THE

ENGLISH AND EMPIRE DIGEST

WITH

COMPLETE AND EXHAUSTIVE

ANNOTATIONS.

SUPPLEMENT No. 8

In this Volume the new English Cases reported up to 1st January, 1933, are included, and other new cases are included so far as the Volumes of Reports of the same were available in London on that date.

THE ENGLISH AND EMPIRE DIGEST

COMPLETE AND EXHAUSTIVE
ANNOTATIONS

SUPPLEMENT No. 8

BEING CUMULATIVE AND CONTAINING ALL THE MATTER OF THE PREVIOUS SUPPLEMENTS, AND, IN ADDITION, ALL THE NEW CASES AND ANNOTATIONS WHICH HAVE BEEN DECIDED IN THE INTERVAL

EDITED BY
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PUBLISHERS' PREFACE.

THE publication of "SUPPLEMENT No. 8" to the "ENGLISH AND EMPIRE DIGEST" affords the Publishers a fitting opportunity of emphasising the increased utility of the Digest, in view of the Digest citations added to cases in the Replacement Volumes of "HALSBURY'S LAWS OF ENGLAND." The Digest thus takes its proper place as a recognised citation, and the interrelation of these two great complementary works is most clearly demonstrated.

The close co-operation existing between the Editorial Department responsible for the production of "HALSBURY" and the Editor of the Digest Supplement has resulted in the addition to Supplement No. 8 of a number of statutory cross-references designed to draw attention to changes in the law rendering obsolete the cases to which they are appended.

WORDS AND PHRASES.

In response to many requests a Title "WORDS AND PHRASES" has been added to the Supplement, in continuation of the valuable collection of judicial interpretations appearing under this heading in the Comprehensive Index, Vol. XLVIII., pp. 1894 *et seq.*

PRACTICE AND PROCEDURE.

Since the appearance of the last Supplement the PRACTICE AND PROCEDURE VOLUME of the Digest has been published, and the latest cases falling within these Titles are therefore Digested in the present Supplement. Arrangements have also been made to include the text of amendments and additions to the Rules of the Supreme Court, following the system adopted in the PRACTICE AND PROCEDURE VOLUME.

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YARD,
TEMPLE BAR,
LONDON.
JANUARY, 1933.

J.S.

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REPORTS INCLUDED IN THIS WORK AND THEIR ABBREVIATIONS

A. C. (preceded by date)	Law Reports, Appeal Cases, House of Lords, since 1890 (*e.g.*, [1891] A. C.)	Eng.
A. Jur. Rep.	Australian Jurist Reports	Aus.
A. L. T.	Australian Law Times	Aus.
A. R.	Ontario Appeal Reports, 27 vols., 1876—1900	Can.
Act.	Acton's Reports, Prize Causes, 2 vols., 1809—1841	Eng.
Ad. & El.	Adolphus and Ellis's Reports, King's Bench and Queen's Bench, 12 vols., 1834—1842	Eng.
Adam	Adam's Justiciary Reports (Scotland), 1893—(current)	Scot.
Add.	Addams' Ecclesiastical Reports, 3 vols., 1822—1826	Eng.
Agra	Agra High Court	Ind.
Agra F. B.	Agra High Court, Full Bench	Ind.
Alc. & N.	Alcock and Napier's Reports, King's Bench (Ireland), 1 vol., 1813—1833	Ir.
Alc. Reg. Cas.	Alcock's Registry Cases (Ireland), 1 vol., 1832—1841	Ir.
Aleyn	Aleyn's Reports, King's Bench, fol., 1 vol., 1646—1649	Eng.
All.	New Brunswick Reports (Allen)	Can.
Alta. L. R.	Alberta Law Reports	Can.
Amb	Ambler's Reports, Chancery, 1 vol., 1716—1783	Eng.
And.	Anderson's Reports, Common Pleas, fol., 2 parts in one vol., 1535—1605	Eng.
Andr.	Andrews' Reports, King's Bench, fol., 1 vol., 1737—1740	Eng.
Anst.	Anstruther's Reports, Exchequer, 3 vols., 1792—1797	Eng.
App. Cas.	Law Reports, Appeal Cases, House of Lords, 15 vols., 1875—1890	Eng
App. Ct. Rep.	Appeal Court Reports	N.Z.
App. D.	South African Law Reports, Appellate Division	S. Af.
Architects' L. R.	Architects' Law Reports, 4 vols., 1904—1909	Eng.
Argus L. R.	Argus Law Reports	Aus.
Arkley	Arkley's Justiciary Reports (Scotland), 1 vol., 1846—1848	Scot.
Arm. M. & O.	Armstrong, Macartney, and Ogle's Civil and Criminal Reports (Ireland), 1840—1842	Ir.
Arn.	Arnold's Reports, Common Pleas, 2 vols., 1838—1839	Eng.
Arn. & H.	Arnold and Hodges' Reports, Queen's Bench, 1 vol., 1840—1841	Eng.
Ashb.	Ashburner's Principles of Equity, 1902	Eng.
Asp. M. L. C.	Aspinall's Maritime Law Cases, 1870—(current)	Eng.
Atk.	Atkyns' Reports, Chancery, 3 vols., 1736—1754	Eng.
Ayl. Pan.	Ayliffe's New Pandect of Roman Civil Law	Eng.
Ayl. Par.	Ayliffe's Parergon Juris Canonici Anglicani	Eng.
B.	Barber's Gold Law	S. Af.
B. & Ad.	Barnewall and Adolphus' Reports, King's Bench, 5 vols., 1830—1834	Eng.
B. & Ald.	Barnewall and Alderson's Reports, King's Bench, 5 vols., 1817—1822	Eng.
B. & C.	Barnewall and Cresswell's Reports, King's Bench, 10 vols., 1822—1830	Eng.
B. & C. R. (preceded by date)	Reports of Bankruptcy and Companies Winding up Cases, 1918—(current) (*e.g.*, [1918—19] B. & C. R.)	Eng.
B. & S.	Best and Smith's Reports, Queen's Bench, 10 vols., 1861—1870	Eng.
B. C. R.	British Columbia Reports	Can.
B. Dig.	Bose's Digest	Ind.
B. L. R.	Bengal Law Reports	Ind.
B. L. R. A. C.	Bengal Law Reports, Appeal Cases	Ind.
B. L. R. P. C.	Bengal Law Reports, Privy Council	Ind.
B. L. R. Sup. Vol.	Bengal Law Reports, Supp. Vol.	Ind.
B. R. A.	Butterworths' Rating Appeals, 2 vols., 1913—1925	Eng.
B. W. C. C.	Butterworths' Workmen's Compensation Cases, 1907—(current)	Eng.
Bac. Abr.	Bacon's Abridgment	Eng.
Bail Ct. Cas.	Bail Court Cases (Lowndes and Maxwell), 1 vol., 1852—1854	Eng.

Baild.	Baildon's Select Cases in Chancery (Selden Society, Vol. X.)	Eng.
Ball & B.	Ball and Beatty's Reports, Chancery (Ireland), 2 vols., 1807—1814	Ir.
Bankr. & Ins. R. ...	Bankruptcy and Insolvency Reports, 2 vols., 1853—1855 ...	Eng.
Bar. & Arn.	Barron and Arnold's Election Cases, 1 vol., 1843—1846 ...	Eng
Bar. & Aust.	Barron and Austin's Election Cases, 1 vol., 1842	Eng.
Barn. Ch.	Barnardiston's Reports, Chancery, fol., 1 vol., 1740—1741 ...	Eng.
Barn. K. B.	Barnardiston's Reports, King's Bench, fol., 2 vols., 1726—1734	Eng.
Barnes	Barnes' Notes of Cases of Practice, Common Pleas, 1 vol., 1732—1760	Eng.
Batt.	Batty's Reports, King's Bench (Ireland), 1 vol., 1825—1826	Ir.
Beat.	Beatty's Reports, Chancery (Ireland), 1 vol., 1813—1830 ...	Ir.
Beav.	Beavan's Reports, Rolls Court, 36 vols., 1838—1866	Eng.
Beav. & Wal.	Beavan and Walford's Railway Parliamentary Cases, 1 vol., 1846	Eng.
Beaw.	Beawes's Lex Mercatoria	Eng.
Bell, C. C.	T. Bell's Crown Cases Reserved, 1 vol., 1858—1860	Eng.
Bell, Ct. of Sess. ...	R. Bell's Decisions, Court of Session (Scotland), 1 vol., 1790—1792	Scot.
Bell, Ct. of Sess. fol. ...	R. Bell's Decisions, Court of Session (Scotland), fol., 1 vol., 1794—1795	Scot.
Bell, Dict. Dec. ...	S. S. Bell's Dictionary of Decisions, Court of Session (Scotland), 2 vols., 1808—1833	Scot.
Bell, Sc. App.	S. S. Bell's Scotch Appeals, House of Lords, 7 vols., 1842—1850	Scot.
Bellewe	Bellewe's Cases *temp.* Richard II., King's Bench, 1 vol. ...	Eng.
Belt's Sup.	Belt's Supplement to Vesey Sen., Chancery, 1 vol., 1746—1756	Eng.
Ben.	Benloe's Reports, Common Pleas, fol., 1 vol., 1357—1579 ...	Eng.
Benl.	Benloe's (or Bendloe's) Reports, King's Bench, fol., 1 vol., 1440—1627	Eng.
Ber.	New Brunswick Reports (Berton)	Can.
Bing.	Bingham's Reports, Common Pleas, 10 vols., 1822—1834 ...	Eng.
Bing. N. C.	Bingham's New Cases, Common Pleas, 6 vols., 1834—1840 ...	Eng.
Biss. & Sm.	Bisset and Smith's Digest	S. Af.
Bitt. Prac. Cas. ...	Bittleston's Practice Cases in Chambers under the Judicature Acts, 1873 and 1875, 1 vol., 1875—1876	Eng.
Bitt. Rep. in Ch. ...	Bittleston's Reports in Chambers (Queen's Bench Division), 1 vol., 1883—1884	Eng.
Bl. Com.	Blackstone's Commentaries	Eng.
Bl. D. & Osb.	Blackham, Dundas, and Osborne's Reports, Practice and Nisi Prius (Ireland), 1 vol., 1846—1848	Ir.
Bli.	Bligh's Reports, House of Lords, 4 vols., 1819—1821	Eng.
Bli. N. S.	Bligh's Reports, House of Lords, New Series, 11 vols., 1827—1837	Eng.
Bluett	Bluett's Isle of Man Cases	I. of M.
Bom.	Bombay High Court Reports	Ind.
Bom. A. C.	Bombay Reports, Appellate Jurisdiction	Ind.
Bom. Cr. Ca.	Bombay Reports, Crown Cases	Ind.
Bom. O. C.	Bombay Reports, Original Civil Jurisdiction	Ind.
Bos. & P.	Bosanquet and Puller's Reports, Common Pleas, 3 vols., 1796—1804	Eng.
Bos. & P. N. R. ...	Bosanquet and Puller's New Reports, Common Pleas, 2 vols., 1804—1807	Eng.
Bott.	Bott's Laws Relating to the Poor, 2 vols., 6th ed., 1827 ...	Eng.
Bourke	Bourke's Reports	Ind.
Br. & Col. Pr. Cas. ...	British and Colonial Prize Cases, 3 vols., 1914—1919	Eng.
Bract.	Bracton De Legibus et Consuetudinibus Angliæ	Eng.
Bro. Abr.	Sir R. Brooke's Abridgement	Eng.
Bro. C. C.	W. Brown's Chancery Reports, 4 vols., 1778—1794	Eng.
Bro. Ecc. Rep.	W. G. Brooke's Ecclesiastical Reports, Privy Council, 1 vol., 1850—1872	Eng.
Bro. N. C.	Sir R. Brooke's New Cases, 1 vol., 1515—1558	Eng.
Bro. Parl. Cas.	J. Brown's Cases in Parliament, 8 vols., 1702—1800 ...	Eng.
Bro. Supp. to Mor. ...	M. P. Brown's Supplement to Morison's Dictionary of Decisions, Court of Session (Scotland), 5 vols.	Scot.
Bro. Synop.	M. P. Brown's Synopsis of Decisions, Court of Session (Scotland), 4 vols., 1532—1827	Scot.
Brod. & Bing.	Broderip and Bingham's Reports, Common Pleas, 3 vols., 1819—1822	Eng.
Brod. & F.	Broderick and Fremantle's Ecclesiastical Reports, Privy Council, 1 vol., 1705—1864	Eng.
Broun	Broun's Justiciary Reports (Scotland), 2 vols., 1842—1845 ...	Scot.
Brown. & Lush. ...	Browning and Lushington's Reports, Admiralty, 1 vol., 1863—1866	Eng.
Brownl.	Brownlow and Goldesborough's Reports, Common Pleas, 2 parts, 1569—1624	Eng.
Bruce	Bruce's Decisions, Court of Session (Scotland), 1714—1715 ...	Scot.

Buch. ...	Buchanan's Reports of the Supreme Court of the Cape of Good Hope, 1868—1879	S. Af.
Buch. A. C.	Buchanan's Reports of Appeal Court (Cape)	S. Af.
Buchan. ...	Buchanan's Reports, Court of Session and Justiciary (Scotland), 1806—1813	Scot.
Buck ...	Buck's Cases in Bankruptcy, 1 vol., 1816—1820	Eng.
Bull. N. P.	Buller's Nisi Prius (published, London, 1772)	Eng.
Bulst. ...	Bulstrode's Reports, King's Bench, fol., 3 parts in 1 vol., 1610—1626	Eng.
Bunb. ...	Bunbury's Reports, Exchequer, fol., 1 vol., 1713—1741 ...	Eng.
Burr. ...	Burrow's Reports, King's Bench, 5 vols., 1756—1772	Eng.
Burr. S. C.	Burrow's Settlement Cases, King's Bench, 1 vol., 1733—1776	Eng.
Burrell ...	Burrell's Reports, Admiralty, ed. by Marsden, 1 vol., 1648—1840	Eng
C. A.	Court of Appeal Reports, 3 vols., 1867—1877	N.Z.
C. & P.	Carrington and Payne's Reports, Nisi Prius, 9 vols., 1823—1841	Eng.
C. B.	Common Bench Reports, 18 vols., 1845—1856	Eng.
C. B. N. S.	Common Bench Reports, New Series, 20 vols., 1856—1865 ...	Eng.
C. B. R.	Canadian Bankruptcy Reports Annotated, 1920—(current) ...	Can.
C. C. Ct. Cas.	Central Criminal Court Cases (Sessions Papers), 1834—1913 ...	Eng.
C. L. Ch.	Common Law Chambers	Can.
C. L. J.	Cape Law Journal	S. Af.
C. L. J. N. S.	Canada Law Journal, New Series, 1865—(current)	Can.
C. L. J. O. S.	Canada Law Journal, Old Series, 10 vols., 1855—1864 ...	Can.
C. L. R.	Common Law Reports, 3 vols., 1853—1855	Eng.
C. L. R.	Commonwealth Law Reports	Aus.
C. L. R.	Calcutta Law Reporter	Ind.
C. L. T.	Canadian Law Times	Can.
C. L. T. Occ. N. ...	Canadian Law Times, Occasional Notes	Can.
C. P.	Upper Canada Common Pleas	Can
C. P. D.	Law Reports, Common Pleas Division, 5 vols., 1875—1880 ...	Eng.
C. P. D.	Cape Provincial Division Reports	S. Af.
C. R. [date] **A. C.** ...	Canadian Reports, Appeal Cases	Can.
C. T. R.	Cape Times Reports of the Supreme Court of the Cape of Good Hope	S. Af.
C. W. N....	Calcutta Weekly Notes	Ind.
Cab. & El.	Cababé and Ellis's Reports, Queen's Bench Division, 1 vol., 1882—1885	Eng.
Cald. Mag. Cas. ...	Caldecott's Magistrates' Cases, 1 vol., 1776—1785	Eng.
Calth.	Calthrop's City of London Cases, King's Bench, 1 vol., 1609—1618	Eng.
Cam. Cas.	Cameron's Supreme Court Cases	Can.
Cam. Prac.	Cameron's Supreme Court Practice	Can.
Camp.	Campbell's Reports, Nisi Prius, 4 vols., 1807—1816	Eng.
Can. C. C.	Canadian Criminal Cases, Annotated, 1898—(current) ...	Can.
Can. Com. Cas.	Commercial Law Reports of Canada, 4 vols., 1901—1905 ...	Can.
Can. Crim. Cas. ...	Canadian Criminal Cases, Annotated, 1898—(current) ...	Can.
Can. Gaz.	Canadian Gazette	Can.
Can. Ry. Cas.	Canadian Railway Cases	Can.
Car. & Kir.	Carrington and Kirwan's Reports, Nisi Prius, 3 vols., 1843—1853	Eng.
Car. & M.	Carrington and Marshman's Reports, Nisi Prius, 1 vol., 1841—1842	Eng.
Car. C. L.	Carrington's Treatise on Criminal Law	Can.
Card. Doc. Ann. ...	Cardwell's Documentary Annals of the Reformed Church of England, 2 vols., 1546—1716	Eng.
Carl.	New Brunswick Reports (Carleton)	Can.
Carp. Pat. Cas.	Carpmael's Patent Cases, 2 vols., 1602—1842	Eng.
Cart.	Carter's Reports, Common Pleas, fol., 1 vol., 1664—1673 ...	Eng.
Cart.	Cases on British North America Act (Cartwright)	Can.
Carth.	Carthew's Reports, King's Bench, fol., 1 vol., 1687—1700 ...	Eng.
Cary	Cary's Reports, Chancery, 1 vol.	Eng.
Cas. in Ch.	Cases in Chancery, fol., 3 parts, 1660—1697	Eng.
Cas. Pract. K. B. ...	Cases of Practice, King's Bench, 1 vol., 1655—1775	Eng.
Cas. Sett.	Cases of Settlements and Removals, 1 vol., 1685—1727 ...	Eng.
Cas. *temp.* Finch ...	Cases *temp.* Finch, Chancery, fol., 1 vol., 1673—1680 ...	Eng.
Cas. *temp.* King ...	Select Cases *temp.* King, Chancery, fol., 1 vol., 1724—1733 ...	Eng.
Cas. *temp.* Talb. ...	Cases in Equity *temp.* Talbot, fol., 1 vol., 1730—1737 ...	Eng.
Dig.	Cassells' Digest	Can.
(preceded by date)	Law Reports, Chancery Division, since 1890 (*e.g.*, [1891] 1 Ch.)	Eng.
App.	Law Reports, Chancery Appeals, 10 vols., 1865—1875 ...	Eng.
Cas. in Ch.	Choyce Cases in Chancery, 1557—1606	Eng.
Ch.	Upper Canada Chancery Chambers Reports	Can.
Ch. D.	Law Reports, Chancery Division, 45 vols., 1875—1890 ...	Eng.
Rob.	Christopher Robinson's Reports, Admiralty, 6 vols., 1798—1808	Eng.
Cham. Cas. ...	Charley's Chamber Cases, 2 vols., 1875—1876	Eng.
Pr. Cas.	Charley's New Practice Reports, 3 vols., 1875—1876	Eng.
... ...	New Brunswick Reports (Chipman)	Can.

Chit.	Chitty's Practice Reports, King's Bench, 2 vols., 1770—1822 ...	Eng.
Cl. & Fin.	Clark and Finnelly's Reports, House of Lords, 12 vols., 1831—1846	Eng.
Cl. & Sc. Dr. Cas. ...	Clark and Scully's Drainage Cases	Can
Clay.	Clayton's Reports and Pleas of Assizes at Yorke, 1 vol., 1631—1650	Eng.
Clif. & Rick.	Clifford and Rickards' Locus Standi Reports, 3 vols., 1873—1884	Eng.
Clif. & Steph.	Clifford and Stephens' Locus Standi Reports, 2 vols., 1867—1872	Eng.
Co. A.	Cook's Lower Canada Admiralty Court Cases	Can.
Co. Ent.	Coke's Entries	Eng.
Co. Inst.	Coke's Institutes	Eng.
Co. L. J.	Colonial Law Journal	N.Z.
Co. Litt.	Coke on Littleton (1 Inst.)	Eng.
Co. Rep.	Coke's Reports, 13 parts, 1572—1616	Eng.
Coch.	Nova Scotia Reports (Cochran)	Can.
Cockb. & Rowe ...	Cockburn and Rowe's Election Cases, 1 vol., 1833	Eng.
Coll.	Collyer's Reports, Chancery, 2 vols., 1844—1846	Eng.
Coll. Jurid.	Collectanea Juridica, 2 vols.	Eng.
Colles	Colles' Cases in Parliament, 1 vol., 1697—1713	Eng.
Colt.	Coltman's Registration Cases, 1 vol., 1879—1885	Eng.
Com.	Comyns' Reports, King's Bench, Common Pleas, and Exchequer, fol., 2 vols., 1695—1740	Eng.
Com. Cas.	Commercial Cases, 1895—(current)	Eng.
Com. Dig.	Comyns' Digest	Eng.
Comb.	Comberbach's Reports, King's Bench, fol., 1 vol., 1685—1698	Eng.
Con. & Law.	Connor and Lawson's Reports, Chancery (Ireland), 2 vols., 1841—1843	Ir.
Cong. Dig.	Congdon's Digest	Can.
Const	Const's edition of Bott's Poor Laws, 3 vols., 1807	Eng.
Cooke & Al.	Cooke and Alcock's Reports, King's Bench (Ireland), 1 vol., 1833—1834	Ir.
Cooke, Pr. Cas.	Cooke's Practice Reports, Common Pleas, 1 vol., 1706—1747	Eng.
Cooke, Pr. Reg. ...	Cooke's Practical Register of the Common Pleas, 1 vol., 1702—1742	Eng.
Coop. G.	G. Cooper's Reports, Chancery, 1 vol., 1792—1815	Eng.
Coop. Pr. Cas.	C. P. Cooper's Reports, Chancery Practice, 1 vol., 1837—1838	Eng.
Coop. *temp.* Brough. ...	C. P. Cooper's Cases *temp.* Brougham, Chancery, 1 vol., 1833—1834	Eng.
Coop. *temp.* Cott. ...	C. P. Cooper's Cases *temp.* Cottenham, Chancery, 2 vols., 1846—1848 (and miscellaneous earlier cases)	Eng.
Cor.	Coryton's Reports	Ind.
Corb. & D.	Corbett and Daniell's Election Cases, 1 vol., 1819	Eng.
Correspondances Jud. ...	Correspondances Judiciaires	Can.
Couper	Couper's Justiciary Reports (Scotland), 5 vols., 1868—1885 ...	Scot.
Cout.	Coutlees' Unreported Cases	Can.
Cout. Dig.	Coutlees' Digest	Can.
Cowp.	Cowper's Reports, King's Bench, 2 vols., 1774—1778	Eng.
Cox & Atk.	Cox and Atkinson's Registration Appeal Cases, 1 vol., 1843—1846	Eng.
Cox, C. C.	E. W. Cox's Criminal Law Cases, 1843—(current)	Eng.
Cox, Eq. Cas.	S. C. Cox's Equity Cases, 2 vols., 1745—1797	Eng.
Cox, M. & H.	Cox, Macrae, and Hertslet's County Courts Cases and Appeals, 1 vol., 1846—1852	Eng.
Cr. & J.	Crompton and Jervis's Reports, Exchequer, 2 vols., 1830—1832	Eng.
Cr. & M.	Crompton and Meeson's Reports, Exchequer, 2 vols., 1832—1834	Eng.
Cr. & Ph.	Craig and Phillips' Reports, Chancery, 1 vol., 1840—1841 ...	Eng.
Cr. App. Rep.	Cohen's Criminal Appeal Reports, 1908—(current)	Eng.
Cr. M. & R.	Crompton, Meeson, and Roscoe's Reports, Exchequer, 2 vols., 1834—1835	Eng.
Craw. & D.	Crawford and Dix's Circuit Cases (Ireland), 3 vols., 1838—1846	Ir.
Craw. & D. Abr. C. ...	Crawford and Dix's Abridged Cases (Ireland), 1 vol., 1837—1838	Ir.
Cress. Insolv. Cas. ...	Cresswell's Insolvency Cases, 1 vol., 1827—1829	Eng.
Cripps' Church Cas. ...	Cripps' Church and Clergy Cases, 2 parts, 1847—1850	Eng.
Cro. Car.	Croke's Reports *temp.* Charles I., King's Bench and Common Pleas, 1 vol., 1625—1641	Eng.
Cro. Eliz.	Croke's Reports *temp.* Elizabeth, King's Bench and Common Pleas, 1 vol., 1582—1603	Eng.
Cro. Jac.	Croke's Reports *temp.* James I., King's Bench and Common Pleas, 1 vol., 1603—1625	Eng.
Cru. Dig.	Cruise's Digest of the Law of Real Property, 7 vols.	Eng.
Cunn.	Cunningham's Reports, King's Bench, fol., 1 vol., 1734—1735	Eng.
Curt.	Curteis' Ecclesiastical Reports, 3 vols., 1834—1844	Eng.
D.	Duxbury's Reports of the High Court of the South African Republic	S. Af.
D. C. A.	Dorion's Queen's Bench Reports	Can.
D. L. R.	Dominion Law Reports	Can.

Dal.	Dalison's Reports, Common Pleas, fol., 1 vol., 1546—1574 ...	Eng.
Dalr.	Dalrymple's Decisions, Court of Session (Scotland), fol., 1 vol., 1698—1720	Scot.
Dan.	Daniell's Reports, Exchequer in Equity, 1 vol., 1817—1823 ...	Eng.
Dan. & Ll.	Danson and Lloyd's Mercantile Cases, 1 vol., 1828—1829 ...	Eng.
Dav. & Mer.	Davison and Merivale's Reports, Queen's Bench, 1 vol., 1843—1844	Eng.
Dav. Ir.	Davys' (or Davis' or Davy's) Reports (Ireland), 1 vol., 1604—1611	Ir.
Dav. Pat. Cas.	Davies' Patent Cases, 1 vol., 1785—1816	Eng.
Day	Day's Election Cases, 1 vol., 1892—1893	Eng.
Dea. & Sw.	Deane and Swabey's Ecclesiastical Reports, 1 vol., 1855—1857	Eng.
Deac.	Deacon's Reports, Bankruptcy, 4 vols., 1834—1840	Eng.
Deac. & Ch.	Deacon and Chitty's Reports, Bankruptcy, 4 vols., 1832—1835	Eng.
Dears. & B.	Dearsly and Bell's Crown Cases Reserved, 1 vol., 1856—1858	Eng.
Dears. C. C.	Dearsly's Crown Cases Reserved, 1 vol., 1852—1856	Eng.
Deas & And.	Deas and Anderson's Decisions (Scotland), 5 vols., 1829—1832	Scot.
De G.	De Gex's Reports, Bankruptcy, 2 vols., 1844—1848	Eng.
De G. & J.	De Gex and Jones's Reports, Chancery, 4 vols., 1857—1859 ...	Eng.
De G. & Sm.	De Gex and Smale's Reports, Chancery, 5 vols., 1846—1852 ...	Eng.
De G. F. & J.	De Gex, Fisher and Jones's Reports, Chancery, 4 vols., 1859—1862	Eng.
De G. J. & Sm. ...	De Gex, Jones, and Smith's Reports, Chancery, 4 vols., 1862—1865	Eng.
De G. M. & G.	De Gex, Macnaghten and Gordon's Reports, Chancery, 8 vols., 1851—1857	Eng.
Delane	Delane's Decisions, Revision Courts, 1 vol., 1832—1835 ...	Eng.
Den.	Denison's Crown Cases Reserved, 2 vols., 1844—1852 ...	Eng.
Dick.	Dickens' Reports, Chancery, 2 vols., 1559—1798	Eng.
Dirl.	Dirleton's Decisions, Court of Session (Scotland), fol., 1 vol., 1665—1677	Scot.
Dods.	Dodson's Reports, Admiralty, 2 vols., 1811—1822	Eng.
Donnelly	Donnelly's Reports, Chancery, 1 vol., 1836—1837	Eng.
Doug. El. Cas.	Douglas' Election Cases, 4 vols., 1774—1776	Eng.
Doug. K. B.	Douglas' Reports, King's Bench, 4 vols., 1778—1785	Eng.
Dow	Dow's Reports, House of Lords, 6 vols., 1812—1818	Eng.
Dow & Cl.	Dow and Clark's Reports, House of Lords, 2 vols., 1827—1832	Eng.
Dow. & L.	Dowling and Lowndes' Practice Reports, 7 vols., 1843—1849	Eng.
Dow. & Ry. K. B. ...	Dowling and Ryland's Reports, King's Bench, 9 vols., 1822—1827	Eng.
Dow. & Ry. M. C. ...	Dowling and Ryland's Magistrates' Cases, 4 vols., 1822—1827	Eng.
Dow. & Ry. N. P. ...	Dowling and Ryland's Reports, Nisi Prius, 1 part, 1822—1823	Eng.
Dowl.	Dowling's Practice Reports, 9 vols., 1830—1841	Eng
Dowl. N. S.	Dowling's Practice Reports, New Series, 2 vols., 1841—1843	Eng.
Dr. & Wal.	Drury and Walsh's Reports, Chancery (Ireland), 2 vols., 1837—1841	Ir.
Dr. & War.	Drury and Warren's Reports, Chancery (Ireland), 4 vols., 1841—1843	Ir.
Dra.	Draper's King's Bench Reports	Can.
Drew.	Drewry's Reports, Chancery, 4 vols., 1852—1859	Eng.
Drew. & Sm.	Drewry and Smale's Reports, Chancery, 2 vols., 1859—1865 ...	Eng.
Drinkwater	Drinkwater's Reports, Common Pleas, 1 vol., 1840—1841 ...	Eng.
Drury *temp.* **Nap.** ...	Drury's Reports *temp.* Napier, Chancery (Ireland), 1 vol., 1858—1859	Ir.
Drury *temp.* **Sug.** ...	Drury's Reports *temp.* Sugden, Chancery (Ireland), 1 vol., 1841—1844	Ir.
Dugd. Orig.	Dugdale's Origines Juridiciales	Eng.
Dunl. (Ct. of Sess.) ...	Dunlop, Court of Session Cases (Scotland), 2nd Series, 24 vols., 1838—1862	Scot.
Dunning	Dunning's Reports, King's Bench, 1 vol., 1753—1754 ...	Eng.
Durie	Durie's Decisions, Court of Session (Scotland), fol., 1 vol., 1621—1642	Scot.
Dyer	Dyer's Reports, King's Bench, 3 vols., 1513—1581	Eng.
E. & A.	Upper Canada Error and Appeal	Can.
E. & B.	Ellis and Blackburn's Reports, Queen's Bench, 8 vols., 1852—1858	Eng.
E. & E.	Ellis and Ellis's Reports, Queen's Bench, 3 vols., 1858—1861	Eng.
E. B. & E.	Ellis, Blackburn, and Ellis's Reports, Queen's Bench, 1 vol., 1858—1860	Eng.
E. D. C.	Reports of the Eastern Districts Court (Cape) from 1880 ...	S. Af.
E. D. L.	South African Law Reports, Eastern Districts Local Division	S. Af.
E. L. R.	Eastern Law Reporter	Can.
E. R. (or Eng. Rep.) ...	English Reports	Eng.
E. R.	Ontario Election Reports	Can.
Eag. & Y.	Eagle and Younge's Tithe Cases, 4 vols., 1204—1825	Eng.

Reports included in this Work and their Abbreviations.

East ...	East's Reports, King's Bench, 16 vols., 1800—1812	Eng.
East, P. C.	East's Pleas of the Crown	Eng.
Ecc. & Ad.	Spinks' Ecclesiastical and Admiralty Reports, 2 vols., 1853—1855	Eng.
Eden ...	Eden's Reports, Chancery, 2 vols., 1757—1766	Eng.
Edgar ...	Edgar's Decisions, Court of Session (Scotland), fol., 1724—1725	Scot.
Edw. ...	Edwards' Reports, Admiralty, 1 vol., 1808—1812	Eng.
Elchies ...	Elchies' Decisions, Court of Session (Scotland), 2 vols., 1733—1754	Scot.
Emden's B. C.	Emden's Building Contracts, Building Leases and Building Statutes	Eng.
Eng. Pr. Cas.	Roscoe's English Prize Cases, 2 vols., 1745—1858	Eng.
Eq. Cas. Abr.	Abridgment of Cases in Equity, fol., 2 vols., 1667—1744 ...	Eng.
Eq. Rep.	Equity Reports, 3 vols., 1853—1855	Eng.
Esp. ...	Espinasse's Reports, Nisi Prius, 6 vols., 1793—1810	Eng.
Ex. D. ...	Law Reports, Exchequer Division, 5 vols., 1875—1880 ...	Eng.
Exch. ...	Exchequer Reports (Welsby, Hurlstone, and Gordon), 11 vols., 1847—1856	Eng.
Exch. C. R.	Exchequer Court Reports	Can.
F. (Ct. of Sess.)	Fraser, Court of Session Cases (Scotland), 5th series, 8 vols., 1898—1906	Scot.
F. ...	Foord's Reports of the Supreme Court of the Cape of Good Hope, 1879—1880	S. Af.
F. & F. ...	Foster and Finlason's Reports, Nisi Prius, 4 vols., 1856—1867	Eng.
F. N. D.	Finnemore's Notes and Digest of Natal Cases, 1863—1867 ...	S. Af.
Fac. Coll.	Faculty of Advocates, Collection of Decisions, Court of Session (Scotland), 38 vols., 1752—1841	Scot.
Falc. ...	Falconer's Decisions, Court of Session (Scotland), 2 vols., fol., 1744—1751	Scot.
Falc. & Fitz.	Falconer and Fitzherbert's Election Cases, 1 vol., 1835—1838	Eng.
Fenton ...	Fenton, Important Judgments	N.Z.
Ferg. ...	Ferguson's Consistorial Decisions (Scotland), 1 vol., 1811—1817	Scot.
Fitz. Nat. Brev.	Fitzherbert's Natura Brevium	Eng.
Fitz-G. ...	Fitz-Gibbons' Reports, King's Bench, fol., 1 vol., 1727—1731	Eng.
Fl. & K.	Flanagan and Kelly's Reports, Rolls Court (Ireland), 1 vol., 1840—1842	Ir.
Fonbl. ...	Fonblanque's Reports, Bankruptcy, 2 parts, 1849—1852 ...	Eng.
For. ...	Forrest's Reports, Exchequer, 1 vol., 1800—1801	Eng.
Forb. ...	Forbes' Decisions, Court of Session (Scotland), fol., 1 vol., 1705—1713	Scot.
Fort. De Laud.	Fortesque, De Laudibus Legum Angliæ	Eng.
Fortes. Rep.	Fortescue's Reports, fol., 1 vol., 1692—1736	Eng.
Fost. ...	Foster's Crown Cases, 1 vol., 1708—1760	Eng.
Fount. ...	Fountainhall's Decisions, Court of Session (Scotland), fol., 2 vols., 1678—1712	Scot.
Fox & S. Ir.	M. C. Fox and T. B. C. Smith's Reports, King's Bench (Ireland), 2 vols., 1822—1825	Ir.
Fox & S. Reg.	J. S. Fox and C. L. Smith's Registration Cases, 1 vol., 1886—1895	Eng.
Fras. ...	Fraser (Simon), Election Cases, 2 vols., 1793	Eng.
Freem. Ch.	Freeman's Reports, Chancery, 1 vol., 1660—1706	Eng.
Freem. K. B.	Freeman's Reports, King's Bench and Common Pleas, 1 vol., 1670—1704	Eng.
G. ...	Gregorowski's Reports of the High Court of the Orange Free State from 1883	S. Af.
G. & R.	Nova Scotia Reports (Geldert & Russell)	Can.
G. I. Dig.	General Index Digest	Can.
G. W. D.	South African Law Reports, Griqualand West Local Division	S. Af.
G. W. L.	South African Law Reports, Griqualand West Local Division	S. Af.
Gal. & Dav.	Gale and Davison's Reports, Queen's Bench, 3 vols., 1841—1843	Eng.
Gale ...	Gale's Reports, Exchequer, 2 vols., 1835—1836	Eng.
Gaz. L. R.	New Zealand Gazette Law Reports	N.Z.
Geld. Dig.	Geldert's Digest	Can.
Gib. Cod.	Gibson's Codex Juris Ecclesiastici Anglicani	Eng.
Giff. ...	Giffard's Reports, Chancery, 5 vols., 1857—1865	Eng.
Gilb. ...	Gilbert's Cases in Law and Equity, 1 vol., 1713—1714 ...	Eng.
Gilb. C. P.	Gilbert's History and Practice of the Court of Common Pleas	Eng.
Gilb. Ch.	Gilbert's Reports, Chancery and Exchequer, fol., 1 vol., 1706—1726	Eng.
Gilm. & F.	Gilmour and Falconer's Decisions, Court of Session (Scotland), 2 parts, Part I. (Gilmour) 1661—1666, Part II. (Falconer) 1681—1686	Scot.
Gl. & J.	Glyn and Jameson's Reports, Bankruptcy, 2 vols., 1819—1828	Eng.
Glanv. ...	Glanville, De Legibus et Consuetudinibus Regni Angliæ ...	Eng.
Glanv. El. Cas.	Glanville's Election Cases, 1 vol., 1623—1624	Eng.
Glascock	Glascock's Reports (Ireland), 1 vol., 1831—1832	Ir.

Godb.	Godbolt's Reports, King's Bench, Common Pleas, and Exchequer, 1 vol., 1574—1637	Eng.
Gouldsb. ...	Gouldsborough's Reports, Queen's Bench and King's Bench, 1 vol., 1586—1601	Eng.
Gow	Gow's Reports, Nisi Prius, 1 vol., 1818—1820	Eng.
Gr.	Upper Canada Chancery (Grant)	Can.
Griffin's Patent Cases	Griffin's Patent Cases, 1884—1887	Eng.
Gwill.	Gwillim's Tithe Cases, 4 vols., 1224—1824	Eng.
H.	Hertzog's Reports of the High Court of the South African Republic, 1893	S. Af.
H. & C.	Hurlstone and Coltman's Reports, Exchequer, 4 vols., 1862—1866	Eng.
H. & N.	Hurlstone and Norman's Reports, Exchequer, 7 vols., 1856—1862	Eng.
H. & Tw.	Hall and Twells' Reports, Chancery, 2 vols., 1848—1850 ...	Eng.
H. & W.	Hurlstone and Walmsley's Reports, Exchequer, 1 vol., 1840—1841	Eng.
H. B. R. (preceded by date)	Hansell's Reports of Bankruptcy and Companies' Winding up Cases, 3 vols., 1915—1917 (*e.g.*, [1915] H. B. R.)	Eng.
H. C.	Reports of the High Court of Griqualand West	S. Af.
H. E. C.	Hodgin's Election Reports	Can.
H. L. Cas. ...	Clark's Reports, House of Lords, 11 vols., 1847—1866 ...	Eng.
Hag. Adm. ...	Haggard's Reports, Admiralty, 3 vols., 1822—1838	Eng.
Hag. Con. ...	Haggard's Consistorial Reports, 2 vols., 1789—1821	Eng.
Hag. Ecc. ...	Haggard's Ecclesiastical Reports, 4 vols., 1827—1833 ...	Eng.
Hailes	Hailes's Decisions, Court of Session (Scotland), 2 vols., 1766—1791	Scot.
Hale, C. L. ...	Hale's Common Law	Eng.
Hale, P. C. ...	Hale's Pleas of the Crown, 2 vols.	Eng.
Han.	New Brunswick Reports (Hannay)	Can.
Har. & Ruth. ...	Harrison and Rutherford's Reports, Common Pleas, 1 vol., 1865—1866	Eng.
Har. & W. ...	Harrison and Wollaston's Reports, King's Bench and Bail Court, 2 vols., 1835—1836	Eng.
Harc.	Harcarse's Decisions, Court of Session (Scotland), fol., 1 vol., 1681—1691	Scot.
Hard.	Hardres' Reports, Exchequer, fol., 1 vol., 1655—1669	Eng.
Hare	Hare's Reports, Chancery, 11 vols., 1841—1853	Eng.
Hawk. P. C. ...	Hawkins's Pleas of the Crown, 2 vols.	Eng.
Hay	Hay's Reports	Ind.
Hay & Marr. ...	Hay & Marriott's Decisions, Admiralty, 1 vol., 1776—1779 ...	Eng.
Hayes	Hayes's Reports, Exchequer (Ireland), 1 vol., 1830—1832 ...	Ir.
Hayes & Jo. ...	Hayes and Jones's Reports, Exchequer (Ireland), 1 vol., 1832—1834	Ir.
Hem. & M. ...	Hemming and Miller's Reports, Chancery, 2 vols., 1862—1865	Eng.
Het.	Hetley's Reports, Common Pleas, fol., 1 vol., 1627—1631 ...	Eng.
Hob.	Hobart's Reports, Common Pleas, fol., 1 vol., 1613—1625 ...	Eng.
Hodg.	Hodges' Reports, Common Pleas, 3 vols., 1835—1837 ...	Eng.
Hog.	Hogan's Reports, Rolls Court (Ireland), 2 vols., 1816—1831 ...	Ir.
Holt, Adm. ...	W. Holt's Rule of the Road Cases, Admiralty, 1 vol., 1863—1867	Eng.
Holt, Eq. ...	W. Holt's Equity Reports, 2 vols., 1845	Eng.
Holt, K. B. ...	Sir John Holt's Reports, King's Bench, fol., 1 vol., 1688—1710	Eng.
N. P. ...	F. Holt's Reports, Nisi Prius, 1 vol., 1815—1817	Eng.
Home, Ct. of Sess.	Home's Decisions, Court of Session (Scotland), fol., 1 vol., 1735—1744	Scot.
Hong Kong L. R.	Hong Kong Reports	Hong Kong
Hop. & Colt.	Hopwood and Coltman's Registration Cases, 2 vols., 1868—1878	Eng.
Hop. & Ph.	Hopwood and Philbrick's Registration Cases, 1 vol., 1863—1867	Eng.
Horn & H.	Horn and Hurlstone's Reports, Exchequer, 2 vols., 1838—1839	Eng.
Hov. Supp.	Hovenden's Supplement to Vesey Jun.'s Reports, Chancery, 2 vols., 1753—1817	Eng.
How. C. ...	Howard's Chancery Practice	Ir.
How. C. S.	Howard's Supplement to Rules, etc., of the High Court of Chancery in Ireland	Ir.
How. E. E.	Howard's Equity Exchequer	Ir.
How. P. L.	Howard on the Popery Laws	Ir.
Hud. & B.	Hudson and Brooke's Reports, King's Bench and Exchequer (Ireland), 2 vols., 1827—1831	Ir.
Hudson's B. C.	Hudson on Building Contracts, 2 vols.	Eng.
Hume ...	Hume's Decisions, Court of Session (Scotland), 1 vol., 1781—1822	Scot.
Hut. ...	Hutton's Reports, Common Pleas, fol., 1 vol., 1617—1638 ...	Eng.
Hy. Bl. ...	Henry Blackstone's Reports, Common Pleas, 2 vols., 1788—1796	Eng.
Hyde ...	Hyde's Reports	Ind.
I. C. L. R.	Irish Common Law Reports, 17 vols., 1849—1866	Ir.
I. Ch. R.	Irish Chancery Reports, 17 vols., 1850—1867	Ir.
I. Eq. R.	Irish Equity Reports, 13 vols., 1838—1851	Ir.

Reports included in this Work and their Abbreviations.

I. L. R.	Irish Law Reports, 13 vols., 1838—1851	Ir.
I. L. R. (Vol.) All. ...	Indian Law Reports, Allahabad	Ind.
I. L. R. (Vol.) Bom. ...	Indian Law Reports, Bombay	Ind.
I. L. R. (Vol.) Calc. ...	Indian Law Reports, Calcutta	Ind.
I. L. R. (Vol.) Lah. ...	Indian Law Reports, Lahore	Ind.
I. L. R. (Vol.) Mad. ...	Indian Law Reports, Madras	Ind.
I. L. R. (Vol.) Pat. ...	Indian Law Reports, Patna	Ind.
I. L. R. (Vol.) Ran. ...	Indian Law Reports, Rangoon	Ind.
I. L. T.	Irish Law Times, 1867—(current)	Ir.
I. L. T. Jo.	Irish Law Times Journal, 1867,—(current)	Ir.
I. R. (preceded by date)	Irish Reports, since 1893 (*e.g.*, [1894] 1 I. R.)	Ir.
I. R. (Vol.) C. L. ...	Irish Reports, Common Law, 11 vols., 1866—1877	Ir.
I. R. Eq.	Irish Reports, Equity, 11 vols., 1866—1877	Ir.
I. R., R. & L.	Irish Reports, Registry Appeals in the Court of Exchequer Chamber and Appeals in the Court for Land Cases Reserved, 1 vol., 1868—1876	Ir.
Ind. Awards ...	Industrial Awards Recommendations	N.Z.
Ind. Jur. N. S. ...	Indian Jurist, New Series	Ind.
Ind. Jur. O. S. ...	Indian Jurist, Old Series	Ind.
Ir. Cir. Rep. ...	Reports of Irish Circuit Cases, 1 vol., 1841—1843	Ir.
Ir. Jur.	Irish Jurist, 18 vols., 1849—1866...	Ir.
Ir. L. Rec. 1st ser.	Law Recorder (Ireland), 1st series, 4 vols., 1827—1831 ...	Ir.
Ir. L. Rec. N. S.	Law Recorder (Ireland), New Series, 6 vols., 1833—1838 ...	Ir.
Irv.	Irvine's Justiciary Reports (Scotland), 5 vols., 1852—1867 ...	Scot.
J. Bridg. ...	Sir John Bridgman's Reports, Common Pleas, fol., 1 vol., 1613—1621	Eng.
J. D. R.	Juta's Daily Reporter, reporting Cases in the Cape Provincial Division	S. Af.
J. P.	Justice of the Peace, 1837—(current)	Eng.
J. P. Jo. ...	Justice of the Peace (Weekly Notes of Cases)	Eng.
J. R.	Jurist Reports	N.Z.
J. R. N. S. ...	Jurist Reports, New Series	N.Z.
J. Shaw, Just. ...	J. Shaw's Justiciary Reports (Scotland), 1 vol., 1848—1852 ...	Scot.
Jac.	Jacob's Reports, Chancery, 1 vol., 1821—1823	Eng.
Jac. & W. ...	Jacob and Walker's Reports, Chancery, 2 vols., 1819—1821 ...	Eng.
James	Nova Scotia Reports (James)	Can.
Jebb & B. ...	Jebb and Bourke's Reports, Queen's Bench (Ireland), 1 vol. 1841—1842	Ir.
Jebb & S. ...	Jebb and Symes' Reports, Queen's Bench (Ireland), 2 vols., 1838—1841	Ir.
Jebb, C. C. ...	Jebb's Crown Cases Reserved (Ireland), 1 vol., 1822—1840 ...	Ir.
Jebb, Cr. & Pr. Cas.	Jebb's Crown and Presentment Cases	Ir.
Jenk.	Jenkins' Reports, 1 vol., 1220—1623	Eng.
Jo. & Car. ...	Jones and Carey's Reports, Exchequer (Ireland), 1 vol., 1838—1839	Ir.
	Jones and La Touche's Reports, Chancery (Ireland), 3 vols., 1844—1846	Ir.
Jo. Ex. Ir.	T. Jones' Reports, Exchequer (Ireland), 2 vols., 1834—1838 ...	Ir.
John. ...	Johnson's Reports, Chancery, 1 vol., 1858—1860	Eng.
John. & H.	Johnson and Hemming's Reports, Chancery, 2 vols., 1859—1862	Eng.
Jur. ...	Jurist Reports, 18 vols., 1837—1854	Eng.
Jur. N. S.	Jurist Reports, New Series, 12 vols., 1855—1867	Eng.
	Kotze's Reports of the High Court of the Transvaal Province 1877—1881	S. Af.
K. & G.	Keane and Grant's Registration Cases, 1 vol., 1854—1862 ...	Eng.
K. & J.	Kay and Johnson's Reports, Chancery, 4 vols., 1854—1858 ...	Eng.
K. B. (preceded by date)	Law Reports, King's Bench Division, since 1900 (*e.g.*, [1901] 2 K. B.)	Eng.
Kames, Dict. Dec. ...	Kames, Dictionary of Decisions, Court of Session (Scotland), fol., 2 vols., 1540—1741	Scot.
Kames, Rem. Dec. ...	Kames, Remarkable Decisions, Court of Session (Scotland), 2 vols., 1716—1752	Scot.
Kames, Sel. Dec ...	Kames, Select Decisions, Court of Session (Scotland), 1 vol., 1752—1768	Scot.
Kay	Kay's Reports, Chancery, 1 vol., 1853—1854	Eng.
Keb.	Keble's Reports, fol., 3 vols., 1661—1677	Eng.
Keen	Keen's Reports, Rolls Court, 2 vols., 1836—1838	Eng.
Keil.	Keilwey's Reports, King's Bench, fol., 1 vol., 1327—1578 ...	Eng.
Kel.	Sir John Kelyng's Reports, Crown Cases, fol., 1 vol., 1662—1707	Eng.
Kel. W.	W. Kelynge's Reports, fol., 1 vol., Chancery, 1730—1732; King's Bench, fol., 1731—1734...	Eng.
Keny.	Kenyon's Notes of Cases, King's Bench, 2 vols., 1753—1759 ...	Eng.
Keny. Ch.	Chancery Cases in Vol. II. of Kenyon's Notes of Cases, 1753—1754	Eng.
Kerr	New Brunswick Reports (Kerr)	Can.

Kilkerran	Kilkerran's Decisions, Court of Session (Scotland), fol., 1 vol., 1738—1752	Scot.
Kn. & Omb.	Knapp and Ombler's Election Cases, 1 vol., 1834—1835 ...	Eng.
Knapp	Knapp's Reports, Privy Council, 3 vols., 1829—1836	Eng.
Knox	Knox's Reports	Aus.
Konst. & W. Rat. App.	Konstam and Ward's Reports of Rating Appeals, 1 vol., 1909—1912	Eng.
Konst. Rat. App. ...	Konstam's Reports of Rating Appeals, 2 vols., 1904—1908 ...	Eng.
L. & G. *temp.* Plunk. ...	Lloyd and Goold's Reports *temp.* Plunkett, Chancery (Ireland), 1 vol., 1834—1839	Ir.
L. & G. *temp.* Sugd. ...	Lloyd and Goold's Reports *temp.* Sugden, Chancery (Ireland), 1 vol., 1835	Ir.
L. & Welsb.	Lloyd and Welsby's Commercial and Mercantile Cases, 1 vol., 1829—1830	Eng.
L. C. & M. Gaz. ...	Local Courts and Municipal Gazette	Can.
L. C. J.	Lower Canada Jurist	Can.
L. C. L. J.	Lower Canada Law Journal	Can.
L. C. R.	Lower Canada Reports	Can.
L. G. R.	Local Government Reports, 1902—(current)	Eng.
L. J. Adm.	Law Journal, Admiralty, 1865—1875	Eng.
L. J. Bcy.	Law Journal, Bankruptcy, 1832—1880	Eng.
L. J. C. C.	Law Journal (County Courts Reporter), 1912—(current) ...	Eng.
L. J. C. P.	Law Journal, Common Pleas, 1831—1875	Eng.
L. J. Ch.	Law Journal, Chancery, 1831—(current)	Eng.
L. J. Eccl.	Law Journal, Ecclesiastical Cases, 1866—1875	Eng.
L. J. Ex.	Law Journal, Exchequer, 1831—1875	Eng.
L. J. Ex. Eq.	Law Journal, Exchequer in Equity, 1835—1841	Eng.
L. J. K. B. or Q. B. ...	Law Journal, King's Bench or Queen's Bench, 1831—(current)	Eng.
L. J. M. C.	Law Journal, Magistrates' Cases, 1831—1896	Eng.
L. J. N. C.	Law Journal, Notes of Cases, 1866—1892 (from 1893, see Law Journal)	Eng.
L. J. O. S.	Law Journal, Old Series, 10 vols., 1822—1831	Eng.
L. J. P.	Law Journal, Probate, Divorce and Admiralty, 1875—(current)	Eng.
L. J. P. & M.	Law Journal, Probate and Matrimonial Cases, 1858—1859, 1866—1875	Eng.
L. J. P. C.	Law Journal, Privy Council, 1865—(current)	Eng.
L. J. P. M. & A. ...	Law Journal, Probate, Matrimonial and Admiralty, 1860—1865	Eng.
L. Jo.	Law Journal Newspaper, 1866—(current)	Eng.
L. L. R.	Leader Law Reports	S. Af.
L. M. & P.	Lowndes, Maxwell, and Pollock's Reports, Bail Court and Practice, 2 vols., 1850—1851	Eng.
L. N.	Legal News	Can.
L. R. A. & E.	Law Reports, Admiralty and Ecclesiastical Cases, 4 vols., 1865—1875	Eng.
L. R. C. C. R.	Law Reports, Crown Cases Reserved, 2 vols., 1865—1875 ...	Eng.
L. R. C. P.	Law Reports, Common Pleas, 10 vols., 1865—1875	Eng.
L. R. Eq.	Law Reports, Equity Cases, 20 vols., 1865—1875	Eng.
L. R. Exch.	Law Reports, Exchequer, 10 vols., 1865—1875	Eng.
L. R. H. L.	Law Reports, English and Irish Appeals and Peerage Claims, House of Lords, 7 vols., 1866—1875	Eng.
L. R. Ind. App. ...	Law Reports, Indian Appeals, Privy Council, 1873—(current)	Eng.
L. R. Ind. App. Supp. Vol.	Law Reports, India Appeals Privy Council, Supplementary Volume, 1872—1873	Eng.
L. R. Ir.	Law Reports (Ireland), Chancery and Common Law, 32 vols., 1877—1893	Ir.
L. R. P. & D.	Law Reports, Probate and Divorce, 3 vols., 1865—1875 ...	Eng.
L. R. P. C.	Law Reports, Privy Council, 6 vols., 1865—1875	Eng.
L. R. Q. B.	Law Reports, Queen's Bench, 10 vols., 1865—1875	Eng.
L. R. Q. B.	Quebec Reports, Queen's Bench	Can.
L. R. Sc. & Div. ...	Law Reports, Scotch and Divorce Appeals, House of Lords 2 vols., 1866—1875	Eng.
L. T.	Law Times Reports, 1859—(current)	Eng.
L. T. Jo.	Law Times Newspaper, 1843—(current)	Eng.
L. T. O. S.	Law Times Reports, Old Series, 34 vols., 1843—1860	Eng.
L. Th.	La Themis	Can.
Lane	Lane's Reports, Exchequer, fol., 1 vol., 1605—1611	Eng.
Lat.	Latch's Reports, King's Bench, fol., 1 vol., 1625—1628 ...	Eng.
Laws. Reg. Cas. ...	Lawson's Registration Cases, 1895—(current)	Eng.
Ld. Raym.	Lord Raymond's Reports, King's Bench and Common Pleas, 3 vols., 1694—1732	Eng.
Le. & Ca.	Leigh and Cave's Crown Cases Reserved, 1 vol., 1861—1865 ...	Eng.
Leach	Leach's Crown Cases, 2 vols., 1730—1814	Eng.
Lee	Sir G. Lee's Ecclesiastical Judgments, 2 vols., 1752—1758 ...	Eng.
Lee *temp.* Hard. ...	T. Lee's Cases *temp.* Hardwicke, King's Bench, 1 vol., 1733—1738	Eng.

Leg. Rep.	Legal Reporter	Ir.
Legge	Legge's Reports	Aus.
Leon.	Leonard's Reports, King's Bench, Common Pleas and Exchequer, fol., 4 parts, 1552—1615	Eng.
Lev.	Levinz's Reports, King's Bench and Common Pleas, fol., 3 vols., 1660—1696	Eng.
Lew. C. C.	Lewin's Crown Cases on the Northern Circuit, 2 vols., 1822—1838	Eng.
Ley	Ley's Reports, King's Bench, fol., 1 vol., 1608—1629 ...	Eng.
Lib. Ass.	Liber Assisarum, Year Books, 1—51 Edw. III....	Eng.
Lilly	Lilly's Reports and Pleadings of Cases in Assize, fol., 1 vol. ...	Eng.
Litt.	Littleton's Reports, Common Pleas, fol., 1 vol., 1627—1631 ...	Eng.
Lloyd, L. R.	Lloyd's List Law Reports, 1919—(current)	Eng.
Lloyd, Pr. Cas.	Lloyd's Reports of Prize Cases, 10 vols., 1914—1924	Eng.
Lofft	Lofft's Reports, King's Bench, fol., 1 vol., 1772—1774 ...	Eng.
Long. & T.	Longfield and Townsend's Reports, Exchequer (Ireland), 1 vol., 1841—1842	Ir.
Lords Journals	Journals of the House of Lords	Eng.
Lud. E. C.	Luder's Election Cases, 3 vols., 1784—1787	Eng.
Lumley, P. L. C. ...	Lumley's Poor Law Cases, 2 vols., 1834—1842	Eng.
Lush.	Lushington's Reports, Admiralty, 1 vol., 1859—1862	Eng.
Lut.	Sir E. Lutwyche's Entries and Reports, Common Pleas, 2 vols., 1682—1704	Eng.
Lut. Reg. Cas.	A. J. Lutwyche's Registration Cases, 2 vols., 1843—1853 ...	Eng.
Lynd.	Lyndwood, Provinciale, fol., 1 vol.	Eng.
M.	Menzie's Reports of the Supreme Court of the Cape of Good Hope, 1828—1850	S. Af.
M. & S.	Maule and Selwyn's Reports, King's Bench, 6 vols., 1813—1817	Eng.
M. & W.	Meeson and Welsby's Reports, Exchequer, 16 vols., 1836—1847	Eng.
M. C. C.	Mining Commissioner's Cases	Can.
M. C. R.	Montreal Condensed Reports	Can.
M. H. C. R.	Madras High Court Reports	Ind.
M. L. R. (Vol.) K. B. or Q. B.	Montreal Law Reports, King's Bench or Queen's Bench ...	Can.
M. L. R. (Vol.) S. C. ...	Montreal Law Reports, Superior Court	Can.
M. M. Cas.	Martin's Reports of Mining Cases	Can.
M. P. R.	Maritime Provinces Reports	Can.
Mac.	Macassey's New Zealand Reports	N.Z.
Mac. & G.	Macnaghten and Gordon's Reports, Chancery, 3 vols., 1849—1852	Eng.
Mac. & H.	Macrae and Hertslet's Insolvency Cases, 1 vol., 1847—1852 ...	Eng.
M'Cle.	M'Cleland's Reports, Exchequer, 1 vol., 1824	Eng.
M'Cle. & Yo.	M'Cleland and Younge's Reports, Exchequer, 1 vol., 1824—1825	Eng.
Macfarlane	Macfarlane's Jury Trials, Court of Session (Scotland), 3 parts, 1838—1839	Scot.
Macl. & Rob.	Maclean and Robinson's Scotch Appeals (House of Lords), 1 vol., 1839	Scot.
Macph. (Ct. of Sess.) ...	Macpherson, Court of Session (Scotland), 3rd series, 11 vols., 1862—1873	Scot.
Macq.	Macqueen's Scotch Appeals, House of Lords, 4 vols., 1849—1865	Scot.
Macr.	Macrory's Patent Cases, 2 parts, 1847—1856	Eng.
Mad.	Madras High Court Reports	Ind.
Madd.	Maddock's Reports, Chancery, 6 vols., 1815—1822	Eng.
Madd. & G.	Maddock and Geldart's Reports, Chancery, 1 vol., 1819—1822 (Vol. VI. of Madd.)	Eng.
Madox	Madox's Formulare Anglicanum	Eng.
Madox, Exch.	Madox's History and Antiquities of the Exchequer, 2 vols. ...	Eng.
Mag.	Magistrate and Municipal and Parochial Lawyer, London, 5 vols., 1848—1852	Eng.
Man. & G.	Manning and Granger's Reports, Common Pleas, 7 vols., 1840—1845	Eng.
Man. & Ry. K. B. ...	Manning and Ryland's Reports, King's Bench, 5 vols., 1827—1830	Eng.
Man. & Ry. M. C. ...	Manning and Ryland's Magistrates' Cases, 3 vols., 1827—1830	Eng.
Man. L. J.	Manitoba Law Journal	Can.
Man. L. R.	Manitoba Law Reports	Can.
Man. R. *temp.* Wood ...	Manitoba Reports *temp.* Wood	Can.
Mans.	Manson's Bankruptcy and Company Cases, 21 vols., 1893—1914	Eng.
Mar. L. C.	Maritime Law Reports (Crockford), 3 vols., 1860—1871 ...	Eng.
March	March's Reports, King's Bench and Common Pleas, 1 vol., 1639—1642	Eng.
Marr.	Hay & Marriott's Decisions, Admiralty, 1 vol., 1776—1779 ...	Eng.
Marsh.	Marshall's Reports, Common Pleas, 2 vols., 1813—1816 ...	Eng.
Marsh.	Marshall's Reports	Ind.
Mayn.	Maynard's Reports, Exchequer Memoranda of Edw. I. and Year Books of Edw. II., Year Books, Part I., 1273—1326 ...	Eng.
... ...	Megone's Companies Acts Cases, 2 vols., 1889—1891	Eng.

Men.	Menzie's Reports of the Supreme Court of the Cape of Good Hope, 1828—1850	S. Af.
Mer.	Merivale's Reports, Chancery, 3 vols., 1815—1817	Eng.
Milw.	Milward's Ecclesiastical Reports (Ireland), 1 vol., 1819—1843	Ir.
Mod. Rep. ...	Modern Reports, 12 vols., 1669—1755	Eng.
Mol.	Molloy's Report's, Chancery (Ireland), 3 vols., 1808—1831 ...	Ir.
Mont.	Montagu's Reports, Bankruptcy, 1 vol., 1829—1832	Eng.
Mont. & A. ...	Montagu and Ayrton's Reports, Bankruptcy, 3 vols., 1832—1838	Eng.
Mont. & B. ...	Montagu and Bligh's Reports, Bankruptcy, 1 vol., 1832—1833	Eng.
Mont. & Ch. ...	Montagu and Chitty's Reports, Bankruptcy, 1 vol.. 1838—1840	Eng.
Mont. & M. ...	Montagu and Macarthur's Reports, Bankruptcy, 1 vol..1826 -1830	Eng.
Mont. D. & De G.	Montagu, Deacon, and De Gex's Reports, Bankruptcy, 3 vols., 1840—1844	Eng.
Moo. & P. ...	Moore and Payne's Reports, Common Pleas, 5 vols., 1827—1831	Eng.
Moo. & S. ...	Moore and Scott's Reports, Common Pleas, 4 vols., 1831 - 1834	Eng.
Moo. Ind. App.	Moore's Indian Appeal Cases, Privy Council, 14 vols., 1836—1872	Eng.
Moo. P. C. C. ...	Moore's Privy Council Cases, 15 vols., 1836—1863	Eng.
Moo. P. C. C. N. S.	Moore's Privy Council Cases, New Series, 9 vols., 1862—1873	Eng.
Mood. & M. ...	Moody and Malkin's Reports, Nisi Prius, 1 vol., 1826 -1830 ...	Eng.
Mood. & R. ...	Moody and Robinson's Reports, Nisi Prius, 2 vols., 1830—1844	Eng.
Mood. C. C. ...	Moody's Crown Cases Reserved, 2 vols., 1824—1844	Eng.
Moore, C. P. ...	J. B. Moore's Reports, Common Pleas, 12 vols., 1817—1827 ...	Eng.
Moore, K. B. ...	Sir F. Moore's Reports, King's Bench, fol., 1 vol., 1485 - 1620	Eng.
Mor. Dict. ...	Morison's Dictionary of Decisions, Court of Session (Scotland), 43 vols., 1532 - 1808	Scot.
Morr.	Morrell's Reports, Bankruptcy, 10 vols., 1884 -1893	Eng.
Mos.	Moseley's Reports, Chancery, fol., 1 vol., 1726—1730	Eng.
Mun. Rep. ...	Municipal Reports	Can.
Murd. Epit. ...	Murdoch's Epitome	Can.
Murp. & H. ...	Murphy and Hurlstone's Reports, Exchequer, 1 vol., 1837 ...	Eng.
Murr.	Murray's Reports, Jury Court (Scotland), 5 vols., 1816—1830	Scot.
My. & Cr. ...	Mylne and Craig's Reports, Chancery, 5 vols., 1835—1841 ...	Eng.
My. & K. ...	Mylne and Keen's Reports, Chancery, 3 vols., 1832 -1835 ...	Eng.
N. A. C.	Native Appeal Cases	S. Af.
N. & S.	Nichols and Stop's Reports (Tasmania) ...	Tasmania
N. B. Dig. ..	New Brunswick Digest (Stevens)	Can.
N. B. Eq. Rep. ..	New Brunswick Equity Reports	Can.
N. B. R. ..	New Brunswick Reports	Can.
N. B. R. (All.) ..	New Brunswick Reports (Allen)	Can.
N. B. R. (Ber.) ..	New Brunswick Reports (Berton)	Can.
N. B. R. (Carl.)	New Brunswick Reports (Carleton)	Can.
N. R. (Chip.)	New Brunswick Reports (Chipman)	Can.
N. B. R. (Han.)	New Brunswick Reports (Hannay)	Can.
N.	New Brunswick Reports (Kerr)	Can.
N.	New Brunswick Reports (Pugsley and Burbidge)	Can.
N.	New Brunswick Reports (Pugsley and Trueman)	Can.
N. B. R. (Pug.) ...	New Brunswick Reports (Pugsley)	Can.
N. B. R. (Tru.) ...	New Brunswick Reports (Trueman)	Can.
N. I. (preceded by date)	Northern Ireland Law Reports, 1925 - (current) (*e.g.*, [1925] N.I.)	Ir.
N. L. R.	Natal Law Reports	S. Af.
N. P. D.	South African Law Reports, Natal Provincial Division ...	S. Af.
N. S. R.	Nova Scotia Reports	Can.
N. S. R. (Coch.) ...	Nova Scotia Reports (Cochran)	Can.
N. S. R. (G. & O.) ...	Nova Scotia Reports (Geldert and Oxley)	Can.
N. S. R. (G. & R.) ...	Nova Scotia Reports (Geldert and Russell)	Can.
N. S. R. (James) ...	Nova Scotia Reports (James)	Can.
N. S. R. (Old.)	Nova Scotia Reports (Oldrights)	Can.
N. S. R. (R. & C.) ...	Nova Scotia Reports (Russell and Chesley)	Can.
N. S. R. (R. & G.) ...	Nova Scotia Reports (Russell and Geldert)	Can.
N. S. R. (Thom.) ...	Nova Scotia Reports (Thomson)	Can.
N. S. W. Adm. or Ad. ...	New South Wales Reports, Admiralty	Aus.
N. S. W. B.	New South Wales Reports, Bankruptcy	Aus.
N. S. W. Bkpty. Cas. ...	New South Wales Bankruptcy Cases	Aus.
N. S. W. Eq.	New South Wales Reports, Equity	Aus.
N. S. W. Ind. Arbtn. Cas.	New South Wales Industrial Arbitration Cases	Aus.
N. S. W. L. R.	New South Wales Law Reports	Aus.
N. S. W. Land App. Cts.	New South Wales Land Appeal Courts	Aus.
N. S. W. S. C. R. (Eq.)	New South Wales Supreme Court Reports (Equity)	Aus.
N. S. W. S. C. R. (L.) ...	New South Wales Supreme Court Reports (Law)	Aus.
N. S. W. S. C. R. N. S.	New South Wales Supreme Court Reports, New Series ...	Aus.
N. S. W. W. N. ...	New South Wales Weekly Notes	Aus.
N. W.	North-Western Provinces High Court Reports	Ind.
N. W. T. R.	North-West Territories Reports	Can.
N. Z. Jur.	New Zealand Jurist	N.Z.
N. Z. Jur. Mining Law	New Zealand Jurist Mining Law	

N. Z. Jur. N. S.	New Zealand Jurist, New Series	N.Z.
N. Z. L. J.	New Zealand Law Journal	N.Z.
N. Z. L. R.	New Zealand Law Reports, 1883—(current)	N.Z.
N. Z. L. R. C. A.	New Zealand Law Reports, Court of Appeal, 5 vols., 1883—1887	N.Z.
Nels.	Nelson's Reports, Chancery, 1 vol., 1625—1693	Eng.
Nev. & M. K. B.	Nevile and Manning's Reports, King's Bench, 6 vols., 1832—1836	Eng.
Nev. & M. M. C.	Nevile and Manning's Magistrates' Cases, 3 vols., 1832—1836	Eng.
Nev. & P. K. B.	Nevile and Perry's Reports, King's Bench, 3 vols., 1836—1838	Eng.
Nev. & P. M. C.	Nevile and Perry's Magistrates' Cases, 1 vol., 1836—1837	Eng.
New Mag. Cas.	New Magistrates' Cases (Bittleston, Wise and Parnell), 5 vols., 1844—1850	Eng.
New Pract. Cas.	New Practice Cases (Bittleston and others), 3 vols., 1844—1848	Eng.
New Rep.	New Reports, 6 vols., 1862—1865	Eng.
New Sess. Cas.	New Sessions Magistrates' Cases (Carrow, Hamerton, Allen, etc.), 4 vols., 1844—1851	Eng.
Nfld. L. R.	Newfoundland Reports	Nfld.
Nolan	Nolan's Magistrates' Cases, 1 vol., 1791—1793	Eng.
Notes of Cases	Notes of Cases in the Ecclesiastical and Maritime Courts, 7 vols., 1841—1850	Eng.
Noy	Noy's Reports, King's Bench, fol., 1 vol., 1558—1649	Eng.
O. B. & F.	Ollivier Bell and Fitzgerald's Reports	N.Z.
O. B. S. P.	Old Bailey Session Papers	Eng.
O. Bridg.	Sir Orlando Bridgman's Reports, Common Pleas, 1 vol., 1660—1666	Eng.
O. F. S.	Reports of the High Court of the Orange Free State, 1879—1883	S. Af.
O. L. R.	Ontario Law Reports	Can.
O'M. & H.	O'Malley and Hardcastle's Election Cases, 1869—(current)	Eng.
O. P. D.	South African Law Reports, Orange Free State Provincial Division	S. Af.
O. R.	Ontario Reports	Can.
O. R. (preceded by date)	Ontario Reports, since 1931 (*e.g.*, [1931] O. R.)	Can.
O. R.	Official Reports of the South African Republic, 1894—1899	S. Af.
O. R. C.	Reports of the High Court of the Orange River Colony	S. Af.
O. S.	Upper Canada Queen's Bench, Old Series	Can.
O. W. N.	Ontario Weekly Notes	Can.
O. W. R.	Ontario Weekly Reporter	Can.
Old.	Nova Scotia Reports (Oldrights)	Can.
Ont. Dig.	Digest of Ontario Case Law, 4 vols., 1823—1900	Can.
Owen	Owen's Reports, King's Bench and Common Pleas, fol., 1 vol., 1557—1614	Eng.
P. (preceded by date)	Law Reports, Probate, Divorce, and Admiralty Division, since 1890 (*e.g.*, [1891] P.)	Eng.
P. & B.	New Brunswick Reports (Pugsley and Burbidge)	Can.
P. & T.	New Brunswick Law Reports (Pugsley and Trueman)	Can.
P. Cas.	Prize Cases Heard and Decided in the Prize Court During the Great War, 3 vols., 1914—1922	Eng. & Col.
P. D.	Law Reports, Probate, Divorce, and Admiralty Division, 15 vols., 1875—1890	Eng.
P. E. I.	Prince Edward Island Reports	Can.
P. R.	Ontario Practice	Can.
P. Wms.	Peere Williams' Reports, Chancery and King's Bench, 3 vols., 1695—1735	Eng.
Palm.	Palmer's Reports, King's Bench, fol., 1 vol., 1619—1629	Eng.
Park.	Parker's Reports, Exchequer, fol., 1 vol., 1743—1767; App. 1678—1717	Eng.
Pat. App.	Paton's Scotch Appeals, House of Lords, 6 vols., 1726—1822	Scot.
Pater. App.	Paterson's Scotch Appeals, House of Lords, 2 vols., 1851—1873	Scot.
Peake	Peake's Reports, Nisi Prius, 1 vol., 1790—1794	Eng.
Peake, Add. Cas.	Peake's Additional Cases, Nisi Prius, 1 vol., 1795—1812	Eng.
Peck.	Peckwell's Election Cases, 2 vols., 1803—1806	Eng.
Pelham	Pelham (S. A.) Reports	Aus.
Per. & Dav.	Perry and Davison's Reports, Queen's Bench, 4 vols., 1838—1841	Eng.
Per. & Kn.	Perry and Knapp's Election Cases, 1 vol., 1833	Eng.
Per. C. S.	Perrault's Counseil Superieur	Can.
Per. P.	Perrault's Prévosté de Quebec, 1726—1756	Can.
Ph.	Phillips' Reports, Chancery, 2 vols., 1841—1849	Eng.
Phil. El. Cas.	Philipps' Election Cases, 1 vol., 1780	Eng.
Phillim.	J. Phillimore's Ecclesiastical Reports, 3 vols., 1809—1821	Eng.
Phillim. Eccl. Jud.	Sir R. Phillimore's Ecclesiastical Judgments, 1 vol., 1867—1875	Eng.
Phip.	Phipson's Digest of Natal Reports, 1858—1859	S. Af.
Pig. & R.	Pigott and Rodwell's Registration Cases, 1 vol., 1843—1845	Eng.
Pitc.	Pitcairn's Criminal Trials (Scotland), 3 vols., 1488—1624	Scot.
Plowd.	Plowden's Reports, fol., 2 vols., 1550—1580, and Plowden's Queries, Vol. I.	Eng.
Poll.	Pollexfen's Reports, King's Bench, fol., 1 vol., 1670—1682	Eng.
Poph.	Popham's Reports, King's Bench, fol., 1 vol., 1591—1627	Eng.
Pow. R. & D.	Power, Rodwell, and Dew's Election Cases, 2 vols., 1848—1856	Eng.

Pratt .	Pratt's Supplement to Bott's Poor Laws, 1833	Eng.
Prec. Ch.	Precedents in Chancery, fol., 1 vol., 1689—1722	Eng.
Price .	Price's Reports, Exchequer, 13 vols., 1814—1824	Eng.
Price .	Price's Mining Commissioners' Cases	Can.
Pug. .	New Brunswick Reports (Pugsley)	Can
Py. R. .	Pykes' Lower Canada Reports	Can.
Q. B.	Queen's Bench Reports (Adolphus and Ellis, New Series), 18 vols., 1841—1852	Eng.
Q. B. (preceded by date)	Law Reports, Queen's Bench Division, 1891—1901 (*e.g.*, [1891] 1 Q. B.)	Eng.
Q. B. D.	Law Reports, Queen's Bench Division, 25 vols., 1875—1890 ...	Eng.
Q. J. P.	Queensland Justice of Peace Reports	Aus.
Q. L. J.	Queensland Law Journal and Reports, 11 vols., 1879—1901 ...	Aus.
Q. L. R.	Quebec Law Reports	Can.
Q. L. R. (Beor) ...	Queensland Law Reports by Beor, 1876—1878	Aus.
Q. P. R.	Quebec Practice Reports	Can.
Q. R. (Vol.) K. B. or Q. B.	Rapports Judiciaries de Québec, Cour du Banc du Roi, 1892—(current)	Can.
Q. R. (Vol.) S. C. ...	Rapports Judiciaires de Québec, Cour Supérieure, 1892—(current)	Can.
Q. S. C. R.	Queensland Supreme Court Reports, 5 vols., 1860—1881 ...	Aus.
Q. S. R.	Queensland State Reports, 6 vols., 1902—1906...	Aus.
Q. W. N.	Weekly Notes, Queensland	Aus.
R.	The Reports, 15 vols., 1893—1895	Eng.
R.	Roscoe's Reports of the Supreme Court of the Cape of Good Hope, 1861—1867, 1871—1872, 1877—1878	S. Af.
R. (Ct. of Sess.)... ...	Rettie, Court of Session Cases (Scotland), 4th series, 25 vols., 1873—1898	Scot.
R. A. C.	Ramsay, Appeal Cases	Can.
R. & C.	Nova Scotia Reports (Russell & Chesley)	Can.
R. & G.	Nova Scotia Reports (Russell and Geldert)	Can.
R. C.	La Revue Critique de Législation et de Jurisprudence de Canada	Can.
R. de J.	Revue de Jurisprudence	Can.
R. de L.	Revue de Législation et de Jurisprudence, 3 vols., 1845—1848	Can.
R. E. D.	New South Wales, Reserved and Equity Decisions	Aus.
R. E. D.	Ritchie's Equity Decisions (Russell)	Can.
R. J. R. Q.	Quebec Revised Reports	Can.
R. L. N. S.	Revue Légale, New Series, 1895—(current)	Can.
R. L. O. S.	Revue Légale, Old Series, 21 vols., 1869—1892...	Can.
R. P. C.	Reports of Patent Cases, 1884—(current)	Eng.
R. R.	Revised Reports	Eng.
Rast.	Rastell's Entries	Eng.
Rayn.	Rayner's Tithe Cases, 3 vols., 1575—1782	Eng.
Real Prop. Cas. ...	Real Property Cases, 2 vols., 1843—1847	Eng.
Rep. Ch.	Reports in Chancery, fol., 3 vols., 1615—1710	Eng.
Rep. in C. of A.... ...	Reports in Courts of Appeal	N.Z.
Res. & Eq. Jud. ...	New South Wales Reserved and Equity Judgments	Aus.
Reserv. Cas.	Reserved Cases	Ir.
Rick. & M.	Rickards and Michael's Locus Standi Reports, 1 vol., 1885—1889	Eng.
Rick. & S.	Rickards and Saunders' Locus Standi Reports, 1 vol., 1890—1894	Eng.
Ridg. L. & S.	Ridgeway, Lapp, and Schoales' Reports (Ireland), 1 vol., 1793—1795	Ir.
Ridg. Parl. Rep. ...	Ridgeway's Parliamentary Reports (Ireland), 3 vols., 1781—1796	Ir.
Ridg. *temp.* H.	Ridgeway's Reports *temp.* Hardwicke, 1 vol., King's Bench, 1733—1736; Chancery, 1741—1746	Eng.
Ritch. Eq. Rep. ...	Ritchie's Equity Reports	Can.
Rob. Eccl.	Robertson's Ecclesiastical Reports, 2 vols., 1844—1853 ...	Eng.
Rob. L. & W.	Roberts, Leeming, and Wallis' New County Court Cases, 1 vol., 1849—1851	Eng.
Robert. App.	Robertson's Scotch Appeals, House of Lords, 1 vol., 1707—1727	Scot.
Robin. App.	Robinson's Scotch Appeals, House of Lords, 2 vols., 1840—1841	Scot.
Roll. Abr.	Rolle's Abridgment of the Common Law, fol., 2 vols.	Eng.
Roll. Rep.	Rolle's Reports, King's Bench, fol., 2 vols., 1614—1625 ...	Eng.
Rom.	Romilly's Notes of Cases, 1 part, 1767—1787	Eng.
Roscoe's B. C.	Roscoe, Digest of Building Cases	Eng.
Rose	Rose's Reports, Bankruptcy, 2 vols., 1810—1816	Eng.
Ross, L. C.	Ross's Leading Cases in Commercial Law (England and Scotland), 3 vols.	Eng.
Rowe	Rowe's Reports (England and Ireland), 1 vol., 1798—1823 ...	Eng.
Rul. Cas.	Campbell's Ruling Cases, 25 vols.	Eng.
Russ.	Russell's Reports, Chancery, 5 vols., 1824—1829	Eng.
Russ. & M.	Russell and Mylne's Reports, Chancery, 2 vols., 1829—1833 ...	Eng.

Russ. & Ry. ...	Russell and Ryan's Crown Cases Reserved, 1 vol., 1800—1823	Eng.
Rus. E. R. ...	Russell's Election Reports...	Can.
Ry. & Can. Cas.	Railway and Canal Cases, 7 vols., 1835—1854	Eng.
Ry. & Can. Tr. Cas.	Railway and Canal Traffic Cases, 1855—(current)	Eng.
Ry. & M. ...	Ryan and Moody's Reports, Nisi Prius, 1 vol., 1823—1826 ...	Eng.
Ryde & K. Rat. App.	Ryde and Konstam's Reports of Rating Appeals, 1 vol., 1894—1904	Eng.
Ry. Rat. App.	Ryde's Rating Appeals, 3 vols., 1871—1893	Eng.
S.	Searle's Reports of the Supreme Court of the Cape of Good Hope	S. Af.
S. A.	South African Law Journal	S. Af.
S. A. L. R.	South Australian Law Reports	Aus.
S. A. L. R.	South African Law Reports	S. Af.
S. A. R.	Reports of the High Court of the South African Republic, 1881—1892	S. Af.
S. A. S. R.	South Australian State Reports, since 1921 (*e.g.*, [1921] S. A. S. R.)	Aus.
	Reports of the Supreme Court of the Cape of Good Hope from 1880	S. Af.
S. C. (preceded by date)	Court of Session Cases (Scotland), since 1906 (*e.g.*, [1906] S. C.)	Scot.
S. C. (H. L.) (preceded by date)	Court of Session Cases (Scotland) (House of Lords), since 1906 (*e.g.*, [1906] S. C. (H. L.))	Scot.
S. C. (J.) (preceded by date)	Court of Justiciary Cases (Scotland), since 1906 (*e.g.*, [1906] S. C. (J.))	Scot.
S. C. R.	Canada, Supreme Court Reports	Can.
S. L. T.	Scots Law Times, 1893 (current)	Scot.
S. Q. R.	Queensland State Reports	Aus.
S. R.	Reports of the High Court of Southern Rhodesia	S. Af.
S. R. C.	Stuart's Lower Canada Reports	Can.
S. R. N. S. W.	New South Wales, State Reports	Aus.
S. R. Q.	Queensland Reports, Supreme Court	Aus.
S. V. A. R.	Stuart's Vice-Admiralty Reports	Can.
S. W. A.	South-West Africa Law Reports	S.-W. Af.
Saint	Saint's Digest of Registration Cases, 1843—1906, 1 vol. ...	Eng.
Salk.	Salkeld's Reports, King's Bench, 3 vols., 1689—1712	Eng.
Sask. L. R.	Saskatchewan Law Reports	Can.
Sau. & Sc.	Sausee and Scully's Reports, Rolls Court (Ireland), 1 vol., 1837—1840	Ir.
Saund.	Saunders's Reports, King's Bench, 2 vols., 1666—1672 ...	Eng.
Saund.	Saunders and Austin's Locus Standi Reports, 2 vols., 1895—1904	Eng.
Saund.	Saunders and Bidder's Locus Standi Reports, 1905—(current)	Eng.
Saund.	Saunders and Cole's Reports, Bail Court, 2 vols., 1846—1848 ...	Eng.
Saund.	Saunders and Macrae's County Courts and Insolvency Cases (County Courts Cases and Appeals, Vols. II. and III.), 2 vols., 1852—1858	Eng.
Sav.	Savile's Reports, Common Pleas, fol., 1 vol., 1580—1591 ...	Eng.
Say.	Sayer's Reports, King's Bench, fol., 1 vol., 1751—1756 ...	Eng.
Sc. Jur.	Scottish Jurist, 46 vols., 1829—1873	Scot.
Sc. L. R. ..	Scottish Law Reporter, 61 vols., 1865—1924	Scot.
Sc. R. R. ..	Scots Revised Reports	Scot.
Sch. & Lef. ..	Schoales and Lefroy's Reports, Chancery (Ireland), 2 vols., 1802—1806	Ir.
Scott	Scott's Reports, Common Pleas, 8 vols., 1834—1840	Eng.
Scott, N. R. ..	Scott's New Reports, Common Pleas, 8 vols., 1840—1845 ...	Eng.
Sea. & Sm. ..	Searle and Smith's Reports, Probate and Divorce, 1 vol., 1859—1860	Eng.
Sel. Cas. Ch. ..	Select Cases in Chancery, fol., 1 vol., 1685—1698 (Pt. III. of Cas. in Ch.)	Eng.
Selwyn's N. P. ..	Selwyn's Abridgement of the Law of Nisi Prius	Eng.
Sess. Cas. K. B.	Sessions Settlement Cases, King's Bench, 2 vols., 1710—1717	Eng.
Sett. & Rem. ..	Cases adjudged in K. B. concerning Settlements & Removals, 1 vol., 1685—1727	Eng.
Sh. (Ct. of Sess.)	Shaw, Court of Session Cases (Scotland), 1st series, 16 vols., 1821—1838	Scot.
Sh. & Macl. ..	Shaw and Maclean's Scotch Appeals, House of Lords, 3 vols., 1835—1838	Scot.
Sh. Dig.	P. Shaw's Digest of Decisions (Scotland), ed. by Bell and Lamond, 3 vols., 1726—1868	Scot.
Sh. Just. ..	P. Shaw's Justiciary Decisions (Scotland), 1 vol., 1819—1831	Scot.
Sh. Sc. App. ..	P. Shaw's Scotch Appeals, House of Lords, 2 vols., 1821—1824	Scot.
Sh. Teind Ct. ..	P. Shaw's Teind Court Decisions (Scotland), 1 vol., 1821—1831	Scot.
Shep. Touch. ..	Sheppard's Touchstone of Common Assurances	Eng.
Show.	Shower's Reports, King's Bench, 2 vols., 1678—1695	Eng.
Show. Parl. Cas.	Shower's Cases in Parliament, fol., 1 vol., 1694—1699... ...	Eng.
Sid.	Siderfin's Reports, King's Bench, Common Pleas and Exchequer, fol., 2 vols., 1657—1670	Eng.

Sim.	Simons' Reports, Chancery, 17 vols., 1826—1852	Eng.
Sim. & St.	Simons and Stuart's Reports, Chancery, 2 vols., 1822—1826	Eng.
Sim. N. S.	Simons' Reports, Chancery, New Series, 2 vols., 1850—1852	Eng.
Skin.	Skinner's Reports, King's Bench, fol., 1 vol., 1681—1697	Eng.
Sm. & Bat.	Smith and Batty's Reports, King's Bench (Ireland), 1 vol., 1824—1825	Ir.
Sm. & G.	Smale and Giffard's Reports, Chancery, 3 vols., 1852—1857	Eng.
Smith, K. B.	J. P. Smith's Reports, King's Bench, 3 vols., 1803—1806	Eng.
Smith, L. C.	Smith's Leading Cases, 2 vols.	Eng.
Smith, Reg. Cas.	C. L. Smith's Registration Cases, 1895—(current)	Eng.
Smythe	Smythe's Reports, Common Pleas (Ireland), 1 vol., 1839—1840	Ir.
Sol. Jo.	Solicitors' Journal, 1856—(current)	Eng.
Spence	Spence's Equitable Jurisdiction of the Court of Chancery	Eng.
Spinks	Spinks' Prize Court Cases, 2 parts, 1854—1856	Eng.
St. R. Qd. (preceded by date)	Queensland State Reports, since 1902 (*e.g.*, [1902] St. R. Qd.)	Aus.
Stair Rep.	Stair's Decisions, Court of Session (Scotland), fol., 2 vols., 1661—1681	Scot.
Stark.	Starkie's Reports, Nisi Prius, 3 vols., 1814—1823	Eng.
State Tr.	State Trials, 34 vols., 1163—1820	Eng.
State Tr. N. S.	State Trials, New Series, 8 vols., 1820—1858	Eng.
Stewart	Stewart's Nova Scotia Admiralty Reports, 1803—1813	Can.
Stockton	Stockton's Vice-Admiralty Report and Digest	Can.
Story	Story's Commentaries on Equity Jurisprudence	Eng.
Stra.	Strange's Reports, 2 vols., 1716—1747	Eng.
Stu. M. & P.	Stuart, Milne, and Peddie's Reports (Scotland), 2 vols., 1851—1853	Scot.
Stuart	Sessions Cases (Stuart)	Scot.
Stuart, Adm.	Stuart's Vice-Admiralty (Lower Canada) Cases, 1836—1856	Can.
Stuart, Adm. N. S.	Stuart's Vice-Admiralty (Lower Canada) Cases, 2nd series, 1859—1874	Can.
Stuart, K. B.	Stuart's Reports of Cases in King's Bench, etc. (Lower Canada), 1810—1835	Can.
Sty.	Style's Reports, King's Bench, fol., 1 vol., 1646—1655	Eng.
Sw.	Swabey's Report, Admiralty, 1 vol., 1855—1859	Eng.
Sw. & Tr.	Swabey and Tristram's Reports, Probate and Divorce, 4 vols., 1858—1865	Eng.
Swan.	Swanston's Reports, Chancery, 3 vols., 1818—1821	Eng.
Swin.	Swinton's Justiciary Reports (Scotland), 2 vols., 1835—1841	Scot.
Syme	Syme's Justiciary Reports (Scotland), 1 vol., 1826—1829	Scot.
T. & M.	Temple and Mew's Criminal Appeal Cases, 1 vol., 1848—1851	Eng.
T. H.	Reports of the Witwatersrand High Court (Transvaal Colony), 1902—1909	S. Af.
T. Jo.	Sir T. Jones's Reports, King's Bench and Common Pleas, fol., 1 vol., 1667—1685	Eng.
T. L.	Reports of the Witwatersrand High Court (Transvaal Colony), 1910—(current)	S. Af.
T. L. R.	The Times Law Reports, 1884—(current)	Eng.
T. P.	Reports of the Supreme Court of the Transvaal, 1910—(current)	S. Af.
T. P. D.	South African Law Reports, Transvaal Provincial Division	S. Af.
T. Raym.	Sir T. Raymond's Reports, King's Bench, fol., 1 vol., 1660—1683	Eng.
T. S.	Reports of the Supreme Court of the Transvaal, 1902—1909	S. Af.
Taml.	Tamlyn's Reports, Rolls Court, 1 vol., 1829—1830	Eng.
Tas. L. R.	Tasmanian Law Reports	Aus.
Taunt.	Taunton's Reports, Common Pleas, 8 vols., 1807—1819	Eng.
Tax Cas.	Tax Cases, 1875—(current)	Eng.
Tay.	Taylor's King's Bench Reports	Can.
***Temp.* Wood**	Manitoba Reports *temp.* Wood	Can.
Term Rep.	Term Reports (Durnford and East), fol., 8 vols., 1785—1800	Eng.
Terr. L. R.	Territories Law Reports	Can.
Thom.	Nova Scotia Reports (Thomson)	Can.
Toth.	Tothill's Transactions in Chancery, 1 vol., 1559—1646	Eng.
Town St. Tr.	Townsend, Modern State Trials	Eng.
Trem. P. C.	Tremaine Pleas of the Crown, 1 vol., 1667	Eng.
Trist.	Tristram's Consistory Judgments, 1 vol., 1872—1890	Eng.
Tru.	New Brunswick Reports (Trueman)	Can.
Tudor, L. C. Merc. Law.	Tudor's Leading Cases on Mercantile and Maritime Law	Eng.
Tudor, L. C. Real Prop.	Tudor's Leading Cases on Real Property	Eng.
Turn. & R.	Turner and Russell's Reports, Chancery, 1 vol., 1822—1825	Eng.
Tyr.	Tyrwhitt's Reports, Exchequer, 5 vols., 1830—1835	Eng.
Tyr. & Gr.	Tyrwhitt and Granger's Reports, Exchequer, 1 vol., 1835—1836	Eng.
U. C. Jur.	Upper Canada Jurist	Can.
U. C. L. J. N. S.	Canada Law Journal, New Series, 1865—(current)	Can.

U. C. L. J. O. S.	Canada Law Journal, Old Series, 10 vols., 1855—1864	**Can.**
U. C. R.	Upper Canada Reports, Queen's Bench	**Can.**
Udal	Fiji Law Reports (Udal)	**Fiji.**
V. L. R.	Victorian Law Reports	**Aus.**
V. R. ...	Victorian Reports	**Aus.**
V. R. (Adm.)	Victorian Reports (Admiralty)	**Aus.**
V. R. (Eq.)	Victorian Reports (Equity)	**Aus.**
V. R. (Law)	Victorian Reports (Law)	**Aus.**
Vaugh. ...	Vaughan's Reports, Common Pleas, fol., 1 vol., 1666—1673 ...	**Eng.**
Vent. ...	Ventris' Reports (Vol. I., King's Bench; Vol. II., Common Pleas), fol., 2 vols., 1668—1691	**Eng.**
Vern. ...	Vernon's Reports, Chancery, 2 vols., 1680—1719	**Eng.**
Vern. & Scr.	Vernon and Scriven's Reports, King's Bench (Ireland), 1 vol., 1786—1788	**Ir.**
Ves. ...	Vesey Jun.'s Reports, Chancery, 19 vols., 1789—1817... ...	**Eng.**
Ves. & B.	Vesey and Beames's Reports, Chancery, 3 vols., 1812—1814...	**Eng.**
Ves. Sen.	Vesey Sen.'s Reports, 2 vols., 1747—1756	**Eng.**
Vin. Abr.	Viner's Abridgment of Law and Equity, fol., 22 vols.	**Eng.**
Vin. Supp.	Supplement to Viner's Abridgment of Law and Equity, 6 vols.	**Eng.**
W.	Watermeyer's Reports of the Supreme Court of the Cape of Good Hope, 1857...	**S. Af.**
W. A. L. R.	West Australian Law Reports	**Aus.**
W. A'B. & W.	Webb, A'Beckett and Williams' Victorian Reports	**Aus.**
W. & W.	Wyatt and Webb	**Aus.**
W. C. C.	Workmen's Compensation Cases (Minton-Senhouse), 9 vols., 1898—1907	**Eng.**
W. H. C.	South African Law Reports, Witwatersrand High Court ...	**S. Af.**
W. Jo.	Sir W. Jones's Reports, King's Bench and Common Pleas, fol., 1 vol., 1620—1640	**Eng.**
W. L. D.	South African Law Reports, Witwatersrand Local Division ...	**S. Af.**
W. L. R.	Western Law Reporter	**Can.**
W. L. T.	Western Law Times	**Can.**
W. N. (preceded by date)	Law Reports, Weekly Notes, 1866—(current) (*e.g.*, [1866] W. N.)	**Eng.**
W. N.	Calcutta Weekly Notes	**Ind.**
W. R.	Weekly Reporter, 54 vols., 1852—1906	**Eng.**
W. R.	Sutherland's Weekly Reporter	**Ind.**
W. R.	Weekly Reporter, reporting cases in the Cape Provincial Division	**S. Af.**
W. W. & A'B.	Wyatt, Webb and A'Beckett	**Aus.**
W. W. R.	Western Weekly Reports	**Can.**
Wallis by Lyne ...	Wallis' Reports, Chancery (Ireland), 1 vol., 1766—1791 ...	**Ir.**
Web. Pat. Cas.	Webster's Patent Cases, 2 vols., 1602—1855	**Eng.**
Welsh. Reg. Cas. ...	Welsh's Registry Cases (Ireland), 1 vol., 1832—1840	**Ir.**
Went. Off. Ex. ...	Wentworth's Office and Duty of Executors	**Eng.**
West	West's Reports, House of Lords, 1 vol., 1839—1841	**Eng.**
West *temp.* Hard. ...	West's Reports *temp.* Hardwicke, Chancery, 1 vol., 1736—1740	**Eng.**
West. Tithe Cas. ...	Western's London Tithe Cases, 1 vol., 1592—1822	**Eng.**
White	White's Justiciary Reports (Scotland), 3 vols., 1886—1893 ...	**Scot.**
White & Tud. L. C. ...	White and Tudor's Leading Cases in Equity, 2 vols.	**Eng.**
Wight	Wightwick's Reports, Exchequer, 1 vol., 1810—1811	**Eng.**
Will. Woll. & Dav. ...	Willmore, Wollaston, and Davison's Reports, Queen's Bench and Bail Court, 1 vol., 1837	**Eng.**
Will. Woll. & H. ...	Willmore, Wollaston, and Hodges' Reports, Queen's Bench and Bail Court, 2 vols., 1838—1839	**Eng.**
Willes	Willes' Reports, Common Pleas, 1 vol., 1737—1758	**Eng.**
Wilm.	Wilmot's Notes of Opinions and Judgments, 1 vol., 1757—1770	**Eng.**
Wils.	G. Wilson's Reports, King's Bench and Common Pleas, fol., 3 vols., 1742—1774	**Eng.**
Wils. & S.	Wilson and Shaw's Scotch Appeals, House of Lords, 7 vols., 1825—1835	**Scot.**
Wils. Ch.	J. Wilson's Reports, Chancery, 2 vols., 1818—1819	**Eng.**
Wils. Ex.	J. Wilson's Reports, Exchequer in Equity, 1 part, 1817 ...	**Eng.**
Win. ...	Winch's Reports, Common Pleas, fol., 1 vol., 1621—1625 ...	**Eng.**
Wm. Bl.	William Blackstone's Reports, King's Bench and Common Pleas, fol., 2 vols., 1746—1779	**Eng.**
Wm. Rob.	William Robinson's Reports, Admiralty, 3 vols., 1838—1850...	**Eng.**
Wms. Saund.	Williams' Notes to Saunders' Reports, 2 vols.	**Eng.**
Wolf. & B.	Wolferstan and Bristowe's Election Cases, 1 vol., 1859—1864	**Eng.**
Wolf. & D.	Wolferstan and Dew's Election Cases, 1 vol., 1857—1858 ...	**Eng.**
Woll. ...	Wollaston's Reports, Bail Court and Practice, 1 vol., 1840—1841	**Eng.**
Wood ...	Wood's Tithe Cases, Exchequer, 4 vols., 1650—1798	**Eng.**
Y. A. D. ...	Young's Vice-Admiralty Reports	**Can.**

Y. & C. Ch. Cas	Younge and Collyer's Reports, Chancery Cases, 2 vols., 1841—1843	Eng.
Y. & C. Ex. ...	Younge and Collyer's Reports, Exchequer in Equity, 4 vols., 1833—1841	Eng.
Y. & J.	Younge and Jervis' Reports, Exchequer, 3 vols., 1826—1830 ...	Eng.
Y. B.	Year Books	Eng.
Y. B. (Rolls Series)	Year Books (Rolls Series)	Eng.
Y. B. (Sel. Soc.) ...	Year Books (Selden Society)	Eng.
Y. S. C. P. ...	Yearly Practice of the Supreme Court	Eng.
Yelv.	Yelverton's Reports, King's Bench, fol., 1 vol., 1602—1613 ...	Eng.
You.	Younge's Reports, Exchequer in Equity, 1 vol., 1830—1832 ...	Eng.

ABBREVIATIONS

USED IN THIS WORK.

(For Abbreviations used in citing Reports, *see* pp. xv—xxxi, *ante*.)

A.-G.	for Attorney-General.
Act.	„ Actiengesellschaft.
Add.	„ Additional.
Admlty.	„ Admiralty.
Affd.	„ Affirmed.
Affg.	„ Affirming.
Akt.	„ Aktiengesellschaft; Aktiebolaget; Aktieselskabet.
Alta.	„ Alberta.
Anon.	„ Anonymous.
Apld.	„ Applied.
Applt.	„ Applicant.
Appln.	„ Application.
Appln.	„ Application to Register a Trade Mark.
Applt.	„ Appellant.
Apprvd.	„ Approved.
Arbn.	„ Arbitration.
Archbp.	„ Archbishop.
Art.	„ Article.
Ass. Tax Case	„ Assessed Tax Case.
Assce.	„ Assurance.
Assocn.	„ Association.
B. C.	„ Borough Council.
B. C.	„ British Columbia.
Bkpcy.	„ Bankruptcy.
Bkpt.	„ Bankrupt.
Bldg. Soc.	„ Building Society.
Bp.	„ Bishop.
C. A.	Court of Appeal.
C. & S. Ry. Co.	City & South London Railway Co.
C. C. A.	Court of Criminal Appeal.
C. C. R.	County Court Rules.
C. C. R.	Court of Crown Cases Reserved.
C. L. P. Act.	Common Law Procedure Act.
C. L. Ry. Co.	Central London Railway Co.
C. O. R.	Crown Office Rules.
C. S. U. C.	Consolidated Statutes of Upper Canada.
Ca. sa.	*Capias ad satisfaciendum.*
Cale. Ry. Co.	Caledonian Railway Co.
Ch.	Chancery.
Ch. Div.	Chancery Division.
Co.	Company.
Co-op. Assocn.	Co-operative Supply Association.
	Commissioners.
Consd.	Considered.
Corpn.	Corporation.
Ct.	Court.
Ct. of Ch.	Court of Chancery.
Ct. of Eq.	Court of Equity.
Ct. of R.	Court of Review.
D. C.	Divisional Court.
Dbtd.	Doubted.

Deft.	for Defendant.
Distd.	,, Distinguished.
Div. Ct.	,, Divisional Court.
Eccl. Comrs.	,, Ecclesiastical Commissioners.
Eccl. Ct.	,, Ecclesiastical Court.
Ex. Ch.	,, Exchequer Chamber.
Ex p.	,, *Ex parte.*
Exch.	,, Exchequer.
Exor.	,, Executor.
Exorship.	,, Executorship.
Expld.	,, Explained.
Extd.	,, Extended.
Extrix.	,, Executrix.
Fi. fa.	,, *Fieri facias.*
Folld.	,, Followed.
G. & S. W. Ry. Co.	Glasgow & South Western Railway Co.
G. C. Ry. Co.	Great Central Railway Co.
G. E. Ry. Co.	Great Eastern Railway Co.
G. N. of Scotland Ry. Co.	Great North of Scotland Railway Co.
G. N. Picc. & Brompton Ry. Co	Great Northern, Piccadilly & Brompton Railway Co.
G. N. Ry. Co.	Great Northern Railway Co.
G. S. & W. Ry. Co. of Ireland	Great Southern & Western Railway Co. of Ireland.
G. W. Ry. Co.	Great Western Railway Co.
Govt.	Government.
Grdns.	Guardians or Guardians of the Poor.
H. C. of A.	High Court of Australia.
H. L.	House of Lords.
I. R. Comrs.	Inland Revenue Commissioners.
Ins.	Insurance.
JJ.	Justices.
Jud. Act	Judicature Act.
K. B. Div.	King's Bench Division.
L. & B. Ry. Co.	London & Brighton Railway Co.
L. & N. E. Ry. Co.	London & North Eastern Railway Co.
L. & N. W. Ry. Co.	London & North Western Railway Co.
L. & S. W. Ry. Co.	London & South Western Railway Co.
L. & Y. Ry. Co.	Lancashire & Yorkshire Railway Co.
L. B.	Local Board.
L. B. & S. C. Ry. Co	London, Brighton & South Coast Railway Co.
L. C.	Lord Chancellor.
L. C. & D. Ry. Co.	London, Chatham & Dover Railway Co.
L. C. C.	London County Council.
L. Elec. Ry. Co.	London Electric Railway Co.
L. G. Board	Local Government Board.
L.J.	Lord Justice.
L.JJ.	Lords Justices.
L. M. & S. Ry. Co.	London, Midland & Scottish Railway Co.
L. T. & S. Ry. Co.	London, Tilbury & Southend Railway Co.
M. S. Act	Merchant Shipping Act.
M. S. & L. Ry. Co.	Manchester, Sheffield & Lincolnshire Railway Co.
Mags.	Magistrates.
Man.	Manitoba.
Mentd.	Mentioned.
Met. Dist. Ry. Co.	Metropolitan District Railway Co.
Met. Ry. Co.	Metropolitan Railway Co.
Mid. G. W. Ry. Co.	Midland Great Western Railway Co.
Mid. Ry. Co.	Midland Railway Co.
Mtge.	Mortgage.
Mtgee.	Mortgagee.
Mtgor.	Mortgagor.
N. B.	New Brunswick.
N. B. Ry. Co.	North British Railway Co.
N. E. Ry. Co.	North Eastern Railway Co.
N. F.	Not Followed.
N. P.	Nisi Prius.

N. S.	for Nova Scotia.
N. W. P.	,, North-West Provinces.
N. W. T.	,, North-West Territories.
Ont.	,, Ontario.
Ord.	,, Order.
Overd.	,, Overruled.
P. C.	,, Privy Council.
P. E. I.	,, Prince Edward Island.
Petn.	,, Petition or Election Petition.
Pltf.	,, Plaintiff.
Q. B. Div.	,, Queen's Bench Division.
Qu.	,, *Quære.*
Que.	,, Quebec.
R. C.	Rural Council.
R. D. C.	Rural District Council
R. S. A.	Rural Sanitary Authority.
R. S. C.	Revised Statutes of Canada.
R. S. C.	Rules of the Supreme Court, 1883.
Refd.	Referred.
Regn. of Trade Mk.	Registration of Trade Mark.
Regr. of Trade Mks.	Registrar of Trade Marks.
Resp.	Respondent.
Restg.	Restoring.
Revsd.	Reversed.
Revsg.	Reversing.
Ry. Co.	Rail. Co. or Railway Co.
S. C.	Same Case.
S. C. (name of colony following)	Supreme Court of a Colony.
S. E.	Settled Estates.
S. E. & C. Ry. Co.	South Eastern & Chatham Railway Co.
S. E. Ry. Co.	South Eastern Railway Co.
S. P.	Same Point.
S.S.	Steamship.
Sask.	Saskatchewan.
Sched.	Schedule.
Sci. fa.	*Scire facias.*
Sect.	Section.
Set. Land Act	Settled Land Act.
Settlmt.	Settlement.
Soc.	Society
Soc. Anon.	Société Anonyme, etc.
Solr.	Solicitor.
Trade Mk.	Trade Mark.
Tram. Co.	Tramways Company.
U. C.	Urban Council.
U. D. C.	Urban District Council.
U. S. A.	United States of America.
Union Assmt. Com.	Union Assessment Committee.
Urban S. A.	Urban Sanitary Authority.
V.-C.	Vice-Chancellor.
Workmen's Comp. Act	Workmen's Compensation Act.
Y. T.	Yukon Territory.

MEANING OF TERMS

USED IN CLASSIFYING ANNOTATING CASES.

THE different expressions used to describe the effect of the annotating cases have the following meanings, and the classification of the annotating cases has been done strictly in accordance with these meanings. The annotating cases, except such as are classified as "Mentioned," are grouped according to the points in the case which they annotate: within these groups they are listed chronologically, except such as are classified as "Referred to," which come at the end of the group and are arranged *inter se* in chronological order. Cases which annotate the annotated case generally are grouped together after cases which annotate specific points, similarly arranged, and are followed by cases classified as "Mentioned" arranged chronologically *inter se*. The terms used in classifying the annotating cases are as follows:—

"APPLIED" (Apld.).—This expression is used to denote the fact that the principle of law enunciated in the annotated case has been applied to a new set of facts and circumstances in the annotating case.

"APPROVED" (Apprvd.).—This expression is used to denote the fact that the annotated case has been considered to be good law in the annotating case where the latter is in a higher court than the former.

"CONSIDERED" (Consd.).—This expression is used where the remarks in the annotating case are devoid of adverse criticism and merely denote the giving of more or less careful consideration to the annotated case.

"DISTINGUISHED" (Distd.).—This expression is used where the earlier case is not necessarily doubted, but where some essential difference (either on the facts or in law) between it and the annotated case is pointed out.

"DOUBTED" (Dbtd.).—This expression is used where the court in the annotating case without definitely going to the length of saying that the annotated case is wrong, adduces reasons which seem to show that it is not accurate.

"EXPLAINED" (Expld.).—This expression is used where the earlier case is not necessarily doubted, but the decision arrived at is justified or accounted for by calling attention to some point of fact or of law which is usually, but not necessarily, one not obvious on the face of the report.

"EXTENDED" (Extd.).—Compare "APPLIED," *supra*.

"FOLLOWED" (Folld.).—This expression is used to denote that the same principles of law are applied in the two cases. It does not necessarily imply that the facts are substantially identical in the two cases.

"NOT FOLLOWED" (N.F.).—Compare "FOLLOWED," *supra*, to which it is the adverse.

"OVERRULED" (Overd.).—This expression is used where the annotating case is on substantially identical facts with the annotated case and in a higher court and the rule in the latter case is held to be wrong.

"REFERRED" (Refd.).—This expression is used only where the annotating case deals with the point of the Digest paragraph and is without comment of any definite character on the case annotated, and where there is no delicate shade of approval or disapproval which would justify the use of any of the foregoing words.

"MENTIONED" (Mentd.).—This expression is used only where none of the foregoing terms apply. In other words, it is used only where the case annotated is cited on a point having nothing to do with the point in the Digest paragraph.

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— *v.* Short (Liquidator) (S. Af.); **9.** *Coys.* p. 28
Zurouvinski *v.* Duke (Can.); **18.** *Distr.* pp. 18, 19
Zurowski, *Re* (Can.); **44.** *Wills*, p. 16
Zwicker *v.* Pettingill (Can.); **29.** *Insce.* p. 18
— *v.* Young (Can.); **22.** *Evid.* p. 14

ABANDONMENT.

See CONFLICT OF LAWS; DISTRESS; DIVORCE; EASEMENTS AND PROFITS À PRENDRE; EXECUTION; INFANTS AND CHILDREN; INSURANCE; RAILWAYS AND CANALS; TRAMWAYS AND LIGHT RAILWAYS, and titles *passim*.

ABATEMENT.

Legacies, of - - *See* EXECUTORS AND ADMINISTRATORS.
Nuisance, of - - ,, NUISANCE.

ABDUCTION.

See CRIMINAL LAW.

ABORTION.

See CRIMINAL LAW.

ACCESSION.

See CONSTITUTIONAL LAW; PERSONAL PROPERTY.

ACKNOWLEDGMENTS.

See LIMITATION OF ACTIONS.

ACTION.

Part I.—Definitions.

1. Before this case add :—
See, now, Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49), s. 225.

11. *Add. Citation :—on appeal, sub nom.* ROYAL AGRICULTURAL HALL CO. *v.* ISLINGTON ASSESSMENT COMMITTEE, [1918] A. C. 525, H. L.

Add. Annotation :—**Consd.** Bottomley *v.* West Derby Assessment Committee, etc. (1931), 47 T. L. R. 468.

18. *Add. Annotation :*—**Refd.** Dennerley *v.* Prestwick U. D. C., [1930] 1 K. B. 334.

18a. **Appeal from Divisional Court—On case stated by quarter sessions—Derating appeal.**]—By Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49), s. 225, an action is defined as a civil proceeding begun by writ, " or in such other manner as may be prescribed by rules of Court." By R. S. C., Ord. 58, r. 15, an appeal from any order, whether final or interlocutory, in any matter not being an action, shall be brought within 14 days after perfecting :—*Held :* as an appeal from the decision of a Div. Ct., on a case stated by quarter sessions on an appeal from an assessment committee on a question of derating, is an appeal in a matter which is not an " action " as above defined, the time for bringing the appeal is limited to 14 days.—BOTTOMLEY *v.* WEST DERBY ASSESSMENT COMMITTEE, MERSEY DOCKS & HARBOUR BOARD *v.* WEST DERBY ASSESSMENT COMMITTEE, BOTTOMLEY *v.* MERSEY DOCKS & HARBOUR BOARD, BOTTOMLEY *v.* LIVERPOOL GRAIN STORAGE & TRANSIT CO., LTD., [1932] 1 K. B. 40 ; 101 L. J. K. B. 8 ; 145 L. T. 592 ; 95 J. P. 186 ; 47 T. L. R. 468 ; 29 L. G. R. 576 ; (1926-31), 2 B. R. A. 846, C. A. ; *on appeal from* S. C. *sub nom.* WEST DERBY REVENUE OFFICER *v.* LIVERPOOL GRAIN STORAGE & TRANSIT CO., LTD., MERSEY DOCKS & HARBOUR BOARD *v.* WEST DERBY REVENUE OFFICER, WEST DERBY REVENUE OFFICER *v.* MERSEY DOCKS & HARBOUR BOARD (1931), 47 T. L. R. 237, D. C.

Annotation :—**Folld.** Wilkinson (Taunton Revenue Officer) *v.* Sibley & Donovan (1931), 101 L. J. K. B. 26.

18b. ——, ——, ——.]—The appeal began with a preliminary objection by counsel for resps. that the appeal was out of time, because fourteen days' notice had not been given. In the Mersey Docks cases (No. 18a, *ante*) that we have just concluded, we unfortunately spent two or three hours in considering whether the time was fourteen days or six weeks. The reasons for our decision will appear when at some later time we give the considered judgment in the Mersey Docks case, but I have the authority of my brothers for stating that at present, for reasons which will appear in the Mersey Docks judgment, the majority of the ct. is of opinion that the time, is fourteen days (SCRUTTON, L.J.).—WILKINSON (TAUNTON REVENUE OFFICER) *v.* SIBLEY & DONOVAN, [1932] 1 K. B. 194 ; 101 L. J. K. B. 26 ; 146 L. T. 1 ; 95 J. P. 208 ; 29 L. G. R. 633 ; 2 B. R. A. 926, C. A.

27. *Add. Annotation :*—**Consd.** R. *v.* L. C. C., *Ex p.* Swan & Edgar (1927), Ltd. (1929), 141 L. T. 590.

29. *Add. Annotation :*—**Apprvd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1929] A. C. 344.

30. *Add. Annotations :*—**Apprvd.** Craigola Merthyr Co. *v.* Swansea Corpn., [1929] A. C. 344. **Refd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

31. *Add. Annotations :*—**Consd.** Ware & De Freville *v.* Motor Trade Assocn., [1921] 3 K. B. 40. **Apprvd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1929] A. C. 344.

35a. **Criminal prosecution — Administration of Justice Act, 1920 (c. 81), s. 15.**]—By above sect., " where, for the purpose of disposing of any action or other matter which is being tried by a judge with a jury in any ct. in England or Wales, it is necessary to ascertain the law of any other country which is applicable to the facts of the case, any question as to the effect of the evidence given with respect to that law shall, instead of being submitted to the jury, be decided by the judge alone " :—*Held :* the words " any action or other matter " include a criminal prosecution.—R. *v.* HAMMER, [1923] 2 K. B. 786 ; 92 L. J. K. B. 1045 ; 129 L. T. 479 ; 87 J. P. 194 ; 39 T. L. R. 670 ; 68 Sol. Jo. 120 ; 17 Cr. App. Rep. 142 ; 27 Cox, C. C. 458, C. C. A.

36. *Add. Annotation :—As to* (1) **Apld.** *Re* Debtor, [1929] 2 Ch. 146.

42. *Add. Annotation :*—**Dbtd.** *Re* Thomson's Mortgage Trusts, Thomson *v.* Bruty, [1920] 1 Ch. 508.

48a. **Summons—Real Property Limitation Act, 1833 (c. 27).**]—A summons by a second mtgee. against the first mtgee. & other persons interested in the surplus proceeds of sale to have it determined whether he is entitled to repayment of the principal moneys owing on the second mtge. & all arrears of interest & costs, & to obtain payment accordingly, is in substance an action by a beneficiary for execution of the trusts of the surplus proceeds & is not an " action or suit " for the recovery of " interest in respect of money charged upon or payable out of land " within sect. 42 of the above Act.—*Re* THOMSON'S MORTGAGE TRUSTS, THOMSON *v.* BRUTY, [1920] 1 Ch. 508 ; 89 L. J. Ch. 213 ; 123 L. T. 138 ; 64 Sol. Jo. 375.

64. *Add. Annotation :*—**Refd.** Thomson's Mortgage Trusts, Thomson *v.* Bruty, [1920] 1 Ch. 508.

PART I. SECT. 1, SUB-SECT. 1.—A.

12 i. *Originating summons—When action.*]—An originating summons taken out pursuant to R. S. C., Ord. 55, r. 4, is an action ; & the time for appealing from an order of the ct. on such a summons is not limited to twenty-one days.—BEAMISH *v.* A.-G., [1919] 1 I. R. 430.—IR.

64a. **Summons—Real Property Limitation Act, 1833 (c. 27).**]—*Re* THOMSON'S MORTGAGE TRUSTS, THOMSON *v.* BRUTY, No. 48a, *ante*.

71. *Add. Annotation :*—**Consd.** *Re* Keystone Knitting Mills Trade Mk., [1929] 1 Ch. 92.

74. *Add. Annotation :*—**Consd.** *Re* Keystone Knitting Mills Trade Mk., [1929] 1 Ch. 92.

82. *Add. Annotations :*—**Consd.** *Re* Jauncey, Bird *v.* Arnold, [1926] Ch. 471. **Refd.** Dennerley *v.* Prestwich U. D. C. [1930] 1 K. B. 334 ; Weld *v.* Petre, [1929] 1 Ch. 33.

87. *Annotations :*—**Consd.** Robinson *v.* R., [1921] 3 K. B. 183. **Refd.** Chester *v.* Bateson, [1920] 1 K. B. 829 ; R. *v.* Hammer, [1923] 2 K. B. 786.

89. *Annotation :*—**Refd.** First National Reinsurance *v.* Greenfield, [1921] 2 K. B. 260.

90. For " under the above sect." read " under Married Women's Property Act, 1893 (c. 63), s. 2."

Add. Annotation :—**Apld.** *Re* Emery, Emery *v.* Emery, [1923] P. 184.

90a. —— ——.]—The Food Controller requisitioned certain cattle feeding stuffs under Defence of the Realm Regulations, but whether under reg. 2 B. or reg. 2 F. was doubtful. By reg. 2 B. the price to be paid for goods taken thereunder was to be determined by the tribunal by which claims for compensation under Defence of the Realm Regulations were determined, but was not to exceed a certain maximum price fixed by an Ord. in Council. By reg. 2 F. compensation for goods taken thereunder was to be paid as determined by an arbitrator, taking into account the cost of production of the goods & a reasonable profit. The maximum price fixed by the Ord. in Council has been paid. The Defence of the Realm Losses Commission having refused to entertain a claim for compensation, the owners of the goods presented a petition of right, claiming that the Food Controller had acted under reg. 2 F., & that they were entitled to compensation fixed by arbn. thereunder. At the trial the judge held that the Controller had acted under reg. 2 B., & dismissed the petition. On July 22, 1920, suppliants gave notice of appeal. On Aug. 16, 1920, Indemnity Act, 1920 (c. 48), was passed :—*Held :* (1) the appeal was not a " proceeding instituted " within sect. 1 of the Act ; (2) those words do not include a final judgment given before the passing of the Act, & therefore the appeal well lay.—ROBINSON (J.) & Co. *v.* R., [1921] 3 K. B. 183 ; 90 L. J. K. B. 1177 ; 125 L. T. 675 ; 37 T. L. R. 698, C. A.

Annotation :—As to (1) **Refd.** Bowling *v.* Camp (1922), 128 L. T. 342.

90b. —.]—A person who has lodged a caveat against probate of a will is not, though his action compels the exors. to take proceedings, so much the actor in the proceedings as to be liable to give security for costs.—*Re* EMERY, EMERY *v.* EMERY, [1923] P. 184 ; 92 L. J. P. 138 ; 39 T. L. R. 713 ; *sub nom. In the Goods of* EMERY, EMERY *v.* EMERY, 130 L. T. 127.

104. *Add. Annotation :*—**Refd.** Goldrei, Foucard *v.* Sinclair & Russian Chamber of Commerce in London, [1918] 1 K. B. 180.

PART I. SECT. 1, SUB-SECT. 5.

5a. *Action—Claim for damages & injunction—Transfer of Land Act*, 1893 (*No.* 14), *s.* 117.]—The term " action at law " in the above sect. embrances an action of the nature of a suit in equity, *e.g.* a claim for an injunction & damages in respect of trespass to & interference with a right of way.—STRELITZ BROTHERS *v.* BRITNALL (1912), 15 W. A. L. R. 12.—**AUS.**

5b. —— *Divorce petition—Insolvency Act*, 1915 (*No.* 2671), *s.* 174.]—The word " action " in the above sect. does not include a proceeding by petition in divorce.—*Re* HARVEY, [1920] V. L. R. 142.—**AUS.**

5c. —— *Petition of right.*]—A petition of right is not an " action." The definitions of " actions " in Judicature Act & rules are merely a conventional method of interpreting the statute & rules, adopted for the sake of brevity & simplicity, & not for the purpose of changing the true nature of things.—MILLAR *v.* R., [1921] 49 O. L. R. 93 ; 19 O. W. N. 458 ; 58 D. L. R. 585.—**CAN.**

5d. *Proceeding in action—Application for relief against distraint—War Relief Act.*]—The above Act empowers a judge of the Supreme Ct. to dispense with the restrictions therein contained. Applt. distrained against resp. under a mtge. notwithstanding that resp. was within the protection of the Act. Resp. applied to a county ct. judge as " local judge " of the Supreme Ct. for relief, who made an order against resp. dispensing with the restrictions of the Act :—*Held :* the local judge had no jurisdiction, as the proceeding was not a proceeding in an " action," as required under the wording of the Ord. in Council, June 16, 1906. Resp.'s proper remedy against applt. was by injunction to restrain applt. from invading his rights under the Act.—HANNA *v.* COSTERTON, [1919] 1 W.W.R. 930 ; 44 D. L. R. 478.—**CAN.**

5e. *Proceeding — Canadian National Railways Act, s.* 15.]—A writ of garnishment attaching moneys owed by the Canadian National Railway Corpn. to a judgment debtor in its employment is a " proceeding " within Canadian National Railways Act, s. 15, & may therefore issue " without a fiat " from the Crown.—CANADIAN NATIONAL RY. Co. *v.* CROTEAU & CLICHE, [1925] S. C. R. 384.—**CAN.**

5f. *Suit or proceeding—Meaning dependent on context of statute.*]—The words " suits " & " proceedings " have different meanings in different statutes, & it is not possible to lay down a general rule which would be applicable to all cases. In each particular case the question has to be examined in reference to the context, & that meaning is to be preferred which will best fit in with it.—KIRPA SINGH *v.* AJAIPAL SINGH (1928), I. L. R. 10 Lah. 165.—**IND.**

5g. *Suit or action—Application by curator bonis.*]—An application by the curator *bonis* of a person who has been declared incapable of managing his affairs for the appointment of a curator *ad litem* & for leave to institute proceedings to set aside the marriage of such a person is a civil suit or action within South Africa Act, s. 103.—MITCHELL *v.* MITCHELL, [1930] App. D. 217.—**S. AF.**

5h. ——.]—The essential feature of a " suit or action " under sect. 50 of the Charter of Justice or under sect. 39 of Transvaal Proclamation 14 of 1902, or of a " suit " under sect. 24 of Cape Act 35 of 1896, is that it is a proceeding in which one party sues for or claims something from another, & no proceeding which lacks this feature, such as requestration proceedings or an application for the winding up of a co., can be properly described as a " suit or action " or as a " suit " under any of these sects.—COLLETT *v.* PRIEST, [1931] A. D. 290.—**S. AF.**

5k. *Case.*]—The word " case " in Civil Procedure Code, s. 115, does not necessarily mean a suit, but can mean a proceeding.—BHOLA NATH *v.* RAGHUNATH DAS MITHAN LAL (1929), I. L. R. 51 All. 1010.—**IND.**

PART I. SECT. 2, SUB-SECT. 1.

104 ii. ——.]—The expression " a cause of action " in Supreme Ct. Act, 1915 (No. 2733), s. 141, means the particular act or omission occasioning the injury complained of, & so giving rise to pltf.'s claim, not every fact material to be proved in order to entitle pltf. to succeed.—CHIDZEY *v.* BRECKLER, [1920] V. L. R. 558.—**AUS.**

104 iii. ——.]—The " cause of action " in District Cts. Act, R. S. S., 1920 (c. 40), s. 29, means the whole cause of action, including every material fact which pltf. must allege & prove to give him a right to judgment, & therefore if the whole cause of a district ct. action did not arise in one judicial district the action should be brought in that district where deft. or one of several defts. resides or carries on business. Notwithstanding sect. 2, sub-sect. 2 (2), of the Act providing that in the Act unless there is something in the subject or context repugnant thereto the expressions " cause " & " action " shall respectively have the same meaning as the same expressions have in King's Bench Act, the words " the cause of action " in sect. 29 should not be construed in the same way as in King's Bench Act, s. 35, because in sect. 29 " there is something in the subject or context repugnant thereto," namely, the fact that sect. 29 confers jurisdiction on an inferior ct. & therefore must be strictly construed, jurisdiction not being assumed beyond what is clearly con-

106. *Add. Annotations :*—**Refd.** Goldrei, Foucard *v.* Sinclair & Russian Chamber of Commerce in London, [1918] 1 K. B. 180; Cheshire County Council *v.* Hopley (1923), 130 L. T. 123; The Koursk, [1924] P. 140; Venn *v.* Tedesco, [1926] 2 K. B. 227.

107. *Add. Annotations :*—**Apld.** Cheshire County Council *v.* Hopley (1923), 130 L. T. 123. **Refd.** Goldrei, Foucard *v.* Sinclair & Russian Chamber of Commerce in London, [1918] 1 K. B. 180; The Koursk, [1924] P. 140; Venn *v.* Tedesco, [1926] 2 K. B. 227.

114. *Add. Annotation :*—**Refd.** Huyton & Roby Gas Co. *v.* Liverpool Corpn., [1926] 1 K. B. 146.

116a. —— **Claim for damages—Right to prior general declaration.**]—Where the substantial object of an action is damages & not the ascertainment of a common right for future guidance, pltfs. ought not to be allowed to split up a cause of action & first obtain a declaration, & then in a second action work out its result.—JONES *v.* CORY BROTHERS & CO., LTD., THOMAS *v.* GREAT MOUNTAIN COLLIERIES CO., LTD. (1921), as reported in 152 L. T. Jo. 70, C. A.

117. For "new subsidence" read "recurring tort."

118. *Add. Annotations :*—*As to* (1) **Refd.** Boynton *v.* Ancholme Drainage & Navigation Comrs., [1921] 2 K. B. 213; Kennard *v.* Cory, [1922] 1 Ch. 265; Huyton & Roby Gas Co. *v.* Liverpool Corpn. (1925), 42 T. L. R. 116. *Generally*, **Refd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

122. *Add. Annotations :*—**Apld.** Wilson *v.* United Counties Bank, [1920] A. C. 102. **Consd.** Ord *v.* Ord, [1923] 2 K. B. 432. **Apld.** The Koursk, [1924] P. 140. **Consd.** Conquer *v.* Boot, [1928] 2 K. B. 336. **Refd.** Goldrei, Foucard *v.* Sinclair & Russian Chamber of Commerce in London, [1918] 1 K. B. 180; Debenham *v.* Perkins (1925), 133 L. T. 252.

125. *Add. Annotation :*—*Generally*, **Refd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

129. *Add. Annotations :*—*As to* (1) **Refd.** Ord *v.* Ord, [1923] 2 K. B. 432 *As to* (2) **Refd.** Mackenzie Kennedy *v.* Air Council, [1927] 2 K. B. 517.

136. *Add. Annotation :*—**Refd.** Ord *v.* Ord (1923), 92 L. J. K. B. 859.

144. *Add. Annotation :*—**Consd.** Fishwick *v.* Gyani, [1925] 1 K. B. 617.

145. *Add. Annotation :*—**Refd.** Goldrei, Foucard *v.* Sinclair & Russian Chamber of Commerce in London, [1918] 1 K. B. 180.

147. *Add. Annotation :*—*As to* (1) **Expld.** Courtenay *v.* Earle (1850), 10 C. B. 73.

153a. —— ——.]—In the ordinary case of possible controversy between parties, but where no specific right has been asserted & no claim formulated, it is not open to one of the parties, because he apprehends a claim against him, to serve a writ or other process upon the other party in order to obtain a determination that such claim cannot be made.

Where the sole exor. under a will never made any claim against the beneficiaries for repayment of certain costs which he had been ordered to pay to them, all he did having been to reserve his right to claim such repayment under a deed of indemnity that the beneficiaries had executed in his favour :—*Held :* the ct. had no jurisdiction to make a declaratory judgment under R. S. C., Ord. 25, r. 5, & Ord. 54A, r. 1, on the application of the beneficiaries, their duty being to wait until they were attacked & then to raise their defence.—*Re* CLAY, CLAY *v.* BOOTH, *Re* A DEED OF INDEMNITY, [1919] 1 Ch. 66; 88 L. J. Ch. 40; 119 L. T. 754; 63 Sol. Jo. 23, C. A.

Annotations :—**Consd.** Jaeger *v.* Jaeger Co. (1927), 44 R. P. C.

ferred, whereas a different principle applies in sect. 35 which does not affect to deal with jurisdiction but simply deals with practice & procedure in a superior ct.—HOWELL *v.* WARNER, [1921] 3 W. W. R. 587.—**CAN.**

106 iii. *S. P.* SHTITZ *v.* CANADIAN NATIONAL RY. CO., [1927] 1 D. L. R. 951; [1927] 1 W. W. R. 193; 21 Sask. L. R. 345.—**CAN.**

106 iv. ——.]—The only definition of "cause of action" that will work, if it has to be applied to cases of all kinds, is the entire set of facts that gives rise to an enforceable claim.—ENGINEERING SUPPLIES, LTD. *v.* DHANDHANIA & CO. (1930), I. L. R. 58 Calc. 539.—**IND.**

PART I. SECT. 2, SUB-SECT. 2.—A.

sj. *Sale of goods—To be delivered at place named—Payment to be made elsewhere.*]—Deft., in Perth, gave to B., who was agent for pltf., a written order for certain goods at a price. This order B. transmitted to his principal in Melbourne, who declined it, but authorised B. to inform deft. that pltf. would accept the order at increased prices, added in ink on the original order. These new prices were subsequently submitted by B. to deft., who agreed to take certain of the good at the increased prices. By the contract the goods were to be delivered f.o.b. Melbourne, payment to be by draft payable at Perth, cost of exchange to be added. Pltf. shipped the goods to deft. in Perth, who refused to accept the draft, alleging inferiority of the goods :—*Held :* the contract was made in Perth; & the only breach of the contract took place in Perth; & although delivery had to be made f.o.b. Melbourne, there was not a cause of action arising within Victoria.—CHIDZEY *v.* BRECKLER, [1920] V. L. R. 558.—**AUS.**

sk. —— —— ——.]—A "cause of action" on a breach of contract includes the contract & its breach. If a purchaser of machinery promises to pay the purchase price to the vendor at M., but signs the agreement & receives the machinery at W. the vendor's cause of action for the purchaser's failure to pay cannot be said to arise at M.—WESTERN CANADA AUTO TRACTOR CO., LTD. *v.* BJARNASON, [1920] 1 W. W. R. 621.—**CAN.**

——.]—Pl livered a motor car to deft. at Prince Albert, & deft. gave lien notes therefor signed at Prince Albert but payable at Saskatoon :—*Held :* the suit for balance due thereon was properly entered in the Saskatoon judicial district as the "cause of action" arose there.—OLMSTEAD *v.* SCOTT, [1921] 1 W. W. R. 1033.—**CAN.**

sm. *Contract—Where act or omission giving cause of complaint occurs.*]—A "cause of action" as applied to actions in the Ct. of King's Bench & for the purposes of King's Bench Act, R. S. S., 1920 (c. 39), s. 35, arises where, with regard to a contract, the act or omission of deft. occurs which gives pltf. his cause of complaint, although the term may have a different construction in cases involving the local jurisdiction of inferior cts.—ST. LOUIS RURAL MUNICIPALITY *v.* MARKHAM, [1921] 1 W. W. R. 950.—**CAN.**

PART I. SECT. 2, SUB-SECT. 4.—B.

sn. *Breach of trust—Failure to account.*]—The wrong of a sale of land in breach of trust & the wrong of a failure to account are entirely different things; & in this case there was a joinder of different causes of action, in which the different defts. were not all interested. An order was made requiring pltf. to elect upon which cause of action he would proceed.—THOMAS *v.* DAY (Alta.) (1912), 21 W. L. R. 244; 2 W. W. R. 133; 4 D. L. R. 238.—**CAN.**

PART I. SECT. 2, SUB-SECT. 4.—C.

wi. —— *Account by agent.*]—In a suit based upon an alleged agency, responsible for accounts & refund, it is the general agency with liability to account & refund the balance which is the cause of action, & not each separate act of payment or collection. Any individual act of collection cannot therefore be said to be a part of the cause of action so as to confer jurisdiction on the ct.—SHAH SANKALCHAND *v.* AMBALAL NAGINDAS (1929), I. L. R. Bom. 192.—**IND.**

PART I. SECT. 2, SUB-SECT. 5.—B.

141 ii. —— ——.]—Though deft. on conviction for a common assault, instead of being fined or imprisoned, was merely bound over to keep the peace, under the magistrates' powers under Criminal Code, s. 748 :—*Held :* deft. was under s. 734 of the Code released from any subsequent civil proceedings for the same cause.—TRINEA *v.* DULEBA, [1924] 3 D. L. R. 636; 2 W. W. R. 1177; 20 Alta. L. R. 493.—**CAN.**

437. **Refd.** Ruislip-Northwood U. D. C. *v.* Lee (1931), 145 L. T. 208.

Declaratory judgments generally, *see* JUDGMENTS.

157. *Add. Annotation :*—**Consd.** Eshelby *v.* Federated European Bank, Ltd. (1931), 101 L. J. K. B. 245.

176. *Add. Annotation :*—**Refd.** Aksionairnoye Obschestvo, A. M. Luther *v.* Sagor, [1921] 1 K. B. 456.

179. *Add. Annotation :*—**Consd.** Lowe *v.* Bentley (1928), 44 T. L. R. 388 ; Eshelby *v.* Federated European Bank, Ltd. (1931), 101 L. J. K. B. 245.

180. *Add. Annotation :*—**Consd.** Lowe *v.* Bentley (1928), 44 T. L. R. 388.

Part II.—In respect of what Acts and Omissions an Action will Lie.

187. *Add. Annotations :*—**Consd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368. **Distd.** Everett *v.* Ryder (1926), 135 L. T. 302. **Refd.** Weld-Blundell *v.* Stephens, [1920] A. C. 956 ; Simmonds *v.* Newport Abercarn Black Vein Steam Coal Co., [1921] 1 K. B. 616 ; Manton *v.* Brocklebank, [1923] 2 K. B. 212.

187a. —.]—Where a person has a sole exclusive right, which is infringed upon, if an action of trespass will not lie, he may have an action of the case, for the law will not permit a man who has a right to be without a remedy. —WHITCHURCH *v.* HIDE (1742), 2 Atk. 391 ; 26 E. R. 636, L. C.

191. *Add. Annotation :*—**Refd.** Manton *v.* Brocklebank, [1923] 1 K. B. 406 ; Place *v.* Searle (1932), 48 T. L. R. 320.

194. *Add. Annotations :*—**Consd.** Banbury *v.* Bank of Montreal, [1918] A. C. 626. **Refd.** Janvier *v.* Sweeney, [1919] 2 K. B. 316.

197. *Add. Annotation :*—**Apld.** R. *v.* Poplar B. C. (No. 1), [1922] 1 K. B. 72.

198. *Add. Annotations :*—**Refd.** Winsford Entertainments *v.* Winsford U. D. C. (1924), 23 L. G. R. 254 ; Layzell *v.* Thompson (1926), 43 T. L. R. 58.

205. *Add. Annotations :*—**Follid.** Janvier *v.* Sweeney, [1919] 2 K. B. 316. **Consd.** Hambrook *v.* Stokes (1924), 41 T. L. R. 125. **Refd.** Shapiro *v.* La Morta (1923), 130 L. T. 622.

205a. Injury to health caused by false statement.]—The wilful making of a false statement with the knowledge that it is calculated to cause injury to the health of the person to whom it is made constitutes a good cause of action, if in fact such injury is thereby caused.—JANVIER *v.* SWEENEY, [1919] 2 K. B. 316 ; 88 L. J. K. B. 1231 ; 121 L. T. 179 ; 35 T. L. R. 360 ; 63 Sol. Jo. 430, C. A.

Annotation :—**Consd.** Hambrook *v.* Stokes, [1925] 1 K. B. 141.

205b. Mental shock caused by negligence.]—Defts.' servant had a motor lorry at the top of an incline in a street, with the handbrake on, the engine running, & the wheels straight. The lorry began to run down the incline & it struck & injured pltf.'s daughter, a child, & pltf.'s wife suffered a severe shock & died in hospital about ten days later. Pltf. claimed damages under Fatal Accidents Act, 1846 (c 93), for negligence causing the death of his wife :—*Held :* pltf. would establish a cause of action if he established that the death of his wife resulted from the shock occasioned by negligence involved in the running away of the lorry, that the shock resulted from what pltf.'s wife either saw or realised by her unaided senses & not from something which some one told her, & that the shock was due to a reasonable fear of immediate personal injury either to herself or to her children.—HAMBROOK *v.* STOKES BROTHERS, [1925] 1 K. B. 141 ; 94 L. J. K. B. 435 ; 132 L. T. 707 ; 41 T. L. R. 125, C. A.

206a. —— ——.]—If the law casts any public duty upon a person which he refuses or fails to perform, he is answerable in damages to those whom his refusal or failure injures.—FERGUSON *v.* KINNOULL (EARL) (1842), 9 Cl. & Fin. 251 ; 4 State Tr. N. S. 785 ; 8 E. R. 412, H. L.

Annotations :—**Refd.** Heriots Hospital, Feoffees *v.* Ross (1846), 12 Cl. & Fin. 507 ; Rogers *v.* Rajendro Dutt (1860), 8 Moo. Ind. App. 103 ; Sinclair *v.* Broughton & Government of India (1882), 47 L. T. 170 ; Allen *v.* Flood, [1898] A. C. 1.

215. *Add. Annotations :*—**Refd.** Turpin *v.* Victoria Palace, [1918] 2 K. B. 539 ; Neville *v.* London "Express" Newspaper, [1919] A. C. 368 ; Wilson *v.* United Counties Bank, [1920] A. C. 102.

217. *Add. Annotation :*—**Consd.** Neville *v.* London "Express" Newspaper Ltd., [1919] A. C. 368.

221. *Add. Annotation :*—**Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

224. *Add. Annotations :*—**Refd.** Boynton *v.* Ancholme Drainage & Navigation Comrs., [1921] 2 K. B. 213 ; Kennard *v.* Cory, [1922] 1 Ch. 265 ; Huyton & Roby Gas Co. *v.* Liverpool Corpn., [1926] 1 K. B. 146.

231. *Annotation :*—**Distd.** The Zelo, [1922] P. 9.

235. *Add. Annotation :*—**Apld.** Sorrell *v.* Smith, [1925] A. C. 700

PART II. SECT. 1, SUB-SECT. 2.

sn. *Act per se injurious—Lawful act on own land.*]—Where the unavoidable consequence of a lawful act done by a person on his own land, such as the erection of a mill dam, is to injure his neighbour, an action lies for such injury : but not if such act *per se* would not be necessarily or probably injurious, but becomes so from a cause not under the control of either party.—PETERS *v.* DEVINNEY (1857), 6 C. P. 389.—**CAN.**

PART II. SECT. 1, SUB-SECT. 4.

216 iii. —— ——.]—An action for damages for a misrepresentation on a sale of goods was dismissed on the ground that there was no evidence on which damages could be assessed. On appeal the trial judge's view, as to the absence of evidence of damages, was sustained, but it was held that as a breach of warranty had been shown pltf. was entitled to a judgment for nominal damages, but that since the action was one for the recovery of substantial damages & not merely to assert a legal right there should be no costs of the trial or appeal to either party.—SMITH *v.* WARD, [1928] 4 D. L. R. 850 ; [1928] 3 W. W. R. 341 ; 37 Man. L. R. 528.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.

237 iii. ——.]—Pltfs. complained that defts. dug holes in the beach upon their lands on the shore of a lake, where the sand met the grass-covered bank, that sand swept from pltfs.'

238. *Add. Annotation :* — **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey, (1930), 99 L. J. Ch. 337.

239. *Add. Annotations :*—**Refd.** Everett *v.* Griffiths, [1920] 3 K. B. 163; More *v.* Weaver, [1928] 2 K. B. 520.

240. *Add. Annotation :*—**Refd.** Ilford U. D. C. *v.* Beal, [1925] 1 K. B. 671.

241. *Add. Annotations :*—**Refd.** Valentine *v.* Hyde, [1919] 2 Ch. 129; Sorrell *v.* Smith, [1925] A. C. 700.

242. *Add. Annotations :*—**Refd.** Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244; Ware & De Freville *v.* Motor Trade Assocn., [1921] 3 K. B. 40.

243a. —— —— ——.]—ST. NEDEPORT (PRIOR) *v.* WESTON (1443), Y. B. 22 Hen. 6, fo. 14, pl. 23.

Annotations :—**Consd.** Huzzey *v.* Field (1835), 5 Tyr. 855; Hammerton *v.* Dysart, [1916] 1 A. C. 57. **Refd.** Churchman *v.* Tunstal (1659), Hard. 162; Pain *v.* Partridge (1691), Holt, K. B. 6; Newton *v.* Cubitt (1862), 12 C. B. N. S. 32; Hopkins *v.* G. N. Ry. (1877), 2 Q. B. D. 224; Cowes U. C. *v.* Southampton Isle of Wight & South of England Royal Mail Steam Packet Co., [1905] 2 K. B. 287; General Estates Co. *v.* Beaver, [1914] 3 K. B. 918.

246. *Add. Annotations :*—**Consd.** Winsford Entertainments *v.* Winsford U. D. C. (1924), 23 L. G. R. 254. **Refd.** Yorkshire East Riding County Council *v.* Selby Bridge Co., [1925] Ch. 841; Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey, [1929] 1 Ch. 686.

247. *Add. Annotations :*—**Refd.** Goddard *v.* Watford Co-op. Soc. (1924), 41 R. P. C. 218; Lyons (J.) & Co., Ltd. *v.* Lyons (J.) (1931), 49 R. P. C. 188.

249. *Add. Annotations :*—**Consd.** Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244; Valentine *v.* Hyde, [1919] 2 Ch. 129; Ware & De Freville *v.* Motor Trade Assocn., [1921] 3 K. B. 40; Sorrell *v.* Smith, [1924] 1 Ch. 506. **Apld.** Reynolds *v.* Shipping Federation, [1924] 1 Ch. 28; Thompson *v.* British Medical Assocn. (N.S.W. Branch), [1924] A. C. 764. **Apld.** Sorrell *v.* Smith, [1925] A. C. 700. **Refd.** Evans *v.* Heathcote, [1918] 1 K. B. 418; Thomas *v.* Moore, [1918] 1 K. B. 555; Davies *v.* Thomas, [1920] 2 Ch. 189; Rawlings *v.* General Trading Co., [1921] 1 K. B. 635; Brimelow *v.* Casson, [1924] 1 Ch. 302; British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383.

249a. —— —— **Unlawful means used.**]—A single person or a body of persons commits an actionable wrong if he or they inflict actual pecuniary damage upon another by the intentional employment of unlawful means, such as threats of coercive action, to injure that person's business, even though the unlawful means may not comprise any specific act which is *per se* actionable & actual malice is not proved. The element of conspiracy in a case of this kind is of importance only in considering the weight of the acts alleged & the extent of the damage resulting therefrom.

Defts., the British Medical Association, a body incorporated for the purpose of maintaining "the honour & interests of the medical profession," & other defts., who were members of the Association, instituted & pursued a system of professional & social ostracism or boycott against pltfs., who were medical men, by means of threats & widely extended coercive action. Defts. sought to justify the boycott on the ground that the conduct of pltfs. in acting as the medical officers of a certain medical dispensary was detrimental to the honour & interests of the profession. As a result of the boycott pltfs. suffered pecuniary loss in the exercise of their profession :—*Held :* pltfs. had a good cause of action against all defts. for damages.—PRATT *v.* BRITISH MEDICAL ASSOCN., [1919] 1 K. B. 244; 88 L. J. K. B. 628; 120 L. T. 41; 35 T. L. R. 14: 63 Sol. Jo. 84.

Annotations :—**Consd.** Ware & De Freville *v.* Motor Trade Assocn., [1921] 3 K. B. 40. **Refd.** Valentine *v.* Hyde, [1919] 2 Ch. 129; Davies *v.* Thomas, [1920] 1 Ch. 217; Hodges *v.* Webb, [1920] 2 Ch. 70; Said *v.* Butt, [1920] 3 K. B. 497; Sorrell *v.* Smith, [1925] A. C. 700.

250. *Annotations :*—**Consd.** Valentine *v.* Hyde, [1919] 2 Ch. 129. **Refd.** Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244; Ware & De Freville *v.* Motor Trade Assocn., [1921] 3 K. B. 40.

251. *Add. Annotation :*—**Refd.** Spalding *v.* Gamage (1918), 35 R. P. C. 101.

253. *Add. Annotations :*—**Consd.** Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244; Valentine *v.* Hyde, [1919] 2 Ch. 129. **Apld.** Davies *v.* Thomas, [1920] 2 Ch. 189. **Consd.** Hodges *v.* Webb, [1920] 2 Ch. 70; Ware & De Freville *v.* Motor Trade Assocn., [1921] 3 K. B. 40; White *v.* Riley, [1921] 1 Ch. 1; Sorrell *v.* Smith, [1923] 2 Ch. 32. **Apld.** Sorrell *v.* Smith, [1925] A. C. 700. **Consd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306. **Refd.** Wolstenholme *v.* Ariss, [1920] 2 Ch. 403; Sorrell *v.* Smith, [1924] 1 Ch. 506; Hampton *v.* West Cannock Colliery Co., [1932] 2 K. B. 293.

255. *Annotation :*—**Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

256. *Add. Annotations :*—**Distd.** The Zelo, [1922] P. 9. **Apld.** Federated Coal & Shipping Co. *v.* R., [1922] 2 K. B. 42. **Consd.** McColl *v.* Canadian Pacific Ry., [1923] A. C. 126. **Refd.** Elliott Steam Tug Co. *v.* Shipping Controller, [1922] 1 K. B. 127.

lands by storms was carried by the wind across defts.' beach, & came to rest in these holes, & that, when the next storm came, the sand remained in the holes & was not blown back to pltfs.' lands. Pltfs. contended that it was wrongfully detained by defts. :—*Held :* pltfs. had no cause of action, as the sand could not be considered a chattel upon its severance by the wind from its original situs, if shifting sand could be said to have a situs.—BREMNER *v.* BLEAKLEY, [1924] 2 D. L. R. 202; 54 O. L. R. 243; *revsd.*, [1923] 2 D. L. R. 576; 52 O. L. R. 124.—CAN

so. *Mental suffering insufficient.*]—Mental suffering caused by a deft. will not support an action for damages in the absence of some *injuria* to pltf.—EDMONDS *v.* ARMSTRONG FUNERAL HOME, LTD., [1930] 3 W. W. R. 649; 25 Alta. L. R. 173; [1931] 1 D. L. R. 676.—CAN.

PART II. SECT. 3, SUB-SECT. 2.—B

253 ii. ——.]—If a person who, by virtue of his position or influence, has power to carry out his design, attempts, without justification, to prevent, & succeeds in preventing by threats to or special influence upon a workman's employers, or would-be employers, such workman from obtaining or holding employment in his calling, & such workman suffers damage thereby, then that person is liable to the workman for such damage.—THOMPSON *v.* RYALL & CUNNINGHAM, [1924] 4 D. L. R. 778; 3 W. W. R. 524.—CAN.

256 ii. ——.]—Pltf. co., a manufacturer of newsprint, brought this action against other manufacturers of the same articles for a declaration that such of defts. as supplied less than their proper share of newsprint to Canadian publishers during the years 1918 & 1919, were liable to pay to pltf. co. the loss suffered by it in supplying more than its proper share during the two years & asked for an account & payment. The claim was based upon an alleged agreement between the parties & also upon orders alleged to

257a. ——.]—A number of discharged sailors entered into a partnership according to the terms of which the sailors were to perform together at certain music halls & were not to appear during the terms of the partnership in any other theatre or music hall. Pltfs., who were members of the co., complained that the deft. had induced certain of the sailors to break the contract by promising to get them employment & by obtaining other engagements for them. By amendment it was further alleged that deft. had wrongfully continued persons in her employment with the knowledge that by being in her employment those persons were breaking a contract with pltfs.:—*Held:* assuming an action lies to recover damages on the latter ground, the foundation of this action is that there shall be notice to deft. of a subsisting contract which one party, at all events, is still willing & able to perform; & there being sufficient evidence before the county ct. judge that the partnership had for all practical purposes come to an end, no action lay.—LONG *v.* SMITHSON (1918), 88 L. J. K. B. 223; 118 L. T. 678; 62 Sol. Jo. 472, D. C.

Annotation:—**Refd.** Said *v.* Butt, [1920] 3 K. B. 497.

258. *Annotations:*—**Consd.** Pontardawe R.D.C. *v.* Moore-Gwyn, [1929] 1 Ch. 656. **Refd.** Stearn *v.* Prentice, [1919] 1 K. B. 394; Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341.

259a. —— **Damage by rats.**]—A firm of artificial manure manufacturers had on their premises, for the purposes of their business, a heap of bones which attracted rats. The occupier of adjoining premises was a farmer. The rats made runs between the factory & the fields & entered the farmer's land, & damaged his crops. The business had been carried on for at least thirty years, & there was no evidence to show that the bone heap had been increased beyond what it had been in past years, or anything to show that an increase which had actually taken place in the numbers of the rats was due to anything done by the manufacturers. In an action by the farmer against the manufacturers:—*Held:* in the absence of evidence showing that there had been an unusual & excessive collection of bones on the factory premises, or of anything unusual or excessive done by defts., or of any duty neglected by defts., pltf. could not maintain an action for damages.—STEARN *v.* PRENTICE BROTHERS, LTD., [1919] 1 K. B. 394; 88 L. J. K. B. 422; 120 L. T. 445; 35 T. L. R. 207; 63 Sol. Jo. 229; 17 L. G. R. 142, D. C.

261. *Add. Annotation:*—**Refd.** Ware & De Freville *v.* Motor Trade Assocn., [1921] 3 K. B. 40.

262. *Add. Annotations:*—**Apld.** The Molière (1924), 41 T. L. R. 154. **Refd.** Kent *v.* Atkinson, [1923] P. 142.

263. *Add. Annotation:*—**Refd.** Kent *v.* Atkinson, [1923] P. 142.

264. *Add. Annotations:*—**Refd.** Barnett *v.* Cohen, [1921] 2 K. B. 461; Kent *v.* Atkinson, [1923] P. 142.

265. *Add. Annotation:*—**Refd.** Nunan *v.* Southern Ry., [1924] 1 K. B. 223.

266. *Add. Annotations:*—**Consd.** Bradford Corpn. *v.* Webster, [1920] 2 K. B. 135. **Apld.** The Molière (1924), 41 T. L. R. 154. **Refd.** Baker *v.* Dalgleish S.S. Co., [1922] 1 K. B. 30; The Edison, [1932] P. 52.

268. *Annotations:*—**Consd.** Weld-Blundell *v.* Stephens, [1919] 1 K. B. 520. **Refd.** Bradstreets British, Ltd. *v.* Mitchell (1932), 48 T. L. R. 670.

274a. Procuring judgment for debt already paid—No malice.]—Pltf., a chemist, owed defts. a debt of £3 11*s.* 4*d.*, & paid it. Defts. overlooked the fact of this payment & issued civil process against pltf. who, when served, pointed out to defts. their mistake. Defts. apologised & wrote: "We are immediately communicating with our agency." On the day of trial defts., the then pltfs., appeared by a solr. & obtained judgment for £3 11*s.* 4*d.* Pltf., the then deft., did not attend or appear. The fact of the judgment was published in a county newspaper. About eight months later the judgment, at the instance of the present pltf. was set aside. Pltf. brought an action claiming (*inter alia*) damages in tort against defts. for procuring this judg-

have been made by the Paper Comptroller appointed by the Canadian Government in Nov. 1917:—*Held:* although pltf. co. sustained a substantial loss of profit by reason of its having been compelled by the Government to supply the Western Canadian publishers with newsprint at prices fixed by the Comptroller when it could have been sold to limited states customers at higher prices, & was thus compelled to bear the burden, which should have been shared by some of defts. the ct. had no jurisdiction to compel an adjustment of pltf. co.'s claim by those defts. who shirked their fair share of the burden.—FORT FRANCES PULP CO. *v.* SPANISH RIVER PULP CO., [1928] 1 D. L. R. 753; 61 O. L. R. 512; *affd.*, [1929] 4 D. L. R. 192; 64 O. L. R. 148; *revsd.*, [1931] 2 D. L. R. 97, P. C.—**CAN.**

257 i. ——.]—Where a workman who has been suspended by his employers suffers damage as a result of two or more persons conspiring without justification, to induce the employers not to reinstate him, he has a right of action against them.—THOMPSON *v.* RYALL & CUNNINGHAM, [1924] 4 D. L. R. 778; 3 W. W. R. 524.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—C.

258 ii. —— *Heightened fence.*]—Applt. & resp. owned & resided upon adjoining properties. In 1925 resp. erected an 8 ft. iron fence or hoarding on the boundary between the properties. In 1929 resp. raised the fence to a height of 18 ft. in order to shield his lavatory from the view of an attic window which applt. had erected. On the day the work of heightening was started applt. notified resp. that, as the fence could not be erected without a trespass being committed, he would sue for damages if the work were proceeded with. A few days later applt. obtained an interdict restraining resp. from trespassing on his land. Applt. then instituted the present action, claiming damages on the ground that resp. had maliciously by himself, his servants and/or workmen trespassed upon the land for the purpose of erecting a hoarding on the boundary. It was proved that on one occasion a piece of timber fell upon applt.'s land & was immediately removed by the workmen:—*Held:* (1) although the heightening of the fence depreciated the value of applt.'s property, applt. could not recover damages, even if the work had been done maliciously; (2) as resp. had not trespassed under a claim of right & had not insolently or defiantly insisted upon going on applt.'s land, applt. was not entitled to succeed.—VANSTON *v.* FROST, [1930] W. L. R. 121.—**S. AF.**

PART II. SECT. 3, SUB-SECT. 2.—E.

n i. —— —— *Expulsion from membership of Church.*]—TOEWS *v.* ISAAC (No. 2), [1931] 2 W. W. R. 48; 39 Man. L. R. 436; 2 D. L. R. 819.—**CAN.**

sp. *Goods claimed from tenant—Refusal of access by landlord.*]—BONNELL *v.* FERRIS, [1929] 1 D. L. R. 540; 60 N. S. R. 297.—**CAN.**

sq. *Interference with privacy.*]—A right to privacy is not an inherent right of a party & can arise only by express usage, by grant or by special permission. Where, therefore, pltf. brought a suit for the closing of certain windows opened by deft. in a newly constructed second storey of his house which was adjoining pltf.'s on the ground that the female apartments of pltf.'s house were overlooked & his privacy was destroyed:—*Held:* pltf.'s claim could not succeed.—KESHO SAHU *v.* MUSAMMAT MUKTAKIMAN (1931), I. L. R. 10 Pat. 280.—**IND.**

ment. Pltf. in his evidence stated that his profits during the year following the judgment were diminished by £95, & during the next year by £105. He attributed this falling off to the judgment & its publication :—*Held :* the cause of action in tort, if any, was the malicious issue of civil process against pltf. There was no evidence of malice, & the supposed damages were irrecoverable.—CORBETT *v.* BURGE, WARREN & RIDGLEY, LTD. (1932), 48 T. L. R. 626.

283. *Add. Annotation :*—**Refd.** Friern Barnet U. C. *v.* Adams, [1927] 2 Ch. 25.

296. *Annotation :*—**Apld.** Webster *v.* Harrison, Townsend (1920), 89 L. J. K. B. 1077.

303a. **Breach of contract—Onus of proof.**]—The burden of proving that a breach of contract falls within the principle of *de minimis non curat lex* is on the party seeking to excuse the breach.—RONAASEN (E. A.) & SON *v.* ARCOS, LTD. (1932), 48 T. L. R. 356 ; 37 Com. Cas. 291, C. A.

304. *Add. Annotation :*—**Refd.** Everett *v.* Ryder (1926), 135 L. T. 302.

310. *Annotations :—Generally,* **Refd.** A.-G. *v.* Sewell (1918), 88 L. J. K. B. 425; Boultwood *v.* Paignton U. D. C. (1928), 92 J. P. 98.

320. *Add. Annotations :*—**Consd.** *Re* Pitts, Cox *v.* Kilsby, [1931] 1 Ch. 546. **Refd.** James *v.* British General Insce., [1927] 2 K. B. 311 ; Royal Exchange Assce. *v.* Hope, [1928] Ch. 179 ; *Re* Collier, [1930] 2 Ch. 37 ; Cousins *v.* Sun Life Assurance Society (1932), 48 T. L. R. 614.

323. *Add. Annotation :*—**Consd.** *Re* Pitts, Cox *v.* Kilsby, [1931] 1 Ch. 546.

325. *Add. Annotations :*—**Consd.** Wylie *v.* Lawrence Wright Music Co. (1932), 96 J. P. 156. **Refd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

326. *Add. Annotations :*—**Apld.** Wild *v.* Simpson, [1919] 2 K. B. 544. **Consd.** Lipton *v.* Powell, [1921] 2 K. B. 51.

328. *Add. Annotation :*—**Refd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383.

332. *Add. Annotation :*—**Refd.** Weld-Blundell *v.* Stephens, [1920] A. C. 956.

333. *Add. Annotation :*—**Refd.** Weld-Blundell *v.* Stephens, [1920] A. C. 956.

Part III.—Who may Sue and be Sued.

338. *Add. Annotation :*—**Refd.** Rex Co. & Rex Research Corpn. *v.* Muirhead & Comptroller-General of Patents (1926), 44 R. P. C. 38.

340. *Add. Annotations :*—**Refd.** The Coaster (1922), 91 L. J. P. 145 ; Page *v.* Scottish Insce. Corpn. (1929), 98 L. J. K. B. 308 ; Allgemeine Versicherungs-Gesellschaft Helvertia *v.* German Property Administrator, [1931] 1 K. B. 672 ; Ellerbeck Collieries, Ltd. *v.* Cornhill Insurance Co., [1932] 1 K. B. 401.

345. *Add. Annotation :*—**Refd.** *Re* Phillips, Public Trustee *v.* Mayer (1931), 76 Sol. Jo. 10.

354. *Add. Annotation :*— **Refd.** Soviet Republics Union *v.* Belaiew (1925), 42 T. L. R. 21.

360. *Add. Annotation :* — **Refd.** Aksionairnoye Obschestvo A. M. Luther *v.* Sagor, [1921] 1 K. B. 456.

360a. **Recognised, if acknowledged here.**]—Where a revolution has taken place in a foreign country & the new Govt. has been recognised as the *de jure* Sovereign of that country by our Govt., that new Govt. is entitled to the possession & custody in England of records & State archives deposited here before the revolution by the old Govt.—SOVIET SOCIALIST REPUBLICS UNION *v.* ONOU (1925), 69 Sol. Jo. 676.

363. *Add. Annotations :*—**Refd.** Aksionairnoye Obschestvo A. M. Luther *v.* Sagor, [1921] 1 K. B. 456 ; Soviet Republics Union *v.* Belaiew (1925), 42 T. L. R. 21.

366a. —— **Action by procurator—Validity of appointment.**]—Pltf., the Spanish ambassador, brought an action, as procurator for all the King of Spain's subjects, to recover two ships & other goods seized by deft. :—*Held :* (1) no man can make a procurator for another ; therefore the King could not make a procurator for all or any of his subjects ; (2) the office of ambassador did not include a procuration private, but public for the King, nor for any several subject, otherwise than as it concerned the King.—ACUNA *v.* BINGLEY (1616), Hob. 78, 113 ; 80 E. R. 263.

Annotations :—As to (2) **Consd.** Hullett *v.* Spain (1828), 2 Bli. N. S. 31. **Folld.** Penedo *v.* Johnson (1873), 22 W. R. 103. *Generally,* **Refd.** Brunswick *v.* Hanover (1844), 13 L. J. Ch. 107.

366b. —— **Action by minister plenipotentiary.**]—A demurrer allowed to a bill filed by the agent duly authorised, & minister plenipotentiary of a foreign state, in respect of rights of such state, on the ground that the state was not properly represented.—SCHNEIDER *v.* LIZARDI (1846), 9 Beav. 461 ; 15 L. J. Ch. 435 ; 50 E. R. 421.

Annotation :—**Folld.** Penedo (Baron) *v.* Johnson (1873), 29 L. T. 452.

366c. —— **Claim under unregistered bill of sale.**]—To a bill filed by the Chargé d'Affaires of the Brazilian Govt. in this country, in his own name, to restrain judgment creditors from issuing execution against certain furniture, etc., upon which a sum of money had been advanced, as was alleged, by the Brazilian Govt. secured by an unregistered bill of sale of the furniture, etc., a demurrer on the ground that the minister could not sue in his own name was allowed.—PENEDO (BARON) *v.* JOHNSON (1873), 29 L. T. 452 ; 22 W. R. 103.

PART II. SECT. 5.

325 iv. —— *Agreement to prosecute third party.*]—Pltf. was in a position to give evidence that one B. was implicated with him in the illegal manufacture of alcohol. Deft. L., who was alleged to be acting not only on his own behalf but also on behalf of his co-defts., all of whom were said to have reasons for wishing to be revenged on B., agreed with pltf. to pay him for said evidence on the conviction of B., the remuneration to be on a sliding scale in accordance with the severity of the sentence obtained by pltf.'s evidence. Part payment was made under the contract & pltf. sued for the balance ; B. having been convicted :—*Held :* the contract was unlawful as against public policy, &, therefore, unenforceable.—SYMINGTON *v.* VANCOUVER BREWERIES, LTD. & RIEFEL, [1931] 1 W. W. R. 410 ; 43 B. C. R. 388 ; 1 D. L. R. 935 ; *affg.,* [1930] 3 W. W. R. 19 ; 4 D. L. R. 1023.—**CAN.**

368. *Annotation :*—**Consd.** Duff Development Co. *v.* Kelantan Government, [1923] 1 Ch. 385.

372. *Add. Annotation :*—**Refd.** Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797.

375. *Annotations :*—**Refd.** The Tervaete (1922), 128 L. T. 176; Duff Development Co. *v.* Kelantan Government, [1923] 1 Ch. 385; Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797; *Re.* Bjornstad & Ouse Shipping Co., [1924] 2 K. B. 673.

376. *Add. Annotation :*—*As to* (2) **Folld.** Soviet Republics Union *v.* Belaiew (1925), 42 T. L. R. 21.

376a. —— ——.]—A foreign Sovereign suing in the cts. of this country submits to the jurisdiction to the extent only that he must give discovery, & cross proceedings in mitigation of the relief claimed by him can be taken against him.

A foreign State sued to restrain dealing with, & for the appointment of a new trustee of, funds lodged in England in the names of a trustee for pltfs. & a trustee for defts. who held a concession from pltfs. for the construction of a railway in their territory. A counterclaim for damages in respect of alleged breaches of the terms of the concession was struck out.—SOUTH AFRICAN REPUBLIC *v.* COMPAGNIE FRANCO-BELGE DU CHEMIN DE FER DU NORD, [1898] 1 Ch. 190; 77 L. T. 555; 46 W. R. 151; 14 T. L. R. 65; 42 Sol. Jo. 66.

Annotations :—**Consd.** Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797. **Refd.** *Re* Suarez, Suarez *v.* Suarez, [1918] 1 Ch. 176; The Tervaete, [1922] P. 259; Soviet Republics Union *v.* Belaiew (1925), 42 T. L. R. 21.

376b. —— ——.]—In 1916 a Russian Govt. Committee, of which deft. was a member, was set up in London by the Imperial Russian Govt. & continued by its successor, the Russian Provisional Govt., & the committee, which incurred large financial obligations, had possession of certain documents, which related to those obligations & were the property of those Govts. The committee ceased to operate in 1918, & the documents were handed over to a board of trustees appointed by the Chargé d'Affaires of the Russian Provincial Govt., & deft. became president of the board. The documents had become the property of pltfs., the present Russian Govt., whose sovereignty had been recognised by the British Govt., but they were still in the possession of deft. Certain actions were pending against deft. as a member of the Russian Govt. Committee with regard to the transactions to which the documents related. Pltfs. claimed the delivery up of the documents, & deft. contended that he was entitled to a lien on the documents until he had received an indemnity in respect of the other actions, & he set up the contention by way of defence & counterclaim :—*Held :* although where a sovereign state was a pltf. a counterclaim could be maintained against it, yet the counterclaim must be in respect of matters immediately connected with the claim, & as the indemnity sought by deft. was not in respect of any liability incurred by him in & about the custody of the documents, & was not in respect of matters immediately connected with the claim, the action succeeded & the counterclaim failed.—SOVIET REPUBLICS UNION *v.* BELAIEW (1925), 134 L. T. 64; 42 T. L. R. 21.

383. *Add. Annotation :*—**Refd.** Soviet Republics Union *v.* Belaiew (1925), 42 T. L. R. 21.

387. *Add. Annotations :*—**Consd.** Compania Mercantil Argentina *v.* United States Shipping Board (1924), 93 L. J. K. B. 816. **Refd.** *Re* Suarez, Suarez *v.* Suarez, [1918] 1 Ch. 176; The Gagara, [1919] P. 95; The Porto Alexandre, [1920] P. 30; Duff Development Co. *v.* Kelantan Government & Colonies Crown Agents (1922), 39 T. L. R. 96; Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797.

387a. —— **Notwithstanding restrictions on exercise of sovereign rights.**]—(1) It is the settled practice of the ct. to take judicial notice of the status of any foreign Govt., & for that purpose, in any case of uncertainty, to seek information from a Secretary of State; & the information so received is conclusive.

(2) A Govt. recognised as sovereign by His Majesty's Govt. is not the less exempt from the jurisdiction of our cts. because it has agreed to restrictions on the exercise of its sovereign rights.

By a deed dated in July, 1912, the Govt. of Kelantan granted to applt. co. certain mining & other rights to be exercised in that State, & the deed contained an arbn. clause, which incorporated Arbn. Act, 1889 (c. 49), so far as applicable. Disputes having arisen as to the effect of the deed, they were referred to an arbitrator, who made an award in favour of the co. & directed the Govt. to pay the costs of the arbn. In Dec. 1921, the Govt. applied to the Ch. Div., under Arbn. Act, 1889, s. 11, to set aside the award, but the application was refused. In June, 1922, the co. obtained from the K. B. Div., under sect. 12 of the Act, an order giving leave to enforce the award, but the order was set aside, on the application of the Govt., on the ground that Kelantan was a sovereign independent State. Before setting aside the order the master asked the Secretary of State for the Colonies for information as to the status of Kelantan, & received in reply an official letter stating that Kelantan was an independent State & its Sultan the sovereign ruler thereof, & that the King did not exercise or claim any rights of sovereignty over Kelantan, & enclosing an agreement regulating the relations between the Sultan & the King. By this agreement the Sultan agreed to have no political relations with any foreign power except through the medium of the King, & in all matters of administration, other than those touching the Mohammedan religion & Malay custom, to follow the advice of an adviser appointed by the King :—*Held :* (1) the statement in the letter as to the sovereignty of Kelantan & its rulers was not intended to be qualified by the terms of the agreement, & the letter was conclusive; (3) the Govt. of Kelantan had not submitted to the jurisdiction of the ct. for the purpose of the proceedings to enforce the award, either by assenting to the arbn. clause or by applying to the ct. to set aside the award.—DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, [1924] A. C. 797; 93 L. J. Ch. 343; 131 L. T. 676; 40 T. L. R. 566; 68 Sol. Jo. 559, H. L.

Annotations :—*As to* (1) **Apld.** Engelke *v.* Musmann, [1928] A. C. 433. **Refd.** Musmann *v.* Engelke (1927), 96 L. J. K. B. 824. *As to* (3) **Refd.** Dickinson *v.* Del Solar (1929), 45 T. L. R. 637.

388. *Annotation :*—**Refd.** Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797.

389. *Add. Annotation :*—**Consd.** Soviet Republic Union *v.* Belaiew (1925), 42 T. L. R. 21.

390. *Add. Annotations :*—**Refd.** The Tervaete, [1922] P. 259 ; Duff Development Co. *v.* Kelantan Government, [1923] 1 Ch. 385.

392. *Add. Annotations :*—**Refd.** Aksionairnoye Obschestvo A. M. Luther *v.* Sagor, [1921] 3 K. B. 532 ; The Tervaete, [1922] P. 259 ; Duff Development Co. *v.* Kelantan Government, [1923] 1 Ch. 385 ; The Jupiter (1924), 93 L. J. P. 156 ; The Jupiter (No. 3) (1927), 137 L. T. 333.

392a. -.]—(1) In proceedings in the cts. of this country by or against the ruler of a colonial State whose status is disputed a written statement by the Secretary of State for the Colonies that the ruler is an independent foreign sovereign is equivalent to a communication from the Crown &. therefore, conclusive, & the ct. will accept it without considering whether it is borne out by documents which are appended to it.

In an arbn. in this country between pltf. co. & the Govt. of Kelantan an award was made in favour of the co. with costs. The Govt. of Kelantan then moved to set aside the award & this motion was dismissed with costs. An appeal from this decision was also dismissed with costs. No portion of these costs had been paid. The co. obtained a garnishee order *nisi* to attach money in the hands of the Crown agents of the Colonies on behalf of the Govt. of Kelantan. Upon an application by the co. for payment by the garnishees the Govt. of Kelantan & the Crown agents appeared together & contended that Kelantan was an independent sovereign State & the ct. had no jurisdiction to execute the orders for costs by a levy on the property of that State :—*Held :* (2) although the Govt. of Kelantan had, by initiating proceedings to set aside the award of the arbitrator, submitted to the jurisdiction of the ct., (3) that submission had not the effect of rendering liable to execution any property belonging to the Govt. within the jurisdiction. —DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, [1923] 1 Ch. 385 ; 92 L. J. Ch. 273 ; 129 L. T. 290 ; 39 T. L. R. 187 ; 67 Sol. Jo. 260, C. A.

393. *Add. Annotations :*—**Refd.** The Porto Alexandre (1919), 89 L. J. P. 97 ; Compania Mercantil Argentina *v.* United States Shipping Board (1924), 93 L. J. K. B. 816.

393a. —— ——.]—A sovereign independent State does not, by entering into a trading contract with a foreigner, lose its immunity from process in foreign cts. as regards matters arising out of the contract ; nor does a sovereign independent State, by making a submission to arbn. in a foreign country, lose its immunity from being impleaded in the cts. of the foreign country.—COMPANIA MERCANTIL ARGENTINA *v.* UNITED STATES SHIPPING BOARD (1924), 93 L. J. K. B. 816 ; 131 L. T. 388 ; 40 T. L. R. 601 ; 68 Sol. Jo. 666, C. A.

393b. —— ——.]—DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, No. 392a, *ante*.

393c. —— ——.]—DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, No. 387a, *ante*.

394. *Add. Annotations :*—**Refd.** *Re* Suarez, Suarez *v.* Suarez, [1918] 1 Ch. 176 ; The Gagara, [1919] P. 95 ; The Porto Alexandre, [1920] P. 30 ; Duff Development Co. *v.* Kelantan Government (1922), 39 T. L. R. 96 ; Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797 ; Compania Mercantil Argentina *v.* United States Shipping Board (1924), 93 L. J. K. B. 816.

403. *Add. Annotation :—Generally*, **Refd.** Soviet Republics Union *v.* Belaiew (1925), 134 L. T. 64.

406. *Add. Annotations :*—**Consd.** Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797. **Refd.** *Re* Suarez, Suarez *v.* Suarez, [1918] 1 Ch. 176 ; The Gagara, [1919] P. 95 ; The Porto Alexandre, [1920] P. 30 ; Duff Development Co. *v.* Kelantan Government (1922), 39 T. L. R. 96 ; Compania Mercantil Argentina *v.* United States Shipping Board (1924), 93 L. J. K. B. 816.

407a. —— ——.]—DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT. No. 392a, *ante*.

407b. —— ——.]—DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, No. 387a, *ante*.

409. *Add. Annotations :*—**Refd.** Aksionairnoye Obschestvo A. M. Luther *v.* Sagor, [1921] 1 K. B. 456 ; Duff Development Co. *v.* Kelantan Government, [1923] 1 Ch. 385 ; Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797.

Part IV.—Conditions Precedent to Action.

412a. Sweepstake—Stewards' decision.]—CIPRIANI *v.* BURNETT, [1932] W. N. 248 ; 174 L. T. Jo. 467 ; 74 L. Jo. 405, P. C.

425. *Add. Annotations :*—**Consd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110. **Refd.** Bradford Old Bank *v.* Sutcliffe, [1918] 2 K B. 833

428. *Add. Annotation :*—**Refd.** Bradford Old Bank, Ltd. *v.* Sutcliffe (1918), 34 T. L. R. 619.

430. *Add. Annotations :*—**Consd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110. **Refd.** Bradford Old Bank *v.* Sutcliffe, [1918] 2 K. B. 833.

434. *Add. Annotations :*—**Refd.** Bradford Old Bank *v.* Sutcliffe, [1918] 2 K. B. 833 ; Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.

436. *Add. Citation :*—11 L. J. Q. B. 87.

PART IV. SECT. 2.

so. *Consent of supervisors—Construction of local Act—Action by "creditor"—Who is.*]—Sect. 4 of c. 73, 1927, an Act respecting the City of Swift Current, provides that during a certain period no "creditor" shall commence a "suit, action or other proceeding" against the city without the written consent of the "supervisors," & sect. 2 defines "creditor" as a person, firm, etc., "now having, or who may hereafter have, any action, cause of action, debt, account, covenant, contract, claim or demand whatsoever, against the city" :—*Held :* definition of "creditor" is wide enough to include a person having a cause of action founded only on tort. —BEISWANGER *v.* SWIFT CURRENT, [1930] 3 W. W. R. 519 ; [1931] 1 D. L. R. 407 ; 25 S. L. R. 141 ; 12 C. B. R. 133 ; *affg.*, [1930] 4 D. L. R. 1031 ; 2 W. W. R. 59 ; 24 S. L. R. 453.—CAN.

448. *Add. Annotation :*—**Refd.** Bradford Old Bank *v.* Sutcliffe, [1918] 2 K. B. 833.

461. *Add. Annotations :*—**Consd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110. **Refd.** Bradford Old Bank *v.* Sutcliffe, [1918] 2 K. B. 833.

462. *Add. Annotation :*—*As to* (1) **Refd.** Bradford Old Bank *v.* Sutcliffe, [1918] 2 K. B. 833.

463. *Add. Annotation :*—**Consd.** Bradford Old Bank *v.* Sutcliffe, [1918] 2 K. B. 833.

480. Add "For full anns., *see* S. C., No. 176, *ante*."

Part V.—Suspension of Right of Action.

496. *Add. Annotation :*—**Refd.** Admiralty Comrs. *v.* S.S. Amerika, [1917] A. C. 38.

497a. —— ——.]—If the party know that he has been robbed of the goods, he must, in order to obtain restitution, first prosecute the felon.—HARRIS *v.* SHAW (1736), Lee *temp.* Hard. 349; 95 E. R. 226.

Annotation :—**Refd.** Wells *v.* Abrahams (1872), L. R. 7 Q. B. 554.

507. *Add. Annotation :*—**Refd.** Admiralty Comrs. *v.* S.S. Amerika, [1917] A. C. 38.

516. *Add. Annotation :*—**Refd.** Canvey Island Comrs. *v.* Preedy (1921), 91 L. J. Ch. 203.

540. *Add. Annotations :*—**Refd.** Weld-Blundell *v.* Stephens, [1919] 1 K. B. 520; Samuel *v.* Dumas, [1924] A. C. 431; Pailin *v.* Northern Employers Mutual Indemnity Co., [1925] 2 K. B. 73.

Part VIII.—Maintenance and Champerty.

549. *Add. Annotations :*—**Expld.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368. **Refd.** Ford *v.* Radford (1920), 36 T. L. R. 658.

551. *Add. Annotation :*—**Consd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

552. *Add. Annotation :*—**Refd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

556. *Add. Citation :*—After "[1917] 2 K. B. 564, C. A." add "*On appeal*, [1919] A. C. 368, H. L.," & after "560" add "561a, 719a." *Add Annotation :*—**Refd.** Wiggins *v.* Lavy (1928), 44 T. L. R. 721.

557. *Add. Annotation :*—**Refd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

558. *Add. Annotation :*—**Consd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

PART V. SECT. 4, SUB-SECT. 1.

498 ii. —— —— *Claim under Criminal Injuries Code of Ireland.*]—The rule or doctrine that no civil remedy will lie against the perpetrators of a felonious act until they have been prosecuted to conviction is not applicable to a claim for compensation under Criminal Injuries Code of Ireland for goods stolen in the course of rioting.—TYLER *v.* CORK COUNTY COUNCIL, [1921] 2 I. R. 8.—**IR.**

499 i. —— ——.]—A criminal charge was laid by pltf. bank against deft. in respect of $1,800 which the bank alleged it had overpaid deft. Before decision in the criminal trial had been given, pltfs. instituted an action to recover the money. It was contended on behalf of deft. that immediately the evidence disclosed a criminal offence on the part of deft., which had not been prosecuted to conviction or acquittal, pltfs. should not have been allowed to proceed with the action, but should have been non-suited :—*Held :* as a criminal prosecution had actually been carried through, even though the decision was under advisement, the action could be maintained.—STANDARD BANK OF CANADA *v.* SHUEN WAH, [1919] 1 W. W. R. 586; 26 B. C. R. 441.—**CAN.**

499 ii. —— ——.]—Where, in an action for assault & battery, pltf. proves that the injury caused grievous bodily harm, pltf. will be nonsuited unless it appears that proceedings have been taken against deft. for the criminal offence.—SCHOHL *v.* KAY (1862), 10 N. B. R. (5 All.) 244.—**CAN.**

504 iii. —— —— —— ——.]—No hard & fast rule can be laid down to indicate the considerations by which a ct. ought to be guided in considering the question of the stay of a criminal proceeding, pending the disposal of a civil suit, & each case must be determined upon its own facts. Even if some or all the matters materially in issue are the same, that in itself cannot be a reason for staying the criminal proceedings. One test is whether the prosecution is public or private. Where it is public the ct. as a rule would not stay criminal proceedings.—GOPALCHANDRA CHAKRAVARTI *v.* KING EMPEROR (1929), I. L. R. 57; Calc. 558.—**IND.**

504 iv. —— —— ——.]—The rule that where pltf. sues in respect of a wrong which is a tort & also a felony, deft. should be prosecuted in respect of the felony before the civil action is heard, does not make such criminal prosecution an indispensable condition precedent to the right to maintain the civil action. In its modern application the rule is merely suspensory of the civil rights, & is subject to the exercise of judicial discretion. In exercising such discretion the ct. may consider circumstances, such as the infancy, ignorance, or poverty of pltf., which may afford excuse for the failure to prosecute in respect of the felony. Where pltf. has obtained a verdict in the civil action, the ct., on motion for a new trial or for judgment, may consider the circumstance that between verdict & motion deft. has been prosecuted in respect of the felony.—CARLISLE *v.* ORR (No. 2), [1918] 2 I. R. 442.—**IR.**

504 v. —— —— ——.]—On Aug. 12, 1920, an information for theft was laid by defts. against pltf. On Aug. 23, 1920, pltf. began an action in a division ct. against defts. to recover $99 for wages; on Aug. 30, defts. counterclaimed in the division ct. action for money & tickets amounting to $202.74, "fraudulently & without colour of right" converted by pltf. to his own use, the subject of conversion being the same as that in respect of which the criminal charge was made; on Sept. 22 pltf. was committed for trial on the criminal charge, & on Sept. 30, a true bill was found against him in the sessions. On a subsequent day the judge of the division ct. heard argument as to whether the action should be proceeded with before the criminal charge was taken up; he decided that it should, & fixed a day for trial, but on Dec. 10, 1920, neither the action nor the criminal proceeding having been tried, an order was made by a judge of the Supreme Ct. of Ontario, upon the application of defts., prohibiting the judge of the division court from proceeding in the action until after the final disposition of the criminal prosecution. Pltf. appealed from this order, & before the completion of the argument of the appeal pltf. was tried upon the criminal charge & acquitted :—*Held :* the division ct. judge had the right, the claim & counterclaim being within the jurisdiction of the ct., to stay proceedings or otherwise deal with the case; & prohibition did not lie, even if the judge erred in the conclusion to which he came.—*Re* BRYANT *v.* CITY DAIRY CO. (1921), 64 D. L. R. 283; 37 Can. Crim. Cas. 405; 50 O. L. R. 40.—**CAN.**

504 vi. —— —— ——.]—The rule that where an injury constitutes both a civil wrong & a felony the civil remedy is suspended until after prosecution does not apply where the offences disclosed by the civil action are offences under the Code, or, if only common law offences, are offences which could not at any time have been classified as felonies.—PORTER *v.* SOLLOWAY MILLS & CO., LTD., [1930] 26 Alta. L. R. 150.—**CAN.**

PART V. SECT. 4, SUB-SECT. 3.—C.

sp. *Civil action against company—Prosecution of directors.*]—On appeal from an order staying a civil action against an incorporated co. until a criminal prosecution against certain officers thereof should be disposed of :—*Held :* the appeal should be allowed.—MACKEE *v.* SOLLOWAY, MILLS & CO., LTD. (No. 3), [1931] 2 W. W. R. 926; 4 D. L. R. 417; 44 B. C. R. 401.—**CAN.**

559. *Add. Annotations :*—**Consd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368. **Refd.** Weld-Blundell *v.* Stephens, [1919] 1 K. B. 520; Hickman *v.* Kent or Romney Marsh Sheepbreeders' Assocn. (1920), 36 T. L. R. 528.

560. For the existing paragraph substitute the following paragraph :—

—— ——.]—(1) The success of the maintained litigation, whether an action or a defence, is not a bar to the right of action for maintenance.

(2) An action for damages for maintenance will not lie in the absence of proof of special damage.—NEVILLE *v.* LONDON "EXPRESS" NEWSPAPER, LTD., [1919] A. C. 368; 88 L. J. K. B. 282; 120 L. T. 299; 35 T. L. R. 167; 63 Sol. Jo. 213, H. L.

Annotations :—As to (2) **Folld.** Hickman *v.* Kent or Romney Marsh Sheepbreeders Assocn. (1920), 37 T. L. R. 163. **Apld.** Wiggins *v.* Lavy (1928), 44 T. L. R. 721. *Generally,* **Refd.** Wild *v.* Simpson, [1919] 2 K. B. 544; Ellis *v.* Torrington, [1920] 1 K. B. 399. **Mentd.** Weld-Blundell *v.* Stephens, [1920] A. C. 956.

561. *Annotation :—As to* (2) **Refd.** Mackey *v.* Monks (Preston), [1918] A. C. 59.

561a. Special damage—Necessity to prove.]—NEVILLE *v.* LONDON "EXPRESS" NEWSPAPER, LTD., No. 560, *ante.*

561b. —— ——.]—Pltf., a member of deft. assocn., brought an action against C., the secretary, & W., the president, of the assocn., for libel in the conduct of the business of the assocn., & in the same action C. counterclaimed against pltf. for damages for libel in respect of the same business. The action resulted in judgment for defts. on the claim, with damages for £75 for C. on the counterclaim. The assocn. before the hearing of the action had passed resolutions to indemnify C. & W. against any liability or costs arising from the action against them, & that the indemnity should extend to the costs of any counterclaim that counsel might advise should be made, provided that any costs of the action for which the assocn. would be liable should be paid *pro tanto* out of any moneys recovered in the action. Pltf. then brought an action against the assocn. for maintenance & champerty, & other relief :—*Held :* (1) champerty being a form of maintenance, a decision which applies to the *genus* must also apply to the *species ;* (2) pltf. had not proved any special damage, & his claim in champerty failed equally with his claim in maintenance.—HICKMAN *v.* KENT OR ROMNEY MARSH SHEEPBREEDERS' ASSOCN. (1920), as reported in 151 L. T. Jo. 5, C. A.

566. *Add. Annotation :*—**Refd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

569. *Add. Annotation :*—**Consd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

576. *Annotations :*—For "For full anns., *see*" read "**Mentd.** Williams *v.* Page (No. 4) (1859), 28 Beav. 148."

577. *Add. Annotation :*—**Consd.** Neville *v.* London "Express" Newspaper, [1919 [A. C. 368.

583. *Add. Annotations :*—**Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251; Ford *v.* Radford (1920), 36 T. L. R. 658.

584a. Special damage—Necessity to prove.]—HICKMAN *v.* KENT OR ROMNEY MARSH SHEEPBREEDERS' ASSOCN., No. 561b, *ante.*

585. *Add. Annotation :*—**Refd.** Ford *v.* Radford (1920), 36 T. L. R. 658.

589. *Add. Annotation :*—**Refd.** Parkinson *v.* College of Ambulance & Harrison, [1925] 2 K. B. 1.

590. *Add. Annotations :*—**Apld.** Ford *v.* Radford (1920), 36 T. L. R. 658. **Refd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

592. *Add. Annotation :*—**Refd.** Ford *v.* Radford (1920), 36 T. L. R. 658.

594. *Add. Annotation :*—**Refd.** Wild *v.* Simpson, [1919] 2 K. B. 544.

598a. Percentage.]—Pltf. was retained by deft. to act as his solr. in an action brought against him. Deft. had a counterclaim, &, while the action was proceeding, an agreement was made that in the event of deft.'s recovering more than sufficient to pay his creditors in full & all legal expenses he would pay his solr. a percentage on the amount, the solr. agreeing to conduct the counterclaim on the above terms, & not to look to deft. for any costs of the counterclaim except out-of-pocket expenses in the event of the success of pltf. in that action. Deft. lost the action, & his solr. sued him for the costs :—*Held :* pltf. could not recover as (1) (BANKES, L.J.) the agreement was champertous, & its effect was to make it an essential part of pltf.'s cause of action on his original retainer that he should negative the event in which he was to get no costs, namely, the event of the success of pltf. in the previous action; (2) (ATKIN, L.J.) the champertous nature of the agreement prevented pltf. from completing his services lawfully, & consequently he could not recover on a *quantum meruit.*—WILD *v.* SIMPSON, [1919] 2 K. B. 544; 88 L. J. K. B. 1085; 121 L. T. 326; 35 T. L. R. 576; 63 Sol. Jo. 625, C. A.

599a. ——.]—Pltf. carried on business as the "Turf Register," which in a prospectus issued by him was called a "society"; but he was the sole proprietor of the business, though he described himself in the prospectus as secretary. In consideration of a subscription, & of a commission on the amount recovered, he undertook to collect for the subscribers betting debts which, under the

PART VIII. SECT. 1, SUB-SECT. 3.

581 ix. —— ——.]—One, D., died sonless in 1843, leaving him surviving three widows, the last of whom died in 1894. The widows had from time to time made numerous alienations of portions of their husband's estate to defts., most of the transactions being evidenced by registered deeds. In 1906, the present suit for possession was brought by A., a collateral of D. & certain assignees from A., to whom he, after the death of the last surviving widow, had transferred a share in the property in consideration of their agreeing to supply funds for the litigation to recover back the land from the alienees :—*Held :* the English rules against champerty & maintenance are not in force in India, & agreements to finance litigation on condition of a promise to share in its fruits are not against public policy or void & can be enforced, unless they are extortionate or otherwise inequitable.—THAKAR SINGH *v.* UTTAM KAUR (1929), I. L. R. 10 Lah. 613.—**IND.**

594 vii. —— —— ——.]—The English law of champerty is not in force in India & fair agreements to share property in litigation with others in consideration of their supplying the funds for carrying on suits are not opposed to public policy, & such agreements should receive effect except when extortionate or inequitable.—INDAR SINGH *v.* MUNSHI (1919), I. L. R. 1 Lah. 124.—**IND.**

594 viii. — —.]—An agreement to contribute towards the costs of law suit in consideration of receiving a share in the result of the suit :—*Held :* on the facts to be not champertous.—FELLOWS-SMITH *v.* SHANES (1925), 46 N. L. R. 168.—**S. AF.**

provisions of Gaming Acts, were not recoverable. It was agreed between him & deft. in the terms of the prospectus, that in consideration of pltf. "putting up all the necessary disbursements for the institution & conduct of legal or other proceedings, the net profits accruing directly or indirectly is to be equally divided between claimant & the society." Pltf. brought an action to recover the amounts of debts alleged to have been wrongfully collected by deft. in breach of the agreement:—*Held:* the agreement was illegal & void, being contrary to public policy, & champerous, as there was no community of interest between the parties, except such as was created by the agreement itself, & pltf. could not recover.—FORD *v.* RADFORD (1920), 36 T. L. R. 658; 64 Sol. Jo. 571.

601. *Add. Annotations:*—**Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251; Neville *v.* London "Express" Newspaper, [1919] A. C. 368; Ellis *v.* Torrington, [1920] 1 K. B. 399.

602. *Add. Annotations:*—**Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251; Ellis *v.* Torrington, [1920] 1 K. B. 399; Allgemeine Versicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672.

603. *Annotation:*—*As to* (1) **Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251.

604. *Annotations:*—**Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251; Marsden *v.* Heyes, [1927] 2 K. B. 1. **Refd.** Gottliffe *v.* Edelston (1930), 99 L. J. K. B. 547.

604a. **Assignment of option to take lease.**]—In 1853 the L. & C. Ry. Co., the predecessors of deft. co., leased land adjacent to the station at Carlisle to H. for 999 years, for the purpose of erecting an hotel thereon. The lease contained a covenant by the co. with H., his exors., administrators & limited assigns that "the co. & their successors & assigns shall permit the tenant or occupier of the hotel for the time being & his servants to have access to the platforms of the station & that the tenant or occupier of the hotel shall have the option of renting the refreshment rooms" at a rent to be fixed as there mentioned, "in preference to any other party." In 1860 H. granted a sub-lease of the hotel premises to B. for 21 years, & the co. also granted to B. a lease of the refreshment rooms for 21 years. In 1866 pltf. co. obtained an assignment from B. of his interest under these two documents. & an assignment from H. of the land comprised in the lease of 1853 & "All & singular other premises comprised in & demised by the said recited indenture of lease of Aug. 1, 1853." From 1866 onwards pltfs. managed & conducted both hotel & refreshment rooms, & after the expiration of the 21 years' term granted by the sub-lease of 1860 to B., they continued in occupation of the rooms upon such terms of that sub-lease as were applicable. In 1879 defts. succeeded by statute to the contracts of the L. & C. Ry. Co. On April 2, 1891, defts. & the Caledonian Ry. Co. demised to pltfs. a plot of land adjacent to the hotel for 962 years. The deed recited the lease of 1853, & referred to it as the "principal indenture"; & it also provided that "these presents are without prejudice to any of the covenants conditions & agreements contained in the principal indenture," which were to remain & be in full force. On Mar. 24, 1916, defts. gave six months' notice to pltfs. to determine their occupation of the refreshment rooms. Pltfs. gave up possession, & then served a written notice on defts. stating their desire to exercise the option contained in the lease of 1853, & requesting to be informed as to terms. Defts. having ignored the notice, pltfs., on Oct. 16, 1916, obtained an express assignment from the personal representatives of H., who had died in 1876, of "all that the benefit right title & interest. if any, now remaining outstanding of or otherwise vested in them or any or either of them of & in the railway obligations." Pltfs. claimed (*a*) a declaration that defts. by the lease of 1853 were under an obligation to put & keep the occupier of pltfs.' hotel in occupation of the refreshment rooms, upon the terms of paying therefor a fixed market rent; (*b*) to have such rent fixed under the direction of the ct.; (*c*) damages for the breach of such obligation by defts.:—*Held:* (1) the option clause did not run with the land, & pass *ipso facto* by the assignment of the lease of 1853, as it did not touch or concern the thing demised; (2) the option clause was assignable, & was not a covenant merely personal to the covenantee; (3) the benefit of this clause was not assigned by the deed of 1866, inasmuch as the word "premises" therein referred to the land & buildings demised, & not to the option clause; (4) the deed of 1891 was not a fresh grant of the option rights to pltfs., & did not constitute a binding recognition of pltfs. as the assignees of the option clause; (5) the assignment of Oct. 16, 1916, by the personal representatives of H., of the option clause in the lease of 1853, being an assignment of a right of property, was not invalid for champerty; (6) the option clause was void for uncertainty; (7) the option clause was *ultra vires* of the railway co., as it fettered injuriously & gravely their obligations of performing efficiently their public duties.—COUNTY HOTEL & WINE CO. *v.* LONDON & NORTH WESTERN RY. CO., [1918] 2 K. B. 251; 87 L. J. K. B. 849; 119 L. T. 38; 34 T. L. R. 393; 17 L. G. R. 274; *affd.* on other grounds, [1921] 1 A. C. 85, H. L.

607. *Add. Annotations:*—*As to* (1) **Distd.** Ford *v.* Radford (1920), 36 T. L. R. 658. **Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251.

615. *Annotation:*—**Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251.

617. *Add. Annotations:*—**Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251; Ellis *v.* Torrington, [1920] 1 K. B. 399.

617a. **Lease of tithes—With covenant to take legal proceedings for recovery of tithes.**]—Agree-

601 a. —— *Payment of consideration dependent on success of action—Assignment void.*]—FIRST MORTGAGE CO. *v.* NOUD, [1925] 4 D. L. R. 221.—CAN.

ment to lease the rectorial tithes of a parish, including the tithes of ninety acres supposed to be within the parish, but which had not paid tithes to the lessor during his incumbency with a stipulation that the intended lessee would, within a given time, take such legal proceedings for the recovery of the tithes of the ninety acres as his counsel should advise:—*Held:* not to be within Statute of Maintenance, 1540 (c. 9).—WHITE *v.* GARDNER (1835), 1 Y. & C. Ex. 385; 160 E. R. 157.

621. *Add. Annotations:*—**Consd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251. **Apld.** Ellis *v.* Torrington, [1920] 1 K. B. 399.

621a. —— —— **Dilapidations.**]—A freehold messuage & tenement were the subject of the following leases: (*a*) a head lease which expired on Dec. 25, 1917; (*b*) an underlease which expired on Dec. 18, 1917; (*c*) a sub-underlease which expired on Dec. 15, 1917. All three leases contained onerous covenants to repair the premises & to keep them & yield them up in good repair. The sub-underlease became vested by assignment in deft. On Dec. 18, 1917, pltf. who had been a tenant to deft. of the same premises, & was liable to him under a covenant to repair less onerous than those in the three leases above mentioned, agreed to purchase, & on May 1, 1918, took a conveyance of the fee simple of the premises together with the benefit of the covenants in the head lease. At the expiration of all the leases the premises were out of repair & deft. was threatening pltf. with an action on his covenant. Thereupon pltf. obtained an assignment of the full benefit of the lessee's covenants to repair contained in the sub-underlease, & commenced an action against deft. as assignee of the sub-underlease for breaches of the lessee's covenants therein:—*Held:* the assignment was free from objection on the ground of maintenance or champerty, the right of action on the covenants being so connected with the enjoyment of property as to be more than a bare right to litigate.—ELLIS *v.* TORRINGTON, [1920] 1 K. B. 399; 89 L. J. K. B. 369; 122 L. T. 361; 36 T. L. R. 82, C. A.

Annotation:—**Refd.** Rye *v.* Purcell, [1926] 1 K. B. 446.

634. *Add. Annotation:*—**Consd.** Ellis *v.* Torrington, [1920] 1 K. B. 399.

635. *Add. Annotations:*—*As to* (1) **Refd.** Ellis *v.* Torrington, [1920] 1 K. B. 399. *As to* (2) **Consd.** County Hotel & Wine Co. *v.* L. & N. W Ry.. [1918] 2 K. B. 251. **Refd.** Earle (1925), Ltd. *v.* Hemsworth R. D. C. (1928), 140 L. T. 69. *Generally*, **Refd.** Earle *v.* Hemsworth R. D. C. (1928), 44 T. L. R. 758.

636. *Add. Annotations:*—**Apld.** Ellis *v.* Torrington, [1920] 1 K. B. 399. **Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251.

637. *Add. Annotations:*—*As to* (1) **Apld.** Ellis *v.* Torrington, [1920] 1 K. B. 399. **Refd.** County Hotel & Wine Co. *v.* L. & N. W. Ry., [1918] 2 K. B. 251.

637a. —— **Actions for infringement of copyright—Society for protection of copyright interests of members.**]—Pltf. society was formed as a limited co. to protect the copyright interests of members, who assigned their copyrights to the society. By the rules of the society fees & damages recovered were pooled, & the fund so formed was divided among the members after the deduction of expenses. The assignments were real & substantial transactions, & the provision as to the division of the damages was only subsidiary. In an action by the society for the infringement of copyrights which had been assigned to the society by two members:—*Held:* the arrangement between the society & its members was made for legitimate business reasons & was not champertous, & pltfs. were entitled to succeed.—PERFORMING RIGHTS SOCIETY, LTD. *v.* THOMPSON (1918), 34 T. L. R. 351.

637b. **Assignment of judgment.**]—In an action of assumpsit to pay money in consideration of the assignment of a judgment:—*Held:* this was good consideration & might be assigned without maintenance.—LODER *v.* CHESLEYN (1664), 1 Sid. 212; 82 E. R. 1063.

640. *Add. Annotation:*—**Consd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

641. *Add. Annotation:*—**Refd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

642. *Add. Annotation:*—**Refd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

644. *Add. Annotations:*—**Consd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368. **Distd.** Ford *v.* Radford (1920), 36 T. L. R. 658.

645. *Add. Annotation:*—**Refd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

646. *Add. Annotations:*—**Refd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368; Weld-Blundell *v.* Stephens, [1919] 1 K. B. 520; Hickman *v.* Kent or Romney Marsh Sheepbreeders' Assocn. (1920), 36 T. L. R. 528.

648. *Add. Annotations:*—*As to* (1) **Apld.** Ford *v.* Radford (1920), 36 T. L. R. 658. *Generally*, **Refd.** Neville *v.* London "Express" Newspaper, [1919] A. C. 368.

PART VIII. SECT. 2, SUB-SECT. 3.

620 i. *Purchase of lands in litigation—Pending actions relating to property purchased — Specific performance.*]—Pltfs. having filed a bill for specific performance of a contract by one R. to sell a certain mine to them, it was agreed between pltfs. & T., one of the now defts., pending such suit, that certain persons should purchase said mine from pltfs.; that they should deposit the money required for the security for costs which pltfs. had been ordered to give in said suit & pay all costs incurred or to be incurred therein, or in any other suit brought or defended by them respecting said mine, & pay all moneys due for the purchase thereof, & allot to each of pltfs. a twentieth share therein, if they should succeed in getting a title through the suit; & that they would settle all claims of Messrs. E. & G. against pltfs. Pltfs. having sued defts. on the last-mentioned covenant:—*Held:* the agreement was void for champerty & maintenance, & they therefore could not recover.—CARR *v.* TANNAHILL (1870), 30 U. C. R. 217.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 4.

634 ii. —— *Subject to litigation—Conveyance valid.*]—By reason of the erection of the Quinze Lake Dam, & the consequent raising of the level of the water in the lake, parts of certain properties in the neighbourhood were flooded. The Crown expropriated the right so to flood these properties including the one in question herein, which at the time of the expropriation belonged to V. Subsequently V. sold the property to R. together with V.'s right to recover the compensation from the Crown for all damages caused him by the flooding & expropriation. The Crown exhibited an information acknowledging liability & seeking to have the amount of the compensation fixed, & made H. deft.:—*Held:* the assignment from V. to H. was not an assignment of litigious rights.—R. *v.* HYE (1921), 21 Exch. C. R. 76.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.

643 ii. ——.]—ARPIN *v.* LECLAIRE, [1930] 2 D. L. R. 427.—**CAN.**

655. *Add. Annotations :*—**Refd.** Neville *v.* London " Express " Newspaper, [1919] A. C. 368 ; Ford *v.* Radford (1920), 36 T. L. R. 658.

661. *Add. Annotations :*—**Distd.** Ford *v.* Radford (1920), 36 T. L. R. 658. **Refd.** Neville *v.* London " Express " Newspaper, [1919] A. C. 368.

665. *Add. Annotation :*—**Refd.** Neville *v.* London " Express " Newspaper, [1919] A. C. 368.

669. *Add. Annotations :*—**Refd.** Neville *v.* London " Express " Newspaper, [1919] A. C. 368 ; Ford *v.* Radford (1920), 36 T. L. R. 658.

671. *Add. Annotation :*—**Consd.** Neville *v.* London " Express " Newspaper, [1919] A. C. 368.

679. *Add. Annotation :*—**Refd.** Neville *v.* London " Express " Newspaper, [1919] A. C. 368.

681. *Add. Annotation :*—**Refd.** Neville *v.* London " Express " Newspaper, [1919] A. C. 368.

683. *Add. Annotations :*—**Refd.** Neville *v.* London " Express " Newspaper, [1919] A. C. 368 ; Weld-Blundell *v.* Stephens, [1919] 1 K. B. 520 ; Hickman *v.* Kent or Romney Marsh Sheepbreeders' Assocn. (1920), 36 T. L. R. 528.

685. *Add. Annotations :*—*As to* (1) **Distd.** Ford *v.* Radford (1920), 36 T. L. R. 658. **Refd.** Neville *v.* London " Express " Newspaper, [1919] A. C. 368. *Generally*, **Refd.** Wiggins *v.* Lavy (1928), 44 T. L. R. 721.

687. *Add. Annotation :*—*As to* (2) **Refd.** Wild *v.* Simpson, [1919] 2 K. B. 544.

689a. —— ——.]—Observations as to the circumstances in which a solr. may take up a speculative case on behalf of a poor client, & as to the terms on which he may do so.—WIGGINS *v.* LAVY (1928), 44 T. L. R. 721, C. A.

692. *Add. Annotations :*—**Refd.** Neville *v.* London " Express " Newspaper, [1919] A. C. 368 ; Ford *v.* Radford (1920), 36 T. L. R. 658.

695. *Annotation :*—**Refd.** Wild *v.* Simpson, [1919] 2 K. B. 544.

696. *Add. Annotation :*—**Refd.** Wild *v.* Simpson, [1919] 2 K. B. 544.

699. *Add. Annotation :*—*As to* (2) **Refd.** Wild *v.* Simpson, [1919] 2 K. B. 544.

702. *Add. Annotation :*—**Refd.** Wild *v.* Simpson, [1919] 2 K. B. 544.

711a. —— ——.]—A solr. will never be permitted to deal with his client for the property in question in the cause.—DOWLIN *v.* —— (1823), as reported in 1 L. J. O. S. Ch. 169.

713a. —— ——.]—PITTMAN *v.* PRUDENTIAL DEPOSIT BANK, LTD. (1896), 13 T. L. R. 110 ; 41 Sol. Jo. 129, C. A.

716. *Add. Annotation :*—**Refd.** Neville *v.* London " Express " Newspaper, [1919] A. C. 368.

719. *Add. Annotation :*—**Refd.** Neville *v.* London " Express " Newspaper, [1919] A. C. 368.

719a. —— **Necessity of proving special damage.**]—NEVILLE *v.* LONDON " EXPRESS " NEWSPAPER, LTD., No. 560, *ante*.

720. *Add. Annotation :*—**Consd.** Neville *v.* London " Express " Newspaper, [1919] A. C. 368.

725. This paragraph was in effect reversed by the House of Lords, *see* NEVILLE *v.* LONDON " EXPRESS " NEWSPAPER, LTD., No. 560, *ante*.

726. *Annotation :*—**Refd.** Neville *v.* London " Express " Newspaper, [1919] A. C. 368.

731. *Add. Annotations :*—**Apld.** Ford *v.* Radford (1920), 36 T. L. R. 658. **Refd.** Neville *v.* London " Express " Newspaper, [1919] A. C. 368.

PART VIII. SECT. 4, SUB-SECT. 2.—A.

695 iii. —— —— *Legal Professions Act*, 1911 (c. 136), *s.* 97.]—An agreement between pltf. & deft. made under the above sect., as to payment for deft.'s services as solr., was rescinded on the ground that the provincial statute authorising such an agreement was *ultra vires*.—TAYLOR *v.* MACKINTOSH, [1924] 3 D. L. R. 926 ; 3 W. W. R. 97 ; 34 B. C. R. 56 ; *affg.*, [1924] 1 D. L. R. 877 ; 1 W. W. R. 859 ; 33 B. C. R. 383.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 3.—D.

sz. *Abolition of distinction between felonies & misdemeanors—Action against company—Prosecution of directors.*]—Even if the rule, that where an injury constitutes both a civil wrong & a felony the civil remedy is suspended or may be stayed until the person who committed the injury has been prosecuted, is in force in Alberta, it is inapplicable where the civil action is against an incorporated company & a stay thereof is asked for on the ground that criminal proceedings are pending against directors of the co. on charges identical with those which might be based on the facts which may be disclosed in the civil action, but there is nothing alleged in the latter action to show that said directors are individually connected with or have a knowledge of the facts alleged in that action. Since said rule under the law of England was applicable where the prosecution was for a felony but not where it was for a misdemeanor, & the distinction between felonies & misdemeanors has been abolished with respect to offences against the Criminal Code, the rule does not apply where the offences disclosed by the civil action are offences under the Code or, if only common-law offences, are offences which could not at any time have been classified as felonies.—PORTER *v.* SOLLOWAY, MILLS & CO., LTD., [1930] 1 W. W. R. 680 ; 3 D. L. R. 758 ; 54 Can. C. C. 181.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 2.—B.

sa. *Defence of champerty—Action must be based on agreement.*]—Where a statement of claim shows a good cause of action which if established at the trial will entitle the pltf. to succeed, deft. cannot by setting up a champertous agreement between pltf. & strangers to the action deprive pltf. of his right to prosecute the action. The defence of champerty & maintenance is confined to actions on the champertous contracts themselves.—DAVEY *v.* TALLON (Man.), [1928] 3 W. W. R. 215 ; *affd.*, [1929] 1 W. W. R. 171.—**CAN.**

ADMIRALTY.

Part I.—Origin and General Characteristics of the Jurisdiction of the Admiralty Division of the High Court of Justice.

1. *Add. Annotation :*—**Consd.** The Fagernes, [1926] P. 185.

12a. -DORRINGTON'S CASE (1615), Moore, K. B. 916 ; 72 E. R. 995.

12b. —— ——.]—MARTIN *v.* GREEN (1664), 1 Keb. 730 ; 83 E. R. 1210.

25. *Citations :*—For "THE LORD COCHRANE" read "DUNCAN *v.* M'CALMONT."

38. *Annotations :*—For "For full anns., *see* SHIPPING & NAVIGATION" read "**Mentd.** The Hanna (1866), L. R. 1 A. & E. 283 ; General Steam Navigation Co. *v.* British & Colonial Navigation Co. (1869), L. R. 4 Exch. 238 ; The Warsaw, [1898] P. 127."

39. *Add. Citations :*—(1862), 15 Moo. P. C. C. 304 ; 5 L. T. 558 ; 10 W. R. 124 ; 1 Mar. L. C. 177 ; 15 E. R. 509, P. C.
Annotations :—For "For full anns., *see* SHIPPING & NAVIGATION" read "**Mentd.** The Stettin (1863), Brown. & Lush. 199 ; The Hanna (1866), L. R. 1 A. & E. 283 ; General Steam Navigation Co. *v.* British & Colonial Steam Navigation Co. (1869), L. R. 4 Exch. 238 ; The Moselle (1874), 32 L. T. 570 ; The Vesta (1882), 7 P. D. 240 ; The Bristol City, [1902] P. 10 ; The Cayo Bonito, [1903] P. 203."

40. *Citations :*—Add after the words "on another point" "*sub nom.* THE ARGOS (CARGO EX), GAUDET *v.* BROWN, THE HEWSONS, GEIPEL *v.* CORNFORTH."
Annotations :—For "For full anns., *see* SHIPPING & NAVIGATION" read "**Mentd.** Purkis *v.* Flower (1873), 43 L. J. Q. B. 33 ; Flower *v.* Bradley (1874), 44 L. J. Ex. 1 ; G. N. Ry. *v.* Swaffield (1874), L. R. 9 Exch. 132 ; Gunnestad *v.* Price, Fullmore *v.* Wait (1875), L. R. 10 Exch. 65 ; The Alina (1880), 5 Ex. D. 227 ; Allen *v.* Garbutt (1880), 6 Q. B. D. 165 , The Rona (1882), 7 P. D. 247 ; R. *v.* Southend County Court Judge (1884), 13 Q. B. D. 142 ; The County of Durham, [1891] P. 1 ; R. *v.* City of London Court Judge, [1892] 1 Q. B. 273 ; The Theodora, [1897] P. 279 ; Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470."

41. *Add. Annotations :*—**Refd.** Ellerman Lines *v.* Grayson, [1919] 2 K. B. 514 ; Admiralty Comrs. *v.* S.S. Volute, [1922] 1 A. C. 129 ; Dew *v.* United British S.S. Co. (1928), 98 L. J. K. B. 88 ; Service *v.* Sundell (1929), 45 T. L. R. 569.

46. *Add. Annotation :*—**Refd.** The Fagernes, [1926] P. 185.

66. *Add. Annotations :*—**Refd.** The Llandovery Castle, [1920] P. 119 ; The Jupiter, [1924] P. 236.

70. *Add. Annotations :*—**Consd.** The St. George, [1926] P. 217. **Refd.** The Tervaete, [1922] P. 259 ; The Colorado, [1923] P. 102 ; The Sylvan Arrow, [1923] P. 220 ; The Zigurds (No. 1) (1932), 48 T. L. R. 556.

82a. ——.]—THE TUBANTIA, No. 594a, *post.*

87a. ——.]—*Held :* barges, fitted with rudders & not propelled by oars, were "ships" within M. S. Act, 1894 (c. 60), ss. 503, 742.—THE HARLOW, [1922] P. 175 ; 91 L. J. P. 119 ;

PART I. SECT. 4, SUB-SECT. 1.

87a. *Equitable jurisdiction.*]—M. obtained judgment for wages, etc., against the *A.*, the owners having made default to appear. D. & Co., the owners of the cargo, intervened. The vessel was duly seized, sold at auction by the sheriff, & purchased by D. & Co., who made the necessary deposit. Money had been wired by applt. to discharge pltf.'s claim, but arrived too late to stop the sale. D. & Co. afterwards tendered the balance of the price, which was refused on account of an application to set aside the sale, & to redeem the vessel. D. & Co., on purchasing the vessel, made arrangements for repairs thereto, & at the time the application was originally made, they were negotiating for the sale thereof. The application was refused : —*Held :* while the Admlty. Ct. exercised an unquestionable equitable jurisdiction, inasmuch as applt. had failed to show a superior equity to those arising in favour of the purchasers, the order refusing the application should not be interfered with.—MCBRIDE *v.* DARRELL (1920), 20 Exch. C. R. 274.—**CAN.**

PART I. SECT. 5.

88b. *Action in rem—Tort committed by master—Recovery of damages.*]—No maritime lien attaches in the case of an assault by the captain on a seaman on board ship, & an action *in rem* does not lie against the vessel to recover damages due to such assault. —LOUPIDES *v.* THE SCHOONER CALIMERIS (1921), 69 D. L. R. 138 ; 20 Exch. C. R. 331.—**CAN.**

88c.—— —— ——.]—If a tort is committed within the jurisdiction of the ct. by the master of a ship, being a *peregrinus*, against a member of his crew, also a *peregrinus*, the ct. has jurisdiction to arrest the tortfeasor or his goods, & to try an action based upon the tort ; but the commission of such a tort is not a ground for attaching the ship to found jurisdiction unless the master has an interest in the ship.—NOLAN *v.* S.S. RUSSEL HAVERSIDE, [1921] C. P. D. 136.—**S. AF.**

88d. —— *Master's claim for damages —& interest on wages in arrear— Whether enforceable by action in rem.*]—A British ship was attached to satisfy various creditors *in rem*, including the master of the vessel. She was subsequently sold, any liens of the creditors being transferred to the proceeds. The master's claim included damages against the owners for wrongful dismissal calculated from a date subsequent to the sale :—*Held :* (1) the master was entitled to damages *pari passu* with his claim for wages, which he could enforce by an action *in rem ;* (2) the master was not entitled to claim *in rem* for interest upon arrear wages.—*Re* GWYDYR CASTLE (1920), 41 N. L. R. 231.—**S. AF.**

PART I. SECT. 6, SUB-SECT. 1.—B. (b).

82 i. *Torts committed on high seas.*]—The Exch. Ct. of Canada in Admlty. has jurisdiction to entertain an action against a ship arrested in Canadian waters for a tort committed on the high seas.—COMMERCIAL PACIFIC CABLE CO. *v.* THE PRINCE ALBERT (B.C.), [1926] 4 D. L. R. 543 ; [1926] 3 W. W. R. 309.—**CAN.**

PART I. SECT. 6, SUB-SECT. 1.—C.

87f. *Vessel built for show.*]—A vessel built for show & not for transportation is a "ship" within admlty. law & is subject to seizure for towage.—NEVILLE CANNERIES, LTD. *v.* SANTA MARIA (1917), 16 Exch. C. R. 481 ; 36 D. L. R. 619.—**CAN.**

87g. *Conservatory attachment of barge—Concurrent jurisdictions of Superior Court & Admiralty Court.*]—GIRARD *v.* GARIEPY (1916), Q. R. 49 S. C. 284.—**CAN.**

126 L. T. 763; 38 T. L. R. 375; 15 Asp. M. L. C. 498.

Annotation:—**Consd.** Merchants' Marine Insce. *v.* North of England Protecting & Indemnity Assocn. (1926), 42 T. L. R. 724.

89. *Add. Annotations:*—*As to* (1) **Apld.** The Harlow, [1922] P. 175. **Distd.** Merchants' Marine Insce. *v.* North of England Protecting & Indemnity Assocn. (1926), 42 T. L. R. 724.

115. *Add. Annotation:*—**Refd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

125. *Add. Annotations:*—**Refd.** The Fagernes, [1926] P. 185; China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

126. *Add. Annotation:*—**Refd.** The Fagernes, [1926] P. 185.

130. *Add. Annotation:*—**Apld.** The Porto Alexandre (1919), 89 L. J. P. 97.

130a. Yacht authorised to fly White Ensign.]—By the Dockyard Port of Dover Order in Council of June 10, 1912, Sched. 1, reg. 9, all vessels other than His Majesty's ships are forbidden to use the eastern entrance to the Admlty. Harbour between one hour after sunset & one hour before sunrise, without the special authority of the King's Harbour Master. While using the entrance during the prohibited hours without the authority of the King's Harbour Master pltf.'s yacht ran upon a wreck, which was said to have been unlighted at the time:—*Held:* the fact that a yacht of the Royal Yacht Squadron is authorised to fly the White Ensign does not confer upon her the status of one of His Majesty's ships within reg. 9.—H.M.S. GLATTON, [1923] P. 215; 93 L. J. P. 12; 39 T. L. R. 690.

131. *Add. Annotations:*—**Apld.** The Crimdon (1918), 35 T. L. R. 81. **Refd.** The Gagara, [1919] P. 95; The Porto Alexandre (1919), 89 L. J. P 97; The Tervaete, [1922] P. 197; France Fenwick *v.* R. (1926), 43 T. L. R. 18.

131a. ——.]—A privately owned vessel used by a sovereign State for public purposes is immune from arrest in a collision action.—THE CRIMDON (1918), 35 T. L. R. 81.

Annotation:—**Consd.** The Porto Alexandre (1919), 89 L. J. P. 97.

134. *Add. Annotation:*—**Refd.** Pyman S.S. Co. *v.* Admiralty Comrs., [1919] 1 K. B. 49.

135. *Add. Annotation:*—**Refd.** The Tervaete, [1922] P. 197.

140. *Add. Annotations:*—**Apld.** The Crimdon, (1918), 35 T. L. R. 81; The Gagara, [1919] P. 95. **Folld.** The Porto Alexandre, [1920] P. 30. **Apld.** The Tervaete, [1922] P. 259. **Consd.** Compania Mercantil Argentina *v.* United States Shipping Board (1924), 93 L. J. K. B. 816. **Refd.** Duff Development Co. *v.* Kelantan Government, [1923] 1 Ch. 385; The Jupiter (1923), 93 L. J. P. 156; The Sylvan Arrow, [1923] P. 220; *Re* Bjornstad & Ouse Shipping Co., [1924] 2 K. B. 673; Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797; The Jupiter (No. 3) (1927), 137 L. T. 333; Engelke *v.* Musmann, [1928] A. C. 433.

141. *Add. Annotations:*—**Refd.** The Crimdon (1918), 35 T. L. R. 81; The Porto Alexandre (1919), 89 L. J. P. 97.

141a. -.]—THE CRIMDON, No. 131a, *ante.*

141b. Government not formally recognised.]—Pltfs., Esthonian subjects, the owners of two sailing vessels, with the approval & support of the Esthonian Govt., issued writs *in rem* claiming possession of the vessels, which had been requisitioned or sequestered by the Provisional Govt. of Northern Russia, & by them hired to a partnership assocn. for the purposes of trading, subject to the control of the director of naval transports. The Provisional Govt. entered appearances under protest, & motions were set down to set aside the writs & all subsequent proceedings on the grounds (*inter alia*) that the vessels were in the service of the Provisional Govt. & therefore immune from arrest; & that the dispute was between foreigners as to the possession of foreign ships, & therefore that, even if the ct. had jurisdiction, it should decline to exercise it. The judge invited the assistance of the Foreign Office as to the status of the Provisional Govt. of Northern Russia, & was informed by the Secretary of State for Foreign Affairs that, while the Allied Powers were co-operating with the Provisional Govt. in the opposition which that Govt. was making to the forces of the Russian Soviet Govt., the Provisional Govt. had not been "formally recognised either by H.M. Govt. or by the Allied Powers as the Govt. of a sovereign independent State:—*Held:* (1) although under the control of an official of the Provisional Govt. the vessels were not in the possession or service of the Govt.; (2) even under the older decisions, the ct. in its discretion would entertain a possession suit between foreigners if the representative of the foreign State to which the vessel belonged requested the intervention of the ct.—THE ANNETTE, THE DORA, [1919] P. 105; 88 L. J. P. 107; 35 T. L. R. 288.

Annotations:—*As to* (2) **Refd.** The Jupiter, [1924] P. 236; The Jupiter (No. 2), [1925] P. 69.

141c. —— Trading.]—A vessel owned or requisitioned by a sovereign independent State & earning freight for the State, is not deprived of the privilege, decreed by international comity, of immunity from the process of arrest, by reason of the fact that she is being employed in ordinary trading voyages carrying cargoes for private individuals.—THE PORTO ALEXANDRE, [1920] P. 30; 89 L. J. P. 97; 122 L. T. 661; 36 T. L. R. 66; 15 Asp. M. L. C. 1, C. A.

Annotations:—**Refd.** The Tervaete, [1922] P. 259; Compania Mercantil Argentina *v.* United States Shipping Board (1924), 93 L. J. K. B. 816; The Zigurds (No. 1) (1932), 48 T. L. R. 556.

141d. ——.]—While under requisition by, & manned & operated by, the United States Govt., defts.' steamship was in collision with & did damage to pltfs.' steamship. After the vessel had been released from requisition pltfs. commenced an action *in rem* for their collision damage. In that action defts. pleaded (*inter alia*) that "at the time when the collision is alleged to have taken place

the *Sylvan Arrow* was under requisition by & under the sole control & management of the Govt. of the United States & was being navigated by persons who were the servants of the Govt. & for whose negligence defts. were & are in no wise responsible. . . . Defts. say that the action is not maintainable *in rem* by reason of the facts set out " above. On the hearing of this question as a preliminary point of law :—*Held :* defts. had surrendered their vessel to the United States Govt. under compulsion ; in no sense could it be said that the master & crew derived their authority from defts., & in the circumstances no maritime lien attached to the vessel by reason of the collision, & her owners were not, either through their vessel or otherwise, liable to pltfs.—THE SYLVAN ARROW, [1923] P. 220 ; 92 L. J. P. 119 ; 130 L. T. 157 ; 39 T. L. R. 655 ; 16 Asp. M. L. C. 244.

142. *Add. Annotations :*—**Refd.** The Porto Alexandre (1919), 89 L. J. P. 97 ; Compania Mercantil Argentina *v.* United States Shipping Board (1924), 92 L. J. K. B. 816.

142a. —— ——.]—THE PORTO ALEXANDRE, No. 141c, *ante.*

142b. -.]—On a motion to set aside a writ *in rem* claiming possession of a vessel in the possession of the Esthonian Govt. the ct. invited the assistance of the Foreign Office as to the status of the Esthonian National Council. The A.-G. on behalf of the Foreign Office stated that His Majesty's Govt. had, for the time being, & with all necessary reservations as to the future, recognised the Esthonian National Council as a *de facto* independent body & had received an informal diplomatic representative of the Provisional Govt. :—*Held :* to permit the arrest of the vessel would be contrary to principles of international comity, as it would compel the Esthonian Govt., whose sovereignty was entitled to be respected, to submit to the jurisdiction of the British cts. ; & the writ & all subsequent proceedings must be set aside.—THE GAGARA, [1919] P. 95 ; 88 L. J. P. 101 ; 122 L. T. 498 ; 35 T. L. R. 259 ; 63 Sol. Jo. 301 ; 14 Asp. M. L. C. 547, C. A.

Annotations :—**Folld.** The Jupiter, [1924] P. 236. **Refd.** The Annette, The Dora, [1919] P. 105.

142c. **Subsequent sale to private owner.**]—Damage occasioned by collision with a foreign state-owned vessel does not impose a maritime lien upon the vessel, & if the vessel be subsequently sold into private ownership she is not then liable to arrest in an action *in rem.*—THE TERVAETE, [1922] P. 259 ; 91 L. J. P. 213 ; 128 L. T. 176 ; 38 T. L. R. 825 ; 67 Sol. Jo. 98 ; 16 Asp. M. L. C. 48, C. A.

Annotations :—**Refd.** The Colorado, [1923] P. 102 ; The Meandros, [1925] P. 61 ; The Stream Fisher, [1927] P. 73.

142d. ——.]—Pltfs., a foreign co., issued a writ *in rem* claiming possession of the steamship *J.* The writ was directed against " the steamship *J.* & all persons claiming any right or interest in the said steamship." The Union of Socialist Soviet Republics entered an appearance under protest & moved to set the writ aside on the ground that the ship was the property of the Union, a recognised independent sovereign State :—*Held :* the issue of a writ *in rem* against a vessel in which a foreign sovereign State claimed an interest was in effect impleading the sovereign State, &, although the right of the sovereign State to possession of the vessel was in dispute, the ct. could not investigate the facts, & the writ must be set aside.—THE JUPITER, [1924] P. 236 ; 93 L. J. P. 156 ; 132 L. T. 624 ; 40 T. L. R. 815 ; 16 Asp. M. L. C. 447, C. A.

143a. Vessel alleged to belong to foreign Government under decree of nationalisation.]—THE JUPITER (No. 2), No. 171a, *post.*

147. *Add. Annotations :*—*As to* (1) **Apld.** The Meandros, [1925] P. 61. **Consd.** The Castor (1932), 48 T. L. R. 604.

147a. **Owners liable though possession of vessel transferred—Ship requisitioned.**]—A Greek steamship owned by defts., a Greek co., was requisitioned by the Greek Govt. during the war in 1922 between Greece & Turkey. Under the terms of requisition the possession or control of the vessel passed to the Greek Govt., & the master & crew ceased to be employed by defts. & were conscripted into the Greek forces. At the end of the period of requisition the vessel had to be returned to defts. in the same condition as at the beginning of the period. While under requisition the vessel stranded, & was saved from possible total loss by the services of pltfs.' salvage ship. After the vessel had been returned to her owners she was arrested by pltfs. in an action *in rem :*—*Held :* the terms of requisition did not dispossess defts. of their property in the vessel ; the services were of benefit to defts., as thereby they had their vessel instead of merely a claim against the Greek Govt. ; as the services were not those of the crew of the Greek vessel, it was immaterial that the crew were the servants of the Greek Govt., & defts. were liable to pltfs. for salvage.—THE MEANDROS, [1925] P. 61 ; 94 L. J. P. 37 ; 132 L. T. 750 ; 41 T. L. R. 236 ; 16 Asp. M. L. C. 476.

Annotation :—**Refd.** France Fenwick *v.* R., [1927] 1 K. B. 458.

149. *Add. Annotation :*—*As to* (1) & (2) **Apld.** The Meandros, [1925] P. 61.

150. *Add. Annotation :*—**Refd.** The Sylvan Arrow, [1923] P. 220.

142 i. *Vessel of foreign Sovereign—Trading.*]—The *I.* was the property of the Govt. of Indo-China, a French possession, administered by a Governor-General for & in the name of the French Republic. Her officers & crew were in the service & pay of that Govt., & at the time of the accident she was on a voyage in the interest of the Govt. of Indo-China :—*Held :* the *I.* could not be lawfully arrested. *Semble :* a sovereign State cannot be impleaded indirectly by proceedings *in rem* against its property. That immunity from arrest of a foreign state-owned ship is not affected by the vessel being used for trading purposes & as a cargo carrier, nor does it matter how the vessel is being employed.—BROWN, JR. *v.* S.S. INDO-CHINE (1921), 21 Exch. C. R. 406.—**CAN.**

Part II.—Jurisdiction in Particular Cases.

170. *Add. Annotation :*—**Refd.** The Annette, The Dora, [1919] P. 105.

170a. ——.]—THE ANNETTE, THE DORA, No. 141b, *ante.*

171. *Add. Annotation :*—**Refd.** The Annette, The Dora, [1919] P. 105.

171a. ——.]—By a contract of sale made in London, an English co. on behalf of the Soviet Govt. purported to sell the *J.* to defts., an Italian co. The vessel had belonged to a Russian co., but the Soviet Govt. asserted that by a decree of nationalisation all vessels of the Russian mercantile marine had become State property, & that the co. had ceased to exist. The Russian co. had moved its business to France, & an action *in rem* was brought in its French name, & in the name of the persons appointed by the French cts. to administer its affairs, against "the *J.*," claiming possession. The Italian co. entered an appearance & moved to set aside the writ :—*Held :* (1) there is no established rule that the Admlty. Ct. will not entertain possession suits in respect of foreign vessels except at the request of both parties or with the consent of the accredited representative of the country to which the vessel belongs ; the matter is one for the discretion of the ct. ; (2) the proceedings did not implead the Soviet Govt. directly or indirectly ; (3) the question of authority to institute the action was a matter which should be referred to the judge at the trial ; (4) the motion to set aside the writ failed.—THE JUPITER (No. 2), [1925] P. 69 ; 94 L. J. P. 59 ; 133 L. T. 85 ; 16 Asp. M. L. C. 491, C. A.

213. *Add. Annotation :*—**Refd.** The Annette, The Dora, [1919] P. 105.

248a. ——.]—(1) The Admlty. Ct. has jurisdiction, under sect. 3 of the above Act, to take cognisance of mtge. claims relating to a ship if the ship or proceeds are under arrest of the ct. at the time when the proceedings are instituted, notwithstanding that the mtge. is not a legal mtge.

(2) A party who intervenes in, & defends, an action *in rem* cannot set up defences which the owners of the ship could not have set up had they appeared & defended.—THE BYZANTION (1922), 127 L. T. 756 ; 38 T. L. R. 744 ; 16 Asp. M. L. C. 19.

254. *Add. Annotation :*—*As to* (2) **Consd.** The Lord Strathcona, [1925] P. 143.

254a. —— **Right of charterer—To dispute validity of mortgage.**]—Pltfs. were mtgees. of a vessel which had been chartered by her owners, the mtgors., for a succession of seasons with options for a renewal which did not expire until 1932. Pltfs. brought an action *in rem* against the shipowners, claiming judgment for the validity of the mtges. & an order for sale of the vessel by the marshal. No appearance was entered by defts. & judgment was given condemning the vessel & ordering her sale. Thereupon the charterers intervened & claimed (a) a declaration that the charterparty was binding on the mtgees., who had notice of its existence when the mtges. were executed, & (b) an injunction to restrain pltfs. from exercising their right to an order for sale of the vessel except subject to the terms of the charterparty. The interveners also alleged that the mtges. were invalid :—*Held :* the interveners had no *locus standi* to dispute the validity of the mtges., but were only entitled to be heard on the question whether pltfs. ought to be restrained from exercising their rights in such a way as to interfere with the interveners' contractual rights under the charterparty.—THE LORD STRATHCONA, [1925] P. 143 ; 95 L. J. P. 5 ; 133 L. T. 765 ; 41 T. L. R. 638 ; 69 Sol. Jo. 762 ; 16 Asp. M. L. C. 536.

262. *Add. Annotation :*—**Refd.** The St. George, [1926] P. 217.

267. *Add. Annotation :*—**Refd.** The James W. Elwell, [1921] P. 351.

269. *Add. Annotation :*—**Consd.** The St. George, [1926] P. 217.

276. *Add. Annotation :*—**Refd.** The James W. Elwell, [1921] P. 351.

277. *Add. Annotation :*—**Refd.** The St. George, [1926] P. 217.

278. *Add. Annotation :*—**Refd.** The James W. Elwell, [1921] P. 351.

283. *Add. Annotation :*—**Refd.** The James W. Elwell, [1921] P. 351.

286. *Add. Annotation :*—**Refd.** The James W. Elwell, [1921] P. 351.

288. *Add. Annotation :*—**Refd.** The James W. Elwell, [1921] P. 351.

289. *Add. Annotation :*—**Refd.** The St. George, [1926] P. 217.

291. *Add. Annotation :*—*Generally,* **Refd.** The St. George, [1926] P. 217.

300. *Add. Annotation :*—**Refd.** The St. George, [1926] P. 217.

304. *Add. Citation :*—166 E. R. 973 ; *on appeal* (1851), 8 Moo. P. C. C. 459, P. C.

Add. Annotations :—**Folld.** The Hamburg (1864), 2 Moo. P. C. C. N. S. 289. **Consd.**

PART II. SECT. 1, SUB-SECT. 2.

182 i. *Wrongdoer.*]—Where a ship has been wrongfully seized by her crew the ct. will order the marshal to deliver possession of it to the owner upon giving security.—PACIFIC GREAT EASTERN RY. CO. *v.* THE CLINTON (1918), 21 Exch. C. R. 169 ; 27 B. C. R. 400 ; [1919] 1 W. W. R. 947.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—A.

250 i. *Admiralty Court Act,* 1861 (*c.* 10)—*Mortgage registered abroad.*]—Action *in rem,* to recover the balance due on a deed of mtge., executed at Buffalo & registered there according to the law & regulations of the State of New York. The ship was arrested & released on bail. Deft. moved for an order to set aside the writ of summons, etc., for want of jurisdiction. On the hearing F. moved to amend, which amendment was in substance an allegation that deft. undertook to have the ship placed under Canadian register & to mtge. the ship, which he failed to do. The ship was not under arrest or seizure at the time of the institution of the action :—*Held :* (1) the ct. was without jurisdiction to entertain the claim ; (2) the amendment could not be allowed.—FINNIGAN *v.* S.S. NORTHWEST (1920), 20 Exch. C. R. 180.—**CAN.**

The Gaetano & Maria (1881), 7 P. D. 1. **Refd.** Segredo (otherwise Eliza Cornish) (1853), 1 Ecc. & Ad. 36; The Rajah of Cochin (1859), Sw. 473; Lloyd *v.* Guibert (1865), L. R. 1 Q. B. 115; The St. George, [1926] P. 217.

315. *Add. Annotation:*—**Refd.** N. V. Kwik Hoo Tong Handel Maatschappij *v.* Finlay, [1927] A. C. 604.

322. *Add. Annotation:*—**Refd.** Pocahontas Fuel Co. *v.* Ambatielos (1922), 27 Com. Cas. 148.

328a. —— —— **Default of appearance.**]—A firm of ship repairers commenced an action *in rem* against the owners of a vessel which they had repaired. It appeared from the statement of claim that the ship was registered in an English port. No appearance was entered:—*Held:* it not being shown to the satisfaction of the ct. that at the time of the institution of the cause any owner or part owner of the ship was domiciled in England or Wales, the ct. would not refuse jurisdiction under sect. 5 of the above Act.—THE MAGGIE A. (1922), 128 L. T. 480; 16 Asp. M. L. C. 117.

329. *Add. Annotation:*—**Refd.** Pocahontas Fuel Co. *v.* Ambatielos (1922), 27 Com. Cas. 148.

331. *Add. Annotation:*—**Refd.** The Mogileff, [1921] P. 236.

334. *Add. Annotation:*—**Refd.** The Mogileff, [1921] P. 236.

335. *Add. Annotation:*—**Refd.** The Mogileff, [1921] P. 236.

336. *Add. Citation:* — *sub nom.* THE WEST FRIESLAND, Sw. 456, P. C.

Add. Annotations:—**Refd.** Laws *v.* Smith, The Rio Tinto (1884), 9 App. Cas. 356; Northcote *v.* Henrich Bjorn, The Henrich Bjorn (1886), 11 App. Cas. 270; The Mogileff, [1921] P. 236.

337. *Add. Annotation:*—*As to* (5) **Refd.** The Mogileff, [1921] P. 236.

338. *Add. Annotation:*—**Refd.** The Mogileff, [1921] P. 236.

338a. —— -THE MOGILEFF, No. 352c, *post.*

343. *Add. Annotations:*—**Refd.** The Mogileff, [1921] P. 236; The Ambatielos, The Cephalonia, [1923] P. 68.

346. *Add. Annotations:*—**Refd.** The Colorado, [1923] P. 102; The Zigurds (No. 1) (1932), 48 T. L. R. 556.

347. *Add. Annotation:*—**Consd.** The British Trade, [1924] P. 104.

352. *Add. Annotation:*—**Refd.** The Mogileff, [1921] P. 236.

352a. —— —— -.]—The agent for a foreign ship, being also part owner, may recover against the ship for necessaries supplied.—THE WEST FRIESLAND (1859), Sw. 454; 5 Jur. N. S. 658; 166 E. R. 1213; *on appeal* (1860), Sw. 456, P. C.

Annotations:—**Apld.** The Underwriter (1868), 25 L. T. 279. **Consd.** Laws *v.* Smith, The Rio Tinto (1884), 9 App. Cas. 356. **Dbtd.** Northcote *v.* The Henrich Björn, The Henrich Björn (1886), 11 App. Cas. 270. **Consd.** The Mogileff, [1921] P. 236. **Refd.** The Riga (1872), L. R. 3 A. & E. 516; The El Salto (1908), 25 T. L. R. 99; Foong Tai *v.* Buchheister, [1908] A. C. 458; The Stream Fisher, [1927] P. 73.

352b. —— ——.]—A person who has made advances in order to supply necessaries to a ship on the credit of the ship may sue *in rem* to recover those advances, although the *res* may belong to a person or persons who are not liable *in personam* as debtor or debtors for the sum so sought to be recovered.

An agent may sue for necessaries supplied under Admlty. Ct. Act, 1861 (c. 10), s. 5, & does not lose his right so to sue by giving credit in the account furnished to his principal for sums received.—FOONG TAI & CO. *v.* BUCHHEISTER & CO., [1908] A. C. 458; 78 L. J. P. C. 31; 99 L. T. 526; 11 Asp. M. L. C. 122, P. C.

Annotations:—**Consd.** The Mogileff, [1921] P. 236. **Refd.** El Salto (1908), 25 T. L. R. 99.

PART II. SECT. 5, SUB-SECT. 1.—A.

327 i a. —— ——.]—A vessel was seized by a mtgee. when it was being repaired by pltf. in pltf.'s yard. Pltf. brought action in the Admlty. Ct. claiming a lien for repairs done at the time the vessel was in possession & repairs previously executed on her last trip:—*Held:* the ct. had no jurisdiction to entertain the action, as the vessel was not "under arrest" at the time the writ was issued.—MARTIN *v.* THE SEA FOAM (1921), 68 D. L. R. 750; 30 B. C. R. 398; [1922] 2 W. W. R. 1181.—**CAN.**

327 i b. —— -.]—THE PACIFICO *v.* WINSLOW MARINE RAILWAY & SHIPBUILDING CO., [1925] 2 D. L. R. 162; [1925] Exch. C. R. 32; *affd.* S. C. *sub nom.* WINSLOW MARINE RY. & SHIPBUILDING CO. *v.* THE PACIFICO, [1924] 2 D. L. R. 190; [1924] Exch. C. R. 90; [1924] 1 W. W. R. 930; 34 B. C. R. 1.—**CAN.**

327 i c. —— ——.]—STACK *v.* THE BARGE LEOPOLD (1919), 18 Exch. C. R. 325.—**CAN.**

327 iii. —— ——.]—*Held:* work done in making alterations in & addition to the pilot-house, rig, spars, sails, tanks, etc., of a gasoline boat necessitated by her intended new employment in outside waters, was for the "building" or "equipping" of a ship within s. 4 of the above Act.—ERIKSEN BROTHERS *v.* THE MAPLE LEAF, [1923] 4 D. L. R. 1201; [1923] Exch. C. R. 39; 31 B. C. R. 443; [1923] 1 W. W. R. 76.—**CAN.**

327 iv. —— "*Building*" *any ship.*]—ERIKSEN BROTHERS *v.* THE MAPLE LEAF, No. 327 iii., *ante.*—**CAN.**

329 ii. — *Ship on colonial register—Actual owner foreigner.*]—The *C.* was registered at Vancouver, B.C., & was owned by a co., having its head office at the same port. The co. was practically A., who was domiciled in San Francisco, U.S.A., being the owner of 995 shares of a total of 1,000 shares, capital stock of the co. In an action for the price of necessaries:—*Held:* as the home port of the *C.* was really San Francisco where the true owner was domiciled, she was a foreign vessel, & the ct. had jurisdiction.—HALEY *v.* S.S. COMOX, [1920] 3 W. W. R. 325; 20 Exch. C. R. 86.—**CAN.**

a i. —— ——.]—Pltf. claimed $1,562.99 for work done & materials furnished for the *S.* while at Amos, P.Q. The vessel was arrested, & J., of Amos, who had an interest therein under an agreement to purchase, filed an appearance under reserve. The vessel was registered at the Port of Montreal, & at the date of institution of the action the registered owner was S., of Smiths Falls, Ont. The vessel was not under arrest of the ct. at the time of the institution of the cause:—*Held:* the ct. had no jurisdiction to entertain the claim.—CIE DES BOIS DU NORD *v.* S.S. ST. LOUIS (1920), 20 Exch. C. R. 232.—**CAN.**

a ii. —— —— *Ship under arrest.*]—THE PACIFICO *v.* WINSLOW MARINE RAILWAY & SHIPBUILDING CO., [1925] 2 D. L. R. 162; [1925] Exch. C. R. 32; *affd.*, [1924] 2 D. L. R. 190; [1924] Exch. C. R. 90; [1924] 1 W. W. R. 930; 34 B. C. R. 1.—**CAN.**

a iii. —— ——.]—*Held:* the ship not being a foreign vessel & its owner being domiciled in Canada, the ct. had no jurisdiction on a claim for necessaries.—PITTSBURG COAL CO. *v.* S.S. BELCHERS, [1926] Exch. C. R. 24.—**CAN.**

PART II. SECT. 5, SUB-SECT. 1.—B.

343 i. *No maritime lien.*]—A claim for the supply of necessaries to a ship does not constitute a maritime lien thereon.—CIE DES BOIS DU NORD *v.* S.S. ST. LOUIS (1920), 20 Exch. C. R. 232.—**CAN.**

348 i. *Maritime lien—Created by foreign law—Whether enforceable in Exchequer Court of Canada.*]—PITTSBURG COAL CO. *v.* S.S. BELCHERS, [1926] Exch. C. R. 24.—**CAN.**

348 ii. —— —— ——.]—STRANDHILL *v.* WALTER W. HODDER CO., [1926] 4 D. L. R. 801.—**CAN.**

348 iii. —— —— ——.]—BAKER, CARVER & MORELL INC. *v.* ASTORIA, [1927] 4 D. L. R. 1022.—**CAN.**

352c. -]—*Primâ facie*, persons who have advanced money for necessaries on behalf of a foreign ship are entitled to sue *in rem*; &, although it may be inferred from the course of business between the principal & agent that the agent has agreed to look to the personal liability of the principal, & that the advances must be treated as items of a mercantile account to be adjusted in accordance with the terms of the agency agreement between the parties, the mere fact that pltfs. are the shipowners' regular agents does not deprive them of their rights *in rem* under Admlty. Ct. Acts, 1840 (c. 65), & 1861 (c. 10). The test to apply in each case is whether at the date of the suit pltf. could maintain an independent action in *assumpsit* in the subject-matter of the claim.—THE MOGILEFF, [1921] P. 236; 90 L. J. P. 329; 37 T. L. R. 549; 65 Sol. Jo. 581.

Annotation :—**Refd.** Pocahontas Fuel Co. *v.* Ambatielos (1922), 27 Com. Cas. 148.

368a. Wrongful dismissal.]—(1) A shipmaster or seaman suing under Admlty. Ct. Act, 1861 (c. 10), on a special contract of service has no maritime lien in respect of damages for wrongful dismissal, inasmuch as such a suit could not have been brought under the ancient jurisdiction of the High Ct. of Admlty.

(2) *Semble :* the maritime lien which a seaman suing under the ordinary mariner's contract has in respect of wages is not limited to the wages earned while actually on board the ship, but extends to wages due after a wrongful determination of the contract of service.—THE BRITISH TRADE, [1924] P. 104; 93 L. J. P. 33; 130 L. T 827; 40 T. L. R. 292; 16 Asp. M. L. C. 296.

398. *Add. Annotation :*—**Refd.** *Ex p.* Guinness, *Ex p.* Murray (1926), 42 T. L. R. 766.

401. *Add. Annotation :*—**Refd.** The British Trade, [1924] P. 104.

415. *Add. Annotation :*—**Refd.** The British Trade, [1924] P. 104.

417a. ——.]—THE BRITISH TRADE, No. 368a, *ante*.

429. *Add. Annotation :*—**Refd.** The Ambatielos, The Cephalonia, [1923] P. 68.

430. *Add. Annotation :*—**Refd.** The Ambatielos, The Cephalonia, [1923] P. 68.

430a. —— Pilotage Act, 1913 (c. 31), s. 49.]—The High Ct. of Admlty. & its successor, the present Admlty. Div. of the High Ct., have always had jurisdiction to entertain an action *in rem* for pilotage dues, & the pilot is not restricted to his right under the above sect., of taking proceedings in a ct. of summary jurisdiction. *Qu.:* whether there is a maritime lien in respect of pilotage dues.—THE AMBATIELOS, THE CEPHALONIA, [1923] P. 68; 92 L. J. P. 45; 128 L. T. 699; 39 T. L. R. 183; 16 Asp. M. L. C. 120.

433. *Add. Annotation :*—**Refd.** The Ambatielos, The Cephalonia, [1923] P. 68.

435. *Add. Annotation :*—**Refd.** *Ex p.* Guinness, *Ex p.* Murray (1926), 42 T. L. R. 766.

437. *Add. Annotation :*—**Refd.** *Ex p.* Guinness, *Ex p.* Murray (1926), 42 T. L. R. 766.

449. *Add. Annotation :*—**Refd.** The Stream Fisher, [1927] P. 73.

459. *Add. Annotation :—As to* (1) **Consd.** The Colorado, [1923] P. 102.

460. *Add. Annotation :—As to* (1) **Refd.** The Colorado, [1923] P. 102.

470. *Add. Annotation :*—**Refd.** The Sylvan Arrow, [1923] P. 220.

471. *Add. Annotation :*—**Refd.** The Sylvan Arrow, [1923] P. 220.

483. *Add. Annotations :*—**Consd.** The Rosalind (1920), 90 L. J. P. 126; The Joannis Vatis,

PART II. SECT. 5, SUB-SECT. 2.

357 i. *Action by default—Proof of claim—Right to proceed ex parte.*]—PAUL *v.* THE AMY TURNER, [1922] V. L. R. 740.—AUS.

PART II. SECT. 6.

358 i. *Extent of jurisdiction—Towage performed in connection with repairs—Not at owner's special request.*]—Towage performed in connection with repairs, not at the owner's special request, is not within the purview of "claims & demands for services in the nature of towage" within Admlty. Ct. Act, 1840 (c. 65), s. 6, as would give the ct. jurisdiction over the claim, neither a claim for towage nor for necessaries is the subject of a maritime lien.—STACK *v.* THE BARGE LEOPOLD (1919), 18 Exch. C. R. 325.—CAN.

PART II. SECT. 7, SUB-SECT. 1.—C.

386 ii. —— *Claim by master for wages & damages—Payable pari passu.*]—A British ship was attached to satisfy various creditors *in rem* including the master of the vessel. She was subsequently sold, any liens of the creditors being transferred to the proceeds. The master's claim included damages against the owners for wrongful dismissal calculated from a date subsequent to the sale :—*Held :* the master was entitled to damages *pari passu* with his claim for wages, which he could enforce by an action *in rem*.—*Re* GWYDYR CASTLE (1920), 41 N. L. R. 231.—S. AF.

PART II. SECT. 7, SUB-SECT. 2.—A (b).

sk. *Shipping Act*, 1906, *s.* 191—*Limits of jurisdiction.*]—A seaman sued for $134 :—*Held :* this being under $200, the action must be dismissed under the above sect., with costs.—OSTROM *v.* THE MIYAKO, [1924] 2 D. L. R. 200; [1924] Exch. C. R. 96; 1 W. W. R. 1098; 34 B. C. R. 4.—CAN.

PART II. SECT. 7, SUB-SECT. 2.—B.

sl. *Assignee of wages.*]—The maritime lien attaching to a seaman's wages is personal to the seaman & not transferable.—MCCULLOUGH *v.* THE SAMUEL MARSHALL, ELIASOPH *v.* STEEL CO. OF CAN. (QUE.), [1924] Exch. C. R. 53; *affg.*, [1923] Exch. C. R. 110.—CAN.

sm. *Person not having signed articles—Nor having lived on board.*]—*Held :* claimant not having signed the ship's articles, not having lived on board, & the sum sued for not having been earned on board, he was not a seaman.—MCCULLOUGH *v.* THE SAMUEL MARSHALL, ELIASOPH *v.* STEEL CO. OF CAN. (QUE.), [1924] Exch. C. R. 53; *affg.*, [1923] Exch. C. R. 110.—CAN.

sn. *Person voluntarily paying wages.*]—No one voluntarily paying the wages of one or more of the crew can claim a lien against the ship for the amount so paid.—MCCULLOUGH *v.* THE SAMUEL MARSHALL, ELIASOPH *v.* STEEL CO. OF CAN. (QUE.), [1924] Exch. C. R. 53; *affg.*, [1923] Exch. C. R. 110.—CAN.

PART II. SECT. 7, SUB-SECT. 3.—A.

452 iii. —— *Contract made abroad.*]—The ct. will not interfere in a dispute as to wages arising out of a contract made abroad between the master of a foreign ship & the members of his crew.—NOLAN *v.* S.S. RUSSEL HAVERSIDE, [1921] C. P. D. 136.—S. AF.

454 vi. —— —— ——.]—A seaman who had signed on an American ship instituted an action in Quebec against the ship for wages. No notice of the institution of the action was given by him to the United States consul, & the affidavit to lead to warrant omitted to state the national character of the ship. Deft. moved to dismiss for defects in the affidavit, & the consul filed a protest against the action being allowed to proceed :—*Held :* (1) the protest of the American consul did not deprive the ct. of its jurisdiction; (2) the ct., in proper circumstances, might exercise its discretion to decline to proceed with such an action.—ROULEAU *v.* S.S. ALEDO, [1923] Exch. C. R. 10.—CAN.

PART II. SECT. 7, SUB-SECT. 3.—B.

458 i. *Conflict of laws—Application of law of litigants' country.*]—Admlty. Ct. Act, 1861 (c. 10), s. 10, permits the application by the ct. of the law of the country of the litigants.—JACOBSON *v.* FORT MORGAN (1919), 19 Exch. C. R. 165; 49 D. L. R. 123.—CAN.

[1922] P. 92. **Refd.** Elliott Steam Tug Co. *v.* Shipping Controller, [1922] 1 K. B. 127; G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742; The Zelo, [1922] P. 9.

—— —— **Obstruction in dock.**]—Defts.' steamship, a Norwegian vessel, while docking in the Stalbridge Dock, Garston, came into collision with & sank a barge. Pltfs., as owners of the dock, took steps to raise & remove the wreck, & by a writ *in rem* in the present action claimed to recover from defts. the expenses which they had incurred "in & about the lighting, buoying, removal, & destruction of the barge." The owners of the barge had given notice that they abandoned their vessel. On a motion by defts. to set aside the service of the writ:—*Held:* the claim was for "damage done by a ship," namely, damage done by defts.' ship to pltfs.' dock by putting an obstruction in it, within Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49), s. 22 (1) (*a*) (iv), & was properly commenced by a writ *in rem*.—THE CHR. KNUDSEN, [1932] P. 153; 101 L. J. P. 72; 48 T. L. R. 619.

489. *Add. Annotations:*—**Consd.** Mersey Docks & Harbour Board *v.* Hay, [1923] A. C. 345. **Refd.** The Stream Fisher, [1927] P. 73.

490. *Add. Annotation:—Generally,* **Refd.** The Carlgarth, The Otarama, [1927] P. 93.

491. *Add. Annotation:*—**Refd.** G. W. Ry. *v.* S.S. Mostyn, [1928] A. C. 57.

494. *Add. Annotation:*—**Refd.** The Sylvan Arrow, [1923] P. 220.

504. *Add. Annotation:*—**Refd.** The Tervaete [1922] P. 259.

510. *Add. Annotation:—As to* (2) **Apld.** The Goulandris, [1927] P. 182.

518. *Add. Annotations:*—**Refd.** McColl *v.* Canadian Pacific Ry., [1923] A. C. 126; The Molière (1924), 41 T. L. R. 154.

After this case add:—*See, now,* Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49), s. 22 (2).

518a. —— —— ——.]—In a collision between Swedish & British steamships, for which both ships were held to blame, a seaman on the former vessel was drowned. Under Swedish law the Swedish shipowners paid compensation to the relatives of the seaman. At the reference to assess the collision damage the Swedish shipowners claimed to recover from the owners of the British vessel a moiety of the compensation so paid. The registrar allowed the item. On appeal:—*Held:* the decision of the registrar was wrong for apart from Maritime Conventions Act, 1911 (c. 57), the Ct. of Admlty. had no jurisdiction to entertain an action *in rem* for loss of life, & the Admlty. rules as to division of loss had no application to such a claim, & sect. 3 of that Act, which provided for contribution between the owners of wrongdong vessels in respect of (*inter alia*) damages for loss of life or personal injuries, only applied to damages recoverable by action, & not to claims for compensation arising out of some statute & independently of fault on the part of the shipowner.—THE MOLIÈRE, [1925] P. 27; 94 L. J. P. 28; 132 L. T. 733; 41 T. L. R. 154; 16 Asp. M. L. C. 470.

518b. Application of Maritime Conventions Act, 1911 (c. 57).]—THE MOLIÈRE, No. 518a, *ante.*

519. *Add. Annotations:—As to* (1) **Consd.** Oliver *v.* Birmingham & Midland Motor Omnibus Co. (1932), 48 T. L. R. 540. **Refd.** The Koursk, [1924] P. 140. *As to* (2) **Refd.** The Molière (1924), 41 T. L. R. 154. *Generally,* **Refd.** The Vectis, [1929] P. 204.

521. *Add. Citation:*—[1909] P. 176.

Add. Annotation:—As to (2) **Refd.** The Molière (1924), 41 T. L. R. 154.

523. *Add. Annotation:—As to* (2) **Refd.** The Molière (1924), 41 T. L. R. 154.

523a. —— ——.]—THE MOLIÈRE, No. 518a, *ante.*

528. *Add. Annotation:*—**Refd.** The Sheaf Brook, [1926] P. 61.

536. *Add. Annotations:—Generally,* **Refd.** Ireland *v.* Southdown S.S. Co. (1926), 136 L. T. 412; Lewis *v.* Dreyfus (1926), 31 Com. Cas. 239.

541a. —— —— —— **Indorsee of document acknowledging receipt of goods for shipment.**]—A document whereby the receipt of goods is acknowledged for shipment on board a named ship, or on some other ship for carriage by sea & delivery to the shipper's order, the document being signed on behalf of the master, is a bill of lading for the purposes of Bills of Lading Act, 1855 (c. 111), & the above sect.

Parcels of goods were accepted in N. for delivery at S. to the shippers' order, there being given to each shipper a document of the above-mentioned character. Upon the named ship arriving at S. the goods were not delivered. Resps., twenty firms, each being indorsees of one of the documents, issued a joint writ *in rem* claiming severally to recover damages. The writ stated that pltfs. claimed as consignees or indorsees of bills of lading for non-delivery of goods agreed to be carried by the named ship, or agreed to be shipped within a reasonable time by some other vessel of the same line. On affidavits sworn separately by pltfs., alleging that the goods were either lost or not shipped on any other vessel within a reasonable time, the ship was arrested. The owners of the ship took out a summons to set aside the writ & all proceedings thereunder:—*Held:* (1) the documents in question were bills of lading within the above sect., & the proceedings being to set aside the writ & it not being denied that some of the goods were received on board, the action should proceed; (2) the action being *in rem* & the joinder of pltfs. convenient, the view of the full Bench of the Supreme Ct. that pltfs. could properly be joined under the rules locally applicable should not be interfered with.—MARLBOROUGH HILL, SHIP *v.* COWAN & SONS, [1921] 1 A. C. 444; 90 L. J. P. C. 87; 124 L. T. 645; 37 T. L. R.

PART II. SECT. 8, SUB-SECT. 2.—A

512 v. —— ——.]—Pltf., a seaman, brought an action *in rem* for damages against a barge for bodily injuries sustained by him in an accident alleged to have been occasioned by negligence for which the ship was liable:—*Held*, the damage done was not "by" the barge, but "on" the barge, & was not such damage as gave pltf. a remedy *in rem*.—MULVEY *v.* THE BARGE NEOSHO (1919), 19 Exch. C. R. 1; 47 D. L. R. 437.—CAN.

190; 15 Asp. M. L. C. 163; 26 Com. Cas. 121, P. C.

Annotation:—As to (1) **Distd.** Diamond Alkali Export Corpn. *v.* Bourgeois, [1921] 3 K. B. 443.

546. *Add. Annotation:*—**Reld.** Marlborough Hill, Ship *v.* Cowan, [1921] 1 A. C. 444.

560. After this case add:—*See* Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49), ss. 22 (1) (*a*) (xii), 33 (2).

562. *Add. Annotation:*—**Reld.** The Sheaf Brook, [1926] P. 61.

565a. Judicature (Consolidation) Act, 1925 (c. 49), ss. 22, 58 (2)—Owner domiciled in England—Application to transfer action to King's Bench Division.]—(1) Pltfs., as owners of cargo on board defts.' ship, brought an action *in personam* in the Admlty. Div. for damages for breach of the contract of carriage. Defts. were domiciled in England. On an application by them to transfer the cause to the King's Bench Div., the judge held that he had a discretion to retain it in the Admlty. Div.:—*Held:* s. 58 (2) of the above Act did not give the ct. discretion to retain a cause in respect of which the Act expressly provided that the Div. had no jurisdiction, & the action must be transferred to the King's Bench Div.

(2) The note to R. S. C., Ord. 49, r. 3, that the Ct. of Appeal cannot order a transfer without the consent of the presidents of both the Divs. from & to which the transfer is proposed to be made, does not apply to cases where the Ct. of Appeal has held that the one Div. has no discretion to retain the cause in that Div. In such cases the transfer is made subject only to the consent of the president of the Div. to which the cause is to be transferred (ATKIN, L.J.).—THE SHEAF BROOK, [1926] P. 61; 95 L. J. P. 113; 134 L. T. 534; 17 Asp. M. L. C. 14, C. A.

Annotation:—As to (1) **Distd.** The Eskbridge, [1931] P. 51.

578. *Add. Annotation:*—**Reld.** The Wilhelmina, [1923] P. 112.

579a. Ship injured in dock—Dockowners repairing ship—In dock belonging to others.]—By the negligence of pltfs.' servants while engaged on work on a steamship in the Hornby Dock, belonging to the Mersey Docks & Harbour Board, the vessel & her cargo were damaged by fire, & pltfs. were held liable in damages. Pltfs. sought to limit their liability under M. S. Act, 1900 (c. 32), s. 2, on the ground that they were the owners of a dry dock at Garston:—*Held:* the liability being in no way connected with the fact that pltfs. were dockowners, they were not entitled to a decree of limitation of liability.—THE CITY OF EDINBURGH, [1921] P. 274; 90 L. J. P. 304; 125 L. T. 375; 37 T. L. R. 468; 15 Asp. M. L. C. 234, C. A.

Annotations:—**Distd.** The Ruapehu (1926), 42 T. L. R. 708. **Expld.** S.S. Ruapehu *v.* Groen & Silley Weir, [1927] A. C. 523.

579b. —— ——.]—Pltfs., owners of a dry dock sought to limit their liability under M. S. Act, 1900 (c. 32), s. 2, in respect of damage caused by a fire which broke out on defts.' vessel owing to the negligence of pltfs.' servants while the vessel was being repaired by them in the dry dock:—*Held:* while some limitation must be put upon the general language of the sect., which, if applied in its strict literal sense would lead to an absurdity, the limitation to be put was not in respect of the nature of the act done but in respect of area, *i.e.*, the damage must be in some way connected with the ownership of the dock.—THE RUAPEHU, [1927] P. 47; 96 L. J. P. 18; 136 L. T. 146; 42 T. L. R. 708; 17 Asp. M. L. C. 138, C. A.; *affd. sub nom.* RUAPEHU (OWNERS) *v.* GREEN (R. & H.) & SILLEY WEIR, LTD., THE RUAPEHU, [1927] A. C. 523; 96 L. J. P. 99; 137 L. T. 353; 43 T. L. R. 402; 71 Sol. Jo. 330; 32 Com. Cas. 323; 17 Asp. M. L. C. 270, H. L.; *subsequent proceedings* (1929), 45 T. L. R. 657.

Annotations:—**Reld.** Gosse Millard *v.* Canadian Government Merchant Marine, American Can Co. *v.* Same (1927), 97 L. J. K. B. 193; The Ruapehu (No. 2), [1929] P. 305.

593. *Citations:*—For "36 L. T. 361" read "6 L. T. 361."

594a. —— —— **Rival salvors—Injunction to restrain act on high seas.**]—In 1922 pltfs. fitted out an expedition to salve cargo from the wreck of a Dutch steamship which had sunk in 1916 in the North Sea in over one hundred feet of water. Pltfs. worked at the scene of the wreck whenever the weather & tides permitted during the summer of 1922 & from Apr. to July, 1923. During that time they had succeeded in cutting a hole into No. 4 hold, had buoyed the wreck, & had extracted some portions of cargo of little value at a cost of over £40,000. In July, 1923, defts., British subjects & partners in a rival salvage co., arrived on the scene in a British registered ship, & by sending down their own divers & interfering with pltfs.' diving operations, tried to secure possession of the wreck & cargo, & either prevent further work on the part of pltfs. or establish themselves with pltfs. in concurrent occupation:—*Held:* (1) an action in respect of injurious acts done on the high seas had always been within the jurisdiction of the High Ct. of Admlty.; (2) pltfs. were sufficiently in occupation of the wreck to exclude third parties from interfering with the property; (3) as defts.' interference was high-handed & deliberate they would be restrained until further order from doing any acts at or near the wreck whereby pltfs. might be prevented or hindered in the carrying on of their salvage operations.—THE TUBANTIA, [1924] P. 78; 93 L. J. P. 148; 131 L. T. 570; 40 T. L. R. 335; 16 Asp. M. L. C. 346.

595a. Services on land.] — THE LAPWING (1839), 8 L. T. 440.

PART II. SECT. 9, SUB-SECT. 1.—B.

564 i. *Admiralty Court Act*, 1861 (c. 10), *s.* 6—*No breach of duty—Contract with shippers imposing no obligation on ship.*]—Pltfs. agreed to purchase goods, the shippers to deliver same at an agreed point. The contract did not purport to be made by or on behalf of the ship, but by the shippers, with pltfs., who claimed damages for breach of contract for non-delivery, & at their request a warrant to arrest the ship & her cargo was issued:—*Held:* (1) pltfs. not having been shown to be "the owners, or consignees or assignees" of the bill of lading of the cargo, the ct. had no jurisdiction in the matter, & the warrant of arrest should be set aside; (2) the contract referred to in the above sect. contemplated an obligation on the part of the ship, & the contract sued on imposed no such obligation.—LAVALLEE *v.* THE ISTAR, [1923] Exch. C. R. 212.—**CAN.**

564 ii. —— *Goods shipped from Canadian port.*]—The jurisdiction the above sect. confers upon the ct. is clearly confined to cases of damage to goods carried by ships into a Canadian port, & does not extend to the case of goods shipped from Canada to foreign ports.—HARRIS ABATTOIR CO. *v.* ALEDO (OWNERS), [1923] 4 D. L. R. 1196; [1923] Exch. C. R. 217.—**CAN.**

596a. ·.]—Two causes of salvage against a vessel were consolidated upon motion by defts., & with the consent of all parties. On a petition being subsequently filed, defts. moved for its dismissal, with costs & damages, on the ground that the value of the property salved was under £1,000 :—*Held :* the proceedings of defts. in reference to the consolidation must be construed as an agreement which gave the ct. jurisdiction under Admlty. Jurisdiction Act, 1868 (c. 71), s. 9.

Semble : under Admlty. Jurisdiction Act, 1868 (c. 71), s. 6, the ct. of Admlty. has discretion to take cognisance of cases of salvage, though the value of the property salved be under £1,000.—THE HERMAN WEDEL (1870), 39 L. J. Adm. 30 ; 23 L. T. 876 ; 3 Mar. L. C. 530.

598. After this case insert, " Prize salvage, *see* PRIZE LAW."

603. *Add. Annotation :*—**Refd.** Pyman S.S. Co. *v.* Admiralty Comrs., [1919] 1 K. B. 49.

606. *Add. Annotations :*—**Consd.** The Meandros, [1925] P. 61. **Refd.** Pyman S.S. Co. *v.* Admiralty Comrs., [1919] 1 K. B. 49.

611. *Add. Annotation :*—**Refd.** Pyman S.S. Co. *v.* Admiralty Comrs., [1919] 1 K. B. 49.

613. *Add. Annotations :*—**Consd.** The Meandros, [1925] P. 61. **Refd.** Pyman S.S. Co. *v.* Admiralty Comrs., [1919] 1 K. B. 49.

617. *Add. Annotation :*—**Consd.** Bradley *v.* Newsom, [1919] A. C. 16.

619. *Add. Annotation :—As to* (1) **Refd.** Bradley *v.* Newsom, [1919] A. C. 16.

622. *Add. Annotation :*—**Refd.** The Fagernes, [1926] P. 185.

642a. ——.]—R. *v.* MILLER (1823), 1 Hag. Adm. 197 ; 166 E. R. 71.

648a. Ship not entitled to be registered as British ship—Ship under jurisdiction of Prize Court.] —A ship registered as a British ship, & nominally owned by a duly registered British co., was in fact owned & controlled by the Hamburg-Amerika Line, of Hamburg, which, in the person of its nominees, owned all the shares in the British co. & appointed its directors. Accordingly, after the outbreak of war with Germany, the ship was seized as prize, & on July 28, 1916, the Prize Ct. pronounced her to have belonged at the time of seizure to enemies of the Crown, & ordered her to be detained by the marshal until further order. Meanwhile on Jan. 11, 1916, under Prize Ct. Rules, Ord. 29, the ship had been requisitioned by the Lords Comrs. of the Admlty., & she remained in their possession. On Apr. 5, 1917, the writ in the present action was issued claiming a declaration under M. S. Acts, 1894 (c. 60), & 1906 (c. 48), that the ship was forfeited to the Crown on the ground that she was not entitled to be registered as a British ship :—*Held :* as the Lords Comrs. of the Admlty. had merely temporary possession of the ship & had to return her into the custody of the Prize Ct. which had at some time to make a final decree either of condemnation or release, the Admlty. Ct. had no jurisdiction to entertain the forfeiture action & to make the usual order for appraisement & sale, & the action must be dismissed.—THE ST. TUDNO, [1918] P. 174 ; 87 L. J. P. 105 ; 34 T. L. R. 357 ; 62 Sol. Jo. 521.

650a. —— **Injunction.]** — THE TUBANTIA, No. 594a, *ante.*

650b. Res under jurisdiction of Prize Court.]— THE ST. TUDNO, No. 648a, *ante.*

663a. No jurisdiction—Judicature (Consolidation) Act, 1925 (c. 49), s. 22—Action for freight—Owner domiciled in England.]—Pltfs., shipowners domiciled in England, instituted an action *in rem* against cargo owners for freight in respect of the carriage of the cargo in the ship. By Judicature (Consolidation) Act, 1925 (c. 49), s. 22 (1) (*a*) (xii), the High Court shall in Admiralty matters have jurisdiction in respect of any claim arising out of an agreement relating to the carriage of goods in a ship, " unless it is shown to the ct. that at the time of the institution of the proceedings any owner or part owner of the ship was domiciled in England " :—*Held :* although under the sect. pltfs. who are British shipowners domiciled in this country are in a less favourable position than foreign shipowners, the sect. was general in its scope & could not be construed as applicable only to deft. shipowners against whom a claim is made, & the ct. had no jurisdiction to entertain the action.—THE ESKBRIDGE, [1931] P. 51 ; 100 L. J. P. 50 ; 144 L. T. 624 ; 47 T. L. R. 235 ; 18 Asp. M. L. C. 207.

Part III.—Present and Former Practice of the Admiralty Division of the High Court of Justice and of Courts other than English County and local Courts.

668a. —— **Issue—Res not within jurisdiction.]**— (1) It is not necessary that, at the time of the issue of a writ *in rem*, the *res* should be within the jurisdiction of the ct. ; & Maritime Conventions Act, 1911 (c. 57), s. 8, which provides that in the case of collision or salvage actions the proceedings must be commenced within two years of the cause

PART II. SECT. 11, SUB-SECT. 2.—B.

608 i. *Action in rem—Or in personam.*]—The first & most proper remedy for the recovery of salvage is *in rem.*—HATTON *v.* AKT. DURBAN HANSEN, [1919] S. C. 154 ; 56 Sc. L. R. 100.—**SCOT.**

PART II. SECT. 16.

654 i. *Exception to jurisdiction—Made after trial.*]—An objection to the jurisdiction will hold good even if made after the trial.—STACK *v.* THE BARGE LEOPOLD (1919), 18 Exch. C. R. 325.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.—A. (a).

668 i. —— *Amendment—Increase of amount.*]—Pltfs. claimed $4,000 damages, by reason of a collision between one of their barges & the *B.* The *B.* was arrested & the bail fixed at $4,000,

of action, is complied with if the writ is issued within two years; the sect. does not contemplate that the arrest of the *res* constitutes the commencement of the proceedings.

(2) In general, the ct. will not grant an extension of time for the renewal of an unserved writ, which has not been renewed within the period of one year as provided by R. S. C., Ord. 8, r. 1, if, but for the extension of time, the claim would be barred by a statute of limitation. But, inasmuch as Maritime Conventions Act, 1911 (c. 57), s. 8, contains provisos for extension of time unknown to any other statutes of limitation, the application to renew a writ in an action which comes within the operation of sect. 8 must be considered on its merits, & if, under the circumstances, the ct. would give leave to issue a writ notwithstanding the lapse of two years, the ct. will allow an extension of time for the renewal of a writ, the time for the renewal of which has expired.—THE ESPANOLETO, [1920] P. 223; 90 L. J. P. 32; 125 L. T. 121; 36 T. L. R. 554; 15 Asp. M. L. C. 287.

668b. —— **Motion to set aside—Facts in dispute.**]—In an action *in rem* for damage by collision defts. moved to set aside the writ & all subsequent proceedings on the ground that their vessel at the time of the collision was under requisition to, & in the sole control & possession of, the United States Navy Department, & that accordingly no maritime lien attached to her. Pltfs. did not admit the facts set out in defts.' affidavit in support of the motion:—*Held:* the facts being in dispute the ct. could not try the issue on motion by affidavit & the motion must be dismissed, but without prejudice to the right of defts. to apply, when the issues were defined by pleadings, for the question of law to be tried as a preliminary point.—THE SYLVAN ARROW, [1923] P. 14; 92 L. J. P. 23; 128 L. T. 448; 39 T. L. R. 25; 16 Asp. M. L. C. 115.

669. *Add. Annotation:—As to* (1) **Consd.** The Joannis Vatis, [1922] P. 92.

672a. **Defendant blaming another ship.**]—Pltfs. claimed damages from defts., owners of the *W.*, in respect of a collision between the *W.* & barges belonging to pltfs. The owners of the *W.* denied liability, alleging by letter to pltfs. that the collision was caused by the negligence of the *A.* An action was commenced between the owners of the *W.* & the owners of the *A.*, in which the owners of the *A.* admitted liability for the collision. The owners of the *A.* agreed pltfs.' damages, but refused to pay the costs of the action by pltfs. against the *W.*, which had then been prosecuted to the stage of filing pltfs.' preliminary act:—*Held:* pltfs. were entitled to amend their writ by adding the owners of the *A.* as defts. The case came within the principle of R. S. C., Ord. 16, r. 11, that no cause should be defeated by the non-joinder of parties, & in the circumstances it would have been a misuse of the discretion of the ct. to refuse to allow a party to exercise that right. The proper course would have been for pltfs. to have added both parties as defts. in the alternative.—THE W. H. RANDALL, [1928] P. 41; 97 L. J. P. 42; 138 L. T. 459; 17 Asp. M. L. C. 397, C. A.

673. *Add. Annotations:*—**Consd.** The Creteforest, [1920] P. 111; Marlborough Hill, Ship *v.* Cowan, [1921] 1 A. C. 444.

682a. —— **Motion to set aside acceptance & undertaking to appear & put in bail—Mistake as to authority.**]—Motion dismissed.—THE GERTRUD (1927), 138 L. T. 239; 44 T. L. R. 1; 17 Asp. M. L. C. 343.

683a. **Renewal of writ—Extension of time for—Maritime Conventions Act, 1911 (c. 57), s. 8.**]—THE ESPANOLETO, No. 668a, *ante*.

697. *Add. Annotation:*—**Refd.** The Point Breeze, [1928] P. 135.

700a. **Right to arrest—Ship under requisition.**]—Pltfs.' steamship & defts.' steamship, the *L.L.*, collided in Sept. 1917. The *L.L.* was at the time under requisition:—*Held:* there could be no effective arrest of the vessel while she was under requisition.—THE LARGO LAW (1920), 123 L. T. 560; 15 Asp. M. L. C. 104.

700b. —— **Ship seized under writ of fieri facias.**]—A foreign ship was seized under a sheriff's writ of *fi. fa.* in execution of a judgment obtained by the charterers of the ship against the owners of fifty-six sixty-fourth shares in the ship. Subsequently the ship was arrested by the Admlty. marshal in an action *in rem* for necessaries. Various other writs *in rem* were issued against the ship, including a writ by the master in respect of wages. The sheriff was unable to effect a sale, & the ship was sold by the marshal without prejudice to the rights of the various claimants:—*Held:* the fact that the sheriff was in possession did not deprive the marshal of his power to arrest the ship in actions *in rem*.—THE JAMES W. ELWELL, [1921] P. 351; 90 L. J. P. 132; 37 T. L. R. 178.

701. *Add. Annotation:*—**Consd.** The James W. Elwell, [1921] P. 351.

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the then estimated cost of repairs. Before the trial of the action, it was found that the actual cost of the repairs amounted to $5,512.94. Pltfs. moved to amend their writ by adding to the amount claimed:—*Held:* the ct. might direct measures to be taken to do full justice to pltfs., & to that end permit the amendment.—HALL COAL CO. *v.* THE BAYUSONA, [1923] Exch. C. R. 128.—**CAN.**

673 i. *Parties—Joinder of plaintiffs—After judgment.*]—In the course of a trial in the Admlty. Ct. pltf. was allowed to amend by adding a party pltf., but failed to amend formally pursuant to the order & entered the formal judgment with only the original pltf. named therein, & proceeded to assess damages before the registrar:—*Held:* in the circumstances pltf. had not elected to abandon the order for amendment & should be allowed to have the judgment & prior proceedings amended in accordance therewith.—EVANS, COLEMAN & EVANS, LTD. *v.* THE ROMAN PRINCE, [1924] 3 D. L. R. 95; [1924] Exch. C. R. 133; 2 W. W. R. 465; 34 B. C. R. 155.—**CAN.**

673 ii. —— *Nonjoinder.*]—There being no special rule in this Ct. dealing with the joinder of parties, the practice & procedure of the High Court of Justice, in England, obtains, & the claimant herein was entitled to bring the present action in his own name alone, without joining his co-owners or their assignees. Misjoinder or nonjoinder cannot now defeat a claim.—MACKAY *v.* R., [1928] Exch. C. R. 149; *on appeal*, [1930] S. C. R. 130; 1 D. L. R. 1005.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.—A. (a).

701 iii. —— *Creditor's action—Claim for building, equipping or repairing.*]—As soon as a creditor finds a ship under arrest of the ct., he may bring his action for, & the Admlty Ct. acquires immediate & irrevocable jurisdiction over, any claim for building, equipping or repairing the ship. That jurisdiction is established without the litigant having to show that the original action under which the ship was arrested must eventually succeed, & notwithstanding that the arrest was made without particulars being given

706a. Re-arrest—Damage in excess of bail—Second action—Right to bring action in personam.]—In an action *in rem* in respect of damage by collision defts. gave bail in the sum of £100,000 as representing the full value of their vessel & the limit of their liability according to French law. In the Admlty. Ct. both pltfs.' & defts.' vessels were held to blame, but the Ct. of Appeal held defts.' vessel alone to blame & this decision was upheld by the House of Lords. The £100,000 being insufficient to satisfy pltfs.' judgment, pltfs. who admitted that *quâ* damages they could not recover more than the £100,000, threatened to arrest defts.' vessel in respect of interest & costs; & under protest, defts. provided bail in a further sum to avoid arrest:—*Held:* having received bail in the full value of defts.' vessel, pltfs. could not arrest her *in rem*, but could proceed *in personam*, & were entitled to a declaration that the amounts due in respect of interest & costs were enforceable by seizure & sale of the vessel by a sheriff under a writ of *fi. fa.*—THE JOANNIS VATIS (No. 2), [1922] P. 213; 91 L. J. P. 196; 127 L. T. 494; 38 T. L. R. 566; 16 Asp. M. L. C. 13.

Annotation:—**Refd.** The Point Breeze, [1928] P. 135.

706b. —— ——.]—In a damage action *in rem* pltfs. demanded & obtained bail from defts. in the sum of £3,500. After judgment had been given pronouncing defts.' ship alone to blame, pltfs. demanded further bail in the sum of £3,000, on the ground that the original sum demanded was insufficient to cover their damages. On the refusal of defts.' solrs. to give an undertaking to provide additional bail, pltfs. extracted a warrant of arrest from the Admlty. registry under which defts.' ship was arrested. On a motion to set aside the warrant of arrest:—*Held:* the effect of taking bail was to release the ship altogether, & the warrant of arrest must be set aside.—THE POINT BREEZE, [1928] P. 135; 97 L. J. P. 88; 139 L. T. 48; 44 T. L. R. 390; 17 Asp. M. L. C. 462.

742. *Add. Annotations:*—**Consd.** The Point Breeze, [1928] P. 135. **Refd.** The Joannis Vatis (No. 2), [1922] P. 213.

746. *Add. Annotation:*—**Consd.** The Joannis Vatis (No. 2), [1922] P. 213.

747. *Add. Annotation:*—**Apld.** The Point Breeze, [1928] P. 135.

760. *Add. Annotation:*—**Refd.** Melanie S.S *v.* San Onofre S.S., [1925] A. C. 246.

764. *Add. Annotation:*—**Refd.** The Annette, The Dora, [1919] P. 105.

766a. —— Waiver of right to plead Maritime Conventions Act, 1911 (c. 57), s. 8.]—By entering an unconditional appearance to a writ issued more than two years after the date of salvage services, defts. do not waive the right of pleading the protection of the above Act in their defence & raising it at the trial of the action.—THE LLANDOVERY CASTLE, [1920]

to prove without doubt the status of pltf. in that original action.—ERIKSEN BROTHERS *v.* THE MAPLE LEAF (1922), 67 D. L. R. 261; [1922] 3 W. W. R. 41.—**CAN.**

701 iv. *Repairs continued after arrest.*]—Resps. contracted with the owner of a ship to do certain repairs, & it was delivered to them for the purpose. When the repairs were going on the ship was arrested at the suit of applts., who claimed for earlier repairs & necessaries. After the arrest the ship was left in the actual possession of resps., who continued to do the repair work contracted for without the sanction of the ct. but in good faith:—*Held:* resps. should have priority for repairs made after the arrest so far as the selling value of the ship was thereby increased.—MONTREAL DRY DOCKS & SHIP REPAIRING CO., LTD. *v.* HALIFAX SHIPYARDS, LTD., [1920] 3 W. W. R. 25; 54 D. L. R. 185; 60 S. C. R. 359.—**CAN.**

d. Read now "**706a i.**"

706a ii. —— —— *Mistake in sum claimed—Cost of repairs exceeding estimate.*]—Pltfs. claimed $4,000 damages, by reason of a collision between one of their barges & the *B.* The *B.* was arrested & the bail fixed at $4,000, the then estimated cost of repairs. Before the trial of the action, it was found that the actual cost of the repairs amounted to $5,512.94. Pltfs. moved to amend their writ by adding to the amount claimed & for the issue of a warrant to re-arrest the *B.*:—*Held:* the ct. might direct measures to be taken to do full justice to pltfs., & to that end permit the issue of a warrant for the re-arrest of the ship, but with costs of the motion & of the re-arrest against pltfs.—HALL COAL CO. *v.* THE BAYUSONA, [1923] Exch. C. R. 128.—**CAN.**

706a iii. —— —— *Dismissal of claim for salvage—Appeal.*]—Where a claim for salvage against a ship has been dismissed, there is no general right, in case of appeal, to hold the bail bond or after its cancellation to re-arrest the ship, nor will such right be granted without good reason therefor, such as that it appears to the ct. that the ship will not be within the jurisdiction to answer the appeal should it go against it.—THE FREIYA *v.* THE R. S. (1921), 63 D. L. R. 687; 21 Exch. C. R. 147; 30 B. C. R. 132; [1921] 2 W. W. R. 749.—**CAN.**

706a iv. —— *Unnecessary where ship already under arrest.*]—The *A.* was under arrest by process of the ct., in a joint action for master's & seaman's wages, when she was re-arrested by pltfs., under three separate warrants, in actions for necessaries & supplies furnished to the *A.* in the port of C., to which she belonged, & the owners of which were domiciled in Canada:—*Held:* the ship being under arrest of the ct., this ct. had jurisdiction in the matter, but the issuing of warrants & the re-arrest was unnecessary.—STEWART & CO., LTD. *v.* THE AMLA, [1929] 4 D. L. R. 719; Ex. C. R. 192.—**CAN.**

sp. *Attachment to found jurisdiction—Both parties domiciled outside jurisdiction—Res within jurisdiction.*]—Where a co. alleged that it intended to bring an Admlty. action *in rem* for damage occasioned to its vessel through the negligent handling of resp. co. whilst in the territorial waters of the Union, & it appeared that both the cos. were domiciled outside the Union, the attachment of the vessel was ordered, such order to be suspended on security being provided in an amount greater than the sum claimed as damages.—S.S. KERATOS *v.* S.S. FABIAN, [1921] C. P. D 148.—**S. AF.**

PART III. SECT. 1, SUB-SECT. 2.—A. (b).

st. *Malâ fide arrest—Abuse of process of court—Rights of other claimants.*]—A ship was arrested at the suit of a member of a firm. His independent claim for wages as a "ship's carpenter on board the ship," was in fact only a part of his firm's claim, & immediately after the ship was arrested his firm's action was instituted:—*Held:* these facts so obviously disclosed *mala fides* & an abuse of the process of the ct. that the arrest could be viewed as a sham proceeding & as not having any legal existence as regards the firm, but other claimants could support their suits on its existence in fact, because in good faith they instituted their suits relying upon the records of the ct. which on their face showed that its jurisdiction could be invoked.—ERIKSEN BROTHERS *v.* THE MAPLE LEAF, [1923] 4 D. L. R. 1201; [1923] Exch. C. R. 39; 31 B. C. R. 443; [1923] 1 W. W. R 76.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3.—A.

a i. —— —— *Court without jurisdiction.*]—In the absence of jurisdiction existing by law, the filing of an appearance & the giving of bail by deft. do not give jurisdiction to the ct. in a proceeding *in rem*. Jurisdiction is not a matter of procedure & cannot be derived from the consent of parties.—MULVEY *v.* THE BARGE NEOSHO (1919), 19 Exch. C. R. 1; 47 D. L. R. 437.—**CAN.**

a ii. —— —— ——.]—A mere technical objection to an informality or irregularity in procedure may be waived by appearance, by the giving of bail or by taking a step in the action; but if, in fact, the ct has no jurisdiction over the subject-matter of the claim, no delay on the part of deft. & no step in the action taken by him can give the ct. jurisdiction.—HARRIS ABATTOIR CO. *v.* ALEDO (OWNERS), [1923] 4 D. L. R. 1196; [1923] Exch. C. R. 217.—**CAN.**

764 iii. ——.]—In Admlty. where deft. wishes to raise an objection to the jurisdiction of the ct. in a case where the ct. has jurisdiction over the subject-matter, he should appear under protest whether the action be *in rem*, or *in personam*.—BURKE *v.* THE AMLA (1929), 4 D. L. R. 873; Ex. C. R. 194.—**CAN.**

P. 119; 89 L. J. P. 141; 124 L. T. 383; 15 Asp. M. L. C. 153.

Effect of Maritime Conventions Act, 1911 (c. 57), *see, generally*, SHIPPING.

768a. Appearance by person interested—Position of intervener.]—THE BYZANTION, No. 248a, *ante*.

768b. Undertaking to appear—Sale of ship—Effect on undertaking.]—THE RING, No. 781d, *post*.

780. *Add. Annotations:*—**Refd.** The Consul Olsson, [1920] P. 43; The Castor (1932), 48 T. L. R. 604.

780a. —— —— ——.]—THE SAN ONOFRE, No. 780b, *post*.

780b. —— —— **Effect of contractual arrangement between owner & charterer.**] — (1) The Admlty. marshal appraised a salved steamship at the sum of £369,841. On an application to vary or set aside the appraisement on the ground that the ship had been appraised at her market value instead of at her value to her owners, which, owing to the fact that she had been chartered to time charterers at a low rate of hire in 1914 for a period which did not expire until 1930, was less than £160,000:—*Held:* for purposes of appraisement of a salved vessel contractual arrangements between the owners & charterers are immaterial, & the marshal's valuation was properly arrived at & was based on the right principle.

(2) The general rule is that an appraisement by the marshal is conclusive, & it is only in very exceptional cases that an application to vary or set aside the appraisement will be allowed.—THE SAN ONOFRE, [1917] P. 96; 86 L. J. P. 103; 116 L. T. 800; 14 Asp. M. L. C. 74.

Annotations:—As to (2) **Consd.** The Consul Olsson, [1920] P. 43. *Generally*, **Refd.** The Castor (1932), 48 T. L. R. 604.

781a. Nature of bail.]—THE BORRE, No. 781b, *post*.

781b. Undertaking to put in bail—Afterwards withdrawn—Effect of subsequent arrest of vessel.] —On June 22, 1920, defts.' solrs. gave an undertaking to enter an appearance & put in bail in respect of a writ *in rem* claiming damages in respect of loss by collision. In consequence defts.' vessel was not arrested. On Feb. 17, 1921, defts.' solrs. wrote to pltfs.' solrs. that their clients were unable to make arrangements for bail, that accordingly the undertaking for bail was withdrawn, & that, as the vessel was within the jurisdiction of the ct., pltfs. could arrest her. Pltfs.' solrs. arrested the vessel, but wrote to defts.' solrs. that they reserved all their clients' rights under the undertaking for bail. On Mar. 16, 1921, the vessel was appraised as being at that time of a value of £600. Defts. provided bail in that sum & the vessel was released. On Apr. 12, pltfs. applied for an order that defts.' solrs. should forthwith provide good & sufficient bail, pursuant to their undertaking. It appeared that in June, 1920, the value of the vessel was much in excess of £600, & pltfs. estimated her value at £4,500:—*Held:* (1) the undertaking to give bail could not be withdrawn by substituting the vessel for the bail; (2) pltfs. had not waived their rights under the undertaking by arresting the vessel; (3) defts.' solrs. must complete their undertaking by putting in bail to the value of the vessel as on June 22, 1920; (4) nature of bail discussed.—THE BORRE, [1921] P. 390; 91 L. J. P. 1; 125 L. T. 576; 37 T. L. R. 668; 55 Sol. Jo. 715; 15 Asp. M. L. C. 334.

781c. —— **When value of ship ascertained.**]—THE BORRE, No. 781b, *ante*.

781d. —— **Sale of ship—Effect on undertaking.**]—In June, 1930, a firm of Norwegian shipowners, being threatened with an action *in rem* by cargo owners in respect of damage & short delivery, to avoid arrest of the ship, instructed their solrs. to give an undertaking to accept service, appear & provide bail. No writ was issued, the ship left the jurisdiction, & when she returned several months later she was encumbered with liens. On Jan. 6, 1931, she was sold by order of the ct. On Mar. 2 the solrs. took out an originating summons, & moved the ct. for an order that they were no longer bound by their undertaking. On Mar. 14 the cargo owners issued their writ *in rem*, but the solrs. refused to accept service pending the hearing of the motion:—*Held:* the undertaking, which was plain in its terms, enabled the ship to leave the jurisdiction without being arrested, & the fact that she was subsequently sold was immaterial; there had not been undue delay in issuing the writ having regard to all the circumstances; & the solrs. remained bound by their undertaking.—THE RING, [1931] P. 58; 100 L. J. P. 118; 145 L. T. 166; 47 T. L. R. 384; 18 Asp. M. L. C. 238.

781e. Liability limited to amount of bail—No second action if bail insufficient—Action in personam — For interest & costs.] — THE JOANNIS VATIS (No. 2) No. 706a, *ante*.

781f. Benefit of bail—Action in name of cargo owners—Some owners not joining in proceedings.]—The steamships *W.* & *J.* came into collision & the *W.* & her cargo were damaged. Before the issue of the writ an undertaking to put in bail to the amount of £100,000, had been given on behalf of the owners of the *J.* The writ was in the names of "The owners of the steamship *W.* & cargo *v.* the owners of the steamship *J.*," but at that time no authority from any of the cargo owners had been received. While the litigation was proceeding the owners of the *W.* asked the various underwriters on the cargo, subrogated to the rights of the respective cargo owners, to join in the proceedings or share in the costs. Some assented & some declined. The litigation proceeded to the House of Lords, where the *J.* was held alone to blame. The sum of £100,000 being insufficient to satisfy all the claims, the owners of the *W.* contended that having sued as owners of the ship & bailees of the cargo they were entitled to receive the whole of the bail for which the undertaking had been given, pay themselves the amount of their

own damage as shipowners in priority to all other claimants, & that the non-assenting cargo owners had no right to share in the fund :—*Held :* (1) although, as bailees of the cargo, the shipowners were entitled to recover the full value of the damage to the cargo, represented by the bail, they must account to all the owners of the damaged parcels of cargo for their share ; (2) it was the duty of the ct., when the bail was recovered, to see that all persons having a claim on the fund, including the non-assenting cargo owners, shared in the distribution.—THE JOANNIS VATIS, [1922] P. 92 ; 91 L. J. P. 182 ; 126 L. T. 718 ; 15 Asp. M. L. C. 506, C. A.

731g. —— **Several salvage actions.**]—A vessel which had stranded on rocks & sustained heavy damage got off with the assistance of various salvors & was placed in dock for temporary repairs. In respect of these services various salvage actions & an action by the ship repairers for salvage &/or necessaries were instituted. No defence was put in, but in the first action an appearance was entered & an undertaking given to put in bail for ship, cargo & freight in the sum of £1,000. The cargo & freight were valued at £327. Before the other actions were instituted the cargo had been landed & dispersed. After some temporary repairs had been effected the vessel was sold by the marshal. She only realised £889 :—*Held :* the bail for cargo & freight did not constitute a fund in which all the salvors could share ; the undertaking was given in one action only, & pltfs. in that action, in which the total values were £1,217, could treat $\frac{327}{1217}$ of £1,000 as bail representing the cargo & freight.—THE RUSSLAND, [1924] P. 55 ; 93 L. J. P. 18 ; 130 L. T. 763 ; 40 T. L. R. 232 ; 68 Sol. Jo. 324 ; 16 Asp. M. L. C. 288.

781h. **Amount of bail—Value of ship & freight—Limit of liability—Facts disputed by plaintiffs.**] — If, in an action of damage by collision, the amount for which the action is brought exceeds the statutory limit provided by M. S. Act, 1894 (c. 60), s. 503, deft. shipowners on filing an affidavit in the damage action stating the tonnage of their ship & that the collision happened without their actual fault or privity, will, if these facts are not denied by pltf. shipowners, be entitled to have the ship released on bail being given to an amount sufficient to cover the statutory limit, together with interest & costs. But if pltfs. dispute the facts on which the right to limit liability depends, bail must be given to the full value of defts.' ship.—THE CHARLOTTE, [1920] P. 78 ; 89 L. J. P. 62 ; 123 L. T. 685 ; 36 T. L. R. 204 ; 64 Sol. Jo. 276 ; 15 Asp. M. L. C. 98.

781j. **Effect of bail — Release of ship.**] — THE POINT BREEZE, No. 706b, *ante*.

796. *Add. Annotation :*—**Refd.** The Consul Olsson, [1920] P. 43.

806. *Add. Annotation :*—**Refd.** The Joannis Vatis (No. 2), [1922] P. 213.

808. *Add. Annotation :*—**Consd.** The Joannis Vatis (No. 2), [1922] P. 213.

810. *Add. Annotation :*—**Refd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369.

829. *Add. Annotation :*—*As to* (1) **Distd.** Bradley *v.* Newsom. [1919] A. C. 16.

831. *Add. Annotation :*—**Refd.** The Edison, [1932] P. 52.

834. *Add. Annotation :*—*As to* (1) **Refd.** The Joannis Vatis (1921), 91 L. J. P. 182.

837. *Add. Annotations :*—*As to* (1) **Refd.** Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255. *As to* (2) **Refd.** New York Life Insce. *v.* Public Trustee, [1924] 2 Ch. 101.

839. *Add. Annotation :*—**Refd.** The Fagernes, [1926] P. 185.

840. *Add. Annotation :*—**Refd.** The Fagernes, [1926] P. 185.

842. *Add. Annotation :*—**Refd.** The Fagernes, [1926] P. 185.

843. *Add. Annotations :*—*As to* (1) **Refd.** Reading Trust *v.* Spero, Spero *v.* Reading Trust, [1930] 1 K. B. 492. *As to* (2) **Refd.** Johnson *v.* Taylor, [1920] A. C. 144.

843a. —— —— —— ——.]—A British ship, coming down the Elbe, came into collision with another British ship, which, in turn, came into collision with a German vessel. The agents at Hamburg of the first British ship & the owners of the German vessel exchanged letters of guarantee ; but the owners of the German vessel did not commence legal proceedings in Germany against the owners of the two British ships until after the owners of the first British ship had commenced an action *in personam* in this country against the owners of the other British ship & the owners of the German vessel. On an application to discharge an order giving the owners of the first British ship leave under R. S. C., Ord. 11, r. 1 (*g*), to serve notice of the writ on the owners of the German vessel out of the jurisdiction :—*Held :* the order ought not to have been made, for there had not been any unreasonable delay on the part of the owners of the German vessel in following up, by legal proceedings, the original cross letters of guarantee.—THE HAGEN, [1908] P. 189 ; 77 L. J. P. 124 ; 98 L. T. 891 ; 24 T. L. R. 411 ; 52 Sol. Jo. 335 ; 11 Asp. M. L. C. 66, C. A.

Annotations :—**Refd.** The Fagernes, [1926] P. 185 ; Schintz, *Re*, Schintz *v.* Warr, [1926] Ch. 710.

855. *Add. Annotation :*—**Refd.** The Cretetorest, [1920] P. 111.

856a. ——.]—(1) In a consolidated salvage action the tender by defts. of a lump sum to answer several claims of salvors is a valid tender ; but, where defts. have adopted this course, they run the risk that the ct. may hold that it was reasonable for pltfs. to proceed to trial although the tender is upheld.

In a consolidated salvage suit where the owners of two tugs, separately owned, joined in one writ, & the masters & crews in another,

PART III. SECT. 1, SUB-SECT. 5.—B.

828 i. *Property deteriorating—Appearance by absent defendant.*]—SIMMS *v.* HODDERN (1818), 1 Nfld. L. R. 93.—NFLD.

PART III. SECT. 3, SUB-SECT. 1.

82. *Joinder of actions in rem & in personam—Propriety of.*]—ATLANTIC COAST S.S. Co. *v.* MONTREAL TRANSPORTATION Co. & THE MARY ELLEN, MONTREAL TRANSPORTATION Co. *v.* THE BUCKEYE STATE (1909), 12 Exch. C. R. 429.—CAN.

defts. tendered a lump sum which the ct. upheld, but as defts.' affidavit of values was only handed to pltfs. on the day of the trial :— *Held :* (2) pltfs., the tug owners, who had been given the conduct of the consolidated action, were entitled to their costs ; (3) the interests of the masters & crews being identical with those of the owners, the masters & crews were not entitled to be separately represented at the expense of defts. Observations on the desirability, except in very special circumstances, of masters & crews joining in one action with the owners.—THE CRETEFOREST, [1920] P. 111 ; 89 L. J. P. 136 ; 123 L. T. 591 ; 36 T. L. R. 367 ; 15 Asp. M. L. C. 48.

857. *Add. Annotation :*—**Refd.** The Creteforest, [1920] P. 111.

864. *Add. Annotation :* —**Refd.** The Creteforest, [1920] P. 111

874a. —— —— ——.]— THE SHEAF BROOK, No. 565a, *ante.*

876. After this case add :—
Exercise of jurisdiction by all Divisions.]— *See, now,* Administration of Justice Act, 1928 (c. 26), s. 6.

876a. Transfer by Court of Appeal—Necessity for consent of Presidents of both Divisions.]— THE SHEAF BROOK, No. 565a, *ante.*

890. *Add. Annotation :—As to* (1) & (2) **Consd.** The El Oso (1925), 133 L. T. 269.

892. *Add. Annotation :—As to* (1) & (2) **Expld.** The El Oso (1925), 133 L. T. 269.

893. *Add. Annotation :*—**Refd.** The El Oso (1925), 133 L. T. 269.

894a. Action between parties whose vessels have not been in collision with each other.] Where the parties to a damage action are the owners of vessels which have not been in collision with each other the practice as to requiring preliminary acts under R. S. C., Ord. 19, r. 28, is a matter for the discretion of the ct. In such cases the proper course is that there should be the communication between the solrs. which commonly takes place in admlty. cases, & that the solrs. should ascertain whether the parties are ready to file preliminary acts under Ord. 19, r. 28. If both parties are not ready to deliver preliminary acts, or one of them declares himself unable or unwilling, then the matter should be raised by summons. If in such a case an order is made for preliminary acts to be filed, such order is not properly complied with by the party whose vessel has not been in collision filing a blank preliminary act.— THE EL OSO (1925), 133 L. T. 269; 16 Asp. M. L. C. 530.

Annotation :— **Consd.** The Carlston & The Balcombe, [1926] P. 82.

894b. Who entitled to — Co-defendant.] — A collision took place between the *C.* & the *B.*, & subsequently the *C.* collided with pltfs.' vessel. Pltfs. issued a writ *in rem* against the owners of the *C.*, & the usual preliminary acts were filed by both parties. In their defence the owners of the *C.* blamed the *B.*, & pltfs. added the owners of the *B.* as second defts. Thereupon the owners of the *C.* obtained an order that the owners of the *B.* should forthwith file a preliminary act :— *Held :* (1) the only parties entitled as against second defts. to a preliminary act were pltfs., & they would be so entitled when they had filed a preliminary act against second defts. ; first defts. were not entitled to require second defts. to file a preliminary act unless they chose to become pltfs. & issue a writ against second defts., & the order must be set aside ; (2) if it were a matter of discretion, the guiding principle, that of mutuality, would be infringed by the order made, as second defts. would be bound by a preliminary act which they had filed, & the parties at whose instance it had been filed would not be bound, as against second defts., by the judgment in the present action.—THE CARLSTON. THE BALCOMBE, [1926] P. 82 ; 95 L. J. P. 51 ; 134 L. T. 766 ; 42 T. L. R. 312 ; 17 Asp. M. L. C. 33.

897a. —— **Course & speed of vessel.**]—In cases of collisions between ships at anchor it is not sufficient in answer to par. 7 of the preliminary act, which asks the course & speed of the vessel when the other was first seen, to reply " at anchor." The heading of the vessel should also be given.—THE MACROOM (1927), 137 L. T. 418 ; 71 Sol. Jo. 472; 17 Asp. M. L. C. 288.

908. *Add. Annotation : — As to* (1) **Distd.** The Woodarra *v.* Admiralty (1921), 66 Sol. Jo. 183.

914a. —— **Raising new claim—Effect of.**]—THE HIGHLAND GLEN (1927), 164 L. T. Jo. 480, C. A.

916. *Add. Annotation :*—**Distd.** The Woodarra *v.* Admiralty (1921), 66 Sol. Jo. 183.

936. *Add Citation :—on appeal* (1853), 8 Moo. P. C. C. 482 P. C.

952. *Add Annotation :* —**Refd.** The San Onofre (1922), 92 L. J. P. 17.

969. *Add. Annotation :* — **Refd.** The Saxicava, [1924] P. 131

969a. —— **Action stayed, discontinued or dismissed—Counterclaim raised in correspondence.**]—A notice of counterclaim contained in correspondence passing between pltf.'s & deft.'s solrs. is not sufficient to " set up " a counterclaim within R. S. C., Ord. 21, r. 16, so that the counterclaim may be proceeded with if pltf.'s action is stayed, discontinued or dismissed.

The counterclaim must at least be set up by some proceeding which is either directed by or recognised by the rules & in respect of which there is a record on the files of the ct.— THE SAXICAVA, [1924] P. 131 ; 93 L. J. P. 60 ; 131 L. T. 342 ; 40 T. L R. 334 ; 68 Sol. Jo. 366; 16 Asp. M. L. C. 324, C. A.

970a. —— ——.]—Two foreign vessels, a barque & a ship, came into collision, when the barque was sunk. The ship was arrested in a cause of damage by the owners of the barque, & when the cause was ready for hearing, the owners of the ship commenced a cross action against them, to which they gave no appearance. On a motion to dismiss the original action unless an appearance & bail were

8a. *Object.*]—The object of a preliminary act is to obtain a statement *recento facto* of the circumstances, to prevent parties shaping their case to meet the one put forward by the other at trial.— LE BLANC *v.* THE EMILIEN BUREK (1919), 19 Exch. C. R. 24 ; 46 D. L. R. 59.—CAN.

given by the owners of the barque :—*Held :* the barque being sunk, the ct. had no jurisdiction to compel the owners to give bail, & must reject the motion.—THE CARLYLE (1858), 30 L. T. O. S. 278 ; 6 W. R. 197.

Annotation :—**Refd.** Chapman *v.* Royal Netherlands Steam Navigation Co. (1879), 4 P. D. 157.

979a. **Consolidated salvage action.**]—THE CRETEFOREST, No. 856a, *ante*.

979b. -.]—I had occasion, recently, when trying a salvage action in which there had been a tender, to express my view that the fact that the amount of the tender was made known to the ct. before it had determined its award hampered the ct. in its judicial capacity ; & that it was better, if a tender were made, that the amount of the tender should not be made known to the ct. until it had exercised its judicial discretion in arriving at what would be a reasonable sum to award, because the question of costs, a serious one, depends upon whether the amount of the award is or is not in excess of the tender. . . . Having expressed my view as to what I thought to be advisable, namely, that the amount should not be stated in the defence, the case of the *U. C.* has arisen, a salvage case, & is now before me on summons ; & I thought it desirable, in view of what has taken place, that my view upon this question should be stated publicly, so that it might be recorded for the information of all concerned. I have thought it right, as I have suggested a variation of what has apparently been the custom & practice of this ct., to speak to the President about it, & he agreed with my view of the case, that putting the amount into the defence in a salvage action was embarrassing to the judge. Upon inquiry, however, it appears that this is such a very old practice, that in the President's view it is not advisable to alter it. The result is that I make no alteration in the existing practice, & dismiss the appeal summons (BARGRAVE DEANE, J.).—THE UPTON CASTLE, [1912] W. N. 84.

1001. *Add. Annotation :*—**Refd.** The Creteforest, [1920] P. 111.

1001a. —— **Tender of lump sum—Consolidated salvage action.**]—THE CRETEFOREST, No. 856a, *ante*.

1023. *Add. Annotations :*—**Apld.** *Re* Bjornstad & Ouse Shipping Co., [1924] 2 K. B. 673. **Refd.** The Tervaete (1922), 128 L. T. 176 ; Duff Development Co. *v.* Kelantan Government, [1923] 1 Ch. 385 ; Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797.

1027a. -.]—Pltfs.' & defts.' vessels came into collision & both received damage. Pltfs. brought an action *in rem* against defts., "the owners of the steamship *N.*" Defts. counterclaimed, & applied to pltfs. for security to answer the counterclaim. Security was given, but on pltfs. making a similar application defts. refused to give security on the ground that the *N.* was owned by the French Govt., & was not subject to arrest :—*Held :* the ct. had no power to order security to be given or, in default thereof, to stay defts.' counterclaim.—THE NEPTUNE, [1919] P. 17 ; 88 L. J. P. 94.

1032. *Add. Annotation :*—**Refd.** The Joannis Vatis (No. 2), [1922] P. 213.

1046. *Add. Annotation :*—**Refd.** The Shropshire 1922), 127 L. T. 487.

1047a. —— **For disposing fairly of cause—For saving costs.**]—The owners of the steamship *N.*, one of two ships found jointly to blame in a collision action, limited their liability & paid the amount into ct. Claims against the fund were in due course filed by the owners of the *N.* & the owners of the other ship, the *S.*, & also by the owners of cargo on the *S.* The same solrs. presented the claims on behalf of the owners of both ships. The owners of cargo on the *S.*, who were not parties to the collision action, then sought leave to administer four interrogatories to the owners of the *S.* Nos. 1 & 2 asked whether there had been, as between the owners of the two ships, a mutual abandonment of claim or a settlement on other terms. No. 3 inquired whether there had been any assignment of the claim of the owners, master, & crew of the *S.* ; & No. 4 asked by whom the particular solrs. were instructed to present the claim of the owners of the *S.* The registrar allowed Nos. 1 & 2, but disallowed Nos. 3 & 4. On appeal by both sides :—*Held :* the first three interrogatories were necessary either for disposing fairly of the cause or matter or for saving costs, within R. S. C., Ord. 31, r. 2, & must be allowed. No. 4 was not pressed.—THE NEDENES (1924), 41 T. L. R. 243.

1062a. —— **Confidential report by master.**]—Defts., the Port of London Authority, arranged with their underwriters that, in all cases of claims for collision in which their vessels were concerned, the management of the claim should be put in the hands of certain solrs. Defts. directed that a report on a printed form headed "Confidential report for the information of the Authority's solr." should be made by the master of the vessel.

PART III. SECT. 8, SUB-SECT 2.—A.

998 ii. —— *Rejection of tender—Acceptance of increased tender after amendment of claim at trial.*]—In an action for salvage services, pltf. claimed $20,000 & in his statement of claim such amount of salvage remuneration as to the ct. might seem meet. The defence was delivered on Mar. 17, when deft. paid into ct. $2,000 & tendered it to pltf., who rejected it. Pltf. at the trial applied for leave to amend to set up an additional claim. The amendment was made, & deft. increased his tender to $4,000, which was accepted : —*Held :* (1) deft. should in any event have the costs of & consequent upon the amendment granted at the trial ; (2) as to the accepted tender, the increased tender must be regarded as having been made & accepted on Mar. 17, & all the costs subsequent to that tender should be borne by pltf. ; (3) the circumstances were not quite sufficient to deprive pltf. of costs before tender.—THE PASCHENA *v.* THE GRIFF, [1925] 2 W. W. R. 676.—**CAN.**

PART III. SECT. 9, SUB-SECT. 1.

8b. *Plaintiff resident out of jurisdiction —Foreign ship.*]—Where pltf. is resident out of the jurisdiction & his ship is a foreign one, security for costs may be ordered, even at an advanced stage of the action & though the delaying in applying therefor is unaccounted for, in the absence of any prejudice to the other side occasioned by such delay.—WRANGELL *v.* THE STEEL SCIENTIST, [1924] 3 D. L. R. 49 ; [1924] Exch C. R. 136 ; 2 W. W. R. 493 ; 34 B. C. R. 114.—**CAN.**

PART III. SECT. 10, SUB-SECT. 1.—A. (a).

8c. *Examination for discovery—In lieu of interrogatories—When ordered—Use of*]—While an examination for discovery may be ordered by the judge as a matter of convenience, in place of the delivery of interrogatories, especially where the opposite party is in ignorance of the facts, such examination cannot be read as evidence at the trial.—POINT ANNE QUARRIES *v.* S.S. M. F. WHALEN (1921), 68 D. L. R. 627 ; 20 Exch. C. R. 483.—**CAN.**

The report was subsequently passed through various departments in defts.' offices until it reached the solr.'s hands. It was then dealt with by the solr. in the course of his professional conduct. A report was made in these circumstances by the master of a vessel belonging to defts. in respect of a collision with pltfs.' vessel. Pltfs. claimed to have this report produced to them:—*Held:* the report having been obtained for the solr., in the sense of being procured as materials upon which professional advice should be taken in proceedings pending or threatened or anticipated, it was privileged from production. —THE HOPPER No. 13, [1925] P. 52; 94 L. J. P. 45; 132 L. T. 736; 41 T. L. R. 189; 16 Asp. M. L. C. 473, D. C.

Annotations:—**Distd.** The City of Baroda (1926), 134 L. T. 576. **Refd.** Ankin *v.* London & North Eastern Ry. Co., [1930] 1 K. B. 527.

1062b. —— Officers' reports.]—Pltfs. claimed for short delivery of certain parcels of bristles, in respect of which they were holders of bills of lading, loaded at Shanghai upon defts.' steamship. Defts. denied liability alleging that the loss was due to pilferage by an organised band of thieves. Defts. had called for reports from the first, second, third, & fourth officers of the steamer, in order to investigate the question of the management of the vessel & the conduct of their officers in the prevention of theft, which reports were in due course obtained through defts.' agents in China. Defts. claimed that these reports were privileged from discovery:—*Held:* (1) the reports were not privileged. (2) Observations upon the form & contents of an affidavit claiming privilege from discovery for deponent's documents.—THE CITY OF BARODA (1926), 134 L. T. 576; 70 Sol. Jo. 1044; 17 Asp. M. L. C. 27.

Annotation:—**Refd.** Ankin *v.* London & North Eastern Ry. Co., [1930] 1 K. B. 527.

1075. For "For full anns., *see* PRACTICE & PROCEDURE," read "*Add. Annotation:*—*As to* (1) **Refd.** Dawson *v.* Shepherd (1880), 42 L. T. 611."

1078a. Taking evidence on commission—Discouraged.]—THE AUGUSTA (1909), 26 T. L. R. [illegible]

1107a. [illegible]-.]—Where suits of rival salvors come on for hearing at the same time the right to begin must depend upon the circumstances of each case.—THE WILLEM III. (1871), L. R. 3 A. & E. 487; 25 L. T. 386; 1 Asp. M. L. C. N. S. 129.

1112a. Right of reply.]—Allowed in all cases.—THE RJUKAN (1866), 14 W. R. 973.

1114a. —— Damage due to collision.] — In an action of damage by collision the *onus* of proving that damage directly flows from deft.'s negligence causing the collision is on pltf.; & the dicta in *The Mellona* (1847), 3 Wm. Rob. 7, 13; *The Pensher* (1857), Sw. 211, & similar cases, to the effect that where damage follows a collision the presumption is that the damage is the result of the collision, unless deft. proves the contrary, must not be taken as laying down a principle, but as having reference only to the particular circumstances of those cases, where the damage, stranding, so obviously followed on the collision that it *primâ facie* was to be regarded as a consequence of the negligence causing the collision.—THE PALUDINA, [1925] P. 40; 132 L. T. 724; 16 Asp. M. L. C. 453, C. A.; *affd. sub nom.* S.S. SINGLETON ABBEY *v.* S.S. PALUDINA, [1927] A. C. 16; 17 Asp. M. L. C. 117, H. L.

Annotation:—**Refd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369.

1152a. Log of defendants' vessel—Right of plaintiffs to put in—After admission of facts by defendants.]—Defts. to an action of salvage by their defence admitted that all pltfs. had rendered salvage services & that the allegations of the facts of such services set out in the respective statements of claim were in substance correct, but they denied that the various inferences sought to be drawn from those facts were accurate or well founded, & that their vessel was ever in any real danger. They also pleaded certain soundings which differed from those pleaded by certain of pltfs. Pltfs. by their reply joined issue upon the defence save in so far as the same consisted of admissions:—*Held:* pltfs. were entitled to put in the logs of defts.' vessel with a view to proving that the ship was in real danger, & also a graphic representation of the soundings based on sketches in defts.' log, but not to call evidence as to the facts, *e.g.* the displacement of certain tugs.—THE WOODARRA (1921), 38 T. L. R. 160; 66 Sol. Jo. 183.

1152b. Oral evidence dispensed with—Salvage—Amount in dispute small—Discretion of court.]—In a case where salvage services had been requisitioned & the amount in dispute was small, by agreement the case was tried on the pleadings & statements of the witnesses, no oral evidence being called & the attendance of the Elder Brethren being dispensed with:—*Held:* the course taken was a mode of procedure useful to the shipping world, & one for which the ct. would endeavour to give proper facilities, the power of the ct. being, of course, discretionary.—THE RIVER FISHER (1923), 39 T. L. R. 233.

PART III. SECT. 11, SUB-SECT. 1.

sd. *Proof of claim—Right to proceed ex parte—Order for sale of res.*]—PAUL *v.* THE AMY TURNER, [1922] V. L. R. 740.—**AUS.**

PART III. SECT. 14, SUB-SECT. 3.—A.

se. *Log books—Independent log kept by mate.*]—*Held:* not admissible.—R. *v.* THE AINOKO (1894), 4 Exch. C. R.

sf. *Manuscript notes made by master.*]—In the circumstances rejected as evidence as part of the ship's log. —THE ANDREW KELLY *v.* THE COMMODORE, [1919] 1 W. W. R. 1059; 19 Exch. C. R. 70; 48 D. L. R. 213.—**CAN.**

sk. *Salvage action—Attendance of master & crew.*]—It is proper to have the master & crew before the ct. in an action for salvage.—JOHNSON & MACKAY *v.* S.S. CHARLES S. NEFF (1918), 18 Exch. C. R. 168.—**CAN.**

PART III. SECT. 14, SUB-SECT. 3.—B. (e).

sm. *Evidence of persons on boom—Collision.*]—Action by pltf. to recover damages suffered by it by reason of deft.'s ship coming into collision with one of its booms of logs:—*Held:* it is next to impossible for one on a moving vessel, unless he is in a position to see her from stem to stern & at the same time maintain a complete & commanding view of the shore, to follow the course, speed or evolutions in the manœuvres of a vessel; & pltf.'s witnesses being some on the boom & some on land overlooking the *locus* of the accident were in a better position to follow the course of the vessel than were those on board the same.—VANCOUVER ORIENT EXPORT CO., LTD. *v.* THE ANGLO-PERUVIAN, [1931] Ex. C. R. 127.—**CAN.**

sn. *Evidence of navigators—Collision—Greater weight than evidence of outsiders.*]—ODFJELL A/S *v.* S.S. VESUVIO & SOCIETA ANONIMA PER L'INDUSTRIA E IL COMMERCIO MARITIMO *v.* S.S. OLDER, [1930] Ex. C. R. 207; [1931] 2 D. L. R. 34.—**CAN.**

1167. Before this case insert "*See, further,* EVIDENCE, Vol. XXII., p. 94."

1185a. —— **Photographs — Calculation as to locality of collision—Absence of expert evidence.**]—In an action arising out of a collision in Sydney harbour between the ships *C. & St. A.*, there were in evidence three photographs, taken from a third moving ship, showing the colliding ships just before. during, & after the collision, with the frontage of the harbour as background. The point in the harbour at which collision occurred was material. The trial judge, basing his judgment solely upon the other evidence in the case, held that the *St. A.* was to blame. The appellate ct. gave the owners of that ship leave to adduce upon an appeal by them the evidence of three land surveyors based upon the photographs. They used the alignment of pairs of objects which they identified in the backgrounds to fix the position of the camera when each photograph was taken, & then by reference to the background localised the collision. These results were shown by a diagram. The appellate ct., accepting the result so arrived at, reversed the decision of the trial judge, stating, however, that apart from the new evidence they agreed with it:—*Held:* the skill or science needed to produce an accurate result by the process adopted was not that of a land surveyor, & in the absence of expert evidence the reversal of the decision of the trial judge was not warranted.—UNITED STATES SHIPPING BOARD *v.* THE ST. ALBANS, [1931] A. C. 632; 100 L. J. P. C. 73; 144 L. T. 601; 47 T. L. R. 245; 18 Asp. M. L. C. 196, P. C.

1187. For "For full anns., *see* PLEADING," read "For full anns., *see* EVIDENCE."

1196. *Add. Annotation:* — **Refd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

1198a. —— —— **Between assessors advising lower court & appellate court—Duty of appellate court.**]—In a case in which there has been a difference of opinion between the nautical assessors advising the respective cts., the Ct. of Appeal is not bound to pay more attention to the opinion of its own assessors than to that of those who advised the ct. below. The assessors occupy much the same position as do skilled witnesses, & if they differ the ct. must make its own choice. In every case the responsibility is with the ct., which has to make up its mind alike on questions of nautical skill & on the value of the advice given upon them.—AUSTRALIA (OWNERS) *v.* NAUTILUS (OWNERS),, THE AUSTRALIA [1972] A. C. 145; 95 L. J. P. 145: 135 L. T. 576; 42 T. L. R. 614; 32 Com. Cas. 82; 17 Asp. M. L. C. 86, H. L.

Annotations:—**Folld.** The Tovarisch, [1930] P. 1: The Otranto, [1930] P. 110. **Refd.** Hall *v.* British Oil & Cake Mills (1930), 23 B. W. C. C. 529.

1198b. —— —— —— ——.] — ARTEMISIA (OWNERS) *v.* DOUGLAS (OWNERS) (1925), [1927] A. C. 164, H. L.

Annotation:—**Consd.** Australia (Owners) *v.* Nautilus (Cargo Owners), [1927] A. C. 145.

1198c. —— —— —— ——.]—We are the judges, & we are to regard the gentlemen who assist us, & the gentlemen who assisted the judge below, as witnesses, & we are to form our opinion, as judges, on the combined evidence of the four witnesses, & not take the view that because the two witnesses whom we see contradict the two witnesses whom we have not seen; we should follow the witnesses whom we see rather than the witnesses whom we do not see (SCRUTTON, L.J.).—THE TOVARISCH, [1930] P. 1; 99 L. J. P. 23; 142 L. T. 372; 46 T. L. R. 125; 18 Asp. M. L. C. 58, C. A.; *affd. on other grounds,* [1931] A. C. 121, H. L.

1198d. —— —— —— ——.]—My duty is to exercise my own judgment, paying due regard to the advice given by the Elder Brethren in the ct. below as well as to that given to us by our assessors (LAWRENCE, L.J.).—THE OTRANTO, [1930] P. 110; 99 L. J. P. 82; 142 L. T. 544, C. A.; *revsd. on other grounds,* [1931] A. C. 194, H. L.

1199. *Add. Annotation:* — **Consd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

1200a. Presence of — Dispensed with — Salvage action — Amount in dispute small.] — THE RIVER FISHER, No. 1152b, *ante.*

1201. *Add. Annotation:* — **Refd.** Australia (Owners) *v.* Nautilus (Owners), [1927] A. C. 145.

1204. *Add. Annotation:*—**Refd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

1206. *Add. Annotation:*—**Refd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

1224. *Add. Annotation:—As to* (2) **Refd.** The Disperser, [1920] P. 228.

1237a. —— **Action against two separate parties—One party only held to blame—Costs of plaintiff.**]—(1) A pltf. who, being in reason-

PART III. SECT. 14, SUB-SECT. 4.—A.

1196 iii. —— ——.]—Two ships collided on a very bad night. The collision was caused by the *M.*, which was light, dragging her anchors, & coming down on the *R.*, which was holding to her moorings. When the *M.* was dragging her anchors she had steam up but did not use it, by which failure she omitted to take a reasonable measure which might have avoided the accident. In an action for damages by the *R.* against the *M.* there was uncontradicted evidence to the effect that the steam had not been used because those in charge of the *M.* did not & could not know owing to the darkness & the weather that they were dragging their anchors. The Lord Ordinary, without expressing any opinion as to whether he credited that evidence or not, accepted an opinion expressed by the nautical assessor to the effect that it would not have been difficult for those on the *M.* to know that they were dragging their anchors: —*Held:* it was for the Lord Ordinary & not for the nautical assessor to pronounce upon the trustworthiness of that evidence, & to say whether or not the master of the *M.* ought to have known when his anchor began to drag, &, on the ground that the evidence did not establish the fault, the *M.* assoilzied.—CAMBO SHIPPING CO., LTD. (ROSSETTI (OWNERS)) *v.* DAMPSKIBSSELSKABET MAGNUS, [1920] S. C. 26; 57 Sc. L. R. 59.—**SCOT.**

1201 iii. —.]—*Held:* evidence of experiments with water in a lock without any steamer being in it was of the nature of expert evidence, & as the ct. had the assistance of a nautical assessor to advise upon any matters requiring nautical or other professional knowledge, such expert evidence was inadmissible.—FRASER *v.* S.S. AZTEC (1920), 20 Exch. C. R. 39.—**CAN.**

1201 iv. —.]—In Admlty. cases where the ct. has the assistance of nautical assessors, evidence involving questions of nautical skill & experience is not admissible.—PACIFIC STEAM NAVIGATION CO. (BOGOTA (OWNERS)) *v.* ANGLO NEWFOUNDLAND DEVELOPMENT CO., LTD. (ALCONDA (OWNERS)), [1923] S. C. 526; 60 Sc. L. R. 333.—**SCOT.**

sl. *Duty of judge to keep note of questions submitted to & answers given by nautical assessor—Nautical Assessors (Scotland) Act,* 1894 (c. 40), s. 3.]—S.S ROWAN *v.* S.S. CLAN MALCOLM, [1923] S. C. 317.—**SCOT.**

able doubt as to which of two parties has been negligent, sues both parties & fails against one, is entitled to add the costs which he has to pay to the successful deft. to his costs against the unsuccessful deft., notwithstanding that the unsuccessful deft. has not put the blame upon the other. But if he brings separate actions, unless he acts reasonably in so doing, he will not be allowed the costs of two actions. (2) Similarly, if one of defts. sets up a counterclaim against pltf. & the other deft. & fails against pltf., he is entitled to recover from deft. against whom he succeeds the costs which he has to pay pltf.—THE SVEIN JARL (1923), 129 L. T. 255; 16 Asp. M. L. C. 159.

Annotation:—**Distd.** The W. H. Randall, [1928] P. 41.

1237b. —— —— —— ——.]—THE THAMES III. & THE K. B. S. (1928), 166 L. T. Jo. 52.

1258. *Add. Annotation:*—**Refd.** The Joannis Vatis (No. 2), [1922] P. 213.

1261. *Add. Annotation:*—**Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

1262. For "*see* S. C. No. 1266, *post*," read "*see* S. C. No. 131, *ante*."

1267a. Unnecessary intervention in mortgagees' action—Liability for costs.]—THE ATHENIC (1931), 48 T. L. R. 158.

1277. *Add. Citation:—sub nom.* THE COMMODORE, 1 Ecc. & Ad. 175, n.

1280a. —— ——.]—THE INNISFAIL, THE SECRET (1876), 35 L. T. 819; 3 Asp. M. L. C. 337.

1283. *Add. Annotation:*—**Refd.** The Modica, [1926] P. 72.

1284. *Add. Annotation:*—**Consd.** The Modica, [1926] P. 72.

1284a. —— -.] — Although it has been the practice since the above Act to make no order as to costs in collision cases in which both vessels have been held to blame in unequal degrees, the ct. must be guided by the circumstances in each case. In a proper case it will feel itself at liberty to give to the party which is held to blame in the smaller degree such a proportion of that party's costs as on the particular facts appears just.—THE MODICA, [1926] P. 72: 95 L. J. P. 100; 135 L. T. 61; 17 Asp. M. L. C. 30.

Annotation:—**Refd.** The Young Sid, [1929] P. 109.

1284b. -Where defts. were three-fourths to blame & pltfs. one-fourth to blame, the ct. ordered defts. to pay one-half of pltfs.' costs.—THE ROBERT KOEPPEN, [1926] P. 81, n.

Annotation:—**Refd.** The Modica, [1926] P. 72.

1286. *Add. Annotation:*—The Modica, [1926] P. 72.

1286a. Neither to blame—Delay in commencing proceedings—Costs of claim to defendants—Costs of counterclaim to plaintiffs.]—Pltfs. & defts.' vessels, navigating without lights in accordance with Admlty. directions, came into collision & both received damage. The ct. held that there was no negligence on the part of either vessel, & gave judgment for defts. on the claim & for pltfs. on the counterclaim. On the question of costs:—*Held:* as nearly eighteen months had elapsed before pltfs. commenced proceedings, during which time defts. had taken no steps to recover their damages from pltfs., it appeared that there would have been no litigation if pltfs. had not issued their writ, &, therefore, there must be judgment for defts. on the claim with costs, & for pltfs. with costs on the counterclaim, & not, as contended by pltfs., no costs on either side.—THE CARDIFF HALL, [1918] P. 56; 87 L. J. P. 113; 119 L. T. 156; 14 Asp. M. L. C. 328.

1297a. -.]—THE HOPPER No. 21, [1903] W. N. 114.

1298a. **Unsuccessful counterclaim.**]—THE SVEIN JARL, No. 1237a, *ante*.

1298b. Costs of separate issues.]—In an action for damage by collision, in which defts. filed a defence & counterclaim, the question of negligence was first tried, & was decided against defts. Subsequently the question whether pltfs. had suffered any damage by reason of the collision was determined in favour of defts., for whom judgment was entered on the claim, judgment being entered for pltfs. on the counterclaim:—*Held:* although defts. were entitled to the general costs of the action, pltfs. must have the costs relating to the question of negligence, & the costs, if any, occasioned by the unsuccessful counterclaim.—THE ADAMS (1919), 88 L. J. P. 129.

1299. *Add. Annotation:*—**Refd.** The Modica, [1926] P. 72.

PART III. SECT. 16, SUB-SECT. 1.

1239 ii. —— —— ——.]—A master suing for wages & disbursements is bound to furnish accounts before bringing his action, otherwise he will not be entitled to his costs.—BURKE *v.* THE AMLA (1929), 4 D. L. R. 873; Ex. C. R. 194.—**CAN.**

PART III. SECT. 16, SUB-SECT. 3.—A.

bi. ——.]—GRAND TRUNK PACIFIC COAST S.S. CO. *v.* THE B.B. (1914), 17 D. L. R. 757; 15 Exch. C. R. 389; 6 W. W. R. 711.—**CAN.**

sm. *Expenses of bail bond—Not recoverable as costs.*]—The expense of procuring a bail bond incurred by an arrestee in order to liberate his ship, which had been arrested as a preliminary to an unsuccessful action *in rem*, cannot be charged against the opposite party, such expense not being part of the expenses of process.—ELLERMANS WILSON LINE, LTD. *v.* NORTHERN LIGHTHOUSES COMRS. 1920), 58 Sc. L. R. 29.—**SCOT.**

sn. *Awarded to salvors.*]—Where salvors of a ship arrested her as an initiatory step in an action *in rem* to recover the salvage due, they were allowed to recover the expenses of arresting the ship from her owners.—HATTON *v.* AKT. DURBAN HANSEN, [1919] S. C. 154; 56 Sc. L. R. 100.—**SCOT.**

so. *Fees of appraiser acting as marshal's substitute—Special arrangement.*]—THE PASCHENA *v.* THE GRIFF (1925), 36 B. C. R. 30.—**CAN.**

sb. *Possession fees—Marshal in possession under several warrants.*]—Where a marshal is in possession of a ship simultaneously under warrants issued in different actions, more than one set of possession fees will not be allowed.—SIMBACK *v.* THE SAGA, CARLSSON *v.* THE SAGA (1899), 6 B. C. R. 522.—**CAN.**

PART III. SECT. 16, SUB-SECT. 4.—A

1279 i. *Inevitable accident—Costs fol low event.*]—The rule as to costs in the same in the Exchequer Ct. of Canada in Admlty. as it is in the Admlty. Div. of the High Ct. in England, & costs follow the event, even in cases of inevitable accident, where no special circumstances require a departure from such rule.—THE JESSIE MAC *v.* THE SEA LION, [1919] 2 W. W. R. 411.—**CAN.**

1283 iii. —— ——.]—Where two vessels came into collision & both vessels were held to blame, no costs were granted to either party.—R. *v.* THE ARGYLLSHIRE, [1922] St. R. Qd. 186.—**AUS.**

1283 iv. —— ——.]—Where the ct. found that both parties were to blame:—*Held:* each delinquent should bear his own costs.—B. W. B NAVIGATION CO. *v.* THE KILTUISH, BARNET LIGHTERAGE CO. *v.* THE KILTUISH (1922), 67 D. L. R. 525; [1922] 2 W. W. R. 959.—**CAN.**

1300a. *S. P.* THE ELEANOR & NANCY (1837), 5 L. T. 241.

1304a. *S.P.* THE ARGO *v.* THE EMMA HEYN (1856), 5 L. T. 122.

1309. *Add. Annotation :-* **Refd.** The Modica, [1926] P. 72.

1351a. —— **Judgment for less than amount of offer refused by salvors.**]—THE HEDWIG (1853), 1 Ecc. & Ad. 19; 164 E. R. 11; *sub nom.* THE HÆDWIG, 17 Jur. 977.

1405a. —— —— —— **Expert evidence.**]—On a reference to assess the damage arising out of a collision the registrar & merchants are not bound to accept the opinions of experts, even though they be all one way, but are entitled to test those opinions by their own experience & bring their own judgment to bear upon the evidence.—THE STEADFAST (1922), 39 T. L. R. 96.

1406a. Reasons should be stated.]—(1) In cases of collisions in which foreign ships are involved, the report of the registrar should state the reasons which have actuated the tribunal in allowing or disallowing large amounts, in order that the foreign interests concerned may appreciate what has been done.

(2) The registrar & merchants are in very much the same position as a jury except that they give their reasons. So far as their reasons involve legal considerations they can be questioned. So far as they are findings of fact it takes a strong case to disturb them, but where it is clear that they have made mistakes or that the evidence does not support their conclusions, the ct. has always retained the power to alter their report, & it is obviously right that the ct. should maintain such a control (SCRUTTON, L.J.).—THE ST. CHARLES (1927), 138 L. T. 456; 17 Asp. M. L. C. 399, C. A.

1413. *Add. Annotation :*—**Refd.** The Kingsway, [1918] P. 344.

1422a. —— ——.]—THE ST. CHARLES, No. 1406a, *ante.*

1428. *Add. Citations :*—Brown. & Lush. 436; 34 L. J. P. M. & A. 113; 12 L. T. 619; 2 Mar. L. C. 221.

Add. Annotations :— **Consd.** The Thuringia (1871), 41 L. J. Adm. 20. **Refd.** The Kingsway, [1918] P. 344; Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369.

1433. *Add. Annotations :*—**Refd.** The Kingsway, [1918] P. 344; *Re* Mersey Docks & Admiralty Comrs., [1920] 3 K. B. 223; Admiralty Comrs. *v.* S.S. Valeria, [1922] 2 A. C. 242; Admiralty Comrs. *v* S S. Chekiang, [1926] A. C. 637; Admiralty Comrs. *v.* S.S. Susquehanna, [1926] A. C. 655.

1439. *Citation :*—For "[1916] A. C. 38," read "[1917] A. C. 38."

1447. *Add. Annotation :*—**Apld.** The Young Sid, [1929] P. 190.

1452. *Add. Annotation :—As to* (1) **Refd.** Mersey Docks & Harbour Board *v.* Hay, [1923] A. C. 345.

1471. *Add. Annotation :*—**Refd.** The Young Sid, [1929] P. 190.

1478. *Add. Annotation :*—**Refd.** The Glenfinlas [1918] P. 363, n.

1482. *Add. Annotation :*—**Refd.** The Rosalind (1920), 90 L. J. P. 126.

1483a. ——.]—While on hire by the Admlty. a steam trawler was sunk through a collision with the *R.* The value of the trawler was agreed between the parties, but the Admlty. claimed, as bailees in possession, to recover as part of their damages interest from the date of the loss. The owners of the *R.* contended that interest was only payable from the date when the Admlty. paid the value of the trawler to her owners :—*Held :* under the Admlty. rule a bailee in possession was entitled to recover from a wrongdoer a complete equivalent of the chattel deteriorated or lost, namely, its value at the time of the deterioration or loss, with interest from that date; but, inasmuch as there was an agreement between the parties that defts. should pay what the Admlty. had to pay to the owners of the trawler, interest on that payment only ran from the date of payment.—THE ROSALIND (1920), 90 L. J. P. 126; 37 T. L. R. 116.

1484. *Add. Annotation :*—**Refd.** The Joannis Vatis (No. 2), [1922] P. 213

1489a. —— —— **Claim by foreign Government.**]—(1) By Finnish law 2½ per cent. of the sale price of a Finnish vessel sold out of Finnish

PART III. SECT. 16, SUB-SECT. 5.—A. (a).

1322 i. *General costs — Excessive claim.*]—In a suit claiming remuneration for salvage services rendered, the claim was excessive & the case was such as to warrant a small award only. The ct. made an award of £25 in favour of pltfs., & ordered defts. to pay the costs of the suit. On a subsequent application for directions, the ct. refused to exercise its discretion & to make a special order for costs.—STUART *v.* COLUMBIA RIVER (1921), 21 S. R. N. S. W. 674.—**AUS.**

1323 iii. —— ——.]—Salvors arrested a ship against which they were claiming salvage amounting to £47,500, & they refused to release the ship except upon obtaining security to the extent of £37,500. The arresters ultimately obtained decree for £4,800 as salvage, with modified expenses against defenders, but they were found liable in the expense incurred by defenders in obtaining security in excess of £8,000 :—*Held :* the arresters were rightly found liable for the expense of obtaining security in excess of £8,000.—ST. CLAIR *v.* AUDNEY, [1922] S. C. 85.—**SCOT.**

si. *Costs of arrest.*]—Where salvors of a ship arrested her as an initiatory step in an action *in rem* to recover the salvage due, they were allowed to recover the expenses of arresting the ship from her owners.—HATTON *v.* AKT. DURBAN HANSEN, [1919] S. C. 154; 56 Sc. L. R. 100.—**SCOT.**

PART III. SECT. 17, SUB-SECT. 2.—C. (c).

1437 i. *Correction of report—Registrar proceeding on wrong principle.*]—CANADIAN VICKERS CO., LTD. *v.* THE SUSQUEHANNA (1919), 18 Exch. C. R. 210; 44 D. L. R. 716.—**CAN.**

PART III. SECT. 18, SUB-SECT. 2.

1480 i. *Awarded from date of loss.*]—Interest in Admlty. cases will be calculated on the damages allowed from the date of the collision; & on payments made in respect of wages, & payments made by reason of the collision, from the dates of such payments.—CANADIAN DREDGING CO. *v.* NORTHERN NAVIGATION CO. (Ont.), [1924] Exch. C. R. 163.—**CAN.**

sq. *Work done—From date of rendering bill.*]—In the Admlty. Ct., in an action to recover for work done & material supplied, the ct. will allow interest from the time of rendering of the bill after completion, in the absence of legal excuse for non-payment.—WINSLOW MARINE RY. & SHIPBUILDING CO. *v.* THE PACIFICO, [1924] 2 D. L. R. 190; [1924] Exch. C. R. 90; 1 W W. R. 930; 34 B. C. R 1; *on appeal, sub nom.* THE PACIFICO *v.* WINSLOW MARINE RAILWAY & SHIPBUILDING CO., [1925] 2 D. L. R. 162.—**CAN.**

PART III. SECT. 18, SUB-SECT. 3.

st. *Sale of ship—By marshal—Not licensed as auctioneer—Right to fees.*]—The marshal, though not licensed as an auctioneer, is entitled to a double fee on the gross proceeds in selling a vessel at auction by order of ct.—HERNANDEZ *v.* THE BAMFIELD (1921), 21 Exch. C. R. 166; 30 B. C. R. 161; [1921] 3 W. W. R. 69.—**CAN.**

nationality is taken by the Finnish Govt.: *Held:* the Finnish Govt. had no claim upon the proceeds of sale of a Finnish ship sold by the marshal under the powers of the ct. in a default action *in rem*.

(2) A party moving for payment out in a default action *in rem* must give notice to all persons who have intervened or entered *caveats*, & if persons wish to resist an application for payment out they must intervene or enter *caveats*, otherwise they are not entitled to be heard.—THE EVA, [1921] P. 454; 91 L. J. P. 17; 126 L. T. 223; 37 T. L. R. 920; 15 Asp. M. L. C. 424.

1492. *Add. Annotation:—Generally,* **Refd.** The Stream Fisher, [1927] P. 73.

1492a. —— **After postponement—Decrease in value of ship—Liability of intervener causing postponement to give further security.**]—In a mtge. action *in rem* pltfs., mtgees., in Jan. 1925, recovered judgment by default condemning the ship & ordering her sale by the marshal. Thereupon certain charterers, to whom the mtgors. had chartered the ship for a term of years, intervened, claiming a declaration that the charterparty was binding on the mtgees.; & by an order of Mar. 3 the sale of the ship stood over pending the trial of the issue, upon the interveners giving security in an amount satisfactory to the registrar for loss arising from delay & any loss on sale due to a fall in shipping values. On July 15 the ct. gave judgment that pltfs. were not bound by the charterparty, that they were entitled to the judgment they had obtained, & that the costs of & occasioned by the intervention should be paid by the interveners. On Oct. 14 the ship was sold by the marshal for £20,000 less than she had been valued at nine months previously. Pltfs. took out a summons for further security:—*Held:* although judgment had been given against the interveners & they were not appealing against that decision, the matter was still at large, as they were contesting pltfs.' claims before the registrar, & the interveners could be ordered to give further security in respect of possible loss of capital & interest & for the marshal's expenses; the case must be referred to the registrar to find what amount should be given & what was the amount of pltfs.' damages under each head.—THE LORD STRATHCONA (No. 2), [1926] P. 18; 95 L. J. P. 108; 134 L. T. 511; 17 Asp. M. L. C. 24.

1493. *Add. Annotations:*—**Consd.** The Kronprinz Olav, [1921] P. 52. **Refd.** Mersey Locks & Harbour Board *v.* Hay, [1923] A. C. 345.

1493a. —— **Unascertained liability—Right of court to delay distribution.**]—THE KRONPRINZ OLAV, No. 1551a, *post*.

1496. *Add. Annotation:*—**Consd.** The Stream Fisher, [1927] P. 73.

1497a. —— **Motion for payment in default action—Necessity for notice.**]—THE EVA, No. 1489a, *ante*.

1497b. —— **Damage to ship whilst under arrest—Payment of damages into court—Cross-claim for damages for breach of charterparty.**]—A vessel whilst under arrest in a necessaries action was damaged by the negligent navigation of another vessel belonging to a party who had recovered judgment for damages for breach of charterparty in an action in the county ct. Liability for the damage to the extent of £21 12*s.* was admitted. On a motion by pltfs. in the necessaries action for payment out of the proceeds, the owners of the vessel which had caused the damage claimed to deduct £21 12*s.* by way of set-off for such damage from their claim in respect of the judgment recovered in the county ct.:—*Held:* claimants could not credit themselves with £21 12*s.*, but must pay that sum into the fund in ct.—THE MAGGIE A. (1923), 155 L. T. Jo. 191.

1497c. **Priorities—Several collisions.**]—Where there has been more than one collision with the same vessel the maritime liens arising thereout, apart from laches, rank *pari passu* & not in the order of the dates of the respective collisions.—THE STREAM FISHER, [1927] P. 73; 96 L. J. P. 29; 136 L. T. 189; 17 Asp. M. L. C. 159.

Maritime liens generally, *see* SHIPPING.

1499. *Add. Annotations:—As to* (2) **Refd.** The Joannis Vatis (No. 2), [1922] P. 213; The Point Breeze, [1928] P. 135.

1500. *Add. Annotations:—As to* (2) **Refd.** The Joannis Vatis (No. 2), [1922] P. 213; The Point Breeze, [1928] P. 135.

1501. *Add. Annotation:*—**Refd.** The Joannis Vatis (No. 2), [1922] P. 213.

1502. *Add. Annotation:*—**Refd.** The Joannis Vatis (No. 2), [1922] P. 213.

1504. *Add. Annotations:*—**N.F.** The Volant (1842), 1 Wm. Rob. 383. **Consd.** The Mary Caroline (1848), 6 Notes of Cases, 536. **Refd.** The Mellona (1848), 3 Wm. Rob. 16; The Benares (1850), 14 Jur. 581; The Milan (1861), 5 L. T. 590.

1505. *Add. Annotation:*—**Refd.** The Point Breeze, [1928] P. 135.

1507. *Add. Annotation:*—**Refd.** The Joannis Vatis (No. 2), [1922] P. 213.

1508. *Add. Annotation:*—**Refd.** The Joannis Vatis (No. 2), [1922] P. 213.

1519a. Expenses of witnesses—Though not called.]—Where a charge for the attendance of such a witness was allowed, because counsel in advising on evidence thought that the witness was necessary:—*Held:* that was a dangerous ground on which to proceed, & one upon which an allowance or disallowance ought not to be founded.—THE LORD STRATHCONA (No. 3), [1926] W. N. 270, C. A.

1520a. —— **Measure of compensation.**]—While it has always been the practice, owing to the nature of their calling, to allow seafaring witnesses to be detained on shore to give

PART III. SECT. 18, SUB-SECT. 4.

1495 iv. —— *Claim by assignee of foreign shipowner.*]—After sale of a ship & payment of all costs & charges there remained in ct. a balance to the credit of the ship. On an application for payment out by a resident of Vancouver, who claimed to be the assignee of the reputed owner who lived in California:—*Held:* the application should be adjourned & published in Victoria & Vancouver by notice & advertisement for one month, the notice to be posted in the registry & served upon the collector of customs & the American Consul at Vancouver.—THE SPEEDWAY (1925), 35 B. C. R. 319.—**CAN.**

PART III. SECT. 19, SUB-SECT. 1.

sw. *Allowance of items not in Table of Fees.*]—THE PASCHENA *v.* THE GRIFF, [1927] 2 D. L. R. 757; [1927] Exch. C. R. 92; [1927] 1 W. W. R. 515; 38 B. C. R. 240.—**CAN.**

evidence, & to allow them reasonable compensation for their detention, it is a question for the taxing master whether a party who seeks to charge his opponent with the cost of detaining an expensive witness has acted reasonably in incurring the expense or whether he ought not to have examined the witness on commission.

A taxing master should bear in mind that a witness duly summoned is bound to attend, & the witness is not entitled to receive, as the measure of his compensation, the exact sum he may prove he has lost by reason of the detention. He is, however, entitled to some compensation, & not merely to the conduct money given him with his *subpœna*; & the wages he is earning may afford an important indication of what is fair compensation. But although this is correct in the case of seamen, as regards captains & other officers, as in the case of professional witnesses, their earnings cannot be taken as a fair criterion on which to base the allowance.—THE IBIS VI, [1921] P. 255; 90 L. J. P. 289; 125 L. T. 378; 37 T. L. R. 557; 65 Sol. Jo. 514; 15 Asp. M. L. C. 237, C. A.

Annotation:—**Expld.** The Ibis VI (No. 2), [1922] P. 4.

1520b. —— ——.]—The mate of pltfs.' fishing vessel, through being detained ashore for twenty-five days to give evidence at the trial of a collision action, was prevented from sailing on a voyage on which he would have earned £280 as his share of the catch. Pltfs., who were successful in the action, paid the witness the £280, &, on taxation, the assistant-registrar allowed the item in pltfs.' bill of costs as chargeable against defts. Defts. appealed, & the matter ultimately went to the Ct. of Appeal, which laid down certain guiding principles as to allowances to witnesses & sent the case back for reassessment. On reconsideration the assistant-registrar allowed the sum of £250, & defts. again appealed:—*Held*: the assistant-registrar had properly applied the directions given by LORD STERNDALE, M.R., in which WARRINGTON, L.J., concurred, namely, that the amount to be awarded should be "the reasonable compensation to a person of the class of the witness, taking into account all the circumstances & considering the wages which the witness was earning about the time of detention not as an absolute measure, but an important indication & guide of what is fair. The fact that all persons are under an obligation to give evidence when called upon should also not be ignored." The appeal therefore failed.—THE IBIS VI (No. 2), [1922] P. 4; 91 L. J. P. 44; 126 L. T. 256; 38 T. L. R. 55; 15 Asp. M. L. C. 427.

1520c. Substitute for witness.]—The expenses of a substitute to join a vessel from which a witness is necessarily taken are not allowable on taxation as a matter of course.—THE MASSILIA, [1926] P. 180; 95 L. J. P. 109; 135 L. T. 671; 42 T. L. R. 551; 17 Asp. M. L. C. 109

1521a. Costs of obtaining statements from independent witnesses—Discontinuance of action.]—In a collision action, before pltfs. had filed their preliminary act or statement of claim, defts. took statements from independent witnesses on other vessels. Pltfs. shortly afterwards discontinued the action. On the taxation of defts.' bill of costs the assistant registrar disallowed the costs of obtaining these statements, on the ground that there was "a well-settled principle of taxation that a party is only entitled as against his opponent to incur such costs or expenses as will enable him to conduct his case at the stage which the proceedings have reached, & not incur expenses in anticipation of matter, which, as events turn out, never arise":—*Held*: R. S. C., Ord. 65, r. 27 (29), was not limited in the way stated by the assistant registrar; if solrs. could compel the discontinuance of an action by collecting the necessary evidence, they were entitled to do so, & the costs in question were not prematurely incurred, & defts. were entitled to recover them from pltfs. on taxation.—THE CHANNEL QUEEN, [1928] P. 157; 97 L. J. P. 97; 139 L. T. 336; 44 T. L. R. 505; 17 Asp. M. L. C. 484.

1521b. Fee of average adjusters — Numerous claims.]—On a reference to assess damages arising out of a collision, the claims of cargo owners against the fund paid into ct. by the owners of the wrongdoing ship, who had limited their liability, were presented to the registrar in the form of an average statement. On taxation, a fee of £1,000 was allowed to the average adjusters in respect of the preparation of the claims. On a summons to review this item:—*Held*: where, as in the present case, there were a number of claims to be dealt with, an average statement was a method of proof to which there was no objection in principle, involving as it did less expense than would be incurred in the preparation of many affidavits or in calling a number of witnesses from overseas; it was irrevelant that the claimants had employed the same adjusters to prepare their claims in general average against underwriters; & the fee of £1,000 was rightly allowed.—THE NORMANSTAR, [1929] P. 283; 98 L. J. P. 152; 141 L. T. 463; 45 T. L. R. 554; 18 Asp. M. L. C. 53.

1526. *Add. Annotation*:—**Expld.** The Ibis VI, [1921] P. 255.

1527. *Add. Annotation*:—**Expld.** The Ibis VI, [1921] P. 255.

1536a. —— **"To persons claiming to have sustained damage"—Appearance at trial—Right to be heard.**]—In an action of limitation of liability pltfs., the owners of the steam tug *H.*, addressed their writ in the usual manner: "To the owners of the steamship *D.* & all other persons claiming to have sustained damage by reason of the collision or collisions between the *H.* & her tow & the *D.* on the morning of Jan. 2, 1921." Notice of the action was inserted in the press. At the trial the owners of the steamship *T.*, who claimed to have sustained damage by reason of the collision or collisions between the *H.* & her tow & the *D.*, appeared by counsel & claimed to be heard. The owners of the *T*

PART III. SECT. 20, SUB-SECT. 1.

ex. *Rate of interest.*]—In the absence of any rule in this State governing the rate of interest in cases to which Merchant Shipping Act, 1894, s. 503, apply, the practice of the Admlty. Ct. in England must be followed.—THE MILLIMUMUL (1929), 30 S. R. N. S. W. 461; 47 N. S. W. W. N. 170, 191.—AUS.

had commenced an action against pltfs., but had taken no step other than appearance at the trial in the limitation suit :—*Held :* the writ made the owners of the *T.* parties to the action, & was served upon them by insertion in the press.—CORY LIGHTERAGE, LTD. *v.* DALTON (OWNERS), THE HARLOW (1922), 153 L. T. Jo. 121.

1538. *Add. Citation :*—4 Asp. M. L. C. 27, n.
Add. Annotation :—**Refd.** The Vigilant, [1921] P. 312.

1541a. —— —— **Waiver of.**]—In an action of limitation of liability under M S. Act, 1894 (c. 60), s. 503, pltfs. did not file the usual affidavit verifying their statement of claim. The owners & crew of the vessel injured in the collision. in respect of which judgment had been given against pltfs. in the previous action, & some cargo owners appeared by counsel at the trial & consented to a decree of limitation :—*Held :* a decree might be granted without requiring pltf. to file the usual affidavit.—THE COIMBRA (1923), 130 L. T. 512 ; 16 Asp. M. L. C. 288.

1544. *Add. Annotation :—As to* (2) **Refd.** Mersey Docks & Harbour Board *v.* Hay, [1923] A. C. 345.

1547. *Add. Annotation :—As to* (2) **Refd.** Mersey Docks & Harbour Board *v.* Hay, [1923] A. C. 345.

1548. *Add. Annotation :—As to* (2) **Consd.** The Coaster (1922), 91 L. J. P. 145.

1548a. —— —— ——.]—Pltf. in an action of limitation of liability, who has paid to claimants a sum in satisfaction of a liability arising out of the collision, is under M. S. Act, 1894 (c. 60), s. 503, entitled, in respect of such payment, to share ratably with other claimants in the distribution of the limitation fund, even though such payment has been enforced by action in a foreign ct.—THE COASTER (1922), 91 L. J. P. 145 ; 127 L. T. 153 ; 38 T. L. R. 511 ; 15 Asp. M. L. C. 560.

1551a. —— **Unascertained liability — Right of plaintiffs in limitation suit to claim against fund.**]—In Feb. 1917, two Norwegian vessels, the *C.* & the *O.*, came into collision & the *C.* sank. In Mar. 1917, the owners of the cargo laden on board the *C.* began an action against the owners of the *O.* in the Admlty. Ct. The action was heard in May, 1919, when both vessels were pronounced to blame, & accordingly it was adjudged that pltfs. were entitled to receive a moiety of the amount of their damage from defts. Thereupon defts., the owners of the *O.*, commenced a limitation action against the owners of the *C.*, the owners of her cargo, & all persons claiming to have received damage by reason of the collision. This action was heard in Feb. 1920, when a decree was pronounced limiting the liability of the owners of the *O.* to £8 per ton on the registered tonnage of the *O.* calculated in accordance with M. S. Act, 1894 (c. 60). The decree provided that all claims were to be brought in within three months & that claims not so brought in would be excluded from sharing in the limitation fund. Claims were filed by the owners of the cargo on the *C.*, but although the owners of the *C.* entered an appearance they took no further steps in the limitation proceedings. Meanwhile, however, in Feb. 1919, the owners of the *C.* had commenced an action in Norway against the owners of the *O.* & in June, 1920, when the reference was held in the limitation proceedings & the registrar made his report, the trial of the Norwegian action was still pending. The owners of the *O.* accordingly took out a summons asking that the report be not confirmed & that they might have leave to file a claim against the fund in respect of any liability they might incur under the Norwegian proceedings. The judge declined to postpone the distribution of the fund & dismissed the summons. Pltfs., the owners of the *O.*, appealed :—*Held :* (1) pltfs. had no absolute right under the limitation sects. of M. S. Act, 1894 (c. 60), to have the distribution of the fund stayed & to bring forward a claim when ascertained ; (2) limitation proceedings do not contemplate claims by pltfs., & the owners of the *O.* could not file a claim against the fund in their own right ; (3) had an application been made in proper form the ct. would have had a discretion to extend the time before distributing the fund, in order to allow pltfs. to ascertain their liability under the pending Norwegian judgment & to apply to the ct. to adjust the distribution of the fund so that pltfs. might obtain credit for the amount payable under the Norwegian judgment; but, having regard to the lapse of time & to the fact that limitation proceedings contemplate that claims shall be brought in promptly & the distribution of the fund not be unreasonably delayed, the ct. had rightly exercised its discretion in refusing to postpone the distribution of the fund.—THE KRONPRINZ OLAV, [1921] P. 52 ; 90 L. J. P. 398 ; 125 L. T. 684 ; 15 Asp. M. L. C. 312, C. A.

Annotation :—As to (3) **Consd.** The Coaster (1922), 91 L. J. P. 145.

1553a. —— ——.]—The usual rule by which the successful pltfs. in a limitation suit are required to pay the costs should not be departed from, notwithstanding that the litigation has been much more expensive than is usual in limitation actions by reason of the issues raised by defts. Nor ought pltfs. to recover their costs of giving bail in excess of the amount of their statutory liability.—CHARLOTTE (OWNERS) *v.* THEORY (LATE) (OWNERS), THE CHARLOTTE (1921), 153 L. T. Jo. 69.

1553b. *S. P.* THE KATHLEEN (1925), [1927] P. 63, n. ; 69 Sol. Jo. 574.

1554. Delete " For full anns., *see* PRACTICE & PROCEDURE."

Part IV.—Appeals.

1581. *Citations :*—For " (1878) " read " (1877)."

1596. For "**No appeal**" read "**Right of appeal.**" *Add. Annotation :*—**Consd.** The Royal Star (1927), 97 L. J. P. 49.

1597a. —— **Master censured but certificate not dealt with.**]—A master, who has been censured in respect of a casualty to his ship by a colonial ct. of inquiry, but has not had his certificate (British) cancelled or suspended, probably has a right of appeal under M. S. Act, 1894 (c. 60), s. 478, but certainly has the right under M. S. Act, 1906 (c. 48), s. 66, as being " a person having an interest " in the inquiry, who has appeared at the hearing, & is " affected by the decision of the ct."—THE ROYAL STAR, [1928] P. 48; 97 L. J. P. 49; 138 L. T. 558; 44 T. L. R. 163; 17 Asp. M. L. C. 417, D. C.; *subsequent proceedings*, [1928] P. 144, D. C.

1599. After this case add :—

——.]—*See* Shipping Casualties & Appeals & Re-hearing Rules, 1923, r. 20H.

1600a. ——.]—A British master holding a Board of Trade certificate received a notice of investigation calling upon him to appear before a Wreck Comr.'s Ct. appointed " to inquire into the causes which led to the casualty [the stranding of his vessel] & into all the facts connected therewith." The notice contained no other statement of the questions intended to be raised, & no charges were specifically formulated against the master before or at the inquiry that he was in fault in connection with any of the matters on which he was examined. The ct. found the master guilty of an error of judgment in taking wrong helm action & in failing to stop & take soundings, & suspended his certificate for three months. The master appealed :—*Held :* the master, having had no notice of the charges on which he had been found in fault, had not had an opportunity of making his defence, & the decision of the Wreck Comr.'s Ct. must be quashed & the certificate restored free from suspension.—THE CHELSTON, [1920] P. 400; 90 L. J. P. 77; 124 L. T. 223; 36 T. L. R. 688; 15 Asp. M. L. C. 158, D. C.

1603a. —— ——.]—THE THROSTLEGARTH (1899), cited, [1906] P. at p. 312.

Annotation :—**Consd.** The Carlisle, [1906] P. 301.

1603b. -.]—THE GRECIAN (1902), [1928] P. 146, n., D. C.

1604a. —— —— **Preliminary motion—As to right of appeal.**]—The governor of a colony ordered an inquiry to be held into the stranding of a British ship. The ct. found the master guilty of negligence & severely censured him, but did not deem it necessary to deal with his certificate. The master served notice of appeal on the Board of Trade, but the Board took the view that no appeal lay unless the officer's certificate had been suspended or cancelled. A motion to determine, as a preliminary point, the question of the right to appeal was decided by the Div. Ct. in the master's favour, & at the subsequent hearing of the appeal the master was held not to have been guilty of the acts of negligence attributed to him :—*Held :* (1) as a matter of principle, as the Board of Trade had not ordered the inquiry, & merely appeared on the appeal in discharge of a public duty, costs ought not to be awarded against the Board; (2) the question of the right to appeal, contested by the Board, raised a matter of public interest, & the master was entitled to the costs of the preliminary motion.—THE ROYAL STAR (No. 2), [1928] P. 144; 97 L. J. P. 107; 44 T. L. R. 408; 17 Asp. M. L. C. 417, D. C.

1610. *Add. Annotation :*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

1611a. —— —— **Costs.**]—THE YOUNG SID, No. 1696a, *post.*

1613a. —— **Appeal out of time—Discretion of court to extend time—Objection that appeal out of time not taken promptly.**]—Where an appeal from a decision confirming the report of the registrar & merchants in an action of damage by collision was out of time :—*Held :* as the objection that the appeal was out of time had not been taken at the earliest possible moment, the ct. would, in its discretion, hear the appeal.—THE OTTOKAR, [1921] W. N. 266, C. A.

Annotation :—**Apld.** London S.S. & Trading Corpn. *v.* Russian Volunteer Fleet (1926), 135 L. T. 607.

1620a. —— —— **Advice to be in writing.**]—Where the Ct. of Appeal sits with nautical assessors it is convenient that the advice of the assessors should be elicited by written questions, so that these questions & the answers may be available in the House of Lords.—MELANIE (OWNERS) *v.* SAN ONOFRE (OWNERS) (1919), 35 T. L. R. 507; 63 Sol. Jo. 552; [1927] A. C. 162, n.; *subsequent proceedings*, [1925] A. C. 246, H. L.

1622. *Add. Annotation :*—**Refd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

1635. *Add. Annotations :*—**Consd.** *Re* Article X of Articles of Agreement for Treaty between Great Britain & Ireland (1928), 45 T. L. R. 57; *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 243.

PART IV. SECT. 2, SUB-SECT. 1.

1612 i. *Who can appeal—Collision—Both vessels to blame.*]—*Held :* where a judgment holds both vessels to blame for a collision, & where each party is actively claiming against the other for damages, it is open to each to appeal from such judgment by a separate & distinct appeal. In such a case each must serve notice of appeal & give security to the other for costs of his appeal.—CANADA ATLANTIC TRANSIT CO. *v.* EASTERN SS. CO., LTD. (Ont. Adm.), [1928] Ex. C. R. 60.—**CAN.**

PART IV. SECT. 4, SUB-SECT. 1.

aa. *In estimating weight of evidence—Witnesses not heard in court below.*]—Where the trial judge did not hear or see the witnesses, an appellate ct. is as competent to appreciate the facts & estimate the credibility of the evidence as the ct. of first instance.—CANADIAN VICKERS CO., LTD. *v.* THE SUSQUEHANNA (1919), 19 Exch. C. R. 116; 48 D. L. R. 461.—**CAN.**

ab. —— *Witnesses heard in court below.*]—Where the local judge in Admiralty has seen & heard the witnesses & was assisted by two assessors, the Exchequer Ct. of Canada, sitting as a ct. of appeal, should not interfere with the decision of the judge of first instance as regards pure questions of fact, unless it is firmly of the opinion that such decision is clearly erroneous.—FRASER *v* S.S. AZTEC (1920), 20 Exch. C. R. 39; 56 D. L. R. 440; (1921), 20 Exch. C. R. 450; 63 D. L. R. 543.—**CAN.**

1640. *Add. Annotation :*—**Refd.** Hontestroom (Owners) *v.* Sagaporack (Owners), Hontestroom (Owners) *v.* Durham Castle (Owners) (1926), 95 L. J. P. 153.

1642. *Add. Annotation :*—**Refd.** Hontestroom (Owners) *v.* Sagaporack (Owners), Hontestroom (Owners) *v.* Durham Castle (Owners) (1926), 95 L. J. P. 153.

1642a. —— ——.]—Observations of LORD SUMNER on the practice of the Ct. of Appeal in reviewing decisions of the Admlty. Ct. depending on the credibility of witnesses.—S.S. HONTESTROOM *v.* S.S. SAGAPORACK, S.S. HONTESTROOM *v.* S.S. DURHAM CASTLE, [1927] A. C. 37; 95 L. J. P. 153; 136 L. T. 33; 17 Asp. M. L. C. 123; *sub nom.* THE SAGAPORACK, THE HONTESTROOM, 42 T. L. R. 741. H. L.

Annotations :—**Consd.** Hoff Trading Co. *v.* De Rougemont (1929), 34 Com. Cas. 291. **Refd.** The Backworth, [1927] P. 256.

1644a. Decision of court below not interfered with —Joinder of plaintiffs convenient—& within rules locally applicable—Action in rem.]—MARLBOROUGH HILL, SHIP *v.* COWAN & SONS, No. 541a, *ante*.

1646. *Add. Annotations :*—**Apld.** The Kingsway, [1918] P. 344. **Refd.** Admiralty Comrs. *v.* S.S. Chekiang, [1926] A. C. 637; Admiralty Comrs. *v.* S.S. Susquehanna, [1926] A. C. 655.

1648. *Add. Annotations :*—**Refd.** Hontestroom (Owners) *v.* Sagaporack (Owners), Hontestroom (Owners) *v.* Durham Castle (Owners) (1926), 95 L. J. P. 153.

1649. *Add. Annotation :*—**Consd.** S.S. Hontestroom *v.* S.S. Sagaporack, S.S. Hontestroom *v.* S.S. Durham Castle, [1927] A. C. 37.

1655a. Failure to consider important matter —Maritime Conventions Act, 1911 (c. 57).]—Where a judge sitting in Admlty. has apportioned the blame between two wrongdoing vessels in accordance with sect. 1 of the above Act, the Ct. of Appeal, if it finds that he has not taken into consideration at all an obviously important matter, is bound to review his decision as to the apportionment of blame in the same way as it would if it had differed with him on the facts & had found that one of the vessels was more blameworthy as regards matters in respect of which she was not held to blame in the ct. below.—THE CLARA CAMUS (1925), 134 L. T. 50; 16 Asp. M. L. C. 570, C. A.; *revsd.* on other grounds (1926), 136 L. T. 291; 17 Asp. M. L. C. 171, H. L.

1682. *Add. Annotation :*—**Refd.** The Modica, [1926] P. 72.

1691. *Add. Annotation :—As to* (1) **Refd.** The Modica, [1926] P. 72.

1694. *Citations :*—For "P. D. 218" read "8 P. D. 218."

Add. Annotation :—**Refd.** The Modica, [1926] P. 72.

1695. *Citation :*—For "27 T. L. R. 1" read "27 T. L. R. 398."

Add. Citation :—on appeal, sub nom. HERO (OWNERS) *v.* LORD HIGH ADMIRAL OF UNITED KINGDOM (COMRS. FOR EXECUTING THE OFFICE OF), [1912] A. C. 300, H. L.

1695a. —.]—CANTON (OWNERS) *v.* RHESUS (OWNERS), [1928] W. N. 214; 31 Lloyd, L. R. 289, H. L.

Annotation :—**Expld.** The Young Sid, [1929] P. 190.

1696. *Add. Annotation :*—**Consd.** S.S. Canton *v.* S.S. Rhesus, [1928] W. N. 214.

1696a. —— —— —— ——.]—On appeal from a judgment in a collision action in which the judge of the county ct. had found both vessels to blame in the proportions of two-thirds & one-third, the Div. Ct. reversed the judgment to the extent of holding the vessels to blame in equal degrees, & appts were given the costs of the appeal. Resps. in the Div. Ct. appealed on the question of costs :—*Held :* by R. S. C., 1883, Ord. 65, r. 1, the question of costs is left in the unfettered discretion of the ct. or judge, & unless the judge can be shown to have taken into consideration matters which are immaterial to the issue his decision is unappealable.—THE YOUNG SID, [1929] P. 190; 98 L. J. P. 97; 141 L. T. 234; 45 T. L. R. 389; 18 Asp. M. L. C. 22, C. A.

1708. *Add. Annotations :*—**Apld.** The Young Sid (1928), 45 T. L. R. 138. **Refd.** The Young Sid, [1929] P. 190.

Part V.—Jurisdiction and Practice of other Courts having Admiralty Jurisdiction.

1710. *Add. Citation :*—14 Asp. M. L. C. 21.

1717. *Add. Citations :—sub nom. Re* PERFECT *v.* POYNTER, R. *v.* ESSEX COUNTY COURT JUDGE, 53 L. J. Q. B. 423; *sub nom.* R. *v.* ABDY, 32 W. R. 754.

1722. *Add. Annotation :*—**Apld.** The Norfolk Coast (1922), 153 L. T. Jo. 450.

1723a. —— ——.]—A collision took place in the Thames between the dumb barge *H.* & the steamer *C.* Proceedings were commenced by the owners of *H.* in the High Ct., but the action was subsequently settled, the owners of the *H.* accepting £48 10*s.* in satisfaction of their claim. Defts. objected to payment of pltfs.' costs on the High Ct. scale, on the ground that the matter was within the Admlty. jurisdiction of the county ct., where the action should have been commenced :—*Held :* pltfs. were warranted in commencing proceedings in the High Ct. & were entitled to have their costs taxed on the High Ct. scale.—THE NORFOLK COAST (1922), 153 L. T. Jo. 450.

PART IV. SECT. 4, SUB-SECT. 3.—A

1660 ß. —— —— ——.]—The amount of salvage reward is in the discretion of the ct., &, unless the same is excessive, an appellate tribunal ought not to interfere.—SHIP SENECA *v.* MACDONALD, [1923] Exch. C. R. 177; *affg.*, [1923] Exch. C. R. 13.—CAN.

Add. Annotation :—**Apld.** The Norfolk Coast (1922), 153 L. T. Jo. 450.

1750. *Add. Annotation :*—**Refd.** The British Trade, [1924] P. 104.

1751. *Add. Annotation :—As to* (2) **Refd.** The Ambatielos, The Cephalonia, [1923] P. 68.

1752. *Add. Annotation :*—**Refd.** The Ambatielos, The Cephalonia, [1923] P. 68.

1757. After this case add :—
See, now, County Courts Act, 1919 (c. 73), s. 13, Sched.

1766. *Add. Annotation :*—**Refd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

1789. After this case add :—
See, now, Liverpool Corporation Act, 1921 (c. lxxiv.), s. 260.

1794. *Add. Citation :*—13 Moo. P. C. C. 132 ; 15 E. R. 50.
Add. Annotation :—**Refd.** The Yuri Maru, The Woron [1927] A. C. 906.

1794a. —— **That of High Court before 1890.**]—(1) The effect of Colonial Cts. of Admlty. Act, 1890 (c. 27), s. 2 (2), is to limit the jurisdiction of colonial cts. of admlty. established under the Act to the admlty. jurisdiction of the High Ct. of England, as it existed at the passing of the Act ; the extension of the admlty. jurisdiction of the High Ct. by Jud. (Consolidation) Act, 1925 (c. 49). s. 22, does not apply to colonial cts. of admlty.
(2) The Exch. Ct. of Canada has not, under sect. 22 (1) (xii) of the above Act of 1925, jurisdiction *in rem* to try an action for damages for breach of a charterparty.—THE YURI MARU, THE WORON, [1927] A. C. 906 ; 43 T. L. R. 698 ; *sub nom.* SNIA VISCOSA SOCIETA, ETC. *v.* S.S. YURI MARU, CANADIAN AMERICAN SHIPPING CO. *v.* S.S. WORAN, 96 L. J. P. C. 137 ; 137 L. T. 747 ; 71 Sol. Jo. 649 ; 17 Asp. M. L. C. 322, P. C.

1795. *Add. Annotation :*—**Refd.** The Yuri Maru, The Woron, [1927] A. C. 906.

1798. *Add. Annotation :—As to* (2) **Refd.** Ellis *v.* Stenning (John) & Son, Ltd. (1932), 76 Sol. Jo. 232.

1799a. ——.]—THE VROUW DOROTHEA (1754), cited 2 Ch. Rob. at p. 246 ; 165 E. R. at p. 304.

1802. After this case add :—
——.]—*See* Colonial Courts of Admiralty Act, 1890 (c. 27), ss. 4, 7, *&c, now,* Statute of Westminster, 1931, s. 6.

1811a. —— **Action in rem for damages for breach of charterparty.**]—THE YURI MARU, THE WORON, No. 1794a, *ante.*

PART V. SECT. 5.

a i. —— *Plea of forum non conveniens.*]—Circumstances in which plea sustained.—SOCIÉTÉ DU GAZ DE PARIS *v.* SOCIÉTÉ ANONYME DE NAVIGATION "LES ARMATEURS FRANÇAIS," [1926] S. C. (H. L.) 13.—**SCOT.**

a ii. —— ——.]—SHEAF STEAMSHIP CO. *v.* COMPANIA TRANSMEDITERRANEA, [1930] S. C. 660.—**SCOT.**

ac. *Jurisdiction of Sheriff Court—Sheriff Courts (Scotland) Act,* 1907 (c. 51), *ss.* 4, 6.]—SHEAF STEAMSHIP CO. *v.* COMPANIA TRANSMEDITERRANEA, [1930] S. C. 660.—**SCOT.**

PART V. SECT. 7, SUB-SECT. 1.

c i. —— *Necessaries.*]—A claim for necessaries can be enforced in a colonial admiralty ct. by a suit *in rem.*—THE HEIWA MARU *v.* BIRD & CO. (1923), I. L. R. 1 Ran. 78.—**IND.**

PART V. SECT. 7, SUB-SECT. 2.

c (p. 253) **i.** —— ——.]—Although the Exch. Ct. of Canada on its Admlty. side sits in Canada, it administers the maritime law of England in like manner as if the cause of action were being tried & disposed of in the English Ct. of Admlty.—ROBILLARD *v.* THE ST. ROCH & CHARLAND (1921), 62 D. L. R. 145 ; 21 Exch. C. R 132.—**CAN.**

c (p. 253) **ii.** —— —— *Necessaries—Ship not "under arrest."*]—Where a ship is not under arrest & its owner is domiciled in Canada, the Exch. Ct. of Canada has no jurisdiction over an action for repairs or necessaries supplied to the ship.—STACK *v.* THE BARGE LEOPOLD (1919), 18 Exch. C. R. 325.—**CAN.**

c (p. 253) **iii.** —— —— *Claim for damages for death of husband—Effect of Maritime Conventions Act,* 1914.]—Pltf.'s husband was killed in a collision between the *C.* & a boat in which he, with another man, was engaged in fishing. Pltf. took action *in rem* in the Exchequer Ct. in Admiralty to recover damages :—*Held :* the Exchequer Ct. had no jurisdiction to hear & determine the present action, & the Maritime Conventions Act, 1914, did not so enlarge the jurisdiction of the Exchequer Ct. in Admiralty, as existing under the Admiralty Court Act, 1861, as to give jurisdiction in actions like the present.—THE CATALA *v.* DAGSLAND (B. C.), [1928] 3 D. L. R. 334 ; [1928] Exch. C. R. 83.—**CAN.**

f (p. 253) **i.** —— —— —— ——.]—Subject to the exceptions mentioned in Canada Shipping Act, 1906 (c. 113), s. 191, in an action for seaman's wages earned on a ship registered in Canada, where the amount of recovery is less, although the amount sued on is more than $200, the Exch. Ct. in Admlty. is without jurisdiction.—KOUAME *v.* S.S. MAPLECOURT 1921), 21 Exch. C. R. 226.—**CAN.**

f (p. 253) **ii.** —— —— —— ——.]—*Held :* subject to the exceptions mentioned in R. S. C., 1927, c. 186, s. 349, no suit or proceedings for recovery of wages under the sum of $200 can be instituted by seamen or apprentices in the Exchequer Ct. of Canada on its Admiralty side.—COFFIN & O'FLYNN *v.* THE PROTOCO, [1930] Ex. C. R. 153 ; 2 D. L. R. 421 ; 1 W. W. R. 558 ; 42 B. C. R. 347.—**CAN.**

sd. —— —— *Stevedores' claims.*]—Pltfs., stevedores, entered into a contract to load a vessel on its arrival at Montreal. The captain of the ship refused to allow them to load the vessel, & thereupon the ship was arrested on a claim for damages arising out of breach of the contract :—*Held :* (1) the admlty. jurisdiction of the ct. was no greater than the admlty. jurisdiction of the High Ct. of England ; (2) upon the facts the ct. had no jurisdiction to entertain the action.—WOLFE *v.* S.S. CLEARPOOL (1920), 20 Exch. C. R. 153 — **CAN.**

se. —— —— —— ——]—The Exch. Ct. of Canada has jurisdiction over stevedores claims.—J. P. FERNS *v.* THE INGELBY, [1923] Exch. C. R. 208.—**CAN.**

—— —— *Maritime lien—Created by foreign law.*]—*See* Nos. 348 i–iii, *ante.*

sf. —— —— *Appellate jurisdiction—Necessity for leave to appeal—Interlocutory judgment.*]—The Exch. Ct., sitting in appeal, cannot entertain an appeal from an interlocutory decree without leave having previously been obtained from either the local judge in admlty. or from the Judge of the Exch. Ct.—JOHNSON & MACKAY *v.* S.S. CHARLES S. NEFF (NO. 1) (1918), 17 Exch. C. R. 155.—**CAN.**

sg. *S. P. Re* 251 BARS OF SILVER & SEA INSURANCE CO. *v.* CANADIAN SALVAGE ASSOCN. (1915), 15 Exch. C. R. 367.—**CAN.**

sk. —— —— —— —— ——.]—(1) Where by statute an appeal is given to the Exch. Ct. of Canada from an interlocutory judgment or order, upon permission so to appeal having been previously obtained, & when no such permission has been obtained, the ct. has no jurisdiction to hear the appeal.
(2) The judgment of a local judge of admlty. confirming a taxation by the district registrar of the marshal's bill for services, etc., relating to the care of the ship whilst in his custody is an interlocutory judgment.—MCCULLOUGH *v.* THE SAMUEL MARSHALL, ELIASOPH *v.* STEEL CO. OF CAN. (QUE.) (1922), 68 D. L. R. 729 ; 21 Exch. C. R. 351.—**CAN.**

sl. —— —— —— *Appeal as to costs.*]—*Semble :* appeals involving merely a question of costs should not be entertained, more particularly when the appeal is from the decision of the trial judge confirming the findings of the taxing master, or when the matter is only one of *quantum* involving the exercise of his discretion.—MCCULLOUGH *v.* THE SAMUEL MARSHALL, ELIASOPH *v.* STEEL CO. OF CAN. (QUE.) (1922), 68 D. L. R. 729 ; 21 Exch. C. R. 351.—**CAN.**

sm. —— —— —— *No jurisdiction to hear appeal from Commissioner's Court under Canada Shipping Act.*]—R. *v.* PERREAULT (1922), 66 D. L. R. 671 ; 21 Exch. C. R. 355.—**CAN.**

—— —— *Transfer of action from one admiralty district to another.*]—*See* cases t i, w i, *post.*

sn. —— *Exercise of jurisdiction—Appellate jurisdiction—Questions of fact.*]—Where the local judge in admlty. has seen & heard the witnesses & was assisted by two assessors, the Exch. Ct. of Canada, sitting as a ct. of appeal, should not interfere with the decision of the judge of first instance as regards pure questions of fact, unless it is firmly of opinion that such decision is erroneous.—FRASER *v.* S.S. AZTEC

(1920), 20 Exch. C. R. 39; 56 D. L. R. 440; (1921), 20 Exch. C. R. 450; 63 D. L. R. 543.—**CAN.**

sp. —— —— —— *Dismissal of appeal for want of prosecution*]—There is no distinction in principle to be drawn between the inherent authority of the ct. to order the dismissal of a case on appeal for want of prosecution, & the dismissal of one at first instance.—MCCULLOUGH *v.* THE SAMUEL MARSHALL, ELIASOPH *v.* STEEL CO. OF CAN. (QUE.) (1922), 70 D. L. R. 16; 21 Exch. C. R. 426.—**CAN.**

st. *Application for retention of bail bond in court or for re-arrest of ship.*]—Application dismissed.—EMPIRE STEVEDORING CO., LTD. *v.* THE EMPRESS OF JAPAN, [1927] 2 D. L. R. 985; 38 B. C. R. 438.—**CAN.**

tl. —— —— *Transfer of action—Convenience.*]—(1) It is in the discretion of the ct. to order the removal of a suit from one district to another upon cause shown.

(2) The determining factor in granting such an order is that of general convenience to the parties.—JOHNSON *v.* THE CHARLES S. NEFF (1918), 21 Exch. C. R. 171.—**CAN.**

wl. —— —— ——.]—On the ground of comity, the Exch. Ct. will not entertain an application for the transfer of a cause from one admlty. district to another without the application having first been made before the local judge.—JOHNSON & MACKAY *v.* S.S. CHARLES S. NEFF (NO. 2) (1918), 17 Exch. C. R. 158.—**CAN.**

sv. *Nova Scotia—Supreme Court of—Collision in harbour in province.*]—SMITH *v.* FECAMPOIS (N. S.), [1929] 2 D.L. R. 925.—**CAN.**

PART V. SECT. 7, SUB-SECT. 3.

sw. *High Court.*]—The High Ct. is a colonial ct. of Admlty. & has jurisdiction in an action by consignees against a ship, the owner of which is not domiciled in Australia, for delivery in a damaged condition of goods for which the consignees hold a bill of lading issued by the master of the ship.—SHARP (JOHN) & SONS, LTD. *v.* THE KATHERINE MACKALI (1924), 34 C. L. R. 420.—**AUS.**

sx. *Application of Carriage of Goods by Sea Act, 1924.*]—In an action on a bill of lading in the Admlty. jurisdiction of the Supreme Court under Admiralty Courts Act, 1861, s. 6, for damage to goods in transit from the United Kingdom, the rights of the parties are governed by the rules contained in the Sched. to the Carriage of Goods by Sea Act, 1924.—PARKE, LACEY, HARDIE, LTD. *v.* THE CLAN MACFADYEN (1929), 30 S. R. N. S. W. 438; 47 N. S. W. W. N. 160.—**AUS.**

PART V. SECT. 7, SUB-SECT. 5.

rl. —— —— *Tort of master within jurisdiction.*]—If a tort is committed within the jurisdiction of the ct. by the master of a ship, being a *peregrinus*, against a member of his crew, also a *peregrinus*, the ct. has jurisdiction to arrest the tort feasor or his goods, & to try an action based upon the tort; but the commission of such a tort is not a ground for attaching the ship to found jurisdiction unless the master has an interest in the ship.—NOLAN *v.* S.S. RUSSEL HAVERSIDE, [1921] C. P. D. 136.—**S. AF.**

sz. —— *Action in rem—Necessaries—What law applicable.*]—In a claim *in rem* against the proceeds of a vessel for a sum of money alleged to have been expended for repairs & necessaries in priority to prior mtgees. of the vessel the law to be applied is English admlty. law & not Roman-Dutch Law.—CROOKS & CO. *v.* AGRICULTURAL CO-OPERATIVE UNION, LTD., [1922] App D. 423; 42 N. L. R. 216.—**S. AF.**

AERIAL NAVIGATION.

See STREET AND AERIAL TRAFFIC.

AFFRAY.

See CRIMINAL LAW

AGENCY.

Part I.—The Relation of Agency.

1. *Add. Annotation :*—**Consd.** Clayton-Greene *v.* De Courville (1920), 36 T. L. R. 790.

5. *Add. Annotation :*—**Consd.** Verner-Jeffreys *v.* Pinto, [1929] 1 Ch. 401.

15. *Add. Annotation :*—**Refd.** Wisbech R. C. *v.* Ward, [1927] 2 K. B. 556.

16. *Add. Annotations :*—**Consd.** Wisbech R D. C. *v.* Ward (1927), 91 J. P. 200. **Refd.** Brightman *v.* Tate, [1919] 1 K. B. 463; Boynton *v.* Richardson (1924), 69 Sol. Jo. 107; Wisbech R. C. *v.* Ward, [1928] 2 K. B. 1.

19. *Add. Annotation :—As to* (2) **Refd.** A.-G. *v.* De Keyser's Royal Hotel, [1920] A. C. 508.

21. *Add Citation :*—8 T. L. R. 194.
Add. Annotation :—**Refd.** Taylor *v.* Davies, [1920] A. C. 636.

28. *Add. Annotation :*— **Refd.** Simeons *v.* Durand's Trustee, [1928] 2 K. B. 66.

29. *Add. Annotations :*—**Consd.** Simeons *v.* Durand's Trustee, [1928] 2 K. B. 66. **Refd.** *Re* Kaufman Segal & Domb, *Ex p.* The Trustee, [1923] 2 Ch. 89.

Part II.—Competency of Parties—Acts which can be done by an Agent.

37. *Add. Annotation :*—**Refd.** Dodd *v.* Amalgamated Marine Workers' Union, [1924] 1 Ch. 116.

40. *Add. Annotation :*— **Refd.** Dodd *v.* Amalgamated Marine Workers' Union, [1924] 1 Ch. 116.

42. After this case add :—*See, now.* Law of Property Act, 1922 (c. 16), s. 128 (3).

68. *Add Annotations :—Generally.* **Refd.** *Re* Ellis, [1925] 1 Ch. 564; Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52.

69. For "**Dramatic Copyright Act, 1888,**" read "**Dramatic Copyright Act, 1833.**"

86. *Add. Annotation :*—**Apld.** *Re* Blucher (Prince), *Ex p.* Debtor, [1931] 2 Ch. 70.

88. *Add. Annotation :*—**Refd.** Banbury *v.* Bank of Montreal, [1918] A. C. 626.

90. *Add. Annotation :*—**Refd.** R. *v.* North Worcestershire Assmt. Com., *Ex p.* Hadley, [1929] 2 K. B. 397.

91. *Add. Annotations :*—**Apprvd.** Civilian War Claimants Assocn. *v.* R., [1932] A. C. 14. **Consd.** Hungarian Property Administrator *v.* Finegold (1931), 100 L. J. K. B. 383. **Refd.** Wigg *v* A.-G. of the Irish Free State (1927), 96 L. J. P. C. 88.

91a. ——.]—By the Treaty of Versailles Germany undertook to make compensation for all damage done to the civilian population of the Allied & Associated Powers & to their property during the period of the belligerency of each as an Allied or Associated Power against Germany by the aggression of Germany & her allies, & moneys were received by the Crown under this article. By a petition of right the suppliants, as assignees of civilian claimants who had suffered loss or damage by German aggression during the War, claimed on their behalf payment of compensation out of the moneys paid or payable as reparations under the above article. The case made by the petition was that the claimants had sent particulars of their claims, first, to the Foreign Claims Office &, afterwards, to the Reparation Claims Department in accordance with the instructions of His Majesty's Govt., that these claims had been duly verified by the Govt., & were included in the agreed total of claims for reparations which Germany was required to pay under the treaty, & that the Crown in inviting the claimants to submit their claims had constituted itself an agent or a trustee for the claimants in respect of any money received by it from Germany on account of

PART I.

1 ii. —— ——.]—The relation of principal & agent only arises when the person called the agent has authority expressed or implied to act on behalf of the other called the principal, & consents so to act.—SMITLE *v.* SLATTARD (1919), 21 W. A. L. R. 19.—**AUS.**

2 i. ——.]—*Held :* in the circumstances despite the designation of deft. as agent by pltf., the real relationship between the parties was that of purchaser & seller.—BRIDGEFORD *v.* DIXON, [1918] E. D. L. 156.—**S. AF.**

5 i. For "**AUS.**" read "**S. AF.**"

5a. *Agent distinguished from—Joint adventurer* —The distinction between the position of a joint adventurer & an ordinary agent buying for his principal with the understanding that he is to be remunerated for his services, pointed out.—SUTTON *v.* FORST (1924), 55 O. L. R. 281.—**CAN.**

8 i. —— ——.]—Where a consignee of goods for sale is authorised to sell them at a certain minimum price & told that whatever amount he obtains above that price will be his commission, the relationship between consignor & consignee is that of principal & agent. —REX GROCERY *v.* HIGGS & KEEN, [1925] 3 D. L. R. 565; [1925] 2 W. W. R. 402; 19 Sask. L. R. 492.—**CAN.**

26 iv. —— ——.]—GIER *v.* VAN AALST (Alta.) (1914), 28 W. L. R. 876. —**CAN.**

27 viii. For "**AUS.**" read "**S. AF.**"

27 xii. —— ——.]—Defts. gave to pltf. a written order to ship goods from England on account of defts., & pltf. ordered goods from a manufacturer in England to be shipped in performance of this order :—*Held :* the relationship between the parties was that of principal & agent, not of vendor & purchaser.—BULTERS *v.* ROOPE, [1922] N. Z. L. R. 549.—**N.Z.**

27 xiii. —— ——.]—PIESSE *v.* TASMANIAN, ETC. CO-OPERATIVE ASSOCN., LTD. (1919), 15 Tas. L. R. 67.—**AUS.**

h i. —— *Shipping manager to marketing association.*]—PEAREN *v.* SASKATCHEWAN LIVESTOCK CO-OPERATIVE MARKETING ASSOCN., LTD., [1930] 2 D. L. R. 63.—**CAN.**

reparations, & that any such money was money had & received by the Crown to the use of the claimants:—*Held:* on demurrer by the Crown, the petition afforded no ground for the contention that the money received under the treaty was received by the Crown as an agent or a trustee for the claimants, or as money had & received to their use, & was bad as disclosing no ground of claim cognisable by the ct.—CIVILIAN WAR CLAIMANTS ASSOCN., LTD. *v.* R., [1932] A. C. 14; 101 L. J. K. B. 105; 146 L. T. 169; 48 T. L. R. 83; 75 Sol. Jo. 813, H. L.

91b. Foreign sovereign power.]—GERMAN PROPERTY ADMINISTRATOR *v.* KNOOP (1932), 49 T. L. R. 109; 76 Sol. Jo. 919.

Part III.—Classes of Agents.

127. *Add. Annotation:*—**Consd.** Stanley (Montagu) & Co. *v.* Solomon (J. C.), Ltd., [1932] 2 K. B. 287.

127a. ——.]—Pltfs. bought from the first defts. a quantity of seed under a written contract, which stated that the first defts., through the agency of the second defts., acting as *del credere* agents, sold the seed to pltfs. The second defts. were paid a commission by the first defts., & received nothing from pltfs. The first defts. were unable to deliver the goods. In an action for damages:—*Held:* as the second defts. were not in fact the agents of pltfs. but only of the first defts., & as the mere description of the second defts. as *del credere* agents, without any further words making them *del credere* agents of either party in particular, did not make them agents of pltfs., the action failed as against the second defts.—NOUVELLES HUILERIES ANVERSOISES S. A. *v.* MANN (H. C.) & Co. (1924), 40 T. L. R. 804.

Part IV.—Formation and Evidence of the Contract of Agency.

133. *Add. Annotation:*—*As to* (1) **Apld.** *Re* Blucher (Prince), *Ex p.* Debtor, [1931] 2 Ch. 70.

147. *Add. Annotation:*—*Generally,* **Consd.** Stanley (Montagu) & Co. *v.* Solomon (J. C.), Ltd., [1932] 2 K. B. 287.

PART III.

sb. *Mercantile agent—Automobile dealer.*]—HARE & CHASE, LTD. *v.* COMMERCIAL FINANCE CORPN., LTD. (1925), 62 O. L. R. 601.—**CAN.**

108 i. *Broker.*]—A broker is an agent of a special kind. A broker who approaches a buyer or seller acts in the first instance as agent of the person who employs him, but directly the other party is aware of the fact that he is a broker, he becomes the agent of both parties, not with a plenary power to bind both parties as he chooses, but to communicate between them until they are *ad idem.*—JACOBS LEVITATZ & BRAUDE *v.* KROONSTAD ROLLER MILLS, [1921] O. P. D. 38.—**S. AF.**

PART IV. SECT. 2, SUB-SECT. 1.

149 iii. —— —— *Statute of Alberta,* 1906 (*c.* 27).]—It is merely the terms of the agency agreement, whether they may be meagre or detailed, that must be in writing under the above Act. The price & the other terms of the proposed sale may or may not be mentioned. If they are, in the circumstances, an essential part of the agency agreement they ought to be in writing. But it is a question of interpretation, even since the statute, whether the terms mentioned as those of the proposed sale are intended merely as a basis on which the agent may negotiate or are intended to bind the agent strictly to a sale on the named terms before he can claim his commission.—KING *v.* SCHON, [1918] 3 W. W. R. 892; 44 D. L. R. 111.—**CAN.**

149 iv. —— —— *Real Estate Commission Act, R.S.A.,* 1922 (*c.* 139), *s.* 2.]—The fact that a written instrument evidencing an agreement for the sale of land does not contain all the terms of the agreement does not prevent it being sufficient to satisfy the proviso to the above sect., if it is one which the ct. will order to be rectified to include the terms agreed on but omitted by mutual mistake, & which when so rectified will be enforceable by the parties thereto subject to such legal or equitable defences available to either of them as the agent who effected the agreement cannot be held accountable for.—HANTON *v.* STEDMAN, [1925] 1 W. W. R. 642.—**CAN.**

149 v. —— *Auctioneers & Commission Agents' Act,* 1922, *s.* 23—*Sufficiency of agency contract.*]—So long as the relationship of principal & agent in respect of the transaction is evidenced in writing, the mischief aimed at by the above sect. has been duly met & the requirements of the sect. satisfied, & the other terms of the agency contract may be effectively made & effectively varied verbally.—CANNIFFE *v.* HOWIE, [1925] S. R. Q. 121; 19 Q. J. P. 57.—**AUS.**

149 vi. —— —— ——.]—So long as the relation of principal & agent in respect of the transaction in question has been evidenced in writing, the requirements of the above sect. have been complied with, & any document signed by pltf. at any time before action brought, which evidences the essential fact, the existence of the relationship in respect of the transaction in question, is sufficient to comply with the Act. It is sufficient if the writing manifests a present intention of engaging or appointing the agent in respect of a transaction by any suitable words, whether contained in one document signed by deft., or in several documents, sufficiently interconnected by internal reference, either direct or inferential, one or more of which are signed by deft., manifesting such intention on his part.—SKIPPER *v.* SYRMIS, [1925] S. R. Q. 129; 19 Q. J. P. 47.—**AUS.**

149 vii. —— —— ——.]—ROACH *v.* HOUGH, [1926] S. R. Q. 24; 20 Q. J. P. 113.—**AUS.**

Necessity for contract to pay commission for services in reference to the sale of land to be in writing, *see* Nos. 1664 xiva–1664 xivl, *post.*

g i. —— *Land Agents Act,* 1912—*When applicable.*]—Deft. intimated to pltf. that he had been instructed to sell a property by private sale. Pltf., an accountant, told deft. that he could introduce a probable purchaser, & would do so if deft. would pay pltf. half the commission payable by the owner of the property to deft. in the event of a sale being effected. Deft. agreed, & on the same day pltf. introduced B. to deft. with whom a sale was arranged. Pltf. in his evidence stated that he was not a land agent, & for the preceding five years had had no transactions for the sale of land except the one in question:—*Held:* the arrangement between the parties was not one of a series nor the commencement of a series of transactions, but a solitary transaction, & pltf. was not a land agent within the above Act.—COOKE *v.* WALLACE (1914), 33 N. Z. L. R. 1054.—**N.Z.**

g ii. —— —— ——.]—Land Agents Act, 1912, *s.* 13, applies only to persons carrying on land agency as a business, & does not extend to casual agency outside the scope of the agent's business.—CLIFTON *v.* JOHNSTONE, [1921] N. Z. L. R. 35.—**N.Z.**

g iii. —— —— *Effect of.*]—The effect of Land Agents Act, 1912, *s.* 13, is not to make the contract of agency illegal by reason of the want of written authority, but merely to prevent the agent from recovering his commission by action.—GLASGOW *v.* HOOD, [1920] N. Z. L. R. 586.—**N.Z.**

g iv. —— —— *Form of appointment.*]—An appointment of a land agent under *s.* 13 of the above Act must be signed by the principal himself & is not sufficient if signed by an agent on his behalf.—BUCHANAN *v.* SAMSON, [1922] N. Z. L. R. 558.—**N.Z.**

g v. —— *Land Agents Act,* 1921—*Form of appointment—Need not be in writing.*]—OLIVER *v.* DICKINSON, [1927] N. Z. L. R. 411.—**N.Z.**

Necessity for contract to pay commission for services in reference to the sale of land to be in writing, *see* Nos. 1664 xiva–1664 xivl, *post.*

156. *Add. Annotation :*—**Refd.** Thirkell *v.* Cambi, [1919] 2 K. B. 590.

157. *Add. Annotations :*—**Apld.** Grindell *v.* Bass, [1920] 2 Ch. 487. **Refd.** Thirkell *v.* Cambi, [1919] 2 K. B. 590; Raingold *v.* Bromley, [1931] 2 Ch. 307.

164a. Counsel — Signing pleadings.] — B., the owner of freehold premises, agreed to sell them to E., but there was no memorandum in writing to satisfy Stat. Frauds. B. then agreed to sell the premises to G., & a valid contract was executed, which B. did not perform. G. brought an action for specific performance against B., who by her defence signed by counsel pleaded the contract with E. in terms that made the pleading a valid memorandum within the statute. G. added E. as a deft. to the action; & E., by a counterclaim, claimed specific performance of his agreement :—*Held :* counsel was the duly authorised agent of B. to sign the pleading & to plead the contract with E., & although the signing of a memorandum within Stat. Frauds was not in the minds of either counsel or client, the pleading, as signed by counsel before E. was a party to the action, was a valid memorandum to satisfy the statute, & E. was entitled to judgment on his counterclaim, & G.'s action against B. must be dismissed.—GRINDELL *v.* BASS, [1920] 2 Ch. 487; 89 L. J. Ch. 591; 124 L. T. 211; 36 T. L. R. 867.

Annotation :— **Consd.** Farr, Smith *v.* Messers (1927), 44 T. L. R. 48.

165. *Add. Annotations :*—**Consd.** Keen *v.* Mear, [1920] 2 Ch. 571. **Distd.** Lewcock *v.* Bromley (1920), 127 L. T. 116.

166. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

176a. ——.]—CHANDLER & CO. *v.* WINCHESTER (1930), 74 Sol. Jo. 353.

182. *Add. Annotation :*—*As to* (1) **Refd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

188. *Add. Annotation :*—**Folld.** Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292.

188a. —— ——.]— & B. were the holders by novation of a licence from pltf. co., to use & exercise certain inventions relating to wireless apparatus which were the subject of letters patent owned or controlled by pltf., co., subject to the payment of certain royalties by N. & B. to pltf. co. N. & B. got into difficulties, & were unable to meet their obligations as they became due owing to overtrading, but they claimed to be still solvent. At a meeting of the trade creditors it was agreed that a committee of inspection should be appointed & that N. & B. should execute a deed of inspectorship. The deed, which was executed on May 6, 1928, was in the usual form, & in all material particulars the same as that considered by the ct. in *Easterbrook* v. *Barker*, No. 188. By the deed N. & B., the debtors, in consideration of a release of their indebtedness to the assenting creditors, assigned their real & personal estates to C. as inspector upon trust to allow N. & B. " henceforth to manage & carry on their said business " subject to the covenants & conditions of the deed. N. & B. undertook to carry on the business or wind it up as the inspector & committee should think best. In a circular which was sent out by C., the inspector, on Sept. 10, 1928, announcing that the deed of inspectorship had been executed, it was stated that " all orders for goods required for the purpose of carrying on the business will be issued on my official order forms in the usual way & will be paid for by me." The inspector & the committee of inspection left the conduct of the business subsequent to the execution of the deed of inspectorship to N. & B. Pltfs. brought an action by which they claimed royalties upon wireless sets constructed & sold by N. & B. since Sept. 6, 1928. The action was brought against N. & B. & also against the inspector & the members of the committee of inspection personally :—*Held :* N. & B. did not become the agents of the inspector or of the committee to carry on the business, but the business remained the business of N. & B., & therefore pltfs.' claim for royalties against the inspector & committee of inspection failed.—MARCONI'S WIRELESS TELEGRAPH CO., LTD. *v.* NEWMAN, [1930] 2 K. B. 292; 99 L. J. K. B. 687; 143 L. T. 471; [1929–30] B. & C. R. 223.

189. *Add. Citation :*—21 J. P. 4.

Add. Annotations :—*As to* (1) **Consd.** Kemp *v.* Elisha, [1918] 1 K. B. 228. *As to* (2) **Refd.** Bygraves *v.* Dicker, [1923] 2 K. B. 585.

192. *Add. Annotations :*—*As to* (1) **Consd.** Performing Right Soc. *v.* Ciryl Theatrical Syndicate,

PART IV. SECT. 3, SUB-SECT. 1.

171 iv. ——.]—The *onus* of establishing the authority of an agent is upon the person who seeks to bind the principal.—STEVENS *v.* MERCHANTS BANK OF CANADA, [1920] 1 W. W. R. 52; 49 D. L. R. 528; 30 Man. L. R. 46.—**CAN.**

176 iv. For "AUS." read "S. AF."

176 v. —— *Claim to goods of principal—In possession of third party.*]— If a person other than the owner makes a demand for return of goods in possession of a third party, he should present credentials or some written authority to show that he is acting as agent of the owner.—CRAIG *v.* MCCREATH, [1922] 2 W. W. R. 1276.—**CAN.**

176 vi. ——.]—PLUMB *v.* W. C. MACDONALD REGISTERED, LATIMER *v.* FOSTER TOBACCO CO., LTD. (1924), 27 O. W. N. 365.—**CAN.**

176 vii. —.]—When actual authority of an alleged agent has been negatived, a pltf. seeking to hold the alleged principal liable on the basis of ostensible authority either must show a holding out by the principal of the alleged agent as such or must give proof of some custom on which ostensible agency can be predicated.—ROBIN LINE S.S. CO. *v.* CANADIAN STEVEDORING CO., SEAS SHIPPING CO. *v.* CANADIAN STEVEDORING CO., [1928] 3 D. L. R. 856; [1928] S. C. R. 423.—**CAN.**

pi. —— ——.]—Possession solely cannot be evidence of both agency & authority, & the fact that one man is with another does not necessarily make one the agent for the other.—TURNER *v.* BEATON (P. E. I.) (1908), 4 E. L. R. 325.—**CAN.**

177 v. ——]—If A. has entered into a contract to purchase land it is open to B. to show by parol evidence that A. did so as his agent & to ask for a declaration of that agency.—VASELENAK *v.* VASELENAK, [1921] 1 W. W. R. 889; 57 D. L. R. 37 16 Alta. L. R. 256.—**CAN.**

177 vi. ——.]—A husband obtained from his wife authority to act on her behalf :—*Held :* it was competent to prove the authority by parol evidence.—WALKER *v.* HENDRY, [1925] S. C. 855.—**SCOT.**

177 vii. ——.]—Where a contract is entered into by a person in his own name, but as agent of another, if in the contract itself there is no special description or assertion of property the agency may be proved by parol.—MUSSON *v.* HEAD, [1926] 1 D. L. R. 965; 58 O. L. R. 210.—**CAN.**

q i. ——.]—ANDERSON *v.* CAMERON (1857), 6 Gr. 285.—**CAN.**

q ii. ——.]—WHITTAKER *v.* TAYLOR (Alta.) (1911), 19 W. L. R. 662; 1 W. W. R. 259.—**CAN.**

q iii. ——.]—CROWN LUMBER CO. *v.* SAULSBERRY (Alta.) (1913), 23 W. L. R. 877; 11 D. L. R. 17; 4 W. W. R. 168.—**CAN.**

[1924] 1 K. B. 1. **Refd.** Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762.

196. *Add. Annotations :*—**Distd.** Keeling *v.* Pearl Assce. (1923), 129 L. T. 573. **Consd.** Paxman *v.* Union Assce. Soc. (1923), 39 T. L. R. 424. **Apprvd.** Newsholme *v.* Road Transport & General Insce., [1929] 2 K. B. 356.

203. *Add. Annotations :*—**Consd.** Brooke *v.* Bool, [1928] 2 K. B. 578. **Refd.** Pratt *v.* Patrick, [1924] 1 K. B. 488.

SECT. 4.—**AGENCY OF NECESSITY** (Vol. I., p. 293).

For "*See* HUSBAND & WIFE; SHIPPING & NAVIGATION," substitute as follows :—

215a. Extent of doctrine.]—An agency of necessity can arise in other cases than that of carriers by land or sea or the acceptor of a bill of exchange for the honour of the drawer Extraordinary circumstances, such as war conditions, which make it impossible for a buyer of goods on behalf of a principal abroad either to despatch them or to communicate with him, would entitle the buyer to sell the goods as an agent of necessity. But in order to establish an agency of necessity the agent must prove that there was an actual & definite commercial necessity for the sale, & that the transaction was *bonâ fide* in the interest of the principal.

Where an agent in London bought skins in 1915 & 1916 to be forwarded to his principal in Roumania as the principal might direct, & in consequence of the occupation of Roumania by the Germans in 1916, the agent was unable to send the skins to his principal or communicate with him, & the agent thereupon sold the skins without authority :—

Held : the agent had failed to establish agency of necessity because (*a*) the deterioration of the furs might have been prevented by putting them in cold storage at a comparatively small expense, &, moreover, they had steadily increased in value, & (*b*) the agent had not acted *bonâ fide* in selling the skins.—PRAGER *v.* BLATSPIEL, STAMP & HEACOCK, LTD., [1924] 1 K. B. 566; 93 L. J. K. B. 410; 130 L. T. 672; 40 T. L. R. 287; 68 Sol. Jo. 460.

Annotation :—**Consd.** Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

See, also, original volume, p. 319, No. 390.

215b. —— Repayment to agent of necessity.]—PONTYPRIDD UNION *v.* DREW, [1927] 1 K. B. 214; 95 L. J. K. B. 1030; 136 L. T. 83; 90 J. P. 169; 42 T. L. R. 677; 70 Sol. Jo. 795; 24 L. G. R. 405, C. A.

215c. —.]—Observations by SCRUTTON, L.J., on the limits of the doctrine.—JEBARA *v.* OTTOMAN BANK, [1927] 2 K. B. 254; 96 L. J. K. B. 581; 137 L. T. 101; 43 T. L. R. 369; 32 Com. Cas. 228, C. A.; *on appeal, sub nom.* OTTOMAN BANK *v.* JEBARA, [1928] A. C. 269, H. L.

Power to delegate in cases of supervening necessity.]—*See* original volume, pp. 390, 391, Nos. 939-942.

Authority of carrier of goods—Land carrier.]—*See* CARRIERS, Vol. VIII., pp. 26, 35, Nos. 151, 201.

—— Master of ship.]—*See* SHIPPING & NAVIGATION.

Authority of wife to pledge husband's credit.]—*See* HUSBAND & WIFE.

Acceptance of bill of exchange for honour of drawer.]—*See* BILLS OF EXCHANGE, Vol. VI., pp. 415, 416.

Part V.—Authority of the Agent.

246. *Add. Annotation :*—**Refd.** Ralli *v.* Compañia Naviera Sota y Aznar, [1920] 2 K. B. 287.

272. *Add. Annotation :*—**Refd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

281. *Add. Annotations :*—**Consd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244. **Refd.** Underwood *v.* Bank of Liverpool, Same *v.* Barclays Bank, [1924] 1 K. B. 775.

PART IV. SECT. 3, SUB-SECT. 2.

200 iii. ——— ———.]—LISTER *v.* BILLY, [1930] 1 W. W. R. 828; 3 D. L. R. 635; 38 Man. L. R. 610.—**CAN.**

sc. *Person entering into contract "acting on behalf of another."*]—To say that a man entered into a contract "acting on behalf of another" is to allege in the absence of any qualifying statement, that he entered into it as the agent of that other.—LIND *v.* SPICER BROTHERS (AFRICA), LTD., [1917] App. D 147.—**S. AF.**

PART V. SECT. 2, SUB-SECT. 1.

240 v. —— *Effect of ratification clause.*]—Where the whole object of a ratification clause is to carry on business in the principal's name, & the acts to be ratified, even when excessive, are specifically said to be acts done in the principal's name, the clause cannot be construed to change the whole nature of the power by making the attorney the universal agent of his principal.—BANK OF TORONTO *v.* MATHESON, [1927] 3 W. W. R. 10.—**CAN.**

247 i. *General powers—Limited by recital.*]—A power of attorney enabling an agent to grant a lease is not revoked by the return of the landlord to the United Kingdom, even though the document containing the power of attorney states that it is granted owing to the grantor being about to depart from the United Kingdom.—GRAHAM *v.* MANDERS (1918), 53 I. L. T. 5.—**IR.**

248 ix. —— ——.]—ARPIN *v.* LECLAIRE, [1930] 2 D. L. R. 427.—**CAN.**

258 iii. —— ——.]—There is no power in an agent, acting under general power of attorney, to present an insolvency petition on behalf of his principal, unless the power expressly authorises such act.—*Re* OSMAN (1919), 40 N. L. R. 17.—**S. AF.**

t. (p. 301) For "(1886)" read "(1873)."

277 iv. —— —— ——.]—Power to borrow money & secure its repayment by mtge. is not to be inferred merely from general powers added to an enumeration of specific powers in a power of attorney, unless the exercise of such a power is strictly necessary to carry out the express purpose of the instrument or the acts specifically authorised thereby.—ANDREWS *v.* SINCLAIR, [1923] 2 D. L. R. 903; 2 W. W. R. 166.—**CAN.**

277 v. —— bare power of attorney to make & indorse notes, cheques, etc., does not authorise the attorney to raise loans on his principal's credit for the principal himself or for the attorney's own accommodation or for a third party: nor is such authority conferred by a general power given the attorney to do all "other acts & things for the purpose of carrying on any business in my name." The power to borrow money must be conferred in express terms, & when this power is alleged to be based on a power of attorney, the document must be read strictly.—BANK OF TORONTO *v.* MATHESON (Sask.), [1927] 4 D. L. R. 328; [1927] 3 W. W. R. 10.—**CAN.**

283 ii. —— —— ——.]—Applt. co. gave to H., customs broker, a power of attorney "to transact all business which" applt. co. "may have with the Collector of the Port of Montreal or relating to the Department of the Customs of the said Port . . . ratifying & confirming all that . . . said attorney & agent shall do. . . ." Cheques to the order of the collector of Customs were given to H. on his requisition for the payment of duties on goods imported by applt. co.,

288. *Add. Annotation :*—**Refd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

294. *Add. Annotation :*—**Refd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

296a. —— —— **Property held on trust for sale.**]—The two pltfs. having, as joint tenants, bought land which by Law of Property Act, 1925 (c. 20), s. 36, became vested in them on the statutory trusts for sale, agreed to sell it to deft., & the conveyance was executed by one pltf. in person & by an attorney on behalf of the other pltf. The power of attorney was expressed to give " the sole & absolute control of all my property real & personal of every description situate & being at Bury & elsewhere in the County of Lancaster & whether owned by me solely or jointly with any other person or persons." Deft. declined to accept the conveyance on the ground that a trustee for sale could not delegate the execution of the trust to his attorney. In an action for specific performance :—*Held :* the words used in the power of attorney applied only to property held in beneficial ownership & not to property held on a trust for sale, & the action failed.—GREEN *v.* WHITEHEAD, [1930] 1 Ch. 38 ; 99 L. J. Ch. 153 ; 142 L. T. 1 ; 46 T. L. R. 11, C. A.

300a. Effect of notice that powers exceeded.]—A power of attorney contained a provision that " the principal ratifies & confirms & agrees to ratify & confirm whatsoever the attorney shall do or purports to do by virtue of these presents " :—*Held :* this provision did not preclude the principal from objecting to a dealing with his property by a person who had notice in ordinary circumstances that the agent was exceeding his authority, actual & ostensible.—MIDLAND BANK, LTD. *v.* RECKITT (1932), 48 T. L. R. 271 ; 76 Sol. Jo. 165 ; 37 Com. Cas. 202, H. L.

308a. Salesman—Authority to cancel sale.]—A salesman employed at a salary of £3 a week & 1½ per cent. on sales effected by him is not authorised to cancel sales made on behalf of his principal.—LECKENBY *v.* WOLMAN, [1921] W. N. 100.

332a. —— ——.]—Pltf. gave a power of attorney to T. & authorised him, in relation to pltf.'s affairs, to draw cheques on pltf.'s account at the bank without restriction. T. in fraud of pltf. drew a cheque on pltf.'s account, in favour of defts. in part-payment for a motor-car which T. had obtained from them for his own purposes on the hire-purchase system. Defts. knew that the cheque was drawn by T. as agent for pltf. In an action by pltf. to recover from defts. the proceeds of the cheque :—*Held :* as defts. knew that T. was paying his own debt

these cheques being made by the latter for fixed amounts corresponding to the invoices. Afterwards, through fraudulent devices, H., having succeeded in passing entries for much smaller sums than the quantity of goods required, induced the Customs House cashier to take the cheques thus issued by applt. co. for a higher amount than the one apparently due, & either to apply the surplus in payment of duties owing by third parties or to reimburse him in cash :—*Held :* (1) it was within the scope of the power of attorney given to H by applt. co. that he should receive, in cash from the custom officials, balances of cheques delivered by him to them, after deducting the duties payable in respect of entries made by H. on behalf of applt. co. ; (2) it was not within the scope of the power of attorney that he should direct the application of balances of applt. co.'s cheques in payment of duties owing by H.'s other customers.—CANADIAN PACIFIC RY. CO. *v.* R. (1917), 55 S. C. R. 374 ; 37 D. L. R. 719.—**CAN.**

283 iii. —— —— *Power to withdraw from bank.*]—A joint savings account with a bank was opened in the names of pltf. & her husband. After the death of the husband pltf. gave her solr. a power of attorney, by which he was authorised to withdraw money from banks or individuals & to deposit same in any other bank or other place. In pursuance of the oral instructions of the solr., & on production of the power of attorney & a certified copy of letters probate of the husband's will, the bank paid over the balance of the account to the husband's exors. :—*Held :* the bank had acted rightly.—ROSS *v.* CANADIAN BANK OF COMMERCE (Alta.), [1927] 3 D. L. R. 1056 ; [1927] 3 W. W. R. 182.—**CAN.**

287 i. *See, also,* No. 287 vi., *post.*

287 iv. —— —— *Power to discharge.*]—A power of attorney appointed the grantor's wife his agent for the purpose of all dealings with his property, real or personal, in Canada. In the specific clause granting the power to execute instruments in connection with his real property, a discharge of mtge. was not named as one of the instruments :—*Held :* the very general words used in the power of attorney covered the right of the agent to execute a discharge of mtge.—*Re* LAND TITLES ACT, *Re* REGISTRATION OF A POWER OF ATTORNEY, [1918] 2 W. W. R. 947.—**CAN.**

287 v. —— —— ——.]—The discharge of a mtge. was executed under a power which, after authorising the attorney to sell the principal's lands & give receipts for the consideration money, gave power, upon payment of all or any debts, to give proper & sufficient acquittances & discharges for same :—*Held :* sufficient authority to sign the statutory certificate.—LEE *v.* MORROW (1866), 25 U. C. R. 604.—**CAN.**

287 vi. —— —— *Power to give—To secure unpaid purchase-money.*]—A transaction whereby an agent purchased land for cash on behalf of his principal & subsequently gave a mtge. on the land & a conveyance of other lands in satisfaction of the amount remaining unpaid :—*Held :* authorised by the agent's power of attorney. —DINSMORE *v.* PHILIP, [1918] 3 W. W. R. 457.—**CAN.**

287 vii. —— —— *Power to invest on second mortgage.*]—A power of attorney authorised the attorney " to lend on mtge., charge or lien of real estate any money belonging to " the principal :—*Held :* the attorney was authorised by the power to lend money on the security of a second mtge.—MCCUTCHEON *v.* REGISTRAR OF TITLES, [1927] V. L. R. 93 ; 48 A. L. T. 137.—**AUS.**

sd. —— *Property—Power to transfer to himself.*]—A husband had certain property put in his wife's name. He held a general power of attorney from her. Subsequently the husband, as his wife's attorney, had the property transferred into his own name :—*Held :* the wife was entitled to have the transfer to her husband set aside.—ELFORD *v.* ELFORD (1922), 69 D. L. R. 284 ; 64 S. C. R. 125 ; [1922] 3 W. W. R. 339 ; *affg.* 61 D. L. R. 40 ; 14 Sask. L. R. 363.—**CAN.**

295 vii. —— —— *Power to sign contract.*]—Resp. co. having sold land to applt. gave to its agent in the Transvaal a general power of attorney conferring upon him " full power to act on our behalf in all matters & things that do or may affect or concern us in S. Africa." The power then proceeded in the following words " & in particular but without prejudice to the foregoing generality " to give particular instances of acts that the agent was empowered to perform :—*Held :* under the power the agent was authorised to sign the written contract of sale.—MEASROCK *v.* NEW SCOTLAND LAND CO., LTD., LIQUIDATOR, [1922] APP. D. 237.—**S. AF.**

se. —— *Trading licence—Power to apply for.*]—A., a storekeeper, by general power of attorney appointed H. to manage & transact his business in Natal. At the date of appointment A. was trading under a licence *ex facie* good, but which later was declared void. H. applied for a new licence, but it was objected that he had no authority to make the application :—*Held :* the power of attorney was sufficient authority to H. for the purpose.—HAFFIZE *v.* JACOBSON (1919), 40 N. L. R. 322.—**S. AF.**

sf. *Power granted by corporation to officials for time being—Registrar entitled to require proof that persons executing power hold office.*]—*Re* LAND TITLES ACT, ROYAL TRUST CO.'S CASE, [1921] 3 W. W. R. 246.—**CAN.**

PART V. SECT. 3, SUB-SECT. 1.

sg. *Agent obtaining transfer of property to principal—Authority to transfer property to third party.*]—Applt. sold to D. land, a portion of which he had not obtained transfer. Applt. instructed resp., an attorney, to put the matter through ; resp. thereupon obtained transfer of the piece of land in question into applt.'s name, & then gave transfer of the whole to D. :—*Held :* resp.'s authority was wide enough to cover the costs incurred by him in obtaining transfer of the piece of land into applt.'s name.—STANTON *v.* ALLPORT, [1923] E. D. L. 155.—**S. AF.**

PART V. SECT. 3, SUB-SECT. 2.

sj. *Grain market usage—Right of broker to close out customer.*] *v.* CANADA WEST GRAIN CO., [1925] 3 W. W. R. 508.—**CAN.**

to them with pltf.'s money, & as T. had no authority to pay his own debts therewith, pltf. was entitled to recover.—RECKITT *v.* BARNETT, PEMBROKE & SLATER, LTD., [1929] A. C. 176; 98 L. J. K. B. 136; 140 L. T. 208; 45 T. L. R. 36; 34 Com. Cas. 126, H. L.

Annotations:—**Apld.** Midland Bank, Ltd. *v.* Reckitt (1932), 48 T. L. R. 271. **Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40; Slingsby *v.* District Bank, Ltd., [1932] 1 K. B. 544.

332b. —— ——.]—Pltf. gave to one T., who was a solr., a power of attorney & authorised him to draw cheques on his, pltf.'s, behalf. T. was also acting as solr. for deft. & obtained from her a cheque for nearly £5,000 for the discharge of certain liabilities of which T. had informed her. At that time deft.'s banking account was, though deft. was not aware of it, about £1,500 short of the amount of the cheque & T. drew a bearer cheque for £1,500 on pltf.'s account & paid it into deft.'s account, the cheque showing on its face that it was drawn by T. as attorney for pltf. T. was thus enabled to cash deft.'s cheque. Pltf., on ascertaining the facts, brought this action against deft. for a declaration that he was entitled to recover from her the proceeds of the £1,500 cheque:—*Held:* as deft.'s bank had notice on the face of the £1,500 cheque that it represented money belonging to pltf., & as they had received it as agents for deft. & had credited it to her account, pltf. was entitled to succeed.—RECKITT *v.* NUNBURNHOLME (1929), 45 T. L. R. 629.

338. *Add. Annotation:*—**Refd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

338a. **Authority to sign for business purposes.**]—Resps. had two accounts with applt. bank at Sydney in connection with a business which they there carried on. They informed the bank in writing that the two managers of their business had authority together to sign & indorse cheques, to draw & indorse promissory notes & bills of exchange, & to transact on their behalf all business connected with the accounts. Banks in Australia frequently issue to a customer, in exchange for a cheque in favour of the bank, a cheque, described as a "bank cheque," drawn by the bank on itself in favour of a person designated by him, or to bearer. In exchange for cheques drawn in favour of applt. bank by the managers, the bank issued to one of the managers bank cheques payable to a name designated by him; these cheques he fraudulently appropriated:—*Held:* applt. bank was not entitled to debit the bank cheques against resps. The manager had not implied authority to receive bank cheques, & the circumstances in which on certain previous occasions the manager had been allowed to give instructions as to the application of the amount of cheques drawn, made the evidence fall far short of the strong case needed to show an ostensible authority prevailing over written instructions.—AUSTRALIAN BANK OF COMMERCE *v.* PEREL, [1926] A. C. 737; 95 L. J. P. C. 185; 135 L. T. 586, P. C.

370. *Add. Annotations:*—*As to* (1) **Consd.** Jones *v.* Waring & Gillow, [1926] A. C. 670. **Refd.** London Joint Stock Bank *v.* Macmillan & Arthur, [1918] A. C. 777.

371. *Add. Annotations:*—*As to* (1) **Refd.** London Joint Stock Bank *v.* Macmillan & Arthur, [1918] A. C. 777; Guildford Trust *v.* Goss (1927), 136 L. T. 725.

373. *Add. Annotation:*—*As to* (1) **Consd.** London Joint Stock Bank *v.* Macmillan & Arthur, [1918] A. C. 777.

379. *Add. Annotation:*—**Consd.** London Joint Stock Bank *v.* Macmillan & Arthur, [1918] A. C. 777.

382. *Add. Annotation:*—**Refd.** Underwood *v.* Liverpool Bank, Same *v.* Barclays Bank, [1924] 1 K. B. 775.

386. *Add. Annotations:*—*As to* (2) **Distd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Refd.** Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292. *As to* (3) **Refd.** Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

387. *Add. Annotations:*—**Distd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Refd.** Underwood *v.* Bank of Liverpool, Same *v.* Barclay's Bank, [1924] 1 K. B. 775; Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

388. *Add. Annotations:*—**Distd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Refd.** Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

390. *Add. Annotations:*—**Consd.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566. **Refd.** Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

PART V. SECT. 3, SUB-SECT. 4.—A.

340 iii. —— *Authority to draw cheques in principal's name—Agent drawing cheques to repay personal losses.*]—If a co.'s branch manager, whose powers include receiving money, depositing it in a bank in the co.'s name, & drawing cheques against such funds in the co.'s name for the purposes of its business but not for his own personal business, misappropriates its funds by drawing cheques in the co.'s name to repay his own personal loans, the co. can recover the sums thus paid from those to whom they were paid, although the latter received them honestly & believing, as told them by the person paying them, that he had money coming to him from the co. for commission & that he was authorised to draw cheques for these commissions.—LONDON GUARANTEE, ETC., CO. *v.* ABRAMS & KOVSKY, [1923] 2 W. W. R. 1006.—**CAN.**

PART V. SECT. 3, SUB-SECT. 5.

379 ii. —— —— ——.]—Where a principal entrusts an agent with indicia of title & a signed transfer, the transferee's name being left blank, for the purpose of raising a certain sum on such securities, & the agent borrows a larger sum & fraudulently appropriates the difference, the lender being in ignorance of the amount specified by the principal, the principal cannot redeem the securities without paying the lender the amount lent. The fact that the transfer states a certain sum as consideration does not necessarily impose upon the lender the duty of inquiring as to the limitations of the agent's authority.—MAHAN *v.* MANNESS, [1918] 2 W. W. R. 191; 28 Man. L. R. 470; 40 D. L. R. 136.—**CAN.**

PART V. SECT. 3, SUB-SECT. 6.—A.

397 ii. —— *Authority as such—Contract not completed.*]—KERSHAW *v.* UNITED ARTISTS (Man.), [1926] 1 D. L. R. 738.—**CAN.**

398 ii. —— *Authority to sign contract—Contract providing for payment of price by instalments.*]—Defts. signed & gave to an agent a document in the following terms:—"We hereby agree to sell the property for £6,700 nett, provided a sale takes place within fourteen days from date hereof. The above price to be clear of all commission charges." The agent, within the fourteen days, signed a contract of sale by which the property was sold to pltf. for £6,700, payable £1,000 deposit (£50 preliminary deposit, to be increased to £1,000 within one month), £2,250 within three months, & £3,450 within six months, possession to be given after the second payment £2,250 at the end of the three months. There was no provision for interest on the balance:—*Held:* the document

399. For "bought note" in catchwords read "sold note."

406. *Add. Annotation :—As to* (1) **Apprvd.** Newsholme *v.* Road Transport & General Insce., [1929] 2 K. B. 356.

426. *Add. Annotations :*—**Consd.** Keen *v.* Mear, [1920] 2 Ch. 574. **Apld.** Lewcock *v.* Bromley (1920), 127 L. T. 116.

427. *Add. Annotation :*—**Refd.** Thirkell *v.* Cambi, [1919] 2 K. B. 590.

433. *Add. Annotation :*—**Consd.** *Re* Bebington's Tenancy, Bebington *v.* Wildman, [1921] 1 Ch. 559.

434. *Add. Annotation :*—**Refd.** *Re* Bebington's Tenancy, Bebington *v.* Wildman, [1921] 1 Ch. 559.

436. *Add. Annotation :*—**Refd.** *Re* Bebington's Tenancy, Bebington *v.* Wildman, [1921] 1 Ch. 559.

442. *Add. Annotation :*—**Refd.** *Re* Knight & Hubbard's Underlease, Hubbard *v.* Highton, [1923] 1 Ch. 130.

464. *Add. Annotation :—As to* (1) **Refd.** Poland *v.* Parr, [1927] 1 K. B. 236.

465. *Add. Annotation :—As to* (1) **Refd.** Savill *v.* Harben (1919), 89 L. J. K. B. 47.

468. *Add. Annotation :*—**Refd.** Lowther *v.* Harris (1926), 43 T. L. R. 24.

469. *Add. Annotations :—As to* (1) **Consd.** Folkes *v.* King, [1923] 1 K. B. 282. **Refd.** Lowther *v.* Harris (1926), 43 T. L. R. 24.

472. *Add. Annotation :—As to* (1) **Refd.** Lowther *v.* Harris, [1927] 1 K. B. 393.

477. *Add. Annotations :*—**Consd.** Folkes *v.* King [1923] 1 K. B. 282; Lowther *v.* Harris (1926), 43 T. L. R. 24.

481a. —— **Person living in house of hirer of goods.**]—STROHMENGER *v.* ATTENBOROUGH (1894), 11 T. L. R. 7, D. C.

483a. —— **Agent intrusted with motor car—To sell to specified person.**]—HEAP *v.* MOTORISTS' ADVISORY AGENCY, LTD., No. 495b, *post.*

484. *Add. Annotation :—As to* (1) **Refd.** Lowther *v.* Harris (1926), 43 T. L. R. 24.

485. *Add. Annotation :—As to* (2) **Consd.** Lowther *v.* Harris (1926), 43 T. L. R. 24.

485a. —— —— —— **Improper sale.**]—Pltf. was the owner of the A. tapestry & the L. tapestry, & he gave to P., a dealer in antiques, a limited authority to obtain & submit offers from possible purchasers. P. falsely represented to pltf. that he could obtain £525 for the A. tapestry, & pltf. allowed him to take it away for delivery to a purchaser, who in fact did not exist. P. then sold the A. tapestry to deft. for £250. Subsequently P., who never had authority to sell the L. tapestry, stole it from pltf. & sold it to deft. In an action for conversion deft. contended that P. had been in possession of the tapestries as a mercantile agent within the Act of 1889, & that as he had bought them from P. in good faith he had acquired the property in them. He also contended that pltf. had held out P. as a person with authority to sell & was estopped from saying that P. had no such authority in fact :—*Held :* (1) although P.'s authority signed by defts. was not an authority to the agent to sign a contract containing the above terms as to payment. —BOYD *v.* O'CONNOR, [1923] V. L. R. 603.—**AUS.**

398 iii. —— —— *Contract containing penalty clause.*]—*Held :* the existence of the penalty clause, which was not covered by the agent's instructions, & was not separable from the remainder of the contract, justified the principal in repudiating the agent's action, & the contract must be set aside.—DU PREEZ *v.* LAIRD, [1927] App. D. 21.—**S. AF.**

q i. —— *General authority.*]—Pltf. contracted with defts. to purchase & deliver potatoes at an agreed price per bushel. The farmers from whom the potatoes were to be purchased required cash payments, & defts. agreed to make advances to put pltf. in funds for this purpose. Defts. were not prompt in providing funds, & pltf. complained of the delay which hampered him in buying, &, in order to induce him to carry out the contract, defts.' agent offered an advance of 25 cents per bushel on the contract price for four cart loads of potatoes :—*Held :* the agent on the spot, looking after defts.' interests, had a general authority sufficiently broad to cover the making of the contract for the advanced price.—LEGACY *v.* DAVISON (1919), 52 N. S. R. 543.—**CAN.**

r. This case was reversed (1916), 22 C. L. R. 307. Delete the words "no actual or apparent" in the sentence, "*Held :* O. had no actual or apparent authority to vary the written contract by substituting a later date for delivery."

sk. *Agent agreeing to payment of compensation to purchaser if transaction not completed—Authority to sell.*]—A claim by a proposed purchaser for damages on the ground of an agreement by the vendor's agent for compensation to the purchaser should the contract not be made by the vendor, disallowed in the absence of any authority from the vendor to make such an agreement. —THOMPSON *v.* LYNNE, [1921] 1 W. W. R. 238; 56 D. L. R. 729.—**CAN.**

sl. *Salesman making reduction in price.*]—*Held :* principal not bound.—MASON & DEAN, LTD. *v.* UDOVIN, [1925] 1 D. L. R. 353; 57 N. S. R. 445.—**CAN.**

sm. *Solicitor's clerk giving undertaking as to withdrawal of Registrar-General's caveat—Authority as such.*]—*Held :* the solr. was personally bound by the undertaking.—HAWKINS *v.* GADEN (1925), 37 C. L. R. 183; 26 S. R. N. S. W. 382; [1926] Argus L. R. 109.—**AUS.**

PART V. SECT. 3, SUB-SECT. 8.—A.

423 iv. —— *Express authority to let on weekly tenancy—Lease granted for long term.*]—Pltf. was the owner of premises let to a weekly tenant. When the tenant left she recommended deft. to pltf. as a tenant. Pltf. never saw deft., but pltf.'s husband arranged some form of lease with him, & thereafter collected the rent, which was paid monthly, on behalf of pltf. & with her authority. In an action of ejectment deft. alleged that pltf.'s husband had given him a lease for four years from Dec. 1913, & that he was a tenant from year to year. Pltf. denied any knowledge of a lease for a term, or that she had given authority to her husband to make such a lease :—*Held :* the fact that pltf.'s husband had collected her rent was no evidence that he had authority to make a lease for four years on her behalf.—VOGE *v.* KERR (1919), 19 N. S. W. L. R. 34; 36 N. S. W. W. N. 19.—**AUS.**

427 ii. —— *Authority to find purchaser or tenant.*]—Deft. wrote to a land agent as follows :—"Re sale of hotel. I will take £2,500 for the freehold, & stock & furniture at valuation, or will lease for a term of five years, rent £5 per week. £1,000 walk in, walk out." The agent submitted the property to pltf., who elected to take a lease. The agent drew up an agreement to lease the property upon the terms mentioned by deft., & signed it on deft.'s behalf :—*Held :* deft.'s letter did not authorise the agent to bind him by a concluded contract, but merely amounted to an authority to find a purchaser.—QUICK *v.* WINTER, [1920] N. Z. L. R. 98.—**N.Z.**

sn. *Law agent—Authority to collect rents & manage property.*]—A law agent, even though he may be employed to collect the rents & attend to the repairs of a property has no general authority to grant leases on behalf of his employer. The existence of such an authority must be proved by the person who requires to found upon it. —DANISH DAIRY CO. *v.* GILLESPIE, [1922] S. C. 656.—**SCOT.**

PART V. SECT. 3, SUB-SECT. 8.—B.

433 i. *Agent—Without authority—Notice ratified.*]—A notice to quit must be such that the tenant may safely act on it at the time of receiving it. A notice by an unauthorised agent, therefore, cannot be made good by an adoption of it by the principal after the proper time for giving it.—SHAIK ABDOOL *v.* JUMA MUSJID TRUST (1929), 50 N. L. R. 75.—**S. AF.**

PART V. SECT. 3, SUB-SECT. 9.

so. *Bank manager consenting to addition of bank as plaintiff—General authority as such.*]—A local manager of a bank has authority to give consent in writing for the adding of pltf. If there be any reasonable doubt whether the signature to the consent is in reality his signature, the order should be that the bank be added as a party pltf. on filing the necessary consent.—KUSCH *v.* PEAT (1922), 63 D. L. R. 408; 15 Sask. L. R. at p. 326; [1922] 2 W. W. R. 174; *revsg.* 15 Sask. L. R. 324.—**CAN**

was limited, & although he was not acting for any principal other than pltf., yet these facts did not prevent him from being a mercantile agent & in the circumstances he was a mercantile agent & in possession of the A. tapestry with the consent of pltf., & as to that tapestry the defence under the Act of 1889 was established; (2) as to the L. tapestry, as P. was never in possession of it with pltf.'s consent, the defence under the Act failed, &, as pltf. had never represented to deft. that P. had authority to sell it, there was no estoppel, & pltf. was entitled to recover the value of the L. tapestry alone.—LOWTHER *v.* HARRIS, [1927] 1 K. B. 393; 96 L. J. K. B. 170; 136 L. T. 377; 43 T. L. R. 24.

487. *Add. Annotations:—As to* (1) **Distd.** Kempler *v.* Bravingtons (1925), 133 L. T. 680. **Refd.** Lowther *v.* Harris (1926), 43 T. L. R. 24. *As to* (2) **Distd.** Kempler *v.* Bravingtons (1925), 133 L. T. 680.

488. *Add. Annotation:—***Refd.** Lowther *v.* Harris (1926), 43 T. L. R. 24.

492. *Add. Annotation:—As to* (1) **Distd.** Laurie & Morewood *v.* Dudin, [1925] 2 K. B. 383.

495. *Add. Annotations:—As to* (1) **Consd.** Folkes *v.* King, [1923] 1 K. B. 282; Lake *v.* Simmons, [1926] 2 K. B. 51. **Refd.** Heap *v.* Motorists' Advisory Agency, [1923] 1 K. B. 577; Lowther *v.* Harris (1926), 43 T. L. R. 24. *Generally*, **Consd.** Buller & Co. *v.* Brooks (T. J.), Ltd. (1930), 142 L. T. 576.

495a. Act of 1889—Agent obtaining possession by trick—Authority to sell—At specified price.]—The owner of a motor car delivered it to a mercantile agent for sale. The owner stipulated & the agent agreed that the car should not be sold at less than a specified price without the owner's permission. The agent intended from the beginning to sell the car immediately for the best price he could get & to use the proceeds for his own purposes. On the day on which he got the car he sold it for less than the specified price to a purchaser who bought it in good faith & without notice of the agent's fraud. The agent misappropriated the proceeds. The car was subsequently purchased by deft. In an action of detinue by the owner of the car against deft.:—*Held:* (1) deft. acquired a good title by virtue of 1889 Act, s. 2; (2) the mercantile agent had not rendered himself liable to be convicted of larceny by a trick, inasmuch as he was authorised by pltf. to pass the property in the car to a purchaser; (3) as pltf. in fact consented to the mercantile agent having possession of the car, it was immaterial whether the latter committed larceny by a trick.—FOLKES *v.* KING, [1923] 1 K. B. 282; 92 L. J. K. B. 125; 128 L. T. 405; 39 T. L. R. 77; 67 Sol. Jo. 227; 28 Com. Cas. 110; 86 J. P. Jo. 552, C. A.

Annotations:—As to (2) **Distd.** Heap *v.* Motorists' Advisory Agency, [1923] 1 K. B. 577. **Consd.** Lake *v.* Simmons, [1926] 2 K. B. 51; Lowther *v.* Harris, [1927] 1 K. B. 393. *As to* (3) **Consd.** Buller & Co. *v.* Brooks (T. J.), Ltd. (1930), 142 L. T. 576.

495b. —— —— —— To specified person—Sale to third party.]—Pltf., desiring to sell his motor car for £210, & being informed by N. that he had a friend H., who would probably buy it for that price, allowed N. to have possession of the car for the sole purpose of showing it & endeavouring to sell it to H. There was no such person as H., & N. represented that there was with the intention of obtaining the car for his own benefit. N. afterwards through an intermediary sold the car to defts. for £110. Before N. got possession of the car he had been convicted of theft & other offences, but that was not known to any of the parties. While N. was in possession of the car he obtained an appointment as car salesman to a firm of motor engineers. In an action by pltf. against defts. for the return of the car or its value & damages for its detention:—*Held:* (1) N. had obtained the car from pltf. by larceny by a trick, pltf. never having given any real consent to his having or passing the property therein, & pltf. should succeed in the action unless defts. had some valid defence thereto; (2) defts. could not rely upon the defence that under 1889 Act, s. 2 (1), the sale to them was as valid as if the seller had been expressly authorised by pltf. to make the same, inasmuch as N. was not a "mercantile agent," &, if he was, the sale by him was not a sale in the ordinary course of his business as a mercantile agent, within that sub-section; &, further, because defts. had failed to satisfy the proviso to that sub-section by showing that they had not at the time of the disposition notice that N. had not authority to sell the car; & defts. had no defence to the action.

(3) Under 1889 Act, s. 2 (1), proviso, the *onus* is on the person taking under the disposition of the goods made by the mercantile agent of proving that he acted in good faith & without notice of the agent's want of authority, & is not upon the person whose goods have been disposed of by the agent of proving the contrary.—HEAP *v.* MOTORISTS' ADVISORY AGENCY, LTD., [1923] 1 K. B. 577; 92 L. J. K. B. 553; 129 L. T. 146; 39 T. L. R. 150; 67 Sol. Jo. 300.

Annotations:—As to (1) **Consd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586. **Refd.** Buller & Co. *v.* Brooks (T. J.), Ltd. (1930), 142 L. T. 576.

498. *Add. Annotation:—As to* (1) **Refd.** Lake *v.* Simmons, [1926] 2 K. B. 51.

500. *Add. Annotation:—***Consd.** Folkes *v.* King, [1923] 1 K. B. 282.

PART V. SECT. 3, SUB-SECT. 10.—A. (a) vi.

sp. *Dealer in possession of goods—Course of business to sell.*]—Pltf., a financing co., took an assignment of an agreement between motor car dealers & their manager for the conditional sale of a motor car. The agreement & the assignment were duly registered. Pltf. left the car in the possession of the dealers knowing that it would be on the latter's premises for the purpose of re-sale. The manager effected a sale of the car to deft., who paid the dealers therefor knowing nothing of pltf.'s claim & believing he was buying from the dealers:—*Held:* deft. was protected by sect. 60 (1) of Sale of Goods Act, R. S. B. C., 1924, c. 225, and had a good title to the car.—COMMERCIAL SECURITIES (BRITISH COLUMBIA), LTD. *v.* JOHNSON, [1930] 2 W. W. R. 444; 4 D. L. R. 509; 43 B. C. R. 61; *affd.*, [1931] 1 W. W. R. 420; 1 D. L. R. 861, 43 B. C. R. 381.—**CAN.**

PART V. SECT. 3, SUB-SECT. 10.—A. (a) vii.

sq. *Act of* 1889—*"When acting in ordinary course of business" defined.*]—The expression "when acting in the ordinary course of business of a mercantile agent," means when acting within business hours, at a proper place of business, & in other respects in the ordinary way in which a mercantile agent would act, so that there is nothing to lead the pledgee to suppose that anything wrong is being done, or to give him notice that the disposition is one which the mercantile agent had no authority to make.—ACME STEEL GOODS CO. OF CANADA, LTD. *v.* WALSH CONSTRUCTION CO., LTD., [1922] 1 W. W. R. 689; 63 D. L. R. 529; 30 B. C. R. 539.—**CAN.**

505a. **Agent intrusted with motor car to sell to specified person—Sale to third party.**]—HEAP *v.* MOTORISTS' ADVISORY AGENCY, LTD., No. 495b, *ante*.

507a. —— **Onus of proof.**]—HEAP *v.* MOTORISTS' ADVISORY AGENCY, LTD., No. 495b, *ante*.

517. *Add. Annotation :—Generally,* **Refd.** Lake *v.* Simmons, [1926] 2 K. B. 51.

520. *Add. Annotation :—As to* (1) **Refd.** Folkes *v.* King, [1923] 1 K. B. 282.

529. *Add. Annotation :*—**Refd.** Lake *v.* Simmons, [1926] 2 K. B. 51.

530. *Add. Annotations :*—**Consd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Refd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

582. *Add. Annotation :*—**Refd.** Pearl Mill Co. *v.* Ivy Tannery Co., [1919] 1 K. B. 78.

586. *Add. Annotation :—As to* (1) **Refd.** Clayton-Greene *v.* De Courville (1920), 36 T. L. R. 790.

589a. **Caretaker.**]—FORDER (J. C.) & SON, LTD. *v.* HARTINGTON (1929), 73 Sol. Jo. 850.

590. *Add. Annotation :*—**Refd.** Coldingham Parish Council *v.* Smith, [1918] 2 K. B. 90.

591. *Add. Annotation :*—**Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

605. *Add. Annotation :*—**Refd.** Miss Gray, Ltd. *v.* Cathcart (1922), 38 T. L. R. 562.

608a. **Tenant of public-house—Not being licensee—Holding out.**]—Deft. was the licensee of a public-house at which meals were served. In 1917, an agreement was entered into between deft. & the general manager of the owners & a third person, whereby the latter became the tenant of the licensed premises & deft. was released from all obligations under the tenancy. The licence, however, was not transferred, & deft.'s name remained painted up over the doorway. During the continuance of the new tenancy liquor as well as food was sold on the premises. Pltfs., during this period, supplied fish, fruit & vegetables to the tenant. The accounts were not fully met, & pltfs., on discovering that deft. was the licensee, which discovery was made after the goods had been supplied, sought to make him liable for the price on the ground that the tenant was either the agent of deft. by operation of law, or that deft. was estopped from denying such agency : —*Held :* where two people agreed that one should illegally & improperly occupy a position which could only be lawfully occupied by the other, that did not necessarily make the person occupying the position the agent for all purposes of the person who ought to be occupying it ; the tenant was not in fact deft.'s agent ; & as between himself & pltfs., deft. was not estopped from setting up the true state of affairs, because, whatever misrepresentations were made, they did not reach pltfs. nor cause them to act to their detriment.—MACFISHERIES, LTD. *v.* HARRISON (1924), 93 L. J. K. B. 811 ; 132 L. T. 22 ; 88 J. P. 154 ; 40 T. L. R. 709 ; 69 Sol. Jo. 89.

627. *Add. Annotation :*—**Refd.** Pennington *v.* Reliance Motor Works, [1923] 1 K. B. 127.

645a. ——.]—BEALE *v.* MOULS (1847), 10 Q. B. 976 ; 5 Ry. & Can. Cas. 105 ; 16 L. J. Q. B. 410 ; 11 Jur. 845 ; 116 E. R. 370.

Annotation :—**Refd.** Newton *v.* Belcher (1818), 6 Ry. & Can. Cas. 38.

646. *Add. Citation :—sub nom. Re* WOLVERHAMPTON, CHESTER & BIRKENHEAD JUNCTION RY. CO., *Ex p.* COTTLE, 14 Jur. 703.

Add. Annotation :—**Apld.** *Re* Direct Exeter, Plymouth & Devenport Ry. Co., *Ex p.* Roberts (1850), 2 H. & Tw. 392.

656. After this case insert " *See, also,* COMPANIES, Vol. IX., p. 53, Nos. 116 *et seq.*"

664. After this case insert " *See, also,* COMPANIES, Vol. IX., pp. 44, 53, Nos. 61-63, 110."

704a. **Mess committee—Goods ordered by secretary.**]—Pltf. supplied goods to the officers' mess of a brigade of which deft. was at the time commanding officer, the orders for the goods being given by the secretary of the mess committee. Pltf. sued deft. for the price, alleging that under the King's Regulations deft. was liable or that he was liable as principal for the acts of the mess secretary : —*Held :* the Regulations did not create any liability between the commanding officer & tradesmen, & as deft. neither gave nor authorised the orders, & pltf. did not give deft. credit, the action failed.—LASCELLES *v*

PART V. SECT. 3, SUB-SECT. 10.—A. (a) viii.

st. *Act of* 1889—*Necessity for proof of mala fides of purchaser.*]—Where an owner of goods, who has placed them with a mercantile agent, sues an alleged purchaser thereof from the agent for wrongful conversion, & deft. relies on [the above Act] the actual payment of money by deft. to the agent will not destroy the fact of *mala fides*, but the fact that the transaction is found not to have been an ordinary sale, *i.e.* a sale to one desirous of either using the goods or disposing of them to advantage, can of itself have a bearing only on the question of good faith, & proof of the dishonesty of the agent is not sufficient ; it must be shown that deft. acted in bad faith, & the evidence should be such as to prove to the hilt the *mala fides* of the alleged sale.—ACME STEEL GOODS CO. OF CANADA, LTD. *v.* WALSH CONSTRUCTION CO., LTD., [1922] 1 W. W. R. 689 ; 63 D. L. R. 529 ; 30 B. C. R. 539.—**CAN.**

PART V. SECT. 3, SUB-SECT. 11.

573 l. *Agent—Authority to buy at discretion—Secret limitations.*]—If a person desiring to buy grain arms his agent with contract forms for the purpose & sends him out to have these forms executed by vendors & with authority to sign them on his behalf subject to the verbal condition that the agent must stipulate that the contracts are not to come into effect until his principal has approved of the samples, this is a holding out that the agent has authority to make the contracts, & the principal is bound thereby though no such stipulation is made therein & no samples approved by the principal, if the vendors have no notice of such limitation of the agent's authority.—REED & KEAST *v.* MCKENZIE CO., LTD., [1921] 3 W. W. R. 72.—**CAN.**

sa. *Manager of branch office—Authority as such.*]—When a co. so conducts its business that a person who sells & delivers goods to a branch office thereof on an order received from such office is reasonably led to suppose that the branch has authority to give the order, the co. will not be permitted to escape liability for the purchase price on the ground that such branch office had no authority to buy the goods.—FARM PRODUCTS, LTD. *v.* MACLEOD FLOURING MILLS, LTD., [1918] 3 W. W. R. 1035 ; 14 Alta. L. R. 128 ; 43 D. L. R. 770.—**CAN.**

PART V. SECT. 3, SUB-SECT. 12.—A.

sb. *Member of syndicate acting for syndicate.*]—Pltf. sought to recover from defts., members of a syndicate formed for the purpose of exploring & testing certain mining properties, the price of goods supplied upon the order of one of the defts., C., & upon his credit. At the time the goods were supplied, pltf. did not know that C. was a member of a syndicate or was acting for others :—*Held :* defts other than C. were not liable to pltf.—MCLAUGHLIN *v.* GENTLES (1920), 46 O. L. R. 477 ; 51 D. L. R. 383 ; 17 O. W. N. 245.—**CAN.**

PART V. SECT. 3, SUB-SECT. 12.—B. (c).

sc. *Committee of unincorporated association—Employment by.*]—*Held :* the committee were under no personal liability to the employee for his salary. —GRAHAM *v.* CARPENTER (1926), 28 W. A. L. R. 66.—**AUS.**

RATHBUN (1919), 35 T. L. R. 347; 63 Sol. Jo. 410, C. A.

710a. *S.P.* BONHAM *v.* MAYCOCK (1928), 138 L. T. 736; 44 T. L. R. 387; 72 Sol. Jo. 254.

711. *Add. Annotation :*—**Dbtd.** Butwick *v.* Grant, [1924] 2 K. B. 483.

712. *Add. Annotation :*—**Expld.** Butwick *v.* Grant, [1924] 2 K. B. 483.

714. *Add. Annotation :*—**Consd.** Butwick *v.* Grant, [1924] 2 K. B. 483.

714a. —— ——.]—Authority to an agent to sell goods does not of necessity imply authority to receive payment of the price.—BUTWICK *v.* GRANT, [1924] 2 K. B. 483; 93 L. J. K. B. 972; 131 L. T. 476, D. C.

718. *Add. Annotation :*—**Apld.** Bonham *v.* Maycock (1928), 138 L. T. 736.

738. *Add. Annotation :*—**Refd.** Bonham *v.* Maycock (1928), 138 L. T. 736.

740. *Add. Annotation :*—**Refd.** Bonham *v.* Maycock (1928), 138 L. T. 736.

741. *Add. Annotation :*—**Refd.** Bonham *v.* Maycock (1928), 138 L. T. 736.

744. *Add. Annotations :*—**Apld.** Bradford *v.* Price (1923), 92 L. J. K. B. 871. **Refd.** Australian Bank of Commerce *v.* Perel, [1926] A. C. 737.

747a. —— **Authority to receive cash for goods—Notice to purchaser to draw cheques to seller's order**].—Pltfs., who were coal factors, engaged W. to manage a branch business for them. W. was authorised to receive payment in cash for coal supplied by pltfs. to their customers. Pltfs. had notified their customers, including defts., that all cheques must be made payable to pltfs.' order, & not to that of W. Defts. nevertheless paid for coal supplied to them by pltfs. by cheques made payable to W. or order. All these cheques were duly honoured on presentation. W. paid seven of defts.' cheques into his own private account & embezzled the proceeds: —*Held :* as W. was authorised by pltfs. to receive payment in cash for coal supplied, & defts. had paid W. by cheques payable to his order, & the cheques were duly honoured, defts. were discharged, notwithstanding that pltfs. had notified them that all cheques must be made payable to pltfs.' order.—BRADFORD & SONS *v.* PRICE BROTHERS (1923), 92 L. J. K. B. 871; 129 L. T. 408; 39 T. L. R. 272.

750. *Add. Annotation :*—**Consd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

751. *Add. Annotation :*—**Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

752. *Add. Annotations :*—*As to* (3) **Refd.** Robinson *v.* Marsh, [1921] 2 K. B. 640; Bradford *v.* Price (1923), 92 L. J. K. B. 871.

754. *Add. Annotation :*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

768. *Add. Annotation :*—**Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

769. *Add. Annotation :*—**Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

773. *Add. Annotation :*—*As to* (1) **Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

778. *Add. Annotation :*—*As to* (2) **Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

781. *Add. Annotations :*—**Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871; Butwick *v.* Grant, [1924] 2 K. B. 483.

786. *Add. Annotation :*—**Refd.** Fettes *v.* Robertson (1921), 37 T. L. R. 581.

798. *Add. Annotations :*—**Consd.** Cheshire *v.* Vaughan, [1920] 3 K. B. 240; Maskell *v.* Hill, [1921] 3 K. B. 157.

PART V. SECT. 3, SUB-SECT. 13.—A.

8d. *Agent—Holding out.*]—If a debtor gives money to another to pay to his, the debtor's, creditor, but the third party fails to pay the same over, the debtor is liable for the amount, unless the third party was the creditor's agent. The *onus* is on the debtor to prove either that there was an express agency, or to show, by the acts of the creditor, that these were sufficient to establish agency by holding out or estoppel.—CARR *v.* FRY & MCCUNE, [1924] 4 D. L. R. 735.—**CAN.**

711 v. —— —— *Right to receive deposit.*]—An agent for sale has no implied authority as such to receive a deposit.—PEARSON *v.* WILSON (1917), Q. W. N. 49; 11 Q. J. P. 105.—**AUS.**

711 vi. —— —— ——.]—Pltf. made an offer to D., as agent for L., to purchase land of L. for $5,000, & with the offer paid $200 to D. as a deposit. In an action for return of the $200, the offer not having been accepted, the trial judge found that L. when approached by pltf. sent him to D. & told him to make an offer through D.; that D. procured from pltf. a written offer to purchase at $5,000, paying part only in cash, & that offer was refused by L.; that D. obtained from pltf. a second offer to pay all cash, & this L. also refused :—*Held :* D. had authority to receive an offer, &, as the making of a deposit was a part of that offer, D. was not going beyond his authority in receiving it.—SILVERMAN *v.* LEGREE (1919), 45 O. L. R. 107; 47 D. L. R. 713; 15 O. W. N. 278.—**CAN.**

8e. *Person obtaining possession of bill of lading—Intervention between shipper & consignee.*]—Mere possession of a bill of lading in the hands of a person who has intervened between the original shipper & the consignee & is in no way identified with the transaction except by possession of the document, does not give him any authority to give a valid discharge of the money payable by the consignee.—STEWART *v.* RICHARDSON SONS & CO., LTD., [1920] 3 W. W. R. 134; 53 D. L. R. 625; 30 Man. L. R. 481.—**CAN.**

PART V. SECT. 3, SUB-SECT. 13.—B.

746 i. *Agent.*]—An agent authorised to receive money for his principal may not receive anything but money; but, if he receives a cheque on a bank, & the amount of the cheque is paid to the agent before his authority is revoked, that is a good payment to his principal.—DELORY *v.* GUYETT (1920), 47 O. L. R. 137; 52 D. L. R. 506; 17 O. W. N. 474.—**CAN.**

746 ii. ——.]—If one is authorised to sell anything for another, the presumption is that he is to sell for cash, unless there is something to show to the contrary.—WATSON *v.* CADILLAC MOTOR SALES CO., LTD., [1920] 3 W. W. R. 107.—**CAN.**

8f. —— *Authority to collect debts—Cashing cheques received.*]—A clerk employed in the business of the Canadian Govt. elevators, whose express duties were to collect amounts due from grain dealers for freight charges, etc., & on presentation of bills of lading & payment of charges to hand out warehouse receipts, & deposit all money collected to the credit of the Receiver-General in a designated bank & at certain intervals to remit by draft to the head office of the business, & which charges were almost always paid to him by accepted cheque, although they might have been received in cash if so tendered :—*Held :* to have no authority to cash any cheques paid to him or any ostensible authority justifying any bank giving him the cash for any such cheque.—R. *v.* ROYAL BANK OF CANADA, [1920] 1 W. W. R. 198; 50 D. L. R. 293; 30 Man. L. R. 104.—**CAN.**

PART V. SECT. 3, SUB-SECT. 15.

804 i. *Agent—Implied authority from circumstances—Husband authorised to purchase stock for wife.*]—The fact that a husband was authorised to act, & has acted, as his wife's agent in the purchase of stock through brokers does not in itself justify the brokers in assuming that he is her agent to direct a sale of it; & even assuming that the rules of the stock exchange subject to which the order to purchase was placed confer on the husband authority to direct such sale, the brokers' responsibility to the wife for the proceeds of the sale is not discharged by payment to the husband unless they show that he had authority, either express or implied, to receive the money.—AIKMAN *v.* BURDICK BROTHERS, [1923] 4 D. L. R. 852; 3 W. W. R. 785; *varying*, [1923] 1 D. L. R. 1165; 31 B. C. R. 478.—**CAN.**

808 v. —— —— *Break in market.*]—Instructions by an owner of wheat to his agent to "sell" without more means "sell as soon as possible," unless there is something in the circumstances

809. *Annotations :*—For "For full anns., *see* LANDLORD & TENANT," read "For full anns., *see* SALE OF LAND."

Add. Annotation :—As to (3) **Refd.** Chillingworth *v.* Esche (1923), 92 L. J. Ch. 461.

810. *Annotations :*—For full anns., *see* S. C. No. 1192, *post.*

828. *Add. Annotations :—As to* (1) **Distd.** Commonwealth Trust *v.* Akotey (1925), 94 L. J. P. C. 167. **Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114. *Generally,* **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

829. *Add. Annotation :*—**Refd.** Lowther *v.* Harris (1926), 43 T. L. R. 24.

833. *Add. Annotations :*—**Consd.** Keen *v.* Mear, [1920] 2 Ch. 574. **Apld.** Lewcock *v.* Bromley (1920), 127 L. T. 116.

834. *Add. Annotation :—As to* (1) **Consd.** Keen *v.* Mear, [1920] 2 Ch. 574.

834a. —— ——.]—A general authority to an agent to find a purchaser of a house does not authorise the agent to sign a contract binding on the vendor. There must, to justify such a signing, be a special & express authority to sign.—LEWCOCK *v.* BROMLEY (1920), 127 L. T. 116; 37 T. L. R. 48; 65 Sol. Jo. 75.

834b. —— ——.]—The mere employment of an estate agent by an owner to dispose of a house confers no authority to make a contract. The agent is solely employed to find some one to negotiate with the owner. But if the agent is definitely instructed to sell at a certain price, those instructions involve authority to make a binding contract & to sign an agreement.

But the authority is limited to signing an open contract & does not authorise the agent to sign a contract with special conditions, *e.g.* as to title with which it is no part of an estate agent's duty to deal.—KEEN *v.* MEAR, [1920] 2 Ch. 574; 89 L. J. Ch. 513; 124 L. T. 19.

836. *Add. Annotations :*—**Consd.** Keen *v.* Mear, [1920] 2 Ch. 574. **Distd.** Lewcock *v.* Bromley (1920), 127 L. T. 116.

836a. —— ——.]—KEEN *v.* MEAR, No. 834b, *ante.*

836b. —— —— **Authority alleged to be limited to state price.**]—Action for specific performance of a contract alleged to have been entered

or the custom of a particular trade known to both parties to give the words a different meaning. Where instructions to sell, without stipulating any price, were given after the close of the market on May 3 :—*Held :* the agent was justified in selling without further instructions at the opening of the market on May 4, though the market had broken by reason of the Grain Exchange having withdrawn option trading & the possibility of the Govt. fixing the price.—GEARHART *v.* QUAKER OATS CO., [1919] 3 W. W. R. 888.—**CAN.**

809 ii a. —— —— —— ——.]—Deft. wired to S., a land agent: "Bed-rock, £13,250 net, £400 down, stock & furniture at valuation." S. replied, "Your wire says £400 down: suppose you mean £4,000, wire us giving authority to sell if we can get your net price." Deft. then wired, "Four thousand down. Sell if you can get my net price" S. replied, "Have sold in accordance with your wire, freehold for £13,750, stock & furniture at valuation, showing you £13,250 net, £4,000 to be paid down, balance to be arranged on mtge. by you. Possession as soon as license granted, not later than Aug. 20, £500 deposit paid": —*Held :* S. had no authority to sell on the terms on which he did sell.—PRINGLE *v.* MCKAY, [1922] N. Z. L. R. 818.—**N.Z.**

815 iii a. —— —— —— ——.]—GEARHART *v.* QUAKER OATS CO. (1918), 42 D. L. R. 791.—**CAN.**

815 iii b. —— —— —— ——.]—A land agent, whom pltf. had informed of his willingness to sell a property for £900, obtained an offer of £825 & telegraphed it to pltf., but through a mistake in transmission the message as delivered to pltf. mentioned £925 as the amount of offer. Pltf. telegraphed his acceptance without naming an amount. The offer having been withdrawn, the agent agreed to sell the property to deft. for £825, & let him into possession. On the tender of the formal contract to pltf. for execution a month later he learned about the mistake in the telegram for the first time & refused to complete :—*Held :* the specific authority originally given to the agent did not authorise the sale of pltf.'s property for less than £900, & no land agent as such is held out as having a general authority on behalf of his client to sell on any terms or at any price.—SHORTAL *v.* BUCHANAN, [1920] N. Z. L. R. 103.—**N.Z.**

815 v. —— —— ——.]—Pltfs., an incorporated co., owning lots of land, appointed C. their general manager to supervise the sale of the lots. In the agreement between pltfs. & C. it was provided that he had no authority to make any representation as to pltfs.' properties other than those contained in their printed matter, & that he should have authority to accept offers for the purchase of lots according to pltfs.' price-list. Pltfs. employed G. to sell their lots. G., in Mar. 1914, telephoned to deft. from pltfs.' office & induced deft. to buy two of the lots, upon the express agreement that pltfs. would resell the lots not later than Aug. 1914, at a profit of $100 on each lot; G. informed deft. that he was authorised by C. to make this arrangement. C. was present when G. was telephoning, & heard what G. said; C. told G. that he should not have said that pltfs. would resell the lots; but, according to the testimony of G., C. himself was not called as a witness, C. ratified the representation made in his name & ostensibly by his authority :—*Held :* C., as general manager, had ostensible authority to make or ratify the collateral agreement, & any secret restriction of his authority would not affect deft., who relied upon his being the general manager.—CANADIAN GENERAL SECURITIES CO., LTD. *v.* GEORGE (1918), 42 O. L. R. 560; 13 O. W. N. 355; 14 O. W. N. 71; 43 D. L. R. 20.—**CAN.**

817 ii. —— *Implied authority*]—A broker who had purchased corn on margin for a customer :—*Held :* justified in selling on the customer failing to forward margin money when a slump occurred in the market-price, a general condition of the broker transacting such business being that he reserved the right to close transactions without further notice when margins were unsatisfactory, which condition the ct. inferred must have been known to the customer who had been for some time a "room trader" & dealer on a larger scale in the broker's office.—MALOOF *v.* BICKELL, [1920] 1 W W R. 407; 50 D. L. R. 590; 17 O. W. N. 294; 59 S. C. R. 429.—**CAN.**

817 iii. —— *Authority to find purchaser.*]—On Jan. 20, 1920, deft. handed to his brokers a letter in these terms: "I authorise you to procure a buyer of the above premises for Rs. 45,000 & on your sending same, I shall pay you as remuneration at 1 per cent. on the purchase-money. The same will be paid at the registration of the conveyance, otherwise not." The offer contained in the letter was accepted by pltf. & thereupon the fact of such acceptance was communicated on the same day to deft. :—*Held :* the offer contained in the letter amounted only to an offer to be put into touch with intending buyers of the premises & it was in no sense an authority to the brokers to sell deft.'s property or an offer on the part of the vendor to sell the premises to whoever might be brought in touch with the vendor by the brokers.—PURNA CHANDRA DUTT *v.* INDRA CHANDRA ROY (1921), I. L. R. 49 Calc. 389.—**IND.**

821 i. —— *General authority—Sale in own name.*]—*Held :* position of pltfs. being that of brokers, in selling in their own name they acted beyond the scope of their authority.—PATERSON *v.* MCCALLUM, [1921] N. Z. L. R. 869.—**N.Z.**

833 xiii a. —— *Instructions to procure purchaser at specified sum.*]—In negotiations for the sale of property a notification by a principal to his agent that he will accept a purchaser at a specified sum will not authorise the agent to conclude a contract.—CARNEY *v.* FAIR (1920), 54 I. L. T. 61.—**IR.**

sk. *Solicitor — Authority to receive tenders—Tenders to be sent either to agent or principal.*]—Exors. gave instructions to solrs. to advertise for tenders for a property & they told the solrs. to insert in the advertisement a notice to the effect that tenders might be sent either to the solrs. or to either of the exors.; this latter the solrs. did not do. A tender was received by the solrs. & forwarded by them to the exors & they wrote acknowledging the receipt thereof. Some days later the tenant of the property forwarded a tender to one of the exors., who did not communicate with his co-exor. or the solrs. about it. The solrs., having heard no more from the exors. entered into a contract to sell the property to the person who made the first tender :—*Held :* the solrs. had no authority to give notice to the person making the first offer that his tender was accepted.—DEANS *v.* ORR (1922), 63 D. L. R. 720.—**CAN.**

into by letters between pltfs. & H. & R., estate agents, whom pltfs. alleged were agents for the first deft. for the sale to pltfs. of freehold premises. The defence was that the agents had a limited authority to state a price only. The premises had been offered for sale by auction by order of the mtgees. under particulars & conditions of sale referred to in the correspondence on Jan. 18. H. & R. inclosed plan & auction particulars to pltfs. stating in their letter that their client would be willing to sell the freehold at £550. On Jan. 27, pltfs. offered £400. On the 28th H. & R. submitted that offer to the first deft., & asked for her instructions. On Feb. 8, the first deft.'s husband communicated with H. & R. over the telephone, & on Feb. 10, they wrote to pltfs. stating that their client would not accept £400, & that "we are now authorised to close with you if you will increase your offer to £450." Pltfs., on Feb. 14, wrote to H. & R. referring to the letter of Feb. 10, & stating "we are prepared to accept your offer of this property agreeing to the price of £450. Kindly forward the contract in due course." On Feb. 17, H. & R. wrote informing the first deft. that, as instructed by her husband, they had offered the property to pltfs. for £450, & that pltfs. had agreed to buy. The second deft. was prepared to purchase the property from the mtgees. at a price more than £450 :—*Held :* the agents had authority to conclude the contract, & pltfs. were entitled to judgment for specific performance of it.—ALLEN & Co., LTD. *v.* WHITEMAN (1920), 89 L. J. Ch. 534 ; 123 L. T. 773 ; 64 Sol. Jo. 727.

837. *Add. Annotation :*—**Refd.** Banque Belge Pour L'Etranger *v.* Hambrouck (1920), 37 T. L. R. 76.

838a. —— ——.]—The mere relation of principal & factor confers, ordinarily, an authority to sell at such times & for such prices as the factor may, in the exercise of his discretion, think best for his employer ; but if he receive the goods subject to any special instructions, he is bound to obey them.—SMART *v.* SANDARS (1846), 3 C. B. 380 ; 16 L. J. C. P. 39 ; 7 L. T. O. S. 339 ; 10 Jur. 841 ; 136 E. R. 152.

Annotations :—**Refd.** Campanari *v.* Woodburn (1854), 15 C. B. 400 ; Siebel *v.* Springfield (1863), 3 New Rep. 36 ; Donald *v.* Suckling (1866), L. R. 1 Q. B. 585.

840. For existing citations read "(1848), 5 C. B. 895 ; 17 L. J. C. P. 258 ; 11 L. T. O. S. 178 ; 12 Jur. 751 ; 136 E. R. 1132."

845a. —— **Authority to discount bill.**]—If an agent employed by the indorsees of a bill to get it discounted warrant it to be a good one, his employers are bound by his act, & are liable to refund if the bill be afterwards dishonoured by the acceptor.—FENN *v.* HARRISON (1791), 4 Term Rep. 177 ; 100 E. R. 959.

Annotations :—**Refd.** Fydell *v.* Clark (1796), 1 Esp. 447 ; Lyon *v.* Mells (1804), 1 Smith, K. B. 478 ; *Re* Acraman, *Ex p.* Bushell (1844), 3 Mont. D. & De G. 615 ; Royal Albert Hall Corpn. *v.* Winchelsea (1891), 7 T. L. R. 362.

850. *Add. Annotation :*—**Refd.** Collins *v.* Hopkins, [1923] 2 K. B. 617.

860. *Add. Annotation :*—**Refd.** Collins *v.* Hopkins, [1923] 2 K. B. 617.

872. *Add. Citations :*—*affd.*, [1918] A. C. 626 ; 87 L. J. K. B. 1158 ; 119 L. T. 446 ; 34 T. L. R. 518 ; 62 Sol. Jo. 665, H. L.

883a. Salesman — Authority to cancel sale.]—LECKENBY *v.* WOLMAN, No. 308a, *ante*.

885a. Grant of sole selling agency—Power of grantee to extend privilege—Extension to company controlled by agent.]— The firm of R. & Co., one of applts., were the sole agents in the Island of Mauritius of the F. Co. of Canada for the sale of F. motor cars & F. spare parts. With the concurrence of said F. co. R. & Co. entered into an identical agreement with each of three garages under which said garages were given the exclusive right to sell F. spare parts in the Island. The agreements reserved, however, to R. & Co. the right to extend the same privileges to two other garages to be chosen by R. & Co. One of said three garage cos., a co. of which the three partners of R. & Co. were directors, went into voluntary liquidation ; &, at the instance of R. & Co., a new co., to wit, resp., was formed, independent entirely of R. & Co. The new co. took over the stock-in-trade of the co. in liquidation & its sub-agency business in F. spare parts. Later, R. & Co. formed another co., the F. Service Station Co., Ltd., one of applts., & conceded to it the privilege of selling F. spare parts within the Island. In the shares of this new co., the then four members of R. & Co., took & retained a controlling interest, the remaining shares being held by their relatives or employees. To this co. the firm of R. & Co. gave the right, in effect, to be & represent itself as being the F. retail distributor in the Island, not only for the sale of F. parts but also for F. cars :—*Held :* R. & Co. were not entitled under the agreement to choose themselves as one of the garages to whom the privileges of the agreement might be extended, &, consequently, what the firm could not do itself it could not do through a co. controlled by it, & the course adopted by the firm in forming applt. co. was not less damaging to the three other garages than would have been the similar activities of the firm itself. An injunction was granted to the resp. restraining R. & Co. from conceding to the F. Service Station Co., Ltd., the privilege of selling F. spare parts within the Island.—AUTO CAR & SPORT EQUIPMENT CO., LTD. *v.* FORD SERVICE STATION CO., LTD., [1931] 3 W. W. R. 363, P. C.

897. For "For full anns., *sce* ESTOPPEL," read "For full anns., *see* DEEDS, Vol. XVII. p. 216, No. 285."

PART V. SECT. 3, SUB-SECT. 16.

a. Transpose lines 5 & 6 of this paragraph.

PART V. SECT. 3, SUB-SECT. 17.

al. *Agent forbidding purchaser to use machinery only partly paid for—Authority as such.*]—Where a letter, sent to a buyer of a farm machine under a conditional sale contract before he is in default, forbidding him, under a threat of serious consequences, to use the machine, is written by an agent of the seller, with authority to sell & collect the purchase-money & make settlements therefor, as an assertion of a right which is to continue until the buyer makes a settlement, it will be held to be written within the apparent scope of such agent's authority. —ROBERT BELL ENGINE & THRESHER CO. *v.* FARQUHARSON, [1918] 1 W. W. R. 924 ; 11 Sask. L. R. 81 ; 39 D. L. R. 625. —CAN.

am. *Real estate agent—Authority to describe property.*]—A real estate agent employed to find a purchaser has implied authority to describe to an intending purchaser the property offered for sale & to state any facts or circumstances which may affect its value.—HUGG *v.* LOW (Sask.), [1928] 4 D. L. R. 315 ; [1928] 2 W. W. R. 710 ; *on appeal*, [1929] 3 D. L. R. 725 ; 2 W. W. R. 55 ; 23 S. L. R. 592.—CAN.

an. *Manager of farm—Authority to engage labour—& sell produce.*]—A manager of a farm or estate may engage labour to do the necessary

Part VI.—Delegation.

906 *Add. Annotations:*—**Apld.** Tarn *v.* Scanlan, Neilsen, Andersen *v.* Collins, Muller (London) *v.* Lethem, Muller *v.* I. R. Comrs. (1927), 44 T. L. R. 53. **Refd.** Prager *v.* Blatspiel. Stamp & Heacock, [1924] 1 K. B. 566.

922. *Add. Annotations:*—**Apld.** Tarn *v.* Scanlan, Neilsen, Andersen *v.* Collins, Muller (London) *v.* Lethem, Muller *v.* I. R. Comrs. (1927), 44 T. L. R. 53. **Refd.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

926. *Add. Annotations:*—**Refd.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566; Tarn *v.* Scanlan, Neilsen, Andersen *v.* Collins, Muller (London) *v.* Lethem, Muller *v.* I. R. Comrs. (1927), 44 T. L. R. 53.

941. *Add. Annotation:*—*As to* (1) **Refd.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

942. *Add. Annotation:*—**Refd.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

944. *Add. Annotations:*—**Refd.** Prager *v.* Blatspiel, Stamp *v.* Heacock, [1924] 1 K. B. 566; Tarn *v.* Scanlan, Neilsen, Andersen *v.* Collins, Muller (London) *v.* Lethem, Muller *v.* I. R. Comrs. (1927), 44 T. L. R. 53.

945a. ——.]—Pltfs., who were financially interested in goods to be shipped to B., employed defts., B. Bank, who, in turn, employed sub-agents to collect the proceeds. Pltfs. wrote to defts.: "We beg to hand you herewith the undermentioned bills for collection, subject to the deduction of commission & expenses & to the condition mentioned." That condition was: "Collections are undertaken at depositor's risk only on the understanding that no liability whatever attaches to the bank in connection therewith or with the storage and insurance of the relative goods." In the margin of the document under the heading "Instructions" was the following: "Documents to be surrendered against payment: if goods are not taken up, please do your best on our behalf to warehouse & insure them against fire." This document was received by the deft. bank, who acted upon it. Goods to which the bills related were destroyed by fire at the Customs House, B., when uninsured. Pltfs. alleged that their loss was due to negligence on the part of the deft. bank & (or) their sub-agents in omitting to insure the goods. It was contended for pltfs. that the clause providing that no liability should attach to deft. bank must be disregarded, as being repugnant to the contractual duty undertaken by the defts. to do their best to warehouse & insure the goods against fire. The action was brought by the C. P. Assocn. against B. Bank & the A.-P. Co., their sub-agents:—*Held:* although in certain cases where the employment of a sub-agent was authorised the agent might be impliedly authorised to create privity of contract between the principal & the sub-agent, there was no general rule of English law that such authority should be implied when a sub-agency was authorised. In the present case no such authority was to be implied & the claim against the sub-agents failed.—CALICO PRINTERS' ASSOCN., LTD. *v.* BARCLAYS BANK (1931), 145 L. T. 51; 36 Com. Cas. 197, C. A.

955. *Add. Annotations:*—*As to* (1) **Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51. *Generally,* **Refd.** Muller (London) *v.* Lethem, Same *v.* I. R. Comrs., [1927] 1 K. B. 780.

957. *Add. Annotation:*—*As to* (1) **Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

964. *Add. Annotation:*—**Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

966. *Add. Annotations:*—**Consd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110. **Refd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

975. *Add. Annotation:*—**Consd.** Belvedere Fish Guano Co. *v.* Rainham Chemical Works, Feldman & Partridge, Ind, Coope *v.* Same, [1920] 2 K. B. 487.

work thereon, or he may sell the produce, & then the owner will be bound by the representations made by the manager as to such produce.—RAVENE PLANTATIONS, LTD. *v.* ESTATE ABREY, [1928] App. D. 143.—**S. AF.**

PART VI. SECT. 1.

906 iii. —— ——.]—GRIMMER *v.* MERCHANTS & MANUFACTURERS FIRE INSURANCE CO., [1932] 2 D. L. R. 621.—**CAN.**

906 iv. —— *Mother managing daughter's property.*]—Where a person employs another relying upon his peculiar aptitude for the work entrusted to him, it is not competent for that person to delegate the trust to another.

Where the authority which a mother had to manage her daughter's property involved a certain trust or discretion for the exercise of which she was selected:—*Held:* she could not delegate that trust & appoint her husband to perform the duties of her agency.—ROBINSON *v.* LONG, [1923] 3 D. L. R. 918.—**CAN.**

906 v. —— *Manager of property.*]—A lease is invalid if it is granted by a person as attorney for one who is a manager of the property leased, & who did not negotiate or consider the lease or know of it until after its execution.—BONNERJI *v.* SITANATH DAS (1921), 49 L. R. Ind. App. 46; I. L. R. 49 Calc 325.—**IND.**

so. *Agreement to assist agent—Remuneration—Construction of contract.*]—Deft., a real-estate agent, with whom a printing & lithographing business had been listed for sale, asked pltf. who had practical knowledge of the latter class of business, to assist him in finding a purchaser, & said to pltf.: "If this deal comes off we will split a nice piece of change":—*Held:* there was a contract between the parties that the commission if earned by their joint efforts would be divided; in the absence of any local or trade meaning to the contrary, the meaning of the words quoted was that the division would be an equal one; &, therefore, pltf. having rendered assistance in bringing about the sale which was made was entitled to judgment for half the commission.—JAMES *v.* FERRIS, [1932] 1 W. W. R. 250; 1 D. L. R. 472; 44 B. C. R. 522.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.

943 iii. —— ——.]—If an agent for sale of grain to whom the goods are consigned or delivered, consigns the same to a sub-agent for sale, & the bill of lading & such other documents & circumstances as there are support the inference of the agent's right to deal with the goods, then in the absence of anything showing a contrary intention the sub-agent has only to account in respect of the proceeds to the first agent & not to the original principal.—HINCHCLIFFE *v.* BAIRD & BOTTERELL, [1920] 3 W. W. R. 159; 53 D. L. R. 451; 30 Man. L. R. 520.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 2.

964 v. —— —— *Contract with sub-agent approved by principal.*]—Where a co. had engaged an agent to sell its shares, had intended him to employ sub-agents, & had approved of the contract made by the agent on its behalf with a sub-agent:—*Held:* the co. was liable to the sub-agent for commission due under his contract.—BERGMAN *v.* CANADIAN FARM IMP. CO., [1924] 1 D. L. R. 350.—**CAN.**

PART VI. SECT. 4.

976 vii. —— *Funds received by sub-agent.*]—Every agent who employs a sub-agent is liable to the principal for money received by the sub-agent to the principal's use, & is responsible to the principal for the negligence & other breaches of duty of the sub-agent in the course of his employment.—HOOLE *v.* ROYAL TRUST CO., [1931] 3 W. W. R. 426.—**CAN.**

977. *Add. Annotation :—As to* (1) **Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

980a. NATIONAL EMPLOYERS' MUTUAL GENERAL INSURANCE ASSOCN., LTD. *v.* ELPHINSTONE, [1929] W. N. 135.

981a. —— **Failure to give proper instructions to sub-agent.**]—SELLER *v.* WORK (1801), Marshall on Marine Insurance, 4th ed., p. 243.

Part VII.—Ratification.

987. *Add. Annotation :*—**Consd.** *Re* Becket, Purnell *v.* Paine, [1918] 2 Ch. 72.

989a. —— ——.]—Resps.' manager, without their authority & fraudulently, obtained from their bankers, in exchange for cheques drawn by resps. upon the bankers, drafts for equivalent amounts drawn by the bankers upon themselves, payable to bearer, & crossed "not negotiable." These drafts the manager paid to an account which he had with applts., & they collected the amounts. Resps. sued applts. for damages for conversion of the drafts :—*Held :* the action failed, since resps. could not ratify the act of their manager in obtaining the drafts, so as to have a title to sue, without also ratifying his subsequent dealing with the drafts, the form of which made collection through a bank necessary.—UNION BANK OF AUSTRALIA *v.* MCCLINTOCK, [1922] 1 A. C. 240 ; 91 L. J. P. C. 108 ; 126 L. T. 588, P. C.

Annotation :—**Refd.** Australian Bank of Commerce *v.* Perel, [1926] A. C. 737.

Compare No. 338a, *ante.*

994. *Add. Annotation :—As to* (3) & (4) **Apprvd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607.

995. *Add. Annotations :*—**Consd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607. **Refd.** Bow's Emporium *v.* Brett (1927), 44 T. L. R. 194.

995a. —.] Pltf. had an account with deft. bank, & his wife forged his signature on cheques & thereby drew out all the money left in the account, & she lent it to her sister. Pltf., on discovering the facts, did not at once inform the bank, but about nine months later, when his wife told him that she wanted more money for her sister, he stated his intention of going to the bank, & that night his wife committed suicide. Pltf. then went to the bank & told the manager about the forged cheques. In an action by pltf., claiming to be credited by deft. bank with the amount of the forged cheques, the bank pleaded (*a*) adoption & ratification, & (*b*) that pltf. was estopped by his silence from alleging that the signatures were forgeries. The tribunal of first instance found that the forged cheques were honoured through the carelessness of the bank officials. There was no evidence that the pltf. had ever adopted the forged cheques as his own :—*Held :* ratification had no applicability to a forged signature, but pltf. was estopped from alleging the forgeries because his silence until after his wife's death had caused the bank to lose their right of action against the forger, & therefore the action failed.—GREENWOOD *v.* MARTINS BANK, LTD. (1932), 101 L. J. K. B. 623 ; 147 L. T. 441 ; 48 T. L. R. 601 ; 76 Sol. Jo. 544 ; 38 Com. Cas. 54, H. L.

998. *Add. Annotation :*—**Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

1001a. **Offer accepted by agent subject to ratification—Withdrawal before ratification.**]—Pltf. was chairman of the board of management of a charity. Deft. wrote a letter to the board saying that he would sell certain property to the board for £6,500. At a full meeting of the board instructions were given to arrange for an inspection of the property by members of the board on a specified date. A deputation, consisting of pltf. & twelve other members of the board, viewed the property & had an interview with deft. The price of £6,500 was again mentioned, & deft. was told that all the members of the board present had resolved to buy the property, & that they could carry the necessary resolution, & they purported to accept deft.'s offer subject to a formal meeting. The secretary of the charity stated that the deputation was not a quorum & could not act as a properly constituted board. On the next day deft. wrote to the secretary promising that the deeds of the property should be left to be inspected by the solr. to the charity, & that his own solr. would forward a form of contract ; & the secretary thereupon sent out a notice to members of the board of a special meeting to be held two days later "to receive the report & recommendation of the deputation." On the day of that meeting deft. telegraphed to the secretary cancelling all negotiations. The meeting, however, passed resolutions to ratify the deputation's acceptance of deft.'s offer to sell for £6,500, & to instruct the solr. to the charity to require deft. to complete. In an action by pltf. on behalf of himself & of all other members of the board for specific performance of an agreement to sell the property to the charity for £6,500 :—*Held :* on the facts the members of the deputation did not warrant their authority to bind the board, & their acceptance of deft.'s offer was subject to ratification by the board ; (2) where an offer is accepted by an agent subject to ratification by the principal there is no contract or contractual relation until ratification, & at any time before ratification the offer may be withdrawn.—WATSON *v.* DAVIES, [1931] 1 Ch. 455 ; 100 L. J. Ch. 87 ; 144 L. T. 545.

1005. *Add. Annotation :*—**Refd.** The Joannis Vatis (1921), 91 L. J. P. 182.

PART VII. SECT. 3.

1006 v a. H. was tenant to P. of lands held under a lease which expired on Sept. 29, 1880. P. brought an ejectment to recover possession of the lands, & for mesne rates, & after he was in a position to mark judgment, an agreement was entered into in Nov. 1884, between H. & P., by which P. agreed to grant a lease to H. for 31 years from Sept. 29, 1884, H. paying £860 on or before Dec. 15, as & for mesne rates up to that date, & for costs, & that H. should be at liberty to sell subject to the landlord's approval. H. not having paid such sum of £860, judgment for possession was entered on Dec. 16. After the entry of the judgment negotiations took place between P. & D. who had taken the lands temporarily for grazing from H. for a lease of the said lands to D., & on Jan. 2, 1885, D. paid P.

1009. *Add. Annotations :*—**Refd.** Drughorn *v.* Rederiaktiebolaget Trans-Atlantic, [1919] A. C. 203; The Joannis Vatis (1921), 91 L. J. P. 182; Underwood *v.* Bank of Liverpool, Same *v.* Barclays Bank, [1924] 1 K. B. 775; Robinson *v.* Midland Bank (1925), 41 T. L. R. 402; Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371.

1019. *Add. Annotation :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371.

1022. *Add. Annotations :*—**Expld. & Distd.** Watson *v.* Davies, [1931] 1 Ch. 455. **Consd.** Reynolds *v.* Atherton (1921), 125 L. T. 690.

1026. *Add. Annotation :*—**Refd.** Reynolds *v.* Atherton (1921), 125 L. T. 690.

1027. *Add. Annotation :*—**Refd.** *Re* Bebington's Tenancy, Bebington *v.* Wildman, [1921] 1 Ch. 559.

1028. *Add. Annotation :*—**Refd.** *Re* Bebington's Tenancy, Bebington *v.* Wildman, [1921] 1 Ch. 559.

1029. *Add. Annotation :*—**Refd.** *Re* Bebington's Tenancy, Bebington *v.* Wildman, [1921] 1 Ch. 559.

1033. *Add. Annotation :*—**Refd.** Bowyer, Philpott & Payne *v.* Mather, [1919] 1 K. B. 419.

1033a. —— After issue of notice to abate—Before institution of proceedings.] — By a bye-law of the city council of W., which was the sanitary authority of W., it was provided that whenever the council was in vacation the mayor & the chairmen of the respective committees of the council might give such instructions as were requisite with respect to any matter of an urgent nature, provided that all such acts were in due course reported to the council. The council of W. held no meeting between July 26, 1917, & Oct. 18, 1917—the summer vacation, & the public health committee of the council did not sit between July 17, 1917, & Oct. 9, 1917. On July 17, 1917, the public health committee passed a resolution appointing its chairman, & in his absence the acting vice-chairman, to deal with all urgent matters on behalf of the committee during the summer vacation. This resolution was reported to the council & approved by them on July 26, 1917. About the middle of Sept. 1917, the medical officer of health, being satisfied that a nuisance existed upon certain premises in the district of the council & city of W., caused a written notice of the fact of its existence to be served on the owner of the premises under Public Health London Act, 1891 (c. 76), s. 3. As the nuisance was not abated, the matter was reported by the medical officer to the chairman of the public health committee, & the latter, considering that the matter was urgent, & acting under the authority conferred upon him by the resolution of the public health committee, which had been confirmed by the council, as before stated, directed that a notice should be served upon the owner of the premises requiring him to abate the nuisance in accordance with the provisions of sect. 4 of the Act. This notice, which was issued in due form, was served upon the owner on Sept. 25, 1917. This action of the chairman was reported to the public health committee at their first meeting after the summer vacation, on Oct. 9, 1917, & approved by them, & the matter was later on, on Oct. 18, 1917, reported to & approved by the council. As the nuisance still continued, proceedings were taken against the owner by the sanitary inspector, & on Dec. 5, 1917, an order was made for its abatement by the magistrate who heard the complaint. The owner thereupon applied for & was granted a rule *nisi* for *certiorari* to quash the order of the magistrate on the ground that the same was made without jurisdiction, the notice of Sept. 25, 1917, not having been given by the authority or direction of the council or of the public health committee, or after consideration by them in pursuance of Public Health London Act, 1891 (c. 76), s. 4 (1) :—*Held :* as the act of the duly authorised agent of the council, namely, the chairman of the public health committee, appointed to act in urgent matters during the vacation under the bye-law & in pursuance of the resolution of the committee subsequently ratified by the council, was reported to & approved & ratified by the council prior to the institution of proceedings against the owner of the premises, the ratification related back to the time of the doing of the act in question, namely, the serving of the notice of Sept. 25, 1917, & the magistrate had jurisdiction to make the order of Dec. 5, 1917.—R. *v.* CHAPMAN, *Ex p.* ARLIDGE, [1918] 2 K. B.

£860, & the following day signed a proposal for a lease for 35 years from Sept. 29, 1884, at the yearly rent of £200. P. was only tenant for life of the lands, & could not take a fine, & there was no mention in the agreement with D. of the payment by him of the £860. On Jan. 6, 1885, the writ in the present action was issued by P. against H. claiming £1,000 damages for mesne profits from the expiration of the lease on Sept. 29, 1880, & in the alternative £1,000 for use & occupation. H. by his defence claimed the benefit of the payment by D. of the £860, & by leave of the judge at the trial paid 6*d.* into ct. on the count in trespass. At the trial P.'s agent deposed that he told D. that whoever gave him £860 would get the land. D., who was examined for H., deposed that he knew £860 was claimed from H. for arrears of rent & costs, & that he was willing to pay that sum on getting a good lease. The question left to the jury was "whether the £860 was paid by D. & received by P. as for the rent of the farm due by H." They found that it was, & that the 6*d.* lodged in ct. was sufficient :—*Held :* there was evidence proper to be submitted to the jury that the £860 was paid by D. & received by H. as & for the arrears of rent & costs, & that it was competent for H. to adopt & claim the benefit of the payment as a defence to the present action.—PURCELL *v.* HENDERSON (1885), L. R. 16 Ir. 213, 466.—**IR.**

1006 v b. —— ——.]—A contract made on behalf of a person, but without his authority, by a person who does not profess to be acting for a principal cannot be ratified.—REIMER *v.* ROSEN, [1918] 1 W. W. R. 425.—**CAN.**

1006 v c. ——————.]—A person does not become a principal by any act of so-called ratification, unless at the time of the contract the so-called agent was not acting for himself but was intending to bind an ascertainable principal; even if it is intended that some unnamed principal shall benefit, if the so-called agent purports to be acting for himself & not for another, the rule applies.—MCCALLUM *v.* COHOE (1918), 44 O. L. R. 497; 46 D. L. R. 733; 15 O. W. N. 262.—**CAN.**

1006 v d. —— ——.]—Pltf. & F. were customers of defts.' bank & F. was, unknown to pltf., largely indebted to the bank. K., a branch manager, drew up a promissory note for $2,500 which was signed by F. & made payable to the order of pltf. on demand. Pltf. was induced to advance the $2,500 before the undertaking by K., written on the note, "this note will be paid when demanded," but K. did not sign this statement as branch manager. The bank received the money by pltf.'s cheque payable to order of F. & indorsed by him, which sum was then used to liquidate F.'s debt to the bank. Pltf. claimed that deft. bank had ratified the acts of K. & were liable :—*Held :* it was not the intention of K. as shown by the evidence to act as agent of defts. in the transactions.—BRASSETH *v.* ROYAL BANK OF CANADA (1922), 67 D. L. R. 740.—**CAN.**

298; 87 L. J. K. B. 1142; 119 L. T. 59; 82 J. P. 229; 16 L. G. R. 525, D. C.

Annotation :—**Refd.** Bowyer, Philpott & Payne *v.* Mather, [1919] 1 K. B. 419.

1040. *Add. Annotations :*—**Refd.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566; Tarn *v.* Scanlan, Neilsen, Andersen *v.* Collins, Muller (London) *v.* Lethem, Muller *v.* I. R. Comrs. (1927), 44 T. L. R. 53.

1079. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Bebington's Tenancy, Bebington *v.* Wildman, [1921] 1 Ch. 559.

1098. *Add. Annotation :*—**Apld.** Bonham *v.* Maycock (1928), 138 L. T. 736.

1102. *Add. Annotations :*—**Consd.** *Re* Bankruptcy Notice, [1924] 2 Ch. 76. **Refd.** Edwards *v.* Motor Union Insce., [1922] 2 K. B. 249.

1104a. —— ——.]—If goods in the city of London are sold by a broker, to be paid by a bill of exchange, the vendor has a right, within a reasonable time, if he is not satisfied with the sufficiency of the purchaser, to annul the contract. But the vendor must intimate his dissent as soon as he has had an opportunity to inquire into the solvency of the purchaser. Five days considered too long a period for this purpose.—HODGSON *v.* DAVIES (1810), 2 Camp. 530; 170 E. R. 1241, N. P.

Annotations :—**Refd.** Maxwell *v.* Deare (1854), 23 L. T. O. S. 1; Humfrey *v.* Dale (1857), 7 E. & B. 266.

1105. *Add. Annotation :*—**Refd.** The Yuri Maru, The Woron, [1927] A. C. 906.

1109. *Add. Annotation :*—*As o* (2) **Refd.** Koenigsblatt *v.* Sweet, [1923] 2 Ch. 314.

1128. *Add. Annotation :*—**Refd.** Koenigsblatt *v.* Sweet, [1923] 2 Ch. 314.

1129. *Add. Annotation :*—**Refd.** Robinson *v.* Midland Bank (1925), 41 T. L. R. 402

1138. *Add. Annotation :*—*As to* (2) **Refd.** Commercial & Estates Co. of Egypt *v.* Board of Trade. [1925] 1 K. B. 271.

1146. *Add. Annotation :*—**Expld. & Distd.** Watson *v.* Davies, [1931] 1 Ch. 455.

1153. *Add. Annotation :*—**Refd.** Koenigsblatt *v.* Sweet, [1923] 2 Ch. 314.

1160. *Add. Annotation :*—*As to* (1) **Refd.** The Joannis Vatis (1921), 91 L. J. P. 182.

PART VII. SECT. 5.

1037 vii. ——.]—In order that a person may be deemed to have ratified an act done without his authority, it is necessary that at the time of the ratification he should have full knowledge of all the material circumstances in which the act was done, unless he intends to ratify the act & take the risk whatever the circumstances may have been.—WHEELER *v.* HISEY (1918), 42 O. L. R. 654; 14 O. W. N. 150; 43 D. L. R. 92.—**CAN.**

1037 viii. ——.]—The agent of defts hired pltfs., but exceeded his authority in regard to the terms of hire :—*Held :* defts. were not estopped by accepting pltfs.' services, from disputing pltfs.' claim for wages, defts. having repudiated the agent's authority as soon as the terms of the contract were brought to their attention.—ROY *v.* ST. JOHN LUMBER CO., FISHER *v.* ST. JOHN LUMBER CO. (1919), 46 N. B. R. 120.—**CAN.**

1037 ix. ——.]—The burden of proving ratification rests on the person alleging it, who must prove full knowledge of the facts.—THOMPSON *v.* LYNNE, [1921] 2 W. W. R. 635; 56 D. L. R. 729; 14 Sask. L. R. 282.—**CAN.**

1037 x. ——.]—A grain broker placed, according to his practice, a written confirmation of a purchase of grain made for a customer in a rack which was in the broker's office & had been pointed out to the customer, & the confirmation remained there for a month. The broker knew the customer's street address. The customer had not instructed the broker to make the purchase in question :—*Held :* the confirmation did not affect the customer with notice of or liability for the transaction.—MELLINIUK *v.* MORRISON & KELLY, LTD., [1930] 1 W. W. R. 602; D. L. R. 984.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 1.

1044 vii. ——.] — In considering whether a person is bound by the acts of an ostensible agent which are alleged to have been ratified, the distinction is to be observed between a ratification to be implied from conduct showing an intention to ratify & an estoppel to deny ratification, the case, that is, where, without a conscious intention to ratify, the so-called principal is estopped from denying that his conduct must be treated as a ratification.—MCKAY *v.* TUDHOPE ANDERSON CO., LTD., [1918] 3 W. W. R. 994; 44 D. L. R. 100; 14 Alta. L. R. 131.—**CAN.**

1044 viii. ——.]—Ratification by a principal of the acts of an alleged agent must be evidenced either by clear adoptive acts or by acquiescence equivalent thereto, & the act or acts of adoption or acquiescence must be accompanied by full knowledge of all the essential facts.—THOMPSON *v.* LYNNE, [1921] 2 W. W. R. 635; 56 D. L. R. 729; 14 Sask. L. R. 282.—**CAN.**

1044 ix. ——.]—If an agent executes on behalf of a former principal a contract for the sale of land, although his authority to execute such contracts has terminated, then if the purchaser seeks to hold the principal liable thereunder he must show that the principal has placed himself by some act or omission of his own in a position which compels him to accept the contract & carry out its terms; & this is not shown where there does not appear to have been any holding out of such agent by the principal either to the purchaser directly or by circumstances of publicity which reached him & upon which he acted.—ZERBESKY *v.* POWELL, [1921] 3 W. W. R. 528.—**CAN.**

1044 x. ——.]—ABBOTT *v.* MCDOUGALL & COWANS (Man.), [1928] 1 D. L. R. 295; [1927] 3 W. W. R. 816.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 2.

1086 i. *Purchase — Acceptance of goods bought.*]—Where an agent, authorised to buy goods of a certain kind, buys goods of a different kind, if the principal for whom they are bought, though repudiating the contract & returning most of the goods, keeps part of them, he thereby does an act in relation to the goods which is inconsistent with the ownership of the seller, & so accepts them, & in so doing ratifies the purchase.—BONTEX IMPORTING CO. *v.* PANAR (1922), 63 D. L. R. 200; [1922] 1 W. W. R. 128.—**CAN.**

1100 iv. —— —— *Paid by cheque of unauthorised agent.*]—S. took part in the negotiations for the sale of an engine by applt. to resp., but was not applt.'s agent either to effect the sale or to collect the purchase-money. After the sale resp. paid the money to S., thinking that he was applt.'s agent, & a few days later S told applt. that he had received the money but could not pay it over then, & offered to pay interest on it, to which applt. agreed. After several applications from applt. S handed him a cheque for the balance shown to be due in an accompanying statement, in which S. debited himself with interest & took credit for commission. Applt. accepted the cheque & paid it into his account, but it was dishonoured & he then sued resp. for the purchase-money :—*Held :* applt.'s acceptance of the cheque was a clear adoptive act evidencing his ratification of S.'s unauthorised act in receiving the money.—MCEWAN *v.* JOHNSTONE, [1918] N. Z. L. R. 49.—**N.Z.**

80. *Demand for payment over of deposit.*]—Where an agent had no authority to sell on the terms on which he did sell :—*Held :* a letter of the principal, demanding payment of the money received by the agent as a deposit, did not ratify the action of the agent in selling.—PRINGLE *v.* M'KAY, [1922] N. Z. L. R. 818.—**N.Z.**

1104 iii a. —— ——.]—Where a principal, knowing the full circumstances of the signing of an agreement for sale & purchase of land by an agent on his behalf, does not notify the purchaser of his repudiation for nearly three years he is estopped by his acts & conduct from objecting to the agreement.—WEST *v.* DILLICAN, [1921] N. Z. L. R. 617.—**N.Z.**

PART VII. SECT. 6, SUB-SECT. 3.

1127 i. *On person alleging ratification.*]—The burden of proving ratification rests on the person alleging it, who must prove full knowledge of the facts.—THOMPSON *v.* LYNNE, [1921] 2 W. W. R. 635; 56 D. L. R. 729; 14 Sask. L. R. 282.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 1.

1132 iii. ——.]—An act done by a person on behalf of another person, but without that other person's authority or knowledge, & subsequently ratified by that other creates the relationship of principal & agent between the parties in respect of that act.—GREAT WEST FARMS, LTD. *v.* HANSBERGER, [1924] 1 D. L. R. 185.—

PART VII. SECT. 7, SUB-SECT. 2.

81. *Trading goods—Agent for sale.*]—If an agent for sale of goods trades them for other goods & the principal ratifies the transaction, the goods received in exchange become the principal's property.—REX GROCERY *v.* HIGGS & KEEN, [1925] 3 D. L. R. 565; [1925] 2 W. W. R. 402; 19 Sask. L. R. 492.—**CAN.**

Part VIII.—Relations between Principal and Agent.

1175. *Add. Annotation :*—**Refd.** Cheshire *v.* Vaughan, [1920] 3 K. B. 240.

1176. *Add. Annotations :*—**Refd.** Cheshire *v.* Vaughan, [1920] 3 K. B. 240 ; Maskell *v.* Hill, [1921] 3 K. B. 157.

1196. *Add. Annotation :*—**Refd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

1206. *Add. Annotations :*—**Consd.** Gould *v.* S. E. & C. Ry., [1920] 2 K. B. 186. **Apld.** Finn *v.* Shelton Iron, Steel & Coal Co. (1924), 131 L. T. 213; Westminster Bank *v* Hilton (1926), 136 L. T. 315. **Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1930), 145 L. T. 51. **Refd.** Weigall *v.* Runciman (1916), 85 L. J. K. B. 1187 ; Weiss, Biheller & Brooks *v.* Farmer, [1923] 1 K. B. 226.

1208. *Add. Citation :*—13 Asp. M. L. C. 463.

1208a. —— ——.]—Vale (J.) & Co. *v.* Van Oppen & Co., Ltd. (1921), 37 T. L. R. 367.

1211. *Add. Annotations :*—**Apld.** Weigall *v.* Runciman (1916), 13 Asp. M. L. C. 463. **Refd.** Finn *v.* Shelton Iron, Steel & Coal Co. (1921), 131 L. T. 213.

1218. *Add. Annotation :*—**Refd.** Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

1243a. —— **Extent of liability.**]—Pltf. employed deft., a chartered accountant, to investigate the affairs of a co. in which he was interested. In a letter of instructions to deft. pltf. inserted libellous statements concerning two officials of the co. Deft. handed the letter to his partner, who negligently left it at the co.'s office. The manager found it, read it. & communicated its contents to the two persons defamed, each of whom sued pltf. for libel & obtained judgment against him for damages & costs. Pltf. then sought to recover from deft. the amount which he had paid for damages & costs in the libel actions as damages for breach of an implied duty to keep secret the letter of instructions :—*Held :* pltf.'s liability for damages in the libel actions did not result from deft.'s breach of duty, & deft. was liable for nominal damages only.—Weld-Blundell *v.* Stephens, [1920] A. C. 956 ; 89 L. J. K. B. 705 ; 123 L. T. 593 ; 36 T. L. R. 640 ; 64 Sol. Jo. 529, H. L.

Annotations :—**Consd.** *Re* Polemis & Furness Withy, [1921] 3 K. B. 560 ; A. & B. Taxis *v.* Secretary of State for Air, [1922] 2 K. B. 328 ; Harnett *v.* Bond, [1924] 2 K. B. 517 ; Bradstreets British, Ltd. *v.* Mitchell (1932), 48 T. L. R. 670. **Refd.** Proops *v.* Chaplin (1920), 37 T. L. R. 112 ; Elliott Steam Tug Co. *v.* Shipping Controller, [1922] 1 K. B. 127 ; The San Onofre, [1922] P. 243 ; Adelaide S.S. Co. *v.* R., [1923] 1 K. B. 59 ; Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461 ; Hambrook *v.* Stokes, [1925] 1 K. B. 141 ; Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83; Singleton Abbey (Owners) *v.* Paludina (Owners), The Paludina (1926), 95 L. J. P. 135.

1243b. -.]—Accountants, employed to prepare balance-sheets from the books of a firm, stated the amount of "cash at the bank" as it appeared in the books, without examining the bank pass-book, or obtaining any statement in reference thereto from the bank, or informing the firm that they had not done so The entries in the books were falsely made by a fraudulent clerk, whose defalcations were not discovered, as they would have been if the entries in the books had been checked by reference to the pass-book :—*Held :* (1) the accountants were negligent ; (2) they were liable in damages for the amount of the defalcations of each year which would have been discovered if the proper steps had been taken as to the pass-book.—Fox & Son *v.* Morrish, Grant & Co. (1918), 35 T. L. R. 126 ; 63 Sol. Jo. 193.

PART VIII. SECT. 2, SUB-SECT. 1.—A.

1184 v. —— —— *Goods not in accordance with order.*]—Defts. gave to pltf. a written order to ship from England on account of defts. one thousand two-gallon & two hundred & fifty three-gallon stoneware jars. Pltf. ordered jars from a manufacturer in England to be shipped in performance of this order. Two lots were shipped & delivered to defts. who paid for them. Delivery of the last lot, which comprised thirty-nine three-gallon & three hundred & forty-two two-gallon jars, was refused by defts. on the ground that there were twenty-three more of the three-gallon jars & twenty-five less of the two-gallon jars than had been ordered, & also that the mouths of a large number of the jars were not of the specified size :—*Held :* pltf. was under a duty to purchase goods for defts. of the description ordered, & his failure to do so amounted to a breach of duty.—Bulters *v.* Roope, [1922] N. Z. L. R. 549.—**N.Z.**

1188 ii. —— ——.]—Wheat held by defts. for pltfs. was on pltfs.' order shipped by defts. from M. to A. Pltfs. telegraphed instructing defts. to sell at once. Defts. wrote saying that until the cars arrived at A. they were unable to sell. They at once, however, tried to sell & after ten days did so :—*Held :* they were justified in selling at the price then obtainable & without receiving further instructions.—Jackson *v.* Saskatchewan Co-operative Elevator Co., Ltd., [1919] 3 W. W. R. 572.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 2.—A. (a).

1214 iv. —— *Negligent misrepresentation.*]—An agent who in breach of his duty to his principal induces him by negligent misrepresentation to enter into a contract is liable to make good to his principal the loss arising therefrom.

In such a case the principal may recover either in tort or in contract, & it is no answer to his claim that he is also entitled to recover from the other party to the contract induced by his agent.—Young *v.* Tassell, [1918] N. Z. L. R. 924.—**N.Z.**

1214 v. ——.]—The duty of a paid agent to his principal is to exercise care, skill, & honesty, & if he takes on himself to convey information which he considers it material that his principal should know, & which he recommends & intends his principal to adopt, it is his duty to use reasonable care & skill in ensuring the accuracy of that information.—Brown *v.* Thornes, [1920] N. Z. L. R. 306.—**N.Z.**

PART VIII. SECT. 2, SUB-SECT. 2.—B. (b).

1245 iv. —— ——.]—A law-agent, to whom a client entrusted money for investment on heritable security to yield 5 per cent., invested £1,000 of the amount in 1903 on a heritable bond which bore to be secured over tenement property, & £200 on a postponed bond over other subjects. These properties both belonged to another client of the agent's firm, who, in 1905, died insolvent, & heavily indebted to the firm. He had granted an *ex facie* absolute disposition of the tenement property in favour of the firm prior in date to the bond for £1,000, which loan was accordingly not validly secured ; & the postponed bond for £200 was worthless, as the prior bond exhausted the value of the security subjects. None of these facts were communicated to the lender :—*Held :* while the agents were not guilty of negligence in investing the money as they did in 1903, in view of the fact that they were called upon to obtain a 5 per cent. investment, they were guilty of negligence upon the death of the borrower in 1905, in respect that, a conflict of interest having then arisen between them & the lender in connection with the £1,000 bond, they failed to inform their client of the position, failed to realise her investments, & failed to advise her to seek independent legal advice.—Wernham *v.* M'Lean, Baird & Neilson, [1925] S. C. 407.—**SCOT.**

sv. *Customs broker.*]—Wolsely Tool & Motor Car Co. *v.* Jackson Potts & Co. (1915), 7 O. W. N. 617 ; 8 O. W. N. 311 ; 33 O. L. R. 96, 587.—**CAN.**

1250. *Add. Annotation :*—**Apld.** *Re* City Equitable Fire Insce, [1925] Ch. 407.

1251. *Add. Annotation :*—**Apld.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

After this case add "*See, generally,* COMPANIES, Vol. IX., pp. 553 *et seq.*"

1263a. ——.]—Agents employed to sell land are generally employed to obtain the best purchase price reasonably obtainable. Their duty to their principal does not cease when they have procured an offer to purchase which he accepts subject to contract. It is still their duty to inform him of any offer which they receive at a higher price than that so accepted, & they remain subject to this duty until final contracts of sale & purchase have been signed & exchanged.

The owner of house property employed a firm of house agents to sell the property. They gave particulars to a tenant of the property, among other persons, & procured an offer from a prospective purchaser. They communicated this offer to the owner, & he accepted it subject to contract. The tenant then made an offer to the agents to purchase the property from the prospective purchaser at an increased price. In the *bonâ fide* belief that they had performed their duty as agents to the owner when he had accepted the offer of the prospective purchaser subject to contract, they omitted to inform the owner of the offer of the tenant. Afterwards final contracts for the sale & purchase of the property were signed & exchanged by & between the owner & the prospective purchaser. The owner then brought an action against the agents for damages for breach of duty in not disclosing to him the offer of the tenant before the contracts were signed & exchanged. The agents counterclaimed for commission on the sale of the property :—*Held :* the obligation of the agents to the owner was not fully performed when he had accepted the offer subject to contract but continued until final contracts were exchanged ; this obligation involved a duty to communicate to him the offer of the tenant ; having committed a breach of this duty they were liable in an action for damages, & the measure of damages was the difference between the price named in the contracts & the price offered by the tenant ; also in the circumstances the agents were entitled to their commission.

There may well be breaches of duty which do not go to the whole contract, & which would not prevent the agent from recovering his remuneration ; & as in this case it is found that the agents acted in good faith, & as the transaction was completed & applt. has had the benefit of it, he must pay the commission (ATKIN, L.J.). — KEPPEL *v.* WHEELER, [1927] 1 K. B. 577 ; 96 L. J. K. B. 433 ; 136 L. T. 203, C. A.

Annotations :—**Folld.** Harrods, Ltd. *v.* Lemon, [1931] 2 K. B. 157. **Apld.** Raymond *v.* Wooten (1931), 47 T. L. R. 606.

1265. *Add. Annotation :*—**Refd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

1267. *Add. Annotations :*—**Refd.** Banbury *v.* Bank of Montreal, [1918] A. C. 626 ; Everett *v.* Griffiths, [1920] 3 K. B. 163.

1269. *Add. Annotations :*—**Apld.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353. **Refd.** Banbury *v.* Bank of Montreal, [1918] A. C. 626 ; Coldman *v.* Hill, [1919] 1 K. B. 443 ; The Empress (1922), 92 L. J. P. 42 ; Pratt *v.* Patrick, [1924] 1 K. B. 488.

1260 i. *Factor.*]—Where advances are made by a factor on the security of a world commodity, such as grain, consigned to him for sale, it is his duty to deal with the goods in such a way as to guard, not only himself, but the principal also, against loss. There is implied in every such transaction a right on the part of the factor to realise on his security whenever the exigency of the case demands it.—UNITED GRAIN GROWERS, LTD. *v.* MABEY, [1925] 1 D. L. R. 301 ; [1925] 1 W. W. R. 19.—**CAN.**

1260 ii. —.]—Where an elevator company advances money on the security of grain delivered to it in storage which it is authorised by the contract between it & the borrower to sell without notice at any time it deems itself unsecure, the co. is not, in the absence of an express agreement to that effect, restricted to resorting to the pledged grain to obtain repayment, but can sue on the implied promise to repay which is ordinarily incident to a loan ; &, moreover, the co. is not obliged to sell the grain &, if it does sell it, cannot be held to have been negligent &, therefore, liable to the borrower merely because it did not sell at a time when it could have received a higher price than it did receive.—PATTERSON (N. M.) & Co., LTD. *v.* CARNDUFF, [1931] 2 W. W. R. 221.—**CAN.**

1262 ii. —— *Extent of duties.*]—If a local agent is entrusted by an absent owner with looking after & renting a furnished house, then, although he is not an insurer of the safety of the property, he must use reasonable care & diligence in its protection & preservation, & if he fails to do so he will be liable for the resulting loss. If furniture disappears or is damaged beyond reasonable wear & tear, he is *primâ facie* liable to account for it. Evidence sufficient to excuse him from liability would in some instances be quite light, in others more burdensome, depending on such questions as the checking over or not of the articles of the furniture, the character of the tenants & the constituents of the tenant's family, the value & nature of the missing articles, etc.

When the owner claims damages against the agent for lost or damaged articles the question of liability may be directly involved in regard to each article, & that liability is a question for the judge, & in such case the value of any article or the damage done to it can be most conveniently determined by the judge when deciding the question of liability, rather than by a referee.—CARLILE *v.* NORTHERN TRUSTS CO., [1924] 2 W. W. R. 961.—**CAN.**

1262 iii. —— ——.]—A house agent, employed to look after the renting of a furnished house, must keep a proper inventory of the furniture & check it over carefully with each incoming & outgoing tenant, & he must exercise care in seeing that tenants to whom he rents the house are the proper sort of persons to occupy it ; but, in the absence of a special contract, the agent is not a guarantor of the rent, or bound to pay the taxes, or to notify the owner so as to prevent a sale of the house for non-payment thereof.—HYLAND *v.* COSTERTON (B. C.), [1927] 1 D. L. R. 1166 ; [1927] 1 W. W. R. 340.—**CAN.**

1264 ii. —— *Acting for vendor & purchaser—Payment of rents to vendor after notice of claim by purchaser.*]—Where an agent who acted for both parties in connection with a sale of immovable property on the terms of "cash against transfer," received the rents &, after notice that they were claimed by the purchaser, paid them over to the seller as having, in his opinion, the better title thereto :—*Held :* he was personally liable to the purchaser therefor.—DE KOCK *v.* FINCHAM (1902), 19 S. C. 136.—**S. AF.**

sw. *Wool broker.*]—A wool broker, in cases where he receives wool from a customer upon which a limit has been placed, is not in law bound to indicate to the customer the state of the market from time to time, so as to be liable in damages if he fails to do so.—FERREIRA *v.* GINGELL, [1921] E. D. L. 374.—**S. AF.**

PART VIII. SECT. 2, SUB-SECT. 2.—C.

1269 vii. ——.]—Deft., an insurance broker, gratuitously procured policies from American cos. :—*Held :* as it was not shown that deft. was in any way negligent, or that he knew or ought to have known of the invalidity of the policies, deft. was not liable.—DIMITROFF *v.* GONDER (1924), 56 O. L. R. 119.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 3.—A. (a).

ii. —— *Purser employed on ship by railway company—Money advanced by company to enable ship to be procured.*]—*Held :* the co. were not liable to account to the shipowner for money received by the purser & not paid over, for he was accountable to the shipowner.—VANEVERY *v.* BUFFALO & LAKE HURON RY. CO. (1861), 20 U. C. R. 630.—**CAN.**

1276 i. *Failure to keep accounts—Liability for charges of accountant preparing accounts.*]—Deft., employed by

1279. For "For full anns., *see* PRACTICE & PROCEDURE," read "For full anns., *see* EXECUTORS, p. 745, No. 7745."

1288. Delete "For full anns., *see* EQUITY."

1304. *Add. Annotation :*—**Refd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743.

1311. *Add. Annotations :*—**Apld.** Holt *v.* Markham, [1923] 1 K. B. 504. **Distd.** Jones *v.* Waring & Gillow, [1926] A. C. 670. **Refd.** British & North European Bank *v.* Zalzstein, [1927] 2 K. B. 92.

1315. *Add. Annotation :*—**Refd.** Camillo Tank S.S. Co. *v.* Alexandria Engineering Works (1921), 38 T. L. R. 134.

1316 *Add. Annotation :*—**Consd.** The Mogiliff, [1921] P. 236.

1318. *Add. Annotation :—As to* (1) **Refd.** Anderson *v.* Equitable Assce. Soc. of United States (1926), 134 L. T. 557.

1346. *Add. Annotation :*—**Consd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743.

1356. *Add. Annotation :—As to* (1) **Refd.** Yourell *v.* Hibernian Bank, [1918] A. C. 372.

1385a. ——.]—FIELD *v.* ALLEN (1842), 9 M. & W. 694; 152 E. R. 294.

1386. *Add. Citations :—sub nom.* PARRY *v.* ROBERTS, 3 Ad. & El. 118; 5 Nev. & M. K. B. 669; 4 L. J. K. B. 189.

1396. *Annotations :*—For "Bridger *v.* Savage (1885), 12 Q. B. D. 363" read "Bridger *v.* Savage (1885), 15 Q. B. D. 363."

Add. Annotation :—**Refd.** Rawlings *v.* General Trading Co., [1921] 1 K. B. 635.

1422. *Add. Annotation :—As to* (1) **Refd.** Baker *v.* Lloyd's Bank, [1920] 8 K. B. 322.

1425. *Add. Annotation :—As to* (2) **Refd.** Lawrence *v.* Hayes, [1927] 2 K. B. 111.

pltf. to administer his affairs, exhibited gross negligence in carrying out his trust. He failed to keep proper books or records of pltf.'s affairs or to render accounts. Pltf. was compelled to employ accountants to prepare accounts between the parties :—*Held :* pltf. was entitled to claim the charges of two accountants for preparing accounts between the parties as damages due to deft.'s negligence, which deft should have contemplated as the natural result of such negligence.—MEAD *v.* CLARKE, [1922] E. D. L. 49.—**S. AF.**

sx. *No duty to account to minor—Agent appointed by guardian.*]—An agent appointed by the guardian of a minor is not liable to account to the minor for his acts, even though he received properties belonging to the minor.—RAMATHAN CHETTIAR *v.* MUTHIAH CHETTY (1919), I. L. R. 43 Mad. 429.—**IND.**

sy. *Accounts framed on wrong basis—& containing incorrect items.*]—Deft. was employed by pltfs., the exors. of an estate, to administer the estate on their behalf. Pltfs. having sued deft. for an account :—*Held :* as the accounts rendered by deft. were framed on a wrong basis as between principal & agent & were incorrect in certain particulars, deft. must render an account within fourteen days.—KRIGE *v.* VAN DIJK'S EXECUTORS, [1918] App. D. 110.—**S. AF.**

PART VIII. SECT. 2, SUB-SECT. 3.—A. (e).

1326 i. *Agent for sale—Principal's intention to defraud creditors known to agent.*]—Where goods were delivered to agents for sale, & the principal, to the knowledge of the agents, intended to defraud his creditors by making away with the proceeds of the sale :—*Held :* (1) the principal in suing the agents for an account of the goods so delivered to them was not relying on an illegal contract & was entitled to succeed; (2) the agents were not absolved from the duty of accounting to the principal by the fact that the goods had been delivered to the agents on a Sunday.—RUSKIN *v.* WASSERMAN, [1917] W. L. D. 174.—**S. AF.**

1326 ii. —— *Goods delivered to agent on Sunday.*]—RUSKIN *v.* WASSERMAN, No. 1326 i., *ante*.—**S. AF.**

1326 iii. ——.]—LESLIE *v.* MORRISON (1858), 16 U. C. R. 318.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 3.—A. (f).

g i. —— *Particulars.*]—In an action which was substantially one claiming a general account in reality on the basis of agency :—*Held :* an application by the agent for particulars of sums alleged to have been converted should be refused.—SHORT *v.* LAMBE, [1925] 1 I. R. 135.—**IR.**

PART VIII. SECT. 2, SUB-SECT. 3.—B. (b).

1352 ii. —— ——.]—Where fiduciary relations have subsisted between the parties, a ct. will not re-open accounts which have long been settled between the parties, unless pltf. can show definitely at least one fraudulent omission or insertion in the accounts.—PURAN MAL *v.* FORD, MACDONALD & CO., LTD. (1919), I. L. R. 41 All. 635.—**IND.**

1352 iii. —— ——.]—RAHIM *v.* LOW (1924), I. L. R. 3 Ran. 1.—**IND.**

PART VIII. SECT. 2, SUB-SECT. 3.—C.

1361 i. *Circumstances in which right arises.*]—RAHIM *v.* LOW (1924), I. L. R. 3 Ran. 1.—**IND.**

PART VIII. SECT. 2, SUB-SECT. 4.—A. (a).

1379 i. *Deposit on purchase paid to land agent.*]—A licensed land agent who does not hold from his principal a written authority to sell, & who, having effected a sale of his principal's land, has received from the purchaser, without his principal's knowledge, a deposit, is not entitled to retain thereout his commission, but must account to his principal for the whole of such deposit.—SMITH *v.* BASON, [1921] N. Z. L. R. 467.—**N.Z.**

1379 ii. ——.]—Where a deposit on a sale of land is paid to a land agent he holds it, unless otherwise stipulated as agreed, for the vendor, & must pay it over to him on demand, subject to the agent's right to apply the same in payment of expenses, commission, or other charges incidental to the sale; but the commission does not include commission which is made irrecoverable by law.—BUCHANAN *v.* SAMSON, [1922] N. Z. L. R. 558.—**N.Z.**

sz. *Money paid to agent by members of syndicate for purchase of land—Claim by one member of syndicate for return of subscription on rescission of sale.*]—Pltf., who had joined with a number of other persons in the purchase of a farm, subscribed £50 which was, with other subscriptions, deposited with deft. to be by him paid out in reduction of the purchase-price. The sale of the farm having been cancelled, to a claim by pltf. for the return of his subscription deft. raised the defence that he had been instructed by the syndicate not to pay over the money received by him but to hold it for another purpose :—*Held :* the defence raised could not succeed.—MANGENA *v.* MOYATUSI, [1918] App. D. 650.—**S. AF.**

sa. *Profits received in foreign currency—Rate of exchange in favour of principal.*]—CUTTEN *v.* BICKELL (1925), 57 O. L. R. 113; *affd.*, [1926] 1 D. L. R. 353.—**CAN.**

sb. *Commission received by sub-agent from principal—Right of agent to recover from sub-agent.*]—Pltf. listed with deft. as a sub-agent the lands of a certain principal, agreeing to pay deft. 25 cents an acre for finding a purchaser. Deft. unknown to pltf. communicated directly with the principal, obtained a listing of the lands from him & effected a sale thereof, deducting the commission :—*Held :* pltf. was entitled to recover from deft. the commission less the sum of 25 cents per acre.—OSWALT *v.* KING, [1919] 3 W. W. R. 72.—**CAN.**

sc. *Venue.*]—It is settled law that a suit by a principal against a commission agent who has agreed to execute an order placed with him by correspondence must be instituted at the place where the commission agent carries on his business & that a principal cannot sue him at the place from where he sent his order.—BHAMBOO MAL *v.* RAM NARAIN (1928), I. L. R. 9 Lah. 455.—**IND.**

PART VIII. SECT. 2, SUB-SECT. 4—A. (c).

1396 ii. ——.]—Assuming a transaction between brokers & their principal was an illegal one, & the brokers paid the proceeds to a person as being the agent of their principal to receive it :—*Held :* the principal could recover such proceeds from the agent.—AIKMAN *v.* BURDICK BROTHERS, [1923] 4 D. L. R. 852; 3 W. W. R. 785; *varying*, [1923] 1 D. L. R. 1165; 31 B. C. R. 478.—**CAN.**

1396 iii. —— *Dealings on grain exchange.*]—In an action against an agent to recover money received by him from a third party on behalf of his principal he cannot resist the principal's claim on the ground of illegality or criminality in the transaction on account of which the payment was made to him as agent, if the alleged invalidity or illegality did not enter into the relations between him & his principal. Applying the above principle :—*Held :* pltf. was entitled to recover moneys in the hands of deft. which had been received by the latter, as agent for pltf., from grain brokers through whom deft. had conducted buying & selling transactions on a grain exchange on behalf of pltf.—HOLDING *v.* WOOD, [1932] 1 W. W. R. 612.—**CAN.**

1426a. Proceeds of sale of goods—Goods consigned by commission agents for principal—Right of agent to set off claims against consignors.]—In 1917 pltf. & F., merchants at Odessa in the Russian Ukraine, consigned large quantities of pigs' bristles to a Russian bank at Odessa, as commission agents, to send the goods to England for sale & remit the proceeds to the consignors. The bank, as principals, sent the goods to defts., as their agents, who knew that pltf. & F. were the original consignors. Afterwards the revolution broke out in Russia, & in Dec. 1917, all private banks in Russia were abolished by decree of the Govt., & in 1918 their assets & liabilities were taken over by the People's Bank of the Russian Socialist Federal Soviet Republic. In 1920 the People's Bank was by further decree abolished & its assets & liabilities were transferred to the Central Budget & Accounts Administration of the Russian Socialist Federal Soviet Republic. One result of this legislation was that the head office of the Odessa bank in Petrograd was raided & its shares were confiscated, but the Odessa bank was allowed to carry on its business as usual until 1920, when it was closed by a local soviet. This permission was the result of the establishment of an independent republican Govt. over the Ukraine—the Ukrainian Soviet Govt., over which the Russian Soviet Govt. claimed neither a *de facto* nor *de jure* jurisdiction, & which was also recognised by foreign powers as an independent Govt. Later on a full federation was entered into between the Ukraine Republic & the Russian Soviet Republic & recognised as a *de facto* &, recently, as a *de jure* Govt. by the Govt. of this country. During transit of the goods to England some of the goods respectively consigned by pltf. & by F. became inextricably mixed, with the result that F. assigned all his rights in his consignment to pltf., & notice of the assignment was given to defts. Before the closing of the bank at Odessa the bank ceded all their rights in the bristles consigned to them to pltf. & F. The bristles consigned to defts. were sold by them in 1920, & pltf. demanded payment of the amount of the proceeds, less the amount of defts.' commission, but defts. refused payment, alleging (*inter alia*) that the goods belonged to the bank at Odessa & that defts. were entitled to set off against pltf.'s claim a debt due to them from the People's Bank in Russia & the Russian Soviet Govt., & pltf. in 1923 brought this action:—*Held:* (1) assuming that the bank at Odessa was an effective bank up to the time when the bank was closed, the bank's instructions to defts., followed by the transfer of the bank's rights to pltf. & F. & the transfer of F.'s rights to pltf., made it clear that the bank's title to the bristles had gone; (2) assuming that the bank was non-existent & that some other person or persons had given the instructions to sell, the sale by defts. was without the authority of the bank, & in that case the bank's title had gone. In either case pltf. as a disclosed or undisclosed principal was entitled to the proceeds, less defts.' commission with interest from the date of the demand.—DORF *v.* NEUMANN, LUEBECK & Co. (1924), 40 T L. R. 405.

1437. *Add. Annotation:*—**Refd.** *Re* Achillopoulos, Johnson *v.* Mavromichali, [1928] Ch. 433.

1438a. —— **Unless jus tertii set up.**]—An agent entrusted with money or goods by a principal to be applied on his principal's account cannot dispute his principal's title, unless he proves a better title in a third person & that he is defending on behalf, & with the authority, of that third person.—BHAWANI SINGH (RAJA) *v.* MAULVI MISBAH-UD-DIN (1929), 56 L. R. Ind. App. 170, P. C.

1452. *Add. Annotation:*—**Refd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743.

1459. *Add. Annotations:—Generally,* **Refd.** Dominion Coal Co. *v.* Maskinonge S.S. Co., [1922] 2 K. B. 132.

1460. *Add. Annotation:*—**Refd.** Dominion Coal Co. *v.* Maskinonge S.S. Co., [1922] 2 K. B. 132.

1467. *Add. Annotation:*—**Refd.** Rawlings *v.* General Trading Co., [1920] 3 K. B. 30.

1482. *Add. Annotations:*—**Apld.** Mortimer *v.* Beckett, [1920] 1 Ch. 571; Prosperity *v.* Lloyds Bank (1923), 39 T. L. R. 372. **Consd.** Rely-A-Bell Burglar & Fire Alarm Co. *v.* Eisler, [1926] Ch. 609.

1484. *Add. Annotation:*—**Refd.** Prosperity *v.* Lloyds Bank (1923), 39 T. L. R. 372.

1486. *Add. Annotation:*—**Consd.** Davey *v.* Robinson, [1923] 1 K. B. 563.

1490. *Add. Annotations:*—**Refd.** Dutton, Massey (Liverpool) *v.* Dutton. Massey (1923), 40 R. P. C. 413; Harrods *v.* Harrod (1924), 40 T. L. R. 195; Motor Manufacturers' & Traders' Soc. *v.* Motor Manufacturers' & Traders' Mutual Insce., [1925] Ch. 675.

1491. *Add. Annotation:*—**Refd.** United Indigo Chemical Co. *v.* Robinson (1931), 49 R. P. C. 178.

1495. *Add. Annotation:*—**Refd.** United Indigo Chemical Co. *v.* Robinson (1931), 49 R. P. C. 178.

1501a. Agent wrongfully acting for other principals—Liability of party inducing agent to commit breach of duty.]—Resps. employed D. as their agent to buy tobacco from growers, the total bought not to exceed 300,000 lbs., &

PART VIII. SECT. 2, SUB-SECT. 5.

sd. *General rule.*]—Where money is recoverable by a principal from an agent as having been received by the agent on the principal's behalf, the agent is not as a rule liable for interest unless by virtue of an express agreement or of some mercantile usage.—LALMAN *v.* CHINTAMANI (1918), I. L. R. 41 All. 254.—**IND.**

PART VIII. SECT. 2, SUB-SECT. 7.—A.

1463 i. *Agent purchasing for himself—Specific performance granted.*]—Where it was shown by evidence that deft. had agreed to attend & buy in a property offered for sale by auction, as the agent of pltf. & for his benefit:—*Held:* notwithstanding that the Statute of Frauds had been set up as a defence, & there was not any writing evidencing the agreement, pltf. was entitled to a decree to carry out the agreement.—ROSS *v.* SCOTT (1875), 22 Gr. 29.—**CAN.**

1464 v a. —.]—Pltf. supplied money for the purchase of land of which deft. took the deed in his own name. In an action to have deft. declared a trustee & for the recovery of mesne profits the defence was that the purchase price was furnished by pltf. with the intention that the land should be deft.'s & that pltf. should have a home with deft. during her lifetime:—*Held:* pltf. was entitled to judgment.—ENNOS *v.* MCLEAN (1919), 52 N. S. R. 485.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 7.—B.

sa. *Investment — Mortgage — Failure to inquire as to discharge of liens.*]—*Held:* agent liable for negligence.—LEFEVRE *v.* ANDREWS, [1932] 1 W. W. R. 122; 1 D. L. R. 805; 44 B. C. R. 516.—**CAN.**

supplied him with forms of contract bearing their firm name as buyers. D. agreed not to act as buying agent for anybody except resps. & another firm. Applt., who knew the position as between D. & resps., induced him to buy in the names of the two firms a total of 1,100,000 lbs., arranging with him to take over the surplus not required for them. Out of that total weight D. handed 300,000 lbs. to resps., & tendered the balance to applt., but he repudiated the arrangement, the market having fallen heavily. Resps. having also repudiated liability, one of the vendors, with whom D. had contracted upon resps.' form, was held to be entitled to damages from resps. as having held out D. as their agent. Resps. claimed to recover over from applt. :—*Held :* resps. were so entitled, applt. having knowingly induced D. to commit a breach of his duty to them, whereby they had suffered the damage.—JASPERSON *v.* DOMINION TOBACCO CO., [1923] A. C. 709; 92 L. J. P. C. 190 ; 129 L. T. 771, P. C.

1501b. Distributing agent for film producers—Block-booking film with others—Sum for hire thereby reduced.]—HERBERT WILCOX PRODUCTIONS, LTD. *v.* FIRST NATIONAL PICTURES, LTD. (1930), 74 Sol. Jo. 353.

1501c. Agent acting for both parties—Company with separate departments as agent.] — Pltfs., a trading co., carried on an estate agency & a building business in separate buildings. Deft. employed pltfs., through their estate agency, to find a purchaser for real property, & they found C., who agreed to purchase the property subject to contract & a surveyor's report. C. employed pltfs., through their building department, to inspect the drains of the property & to make an estimate for putting them in order. As a result of the report C. claimed a reduction in the purchase-price. Subsequently after complaint by deft., pltfs. discovered that they had been acting in this way for both the potential vendor & purchaser, &, by their solrs., offered deft. to invite the purchaser to obtain an independent survey of the drains. Deft. did not accept the offer, but completed the sale at a reduction of the agreed price, the reduction being due to the work required to be done upon the drains. Pltfs. sued deft. for commission on the sale :—*Held :* (1) pltfs. had acted in good faith, & deft. had in fact suffered no damage, as C. would in any event have secured a report on the drains, & any competent person would have recommended an expenditure on the drains of more than the reduction in the purchase-price ; (2) pltfs. constituted one person in law, however, many businesses they might carry on, & in acting as they did they committed a breach of their duty as agents of their principal, but as deft. with full knowledge of the breach of duty on the part of pltfs. had completed the contract at the reduced price, pltfs. were entitled to commission. Vendor, with full knowledge of their action on behalf of the purchaser, had refused the offer of pltfs. to stand aside that C. might have the drains tested by another firm, & had concluded the sale at the reduced price.—HARRODS, LTD. *v.* LEMON, [1931] 2 K. B. 157 ; 100 L. J. K. B. 219 ; 144 L. T. 657 ; 47 T. L. R. 248 ; 75 Sol. Jo. 119, C. A.

1504. *Add. Annotations :*—**Refd.** Lynn *v.* Bamber, [1930] 2 K. B. 72 ; Legh *v.* Legh (1930), 143 L. T. 151.

1505. *Add. Annotation :—As to* (1) **Refd.** Spencer *v.* Hemmerde, [1922] 2 A. C. 507.

1508. *Add. Annotations :*—**Refd.** *Re* Richardson, Pole *v.* Pattenden, [1920] 1 Ch. 423 ; Taylor *v.* Davies, [1920] A. C. 636 ; *Re* Blake, *Re* Minahan's Petition of Right, [1932] 1 Ch. 54.

1509. *Add. Annotations :*—**Refd.** Taylor *v.* Davies, [1920] A. C. 636 ; *Re* Claridge's Patent Asphalte Co., [1921] 1 Ch. 543.

1513. *Add. Annotations :*—**Refd.** *Re* Richardson, Pole *v.* Pattenden, [1920] 1 Ch. 423 ; Taylor *v.* Davies, [1920] A. C. 636 ; *Re* Blake, *Re* Minahan's Petition of Right, [1932] 1 Ch. 54.

1517. *Citations :*—For "[1894] 1 Ch. 416" read "[1894] 1 Ch. 616."

Add. Annotation :—**Refd.** *Re* Windsor Steam Coal Co. (1901), Ltd., [1928] Ch. 609.

1518. *Add. Annotation :*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307.

1520. *Add. Annotations :*—**Refd.** Lynn *v.* Bamber, [1930] 2 K. B. 72 ; Legh *v.* Legh (1930), 143 L. T. 151.

1526. *Add. Annotations :—As to* (1) **Apld.** *Re* Thomson, Thomson *v.* Allen, [1930] 1 Ch. 203. *As to* (2) **Refd.** Wright *v.* Morgan, [1926] A. C. 788.

1529a. —— Unless full disclosure—Sufficiency of disclosure.]—Deft. bought shares in the B. Co. on the recommendation of T., who was in the office of E. & Co., stockbrokers. E. & Co. carried through the transaction & sent deft. two contract notes, on which were the words "bought of ourselves as principals," & no commission was charged. By arrangement deft. paid 25 per cent. of the price of the shares, the balance being carried over. E. & Co. subsequently became bkpt. & their trustee in bkpcy. claimed the balance then due on the account from deft. :—*Held :* E. & Co. had made a sufficiently full & accurate disclosure to deft. that they were selling as principals & deft. with full knowledge gave his assent to their position, & the trustee's claim succeeded —ELLIS & Co.'s TRUSTEE *v.* WATSHAM (1923), 155 L. T. Jo. 363.

1533. *Add. Annotations :*—**Refd.** *Re* Jubilee Cotton Mills, [1922] 1 Ch. 100; *Re* Etic, [1928] Ch. 861.

PART VIII. SECT. 2, SUB-SECT. 9.—A.

11. —— *Agent lending money to persons to whom agent not authorised to lend.*]—A suit by a principal against an agent for the recovery of money lent to persons to whom the agent was not authorised to lend, is a suit for an ordinary money account & is governed by art. 89 & not art. 90 of Limitation Act (ix. of 1908).—MUTHIAH CHETTY *v.* ALAGAPPA CHETTY (1917), I. L. R. 41 Mad. 1.—**IND.**

PART VIII. SECT. 2, SUB-SECT. 10.

1530 i. —— *Remedies of principal—Principal may repudiate or adopt transaction.*]—A principal who discovers that he has purchased his agent's own property may elect either to repudiate the contract or to affirm it. If he wishes it to stand & also claims the resulting profit, he must show that such profit arises from transactions completely covered by the prohibitive operation of the relationship between him & the agent.—ROBINSON *v.* RANDFONTEIN, ETC., [1921] App. D. 168.—**S. AF.**

PART VIII. SECT. 2, SUB-SECT. 11.

1542 vi. ——.]—An agent employed to sell goods cannot himself purchase such goods at a sale by public auction. —OSBY *v.* HIRSCH, [1922] C. P. D. 531.—**S. AF.**

1542 vii. ——.]—JARVIS *v.* JARVIS, [1926] 3 D. L. R. 897.—**CAN.**

1550a. **Broker.**]—Applt. employed a broker to make speculative purchases of cotton for him, & became heavily indebted to him owing to the fall of prices in the cotton market. The broker, as he was entitled to do by the terms of his agency, closed the account by selling the cotton which he had bought for applt. He sold (*inter alia*) two lots of foreign cotton to different jobbers at the respective market prices of the day & immediately bought back from the same jobbers at the same prices equivalent amounts of cotton of the same description. The broker having assigned his property for the benefit of his creditors, resp. as trustee of the deed of assignment, sued applt. to enforce the broker's claim to be indemnified. The trial judge found that there was a real sale & a real purchase of the cottons in question, & the Ct. of Appeal accepted this finding:—*Held:* the simultaneous re-sale to the broker did not vitiate the sale by the broker & the account was effectually closed.—CHRISTOFORIDES *v.* TERRY, [1924] A. C. 566; 93 L. J. K. B. 481; 131 L. T. 84; 40 T. L. R. 485, H. L.

1552. *Add. Annotation:*—*Generally*, **Refd.** Christoforides *v.* Terry, [1924] A. C. 566.

1553. *Add. Annotation:*—**Apld.** Christoforides *v.* Terry, [1924] A. C. 566.

1558a. —IMESON *v.* LISTER (1920), 149 L. T. Jo. 446.

1561. *Add. Annotations:*—*As to* (1) **Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51. **Refd.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566. *Generally*, **Refd.** Tarn *v.* Scanlan, Neilsen, Andersen *v.* Collins, Muller (London) *v.* Lethem, Muller *v.* I. R. Comrs. (1927), 44 T. L. R. 53.

1571. *Add. Annotation:*—**Refd.** Inche Noriah *v.* Shaik Allie Bin Omar, [1929] A. C. 127.

1580. *Add. Annotation:*—**Refd.** Hocker *v.* Waller (1924), 29 Com. Cas. 296.

1584. *Add. Annotations:*—*Generally*, **Mentd.** London County & Westminster Bank *v.* Tompkins, [1918] 1 K. B. 515; Ellis' Trustee *v.* Dixon-Johnson, [1924] 1 Ch. 342.

1550 ii. ——— ———.]—PALMER *v.* CHRISTIE (Y. T.) (1905), 2 W. L. R. 561.—**CAN.**

1565 i. ——— ——— ——— *No confirmation without knowledge.*]—In order to establish acquiescence or ratification on the part of pltf. it must be shown that he has, either by word or deed, & with a full knowledge of the circstances abandoned his rights.—OSRY *v.* HIRSCH, [1922] C. P. D. 531.—**S. AF.**

PART VIII. SECT. 2, SUB-SECT. 13.

1572 ii. ———.]—In pursuance of an agreement defts. obtained for pltf. a mtge. of £100,000 at 5 per cent., but without pltf.'s knowledge entered into an agreement with the mtgee. by which, in consideration of a commission of ½ per cent. per annum to be paid to them by the mtgee. out of the interest payable by pltf., they agreed to guarantee the payment of principal & interest, & under that agreement defts. were paid by the mtgee. £2,500, being £250 each half-year during the term of the mtge. In an action by pltf. against defts. to recover the £2,500 as being a secret profit made by them while acting as his agent:—*Held:* pltf. was entitled to payment to him of the £2,500.—KROGH *v.* DALGETY & Co. (1916), 22 C. L. R. 402.—**AUS.**

1572 iii. ———.]—An agent has no right to receive remuneration other than from his principal, unless there is a contract express or implied to that effect.—SMITLE *v.* SLATTARD (1919), 21 W. A. L. R. 19.—**AUS.**

1572 iv. ———.]—Where one man stands to another in a position of confidence involving a duty to protect the interests of that other, he is not permitted to make a secret profit at the other's expense or to place himself in a position where his interests conflict with his duty.—ROBINSON *v.* RANDFONTEIN, ETC., [1921] App. D. 168.—**S. AF.**

1572 v. ———.]—A. authorised B., his agent, to sell property for a certain sum, A. agreeing to take a portion of the purchase price in cash & a mtge. bond on the property for the balance. B. sold the property for the stipulated amount, but without the knowledge or consent of A. obtained & retained a commission from the purchaser for raising the bond:—*Held:* such commission was a secret profit, & B. in concealing it had acted dishonestly towards A.—LEVIN *v.* LEVY, [1917] T. P. D. 702.—**S. AF.**

se. ——— *Agent receiving present.*]—Disclosure, after completion of a sale of land, by the vendor to certain directors of a purchasing co., who were concerned in the negotiations for the purchase, of his intention, afterwards carried out, to make a money present to the purchaser's manager & agent, who took the principal part in the negotiations, & assent thereto by such directors, is not effective to prevent rescission on the basis of secret profit to the agent if the vendor has, prior to the completion, secretly led the agent to expect that he would receive a substantial sum in the event of the sale being completed, & it is immaterial that the vendor's motive was to a large extent to recoup the agent for out-of-pocket expenses.—BENDIGO, ETC. CO. *v.* CUNNINGHAM, [1919] V. L. R. 387.—**AUS.**

sf. ——— *Agent entering into contract with principal.*]—If an agent, without disclosing that he is the person dealing, himself enters into a contract with his principal, the latter on discovering the fact can have the transaction set aside, & it is immaterial whether there has been fraud or not, or whether the transaction is advantageous or otherwise to the principal.—ACHUTHA, NAIDU *v.* OAKLEY, BOWDEN & Co. (1922), I. L. R. 45 Mad. 1005.—**IND.**

sg. ——— *Agent for sale artificially inflating rates.*]—An agent for sale of goods cannot, while actually selling or making settlements on foot of such transactions, make any secret profit for himself, or for persons with whom he is associated, by artificially inflating the rates & then settling on the basis of those rates.—MATHRA DAS-JAGAN NATH *v.* JIWAN MAL-GIAN CHAND (1927), 1 L. R. 9 Lah. 7.—**IND.**

1581 iii. ——— ———.]—There are cases where an agent is entitled to retain profits, such as (1) where the connection between the agency & the profit is accidental, (2) where the transaction producing the profits is outside the scope of the agency & no conflict between duty & interest arises, (3) where the principal on account of his clear knowledge is deemed to waive his right to profits by his implied consent.—UNION GOVERNMENT *v.* CHAPPELL, [1918] C. P. D. 462.—**S. AF.**

1581 iv. ——— ———.]—Pltf. signed a written agreement by which he agreed to pay defts. 2½ per cent. on £2,500 if defts. sold property for that sum, & authorised defts. to keep any amount paid for the property in excess of that sum. Pltf. claimed a refund of the commission retained by the agent on the ground that he had secretly obtained a commission from the purchaser. The commission obtained by defts. from the purchaser, who had to pay cash to pltf., was for raising loans to enable her to pay the seller:—*Held:* as the commission obtained from the purchaser by defts. was not a commission on the price, but in respect of an entirely different transaction, his conduct was perfectly honest, & he had not forfeited his right to be paid a commission by pltf.—STANTON *v.* HUMPHREY, [1923] E. D. L. 419.—**S. AF.**

1589 i. ——— *Remedies of principal—Principal may repudiate transaction—Not after affirming transaction.*]—UNION GOVERNMENT *v.* CHAPPELL, [1918] C. P. D. 462.—**S. AF.**

1590 vi.
v. BUTLER (N. S.), [1929] 1
52.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 14.

1594 iii. ———.]—*Held:* pltf. could not recover any commission, because he was in a position where his interest was opposed to that of his principal, so that he had a temptation not to perform faithfully his duty, & failed to disclose the facts.—D'ARCY *v.* LAND (1920), 47 N. B. R. 203; 52 D. L. R. 660.—**CAN.**

1594 iv. ———.]—Pltfs. sued to recover five Victory Bonds, or the proceeds thereof, handed by them to deft. H., a real-estate agent, in payment of the purchase-price of property owned jointly by the defts. Pltfs. alleged that H., knowing that they were relying, because of inexperience, on his advice had induced them to give him the bonds for investment in the property without disclosing his interest therein, & the ground pressed on the ct. for their return was that a fiduciary relationship arising from agency existed between them & H. which put him under the burden of establishing the perfect fairness of the transaction, although it was nowhere distinctly alleged that they had employed him as their agent to buy the property:—*Held:* H. never was pltf.'s agent, &, moreover, that he had fully disclosed his interest in the property before the sale. The dismissal of the action was, therefore, upheld.—HENDERSON *v.* HAMILTON, [1929] 1 D. L. R. 721; 1 W. W. R. 336; 38 Man. L. R. 67.—**CAN.**

1603. *Add. Annotation :*—**Apld.** *Re* A Debtor, [1927] 2 Ch. 367.

1607. *Add. Annotation :*—**Apld.** *Re* A Debtor, [1927] 2 Ch. 367.

1608a. —— ——.]—A hotel broker, who is acting as the vendor's agent for reward, is not entitled to enter into a second agency of the like kind on behalf of the purchaser, unless this arrangement is assented to with full knowledge by the original principal.—FULLWOOD *v.* HURLEY, [1928] 1 K. B. 498; 96 L. J. K. B. 976; 138 L. T. 49; 43 T. L. R. 745, C. A.

Annotation :—**Refd.** Harrods, Ltd. *v.* Lemon, [1931] 2 K. B. 157.

1608b. —— **Although no pecuniary loss to employer.**]—(1) An English information will lie against a servant employed by the Crown in making confidential inquiries, in respect to secret profits alleged to have been made in the course of his employment. (2) The rule as to secret profits is applicable in spite of the fact that no pecuniary interest of the employer is involved.—A.-G. *v.* GODDARD (1929), 98 L. J. K. B. 743; 45 T. L. R. 609; 73 Sol. Jo. 514.

1616. *Add. Annotation :*—*As to* (2) **Consd.** Harrods, LTD. *v.* LEMON, [1931] 2 K. B. 157.

1621. *Add. Annotation :*—*Generally*, **Consd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743.

1623. *Add. Annotation :*—*As to* (2) **Apld.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743.

1626. *Add. Annotations :*—**Consd.** Rhodes *v.* Macalister (1923), 29 Com. Cas. 19; Fenton Textile Assocn. *v.* Thomas (1929), 45 T. L. R. 264. **Refd.** *Re* Hall & Pim (1927), 137 L. T. 585.

1626a. **Crown servant.**]—A.-G. *v.* GODDARD, No. 1608b, *ante*.

1627. *Add. Annotation :*—*As to* (1) **Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

1632. *Add. Annotations :*—*As to* (1) **Consd.** Rhodes *v.* Macalister (1923), 29 Com. Cas. 19. **Refd.** Taylor *v.* Oakes, Roncoroni (1922), 127 L. T. 267. *As to* (2) **Consd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743. **Refd.** Adams *v.* Morgan, [1923] 2 K. B. 234. *As to* (3) **Refd.** Ramsden *v.* David Sharratt & Sons (1930), 35 Com. Cas. 314. *Generally*, **Refd.** Harrods, Ltd. *v.* Lemon, [1931] 2 K. B. 157.

1635. *Add. Annotations :*—**Apld.** Alexander *v.* Webber, [1922] 1 K. B. 642; *Re* A Debtor, [1927] 2 Ch. 367.

1636. *Add. Annotation :*—**Apld.** *Re* A Debtor, [1927] 2 Ch. 367.

1638. *Add. Annotation :*—*Generally*, **Refd.** *Re* A Debtor, [1927] 2 Ch. 367.

1638a. —— ——.]—Pltf. agreed to purchase a motor car from deft., & in accordance with the agreement he paid a deposit. Pltf. afterwards purported to repudiate the contract, wrongfully, as the judge found. During the pendency of an action by him for the recovery of the deposit pltf. died, & his exors. were substituted as pltfs., & they then discovered that at the time the contract was entered into deft. had promised, without the knowledge of pltf., to give pltf.'s chauffeur a share of the profit on the sale of the car if

sj. —— *Agent to raise money advancing sum himself.*]—Under a contract between a principal & a financial agent, by which the agent agrees to raise sums of money for the principal upon first & second mtges., at stated rates of interest, of the principal's land, it is not illegal for the agent to find the money himself, unless there is a special stipulation to the contrary; the fact of the rates of interest being specified prevents a conflict of interest & duty in the agent.—DALGETY *v.* GRAY, [1919] V. L. R. 586.—**AUS.**

sk. —— *Agent having option to purchase.*]—GUNNING *v.* LUSBY (No. 1) (1922), 68 D. L. R. 89; 55 N. S. R. 84; *affd.*, [1925] 1 D. L. R. 101.—**CAN.**

sl. *Partner of agent to buy one of trustee vendors—Purchaser suffering no damage.*]—WOOLWORTH (F. W.) Co., LTD. *v.* POOLEY (1925), 35 B. C. R. 386.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 14.

1594 iii. ——.]—The rule that where an agent for the sale of land is, without the knowledge of his principal, to receive a commission from the purchaser he cannot recover a commission from his principal applies to the case of an exchange of properties even though the two owners have listed them with the same agent.—OLIVER *v.* KEMP, [1929] 4 D. L. R. 1045; 3 W. W. R. 369; 38 Man. L. R. 310.—**CAN.**

1599 i. *Joint adventurers.*]—GROSCH *v.* LOVERIDGE, SMITH *v.* LOVERIDGE (Ont.), [1930] 1 D. L. R. 309.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 15.—A.

1601 i a. ——.]—If the agent for the vendor in a sale of real property receives commission from the purchaser also, the vendor is entitled to recover the amount of such commission from the agent, notwithstanding that the sale of the property has been completed.—FOSTER *v.* REAUME, [1924] 2 D. L. R. 951; *revsg.*, [1923] 4 D. L. R. 51; 54 O. L. R. 345.—**CAN.**

1608 vi. —— ——.]—Where an agent accepted commission from both parties & in consideration thereof his principal, since deceased, signed an agreement to pay the agent a reduced commission :—*Held :* the making of the agreement being proved & corroborated by its production, Evidence Act, R. S. O., 1927, does not require corroboration of the disclosure.—BAYLEY *v.* TRUSTS & GUARANTEE CO., LTD., [1931] 1 D. L. R. 500; 66 O. L. R. 254; *affd.*, [1930] 3 D. L. R. 625; 65 O. L. R. 315.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 15.—B.

sm. *Agent to do repairs—Agent doing work himself.*]—Defts., house-agents, acted as agents for pltf. to collect the rents & to do the necessary repairs to her property. Defts. were originally appointed in 1908, & up to 1911 had the repairs executed by outside contractors. In 1911 defts. opened their own repairs yard, did the repairs themselves, & charged the "usual trade prices," which included a profit. Quarterly statements of account were regularly furnished by defts. to pltf. from the commencement of the agency. Pltf. claimed to have the accounts reopened on the ground that she had been charged a secret profit by defts. on the repairs executed by them in addition to their commission :—*Held :* as pltf. knew & approved of the repair work being executed by defts., & defts. had made sufficient disclosure to pltf. that they were charging a profit, & the charges were not shown to have been unfair or unusual, pltf. was not entitled to have the accounts reopened.—SHERRARD *v.* BARRON, [1923] 1 I. R. 21.—**IR.**

PART VIII. SECT. 2, SUB-SECT. 15.—D.

1635 iii. ——]—Any secret benefit given by one contracting party to the agent of another with the intention of influencing his mind in favour of the donor is a bribe, which entitles the other contracting party to claim to set aside the contract.—DAVIES *v.* DONALD, [1923] C. P. D 295.—**S. AF.**

1635 iv. ——.]—A private arrangement between an agent on a commission basis & an employee of his principal whereunder the agent is to give the employee a rebate on certain of his commissions is ground for repudiating the contract; unless, possibly, where it can be shown that the arrangement did not conflict with the principal's interests.—COUTTS *v.* ACME MANUFACTURING CO., LTD., [1931] 3 D. L. R. 440; *affd.*, [1931] 3 W. W. R. 273; 4 D. L. R. 803; 40 Man. L. R. 9.—**CAN.**

pltf. bought it. On the ground of that secret arrangement the exors. now sought to avoid the contract & to recover the deposit:—*Held:* the surreptitious dealing between deft. & pltf.'s chauffeur was a fraud on pltf.; the fact that pltf., when he purported to repudiate the contract, was not aware of the fraud, did not prevent his exors. from now relying upon it; & they were entitled on the ground of the fraud to avoid the contract & to recover the deposit.—ALEXANDER *v.* WEBBER, [1922] 1 K. B. 642; 91 L. J. K. B. 320; 126 L. T. 512; 38 T. L. R. 42.

1640. *Add. Annotation:—Generally,* **Refd.** *Re* A Debtor, [1927] 2 Ch. 367.

1640a. ——.]—A. employed L. as his agent to negotiate a loan for him with a money-lender. B., a money-lender, lent A. £60 on his promissory note for £100. &, without the knowledge or consent of A., paid L. a commission:—*Held:* the payment of the commission to L. by B. rendered the contract voidable, if not void, against A.—*Re* A DEBTOR (No. 229 of 1927), [1927] 2 Ch. 367; 96 L. J. Ch 381; 137 L. T. 507; [1927] B. & C. R. 127, C. A.

1643. *Add. Annotations:*—**Consd.** Rhodes *v.* Macalister (1923), 29 Com. Cas. 19. **Refd.** *Re* Hall & Pim (1927), 137 L. T. 585.

1649. *Add. Annotation:—As to* (1) **Refd.** Weiss, Biheller & Brooks *v.* Farmer, [1923] 1 K. B. 226.

1662. *Add. Annotation:*—**Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

1664. *Add. Annotation:*—**Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

1669. *Add. Annotation:*—**Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

1670. *Add. Annotation:*—**Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

1670a. —— —— .]—PYKE *v.* DAY (1844), 2 L. T. O. S. 286.

PART VIII. SECT. 3, SUB-SECT. 1.—A.

1664 xiv a. ——.]—Pltf. not allowed to recover commission on exchange of deft.'s land, as there was no agreement in writing to pay such commission as required by Alberta Stat. 1906, c. 27.—NUNNELEY *v.* BLATT, [1919] 2 W. W. R. 699; 47 D. L. R. 254.—**CAN.**

1664 xiv b. ——.]—Alberta Stat. 1906, c. 27, applies only to the case of a vendor's agent & does not apply to a commission or other remuneration claimed by a purchaser's agent.—POTTER *v.* LANDEN, [1920] 3 W. W. R. 1075.—**CAN.**

1664 xiv c. ——.]—Under an oral agency agreement an agent claimed commission for selling at a lump sum certain property. Shortly before the trial, Alberta Stat. 1906, c. 27, was amended:—*Held:* (1) the amending Act did not apply to an agreement made before its passing; (2) the agent was entitled to compensation, fixed at the commission rate on the fair proportionate value of the goods, for sale of the chattels.—FILTEAU & DE ROUSSY *v.* NESBITT, [1920] 2 W. W. R. 892; 53 D. L. R. 514; 15 Alta. L. R. 522.—**CAN.**

1664 xiv d. ——.]—An agreement for the exchange of lands was on a principal form on one side of a sheet of paper, but in two parts, the one called the offer & the other the acceptance, the one being placed immediately above the other; the lower part only was signed by deft., & the upper was signed only by the person with whom deft. was making the exchange. The upper part contained a clause by which the person signing was to pay "the regular commission"; & the lower part, signed by deft., contained the words: "I agree to pay a commission on $26,000 at 2½ per cent" on execution of the agreement to pltf:—*Held:* the agreement to pay pltf. a commission did not satisfy Stat. Frauds, s. 13, as enacted by 6 Geo. 5, c. 24, s. 19, & amended by 8 Geo. 5, c. 20, s. 58, for the agreement was not in writing separate from the sale agreement, & an action for the commission could not be maintained.—DAVIS *v.* BEGGS (1919), 46 O. L. R. 169; 17 O. W. N. 63.—**CAN.**

1664 xiv e. ——.]—*Held:* the agreement to pay a commission, in order to be separate from the sale-agreement, need not be on a separate piece of paper.—HAYGARTH *v.* WEBB (1923), 54 O. L. R. 172.—**CAN.**

1664 xiv f. ——.]—SILVERMAN *v.* LEGREE (1919), 45 O. L. R. 107; 47 D. L. R. 713; 15 O. W. N. 278.—**CAN.**

1664 xiv g. ——.]—*Held:* an addition to Stat. Frauds was not retrospective, & was no bar to an action based upon an agreement not in writing entered nto before its enactment.

An Act which is a bar to an action to recover an agent's commission unless the agreement therefor be in writing is also a bar, where such agreement is not in writing, to an action by him to recover damages from his principal for preventing him from earning the commission.—SMITH *v.* UPPER CANADA COLLEGE, [1921] 1 W. W. R. 1154; 57 D. L. R. 648; 61 S. C. R. 413.—**CAN.**

1664 xiv h. —— *Construction of agreement.*]—MCINTYRE & CO. *v.* LAW, [1918] 2 W. W. R. 359; 13 Alta. L. R. 273; 40 D. L R 231.—**CAN.**

1664 xiv j. —.]—Land Agents Act, 1912, s. 13, prevents a land agent from recovering commission under an oral agreement extending the period fixed for his authority by the document creating it.—HOOPER *v.* ANDERSON (EDWARD) & CO., LTD., [1918] N. Z. L. R. 119.—**N.Z.**

1664 xiv k. ——.]—Land Agents Act, 1912, s. 13, covers every action for remuneration for or in respect of the sale of land; & the fact that an agent is not employed to sell land but only to find a purchaser does not exclude the operation of the sect.—HOOPER *v.* ANDERSON (EDWARD) & CO., LTD. (NO. 2), [1919] N. Z. L. R. 65.—**N.Z.**

1664 xiv l. ——.]—The effect of Land Agents Act, 1912, s. 13, is to prevent the agent from recovering his commission by action.—GLASGOW *v.* HOOD, [1920] N. Z. L. R. 586.—**N.Z.**

1664 xvi a. —— ——.]—MCLAUGHLIN & CO. *v.* BIRKS, [1925] 3 D. L. R. 968; [1925] S. L. R. 690.—**CAN.**

1664 xxi. —— *Agent acting for syndicate—Also member of syndicate.*]—Where an agent is interested himself, along with others, in a transaction which is being carried through by him, he *primâ facie* is not entitled to charge his co-adventurers any commission.—GLASGOW *v.* HOOD, [1920] N. Z. L. R. 586.—**N.Z.**

1664 xxii. —— *Soldier Settlement Act,* 1919 (c. 71), *s.* 61.]—A real estate agent entitled to his commission on a sale made before the coming into operation of the above Act.—ROWLANDS & JOHNSTONE *v.* HOLLAND (1920), 53 D. L. R. 652.—**CAN.**

1664 xxiii. —— ——.]—Deft. listed lands with pltf. for sale, & pltf. negotiated with three soldiers, although, apparently, pltf. did not get into touch with the soldiers until after July 7, 1919, when the above Act came into force. Eventually the land was sold direct by the Soldier Settlement Board to the soldiers & pltf. claimed commission from deft.:—*Held:* pltf. not entitled to commission.—TODD *v* POTVIN, [1922] 1 W. W. R. 479; 63 D. L. R. 233; 17 Alta. L. R. 226.—**CAN.**

1664 xxiv. —.]—Lands were listed with the Soldier Settlement Board at the specified price of $3,800. Deft. agreed to purchase at $3,800. The Board refused to pay more than $3,200. Deft. then arranged with the owner that the latter should transfer the lands to the Board for $3,200, which was subsequently done, & he agreed to give, & did give his promissory notes for the difference as part of the consideration & as in increase in price:—*Held:* the above sect. did not apply.—FLOWER *v.* SANDERSON, [1922] 3 W. W. R. 464.—**CAN.**

1664 xxv. ——.]—In order to found a legal claim for commission there must not only be a causal, but also a contractual, relation between the introduction & the ultimate transaction of sale. Where there is no employment to sell express or implied, there can be no claim to remuneration.—WEEDEN *v.* TURNER (1922), 68 D. L. R. 748; [1922] 3 W. W. R. 623.—**CAN.**

1664 xxvi. ——.]—MORRIS *v.* WALTON (1914), 28 W. L. R. 547; 18 D. L. R. 655; 24 Man. L. R. 361.—**CAN.**

1664 xxvii. ——.]—ECCLESTONE *v.* UNION MINING & MILLING CO., [1932] 3 D. L. R. 514.—**CAN.**

1669 i. —— *Contract may be express or implied.*]—In an action to recover remuneration on a *quantum meruit* basis for procuring a purchaser for deft.'s oil leases:—*Held:* although pltf. had at first acted as a volunteer on his own initiative, the benefit of pltf.'s introduction of the purchaser had been completed at deft.'s implied request, & since deft. had accepted the purchaser & profited by pltf.'s services, pltf. was entitled to be remunerated on the ground of an implied contract to pay therefor.—JOHNSON *v.* FORBES, [1931] 2 W. W. R. 819; 2 D. L. R. 940; *revsd.* (1932), 1 D. L. R. 219; [1931] 3 W. W. R. 757.

1671 viii. —— —— ——.]—In the absence of an express contract as to the commission which a real estate agent is to receive, he is entitled to a reasonable remuneration having regard to the circumstances of the particular case. The fact that the agents in a certain town have established a custom among themselves as to the rate of commission, does not render such custom binding upon those who do business with them in the absence of notice, express or implied, that the charges

1683. *Add. Annotation :*—**Expld. & Distd.** Patent Castings Syndicate *v.* Etherington, [1919] 2 Ch. 254.

1687a. —— Commission on sale.]—(1) Although commissions on sales are usually paid by the vendor, an express bargain may throw the commission upon the purchaser.

(2) Where an agent is employed to make inquiries about a particular business with a view to his employer's acquiring it, on the

for their services are to be based on such custom.—GARLAND *v.* NEWMAN (1922), 66 D. L. R. 770; 32 Man. L. R. 1; [1922] 1 W. W. R. 867.—**CAN.**

1671 ix. —— —— *When implied contract negatived.*]—Deft. advertised his business for sale in a local newspaper. The following day pltfs., having seen the advertisement, called on deft. & inquired the price. Pltfs. then entered into communication with A., who ultimately bought the business: —*Held :* deft. had never considered that he was employing pltfs. to act as his agents, & pltfs. had failed to prove any implied contract by deft. to remunerate them.—CHAPPLE *v.* MOSS, [1920] 22 W. A. L. R. 74.—**AUS.**

1671 x. —— —— ——.]—Pltf. was asked by defts. to find a purchaser for a wagon, & he succeeded in introducing to defts. H., who bought the wagon from them. Defts denied that it was agreed that pltf. should be paid a commission, but it was admitted that they knew that he received commission for wagons sold by him. H. stated that he was sent to defts. by pltf. & would not have bought the wagon if he had not been persuaded by pltf. to do so :—*Held :* an agreement to pay commission was implied.—NICHOLAS *v.* DUMOULIN (1919), 46 D. L. R. 687.—**CAN.**

1671 xi. —— —— ——.]—An implied contract to pay a real estate agent a commission for his services if he found a purchaser for a property is negatived by the fact that the owner refused to list the property with him, although she gave him the terms upon which she was willing to sell.—TOLLEY & CO. *v.* SKUCE (1922), 63 D. L. R. 602.—**CAN.**

1671 xii. —— —— ——.]—It is not a general principle of law that whenever a man, having found out from the owner of property the terms upon which it can be sold or leased, produces a third party who will buy or lease on those terms, he thereby & without more entitles himself to payment of a commission by such owner. There must be, in addition to this, an intimation to the owner that a commission would be expected from him in the event of a sale or lease being effected upon the terms stated. The intimation of expectancy of a commission not negatived by the owner who permits the other to go to the trouble of finding a customer in the expectation of earning a commission, may well be a fact from which a promiseto pay a commission may be inferred. A mere volunteer who acts as a go-between between buyer & seller & ultimately produces a sale cannot upon that fact alone found a legal claim for commission, nor can a third party, who acting for a possible purchaser, obtains from a property owner terms of sale or lease, & thus brings about a completed transaction upon those identical terms, legally claim a commission from the owner in the absence of some promise to pay a commission, either express or implied.—CHAMBERLIN *v.* MAW (1922), 68 D. L. R. 754; [1922] 1 W. W. R. 299.—**CAN.**

1679 iv. —— *Out of what fund payable.*]—The agent is entitled to pay himself his commission out of any money paid to him by his principal, without any appropriation by the latter. The right, however, does not extend to any sum paid to the agent by some third person on behalf of the principal.—GLASGOW *v.* HOOD, [1920] N. Z. L. R. 586.—**N.Z.**

1679 v. —— —— *Deposit on sale of land.*]—A licensed land agent, who does not hold from his principal a written authority to sell, & who, having effected a sale of his principal's land, has received from the purchaser, without his principal's knowledge, a deposit, is not entitled to retain thereout his commission.—SMITH *v.* BASON, [1921] N. Z. L. R. 467.—**N.Z.**

1679 vi. —— —— ——.]—When a deposit on a sale of land is paid to a land agent he must pay it over to him on demand, subject to the agent's right to apply the same in payment of expenses, commission, or other charges incidental to the sale; but commission which is made irrecoverable by law is not a just allowance deductible by the agent.—BUCHANAN *v.* SAMSON, [1922] N. Z. L. R 558.—**N.Z.**

sn. *Amount of remuneration—Sale of mortgaged property—As if free from incumbrances.*]—Resp. placed a farm in the hands of appits. for sale or exchange & undertook, should a sale or exchange be effected by them, to pay commission at specified rates. Appits. found a purchaser for the property & an agreement was executed whereby resp. agreed to sell the property "as if free from incumbrances." Appits. sued for commission on the full value of resp.'s property unincumbered, but the magistrate held them entitled only to commission on the value of the equity of redemption :—*Held :* commission was payable on the gross price of the property sold.—KNYVETT & PRATT *v.* SUISTED, [1918] N. Z. L. R. 53.—**N.Z.**

so. *Necessity for compliance with Land Agents Act*, 1922.]—Pltf., who was a land agent, received instructions from deft. to sell deft.'s property, & obtained a buyer at the price authorised, who paid pltf. a deposit of £200. On the same day that pltf. sold the property deft. sold it to another buyer & in effect repudiated the contract of sale effected by pltf. on his behalf. On the repudiation of the contract pltf. utilised the deposit of £200 received from his purchaser in the purchase of another property by the first buyer. Pltf. notwithstanding that he did not forward the deposit, with the signed contract to deft., less his commission, sued deft. for commission on the sale. Deft. applied for a nonsuit on the ground that pltf. had not complied with the provisions of Land Agents Act, 1922, s. 8, deducting his commission from the deposit, & handing the balance to deft. The magistrate having nonsuited pltf. :—*Held :* sect. 8 deals with the application of trust moneys & if the deal was going through it was the duty of pltf. as agent to act in compliance with it, but if the deal was not going through, if there had been repudiation as the magistrate found sect. 8 had no application. Pltf. was accordingly entitled to payment of his commission. —BALLANTYNE *v.* CLOUTT (1927), 29 W. A. L. R. 93.—**AUS.**

1684 ia. —— ——.] —HAMEL *v.* PATENAUDE, [1925] 4 D. L. R. 1071; [1925] S. C. R. 493; *revsg.*, [1925] 4 D. L. R. 577; Q. R. 35 K. B. 333.—**CAN.**

1684 vi. —— ——.]—A distributor of machinery wrote its agent with reference to a prospective sale at $1,200 as follows : "Your commission 10 per cent. if we finance, 25 per cent. if you handle cash basis" :—*Held :* the phrase "handle cash basis" could not be given an alleged trade meaning that the agent should buy from his principal & resell to the prospective purchaser & assume full responsibility to him.—TRENWITH, LTD. *v.* JARVIS ELECTRIC CO., LTD. (B. C.), [1929] 4 D. L. R. 400; 2 W. W. R. 489.—**CAN.**

1684 vii. —— ——.]—A real-estate agent having earned a commission for procuring a purchaser of farm lands entered into an agreement with the vendors by which they undertook to pay him part of the commission in cash and a percentage of the balance each year "as it is paid off by the purchaser on the contract." Nothing was stated as to what would happen should the purchaser fail to make his payments or if the vendors should determine the contract. The vendors, having become dissatisfied with the purchaser, determined the contract of sale by agreement with the purchaser :—*Held :* the agent was entitled to recover the full amount of the commission.—LEVENICK *v.* EDDY & EDDY, [1931] 2 W. W. R. 771.—**CAN.**

1684 viii. —— ——.]—Pltf. who as agent for defts. had procured a purchaser on the crop-payment plan for two sections of land owned by defts. agreed in writing to accept $1,280 as his commission, payable, as to $500 thereof, on Nov. 1, 1930, "if N. (the purchaser) farms under said purchase agreement, & delivers your grain," &, as to the remaining $780 "in the fall of 1931 under the same conditions of N. farming, & delivering the crop to you the same as 1930." Pltf. had recommended N. to defts. as a man fit & competent to perform his contract with them, but in the fall of 1930 his position was such that he was unable to carry on &, in consideration of a quit-claim deed, he was released from his contract. He had farmed the land in 1930, & delivered one-half share of the crop harvested by him to defts., but he did not summerfallow according to the terms of the contract, or pay the taxes or the interest on the unpaid purchase-money, & he negligently allowed 125 acres of standing crop to go to waste :—*Held :* the condition of pltf.'s right to the commission was, not merely the purchaser's delivery of deft.'s share of the grain grown on the land; but also his farming the land in accordance with the terms of his purchase agreement, &, as he had not done so in 1930, pltf. was not entitled to the $500, nor to the additional $750.—BROATCH *v.* VERMONT LOAN & TRUST CO., [1931] 2 W. W. R. 775.—**CAN.**

sp. *Action for commission on sale—Defence denying sale—Effect.*]—When in an action for commission on a sale the principal's pleadings deny the agreement for sale, such denial indicates his repudiation of the agreement to pay the agent, &, under the doctrine of anticipatory breach, the latter, on proving his right to the commission, is entitled to judgment for the whole amount thereof, even though under the agreement it was to be paid in instalments at dates which are yet *in futuro*.—HANTON *v.* STEDMAN, [1925] 1 W. W. R. 642.—**CAN.**

sq. —— *Tariff rate of Estate Agents Institute.*]—PLEIN & CO. *v.* JACOBSON & SON, [1928] App. D. 25.—**S. AF.**

sr. *Commission—Meaning of.*]—The word "commission" may quite properly, both from a legal & commercial point of view, be employed as denoting a lump sum which represents no percentage on anything.—CAMPBELL *v.* NATIONAL TRUST CO., LTD., [1931] 1 W. W. R. 465; 1 D. L. R. 705.—**CAN.**

terms of his being paid by the purchaser a commission on the purchase price if business is transacted, & where the parties are brought together through his agency, he is entitled to commission, even where the actual purchase is ultimately effected through the intervention of another agent, provided that his services are really instrumental in bringing about the transaction.—BOW'S EMPORIUM LTD. *v.* BRETT (A. R.) & CO., LTD. (1927), 44 T. L. R. 194, H. L.

1699a. Agent for sale of lottery ticket—Sale by principal.]—NASH *v.* SHEPHEARD (1931), 75 Sol. Jo. 331.

PART VIII. SECT. 3, SUB-SECT. 1.—B. (a).

1693 vii. ——.]—A sale of land directly by the owner, after it had been listed for sale with a broker, does not entitle the latter to his commission, merely because it happened to be sold to a purchaser with whom he had negotiated in a previous transaction.—GILBERT BROTHERS *v.* MCDILL (1917), 36 D. L. R. 324.—**CAN.**

1693 viii. ——.]—Where a person discovers that another is considering the purchase of a piece of land & then ascertains from the owner that he will sell & pay a commission, but does not afterwards communicate with the prospective buyer, & the latter & the owner complete the sale themselves, there is no commission payable by the owner.—LANGTON *v.* NICHOLSON, [1918] 1 W. W. R. 908.—**CAN.**

1693 ix. ——.]—An agent for the sale of coal who had merely interviewed a customer & notified his principal that he had done so :—*Held :* not entitled to a commission on an order given about two months later direct to the principal, & after an inspection of the coal by the customer.—BOND *v.* STURGEON CONSOLIDATED COLLIERIES, LTD., [1918] 2 W. W. R. 912 ; 41 D. L. R. 147.—**CAN.**

1693 x. ——.]—In the absence of a special agreement that he is to be remunerated if he does not find a purchaser, the agent is not entitled to a commission where the owner sells to a purchaser whom he himself has found. Where the owner found the person who subsequently purchased, although the agent subsequently spoke to the same person, the agent was not allowed the commission.—BARAGER *v.* WALLACE, [1919] 2 W. W. R. 858 ; 48 D. L. R. 158 ; 12 Sask. L. R. 301.—**CAN.**

1693 xi. ——.]—Where an agent spoke to one about certain land & the latter refused to buy, but some time afterwards, hearing through another channel that the land could be rented, went to the owner's place for the purpose of renting it & was induced by the owner to buy it :—*Held :* the agent was not entitled to commission.—TAYLOR *v.* RABBITTS, [1920] 1 W. W. R. 1024 ; 53 D. L. R. 59 ; 13 Sask. L. R. 198.—**CAN.**

1693 xii. ——.]—Deft. desired to acquire or gain control of certain shares in a co. Pltf. outlined to him a plan, & for carrying out the arrangement one-third of the shares were to be given to pltf. Pltf. worked on the undertaking & made considerable progress, but before the scheme was carried out deft. obtained what he wanted in other ways & without making use of pltf.'s services :—*Held :* pltf. could not recover the agreed commission.—MACINTYRE *v.* MILLER (1922), 70 D. L. R. 218 ; [1922] 3 W. W. R. 529.—**CAN.**

1693 xiii. ——.]—As a general rule & in the absence of any stipulation to the contrary a principal, who employs a house agent on commission to find a purchaser for a house, retains the right as against the house agent of selling the house to a third party, who has not been introduced by the house agent directly or through another agent at any time before a proper offer is brought to him by the house agent. If by so selling he prevents the house agent from earning his proper commission he is not liable in damages, for the act of selling is a rightful act as against the house agent.—BOOSE *v.* ZEEDERBERG & DUNCAN, [1918] C. P. D. 283.—**S. AF.**

1693 xiv. ——.]—An auctioneer was employed to sell property by auction on condition that if the reserve price was not reached no commission was to be charged. The reserve price not being reached, the property was not sold. A prospective purchaser, who was present at the auction & who knew who the owner of the property was, was about to approach the owner after the conclusion of the auction with a view to negotiating for the purchase of the property when the auctioneer formally introduced them. After protracted negotiations the prospective purchaser bought the property :—*Held :* the auctioneer's agency terminated the moment he failed to sell by auction.—MARTIN *v.* CURRIE, [1921] T. P. D. 50.—**S. AF.**

1693 xv. ——.]—Deft. listed his property with pltfs., real estate agents, for sale at a fixed price & on named terms. Pltfs. mentioned the property to one F., who thereafter negotiated with deft. for the purchase of the property, & concealed from him the fact that pltfs. had sent him. Deft., then, without any knowledge of pltfs.' intervention, sold to F., on terms less advantageous to himself than those contemplated in the agreement between pltfs. & himself. There was nothing in the circumstances to put deft. upon his inquiry as to whether pltfs. had sent F. to him :—*Held :* pltfs. could recover neither a commission on the sale nor anything for their services by way of *quantum meruit*.—ELVIN *v.* CLOUGH (1908), 7 W. L. R. 762 ; 8 W. L. R. 590.—**CAN.**

1693 xvi. ——.]—In an action for an agent's commission on the sale of a farm by deft. to one C. held that pltf. could not recover ; because he had not been instrumental in bringing the parties together, C. having been discovered by deft., & because pltf.'s employment with respect to C. was of a special character under the terms of which he was not to be entitled to a commission unless he succeed in selling the land to C. on the terms stated ; he failed to secure an offer from C. & deft. sold to C. direct.—WIEBE *v.* GARVEY, [1930] 2 W. W. R. 468 ; 3 D. L. R. 992 ; 24 S. L. R. 554.—**CAN.**

1700 iv. ——.]—If the seller has opened negotiations with a proposed buyer, but the negotiations are broken off, & later the buyer renews the same through an agent, the agent is entitled to commission.—FITZGERALD *v.* BUCKLEY, [1924] 4 D. L. R. 38 ; *affg.* 25 O. W. N. 538.—**CAN.**

1702 xxxix. ——.]—H. agreed with S., who had certain properties in his hands for sale, that he should receive half of the commission if he effected a sale. At the time a likely purchaser, C., was known to both parties. H. pressed C. to purchase, but after a time, as a matter of policy, let the matter drop, intending to approach C. again on a fitting occasion. In the meantime a member of S.'s staff indirectly approached C., who decided to purchase :—*Held :* H. had established a chain of causation between his efforts & the result, & he was entitled to half the commission.—HEALY *v.* SAUNDERS (1921), 17 Tas. L. R. 32.—**AUS.**

1702 xl. ——.]—Pltf. as agent for the owner of certain property introduced it to A. The owner was asking £17 17*s.* per week. Pltf. gave A. the key, on which was a label bearing only the name of the owner. A. told pltf. the property was unsuitable, & returned the key. About a fortnight later A., through seeing the owner's name on the label & consulting the telephone directory, discovered the owner's address, & met him to discuss the letting of the property, but did not tell him that she had seen pltf. After negotiations between A. & the owner extending over some days the owner agreed to let the property to A. for twelve months at £13 13*s.* per week :—*Held :* pltf. was entitled to commission.—SYMONS *v.* CALLIL, [1923] V. L. R. 49.—**AUS.**

1702 xli. ——.]—Deft. gave to pltfs. written authority to sell her land on terms, one of which was "price, very lowest, £10,000." Pltfs. brought the property under the notice of A., who got into personal communication with deft. & decided that it would suit him in every way, except as to price. After a delay of some weeks deft. & A. resumed negotiations, which led to a sale of the property to A. for £7,300 :—*Held :* the relation of buyer & seller was really brought about by pltfs., who were entitled to commission.—BIRTCHNELL *v.* MORRIS, [1913] V. L. R. 201.—**AUS.**

1702 xlii. ——.]—Agent :—*Held :* entitled to recover commission.—GAMBLE *v.* EXCELSIOR LIFE ASSURANCE CO. (1917), 36 D. L. R. 592.—**CAN.**

1702 xliii. ——.]—In 1913, deft co. employed pltfs., brokers, to sell its lumber property at a minimum price of $110,000.00, & agreed to pay a commission on the purchase price. During the remainder of that year & the whole of 1914, pltfs. were working on this proposition, but failed to effect a sale. In 1915 the selling price was reduced to $75.000.00. In 1916. deft. co. sold to a purchaser introduced by pltfs. for $65,000.00 :—*Held :* pltfs. were entitled to commission on the purchase price.—JARDINE *v.* PRESCOTT LUMBER CO., LTD. (1917), 44 N. B. R 505.—**CAN.**

1702 xliv. —.]—Where land is listed with a real estate agent for sale & is afterwards sold by the vendor directly to a purchaser introduced by the agent, the latter is entitled to his commission, even though the terms of sale given in the listing as the basis on which the agent is to negotiate are not strictly adhered to.—KING *v.* SCHON, [1918] 3 W. W. R. 892 ; 44 D. L. R. 111.—**CAN.**

1702 xlv. ——.]—NUNNELLY *v.* ONSUM, [1921] 1 W. W. R. 506 ; 56 D. L. R. 599 ; 16 Alta. L. R. 455.—**CAN.**

1702 xlvi. ——.]—Deft. agreed to pay pltfs. commission on the sale of certain land, & agreed that it was an exclusive listing, subject to notice of withdrawal, which was not given. Pltfs. submitted the land to P. on terms of the listing & introduced P. to deft., who later, without pltfs.' knowledge or consent, entered into an agreement with P. for sale of the land & of certain chattels used in farming it. The price of the land was somewhat less, & the cash payment considerably less, than as given in the listing :—*Held :* pltf. was wrongfully

1705a. ——.]—Where an agent is instructed, but not as sole agent, to sell a house, & he procures an offer to purchase "subject to contract," & that offer is accepted by the vendor "subject to contract," but the sale subsequently goes off owing to the vendor's obtaining a better offer through another person, the agent cannot recover commission from the vendor as there is no binding contract of sale, & he cannot recover damages from the vendor, as the vendor has not committed any breach of contract whereby the agent was prevented from earning his commission.—RAYMOND *v.* WOOTEN (1931), 47 T. L. R. 606; 75 Sol. Jo. 645, D. C.

1706a. —— ——.]—BOW'S EMPORIUM, LTD. *v.* BRETT (A. R.) & Co., LTD., No. 1687a, *ante*.

deprived of the right which the listing gave him to earn his commission.—GILBERT BROTHERS, LTD. *v.* KEISER (1922), 69 D. L. R. 713; [1922] 2 W. W. R. 1228.—**CAN.**

1702 xlvii. ——.]—Agent :—*Held :* not entitled to recover commission.—KENNEDY *v.* VICTORY LAND & TIMBER CO., [1922] 3 W. W. R. 145; 68 D. L. R. 201; *revsd.*, [1922] 3 W. W. R. 683; 70 D. L. R. 868.—**CAN.**

1702 xlviii. ——.]—If the relation of buyer & seller is really brought about by the act of the agent, he is entitled to a commission although the actual sale has not been effected by him, but he must show that some act of his was the *causa causans* or the efficient cause of the sale.—BUNTING *v.* HOVLAND & WATKINS (1923), 33 B. C. R. 291.—**CAN.**

1702 xlix. ——.]—Deft. wishing to sell his house placed it in an agent's hands, fixing a net price. The agent introduced P. but negotiations failing, deft. cancelled the agent's instruction to sell. Some time later deft. & P. agreed upon terms & a sale resulted :—*Held :* commission was payable on the amount P. first offered through the agent.—FRASER *v.* HARRISON, [1924] 1 D. L. R. 765; 56 N. S. R. 431.—**CAN.**

1702 l. ——.]—Pltf. procured A., B., & C. to enter into an agreement to purchase deft.'s mineral claims on certain terms of payment, upon which pltf. was to receive a commission as payments were made from time to time. Under this agreement a portion of the purchase price was paid & pltf. got his commission, but the agreement was afterwards cancelled. Subsequently E., who had advanced to A. a considerable part of the money paid by him under the agreement, entered into an agreement direct with deft. to purchase the claims paying $10,000 down, & pltf. sought to recover commission on that sum :—*Held :* pltf. was not the effective cause of the sale.—OLSEN *v.* PEARSON, [1924] 1 D. L. R. 1097.—**CAN.**

1702 li. ——.]—R. M. BUCHANAN Co., LTD. *v.* EBY, [1927] 2 D. L. R. 819; [1927] 1 W. W. R. 929; 21 Sask. L. R. 438.—**CAN.**

1702 lii. ——.]—NICHOLSON *v.* DEBUSE (Alta.), [1927] 3 W. W. R. 799.—**CAN.**

1702 liii. ——.]—An agent gave G. a card to view certain property. After inspection G. decided not to buy as the price was too high. Some months later G. saw a "for sale" notice on the property which reminded him that he had previously inspected the property. He then, without further communication with the agent, negotiated with the owner direct & purchased for a smaller amount :—*Held :* the *causa causans* of the sale was the previous introduction through the agent who was entitled to his commission on the lower purchase price.—DOYLE *v.* GIBBON, [1919] T. P. D. 220.—**S. AF.**

1702 liv. ——.]—Certain property given for sale by the owner to an auctioneer at a fixed commission was not sold, the reserve not being reached, & was thereafter given to the auctioneer for sale privately. L., on passing the property, saw a notice up referring intending purchasers to R., but being aware of the fact that the auctioneer had been selling the property went to the auctioneer, who referred him to the owner. L. thereupon went direct to the owner & bought the property after having told him that he came on his own behalf & not at the instance of any agent :—*Held :* the auctioneer was entitled to his commission.—TREGASKES *v.* MEIKLE, [1922] T. P. D. 317.—**S. AF.**

1702 lv. ——.]—Where a vendor concludes a contract of sale with a party with whom his real estate agent has been negotiating in ignorance that he is such a party, the agent is entitled to his commission if the circumstances are such that the vendor ought to have made inquiries which would at once have revealed the facts.—GRIFFITHS *v.* ANDERSON, [1925] 4 D. L. R. 976.—**CAN.**

1702 lvi. ——.]—NELSON *v.* HIRSCHBORN, [1927] App. D. 190.—**S AF.**

1702 lvii. ——.] — TRENWITH *v.* INTERNATIONAL HARVESTER CO. (B.C.), [1928] 2 D. L. R. 121.—**CAN.**

1702 lviii. ——.]—A real estate agent who brings his principal into relations with the actual purchaser is the effective cause of the sale & entitled to his commission, although the principal sells behind his back & the price paid by the purchaser is less than the sum at first demanded by the principal. In the present case wherein the purchase-money was paid into deft. bank, a creditor of the vendors, under an arrangement under which it undertook to pay the agent his commission out of the sums paid in, held that the fact that the property was first transferred to the bank's manager who afterwards transferred it to the purchaser introduced by the agent did not take away the agent's right to the commission, since the transfer to the manager was taken merely to secure, in the interests of the bank & the other creditors of the vendors, a sale to said purchaser; &, moreover, the agent was entitled to succeed against the bank on the ground that, whether the sale originally contemplated *i.e.*, that from the vendors direct to said purchaser, was or was not called off, the bank's manager had agreed that the bank would pay the agent the commission if the transfer from the manager to said purchaser went through.—LADD *v.* BANQUE CANADIENNE NATIONALE (Man.), [1928] 2 W. W. R. 272.—**CAN.**

1702 lix. ——.]—The agent is entitled to commission if he has been the means of bringing the parties together, although he may not actually have introduced them to each other, & although the actual sale has not been effected by him.—BRETT & Co., LTD. *v.* BOW'S EMPORIUM, LTD., [1928] S. C. (H. L.) 19.—**SCOT.**

1702 lx. ——.]—The owner of a property of 1,698 acres, put it into the hands of an estate agent with the following instructions : "Price £1 per acre, or lease for a term of three years with option of purchase at 2*s.* per acre. I hereby authorise you to sell the above property." The agent obtained a lessee for three years, with an option of purchase at £1,682. Shortly before the expiration of the lease, the lessee asked the agent to try & get an extension of the option for twelve months, &, on the latter's advice, visited the owner for that purpose, the agent at the same time writing to the owner informing him of the proposed visit. An extension of the lease was granted, but the price of the option was increased to £1,800. The lessee exercised this option, & became the purchaser of the property :—*Held :* there was evidence sufficient to justify a finding that the agent was the efficient cause of the sale, & that therefore he was entitled to commission thereon.—UPJOHN *v.* ILLINGWORTH (1928), 29 S. R. N. S. W. 4; 46 N. S. W. W. N. 5.—**AUS.**

1702 lxi. ——.]—GREAVES *v.* SALISBURY (Sask.), [1929] 3 D. L. R. 289.—**CAN.**

1702 lxii. ——.]—SIMONITE *v.* MOXAM, [1929] 1 D. L. R. 825; 1 W. W. R. 513; 38 Man. L. R. 113; *affd.*, [1930] S. C. R. 334; 2 D. L. R. 991.—**CAN.**

1702 lxiii. ——.]—If an owner has contracted to pay a commission to an agent if the latter finds a purchaser, & the relation of buyer & seller is really brought about by some act of the agent, he is entitled to the commission although the actual sale has not been effected by him.—GRAVES *v.* MCLEAN, [1931] 2 W. W. R. 895.—**CAN.**

1702 lxiv. ——.]—KEIFER *v.* ENDERS, [1931] 3 D. L. R. 189.—**CAN.**

sr. —— *Purchaser acting behind agent's back.*]—*Held :* principal liable to pay full commission on conclusion of a contract of sale with the purchaser.—MERRITT *v.* DOHERTY, [1925] 3 D. L. R. 797.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—B (b).

1703 x. ——.]—One of two real estate agents with whom property was listed for sale :—*Held :* entitled to commission on a sale initiated by him but completed by the other agent, to whom the purchaser made known his wish to buy the property after it had been brought to his attention by pltf.—GRIFFITHS *v.* ANDERSON, [1926] 2 D. L. R. 657; [1926] 1 W. W. R. 956; 35 Man. L. R. 480.—**CAN.**

1703 xi. ——.]—Deft. placed a property in the hands of several agents, including pltf., for sale. Pltf. found a purchaser who was willing to pay the price as ultimately fixed for the property, & despatched a telegram stating that fact to deft. Before deft. received the telegram, however, he had in fact sold the property to another person through another agent. In an action by pltf. for commission :—*Held :* he had not complied with the implied condition attached to the promise to pay commission, namely, that he should find an able & willing purchaser & introduce him to the vendor before the vendor had in fact sold the property to some other person, & was therefore not entitled to recover commission.—DAINTON *v.* CHIVERS, [1928] V. L. R. 555; 49 A. L. T. 299 [1928] Argus L. R. 394.—**AUS.**

1706 ix. Delete the words "& entitled to commission."

1706 xiii. —.]—Pltf. introduced to deft. __, who wished to purchase a property for his son, B. Deft.'s house was eventually transferred to the trustees of C.'s estate, in which A.'s family was interested, &

1711. *Add. Annotation :—As to* (1) **Consd.** Price, Davis *v.* Smith (1929), 141 L. T. 490.

1718. *Add. Annotations :—As to* (2) **Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110. *Generally*, **Refd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

1726. *Add. Annotations :—***Refd.** Houlder Howard *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110; Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

the purchase-money was paid by the trustees at the instance of A. Deft. alleged that another agent, though aware of A.'s inspection of the house, obtained B.'s signature to the contract of sale :—*Held :* the verdict should be entered for pltf.—WEBSTER (A. G.) & SONS, LTD. *v.* COTTON (1919), 15 Tas. L. R. 17.—**AUS.**

1706 xiv. —— ——.]—An agent is entitled to commission on a sale brought about by his action in putting the purchaser in touch with the principal, even though the purchase is subsequently completed through another agent.—PETTYPIECE *v.* HOLDEN (1920), 40 D. L. R. 386.—**CAN.**

1706 xv. —— ——.]—The commission on a sale of real estate was given by the ct. to the agent who found the purchaser & put the vendor in motion to meet him, rather than to another who performed services in connection with the effecting & carrying out of the sale.—BATEMAN *v.* SNELGROVE & GARDEN, [1921] 1 W. W. R. 305 ; 14 Sask. L. R. 69 ; 57 D. L. R. 283.—**CAN.**

1706 xvi. —— ——.]—A. promised B. a commission if B. sold a ship. B. employed a broker as sub-agent, who mentioned the matter to another agent, & it was passed on through others until, about nine months after the agreement with B., a broker to whom the matter was mentioned came to A. & made an arrangement directly with him resulting in a purchaser being obtained. B. continued his services, which were accepted by A., up to the time of sale, & was of assistance in procuring the Govt.'s consent to a transfer of the ship to a foreign registry :—*Held :* B. entitled to commission.—GREER *v.* GODSON, [1921] 2 W. W. R. 209 ; 60 S. C. R. 653 ; 56 D. L. R. 696.—**CAN.**

1706 xvii. —— ——.]—Pltf. endeavoured to effect a sale of deft.'s land to a co., of which H. was a director, & introduced H. to deft. The parties ailed to agree upon terms & the negotiations ended, & pltf. made no further effort to sell the land. Subsequently deft. through another agent sold the land to H., who purchased it on behalf of another co. :—*Held :* pltf. was not entitled to commission.—NEVE *v.* LEESON, [1921] 1 W. W. R. 04.—**CAN.**

1706 xviii. —— ——.]—After pltfs., with whom a house had been listed, introduced a prospective purchaser to the vendor, the purchaser endeavoured to induce the vendor to reduce the price. The vendor was unwilling to fix a figure agreable to the purchaser, & the latter then negotiated through other agents, with whom the house had also been listed, & finally bought it :—*Held :* pltfs. were entitled to commission.—BROOK & ALLISON *v.* HENDRICKS (1922), 66 D. L. R. 825 ; 15 Sask. L. R. 439 ; [1922] 2 W. W. R. 580.—**CAN.**

1706 xix. —— ——.]—Deft. listed a property with pltfs. with instructions to find a purchaser at the price of $5,000. A month later deft. listed the property with another broker at $4,750, the second broker having his offices across the hall from pltfs.' offices in the same building. Pltfs. interested S. in the property & brought her to view it. Shortly after S. went to pltfs.' offices with a view to purchasing, & when about to enter the offices saw a picture of the property in the window across the hall marked for sale at $4,750. She went into pltfs.' offices, discussed the sale but went out without making the purchase, crossed the hall & purchased the property from the second broker at $4,750 :—*Held :* pltfs. were entitled to their commission.—TURNER, MEAKIN & CO. *v.* FIELD (1923), 33 B. C. R. 56.—**CAN.**

1706 xx. —— ——.]—CARR *v.* LA DRECHE, [1927] 2 D. L. R. 480 ; [1927] 1 W. W. R. 574 ; 38 B. C. R. 97.—**CAN.**

1706 xxi. —— ——.]—Pltf. received written authority from deft. to enter into a contract with a purchaser for the sale of his farm & stock. The rate of remuneration was stated to be a certain percentage on the value of the land sold. Pltf. introduced the property to a prospective buyer, who ultimately purchased the property, but through the instrumentality of another agent. Pltf. claimed from deft. £171 19s. in respect of the land sold, & £65 in respect of the stock & implements. The jury found that the sale had resulted from the introduction of the purchaser from pltf. :—*Held :* pltf.'s right to commission depended on the terms of his authority, & this did not authorise any commission on the sale of the stock.—ROWE *v.* BUTLER, [1921] N. Z. L. R. 437.—**N.Z.**

1706 xxii. —— ——.]—Deft. agreed to pay pltf. commission if a sale of deft.'s house to X., who was introduced by pltf., went through. Deft. also agreed to let pltf. know should he be prepared to sell his house for a smaller amount than he had mentioned to pltf. Deft. subsequently instructed another attorney to offer the house to X. at a reduced price, & a sale was thereupon concluded :—*Held :* pltf. was entitled to the commission agreed upon.—VAN DER WALT *v.* HOFMEYR, [1920] C. P. D. 50.—**S. AF.**

1706 xxiii. —— ——.]—A. agreed to give B. a commission in case of a sale of certain premises. B. introduced C., but no sale resulted. C., of his own motion & not as an agent of B., subsequently introduced D., & A. sold the premises to D. :—*Held :* B. was not entitled to commission.—GODDARD *v.* ARNOLD, [1922] T. P. D. 167.—**S. AF.**

1706 xxiv. —— ——.]—WALLACE *v.* WESTERMAN (B. C.), [1928] 3 D. L. R. 939.—**CAN.**

1706 xxv. —— ——.]—KORCHINSKI *v.* NATIONAL TRUST CO., MCDOUGALL *v.* NATIONAL TRUST CO. (Alta.), [1929] 1 D. L. R. 268.—**CAN.**

1706 xxvi. —— ——.]—BELL-IRVING *v.* MACAULAY NICOLLS, LTD., [1931] S. C. R. 276 ; [1931] 1 D. L. R. 381 ; *revg.*, [1930] 2 D. L. R. 326 ; 42 B. C. R. 140.—**CAN.**

1707 ii. ——.]—In a dispute as to which of two real-estate agents was entitled to the commission on a sale :—*Held :* the one who first through his advertisement attracted & interviewed the purchaser & directed him to the owner was the efficient cause of the sale & entitled to the commission, rather than the other who subsequently discussed the property with the purchaser & whose agent first showed it to him.—BUFFET *v.* WALLER & LAZARNICK, [1920] 2 W. W. R. 404 ; 52 D. L. R. 499 ; 30 Man. L. R. 437.—**CAN.**

1707 iii. —— *Loan broker.*]—The office of a loan broker is to bring together the borrower & the lender who is willing to open negotiations on a reasonable basis, & when he has done that, he has done all that is necessary for him to do & earn his commission.—VASAUJI MOOLJI *v.* KARSONDAS TEJPAL (1927), I. L. R. 52 Bom. 627.—**IND.**

1716 vii. ——.]—A broker, employed by a house owner to find a purchaser for the house, is entitled to receive the remuneration agreed upon, when the sale takes place in favour of a purchaser introduced by the broker, although the actual negotiation or completion of the sale may not have taken place through the direct intervention of the broker.—ROOPJI & SONS *v.* DYER MEAKER & CO. (1930), I. L. R. 52 All. 688.—**IND.**

PART VIII. SECT. 3, SUB-SECT. 1.—B. (c).

t i. *S. P.* SATCHIDINANDA DUTT *v.* NRITYA NATH MITTER (1923), I. L. R. 50 Calc. 878.—**IND.**

t ii. ——.]—Where a land agent is employed to sell or exchange the property of his client, & commission is to be paid to him when he has "effected" a sale or exchange of such property, his right to commission accrues when he procures a valid contract for the sale or exchange of such property.—NIGRO *v.* WILSON, [1924] N. Z. L. R. 834.—**N.Z.**

1722 i. *Completion of entire contract.*]—GREER *v.* GODSON (1918), 40 D. L. R. 218.—**CAN.**

c i. —— ——.]—Pltf. found a purchaser for deft.'s land, the amount of commission was agreed on, & an agreement of sale executed. The purchaser subsequently refused to carry out the sale :—*Held :* pltf. was entitled to the commission.—JONER *v.* LOOSE, [1920] 2 W. W. R. 388 ; 53 D. L. R. 39 ; 30 Man. L. R. 350.—**CAN.**

c ii. —— ——.]—When an estate agent is employed on the ordinary terms as to commission to find a purchaser of land, & he introduces a purchaser with whom the principal enters into a contract of sale, the agent is *primâ facie* entitled to his commission.—MACARTHUR & MACLEOD PTY., LTD. *v.* CAREY, [1931] V. L. R. 269 ; Argus L. R. 261.—**AUS.**

st. —— *Commission payable on receipt of purchase-money—Payment by promissory notes.*]—An agreement provided that commission was "to become due & payable when the purchase-money or any part thereof has been paid" :—*Held :* defts. having accepted promissory notes in lieu of a cash payment, the promissory notes must be treated as a cash payment so far as pltf. was concerned.—CROSS *v.* WOOD (1921), 64 D. L. R. 105 ; 50 O. L. R. 15.—**CAN.**

sa. —— *Commission payable for services already rendered.*]—When it has been definitely agreed to pay an agent commission for his services in negotiating a sale, & the payment was to be made for services already rendered & was not to be dependent upon the payment of the purchase price, the agent can recover the commission under the agreement, although the purchaser has failed to make any payment after the first one.—CARMICHAEL *v.* BOWERS (1922), 67 D. L. R. 515.—**CAN.**

sb. ——.]—*Held :* pltf.'s claim was not affected by changes made in the agreement between purchaser & defts. If defts. saw fit to vary the terms of the agreement & accept property in lieu of cash, that should not prevent pltf. from obtaining payment of his commission, which he earned when he

1738. *Add. Annotation :*—**Consd.** Bow's Emporium *v.* Brett (1927), 44 T. L. R. 194.

1739. *Citations :*—For the existing citations substitute as follows :—
(1887), as reported in 58 L. T. 96 ; 3 T. L. R. 836, H. L.
Annotations :—For "**Mentd.** Barnett *v.* Isaacson (1888), 4 T. L. R. 595," read "**Refd.** Barnett *v.* Isaacson (1888), 4 T. L. R. 595."
Add. Annotations :—*As to* (2) **Consd.** Price, Davies *v.* Smith (1929), 141 L. T. 490. *Generally,* **Refd.** Keppel *v.* Wheeler, [1927] 1 K. B. 577.

1740. *Add. Annotation :*—**Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

1741. *Add. Annotation :*—**Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

1746. *Add. Annotations :*—**Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110 ; Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

procured a binding agreement for the sale of the property.—CRAWFORD *v.* IMPERIAL TRUST CO. OF CAN., [1929] 4 D. L. R. 913 ; 64 O. L. R. 433.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—C. (a).

1729 iii. —— *Sale of remainder of land.*]—Pltf. employed deft. to sell a house & portion of the block of land on which it stood. Deft. found a purchaser & a contract of sale was signed under which pltf. gave the purchaser certain provisional rights over the unsold portion. Afterwards pltf. endeavoured to obtain from the purchaser a modification of the contract with regard to the rights over the unsold portion, & deft. did considerable work in trying to induce the purchaser to vary the contract in this respect. During the negotiations left. repeatedly urged pltf to sell the whole of the land. Negotiations having failed pltf. behind the back of deft. sold the remainder of the land to the original purchaser & the whole was included in a single transfer :—*Held :* deft. was not entitled to commission on the sale.—MCANDREW *v.* GRAY (1920), 20 S. R. N. S. W. 635.—**AUS.**

PART VIII. SECT. 3, SUB-SECT. 1.—C. (b).

sw. *Transaction similar — Further sale.*]—A. in 1911 employed pltf. to sell a Crown lease, & an agreement was entered into which provided that if pltf. sold the lease for £25,000 he was to receive £5,000. In 1914 through the instrumentality of pltf. the lease was transferred to S. &, on payment by S. of £5,000, pltf. received £1,000 as commission. In 1919 A. & S. sold the lease to T. for £14,000. Some years prior to this sale pltf. had submitted full particulars of the lease to T., who would not then buy. L., who was employed for that purpose by A. & S., had brought about the sale to T. Pltf. claimed commission in respect of the sale to T. :—*Held :* pltf. was not entitled to commission.—DEWDNEY *v.* MATHESON, [1923] S. A. S. R. 105.—**AUS.**

PART VIII. SECT. 3, SUB-SECT. 1.—D.

sa. *Agent to obtain money for project—Expansion & modification of proposal.*]—*Held :* the agent was entitled to recover commission.—THOMAS *v.* GALE, [1927] 1 D. L. R. 593 ; S. C. R. 314 ; *varying,* [1925] 3 D. L. R. 757.—**CAN.**

sb. *Agent to procure loan to third party—Loan raised by third party.*]—Pltf. claimed a commission of 1 per cent. from deft. on the ground that the latter had requested him to raise a loan of £27,500, subsequently increased to £35,000, not on behalf of deft. but on behalf of one F. It was admitted that deft. had sold a certain property to F. for a sum of £45,000, £10,000 to be paid in cash & the balance to be secured by a bond over the property ; through pltf.'s efforts the manager of a certain insurance co. was prepared to advance £27,500 to F. on a first mtge. over the property & that thereafter a sum of £35,000 was in fact advanced by the insurance co. upon that security, together with certain additional securities. Deft. denied that he had made the contract alleged with pltf. & stated that the real arrangement between them was that pltf. should raise a loan of £27,500 on behalf of deft. himself & not for F., & further, that if F. paid off the whole amount of the purchase price in cash pltf. was not entitled to any commission whatever, & that F. had personally raised on his own behalf a loan of £35,000 not on the security of the property alone but on additional securities belonging to him. At the trial pltf. applied for leave to amend his declaration so as to base his claim on a mandate to raise a loan of £27,000 only. The trial ct. refused to grant the amendment & held pltf. had earned commission on £35,000, the sum actually advanced to F., but as pltf. had declared himself satisfied with £275 awarded the latter amount. Deft. having appealed :—*Held :* commission of 1 per cent. was promised pltf. by deft. if the former was instrumental in obtaining a loan of £27,500 from the insurance co. to F. ; further, in view of application for amendment, which should have been granted, it was unnecessary to consider whether pltf. was entitled to commission on the whole sum advanced, &, as on the facts, it was clear that £27,500 would have been advanced on the property alone, the fact that £35,000 had been lent upon the property, together with additional security, did not debar pltf. from recovering commission on £27,500.—SAMMEL *v.* JACOBS & Co., [1928] App. D. 353.—**S. AF.**

sc. *Agent to sell—Third party entering into partnership with principal.*]—A., an agent employed by P. to obtain a purchaser for a mill, introduced M. to P. The sale did not go through. P. eventually entered into a contract of partnership to work the mill, the partners being P., M. & C. :—*Held :* as the transaction resulting from the agency differed substantially from that which A. had been employed to procure, he was not entitled to any remuneration.—BORDER *v.* EDLEY, [1920] O. P. D. 19.—**S. AF.**

p i. —— ——.]—Pltfs. claimed for commission on sale of timber holdings of deft. co. The shareholders had passed a resolution authorising a sale at a fixed minimum price upon terms agreeable to the directors, & a letter from the co.'s managing director to pltfs. offered $35,000 commission should pltfs. make a sale at a certain named price, which price would net the co. such minimum price. A sale was made through other agents, not for a lump sum, but for a price based on board measurement to be paid for as the timber was taken, with an additional sum to be paid when the timber had been logged :—*Held :* the sale was not a sale within the contract.—RORAY *v.* NIMPKISH LAKE LOGGING CO., LTD., & GARLAND, [1919] 2 W. W. R. 105.—**CAN.**

y i. —— ——.]—E. requested S., a servant of pltf., to obtain a buyer for his property. E. told S. that he wanted £850, & would pay commission. S. then asked E. if he would consider an offer. E. replied he wanted £800 clear. S. introduced K. to E., but the price offered was too low, & after various negotiations no sale took place. Six months later E. sold the property to K. for £600 :—*Held :* as the buyer offered less than £800, pltf. was not entitled to commission.—ROBINSON *v.* EVES, [1917] S. A. L. R. 71.—**AUS.**

y ii. —— ——.]—*Held :* as the employment was a general one, the price mentioned being intended not as a hard & fast one, but as a basis of negotiations, pltf. was entitled to the agreed commission on the price obtained.—PRENTICE *v.* MERRICK, [1917] 3 W. W. R. 1060 ; 24 B. C. R. 432 ; 38 D. L. R. 388.—**CAN.**

y iii. —— ——.]—An owner in Apr. listed with an agent certain land for sale at $35 an acre with a fixed cash payment, the price to include the crop. In Nov., after the owner had taken off & sold the crop, the agent sold the land for $30 an acre on a small cash payment :—*Held :* in order to earn his commission the agent had to obtain a purchaser for the land & crop at $35 per acre.—FITCHELL *v.* LAWTON, [1919] 3 W. W. R. 728 ; 49 D. L. R. 185.—**CAN.**

y iv. —— ——.]—Deft. listed his farm with pltfs. for sale at $38 an acre. Deft. sold the land at $37 an acre to one introduced by pltfs. :—*Held :* pltfs. were entitled to commission.—SMITH *v.* WRIGHT, [1919] 3 W. W. R. 1094 ; 49 D. L. R. 408 ; 12 Sask. L. R. 491.—**CAN.**

y v. —— ——.]—When a proprietor goes to an agent & requests him to find a purchaser, naming at the same time the sum which he is willing to accept, that will constitute a general employment, & should the estate be eventually sold to a purchaser introduced by the agent, the latter will be entitled to his commission, although the price paid should be less than the sum named at the time the employment was given. The mention of a specific sum prevents the agent from selling at a lower price without the consent of his employer, but it is given merely as the basis of future negotiations, leaving the actual price to be settled in the course of those negotiations.—PALMER *v.* HARVEY (1922), 65 D. L. R. 769 ; 15 Sask. L. R. 152 ; 1 W. W. R. 231 ; *affg.* (1920), 55 D. L. R. 703 ; 14 Sask. L. R. 19.—**CAN.**

y vi. —— ——.]—Where the contract is that the agent is not to be paid a commission unless he procures a purchaser at a specified figure, the fact that a sale is made by the owner at a lower price does not entitle the agent to remuneration by way of *quantum meruit.*—GRIFFITH *v.* FREDERICKSON, [1926] 4 D. L. R. 50 ; [1926] 2 W. W. R. 680 ; 36 Man. L. R. 54.—**CAN.**

y vii. —— ——.]—WEAVER *v.* DIXSON, [1928] 4 D. L. R. 226 ; 62 O. L. R. 419.—**CAN.**

y viii. —— ——.]—WEIR *v.* GRAND [1931] 1 D. L. R. 581 ; 66 O. L. R. 245.—**CAN.**

sd. —— *Third party taking land in a trade.*]—Agents who had been promised a commission should they obtain a purchaser for land at a certain price :—

1746a. Agent to sell property—Agent himself buying property—With consent of principal.]—Where an agent has been instructed to sell property on commission &, after failing to find a purchaser, agrees with his principal to buy the property himself, he is not entitled to commission on the purchase by himself unless his principal has expressly agreed that such commission shall be payable.—HOCKER *v.* WALLER (1924), 29 Com. Cas. 296.

1746b. —— At stated price—Sale at lower price—With consent of principal.]—PRICE, DAVIES & CO. *v.* SMITH, No. 1780a, *post*.

1751. *Add. Annotation :—As to* (2) **Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

1751a. -.]—Pltfs., who were shipbrokers, negotiated on behalf of defts., the owners of a steamship, a charterparty of the steamship which was to be in force from Oct. 1920 for five years, & which contained a clause providing that the charterers should have the option of purchasing the steamship at any time between the signing of the charter & the completion of the charter period for £125,000. On the day when the charterparty was signed defts. signed & gave to pltfs. a commission note in these terms: "We hereby agree to pay you . . . 5 per cent. brokerage on hire. . . . Should the option of purchase contained in the charter be availed of, the brokerage on purchase to be 3½ per cent. . . ." The charterparty was acted upon until June, 1921, when defts. sold the steamship to the charterers for £65,000. Pltfs. brought an action against defts., claiming (*inter alia*) 3½ per cent. commission on £65,000, the price paid by the charterers for the steamship, &, in the alternative, a *quantum meruit* for their alleged services in effecting the same :—*Held :* (1) the former of these claims failed, the option of purchase mentioned in the commission note never having been exercised, & the sale effected being a sale at a different price from that upon which alone the brokerage of 3½ per cent. was to become payable ; (2) the latter claim also failed inasmuch as the parties having reduced their bargain into writing in the commission note, there was no scope for the operation of the principle of *quantum meruit*.—HOWARD-HOULDER & PARTNERS, LTD. *v.* MANX ISLES S.S. Co., [1923] 1 K. B. 110 ; 92 L. J. K. B. 233 ; 128 L. T. 347 ; 38 T. L. R. 757 ; 66 Sol. Jo. 682 ; 16 Asp. M. L. C. 95 ; 28 Com. Cas. 15.

Annotation :—**Refd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

1754. *Add. Annotation :*—**Refd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

1755. *Add. Annotations :*—**Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110; Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

1759. *Add. Annotation :*—**Consd.** Price, Davies *v.* Smith (1929), 141 L. T. 490.

1761. *Add. Annotation :*—**Consd.** James *v.* Smith, [1931] 2 K. B. 317, n.

1763. *Add. Annotation :*—**Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110.

Held : not entitled to commission, as they only introduced a party who took the land in a trade & with whom the principal had previously discussed a trade.—BROWN *v.* PATCHELL, [1919] 3 W. W. R. 701 ; 49 D. L. R. 158.—**CAN.**

se. *Agent to exchange—Exchange of other properties.*]—A real estate agent is entitled to his commission on an exchange of properties where he brings the parties together & engages actively in negotiating the exchange, which eventually falls through owing to the objection of his principal to include certain stock & implements in the transaction, the principal soon afterwards completing the exchange without the stock & implements but with the same purchaser for other property owned by him.—DUNN *v.* SINCLAIR, [1923] 1 D. L. R. 426.—**CAN.**

sf. *Agent to obtain signature of wife—Obtaining signature of husband.*]—Defts. agreed with pltfs. that if the latter obtained Mrs. M. to sign a building contract for a house they would pay pltfs. the usual commission as on a sale of land. Pltfs. obtained the signature of the husband :—*Held :* as it was immaterial to defts. whether the contract was signed by Mrs. M. or by the husband, pltfs. were entitled to the commission agreed to.—SMITH & SMITH *v.* DINGLE & HOLMES, [1923] 3 D. L. R. 68 ; 3 W. W. R. 49.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—E. (a).

1754 xix. —— *Principal altering date for giving possession.*]—An agent with whom land has been listed for sale has earned his commission when he has introduced to the owner a purchaser who is ready, willing & able to buy at the price & terms stated by the owner, though the sale does not go through by reason of the owner insisting on a date for giving of possession later than that at first stated.—HIGGINS *v.* MITCHELL, [1921] 1 W. W. R. 252 ; 57 D. L. R. 288 ; 31 Man. L. R. 60.—**CAN.**

1754 xx. ——.]—Deft. :—*Held :* liable to pltf. for an agreed commission for a sale of land procured by pltf. & which was not carried out because of deft.'s refusal, without sufficient reason, to carry it out.—BALLS *v.* MCGREGOR (1922), 68 D. L. R. 718 ; 32 Man. L. R. 196 ; [1922] 2 W. W. R. 1247 ; *affg.*, 66 D. L. R. 696.—**CAN.**

1754 xxi. ——.]—Where a real-estate agent had found a purchaser who had accepted the seller's proposition for the sale or exchange of his land, & the acceptance was made within the time limited by the seller, but the seller refused to complete the transaction & alleged that the purchaser was not ready, willing or able to complete the transaction :—*Held :* the *onus* of proof was on the agent suing for commission.—REGINA BROKERAGE & INVESTMENT CO. *v.* KISTNER (1922), 70 D. L. R. 75 ; [1922] 3 W. W. R. 657.—**CAN.**

1754 xxii. —— *Agent taking undue advantage of principal.*]—A real estate dealer, who acted for a foreigner with an imperfect knowledge of English, took an undue advantage of his principal in representing an improvident transaction to be a very desirable one, which he should enter into in substitution for an exchange which had fallen through. The principal having repudiated the second transaction, the ct. refused to allow the agent the commission he would have obtained thereunder had it been completed, but allowed him commission on a *quantum meruit* based on the amount of commission contemplated by the first transaction. — BURNS *v.* MINCHAU (Alta.), [1926] 3 W. W. R. 791.—**CAN.**

1754 xxiii. ——.]—TURNER MEAKIN & CO. *v.* CALEDONIA & BRITISH COLUMBIA MORTGAGE CO., LTD., [1927] 2 D. L. R. 395 ; 38 B. C. R. 103.—**CAN.**

1758 viii. ——.]—Deft. having a property for sale, gave an authority to pltf. in the following terms : "I hereby authorise you to sell my property, for the price of £2,600 nett. Any amount over & above this figure to be paid to you as commission on the sale." Pltf. found a purchaser who entered into a contract to purchase for £2,750. The bargain went off, however, owing to the purchaser's insistence on the removal of some restrictive covenants, which deft. was unable to effect :—*Held :* pltf. having found a purchaser, & having brought about a contract for sale at a price of £2,750, was entitled to the sum of £150 by way of commission, & the subsequent failure of the transaction, through no default on his part, did not deprive him of his right to recover that amount from deft.—PEACOCK *v.* TARLETON (1928), 28 S. R. N. S. W. 561 ; 45 N. S. W. W. N. 164.—**AUS.**

sk. *Principal refusing to compete with other buyers.*]—Pltfs. engaged deft. to purchase lambs in a large specified area. He was to receive a commission on all lambs bought by him, the price to be the highest market price at the time of delivery. Deft. proceeded to canvass farmers & secure options on the lambs they had for sale. When the time for taking the delivery was at hand pltfs. advanced deft. $2,000 to buy lambs. When the time for taking delivery of the lambs arrived, pltfs. refused to advance the price to the level of that of competing buyers & deft. was unable to procure the lambs which he had agreed for :—*Held :* pltfs. had defaulted & were estopped from saying that deft. did not complete his contract.—NEW ENGLAND DRESSED MEAT & WOOL CO. *v.* PATRICK BROTHERS, [1923] 1 D. L. R. 153.—**CAN.**

1763 i. *Principal declining to accept loan.*]—Where an agent performed his part in obtaining a loan, & was in no way responsible for the non-payment

1767. *Add. Annotation :*—**Consd.** James *v.* Smith, [1931] 2 K. B. 317, n.

1768a. Principal selling ship to charterers—During currency of charter.]—Shipbrokers employed to effect a charter of a steamship procured a charter for eighteen months, but after four months of the charter had run the owner sold the vessel to the charterers & the charterparty was cancelled. The charterparty provided for payment of a commission of 2½ per cent. on the hire paid & earned under the charterparty & on any continuation thereof. In an action by the brokers to recover commission for the remainder of the charter period :—*Held :* it was not an implied term of the contract that the shipowners should not agree to put an end to the charterparty by the sale of the ship to the charterers, & the action failed.—FRENCH (L.) & Co. *v.* LEESTON SHIPPING CO., [1922] A. C. 451 ; 91 L. J. K. B. 655 ; 127 L. T. 169 ; 38 T. L. R. 459 ; 15 Asp. M. L. C. 544 ; 27 Com. Cas. 257, H. L.

Annotations :—**Folld.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110. **Refd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

1769. *Add. Annotation :*—**Refd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

1770. *Add. Annotation :*—**Consd.** James *v.* Smith, [1931] 2 K. B. 317, n.

1771. *Add. Annotations :*—**Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110 ; Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

1775. *Add. Annotations :*—**Consd.** James *v.* Smith, [1931] 2 K. B. 317, n. **Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B.

of the money under the loan :—*Held :* he was entitled to his commission.—WHITESIDE *v.* WALLACE SHIPYARDS, LTD (1919), 27 B. C. R. 40 ; 45 O. L. R. 434.—**CAN.**

1766 v. ——.]—SMITH *v.* UPPER CANADA COLLEGE (1920), 48 O. L. R. 120 ; 54 D. L. R. 548 ; 18 O. W. N. 370.—**CAN.**

1766 vi. ——.]—Pltf., a ship & general broker, sold to N. a ship on deft.'s behalf. The purchase price was £140,000 payable by N. to deft. in instalments, & deft. agreed to pay pltf. £20,000 of the purchase price when he received the second instalment. Before that instalment was paid N., with deft.'s consent, cancelled the contract :—*Held :* upon the cancellation of the contract of sale, pltf.'s right under his special contract with deft. was determined & his claim for commission failed.—GOWAN *v.* BOWERN, [1924] App. D. 550.—**S. AF.**

sl. *Principal not negotiating in good faith.*]—Where under an agreement to pay an agent commission on a sale of real estate, the agent is to be entitled to the commission only when the principal concludes a sale to a purchaser found by the agent, the law implies an agreement by the principal to negotiate in good faith with the purchaser proposed & to demand only such terms as, considering all the circumstances, might be conceivably demanded in perfect good faith. Where the principal does not negotiate in good faith & the sale is thereby prevented, the agent is entitled to damages.—MCINTYRE & Co. *v.* LAW, [1918] 2 W. W. R. 359 ; 13 Alta. L. R. 273 : 40 D. L. R. 231.—**CAN.**

sm. *Principal selling ship to charterers —Commission payable under charter.*]—Pltfs. negotiated a charterparty, which contained a clause providing for payment of commission on the estimated gross amount of hire as earned & paid. Subsequently the owners & the charterers entered into a contract of sale, which contained a clause cancelling the charter & so cancelling the clause therein providing for the commission :—*Held :* pltfs. were entitled to the amount of commission which would have been payable if the charterparty had not been cancelled, but, especially having regard to the fact that the action was brought before the period of hiring under the charterparty had expired, subject to a fair deduction in view of the risk of the hire ceasing apart from any voluntary action by the owners.—ROXBURGH *v.* CROSBY & Co., [1918] V. L. R. 118.—**AUS**

PART VIII. SECT. 3, SUB-SECT. 1.—E. (b).

b i. ——.]—*Held :* the agent was not entitled to commission.—FLANAGAN *v.* CHAPMAN, [1926] 1 D. L. R. 159 ; 58 O. L. R. 94.—**CAN.**

e i. ——.]—Deft, who was authorised to procure a purchaser & accept a deposit & retain from the deposit his commission for procuring a purchaser then ready & willing & apparently able to fulfil his obligations to the extent at least of making the down payment, procured a purchaser, who made the agent a deposit of $250, & the vendor entered into a written memorandum to sell to him. The principals afterwards by arrangements between themselves cancelled the contract on the ground that the purchaser found himself unable to make the first payment, & the purchaser agreed to forfeit the $250 :—*Held :* deft. was entitled to retain the $250, but was not entitled to anything further.—DE WOLF *v.* DELMAGE (1922), 65 D. L. R. 42 ; 17 Alta. L. R. 441 ; [1922] 1 W. W. R. 1129.—**CAN.**

e ii. ——.]—A broker, commissioned to obtain a purchaser for a piece of land, found a purchaser, who failed to complete the sale within a fixed period owing to his inability to pay ready money. The principal entered into a new arrangement direct with the purchaser, & such new arrangement was subsequently rescinded by the principal :—*Held :* the broker was not entitled to commission.—FOUCAR & Co. *v.* MUDALIAR (1923), I. L. R. 2 Ran. 45.—**IND.**

e iii. ——.]—M. placed a property in the hands of G., a commission agent, for sale or exchange. G. obtained a person who was willing to buy provided M. would accept as part payment of the price certain properties owned by him. There was a restrictive covenant upon one of the latter properties which the other party was unable to remove when called upon to do so by M. As a result thereof the contract was mutually rescinded :—*Held :* although the purchaser was willing, he was not able to pay the contract price, & therefore that G. was not entitled to recover commission from M.—GILFORD *v.* MCLEAN (1929), 29 S. R. N. S. W. 336 ; 46 N. S. W. W. N. 132.—**AUS.**

f i. ——.]—W., having agreed to sell shares to a co., entered into a contract to pay C. a commission for services in effecting the sale. The purchase price of the shares was to be paid by instalments & the commission was to be paid out of the respective instalments. The contract provided that if the payments were not made by the purchasers W. would be under no liability to pay the commission. The initial payment was made & the commission thereon paid to C. When the next payment fell due the purchasers defaulted & shortly after the co. was placed in liquidation. The liquidator offered the assets for sale & accepted the tender of W. & H. The successful tenderers received all the assets of the estate including the stock sold by C. There was no evidence that the assets had a cash value equivalent to the amount of the unpaid purchase price of the shares :—*Held :* W. had not received payment for the shares, & the commission was not earned.—CECIL *v.* WETTLAUFER, [1923] S. C. R. 69 ; 1 D. L. R. 352 ; *affg.* 20 O. W. N. 260.—**CAN.**

li. ——.]—PROGRESSIVE AGENCY *v.* BENNETT, [1928] N. Z. L. R. 100.—**N.Z.**

sn. *Third party repudiating contract.*]—Where a contract for sale was entered into between A. & B., & A. accepted B. as the purchaser, but B. did not pay any portion of the purchase-money, & subsequently repudiated the contract :—*Held :* the agent who negotiated the contract was entitled to commission on the sale.—BOND *v.* DAWSON, [1923] St. R. Qd. 63.—**AUS.**

sp. ——.]—Where a purchaser repudiated the agreement of sale, the vendor acquiescing :—*Held :* pltfs. as agents were not entitled to commission.—MOTOR FARMING & DEVELOPMENT CO. & DAVIDSON *v.* SMITH, [1923] 2 D. L. R. 1178 ; 1 W. W. R. 1409.—**CAN.**

st. ——.]—Pltf. employed deft. to find a purchaser for certain land, & agreed to pay him commission if he succeeded. Deft. found persons willing to take an option, & he prepared an option agreement which was entered into by the parties. The purchase price was $3,000, & the cash payment was $300 which was to be forfeited if the purchasers failed to go further in the purchase. They paid this $300 to deft., who paid pltf. $150, retaining the balance, $150, as his commission on the whole purchase price. The purchasers refused to carry out the purchase :—*Held :* pltf. was entitled to the $150 retained by deft. as commission.—CARLSON *v.* THOMPSON, [1923] 3 W. W. R. 869.—**CAN.**

sa. ——.]—Pltf. entered into the following sale agreement with deft. :—"I hereby authorise you to negotiate a sale, & agree to pay you commission provided you sell or furnish me either directly or indirectly with the name of a party to whom I may sell. Commission to be due & payable when sale is made." Deft. found a purchaser, entered into an agreement of sale with him, & a deposit of $200 was paid by the purchaser to deft. The purchaser subsequently refused to complete the purchase, & the sale was never completed :—*Held :* the sale never having been completed, deft. was not entitled to any commission.—LEAMAN *v.* LAWTON (1923), 51 N. B. R. 110.—**CAN.**

110; Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

1776. *Add. Annotation :*—**Consd.** James *v.* Smith, [1931] 2 K. B. 317, n.

1776a. **"Private treaty" sale.**]—Where an estate agent is employed to find a purchaser of an estate, the terms of the agent's employment being that commission is payable to him on the purchase price on sales by "private treaty," his principals are liable for his remuneration only when a sale has been completed & the purchase price has been paid on completion, except where the non-completion is due to some default or omission on the part of his principals. When, therefore, the agent has been employed simply on the above terms, he is not entitled to commission on the purchase price if he has merely brought about a purchase agreement which, without default or omission on the part of his principals, has not been completed.—KNIGHT, FRANK & RUTLEY *v.* GORDON (1923), 39 T. L. R. 399.

1776b. ——.]—JAMES *v.* SMITH (1921), [1931] 2 K. B. 317, n.; 100 L. J. K. B. 585, n.; 145 L. T. 457, n., C. A.

Annotation :—**Consd.** Martin *v.* Perry & Daw (1931), 47 T. L. R. 377.

1776c. —— **Onus of proof.**]—Pltf. put his business in the hands of defts., estate agents, to find a purchaser, commission being payable "on a sale being effected." Defts. found a purchaser R., who paid a deposit to defts. as agents for pltf., & entered into a binding contract with pltf. to purchase the business. For reasons, of which no evidence was given by defts., R. did not complete. Pltf. thereupon claimed the above deposit from defts. Defts. admitted the claim, but counterclaimed a larger sum as commission :—*Held :* defts., to be entitled to commission, were bound to introduce a purchaser ready, willing & able to complete; the onus of showing that R. was such a purchaser lay on them, & they had failed to discharge that onus, & were consequently not entitled to commission.—MARTIN *v.* PERRY & DAW, [1931] 2 K. B. 310; 100 L. J. K. B. 582; 145 L. T. 455; 47 T. L. R. 377; 75 Sol. Jo. 259.

1780a. -.]—Pltfs. D. & Co., who were partnership agents, claimed to recover from deft. the sum of £92 10*s.*, being the balance of commission on the sale of deft.'s business premises at T., effected by pltfs. Deft. had advertised the property for sale, & pltfs. had sent him a "particular form" which was in blank, except the words: "I hereby instruct you to sell my business premises as per particulars above, which I declare to be correct, & agree to pay you a commission 5 per cent. on the total price paid by the purchaser & appoint you agents," which, as pltfs. alleged, they had inserted on the form before sending it to deft. On July 8, 1928, deft. filled in the form & returned it to pltfs., but he subsequently denied that the above words were on the form when he signed it. A firm of G. & Co., estate agents, believing that they had secured a likely customer for the property, communicated with pltfs. & sent their representative, P., to them, & pltfs. introduced P. to deft. Deft. alleged that P. had been introduced to him as a purchaser, but pltfs. contended that he had been introduced to deft. as another agent who would be likely to find a purchaser. Ultimately P. found a purchaser in one T., who agreed to pay £4,000 for deft.'s property. In the "particulars form" deft. had stated: "Lowest price for goodwill, fixtures, & fittings, £4,500," but he eventually accepted £4,000. Meanwhile pltfs. & G. & Co. had agreed to share the commission. Deft. subsequently paid commission amounting to £107 10*s.* to G. & Co. As this amount was £92 10*s* short of £200, the 5 per cent. commission on £4,000, pltfs. on Nov. 2, 1928, issued a writ claiming the balance from deft. The completion of the purchase did not take place until Nov. 15, 1928, & deft. contended (*inter alia*) that he was not liable to pay commission until he had received the purchase price. The jury found (*a*) that the words in relation to the 5 per cent. commission were in the particulars form of July 8, 1928, when deft. signed it, (*b*) that the property was sold to T. through the instrumentality of pltfs., & (*c*) that G. & Co. were not acting as sub-agents for pltfs. :—*Held :* (1) pltfs. were not to be deprived of their commission by reason of the fact that the property was ultimately sold for £4,000 instead of the £4,500 asked by deft. in the particulars form; (2) the jury's findings that the words about 5 per cent. commissions were in the document when deft. signed it, the property was sold through the instrumentality of the pltfs., & that G. & Co. were acting as sub-agents for pltfs., could not be interfered with; & (3) although pltfs. had done all the work required to entitle them to their commission, they were not in a position to claim payment of their commission until the purchase was completed, & as the writ was issued thirteen days before the date of the actual completion of the purchase, it was issued too soon & the action failed.—PRICE, DAVIES & CO. *v.* SMITH (1929), 141 L. T. 490; 45 T. L. R. 542; 73 Sol. Jo. 401, C. A.

1782. *Add. Annotation :—Generally,* **Reld.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

1783. *Add. Annotation :*—**Reld.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110;

PART VIII. SECT. 3, SUB-SECT. 1.—E. (c).

sb. *Agent himself paying deposit—To prevent sale of land until definite purchaser secured.*]—Where an agent for sale of land paid his principal $200, leading the principal to believe it was paid as a deposit on behalf of P., whereas it was really paid to hold the land until a definite purchaser could be secured :—*Held :* the agent was not entitled to any commission.—CREBER & PATTERSON *v.* BRAYBROOK, [1919] 3 W. W. R. 422.—**CAN.**

1780 ix. *Agreement to pay commission on work done.*]—Pltf., who was employed by deft. to sell a station property & to find a lease for another, found A., who was ready & willing to purchase the one & to lease the other, & with him deft. entered into a contract. Subsequently the contract having fallen through, pltf. was employed by deft. to raise money for him which it was hoped would enable the purchase & lease by A. to be carried through, & a written agreement was entered into between pltf. & deft., by which it was provided that in the event of the completion of the sale & lease deft. should pay to pltf. a certain sum "representing commission due to" pltf. "on these transactions." The sale & leasing were never completed. In an action to recover the sum mentioned in the agreement, the trial judge found that when the agreement was entered into pltf. had a right to recover a reasonable sum for commission in respect of the work he had then done, & that the contract did not deprive him of that right :—*Held :* pltf. was entitled to recover a sum made up of 1 per cent. of the purchase-money & 5 per cent. of a year's rent.—FRY *v.* BYRNE (1917), 23 C. L. R. 589.—**AUS.**

Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

1785. *Add. Annotation :*—**Apprvd. & Apld.** French *v.* Leeston Shipping Co., [1922] 1 A. C. 451.

1786. *Add. Citation :*—23 Com. Cas. 121.

Add. Annotation :—**Consd.** Affréteurs Réunis Soc. Anon. *v.* Leopold Walford (London), [1919] A. C. 801.

1786a. —— **No hire earned—Special clause in charterparty.**]—A clause in a time charterparty provided that " a commission of 3 per cent. on the estimated gross amount of hire is due to L. on signing this charter ship lost or not lost." No hire was in fact earned under the charterparty :—*Held :* (1) the charterers, as trustees for the brokers, could enforce the clause against the shipowners ; (2) a custom by which commission was payable only if hire was earned under the charterparty could not be set up by the shipowners as an answer to the brokers' claim, inasmuch as it was inconsistent with the terms of the clause.—Affréteurs Réunis Société Anonyme *v.* Leopold Walford (London), Ltd., [1919] A. C. 801 ; 88 L. J. K. B. 861 ; 121 L. T. 393 ; 35 T. L. R. 542 ; 14 Asp. M. L. C. 451 ; 24 Com. Cas. 268, H. L. ; *affg.* S. C. *sub nom.* Leopold Walford (London) *v.* Affréteurs Réunis Société Anonyme, [1918] 2 K. B. 498, C. A.

Annotation :—*As to* (1) **Consd.** French *v.* Leeston Shipping Co. (1921), 37 T. L. R. 453.

1790. *Add. Annotations :*—**Consd.** James *v.* Smith, [1931] 2 K. B. 317, n. **Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110 ; Bental, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

1791a. ——.]—Howard Houlder & Partners, Ltd. *v.* Manx Isles S.S. Co., No. 1751a, *ante.*

1793. *Add. Annotations :*—**Refd.** Howard Houlder *v.* Manx Isles S.S. Co., [1923] 1 K. B. 110 ; Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

1784 iv. ——.]—Deft. placed a property in the hands of pltf., a commission agent, for sale upon prescribed conditions. Pltf. found A., who was ready & willing to purchase upon all the prescribed conditions except two, to which at all material times he expressed his unwillingness to agree. Deft. thinking that A. had agreed to all the prescribed conditions, submitted to A.'s solr. a contract of sale containing all the prescribed conditions. A. refused to sign the contract unless the two prescribed conditions were struck out :—*Held :* pltf. was not entitled to any commission or other remuneration from deft.—Tynan *v.* A'Beckett, [1923] V. L. R. 412.—**AUS.**

1784 v. ——.]—In the absence of an exclusive listing, or of a special arrangement that he is to be remunerated if he does not find a purchaser, the agent is not entitled to anything if he does not find the purchaser.—Greenwood & Greenwood *v.* Welford (1922), 70 D. C. R. 107 ; [1922] 3 W. W. R. 388.—**CAN.**

1c. *Agent abandoning negotiations.*]—*Held :* not entitled to commission.—Hales *v.* Thomson (Man.), [1927] 3 W. W. R. 156 ; *affd.*, [1928] 1 W. W. R. 127.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—E. (d).

1787 ii. ——.]—A claim upon a *quantum meruit* for services as agent in respect of certain properties disallowed on the ground that it was not the understanding of the parties that payment should be made except as commission on a sale being effected ; in suing upon a *quantum meruit*, in order to rely upon the acceptance by deft. of something pltf. has done he must have done it in circumstances which led deft. to know that if he accepted what had been done it was on the terms he must pay for it.—Weeden *v.* Turner (1922), 68 D. L. R. 748 ; [1922] 3 W. W. R. 623.—**CAN.**

1789 i. *No right where express contract.*]—Where a contract of agency stipulates the circumstances in which the agent will be entitled to a commission, compensation by way of *quantum meruit* will not be allowed in circumstances where no commission can be claimed ; so to allow it would be to declare a contract existing between the parties different from the one they have made themselves.—Law & Maclean *v.* Sawyer Massey Co., [1918] 1 W. W. R. 727 ; 13 Alta. L. R. 126 ; 38 D. L. R. 333.—**CAN.**

1789 ii. —— *Claim based on sage.*]—Where an agent's claim was based on a usage :—*Held :* a special contract arose between the parties, & a *quantum meruit* was excluded.—Samson *v.* McKay, [1923] N. Z. L. R. 40.—**N.Z.**

1789 iii. ——.]—Elliott *v.* Warburton, [1925] 4 D. L. R. 1070.—**CAN.**

1789 iv. ——.]—A writing was signed by deft. agreeing to pay pltf. $200 upon the " due completion of the exchange." An agreement for an exchange was obtained by pltf., but there was no " due completion of the exchange " :—*Held :* as the special agreement made the commission payable upon an event which did not happen, no recovery as upon a *quantum meruit* could be had.—Price *v.* Haberman, [1931] 4 D. L. R. 251 ; O. R. 421.—**CAN.**

1793 ii. ——.]—Deft. employed pltf. as agent to sell land & equipment of cattle, horses, implements, etc., & furniture, at a price on a basis of $80 an acre with a certain cash payment. Pltf. found a purchaser who wanted the land alone, but could not make a cash payment. Deft. & the purchaser came to an agreement for sale on crop payments at $60 an acre, & signed an agreement prepared by pltf., which was crude & improvident but one from which the rights of the parties could be defined. Subsequently a more elaborate agreement was drawn by deft.'s solr., which because of certain onerous additions therein for the protection of deft. the purchaser refused to sign, & the transaction was broken off :—*Held :* there was in effect a sale of which pltf. was the *causa causans*, & he was entitled to payment for his services, on a *quantum meruit* basis.—Bannermann *v.* Bradley, [1919] 3 W. W. R 952.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—F.

w i. ——.]—Where an agreement as to commission is that the agent is to receive all over & above a certain figure, but nothing is said as to when the commission is to be paid, the agent is not entitled to his commission until the vendor has received in full the amount stipulated, & a promise made by the principal after the sale to pay the commission at once does not render him liable to make immediate payment.—Clavelle *v.* Russell, [1918] 1 W. W. R. 900 ; 40 D. L. R. 61 ; 11 Sask. L. R. 111.—**CAN**

w ii. —— *Agreement as to payment of commission obtained by agent by misrepresentation as to nature of document.*]—*Held :* the principal was not bound by such agreement.—Taylor *v.* Smith, [1926] V. L. R. 100 ; 47 A. L. T. 122 ; *affd.*, [1926] V. L. R. 271.—**AUS.**

sd. *Commission payable out of purchase-money — Total purchase-money paid into bank—Disclaimer by seller of interest in sum agreed to be paid to agent.*]—An agent for the sale of goods was authorised to ask a price which would give him a certain amount for his own benefit. The buyer paid the total purchase price into a bank to be paid over to the seller, & the latter disclaimed any interest in the amount which he had agreed to let the agent have. The buyer then claimed that amount as his :—*Held :* the money belonged to the agent.—Devall *v.* Gorman, Clancey & Grindley, Ltd., [1918] 3 W. W. R. 221 ; 42 D. L. R. 573.—**CAN.**

se. —— *No purchase-money paid.*]—Where a principal incurred no contractual obligation to pay commission except out of the purchase-money as received, & no part of the purchase-money had been received :—*Held :* the principal was not liable.—Thorndyke-Trenholme Realty Co. *v.* Lyall Shipbuilding Co., [1921] 3 W. W. R. 333 ; 59 D. L. R. 490.—**CAN.**

sf. —— *Purchase-money payable in instalments—Failure to keep up instalments.*]—An agreement between vendors of land & their agents stated that, whereas the agents had procured purchasers for certain parcels of the vendor's land, the vendor agrees to pay the agents a commission of a specified amount & interest in instalments, said instalments of principal & interest to be made out of, & to be a certain percentage of, the moneys to be collected annually from the purchasers. No provision was made as to what was to happen if the purchasers should default in their payments before the agents had received the full amount of their commission. This contingency occurred, owing to the fact that the purchasers, who abandoned their contract, were financially worthless :—*Held :* in the absence of a provision providing for said contingency, the agents were entitled to recover the full commission agreed upon.—Western Colonizers, Ltd. *v.* Bursaw, [1931] 2 D. L. R. 379 ; 25 S. L. R. 243 1 W. W. R. 188.—**CAN.**

sg. —— —— ——.]—Deft. gave a written listing to pltf., a real-estate agent, for the sale of his farm at a certain price, the terms to be a certain cash payment & the balance on half-crop payments. The commission was stated to be " five per cent. on all sales." Pltf. being unable to find a purchaser willing to make the cash payment, then introduced a father & son to whom deft. agreed to sell the

1813. *Add. Annotation :*—**Consd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

1813a. —— —— **Contract of sole agency—Property to be left in agent's hands for specified period.**]—CHAMBERLAIN & WILLOWS *v.* ROSE (1924), cited 47 T. L. R. at p. 101, D. C.

Annotation :—**Consd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

1813b. -.]—Deft., the owner of property, appointed pltfs., who were estate agents, his "sole agents for the sale of the property" for a stipulated period, it being agreed that, if pltfs. introduced a purchaser, they should receive a commission of 5 per cent. on the purchase price. During the period of the agency deft. negotiated personally & quite apart from pltfs. with a purchaser who had never had any communication with pltfs. & whom pltfs. did not know. The result of the negotiations was that the property was sold to this purchaser. Pltfs. thereupon claimed from deft. damages for breach of contract on the ground that, in selling the property direct to the purchaser, he had acted in breach of his contract with them & had thereby deprived them of their commission :—*Held :* (1) pltfs. were not entitled to damages, as the contract contained no express prohibition against a sale by deft. himself, & the implication of such a prohibition was not necessary to give business efficacy to the transaction ; (2) on the terms of the contract, pltfs. could not recover commission at the agreed rate on the purchase price received by deft., as they had failed to introduce the purchaser, not could they recover on a *quantum meruit*.—BENTALL, HORSLEY & BALDRY *v.* VICARY, [1931] 1 K. B. 253 ; 100 L. J. K. B. 201 ; 144 L. T. 365 ; 47 T. L. R. 99 ; 74 Sol. Jo. 862.

Annotation :—*Generally*, **Refd.** Lamb (W. T.) & Sons *v.* Goring Brick Co. (1931), 48 T. L. R. 160.

farm for a certain price to be paid by yearly payments of principal & interest "out of a half-share of the crop." Deft. then agreed in writing to pay the plaintiff a commission of a certain amount payable partly in cash within two weeks, "the balance by paying 25 per cent. of all money paid by said purchaser on principal as soon as the same are received." Deft. made the cash payment to pltf., & also other payments which amounted to 25 per cent. of all he ever received from the purchasers on principal. The purchasers being unable to meet their obligations, deft. took proceedings against them & the land reverted to him, nothing having been paid by the purchasers on the principal within the preceding three years. Pltf. then sued for the balance due him on the basis of a 5 per cent. commission :—*Held :* the meaning of the second agreement was that it was a condition precedent to deft.'s liability to pay any commission, over & above the cash payment, that instalments of capital should first be paid by the purchasers. —LEVENICK *v.* TURNBULL, [1932] 1 W. W. R. 74 ; 1 D. L. R. 620 ; 40 Man. L. R. 134.—**CAN.**

sh. ——.]—PRECISION MACH. & FDRY., LTD. *v.* INDUSTRIAL SECURITIES, LTD. (Alta.), [1929] 4 D. L. R. 241.—**CAN.**

sj. *Commission payable out of profit on resale—Resale at large nominal profit—No part of purchase-money paid.*]—B. & C. through pltf. purchased certain land, agreeing to pay pltf. a commission of $1 per acre, which was to be paid, however, only out of a profit on a resale. B. & C. assumed to make a sale at a purchase price showing a large nominal profit, which purchase price was to be paid by crop payments. The purchasers had three crop failures, paid nothing on account of principal, interest or taxes, & finally abandoned the agreement of purchase & went out of possession of the land :—*Held :* the sale was a resale at a profit within the contemplation of the parties, & pltf. was entitled to commission.—HANTON *v.* ROYAL TRUST CO. [1923] 3 D. L. R. 809 ; 2 W. W. R. 1046.—**CAN.**

sk. *Commission payable out of specified instalment—Instalment not paid.*]—Where it was an express stipulation of a contract as to commission that the balance of commission due was to be paid out of a specified instalment of the purchase price payable on a specified date :—*Held :* the instalment not having been paid by the purchaser, who had abandoned the land, no commission was payable.—BILODEAU *v.* MCLEAN, [1924] 3 D. L. R. 410 ; 2 W. W. R. 631 ; 34 Man. L. R. 239.—**CAN.**

sm. *Sale of land on crop payment plan—Commission payable out of vendor's share of crop—Provision for cesser of right to commission on termination of agreement.*]—LESLIE *v.* GRAHAM, [1929] 3 D. L. R. 712 ; 2 W. W. R. 65 ; 23 S. L. R. 605.—**CAN.**

sn. *Agent working under commission & drawing account arrangement.*]—*Semble :* unless an agreement between the parties provides otherwise, where an agent is working on a commission basis & his employer allows him a drawing account against his commissions, the employer cannot, after the relationship is terminated, collect from the agent anything beyond the commissions he has earned.—ROBOTHAM *v.* DOMINION MOTOR CO. & KICKLEY, [1931] 1 W. W. R. 373.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—G.

1808 ix. —— *Option to purchase.*]—A. held an option for the sale of land, his remuneration to be the excess of the price obtained over $29,000. After the option had lapsed he introduced to the owner a purchaser of the land at $35,000 :—*Held :* A. was not entitled to the excess over $29,000, but could only recover *quantum meruit*.—ACKLES *v.* BEATTY (1919), 59 S. C. R. 640 ; 52 D. L. R. 691.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—K.

agent has no right to remuneration unless he succeeds in obtaining a tenant or purchaser, as the case may be, on the appointed terms, for the property put in his hands for the purpose of being sold or let. The contract is revocable at the will of the principal at any time before the agent has actually procured a person ready to take or to purchase on the terms arranged.—SMITH (JUDGE) *v.* RENFREY, [1920] 22 W. A. L. R. 61.—**AUS.**

l ii. —— ——.]—Where a real estate agent receives an exclusive listing of land it may be revoked by the sale of the property by the owner, in which case the real estate agent will only be entitled to recover on a *quantum meruit*. —GREENWOOD & GREENWOOD *v.* WELFORD (1922), 70 D. L. R. 107 ; [1922] 3 W. W. R. 388.—**CAN.**

m i. —— *Principal's implied right to sell himself.*]—Where the owner of property puts it in the hands of an agent for sale upon commission, there is, in default of stipulations to the contrary in the contract of agency, a right in the owner to deal with his property, without liability to the agent, so long as the agent's mandate is not performed.—DONOWA *v.* WEBSTER (1929), 29 S. R. N. S. W. 318 ; 46 N. S. W. W. N. 124. —**AUS.**

m ii. —— ——.]—An agency agreement for the sale of a farm contained the following clause : "Your agency to hold until one month after being notified in writing by me that it shall cease, but for not less than a year from date. If a sale is made through any person during your acting as such agent, you are to be paid the aforesaid commission." Two years elapsed but no purchaser was found. Without giving any notice to terminate the agreement, deft. then sold the farm, without the intervention of any other agent or person :—*Held :* as the sale was not made "through any person" pltf. was not entitled to commission.—BARKLEY *v.* BUSH, [1929] 3 D. L. R. 360 ; 63 O. L. R. 678.—**CAN.**

n i. ——.]—Pltf., by writing signed by deft. on Sept. 16, 1919, was authorised "from this date until withdrawn by me in writing," to offer for sale land for $7,500, & deft. thereby agreed to pay pltf. a commission "on this or the selling price, should you effect a sale." Later on the same day, deft. himself sold the property to M. for $7,000. On Sept. 18, pltf. obtained a written offer under seal from B. to buy the property for $7,500 cash, & the offer was accompanied by a cheque for $1,000 ; the offer & cheque reached deft. on Sept. 19. No notice in writing of the sale to M. was given to pltf. until Sept. 20, when deft. wrote advising pltf. of that sale & returning the B. offer & cheque :—*Held :* pltf. was entitled to recover the agreed payment for his services.—GORMAN *v.* YOUNG (1921), 64 D. L. R. 51 ; 49 O. L. R. 162.—**CAN.**

sp. *Sub-agent—Appointed by person expecting appointment as agent.*]—A co. which expected to be appointed agents for the Govt. of Western Australia, agreed to employ W. as sub-agent. The co. failed to secure the appointment & terminated W.'s employment : —*Held :* the co. warranted that they would be appointed govt. agents, & they were liable to W.—OCKERBY & CO., LTD. *v.* WATSON (1918), 25 C. L. R. 431.—**AUS.**

PART VIII. SECT. 3, SUB-SECT. 1.—L. (a).

1818 i. *Insurance agent—Commission on premiums paid after termination of agency.*]—In the absence of a definite agreement to that effect, an agent of an insurance co., who has secured policy-holders for the co. & whose duties as agent do not cease with the first introduction of the customer, has no right to commission on subsequent premiums paid in by such policy-holders, after he ceased to be agent.—EMPIRE OF INDIA LIFE ASSURANCE CO., BOMBAY *v.* NANU AYYAR (1920), I. L. R. 44 Mad. 170.—**IND**

1820. *Add. Citation :—affd.* C. A. " *Times*," Jan. 16, 1890.

Add. Annotation :—**Consd.** Cramb *v.* Goodwin (1919), 35 T. L. R. 314.

1829. *Add. Annotation :—As to* (2) **Folld.** Cramb *v.* Goodwin (1919), 35 T. L. R. 314.

1829a. —— ——.]—Deft. engaged pltf. as a commercial traveller on a salary & commission on all business obtained by pltf., including repeat orders from all firms in the ground allotted to pltf., it being stipulated that pltf. was to have the commission on all accounts that he opened, including all repeat orders, whether they were actually handed to pltf. or posted direct to deft. :—*Held :* the intention of the parties was that commission should be paid only on orders obtained during the engagement, & pltf. was not entitled to commission on repeat orders received after the termination of his engagements.—CRAMB *v.* GOODWIN (1919), 35 T. L. R. 477 ; 63 Sol. Jo. 496, C. A.

1832. *Add. Annotation :*—**Folld.** Schostall *v.* Johnson (1919), 36 T. L. R. 75.

1833. *Add. Citations :—Affd.*, [1918] A. C. 239 ; 87 L. J. K. B. 416 ; 118 L. T. 126 ; 34 T. L. R. 206 ; 62 Sol. Jo. 290, H. L.

Add. Annotations :—**Refd.** Ertel Bieber *v.* Rio Tinto Co., [1918] A. C. 260 ; Naylor, Benzon *v.* Krainische Industrie Gesellschaft, [1918] 1 K. B. 331 ; Fried Krupp Akt. *v.* Orconera Iron Ore Co. (1919), 88 L. J. Ch. 304 ; Rodriguez *v.* Speyer, [1919] A. C. 59.

1834. *Add. Annotation :*—**Distd.** Schostall *v.* Johnson (1919), 36 T. L. R. 75.

1835. *Add. Annotation :*—**Refd.** Anderson *v.* Daniel, [1924] 1 K. B. 138.

1818 ii. —— ——.]—The question whether an insurance agent, who is compensated by commissions on renewal premiums, is entitled to commissions on such premiums paid after the termination of his agency, depends to a great extent on the language of his contract with his employer. If such contract contains no provisions on the subject & the agency is terminated without his fault, the agent is entitled to commissions on renewal premiums paid thereafter ; If, however, the agent voluntarily resigns his agency, or is discharged for good cause, the rule seems to be otherwise.—BERRY *v.* CONFEDERATION LIFE ASSOCN. (Can.), [1927] 3 D. L. R. 945.—**CAN.**

1818 iii. —— ——.]—The question whether an insurance agent is entitled to commissions on renewal premiums paid after the termination of his employment is governed by the terms of the contract between him & his co. If the contract between the agent & the insurance co. contains no provision on the subject, the agent is entitled, in case the agency is terminated by the co. without fault on his part, to the commissions on renewal premiums which the contract secures to him, as part of his compensation, although such premiums may be paid after the termination of the agency.—FINGARD *v.* MERCHANTS CASUALTY INSCE. CO., [1928] 2 W. W. R. 609.—**CAN.**

u i. —— *Commission on sales made before termination of agency—Deliveries & payments made after termination.*]—Under an agreement pltf. was appointed defts.' sole & exclusive salesman for the sale of coal, at a commission " on the gross amount of all sales made by " defts. " under this agreement " :—*Held :* pltf. was entitled to commission upon sales contracted before termination of the agreement, but in respect of which deliveries of coal were made & paid for after it.—WILSON *v.* ATLAS COAL CO., LTD., [1923] 2 W W R 890.—**CAN.**

sq. *Agent to obtain permit to sell beer in certain area—Entitled to commission on subsequent sales in area.*]—JOHNSON *v.* MEDICINE HAT BREWING CO., LTD., [1927] 2 D. L. R. 231 ; [1927] 1 W. W. R. 486 ; 22 Alta. L. R. 476.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—L. (e).

sr. *Agent leaving employment voluntarily.*]—Pltf. was employed by a collection agency in soliciting business on a commission basis ; the commission which it was agreed he was to receive being 50 per cent. of that earned by his employers on any business which he introduced. No period of employment was mentioned when he was engaged ; the evidence of the manager of the employers was that pltf. was to be paid said commission " just while he was in our employment." The employers furnished the office accommodation & paid the staff :—*Held :* pltf. was not entitled to the commission on moneys coming in after he had left deft.'s employment.—SWARTZ *v.* SHRAGGE, [1932] 1 W. W. R. 797 ; 2 D. L. R. 724 ; 40 Man. L. R. 242.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—M. (a).

st. *Land agent—Land Agents Act*, 1912]—A person who, not being liconsed as a land agent, obtains an appointment from a vendor to act as such is guilty of an offence under s. 14 of the above Act, & cannot maintain an action against his principal for commission ; & the defect is not cured either by the expiry of the period of limitation or by the fact that the agent has obtained a licence before performing the services in respect of which the commission is claimed.—NELSON *v.* CROSBY, [1919] N. Z. L. R. 369.—**N.Z.**

sv. —— ——.]—Land Agents Act, 1912, s. 13 (*a*), ought to be construed as meaning that the land agent must possess a licence at the time the work is done, & the fact that after the work is done the land agent fails to take out a further licence does not destroy a right to bring an action for commission, where the cause of action arose at the time the agent was in possession of a licence.—JOHNSTONE *v.* GOODSON, [1920] N. Z. L. R. 883.—**N.Z.**

x i. —— *Real Estate Agents Licensing Act.*]—Pltf., a store-keeper, brought about the sale of deft.'s land to another person. In an action for commission ; —*Held :* s. 21 of the above Act did not apply to individual transactions.—GOODALL *v.* COUSINS, [1923] 3 D. L. R. 718 ; 32 B. C. R. 440.—**CAN.**

xii. —— —— *Licence obtained before completion of sale.*]—Agent entitled to commission.—CUDWORTH *v.* EDDY, [1927] 1 W. W. R. 583 ; 37 B. C. R. 407.—**CAN.**

xiii. —— —— *Unlicenced employee.*]—Pltf., a real estate agent, sued for a commission on a sale, which had resulted from the introduction of the buyer to the seller by pltf.'s employee, who was found to be the efficient cause of the sale, although deft. completed it through agent. Pltf. had been duly licenced under above Act, at & from the time of the listing ; his employee, however, was not licenced under above Act when he introduced the buyer & conducted the negotiations although he obtained his licence before the sale was made :—*Held :* under above Act his employee's lack of a licence while he was doing the work rendered the work illegal & prevented pltf. from recovering the commission.—ANDERSON *v.* LAKE (B. C.), [1928] 4 D. L. R. 220 ; [1928] 3 W. W. R. 136.—**CAN.**

sa. *Agent not registered—Security Frauds Prevention Act.*]—In an action to recover compensation for obtaining a buyer for deft.'s farm :—*Held :* since all that pltf. did in the matter within Winnipeg was to secure from deft. the information & authority which enabled him to assure the persons who afterwards bought the farm that a purchase was within their reach, his claim was not barred by the amendment of 1930 to Security Frauds Prevention Act, 1929, although he was registered as a real-estate agent thereunder.—KRUEGER *v.* NATIONAL TRUST CO., LTD., [1931] 1 W. W. R. 725.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—M. (b).

sb. *Member of Parliament effecting sale—Sale to Government.*]—Pltfs., land agents, were employed by deft. to bring about a sale of deft.'s property to the Govt. of Victoria. Services were to be rendered by D., a member of the Parliament of Victoria, who was employed by pltfs. as their representative on the terms that he should receive a share of their commission on the sale. D.'s services were an effective cause of the sale. In an action by pltfs. against deft. to recover commission on the sale :—*Held :* the transaction was contrary to public policy, & pltfs.' action failed.—HORNE *v.* BARBER (1920), 27 C. L. R. 493.—**AUS.**

sc. —— *Consent of Government necessary.*]—A member of the Dominion Parliament brought about a sale, it being his duty under agreement with the vendor to use his influence with the minister in charge to secure the Govt.'s consent which was necessary to complete the sale :—*Held :* he was not entitled to a commission for his services, the agreement being void on the ground of public policy.—CLEMENTS *v.* COUGHLAN 1924), 34 B. C. R. 401.—**CAN.**

sd. *Sale under Discharged Soldiers Settlement Act*, 1919 (*No.* 3039)—*Member of advisory committee agent of vendor.*]—A land agent, who was also a member of an advisory committee, constituted under s. 35 of the above Act, to the Lands Purchase & Management Board, entered into a contract with the owner for effecting the sale to the board of certain land, as to which the committee had certain powers & duties to advise the board. The contract did not refer to the use by the agent of any influence as a member of the committee in effectuating the sale ; the agent took no part in the discussion by the committee of the report of a sub-committee as to the expediency of the purchase by the board of

1848a. ——.]—Pltf. was employed by deft., a music seller, to find a purchaser of the lease of deft.'s business premises, which were held under a covenant against carrying on any other business. Several tailors expressed to deft. their willingness to buy the lease for £2,500, but deft., believing that the landlords would not consent to the carrying on of a tailoring business, did not approach the landlords. Pltf., however, having found a tailoring co. who wanted to purchase the lease, received an assurance from the landlords that they would consent to a tailoring business, & he, by concealing this fact from deft., induced him to agree to sell the lease to the tailoring co. for £2,250 in ignorance of the fact that the proposed purchasers carried on a tailoring business. In an action for commission for finding a purchaser :—*Held :* as pltf. had taken advantage of the false position to persuade deft. to agree to take a lower price than deft. could have got elsewhere, the action failed.—HEATH *v.* PARKINSON (1926), 136 L. T. 128; 42 T. L. R. 693; 70 Sol. Jo. 798.

1852, *Add. Annotation :*—Consd. Rhodes *v.* Macalister (1923), 29 Com. Cas. 19.

1852a. -.]—Pltfs., a firm of mining engineers, were employed by defts. to negotiate the purchase of mining properties. Defts. were willing to give £9,000 for the properties, & agreed with pltfs. that if they made a bargain for less than £9,000, the difference between the £9,000 & the lesser sum could be taken by pltfs. as remuneration. Before the purchase was effected, pltfs. had arranged with the vendors to take commission from them on the sale :—*Held :* pltfs. had committed a breach of duty as agents for defts. & were not entitled to any remuneration from defts. —RHODES *v.* MACALISTER (1923), 29 Com. Cas. 19, C. A.

1853a. Agent acting in good faith.]—KEPPEL *v.* WHEELER, No. 1263a, *ante*.

1853b. No damage suffered by principal.]—HARRODS, LTD. *v.* LEMON, No. 1501c, *ante*.

1853c. Waiver of breach.]—HARRODS, LTD. *v.* LEMON, No. 1501c, *ante*.

such land, & acted throughout *bonâ fide* & without concealment of the fact of his agency, & he was not at any time a member of any valuation sub-committee :—*Held :* the contract was void as being against public policy, & the agent's claim for commission failed.—WOOD *v.* LITTLE, [1922] V. L. R. 11.—**AUS.**

PART VIII. SECT. 3, SUB-SECT. 1.—M. (c).

se. *Agent returning deposit to purchaser.*]—Resps. were employed as agents to sell property belonging to applt. They found a purchaser but applt. failed to complete the sale on the day fixed, & resps., on the application of purchaser, paid him back the deposit without communicating with applt. :—*Held :* resps. had been guilty of a wilful breach of the duty which, under Land Agents Act, 1912, s. 8, they owed to applt., & such breach deprived them of their right to recover any commission at all.—BUCHANAN *v.* NEALE, [1920] N. Z. L. R. 889.—**N.Z.**

sf. *Failure to make binding contract.*]—Where pltfs., acting as brokers, failed to make a contract binding on both parties :—*Held :* they were not entitled to commission.—PATERSON *v.* MCCALLUM, [1921] N. Z. L. R. 869.—**N.Z.**

1841 iva. —— ——.]—MACK *v.* MCLEOD, [1925] 2 D. L. R. 1201.—**CAN.**

1841 vi. —— *Secret agreement to pool commissions.*]—On a proposed exchange of properties, if the agents, unknown to either of the principals, agree to pool their respective commissions & to divide equally, so that under such pooling agreement one agent receives more than the commission payable by his principal, that agent cannot recover any commission from his principal, as such an agreement gave him an interest adverse to the interest of his principal.—DALY *v.* KELIHER, [1921] 2 W. W. R. 192.—**CAN.**

1841 vii. —— *Agent acting for both parties—Rules of Real Estate Exchange.*]—Where the owner of property listed with a real estate agent for sale exchanged the property with the assistance of the agent for other property listed, to the knowledge of the owner, with the agent for exchange, but had not agreed to pay him a commission on the exchange & had not been informed by him that he still intended to act as her agent & to charge her a commission :—*Held :* (1) she was not liable for commission; (2) a rule of a Real Estate Exchange to which the agent belonged, that an agent who acted for both parties in an exchange could collect from each one-half the usual commission on a sale, did not legally entitle the agent to recover such half from her.—HACKNEY *v.* LYNE, [1925] 4 D. L. R. 861; [1925] 3 W. W. R. 614.—**CAN.**

1841 viii. —— ——.]—If a vendor with full knowledge of the facts agrees to pay commission to a purchaser's agent, he will be bound by his contract, but the *onus* is on the agent to show clearly that the vendor knew that he was acting in a dual capacity & assented to that state of affairs.—MOLLER *v.* FORGE (1927), 27 S. R. N. S. W. 69; 44 N. S. W. W. N. 42.—**AUS.**

1850 iiia. —— —— *Fraudulent representations inducing listing.*]—Agent not entitled to commission.—SLETTO *v.* ADAMS, [1927] 1 D. L. R. 547; [1927] 1 W. W. R. 12; 22 Alta. L. R. 333.—**CAN.**

1850 vii. —— *Agent to sell acting for other principals—Breach of contract.*]—A contract, entered into in Feb. 1914, between a firm & a commission agent, whereby the latter was appointed agent for the sale of certain cotton goods dealt in by the firm, contained a clause prohibiting the agent from selling such goods supplied by others than his principals. From July 10, 1916, onwards the agent regularly sold goods of that class on behalf of another firm, & he also bought & sold such goods on his own account :—*Held :* the agent was not entitled to an accounting for the period subsequent to July 10, 1916, as he was then in material breach of his contract, but he was entitled to an accounting for the period prior to that date during which he had duly obtempered the contract.—GRAHAM & CO. *v.* UNITED TURKEY RED., ETC. CO., LTD., [1922] S. C. 533; 59 Sc. L. R. 420.—**SCOT.**

1850 viii. —— *Inducing principal to sell at undervalue.*]—Where an owner of land requests an agent to find a purchaser at a price not less than a stated amount the agency is a general one & the agent stands in a fiduciary relation to his principal; & if he endeavours to get the latter to sell at a price less than that which he knows the purchaser found by him is willing to pay he is acting in bad faith &, therefore, disentitles himself to a commission even though the sale is finally made at the full price which said purchaser was willing to pay.—LAFRENIERE *v.* BOUFFARD (Sask.), [1929] 4 D. L. R. 183; 2 W. W. R. 602.—**CAN.**

1852 vii. ——.]—Where an agent acts improperly & unfaithfully in the performance of his duties towards his principal, he forfeits any remuneration or commission to which he would otherwise have been entitled if his improper or unfaithful conduct is connected with the duty he had to perform. The mere fact of an agent receiving & retaining a secret profit or commission arising out of & in connection with the performance of his duty constitutes unfaithfulness & dishonesty, & disentitles him to any remuneration or commission.—LEVIN *v.* LEVY, [1917] T. P. D. 702.—**S. AF.**

PART VIII. SECT. 3, SUB-SECT. 1.—M. (d).

sj. *Agent selling at less than listed price.*]—An agent for the sale of goods is not entitled to a commission for introducing a purchaser where the goods are sold at a reduction from the listed price greater than the commission, & the agency contract provides that if any goods are sold for less than the current price list by the agent, the acceptance of such sale shall not entitle the agent to the commissions set forth, but such reduction in price shall be deducted from the agent's commission.—LAW & MACLEAN *v.* SAWYER MASSEY CO., [1918] 1 W. W. R. 727; 13 Alta. L. R. 126; 38 D. L. R. 333.—**CAN.**

sk. *No commission on land not sold.*]—Dett.'s land having been listed with pltf., an estate agent, the latter claimed commission on the proceeds of a subsequent sale, but failed to show that he brought about a sale of deft.'s land, or that deft. made a sale thereof to a person introduced to him by pltf. :—*Held :* pltf. had not shown the performance of any services which entitled him to commission.—DUNN *v.* GRAF (1922), 66 D. L. R. 713.—**CAN.**

sl. *No commission on goods "taken back."*]—*Held :* goods "taken back" included goods "repossessed" on default.—COWIE *v.* SAWYER-MASSEY CO. (1916), 34 W. L. R. 274; 10 W. W. R. 254.—**CAN.**

sm. *Sale of homestead—Necessity for wife's consent.*]—SEMPLE *v.* SHARP, [1927] 1 W. W. R. 965; 21 Sask. L. R. 435.—**CAN.**

1862. *Add. Annotation :*—**Apld.** Adams *v.* Morgan, [1923] 2 K. B. 234.

1872a. Promise to indemnify vendor of business to company—Vendor retained as agent for limited period—Assessment of vendor to super-tax on profits made within period.]—Pltf., who was the owner of a stationery business, sold it in Aug. 1919, to defts., a limited co. One of the terms on which the business was sold was that as from Dec. 31, 1918, until Sept. 15, 1919, pltf. should be deemed to have been carrying on the business on account & for the benefit of the purchasers, & that pltf. should account & be entitled to be indemnified accordingly. For his services until the date of completion pltf was to be paid a fixed sum monthly. Pltf. was assessed for super-tax on the profits of the business from Apr. 6, 1919, to Aug. 22, 1919. He paid the amount demanded & claimed to recover an indemnity from defts. : —*Held :* pltf., as agent of defts., was entitled to be indemnified by them in respect of the amount of super-tax paid by him, although defts. as a limited co. would not be liable to pay super-tax.—ADAMS *v.* MORGAN & Co., [1924] 1 K. B. 751 ; 93 L. J. K. B. 382 ; 130 L. T. 792 ; 40 T. L. R. 70 ; 68 Sol. Jo. 348, C. A.

1875. *Add. Annotation :*—**Consd.** Weddle, Beck *v.* Hackett, [1929] 1 K. B. 321.

1878. *Add. Annotation :*—*As to* (2) **Refd.** Weld-Blundell *v.* Stephens, [1919] 1. K. B. 520.

1886. *Add. Annotations :*—**Refd.** Adams *v.* Morgan, [1923] 2 K. B. 234 ; Britannia Hygienic Laundry Co. *v.* Thornycroft (1925), 94 L. J. K. B. 858.

1941. *Add. Annotation :*—**Refd.** Christoforides *v.* Terry, [1924] A. C. 566.

1944. *Add. Annotations :*—**Distd.** Reigate *v.* Union Manufacturing Co. (Ramsbottom), [1918] 1 K. B. 592. **Consd.** Warren *v.* Agdeshman (1922), 38 T. L. R. 588. **Refd.** *Re* Windsor Steam Coal Co. (1901), Ltd. (1928), 140 L. T. 80.

1945. *Add. Annotations :*—**Apld.** French *v.* Leeston Shipping Co. (1921), 37 T. L. R. 453. **Refd.** Reigate *v.* Union Manufacturing Co. (Ramsbottom), [1918] 1 K. B. 592.

1946. *Add. Annotations :*—*As to* (2) **Consd.** Warren *v.* Agdeshman (1922), 38 T. L. R. 588. **Refd.** Turpin *v.* Victoria Palace, [1918] 2 K. B. 539. *Generally*, **Refd.** Reigate *v.* Union Manufacturing Co. (Ramsbottom), [1918] 1 K. B. 592 ; *Re* Rubel Bronze & Metal Co. & Vos, [1918] 1 K. B. 315 ; *Re* Windsor Steam Coal Co. (1901), Ltd. (1928), 140 L. T. 80.

1947. *Add. Annotation :*—**Refd.** Warren *v.* Agdeshman (1922), 38 T. L. R. 588.

1947a. ——.]—By a contract in writing deft. appointed pltfs. to be sole agents for the United Kingdom, with certain exceptions, for a period of three years. Pltfs were to be paid a commission at the rate of 22 per cent. on all goods sold throughout the United

PART VIII. SECT. 3, SUB-SECT. 2.—C. (a).

1873 i. *In general.*]—Where an act is innocently done under the express direction of another, which occasions an injury to the rights of a third party, the principal must indemnify the innocent agent.—VICTORIA SCHOOL TRUSTEES *v.* MUIRHEAD & MANN (1895), 4 B. C. R. 148.—**CAN.**

b i. —— *Loss through delay in delivery.*]—E. & Co., commission agents, entered into a contract with defts. under which they undertook to purchase & ship goods "on account & risk" of defts., & E. & Co. shipped the goods under a c.i.f. contract on board a German ship. Owing to the outbreak of war during transit the goods did not arrive at their destination until long after due time. On defts.' refusal to accept the goods they were sold :—*Held :* E. & Co. were entitled to recover damages for breach of contract.—MEREDITH *v.* ABDULLA (SAHIB) (1918), I. L. R. 41 Mad. 1060.—**IND.**

sn. *Broker buying wheat to meet deliveries.*]—Brokers were instructed by their principal to sell wheat for future delivery :—*Held :* when the principal could not deliver the wheat he instructed the brokers to buy the wheat necessary to cover his contracts, which they did, & he must repay to them the amount so expended.—CANADIAN GRAIN CO., LTD. *v.* NICHOL, [1920] 3 W. W. R. 127 ; 53 D. L. R. 375 ; 13 Sask. L. R. 30.—**CAN.**

so. *Dealings in grain futures—Broker with knowledge of illegality of transactions—Broker not entitled to recover balance due from customer.*]—TOPPER GRAIN CO. *v.* MANTZ (Alta.), [1926] 2 D. L. R. 712 ; [1926] 2 W. W. R. 140. —**CAN.**

PART VIII. SECT. 3, SUB-SECT. 2.—C. (b).

1905 ii. ——]—JONES *v.* BURGESS (1914), 48 N. B. R. 126.—**CAN.**

sp. *Forwarding agent acting in accordance with ordinary duty.*]—Defts., forwarding agents in Durban, who acted as the agents of pltf. in clearing & forwarding goods consigned to him from India, on Oct. 21, received a letter from a firm in India informing them that they had shipped a consignment of goods on behalf of pltf. The goods arrived on Oct. 20, & on Oct. 22 defts. cleared & trucked the goods to Johannesburg & sent pltf. a consignment note which he received on Oct. 26. Immediately on receipt of the note pltf. telegraphed to defts. instructing them to keep the goods for sale in Durban. Defts. on the instructions of pltf. had the trucks stopped & returned to Durban. Defts. in order to obtain delivery of the goods paid the railway charges & upon pltf.'s refusal to reimburse them declined to hand the goods over to pltf. :—*Held :* defts. in railing the goods without awaiting special instructions had acted in accordance with their ordinary duty as forwarding agents, & in the absence of special instructions to the contrary defts. were justified in so railing the goods.—PATEL *v.* KEELER & Co., [1923] App. D. 506.—**S. AF.**

PART VIII. SECT. 3, SUB-SECT. 2.—C. (e).

sq. *Contract for delivery of grain—Actual delivery necessary—Duty of broker to prove contract not illegal.*]—HANSEN *v.* LECHTZIER, [1925] 4 D. L. R. 1008.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 2.—D. (a).

sr. *Agent assuming liability to third party.*]—Where a superintendent of road construction for a municipality ordered supplies on its behalf, & which were charged to it:—*Held :* as he was not legally liable on the accounts he had no cause of action against the municipality in respect thereof whether for payment or indemnity, although he had paid one of the accounts & judgment had been obtained against him for another.—DICKINSON *v.* RURAL MUNICIPALITY OF STONEHAGUE, [1920] 1 W. W. R. 235 ; 50 D. L. R. 383 ; 13 Sask. L. R. 1.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 3.—A. (a).

1946 i. *Principal bound to enable agent to earn commission.*]—By agreement dated Aug. 17, 1929, R. appointed C. his sole agent to sell a certain publication in Australia on a commission basis. The agreement provided, *inter alia*, that the agency should commence on the date C. & R. arrived in Australia, & that it could be determined by either R. or C. on the happening of certain specified events. None of those events in fact happened. The parties came to Australia & the business of the agency was embarked upon. In Jan. 1930, R. went into partnership with S. in the business of booksellers. On Mar. 15, 1930, R. gave C. six months' notice of the termination of the agency agreement of Aug. 17, 1929. On Aug. 1, 1930, R. & S. entered into an agreement with a co. for the sale to it of the goodwill & assets of their business including the agency rights. After Aug. 1, 1930, R. did not accept any new orders from C. under the agreement of Aug. 17, 1929. C. did not know of the agreement of Aug. 1, 1930, until after Sept. 15, 1930, up to which date he regarded himself as still employed by R. He took orders for the co. & received commission from it. From Sept. 15, 1930, he was refused further employment by R. He thereupon sought to recover damages from R. for his wrongful determination of the agreement :—*Held :* a term could not be implied into the agency agreement that R. could terminate the agency at any time by ceasing to carry on his business, & C. was entitled to recover from R. such damages as he sustained by reason of the wrongful determination of the agreement.—COULTER *v.* READHEAD (1931), 31 S. R. N. S. W. 432 ; 48 N. S. W. W. N. 161.—**AUS.**

Kingdom, with the exceptions above referred to, whether the goods were sold through the instrumentality of pltfs. or not, & deft. agreed with pltfs. that he would keep them fully supplied with samples, & would execute all orders with due diligence, & would not, directly or indirectly, canvass orders or in any manner approach or solicit any of the customers, or potential customers, of pltfs. in respect of the sales of his goods. Before the expiry of the three years deft. broke these undertakings & then wrote to pltfs. cancelling the agreement :—*Held :* as it was a necessary implication from the terms of the contract that pltfs. would not decline reasonably to introduce customers, the agreement was not void for lack of mutuality, & although the mere appointment of an agent on commission for a term of years does not carry with it the necessary implication that the business shall be carried on for that term, yet, as deft. had undertaken certain obligations to facilitate the earning of the commission & had broken his undertakings, he could not, by a purported cancellation of the contract, limit his liability for damages to the period prior to such purported cancellation.—WARREN & Co. *v.* AGDESHMAN (1922), 38 T. L. R. 588.

1947b. ——.]—RAYMOND *v.* WOOTEN, No. 1705a, *ante*.

1948. *Add. Annotation :*—**Apld.** Graves *v.* Cohen (1929), 46 T. L. R. 121.

1950. *Add. Annotation :*—*As to* (2) **Refd.** Payzu *v.* Saunders, [1919] 2 K. B. 581.

1951a. ——.]—By an agreement made between pltf. & a limited co., which carried on business in Lancashire, in consideration of pltf. subscribing for £1,000 in shares of the co., & of introducing to the co. certain new classes of goods to be manufactured by them, the co. appointed him their sole agent in the United Kingdom, India, & the Colonies for the sale of those goods for the term of seven years, if the agent should so long live, & thereafter until the agreement should be determined by six months' notice on either side. The agent was to use his best endeavours to obtain orders for the co.'s goods at prices to be from time to time agreed upon, & all orders obtained by the agent were at once to be communicated to the co., who upon approving or rejecting the same were to inform the agent thereof & who were to carry out such orders as were accepted without undue delay; & the agent was not definitely to accept orders for the co., but only subject to confirmation & acceptance by the co., such confirmation or acceptance not to be unreasonably withheld. The co. were to pay the agent a commission upon the invoiced prices of all goods delivered by the co., & duly paid for by the respective purchasers. A few months afterwards the co. required fresh capital, & they applied to pltf. to assist them in finding it, telling him that otherwise they would have to close down. Pltf. tried to do so, but failed. The co. then asked pltf. to give up the agency for the Manchester district, telling him that he would have to stand down so far as that district was concerned, in which case they thought that they could find the necessary capital, but he refused. The co. thereupon being insolvent passed resolutions for voluntary winding up & ceased to do business through pltf. & eventually sold their business. In an action to recover damages for breach of the agreement to employ pltf. as their agent for the seven years :—*Held :* the agreement was to employ pltf. as agent for the seven years & a term could not be implied to the effect that the co. could terminate the agency at any time by ceasing to carry on their business; & the circumstances coupled with the voluntary winding up showed a repudiation by the co. of the agreement, & they were therefore liable in damages for the breach.—REIGATE *v.* UNION MANUFACTURING CO. (RAMSBOTTOM), [1918] 1 K. B. 592; 87 L. J. K. B. 724; 118 L. T. 479, C. A.

Annotations :—**Apld.** Fowler *v.* Commercial Timber Co., [1930] 2 K. B. 1; *Re* Gramophone Records, Ltd. (1930), 69 L. Jo. 201. **Refd.** Thomas *v.* Todd, [1926] 2 K. B. 511; Livock *v.* Pearson (1928), 33 Com. Cas. 188.

1952. *Add. Annotation :*—**Refd.** Warren *v.* Agdeshman (1922), 38 T. L. R. 588.

1953. *Add. Annotations :*—**Refd.** Reigate *v.* Union Manufacturing Co. (Ramsbottom), [1918] 1 K. B. 592; Warren *v.* Agdeshman (1922), 38 T. L. R. 588.

1957. *Add. Annotations :*—**Refd.** Reigate *v.* Union Manufacturing Co. (Ramsbottom), [1918] 1 K. B. 592; Warren *v.* Agdeshman (1922), 38 T. L. R. 588.

1961. *Add. Annotation :*—**Refd.** Taylor *v.* Oakes, Roncoroni (1922), 127 L. T. 267.

1974. *Add. Annotations :*—*As to* (1) **Consd.** Mortimer *v.* Beckett, [1920] 1 Ch. 571. *As to* (2) **Apld.** Mortimer *v.* Beckett, [1920] 1 Ch. 571.

PART VIII. SECT. 3, SUB-SECT 3. —B.

1959 ii. For this number read "1967 i."

1967 ii. —— ——.]—In a five years' agreement between a selling agent & a firm of merchants it was provided that, if at the end of the first three years the agent had not realised a certain turnover, the merchants should be entitled to terminate the agreement. The agreement further provided that the merchants undertook to supply goods to the agent, who was bound to buy exclusively from them. At the end of the three years the value of the goods sold & delivered by the agent failed to reach the stipulated turnover, & the merchants terminated the agreement. The value of the sales effected by the agent had in fact materially exceeded the stipulated figure, but the value of the goods actually delivered by him fell short of it, owing to the failure of the merchants to supply him with the full amount of goods ordered by him. The merchants, who were not manufacturers, were dependent on delivery to themselves by the manufacturers, &, owing to war conditions, they were themselves unable to obtain the full supplies they required. They had, however, obtained sufficient goods to have implemented the agent's orders, but they preferred to distribute these goods ratably among all their agents & customers, the agent in question receiving his full share. In an action by the agent against the merchants concluding for damages for unjustifiable termination of the agreement :—*Held :* defts. were not entitled to terminate the agreement.—DOWLING *v.* METHVEN, SONS & CO., LTD., [1921] S. C. 948; 59 Sc. L. R. 7.—SCOT.

1978 iii. —— ——.]—Pltf. & defts., an English business house, entered into an agreement by correspondence by which pltf. was to be the selling agent of defts.' goods in British Columbia. In the letter from defts. setting out the proposed terms of agreement were the words, "this offer to be firm for one year." Defts. broke the agency agreement during the first year :—*Held :* pltf. was entitled to damages on the basis of loss of profits on two years contract, as being reasonable in all the circumstances.—MACDONALD *v.* CASEIN, LTD., [1919] 1 W. W. R. 293.—CAN.

1978 iv. —— ——

agreed to employ appts. as underbrokers for the business of a co. during the subsistence of an agreement which they themselves had as brokers to the co.; the latter agreement was for five years. In Aug. 1912, resps. wrongfully determined the agreement with appts. On Dec. 2, 1912, resps., *bonâ fide* & not as a means of limiting the damages, made a new agreement with the co., the terms of which were inconsistent with, & thus put an end to,

1980. *Add. Annotation :—As to* (2) **Consd.** Martin *v.* Stout, [1925] A. C. 359.

2005. *Add. Annotation :—As to* (2) **Refd.** Wrightson *v.* McArthur & Hutchisons, [1921] 2 K. B. 807.

2025. *Add. Annotation :—***Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.

2029. *Add. Annotation :—***Refd.** *Re* Gunsbourg, *Ex p.* Trustee (1920), 89 L. J. K. B. 725.

2052. *Add. Annotation :—***Refd.** Near East Relief *v.* King, Chasseur & Co., [1930] 2 K. B. 40.

2056. *Add. Annotation :—***Refd.** Booth S.S. Co. *v.* Cargo Fleet Iron Co. (1916), 13 Asp. M. L. C. 451.

2082. *Add. Annotations :—***Dbtd. & Expld.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99. **Consd.** Lamb (W. T.) & Sons *v.* Goring Brick Co. (1931), 48 T. L. R. 160.

2083. *Add. Annotation :—***Distd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

2083a. —— —— **Sale by principal himself.**]—CHAMBERLAIN & WILLOWS *v.* ROSE (1924), cited 47 T. L. R. at p. 101, D. C.

*Annotation :—***Consd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

2083b. —— —— ——.]—BENTALL, HORSLEY & BALDRY *v.* VICARY, No. 1813b, *ante.*

Compare SALE OF GOODS, No. 1399a, *post.*

2083c. Agreement for commission although transaction not completed.] — TREDINNICK *v.* BROWNE (1921), cited 47 T. L. R. at p. 101.

*Annotation :—***Consd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

Part IX.—Relations between Principal and Third Parties.

2096. *Add. Annotation :—***Refd.** Banque Belge Pour L'Etranger *v.* Hambrouck, [1921] 1 K. B. 321.

2098. *Add. Annotation :—***Consd.** Jones *v.* Waring & Gillow, [1925] 2 K. B. 612.

2106. *Add. Annotations :—***Refd.** *Re* Hodgson's Trusts, Public Trustee *v.* Milne, [1919] 2 Ch. 189 ; Banque Belge Pour L'Etranger *v.* Hambrouck, [1921] 1 K. B. 321; *Re* Wait, [1927] 1 Ch. 606.

2109. *Add. Annotation :—As to* (1) **Refd.** Underwood *v.* Bank of Liverpool, Same *v.* Barclays Bank, [1924] 1 K. B. 775.

2118. *Add. Annotations :—***Refd.** Muller (London) *v.* Lethem, Same *v.* I. R. Comrs., [1927] 1 K. B. 780 ; Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

2120. *Add. Annotation :—***Consd.** Rederi Akt. Transatlantic *v.* Drughorn, [1918] 1 K. B. 394.

the original agreement between resps. & the co. In Jan. 1913, applts. sued resps. for damages : — *Held :* the damages recoverable were limited to the amount which applts. would have earned as under-brokers down to Dec. 2, 1912.—LACHMANDAS, KHANDELWAL *v.* RAGHUMULL (1919), L. R. 46 Ind. App. 314 ; 24 C. W. N. 577.—**IND.**

PART VIII. SECT. 3, SUB-SECT. 8.

2083 ii. *Breach of covenant.*]—By an instrument by way of security the grantor transferred to the grantee by way of mtge. (*a*) certain stock specifically described in the sched. ; (*b*) all stock depasturing on the lands of the grantor ; (*c*) " all stock which may now or shall at any time hereafter during the continuance of this security belong to the grantor, wherever the same may be depasturing or kept, & all the natural increase of such stock," but did not expressly mention the natural increase of stock in (*a*) or (*b*). The grantee was by the instrument appointed sole agent of the grantor to effect all sales of produce, stock, & chattels which the grantor might require or desire to sell. The grantor, without obtaining the grantee's consent, sold to deft. in the ordinary course of business certain lambs the natural increase of the stock specifically described in the sched., & the grantee (pltf.) sought to recover possession of the same or their value :—*Held :* the appointment of the grantee as sole agent to sell did not negative the implied power of sale, & the sale, although it might be a breach of covenant, gave to the purchaser a good title to the lambs, & the sole agent's remedy was for damages for breach of contract.—NEW ZEALAND FARMERS' CO-OPERATIVE ASSOCN. OF CANTERBURY, LTD. *v.* CANTERBURY FROZEN MEAT & DAIRY-PRODUCE EXPORT CO., LTD., [1932] N. Z. L. R. 381.—**N.Z.**

PART VIII. SECT. 4, SUB-SECT. 2.

st. *Liability of principals to indemnify agent—Release of co-principal.*]—The release of one co-principal does not release another co-principal from his obligation to exonerate & contribute to the extent to which he would have been ultimately liable had the one co-principal not been released.—MALOWANY *v.* PASEMKO, [1919] 1 W. W. R. 553.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 1.

b i. —— *Goods sold—Knowledge of purchaser.*]—M. left two hundred & fifty cattle with B., a cattle dealer. He gave B. written authority to sell forty-eight, & B. was to graze the rest. B. sold one hundred cattle to C., purporting to act as M.'s agent, showing the written authority & alleging further oral authority. At B.'s request C. made a cheque for the purchase price payable to him. C. bought in good faith & for value. M. repudiated the sale & sued to vindicate the cattle sold without authority :—*Held :* the written authority & the request for personal payment should have put the purchaser upon inquiry.—MULLER *v.* CHENNELLS (1923), 44 N. L. R. 69.—**S. AF.**

2105 ii. —.]—Where an agent is entrusted by his principal with money to buy goods, the money will be considered trust funds in his hands & the principal has the same interest in the goods when bought as he had in the funds producing them. If the goods so bought are mixed with those of the agent, the principal has an equitable title to a quantity to be taken from the mass, equivalent to the money advanced which has been used in the purchase.—*Re* CLARK (R. P.) & Co. (VANCOUVER), LTD., [1931] 3 W. W. R. 79.—**CAN.**

2106 i. *Agent holding principal's funds—Money paid into agent's banking account—Agent in fiduciary character.*]—Money received by a commission agent from sales of his customers' property, is, after deduction therefrom of the agent's commission & expenses, money held by him in a fiduciary capacity, & if it is mixed by the agent with his own money in his general banking account & he becomes bkpt., the money can be followed if it is still traceable.—SALTER & ARNOLD, LTD. *v.* DOMINION BANK (1923), 4 C. B. R. 379 ; [1923] 3 W. W. R. 257.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 1.—A.

2120 viii. ——.]—J., as agent of pltf., advanced sums to deft. in consideration of deft.'s going to work on a sugar estate, on behalf of K., who supplied money for the advance, to whom J. had to account, & to whom J. stated that he had accounted. Deft. stated that J. had recruited him to work for some person whose name was not given. Deft. contended in an action for refund of the advance that pltf. could not sue without cession of action from K. :—*Held :* pltf. had a right of action against deft.—GADLELA *v.* MOUNTJOY, [1921] E. D. L. 151.—**S. AF.**

2a. *Action for money paid under contract.*]—Pltf., desiring to have ten vessels constructed in Canada, entered into a preliminary agreement with A., whereby A. was to enter into contracts with three builders for the construction of the vessels, called " building contracts," & at the same time into contracts with pltf., called the " vessel contracts " providing for the payment for vessels, the nature of their construction & due delivery thereof. The " building contract " & the " vessel contract " each expressly stated that a copy of the other was attached to & made a part of it. By the " building contract " deft. covenanted to build the vessels according to the terms of

2125a. Action for specific performance—Effect of non-disclosure of principal.]—Pltf. procured C. to enter into an agreement to purchase land from defts. C. never disclosed to defts. that he was acting as the agent of pltf. Subsequently C. explained to defts. that he was acting as agent for pltf., & at his request the agreement was cancelled. In an action for specific performance:—*Held:* the agreement not being one in which any personal qualification by C. was a material factor, the mere non-disclosure of the person actually entitled to the benefit of the contract for the sale of real estate did not amount to misrepresentation.—DYSTER *v.* RANDALL & SONS, [1926] Ch. 932; 95 L. J. Ch. 504; 135 L. T. 596; 70 Sol. Jo. 797; [1926] B. & C. R. 113, C. A.

2126a. —— Sold by agent—Effect of misrepresentation as to being principal.]—G., employed as a traveller by a firm of builders, owed deft £17 for goods sold. He asked deft. to buy timber from him, telling him that he had left the employment of the builders & had set up as a timber merchant on his own account, & deft. agreed to order timber from him on the terms that G.'s debt of £17 should be set off against the price. G. had not set up in business on his own account, but was employed by pltf. as an agent for sale on commission. Timber was delivered to deft. with invoices & letters bearing the name, address, & description of pltf., which G. told deft. were his own trade name, address, & description. Pltf. brought an action in the county ct. for the price of the timber, & the county ct. judge found that deft. honestly believed that the name, address, & description on the invoices & letters were those of G., but that deft. was put upon inquiry by the invoices & letters, & had notice that G. was not selling as a principal but only as an agent for pltf., & he gave judgment for pltf. for the price of the timber:—*Held:* deft. had no more than constructive notice that pltf. was the principal of G., & in the circumstances constructive notice was not equivalent to actual notice; deft. had made no contract with pltf., & was entitled to judgment.—GREER *v.* DOWNS SUPPLY CO., [1927] 2 K. B. 28; 96 L. J. K. B. 534; 137 L. T. 174, C. A.

2130a. Sub-underwriting agreement.]—Pltf., at the suggestion of M., who was a director of E. co. in Nov. 1927, was minded to underwrite shares in deft. co. about to be offered for public subscription. It had not then been started, but its object was to acquire & carry on as going concerns eight greyhound racecourses. An underwriting agreement was entered into by trustees for deft. co. & B. co. & a draft prospectus was prepared therein referred to. On the following day M. & O. offered to sub-underwrite 12,000 shares, & sent a cheque for £600 to B. co., which was accepted by them on Dec. 8. On Dec. 12, the co. was incorporated, the underwriting agreement ratified, & a similar prospectus signed by the directors, which, on Dec. 19, was issued to the public. The response not being sufficient, the balance of shares was issued to the underwriters or sub-underwriters. One of such allotments was for 8,160 to M. & O. as sub-underwriters. A number of sub-underwriters had repudiated their agreements on Dec. 16, but this was not known to the directors when they went to allotment on Dec. 17. Subsequently these 8,160 were renounced in favour of pltf. The consequence of the failure of some of the underwriting agreements was that two of the racecourses, representing about two-fifths of the estimated profits, could not be acquired. In these circumstances, this action was brought for rescission on the ground of material misrepresentations in the prospectus. Defts. denied these, & claimed for the balance due. They submitted that, the contract having been made with agents for an undisclosed principal, he could not recover:—*Held:* pltf. could not establish his case on the basis of principal & agent, as in such a case as this an undisclosed principal could not be substituted for the persons contracting; all the rights of the agents under the contract with the co. did not pass to pltf. by virtue of the agents' renunciation & nomination of pltf., & though there was a contract between pltf. & the co. it was not a contract based on the prospectus.—COLLINS *v.* ASSOCIATED GREYHOUNDS RACECOURSES, LTD., [1930] 1 Ch. 1; 99 L. J. Ch. 52; 141 L. T. 529; 45 T. L. R. 519.

2139a. Agent acting in his own interest.]—Where an agent, in contracting on behalf of his principal, has acted within the terms of a written authority given to him by the principal, but the existence of which was not

the "vessel contract," & this contract was expressed to be made with pltf. as well as with A., & deft. also confirmed provisions of the "vessel contract" for payment of the instalments of the purchase price to A. & appointed A. his agent to receive payments. Upon the signing of the contracts a first payment made by pltf. to A. was distributed by A. between the three "builders," who proceeded with the construction of the vessels. Upon pltf.'s failure to make the next deposit as provided for in the "vessel" contract, deft. gave notice terminating the contract. Pltf. having brought action for repayment by deft. of money paid on account of the vessels, less such expenses as deft. had incurred by virtue of the contract:—*Held:* pltf. had no right of action.—VAN HEMELRYCK *v.* NEW WESTMINSTER CONSTRUCTION & ENGINEERING CO., VAN HEMELRYCK *v.* NORTHERN CONSTRUCTION CO., VAN HEMELRYCK *v.* PACIFIC CONSTRUCTION CO. (1920), 29 B. C. R. 39; 55 D. L. R. 589.—CAN.

PART IX. SECT. 3, SUB-SECT. 1.—B.

2134 i. *General rule.*]—BOLUS & CO., LTD. *v.* INGLIS BROTHERS, LTD., [1924] N. Z. L. R. 164.—N.Z.

2135 ii. ——.]—Deft., owner of a theatre, entered into a contract with W., an advertising manager, under which W. was to conduct an advertising campaign relative to the theatre. The campaign was to take the form of a contest for prizes to be offered for selling tickets of admission to the theatre. Pltf. was assignee for value of a prize-winner's rights:—*Held:* the agent's promises to the contestants were the promises of deft. as principal, & deft. was liable as principal.—ROSS *v.* KOBOLD, [1924] 1 D. L. R. 750; 1 W. W. R. 428; 34 Man. L. R. 111.—CAN.

sb. *Contract in agent's name—Under seal.*]—Defts. made an agreement with B. for conditional sale to him of a large quantity of land, the intention of the parties being for its subdivision & sale for fruit-farming purposes. All surveys & sales were to be approved by defts., a minimum price per acre in selling was stipulated, & the proceeds of sales were to be paid into a bank to defts.' credit, & title to be retained by defts. until the full purchase price of the sale to B. was realised. On certain amounts of sales being made, defts. agreed to do certain clearing, irrigating & tree-planting, B. acting as their agent in the supervision thereof. B. was to receive commission on sales made, should he not succeed in carrying out the agreement. B. made an approved agreement with pltf. for sale of a lot to be selected by pltf. who sought to recover from defts. the amount of payments made by him:—*Held:* the fact that pltf.'s agreement was with B., in B.'s own name & under seal, did not prevent recovery from defts. as for money had & received.—HITCHCOCK *v.* COLUMBIA VALLEY LAND CO., LTD., [1919] 2 W. W. R. 969; 48 D. L. R. 737.—CAN.

known to the other party to the contract, the principal cannot, if the other party has acted *bonâ fide*, repudiate liability on the contract on the ground that the agent, in making it, acted in his own interests, & not in those of his principal.—HAMBRO *v.* BURNAND, [1904] 2 K. B. 10; 73 L. J. K. B. 669; 90 L. T. 803; 52 W. R. 583; 20 T. L. R. 398; 48 Sol. Jo. 369; 9 Com. Cas. 251, C. A.; *revsg.*, [1903] 2 K. B. 399.

Annotations:—**Consd.** Willis, Faber *v.* Joyce (1911), 104 L. T. 576; Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775. **Distd.** Reckitt *v.* Barnett, Pembroke & Slater, [1929] A. C. 176. **Refd.** British Marine Mutual Insce. Assocn. *v.* Draffen, Read & Morgan (1903), 47 Sol. Jo. 672; Ruben *v.* Great Fingall Consolidated, [1904] 2 K. B. 712; Malcolm, Brunker *v.* Waterhouse (1908), 24 T. L. R. 854; Lloyd *v.* Grace, Smith, [1912] A. C. 716; Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.

2139b. Account stated & signed by agent.]—In Mar. 1918, a tank steamer was damaged by fire & her repairs were entrusted to a firm of ship repairers at A. The steamer was insured. The owners sent out an agent from L. to expedite the repairs & authorised him to sign the repair account with the Lloyds' surveyor as "approved subject to adjustment &, conditions of insurances." In Jan. 1919, the repairers delivered to the owners an account of the repairs signed by the owners' agent & by Lloyds' surveyor in the above form after a detailed examination of the account. The owners paid part of the amount due on this account but declined to pay the balance on the ground that the charges were excessive. The repairers sued the owners for the balance of amount due for work & labour done by pltfs. & materials supplied at the request of defts., &, in the alternative, claimed the balance as being the amount found due from defts. to pltfs. on accounts stated between them & contained in an account signed by defts. by their agent, less the sums since paid by defts. in respect thereof. Defts. denied that the agent was authorised to agree the amounts due from defts. to pltfs., or that he in fact purported to agree such amount, or that the account constituted an account stated:—*Held:* the signature of defts.' agent was an agreement by him, with their authority, that the amount charged for the repairs was correct, &, there being no ground for re-opening the account, pltfs. were entitled to judgment.—CAMILLO TANK S.S. CO., LTD. *v.* ALEXANDRIA ENGINEERING WORKS (1921), 38 T. L. R. 134, H. L.

2147a. ——.]—A member of the Stock Exchange was indebted to defts. He became a defaulter on the Stock Exchange, & the liquidation of his affairs was undertaken by pltf. as official assignee. For the purposes of the liquidation he was authorised by pltf. to sell, & accordingly sold, certain shares standing in his name to defts., who were not members of the Stock Exchange, but who knew his position & that of pltf. as official assignee. Pltf. having sued defts. for the price of the shares:—*Held:* the action was maintainable, & defts. were not entitled to a set-off in respect of their debt.—RICHARDSON *v.* STORMONT, TODD & CO., [1900] 1 Q. B. 701; 69 L. J. Q. B. 369; 82 L. T. 316; 48 W. R. 451; 16 T. L. R. 224; 5 Com. Cas. 134, C. A.

Annotations:—**Apld.** Lomas *v.* Graves, [1904] 2 K. B. 557. **Refd.** *Re* Halstead, *Ex p.* Richardson, [1917] 1 K. B. 695.

2168. *Add. Annotation:*—**Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

2172. *Add. Annotations:*—**Refd.** Norbury Natzio *v.* Griffiths, [1918] 2 K. B. 369; Rodriguez *v.* Speyer, [1919] A. C. 59; Bennett *v.* Whitehead, [1926] 2 K. B. 380; Pirie *v.* Richardson (1926), 70 Sol. Jo. 1023; R. M. K. R. M. (Firm of *v.* M. R. M. V. L. (Firm of), [1926] A. C. 761.

2177. *Add. Annotation:*—**Refd.** R. M. K. R. M. (Firm of) *v.* M. R. M. V. L. (Firm of), R. M. K. R. M. Somasundaram Chetty *v.* M. R. M. V. L. Supramanian Chetty (1926), 95 L. J. P. C. 197.

2183. *Add. Annotations:*—**Refd.** Bennett *v.* Whitehead, [1926] 2 K. B. 380; R. M. K. R. M. (Firm of) *v.* M. R. M. V. L. (Firm of), [1926] A. C. 761.

2184. *Add. Annotation:*—**Refd.** R. M. K. R. M. (Firm of) *v.* M. R. M. V. L. (Firm of), R. M. K. R. M. Somasundaram Chetty *v.* M. R. M. V. L. Supramanian Chetty (1926), 95 L. J. P. C. 197.

2188. *Add. Annotation:*—*As to* (3) **Refd.** Bennett *v.* Whitehead, [1926] 2 K. B. 380.

2193. *Add. Annotation*:—**Consd.** Bennett *v.* Whitehead, [1926] 2 K. B. 380.

2194. *Add. Annotation:*—**Refd.** R. M. K. R. M. (Firm of) *v.* M. R. M. V. L. (Firm of), [1926] A. C. 761.

2195. *Add. Annotations:*—**Apld.** Parr *v.* Snell, [1923] 1 K. B. 1; R. M. K. R. M. (Firm of) *v.* M. R. M. V. L. (Firm of), [1926] A. C. 761. **Refd.** Goldrei, Foucard *v.* Sinclair & Russian Chamber of Commerce in London, [1918] 1 K. B. 180; Moore *v.* Flanagan, [1920] 1 K. B. 919; Clarkson *v.* Davies, [1923] A. C. 100; Duffner *v.* Bowyer (1924), 40 T. L. R. 700; The Koursk, [1924] P 140; Pirie *v.* Richardson (1926), 70 Sol. Jo. 1023.

PART IX. SECT. 3, SUB-SECT. 2.—F. (a).

2172 ii. ——.]—GLADUE *v.* WALCH, No. 2510 XIV., *post*.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 2.—F. (c).

q i. —— ——.]—P., acting as agent, purchased food for M.'s poultry farm from pltf. with whom he had a running account upon which from time to time he made payments. Pltf. brought action against P. for the balance of the account, but before entering judgment obtained an order adding M. as a party deft.:—*Held:* the agent not having been sued on to judgment, pltf. may pursue the principal.—VANCOUVER MILLING & GRAIN PERKINS & MCLEOD (1930), 42 B. C. R. 557.—**CAN.**

2194 v. ——.]—M., without disclosing the fact that he was acting as agent for the Crown, purchased hay from A., & was sued for a balance of the purchase price. At the trial that fact became known to A., but he nevertheless proceeded with the case & recovered judgment against M.:—*Held:* A., having elected to proceed to judgment against M., could not afterwards sue the Crown.—DESROISERS *v.* R. (1919), 18 Exch. C. R. 461.—**CAN.**

2194 vi. ——.]—Engineers brought an action against shipowners for payment of the balance of the contract price of two boilers for a steamship. The shipowners denied liability, & also brought a counter-action for damages in respect of breach of contract. The actions were conjoined & a proof was led, in the course of which it transpired that the shipowners were not the registered owners of the steamship, as had up to that time been assumed, but merely acted as managers for a co. which owned her. Both parties thereupon amended their records; the shipowners averring in both actions that they had contracted, & were litigating, as agents for the limited co.; & the engineers, as defenders in the counter-action, pleading "no title to sue":—*Held:* by prosecuting their own action to decree, the engineers had elected to treat defts. as their debtors in the contract.—CRAIG & CO. *v.* BLACKATER, [1923] S. C. 472.—**SCOT.**

2197. *Add. Annotations :*—**Folld.** Moore *v.* Flanagan & Wife, [1920] 1 K. B. 919. **Apld.** London General Omnibus Co. *v.* Pope (1922), 38 T. L. R. 270. **Refd.** Duffner *v.* Bowyer (1924), 40 T. L. R. 700; Debenham *v.* Perkins (1925), 133 L. T. 252; Bennett *v.* Whitehead, [1926] 2 K. B. 380; R. M. K. R. M. (Firm of) *v.* M. R. M. V. L. (Firm of), R. M. K. R. M. Somasundaram Chetty *v.* M. R. M. V. L. Supramanian Chetty (1926), 95 L. J. P. C. 197.

2198. *Add. Annotation :*—*As to* (1) **Distd.** Debenham *v.* Perkins (1925), 133 L. T. 252.

2199. *Add. Annotations :*—*As to* (1) **Refd.** Moore *v.* Flanagan & Wife, [1920] 1 K. B. 919; Parr *v.* Snell, [1923] 1 K. B. 1; Pirie *v.* Richardson, [1927] 1 K. B. 448.

2201. After this case insert "Res judicata generally, *see* ESTOPPEL, Vol. XXI., pp. 159 *et seq.*, 198 *et seq.*"

2205a. **Acceptance of payment from principal —After receiving order against agent.**]—Resp. was employed by the debtor, who was acting for a co., but who was himself personally liable on the contract. While the contract was running, a receiving order was made against the debtor, but he was not adjudicated bkpt., the receiving order being discharged & an order being made approving a composition of 20*s.* in the pound. After the breach of contract by the debtor resp. took the salary offered to him by the co., & a proof put in by resp. for damages for the breach was rejected by the trustee of the composition on the ground that resp. had elected to look to the co. for the fulfilment of the contract :—*Held :* resp. had not, by his conduct, finally elected in law to look to the co. for the fulfilment of the contract, & the proof ought to be allowed.—*Ex p.* PITT (1923), 40 T. L. R. 5, C. A.

2233. *Add. Annotation :*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

2245. *Add. Annotations :*—*As to* (2) **Refd.** Janvier *v.* Sweeney, [1919] 2 K. B. 316; Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244. *Generally*, **Refd.** Kreditbank Cassel G.M.B.H. *v.* Schenkers, [1927] 1 K. B. 826; Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

2246. *Add. Annotations :*—**Consd.** Janvier *v.* Sweeney (1919), 35 T. L. R. 220; Rand *v.* Craig, [1919] 1 Ch. 1; Mintz *v.* Silverton (1920), 36 T. L. R. 399; Kreditbank Cassel G.M.B.H. *v.* Schenkers, [1927] 1 K. B. 826; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114. **Refd.** Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244; Percy *v.* Glasgow Corpn., [1922] 2 A. C. 299; Underwood *v.* Bank of Liverpool, Same *v.* Barclays Bank, [1924] 1 K. B. 775.

2253. *Add. Annotation :*—**Refd.** Collins *v.* Hopkins, [1923] 2 K. B. 617.

PART IX. SECT. 3, SUB-SECT. 2.—F. (d).

2206 i. *Election to sue one discharges other.*]—MURRAY *v.* DELTA COPPER CO., LTD., [1925] 4 D. L. R. 1061.—**CAN.**

2206 ii. ——.]—Deft. co., owner of certain lands, gave an option to purchase to one M., one of the terms of the sale being that he should immediately have the lands ploughed. Deft. H., who was president of deft. co., got in touch with pltf. with reference to the ploughing, & after they had taken a view of the land with M. pltf. entered into an agreement with H. to plough the land for $9 per acre. Pltf. proceeded with the work & received money from M. on account of the ploughing, although he knew nothing as to M. having an option to purchase. While the work was in progress M. threw up the option. Pltf. continued his work to completion. Pltf. recovered judgment against the co. & H. for the balance due :—*Held :* the judgment against H. should stand, but it should be dismissed as against the co.—DENNIS *v.* INDEPENDENT LANDS, LTD. (1930), 43 B. C. R. 65.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 4.—A.

2245 v. ——.]—Resp. had taken fire insurance policies in several cos., amongst which were applt. co. & the F. Co., both represented by D. as their agent. The property insured having been destroyed by fire, resp. received from the adjuster a memorandum showing him entitled to $2,864.45 as against the F. Co., & to $1,841.45 & $2,861.60, as against applt. co., under two policies. Later on, the F. Co., sent to D. their cheque payable to resp., & D. appropriated its proceeds by forging the signature of resp. The latter, pressing D. for a settlement, accepted as an accommodation D.'s personal cheque for the amount of his claim against the F. Co. On the afternoon of the same day, D. informed resp that the cheque of the F. Co. had arrived. At that time, D. had also received from applt. co. two drafts, payable to the order of resp. D. obtained resp.'s indorsement on the larger one of the drafts on the representation that it was the cheque of the F. Co., which he would use to reimburse himself for his personal cheque, & also secured resp.'s signature on the other draft on the representation that it was a receipt, the execution of which was a formality required by the F. Co. D. indorsed both drafts & deposited them to his own credit, & they were later paid & charged to applt. co.'s account by the bank. Resp. having sued applt. co. :—*Held :* in the fraud practised upon resp., D. was acting within the scope of his agency so as to make his fraud that of his principals, applt. co.; & the indorsements on the drafts of applt. co. were not binding on resp. in the circumstances in which they were given.—NATIONAL UNION FIRE INSURANCE CO. OF PITTSBURG *v.* MARTIN, [1924] 3 D. L. R. 1012; S. C. R. 348; *affg.*, [1923] 4 D. L. R. 574; 3 W. W. R. 897; 19 Alta. L. R. 786; *affg.*, [1923] 3 D. L. R. 220.—**CAN.**

2245 vi. ——.]—POPE *v.* PICTOU STEAMBOAT CO. (1865), 6 N. S. R. (2 Old.) 18.—**CAN.**

2245 vii. —.]—PARTAB NARAIN *v.* JUTE MILLS (1927), I. L. R. 50 All. 29.—**IND.**

2246 ii. —— ——.]—Pltf., believing Z. to be agent of defts., arranged with him for the shipment of two carloads of grain to defts., & signed the bills of lading, on which his name appeared as shipper & defts.' name as consignees. The documents were signed partly in blank, certain particulars being left to be filled in by Z. Z. used the documents for his own purposes, borrowed money upon them from the bank, signed his own name to them, crossed out defts.' name as consignees & substituted that of the bank. Defts., being notified of shipment, paid the bank, procured the bills of lading, disposed of the grain & settled with Z. for the proceeds :—*Held :* defts. were liable to pltf. for conversion for the value of the grain.—LENO *v.* SIMPSON-HEPWORTH CO., LTD., [1919] 1 W. W. R. 721; 45 D. L. R. 285.—**CAN.**

2246 iii. —.]—A principal is liable for the fraud of his agent acting within the scope of his authority, whether the fraud is committed for the benefit of the principal or for the benefit of the agent.—DINABANDHU SAHA *v.* ABDUL LATIF MOLLA (1912), I. L. R. 50 Calc. 258.—**IND.**

2246 iv. —— ——.]—Pltf., after negotiations with a sales agent of deft. co., signed at the co.'s office a contract form for the purchase of a motor-car & paid to the agent the purchase price in full. The receipt therefore, expressed to be for "held cash," was signed by the agent personally. The contract form contained the words "Not binding until accepted by management," & the space for the manager's signature was not filled in. Pltf. did not want immediate delivery of the car, & the agent wrote on the form, "The agreement to be held until car wanted." In purported compliance with said offer to purchase, the agent delivered to pltf. a car belonging to the agent subject to a lien under which it was afterwards seized & sold. The agent had meanwhile disappeared with pltf.'s money, & the co. refused pltf.'s demand for a car, the manager saying that he knew nothing of the transaction. Pltf. then sued the co. to recover the money paid to the agent :—*Held :* pltf. was entitled to judgment.—OLSHANSKY *v.* DOMINION MOTOR CO., [1929] 1 D. L. R. 854; 1 W. W. R. 404; 38 Man. L. R. 56.—**CAN.**

2253 iv. —— ——.]—Pltfs., who resided in England, were the owners of a sub-division in Calgary & were represented there by agents. L. obtained from the agents a listing of parcels of lots & authority to obtain purchasers. L induced deft. to purchase lots for $3,400 under an agreement made by a fictitious person as vendor, which L. delivered to deft. & received from him $1,500 as the cash payment. L.

2267. *Add. Annotation :*—**Refd.** *Re* Jubilee Cotton Mills, [1923] 1 Ch. 1.

2268. *Add. Annotations :*—**Consd.** Rand *v.* Craig, [1919] 1 Ch. 1; Kreditbank Cassel G.M.B.H. *v* Schenkers, [1927] 1 K. B. 826.

2273a. Liability for fraudulent preference by agent.]—If a principal leaves the control of his business in the hands of an agent so that the agent is employed to determine which of the creditors of the principal shall be paid, when they shall be paid, & why they shall be paid, a payment made by such an agent with an intention to prefer a creditor of his principal is, in the event of the bkpcy. of the principal, a fraudulent preference by the principal within 1914 Act, s. 44. It makes no difference that the agent had not authority to sign the cheques he drew & presented to his principal, nor that the principal when signing them had no intention to prefer any creditor, but honestly believed the payments so made to be proper & in the ordinary course of business.

A firm of builders, having contracted to erect houses at S., employed T. as their salaried agent to control & manage the purchase of & payment for building materials, & generally to supervise & advise the firm on financial matters in relation to the contract. The partners had no knowledge as to the terms upon which the materials supplied had in fact been purchased, nor were they aware of any of the circumstances relating to any payments they in fact made. They signed cheques drawn by the agent as & when he prepared & presented them, but the agent had no right to make any payment except by cheques signed by his principals. The partners having become bkpts., it appeared in the bkpcy. proceedings that less than three months before the date of the receiving order, T., intending to prefer S. & Co., creditors of his principals & then well aware of his principals' insolvency, presented to F., the managing partner, two cheques which T. had drawn & which F. signed without inquiry in the honest belief that T. intended thereby to make proper payments but which were in fact intended & devoted by T., one to the extent of £100 in payment of a debt due by his principals under a contract other than the S. contract, & the other to the extent of £647 in payment of goods delivered by S. & Co. on credit terms not then expired :—*Held :* the partners as principals were bound by the acts of their agent T. when he, acting within the scope of his employment & as their agent, made the payments in question, & the act of the agent in making the payments with knowledge of the principals' insolvency & with a view of giving a preference must be treated as the act of the principals.—*Re* Drabble Bros., [1930] 2 Ch. 211; 99 L. J. Ch. 345; 143 L. T. 337; 74 Sol. Jo. 464, C. A.

2280. *Add. Annotations :*—**Distd.** Dyster *v.* Randall, [1926] Ch. 932. **Refd.** Said *v.* Butt, [1920] 3 K. B. 497.

2282. *Add. Annotations :*—**Refd.** Janvier *v.* Sweeney, [1919] 2 K. B. 316; Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244; Kreditbank Cassel G.M.B.H. *v.* Schenkers, [1927] 1 K. B. 826.

2284. *Add. Annotations :*—**Consd.** Janvier *v.* Sweeney (1919), 35 T. L. R. 226; Rand *v.* Craig, [1919] 1 Ch. 1; Mintz *v.* Silverton (1920), 36 T. L. R. 399; Kreditbank Cassel G.M.B.H. *v.* Schenkers, [1927] 1 K. B. 826; Britt *v.* Galmoye & Nevill (1928), 44 T. L. R. 294; Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244. **Distd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587; **Consd.** Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114. **Refd.** Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244; Percy *v.* Glasgow Corpn., [1922] 2 A. C. 299; Underwood *v.* Bank of Liverpool, Same *v.* Barclays Bank, [1924] 1 K. B. 775; Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.

2286. *Add. Annotations :*—**Consd.** Rand *v.* Craig, [1919] 1 Ch. 1; Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762. **Refd.** Janvier *v.* Sweeney (1919), 35 T. L. R. 226; Soanes *v.* L. & S. W. Ry. (1919), 88 L. J. K. B. 524.

2287. *Add. Annotation :*—**Refd.** The Sylvan Arrow, [1923] P. 220.

2287a. —— Forgery.]—Pltfs., exors. of a will, kept an exors.' account with defts., & retained a firm of solrs., Messrs. C. & P., who used to assist them in matters connected with their testator's estate. The acting member of the firm was one J. C. Pltfs. in conference with J. C. decided to invest through Messrs. J. P. & Co., stockbrokers, a sum of £5,000, part of the estate lodged on deposit with defts. J. C. accordingly drew out a form of cheque for signature by pltfs. It was in the form " Pay J. P. & Co. or order " & was drawn on pltfs.' deposit account with defts. The cheque was signed by pltfs. & left with J. C. to be posted to J. P. & Co. with instructions to invest the money. J. C., instead of posting the cheque to J. P. & Co., fraudulently inserted the words " per C. & P." in the blank space between the payees' name & the words " or

brought in to pltfs.' agents an agreement for sale of the lots to a fictitious person for $3,000 of which $1,000 was payable in cash, which sum only be paid in. He also subsequently collected from deft., but never paid in, the deferred payments under deft.'s agreement. Pltfs. had no knowledge of L.'s fraud until after all the money had been paid to him :—*Held :* pltfs. were liable for the additional $500 of cash payment fraudulently contracted for & received by L.—Denton *v.* Goodman, [1922] 1 W. W. R. 117; 62 D. L. R. 559.—**CAN.**

2253 v. —— *Agent added as co-defendant.*]—The agent of pltf., the vendor, made false representations without the knowledge of his principal in order to induce deft. to purchase property belonging to pltf. Deft., on discovering that the representations were false, refused to complete the transaction &, on being sued by pltf. for such non-performance, brought a counterclaim for rescission & damage, & joined the agent as co-defendant :—*Held :* the agent was rightly made co-defendant.—Rothwell *v.* Attwood, [1923] 4 D. L. R. 734; *revsd.*, [1924] 1 D. L. R. 43.—**CAN.**

PART IX. SECT. 4, SUB-SECT. 1.—A.

2282 vii. —— —— *Negligence of agent's employee.*]—An agent is not personally responsible for damage done by the negligence of those employed by him in the service of his principal, but the principal or those actually employed only are liable.—Wintermute *v.* Moulton (1922), 65 D. L. R. 653.—**CAN.**

2282 viii. —— ——.]—Deft. agreed to provide teams & men to cart goods for pltf., & in performing such contract caused damage to certain roads. The county council took proceedings, & obtained judgment against pltf. for recovery of the expenses incurred by the council by reason of the damage caused by the extraordinary traffic carried on by deft. On a claim by pltf. to be indemnified by deft. for the amount of the judgment :—*Held :* deft. was pltf.'s agent to do the carting, & the liability to pay for the damage rested on pltf.—Begg *v.* Hagan, [1921] N. Z. L. R. 220.—**N.Z.**

order"; he then indorsed the document with the names C. & P. & paid it so altered & indorsed into the W. Bank to the credit of a co. in which he was interested & which had an account at that bank. The document was accepted without question by the W. Bank & passed through the clearing house, & the account of pltfs. with defts. was debited, & that of the co. with the W. Bank was credited, with the amount on the face of the document. In an action by pltfs. against defts. for conversion, negligence & breach of duty:—*Held:* pltfs. had not held out J. C. as having authority to draw cheques on their behalf so as to estop them from asserting the fact that a document drawn by him & purporting to be a cheque signed by them had been materially altered by him after signature without their authority & was a forgery.—SLINGSBY *v.* DISTRICT BANK, LTD., [1932] 1 K. B. 544; 101 L. J. K. B. 281; 146 L. T. 377; 48 T. L. R. 114; 37 Com. Cas. 39, C. A.

2292. *Add. Annotations:*—**Consd.** Janvier *v.* Sweeney (1919), 35 T. L. R. 226; Rand *v.* Craig, [1919] 1 Ch. 1; Kreditbank Cassel G.M.B.H. *v.* Schenkers, [1927] 1 K. B. 826; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114. **Refd.** Pratt *v.* British Medical Assocn., [1919] 1 K. B. 244; Mintz *v.* Silverton (1920), 36 T. L. R. 399; Percy *v.* Glasgow Corpn., [1922] 2 A. C. 299; Underwood *v.* Bank of Liverpool, Same *v.* Barclays Bank, [1924] 1 K. B. 775.

2294. *Add. Annotation:*—**Refd.** Bonham *v.* Maycock (1928), 138 L. T. 736.

2295. *Add. Annotation:*—**Refd.** Admiralty Comrs. *v.* National Provincial & Union Bank of England (1922), 127 L. T. 452.

2309. *Add. Annotation:*—*As to* (1) **Refd.** London Joint Stock Bank *v.* Macmillan & Arthur, [1918] A. C. 777.

2317. *Add. Annotations:*—**Apld.** Pratt *v.* Patrick, [1924] 1 K. B. 488. **Consd.** Parker *v.* Miller (1926), 42 T. L. R. 408; Brooke *v.* Bool, [1928] 2 K. B. 578.

2318. *Add. Annotations:*—*As to* (1) **Refd.** Pratt *v.* Patrick, [1924] 1 K. B. 488. *As to* (2) **Consd.** Brooke *v.* Bool, [1928] 2 K. B. 578.

2318a. —— ——.]—Deft. was in his motor car, with him, on his invitation, being two friends, E. & P. E. drove the car, & owing to his negligence it collided with another vehicle, & P. sustained injuries from which he died. P.'s widow sued deft. under Fatal Accidents Act, 1846 (c. 93), for damages:—*Held:* as deft. was in the car, & there was no evidence that he had abandoned his right of control, he was liable notwithstanding that by a casual delegation he had entrusted its actual physical management & mechanical control to E.—PRATT *v.* PATRICK, [1924] 1 K. B. 488; 93 L. J. K. B. 174; 130 L. T. 735; 40 T. L. R. 227; 68 Sol. Jo. 387; 22 L. G. R. 185.

2318b. —— **Search for escape of gas.**]—A landlord of a lock-up shop, occupied by a tenant,

PART IX. SECT. 4, SUB-SECT. 1.—B.

2299 i. *Funds received for investment—By local manager of bank—Improvident investment.*]—Two persons who formed the local advisory board of deft. co. purchased on defts.' behalf for $7,000 the balance unpaid under an agreement for sale of subdivided property, which amounted to about $7,500 taking the assignment in their own name "as trustees." One of these persons, the local manager of deft. co., had an individual private client, pltf., for whom he had invested money. Having $5,000 of pltf.'s money on hand he invested it by buying a part interest in the assignment of agreement for sale, & a declaration of trust was made by the trustees in pltf.'s favour to the extent of $5,000 & interest. The investment turned out badly & pltf. sued deft. co. for recovery of his money:—*Held:* pltf. was entitled to recover.—MCCRINDLE *v.* LONDON SCOTTISH CANADIAN INVESTMENT SYNDICATE, [1922] 3 W. W. R. 977; 70 D. L. R. 612.—**CAN.**

PART IX. SECT. 4, SUB-SECT. 1.—C.

2317 ii a. —— ——.]—A motor bicycle, the property of deft., which was ridden by R., deft.'s brother, injured pltfs. Deft.'s brother had general permission to ride the motor bicycle for himself or for deft., but he was never in deft.'s employment. The jury found that the rider was acting as the agent or servant of deft. in the management of the motor bicycle at the time of the accident:—*Held:* the jury's findings & verdict must stand.—THOMPSON *v.* REYNOLDS, GIBSON *v.* REYNOLDS, [1926] N. 131.—**IR.**

2317 ii b. —— ——.]—DRISCOLL *v.* COLLETTI, [1926] 2 D. L. R. 428; 58 O. L. R. 444.—**CAN.**

2317 ii c. —— ——.]—A man was knocked down & killed by a motor car owned by deft. whilst it was being driven by his son. The car was kept in a garage on deft.'s property which adjoined the son's home. Deft. was not licensed to drive & had never been seen driving the car, which on many occasions was driven by the son, who worked with his father. The accident took place whilst the car was proceeding in the direction of the homes of deft. & his son:—*Held:* the evidence was not sufficient to establish as between deft. & his son the relationship of principal & agent.—GOLDMAN *v.* BARNFIELD (1927), 27 S. R. N. S. W. 405; 44 N. S. W. W. N. 147.—**AUS.**

2317 ii d. —— ——.]—Pltf. collided with deft.'s motor car, which was driven by J., a son of deft., & sustained serious injuries. In answers to interrogatories deft. admitted that she was the registered owner of the motor car; that her son C. & her daughter H. were licensed drivers; that she had purchased the car for pleasure; that she paid for all the petrol & oil; that her son J. resided with her; that she paid the rent for a lock-up garage, the key of which was kept by her son C. A witness stated that he saw J. driving his mother's car more than once prior to the day of the accident. Deft. denied that she knew that J. had a key of the garage in his possession on the day of the accident, or that she knew he had access to the key, & stated that she never at any time gave J. permission to drive her car, & that he never drove it to her knowledge:—*Held:* if the answer of the jury that J. at the time of the accident was driving the car with the implied authority of deft., amounted to a finding of agency, it must be set aside, on the ground that there was no evidence to support it.—GIBSON *v.* O'KEENEY, [1928] N. I. 66.—**IR.**

2317 ii e. —— ——.]—A motor car owned by deft. was, at the time of an accident, being driven by a person to whom it had been lent by him:—*Held:* the mere proof of deft.'s ownership of the car was not of itself sufficient to establish a *prima facie* case of liability on his part.—FERGUSON *v.* WAGNER (1926), 27 S. R. N. S. W. 9; 44 N. S. W. W. N. 22.—**AUS.**

2317 ii f. —.]—EVANOFF *v.* WINKLER & KELLY, [1931] 2 W. W. R. 576; 2 D. L. R. 932; *affd.*, [1931] 3 W. W. R. 177; 4 D. L. R. 919; 26 Alta. L. R. 40.—**CAN.**

2317 ii g. *Allowing third party to drive contrary to instructions—Principal not liable.*]—WAINIO *v.* BEAUDREAULT (Ont.), [1927] 4 D. L. R. 1131.—**CAN.**

2317 h. —— —— *Liability of person in control of driver.*]—If there is some one in a motor car who, although not driving it, has the right to control the driver he is under a duty to exercise that right & his failure to do so may render him equally liable with the driver for damages caused by the latter's negligence, even though said person is not the owner of the car.—RADER *v.* MCLELLAN (Alta.), [1929 1 D. L. R. 577; 1 W. W. R. 64.—**CAN.**

2317 j. —— —— *Wife of owner.*]—SHORTT *v.* WONG (Sask.), [1929] 4 D. L. R. 677; 3 W. W. R. 72.—**CAN.**

2317 k. —.]—When a mere licence is given to another to drive one's car, & that other in driving it injures some person, the owner, apart from legislation, is not responsible for damages.—HOWARD *v.* HENDERSON (1929), 41 B. C. R. 441.—**CAN.**

2317 l. —— *Vehicle driven by co-owner.*]—One of two joint-owners of a motor car was guilty of negligent driving whereby pltf., who were guests in the car, were injured. At the time of the accident the other joint owner was seated on the front seat beside the driver. During the journey they had been driving alternately, & the one not driving assisted the driver occasionally by applying the emergency brake when necessary:—*Held:* the co-owners were jointly liable to pltfs.—HAMMER & LUTHMER *v.* HAMMER & LUTHMER, [1929] 3 D. L. R. 273; 2 W. W. R. 130; 41 B. C. R. 55.—**CAN.**

2319 i. Add "*revsd., sub nom.* MURRAY *v.* JENKINS (1898), 28 S. C. R. 565.—**CAN.**" and delete the word "**AUS.**"

had the tenant's authority to visit the premises at night. The landlord occupied the adjoining premises, & a lodger, who had no authority to enter the shop himself, complained to him of a smell of escaping gas coming from the shop. The landlord & the lodger went into the shop together, & the landlord commenced a search for the escape of gas with a naked light, which the lodger continued. Owing to the lodger's negligent conduct, an explosion was caused, resulting in damage to the tenant's goods on the premises :—*Held :* the landlord was liable for the damage on the ground (*inter alia*) of agency.—BROOKE *v.* BOOL, [1928] 2 K. B. 578 ; 97 L. J. K. B. 511 ; 139 L. T. 376 ; 44 T. L. R. 531 ; 72 Sol. Jo. 354, D. C.

2326. *Add. Annotation :—Generally,* **Refd.** Poland *v.* Parr, [1927] 1 K. B. 236.

2331. *Add. Annotation :—***Distd.** Goh Choon Seng *v.* Lee Kim Soo, [1925] A. C. 550.

2336. *Add. Annotations :—As to* (1) **Refd.** Britt *v.* Galmoye & Nevill (1928), 44 T. L. R. 294. *Generally,* **Refd.** Poland *v.* Parr, [1927] 1 K. B. 236.

2337a. Imprisonment by foreign sovereign—Procured by principal.]—Trespass lies for procuring by awe, fear, & influence, & contrary to his own inclination, a sovereign independent absolute prince to imprison pltf.—RAFAEL *v.* VERELST (1776), 2 Wm. Bl. 1055 ; 96 E. R. 621.

*Annotations :—***Refd.** West *v.* Smallwood (1838), 6 Dowl. 580 ; Companhia de Mocambique *v.* British South Africa Co., De Sousa *v.* Same, [1892] 2 Q. B. 358.

2339. *Add. Annotations :—As to* (1) **Consd.** Performing Right Soc. *v.* Ciryl Theatrical Syndicate, [1924] 1 K. B. 1 ; Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762.

2339a. Fence—Omission to.]—Where, upon the diversion of a turnpike road after the new road had been completed, but before the old road was stopped up, the trustees, by the permission of B., broke down his fence to make a passage from the new road to the close of A., but did not put up a gate or fence to protect the latter close :—*Held :* the trustees were wrong-doers, & B. was responsible for their acts.—WINTER *v.* CHARTER (1829), 3 Y. & J. 308 ; 2 Man. & Ry. M. C. 177 ; 148 E. R. 1197.

2415. *Add. Annotation :—***Refd.** Newsholme *v.* Road Transport & General Insce. (1928), 45 T. L. R. 123.

2436. *Add. Annotation :—Generally,* **Refd.** Sassoon *v.* International Banking Corpn., [1927] A. C. 711.

2446. *Add. Annotation :—***Refd.** Clayton-Greene *v.* De Courville (1920), 36 T. L. R. 790.

2448. *Add. Annotation :—***Refd.** Edwards *v.* Porter, McNeall *v.* Hawes, [1923] 2 K. B. 538.

2455. *Add. Annotation :—***Refd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

PART IX. SECT. 5, SUB-SECT. 2.—B.

2384 i. —— ——.]—A letter from an agent to his principal which is merely a narrative of an interview between the agent & a third party, if admissible in evidence at all, is not evidence against the principal of a parol acceptance by the third party of an offer made to him.—SWAN *v.* MILLER, [1919] 1 I. R. 151.—**IR.**

PART IX. SECT. 6, SUB-SECT. 1.—B.

2396 ii. —— *Not to agent's interest to disclose.*]—Knowledge communicated to an agent of a fact which it was not the agent's interest to disclose & which he did not disclose to the principal cannot be imputed to the principal.—TEXAS CO. *v.* BOMBAY BANKING CO., LTD. (1919), 24 C. W. N. 469.—**IND.**

2408 ii. —— ——.]—MOUNT HOPE RURAL MUNICIPALITY *v.* FINDLAY, [1921] 3 W. W. R. 658.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 2.—B.

2428 iv. ——.]—QUEBEC FEDERATED CO-OP. CO. *v.* FARMERS FENCE CO., [1925] 2 D. L. R. 574 ; *affg.* Q. R. 37 K. B. 345.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 3.

sc. *In general.*] — By conferring authority upon his agent the principal gives third persons the right to assume that they can deal with the agent in the matters covered by that authority until they receive notice of his authority having been revoked, or at least until some circumstance arises which in all reason should put them upon inquiry, & this rule applies especially in favour of third parties who began to deal with the agent while his authority did in fact exist.—WATSON *v.* POWELL, [1921] 2 W. W. R. 128 ; 14 Sask. L. R. 424 ; 58 D. L. R. 615.—**CAN.**

sd. *Owner leasing farm to former manager.*]—When an owner of land has permitted his employee to manage a farm & to dispose of the crop, from year to year, to an elevator co. & account for the proceeds, & the owner changes his course of dealing, & leases the land to the former employee on a crop-payment rental, the owner is not entitled to relief against the elevator co. for the loss of his share by the lessee, unless notice of the change of relationship has been given to the co.—NORTH AMERICAN FINANCE CO. *v.* WESTERN ELEVATOR CO. (1922), 66 D. L. R. 467 ; 32 Man. L. R. 76 ; [1922] 2 W. W. R. 162.—**CAN.**

sf. *Agent accepting goods after revocation.*]—Applts., a Durban firm, entered through V. into contracts with farmers in Alexandria for the supply of chicory In 1917 V. had authority to accept chicory on behalf of applts., but when applts. entered into a contract with resps. for the 1918–1919 crop of chicory, this authority of V. had been withdrawn. Resps. tendered a consignment of chicory, which was accepted at Alexandria after examination by V., & sent to applts. at Durban ; but it was rejected by applts. as being unsound in terms of the contract. Prior to the sending off of this consignment, applts. had notified all the farmers by circular that they would reject any chicory not "tip-top," & charge railage & storage to the senders :—*Held :* the circulars should have put resps. on inquiry as to V.'s authority.—ELLIS BROWN *v.* VAN ROOYEN, [1920] E. D. L. 81.—**S. AF.**

sg. *Agent contracting after revocation.*]—Deft. authorised his wife to sell land, but before the contract with pltf. was concluded he revoked his wife's authority. The revocation was not communicated to pltf :—*Held :* deft. was bound by the contract entered into by his agent with pltf.—WILLIAMS *v.* WEST, [1921] E. D. L. 352.—**S. AF.**

sh. *Lapse of time putting third party on inquiry.*]—Applt., a contractor, had obtained a contract to work the O. quarry for a municipality, one of the terms being that he should not transfer any of the work to other persons without the consent of the engineer of the municipality. During the period June to Sept. 1926, resp., in response to orders given over the telephone from the quarry, supplied applt. at the quarry with coal to the value of £35, which amount was duly paid by applt. Thereafter no further coal was ordered until Jan. 1928, when certain further orders were received by resp. over the telephone for coal to be delivered at the quarry. The coal was delivered & the delivery notes were signed on behalf of the O. quarry. At this time applt. was no longer at the quarry, but had sublet the contract to S. & G. Applt. had not given notice in any form of this fact. After delivery of portion of the coal, resp. inquired from the municipal engineer whether the contract had been sublet, & upon receiving an answer in the negative supplied further coal to the quarry, making no attempt to communicate with applt. It was not disputed that orders had been given for the coal by S. & G., & that as between themselves & applt. they had no authority to bind the latter's credit :—*Held :* assuming S. & G. professed to act on applt.'s behalf, applt. could not have reasonably foreseen that a tradesman from whom he had ordered goods some eighteen months before over the telephone would act upon further telephone orders without communicating with him, & he was therefore not estopped from denying the authority of S. & G. to find his credit.—MONZOLI *v.* SMITH, [1929] A. D. 382.—**S. AF.**

Part X.—Relations between Agent and Third Parties.

2457. *Add. Annotation :—As to* (1) **Folld.** Flatau, Dick & Co. *v.* Keeping (1931), 36 Com. Cas. 243.

2473. *Add. Annotation :*—**Refd.** Edwards *v.* Porter (1924), 41 T. L. R. 57.

2474a. ——.]—The owners of a chartered ship sued the K. Coal Co. for demurrage at the port of loading under a charterparty expressed to be entered into " between G. T. G. & Co., owners' agents, & A. B. Co., Copenhagen, charterers." The charterparty, which was on a printed form, provided for payment of demurrage by " the charterers," & at the end of the charterparty the following stipulation was added in writing : " Freight & demurrage (if any in loading) to be paid in Glasgow by the K. Coal Co., Ltd." The charterparty was signed as follows : " For the A. B. Co., Copenhagen, J. B. J., of the K. Coal Co., Ltd. For & by telegraphic authority of owners, for G. T. G. & Co., J. M., as agents only." It was admitted that J. B. J. signed on behalf of the K. Coal Co. :—*Held :* (1) the K. Coal Co. were not by reason of the form of the signature made liable upon the charterparty ; (2) the clause in writing did not import a promise of liability sufficient to rebut any inference to the contrary from the form of the signature.—KIMBER COAL CO. *v.* STONE & ROLFE, LTD., [1926] A. C. 414 ; 95 L. J. K. B. 601 ; 135 L. T. 161 ; 42 T. L. R. 430 ; 31 Com. Cas. 333 ; 17 Asp. M. L. C. 37, H. L.

2476a. ——.]—MARCONI'S WIRELESS TELEGRAPH CO., LTD. *v.* NEWMAN, No. 188a, *ante*.

2482a. Person selling " as agent for " named principal.]—JAMES (ARTHUR) & CO. *v.* JOHN WESTON & CO., LTD. (1929), 73 Sol. Jo. 484.

2487a. ——.]—Pltf., a builder, did work on the order of H., a director of a co. for which pltf. had previously done work on H.'s order. As the work proceeded pltf. prepared estimates & addressed them to the co. whose name he had entered in his books. When the work was finished he was paid a sum on account, but when trying to get payment of the balance he was told that the work had not been ordered on behalf of the co., but for other principals. Thereupon he sued H. The judge found that H. impliedly undertook personal liability for the work, that pltf. gave credit to the co. up to a certain date, but did so under a mistaken impression, & that he never gave exclusive credit to them in such a way as to bind himself to look to them, & that he never gave credit to H. before the work was completed :—*Held :* H. was liable for the balance.—GARDINER *v.* HEADING, [1928] 2 K. B. 284 ; 97 L. J. K. B. 766 ; 139 L. T. 449, C. A.

PART X. SECT. 1, SUB-SECT. 1.—A. (a) i.

2457 i. *Agent cannot sue.*]—Pltf. sent to defts. a quotation for goods, written on paper headed, " Niels Storaker, Representative for Alliance Export & Import Co., Christiania, Norway. All orders & contracts are subject to the suppliers' terms of contract. No order or contract is firmly accepted until the suppliers have consented to book it." In the letter he wrote : " All orders are booked on the understanding that my principals are given the option of shipping by steamer or sailing vessel." Defts. gave pltf. an order. Pltf. wrote to defts. saying : " I have cabled the order over to-day & I hope soon to be able to give upon cable acceptance." Subsequently he wrote : " I am glad in being able to inform you that the above-mentioned order has been booked by my principals & will send you official confirmation in due course." Pltf.'s letters were all signed " Niels Storaker " without any qualification :—*Held :* pltf. was contracting merely as agent, not as principal, & was not entitled to sue on the contract.—STORAKER *v.* SOUTHOUSE & LONG, LTD. (1920), 20 S. R. N. S W. 190.—**AUS.**

2457 ii. ——.]—An order for books, addressed to the publishers on a form apparently supplied by them, requested delivery through " your distributors," contained an agreement to pay them (the distributors) at their office & provided that " this order to be binding shall be accepted by them." The distributors supplied the books, & sued for the price :—*Held :* the action was not maintainable.—WISE *v.* KERR, [1925] 1 W. W. R. 849 ; 35 B. C. R. 161.—**CAN.**

2457 iii. ——.]—BARKLEY *v.* WINNYCHUK (Alta.), [1926] 4 D. L. R. 538 ; [1926] 3 W. W. R. 327.—**CAN.**

2467 i. *Agent real principal.*]—Where an agent names his principal & makes the contract as agent on his behalf, he cannot enforce it, even though he is the real principal, unless the other party has affirmed the contract with knowledge of the fact.—GLASGOW *v.* HOOD, [1920] N. Z. L. R. 586.—**N.Z.**

PART X. SECT. 1, SUB-SECT. 1.—A. (a) ii.

2471 vi. —— *Father & son.*]—A person acting for a disclosed principal in a contract is not liable thereon, unless there be circumstances to show that he intended to render himself liable. The fact that a son residing with his father telephones for a physician to come & attend his father's servant who is ill, raises no presumption that the son agrees to pay for such services.—BLEECKER *v.* STUTSMAN, [1920] 3 W. W. R. 644 ; 54 D. L. R. 662.—**CAN.**

2483 i. *Agent real principal.*]—Pltf. signed an order for the purchase of a tractor addressed to a co., for whom deft. claimed to have made the sale as agent only :—*Held :* deft. was liable as the real vendor.—PETERSON *v.* CUSHMAN MOTOR WORKS, [1922] 2 W. W. R. 1041 ; 67 D. L. R. 38.—**CAN.**

ak. *Contract for work & labour.*]—After judgment by default on common counts for work & labour, etc., deft. may show on the execution of writ of inquiry that he contracted merely as agent of the person to whom the credit was given.—FALLS *v.* SARGENT (1846), 3 Kerr, 248.—**CAN.**

PART X. SECT. 1, SUB-SECT. 1.—A. (b) ii.

e i. ——.]—Every person who in making a contract discloses the existence, but not the name, of the principal on whose behalf he is acting, is personally liable on the contract to the other contracting party.—GLADUE *v.* WALCH, [1918] 3 W. W. R. 975 ; 43 D. L. R. 757.—**CAN.**

e ii. *Name disclosed by third party.*]—Under Indian Contract Act, s. 230, pltfs. as agents for an undisclosed principal, could personally enforce the contract. The expression " where the agent does not disclose the name of the principal " does not apply to a case where the name of the principal is disclosed not by the agent, but by a third party.—KAPURJI MAGNIRAM *v.* PANAJI DERICHAND (1928), I. L. R. 53 Bom. 110.—**IND.**

2492 i. *Agent real principal.*]—Where the owner in equity signs a contract for the sale of land " as agent for the owner " evidence is admissible to show that the person so contracting is the owner, & he is entitled to sue the purchaser without having given him notice prior to action brought that he was the principal, & not the agent.—MACCORMAC *v.* BRADFORD, [1927] S. A. S. R. 152.—**AUS.**

sl. *Person contracting for " buyer."*]—In pursuance of authority given by deft. his agents purchased sheep for pltf. In none of the telegrams between pltf. & deft.'s agents by which the purchase was arranged was deft. named, but the last telegram from the agents contained the words " Buyer confirms sale " :—*Held :* the words " Buyer confirms sale " showed that deft.'s agents were contracting as agents, & relieved them from personal liability on the contract.—MURRAY *v.* HOPKINS, [1919] N. Z. L. R. 689.—**N.Z.**

PART X. SECT. 1, SUB-SECT. 1.—A. (c) i.

2497 v. ——.]—Where an agent for an undisclosed principal contracts on such terms as import that he is the real & only principal, the undisclosed principal cannot sue or be sued on the contract.—WEST *v.* DILLICAN, [1921] N. Z. L. R. 617.—**N.Z.**

2497 vi. —— *Agent real principal.*]—Where a person who purports to contract as agent for an undisclosed principal is in fact the principal in the transaction, it is not clear whether or not he is entitled to sue on the contract as principal.—GLASGOW *v.* HOOD, [1920] N. Z. L. R. 586.—**N.Z.**

2501. *Add. Annotations :*—**Refd.** Phillips *v.* Brooks, [1919] 2 K. B. 243 ; Said *v.* Butt, [1920] 3 K. B. 497 ; Lake *v.* Simmons, [1927] A. C. 487.

2502. *Add. Annotation :*—**Consd.** Dyster *v.* Randall, [1926] Ch. 932.

2504. *Add. Annotation :*—**Consd.** Rederi Akt. Transatlantic *v.* Drughorn, [1918] 1 K. B. 394.

2523a. Judgment obtained against undisclosed principal — Judgment unsatisfied.] — A person making a contract with an agent, who is acting on behalf of an undisclosed principal, cannot sue the agent on the contract after having obtained judgment upon it against the undisclosed principal, even though such judgment is still unsatisfied. — LONDON GENERAL OMNIBUS CO , LTD. *v.* POPE (1922), 38 T. L. lt. 270.

2531. *Add. Annotations :*—*As to* (1) **Refd.** Ariadne S.S. Co. *v.* KcKelvie, [1922] 1 K. B. 518. *As to* (2) **Refd.** Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2537. *Add. Annotations :*—**Refd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518 ; Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2542. *Add. Annotation :*—**Refd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518.

2543. *Add. Annotations :*—**Consd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414. **Refd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518 ; Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2544. *Add. Annotation :*—**Consd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414.

2545. *Add. Annotations :*—**Refd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518 ; Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2546. *Add. Annotations :*—*As to* (1) **Consd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 5118 ; Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492 ; Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414. *As to* (2) **Apprvd.** Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2546a. —— —— Unnamed principal.]—Appelts., pltfs. in the action, were English timber brokers. In Oct. 1929, they, as brokers acting on behalf of a foreign seller, sold to resp., an English buyer, a quantity of timber. The contract of sale was signed by applts. as brokers & was expressed to be made " on account of our principals," but the name of the seller was not disclosed. Delivery was to be made by instalments, & the first instalment was accepted & paid for by resp. without question. The second instalment was then delivered, but before paying for it resp. discovered that the seller was a merchant at D. with whom he had previously been in litigation & against whom he had a judgment which was still unsatisfied. Resp. thereupon refused to pay for the second instalment but offered to set off the price against so much of his unsatisfied judgment. Applts. had meanwhile paid the foreign seller themselves & had obtained the documents from him, and they brought this action in their own name to recover the price from resp. :—*Held :* dismissing the appeal (1) as applts. had only signed the contract in their capacity as brokers they had not themselves either rights or liabilities under it ; & (2) on the evidence there was no custom in the trade under which the ct. could imply an independent contract by the buyer to become liable to pay the brokers instead of their principals.—FLATAU, DICK & CO. *v.* KEEPING (1931), 36 Com. Cas. 243, C. A.

2549. *Add. Annotation :*—*As to* (2) **Refd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518.

2549a. —— —— Agents also described as charterers.]—A charterparty was expressed to be made " between T. H. S. & Co., agents for the owners " of a steamer, " & J. McK. & Co., charterers," & was signed " For & on behalf of J. McK. & Co. (as agents), J. A. McK." The steamer was to load a cargo of coal on the Tyne & proceed to a foreign port, & provision was made for the payment by the charterers of demurrage in the event of the steamer being detained beyond the stipulated time either at the port of loading or at the port of discharge. The charterparty contained numerous other provisions imposing obligations on the charterers. The owners were aware at the time when the charterparty was signed that J. McK. & Co. were acting for other persons. In an action by the owners against J. McK. & Co. for demurrage at the port of discharge :—*Held :* defts. having signed as agents were not liable as principals to pay demurrage, notwithstanding that they were described as charterers in the body of the charterparty.—UNIVERSAL STEAM NAVIGATION CO. *v.* MCKELVIE (J.) & CO., [1923] A. C. 492 ; 92 L. J. K. B. 647 ; 129 L. T. 395 ; 39 T. L. R. 480 ; 67 Sol. Jo. 593 ; 16 Asp. M L. C. 184 ; 28 Com. Cas. 353, H. L. ; *affg.* S. C. *sub nom.* ARIADNE S.S. CO., LTD. *v.* MCKELVIE (J.) & CO., [1922] 1 K. B. 518, C. A.

Annotations :—**Consd.** Flatau, Dick & Co. *v.* Keeping (1931), 36 Com. Cas. 243. **Refd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414.

2553. *Add. Annotation :*—**Refd.** Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2497 vii. —— *Damage suffered by principal.*]—In an action against shipowners for payment of the balance of the contract price of goods for a ship, the shipowners counterclaimed for damages for breach of contract. In the course of the action it appeared that the shipowners were not the registered owners of the ship, but merely acted as managers for a co. which owned her :—*Held :* as pltfs. had in the circumstances elected to treat defts. as their debtors, defts. were entitled to counterclaim for damages although the damages had been suffered by the principals whom they represented, & not by themselves.—CRAIG & CO. *v.* BLACKATER, [1923] S. C. 472.—**SCOT.**

PART X. SECT. 1, SUB-SECT. 1.—A. (c) ii.

2510 xiv. ——.]—Where a person makes a contract in his own name without disclosing either the name or existence of a principal, he is primarily liable on the contract to the other contracting party.—GLADUE *v.* WALCH, [1918] 3 W. W. R. 975 ; 43 D. L. R. 757.—**CAN.**

2510 xv. ——.]—In an action for the hire of a dredge obtained by deft. M. from pltf., relief was sought against deft. J. as undisclosed principal : —*Held :* suspicious circumstances in the relations between M. & J. were not sufficient to support the judgment against J., in the face of the denial of defts. that any such relation existed.—NOVA SCOTIA DREDGING CO., LTD. *v.* MUSGRAVE & CO. (1918), 52 N. S. R. 71 ; 40 D. L. R. 589.—**CAN.**

2510 xvi. ——.]—An agent, who does not clearly indicate to the third party that he is acting as an agent, is personally liable.—HILLS *v.* SWIFT CANADIAN CO., [1923] 3 D. L. R. 997.—**CAN.**

2510 xvii. ——.]—LITCHFIELD *v.* SASKATCHEWAN & BATTLE RIVER LAND & DEVELOPING CO. (Sask.) (1908), 7 W. L. R. 475.—**CAN.**

2510 xviii. ——.]—WEST *v.* DILLICAN. No. 2497 v., *ante*.—**N.Z.**

2510 xix. ——.]—MCCREA *v.* BARHAN-JENKINS COMMISSION CO. & RABY, [1930] 2 W. W. R. 52 ; 3 D. L. R. 481 ; 24 Alta. L. R. 521.—**CAN.**

2559. For " 2 C. & P. 145 " read " 2 C. & P. 124."

2563. *Add. Annotations :—As to* (1) **Consd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414. *As to* (3) **Refd.** Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2564. *Add. Annotations :—As to* (1) **Refd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414. *As to* (2) **Refd.** Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292.

2566. *Add. Annotations :* — **Consd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518 ; Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2567. *Add. Annotations :*—**Consd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414. **Refd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518.

2571. *Add. Annotations :*—**Overd.** Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492. **Refd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414.

2575. *Add. Annotation :*—**Consd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

2576. *Add. Annotation :*—**Expld.** Akt. Ocean *v.* Harding, [1928] 2 K. B. 371.

2577. *Add. Annotation :—As to* (1) **Refd.** Westacott *v.* Hahn, [1918] 1 K. B. 495.

2583. *Add. Annotation :—As to* (2) **Refd.** Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2584. *Add. Annotation :*—**Refd.** The Lizzie, [1919] P. 22.

2585. *Add. Annotation :—As to* (1) **Refd.** Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492.

2591. *Add. Annotation :*—**Refd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518.

2594. *Add. Annotation :—As to* (2) **Refd.** Bennett *v.* Whitehead, [1926] 2 K. B. 380.

2595. *Add. Annotation :*—**Distd.** Drughorn *v.* Rederiakt. Trans-Atlantic, [1919] A. C. 203.

2597. *Add. Annotation :—As to* (1) **Consd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414.

2599. *Add. Annotation :*—**Refd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518.

2606. *Add. Annotations :*—**Distd.** Drughorn *v.* Rederiakt. Trans-Atlantic, [1919] A. C. 203. **Refd.** Rederiakt. Argonaut *v.* Hani, [1918] 2 K. B. 247 ; Collins *v.* Associated Greyhound Racecourses, [1930] 1 Ch. 1.

2609. *Add. Citations :* — REDERIAKTIEBOLAGET ARGONAUT *v.* HANI, [1918] 2 K. B. 247 ; 87 L. J. K. B. 999 ; *sub nom.* ARGONAUT *v.* HANI, 14 Asp. M. L. C. 310.
Add. Annotation :—**Refd.** Drughorn *v.* Rederiaktiebolaget Trans-Atlantic, [1919] A. C. 203.

2609a. ——.]—The description in a charterparty of one of the contracting parties as " charterer " does not, of itself, designate him as the only person to fill that position.

An action for breach of charterparty was brought by persons claiming to be the undisclosed principals of a party described in the contract as " charterer," & objection was taken to the admission of evidence that pltfs. were in fact the charterers, on the ground that such evidence would contradict the written contract :—*Held :* the evidence was admissible.—DRUGHORN (F.), LTD. *v.* REDERIAKTIEBOLAGET TRANS-ATLANTIC, [1919] A. C. 203 ; 88 L. J. K. B. 233 ; 120 L. T. 70 ; 35 T. L. R. 73 ; 63 Sol. Jo. 99 ; 14 Asp. M. L. C. 400 ; 24 Com. Cas. 45, H. L. ; *affg.* S. C. *sub nom.* REDERI AKT. TRANS-ATLANTIC *v.* DRUGHORN, [1918] 1 K. B. 394, C. A.

Annotation :—**Consd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518.

2610. *Add. Annotation :—As to* (2) **Refd.** Keen *v.* Mear (1920), 124 L. T. 19.

2613. *Add. Annotation :*—**Refd.** Wilson *v.* United Counties Bank, [1920] A. C. 102.

2620. *Add. Annotation :*—**Refd.** Ariadne S.S. Co. *v.* McKelvie, [1922] 1 K. B. 518.

2634. Before this case, after " *See, now,* Bills of Exchange Act, 1882 (c. 61), s. 26," add " *&, generally,* BILLS OF EXCHANGE, Vol. VI., pp. 112–114."

2635. *Add. Annotations :*—**Refd.** Elliott *v.* Bax-Ironside, [1925] 2 K. B. 301 ; Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414 ; Kettle *v.* Dunster & Wakefield (1927), 43 T. L. R. 770.

2639. *Add. Annotation :*—**Refd.** Pocahontas Fuel Co. *v.* Ambatielos (1922), 27 Com. Cas. 148.

2655. *Add. Annotations :*—**Refd.** Elliott *v.* Bax-Ironside, [1925] 2 K. B. 301 ; Kettle *v.* Dunster & Wakefield (1927), 43 T. L. R. 770.

PART X. SECT. 1, SUB-SECT. 1.—B. (c) i.

2591 iii. ——.]—Where a wife contracting for the sale of a house signed a document in her own name without any indication that she was acting as agent for her husband, & expressly purported as owner to contract for payment to pltf. of the commission on the sale thereof :—*Held :* parol evidence was not admissible in an action against the husband to show that she was in fact acting as agent.—KATZMAN *v.* OWNAHOME REALTY CO., [1924] 1 D. L. R. 201 ; 25 O. W. N. 333.—**CAN.**

PART X. SECT. 1, SUB-SECT. 1.—B. (c) ii.

2598 ii. ——.]—Where a contract is entered into by an agent in his own name & the terms thereof clearly indicate personal liability the agent is personally bound by the contract, regardless of his intention, unless it can be shown by extrinsic evidence that there was an express agreement that the agent should not be liable & that the contract rendering him liable was so drawn by mistake.—CURRIE *v.* RURAL MUNICIPALITY OF WREFORD, NO. 280, & LASHER, [1918] 1 W. W. R. 315 ; 39 D. L. R. 516 ; 11 Sask. L. R. 22.—**CAN.**

sm. —— *Sale of shares.*]—An investor purchased from a chartered accountant 150 shares in a co., paid the price therefor, & received from the chartered accountant a receipt, which acknowledged payment of the price of 150 shares & concluded with these words: " the transfer for which will be sent you for signature in due course." In an action at the instance of the purchaser against the chartered accountant for transfer of the shares or repayment of the price deft. denied liability, averring that his position in the transaction was merely that of an agent for a disclosed principal :—*Held :* on the terms of the receipt deft. was personally liable to implement the contract of sale, & it was incompetent for him to adduce parol evidence to show, in contradiction of its terms, that he was merely an agent. v. CRAIG, [1919] S. C. 139 ; 56 Sc. L. R. 93 ; [1918] 2 S. L. T. 321.—**SCOT.**

PART X. SECT. 1, SUB-SECT. 2.—C b i. —— ——.]—A clause in a document under seal purporting to bind a person as principal of one of the parties, cannot so bind him where the deed was not executed by him or executed in his name.—BATTLE CREEK TOASTED CORN FLAKE CO. *v.* KELLOGG TOASTED CORN FLAKE CO., [1923] 4 D. L. R. 543.—**CAN.**

PART X. SECT. 1, SUB-SECT. 3.—B. (b).

sl. *General rule.*]—The name of a person or firm to be charged upon a negotiable instrument should be clearly stated on the face or on the back of the document. A promissory note was signed by a chetty who was alleged to be the agent of applt. firm. The chetty signed it in his own name & it contained no promise by applt. firm to repay the loan :—*Held :* the firm was not liable.—P. R. M. P. R. CHETTYAR *v.* MUNIYANDI SERVAI (1932), I. L. R. 10 Ran. 257.—**IND.**

2658. *Add. Citations :—sub nom.* CREW *v.* PETIT, 3 Nev. & M. K. B. 456 ; 2 Nev. & M. M. C. 309. *Add. Annotation :*—**Refd.** Elliott *v.* Bax-Ironside, [1925] 2 K. B. 301.

2664. *Add. Annotation :—As to* (1) **Refd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414.

2665. *Add. Annotations :*—**Consd.** Elliott *v.* Bax-Ironside, [1925] 2 K. B. 301 ; Kettle *v.* Dunster & Wakefield (1927), 43 T. L. R. 770.

2666. *Add. Annotation :—Generally,* **Refd.** Kettle *v.* Dunster & Wakefield (1927), 43 T. L. R. 770.

2686. *Add. Annotations :*—**Refd.** Weiss, Biheller & Brooks *v.* Farmer, [1923] 1 K. B. 226 ; Westminster Bank *v.* Hilton (1926), 136 L. T. 315.

2695. *Add. Annotations :—As to* (1) **Overd.** Universal Steam Navigation Co. *v.* McKelvie, [1923] A. C. 492. *Generally,* **Refd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414.

2701. *Add. Annotation :*—**Consd.** Akt. Ocean *v.* Harding, [1928] 2 K. B. 371.

2712. *Add. Annotation :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371.

2726. *Add. Annotations :—As to* (2) **Refd.** Public Works Comrs *v.* Pontypridd Masonic Hall Co., [1920] 2 K. B. 233. *Generally,* **Consd.** Gilleghan *v.* Minister of Health (1931), 47 T. L. R. 439. **Refd.** Rowland *v.* Air Council (1923), 39 T. L. R. 228.

2726a. Minister of Health—For breach of contract.]—By Ministry of Health Act, 1919 (c. 21), s. 7 (1), " The Minister may sue & be sued by the name of the Minister of Health, & may for all purposes be described by that name " :—*Held :* this provision does not enable an action to be brought against the Minister for alleged breach of a contract made by the Minister as a servant of the Crown, & the proper remedy is against the Crown by petition of right.—GILLEGHAN *v.* MINISTER OF HEALTH, [1932] 1 Ch. 86 ; 101 L. J. Ch. 81 ; 146 L. T. 231 ; 47 T. L. R. 439.

2727. *Add. Annotations :*—**Consd.** Gilleghan *v.* Minister of Health (1931), 47 T. L. R. 439. **Refd.** Public Works Comrs. *v.* Pontypridd Masonic Hall Co., [1920] 2 K. B. 233.

2729. *Add. Annotations :*—**Folld.** Hosier *v.* Derby (Earl), [1918] 2 K. B. 671. **Refd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

2731. *Add. Annotation :*—**Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

2732. *Add. Annotation :*—**Refd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

2733a. —— For declaration as to meaning of contract.]—By a contract made between pltfs. & the Secretary of State for War the Secretary of State hired from pltfs. a steam engine & hay press upon the terms that the engine

PART X. SECT. 1, SUB-SECT. 4.—B. (a).

an. *Failure of foreign principal to perform contract.*]—Defts., acting on behalf of a foreign shipowner, who proposed to establish a service from Halifax to Havana & other southern ports, contracted in their own name with pltf. to provide space on the ship for a shipment of timber to be carried from Halifax to Buenos Ayres. The proposed service was abandoned by the shipowner, so that the contract entered into by defts. could not be performed :—*Held :* there having been failure on defts.' part to disclose that they were merely acting in the capacity of agents for a foreign principal, they were liable to pltf. for damages resulting from cancellation of the ship's sailing.—SHEPARD & MORSE LUMBER CO. INCORPORATED *v.* MATHERS (I. H.) & SON, [1926] 2 D. L. R. 457 ; 58 N. S. R. 466.—**CAN.**

PART X. SECT. 1, SUB-SECT. 4.—E.

2709 iii. —— *Principal undisclosed—Principal no right to sue.*]—COHEN *v.* DOMINION ATLANTIC RY. CO. (1931), 3 M. P. R. 495 ; *affd.*, [1931] S. C. R. 715 ; [1932] 2 D. L. R. 815.—**CAN.**

PART X. SECT. 1, SUB-SECT. 5.

2712 ii. —— *On behalf of unincorporated body.*]—An officer of a brotherhood lodge, an unincorporated body, who as such officer on behalf of the lodge borrows money & signs documents purporting to obligate it to repayment, is personally liable for repayment, having contracted for a principal who had no existence in law. —FINLAY *v.* BLACK, [1921] 2 W. W. R. 907.—**CAN.**

2712 iii. —— —— .]—A person cannot be the agent of a projected but actually as yet non-existent co., & the co. when formed cannot take advantage of any contract entered into by a person purporting to act as its agent, whether by attempted ratification or otherwise ; but a person may make a provisional contract not to become binding—*i.e.* not to be a contract at all—unless & until the co. becomes entitled to commence business.—HUDSON-MATTAGAMI EXPLORATION MINING CO. *v.* WETTLAUFER BROTHERS, LTD., [1928] 3 D. L. R. 661 ; 62 O. L. R. 387.—**CAN.**

2712 iv. —— ——.]—A co. cannot be bound by any contract made on its behalf before it comes into existence, nor can it, subsequent to its formation, ratify such a contract.—WEARNE BROTHERS *v.* RUSSA ENGINEERING WORKS (1928), I. L. R. 7 Ran. 144.—**IND.**

sp. *Bill of exchange accepted—In name of non-existent company.*] — Deft., a member of a firm, H. & S., represented & warranted to pltf. that H. & S. Co., Ltd., were an incorporated co. & that he was authorised by it to accept a bill of exchange as its agent. He accepted a draft in the name of the co & pltf. upon the faith of such assertion & warranty discounted the draft. H. & S. Co., Ltd., were not then an incorporated co. :—*Held :* deft., by his acceptance of the draft in the name of a non-existing corpn., warranted & represented that there was such a corpn. in existence & that he had authority to accept the draft for that co., & not having any such authority, he was personally liable for the amount of the draft & the costs & expenses incurred by pltf. in endeavouring to collect same from H. & S. Co., Ltd.—BANK OF NOVA SCOTIA *v.* HATFIELD (1920), 48 N. B. R 13 ; 58 D. L. R. 136.—**CAN.**

sq. *Purchase of goods on behalf of firm—Firm having disposed of business.*] —Pltfs., owners of an apple orchard, were visited by C., acting for deft. co., who represented to pltfs. that he was buying on behalf of N. & L., a firm which had been well-known to pltfs. in previous years as buyers of apples, & was represented to pltfs. by C., as " all right, solid as a rock " & " had been running since 1847." A paper was produced & signed by pltfs. containing particulars of the proposed sale & purporting to be made between pltfs., as sellers, & N. & L., or their agents, as buyers. Pltfs. delivered their apples to deft., & received payment on account in cheques of deft. co. At the time of the transaction N. & L. had gone out of business, having disposed of the same to another co., which, after changing its name several times had gone into liquidation :—*Held :* deft. co. was liable to pltfs. for the balance remaining unpaid on account of the sale.—BRENNAN *v.* BERWICK FRUIT CO., [1928] 1 D. L. R. 548 ; 59 N. S. R. 510.—**CAN.**

PART X. SECT. 1, SUB-SECT. 6.—A. (a).

2730 i. *Secretary of State for India—Contract for supply of goods by Commanding Officer—Contract ultra vires.*] —Pltf. having entered into a contract for the supply of horses' food with the officer commanding the depot of a cavalry regiment, sued the Secretary of State for the balance due to him under the contract :—*Held :* an officer commanding a depot, not being one of the officers authorised by the Governor-General in Council under Government of India Act, 1915, s. 30 (2), to enter into contracts on behalf, of the Secretary of State, the contract sued upon was *ultra vires* & could not be enforced against the latter.—SECRETARY OF STATE *v.* SARIN & CO. (1929), I. L. R. 11 Lah. 375.—**IND.**

ar. *Who is Crown servant or agent—Contractor.*]—Resp. co. entered into a contract with the Minister of Railways & Canals, as representing the Crown, for the enlargement of the L. Canal. Applt. co. had obtained under a lease from the Govt. the right to lay & maintain a gas main across the *solum* of the canal. Clause 6 of the lease stipulated that, in the event of its gas main being from any cause injured, applt. co. was to have no claim or demand against " His Majesty, His servants or agents." During the execution of the contract, a break occurred in the gas main, & applt. co. claimed damages alleging negligence of the resp. co. in dredging the bed of the canal :—*Held :* resp. co. was not a " servant " or an " agent " within the contemplation of clause 6 of the lease & was therefore liable in damages.—MONTREAL LIGHT, HEAT & POWER CO. *v.* QUINLAN & ROBERTSON, LTD., [1929] 3 D. L. R. 568 ; S. C. R. 385 ; *revg.*, 44 Que. K. B. 230 ; *affg.*, 63 Que. S. C. 436 ; 31 Rev. Leg. 450.—**CAN.**

should be used only for the purpose of working the press. Pltfs. brought an action against deft., who was Secretary of State for War at the date of the writ, but at the date of the contract did not nor did he now hold that office, alleging that deft. had improperly used the engine for other than the specified purposes, & claiming a declaration that pltfs. were entitled to compensation for the improper use of the engine, & certain other declarations as to the construction & meaning of the contract :—*Held :* the action was not maintainable. It could no more be brought against a servant of the Crown for a declaration as to what the contract meant than for substantive relief upon the contract itself.—HOSIER BROTHERS *v.* DERBY (EARL), [1918] 2 K. B. 671 ; 87 L. J. K. B. 1009 ; 119 L. T. 351 ; 34 T. L. R. 477, C. A.

2734. *Add. Annotations :*—**Consd.** R. *v.* Income Tax Special Purposes Comrs., *Ex p.* Dr. Barnado's Homes National Incorporated Assocn., [1920] 1 K. B. 26. **Refd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

2740a. —— —— **To mess.**]— BROWN *v.* DOYLE (1788), 3 Camp. 51, n. ; 170 E. R. 1302.

2742a. —— —— **On order of secretary of mess committee.**]—LASCELLES *v.* RATHBUN, No. 704a, *ante*.

2748. *Add. Annotation :*—**Consd.** Edwards *v.* Porter (1924), 41 T. L. R. 57.

2749. *Add. Annotations :*—**Consd.** Edwards *v.* Porter, McNeall *v.* Hawes, [1923] 2 K. B. 538 ; Edwards *v.* Porter (1924), 41 T. L. R. 57.

2751. *Add. Annotation :*—**Refd.** Edwards *v.* Porter, McNeall *v.* Hawes, [1923] 2 K. B. 538.

2752. *Add. Annotation :*—**Refd.** Edwards *v.* Porter, McNeall *v.* Hawes, [1923] 2 K. B. 538.

2753. *Citations :*—For " P. C." read " H. L."

2753a. Sale of goods—Principal not entitled to sell.]—Where an agent purports to make a contract for a principal to buy goods, whether ascertained or not, or to sell unascertained goods, disclosing the fact that he is acting as agent, but not disclosing the name of his principal, he is personally liable to the purchaser if it afterwards appear that the principal had no right to sell, it being presumed that the purchaser would be unwilling to contract solely with an unknown man. But this presumption does not exist where a specific chattel is so sold, it being impossible to suppose that a purchaser would impose or an agent accept such a liability.—BENTON *v.* CAMPBELL, PARKER & Co., [1925] 2 K. B. 410 ; 94 L. J. K. B. 881 ; 134 L. T. 60 ; 89 J. P. 187 ; 41 T. L. R. 662 69 Sol. Jo. 842, D. C.

2757. *Add. Annotation :*—*As to* (1) **Consd.** Edwards *v.* Porter (1924). 41 T. L. R. 57.

2761. *Add. Annotation :*—*As to* (3) **Refd.** Edwards *v.* Porter, McNeall *v.* Hawes, [1923] 2 K. B. 538.

2763. *Add. Annotations :*—*As to* (1) **Refd.** Edwards *v.* Porter, McNeall *v.* Hawes, [1923] 2 K. B. 538 ; Edwards *v.* Porter (1924), 41 T. L. R. 57. *As to* (2) **Refd.** *Re* Wingfields, [1923] 2 K. B. 112.

2769. *Add. Citation :*—13 Asp. M. L. C. 463.

2775a. —— **Acceptance subject to ratification.**]—WATSON *v.* DAVIES, No. 1001a, *ante*.

2777. *Add. Annotation :*—**Consd.** Edwards *v.* Porter, McNeall *v.* Hawes, [1923] 2 K. B. 538.

2780. *Add. Annotation :*—**Consd.** Edwards *v.* Porter (1924), 41 T. L. R. 57.

2788. *Add. Annotation :*—**Refd.** Smith *v.* Buskell, Buskell *v.* Smith & G. W. Ry., [1919] 2 K. B. 362.

2791. *Add. Annotation :*—**Refd.** Cooper *v.* Dummett (1930), 70 L. Jo. 394.

2795. *Add. Annotations :*—**Refd.** Edwards *v.* Porter, McNeall *v.* Hawes, [1923] 2 K. B. 538 ; Edwards *v.* Porter (1924), 41 T. L. R. 57.

2807. *Add. Annotation :*—**Refd.** Holt *v.* Markham, [1923] 1 K. B. 504.

2812. *Add. Annotation :*—*A to* (2) **Refd.** Archangel Saw Mills *v.* Baring & A.-G., Steam Saw Mills *v.* Baring & A.-G. (1921), 37 T. L. R. 857.

PART X. SECT. 1, SUB-SECT. 7.—A.

2748 v. ——.]—In an action for breach of warranty of authority, the cause of action is the breach of the express or implied promise of the person who assumes to act as agent that he has authority so to act, the consideration necessary to make that promise binding being found in the action of the other party in entering into the contract. Pltf. in such an action need not establish that he believed deft.'s representation that he had authority, though it must appear that he acted in reliance upon it.—LEGGO *v.* BROWN, [1923] V. L. R. 440. —**AUS.**

2748 vi. ——.]—BROOKS, LTD. *v.* CLAUDE NEON GENERAL ADVERTISING, LTD., [1932] 2 D. L. R. 45.—**CAN.**

st. *Liability for return of deposit.*]—Where a person, falsely representing himself to be the agent for the owner of certain land, entered into a contract for the sale thereof, & received a deposit on account of the purchase money, but the vendee could not obtain specific performance of the contract :—*Held :* his remedy against the agent for the return of the deposit was at law, & that a bill for that purpose would not lie.—GRAHAM *v.* POWELL (1868), 15 Gr. 327.—**CAN.**

PART X. SECT. 1, SUB-SECT. 7.—B.

2765 i. *Third party in error as to actual scope of agent's authority.*]—Deft., as agent of absentee landlords, instructed pltf., a solr., to distrain for rent on certain goods. A claim was made to the goods by a chattel mtgee., whose right was contested by pltf. under instructions from deft., whose authority for such proceedings was later repudiated by the landlords :—*Held :* pltf. could recover from deft. his costs of the interpleader proceedings upon a warranty of authority.—CUNLIFFE *v.* PLANTA, [1920] 3 W. W. R. 898 ; 54 D. L. R. 196.—**CAN.**

PART X. SECT. 1, SUB-SECT. 8.—A. (a).

2808 iii. —— *Subject to special terms.*]—Pltf. listed land with defts. for sale. Defts. secured a prospective purchaser, receiving from him $1,000 as deposit & gave a receipt setting out the terms of sale & concluding thus : " Money to be refunded if Gray Estate fail to deliver, as per agreement." The purchaser refused to complete :—*Held :* defts. in their receipt undertook an obligation to the purchaser to hold the deposit on his behalf, & pltf. could not recover the money from defts. as if it had been received by them simply & solely on her behalf.—GRAY *v.* MURCHISON (1922), 70 D. L. R. 7 ; [1922] 3 W. W. R 545.—**CAN.**

2808 iv. ——.]—Where a person who has offered, through the agent of an owner of land, to buy the land for cash pays the agent a deposit on the proposed purchase-price on the condition that the money shall be held pending the execution of a transfer by the owner, then living abroad, & that, if the transfer is not executed & returned, the money will be handed back to the payer, the agent is bound to so hold the money & return it if he cannot procure the transfer.—BELL *v.* KROHN, [1931] 2 W. W. R. 701.—**CAN.**

2809 i a. —— —— ——.]—Where a vendor has agreed to pay a commission to his agent & has agreed that the amount received by the agent as a deposit from the purchaser should be retained by the agent in part payment of such commission & has given security for the balance, the deposit must be treated as paid over to the vendor, & in an action for money had & received it is only from the vendor that it can be recovered.—BRUNSTETTER *v.* ZUSHING, [1918] 3 W. W. R. 546.—**CAN.**

2814a. Agent receiving proceeds of sale of goods for credit of foreign Government.]—In 1917 pltfs., under licence from the Russian Imperial Govt. exported timber to this country, &, in accordance with the conditions of the licence, paid the purchase-money received by them for the timber to deft. bankers for the credit of the Russian Govt. They then became entitled to receive from the Govt. in Russia an equivalent amount in roubles at a fixed rate of exchange. In Mar. 1917, the Imperial Govt. was overthrown by a revolution, & was succeeded by a Provisional Govt., which in its turn, was, on Nov. 7, 1917, displaced by the Bolshevists, who, on Dec. 13, forcibly dissolved the Constituent Assembly & established a Soviet Republic. Pltfs. having received no roubles in Russia, brought actions against the bankers to recover two sums of money, one of which was paid to them by pltfs. in the second action before Nov. 7, & the other by pltfs. in the first action on Nov. 9, at which date they did not know of the Bolshevist revolution. Pltfs. in both actions alleged that the bankers & the Russian Govt. were merely trustees for them, & the money having been paid under a contract, the consideration for which had entirely failed, they were entitled to recover. Pltfs. in the first action further contended that they had paid the money under a mistake of fact, & on that ground also they were entitled to recover it: —*Held:* (1) this money had been paid to the bank as agents for the Russian Govt., & the ct. would not order payment of it in the absence of that Govt. or its representatives; (2) the bank were entitled to keep the money in their hands, but must undertake not to part with it without notice to pltfs. & an order of the ct.—STEAM SAW MILLS CO. *v.* BARING BROTHERS & CO., ARCHANGEL SAW MILLS CO. *v.* BARING BROTHERS & CO., [1922] 1 Ch. 244; 91 L. J. Ch. 325: 126 L. T. 403; 38 T. L. R. 200; 66 Sol. Jo. 170, C. A.

Annotation:—**Refd.** Home & Colonial Insce. *v.* London Guarantee & Accident Co. (1928), 45 T. L. R. 134.

2815. *Add. Annotation:*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

2818. *Add. Annotations:*—**Consd.** Scottish Metropolitan Assce. *v.* Samuel, [1923] 1 K. B. 348 **Refd.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328.

2825. *Add. Annotation:*—**Refd.** *Re* A Debtor, [1928] Ch. 199.

2826. *Add. Annotations:*—**Apld.** Admiralty Comrs. *v.* National Provincial & Union Bank of England (1922), 127 L. T. 452. **Distd.** Steam Saw Mills Co. *v.* Baring, Archangel Saw Mills Co. *v.* Baring, [1922] 1 Ch. 244. **Consd.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328. **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

2828. *Add. Annotations:*—**Consd.** Scottish Metropolitan Assce. *v.* Samuel, [1923] 1 K. B. 348. **Refd.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328.

2831. *Add. Annotation:*—**Consd.** Guaranty Trust Co. of New York *v.* Hannay, [1918] 2 K. B. 623.

2834. *Add. Annotation:—As to* (1) **Refd.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328.

2839. *Add. Annotations:*—**Refd.** Marshall Shipping Co. *v.* Board of Trade, [1923] 2 K. B. 343; China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

2841. *Add. Annotations:*—**Refd.** Holt *v.* Markham, [1923] 1 K. B. 504: Jones *v.* Waring & Gillow, [1926] A. C. 670.

2842. *Add. Annotation:—As to* (3) **Consd.** Rekstin *v.* Severo Sibirsko Gosudarstvernnoe Akcionernoe Olschestro Komseverputj & Bank for Russian Trade, Ltd. (1932), 48 T. L. R. 422.

2866. *Add. Annotation:*—**Folld.** Hosier *v.* Derby (Earl), [1918] 2 K. B. 671.

2867. *Add. Annotation:*—**Consd.** R. *v.* Income Tax Special Purposes Comrs., *Ex p.* Dr. Barnado's Homes National Incorporated Assocn., [1920] 1 K. B. 26.

2888. *Add. Annotations:*—**Consd.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328: Jones *v.* Waring & Gillow, [1926] A. C. 670.

2895. *Add. Annotation:*—**Refd.** Lawrence *v.* Hayes, [1927] 2 K. B. 111.

2899. *Add. Annotation:*—**Refd.** McCreagh *v.* Judd, [1923] W. N. 174.

2924. *Add. Annotation:*—**Refd.** Belvedere Fish Guano Co. *v.* Rainham Chemical Works, Feldman & Partridge, 1nd Coope *v.* Same, [1920] 2 K. B. 487.

2926. *Add. Annotation:*—**Consd.** Weld-Blundell *v.* Stephens, [1920] A. C. 956.

2940. *Add. Annotations:*—**Consd.** Fenton Textile Assocn. *v.* Thomas (1929), 45 T. L. R. 264. **Refd.** Underwood *v.* Bank of Liverpool, Same *v.* Barclays Bank, [1924] 1 K. B. 775; London & Montrose Shipbuilding & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas. 67; Leitch (William) & Co. *v.* Leydon; Barr (A. G.) & Co. *v.* Macgeoghegan (1930), 47 T. L. R. 81; United Fruit Co. *v.* Frederick Leyland & Co. (1930), 47 T. L. R. 33; Savory (G. B.) & Co. *v.* Lloyds Bank, Ltd. (1932), 146 L. T. 530.

2943. *Add. Annotation:*—**Refd.** Jones *v.* Waring & Gillow, [1925] 2 K. B. 612.

PART X. SECT. 1, SUB-SECT. 8.—A. (b) ii.

2828 v. ——.]—*If* a bank pays money on a forged cheque to an innocent agent who at the time informs the bank that he is an agent & not a principal, & who before discovery of the forgery pays the money over in accordance with instructions received from his principal, the bank cannot recover the amount from such agent.—BANQUE D'HOCHELAGA *v.* MARSHALL, [1921] 2 W. W. R. 496; 31 Man. L. R. 242.—**CAN.**

PART X. SECT. 2, SUB-SECT. 2.—A. (b).

2918 i. *General rule.*]—Where a third party has suffered loss or injury he has no right of action against an agent personally unless the agent has been guilty of a wrong or a breach of trust.—WINTERMUTE *v.* MOULTON (1922), 65 D. L. R. 653.—**CAN.**

PART X. SECT. 2, SUB-SECT. 2.—B. (a).

2944 i. *Agent holding goods for principal—Absolute refusal to true owner.*]—A servant or agent can be sued for conversion of a chattel mtge. claimed by pltf. from the master or principal, where the refusal by such servant or agent to deliver it to the pltf. is absolute.—ADVANCE RUMELY THRESHER CO., INCORPORATED *v.* SERVICE, [1919] 2 W. W. R. 647; 12 Sask. L. R. 294.—**CAN.**

ar. *Breach of trust.*]—Under an agreement between pltf. finance co. & deft. co. which was a retail dealer in motor cars, the former co. financed for the latter co. certain shipments of cars

2951. *Add. Annotation :*—**Refd.** Banbury *v.* Bank of Montreal, [1918] A. C. 626.

2953. *Add. Annotation :*—**Consd.** Edwards Porter (1924), 41 T. L. R. 57.

Part XI.—Duration and Termination of Agency.

2989. *Add. Annotation :*—**Apld.** Graves *v.* Cohen (1929), 46 T. L. R. 121.

3002. *Add. Annotation :*—**Apld.** Graves *v.* Cohen (1929), 46 T. L. R. 121.

3004. *Add. Annotation :*—**Refd.** *In the Estate of* Dinshaw, [1930] P. 180.

3005. *Add. Annotations :*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307 ; *Re* Blake, *Re* Minahan's Petition of Right, [1932] 1 Ch. 54.

3014. *Add. Annotation :*—**Refd.** Payzu *v.* Saunders, [1919] 2 K. B. 581.

3025. *Add. Annotation :*—**Refd.** *Re* Vulcaan Coal Co., Harrison *v.* Harbottle, [1922] 2 Ch. 60.

3027. *Add. Annotation :*—*As to* (1) **Folld.** Schostall *v.* Johnson (1919), 36 T. L. R. 75.

3027a. —— —— **Agent not interned.**]—In Aug. 1912, pltf., who was an Austrian subject residing in this country, made with defts., who were sugar brokers in L., a contract whereby for three years he was to have a share of the commissions & profits on certain business introduced by him & was to assist in defts.' general business in return for a share of the profits. War broke out between England & Austria in Aug. 1914, but pltf. was exempted from internment & was allowed to travel between his house & defts.' place of business. In Sept. 1914, defts. wrote to pltf. that in the circumstances the agreement was null & void, & gave him to understand that it was of no use for him to attempt to do business for them any longer. In an action for breach of the contract :—*Held :* the status of pltf. as the subject of an enemy State did not in the circumstances make the contract impossible of performance, & pltf. was entitled to damages.—SCHOSTALL *v.* JOHNSON (1919), 36 T. L. R. 75.

3028. *Add. Citations :*—*affd.*, [1918] A. C. 239 ; 87 L. J. K. B. 416 ; 118 L. T. 126 ; 34 T. L. R. 206 ; 62 Sol. Jo. 290, H. L.

Add. Annotations :—*As to* (1) **Refd.** Ertel Bieber *v.* Rio Tinto Co., [1918] A. C. 260. *As to* (2) **Distd.** Fried Krupp Akt. *v.* Orconera Iron Ore Co. (1919), 88 L. J. Ch. 304. **Refd.** Naylor, Benzon *v.* Krainische Industrie Gesellschaft, [1918] 1 K. B. 331 ; Rodriguez *v.* Speyer, [1919] A. C. 59.

3029. *Add. Annotation :*—*As to* (2) **Refd.** Naylor, Benzon *v.* Krainische Industrie Gesellschaft, [1918] 1 K. B. 331.

3030. *Add. Annotation :*—**Refd.** Schostall *v.* Johnson (1919), 36 T. L. R. 75.

3040a. —— ——.]—By an underwriting contract dated Dec. 3, 1919, a syndicate agreed with a co. in consideration of a commission to subscribe for 150,000 of 350,000 shares to be offered to the public by a prospectus then about to be issued, & all allotments to the public were to be applied in relief of the

consigned by the manufacturers, under bills of lading with draft attached, to the deft. co. By the terms of said agreement deft. co. covenanted not to sell, mtge., etc., the cars without first having paid in cash the unpaid balance of the purchase-price, & to hold the cars in trust for pltf. until their price had been paid in full, & by the latter clause deft. co. also expressly admitted that until such amount was paid it had no right or title in the cars. The cars were never in the possession of pltf., nor did pltf. have any dealings with the manufacturers with respect to them. The agreement was signed for deft. co. by deft., M., its president ; & through him deft. co. sold the cars without having made the payments called for by the agreement. Pltf. sued both defts. for damages for conversion. The defence of the co. was struck out & the action proceeded against M. :—*Held :* by the agreement deft. co. became at least a trustee for pltf., & that the sale of the cars in violation of the agreement was a breach of the trust, for which deft. M., as well as deft. co., was liable in damages.—DEALERS FINANCE CORPN., LTD. *v.* MASTERSON MOTORS, LTD. & MASTERSON, [1931] 1 W. W. R. 214 ; 4 D. L. R. 730 ; *revsg.*, [1931] 1 W. W. R. 194 ; 25 S. L. R. 240.—**CAN.**

PART X. SECT. 2, SUB-SECT. 2.—B. (b).

2950 i. *Misrepresentations — Reckless.*]—Deft., as agent for the owner, induced pltf. to purchase a grocery business. Pltf. claimed damages from deft. on the ground that he had induced her to purchase the business by misrepresentations. The jury found that the representations made were untrue, that they had been made by deft. recklessly & without regard to their truth or falsehood, & that they had induced pltf. to purchase the business : —*Held :* the jury was justified in treating deft.'s statements as definite representations & in concluding that they were made to induce & did induce, pltf. to buy the business.—EASTERBROOK *v.* HOPKINS, [1918] N. Z. L. R. 428.—**N.Z.**

PART XI. SECT. 2, SUB-SECT. 1.—A.

2965 vii. ——.]—In an ordinary house agent's agreement the principal may revoke the agent's authority at any time before the agent has fully performed what he was authorised to do.—TYNAN *v.* A'BECKETT, [1923 V. L. R. 412.—**AUS.**

2965 viii. ——.]—A contract of agency can in the absence of a term, express or implied to the contrary, be terminated at the will of either party.—POLLARD *v.* GIBSON, [1924] 4 D. L. R. 854 ; 55 O. L. R. 424 : *varying*, 54 O. L. R. 419.—**CAN.**

PART XI. SECT. 2, SUB-SECT. 1.—B.

2976 vi. —— *Loss of subject-matter.*]—Deft., the purchaser under an agreement for the sale of timber limits, listed the property with B. for sale. B. introduced C. as a prospective purchaser. Deft. being unable to meet the payments due under his agreement gave his vendors a quit-claim deed & they gave him an option to purchase again. This option expired, & deft. discontinued all negotiations for about nine months. He then obtained another option, &, having made another agreement with the owners to purchase, then affected a sale to C. Pltf., who was an assignee of B., claimed a commission on this sale :—*Held :* deft.'s contract with B. was determined when deft. lost the property, &, when after the lapse of the nine months, deft. again obtained an interest in it he was free to deal with C. or any one else on his own account.—CURTIS *v.* CRUICKSHANK, [1929] 2 D. L. R. 35 ; 1 W. W. R. 851 ; 40 B. C. R. 546.—**CAN.**

PART XI. SECT. 3, SUB-SECT. 1.

st. *Death of principal—Power to convey land.*]—*Held :* under a power of attorney executed by M., who died in 1919, her attorney could execute a valid transfer of her land, after her death.—*Re* MCCARTY (1920), 53 D. L. R. 249 ; 47 O. L. R. 285.—**CAN.**

PART XI. SECT. 3, SUB-SECT. 4.

3015 i. *General rule.*]—On June 19, 1925, C. appointed P. her attorney by a power of attorney under seal, which was expressed to come into operation when C. was incapacitated through illness from attending to business. The deed purported to confer on P. wide powers of management in respect of C.'s estate, & in particular a power to sell C.'s personal estate & withdraw money from her bank account & employ it for any of the purposes mentioned in the deed. On Sept. 9, 1925, C. was certified to be insane, & thereafter until her death on Apr. 27, 1928, she was unable to manage her affairs :—*Held :* the power of attorney became void on the supervention of C.'s insanity.—*Re* COLEMAN, *Ex p.* PROPSTING (1931), 24 Tas. L. R. 77.—**AUS.**

syndicate's obligation to take up the 150,000 shares. By a sub-underwriting letter applt. agreed with the syndicate to subscribe 10,000 of the 150,000 shares underwritten by them & stated: "We now hand you application for the shares hereby underwritten by us together with cheque for £1,256, being deposit of 2*s*. 6*d*. per share." The letter also provided that applt. was only to be allotted & pay for so many of the 10,000 shares as should be his due proportion of the shares not taken up by the public, & that he was to receive a commission on the shares sub-underwritten by him. The letter also contained this clause: "This contract & our said application shall, notwithstanding any withdrawal on our part &/or any repudiation of our responsibility hereunder, or under the said application form, be sufficient to authorise & empower the directors to allot to us the above-mentioned shares & enter our name in the register of members in respect thereof." Applt. did not in fact sign or hand to the syndicate any written application to the co. for the 10,000 shares as contemplated by the sub-underwriting letter, but he handed to the syndicate the letter together with his cheque for £1,250 in their favour. On the issue of the prospectus only 55,000 shares were applied for by the public. On Dec. 12 the syndicate verbally applied in their own name & in the names of several sub-underwriters including applt. for an allotment of the total amount of the shares which they were bound to take up & paid with their own cheque for the total amount of the application money. On the same day the co. allotted to applt. 6,334, being his proportion of the 10,000 shares under his sub-underwriting letter. On Dec. 22, applt. wrote to the co. withdrawing his application for shares, meaning his sub-underwriting letter, but on Dec. 29 the co. sent him the usual formal notice of the allotment to him of 6,334 shares. On motion by applt. to rectify the register by removing his name therefrom as the holder of the 6,334 shares:—*Held:* the authority given by applt. to the syndicate to apply for shares was a continuing & irrevocable authority coupled with an interest which he was not entitled to withdraw.—*Re* OLYMPIC REINSURANCE CO., POLE'S CASE, [1920] 2 Ch. 341; 89 L. J. Ch. 544; 123 L. T. 786; 36 T. L. R. 691, C. A.

See, generally, COMPANIES, Vol. IX., pp. 182 *et seq.*

3041a. —— **Agent having sole selling rights of manufacture.**]—ELLIS STERLING BOOK KEEPING MACHINES, LTD. *v.* ELLIS ADDING TYPEWRITING CO. (1930), 74 Sol. Jo. 26.

3051. *Add. Annotation:*—**Refd.** Smith *v.* Wood (1928), 139 L. T. 250.

3057. *Add. Annotations:*—**Refd.** Cheshire *v.* Vaughan, [1920] 3 K. B. 240; Maskell *v.* Hill, [1921] 3 K. B. 157.

PART XI. SECT. 4, SUB-SECT. 3.

3045 iii. —— ——.]—*Held:* a mere authority to sell was not rendered irrevocable, either by reason of its express terms or from valuable consideration having been given.—MAHOOD *v.* GEANGE, [1927] N. Z. L. R. 780.—**N.Z.**

AGRICULTURE.

NOTE.—The Act now in force in England is "Agricultural Holdings Act, 1923 (c. 9)," herein referred to as A. H. Act, 1923. The Act repealed (*inter alia*) A. H. Act of 1908 (c. 28).

Owing to the statutory extensions in the law since the original volume was published the following new sub-sections have been added to Part V., Sect. 3 :—

SUB-SECT. 1*a*.—COMPENSATION FOR INCREASED OR DIMINISHED VALUE OF HOLDING.

SUB-SECT. 3*a*.—COMPENSATION FOR ENFORCEMENT OF PROPER CULTIVATION.

SUB-SECT. 3*b*.—ASCERTAINMENT OF COMPENSATION.

Part I.—Definitions.

Add the following cross-references :—**"Market garden."**]—*See* Nos. 267b, 267c, *post*.
"Agricultural holding."]—*See* No. 30f, *post*.

Part II.—Commencement, Duration, and Termination of Agricultural Tenancy.

4. *Add. Annotations :*—**Reld.** Croft *v.* Blay, [1919] 1 Ch. 277; Simmons *v.* Crossley, [1922] 2 K. B. 95.

19. *Add. Annotations :—As to* (2) **Reld.** *Re* Bebington's Tenancy, Bebington *v.* Wildman, [1921] 1 Ch. 559; Fordree *v.* Barrell (1931), 95 J. P. 141.

24a. Agriculture Act, 1920 (c. 76), s. 28—To what tenancies applicable.]—The above sect., which renders a notice to quit a holding invalid if it purports to determine the tenancy before the expiration of twelve months from the end of the then current year of tenancy, applies not only to the case of a yearly tenancy but to all contracts of tenancy in which a notice to quit is required to determine the tenancy, including a lease for twenty-one years with an option to either party to determine it on six months' notice at the end of the first seven or fourteen years of the term. A notice to quit includes a notice to determine the tenancy.—EDELL *v.* DULIEU, [1924] A. C. 38; 93 L. J. K. B. 286; 130 L. T. 390; 40 T. L. R. 84; 68 Sol. Jo. 183, H. L.

24b. Agricultural Holdings Act, 1923 (c. 9), s. 25 (1).]—The above sub-sect. applies to a notice to quit given by a tenant, as well as to a notice to quit given by a landlord.—FLATHER *v.* HOOD (1928), 44 T. L. R. 698; 72 Sol. Jo. 468.

29a. Termination of tenancy—Whether matter for arbitrator—Under Agricultural Holdings Act, 1923 (c. 9), s. 16.]—A question whether a tenancy has terminated or not is not a "question or difference arising out of the

PART I.

5a. *"Agriculturist"—Saskatchewan Co-operative Elevator Company Acts.*]—*Re* COMPANIES WINDING UP ACT, *Re* SASKATCHEWAN CO-OPERATIVE ELEVATOR CO., LTD. (Sask.), [1927] 4 D. L. R. 804; [1927] 3 W. W. R. 269.—**CAN.**

5d. *"Market garden."—Not experimental bulb growing establishment.*]—WATTERS *v.* HUNTER, [1927] S. C. 310.—**SCOT.**

5e. —*Whether "holding" includes "part of a holding."*]—*Held :* in the construction of Market Gardeners Compensation (Scotland) Act, 1897 (c. 22), the term "holding" includes "part of a holding," & consequently sect. 4 of the Act applies where part of a farm, held under an ordinary agricultural lease, had been cultivated as a market garden prior to the commencement of the Act.—CALLANDER *v.* SMITH (1900), 37 Sc. L. R. 890.—**SCOT.**

5f. *"Agricultural holding."*]—Two enclosures of "permanent grass park" 10 & 3¼ acres in extent, on which there were no buildings, were used by the tenant, a dairykeeper, for the grazing & feeding of 5 cows & 1 horse. In his dairy business, which had existed before he got the enclosures, he sold the milk produced by his own 5 cows, & the milk, which he bought of other 10 cows belonging to neighbouring farmers. The horse was used for the purpose of the holding & for conveying the milk to market :—*Held :* the subjects were not "held for the purpose of a business or calling not primarily agricultural or pastoral," within Small Landholders (Scotland) Act, 1911 (c. 49), s. 26 (3) (*g*), & consequently were not excluded from the operation of the Act.—HOWATSON *v.* M'CLYMONT (1914), 51 Sc. L. R. 153.—**SCOT.**

PART II. SECT. 3, SUB-SECT. 2.—A.

11i. *Unregistered.*]—In an action of removing from an agricultural holding it was admitted that a removal notice had been sent by unregistered letter & had been received. It was also conceded that the provisions of Removal Terms (Scotland) Act, 1886, did not apply :—*Held :* under rule 113 of Sheriff Cts. (Scotland) Act, a landlord was entitled to adopt any one of the three methods of giving notice there set forth, but must adopt one or other of them; &, accordingly, the notice of intention to bring the tenancy to an end sent by unregistered letter was invalid.—DEPARTMENT OF AGRICULTURE FOR SCOTLAND *v.* GOODFELLOW, [1931] S. C. 556.—**SCOT.**

11k. *Joint tenants in possession by tacit relocation—Notice to terminate given by one tenant.*]—Two brothers were partners & joint tenants under a lease renewable by tacit relocation. The elder brother, the active partner, gave notice in writing to the landlord that he intended to leave the farm. Subsequently they declined to remove from the farm, on the ground that the notice being in the name of one of the joint tenants only, was insufficient to prevent renewal of the lease by tacit relocation :—*Held :* (1) the notice necessary, under A. H. (Scotland) Act, 1908 (c. 64), s. 18 (1), to prevent tacit relocation, might be given by a duly authorised agent for the tenant; (2) as the evidence showed that the elder brother had sufficient authority to terminate the lease on behalf of the partners, the notice given by him was effectual to prevent tacit relocation, although the fact that he was acting both for himself & as agent for his brother did not appear *ex facie* of the notice.—GRAHAM *v.* STIRLING, [1922] S. C. 90.—**SCOT.**

PART II. SECT. 3, SUB-SECT. 2.—B.

11p. *Statutory provisions—Contracting out.*]—Parties to a lease of agricultural subjects cannot contract out of the statutory provisions with regard to notice of termination of the tenancy.—DUGUID *v.* MUIRHEAD, [1926] S. C. 1078.—**SCOT.**

PART II. SECT. 3, SUB-SECT. 6.

29a i. *Termination of tenancy—Whether matter for arbitrator—Under Agricultural Holdings (Scotland) Act*, 1923 (c. 10), *s.* 15.]—*Held :* not one of the matters remitted to the exclusive jurisdiction of the arbitrator.—DONALDSON'S HOSPITAL (EDINBURGH) TRUSTEES *v.* ESSLEMONT, [1925] S. C. 199; *on appeal*, [1926] S. C. (H. L.) 68.—**SCOT.**

termination of the tenancy" within the above sect.—SIMPSON *v.* BATEY, [1924] 2 K. B. 666; 93 L. J. K. B. 919; 131 L. T. 724; 68 Sol. Jo 754, C. A.

Annotations:—**Expld.** R. *v.* Powell, *Ex p.* Camden, [1925] 1 K. B. 641. **Consd.** Lowther *v.* Clifford, [1927] 1 K. B. 130. **Refd.** Harrison *v.* Ridgway (1925), 133 L. T. 238.

29b. —— —— ——.]—In Agricultural Holdings Act, 1923 (c. 9), s. 16 (1), which specifies the various kinds of question, difference, or claim to be determined by arbn. under the Act, the words "arising out of the termination of the tenancy of the holding" apply to a question, difference, or claim of any of the kinds previously mentioned in the sub-sect., &, consequently, no question, difference, or claim of any of these kinds can arise for determination by arbn. under the Act until after the termination of the tenancy.

The landlord of an agricultural holding gave to the tenant a notice to quit on a certain day. The landlord alleged that before that day the notice to quit was withdrawn by mutual consent. The tenant denied that he ever consented to a withdrawal of the notice to quit, & continued to occupy the holding after that day. Subsequently, on the application of the tenant the Minister of Agriculture & Fisheries appointed an arbitrator to determine in accordance with Agricultural Holdings Act, 1923, the following claims, questions, or differences between the parties—namely, (*a*) whether the tenancy had been determined by the notice to quit; (*b*) whether the tenant was entitled to compensation for disturbance, &, if so, the amount thereof; & (*c*) the amount of the compensation to the tenant for improvements & certain other matters:—*Held:* questions such as these were not questions which under sect. 16 (1) of the Act should be determined by arbn. in accordance with the Act, unless were questions "arising out of the termination of the tenancy"; that inasmuch as it did not appear that the tenancy had been terminated by the notice to quit or otherwise, these questions could not be said to arise out of the termination of the tenancy, & consequently that the arbitrator should be prohibited from proceeding with the arbn.—R. *v.* POWELL, *Ex p.* CAMDEN (MARQUIS), [1925] 1 K. B. 641; 94 L. J. K. B. 433; 132 L. T. 766; 89 J. P. 64; 41 T. L. R. 277; 23 L. G. R. 391, D. C.

Annotations:—**Consd.** Lowther *v.* Clifford, [1927] 1 K. B. 130. **Refd.** Harrison *v.* Ridgway (1925), 133 L. T. 238; R. *v.* Webster, *Ex p.* Marshall (1931), 95 J. P. 226.

29c. —— **Whether condition precedent to arbitration—Under Agricultural Holdings Act, 1923 (c. 9), s. 16.**]—The words "arising out of the termination of the tenancy of the holding" in the above sect. apply to the whole of the preceding part of sub-sect. 1 of the sect., & the determination of the tenancy is a condition precedent to the right to demand the appointment of an arbitrator.—R. *v.* POWELL, *Ex p.* CAMDEN (MARQUIS), [1925] 1 K. B. 641; 94 L. J. K. B. 433; 132 L. T. 766; 89 J. P. 64; 41 T. L. R. 277; 23 L. G. R. 391, D. C.

Annotations:—**Folld.** Harrison *v.* Ridgway (1925), 133 L. T. 238. **Consd.** Lowther *v.* Clifford, [1927] 1 K. B. 130. **Refd.** R. *v.* Webster, *Ex p.* Marshall (1931), 95 J. P. 226.

29d. —— —— ——.]—The determination of the tenancy is a condition precedent to the right to have a dispute within above sect. decided by arbn. Where the tenancy has not been determined, the county ct. has jurisdiction to try the issue.—HARRISON *v.* RIDGWAY (1925), 133 L. T. 238; 23 L. G. R. 434, D. C.

Annotation:—**Consd.** Lowther *v.* Clifford, [1927] 1 K. B. 130.

30a. **Agricultural Land Sales (Restriction of Notices to Quit) Act, 1919 (c. 63)—Application of Act.**]—Sect. 1 of the above Act, rendering null & void notices to quit in the event of sales, applies (1) where the sale is a sub-sale of an interest under a previous contract; (2) to equitable as well as legal owners; (3) where notice is by one person & sale by another; (4) to the whole holding, although the sale is only as to a part.—ROBINSON *v.* NESBITT (1920), 64 Sol. Jo. 291.

Annotation:—*Generally*, **Apprvd.** Blay *v.* Dadswell, [1922] 1 K. B. 632.

30b. —— **Contract for sale after passing of Act—Notice by one person—Sale by another.**]—ROBINSON *v.* NESBITT, No. 30a, *ante*.

30c. —— —— **Sale requiring consent of several parties—Consent of some parties given after passing of Act.**]—A contract to sell to pltf. land under Church Building Act, 1839 (c. 49), was entered into before the passing of the Act of 1919, by several, but not all, of the persons whose consent was necessary to the sale. At the time of the contract deft. was in occupation of the land as yearly tenant, but was under a notice to quit which had been served upon him by the vendors. All the persons whose consents were necessary for the sale subsequently joined in the conveyance to pltf., which was executed after the passing of the Act of 1919:—*Held:* the contract of sale was entered into with pltf. before the passing of the Act of 1919, & the notice to quit, therefore, was valid, & pltf. was entitled to possession.—BROOKS *v.* BLOOR (1920), 90 L. J. K. B. 577; 124 L. T. 316; 36 T. L. R. 826; 64 Sol. Jo. 685, D. C.

30d. —— —— **Sale to tenant.**]—(1) Sect. 1 of the above Act applies not only to contracts of sale of holdings to third persons, but also to contracts of sale to the tenants themselves. (2) Agriculture Act, 1920 (c. 76), s. 29 & sched. 1, are amending & not merely declaratory, & are not retrospective as to notices which would, if valid, have expired before the commencement of that Act.—BLAY *v.* DADSWELL, [1922] 1 K. B. 632; 91 L. J. K. B. 739; 127 L. T. 6; 66 Sol. Jo. 439; 20 L. G. R. 221; 86 J. P. Jo. 65, C. A.

Annotation:—*As to* (1) **Refd.** Rigby *v.* Waugh's Exors. (1931), 100 L. J. K. B. 259.

30e. **Agricultural Holdings Act, 1923 (c. 9)—Farm held under two landlords—Notice to quit given by both—Contract for sale by**

st. *Lessor selling farm under power in lease—Purchaser put in possession—Sale not completed.*]—*Held:* pltf. having sold the farm, & put purchaser in possession to the knowledge of deft., the latter might conclude that pltf. had exercised the right to sell given the lessor under the lease & that his lease was therefore at an end; pltf.'s allowing the purchaser to withdraw from the agreement to purchase did not affect deft.'s rights or reinstate the lease.—RINK *v.* MILOS, [1918] 2 W. W. R. 1021; 11 Sask. L. R. 271; 42 D. L. R. 782.—**CAN.**

sz. *Contract for share farming—No provision as to duration.*]—Deft. cropped pltf.'s land on shares in 1917, & in 1918 agreed to do so again. Pltf. was trying to sell the land, as deft. knew, & during the summer sold it. No time had been fixed for deft. to give up possession:—*Held:* deft. was entitled to such occupation as was necessary to put in & harvest the crop for 1918.—FLETCHER *v.* LYONS, [1919] 3 W. W. R. 331; 48 D. L. R. 365.—**CAN.**

one for part of farm.]—On May 20, 1912, T. let a farm to C. from year to year from Oct. 11, 1911, at an annual rent of £150. On Dec. 23, 1914, T. conveyed about half the farm to pltfs., subject to & with the benefit of the tenancy agreement. T. died on Jan. 4, 1919, & C. continued to pay the whole rent to her exors., as he had since the conveyance paid it to T. After Oct. 11, 1922, the rent fell into arrear. By a notice to quit dated Oct. 10, 1923, the agents of T.'s exors. & the agent of pltfs. jointly gave C. notice to quit the whole holding on Oct. 11, 1924. By an agreement dated Oct. 1, 1924, T.'s exors. agreed to sell their part of the farm to C., & it was conveyed to him on Apr. 17, 1925. C. refused to give up possession to pltfs. of their part of the holding, contending that under sect. 26 of the above Act the contract by T.'s exors. to sell to him rendered the notice to quit null & void. Pltfs. brought an action for a declaration that the notice to quit was effective, & to recover possession of their land:—*Held:* as the contract to sell a part was not made by the persons who gave notice to quit the entire holding, but only by some of them, sect. 26 of the above Act did not apply; the tenancy had been duly determined as regards pltfs.' land, & pltfs. were entitled to the declaration which they asked & to an order for possession of their land.—ROCHESTER & CHATHAM JOINT SEWERAGE BOARD *v.* CLINCH, [1925] Ch. 753; 95 L. J. Ch. 49; 134 L. T. 139.

30f. —— **To what holdings applicable—Holding let for horse breeding.**]—A holding let for the breeding of pedigree horses is not necessarily an agricultural holding within Agricultural Holdings Act, 1923 (c. 9).

A lessor sold to pltf. the freehold of certain property subject to a lease to deft. The lease described the property as the P. stud farm; it contained covenants to repair, varnish, & distemper paddock boxes, stables, & coach-house, to graze down turf by stocking & moving, & not to use the premises otherwise than as a stud farm: & the schedule contained a description of the stud farm. The tenancy was due to expire by effluxion of time shortly after the sale to pltf., but deft. refused to give vacant possession, alleging that the lease created an "agricultural holding" within Agricultural Holdings Act, 1923 (c. 9), & that the holding had not been terminated by twelve months' notice, as required by sect. 23 of that Act. Upon a summons by pltf. for a declaration that the lease did not create a holding within the meaning of that Act, & that no notice was required for the termination of deft.'s tenancy:—*Held:* the main purpose of the letting was the breeding of race-horses, &, although there were in most of the fields plots of grass or portions of pasture land, the holding was not "wholly pastoral," & therefore Agricultural Holdings Act, 1923 (c. 9), s. 23, did not apply.—*Re* JOEL'S LEASE, BERWICK *v.* BAIRD, [1930] 2 Ch. 359; 99 L. J. Ch. 529; 143 L. T. 765; 46 T. L. R. 424.

30g. —— **Sale of holding—Agreement that notice to quit shall be valid—Form.**]—The agreement of a tenant from year to year of a holding, by writing, that a notice to quit shall be valid, within sect. 26 (1) of 1923 Act need not be in the express words of the sub-sect. Where the landlords of such a holding gave the tenant notice to quit stating that they contemplated selling the property, a reply by the tenant acknowledging the receipt of the notice to quit & continuing: "We are sorry to leave & will give you possession of the farm & buildings" on the dates mentioned in the notice to quit, was held an agreement, by writing, that the notice to quit should be valid within the sub-sect.—RIGBY *v.* WAUGH'S EXORS. (1931), 100 L. J. K. B. 259; 145 L. T. 137, C. A.

Part III.—Covenants and Customs of the Country.

32. *Add. Annotation:*—**Refd.** Richmond *v.* Savill, [1926] 2 K. B. 530.

35. *Add. Annotation:*—**Refd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

36. *Add. Annotation:*—**Apld.** Cheater *v.* Cater, [1918] 1 K. B. 247.

39. *Add. Annotation:*—**Refd.** Horlick *v.* Scully, [1927] 2 Ch. 150.

56a. —— —— **Grass land laid down by tenant.**]—By a tenancy agreement made in 1894 the trustees of an estate, of which pltf. was the present tenant for life in possession, agreed to let to deft. certain farm lands & house buildings comprising 138 acres more or less, as described in a schedule attached to the agreement, on a yearly tenancy, at the rent of £48. The tenant covenanted to manage & cultivate the land in a husbandlike manner, & that he would not plough or otherwise break up "any grass land" without the consent of the landlord. In the schedule to the agreement the premises were described as consisting of 130 acres 1 r. 31 p. of arable & 8 acres of grass land. In 1898 the tenant laid down 40 acres more to permanent grass. On notice being given to him to determine the tenancy on Sept. 29, 1919, he claimed the right to plough up this 40 acres of permanent grass which had been arable at the commencement of his tenancy. In an action by pltf. to restrain him from so doing in breach of his covenants an *interim* order was made granting the injunction on the usual undertaking as to damages. Deft. counterclaimed for damages by reason of the *interim* order:—*Held:* (1) on the true construction of the agreement, the covenant not to plough up any grass land was not restricted to the 8 acres of grass at the date of the demise but

PART III. SECT. 1, SUB-SECT. 1.

ss. *In crop-payment agreement—Essence of contract.*]—The covenants to cultivate under a crop-payment purchase are of the essence of the contract, & go to the root of the performance of the contract by the purchaser. WEIST *v.* SMITH (Sask.), [1927] 1 D. L. R. 448; [1927] 1 W. W. R. 280.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.—B.

ss. *Covenant to rid land of weeds—Breach—Relief from forfeiture.*]—Relief was granted due to exceptional weather conditions, etc.—WARNER *v.* LINAHAN, [1919] 2 W. W. R. 94.—**CAN.**

extended to the grass land in dispute & pltf. was entitled to the relief claimed; (2) on the evidence, the proposed dealing with the land would have been a breach of the covenant to cultivate in a husbandlike manner; (3) deft. had suffered no damage from the granting of the *interim* injunction.—CLARKE-JERVOISE *v.* SCUTT, [1920] 1 Ch. 382; 89 L. J. Ch. 218; 122 L. T. 581.

68. *Add. Annotation:*—**Consd.** Cole *v.* Kelly, [1920] 2 K. B. 106.

69. For "that relation existing between him & the other tenants in common" read "that relation not existing between him & the other tenants in common."

80. *Add. Annotation:*—**Refd.** Horlick *v.* Scully, [1927] 2 Ch. 150.

103. *Add. Annotation:*—**Refd.** Melzak *v.* Lilienfeld, [1926] Ch. 480.

106. *Add. Annotation:*—*As to* (1) **Refd.** Clarke-Jervoise *v.* Scutt, [1920] 1 Ch. 382.

107a. *S. P.* AYLET *v.* DODD (1741), 2 Atk. 238; 26 E. R. 547.

Annotation:—**Refd.** Denton *v.* Richmond (1833), 3 Tyr. 630.

117. *Add. Annotation:*—**Refd.** Matthey *v.* Curling, [1922] 2 A. C. 180.

117a. —— Grass land laid down by tenant.]—CLARKE-JERVOISE *v.* SCUTT, No. 56a, *ante*.

140. *Add. Annotations:*—**Refd.** Raikes *v.* Ogle, [1921] 1 K. B. 576; Brakspear *v.* Barton, [1924] 2 K. B. 88.

164a. Against sub-letting—Letting of grass keep in last year of tenancy—Agistment.]—Where the tenant of a farm covenants not to underlet or permit any other person to use or occupy any part of the demised premises without the written consent of the landlord, the sale or letting by the tenant, without such consent, in the last year of his tenancy of the grass keep, *i.e.* growing herbage, of his pasture lands for a definite period, is a breach of the covenant, although such sale or letting is in accordance with the usual practice of an outgoing tenant in that part of the country *Semble:* agistment, *i.e.* the taking in by the tenant of the sheep or cattle of another to be depastured on the farm at so much per head per week, would not be a breach of the covenant.—RICHARDS *v.* DAVIES, [1921] 1 Ch. 90; 89 L. J. Ch. 601; 124 L. T. 238; 65 Sol. Jo. 44.

SUB-SECT. 16.—OTHER MATTERS (Vol. II., p. 28).

Add the following case:—

166a. Tenant to perform "team-work" for landlord.]—An agreement for an agricultural lease contained a stipulation that the tenant should perform each year for the landlord, "at the rate of one day's team-work with two horses & one proper person for every £50 of rent when required, except at hay & corn harvest, without being paid for the same." In ejectment for a forfeiture:—*Held:* (1) the work thus to be performed meant any work for which teams are generally used, & therefore included drawing coals to B Palace; (2) the tenant was not bound to supply a car or other vehicle for the purpose of the work.—MARLBOROUGH (DUKE) *v.* OSBORN (1864), 5 B. & S. 67; 3 New Rep. 568; 33 L. J. Q. B. 148; 10 L. T. 28; 28 J. P. 532; 12 W. R. 418; 122 E. R. 758.

173a. Right of vendor to reimbursement from purchaser.]—By an agreement for the sale of real estate it was provided that if from any cause whatever other than wilful default on the part of the vendors the purchase was not completed on Jan. 2, 1899, the purchase-money should bear interest at 5 per cent. A dispute arose about the wording of the conveyance, & the purchase was not completed on the day fixed; the purchaser brought an action for specific performance, & the judge held that the vendors had been wrong in the dispute & gave judgment for specific performance with costs. After the commencement of the action one of the farms agreed to be sold fell vacant. The vendors did not let it, but occupied it themselves, paid the valuation of the outgoing tenant, & farmed the land:—*Held:* under the account of rents & profits directed by the order for specific performance, which was not on the footing of wilful default, the vendors were entitled to be allowed what they had paid for the valuation & the expenses of realising the crops, but not for the losses incurred in farming.—BENNETT *v.* STONE, [1902] 1 Ch. 226; 71 L. J. Ch. 60; 85 L. T 753; 50 W. R. 118; 46 Sol. Jo. 151; *affd.*, [1903] 1 Ch. 509, C. A.

Annotation:—**Refd.** *Re* Bayley-Worthington & Cohen's Contract, [1909] 1 Ch. 648.

175a. Agreement to pay interest on amount of incoming valuation & on quitting to leave equal value of tenant rights.]—*Held:* not to create a personal debt to the lessor, but to

PART III. SECT. 2, SUB-SECT. 3.—B.

● i. —— ——.]—Applt. alleged that he was prevented from summer-following by an excessive quantity of water being on the land:—*Held:* resp. was entitled to $133 damages.—HUNT *v.* WEIBERG (1921), 67 D. L. R. 777.—**CAN.**

● ii. —— *Or to crop—Breach.*]—A lessee agreed each year either to crop or summer-fallow every portion of the demised premises brought under cultivation. The lessee failed to crop or summer-fallow 30 acres brought under cultivation, owing to the land being covered with water. The lessor gave evidence that a crop of green feed could have been grown on the 30 acres:—*Held:* if the lessee could not, or did not choose to crop, he must summer-fallow; "crop" within the covenant in the lease included a green crop.—STEFFS *v.* SMITH (1921), 66 D. L. R. 452; 17 Alta. L. R. 366; [1922] 1 W. W. R. 70.—**CAN.**

● iii. —— *& to break land—Breach—Measure of damages.*]—The measure of damages is the value of the additional work necessary to do the summer-fallowing & breaking.—TOCHER *v.* JOHNSON (1922), 68 D. L. R. 768; 32 Man. L. R. 356; [1922] 2 W. W. R. 616.—**CAN.**

PART III. SECT. 2, SUB-SECT. 4.

120 iv. —— —— ——.]—AINLEY *v.* LOWEY (Sask.), [1926] 1 D. L. R. 73.—**CAN.**

sd. *Miscropping — Claim for damages during tenancy—How determined.*]—Agricultural Holdings (Scotland) Act, 1923 (c. 10), s. 15 (1), is, except as regards disputes relating to the construction of the lease, applicable only to disputes arising out of the termination of the tenancy; & a claim for damages for miscropping made by a landlord against a tenant under s. 35 (2) during the currency of the lease cannot be referred to arbn., but falls to be determined by the ct. in an ordinary action.—WESTWOOD *v.* BARNETT, [1925] S. C. 624.—**SCOT.**

PART III. SECT. 2, SUB-SECT. 16.

se. *Covenant to deliver to landlord share of crop or pay its value—Option of tenant—Time for exercising.*]—The lessee of a farm agreed to deliver to the lessor a fixed share of the crops, or pay the value thereof, all crops to remain the property of the lessor until the settlement of accounts at the termination of the contract:—*Held:* the time for the exercise of the option was upon the settlement of accounts when the contract was terminated.—DICKIE *v.* SPARE (1921), 62 D. L. R. 551.—**CAN.**

enure for the benefit of a subsequent landlord.—WAGSTAFF *v.* CLINTON (1883), 1 Cab. & El. 45.

194. *Add. Annotations :*—**Consd.** Bradbury *v.* Grimble (1920), 124 L. T. 189. **Refd.** Lowther *v.* Clifford (1926), 95 L. J. K. B. 576.

Part V.—Compensation.

226a. -.]—Where the tenant of a farm held on a verbal tenancy becomes bkpt., the trustee, having entered into possession of the farm, subsequently disclaims the tenancy, he is excluded from all benefit as well as liability thereunder, including the tenant-right or right to compensation under custom of statute for unexhausted improvements by the tenant, & the amount fixed for compensation having been paid by the incoming tenant to the landlord, to whom arrears of rent are due, the landlord is not bound to account for such payment.—*Re* WADSLEY, BETTINSON'S REPRESENTATIVE *v.* TRUSTEE (1925), 94 L. J. Ch. 215; [1925] B. & C. R. 76.

229. *Add. Annotations :*—**Refd.** Bradshaw *v.* Bird, [1920] 3 K. B. 144; Dale *v.* Hatfield Chase Corpn., [1922] 2 K. B. 282.

229a. Incoming tenant agreeing to repay compensation paid by landlord—Action by landlord on agreement—When cause of action arises.]—By an agreement dated Dec. 24, 1915, made under seal, pltfs. let to deft. a small-holding from year to year from Feb. 2, 1916, at a rent of £132 10*s.* a year payable by half-yearly payments on Feb. 2, & Aug. 2, each year. The tenant agreed "to pay on entry any allowance or compensation which may be due from the council to the outgoing tenant in respect of feeding stuffs or manures or any improvements mentioned in A. H. Act, 1908, Sched. 1, Part III." Deft. entered into occupation of the small-holding on Feb. 2, 1916. At that date the amount of the compensation payable to the outgoing tenant had not been fixed, & it was not until Feb. 11, 1918, that the amount of compensation was agreed to. It was then agreed that the council should pay the outgoing tenant £30 17*s.* 6*d.*, & that sum was paid by the council to the outgoing tenant on Mar. 17, 1921. On Jan. 13, 1923, pltf. council brought an action in the county ct. claiming to recover from deft. the sum of £30 17*s.* 6*d.* under the agreement of Dec. 24, 1915. Deft. pleaded that pltfs.' cause of action had arisen on Feb. 2, 1916, the date of his entry on the holding, & that therefore the claim was barred by Stat. Limitations, s. 3, because the action was not brought "within six years next after the cause of such action or suit" :—*Held :* pltfs.' cause of action against deft. did not arise on Feb. 2, 1916, when deft. entered on the holding but only on Feb. 11, 1918, when the amount of the compensation was ascertained by agreement; therefore the time only began to run from Feb. 11, 1918, & the action was not barred.—CHESHIRE COUNTY COUNCIL *v.* HOPLEY (1923), 130 L. T. 123; 21 L. G. R. 524.

Annotation :—**Refd.** Cayzer, Irvine *v.* Board of Trade, [1927] 1 K. B. 269.

232. *Add. Annotation :*—**Consd.** *Re* Russell & Harding (1922), 128 L. T. 476; *Re* Joel's Lease, Berwick *v.* Baird, [1930] 2 Ch. 359.

233. *Add. Annotation :*—**Refd.** *Re* Masters & Duveen, [1923] 2 K. B. 729.

237a. Agricultural Holdings Act, 1908, s. 1 (1)—Improvements required to be made under tenancy agreement—Agreement made before January 1, 1921.]—A contract of tenancy made in 1906 for a term of fifteen years contained an agreement by the tenant to plant half the land with fruit trees & fruit bushes within the first four years, & the rest with fruit trees within the first ten years of letting. The tenant planted trees & bushes in accordance with the agreement. At the end of the tenancy he claimed compensation for the improvement thus made :—*Held :* he was not entitled to compensation, the improvement being one which he was required to make by the terms of his tenancy & the contract of tenancy having been made before Jan. 1, 1921.—HUCKELL *v.* SAINTEY, [1923] 1 K. B. 150; 92 L. J. K. B. 313; 128 L. T. 299, C. A.

237b. Agricultural Holdings Act, 1923 (c. 9)—Arable laid down as temporary pasture.]—A

PART III. SECT. 3, SUB-SECT. 7.

sf. *General rule—No right to compensation.*]—At common law a tenant is not entitled on quitting to any compensation for permanent improvements made by him during his tenancy on the premises leased.—R. *v.* EASTERBROOK, [1929] Ex. C. R. 28.—**CAN.**

PART V. SECT. 3, SUB-SECT. 1.—A.

sg. *Improvements made in mistaken belief as to ownership of land.*]—Under the statute law of Ontario, in order that the occupant of any land may be entitled to compensation for "lasting" improvements on the land he must show that the improvements were made "under the belief that the land was his own," & a tenant recognising another as the owner by the payment of rent to him is not entitled upon the lease being terminated to any compensation for any improvements made by him.—R. *v.* EASTERBROOK, [1929] Ex. C. R. 28; *affd.*, [1931] S. C. R. 210; 1 D. L. R. 628.—**CAN.**

PART V. SECT. 3, SUB-SECT. 1.—B.

229 i. *Purchaser.*]—An estate was sold with entry to the purchaser at Martinmas 1922, & on the same date an existing lease of the lands terminated, & the tenant gave up possession. Less than two months later, he intimated a claim for compensation for improvements to the purchaser, & applied to the Board of Agriculture, who appointed an arbiter : —*Held :* the "landlord" liable to make payment of compensation to the tenant was the selling owner, in respect that he alone was the "landlord" at the termination of the tenancy when the tenant quitted the holding & the claim for compensation emerged, & the obligation so incurred did not transmit to the purchaser, & interdict against the arbn. proceedings granted. —WADDELL *v.* HOWAT, [1925] S. C. 484.—**SCOT.**

PART V. SECT. 3, SUB-SECT. 1.—D.

237 viia. ——— ——— ———.]—Where a landlord abstains from terminating a tenancy, he gives no benefit to the tenant under s. 1 (2) (*a*) of the above Act where it is not proved that the tenancy was continued in consideration of the tenant executing the improvement.—MACKENZIE *v.* MACGILLIVRAY, [1921] S. C. 722 58 Sc. L. R. 488.—**SCOT.**

237 ix. ——— *Tenant laying down temporary pasture.*]—The fact that an arbiter finds that in laying down temporary pasture the tenant is complying with the rules of good husbandry, which he was bound to observe, does not preclude him from also finding that the temporary pasture is an improvement for which the tenant is entitled to compensation under the above Act.—MACKENZIE *v.* MACGILLIVRAY, [1921] S. C. 722; 58 Sc. L. R. 488.—**SCOT.**

sg. *Agricultural Holdings (Scotland) Act*, 1923 (c. 10), s. 1 (1)—*Lease entered into before Jan.* 1, 1921—*Adoption of one of alternative obligations in lease.*]—

tenant farmer, who held a farm by successive tenancies beginning in 1912, in 1918 & in 1925 under different landlords, in each case with an undertaking by him not to convert any part of the farm, which in 1912 was all permanent pasture, into tillage, was in 1917 required to plough up two of his fields under reg. 2 (*m*) of the Defence of the Realm Regulations. These two arable fields were in 1919 laid down by the tenant as temporary pasture. On a claim by the tenant, who had left the farm in 1930 on a notice to quit by the present landlord who had purchased the farm in 1929, for disturbance under sect. 12 of the Agricultural Holdings Act, 1923 (c. 9), s. 12, he included particulars for an improvement of laying down those two arable fields as temporary pasture :—*Held :* the claim was enforceable as coming within the exact words of Sched. I., Part III., para. 28, of 1923 Act. The tenancy was to be deemed to have commenced for this purpose from 1918, that being the date when a new tenancy commenced with arable fields on the farm.—WARE *v.* DAVIES (1931), 101 L. J. K. B. 1 ; 146 L. T. 130, C. A.

239. *Add. Annotation :—As to* (2) **Refd.** Premier Dairies *v.* Garlick, [1920] 2 Ch. 17.

242a. Agricultural Holdings Act, 1908—Attempted exclusion of statutory compensation.]—*Re* MASTERS & DUVEEN, No. 267a, *post.*

255. *Add. Annotations :*—**Consd.** Simpson *v.* Crowle, [1921] 3 K. B. 243 ; Smythe *v.* Wiles, [1921] 2 K. B. 66. **Refd.** St. Magnus, etc., Parochial Church Council *v.* London Diocese (Chancellor), [1923] P. 38; Mansfield *v.* Robinson, [1928] 2 K. B. 353.

259. *Add. Annotations :*—**Apld.** Bradshaw *v.* Air Council, [1926] Ch. 329. **Refd.** Ellesmere *v.* I. R. Comrs. (1918), 88 L. J. K. B. 337 ; Haynes *v.* Aldridge Colliery Co. (1923), 130 L. T. 282; Mansfield *v.* Robinson, [1928] 2 K. B. 353.

264. After this case add as follows :—
See, further, Sect. 3, sub-sect. 3*b*, *post.*

SUB-SECT 1*a*.—COMPENSATION FOR INCREASED OR DIMINISHED VALUE OF HOLDING.

A. Compensation to Tenant.
See A. H. Act, 1923, s. 9.

B. Compensation to Landlord.
See A. H. Act, 1923, s. 10.

264a. Notice of claim—Time for giving—Agriculture Act, 1920 (c. 76).]—*Held :* the meaning of sect. 19 of the above Act taken as a whole was that the landlord should have a right of compensation for deterioration under the sect. if he gave a notice before the termination of the tenancy & not otherwise ; but if he had a right under contract to claim for deterioration apart from the sect., nothing in the sect. should interfere with that right.

A tenant held a farm as a yearly tenant under the landlord upon the terms, as the arbitrator found, of an agreement in writing under which the father of the tenant had

A lease entered into before Jan. 1, 1921, bound the tenant to adopt one of two rotations of cropping. The tenant adopted one of the prescribed rotations, with the result that he made an improvement upon his holding within Sched. I. of above Act. On quitting the holding at the termination of his tenancy he claimed compensation for the improvement from the landlords : —*Held :* he was entitled to compensation as for a voluntary improvement, in respect that he was not required by the lease to execute the particular improvement but was merely bound to adopt one or other of two prescribed methods of cultivation.—GIBSON *v.* SHERRET, [1928] S. C. 493.—**SCOT.**

PART V. SECT. 3, SUB-SECT. 1.—G.

sh. *Agricultural Holdings (Scotland) Act,* 1908 (c. 64) *—Sufficiency of notice.*] —A tenant who has, before the determination of his tenancy, made it clear to the landlord that he proposes to claim for unexhausted manures & feeding stuffs, but without furnishing the particulars or amounts, has sufficiently complied with s. 6 (2) of the above Act.—ROGER *v.* HUTCHESON, [1922] S. C. (H. L.) 140, 170.—**SCOT.**

PART V. SECT. 3, SUB-SECT. 1.—H. (a).

sj. *Agricultural Holdings (Scotland) Act,* 1923 (c. 10)—*"Question or difference"—What amounts to.*]—The purchaser of a farm, who became proprietor as at Whit-Sunday 1928, had entered into an agreement on May 7, 1928, with the tenant, that, in consideration of the tenant vacating the farm by June 30, 1928, the purchaser would (*inter alia*) take over at valuation certain crops, stock, & implements. The parties thereafter executed a submission to two arbiters & an oversman, by whom a valuation was made. In an action at the instance of the tenant against the new proprietor for sums due under the valuation :—*Held :* the submission did not involve any question or difference within Agricultural Holdings (Scotland) Act, 1923, s. 15 (1), in respect (*a*) that the new proprietor's obligation to take over the tenant's crops, stock, & implements arose, not "out of the termination of the tenancy," but from an express agreement between the parties ; & (*b*) that, on May 7, 1928, the date when the agreement to take over at valuation was entered into by the parties, the relationship of "landlord" & "tenant" did not exist between them ; &, accordingly, the submission was not incompetent because it did not take the form, required by sect. 16 (1) of the Act of submission to a single arbiter.—CAMERON *v.* NICOL, [1930] S. C. 1.—**SCOT.**

sk. ——*Effect of submission.*]—*Held :* when both parties to an agricultural valuation allow arbn. proceedings to be carried on by a method which is not in strict conformity with the provisions of Agricultural Holdings (Scotland) Act, 1923, s. 16, & the arbiter has issued his award, they are barred *personali exceptione* from objecting to the competence of the proceedings.—CAMERON *v.* NICOL, [1930] S. C. 1.—**SCOT.**

PART V. SECT. 3, SUB-SECT. 1.—H. (b).

254 i. *Award—Particulars not specified in.*]—The proprietor of a farm & the outgoing tenant, entered into a submission, whereby they referred the valuation of certain crops, stocks, & implements, agreed to be taken over by the proprietor, to two arbiters, & to an oversman to be appointed by the arbiters to act in the event of their differing in opinion. An award was issued signed by the two arbiters & the oversman, which contained nothing to show in respect of which, if any, of the items under valuation the arbiters had differed in their estimate, thereby rendering necessary a devolution on the oversman :—*Held :* the valuation belonged to a class of arbn. where a rigid conformity with formal procedure was not exacted ; &, accordingly, that the award was not invalid because it did not distinguish between items valued by the arbiters alone & items upon which the decision of the oversman had been rendered necessary.—CAMERON *v.* NICOL, [1930] S. C. 1.—**SCOT.**

sj. *What questions arbitrator may determine—Termination of tenancy—Agricultural Holdings (Scotland) Act,* 1923 (c. 10), *s.* 15.]—In a note of suspension & interdict brought by the landlords of a farm, craving the ct. to interdict proceedings in an arbn. under the above Act upon a claim by the tenant, who had vacated the farm in favour of a new occupier, for compensation for improvements, the complainers maintained that the tenancy had not terminated, & that the appointment of an arbiter under the Act was illegal :—*Held :* the question of the claimant's title to present a claim was not one of the matters remitted by the Act to the exclusive jurisdiction of the arbiter, but was a question precedent to the existence of a statutory claim, & the ct. had jurisdiction to entertain the action of interdict.—DONALDSON'S HOSPITAL (EDINBURGH) TRUSTEES *v.* ESSLEMONT, [1925] S. C. 199; *on appeal,* [1926] S. C. (H. L.) 68.—**SCOT.**

sk. *Form of arbitration—Arbitration between outgoing & incoming tenants—Agricultural Holdings (Scotland) Act,* 1908 (c. 64).]—There is nothing illegal in the outgoing & incoming tenants entering into an agreement for a common law arbn.—ROGER *v.* HUTCHESON, [1922] S. C. (H. L.) 140, 170.—**SCOT.**

for preparing & adjusting a special case fall to be dealt with by the arbiter.—THOMSON *v.* GALLOWAY, [1919] S. C. 611; 56 Sc. L. R. 521. —**SCOT.**

originally held the farm. On Aug. 20, 1920, the landlord served a notice to quit upon the tenant, which expired as to the land, other than the boozy pasture, on Feb. 2, 1922. The tenant gave up possession of the land except the boozy pasture, the tenancy of which did not expire until May 1, 1922, upon that date. On Mar. 28, 1922, the landlord gave notice of & particulars of a counterclaim against the tenant for waste wrongly committed or permitted by the tenant & for breach of contract or otherwise, whereby he claimed for neglect in the care of hedges & ditches on the land & dirty land :—*Held :* (1) the landlord's claim was not barred by sect. 19 of the above Act ; (2) the boozy pasture & the rest of the farm were held under one contract of tenancy ; the contract did not finally cease under sect. 10 (7) of the above Act until May 1, 1922, the date of the termination of the boozy tenancy, & the landlord's notice was therefore in time.—*Re* ARDEN & RUTTER, [1923] 2 K. B. 865 ; 130 L. T. 51 ; *sub nom.* ARDEN *v.* RUTTER, 92 L. J. K. B. 894, C. A.

Annotation :—As to (1) **Reld.** Lowther *v.* Clifford, [1927] 1 K. B. 130.

264b. —— —— **Agricultural Holdings Act, 1923 (c. 9), s. 16 (2)—Claims independent of Agricultural Holdings Acts.**]—OLIVE *v.* PAYNTER, [1932] 2 K. B. 666 ; 101 L. J. K. B. 786, C. A.

265a. —— **Right to compensation—Tenant holding over after notice to quit.**]—A tenancy was determined by notice to quit on a certain day. The tenant remained on in possession for about nine months, & was finally ejected. Two days before his ejectment he furnished details of his claim for compensation :—*Held :* the tenant, from the date when his notice expired, was not holding under a contract of tenancy, & the land which he persisted in occupying unlawfully was not a holding within sect. 11 of the above Act, & he, therefore, was not within the benefit of the Act.—CAVE *v.* PAGE (1923), 67 Sol. Jo. 659, C. A.

265b. —— **Liability to pay compensation—"Landlord"—Purchaser entitled to rents—Purchase not completed till after claim.**]—Certain landowners let a farm to tenants. In 1917 they gave notice to the tenants to quit at Michaelmas, 1918, with a view to the sale of the farm. In Oct. 1917, they agreed to sell the farm to a purchaser. On July 5, 1918, the tenants gave to the purchaser, who was then entitled to the rents & profits, notice in writing under sect. 1 (1) of the Act of 1914 of their intention to claim compensation in terms of sect. 11 of the Act of 1908. On July 18, 1918, the sale of the farm was completed :—*Held :* (1) the purchaser was the "landlord" within the Acts ; (2) the notice of intention to claim compensation was rightly given to him ; (3) he was liable to pay compensation.—BRADSHAW *v.* BIRD, [1920] 3 K. B. 144 ; 90 L. J. K. B. 221 ; 123 L. T. 703, C. A.

Annotations :—As to (1) **Expld.** Richards *v.* Pryse, [1927] 2 K. B. 76. *Generally,* **Consd.** Dale *v.* Hatfield Chase Corpn., [1922] 2 K. B. 282 ; Tombs *v.* Turvey (1923), 93 L. J. K. B. 785.

265c —— —— **Person entitled to rents at end of tenancy.**]—(1) Where the tenant of an agricultural holding, who has been disturbed in his tenancy, becomes entitled under sect. 11 of the above Act to compensation for loss in connection with the sale or removal of his household goods, implements, or stock on the condition, among others, of giving to the landlord a reasonable opportunity of making a valuation of such goods, etc., the question whether he has given such a reasonable opportunity is in each case a question of fact depending on the circumstances. The mere lapse of an interval of several months between notice of intention to claim compensation & sale or removal is not of itself sufficient to satisfy the condition.

(2) Where the tenant of an agricultural holding has given notice to his landlord under sect. 11, proviso (*b*), of his intention to claim compensation for disturbance, & the landlord before the appointment of an arbitrator under that sect. assigns the reversion, the person who is liable to pay such compensation as may be awarded is the person who is entitled to receive the rents at the termination of the tenancy, & the notice of intention to claim so given to the original landlord will enure for the benefit of the tenant as against such last-named person.

(3) Assuming sect. 48 (2) of the above Act to apply to proceedings for compensation for disturbance as well as for improvements, the commencement of the "proceedings" is not the service of notice of intention to claim compensation, but the appointment of the arbitrator.—DALE *v.* HATFIELD CHASE CORPN., [1922] 2 K. B. 282 ; 92 L. J. K. B. 237 ;

PART V. SECT. 3, SUB-SECT. 2.

sl. *Agricultural Holdings (Scotland) Act,* 1908 (*c.* 64)—*What questions arbitrator must determine.*]—Under s. 10 of the above Act it falls to the arbiter to determine questions connected with the time & validity of notices to quit & notices to claim compensation.—COWDRAY *v.* FERRIES, [1919] S. C. (H. L.) 27.—**SCOT.**

sm. *Agriculture Act,* 1920 (*c.* 76), *s.* 10—*Claim exceeding one year's rent—Damage proved less than one year's rent.*]—A tenant claimed compensation for disturbance to an amount exceeding one year's rent, & the claim went to arbn., in which it was proved that the damage sustained by him was less than one year's rent :—*Held :* the minimum amount of compensation payable to a tenant under Agriculture Act, 1920 (c. 76), s. 10, was an amount equal to one year's rent ; &, although as the matter had gone to arbn. a "dispute" had not been avoided, the tenant was still entitled to one year's rent & was not limited to the amount of damage actually proved.—M'HARG *v.* SPEIRS, [1924] S. C. 272.—**SCOT.**

sn. —— *Loss from error in valuation of waygoing grain crop.*]—Under the lease of a farm the landlord took over the waygoing crop of grain from the outgoing tenant at fiars prices, the quantity of the growing crop being ascertained by arbn. After threshing it was found that the quantity had been underestimated by the arbiters. The outgoing tenant claimed, under the above sect., as compensation for loss in connection with the sale of the farm produce, a sum representing the difference between the price he had received & the price of the actual quantity threshed :—*Held :* the loss was not "directly attributable to the quitting of the holding," but had arisen from an error of the arbiters.—MCGREGOR *v.* BOARD OF AGRICULTURE FOR SCOTLAND, [1925] S. C. 613.—**SCOT.**

so. *Agricultural Holdings (Scotland) Act,* 1923 (c. 10)—*Refusal of landlord to take over stock—Claim for loss on sale.*]—The tenant of a farm received notice to quit. Having taken over another farm with a bound stock, he sold his sheep at a displenishing sale, the landlord refusing to take them over. In a claim for compensation for the difference between the price realised & the "going concern" value :—*Held :* the loss was directly attributable to the quitting of the holding under sect. 12 (6) of above Act.—KESWICK *v.* WRIGHT, [1924] S. C. 766.—**SCOT.**

sq. —— *Tenant holding over after notice to quit—No right to compensation.*]—HENDRY *v.* WALKER (1927), S. L. T. 333.—**SCOT.**

sr. —— *Ejectment proceedings following notice to quit—Whether tenant entitled to compensation.*]—HENDRY *v.* WALKER (1927), S. L. T. 333.—**SCOT.**

128 L. T. 194; 87 J. P. 11; 20 L. G. R. 765, C. A.

Annotations :—As to (2) **Consd.** Tombs *v.* Turvey (1923), 93 L. J. K. B. 785. **Refd.** Richards *v.* Pryse, [1927] 2 K. B. 76. *Generally* **Refd.** Smith *v.* Metropolitan Properties Co., [1932] 1 K. B. 314.

266a. —— **Notice of claim—To whom given—Purchaser entitled to rents.**]—BRADSHAW *v.* BIRD, No. 265b, *ante*.

266b. —— —— —— **Landlord—Subsequent alienation of reversion.**]—DALE *v.* HATFIELD CHASE CORPN., No. 265c, *ante*.

266c. —— **Reasonable opportunity of making valuation—What amounts to.**]—DALE *v.* HATFIELD CHASE CORPN., No. 265c, *ante*.

266d. —— **Commencement of "proceedings"—What amounts to.**]—DALE *v.* HATFIELD CHASE CORPN., No. 265c, *ante*.

266e. Agriculture Act, 1920 (c. 76)—Right to compensation—Withdrawal of notice to quit—What amounts to.]—In Sept. 1920, a landlord gave to the tenant notice to quit his tenancy of a farm for which he was paying a yearly rental of £506 2*s*. On Dec. 31, 1920, the landlord wrote to the tenant: "I have received an offer of £670 *per annum* for your holding. If you choose to give me the same, you are most welcome to continue the tenancy" :—*Held :* having regard to sect. 10 of the above Act, the letter of Dec. 31, 1920, did not constitute an offer in writing to withdraw the notice to quit within the proviso to sect. 10 (1) of that Act.—*Re* PERRETT & BENNETT-STANFORD, [1922] 2 K. B. 592; 91 L. J. K. B. 930; 128 L. T. 57; 38 T. L. R. 849; *sub nom* PERRETT *v.* BENNETT-STANFORD 66 Sol. Jo. 680, C. A.

266f. —— —— **Ejectment proceedings following notice to quit.**]—The landlord of a farm served on the tenant a notice to quit on Mar. 25, 1923. Owing to the illness of his wife, the tenant did not quit the farmhouse at the expiry of the notice, but he quitted the land, save as under the custom of the country, immediately after the expiry of the notice. Ejectment proceedings were brought by the landlord & judgment was obtained by default of appearance. On being served with the notice to quit, the tenant duly served on the landlord a notice of intention to claim compensation for disturbance under sect. 10 of the above Act :—*Held :* if the tenant was ejected, the ejectment was in consequence of the notice to quit, &, therefore, the tenant had quitted the farm in consequence of the notice to quit terminating the tenancy, & the tenant was accordingly entitled to compensation under sect. 10 of the Act.—MILLS *v.* ROSE (1923), 68 Sol. Jo. 420, C. A.

266g. —— —— **Necessity for proof of loss or expense—Entire holding in occupation of sub-tenants.**]—The effect of sect. 10 (6) of the above Act is that as a condition precedent to his right to compensation for disturbance a tenant must prove that he has incurred some loss or some expense of the kind indicated in the sub-sect.; that on proof of that he is entitled as a minimum to one year's rent of the holding; but that unless he proves some loss or some expense of the kind indicated he does not bring himself within sub-sect. 6 & is not entitled to compensation. Therefore where a lease of a holding under the Act was duly determined by notice to quit & the holding was entirely in the occupation of sub-tenants whose sub-tenancies terminated without notice on the termination of the lease, & the lessee did not sell or remove any household goods, implements of husbandry, fixtures, farm produce or farm stock on or used in connection with the holding :—*Held :* he was not entitled to compensation for disturbance under sect. 10.—AGRICULTURE & FISHERIES MINISTER *v.* DEAN, [1924] 1 K. B. 851; 93 L. J. K. B. 374; 130 L. T. 709; 40 T. L. R. 285; 68 Sol. Jo. 401, C. A.

Annotation :—**Consd.** Westlake *v.* Page, [1926] 1 K. B. 298. **Refd.** Selleck *v.* Hellens (1928), 98 L. J. K. B. 214.

266h. **Notice of claim—Time for giving—Termination of tenancy"—Tenancy of different parts of holding expiring at different times.**]—A landlord let a farm, according to the custom of the country, upon a yearly tenancy on the terms that the tenant should enter into occupation of the main portion of the land on Apr. 6, & of the farmhouse, farm buildings, & the remainder of the land on May 13, & that "on the termination of the tenancy" he should give up possession of the different portions of the farm on the respective dates, there being one rent reserved for the whole farm :—*Held :* the "termination of the tenancy" for the purposes of sect. 10 (7) of the above Act took place on May 13, notwithstanding that the main portion of the premises had to be surrendered at the earlier date.—*Semble :* the proviso to sect. 18 (2) of the above Act applies only to a case where the tenant has been allowed by a landlord to remain on, after the cesser of the agreement of tenancy, under a new agreement.—SWINBURNE *v.* ANDREWS, [1923] 2 K. B. 483; 92 L. J. K. B. 889; 129 L. T. 650; 39 T. L. R. 545; 67 Sol. Jo. 726, C. A.

Annotation :—**Consd.** *Re* Arden & Rutter, [1923] 2 K. B. 865.

266i. **Given under Act subsequently repealed—Necessity for notice under repealing Act.**]—A tenant who had on Sept. 29, 1920, received notice to quit his farm on Sept. 29, 1921, gave notice on Nov. 17, 1920, to his landlord of his intention to claim compensation for disturbance under A. H. Act, 1908, s. 11. That sect. was repealed by the Act of 1920, which came into force on Jan 1, 1921, & by sect. 10 substituted a new right to compensation for disturbance. The tenant gave no notice of his intention to claim compensation under that sect. as required by sub-sect. 7 (*b*) thereof :—*Held :* not having given notice under sect. 10 of the Act of 1920, he had no right of claim under that sect., but his right of making a claim under A. H. Act, 1908, s. 11, was preserved by Interpretation Act, 1889 (c. 63), s. 38, notwithstanding the repeal of sect. 11.—HAMILTON-GELL *v.* WHITE, [1922] 2 K. B. 422; 91 L. J. K. B. 875; 127 L. T. 728; 38 T. L. R. 829; 67 Sol. Jo. 80, C. A.

Annotation :—**Consd.** Briggs *v.* Dryden, Talbot *v.* Vickers, [1925] 2 K. B. 667.

See, now, A. H. Act, 1923, s. 12.

266j. Agricultural Holdings Act, 1923 (c. 9)—Right to compensation—Refusal or failure to agree to arbitration.]—(1) A landlord of a holding gave the tenant notice to quit, & in the same document stated that he had no desire to terminate the tenancy if the tenant would agree to his demand that the rent should be

fixed by arbn. The tenant did not agree to arbn. :—*Held :* the tenant did not thereby disentitle himself to compensation, for the refusal or failure to agree to arbn. dealt with by sect. 12 (1) (e) of the above Act is a refusal or failure which has taken place before the date of the notice.

(2) It cannot be laid down as a matter of law, that in no case can the minimum compensation of one year's rent provided by sect. 12 (6) be reduced under the provisions of sect. 12 (8) if the tenant, having held two or more holdings as tenant, remains in possession of one of them. But the provisions of sect. 12 (8) have no application to a case in which the tenant remains in possession of the other holding or holdings, not as tenant, but as owner.—WESTLAKE *v.* PAGE, [1926] 1 K. B. 299 ; 95 L. J. K. B. 456 ; 134 L. T. 612, C. A.

266k. —— **Amount of compensation—Tenant holding two or more holdings.**]—WESTLAKE *v.* PAGE, No. 266j, *ante*.

266l. —— **Liability to pay compensation—"Landlord"—Agreement for sale—Whether purchaser entitled to rents.**]—In July, 1924, the owner of an estate, which included a farm in the occupation of tenants, agreed to sell the farm to a purchaser, who agreed to pay the purchase money in Oct. 1924. The agreement was subject to conditions of sale, by one of which the purchaser agreed to pay the balance of the purchase money on the day named in the contract, & in that respect time was to be of the essence of the contract ; & it was further agreed that "all rents & periodical outgoings" should be "apportioned up to the completion," & added to or deducted from the purchase money as the case might require. On Sept. 23, 1924, notice was given to the tenants to quit the farm on Sept. 29, 1925. The purchase was not in fact completed until Oct. 1925 :—*Held :* (1) "completion" in the condition of sale meant actual completion, & not the date named for completion ; (2) on Sept. 29, 1925, the vendor was the "person entitled to receive the rents & profits" of the farm within sect. 57, & he, & not the purchaser, was the "landlord" within sect. 12 & the person to pay compensation to the tenants.—RICHARDS *v.* PRYSE, [1927] 2 K. B. 76 ; 96 L. J. K. B. 743 ; 137 L. T. 170, C. A.

266m. —— **Notice of claim—By whom given—Joint tenancy.**]—W., who had been tenant of a farm for many years, entered into negotiations with his landlord to have his tenancy agreement, upon the termination thereof, transferred to himself & B., & as the result of those negotiations W. became joint tenant of the farm with B. at the request of, & for the protection of, the landlord. Upon the termination of W.'s tenancy B. paid W. for the tenant right & also provided the whole of the finance necessary for carrying on the farm. On Feb. 21, 1924, W. alone gave notice to quit. On Mar. 21, 1924, the landlord served notice to quit upon both tenants, upon the ground that they were not cultivating the farm according to the rules of good husbandry. Thereupon B. gave notice to the landlord of his intention to claim compensation :—*Held :* (1) the notice given by B., being the one of the joint tenants who owned the household goods & agricultural implements & had suffered loss by their removal or sale upon the expiration of the joint tenancy, was sufficient to give the arbitrator jurisdiction ; (2) it being the object of sect. 12 (7) (*b*) of the above Act that the landlord should have notice of what compensation was claimed against him, it would, in the case of a joint tenancy, be a great hardship upon the tenant who had a proper & valid claim for compensation which was to be defeated because his joint tenant, who had no such claim, had not joined in the notice.—HOWSON *v.* BUXTON (1928), 97 L. J. K. B. 749 ; 139 L. T. 504, C. A.

266n. —— **Notice to quit—Reason must be stated—Effect of notice giving alternative reasons.**]—A tenant in giving a notice to quit under sect. 12 (3) of above Act, on account of the landlord's refusal or failure to agree to the tenant's demand for arbn. as to the rent of the holding, is, as a condition precedent to his right to compensation for disturbance, bound to state correctly the reason for the notice which in fact exists, but he may put himself right by putting his notice in the alternative by stating that the notice given was either for the reason that the landlord had refused or that he had within a reasonable time failed to agree to the demand made on him by the tenant for arbn.

Where the landlord had within a reasonable time failed to agree to such a demand but had not refused to do so & the notice to quit wrongly stated that it was given by reason of the landlord's refusal to agree :—*Held :* the tenant could not succeed in his claim for compensation for disturbance.—SELLECK *v.* HELLENS (1928), 98 L. J. K. B. 214 ; 140 L. T. 353 ; 45 T. L. R. 179 ; 73 Sol. Jo. 76, C. A.

266o. —— —— —— **Form of notice.**]—The landlord of a holding served on the tenant notice to quit in the following form : "In accordance with sect. 12 (1) (*a*) & (*b*) of Agricultural Holdings Act, 1923 (c. 9), we hereby as agents for" the landlord "give you notice to quit," etc. The tenant, in accordance with this notice having quitted the holding, claimed compensation for disturbance, contending that the notice did not sufficiently state that it was given for any of the reasons specified in sect. 12 (1) of the Act, or did not specify for which of those reasons it was given :—*Held :* the notice to quit sufficiently stated that it was given for the reasons indicated in sect. 12 (1) (*a*) & (*b*), & was an effective notice to bar the tenant's claim to compensation if the allegations were sustained.—*Re* DIGBY & PENNY, [1932] 2 K. B. 491 ; 101 L. J. K. B. 615 ; 147 L. T. 221 ; 48 T. L. R. 403, C. A.

266oi. —— —— **By equitable owner of rents & profits—Estoppel.**]—FARROW *v.* ORTTEWELL (1932), 49 T. L. R. 28 ; 76 Sol. Jo. 831.

SUB-SECT. 3*a*.—COMPENSATION FOR ENFORCEMENT OF PROPER CULTIVATION.

. Corn Production Act, 1917 (c. 46), s. 9 (9)—Who is person interested—Tenant.]—(1) A notice to convert certain land into tillage, made under sub-sect. 1 of the above sect. & Defence of the Realm Regulations, 1914, reg. 2 M, was served on the owner of land who was in occupation. After the service of the

notice the owner agreed to let the land to a tenant who entered into occupation & carried out the requirements of the notice. The notice had not been served on the tenant. The tenant claimed compensation for loss alleged to have been suffered by him by reason of his having carried out the requirements of the notice, & the claim was referred to arbn. under the Act, & the arbitrator stated a case in which he asked the ct. certain questions :—*Held :* the tenant was a " person who was interested in the land in respect of which the notice was served," within sub-sect. 9 of the above sect., inasmuch as he was interested at the time when the loss was alleged to have occurred ; & the tenant came within the words of the sub-sect. " who suffers any loss by reason of the exercise of the powers conferred by this sect." & was entitled to compensation for the loss, if any, though the notice had not been served on him, as he had carried out the requirements of the notice.

(2) Two notices were served, each in respect of a different field in a separate farm occupied by the same tenant :—*Held :* in the circumstances, the loss, if any, in respect of each field should be assessed separately.

(3) The tenant of certain land in respect of which a notice to plough had been served under the Act sent in a claim for compensation on Sept. 28, 1918, for the year 1918, & in 1919 he sent in a claim for compensation for 1919. The arbn. to assess compensation was held after both claims had been sent in : —*Held :* the assessment should not be based on the loss, if any, in each year separately ; (BANKES, L.J.) the arbitrator should take the experience of the two years, setting off any profit in one year against any loss in the other ; (SCRUTTON & ATKIN, L.JJ.) the whole effect of the exercise of the powers conferred by the sect. had to be considered by the arbitrator, including an estimate of the probable loss or profit in the future. —*Re* TODD & NORTH RIDING OF YORKSHIRE AGRICULTURAL EXECUTIVE COMMITTEE, [1921] 1 K. B. 281 ; 90 L. J. K. B. 228 : 124 L. T. 407 ; 85 J. P. 89 ; 18 L. G. R. 790, C. A.

266q. —— Separate notices as to parts of two farms —Occupied by one tenant—Method of assessment.]—*Re* TODD & NORTH RIDING OF YORKSHIRE AGRICULTURAL EXECUTIVE COMMITTEE, No. 266p, *ante*.

266r. —— Separate claims by tenant for two successive years—Method of assessment.]—*Re* TODD & NORTH RIDING OF YORKSHIRE AGRICULTURAL EXECUTIVE COMMITTEE, No. 266p, *ante*.

266s. —— Award—Jurisdiction of court to remit —Award bad on face for ambiguity or uncertainty.]—In an arbn. for the purpose of awarding compensation under the above Act, the High Ct. may remit to the arbitrator an award bad on the face of it for ambiguity or uncertainty, in accordance with Arbitration Act, 1889 (c. 49), although by sect. 11, sub-sect. 1, of the above Act, it is provided that arbns. thereunder shall be in accordance with A. H. Act, 1908, Sched. 2, which excludes Arbitration Act, 1889.—MURRAY *v.* DALTON (1920), 90 L. J. K. B. 401 ; 124 L. T. 762 ; 37 T. L. R. 234 ; 65 Sol. Jo. 155, D. C.

Annotation :—**Reld.** *Re* Jones & Carter, [1922] 2 Ch. 599.

Control of food in wartime generally, *see* FOOD & DRUGS, Vol. XXV., pp. 132 *et seq.*

SUB-SECT. 3*b*.—ASCERTAINMENT OF COMPENSATION.

266t. In respect of what holdings compensation payable—Tenant sub-letting farmhouse.]—By an agreement of tenancy a landlord demised to the tenant a farm of 1,000 acres together with a farmhouse & some cottages. There was a provision that the tenant should use the demised premises for farming purposes. The tenant subsequently, with the permission of the landlord, sub-let the farmhouse to a lady who used it as a house for paying guests. Upon the determination of the lease, the tenant made a claim for compensation under A. H. Act, 1908 :—*Held :* the ct. must have regard to the substance of what had been done ; by the lease the holding was an agricultural one, & the fact that the farmhouse had been let to a sub-tenant did not cause it to cease to be a " holding " within the Act.—*Re* RUSSELL & HARDING (1922), 128 L. T. 476 ; 39 T. L. R. 92 ; 67 Sol. Jo. 123, C. A.

—— Compensation for Improvements—Under Agricultural Holdings Act, 1908.] — *See* original volume, p. 42, Nos. 230–232.

266u. Notice of claim—To whom given—Purchaser —Taking subject to existing tenancies.]—Applt. was the tenant of an agricultural holding under a tenancy expiring on Sept. 29, 1922. In May, 1922, the landlord contracted to sell the holding, subject to the tenancy, to resp., completion to take place on Sept. 29, 1922. The completion in fact took place on Nov. 2. The contract of sale contained a general condition that the rents, profits or possession of the property should be received or retained & the outgoings discharged by the vendor up to the time appointed for completion, & that current rents should be apportioned. By a special condition it was provided that for the purpose of this general condition any rent

PART V. SECT. 3, SUB-SECT. 3a.

st. *Agricultural Holdings (Scotland) Act*, 1908 (c. 64)—*Appeal—Whether maintainable from opinion of sheriff on case stated—Claim under Corn Production Act*, 1917 (c. 46).]—JOHNSON-FERGUSON *v.* BOARD OF AGRICULTURE, [1921] S. C. 103 ; 58 Sc. L. R. 96.—**SCOT.**

PART V. SECT. 3, SUB-SECT. 3b.

266u i. *Particulars of claim—Sufficiency—Agricultural Holdings (Scotland) Act*, 1923 (c. 10), *s.* 15 (2).]—By a letter, written on receipt of a notice from the tenant of his intention to terminate his tenancy of a sheep farm, the landlord intimated that he reserved his claim in respect of depletion of the sheep stock ; & by a second letter, written within two months after the termination of the tenancy, in which he referred to his former letter, he stated that only 51 per cent. of the sheep stock had been delivered to the incoming tenant, & that the amount of the claim would be intimated when the exact shortage was determined :—*Held :* (1) in view of the severity of the penalty attached to non-compliance, the requirements of the above sub-sect. were sufficiently complied with if fair notice was given to the opposite party of the nature of the claim against him & of the case he had to meet ; (2) the letters gave such notice, although they did not state the legal basis of the claim or its actual amount.—MONTROSE (DUKE) *v.* HART, [1925] S. C. 160.—**SCOT.**

sa. *Agricultural Holdings (Scotland) Act*, 1908 (c. 64)—*Appeal—Decision of court on case stated—Binding on arbitrator.*]—MITCHELL-GILL *v.* BUCHAN, [1921] S. C. 390 ; 58 Sc. L. R. 371.—**SCOT.**

payable on Sept. 29 was to be deemed "current rent," & was to be payable by the purchaser on completion. After the determination of the tenancy the purchaser as "landlord" made a claim against the tenant for dilapidations, & the tenant counterclaimed for compensation:—*Held:* the purchaser was not at the date of the termination of the tenancy the "landlord" within A. H. Act, 1908, s. 48, & Agriculture Act, 1920 (c. 76), s. 18.—TOMBS *v.* TURVEY (1923), 93 L. J. K. B. 785; 131 L. T. 330; 68 Sol. Jo. 385, C. A.

—— **For compensation for improvements—Under Agricultural Holdings Act, 1908.**]—*See* original volume, p. 46, Nos. 245–250.

—— **For compensation to landlord for deterioration.**]—*See* No. 264a, *ante*.

—— **For compensation for disturbance—Under Agricultural Holdings Act, 1908.**]—*See* original volume, p. 48, No. 266; & Nos. 265b, 265c, *ante*.

Under Agriculture Act, 1920 (c. 76).]—*See* Nos. 266h, 266i, *ante*.

266v. Particulars of claim—Sufficiency.]—*Held:* having regard to the severity of the penalty attached to non-compliance with Agriculture Act, 1920 (c. 76), s. 18 (2), namely, total extinguishment of the claim, the presumption was that the requirement of "particulars" was not intended to be construed strictly, &, for the purpose of keeping the claim alive & enabling the parties to get before the arbitrator, a less degree of particularity was required to satisfy the sect. than would be required of particulars of a statement of claim in an action, notwithstanding that when the parties get before the arbitrator he might be of opinion that the particulars were insufficient, & might order further & better particulars to be given.—JONES *v.* EVANS, [1923] 1 K. B. 12; 92 L. J. K. B. 35; 128 L. T. 228, C. A.

Annotation:—**Apld.** *Re* Agricultural Holdings Act, 1923, O'Connor *v.* Brewin (1932), 76 Sol. Jo. 511.

266w. —— ——.]—*Re* AGRICULTURAL HOLDINGS ACT, 1923, O'CONNOR *v.* BREWIN (1932), 101 L. J. 706; 147 L. T. 386; 76 Sol. Jo. 511, C. A.

266x. —— —— **Question of fact.**]—OLIVE *v.* PAYNTER, 2 K. B. 666, C. A.

266y. Award—Setting aside—Jurisdiction of court—Error on face of award.]—The inherent jurisdiction of the High Ct. to set aside an award under A. H. Act, 1908, on the ground of error appearing on the face of it where there has been no misconduct on the part of the arbitrator is not taken away by that Act. That jurisdiction was not excluded by Arbitration Act, 1889 (c. 49), & when the jurisdiction under that Act with reference to arbn. proceedings under the A. H. Act, 1908, was transferred to the county ct. by that Act, the inherent jurisdiction of the High Ct. in those matters was neither expressly nor by implication transferred to it.—*Re* JONES & CARTER, [1922] 2 Ch. 599; 91 L. J. Ch. 824; 127 L. T. 622; 38 T. L. R. 779; 66 Sol. Jo. 611, C. A.

Annotation:—**Consd.** Horrell *v.* St. John of Bletso, [1928] 2 K. B. 616.

266z. —— —— **Time for notice of motion to set aside.**]—In an arbn. under the A. H. Act, 1908, the award was made on Apr. 8, 1921, & on June 3 applt. gave notice of motion to set aside the award on various grounds. There was no rule either under County Cts. Act, 1888 (c. 43), or under A. H. Act, 1908, dealing with the time within which a notice of motion to set aside an award must be given:—*Held:* the words "principles of practice" in County Cts. Act. 1888 (c. 43), s. 164. did not refer to specific rules of the High Ct., & the time limit of six weeks under R. S. C., Ord. 64, r. 14, was not a "principle of practice" within that sect. of the Act; therefore the only time limit applicable in the present case was under Stat. Limitations & under the doctrine of laches, & the motion to set aside the award was made in time.—MCCREAGH *v.* FREARSON (1921), 91 L. J. K. B. 365; 126 L. T. 601, D. C.

266aa. —— **Order directing arbitrator to state special case—Appeal lies to Divisional Court.**]—STEVENS *v.* DOWNHAM, ISLE OF ELY (FEOFFEES OF POOR LANDS), [1926] W. N. 168.

266bb. —— **No power to orderarbitrat or to state special case on question not within submission to arbitration.**] — STEVENS *v.* DOWNHAM, ISLE OF ELY (FEOFFEES OF POOR LANDS), [1926] W. N. 168.

—— **Of compensation for improvements—Under Agricultural Holdings Act, 1908.**] — *See* original volume, p. 47, No. 254–256.

266cc. Recovery of compensation agreed or awarded—In what court.]—A. H. Act, 1923, s. 19, does not give exclusive jurisdiction to the county ct. in all cases & prevent an action from being brought to recover the sum in the High Ct., when it is in excess of the amount ordinarily recoverable in the county ct.—HORRELL *v.* ST. JOHN OF BLETSO (LORD), [1928] 2 K. B. 616; *sub nom.* HORRELL *v.* BLETSO, 97 L. J. K. B. 655; 139 L. T. 400.

266dd. Costs—Agreement as to—Validity.]—The parties to an arbn. under A. H. Act, 1923, agreed beforehand that the successful party should have costs on the High Ct. scale. The agreement was not communicated to the arbitrator, who gave his award in favour of the landlord, & awarded that each party should pay his own costs. In an action by the landlord to enforce the agreement the judge gave judgment for the tenants, on the ground that the Act gave discretion to the arbitrator as to costs:—*Held:* the agreement was valid & enforceable.—MANSFIELD *v.* ROBINSON, [1928] 2 K. B. 353; 97 L. J. K. B. 466; 139 L. T. 349; 92 J. P. 126; 44 T. L. R. 518, D. C.

267a. —— **"Treated as a market garden."**]—(1) *Held:* the word "treated" in sect. 42 (1) of the above Act, in the collocation in which it was there used did not mean simply that the holding should be in use or cultivation as a market garden, but that it should be let by one person as landlord & occupied by the other as tenant as a market garden, & so treated as between them for the purpose of govening their rights in respect of the holding as a market garden.

By an agreement in writing dated Dec. 31, 1919, & made between the landlord of the one part & the tenant therein described as "market gardener" of the other part, it was agreed (clause 1): that the landlord should

let & the tenant should take the farm therein described for the term of one year from Sept. 19, 1919, & so on from year to year at the yearly rent of £185 by half-yearly payments on Mar. 25 & Sept. 29 in each year, & that the tenant should pay to the landlord as a further rent at the rate of £6 per cent. *per annum* on all sums of money expended by the landlord in the supply of any fruit trees during the tenancy. By clause 7 the tenant was to cultivate the land on the best & most approved system of gardening in general practice in the neighbourhood, & was not to cut down, grub up or destroy any fruit trees growing in or upon the land, or at any time to be planted thereon, under the provisions of the agreement, without the consent in writing of the landlord or his agent first had & obtained. By clause 9 the landlord was during the term to supply the tenant at his own expense with all fruit trees which might at any time be agreed between the landlord & tenant to be necessary, & the tenant was to pay a certain additional rent in respect of the fruit trees so supplied. Clause 11 contained the following proviso: "That nothing herein contained shall be deemed to be an agreement by the landlord that the premises hereby demised or any part thereof shall be let or treated as a market garden or give rise to a claim for compensation for fruit trees or bushes under A. H. Act, 1908, or any statutory modification thereof": —*Held:* (2) clause 11 of the agreement contained the clearest possible expression of the intention of the parties that the holding was not to be treated as a market garden; there was therefore no agreement in writing within sect. 42 (1) of the Act, by which it was agreed that it should be let or treated as a market garden, & therefore no claim to compensation on that basis arose, because the existence of such an agreement was a condition precedent to such a claim; (3) the agreement was not one which was avoided by sect. 5 of the Act, because the condition precedent to the tenant having the right to claim compensation had not been satisfied.—*Re* MASTERS & DUVEEN, [1923] 2 K. B. 729; 68 Sol. Jo. 11; *sub nom.* MASTERS *v.* DUVEEN, 93 L. J. K. B. 57; 130 L. T. 13, C. A.

267b. Market garden—What is—Garden of country house—Sale of produce.]—The fact that the occupier of a country house sells regularly one-half of the produce of the gardens occupied therewith does not constitute the gardens a market garden.—BICKERDIKE *v.* LUCY, [1920] 1 K. B. 707; 89 L. J. K. B. 558; 84 J. P. 61; 36 T. L. R. 210; 64 Sol. Jo. 257; 18 L. G. R. 207, D. C.

Annotation:—**Refd.** Lowther *v.* Clifford (1925), 90 J. P. 55.

267c. —— ——.]—Land was cultivated in order that the crops might be sold, & the crops included fruit & rhubarb:—*Held:* (1) the land was a market garden within A. H. Act, 1923, s. 57; (2) having regard to sect. 54 & other sects. of that Act, sect. 16 should not be read with an unrestricted meaning, & the landlord's right of action to recover the expense of making up a road had not been affected by the provision for reference to arbn. in that sect. (3) *Semble:* sect. 16 deals with procedure.—LOWTHER *v.* CLIFFORD, [1927] 1 K. B. 130, 95 L. J. K. B. 576, 135 L. T. 200; 90 J. P. 113; 42 T. L. R. 432; 70 Sol. Jo. 544; 24 L. G. R. 231, C. A.

Annotations:—*As to* (2) **Folld.** Olive *v.* Paynter, [1932] W. N. 179. *As to* (3) **Refd.** Mansfield. *v.* Robinson, [1928] 2 K. B. 353.

267d. "Let or treated as a market garden". Part of premises treated as market garden.]—SANDERS-JACOB *v.* YATES, [1932] W. N. 260; 174 L. T. Jo. 469.

Part VI.—Fixtures.

268. *Add. Annotations:*—**Consd.** *Re* Mann & Harvey (1920), 123 L. T. 242. **Refd.** Pole-Carew *v.* Western Counties & General Manure Co., [1920] 2 Ch. 97.

268a. —— Removal by tenant—Agricultural Holdings Act, 1908, s. 21—Power to contract out of Act.]—A. H. Act, 1908, contains no prohibition against the parties to a lease or tenancy contracting themselves out of the provisions of sect. 21 of the Act, & it is therefore competent to them to do so.

A lease of a farm contained a covenant by the lessee to deliver up at the end of the term all the demised premises & all new & other buildings & erections thereon & all such fixtures as were in anywise affixed or fastened to the freehold of the premises:—*Held:* the covenant effectually excluded the provisions of sect. 21 of the Act, & the tenant was not entitled to remove certain buildings & fixtures erected & affixed by him during the term.—PREMIER DAIRIES *v.* GARLICK, [1920] 2 Ch. 17; 89 L. J. Ch. 332; 123 L. T. 44; 64 Sol. Jo. 375.

268b. —— —— No notice by tenant of intention to remove—Claim by tenant for loss on removal.]—An agricultural tenant who at the expiration of his tenancy omits to give to the landlord, under A. H. Act, 1908, s. 21, notice of his intention to remove a fixture or building, whereby the landlord is prevented from exercising the option given to him by the Act to purchase the same, cannot afterwards claim compensation for expenses or loss suffered through the removal under A. H. Act, 1914, s. 1, & A. H. Act, 1908,

PART VI.

m i. ——.]—Where a lease of farm land provides that the lessee shall have the right, within a specified time after the expiration of the term, to remove any fence which he may have erected during his occupancy, & he erects a fence consisting of strands of wire carried on wooden pickets, the pickets & wire become part of the land, subject to the lessee's contractual right to sever them, thereby restoring them to the condition of chattels, & to remove them.—CHERRY *v.* BREDIN (Sask.), [1927] 3 D. L. R. 326; [1927] 2 W. W. R. 314.—**CAN.**

n. (p. 49) For "SASKATCHEWAN *v.* GOMBAR" read "SASKATCHEWAN ELBOW WHEAT LAND CO. *v.* GOMBAR."

n (p. 49) i. —— *Windmill & stable windows.*]—A windmill, wire fencing & windows in a stable, erected or furnished by a tenant of agricultural land:—*Held:* in view of the degree of annexation & the object of the annexation, to be removable by the tenant.—CARSCALLEN *v.* LEESON (Alta.), [1927] 4 D. L. R. 797; [1927] 3 W. W. R. 425. —**CAN.**

t. (p. 49) For "SASKATCHEWAN *v.* GOMBAR" read "SASKATCHEWAN ELBOW WHEAT LAND CO. *v.* GOMBAR."

s. 11.—*Re* HARVEY & MANN (1920), 89 L. J. K. B. 687; *sub nom. Re* MANN & HARVEY, 123 L. T. 242, C. A.

271. *Add. Annotation :*—**Refd.** Pole-Carew *v.* Western Counties & General Manure Co., [1920] 2 Ch. 97.

273. *Add. Annotation :*—*As to* (3) **Refd.** Vaudeville Electric Cinema *v.* Muriset, [1923] 2 Ch. 74.

275. *Add. Annotation :*—**Consd.** *Re* Mann & Harvey (1920), 123 L. T. 242.

276. *Add. Annotation :*—*As to* (4) **Refd.** Premier Dairies *v.* Garlick, [1920] 2 Ch. 17.

277. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Rogerstone Brick & Stone Co., Southall *v.* Wescomb, [1919] 1 Ch. 110.

Part VIII.—Growing Crops and Crops, Emblements, and Gleaning.

NOTE.—*Stat. Frauds, s.* 4, *is now replaced by Law of Property Act*, 1925 (*c.* 20), *s.* 40.

280. *Add. Annotations :*—**Refd.** Richards *v.* [1921] 1 Ch. 90; Back *v.* Daniels (1924), 69 Sol. Jo. 160.

286. *Add Annotation :*—**Consd.** Stephenson *v.* Thompson, [1924] 2 K B. 240.

288. *Add. Annotation :*—**Refd.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174.

296. *Add. Annotations :*—**Consd.** Stephenson *v.* Thompson, [1924] 2 K. B. 240. **Refd.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174.

298. *Add. Annotation :*—**Refd.** Back *v.* Daniels (1924), 69 Sol. Jo. 160.

304. *Add. Annotations :*—**Consd.** Lebeaupin *v.* Crispin, [1920] 2 K B. 714. **Expld. & Distd.** *Re* Wait, [1927] 1 Ch. 606.

310a. —— ——.]—The owner of the herbage may maintain trespass *quare clausum fregit.*—

PART VIII. SECT. 1.

280 i. *Sale—Interest in land—Passing before severance—Statute of Frauds—Grass*]—ROBINSON *v.* LONG, [1923] 3 D. L. R. 918.—**CAN.**

286 ii. —— —— —— —— ——.]—As a general rule a contract for the sale of standing timber which is not to be severed immediately is a sale of an interest in land.—HANDY *v.* CARRUTHERS (1893), 25 O. R. 279.—**CAN.**

286 iii. —— —— —— —— ——.]—MCKENZIE *v.* HARVEY & BLANCHARD, [1930] 1 D. L. R. 547.—**CAN.**

286 iv. —— —— —— —— ——.]—MACMILLAN *v.* MCDONALD, [1930] 1 D. L. R. 667.—**CAN.**

286 v. —— —— —— —— ——.]—*Held :* sale of timber for the removal of which the purchaser was to have as much time as he desired, was the sale of an interest in land.—KELLY PIANO CO. *v.* NASH (1931), 44 B. C. R. 14.—**CAN.**

286 vi. —— —— *Dependent on terms of contract.*]—The question whether a contract relating to timber constitutes a sale of chattels or relates to an interest in land depends on the terms of the contract. A contract for the sale of standing timber to be cut & removed by the buyer, who is given "as much time as he desires" to remove it, is one which deals with an interest in land within the meaning of sect. 34 of Land Registry Act, R. S. B. C., 1924, &, therefore, it is one which must be registered thereunder in order to pass such interest.—CARLSON *v.* DUNCAN, [1931] 2 W. W. R. 343; 3 D. L. R. 570; 44 B. C. R. 14.—**CAN.**

286 vii. —— —— "*Orchard or fruit lands*"—*Soldier's Settlement Act.*]—*Held :* the sale of "orchard or fruit lands," mentioned in sect. 59 (c) of Soldier's Settlement Act, 1919, though providing for a valuation of the trees apart from the land, is nevertheless a sale of "orchard or fruit lands," which is not personal property. An intention in a statute to depart from a common law rule would need to be expressed with the utmost clarity, & sect. 59 (*c*) does not pretend to enact that planted & growing fruit trees are to be treated as chattels or personal property.—MCCLELLAN *v.* R., [1932] EX. C. R. 18; *on appeal*, [1932] S. C. R. 617; 4 D. L. R. 79.—**CAN.**

b i. —.]—MESSERVEY *v.* CENTRAL CANADA CANNING CO., [1923] 4 D. L. R. 1202; 3 W. W. R. 365.—**CAN.**

b ii. —— ——.]—By an agreement in writing pltf. contracted (*inter alia*) to sell to deft. 14 acres of swedes & 16 acres of turnips for 1931 feed. Subsequently, on account of the lateness of the season, the parties verbally agreed that the 14 acres intended to be sown in swedes should be sown in turnips. The crop became infected with a disease & deft. did not put his sheep on to eat any part of the crop. Pltf. required the use of the 30 acres for cultivating for the 1932 harvest, & alleging that he was prevented from so doing by deft.'s neglect to clear off the turnips, claimed £20 damages for breach of contract in addition to £180 purchase price :—*Held :* the crops were "goods" within Sale of Goods Act, 1908, & the second contract, being oral, was unenforceable.—SCULLY *v.* SOUTH, [1931] N. Z. L. R. 1187.—**N.Z.**

e i. —— ——.]—Crops growing at the completion of a sale of land pass to the purchaser, unless there be a stipulation to the contrary.—ANDERSON *v.* STASIUK, [1926] 1 D. L. R 347; [1926] 1 W. W. R. 107; 20 Sask. L. R. 269.—**CAN.**

A conveyance by a mtgee. under a power of sale entitles the purchaser to the growing crops.—DYCK *v.* DYCK, [1926] 3 W. W. R. 762; [1927] 1 D. L. R. 458; 36 Man. L. R. 210.—**CAN.**

e iii. —— ——.]—Growing crops are "goods" within Sale of Goods Act when there is an agreement that they are to be severed under the contract of sale; but, otherwise, they are part of the land & pass with it.—SHEWCHUK *v.* SEAFRED, [1927] 3 D. L. R. 280; [1927] 2 W. W. R. 207; 36 Man. L. R. 469.—**CAN.**

e iv. —— *Right of vendor to crop on cancellation of contract—Who entitled to cut crops.*]—A provision in an agreement for the sale of land that the vendor, on becoming entitled to cancel the contract, shall have the right to enter into possession & to possess "the growing crop," does not give him any right to crops that have been cut & which thereby became chattels.—CANADIAN PACIFIC RY. CO. *v.* STEWART (Sask.), [1927] 3 D. L. R. 555; [1927] 2 W. W. R. 385.—**CAN.**

g i. *Permit to cut hay—Cancellation if land leased.*]—*Held :* the permit was not cancelled by only a part of the land being leased.—DECOCK *v.* BARRAGER (1909), 19 Man. L. R. 34.—**CAN.**

p i. —— *Right of devisee to crops sown by share tenant—& growing at testator's death.*]—*Held :* as testator's interest in the wheat while growing arose out of the agreement, which amounted to a severance of the crop from the land, the money payable for testator's share in the crop fell into the residue of the estate.—*Re* BURGIN, [1922] V. L. R. 686.—**AUS.**

p ii. —— *Cost of threshing.*]—A lessor on the crop-payment plan agreed to pay one-half the cost of threshing :—*Held :* he was liable for one-half of the cost of hauling the sheaves from the stook to the thresher.—TOCHER *v.* JOHNSON (1922), 68 D. L. R. 768; 32 Man. L. R. 356; [1922] 2 W. W. R. 616.—**CAN.**

p iii. —— *Failure of lessor to supply seed—Measure of damages.*]—BEAMAN *v.* TULLY (Sask.), [1927] 4 D. L. R. 143; [1927] 2 W. W. R. 953.—**CAN.**

p iv —— *Crop-payment covenant—On whom binding.*]—*Held :* binding only on the purchaser & his successors in interest under the covenant.—*Re* SASKATCHEWAN CO-OPERATIVE WHEAT PRODUCERS, LTD., *Re* SENGER & HOUCK (Sask.), [1927] 4 D. L. R. 1090; [1927] 3 W. W. R. 547.—**CAN.**

sf. *Licence to sow crop—Implied right to benefit from crop—Condition precedent.*]—Where a licence to fallow was given by A. & fallowing was done & a crop put in on the land by B., but the evidence also showed that such licence, although coupled with an interest, depended on an express condition that the licencee should have the benefit of the crop only if a contract for the sale of the land was completed, on the contract not being completed :—*Held :* the licence, although coupled with an interest, did not confer any right to the crop on the licencee. Also, on the evidence, apart from the express condition, there was an implied condition to the same effect. Further, on the evidence, the condition was a condition precedent.—FERRES *v.* COPE, [1928] S. A. S. R. 415.—**AUS.**

PICKETT *v.* BUTLER (1844), 3 L. T. O. S. 39, 183.

311a. *S. P.* ARCHER *v.* SADLER (1859), 1 F. & F. 481, N. P.

311b. —.]—At an auction sale of grass crops held at a farm pltf. purchased the crop of swedes in one of the fields, & deft. purchased the grass on an adjoining field. One of the conditions upon which pltf. purchased the crop of swedes was that he should not remove from the field more than one-half of the crop of swedes, the other half having to be consumed on the field. Deft. put a number of sheep into his field of grass, & the sheep got into pltf.'s field of swedes & did considerable damage to the swedes :—*Held :* the fact that the right of pltf. to remove the swedes from the field was limited to one-half of the crop did not prevent him from maintaining an action of trespass in respect of the damage done by deft.'s sheep, as pltf. had such an exclusive right of possession in the crop as would entitle him to maintain an action of trespass.—WELLAWAY *v.* COURTIER, [1918] 1 K. B. 200 ; 87 L. J. K. B. 299 ; 118 L. T. 256 ; 34 T. L. R. 115 ; 62 Sol. Jo. 161, D. C.

Annotation :—Richards *v.* Davies, [1921] 1 Ch. 90.

315. *Add. Annotations :—As to* (1) **Refd.** Brightman *v.* Tate (1919), 35 T. L. R. 209 ; Gurney *v.* Houghton (1920), 123 L. T. 706 ; Hudson's Bay Co. *v.* Maclay (1920), 36 T. L. R. 469 ; Newcastle Breweries *v.* R., [1920] 1 K. B. 854 ; Shutler *v.* Rolfe (1920), 36 T. L. R. 828 ; R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

317. *Add. Annotation :*—**Refd.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174.

332a. —— **Not lessee for life.**]—KNEVIT *v.* POOLE (1601), Gouldsb. 143 ; Cro. Eliz. 463 ; 75 E. R. 1053.

Part IX.—Trees and Timber.

352a. —— —— ——.]—*Re* TOWER'S CONTRACT, [1924] W. N. 331.

366. *Add Annotation :*—**Refd.** Horlick *v.* Scully, [1927] 2 Ch 150.

392. *Add. Annotation :*—**Refd.** Horlick *v.* Scully, [1927] 2 Ch. 150.

395. *Add. Citation :*—15 W. R. 640.

396. *Add. Annotations :*—**Refd.** De Silva *v.* Korossa (Ceylon) Rubber Co. (1919), 88 L. J. P. C. 54 ; Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341 ; Brooke *v.* Bool, [1928] 2 K. B. 578.

402. *Add. Annotation :*—**Refd.** Chowood, Ltd. *v.* Lyall (1930), 143 L. T. 546.

404. *Add. Annotations :*—**Distd.** Noble *v.* Harrison, [1926] 2 K. B. 332. **Refd.** Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226.

405. *Add. Annotations :—As to* (1) **Refd.** Noble *v.* Harrison, [1926] 2 K. B 332. *As to* (2) **Refd.** Collis *v.* Amphlett (1919), 89 L. J. Ch. 101 ; Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341. *As to* (3) **Refd.** Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341. *As to* (4) **Consd.** Collins *v.* Amphlett (1919), 89 L. J. Ch. 101. **Refd.** Mills *v.* Brooker, [1919] 1 K. B. 555 ; Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341.

406. *Add. Annotations :*—**Consd.** Collis *v.* Amphlett (1919), 89 L. J. Ch. 101. **Refd.** Mills *v.* Brooker, [1919] 1 K. B. 555 ; Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341 ; Noble *v.* Harrison, [1926] 2 K. B. 332.

406a. —— —— **Right to appropriate fruit.**]—Where the branches of fruit trees growing near their owner's boundary overhang the land of the adjoining owner, the right of the adjoining owner to lop the branches does not carry with it the right to pick & appropriate the fruit, & if he does so he is guilty of conversion & liable to the owner for its value.—MILLS *v.* BROOKER, [1919] 1 K. B. 555 ; 88 L. J. K. B. 950 ; 121 L. T. 254 ; 35 T. L. R. 261 ; 63 Sol. Jo. 431 ; 17 L. G. R. 238, D. C.

407. *Add. Annotation :*—**Refd.** Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341.

412. *Add. Annotation :*—**Refd.** Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341.

418. *Add. Annotation :*—**Refd.** Musgrove *v.* Pandelis, [1919] 2 K. B. 43.

419. *Add. Annotation :*—**Refd.** Derry *v.* Sanders, [1919] 1 K. B. 223.

PART VIII. SECT. 2.

g i. —— *Tenant whose estate forfeited.*]—A tenant whose term is ended because of his own default resulting in a forfeiture is not entitled to the crops growing at the time of the default.—SWENSON *v.* MCILMOYLE, [1930] 2 W. W. R. 382 ; 3 D. L. R. 959.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 1.

403 iii. —— —— *Property in severed portion.*]—Where W. cuts off that portion of a tree overhanging his lot, the trunk of which is on L.'s lot, although the ownership of the fallen portion is in L. & he has the right to enter on W.'s lot & take it away, there is no obligation on the part of W. to deliver the cut portion to L.—LOVEROCK *v.* WEBB (1921), 70 D. L. R. 748 ; 30 B. C. R. 327.—**CAN.**

403 iv. —— —— ——.]—The owner of land may lop branches overhanging his land without previous notice to the owner of the tree, but may not keep the branches so lopped down for himself.—DE VILLIERS *v.* O'SULLIVAN (1883), 2 S. C. 251.—**S. AF.**

403 v. —— ——.]—A person is entitled to cut off those portions of trees growing on his neighbour's land which overhang his land.—VISHNU JAGANNATH JOSHI *v.* VASUDEP RAGHUNATH OKA (1918), I. L. R. 43 Bom. 164.—**IND.**

403 vi. *S. P.* MAUNG PO THAUNG *v.* MA GYI (1923), I. L. R. 1 Ran. 281.—**IND.**

407 ia. —— ——.]—Where the soil & freehold of a highway is in the Crown & the possession of the highway in the municipality, an action is not maintainable by an adjoining landowner for damages for the cutting by the municipality of trees on the highway.—A.-G. FOR BRITISH COLUMBIA & WATT *v.* SAANICH CORPN., [1921] 1 W. W. R. 471 ; 56 D. L. R. 482.—**CAN.**

407 iia. —— ——.]—A person can obtain an injunction to remove the overhanging portions of trees though he may not be able to prove any damage.—VISHNU JAGANNATH JOSHI *v.* VASUDEP RAGHUNATH OKA (1918), I. L. R. 43 Bom. 164.—**IND.**

sb. *Leaves blown on to neighbour's land —Polluting water—Trees not noxious & planted for shelter.*]—*Held :* the rule in *Rylands* v. *Fletcher* (1868), L. R. 3 H. L. 330, did not apply.—MATTHEWS *v.* FORGIE, [1917] N. Z. L. R. 921.—**N.Z.**

479a. ——.]—A tenant in fee simple in possession of real estates, with an executory gift over, is not impeachable for waste.—*Re* HANBURY'S SETTLED ESTATES, [1913] 2 Ch. 357; 82 L. J. Ch. 428; 109 L. T. 358; 29 T. L. R. 621; 57 Sol. Jo. 646.

484. Before this case add "*See, also,* ECCLESIASTICAL LAW, Vol. XIX., p. 511."

Add. Annotation:—**Refd.** Stockman *v.* Whither (1614), 1 Roll. Rep. 86.

518a. ——.]—BILLINGSLEY (LADY) *v.* HERSEY (1612), 2 Bulst. 5; 80 E. R. 912.

519. *Add. Annotations:*—**Apld.** *Re* Londesborough, Spicer *v.* Londesborough, [1923] 1 Ch. 500. **Refd.** Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 569.

533. *Add. Annotation:*—**Distd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

534. *Add. Annotation:*—**Distd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

552. *Add. Annotation:*—**Distd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

591. *Add. Annotation:*—**Refd.** *Re* Williams' Settlement, Williams Wynn *v.* Williams, [1922] 2 Ch. 750.

602. *Add. Annotations:*—**Refd.** Lloyd-Jones *v.* Clark-Lloyd, [1919] 1 Ch. 424; Horlick *v.* Scully, [1927] 2 Ch. 150.

615. *Add. Annotations:*—**Distd.** Horlick *v.* Scully, [1927] 2 Ch. 150. **Refd.** Lloyd-Jones *v.* Clark-Lloyd, [1919] 1 Ch. 424.

633a. No right to sell timber during life of tenant for life unimpeachable for waste.]—WALLER & PETTY *v.* SANDS (1632), Cro. Car. 274; 79 E. R. 839.

652. *Add. Annotation:*—**Consd.** *Re* Londesborough, Spicer *v.* Londesborough, [1923] Ch. 500.

652a. —— —— ——.]—(1) By a settlement certain hereditaments were settled to the use of certain trustees during the life of A. without impeachment of waste upon the trusts, & with & subject to the powers thereinafter declared, with remainders as therein mentioned, & it was declared that the hereditaments were thereby limited to the trustees upon trust, during the life of A., that if at the time of such limitation taking effect in possession A. should not be or have been bkpt. the trustees should allow him to enter into & remain in the possession or receipt of the rents & profits of the settled estates during his life or until he should become bkpt. By an agreement, dated Dec. 7, 1920, A. agreed to sell all the timber standing in certain portions of the settled estates. On Jan. 18, 1922, a contract was entered into by A. for sale of part of the settled land, subject to the agreement of Dec. 7, 1920, & on Mar. 14, 1922, such land was conveyed to the purchaser, subject to the agreement:—*Held:* the proceeds of sale of the timber belonged to A.

(2) At the date of the contract for the sale of land & at the date of the conveyance, part of the timber, to the value of about £500, remained uncut:—*Held:* although as regards the purchaser of the land the timber was divided from the freehold, yet nevertheless it remained part of the inheritance & subject to the limitations of the settlement; accordingly, it did not vest in A., but being however part of the inheritance & still remaining subject to the limitations of the settlement, on severance it became the property of A., & therefore the £500 belonged to him.—*Re* LONDESBOROUGH (EARL), SPICER *v.* LONDESBOROUGH (EARL), [1923] 1 Ch. 500; 92 L. J. Ch. 423; 128 L. T. 792; 67 Sol. Jo. 439.

656. *Add. Annotation:*—*As to* (4) **Refd.** *Re* Williams' Settlement, Williams Wynn *v.* Williams, [1922] 2 Ch. 750.

661a. —— —— ——.]—*Re* LONDESBOROUGH (EARL), SPICER *v.* LONDESBOROUGH (EARL), No. 652a, *ante.*

671. *Add. Annotation:*—**Refd.** *Re* Williams' Settlement, Williams Wynn *v.* Williams, [1922] 2 Ch. 750.

680. *Add. Annotation:*—**Refd.** *Re* Williams' Settlement, Williams Wynn *v.* Williams, [1922] 2 Ch. 750.

696. *Add. Annotations:*—**Apld.** *Re* Londesborough Spicer *v.* Londesborough, [1923] 1 Ch. 500 **Refd.** Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 569.

711. *Add. Annotation:*—**Consd.** *Re* Londesborough, Spicer *v.* Londesborough, [1923] 1 Ch. 500.

712. *Add. Annotations:*—**Distd.** Horlick *v.* Scully, [1927] 2 Ch. 150. **Refd.** Lloyd-Jones *v.* Clark-Lloyd, [1919] 1 Ch. 424.

PART IX. SECT. 2, SUB-SECT. 7.

510 i. *Mortgagee.*]—The mtgee. of a term for years being in possession will, at the suit of the mtgor., be restrained from felling timber, although he may have obtained the consent of the reversioner.—CHISHOLM *v.* SHELDON (1850), 1 Gr. 318.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 9.—A.

518 i. *General rules.*]—GOULIN *v.* CALDWELL (1867), 13 Gr. 493.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 9.—B.

528 i. *Cannot enter & cut trees.*]—A landlord is not entitled to enter upon the holding of his tenant & cut down trees there without the tenant's consent.—KAMALKRISHNA SANYAL *v.* MADHUSUDAN CHAUDHURI (1929), I. L. R. 57 Calc. 344.—**IND.**

PART IX. SECT. 2, SUB-SECT. 9.—C

555 ii. —— *Lessee on wild or unimproved land.*]—ATTORNEY-GENERAL OF NOVA SCOTIA *v.* MCDOUGALL, [1930] 2 D. L. R. 479.—**CAN.**

sc. *Right to cut trees for securing profitable enjoyment of land.*]—A tenant may have an implied right to cut or destroy bush in order to obtain in a reasonable way the profitable enjoyment of the land, &, in lieu of burning or destroying the timber, may save it & sell it for his own benefit. Where, however, the cutting down of the timber is done for the purpose of making an immediate profit out of the timber, & without any regard to the improvement of the land, there is no implied grant to the tenant to cut & sell the timber.

In the absence of any such grant, the property in the timber when cut vests immediately in the person entitled to the first estate of inheritance in fee or in tail.—HIRAWANU *v.* GARDNER, [1926] N. Z. L. R. 48; *revsd.* on the facts, *sub nom.* GARDNER *v.* HIRAWANU, [1927] A. C. 388; 93 L. J. P. C. 53; 136 L. T. 613; 46 T. L. R. 198—**N.Z.**

PART IX. SECT. 2, SUB-SECT. 10.—E. (a).

649 i. *Tenant for life unimpeachable—Trees taken compulsorily by overruling authority.*]—*Held:* the money given by way of compensation must be applied by the trustees as part of the corpus of the estate.—GAGE & ROPER *v.* PIGOTT & DE JENNER, [1919] 1 I. R. 23.—**IR.**

PART IX. SECT. 2, SUB-SECT. 11.

682 i. *Rights inter se—Cutting down trees.*]—If one joint owner of land cuts timber on it adversely to his co-tenant, they become joint owners of the timber. The wrongful act of cutting does not divest the tenant of his interest in the property.—GODARD *v.* TUCK (1866), 6 All. 370.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 16.

ak. *Purchaser under covenant to erect frame dwelling.*]—*Held:* entitled, under the agreement for purchase, to take standing trees to complete the building.—GIBBONS *v.* RIDDLE, [1926] 3 D. L. R. 76; 58 O. L. R. 627.—**CAN.**

736. *Add. Citation :—sub nom.* STEWKLEY *v.* BUTLER (1615), Moore, K. B. 880 ; 72 E. R. 970.

739. *Add. Annotations :—As to* (1) **Refd.** Joel *v.* International Circus & Christmas Fair (1920), 124 L. T. 459 ; Cohen *v.* Roche (1926), 95 L. J. K. B. 945 ; Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 569 ; *Re* Wait, [1926] Ch. 962. *As to* (2) **Refd.** Waimiha Sawmilling Co. *v.* Waione Timber Co., [1926] A. C. 101.

745. *Add. Annotations :*—**Apld.** *Re* Londesborough, Spicer *v.* Londesborough, [1923] 1 Ch. 500. **Refd.** Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 569.

769. *Add. Annotation :—As to* (2) **Refd.** Ambatielos *v.* Anton Jurgens Margarine Works, [1922] 2 K. B. 186.

781a. Exception of timber—Limitation on time for cutting.]—ELLIS *v.* NOAKES, [1932] 2 Ch. 98, n. ; 101 L. J. Ch. 409, n. ; 147 L. T. 453, n.

808. *Add. Annotation :—As to* (1) **Refd.** *Re* Thellusson, *Ex p.* Abdy, [1919] 2 K. B. 735.

810. *Add. Annotations :—As to* (2) **Refd.** Joel *v.* International Circus & Christmas Fair (1920), 124 L. T. 459 ; Waimiha Sawmilling Co. *v.* Waione Timber Co., [1926] A. C. 101.

PART IX. SECT. 3, SUB-SECT. 3.

736 ii. ——.]—The owner of real estate sold all the hemlock bark thereon :—*Held :* the purchaser had a right to fell the trees.—HATCH *v.* FICK (1857), 5 Gr. 651.—**CAN.**

PART IX. SECT. 4, SUB-SECT. 5.

804 i. *Contract to take timber by valuation—Valuation by joint valuers—Subsequent valuation by valuers of vendor.*]—Deft. agreed to purchase all merchantable timber whether "standing or down" on four lots belonging to pltf. at $7 per M., deft. to do his own logging & take the timber off. After logging for two years, deft. decided to cease work & as some merchantable timber remained the parties agreed that two cruisers, one appointed by each party, should estimate the quantity left & deft. should pay pltf. $7 per M. for what remained. The cruisers reported, but pltf. being dissatisfied with their finding, had two of his own cruisers to make an estimate & they found that more than double the amount of merchantable timber remained. On examination, the joint cruisers admitted they did not cruise two of the lots, as these lots had been logged by deft., & they concluded, without examination, there was no merchantable timber there. Pltf.'s own cruisers reported that there were 80,000 feet of "down" timber on these two lots which were merchantable. Pltf.'s action to recover the value of the remaining timber as found by his own cruisers was dismissed :—*Held :* the joint cruise was such a partial estimate of the remaining timber that it could not be regarded as a cruise contemplated by the parties, & it was not binding.—REINSETH *v.* NICOLA PINE MILLS, LTD. & MCDOUGALL, [1928] 1 D. L. R. 93 ; 39 B. C. R. 151.—**CAN.**

807 ii. —— *Construction—Time for removal of timber.*]—M. conveyed to B. all the timber on his land, with a right for B. at all reasonable times during —— years to enter & cut & remove same :—*Held :* the instrument did not convey to B. the fee simple in the standing timber, but only gave him the right to cut & remove it within a reasonable time.—BEATTY *v.* MATHEWSON (1908), 40 S. C. R. 557.—**CAN.**

807 iii. —— —— *Terms of payment.*]—O'BRIEN *v.* MACKINTOSH (1903), 34 S. C. R. 169.—**CAN.**

810 ii. —— *Rights of purchaser.*]—Under a contract for the sale by the owner of land of the timber growing on it, with "the use of all roads & passes," & permission to erect saw-mills on the land, the purchaser was held not entitled (*a*) to use a saw-mill erected by him on the land for the purpose of manufacturing sleepers or brush-heads out of portion of the timber ; (*b*) to remove the timber by a mode of traction which injured the roads through the land so as to render them incapable of use by the owner of the land ; (*c*) to hold sales of the timber by public auction on the land ; (*d*) to leave timber or branches on the land longer than was reasonably necessary. The purchaser under such a contract held entitled (*a*) to lay down & work a railway on the land for the purpose of removing the timber ; (*b*) to make gaps in walls & fences for the purpose of removing the timber, subject to the duty of restoring the walls & fences.—RUDD *v.* REA, [1921] 1 I. R. 223 ; *affd.*, [1923] 1 I. R. 55.—**IR.**

si. *Sale of timber—On land sold to third party—Failure to remove timber.*]—*Held :* no action lay at the instance of the purchaser of the land against the purchaser of the timber for any supposed breach of duty in not removing the timber, as the only ground of action was on the contract, which did not vest in the purchaser of the land.—RAE *v.* RANKIN (1844), 2 Kerr, 453.—**CAN.**

sm. —— *Subsequent verbal agreement to let made timber remain on land—Validity.*]—HEDLEY *v.* SCISSONS (1873), 33 U. C. R. 215.—**CAN.**

sn. —— *By locatee — Subsequent patent to third party—No reservation of timber.*]—LANGMAID *v.* MICKLE (1888), 16 O. R. 111.—**CAN.**

so. —— —— *Before issue of patent.*]—*Held :* the locatee was not, nor anyone claiming under him, after its issue, estopped from denying the validity of the sale.—CHAPLEWSKI *v.* CAMPBELL (1898), 29 O. R. 343.—**CAN.**

sp. —— —— —— *Effect of* 31 *Vict. c.* 8 *&* 37 *Vict. c.* 23 (*O.*).]—HUTCHINSON *v.* BEATTY (1876), 40 U. C. R. 135.—**CAN.**

sw. —— *On limit—Duty of vendor to maintain title for reasonable time for removal of timber.*]—CAINE *v.* SCHULTZ, [1927] 1 W. W. R. 600 ; 38 B. C. R. 332.—**CAN.**

sx. ——*Accepted order for timber—Whether property passes.*]—B. drew an order on deft., a pond-keeper, in favour of R. for five hundred tons of pine timber, which deft. accepted & credited R. with the timber in account. R. afterwards assigned all his property to pltf. :—*Held :* in the absence of any proof of title to the timber in B., or that he had delivered it to deft., or of any usage in the timber trade relative to such acceptances, no property vested in R. by the acceptance in any specific five hundred tons of timber, & the action could not be maintained.—POLLOK *v.* FISHER (1849), 6 N. B. R. (1 All.) 515.—**CAN.**

sy. —— *Non-payment of Crown dues—Right to damages.*]—EDSALL *v.* HAMELL (1865), 16 C. P. 93.—**CAN.**

sz. —— *Right to cut timber during specified period—Time for removal extended—Interference by vendor.*]—Deft. having sold to pltfs. the right to cut & remove within two years the fir timber on a certain section of land, & the time for the removal of the timber having been extended by a subsequent agreement :—*Held :* pltfs. were entitled to an injunction restraining deft. from interfering, within said extended period, with the removal of the timber which pltfs. had cut prior to the expiration of the two years from the date of the original agreement.—RIDLEY & RIDLEY, BARCLAY (B. C.), [1928] 4 D. L. R. 79 ; [1928] 3 W. W. R. 62.—**CAN.**

sa. —— *Value fixed on estimate of vendor's agent—Deficiency in quantity—Rescission.*]—Where an agreement for the purchase of timber licences for a certain sum was found to have been arrived at on the basis that the timber was being sold & bought at so much per thousand feet, & it was found that the purchaser had entered into the agreement relying on estimates, exhibited by the vendors' agent, & made up by a firm of timber-cruisers employed by them, showing the total number of feet of timber covered by the licences, & it was, afterwards, established, by a cruise made for the purchaser, that there was a shortage of about one-third as between the actual quantity of timber & said estimates :—*Held :* the purchaser was entitled, even though there was no fraud, to rescission of the agreement.—FUKUKAWA & QUEEN CHARLOTTE TIMBER HOLDING CO., LTD. *v.* AMERICAN TIMBER HOLDING CO., AMERICAN TIMBER HOLDING CO. *v.* FUKUKAWA (B. C.), [1928] 3 D. L. R. 44 ; [1928] 2 W. W. R. 37.—**CAN.**

sb. —— *Ascertainment of quantity.*]—DOUCET *v.* SYDNEY LUMBERING CO. (N. B.), [1928] 2 D. L. R. 513.—**CAN.**

sc. ——*Sale of licence by holder—Title to cut all timber except that sold by purchaser—Effect of agreement on third party without notice.*]—Where the holders of a licence for a timber berth agreed to sell it subject to the condition that they were to retain title to all the lumber cut thereon except that sold & delivered by the purchasers in the ordinary course of the latter's business, & they put the purchasers in possession of the berth under circumstances which would lead all persons without knowledge of the terms of the agreement to assume that the purchasers were the owners of the lumber : —*Held :* the vendors could not maintain their claim to the cut lumber as against those who had innocently bought it for value from said purchasers even though all the lumber so bought had not yet been delivered.—CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* EDMONTON LUMBER CO., LTD., [1930] 2 W. W. R. 97 ; *sub nom.* BEAR CREEK LUMBER CO. *v.* EDMONTON LUMBER CO. & ROSS SMITH LUMBER CO., [1930] 3 D. L. R. 406 ; 11 C. B. R. 376.—**CAN.**

sd. *Licence to cut timber—Whether interest in land—Statute of Frauds.*]—A licence to cut a quantity of timber within certain prescribed limits, & to remove the same, does not convey any interest in lands under Stat. Frauds, or give any property in the standing trees.—KERR *v.* CONNELL (1836), Ber. 233.—**CAN.**

se. —— *Trees reserved in clearing land.*]—Where a locatee of lands, in clearing a portion thereof, reserved twenty-six pine trees thereon, thinking that they would be useful for building, but had previously erected a permanent house & stable, & put up fences, & had enough timber left for building a barn without reserving these trees :—*Held :* by thus reserving these trees,

810a. **Confiscation by foreign State—Frustration.**]—By a contract the vendors agreed to sell & the purchasers to purchase the timber then standing uncut in a forest in the Republic of Latvia, the purchasers to have fifteen years in which to cut & remove it, such time to be extended if the purchasers were prevented by an act of the Govt., or otherwise by *force majeure*, or by war, from cutting or disposing of the timber. Merchantable timber was to mean & include all trunks & branches of trees not less than six inches in diameter at a height of four feet from the ground. The purchasers took possession of the forest, but shortly afterwards an agrarian law was passed in Latvia under which the forest & all the timber therein became the property of the Latvian State, the agreement became annulled, & all the rights of vendors & purchasers in the forest & the timber became entirely confiscated:—*Held:* the contract was not an executed contract on the part of the vendors at the date when it was signed, & the property in the timber had not passed, to the purchaser; the performance of the contract was entirely frustrated by the act of the Latvian State, & the parties were released from it.—KURSELL *v.* TIMBER OPERATORS & CONTRACTORS, [1927] 1 K. B. 298; 95 L. J. K. B. 569; 135 L. T. 223; 42 T. L. R. 435, C. A.

814. *Add. Annotations:*—**Refd.** Lloyd-Jones *v.* Clark-Lloyd, [1919] 1 Ch. 424; Horlick *v.* Scully, [1927] 2 Ch. 150.

828. *Add. Annotation:*—*As to* (1) **Refd.** *Re* Williams' Settlement, Williams Wynn *v.* Williams, [1922] 2 Ch. 750.

842. *Add. Citations:*—119 L. T. 596; 62 Sol. Jo. 716, C. A.

846a. *S. P.* OSBORNE *v.* OSBORNE (*circa* 1814), cited in 19 Ves. at p. 422; 34 E. R. at p. 574, L. C.

Annotations:—**Folld.** Wickham *v.* Wickham (1815), 19 Ves. 419. **Refd.** Tooker *v.* Annesley (1832), 5 Sim. 235.

851. *Add. Annotations:*—**Refd.** Lloyd-Jones *v.* Clark-Lloyd, [1919] 1 Ch. 424; Horlick *v.* Scully, [1927] 2 Ch. 150.

856. *Add. Annotation:*—**Refd.** Horlick *v.* Scully, [1927] 2 Ch. 150.

874. *Add. Annotation:*—**Refd.** *Re* Williams' Settlement, Williams Wynn *v.* Williams, [1922] 2 Ch. 750.

884a. *S. P.* MATTHEW *v.* CRASSE (1613), as reported in 2 Bulst. 89; 80 E. R. 983.

894a. —— —— **Tenant for years unimpeachable for waste.**]—Lessee for years *sans* waste cannot pull down trees that are a defence or ornament to the house.—LONDON (BP.) *v.* WEB (1718), as reported in 1 P. Wms. 527; 24 E. R. 501.

Annotation:—**Refd.** Chamberlayne *v.* Dummer (1792), 3 Bro. C. C. 549.

928. *Add. Annotation:*—*As to* (1) & (2) **Consd.** Wheeler *v.* Keeble (1914), Ltd., [1920] 1 Ch. 57.

944a. —— —— **Trees excepted.**]—If a lessee cuts down the trees excepted out of his lease, the lessor shall have trespass *vi et armis* against him.—PERCY'S CASE (1609), 13 Co. Rep. 60; Ley, 20; 77 E. R. 1470.

949. *Add. Annotation:*—**Refd.** *Re* Williams' Settlement, Williams Wynn *v.* Williams, [1922] 2 Ch. 750.

964a. ——.]—ALDERMAN *v.* BANNISTER (1826), 4 L. J. O. S. Ch. 126.

970. *Add. Annotations:*—**Consd.** Baldock *v.* Westminster City Council (1918), 88 L. J. K. B. 502: Sheppard *v.* Glossop Corpn., [1921] 3 K. B. 132. **Refd.** Oldham *v.* Sheffield Corpn. (1927), 136 L. T. 681

970a. —— **Omnibus company with right to cut trees—Injury to passenger.**]—Where the route of an omnibus lies along a road lined by trees, which by permission of the owner the omnibus co. have taken reasonable care to cut, an accident caused to an outside passenger by an overhanging branch does not render the co. liable, if there is no evidence that the driver was driving too near the trees, or that he had any reason to suspect that they were overhanging.—TUNDER *v.* GREAT WESTERN RY. CO. (1919), 35 T. L. R. 291.

the locatee left them the property of the Crown, & a licencee of timber under the Crown had a right to cut & remove them.—PARKER *v.* MAXWELL (1887), 14 O. R. 239.—**CAN.**

si. —— *Land subject of free grant—Interference with rights of patentee.*]—LAKEFIELD LUMBER & MANUFACTURING CO. *v.* SHAIRP (1891), 19 S. C. R. 657.—**CAN.**

sg. —— *Reservation of right to cu timber for public works—Railway.*]—Pltf. held a licence from the Crown under the Crown Lands' Act for the purpose of cutting timber on certain lands defined in the licence. In the said licence was a reservation to the public, with the permission of the Crown, to go in at any time on the said lands & cut down timber for public works":—*Held:* the interpretation of the words "public works" or "public purposes" in the Crown Lands' Act, or the instruments issued under that Act, cannot be so construed as to be applicable to the building of a "railroad."—PHILLIPS *v.* REID (1899), 8 Nfld. L. R. 241.—**NFLD.**

sh. —— *Forfeiture for breach of covenant—Waiver.*]—A timber license over an area in Newfoundland for ninety-nine years was issued in 1915 under the local Crown Lands Act, 1903, as amended in 1911, the licensee agreeing to pay an annual rent & royalties. The license provided that it was subject to the express condition that the licensee should erect a saw mill or pulp factory to be completed by 1920, also to the conditions of the Act, & that if the licensee should make default in performing "any of the conditions herein contained" the license should be null & void. One of the conditions in the Act was that a licensee was to work the licensed area in a *bonâ fide* manner, & operate the mill or factory erected, in each year; but that condition was not set out in the license. The Act, as amended in 1911, provided for forfeiture only for non-payment of rent or royalties; for any breach of the other conditions the licensee was to be liable to a penalty not exceeding $10,000, & a penalty not exceeding $100 for every day the breach continued. By an amending Act of 1918 a breach of any condition was made a cause of forfeiture. The licensee & his assign did nothing under the license except to pay the rent. Rent paid in 1928 was accepted, but was returned later. In 1930 the Crown sued for a declaration that the license was null & void, or was forfeited, & for penalties & damages:—*Held:* (1) the license was subsisting, because (*a*) the provision that upon relevant default it was to be void was to be treated as making it merely voidable at the option of the Crown; (*b*) the words "conditions herein contained" meant the conditions set out, & did not include the incorporated statutory conditions; (*c*) the condition set out as to the erection of a mill or factory had been broken once & for all in 1920, & forfeiture on that account had been waived by the acceptance of rent in 1928, & there had not been any later breach of a condition for which there was a right of forfeiture, as the Act of 1918 applied only to licenses issued after it was passed; (2) damages could not be recovered, as there was no contractual obligation by the licensee to perform the conditions, nor daily penalties, as there was no continuing breach; but, by agreement, the case should be remitted for the trial ct. to decide the amount of lump sum penalty to be imposed.—JARDINE *v.* A.-G. FOR NEWFOUNDLAND, [1932] A. C. 275; 101 L. J. P. C. 70; 146 L. T. 393; 48 T. L. R. 199, P. C.—**NFLD.**

PART IX. SECT. 9, SUB-SECT. 1.

922 vi. ——.]—LAWRENCE *v.* (1851), 2 Gr. 301.—**CAN.**

PART IX. SECT. 10.

970 i. Read now "970b i."
970 ii. Read now "970b ii."

970b. **Overhanging trees.**]—Deft. was possessed of land on which there was growing a beech tree, a bough of which overhung a highway. This bough suddenly broke in fine weather, fell upon pltf.'s vehicle then passing, & caused damage. Neither deft. nor his servants knew that the bough was dangerous, & the fracture was due to a latent defect not discoverable by any reasonably careful inspection:—*Held:* deft. was not liable, as the mere fact that the tree overhung the highway did not make the tree a nuisance, & as he neither knew nor ought to have known of the actual danger, & there was no absolute obligation on him to support a tree overhanging the road unless it appeared, or would appear on a proper inspection, that nature could no longer be relied upon to support it.—NOBLE *v.* HARRISON, [1926] 2 K. B. 332; 95 L. J. K. B. 813; 135 L. T. 325; 90 J. P. 188; 42 T. L. R. 518; 70 Sol. Jo. 691, D. C.

Part X.—Fertilisers, Feeding Stuffs and Seeds.

NOTE.—*Fertilisers & Feeding Stuffs Act*, 1906 (*c.* 27), *was repealed by Fertilisers & Feeding Stuffs Act*, 1926 (*c.* 45).

971a. **Feeding stuffs—Act of 1906, s. 1 (4).**]—In Sept. 1922, pltf., a pig-keeper, saw defts.' managing director, who offered to sell him the bakery sweepings as pig food at 2*s.* 6*d.* a bag. Pltf. accepted the offer & purchased the sweepings from defts. & fed five pigs with it successfully from Sept. 1922 to Jan. 1923, when the pigs became ill & four of them died. The sweepings consisted of ingredients used in making bread, together with dust & dirt & other odds & ends & string:—*Held:* the words "on the sale of any article" in the above sub-sect. were wide enough to cover the sale of these bakery sweepings; the effect of the sub-sect. was to put the risk upon the seller, who, knowing the constituents of the article which he chose to sell as food for cattle, was made responsible if in fact it contained some article deleterious; if the seller desired to protect himself against the stringent provisions of the Act, it was competent to him to do so by a special contract made for that purpose.—PULLING *v.* LIDBETTER, LTD., [1924] 2 K. B. 114; 93 L. J. K. B. 542; 131 L. T. 119; 88 J. P. 83; 68 Sol. Jo. 615; 22 L. G. R. 456, C. A.

973. *Add. Annotation:*—**Refd.** Anderson *v.* Daniel (1923), 130 L. T. 418.

974a. —— —— ——.]—A seller who in fact delivers a false invoice commits an offence under sect. 6 (1) (*b*) of the above Act, whether the nature of the article is such as to make it obligatory on him under sect. 1 to deliver an invoice or not.—HARVEY & Co. *v.* HEREFORDSHIRE COUNTY COUNCIL, [1920] 2 K. B. 395; 89 L. J. K. B. 601; 123 L. T. 428; 84 J. P. 195; 18 L. G. R. 470, D. C.

975a. —— **Sending of sample to seller—Act of 1906, s. 3 (3).**]—It is a condition precedent to a prosecution of the seller under sect. 6 (1) (*a*) of the above Act, on a charge of not sending an invoice on the sale of a fertiliser of the soil according to the provisions of sect. 1 (1), that a prescribed portion of the sample thereof taken with a view to the proceedings under sect. 3 (3) shall have been sent to the seller.—VAUGHAN *v.* GRINDELL, [1921] 3 K. B. 412; 91 L. J. K. B. 141; 125 L. T. 315; 85 J. P. 199; 19 L. G. R. 416; 27 Cox, C. C. 5, D. C.

977. *Add. Annotation:*—*As to* (2) **Refd.** Harvey *v.* Herefordshire County Council, [1920] 2 K. B. 395.

978a. —— **Effect of—"Reasonable excuse."**]—(1) As the object of the Act of 1906 in requiring the vendor to give the statutory invoice & imposing on him a penalty in the event of his default is to protect the purchasers of fertilisers, the effect of non-compliance with the requirement is not merely to render the vendor liable to the penalty, but also to make the sale illegal & preclude the vendor from suing for the price. (2) The fact that, owing to the nature of the article sold as a fertiliser, an analysis of it would necessitate so expensive a process as to make it impossible to sell it after analysis at a profit, affords no "reasonable excuse" within sect. 6 (1), for omitting to give the invoice required by the Act. *Semble:* neither will impossibility of analysis afford any excuse, the intention of the statute in that event being to prohibit the sale of the article altogether. (3) The expression "without prejudice to any civil liability" in sect. 6 (1) refers to the civil liability of the vendor, not to that of the purchaser.—ANDERSON, LTD. *v.* DANIEL, [1921] 1 K. B. 138; 93 L. J. K. B. 97; 130 L. T. 418; 88 J. P. 53; 40 T. L. R. 61; 68 Sol. Jo. 274; 22 L. G. R. 49, C. A.

Annotation:—*As to* (2) **Consd.** Pulling *v.* Lidbetter (1924), 93 L. J. K. B. 542.

978b. **Fertilizers & Feeding Stuffs Act, 1926 (c. 45)—Implied warranty of fitness—Sale for purpose of resale.**]—Pltfs. bought from defts., both being cattle food merchants, a quantity of linseed cake. Defts. sold in their own name, but they were in fact acting in the transaction as brokers for a bank to whom the goods had been hypothecated as security for certain bills of exchange which had been refused acceptance by the drawees. The sale note stated (*inter alia*) that the cake was sold "*tel quel*," & that the analysis, for which defts. said they accepted no responsibility, showed that the cake was "castor free." Pltfs. resold portions of the cake to their customers as food for cattle. It then appeared on further analysis that portions of the cake contained castor seed, a constituent injurious to cattle; and in fact cattle which were fed on some of the cake were injured. Claims were thereupon made upon pltfs. by their purchasers in respect of the damage so caused to their cattle, & pltfs. then claimed damages from defts., including in their claim the amounts they had to pay to the sub-purchasers:—*Held:* (1) the sale of the cake by defts. to pltfs. was a sale for use as food for cattle, within sect. 2 (2) of above Act, notwithstanding that pltfs. them-

selves did not intend to use the cake for that purpose but intended to resell it to those who would so use it; (2) the sale, though in fact effected by defts. on behalf of the bank, was not a sale "in exercise of a statutory power to enforce a right or to satisfy a claim or lien," within sect. 24 of above Act, so as to be exempt from the operation of the Act; (3) pltfs. were entitled to damages from defts. for the breach of the statutory warranty, & were entitled to include in those damages the amounts they were liable to pay to their sub-purchasers.—DOBELL (G. C.) & Co., LTD. *v.* BARBER & GARRATT, [1931] 1 K. B. 219; 100 L. J. K. B. 65; 144 L. T. 266; 47 T. L. R. 66; 74 Sol. Jo. 836; 36 Com. Cas. 87, C. A.

978c. —— —— —— **Sale to satisfy lien.**]—DOBELL (C. G.) & Co., LTD. *v.* BARBER & GARRATT, No. 978b, *ante*.

978d. —— —— —— **Measure of damages for breach—Sale for purpose of resale to knowledge of vendor.**]—DOBELL (C. G.) & Co., LTD. *v.* BARBER & GARRATT, No. 978b, *ante*.

979. *Add. Annotations :*—**Consd.** Pontardawe R. C. *v.* Moore Gwyn, [1929] 1 Ch. 656. **Refd.** Stearn *v.* Prentice (1918), 88 L. J. K. B. 422; Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341.

Part XI.—Miscellaneous.

SECT. 11.—**AGRICULTURAL CREDITS.**

See Agricultural Credits Act, 1928 (c. 43).

979a. Restrictions on enforcement of charge—When charge enforced.]—A bank, having advanced money to a farmer on an agricultural charge within Agricultural Credits Act, 1928 (c. 43), in the year 1930 called in the money & threatened a sale, but did not until after Jan. 1, 1931, appoint an agent for sale or proceed to a sale :—*Held :* the bank's charge was not enforced until after Jan. 1, 1931, & accordingly the restrictive provisions of Agricultural Credits Act, 1928 (c. 43), s. 12, which applied only until Jan. 1, 1931, did not govern the case, & the bank was therefore entitled to retain out of the proceeds of sale the whole amount of its debt without regard to those restrictive provisions.—*Re* JONES (JOHN), *Ex p.* NATIONAL PROVINCIAL BANK, [1932] 1 Ch. 548; 147 L. T. 60; *sub nom. Re* JONES, NATIONAL PROVINCIAL BANK *v.* OFFICIAL RECEIVER, 101 L. J. Ch. 173; 76 Sol. Jo. 111; [1931] B. & C. R. 132, D. C.

SECT. 12.—**AGRICULTURAL MARKETING.**

See Agricultural Marketing Act, 1931 (c. 42).

979b. Validity of Scheme—Power to "buy" product—What amounts to purchase.]—Agricultural Marketing Act, 1931 (c. 42), provides that schemes may be framed & boards constituted for the marketing & disposal of agricultural produce, &, by sect. 5, a scheme may empower the board "to buy the regulated product, to produce such commodities from that product as may be specified in the scheme, & to sell, grade, pack, store, adapt for sale, insure, advertise & transport the regulated product." A board elected by hop growers framed a scheme by which all hops were to be sold through their agency, &, after paying expenses, etc., the money so received was to be pooled & divided amongst the growers according to the value of the produce taken from each one :—*Held :* although the 1931 Act authorised the board to "buy" the regulated product, the taking, pooling, sale & division constituted what in fact was a purchase from the producer & a sale on his behalf, & the scheme was therefore not an infringement of the terms of the Act.—R. *v.* MINISTER OF AGRICULTURE & FISHERIES, *Ex p.* BERRY (1932), 101 L. J. K. B. 561; 147 L. T. 326; 96 J. P. 447; 48 T. L. R. 572; 30 L. G. R. 333, C. A.

PART XI. SECT. 10.

c i. —— *Under licence—Under Forest Act.*]—A.-G. FOR BRITISH COLUMBIA *v.* ROBERTSON, [1924] 1 D. L. R. 1090; [1924] 1 W. W. R. 1155; 33 B. C. R. 325.—**CAN.**

hi. *Right of Crown to sue for expenses.*]—The Crown in the right of the Dominion may sue under Forest Act, R.S.B.C., 1924 (c. 93), s. 114, to recover expenses incurred by officials of the Dominion Forest Branch in controlling & extinguishing a fire on deft.'s property.—R. *v.* SWANSTROM, [1925] 3 D. L. R. 79; [1925] 1 W. W. R. 713.—**CAN.**

AIR COUNCIL.

See PUBLIC AUTHORITIES.

AIR FORCES.

See ROYAL FORCES.

AIR NAVIGATION.

See STREET AND AERIAL TRAFFIC.

ALIENS.

Part I.—What Constitutes Alienage.

NOTE.- 1914 *Act was amended by British Nationality & Status of Aliens Acts*, 1918 (c. 38) 1922 (c. 44).

1. *Add. Annotations :*—**Consd.** Markwald *v.* A.-G., [1920] 1 Ch. 348. **Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262. **Mentd.** The Tervaete (1922), 128 L. T. 176.

13. *Add. Annotation :—As to* (2) **Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

13a. —— ——.]—By an Order in Council made on Nov. 5, 1914, Cyprus was annexed, & by a Proclamation made thereunder on Mar. 3, 1915, revoking an earlier Proclamation, it was provided that " all Ottoman subjects, resident in Cyprus on Nov. 5, 1914, have become British subjects." An amending Order in Council made on Nov. 27, 1917, after reciting that doubts had arisen as to the effect of the Order & the proper interpretation of the Proclamation, ordered that the following persons (*inter alios*) should be deemed to have become British subjects by virtue thereof : " any Ottoman subject who was ordinarily resident & actually present in Cyprus on Nov. 5, 1914." Resp., an Ottoman subject by birth, carried on business in Cairo from 1893 to 1913. In Dec. 1913, he went to Cyprus, & after three or four months brought his family there. He rented a house in Cyprus monthly, & while there discontinued his business in Cairo. He was present in Cyprus on Nov. 5, 1914, & remained there until Oct. 1915, when he returned to Cairo, his family following in December. He received a passport describing him as a British subject, & was so registered at the British Consulate at Cairo, but after annual renewals registration was refused in 1919. He sued for a declaration that he was entitled to registration :—*Held :* if there were any difference between " resident " & " ordinarily resident " the latter became the test by virtue of the interpretative Order of 1917 ; but on the facts resp. was both " resident " & " ordinarily resident " in Cyprus on Nov. 5, 1914, whether or not Cyprus was then his domicil ; & whatever may have been his motive for going there, he was a British subject by virtue of the Order in Council.—GOUT *v.* CIMITIAN, [1922] 1 A. C. 105 ; 91 L. J. P. C. 18 ; 38 T. L. R. 100 ; *sub nom.* GOUT *v.* CIMITIAN, CIMITIAN *v.* GOUT, 126 L. T. 293, P. C.

14. *Add. Annotations :*—**Refd.** Markwald *v.* A.-G., [1920] 1 Ch. 348 ; Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

20. *Annotations :*—For " *Re* Goodman's Trust (1881), 7 Ch. D. 266 " read " *Re* Goodman's Trust (1881), 17 Ch. D. 266."

29. *Add. Citation :*—25 Cox, C. C. 622, D. C.

43. *Add. Annotations :*—**Refd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692 ; *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61 ; *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

49a. **Under Treaties of Peace & consequent Orders—Who is foreign national—" Stateless person "—Denationalised German.**]—(1) Pltf. having lost Prussian nationality in 1896, & not acquired nationality of a German State or other nationality :—*Held :* he was not a German national within Peace Treaty of Versailles, Part X., s. 4, or Treaty of Peace Order, 1919.

(2) Statelessness is not unrecognised by the municipal law of this country.

(3) Whether a man is a German national or not must be decided by German municipal law & not by English municipal law.—STOECK *v.* PUBLIC TRUSTEE, [1921] 2 Ch. 67 ; 90 L. J. Ch. 386 ; 125 L. T. 851 ; 37 T. L. R. 666 ; 65 Sol. Jo. 605.

Annotations :—As to (3) **Folld.** *Re* Chamberlain's Settlmt., Chamberlain *v.* Chamberlain, [1921] 2 Ch. 533. *Generally*, **Refd.** Kramer *v.* A.-G., [1923] A. C. 528.

49b. —— —— —— **Burden of proof.**]—(1) In 1893 pltfs. were admittedly German nationals, & on the *bonâ fide* assumption that they were still German nationals on Jan. 10, 1920, when the charge under Treaty of Peace Order, 1919, s. 1 (xvi) attached, deft. was in possession of their London property as custodian. In an action to obtain release of their property :—*Held :* the *onus* was on pltfs. to show that they had lost their original German nationality before Jan. 10, 1920, & not on deft. to disprove it.

Pltfs. had left their birthplace, Idar, in the district of Birkenfeld, about 1893, & with the exception of short annual visits to their mother, &, in the case of one, six weeks' military training in 1896, they had resided uninterruptedly out of Germany from 1893

PART I. SECT. 1.

1 iii. —— *Birth in Native Indian State.*]—The subject of a Native Indian State is an alien.—MAHOMED & SON *v.* IMMIGRANTS APPEAL BOARD (1918), 38 N. L. R. 7.—S. AF.

10 iv. —— ——.]—Applt., who was by birth a Bavarian subject, in 1881 became a burgher of the Orange Free State, but in 1883 left the Free State & did not return before 1902, at which date he was resident in, but not a burgher of, the Transvaal. Under the Orange Free State Constitution of 1878 Free State burghership was lost by residence abroad for more than two years :—*Held :* as at the time of the annexation of the Orange Free State & Transvaal in 1902 applt. did not become a British subject either as being a burgher of the Orange Free State or as a resident in the Transvaal, he was by inference still a Bavarian subject.—WOLFF *v.* THE TREASURY, [1919] App. D., 336.—S. AF.

PART I. SECT. 3.

49a i. *Under Treaties of Peace & consequent Orders—Who is foreign national—" Stateless person "—Denationalised German.*]—PAULEY *v.* CUSTODIAN, [1922] App. D. 161.—S AF.

88. *American domicile—When Irish Free State established.*]—*Held :* as S. was admittedly domiciled in the United States of America on Dec. 6, 1922, the date of the coming into operation of the Constitution of the Irish Free State, he was not one of the original citizens of the Irish Free State, having regard to Art. 3 of that Constitution ; &, inasmuch as the law with reference to the future acquisition of citizenship contemplated by the said Article has not yet been enacted, S. did not at any subsequent period become a citizen of the Irish Free State. Further, S. was not a British subject, as he ceased to be such by sect. 6 of Naturalisation Act, 1870 (c. 14), when he became naturalised as a citizen of the United States of America.—BRADFIELD *v.* SWANTON, [1931] I. R. 446.—IR.

to 1917 or 1918, when they were repatriated, after war internment, to Idar, where according to the police register entries, if genuine, they were registered as stateless on their arrival, & also on their departure for Amsterdam in 1920. On Jan. 29, 1923, the Birkenfeld Govt. after inquiry as to the period of pltfs.' absence from Germany, & as to their German visits during that period, granted them certificates to the effect that during that period they had forfeited their German nationality by ten years' "uninterrupted" residence abroad within North German Nationality Law, 1870, s. 21, & were therefore stateless on Jan. 10, 1920. These certificates were based on the view of the Administrative Cts. which, in considering whether German visits break the ten years' period, look to the number, length, purpose & intent of those visits. They were, however directly contrary to the view of the Leipzig Reichsgericht, which holds that the smallest visit, accidental or otherwise, breaks the period:—*Held:* (2) the certificates, which were admittedly only *primâ facie* evidence & open to review in any German ct., were not conclusive in an English ct., & the *onus* was on pltfs. to substantiate them; (3) if the Leipzig ct. view was right, the certificates were invalid; (4) even if the Administrative Ct. view was right, pltfs. had failed to satisfy the English ct. that an Administrative Ct. on being informed of all the circumstances, including fraudulent conduct by pltfs., applications as German nationals in 1915 & 1921, & previous false statements as to their German visits, would necessarily uphold the certificates; (5) having regard to the conflict of opinion in the German cts., pltfs. had failed to discharge the *onus* of proving that by unquestionable & undoubted German law they had lost their nationality on Jan. 10, 1920.—HAHN *v.* PUBLIC TRUSTEE, [1925] Ch. 715; 95 L. J. Ch. 9; 133 L. T. 713; 14 T. L. R. 586; 69 Sol. Jo. 824

—— —— **British subject marrying German —& naturalised as German during war.**]—By a settlement dated in 1902 a fund of £5,000 was vested in trustees on trust to invest & pay the income of the trust funds to H. during his life or until he should become bkpt. or charge it, "or until some event shall happen . . . whereby the income or any part thereof if belonging absolutely to him would become vested or charged in favour of some other person or persons or corpn.," & in the event of the determination during the life of H., of the above trust in his favour the trustees were given a discretion to apply the income for the benefit of all or any the said H., & his present or any other after-taken wife & his issue & the persons interested for the time being under the ulterior trusts, &, subject thereto, were directed to hold the capital & income of the trust funds upon trust for the benefit of the issue of H. & in default of issue upon trust for H.'s nephews & nieces. H. was born in England of English parents but had resided in Germany since 1906 & had been twice married there to German wives. During the war, on Aug. 8, 1916, he obtained a certificate of naturalisation as a German. In these circumstances a summons was taken out by the trustees to have it determined whether the life interest of H. in the funds was forfeited by the charge imposed on property of German nationals in this country on Jan. 10, 1920, by the Treaty of Peace with Germany, art. 297, or Treaty of Peace Order, 1919, & how the income accrued since Aug. 4, 1914, ought to be disposed of. It was admitted at the hearing on behalf of H. that in a German ct. applying German law he would be recognised as a German citizen. No question arose as to the income before Nov. 4, 1915, which had been paid over to H.'s agent:—*Held:* (1) the decision whether a person was a German national within the Treaty & Order fell to be determined exclusively by German municipal law, & accordingly H. was a German national; (2) H.'s interest under the settlement was forfeited as on Jan. 10, 1920, & subject to the payment of costs the accumulations of income in the trustees' hands from Nov. 4, 1915, to Jan. 10, 1920, must be paid to the custodian; (3) as the question raised was one that might affect a large section of the British public the A.-G. was a proper party to the proceedings.—*Re* CHAMBERLAIN'S SETTLEMENT, CHAMBERLAIN *v.* CHAMBERLAIN, [1921] 2 Ch. 533; 91 L. J. Ch. 34; 126 L. T. 52; 37 T. L. R. 906; 66 Sol. Jo. (W. R.) 3.

Annotation:—*As to* (1) **Apprvd.** Fasbender *v.* A.-G., Kramer *v.* A.-G., [1922] 2 Ch. 850.

49d. —— —— ——.]—A British-born woman, between the date of the signing of the Peace Treaty between England & Germany & the date of its coming into force, went to Germany & there married a German subject. At the date of her marriage & on Jan. 10, 1920, when the Treaty came into force, she was the registered holder of shares in an English limited co.:—*Held:* under British Nationality & Status of Aliens Act, 1914 (c. 17), s. 10, she must be deemed to be an alien, & by her marriage, which was not invalid, she had lost her British nationality & became a German national, so that her shares were subject to the charge imposed by Treaty of Peace Order, 1919, s. 1 (xvi).—FASBENDER *v.* A.-G., KRAMER *v.* A.-G., [1922] 2 Ch. 850; 91 L. J. Ch. 791; 128 L. T. 85; 38 T. L. R. 852; 66 Sol. Jo. 709, C. A.

Annotation:—**Refd.** *Re* Rush, Warre *v.* Rush, [1923] 1 Ch. 56.

49e. —— —— **Dual nationality.**]—KRAMER *v.* A.-G., No. 215j, *post.*

49f. —— —— —— **Austrian acquiring new nationality.**]—An Austrian granted citizenship of the Czechoslovakian Republic after the disruption of the Austrian Empire, but before July 16, 1920, the date when the Treaty of Peace between the Allied & Associated Powers & Austria came into force, remains subject to the charge created by art. 249 (b) of the Treaty & Treaty of Peace (Austria) Order, 1920, s. 1 (ix), notwithstanding the provisions of art. 230 of the Treaty.—ROTHSCHILD *v.* AUSTRIAN PROPERTY ADMINISTRATOR, [1923] 2 Ch. 542; 93 L. J. Ch. 508; 130 L. T. 175; 68 Sol. Jo. 40.

Annotations:—**Folld.** Bohemian Union Bank *v.* Austrian Property Administrator, [1927] 2 Ch. 175. **Consd.** Groedel *v.* Hungarian Property Administrator (1927), 44 T. L. R. 65.

49g. —— —— **Czechoslovakian corporation.**]—Under the Treaty of St. Germain, which came into force on July 16, 1920, a Czecho-

slovakian corpn., as well as an individual, can acquire *ipso facto* Czechoslovakian nationality, & the property of such a corpn. within the territory of Great Britain at that date is entitled to the benefit of the exemption provided by art. 249 (b) of the Treaty from liability to the charge in favour of the administrator of Austrian property created by that art. & Treaty of Peace (Austria) Order, 1920, s. 1 (ix).—BOHEMIAN UNION BANK *v.* AUSTRIAN PROPERTY ADMINISTRATOR, [1927] 2 Ch. 175; 96 L. J. Ch. 365; 137 L. T. 271; 43 T. L. R. 356; 71 Sol. Jo. 431.

49h. —— —— **Hungarian.**]—(1) The expression "nationals of the former Kingdom of Hungary" in Treaty of Peace (Hungary) Order, 1921, s. 1 (ix), means persons who were Hungarian nationals on Oct. 28, 1918, when the Austrian Empire ceased to exist by the deposition of the Emperor.

(2) Where the administrator of Hungarian property has determined that he is not satisfied that a national of the former Kingdom of Hungary has acquired *ipso facto* in accordance with the Treaty the nationality of an Allied or Associated Power, the ct. cannot go behind the decision of the administrator & investigate the question anew.—GROEDEL *v.* HUNGARIAN PROPERTY ADMINISTRATOR (1927), 44 T. L. R. 65.

49i. —— —— —— **By what law decided.**]—STOECK *v.* PUBLIC TRUSTEE, No. 49a, *ante*.

49j. —— —— ——.] —*Re* CHAMBERLAIN'S SETTLEMENT, CHAMBERLAIN *v.* CHAMBERLAIN, No. 49c, *ante*.

49k. —— —— —— **Decision of administrator—Whether final.**]—By the Treaty of Peace with Austria, art. 249 (b), the Allied & Associated Powers reserved the right to retain & liquidate all property, rights & interests which belonged at the date of the coming into force of the Treaty to nationals of the former Austrian Empire, but it was provided that "persons who within six months of the coming into force of the present Treaty show that they have acquired *ipso facto* in accordance with its provisions the nationality of an Allied or Associated Power . . . will not be considered as nationals of the former Austrian Empire within the meaning of this paragraph." The annex to arts. 249 & 250 sanctioned the imposition of a charge on such property, rights or interests. Arts. 248 to 262 with their annexes were scheduled to Treaty of Peace (Austria) Order, 1920, & by art. 1 (i) of the Order given full effect as law. By art. 1 (ix), the charge was imposed on all property, rights & interests within His Majesty's Dominions belonging to nationals of the former Austrian Empire at the date when the Treaty came into force. Art. 2 provided that "for the purposes of the foregoing provisions of this Order but not including the schedule therein referred to . . . the expression 'national of the former Austrian Empire,' does not include persons who within six months of the coming into force of the Treaty show to the satisfaction of the administrator that they have acquired *ipso facto* in accordance with its provisions nationality of an Allied or Associated Power":—*Held:* where the administrator had decided that he was not satisfied that pltf., who was originally a national of the former Austrian Empire, had acquired *ipso facto* the nationality of an Allied or Associated Power, the ct. would not, in an action by him for a declaration that he has "shown that he has acquired *ipso facto* in accordance with the Treaty the nationality of the Republic of Poland & that he is not a national of the former Austrian Empire within the Treaty & the Treaty of Peace Order, & that his property, rights & interests in His Majesty's Dominions are not subject to be charged under the Treaty & the Treaty of Peace Order," go behind the decision of the administrator & investigate independently the question of nationality.—REITZES DE MARIENWERT *v.* AUSTRIAN PROPERTY ADMINISTRATOR, [1924] 2 Ch. 282; 93 L. J. Ch. 587; 132 L. T. 42, 40 T. L. R. 698; 68 Sol. Jo. 644, C. A.

Annotations:—**Folld.** Groedel *v.* Hungarian Property Administrator (1927), 44 T. L. R. 65. **Refd.** Groebel *v.* Hungarian Property Administrator (1925), 70 Sol. Jo. 345.

49l. —— —— —— ——.]—GROEDEL *v.* HUNGARIAN PROPERTY ADMINISTRATOR, No. 49h, *ante*.

Part II.—Rights, Liabilities, and Disabilities of Aliens in Time of Peace.

50. *Add. Annotation:*—**Refd.** The Wilhelmina, [1923] P. 112.

61. *Add. Annotation:*—**Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

63. *Add. Annotations:*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59; Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

65a. —— **Detention of property—Ratification by Crown—Citizen of friendly State personally hostile to Crown.**]—(1) It is not a good defence to an action of tort brought by a friendly alien resident in the United Kingdom against an officer of the Crown in respect of the wrongful seizure & detention of the alien's property that the seizure & detention have been adopted & ratified by the Crown as an act of State.

Pltf., who was born in Ireland, having become a naturalised American citizen, returned to Ireland in 1916 & took part in the rebellion of Easter, 1916, & was interned. On his release he took part in illegal drilling, &, on being arrested in Ireland, a sum of money was found upon him, which was taken & detained by the police authorities, the seizure & detention being subsequently ratified by the Chief Secretary for Ireland.

49 ii. —— —— *By what law decided.*]—Questions of nationality must be determined by the municipal law of the country concerned.—PAULEY *v.* CUSTODIAN, [1922] App. D. 161.—S. AF.

PART II. SECT. 2, SUB-SECT. 1.

5a. *Non-resident alien—Leave to sue in formâ pauperis.*]—The Supreme Ct. of Alberta has jurisdiction to grant leave to a non-resident alien to sue in *formâ pauperis*.—AUGUSTINO *v.* CANADIAN NORTH-WESTERN RY. CO. (Alta.), [1927] 4 D. L. R. 609; [1927] 3 W. W. R. 321.—CAN.

In an action by pltf. against the Chief Comr. of the Police for the recovery of the money, deft. pleaded that pltf. was an alien & that the money was detained by direction of the Crown as an act of State :—*Held :* the plea was bad & pltf. was entitled to judgment.

(2) *Semble :* the fact that a subject of a friendly State residing within the realm under an implied licence from the Crown violates the local allegiance which he owes to the Crown does not disentitle him to the rights of an alien *amy* until the Crown withdraws its protection.—JOHNSTONE *v.* PEDLAR, [1921] 2 A. C. 262 ; 90 L. J. P. C. 181 ; 125 L. T. 809 ; 37 T. L. R. 870 ; 65 Sol. Jo. 679 ; 27 Cox, C. C. 68, H. L.

Annotation :— *As to* (1) **Refd.** Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271.

70. *Add. Annotation :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

79. *Add. Annotation :*—**Folld.** Falcon *v.* Famous Players Film Co., [1926] 2 K. B. 474.

82. *Add. Annotation :*—**Refd.** Behnke *v.* Bede Shipping Co., [1927] 1 K. B. 649.

85. *Add. Annotation :*—**Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

94. *Add. Annotation :*—**Dbtd.** Falcon *v.* Famous Players Film Co., [1926] 2 K. B. 474.

96. To the cross-reference after this case to Copyright Act, 1911 (c. 46), add "*&, generally,* COPYRIGHT, Vol. XIII., pp. 180–182."

114. *Add. Annotations :*—**Consd.** *Re* Lyne's Settlement Trusts, *Re* Gibbs, Lyne *v.* Gibbs, [1919] 1 Ch 80. **Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

116. *Add. Citations :*—Sty. 20, 40, 75 ; 1 Roll. Abr. 19b.

Add. Annotations :—*As to* (1) **Consd.** Du Hourmelin *v.* Sheldon (1838), 1 Beav. 79 ; Barrow *v.* Wadkin (1858), 27 L. J. Ch. 129. **Refd.** A.-G. *v.* Sands (1670), Freem. Ch. 129 ; A.-G. *v.* Duplessis (1752), Park. 144 : Burgess *v.* Wheate, A.-G. *v.* Wheate (1759), 1 Eden, 177 ; Rittson *v.* Stordy (1855), 3 Sm. & G. 230 ; Sharp *v.* St. Sauveur (1871), 7 Ch. App. 343. *As to* (2) **Refd.** Burgess *v.* Wheate, A.-G. *v.* Wheate (1759), 1 Eden, 177.

119a. —— —— ——.]—A devise of land to trustees, upon trust to sell & invest the proceeds in the public funds upon trust for persons some of whom were aliens :—*Held :* the aliens did not take any interest or estate which the Crown could lay claim to.—DE HOURMELIN *v.* SHELDON, DE HOURMELIN *v.* A.-G. (1839), 4 Jur. 116.

140a. Member of Stock Exchange.]—By the rules of the London Stock Exchange each member is elected for one year only, & must come up for re-election annually under rule 21, which provides that the committee shall on the first Monday in March proceed (*inter alia*) to elect such members as they shall deem eligible to be members of the Stock Exchange during the following year commencing on Mar. 25 then instant. In 1917 an objection was lodged against the re-election of applt., who was a British subject naturalised in this country & denationalised in Germany, at the election to be held in March of that year, on the ground of his enemy birth. Upon the invitation of the committee applt., first in a letter & afterwards at an interview, set forth various facts in proof of his loyalty to the country of his adoption, but eventually the committee refused to re-elect him. Applt. impeached this decision on the ground that the committee had acted arbitrarily & capriciously & had been influenced by irrelevant considerations :—*Held :* the decision of the committee had proceeded solely upon the ground of applt.'s enemy birth, & before deeming him ineligible for re-election on that ground he had been given an opportunity of being heard. The committee having acted honestly & fairly in the exercise of their discretion & within their competence, it was not open to any ct. to review their decision.—WEINBERGER *v.* INGLIS, [1919] A. C. 606 ; 88 L. J. Ch. 287 ; 121 L. T. 65 ; 35 T. L. R. 399 ; 63 Sol. Jo. 461, H. L.

Annotation :—**Refd.** Cookson *v.* Harewood (1932), 146 L. T. 550, n.

See, further, STOCK EXCHANGE.

Part III.—Aliens in Time of War.

144. *Add. Annotation :*—**Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

146. *Add. Annotation :*—**Refd.** Central India Mining Co. *v.* Soc. Coloniale Anversoise, [1920] 1 K. B. 753.

155. *Add. Annotation :*—**Apld.** *Re* Sutherland, Bechoff *v.* Bubna (1921), 65 Sol. Jo. 513.

156a. —— ——.]—A man who, having a business & commercial domicil in a neutral country, returns to his enemy country of origin & engages in active hostilities against this country, leaving his business under the care of a manager, but controlling it himself from his domicil of residence so far as he is able,

PART II. SECT. 7, SUB-SECT. 2.

129 i. *Right to hold & dispose—Law 3 of 1885—Act 35 of 1908—Company with Asiatic shareholders.*]—Law 3 of 1885 & Act 35 of 1908 do not apply to joint stock cos., even though their shares are held by Asiatics.—DADOO *v.* KRUGERSDORP, [1920] App. D. 530.—**S. AF.**

PART II. SECT. 8.

132 i. *Civil office of trust—Town inspector.*]—The office of town inspector is one of trust which an alien is ineligible to hold.—R. *v.* HEIGHTON (1) (1922), 69 D. L. R. 386 ; 55 N. S. R. (G. & R.) 512.—**CAN.**

132 ii. *S. P.* R. *v.* HEIGHTON (2) (1922), 69 D. L. R. 396 ; 55 N. S. R. (G. & R.) 527.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.

151 ii. —— ——.]—The subject of an alien State at war with His Majesty, who resides in the province of Quebec & has submitted to the laws of that country, is not an alien enemy.—RAGUSZ *v.* MONTREAL HARBOUR COMRS. (1916), 18 Q. P. R. 98 ; Q. R. 26 K. B. 87.—**CAN.**

155 i. —— *Place of residence & carrying on trade.*]—" Enemy " means a person, of whatever nationality, who resides or carries on business in enemy territory.—LAMPEL *v.* BERGER (1917), 40 O. L. R. 165 ; 38 D. L. R. 47.—**CAN.**

155 ii. —— ——.]—The question whether a person is an alien enemy is determined not by his nationality, but by the place where he resides or carries on business.—REVENLTOW-CRIMINIL *v.* STREAMSTOWN RURAL MUNICIPALITY, No. 511, [1917] 3 W. W. R. 546 ; 37 D. L. R 394 ; *affd.,* [1920] 1 W. W. R. 578 ; 52 D. L. R. 266 ; 15 Alta. L. R. 204.—**CAN.**

cannot be considered anything but an enemy, & his business is an enemy firm & the assets are enemy property.—THE ANTWERPEN, [1919] P. 252, n.; 89 L. J. P. 26, n.

156b. —— ——.]—An action was brought to recover a debt by a firm consisting of two French subjects & a German subject, & a sequestrator was subsequently appointed in respect of the property of the German pltf.:—*Held:* as the German subject was not residing nor carrying on business in an enemy State, the action was maintainable, & the sequestrator was not a necessary party.—*Re* SUTHERLAND (DUCHESS), BECHOFF & Co. *v.* BUBNA (1921), 65 Sol. Jo. 513.

157. *Add. Annotations:*—**Refd.** *Re* Sutherland, Bechoff *v.* Bubna (1921), 65 Sol. Jo. 513. **Mentd.** *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107; Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

161. *Citation:*—For "[1916] A. C. 421" read "[1916] 1 A. C. 421."
Add. Annotation:—*As to* (1) **Consd.** Stoeck *v.* Public Trustee, [1921] 2 Ch. 67.

162. *Add. Annotations:*—*As to* (1) **Consd.** Stoeck *v.* Public Trustee, [1921] 2 Ch. 67. *As to* (2) **Refd.** Stoeck *v.* Public Trustee, [1921] 2 Ch. 67.

163. *Add. Annotation:*—**Refd.** *Re* Sutherland, Bechoff *v.* Bubna (1921), 65 Sol. Jo. 513.

166. *Add. Citation:*—*subsequent proceedings* (1921), 65 Sol. Jo. 513.

168. *Add. Citation:*—1 Br. & Col. Pr. Cas. 605.

183. *Add. Annotation:*—**Refd.** The Lützow, [1918] A. C. 435.

187. *Add. Annotations:*—**Consd.** Rodriguez *v.* Speyer, [1919] A. C. 59. **Refd.** Ertel Bieber *v.* Rio Tinto Co., etc., [1918] A. C. 260; *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331.

189. *Add. Annotation:*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

192. *Add. Annotation:*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

195. *Add. Annotations:*—*As to* (1) **Consd.** The Poona (1915), 84 L. J. P. 150; The St. Tudno, [1916] P. 291; *Re* Hilckes, *Ex p.* Muhesa Rubber Plantations, [1917] 1 K. B. 48; *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331; Russian Commercial & Industrial Bank *v.* Comptoir d'Escompte de Mulhouse, [1923] 2 K. B. 630. **Refd.** R. *v.* L. C. C., *Ex p.* London & Provincial Electric Theatres, [1915] 2 K. B. 466; Clapham S.S. Co. *v.* Handels-en-Transport-Maatschappij Vulcaan of Rotterdam, [1917] 2 K. B. 639; Continho Caro *v.* Vermont, [1917] 2 K. B. 587; Elders & Fyffes *v.* Hamburg Amerikanische Packetfahrt Act., Elders & Fyffes *v.* Hamburg Columbien Bananen Act. (1918), 34 T. L. R. 275; *Re* British Incandescent Mantle Works (1923), 129 L. T. 126; Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255; Russian Commercial & Industrial Bank *v.* Comptoir d Escompte de Mulhouse, [1925] A. C. 112; Bohemian Union Bank *v.* Austrian Property Administrator, [1927] 2 Ch. 175. *As to* (2) **Consd.** The St. Tudno, [1916] P. 291. **Apld.** The Hamborn, [1919] A. C. 993. **Consd.** The Noordam (No. 2), [1919] P. 255; *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331. **Refd.** The Vesta, [1920] P. 385; I. R. Comrs. *v.* Sansom (1921), 8 Tax Cas. 20. *As to* (3) **Consd.** *Re* Hilckes, *Ex p.* Muhesa Rubber Plantations, [1917] 1 K. B. 48. **Refd.** *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331. *As to* (4) **Consd.** *Re* Hilckes, *Ex p.* Muhesa Rubber Plantations, [1917] 1 K. B. 48. *As to* (5) **Consd.** Rio Tinto Co. *v.* Ertel Bieber (1917), 116 L. T. 810; Tingley *v.* Müller, [1917] 2 Ch. 144; Naylor, Benzon *v.* Krainische Industrie Gesellschaft, [1918] 1 K. B. 331; Stevenson *v.* Akt. für Cartonnagen Industrie, [1918] A. C. 239. **Refd.** *Re* Aramayo Francke Mines, [1917] 1 Ch. 451; Ertel Bieber *v.* Rio Tinto Co., [1918] A. C. 260; Rodriguez *v.* Speyer, [1919] A. C. 59; *Re* Munster, [1920] 1 Ch. 268; *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107; *Re* Rush, Warre *v.* Rush, [1923] 1 Ch. 56; Simpson *v.* Maurice's Exors. (1929), 14 Tax Cas. 580.

195a. —— ——.]—*Re* BADISCHE CO., LTD., *Re* BAYER CO., LTD., *Re* GRIESHEIM ELEKTRON, LTD., *Re* KALLE & CO., LTD., *Re* BERLIN ANILINE CO., LTD., *Re* MEISTER LUCIUS & BRUNING, LTD., No. 405a, *post.*

198. *Add. Annotations:*—**Consd.** Central India Mining Co. *v.* Soc. Coloniale Anversoise, [1920] 1 K. B. 753; *Re* Deutsche Bank (London Agency), [1921] 2 Ch. 291. **Refd.** Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

198a. ——.]—In Jan. 1914, pltfs. entered into a contract with defts., who were a co. incorporated under the laws of Belgium & had their registered office at Antwerp, to sell to them manganese ore deliverable in certain quantities during the second half of 1914 & the three following years alongside steamer in Bombay. In Sept. 1914, when the German armies were threatening Antwerp, the managing director of deft. co. removed all the co.'s goods & the money in bank to London & came himself to London, & there, without any formal authority from the co., carried on business in his own name, but for the benefit of the co. After the German occupation of Antwerp the German authorities placed the co. under compulsory administration. During the German occupation, meetings of the directors & shareholders were held at which formal business was transacted.

155 iii. —— ——.]—A Mission Society, the headquarters of which were in Germany, held property in Natal & had an agent there for the management of its property & interests:—*Held:* (1) the society was resident in Germany & was an alien enemy; (2) a person's place of business, though one test, is not the sole test of his enemy character.—SIBISI *v.* HERMANSBERG MISSION SOCIETY (1916), 37 N. L. R. 409.—**S. AF.**

155 iv. —— ——.]—An "alien enemy" does not mean a subject of a State at war with this country but a person of any nationality who resides or carries on business in an enemy country.—MALCOMESS *v.* DURBAN TOWN COUNCIL (1917), 38 N. L. R. 275.—**S. AF.**

st. *Who is an "enemy" within Treaty of Peace (Germany) Order, 1920, s. 32.*]—BAUMFELDER *v.* SECRETARY OF STATE OF CANADA, [1927] Exch. C. R. 86.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.

sa. *Widow of naturalised British subject—Return to foreign country after death of husband.*]—Resp., a German subject by birth, married a naturalised British subject in Cape Colony. After the death of her husband in 1901 resp. returned to Germany where she resided until 1915, & then removed to Switzerland:—*Held:* resp. was not an enemy under Act 39 of 1916.—THE TREASURY *v.* HANF, [1919] App. D. 50.—**S. AF.**

PART III. SECT. 1, SUB-SECT. 4.

193 iii. ——.]—A person who voluntarily resides in a hostile country for a substantial period of time acquires the disability attaching to an enemy during that period even if he is a British subject, unless such residence is with the consent of the Crown.—HAJI AH JON *v.* ABDUL JALIL KHAN (1920), I. L. R. 1 Lah. 276.—**IND.**

These meetings were held so as to comply with Belgian law & to keep the co. in existence. The co. also collected & paid debts due to & owing by it in order to prevent the German authorities from winding up the co. & investing the uncalled capital in German War Loan, & with the like object it created a debt against its uncalled capital in favour of its bankers for the purpose of paying arrears of dividend on its preference shares. Pltfs. contended that the co. was an enemy, & they claimed a declaration that the contract was dissolved & was no longer binding on them :—*Held :* pltfs. were entitled to the declaration claimed; though acts which were necessary merely for the purpose of keeping the co. in existence might not amount to "carrying on business" within the Proclamation of Sept. 14, 1915, the collection of debts & discharge of liabilities with the intention of continuing the business amounted to a "carrying on business," & constituted the co. an "enemy" within the Proclamation.—CENTRAL INDIA MINING CO. *v.* SOCIÉTÉ COLONIALE ANVERSOISE, [1920] 1 K. B. 753 ; 89 L. J. K. B. 769 ; 122 L. T. 451 ; 36 T. L. R. 88, C. A.

198b. ——.]—Germany was in effective military occupation of Brussels & the greater part of Belgium at the date of an order for winding up the business carried on in this country by a German bank, of which a Belgian bank carrying on business in Brussels was an unsecured creditor :—*Held :* the Belgian bank was a creditor who was not an enemy within Trading with the Enemy Amendment Act, 1916 (c. 105), s. 1 (3).—*Re* DEUTSCHE BANK (LONDON AGENCY), [1921] 2 Ch. 291 ; 90 L. J. Ch. 449 ; 126 L. T. 20 ; 37 T. L. R. 912 ; 65 Sol. Jo. 781.

198c. Registered in allied country—Government overthrown—Non-recognition of usurping Government.]—Pltfs., an insurance co. with its registered office at Petrograd & a branch office in England, in Apr. 1917, entered into a reinsurance treaty with defts., an English insurance co., whereby pltfs. reinsured part of the risks of defts. At the end of the first year there was a balance in favour of pltfs. In an action to recover the amount of the balance defts. pleaded that as the Bolshevists had in Nov. 1917, usurped supreme power in Russia, & as the British Govt. was carrying on warlike operations against them pltfs. were alien enemies, & that owing to the entire suspension of business in Petrograd by reason of the usurpation the basis of the contract had been destroyed :—*Held :* as the Bolshevist Govt. had not been recognised by this country as the Russian Govt., & as pltfs. had not adhered to the Bolshevists pltfs. were not alien enemies ; & as defts. with knowledge of the facts had continued to treat the contract as alive by crediting pltfs. with premiums & debiting them with losses, the Bolshevist revolution had not so destroyed the basis of the contract as to put an end to it, & pltfs. were entitled to recover. —EASTERN CARRYING INSURANCE CO. *v.* NATIONAL BENEFIT LIFE & PROPERTY ASSURANCE CO., LTD. (1919), 35 T. L. R. 292.

199. *Add. Citation :*—1 P. Cas. 75.

201. *Add. Annotation :*—**Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

202. *Add. Annotation :*—**Consd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

204. *Add. Annotation :*—**Consd.** *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107.

205. *Add. Annotation :*—**Consd.** *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107.

207. *Add. Annotations :*—**Refd.** *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107 ; Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

208. *Add. Citation :*—1 P. Cas. 75.
Add. Annotations :—**Refd.** The Achilles, [1919] P. 340 ; *Re* Certain Craft Captured on Victoria Nyanza, [1919] P. 83 ; The Orteric, [1920] A. C. 724 ; The Vesta, etc., [1921] 1 A. C. 774 ; The Anichab, etc., [1922] 1 A. C. 235.

208a. —— —— —— **Effect of Trading with Enemy Acts, 1914-1916.**]—(1) Under the common law of England the Crown has always had &, subject to the effect of the above Acts, still has the right to seize & forfeit private property, including choses in action & equitable interests therein, found in this Kingdom belonging to subjects of an enemy State. That right has not been abandoned by desuetude. The powers conferred by the above Acts, however, are so inconsistent with the exercise of the common law right of forfeiture that that right must be treated as being thereby, at least temporarily, superseded.

(2) In order to complete the title of the Crown to property so seized an inquisition of office must be held before the conclusion of peace. — *Re* FERDINAND, EX-TSAR OF BULGARIA, [1921] 1 Ch. 107 ; 90 L. J. Ch. 1, C. A.

209. *Add. Annotation :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

215a. Treaties of Peace & consequent Orders—What property subject to charge under—Right to assessment of damages in collision action.]—Before the outbreak of war, defts., the German owners of the steamship *M.*,

PART III. SECT. 2, SUB-SECT. 2.—A.

206 ii. (p. 147) For "VAN ZYH *v.* PIENMAN" read "VAN ZIJL *v.* PIENAAR."

sb. *Shares held by enemy subject—Vested in Public Trustee—Power to sell.*]—*Held :* War Precautions (Enemy Shareholders) Regulations, 1916 reg. 11 (2), which empowered the A.-G. to authorise the Public Trustee to sell shares in a co. transferred to him as being held by an alien enemy, was a valid exercise of the power conferred by War Precautions Act, 1914-1916, s. 4, & was within the defence power of the Commonwealth.—BURKARD *v.* OAKLEY (1918), 25 C. L. R. 422.—**AUS.**

sc. ——————.]—*Held :* War Precautions (Enemy Shareholders) Regulations, 1916 reg. 11, authorised the sale of shares transferred to the Public Trustee, notwithstanding that some beneficial interest in the shares was held by a person not an enemy subject, & was a valid exercise of the power conferred by War Precautions Act, 1914-1916, s. 4.—BURKARD *v.* OAKLEY (1920), 27 C. L. R. 520.—**AUS.**

212 i. *Patent in name of alien enemy—Royalties paid by licensee during suspension of patent—Who entitled to.*]—*Held :* (1) royalties paid by the licensee from the date of his licence up to the expiration of six months from the ending of the war, i.e., to Jan. 10, 1920, were not sums belonging to an enemy, & were not properly in the hands of the custodian ; (2) royalties paid or to be paid after June 10, 1920, were properly paid or payable in the hands of the custodian as a debt due to an enemy.—*Re* SYNTHETIC DRUG CO., [1925] Exch. C. R. 196.—**CAN.**

215 i. *Licensed to trade for limited purposes—Banking transactions.*]—The London agency of a German bank, which at the outbreak of war in 1914 became an enemy, held a bill, drawn by a German subject & accepted by a Scotsman, which had been sent from Germany for collection. It had been the practice of the bank that, if bills so sent were dishonoured, no legal proceedings were taken against ac-

recovered judgment against the British owners of the steamship *K.* for the amount of the damage arising out of a collision between the two vessels, & the damages were referred to the registrar & merchants for assessment. Before defts. had filed their claim in the registry the war had broken out. A few days before the Peace Treaty was ratified the claim & vouchers were filed, but by consent they were treated as having been filed after the ratification. Thereupon pltfs. took out a summons for an order to set aside the filing & service of the claim & vouchers on the ground that under arts. 296 & 297 of the Treaty & Treaty of Peace Order, 1919, s. 1 (xvi & xvii), the parties had no right to litigate the claim in the registry, inasmuch as, being a debt owing to German nationals, it had to be settled through the intervention of clearing houses:—*Held:* (1) defts.' claim was not a debt but a right, which by the Peace Treaty, art. 297, was subject to the right to be retained & liquidated "in accordance with the law of the allied State . . . concerned," namely, Great Britain; (2) not being a debt, art. 296 did not apply; (3) although defts. would not be able to handle the sum awarded, there was nothing in art. 297 or in Treaty of Peace Order, s. 1 (xvii) to deprive defts. of their right to proceed to a reference, or to prevent pltfs. paying money into ct. with a notice that it was in satisfaction of the claim of German subjects.—THE MARIE GARTZ, [1920] P. 172; 89 L. J. P. 206; 123 L. T. 680; 36 T. L. R. 417; 15 Asp. M. L. C. 98.

215b. —— —— **Debt—Due to German.**]—Clause 14 of the annex contained in the Sched. to Treaty of Peace Order, 1919, does not affect the rights of an individual British national to resist a claim by the Controller of the British Clearing Office to recover a debt which is admitted to be due to a German national, & is therefore an "enemy debt" within Treaty of Versailles & Treaty of Peace Order, 1919.—CLEARING OFFICE CONTROLLER *v.* EDWARDS & CO. (BREAD STREET), LTD., [1923] W. N. 245.

215c. —— —— **Trust estate—Accumulations of interest.**]—*Re* CHAMBERLAIN'S SETTLEMENT, CHAMBERLAIN *v.* CHAMBERLAIN, No. 49c, *ante*.

215d. —.]—*Re* HALLENSTEIN, HALSTED *v.* BLANK, No. 237c, *post*.

215e. —— —— —— **Accumulations of annuities.**]—By his will a testator, who died on Jan. 14, 1916, directed his exors. to pay annuities to an Austrian & two German nationals "until he or she shall die or mortgage or otherwise charge the same . . . or until the happening of any event whereupon the same if given to him or her absolutely would no longer be received by him or her for his or her benefit." No part of the annuities could be paid to the annuitants during the war by reason of Trading with the Enemy Amendment Act, 1914 (c. 12), but accumulations were retained by the exors., as no order was made under sect. 4 of the Act vesting the annuitants' interests in the custodian:—*Held:* (1) as the Act of 1914 only suspended payments to the alien enemies & did not determine the ownership & ultimate destination of their annuities, those annuities were not forfeited *ab initio;* (2) the annuities were forfeited & determined in the case of the German nationals as from Jan. 10, 1920, by the charge imposed by the Treaty of Peace with Germany & Treaty of Peace Order, 1919, & in the case of the Austrian national as from July 16, 1920, by the charge imposed by the Treaty of Peace with Austria & Treaty of Peace (Austria) Order, 1920; (3) the accumulations of the annuities until those respective dates became subject to the charges & payable therefore to the custodian or the administrator of Austrian property as the case might be.—*Re* LEVINSTEIN, LEVINSTEIN *v.* LEVINSTEIN, [1921] 2 Ch. 251; 91 L. J. Ch. 32; 126 L. T. 177; 65 Sol. Jo. 767.

Annotations:—As to (3) **Followed.** *Re* Chamberlain's Settlmt., Chamberlain *v.* Chamberlain, [1921] 2 Ch. 533; *Re* Biedermann, Best *v.* Wertheim, [1922] 1 Ch. 31.

215f. —— —.]—A testator, whose domicil was English, by his will directed his trustees to invest a certain sum in the Hamburg State Loan & from the income thereof to pay a number of annuities, &, as & when the annuities fell in, to apply the income & the capital so set free in accumulating a trust fund. That trust fund was also invested in the Hamburg State Loan. The annuitants. & those interested under the will in the trust fund, were German nationals:—*Held:* the interests of the beneficiaries under the will were charged under Treaty of Peace Order, 1919, as being "property, rights & interests" in the United Kingdom.

ceptors in Great Britain, but the bills were retransmitted to the German office so that proceedings might be taken in the German cts. against the German indorsers. Licences covering the whole period of the war were issued to the London agency, empowering it to carry on banking business under supervision, to the extent of completing current transactions, so as to make its realisable assets available to its creditors, "so far as those transactions would in ordinary course have been carried out through" the London establishment. The bill having been dishonoured on presentation, was retained by the London agency, which debited the German office with the amount, & filed a letter, which owing to war conditions could not be sent, to the German office intimating the circumstances. In an action on the bill brought in 1922 by the Public Trustee against the Scottish acceptor:—*Held:* as an action on the bill was not a transaction that would in ordinary course have been carried out through the London agency, the licences conferred no right to sue.—PUBLIC TRUSTEE *v.* DAVIDSON, [1925] S. C. 451.—**SCOT.**

215 ii. Substitute this number for **215 i.** in original volume.

215b i. *Treaty of Peace & consequent Orders—What property subject to charge under—"Debts"—What are.*]—(1) Deposits of money with the National Trust Co. for investment in securities, repayment of which was guaranteed on dates which fell during the war; (2) not deposits in a savings bank & moneys invested with a loan co. to be withdrawn on notice & from the bank on presentment of the bank book; (3) not moneys deposited with a trust co. with instructions that all sums of capital & interest so received should be held by the co. to the credit of the owner until further advice.—SECRETARY OF STATE OF CANADA *v.* NEITZKE, SECRETARY OF STATE OF CANADA *v.* WIEHMAYER (1921), 68 D. L. R. 443; 62 S. C. R. 262; *varying*, 20 Exch. C. R. 219.—**CAN.**

215b ii. —— —— —— *Due to German.*]—At the outbreak of war between England & Germany in 1914 deft., as agent, held certain goods on behalf of an enemy subject, which goods, on the instructions of his principal, the agent realised between the outbreak of war & Mar. 30, 1915, with the result that he held, as the proceeds of realisation, a sum of £964 6*s.* 9*d.* Prior to the war deft.'s engagement had been at a salary of £5 per week. Pltf., as a public trustee, under Trading with the Enemy Act, 1914-16 (Fed.), claimed the moneys in the hands of deft.:—*Held:* the claim of pltf. was not defeated by reason of the Treaty of Peace, inasmuch as at the date of the declaration of war deft. was a German national, & the debt sued for, therefore, did not arise out of a transaction or contract made by a national of one power with a national of an opposing power.—PUBLIC TRUSTEE *v.* SHERWOOD, [1928] W. A. L. R. 112.—**AUS.**

—FAVORKE *v.* STEINKOPFF, [1922] 1 Ch. 174; *sub nom. Re* STEINKOPFF, FAVORKE *v.* STEINKOPFF, 91 L. J. Ch. 165; 126 L. T. 597.

215g. —— —— —— ——.]—Under the trusts of a marriage settlement of 1903 & in the events that had happened certain infant children, German nationals, were on Jan. 10, 1920, when the Peace Treaty came into operation, entitled contingently on attaining twenty-one or marrying to an annuity of £150 a year. If neither infant attained a vested interest the annuity passed to the husband, also a German national. The annuity was secured by the covenant of the wife's parents with the trustees, all British subjects, & was payable during the lives of the surviving covenantor & the surviving child, but the trustees were not to be liable for any loss occasioned by their neglect to enforce the covenant. The infants' contingent title accrued in possession on the wife's death on July 17, 1918, but the trustees had not enforced the payment of any instalment since then. The custodian having claimed the annuity, the trustees submitted the matter to the ct. The custodian had not obtained a vesting order:—*Held:* both the arrears & the contingent future instalments payable after Jan. 10, 1920, were property rights or interests within Peace Treaty Order, 1919, s. 1 (xvi), &, notwithstanding the infants' personal incapacity, were caught by the charge.—*Re* NEUBURGER'S SETTLEMENT, FORESHEW *v.* PUBLIC TRUSTEE, [1923] 1 Ch. 508; 92 L. J. Ch. 442; 129 L. T. 735; 67 Sol. Jo. 500.

215h. —— —— **Accumulations of annuities.**]—By his will dated Mar. 31, 1911, a testator bequeathed an annuity of £250 to an Austrian national "until he shall die or voluntarily or involuntarily alienate or encumber . . . the same." Testator died on Aug. 22, 1914, during the war. The annuity was therefore accumulated in the hands of his legal personal representative, who made the proper returns to the custodian under Trading with the Enemy Amendment Act, 1914 (c. 12), s. 3, but no vesting order was made under sect. 4. By Treaty of Peace (Austria) Order, 1920, the annuity & its accumulations were, as from July 16, 1920, charged in favour of the administrator of Austrian Property, to secure (*inter alia*) payment of debts owing by Austrian to British nationals:—*Held:* (1) the accumulations up to July 16, 1920, passed to the administrator of Austrian property; (2) the charge created by Treaty of Peace Order was not an involuntary alienation or encumbrance within the meaning of the will, so that the current annuity since July 16, 1920, was not forfeited, but was payable to the administrator of Austrian property.—*Re* BIEDERMANN, BEST *v.* WERTHEIM, [1922] 1 Ch. 31; 91 L. J. Ch. 105; 38 T. L. R. 37; 66 Sol. Jo. 107; *on appeal*, [1922] 2 Ch. 771, C. A.

Trust estate.]—*See* Nos. 215e-215g, *ante*.

215i. —— —— **Shares in English company.**]—FASBENDER *v.* A.-G., KRAMER *v.* A.-G., No. 49d, *ante*.

215j. —— **Property in England.**]—A person of dual nationality, who is a British subject by British law, having been born in England, & also a German subject by German law, is a "German national" within the Treaty of Peace with Germany, art. 297, & Treaty of Peace Order, 1919, giving effect to it, & is not entitled to have property in England belonging to him exempted from the charge created by sect. 1 (xvi) of that Order.—KRAMER *v.* A.-G., [1923] A. C. 528; 92

215j i. *Bearer shares — debentures in Transvaal mining company.*]—RANDFONTEIN ESTATES GOLD MINING CO., LTD. *v.* CUSTODIAN OF ENEMY PROPERTY, [1923] App. D. 576.—**S. AF.**

215j i. —— —— *Property in Australia—Subject to restraint on anticipation.*]—The words "all property, rights & interests" appearing in cl. 4 of the annex to art. 297 of the Treaty of Peace between the Allied Powers & Germany are wide enough to include an estate for life of a married woman, being a German national, still under coverture subject to a restraint on anticipation.—COWPER *v.* FRANKENBERG (1921), 21 S. R. N. S. W. 388.—**AUS.**

sd. —— —— *Rights of German nationals in testator's undisposed of property.*]—The rights of German nationals in testator's property undisposed of by his will are subject to the charge created by Regulations of Jan. 28, 1920, par. 20 (1).—*Re* MITCHNER, [1922] St. R. Qd. 39.—**AUS.**

se. —— —— —— *Administration of trusts in Germany.*]—*Re* MITCHNER, UNION TRUSTEE CO. OF AUSTRALIA, LTD. *v.* A.-G. FOR COMMONWEALTH OF AUSTRALIA, [1927] S. R. Q. 279.—**AUS.**

sf. —— —— *Contingent interest.*]—By a settlement certain property was settled on T. for life, & contingently on their surviving him, on (*inter alia*), two German nationals. In Apr. 1925, after the death of T., one of these executed a document effecting either a renunciation of her interest in the settlement of an appointment of it to a British subject:—*Held:* assuming the interest dealt with was a contingent interest, it was property within Treaty of Peace Regulations, reg. 20. The document was ineffective by reason of the Treaty of Peace & regs. 20 & 21 made thereunder.—*Re* NICKEL, HOMBURG *v.* PUBLIC TRUSTEE, [1928] S. A. S. R. 148.—**AUS.**

sg. —— *Rights acquired under vesting orders made under Trading with Enemy Acts not affected.*]—SECRETARY OF STATE OF CANADA *v.* GREENSHIELDS, LTD., [1925] Exch. C. R. 29.—**CAN.**

sh. —— *Property passing to Custodian—Shares vested in Alien Property Custodian for United States.*]—Certain "securities," shares, note certificates & stocks, listed & dealt in on recognised stock exchanges, & the certificates for which were held in the United States, being owned by enemy nationals, were, upon demand of the Alien Property Custodian of the United States, surrendered to him or to others for him, in 1918, under the War legislation of that country, & were subsequently transferred to him on the books of the said cos., or new certificates issued. In regard to one of the above cos. no vesting order was ever obtained by the Canadian Custodian, but as to the others vesting orders were obtained subsequent to the action by the American Custodian, namely, in 1919, but none of the "securities" were ever transferred to him nor is it in evidence that such orders were served on the cos.:—*Held:* (1) the beneficial ownership in or title to the securities herein was in him who held the paper, & that it is the law of the place where the paper was that determined who was the holder. The contention that certificates of securities are but evidence of ownership, is not inconsistent with the idea that an assignment & delivery of the certificates carries the title and property in the securities; (2) under the Canadian Consolidated Orders enemy property was not automatically confiscated, but the owners' enjoyment thereof was suspended until the restoration of peace, &, subject to any legislation to the contrary or anything to the contrary contained in the Treaty of Peace, such enemy was then entitled to his property, or if liquidated, to its proceeds. It was only the transfer of securities by or on behalf of an enemy that was prohibited by the publication of these Orders; (3) under the Peace Order only two classes of enemy property passed to Canada: (*a*) property in Canada belonging to an enemy on Jan. 10, 1920, & not in the possession or control of the Custodian, & (*b*) enemy property in the possession & control of the Custodian on that date; (4) there was nothing to be found in the Canadian War Measures prohibiting or avoiding the transfers of the securities in issue as made by the American Custodian; on Jan. 10, 1920, the property, right or interest in the securities mentioned & the title to the same did not belong to an enemy, & was not at that date in the control or possession of the Canadian Custodian; & the property, right or interest in such securities & the title to the same belonged to the Alien Property Custodian of the United States.—SECRETARY OF STATE OF CANADA *v.* ALIEN PROPERTY CUSTODIAN FOR THE UNITED STATES & TORONTO POWER CO., LTD., & SECRETARY OF STATE OF CANADA AS CUSTODIAN OF ENEMY PROPERTY *v.* ALIEN PROPERTY CUSTODIAN FOR THE UNITED STATES & MONTREAL, CITY OF, [1930] Ex. C. R. 75; 3 D. L. R. 81; *affd.*, [1931] S. C. R. 170; 1 D. L. R. 890.—**CAN.**

L. J. Ch. 333; 129 L. T. 390; 39 T. L. R. 462; 67 Sol. Jo. 552, H. L.; *affg.* S. C. *sub nom.* FASBENDER *v.* A.-G., KRAMER *v.* A.-G., [1922] 2 Ch. 850, C. A.

Annotation :—**Reld.** *Re* Rush, Warre *v.* Rush, [1923] 1 Ch. 56.

215k. —— —— —— **Subject to restraint on anticipation.**]—The charge imposed by Treaty of Peace Order, 1919, s. 1 (xvi), upon all property, rights & interests in this country belonging to German nationals at the date of the coming into force of the Treaty of Versailles attaches to the interest of a married woman, who is a German national, in property in England settled upon her for life without power of anticipation, notwithstanding the restraint upon anticipation.—PUBLIC TRUSTEE *v.* WOLF, [1923] A. C. 544; 92 L. J. Ch. 520; 129 L. T. 738; 39 T. L. R. 553; 67 Sol. Jo. 637, H. L.; *revsg.* S. C. *sub nom. Re* RUSH, WARRE *v.* RUSH, [1923] 1 Ch. 56, C. A.

Annotation :—**Reld.** *Re* Neuburger's Settlmt., Foreshew *v.* Public Trustee, [1923] 1 Ch. 508.

215l. —— —— —— **Belonging to foreign bank in liquidation.**]—Pltfs. were the receivers of the Austro-Hungarian Bank appointed by the Reparations Commission under Treaty of Peace with Austria, art. 206, & entrusted with the duty of liquidating the bank for the purpose of distributing the liability on the currency notes of the bank among the several States among which the territory of the former Austro-Hungarian monarchy had been divided. Art. 249 of that Treaty provided that "subject to any contrary stipulation" in the Treaty, the British Govt. might retain & liquidate the property in this country of "nationals of the former Austrian Empire" which expression, as the ct. found, included the Austro-Hungarian Bank, & charge it with the payment of claims by British nationals in respect of (*inter alia*) debts due to them by Austrian nationals. By the same article Austria undertook to compensate her own nationals for the retention of & charge upon their property. Defts. were the custodian of enemy property in this country & the administrator appointed by Order in Council to liquidate the property of Austrian nationals in this country & administer the above-mentioned charge. Pltfs. claimed that art. 206 was a "contrary stipulation" within art. 249, that the property of the bank in this country was consequently not subject to the charge, & that they & not defts. were entitled to administer that property :—*Held :* there was no inconsistency between the two articles, which dealt with different subject matters, the only effect of art. 249 upon the liquidation under art. 206 being to replace the assets of Austrian nationals in this country by assets of equal value in Austria if the Austrian Govt. carried out its undertaking, & the action must be dismissed.—LUXARDO *v.* PUBLIC TRUSTEE, [1924] 2 Ch. 147; 93 L. J. Ch. 425; 131 L. T. 200; 40 T. L. R. 546; 68 Sol. Jo. 737, C. A.

215m. —— —— **Policy money—Payable in England.**]—Pltf. co. was incorporated by special Act of the Legislature of New York, & had its central office & the bulk of its assets in New York. The co. had a branch in London, & in most of the capitals of Europe, the branch in Paris being its head office for Europe. The general manager of the London branch had no general authority to issue policies in this country. Certain life policies signed by the president & secretary of the co. & countersigned by the general manager for Europe were issued in London to German nationals before the outbreak of the war. The policies were not under seal. The policy moneys were expressed to be payable in London, but all premiums were payable either at the central office in New York or at the office where the insurance was payable & proofs of death were to be furnished at the New York office. An indorsement on the policy provided that it should be construed according to English law. In an action to determine whether the policy moneys payable under the policies in question, which had matured on or before Jan. 10, 1920, the date when the Treaty of Peace with Germany came into force, were "property, rights & interests within His Majesty's Dominions" belonging to German nationals, & as such were subject to the charge created by Treaty of Peace Order, 1919, s. 1 (xvi) :—*Held :* (1) there was nothing in art. 299 of s. V of the Peace Treaty, or in par. 11 of the annex thereto, to indicate that the property, rights, & interests of the assured under such contracts were to be excluded from the general charge under par. 4 of the annex to s. IV.; (2) inasmuch as a corpn. might have a dual residence, & there was evidence that pltfs. were resident both in New York & in London carrying on business in both places & in both places being subject to the jurisdiction of the cts., it was permissible & necessary to look at the terms of the contracts & to determine from them at what place the debts would be recoverable. Applying that test in the present case, the debts were recoverable in London where they were expressed to be payable, &, that being so, they were situate within His Majesty's Dominions & became subject to the charge.—NEW YORK LIFE INSURANCE CO. *v.* PUBLIC TRUSTEE, [1924] 2 Ch. 101; 93 L. J. Ch. 449; 131 L. T. 438; 40 T. L. R. 430; 68 Sol. Jo. 477, C. A.

Annotations :—*As to* (2) **Reld.** Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255; Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

215n. —— **Share of enemy partner in firm.**]—So far as English law is concerned one partner in a firm who purchases the share of an enemy partner therein during hostilities acquires no fresh right & has no fresh remedy as a result of such purchase. Such enemy's interest in the concern still falls within the category of "property, rights, & interests" subject to the charge created by Treaty of Peace Order, s. 1 (xvi) for the purpose of giving effect to art. 297, & by Treaty of Peace Orders, s. 1 (xvii) (ccc) is payable to the administrator of German property.—FRIED *v.* GERMAN PROPERTY ADMINISTRATOR, [1925] Ch. 757; 95 L. J. Ch. 4; 134 L. T. 376; 69 Sol. Jo. 707.

Annotation :—**Reld.** Allgemeine Versicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672.

215o. —— **Joint decisions of Clearing Offices—Effect.**]—In 1913 defts. had entered into contracts with German sellers for the purchase of a quantity of nitrate, delivery of which was to be made to defts.' agent alongside the vessel at Iquique, & payment for which was to be made in London after presentation of

bills of lading. Several cargoes were shipped, but war broke out before the vessels arrived at their destination & before the bills of lading, which were made out to order, could be presented. In these circumstances defts. procured delivery to their sub-purchasers by giving an indemnity to the ships, & presumably received payment for the nitrate from their sub-purchasers. After an interval the German sellers duly notified their claim for the price of the nitrate & for interest to the German clearing office, which in turn passed it on to the British clearing office. Defts. were prepared to pay what the Germans claimed as the price of the goods, though they disputed the existence of any debt, either in the strict legal sense or in the sense in which the expression is used in Treaty of Peace, art. 296, & they disputed the claim for interest. As the Treaty only contemplated the admission of debts, & defts. were prepared to pay the amount claimed as the price of the goods, the British clearing office admitted the debt, & the principal money was cleared in 1923. At a later period the claim for interest was again put forward. This claim defts. still disputed, but the two clearing offices arrived at a joint decision that interest was payable upon the principal sum admitted by the British clearing office. Notice of the decision was conveyed to defts. in a letter dated Sept. 13, 1923. The decision took the form of an intimation that the British & German clearing offices had jointly agreed that interest in accordance with par. 22 of the annex to sect. III. of Part X. of the Treaty was payable upon the admitted debt at the rate of 5 per cent. *per annum* calculated from dates specified. The notice then continued as follows: "In default of a notice of appeal under r. 22 of the Rules of Procedure of the Anglo-German Mixed Arbitral Tribunal, the interest on the said sum of . . . at the rate of 5 per cent. from (the date named) to the date of crediting & advice to the German clearing office will be credited by the British clearing office to the German clearing office." No appeal was brought, &, after the expiry of the time for appealing, pltf., the controller of the British clearing office, sought to enforce this joint decision by action on the ground that a joint decision unappealed from should, on a true construction of the Peace Treaty, be regarded in the same light as if it was a foreign judgment, or the award of an arbitrator, & should, therefore, be enforced by the cts. of this country on the same principle as either a foreign judgment or an award is enforced:—*Held:* under Treaty of Peace, art. 296, as carried out by Treaty of Peace Act, 1919, & Treaty of Peace Order, 1919, the joint decisions of the clearing offices were not in the nature of judgments or of awards under an arbn., so as themselves to be enforceable by action, & therefore the action failed.—CLEARING OFFICE CONTROLLER *v.* WEIR & Co. (1925), 95 L. J. K. B. 88; 133 L. T. 701; 41 T. L. R. 603; 69 Sol. Jo. 809; 22 Lloyd, L. R. 280, C. A.; *affd.* (1926), 135 L. T. 705; 42 T. L. R. 697, H. L.

215p. —— **Whether administrator agent of Crown.**]—WEINER *v.* USTAV (1927), cited 100 L. J. K. B. 385, C. A.

Annotation:—**Apld.** Hungarian Property Administrator *v.* [illegible] (1931), 100 L. J. K. B. 383.

215q. —— **Action against administrator—Whether Attorney-General necessary party.**] — The A.-G. is not a necessary party to an action against the administrator of Hungarian property in which the susbtantial claim was against the fund, & a subsidiary claim for a declaration as to nationality was added.—GROEBEL *v.* HUNGARIAN PROPERTY ADMINISTRATOR (1925), 70 Sol. Jo. 345.

215r. —— **Action by administrator—Statute of Limitations not applicable.**]—In collecting debts due to subjects of ex-enemy countries, the Administrators appointed under the Peace Treaties are acting as agents of the Crown, & therefore no Statute of Limitation runs against them.—HUNGARIAN PROPERTY ADMINISTRATOR *v.* FINEGOLD (1931), 100 L. J. K. B. 383; 144 L. T. 670; 47 T. L. R. 288; 75 Sol. Jo. 191.

215s. —— —— ——.]—By Treaty of Peace (Austria) Order, 1920, clause (x), para. (*ee*), "Where the property right or interest subject to the charge consists of any sum of money due to an Austrian national . . . it shall be payable to the Administrator, & shall be paid to him on demand, & the Administrator shall have power to enforce the payment thereof, & for that purpose shall have all such rights & powers as if he were the creditor":—*Held:* where at the date when a debt becomes payable to the Administrator it is not statute-barred as against the original creditor, it cannot afterwards, as against the Administrator, become statute-barred, inasmuch as the Administrator is the agent of the Crown, & as the above para. does not modify the general rule that the Crown is not bound by the Statute of Limitations.—AUSTRIAN PROPERTY ADMINISTRATOR *v.* RUSSIAN BANK FOR FOREIGN TRADE (1932), 48 T. L. R. 37, C. A.

215t. —— **Effect of London Agreement—Whether German Government trustee or agent for German nationals.**]—GERMAN PROPERTY ADMINISTRATOR *v.* KNOOP (1932), 49 T. L. R. 109; 76 Sol. Jo. 919.

219. *Citations:*—For "*Re* HEGELBERG" read "*Re* HAGELBERG."

219a. —— —— ——.]—The controller of the London agency of an enemy bank appointed under the above Act ought not in the absence of special circumstances to pay (1) non-enemy holders of cheques drawn before or after the outbreak of war by enemy customers; (2) non-enemy holders of cheques drawn before or after the outbreak of war by non-enemy customers; (3) pre-war acceptances of customers, whether enemy or non-enemy, of the London branch, or of other persons domiciled for payment at the London branch.

(4) Where cheques are drawn by the head office or any enemy branch on the London branch payable to non-enemy persons, claims in respect thereof must not be met without the direction of the judge.—*Re* DRESDNER BANK (LONDON AGENCY) (1920), 64 Sol. Jo. 426.

219b. —— —— —— **Effect of Treaty of Peace.**]—(1) The provision contained in sect. 1 (3) of the above Act continues in force after the coming into operation of the Treaty of Peace of June 28, 1919.

(2) The date at which the enemy or non-enemy character of creditors is to be deter-

mined is the date of the winding-up order.—*Re* DEUTSCHE BANK (LONDON AGENCY), [1921] 2 Ch. 30; 90 L. J. Ch. 406; 126 L. T. 20; 37 T. L. R. 559; 65 Sol. Jo. 492; *subsequent proceedings*, [1921] 2 Ch. 291.

219c. —— —— —— **Who are creditors.**]—On the outbreak of war three enemy banks in the City were closed, but were afterwards reopened under licence. Ultimately the Board of Trade made orders under the above Act winding up the businesses, & a controller was appointed for that purpose. The controller gave the managers notice purporting to terminate their contracts under which they were entitled to a year's notice, & the contracts being subject to German law were not determined by the outbreak of war. The managers took out summonses claiming payment of their salary monthly after the date of the notice, or damages for wrongful dismissal:—*Held:* the claims for salary & for damages were not debts of a London business payable under the above Act, & the applications failed.—*Re* ANGLO-AUSTRIAN BANK, *Re* DRESDNER BANK, *Re* DIRECTION DER DISCONTO GESELLSCHAFT, [1920] 1 Ch. 69; 89 L. J. Ch. 86; 121 L. T. 640; 35 T. L. R. 736.

Annotation:—**Consd.** *Re* Vulcaan Coal Co., Harrison *v.* Harbottle, [1922] 2 Ch. 60.

220. *Add. Annotations:*—**Consd.** Meyer *v.* Faber (No. 2), [1923] 2 Ch. 421. **Refd.** *Re* Vulcaan Coal Co., Harrison *v.* Harbottle, [1922] 2 Ch. 60.

221. *Add. Annotations:*—**Refd.** *Re* Dieckmann (1917), 117 L. T. 713; Meyer *v.* Faber (No. 2), [1923] 2 Ch. 421.

221a. —— —— **Liability of third party to put business in funds to meet bills.**]—In June, 1914, defts. by their Paris branch, drew ten bills of exchange, payable in London three months after date, on the Dresdner Bank. The Dresdner Bank accepted the bills at their London branch & received as security Russian promissory notes. Defts. provided no funds to meet the bills when they fell due &, under an arrangement between the Treasury & the Bank of England, the amount payable was discharged by the Bank of England. By 1917 the Dresdner Bank in London had repaid the sum due for principal & interest to the Bank of England. In 1918 the Board of Trade, under the above Act, ordered the business carried on by the Dresdner Bank in London to be wound up, & appointed a controller to wind up the business, with power to collect all moneys owing to the bank & to bring actions in the name of the bank:—*Held:* (1) the transaction was part of the "business" of the London branch of the Dresdner Bank; defts.' liability to put the Dresdner Bank in funds to meet the bills was an asset of the London branch within the above sect., even if the London branch accepted the bills on the instructions of the head office in Berlin & debited the current account of the head office with the amount paid on the bills, & defts. were liable to repay pltfs. the money paid by them to the Bank of England in respect of the bills with simple interest at 5 per cent. on each instalment from the date of payment; (2) the action by the controller in the name of the Dresdner Bank (London Agency) was not an action in the name of a branch of that bank but an action in the name of the Dresdner Bank, & the addition of the words "London Agency," being merely descriptive, did not change pltfs. from being the Dresdner Bank into something unknown to the law as a legal person.—DRESDNER BANK *v.* RUSSO-ASIATIC BANK, [1923] 1 Ch. 209; 92 L. J. Ch. 204; 128 L. T. 633; 67 Sol. Jo. 277.

222. *Add. Annotation:*—**Refd.** Meyer *v.* Faber (No. 2), [1923] 2 Ch. 421.

223. *Add. Annotations:*—**Refd.** *Re* Vulcaan Coal Co., Harrison *v.* Harbottle, [1922] 2 Ch. 60; Meyer *v.* Faber (No. 2), [1923] 2 Ch. 421.

223a. —— —— —— **Action in name of business—Addition of words "London Agency."**]—DRESDNER BANK *v.* RUSSO-ASIATIC BANK, No. 221a, *ante*.

223b. — —— —— **After Treaty of Peace.**]—The Treaty of Peace with Germany, art. 296, which declared that enemy debts as therein defined were to be settled through clearing offices to be established after the treaty came into operation, & the annex to that article, are qualified by art. 297, & the latter article & its annex cannot be construed as limited to a confirmation of what has been done under "exceptional war measures" prior to the coming into force of the Treaty, but must be held to validate all acts & procedure done thereafter in the execution of such exceptional war measures.

Where an action was brought four months after the coming into force of the Treaty of Peace by the controller with the sanction of the Board of Trade, in the name of enemy subjects formerly carrying on business in London, to recover assets of the business alleged to be in the hands of deft.:—*Held:* the action was properly brought; & a motion by deft. to stay the proceeding on the ground that it was prohibited by the Treaty of Peace was dismissed.—MEYER & CO. *v.* FABER, [1921] 2 Ch. 226; 91 L. J. Ch. 233; 125 L. T. 531.

223c. —— —— **General position of controller.**]—*Re* VULCAAN COAL CO., HARRISON *v.* HARBOTTLE, No. 223f, *post*.

223d. —— —— ——.]—At the outbreak of war in 1914, a British subject, resident in England, & three German subjects, resident in Germany, were carrying on business in partnership in London. The outbreak of war having dissolved the partnership, the British partner with the sanction of the Home Office proceeded to wind up the business. He got in a large sum of money, representing assets of the business, & discharged nearly all the liabilities, & had a balance in hand. The controller, appointed in 1918 under Trading with the Enemy Acts, 1916 (c. 105) & 1918 (c. 31), sued, in the name of the firm, the British partner for the balance of assets. Deft. contended that he had himself claims against the business, & that he was entitled to the taking of partnership accounts to ascertain those claims before paying over the assets:—*Held:* under the Acts, the controller had not the powers of a trustee in bkpcy., his outside powers being those of a liquidator in a voluntary winding up, & he could not therefore override the ordinary law of partnership which entitled deft. to the taking of accounts between himself & the other partners.—MEYER & CO. *v.* FABER

(No. 2), [1923] 2 Ch. 421 ; 93 L. J. Ch. 17 ; 129 L. T. 490 ; 39 T. L. R. 550 ; *sub nom.* MEYER & Co. *v.* FABER, MEYER & Co. *v.* ELDER, 67 Sol. Jo. 576, C. A.

223e. —— —— **Dismissal of manager by controller—Claim by manager for salary & damages for wrongful dismissal.**]—*Re* ANGLO-AUSTRIAN BANK, *Re* DRESDNER BANK, *Re* DIRECTION DER DISCONTO GESELLSCHAFT, No. 219c, *ante.*

223f. —— —— —— **Claim by manager to retain money as against controller.**]—A controller appointed by the Board of Trade under sect. 1 (1) of the above Act to wind up the English business of an enemy co. or firm, does not represent the co. or firm. His duties are to get in the assets & discharge the liabilities of the business.

By an agreement, dated Mar. 28, 1913, H. was engaged as manager of the Newcastle branch of a German co. registered in Holland until June 30, 1918, at a salary of not less than £1,000 *per annum.* On Aug. 14, 1916, the Board of Trade made an order to wind up the business & appointed a controller under sect. 1 (1) of the above Act. On Aug. 31, 1916, the controller dispensed with the services of H. At that date H. had in his possession certain moneys of the business, which he claimed to retain, as against the controller, to satisfy his claim for damages for breach by the co. of the agreement :—*Held :* the claim was against the co., & not against the business, & H. was not entitled to retain the moneys as against the controller.—*Re* VULCAN COAL CO., HARRISON *v.* HARBOTTLE, [1922] 2 Ch. 60 ; 91 L. J. Ch. 491 ; 127 L. T. 274 ; 66 Sol. Jo. 423.

Annotation :—**Dbtd.** Meyer *v.* Faber (No. 2), [1923] 2 Ch. 421.

223g. **Sale of business by controller—Damages for breach of contract.**]—At the outbreak of war the majority of the shares in M. Co., carrying on business in the United Kingdom, were held by, & the majority of the directors were, alien enemies. A controller of the co. was appointed. By the appointment of new directors the co. came under British management. In Dec. 1915, M. Co. agreed to sell, & F. Co. to buy, the whole output of M. Co. until six months after the declaration of peace between England & Germany. In 1919 the Board of Trade, under the above Act, ordered the business of M. Co. to be wound up & the controller sold the business :—*Held :* although at the outbreak of war M. Co. became an alien enemy, yet its business could be lawfully carried on under new non-enemy management even if enemy shareholders might after the war benefit by such trading, &, although it was in consequence of the winding-up order that M. Co. was unable to carry out its contract, it was liable in damages to F. Co. for breach of contract.—*Re* BRITISH INCANDESCENT MANTLE WORKS, LTD. (1923), 129 L. T. 126 ; 39 T. L. R. 244 ; 67 Sol. Jo. 517.

224. *Add. Annotations :*—**Refd.** *Re* Vulcaan Coal Co., Harrison *v.* Harbottle, [1922] 2 Ch. 60 ; Meyer *v.* Faber (No. 2), [1923] 2 Ch. 421.

226. *Add. Citation :*—[1917] H. B. R. 243.

PART III. SECT. 2, SUB-SECT. 2.—B. (a).

223 i. *Amending Act of* 1916, *s.* 1—*Business ordered to be wound up—Sale of stock—Rights of consignors of stock supplied on sale or return.*]—The business of an alien enemy bookseller was ordered to be wound up, upon application by the controller under the above sect. :—*Held :* he was entitled to sell the whole stock, but if there were identifiable consignments of unsold stock on sale or return from persons with whom he could communicate, he must return or store them at consignor's expense.—*Re* THOMSON, *Ex p.* M'LINTOCK, [1918] 1 S. L. T. 137.—**SCOT.**

sj. *Trading with Enemy Acts,* 1914-1916—*Business ordered to be wound up—Power of controller to apply.*]—*Held :* s. 9H of the 1914-16 Acts authorised the Minister for Trade & Customs to confer upon a controller powers under which the right of that controller to apply to the High Ct. was not to be measured by the standard laid down with regard to similar applications by a liquidator.—BROKEN HILL PROPRIETARY CO., LTD. *v.* WARNOCK (1922), 30 C. L. R. 362.—**AUS.**

sk. *Enemy Trading Act, X of* 1916—*Business ordered to be wound up—Powers of controller.*]—WOLF *v.* DADYBA (1919), I. L. R. 44 Bom. 631.—**IND.**

PART III. SECT. 2, SUB-SECT. 2.—B. (b).

230 ii. —— —— *Proof of enemy's interest in property.*]—A British subject applied to the ct. to make a vesting order vesting in the custodian for Scotland a ship & £20,000, the freight earned by the ship while under requisition of the Admlty. He averred that the enemy firm, & the two partners thereof, were "the owners or at least part-owners of the" ship :—*Held :* appot. had failed to aver a sufficient interest of the enemy firm & its partners in the ship to make s. 4 (1) of the above Act applicable.—BURRELL *v.* MAASHAVEN S.S. Co., LTD. (1919), 56 Sc. L. R. 434.—**SCOT.**

230 iii. —— —— *Instalments of purchase price of ship—Paid to builder by enemy—Ship requisitioned by Admiralty.*]—Scottish shipbuilders contracted to build a ship for Austrian shipowners. On the declaration of war between Great Britain & Austria the vessel was nearing completion, & the purchasers had paid instalments of the price amounting to £79,732. On Feb 17, 1915, the Admlty. requisitioned the ship as she then stood at the price of £86,000, but it was not until July 30, 1917, that the Admlty. paid the builders that sum, & they refused to pay any interest from the date of requisition. On Dec. 1, 1917, the Board of Trade pronounced an order vesting the sum of £79,732, with interest from the date of receipt of the instalments, in the custodian for Scotland under the above Act :—*Held :* the custodian was entitled to decree for £79,732 with interest from the date of the interlocutor of the First Division.—PENNEY *v.* CLYDE, [1920] S. C. (H. L.) 68.—**SCOT.**

sl. *War Measures Act,* 1914 (c. 2)—*What property can be vested—Trust funds—Agreement by beneficiaries as to disposition of fund.*]—By the will of W., a citizen of the United States, who died in 1916 resident there, the residue of his estate was given to a trustee for the sole use & benefit of the wife & daughter, share & share alike. His daughter was married to a German national, & was residing in Germany at the time of her father's death. W.'s widow was a citizen of the United States. Early in 1917, an agreement was made by the trustee & the wife & daughter, pursuant to clause 11 of the will, by which, in effect, it was agreed that the whole of the assets in Ontario should be allocated to the widow. In May, 1919, an application was made to the ct., by the Secretary of State for Canada, for an order vesting in the custodian appointed under Consolidated Orders respecting Trading with the Enemy, 1916, one-half of the assets situated in Ontario of the estate of W., on the ground that the said half belonged to or was held or managed for or on behalf of W.'s daughter, who was an enemy. The motion was made under Consolidated Order 28, which was passed pursuant to the above Act :—*Held :* it was appropriate & expedient to make the order asked for.—*Re* WALKER (1919), 46 O. L. R. 86 ; 16 O. W. N. 328.—**CAN.**

234 i. For "234 i" read "236 i."

sm. *Trading with Enemy Acts,* 1914-1916—*Powers & duties of custodian—Payment of mortgage debt—Form of order—Costs.*]—Where, under s. 9D (2) of the 1914-16 Acts the Public Trustee is authorised to pay out of the property paid to him in respect of an enemy subject a mtge. debt & interest due by him, the order should provide that the mtgee. should execute a proper discharge of the mtge. & deliver up upon oath to the Public Trustee all titles & other documents relating to the land mortgaged. The costs of a motion for an order under sect. 9D (2), of the Public Trustee & of the enemy subject were allowed out of the property in the hands of the Public Trustee. Form of order stated.—*Re* SCHURR (1920), 27 C. L. R. 442.—**AUS.**

sn. —— *Recovery of enemy debt—Effect of Treaty of Peace & subsequent Orders.*]—Before the war, F., a German firm, sent to W. Co. in Canada goods on consignment for sale on commission. During the war W. Co. sold the goods &, shortly afterwards, sold its assets to C. Co. which assumed W. Co.'s liabilities, including the liability to F. In June, 1920, C. Co., having notice of competing claims by F. & its sequestrator in France, for the amount of said liability, applied for & obtained from the master in chambers, in the

235a. —— —— **To wind up partnership—Parties.**]—At the outbreak of war three German subjects were carrying on business in London in co-partnership with F., their English partner. Under the partnership articles F. was the managing partner in London, & on the dissolution by the declaration of war he carried on the business & collected the assets with the view of liquidation. No accounts had been taken between the partners since Dec. 31, 1913. F. died in 1920, & deft. was his legal personal representative. By an order of the Board of Trade it was ordered that all the property, rights, & interests of the three German partners in the assets of the firm in respect of any claim against the English partner, or his estate, should vest in pltf., who should take all necessary proceedings to collect what might be due to the German partners. In an action by pltf. as custodian of enemy property with the object of winding up the partnership he claimed an account against deft. of all dealings between the German partners & the English partner, including all dealings with the partnership assets since the dissolution, payment of what should be found due, & an inquiry of what the partnership property consisted. The German partners were not added as pltfs. in the action :—*Held :* in the absence of the German partners as parties to the action no such relief as was asked could be granted, & the action failed.—PUBLIC TRUSTEE *v.* ELDER, [1926] Ch. 776 ; 95 L. J. Ch. 519 ; 135 L. T. 589, C. A.

236. *Add. Annotation :*—**Refd.** *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107.

236a. —— —— —— **Effect of Treaty of Peace & consequent Orders.**]—By Treaty of Peace Act, 1919 (c. 33), Treaty of Peace Order, & the Treaty of Peace with Germany, the power conferred by Trading with the Enemy Amendment Act, 1914 (c. 12), s. 5 (2), on the ct. to authorise the custodian to pay out of property paid to him in respect of an enemy debts due by that enemy, has, so far as concerns pre-war debts due by German nationals to British nationals, come to an end. Payment of such debts can now be made only through the clearing office established under s. III. of Part X. of the Treaty.—*Re* NIERHAUS, [1921] 1 Ch. 269 ; 91 L. J. Ch. 107 ; 36 T. L. R. 425 ; 64 Sol. Jo. 426.

Annotation :—**Refd.** *Re* National Bank für Deutschland, *Re* Anglo-Austrian Bank, [1921] 1 Ch. 284.

236b. —— —At the outbreak of war a debt was due from a German bank to the London agency of an Austrian bank. Vesting orders were made, under which the property in England of the German bank was vested in the custodian. An order had been made, under which the business of the London agency was wound up & a controller appointed. The controller applied to the ct. to give directions under the powers conferred by sect. 5 (1) or (2) of the above Act that the debt should be paid out of the property vested in the custodian :—*Held :* even if the power still subsisted under those subsects. to direct such payment to persons who were not British nationals under the Treaty of Peace, such power was discretionary & the ct. would not exercise it, except in very special circumstances, but would leave such debts to be dealt with under the Order in Council to be made at the termination of the war under sect. 5 (1) of the Act.—*Re* NATIONAL BANK FÜR DEUTSCHLAND, *Re* ANGLO-AUSTRIAN BANK, [1921] 1 Ch. 284 ; 90 L. J. Ch. 15 ; 123 L. T. 647.

237. *Add. Annotation :*—**Folld.** Dresdner Bank *v.* Russo-Asiatic Bank, [1923] 1 Ch. 209.

237a. —— —— **Release of funds in favour of British creditors—Mode of distribution.**]—Funds were released by the custodian of enemy assets in this country from his charge upon them under the Treaty of Peace Orders, the release being expressly limited in favour of creditors of British nationality. There were no German creditors, but there were some foreign creditors. Upon the trustee's application for directions :—*Held :* the ct. would direct the funds to be distributed according to Bkpcy. Act, 1914 (c. 59), but would give the custodian an opportunity of being heard, if he so wished, before the order was drawn up.—*Re* WISKEMANN, *Ex p.* TRUSTEE (1923), 92 L. J. Ch. 349 ; [1923] B. & C. R. 28.

237b. —— **Right to dividends—On shares held by alien enemies.**]—An English co. had certain alien enemy shareholders & certain assets in Germany. From time to time after the outbreak of the war with Germany, resolutions were passed by the directors & by the co. in general meeting declaring *interim* & final dividends respectively, subject in each case to a condition that as regards members of the co. resident in Germany, Austria & Turkey, the dividend should be payable only out of assets in Germany, & as regards members resident elsewhere out of assets in England. By an order made on Aug. 24, 1916, under sect. 4 (1) of the above Act, it was ordered that the right to transfer the shares held by alien enemies & to receive any dividends "now due & to accrue due thereon" vested in the custodian, & the shares were transferred into his name in due course :—*Held :* the resolutions, so far as they provided for payment only out of assets in Germany, were void as against the custodian, & the co. was liable out of any assets in its hands to pay him the amounts of the dividends, whether declared before or after the vesting order.—ARAMAYO FRANCKE MINES, LTD. *v.* PUBLIC TRUSTEE, [1922] 2 A. C. 406 ; 91 L. J. Ch. 643 ; 127 L. T. 661 ; 38 T. L. R. 756 ; 66 Sol. Jo. 611, H. L. ; *affg.* S. C. *sub nom. Re* ARAMAYO FRANCKE MINES, LTD., [1921] 1 Ch. 675, C. A.

237c. —— —— **Part of trust income—Payable to enemy.**]—(1) *Held :* sect. 2 (1) of the above Act related only to moneys payable under contractual obligations arising out of loans, partnership or membership of a co., & not to trust income payable by trustees to an enemy even when the income was derived from dividends on shares.

Supreme Ct. of Ontario, an order for the payment of the amount into ct. In November, 1925, P., as attorney for F., & the Custodian of Alien Enemy Property each applied for payment to himself of the money in ct. :—*Held :* the Custodian was entitled to the money ; it represented an enemy "debt" owing by a debtor in Canada & recoverable by the Custodian under the regulations of Treaty of Peace (Germany) Order, 1920, Part I.—CUSTODIAN OF ALIEN ENEMY PROPERTY *v.* PASSAVANT, [1928] 3 D. L. R. 5 ; [1928] S. C. R. 242.—CAN.

(2) By his will a testator, who died in 1904, bequeathed his estate upon trusts whereby the residue & the proceeds of sale thereof were to go in equal shares to his children; & he directed his trustees to retain the share of each of his daughters upon trust during the life of the daughter to pay the annual income to her for her separate use without power of anticipation & until she should do or suffer any act or thing whereby the same, if payable to her absolutely or any part thereof, might have become payable or forfeited to or vested in any other person. In the event of a forfeiture under this provision the income was given upon a discretionary trust during the remainder of the life of the daughter, & subject thereto the daughter's share was to be held in trust for her children & issue as therein mentioned. One of the testator's daughters had intermarried with a German in 1908, & had since resided in Germany. Since the coming into force of the above Act, the trustees had accumulated the income of her share, which amounted on Jan. 10, 1920, the date of the ratification of the Treaty of Peace with Germany, to about £4,000:—*Held:* the daughter's life interest was not determined on the coming into force of the above Act, but ceased on Jan. 10, 1920, by reason of the Treaty of Peace charge, & the accumulations of income up to that date were subject to the charge.—*Re* HALLENSTEIN, HALSTED *v.* BLANK, [1922] 1 Ch. 355; 91 L. J. Ch. 120; 127 L. T. 58; 38 T. L. R. 313; 66 Sol. Jo. 299.

—— **Liability of custodian for super tax.**]—Property belonging to an enemy which is paid to or vested in the custodian under the above Act is, pending its disposition by Order in Council after the termination of the war, removed from the control & beneficial ownership of the enemy. During the interval the beneficial ownership is in statutory suspense or abeyance, the custodian having meanwhile limited powers of dealing with the property.

When war broke out in 1914, M., an enemy within the Act, owned real estate in England & shares & securities in British cos. By orders under sect. 4 of the Act the real estate, shares & securities were vested in the custodian. The Special Comrs. for Income Tax assessed the custodian to super tax as agent or receiver for M. The custodian disputed the legality of the assessment:—*Held:* (1) M.'s beneficial ownership of the property having ceased on the making of the vesting orders, the profits & gains received by the custodian were received by him in respect of M., but did not in his hands belong to M.; he did not receive or hold them as agent or receiver or trustee for M. within 5 & 6 Vict. c. 35, s. 41, &, therefore, he was not liable to be assessed to super tax; (2) as M. could not, after the war, ask to receive back the property except on the footing that a sum equal to the amount of super tax which, but for the war, he would have been liable to pay was paid, the custodian must, under the discretion given to the ct. by sect. 5 (1) of the Act of 1914, pay that sum to the Comrs. as analogous to payment of a debt under sect. 5 (2).—*Re* MÜNSTER, [1920] 1 Ch. 268; 89 L. J. Ch. 138; 36 T. L. R. 173; 64 Sol. Jo. 309.

Annotation:—As to (1) **Refd.** *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107.

239a. —— —— **Application to court—Rectification of register of shareholders.**]—Shares belonging to an alien enemy were after the declaration of war vested in the Public Trustee & sold by him. A four-day order was obtained, directing the co. to rectify the register of members, but that order was not complied with. The solrs. to the co. stated in correspondence they had the books of the co., but that all the directors & secretary had resigned:—*Held:* the Public Trustee was entitled to an order to carry out the transfer of the shares.—*Re* MANIHOT RUBBER PLANTATIONS, LTD. (1919), 63 Sol. Jo. 827.

240. *Add. Citation:*—[1918-19] B. & C. R. 171.

Add. Annotation:—**Refd.** Meyer *v.* Faber (No. 2), [1923] 2 Ch. 421.

241. *Add. Annotations:*—**Consd.** Central India Mining Co. *v.* Soc. Coloniale Anversoise, [1920] 1 K. B. 753; *Re* Deutsche Bank (London Agency), [1921] 2 Ch. 291. **Refd.** Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

253. *Add. Annotations:*—**Consd.** Rodriguez *v.* Speyer, [1919] A. C. 59. **Mentd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

254. *Add. Annotations:*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59; *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107.

256. *Add. Annotations:*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59; Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

257. *Add. Annotation:—As to* (2) **Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

259. *Add. Annotations:*—**Follid.** Krauss *v.* Krauss & Orbach (1919), 35 T. L. R. 637. **Refd.**

PART III. SECT. 2, SUB-SECT. 3.—A.

250 vii. —— *Plaintiff compelled to sue to establish caveat.*]—An alien enemy, unless he be within the realm by the licence of the King, cannot sue in our cts. either by himself or by any person on his behalf until peace is restored.

Where a municipality, having sold land for taxes, serves notice on the owner to take proceedings on a *caveat*, thereby compelling him to proceed to establish it, the owner, if an alien enemy, should be treated, to some extent at least, as in the position of an alien enemy who is deft. to an action. Therefore the action should not be dismissed on the ground that pltf. is an alien enemy, for therefrom a discharge of an order continuing the *caveat* & a discharge of the *caveat* would follow.—REVENLTOW-CRIMINIL *v.* STREAMSTOWN RURAL MUNICIPALITY, No. 511, [1917] 3 W. W. R. 546; 37 D. L. R. 394; *affd.*, [1920] 1 W. W. R. 578; 52 D. L. R. 266; 15 Alta. L. R. 204.—**CAN.**

250 viii. ——.]—An alien enemy cannot enforce civil rights in a British ct. during the period of hostilities.—SIBISI *v.* HERMANSBERG MISSION SOCIETY (1916), 37 N. L. R. 409.—**S. AF.**

256 i. For "Proclamation of August 13, 1914" read "Proclamation of August 15, 1914."

256 iv. —— —— ——.]—An alien resident in Ontario, although his country is at war with ours, so long as he conducts himself peaceably, & is within the above Proclamation, is entitled to bring & maintain an action in any ct. in Ontario.—KRISTO *v.* HOLLINGER CONSOLIDATED GOLD MINES, LTD. (1918), 41 O. L. R. 51; 13 O. W. N. 206.—**CAN.**

256 v. —— —— *Christian Armenian.*]—The cts. of the province of Quebec are open to a Christian Armenian specially exempted under Order in Council of Nov. 20, 1914.—SAP *v.* PICARD (1919), 20 Q. P. R. 179.—**CAN.**

f i. *Action under Families Compensation Act.*]—An action brought under the above Act, for the benefit of the mother of deceased, she being an alien enemy, cannot be maintained.—CREMIDAS *v.* BRITISH COLUMBIA ELECTRIC RY. CO., 1919] 2 W. W. R. 549.—**CAN.**

Procurator in Egypt *v.* Deutsches Kohlen Depot Gesellschaft, [1919] A. C. 291.

260. *Add. Annotations :*—**Refd.** *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107; *Re* Sutherland, Bechoff *v.* Bubna (1921), 65 Sol. Jo. 513.

261. *Add. Annotation :*—**Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

261a. **Suit for dissolution of marriage.**]—An alien enemy, who has been registered as such & is domiciled in England, has a right to bring a petition for the dissolution of his marriage.—KRAUSS (OTHERWISE DES SALLES D'EPINOIX) *v.* KRAUSS (OTHERWISE DES SALLES D'EPINOIX) & ORBACH (1919), 35 T. L. R. 637; 63 Sol. Jo. 760.

276. *Add. Annotation :*—**Refd.** Stoeck *v.* Public Trustee, [1921] 2 Ch. 67.

280. *Add. Annotation :*—**Consd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

Delete the cross-reference following this case.

280a. **Effect of peace—Treaties of Peace & consequent Orders—Right to sue after restoration of peace—Cause of action arising during war.**]—In an action for infringement defts. alleged (*inter alia*) that, at all material times, pltf. had been residing or carrying on business in Germany; that, having regard to the Treaty of Peace, art. 309, or, alternatively, under the common law, he could not sue; & that, at the dates of the alleged infringements, the patent had been vested in the custodian under Trading with the Enemy Amendment Act, 1916 (c. 105), & pltf. could not maintain the action :—*Held :* pltf. could not maintain the action because (1) at the date of the alleged infringement, he had been a "hostile person" within the General Vesting Order made under Trading with the Enemy Amendment Act, 1916, & the patent had been vested in the custodian, & the Divesting Order had not transferred to pltf. a right of action that had accrued to the custodian; (2) the case fell within the Treaty of Peace, art. 309.—WILDERMAN *v.* BERK (F. W.) & Co., [1925] Ch. 116; 94 L. J. Ch. 136; 132 L. T. 534; 41 T. L. R. 50; 42 R. P. C. 79.

-.]—*See, also,* original volume, Nos. 202, 269, 270

280b. **Debt incurred by neutral.**]—Deft., a Norwegian subject, living in England, incurred a debt to pltfs., an Austrian co., before the outbreak of war. After the Treaty of Peace pltfs. sued deft. for the amount :—*Held :* although the claim was against a neutral subject, yet, as Treaty of Peace Order, s. 7, made the debt payable to the administrator & transferred to him all the rights of the creditors, pltfs. had no right to bring the action.—JOSEF INWALD ACT. *v.* PFEIFFER (1927), 43 T. L. R. 399, C. A.; *affd.* (1928), 44 T. L. R. 352; 72 Sol. Jo. 205, H. L.

288. *Add. Annotation :* — **Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

291. *Add. Annotation :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

293. *Add. Annotation :*—**Consd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

295. For "but not to a counterclaim," read "but not a counterclaim."
Citation :—For "34 R. P. C. 332" read "34 R. P. C. 339."

297. *Add. Annotation :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

299. *Add. Annotation :*—**Refd.** Richardson *v.* Richardson, [1927] P. 228.

300. *Add. Annotation :*—**Refd.** Richardson *v.* Richardson, [1927] P. 228.

303. *Add. Annotations :*—**Consd.** *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107. **Refd.** Aksionairnoye Obschestvo A. M. Luther *v.* Sagor, [1921] 1 K. B. 456.

304. *Add. Annotations :*—**Consd.** Rodriguez *v.* Speyer, [1919] A. C. 59. **Refd.** Ertel Bieber *v.* Rio Tinto Co., etc., [1918] A. C. 260; *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331.

306. *Add. Citations :*—[1919] A. C. 59; 88 L. J. K. B. 147, H. L.

310. *Add. Annotation :—As to* (1) **Apprvd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

313. *Add. Annotation :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

316. *Add. Annotations :—As to* (1) **Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59. *As to* (2) **Consd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

318. *Add. Annotation :*—**Refd.** Central India Mining Co. *v.* Soc. Coloniale Anversoise, [1920] 1 K. B. 753.

320. *Add. Annotation :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

322. *Add. Annotation :—As to* (1) **Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

329. *Add. Annotation :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

274 iii. *War Measures Act.*]—PERLMAN *v.* PICHE (1918), Q. R. 54 S. C. 170; 41 D. L. R. 147; 24 R. de J. 438.—**CAN.**

276 ii. —— —— ——.]—A man of Austro-Hungarian nationality came to Canada after the outbreak of the war, & registered as an alien enemy. In violation of the law, he left Canada without an *exeat*, & on his return was prosecuted & fined. In Dec. 1917, he was arrested under the immigration officer's warrant. His application for a writ of *habeas corpus* was refused on the following grounds: (1) he was an alien enemy, & could not, without the King's protection, sue in His Majesty's ct.; (2) he was not within the proclamation conferring protection upon alien enemies; (3) had he been within the protection of the proclamation, he lost his right by violation of the terms upon which protection was granted; (4) the ct. had no right to deal with the application without the consent of the Minister of Justice.—*Re* GOTTESMAN (1918), 29 Can. Crim. Cas. 439; 41 O. L. R. 547; 13 O. W. N. 344.—**CAN.**

PART III. SECT. 2, SUB-SECT. 3.—C.

292 ii. ——.]—An alien enemy, who is sued by a British subject in a British ct. is entitled to be heard in defence.—UNION BANK *v.* LOHMANN, [1919] V. L. R. 418.—**AUS.**

292 iii. ——.]—An alien enemy who is sued has a right to defend the action & to appeal against any decision, final or interlocutory, that may be given against him.

Where a municipality served notice on the owner of land, sold for taxes, to take proceedings on a *caveat*, thereby compelling him to proceed to establish it :—*Held :* the owner, being an alien enemy, should be treated as being in the position of an alien enemy defending an action, & the action should not be dismissed.—REVENTLOW-CRIMINIL *v.* STREAMSTOWN RURAL MUNICIPALITY, [1920] 1 W. W. R. 577; 52 D. L. R. 266; 15 Alta. L. R. 204; *affg.*, [1917 3 W. W. R. 546; 37 D. L. R. 394.—**CAN.**

PART III. SECT. 2, SUB-SECT. 3.—D.

304 i. *Proceedings by partnership—Enemy partners.*]—If one of the partners in a firm is an alien enemy, neither he nor his partner, who does not bear an enemy character, can recover money owing to the firm.—HAJI AH JON *v.* ABDUL JALIL KHAN (1920), I. L. R. 1 Lah. 276.—**IND.**

Part IV.—Trading and Communicating with the Enemy.

332. *Add. Annotation :*—**Refd.** Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

347. *Add. Annotation :*—**Consd.** Casdagli *v.* Casdagli, [1919] A. C. 145.

351. After the words " was void " at the end of the paragraph in original volume add " ; (2) in the circumstances the indorsement to pltf. conveyed to him a legal title in the bills, on which he might sue after the return of peace."

359. *Add. Annotation :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

363. *Add. Annotation :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

370. *Add. Annotation :*—**Refd.** Casdagli *v.* Casdagli, [1919] A. C. 145.

371. *Add. Annotations :*—**Refd.** *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331 ; Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

374. *Add. Citation :*—13 Asp. M. L. C. 484.

375a. —— **Deportation order.**]—NELSON *v.* R., [1928] W. N. 197, P. C.

376. *Add. Annotation : — As to* (1) **Refd.** The Ambatielos, The Cephalonia, [1923] P. 68.

379. *Add. Annotation :*—**Refd.** Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

383. *Add. Annotation :*—**Refd.** Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

389a. —— **What amounts to " assignment "—Abandonment by enemy insured to neutral insurer.**]—In 1916 a firm in Germany despatched to a firm in Lima, both consignors & consignees being at that date enemies within the meaning of the Trading with the Enemy Acts, a parcel of diamonds by a Dutch steamship sailing from Amsterdam, the diamonds being insured against war and other risks with a Swiss insurance co. The British authorities, acting under the Reprisals Order of Mar. 11, 1915, required the Dutch vessel to put in to Kirkwall, where her cargo was examined, & the diamonds being found they were in due course placed in the custody of the Marshal of the Prize Ct., which, in Feb. 1918, ordered their detention & sale. After that order was made, but before the sale was carried out, the assured gave notice of abandonment of the diamonds & ceded all their rights therein to the insurance co., which accepted the notice & paid the assured as for a total loss. In 1919 the diamonds were sold, & the proceeds were ordered by the Prize Ct. to be handed to the predecessor in title of the Administrator of German property to be dealt with in accordance with the provisions of the Treaty of Versailles & the Treaty of Peace Order, 1919. The Swiss insurance co. claiming that as a result of the abandonment to them by the assured the diamonds became their property, now sued the Administrator of German Property to recover the proceeds of the sale :—*Held :* the action was not maintainable, inasmuch as (1) the notice of abandonment & its acceptance constituted an " assignment " within " Act B.," s. 6 (1) ; (2) the proceeds of sale of the diamonds constituted a " chose in action " within the same sub-sect. ; & (3) the Administrator of German Property, as representing the Crown, was entitled to rely on the provisions of that sub-sect. as precluding the insurance co. from recovering.—ALLGEMEINE VERSICHERUNGS-GESELLSCHAFT HELVETIA *v.* GERMAN PROPERTY ADMINISTRATOR, [1931] 1 K. B. 672 ; 100 L. J. K. B. 290 ; 144 L. T. 705, C. A.

389b. **What amounts to " chose in action "—Proceeds of sale of goods abandoned to neutral insurer.**] — ALLGEMEINE VERSICHERUNGS-GESELLSCHAFT HELVETIA *v.* GERMAN PROPERTY ADMINISTRATOR, No. 389a, *ante*.

392. *Add. Citation :*—1 Br. & Col Pr. Cas. 605.

392a. **" Proc. A," par. 7—Goods sent to enemy agent for sale.**]—Applts., who were Ottoman subjects carrying on business in England, in Sept. & Nov. 1915 posted to their agent, an Austrian subject, at Shanghai packets of diamonds for sale on their behalf. The diamonds were returned to England by the postal authorities & were seized in the Postal Censor's office in Nov. 1917. They were condemned on the ground that the transaction was a trading with the enemy :—*Held :* the diamonds were properly condemned, since under Trading with the Enemy (China, Siam, Persia & Morocco) Proclamation, 1915, applts.' agent was for the purpose of " Proc. A," an " enemy " & the transaction was a supplying with goods contrary to cl. 5 (7) of the latter Proclamation.—SALTI ET FILS *v.* PROCURATOR-GENERAL, [1919] A. C. 968 ; 88 L. J. P. 209 ; 121 L. T. 459 ; 35 T. L. R. 679 ; 14 Asp. M. L. C. 460, P. C.

395. *Add. Annotation :*—**Refd.** Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

PART IV. SECT. 2.

365 i. For " VAN ZYL *v.* PRENAAR " read " VAN ZIJL *v.* PIENAAR."

PART IV. SECT. 3, SUB-SECT. 1.

390 i. " *Act B.*," *s. 6—Assignment of chose in action to British firm—In payment of debt.*]—An Austrian firm was indebted to a London firm at the commencement of the war. On Sept. 25, 1914, the Austrian firm wrote a letter purporting to be an assignment to the London firm of a debt due to them by B. The letter contained an enclosure signed by the Austrian firm addressed to B. amounting to a notice of assignment of the debt. In the following December the London firm forwarded it to B. :—*Held :* as the transaction of Sept. 25 amounted to a valid equitable assignment of a chose in action for valuable consideration, it was not illegal as contravening the above sect.—GRUNDY *v.* BROADBENT, [1918] 1 I. R. 433.—IR.

391. *Proclamation of December 12, 1914—Taking delivery of goods from enemy ships in neutral ports.*]—Pltfs. were a British bank carrying on business in London & Bombay. Defts were a firm of merchants, British subjects, carrying on business in Bombay. On June 24, 1914, A., a German subject, drew a bill of exchange upon defts. in favour of pltfs. The bill purported to be drawn upon defts. against fifty bales of goods per a German steamer. The bill was accepted by defts. on July 20, 1914, payable at the office of pltfs. in Bombay. The steamer reached Bombay just before the outbreak of war, & in order to evade capture left Bombay & took shelter in a neutral port. The bill was presented for payment on the due date with the shipping documents attached but was dishonoured by non-payment. Pltfs. filed a suit on Sept. 30, 1915, to recover the amount due on the bill :—*Held :* pltfs. were entitled to succeed, as by the above Proclamation the consignees were permitted to take delivery of goods from enemy ships in neutral ports.—MOTISHAW & CO. *v.* MERCANTILE BANK OF INDIA (1916), I. L. R. 41 Bom. 566. —IND.

402. *Add. Annotations :—As to* (1) **Refd.** Lebeaupin *v.* Crispin, [1920] 2 K. B. 714. *As to* (2) **Refd.** *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331. *As to* (3) **Refd.** *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331.

402a. ——.]—Pltf. was a British subject carrying on business as an exporter of Manchester goods to Turkey. At the outbreak of war between Great Britain & Turkey deft. bank, a Turkish subject, was the holder of sight bills for the invoice amount in sterling of goods consigned by pltf. to Beyrout, which had arrived there shortly before the outbreak of war, & were subsequently delivered to the customers by deft. bank against payment in piastres. At the conclusion of the war deft. bank claimed the right to pay to pltf. an amount in sterling representing the then value of the piastres which they had received in payment for the goods. Pltf. claimed to be paid the sterling amount of the bills, or, in the alternative, damages for their conversion :—*Held :* (1) as the bank in Beyrout accepted the payment in lawful money from the Syrian merchant & handed over the goods, it constituted itself, as in a question with the drawer, debtor for the sterling amount on the face of the bill ; (2) it was not every contract that was abrogated by the war ; it was only a contract which was still executory & which for its execution required intercourse between the British subject & the enemy, & as the contract had been partially carried out, the bills had been indorsed, & the bank had been handed them together with the indorsed bills of lading, from that a subsidiary contract arose, namely, that on payment of the bills the shipping documents should be handed over, to execute which no intercourse between a British subject & the enemy was necessary ; & the bank was entitled to do what it did, & there could be no question of conversion, & having constituted themselves debtors in sterling, in sterling they must pay. —OTTOMAN BANK *v.* JEBARA, [1928] A. C. 269 ; 97 L. J. K. B. 502 ; 139 L. T. 194 ; 44 T. L. R. 525 ; 72 Sol. Jo. 516 ; 33 Com. Cas. 260, H. L. ; *revsg.* S. C. *sub nom.* JEBARA *v.* OTTOMAN BANK, [1927] 2 K. B. 254, C. A.

Annotation :—As to (2) **Refd.** Simpson *v.* Maurice's Exors. (1929), 14 Tax Cas. 580.

403. *Add. Annotation :*—**Refd.** Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1923), 92 L. J. K. B. 455.

405a. —— —— ——.]—For many years there existed in Germany works for the manufacture of dyestuffs (Farbenfabriken), belonging to a German concern which carried on business in England through agents. In 1878 the agents were a partnership firm consisting of A. & two other persons. In 1895 A. was the sole partner. In that year a limited co. was formed & registered in England, & in 1898 its name was changed to B. Co. Its original capital was £5,000, divided into 500 shares of £10 each of which A. held five shares & the German concern 470. In 1905 the capital was increased to £25,000 by the issue of 2,000 new shares fully

PART IV. SECT. 4.

402 iv. —— —— *Repayment of instalments.*]—In Apr., 1914, the A. co. contracted to construct machinery for the B. co. by Dec. 31, 1914. Progress payments were made by the B. co., but none of the machinery was ever delivered. After the commencement of the war, an order was, on Nov. 13, 1914, made under Trading with the Enemy Act, 1914, s. 8, appointing C. controller of the B. co., & on June 13, 1918, under Trading with the Enemy Act, 1914-1916, s. 9B, requiring the B. co. to be wound up, & appointing C. controller. The contract was never completed :—*Held :* the contract became null & void as from the commencement of the war, & neither the B. co. nor C. was entitled to recover from the A. co. any portion of the sum paid as progress payments.—*Re* CONTINENTAL (1919), 27 C. L. R. 194.—**AUS.**

402 v. —— —— ——.]—A contract between a British firm & an Austrian firm, for the purchase by the latter of goods to be manufactured, provided for an extension of time for delivery if delay should occur owing to causes beyond the control of the sellers. The price was payable by instalments, of which £4,620 was paid to account of the whole when war broke out & it became illegal to implement the contract. None of the goods had at that time been delivered. Thereafter the goods were completed & sold in Great Britain at an enhanced price. Third parties having obtained a decree against the purchasers of the goods arrested money in the hands of the sellers of the goods :—*Held :* (1) the contract was dissolved by the outbreak of war ; (2) the sum paid to account of the price of the goods belonged to the buyers & was validly arrested in the hands of the sellers.—DAVIS & PRIMROSE, LTD. *v.* CLYDE SHIPBUILDING & ENGINEERING CO., LTD. (1918), 56 Sc. L. R. 24.—**SCOT.**

402 vi. —— —— ——.]—In May, 1914, Scottish engineers contracted with Austrian shipbuilders to build a set of marine engines, payment to be by instalments. The first instalment had been paid, but no part of the engines had been built when war broke out & further performance of the contract became legally impossible. After the war on action brought for repetition of the instalment paid :—*Held :* as the instalment had been paid as part of the price of the engines, & as the engines had not been delivered owing to a cause for which neither of the parties was responsible, defenders were bound to make restitution of the instalment.—CANTIERE *v.* CLYDE, [1923] S. C. (H. L.) 105 ; 60 Sc. L. R. 635.—**SCOT.**

402 vii. —— —— *Enemy Contracts Annulment Act*, 1915.]—A contract was made in 1911 for the sale by the C. co. to the B. co. of the whole of the output of the C. co. In Sept. 1914, an agreement was entered into between the parties by which the terms of payment were varied :—*Held :* the agreement of Sept. 1914, was not rendered null & void by s. 3 (6) of the above Act, nor by Trading with the Enemy Act, 1914.—BROKEN HILL PROPRIETARY CO., LTD. *v.* WARNOCK (1922), 30 C. L. R. 362.—**AUS.**

402 viii. —— ——.]—On Feb. 2, 1914, deft. firm agreed to sell to pltfs. steel bars under a c.i.f. contract free Hooghly. The goods were shipped on July 2, 1914, per a German steamer, which was subsequently captured with her cargo & condemned by the Prize Ct. :—*Held :* the contract under which the goods would be delivered in the Hooghly became impossible by the outbreak of war within Indian Contract Act, s. 56, & was void.—MADHORAM HURDEO DAS *v.* SETT (1917), I. L. R. 45 Calc. 28.—**IND.**

405 i. —— —— *Effect of suspensory clause.*]—By a contract made after the outbreak of war with Germany to supply German dyes, deft. was not to be liable in case of non-arrival of the steamers at certain ports on account of the state of war. The ship & the dyes therein were seized & condemned by a Prize Ct. :—*Held :* (1) the contract was unenforceable ; (2) the Royal Proclamation of Sept. 8, 1914, put an end to the contract.—ABDUL RAZACK *v.* KHANDI ROW (1918), I. L. R. 41 Mad. 225.—**IND.**

sp. *Debtor of alien enemy—Payment of interest in respect of transaction entered into before outbreak of war—Right to repayment.*]—Where a person indebted to an alien enemy had paid interest in respect of a transaction entered into before the outbreak of hostilities & sought a refund of the amount paid for the period between the outbreak of hostilities & the date of a licence to trade obtained by the enemy firm :—*Held :* he was not entitled to such refund, as there was on suspension of interest in respect of such transactions during that period.—VALLI MAHOMED ABU *v.* BERTHOLD REIF (1919), I. L. R. 44 Bom. 1.—**IND.**

sq. *Erection of machinery—Replacement of defective parts.*]—In Mar. 1913, resps. contracted to supply & erect certain machinery for appts. In Mar. 1914, the machinery was erected, & in June, 1914, it broke down. By an agreement made in Jan. 1915, resps. agreed to replace the defective parts, & did so in Apr. 1915. Shortly afterwards the machinery again broke down. In July, 1915, resps. were declared to be a co. "managed or controlled, directly or indirectly, by or under the influence of, or carried on wholly or mainly for the benefit or on behalf of, persons of enemy nationality" :—*Held :* the agreement of Jan. 1915, & subject to the exception in Enem Contracts Annulment Act, 1915, s. 3 (6 the agreement of Mar. 1913, were an & void.—SYDNEY MUNICIPAL COUN *v.* AUSTRALIAN METAL CO., LTD. (192N 37 C. L. R. 550.—**AUS.**

paid, & in 1909 it was increased to £100,000, by the issue of 7,500 like shares. At the times material the German concern held 9,912 shares & A. twenty shares. By an agreement dated in 1910 between the German concern & B. Co., the district of the German concern was defined as the whole world outside the United Kingdom with the Channel Islands & the Isle of Man, & the district of B. Co. as the United Kingdom, the Channel Islands & the Isle of Man. The German concern bound itself not to import goods into B. Co.'s district except for the purposes of B. Co., & B. Co. bound itself not to import into the German concern's district except for the purposes of the German concern. By an agreement, dated in 1912, between the same parties & operative for seven years, the German concern bound itself to sell to B. Co. & to no one else in the United Kingdom for sale in the United Kingdom anilines & chemicals manufactured by the German concern, & B. Co. bound itself to buy from the German concern & from no other manufacturer such dyestuffs. By unwritten agreement B. Co. was bound from its inception to import only from the German concern. From the time of the registration of B. Co. A.'s firm ceased to act as agents for the German concern. B. Co. sold not in the name of the German concern, but in its own name, & as a principal; but it announced to the world on its office windows, & to its customers on notepaper & other documents & by books, catalogues & samples, that it was the sole importer in England of the manufactures of the German concern. It was thus brought home to the customers that they were buying the produce of the German concern as before. The new *régime* was in effect a continuation of the agency though legally the agency had ceased. The business of B. Co. was conducted by A. & another director, both resident in England. The German concern supplied them with lists of prices to be charged by the German concern to B. Co., B. Co. making a profit by selling to customers at a price higher than the list. If an English customer offered to buy at a price lower than the list, the German concern would reduce its price to B. Co. accordingly. The overwhelming shareholding of the German concern in B. Co. caused it to be vitally interested, as seller & buyer, in the contract between itself & B. Co. & as seller in the contract between B. Co. & its customer. Down to the outbreak of war between England & Germany on Aug. 4, 1914, the control of B. Co., its business, affairs & acts, were in the hands of the German concern. On Apr. 1, 1914, B. Co. entered into a contract with a British firm for a supply to the firm of dyestuffs, identified by letters & numbers as the manufacture of the German concern or of other German manufacturers, of which samples from Germany were in the possession of the British firm. It was provided that any duties imposed by the British Govt. on the goods should be paid by the British firm or the price should be advanced accordingly. It was further provided that deliveries or orders off the contract might be suspended by either party if any contingency should arise beyond the control of the parties, such as fire, accidents, war, strikes, or the like. The contract covered a period unexpired at the outbreak of war. At that date quantities of dyestuffs remained undelivered & were never afterwards delivered. An order was made by the Board of Trade, under Trading with the Enemy Amendment Act, 1916 (c. 105), s. 1, for the winding up of the business of B. Co., & a controller appointed. In the winding up the British firm claimed damages for breach of contract in the non-fulfilment of deliveries. The controller resisted the claim on the grounds: (*a*) that the contract was dissolved at the outbreak of war, because B. Co. was an enemy or of enemy character, because the parties contracted on the footing that the goods should come from Germany, & because continued existence or performance of the contract would involve intercourse with, or tend to assist the enemy; (*b*) that owing to the suspension clause no right to damages had yet arisen; (*c*) that the object of the contract had been frustrated, because the period of suspension was indefinite & beyond the contemplation of the parties, because performance of the contract was prevented by Govt. action or embargo, & because the basis of the contract was that the importation of the goods to be supplied should continue to be possible & by reason of war it was rendered impossible. On application to the ct. by the controller for directions whether the claim should be admitted as a debt due from B. Co.:—*Held:* (1) at the date of the outbreak of war B. Co. assumed enemy character, &, accordingly, the contract became dissolved by the outbreak of war as being a current contract entered into with a co. which *eo instanti* assumed enemy character; (2) the abrogation of the contract by outbreak of war being founded on public policy, the presence of a suspension clause in the event of war did not assist the claimant, & if "war" in the clause included war between England & Germany the clause was void as against public policy, & the claim must be rejected; (3) assuming that B. Co. had not assumed enemy character at the outbreak of war, the claim must fail on the following grounds: that, the contract being for the supply of goods to be obtained from Germany, further performance on the outbreak of war involved intercourse with the enemy & became illegal accordingly; that, the contracts having been made on the basis that the existing commercial conditions would continue & that the basis having ceased to exist by outbreak of war between England & Germany, the commercial object of the contract had been frustrated, & the contract was dissolved at the outbreak of war; (4) the suspension clause was not intended by the parties to apply to war between England & Germany; (5) the doctrine of frustration applied to contracts for the sale of unascertained goods.—*Re* BADISCHE CO., LTD., *Re* BAYER CO., LTD., *Re* GRIESHEIM ELEKTRON, LTD., *Re* KALLE & CO., LTD., *Re* BERLIN ANILINE CO., LTD., *Re* MEISTER LUCIUS & BRUNING, LTD., [1921] 2 Ch. 331; 91 L. J. Ch. 133; 126 L. T. 466.

406. *Add. Citations:*—*affd. sub nom.* FRIED KRUPP AKT. *v.* ORCONERA IRON ORE CO., LTD. (1919), 88 L. J. Ch. 304; 120 L. T. 386; 35 T. L. R. 234, H. L.

408. *Add. Annotations :—As to* (1) **Follд.** Fried Krupp Akt. *v.* Orconera Iron Ore Co. (1919), 88 L. J. Ch. 304. **Refd.** Central India Mining Co. *v.* Soc. Colonial Anversoise, [1920] 1 K. B. 753; *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331; Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1922), 38 T. L. R. 739; Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254. *As to* (2) **Refd.** *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331. *As to* (3) **Refd.** Guaranty Trust Co. of New York *v.* Hannay, [1918] 2 K. B. 623.

409. *Add. Annotation :*—**Refd.** *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331

409a. —— —— **Effect of Treaties of Peace & consequent Orders.**]—ROWE BROTHERS & Co., LTD. *v.* LINDGENS (1920), 36 T. L. R. 247.

411. *Add. Annotation :—As to* (1) **Refd.** *Re* Sutherland, Bechoff *v.* Bubna (1921), 65 Sol. Jo. 513.

412. *Add. Annotation :*—**Refd.** *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331.

412a. Insurance policy—Effect of Treaties of Peace & consequent Orders.]—EXCESS INSURANCE Co., LTD. *v.* MATHEWS (1925), 31 Com. Cas. 43.

413. *Add. Annotation :—As to* (2) **Refd.** Matthey *v.* Curling, [1922] 2 A. C. 180.

416. *Add. Annotations :*—**Consd.** Simpson *v.* Maurice's Exors. (1929), 14 Tax Cas. 580. **Refd.** Naylor, Benzon *v.* Krainische Industrie Gesellschaft, [1918] 1 K. B. 331; Fried Krupp Akt. *v.* Orconera Iron Ore Co. (1919), 88 L. J. Ch. 304; *Re* Ferdinand, Ex-Tsar of Bulgaria, [1921] 1 Ch. 107; *Re* Rush, Warre *v.* Rush, [1923] 1 Ch. 56.

418. *Add. Annotation :*—**Refd.** Rodriguez *v.* Speyer, [1919] A. C. 59.

419a. —— **Property otherwise subject to confiscation.**]—THE DEERGARDEN (1747), cited in 1 Ch. Rob. at p. 202; THE ST. PHILIP (1747), cited in 8 Term Rep. at p. 556; THE ELIZABETH (1749), cited in 1 Ch. Rob. at p. 202; THE LADY JANE (1749), cited in 1 Ch. Rob. at p. 202; THE RINGENDE JACOB (1750), cited in 1 Ch. Rob. at p. 202; THE JUFFROUW LOUISA MARGARETHA (1781), cited in 1 Ch. Rob. at p. 203; THE COMPTE DE WOHRONZOFF (1781), cited in 1 Ch. Rob. at p. 205; THE EXPEDITE VAN ROTERDAM (1782), cited in 1 Ch. Rob. at p. 206; THE BELLA GUIDITA (1785), cited in 1 Ch. Rob. at p. 207; THE EENIGHEID (1795), cited in 1 Ch. Rob. at p. 210; THE FORTUNA (1795), cited in 1 Ch. Rob. at p. 212; THE FREEDEN (1795), cited in 1 Ch. Rob. at p. 213; THE WILLIAM (1795), cited in 1 Ch. Rob. at p. 214.

—.]—*See, also,* Nos. 369–371, *ante.*

424. *Add. Annotation :*—**Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

425. *Add. Annotation :*—**Refd.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

429. *Add. Annotation :—As to* (1) & (2) **Refd.** Casdagli *v.* Casdagli, [1919] A. C. 145.

440a. .]—LA FLORA (1805), 6 Ch. Rob. 1; 1 Eng. Pr. Cas. 515; 165 E. R. 828.

445. *Add. Annotation :—As to* (1) **Refd.** The Rannveig, [1922] 1 A. C. 97.

460. *Add. Annotation :*—**Refd.** Casdagli *v.* Casdagli, [1919] A. C. 145.

493a. —— ——.]—Where a licence is granted for a voyage to a hostile country, to continue in force till a given day, if the voyage is *bonâ fide* begun before that day, it continues to be protected by the licence, though delayed beyond the day by stress of weather or other accident over which the assured have no control.—GRONING *v.* CROCKETT (1811), 3 Camp. 83; 170 E. R. 1313, N. P.

Part V.—Acquisition of British Nationality.

515. Before this case add "*See* note to Part I., *ante.*"

520. *Add. Citation :*—26 Cox, C. C. 211, D. C. *Add. Annotation :*—**Consd.** Markwald *v.* A.-G., [1920] 1 Ch. 348.

520a. —— ——.]—A natural-born German subject left Germany in 1878 & went to Australia, where, in 1908, he took the oath of allegiance to His Majesty & was granted under the powers of the Naturalisation Act, 1903, a certificate of naturalisation by which he became entitled to all political & other rights, powers, & privileges to which a natural-born British subject is entitled in the Commonwealth. He subsequently became a resident in London & was charged & convicted for that, being an alien, he had failed to furnish to a registration officer the particulars required by Aliens Restriction (Consolidated) Order, 1916, & his conviction was afterwards upheld by a Div. Ct. In an action brought by pltf. against the A.-G. for a declaration that he was no alien in England, but a liege subject of His Majesty the King, & entitled to the protection of His Majesty the King in

PART IV. SECT. 5, SUB-SECT. 1.

420 i. *Necessity for licence—How given—Approval of contract by officer entrusted to grant licence.*]—*Held :* the fact that a contract had been approved by the officer who was *de facto* entrusted by the Crown with the exercise of the prerogative to grant licences to trade with the enemy was an answer to prosecutions for trading with the enemy.—DONOHOE *v.* SCHROEDER (1916), 22 C. L. R. 362.—AUS.

PART V. SECT. 3.

518 ii. —— —— *Child of mother naturalised by subsequent marriage.*]—Sect. 10 (5) of the above Act does not apply to an infant whose mother by her subsequent marriage to a naturalised British subject has herself become a British subject but has not, while a widow, obtained a certificate of naturalisation in the United Kingdom.—JERGER *v.* PEARCE (1920), 27 C. L. R. 526.—AUS.

ss. *Commonwealth Naturalisation Acts, 1903–1917, s. 10—Effect—Step-child of man naturalised under Naturalisation Act, 1870 (c. 14).*]—The above sect. does not apply to a child whose mother has married a man who was naturalised under Naturalisation Act, 1870 (c. 14).—JERGER *v.* PEARCE (1920), 27 C. L. R. 526.—AUS.

ss. *Naturalisation Act, R. S. C., 1906 (c. 77)—Status of naturalised persons.*]—An alien naturalised in Canada under the above Act acquires the status of a British subject.—*Re* SOLVANG, [1918] 3 W. W. R. 876; 43 D. L. R. 549.—CAN.

vi. *Naturalisation Acts—Fitness of applicant—Previous conviction.*]—The fact that appct. had several years before undergone a sentence of imprisonment in default of paying a fine for supplying intoxicating liquor to an Indian is not a bar to his claim for naturalisation under the above Acts.—*Re* BRESNIK (1920), 58 D. L. R. 233; 34 Can. Crim. Cas. 167.—CAN.

all parts of His Majesty's Kingdom & Dominions:—*Held:* neither the taking of the oath of allegiance alone, nor the taking of the oath coupled with the grant of the certificate in Australia, made pltf. a British subject in the United Kingdom, & he was, therefore, an alien when in the United Kingdom, & the declaration must be refused. Pltf. was at least to this extent to be regarded as an alien, that he was a person so described in British Nationality & Status of Aliens Act, 1914 (c. 17), & for the purposes of that Act. He was a person entitled under that Act to apply as an alien for & to have granted to him in the United Kingdom a certificate of naturalisation.—MARKWALD *v.* A.-G., [1920] 1 Ch. 348; 89 L. J. Ch. 225; 122 L. T. 603; 36 T. L. R. 197; 64 Sol. Jo. 239, C. A.

Part VI.—Loss of British Nationality.

532. *Add. Annotation:*—*As to* (2) **Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61.

533. *Add. Annotations:*—**Consd.** Fasbender *v.* A.-G., [1922] 1 Ch. 232. **Reld.** *Re* Chamberlain's Settlement, [1921] 2 Ch. 523; Fasbender *v.* A.-G., Kramer *v.* A.-G., [1922] 2 Ch. 850.

536. *Add. Citation:*—26 Cox, C. C. 177, D. C.

537. *Add. Citations:*—16 L. G. R. 764; 26 Cox, C. C. 244, D. C.

538. *Add. Annotations:*—**Consd.** Fasbender *v.* A.-G., [1922] 1 Ch. 232. **Reld.** *Re* Chamberlain's Settlement, [1921] 2 Ch. 533; Fasbender *v.* A.-G., Kramer *v.* A.-G., [1922] 2 Ch. 850; Kramer *v.* A.-G., [1923] A. C. 528.

538a. —— **British woman marrying alien—In time of war.**]—FASBENDER *v.* A.-G., KRAMER *v.* A.-G., No. 49d, *ante*.

Part VIII.—Immigration and Expulsion of Aliens.

540. *Add. Annotation:*—**Reld.** Johnstone *v* Pedlar, [1921] 2 A. C. 262.

541. *Add. Annotation:*—**Reld.** Johnstone *v.* Pedlar, [1921] 2 A. C. 262.

PART VI.

sb. *Revocation—Whether reasons need be stated.*]—A revocation of a certificate of naturalisation need not state the reasons of the Governor-General.—MEYER *v.* POYNTON (1920), 27 C. L. R. 436.—**AUS.**

sc. —— *Effect of Treaty of Peace with Germany.*]—Art. 278 of the above Treaty does not affect the right of the Governor-General to revoke the certificate of naturalisation of a naturalborn German subject.—MEYER *v.* POYNTON (1920), 27 C. L. R. 436.—**AUS.**

sd. *Declaration of intention to become citizen of foreign State.*]—By going to the United States & there making a declaration of intention to become a citizen of that country, a person of German birth naturalised in Canada does not cease to be a British citizen.—NEWMAN (or NEUMAN) *v.* BRADSHAW, [1917] 1 W. W. R. 1223; 23 B. C. R. 492.—**CAN.**

534 i. *British Nationality & Status of Aliens Act*, 1914 (*c.* 17)—*Declaration of alienage—Effect on liability under Military Service Acts.*]—A natural-born British subject who is also an American subject, & has been duly called up under Military Service Act, 1916, ss. 3, 11, is not relieved from his obligation to serve by a declaration of alienage under British Nationality & Status of Aliens Act, 1914 (c. 17).—*Re* HORNE, [1919] N. Z. L. R. 190.—**N.Z.**

PART VIII.

540 ix. —— *Son of domiciled Chinaman.*]—The domicil gained by a Chinaman in Canada was held not available for the benefit of his son, twelve years of age, who had lived his lifetime in China, so as to give the son Canadian domicil.—*Re* WONG SUEY MONG, [1921] 3 W. W. R. 122.—**CAN.**

540 x. —— *Son of naturalised Russian.*]—A Russian, an insane person, was held for deportation under Immigration Act (Consolidation), s. 3. His release was applied for on the ground that his father had been resident in Canada for a number of years & had been naturalised there, & that the domicil of the father applied to the son:—*Held:* the son had no domicil in Canada & was expressly prohibited from landing under the Immigration Act.—*Re* LIPSTEIN, [1923] 2 D. L. R. 1055; 56 N. S. R. (G. & R.) 292.—**CAN.**

e (p. 193) i. —— ——.]—A deportation order made by an immigration officer, when there is no Board of Inquiry in the vicinity of the port of entry, must show on the face of it that there was no such Board there.—R. *v.* BANNSTEAD, *Ex p.* HIANSON, *Ex p.* MOLLER (1920), 55 D. L. R. 287.—**CAN.**

sf. *Immigration Act*, 1901-1920—*Prohibited immigrant—Onus of proof—Evidence of prosecution incomplete.*]—Where, on a prosecution under sect. 5 (2) of the above Act, the prosecution proves some only of the relevant facts & does not complete them so as to enable the tribunal to come to a conclusion one way or the other, the averment that deft. is an immigrant & has entered the Commonwealth within three years before failing to pass the dictation test is, under sect. 5 (3), to be deemed to be proved in the absence of proof to the contrary by the personal evidence of deft.—GABRIEL *v.* AH MOOK (1924), 34 C. L. R. 591; 31 Argus L. R 84.—**AUS.**

sj. —— —— *Person born in Australia returning from abroad.*]—Where a person born in Australia has left the Commonwealth, the question whether, when he attempts to re-enter the Commonwealth, he is an immigrant within the above Act depends on whether he is as a fact coming back to Australia as to his home.—DONOHOE *v.* WONG SAU (1925), 36 C. L. R. 404.—**AUS.**

sk. —— *Application to immigration after date of enactment.*]—Applt., an alleged prohibited immigrant, entered the Commonwealth not later than the year 1906 & the dictation test, which he failed to pass, was applied to him in the year 1930. No substantive evidence was adduced that applt. had evaded an officer, the only evidence of this fact being the averment thereof contained in the information:—*Held:* s. 5 (1) (*a*) of Immigration Act, 1901-1925, only operates & applies to immigrants who enter Australia after the date of its enactment.—AH YOU *v.* GLEESON (1929), 43 C. L. R. 589; 4 A. L. J. 160; (1930), Argus L. R. 273.—**AUS.**

s (p. 194) i. —— —— "*Landing*"—*What is.*]—"Landing" is the original act of landing & not the return of a certificated Chinese resident of Canada from a short visit to an adjacent city in the United States.—R. *v.* FONG SOON, [1919] 1 W. W. R. 486; 45 D. L. R. 78; 31 Can. Crim. Cas. 78.—**CAN.**

si. —— *Whether repugnant to Immigration Act*, 1910 (*c.* 27).]—The powers & mode of procedure of the Board of Inquiry as to deportation under the latter Act are repugnant to the former Act, & do not apply.—*Re* IMMIGRATION ACT, R. *v.* JEN JANG HOW, [1919] 3 W. W. R. 271; 47 D. L. R. 538.—**CAN.**

sm. —— ——.]—Sect. 18 of the former Act is not repugnant to s. 3 of the latter Act.—*Re* JUNG YIN, [1921] 3 W. W. R. 194.—**CAN.**

sn. *Chinese Immigration Act*, 1923 (*c.* 38)—*Deportation order—Appeal from—Person not Canadian citizen or having no Canadian domicil.*]—*Held:* the ct. had no jurisdiction to interfere.—*Re* YEE FOO, [1925] 2 D. L. R. 1131; 44 Can. Crim. Cas. 17; 56 O. L. R. 669.—**CAN.**

sp. *S.P. Re* YOUNG SUE HING (1926), 37 B. C. R. 227; [1926] 2 W. W. R. 74.—**CAN.**

sq. —— —— ——.]—*Certiorari* in general lies with respect to an order for deportation made under sect. 26 of the above Act; & sect. 38 is no bar to its application to such orders when made without or in excess of jurisdiction or in violation of the essentials of justice.—*Re* LOW HONG HING, [1926] 3 D. L. R. 692; [1926] 2 W. W. R. 597

543a. —— —— —— ——.]—In making a recommendation for expulsion part of a sentence regard must be had to the period of the alien's residence in this country.—R. *v.* SHAFFNER (1920), 14 Cr. App. Rep. 131, C. C. A.

543b. —— —— —— ——.]—R. *v.* GILBERT (1921), 16 Cr. App. Rep. 34, C. C. A.

46 Can. Crim. Cas. 65; 37 B. C. R. 295.—**CAN.**

sr. —— *Alien allowed to land pending inquiry—Omission to obtain deposit as security.*]—*Held:* not equivalent to an assent to the alien being landed.—R. *v.* LEE CHOW YING, [1927] 1 W. W. R. 527; 47 Can. Crim. Cas. 203; 38 B. C. R. 241.—**CAN.**

ss. —— *Certificate obtained by fraud—Conclusive.*]—When the Controller of Chinese Immigration has concluded after inquiry that a Chinaman is entitled to enter Canada & has permitted him to land & given him the certificate provided for in sect. 17 of above Act, the Controller has exhausted his jurisdiction & even though it is afterwards discovered that a fraud has been committed on him, the Chinaman's right to be in Canada can be contested only before a judge as provided in sect. 17 of above Act.—R. *v.* CHIN SACK, [1928] 1 D. L. R. 779; [1928] 1 W. W. R. 618; 49 Can. Crim. Cas. 43; 39 B. C. R. 223.—**CAN.**

st. —— *Habeas corpus—Right of person claiming Canadian birth.*]—Chinese Immigration Act, 1923, c. 38, s. 38, enacts inferentially that anyone claiming Canadian birth has a right to apply for relief by way of *habeas corpus* from the Comptroller's decision.—*Re* CHINESE IMMIGRATION ACT & LEE CHOW YING (1928), 49 Can. Crim. Cas. 168; 39 B. C. R. 322.—**CAN.**

su. *Chinese Immigration Act*, 1927 (*c.* 95)—*Decision as to validity of certificate—No appeal.*]—*Ex p.* CHIN SHACK (B. C.) (1928), 50 Can. Crim. Cas. 137.—**CAN.**

sv. —— *Previous deportation—Bar to admission.*]—*Re* LIM COOIE FOO, [1931] 1 W. W. R. 233; *revsg.*, [1930] 1 W. W. R. 894; 53 Can. C. C. 357; 42 B. C. R. 496; *sub nom.* R. *v.* LIM COOIE FOO (1930), 54 Can. C. C. 383; 43 B. C. R. 54.—**CAN.**

sy. —— *Habeas corpus—Order for examination—Appeal from.*]—R. *v.* LEE MOON KOO, [1931] 1 W. W. R. 571; 55 Can. C. C. 188; 43 B. C. R. 458.—**CAN.**

q (p. 195) **i.** —— *Detention for return to country not specified in order—After admittance refused by country specified in order.*]—An order had been made under the above Act for deportation of a native of India to the United States. On the refusal of the United States immigration officials to allow him to enter he was held for deportation to India:—*Held:* he was illegally detained & was entitled to his discharge.—*Re* SANTA SINGH, [1924] 3 D. L. R. 1088; 3 W. W. R. 164; 34 B. C. R. 190.—**CAN.**

q (p. 195) **ii.** —— *Attempting to land forbidden person.*]—R. *v.* PALANGIO (1912), 22 O. W. R. 540; 3 O. W. N. 1440; 4 D. L. R. 611.—**CAN.**

sz. —— *Whether repugnant to Chinese Immigration Act, R. S. C.*, 1906 (*c.* 95).]—*Re* IMMIGRATION ACT. R. *v.* JEN JANG HOW, [1919] 3 W. W. R. 271.—**CAN.**

—— *Proceedings under—Not criminal proceedings.*]—R. *v.* ALAMAZOFF, [1919] 3 W. W. R. 281; 47 D. L. R. 533.—**CAN.**

sb. —— —— ——.]—*Re* IMMIGRATION ACT & WONG SHEE (1922), 66 D. L. R. 485; 37 Can. Crim. Cas. 371; [1922] 2 W. W. R. 156.—**CAN.**

sc. —— —— ——.]—*Ite* PONG FOOK WING, *Re* IMMIGRATION ACT, [1923] 4 D. L. R. 1034; 3 W. W. R. 819.—**CAN.**

t (p. 195) **i.** —— —— —— *Person not Canadian citizen or having Canadian domicil.*]—The ct. cannot interfere with what is done is by the Immigration officers looking to the deportation of aliens who have not acquired Canadian domicil.—*Re* GOTTESMAN (1918), 29 Can. Crim. Cas. 439; 41 O. L. R. 547; 13 O. W. N. 344.—**CAN.**

t (p. 195) **ii.** —— —— —— ——.]—Motion for release from custody of one held for deportation under an order of a Board of Inquiry, was dismissed for want of jurisdiction in the ct. under s. 23 of the above Act. Appct. had not shown that he was a Canadian citizen or had Canadian domicil.—R. *v.* SCHOPPELREI, [1919] 3 W. W. R. 322.—**CAN.**

t (p. 195) **iii.** —— —— —— ——.]—The ct. has no power to interfere with an order of deportation made by the Board of Inquiry unless the person ordered to be deported be a Canadian citizen or have Canadian domicil.—*Re* IMMIGRATION ACT & WONG SHEE (1922), 66 D. L. R. 485; 37 Can. Crim. Cas. 371; [1922] 2 W. W. R. 156; *revsg.* 59 D. L. R. 626; 36 Can. Crim. Cas. 405; 30 B. C. R. 70.—**CAN.**

t (p. 195) **iv.** —— —— ——.]—*Habeas corpus* will lie in respect of a deportation order made by an immigration officer whose jurisdiction so to act in the stead of a Board of Inquiry is not shown on the face of the order, although an appeal by appct. to the Minister of the Interior under s. 19 of the above Act has been unsuccessful.—R. *v.* BANNSTEAD, *Ex p.* HIANSON, *Ex p.* MOLLER (1920), 55 D. L. R. 287.—**CAN.**

t (p. 195) **v.** —— —— ——.]—If it be proved that the Board of Inquiry has not acted judicially, but merely on instructions from Ottawa, in ordering the deportation of a Chinaman, the ct. would be bound to grant an application for a writ of *habeas corpus.*—*Re* JUNG YIN, [1921] 3 W. W. R. 194.—**CAN.**

t (p. 195) **vi.** —— —— ——.]—An appeal lies in *habeas corpus* proceedings where a person is detained under the above Act.—*Re* IMMIGRATION ACT & WONG SHEE (1922), 66 D. L. R. 485, 37 Can. Crim. Cas. 371; [1922] 2 W. W. R. 156.—**CAN.**

t (p. 195) **vii.** —— —— ——.]—An appeal lies to the Ct. of Appeal from an order made in *habeas corpus* proceedings releasing a person detained under the above Act.—*Re* PONG FOOK WING, *Re* IMMIGRATION ACT, [1923] 4 D. L. R. 1034; 3 W. W. R. 819.—**CAN.**

v (p. 195) **i.** —— —— —— *Chinese immigrant.*]—Under s. 23 of the above Act the ct. is prevented from interfering with the decision of a Board of Inquiry concerning the admission of a Chinaman to Canada.—*Re* WONG SIT KIT, [1921] 3 W. W. R. 116.—**CAN.**

v (p. 195) **ii.** —— —— —— ——.]—The decision of a Board of Inquiry as to the admission of a Chinaman is not subject to review by the ct.—*Re* WONG SUEY MONG, [1921] 3 W. W. R 122.—**CAN.**

sd. *Immigration Amendment Act*, 1919 (*c.* 25)—*Not retrospective.*]—*Re* IMMIGRATION ACT & SANTA SINGH, [1920] 2 W. W. R. 999.—**CAN.**

se. —— *Appointment of immigration officer—Sufficiency.*]—The signature of the Acting Deputy Minister of Immigration & Colonisation is sufficient.—*Re* PAPPAS, [1921] 1 W. W. R. 949.—**CAN.**

sf. —— *Deportation order—Form of order.*]—Where an order only stated "P. C. 23" as the reason for deportation:—*Held:* such an order was defective.—R. *v.* LANTALUM, *Ex p.* OFFMAN (1921), 62 D. L. R. 223; 35 Can. Crim. Cas. 295; 48 N. B. R. 448.—**CAN.**

sg. —— —— *Amendment of order.*]—An order of deportation, insufficient in form as not showing jurisdiction, may be amended by the immigration officer.—*Re* PAPPAS, [1921] 1 W W R. 949.—**CAN**

sh. *Immigration Law* (*R. S. C.*, 1927, *c.* 93)—*Right to annul expulsion order.*]—The tribunals have not power or jurisdiction to annul an expulsion order made against an immigrant on the strength of the immigration law even if they think the officials charged with administering the said law have not applied their orders correctly.—YERSHEMSKY *v.* MOQUIN (1928), Q. R. 45 K. B. 166.—**CAN.**

sa. —— *Right of illiterate relatives to admission—Effect of disqualification.*]—M., an immigrant from Japan in 1914, subsequently obtained a certificate of naturalisation as a Canadian citizen. In 1928 his wife & two children on arriving at Victoria from Japan were refused entry on the ground that they had not in their possession a valid passport issued in & by the Government of the country of which they were citizens as required by order in council pursuant to sect. 3 (i) of the Immigration Act. On *habeas corpus* proceedings appcts. claimed that notwithstanding their not having a passport they were entitled to admission into Canada by virtue of sect. 3 (*t*) of the Immigration Act:—*Held:* sect. 3 (*t*) is restricted to the question of illiteracy of relatives of an admitted immigrant, & when otherwise disqualified such persons are prohibited from entering Canada.—*Re* TOKU NISHI (1928), 41 B. C. R. 199.—**CAN.**

sb. —— *Warrant of deportation need not be addressed to officer where alien detained.*]—*Re* MAH FUNG (1930), 54 Can. C. C. 374.—**CAN.**

sr. —— *Validity of deportation order—What must be stated.*]—An order for deportation made by a Board of Inquiry under sect. 33 (7) of Immigration Act, 1927, which states that it was made because the deportee had entered Canada surreptitiously is not invalid because it does not also state that the Board found that he was not a Canadian citizen and did not have Canadian domicile.—R. *v.* TAKHAR, [1931] 3 W. W. R. 37; 56 Can. C. C. 376; 44 B. C. R. 360; [1932] 1 D. L. R. 332.—**CAN.**

st. —— —— ——.]—In a deportation order the reasons for the deportation must be clearly stated. It is not sufficient to state as a reason that the deportee's entry was effected contrary to sect. 35 (7) of the Immigration Act. If not sufficiently stated the deportee is entitled to be discharged on *habeas corpus.*—*Re* MUNETAKA SAMEJIMA, [1931] 3 W. W. R. 56; 44 B. C. R. 317.—**CAN.**

sg. —— *Defective deportation order quashed—No power of amendment.*]—MUNETAKA SAMEJIMA *v.* R., [1932] S. C. R. 640; *revsg.*, [1932] 3 W. W. R. 201.—**CAN.**

sv. —— *Prisoner in gaol pending deportation—Five months after termination of sentence—Grant of habeas corpus.*]—R. *v.* STACHOW, [1932] 2 W. W. R. 698.—**CAN.**

sx. —— *Deportation "forthwith"—Effect of delay in obtaining passport.*]—Where in proceedings under sects. 40 & 42 of Immigration Act, R. S. C., 1927, an inquiry has been held & the deportation of the immigrant has been duly ordered, the fact that there is a long delay before a passport, promptly applied for, can be obtained from the

544. *Add. Annotations:—As to* (2) **Follo.** R. *v.* Shaffner (1920), 14 Cr. App. Rep. 131; R. *v.* Rogoff (1924), 18 Cr. App. Rep. 1.

544a. —— —— —— —— **Family domiciled in England.**]—R. *v.* ROGOFF (1924), 18 Cr. App. Rep. 1, C. C. A.

547. *Add. Annotation:*—**Follo.** R. *v.* Gilbert (1921), 16 Cr. App. Rep. 34.

548a. —— —— —— —— **Unnecessary aggravation of sentence involved.**]—R. *v.* IRVING (1920), 15 Cr. App. Rep. 61, C. C. A.

immigrant's country does not render the order ineffective on the ground that sects. 42 (3) & 19 (2) of the Act require such person to be deported "forthwith."—*Re* JANOCZKA, [1932] 3 W. W. R. 29.—**CAN.**

sc. *Opium & Narcotic Drugs Acts—Proceedings under—Not criminal proceedings.*]—*Re* LOO LEN (No. 1), [1924] 1 D. L. R. 909; 1 W. W. R. 733; 41 Can. Crim. Cas. 386; 33 B. C. R. 448.—**CAN.**

sk. —— *Conviction under—No order against deportation—Power to make subsequent order.*]—There is no power to make an order except at the time of conviction.—*Re* JOE FONG (1923), 53 O. L. R. 493; 24 O. W. N. 39.—**CAN.**

sl. —— —— —— ——.]—An order against deportation made subsequently is invalid.—R. *v.* LEE PARK, [1924] 4 D. L. R. 883; 3 W. W. R. 490.—**CAN.**

sn. —— —— —— *Necessity for order.*]—Since under Opium & Narcotic Drug Act, 1923, s. 25, deportation follows automatically in the case of the conviction of an alien under sect. 4 (*d*), it is not necessary for a formal order for deportation to be made in such a case.—R. *v.* WOO FONG TOY (B.C.), [1926] 3 W. W. R. 703.—**CAN.**

so. —— —— *Validity of warrant.*]—The omission of the figures "1923" from the citation of the Act does not invalidate the warrant.—R. *v.* GAN, [1925] 3 W. W. R. 783.—**CAN.**

sp. —— —— *Subsequent detention for deportation—Validity.*]—Accused was convicted under s. 5*a* (2) of the 1911 Act & fined with imprisonment in default of payment. The fine was not paid, & on the termination of the imprisonment prisoner was held for deportation under s. 10*b*:—*Held:* the purpose of s. 10*b* was to superadd the penalty of deportation as a consequence of a conviction for the commission of any of the statutory offences created by s. 5*a*.—R. *v.* HOW, [1923] 4 D. L. R. 1007; 56 N. S. R. (G. & R.) 372.—**CAN.**

sl. —— —— —— ——.]—*Re* SUE SUN POY (No. 2), [1932] 3 W. W. R. 220.—**CAN.**

sq. —— —— —— *Application for release.*]—Where an alien has been convicted under s. 5*a* (2) of the 1911 Act & upon termination of the imprisonment imposed is detained for deportation under s. 10*b*, he is not entitled to release on *habeas corpus* on the ground of having Canadian domicil within Immigration Act, s. 43.—R. *v.* CHANG SONG, [1924] 1 D. L. R. 1161; 1 W. W. R. 778; 42 Can. Crim. Cas. 8; 33 B. C. R. 176.—**CAN.**

sr. —— —— —— ——.]—A warrant of deportation regular on its face having issued after prisoner had served his sentence on conviction under the 1911 Act, the ct., on an application in *habeas corpus* proceedings, can only inquire into the truth of the statements made in the warrant, & cannot interfere by reason on the unlawful imposition of hard labour by the sentence & conviction.—R. *v.* CHOW TONG (1924), 34 B. C. R. 12.—**CAN.**

ss. —— —— —— ——.]—Where a prisoner has been convicted of an infraction of the 1923 Act & is held for deportation, the mere fact that the warrant committing him for deportation, although stating him to be an alien, does not show or recite that a Board of Inquiry was held as provided by Immigration Act, is not a ground for granting a writ of *habeas corpus*.—R. *v.* GEE DEW (No. 3), [1924] 3 D. L. R. 186; 2 W. W. R. 793; 42 Can. Crim. Cas. 213; 33 B. C. R. 548.—**CAN.**

sv. —— —— —— ——.]—*Held:* *habeas corpus* proceedings were proceedings "arising out of a criminal charge," & within the exception to the jurisdiction of the Supreme Ct. of Canada under Supreme Ct. Act, R. S. C., 1906, s. 36.—JUNGO LEE *v.* R., [1927] 1 D. L. R. 721; 46 Can. Crim. Cas. 329; [1926] S. C. R. 652—**CAN.**

sw. —— —— —— —— *Appeal.*]—Accused was convicted under s. 5*a* (2) of the 1911 Act, & condemned to pay a fine, & in default of payment to imprisonment. Upon termination of the imprisonment he was kept in custody for deportation under s. 10*b*. A writ of *habeas corpus* was granted & accused ordered to be discharged from custody. On appeal the order was sustained.—*Re* MAH SHIN SHONG, *Re* SING YIM HONG, [1923] 4 D. L. R. 844; 39 Can. Crim. Cas. 401; 32 B. C. R. 176; [1923] 1 W. W. R. 1365.—**CAN.**

sx. —— —— —— —— ——.]—Where an alien on the termination of his imprisonment, imposed on conviction under the 1911 Act, is detained pending deportation & he applies for *habeas corpus*, but is refused release, an appeal from such refusal lies to the Ct. of Appeal.—*Re* LOO LEN (No. 1), [1924] 1 D. L. R. 909; 1 W. W. R. 733; 41 Can. Crim. Cas. 386; 33 B. C. R. 448.—**CAN.**

v. SUE SUN POY (No. 1), [1932] 3 W. W. R. 212.—**CAN.**

sy. —— —— —— *Validity of warrant of deportation.*]—The omission of the figures "1923" from the citation of the Act does not invalidate the warrant.—R. *v.* JUNGO LEE (1926), 46 Can. Crim. Cas. 92; 37 B. C. R. 318; [1926] 2 W. W. R. 734.—**CAN.**

sz. *Chinese Exclusion Act*, 1904 (*c.* 37) (*Cape*)—*Deportation after conviction—Effect of exemption certificate.*]—Applts., being Chinamen & holders of exemption certificates under the above Act, having each been convicted at least twice for offences against the gambling laws, but none of them having served two terms of imprisonment:—*Held:* not to be exempted under s. 2 (*e*) of the Act from s. 34, & liable under the terms of the latter sect. to be deported.—AH YET *v.* UNION GOVERNMENT, [1921] App. D. 97.—**S. AF.**

sa. *Act 22 of 1913—Prohibited immigrant—Asiatic—Holding qualifications for residence.*]—The entry of applt., an Asiatic, into Natal was not discovered until Apr. 1916, when he was arrested as a prohibited immigrant under s. 4 (1) (*a*) of the above Act:—*Held:* he had obtained no title to reside in the Union until he had successfully presented himself as an immigrant no matter how well qualified he might be to obtain a title to reside in the Union.—DESAI *v.* IMMIGRANTS' APPEAL BOARD (1916), 37 N. L. R. 277.—**S. AF.**

sb. —— —— *Indian returning after temporary residence in India—Domicil certificate not acquired before departure to India.*]—Applt., a resident in Natal from 1897, in 1911 went to India with the object of seeking a wife there from among his own relations. Prior to leaving for India he applied to the authorities for a certificate of domicil, but that certificate was illegally refused. Appit.'s visit to India was extended to a period of four years, & he returned to Natal in Apr. 1915:—*Held:* applt.'s visit to India was for a special or temporary purpose; the home in Natal continued to be his place of permanent abode, & he was domiciled in Natal within s. 30 of the above Act.—KAJEE *v.* IMMIGRANTS' APPEAL BOARD (1916), 37 N. L. R. 42.—**S. AF.**

sc. —— —— —— *Domicil certificate acquired before departure to India.*]—Immigrant, an Indian, first came to Natal in 1893, where he continued to reside. In 1899 he obtained a certificate of domicil. In 1902 immigrant went back to India. Recently he returned to Natal but was refused admission as being a prohibited immigrant under the above Act:—*Held:* the certificate conferred upon him rights, which were not restricted by the above Act, & there was no intention on the part of immigrant to abandon his domicil in Natal.—*Re* RUNGASAMY CHETTY (1917), 38 N. L. R. 42.—**S. AF.**

sd. —— —— —— *Domicil certificate acquired by deceased parent.*]—K., the possessor of a certificate of domicil under the above Act, brought his wife & son, N., to Natal from India in 1911. In 1914 they returned to India & lived there till after K.'s death in Natal in 1917. On a question as to whether N. could of right enter Natal in 1920:—*Held:* N. had no such right under s. 5 (*g*) of the above Act, as he had no father domiciled in Natal.—NATHOO *v.* IMMIGRANTS' APPEAL BOARD (1921), 42 N. L. R. 30.—**S. AF.**

se. —— —— *Second wife of Mohammedan.*]—Where a Mohammedan's daughter & her mother have returned to India & both are residing there, another wife of such Mohammedan is not a prohibited immigrant.—MARIAM & MAHOMED *v.* IMMIGRANTS' APPEAL BOARD (1918), 39 N. L. R. 382.—**S. AF.**

sf. —— —— *Sons of domiciled parents—Resident in another province.*]—M. & Y., Asiatics, & the minor sons of parents resident in the Transvaal, but formerly resident in Natal, & holding certificates of domicil under the above Act, were declared prohibited immigrants in Natal, neither M. or Y. having ever been resident in Natal save for temporary purposes during which periods their parents remained in the Transvaal.—MAHOMED *v.* PRINCIPAL IMMIGRATION OFFICER (1921), 42 N. L. R. 337.—**S. AF.**

sg. —— —— —— *Parent resident in India.*]—Applt. was born in India, in 1913, of a woman who was recognised as the wife of an Indian, S., but who had never been in the Union. S. had entered the Transvaal in 1907 & had, thereafter, acquired a domicile of choice in the Tranvaal, but in 1919 had returned to India, & had since not been in the Union. Save that there was evidence that S. was undergoing medical treatment in India, there was no explanation of his long stay there. He had shares to the value of £4,000 in a business in the Transvaal but had apparently never taken any active part in the business. Applt., aged 12, arrived in the Union & claimed a right to enter the Union under Act 22 of 1913, s. 5 (*g*). On appeal from a judgment of a Provincial Div. in a case stated by the Immigrants Appeal

551. *Add. Annotations* :—**Consd.** Eshugbayi Eleko *v.* Nigeria Govt., [1931] A. C. 662. **Refd.** Brightman *v.* Tate (1919), 35 T. L. R. 209; R. *v.* Brixton Prison, *Ex p.* Bloom (1920), 90 L. J. K. B. 574; R. *v.* Home Secretary, *Ex p.* Bressler (1924), 131 L. T. 386.

551a. —— —— ——.]—Aliens Order, 1919, art. 12, par. 1, which empowers the Secretary of State "if he deems it to be conducive to the public good" to make a deportation order against an alien, is not *ultra vires*. In acting under the article the Secretary of State is not a judicial, but is an executive officer, & is therefore not bound to hold an inquiry or give the person against whom he proposes to make a deportation order the opportunity of being heard.—R. *v.* LEMAN STREET POLICE STATION INSPECTOR, *Ex p.* VENICOFF, R. *v.* SECRETARY OF STATE FOR HOME AFFAIRS, *Ex p.* VENICOFF, [1920] 3 K. B. 72; 89 L. J. K. B. 1200; 23 L. T. 573; 84 J. P. 222; 36 T. L. R. 677, D. C.

Annotation :—**Refd.** R. *v.* Home Secretary, *Ex p.* Bressler (1924), 131 L. T. 386.

553. *Add. Annotations* :—*As to* (1) **Consd.** R. *v.* Home Secretary, *Ex p.* Bressler (1924), 131 L. T. 386. **Refd.** Brightman *v.* Tate (1919), 35 T. L. R. 209.

553a. —— **Aliens Restriction (Amendment) Act, 1919 (c. 92)—Power of expulsion in time of peace.**]—Appct. was charged before a metropolitan police magistrate with four offences under the above Acts. He pleaded guilty to the charges, & was sentenced to fourteen days' imprisonment & recommended for deportation. After having served his sentence, he was detained in prison awaiting deportation. The Secretary of State had on the day after the expiration of the sentence made an order for the deportation of appct. Upon an application for a writ of *habeas corpus* :—*Held* : the order of the Secretary of State was not *ultra vires*, but was within the powers conferred upon him by the above Acts, & Aliens Order, 1920, art. 12.—R. *v.* BRIXTON PRISON (GOVERNOR), *Ex p.* BLOOM (1920), 90 L. J. K. B. 574; 124 L. T. 375; 85 J. P. 87; 19 L. G. R. 62; 26 Cox, C. C. 687, D. C.

553b. —— —— ——.]—The Order in Council made as to the deportation of aliens on Mar. 25, 1920, under sect. 1 (1) of each of the above Acts, did not expire when the power to make such an order would, but for further legislation, have expired, namely on Dec. 23, 1920, inasmuch as the Act of 1919 has been continued by the Expiring Laws Continuance Acts, 1920 (c. 73), & 1921 (c. 53).—R. *v.* BRIXTON PRISON (GOVERNOR), *Ex p.* SUGARMAN (1922), 127 L. T. 27; 86 J. P. 75; 38 T. L. R. 325; 27 Cox, C. C. 208, D. C.

553c. —— —— —— **Form of order by Secretary of State.**]—The making of an order for the deportation of an alien under Aliens' Order, 1920, art. 12 (6), lies within the discretion of the Home Secretary. It is desirable that an order made under the article should state on the face of it that the Home Secretary deems it to be conducive to the public good to make the order.—R. *v.* HOME SECRETARY, *Ex p.* BRESSLER (1924), 131 L. T. 386; 88 J. P. 89; 68 Sol. Jo. 646; 22 L. G. R. 460; 27 Cox, C. C. 655, C. A.

553d. —— —— **Recommendation for deportation —Right of appeal.**]—R. *v.* GRAHAM CAMPBELL, *Ex p.* AHMED HAMID MOUSSA, No. 558h, *post*.

Board :—*Held* : assuming the onus rested upon the immigration officer, the Board was entitled to find that S. had abandoned his Transvaal domicile, &, therefore, applt. was a prohibited immigrant.—MAHOMED *v.* PRINCIPAL IMMIGRATION OFFICER, [1929] App. D. 190.—**S. AF.**

sh. —— *Deportation under—Conviction obtained without Union.*]—A person not born in the Union of South Africa who is convicted of an offence under s. 4 (1) (*b*) of the above Act is liable to be deported under s. 22, whether the conviction took place within or without the Union.—COLLINGWOOD *v.* UNION GOVERNMENT, [1917] App. D. 550.—**S. AF.**

sj. —— *Boarding ship before examination of immigrants completed.*]—Where a person was convicted of being on board a ship before the general examination of immigrants had been completed, & stated in defence that notice to the master of the ship had been given :—*Held* : he was rightly convicted.—ANGLIA *v.* R. (1918), 39 N. L. R. 147.—**S. AF.**

sk. —— *Decision of immigration authority—Jurisdiction of court to interfere.*]—The ct. may interfere where there is a manifest absence of jurisdiction or if an order is made or obtained fraudulently.—UNION GOVERNMENT *v.* FAKIR, [1923] App. D. 466.—**S. AF.**

sl. —— —— ——.]—Appct., an Asiatic, had been declared by the immigration officer of Natal to be a prohibited immigrant On application to the ct. for an order restraining his deportation :—*Held* : as the immigration officer had not acted outside his jurisdiction or *malâ fide*, the ct. had no jurisdiction to make the order prayed.—NARAINSAMY *v.* PRINCIPAL IMMIGRATION OFFICER, [1923] App. D. 673.—**S. AF.**

sm. —— *Requirement of immigration officer—Effect.*]—When an immigration officer requires a person to make & sign a declaration under sect. 19 (1) (*a*) of Act 22, 1913, his requirement becomes a requirement of the Act, & failure to comply therewith is an offence under sect. 27 (*d*).—R. *v.* LAUGHTON, [1930] N. L. R. 47.—**S. AF.**

sn. *Immigration & Indian Relief Act, 37 of 1927, s. 5—Retrospective.*]—PRINCIPAL IMMIGRATION OFFICER *v.* PURSHOTAM, [1928] App. D. 435.—**S. AF.**

so. *Indian Immigration Act, 1891 (Natal)—Liability of employers for medical attendance on Indian immigrants.*]—Employers were held liable under the above Act for medical attendance on Indian immigrants, who, after being free, had not re-indentured, themselves & for their descendants.—INDIAN IMMIGRATION TRUST BOARD OF NATAL *v.* GOVINDSAMY (1920), 37 T. L. R. 128.—**S. AF.**

552 1. *Aliens Restriction Order, 1915—Power of expulsion in war time—Validity of Order—Power to specify destination.*]—*Held* : par. 25 of the above Order was within the authority conferred by War Precautions Act, 1914-1916, s. 6; it conferred a discretion upon the Minister to make an order for the deportation of any particular alien, & authorised his subsequent arrest & detention & the placing him on board a ship chosen by the Minister, & his detention there whilst the ship was in the territorial limits of the Commonwealth; & such an order was not rendered invalid by the fact that the Minister made it for the purpose of carrying out an agreement by which the Commonwealth Govt. was under an obligation to the country of which the particular alien was a subject to assist as far as possible in enforcing the return to that country of persons liable to military service there.—FERRANDO *v.* PEARCE (1918), 25 C. L. R. 241.—**AUS.**

sp. —— —— *Necessity of communication of deportation order to alien.*]—Par. 2J of the above Order does not require communication to the alien of a deportation order made under it by the Minister of Defence.—MEYER *v.* POYNTON (1920), 27 C. L. R. 436.—**AUS.**

sr. —— —— *Form of deportation order.*]—Such order need not be in any particular form.—JERGER *v.* PEARCE (1920), 28 C. L. R. 588.—**AUS.**

sw. *Aliens Restriction Order, 1916—Power of expulsion in war time—Subject of allied State liable for military service.*]—The Minister having ordered the deportation of an Italian subject for military service, the ct. refused an application for a rule *nisi* for *habeas corpus*, the matter being in the Minister's discretion under the above Order.—*Ex p.* MAGGI (1918), 18 S. R. N. S. W. 150.—**AUS.**

Part IX.—Registration, Internment, and other Restrictions.

557. *Add. Citation:*—26 Cox, C. C. 16, D. C.

558a. **Aliens Order, 1920.**]—(1) The word "keeper" in the above Order of 1920, art. 20 (2), includes the lessee of a house who lets unfurnished rooms in the house in separate lettings to tenants at weekly rentals & employs another person to manage the house for him.

(2) A flat let on a seven years' lease would not constitute "premises" within the above Order of 1920, art. 6, but that art. does not apply to rooms in a leasehold house let unfurnished on weekly tenancies, there being a manager of the house employed by the lessee whose duties include cleaning the common stairs, ways & places, the maintenance of electric light, & so on.—RODDA *v.* GODFREY (1926), 95 L. J. K. B. 704; 90 J. P. 111; 42 T. L. R. 473; 24 L. G. R. 311; 28 Cox, C. C. 209, D. C.

558b. —— —— —— ——.]—The fact that the keeper of any premises to which the above Order of 1920, art. 7, applies knows that a person staying at such premises is a British subject, does not excuse compliance with the obligation to require such person to sign a statement as to his nationality.—WILLIAMS *v.* JONES, [1928] 2 K. B. 227; 97 L. J. K. B. 606; 139 L. T. 167; 92 J. P. 79; 44 T. L. R. 511; 26 L. G. R. 318; 28 Cox, C. C. 505, D. C.

558c. —— **Aliens Restriction (Amendment) Act, 1919 (c. 92)—Restrictions as to change of name—Carrying on business under pre-war name.**]—Resp., who was an alien, & whose real name was Karel Kollross, purchased in 1921, & continued to carry on, a business under the name of the Widmore Laundry, which business had been carried on under the same name by his predecessors for many years before Aug. 4, 1914. Apart from the laundry business resp. continued to be known as Karel Kollross, & he was registered in that name as the proprietor of the Widmore Laundry under Registration of Business Names Act, 1916 (c. 58). An information having been preferred against resp. for using the name Widmore Laundry, being a name other than that by which he was ordinarily known on Aug. 4, 1914, contrary to sect. 7 of the Act of 1919, the justices dismissed the information:—*Held:* the justices were right, as resp. had committed no offence against sect. 7 (1), by taking over an old-established business with a pre-war name & continuing to carry it on under that name.—BRUNNING *v.* KOLLROSS, [1923] 1 K. B. 311; 92 L. J. K. B. 323; 128 L. T. 600; 87 J. P. 41; 39 T. L. R. 129; 67 Sol. Jo. 278; 21 L. G. R. 108; 27 Cox, C. C. 383, D. C.

558d. **Addition of Co."**]—An alien uses a name "other than that by which he was ordinarily known" on Aug. 4, 1914, contrary to sect. 7 (1) of the Act of 1919, if he adds to the name by which he was ordinarily known on that date the words "& Co."—EVANS *v.* PIAUNEAU, [1927] 2 K. B. 374; 96 L. J. K. B. 734; 137 L. T. 482; 91 J. P. 97; 43 T. L. R. 524; 25 L. G. R. 321; 28 Cox, C. C. 410, D. C.

558e. —— —— **Prosecution under—Whether offences triable on indictment.**]—(1) On a prosecution for an offence against a statutory Order, an objection that the Order has not been proved must be taken before the ct. at the trial. It is too late to take the point for the first time on appeal.

(2) In cases under the Act of 1914, s. 1 (4), & the Act of 1919, s. 13, when any question arises whether the person charged is an alien or not the *onus* lies upon him to prove that he is not an alien.

(3) Offences against the Act of 1914 & the Act of 1919 are punishable only in the manner prescribed by the statutes, namely on summary conviction, unless the person charged with the offence claims the right under Summary Jurisdiction Act, 1879 (c. 49), s. 17, to be tried with a jury. Where, therefore, an offence under those Acts was treated by the magistrate as an indictable one & the case sent for trial before quarter sessions without any claim for trial with a jury having been put forward by prisoner, the conviction at the sessions was quashed.—R. *v.* KAKELO, [1923] 2 K. B. 793; 92 L. J. K. B. 997; 129 L. T. 477; 87 J. P. 184; 39 T. L. R. 671; 68 Sol. Jo. 41; 27 Cox, C. C. 454; 17 Cr. App. Rep. 150, C. C. A.

558f. **Proof of Order.**]—R. KAKELO, No. 558e, *ante*.

558g. —— —— **Proof of alienage.**]—R. *v.* KAKELO, No. 558e, *ante*.

558h. **Appeal—Effect of ambiguous plea.**]—Appct. was charged under Aliens Order, 1920, with, being an alien, having failed to notify his change of address. When before the magistrate he was asked "Are you an Egyptian?" to which he answered "Yes." He was then asked "Did you tell the registration officer that you intended to change your residence, & tell him when & where you were going?" to which he answered "No." Thereupon the magistrate entered a plea of guilty & sentenced appct. to imprisonment for one month & recommended the making of a deportation order against him:—*Held:* appct had not pleaded guilty or admitted the truth of the charge within Summary Jurisdiction Act, 1879 (c. 49), s. 19, or Criminal Justice Administration Act, 1914 (c. 58), s. 37, &, therefore, he had a right of appeal to quarter sessions by virtue of those sections.—R. *v.* GRAHAM CAMPBELL, *Ex p.* AHMED HAMID MOUSSA, [1921] 2 K. B. 473; 90 L. J. K. B. 818; 125 L. T. 310; 85 J. P. 189; 37 T. L. R. 611; 19 L. G. R. 461; 26 Cox, C. C. 747, D. C.

558i. —— —— —— —— **From recommendation for deportation.**]—R. *v.* GRAHAM CAMPBELL, *Ex p.* AHMED HAMID MOUSSA, No. 558h, *ante*.

PART IX.

ax. *Registration—No proof of no permanent place of residence.*]—Deft. was convicted for neglect to register as an enemy alien. There was no evidence that deft. had no permanent place of residence in Canada:—*Held:* the charge could not succeed.—R. *v.* HACKMAN (1919), 44 O. L. R. 224; 15 O. W. N. 190.—CAN.

558j. —— **Aliens Order, 1920—Effect on acquisition of English domicile.**]—In a husband's suit for dissolution of marriage the wife objected to the jurisdiction on the ground that the domicil of the husband was not English. The husband was a waiter of Italian nationality & was registered as an alien in England, & as such was subject to the restrictions & liabilities imposed by the Aliens Restriction Act, 1914 (c. 12), & the Aliens Order, 1920 :—*Held :* the provisions of the Act of 1914 & the Order of 1920 did not preclude petitioner from acquiring an English domicil of choice.—BOLDRINI *v.* BOLDRINI & MARTINI, [1932] P. 9; 101 L. J. P. 4; 146 L. T. 121; 48 T. L. R. 94; 75 Sol. Jo. 868, C. A.

559. *Add. Annotation :* — **Refd.** Ronnfeldt *v.* Phillips (1918), 35 T. L. R. 46.

560. *Add. Annotations :*—**Consd.** Ernest *v.* Metropolitan Police Comr. (1919), 89 L. J. K. B. 42. **Refd.** Brightman *v.* Tate (1919), 35 T. L. R. 209; *Re* De Keyser's Royal Hotel, De Keyser's Royal Hotel *v.* R., [1919] 2 Ch. 197; Chester *v.* Bateson, [1920] 1 K. B. 829; Fowle *v.* Monsell (1920), 90 L. J. K. B. 105; Gurney *v.* Houghton (1920), 123 L. T. 706; Hudsons' Bay Co. *v.* Maclay (1920), 36 T. L. R. 469; R. *v.* Leman Street Police Station Inspector, *Ex p.* Venicoff, [1920] 3 K. B. 72; R. *v.* Wormwood Scrubbs Prison, [1920] 2 K. B. 305; Shutler *v.* Rolfe (1920), 36 T. L. R. 828; R. *v.* Cannon Row Police Station Inspector, *Ex p.* Brady (1921), 91 L. J. K. B. 98. **Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98. **Mentd.** Brown *v.* Dagenham U. C. (1929), 98 L. J. K. B. 565.

561. *Add. Annotations :*—**Refd.** R. *v.* Secretary of State for Home Affairs, *Ex p.* O'Brien, [1923] 2 K. B. 361. **Mentd.** *Re* Clifford & O'Sullivan, [1921] 2 A. C. 470; Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603.

561a. —— **Restrictions as to change of name—Validity.**]—Applt., a foreigner by birth, became a naturalised British subject in 1912, & changed his name by deed poll in 1915 from Ernst to Ernest. In 1919 he was convicted under reg. 14h of the above regulations, for that, not being a natural-born British subject, he used a name other than that by which he was ordinarily known at the beginning of the war. He contended that reg. 14h was *ultra vires*, on the ground that it was not competent by Order in Council, issued under Defence of the Realm Act, 1914 (c. 8), to deprive him of any rights, powers, or privileges which were not at the same time taken away from all British subjects; & that the regulations purported to override an Act of Parliament, although there was no power under the Act of 1914 to do so :—*Held :* reg. 14h was not *ultra vires* because it discriminated between naturalised & natural-born British subjects.

Regulations made by the King in Council under Defence of the Realm Act, 1914 (c. 8), have all the force of a statute & may take away a statutory privilege or impose a statutory duty.—ERNEST *v.* METROPOLITAN POLICE COMR. (1919), 89 L. J. K. B. 42; 121 L. T. 222; 83 J. P. 182; 35 T. L. R. 512; 17 L. G. R. 448; 26 Cox, C. C. 458, D. C.

563. *Add. Citation :*—26 Cox, C. C. 58, D. C.

ALKALI WORKS.

See INSURANCE; PUBLIC HEALTH.

ALLOTMENT OF SHARES.

See COMPANIES.

AMICUS CURIÆ.

See BARRISTERS; CRIMINAL LAW.

ANIMALS.

Part II.—Property in Animals.

20. *Add. Annotation :*—**Refd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

34. *Add. Annotations :—As to* (3) **Apld.** Nicholls *v.* Ely Beet Sugar Factory, [1931] 2 Ch. 84. **Refd.** Granby *v.* Bakewell U. D. C. (1923), 87 J. P. 105 ; Peech *v.* Best (1930), 99 L. J. K. B. 537.

43. *Add. Annotation :*—**Refd.** *Re* Powell, Dodd *v.* Williams, [1921] 1 Ch. 178.

44. *Add. Annotations :—As to* (1) **Refd.** *Re* Powell, Dodd *v.* Williams, [1921] 1 Ch. 178. *As to* (2) **Consd.** *Re* Powell, Dodd *v.* Williams, [1921] 1 Ch. 178.

45. *Add. Annotation :*—**Refd.** The Tubantia, [1924] P. 78.

46. *Add. Annotation :*—**Refd.** The Tubantia, [1924] P. 78.

65. *Add. Annotation :*—**Refd.** Farey *v.* Welch (1929), 28 Cox, C. C. 604.

67a. —— **Unlawful taking—Larceny Act, 1861 (c. 96), s. 23—Necessity for mens rea.**]—*Held :* above sect. applies the general law of larceny to pigeons so far as it does not apply to them already : & consequently, a taker who honestly believed the pigeons taken to be his own was not within the sect.—FAREY *v.* WELCH, [1929] 1 K. B. 388 ; 98 L. J. K. B. 318 ; 140 L. T. 560 ; 93 J. P. 70 ; 45 T. L. R. 277 ; 27 L. G. R. 153 ; 28 Cox, C. C. 604, D. C.

73. *Add. Annotation :*—**Refd.** The Tubantia, [1924] P. 78.

80. *Add. Annotation :*—**Refd.** Farey *v.* Welch, [1929] 1 K. B. 388.

90. *Add. Annotations :—As to* (1) **Consd.** *Re* Powell, Dodd *v.* Williams, [1921] 1 Ch. 178. *As to* (2) **Refd.** *Re* Powell, Dodd *v.* Williams, [1921] 1 Ch. 178.

Part III.—Rights and Liabilities of Owners of Animals.

101. *Add. Annotation :*—**Apld.** Barnard *v.* Evans, [1925] 2 K. B. 794.

107. *Add. Annotation :*—**Refd.** Stearn *v.* Prentice, [1919] 1 K. B. 394.

109. *Add. Annotation :*—**Consd.** Hines *v.* Tousley (1926), 95 L. J. K. B. 773.

116. *Add. Annotation :*—**Consd.** Barnard *v.* Evans, [1925] 2 K. B. 794.

117. *Add. Annotation :*—**Refd.** Nye *v.* Niblett (1917), 87 L. J. K. B. 590.

119. *Add. Annotations :*—**Consd.** Horton *v.* Gwynne, [1921] 2 K. B. 661. **Apld.** Farey *v.* Welch, [1929] 1 K. B. 388.

PART II. SECT. 1, SUB-SECT. 1.

a. *Camel.*]—Under the condition of affairs which has existed in Western Australia for many years, camels are to be regarded as belonging to the class of domestic animals.—NADA SHAH *v.* SLEEMAN (1917), 19 W. A. L. R. 119.—**AUS.**

sg. *Ranch-bred fox.*]—*Held :* a domestic animal.—EBERS *v.* MACEACHERN, [1932] 3 D. L. R. 415.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.—A.

19 ii. —— —— ——.]—A fox born & reared in captivity escaped & was killed by defts. upon a stranger's land a week later :—*Held :* the fox was an animal *feræ naturæ ;* pltf.'s qualified property therein came to an end when the animal escaped & was reduced into actual possession by defts. ; there was no immediate pursuit, nor was there *animus revertendi.*—CAMPBELL *v.* HEDLEY (1917), 39 O. L. R. 528 ; 37 D. L. R. 289.—**CAN.**

50 ii. —— *Damage to hives.*]—A bee is not an animal within Criminal Law Consolidation Act, 1876 (S. A.), s. 119. —R. *v.* NITSCHKE, [1928] S. A. S. R. 229.—**AUS.**

PART II. SECT. 2, SUB-SECT. 2.

74 ii. —— *Animal killed by trespasser.*]—When a person kills a wild animal on the property of another the carcass does not belong to the killer but to the proprietor of the property & the latter, either himself or by his duly authorised agent, is entitled to demand &, if refused, seize the carcass, & such persons as help him to exercise his right are doing no wrong ; but as against any other person, the killer has a right to retain possession of the carcass.—R. *v.* ARTU RANTRA (1924), I. L. R. 3 Pat. 549.—**IND.**

PART II. SECT. 3.

sb. *As between husband & wife—Wife's cattle on husband's farm.*]—Where cattle belonging to a wife are placed on her husband's farm, fed from the crops grown thereon & looked after by him in carrying on farming operations, not as her agent or manager, but as his own business, & the offspring of the original stock are treated in the same way & sold from time to time & the proceeds invested in other stock, the increase of the original animals & the animals bought from the proceeds of the sale cannot be claimed by the wife.—MINAKER *v.* HADDEN, [1917] 3 W. W. R. 774.—**CAN.**

sc. *Brood of tame & domestic animals—Belongs to owner of dam or mother.*]—CALHOUN *v.* REID (Sask.), [1927] 4 D. L. R. 808 ; [1927] W. W. R. 429.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.—B.

sd. *Straying bull tied up during night—Released & driven away next day—Subsequently found dying.*]—Deft. tied up over night a bull which had strayed on his premises, to prevent it damaging his cows & released it next day & drove it away. In the evening it was found castrated near the boundary of deft.'s farm & died the next day. In an action for damages : —*Held :* deft.'s actions were justified, & in the absence of evidence as to when or how or by whom the animal was injured, pltf. could not succeed.—FICOWICH *v.* MALESHCHAK, [1924] 4 D. L. R. 585 ; 3 W. W. R. 308.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.—C.

104 ii. ——.]—The making use of dogs to drive away trespassing cattle is not wrongful where in doing so the cattle are not wilfully or negligently injured.—CHALEFOUR *v.* CRETIEN, [1930] 2 W. W. R. 77.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.—E.

se. *Claim against custodian of animal—Onus of proof as to absence of negligence.*]—The *onus* is upon the custodian to show that the injury did not occur through his act or negligence only where it is shown that the injury occurred when the animal was or should have been in his custody or control, or that he was under an obligation to account for it to the owner.—FICOWICH *v.* MALESHCHAK, [1924] 4 D. L. R. 585 ; 3 W. W. R. 308.—**CAN.**

132 ii a. —— *Animal falling in well—Animal lawfully at large.*]—Pltf.'s horse while lawfully running at large was killed by falling into an open well on deft.'s land. Deft., who knew of the open well, was residing outside the province, the land being occupied by a tenant :—*Held :* deft.'s breach of Open Wells Act gave pltf. a right of action "on a tort committed within the jurisdiction," justifying allowance of the issue of a writ for service on deft. *ex juris.*—BROTHERSON *v.* KENNEDY, [1919] 2 W. W. R. 803 ; 47 D. L. R. 131 ; 12 Sask. L. R. 304.—**CAN.**

132 ii b. —— —— *What is an "open well."*]—Whether a well is an "open well" or not is a question of fact to be proved at the trial. While it might be an "open well" if insecurely covered, the fact that an animal falls into it without any evidence of how it

134. *Add. Annotations :*—**Refd.** British Petroleum Co. *v.* A.-G. for Ceylon, [1926] A. C. 147; Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

136a. Negligent driving by farrier — Measure of damages.]—In an action for negligent driving, whereby pltf.'s horse was injured, it appeared that the horse was sent to a farrier's for six weeks for the purpose of being cured, & that at the end of that time it was ascertained that the horse was permanently damaged to the extent of £20 :—*Held :* the proper measure of damages was the keep of the horse at the farrier's, the amount of the farrier's bill, & the difference between the value of the horse at the time of the accident & at the end of the six weeks; but pltf. ought not to be allowed also for the hire of another horse during the six weeks.—HUGHES *v.* QUENTIN (1838), 8 C. & P. 703; 173 E. R. 681, N. P.

Annotations :—**Apld.** Greenbirt *v.* Smee (1876), 135 L. T. 168. **Refd.** The Mediana (1900), 69 L. J. P. 35.

139. *Add. Annotations :*—**Consd.** Dunster *v.* Hollis, [1918] 2 K. B. 795. **Refd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

occurred does not prove it such, nor does the fact that the material of the covering was seven years old.—DRYSDALE *v.* REID, [1920] 3 W. W. R. 832.—**CAN.**

132 ii c. —— —— *Animal unlawfully at large.*]—Owners of such animals have no right of action where they are killed or injured by falling into an open well.—DILLE *v.* GREAT WEST LIFE ANCE CO., [1926] 3 D. L. R. 339; [1926] 2 W. W. R. 342; 20 Sask. L. R. 545.—**CAN.**

132 ii d. —— —— ——.]—Where pltf. proves that his stock strayed on to deft.'s premises & there fell into a well & was killed, he has established a *primâ facie* violation of the Act, & where deft.'s only explanation is that he erected a protection reasonably sufficient to keep animals away from the well, but that the animal in question somehow or other got into the well, he has not rebutted the *primâ facie* case, especially where the circumstances justify the inference that the animal got through the protection by doing that which animals are wont to do.—PITMAN *v.* BROWN, [1925] 3 D. L. R. 61; [1925] 2 W. W. R. 36; 19 Sask. L. R. 362.—**CAN.**

132 ii e. —— —— *Ignorance of owner as to existence of well.*]—An owner of land on which there is an open well contrary to statute cannot rid himself of liability for damages caused thereby by pleading that he did not know it was there.—HUDSON *v.* SILZER (Sask.), [1919] 3 W. W. R. 575; 49 D. L. R. 125.—**CAN.**

132 iii a. —— ——.]—The digging by a municipality of a ditch dangerous to animals alongside the travelled portion of a highway & the leaving of it unprotected, was held to be a misfeasance which rendered the municipality liable for the loss of a horse which plunged into the ditch & was killed.—HOWELL *v.* WILTON RURAL MUNICIPALITY NO. 472 (1922), 66 D. L. R. 321; 15 Sask. L. R. 427; [1922] 2 W. W. R. 568.—**CAN.**

132 iv. —— *Animal falling in excavation.*]—Deft. & pltf. were neighbours. Pltf.'s cow while running at large fell into an excavation on deft.'s land :—*Held :* pltf. could not recover damages.—PITTZEN *v.* SHOKLUK, [1921] 2 W. W. R. 686; 16 Alta. L. R. 482.—**CAN.**

132 v. —— ——.]—The owner or occupier of land will be liable in damages for any loss of stock resulting from failure to guard against access to an excavation.—KELLOGG *v.* DAPPEN (1922), 69 D. L. R. 528; [1922] 3 W. W. R. 573.—**CAN.**

132 vi. —— —— *Cellar of unused house.*]—Deft. owned unfenced land on which was an unused open house with a cellar beneath. Pltf.'s horse, running at large, got into the house, &, while there, one of its feet broke through the floor above the cellar &, being unable to withdraw it, it died :—*Held* the animals must take the land as they find it, & Open Wells Act did not apply.—WRUBLEFSKI *v.* LOFF, [1923] 2 W. W. R. 764.—**CAN.**

z i. —— ——.]—Where there is a bye-law permitting cattle to run at large & such cattle are injured by the barbed wire of a fence which has fallen down through the rottenness of its posts, the owner of the fence is liable for the injury to cattle lawfully on the highway & injured thereon.—CHASE *v.* COLERIDGE, [1917] 2 W. W. R. 736.—**CAN.**

z ii. —— *On racecourse—Injury to racehorse.*]—Applt.'s racehorse was injured on resp.'s racecourse by a splinter from a stake used to flag off a portion of the regular course, which had become dangerous owing to heavy rain :—*Held :* resp. having taken proper steps to ensure that the course was as safe as reasonable care & skill could make it, & the risk not being in the nature of a "trap," no liability attached for the injury.—WACKROW *v.* TAKAPUNA JOCKEY CLUB, [1928] N. Z. L. R. 249.—**N.Z.**

137 xiii. —— —— *Negligence of owner.*]—An action will not lie for damages for the loss of cattle killed by a train when the cattle were on the railway line through the negligence of pltf.—NELSON *v.* GRAND TRUNK PACIFIC RY. CO. (1920), 51 D. L. R. 141.—**CAN.**

k i. *Grain left accessible to stock—Injury from eating—Grain escaping from granary.*]—Where animals straying upon the premises were injured by consuming grain which had escaped from a granary through no fault of the grower :—*Held :* deft. was not liable under Open Wells Act, R. S. S. (c 124), s. 3.—HILL *v.* MALLACH, [1918] 1 W. W. R. 10; 10 Sask. L. R. 419; 37 D. L. R. 709.—**CAN.**

k ii. —— —— *Animal lawfully at large.*]—Where the non-observance by a proprietor of land of Open Wells Act, R. S. S., 1909 (c. 124), s. 3, results in injury to animals lawfully at large which have strayed upon his land, he is liable in damages to their owner.—WATSON *v.* GUILLAUME, [1918] 2 W. W. R. 1047; 11 Sask. L. R. 348; 42 D. L. R. 380.—**CAN.**

k iii. —— —— —— *Granary reasonably fit for grain.*]—*Held :* defts. were not liable for damages for injury to pltfs.' horses, while lawfully running at large, caused by eating wheat which had run from a granary on defts.' premises, in view of the jury's finding that the granary was reasonably fit for storing the wheat as against animals running at large.—GLENN & BABB *v.* SCHOFIELD, [1928] 2 D. L. R. 319; [1928] S. C. R. 208.—**CAN.**

k iv. —— —— *Animal trespassing.*]—If grain be left in such an unguarded condition as to permit of horses being attracted by it & eating it to their injury, the owner of the grain will be liable for the resulting damage, even though the horses are trespassers.—FULTON *v.* RANDALL, GEE & MITCHELL, LTD., [1918] 3 W. W. R. 331.—**CAN.**

k v. —— —— ——.]—A person who allows threshed grain to be accessible to stock, is liable in damages for the death of an animal resulting therefrom, even though the animal was unlawfully at large, unless the owner of the animal when turning it at large knew that such grain was accessible to stock.—HAWORTH *v.* WEBB (1922), 65 D. L. R. 174; 15 Sask. L. R. 275; [1922] 1 W. W. R. 1070.—**CAN.**

k vi. —— —— ——.]—Pltf. alleged that deft. while engaged in seeding left out in his unfenced ploughed field an unprotected waggon box which contained wheat & that pltf.'s horse while lawfully running at large gorged itself with the wheat & died :—*Held :* deft. was not liable.—MUSSELMAN *v.* ZIMMERMAN (1922), 66 D. L. R. 350; [1922] 2 W. W. R. 640.—**CAN.**

k vii. —— —— ——.]—The result of an action under Open Wells Act, R. S. S., 1920 (c. 169), does not depend upon whether or not the animals injured were unlawfully at large under Stray Animals Act, R. S. S. 1920 (c. 124).—WENTZAIL *v.* PERKS, [1924] 3 W. W. R. 876.—**CAN.**

k viii. —— —— *Grain mixed with poisonous substance.*]—No liability attaches to a railway co. for damages for the loss of cattle which die from eating grain which has become mixed with lead ore, where the grain was dropped upon the ground among the particles of lead ore by a customer of the railway co. while unloading grain from the company's cars.—DAWSON *v.* PARADISE MINE & CANADIAN PACIFIC RY. CO., [1919] 1 W. W. R. 499.—**CAN.**

k ix. —— ——.]—The obligation imposed by Open Wells, etc., Act, R. S. S., 1920 (c. 160), s. 4, is an absolute one, & where another's animals have been injured as the result of threshed grain being accessible to them, the fact that the granary in question was reasonably fit for the storage of grain as against animals running at large is no defence.—SCHOFIELD *v.* GLENN & BABB, [1927] 3 D. L. R. 188; [1927] 2 W. W. R. 183; 21 Sask. L. R. 494.—**CAN.**

n i. —— *Running into animal using highway.*]—Deft., while driving his automobile at dusk at twenty-five miles an hour with his lights on, ran into pltf.'s cow which he had not seen until very close to it. He was held liable in damages.—JOHNSON *v.* GIFFEN (1921), 62 D. L. R. 635; [1921] 3 W. W. R. 596.—**CAN.**

n ii. —— ——.]—PAWLUK *v.* FRIESEN, [1930] 2 D. L. R. 991.—**CAN.**

w i. —— *Liability of boatowner for act of repairer.*]—A boatowner employed a joiner to repair his boats. The paint scrapings were left lying on the ground, & poisoned a cow that was grazing on the pasture :—*Held :* it was the boatowner's duty to see that the paint scrapings were removed, & he was liable in damages for the cow's death.—STEWART *v.* ADAMS, [1920] S. C. 129; 57 Sc. L. R. 83.—**SCOT.**

w ii. —— *Animals lawfully at large—Whether poison hidden trap.*]—Poison which deft. had put in bags on his unfenced land & carefully covered with manure, & which, without his knowledge, became exposed & caused the death of pltf.'s cattle lawfully at large, which entered on the land :—*Held :* not to constitute a hidden trap.—WINMILL & THOMAS *v.* COLLINS (Sask.), [1927] 3 W. W. R. 325; *revsd.*, [1928] 2 D. L. R. 353; 1 W. W. R. 705; 22 S. L. R. 422.—**CAN.**

140. *Add. Annotation :*—**Refd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

145. *Add. Annotation :—As to* (1) **Refd.** British & Foreign Marine Insce. *v.* Gaunt, [1921] 2 A. C. 41.

145a. Animal killed—Meaning of "external & visible injury."]—A policy of insurance provided that an insurance co. should indemnify the insured against death solely attributable to accidental external & visible injury to any horse the property of the insured, duly certified by a veterinary surgeon, & further provided that the due observance & fulfilment of the conditions of the policy should be a condition precedent to any liability of the co. under the policy The insured's horse, drawing a loaded van, got out of the driver's control, bolted, & fell into a ditch with the van on top of it, & died in consequence of the pressure of a shaft upon its windpipe. There was no mark visible on the skin of the horse, & no certificate of a veterinary surgeon was obtained :—*Held :* (1) it was not necessary that there should have been any mark visible on the skin of the horse, & the injury was external & visible ; & (2) it was a condition precedent to the insured's right to recover that the death of the horse should be duly certified by a veterinary surgeon, but, on the facts of the case, the co. had waived compliance with such condition.—Burridge & Son *v.* Haines (F. H.) & Sons, Ltd. (1918), 87 L. J. K. B. 641 ; 118 L. T. 681 ; 62 Sol. Jo. 521, D. C.

151. After this case add "*See, also,* Constitutional Law, Vol. XI., p. 589 ; Copyholds, Vol. XIII., pp. 21 *et seq.*"

154. *Add. Citation :*—17 C. B. N. S. 251, n.

Add. Annotations :—**Refd.** Read *v.* Edwards (1864), 17 C. B. N. S. 245 ; Gayler & Pope *v.* Davies (1924), 93 L. J. K. B. 702.

156a. ——.]—Manton *v.* Brocklebank, No. 258a, *post.*

156b. ——.]—(1) For injury caused by horses or cattle to property on or adjoining a highway the owner is not liable in the absence of negligence or of wilful intention on his part.

(2) The bolting of a horse which has been left unattended in a public street is *primâ facie* evidence of negligence on the part of the owner.—Gayler & Pope, Ltd. *v.* Davies (B.) & Son, Ltd., [1924] 2 K. B. 75 ; 93 L. J. K. B. 702 ; 131 L. T. 507 ; 40 T. L. R. 591 ; 68 Sol. Jo. 685.

159. *Add. Citation :*—62 Sol. Jo. 161.

Add. Annotation :—As to (1) **Refd.** Richards *v.* Davies, [1921] 1 Ch. 90.

162. After this case add "*See, now,* Dogs Act, 1906 (c. 32), s. 1 (1) (3)."

163a. Cat killing pigeons.]—The owner of a cat is not bound to keep it from straying into a neighbour's land.

A cat belongs to the class of animals *mansuetæ naturæ*. For mischief done by it in following the common instincts of its kind, its owner is not liable. To make him liable he must have knowledge of some vicious propensity beyond those common instincts. Therefore where a cat strayed from its owner's land into the land of a neighbour & killed fowls & pigeons kept there :—*Held :* the owner of the cat was not liable.—Buckle *v.* Holmes, [1926] 2 K. B. 125 ; 95 L. J. K. B. 547 ; 134 L. T. 743 ; 90 J. P. 109 ; 42 T. L. R. 369 ; 70 Sol. Jo. 464, C. A.

166. *Add. Annotation :*—**Consd.** Hines *v.* Tousley (1926), 95 L. J. K. B. 773.

167. *Add. Annotation :*—**Consd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212.

168. *Add. Annotation :*—**Refd.** Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762.

—— —— ——.]—Anon. (1470), Y. B. 10 Edw. 4, fo. 7, pl. 19.

Annotations :—**Refd.** Right *v.* Barnard (1674), Freem. K. B. 379 ; Ricketts *v.* East & West India Docks, etc., Ry. (1852), 12 C. B. 160.

141 i. *Wrong quantity in poisonous dip—Animals poisoned.*]—Pltf. alleged that the death of his sheep was due to the presence of an excess of arsenic in powder manufactured & sold by defts. which he had added, together with more than the quantity of water specified in defts.' printed instructions, to a solution through which the sheep had already been passed without injury :—*Held :* pltf. had not proved that the death of the sheep was due to an excess of arsenic in the powder.—Cooper *v.* Visser, [1920] App. D. 111. —S. Afr.

PART III. SECT. 1, SUB-SECT. 1.—G.

c i. —— ——.]—A claimant has a right of action to compel council & valuer to comply with the Acts as far as may be necessary to give effect to a valid claim for compensation ; but he has no right of action in the nature of appeal against the determination of the council or the valuation of the valuer.—Hogle *v.* Ernesttown Township (1918), 41 O. L. R. 394 ; 13 O. W. N. 347 ; 41 D. L. R. 123.—CAN.

c ii. —— —— *Mandamus.*]—The direction to the municipal council to award compensation under the Act of 1914 is mandatory ; & they may by *mandamus* be required to obey the statute.—Noble *v.* Esquesing Township (1918), 41 O. L. R. 400 ; 13 O. W. N. 339 ; 41 D. L. R. 99.—CAN.

c iii. —— —— ——.]—If a township council fail to perform the duties imposed upon it by s. 18 of the Act of 1914, a *mandamus* may be granted to compel the council to make the inquiry directed by the sect. & award compensation.—Hudson & Hardy *v.* Biddulph Township (1920), 46 O. L. R. 216.—CAN.

sl. —— *Wanton killing of unlicensed dog.*]—Notwithstanding the Act of 1917, B. C., s. 3, one is liable in damages for causing death or injury to an unlicensed dog in a sheep-protection district, if the injury is inflicted wantonly.—Wilgress *v.* Ritchie, [1920] 2 W. W. R. 421 ; 52 D. L. R. 543.—CAN.

sg. *Stock-brands Act, R. S. B. C., 1924 — Offence against.*]—R. *ex rel* Maxson *v.* Dobbin (B. C.), [1929] 3 W. W. R. 176 ; 52 Can. Crim. Cas. 342.—CAN.

PART III. SECT. 1, SUB-SECT. 2.

sk. *Stray Animals Act, 1920 (c. 124)—Meaning of animal—Turkey.*]—Since turkeys are not included under the words "animal" or "animals" in above Act an owner of a turkey, who enters upon another's land to get the turkey after it has strayed thereon commits a trespass.—Sorlie *v.* McKee, [1927] 1 D. L. R. 249 ; [1927] 1 W. W. R. 56 : 21 Sask. L. R. 330—CAN.

sm. *Authorised round-up—Liability for* ——.]—Jones *v.* Walker, [1932] 3 W. W. R. 327.—CAN.

PART III. SECT. 2, SUB-SECT. 1.—A.

154 ix. ——.]—The owner of an animal in which by law the rule of property can exist is bound to take care that it does not stray into the land of his neighbour, & he is liable for any trespass it may commit, & for the ordinary consequences of that trespass. Whether or not the escape of the animal is due to the owner's negligence is immaterial.—Whalley *v.* Vandergrand, [1919] 1 W. W. R. 87 ; 44 D. L. R. 319.—CAN.

154 x. —— *To remove cattle—Under Domestic Animals Act, R. S. A., 1922 (c. 67), s. 64.*]—If lands of A. adjoin lands of B. without a fence between them, & the lands are within an extra-municipal area which has not been closed under s. 8 of the above Act, & none of the lands have ever been within a municipal or pound district, & if A.'s cattle stray on to B.'s lands & B. gives notice to remove them, A. sufficiently complies with s. 64 of the above Act by removing them a reasonable distance on to his own land, even though this does not effect a permanent removal.—R. (Gagan) *v.* Hillmer, [1923] 3 W. W. R. 660.—CAN.

176 iii. —— —— ——.]—Where a fence erected by one of two adjoining owners becomes by agreement, express or implied, the line fence & the other adjoining owner fences three sides of his land & joins on to the line fence, he must pay a just proportion of the then value thereof & thereafter bear an equal share of the costs of maintenance & repair, but it also vests in him all the rights of an owner in respect of the line fence. He is entitled to strengthen & repair it by adding strands of wire

180. *Add. Annotations :—As to* (1) **Consd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212. *As to* (2) **Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212.

181. After this case add "*See, also,* BOUNDARIES, Vol. VII., pp. 281, 282."

183. *Add. Annotations :* — **Consd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212; Gayler & Pope *v.* Davies, [1924] 2 K. B. 75. **Refd.** Theyer *v.* Purnell, [1918] 2 K. B. 333.

187. *Add. Annotation :*—**Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212.

188a. Cat trespassing.]—BUCKLE *v.* HOLMES, No. 163a, *ante.*

194. *Add. Annotation :*—**Consd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212.

195. *Add. Annotations :*—**Consd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212; Hines *v.* Tousley (1926), 95 L. J. K. B. 773. **Distd.** Fardon *v.* Harcourt-Rivington (1932), 48 T. L. R. 215. **Apld.** A.-G. *v.* Corke (1932), 48 T. L. R. 650. **Refd.** Mansel *v.* Webb (1918), 88 L. J. K. B. 323; Musgrove *v.* Pandelis, [1919] 2 K. B. 43; A.-G. *v.* Cory, Kennard *v.* Cory, [1921] 1 A. C. 521; Rainham Chemical Works *v.* Belvedere Fish Guano Co., [1921] 2 A. C. 465; Hoare *v.* McAlpine, [1923] 1 Ch. 167; Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341; Gayler & Pope *v.* Davies, [1924] 2 K. B. 75; Glanville *v.* Sutton (1927), 44 T. L. R. 98; St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1; Pontardawe R. C. *v.* Moore-Gwyn, [1929] 1 Ch. 656.

to prevent his cattle getting upon the land of his neighbour, & the latter has no right to remove the strands. If he does so, & the cattle get upon his land by his act, he cannot claim against the adjoining owner for resulting damages. —ARMSTRONG *v.* THOMPSON, [1923] 3 D. L. R. 74; 2 W. W. R. 609.—**CAN.**

h i. ——— ———.]—A horse belonging to applt. was being grazed in a field which adjoined resp.'s farm, upon which he kept cattle, including a bull. The cattle were continually breaking through the dividing fence, & on one occasion the bull gored the horse. The fence between the properties was not a sufficient fence within Fencing Act, 1908 :—*Held :* there was no evidence of negligence by resp. towards applt. & without proof of *scienter* damages were not recoverable.— EDWARDS *v.* RAWLINS, [1924] N. Z. L. R. 333.—**N.Z.**

l i. ———.]—Where there exists a valid bye-law permitting animals to run at large in a municipality, an owner cannot be held to be guilty of negligence in allowing his animals so to run. —KOCH *v.* GRAND TRUNK PACIFIC BRANCH LINES CO., [1917] 1 W. W. R. 1120; 10 Sask. L. R. 35.—**CAN.**

l ii. ———.]—Damage caused by a bull running at large contrary to Entire Animals Ordinance, s. 4, is recoverable though the property damaged is not surrounded by a lawful fence.—MCLEAN *v.* BRETT, [1919] 3 W. W. R. 521; 49 D. L. R. 162.— **CAN.**

l iii. ———.]—The owner of cattle rightfully running at large is not liable for damage to crops done by them on unfenced land.—MCKAY *v.* LOUCKS, [1920] 2 W. W. R. 1007; 53 D. L. R. 394.—**CAN.**

l iv. ———.]—Animals are not running at large when in charge of a herdsman. —R. *v.* PETERSON, [1920] 1 W. W. R. 506; 51 D. L. R. 104; 32 Can. Crim. Cas. 218.—**CAN.**

l v. ———.]—CLEARY *v.* HITE, [1921] 3 W. W. R. 130.—**CAN.**

l vi. ———.]—Pltf. & deft. owned adjoining farms, & the line between the farms was unfenced. Deft. turned his cattle loose & they went on to pltf.'s land & ate up his grain which was, to deft.'s knowledge, lying in stocks thereon :—*Held :* deft. was liable in damages.—DOBROLOWSKI *v.* DANYLUK, [1921] 2 W. W. R. 729.—**CAN.**

l vii. ———.]—A bull, which has broken through from its owner's enclosed land on to adjoining enclosed land of another person & is without a herder, is running at large within Stray Animals Act.—R. *v.* BRADY, [1921] 3 W. W. R. 396.—**CAN.**

l viii. ———.]—Under Animals Act, R. S. B. C., 1924 (c. 11), s. 11, the owner of an animal unlawfully at large is liable for personal injuries committed by it when running at large, as well as for injury to property.—JACOBSON *v.* SCHNEIDER, [1927] 1 D. L. R. 1006; [1927] 2 W. W. R. 257; 38 B. C. R. 83.—**CAN.**

l ix. ———.]—Trespass Act, 1924, c. 260, s. 14, dealing with animals straying into lands unprotected by a lawful fence, does not apply to animals, in this instance swine, which by Animals Act, 1924, c. 11, s. 3, are absolutely prohibited from being at large.—BISHOP *v.* LIDEN, [1929] 1 D. L. R. 998; 1 W. W. R. 402; 40 B. C. R. 556.—**CAN.**

n i. ——— ———.]—Where a municipal bye-law is passed pursuant to Stray Animals Act, R. S. S. 1920 (c. 124), to prohibit the permitting of horses to run at large, the duty imposed thereby is one towards the proprietors of cultivated land as defined in s. 2 (14) of the Act, & not towards the public at large.—OSADCHUK *v.* RUSSNIAK (1922), 63 D. L. R. 323; 15 Sask. L. R. 286; [1922] 1 W. W. R. 829.—**CAN.**

n ii. ——— ———.]—A municipality passed a bye-law providing that all animals should be allowed to run at large in the municipality with certain exceptions & except between certain dates. Another bye-law prescribed what should constitute a lawful fence. Nothing was said as to what should be the effect of a lawful fence, & no bye-law was passed for the purposes of Municipal Act, Man., s. 602 (d) :— *Held :* the effect of the first-mentioned bye-law was to permit cattle, other than those excepted in it, to run at large between certain dates, & in this it ousted the common law liability of the owner of the cattle for damages caused by them when so running at large, & such damages were not recoverable even if the land where the damage was done was surrounded by a lawful fence.

(2) The bye-law also provided that nothing therein contained should prevent the owner of any lands trespassed upon or of any property destroyed from waiving rights created by that bye-law & bringing his action in any competent ct. in consequence of any trespass :—*Held :* that provision gave no right of action taken away by the other bye-law provision.—JUKES *v.* MISKELLY, [1923] 2 D. L. R. 561; 33 Man. L. R. 67; [1923] 1 W. W. R. 1057.—**CAN.**

194 i. ——— *Remoteness of damage.*]—Damages for personal injuries suffered by the rider of a horse from a kick by a neighbour's trespassing horse are not too remote where the trespassing horse's owner knows that the neighbour frequently rides on horseback, & where it is customary in the country to ride horses when bringing home horses or cattle.—WHALLEY *v.* VANDERGRAND, [1919] 1 W. W. R. 87; 44 D. L. R. 319.—**CAN.**

194 ii. ——— ———.]—Where a heifer was thoroughbred & registered & its owner intended to breed it to a certain thoroughbred registered bull, the owner of the heifer was given damages for the difference in value between the calf anticipated as the result of such breeding & the calf that was born as the result of a bull's trespass. Damage by reason of the possible influence upon the strain of subsequent offspring was held too remote & uncertain to be considered.—MCLEAN *v.* BRETT, [1919] 3 W. W. R. 521; 49 D. L. R. 162.— **CAN.**

194 iii. ——— ———.]—Deft.'s trespassing "scrub" bull served pltf.'s young purebred heifer :—*Held :* pltf. was entitled to damages for the decreased value of the heifer caused by her growth being stunted & shape being affected by being bred at an early age, but not to damages based on a consideration of the effects on the minds of others of an erroneous theory that the heifer was liable to "throw back" to the first bull in future breeding.— COUSINS *v.* GREAVES, [1920] 3 W. W. R. 702; 54 D. L. R. 650.—**CAN.**

194 iv. ——— ———.]—Deft. negligently allowed his mare to escape & trespass in another's field where she kicked & injured a farm boy while she was being ejected :—*Held :* the injury was not too remote.—HARRISON *v.* ARMSTRONG (1917), 51 I. L. T. 38. **IR.**

195 iii. ——— ———.]—The owner of a bull at large contrary to law must be held to have known that he would naturally seek to cover any heifer or cow which he can reach, & his covering the heifer of another owner on that owner's property & against his will is a trespass for which the owner of the bull is liable.—MCLEAN *v.* BRETT, [1919] 3 W. W. R. 521; 49 D. L. R. 162.—**CAN.**

195 iv. ——— ———.]—Deft.'s cattle trespassed on pltf.'s land which was not enclosed by a lawful fence. Pltf.'s son on horseback was chasing the cattle out when pltf. proceeded on foot to drive a steer through a gateway & was charged by the steer & injured. Deft. had no knowledge that the steer was of a vicious nature or liable to attack persons :—*Held :* pltf. could not recover damages, as the injury was not an ordinary consequence of the trespass; the damages claimed were too remote, & the proximate cause of the injury was pltf.'s action in approaching the animal on foot which he should not have done.—HATTON *v.* MORTON, [1921] 2 W. W. R. 803.—**CAN.**

197. *Add. Annotation :*—**Consd.** Arneil *v.* Paterson, [1931] A. C. 560. (So far as I understand the facts, I do not think the headnote in *Piper* v. *Winnifrith* is justified by the facts as found, nor is it justified by anything I find in the judgment, *per* VISCOUNT HAILSHAM.)

197a. —— —— **Liability of each owner for whole damage.**]—Two dogs, the property of different owners, acting in concert, attacked a flock of sheep & injured several. An action of damages brought under this Act by the owners of the sheep against the respective owners of the dogs, craving for a joint & several decree against the defenders, was defended by one defender only, who claimed that he was liable for one-half only of the damage :—*Held :* when once liability under the Act was established, the ordinary measure of damages had to be applied ; in law each of the dogs occasioned the whole of the damage as the result of the two dogs acting together, & consequently each owner was responsible for the whole.—ARNEIL *v.* PATERSON, [1931] A. C. 560 ; 100 L. J. P. C. 161 ; 145 L. T. 393 ; 47 T. L. R. 441 ; 75 Sol. Jo. 424, H. L.

201. *Add. Annotation :* — **Consd.** Phillips *v.* Britannia Hygienic Laundry Co., [1923] 1 K. B. 539.

202. *Add. Annotation :*—**Refd.** Phillips *v.* Britannia Hygienic Laundry Co., [1923] 1 K. B. 539.

203. *Add. Annotations :*—**Consd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75 ; Ellor *v.* Selfridge & Co., Ltd. (1930), 46 T. L. R. 236 ; McGowan *v.* Stott (1923), 99 L. J. K. B. 357, n. **Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212 ; Phillips *v.* Britannia Hygienic Laundry Co., [1923] 1 K. B. 539.

204. *Add. Annotations :—As to* (1) **Consd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75. **Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212.

205. *Add. Annotation :*—**Refd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75.

206a. —— ——.]—GAYLER & POPE, LTD. *v.* DAVIES (B.) & SON, LTD., No. 156b, *ante*.

208. *Add. Annotations :*—**Consd.** Glasgow Corpn. *v.* Taylor, [1922] 1 A. C. 44. **Refd.** Hardy *v.* C. L. Ry., [1920] 3 K. B. 459 ; Weld-Blundell *v.* Stephens, [1920] A. C. 956.

214. *Add. Annotations :*—**Consd.** Paul *v.* G. E. Ry. (1920), 36 T. L. R. 344 ; Hargrove *v.* Burn (1929), 46 T. L. R. 59. **Apprvd.** Cooper *v.* Swadling (1929), 46 T. L. R. 73. **Distd.** Swadling *v.* Cooper (1930), 46 T. L. R. 597. **Consd.** M'Lean *v.* Bell (1932), 48 T. L. R. 467. **Refd.** Ellerman Lines *v.* Grayson, [1919] 2 K. B. 514 ; Saies *v.* Bristol Petroleum Co. *v.* G. W. Ry. (1920), 90 L. J. K. B. 1289 ; Admiralty Comrs. *v.* S.S. Volute, [1922] 1 A. C. 129 ; Anglo-Newfoundland Development Co. *v.* Pacific Steam Navigation Co., [1924] A. C. 406 ; The Vectis, [1929] P. 204 ; The Chatwood, 100 L. J. P. 1.

216. *Add. Annotations :*—**Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212 ; Phillips *v.* Britannia Hygienic Laundry Co., [1923] 1 K. B. 539 ; Gayler & Pope *v.* Davies, [1924] 2 K. B. 75.

218. *Add. Annotations :* — **Consd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212 ; Buckle *v.* Holmes, [1926] 2 K. B. 125. **Refd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75.

219a. Dog left inside motor car.]—Deft. parked his saloon car in a street with its back against the pavement. The car was left shut with

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197 ia. —— —— ——.]—A sheep owner cannot join the owners of trespassing dogs as defts. in one action for damages for the loss of his sheep.—MCDERMOTT *v.* HUDSON (1920), 16 Tas. L. R. 21.—**AUS.**

197 ib. —— —— —— *Onus of proof of damage done by each dog.*]—Applt.'s sheep were worried by 5 dogs, of which resp.'s dog & one belonging to an unidentified owner were shot. In an action in the magistrates' ct. resp. was ordered to pay one-fifth of the total damages. There was no direct evidence as to the precise extent of resp.'s dog's depredations as distinguished from those of the other 4 dogs :—*Held :* allowing the appeal, & awarding as against resp. the total damages assessed, if 2 or more dogs belonging to different owners go together & jointly partake in a raid on sheep, then such raid is a joint affair, & on proof of this it lies on the owner of each dog to establish affirmatively the particular part of the damage his dog did, & to establish also that his dog acted independently of the others, & not in concert with them.—LANKSHEAR *v.* FAIR, [1930] N. Z. L. R. 347.—**N.Z.**

197 iv. —— —— ——.]—Where damage is done by animals belonging to several owners the fact that the injured party cannot specify the amount of damage done by the animals of each owner does not disentitle him to substantial damages.—PIXLEY *v.* BEDFORD, [1918] 2 W. W. R. 1055 ; 11 Sask. L. R. 345 ; 42 D. L. R. 560.—**CAN.**

197 v. —— —— ——.]—The owners of different animals were held liable as joint tortfeasors for destruction of grain.—ALTHOUSE *v.* BESANA, [1919] 3 W. W. R. 725 ; 49 D. L. R. 158.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.—C.

200 ii. ——.]—Where by deft.'s negligence his four-horse team ran away & pltf. ran out to stop them & received injuries :—*Held :* pltf. could not recover damages as he failed to show that any person was in danger when he tried to stop the horses.—MCDONALD *v.* BURR, [1919] 3 W. W. R. 825.—**CAN.**

200 iii. ——.]—A horse owned by deft. co., attached to a bread-wagon, ran away upon a city street & came in contact with a truck upon which pltf. was standing, causing him to fall to the pavement & sustain serious injuries :—*Held :* there was no evidence of negligence. The accident was clearly the result of the horse running away, & there was no evidence that it was wild or vicious or had any tendency to run away before the accident.—CANIVET *v.* BROWN'S BREAD, LTD., [1930] 1 D. L. R. 519 ; 64 O. L. R. 580.—**CAN.**

206 x. —— —— *Mechanical precautions for control of horse.*]—TUCKER *v.* HENNESSEY, [1918] V. L. R. 56.—**AUS.**

si. —— —— ——.]—A two-horse light trolly used for delivering ice was left unattended by the driver in a public road while he delivered ice. The wheel was chained & the reins tied to a swingle-bar. While the driver was in a shop on the roadside the horses were startled by a boy on a bicycle riding over a piece of paper. The driver saw the horses move off, ran out of the shop, & a few seconds later caught the reins. The horses were then trotting, but on one of the horses striking the driver on the leg, he released his hold on the reins. The horses then bolted & collided with a stationary vehicle :—*Held :* the driver had not been guilty of negligence.—OTTEWILL *v.* ALASKA ICE CREAM CO., LTD., [1928] S. A. S. R. 107.—**AUS.**

w i. —— ——.]—It is negligence for a man mounted on a bicycle to drive loose horses at 6.15 a.m. along the streets of a populated district, urging them round corners at a fast trot.—BARRETT *v.* HARDIE & THOMPSON, LTD., [1924] N. Z. L. R. 228.—**N.Z.**

y i. *Restive horse — Negligence.*] — Pltf. was driving a motor car when he was held up by the traffic police. Deft.'s driver pulled up his horse & cart between the car & the footpath, & the horse became restive & backed into the motor car, occasioning damage to it. The horse had not previously been known to be restive, & was usually quiet, & the driver was unable to say what had frightened the horse. The driver was not in any way negligent in the manner in which he looked after the horse :—*Held :* there was no evidence of negligence on the part of the driver of the horse or of deft.—SARTORI *v.* REYNOLDS, LTD. (1927), 29 W. A. L. R. 32.—**AUS.**

215 iii. —— *Liability of dog owner.*] —Deft.'s dog, to his knowledge, had for long had a habit of running after & barking at horses & carriages travelling upon highways :—*Held :* deft. was liable in damages for injury caused by the running away of horses frightened by the dog so acting.—BIRDSALL *v.* MERRITT (1917), 38 O. L. R. 587 ; 35 D. L. R. 260.—**CAN.**

215 iv. —— —— *Scienter.*]—Deft.'s dog jumped from an automobile & ran at pltf.'s horses & barked causing the horses to jump sideways, the pole strap to break, & the team to run away, causing loss & bodily injuries. The ct. found that the dog had, to deft.'s knowledge, the mischievous propensity of doing such acts, & deft. was held liable in damages.—SPAT *v.* HOGSON, [1919] 3 W. W. R. 210.—**CAN.**

a dog inside it. There was no evidence that the dog had a vicious propensity. When pltf., who had parked his car near deft.'s car, was walking past deft.'s car the dog, which had been barking & jumping about the car, jumped up against the window in the rear of deft.'s car, smashing a panel, whereby a glass splinter flew out & entered pltf.'s eye, with the result that pltf. lost his eye. In an action for damages for personal injuries :—*Held :* the danger of a piece of glass being knocked by a dog out of a small window at the back of the car, & of a splinter of glass hitting a passer-by on the pavement, was such an unlooked-for event that no reasonable man could say that a person ought to be convicted of negligence for not taking any precautions against it. A person must guard against a reasonable probability of danger ; he was not bound to guard against a fantastic possibility.—FARDON *v.* HARCOURT-RIVINGTON (1932), 146 L. T. 391 ; 48 T. L. R. 215 ; 76 Sol. Jo. 81, H. L.

219b. ——.]—Where a pltf., aged five, when leaning over a motor car, stationary upon the highway, which she had been warned by her father not to approach, after a general warning by deft., the owner of the car, to the children accustomed to play nearby, was bitten by a dog owned by deft., confined to the car by a leash so that it could project its nose only 3 inches over the rim of the door, & where the evidence that the dog was of a ferocious disposition towards mankind, & that deft. knew of it, was so slight that no reasonable jury could act upon it :—*Held :* judgment must be entered for deft.

Per SCRUTTON & LAWRENCE, L.JJ.—The doctrine of *scienter*, applicable to the liability of the owner of a dog let run in the street, was applicable also to the liability of the owner of a dog confined in a motor car.

Per GREER, L.J.—The owner of a dog might be liable to a person bitten, apart from any *scienter*, if he placed it in such a position & under such circumstances as rendered it likely that the dog would get excited, would lose its temper, & would cause damage to persons lawfully passing along the highway. But here deft. had tied up the dog in the way proved, had warned the children of the neighbourhood, & this warning had been expressly conveyed to pltf. Had pltf. not been so expressly warned, his Lordship stated that he did not know what his view would have been.—SYCAMORE *v.* LEY (1932), 147 L. T. 342, C. A.

220. *Add. Annotation :*—**Reld.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75.

222. *Add. Annotation :—As to* (1) **Reld.** Manton *v.* Brocklebank, [1923] 2 K. B. 212.

226. *Add. Annotation :—As to* (1) **Reld.** Manton *v.* Brocklebank, [1923] 2 K. B. 212.

234. *Add. Annotation :*—**Reld.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75.

235. *Add. Annotation :—As to* (1) **Reld.** Manton *v.* Brocklebank, [1923] 2 K. B. 212.

238. *Add. Annotation :*—**Reld.** Manton *v.* Brocklebank, [1923] 1 K. B. 406.

239. *Add. Annotations :* — **Consd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212 ; Hines *v.* Tousley (1926), 95 L. J. K. B. 773. **Distd.** Fardon *v.* Harcourt-Rivington (1932), 48 T. L. R. 215. **Apld.** A.-G. *v.* Corke (1932), 48 T. L. R. 650. **Reld.** Mansel *v.* Webb (1918), 88 L. J. K. B. 323 ; Musgrove *v.* Pandelis, [1919] 2 K. B. 43 ; A.-G. *v.* Cory, Kennard *v.* Cory, [1921] 1 A. C. 521 ; Rainham Chemical Works *v.* Belvedere Fish Guano Co., [1921] 2 A. C. 465 ; Hoare *v.* McAlpine, [1923] 1 Ch. 167 ; Cockburn *v.* Smith, [1924] 2 K. B. 119 ; Edwards *v.* Birmingham Navigations, [1924] 1 K. B. 341 ; Gayler & Pope *v.* Davies, [1924] 2 K. B. 75 ; Booth *v.* Thomas (1925), 42 T. L. R. 114 ; Noble *v.* Harrison, [1926] 2 K. B. 332 ; Smith *v.* G. W. Ry. (1926), 135 L. T. 112 ; Glanville *v.* Sutton (1927), 44 T. L. R. 98 , St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1 ; Pontardawe R. C. *v.* Moore-Gwyn, [1929] 1 Ch. 656.

225 iii. —— ——.]—Pltf.'s motor car collided with a dark brown heifer belonging to deft. which had strayed from deft.'s unfenced land & came suddenly out on to the highway from the land of an adjoining owner ; the car was overturned & pltf. sustained injury. There was no negligence in the driving or management of the car :—*Held :* deft. was not liable to pltf.—HALL *v.* WIGHTMAN, [1926] N. 92.—IR.

225 iv. —— ——.]—*Held :* permitting one's cattle to run at large on a provincial highway being forbidden by Highway Improvement Act, 1927, s. 73, the presence of the calves on the road was unlawful, quite as much so as if forbidden by a municipal bye-law ; &, where an animal is unlawfully upon a highway in this Province, the owner is liable in damages for any injury which is the natural result of the unlawful straying.—MCMILLAN *v.* WALLACE, [1929] 3 D. L. R. 367 ; 64 O. L. R. 4.—CAN.

226 i. —— *Sheep—Defective fence—Natural propensity.*]—A motor cyclist was injured by a collision in daylight with a sheep upon a public road. Pursuer averred that defender was negligent in knowingly failing to keep his fences in such repair as would prevent his sheep from straying on to the road, &, in any event, in allowing his sheep to graze upon the road :—*Held :* the accident was not the natural & probable result of the negligence alleged.—FRAZER *v.* PATE, [1923] S. C. 748 ; 60 Sc. L. R. 470.—SCOT.

sk. *Animals running "at large"—Dog—Biting pedestrian.*]—The owner is liable in damages only if he knew that the dog was viciously disposed.—BOWEN *v.* LIGHTFOOT, [1920] 2 W. W. R. 153 ; 32 D. L. R. 305 ; 30 Man. L. R. 337.—CAN.

sl. —— *Horses — Collision with motor car.*]—The owner is *primâ facie* liable only for such damages as a horse is likely to commit if allowed to stray. The doctrine of *scienter* applies, & the case is in the same class as that of a horse biting or kicking a person on the highway.—OSADCHUK *v.* RUSSNIAK (1922), 63 D. L. R. 323 ; 15 Sask. L. R. 286 ; [1922] 1 W. W. R. 829.—CAN.

PART III. SECT. 2, SUB-SECT. 1.—D.

sm. *Person in unfenced garden—Cow escaping from railway yard.*]—The animal knocked down & injured pltf., but was not vicious, but nervous & excitable :—*Held :* pltf.'s action to recover damages for her injuries failed.—STREET *v.* CRAIG (1920), 48 O. L. R. 324 ; 56 D. L. R. 105.—CAN.

PART III. SECT. 2, SUB-SECT. 2.—A.

q i. —— ——.]—Applt. kept about seventy hives of bees on a small piece of land adjoining resp.'s farm. While resps. were reaping close to the apiary, bees in great numbers attacked resps. & their horses, causing serious injuries. In an action for damages, the magistrate found as a fact that applt. was guilty of negligence ; &, further, apart from negligence, the liability of a bee-keeper was coextensive with the liability of a person keeping on his land water, wild & dangerous animals, or poisonous fumes. From this judgment deft. appealed :—*Held :* (1) Apiaries Act, 1927, being restrictive & not permissive, does not exempt a registered apiarist from common-law liability for injuries inflicted by his bees ; (2) applt. was guilty of negligence in keeping so many hives of bees on the boundary, & this negligence was the effective cause of the injury & damage.—ROBINS *v.* KENNEDY & COLUMB, [1931] N. Z. L. R. 1134.—N.Z.

sn. *Husky.*]—An animal which is the result of a cross between a dog & a wolf must be considered as essentially a wild animal, & a person in charge thereof will be responsible for injury done by it to a human being.—TEMPLE *v.* ELVERY (Sask.), [1926] 3 W. W. R. 652.—CAN.

sp. *Steer.*]—The rule that an owner of an animal of an ordinarily quiet nature is liable for the vicious acts thereof only if he knew that the animal was accustomed or likely to commit such acts, applies to an action for damages for personal injuries caused by an attack by a steer.—ROSENTHAL *v.* HESS (Sask.), [1927] 1 D. L. R. 493 ; [1927] 1 W. W. R. 15.—CAN.

243. *Add. Annotations :*—**Consd.** Sycamore *v.* Ley (1932), 74 L. Jo. 41. **Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212; Buckle *v.* Holmes (1925), 95 L. J. K. B. 158.

246a. Bull attacking cow—Bull in auction yard.]—In an action for damages arising out of an attack on a cow in an auction yard by a bull which was in charge of deft.'s servants, but otherwise unsecured :—*Held :* there was no presumption in law that a bull would attack a cow in such circumstances, & for pltf. to succeed it was necessary for him to prove negligence in not having anticipated a probable danger; further, if such negligence were proved, it would be no answer for deft. to set up absence of *scienter*.—HINCKES *v.* HARRIS (1921), 65 Sol. Jo. 781.

258a. Mare attacking horse—Strange mare turned into field with horse.]—Trespass to person or goods by an animal in which there is at common law a valuable property, such as horses & cattle, does not generally render its owner liable.

Deft. put a mare into a field in which there was a horse belonging to pltf. without notifying pltf. The mare kicked the horse, which had to be destroyed. No *scienter* was proved in deft., but it was found by the deputy county ct. judge that the propensity of horses running loose to injure one another in sport or quarrel was common knowledge : —*Held :* (1) the mare was not within the class of dangerous animals which the owner must keep at his peril according to the rule in *Fletcher* v. *Rylands* (*see* No. 195); (2) deft. was entitled to assume that the mare, being *mansuetæ naturæ*, was an innocent animal, &, having no notice of any fact indicating the contrary, was not under any duty towards pltf. to give notice of his intention to place the mare in the field, or to have a person on the watch or in charge of her, & on the whole deft. was not liable either for breach of an absolute duty or for negligence.—MANTON *v.* BROCKLEBANK, [1923] 2 K. B. 212; 92 L. J. K. B. 624; 129 L. T. 135; 39 T. L. R. 344; 67 Sol. Jo. 455, C. A.

Annotations :—As to (2) **Apld.** Buckle *v.* Holmes, [1926] 2 K. B. 125. **Refd.** Gayler & Pope *v.* Davies [1924] 2 K. B. 75; Glanville *v.* Sutton (1927), 44 T. L. R. 98.

260. *Add. Citations :*—6 Exch. 697; 17 L. T. O. S. 158; 155 E. R. 724.

Add. Annotation :—**Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212.

261. *Add. Annotations :—As to* (1) **Expld.** Addie (Collieries) *v.* Dumbreck, [1929] A. C. 358. **Refd.** Hardy *v.* C. L. Ry., [1920] 3 K. B. 459. *As to* (2) **Consd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776. **Refd.** Fairman *v.* Perpetual Investment Bldg. Soc., [1923] A. C. 74; Manton *v.* Brocklebank, [1923] 1 K. B. 406.

264. *Add. Annotations :—As to* (1) **Refd.** National Provincial & Union Bank of England *v.* Charnley, [1924] 1 K. B. 431. *As to* (2) **Refd.** Baker *v.* James, [1921] 2 K. B. 674; Letang *v.* Ottawa Electric Ry., [1926] A. C. 725.

270a. —— **Mare kicking horse.**]—MANTON *v.* BROCKLEBANK, No. 258a, *ante*.

274. *Add. Annotations :*—**Consd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212. **Apld.** Buckle *v.* Holmes (1925), 95 L. J. K. B. 158. **Consd.** Hines *v.* Tousley (1926), 95 L. J. K. B. 773.

274a. —— ——.]—The owner of a dog, which was a well-behaved dog, & against whose character nothing was known :—*Held :* not liable to indemnify an employer in respect of compensation which the employer had to pay under Workmen's Compensation Acts to the employee, who had been injured by an accident caused by the dog.—HINES *v.* TOUSLEY (1926), 95 L. J. K. B. 773; 135 L. T. 296; 70 Sol. Jo. 732; 19 B. W. C. C. 216, C. A.

275. *Add. Annotations :*—**Consd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212; Buckle *v.* Holmes, [1926] 2 K. B. 125. **Refd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75.

PART III. SECT. 2, SUB-SECT. 2.—B. (a).

245 i. *Vicious animals in general—Duty to keep under control.*]—If an owner of a dangerous animal knows it to be dangerous & neglects to keep it safe, he is liable in damages for injuries or death caused by it.—TARASOFF *v.* ZIELINSKY, [1921] 2 W. W. R. 135; 14 Sask. L. R. 226; 59 D. L. R. 177.—**CAN.**

245 ii. —— ——.]—In an action for damages for the death of a person killed by a bull known to be dangerous allowed to be at large on the farm where deceased lived, a defence of contributory negligence cannot be supported by the fact that deceased, though knowing of the possible danger, went about her ordinary business on the farm, in the course of which she was killed.—TARASOFF *v.* ZIELINSKY, [1921] 2 W. W. R. 135; 14 Sask. L. R. 226; 59 D. L. R. 177.—**CAN.**

245 iii. —— ——.] — Liability attaches to the owner if, knowing of the mischievous tendencies of his dog, he neglects reasonable precautions to prevent such tendencies causing damage.

Pltf. walking in the street was passing deft.'s house, when his dog rushed out, knocked her down, & injured her. At the trial of an action for damages for her injury, the jury found that deft. knew that the dog was of a vicious disposition & assessed damages to pltf. :—*Held :* there was evidence to sustain the jury's finding, deft.'s wife, who was in control of the dog, having knowledge of its propensity to rush out & jump at persons passing. — NORTON *v.* FITZGERALD, [1928] 3 D. L. R. 474; 62 O. L. R. 314.—**CAN.**

245 iv. —— ——.]—The owner of a domestic animal, *e.g.* a bull, unlawfully at large contrary to a statute is not liable for personal injuries committed by it, even though it was at large through the negligence of the owner, unless the statute so provides or the injuries were such as might reasonably be expected to be the natural result of the animal in question being at large.—PARKEN *v.* COLE, [1931] 1 W. W. R. 9; 1 D. L. R. 811; 25 Alta. L. R. 157.—**CAN.**

246 iii. ——.]—While deft.'s servants were unloading cattle at a railway station a bullock "got wild" on the platform, rushed upon adjoining ground, was driven back, escaped through a gate, ran through the streets of the city, & injured pltf. :—*Held :* the bullock on emerging from the railway wagon had displayed its wild condition to deft.'s servants in such a way as to deprive them of the benefit of the doctrine of the *primâ facie* harmlessness of domestic animals as frequenters of the highway, & the duty of controlling it as though it belonged to the class of animals *feræ naturæ* had fallen on deft. & his servants.—HOWARD *v.* BERGIN, O'CONNOR & Co., [1925] 2 I. R. 110, 118.—**IR.**

250 i. —— *Failure to keep same off premises.*]— If a party harbours a dog, or allows it to remain about his premises, with a knowledge of its vicious character, he is liable for injuries caused by it, though he is not the owner.—WOOD *v.* VAUGHAN (1889), 28 N. B. R. 472.—**CAN.**

o i. ——.]—It is negligence on the part of the owner of a stallion, whose disposition towards mares is known to him to be dangerous, not to take reasonable care to prevent the stallion from being in an enclosure in which, as he is aware, mares belonging to other persons are or may be running, & he will be liable in damages if injury ensues.—MATHESON *v.* STUCKEY, [1921] V. L. R. 637.—**AUS.**

PART III. SECT. 2, SUB-SECT. 2.—B. (d).

a i. —— ——.]—In proceedings under Sheep Protection Act, s. 13, it is not necessary for the owner of the killed or injured animal to prove that the dog which inflicted the injury complained of had a previous mischievous propensity.—R. *ex rel* BIGRIGG *v.* WILLIAMS, [1930] 1 W. W. R. 292; 2 D. L. R. 493; 53 Can. C. C. 88; 42 B. C. R. 175; *revsg.*, [1929] 1 W. W. R. 802; 52 Can. C. C. 323.—**CAN.**

277. *Add. Annotation :*—**Refd.** Manton *v.* Brocklebank, [1923] 2 K. B. 212.

301a. **Dog biting cattle—Furious disposition—Previous biting of cattle.**]—*Held :* no evidence of *scienter*.—THOMAS *v.* MORGAN (1835), 2 Cr. M. & R. 496 ; 1 Gale, 172 ; 5 Tyr. 1085 ; 5 L. J. Ex. 64 ; 150 E. R. 214.

Annotations :—**Refd.** Owen *v.* Knight (1837), 5 Scott, 307 ; May *v.* Burdett (1846), 9 Q. B. 101.

305a. **Horse biting man—Previous biting of horses.**]—The fact that the owner of a horse knew that it was accustomed to bite other horses is not sufficient to establish his liability for its biting a human being.—GLANVILLE *v.* SUTTON & Co., LTD., [1928] 1 K. B. 571; 97 L. J. K. B. 166; 138 L. T. 336; 44 T. L. R. 98, D. C.

306. *Add. Annotation :*—**Refd.** Wakefield *v.* Board (1928), 45 R. P. C. 261.

325. *Add. Annotation :*—*As to* (2) **Apld.** Stearn *v.* Prentice, [1919] 1 K. B. 394.

325a. **Rats—Damage to crops.**]—Defts. carried on the business of bone manure manufacturers on premises near pltf.'s farm. For the purpose of their business they had on their premises a heap of bones, which caused large numbers of rats to assemble there. The rats made their way from defts.' premises on to pltf.'s land, & ate his corn, causing substantial loss, in respect of which pltf. claimed damages from defts. It was not proved that the bones kept by defts. were excessive or unusual in quantity :—*Held :* no cause of action had been established against defts.—STEARN *v.* PRENTICE BROTHERS, LTD., [1919] 1 K. B. 394 ; 88 L. J. K. B. 422 ; 120 L. T. 445 ; 35 T. L. R. 207 ; 63 Sol. Jo. 229 ; 17 L. G. R. 142, D. C.

328a. —— ——.]—R. *v.* FAIRBANK (1850), 15 L. T. O. S. 259 ; *sub nom.* R. *v.* HULL JJ., 14 J. P. Jo. 384.

332. *Add. Annotation :*—**Refd.** A.-G. *v.* Hodgson, [1922] 2 Ch. 429.

332a. —— —— —— **Proof that infraction of bye-law caused nuisance not necessary.**]—TONG STREET LOCAL BOARD *v.* SEED (1874), 39 J. P. 278.

—— —— —— ——.]—*See, also*, No. 331, *ante*.

333a. —— ——. **Metropolis Management Act, 1862 (c. 102), s. 73—Proof of actual nuisance necessary.**]—CHELSEA VESTRY *v.* KING (1864), 17 C. B. N. S. 625 ; 5 New Rep. 85 ; 34 L. J. M. C. 9 ; 11 L. T. 419 ; 29 J. P. 39 ; 10 Jur. N. S. 1150 ; 13 W. R. 157 ; 144 E. R. 250.

338. *Add. Annotation :*—**Refd.** Sack *v.* Jones, [1925] Ch. 235.

Part IV.—Agistment.

342. *Add. Annotation :*—**Refd.** Back *v.* Daniels (1924), 69 Sol. Jo. 160.

342. After this case add "Stat. Frauds, s. 4, is now replaced by Law of Property Act, 1925 (c. 20), s. 40."

342a. —— **Whether breach of covenant not to underlet.**]—Where the tenant of a farm covenants not to underlet or permit any other person to use or occupy any part of the demised premises without the written consent of the landlord, the sale or letting by the tenant, without such consent, in the last year of his tenancy of the grass keep—*i.e.* growing herbage, of his pasture lands for a definite period, is a breach of the covenant, although such sale or letting is in accordance with the usual practice of an outgoing tenant in that part of the country.

Semble : agistment, *i.e.* the taking in by the tenant of the sheep or cattle of another to be depastured on the farm at so much per head per week, would not be a breach of the covenant.—RICHARDS *v.* DAVIES, [1921] 1 Ch. 90 ; 89 L. J. Ch. 601 ; 124 L. T. 238 ; 65 Sol. Jo. 44.

343. *Add. Annotation :*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443.

344. *Add. Annotation :*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443.

PART III. SECT. 2, SUB-SECT. 3.

p i. —— —— *To order dog to be kept under control—Person in charge of dog.*]—WALKER *v.* BRANDER, [1920] S. C. (J.) 20 57 Sc. L. R. 651.—**SCOT.**

sq. *Registration of Dogs Act*, 1914—*Presumption as to keeping.*]—There is no presumption raised by sect. 9 of above Act, that a dog has been kept at a particular place within a district. Evidence of such keeping must be given.—FOREMAN *v.* SMITH, [1927] S. A. S. R. 366.—**AUS.**

PART III. SECT. 2, SUB-SECT. 4.

337 i. *Horses—Noise from stables.*]—Though a livery stable is constructed with all modern improvements for drainage & ventilation, if offensive odour therefrom, & the noise made by the horses, are a source of annoyance & inconvenience to the neighbouring residents, the proprietor is liable in damages for the injury caused thereby. —DRYSDALE *v.* DUGAS (1896), 26 S. C. R. 20.—**CAN.**

340 i. —— *Smell from stables.*]—DRYSDALE *v.* DUGAS, No. 337 i, *ante*.—**CAN.**

PART IV.

b i. —— *Construction.*]—By a contract for agistment pltf. agreed to make available certain properties for the agistment of deft.'s sheep. The terms of payment were 1½*d.* per head per week, £500 to be paid when the sheep arrived, £500 in six months, & the balance when the sheep were removed : —*Held :* the payment contemplated by the contract was 1½*d.* per head per week, according to the number of sheep on the properties from time to time ; the contract was one for making available the area of land agreed on for the sheep, & included the taking care of the sheep agisted at the above remuneration while they were in pltf.'s custody.—SPRING *v.* YOUNG, [1923] S. A. S. R. 116.—**AUS.**

c i. —— *Whether agister liable to supply water.*]—Pltf. having bought horses from deft., the latter agreed at pltf.'s request to winter them. The terms of the agreement were set out in a letter from deft. to pltf. in which deft. said : "I will winter them as usual, that is, bring them in straw 3 times a week." The horses were given no water by deft. & pltf. sued for damages, the horses being in poorer condition when he took delivery of them than they would have been had they been watered :—*Held :* in view of the terms of said letter & all the facts of the case, deft. was under no obligation to supply water.—RUDGE *v.* STAUFFER, [1929] 1 W. W. R. 46 ; 23 Alta. L. R. 028.—**CAN.**

344 xii. —— *Loss of animals.*]—Pltf. was the owner of a mare which he delivered to deft. for agistment in his paddock of 6,000 acres, which paddock was heavily timbered & covered with blackboys. After the mare had remained in the paddock for some time, pltf. requested the delivery of the mare in two months' time. Deft. made endeavours to find the mare, but only saw it on one occasion, & thereafter made many attempts to locate the mare, but without success : —*Held :* deft. was not liable to pltf. for the value of the mare, there being no evidence of negligence.—ROBINSON *v.* WATERS (1920), 22 W. A. L. R. 66.—**AUS.**

344 xiii. —— —— *Failure to detect loss within reasonable time.*]—A large number of sheep were lost, & there was evidence rendering it probable that these had been driven off the run :—

346. *Add. Annotation :*—**Reld.** Weld-Blundell *v.* Stephens, [1920] A. C. 956.

346a. —— **Animal stolen—Duty of agister.**]—An agister of cattle does not discharge himself of his duty as a bailee for reward by proving that they were stolen without his default, if by using reasonable diligence he could have recovered them.

If, having failed to use such diligence, he is sued for loss of the cattle, he must prove, in order to discharge himself, that such diligence would have been unavailing; it is not for the bailor to prove that it would have retrieved the loss.

A farmer accepted certain cattle for agistment. Some of them were stolen without his default. After learning that they were missing he made no effort, whether by informing the owner or the police, or otherwise, to recover them. It was doubtful whether any reasonable attempt on his part would have led to their recovery :—*Held :* he was liable for their loss.—COLDMAN *v.* HILL, [1919] 1 K. B. 443 ; 88 L. J. K. B. 491 ; 120 L. T. 412 ; 35 T. L. R. 146 ; 63 Sol. Jo. 166, C. A.

347. *Add. Annotation :*—**Consd.** White *v.* Smith (1927), 96 L. J. K. B. 397.

Part V.—Hiring.

371. *Add. Annotation :*—**Reld.** Edwards *v.* Porter (1924), 41 T. L. R. 57.

377. *Add. Annotation :*—*As to* (4) **Reld.** Kemp *v.* Elisha, [1918] 1 K. B. 228.

378. *Add. Annotation :*—*As to* (1) **Reld.** McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494.

Held : an agister of sheep must show that he took reasonable care to see the sheep were on the agistment area, & failure to detect this loss within a reasonable time was clear evidence of negligence.—SPRING *v.* YOUNG, [1923] S. A. S. R. 116.—**AUS.**

344 xiv. —— ——.]—An agister is bound to take reasonable care of the animal entrusted to him, & when the owner comes for it, if he cannot produce it he must show that he took all reasonable precautions against its disappearance.—COMSTOCK *v.* ASHCROFT ESTATES, LTD., [1917] 1 W. W. R. 1412 ; 23 B. C. R. 4761.—**CAN.**

344 xv. —— —— *Onus of negativing negligence.*]—In case of loss of animals while in the care of an agister, the *onus* is on him to show circumstances negativing negligence on his part.—MCCAULEY *v.* HUBER, [1920] 3 W. W. R. 123 ; 54 D. L. R. 150.—**CAN.**

344 xvi. —— *Agister not insurer—What amounts to negligence.*]—POTTS *v.* SMAIL (Alta.), [1928] 1 D. L. R. 208 ; 1927] 3 W. W. R. 619.—**CAN.**

ar. —— *Failure to provide food & water.*]—Where horses have been delivered into the custody of an owner of pasture lands to be kept & pastured by him in return for a money payment, it is his duty to see that the horses are provided with sufficient food & water, & if he neglects these duties & a loss through death or a loss through depreciation is thereby incurred he is liable in damages.—METZ *v.* MARSHALL (1922), 70 D. L. R. 14 ; [1922] 3 W. W. R. 660.—**CAN.**

356 iii. ——.]—An agister has no lien, in the absence of special agreement, upon the animals he agists.—*Re* JORGENSON, [1923] 2 W. W. R. 600. —**CAN.**

356 iv. —— *Or statute.*]—An agister has a lien on the pastured animals under Possessory Liens Act, R.S.A., 1922 (c. 104), but not under Livery Stable-Keepers Act, R.S.A., 1922 (c. 107).—SPARLING *v.* WARD, [1925] 2 D. L. R. 922 ; [1925] 2 W. W. R. 181.—**CAN.**

362 i. —— *For malicious injury.*]—Appt. had cattle on his land under grazing contracts with the owners. These cattle were maliciously driven off the lands & injured :—*Held :* appt. as bailee in possession could claim compensation for the cattle entrusted to his care.—WORTHINGTON *v.* TIPPERARY COUNTY COUNCIL, [1920] 2 I. R. 233 ; 54 I. L. R. 77.—**IR.**

PART V.

369 xv. —— —— —— ——.]—If a hired horse is in a sound condition when taken out, & it is brought back injured, the *onus* of proof in a claim for damages for negligence is on deft. The hirer is bound to treat the horse with the degree of care which a person of ordinary discretion would use towards his own, but if the horse is so treated & nevertheless receives an injury the hirer is not liable in damages for such injury.—REINSETH *v.* CAMPBELL (1920), 52 D. L. R. 357.—**CAN.**

369 xvi. —— —— —— ——.]—Where a person hires an animal & it dies while in his custody, the *onus* is upon him to establish that he took care of it. That care is the care which a prudent man would take of his own animal under the circumstances.—MURRAY *v.* COLLINS, [1920] 2 W. W. R. 845 ; 53 D. L. R. 120.—**CAN.**

369 xvii. —— —— ——.]—Deft. hired a horse from pltf. to drive from T. to L. & return. At a distance of between six & eight miles from S., the horse fell lame in the right hind leg. Deft. drove it to S., put it in a livery stable & gave instructions to have the hoof of the right hind leg re-shod. Deft. hired another horse & continued his journey to L., a distance of over eight miles. He returned next day, took the horse out, & finding that it was not then lame, started with it on the return journey. After travelling about three miles, the horse again fell lame & kept getting a little lamer all the way to T. The journey from S. to T., a distance of twenty-two miles, took seven & one-half hours. There was no evidence as to what caused the horse's lameness. There was no evidence that there was, between the place where the horse fell lame & T. any suitable place in which the horse could have been placed & cared for, or where deft. could have hired another horse to continue the return journey : —*Held :* as the lameness when it first developed on the return journey was not shown to have been of a more serious nature than often happens to a horse which may nevertheless walk, or even trot slowly, fifteen to twenty miles without serious distress, deft. could not be held guilty of negligence until he had travelled a sufficient distance to satisfy himself that the lameness was increasing so as to make it dangerous to the welfare of the horse to continue the journey.—GAGNON *v.* LANGIS (1920), 48 N. B. R. 76.—**CAN.**

374 ii. —— *Bill of sale granted by bailee—Rights of grantee.*]—A., the owner of twenty-seven cows depasturing on his farm, agreed to lease his farm & cows to G. for a term of years, & it was agreed that G. should have the right to purchase the farm & stock at any time during the term. G. was given possession of the stock & farm. G. gave to applt. a bill of sale over the cows. A. recovered possession of his farm & cows from G., & shortly thereafter applt. seized & sold the cows under his bill of sale. Thirty-four cows were seized & sold, only nine of which were of the original herd, the balance having been bought by G. during the time he had possession of the farm. A. claimed damages for the seizure :—*Held :* it had not been shown that the cattle substituted by G. for those originally bailed to him had become the property of A., who was entitled to damages only in respect of the cows originally bailed.—NORFOLK CO-OPERATIVE DAIRY CO., LTD. *v.* ALLEN, [1924] N. Z. L. R. 136.—**N.Z.**

374 iii. —— *Loss by bailee—Negligence.*]—In an action for the value of a horse which was lost after it had been hired to deft. under an agreement whereby the latter undertook to take "good care in every way" thereof, it appeared that the horse, which was unbroken, was received by deft. & put into a pasture belonging to a neighbour of deft., & deft. went to see it every other day The pasture was surrounded by fence of two strands of wire, & the horse got out twice during the winter but was put back. It disappeared about the end of the following April. The fence was down in one place, & the evidence showed a custom among the farmers in the neighbourhood to allow horses not in use to run at large during the winter. While deft. was given the right to work the horse, it was shown that it was not customary in that locality to break horses until the spring :—*Held :* deft. had taken sufficiently good care of the horse & was not liable for its loss.—ZIMMERMAN *v.* ARCHER (1922), 63 D. L. R. 399 ; [1922] 2 W. W. R. 524. —**CAN.**

380 i. *Contract — Covering mare — Damages for breach.*]—Breach of a contract to breed mares to a stallion is not a ground for damages, in the absence of evidence upon which such damages may be estimated with reasonable certainty.—SINCLAIR *v.* WALKER, [1917] 2 W. W. R. 321.—**CAN.**

Part VI.—Sale and Exchange of Animals.

384. *Add. Annotation :*—**Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

390a. —— —— **Resale of horse at loss—Form of action.**]—A vendor gave a warranty of sound workable condition on the sale of a horse, The warranty was fulfilled, but the purchaser wrongfully refused delivery, & returned the horse. The vendor then put it up at auction as " in dispute," & without a warranty, when it was sold for about £40 less than the contract price. In an action for the difference between the price realised at the auction & the contract price :—*Held :* (1) this was not the proper form of action ; (2) the action must be for damages ; (3) the conditions of the auction sale were not a test of the value of the horse, the auction being of a horse " in dispute," & without warranty, & quite different from the original contract conditions ; (4) pltf. was not entitled to more than nominal damages, as he had failed to prove his damages to be the difference between the contract price & the price realised at the auction.—MACKLIN *v.* NEWBURY SANITARY LAUNDRY (1919), 63 Sol. Jo. 337, D. C.

390b. —— **Rescission by vendor—Vendor liable for keep during period animal kept by purchaser.**]—KING *v.* PRICE (1816), 2 Chit. 416.

391. *Add. Annotation :*—**Consd.** *Re* A Debtor, [1927] 2 Ch. 367.

401. *Add. Annotation :* — **Refd.** Phillips *v.* Britannia Hygienic Laundry Co., [1923] 1 K. B. 539.

409. *Add. Annotation :*—**Refd.** Manchester Liners *v.* Rea, [1922] 2 A. C. 74 ; Canada Atlantic Grain Export Co. *v.* Eilers (1929), 35 Com. Cas. 90.

410. *Add. Annotations :*—**Refd.** Manchester Liners *v.* Rea, [1922] 2 A. C. 74 ; Baldry *v.* Marshall, [1925] 1 K. B. 260.

416. *Add. Annotation :*—**Refd.** Said *v.* Butt, [1920] 3 K. B. 497.

416a. As to pedigree of horse.]—A receipt described a horse as " got by Cheshire Cheese, warranted sound " :—*Held :* the statement that the horse was got by Cheshire Cheese was a mere representation.—DICKENSON *v.* GAPP (1821), cited in 1 Moo. & S. at p. 78.

Annotation :—**Folld.** Budd *v.* Fairmaner (1831), 1 Moo. & S. 74.

430. *Add. Citations :*—171 E. R. 90 ; *sub nom.* ELTON *v.* JORDAN, 1 Stark. 127, N. P.

467. For " 99 E R. 136 " read " 99 E. R. 1016."

PART VI. SECT. 1.

t i. —— —— —— *Action by purchaser for damages—What damages recoverable.*]—PERRY *v.* KIDD (1909), 12 W. L. R. 9.—**CAN.**

t ii. —— *Sale of bull—Bull sterile.*]—At an auction sale advertised " as pedigree stock sale " resp. purchased from applt. a bull described in the sale catalogue under the heading " Jersey Bulls " as " Lot 78, Bull Harbour Light." The conditions of sale expressly negatived the existence of any warranties on the vendor's part. At the time of the sale the bull had not been used, but subsequently was found to be sterile. This condition was shown to be a latent defect not discoverable upon examination. In an action by resp., claiming damages :—*Held* : as the capacity for procreation was not, by implication, a part of the description, & as the bull complied in all other respects with the description, resp. was without remedy.—DELL *v.* QUILTY, [1924] N. Z. L. R. 1270.—**N.Z.**

t iii. —— *Sale of horse as gelding—Horse in fact a " ripot "—Whether failure of implied condition on sale of goods by description.*]—TWAITES *v.* MORRISON (Alta.), [1918] 3 W. W. R. 349 ; 43 D. L. R. 73.—**CAN.**

t iv. —— *Default by purchaser—Resale by vendor.*]—*Held :* (1) money paid, not as a deposit, but on account of the purchase-price, must be returned to the purchaser ; (2) having elected to treat the contract as at an end, instead of suing for damages for breach, the vendor was not entitled to recover anything for the care of the animals from the time fixed by the contract for delivery until he resold.—BALDWIN *v.* BRIANGER, [1920] 1 W. W. R. 216 ; 50 D. L. R. 540 ; 13 Alta. L. R. 27.—**CAN.**

t v. —— ——.]—*Held :* oral evidence that it was part of the agreement for sale of a stallion that the pedigree papers should be delivered to the purchaser within a few days of the sale, being in contradiction of the written agreement, was not admissible.—KASTER *v.* COWAN, [1925] 2 D. L. R. 742 ; [1925] 2 W. W. R. 186 ; 21 Alta. L. R. 366 ; *revsg.*, [1923] 4 D. L. R. 491 ; [1923] 3 W. W. R. 610.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 1.

396 vi. —— ——.]—An auctioneer in selling a horse said : " Here is a horse about nine years old " in presence of the vendor who did not contradict it. A note given for the balance of the price had indorsed thereon : " Given for one bay mare nine years old." The purchaser believed the horse was of that age :—*Held :* the statement amounted to a warranty, & the vendor was bound thereby.—ALLEN *v.* SMITH, [1920] 3 W. W. R. 645.—**CAN.**

410 iv. —— —— ——.]—Pltf purchased a horse from deft. which deft. warranted to be suitable for the general purposes of a farmer & sound in every respect. The trial judge found that there was a defect in the horse which could not be discovered by an ordinary examination at the time of the sale & that the horse was not suitable for the purpose for which it was required : —*Held :* the findings of the trial judge must be accepted.—MARTELL *v.* PRINGLE (1920), 53 N. S. R. 502.—**CAN.**

sr. *Sale of male animal—Under Livestock Purchase & Sale Act, R.S.S., 1920 (c. 125)—No implied warranty that animal capable of reproducing type & colour.*]—R. (MINISTER OF AGRICULTURE FOR SASKATCHEWAN) *v.* BOURKE, 1925] 3 D. L. R. 537 ; [1925] 2 W. W. R. 397 ; 19 Sask. L. R. 483.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 2.

420 ii. ——.]— EISENHAUER *v.* MACKAY (N. S.) (1911), 9 E. L. R. 304.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 3.—A.

438 i. *Sound—Meaning of term—Seeds of disease at date of sale.*]—At an auction sale the auctioneer said : " Would you let this good sound mare go for that money ? " The mare was diseased at the time. No fraud was proved :—*Held :* one who was induced by the statement to bid for & purchase the mare was entitled to rescission on the ground of misrepresentation.—ANDERSON *v.* KENNEDY, [1920] 1 W. W. R. 25 ; 50 D. L. R. 105 ; 13 Sask. L. R. 38.—**CAN.**

459 i. *Warranty relating to future—Dairy cattle warranted " to calve at proper time & correct in teats only."*]—A dairy cow, due to calve within a fortnight, was bought at a cattle market under the following warranty : " Dairy cattle are warranted to calve at their proper time & correct in their teats only." The cow calved at her proper time, but, owing to disease which appeared in her teats, her milk supply was defective : — *Held* : (1) the warranty applied to the period of calving, & guaranteed, against the ordinary risks of that period, that the cow's teats would then be capable of performing their function of giving milk : (2) as the disease from which the cow suffered had not been proved to be due either to negligence on pursuer's part or to external accident, the guarantee applied.— KYLE *v.* SIM, [1925] S. C. 425.—**SCOT.**

PART VI. SECT. 2, SUB-SECT. 4.—A.

st. *Rescission—Affirmance of contract after notice of misrepresentation.*]—A purchaser of a mare was not allowed rescission on the ground of what the ct. found was an innocent misrepresentation as to her being in foal to a celebrated stallion, because after discovery that the mare was not in foal he repeatedly attempted to get her in foal by breeding her to another stallion, this being held to amount to an affirmance of the contract.—MONTICELLO STATE BANK *v.* GUEST, [1920] 3 W. W. R. 14.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 4.—B.

g i. —— ——.]—In an action on promissory notes given for the price of a stallion, an alleged breach of warranty

474. *Add. Annotation :*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

476a. —— ——.]—A., as agent of B., sold a mare to C., & having no express authority from B. to warrant her, refused to do so, but, at the time of the sale, told C. that "if the mare was not all right she was not his." C. thereupon paid the price, which was received by B. The mare proving unsound, C. returned her to A., & sued B. for a return of the money :—*Held :* the proper question to leave to the jury was whether it was part of the contract that the mare should be returned if she proved unsound.—FOSTER *v.* SMITH (1856), 18 C. B. 156 ; 20 J. P. 438 ; 139 E. R. 1326.

486a. ——.]—HARE *v.* TAYLOR (1837), 1 Jur. 261.

Part VII.—Carriage of Animals.

517. *Add. Annotations :*—**Consd.** Gould *v.* S. E. & C. Ry., [1920] 2 K. B. 186. **Refd.** L. & N. W. Ry. *v.* Hudson, [1920] A. C. 324.

518. *Add Annotation :—As to* (2) **Refd.** L. & N. W. Ry. *v.* Hudson, [1920] A. C. 324.

522. *Add. Annotations :*—**Refd.** Gould *v.* S. E. & C. Ry., [1920] 2 K. B. 186 ; L. &. N. W. Ry. *v* Hudson, [1920] A. C. 324.

526. *Add. Annotation :*—**Refd.** Hemmings *v.* Stoke Poges Golf Club, [1920] 1 K. B. 720.

530. For "**Expenses reasonably—Incurred in disinfecting,**" etc., read "**Expenses reasonably incurred—In disinfecting,**" etc.

531. *Add. Annotations :*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443 ; Transoceanica Soc. Italiana Di Navigazione *v.* Shipton, [1923] 1 K. B. 31 ; Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

535. *Add. Annotation :—As to* (1) **Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

542. *Add. Annotation :—As to* (1) **Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

does not justify a defence of failure of consideration. Deft. must claim under the breach of warranty setting it up in diminution of the price, or in an action for damages.—EDWARDS *v.* PEARSON (Alta.), [1919] 3 W. W. R. 505.—**CAN.**

sv. *Cheque given for price—Whether breach of warranty a defence.*]—MYKLEBUST *v.* GALEY (Sask.) (1919), 46 D. L. R. 699—**CAN.**

PART VI. SECT. 2, SUB-SECT. 4.—C.

484 ii. —— *Effect of—On other remedies of purchaser.*]—A condition for return of a horse in as good condition as when sold & the substitution of another horse of equal value prevents the purchaser from resorting to any other form of remedy, unless he can show that he returned the horse in good condition & the vendor failed to substitute as agreed.—EDWARDS *v.* PEARSON (Alta.), [1919] 3 W. W. R. 505.—**CAN.**

485 ii. —— *Purchaser not liable for cost of keep after repudiation of contract.*]—LONG *v.* BYERS (Sask.), [1927] 4 D. L. R. 223.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 4.—D.

486 ix. —— ——.]—A written contract entered into in Mar. 1928, for the sale of a stallion provided that the only "guarantee" by which the seller bound himself was that the horse was serviceably sound as a serving stallion, and it also provided that if the horse "after a fair trial on sure breeding mares" should prove not to be so sound the buyer would return it to the seller & receive another horse of equal value in exchange, but that the seller should not be bound by "the conditions of this guarantee" unless the buyer submitted a monthly report in writing showing the condition of the horse, etc., & that the contract should expire & the seller be released from any further obligation to the buyer after Apr. 1, 1929, except in the event of the death of the horse within three years. In an action, begun after Apr. 1, 1929, for the balance of the purchase-price the buyer claimed a set-off for damages for loss of service fees which he would have earned with the horse had it been as guaranteed & counter claimed for the excess of said damages over the amount of pltf.'s claim :—*Held :* deft.'s only remedy for the difference between the purchase-price & the actual value of the horse was that expressly agreed to in the contract, viz. the return of the horse and the taking of another in its place, said provision, however, did not affect his right to sue for other damages, such as loss of service fees, which he had suffered up to Apr. 1, 1929, through the breach of the guarantee, but that his failure to submit the monthly report provided for in the contract would preclude him from recovering said other damages, & the trial judge's conclusion that there had been a reasonable compliance with that requirement could not be sustained.—HEAD *v.* LINTON, [1930] 2 W. W. R. 369 ; 24 S. L. R. 596.—**CAN.**

486 x. ——.]—The measure of damage in an action for breach of warranty of a bull is the difference between the value at the time of delivery to the buyer & the value it would have had if it had answered to the warranty.—WARD *v.* ROSSER (1920), 54 D. L. R. 531.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 4.—E.

sw. *Proof of breach at time of sale necessary—Sufficiency of evidence.*]—WESTWOOD *v.* MCMILLAN (Sask.), [1920] 2 W. W. R. 857 ; 53 D. L. R. 317.—**CAN.**

sx. —— ——.]—AHEIR *v.* CAPLETTE [1926] 3 D. L. R. 346 ; [1926] 2 W. W. R. 346 ; 20 Sask. L. R. 549.—**CAN.**

sy. ——.]—LONG *v.* BYERS (Sask.), [1927] 4 D. L. R. 223.—**CAN.**

PART VI. SECT. 3.

sz. *Live Stock Pedigree Act*, 1927 (*c.* 121)*—False registration of animal—What amounts to.*]—An application for registration of a transfer of ownership of an animal is not an application for the registration of the animal. Moreover, where the statements made in the former application are true with respect to the animal mentioned therein there is no offence under sect. 17 of above Act although the animal which was in fact sold was not the animal named in said application.—R. *v.* DAVENPORT (Alta.), [1928] 2 D. L. R. 852 ; [1928] 1 W. W. R. 876 ; 50 Can. Crim. Cas. 40.—**CAN.**

PART VII. SECT. 1, SUB-SECT. 1.—A.

528 i. —— *Animals poisoned—No affirmative evidence.*]—Pltf. shipped horses by defts.' railway. On arrival at destination, some of the horses had died & others were sick & died soon after. It was subsequently established that they died of arsenic poison. An action against deft. railway co. for negligence was dismissed, as there was no evidence connecting the cause of injury with any alleged negligence. The cause of the damage was purely a matter of speculation, & certain provisions of the contract were a complete answer to pltf.'s claim that the damages arose from defts.' negligence. —TURNER *v.* CANADIAN PACIFIC RY. CO. (1922), 66 D. L. R. 31 ; [1922] 2 W. W. R. 858.—**CAN.**

PART VII. SECT. 1, SUB-SECT. 2.

532 i. *Declaration of value — Requisites of.*]—FOX *v.* LONDON, MIDLAND & SCOTTISH RY. CO., No. 541 i, *post.*—**IR.**

541 i. *Carrier exempted from liability "in any case" above declared value.*]—A railway co. made conditions limiting their liability for loss of or damage to any live stock delivered to them for transit beyond the value, in the case of horses, of £50, unless a higher value was declared in writing at the time of delivery, & a percentage of 1½ per cent. paid on the value, so declared, in excess of the above-named sum. A race horse, exceeding £50 in value, was delivered to the co. for transit by the sender's groom, who informed the booking clerk that he had got "a very valuable 'chaser, worth about £1,000," a figure arrived at by the groom himself from casual gossip. The clerk gave the groom the co.'s form of "consignment note & waybill" for live stock, & the groom filled it in for carriage at the ordinary rate, & signed it, with full knowledge of its contents. The horse having been injured in transit :—*Held :* (1) the above conditions were not unreasonable ; (2) the contract of carriage, which was signed by the groom under a direction by his employer that the horse was to be carried at the ordinary rate, exempted the co. from liability for any greater amount than £50 ; (3) in order to make the co. liable for the full value of the horse, the declaration of value

Part VIII.—Wild Birds.

563a. Birds lawfully taken elsewhere.]—Applt. was charged under Wild Birds Protection Act, 1880 (c. 35), s. 3, as extended under s. 8 in the county of London by the Wild Birds Protection (Administrative County of London) Order, 1909, par. 4, with having in his possession some goldfinches recently taken. The magistrate found that the charge was proved & dismissed it under the Probation of Offenders Act, 1907 (c. 17), ordering applt. to pay the costs. The birds were lawfully caught in Ireland on or immediately before Dec. 3, 1918, &, after being kept there for upwards of a month to enable them to recover their condition, & travel safely, were sent to applt. in London by post. They were found in applt.'s possession in a wild & terrified state on Jan. 15, 1919:—*Held:* the magistrate was justified in taking into consideration all the circumstances of the case, including the condition of the birds when exposed for sale & the fact that they had to be kept in Ireland for some time in order to endure the journey & arrive alive, & also the length of the journey, in order to arrive at the conclusion that the birds were recently taken.—HARRIS *v.* LUCAS, [1919] 2 K. B. 291; 88 L. J. K. B. 1082; 121 L. T. 317; 83 J. P. 208; 35 T. L. R. 486; 17 L. G. R. 421; 26 Cox, C. C. 468, D. C.

564. *Add. Annotation:*—**Apld.** Harris *v.* Lucas, [1919] 2 K. B. 291.

Part X.—Cruelty to and Killing, Maiming, and Wounding Animals.

NOTE.—The Act now in force in England is Protection of Animals Act, 1911 (c. 27), as amended by Protection of Animals Act (1911) Amendment Acts, 1912 (c. 17), & 1921 (c. 14). In considering the cases in Sect. 1 of this Part, regard should be had to their dates & the Act under which they were decided.

572a. Shooting trespassing dog—No attempt to drive dog away before shooting.]—A farm labourer shot at a dog which was trespassing on his master's land, & wounded it. The dog was not doing damage & deft. made no effort to drive it away before he shot it, & the justices found that shooting was not necessary:—*Held:* he was guilty of "cruelly ill-treating" the dog within Protection of Animals Act, 1911 (c. 27), s. 1.—BARNARD *v.* EVANS, [1925] 2 K. B. 794; 94 L. J. K. B. 932; 133 L. T. 829; 89 J. P. 165; 41 T. L. R. 682; 28 Cox, C. C. 69, D. C.

574. *Add. Annotation:*—**Distd.** Barnard *v.* Evans, [1925] 2 K. B. 794.

576. *Add. Annotation:*—**Distd.** Barnard *v.* Evans, [1925] 2 K. B. 794.

587. *Add. Annotation:*—*As to* (1) & (2) **Refd.** Jenkins *v.* Ash (1929), 45 T. L. R. 479.

587a. —— Liberation in exhausted condition.]—On a prosecution of A. & G. for cruelly ill-treating a live wild rabbit contrary to Protection of Animals Act, 1911 (c. 27), s. 1, it appeared that A. had dangled the rabbit by its hind legs three or four yards away

must have been made with the intention of paying the higher rate, & the statement of value made by the groom to the booking clerk was insufficient.—FOX *v.* LONDON, MIDLAND & SCOTTISH RY. CO., [1926] I. R. 106.—**IR.**

sa. *Shipper undertaking obligation to "feed" & "water" animals—Obligation of supplying feed & water.*]—The obligation to furnish the feed & water is upon the shipper.—KNIGHT-WATSON RANCHING CO. *v.* CANADIAN PACIFIC RY. CO. (1921), 62 D. L. R. 601; 15 Sask. L. R. 1; [1921] 3 W. W. R. 788; *revsg.*, 14 Sask. L. R. 5.—**CAN.**

sb. *Carrier under no liability "unless written notice delivered at point of delivery"—Sufficiency of notice.*]—KNIGHT-WATSON RANCHING CO. *v.* CANADIAN PACIFIC RY. CO. (1921), 62 D. L. R. 601; 15 Sask. L. R. 1; [1921] 3 W. W. R. 788; *revsg.*, 14 Sask. L. R. 5.—**CAN.**

PART VII. SECT. 2

si. —— *Train run in contravention of Lord's Day Act.*]—Pltf. shipped goods, including horses, by defts.' line, & signed a special contract providing that defts. should not be liable for any loss or damages in respect of the live stock by reason of injury except such as might arise from a collision, & should in no case be responsible for any amount exceeding certain small sums named. Pltf. accompanied his goods, & the train was lawfully proceeding on a Sunday, notwithstanding the Lord's Day Act, when a collision occurred with one of defts.' trains, which was being run unlawfully because in contravention of that Act, & some of the horses & other goods of pltf. were destroyed or damaged. Pltf. sued in tort for the amount of his loss, claiming much more than the limited amounts stated in the special contract. Defts. set up the special contract:—*Held:* the provision of the contract limiting the liability of defts. in the case of a collision to a stated sum did not sustain the defence, because that provision must be taken not to have contemplated a collision occurring by reason of the breach of a statute distinctly prohibiting & making unlawful the act which caused the collision.—RISE *v.* CANADIAN PACIFIC RY. CO. (1910), 14 W. L. R. 635.—**CAN.**

PART X. SECT. 1, SUB-SECT. 1.

574 ii. —— *Failure to remove from animal broken pieces of instrument.*]—Resp. undertook to treat a horse, & inserted into the animal's urethra a catheter, which broke, & the horse was returned to its owner with the broken pieces left in the urethra:—*Held:* (1) if resp. allowed the broken pieces of the catheter to remain in the urethra for an unreasonable time, without taking any steps to alleviate the pain or without taking any steps to secure their removal, he unreasonably caused unnecessary pain; (2) resp. was under a duty to inform the owner of the horse within a reasonable time that the fragments were in the animal's urethra.—MARTIN *v.* CARPENTER, [1925] S. A. S. R. 421.—**AUS.**

sc. *Abandoning horse in street—Horse found starving—Whether owner exercising control.*]—*Held:* accused could not be convicted of ill-treatment under Prevention of Cruelty to Animals Act, 1890, s. 3 (*a*), as he was not in a position to exercise control over the animal at the time of the ill-treatment.—R. *v.* NAZIR WAZIR (1919), I. L. R. 44 Bom. 159.—**IND.**

sd. *Permitting animal injured on ship to land—Master of ship ignorant of animal's condition.*]—*Held:* the master's want of knowledge was no defence.—M'LAREN *v.* SMITH, [1923] S. C. (J.) 91.—**SCOT.**

PART X. SECT. 1, SUB-SECT. 2.

se. *Carrying cranes by train—With eyes stitched up.*]—*Held:* accused had committed no offence under Prevention of Cruelty to Animals Act, 1890, s. 3, cl. (*b*), for the cruelty was caused by the persons who stitched up the eyes & not by the manner or position in which the birds were carried in the train.—R. *v.* IBRAHIM MEER SHIKAR (1917), I. L. R. 41 Bom. 654.—**IND.**

from two greyhounds, held in leash by G., & that the greyhounds having been taken thirty or forty yards away, the rabbit had been thrown on the ground, where it had remained, only hopping a couple of yards when flicked by a hat. The magistrate held that there was no cruel ill-treatment within the sect.; that what had been done by resps. was ordinary coursing & so protected by sect. 1 (3) (*b*), & that there was no evidence of the rabbit having been liberated in an injured, mutilated, or exhausted condition. On appeal:—*Held:* all the evidence showed that there had been cruel ill-treatment of the rabbit & that the rabbit had been liberated in an exhausted condition. On this ground & also on the ground that the cruel ill-treatment occurred before the rabbit was liberated for the purpose of being coursed or hunted, resps. had not brought themselves within the protection given by the sect. to the coursing or hunting of any captive animal.—JENKINS *v.* ASH (1929), 141 L. T. 591; 93 J. P. 229; 45 T. L. R. 479; 27 L. G. R. 537; 28 Cox, C. C. 665, D. C.

587b. **- Ill-treatment before liberation.**]—JENKINS *v.* ASH, No. 587a, *ante*.

595. *Add. Annotation:*—**Refd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

602. *Add. Annotation:*—**Consd.** White *v.* Fox & Dawes (1932), 48 T. L. R. 641.

602a. —— —— **Not domestic animal.**]—WHITE *v.* FOX & DAWES (1932), 48 T. L. R. 641, D. C.

613. *Add. Annotation:*—**Refd.** R. *v.* Wood, *Ex p.* Farwell (1918), 87 L. J. K. B. 913.

625. After this case add "*See* Animals (Anæsthetics) Act, 1919 (c. 54)."

651. *Add. Citation:*—26 Cox, C. C. 113.

653. *Add. Annotation:*—**Refd.** Nye *v.* Niblett (1918), 87 L. J. K. B. 590.

654. *Add. Annotations:*—**Consd.** Horton *v.* Gwynne, [1921] 2 K. B. 661. **Apld.** Farey *v.* Welch, [1929] 1 K. B. 388.

656. *Add. Annotation:*—**Refd.** Nye *v.* Niblett (1918), 87 L. J. K. B. 590.

Part XI.—Diseased Animals.

657. *Add. Annotation:*—**Refd.** Theyer *v.* Purnell, [1918] 2 K. B. 333.

659. *Add. Citation:*—88 L. J. K. B. 263.

664. *Add. Annotation:*—**Refd.** Phillips *v.* Britannia Hygienic Laundry Co., [1923] 1 K. B. 539.

688a. —— **Transit of Animals (Amendment) Order, 1930—Meaning of "consecutive journeys."**]—Transit of Animals (Amendment) Order, 1930, art. 1, enacts, among other things, that any road vehicle used for the conveyance of animals the property of a dealer or in connection with the trade or business of a dealer shall, as soon as practicable after each occasion on which it is so used, and before any other animal is placed in it, be cleansed and disinfected as therein mentioned, "Provided that in the case of a vehicle . . . making consecutive journeys on any one day between the same two points, the requisites of this article shall be deemed to be sufficiently complied with if the vehicle is cleansed & disinfected . . . as soon as practicable after the completion of the last of such consecutive journeys":—*Held:* on the construction of the Order, the expression "consecutive journeys . . . between the same two points" in the proviso to art. 1 does not mean consecutive journeys in the same direction between the two points, the return journey counting as distinct, but consecutive journeys in either direction, & the vehicle need not be cleansed & disinfected until the completion of the last of its consecutive journeys in either direction.—NETHAWAY *v.* BREWER, [1931] 2 K. B. 459; 100 L. J. K. B. 524; 145 L. T. 191; 95 J. P. 159; 75 Sol. Jo. 359; 29 L. G. R. 489; 29 Cox, C. C. 305, D. C.

690a. —— **"Double dipping"—Meaning.**]—*Held:* the words "double dipped" meant twice dipped & not dipped for a second time after the first prescribed dipping.—ADAMS *v.* GALLOWAY (1925), 23 L. G. R. 588, D. C.

PART X. SECT. 1, SUB-SECT. 3.

sf. *Commitment for trial for overdriving—Jurisdiction of one justice.*]—R. *v.* NELSON (1916), 28 Can. Crim. Cas. 276.—CAN.

PART XI. SECT. 1.

662 vi. ——.]—A contract for the sale of animals affected with a contagious or infectious disease is an offence against R. S. C. 1906 (c. 75), s. 38, whether or not the seller knows that the animals are so affected.—BALDWIN *v.* SNOOK, [1918] 2 W. W. R. 314; 40 D. L. R. 433.—CAN.

662 vii. ——.]—On a sale without warranty of an animal known to the seller to be affected with a certain contagious disease there is no common-law duty upon the seller to warn the buyer of the disease, where the latter is reputed to be possessed of more than ordinary skill & knowledge in the treatment of animals, the disease in question is fairly common in the neighbourhood, the buyer knows that the animal is suffering from some complaint, although not the particular nature of it, & the buyer refuses to complete the sale until he has had the animal in his possession a certain time.

The Animal Contagious Diseases Act, R. S. C. 1906 (c. 75), does not give a right of action to a buyer of animals who suffers damage from a sale which is illegal under that Act.—O'MEALEY *v.* SWARTZ, [1918] 3 W. W. R. 98.—CAN.

662 viii. ——.]—In view of Orders in Council authorised under s. 38k exempting tuberculosis from the effect of Animal Contagious Diseases Act, R. S. C. 1906 (c. 75), s. 38, *Baldwin* v. *Snook*, No. 662 vi., *ante*, was held not applicable to support a defence of illegal sale of cattle.—WOOD, WEILLER & MCCARTHY, LTD. *v.* VALCOUR, [1921] 2 W. W. R. 32.—CAN.

— ix. ——.]—Where animals are exposed for sale by a vendor & he knows that they are infected with a contagious disease he is liable to a penalty under Animal Contagious Diseases Act, & if he effects a sale of the animals under such circumstances the sale is illegal & void. If in addition to the breach of his statutory duty the vendor makes false representations as to the condition of the animals & thereby induces a person to purchase them, the latter is entitled to succeed in an action for any resulting damages sustained by him, & in any event he is entitled to recover any money paid by him to the vendor on the illegal contract, he not being in *pari delicto* with the vendor.—LONG *v.* ZLATNICK (1922), 70 D. L. R. 88; [1922] 3 W. W. R. 687.—CAN.

PART XI. SECT. 2, SUB-SECT. 2.

690 ii. —— *Validity of notice—Blank form issued by Government Veterinary Officer—Day & hour filled in by Inspector.*]—KAJEE *v.* R., [1930] N. L. R. 55.—S. AF.

PART XI. SECT. 2, SUB-SECT. 3.

sk. *Hogs fed on garbage—Under licence waiving compensation—Disease necessitating slaughter—Onus of proof of cause of disease.*]—A. obtained a

694a. Compensation—On commercial basis of valuation—Failure to object—Valuation binding.]—By Diseases of Animals Act, 1894 (c. 57), s. 15 (2), "The Board shall for animals slaughtered under this section pay compensation as follows: (i) Where the animal slaughtered was affected with foot-&-mouth disease the compensation shall be the value of the animal immediately before it became so affected. (ii) In every other case the compensation shall be the value of the animal immediately before it was slaughtered."

Pltf. was the owner of a herd of pedigree Friesian cattle which became infected with foot-&-mouth disease, & the Minister of Agriculture & Fisheries provisionally decided that it was not a case for slaughter, but was a case for isolation which would have caused expense to pltf. together with possible risk of losing his stock. Subsequently, however, after certain conversations between the Govt. inspector & pltf. the Minister decided to have the cattle valued & slaughtered. The cattle were valued on behalf of the Minister on a commercial & not a pedigree basis at £993, & notice of this valuation was given to pltf. & he signed the valuation form. The cattle were accordingly slaughtered on the following day & pltf. was paid the sum of £993. Pltf. did not give within 14 days, as required by clause 39 of Animals (Transit & General) Order, 1912, a counter-notice that he disputed the valuation. Afterwards pltf. claimed from the Minister the difference between the £993 & the pedigree value. The latter was agreed at the trial to be £2,162. The claim was based (*inter alia*) on the provision in s. 15 (2) that "the value" of the slaughtered animals should be paid as compensation:—*Held:* as pltf. & the Minister had agreed that the valuation should be on a commercial basis, the agreement was binding & the claim of pltf. failed.—BLIGH *v.* MINISTER OF AGRICULTURE & FISHERIES (1931), 47 T. L. R. 492.

699. *Add. Annotation:—As to* (1) **Refd.** R. *v.* North Worcestershire Assmt. Com., *Ex p.* Hadley, [1929] 2 K. B. 397.

700. *Add. Annotation:*—**Refd.** Fisher *v.* Oldham Borough Corpn. (1930), 143 L. T. 281.

705a. Burden of proof—Diseases of Animals Act, 1894 (c. 57), ss. 4 (1), 57 (1).]—A farmer who was summoned under Diseases of Animals Act, 1894 (c. 57), s. 4, for not giving notice with all practicable speed to a constable of the fact that two of his cows were suffering from foot & mouth disease, contended before the justices that as there was no evidence that he knew before the day on which he gave notice that the animals were affected, he had discharged the onus which lay upon him under sect. 4 by giving notice on that date. The justices accepted this contention, & dismissed the summons:—*Held:* this contention was in direct conflict with sect. 57 of the Act, which cast on the accused the onus of proving absence of knowledge, & that the justices ought to have convicted.—WILSON *v.* YATES (1927), 91 J. P. 188; 44 T. L. R. 25; 25 L. G. R. 514, D. C.

NOTE.—It has been found desirable to add the following Part:-

Part XII.—Breeding of Animals.

Statutory control—Horse breeding.]—*See* Horse Breeding Act, 1918 (c. 13).

Hire of stallion's services—Right of lien on mare—For expense of covering.]—*See* original volume, p. 257, No. 380.

Increase in animals—Who entitled to.]—*See* original volume, pp. 212, 213.

licence to feed his hogs on garbage obtained from outside, which licence contained the following words: "In consideration of the granting of a licence to me I hereby agree . . (4) to forfeit all claim to compensation, in case it is necessary to destroy any of my hogs, as a result of hog cholera, unless it can be shown that the infection came from some other source than garbage feeding":—*Held:* the *onus* of proving that the cholera in question came from some other source than garbage feeding was upon suppliant.—ALDERSON *v.* R. (1922), 65 D. L. R. 398; 21 Exch. C. R. 359.—CAN.

PART XI. SECT. 2, SUB-SECT. 5.

sl. *Power to make bye-law—Prohibiting admission of infected animals into municipality.*]—To provide in a bye-law that no animal affected with any infectious or contagious disease shall be brought into the municipality was held to be beyond the powers of a municipal council under Municipal Act.—R. *v.* MOULD, [1920] 2 W. W. R. 540; 52 D. L. R. 302.—CAN.

PART XI. SECT. 2, SUB-SECT. 6.

gi. —— *Proof of scienter.*]—On a prosecution under Cattle Disease Act, Ireland, 29 & 30 Vict. c. 4, & 33 & 34 Vict. c. 36, & the Orders of the Privy Council, "knowledge" that the cattle are diseased is part of the offence & must be proved by the prosecutor.—CARROLL *v.* EWERS (1873), I. R. 7 C. L. 226.—IR.

gii. —— *Certificate of veterinary surgeon—No proof of authenticity—Whether admissible.*]—In a prosecution for failure to give notice of the existence of swine fever in contravention of the Act, the prosecutor produced a certificate bearing to be signed by a veterinary surgeon, certifying the existence of the disease at accused's premises. No evidence was led to prove the authenticity of the certificate, which was not attested, or to prove that the grantor held the office of veterinary inspector under the Act. The justices sustained an objection to the admission of the certificate as evidence:—*Held:* the certificate was admissible as evidence, in terms of Diseases of Animals Act, 1894, s. 44 (5), without proof of its authenticity or of the grantor's qualifications, at all events in the absence of specific challenge on these points by the accused at the trial.—*v.* WARDROPE, [1932] S. C. (J.) 18.—SCOT.

PART XII.

sm. *Statutory control—Horse breeding—Refusal of certificate of registration of stallion—Registration of Stallions Act, 1916.*]—At the trial of an action by a person, who was the owner of a stallion, against the members of the Board of Control & Appeal under the above Act for wrongful refusal to consider an appeal against the refusal of a certificate of registration, it appeared that pltf. was not actual owner but had control & management of the animal:—*Held:* he was entitled to maintain the action.—DUTTON *v.* EVANS (1920), 16 Tas. L. R. 45.—AUS.

Hire of stallion's services—Liability of owner of stallion—Injury to mare.]—*See* Vol II., p. 220, cases q, r.

—— —— *Mare improperly served by stallion.*]—*See* Vol II., p. 220, cases s, t, u.

sp. —— —— *Breach of contract.*]—SINCLAIR *v.* WALKER, No. 380 i., *ante.*—CAN.

ARBITRATION.

Part I.—The Submission.

3 *Add. Annotation :*—**Refd.** Charles *v.* Cardiff Collieries (1928), 44 T. L. R. 448.

24. *Add. Annotation :*—**Refd.** Anglo-Newfoundland Development Co *v.* R., [1920] 2 K. B. 214.

26 *Add. Annotation :*—**Refd.** Anglo-Newfoundland Development Co. *v.* R., [1920] 2 K. B. 214.

26a. —— Verbal agreement to grant royalties—Amount to be settled by arbitration—Refusal of grantee to arbitrate.]—In 1913 a patent was granted for "Improvements in winches for operating the rope of a duplex derrick." Between the times of the filing of the provisional & complete specifications, the patentee, under a verbal agreement, entered the service of a co. engaged in making windlasses as technical adviser & engineer draughtsman; & the co., while the patentee was in their employment, made & sold the patented windlasses. In 1919 the patentee commenced an action against the co., alleging that it was a term of the verbal agreement that, during pltf.'s service, the co. should have pltf.'s licence to make & sell windlasses under the patent, at a reasonable royalty, &, failing agreement between the parties, at such royalty as might be settled by arbn. He contended that he would have received at least 5 per cent. on the selling price of the windlasses. Defts. denied that they had agreed to accept a licence from pltf. :—*Held :* pltf. had proved that the agreement for a licence had been made; he was entitled to a reasonable royalty; &, as the agreement was verbal, & defts. refused to refer the matter to arbn., the matter could not go to arbn. It was directed that the matter should be referred to an official referee for inquiry & report under sect. 13 of the above Act.—FLEMING *v.* DOIG (J. S.) (GRIMSBY), LTD. (1921), 38 R. P. C. 57.

36a. Reference under National Health Insurance Regulations of Insurance Commissioners.]—By an agreement between a medical practitioner on the panel & the insurance committee of a county, the practitioner agreed to give medical treatment to insured persons, & by clause 1 the National Health Insurance (Medical Benefit) Regulations (England), 1913, were incorporated. By clause 14, "any dispute or question arising between the committee & the practitioner . . . relating to the construction of this agreement or the rights & liabilities of the committee or the practitioner . . . hereunder shall be referred to the Comrs." By reg. 51 of the regulations, "Where under the provision of these regulations or of any agreement made between the committee & a practitioner . . . is referred, or any appeal from a decision of the committee is made to the Comrs. the Comrs. shall determine such questions or appeal in such manner as they think fit, & if in the opinion of the Comrs. a hearing is required they may authorise any two or more of the Comrs. to hear & determine such question or appeal, & any decision of the Comrs. or any of them made under this article shall be final & conclusive." A dispute having arisen under the agreement, the practitioner brought an action against the committee in respect thereof, & the committee applied under the Act of 1889, s. 4, to stay the action : —*Held :* the action must be stayed (PICKFORD, L.J. & SARGANT, J.) upon the ground that there was a "submission" to arbn. within the Act of 1889, s. 27 (BANKES, L.J.), upon the ground that under reg. 51 a special tribunal was constituted with special powers for determining disputes between practitioners & the committee.—CLEMENTS *v.* COUNTY OF DEVON INSURANCE COMMITTEE, [1918] 1 K. B. 94; 87 L. J. K. B. 203; 118 L. T. 89; 82 J. P. 71, C. A.

PART I. SECT. 2.

—— —— *Informal extension of submission amounting to new parol submission.*]—An award was not made within the time fixed by the written submission to arbn. nor was the time extended. The arbitrators proceeded after the expiry of the time, both parties appearing before them & taking part in the proceedings, & the award was made & not appealed from or moved against, & had ever since been acted upon :—*Held :* a parol submission must be taken to have been made & to include the terms contained in the written one, & the award to have been made pursuant to the parol submission.—HARRISON *v.* HARRISON (1918), 41 O. L. R. 195; 13 O. W. N. 245.—**CAN.**

10 v. —— —— *Signature of one of series of documents—Forming part of agreement.*]—A submission or written agreement to submit differences to arbn. may be collected from a series of documents, even though connected by parol evidence, & signature of any document forming part of the agreement is sufficient to bind the person so signing to the submission contained in the agreement.—SUKHAMAL BANSIDHAR *v.* BARN LAL KEDIN & CO. (1920), I. L. R. 42 All. 525.—**IND.**

e i. —— *Must not be contrary to public policy.*]—If it is an implied term of a reference to arbn., & of an *ekranama* pursuant to the award, that a complaint that a non-compoundable offence under the Penal Code has been committed shall not be proceeded with, the consideration is unlawful on the ground of public policy, & the award & *ekranama* are therefore unenforceable; that is so irrespective of whether in law a prosecution has been commenced.—KAMINI KUMAR BASU *v.* BIRENDRA NATH BASU (1929); 57 L. R. Ind. App. 117, P. C.—**IND.**

1 i. —— *General requisites.*]—An award made by arbitrators is not invalid on the ground that in the reference to arbn. the actual dispute is stated merely in general terms, when the award itself shows that the nature of the dispute was properly explained to the arbitrators.—RAM BAHADUR SEN *v.* MAHANATH GANESH BHAGAT (1923), I. L. R. 2 Pat. 554.—**IND.**

1 ii. ——]—A submission to arbn. according to the above sect. is a submission which provides that either party in case of a dispute arising on the contract is at liberty to take the necessary steps to get the dispute decided by arbn.—BURJOR *v.* ELLERMAN CITY LINES, LTD. (1925), I. L. R. 49 Bom. 854.—**IND.**

1 iii. —— *Written agreement to submit.*]—A submission to arbn. under Indian Arbn. Act need not be signed by both parties. All that is required is a written agreement to submit, & acting upon it.—RADHA KANTA DAS *v.* BAERLIEN BROTHERS (1928), I. L. R. 56 Calc. 118.—**IND.**

PART I. SECT 3, SUB-SECT. 1.

3a. *Appointment of appraisers—Under arrangement separate from policy.*]—*Held :* not to constitute a submission to arbn., but a provision for appraisement.—SEARLE *v.* ALLIANCE INSURANCE CO., [1925] 4 D. L. R. 373 : [1925] 3 W. W. R. 729.—**CAN**

41. *Add. Annotation :*—**Consd.** O'Rourke *v.* Darbishire, [1920] A. C. 581

—— —— **Appeal.**]—Where proceedings are taken out of the ordinary *cursus curiæ*, with the assent of the parties, the decree of the ct. below cannot be regarded as the award of an arbitrator, so as to deprive either party of the right of appeal, unless there has been an attempt to give the ct. a jurisdiction which it does not possess, or unless the procedure has been so violently strained as to be put entirely out of its course.—PISANI *v.* A.-G. FOR GIBRALTAR (1874), L. R. 5 P. C. 516; 30 L. T. 729; 22 W. R. 900, P. C.

53. *Add. Annotation :*—**Consd.** Charles *v.* Cardiff Collieries (1928), 44 T. L. R. 448.

53a. —— ——.]—BOYNTON *v.* RICHARDSON, No. 71a, *post*.

66. *Add. Annotations :*—**Consd.** Richardsons & Bradley *v.* Bernhard, [1925] 2 K. B. 121; Simbro Trading Co. *v.* Posograph (Parent) Corpn., [1929] 2 K. B. 266.

68. *Add. Annotation :*—**Consd.** Charles *v.* Cardiff Collieries (1928), 44 T. L. R. 448.

70. *Add. Annotation :*—**Consd.** Charles *v.* Cardiff Collieries (1928), 44 T. L. R. 448.

71. *Add. Annotations :* — **Apld.** Boynton *v.* Richardson (1924), 69 Sol. Jo. 107. **Consd.** Wisbech R. D. C. *v.* Ward (1927), 91 J. P. 200. **Refd.** Brightman *v.* Tate, [1919] 1 K. B. 463; Wisbech R. C. *v.* Ward, [1928] 2 K. B. 1.

71a. Surveyor's certificate—Valuation of timber—Liability for negligence.]—A firm of surveyors was appointed jointly by the parties to a contract for the sale of certain growing timber, to value the timber. The vendor subsequently commenced proceedings against the surveyors for damages for negligence in respect of their valuation of the timber :—*Held :* the surveyors were in the position of quasi-arbitrators, & the action failed.—BOYNTON *v.* RICHARDSON (1924), 69 Sol. Jo. 107.

78. *Add. Annotation :*—**Refd.** L. & N. E. Ry. *v.* Easington Union Assmt. Com. & Easington-with-Thorpe Parish Council (1925), 95 L. J. K. B. 255.

79. *Add. Annotation :*—**Refd.** *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331.

80. *Add. Annotations :*—**Refd.** Fried Krupp Akt. *v.* Orconera Iron Ore Co. (1919), 88 L. J. Ch. 304; *Re* Badische Co., Bayer Co., etc., [1921] 2 Ch. 331; Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

125. *Add. Annotation :* — **Refd.** Woodrow *v.* Trawlers (White Sea & Grimsby), Ltd., [1930] 1 K. B. 176.

135a. ——.]—By a contract made between an Italian buyer & English sellers it was provided as follows : "Any dispute arising out of this contract to be settled by arbn. in London in the usual way." A dispute having arisen between the parties, defts. appointed M. as their arbitrator. Plff. having failed to appoint an arbitrator after due notice given, M. made an award in favour of defts., & defts. thereupon counterclaimed to enforce the award :—*Held :* (1) the words "to be settled by arbn. in London in the usual way" meant the way in which disputes arising as to the particular commodity were settled in London, & there was ample evidence that the dispute had been

PART I. SECT. 3, SUB-SECT. 2.

42 iii. —— ——.]—In an action of slander the parties agreed to trial before a judge & seven jurymen instead of the requisite eight. A verdict was given for plff. Deft. appealed :—*Held :* the ct. had acted as an arbitrator, & no appeal lay.—LOANE *v.* BLACK, [1925] 3 D. L. R. 940.—**CAN**

42 iv. —— ——.]—*Re* FRASER'S APPEAL, *Re* WINNIPEG CHARTER, [1927] 4 D. L. R. 213; [1927] 2 W. W. R. 600; 36 Man. L. R. 597.—**CAN.**

PART I. SECT. 3, SUB-SECT. 6.

51 ii. ——.]—Where land was expropriated for railway purposes the railway co. & the owner agreed to have the compensation determined by reference to three named persons called "valuers" in the submission; their decision was to be binding & conclusive on both parties & not subject to appeal; they could view the property & call such witnesses & take such evidence, on oath or otherwise, as they, or a majority of them, might think proper; & either party could have a representative present at the view or taking of evidence, but his failure to attend for any reason would not affect the validity of the decision :—*Held :* this agreement did not provide for a judicial arbn. but for a valuation merely.—CAMPBELLFORD, LAKE ONTARIO & WESTERN RY. CO. *v.* MASSIE 1914), 50 S. C. R. 409.—**CAN.**

m i. *Assessing loss by theft & fire—Appointment of appraisers under arrangement separate from policy.*]—*Held :* a provision for appraisement, & not a submission to arbn.—SEARLE *v.* ALLIANCE INSURANCE CO., [1925] 4 D. L. R. 378; [1925] 3 W. W. R. 729.—**CAN.**

n i. *S. P.* IRWIN *v.* CAMPBELL (1914), 32 O. L. R. 48.—**CAN.**

PART I. SECT. 4.

t i. *S.P.* JNAUENDRA NATH BAGCHI *v.* SURES CHANDRA ROY (1927), I. L. R. 6 Pat. 556.—**IND.**

v i. ——.]—The selection of a guardian cannot be referred to arbn., as it is not a matter of private interest between parties.—PALANIANDI CHETTI *v.* ADAIKALAM CHETTI 1923), I. L. R. 47 Mad. 459.—**IND.**

sc. *Construction of agreement—Involving point of law.*]—By an agreement between the N. B. Ry. Co. & the F. Ry. Co. it was provided that, in the event of an Act of Parliament being obtained & the capital being subscribed, a line of railway should be constructed by the F. Co., & thereafter worked by the N. B. Co. on certain terms. It was further provided that the N. B. Co. should be bound to contribute to the F. Co. a sum sufficient to make up a dividend of 4 per cent. on the "paid-up share capital" of the F. Co., & that all questions which might arise between the parties in relation to the agreement, or the import or meaning thereof, or the carrying out of the same, should be referred to arbn. in terms of Railway Companies Arbitration Act, 1859. The line of railway was thereafter constructed & worked in terms of the agreement. In an action at the instance of the N. B. Co. against the F. Co., concluding for declarator (*inter alia*) that the pursuers were freed & relieved of all liability to make up the dividend of the F. Co. to 4 per cent., & that the articles of the agreement thereanent were null & of no effect, the pursuers averred that the *ex facie* capital of defenders' co. was not the "paid-up share capital" on which the dividend had been guaranteed in respect that defenders had raised that capital in a manner which was illegal & *ultra vires* of their statutory authority, the pursuers maintained that this depended on a legal interpretation of matters outwith the agreement, & consequently that the clause of arbn. did not apply, & that the question raised in the action fell to be decided by the Ct. of Session :—*Held :* the arbn. clause was a general clause, by which the parties had contracted themselves out of the jurisdiction of the ct. as to anything which fell within the clause; the questions raised were questions of the construction of the agreement, &, accordingly, must be determined by the arbiter, even although their determinations depended upon the question of *ultra vires* & although it involved a point of law.—NORTH BRITISH RY. CO. *v.* NEWBURGH & NORTH FIFE RY. CO., [1911] S. C. 710.—**SCOT.**

sm. *Liability for & amount of alimony.*]—*Held :* proper subjects for arbn.—HARRISON *v.* HARRISON (1918), 41 O. L. R. 195; 130 W. N. 245.—**CAN.**

sp. *Right to receiver & injunction.*]—*Held :* not a matter to refer.—SURENDRA KUMAR ROY CHOWDHURY *v.* SUSHIL KUMAR ROY CHOWDHURY (1927), I. L. R. 55 Calc. 249.—**IND.**

PART I. SECT. 5.

st. *Reference by Crown—By whom signed.*]—DOMINION BUILDING CORPN., LTD. *v.* R., [1927] 2 D. L. R. 510; [1927] Exch. C. R. 79.—**CAN.**

PART I. SECT. 6, SUB-SECT. 1.

137 ii. ——.]—Where a submission to arbn. is made subject to Arbn. Act, R.S.A., 1922 (c. 98), the provisions of that Act must be held to be applicable in so far as they can reasonably be applied.—MASTERS & MCDOUGALL *v.* STEPHEN, STEPHEN *v.* MASTERS & MCDOUGALL, [1925] 4 D. L. R. 684; [1925] 3 W. W. R. 493.—**CAN.**

settled " in the usual way " ; (2) any objection to the award upon the ground of irregularity or misconduct on the part of the arbitrator could only be taken by motion to set aside or remit the award, & pltf. having failed to move within the limited time, his remedy in that respect had lapsed.—SCRIMAGLIO *v.* THORNETT & FEHR (1924), 131 L. T. 174 ; 40 T. L. R. 320 ; 68 Sol. Jo. 630 ; 29 Com. Cas. 175, C. A.

141. *Add. Annotation :*—**Refd.** Phœnix Insce. of Hartford *v.* De Monchy (1929), 141 L. T. 439.

146. *Add. Annotations :*—**Consd.** Woodall *v.* Pearl Assce., [1919] 1 K. B. 593. **Distd.** Macaura *v.* Northern Assce., [1925] A. C. 619. **Refd.** Sanderson *v.* Armour (1922), 91 L. J. P. C. 167 ; Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497.

147. *Add. Annotation :*—**Consd.** Macaura *v.* Northern Assce., [1925] A. C. 619.

147a. —— ——.]—In a proposal for insurance against accident the intending assured stated his occupation & signed a declaration that the answers to the questions therein were true, & that he agreed that the declaration should be the basis of the contract between him & the insurance co. whose policy, subject to the terms & conditions thereof, he agreed to accept. The policy recited the proposal & declaration " which proposal & declaration warranted to be true it is agreed shall be the basis of this contract . . . & be considered as incorporated herein, & any suppression, misrepresentation, or misstatement of fact in such written proposal & declaration shall *ipso facto* render this policy null & void " ; & it provided that it was a condition precedent to the recovery of any sum under the policy that the conditions indorsed thereon should be strictly observed. Condition 8 provided that the policy might be renewed from year to year but only upon condition that nothing had happened to increase the risk, & if the risk was increased by (*inter alia*) the assured engaging in some other occupation, then " unless notice in writing of such increased risk is given to the co. . . . & any extra premium that may be required paid . . . the policy is void & no claim can be made." By condition 11, " If any question shall arise touching this policy or the liability of the co. thereunder or the extent or nature of such liability or otherwise howsoever in connection herewith then the assured & all persons claiming through the assured may refer & shall be bound, if the co. shall so require, to refer the same to arbn. by one arbitrator to be agreed on or in default of agreement by two arbitrators & their umpire under the Act of 1889 . . . & no person shall be entitled to bring or to maintain any action or proceeding on this policy except for the sum awarded under such arbn." During the currency of the policy the assured was killed by an accident. The co. denied liability on the policy on the ground that the assured either had misstated his occupation in the proposal, or, if not, had changed his occupation for one involving increased risk of which notice as required by condition 8 had not been given to the co., & contended that the policy was therefore void, & they

PART I. SECT. 6, SUB-SECT. 3.

145 v. —— ——.]—A policy of fire insurance provided that if a claim be rejected & an action be not commenced within three months after such rejection, all benefits under the policy should be forfeited, & further any question of amount of loss should be referred to arbn., such arbn. to be a condition precedent to any action. To a claim sent in, the co. answered that they did not agree upon the amount claimed & that under the conditions of the policy they did not admit their liability :—*Held :* the right of action was that it might be decided whether such rejection was right or wrong, & it was only in the event of that question being decided against the co. that it would become necessary to ascertain the amount of the loss by arbn.—EAGLE STAR & BRITISH DOMINIONS INSURANCE CO. *v.* DINANATH (1922), I. L. R. 47 Bom. 509.—**IND.**

145 vi. —— ——.]—Insurers alleged that material misrepresentations were made by the insured in his proposal, & that consequently the policy was void under clause 7 of the policy, & that therefore a dispute had arisen which, under clause 12 of the policy, should be referred to arbn. :—*Held :* the question of misrepresentation was within the arbn. clause in the policy.—RICHARDSON *v.* ARMY, NAVY, & GENERAL ASSURANCE ASSOCN., LTD., [1924] 2 I. R. 96.—**IR.**

145 vii. —— ——.]—F. insured a motor char-a-banc with deft. co. The policy contained the usual clause as to wilful misstatements, & a clause that any dispute . . . " as to the extent & meaning " of the policy should be referred to arbn. The co. repudiated a claim by F. on the ground that non-disclosure by him of material facts had rendered it null & void, but in an action by F. the co. moved to stay the proceedings & to refer to arbn. :—*Held :* the contract having been repudiated the dispute was not one as to the extent & meaning of the policy, & not being otherwise within the arbn. clause could not be referred to arbn.—FUREY *v.* EAGLE, STAR & BRITISH DOMINIONS INSCE. CO. (1922), 56 I. L. T. 23.—**IR.**

e. *Revsd.*, [1909] W. N. 161.—**SCOT.**

e i. —— ——.]—The parties in framing a contract may insert a clause binding them to refer all future disputes, either in the carrying out of the contract or in respect of a breach of it, to arbn., & one party to such a contract cannot, by averring that the other party has repudiated the contract, get rid of the arbn. clause.—SANDERSON & SON *v.* ARMOUR & CO., LTD. (1922), 91 L. J. P. C. 167 ; 127 L. T. 597 ; [1922] S. C. (H. L.) 117 ; 59 Sc. L. R. 268.—**SCOT.**

e ii. —— ——]—Where there is a repudiation which goes to the substance of the whole contract, the person setting up that repudiation cannot insist on a subordinate term of the contract still being enforced.—GRAHAM *v.* PROVIDENT LIFE ASSURANCE CO., [1922] N. Z. L. R. 718.—**N.Z.**

e iii. —— ——.]—Where a contract contains an arbn. clause, & one of the parties seeks to avoid the contract, the dispute is referable to arbn. if the avoidance of the contract arises out of the terms of the contract itself. Where, however, a party seeks to avoid the contract for reasons *dehors* it, the arbn. clause cannot be resorted to as it, together with the other terms of the contract, is set aside. In other words, a party cannot rely on a term of the contract to repudiate it, & still say the arbn. clause should not apply. If he relies on a contract he must rely on it for all purposes.—INDIA ELECTRIC CO. *v.* GENERAL ELECTRIC TRADING CO. (1929), I. L. R. 53 Bom. 573.—**IND.**

s i. —— *Performance of contract prevented by Government.*]—A firm agreed to sell & to ship from Calcutta to Buenos Ayres bales of jute goods. The contracts contained provisions exempting the sellers from liability for late & short shipment attributable (*inter alia*) to Govt. commandeering of ships, war, " or any other unforeseen circumstances " & included provisions for the shipment of delayed cargoes as soon as possible, subject to a right of refusal on the part of the purchasers. Each contract contained an arbn. clause in these terms : " Any dispute that may arise under this contract to be settled by arbn." Before all the bales had been shipped, the further export of jute from India to the Argentine was prohibited. A controversy having arisen between the parties as to whether, in the circumstances, the contracts had been rendered void & unenforceable *quoad* the shipment of the remainder of the bales :—*Held :* on a construction of the contracts, the controversy was a dispute arising under the contracts, & accordingly, fell to be determined by arbn.—SCOTT & SONS *v.* DEL SEL, [1923] S. C. (H. L.) 37.—**SCOT.**

s ii. —— *Contract cancelled.*]—If a contract is cancelled, an arbn. clause falls with such cancellation.—COX TOWING LINE *v.* BUNFIELD & CO. (1922), 68 D. L. R. 133.—**CAN.**

s iii. —— *Existence of dispute.*]—The right of one party to a contract to insist upon a term in it providing for reference to arbn. depends in the first place on the existence of a dispute.—STANDARD INSURANCE CO. *v.* SCANDRETT (1923), 23 S. R. N. S. W 254 ; 40 N. S. W. W. N. 22.—**AUS.**

s iv. —— ——.]—The existence of a dispute is an essential condition for the jurisdiction of arbitrators.—UTTAM CHAND SALIGRAM *v.* JEWA MAMOOJI (1919), I. L. R. 46 Calc. 534.—**IND.**

required the dispute to be referred to arbn. under condition 11. In an action on the policy :—*Held :* (1) upon the co. requiring arbn. condition 11 made the obtaining of an award a condition precedent to a right of action ; (2) the co. by relying on the terms of the policy which rendered it void in certain events did not thereby repudiate the policy as a binding contract between the parties, & were entitled to rely upon the arbn. clause as a defence to the action.—WOODALL *v.* PEARL ASSURANCE CO., [1919] 1 K. B. 593 ; 88 L. J. K. B. 706 ; 120 L. T. 556 ; 83 J. P. 125 ; 63 Sol. Jo. 352 ; 24 Com. Cas. 237, C. A.

Annotation :—As to (2) **Refd.** Macaura *v.* Northern Assce., [1925] A. C. 619.

Compare original volume, p. 356, No. 293.

153. *Add. Annotation :*—**Refd.** Lowther *v.* Clifford (1926), 95 L. J. K. B. 576.

155. *Add. Annotations :—As to* (1) **Refd.** Jones *v.* Oceanic Steam Navigation Co., [1924] 2 K. B. 730 ; N. V. Kwik Hoo Tong Handel Maatschappij *v.* Finlay, [1927] A. C. 604. *As to* (2) **Refd.** Sanderson *v.* Armour (1922), 91 L. J. P. C. 167.

156. *Add. Annotation :*—**Consd.** Board of Trade *v.* Cayzer, Irvine, [1927] A. C. 610.

164. *Add. Annotation :*—**Consd.** Pinnock *v.* Lewis & Peat, [1923] 1 K. B. 690.

164a. ——.]—By two contracts made in 1919, applt. bought from resps. a large quantity of "American Fresh Eggs." The contracts provided that in case of any dispute as to the quality or condition of the goods, the question should be referred to arbn., provided that, "such reference shall be claimed in writing within three days after the goods have been landed." It was also provided that the award in writing of any two arbitrators should be conclusive & binding on all parties, subject to the right of appeal. The goods arrived in England, & were not examined at the port of landing, but were sold by applt. to sub-purchasers. More than three days after the goods had been landed applt. wrote to resps. complaining that the goods were of inferior quality, & some time later he wrote a letter claiming a reference to arbn. Resps. did not then take the objection that the claim was out of time, but signed a submission to arbn. in respect of each contract. At the reference resps took the points that applt.'s claim was out of time, & that the goods should have been examined at the port of landing. The arbitrators awarded "that the buyer was out of time in examining & making claim on the goods, & also in claiming arbn., & that therefore his case fails." The buyer took no steps to set aside the awards, but nearly two years later brought an action claiming damages for breach of contract :—*Held :* the awards were a bar to the action.—AYSCOUGH *v.* SHEED THOMSON & CO. (1924), 93 L. J. K. B. 924 ; 131 L. T. 610 ; 40 T. L. R. 707 ; 30 Com. Cas. 23, H. L. ; *affg.* (1923), 92 L. J. K. B. 878, C. A.

Annotation :—**Distd.** Pinnock *v.* Lewis & Peat, [1923] 1 K. B. 690.

165a. **Arbitrator to be appointed within limited time.**]—A ship was chartered for a voyage from R. to H. with a full cargo of linseed. The charterparty provided for the reference of all disputes to the final arbitrament of two arbitrators, one to be appointed by each of the parties, with power to appoint an umpire, & the clause continued : "Any claim must be made in writing & claimants' arbitrator appointed within three months of final discharge, & where this provision is not complied with the claim shall be deemed to be waived & absolutely barred." After the arrival of the ship at H. the charterers brought an action against the shipowners in respect of damage alleged to have been occasioned to a part of the linseed during the voyage by reason of the unseaworthiness of the ship at the commencement of the voyage. The shipowners pleaded that the charterers failed to appoint their arbitrator within three months of the discharge of the ship & that by reason thereof the action was not maintainable, &, by order of the ct., the question whether the claim in the action was barred by the arbn. clause was tried as a preliminary question of law :—*Held :* (1) the arbn. clause was not open to objection on the ground that it ousted the jurisdiction of the ct. ; (2) inasmuch as the claim in the action was founded upon a breach of the implied condition of seaworthiness, there being in the charterparty no express provision relating to unseaworthiness, the shipowners were not entitled to the benefit of the term in the clause restricting the time within which the action could be brought, & consequently the claim was not barred by the arbn. clause.—ATLANTIC SHIPPING & TRADING CO. *v.* DREYFUS (L.) & CO., [1922] 2 A. C. 250 ; 91 L. J. K. B. 513 ; 127 L. T. 411 ; 38 T. L. R. 534 ; 66 Sol. Jo. 437 ; 15 Asp. M. L. C. 566 ; 27 Com. Cas. 311, H. L. ; *varying* S. C. *sub nom.* DREYFUS & CO. *v.* ATLANTIC SHIPPING & TRADING CO. (1921), 37 T. L. R. 417, C. A.

Annotations :—As to (1) **Distd. & Expld.** Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478. *As to* (2) **Distd.** Ford *v.* Compagnie Furness (France), [1922] 2 K. B. 797 ; Pinnock *v.* Lewis & Peat, [1923] 1 K. B. 690. **Refd.** Cosmopolitan Shipping Co. *v.* Hatton & Cookson, Ltd. (Liverpool) (1929), 143 L. T. 296.

165b. —.]—A charterparty contained a clause providing that all disputes arising out of the contract should be referred to arbn., the claimants' arbitrator to be appointed within a time therein limited, & if he was not so appointed the claim was to be deemed to be waived & absolutely barred. Loss to cargo was suffered owing to the ship's unseaworthiness. The cargo owners claimed damages & went to arbn., but did not appoint their arbitrator within the time limited. An

153 iv. —— *Lease in dispute.*]—A lease contained a clause referring to arbn. certain specific matters & "any other questions in reference to this lease which may arise between the parties." In arbn. proceedings the issue between the parties was not the validity of a notice to quit but the question whether the tenant was possessing under the lease or under a new bargain :—*Held :* as the lease itself was in dispute, the arbn. clause in the lease did not apply.—HOTH *v.* COWAN, [1926] S. C. 58.—SCOT.

sb. *Clause in broker's note—Rules applicable to members only.*]—Flour was sold by defts. to pltf. under contracts in broker's notes which contained a condition that the rules & regulations of the S. Assocn. should apply. The rules of the assocn. provided that every dispute or difference arising out of any contract or dealing should be referred to arbn. Pltf., who was not a member of the assocn., having sued defts. for damages for breach of contract :—*Held :* as the rules referring to arbn. were applicable only to disputes between members of the assocn., an application for a stay of proceedings must be dismissed.—LEVIN *v.* BERG, ETC., [1921] App. D. 78.—S. AF.

PART I. SECT. 6, SUB-SECT. 4.

b. *Revsd.*, [1909] W. N. 161.—SCOT.

award was made in their favour, the shipowners not appearing:—*Held:* although the loss was caused by unseaworthiness, &, consequently, the above clause could not have been set up by the shipowners, the cargo owners were entitled in virtue of the clause to go to arbn., but only in accordance with its terms, & as they had not complied with those terms the arbitrator had no jurisdiction to make the award.—FORD (H.) & Co. *v.* COMPAGNIE FURNESS (FRANCE), [1922] 2 K. B. 797; 92 L. J. K. B. 88; 128 L. T. 286; 16 Asp. M. L. C. 102, D. C.

165c. ——.]—Pltfs. bought from defts. a quantity of East African copra cake to be of fair average quality, sound delivered. The contract provided that "the goods are not warranted free from defect rendering same unmerchantable, which would not be apparent on reasonable examination"; that any disputes arising out of the contract should be settled by arbn.; & that notice of arbn. should be given & the arbitrator nominated in writing not later than fourteen days after the final discharge of the vessel. Pltfs. resold the copra cake to B. & Co., who resold it to dealers, & they in turn resold it to farmers, who used it for feeding cattle. The cattle fed on the cake became ill, & it was then found on analysis that the cake contained an admixture of castor beans in so large a proportion as to make it poisonous. Claims were then made by the various buyers against their sellers & by pltfs. against defts. as soon as the mischief was discovered, but this was after the expiration of fourteen days from the final discharge of the vessel. Pltfs. claimed arbn., but the arbitrator before whom the matter came held that he had no jurisdiction, as notice of arbn. was not given nor the arbitrator nominated in time. In an action by pltfs. claiming damages, it was found that it was within the contemplation of the parties that the copra cake would be used for cattle food & nothing else:—*Held:* the presence of the arbn. clause was not in itself a bar to the action, nor was the award, which dealt merely with the arbitrator's jurisdiction & not with the claim.—PINNOCK BROTHERS *v.* LEWIS & PEAT, LTD., [1923] 1 K. B. 690; 92 L. J. K. B. 695; 129 L. T. 320; 39 T. L. R. 212; 67 Sol. Jo. 501; 28 Com. Cas. 210.

Annotations:—**Distd.** Ayscough *v.* Shood Thomson (1924), 93 L. J. K. B. 924. **Refd.** Dobell (C. G.) & Co. *v.* Barber & Garratt (1930), 47 T. L. R. 66.

165d. ——.]—Pltfs. chartered their ship to defts. to carry grain, the charterparty providing that all disputes should be referred to arbn. & that claimant's arbitrator must be "appointed within three months of final discharge, & where this provision is not complied with the claim shall be deemed to be waived & absolutely barred." Before completion of discharge defts. made various payments to pltfs. on account of freight, & on final discharge pltfs. claimed that £568 was still owing for freight. Defts. admitted that £416 was still owing for freight, but they set up a counterclaim for £581 for short delivery & refused to pay the £416 until their counterclaim was met. Neither party referred the matter to arbn., & more than three months after final discharge pltfs. brought an action for £568 balance of freight & defts. counterclaimed £581 for short delivery:—*Held:* though pltfs. could not recover the £568, as the claim for it ought to have been taken to arbn., yet they could recover the £416 about which there had never been any dispute, but the counterclaim, as it was always in dispute, was barred by the arbn. clause.—BEDE STEAM SHIPPING CO., LTD. *v.* BUNGE Y BORN LIMITADA S.A. (1927), 43 T. L. R. 374.

167. *Add. Annotation*:—**Distd.** Crediton Gas Co. *v.* Crediton U. D. C., [1928] 1 Ch. 447.

168. *Add. Annotation*:—**Consd.** Metropolitan Tunnel & Public Works *v.* L. Elec. Ry., [1926] Ch. 371.

172. *Add. Annotation*:—**Consd.** Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497.

234. *Add. Citation*:—2 Hudson's B. C. 4th ed. 100. *Add. Annotations*:—**Consd.** *Re* Nott & Cardiff Corpn., [1918] 2 K. B. 146. **Refd.** Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497.

237a. **"If any dispute as to the agreement or any matter or thing therein or intention or construction thereof."**]—Where a dispute arose on a contract as to the meaning of a clause therein which dealt with tests that the purchaser was making, the purchaser contending that the tests were unsatisfactory, & the vendor that they signed the contract on the faith of an assurance by the purchaser that the tests were proving satisfactory, & the contract contained a clause that if any dispute should arise between the parties as to the agreement or any clause, matter or thing therein contained, or the intention or construction thereof, or in anywise relating thereto, the same should be referred to arbn.:—*Held:* such dispute came within the clause, & was not a dispute dehors the contract.—DE LA GARDE *v.* WORSNOP & Co., [1928] Ch. 17; 96 L. J. Ch. 446; 137 L. T. 475; 71 Sol. Jo. 604.

PART I. SECT. 6, SUB-SECT. 7.—A.

166 iv. ——.]—An arbitrator cannot, by an erroneous construction of the contract, give himself jurisdiction over matters not covered by it; he cannot go beyond the matters as to which the parties agreed to give him jurisdiction, nor can he deprive the ct. of the right & duty of determining the limits of the jurisdiction.—LAW *v.* CITY OF TORONTO (1920), 47 O. L. R. 251; 18 O. W. N. 58.—**CAN.**

PART I. SECT. 6, SUB-SECT. 7.—C.

8a. *Whether disputes within arbitration clause.*]—On an application for a stay of proceedings in an action on an insurance policy covering loss of profits suffered by reason of a fire which destroyed pltfs.' merchandise, on the ground that the instrument upon which the action was brought contained a stipulation that "if any difference arises as to the value of the property insured, the property saved, or the amount of the loss, such value & amount, & the proportion thereof, if any, to be paid by the insurer shall, whether the right to recover on the policy is disputed or not, & independently of all other questions, be submitted to arbn.," etc., an order was made staying proceedings in the action until completion of an arbn. pursuant to said stipulation:—*Held:* it was the intention of the parties to refer to arbn. not only the disputes between them, but also the question whether these disputes fell within the arbn. clause, & in the circumstances of this case, where no serious question of law arose, the issues ought to be decided by arbn.—FAMOUS CLOAK & SUIT CO. *v.* PHŒNIX ASSCE. CO. (1931), 44 B. C. R. 120.—**CAN.**

PART I. SECT. 6, SUB-SECT. 7.—D.

8a (p. 343) i. *"Any difference"—Partnership dispute—Claim for damages.*]—A clause in a deed of partnership provided that any difference between the partners in regard to any matter relating to the partnership affairs should be submitted to arbn. Pltf. sued deft. for damages suffered through the fraudulent acts of deft. in breach of his duty as a partner:—*Held:* such a claim fell within the terms of the arbn. clause.—WALTERS *v.* ALLISON (1922), 43 N. L. R. 238.—**S. AF.**

238a. "All loss."]—In an action in Manitoba against building contractors to recover sums improperly paid to them under a contract, & for damages, a judgment by consent was entered whereby it was provided (*inter alia*) that pltf. should recover. among other sums, "all loss to pltf. by reason of defective workmanship & materials," & that there should be set off against the sums recovered by pltf. the fair value of the work done & materials provided at fair contractor's prices. The judgment provided further that the sums to be debited & credited were to be determined by two appraisers, & that any matter upon which they differed was to be referred to a named umpire whose decision thereon was to be final; & that the Manitoba Arbn. Act should not apply. Defts moved to set aside or vary an award made:—*Held*: (1) under the words "all loss" there was jurisdiction to award to pltf. not only sums actually expended at the date of the award, but also a sum estimated as being necessary to make good the defects; (2) the award being within the jurisdiction conferred by the submission, & there being no error apparent on its face, it could not be questioned either on the facts or on the law.—A.-G. FOR MANITOBA *v.* KELLY, [1922] 1 A. C. 268; 91 L. J. P. C. 101; 126 L. T. 711; 38 T. L. R. 281, P. C.

Annotations:—*As to* (2) **Consd.** Kelantan Government *v.* Duff Development Co., [1923] A. C. 395. **Refd.** Hirji Mulji Cheong Yue S.S. Co., [1926] A. C. 497.

240. *Add. Annotation:*—**Refd.** *Re* Boks & Peters, Rushton, [1919] 1 K. B. 491.

254. *Add. Annotations:*—**Consd.** Board of Trade *v.* Cayzer, Irvine, [1927] A. C. 610. **Apprvd.** Ramdutt Ramkissen Das *v.* Sassoon (1929), 98 L. J. P. C. 58.

254a. —.]—Unless the submission otherwise provides, the Crown is entitled, in arbn. proceedings, to rely upon the defence of the above Act.—CAYZER, IRVINE & CO. *v.* BOARD OF TRADE (1925), 95 L. J. K. B. 134; 136 L. T. 7; 42 T. L. R. 163; 70 Sol. Jo. 347; *revsd.* on other grounds, *sub nom.* BOARD OF TRADE *v.* CAYZER, IRVINE & CO., [1927] A. C. 610, H. L.

Annotation:—**Refd.** Hyman, *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

254b. —.]—Although above Act does not in terms apply to arbns. it is an implied term of a contract which contains an arbn. clause that the arbitrator must decide the dispute according to the existing law of contract, & every defence open in a ct. of law can be equally proponed for the arbitrator's decision, & consequently in an arbn. above Act can be pleaded.—RAMDUTT RAMKISSEN DAS *v.* SASSOON (E. D.) & CO. (1929), 98 L. J. P. C. 58; 140 L. T. 542; 45 T. L. R. 205, P. C.

255. *Add. Annotation:*—**Consd.** Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478.

263. *Add. Annotations:*—**Consd.** Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478; Hallen *v.* Spaeth, [1923] A. C. 684. **Expld.** Caven *v.* Canadian Pacific Ry. (1925), 133 L. T. 774. **Refd.** Woodall *v.* Pearl Assce., [1919] 1 K. B. 593; Atlantic Shipping & Trading Co. *v.* Dreyfus, [1922] 2 A. C. 250; Board of Trade *v.* Cayzer, Irvine, [1927] A. C. 610; Gowar *v.* Hales (1927), 96 L. J. K. B. 1088; Wales *v.* Iron Trades Employers' Assocn. (1928), 21 B. W. C. C. 316; Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1.

265a. **Action on charterparty.**]—ATLANTIC SHIPPING & TRADING CO. *v.* DREYFUS (L.) & CO., No. 165a, *ante*.

269. *Add. Annotation:*—**Refd.** Board of Trade *v.* Cayzer, Irvine, [1927] A. C. 610.

273. *Add. Annotation:*—**Refd.** Kerr *v.* Marine Products (1928), 44 T. L. R. 292.

278. *Add. Annotation:*—**Refd.** Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478.

288. *Add. Annotation:*—**Refd.** Sanderson *v.* Armour (1922), 91 L. J. P. C. 167.

290. *Add. Annotations:*—**Apld.** Woodall *v.* Pearl Assce., [1919] 1 K. B. 593. **Consd.** Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478. **Apld.** Hallen *v.* Spaeth, [1923] A. C. 684. **Expld.** Caven *v.* Canadian Pacific Ry. (1925), 133 L. T. 774. **Apld.** Board of Trade *v.* Cayzer, Irvine, [1927] A. C. 610. **Refd.** Hill *v.* South Staffordshire Ry. (1865), 12 L. T. 63; Atlantic Shipping & Trading Co. *v.* Dreyfus, [1922] 2 A. C. 250; Gowar *v.* Hales (1927), 96 L. J. K. B. 1088; Wales *v.* Iron Trades Employers' Assocn. (1928), 21 B. W. C. C. 316; Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1.

293. *Add. Annotation:*—**Refd.** Board of Trade *v.* Cayzer, Irvine, [1927] A. C. 610.

299. *Add. Annotation:*—**Refd.** Board of Trade *v.* Cayzer, Irvine, [1927] A. C. 610.

300. *Add. Annotation:*—**Consd.** Board of Trade *v.* Cayzer, Irvine, [1927] A. C. 610.

301. *Add. Annotation:*—**Consd.** Board of Trade *v.* Cayzer, Irvine, [1927] A. C. 610.

PART I. SECT. 7.

ri. —.]—GROTHE *v.* MONTREAL CORPN., [1924] 4 D. L. R. 401.—**CAN.**

sc. *Waiver of right to immediate appraisal—Repossessim by vendor of farm implement—Farm Implement Act, R.S.S.* 1920 (c. 128), *s.* 24.]—*Re* GRAY TRACTOR CO. OF CANADA & VAN TROYEN, [1925] 1 D. L. R. 718; [1925] 1 W. W. R. 513; 19 Sask. L. R. 202.—**CAN.**

PART I. SECT. 8.

263 vii. —— ——.]—An agreement to refer a dispute to arbn. does not oust the jurisdiction of the ct.—BHOWANIDAS RAMGOBIND *v.* PANNACHAND LUCHMIPAT (1924), I. L. R. 52 Calc. 453.—**IND.**

288 i. *Statutory reference—Jurisdiction ousted.*]—When the rules of an assocn. registered under Primary Producers' Co-operative Assocns. Acts, 1923 to 1926, provide for the settlement of disputes between the association & any of its members by arbitration, a magistrate's ct. has no jurisdiction to entertain an action by a member against the association for moneys claimed to be due for milk supplied, & the association cannot waive its right to this statutory remedy.—KUHL *v.* THE MACLAGAN VALLEY CO-OPERATIVE DAIRY ASSOCN., LTD. (1929), S. R. (Q.) 49; 23 Q. J. P. 17.—**AUS.**

PART I. SECT. 9, SUB-SECT. 1.

290 v. —— *Reference of disputed claim under policy.*]—Conditions in an insurance policy requiring the reference of any disputed claim to arbn. & the making of an award a condition precedent to any right of action on the policy, & requiring the action to be brought within three months after such award, are valid.—WEBB *v.* QUEENSLAND INSURANCE CO., LTD., [1920] N. Z. L. R. 118.—**N.Z.**

290 vi. —— ——.]—On an application by way of motion by pltf. co. to restrain deft. from proceeding with his action, which by agreement was dealt with as if made by originating summons for the construction of the policy, removed into the Ct. of Appeal for argument:—*Held*: pltf. co. was entitled to a declaration that it was a condition precedent to the liability of the co. to pay, & of deft. to recover any sum under the policy that the amount payable by the co. in respect to the accident should be determined by arbn.—UNITED INSURANCE CO. *v.* ARTHUR, [1929] N. Z. L. R. 33.—**N.Z.**

PART I. SECT. 9, SUB-SECT. 2.

295 v. ——.]—BRYLINSKI *v.* INKOL (1924), 55 O. L. R. 369.—**CAN.**

302. *Add. Annotations :—As to* (1) **Folld.** Pailin *v.* Northern Employers Mutual Indemnity Co., [1925] 2 K. B. 73. **Apld.** Wales *v.* Iron Trades Employers' Assocn. (1928), 21 B. W. C. C. 316.

302a. Reference of disputes under charterparty—No action maintainable till after arbitration.]—WILLIAMS & MORDEY *v.* MULLER (W. H.) & Co. (LONDON), LTD. (1924), 18 Lloyd, L. R. 50.

303. *Add. Annotation :—***Refd.** Charles *v.* Cardiff Collieries (1928), 44 T. L. R. 448.

305. *Add. Annotation :—As to* (2) **Consd.** *Re* Nott & Cardiff Corpn., [1918] 2 K. B. 146.

305a. Provision for fixing valuation of buildings by reference to arbitration.]—Applt. let an estate to resp. for a term of ten years, & covenanted that at the end of the term he would purchase "by valuation buildings erected by the lessee," with a reference to arbn. if the parties were unable to agree the valuation. Resp. covenanted not to transfer the demised premises without the written consent of applt.; but, in breach of that covenant, he sub-leased for the entire term, there being similar covenants in the sub-lease. At the end of the term applt. having resumed possession, resp. sued him to recover the value of buildings erected by the sub-lessee. There had been no agreement as to the amount of the valuation, & no arbn. :—*Held :* the action failed, since upon the true construction of applt.'s covenant resp. could not recover in the absence of an agreement, or an award, as to the amount of the valuation.—HALLEN *v.* SPAETH, [1923] A. C. 684; 92 L. J. P. C. 181; 129 L. T. 803, P. C.

306. *Add. Annotations :—***Consd.** Ramdutt Ramkissen Das *v.* Sassoon (1929), 98 L. J. P. C. 58. **Refd.** Cayzer, Irvine *v.* Board of Trade (1926), 95 L. J. K. B. 1054.

310a. Jurisdiction of arbitrator—Dismissal of action on ground that award is condition precedent.]—When an action on a contract has been dismissed upon a contention by deft. that an award is a condition precedent to the right to sue, & the claim is then submitted to arbn., deft. is precluded from contending that the award is bad in that the arbitrators had not jurisdiction to construe the contract, but only to determine the sum, if any, due.—SOUTH BRITISH INSURANCE CO. *v.* GAUCI BROTHERS & Co., [1928] A. C. 352; 97 L. J. P. C. 101; 139 L. T. 362, P. C.

316a. Petition of right.]—(1) Where a petition of right, founded on a contract with the Crown which contains a written agreement to submit differences to arbn., has been filed in the High Ct. of Justice, proceedings in the petition may in a proper case be stayed under the Act of 1889, s. 4. (2) The granting of the King's fiat is not a step in the proceedings within that sect.

Held : (3) as the matters in dispute included an important constitutional question the proceedings in the petition ought not to be stayed.—ANGLO-NEWFOUNDLAND DEVELOPMENT CO. *v.* R., [1920] 2 K. B. 214; 89 L. J. K. B. 570; 122 L. T. 731; 84 J. P. 121; 14 Asp. M. L. C. 584, C. A.

Annotation :—As to (1) **Refd.** Ruffy-Arnell, etc. Co. *v.* R., [1922] 1 K. B. 599.

324. To the existing paragraph, after the last words "being known" add as follows :—; (4) although the ct. had jurisdiction to appoint a receiver pending a reference to arbn., it was not proper to do so unless a special case was made, as the course of liquidation before the tribunal chosen by the parties themselves would thereby be interfered with.

336a. Assignees of contract.]—ASPELL *v.* SEYMOUR, [1929] W. N. 152, C. A.

338. *Add. Annotation :—***Consd.** Metropolitan Tunnel & Public Works *v.* L. Elec. Ry., [1926] Ch. 371.

339. *Add. Annotation :—***Folld.** Metropolitan Tunnel & Public Works *v.* L. Elec. Ry., [1926] Ch. 371.

343. *Add. Annotation :—***Refd.** Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497.

308 v. For "4 I. C. L. R. 17" read "I. R. 4 C. L. 17."

sd. *Reference of disputes at port of loading—No action "elsewhere" till after arbitration.*]—*Held :* the clause prohibited the bringing of an action on such a dispute outside the province in which the port of loading was situated.—COX TOWING LINE *v.* BUNFIELD & Co. (1922), 68 D. L. R. 133.—**CAN.**

se. *Provision for fixing price of goods.*]—Pltf. agreed to sell, & deft. agreed to purchase, all fish caught by pltf. The price was to be "hereafter agreed upon, failing which the price shall be arrived at by the decision of three arbitrators." Provision was made for appointment of the arbitrators who were to "determine the price for the winter fish & the price so determined shall be paid" by deft. to pltf. :—*Held :* the fixing of the price by agreement or arbn. was a condition precedent to the right of pltf. to sue to recover the price.—VIDAL *v.* ROBINSON (WILLIAM) Co., LTD.; STEVENS *v.* ROBINSON (WILLIAM) Co., LTD.; SIGURDSON *v.* ROBINSON (WILLIAM) Co., LTD., [1925] 1 D. L. R. 1001.—**CAN.**

PART I. SECT. 10, SUB-SECT. 3.—C.

c i. ——.]—A clause in a policy of fire insurance whereby the parties agreed that, if any difference should arise as to the amount of loss, it should be submitted to arbn., but which did not provide that the determination of the insurer's liability should be postponed until the loss had been ascertained :—*Held :* not to be a reason for staying an action by the insured on the policy.—GRANCHUK *v.* SPRINGFIELD FIRE & MARINE INSURANCE CO., [1925] 1 D. L. R. 857; [1925] 1 W. W. R. 272; 35 Man. L. R. 139.—**CAN.**

sf. *Arbitration Act, R. S. M.*, 1913 (*c.* 9)—*Agreement to refer to foreign court.*]—Sect. 6 of the above Act enables deft. to take advantage of an agreement to refer disputes to arbn. by an application to stay proceedings in the action. A clause in an agreement providing for the reference of any disputes which may arise to the decision of a foreign ct. is a submission within s. 6.—BRAND *v.* NATIONAL LIFE ASSURANCE CO. OF CANADA, [1918] 3 W. W. R. 858.—**CAN.**

sg. *Arbitration abortive.*]—Where an arbn. proves abortive & an action is brought with respect to the matter arbitrated, the objection that the parties should be compelled to resort to arbn. should be taken at the commencement of the action.—BERGE *v.* GREW (Alta.), [1927] 3 W. W. R. 811.—**CAN.**

sh. *Alberta Co-operative Associations Act—Dispute arising out of marketing agreement.*]—KEAY *v.* ALBERTA CO-OPERATIVE WHEAT PRODUCERS, LTD. & ALBERTA POOL ELEVATORS, LTD., [1929] 3 D. L. R. 858; S. C. R. 616; *affg.* with variation, [1929] 1 D. L. R. 949; 1 W. W. R. 413; *revg.*, [1929] 1 D. L. R. 515; 1 W. W. R. 96.—**CAN.**

PART I. SECT. 10, SUB-SECT. 5.

339 iii. ——.]—When the ct. has been apprised that a suit has been instituted in contravention of an arbn. agreement, the ct. has a discretion to stay the suit. The burden lies on pltf. to show that some sufficient reason exists why the matter should not be referred to arbn.—DINABANDHU JANA *v.* DURGAPRASAD JANA (1919), I. L. R. 46 Calc. 1041.—**IND.**

m (p. 366) i. —— *Arbitrator unable to enforce discovery—& attendance of witnesses.*]—A mere possibility that the arbitrators may not be able to enforce discovery & the attendance of witnesses is no ground for refusing the order of stay.—RANEE GUNGE COAL ASSOCN., LTD. *v.* TATA IRON & STEEL CO., LTD. (1928), I. L. R. 53 Bom. 271.—**IND.**

349 i. *Power to appoint receiver.*]—Where on account of an arbn. clause the ct. stays proceedings pending before itself, it retains jurisdiction to deal with a prayer for an injunction or for a receiver.—SURENDRA KUMAR ROY CHOWDHURY *v.* SUSHIL KUMAR ROY CHOWDHURY (1927), I. L. R. 55 Calc. 249.—**IND.**

350a. -.]—LAW *v.* GARRETT, No. 324,

355. *Add. Annotations:*—**Refd.** Metropolitan Tunnel & Public Works *v.* L. Elec. Ry., [1926] Ch. 371. **Mentd.** R. *v.* Leman Street Police Station Inspector, *Ex p.* Venicoff, [1920] 3 K. B. 72.

362. *Add. Annotation:*—**Refd.** Maclean *v.* Workers' Union, [1929] 1 Ch. 602.

367. *Add. Annotation:*—**Consd.** Metropolitan Tunnel & Public Works *v.* L. Elec. Ry., [1926] Ch. 371.

372. *Add. Annotation:*—*As to* (1) **Apld.** Metropolitan Tunnel & Public Works *v.* L. Elec. Ry., [1926] Ch. 371.

372a. ——.]—Pltfs. agreed with defts. to execute railway works at prices contained in schedules amounting to £359,383 0*s.* 10*d.*, & with the addition thereto of 10 per cent. for "general contingencies," amounting in the aggregate to £395,321 6*s.* 11*d.*, & there was incorporated in the contract a letter from defts. accepting pltfs.' tender for that sum. The contract provided for the payment by monthly instalments on the certificate of defts.' engineer at the rate of 90 per cent. of the value of the work actually executed, the remaining 10 per cent. to be treated as a retention fund, & further provided that any question arising between the parties in connection with the contract, or as to the construction or meaning of the contract, should be referred to the decision of an engineer to be agreed upon, or, failing agreement, to be nominated by the President for the time being of the Institute of Civil Engineers, & such submission should be deemed a submission to arbn. within the Act of 1889. An originating summons having been taken out by pltfs. for the determination of the question whether upon the true construction of the contract, for the purpose of the monthly payments to be made to pltfs. thereunder, the value of the work executed was to be ascertained by adding to the prices contained in the schedules a proportionate amount of the sum therein provided for "general contingencies," defts. moved for a stay of proceedings under the summons:—*Held:* there was a clear & definite contract between the parties that the matter in dispute should be referred to an arbitrator as being a person who possessed the necessary technical knowledge for dealing with the subject-matter of the contract; if the ct. allowed the action to proceed evidence would be necessary in order to put the ct. in a position to determine the technical meaning of the expression "general contingencies" & a number of other expressions used in the contract; the meaning of those expressions in an engineering contract would be perfectly familiar & would present no difficulty to the engineer to whom the parties had agreed to refer the decision of their disputes; the case was not one which involved a simple question of law, & pltfs. had not discharged the *onus* of showing that the dispute was one which ought not to be referred to arbn., & the arbn. ought to proceed.—METROPOLITAN TUNNEL & PUBLIC WORKS *v.* LONDON ELECTRIC RY. CO., [1926] Ch. 371; 95 L. J. Ch. 246; 135 L. T. 35, C. A.

379a. Matters in dispute including important constitutional question.] — ANGLO-NEWFOUNDLAND DEVELOPMENT CO. *v.* R., No. 316a, *ante*.

380. *Add. Annotation:*—**Consd.** Smith *v.* Martin, [1925] 1 K. B. 745.

383. *Add. Annotation:*—*As to* (1) **Refd.** Metropolitan Tunnel & Public Works *v.* L. Elec. Ry., [1926] Ch. 371.

PART I. SECT. 10, SUB-SECT. 6.—C.

361 i. *Surveyor of one party.*]—A contract provided that every dispute which might arise between the parties touching the construction of the contract, or as to the rights or liabilities of either party thereunder, should be referred to defts.' surveyor, whose decision should be final:—*Held:* if questions would come before him for decision in which he would be a necessary witness defts.' surveyor would be disqualified from acting as arbitrator, but as, in the circumstances, he would not be a necessary witness, he was not disqualified, although he had already expressed an opinion in favour of defts. —HOGG *v.* BELFAST CORPN., [1919] 2 I. R. 305.—IR.

363 ii. ——.]—When a personal interest which may conflict with duty exists, an arbitrator is disqualified; & the inference necessary to disqualify is more easily drawn by reason of the relationship between the arbitrator & one of the contracting parties.—LAW *v.* CITY OF TORONTO (1920), 47 O. L. R. 251; 18 O. W. N. 58.—CAN.

PART I. SECT. 10, SUB-SECT. 6.—D.

369 i. *Only question one of law.*]—*Held:* the question should be determined in the course of the action itself. —GRAHAM *v.* PROVIDENT LIFE ASSURANCE CO., [1922] N. Z. L. R. 718.—N.Z.

373 i. *Questions of law inter alia.*]—An agreement for the supply of electric energy by pltf. co. to deft. co. provided that the adjustment of all disputes should be submitted to three arbitrators. Disputes having arisen, there was an arbitration & an award. Further disputes subsequently arising, this action was brought to recover a sum of money alleged to be due under the agreement; & deft. co. moved under Arbn. Act, 1927 (c. 97), s. 7, to stay proceedings:—*Held:* as the questions which had to be determined were mixed questions of law & fact, the ct.'s discretion should be exercised by refusing the motion & allowing the action to proceed.—M. J. O'BRIEN, LTD. *v.* SEAMAN KENI CO., [1928] 3 D. L. R. 43; 62 O. L. R. 160.—CAN.

373 ii. ——.]—Arbitrators are competent to determine points of law as well as questions of the construction of an agreement. It is erroneous to apply English decisions subsequent to the English Arbn. Act of 1889, without qualification, to cases of stay under the Indian Arbn. Act, 1899. The principles of decisions in England which, since the English Arbn. Act of 1889, make the cts. there reluctant to stay the suit where the main point in dispute is a question of law, because such a question must ultimately return by way of a case stated to the ct. for decision, should not be applied for refusing a stay under Indian Arbn. Act, 1899, s. 19.—RANEE GUNGE COAL ASSOCN., LTD. *v.* TATA IRON & STEEL CO., LTD. (1928), I. L. R. 53 Bom. 271.—IND.

373 iii. ——.]—DESLAURIERS *v.* HIMMELMAN SHIPPING CO. (N. S.), [1929] 2 D. L. R. 360.—CAN.

374 iii. ——.]—An important question of law being involved, the ct. in the exercise of its discretion, refused to stay the action.—RICHARDSON *v.* ARMY, NAVY & GENERAL ASSURANCE ASSOCN., LTD., [1924] 2 I. R. 96.—IR.

374 iv. ——.]—ANGLO-PERSIAN OIL CO., LTD. (MADRAS) *v.* PANCHAPAKESA AIYAR (1923), I. L. R. 47 Mad. 164.—IND.

sk. *Fundamental questions of law.*]—On motion by defts. to stay the proceedings, & to refer the matters in dispute to defts.' surveyor:—*Held:* fundamental questions of law were involved which should be tried in an action. Motion refused.—HOGG *v.* BELFAST CORPN., [1919] 2 I. R. 305.—IR.

PART I. SECT. 10, SUB-SECT. 6.—E.

376 vi. ——.]—In an action for specific performance of a contract, deft. applied for stay of proceedings under an arbn. clause:—*Held:* the dispute going to the making of the contract was not within the arbn. clause, & stay refused. —MCINTOSH *v.* LAYFIELD, [1919] 1 W. W. R. 590.—CAN.

376 vii. ——.]—On a motion by defts. to stay proceedings & to refer the matters in dispute to arbn.:—*Held:* the matters in dispute were outside the arbn. clause, & motion refused.—HOGG *v.* BELFAST CORPN., [1919] 2 I. R. 305.—IR.

383 i a. ——.]—The cts. should be reluctant to permit an appeal to them by one of the parties to an agreement to refer questions that may arise between them to a domestic forum rather than the ordinary cts., when the agreement is couched in wide terms.—STOKES-STEPHENS OIL CO. *v.* MCNAUGHT, [1918] 2 W. W. R. 124.—CAN.

383 i b. ——.]—JOHNSON *v.* HERRON CARTAGE CO., [1931] 2 D. L. R. 900.—CAN.

391. *Add. Annotation :*—**Refd.** Metropolitan Tunnel & Public Works *v.* L. Elec. Ry., [1926] Ch. 371.

400. *Add. Annotation :*—**Refd.** Metropolitan Tunnel & Public Works *v.* L. Elec. Ry., [1926] Ch. 371.

402a. Summons for discovery.]—A party to a written contract containing an agreement to refer disputes to arbn. was sued for breach of the contract. He was unaware that the contract contained an agreement to refer. Pltfs. in the action took out a summons for discovery. Deft. asked for discovery also, & an order for mutual discovery was made. He then became aware of the agreement to refer & applied for a stay of proceedings in the action :—*Held :* he had taken a step in the proceedings within the Act of 1889, s. 4, & therefore was not entitled to a stay.—PARKER, GAINES & Co. *v.* TURPIN, [1918] 1 K. B. 358 ; 87 L. J. K. B. 357 ; 118 L. T. 346 ; 62 Sol. Jo. 331, D. C.

408a. Granting of flat—Petition of right.]—ANGLO-NEWFOUNDLAND DEVELOPMENT Co. *v.* R., No. 316a, *ante*.

424. *Add. Annotation :*—**Refd.** Maclean *v.* Workers' Union, [1929] 1 Ch. 602.

472. *Add. Annotation :*—**Consd.** Simbro Trading Co. *v.* Posograph (Parent) Corpn., [1929] 2 K. B. 266.

498. *Add. Annotation :*—**Refd.** Simbro Trading Co. *v.* Posograph (Parent) Corpn., [1929] 2 K. B. 266.

503. *Add. Annotation :*—**Refd.** *Re* Cogstad & Newsum, [1921] 1 K. B. 87.

523. *Add. Annotation :*—**Apprvd.** Simbro Trading Co. *v.* Posograph (Parent) Corpn., [1929] 2 K. B. 266.

523a. Appeal from refusal to revoke.] — An appeal from a judge at chambers refusing to revoke a submission to arbn. is in a matter of practice & procedure & therefore lies to the Ct. of Appeal & not to a Div. Ct.—SIMBRO TRADING Co. *v.* POSOGRAPH (PARENT) CORPN., [1929] 2 K. B. 266 ; 98 L. J. K. B. 631 ; 141 L. T. 395 ; 73 Sol. Jo. 384, C. A.

548. *Add. Annotation :* — **Refd.** Woodrow *v.* Trawlers (White Sea & Grimsby), Ltd., [1930] 1 K. B. 176.

565. After this case, following "*D. By Lunacy.*—*See* case *infra*," add as follows :—

E. Other Cases.

565a. Frustration of adventure—Charterparty containing arbitration clause.]—Resps. agreed to place their steamship at the disposal of applts. on Mar. 1, 1917, & applts. agreed to employ her on specified terms for ten months from the date when she was delivered to them. The charterparty contained a clause by which all disputes arising out of the contract were submitted to arbn. The ship was requisitioned by the Govt. before Mar. 1, 1917, & was not released until Feb. 1919. Applts. then refused to take delivery of her. An arbitrator awarded resps. damages for breach of contract, & they brought an action upon the award :—*Held :* there had been in 1917 a frustration of the charterparty which forthwith brought to an end the whole contract, including the submission to arbn., & the contract being executory the arbitrator had not jurisdiction.—HIRJI MULJI *v.* CHEONG YUE S.S. Co., [1926] A. C. 497 ; 95 L. J. P. C. 121 ; 134 L. T. 737 ; 42 T. L. R. 359 ; 31 Com. Cas. 199 ; 17 Asp. M. L. C. 8, P. C.

Annotation :—**Distd.** De la Garde *v.* Worsnop (1927), 96 L. J. Ch. 416.

Part II.—The Arbitrators and Umpire.

B. Under Arbitration Act, 1889 (*c.* 49), *s.* 5.

626a. Who may apply—Only party to submission.] —A deed of partnership provided that each original partner could, by will or codicil, nominate a qualified person as a new general partner ; that the admission to the partnership was to be subject to the consent, not to

PART I. SECT. 10, SUB-SECT. 7.

si. *After appearance.*]—An application must be made after appearance, & where appearance is not requisite the application may be made at any time before taking any other step in the proceedings.—HARRISON, ETC. *v.* CRESSFIN, [1921] V. L. R. 643.—**AUS.**

si. ——.]—The application for a stay is too late if made after delivery of the defence.—BRAND *v.* NATIONAL LIFE ASSURANCE Co. OF CANADA, [1918] 3 W. W. R. 858.—**CAN.**

ti. ——.]—An application for stay of proceedings before deft. has filed his written statement or taken any other step in the suit does not constitute taking a step in the proceedings within Arbn. Act, s. 19, so as to operate as a bar.—JOYLALL & Co. *v.* GOPIRAM BHOTICA (1920), I. L. R. 47 Calc. 611.—**IND.**

396 i. *Security for costs.*]—Defts. were held to be precluded from moving for an order staying proceedings in an action, by having previously issued & served an order for security for costs.—HEISTEIN & SONS *v.* POLSON IRON WORKS, LTD., [1920] 46 O. L. R. 285.—**CAN.**

398 i. *Summons for directions.*]—If a party on a summons for directions takes objection, this is a "step in the action" & prevents him applying for a stay of the action, although he may say at the time he intends to apply for a stay.—BUCKLEY *v.* QUEEN INSURANCE Co., [1923] 3 D. L. R. 165.—**CAN.**

sm. *Application for adjournment.*]—*Held :* the mere application for an adjournment of the summons was not a "step in the proceedings" sufficient in itself to disentitle the lessors to apply to have the matters in dispute referred to arbn.—O'SHAUGHNESSY *v.* QUICK SERVICE STATIONS, LTD., [1928] V. L. R. 405 ; 49 A. L. T. 279.—**AUS.**

PART I. SECT. 11.

417 iii. —— ——.]—The ct. has no jurisdiction to restrain a deft. from beginning arbn. proceedings outside the agreement to refer, however futile & annoying they may be.—RAMDAS KHATAN & Co. *v.* ATLAS MILLS Co. (1930), I. L. R. 55 Bom. 659.—**IND.**

424 viii. For "BELLOR YOUNG OR FARRELL *v.* ARNOTT" read "BELL OR YOUNG OR FARRELL *v.* ARNOTT."

PART I. SECT. 12, SUB-SECT. 1.

429 ii. For "6 I. C. L. R. 504," read "I. R. 6 C. L. 504."

PART I. SECT. 12, SUB-SECT. 2.

441 i. *Powers & duty of court.*]—An arbn. as to the value of property became abortive because of the failure of the persons appointed to act as arbitrators to agree :—*Held :* it was the duty of the ct. in working out a contract which provided for such arbn. to receive evidence of such value & to decide the question.—CALGARY CITY *v.* BLOW, [1925] 3 D. L. R. 1165 ; 1925] 3 W. W. R. 225.—**CAN.**

sn. *Award set aside—Agreement to refer not exhausted.*]—An arbn., ending in an award which is set aside as being invalid, is an abortive arbn., & the agreement to refer is not exhausted thereby.—RIKHAB KUMAR *v.* TRIVEDI & Co. (1929), I. L. R. 51 All. 874.—**IND.**

PART I. SECT. 13, SUB-SECT. 1.—B.

494 ii. —— *Submission by Crown in right of Dominion.*]—Ontario Arbn. Act, s. 5, making a submission to arbn. irrevocable except by leave of the ct., does not apply to a submission by the Crown in right of the Dominion.—GAUTHIER *v.* R. (1916), 56 S. C. R. 176 ; 40 D. L. R. 353.—**CAN.**

PART II. SECT. 1, SUB-SECT. 1.

579 x a. —— ——.]—FINO *v.* SOUTH AFRICAN RAILWAYS & HARBOURS (1927), 48 N. L. R. 369.—**S. AF.**

579 xii a.—— ——.]—SWANSON *v.* BOARD OF LAND & WORKS, [1928] V. L. R. 283 ; 49 A. L. T. 217 ; [1928] Argus L. R. 186.—**AUS.**

be unreasonably withheld, of the general partners; & that a general partner or the qualified nominee, if of opinion that the consent to admission had been unreasonably withheld, could require the matter to be referred to arbn. An original partner nominated by will F., a qualified person, as a new general partner. After the death of the nominator the general partners refused to admit F. into the partnership. F. made an application under Arbn. Act, 1889, s. 5, asking that some fit & proper person might be appointed to act as arbitrator:—*Held:* only a party to the submission could make an application under sect. 5, & F. was not such a party.—*Re* FRANKLIN & SWATHLING'S ARBITRATION, [1929] 1 Ch. 238; 98 L. J. Ch. 101; 140 L. T. 403.

627. After this case insert, "*See, now,* Administration of Justice Act, 1920 (c. 81), s. 16."

629. *Add. Annotation:—As to* (3) **Distd.** *Re* Bjornstad & Ouse Shipping Co., [1924] 2 K. B. 673.

629a. **Discretion of court to refuse to appoint except upon terms.**]—On an application under the Act of 1889, s. 5, to appoint an arbitrator the ct. has a discretion & may in a proper case refuse to make an appointment except upon terms.

A contract between British shipbuilders & foreign shipowners for the building & purchase of certain ships contained a clause referring disputes & differences to the decision of a single arbitrator in accordance with the Arbn. Act. Disputes having arisen the foreign firm duly gave notice to the British shipbuilders to appoint an arbitrator, &, on their refusal to do so, applied to the ct. under sect. 5 of the Act to appoint an arbitrator:—*Held:* in the case of an application for arbn. by a foreigner residing out of the jurisdiction the ct. had an absolute discretion in assenting to or refusing the application, & in the former case the ct. could attach any reasonable condition, such as making an order for security for the costs of the proceedings, to the granting of the application.—*Re* BJORNSTAD & OUSE SHIPPING CO., [1924] 2 K. B. 673; *sub nom.* BJORNSTAD *v.* OUSE SHIPPING CO., 93 L. J. K. B. 977; 131 L. T. 663; 40 T. L. R. 636; 68 Sol. Jo. 754; 30 Com. Cas. 14, C. A.

630. *Add. Annotations:—As to* (1) **Folld.** Richardsons & Bradley *v.* Bernhard, [1925] 2 K. B. 121. **Expld.** Simbro Trading Co. *v.* Posograph (Parent) Corpn., [1929] 2 K. B. 266.

630a. —— —— ——.]—A contract for the sale of goods was entered into between B., the seller, & R., who, so far as appeared from the contract, were the buyers. The contract contained an arbn. clause. The goods delivered in pursuance of the contract were despatched to a foreign firm, who complained of their quality. Thereupon the foreign firm & R., who said they had merely acted as agents for that firm, claimed to have the dispute as to the quality of the goods submitted to arbn. B., while willing to go to arbn. as between himself & R., refused to assent to an arbn. to which the foreign firm were parties, maintaining that he had sold to R. as principals. R. & the foreign firm then took out a summons for the appointment of an arbitrator pursuant to the Act of 1889, s. 5:—*Held:* it being in dispute whether there was a submission between B. on the one hand & R. & the foreign firm on the other, there was no "matter" pending in the High Ct. as between those parties; therefore an appeal from an order for the appointment of an arbitrator was not in a matter of practice & procedure within R. S. C. Ord. 54, r. 23, &, consequently, it lay not to the Ct. of Appeal, but to the Div. Ct.—RICHARDSONS & BRADLEY & CO. *v.* BERNHARD, [1925] 2 K. B. 121; 94 L. J. K. B. 691; 133 L. T. 234, D. C.

696. *Add. Annotation:*—**Refd.** Paterson *v.* Ardrossan Harbour Co. (1926), 19 B. W. C. C. 621.

704. *Add. Annotation:*—**Refd.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

579 xxvii. ——.]—SIMS *v.* SELLER (P. E. I.), [1927] 2 D. L. R. 51.—CAN.

PART II. SECT. 1, SUB-SECT. 2.—A.

n. Add as follows:—*Revsd. sub nom.* INVERNESS RY. & COAL CO. *v.* MCISAAC (1905), 37 S. C. R. 134.—CAN.

o i. —— *Objection to—Whether maintainable.*]—Where an agreement with an incorporated club provides that it shall be compensated for damage from the acts which the agreement authorises the other party to perform, it is not open to such party to object that notice of the appointment, in pursuance of the agreement, of the club's arbitrator is not properly signed.—*Re* WINNIPEG GOLF CLUB *v.* HUTCHINGS (Man.), [1926] 4 D. L. R. 1188; [1926] 3 W. W. R. 443.—CAN.

PART II. SECT. 1, SUB-SECT. 2.—B.

y ii. —— ——.]—A motion to appoint an arbitrator under s. 8 of the above Act on the refusal of the municipality to appoint its arbitrator, refused on the ground of lack of jurisdiction.—GOLD *v.* SOUTH VANCOUVER, [1918] 3 W. W. R. 585.—CAN.

See, also, Vol. II., p. 409, case n.

PART II. SECT. 1, SUB-SECT. 4.

618 i. *Time for appointment.*]—SYNOD OF HURON *v.* FERGUSON (1924), 56 O. L. R. 161.—CAN.

an. *Three names suggested in notice to arbitrate — Effect.*]—BEGLEY *v.* IRVINE, [1930] 3 D. L. R. 672.—CAN.

PART II. SECT. 1, SUB-SECT. 5.

so. *Original nominee incapable of acting.*]—A party to an arbn. has power to appoint another arbitrator in place of a first who has rendered himself incapable of acting.—*Re* WEILER BROTHERS & CITY OF VICTORIA CORPN. (1917), 24 B. C. R. 148.—CAN.

PART II. SECT. 1, SUB-SECT. 6.—C.

d (p. 408) i. —— *Vancouver Incorporation Act.*]—SPENCER *v.* CITY OF VANCOUVER (1922), 68 D. L. R. 747; 30 B. C. R. 382; [1922] 1 W. W. R. 779.—CAN.

d (p. 408) ii. —— —— *Costs of application.*]—A Supreme Ct. judge in appointing an arbitrator is acting as *persona designata,* & has no jurisdiction under s. 133 (9) of the above Act to award costs.—MATTE *v.* VANCOUVER (CITY), [1917] 2 W. W. R. 53.—CAN.

n i. —— ——.]—BULGER *v.* HOME INSURANCE CO., [1927] 2 D. L. R. 585; [1927] 2 W. W. R. 456; 38 B. C. R. 270; *revsd.* [1929] 1 D. L. R. 47; [1928] S. C. R. 436.—CAN.

o i. —— *Party declining to appoint—Ottoman Order in Council,* 1910, *arts.* 90, 99, 129.]—SOUTH BRITISH INSURANCE CO., LTD. *v.* GAUCI BROTHERS & CO., [1928] A. C. 352; 97 L. J. P. C. 101; 139 L. T. 362, P. C.—EGYPT.

sp. *Arbitrator incapable of acting—Removal of residence to United States of America—Arbitration Act,* 1909.]—Where an arbitrator had removed his residence to Buffalo, N.Y., & was not expected to return:—*Held:* the appointment of a new arbitrator was justified as the first was "incapable of acting" within s. 7 of the above Act.—*Re* MCNAUGHT & STOKES-STEPHENS OIL CO. (No. 2), [1918] 3 W. W. R. 337; 43 D. L. R. 7.—CAN.

sq. *Appointment on dissolution of company—Failure of company to appoint.*]—*Re* MERSEY HYDRAULIC CO. (N. S.), [1929] 2 D. L. R. 799.—CAN.

PART II. SECT. 5, SUB-SECT. 1.

sr. *Arbitrator a barrister.*]—SCHOOL DISTRICT ST. BONIFACE *v.* MACDONALD, [1927] 2. D. L. R. 735.—CAN.

PART II. SECT. 5, SUB-SECT. 4.

st. *Action for return of excess paid—Payment by one cheque to arbitrators jointly—Form of judgment.*]—The judgment should be against each deft. for the sum received by him in excess of the amount to which he was entitled.—CANADIAN NORTHERN RY. CO. ——— [1918] 2 W. W. R. 1005; 11 Sask. L. R. 282; 42 D. L. R. 772.—CAN.

791. *Add. Annotation :*—**Refd.** Boynton *v.* Richardson (1924), 69 Sol. Jo. 107.

793. *Add. Annotation :*—**Refd.** Wisbech R. C. *v.* Ward (1927), 138 L. T. 308.

794. *Add. Annotations :—As to* (1) **Consd.** Wisbech R. D. C. *v.* Ward (1927), 91 J. P. 200. **Refd.** Brightman *v.* Tate, [1919] 1 K. B. 463. *As to* (2) **Folld.** Boynton *v.* Richardson (1924), 69 Sol. Jo. 107.

Part III.—The Hearing.

816a. —— **Act of 1889, s. 2, Sched. I. (f)—Against Crown—"Subject to any legal objection."**]—(1) In an arbn. for the determination of disputes under a contract between the Shipping Controller on behalf of His Majesty & another party, the arbitrators or umpire have no jurisdiction under Sched. 1 (*f*), incorporated in sect. 2 of the above Act, or otherwise, to require the Shipping Controller to make discovery of the documents in his possession or power relating to the matters in question. (2) In Sched. 1 (*f*), incorporated in sect. 2 of the above Act, the words "subject to any legal objection" apply to all the subsequent provisions of the clause, including not only the provision that the parties shall produce before the arbitrators or umpire all books, etc., within their possession or power, but also the provision that the parties shall "do all other things which . . . the arbitrators or umpire may require."—*Re* Société Les Affréteurs Réunis & Shipping Controller, [1921] 3 K. B. 1 ; *sub nom.* Société Les Affréteurs Réunis *v.* Shipping Controller, 90 L. J. K. B. 812 ; 124 L. T. 727 ; 37 T. L. R. 460, D. C.

Annotation :—As to (2) **Refd.** Kursell *v* Timber Operators & Contractors, [1923] 2 K. B. 202.

Discovery against the Crown generally, *see* Discovery, Vol. XVIII., p. 60.

817. *Add. Annotations :*—**Consd.** *Re* Soc. Les Affréteurs Réunis & Shipping Controller, [1921] 3 K. B. 1 ; Kursell *v.* Timber Operators & Contractors, [1923] 2 K. B. 202.

817a. —— **Power of arbitrator to order—Reference by consent out of court.**]—In a reference by consent out of ct. under the Act of 1889, the arbitrator has jurisdiction to order either party to make discovery of documents or to answer interrogatories on oath, by virtue of Sched. 1 (*f*) of the Act.—Kursell *v.* Timber Operators & Contractors, Ltd., [1923] 2 K. B. 202 ; 92 L. J. K. B. 607 ; 129 L. T. 21 ; 87 J. P. 79 ; 39 T. L. R. 419 ; 67 Sol. Jo. 557 ; 28 Com. Cas. 376, D. C.

830. *Add. Annotation :*—**Refd.** Ricketts *v.* Gurney (1819), 7 Price, 699.

830a. —— ——.]—On an application to the Ct. of Exch. on the same facts as set out in No. 830 :—*Held :* the party was privileged during the journey, including his stay at Clifton, on the ground of the deviation being for a necessary purpose, & the delay no more than reasonable for the accomplishment of it.—Ricketts *v.* Gurney (1819), 7 Price, 699 ; 1 Chit. 682 ; 146 E. R. 1106.

Annotation :—**Refd.** Spencer *v.* Newton (1837), 1 Nev. & P. K. B. 818.

835. *Add. Annotations :*—**Refd.** A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268 ; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395.

836. *Add. Annotation :*—**Consd.** Cayzer, Irvine *v.* Board of Trade (1926), 95 L. J. K. B. 1054.

840. *Add. Annotation :*—**Refd.** R. *v.* Sullivan, [1923] 1 K. B. 47 ; R. *v.* Harris, [1927] 2 K. B. 587

841a. Whether entitled to act as advocate for party appointing him.]—An arbitrator appointed to act for one of the parties to a commercial dispute is not justified in taking up the position of an advocate for the party appointing him, but should act impartially.—Roff *v.* British & French Chemical Manufacturing Co. & Gibson, [1918] 2 K. B. 677 ; 87 L. J. K. B. 996 ; 119 L. T. 436 ; 34 T. L. Ry. 485 ; 62 Sol. Jo. 620, C. A.

841b. ——.]—French Government *v.* Tsurushima Maru (Owners), No. 1022a, *post.*

862. *Add. Annotation :*—**Refd.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

874. *Add. Annotation :*—**Refd.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

888a. —— —— **Agreement to dispense with notice.**]—French Government *v.* Tsurushima Maru (Owners), No. 1022a, *post.*

905a. —— **Award sent back for amendment.**]—Where an award is sent back to the arbitrator to be amended, he is not bound to give the parties notice to attend him thereon.—Howett *v.* Clements, Clements *v.* Howett (1845), 1 C. B. 128 ; 135 E. R. 485 ; *previous proceedings* (1844), 7 Man. & G. 1044.

Annotation :—**Consd.** Davies *v.* Pratt (1855), 17 C. B. 183.

906. *Add. Annotations :—As to* (1) **Apprvd. & Folld.** Oppenheim *v.* Mahomed Haneef, 1922] 1 A. C. 482. **Refd.** Scrimaglio *v.* Thornett & Fehr (1924), 131 L. T. 174.

PART II. SECT. 7.

t (p. 431) l. —— *Right of court to stay action.*]—On an application to stay a suit instituted in respect of a dispute which was previously referred to the arbn. of two gentlemen chosen by both parties, but one of whom refused to act, it was held by the original ct. that the ct. had no power to appoint an arbitrator in place of the arbitrator who refused & staying the suit would lead the parties to an infructuous arbn. :—*Held :* the ct. had such power, but the application for stay should be dismissed on the merits of the case.—General Electric Trading Co. *v.* Siemans (India), Ltd. (1928), I. L. R. 56 Calc. 848.—**IND.**

PART III. SECT. 2, SUB-SECT. 1.

835 vi. ——.]—In a mercantile reference to arbn., it is an implied term of the contract that the arbitrators must decide the dispute according to the existing law of contract, & that every defence which would have been open in a ct. of law, including limitation, can be raised, unless that defence has been excluded by agreement of the parties.—Ramdutt Ramkissendass *v.* E. D. Sassoon & Co. (1929), I. L. R. 56 Calc. 1048.—**IND.**

PART III. SECT. 2, SUB-SECT. 2.

t i. ——.]—*Re* Smith & Plympton (Township) (1886), 12 O. R. 20.—**CAN.**

PART III. SECT. 2, SUB-SECT. 4.

883 iii. —— ——.]—There is no statutory rule that if an arbitrator proceeds *ex parte* without giving notice of his intention to proceed in that manner, the award made by him must be set aside.—Udaichand Panna Lall *v.* Debibux Jewanram (1920), I. L. R. 47 Calc. 951.—**IND.**

As to (2) **Apprvd. & Folld.** Oppenheim *v.* Mahomed Haneef, [1922] 1 A. C. 482. **Refd.** Scrimaglio *v.* Thornett & Fehr (1924), 131 L. T. 174.

939. *Add. Annotation :*—**Refd.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

941. *Add. Annotation :*—**Refd.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

943. *Add. Annotation :*—**Refd.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

949a. ——.]—An arbitrator appointed under Agricultural Holdings Act, 1908 (c. 28), for the purpose of determining claims & compensation payable in respect of (*inter alia*) certain fixtures, hay & straw left by the tenant on his farms, & hay & straw removed by him after the determination of the tenancy, held two sittings & then gave notice that he had been waiting to be supplied with information as to the hay & straw sold off & warned the parties that if it was not supplied promptly he would have to hold another sitting. After an interval of less than a fortnight he gave further notice that he would go to the farms on a specified date "to value the hay & straw & to receive an account of the hay & straw removed." The tenant not having such an account ready & thinking that the only question to be dealt with was a valuation of the stacks of hay & straw remaining on the farm did not attend by himself or his representative, but his foreman was present to point out & give information about the stacks on the farms. While there the arbitrator, besides valuing the stacks, questioned the foreman as to the hay & straw removed. Immediately afterwards he closed the hearing & made an award in which he dealt with the claim for hay & straw removed on the basis of the foreman's evidence, which had not been tendered by either party, & was taken in the presence only of the landlord's representative. He did not deal with the question of the fixtures, but purported to reserve power to deal with them, if required : —*Held :* the award must be set aside as the arbitrator had been guilty of legal misconduct in taking evidence in the absence of, & without previous notice to, the tenant.—*Re* O'CONOR & WHITLAW'S ARBITRATION (1919), 88 L. J. K. B. 1242, C. A.

949b. ——.]—In an arbn. between sellers & buyer arising out of the rejection by the latter of certain goods which he alleged did not correspond to the contract description, the arbitrators heard the evidence of each of the parties in the absence of the other. No objection was made at the time to this procedure. An award having been made in favour of the sellers, the buyer moved to set it aside :—*Held :* the award must be set aside, as the arbitrators had acted improperly in hearing the evidence on behalf of one party in the absence of the other.—RAMSDEN (W.) & Co. *v.* JACOBS, [1922] 1 K. B. 640 ; 91 L. J. K. B. 432 ; 126 L. T. 409 ; 26 Com. Cas. 287, D. C.

949c. —— **Evidence immaterial.**]—It is misconduct which may justify the setting aside of an award if the arbitrators hear evidence in the absence of the parties, even though the evidence so received is immaterial. It makes no difference that the arbitrators could not properly have made any other award than that which they did make, & it is quite immaterial whether the evidence wrongly admitted helped the arbitrators to a right conclusion or a wrong conclusion, & the ct. cannot inquire to what extent their minds were affected by such evidence.—ROYAL COMMISSION ON SUGAR SUPPLY *v.* KWIK-HOO-TONG TRADING SOCIETY (1922), 38 T. L. R. 684, D. C. ; *subsequent proceedings, sub nom.* KWIK-HOO-TONG TRADING SOCIETY *v.* ROYAL COMMISSION ON SUGAR SUPPLY (1923), 129 L. T. 500.

952. *Add. Annotation :*—**Refd.** Royal Commission on Sugar Supply *v.* Kwik Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

955. *Add. Annotation :*—**Refd.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

956. *Add. Annotation :*—**Refd.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

960. *Add. Annotation :*—**Refd.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684 ; Mercer *v.* Reid (1931), 47 T. L. R. 574.

962a. **Small reduction of amount payable—Award upheld.**]—MERCER *v.* REID (1931), 47 T. L. R. 574 ; 75 Sol. Jo. 589, D. C. ; *affd.*, 48 T. L. R. 33, C. A.

PART III. SECT. 2, SUB-SECT. 8.—A.

g i. —— ——.]—An arbitrator cannot decide the case submitted to him on his own knowledge & without taking evidence, unless the terms of the reference especially permit him to do so.—LACHMI NARAIN *v.* SHEONATH PONDE (1919), I. L. R. 42 All. 185.—**IND.**

p i. —— ——.]—In an agricultural reference when the general question submitted was a matter depending upon opinion :—*Held :* the overseman, himself a farmer & skilled valuer, was able to form a just & conscientious opinion without the necessity of hearing evidence.—FLETCHER *v.* ROBERTSON (1919), 56 Sc. L. R. 305 ; [1919] 1 S. L. T. 260.—**SCOT.**

PART III. SECT. 2, SUB-SECT. 8.—B.

938 v. ——.]—An award was set aside for the taking of evidence by the arbitrator in the absence of the other arbitrators & of one of the parties.—*Re* SNIDER & MILLER'S ARBITRATION, [1924] 4 D. L. R. 313 ; 3 W. W. R. 226.—**CAN.**

938 vi. ——.]—One of the parties to an arbn. sought reduction of the arbiter's award on the ground that the arbiter had examined witnesses without that party being present or being represented :—*Held :* as the arbiter had decided the question in that party's favour, he had suffered no injustice, & reduction refused.—BLACK *v.* WILLIAMS & Co. (WISHAW), LTD., [1924] S. C. (H. L.) 22.—**SCOT.**

938 vii. ——.]—An arbitrator heard evidence from one party in the absence of his opponent, & also took evidence in the absence of both parties. The award was consequently set aside by the ct.—BURNS *v.* BURNE (1922), 43 N. L. R. 461.—**S. AF.**

938 viii. —— *By umpire.*]—Arbitrators having differed, the matter was submitted to an umpire, who made inquiries in the absence of deft., but denied that he had recorded any evidence at the time :—*Held :* in making these inquiries the umpire was guilty of misconduct.—ABDUL HAMID *v.* MUHAMMAD AFZAL (1927), I. L. R. 8 Lah. 329.—**IND.**

959 v. ——.]—An award was set aside because, in considering the same after the hearing, an arbitrator, in the absence of & without notice to the parties, interviewed & got information from one who had been a witness on the hearing.—*Re* YUKON GOLD CO. & MORRAU, [1921] 1 W. W. R. 760 ; 57 D. L. R. 229.—**CAN**

959 vi. ——.]—Where the arbitrator had taken evidence in the absence of both parties :—*Held :* the award should be set aside.—BURNS *v.* BURNE (1922), 43 N. L. R. 461.—**S. AF.**

963. *Add. Annotation :*—**Refd.** Mercer *v.* Reid (1931), 47 T. L. R. 574.

964. *Add. Annotation :*—**Refd.** Royal Commission on Sugar Supply *v.* Kwik-Hoo-Tong Trading Soc. (1922), 38 T. L. R. 684.

969. *Add. Annotation :*—**Follld.** Caven *v.* Canadian Ry. (1925), 133 L. T. 774.

1000. *Add. Annotation :*—**Refd.** Kursell *v.* Timber Operators & Contractors, [1923] 2 K. B. 202.

1022a. -.]—In commercial arbns. the practice is that, unless the parties give notice that they desire to attend personally or by their solr. or counsel, the arbitrators present the evidence & arguments to the umpire & have full power to act as advocates. In an arbn. on a charterparty the umpire without hearing the parties made his award on the case as presented by the arbitrators. On a motion to set aside the award on the ground of misconduct by the umpire :—*Held :* there was no evidence of misconduct by the umpire, & the motion failed.

In arbn. proceedings *primâ facie* the common law rule applies that the parties should have notice of the proceedings so that they could attend them, if desirous of so doing, & the only way in which the rule can be departed from is by agreement, & the ct. would give effect to their agreement (Atkin, L.J.).—French Government *v.* Tsurushima Maru (Owners) (1921), 37 T. L. R. 961, C. A.

Annotation :—**Refd.** Bourgeois *v.* Weddell, [1924] 1 K. B. 539.

1023a. Right to call arbitrator as witness.]—A dispute arose between the buyer & sellers of a quantity of meat as to its quality. The buyer sent K. to inspect & report upon the meat. The dispute having been referred to arbn., the buyer appointed K. as his arbitrator. The arbitrators having failed to agree upon their award the matter was referred to an umpire, & the buyer then proposed to call K. as a witness before the umpire to prove the state of the meat. The sellers objected to the competency of K. as a witness on the general principle that an arbitrator was disqualified from giving evidence in the arbn. proceedings :—*Held :* as it was a commercial arbn. K. was not disqualified from giving evidence before the umpire, notwithstanding that he had acted as arbitrator.—Bourgeois *v.* Weddell & Co., [1924] 1 K. B. 539 ; 93 L. J. K. B. 232 ; 130 L. T. 635 ; 40 T. L. R. 261 ; 68 Sol. Jo. 421 ; 29 Com. Cas. 152 ; 88 J. P. Jo. 25, D. C.

Sub-sect. 1 (p. 456).—Statement of Special Case during Reference.

Arbitration Act, 1889, s. 19, is now replaced by S.C.J. (Consolidation) Act, 1925 (c. 49), s. 94.

1034. *Add. Annotation :*—**Refd.** *Re* Cogstad & Newsum, [1921] 1 K. B. 87.

1035. *Add. Annotation :*—**Refd.** Czarnikow *v.* Roth, Schmidt (1922), 127 L. T. 824.

1036. *Add Annotation :*—**Refd.** Czarnikow *v.* Roth, Schmidt (1922), 127 L. T. 824.

1036a. —— —— ——.] -A contract for the sale of sugar provided that the contract was subject to the rules of the Refined Sugar Assocn. The rules required that all members of the assocn. making contracts subject to those rules should refer any disputes arising out of such contracts, including any questions of law, to the arbn. of the council of the assocn. ; & by r. 19 : " Neither buyer, seller, trustee in bkpcy., nor any other person as aforesaid shall require, nor shall they apply to the ct. to require, any arbitrators to state in the form of a special case for the opinion of the ct. any question of law arising in the reference, but such question of law shall be determined in the arbn. in manner herein directed." A dispute between the buyers & sellers was referred to the arbn. of the council. The buyers requested the arbitrators either to state their award in the form of a special case under the Act of 1889, s. 7, or alternatively to state a case for the opinion of the ct. under sect. 19 upon certain points of law arising in the reference, or to give them an opportunity of applying to the ct. for an order directing them to state a case. The arbitrators, thinking themselves precluded by r. 19, refused to comply with that request, & made their award without giving the buyers an opportunity of applying to the ct. for an order. The buyers move to set aside the award on the ground of misconduct of the arbitrators in so refusing :—*Held :* r. 19 & the agreement embodying it were contrary to public policy & invalid, as involving an ouster of the statutory jurisdiction of the cts. under the Arbn. Act, & the award must be set aside.—Czarnikow *v.* Roth, Schmidt & Co., [1922] 2 K. B. 478 ; 92 L. J. K. B. 81 ; 127 L. T. 824 ; 38 T. L. R. 797 ; 28 Com. Cas. 29, C. A.

1037. *Add. Annotations :*—**Refd.** Buerger *v.* Barnett (1919), 89 L. J. K. B. 161 ; Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478.

1039a. —— Well-defined question of law must be formulated.]—An arbitrator should not state a special case except upon some well-defined

PART III. SECT. 2, SUB-SECT. 8.—C.

968 x. *S. P.* Latham *v.* Foster's Australian Fibres, Ltd., [1926] V. L. R. 427.—**AUS.**

PART III. SECT. 2, SUB-SECT. 8.—D.

975 v. —— —— *Waiver.*]—The award in question herein was also objected to on the ground that the arbitrators permitted expert testimony to be given on behalf of one of the parties by more than three expert witnesses, contrary to Manitoba Evidence Act, s. 7 :—*Held :* it was not shown that more than three witnesses called by said party were experts ; & even if more than three of them were experts, the other party by failing to object to their evidence at the hearing & by himself calling more than three experts had waived the right to raise the objection. —*Re* Winnipeg Golf Club & Hutchings, [1928] 3 D. L. R. 522 ; [1928] 2 W. W. R. 224 ; 37 Man. L. R. 341.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.

1034 v. —— *Arbitration Act, R. S. O.,* 1914 (c. 65).]—A case may be stated by the arbitrators under s. 29 of the above Act.—*Re* Toronto General Trusts Corpn. & McConkey (1918), 41 O. L. R. 314 ; 13 O. W. N. 281.—**CAN.**

1034 v i. ——.]—An arbitrator is not *functus officio* until his award has been actually made and the power given him and the ct. under said sect. 15 of Arbn. Act, R. S. A. 1922, to state a case for the opinion of the ct. may be exercised " at any stage of the proceedings," *i.e.* at any stage before the proceedings have come to an end by a completed award.—*Re* Jamieson Construction Co., Ltd., & Edmonton City, [1930] 3 W. W. R. 23 ; 4 D. L. R. 58.—**CAN.**

m i. ——.]—A case stated by arbitrators, under Arbn Act, R. S. O., 1914 (c. 65), s. 22, for the determination of the ct., is now to be heard by a judge in the Weekly Ct.—*Re* McConkey's Arbitration (1918), 42 O. L. R. 380 ; 14 O. W. N. 31 ; 43 D. L. R. 732.—**CAN.**

questions of law & should insist that the party asking him to state a case should formulate the questions upon which he desires it to be stated. It is improper for an arbitrator to state a case merely asking generally for the opinion of the ct. on any questions of law involved.—WILLIAMS *v.* MANISSALIAN FRÈRES (1923), 29 Com. Cas. 42, C. A.

1047. *Add. Annotation :*—**Refd.** Czarnikow *v.* Roth, Schmidt (1922), 127 L. T. 824.

1049. *Add. Citation :—On appeal,* [1914] 1 Ch. 300, C. A.

1051a. —— **Application to stay proceedings—Until security for costs given.**]—The Govt. of an independent State made with a co. a contract containing an arbn. clause. An arbn. took place & was divided into two parts, the first being as to whether the Govt. had committed a breach of contract. The result of this part of the arbn. was that an award was given in favour of the co. & the Govt. was ordered to pay costs. The second part of the arbn. as to the amount of damage then began, & when the evidence had been closed the Govt. asked the arbitrator to state an advisory case for the opinion of the ct., but the arbitrator refused to do so. The Govt then issued a summons asking that the arbitrator might be ordered to state a case, & thereupon the co., applied that all further proceedings might be stayed until the Govt. (1) had paid the costs which it had been ordered to pay, & (2) had given security to answer the costs of the matter & of the arbn. :—*Held :* so far as concerned the summons for a case to be stated the Govt. was in the position of a pltf., & it could not rely on its foreign sovereignty, & being out of the jurisdiction must give security for the costs of the summons, but the rest of the co.'s application must stand over to be dealt with on the hearing of the summons.—DUFF DEVELOPMENT CO., LTD. *v.* KELANTAN GOVERNMENT (1925), 41 T. L. R. 375 ; *sub nom. Re* DUFF DEVELOPMENT CO., LTD. & KELANTAN GOVERNMENT, 69 S. Jo. 491.

1052. *Add. Annotation :*—**N.F.** Simbro Trading Co. *v.* Posograph (Parent) Corpn., [1929] 2 K. B. 266.

1053. *Add. Annotations :*—**Consd.** Duff Development Co. *v.* Kelantan Government (1925), 41 T. L. R. 375. **Refd.** Northwood *v.* L. C. C. (1927), 137 L. T. 49.

1054. *Add. Annotation :*—**Refd.** Cogstad *v.* Newsum, [1921] 2 A. C. 528.

1055. *Add. Annotations :—As to* (1) **Consd.** Cogstad *v.* Newsum, [1921] 2 A. C. 528. *As to* (2) **Refd.** Cogstad *v.* Newsum, [1921] 2 A. C. 528.

1056. *Add. Annotations :*—**Consd.** Northwood *v.* L. C. C. (1927), 137 L. T. 49. **Refd.** Manbre Saccharine Co. *v.* Corn Products Co., [1919] 1 K. B. 198; Cogstad *v.* Newsum, [1921] 2 A. C. 528 ; Duff Development Co. *v.* Kelantan Government (1925), 41 T. L. R. 375.

1057. *Add. Annotations :*—**Consd.** Cogstad *v.* Newsum, [1921] 2 A. C. 528. **Refd.** Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1922), 92 L. J. K. B. 45.

1058a. ·.]—A special case stated by an arbitrator for the opinion of the ct. is stated under the Act of 1889, s. 19, or s. 7, according as the arbitrator does or does not retain jurisdiction in the reference. If he retains jurisdiction the case is stated under sect. 19, & no appeal lies to the Ct. of Appeal from the decision of the High Ct. upon the special case ; but if he makes his award finally, & retains no further jurisdiction in the reference, the case is stated under sect. 7 & an appeal lies from the decision of the ct.

By a submission contained in a charterparty disputes were referred to two arbitrators &, if they could not agree, to an umpire. The umpire stated for the opinion of the High Ct. a special case in which he set out the facts, decided that there had been a breach of the charterparty, & assessed damages for the breach. The award concluded with these words : " The question for the opinion of the ct. is whether upon the true construction of the charterparty & the facts stated by me the decisions at which I have arrived are correct in law. If they be correct my award is to stand, but if incorrect in any particulars I desire that the award may be referred back to me for reassessment of the damages due in accordance with the decision of the ct." :—*Held :* this was not a final award ; the case was, therefore, stated under sect. 19 & no appeal lay to the Ct. of Appeal. —COGSTAD (C. T.) & Co. *v.* NEWSUM (H.), SONS & Co., [1921] 2 A. C. 528 90 L. J. K. B. 1293 ; 85 J. P. 253 ; 37 T. L. R. 995 ; 19 L. G. R. 581 ; 27 Com. Cas. 11 ; *sub nom. Re* COGSTAD (C. T.) & Co. & NEWSUM (H.), SONS & Co., LTD., 126 L. T. 65 ; 15 Asp. M. L. C. 369, H. L. ; *affg.* S. C. *sub nom. Re* COGSTAD & Co. & NEWSUM, SONS & Co., [1921] 1 K. B. 87, C A. ; *previous proceedings, sub nom.* LORD (OWNERS) *v.* NEWSUM, SONS & Co., LTD., [1920] 1 K. B. 846.

Annotation :—**Expld. & Distd.** Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1922), 92 L. J. K. B. 45.

1059. *Add. Annotations :*—**Consd.** *Re* Wulff & Dreyfus (1917), 117 L. T. 583 ; *Re* Cogstad & Newsum, [1921] 1 K. B. 87 ; A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268 ; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395. **Refd.** *Re* Olympia Oil & Cake Co. & MacAndrew Moreland, [1918] 2 K. B. 771 ; *Re* Parsons & Brixham Fishing Smack Insce. Soc. (1918), 62 Sol. Jo. 384 ; Westacott *v.* Hahn, [1918] 1 K. B. 495 ; Champsey Bhara *v.* Jivraj Balloo Spinning & Weaving Co., [1923] A. C. 480 ; Northwood *v* L. C. C. (1927), 137 L. T. 49 ; Roberts *v.* Anglo-Saxon Insce. Assocn. (1927), 96 L. J. K. B. 590.

1067. *Add. Annotation :—As to* (1) **Refd.** Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1922), 92 L. J. K. B. 45.

1067a. Finality—Request to court to vary if award wrong in law.]—Disputes which had arisen under a charterparty were referred to arbn. & the arbitrator made his award in the form of a special case in which, after setting out the facts, & holding that the owners had

1059 i. —— —— *Where erroneous award can be set aside.*]—Although an appeal cannot be brought upon an opinion of the ct. given to arbitrators, who have consulted the ct. on a point of law arising in the course of the arbn. proceedings, yet the award expressed to be based upon such opinion & incorporating same, if the opinion is erroneous, may be set aside & referred back to the arbitrators as being based on an error of law apparent upon the face of the award.—*Re* BRECHIN & DRAPERY IMPORTING CO., LTD., [1928] N. Z. L. R. 241.—N.Z.

committed a breach of the charterparty, he made an award in favour of the charterers & assessed the damages & costs payable by the owners to the charterers. The case proceeded as follows: "The question for the opinion of the ct. is whether upon the facts as stated by me my award is right in law. If my award be correct then it shall stand; but should the ct. find that it be wrong in law then I request that the ct. shall vary my award as in their discretion they may think fit, both as to the damages & as to the costs . . . except that if the ct. shall only vary my award on the subject of the amount of the damages, my discretion as to the costs of the reference & the costs of my award shall stand":—*Held:* the award was a complete & final award under sect. 7 of the Act of 1889.—LARRINAGA & Co. *v.* SOCIETE FRANCO-AMERICAINE DES PHOSPHATES DE MEDULLA (1922), 92 L. J. K. B. 45; 27 Com. Cas. 160.

1069a. Subject-matter of commercial nature—May be transferred to & heard in Commercial Court.]—PRACTICE NOTE, [1927] W. N. 258.

1070. For "**Burden of proof on party disputing award**" read "**Right to begin—Burden of proof on party disputing award.**"

1071. For "——" read "—— ——."

1071a. —— Award in alternative form—Party claiming damages entitled to begin.]—PATRICK & Co. *v.* RUSSO-BRITISH GRAIN EXPORT CO., LTD. (1927), 43 T. L. R. 724.

1071b. Case stated on unstamped document—Struck out.]—SYMINGTON & Co. *v.* UNION INSURANCE SOCIETY OF CANTON (1927), 164 L. T. Jo. 390.

1073. *Add. Annotation:*—**Refd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1928] Ch. 31.

1077. *Citation:*—For existing citations read "as reported in [1915] 2 K. B. 393, n."

1082. *Add. Annotation:*—**Refd.** *Re* Cogstad & Newsum, [1921] 1 K. B. 87.

1083. *Add. Annotation:*—**Refd.** Ruf *v.* Pauwels, [1919] 1 K. B. 660.

1083a. Act of 1889, s. 7—Appeal lies to Court of Appeal.]—COGSTAD (C. T.) & Co. *v.* NEWSUM (H.), SONS & Co., No. 1058a. *ante.*

1083b. Loss of right to appeal—Acceptance of award.]—In an arbn. concerning a contract of sale of goods the umpire stated a special case in which he made three different awards, leaving the ct. to decide which was right. The judge having decided that the first award was right, applts. demanded & obtained payment of the amount of that award & gave a receipt therefor. They then appealed from the decision of the judge & contended that the second award was the right one:—*Held:* having demanded & accepted payment under the first award applts. were precluded from contending that it was wrong.—DEXTERS, LTD. *v.* HILL CREST OIL CO. (BRADFORD), [1926] 1 K. B. 348; 95 L. J. K. B. 386; 134 L. T. 494; 42 T. L. R. 212; 31 Com. Cas. 161, C. A.

Part IV.—The Award.

1086. *Add. Annotations:*—**Mentd.** A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268; Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1922), 92 L. J. K. B. 45; Rockingham Sisters of Charity *v.* R., [1922] 2 A. C. 315.

1100. *Add. Annotation:*—**Mentd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

1107a. —— Award signed by all three as arbitrators.]—Under a submission to arbn. each of the two parties could appoint an arbitrator, & the arbitrators could appoint an umpire. The parties duly appointed arbitrators & the arbitrators appointed an umpire. An award was then made & was signed by these three persons, who added to their signatures the word "arbitrators":—*Held:* the third person who signed the award was properly appointed as umpire, he acted as umpire, & he really intended to sign as umpire, & the fact that he signed as arbitrator was only a matter to require a purely formal amendment.—BENABU & Co. *v.* PRODUCE BROKERS CO., LTD. (1921), 37 T. L. R. 609; *on appeal*, 37 T. L. R. 851, C. A.

1125a. -.]—An award is published when the arbitrator gives the parties notice that it may be had on payment of his charges; whether they be reasonable or not.—MACARTHUR *v.* CAMPBELL (1833), 5 B. & Ad. 518; 2 Nev. & M. K. B. 444; 4 L. J. K. B. 25; 110 E. R. 882; *subsequent proceedings* (1834), 2 Ad. & El. 52.

Annotations:—**Dbtd.** Brooke *v.* Mitchell (1840), 8 Dowl. 392. **Refd.** Allenby *v.* Proudlock (1835), 4 Dowl. 54; Sherry *v.* Okes (1835), 1 Har. & W. 119; Moore *v.* Darley (1845), 1 C. B. 445; Paxton *v.* Great North of England Ry. Co. (1846), 8 Q. B. 938; Roberts *v.* Eberhardt (1857), 3 C. B. N. S. 482.

PART III. SECT. 3, SUB-SECT. 2.—D.

sa. *Duty of court.*]—*Re* EDMONTON & JAMIESON CONSTRUCTION CO., [1931] 1 D. L. R. 1011.—CAN.

PART IV. SECT. 2.

1092 ii a. —— —— —— *Other dissenting.*]—Where a submission to arbn. before three arbitrators provides that any two of them can make an award, &, after discussion & the taking of his opinion, one of the three refuses to concur in the award the other two have the right to sign it in his absence.—*Re* WINNIPEG GOLF CLUB & HUTCHINGS, [1928] 3 D. L. R. 522; [1928] 2 W. W. R. 224; 37 Man. L. R. 341.—CAN.

k i. —— *Majority award valid—Alberta Insurance Act, R. S. A.*, 1922 (*c.* 171).]—On a submission to an arbn. of three persons under statutory condition No. 22 in Sched. C. to the above Act, to determine the amount of loss, the decision of a majority of the arbitrators is binding.—GLASGOW UNDERWRITERS *v.* SMITH, [1924] 4 D. L. R. 801; [1924] S. C. R. 531; *affg.*, [1924] 1 D. L. R. 187; 1 W. W. R. 155; 20 Alta. L. R. 114.—CAN.

w i. —— —— ——.]—*Held:* the award was valid.—*Re* BALDWIN & WILLINSKY, [1925] 1 D. L. R. 1177; 56 O. L. R. 296.—CAN.

1100 v. —— *Award by one.*]—*Held:* valid.—*Re* NATIONAL TRUST CO. & MUNICIPAL DISTRICT OF VALE, [1925] 3 D. L. R. 459.—CAN.

1106 ia. —— ——.]—*Held:* binding.—MASTERS & MCDOUGALL *v.* STEPHEN, STEPHEN *v.* MASTERS & MCDOUGALL, [1925] 4 D. L. R. 684; [1925] 3 W. W. R. 493.—CAN.

1109 viii. —— ——.]—Where the arbitrators did not meet together & sign the formal document in the presence of each other:—*Semble:* the award was invalid.—HARRISON *v.* HARRISON (1918), 41 O. L. R. 195; 13 O. W. N. 245.—CAN.

1109 ix. —— ——.]—RYE FARM CO. *v.* BRITISH OAK INSURANCE CO., LTD., [1924] 3 D. L. R. 706; 3 W. W. R. 16.—CAN.

PART IV. SECT. 5.

1125 x. ——.]—An award made upon an arbn. under Municipal Act is published when notice thereof is given by the arbitrators to the municipality.—*Re* SWEINSSON & MUNICIPALITY OF CHARLESWOOD, [1917] 1 W. W. R. 293; 27 Man. L. R. 234.—CAN.

1152a. Existence of written contract—Signature by one party only.]—(1) To constitute a contract in writing it is not necessary that such contract should be signed by both parties, & the recital in an award of the existence of a contract in writing between the parties when in fact the contract has been signed by one of them only does not constitute an error in law on the face of the award sufficient to justify the ct. in setting it aside.

(2) In the case of a decision of a Div. Ct. setting aside the award of an arbitrator for error of law & as being bad on the face of it, the leave of that ct. or of the Ct. of Appeal to appeal from the decision is not necessary, as Supreme Ct. of Judicature (Procedure) Act, 1894 (c. 16), s. 1 (1) (*b*), has no application.—RUF (T. A.) & Co. *v.* PAUWELS, [1919] 1 K. B. 660; 88 L. J. K. B. 674; 121 L. T. 36; 83 J. P. 150; 35 T. L. R. 322; 33 Sol. Jo. 372, C. A.

1182. *Add. Annotations :*—**Refd.** *Re* Rubel Bronze & Metal Co. & Vos, [1918] 1 K. B. 315; Robert (A.) Munro & Co. *v.* Meyer, [1930] 2 K. B. 312.

1187. *Add. Annotation :*—**Consd.** Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497.

1188. *Add. Annotations :*—**Refd.** Lebeaupin *v.* Crispin (1920), 124 L. T. 124; Sheik Mohammad Habib Ullah *v.* Bird (1921), 37 T. L. R. 405.

1263. *Add. Annotation :*—**Refd.** Weber *v.* Birkett, [1925] 1 K. B. 720.

1288. *Add. Annotation :*—**Refd.** Weber *v.* Birkett, [1925] 1 K. B. 720.

1291. *Add. Citation :*—7 Mod. Rep. 345.

1326. *Add. Annotation :*—**Refd.** Woodrow *v.* Trawlers (White Sea & Grimsby), Ltd., [1930] 1 K. B. 176.

1357a. —— ——.]—COGSTAD (C. T.) & Co. *v.* NEWSUM (H.) SONS & Co., No. 1058a, *ante*.

1357b. —— ——.]—LARRINAGA & Co. *v.* SOCIETE FRANCO-AMERICAINE DES PHOSPHATES DE MEDULLA, No. 1067a, *ante*.

1361. *Add. Citations :*—88 L. J. K. B. 227; 119 L. T. 553; 83 J. P. 9.
Add. Annotation :—**Refd.** *Re* Fiscel & Mann & Cook, [1919] 2 K. B. 431.

1361a. —— ——.]—Arbitrators made their award in an alternative form stating a special case & giving to the parties the option of taking the opinion of the ct. upon the points of law involved in it if notice of intention to apply to the ct. was given before a date specified; & in the alternative making an award in favour of one of the parties if, as was the case, no such notice was given. The case was set down for argument in the special paper :—*Held :* the condition was reasonable & the award was good, so that there was nothing for the ct. to deal with.—LYON (J. L.) & Co., LTD. *v.* HADDOCK, PARKER & Co., [1919] W. N. 11.

1415a. —— —— **Reserved for consideration if required.**]—*Re* O'CONOR & WHITLAW'S ARBITRATION, No. 949a, *ante*.

1421. *Add. Annotation :*—**Refd.** Woodrow *v.* Trawlers (White Sea & Grimsby), Ltd., [1930] 1 K. B. 176.

1435a. —.]—(1) Where parties submitted all matters in difference to arbn., & the award, after reciting the submission, awarded that a certain sum was due & owing from one party to the other :—*Held :* the award must be intended to be made on all the matters referred.

PART IV. SECT. 8, SUB-SECT. 1.

1155 i. *Must conform to submission.*]—The awards in these cases, making special provision with regard to the repairing & keeping up a mill-dam, etc., were held bad as beyond the submission & power of the arbitrators.—*Re* HALEY & ENNIS (1854), 1 P. R. 173.—**CAN.**

PART IV. SECT. 8, SUB-SECT. 2.—A.

1161 xi. ——.]—The umpire is bound by the terms of the submission, & he cannot make an award not within its scope.—PORTER *v.* PORTER (1921), 55 I. L. T. 206.—**IR.**

PART IV. SECT. 8, SUB-SECT. 2.—B.

1 i. ——.]—*Held :* the arbitrators had no power to include in their award interest on the amount found to be the value of the property from the date of taking possession.—TORONTO CITY CORPN. *v.* TORONTO RY. CORPN., [1925] A. C. 177, P. C.—**CAN.**

1a. *Reference of "accuracy" & "justice" of accounts.*]—*Held :* the arbitrator was appointed to adjust the accounts between the parties on a fair & equitable basis, & had a discretion whether any interest should be allowed to either party, & in the exercise of that discretion was not bound to apply any rule of law.—FISHER *v.* MATSON & Co., MATSON & Co. *v.* FISHER, [1918] N. Z. L. R. 1.—**N.Z.**

PART IV. SECT. 8, SUB-SECT. 2.—C.

1185 ii. —— *Award dismissing claim for short delivery.*]—*Held* : words "any claim or dispute arising in connection with this contract" in the arbn. clause included a claim for short delivery of goods.—GHAMANDI LAL-NARAIN DAS *v.* CHURANJI LAL-POKHAR MAL (1923), I. L. R. 4 Lah. 168.—**IND.**

1188 i. *Submission of any question arising under contract—Award giving damages for non-delivery.*]—Where a contract provided for a reference to arbn. of any question arising under it :—*Held :* the proper conclusion upon the evidence was that the parties, by their course of conduct before the arbitrators, established that the question as to the damages was a matter in dispute & a subject of the reference.—*Re* BEAVER WOOD FIBRE CO., LTD., & AMERICAN FOREST PRODUCTS CORPN., [1920] 47 O. L. R. 590; 54 D. L. R. 672; 18 O. W. N. 281.—**CAN.**

PART IV. SECT. 8, SUB-SECT. 2.—G.

g (p. 479) **i.** —— *Valuation to be fixed as in open market—Absence of any market.*]—CANADIAN PACIFIC RY. CO. *v.* WINDEBANK, [1917] 3 W. W. R. 99.—**CAN.**

q i. ——.]—The points for decision on a submission to arbn. were on which partner rested the responsibility for the causes necessitating dissolution, & on which condition the partnership should be dissolved :—*Held :* this did not give jurisdiction to the arbitrator to award payment by one partner of damages because of premature dissolution of the partnership.—*Re* ARBITRATION ACT, *Re* GUYOT & VIGOURET & AWARD MADE BY GOSSELIN, [1919] 3 W. W. R. 957.—**CAN.**

PART IV. SECT. 8, SUB-SECT. 3.—D.

1286 iv. —— *Delivery of goods "in fair proportion to all imports."*]—*Held :* the direction to deliver goods "in fair proportion to all imports" was uncertain & lacking in finality & therefore not enforceable.—THOMPSON, MEGGITT & Co., LTD. *v.* MOODY (1920), 21 S. R. N. S. W. 125; 37 N. S. W. W. N. 267.—**AUS.**

PART IV. SECT. 8, SUB-SECT. 3.—E.

sb. *Award of sum subject to variation—"Good & special reasons."*]—NOBLE *v.* CAMPBELLFORD, LAKE ONTARIO & WESTERN RY. CO. (1918), 21 Can. Ry. Cas. 380.—**CAN.**

sc. *Award for payment for working to "estimated" depth.*]—An award stated that a contractor was entitled to payment at the contract-price for the drilling to an estimated depth of 2,400 feet, saying nothing about the amount to which the contractor was thus entitled :—*Held :* the amount of the contract-price & credits allowed could be ascertained by evidence, & the use of the word "estimated" in the award was definite & amounted to a fixing of the depth at 2,400 feet.—MCNAUGHT *v.* STOKES-STEPHENS OIL CO., LTD., [1919] 1 W. W. R. 952.—**CAN.**

PART IV. SECT. 8, SUB-SECT. 3.—L.

1356 i. *Award settling dispute—Alternative if court should decide differently.*]—An arbitrator awarded a certain sum, &, in the event of the Supreme Ct. determining that certain views expressed by him in his reasons were erroneous, a certain larger sum :—*Held :* in the absence of any such determination the alternative award did not come into operation, & the award was not thereby rendered uncertain.—MELBOURNE HARBOUR TRUST COMRS. *v.* HANCOCK, [1927] V. L. R. 418; 39 C. L. R. 570; [1927] Argus L. R. 245.—**AUS.**

(2) It appeared by affidavit that the claims of one of the parties consisted of items for money due, & also for prospective damages, in consequence of a contract between the parties being put an end to by the other side, but as it also appeared that each of the claims was investigated before the arbitrators:—*Held:* a general finding was sufficient that a balance was due to one of the parties.

(3) Where on a reference one of the parties admits the claim of the other, but seeks to reduce the balance by a set-off, it is sufficient for the award to state that a sum is owing to one side or the other, without further noticing the set-off.—*Re* CROYDON CANAL CO. (1839), 1 Per. & Dav. 391.

1461. *Add. Annotation:*—**Refd.** Weber *v.* Birkett, [1925] 1 K. B. 720.

1467. *Add. Annotation:*—**Refd.** Weber *v.* Birkett, [1925] 1 K. B. 720.

1468. *Add. Annotation:*—**Refd.** Weber *v.* Birkett, [1925], 1 K. B. 720.

1472. *Add. Annotation:*—**Refd.** Weber *v.* Birkett, [1925] 1 K. B. 720.

1473. *Add. Annotation:*—**Refd.** Weber *v.* Birkett, [1925] 1 K. B. 720.

1477. *Add. Annotation:*—**Refd.** Weber *v.* Birkett, [1925] 1 K. B. 720.

1497. *Add. Annotation:*—**Consd.** Weber *v.* Birkett, [1925] 1 K. B. 720.

1506. *Add. Annotation:*—**Refd.** Weber *v.* Birkett, [1925] 1 K. B. 720.

1511. *Add. Annotation:*—**Refd.** Caven *v.* Canadian Pacific Ry. (1925), 133 L. T. 774.

1516a. ——.]—*Re* CROYDON CANAL CO., No. 1435a, *ante*.

1593a. —— ——.]—A.-G. FOR MANITOBA *v.* KELLY, No. 238a, *ante*

1598. *Add. Annotations:*—**Distd.** Champsey Bhara *v.* Jivraj Balloo Spinning & Weaving Co., [1923] A. C. 480. **Consd.** Kelantan Government *v.* Duff Development Co., [1923] A. C. 395.

1598a. -.]—Certain trawlers were insured as to three-quarters of their value in the B. Insurance Co. To save their vessels from destruction by enemy submarine, the owners cut away the trawls, which were not insured, & claimed a general average contribution against the co., of which the owners were members. The rules provided that all disputes should be settled in the first instance by a general meeting of the co., or, on appeal, by two arbitrators & an umpire, none of whom should be lawyers. The general meeting having refused the claim, the owners proceeded to arbn. under a submission which provided that "all matters in difference in reference to the said claim for a general average contribution are referred," etc. The umpire by his award ignored the claim for general average. On a motion to set aside the award:—*Held:* it was bad as disclosing an error in law on the face of it; &, having regard to the general terms of the submission, it was not open to resps. to say that a definite point of law had been submitted to arbn., as to which the decision of the arbitrator was final, & the award must be set aside.—PARSONS *v.* BRIXHAM FISHING SMACK INSURANCE CO., LTD. (1918), 118 L. T. 600; 14 Asp. M. L. C. 307; *sub nom. Re* PARSONS & BRIXHAM FISHING SMACK INSURANCE CO., LTD., 62 Sol. Jo. 384, D. C.

1598b. —— ——.]—An error in law on the face of an award means that one can find in the award or in a document actually incorporated, as, for instance, a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award & which is erroneous. Where it is impossible to say, from what is shown on the face of the award, what mistake, if any, the arbitrator has made, or that the arbitrator has tied himself down, on the face of his award, to some special legal proposition which is unsound, the award will stand.—CHAMPSEY BHARA & CO. *v.* JIVRAJ BALLOO SPINNING & WEAVING CO., [1923] A. C. 480; 92 L. J. P. C. 163; 129 L. T. 166; 39 T. L. R. 253, P. C.

Annotation:—**Mentd.** Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497.

1599. *Add. Annotations:*—**Consd.** *Re* Cogstad & Newsum, [1921] 1 K. B. 87; A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268; Champsey Bhara *v.* Jivraj Balloo Spinning & Weaving Co., [1923] A. C. 480; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395; Northwood *v.* L. C. C. (1927), 137 L. T. 49; Roberts *v.* Anglo-Saxon Insce. Assocn. (1927), 96 L. J. K. B. 590.

1603a. —— **Immaterial to decision.**]—BUERGER & CO. *v.* BARNETT, No. 1822a, *post*.

1614. *Add. Annotation:*—**Consd.** A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268.

1622. *Add. Annotation:*—**Refd.** *Re* Becker, Shillan & Barry, [1921] 1 K. B. 391.

PART IV. SECT. 8, SUB-SECT. 9.—D.

1517 i. *Reference of two separate matters—One award.*]—*Held:* the award must be referred to the arbitrator to draw up two awards.—*Re* DREYFUS & S. A. MILLING & TRADING CO., [1923] S. A. S. R. 75.—**AUS.**

PART IV. SECT. 10.

1520 v. ——.]—Where an arbn. award is valid as to a part thereof & void as to another part, the valid portion, if severable from the rest, is enforceable.—CITY OF SWIFT CURRENT *v.* LESLIE, [1920] 1 W. W. R. 467; 52 D. L. R. 532.—**CAN.**

1541 ii. ——.]—An award contained two directions:—*Held:* the two directions could not be severed, &, although the first direction was valid, the second direction being invalid judgment must be entered for deft.—THOMPSON, MEGGITT & CO., LTD. *v.* MOODY (1920), 21 S. R. N. S. W. 125; 37 N. S. W. W. N. 267.—**AUS.**

PART IV. SECT. 13, SUB-SECT. 1.

1594 ii. —— ——.]—The ct. has jurisdiction to set aside an award where an error of law appears on the face of it.—*Re* CASSWELL & CO., LTD. & DONALD & JACOBS, LTD., [1921] N. Z. L. R. 368.—**N.Z.**

1594 iii. —— ——.]—SALEH MAHOMED UMER DOOSAL *v* NATHOOMAL KESSAMAL (1927), 54 L. R. Ind. App 427; I. L. R. 55 Calc. 126.—**IND.**

1594 iv. ——.]——In determining whether an agreement to abide by the result of an arbn. is binding, a distinction is to be drawn between the case where parties to a contract generally refer their "differences" arising therefrom & the case where a specific question of fact or law is submitted. In the former case the fact that the arbitrator was wrong in point of law is ground for setting the award aside.—*Re* WOOD & MALKIN CO., LTD. (B. C.), [1928] 4 D. L. R. 511; [1928] 2 W. W. R. 674.—**CAN.**

1599 i. —— *In special case submitted to High Court.*]—*Re* BRECHIN & DRAPERY IMPORTING CO., LTD., No. 1059 i, *ante*.—**N.Z.**

1604 ii. —— *Apparent on face of award.*]—*Held:* the mistake rendered the award invalid.—BEACH *v.* HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO, [1924] 4 D. L. R. 995; 56 O. L. R. 35.—**CAN.**

1606 vii. —— *Omission to mention agreed disposition of property.*]—*Held:* the arbitrator was entitled to supply the omission by an addition to the award.—DEBRET *v.* DEBRET, [1917] 3 W. W. R. 503; 10 Sask. L. R. 366.—**CAN.**

1624. *Add. Annotations :*—**Expld.** *Re* Becker, Shillan & Barry, [1921] 1 K. B. 391. **Refd.** Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1922), 92 L. J. K. B. 45.

1643. *Add. Annotations :*—**Refd.** A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395.

1644. *Add. Annotation :*—**Refd.** Kelantan Government *v.* Duff Development Co., [1923] A. C. 395.

1644a. .] — Though an award may be set aside for an error of law appearing on the face of it, & though a question of construction is, generally speaking, a question of law, yet, where a qusetion of construction is the very thing referred for arbn., then the decision of the arbitrator upon that point cannot be set aside by the ct. only because the ct. would itself have come to a different conclusion: If it appears by the award that the arbitrator has proceeded illegally, for instance, that he decided on evidence which in law is not admissible or on principles of construction which the law does not countenance, then there is error in law which may be ground for setting aside the award; but the mere dissent of the ct. from the arbitrator's conclusion on construction is not enough for that purpose.—KELANTAN GOVERNMENT *v.* DUFF DEVELOPMENT CO., [1923] A. C. 395; 129 L. T. 356; 39 T. L. R. 337; 67 Sol. Jo. 437, H. L.; *previous proceedings, sub nom.* DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, [1923] 1 Ch. 385, C. A.

1645. *Add. Annotations :*—*As to* (1) **Apprvd.** Champsey Bhara *v.* Jivraj Balloo Spinning & Weaving Co., [1923] A. C. 480. **Consd.** Roberts *v.* Anglo-Saxon Insce. Assocn. (1927), 96 L. J. K. B. 590. **Refd.** A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395.

1647. *Add. Annotation :*—**Consd.** Kelantan Government *v.* Duff Development Co., [1923] A. C. 395.

1667. *Add. Annotation :*—**Consd.** Sutherland *v.* Hannevig, [1921] 1 K. B. 336.

1668a. —— —— **Act of 1889, s. 7 (c).**]—An arbitrator in making his award gave two sets of costs to one of the parties in terms which were not sufficiently explicit, & subsequently on the request of one party added explanatory words & issued an amended award :—*Held :* inasmuch as the original award was in the language intended by the arbitrator & neither contained words which he had meant to omit, nor omitted words which he had intended to insert, the fact that he had failed to choose apt words to convey his meaning was not an "accidental slip or omission" entitling him to amend his award under the above sect., & the amended award must be set aside.—SUTHERLAND & CO. *v.* HANNEVIG BROTHERS, LTD., [1921] 1 K. B. 336; 90 L. J. K. B 225; 37 T. L. R. 102; *sub nom. Re* SUTHERLAND & CO. & HANNEVIG BROTHERS, LTD., 125 L. T. 281; 15 Asp. M. L. C. 203, D. C.

1669. *Add. Annotation :*—**Refd.** Sutherland *v.* Hannevig, [1921] 1 K. B. 336.

1674a. Stranger cannot alter.]—An award by an umpire is not vitiated by a mistake in the recital of the award, in the Christian name of one of the original arbitrators who had appointed the umpire. Such mistake not being material, an alteration made by a stranger subsequently to the publication of the award, by striking out the wrong & inserting the right Christian name, does not vitiate the award, but leaves it in the state in which it was before such alteration.—TREW *v.* BURTON (1833), 1 Cr. & M. 533; 3 Tyr. 559; 2 L. J. Ex. 236; 149 E. R. 511.

1698. *Add. Annotation :*—**Refd.** A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268.

1701a. —— **Liability to cross-examination.**]—In June, 1913, claimants, R. & Co., effected an insurance with resps., an insurance co., whereby the insurance co. agreed that, if at any time during the period covered by the policy the premises of claimants should be destroyed by fire, & their business should be thereby interfered with or interrupted, they would pay to claimants monthly until such time as the reduction in turnover in consequence of the fire should have ceased, but not exceeding in all nine months, on account

PART IV. SECT. 13, SUB-SECT. 2.—B. (a).

1626 i. *General reference of all matters in dispute.*]—*Held :* the parties were bound by the arbitrator's award however erroneous in law it might be.—NATIONAL MORTGAGE & AGENCY CO., LTD. *v.* BRAID & CO., [1923] N. Z. L. R. 933.—**N.Z.**

1626 ii. *Reference of all differences—Several questions of law involved.*]—Where all differences have been referred to an arbitrator, the rule that a wrong decision of the arbitrator on a question of law is final & cannot be reviewed unless the error appears in the award itself, or in a document contemporaneous & forming part of the award, applies to any number of questions of law which may be specifically referred in the same reference, & does not apply merely where the question of law is the sole question referred. An award will not be set aside where the error occurs not in the award itself, but in a contemporaneous document setting out the reasons for the award, & which the arbitrator has expressly stated is not to be deemed to be part of the award.—STEANS *v.* MALING & CO., LTD., [1931] N. Z. L. R. 312.—**N.Z.**

1630 vi. ——.]—Where a question of law has been submitted to the arbitrators their decision is not open to review.—*Re* MCNAUGHT & STOKES-STEPHENS OIL CO., LTD. (NO. 3) (1919), 14 Alta. L. R. 148.—**CAN.**

PART IV. SECT. 13, SUB-SECT. 2.—B. (b).

1649 vii. ——.]—It is no ground for setting aside an award that an examination of the materials before the arbitrator discloses that his findings are unsupported by, or against, the weight of evidence.—LATHAM *v.* FOSTER'S AUSTRALIAN FIBRES, LTD., [1926] V. L. R. 427.—**AUS.**

PART IV. SECT. 13, SUB-SECT. 3.

1665 iii. For "SANDFORD *v.* SANDFORD" read "SANFORD *v.* SANFORD."

1665 iv a. —— ——.]—Where an arbitrator has made an award in respect of a claim involving the proof of a number of items, an affidavit of the arbitrator setting out the items in respect of which he has made his award, & the amount he awarded in respect of each item of the claim, is inadmissable in evidence.—HALLIGAN *v.* LAWSON (1922), 22 S. R., N. S. W. 501; 39 N. S. W. W. N. 204.—**AUS.**

1666 iii. —— —— *Effect of statute—Arbitration Act*, 1914 (*c.* 65).]—*Held :* the arbitrator had power to amend his award under s. 10 (*c*) of the above Act.—*Re* WHITE & CITY OF TORONTO (1917), 38 O. L. R. 337.—**CAN.**

1671 vii. —— *Unless award not truly stating arbitrator's opinion.*]—An appellate ct. should not interfere to vary an award unless it is satisfied that the award did not truly represent the honest opinion of the arbitrators as to damages, or that their basis of valuation was erroneous.—*Re* SCOTT & OSHAWA TOWN (1922), 52 O. L. R. 504.—**CAN.**

1671 viii. —— *Power to increase amount.*]—The amount awarded by an arbitrator may, upon consideration of the evidence, be increased by the appellate ct.—LAKE ERIE & NORTHERN RY. CO. *v.* BRANTFORD GOLF & COUNTRY CLUB (1918), 21 Can. Ry. Cas. 360; 32 D. L. R. 219.—**CAN.**

of annual net profit & charges as therein set forth, the same percentage on the amount by which the turnover in each month should in consequence of the fire be less than the turnover for the corresponding month of the year preceding the fire as the sum or sums thereby insured should bear to the total of the turnover for the last financial year. It was provided that the amount of the losses under the policy should be assessed by claimants' auditors, L. & G. A condition on the back of the policy provided for reference to arbn. of all differences arising out of the policy. The premises of claimants were destroyed by fire on July 22, 1913, a date within the period covered by the policy. G., a member of the firm of L. & G., duly assessed the amount of the loss suffered by claimants in respect of profits for the period of nine months succeeding the fire. Differences having arisen in regard to the payments under the policy, the parties went to arbn. G. was called as a witness by claimants at the arbn. proceedings, & stated that although it did not so appear on the face of the assessments he was at the time of signing the same satisfied that the losses of the turnover respectively therein stated were in fact sustained in consequence of the fire. There was no suggestion of any fraud on the part of the assessor:—*Held:* as G., whether regarded as an arbitrator or an assessor, had been called to give oral testimony he could be cross-examined on all relevant issues & consequently could be cross-examined to show that he had failed to take into account certain considerations necessary for arriving at the reduction in the turnover of claimants due solely to the fire.—RECHER & CO. *v.* NORTH BRITISH & MERCANTILE INSURANCE CO., [1915] 3 K. B. 277; 84 L. J. K. B. 1813; 113 L. T. 827, D. C.

1722a. —— Reference to umpire by arbitrators—Custom of the tallow trade.]—Pltfs. sold to defts. a quantity of paraffin wax under a contract providing, "any dispute arising under this contract to be settled by arbitrators in London in the usual way." A claim was made by defts. against pltfs., & the arbitrators, being unable to agree, appointed an umpire by a document headed, "the use of this form constitutes a submission to the rules of the assocn.," *i.e.*, the London Oil & Tallow Trades Assocn. The umpire awarded that defts.' claim failed & that they were to pay the costs of the arbn. The rules of the assocn. provided for an appeal to an appeal committee, & defts. claimed a right of appeal. Pltfs. thereupon brought an action against defts. to recover the costs of the arbn., & the evidence was that in the trade in paraffin wax the usual way of settling a dispute by arbn. was to appoint arbitrators who could appoint an umpire whose decision would be final:—*Held:* the heading did not apply & the umpire was really appointed in pursuance of the original agreement as to arbn. & not under the rules of the assocn., & pltfs. were entitled to recover.—PALMER & CO., LTD. *v.* PILOT TRADING CO., LTD. (1929), 45 T. L. R. 214.

1735. *Add. Annotation:*—**Refd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

1738. After this case add "**Personal representative.**]—*See* Vol. XXIV., p. 621, Nos. 6508, 6509, & *compare* original volume, pp. 393 *et seq.*"

1751. *Add. Annotation:*—**Refd.** Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478.

1758. *Add. Annotation:*—**Refd.** Ayscough *v.* Sheed Thomson (1923), 92 L. J. K. B. 878.

1761. *Add. Annotation:*—**Refd.** Ayscough *v.* Sheed Thomson (1923), 92 L. J. K. B. 878.

1762. *Add. Annotation:*—**Refd.** Ayscough *v.* Sheed Thomson (1923), 92 L. J. K. B. 878.

1799a. —— Single judge of High Court.]—PRODUCE BROKERS, LTD. *v.* BLYTH, GREENE, JOURDAIN & CO., LTD., No. 1960a, *post.*

PART IV. SECT. 15, SUB-SECT. 2.—A. (b).

1723 xi. —— *Damages — Unless wrong principle followed.*]—LAKE ERIE & NORTHERN RY. CO. *v.* MUIR (1918), 21 Can. Ry. Cas. 350.—**CAN.**

PART IV. SECT. 15, SUB-SECT. 2.—A. (c).

n i. ——.]—Where arbn. proceedings are initiated by a provincial railway co. & much of the evidence is received before an amalgamation of the co. with a Dominion railway co. is effected & the proceedings are allowed to proceed after the amalgamation, until practically all that remained to be done is the making of the award, the Dominion co. is bound by the award made as a result of such proceedings.—HANEY *v.* CANADIAN NORTHERN RY. CO., [1917] 3 W. W. R. 105; 36 D. L. R. 674.—**CAN.**

PART IV. SECT. 15, SUB-SECT. 2.—D.

sd. *Jurisdiction of court ordering reference.*]—Where an order for a reference is made with the consent of the solrs. on both sides, & arbitrators are appointed in pursuance of such order, & the arbitrators take evidence & file their award, counsel for both parties taking no objection to the regularity of the proceedings, the parties will not be permitted, afterwards, to attack the award or the subsequent proceedings on the ground that the ct. by which the order for reference was made had no jurisdiction to do so.—HALL *v.* ELECTRIC COMRS. OF LAWRENCETOWN, [1921] 54 N. S. R. 283; 57 D. L. R. 535.—**CAN.**

PART IV. SECT. 16, SUB-SECT. 1.

a i. —— *Compulsory reference—Subsequent voluntary submission.*]—*Held:* the award of the arbitrator was not open to review by the ct.—ROYAL COMMISSION OF WHEAT SUPPLIES *v.* USHER & CO., LTD., [1920] 3 I. R. 483.—**IR.**

a ii. ——.]—LACOSTE *v.* CEDARS RAPIDS MANUFACTURING & POWER CO., [1928] 2 D. L. R. 1.—**CAN.**

a iii. ——.]—Under its inherent jurisdiction, the power of the ct. to set aside an award depends on whether it is "bad on its face" or on some ground which is more or less an extension of the same principle.—*Re* WOOD & MALKIN CO., LTD. (B. C.), [1928] 4 D. L. R. 511; [1928] 2 W. W. R. 674.—**CAN.**

1786 i a. —— *Appellate Division of Supreme Court.*]—An appeal from or a motion to set aside or remit an award must be to the Appellate Div. of the Supreme Ct.—SNIDER *v.* MILLER, [1924] 2 D. L. R. 617; 1 W. W. R. 1163; 20 Alta. L. R. 237; *affg.*, [1924] 1 D. L. R. 198; [1923] 3 W. W. R. 1376.—**CAN.**

1802 iii. —— ——.]—In a submission to arbn. the parties thereto agreed that the Arbn. Act should not apply therein, & that the decision of the arbitrator should be final & binding upon both parties:—*Held:* this agreement was void as against public policy.—BEACH *v.* HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO, [1924] 4 D. L. R. 995; 56 O. L. R. 35.—**CAN.**

PART IV. SECT. 16, SUB-SECT. 2.—A.

c i. ——.]—Unless in the procedure adopted by the arbitrators there has been something radically wrong or vicious an award cannot be impeached on the ground that the technical web of judicial procedure & rules of evidence which surround judicial procedure were not strictly adhered to.—MAURIG SHWE HPU *v.* U MIN NYUN (1925), I. L. R. 3 Ran. 387.—**IND.**

1 (p. 547). For "**IND.**" read "**CEYLON.**"

se. *Award reciting order of reference not fixing time for delivery of award.*]—*Held:* an award which recited an order of reference not fixing a time for delivery of the award was *primâ facie* liable to be set aside, but Supreme Ct. Ordinance, 1876, of the Gold Coast, Ord. 52, rr. 12 (c) & 13, prevented the omission from having that effect.—YAMIKE KWEKU *v.* ANNOR ADJAYE, [1926] A. C. 755; 95 L. J. P. C. 157; 135 L. T. 642.—**GOLD COAST.**

PART IV. SECT. 16, SUB-SECT. 2.—B.

w (p. 548) i. —— ——.]—The misconduct referred to in Arbn. Act, s. 14 (2) is "legal misconduct." In determining whether there was "legal misconduct" on the part of the

1822. *Add. Annotations :*—**Refd.** Buerger *v.* Barnett (1919), 89 L. J. K. B. 161 ; Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478.

1822a. **Question to be raised immaterial.**]—(1) It is not misconduct on the part of an arbitrator or umpire, within the Act of 1889, s. 11, to refuse to state a case, under sect. 7 (b) or 19 of the Act, for the opinion of the ct. on a point of law, if his finding on a question of fact makes the question which would be raised by the case immaterial.

(2) An award is not vitiated by an error in law on the face of it, if the error is not material to the decision.—BUERGER & Co. *v.* BARNETT (1919), 89 L. J. K. B 161 ; 120 L. T. 570 ; 35 T. L. R. 260 ; 63 Sol. Jo. 391, D. C.

1822b. ——.]—When questions of law arise in an arbn. it is of the greatest importance that the right of the parties to obtain the assistance of the ct. at any period of the proceedings should be fully enforced, though the arbn. tribunal has not passed through all the stages of its own procedure providing for an appeal from the award. If the umpire by refusing to make his award in the form of a special case deprives the parties of the right to have questions of law, which are neither frivolous nor vexatious but are substantial, decided by the ct., he is guilty of misconduct & his award will be set aside.—*Re* FISCHEL & Co. & MANN & COOK, [1919] 2 K. B. 431 ; 121 L. T. 275 ; *sub nom.* FISCHEL & Co. *v.* MANN & COOK, 88 L. J. K. B. 1173, D. C.

1825a. **Disregarding statute passed after hearing but before issue of award.**] — (1) Resps. to an arbn. had hired of claimant, for a certain period, a number of horses which, on the outbreak of war & before the expiry of the period, were commandeered by the War Office. He then refused to pay the hire for the full period on the ground of frustration of the adventure. At the hearing of the arbn. on June 19, 1917, claimant did not press for hire after the seizure of the horses, & on July 31, 1917, the arbitrator issued his award, giving claimant the amount due up to the date of the seizure, but not afterwards. On July 10, 1917, Courts Emergency Powers Act, 1917 (c. 25), had come into operation, but there was nothing to show whether the arbitrator was or was not aware of the Act. On a motion to set aside the award on the ground of the technical misconduct of the arbitrator in not taking the statute into consideration :—*Held :* whether or not the arbitrator was aware of the Act, he had applied its principles, &, consequently, there was no misconduct ; the parties were not taken by surprise, & the award was good.

(2) It has been contended that the fact that the arbitrator did not know or take cognisance of the Act, which was passed after the hearing of the arbn. & before the issue of the award, constituted misconduct. I doubt very much whether that would amount to misconduct, although possibly it might amount to surprise (A. T. LAWRENCE, J.).—OSMOND *v.* WOOLLEY (1917), 87 L. J. K. B. 822 ; 118 L. T. 29 ; 34 T. L. R. 133, D. C.

1826. *Add. Annotations :*—**Refd.** Cayzer, Irvine *v.* Board of Trade (1926), 95 L. J. K. B. 1054 ; Ramdutt Ramkissen Das *v.* Sassoon (1929), 98 L. J. P. C. 58.

1827. *Add. Annotation :*—**Refd.** *Re* Boks & Peters Rushton, [1919] 1 K. B. 491.

1839a. **Surprise.**]—It is no ground for setting aside an award that the unsuccessful party suffered a surprise ; as an arbitrator would have power to postpone the proceedings upon any reasonable application for that purpose.—SOLOMON *v.* SOLOMON (1859), 28 L. J. Ex. 129.

1839b. —— **What amounts to.**]—OSMOND *v.* WOOLLEY, No. 1825a, *ante*.

1846. *Add. Annotation :*—**Refd.** Delahunt *v.* Moody (1927), 21 B. W. C. C. 588.

1850a. **Objection to authority of arbitrator to determine dispute.**]—The owner of a timber estate sold the whole of the timber thereon to a timber co. in consideration of fully paid up shares in the co. Subsequently by policies effected in his own name with several insurance cos. he insured this timber against fire. The greater part of the timber having been destroyed by fire, he sued the insurance cos. to recover the loss, but the actions were stayed & the matter was referred to arbn. in pursuance of the conditions contained in the policies. C. was sole shareholder in the co. & was director of the co. to a large extent. The arbitrator held that claimant had no insurable interest in the goods insured & disallowed the claim :—*Held :* claimant having allowed the point of want of insurable interest to be raised before the arbitrator without objection, it was not open to him to call in question the authority of the arbitrator to entertain it.—MACAURA *v.* NORTHERN ASSURANCE Co., [1925] A. C. 619 ; 94 L. J. P. C. 154 ; 133 L. T. 152 ; 41 T. L. R. 447 ; 69 Sol. Jo. 777 ; 31 Com. Cas. 10, H. L.

arbitrator which would justify the setting the award aside, the ct. may look at the evidence adduced before him, in order to ascertain whether he acted on evidence which was wholly inadmissible & which went to the root of the question before him.

While in the present case, an arbn. as to the loss suffered by the seller of goods because of their non-acceptance by the buyer, the arbitrator was held to have erred in allowing the seller to "split" his case, yet, as he had exercised a discretion in the matter & no substantial injustice was occasioned thereby, the course adopted did not invalidate the award.—*Re* WOOD & MALKIN Co., LTD. (B. C.), [1928] 4 D. L. R. 511 ; [1928] 2 W. W. R. 674.—**CAN.**

y (p. 548) For "IND." read "CAN."

c i. —— *Refusal to state case.*]—Neglect by an arbitrator to state a case for the opinion of the ct. after being definitely asked by either of the parties to do so is *prima facie* technical misconduct for which his award may be set aside.—FISHER *v.* MATSON & Co., MATSON & Co. *v.* FISHER, [1918] N. Z. L. R. 1.—**N.Z.**

1811 ii a. ——.]—Where in a paving contract with a city the city's engineer is made arbitrator, he must guard against being unduly influenced by his employers ; & if it appears that he is so biased as to be likely not to decide fairly, then the contractor will not be bound by his decision.—BLOME *v.* CITY OF REGINA, [1920] 1 W. W. R. 311 ; 50 D. L. R. 93 ; 13 Alta. L. R. 94.—**CAN.**

sf. *Keeping answers secret.*]—Where arbitrators have not disposed of all the questions submitted to them, but have deliberately agreed not to disclose & to keep secret their answers to specific questions put to them, there is such misconduct as requires the ct. to set aside the award instead of remitting it.—*Re* BIDEN & THOMPSON, [1932] 1 W. W. R. 843.—**CAN.**

PART IV. SECT. 16, SUB-SECT. 2.—D.

sg. *Excess of jurisdiction.*]—The ct. has jurisdiction to set aside any award which purports to exercise jurisdiction beyond that given by the authorising Act & the submission made pursuant thereto.—*Re* BRITISH COLUMBIA MINISTER OF PUBLIC WORKS & TIPPING, [1931] 2 W. W. R. 835 ; 44 B. C. R. 321.—**CAN.**

—— ——.]—DEXTERS, LTD. *v.* HILL CREST OIL CO. (BRADFORD), No. 1083b, *ante*.

1855. *Add. Annotation :*—**Reld.** Mercer *v.* Reid (1931), 47 T. L. R. 574.

1857a. By motion.]—Any objection to an award on the ground of misconduct or irregularity on the part of an arbitrator must be taken by motion to set aside or remit the award, & if not so taken [within the time limited by R. S. C., Ord. 64, r. 14] cannot be pleaded in answer to an action on the award (*per* CUR.).—OPPENHEIM & Co. *v.* MAHOMED HANEEF, [1922] 1 A. C. 482 ; 91 L. J. P. C. 205 ; 127 L. T. 196, P. C.

Annotation :—**Apld.** Scrimaglio *v.* Thornett & Fehr (1924), 131 L. T. 174.

1857b. .]—SCRIMAGLIO *v.* THORNETT & FEHR, No. 135a, *ante*.

1857c. —— Entered in special paper.]—A motion to set aside an award which has been stated in the form of a special case should be entered in the special paper, & both the motion & the special case should be argued before the judge who takes the special paper. Where a special case has been set down in the special paper & subsequently notice of motion is given to set aside the award, the motion should be set down also in the special paper. —*Re* COWAN BROTHERS, LTD. & RYMER (HENRY) & Co., [1919] W. N. 140, D. C.

1869. *Add. Annotation :*—**Reld.** *Re* Campbell (1919), 88 L. J. Ch. 519.

1912a. —— Failure to apply within time limit.]—OPPENHEIM & Co. *v.* MAHOMED HANEEF, No. 1857a, *ante*.

1912b. —— ——.]—SCRIMAGLIO *v.* THORNETT & , No 135a, *ante*.

1925. *Add. Annotations :*—**Reld.** A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268 ; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395.

1937a. Whether leave to appeal necessary.]—RUF (T. A.) & Co. *v.* PAUWELS, No. 1152a, *ante*.

1943. *Add. Annotations :*—**Reld.** A.-G. for Manitoba *v.* Kelly, [1922] 1 A. C. 268 ; Champsey Bhara *v.* Jivraj Balloo Spinning & Weaving Co., [1923] A. C. 480 ; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395 ; Roberts *v.* Anglo-Saxon Insce. Assocn. (1927), 96 L. J. K. B. 590.

1950a. Misconduct.] — OPPENHEIM & Co. *v.* MAHOMED HANEEF, No. 1857a, *ante*.

1954a. ——.]—Where an arbitrator in making his award deals with the costs of the award & his own personal costs, but does not mention the costs of the parties in the reference, the ct. will not presume that he has exercised his discretion to make no order as to costs, or to leave each side to pay their own costs, but will remit the award to the arbitrator to exercise his discretion in express terms.—*Re* BECKER, SHILLAN & Co. & BARRY BROTHERS, [1921] 1 K. B. 391 ; 90 L. J. K. B. 316 ; 124 L. T. 604 ; *sub nom.* BECKER, SHILLAN & Co. *v.* BARRY BROTHERS, 37 T. L. R. 101, D. C.

Annotations :—**Consd.** Bradshaw *v.* Air Council. [1926] Ch. 329. **Reld.** Larrinaga *v.* Soc. Franco-Américaine des Phosphates de Medulla (1922), 92 L. J. K. B. 45.

1960a. —— By motion—Before single judge of High Court.]—A judge of the High Ct. sitting alone may entertain a motion to set aside or remit for further statement an award stated in the form of a special case.—PRODUCE BROKERS, LTD. *v.* BLYTH, GREENE, JOURDAIN & Co., LTD. (1918), 88 L. J. K. B. 597 ; 119 L. T. 311 ; 34 T. L. R. 419.

Annotation :—**Foll.** *Re* Cowan & Rymer, [1919] W. N. 140.

1960b. —— ——.]—OPPENHEIM & Co. *v.* MAHOMED HANEEF, No. 1857a, *ante*.

1981. For the paragraph in original volume substitute the following paragraph :—

Foreign award — Whether enforceable as

PART IV. SECT. 16, SUB-SECT. 3.

1852 xi. —— *Consent to extension of time for making award.*]—*Held :* the act of consent to extension of time, & recognition of the propriety of the arbitrators making the award, precluded objection to the award on the ground of misconduct.—POWIS *v.* VANCOUVER (CITY), RAMAGE *v.* VANCOUVER (CITY) (1917), 23 B. C. R. 180. —CAN.

1852 xii. ——.] — Where appts. went on with an arbn. without objection after an irregularity had occurred :—*Held :* they were precluded from seeking to set aside the award on the ground of the irregularity. — U GUNAWA *v.* U PYINNYADIPA (1923), I. L. R. 1 Ran. 15.—IND.

1852 xiii. ——.]—A reference was made to arbiters to determine the amount payable by a landlord to his tenant in respect of sheep stock :—*Held :* pursuer having full knowledge of the nature of the stock that was tendered to him, & having accepted the stock & dealt with it as if it was his own, was barred from objecting to the award of the oversman.—FLETCHER *v.* ROBERTSON (1919), 56 Sc. L. R. 305 ; [1919] 1 S. L. T. 260.—SCOT.

sh. *Award following opinion of court on case stated.*]—*Held :* the award might be set aside notwithstanding that it followed the opinion of the ct. upon a case stated under Arbn. Act, s. 29.—*Re* MCCONKEY'S ARBITRATION (1920), 17 O. W. N. 329 ; 47 O. L. R. 411.—CAN.

PART IV. SECT. 16, SUB-SECT. 4.—C.

1898 i. *Grounds for extension—Not mistake of counsel on question of law or practice.*]—On a motion to extend the time for making an application to set aside an award :—*Held :* where the rules require special circumstances to be shown upon an application for extension of time, the mistake of counsel or solr. upon a question of law or practice does not constitute a special circumstance justifying the intervention of the ct.—*Re* SWEINSSON & MUNICIPALITY OF CHARLESWOOD, [1917] 1 W. W. R. 293 ; 27 Man. L. R. 234.—CAN.

sg. *Within term following publication.*]—An award must be moved against within the term following its publication, or within the period which such term formerly occupied.—KEAN *v.* EDWARDS (1888), 12 P. R. 625.—CAN.

sj. *Under Consolidated Municipal Act*, 1922, *ss.* 333, 345 (1).]—*Re* VAHEY & CARLETON COUNTY, [1924] 4 D. L. R. 1055 ; 56 O. L. R. 129.—CAN.

PART IV. SECT. 16, SUB-SECT. 4.—D

sk. *Limited to evidence taken down in writing by arbitrator.*]—*Re* NEW BRUNSWICK GAS & OILFIELDS, LTD. & NEW BRUNSWICK ELECTRIC POWER COMMITTEE (N.B.), [1926] 2 D. L. R. 102.—CAN.

PART IV. SECT. 16, SUB-SECT. 4.—F.

y (p. 561). For "WADE AND OTHERS (No. 2) (1909)" read "WADE *v.* HARDLEY (No. 2) (1910)."

PART IV. SECT. 17, SUB-SECT. 1.

sl. *Under Arbitration Act*, 1927 (c. 97), *s.* 11.]—The power conferred by above sect. is conferred upon "the ct." & may be exercised by a judge sitting in ct. ; that does not necessarily mean the weekly ct. ; & a judge having the parties before him at a trial may, of his own motion, in a proper case, remit the matter to the arbitrators.—MILLER *v.* MCDONNELL, [1928] 4 D. L. R. 728 ; 62 O. L. R. 484.—CAN.

PART IV. SECT. 17, SUB-SECT. 2.

sm. *Under 2 Edw. 7, c. 107, ss. 12, 21—Grounds for remitting.*]—*Re* COLEMAN & TORONTO & NIAGARA POWER CO. (1917), 40 O. L. R. 130 ; 38 D. L. R. 65.—CAN.

PART IV. SECT. 17, SUB-SECT. 3.

r i. ——.]—Unless there is a mistake in law or fact evident on the face of the award itself, or the arbitrator admits that he has made a mistake in law or fact, or there has been fraud or corruption, the award will not be referred back.—*Re* FOX & CONSOLIDATED MINING & SMELTING CO. OF CANADA, [1925] 1 D. L. R. 245 ; [1924] 3 W. W. R. 861.—CAN.

r ii. —— *Arbitrators alleging mistake.*]—The ct. will not remit an award because the arbitrators allege a mistake involving an impeachment of their award. ROBINS *v.* ANDREWS, [1923] 2 D. L. R. 353 ; 1 W. W. R. 963.—CAN.

judgment of foreign court.]—An award in a foreign arbn. [unenforceable in the foreign country without an enforcement order] is not a decision which a ct. here ought to recognise as a foreign judgment, & cannot be enforced.—MERRIFIELD, ZIEGLER & CO. *v.* LIVERPOOL COTTON ASSOCN., LTD. (1911), 105 L. T. 97; 55 Sol. Jo. 581.

Annotation :—**Reld.** Harrop *v.* Harrop, [1920] 3 K. B. 386.

1981a. —— Action on—By what law contract governed.]—Pltfs., an insurance co. in London, & defts., an insurance co. in Norway, entered into a written contract headed "Reinsurance contract—Marine Insurance." The contract was not stamped as a policy, but it contained the usual terms of a reinsurance treaty, pltfs. being the reinsured & defts. the reinsurers, & there was a clause providing that in the event of disputes an arbn. should take place in Norway. The contract was signed by pltfs. in Norway & by defts. in London & was stamped with an English sixpenny stamp, but not in accordance with the English law as to contracts of marine insurance, but it was valid by the law of Norway. An arbn. under the contract was held in Norway & an award was issued in favour of pltfs. In an action on the award defts. submitted that the law applicable to the whole contract must be the law of England, & that, since the contract neither was a policy as required by English law nor was properly stamped as such a policy, pltfs. could not recover on the award :—*Held :* as the action was brought on the award, & as the proper inference from the provision as to the arbn. being held in Norway was that the parties intended the law of Norway to govern the contract, pltfs. were entitled to recover the sum awarded.—NORSKE ATLAS INSURANCE CO., LTD. *v.* LONDON GENERAL INSURANCE CO., LTD. (1927), 43 T. L. R. 541.

1985. After this case add "*See, now*, R. S. C., Ord. 11, r. 8a."

1985a. Grounds for granting or refusing order—Objection to award.]—Where there is no objection to an award or where the objection raised is one which can easily be disposed of, the summary procedure provided by the Act of 1889, s. 12, is prompt & convenient; but where there are matters which may gravely affect the validity of the award or the right to proceed under it, it is proper that they should be dealt with by an action in which the facts can be fully ascertained, & no order under the sect. should be made giving leave to proceed summarily under the award.—*Re* BOKS & CO. & PETERS, RUSHTON & CO., [1919] 1 K. B. 491; 88 L. J. K. B. 351; 120 L. T. 516, C. A.

1985b. —— Award against Crown.]—An award against the Crown in an arbn. under the Act of 1889 cannot, for the purpose of enforcement, be treated as a judgment or decree on a petition of right, & under sect. 12 of that Act leave to enforce the award as a judgment or order will be refused.—GRECH *v.* BOARD OF TRADE (1923), 92 L. J. K. B. 956; 130 L. T. 15; 39 T. L. R. 630; 67 Sol. Jo. 725, C. A.

1986. *Add. Annotations :*—**Distd.** Richardsons & Bradley *v.* Bernhard, [1925] 2 K. B. 121. **Foll.** Simbro Trading Co. *v.* Posograph (Parent) Corpn., [1929] 2 K. B. 266.

2056a. ——.]—OPPENHEIM & CO. *v.* MAHOMED HANEEF, No. 1857a, *ante*.

2059. *Add. Annotation :*—**Reld.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.

2092a. ——.]—On a motion for an attachment for not performing an award, the ct. will not discuss objections to the award, not apparent on the face of it; as, that the arbitrator was partial, or that matters were brought before him, the reference being of all matters in difference, which are not disposed of by the award.—MACARTHUR *v.* CAMPBELL (1834), 2 Ad. & El. 52; 4 Nev. & M. K. B. 208; 4 L. J. K. B. 25; 111 E. R. 21; *previous proceedings* (1834), 5 B. & Ad. 518.

Annotations :—**Consd.** Wright *v.* Graham (1848), 3 Exch. 131. **Reld.** Smith *v.* Troup (1849), 7 C. B. 757; Davies *v.* Pratt (1855), 17 C. B. 183.

PART IV. SECT. 19, SUB-SECT. 4.—C.

2050 iii a. —— ——.]—B., an arbitrator, in the absence of & without notice to one of the parties, made an award :—*Held :* although the award might have been set aside for misconduct of the arbitrator if moved against in time, yet, the award being final, the misconduct could not be set up as an answer to an action upon the award.—TOURANGEAU *v.* SANDWICH WEST TOWNSHIP, [1920] 48 O. L. R. 306; 56 D. L. R. 83.—**CAN.**

2050 iii b. —— ——.]—In a suit in India upon an award made upon a submission to arbn. in England, irregularity or misconduct in arriving at the award is not a defence.—OPPENHEIM & CO. *v.* MAHOMED HANEEF [1922] 1 A. C. 482; 91 L. J. P. C. 205; 127 L. T. 196; 49 L. R. Ind. App. 174.—**IND**

2050 iii c. —— ——.]—An award duly made in England under the English Act of 1889 can be enforced by a suit in an Indian ct., & cannot be set aside by an Indian ct. on any ground of misconduct or irregularity on the part of the arbitrator.—JOHN BATT & CO. (LONDON) *v.* KANODLAL & CO. (1925), I. L. R. 53 Calc 65.—**IND.**

2056 i. *Not irregularity in conduct of arbitrators.*]—Arbitrators appointed, but not in writing for the purpose of winding up the affairs of a partnership between pltf. & deft. met & went over such papers as were available at the moment, heard what each of the partners had to say & reached a conclusion which they stated at the meeting. The arbitrators took no oath of office, & two witnesses were sworn. A day or two after the meeting, one of the arbitrators prepared & signed a memorandum headed "Report of Arbitrators," stating the conclusion that the balance due to pltf. was a certain sum. This memorandum was taken by pltf. to the other arbitrators, each of whom signed it. This action was brought upon the memorandum as upon an award. Deft. pleaded the award was irregular & illegal, in that no evidence was taken under oath, the arbitrators were not sworn, or legally appointed, deft. was not permitted to give his evidence, & although he objected, the award was given without his being heard. Deft. also counterclaimed for moneys paid to pltf., etc. :—*Held :* the objections pleaded ought to have been taken on a motion to set aside the award, & were not available as a defence to the action.—MILLER *v.* MCDONNELL, [1928] 4 D. L. R. 728; 62 O. L. R. 484.—**CAN.**

PART IV. SECT. 19, SUB-SECT. 8.

2n. *What defences available.*]—Appts. brought an action against the Commonwealth to recover money due under two contracts. While the action was pending the A.-G. of the Commonwealth agreed to submit to arbn. the matters in dispute between the parties. This agreement recited the making of the two contracts. The arbitrator having made his award in favour of the Commonwealth, appts. moved to set aside the award or to remit it to the arbitrator on certain grounds, none of which related to the validity of either of the contracts. That motion was dismissed. On an application by the Commonwealth for leave to enforce the award :—*Held :* appts. were not entitled to challenge the validity of the two contracts or the authority of the A.-G. to make the agreement for arbn. —KIDMAN *v.* COMMONWEALTH OF AUSTRALIA (1925), 37 C. L. R. 233; 26 S. R. N. S. W. 379; 43 N. S. W. W. N. 11; [1926] Argus L. R. 118.—**AUS.**

2o. *Arbitration Act*, 1909, *s.* 13—*Award merely determining rights.*]—The above sect. does not authorise a judge to give leave to issue execution directly on an award which merely determines rights, but says nothing as to the amount to which the successful party is entitled.—*Re* MCNAUGHT & STOKES-STEPHENS OIL CO. (No. 2), [1918] 3 W. W. R. 337; 43 D. L. R. 7.—**CAN.**

3p. *Arbitration Act, R. S. M.*, 1913 (*c.* 9)—*Award under Municipal Act.*]—Arbn. Act, R. S. M., 1913 (c. 9), applies to awards under Municipal Act un-

2187. *Add. Annotations :*—**Apld.** Bradshaw *v.* Air Council, [1926] Ch. 329. **Refd.** Haynes *v.* Aldridge Colliery Co. (1923), 130 L. T. 282; Mansfield *v.* Robinson, [1928] 2 K. B. 353.

2187a. Discretion of arbitrator—Must be exercised judicially.]—An arbitrator's discretion as to costs must be exercised judicially.—LLOYD DEL PACIFICO *v.* BOARD OF TRADE (1930), 46 T. L. R. 476; 35 Com. Cas. 325.

2213. *Add. Annotation :*—**Consd.** Kursell *v.* Timber Operators & Contractors, [1923] 2 K. B. 202.

2244. *Add. Annotation :*—**Refd.** Akt. Ocean *v.* Harding, [1928] 2 K. B. 371.

2326. *Add. Annotation :—As to* (1) **Refd.** Reid, Hewitt *v.* Joseph, [1918] A. C. 717.

2331. *Add. Annotation :*—**Refd.** Akt. Ocean *v.* Harding, [1928] 2 K. B. 371.

2332. *Add. Annotations :*—**Consd.** Reid, Hewitt *v.* Joseph, [1918] A. C. 717. **Refd.** Terry *v.* Gould (No. 2) (1924), 69 Sol. Jo. 212; Weber *v.* Birkett, [1925] 1 K. B. 720.

2336. *Add. Annotation :*—**Consd.** Reid, Hewitt *v.* Joseph, [1918] A. C. 717.

2340. *Add. Annotations :*—**Consd.** Keen *v.* Towler (1924), 41 T. L. R. 86. **Apld.** King *v.* Sunday Pictorial Newspapers (1920) (1924), 133 L. T. 397.

2344. *Add. Annotation :*—**Apld.** *Re* Becker, Shillan & Barry, [1921] 1 K. B. 391.

2352. *Add. Annotation :*—**Refd.** *Re* Becker, Shillan & Barry, [1921] 1 K. B. 391.

2353. *Add. Annotation :*—**Consd.** Williams *v.* Jones, [1926] 1 K. B. 255.

2354. *Add. Annotation :—As to* (1) **Consd.** Williams *v.* Jones, [1926] 2 K. B. 37.

2355a. —— Whether more than one issue—R. S. C., Ord. 65, r. 2.]—WILLIAMS *v.* JONES (STANLEY) & Co., [1926] 2 K. B. 37; 95 L. J. K. B. 471; 134 L. T. 652; 70 Sol. Jo. 463, C. A.

2358. *Add. Annotation :*—**Apld.** *Re* Becker, Shillan & Barry, [1921] 1 K. B. 391.

2361a. —— Award not providing for costs of parties.]—*Re* BECKER, SHILLAN & Co. & BARRY BROTHERS, No. 1954a, *ante*.

Part V.—References by Order of Court.

SECT. 1 (p. 613).—**REFERENCES FOR INQUIRY AND REPORT.**

See, now, S.C.J. (Consolidation) Act, 1925 (c. 49), ss. 88, 92.

2448. *Add. Annotation :*—**Refd.** Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

2451. Before this case add "Arbitration Act, 1889, s. 15, is now replaced by S.C.J. (Consolidation) Act, 1925 (c. 49), s. 90."

2455. *Add. Annotation :*—**Refd.** Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

2458. Before this case add "Arbitration Act, 1889, s. 13 (2), is now replaced by S.C.J. (Consolidation) Act, 1925 (c. 49), s. 88 (2)."

2459. *Add. Annotation :*—**Refd.** Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

2475. For cross-reference after this caser ead "*See now*, S.C.J. (Consolidation) Act, 1925 (c. 49), s. 90 (3)."

expressly conflicting with the latter Act. Where an award on an arbn. under Municipal Act is made on a written submission & fixes not only the amount but also the liability, it may be entered on application as a judgment of the Ct. of King's Bench & enforced accordingly.—SWEINSSON *v.* RURAL MUNICIPALITY OF CHARLESWOOD, [1917], 3 W. W. R. 201; 36 D. L. R. 32.—**CAN.**

sq. *Decree—Failure to accept award.*]—Where in a suit parties have referred their difference to arbn. without an order of the ct. & an award is made, a decree in terms of the award can be passed by the ct. under Civil Procedure Code, Ord. XVIII., r. 3, although the parties do not accept the award.—SUBBARAJU *v.* VENKATRAMARAJU (1928), I. L. R. 51 Mad. 800.—**IND.**

PART IV. SECT. 20, SUB-SECT. 1.—D. (b).

1 i. —— *Arbitration Act, R. S. M., 1913 (c. 9)—Greater Winnipeg Water District Act, 1913 (c. 22).*]—*Re* IVERSON & GREATER WINNIPEG WATER DISTRICT, [1921] 1 W. W. R. 621; 57 D. L. R. 184; 30 Man. L. R. 98.—**CAN.**

1 ii. —— *Arbitration Act, 1908.*]—An order provided that the costs of the reference & award should be within the discretion of the arbitrator under & subject to the above Act :—*Held :* the discretion of arbitrators with regard to costs was not limited by the principles which the cts. apply.—TYNAN *v.* FORBES, [1921] N. Z. L. R. 738.—**N.Z.**

PART IV. SECT. 20, SUB-SECT. 3.

z i. —— *Includes costs of counterclaim.*]—KIRK *v.* KIRK (1897), 40 N. S. R. 600.—**CAN.**

sr. *"Costs of attendance of" party—Party attending with several witnesses—Costs of witnesses not included.*]—MCQUEEN *v.* VANCOUVER ISLAND POWER CO., LTD. (1925), 35 B. C. R. 558.—**CAN.**

PART IV. SECT. 20, SUB-SECT. 6.

st. *Power of arbitrator to fix counsel's fees.*]—On an arbn. as to costs in an action, the arbitrator has power to fix the counsel's fees.—CHATTERSON *v.* DUTTON, [1917] 2 W. W. R. 393; 33 D. L. R. 622; 10 Sask. L. R. 169.—**CAN.**

sv. *Power of arbitrator to postpone taxation.*]—An arbitrator on making his award may reserve the question of the costs of the arbn. & tax them subsequently.—CHATTERSON *v.* DUTTON, [1917] 2 W. W. R. 393; 33 D. L. R. 622; 10 Sask. L. R. 169.—**CAN.**

2395 vii. —— ——.]—The taxing officer having disallowed the fees for senior counsel on the taxation of a bill of costs in an arbn. case on the ground that two counsel were in no way necessary :—*Held :* as the arbn. involved a sum of nearly £6,000 & the evidence was of a highly technical nature, the services of a senior counsel were properly employed, & his fees & the accessory charges should have been allowed.—GARLICK & Co. *v.* POYNTON (1917), 38 N. L. R. 59.—**S. AF.**

2414 viii. ——.]—NEW BRUNSWICK ELECTRIC POWER COMMISSION *v.* QUINTON, [1924] 4 D. L. R. 345.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.

a i. —— *"Acting" Deputy Registrar of Supreme Court.*]—*Held :* while the validity of the appointment was doubtful, yet as the above officer had acted since his appointment, a judge of first instance should uphold the appointment unless fully satisfied that there was no power of making it, especially where, as in this case, the reference had proceeded without objection on the point.—FUSARELLI *v.* Loco TOWNSITE CO., [1922] 1 W. W. R. 1238.—**CAN.**

PART V. SECT. 1, SUB-SECT. 5.

p (p. 616) **i.** —— —— —— *Alberta Rules, r. 312.*]—MAINFROID *v.* MAINFROID (Alta.), [1926] 4 D. L. R. 1060; [1926] 3 W. W. R. 617.—**CAN.**

z i. —— —— ——.]—*Re* COCHRAN'S TRUSTS (No. 2) (1919), 52 N. S. R. 278.—**CAN.**

PART V. SECT. 1, SUB-SECT. 6.

2474 ii. ——.]—AVORY & SON *v.* PARKS (1917), 12 O. W. N. 4; 39 O. L. R. 74; 35 D. L. R. 71.—**CAN.**

SECT. 2 (p. 619).—**REFERENCES FOR TRIAL.**

See; now, S.C.J. (Consolidation) Act, 1925 (c. 49), s. 89.

2485. *Add. Annotation:*—**Refd.** Mayhead *v.* Hydraulic Hoist Co. (1931), 100 L. J. K. B. 369.

2511. *Add. Annotation:*—**Refd.** Mayhead *v.* Hydraulic Hoist Co. (1931), 100 L. J. K. B. 369.

2554. Before this case add "Arbitration Act, 1889, ss. 16, 17, is now replaced by S.C.J. (Consolidation) Act, 1925 (c. 49), ss. 91, 92."

2557. *Add. Annotations:—As to* (1) **Consd.** *Re* Soc. les Affréteurs Réunis & Shipping Controller, [1921] 3 K. B. 1; Kursell *v.* Timber Operators & Contractors, [1923] 2 K. B. 202. *As to* (2) **Consd.** *Re* Soc. les Affréteurs Réunis & Shipping Controller, [1921] 3 K. B. 1; Kursell *v.* Timber Operators & Contractors, [1923] 2 K. B. 202; Light *v.* West, [1926] 2 K. B. 238.

2567. Delete cross-reference before this case.

2575. Before this case add "*See, now,* S.C.J. (Consolidation) Act, 1925 (c. 49), s. 90 (2)."

2580a. No power to alter his own order.]—Where a referee acts deliberately, even though he may not realise that what he is doing does not carry out his full intention, he has no jurisdiction under R. S. C., Ord. 28, r. 11, to alter his report subsequently.—BENTLEY *v.* O'SULLIVAN (1925), 133 L. T. 189; 41 T. L. R. 374; 69 Sol. Jo. 509, D. C.

2580b. Power to set aside his own order.]—In an action tried by an official referee judgment was given against defts. by default. Defts. applied to the judge in chambers to set aside the judgment of the official referee & to order a new trial. The application was not made within six days after the trial before the official referee, but no objection in regard to time was taken by pltfs. before the judge in chambers. The judge referred to the official referee the application to set aside his own judgment. At the hearing of the application the official referee himself took the point that the application to set aside his judgment had not been made within six days after the trial; & he further held that, having regard to the concluding words of R. S. C., Ord. 59a, r. 3 (b), he had no jurisdiction to set aside his own judgment:—*Held:* (1) the objection in regard to time, not having been taken at the earliest opportunity, could not be relied upon by pltfs. on the appeal; (2) as under R. S. C., Ord. 36, r. 50, the official referee had "the same authority in the conduct of any reference or trial as a judge of the High Ct.," he had jurisdiction to set aside his own judgment, & the words "save as herein provided, no application for a new trial before a referee shall be made" at the conclusion of Ord. 59a, r. 3 (b), referred only to the procedure to be followed in appeals from referees to the Divisional Ct.—LONDON STEAMSHIP & TRADING CORPN., LTD. *v.* RUSSIAN VOLUNTEER FLEET (1926), 135 L. T. 607; 42 T. L. R. 632; 70 Sol. Jo. 838, D. C.

2593. *Add. Annotation:*—**Refd.** Ruf *v.* Pauwels, [1919] 1 K. B. 660.

2599. *Add. Citation:*—46 L. J. Q. B. 136.

2603. *Add. Annotations:—As to* (1) **Consd.** Cogstad *v.* Newsum, [1921] 2 A. C. 528. *As to* (2) **N.F.** Cogstad *v.* Newsum, [1921] 2 A. C. 528.

2611a. —— **Costs.**]—In an action upon a contract in the High Ct. judgment was given for pltf. for an amount to be ascertained on taking an account between the parties, with costs of the action. This judgment was dated & entered on Apr. 8. The referee took the account & ascertained the amount to be £83 10*s.* & on Nov. 29 indorsed the order accordingly. On the next day & before final entry of the completed order, the judge, upon pltf.'s application, ordered the costs to be taxed on the High Ct. scale:—*Held:* in the circumstances the judge had jurisdiction under County Cts. Act, 1919 (c. 73), s. 11, to award costs on the High Ct. scale, for until the result of the account was ascertained the question of costs could not be finally determined.—LIGHT *v.* WEST (WILLIAM) & SONS, LTD., [1926] 2 K. B. 238; 95 L. J. K. B. 557; 134 L. T. 693; 42 T. L. R. 311; 70 Sol. Jo. 404, C. A.

Part VI.—Application of Arbitration Act, 1889, to References under Statute.

2618. *Add. Annotation:*—**Consd.** *Re* Becker, Shillan & Barry, [1921] 1 K. B. 391.

PART V. SECT. 2, SUB-SECT. 1.—D.

sw. *Under Alberta Rules.*]—MAINFROID *v.* MAINFROID (Alta.), [1926] 4 D. L. R. 1060; [1926] 3 W. W. R. 617.—**CAN.**

o l. —— *Action on building contract.*]—HOUSE REPAIR & SERVICE CO. *v.* MILLER (1921), 64 D. L. R. 115; 49 O. L. R. 205.—**CAN.**

PART V. SECT. 2, SUB-SECT. 1.—E.

l l. ——.]—An order made by a judge in the exercise of his discretion, referring an action to arbn. under Ord. 97, will not be interfered with by the Ct. of Appeal, unless it is manifest that the order will operate to defeat the rights of, or cause injustice to, one or other of the parties.—TYLORS (AUSTRALIA), LTD. *v.* MACGROARTY, [1928] St. R. Qd. 371.—**AUS.**

PART V. SECT. 2, SUB-SECT. 6.

sy. *Time for appeal—Extension of time—When granted.*]—An application was refused for extension of time for appeal from a matter in a referee's report, the report, although not finally confirmed, having been dealt with nearly two months before, & the reason for extension & merits of appeal being, in the circumstances, insufficient.—JAMIESON *v.* JAMIESON, [1921] 1 W. W. R. 63.—**CAN.**

PART V. SECT. 3.

sz. *Scope of reference—Not facts in issue & determined by court.*]—FOSTER *v.* REAUME, [1926] 1 D. L. R. 1024; 60 O. L. R. 63.—**CAN.**

ARMS AND AMMUNITION.

Carrying – – *See* CRIMINAL LAW.
Gun Licences – ,, REVENUE.
Sale of – – ,, TRADE AND TRADE UNIONS.

ARTIFICIAL CREAM.

See FOOD AND DRUGS.

ASSISTANCE, WRIT OF.

See EXECUTION.

AUCTION AND AUCTIONEERS.

Part I.—Definitions.

1. *Citations :*—For " 1 Dav. 111 " read " 1 Dow. 111, H. L."

Part II.—Auctioneer's Licence.

15a. Use of initials "A.A.I."]—Pltf. Bowler & his co-pltf. Blake carried on in partnership the business of auctioneers & estate agents at P. & G., & in May, 1920, deft. entered their employment as an outside canvassing & negotiating clerk under a written agreement of service which provided (*inter alia*) that either party could terminate the employment on giving seven days' notice in writing & (clause 5) " after the termination from any cause of the employment aforesaid the clerk shall not for the term of one year carry on or be interested in carrying on the business of auctioneers & estate agents after such termination directly or indirectly assist as clerk manager or in any other capacity in the carrying on of such business within the borough of P. or in the town of G." In Sept. 1920, pltfs. duly terminated deft.'s employment, & on leaving their service he at once commenced business on his own account as an estate agent within the prohibited area, describing himself as " C. Lovegrove, A.A.I., Estate Agent," the initials A.A.I. meaning Associate of the Auctioneers' Institute, but he did not take out an auctioneer's licence nor do any business as an auctioneer : —*Held :* deft. had not by the use of the initials A.A.I. held himself out to be an auctioneer.—BOWLER *v.* LOVEGROVE [1921] 1 Ch. 642 ; 90 L. J. Ch. 356 ; 124 L. T. 695 ; 37 T. L. R. 424 ; 65 Sol. Jo. 397.

Annotation :—**Refd.** Vincents of Reading *v.* Fogden (1932), 48 T. L. R. 613.

Part III.—Authority of Auctioneer.

43. *Add. Annotation :*—**Refd.** Chaney *v.* Maclow, [1929] 1 Ch. 461.

46. After this case add :—
—— ——.]—Stat. Frauds, s. 4, is now replaced by Law of Property Act, 1925 (c. 20), s. 40.

56. *Add. Annotation :*—**Consd.** Chaney *v.* Maclow, [1929] 1 Ch. 461.

57. *Add. Annotations :*—**Consd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945; Chaney *v.* Maclow, [1929] 1 Ch. 461.

58. *Add. Annotation :*—**Refd.** Chaney *v.* Maclow, [1929] 1 Ch. 461.

59. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

63. *Add. Annotation :*—**Apld.** Chaney *v.* Maclow, [1929] 1 Ch. 461.

63a. —— —— ——.]—A freehold house was knocked down to deft. as the highest bidder, but he afterwards refused to sign the contract because one of the conditions of sale required the purchaser to pay certain road-making charges. On the same day the auctioneer, as soon as he was informed of deft.'s refusal, signed the contract as deft.'s agent. In an action by the vendor for specific performance, the judge held in the circumstances the auctioneer's signature could fairly be said to be part of the transaction of sale, & there was a memorandum in writing sufficient to satisfy Law of Property Act, 1925 (c. 20), s. 40 :—*Held :* an auctioneer had authority to sign a memorandum sufficient to satisfy the Act, provided he signed it at such a time & in such circumstances that the signature could fairly be said to be part of the transaction of sale, & as the question whether this condition was satisfied was a question of fact, the judge's decision that there was a valid memorandum must be affirmed.—CHANEY *v.* MACLOW, [1929] 1 Ch. 461 ; 98 L. J. Ch. 345 ; 140 L. T. 312 ; 45 T. L. R. 135 ; 73 Sol. Jo. 26, C. A.

65. *Add. Annotation :*- -**Distd.** Chaney *v.* Maclow, [1929] 1 Ch. 461.

66. *Add. Annotation :*—**Consd.** Chaney *v.* Maclow, [1929] 1 Ch. 461.

67. *Add. Annotation :*—**Consd.** Chaney *v.* Maclow, [1929] 1 Ch. 461.

68. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

71. *Add. Annotation :*—**Consd.** Chaney *v.* Maclow, [1929] 1 Ch. 461.

PART II.

8a. *Acquisition of provincial licence —Necessity for municipal licence.*]—A person who has obtained a provincial licence as auctioneer under Auctioneers & Pedlers' Act, R. S. A., 1922 (c. 39), may be compelled to take out a municipal licence.—R. (MORRIS) *v.* STIMMEL, [1923] 4 D. L. R. 955 ; 3 W. W. R. 1185.—CAN.

8b. —— —— *Power of city—Cannot arbitrarily refuse licence.*]—MOOSE JAW *v.* TAYLOR, [1924] 1 W. W. R. 1063.—CAN.

8c. —— —— —— *Cannot arbitrarily revoke licence.*]—MOOSE JAW *v.* TAYLOR, [1924] 1 W. W. R. 1063.—CAN.

8 i. —— —— *Auctioneer licensed by province.*]—MOOSE JAW *v.* TAYLOR, [1924] 1 W. W. R. 1063.—CAN.

8d. *Licensing & Bankrupt Sales in City of St. John Act, N. B.*, 1924 (c. 75)—*When fee of $500 payable.*]—PAGE *v.* ST. JOHN'S CORPN. (N. B.), [1926] 2 D. L. R. 414.—CAN.

PART III. SECT. 1.

24 i. *To receive purchase price—By bill of exchange.*]—An auctioneer cannot without authority from his client take payment otherwise than in cash, & if he takes a bill of exchange, & afterwards does not pay the vendor, the purchaser is not discharged.—BOOTHMAN *v.* BYRNE (1923), 57 I. L. T. 36.—IR.

75. *Add. Annotation :*—**Consd.** Chaney *v.* Maclow, [1929] 1 Ch. 461.

76a. —— Entry of purchaser's name—Auctioneer's name printed on catalogue.]—Pltf. bought for £60 at an auction one of the lots, which was the property of deft., who was the auctioneer. The lot was included in the printed catalogue, the whole of which was pasted into the auctioneer's book, & after the lot in question was knocked down to pltf. deft. wrote against its description in the book the price & pltf.'s trade name. Deft.'s name was nowhere written by him in the book, but his printed name appeared on the front page of the catalogue pasted in the book. Deft. refused to hand over the goods on the ground that the lot in question had been the subject of a "knock-out" to which pltf. had been a party. In an action for breach of contract deft. pleaded that there was no memorandum signed by him within Sale of Goods Act, 1893 (c. 71), s. 4 (1) :—*Held :* (1) the existence of a "knock-out" did not afford any defence to the action ; (2) deft.'s printed name, having been authenticated by his writing down the price & the purchaser's name, was a sufficient signature, & there was a sufficient note or memorandum of the contract, & pltf. was entitled to recover.—COHEN *v.* ROCHE, [1927] 1 K. B. 169 ; 95 L. J. K. B. 945 ; 136 L. T. 219 ; 42 T. L. R. 674 ; 70 Sol. Jo. 942.

Part IV.—Conduct of the Sale.

82a. **Sale below reserve price—Vendor bidding personally.**]—NARRAMORE *v.* FULLER, HALL & FOULSHAM (1932), 76 Sol. Jo. 289.

134. *Add. Annotation :*—**Reld.** Beyfus *v.* Lodge, [1925] Ch. 350.

148. *Add. Annotation :*—**Apld.** Rawlings *v.* General Trading Co., [1921] 1 K. B. 635.

149. *Add. Annotation :*—**Reld.** Rawlings *v.* General Trading Co., [1921] 1 K. B. 635.

150. *Add. Annotation :*—**Consd.** Rawlings *v.* General Trading Co., [1921] 1 K. B. 635.

After this case add :—

——.]—*See, now,* Auctions (Bidding Agreements) Act, 1927 (c. 12).

151a. -.]—At a sale by public auction of surplus property belonging to the Ministry of Munitions pltf. & deft. agreed, in order to avoid competition, that deft. alone should bid for certain goods, & that the goods, if purchased, should be divided equally between them. In pursuance of that agreement pltf. abstained from bidding & the goods were knocked down to deft. Deft. subsequently repudiated the agreement. In an action by pltf. to recover one moiety of the goods purchased or the value thereof over & above the price paid at the auction.—*Held :* the agreement was not illegal, & judgment should be entered for pltf.—RAWLINGS *v.* GENERAL TRADING CO., [1921] 1 K. B. 635 ; 90 L. J. K. B. 404 ; 124 L. T. 562 ; 37 T. L. R. 252 ; 65 Sol. Jo. 220 ; 26 Com. Cas. 171, C. A.

Annotation :—**Apld.** Cohen *v.* Roche, [1927] 1 K. B. 169.

151b. —— ——.]—COHEN *v.* ROCHE, No. 76a, *ante.*

152. *Add. Annotation :*—**Reld.** Rawlings *v.* General Trading Co., [1921] 1 K. B. 635.

153. *Add. Annotation :*—**Reld.** Rawlings *v.* General Trading Co., [1921] 1 K. B. 635

155a. ——.]—A purchaser alleged by his answer to a suit for specific performance, that he acted as a puffer in bidding for one lot, & also as puffer in bidding for another lot, which was knocked down to him ; & that he therefore purchased the lot, & signed the agreement for the purchase, as the agent of the vendor ; but the statement in his depositions of the circumstances attending the signature was somewhat different from that in his answer, & he had signed an order on his attorney for payment of the deposit money :—*Held :* there was not sufficient evidence of agency, & deft. was held to have purchased on his own account.

Taking into consideration the signature by deft. of the memorandum of agreement, the contradiction between his answer & his examination, & his having given an order for the deposit in his own name, & on his own agent, it is impossible to contend that he purchased as the agent of pltf. (TURNER, V.-C.).—BENNETT *v.* SMITH (1852), 20 L. T. O. S. 28 ; 16 Jur. 421.

PART IV. SECT. 3, SUB-SECT. 2.

se. *Sale "without reserve"—Burden of proof.*]—The *onus* of proving that a sale by auction was "without reserve" is upon the person alleging it. In case of doubt the presumption is that the auction was one with reserve. NEUGEBAUER & CO., LTD. *v.* HERMANN, [1923] App. D. 564.—**S. AF.**

PART IV. SECT. 5.

a i. —— *Sale for cash—Bidder unable to pay cash.*]—*Held :* no sale had been effected.—DENIS *v.* MORINILL CORPN. (Alta.), [1917] 2 W. W. R. 323 ; 34 D. L. R. 724.—**CAN.**

c i. —— *Not affected by verbal statements made by vendor's clerk at sale.*]—CURRIER *v.* CROSBY (1877), 17 N. B. R. (1 P. & B.) 464.—**CAN.**

PART IV. SECT. 7.

sl. *Refusal of bidder to pay—Sale of goods seized under execution—Sheriff entitled to sell goods again.*]—HALIFAX AUTOMOBILE CO. *v.* DREW, [1924] 1 D. L. R. 891 ; 57 N. S. R. 1.—**CAN.**

PART IV. SECT. 9.

148 vi. ——.]—A combination among intending purchasers at an unreserved auction sale to stifle competition by not bidding against one another is a fraud against the seller, & the auctioneer is not bound to recognise a bid by a member of such a combination.—NEUGEBAUER & CO., LTD. *v.* HERMANN, [1923] App. D. 564.—**S. AF.**

151 i. *Knock-out sale—Enforcement of agreement between parties.*]—GRANT *v.* WHITZMAN (1921), 55 N. S. R. 16.—**CAN.**

n i. ——.]—Sale declared void.—FOY *v.* MERRICK (1860), 8 Gr. 323.—**CAN.**

n ii. ——.]—*Held :* the legal estate passed by the conveyance, & if it was sought to impeach it, the case must be taken into equity.—RAYNES *v.* CROWDER (1864), 14 C. P. 111.—**CAN.**

n iii. ——.]—A sale will not be set aside on the ground that a party was prevented from bidding by promises made to him by the purchaser. Such fact, if established, would constitute the purchaser a trustee for him, & would be subject for a suit.—BROCK *v.* SAUL (1867), 2 Ch. Ch. 145.—**CAN.**

Part V.—Deposit.

171a. Failure to require deposit—Whether breach of contract with vendor.]—Pltfs. entrusted to defts., who were auctioneers, a suit of armour for sale by auction. One of the conditions of sale was that the buyer should pay down 10*s.* in the £ or more if required in part payment of the purchase-money, in default of which the lot might be put up again & resold. By another condition, on the failure of a buyer to comply with any of the conditions, the money deposited in part payment was to be forfeited. One B., who had previously bought for an American millionaire, bid at the auction & the armour was knocked down to him. The auctioneers did not ask B. for a deposit, as they assumed that he was acting for the millionaire for whom he had acted before. The millionaire afterwards repudiated B.'s authority, & B., when asked to take the armour, could not pay for it. Consequently the sale was not carried out. In an action by the sellers against the auctioneers for breach of contract to procure the buyer to pay the deposit:—*Held:* there was no ngeligence or breach of duty on the part of the auctioneers in exercising their judgment, in the circumstances, by not enforcing the conditions of sale as to a deposit, &, since on the evidence the armour would not have been sold if it had been put up again, there were no damages, & the action failed.—CYRIL ANRADE, LTD. *v.* SOTHEBY & CO. (1931), 47 T. L. R. 244; 75 Sol. Jo. 120.

191a. —— —— Order for repayment under Law of Property Act, 1925 (c. 20), s. 49.]—Leasehold shops described in the particulars of sale as "Valuable business premises" were put up for sale by auction, subject to special conditions of sale & also to the National Conditions of Sale, by one of which, namely, the sixth, it was stipulated that the leases or copies thereof might be examined at the office of the vendors' solicitors before the sale & that the purchaser, whether or not he inspected the same, should be deemed to have bought with notice of the contents thereof. Deft. only became aware of the sale on the day when it was held &, having on that day been supplied by the auctioneers with the particulars & special conditions, but not with the National Conditions, & relying upon the truth of the description in the particulars, he bid at the sale and was declared to be the highest bidder thereat. He then signed the usual form of memorandum to the effect above stated & paid a deposit to the auctioneers. In the course of investigating the title it came to deft.'s knowledge for the first time that the leases under which the properties were held were subject to covenants which prohibited any other trade or business than that of a ladies' outfitter, fancy draper & manufacturer of ladies' clothing from being carried on upon the properties. In consequence of the existence of those restrictive covenants & the failure of pltfs. to procure their removal or the licence of the lessors to use the properties for the purposes of any business, deft. refused to complete the purchase. In an action by the vendors for specific performance in which deft. counterclaimed rescission of the contract & to recover his deposit:—*Held:* (1) a shop which could be used for one purpose only was not fairly described as "valuable business premises"; & (2) such a misleading representation by pltfs. in their particulars of sale disentitled them, notwithstanding the sixth condition, to the assistance of the ct. to compel deft., who purchased in reliance upon the truth of such representation, to specifically perform his part of a contract for a consideration different from that which he was led to expect. The action was dismissed; & deft. was declared to be entitled to give a valid receipt to the auctioneers for the deposit.—CHARLES HUNT, LTD. *v.* PALMER, [1931] 2 Ch. 287; 100 L. J. Ch. 356; 145 L. T. 630; 75 Sol. Jo. 525.

192. *Add. Annotation:*—**Refd.** Beyfus *v.* Lodge, [1925] Ch. 350.

Part VII.—Rights and Duties in Relation to Vendor.

213. *Add. Annotation:*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

225. *Add. Annotation:*—**Consd.** Harrods, Ltd. *v.* Lemon, [1931] 2 K. B. 157.

242a. Sale stopped by vendor.]—DAVIES *v.* DAWS, DAWS *v.* DAVIES (1930), 74 Sol. Jo. 663.

246. *Add. Annotation:*—**Consd.** Bow's Emporium *v.* Brett (1927), 44 T. L. R. 194.

255. *Add. Annotations:*—**Refd.** Page *v.* Sully (1919), 63 Sol. Jo. 55; Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

257. *Add. Annotation:*—**Refd.** Albemarle Supply Co. *v.* Hind (1927), 43 T. L. R. 783.

263. *Add. Annotation:*—**Consd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83.

268. *Add. Annotation:*—**Refd.** Adams *v.* Morgan, [1923] 2 K. B. 234.

PART VII. SECT. 1.

t i. *Disappearance of pl*
—Lot not resold.]—Pltf. instructed defts. to sell his household furniture by public auction for cash without reserve. At the auction a suite of furniture was put up for sale, & after some bidding was knocked down to B. for £9 5*s.* B. went away, ostensibly to get the money, but did not return, & she could not be traced subsequently. The furniture was not removed & defts. asked pltf. what they should do with it, but he refused to give any directions as to its disposal. Pltf. then sued defts. for £9 5*s.*, the price of goods sold & delivered or, alternatively, as damages for negligence:—*Held:* the first claim could not be sustained in law & there had been no negligence on the part of defts.—ASHENDEN & CO. *v.* DORNEY, [1930] W. A. L. R. 111.—**AUS.**

PART VII. SECT. 6, SUB-SECT. 2.

240 ii. ——.]—*Re* MCCOLL, MCCOLL *v.* MCCOLL (1881), 8 P. R. 480.—**CAN.**

Part VIII.—Rights and Liabilities in Relation to Purchaser.

273. *Add. Annotations :*—**Consd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410. **Reld.** Page *v.* Sully (1918), 63 Sol. Jo. 55.

280a. —— **Option to resell on purchaser's default.**]—Goods were put up for sale by auction, the conditions of sale printed on the auctioneers' catalogue providing : " The lot to be taken away & paid for the day after sale," & " upon failure of complying with the above conditions all lots uncleared within the time aforesaid shall be resold." A purchaser, through his own negligence, bid for a lot for which he had not intended to bid, & the lot was knocked down to him. He afterwards endeavoured to persuade the auctioneers to put up the lot for sale again, but they declined. Upon his refusing to pay, an action for the purchase price was brought by the auctioneers, & the purchaser contended that under the conditions of sale it was obligatory upon the auctioneers to resell the lot in question, & that he could be charged only with any deficiency upon resale :—*Held :* the words " all lots uncleared shall be resold " did not impose any obligation upon the auctioneers, but merely conferred upon them an option of reselling at their discretion, & the auctioneers were entitled to recover the full price at which the lot was knocked down to the purchaser.—ROBINSON, FISHER & HARDING *v.* BEBAR, [1927] 1 K. B. 513; 96 L. J. K. B. 150; 136 L. T. 284; 91 J. P. 59; 43 T. L. R. 66, D. C.

282. *Add. Annotation :*—**Consd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

289. *Add. Annotation :*—**Consd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

293. *Add. Annotation :*—**Consd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

293a. -.]—PAGE *v.* SULLY, No. 301a, *post.*

295. *Add. Annotation :*—**Distd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

296. *Add. Annotation :*—**Consd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

301a. **Non-delivery—Goods included in a lot by mistake.**]—In the catalogue of a sale by auction a lot marked 103 to 109* was included, being various bundles of paper. Item 109* was a bundle which the auctioneer did not intend to be in the catalogue, & he purposed to sell it separately. It was, however, knocked down to pltf., & he paid for it, but the auctioneer refused to deliver it to him. The catalogue announced the sale as being " By order of J. S. & others." The buyer brought an action for damages against the auctioneer : —*Held :* the various owners of the lots not being disclosed as the principals, & there being no disclaimer by the auctioneer of personal liability, the auctioneer was personally liable for non-delivery ; & the fact that the buyer accidentally learned of the ownership of lot 109* was not material.—PAGE *v.* SULLY (1918), 63 Sol. Jo. 55, D. C.

307. *Add. Annotation :*—**Reld.** Page *v.* Sully (1918), 63 Sol. Jo. 55.

311. *Add. Annotation :*—**Consd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

312a. -.]—An auctioneer who sells a chattel on behalf of a principal does not by the mere fact of sale warrant his principal's right to sell.—BENTON *v.* CAMPBELL, PARKER & CO., [1925] 2 K. B. 410 ; 94 L. J. K. B. 881 ; 134 L. T. 60 ; 89 J. P. 187 ; 41 T. L. R. 662 ; 69 Sol. Jo. 842, D. C.

Part IX.—Rights and Liabilities in Relation to Third Parties.

313. *Add. Annotation :*—**Consd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

337. *Add. Annotation :*—**Reld.** Vanderpant *v.* Mayfair Hotel Co. (1929), 27 L. G. R. 752.

PART VIII. SECT. 2, SUB-SECT. 1.

entered into a hire-purchase agreement in respect of a motor car. After making his first payment C. delivered the car to W. to sell at public auction. K. bought the car at an auction conducted by W. :—*Held :* the name of the vendor having been disclosed to the purchaser at the sale W. was not responsible to the buyer.—ARCHIBALD *v.* WASHER & CO. & KINNERNEY, [1923] N. Z. L. R. 165.—N.Z.

m i. —— —— ——.]—A house & premises were put up for sale by public auction, but no sale was effected. Subsequently a sale by private treaty was made & the original conditions of sale were signed by the purchaser. The purchaser paid the auctioneer the auction fees provided for by the conditions of sale. The purchase subsequently fell through owing to the vendor's inability to get certain mtgees. to join in the sale :—*Held :* the purchaser was not entitled to recover the auction fees paid by him to the auctioneer.—M'NULTY *v.* HANRATTY (1917), 52 I. L. T. 43.—IR.

AUDIENCE, RIGHT OF.

See BARRISTERS ; SOLICITORS.

AUSTRALIA, COMMONWEALTH OF.

See DEPENDENCIES AND DOMINIONS.

BAILMENT.

Part I.—In General.

1. *Add. Annotation :*—**Refd.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353.

6. *Add. Annotation :*—**Refd.** Folkes *v.* King, [1923] 1 K. B. 282.

16. *Add. Annotation :*—**Refd.** *Re* Carrington, Ralphs *v.* Swithenbank, [1932] 1 Ch. 1.

38. *Add. Annotation :*—**Refd.** Van Oppen *v.* Tredegars (1921), 37 T. L. R. 504.

Part II.—Gratuitous Bailment.

43. *Add. Citation :*—Palm. 381.
Annotation :—**Refd.** Hill *v.* Vaux, 1 Ld. Raym. 227.

46. *Add. Annotations :*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443; Betts *v.* Metropolitan Police District Receiver (1932), 48 T. L. R. 517; Copper Export Assocn. Inc. *v.* Mersey Docks & Harbour Board (1932), 48 T. L. R. 542.

47. *Add. Annotations :*—**Consd.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353. **Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443; The Empress (1922), 92 L. J. P. 42.

PART I. SECT. 1.

sk. *Person obtaining possession & control of goods without owner's consent.*]—To constitute a bailment it is sufficient if the bailee, having obtained possession & control of the bailor's goods without the latter's knowledge or consent, afterwards acknowledges to the bailor that he holds them for him, & thereafter retains possession & control for him with his consent.—MAKOWER, MCBEATH & CO., PROPRIETARY, LTD. *v.* DALGETY & CO., LTD., [1921] V. L. R. 365.—**AUS.**

13 i. —— *Licence to occupy floor space.*]—Deft. was owner of a private garage, & rented to pltf. the right to store his motor car therein. The garage had no dividing partitions or stalls, & no particular space was assigned to pltf. Pltf. was given a key of this garage & was able to enter at any time he saw fit to do so & remove & return his car as he chose :—*Held :* deft. was not bailee of pltf.'s car.—LESSER *v.* JONES, [1920] 47 N. B. R. 318.—**CAN.**

14 i. —— *Goods left at cloak-room—Ball organised by committee.*]—The committee hired a hall, & tickets were sold. A room was provided for a cloak-room, & a caretaker of this room hired at a remuneration paid by the committee. When resp. presented his numbered ticket corresponding to the number placed on his coat it was found that another coat had been substituted for his :—*Held :* as regards the caretaker, there was no implied contract between him & resp. As regards the members of the committee, any contract they might make was a contract on behalf of the whole body, including resp.—CORBETT *v.* JAMIESON, [1923] N. Z. L. R. 374.—**N.Z.**

30 i. —— *Cab driver & cab proprietor.*]—A taxi-cab co. hired cabs to drivers under a contract which purported to create the relation of bailor & bailee as between the letter & the hirer. The letting was for a period of twenty-four hours. At the termination of the hiring the driver was to return the cab immediately to the co.'s garage in good order & condition. If he so desired the driver could use the co.'s garage telephone, uniform & greasing & inspection services. He supplied his own petrol, but had to buy it from the co. He was to keep the cab in his own personal custody & was not to allow any other person to drive it. The cab was to be used exclusively for the carriage of passengers for hire. A right to inspect the cab was reserved to the co.'s servants. The driver agreed to pay as rent for the cab a certain sum at the conclusion of the hiring, such sum being a fixed percentage of the amount earned by him as fares during the hiring, the balance belonged to the driver. He had no specific right to a renewal of the agreement; but each day he took out a cab a contract embodying the above provisions was executed by him :—*Held :* the contract was one of bailment & not partnership.—CHECKER TAXICAB CO. *v.* STONE, [1930] N. Z. L. R. 169.—**N.Z.**

31. —— *Delivery of mineral-water bottles—Charge for detention of empties.*]—Pltfs. sold mineral-water in bottles branded with their name. The course of dealing with customers was to invoice the bottles at a deposit rate of two shillings per dozen & when bottles were returned the customers were credited in full. Where bottles were not returned the customers were debited with a charge for them. pltfs. usually accepting half the deposit rate for missing bottles where a deficiency was found to exist :—*Held :* the transaction was in law a bailment in which bare possession of the bottles vested in the borrower, the true ownership remaining in the lender.—CANTRELL & COCHRANE *v.* NEESON, [1926] N. I. 107.—**IR.**

PART I. SECT. 2.

sm. *General rule.*]—A man cannot be made a bailee of goods against his will.—MCCUTCHEON *v.* LIGHTFOOT, [1930] S. C. R. 108; 1 D. L. R. 995; *affg.*, [1929] 1 D. L. R. 971; 1 W. W. R. 694; 38 Man. L. R. 160; *revg.*, [1928] 2 W. W. R. 240.—**CAN.**

38 ii. ——.]—LONG *v.* R. (1922), 63 D. L. R. 134; 21 Exch. C. R. 264.—**CAN.**

PART II. SECT. 1, SUB-SECT. 1.

so. *Timber sold remaining in mill yards—Warehouse receipt given to buyer.*]—*Held :* seller gratuitous bailee for buyer.—FERGUSON *v.* EYER (1918), 43 O. L. R. 190.—**CAN.**

40 iii. —— *Valuables of bathers left with caretaker of bathing-shed.*]—Applts. were sued by resp. for the value of a gold watch & other articles left by resp. in the custody of the caretaker of a bathing-shed conducted by applts. & which were lost, presumably stolen :—*Held :* the fact by undertaking the care of valuables belonging to bathers the use of the bathing-shed was rendered more attractive would constitute a consideration.—TIMARU BOROUGH COUNCIL *v.* BOULTON, [1924] N. Z. L. R. 365.—**N.Z.**

40 iv. —— ——.]—Pltf. hired a locker at deft.'s bathing sheds in which to place his clothes & effects & which was securely locked before he proceeded to bathe. Subsequently on opening the locker it was found to be empty. In an action based upon a contract of bailment the judge expressly found that there was no one continuously employed on duty in the locker room during the absence of pltf. & returned a verdict for pltf. for the value of the articles placed in the locker :—*Held :* inasmuch as there had been no finding of facts from which any duty owed by deft. to pltf. would arise there must be a new trial.—GREENWOOD *v.* WAVERLEY MUNICIPALITY COUNCIL (1928), 28 S. R. N. S. W. 219; 45 N. S. W. W. N. 59.—**AUS.**

PART II. SECT. 1, SUB-SECT. 2.

47 ii. —— ——.]—Pltf. on leaving a hotel was allowed to leave a locked bag in the baggage room, which was kept locked except when opened for taking luggage in or out. On calling for the bag he found contents had been stolen :—*Held :* the hotelkeeper was a gratuitous bailee & had exercised the reasonable care of a prudent man.—BREWER *v.* CALORI (1921), 29 B. C. R. 457.—**CAN.**

47 iii. —— ——.]—GIBSON *v.* WILSON & DOWNER (1922), 67 D. L. R. 410.—**CAN.**

47 iv. —— ——.]—The duty of a gratuitous bailee is to take the same care of the goods deposited with him as a reasonably prudent & careful man might fairly be expected to take of his own property.—MUMFORD *v.* NORTHERN TRUSTS CO., [1924] 2 W. W. R. 745.—**CAN.**

47 v. —— —— *Cloak-room— Of school.*]—Boards of Education are not insurers of school children's clothing; they are responsible for its loss or injury only when it is caused by their negligence.—STEVENSON *v.* TORONTO BOARD OF EDUCATION (1919), 46 O. L. R. 146: 17 O. W. N. 52.—**CAN.**

47 vi. —— —— —— *Of racing club.*]—Resp. sued applts., a racing club, for the value of a coat which she had left at applts.' cloak-room at the racecourse, & which disappeared from there. Resp. was holder of a ticket for the race meeting, but paid nothing for the deposit of the coat. There were hung on the walls of the waiting-room notices stating that while every care would be taken of deposited articles the club accepted no responsibility for same :—*Held :* there was a want of care on the part of applts. in discharging the duty they had accepted.—WELLINGTON RACING CLUB *v.* SYMONS, [1923] N. Z. L. R. 1.—**N.Z.**

g i. —— ——.]—The exhibiting of a dog at a dog show constitutes a bailment for the benefit of both the

50. *Add. Annotations :*—**Refd.** The Santa Catharina (1919), 88 L. J. P. 170 ; The Cairnsmore, The Gunda, [1921] 1 A. C. 439 ; The Canadia (1922), 127 L. T. 499.

50a. —— ——.]—Pltf., who was a member of a residential club, of which defts. were the proprietors, gave the manager certain jewellery to lock up in a safe in the manager's office. The rules provided that " No claim in respect of any property alleged to have been left or lost in the club-house will be entertained, & neither the club nor the proprietors shall be responsible for any article of value so left or lost in the club, but small articles of value may, on application to the secretary, be deposited in the safe, but neither the club nor the proprietors shall be under any liability in respect of such deposits." The jewellery was stolen from the safe by the night porter employed by defts., who before engaging him had obtained references from two persons by whom he had been employed, but apparently had made no inquiry as to his previous career. After the theft it was discovered that he was an old & dangerous criminal :—*Held :* defts. had not used due care in engaging the night porter, & as the above rule did not negative defts.' liability for damage due to their neglect to take such care, they were liable for the loss.—WILLIAMS *v.* CURZON SYNDICATE, LTD. (1919), 35 T. L. R. 475, C. A.

52. *Add. Annotation :*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443.

64. *Add. Annotation :*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443.

65. *Add. Annotation :*—**Refd.** Layton *v.* General Steam Navigation Co. (1923), 130 L. T. 662.

67. *Add. Annotations :*—**Consd.** Coldman *v.* Hill, [1919] 1 K. B. 443. **Distd.** City of Baroda (Cargo Owners *v.* Hall Line (1926), 42 T. L. R. 717.

69a. Loss of goods.]—An innkeeper is not liable in trover for the loss of articles deposited in his house for the purpose of being forwarded by a carrier.—WILLIAMS *v.* GESSE (1837), 3 Bing. N. C. 849 ; 7 C. & P. 777 ; 3 Hodg. 131 ; 5 Scott, 56, 57 ; 132 E. R. 637.

Annotation :—**Refd.** Wilkinson *v.* Verity (1871), L. R. 6 C. P. 206.

70. *Add. Annotations :*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443 ; G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

75. *Add. Annotations :*—*As to* (2) **Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 47 T. L. R. 359. *Generally*, **Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443 ; Smith *v.* G. W. Ry. (1920), 37 T. L. R. 117.

88. *Add. Annotation :*—**Refd.** Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

90a. —— **Liability where goods recovered by owner.**]—Trover & conversion lies for goods found & converted although they come afterwards to the hands of the party that lost them (ROLL, C.J.).—GOWR *v.* —— (1651), Sty. 261 ; 82 E. R. 695.

91. *Add. Annotations :*—**Refd.** Leitch (William) & Co. *v.* Leydon ; Barr (A. G.) & Co. *v.* Macgeoghegan (1930), 47 T. L. R. 81 ; United Fruit Co. *v.* Frederick Leyland & Co. (1930), 47 T. L. R. 33.

96. *Add. Annotations :*—**Consd.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353. **Refd.** The Empress (1922), 92 L. J. P. 42.

100. *Add. Citations :*—*sub nom.* PARRY *v.* ROBERTS, 3 Ad. & El. 118 ; 5 Nev. & M. K. B. 669 ; 4 L. J. K. B. 189.

103a. *S. P.* PARRY *v.* ROBERTS (1835), 3 Ad. & El. 118 ; 5 Nev. & M. K. B. 669 ; 4 L. J. K. B. 189 ; 111 E. R. 358 ; *sub nom.* BARRY *v.* ROBERTS, 1 H. & W. 242.

106. *Add. Citation :*—*sub nom.* ANON., Cary, 9.

108. *Add. Annotation :*—**Consd.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353.

exhibitor & the club or assocn. holding the exhibition, & the latter are liable for their own carelessness notwithstanding a provision in the entry form signed by the exhibitor that " it shall be a condition of entry that the club shall not be liable for loss or damage to any exhibit occasioned by fire, accident, condition of structure, or negligence of other exhibitors or of the officials or servants of the club or otherwise."—ANDREW *v.* GRIFFIN, [1918] 1 W. W. R. 274.—**CAN.**

59 iii. —— ——.]—Defts. having by mistake removed a suit case from a railway carriage, took the most speedy means of restoring the suit case to the owner by placing it on a steamer about to leave for a point on the railway :—*Held :* (1) defts. as bailees without reward were bound to use as much diligence in dealing with the goods in their possession as they would in dealing with their own ; (2) in delivering the suit case to a fireman on the steamer the o delivered to the mate, defts. failed to acquit themselves of the responsibility resting upon them.—MCCOWAN *v.* MCCULLOCH, [1926] 1 D. L. R. 312 ; 58 N. S. R. 320.—**CAN.**

65 iv. —— ——.]—The fact that a chattel has been lost or injured in the hands of a gratuitous bailee raises a *primâ facie* presumption against him. That presumption, however, may be rebutted by his proving that he was not to blame for the loss or injury.—MUMFORD *v.* NORTHERN TRUSTS CO., [1924] 2 W. W. R. 745.—**CAN.**

PART II. SECT. 1, SUB-SECT. 4.

77 i. *Rights of finder against all but true owner—Money found in shop.*]—Deft. was a shopkeeper, & pltf., a salesman in the shop, picked up from the floor a roll of banknotes, & handed it to deft., who caused inquiry to be made for the owner. No claim was made, & deft. kept the notes :—*Held :* the property was " lost," & as against all other persons than the owner, the finder became the substantial owner of the thing found by him, & pltf. was not, by reason of being in the employment of deft., deprived of his rights as a finder.—HAYNEN *v.* MUNDLE, 22 C. L. T. 152.—**CAN.**

77 ii. —— —— *Or in bank.*]—A clerk in a bank noticed lying on a desk, used by patrons of the bank in the public portion of the premises, a wallet containing money, & handed it over to the manager for the rightful owner, who never was discovered or appeared to claim it :—*Held :* the money was not " lost."—HEDDLE *v.* BANK OF HAMILTON (1912), 17 B. C. R. 306.—**CAN.**

PART II. SECT. 3.

108 i. *Duties of borrower—Measure of diligence.*]—Where an owner of a motor car leaves it at a garage to be repaired & is given, without charge, a motor therefrom for use in the meantime, he is a bailee from the garage proprietor without reward unless it be that the work of repairing is the consideration for the loan of the car. He is therefore bound to take reasonable care of the car hired, & if it be received by him in good condition & he returns it damaged & fails to give any account of the time, place & manner of the injury, the law will presume that he has been negligent.—BIJOU MOTOR PARLORS *v.* KEEL, [1918] 1 W. W. R. 706 ; 39 D. L. R. 410.—**CAN**

108 ii. —— —— *Onus to negative negligence.*]—Pltf. loaned deft. his traction engine to be used for hauling a gasoline engine to start same. While being used for hauling a separator over rough ground the crankshaft broke :—*Held :* the *onus* was on deft. to negative negligence on his part, &, not having discharged this *onus*, he was liable in damages.—SMITH *v.* MOATS, [1921] 1 W. W. R. 268 ; 56 D. L. R. 415 ; 14 Sask. L. R. 37.—**CAN.**

108 iii. —— ——.]—ANDERSON *v.* ROYER (Sask.), [1928] 3 D. L. R. 248.—**CAN.**

108 iv. —— ——.]—Defts. having delivered their motor-truck to pltfs. to be repaired, pltfs. lent defts. a truck for the time their own was under repair. The borrowed truck was injured while being driven by defts.' servant, & pltfs. sued for damages, alleging negligence :—*Held :* defts. were gratuitous bailees, the bailment being for their sole benefit, & the *onus* was upon them to prove that they were not guilty of even slight negligence.—RIVERDALE GARAGE, LTD. *v.* BARRETT BROS., [1930] 4 D. L. R. 420 ; 65 O. L. R. 616.—**CAN.**

118. *Add. Annotation :*—**Refd.** Sack *v.* Jones, [1925] Ch. 235.

122. *Add. Annotation :*—**Refd.** Smith *v.* Wood (1928), 139 L. T. 250.

123a. —— ——.]—If I have a load of hay, & another will come & mingle his hay with mine, in this case I may well take & detain the whole (CROKE, J.).—DOWGLAS *v.* KENDALL (1610), as reported in 1 Bulst. 93 ; 80 E. R. 792.

125a. *S. P.* PRICE *v.* GROOM (1848), 11 L. T. O. S. 475, N. P. ; *on appeal*, 2 Exch. 542.

131. *Add. Annotation :*—**Consd.** Lambert *v.* I. R. Comrs. (1927), 12 Tax Cas. 1053.

131a. —— **Distinct chattels.**]—The doctrine of confusion of property does not apply to distinct chattels like chairs & tables, but to commodities such as corn, wine, oil & the like, of which there can be a commingling of substance (BRAMWELL, B.).—SMITH *v.* TORR (1862), 3 F. & F. 505.

Part III.—Bailment for Valuable Consideration.

133. *Add. Annotations :*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443 ; The Empress (1922), 92 L. J. P. 42 ; Halliwell *v.* Venables (1930), 99 L. J. K. B. 353.

136. *Add. Annotation :*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443.

137. *Add. Annotations :*—**Consd.** Winkworth *v.* Raven, [1931] 1 K. B. 652. **Refd.** Coldman *v.* Hill (1918), 88 L. J. K. B. 491 ; Welden *v.* Smith, [1924] A. C. 484.

140. *Add. Annotations :*—**Consd.** Turner *v.* Civil Service Supply Assocn., [1926] 1 K. B. 50. **Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443 ; The Santa Catharina (1919), 88 L. J. P. 170 ; Williams *v.* Curzon Syndicate (1919), 35 T. L. R. 475 ; Gibaud *v.* G. E. Ry., [1921] 2 K. B. 426 ; Reynolds *v.* Boston Deep Sea Fishing & Ice Co. (1921), 38 T. L. R. 22 ; Rutter *v.* Palmer, [1922] 2 K. B. 87 ; Layton *v.* General Steam Navigation Co. (1923), 130 L. T. 662 ; Fagan *v.* Green & Edwards (1925), 70 Sol. Jo. 185 ; Gosse Millard *v.* Canadian Government Merchant Marine, American Can Co *v.* Canadian Government Merchant Marine, [1927] 2 K. B. 432 ; Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1930), 145 L. T. 51.

140a. —— **Car driven "at customer's sole risk."**]—The owner of a motor car deposited the car for sale on commission with deft., the keeper of a garage, upon the terms of a printed document containing the clause : "Customers' cars are driven by your staff at customers' sole risk." The car was sent out by deft. in charge of one of his drivers to be shown to a prospective purchaser, & was injured owing to the negligence of the driver : —*Held :* the above clause protected deft. from liability for the negligence of his servants.—RUTTER *v.* PALMER, [1922] 2 K. B. 87 ; 91 L. J. K. B. 657 ; 127 L. T. 419 ; 38 T. L. R. 555 ; 66 Sol. Jo. 576, C. A.

Annotations :—**Apld.** Forbes, Abbott & Lennard *v.* G. W. Ry. (1927), 138 T. L. 286. **Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51. **Refd.** Durnford *v.* G. W. Ry. (1927), 43 T. L. R. 527.

140b. **No liability for any accident or damage —Whether bailee liable for negligence.**]—Pltf., the owner of a steam trawler, sent the trawler to be examined on a slipway belonging to deft. co., who were ship repairers. A clause in the contract under which defts. allowed the use of their slipway provided that "All persons using the slipway must do so at their own risk & no liability whatever shall attach to the co. for any accident or damage done to or by any vessel either in taking her to the slip or when on it or when launching from it. . . ." The trawler was put on the cradle & was drawn out of the water, but suddenly she fell over on her side & was damaged. In an action for negligence : —*Held :* the above clause, though it did not expressly mention negligence, protected defts. from liability.—REYNOLDS *v.* BOSTON DEEP SEA FISHING & ICE CO., LTD. (1922), 38 T. L. R. 429, C. A.

Annotations :—**Distd.** Forbes, Abbott & Lennard *v.* Great Western Ry. (1927), 96 L. J. K. B. 995. **Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51. **Refd.** Rutter *v.* Palmer, [1922] 2 K. B. 87.

141. *Add. Annotation :*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443.

PART III. SECT. 1, SUB-SECT. 1.

133 ii. —— *Not liable for theft—Motor car left at garage—Garage under repair.*]—FOURNIER *v.* MCKENNA (1921), 57 D. L. R. 725 ; 54 N. S. R. 479.—**CAN.**

135 ii. —— ——.]—A restaurant keeper who invites customers to deposit articles of clothing temporarily in a place provided by him for that purpose is a bailee for hire & not a gratuitous bailee. It is part of the accommodation for which the keeper of the restaurant receives his recompense from his customers. The bailee in such a case is bound to exercise ordinary diligence in caring for the articles entrusted to him & is liable in case of failure to do so.—MURPHY *v.* HART (1919), 52 N. S. R. 79.—**CAN.**

136 iii. —— —— *Stable keeper.*]—Pltf.'s mare, kept for him in an open stall in deft.'s stable, was kicked by a horse, which was kept in the adjoining open stall, & had broken his halter shank during the night & got loose :—*Held :* as it was not proved that the horse had ever broken a halter shank before, or that the shank was not as strong as halter shanks usually were, deft. was not liable.—TEMPLETON *v.* WADDINGTON (1904), 24 C. L. T. Occ. N. 151 ; 14 Man. L. R. 495.—**CAN.**

sn. —— *Liability for acts of servants.*]—A motor car was entrusted by its owners to garage proprietors for safe custody over night. During the night the night watchman in charge of the garage took the car out for his own purposes, contrary to his employers' instructions & without their knowledge. While being driven by the night watchman the car collided with another car & was damaged :—*Held :* as the defenders had delegated their duty of keeping the car safely secured in the garage to their servant, they were liable to pursuers for the servant's failure in performance.—CENTRAL MOTORS, GLASGOW, LTD. *v.* CESSNOCK GARAGE & MOTOR CO., [1925] S. C. 796.—**SCOT.**

so. —— ——.]—Pltf., a customer of deft., left his motor-car at deft.'s service station to be supplied with gas & oil & washed. There were no facilities at the station for washing the car, & deft.'s servant, as was his duty, took out the car to drive it to a garage to be washed. On the way to the garage the servant changed his mind & drove the car in another direction "upon a frolic of his own." In doing so he ran the car into a telephone pole & damaged the car :—*Held :* deft., as master, was liable in damages for the wrongful act of his servant.—VAN GEEL *v.* WARRINGTON, [1929] 1 D. L. R. 94 ; 63 O. L. R. 143.—**CAN.**

141 iv. —— ——.]—Where a bailee for reward, or a person who is under the same legal obligations as such a bailee, is sued for the loss of goods, the *onus* of proving that the loss did not occur through any want of reasonable care on the part of deft. or his employees is upon deft.—MAKOWER, MCBEATH & CO., PROPRIETARY, LTD. *v.* DALGETY & CO., LTD., [1921] V. L. R. 305.—**AUS.**

141 v. —.]—The burden is

142. *Add. Annotation :*—**Refd.** Layton *v.* General Steam Navigation Co. (1923), 130 L. T. 662.

143. *Add. Annotation :*—**Refd.** Gosse Millard *v.* Canadian Government Merchant Marine, American Can Co. *v.* Canadian Government Merchant Marine, [1927] 2 K. B. 432.

144. *Add. Annotations :*—**Consd.** Layton *v.* General Steam Navigation Co. (1923), 130 L. T. 662; Gosse Millard *v.* Canadian Government Merchant Marine, American Can Co *v.* Canadian Government Merchant Marine, [1927] 2 K. B. 432; Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1930), 145 L. T. 51. **Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443; The Santa Catharina (1919), 88 L. J. P. 170; Williams *v.* Curzon Syndicate (1919), 35 T. L. R. 475; Fagan *v.* Green & Edwards (1925), 70 Sol. Jo. 185; Turner *v.* Civil Service Supply Assocn., [1926] 1 K. B. 50.

145. *Add. Annotation :*—**Consd.** Pennington *v.* Reliance Motor Works, [1923] 1 K. B. 127.

159. *Add. Citation :*—88 L. J. K. B. 55.

Annotation :—**Refd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294.

163. *Add. Annotations :*—**Consd.** Gibaud *v.* G. E. Ry., [1921] 2 K. B. 426. **Apld.** Buerger *v.* Cunard S.S. Co., [1925] 2 K. B. 646. **Refd.** The Cap Palos, [1921] P. 458; L. & N. W. Ry. *v.* Neilson, [1922] 2 A. C. 263; The Refrigerant, [1925] P. 130.

163a. —— **Evidence of negligence—Failure to examine goods periodically.**]—Resps.' wheat was stored at applts.' warehouse, which was allowed to become congested with grain of various kinds, including maize, which had a special tendency to heat, & applts. were in consequence unable to fulfil the obligation they were under to resps. to execute their orders to turn & cool as expeditiously as they were bound to do. Resps.' wheat was moist, & there was evidence that even a small rise in the surrounding temperature might, unless it was expeditiously turned, cause it to heat :—*Held :* applts. were liable.—LIVERPOOL GRAIN STORAGE & TRANSIT CO., LTD. *v.* CHARLTON & BAGSHAW (1918), 146 L. T. Jo. 20, H. L.

164. *Add. Annotation :*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443.

168. *Add. Annotation :*—*Generally*, **Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1920] 1 K. B. 40.

171. *Add. Annotation :*—**Consd.** Engel *v.* Lancashire & General Assce. (1925), 41 T. L. R. 408.

184. *Add. Annotation :*—**Refd.** L. & N. W. Ry. *v.* Hudson, [1920] A. C. 324.

190. **For "Company not responsible for package over £10," read "Company not responsible for package over stated value."**

Add. Annotation :—**Refd.** Gibaud *v.* G. E. Ry. (1921), 125 L. T. 76.

192. *Add. Annotation :*—**Consd.** Gibaud *v.* G. E. Ry., [1921] 2 K. B. 426.

192a. —— **Loss of luggage left outside cloak-room.**]—A condition in a railway cloak-room ticket purporting to exempt the railway co. from responsibility for articles above a

on pltf. in the first instance to establish negligence, but where the loss is established or the goods are not returned, a sufficient case is raised against the bailee to put him upon his defence. The law in such case presumes negligence to be the cause of the loss or non-return. Where there is no explanation of the cause of loss & deft. fails to meet the *primâ facie* case against him he will be held liable for the consequences of his neglect.—MURPHY *v.* HART (1919), 52 N. S. R. 79.—**CAN.**

141 vi. —— ——.]—CAMMIAERT *v.* GRASSWOLD (Alta.), [1926] 2 D. L. R. 1062.—**CAN.**

141 vii. —— ——.]—Where goods stored with a bailee for reward are damaged while under his charge the *onus* is on him of showing that he took all reasonable care to prevent such damage. In an action against a garage proprietor for damage to a motor car caused by a fire of unknown origin which broke out in the garage in which the car was stored some hours after the apparent complete extinguishment of a previous fire which had occurred on the evening prior to the morning on which the fire in question herein started :—*Held :* the finding of the trial judge that the proprietor had discharged the *onus* on him of disproving negligence was warranted by the evidence &, therefore, should be sustained.—ROMANO *v.* COLUMBIA MOTORS, LTD., [1930] 1 W. W. R. 159; 1 D. L. R. 815; 42 B. C. R. 168; *affg.*, [1929] 4 D. L. R. 1064; 2 W. W. R. 636.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.

157 iv. —— *Ship received in dry dock—Injury by water when moored in unsafe place.*]—PORTER & SONS *v.* MUIR BROS. DRY DOCK CO., [1929] 2 D. L. R. 561; 63 O. L. R. 437.—**CAN.**

161 vi. Read now "163a i."

161 vii. Read now "163a ii."

163a iii. —— —— ——.]—Pltf. placed apples in the cool stores of deft. The apples were in good order & condition when they were placed in the store. Several months later the apples were taken out of the store considerably damaged & deteriorated :—*Held :* it was the duty of deft. being a bailee for reward to provide a cool store fit for the purpose intended, & to maintain the proper temperature & proper circulation of cold air in the store by efficient means, & to store the apples in such manner as would ensure access of the cold air to the fruit; & as fruit was liable to be injuriously affected by failure to perform any of these duties, & might become affected at any time, it was the duty of deft. to inspect the fruit in the store at reasonable times, &, if indications of deterioration were observed, to notify pltfs., &, if necessary & practicable, to take steps to protect the goods from further damage.—AURORA TRADING CO., LTD. & JACKSON *v.* NELSON FREEZING CO., LTD., [1922] N. Z. L. R. 662.—**N.Z.**

163a iv. —— —— *Failure to inspect premises—Defective wharf.*]—*Held :* the collapse of the wharf was due to failure of worm-eaten piles supporting it, & such defect should have been known if proper diligence had been used in inspection.—FURNESS WITHY CO., LTD. *v.* AHLIN (1918), 42 D. L. R. 97.—**CAN.**

sp. Delivery to purchaser without production of lake-bills of lading.]—*Held :* defts., an elevator co., to whom the goods had been shipped for storage, were liable.—NORTHERN GRAIN CO., LTD. *v.* GODERICH ELEVATOR & TRANSIT CO., LTD., [1926] 1 D. L. R. 297; [1926] S. C. R. 120.—**CAN.**

172 ii. ——.]—Pltf. delivered goods to defts., a warehouse co., for storage. The warehouse contract provided that the responsibility of the co. "for the contents of any piece or package is limited to the sum of $50, unless the value thereof is made known at the time of storage & receipted for in the schedule; an additional charge will be made for higher valuation." The goods, which were in several packages, were stored without a declaration of value & without any additional charge for a higher valuation. Through the negligence of defts.' servants, the goods were included in a shipment of other goods & sent to England. Some of pltf.'s goods were lost, & others damaged :—*Held :* the amount which pltf. was entitled to recover was limited by the clause of the warehouse contract.—MAUNSELL *v.* CAMPBELL SECURITY FIREPROOF STORAGE & MOVING CO., LTD., [1921] 2 W. W. R. 348; [1921] 2 W. W. R. 579.—**CAN.**

172 iii. ——.]—A cold storage co. gave a receipt for hops stored with them which bore, "The co. will use every endeavour in taking care of all goods consigned to its charge, but will not be held responsible for any damage whatsoever. . . . All goods are received subject to the conditions on the back of this receipt." The first condition on the back was, "The co. will use every endeavour in taking care of all goods consigned to its charge, but will not be held responsible for loss or damage to goods stored through maintaining too high or too low a temperature in the stores, failure of machinery, buildings or plant fire, or any other cause whatsoever other than theft" :—*Held :* the contract meant that defenders promised to do their utmost to take care of the hops, but that, if their efforts were unsuccessful for any cause other than theft, they were not to be liable in damages.—BALLINGALL & SON *v.* DUNDEE ICE & COLD STORAGE CO., [1924] S. C. 238.—**SCOT.**

specified value deposited in the cloak-room except on certain terms, & assented to by the person taking the ticket, is not prevented from being part of the contract & from protecting the co. merely because it is unreasonable, provided that it be not so extravagant as to imply, & there is no other evidence to show, that that person's assent to it has been obtained by fraud, or so irrelevant as to be foreign to the contract.

Pltf. took his bicycle to the cloak-room at a station of deft. co. for the purpose of depositing it there, paid to the official the charge demanded, & received a ticket purporting to be a cloak-room ticket upon the face of which was legibly printed the following condition: "The co. will not be in any way responsible in respect of any article deposited the value whereof exceeds £5, unless at the time of deposit the true value & nature of the article shall have been declared, & 1*d.* per £1 sterling of the declared value be paid for each day or part of a day in addition to the ordinary cloak-room charges." The value of the bicycle exceeded £5, but pltf. made no declaration of value or additional payment. The bicycle was standing at the open door of the cloak-room, but the official told pltf. to leave it there as he would put it away. When pltf. returned to claim the bicycle it could not be found. In an action by pltf. against defts. for the value of the bicycle defts. relied upon the above condition. It was found in effect that pltf. knew that there was printing on the ticket, that he believed it contained a condition, & that defts. had done sufficient to give pltf. notice of the condition; & it was not found & there was no evidence to show that pltf.'s assent to the condition had been obtained by fraud. It was further found that owing to the negligence of the official in leaving the bicycle at the door of the cloak-room it had been stolen:—*Held:* (1) assuming that the condition was unreasonable which, *semble*, it was not, defts. were not, merely on that ground, prevented from relying upon it, inasmuch as it was not so extravagant as to imply that pltf.'s assent to it had been obtained by fraud, or so irrevelant as to be foreign to the contract; (2) defts. were protected by the condition, although the bicycle had not been deposited within the cloak-room; (3) on the above facts & findings judgment should be entered for defts.—GIBAUD *v.* GREAT EASTERN RY. Co., [1921] 2 K. B. 426; 90 L. J. K. B. 535; 125 L. T. 76; 37 T. L. R. 422; 65 Sol. Jo. 454, C. A.

Annotations:—As to (2) **Consd.** L. &. N. W. Ry. *v.* Neilson, [1922] 2 A. C. 263. **Refd.** Armour *v.* Walford (London), [1921] 3 K. B. 473; The Cap Palos, [1921] P. 458; Nunan *v.* Southern Ry. (1923), 130 L. T. 131; Buerger *v.* Cunard S. S. Co., [1925] 2 K. B. 646; The Refrigerant, [1925] P. 130. *Generally*, **Refd.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

194. *Add. Annotation:*—**Consd.** Gibaud *v.* G. E. Ry. (1921), 125 L. T. 76.

195a. —— —— ——.]—DOVER *v.* MILLS (1831), 5 C. & P. 175; 172 E. R. 928, N. P.

Annotation:—**Refd.** Colepeppre *v.* Good (1832), 5 C. & P. 380.

197. *Add. Annotations:*—**Expld. & Distd.** Thompson *v.* London, Midland & Scottish Ry. Co., [1930] 1 K. B. 41. **Consd.** Gibaud *v.* G. E. Ry. (1921), 125 L. T. 76. **Apld.** Ehinger *v.* S. E. & C. Ry. & The Pullman Car Co. (1922), 38 T. L. R. 678; Hearn *v.* Southern Ry. (1925), 41 T. L. R. 305. **Consd.** Thompson *v.* L. M. & S. Ry. (1929), 98 L. J. K. B. 615.

198. *Add. Annotations:*—**Apld.** Thompson *v.* L. M. & S. Ry. (1929). 98 L. J. K. B. 615. **Refd.** Gibaud *v.* G. E. Ry. (1921), 125 L. T. 76.

201. *Add. Annotation:*—**Refd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

203. *Add. Annotation:*—**Refd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

207. *Add. Annotation:—As to* (2) **Refd.** Franco-British Ship Store Co. *v.* Compagnie des Chargeurs Française (1926), 42 T. L. R. 735.

211. *Add Annotation:*—**Refd.** Geddling *v.* Marsh, [1920] 1 K. B. 668.

212. *Add. Annotation:*—**Apld.** Point Anne Quarries *v.* The M. F. Whalen (1922), 39 T L. R. 37.

215. *Add. Annotation:*—**Refd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83; Dobell C. (G.) & Co. *v.* Barber & Garratt (1930), 47 T. L. R. 66.

216a. Duty to keep in repair.]—Where a person hires a specific thing for the purpose of using it, there is an implied contract on the part of the letter that he will in the meantime keep the thing, as I should say, in repair, that is, he will not by want of reasonable care after the contract is made allow it to become worse than it was at the time the contract was made (BRETT, L.J.).—ROBERTSON *v.* AMAZON TUG & LIGHTERAGE Co. (1881), as reported in 7 Q. B. D., at p. 606, C. A.

Annotations:—**Refd.** The West Cock, [1911] P. 208; The Glenmorven, [1913] P. 141.

218. *Add. Annotations:*—**Folld.** Mintz *v.* Silverton (1920), 36 T. L. R. 399. **Refd.** Williams *v.* Curzon Syndicate (1919), 35 T. L. R. 475.

218a. Agreement to insure chattel—Against "all risks."]—Defts. hired a crane-barge from pltfs., one of the terms of the contract being that pltfs. would insure the crane against all risks, defts. paying the premium. Pltfs. took out a policy covering, as they thought, all risks. The crane, when proceeding to lift a load, broke away from its bedplate & fell over & was damaged. It was then found that the accident was not covered by the policy, & defts. refused to pay for the damage. In an action for breach of contract:—*Held:* though defts. had failed to discharge the *onus* which was upon them, of proving that what happened was not the result of negligence by their servants, yet, as the agreement in regard to insurance was intended to be an arrangement for the benefit of both parties, & as the accident came within the description "all risks" & defts. had stipulated that they were not to bear those risks, the action failed.—BRICE & SONS *v.* CHRISTIANI & NIELSEN (1928), 44 T. L. R. 335; 72 Sol. Jo. 172.

223. *Add. Annotation:—As to* (1) **Refd.** Gosse Millard *v.* Canadian Government Merchant Marine, American Can Co. *v.* Canadian Government Merchant Marine, [1927] 2 K. B. 432.

224. For the existing paragraph substitute as follows:—**Obligation to keep in repair—Agreement for redelivery in good working order.**]—SCHRODER *v.* WARD, No. 237, *post*.

226. *Add. Annotations :*—**Refd.** Mertens *v.* Home Freeholds Co., [1921] 2 K. B. 526; Kursell *v.* Timber Operators & Contractors, [1927] 1 K. B. 298; First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922; The Penelope, [1928] P. 180; May *v.* May, [1929] 2 K. B. 386; Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

227. *Add. Annotations :*—**Refd.** Coldman *v.* Hill, [1919] 1 K. B. 443; The Empress (1922), 92 L. J. P. 42.

241. *Add. Annotation:*—**Follid.** Taylor *v.* Thompson (1929), 69 L. Jo. 116.

244a. ——.]—AUTOMOBILE & GENERAL FINANCE CORPN., LTD. *v.* MORRIS (1929), 73 Sol. Jo. 451.

244b. ——.]—TAYLOR *v.* THOMPSON (1930), 69 L. Jo. 116; 169 L. T. Jo. 101; [1930] W. N. 16.

245. *Add. Annotations:*—**Distd.** Taylor *v.* Thompson (1929), 69 L. Jo. 116. **Consd.** Lewis *v.* Thomas, [1919] 1 K. B. 319; Blakey *v.* Pendlebury's Trustees (1931), 47 T. L. R. 503; *Re* George Inglefield, Ltd. (1932), 48 T. L. R. 536.

252a. Delivery—Refusal of hirer to take delivery—Remedy of owner.]—Under a hire-purchase agreement deft. agreed to hire from pltfs. a cash register for ten months certain at an agreed monthly rental payable in advance with an option to purchase on payment of a fixed sum within one month after payment of all the rent for the agreed period of hiring. Deft. in breach of his contract refused to accept delivery of the register. Pltfs. issued a default summons in the county ct. for rent accrued due up to the date of the summons :—*Held :* no actual debt had been incurred & the action was not maintainable, pltfs.' remedy being in damages only.—NATIONAL CASH REGISTER CO. *v.* STANLEY, [1921] 3 K. B. 292; 90 L. J. K. B. 1220; 125 L. T. 765; 37 T. L. R. 776; 65 Sol. Jo. 643, D. C.

254. *Add. Annotation:*—**Refd.** Albemarle Supply Co. *v.* Hind (1927), 43 T. L. R. 783.

255. *Add. Annotation:*—**Refd.** Albemarle Supply Co. *v.* Hind (1927), 43 T. L. R. 783.

257. *Add. Annotation :*—**Apld.** A.-G. *v.* Pritchard (1928), 97 L. J. K. B. 561.

258. *Add. Annotation :*—**Distd.** A.-G. *v.* Pritchard (1928), 97 L. J. K. B. 561.

258a. —— Recovery of unpaid instalments.]—On a claim by the owner of furniture for unpaid instalments :—*Held :* as the agreement with the hirer was for the sale of the furniture, the property not to pass to him until all the instalments had been paid, & the owner had resumed possession of it & dealt with it in such a way as to put it out of his power to return it to the hirer, he was disentitled from claiming part of the purchase price, & the

PART III. SECT. 2, SUB-SECT. 3.—A.

231 iv. ——.]—A bailee is not liable for damages done to a chattel through the negligence of his servant where the servant at the time the injury was done was not acting in the course of his employment.—SOUTH ISLAND MOTORS, LTD. *v.* THACKER, [1931] N. Z. L. R. 1104.—**N.Z.**

PART III. SECT. 3, SUB-SECT. 1.

se. *What amounts to hire-purchase agreement.*]—In order that an agreement may be classed as a hire-purchase agreement, the hirer's right to exercise his option to purchase need not be unfettered, unqualified, & absolute.—BROADLEY *v.* CHECKER CAB CO. (AUSTRALIA), LTD. (1931), 48 N. S. W. W. N. 44.—**AUS.**

241 vi. ——.]—Pltf. handed over nine motor lorries to deft., receiving from him Rs.5,000 upon the terms of a written agreement, the material parts of which were as follows :—" I have to-day agreed to sell to you on the hire-purchase system for Rs.25,000 my nine lorries . . . in consideration of payment as under. In case of failure to pay any of the instalments on due date, previous payments will be considered null & void, & the lorries are not considered as sold until the final payment has been received. The purchaser has no right to mortgage or dispose of any lorries until the full amount has been paid & [pltf.] or his nominee has the right to seize the lorries wherever they may be. The consideration money is to be paid as under. As against the payment of Rs.5 000 I have to-day given to you delivery of all the nine lorries, & also a letter addressed to the Commissioner of Police to transfer the lorries to your name " :—*Held :* the agreement was an agreement for sale.—COLE *v.* NANALAL MORARJI DARE (1924), I. L. R. 49 Bom. 172.—**IND.**

241 vii. ——.]—Applt., which was a co. carrying on the business of selling new & second hand motor cars, accepted an order from resp. for a motor car, which was written upon one of applt.'s order forms, the order describing the same but not stating in the description whether it was to be a new or a second-hand car. In the order resp. agreed to pay a deposit & the balance of the purchase money by instalments & to execute applt.'s usual form of hire-purchase agreement. On the order form it was stated that all new cars were sold subject to a guarantee which was set out, which did not include a guarantee that the car was new; & that no guarantee was given with second-hand cars. Resp. also signed applt.'s usual form of hire-purchase agreement, by which the co. agreed to let & the hirer to take the car described therein, the description being similar to that in the order form, & repeated the provisions as to guarantee above referred to; & this agreement excluded any implied " warranty undertaking or agreement other than is herein set forth." The car delivered by applt. to resp. was not new :—*Held :* the contract between the parties was constituted by the order & the hire-purchase agreement; & that, when read together, they constituted an agreement for the sale, & not merely for the hire, of the car.—MARCUS CLARK (AUSTRALIA), LTD. *v.* BROWN (1928), 40 C. L. R. 540; [1928] V. L. R. 293; [1928] Argus L. R. 189.—**AUS.**

241 viii. ——.]—A hire-purchase agreement relating to a motor truck provided for payment in nine monthly instalments. The hirer could become the owner of the truck on payment in full of the instalments & a rupee extra. On failure on part of the hirer to pay any instalment as it became due, the owner was entitled to seize the truck & credit its value as against the amount due but subject to a condition that the owner in no case would credit the hirer with more than the amount still due on the contract :—*Held :* the agreement though in form is one of hire, its object is to provide for a contract of sale in which security to the seller is provided for due payment of the purchase price.—MAUNG BA OH *v.* MOTOR HOUSE CO. (1929), I. L. R. 7 Ran. 431.—**IND.**

241 ix. ——.]—When it is clear from the agreement that the party taking the chattel, called the hirer or lessee, has to pay the full amount of consideration mentioned in the agreement, even though the payment is by instalments, & that amount is sufficient to cover the purchase price of the chattel, or when it is clear from the agreement that the hirer or lessee cannot at any time during the period mentioned in the agreement return the chattel to the other party called the owner, or lessor, & absolve himself from the obligation to make further payment, the agreement is really an agreement for sale & not for hire.

If the hirer is not bound to pay the full amount of the purchase price, or if he can terminate the hiring at any time by delivering the chattel to the other party, the agreement is in form & in substance an agreement for hire, & all that the hirer has obtained is an option to purchase.—BHIMJI *v.* BOMBAY TRUST CORPN., LTD. (1929), I. L. R. 54 Bom. 381.—**IND**

247 i. —— *Sale of Goods Act*, 1895—*Option only.*]—A hire-purchase agreement conferring an option to return the goods is not an agreement to sell within Sale of Goods Act, 1895, s. 14. Such a contract is one of bailment of a chattel, & the warranty of fitness is of the nature implied in that form of contract. Notwithstanding that the option to return a chattel cannot be exercised until after payment of the penultimate instalment of hire, a contract of hire-purchase so expressed is not an agreement to sell.—KLOSE *v.* DUNCAN & FRASER, LTD., [1928] S. A. S. R. 139.—**AUS.**

248 vi. —— —— *What is payment.*]—Under a hire-purchase agreement the hirers made an initial payment & gave to the owners bills of exchange for the total amount of the monthly payments as collateral security. These bills were subsequently discounted by the owners :—*Held :* no conditional payment, & the property in the goods remained in the owners.—*Re* RANKIN & SHILIDAY, [1927] N. 162.—**IR.**

PART III. SECT. 3, SUB-SECT. 2.

251 ii. —— *Initial payment at commencement of hiring—Whether payment in advance or first instalment.*]—AUTO SUPPLY CO., LTD. *v.* RAGHUNATHA CHETTY (1929), I. L. R. 52 Mad. 829.—**IND.**

proper remedy was to sue for damages for breach of contract.—A.-G. *v.* PRITCHARD (1928), 97 L. J. K. B. 561; 44 T. L. R. 490.

261. *Add. Annotation :*—**Refd.** Blakey *v.* Pendlebury Property Trustees, [1931] 2 Ch. 255.

262. *Add. Citation :*—119 L. T. 632.

Add. Annotations :—As to (1) **Consd.** Nelson Murdoch *v.* Wood (1922), 126 L. T. 745. *As to* (2) **Apld.** Cohen *v.* Roche, [1927] 1 K. B. 169.

262a. —— —— ——.]—Pltfs. let a piano on a hire-purchase agreement which provided that until all the instalments were paid the hirer should have no property in the goods otherwise than as hirer, & that in case of any breach of the agreement pltfs. might, without any formal notice, put an end to the hiring & retake possession of the piano, & that the hirer should keep the piano in his own custody. At a date when the hirer had paid all the instalments then due, but before he had paid the total price, he sold the piano to deft., who *bonâ fide* believed that the hirer was the absolute owner. The hirer having subsequently got the piano back into his own possession & having again disposed of it, but having, in the meantime, kept up the payment of the instalments, pltfs., on ascertaining the facts, claimed damages from deft. for conversion :—*Held :* the sale by the hirer to deft. was not *ipso facto* a repudiation of the hire-purchase agreement, as pltfs. had never accepted the repudiation, but it transferred whatever interest the hirer had at the time of the sale, & as pltfs. were not entitled to the possession of the piano until they elected to put an end to the agreement there was no conversion by deft.—NELSON MURDOCH & Co. *v.* WOOD (1921), 126 L. T. 745; 38 T. L. R. 23; 66 Sol. Jo. (W. R.) 6 D. C.; *revsd.* on other grounds (1922), 38 T. L. R. 393, C. A.

264. After "the owner can maintain an action for conversion against the purchaser" add ", as the hirer has not 'agreed to buy' the goods within Factors Act, 1889 (c. 45), s. 9."

264. *Add. Annotation :*—**Consd.** Buller & Co. *v.* Brooks, T. J. (1930), 142 L. T. 576.

271a. —— ——.]—DASH *v.* FAULKNER (1886), 2 T. L. R. 255.

272a. —— **Breach of agreement as to method of redelivery — Goods stolen — Measure of damages.**]—BOOTH *v.* WELLBY (1928), 165 L. T. Jo. 213, C. A.

Part IV.—Considerations Common to all Classes of Bailment.

278. *Add. Annotations :*—**Refd.** Mertens *v.* Home Freeholds Co., [1921] 2 K. B. 526; Kursell *v.* Timber Operators & Contractors, [1927] 1 K B. 298; First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922; The Penelope, [1928] P 180; May *v.* May, [1929] 2 K. B. 386; Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

280. *Add. Annotations :*—**Consd.** Kempler *v.* Bravingtons (1925), 133 L. T. 680. **Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

285. *Add. Annotations :*—**Refd.** Russian Commercial & Industrial Bank *v.* Comptoir D'Escompte de Mulhouse (1924), 93 L. J. K. B. 1098; The Jupiter (No. 3) (1927), 137 L. T. 333.

259 ii. —.]—ROGERS *v.* NANAIMO MOTORS, LTD. (1926), 37 B. C. R. 326.—**CAN.**

264 v. —— ——.]—Pltf. & C. entered into a hire-purchase agreement in the usual form in respect of a motor car. After making his first payment C. delivered the car to deft. W. to sell. Deft. K. bought the car at an auction conducted by W.:—*Held :* both defts. were liable to pltf.—ARCHIBALD *v.* WASHER & Co. & KINNERNEY, [1923] N. Z. L. R. 165.—**N.Z.**

sa. *Seizure by owner on default by hirer—Goods of third party attached to chattel—Conversion by owner.*]—M. had hired to W. a motor lorry with solid tyres. These became worn out, & B. fitted new tyres to the lorry under a hire-purchase agreement with W. Subsequently W. made default under his hiring agreement with M., who seized the lorry & refused to hand over the tyres to B. The tyres were detachable only by means of special machinery which M. did not possess :—*Held :* B. was entitled to possession of the tyres, & could succeed against M. in an action for detinue.—BERGOUGNAN *v.* BRITISH MOTORS, LTD. (1929), 30 S. R. N. S. W. 61; 47 N. S. W. W. N. 10.—**AUS.**

PART III. SECT. 4.

269 i a. —— —— ——.]—*Held :* a firm of upholsterers who had contracted to remove, beat, & relay a carpet, were not liable for its accidental destruction while in the premises of a firm of carpet-beaters with whom they had sub-contracted to beat it, there being no *delectus personæ* in such a contract as to bar them from employing a sub-contractor, & no negligence in the selection of the sub-contractor.—STEVENSON & SONS *v.* MAULE & SON, [1920] S. C. 335; 57 Sc. L. R. 284.—**SCOT.**

269 iv. —— —— ——.]—On leaving his motor car at deft.'s garage for the purpose of having it repaired pltf. signed a "work order," at the end of which there appeared in small type the following: "this co. does not assume in any way any liability whatever either for cars left with us for repair, storage or other purposes, or while being driven by our employees." Pltf. did not call for his car as soon as it was repaired & deft. put it in storage, but failed to remove the water from the radiator with the consequence that it froze & damaged the car:—*Held :* the above special clause in the work order exonerated deft. from liability whether pltf. had read it or not.—WALDEN *v.* HANEY GARAGE, LTD., [1928] 1 D. L. R. 688; [1928] 1 W. W. R. 371; 39 B. C. R. 413.—**CAN.**

269 v. —— —— ——.]—Pltf. left his motor car at the garage of deft., a garage proprietor & motor mechanic, & instructed him to adjust the headlights of the car. In the garage was exhibited a notice, seen by pltf., "Cars garaged & driven at owner's risk—Every care but no responsibility." Deft. drove the car on the road to test the headlights, when a collision caused by deft.'s negligence damaged the car:—*Held :* the notice applied to the driving of the car during which the damage occurred, but did not amount to an unequivocal & unambiguous notification to pltf. that the car was being accepted by deft. on terms that deft. was not to be liable for the consequences of his own negligence in driving, & therefore deft. was responsible.—MORAN *v.* LIPSCOMBE (1929), V. L. R. 10; 1929 A. L. R. 38.—**AUS.**

270 i. —— —— *Liability for acts of servant.*]—A master is liable for the conduct of his servant whom he selects & puts in his place to discharge the duty he has undertaken, & this law is applicable in a case of bailment. The conduct of the servant is then the conduct of the master, & the master is liable to the bailor.

Pltf., a customer of deft., left his motor car at deft.'s service station to be supplied with gas & oil & washed. There were no facilities at the station for washing the car, & deft.'s servant, as was his duty, took out the car to drive it to a garage to be washed. On the way to the garage the servant changed his mind & drove the car in another direction "upon a frolic of his own." In doing so he ran the car into a telephone pole & damaged the car:—*Held :* deft. as master was liable in damages for the wrongful act of his servant.—VAN GEEL *v.* WARRINGTON, [1929] 1 D. L. R. 94; 63 O. L. R. 143.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 1.

275 ii. —.]—The law imposes an obligation upon a bailee to restore the article bailed to the bailor, subject to this, that the bailee is excused from restoring it if his inability to do so is due to no want of reasonable care on his part.—PATERSON *v.* MILLER, [1923] V. L. R. 36.—**AUS.**

296. *Add. Annotations :*—**Distd.** Laurie & Morewood *v.* Dudin, [1926] 1 K. B. 223; Wait & James *v.* Midland Bank (1926), 31 Com. Cas. 172.

298. *Add. Citation :*—19 Q. B. D. 68.
Add. Annotations :—**Consd.** Flatau *v.* Sawyer (1892), 8 T. L. R. 656. **Refd.** Sarat Chunder Dey *v.* Chunder Lala (1892), 56 J. P. 741; H. *v.* H., [1928] P. 206.

299. *Add. Annotation :*—**Consd.** Laurie & Morewood *v.* Dudin (1925), 134 L. T. 309.

300. *Add. Annotation :*—**Consd.** Laurie & Morewood *v.* Dudin, [1926] 1 K. B. 223.

304a. ——.]—Defts., warehousemen, held 618 quarters of maize belonging to A., who sold 200 quarters thereof to W., who sold them to pltfs., giving to the latter a delivery order which they lodged with defts. Defts. did not object to the order, nor did they make any acknowledgment to pltfs. of their title :—*Held :* the mere receipt of the delivery order by defts. without objection did not estop them from denying that pltfs. were the owners of the 200 quarters.—LAURIE & MOREWOOD *v.* DUDIN & SONS, [1926] 1 K. B. 223, 95 L. J. K. B. 191; 134 L. T. 309; 42 T. L. R. 149; 31 Com. Cas. 96, C. A.

Annotations :—**Consd.** Wait & James *v.* Midland Bank (1926), 31 Com. Cas. 172; *Re* Wait, [1927] 1 Ch. 606.

304b. ——.]—WAIT & JAMES *v.* MIDLAND BANK (1926), 31 Com. Cas. 172.

306. *Add. Annotation :*—**Consd.** Laurie & Morewood *v.* Dudin, [1926] 1 K. B. 223.

309. *Add. Annotations :*—**Apld.** The Joannis Vatis, [1922] P 92. **Refd.** The Rosalind (1920), 90 L. J. P. 126.

312. *Add. Annotation :*—**Consd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

313. *Add. Annotation :*—**Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

317. *Add. Annotation :*—**Refd.** Whiteley *v.* Hilt, [1918] 2 K. B. 808.

318a. —— ——.]—SINGER & CO., LTD. *v.* FOULKES (D. E.) & CO., LTD. (1931), 75 Sol. Jo. 603.

319a. **Completion of work—Goods sent to tradesman for work to be done.**]—Where goods are sent to a tradesman to exercise his skill upon them, his duties as bailee do not cease as soon as his work is done. Until the parties have shown, either by express words or by conduct, that they intend to alter the original relationship between them, that relationship continues.—MITCHELL *v.* DAVIS (1920), 37 T. L. R. 68.

322. *Add. Annotation :*—**Refd.** Whiteley *v.* Hilt, [1918] 2 K. B. 808.

325. *Add. Citation :*—119 L. T. 632.
Add. Annotations :—**Consd.** Nelson Murdoch *v.* Wood (1922), 126 L. T. 745. **Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

329a. —— —— **After termination of bailment.**]—*Semble :* a bailor cannot maintain trover against his bailee until after the term of the bailment has expired.—UPHAM *v.* GOULSTONE (1843), 2 L. T. O. S. 166.

336. *Add. Annotations :*—**Consd.** Coldman *v.* Hill, [1919] 1 K. B. 443. **Refd.** City of Baroda (Cargo Owners) *v.* Hall Line (1926), 42 T. L. R. 717.

338. *Add. Annotations :*—**Consd.** Coldman *v.* Hill, [1919] 1 K. B. 443. **Apld.** Betts *v.* Metropolitan Police District Receiver (1932), 48 T. L. R. 517. **Consd.** Copper Export Assocn. Inc. *v.* Mersey Docks & Harbour Board (1932), 48 T. L. R. 542.

339. *Add. Annotation :*—**Consd.** White *v.* Smith (1927), 96 L. J. K. B. 397.

339a. **Right of sale—On non-payment of charges—Storage of goods.**]—Defts., a firm of warehousemen, received a quantity of furniture from pltf. to be stored by them at an agreed rental. An express condition of the contract stipulated that if the rent or other charges due to defts. should be two years in arrear defts., on giving proper notice in the terms of the contract to pltf., should be entitled to sell the whole or any part of the goods & pay themselves out of the proceeds :—*Held :* defts. were entitled to sell the whole of the goods, & it was not unreasonable that they should do so, & they had done nothing actionable in selling.—WILLETTS *v.* CHAPLIN & CO. (1923), 39 T. L. R. 222.

340. *Add. Annotation :*—**Apld.** Parkinson *v.* College of Ambulance & Harrison (1924), 40 T. L. R. 886.

348. *Add. Annotation :*—**Consd.** Buller & Co. *v.* Brooks, T. J. (1930), 142 L. T. 576.

350. *Add. Annotations :*—**Consd.** Leitch (William) & Co. *v.* Leydon; Barr (A. G.) & Co. *v.* Macgeoghegan (1930), 47 T. L. R. 81.

357. *Add. Annotations :*—**Apld.** The Joannis Vatis, [1922] P. 92. **Refd.** The Rosalind (1920), 90 L. J. P. 126.

371. *Add. Annotation :*—**Consd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

372. *Add. Annotation :*—**Refd.** The Joannis Vatis (1921), 15 Asp. M. L. C. 506.

373. *Add. Annotations :*—**Consd.** The Rosalind (1920), 90 L. J. P. 126. **Apld.** The Joannis Vatis, [1922] P. 92; The Zelo, [1922] P. 9. **Refd.** Elliott Steam Tug Co. *v.* Shipping Controller, [1922] 1 K. B. 127.

374a. *S. P.* BROWN *v.* HAND-IN-HAND FIRE INSURANCE SOCIETY (1895), 11 T. L. R. 538; 39 Sol. Jo. 672.

PART IV. SECT. 1, SUB-SECT. 7.

316 ii. —— ——.]—S. sold certain sheep to D. Under the contract of sale, on a fixed date, a count & *pro formâ* delivery was to be given, & such delivery was to be taken only upon payment in cash of the full amount of the purchase-money & not before. Until such payment in cash, or until all cheques, etc., given in payment were met & satisfied, the sheep were to remain the sole & absolute property of S. During the period between the *pro formâ* delivery & payment the sheep were to be in charge of D. D. sold the sheep though payment to S. in accordance with the terms of the contract had not been made :—*Held :* under the terms of the contract, S. had a right to immediate possession of the sheep.—SCOTTON *v.* BRIDGE & CO., LTD. (1919), 19 N. S. W. L. R. 70.—AUS.

PART IV. SECT. 2, SUB-SECT. 1.

344 v a. —— —— ——.]—WALL *v.* PORTER, [1930] 3 D. L. R. 343.—CAN.

354 iii. —— —— *Joint negligence of bailee & third party.*]—A. entrusted his motor car to C. for repairs. While the car was being tested by C. it came into collision with a lorry belonging to B. In an action for damages brought by A. against B., the jury found that the driver of the lorry had driven at an excessive speed, & that the driver of the motor car was negligent in not keeping a proper look-out :—*Held :* the doctrine of identification of bailor & bailee was not applicable in relation to liability for negligence.—WELLWOOD *v.* KING (ALEXANDER), LTD., [1921] 2 I. R. 274.—IR.

354 iv. —— ——.]—A bailor is not so far identified with his bailee as to be prevented from recovering damages against a third person with respect to injuries to the subject-matter of the bailment resulting from the negligence of the third person & the contributory negligence of the bailee.—KRAHN *v.* BELL, [1930] 2 W. W. R. 146; 4 D. L. R. 480; 24 S. L. R. 365.—CAN.

374b. **With interest from date of loss.**]—While on hire by the Admlty. a steam trawler was sunk through a collision with the *R.* The value of the trawler was agreed between the parties, but the Admlty. claimed, as bailees in possession, to recover as part of their damages interest from the date of the loss. The owners of the *R.* contended that interest was only payable from the date when the Admlty. paid the value of the trawler to her owners:—*Held:* under the Admlty. rule a bailee in possession was entitled to recover from a wrongdoer a complete equivalent of the chattel deteriorated or lost, namely, its value at the time of the deterioration or loss, with interest from that date; but inasmuch as there was an agreement between the parties that defts. should pay what the Admlty. had to pay to the owners of the trawler, interest on the payment only ran from the date of payment.—THE ROSALIND (1920), 90 L. J. P. 126; 37 T. L. R. 116.

379. *Add. Annotations:*—**Apld.** The Zelo, [1922] P. 9. **Refd.** Elliott Steam Tug Co. *v.* Shipping Controller, [1922] 1 K. B. 127; Wilston S.S. Co. *v.* Andrew Weir (1925), 31 Com. Cas. 111.

381. *Add. Annotation:*—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494.

382. *Add. Annotation:*—*As to* (1) **Refd.** McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494.

392. *Add. Annotations:*—**Consd.** Brooke *v.* Bool, [1928] 2 K. B. 578. **Refd.** Pratt *v.* Patrick, [1924] 1 K. B. 488.

PART IV. SECT. 2, SUB-SECT. 2.

376 ii. —— *Proceeds of sale paid to fictitious owner.*]—The owner of furniture entrusted it to pltf. for storage. Pltf. was fraudulently induced to send the furniture for sale by deft., who was to account to the owner for it. Deft. sold the furniture & paid the purchase-money to the person who had falsely represented himself to be the owner:—*Held:* pltf. could not maintain an action against deft. either for conversion or for money had & received.—GRACE BROTHERS, LTD. *v.* LAWSON (1922), 31 C. L. R. 130.—**AUS.**

PART IV. SECT. 2, SUB-SECT. 3.

383 i. *Negligence of hirer in use of chattel.*]—WAINIO *v.* BEAUDREAULT (Ont.), [1927] 4 D. L. R. 1131.—**CAN.**

383 ii. ——.]—A bailor is not responsible for the negligence of his bailee.—GIBSON *v.* O'KEENEY, [1928] N. I. 66.—**IR.**

BANKERS AND BANKING.

Part I.—Constitution and General Position of Banks.

38a. **Court of Chancery Act, 1841 (c. 5), s. 4.**]—CHAMBERLAIN & SPROAT *v.* WALL & LLOYD (1920), 150 L. T. Jo. 387.

56. *Add. Annotations :*—**Distd.** Hong Kong & Shanghai Bank *v.* Lo Lee Shi, [1928] A. C. 181. **Consd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587 ; Koch *v.* Dicks, [1932] W. N. 156 ; Broken Hill Proprietary Co. *v.* Latham (1932), 48 T. L. R. 630.

57. *Add. Annotation :*—*As to* (2) **Consd.** Woollatt *v.* Stanley (1928), 138 L. T. 620.

67a. —— ——.]—SNOW *v.* LEATHAM (1826), 2 C. & P. 314 ; 172 E. R. 141, N. P.

Annotation :—**Refd.** Slater *v.* West (1828), 3 C. & P. 325.

98. *Add. Annotation :*—**Consd.** Bailey *v.* Bailey, [1926] Ch. 758.

106. *Citations :*—For "3 L. T. M. C. 84" read "3 L. J. M. C. 84."

107. After this case add :—
—— ——.]—*See, now*, Savings Bank Act, 1920 (c. 12), s. 1, & Savings Bank Act, 1929 (c. 27), s. 10, Sched.

112a. **"Dispute"—Conflicting claims to deposit—Jurisdiction of Registrar of Friendly Societies.**]—*Held :* (1) the words "any person claiming to be entitled to any money deposited in such savings bank" in Savings Bank Act, 1844 (c. 83), s. 14, were not limited to persons claiming through a depositor ; (2) a dispute between a depositor & a person claiming adversely to him was a dispute within the sect. ; (3) the Registrar of Friendly Societies now has jurisdiction over disputes between rival claimants to a deposit.—BAILEY *v.* BAILEY, [1926] Ch. 758 ; 95 L. J. Ch. 470 ; 135 L. T. 431 ; 42 T. L. R. 502, C. A.

112b. **Nomination to deposit—Invalid nomination—Recovery of money paid under.**]—P., who had money to his credit in the Post Office Savings Bank, signed a nomination form by which he left the money to deft. The name of a witness appeared on the form, but P. had not signed the form in his presence as required by the regulations. After P.'s death, as the form appeared on the face of it to be valid, the Postmaster-General paid the money to deft. Pltf., having taken out letters of administration of P.'s estate, claimed the money from deft., as money received by him to the use of pltf. :—*Held :* the form was invalid, & the position of deft. was the same as if he had received payment under a will afterwards held invalid, & pltf. was entitled to recover. — PEARMAN *v.* CHARLTON (1928), 44 T. L. R. 517 ; 72 Sol. Jo. 368.

SECT. 6*a*.—**MUNICIPAL SAVINGS BANKS.**

112c. **Nomination to deposit—Regulations—Power of bank to alter.**]—A. had a sum of money on deposit at a municipal savings bank, which he purported to nominate to his two daughters under the regulations relating to deposits in savings banks. A. died intestate, & an application was made by one of his next of kin for a declaration that the nomination was void, on the ground that there was a limit as to nominations by depositors under the special Act of the corpn. whose bank it was, & that, even though by later regulations the corpn. had purported to abandon this limitation, such a nomination was *ultra vires* the special Act & void :—*Held :* regulations as to nominations could be made by the corpn. under their special Act similar to those indicated in Savings Banks Act, 1887 (c. 40), with such modifications, including abolition of the maximum, as might be considered necessary ; the limit laid down could be abolished under these regulations & such abolition need not abrogate the whole matter, & the nomination by deceased was good.—*Re* KIMBER, VALE *v.* ROCKMAN, [1928] Ch. 749 ; 97 L. J. Ch. 430 ; 139 L. T. 550 ; 72 Sol. Jo. 545.

128. *Add. Annotation :*—**Refd.** *Re* Lee Behrens & Co. (1932), 48 T. L. R. 248.

128a. —— **To act as sole judicial trustee with remuneration.**]—A bank may be appointed a sole judicial trustee, with remuneration, under the sect. dealing with the appointment of "a person" under Judicial Trustee Act, 1896 (c. 35).—*Re* COHEN, COHEN *v.* COHEN (1918), 62 Sol. Jo. 682.

156. *Add. Citation :*—*sub nom.* BANK OF AUSTRALASIA *v.* BANK OF AUSTRALIA, 12 Jur. 189.

159. *Add. Citation :*—18 Jur. 885.

166. *Add. Annotations :*—**Refd.** Wright *v.* Morgan, [1926] A. C. 788 ; A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743 ; Harrods, Ltd. *v.* Lemon, [1931] 2 K. B. 157.

169. *Add. Annotations :*—**Consd.** Atherton *v.* British Insulated & Helsby Cables, [1925] 1 K. B. 421. **Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

203. *Add. Annotation :*—**Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

PART I. SECT. 6.

111 i. *Savings bank book—Notice of loss—Meaning of "lost."*]—A rule of the Savings Bank of South Australia which by the Savings Bank Act, 1875, has the same force as if inserted in the Act, provides that if a pass-book be lost, notice in writing shall forthwith be given to the bank :—*Held :* a stolen pass-book is lost within the meaning of the rule.—MICHAIL *v.* SAVINGS BANK OF SOUTH AUSTRALIA, [1930] S. A. S. R. 60.—**AUS.**

t. Read now "**112a i.**"

PART I. SECT. 7, SUB-SECT. 3.

y i. —— ——.]—R. *v.* BARNARD (1925), 44 Can. Crim. Cas. 137 ; 57 O. L. R. 397.—**CAN.**

y ii. —— ——.]—R. *v.* SMITH (1925), 44 Can. Crim. Cas. 361 ; 57 O. L. R. 383.—**CAN.**

y iii. —— ——.]—R. *v.* (1925), 44 Can. Crim. Cas. 122 ; O. L. R. 436.—**CAN.**

PART I. SECT. 7, SUB-SECT. 4.—B

214 ix. —— *By administrator to next of kin.*]—CLARKSON *v.* MCLEAN (1918), 42 O. L. R. 1 ; 13 O. W. N 373.—**CAN.**

215a. *S. P.* FRY *v.* RUSSELL (1858), 3 C. B. N. S. 665; 140 E. R. 902; *sub nom.* FRY *v.* RUSSELL, POWIS *v.* BUTLER, 27 L. J. C. P. 153; 4 Jur. N. S. 193.

226. *Add. Citation :*—1 De G. F. & J. 17.

SECT. 8.—FOREIGN AND BRITISH OVERSEAS BANKS (Vol. III., p. 159).

For "*See* COMPANIES" read as follows :—

230a. Credit notes of Russian State Bank—Rights of holders.]—MARSHALL *v.* GRINBAUM (1921), 37 T. L. R. 913.

Foreign companies.]—*See* COMPANIES, Vol. X., pp. 1198–1209.

231. *Add. Annotations :—As to* (4) **Refd.** Banque Belge *v.* Hambrouck, [1921] 1 K. B. 321; Anchor Donaldson *v.* Crossland, [1929] A. C. 297.

237. *Add. Annotation :*—**Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

239. *Add. Annotations :—As to* (2) **Refd.** Kreditbank Cassel G.M.B.H. *v.* Schenkers, [1927] 1 K. B. 826. *Generally*, **Refd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

247. *Add. Annotation :*—**Consd.** Jones *v.* Waring & Gillow, [1925] 2 K. B. 612.

263. *Add. Annotation :*—**Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

PART I. SECT. 7, SUB-SECT. 4.—C.

ss. *Dividends payable after shareholder's death—Belong to legatees.*]—BRYSON *v.* BRYSON (1927), Q. R. 65 S. C. 112.—**CAN.**

PART I. SECT. 7, SUB-SECT. 5.

u i. —— *Appointment of interim liquidator—Notwithstanding curator appointed.*]—*Re* HOME BANK OF CANADA (Ont.), [1923] 4 D. L. R. 891.—**CAN.**

x i. *Pensions fund society—Right of members to fund.*]—Where the merger or winding up of a bank constitutes a cessation of employment & a pensions fund society has been founded in accordance with Pension Fund Societies Act, R. S. C., 1906 (c. 123), members, ex-members & pensioners rank for distribution of the funds of the society according to the byelaws of the society regardless of the general law unless the bye-laws make no provision for the case in question.—*Re* SOCIETE DE LA CAISSE DE RETRAITE DE LA BANQUE NATIONALE, TRUDEL *v.* LEMOINE, [1925] 4 D. L. R. 97; [1925] S. C. R. 698; *affd.*, [1926] 3 D. L. R. 988.—**CAN.**

b (p. 157) **i.** —— *Bank not properly incorporated—Effect upon position of shareholders.*]—*Re* HOME BANK OF CANADA, [1927] 1 D. L. R. 871; 59 D. L. R. 654; 8 C. B. R. 143.—**CAN.**

j i. —— *Debt to party liable as surety.*]—In the winding up of a bank a person liable to the bank as surety may set off his personal right against the bank as a depositor, where both debts exist at the time of the winding up.—CLARKSON *v.* ROBINET, [1925] 4 D. L. R. 778; *varying*, 26 O. W. N. 466.—**CAN.**

j ii. —— *Debt to party liable as partner.*]—A partner, with his copartner, was sued by the liquidators of an insolvent bank for a partnership debt, for which he had pledged his individual deposit in the bank :—*Held :* he was entitled to have his separate deposit applied, either as a set-off in the action, or against the partnership debt.—CLARKSON *v.* SMITH & GOLDBERG, [1926] 1 D. L. R. 509; 58 O. L. R. 241.—**CAN.**

j iii. ——.]—CLARKSON & HOME BANK OF CANADA *v.* LANCASTER (1927), 38 B. C. R. 217.—**CAN.**

223 i. *Liability to contribute—Trustee.*]—*Held :* not personally liable, as the will was sufficiently "named" in the books of the bank in connection with the actual holding.—*Re* HOME BANK OF CANADA, NATIONAL TRUST CO.'S CASE (1925), 57 O. L. R. 27; 5 C. B. R. 644; *affg.* 5 C. B. R. 318.—**CAN.**

sb. *Action by bank—Security for costs.*]—Order made.—HOME BANK *v.* HAMONA FARMERS ASSOCN., [1927] 1 W. W. R. 528; 21 Sask. L. R. 420.—**CAN.**

PART I. SECT. 10, SUB-SECT. 1.

a (p. 159) **i.** —— ——.]—CUNNINGHAM *v.* NORTHERN BANKING CO., LTD., [1928] N. I. 112.—**IR.**

sc. *Right to give consent for adding bank as party.*]—A local manager of a bank has authority to give the consent in writing required by Rules of Ct., r. 41, for the adding of a pltf.—KUSCH *v.* PEAT, [1922] 2 W. W. R. 174; 63 D. L. R. 408; 15 Sask. L. R. 324.—**CAN.**

f (p. 160) **i.** —— ——.]—The local manager of a bank, in answer to the inquiry of a customer, informed him that a cheque held by him was good, & the customer indorsed the cheque & left it with the manager to be applied against his debt to the bank, &, relying on such assurance, permitted his position as against the maker of the cheque to be altered to his prejudice. On the failure of the maker to provide funds to meet the cheque :—*Held :* the bank was estopped from denying that the customer paid in the amount represented by the cheque.—BANQUE D'HOCHELAGA *v.* BRUNET, [1925] 2 W. W. R. 447.—**CAN.**

f (p. 160) **ii.** —— ——.]—The acceptance of a cheque by a local bank manager is binding on the bank, although at the time the drawer has insufficient funds to meet it.—LEDUC *v.* LA BANQUE D'HOCHELAGA, [1926] 1 D. L. R. 433; [1926] S. C. R. 76.—**CAN.**

235 iii. —— *Liability of bank.*]—R., a branch manager of deft. bank, suggested to pltf. that some part of pltf.'s moneys on deposit with the bank should be invested, stating that an investment could be found which would return interest at 8 per cent. For the purpose of such an investment, pltf. handed to R. two cheques, one payable to cash on bearer, & the other payable to self or bearer & indorsed by pltf. R. used the money for his own purposes. Pltf. sought to recover the amount from the bank. This ct. found on the evidence : that pltf. believed, & R. intended him to believe, that R., in making the proposal, was acting as agent of the bank; that pltf. believed he was placing his money at the disposal of the bank, & R. was fully aware of this; that unrestricted discretion was committed by pltf. to R. as to the nature of the investment :—*Held :* the bank was not liable. In this transaction R. was not doing something of a kind that, as agent of the bank, he was authorised to do, in the sense that such a transaction would fall within the general scope of his employment.—ROYAL BANK OF CANADA *v.* MACK, [1932] S. C. R. 488; 1 D. L. R. 753.—**CAN.**

235 iv. —— ——.]—The manager of a local branch of deft. bank suggested an investment to pltf. who had an account in the savings bank dept. Pltf. signed a cheque payable to cash on bearer for the amount required & gave it to the manager to complete the investment, when he approved of it. Some time later the manager told pltf. that the investment was unsatisfactory & that the money was still in the bank. About two months after he was given the cheque the manager paid it into his own account to cover shortages for money he had taken from the bank. In an action to recover the amount of the cheque from the bank :—*Held :* the bank cannot take advantage of its own manager's improper use of the cheque to make good his thefts from it, & pltf. was entitled to judgment.—MCDONALD *v.* ROYAL BANK OF CANADA (1929), 41 B. C. R. 450.—**CAN.**

245 i. *Guaranteeing repayment of loan—Made by third party to customer.*]—*Held :* not within the ostensible authority of a local branch manager of a bank.—STEVENS *v.* MERCHANTS BANK OF CANADA, [1920] 1 W. W. R. 52; 49 D. L. R. 528; 30 Man. L. R. 46.—**CAN.**

248 ii. —— *Delivery up of keys to purchaser from customer without getting cheque.*]—Pltf. sold his business & agreed to assign to the purchasers the lease of the premises upon which the business was carried on. Pltf. sent the keys of the premises to deft. C., manager of a branch of deft. bank, in a letter, in which he requested C. to hand the keys to W., one of the purchasers, upon receiving from W. a cheque for a named sum. C., without getting the cheque, gave up the keys to the landlord of the premises, who handed them to W. :—*Held :* (1) C. had failed to carry out the terms of his instructions; (2) the keys were sent to C. in his capacity as manager, & the transaction was within the scope of his authority as such; (3) the *onus* of proving damage was on pltf., & he had not satisfied it.—GARBER *v.* UNION BANK OF CANADA (1919), 46 O. L. R. 129; 17 O. W. N. 16.—**CAN.**

250 ii a. —— —— ——.]—As the terms of Mercantile Law (Scotland) Amendment Act, 1856 (c. 60), s. 6, are unequivocal & unambiguous, they cannot be construed as relating only to the case where the representations are founded on as the basis of a substantive action but must equally apply where they are founded on in defence.—UNION BANK OF SCOTLAND *v.* TAYLOR, [1925] S. C. 835.—**SCOT.**

sd. *Agreeing to forward bankers' draft.*]—*Held :* as the promise by the acting manager to forward the draft was a voluntary act without remuneration & not part of his duty as an officer of the bank, the bank was not liable for his failure in performing it.—MAXWELL *v.* UNION BANK OF CANADA, [1922] 1 W. W. R. 7; 69 D. L. R. 130.—**CAN.**

Part II.—Business of Banking.

264. *Add. Citation :—sub nom.* BANK OF AUSTRALASIA *v.* BANK OF AUSTRALIA, 12 Jur. 189.

270a. **Cheque presented after business hours—Right of bank to deal with cheque.**]—Pltf. had an account with defts.' branch, the closing hour of which was 3 p.m. Pltf. drew a cheque in favour of W., & handed it to W. at such an hour that it was impossible for him to present it for payment before 3 p.m. He did, in fact, present it for payment shortly after 3 o'clock, & received payment. Later in the day pltf. decided to stop payment of the cheque, & sent his son to the bank at the hour of opening on the following morning, but he then found that the money had already been paid :—*Held :* a bank is entitled to deal with a cheque within a reasonable business margin after their advertised time of closing, & in cashing the cheque defts. had acted within their rights.—BAINES *v.* NATIONAL PROVINCIAL BANK, LTD. (1927), 96 L. J. K. B. 801; 137 L. T. 631; 32 Com. Cas. 216.

272. *Add. Annotations :*—**Consd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110. **Reld.** London Joint Stock Bank *v.* Macmillan & Arthur, [1918] A. C. 777.

274. *Add. Annotation :*—**Consd.** *Re* Farrow's Bank, [1923] 1 Ch. 41.

274a. —— **Bank stopping payment before final clearance of cheque received for collection.**]—*Re* FARROW'S BANK, LTD., No. 470a, *post.*

275. *Add. Annotation :*—**Reld.** Garrard *v.* James, [1925] Ch. 616.

276. *Add. Annotation :*—**Consd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.

276a. —— —— —— **At branch where account kept.**]—In the absence of special agreement, it is an implied term of the contract between a bank & its customer that the promise of the bank to repay a balance is a promise to repay it at the branch of the bank where the account is kept & not till after demand at that branch. The obligation of the bank is local, although after local demand & refusal to pay the bank is liable to be sued wherever it can be served. When local demand must be met by payment in a foreign currency the remedy available in an English ct. for refusal to pay is a cause of action in damages for breach of contract & not for debt.—RICHARDSON *v.* RICHARDSON, [1927] P. 228; 96 L. J. P. 125; 137 L. T. 492; 43 T. L. R. 631; 71 Sol. Jo. 695.

277. *Add. Annotation :*—**Reld.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353.

277a. —— **Duration—Notice to close & transfer account—No notice to transferee.**]—Judgment debtors instructed their bank to transfer their account to the account of another body which had diplomatic privilege & to close their account, & that transaction was then entered in the books of the bank, but before any notice of or acquiescence in the transfer by the proposed transferees the judgment creditor served a garnishee order *nisi* on the bank attaching the judgment debtors' account :—*Held :* (1) after the bank received notice to close & transfer the account, & the appropriate book entries had been made, but no notice of the transfer had been given to the proposed transferees, the relation of banker & customer still existed; (2) the judgment debtors had power to revoke the direction to close & transfer their account at the time when the garnishee order was served; (3) at the time the garnishee order was served it operated in law as a revocation of the direction to transfer the account so long as no notice of or acquiescence in the transfer had been received by the proposed transferee.—REKSTIN *v.* SEVERO SIBIRSKO GOSUDARSTVERNNOE AKCIONERNOE OLSCHESTRO KOMSEVERPUTJ & BANK OF RUSSIAN TRADE (1932), 147 L. T. 231; 48 T. L. R. 578; 76 Sol. Jo. 494, C. A.

277b. **Order to transfer account—No notice to transferee.**]—REKSTIN *v.* SEVERO SIBIRSKO GOSUDARSTVERNNOE AKCIONERNOE OBSCHESTRO KOMSEVERPUTJ & BANK OF RUSSIAN TRADE, No. 277a, *ante.*

281. *Add. Annotation :*—**Consd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294.

282. *Add. Annotations :*—**Apld.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328. **Reld.** Admiralty Comrs. *v.* National Provincial & Union Bank of England (1922), 127 L. T. 452; Jones *v.* Waring & Gillow, [1926] A. C. 670.

282a. **Account opened in assumed name—Payment in of cheque obtained by duress—Payment out on forged cheques—Action by party whose name assumed.**]—Pltf. brought an action against deft. bank for £125,000, money had & received by defts. to his use. Pltf.'s case was that an account was opened in his name at a branch of deft. bank by some one other than himself, that a cheque for £150,000 payable to his order was paid into the account, & that on the following day a forged cheque, purporting to be drawn by pltf., for £130,000 was cashed by one H., the balance being afterwards withdrawn by H., by means of

PART II. SECT. 1, SUB-SECT. 2.

b i. ——.]—BRANDON *v.* BANK OF MONTREAL, [1926] 4 D. L. R. 182; 59 O. L. R. 268.—CAN.

275 va. —— —— ——.]—A deposit of money in a bank to meet a draft is not payment of the draft. The money so deposited must be appropriated by the depositor thereof to the draft. Where the bank is authorised so to appropriate the money it acts in doing so as agent of the depositor, &, if it fails to carry out its duties as such agent, the loss falls on its principal. It is possible for a bank while acting as agent of the drawer of a draft for the purpose of collecting it to act also as agent of the drawee in appropriating the money.—BRANTFORD CORDAGE CO. *v.* MILNE, [1925] 1 D. L. R. 862; [1925] 1 W. W. R. 911; 35 Man. L. R. 17; *affd.*, [1925] 1 D. L. R. 92; [1925] 1 W. W. R. 442.—CAN.

275 vii. —— —— *In Canadian paper in American bank—In what currency payable by bank.*]—*Held :* pltf.'s deposits created merely the relation of debtor & creditor, & the bank's obligation under that relationship was to repay the exact amount of money which was received on deposit. Whether amounts of deposits repayable in Canadian or American currency discussed.—SHEPPARD *v.* FIRST INTERNATIONAL BANK OF SWEET GRASS, [1924] 1 D. L. R. 582; 1 W. W. R. 290.—CAN.

275 viii. —— —— *Cheque delivered to bank to be cashed.*]—The fact that the holder of a cheque delivers it to a bank to be cashed does not constitute a deposit nor render the bank his debtor, & the bank has no right to set off against the proceeds of the cheque a debt owing to it by the holder.—ROYKEL *v.* ROYAL BANK OF CANADA, [1918] 2 W. W. R. 791; 11 Sask. L. R. 218.—CAN.

other forged cheques. Defts. alleged that the cheque for £150,000 was obtained by a blackmailing conspiracy from one A., who was discovered by one N. with pltf.'s wife in compromising circumstances, & that the proceeds were shared between the conspirators, whom defts. alleged to include, among others, pltf., pltf.'s wife, & H. & N. Pltf. & his wife denied that they took part in any conspiracy, & pltf. said that, when he heard of the relations between his wife & A., he instructed H., who represented himself to be a solr., to take divorce proceedings, & that, when the sum of £25,000 was handed to him by H., he, pltf., passed the amount on to his wife & said that he would have nothing more to do with her, & that he learned later that A. had paid £150,000. It was to recover the difference between these two amounts that the action was brought. The jury found that there was a conspiracy to get money from A. by catching him with pltf.'s wife, but that pltf. & his wife were not parties to the conspiracy, that A. was induced to part with the money through fear, & that his parting with it was not free & voluntary:—*Held:* pltf. never got the property in the cheque for £150,000 & could not sue in conversion, & he had no right to sue in contract because the dealings with deft. bank were not on his behalf, & therefore he had no title to the cheque, & the action failed.—ROBINSON *v.* MIDLAND BANK, LTD. (1925), 41 T. L. R. 402; 69 Sol. Jo. 428, 792, C. A.

284a. —— **Effect of mere book entries.**] — In dealings between banker & customer, where it is sought to treat a mere book entry as a payment, some other circumstances must be present & relied upon to enable the customer in whose favour it is made to succeed, either some express previous authority to pay, or a communication of the making of the entry to the customer & an acting upon it by him; there must be, in effect, both a payment by one party & a receipt by the other, or an alteration in the position of the customer in whose favour the book entry was made.—BRITISH & NORTH EUROPEAN BANK, LTD. *v.* ZALZSTEIN, [1927] 2 K. B. 92; 96 L. J. K. B. 539; 137 L. T. 127; 43 T. L. R. 299.

289a. **Bills specifically appropriated to one account—Payment of proceeds to other account.**]—A banker who has agreed with a customer to open two accounts in his name, & who holds bills which the customer has specifically appropriated to one account, is not entitled, without the customer's consent, to transfer the proceeds of such bills to the other account.—GREENHALGH (W. P.) & SONS *v.* UNION BANK OF MANCHESTER, [1924] 2 K. B. 153; 93 L. J. K. B. 844; 131 L. T. 637.

289 ii. —— *Moneys held to manager's own account.*]—BLENKHORN *v.* ROYAL BANK (1920), 60 N. S. R. 388.—CAN.

289 ii. —— ——.]—In the absence of any special contract to keep a customer's accounts separate a bank may combine his accounts in different departments of the bank for the purpose of meeting his indebtedness to the bank without notifying him or obtaining his consent thereto.—WALLINDER *v.* IMPERIAL BANK OF CANADA, [1925] 4 D. L. R. 390; [1925] 3 W. W. R. 409.—CAN.

293 i. *Drawing cheque—Customer's duty to bank.*]—A customer of a bank owes a duty to the bank in drawing cheques to take reasonable & ordinary precautions against the amount of the cheque being raised by forgery, & if as the natural & probable result of the neglect of those precautions the amount is so increased the customer must bear the loss as between himself & the bank. The duty of a customer to draw up his cheque without negligence is the same with respect to a cheque on a savings account as in the case of a cheque on a current account.—WILL *v.* BANK OF MONTREAL, [1931] 2 W. W. R. 364; 3 D. L. R. 526.—CAN.

292. *Add. Annotations:*—**Refd.** Taxation Comrs. *v.* English, Scottish & Australian Bank, [1920] A. C. 683; Savory (E. B.) & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

292a. —— —— ——.]—(1) The word "customer" in Bills of Exchange Act, 1909 (No. 27 of 1909, Commonwealth), s. 88 (1), which is in the same terms as the above sect. signifies a relationship in which duration is not of the essence, & includes a person who has opened an account on the day before paying in a cheque to which he has no title.

(2) The negligence referred to in the subsect. is negligence in collecting the cheque, not in opening the account. The test is whether the paying in of any given cheque, coupled with the circumstances antecedent & present, was so out of the ordinary course that it ought to have aroused doubt in the banker's mind, & caused him to make inquiries. The standard of care required is that derived from the practice of bankers.—TAXATION COMRS. *v.* ENGLISH, SCOTTISH & AUSTRALIAN BANK [1920] A. C. 683; 89 L. J. P. C. 181; 123 L. T. 34; 36 T. L. R. 305, P. C.

Annotations:—*As to* (1) **Refd.** Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344. *As to* (2) **Apld.** Hampstead Grdns. *v.* Barclays Bank (1923), 39 T. L. R. 229. **Consd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294. **Apld.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Consd.** Slingsby *v.* Westminster Bank, Ltd., [1931] 1 K. B. 173. **Refd.** Underwood *v.* Bank of Liverpool, Same *v.* Barclay's Bank, [1924] 1 K. B. 775; London & Montrose Shipbuilding & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas. 67.

292b. —— **Another bank for whom cheque collected—Bills of Exchange Act, 1882 (c. 61), s. 82.**]—(1) The word "customer" in the above sect. applies to another bank for whom the bank, which relies on the protection of the sect., collects a cheque.

(2) The words "receives payment" in the sect. apply to a bank which receives payment as a collecting bank.—IMPORTERS CO. *v.* WESTMINSTER BANK, [1927] 2 K. B. 297; 96 L. J. K. B. 919; 137 L. T. 693; 43 T. L. R. 639; 32 Com. Cas. 369, C. A.

293. *Add. Citation:*—88 L. J. K. B. 55.

Add. Annotations:—**Consd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294; Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114. **Mentd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110; *Re* Polemis & Furness, Withy, [1921] 3 K. B. 560; Jones *v.* Waring & Gillow, [1926] A. C. 670.

298a. **Remittance sent abroad on request—Obligation of bank.**]—Pltfs., customers of defts., bankers in London, instructed them to transmit money to a person in Rumania, & defts. sent a cheque by registered post to him personally. The cheque never reached him, but someone apparently put

298d. *Unauthorised withdrawal of sum from account by manager—Onus of proof of repayment.*]—F., a local branch bank manager, took without authority certain sums from S.'s account in the bank. S. having died, his exors. sued the bank & F. to recover these sums:—*Held:* on the evidence, defts. had not acquitted themselves of the *onus* of establishing repayment, & pltfs. were entitled to recover.—STEWART *v.* ROYAL BANK OF CANADA & FRASER, [1930] S. C. R. 544; 4 D. L. R. 694; *revg.*, [1930] 2 D. L. R. 617; 1 M. P. R. 302.—CAN.

on it a forged indorsement of his name, & it was eventually cleared through a bank in Poland, & defts. debited pltfs. with the amount. In an action for negligence pltfs. alleged that defts. should have sent the cheque by a letter which was insured in addition to being registered:—*Held:* as the loss of a cheque was a rare occurrence, & as the standard of defts.' duty should not be measured by a consideration of all the precautions which subsequent events might suggest. the action failed.—OSE GESELLSCHAFT, ETC. *v.* JEWISH COLONIAL TRUST (1927), 43 T. L. R. 398.

300. *Add. Annotations:*—**Apld.** London Provincial & South Western Bank *v.* Buszard (1918), 35 T. L. R. 142. **Refd.** Brown *v.* Swan (1921), 37 T. L. R. 787.

301. *Add. Annotations:*—**Consd.** Brown *v.* Swan (1921), 37 T. L. R. 787. **Refd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51; Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

302. *Add. Annotations:*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669; Richardson *v.* Richardson, [1927] P. 228.

303. *Add. Citation:*—63 Sol. Jo. 246.

304. *Add. Annotations:*—**Consd.** Elliott *v.* Bax-Ironside, [1925] 2 K. B. 301. **Refd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414; Kettle *v.* Dunster & Wakefield (1927), 43 T. L. R. 770.

306. *Add. Annotation:*—**Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

310. *Add. Annotations:*—**Refd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110. **Mentd.** *Re* Gunsbourg, *Ex p.* Trustee, [1919] B. & C. R. 99.

311. *Add. Annotation:*—**Consd.** Rekstin *v.* Komseverputj Bureau (Bank for Russian Trade, Ltd.) (1932), 48 T. L. R. 578.

312. *Add. Annotation:*—*Generally*, **Refd.** Earle *v.* Hemsworth R. D. C. (1928), 140 L. T. 69.

After this case add, *See* Law of Property Act, 1925 (c. 20), s. 136 (1).

317. *Add. Annotations:*—*As to* (1) **Refd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110. *Generally*, **Refd.** Richardson *v.* Richardson, [1927] P. 228; Rekstin *v.* Komseverputj Bureau (Bank for Russian Trade, Ltd.) (1932), 48 T. L. R. 578.

321a. —— **Operation as revocation of direction to transfer account—Before notice to transferee.**]—REKSTIN *v.* SEVERO SIBIRSKO GOSUDARSTVERNNOE AKCIONERNOE OBSCHESTVO KOMSEVERPUTJ (BUREAU) & BANK FOR RUSSIAN TRADE, LTD., No. 277a, *ante*.

330. *Add. Citation:*—40 L. T. 404.

331. *Add. Annotation:*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

332. *Add. Annotations:*—**Consd.** Rekstin *v.* Komseverputj Bureau (Bank for Russian Trade, Ltd.) (1932), 48 T. L. R. 578. **Refd.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328; Jones *v.* Waring & Gillow, [1926] A. C. 670.

333. *Add. Annotations:*—**Consd.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328; Jones *v.* Waring & Gillow, [1926] A. C. 670.

333a. —— **Payment into account under belief that customer alive—Liability to refund.**]—Where money has been paid into the current account of the customer of a bank under a mistake of fact, such as the belief that the customer is still alive & entitled to the money, the money can be recovered back from the bank without joining the customer's legal personal representatives as defts. to the action.—ADMIRALTY COMRS. *v.* NATIONAL PROVINCIAL & UNION BANK OF ENGLAND, LTD. (1922), 127 L. T. 452; 38 T. L. R. 492; 66 Sol. Jo. 422.

334. *Add. Annotations:*—**Consd.** *Re* Hodgson's Trusts, Public Trustee *v.* Milne, [1919] 2 Ch. 189. **Refd.** Bradford Old Bank *v.* Sutcliffe (1918), 88 L. J. K. B. 85; Albemarle Supply Co. *v.* Hind (1927), 43 T. L. R. 652; Holder *v.* I. R. Comrs. (1932), 48 T. L. R. 365.

338a. —— **Joint account—Including proceeds of theft.**]—THE ADMIRALTY *v.* MILLS (1908), *Times*, Oct. 29.

338b. **Necessity for demand—Whether condition precedent to action against banker on account.**]—Where money is standing to the credit of a customer on current account with a banker, in the absence of a special agreement a demand by the customer is a necessary ingredient in the cause of action against the banker for money lent.—JOACHIMSON *v.* SWISS BANK CORPN., [1921] 3 K. B. 110; 90 L. J. K. B. 973; 125 L. T. 338; 37 T. L. R. 534; 65 Sol. Jo. 434; 26 Com. Cas. 196, C. A.

Annotations:—**Consd.** Admiralty Comrs. *v.* National Provincial & Union Bank of England (1922), 38 T. L. R. 492;

PART II. SECT. 1, SUB-SECT. 3.—A.

301 ii. —— ——.]—For certain limited purposes a branch bank may be treated as a separate organisation, but for all purposes of liability a bank is a unit & indivisible.—WHITE *v.* ROYAL BANK OF CANADA, [1923] 4 D. L. R. 1206; 53 O. L. R. 543.—**CAN.**

8a. *Forwarding to another branch documents for collection—Negligence.*]—Where a branch office of a bank, in the usual course of banking business for reward, sends to another office of the bank for collection on behalf of a customer negotiable documents of debts, such as participation certificates issued by the Canadian Wheat Board, which, having been indorsed by the producer, are, in effect, made payable to bearer on surrender thereof, & whose terms deny responsibility in the Wheat Board with respect to indorsements, &, failing to receive a return letter of acknowledgment, the sending office makes no inquiry of the receiving office as to the safety of the documents until after the lapse of six weeks, it is guilty of negligence. The bank is still more guilty of negligence, when, having made the belated inquiry & learned that the documents have not been received at the other office it fails to take immediate steps in the quickest manner available to warn the debtor liable under the documents of the loss thereof, & thus stop payment to any unauthorised person.—NELSON *v.* UNION BANK OF CANADA, [1923] 3 W. W. R. 1330.—**CAN.**

303 i. —— —— ——.]—GARRIOCH *v.* CANADIAN BANK OF COMMERCE, [1919] 3 W. W. R. 185.—**CAN.**

PART II. SECT. 1, SUB-SECT. 4.

317 xi. —— *Account in trade name.*]—Where an individual keeps his bank account under a trade name & is sued & his banker is garnisheed, it is for the bankers to satisfy themselves that the judgment debtor named is the person keeping such account, & if satisfied beyond reasonable doubt that the right fund is being garnisheed to pay it into ct.—SMITH *v.* GAUTSCHE, [1917] 2 W. W. R. 225; 23 B. C. R. 455.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.

334 v. ——.]—Pltf. made a promissory note in favour of S., which was dishonoured on presentment. Both banked with defts., to whom S. was indebted on overdraft for a greater sum than the amount of the note. Subsequently pltf. paid £100 into his account, & defts. immediately, without reference to pltf., paid the note for £119 19*s.* 10*d.* & debited pltf.'s account with the amount by which his funds in the hands of defts. were insufficient to meet the note:—*Held:* defts. were at liberty to apply whatever funds of pltf. they had in hand in satisfaction, *pro tanto*, of the note of which they were the holders for value.—BELL *v.* UNION BANK, [1923] N. Z. L. R. 379.—**N.Z.**

Richardson *v.* Richardson, [1927] P. 228; Douglass *v.* Lloyds Bank (1929), 34 Com. Cas. 263. **Refd.** *Re* British American Continental Bank, Credit General Leigeois' Claim, [1922] 2 Ch. 589; Prosperity *v.* Lloyds Bank (1923), 39 T. L. R. 372; Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461; Rekstin *v.* Komseverputj Bureau (Bank for Russian Trade, Ltd.) (1932), 48 T. L. R. 578.

342. *Add. Annotation :—Generally,* **Refd.** I. R. Comrs. *v.* Holder, [1931] 2 K. B. 81.

342a. —— Account in credit—Reasonable notice.]—In the absence of special stipulation a banker can close his customer's banking account in credit only on giving him a reasonable notice, dependent on the nature of the account & the facts & circumstances of the case. When a banking account, opened by pltfs. with defts., & having a credit balance of some £7,000, was so interwoven with a "snowball" scheme of insurance devised by pltfs. that it became in respect to subscriptions to the scheme a part thereof :—*Held :* a month's notice by defts. to discontinue the account was not, in the circumstances of the case, sufficient, but an injunction restraining defts. from closing the account must be refused.—Prosperity, Ltd. *v.* Lloyds Bank, Ltd. (1923), 39 T. L. R. 372.

342b. Existence of account—Proof of—Effect of non-existence of entry in material books.]—Douglass *v.* Lloyds Bank, No. 403a, *post.*

347. *Add. Citation :—affg.* S. C. *sub nom. Re* Gross, *Ex p.* Adair (1871), 24 L. T. 198.

363. *Add. Annotations :*—**Consd.** Banque Belge *v.* Hambrouck, [1921] 1 K. B. 321. **Refd.** *Re* Hodgson's Trusts, Public Trustee *v.* Milne, [1919] 2 Ch. 189.

380a. Payment of principal's money to own account—Bank without notice—Retention against overdraft.]—*Re* Sangster, Green *v.* Mockett (1894), 10 T. L. R. 184.

381a. Trust moneys credited to private account—Liability of bank.]—Resp. bank agreed with applts. to furnish applts.' agent with cash in exchange for drafts upon applts. The cash, as resps. knew, was to be used in paying for grain to be purchased for applts. by their agent. In numerous cases resps. instead of giving the agent cash credited the drafts, wholly or in part, to the agent's private account which was generally overdrawn. Applts. sued resps. to recover the aggregate amount, with interest, of specified drafts, or parts of drafts which had been thus applied; the agent was not joined as a party. Resps. alleged but did not prove that the agent had paid for grain by cheques on his private account. The Ct. of Appeal ordered an account to ascertain what loss applts. had sustained :—*Held :* resps. having been parties to a misapplication of trust funds, applts. were entitled to judgment for the amount sued for.—British Elevator Co. *v.* Bank of British North America, [1919] A. C. 658; 88 L. J. P. C. 118; 121 L. T. 100, P. C.

387a. —— —— ——.]—For some years before 1919 one U., a merchant, had a banking account at defts.' bank. In that year he converted himself into a limited co., all the shares being allotted to himself except one, which was held by his wife. A debenture in the form of a floating charge over the assets of the co. was issued to a creditor of U. as a security for his debt. The arts. of assocn. of the co. incorporated Table A. by par. 71 of which the business of the co. is to be managed by the directors. By the arts. U. was appointed sole director. After the formation of the co. U. kept on his private banking account with defts. as before, they having notice that his business had been transferred to the co. The co. had a separate account, which was kept at another bank, but defts. had no knowledge of that fact. U., as sole director, became possessed of a number of cheques, some crossed & others uncrossed, drawn in favour of the co. He indorsed them "A.L.U., Ltd.—A.L.U. sole director," & paid them into his own account with defts. instead of paying them in to the co.'s account with the other bank. Defts., without inquiring whether the co. had a separate banking account, collected the cheques & credited U. with the proceeds, which he misappropriated. When doing so they treated him as being identical with the co., as he owned all the shares, & overlooked the materiality of the cheques being drawn in the co.'s favour & not in his. In an action brought by the co. on behalf of the debenture-holder for conversion of the cheques :—*Held :* (1) defts. were precluded from setting up that U., when paying the cheques in to his own account, was acting within the scope of his apparent authority as agent of the co., upon two grounds: first, that the act of an agent paying his principal's cheques into his own account was so unusual as to put them on inquiry, that they ought to have inquired whether the co. had a separate banking account, &, if it had, why the cheques were not paid in to that account, & that their failure to make that inquiry amounted to negligence; &, secondly, that U. when paying in the cheques did not purport to act as the co.'s agent, but as being himself the co., & that defts. so treated him; (2) with respect to the cheques which were crossed the omission to inquire about the co.'s banking account disentitled defts. as collecting bankers to the protection afforded by Bills of Exchange Act, 1882 (c. 61), s. 82.

A customer of a bank paid into his account

PART II. SECT. 2, SUB-SECT. 2.—B.

sf. *Right of bank to refuse to pay.]*—In order to hold a banker justified in refusing to pay a demand of his customer the customer being an exor., & drawing a cheque as exor., there must in the first place be some misapplication, some breach of trust intended by the exor., & there must in the second place be proof that the bankers are privy to the intent to make their misapplication of the trust funds. If it be shown that any personal benefit to the bankers themselves is designed or stipulated for, that circumstance above all others will most readily establish the fact that the bankers are in privity with the breach of trust that is about to be committed. —Standard Bank *v.* Estate van Rhyn, [1925] App. D. 266.—**S. AF.**

PART II. SECT. 2, SUB-SECT. 3.—A.

371 i. *Joint account of persons not partners—Cheque drawn & countermanded by one after decease of other—Payment by bank—No right of action in survivor.]*—Radcliffe *v.* Bank of Montreal, [1919] 2 W. W. R. 887.—**CAN.**

371 ii. —— *Subsequent claim by one to whole account—Position of bank.]*—Where a bank deposit is made in the name of either of two persons it is a notification that either one may deal with the funds & that the account will be subject to the control of either of them in the absence of special directions. But upon a subsequent notice to the bank by one of such persons that he claims it all, the bank in dealing with the money thereafter in any way affecting such claim acts at its own risk.—Hill *v.* Hochelaga Bank, [1921] 3 W. W. R. 430.—**CAN.**

PART II. SECT. 2, SUB-SECT. 3.—B.

g. Add "*on appeal,* [1919] A. C. 658; 88 L. J. P. C. 118; 121 L. T. 100, P. C."

some cheques to which he had no title. Immediately on his so paying them in the bank credited him with the amounts of the cheques in their ledger, but there was no agreement between the bank & the customer that he should be allowed to draw against the cheques before they were cleared, nor did he in fact draw against them until after the bank had received the proceeds:—*Held:* (3) apart from any question whether the bank had notice of any defect in the customer's title, they were not holders in due course, there being no evidence that they took the cheques for value. The mere fact that bankers credit a customer with the amounts of cheques before they are cleared does not make them holders for value; in order to entitle them to that character there must have been an agreement, express or implied, that the customer should be allowed to draw against the cheques before clearance, & that agreement must have been acted upon. —UNDERWOOD (A. L.), LTD. *v.* BANK OF LIVERPOOL, SAME *v.* BARCLAYS BANK, [1924] 1 K. B. 775; 93 L. J. K. B. 690; 131 L. T. 271; 40 T. L. R. 302; 68 Sol. Jo. 716; 29 Com. Cas. 182, C. A.

Annotations:—As to (1) **Apld.** London & Montrose Shipbuilding & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas 67; Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443. **Consd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294. **Apld.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Fenton Textile Assocn. *v.* Thomas (1929), 45 T. L. R. 264; Reckitt *v.* Barnett, Pembroke & Slater, [1929] A. C. 176; Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344. *As to* (2) **Consd.** London & Montrose Shipbuilding & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas. 67. **Refd.** Robinson *v.* Midland Bank (1925), 41 T. L. R. 402. *Generally*, **Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465 Midland Bank, Ltd. *v.* Reckitt (1932), 48 T. L. R. 271 Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114 Slingsby *v.* Westminster Bank, Ltd., [1931] 2 K. B. 583.

389. *Add. Annotations:*—**Consd.** Jones *v.* Waring & Gillow, [1925] 2 K. B. 612. **Refd.** Banque Belge pour l'Etranger (Soc. Anon.) *v.* Hambrouck, Spanoghe (1920), 123 L. T. 495.

391. *Add. Annotation:*—**Distd.** *Re* Harrison, Day *v.* Harrison (1920), 90 L. J. Ch. 186.

391a. —— —— Cheques drawn by wife on bank manager's advice—Title of wife to balance.] —A husband, in 1908 transferred the money standing to a current account at his bank in his own name into the joint names of himself & his wife. He did not inform his wife of the joint account, & always drew cheques on the account himself. He died in Nov. 1919. The wife never drew any cheque on the account until shortly before his death, when he was in failing health & unable to attend to business. The bank manager then informed her of the joint account, & advised her to draw a cheque, which she did. The husband had also from time to time made deposits in the joint names of himself & his wife, & in Aug. 1919, consolidated them into one deposit in the joint names. The wife never knew of this deposit until after her husband's death. There was then found among his papers an envelope indorsed with the wife's initials & containing the deposit receipt & a document in which he said: "I would like this paying away at once if possible as under," with a list of names with amounts against them:—*Held:* the money standing to the credit of both the current account & the deposit account belonged to the wife as survivor, & the document did not raise any presumption that the husband regarded the deposit as his own property.—*Re* HARRISON, DAY *v.* HARRISON (1920), 90 L. J. Ch. 186.

402. *Add. Annotations:*—**Refd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110; Douglass *v.* Lloyds Bank (1929), 34 Com. Cas. 263.

402a. Effect of need for notice of withdrawal.]—There is no difference in principle in the nature of a deposit requiring notice of withdrawal & a deposit not requiring notice of withdrawal.—*Re* GLENDINNING, STEEL *v.* GLENDINNING (1918), 88 L. J. Ch. 87; 120 L. T. 222; 63 Sol. Jo. 156.

403a. Loss of right to repayment—Laches.]—In May, 1866, one F. deposited £6,000 with a Birmingham branch of deft. bank, upon the terms that he could withdraw the money at any time on giving fourteen days' notice, & that interest should be paid on it at the rate of 6 per cent. for the first three months, & thereafter at the current bank rate for the time being. In Aug. 1866, the bank repaid £2,500 of the £6,000 with interest due to that date, & a note of the payment was indorsed on the deposit receipt. In Nov. 1866, a further indorsement was made showing that all interest then due had been paid, but after that date there was no record of any further payment by the bank of either principal or interest & no record of any demand by F. for payment. F. died in 1893. In 1927 a relative of F. discovered the deposit receipt amongst some old papers, & sent it to the surviving exor. & trustee of F.'s will. He gave deft. bank formal notice to pay the £3,500, balance of the principal £6,000, together with interest, in fourteen days. The bank refused to pay, on the ground that it must be presumed that the deposit must have been repaid long ago. The exor. then brought this action to enforce payment, & the bank pleaded presumption of payment; & although they refused to plead Stat. Limitations, they claimed relief on the ground that F. & his representatives had been guilty of laches:—*Held:* although defts. could not produce evidence of repayment, the proper inference from all the circumstances was that that money must have been repaid, & the action therefore failed. Bankers' Books Evidence Act, 1879 (c. 11), s. 3, makes an entry in bankers' books *primâ facie* evidence of an account.

Qu.: whether the non-existence of any entry in material books is *primâ facie* evidence of the non-existence of an alleged account.—DOUGLASS *v.* LLOYDS BANK, LTD. (1929), 34 Com. Cas. 263.

409. *Add. Annotation:*—**Apld.** *Re* Westerton, Public Trustee *v.* Gray (1919), 122 L. T. 264.

409a. Assignment by order in writing to bank to pay third party sum on deposit—Unindorsed deposit receipt—Letter to assignee.]—About a year before his death, which happened in 1917, testator handed to his landlady, G.,

an envelope addressed to her describing it as a present to her. She was about to open it, when he took it from her hand & said he would keep it for her & locked it up in his despatch box. After testator's death there was found in his despatch box an envelope containing: (1) A deposit receipt for £500 deposited with his bank in 1914; (2) an order in writing signed by testator directing the bank to pay to G. the sum of £500 then on deposit; & (3) a letter addressed to G.: "You have been very kind to me & I desire to make some return by giving you the amount £500 now on deposit at the . . . bank as per receipt enclosed." The deposit receipt was not indorsed by testator & no notice was given to the bank of any assignment till after his death, the interest on the sum on deposit having been carried by the bank to his current account:—*Held:* there was a valid & complete gift to G. of the sum on deposit by way of assignment under Jud. Act, 1873, s. 25 (6).—*Re* WESTERTON. PUBLIC TRUSTEE *v.* GRAY, [1919] 2 Ch. 104; 88 L. J. Ch 392; 122 L. T. 264; 63 Sol. Jo. 410.

Annotation:—**Apprvd.** & **Apld.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

412. *Add. Annotation:*—**Refd.** I. R. Comrs. *v.* Holder, [1931] 2 K. B. 81.

425. For "SAUNDERSON *v.* BOWES," read "SANDERSON *v.* BOWES."
Add. Annotation:—**Apld.** *Re* British Trade Corpn., Ltd., [1932] 2 Ch. 1.

431. *Add. Annotation:*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

453. *Add. Annotation:*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

454. *Add. Annotation:*—**Consd.** Slingsby *v.* Westminster Bank, Ltd., [1931] 1 K. B. 173.

456. *Add. Annotation:*—**Refd.** Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

456a. Contract to print notes—Notes printed without authority—Liability to bank.]—Pltfs., a Portuguese bank, made with defts., who were printers, a contract which provided that defts. should print the authorised notes for the bank, the plates being left in defts.' possession & being intended to be available only for the purposes of the bank. By means of an elaborate fraud defts. were induced by an unauthorised person to print from the plates a large quantity of notes & to deliver the notes to him, & the result was that these notes were put into circulation. In consequence of the fraud pltfs. honoured a large number of the spurious notes, & on learning the facts they found it necessary to withdraw all the genuine notes of the same issue from circulation as they had, at that time, no means of distinguishing the genuine from the spurious notes. In an action for breach of contract, negligence, or conversion:—*Held:* it was an implied term of the contract that there was to be no use of the plates for any purpose not authorised by pltfs., & there was an absolute duty on defts. not to print or deliver notes of pltf. bank without the authority of the bank, &, even if defts. were bound only to take reasonable care to avoid such acts, defts. had, on the facts, fallen short of the standard of care required by the special nature of the business, & pltfs. were entitled to recover.—BANCO DE PORTUGAL *v.* WATERLOW & SONS, LTD. (1930), 47 T. L. R. 214; 75 Sol. Jo. 81; *on appeal* (1931), 100 L. J. K. B. 465, C. A.; [1932] A. C. 452, H. L.

456b. —— —— **Measure of damages.**]—A firm of printers employed by the Bank of Portugal to print a series of bank notes known as Vasco da Gama 500 escudo notes delivered to the Bank 600,000 notes which were put into circulation in Portugal. Subsequently, in breach of their contract of employment, the printers delivered to one M., the head of a band of criminals, 580,000 notes of the same type, printed from the original plates or from plates made from the same die, in the belief that he had the authority of the bank. M. & his associates introduced these false notes into Portugal & put a large number of them into circulation. The bank on discovering that unauthorised notes were in circulation issued notices withdrawing the whole of this issue of Vasco da Gama notes & undertaking, within a limited time, to exchange all notes of this type presented to the bank for other notes. The bank had an exclusive license to issue bank notes as legal tender in Portugal, but the amount of the notes to be issued was controlled by law. At all material times the currency was inconvertible. In an action by the bank against the printers for breach of contract defts. maintained (*a*) that the loss suffered by the bank was due to their own voluntary action in paying the unauthorised notes; (*b*) that the loss to the bank was limited to the cost of printing & paper in regard to the new issue:—*Held:* (1) the loss arose naturally from the breach of contract; (2) the proper measure of damages was the exchange value expressed in sterling of the genuine currency given in exchange for the spurious notes together with the cost of printing the genuine notes withdrawn.—BANCO DE PORTUGAL *v.* WATERLOW & SONS, LTD., WATERLOW & SONS, LTD. *v.* BANCO DE PORTUGAL, [1932] A. C. 452; 101 L. J. K. B. 417; 147 L. T. 101; 48 T. L. R. 404; 76 Sol. Jo. 327, H. L.

Annotation:—**Refd.** The Edison (1932), 147 L. T. 141.

479. *Add. Annotation:*—**Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

479a. Cheque credited before clearance—Whether bank holders for value—Bank stopping payment before final clearance.]—(1) Where a customer pays a crossed cheque into his bank, the question whether the bank receive it as holders for value or as agents for collection is a pure question of fact. The fact that the cheque is immediately credited in the ledger does not necessarily make the bank holders

PART II. SECT. 4, SUB-SECT. 3.

ag. *Money paid to retire draft—Failure of purpose for which draft paid—Liability of bank to refund.*]—*Held:* pltfs. could recover from the bank the amount paid by them to retire the draft.—GIBBONS & CARNES *v.* ROYAL BANK OF CANADA, 1921] 2 W. W. R. 370.—**CAN.**

aj. *Delay in transmitting draft—Transaction not part of manager's duty—Liability of bank.*]—*Held:* as the promise by the acting manager to forward the draft was a voluntary act without remuneration & not part of his duty as an officer of the bank, the bank was not liable for his failure in performing it.—MAXWELL *v.* UNION BANK OF CANADA, [1922] 1 W. W. R. 7; 69 D. L. R. 130.—**CAN.**

ak. *Payment of draft on forged indorsement—Liability of bank.*]—PORTEOUS *v.* PORTEOUS, [1932] 3 D. L. R. 562.—**CAN.**

PART II. SECT. 5, SUB-SECT. 1.

463 i. —— *Stoppage of bank-cheque for debt—Debt not paid.*]—UNION BANK OF CANADA *v.* NETTLETON (1924), 55 O. L. R. 643.—**CAN.**

for value. That inference may be rebutted by notices in the pass-book & paying-in slip or other evidence showing that the customer could not draw before clearance.

(2) If the bank receive the cheque as agents for collection & stop payment before it is finally cleared at the clearing house, they can only receive & hold the proceeds as collecting agents for their customer, & not on the ordinary bank relationship of debtor & creditor. Consequently, in a winding up following on the stoppage the liquidator must pay the full proceeds of a cheque cleared after the stoppage to the customer, although it was cleared shortly before the actual winding up.—*Re* FARROW'S BANK, LTD., [1923] 1 Ch. 41; 92 L. J. Ch. 153; 128 L. T. 332; 67 Sol. Jo. 78; [1925] B. & C. R. 8, C. A.

479b. —— ——.]—UNDERWOOD (A. L.), LTD. *v.* BANK OF LIVERPOOL, SAME *v.* BARCLAYS BANK, No. 387a, *ante*.

484. *Add. Annotations:*—**Refd.** Guaranty Trust Co. of New York *v.* Hannay, [1918] 2 K. B. 623; Greenwood *v.* Martin's Bank, Ltd. (1932), 48 T. L. R. 601.

485. *Add. Annotation:*—**Consd.** Calico Printers' Association, Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

487. *Add. Annotation:*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

493. *Add. Annotations:*—**Apld.** London Provincial & South Western Bank *v.* Buszard (1918), 35 T. L. R. 142. **Refd.** Brown *v.* Swan (1921), 37 T. L. R. 787.

500. *Add. Annotation:*—*Generally*, **Refd.** Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

527a. What is negligence—Defective title of customer—Statutory protection of banker.]—SLINGSBY *v.* WESTMINSTER BANK, LTD., No. 691d, *post*.

537. *Add. Annotations:*—**Consd.** Barclay *v.* Malcolm (1925), 133 L. T. 512; Jones *v.* Waring & Gillow, [1925] 2 K. B. 612.

538. *Add. Annotation:*—**Consd.** *Re* Swinburne, Sutton *v.* Featherley (1925), 70 Sol. Jo. 64.

538a. ——.] — A. drew a cheque for £700 in favour of B. & gave it to B., who presented it forthwith. A. had current & deposit accounts at the bank, but her money on current account was not sufficient to meet the cheque without resort to the money on deposit. It had been the practice of the bank to allow A. to overdraw her current account so long as the overdraft was covered by her money on deposit. The bank refused payment of the cheque, not because of the state of A.'s current account, but because they doubted A.'s signature on the cheque. A. died before anything further was done:—*Held:* in the circumstances there had not been any appropriation or dedication of the money in the bank, or any constructive payment of the cheque; & there had been an incomplete gift *inter vivos* of the amount of the cheque, which gift would not be perfected by the assistance of equity.—*Re* SWINBURNE, SUTTON *v.* FEATHERLEY, [1926] Ch. 38; 95 L. J. Ch. 104; 134 L. T. 121; 70 Sol. Jo. 64, C. A.

540. *Add. Annotation:*—**Refd.** Australian Bank of Commerce *v.* Perel, [1926] A. C. 737.

544. *Add. Annotations:*—**Apld.** Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775. **Consd.** British Thomson-Houston Co. *v.* Federated European Bank, Ltd., [1932] 2 K. B. 176. **Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443.

544a. —— —— ——.]—A bye-law of applt. co. authorised its secretary-treasurer jointly with any director to sign cheques drawn upon its bank account. A series of cheques payable to one of the directors were fraudulently signed by the director jointly with the secretary-treasurer, & after indorsement were placed by resp. bank to the credit of an account which the director had with them. Resps. collected the cheques from applts.' bank in the usual course of business. In order that there should be to the credit of applts.' account sufficient to meet each of the cheques, the director in each case fraudulently drew a cheque upon one of various other accounts upon which he had authority to draw, & paid it into applts.' account. Applts. sued resps. to recover the aggregate amount of the cheques collected by them:—*Held:* the action failed, because (1) resps. had not knowledge, either by the form of the cheques collected or otherwise, that they were improperly drawn on applts.' account, & could not recover the money as having been held by their bankers in trust for them, & (2) applts. had suffered no loss, & the ct. could not investigate applts.' liability to persons not parties to the action in respect of the cheques placed to applts.' credit.—CORPORATION AGENCIES *v.* HOME BANK OF CANADA, [1927] A. C. 318; 96 L. J. P. C. 63, P. C.

Annotations:—As to (1) **Consd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Refd.** Reckitt *v.* Barnett, Pembroke & Slater, [1929] A. C. 176.

PART II. SECT. 6, SUB-SECT. 1.

cl. ——.]—A co. drew bills of exchange upon customers to whom they had supplied goods & who accepted the bills. The co. indorsed the bills in blank, & delivered them to a bank for collection. The co. went into liquidation. Its current account with the bank was overdrawn to a large amount. In the liquidation the bank claimed that they were owners of the bills, & that they were not bound to value & deduct the obligations in the bills for the purpose of a ranking. The bank's lien over the proceeds of the bills was admitted:—*Held:* the bills, having been indorsed & delivered to the bank for the limited purpose of collection, remained assets of the co., over which the bank held a mere right in security in virtue of their lien, & the obligations under the bills must be valued & deducted for the purposes of a ranking.—CLYDESDALE BANK, LTD. *v.* SENIOR (JAMES ALLAN) & SON LIQUIDATORS, [1926] S. C. 235.—SCOT.

PART II. SECT. 8, SUB-SECT. 2.—A.

538 i. *Constructive payment—Cheque & credit slip stamped "paid."*]—WHITE *v.* ROYAL BANK OF CANADA, [1923] 4 D. L. R. 1206; 53 O. L. R. 543.—CAN.

PART II. SECT. 8, SUB-SECT. 2.—B.

545 i. *To clerk—Notice of limitation of authority.*]—A clerk's express duties were to collect amounts due from grain dealers for freight charges, etc., & on presentation of bills of lading & payment of charges to hand out warehouse receipts, & deposit all moneys collected to the credit of the Receiver-General in a designated bank & at certain intervals to remit by draft to the head office of the business. Such charges were almost always paid to him by accepted cheque & deft. bank cashed such a cheque on it, paying the clerk the proceeds:—*Held:* the bank was negligent as inquiry should have been made as to the clerk's authority & the unusual act of a business firm cashing such a cheque, especially of a large amount, & a certain discrepancy between the name of the payee in the cheque & the name

546a. Cheques paid to customer's creditors.]—Deft. bank negligently, & in breach of the instructions given by their customer, pltf. co., paid cheques drawn on the co.'s account signed by one director only. All the cheques were paid to the co.'s trade creditors:—*Held:* (1) the bank being put on inquiry & being negligont, as the jury found, were not entitled to assume that a signature purporting to be that of a new director was that of a person duly appointed; (2) whether pltf. co.'s account was in credit or in debit at the time of the payments to trade creditors, the bank were, on the equitable doctrine under which a person who has in fact paid the debts of another without authority is allowed to take advantage of his payment, entitled to credit for the cheques paid in discharge of the debts of pltf. co.; (3) an inquiry should be ordered into the circumstances of payment of each cheque.—LIGGETT (B.) (LIVERPOOL), LTD. *v.* BARCLAYS BANK, LTD., [1928] 1 K. B. 48; 97 L. J. K. B. 1; 137 L. T. 443; 43 T. L. R. 449.

Annotation:—*As to* (2) & (3) **Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.

546b. Issue of bank drafts to customer's agent—Agent without proper authority—Negligence.]—A co. instructed its bankers in writing that any two of four named persons, of whom three were directors & the fourth was an accountant in the co.'s employment, had authority to draw cheques & sign orders for payments on its behalf. The co. from time to time required drafts payable in New York to remit to creditors there. The course of business was that the accountant attended at the bank with a cheque, duly signed by two of the named persons, payable to the bankers' order for the sum for which the draft was required, but without any further document or written instructions; having filled up a requisition note giving particulars of the draft required, including the name of the payee, he was handed a draft in accordance with those particulars. In Jan. 1922, it was first discovered that on 41 out of 106 occasions upon which drafts had been so purchased since Nov. 1918, the accountant, having entered his own name in the requisition note, had obtained drafts payable to himself, & had misappropriated the proceeds, covering his fraud by false entries in the company's books. The resps. having paid the co. under a policy guaranteeing the fidelity of the accountant, sued the bankers (applts.) in respect of the loss after the date of the policy:—*Held:* the bankers had acted negligently in issuing the drafts without authority in accordance with the company's instructions, & were liable in damages in respect thereof; the frequent repetition of the same irregular procedure afforded no defence either by way of estoppel, ratification or otherwise.—BANK OF MONTREAL *v.* DOMINION GRESHAM GUARANTEE & CASUALTY CO., LTD., [1930] A. C. 659; 99 L. J. P. C. 202; 144 L. T. 6; 46 T. L. R. 575; 36 Com. Cas. 28, P. C.

Annotation:—**Refd.** Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

548. *Add. Annotations:*—**Refd.** Brown *v.* Swan (1921), 37 T. L. R. 787; Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

549. *Add. Annotation:*—**Refd.** Wilson *v.* United Counties Bank, [1920] A. C. 102.

550. *Add. Annotation:*—**Refd.** Wilson *v.* United Counties Bank, [1920] A. C. 102.

552. *Add. Annotation:*—**Consd.** Ralston *v.* Ralston, [1930] 2 K. B. 238.

554. *Add. Annotation:*—**Refd.** Prosperity *v.* Lloyds Bank (1923), 39 T. L. R. 372.

557. *Add. Annotations:*—**Consd.** *Re* Farrow's Bank, [1923] 1 Ch. 41. **Refd.** British & North European Bank *v* Zalzstein, [1927] 2 K. B. 92.

565. *Add. Annotation:*—*As to* (1) **Refd.** Tolley *v.* Fry (1929), 46 T. L. R. 108.

569. *Add. Annotations:*—**Refd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110; Richardson *v.* Richardson, [1927] P. 228; Rekstin *v.* Komseverputj Bureau (Bank for Russian Trade, Ltd.) (1932), 48 T. L. R. 578.

574. *Add. Annotation:*—**Refd.** Brown *v.* Swan (1921), 37 T. L. R. 787.

in the indorsement should have aroused suspicion.—R. *v.* ROYAL BANK OF CANADA (1920), 1 W. W. R. 198; 50 D. L. R. 293; 30 Man. L. R. 104.—**CAN.**

545 ii. —— ——.]—HAYES *v.* STANDARD BANK, [1927] 3 D. L. R. 336; 60 O. L. R. 461; *revsd.*, [1928] 2 D. L. R. 898; 62 O. L. R. 186.—**CAN.**

ss. *Effect of signing "verification slip."*]—RUTHERFORD *v.* ROYAL BANK OF CANADA, [1932] S. C. R. 131; 2 D. L. R. 332.—**CAN.**

PART II. SECT. 8, SUB-SECT. 2.—C.

548 i. *Cheque drawn on one branch—Payment at another—Dishonour on presentation.*]—A bank, which pays a cheque at any branch except that at which the customer keeps his account, must be assumed to have paid it not on the credit of the customer but on the indorsement itself.

A. drew a cheque in favour of B. upon the Bank C., D. branch, & B. indorsed it for collection in favour of L., who received payment from the P. branch of the bank, which sent the cheque on to the D. branch. The latter dishonoured the cheque, whereon the P. branch gave notice of dishonour & instituted a suit against B. & L. for the recovery of the sum paid. The defence was (*inter alia*) that the cheque having been discharged by payment there was no power left in the P. branch to give notice of dishonour:—*Held:* the payment by the P. branch did not operate as a discharge of the cheque, the payment having been made not on the credit of A. but on the credit of B. &, therefore, pltf. was entitled to recover the sum from defts.—RAJA JOYTI PRASAD SINGH DES BAHADUR *v.* CHOTA NAGPUR BANKING ASSOCN. (1928), I. L. R. 8 Pat. 413.—**IND.**

sk. *Effect of confirmation by telephone.*]—The accountant of a bank called up defts.' office by telephone, an automatic telephone, which rang number required direct without the necessity of calling a "central" operator. A woman's voice answered &, the accountant asking for the manager, a man's voice answered. The accountant then stated that it was the bank speaking & that the bank had a certain amount of money to pay over for the F. Co. "under protest," & the man at the other end of the wire said "All right":—*Held:* this constituted a notice to defts. that the money was available at the bank, & that it was not necessary the person spoken to should be identified.—FIDELITY OIL & GAS CO. *v.* JANSE DRILLING CO. (Alta.) (1916), 34 W. L. R. 370; 10 W. W. R. 533.—**CAN.**

PART II. SECT. 8, SUB-SECT. 3.—A.

549 iii. —— *Money advanced on agreed terms—Bank holding security.*]—FINUCANE *v.* STANDARD BANK OF CANADA, [1921] 3 W. W. R. 314; 62 S. C. R. 110; 59 D. L. R. 465.—**CAN.**

y i. —— *Dishonour of cheques payable to self.*]—A demand made personally by a customer upon his banker for payment is a two-party transaction. The refusal of payment cannot give rise to the implication of defamation of the customer to a third party, which necessarily arises when a trader's cheque, drawn or indorsed in favour of a third party, is presented by the holder & dishonoured by the banker. Judgment for pltf. for £250 set aside, & judgment entered for defts., defts. having admitted liability to pay pltf. nominal damages & having paid £10 into ct.—KINLAN *v.* ULSTER BANK, LTD., [1928] I. R. 171.—**IR.**

PART II. SECT. 8, SUB-SECT. 3.—B.

573 ii. ——.]—A banker is not obliged to pay a cheque when there are no assets belonging to the customer in his hands; & the countermanding of a cheque by a customer in whose account there are funds sufficient to meet it cannot do more than cause the obligation to pay, which otherwise existed, to cease to exist.—PUNJAB INDUSTRIAL AGENCY, LTD. *v.* MERCANTILE BANK OF INDIA, LTD. I. L. R. 11 Lah. 667.—**IND.**

585. *Add. Annotation :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

589. *Add. Annotation :*—**Consd.** Westminster Bank *v.* Hilton (1926), 136 L. T. 315.

589a. —— **Mistake in telegram—Duty of bank to make inquiry.**]—Pltf., who had an account with defts., on July 31, 1924, drew a cheque, No. 117,285, & post-dated it Aug. 2. On Aug. 1 he telegraphed to defts. to stop payment of cheque No. 117,283, mentioning the date, the payee, & the amount. These particulars were correct as to cheque No. 117,285, but the number of the cheque was wrong. Cheque No. 117,285 was presented on Aug. 6, & the bank officials paid it, supposing that it had been drawn in place of the one that had been stopped. If they had searched, they would have seen that a cheque numbered 117,283 had already been presented & honoured. In an action for negligence :—*Held :* the view of the bank officials, that the cheque presented, being subsequent to the date of the stop instructions, might be a duplicate cheque which they were bound to cash, was correct, & pltf. was not entitled to recover.—WESTMINSTER BANK, LTD. *v.* HILTON (1926), 136 L. T. 315; 43 T. L. R. 124 ; 70 Sol. Jo. 1196 ; *sub nom.* HILTON *v.* WESTMINSTER BANK, LTD., 162 L. T. Jo. 450, H. L.

592. *Add. Annotation :*—**Refd.** Baines *v.* National Provincial Bank (1927), 96 L. J. K. B. 801.

594. *Add. Annotation :*—**Refd.** Baines *v.* National Provincial Bank (1927), 96 L. J. K. B. 801.

595. *Add. Annotation :*—*As to* (2) **Refd.** Baines *v.* National Provincial Bank (1927), 96 L. J. K. B. 801.

600a. **Presentment over counter—Duty of bank to pay.**]—Pltfs., a partnership firm at Liverpool, sold goods to the P. Co. & drew upon the co. a bill for a large amount payable in three months in payment for the goods. The P. Co. accepted the bill payable at deft. bank at Liverpool, where they kept their account. Shortly before the bill became payable the co., who were then overdrawn at deft. bank, asked that bank to order payment of the bill & charge to the account of the co. Defts. were willing to act upon this advice, because they had an arrangement for a running overdraft with the co., & the bill was within the limits of that overdraft. When the bill became due it was brought by W., a servant of pltfs., to a partner of pltf. firm, who, at W.'s request, indorsed the bill in blank. W., instead of taking the bill to pltfs.' bank for the purpose of collection through the clearing house, presented the bill for payment over the counter to deft. bank & received the money, which he then fraudulently converted & stole. Pltfs. sued defts. to recover the amount of the bill on the grounds of negligence, money had & received, & conversion of the bill. Evidence was given at the trial that there is an almost universal custom at Liverpool that trade bills should be presented through the clearing house for payment to the bank at which they were accepted payable, but evidence was also given that presentation of such bills over the counter, though most unusual, was not irregular :—*Held :* deft. bank were not liable to pltfs. (1) on the ground of negligence, because no privity of contract existed between defts. & pltfs., & defts. owed no duty to pltfs. ; (2) on the ground of money had & received, because the drawing of the bill did not amount to an assignment in favour of the payee of funds of the drawee, as the acceptors had no funds to meet the bill, which was paid out of a loan by defts., & the advice to pay the bill sent by the acceptors to defts. gave no rights to pltfs. as against defts. ; (3) defts. were not liable to pltfs. for the conversion of the bill, because the bill was a negotiable instrument, & they paid it in good faith without notice of any defect in title & in accordance with the law merchant. A bank was not bound to make inquiries merely because a bill indorsed in blank or an open cheque was presented for payment over the counter. According to the law merchant such presentation, although unusual, was always recognised as due presentation, sufficient to require the bankers to pay, in the absence of very special circumstances of suspicion.—AUCHTERONI & Co. *v.* MIDLAND BANK, LTD., [1928] 2 K. B. 294 ; 97 L. J. K. B. 625 ; 139 L. T. 344 ; 44 T. L. R. 441 ; 72 Sol. Jo. 337 ; 33 Com. Cas. 345.

603. *Add. Annotation :*—**Refd.** *Re* Pinto Leite, *Ex p.* Des Olivaes, [1929] 1 Ch. 221.

615. *Add. Annotation :*—**Consd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294.

617. *Add. Annotation :*—**Refd.** Wilson *v.* United Counties Bank, [1920] A. C. 102.

624. *Add. Annotation :*—**Consd.** *Re* British Trade Corpn., [1932] 2 Ch. 1.

PART II. SECT. 8, SUB-SECT. 3.—D.

583 i. *Dishonour by country bank—Failure to return cheque by return of post—Clearing-house rules.*]—When a cheque is passed through the clearing-house in Melbourne & not returned dishonoured within the time allowed by the rules of the clearing-house for the return of dishonoured cheques, its payment to the collecting bank must on the expiration of that time be regarded as complete. Pltf. paid into his account at a country branch of deft. bank a cheque drawn upon a Melbourne branch of another bank. The cheque was passed through the Melbourne clearing-house, where, on the settlement of balances, its amount was credited to deft. bank by the bank upon which it was drawn. After the expiration of the time allowed by the rules of the clearing-house for the return of dishonoured cheques had expired, the cheque was returned dishonoured to deft. bank. Notwithstanding that the rules provided that any stale return might be rejected, deft. bank credited the bank upon which the cheque was drawn with its amount :—*Held :* deft. bank had, as agent for pltf., received payment of the cheque, & was therefore liable to pltf. for its amount as money had & received to his use.—RIEDELL *v.* COMMERCIAL BANK OF AUSTRALIA, LTD., [1931] V. L. R. 382 ; Argus L. R. 285.—**AUS.**

PART II. SECT. 8, SUB-SECT. 4.

sl. *Payment after notice of countermand—Liability of bank.*]—GARRIOCH *v.* CANADIAN BANK OF COMMERCE, 3 W. W. R. 185.—**CAN.**

589 l. *By telegram—Payment after notice of countermand—Negligence.*]—*Held :* defts. were guilty of a breach of duty as bankers.—READE *v.* ROYAL BANK OF IRELAND, LTD., [1922] 2 I. R. 22.—**IR.**

sm. *By notice of death.*]—The duty & authority of a bank to pay a cheque cease on notice of the drawer's death.—CURLEY *v.* BRIGGS (ADMINISTRATOR OF DRURY ESTATE), [1920] 2 W. W. R. 1025 ; 53 D. L. R. 351.—**CAN.**

sn. ——.]—It is not the death of the customer, but notice of his death, that operates as a revocation of the authority of a bank to pay the customer's cheque.—KENDRICK *v.* DOMINION BANK & BOWNAS (1920), 47 O. L. R. 372 ; 18 O. W. N. 138.—**CAN.**

so. ——.]—WINNIPEG SAVINGS BANK (TRUSTEE) *v.* KENNY, [1924] 1 D. L. R. 952.—**CAN.**

PART II. SECT. 9, SUB-SECT. 2.

sp. *Note made by customer—Bank not bound to debit customer's account after maturity—To protect endorser.*]—ROYAL BANK OF CANADA *v.* MCNAUGHTON, [1931] 3 D. L. R. 233.—**CAN.**

625. *Add. Annotation :*—**Refd.** Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

627. *Add. Annotation :*—**Consd.** Garrard *v.* James, [1925] Ch. 616.

629. *Add. Citation :*—88 L. J. K. B. 55.

Add. Annotations :—**Consd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294 ; Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607 ; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114.

629a. —— —— **Space left between name of payee & words "or order."**]—Pltfs., exors. of a will, kept an exors.' account with defts., & retained a firm of solrs., Messrs. C. & P., who used to assist them in matters connected with their testator's estate. The acting member of the firm was one J. C. Pltfs. in conference with J. C. decided to invest through Messrs. J. P. & Co., stockbrokers, a sum of £5,000, part of the estate lodged on deposit with defts. J. C. accordingly drew out a form of cheque for signature by pltfs. It was in the form " Pay J. P. & Co. or order " & was drawn on pltfs.' deposit account with defts. The cheque was signed by pltfs. & left with J. C. to be posted to J. P. & Co. with instructions to invest the money. J. C., instead of posting the cheque to J. P. & Co., fraudulently inserted the words " per C. & P." in the blank space between the payees' name & the words " or order " ; he then indorsed the document with the names C. & P. & paid it so altered & indorsed into the W. Bank to the credit of a co. in which he was interested & which had an account at that bank. The document was accepted without question by the W. Bank & passed through the clearing-house, & the account of pltfs. with defts. was debited, & that of the co. with the W. Bank was credited, with the amount on the face of the document. In an action by pltfs. against defts. for conversion, negligence & breach of duty :—*Held :* (1) the cheque had been " materially altered " within Bills of Exchange Act, 1882 (c. 61), s. 64, & was avoided as between pltfs. & defts. by that sect., & therefore defts. could not rely upon sect. 60 of the Act as excusing them for paying the cheque ; (2) for the same reason defts. could not rely on sect. 80 of the Act ; (3) assuming the description of the payees, " J. P. & Co. per C. & P." to be a recognised although unusual description, the indorsement of " C. & P." without any reference to " J. P. & Co." was irregular & invalid & defts. were negligent in honouring the cheque, & for this reason also were not protected by sect. 80, or *semble* by sect. 60 of the Act ; (4) in leaving a blank space between the names of the payees & the words " or order " pltfs. were not guilty of any breach of duty towards defts.—SLINGSBY *v.* DISTRICT BANK, LTD., [1932] 1 K. B. 544 ; 101 L. J. K. B. 281 ; 146 L. T. 377 ; 37 Com. Cas. 39, C. A.

631. *Add. Annotations :*—**Consd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244 ; Midland Bank, Ltd. *v.* Reckitt (1932), 48 T. L. R. 271 ; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114 ; Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344. **Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.

634. *Add. Annotation :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371.

634a. —— —— **Customer silent—Estoppel.**]—Pltf. had an account with deft. bank, & his wife forged his signature on cheques & thereby drew out all the money left in the account, & she lent it to her sister. Pltf., on discovering the facts, did not at once inform the bank, but about nine months later, when his wife told him that she wanted more money for her sister, he stated his intention of going to the bank, & that night his wife committed suicide. Pltf. then went to the bank & told the manager about the forged cheques. In an action by pltf., claiming to be credited by deft. bank with the amount of the forged cheques, the bank pleaded (*a*) adoption & ratification, & (*b*) that pltf. was estopped by his silence from alleging that the signatures were forgeries. The tribunal of first instance found that the forged cheques were honoured through the carelessness of the bank officials. There was no evidence that pltf. had ever adopted the forged cheques as his own :—*Held :* ratification had no applicability to a forged signature, but pltf. was estopped from alleging the forgeries because his silence until after his wife's death had caused the bank to lose their right of action against the forger, & therefore the action failed.—GREENWOOD *v.* MARTINS BANK, LTD. (1932) ; 101 L. J. K. B. 623 ; 147 L. T. 441 ; 48 T. L. R. 601 ; 76 Sol. Jo. 544 ; 38 Com. Cas. 54, H. L.

Annotation :—**Consd.** *Re* National Benefit Assurance Co. (1932), 48 T. L. R. 612.

635. *Add. Annotation :*—**Consd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587.

639a. Payment to third party without valuable consideration—Right of bank to recover.]—Deft. H. having possessed himself of crossed cheques which were drawn on pltf. bank in his favour & which purported to be drawn by his employer's authority defrauded his employer by paying them into a bank, which collected them & credited H. with the amounts. H. drew out these amounts & paid some of the money without valuable consideration to deft. S., who in turn paid into her account with deft. bank a portion of what she so received. S. had no notice of any defect in H.'s title, & she never paid into her account with deft. bank any money except money which was part of the proceeds of H.'s frauds. In an action for a declaration that the money standing to the credit of S. with deft. bank was the property of pltf. bank :—*Held :* on the assumption that H. obtained a voidable title to the proceeds of the cheques, yet pltf. bank had established their right to the money claimed, as it was

PART II. SECT. 10.

635 ii a. —— —— ——.]—In an action by a customer of deft. bank to recover the aggregate amount of a number of cheques forged by a confidential clerk employed by the customer, which were paid by the bank & charged to the customer's account, the fraud being skilfully concealed from both customer & bank :—*Held :* with the exception of certain cheques bearing genuine signatures, the amounts of which were raised by the clerk, there was no negligence on the part of either the customer or the bank in failing to discover the frauds.—COLUMBIA GRAPHOPHONE CO. *v.* UNION BANK OF CANADA (1916), 38 O. L. R. 326 ; 34 D. L. R. 743.—CAN.

635 ii b. —— —— ——.]—A customer of a bank was estopped from denying that certain forged cheques were signed by him or by his authority, by reason of his conduct in not having notified the bank when he learned of the forgery of previous cheques on his account by the same person.—CABANA *v.* BANK OF MONTREAL, [1919] 3 W. W. R. 969.—CAN.

capable of being traced.—BANQUE BELGE POUR L'ETRANGER *v.* HAMBROUCK, [1921] 1 K. B. 321; 90 L. J. K. B. 322; 37 T. L. R. 76; 65 Sol. Jo. 74; 26 Com. Cas. 72, C. A.

Annotation :—**Expld.** Jones *v.* Waring & Gillow, [1925] 2 K. B. 612.

640. *Add. Annotation :*—**Reld.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587.

644. *Add. Citation :*—88 L. J. K. B. 55.

Add. Annotations :—**Consd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294; Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114.

646. *Add. Annotation :*—*As to* (2) **Reld.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

647a. **Alteration of payee.**]—Pltfs., exors. of one T., deceased, employed a solr., one C., of a firm C. & P. to act for them in matters relating to deceased's estate. They wished to invest a sum of £5,000 through a firm of stockbrokers, & C. accordingly prepared a cheque for that amount payable to the stockbrokers; pltfs. then signed the cheque & handed it back to C. to deal with as directed. C., however, fraudulently added to the cheque the words "*per* C. & P.," & then indorsed the cheque with the words "C. & P." & handed it to a branch of deft. bank to be credited to the account which a co. in which he was interested kept at that branch. The cheque was credited to that co. & was passed through the clearing house, & in due course pltfs. were debited by their own bank with the sum of £5,000. On discovering the fraud pltfs. brought this action to recover the £5,000 from defts. :—*Held :* the words added by C. to the cheque constituted a material alteration & rendered the cheque void under Bills of Exchange Act, 1882 (c. 61), s. 64 (1). As therefore the cheque when it came into the hands of defts. was merely a piece of worthless paper no action could be brought on it, & pltfs.' claim failed. If, however, the cheque remained a valid one defts. had dealt with it without negligence & were protected by Bills of Exchange Act, 1882 (c. 61), s. 82, & for that reason also the claim failed.—SLINGSBY *v.* WESTMINSTER BANK, LTD. (No. 2), [1931] 2 K. B. 583; 101 L. J. K. B. 291, n.; 146 L. T. 89; 47 T. L. R. 1; 36 Com. Cas. 61.

Annotation :—**Overd.** Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114.

647b. ——.]—SLINGSBY *v.* THE DISTRICT BANK, No. 629a, *ante*.

649. *Add. Annotations :*—**Consd.** Koechlin *v.* Kestenbaum, [1927] 1 K. B. 889. **Reld.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

652. *Add. Annotation :*—**Reld.** Goldman *v.* Cox (1924), 40 T. L. R. 744.

655. *Add. Annotation :*—**Reld.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

658. *Add. Annotations :*—**Consd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607. **Reld.** Bow's Emporium *v.* Brett (1927), 44 T. L. R. 194.

663. *Add. Annotations :*—**Reld.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294; Stag Line, Ltd. *v.* Foscolo Mango & Co. (1931), 48 T. L. R. 127.

666. In paragraph, for "protected by Bills of Exchange Act, 1882 (c. 61), s. 19," read "protected by Stamp Act, 1853 (c. 59), s. 19."

Add. Annotation :—**Reld.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.

667. *Add Annotation :*—**Reld.** Lloyds Bank *v.* Chartered Bank of India (1927), 44 T. L. R. 165.

668a. —— —— —— ——.]—M., who was secretary & managing director of pltf. co., represented that he had bought goods for them from W., & the co. drew cheques to the aggregate amount of £762 in payment on a South African bank, making them payable to W., & handing them to M. as manager that he might hand them to W. M., instead of doing so, paid the cheques with forged indorsements into his own account with deft. bank which credited him with the amounts & obtained payment from the South African bank. The cheques were signed by two directors, including M., of pltf. co. M. applied the money received from the cheques with the exception of about £272 for W., paying out of the proceeds of five cheques "to order" for £62 10*s.* each four sums of £60 from his private account to W. One cheque, dated May 27, 1918, for £97 10*s.*, which was payable to "self or order" & signed by M. & a co-director, was refused by the bank, & came back to them after such refusal with M.'s name written in after the word "self," but the alteration was not initialed by both directors, & the addition was in M.'s writing. Pltf. co. repudiated the transactions & sued the bank for damages for conversion of the cheques, or alternatively for money had & received. Deft. bank claimed protection under Bills of Exchange Act, 1882 (c. 61), s. 82, & also as holders for value :—*Held :* (1) the *onus* of proving that there was no negligence had been discharged by the bank, except as to the five cheques for £62 10*s.* each; (2) the bank's duty with regard to these five cheques was to have made inquiries, & they were negligent in paying them into M.'s account; (3) the bank was negligent in cashing the cheque of May 27, 1918, as it should have seen that the alteration in it was made without the concurrence of both directors; (4) the evidence was not sufficient to show that M. paid anything out of his private account to W. in respect of the fifth cheque for £62 10*s.*; (5) there must be judgment for pltf. co. for £2 10*s.* on four of the cheques "to order" for £62 10*s.*, £62 10*s.* on the fifth cheque for the same amount, & £97 10*s.* on the cheque of May 27, 1918, making an aggregate amount of £170.—SOUCHETTE, LTD. *v.* LONDON COUNTY, WESTMINSTER & PARR'S BANK, LTD. (1920), 36 T. L. R. 195.

670. *Add. Annotations :*—**Reld.** Importers Co. *v.* Westminster Bank, [1927] 2 K. B. 297; Slingsby *v.* Westminster Bank, [1931] 1 K. B. 173.

671. *Add. Citation :*—*sub nom.* MATHEWS *v.* WILLIAMS, BROWN & Co., 10 R. 210.

672. *Add. Annotation :*—*As to* (2) **Reld.** Savory (E. B.) & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

Collection for another bank.]—IMPORTERS Co. *v.* WESTMINSTER BANK, No. 292b, *ante*.

673. *Add. Annotations :*—**Refd.** Taxation Comrs. *v.* English, Scottish & Australian Bank, [1920] A. C. 683; Savory (E. B.) & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

674. *Add. Annotations :—As to* (2) **Consd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Refd.** London & Montrose Shipbuilding & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas. 67.

676. *Add. Annotations :*—**Apld.** Brown *v.* Swan (1921), 37 T. L. R. 787. **Consd.** *Re* Farrows' Bank, [1923] 1 Ch. 41. **Refd.** Dey *v.* Mayo, [1920] 2 K. B. 346; Sutters *v.* Briggs, [1922] 1 A. C. 1; Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Importers Co. *v.* Westminster Bank, [1927] 2 K. B. 297; Slingsby *v.* Westminster Bank, [1931] 1 K. B. 73.

677. *Add. Annotations :*—**Refd.** Dey *v.* Mayo [1920] 2 K. B. 346; Sutters *v.* Briggs, [1922] 1 A. C. 1; *Re* Farrow's Bank, [1923] 1 Ch. 41; Importers Co. *v.* Westminster Bank, [1927] 2 K. B. 297.

679. *Add. Annotation :*—**Distd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.

680. *Add. Annotation :*—**Consd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.

680a. **"Receives payment"—Collecting bank.**]—IMPORTERS CO. *v.* WESTMINSTER BANK, No. 292b, *ante*.

681. Before this case add "*See, also*, Nos. 674–680."

684. *Add. Annotations :*—**Apld.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Refd.** Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

685. *Add. Annotation :*—**Apld.** Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

687. *Add. Annotations :*—**Consd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Refd.** Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Savory (E. B.) & Co. *v.* Lloyds Bank, Ltd. (1932), 146 L. T. 530.

687a —— —— ——.]—L., who was the chief accountant at the Bombay branch of pltf. bank, & was authorised to sign cheques on their behalf, had by a system of fraud procured the signature by another official of the branch of cheques payable to deft. bank. Those cheques were then sent to deft. bank for collection, with instructions written by L. on the bank's letter paper requesting deft. bank to place the proceeds of the cheques to the credit of a joint account which L. had opened at deft. bank in the name of himself & his wife. Those instructions having been carried out, the proceeds of the cheques were then collected by L. promptly after they had been paid in. It appeared from the account itself that it was generally in small credit until the arrival of each fraudulent cheque, & there was a failure on the part of deft. bank to make inquiries of pltf. bank as to the regularity of the transactions :—*Held :* (1) each cheque taken by itself was "issued," being signed & dealt with by persons having ostensible authority to sign & issue it, but the accompanying instructions, signed by L. alone, gave notice of irregularity which destroyed the "holding in due course"; (2) deft. bank were not entitled to rely on Indian Negotiable Instruments Act, s. 131, as their title as holders was defective through notice, so that they were not "true owners" within the sect.; (3) deft. bank had failed to discharge the burden of showing that they had collected without negligence. Examination of L.'s account should have put them on inquiry as to the source from which these payments were made, & pltfs. were entitled to succeed in their claim for conversion; (4) defts. could not set off the amount of the cheques repaid to pltfs. against the amount of the converted cheques.—LLOYDS BANK *v.* CHARTERED BANK OF INDIA, AUSTRALIA & CHINA, [1929] 1 K. B. 40; 97 L. J. K. B. 609; 139 L. T. 126; 44 T. L. R. 534; 33 Com. Cas. 306, C. A.

Annotations :—As to (3) **Consd.** Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114. **Refd.** Fenton Textile Assocn. *v.* Thomas (1929), 45 T. L. R. 264; Slingsby *v.* Westminster Bank, Ltd., [1931] 2 K. B. 583.

687b. —— —— ——.]—One T., a solr., had from a client a power of attorney entitling T. to draw cheques on the client's banking account & to apply the moneys for the purposes of his client. T. for his own purposes fraudulently drew 15 cheques on his client's account with the B. bank, signing the cheques by using a rubber stamp which had on the upper line the name of the client & on the lower line "his attorney" & by placing his own signature between the lines. T. then paid the cheques into his own account with the M. bank, defts., with whom he had an overdraft. On discovering the facts the client brought an action against defts. for damages for conversion of the cheques, & defts. relied on Bills of Exchange Act, 1882 (c. 61), s. 82, alleging that the cheques were crossed cheques & that they had received payment of them in good faith & without negligence. During the proceedings T.'s client died, & the proceedings were continued by the client's exors. as pltfs. It was admitted that defts. had acted in good faith :—*Held :* except in the case of two of the cheques defts. in presenting & receiving payment for the cheques, had converted them, & as defts. had from the form of the cheques notice as to the money not being T.'s money, they were negligent in making no inquiry as to T.'s authority to make these payments into his own account, & therefore the action succeeded.—MIDLAND BANK, LTD. *v.* RECKITT (1932), 48 T. L. R. 271; 76 Sol. Jo. 165; 37 Com. Cas. 202, H. L.

Annotation :—**Consd.** Slingsby *v.* District Bank, Ltd., [1932] 1 K. B. 544.

689. *Add. Annotation :—As to* (1) **Refd.** Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 146 L. T. 530.

690. *Add. Annotations :—As to* (1) **Consd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609; Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244; Midland Bank, Ltd. *v.* Reckitt (1932), 48 T. L. R. 271; Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114. **Refd.** Taxation Comrs. *v.* English, Scottish & Australian Bank, [1920] A. C. 683; Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K B.

775; Australian Bank of Commerce *v.* Perel, [1926] A. C. 737. *Generally*, **Refd.** Goldman *v.* Cox, (1924), 40 T. L. R. 423.

691. *Add. Annotation :—As to* (2) **Refd.** Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

691a. —— —— **Cheque payable to & indorsed by public official.**]—A banker to whom a private customer hands, for collection on his account, a cheque payable to & indorsed by a public official is put upon inquiry whether the customer is entitled to the cheque, & acts negligently if he credits the customer with the proceeds of the cheque without having made any such inquiry.

The Overseas Military Forces of Canada engaged in the European war had an estates office in England authorised by the Secretary of State for the Colonies to perform in accordance with statutory conditions the duties of collecting & distributing the estates of members of these forces dying in Europe. A sergeant employed at the office misappropriated during a period of ten months thirty-two cheques of the aggregate value of about £3,900, representing money belonging to the estates of deceased soldiers. Each of the cheques was drawn payable to "The Officer in Charge, Estates Office, Canadian Overseas Military Forces," & was indorsed generally by that officer under the same description with a view to its being sent to the Paymaster-General of these forces for payment of the amount to the beneficiaries, or in some cases directly to the beneficiary, & each cheque was crossed generally. The sergeant paid the first two cheques into a branch of defts.' bank at which he had a small private account of his own & the rest of them into another branch of the bank which passed them on to the former branch. No inquiry was made at either branch whether he was entitled to the cheques, & at the former branch they were credited to his account & payment of them was received for him. In an action by the Paymaster-General against defts. for damages for conversion of the cheques :—*Held :* the fact that the cheques were drawn payable to & indorsed by a public official should have put the cashiers of defts. upon inquiry whether their private customer was entitled to the cheques; in crediting the cheques to him without any inquiry the cashiers of both the branches had been guilty of negligence; & therefore defts. were not protected by Bills of Exchange Act, 1882 (c. 61), s. 82, from liability to pltf.—ROSS *v.* LONDON COUNTY, WESTMINSTER & PARR'S BANK, [1919] 1 K. B. 678; 88 L. J. K. B. 927; 120 L. T. 636; 35 T. L. R. 315; 63 Sol. Jo. 411.

Annotations :—**Dbtd.** Slingsby *v.* Westminster Bank, [1931] 1 K. B. 173. **Consd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Refd.** Underwood *v.* Bank of Liverpool & Martins, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

691b. —— —— **Cheque payable to company.**]—UNDERWOOD (A. L.), LTD. *v.* BANK OF LIVERPOOL, SAME *v.* BARCLAYS BANK, No. 387a, *ante*.

691c. —— —— ——.]—In 1922 pltfs. were building ships for a firm, L. M. & P., & in connection with that business L. M. & P. sent pltfs. a crossed cheque for £8,000. That cheque was duly received at pltfs.' office & B., a director, signed a receipt form on the back of the cheque as follows: "L. & M. Shipbuilding Co. T. B. director." Another director of pltfs., J., then indorsed the cheque to the order of another co. of which B. was a director, B. & Co. Ltd. The cheque was then indorsed by B. "for & on behalf of B. & Co. T. B. director," & was paid into the account of B. & Co. at a branch of defts.; & subsequently by arrangement between defts. & himself B. drew £2,000 out of the £8,000 thus credited to B. & Co. Ltd. for his own private purposes. J. had no right to indorse the cheque to the order of B. & Co., & B. & Co. had no right to the proceeds of the cheque. In 1923 pltfs. went into liquidation, & the liquidator on examining the accounts found that the cheque for £8,000 had been misapplied, & also that other sums were owing by B. to pltfs. The liquidator thereupon proceeded by a misfeasance summons against J. & B., & upon that summons an order was made for £450 against J. & £10,450 against B. The money was not paid, & pltfs. brought an action against defts. for conversion of the £8,000 cheque :—*Held :* there was clear evidence of negligence on the part of defts., & Bills of Exchange Act, 1882 (c. 61), s. 82, gave no defence to the claim.—LONDON & MONTROSE SHIPBUILDING & LTD. *v.* KENDALL (1920), 28 C. L. R. 401.—**AUS.**

PART II. SECT. 12, SUB-SECT. 3.

691 i. *What is negligence—Defective title of customer—Collection for stranger.*]—A man unknown to a banker was permitted to open an account with the bank by paying in a deposit of £5 in notes & four crossed cheques for such cheques being made payable to a number or bearer & marked "bank," or "not negotiable," or "bank not negotiable." Without making any inquiry as to the man's title to the cheques the bank collected them. On the following day the man, by an open cheque, drew out almost the whole of the amount to the credit of his account, & paid in for collection four other crossed cheques, including one drawn by pltf. payable to a number or bearer to which the man who paid it in had no title. These four cheques were collected by the bank almost without inquiry :—*Held :* the circumstances in which the account was opened was such as to put the bank upon inquiry; the duty of inquiry extended to the transactions of the next day & in the absence of reasonable inquiry the bank was guilty of negligence.—LONDON BANK OF AUSTRALIA, LTD. *v.* KENDALL (1920), 28 C. L. R. 401.—**AUS.**

691 ii. —— —— ——.]—MASON *v.* SAVINGS BANK OF SOUTH AUSTRALIA, [1925] S. A. S. R. 198.—**AUS.**

691 iii. —— ——.]—Pltf.'s manager, S., had general authority to draw cheques on pltf.'s account. S. drew & signed a cheque on pltf.'s account for £250 odd in favour of "A. or bearer"; the amount, date & payee's name was also in the handwriting of S. The cheque was crossed generally "Not negotiable." The cheque was on one of pltf.'s cheque forms. This cheque was paid by S. into his account with deft. bank a few hours after it appeared to have been signed. The teller on S. handing in the cheque, asked S. which his title was & received an assurance from S. that "it was all right." S. was well known & of good repute in the district, & had had an account with deft. bank for some time, & during the previous six months several cheques in his favour signed by him, drawn on pltf.'s account, had been paid in & not been queried. Over a year later S. drew & signed a further cheque on one of pltf.'s forms on pltf.'s account for £358 odd in favour of "V. or bearer." The cheque & transaction were similar to the other cheque except that the date, name of payee & payee & amount were not in S.'s handwriting. A similar query was made by the teller, & answered in much the same way. In the interval five directors' cheques signed by S. had been paid in payable to himself or bearer. Other than the inquiry made by the teller of S. no inquiries were made by the deft. The cheques were in fact drawn by S. without authority & the proceeds were misappropriated by him. In an action for damages for conversion :—*Held :* there was a conversion in each case. Also, as the bank had not acted without negligence, it was not protected by sect. 88 of Bills of Exchange Act, 1909.—BENNETT & FISHER, LTD. *v.* COMMERCIAL BANK OF AUSTRALIA, LTD., [1930] S. A. S. R. 26.—**AUS.**

691 iv. ——.]—Where a banker claims the protection of sect. 88 (1) of Bills of Exchange Act, 1909–1912, the test of negligence is whether the transaction of paying in the cheque, coupled with the circumstances ante-

REPAIRING CO., LTD. *v.* BARCLAYS BANK (1926), 31 Com. Cas. 182, C. A.

691d. —— —— **Dividend warrant for War Loan.**]—The first pltf., who was an executrix & a beneficiary under a will, received from the Bank of England a warrant for interest on War Loan, the warrant being crossed "& Co. Not negotiable" & being expressed to be "A/c Harry Turner, deceased." She signed the warrant & sent it to the exor.'s solr. in pursuance of an arrangement that any warrants received by her should be sent to him for attention. The solr. paid the warrant into his own account with deft. bank, representing to the bank that it was a repayment of a loan which he said he had made to the first pltf. In an action against the bank to recover the amount:—*Held:* (1) although the drawer of the warrant was an official of the Bank of England on which it was drawn, yet, as he was acting as an agent of the Government, the warrant constituted a "cheque"; (2) the word "dividends" in Bills of Exchange Act, 1882 (c. 61), s. 95, included interest on Government stock, & (3) as defts. had not been guilty of any negligence they were. on both grounds, protected by Bills of Exchange Act, 1882 (c. 61), s. 82, & the action failed.—SLINGSBY *v.* WESTMINSTER BANK, LTD., [1931] 1 K. B. 173; 100 L. J. K. B. 195; 144 L. T. 369; 47 T. L. R. 1; 36 Com. Cas. 54.

Annotations:—**Dbtd.** Slingsby *v.* District Bank, Ltd., [1932] 1 K. B. 544. **Reid.** Slingsby *v.* Westminster Bank, Ltd. (No. 2), [1931] 2 K. B. 583.

692a. ——.]—TAXATION COMRS. *v.* ENGLISH, SCOTTISH & AUSTRALIAN BANK. No. 292a, *ante*.

692b. —— **Question of fact.**]—The question whether a banker in receiving payment of a cheque for a customer has acted without negligence, so as to be protected by Bills of Exchange Act, 1882 (c. 61), s. 82, if the customer has no title thereto, is a question of fact. Where there was a missing link in the chain of identification of the customer:—*Held:* that fact ought to have put the bank upon inquiry, & the bank was not protected by the sect.—HAMPSTEAD GUARDIANS *v.* BARCLAYS BANK, LTD. (1923), 39 T. L. R. 229; 67 Sol. Jo. 440.

692c. -.]—SLINGSBY *v.* WESTMINSTER BANK (No. 2), No. 647a, *ante*.

692d. —— **Failure to require particulars of cheques paid in.**]—Pltfs., who were members of the London Stock Exchange, had in their employment two clerks, P. & S., who, over a considerable period, stole a number of cheques which were to be paid by pltfs. to certain jobbers, & which, as is usual in transactions between members of the Stock Exchange, were made payable to the jobbers or bearer & were crossed. P. had an account at a country branch of defts., whose officials knew that he was a stockbroker's clerk, but did not know, nor did they ask, the name of his employers. S.'s wife had an account at another country branch of defts., but the officials there did not know, nor did they inquire, who or what her husband was. P. & S. paid the stolen cheques into one of defts.' City offices, where nothing was known about either or about the drawers or payees of the cheques, to be credited in the one case to P. at the country branch where he had his account, & in the other case to the account of S.'s wife. In each case when paying in the cheques at the City offices, P. & S. filled up a paying-in slip in the name of the payee, stating merely the name of the customer whose account was to be credited & the amount of the cheque. This paying-in slip the City office forwarded to the customer's branch, the cheque itself being sent direct to the Clearing House by the City office, so that the officials at the customer's branch had no opportunity of judging whether the cheque called for inquiry or not. On the frauds being discovered, pltfs. sued defts. for conversion of the cheques. At the trial evidence was given by defts. that the system by which cheques could be paid into one of their offices to be credited to a customer's account at another office had been in operation for nearly forty years by them & by other banks without untoward consequences, & they pleaded that they were protected by Bills of Exchange Act, 1882 (c. 61), s. 82, as having acted in good faith (this was admitted) & without negligence:—*Held:* (1) the system under which the cheques could be paid into one of defts.' offices to be credited to a customer's account at another branch, without furnishing the officials at the latter branch with particulars of the cheques & the names of the drawers & payees so as to enable those officials to make inquiry how the cheques came to be paid into the customer's account, was inherently defective; it could not be said that defts. had acted without negligence within sect. 82; &, consequently, they were liable to pltfs. as the true owners of the cheques; (2) defts. were negligent in that their branch managers, in opening the accounts in the name of P. & Mrs. S. respectively, had failed to make inquiry as to the name of P.'s employers & the occupation of S.; (3) *Semble:* neither P. nor Mrs. S. was a "customer" within the true meaning of sect. 82, inasmuch as neither had an account at the City offices into which the cheques were paid.—SAVORY (E. B.) & Co. *v.* LLOYDS BANK, LTD., [1932] 2 K. B. 122; 101 L. J. K. B. 499; 146 L. T. 530; 48 T. L. R. 344; 37 Com. Cas. 259, C. A.; *affd.* 49 T. L. R. 116, H. L.

692e. —— **Failure to inquire as to employment or occupation of customer.**]—SAVORY (E. B.) & Co. *v.* LLOYDS BANK, LTD., No. 692d, *ante*.

692f. Who is "customer."]—SAVORY (E. B.) & Co. *v.* LLOYDS BANK, LTD., No. 692d, *ante*.

693. *Add. Annotation:*—**Reid.** London & Montrose Shipbuilding & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas. 67.

694. For "forgot" in the seventh line of the paragraph read "forged."

Add. Annotations:—**Reid.** Importers Co. *v.* Westminster Bank, [1927] 2 K. B. 297; Slingsby *v.* Westminster Bank, [1931] 1 K. B. 173.

cedent & present, was so out of the ordinary course that it ought to have aroused doubts in the banker's mind & caused him to make inquiry.—ENGLISH, SCOTTISH & AUSTRALIAN BANK, LTD. *v.* BEATTY, [1931] S. R. (Q.) 391.—**AUS.**

PART II. SECT. 13, SUB-SECT. 1.

696 i. *Passing to & fro of—Effect.*]—*Qu.*: whether the return of a bank's pass book without comment constitutes a stated & settled account & operates as an estoppel precluding the customer from disputing the entries therein to the prejudice of the bank.—BATAKRISHNA PRAMANIK *v.* BHOWANIPUR BANKING CORPN., LTD. (1931), I. L. R. 59 Calc. 662.—**IND.**

699 iii. —— ——.]—BHARAT NATIONAL BANK *v.* BANARJE DAS (1923), I. L. R. 5 Lah. 129.—**IND.**

703. *Add. Annotations :*—**Refd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294; Stag Line, Ltd. *v.* Foscolo Mango & Co. (1931), 48 T. L. R. 127.

704. *Add. Annotation :—As to* (2) **Refd.** British & North European Bank *v.* Zalzstein, [1927] 2 K. B. 92.

706. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* Holder, [1931] 2 K. B. 81.

708. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* Holder, [1931] 2 K. B. 81.

713. *Add. Annotation :*—**Consd.** *Re* Swinburne, Sutton *v.* Featherley (1925), 70 Sol. Jo. 64.

728. *Add. Annotation :*—**Consd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294.

734. *Add. Annotations :*—**Apld.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328. **Refd.** Admiralty Comrs. *v.* National Provincial & Union Bank of England (1922), 127 L. T. 452; Steam Saw Mills Co. *v.* Baring, Archangel Saw Mills Co. *v.* Baring, [1922] 1 Ch. 244; Jones *v.* Waring & Gillow, [1926] A. C. 670.

735. *Add. Annotation :—As to* (2) **Consd.** Rekstin *v.* Severo Sibirsko Gosudarstvernnoe Akcionernoe Olschestro Komseverputj & Bank for Russian Trade, Ltd. (1932), 48 T. L. R. 422.

748. *Add. Annotation :*—**Refd.** Sassoon *v.* International Banking Corpn., [1927] A. C. 711.

752. *Add. Annotation :*—**Refd.** Sassoon *v.* International Banking Corpn., [1927] A. C. 711.

753. *Add. Annotation :*—**Consd.** Sassoon *v.* International Banking Corpn., [1927] A. C. 711.

756a. Credit conditional on tender of approved insurance policy—What is approved insurance policy.]—Bankers issued a letter of credit to English sellers of 100 tons of steel plates to Dutch buyers. By the terms of the letter of credit the bankers agreed to honour the sellers' draft for the amount of the purchase-money, which included freight & insurance to R., provided the draft were accompanied by an approved insurance policy covering the shipment of the goods. The sellers presented their draft accompanied by a certificate of insurance which did not contain & did not offer any means of ascertaining the full terms of the insurance. In an action by the sellers against the bankers for not honouring the draft :—*Held :* the certificate was not an "approved insurance policy" within the meaning of the letter of credit, & the bankers were justified in refusing to honour the draft. An approved insurance policy is one to which no reasonable objection can be made.—SCOTT (DONALD H.) & Co., LTD. *v.* BARCLAYS BANK, LTD., [1923] 2 K. B. 1; 92 L. J. K. B. 772; 129 L. T. 108; 39 T. L. R. 198; 67 Sol. Jo. 456; 28 Com. Cas. 253, C. A.

Annotations :—**Refd.** Harper *v.* Mackechnie, [1925] 2 K. B. 423; Koskas *v.* Standard Marine Insce. (1926), 42 T. L. R. 692; Sassoon *v.* International Banking Corpn., [1927] A. C. 711; De Monchy *v.* Phœnix Insce. Co. of Hartford (1928), 138 L. T. 703.

756b. Irrevocable letter of credit—Payment for goods—Refusal of bank to pay invoices—Liability of bank to seller.]—Pltfs. entered into a contract with buyers in C. to manufacture & ship machinery by instalments over several months at agreed prices, but subject to a stipulation that should the cost of labour or wages increase, there should be a corresponding increase in the purchase price. The buyers were also to open a "confirmed irrevocable credit" in favour of pltfs. with a bank in this country, & to pay for each shipment as it took place. In pursuance of this arrangement defts., who were the buyers' bankers in L., wrote to pltfs. stating that they would pay bills drawn on the buyers to the extent of £70,000, the bills to be accompanied by documents & to be received before Apr. 14, 1921, "this to be considered a confirmed irrevocable credit." Pltfs. shipped two instalments under the contract & received payment under the letter of credit. The buyers then found that the invoices included an increase in the purchase price on account of wages & material, & instructed defts. only to pay so much of the next invoices as represented the original prices. Defts. accordingly refused to pay the bill presented on the next shipment & pltfs. then cancelled the contract, claiming damages from defts. as on a repudiation by the buyers :—*Held :* the credit being irrevocable, the refusal of defts. to take & pay for the particular bills on presentation of the proper documents constituted a repudiation of the contract as a whole, & pltfs. were entitled to damages so reckoned. The basis of this form of banking facility is that the buyer is taken, as between himself & the banker, to accept the seller's invoices as correct. Any adjustment must be made by way of refund by the seller & not by way of retention by the buyer.—URQUHART LINDSAY & Co. *v.* EASTERN BANK, LTD., [1922] 1 K. B. 318; 91 L. J. K. B. 274; 126 L. T. 534; 27 Com. Cas. 124.

Annotation :—**Refd.** Prosperity *v.* Lloyds Bank (1923), 39 T. L. R. 372.

756c. Revocable letter of credit—Duty of bank to give notice of withdrawal.]—A firm in W., who wished to buy a quantity of asbestos

sp. *Signing vouchers as to correctness of account in pass-book—Estoppel.*]—COLUMBIA GRAPHOPHONE CO. *v.* UNION BANK OF CANADA (1916), 38 O. L. R. 326; 34 D. L. R. 743.—**CAN.**

st. —— ——.]—Monthly vouchers regularly signed by a bank's customer as to the correctness of his account as it stood from time to time & given in exchange for cancelled cheques, were held to be fatal to his contention that certain cheques had not been credited to him.—UNION BANK OF CANADA *v.* WOOD, [1920] 3 W. W. R. 173.—**CAN.**

sw. —— ——.]—CAMPBELL *v.* IMPERIAL BANK, [1924] 4 D. L. R. 289; 55 O. L. R. 318.—**CAN.**

713 ii. —— —— ——.]—The delivery of a pass-book cannot constitute a *donatio mortis causâ* so as to give the donee title to the money represented by it.—CUSACK *v.* DAY, [1925] 3 D. L. R. 1028; [1925] 2 W. W. R. 715.—**CAN.**

PART II. SECT. 16.

a i. ——.]—A document in the form of a letter written by a bank was as follows :—"We beg to inform you that we are in receipt of advice by wire from our London office that a confirmed irrevocable credit has been opened under which we are authorised to negotiate your bills, as offered on G. & Co., of London, to the extent of £16,875 on the following conditions : bills to be drawn payable three months after sight & to be accompanied by proper shipping documents representing shipment of two thousand bales of jute of a particular mark from Calcutta to Antwerp, during Nov., Dec. 1920." Among the conditions, the two following were the most important :—(a) "Please note that this advice does not release you from the liability attaching to the drawer of a bill of exchange"; (b) "Under present conditions we can give no undertaking to negotiate bills drawn under this credit" :—*Held :* the document was not an ordinary banker's letter of credit.—CHANDANMULL BENGANEY *v.* NATIONAL BANK OF INDIA, LTD. (1923), I. L. R. 51 Calc. 43.—**IND.**

sheets from pltfs., a firm in L., instructed defts. to open a credit in favour of pltfs. Defts. accordingly wrote a letter dated June 14, 1920, to pltfs. informing them of their instructions & adding that their letter "is merely an advice of the opening of the above-mentioned credit, & is not a confirmation of the same." On July 20, 1920, pltfs. shipped part of the goods to the buyers & were paid the agreed price by defts. on presentation of the stipulated documents which included bills of lading & a draft on defts. On Aug. 4, 1920, defts. were instructed by cable that the credit was withdrawn. On Sept. 30, 1920, pltfs., not having had notice of the withdrawal of the credit, shipped the balance of the goods to the buyers, but defts. refused payment of a draft for the price. Pltfs. brought an action against defts. for recovery of the balance of the credit, alleging (*inter alia*) that it was the duty of defts. to give to pltfs. reasonable notice that the credit had been withdrawn. There was evidence that it was the practice of defts. at once to inform persons to whom revocable credit was given of the withdrawal of the credit, but that in this instance, owing to pressure of business, they had forgotten to do so. Among the documents tendered to defts. on the application for payment on the second occasion was a bill of lading which defts. alleged was out of order, but which, according to pltfs., was in exactly the same terms as the former bill of lading accepted by defts. without objection:—*Held:* (1) a letter in the form of that written by defts. on June 14, 1920, intimated to the person in whose favour the credit was opened that he might find that the credit was revoked at any time; (2) there was no legal obligation on defts. to give notice of the revocation of the credit; (3) the giving of notice was an act of courtesy which it was very desirable should be performed, but it was not founded upon any legal obligation.—CAPE ASBESTOS CO., LTD. *v.* LLOYDS BANK, LTD., [1921] W. N. 274.

760. *Add. Annotations:*—**Refd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114.

767. *Add Annotation:*—**Refd.** National Provident Institution *v.* Brown, Brown *v.* National Provident Institution, Provident Mutual Life Assce. Assocn. *v.* Ogston, Ogston *v.* Provident Mutual Life Assce. Assocn. (1921), 8 Tax Cas. 57.

779. *Add. Annotation:*—**Refd.** Humphrey & Denman *v.* Kavanagh (1925), 41 T. L. R. 378.

790. *Add. Annotation:*—**Refd.** I. R. Comrs. *v.* Holder, [1931] 2 K. B. 81.

798. *Add. Annotation:*—**Refd.** Humphrey *v.* Wilson (1929), 141 L. T. 469.

803a. —— ——.]—Three shareholders in a shipbuilding co., which was heavily indebted to a bank, agreed to purchase certain shares in a steel co. which belonged to the shipbuilding co. & were held by the bank as security. The price of the shares was £69,750, & the bank agreed to advance £39,750, "on joint loan" to the three purchasers, the balance being provided by them in equal portions. The shares were thereafter to be held by the bank in security of the sum advanced. The purchasers paid for the shares by granting their individual cheques to the sellers for £10,000 each, & by drawing joint cheques, signed by them all, on the bank for the £39,750 advanced. The bank paid this amount to the sellers, & opened a joint overdraft account in name of the three purchasers. The purchasers were not customers of the bank. The value of the shares having fallen, the bank intimated to one of the three purchasers that it held him liable for the whole amount of the loan. He thereupon brought an action concluding for declarator that he was liable only for one-third of the amount of the loan, & that, on payment thereof, he was entitled to receive a transfer of one-third of the shares held in security by the bank:—*Held:* (1) the pursuer was liable for one-third only, in respect (*a*) that the purchasers were not jointly & severally liable, as drawers of the joint cheques, to the bank as a holder in due course, seeing that the cheques had been paid by the bank as drawee & were thus no longer subsisting documents of debt; & (*b*) that the loan was constituted by the agreement to advance it which imposed only a joint liability, & not by the cheques which were merely part of the machinery for carrying out the transaction; but (2) the pursuer was not entitled to receive a transfer of one-third of the shares, in respect that the bank, under the arrangement for the pledge of the shares, was entitled to treat the whole of the shares deposited as being security for the whole of the amount advanced.—COATS *v.* UNION BANK OF SCOTLAND, LTD., [1929] S. C. 114 (H. L.).

805. *Add. Annotations:—As to* (1) **Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609. *As to* (2) **Refd.** Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

809. *Add. Citations:*—88 L. J. K. B. 85; 119 L. T. 727.

818a. —— **Capitalisation of unpaid interest on advance.**]—To secure a co.'s indebtedness to a bank, resps. from time to time gave guarantees to the bank. From 1920 onwards the co. was indebted to the bank continuously, & the interest on the amount owing from time to time was debited half-yearly to the co.'s account. On Nov. 17,

PART II. SECT. 19.

82. *Unauthorised application of proceeds—In payment of borrower's debts to other customers—Right to damages.*]—After crediting pltf. with the proceeds of a note which it discounted for him, deft. bank, without authority from him, applied nearly all of such proceeds to pay off debts which he owed to other customers of the same bank, & paid itself the amount of the note out of the proceeds of promissory notes which it held as collateral securities for advances made by it to him:—*Held:* pltf. was entitled to nominal damages & costs for the breach of the contract to lend him the money, & to judgment for the amount of the proceeds of his note which the bank had so applied, together with interest.—MARSH *v.* ROYAL BANK OF CANADA, [1922] 1 W. W. R. 486; 63 D. L. R. 659; 15 Sask. L. R. 201.—CAN.

PART II. SECT. 20, SUB-SECT. 1.

809 i. *Discharge of overdraft—Tender of cheque—What amounts to acceptance.*]—*Held:* the action of the bank in retaining & clearing the cheque was not conclusive on the question of acceptance, & as the bank had not accepted the proceeds of the cheque in full settlement, judgment had been rightly entered for the bank.—BURT *v.* NATIONAL BANK OF SOUTH AFRICA, LTD., [1921] App. D. 59.—S. AF.

1926, when the co. had become completely insolvent, resps. satisfied the whole indebtedness to the bank by means of a loan from the bank to resps. personally. Resps. claimed repayment of income tax under Income Tax Act, 1918 (c. 40), s. 36 (1), on the part of the total sum paid amounting to £17,861 16*s.* 5*d.*, which represented interest debited half-yearly to the co.'s account with the bank:—*Held:* the interest due each half-year which, upon the failure of the co. to pay it, was, according to the regular practice of bankers, added to the capital sum advanced, was thereby capitalised & could not thereafter be treated as interest paid under the sub-sect.—INLAND REVENUE COMRS. *v.* HOLDER, [1931] 2 K. B. 81; 100 L. J. K. B. 439; 145 L. T. 193; 47 T. L. R. 330, C. A.; *on appeal, sub nom.* HOLDER *v.* INLAND REVENUE COMRS., [1932] A. C. 624, H. L.

828. *Add. Annotations:*—**Expld.** Elder *v.* Northcott, [1930] 2 Ch. 422; I. R. Comrs. *v.* Holder, [1931] 2 K. B. 81.

829. *Delete citation & add the following para. & citation:*—

Where a creditor appropriates his debtor's payments in his books without communicating the appropriation to the debtor the creditor is not bound by the appropriation.—LONDON & WESTMINSTER BANK *v.* BUTTON (1907), 51 Sol. Jo. 466.

PART II. SECT. 20, SUB-SECT. 2.

822 iv. —— ——.]—A bank's customer conveyed certain lands, by way of mtge., as security for the money which had been advanced to him. The mtge. deed provided that the interest payable by the mtgor. was to be "at the said bank's current rate & calculated according to the custom of the bankers." As a matter of fact compound interest had been paid during the lifetime of the mtgor. In a suit for the administration of the estate of the mtgor. the bank claimed to be entitled to compound interest on the mtge. debt until date of payment:—*Held:* after the death of the mtgor. the relationship of banker & customer came to an end, & thereafter the deft. bore simple interest only.—MORGAN *v.* ROE (1911), 46 I. L. T. 41, C. A.—**IR.**

y i. —— —— ——.]—Where there is an agreement between a bank & its customer, that he shall pay interest at the rate of 8 per cent. upon a promissory note, the agreement is not entirely void, & the customer remains liable to pay interest at the rate of 5 per cent.—STANDARD BANK OF CANADA *v.* ALBERTA ENGINEERING CO., LTD. (1917), 1 W. W. R. 1177; 33 D. L. R. 542; 11 Alta. L. R. 96.—**CAN.**

y ii. —— —— ——.]—The stipulation by a bank for an illegal rate of interest merely avoids the rate & not the entire contract for interest.—UNION BANK *v.* FARMER, [1917] 1 W. W. R. 1361.—**CAN.**

y iii. —— —— ——.]—Pltf. was indebted to deft. bank for which debt they took his note charged with interest at 9 per cent. Order made for reduction of interest to 5 per cent.—DEGROW *v.* UNION BANK OF CANADA (1922), 63 D. L. R. 688.—**CAN.**

y iv. —— —— ——.]—Where a bank contracts for 8 per cent. interest it can only collect the legal rate of 5 per cent.—BANK OF MONTREAL *v.* HOLOBOFF, [1923] 3 W. W. R. 645.—**CAN.**

y v. —— —— ——.]—A provision in a guarantee given a bank that any account settled or stated by or between the bank & its customer may be adduced by the bank as conclusive evidence against the guarantor, cannot be held binding on the guarantor, when there is included in the amount so stated interest charges at a rate in excess of the maximum legal rate allowed under Bank Act.—ROYAL BANK OF CANADA *v.* MCBRIDE, [1927] 1 D. L. R. 909; [1927] 1 W. W. R. 245; 21 Sask. L. R. 417.—**CAN.**

y vi. —— —— ——.]—Where interest on a loan has been charged up to a borrower's current account at a rate in excess of 7 per cent. & such charges have been included in the statements furnished him from month to month, &, without making any objection thereto, he has signed & returned such statements as satisfactory, he cannot complain, in an action to recover the loan & interest, that the charges for interest at that rate were illegal.—ROYAL BANK OF CANADA *v.* DOTEN (Alta.), [1927] 3 D. L. R. 305; [1927] 2 W. W. R. 670.—**CAN.**

y vii. —— —— *Whether charged.*]—Upon the return of a dishonoured bill, the drawer would again draw for the same amount, & pltf. bank would discount the bill as before, & if the second bill came back dishonoured it would again be charged in full to the drawer's account:—*Held:* there was no breach of Bank Act, s. 91.—IMPERIAL BANK OF CANADA *v.* ALLEY, [1926] 3 D. L. R. 85; 59 O. L. R. 1.—**CAN.**

y viii. —— —— *Acquiescence—Whether guarantor bound.*]—When a bank has charged a borrower interest at a rate beyond that permitted by the Bank Act the principle that if the borrower voluntarily pays the excess he cannot recover it back extends to the borrower's voluntary assent to anything which is equivalent to payment of interest at that rate; & if at the date of a guarantee given the bank the actual amount guaranteed includes such excess interest & the borrower has so recognized the propriety of the excess charge that it must be considered voluntarily "paid," it is not afterwards open to the guarantor to say that as against him the accounts must be re-opened & such voluntary payments rescinded.—BANQUE CANADIENNE NATIONALE *v.* SHRAGGE (Man.), [1929] 3 W. W. R. 676; [1930] 1 D. L. R. 590.—**CAN.**

y ix. —— —— —— *Giving renewal note.*]—Where a customer has given a bank a note bearing a rate of interest higher than 7 per cent. & has renewed it with a note for an amount inclusive of the interest accrued at said rate such renewal note has the same effect as payment would have had with respect to the matter of interest, *i.e.*, the customer cannot complain in an action to recover the loan & interest that the rate of interest was illegal.—CANADIAN BANK OF COMMERCE *v.* POSTMAN & POSTMAN, [1931] 3 W. W. R. 737.—**CAN.**

sa. *Raising rate of interest—Whether customer bound.*]—The mere sending of a notice that the interest charged on overdrafts against security held by the bank has been raised, is not of itself sufficient to render a customer liable to pay the enhanced rate, but where, after receiving such a notice, the customer borrows more money from the bank, the bank is justified in charging him interes at the enhanced rate.—GADDAR MAL *v.* TATA INDUSTRIAL BANK, LTD., BOMBAY (1927), I. L. R. 49 All. 674.—**IND.**

PART II. SECT. 21, SUB-SECT. 1.

d i. —— *Liability contracted after execution of mortgage.*]—A mtge. to a bank cannot be a valid security for a liability contracted subsequently to its execution.—*Re* EDMONTON BREWING & MALTING CO., LTD. (NO. 2), [1918] 3 W. W. R. 988; 43 D. L. R. 748.—**CAN.**

n. Add "*affd.*, 58 S. C. R. 448."

sm. *Unauthorised loan by bank—Right to sue.*]—Though under its memorandum of assocn. a bank is precluded from lending money on mtges. yet, where money has been lent by the bank on a mtge., it is entitled to sue for & realise the money so lent.—AHMED SAIT *v.* BANK OF MYSORE (1929), I. L. R. 53 Mad. 771.—**IND.**

PART II. SECT. 21, SUB-SECT. 2.

o i. ——.]—QUEBEC BANK *v.* PHILLIPS, [1917] 2 W. W. R. 365; 10 Sask. L. R. 190; 36 D. L. R. 440.—**CAN.**

PART II. SECT. 21, SUB-SECT. 3.

837 i. *Promissory note—Bank parting with possession—Right to recover.*]—Where a promissory note which had been pledged by the holder thereof to his bank as collateral security was lost by the bank:—*Held:* the bank was liable to him for the value thereof, which was *primâ facie* its face value.—ROYAL BANK OF CANADA *v.* TALBOT, [1928] 3 D. L. R. 157; [1928] 2 W. W. R. 190; 34 Alta. L. R. 395.—**CAN.**

r i. —— —— *Money advanced partly on security of land.*]—A bank may recover upon a promissory note notwithstanding that the moneys were advanced upon the security in part of lands.—ROYAL BANK OF CANADA *v.* GOLD, [1918] 2 W. W. R. 745; 24 B. C. R. 145; 41 D. L. R. 276.—**CAN.**

a i. —— —— *New note given by maker—Rights of bank.*]—*Held:* the bank was entitled to recover on the note.—BANK OF MONTREAL *v.* WEISDEPP, [1917] 2 W. W. R. 615; 24 B. C. R. 73; 34 D. L. R. 26.—**CAN.**

a ii. —— —— *Conversion of specific security into general security.*]—*Held:* as the bank knew that debtor had no right to hypothecate generally the notes they could not recover, not being holders in due course.—BANK OF MONTREAL *v.* NORMANDIN, [1925] 3 D. L. R. 975; [1925] S. C. R. 687.—**CAN.**

f i. —— *Obtained to cover overdraft—Alleged fraud of manager.*]—Pltf. alleged that a bank manager obtained a note from him without disclosing that the note was for payment of an overdraft then due to the bank. Application for judgment dismissed for want of any evidence of fraud on the bank manager's part.—BRASSETH *v.* ROYAL BANK OF CANADA (1921), 67 D. L. R. 740.—**CAN.**

f ii. —— *Renewal—Effect of.*]—The renewal by defts. of a promissory note given to pltf. bank as security for a loan:—*Held:* not to estop them from setting up the defence that the bank had received & misapplied the proceeds of goods covered by a lien note which they had assigned to the bank as collateral security, such proceeds having been paid into the bank by the

844. *Citations:*—For "61 L. J. Ch. 732" read "61 L. J. Ch. 723."

Add. Annotations:—**Consd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294; Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

. —— —— —— Bank entitled to hold securities not merely for specific advance but for balance of whole account between broker & bank.]—TINDALL *v.* BARNETTS & HOARE (1887), 3 T. L. R. 476.

862a. Shares held by bank as security for joint loan to three persons—Several liability—Whether one borrower entitled to transfer of one-third of the shares on payment of his proportion.]—COATS *v.* UNION BANK OF SCOTLAND, LTD., No. 803a, *ante*.

maker of the lien note.—CANADIAN BANK OF COMMERCE *v.* REID, [1925] 3 D. L. R. 509; [1925] 1 W. W. R. 1080; 21 Alta. L. R. 337.—**CAN.**

PART II. SECT. 21, SUB-SECT. 4.

844 iii. —— —— —— *Rights of customer.*]—A stockbroker, having in his possession shares belonging to a customer, pledged to him for a specific & definite purpose, has no right, in the absence of agreement with the customer, or some established custom binding upon the customer, to repledge the shares for more than the amount due to him; & where there has been such a repledge the customer is entitled, as against the broker's creditors, to the redelivery of the shares, which have not been disposed of by the bank, free from any claim of the trustee in bkpcy. of the broker's estate.—HAGGART *v.* TRUSTS & GUARANTEE CO., [1930] 2 D. L. R. 127; 65 O. L. R. 23; 11 C. B. R. 163.—**CAN.**

847 v a. —— Shares in pltf.'s name were endorsed by him in blank without restriction & handed to his brokers as security on account of a purchase of other shares which he directed them to make. The brokers, although they had not carried out pltf.'s order to buy, hypothecated pltf.'s said shares with deft. bank. In an action against the bank & the brokers, in bkpcy. for conversion:—*Held:* in the absence of evidence that the bank had notice of a lack of capacity in the brokers to deal with the shares & of evidence pointing to a lack of good faith in the bank in the transaction, pltf. was estopped by his conduct in so endorsing the shares from asserting title to them as against the bank, even though there was fraud on the part of the brokers.—ROBINSON *v.* BANK OF TORONTO & CLARK (R. P.) & Co., [1932] 2 W. W. R. 91.—**CAN.**

m i. —— *Stock registered in name of bank's nominee—Identity of shares not preserved—Rights of owner.*]—A customer, who had a secured loan account with a bank which was operated upon in accordance with the above practice, averred that the bank had sold her shares without her authority, in breach of their obligation to retain the specific shares unless realised for reduction of the loan & to retransfer the identical shares on repayment of the loan:—*Held:* defenders had acted according to their usual practice, which was known to & approved by the firm of stockbrokers whom pursuer had employed as her agents in the transactions, & she was barred from insisting in the action.—CRERAR *v.* BANK OF SCOTLAND, [1922] S. C. (H. L.) 137; 59 Sc. L. R. 312.—**SCOT.**

p i. *Shares of company—Sale by bank before default—Measure of damages.*]—GEORGESON *v.* DOMINION BANK, [1924] 3 D. L. R. 607; 2 W. W. R. 931.—**CAN.**

857 ii. *Shares deposited by customer—Defect in title—Rights of bank.*]—Share certificates endorsed in blank held to be negotiable instruments transferable by delivery. Pltf. agreed to take a certain number of its shares from a stock-brokerage co. which had acted as his brokers, provided certain conditions were complied with, &, as a guarantee of his performance of the agreement if said conditions should be fulfilled, transferred to the co. certain other shares owned by him with a certificate of transfer on the back thereof signed by him, the name of the transferee being left blank. The co.'s bank, having demanded further security from it before it would pay a cheque drawn by the co., the co. delivered to it pltf.'s said shares as security.—PATRICK *v.* ROYAL BANK OF CANADA, [1932] 2 W. W. R. 257; 3 D. L. R. 532.—**CAN.**

861 i. *Bearer securities—Presumed to belong to depositing customer.*]—BANK OF MONTREAL *v.* ISBELL, [1925] 2 D. L. R. 30; *revsg.* 26 O. W. N. 263.—**CAN.**

sb. *Advance to son—Representation by father that son entitled to shares.*]—Upon the representation of a father that his son was entitled to an interest in certain shares in a co. standing in the name of another son, a bank lent money to the son:—*Held:* the bank was entitled to a declaration of its debtor's right to certain of such shares over which the father had control.—ROYAL BANK *v.* POPE, [1917] 2 W. W. R. 1; 11 Alta. L. R. 68.—**CAN.**

PART II. SECT. 21, SUB-SECT. 6.

h (p. 277) **i.** —— *Indorsed by shipper to bank—Bank to apply part of proceeds to payment of promissory note.*]—*Held:* no violation of Bank Act, s. 90.—ROYAL BANK OF CANADA *v.* WYE, [1926] 4 D. L. R. 262; [1926] 2 W. W. R. 780; 36 Man. L. R. 14.—**CAN.**

h (p. 277) **ii.** —— *Bank taking bailee's receipt from parties for whom goods shipped—Duty of bank not to impair security.*]—SALTERS (JOSEPH) SONS, LTD. *v.* BANK OF NOVA SCOTIA, [1926] 1 D. L. R. 581; 58 N. S. R. 389.—**CAN.**

q (p. 280) **i.** —— *Chattel mortgage to secure past debt—Subsequent mortgage of land—Right to enforce chattel mortgage.*]—*Held:* (1) the mtge. was not contrary to Bank Act; (2) the fact that a mtge. on land was afterwards given to the bank did not prevent it from realising first on the chattel mtge.—PIPER *v.* CANADIAN BANK OF COMMERCE, [1922] 1 W. W. R. 121.—**CAN.**

q (p. 280) **ii.** —— ——.]—A. obtained advances & delivered to the bank storage tickets for wheat in elevators:—*Held:* the security of the warehouse receipts would not cover past advances.—YOUNG *v.* DENCHER, BANK OF TORONTO *v.* ADAMES, [1923] 1 D. L. R. 432; 18 Alta. L. R. 496; [1923] 1 W. W. R. 136.—**CAN.**

q (p. 280) **iii.** —— *Chattel mortgage as security for loan—Whether crops of following year chargeable.*]—Security on grain given to a bank in Oct. 1921, in respect of advances made in the spring of 1920, held invalid in respect of the 1921 crop.—NORTH AMERICAN LUMBER CO., LTD. *v.* BANK OF MONTREAL, [1922] 1 W. W. R. 1265; 65 D. L. R. 348; 15 Sask. L. R. 375.—**CAN.**

q (p. 280) **iv.** —— *Lease of chattels to secure advances.*]—*Held:* the lease was invalid, the bank not having the power under Bank Act to take a lease of chattels as security.—BANK OF MONTREAL *v.* HUESTON (1922), 69 D. L. R. 208; 51 O. L. R. 584.—**CAN.**

q (p. 280) **v.** —— *Lien agreements on goods—Valid.*]—*Re* CANADIAN HART PRODUCTS, LTD. (TRUSTEE) *v.* ROYAL BANK, [1924] 4 D. L. R. 225; 54 O. L. R. 293; 4 C. B. R. 211.—**CAN.**

q (p. 280) **vi.** —— *Warehouse receipt for goods on leased premises—Valid.*]—*Re* J. STANLEY WEDLOCK, LTD. (P. E. I.), [1926] 2 D. L. R. 263; 7 C. B. R. 147.—**CAN.**

e (p. 281) **i.** *S. P.* BANQUE CANADIENNE NATIONALE *v.* SAWCHUK, [1926] 3 D. L. R. 964; [1926] 2 W. W. R. 771; 36 Man. L. R. 1.—**CAN.**

o (p. 281) **i.** —— —— —— *Whether purchaser owner within sect.* 88.]—An agreement for the sale of timber licences together with all the timber thereon gave the purchaser the right to cut & remove the timber & provided that the purchase-price should be payable in instalments & that the property in the licences & all timber cut therefrom should remain in the vendors until fully paid for by the purchasers. The agreement was not registered under Conditional Sales Act. Security on the timber cut by the purchasers & remaining on the timber berths was given under sect. 88 of the Bank Act by the purchaser to the applt. bank. The purchaser became bkpt., the cut timber was taken possession of by its trustee, & sold under an order of the ct. & the proceeds thereof were claimed by the bank & also by the vendors, to whom a balance was owing under the agreement. The bank had had no notice of the vendors' claim & had not inquired as to the purchaser's title, but all parties had acted in good faith:—*Held:* at the time of the assignment to the bank the purchaser was the "owner" of the timber within sect. 88 & had possession thereof within the meaning of that word in Sched. C. to said sect.; & the agreement between the purchaser & the vendors was one within Conditional Sales Act. The bank's claim was therefore sustained.—ROYAL BANK OF CANADA *v.* HODGES (B. C.), [1930] 1 D. L. R. 397; [1929] 3 W. W. R. 605; 42 B. C. R. 44; *revg.*, [1929] 2 W. W. R. 202.—**CAN.**

s (p. 282) **i.** —— ——.]—ROYAL BANK OF CANADA *v.* MCLENNAN, [1931] 1 D. L. R. 981.—**CAN.**

s (p. 282) **ii.** —— *Grower of roses for sale as cut flowers—Whether "wholesale dealer."*]—A co. growing roses & selling the cut flowers held not to be a wholesale purchaser of, or dealer in the products of agriculture.—MACPHERSON *v.* LONDON LOAN ASSETS, LTD., [1931] 2 D. L. R. 630; O. R. 109; 12 C. B. R. 302.—**CAN.**

sa. *Security on crop to be grown—Priority over claim by vendor under crop-payment agreement.*]—GOEBEL *v.* CANADIAN BANK OF COMMERCE, [1921] 3 W. W. R. 81; 14 Sask. L. R. 451.—**CAN.**

sb. *Security invalid under Bank Acts—Sale of goods to third party—Bank not entitled to follow goods or proceeds.*]—HAWKER *v.* ROYAL BANK OF CANADA (1921), 59 D. L. R. 674.—**CAN.**

sc. *Title of bank as against municipal lien for taxes.*]—*Re* ELECTRICAL FITTINGS & FOUNDRY CO., LTD. (Ont.), [1926]

865. *Add. Annotations :*—**Apld.** *Re* Allester, [1922] 2 Ch. 211. **Refd.** Albemarle Supply Co. *v.* Hind (1927), 43 T. L. R. 652; Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

865a. Bills of lading pledged—Authorised sale by pledgor—Title of bank to proceeds.]—A limited co. pledged bills of lading with a bank to secure an overdraft. When it was time to sell the goods, the co. in accordance with the well-established mercantile practice obtained the bills of lading from the bank for realisation on the terms stated in the usual letter of trust given by the co. to the bank, to wit, that the co. received the bills of lading in trust on the bank's account & undertook to hold the goods when received & the proceeds when sold as the bank's trustees to remit the entire net proceeds as realised :—*Held :* the bank's previous rights as pledgee remained unaffected by this common & convenient mode of realisation.—*Re* ALLESTER (D.), LTD., [1922] 2 Ch. 211; 91 L. J. Ch. 797; 127 L. T. 434; 38 T. L. R. 611; 66 Sol. Jo. 486; [1922] B. & C. R. 190.

877. After this case add :—
Agricultural charge—Enforcement.]—*See* AGRICULTURE, No. 979a, *ante.*

878a. -.]—Bankers most undoubtedly have a general lien on all securities deposited with them as bankers by a customer, unless there be an express contract or circumstances that show an implied contract inconsistent with the lien.—LONDON CHARTERED BANK OF AUSTRALASIA *v.* WHITE (1879), 4 App. Cas. 413; 48 L. J. P. C. 75, P. C.

883. *Add. Annotation :*—*Generally*, **Refd.** Lawrence *v.* Hayes, [1927] 2 K. B. 111.

921. *Add. Annotation :*—**Folld.** Baker *v.* Lloyds Bank, [1920] 2 K. B. 322.

921a. —— —— ——.]—Defts. acted as bankers for a firm up to Feb. 3, 1914, when the firm being insolvent by deed assigned all their property to pltf. as trustee for their creditors. The deed provided that payments to the creditors should be made upon the basis of a bkpcy. distribution of the property & that secured creditors should have the same rights as under a bkpcy. At the date of the deed the firm had £2,934 to the credit of their current account in deft. bank, & the bank held certain shares as security for an advance to the firm. These shares were subsequently sold by the bank & realised £812 in excess of the amount of the advance to the firm. Before Feb. 3, 1914, the firm had discounted with the bank a number of bills of exchange, which matured after that date, & in respect thereof the firm became the debtors of the bank to the amount of £19,941. In an action by pltf. as trustee under the deed to recover from the bank the two sums of £2,934 & £812, the bank claimed a lien on those sums & also to set off a sufficient portion of £19,941 against those sums :—*Held :* the bank's claim was right on both points.—BAKER *v.* LLOYDS BANK, [1920] 2 K. B. 322; 89 L. J. K. B. 912; 123 L. T. 330; [1920] B. & C. R. 128.

921b. —— —— **Balance of proceeds of sale of shares—Held as security for advances.**]—BAKER *v.* LLOYDS BANK, No. 921a, *ante.*

923. *Add. Annotations :*—**Consd.** Baker *v.* Lloyds Bank, [1920] 2 K. B. 322; *Re* Pinto Leite, *Ex p.* Des Olivaes, [1929] 1 Ch. 221.

1 D. L. R. 752; 58 O. L. R. 364.—**CAN.**

sd. *Wheat tickets—Sale in breach of instructions—Measure of damages.*]—A borrower from a bank gave it as collateral security an assignment of wheat tickets on the terms that the bank was to sell the wheat on deft.'s instructions & apply the proceeds in reduction of his loan. The borrower later on instructed the bank to sell when wheat should reach $1 per bushel at Fort William; & the bank's manager agreed to carry out these instructions. The market-price at Fort William reached said price some weeks afterwards; but no sale was made, although it was admitted that the wheat could have been sold at that time :—*Held :* the borrower was entitled to damages & the measure thereof was the market-price at the time when the bank should have sold the wheat; & not, as held on the trial, at the date when the borrower learned that his instructions had not been complied with.—BANK OF TORONTO *v.* SIMONSON, [1932] 2 W. W. R. 102.—**CAN.**

PART II. SECT. 21, SUB-SECT. 7.

se. *Assignment of mortgage—Or of agreement for sale of land—As additional security—Valid.*]—*Re* WIARTON LUMBER CO., *Ex p.* BANK OF COMMERCE, [1924] 2 D. L. R. 160; 4 C. B. R. 477.—**CAN.**

sf. *Assignment of debts present & future & all contracts & securities—Valid.*]—*Re* WIARTON LUMBER CO., *Ex p.* BANK OF COMMERCE, [1924] 2 D. L. R. 160; 4 C. B. R. 477.—**CAN.**

sg. *Assignment of debts present & future & all contracts & securities—Valid.*]—*Re* WIARTON LUMBER CO., *Ex p.* BANK OF COMMERCE, [1924] 2 D. L. R. 160; 4 C. B. R. 477.—**CAN.**

sh. *Assignment of money due under agreement for sale of land—Valid.*]—*Re* SHAW, [1925] 3 D. L. R. 1205; 5 C. B. R. 825.—**CAN.**

si. *Common law assignment of money—Subsequent security under Bank Act—Property passed by assignment—Validity of security immaterial.*]—IMPERIAL BANK *v.* WESTERN SUPPLY & EQUIPMENT CO. (1918), 39 D. L. R. 803.—**CAN.**

PART II. SECT. 21, SUB-SECT. 8.

sk. *Fire insurance policies.*]—A bank may, under s. 75 (1) (*d*) of the Bank Act take as security the obligations of fire insurance companies to pay indemnities stipulated for in fire insurance policies.—TURGEON *v.* DOMINION BANK (Can.), [1930] S. C. R. 67; [1929] 4 D. L. R. 1028; *affg.*, 47 Que. K. B. 383; 10 C. B. R. 212.—**CAN.**

sl. *Prohibited security—Money lent thereunder recoverable.*]—A bank may recover money lent upon a prohibited security although it cannot enforce the security.—UNION BANK *v.* FARMER, [1917] 1 W. W. R. 1361.—**CAN.**

sm. *Authorised securities under Bank Act, s. 88—Whether authorised forms must be used.*]—A bank took what purported to be a security under sect. 88 of Bank Act on live stock of a rancher, but used Form C. instead of Form E. :—*Held :* the document was in form to the like effect as Form E., & constituted a valid security.—ROYAL BANK OF CANADA *v.* MACKENZIE, [1932] S. C. R. 524; 2 D. L. R. 12.—**CAN.**

PART II. SECT. 22, SUB-SECT. 1.—A.

n i. —— ——.]—A bank has not a lien in respect of a deposit or balance to the credit of a customer, as there is no specific property on which a lien can operate.—*Re* MORRIS, CONEYS *v.* MORRIS, [1922] 1 I. R. 81.—**IR.**

sn. *Lien on goods not in existence—Bank Act, s. 88.*]—The owner of a timber licence, who proposes to go into the forest to cut down the trees & transform them into what is commercially known as pulpwood & who may require financial assistance from a bank before the pulpwood is produced in its commercial form, can give the bank which assists him a valid lien on the finished product, although not in existence as such at the time of the loan.—LANDRY PULPWOOD CO., LTD. *v.* LA BANQUE CANADIENNE NATIONALE, [1928] 1 D. L. R. 493; [1927] S. C. R. 605.—**CAN.**

PART II. SECT. 22, SUB-SECT. 1.—F.

so. *Pledged to third party—Duty of bank to disclose lien.*]—*Held :* such a duty existed.—LAZARD BROTHERS & CO. *v.* UNION BANK OF CANADA (1920), 47 O. L. R. 608; 18 O. W. N. 290; 51 D. L. R. 636.—**CAN.**

PART II. SECT. 22, SUB-SECT. 2.

m i. —— ——.]—*Held :* money to the credit of the customer not shown to be trust funds, might be retained & set off by the bank as against the indebtedness of the customer on the note.—ROY *v.* CANADIAN BANK OF COMMERCE (1918), 24 B. C. R. 397; 38 D. L. R. 742.—**CAN.**

925. *Add. Annotation :*—**Refd.** *Re* Southerden, Adams *v.* Southerden, [1925] P. 177.

926. *Add. Annotation :*—**Consd.** Baker *v.* Lloyds Bank, [1920] 2 K. B. 322.

930a. —— **Liability for negligent payment of cheque—No right to set off sums recovered from customer by party defrauded.**]—LLOYDS BANK *v.* CHARTERED BANK OF INDIA, AUSTRALIA & CHINA, No. 687a, *ante*.

932. *Add. Annotation :*—**Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179.

932a. —— **Joint & several guarantee—Termination.**]—By an agreement the six signatories thereto jointly & severally agreed with a Canadian bank to guarantee repayment up to a fixed sum of all liabilities, including interest, which a customer had or should incur to the bank : it was provided that the agreement should be a continuing guarantee "until the undersigned, or the exor. or administrator of the undersigned, shall have given the bank notice in writing to make no further advances on the security of this guarantee." In 1913, the bank, without notice to the guarantors but with the assent of the debtor, increased the rate of interest upon the advances to 8 per cent., though, by Bank Act (R. S. Can. c. 29), s. 91, it was illegal for a bank to charge more than 7 per cent. Subsequently one of the signatories died, & his exors. gave notice purporting to terminate the liability of the estate of the deceased under the guarantee :—*Held :* (1) the guarantee remained in force against all the guarantors until each & all of them or their respective exors. or administrators gave notice to determine it ; (2) the increase in the rate of interest did not discharge the guarantors, but they were liable for the principal sum advanced & for such interest as the debtor was legally to pay.—EGBERT *v.* NATIONAL CROWN BANK, [1918] A. C. 903 ; 87 L. J. P. C. 186 ; 119 L. T. 659 ; 35 T. L. R. 1, P. C.

Annotation :—As to (2) **Refd.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487.

934. *Add. Annotation :*—**Refd.** Eshelby *v.* Federated European Bank, Ltd. (1931), 146 L. T. 336.

938. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* Holder, [1931] 2 K. B. 81.

961. *Add. Annotation :*—**Refd.** *Re* Wait, [1927] 1 Ch. 606.

966. *Add. Annotation :*—**Refd.** *Re* Douglas, *Ex p.* Douglas' (James) Exors., [1930] 1 Ch. 342.

974. *Add. Annotation :*—**Consd.** British & North European Bank *v.* Zalzstein, [1927] 2 K. B. 92.

978. *Add. Annotation :*—**Refd.** Holder *v.* I. R. Comrs. (1932), 48 T. L. R. 365.

985. *Add. Annotation : —* **Consd.** Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461.

930 i. *Set-off or counterclaim—Balance on current account—Right to set off undue promissory note.*]—Where at the date of the death of a customer of a bank there was a deposit to his credit the bank cannot on the maturing, after his death, of promissory notes made or endorsed by him to the bank, set off the amount thereof against the deposit.—TRUSTS & GUARANTEE CO., LTD. *v.* ROYAL BANK OF CANADA, [1931] 1 W. W. R. 689 ; 2 D. L. R. 601.—**CAN.**

sp. *Bank cashing cheque—Holder indebted to bank.*]—A bank, to which a cheque has been delivered to be cashed, has no right to set off against the proceeds of the cheque a debt owing to it by the holder.—ROYXEL *v.* ROYAL BANK OF CANADA, [1918] 2 W. W. R. 791 ; 11 Sask. L. R. 218.—**CAN.**

st. *Debt not recoverable — Statute-barred.*]—A bank has not a lien in respect of a deposit or balance to the credit of a customer, inasmuch as there is no specific property on which a lien can operate ; the only right of the bank is a right of set-off, but such a right cannot be exercised where a debt is statute-barred & not recoverable.—*Re* MORRIS, CONEYS *v.* MORRIS, [1922] 1 I. R. 136.—**IR.**

sv. *Bank acting as clearing house—Right of set-off against insolvent bank.*]—*Re* HOME BANK OF CANADA, [1931] 1 D. L. R. 589 ; 66 O. L. R. 264 ; 12 C. B. R. 513.—**CAN.**

PART II. SECT. 23.

932 i. *Continuing guarantee — Consideration—Whether fresh transaction after guarantee given necessary.*]—ROYAL BANK OF CANADA *v.* SALVATORI, [1928] 3 W. W. R. 501, P. C.—**CAN.**

932 ii. —— —— ——.]—ROYAL BANK OF CANADA *v.* MILLS, [1932] 3 W. W. R. 283.—**CAN.**

935 i. *Whether surety released—Increase in rate of interest.*]—*Held :* an increase in the rate of interest charged by the bank to an amount in excess of that authorised by Canadian Bank Act, without intimation to the guarantors, did not discharge them from their liability.—EGBERT *v.* NATIONAL CROWN BANK, [1918] A. C. 903 ; 87 L. J. P. C. 186 ; 119 L. T. 659.—**CAN.**

935 ii. *S. P.* MERCHANTS BANK OF CANADA *v.* BUSH, [1918] 2 W. W. R. 574, 631.—**CAN.**

935 iii. —— *Taking new security from principal debtor.*]—BANK OF NEW ZEALAND *v.* BAKER, [1926] N. Z. L. R. 462.—**N.Z.**

935 iv. —— *Note indorsed as security for specific purpose—General hypothecation of note by creditor to bank.*]—*Held :* surety released.—GORDON *v.* HEBBLEWHITE, [1927] 1 D. L. R. 817 ; [1927] S. C. R. 29.—**CAN.**

sw. *Account settled between bank & customer—How far binding on surety of customer.*]—Even if a certificate given by a customer of a bank of the correctness of the condition of his account as stated therein constitutes an account stated between the bank & its customer, yet such certificate cannot be conclusive as against the surety of the customer.—STANDARD BANK OF CANADA *v.* ALBERTA ENGINEERING CO., LTD., [1917] 1 W. W. R. 1177.—**CAN.**

sx. —— —— *Special agreement to accept account.*]—An express provision in the guarantee given to the bank that the stating, settling or admission of an account between the creditor & the bank should be conclusive evidence against the sureties cannot be effective to prevent the sureties from objecting to illegal charges, nor to charges, which though not illegal, were improper to the knowledge of the bank.—NORTHERN CROWN BANK *v.* WOODCRAFTS, LTD., [1917] 1 W. W. R. 1205 ; 33 D. L. R. 367.—**CAN.**

sz. *Advance also secured by crop to be grown—Right of surety to proceeds of crop.*]—Where a bank advances money for the purchase of seed grain on the security of the crop to be grown therefrom & also procures the signature of a surety to the borrower's note, the surety has a right to have any money realised out of the crop appropriated to the reduction of the debt for which he became surety in priority to all other claims of the bank against the borrower.—PROUDLOCK *v.* CANADIAN BANK OF COMMERCE, [1925] 2 W. W. R. 150 ; 19 Sask. L. R. 413.—**CAN.**

sa. *Arrangement between debtor & surety—Drafted by bank's solicitor—Effect on bank as creditor.*]—IMPERIAL BANK OF CANADA *v.* HANCOCK, [1930] 3 W. W. R. 398 ; [1931] 1 D. L. R. 426.—**CAN.**

PART II. SECT. 25.

957 ii. *Rights of bank.*]—A cheque on the S. Bank, which was indorsed by the payee to the H. Bank, was deposited & applied against his overdraft after the H. Bank had suspended payment at its head office, but before notice thereof reached the local branch in which the cheque was deposited :—*Held :* the H. Bank was entitled to enforce payment of the cheque from the drawer.—SULLIVAN *v.* HOME BANK OF CANADA, [1927] 1 D. L. R. 1097 ; S. C. R. 115.—**CAN.**

957 iii. *Collection of bills for customer —Money received—Rights of customer.*]—Where a branch of resp. bank had received bills from applts. for collection & remittance of the proceeds, & after collection but prior to remitting the bank suspended payment :—*Held :* (1) applts., having employed the bank as a whole in a fiduciary capacity, were entitled to a prior charge on the balances held by the bank as a whole at the date of suspension of payment ; (2) applts. were not entitled to a prior charge on the bank's general assets.—SHAW WALLACE & CO. *v.* AMRITSAR NATIONAL BANK (IN LIQUIDATION) (1926), I. L. R. 7 Lah. 155.—**IND.**

PART II. SECT. 26.

985 ii. —— ——.]—Neither the assignee of the equity of redemption of property mortgaged to a bank, nor a surety who has mortgaged property by way of collateral security to a bank is entitled to obtain from the bank the same full account that the bank is obliged to give its customer. A guarantor of a customer's account with a bank is not entitled to demand from the bank a copy of the account

986. *Add. Annotation :*—**Refd.** Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461.

986a. —— —— **Without consent of customer.**]—It is an implied term of the contract between a banker & his customer that the bank will not divulge to third persons, without the consent of the customer express or implied, either the state of the customer's account, or any of his transactions with the bank, or any information relating to the customer acquired through the keeping of his account, unless the banker is compelled to do so by order of a ct., or the circumstances give rise to a public duty of disclosure, or the protection of the banker's own interests requires it.

Pltf. was a customer of deft. bank. A cheque was drawn by another customer of defts. in favour of pltf., who instead of paying it in to his own account indorsed it to a third person who had an account at another bank. On the return of the cheque to defts. their manager inquired of the last-named bank who the person was to whom it had been paid, & was told it was a bookmaker. That information defts. disclosed to third persons : —*Held :* that disclosure constituted a breach of defts.' duty to pltf., for though the information was acquired not through pltf.'s account but through that of the drawer of the cheque, it was acquired by defts. during the currency of pltf.'s account & in their character as bankers.—TOURNIER *v.* NATIONAL PROVINCIAL & UNION BANK OF ENGLAND, [1924] 1 K. B. 461 ; 93 L. J. K. B. 449 ; 130 L. T. 682 ; 40 T. L. R. 214 ; 68 Sol. Jo. 441 ; 29 Com. Cas. 129, C. A.

Annotation :—**Refd.** Waterhouse *v.* Barker, [1924] 2 K. B. 759.

986b. —— **Extent of duty to inquirer.**]—Where for business purposes inquiry is made of a bank as to the stability of a customer of the bank, the only duty, if any, owed by the bank to the inquirer is a duty, in giving a reply, not to be negligent.—BATTS COMBE QUARRY CO. *v.* BARCLAYS BANK, LTD. (1931), 48 T. L. R. 4.

987. *Add. Annotation :* — **Refd.** Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461.

990a. Disclosing any other information relating to customer.]—TOURNIER *v.* NATIONAL PROVINCIAL & UNION BANK OF ENGLAND, No. 986a, *ante.*

1008a. —— **Primâ facie evidence of account.**]—DOUGLASS *v.* LLOYDS BANK, LTD., No. 403a, *ante.*

1010. *Add. Annotation :*—**Refd.** Waterhouse *v.* Barker, [1924] 2 K. B. 759.

1011. *Add. Annotation :*—**Refd.** Ironmonger *v.* Dyne (1928), 44 T. L. R. 579.

1012. *Add. Annotation :*—**Refd.** Waterhouse *v.* Barker, [1924] 2 K. B. 759.

1012a. —— —— **Entries tending to incriminate.**]—On an application under Bankers' Books Evidence Act, 1879 (c. 11), s. 7, for leave to inspect & take copies of entries in a banker's books before the trial of an action, the ct. is guided by the general rules regulating the inspection of documents before trial. Therefore if resp. to the application, being a party to the action, objects in proper form that the entries tend to incriminate him, the ct. will not grant the leave applied for.—WATERHOUSE *v.* BARKER, [1924] 2 K. B. 759 ; 93 L. J. K. B. 897 ; 132 L. T. 15 ; 40 T. L. R. 805 ; 69 Sol. Jo. 51, C. A.

1012b. —— ——.]—Where, under Bankers' Books Evidence Act, 1879 (c. 11), s. 7, an order is made for the inspection of a judgment debtor's account with a banker, the ct. has power to make the order extend to the banking account of a person other than debtor, if the account of that other person was controlled by debtor & was used by debtor for his or her own purposes.—IRONMONGER & CO. *v.* DYNE (1928), 44 T. L. R. 579, C. A.

1013. For "ss. 2 & 5" read "ss. 2-5."

Add. Annotation :—**Refd.** Waterhouse *v.* Barker, [1924] 2 K. B. 759.

1016. *Add. Annotation :*—**Refd.** Waterhouse *v.* Barker, [1924] 2 K. B. 759.

1017. *Add. Annotation :*—*As to* (1) **Apld.** Waterhouse *v.* Barker, [1924] 2 K. B. 759.

1018. *Add. Annotations :*—**Apld.** Waterhouse *v.* Barker, [1924] 2 K. B. 759. **Consd.** Ironmonger *v.* Dyne (1928), 44 T. L. R. 579.

1019. *Add. Annotation :*—**Refd.** Waterhouse *v.* Barker (1924), 132 L. T. 15.

1022. *Add. Annotation :*—**Refd.** Waterhouse *v.* Barker, [1924] 2 K. B. 759.

but is entitled to demand from the bank information as to the balance then owing, the rate of interest charged, & the amount, if any, realised by the bank in respect of collateral securities. —ROSS *v.* BANK OF NEW SOUTH WALES (1928), 28 S. R. N. S. W. 539 ; 45 N. S. W. W. N. 117.—**AUS.**

PART II. SECT. 28, SUB-SECT. 1.

1004 iv. —— —— ——.]—An order to inspect the books of a bank relating to the account of a person not party to the litigation will seldom or never be exercised except where such account is in form or substance really the account of a party to the litigation, or is kept on his behalf, so that entries in it would be evidence against him at the trial. In any case, no such order will be made unless the third party has been given an opportunity to attend the hearing of the application.—JAMES *v.* MABIN (No. 3), [1929] N. Z. L. R. 899.—**N.Z.**

PART II. SECT. 28, SUB-SECT. 2.

1015 v. —— *What are "legal proceedings."*]—A Comr. issued a summons to the manager of a bank, requiring him to attend before a Royal Commission & give evidence, & to produce the ledgers containing the accounts of certain persons, & also all cheques drawn on the accounts & all deposit slips affecting such accounts. Later, on being informed of the difficulty in producing the ledgers, the Comr. made a verbal order to the bank to produce copies of the entries in accordance with Bankers' Books Evidence Act :—*Held :* the proceedings before the Commission were not "legal proceedings" within the meaning of Bankers' Books Evidence Act, & the verbal order was invalid ; but the summons was valid.—MCCORMACK *v.* CAMPBELL (1930), S. R. (Q.) 228.—**AUS.**

sa. *Pay-in slips.*]—A bank retaining pay-in slips which have accompanied payments into a customer's account does not hold them as the agent of the customer, who, consequently, will not be ordered in an action to which he is a party to produce them as documents in his possession or power. In such an action the ct. also declined to make any order relating to those documents under Evidence Act, 1915, s. 89.—LEVER *v.* MAGUIRE, [1928] V. L. R. 262 ; 49 A. L. T. 194 ; [1928] Argus L. R. 169.—**AUS.**

BARRISTERS.

16a. —— **Procured by fraud—Duty of Benchers.**] —The Benchers of the Inns of Court owe a duty to the public in respect of admission to the Bar: therefore a fraud committed upon them to procure such admission is a mischief against public policy none the less because its intent is not to procure money for the offender.—R. *v.* BASSEY (1931), 47 T. L. R. 222; 75 Sol. Jo. 121; 22 Cr. App. Rep. 160, C. C. A.

31. *Add. Annotation:*—**Refd.** Towle *v.* Improved Industrial Dwellings Co., [1931] 1 K. B. 263.

50a. ——.]—All motions before the ct. must be made by counsel.—DRAKE *v.* MORGAN (1858), 27 L. J. P. & M. 3; 4 Jur. N. S. 32.

66a. **Before parliamentary commission.**] —BELFAST RIOTS COMMISSION CASE (1886), 21 L. Jo. 556.

71. *Add. Annotation:*—**Refd.** Marson *v.* Unmack, [1923] P. 163.

84. After this case add the following cross-reference: *See, further,* JUDGMENTS, Vol. XXX., pp. 203 *et seq.*

SECT. 1, SUB-SECT. 1.

b i. —— *Nature of duties devolving upon.*]—The discharge of the duties under Law Society Act, now R. S. O., 1914, c. 157 is not a matter of mere private concern, but one affecting the public, having to do with the well-being of the society in maintaining the standards which should prevail in the legal profession; &, unless in a case of manifest wrong, there should be no interference with the society's exercise of its statutory powers.—HALL *v.* BALL (1923), 54 O. L. R. 147.—**CAN.**

SECT. 1, SUB-SECT. 2.—A.

11 ii. For "(1905), S. C. 221" read "[1905] T. S. 221."

11 iii. —— *Without examination—Managing clerk to solicitor.*]—In Law Practitioners Act, 1908, s. 5, the words "managing clerk to a solr." must be taken in the strict sense to mean one who has control & supervision of other clerks in the solr.'s employ.—*Re* CHALMERS, [1918] N. Z. L. R. 561.—**N.Z.**

c i. —— *Qualification—English barrister.*]—Appct. sought admission as an advocate on the ground that he was admitted as a barrister in England & had passed an examination in Natal statute law & practice as required by the proviso to Ord. 32, r. 38. The Law Society opposed on the ground that it was necessary for appct. also to have passed the examination in Union statute law required by sect. 2 of Act 19, 1921:—*Held:* as appct.'s qualification acquired outside the Union would not have entitled him to admission in Natal, sect. 2 of Act 19, 1921, did not apply to him.—*Ex p.* ROBINSON (1930), 51 N. L. R. 305.—**.AF.**

c ii. —— —— *Cambridge degree.*]—Appct., who held the degree of LL.B. of the University of Cambridge, applied under sect. 1 of Act 19, 1921, for admission as an Advocate, relying upon G. N., No. 1475 of 1925, under which the Chief Justice & Judges of the App. Div. decided that the examination in Roman-Dutch Law in connection with the degree of LL.B. of the University of Cambridge should be an adequate examination in Roman-Dutch Law within sect. 2 of the Act:—*Held:* applct. was entitled to admission.—*Ex p.* HALL (1931), 52 N. L. R. 118.—**S. AF.**

15 iia. —— ——.]—The ct. will not grant *mandamus* to compel Benchers of a Law Society to admit an individual as member with a view to his qualifying himself to be called to the Bar.—*Re* HAGEL & LAW SOCIETY OF BRITISH COLUMBIA (1922), 31 B. C. R. 75.—**CAN.**

SECT. 1, SUB-SECT. 2.—B.

25 iii. —— —— —— *Duty of tribunal to come to a finding.*]—Where the High Ct. did not think fit summarily to reject a complaint made against an advocate, & was obliged, therefore, to refer the case for inquiry to the Bar Council, & the tribunal, after certain evidence had been taken on affidavits, on the intimation of complainant's solr. that he withdrew the complaint reported "in these circumstances the inquiry cannot be further proceeded with. the ct. referred the matter back to the tribunal, holding that the Act required the tribunal to come to a finding."—*Re* BAR COUNCILS ACT (1929), I. L. R. 57 Calc. 724.—**IND.**

si. *Effect of entry on roll of advocates—Right of retired judge to practise in High Court.*]—After his retirement from the position of a judge of the High Ct. at Patna, India, applt. with a view to resuming practice at the Bar of that ct. applied to have his name entered on the roll of advocates as required by Indian Bar Councils Act, 1926. The judges, by a majority, held that he was entitled to be so enrolled under that Act, but added that in view of the fact that he had been a permanent judge of that ct. they refused to allow him to appear in the cts. of the province. On appeal against that refusal:—*Held:* by being entered on the roll of advocates applt. had established a statutory right to practise of the Indian Bar Councils Act, 1926, s. 14 (1) providing that, "An advocate shall be entitled as of right to practise . . . in the High Ct. of which he is an advocate. . . ."—PRAFULLA RANJAN DAS *v.* PATNA HIGH COURT JUDGES (1930), 47 T. L. R. 98, P. C.—**IND.**

SECT. 2, SUB-SECT. 1.—D.

u i. *Before High Court of Madras—Exercising insolvency jurisdiction—Right to "act."*]—Advocates, enrolled in the High Ct. of Madras under Indian Bar Councils Act (I of 1926) are, by virtue of sects. 2 (*a*), 8 & 14 of the Act, entitled not only to appear & plead, but also to "act" in the insolvency jurisdiction of the High Ct. Insolvency Rules of the High Ct., r. 128, which allowed advocates only to appear & plead in that jurisdiction, is no longer in force.—*Re* POWERS OF ADVOCATES (1928), I. L. R. 52 Mad. 92.—**IND.**

sa. *Natal—Qualification acquired outside Natal.*]—A person admitted as an attorney in Natal by virtue of qualifications acquired elsewhere than in Natal is not entitled to appear as counsel in the Supreme Ct. or to practise as an advocate until he has served under articles in Natal for at least 18 months.—INCORPORATED LAW SOCIETY *v.* POSSMAN (1929), 50 N. L. R. 318.—**S. AF.**

SECT. 2 SUB-SECT. 7.—A.

sb. *Barrister of five years' standing—What constitutes.*]—*Held:* applt., who had been called to the Bar more than five years, but had never practised as a barrister, was a "barrister of not less than five years' standing" within the meaning of Industrial Arbn. Act, s. 6 (7).—MCCAWLEY *v.* R. (1918), 26 C. L. R. 9.—**AUS.**

SECT. 3, SUB-SECT. 1.—A.

g. For "IR." at the end of this case read "SIERRA LEONE."

sc. *For conviction for perjury in England—Disbarment in England—How far binding on Indian court.*]—*Held:* (1) the loss of the privilege of being a barrister in England, though the only qualification for admission in India as an advocate, did not necessarily entail disbarment in the High Ct. (2) Suspension for one year ordered in this case.—*Re* AN ADVOCATE (1923), I. L. R. 46 Mad. 903.—**IND.**

sd. *Professional misconduct—Under Pleaders' Act—Canvassing for work.*]—S., a district pleader, holding a Sanad for the Surat District, sent circular postcards to the public under his signature as a High Ct. pleader stating that he had been authorised by the District Ct. to examine Wakf properties & to issue certificates. In fact all that he had been authorised to do was to examine accounts for certain specific Wakf properties on his separate application in each case, but was not authorised to audit the accounts of Wakf properties generally:—*Held:* it was improper conduct on the part of S. to issue such postcards & to canvass for the auditing work in the way that he did & accordingly he was guilty of an offence under Pleaders' Act, s. 26.—GOVERNMENT PLEADER *v.* SIDDICK (1929), I. L. R. 53 Bom. 640.—**IND.**

se. —— *Extent of jurisdiction.*]—No power to exercise inherent disciplinary jurisdiction over legal practitioners, independently of the Legal Practitioners Act & the Indian Bar Councils Act, now exists in the High Ct. in respect of their professional or other misconduct. No disciplinary power over legal practitioners or power to punish for contempt outside the Indian Penal Code is vested in the subordinate cts.—MAHANT SHANTANAND GIR *v.* MAHANT BASUDEVANAND GIR (1930), I. L. R. 52 All. 619.—**IND.**

sf. *Procedure of High Court—Under Bar Councils Act, 1926.*]—As from June 1, 1928, the procedure by which an advocate can be called upon to answer for misconduct is governed by Bar Councils Act, 1926, ss. 10 *et seq.* To proceed under sect. 10, the High Ct. is required, by sub-sect. (2) of that sect., if it does not summarily reject the complaint, either to refer the case for inquiry to the Bar Council, or, after consultation with the Bar Council, to refer it to the ct. of a District judge. Similar powers of reference are given where the ct., instead of acting on a complaint, acts on its own motion.

110. *Add. Annotation :*—**Refd.** Apted *v.* Apted & Bliss, [1930] P. 246.

148a. —.]—On an indictment for rape, prisoner ought to be defended by counsel.—R. *v.* HANCOCK (1931), *as reported in* 23 Cr. App. Rep. 16, C. C. A.

155a. **Under Poor Prisoners' Defence Act, 1930 (c. 32).**]—R. *v.* TIDMARSH (1931), 23 Cr. App. Rep. 79, C. C. A.

162a. —— **Right of junior counsel settling pleadings to lead another junior counsel.**]—A member of the Outer Bar settled pleadings & led at trial. Another member of the Outer Bar was briefed to attend trial as his junior. On party & party taxation the taxing master disallowed the fees paid to the second counsel on the ground that the junior who settled the pleadings could not lead, but could be led by a senior either of the Outer or Inner Bar :—*Held :* junior counsel who settled pleadings could lead another junior counsel, & fees of both counsel should be allowed.—DOUGLAS *v.* ASSOCIATED NEWSPAPERS, LTD. (1922), 67 Sol. Jo. 48.

173a. —— **Position of.**]—A barrister practising in Bristol & a barrister practising in London, or, rather one having chambers in both places, is not practising separate professions ; he is still a practising barrister. The profession of a practising barrister is that of a barrister practising in the courts of Great Britain, & wherever he is called upon to go, there he acts as a practising barrister. I think it is quite impossible to regard a change of chambers from one town to another as a relevant fact. Now, as to the fact of the barrister becoming a King's Counsel, I do not think the matter can be dealt with by construing the King's patent, or by considering it in a technical manner, but by regarding what, *de facto*, is the state of affairs which arises when a barrister becomes a King's Counsel. No doubt at one time he was considered to hold an office ; he was paid a salary & could not appear against the Crown without a licence. What happens now is that the Sovereign confers a titular rank which is recognised in the cts. by giving the holder precedence, a seat within the Bar, & by entitling him to wear a silk gown. On the other hand, by the practice of the profession, he abstains from doing certain classes of work which he did before appointment. But he is still acting in the same way as before, practising the art of advocacy. All he does is to limit the part he takes therein, but he carries on the work of advocacy still, though in a higher degree. I do not think that there can be any distinction between the different cases where junior barristers become King's Counsel ; the position involved is quite simple & all must come under the same head. Both the junior barrister & the King's Counsel carry on the same profession, but the latter occupy a higher rank or degree within it (ROWLATT, J.).—SELDON (F. E.) *v.* CROOM-JOHNSON ; SELDON (F. E.) *v.* BRUCE THOMAS, [1932] 1 K. B. 759 ; 101 L. J. K. B. 358 ; 147 L. T. 72 ; 48 T. L. R. 304 ; 76 Sol. Jo. 273 ; 16 Tax Cas. 740.

191. *Add. Annotation :*—**Apld.** *Re* Morgan, Brown *v.* Jones (1927), 71 Sol. Jo. 650.

191a. —— ——.]—Where trustees are represented by the same firm of solrs. & one of them is interested in the trust fund beneficially, it is *primâ facie* the solrs.' duty to employ separate counsel to represent the independent trustee, in order that the ct. may have the assistance of such separate counsel.—*Re* MORGAN, BROWN *v.* JONES (1927), 71 Sol. Jo. 650.

220a. —— **Of junior counsel—Proportionate to fee of leader.**]—A junior counsel is entitled to be allowed two-thirds of the fee allowed to his leader & the taxing master has no power to direct that the amount of the fee of junior counsel on the hearing before the master in chambers should be deducted from the amount of the fee allowed on the adjourned hearing before the judge in ct., on the ground that the brief was practically the same on each occasion.—*Re* PARK, BOTT *v.* CHESTER (1921), 66 Sol. Jo. (W. R.) 2.

242. *Add. Annotation :*—**Refd.** Minter *v.* Priest, [1929] 1 K. B. 655.

But in either event, it is necessary for the case to be either referred to the Bar Council, or at any rate for the Bar Council to be consulted.—*Re* A VAKIL OF AZAMGARH (1928), I. L. R. 51 All. 76.—**IND.**

sg. *Under Legal Practitioners Act, s.* 12.]—The discretion of the High Ct., in each particular case under sect. 12, is absolute, & it can let off a pleader with an admonition or suspend him or strike him off the rolls.—*Re* A PLEADER (1929), I. L. R. 57 Calc. 337. —**IND.**

sh. *Acts in furtherance of civil disobedience movement.*]—Where a legal practitioner, being a member of the civil disobedience movement commits illegal acts in furtherance of that movement, he brings himself within the disciplinary jurisdiction of the High Ct.—*Re* PLEADER RAMGOBIND SINHA, (1932), I. L. R. 11 Pat. 365.—**IND.**

SECT. 5, SUB-SECT. 1.—A. (g).

188 i. *Party proposing employment—Proceeding against previous client.*]—Appt., an advocate, allowed resp. to give him instructions in full without warning him that the other side had approached him to represent them in the matter & that he had not declined the offer. He, however, was not retained by resp. & the brief of the other side being offered to him, accepted the same :—*Held :* whilst the action of resp. did not amount to professional misconduct, the case came within the ambit of the rule that counsel ought not to accept a brief against a party, even though that party refuses to retain him, in any case in which he would be embarrassed in the discharge of his duty by reason of the confidence & appt. was rightly refused permission by the trial ct. to appear in the suit.—U. KO KO GYI *v.* U SAN MYA (1930), I. L. R. 8 Ran. 446.—**IND.**

190 iii. —— ——.]—A legal practitioner may change sides, but, if, as in this case, such conduct is likely to cause mischief or reasonable misapprehension in the mind of his late client, the ct. would not allow the advocate to appear for the other party. —MAUNG SEIN GYI *v.* MANEKJEE (1929), I. L. R. 8 Ran. 44.—**IND.**

SECT. 5, SUB-SECT. 2.

206 vi. —— ——.]—Where a pleader sued to recover from his client a sum of money as remuneration for his services as a pleader, on the basis of a verbal agreement entered into with his client, or, if the agreement was held to be invalid, on the basis of *quantum meruit :—Held :* though the agreement was void under Legal Practitioners Act, s. 28, the pleader was entitled to reasonable compensation for work & labour done by him on behalf of the client.—THANGAMMAL AYIYAR *v.* KRISHNAN (1929), I. L. R. 53 Mad. 309.—**IND.**

217 i. *Amount of fees—Application of "two-thirds" rule in India.*]—The amount of fees allowed to junior counsel must be adjusted by the Taxing Master according to two-thirds of the amount allowed to senior counsel. —*Re* GOPALCHANDRA SINGHA (1930), I. L. R. 58 Calc. 505.—**IND.**

221 xi. —— ——.]—ARMOUR *v.* DINNER (1899), 4 Terr. L. R. 30.—**CAN.**

sh. *"Normal" fees—Fees in big & difficult cases.*]—*Held :* both are just such fees as a practising law-agent finds sufficient in order to command the services of competent counsel in cases of a similar character.—CALEDONIAN RY. CO. *v.* GREENOCK CORPN., GLASGOW & SOUTH WESTERN RY. CO. *v.* SAME, [1922] S. C. 299.—**SCOT.**

SECT. 5, SUB-SECT. 4.

238 ii. ——.]—There is no hard & fast rule rendering counsel in a cause incompetent as a witness in that cause. —R. *v.* BECKER, [1929] App. D. 167.—**S. AF.**

252 xiv. ——.]—GRADY *v.* WAITE, [1930] 1 D. L. R. 838 ; 1 M. P. R. 116. —**CAN.**

291. *Add. Annotations :*—**Apld.** Shepherd *v.* Robinson, [1919] 1 K. B. 474. **Refd.** Sourendra Nath Mitra *v.* Srimati Tarubala Dasi (1930), 46 T. L. R. 191.

300. *Add. Annotation :*—**Refd.** Shepherd *v.* Robinson, [1919] 1 K. B. 474.

311. *Add. Annotation :*—**Refd.** L. *v.* L., [1931] P. 63.

323a. Express instructions given to solicitor.]—At the hearing of an action for debt counsel for deft. consented to judgment against his client for part only of the claim, pltf. abandoning the balance. Without the knowledge of counsel on either side, or of the solrs. for pltf., deft. had given instructions to her solrs. that the case was not to be settled. Upon an application made before the judgment was drawn up :—*Held :* the case must be restored to the list for hearing.—SHEPHERD *v.* ROBINSON, [1919] 1 K. B. 474 ; 88 L. J. K. B. 873 ; 120 L. T. 492 ; 35 T. L. R. 220, C. A.

Annotation :—**Refd.** Sourendra Nath Mitra *v.* Srimati Tarubala Dasi (1930), 46 T. L. R. 191.

324. *Add. Annotation :*—**Distd.** Shepherd *v.* Robinson, [1919] 1 K. B. 474.

326. *Add. Annotation :*—**Apld.** Shepherd *v.* Robinson, [1919] 1 K. B. 474.

331. *Add. Annotation :*—**Apld.** Shepherd *v.* Robinson, [1919] 1 K. B. 474.

335. *Add. Annotation :*—**Refd.** Shepherd *v.* Robinson, [1919] 1 K. B. 474.

347a. —— Whether evidence for opposite party.]—The judge at a trial will not take the facts from the opening of the counsel on the opposite side.—MACHELL *v.* ELLIS (1845), 1 Car. & Kir. 682.

356a. Whether binding at second trial.]—A man was employed by a railway co. to sweep their yard & goods warehouse. Several lines of rails ran through the yard, & it was his duty to sweep between the lines, but to stand clear of them when trucks were being run over them. On June 10, 1918, a capstan man in the employ of defts. gave notice to the man that he was going to run trucks into the yard, which notice the man acknowledged. The first truck was sent in, & the capstan man stated that he saw the man apply the brake to it, which was not a part of his duty, & then leave the yard. A second truck was then sent down on another line, & shortly afterwards the man was found sitting on the ground, having sustained injuries from which he died. Upon a claim by his widow for compensation under Workmen's Compensation Act, 1906 (c. 58), an admission was made by counsel at the trial that " deceased was crushed between two waggons & sustained abdominal injury from which he died." A new trial having been ordered :—*Held :* the above admission was not to be binding at the second trial.—DAWSON *v.* GREAT CENTRAL RY. CO. (1919), 88 L. J. K. B. 1177 ; 121 L. T. 263 ; 12 B. W. C. C. 163, C. A.

383a. Duty to assist court—By citing all relevant authorities.]—Upon the hearing of an appeal in the House of Lords, it is the duty of counsel to bring to the attention of the House any authority, statutory or other, within their knowledge which bears one way or the other upon the matters under debate, irrespectively of whether or not the particular authority assists the case of the party who is aware of it. It is likewise the duty of those who instruct counsel, if they are aware of any such authority, to bring it to the atten-

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SECT. 5, SUB-SECT. 6.

274 i. *Misconduct—Inserting libel on judge in notice of appeal—On instructions of client.*]—*Held :* this conduct was highly improper.—JACOB & CO. *v.* RASH BEHARI GHOSE (1920), I. L. R. 47 Calc. 828.—**IND.**

274 ii. —— *Refusal to take brief.*]—The refusal of a lawyer to take up a brief for a member of the public, simply & solely on the ground that he would be appearing against a brother practitioner, who was the litigating party on the other side, or putting forward untrue excuses, when the real reason is a disinclination to appear against a brother practitioner, is professional misconduct ; that is, it is a breach of the duty which the acceptance of the status of an advocate demands from every man who becomes an advocate.—MUHAMMAD INAYAT ALI *v.* EMPEROR (1929), I. L. R. 51 All. 892. —**IND.**

SECT. 5, SUB-SECT. 7.—C. (b) i.

291 i. *General rule.*]—Rules regarding competency of counsel to compromise suits, make admissions, or confess judgment, so as to bind their clients, discussed.—MUTHIAH CHETTIAR *v.* MUTHU K. R. A. KAROPPAN CHETTI (1927), I. L. R. 50 Mad. 786.—**IND.**

291 ii. ——.]—An advocate, admitted to practise by the appropriate ct. in India, when briefed in a suit, including a suit in the ct. of a subordinate judge, has the implied authority of his client to settle the suit by a compromise. If he is briefed in an interlocutory matter he has implied authority to settle the whole suit where it appears that the intention was to place him in the same position, & to arm him with the same authority, as though he had been briefed to conduct the whole suit.—SOURENDRA NATH MITRA *v.* TARUBALA DASI (1930), 46 T. L. R. 191 ; 57 L. R. Ind. App. 133, P. C.—**IND.**

294 i. *Power presumed—Counsel apparently properly instructed—Party's agent present without protest.*]—NILMONE CHAUDHURI *v.* KEDAR NATH DAGA (1922), I. L. R. 1 Pat. 489.—**IND.**

300 iv. ——.]—A settlement within the apparent general authority of counsel :—*Held :* binding.—B. N. SEN & BROTHERS *v.* CHUNI LAL DUTT & CO. (1923), I. L. R. 51 Calc. 385.—**IND.**

301 i. *Authority to compromise out of court.*]—A compromise effected by counsel on behalf of his client out of ct., & not assented to by his client, is only binding upon the client if it is expressly authorised or subsequently ratified by the client or by his agent authorised in that behalf.—ASKARAU CHOUTMAL *v.* EAST INDIAN RY. CO. (1925), I. L. R. 52 Calc. 386.—**IND.**

301 ii. ——.]—The fact that negotiations for compromise between counsel took place before the hearing of the suit commenced, or were carried on outside the ct., does not vitiate the agreement.—JOHURMULL BHUTRA *v.* KEDAR NATH BHUTRA (1927), I. L. R. 55 Calc. 113.—**IND.**

sc. *Effect of client's presence in court.*]—Mere presence in ct. of the client, when he does not make his presence known to the counsel, does not affect the ostensible authority of the counsel, who can compromise the suit without consulting the client. — GHASIRAM GOENKA *v.* HARIBUX GOBARDHANDAS (1931), I. L. R. 59 Calc. 31.—**IND.**

SECT. 5, SUB-SECT. 7.—C. (b) iii.

t i. ——.]—The general authority of counsel to compromise a suit does not extend beyond matters in the suit. —JOHURMULL BHUTRA *v.* KEDAR NATH BHUTRA (1927), I. L. R. 55 Calc. 113.—**IND.**

SECT. 5, SUB-SECT. 7.—C. (b) iv.

334 ii. ——.]—Where the advocate for one of the parties in a proceeding for the grant of letters of administration under a misapprehension consented to the other party being granted the letters :—*Held :* if such consent was given without instructions the client might withdraw the consent at any time prior to the actual issue of letters.—KYONE HOE TSEE *v* KYON SOON SUN (1925), I. L. R. 3 Ran. 261.—**IND.**

SECT. 5, SUB-SECT. 8.

8a. *Counsel must not combine functions of advocate & witness.*]—CAIRNS *v.* CAIRNS, [1931] 3 W. W. R. 335 ; 4 D. L. R. 819 ; 26 Alta. L. R. 69.—**CAN.**

SECT. 5, SUB-SECT. 10.

e i. ——.]—In an action for damages for breach of contract, certain admissions were made by counsel for both parties & put in at the trial by consent : —*Held :* deft. was bound by the admissions made by counsel on his behalf.—DOMINION ART CO., LTD. *v.* MURPHY (1923), 54 O. L. R. 332.—**CAN.**

SECT. 6, SUB-SECT. 1.

383 i. —— *Should not make scandalous charges.*]—Members of the legal profession are under no duty to their clients to make grave & scandalous charges against either judges or the opposite parties on their client's mere wish. They are responsible to the ct. for the fair & honest conduct of the case. They are not mere agents of the man who pays them, but are

tion of counsel, in order that they in turn may bring it to the attention of the House.—GLEBE SUGAR REFINING CO., LTD. *v.* GREENOCK PORT & HARBOURS TRUSTEES, [1921] 2 A. C. 66; 125 L. T. 578; 37 T. L. R. 436; 65 Sol. Jo. 551, H. L.

383b. Duty to disclose adultery of petitioner in suit for dissolution of marriage.]—Where a petitioner has committed adultery it is the duty of his counsel & solr. to disclose the fact to the ct. if they are aware of it.—ABRAHAM *v.* ABRAHAM & HARDING (1919), 120 L. T. 672; 35 T. L. R. 371; 63 Sol. Jo. 411.

Disclosure of petitioner's adultery in suits for dissolution of marriage generally, *see* HUSBAND & WIFE.

889. *Add. Annotation:*—Apld. Grinham *v.* Davies, [1929] 2 K. B. 249.

After this case add, *See, also*, NEGLIGENCE, Nos. 842, 842a.

408a. —— ——.]—PRACTICE NOTE, [1920] W. N. 34.

421a. —— ——.]—The House of Lords has a prior claim to the attendance of counsel over other cts., & before absenting himself counsel ought to have made an application for leave to be absent.—ABRAM S.S. Co. *v.* WESTVILLE SHIPPING Co. (1923), as reported in 67 Sol. Jo. 535, H. L.

453. *Add. Annotations:*—Refd. Banbury *v.* Bank of Montreal, [1918] A. C. 626; Wilson *v.* United Counties Bank, [1920] A. C. 102.

465. *Add. Annotation:*—Consd. De Freville *v.* Dill (1927), 43 T. L. R. 431.

acting in the administration of justice. —*Re* DIVARKA PRASAD MITHAL (1923), I. L. R. 46 All 121.—IND.

383 ii. —— *Duty as regards offensive questions.*]—An advocate should exercise his own discretion before putting an offensive question.—M. BANERJEE *v.* ANUKUL CHANDRA MITRA (1927), I. L. R. 55 Calc. 85.—IND.

ii. May criticise questions submitted to jury—After asking for direction & calling no evidence.]—STEELE *v.* BELFAST CORPN., [1920] 2 I. R. 125, 133.—IR.

SECT. 6, SUB-SECT. 5.

429 ii. —— ——.]—*Re* DIVARKA PRASAD MITHAL, No. 383 i., *ante*.—IND.

439 ii. ——.]—In an action of damages for breach of promise of marriage defender made a tender of £100 & expenses, which was not accepted by pursuer. The jury having awarded the pursuer the sum of £75, she moved for a new trial on the ground that counsel for defender, in addressing the jury, had used words which represented that an award of £50 would carry the expenses of the action. The ct., holding that there had been no intention to mislead the jury, & that the words used did not necessarily bear the meaning put upon them by pursuer, & had not prevented the trial from being a fair one, refused to grant a new trial.—REEKIE *v.* M'KINVEN, [1921] S. C. 733.—SCOT.

BASTARDY.

Part I.—The Presumption of Legitimacy.

2. *Add. Annotations :*—**Refd.** Gaskill *v.* Gaskill (1921), 126 L. T. 115 ; Warren *v.* Warren, [1925] P. 107.

3. *Add. Annotations :*—**Refd.** Gaskill *v.* Gaskill (1921), 126 L. T. 115 ; Farman *v.* Farman (1924), 40 T. L. R. 823.

4. *Add. Annotation :*—**Consd.** Mart *v.* Mart, [1926] P. 24.

11. *Add. Annotation :*—**Refd.** Gaskill *v.* Gaskill, [1921] P. 425.

12. *Add. Annotations :*—**Refd.** Gaskill *v.* Gaskill, [1921] P. 425 ; Russell *v.* Russell, [1924] A. C. 687.

17. *Add. Annotations :*—**Apld.** Warren *v.* Warren, [1925] P. 107. **Refd.** Russell *v.* Russell, [1924] A. C. 687.

20. *Add. Annotation :*—**Refd.** Andrews *v.* Andrews & Chalmers (1924), 40 T. L. R. 873.

22. *Add. Annotations :*—**Consd.** Russell *v.* Russell, [1924] A. C. 687 ; Mart *v.* Mart, [1926] P. 24. **Refd.** Andrews *v.* Andrews & Chalmers (1924), 132 L. T. 400.

22a. ——— ———.]—In the absence of evidence to the contrary the presumption of legitimacy does not arise in the case of a child born to a resp. more than nine months after she has obtained, under Summary Jurisdiction Married Women's Act, 1895 (c. 39), an order that she be no longer bound to cohabit with petitioner.—ANDREWS *v.* ANDREWS & CHALMERS, [1924] P. 255 ; 93 L. J. P. 137 ; 132 L. T. 400 ; 40 T. L. R. 873.

Annotation :—**Refd.** Mart *v.* Mart, [1926] P.24.

22b. ——— ———.]—STEWART *v.* STEWART, No. 65e, *post.*

22c. **Deed of separation—Presumption of non-access.**]—The legal presumption of access, & of the legitimacy of a child born during marriage, is rebutted by its conception during a period when the spouses are living apart under a deed of separation. For this purpose a deed of separation has the same effect as an order under Summary Jurisdiction (Married Women) Act, 1895 (c. 39), that the wife shall not be bound to cohabit with her husband, or a judicial separation.—MART *v.* MART, [1926] P. 24 ; 95 L. J. P. 29 ; 134 L. T. 446 ; 42 T. L. R. 253.

24a. —.]—HASLAM *v.* CRON, OLIVANT'S CLAIM (1871), 19 W. R. 968.

25. *Add. Annotations :*—**Refd.** Gaskill *v.* Gaskill (1921), 126 L. T. 115 ; Farman *v.* Farman (1924), 40 T. L. R. 823.

28. *Add. Annotation :*—**Refd.** Russell *v.* Russell, [1924] A. C. 687.

35. *Add. Annotations :*—**Refd.** Gaskill *v.* Gaskill (1921), 126 L. T. 115 ; Warren *v.* Warren, [1925] P. 107.

PART I. SECT. 2.

7 v. —.]—*Held :* " born out of wedlock " within Children of Unmarried Parents Act, 1921 (c. 54), s. 13, & the husband may show by his own evidence & that of his wife that they had in fact no intercourse at such time as would make his parentage possible.—*Re* DUCKWORTH & SKINKLE (1924), 55 O. L. R. 272.—**CAN.**

7 vi. ——— ——— *Wife divorced woman.*]—Where a Hindu woman was married to S. in Oct. 1903, was divorced by him in June 1904, married T. in July 1904, & gave birth to a son in Sept. 1904 :—*Held :* there was no proof that T. could not have had access to her at any time when the son could have been begotten, & the son should be held to be the legitimate son of T.—SETHU *v.* PALAIN (1925), I. L. R. 49 Mad. 553.—**IND**

12 iv. ——— *Irrebutlable presumption.*]—Once access of, or intercourse by, a husband is proved, no evidence will be allowed to show that the child is not the child of the husband. The circumstance that the wife had intercourse with several at that time makes no difference.—JAGANNATHA MUDALI *v.* CHINNASWAMI CHETTI (1932), I. L. R. 55 Mad. 243.—**IND.**

14 i. ——— ——— *Even where wife adulteress.*]—*Re* BROWN & ARGUE, [1925] 3 D. L. R. 873 ; 57 O. L. R. 297.—**CAN.**

ss. *Child of Chinese resident in Straits Settlements & " t 'sip."*]—According to the Chinese law of marriage, which is applied in Penang in the case of Chinese residents, a Chinaman may have secondary wives (sometimes called " t 'sips ") who have the status of wives & whose children are legitimate. Although some sort of ceremony is usual when a " t 'sip " is taken, proof of the performance of a ceremony is not essential to establish the relationship. Deceased resp. for twenty-six years lived & was maintained in the house of a Chinese merchant in Penang, & bore him children. One child who survived the father was referred to in his will as " my daughter," & her name appeared upon his tombstone. The resp. had been recognised by the Chinaman & by his primary wife as occupying in his household the position of a secondary wife :—*Held :* deceased resp. was a secondary wife, whether or not the performance of a ceremony was proved, & under the practice in Penang (which was not questioned in the appeal) she was entitled, upon the death of the Chinaman partially intestate, to share as a widow.—CHEANG THYE PHIN *v.* TAN AH LOY, [1920] A. C. 369 ; 89 L. J. P. C. 44 ; 122 L. T. 593, P. C.—**STRAITS SETTLEMENTS.**

sd. ———.]—Regarded as legitimate & entitled to inherit equally with children by the " t 'sai " (primary wife).—KHOO HOOI LEONG *v.* KHOO HEAN KWEE, [1926] A. C. 529 ; 95 L. J. P. C. 94 ; 135 L. T. 170.—**STRAITS SETTLEMENTS.**

se. ———.]—The Chinese custom of legitimation of a natural son by subsequent recognition is not part of the law of the Straits Settlements in relation to Chinese people there domiciled ; nor does recognition as a son raise a presumption that the son's mother was a " t 'sip," or secondary wife. The modifications of the law of England which obtain in the Colony in its application to the various alien races established there arise from the necessity of preventing the injustice or oppression which otherwise would ensue. It is from that necessity that the status of " t 'sips," & consequently the legitimacy of their offspring, have been recognised ; but there are no grounds which would justify treating an illegitimate natural son as legitimated by the mere fact of subsequent recognition.—KHOO HOOI LEONG *v.* KHOO CHONG YEOK, [1930] A. C. 346 ; 99 L. J. P. C. 129 ; 143 L. T. 25, P. C.—**STRAITS SETTLEMENTS.**

sf. *Child of Mahomedan & his servant —Acknowledgment of child by father as his son.*]—The son of a Mahomedan by a female servant in his house claimed a declaration of his legitimacy. The parents had continuously cohabited for many years, & the father on several occasions had acknowledged pltf. as his son. There was some evidence of a *nikah* marriage :—*Held :* evidence that other members of the father's class had illegitimate children by servants was inadmissible to rebut the presumption of legitimacy arising from the acknowledgments, & though the fact that the mother unlike the father's other wives was not *parda-niskin* was one to be considered, it was insufficient to interfere with the presumption of law or the balance of proof of the fact of legitimacy.—MOHABBAT ALI KHAN *v.* MAHOMED IBRAHIM KHAN (1929), 56 L. R. Ind. App. 201.—**IND.**

36. *Add. Annotations :*—**Apld.** Best *v.* Best & McKinley, [1920] P. 75; *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

42. *Add. Annotation :*—**Consd.** Gaskill *v.* Gaskill (1921), 126 L. T. 115.

43. *Add. Annotation :*—**Refd.** Gaskill *v.* Gaskill, [1921] P. 425.

43a. —— —— —— ——.]—When adultery is to be inferred solely from the length of gestation of a child *in utero*, & evidence adverse to the wife, its mother, as regards her conduct, is absent, the same considerations apply as in a case of legitimacy & the presumption thereof. In such a case the evidence to negative lawful access as the cause of pregnancy must be strong, distinct, satisfactory, & conclusive, & must not consist of a mere balance of probability. If on medical evidence there is no distinct & inherent impossibility of access by the husband which could account for the birth of a child, the wife cannot be found guilty of adultery.—GASKILL *v.* GASKILL, [1921] P. 425; 90 L. J. P. 339; 126 L. T. 115; 38 T. L. R. 1.

Annotation :—**Refd.** Russell *v.* Russell, [1924] A. C. 687.

46. *Add. Annotation :*—**Refd.** Warren *v.* Warren, [1925] P. 107.

49. *Add. Annotations :*—**Apld.** Gaskill *v.* Gaskill, [1921] P. 425. **Refd.** Russell *v.* Russell, [1924] A. C. 687.

54. *Add. Annotations :*—**Refd.** Gaskill *v.* Gaskill (1921), 126 L. T. 115; Warren *v.* Warren, [1925] P. 107.

56. *Add. Annotation :*—**Refd.** Russell *v.* Russell, [1924] A. C. 687.

57. *Add. Annotation :*—**Refd.** Russell *v.* Russell, [1924] A. C. 687.

58. *Add. Annotations :*—**Consd.** Russell *v.* Russell, [1924] A. C. 687. **Distd.** Holland *v.* Holland, [1925] P. 101. **Refd.** Warren *v.* Warren, [1925] P. 107.

59. *Add. Annotation :*—**Refd.** Warren *v.* Warren, [1925] P. 107.

60. *Add. Annotations :*—**Consd.** Russell *v.* Russell, [1924] A. C. 687. **Refd.** Brown *v.* Leech (1924), 88 J. P. 208.

61. *Add. Annotation :*—**Refd.** Brown *v.* Leech (1924), 88 J. P. 208.

63. *Add. Annotation :*—**Consd.** Russell *v.* Russell, [1924] A. C. 687.

64. *Add. Annotation :*—**Refd.** Russell *v.* Russell, [1924] A. C. 687.

65a. —— —— ——.]—Resp., A. L., a married woman, living at all material times in London apart from her husband, preferred a complaint against applt. alleging that he was the father of her bastard child. Evidence was given by two independent witnesses that at all material times one F. L., was living in Cardiff. Resp. alone identified F. L. as her husband :—*Held :* apart from resp.'s identification, there was no evidence of non-access by the husband, & since *Russell* v. *Russell*, No. 70a, *post*, such evidence could not be given by the wife.—BROWN *v.* LEECH (1924), 94 L. J. K. B. 48; 132 L. T. 205; 88 J. P. 208; 41 T. L. R. 89, D. C.

65b. —— —— —— **Child still-born.**]—The rule laid down by the House of Lords in *Russell v. Russell*, No. 70a, *post*, that evidence of non-access by the husband or wife cannot be admitted where the result may be to bastardise a child, does not include a still-born child.—HOLLAND *v.* HOLLAND, [1925] P. 101; 94 L. J. P. 64; 133 L. T. 318; 41 T. L. R. 431.

65c. —.]—A wife's admission that she had committed adultery, even if accompanied by a statement of her belief that a child subsequently born, was the result of the adultery, cannot bastardise the child without evidence of the non-access of the husband. The confession of the wife, therefore, that she had committed adultery is admissible as evidence in a suit for divorce so long as she does not assert that the husband could have had no access at the time of conception.—WARREN *v.* WARREN, [1925] P. 107; 94 L. J. P. 68; 133 L. T. 352; 41 T. L. R. 599; 69 Sol. Jo. 725.

Annotation :—**Consd.** Rimmer *v.* Rimmer (1930), 46 T. L. R. 624, n.

65d. —— —— ——.]—Where a husband took out a summons asking that an order for maintenance should be discharged, on the ground that the wife had committed adultery :—*Held :* evidence of the husband of non-access to bastardise his child was not admissible.—BOSTON *v.* BOSTON (1928), 138 L. T. 647; 92 J. P. 44; 26 L. G. R. 183, D. C.

Annotation :—**Distd.** Stewart *v.* Stewart (1932), 96 J. P. 94.

65e. —— —— —— **Effect of separation order.**]—A maintenance order having been made

PART I. SECT. 3.

49 iii. —— *Illicit intercourse with paramour.*]—*Held :* evidence of pltf. should not have been received to bastardise her child, & as there was no admissible evidence that the child was illegitimate, it must be taken that pltf.'s husband was the father.—KIJKO *v.* BACYZSKI (1921), 67 D. L. R. 46; 51 O. L. R. 225.—**CAN.**

PART I. SECT. 4.

56 vii. —— ——.]—The evidence of a man & his wife, given for the purpose of bastardising a child born during wedlock, & at a time consistent with lawful conception, is not admissible.—*Re* BROWN & ARGUE, [1925] 3 D. L. R. 873; 57 O. L. R. 297.—**CAN.**

56 viii. —— ——.]—A husband sued his wife for divorce on the ground of adultery, which she denied. The wife had given birth to a child, of which the husband alleged that he was not the father. The husband gave evidence of non-access. The birth had been registered by the wife, who gave the name of a man other than her husband as its father :—*Held :* (1) the husband's evidence as to non-access was inadmissible; (2) the registration of the child's birth by the wife did not throw the *onus* upon her of proving that the child was not an adultrine child, but the *onus* of proof remained upon the husband.—SURMON *v.* SURMON, [1926] App. D. 47.—**S. AF.**

56 ix. —— ——.]—Evidence of adultery does not bastardise issue, unless it amounts to evidence of non-access by the husband at about the time when the child might have been begotten.—JUSTICE *v.* JUSTICE, [1925] S. A. S. R. 278.—**AUS.**

56 x. —— ——.]—AARNES *v.* AARNES, [1929] 2 D. L. R. 298; 1 W. W. R. 894; 23 S. L. R. 503.—**CAN.**

56 xi. —— ——.]—*Held :* the evidence of spouses was admissible to bastardise a child born during wedlock; the rule to the contrary, applied in *Russell* v. *Russell*, No. 70a, not being part of the law of Scotland.—BURMAN *v.* BURMAN, [1930] S. C. 262.—**SCOT.**

56 xii. —— ——.]—In Indian law a wife is a competent witness to prove access or non-access by her husband.—MAYANDI ASARI *v.* SAMI ASARI (1932), I. L. R. 55 Mad. 292.—**IND.**

56 xiii. —— ——.]—The presumption of legitimacy which arises when a child is born in wedlock can be met only by some kind of definite proof that sexual intercourse between husband & wife did not or could not take place at the time the woman conceived. Evidence that the child has physical characteristics which suggest Mongolian paternity is not in itself sufficient to constitute such proof where the mother & her husband are Europeans. The testimony of a parent of the child is not admissible to prove that the child is illegitimate.—AH CHUCK *v.* NEEDHAM, [1931] N. Z. L. R. 559.—**N.Z.**

against a husband in 1929 on the ground of desertion, including a non-cohabitation clause, the husband in Nov. 1931, took out a summons for discharge or variation of the order on the ground that since the order made in 1929, the wife had committed adultery. The proof of adultery submitted to the Bench was the husband's evidence of the birth to his wife on Oct. 27, 1931, of a child of which he could not be the father by reason of his non-access. The magistrates refused to admit the evidence, on the ground that they were debarred from so doing by the decision in *Russell* v. *Russell*, No. 70a, & declined to vary the order. The husband appealed:—*Held:* the magistrates' view that the husband must be presumed to be the father of the child born in Oct. 1931, was wrong. The separation order had the force of a judicial separation, & therefore there was no presumption of law that appct. was the father of the child. The magistrates had been in error in excluding the evidence of non-access. The appeal succeeded, & the order would be set aside so far as the allowance to the wife was concerned.—STEWART *v.* STEWART (1932), 146 L. T. 407; 96 J. P. 94; 76 Sol. Jo. 96; 30 L. G. R. 104; 29 Cox, C. C. 438, D. C.

Annotation :—**Refd.** Natborny *v.* Natborny (1932), 96 J. P. 228.

66. *Add. Annotation :*—**Consd.** Russell *v.* Russell, [1924] A. C. 687.

67. *Add. Annotation :*—**Refd.** Russell *v.* Russell, [1924] A. C. 687.

68. *Add. Annotation :*—**Refd.** Russell *v.* Russell. [1924] A. C. 687.

70a. —— —— ——.]—The rule of law that neither a husband nor a wife is permitted to give evidence of non-intercourse after marriage to bastardise a child born in wedlock applies to proceedings instituted in consequence of adultery, & is not affected by the above sect., which makes the parties to such proceedings, & the husbands & wives of such parties, competent witnesses.—RUSSELL *v.* RUSSELL, [1924] A. C. 687; 93 L. J. P. 97; 131 L. T. 482; 40 T. L. R. 713; 68 Sol. Jo. 682, H. L.

—— :—**Apld.** Brown v. Leech (1924), 94 L. J. K. B. 48. **Consd.** Farman *v.* Farman (1924), 40 T. L. R. 823. **Distd.** Warren *v.* Warren, [1925] P. 107 **Consd.** Mart *v.* Mart, [1926] P. 24; *Re* A. B.'s Petn., [1928] P. 25. **Distd.** Stewart *v.* Stewart (1932), 96 J. P. 94. **Refd.** Andrews *v.* Andrews & Chalmers (1924), 132 L. T. 400; Holland *v.* Holland, [1925] P. 101; Selby *v.* Atkins (1926), 135 L. T. 45; S. *v.* S. & P. (1927), 44 T. L. R. 52; Inverclyde *v.* Inverclyde, [1931] P. 29.

Evidence in matrimonial suits generally, *see* HUSBAND & WIFE.

—— —— ——.]—*See, now,* S. C. J. (Consolidation) Act, 1925 (c. 49), s. 198.

71. *Add. Annotations :*—**Consd.** Russell *v.* Russell, [1924] A. C. 687; Mart *v.* Mart, [1926] P 24. **Refd.** Andrews *v.* Andrews & Chalmers (1924), 132 L. T. 400.

72. *Add. Annotation :*—**Refd.** Brown *v.* Leech (1924), 88 J. P. 208.

73. *Add. Annotation :*—**Refd.** Russell *v.* Russell, [1924] A. C. 687.

73a. —— —— ——.]—Although, as decided in *Russell* v. *Russell*, No. 70a, *ante*, neither husband nor wife can give evidence of non-access, with a view of showing that a child born in wedlock was not a child of the marriage, yet the fact of non-access can be proved by evidence *aliunde*.—FARMAN *v.* FARMAN (1924), 40 T. L. R. 823.

76. *Add. Annotations :*—**Consd.** Russell *v.* Russell, [1924] A. C. 687; Mart *v.* Mart, [1926] P. 24.

79a. **Statutory declaration by wife—For rectification of birth register—Not admissible.**]—In proceedings for the rescission of a decree *nisi* there was tendered in evidence a statutory declaration by the wife, made for the purpose of rectifying a birth register by the deletion of the name of the husband as the father of a child born to her some sixteen months after a maintenance order:—*Held:* such a declaration was not admissible by reason of the rule in *Russell* v. *Russell*, No. 70a, *ante*.—RIMMER *v.* RIMMER (1930), 144 L. T. 96; 46 T. L. R. 624, n.

80. *Add. Annotations :*—**Consd.** Russell *v.* Russell, [1924] A. C. 687; Mart *v.* Mart, [1926] P. 24.

83. *Add. Annotations :*—**Refd.** Holland *v.* Holland, [1925] P. 101; Warren *v.* Warren, [1925] P. 107.

85. *Add. Annotation :*—**Consd.** *Re* Stollery, Weir *v.* Treasury Solicitor (1926), 134 L. T. 430.

90a. —— **Allegation of bigamous marriage——Conclusive evidence required.**]—HAYWARD *v.* HAYWARD (1928), 72 Sol. Jo. 469.

96. *Add. Citation :—previous proceedings* (1861), 2 Sw. & Tr. 405.

75 i. —— —— *Whether admissible to prove access before marriage.*]—There is no rule of law that evidence negativing intercourse before marriage is inadmissible to disprove the paternity of a child born in wedlock but conceived before marriage.—MCLEAN *v.* MCLEAN, [1931] N. Z. L. R. 167.—**N.Z.**

79a i. *Statement to district registrar of births.*]—A statement as to the particulars of the birth of an illegitimate child signed by its mother, a married woman, before the district registrar of births, is not admissible evidence against her to prove her adultery as it is evidence tending to bastardise the child.—JESSOP *v.* JESSOP (1931), 48 N. S. W. W. N. 78.—**AUS.**

92 i. *Evidence as to legitimacy—Declaration in matter of pedigree—By deceased member of family—By father.*]—A husband or wife is entitled to give evidence as to events prior to their marriage even though such evidence may have the effect of bastardising a child born in wedlock. Upon an application by A. for maintenance under Testator's Family Maintenance & Guardianship of Infants Act, 1916, it appeared that A. was born about seven weeks after the marriage of his mother with M. Declarations by M., who was deceased, were tendered in evidence to show that, although M. had been intimate with his wife about four months before their marriage, A. was not his son, & that his wife had admitted that fact:—*Held:* the evidence was not rendered inadmissible by reason of the rule laid down in *Russell* v. *Russell*, No. 70a, & the declarations of M. were admissible as evidence to prove matters of pedigree.—*Re* MACKAY (1928), 28 S. R. N. S. W. 404; 45 N. S. W. W. N. 106.—**AUS.**

Part II.—Mode of Determining Question of Legitimacy.

SUB-SECT. 1 (p. 369.)

Legitimacy Declaration Act, 1858, is now replaced, except as to sect. 3, by S. C. J. (Consolidation) Act, 1925, s. 188.

111. For " a person who has no interest in opposing a petition will not be cited," read " a person not cited, who has no real interest in opposing a petition for a declaration of legitimacy, will not be allowed to intervene."

Add. Citation :—1 New Rep. 107, 378.

121. *Add. Annotation :*—**Apld.** Rutter *v.* Rutter, [1921] P. 136.

127. After this case add :—

—— ——.]—*See note to Sub-sect.* 1, *supra.*

130a. Under Legitimacy Act, 1926 (c. 60)—Parties.]—*Held :* in a suit, to which only a husband & wife were parties, the ct. was not competent to find the facts necessary to make the child a legitimated child by virtue of the above Act.—BEDNALL *v.* BEDNALL & SHIVUSSAWA, [1927] P. 225 ; 96 L. J. P. 150 ; 137 L. T. 632 ; 43 T. L. R. 599 ; 71 Sol. Jo. 453

Annotations :—**Apld.** Green *v.* Green, [1929] P. 101. **Refd.** Jones *v.* Jones (1929), 98 L. J. P. 74.

130b. —— ——.]—The ct. has no jurisdiction to make an order for custody in divorce proceedings in the case of a child of the parties who was born before their marriage & had not been declared legitimate in accordance with Legitimacy Act, 1926 (c. 60). Such an order for custody would imply a declaration of legitimacy, which cannot be made by the ct. in proceedings in which the child & other persons interested are not represented.—GREEN *v.* GREEN, [1929] P. 101 ; 98 L. J. P. 58 ; 140 L. T. 93 ; *sub nom.* G. *v.* G., 45 T. L. R. 7 ; 73 Sol. Jo. 111.

Annotations :—**Follд.** Jones *v.* Jones (1929), 98 L. J. P. 74. **Refd.** *Re* Carroll, [1931] 1 K. B. 317.

130c. —— ——.]—If a child is born to a couple who afterwards marry, & is re-registered on the authority of the Registrar-General under the rules provided in pursuance of Legitimacy Act, 1926 (c. 60), as legitimated, & if the mother of the child subsequently secures a divorce, the ct. has no jurisdiction to grant her an order for the custody of the child, because such an order would imply a declaration of the legitimacy in proceedings in which the child & other parties interested are not parties.—JONES *v.* JONES (1929), 98 L. J. P. 74 ; 140 L. T. 647 ; 45 T. L. R. 292 ; 73 Sol. Jo. 192 ; 29 Cox, C. C. 33.

130d. —— Petition on behalf of several persons—Procedure.]—A petition for legitimation can only be presented by the party to be legitimated. Persons having a common interest must proceed by separate petitions, but leave may be obtained for them to be heard together with one set of affidavits & one body of evidence. Interested parties must be brought before the ct. Notice of the proposed petition must be given to the A.-G. one month before filing.—*Re* A. B.'s PETITION (1927), 96 L. J. P. 155 ; 138 L. T. 64 ; *sub nom. Re* CLAYTON'S PETITION, 43 T. L. R. 659 ; 71 Sol. Jo. 543.

130e. —— Hearing — Whether in camerâ.] — A petition filed under the above Act for the legitimation of a person who was born illegitimate, but whose parents were married subsequently to his birth, is not a proceeding which entitles petitioner to a hearing *in camerâ.*—GREENWAY *v.* A.-G. (1927), 44 T. L. R. 124 ; 71 Sol. Jo. 882 ; *sub nom. Re* A. B.'s PETITION, 97 L. J. P. 104 ; *sub nom. Re* C. D.'s PETITION, 138 L. T. 208.

Annotation :—**Refd.** *Re* Lowe, Stewart *v.* Lowe, [1929] 2 Ch. 210.

Part III.—Legitimation by Subsequent Marriage.

132 *Add. Annotations :*—**Consd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259. **Refd.** Boldrini *v.* Boldrini & Martini, [1932] P. 9.

134. *Add. Annotation :*—**Consd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

136. *Add. Annotation :*—**Consd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

141a. —— —— —— **Germany.**] — *Re* ASKEW, MARJORIBANKS *v.* ASKEW, No. 152a, *post.*

142a. Under Legitimacy Act, 1926 (c. 60)—Parent married to third party when petitioner born—Petitioner with foreign domicile.]—Though the Legitimacy Act, 1926 (c. 60), does not in general permit the legitimation of a person born before the marriage of his parents if either parent was married to a third person when the illegitimate person was born, this restriction does not apply when the person seeking to be declared legitimate is domiciled abroad, & when by the law of the domicile he would be legitimated *per subsequens matrimonium.* In this case the infant petitioner & his father, a British subject, were domiciled in Germany. When the petitioner was born there was a subsisting marriage between his father & a woman not the petitioner's mother. The father was divorced in Germany, & married the mother of his son. By German law petitioner was thereby legitimated :—*Held :* under the joint operation of Legitimacy Act, 1926 (c. 60), ss. 2, 8, the infant petitioner was entitled to a declaration of legitimacy.—COLLINS *v.* A.-G. (1931), 145 L. T. 551 ; 47 T. L. R. 484 ; 75 Sol. Jo. 616.

—— —— **Marriage subsequently declared void for incapacity.**]—A man went through a

PART II. SECT. 2, SUB-SECT. 1.

sj. *Jurisdiction of court.*]—*Held :* Legitimacy Declaration Act, 1858 (Imp.), gives the ct. jurisdiction to make a declaration of legitimacy upon a direct application for that purpose.—*Re* G., [1922] 1 W. W. R. 978 ; 63 D. L. R. 365 ; 17 Alta. L. R. 473.—CAN.

PART III. SECT. 1.

sk. *Subsequent marriage of parents in England—Child acquiring domicil in Ontario—Ontario Legitimation Act,* 1921 (*c.* 53).]—W. was born out of wedlock in England ; his parents subsequently married in England ; & W. went to Ontario when twenty-four years of age, & acquired a domicil in Ontario :—*Held :* W. was legitimate.—*Re* W., [1925] 2 D. L. R. 1177 ; 56 O. L. R. 611.—CAN.

form of marriage with a woman in 1909. Another woman, then unmarried, bore him a child in Apr. 1929. The man was granted in May, 1929, a decree of nullity of the 1909 union on the ground of the woman's incapacity. He married the mother of his child in Nov. 1929, after the decree of nullity had been made absolute. On a petition for a declaration of legitimacy on behalf of the child it was held that, as the retrospective effect of the decree of nullity was to declare that there had been no marriage in 1909 at all, the man was in fact free to marry when the child was born in Apr. 1929, & the child was entitled under the Legitimacy Act, 1926, to the declaration sought.—NEWBOULD *v.* A.-G., [1931] P. 75; 100 L. J. P. 54; 144 L. T. 728; 47 T. L. R. 297; 75 Sol. Jo. 174.

142c. —— **Court must be satisfied as to parentage.**]—Where a petition for a declaration of legitimacy under Legitimacy Act, 1926 (c. 60), was presented on behalf of a young woman of unsound mind who was entitled to an estate of some £11,000, the ct. was not satisfied with the proof of parentage adduced, & dismissed the petition.—S. (OTHERWISE U.) *v.* A.-G. (1931), 146 L. T. 144; 48 T. L. R. 66.

-.]—*Qu.:*

child, born in Scotland, of parents domiciled there, who at the time of his birth were not married, but who afterwards intermarried in Scotland, neither having in the meantime married any other person, can take as heir lands of his father in England.

It is said that the *lex loci rei sitæ* must govern the succession to real estate. Undoubtedly it must (LORD BROUGHAM, C.).—DOE d. BIRTWHISTLE *v.* VARDILL (1835), 2 Cl. & Fin. 571; 9 Bli. (N. S.) 32; 6 E. R. 1270.

152a. **On exercise of power of appointment.**]—For the purpose of the exercise of a power of appointment a child which is legitimate by the *lex domicilii* will be treated as legitimate by the English Cts.

Under an English marriage settlement of 1893, funds were settled on trust for J., the husband, who was the settlor, his wife F., & the issue of the marriage, but in the event of a future marriage the husband had power to appoint part of the funds to the children of that marriage. There were issue of the first marriage, two children. About 1909 J. separated from F., who lived in Switzerland with her two children until her death in 1918. J. had acquired a German domicil before 1911, & his first marriage was dissolved in June, 1911, by a ct. in Germany having jurisdiction, the decree *nisi* being made absolute on July 27, 1911. On Apr. 20, 1912, J. married his second wife A., with whom he had cohabited since 1909. M., their acknowledged daughter, had been born on Jan. 30, 1911, at Zurich, & by German law the marriage gave her the status of legitimacy. By deed poll, dated June 13, 1913, J. purported to revoke the trusts relating to a portion of the trust funds under the marriage settlement of 1893, & appointed the income of that portion after his death to A., & after her death he appointed the capital to M. J. died in 1929:—*Held:* (1) the *lex domicilii*, that is German law, was applicable; (2) the *lex domicilii*, in its widest sense being recognised by the English Cts., M. was a legitimate child of J.; & (3) J. had validly exercised the power of appointment in favour of M.—*Re* ASKEW, MARJORIBANKS *v.* ASKEW, [1930] 2 Ch. 259; 99 L. J. Ch. 466; 143 L. T. 616; 46 T. L. R. 539.

152b. **Under Legitimacy Act, 1926 (c. 60)—Death after marriage of parents—Before operative date of Act—Rights of issue.**]—M. had two illegitimate children, a son & a daughter, by L., whom she subsequently married in 1905. The son died in 1919 leaving issue. L. died in 1919. M. died in 1928 intestate:—*Held:* the son having died before above Act came into force, his issue took no share of M.'s estate.—*Re* LOWE, STEWART *v.* LOWE, [1929] 2 Ch. 210; 98 L. J. Ch. 440; 141 L. T. 428; 45 T. L. R. 484.

SECT. 3.—**UNDER LEGITIMACY ACT, 1926 (c. 60).**

Mode of determining legitimacy.]—*See* Nos. 130a–130e, *ante.*

Effect of Act—On rights of succession to intestate.]—*See* No. 152b, *ante.*

Conditions of legitimation.]—*See* Nos. 142a, 142b, 142c, *ante.*

Part IV.—Legal Position of Bastard.

157. *Add. Annotation:*—**Consd.** *Re* Phillips, *Re* Howard, Charter *v.* Ferguson, [1919] 1 Ch. 128

161. *Add. Annotations:*—**Refd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259; Boldrini *v.* Boldrini & Martini, [1932] P. 9.

162. *Add. Annotation:*—**Refd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

166. *Add. Annotations:*—**Refd.** Papadopoulos *v.* Papapopoulos, [1930] P. 55; *Re* Ross, Ross *v.* Waterfield, [1930] 1 Ch. 377.

After this case add:—

Right to succeed to mother on intestacy.]—*See* Legitimacy Act, 1926 (c. 60), s. 9.

170. After this case add:—

Right of mother to succeed on intestacy.]—*See* Legitimacy Act, 1926 (c. 60), s. 9.

178. *Add. Annotation:*—**Consd.** *Re* Hyde, Smith *v.* Jack, [1932] 1 Ch. 95.

179. *Add. Annotation:*—**Refd.** *Re* Hyde, Smith *v.* Jack, [1932] 1 Ch. 95.

PART IV. SECT. 1.

154 i. *Nullius filius—Extent of rule.*] *-Held:* does not prevail in a ct. of eq. *-Re* CONNOR, [1919] 1 I. R. 361.—**IR.**

PART IV. SECT. 2, SUB-SECT. 2.—A. (b).

167 iii. —— *Right of Crown to escheat not affected—Although intestate legitimated per subsequens matrimonium.*]—*Re* W., [1925] 2 D. L. R. 1177; 56 O. L. R. 611.—**CAN.**

Part V.—Rights and Liabilities towards the Bastard.

199. *Add. Annotation :*—**Refd.** *Re* Carroll, 1 K. B. 317.

200. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

204. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

204a. *S. P. Ex p.* EMERSON (1895), 11 T. L. R. 218, D. C.

206. *Add. Annotation :*—**Consd.** Green *v.* Green, [1929] P. 101.

207. *Add. Annotations :*—**Consd.** Green *v.* Green, [1929] P. 101 ; *Re* Carroll, [1931] 1 K. B. 317.

208. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

210a. *S. P.* R. *v.* CLAYDON (1859), 34 L. T. O. S 46.

211. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

214. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

215. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

225. *Add. Annotations :*—**Consd.** *Re* Carroll, [1931] 1 K. B. 317. **Refd.** Green *v.* Green, [1929] P. 101.

226. *Add. Annotations :*—**Folld.** *Re* Carroll, [1931] 1 K. B. 317. **Refd.** Green *v.* Green, [1920] P. 101.

226a. —— ——.]—In determining the question of the custody of an illegitimate child, too young to have any views of its own, where the character of the mother is not attacked, it is the duty of the ct. to give effect to the wishes of the mother with regard to the religion & education of her child, because, according to the whole tenor of the authorities, unless the character of the mother is such that her wishes with regard to those matters may be disregarded, the mother has a legal right to require that her child shall be brought up in her religion in which the child has been baptised. So far as religious education is concerned, the authorities require the ct. to give the gravest consideration to the wishes of the parents ; in the case of an illegitimate child, of the mother. —*Re* CARROLL (J. M.), [1931] 1 K. B. 317 ; 100 L. J. K. B. 113 ; 144 L. T. 383 ; 95 J. P. 25 ; 47 T. L. R. 125 ; 75 Sol. Jo. 98 ; 29 L. G. R. 152, C. A.

227. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

228. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

241a. —— **Permanent maintenance.**]—(1) A judgment recognising the right of an illegitimate child to perpetual maintenance against the putative father & his estate, is contrary to public policy.

(2) The right to a posthumous affiliation order is a cause of action unknown in England. —*Re* MACARTNEY, MACFARLANE *v.* MACARTNEY, [1921] 1 Ch. 522 ; 90 L. J. Ch. 314 ; 124 L. T. 658 ; 65 Sol. Jo. 435.

Part VI.—Affiliation Proceedings and Kindred Proceedings under Colonial Statutes.

259. *Add. Annotation :*—**Distd.** Boyce *v.* Cox, [1922] 1 K. B. 149.

262. *Add. Annotation :*—**Distd.** Boyce *v.* Cox, [1922] 1 K. B. 149.

262a. —— —— **Under separation order.**]—An unmarried woman was delivered of a child. The putative father made payments for its maintenance within twelve months. Subse-

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PART V. SECT. 1.

198 i. *Father's right to custody—Father maintaining child.*]—*Held :* 1 & 2 Vict. c. 56, s. 53, imposed an obligation on the father to support & maintain an infant illegitimate son, which obligation the father was willing to fulfil, & had fulfilled until prevented by the mother, & the father was *primâ facie* entitled to the custody of the child. —*Re* GAVAGAN, [1922] 1 I. R. 148.—**IR.**

205 vi a. —— —— —— ——.]—WALTER *v.* CULBERTSON, [1921] S. C. 490 ; 58 Sc. L. R. 401.—**SCOT.**

205 ix a. —— —— —— ——.]—*Held :* a parent should not be deprived of the custody of an infant unless it is shown that the parent has abandoned or deserted it, or that his conduct has been such as to disentitle him to its custody, or that he has allowed it to be brought up by another person at that person's expense.—*Re* P., [1922] 1 W. W. R. 853 ; 63 D. L. R. 430 ; 17 Alta. L. R. 493.—**CAN.**

si. "*Neglected child*"—*Who is.*]—An illegitimate child whose mother is unable to maintain it is a "neglected child" within Children's Protection Act (Ontario), although cared & provided for by a third party.—*Re* S. (1919), 45 O. L. R. 46.—**CAN.**

sm. *Equal Guardianship of Infants Act, R. S. B. C.*, 1924 (*c.* 101)—*Not applicable to illegitimate child*].—*Re* S., *Re* EQUAL GUARDIANSHIP OF INFANTS ACT, [1927] 2 D. L. R. 91 ; [1927] 1 W. W. R. 441 ; 38 B. C. R. 285.—**CAN.**

PART V. SECT. 3.

227 ii. —— —— ——.]—In the case of the father of a legitimate child, if he has not waived or forfeited his right by conduct, the ct. will allow his wishes on religion to control the faith of the child, even after his death, but, in the case of the mother of an illegitimate child, will only do so so long as she is living, & the obligation to support the child remains. Where special facts nullify or negative the application of any rule of law or practice compelling the ct. to yield to the wishes of a parent as to the religion of a child, the ct. is bound solely to pay regard to the welfare of the child.—*Re* CONNOR, [1919] 1 I. R. 361.—**IR.**

PART V. SECT. 4.

p i. —— —— *Child born before Children of Unmarried Parents Act*, 1921 (*Ont.*) (*c.* 54).]—*Held :* the father is not liable to be prosecuted.—R. *v.* O'DONNELL (1923), 39 Can. Crim. Cas. 94.—**CAN.**

sn. *Municipality—Child over six—Child Welfare Act, C. A.*, 1924 *& 1927.*]—CARTIER RURAL MUNICIPALITY *v.* DIRECTOR OF CHILD WELFARE, [1931] 2 D. L. R. 845 ; 2 W. W. R. 7 ; 39 Man. L. R. 429.—**CAN.**

so. *Illegitimate Children's Act*, 1927—*Object of Act—Protection of child.*]—McLELLAN *v.* TURNER (1929), 1 M. P. R. 279.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 1.

253 ii. ——.]—Under Children of Unmarried Parents Act, 1921, the father of an illegitimate child is liable for the maintenance & care of the mother before, at, & after the birth of the child, notwithstanding that the child is still-born.—*Re* KIRKPATRICK & MOROUGHAN, [1927] 3 D. L. R. 546 ; 60 O. L. R. 495.—**CAN.**

sp. *Birth before passing of Children of Unmarried Parents Act*, 1923 (*c.* 50)

quently the mother married another man, who maintained the illegitimate child till the mother obtained a separation order on the ground of his cruelty. No provision was made in the order for maintenance of the illegitimate child:—*Held:* the mother was a "single woman" within 1872 Act, s. 3, the effect of a separation order being to confer on her the status of a *feme sole*.—BOYCE *v.* Cox, [1922] 1 K. B. 149; 91 L. J. K. B. 122; 126 L. T. 254; 85 J. P. 279; 38 T. L. R. 51; 66 Sol. Jo. 142; 20 L. G. R. 686; 27 Cox, C. C. 139, D. C.

263. *Annotations:*—For "R. *v.* Suffolk JJ. (1884), 12 J. P. 426" read "R. *v.* Suffolk JJ. (1848), 12 J. P. 426."

Add. Annotation:—**Refd.** Brown *v.* Leech (1924), 88 J. P. 208.

264. *Add. Annotation:*—**Refd.** Brown *v.* Leech (1924), 88 J. P. 208.

267. *Add. Citation:*—26 Cox, C. C. 129.

274. After this case add:—

—— —— **Marriage of person under sixteen.**]—*See* Age of Marriage Act, 1929 (c. 36), s. 2.

274a. —— **After death of father.**]—*Re* MACARTNEY, MACFARLANE *v.* MACARTNEY, No. 241a, *ante*.

278a. —— ——.]—(1) A woman who was with child went to stay at the house of her sister, who lived in a different petty sessional division from that in which the woman usually resided. The woman went home to be confined, & fourteen days after the birth of her child she went back to her sister & stayed with her for a month. Eight days after the commencement of this visit the woman applied to a justice of the peace acting for the petty sessional division of the place where her sister resided for a summons against the man alleged by her to be the father of her child:—*Held:* the woman resided in that petty sessional division within 1872 Act, s. 3, so as to give the justices of that petty sessional division jurisdiction to make an affiliation order against the putative father, as that sect. did not require that the application should be made to a justice of the peace acting for the petty sessional division of the place where the woman usually or permanently resided.

(2) Where an affiliation order has been made which is not appealed against, or where there has been an appeal to quarter sessions against the order & the appeal has been dismissed, & subsequently an application is made to justices to enforce the order by the issue of a distress warrant, the justices have no jurisdiction to enter into any inquiry as to the validity of the original order.—R. *v.* LANCASHIRE JJ., *Ex p.* TYRER, [1925] 1 K. B. 200; 94 L. J. K. B. 331; 132 L. T. 382; 89 J. P. 17; 41 T. L. R. 103; 69 Sol. Jo. 194; 23 L. G. R. 32; 27 Cox, C. C. 711, D. C.

280. *Add. Annotation:*—**Refd.** R. *v.* Lancashire JJ., *Ex p.* Tyrer (1924), 88 J. P. Jo. 701.

285. *Add. Annotation:*—**Refd.** Kenney *v.* Kenney (1925), 133 L. T. 400.

290. After this case add:—

—— ——.]—*See, now*, Bastardy Act, 1923 (c. 23), s. 1.

293. *Add. Annotation:*—**Apld.** Williams *v.* Letheren, [1919] 2 K. B. 262.

(*Alta.*).]—The above Act applies, where its conditions are complied with, to a child born before the Act was passed or came into operation.—ANDERTON *v.* SEROKA, [1925] 2 D. L. R. 488; [1925] 1 W. W. R. 1019; 21 Alta. L. R. 100; *affg.* [1925] 1 W. W. R. 543.—**CAN.**

sq. *Birth before passing of Child Welfare Act*, 1927.]—The liability which sect. 145 of Child Welfare Act, 1927, c. 60, imposes on the father of an illegitimate child to contribute to its maintenance extends to the maintenance of a child born before the Act came into force.—KARST *v.* BERLINSKI, [1930] 2 W. W. R. 417; 4 D. L. R. 884; 24 S. L. R. 534.—**CAN.**

sr. *Birth outside Alberta—Children of Unmarried Parents Act*, 1923 (c. 50) (*Alta.*) *applicable.*]—MUNRO *v.* LEEDHAM, [1925] 2 D. L. R. 604; [1925] 1 W. W. R. 1113; 21 Alta. L. R. 75.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 2.

st. *Application for preliminary expenses—Proof of pregnancy—Sufficiency.*]—On the hearing of an application for preliminary expenses under Child Welfare Act, 1923, the only evidence to prove that the woman was quick with child was a medical certificate which was in the following terms: "I have this day examined W. & find that she is pregnant. I estimate the period of gestation as about 4½ to 5 months":—*Held:* this did not amount to proof that she was quick with child as required by Child Welfare Act, 1923, s. 70, & the magistrate had no jurisdiction to make an order.—*Ex p.* FAHEY (1929), 29 S. R. N. S. W. 352; 46 N. S. W. W. N. 135.—**AUS.**

sv. *Mother must be unmarried.*]—The mother of an illegitimate child has the right to apply under Child Welfare Act, 1924, for a summons or warrant against the alleged father only if she is unmarried. Under the law of England as it stood on July 15, 1870, a husband is responsible for the maintenance of all the children of his wife born before her marriage to him, whether they were legitimate or illegitimate; and that *semble* is the law of Manitoba.—LANG *v.* DAVIS, [1930] 1 W. W. R. 1; 2 D. L. R. 571.—**CAN.**

sb. —— *Widow.*]—HAWRYSH *v.* REPA, [1932] 3 W. W. R. 427.—**CAN.**

PART VI. SECT. 2.

sw. *Who may lay complaint—Children of Unmarried Parents Act*, 1923 (c. 50) (*Alta.*).]—The deputy A.-G. of Alberta may authorise another person to act for the Superintendent of Neglected & Dependent Children in laying a complaint under the above Act. Such authorisation may be sufficiently given by telegram.—MUNRO *v.* LEEDHAM, [1925] 2 D. L. R. 604; [1925] 1 W. W. R. 1113; 21 Alta. L. R. 75.—**CAN.**

s i. —— ——.]—Where the affidavit filed by the mother stated that deft. was the father of the child, not "really the father" as required by Children of Unmarried Parents Act, s. 26:—*Held:* the omission of the word "really" was fatal, & the action should be dismissed.—LANCASTER *v.* VAUGHAN (No. 2) (1924), 33 B. C. R. 440.—**CAN.**

sx. *Right to apply for maintenance—Notwithstanding agreement between mother & father.*]—*Held:* such an agreement does not bar another person's right of action under Child Welfare Act, 1927.—KARST *v.* BERLINSKI, [1930] 2 W. W. R. 417; 4 D. L. R. 884; 24 S. L. R. 534.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.

299 i. *Amendment of summons—Where two possible fathers.*]—Where an information was laid under sect. 112 of Child Welfare Act, 1927, & the magistrate after hearing the evidence, instead of discharging the alleged putative father or making an order of filiation, complied with the request of counsel for complainant to "amend" the information so as to bring it within sect. 135 of the Act, relating to informations against possible fathers, & adjourned the hearing:—*Held:* what purported to be an amendment was really the taking of a new information & the alleged putative father was thereupon entitled to an order discharging him as putative father.—WESTFALL *v.* BONNER, [1931] 1 W. W. R. 124; 2 D. L. R. 779; 25 S. L. R. 182; *revsg.*, [1930] W. W. R. 525; 4 D. L. R. 584; 24 S. L. R. 583.—**CAN.**

PART VI. SECT. 4.

c i. *Before whom—Judge of any county or district court in Ontario.*]—*Held:* to be the effect of Children of Unmarried Parents Act, 1921, & Children of Unmarried Parents Act, R. S. O., 1927, as amended by 19 Geo. V., c. 23, s. 10.—*Re* GRAWBARGER & MOYER, [1930] 4 D. L. R. 651; 65 O. L. R. 491; *affg.*, [1930] 1 D. L. R. 856; 64 O. L. R. 630.—**CAN.**

g (p. 394) **i.** —— *Children of Unmarried Parents Act*, 1927, *s.* 21—*Whether retrospective.*]—A proceeding to obtain an affiliation order against A. as the father of an illegitimate child borne by W. on Oct. 13, 1925, was commenced under the provisions of Children of Unmarried Parents Act, 1921, & continued after Children of Unmarried Parents Act, 1927, came into force upon receiving the royal assent on Apr. 5, 1927. Some evidence was taken in June, 1927, & on June 29 an order was pronounced by a county ct. judge declaring A. to be the father of the child:—*Held:* above sect. which was different in terms from sect. 25 of the earlier statute, was

306a. *S. P.* DELOMBRE *v.* FOUQUAULT (1909), 44 L. Jo. 263.

318. *Add. Annotation :*—**Refd.** Thomas *v.* Jones, [1920] 2 K. B. 399.

321. *Add. Annotation :*—**Refd.** Thomas *v.* Jones, [1920] 2 K. B. 399.

322. *Add. Annotation :—Generally,* **Refd.** Thomas *v.* Jones, [1921] 1 K. B. 22.

323. *Add. Annotation :*—**Consd.** Thomas *v.* Jones, [1921] 1 K. B. 22.

325a. ——.]—Applt. was charged on complaint preferred by resp. with being the father of a bastard child of resp. Applt. was a farmer & a bachelor. Resp. was his housekeeper. On the morning of the birth when resp. was in labour, applt., who had no other female servant, lit a fire for her & took her some tea & brandy. He also sent for the doctor. After the birth he allowed her & the child to remain for five weeks & two days, until June 17, in his house. There was no evidence whether she was sufficiently recovered to have left at an earlier date. Applt. admitted that during those five weeks & two days he never asked resp. who was the father of her child. Resp. in her evidence said that during that time, though she did not fix the date except that it was before June 16, she asked applt. what he was going to do about the child, & he said that there was nothing for him to do but to pay. After resp. had left his house she wrote him a letter charging him with being the father of the child, & asking him if he meant to pay for its maintenance. To that letter he made no reply :—*Held :* the above facts did not afford any evidence corroborating the evidence of resp. in some material particular, as required by 1872 Act, s. 4.—THOMAS *v.* JONES, [1921] 1 K. B. 22 ; 90 L. J. K. B. 49 ; 124 L. T. 179 ; 85 J. P. 38 ; 36 T. L. R. 872, C. A.

330. After this case add :—

——.]—*See, now,* Poor Law Act, 1927 (c. 14) ; Bastardy (Witness Process) Act, 1929 (c. 38).

334. *Add. Annotation :*—**Refd.** Kenney *v.* Kenney (1925), 133 L. T. 400.

applicable to the proceeding though not in force when it was commenced. Above sect. providing that no order of affiliation shall be made upon the evidence of the mother of the child unless her evidence is corroborated by some other material evidence, is an enactment governing procedure only, & had effect from the time of its coming into force with respect to any order made thereafter, & whether or not the proceeding was commenced before or after the enactment came into force.—*Re* WICKS & ARMSTRONG, [1928] 2 D. L. R. 210 ; 49 Can. Crim. Cas. 281 ; 61 O. L. R. 667.—**CAN.**

317 xii. Add " *revsd. sub nom.* RIDLEY *v.* WHIPP, 22 C. L. R. 381."

317 xii a. —— —— ——.]—An isolated instance of familiarity in the presence of a third person & a statement by the putative father when taxed with the paternity of the child that other men besides him could be the father of it, do not amount to corroboration under Infant Life Protection Act, 1907, s. 19, of the evidence of complainant that deft. was the father of her child.—FROST *v.* ALLEN (1919), 15 Tas. L. R. 12.—**AUS.**

317 xxxii a. —— —— ——.]—In an action by P. against L. for lying-in & medical expenses & aliment for her illegitimate child, L. denied on oath P.'s allegation of seduction :—*Held :* the corroborative evidence in regard to seduction required must be evidence *aliunde* which was inconsistent with deft.'s innocence.—DU PLESSIS *v.* LEVY (1925), 46 N. L. R. 249.—**S. AF.**

317 xxxiii b. —— —— ——.]—A denial of a conversation testified to by independent evidence :—*Held :* an implied admission which vested the evidence with a quality it did not previously possess, & corroboration of the mother's evidence in a material particular.—PITTMAN *v.* BYRNE, [1926] S. A. S. R. 207.—**AUS.**

317 xxxiii c. —— —— ——.]—Evidence of a false denial by deft. is not corroboration, where such denial is not of facts establishing, or connected with, opportunities for intercourse at the critical time, & there is no evidence of opportunity, on the occasions referred to, which can cause the denial to give any particular colour to facts which have no suggestive significance.—MORRISON *v.* TAYLOR, [1927] V. L. R. 62 ; [1927] Argus L. R. 30.—**AUS.**

317 xxxiii d. —— ——.]—The requirement of corroboration in a bastardy case does not import the necessity for independent testimony which establishes the fact of intercourse at a time when the child might have been conceived. Proof of a guilty affection extending over or into the actual period may justify the inference of intercourse without any definite proof of opportunity during that period. It is desirable, if not essential, that the corroboration of the mother's evidence should extend to cover the date of birth of the child.—STANDFIELD *v.* BYRNE (1929), S. A. S. R. 352.—**AUS.**

317 xxxiii e. —— —— ——.]—R. *v.* MOORE (1927), 38 B. C. R. 425.—**CAN.**

317 xxxiii f. —— —— ——.]—OULLETTE (Sask.), [1928] 3 W. W. R. 587.—**CAN.**

317 xxxviii a. —— —— ——.]—On a complaint that deft. had left his illegitimate child without adequate means of support, evidence was given by the complainant that deft. was the father of the child. Letters which plf. swore she had received from deft., & which pointed to sexual intercourse at a relevant period, were admitted without objection. In one of these letters reference was made to the enclosure of £2. In another the writer acknowledged the receipt of letters from the complainant. Deft.'s solr. tendered letters written by the complainant to deft. in one of which reference was made to the receipt of money from deft. Complainant's solr. also rendered a letter written to him by deft.'s solr., in which it was admitted, though paternity was denied, that deft. had contributed towards the support of a prior illegitimate child of which the complainant was also the mother :—*Held :* there was sufficient corroboration of the mother's oath that deft. was the father of her child.—CALLAN *v.* HARTY, *Ex p.* HARTY (1928), 22 Q. J. P. 78.—**AUS.**

317 xlv a. —— —— ——.]—Where reliance is placed upon opportunity of intercourse, that evidence must be supplemented by evidence of circumstances which lead to the inference that it was probable that advantage would be taken of the opportunity.—RIDLEY *v.* WHIPP (1916), 22 C. L. R. 381.—**AUS.**

317 xlv b. —— —— ——.]—On the hearing of a complaint under Illegitimate Children's Act, R.S.M., 1913 (c. 92), the corroboration of the mother's evidence required to support a filiation order may be supplied, not by mere proof of opportunity of intercourse, but by such proof coupled with the fact that deft. denies circumstances with respect to it which are otherwise proved & innocent in themselves & thereby gives to the proved opportunity a different complexion from what it would have borne had such false statements not been made.—BARTLEY *v.* GALL, [1925] 3 D. L. R. 585 ; [1925] 2 W. W. R. 669 ; 35 Man. L. R. 200.—**CAN.**

317 xlv c. —— —— —— —— *No proof of receipt of letters.*]—SIEVEWRIGHT *v.* KRONEVITT, [1932] 1 W. W. R. 837 ; 2 D. L. R. 809.—**CAN.**

317 xlv d. —— —— —— *Failure of defendant to call evidence or give evidence himself.*]—*Held :* deft.'s conduct did not afford corroboration of plf.'s case.—FADDES *v.* M'NEISH, [1923] S. C. 443.—**SCOT.**

317. xlv e. —— —— —— *conduct prior to possible time of conception.*]—In affiliation cases evidence is admissible of misconduct by deft. with the person on whose behalf the order is sought previous to the period when the conception must have occurred.—MUNRO *v.* KRAUSE, [1931] 2 W. W. R. 685 ; 4 D. L. R. 120 ; 56 Can. C. C. 311 ; 25 Alta. L. R. 486.—**CAN.**

317 xlix a. —— —— ——.]—In an action of affiliation it was proved that pursuer had sexual intercourse with the defender between Dec. 7 & Dec. 14, & that she had previously, between Nov. 7 & Nov. 20, had sexual intercourse with another man. She menstruated normally from Dec. 1 to Dec. 6. The child was born on Sept. 4, a date consistent with the paternity of either man. The medical evidence established that menstruation after conception was very uncommon, but not impossible :—*Held :* the pursuer had sufficiently instructed that defender was the father of her child.—SINCLAIR *v.* RANKIN, [1921] S. C. 933 ; 58 Sc. L. R. 624.—**SCOT.**

317 xlix b. —— —— ——.]—Mere promiscuity of sexual intercourse without evidence that such intercourse takes place as a means of gain does not justify a finding that a woman is a common prostitute.—NICHOLLE *v.* PADDICK, [1927] S. A. S. R. 595.—**AUS.**

PART VI. SECT. 5.

g 1. —— *No evidence of means & expenses.*]—An order made under Children of Unmarried Parents Act, 1923 (c. 50) (Alta.), fixing amounts to be paid by the putative father set aside, where it was made without

Citation :—2 L. M. & P. 130.

358a. —— ——.]—An order of bastardy stated to be made upon the oath of the wife, as otherwise, is good; for it will be presumed that the non-access of the husband was proved by competent witnesses on oath other than the wife; or if proved by her also, that the judgment of the justices was founded on the other proof.—R. *v.* LUFFE (1807), 8 East, 193; 103 E. R. 316.

Annotations :—**Refd.** R. *v.* Kea (1809), 11 East, 132; R. *v.* Hartington (1816), 4 M. & S. 559; Head *v.* Head (1823), 1 Sim. & St. 150; R. *v.* Sourton (1836), 2 Har. & W. 209; Morris *v.* Davies (1836–7), 5 Cl. & Fin. 163; R. *v.* King's Lynn Recorder (1846), 3 Dow. & L. 725; R. *v.* Shipperbottom (1847), 10 Q. B. 514; Ormerod *v.* Chadwick (1847), 16 M. & W. 367; R. *v.* Collingwood (1848), 12 Q. B. 681; R. *v.* Grafton (1848), 3 New Mag. Cas. 2; R. *v.* Pilkington (1853), 2 E. & B. 546; Legge *v.* Edmonds (1855), 25 L. J. Ch. 125; *Ex p.* Baker (1857), 7 E. & B. 697; Yates *v.* Chippindale (1862), 11 C. B. N. S. 512; Turnock *v.* Turnock & Turnock (1867), 36 L. J. P. & M. 85; *Re* Parson's Trust (1868), 18 L. T. 704; R. *v.* Suffolk Justices (1848), 12 J. P. 426; Jones *v.* Davies, [1901] 1 K. B. 118; Webb *v.* Murrel (1904), 68 J. P. 104; Brown *v.* Leech (1924), 94 L. J. K. B. 48; Russell *v.* Russell, [1924] A. C. 687.

366a. Variation of order—Adjudication of paternity —"Fresh evidence."]—On the application of resp., justices made an order adjudging that applt. was the father of her illegitimate child, & ordered him to make her a periodical payment. On a subsequent application by applt. under Criminal Justice Administration Act, 1914 (c. 58), s. 30 (3), to revoke the whole order, he tendered fresh evidence, which went only to show that he was not the father of the child. The justices refused to hear it, holding that they had no power to deal with that part of the order which adjudged the paternity:—*Held :* (1) the justices were right; (2) (AVORY & SHEARMAN, JJ.) there being nothing to show that the evidence tendered was of facts which had occurred since the original hearing, or had come to the knowledge of applt. since the hearing, that evidence was not "fresh evidence" within sect. 30 (3).—COLCHESTER *v.* PECK, [1926] 2 K. B. 366; 95 L. J. K. B. 1038; 135 L. T. 32; 90 J. P. 130; 42 T. L. R. 535; 28 Cox, C. C. 225, D. C.

Annotation :—As to (1) **Foll.** R. *v.* Copestake, *Ex p.* Wilkinson (1926), 90 J. P. 191.

366b. —— —— -.]—(1) Criminal Justice Administration Act, 1914 (c. 38), s. 30 (3), while empowering justices to deal generally with an existing bastardy order, does not enable them to revoke that part of the order which consists of the adjudication of paternity.

(2) "Fresh evidence" must be of such a character that not merely is it relevant, but of such importance that it would have affected the judgment of any one if they had had the opportunity of hearing it at the original hearing of the case.—R. *v.* COPESTAKE, *Ex p.* WILKINSON, [1927] 1 K. B. 468, 96 L. J. K. B. 65; 136 L. T. 100; 90 J. P. 191; 24 L. G. R. 562, C. A.

367. *Add. Annotation :*—**Refd.** Grocock *v.* Grocock, [1920] 1 K. B. 1.

367a. —— **Justices' discretion.**]—Under 1872 Act, s. 4, the magistrate has a discretion as to whether he will grant or refuse an order for payment of arrears due under an affiliation order, but he has no discretion to grant an order for payment of a portion only of the arrears enforceable by law.—GROCOCK *v.* GROCOCK, [1920] 1 K. B. 1; 88 L. J. K. B. 1068; 121 L. T. 466; 83 J. P. 185; 35 T. L. R. 509; 63 Sol. Jo. 627; 17 L. G. R. 623; 26 Cox, C. C. 485, D. C.

Annotation :—**Refd.** Colchester *v.* Peck, [1926] 2 K. B. 366.

368. *Add. Annotation :*—**Refd.** Horsfield *v.* Brown, [1932] 1 K. B. 355.

371. *Add. Annotation :*—**Consd.** Horsfield *v.* Brown, [1932] 1 K. B. 355.

372a. —— **Application for warrant—Jurisdiction of justices to question validity of affiliation order.**]—R. *v.* LANCASHIRE JJ., *Ex p.* TYRER, No. 278a, *ante*.

375. *Add. Annotation :*—**Consd.** Firman *v.* Royal, [1925] 1 K. B. 681.

379. *Add. Annotations :*—*As to* (1) **Apld.** Grocock *v.* Grocock, [1920] 1 K. B. 1. **Expld.** Colchester *v.* Peck, [1926] 2 K. B. 366.

384. *Add. Citation :*—*sub nom.* R. *v.* SMITH, 55 L. J. M. C. 147.

395. *Add. Annotation :*—**Refd.** Marsland *v.* Taggart, [1928] 2 K. B. 447.

398. After this case add :—

—— —— —— ——.]—*See, now,* Summary Jurisdiction Act, 1879 (c. 49), ss. 35, 47.

evidence being adduced as to his means, the expenses incurred by the mother, or the respective abilities of the parents to provide for the child. —ANDERTON *v.* SEROKA, [1925] 2 D. L. R. 912; [1925] 2 W. W. R. 433; 21 Alta. L. R. 362.—**CAN.**

g ii. —— *Variation of order.*]—Where the mother craved an increase because of the cost of living due to the war:—*Held :* the amount of inlying expenses be unaltered, but decree granted for 4*s.* 6*d.* per week, in name of aliment, permission being granted to deft. to apply to the ct. should a change of circumstances arise.—FORBES *v.* MATTHEW, [1919] S. C. 242; 56 Sc. L. R. 137.—**SCOT.**

g iii. ——.]—The true criterion in Scotland is, not the rank or financial position of the parties, but the support beyond want which must be accorded to an illegitimate child.—FRASER *v.* CAMPBELL, [1927] S. C. 589.—**SCOT.**

PART VI. SECT. 6.

st. *Imprisonment—Failure to pay aliment—Offer by father to maintain child in his home.*]—In an application under Civil Imprisonment (Scotland) Act, 1882, s. 4, by the mother of two illegitimate daughters for warrant to imprison the father, in respect of his failure to obtemper a charge proceeding upon a decree for payment of aliment until the children respectively attained fourteen years of age, the Sheriff, notwithstanding an offer by the father, a married man, to maintain the children, who were then over ten years of age, in his own home, granted warrant of imprisonment. The father, having sought to suspend the charge & warrant, the mother contended that his offer of maintenance should not be entertained, in respect that, under the decree for aliment which was still current, his obligation could only be discharged by money payments:—*Held :* (1) a father's option at common law to maintain his illegitimate child in his home, if a boy after the age of seven, & if a girl after the age of ten, was not excluded by the fact that at the date of such an offer of maintenance a decree against him for aliment was still current; (2) in view of the *bona fide* offer of maintenance here made, the complainer was not a person wilfully refusing to pay aliment within Civil Imprisonment (Scotland) Act, 1882, s. 4, & charge & warrant suspended.—MACDONALD *v.* DENOON, [1929] S. C. 172.—**SCOT.**

sw. —— *Effect.*]—A filiation order under Child Welfare Act, C. A., 1924, c. 30, provided that, in the event of the accused failing to give the bond or making the cash payment required of him by the order, he should be committed to gaol for 12 months. On appealing from the order the accused, not wishing to go to gaol pending the hearing of the appeal, gave the bond provided for by sect. 68 (*b*) of said Act. His appeal was dismissed; &, none of the directions of the filiation order having been complied with, his bondsmen delivered him into custody, & he was committed to gaol & served the prescribed term. An action was then brought by the mother on the bond given in respect to the appeal:—*Held :* the serving of the term of imprisonment did not satisfy his obligations on the filiation order & pltf. was held entitled to judgment; but she could not recover more than the amount presently in default under said order.—BOYAK *v.* KOBYLANSKI, [1929] 1 D. L. R. 867; 1 W. W. R. 364; 38 Man. L. R. 89.—**CAN.**

403a. —— —— **New evidence.**]—Complainant in an affiliation summons was a married woman who was not living apart from her husband at the material date, & an order on the evidence & on his own admission was made against one M. After the time for appealing against this order had expired, the rule in the present case was obtained on an affidavit by complainant's husband that he had cohabited with complainant at the material date & could have been the father of the child:—*Held:* the question of access or non-access was a question of fact for the justices, from which they were entitled to find that M. was the child's father; the ct. would not, in support of a rule for a *certiorari*, rehear a case upon further evidence on a disputed question of fact, & perform the functions of quarter sessions, to which, owing to lapse of time, an appeal could not be made.—R. *v.* MARKHAM, *Ex p.* MARSH (1923), 67 Sol. Jo. 518.

403b. —— —— **Sufficiency of corroboration.**]—On a bastardy summons justices, having heard the evidence of the mother & such other evidence as was produced by her & other evidence tendered by the person alleged to be the father, made an order in these terms: "On hearing the complaint & the evidence of complainant & other evidence satisfactorily corroborating in a material particular her evidence & also the evidence tendered by deft., & being satisfied of the truth of the complaint, it is adjudged that deft. is the putative father of the child":—*Held:* the question whether the evidence of the mother was corroborated in some material particular by other evidence to the satisfaction of the justices, was a matter to be decided by the justices &, even if the other evidence did not corroborate the evidence of the mother, the justices had acted within their jurisdiction, & a writ of *certiorari* should not issue to quash their order.—R. *v.* LINCOLNSHIRE JJ., *Ex p.* BRETT, [1926] 2 K. B. 192; 95 L. J. K. B. 827; 135 L. T. 141; 90 J. P. 149; 28 Cox, C. C. 178, C. A.

PART VI. SECT. 7, SUB-SECT. 2.

400 i. —— —— *Irregularity or illegality in proceedings.*]—Illegitimate Children's Act, R. S. S. 1920 (c. 156), s. 10, gives the ct. power at the instance of a putative father to rescind or vary an order. He thus has a means of relief, & *certiorari* may in the discretion of the superior ct. be refused.—DWYER *v.* BULBECK, [1923] 1 D. L. R. 597; 39 Can. Crim. Cas. 162; 16 Sask. L. R. 13; [1922] 3 W. W. R. 391.—**CAN.**

r i. —— —— *Refusal to vary or rescind order.*]—The magistrate has no discretion to refuse to hear an application, but after hearing it he may refuse to rescind or vary his order. If the magistrate refuses to hear the application, appt. is entitled to a prerogative writ of *mandamus* to compel him to do so.—WHEATLEY *v.* HOWARD, [1923] 3 D. L. R. 288; 2 W. W. R. 942.—**CAN.**

y i. —— ——.]—Notice of an appeal from an order of filiation made under Child Welfare Act, C. A., 1924, c. 30, was given within 10 days of the making & date of the formal order. The judge had three days previously, & after the hearing, endorsed on the information an entry which included the words, "Remanded until Friday," "Filiation order granted." At the adjourned sitting he made another such entry which repeated & supplemented the previous entry, & he then signed & dated the formal order. On the appeal, the county ct. judge held that said first entry constituted the order provided for in sect. 750 (*b*) of the Criminal Code, made applicable by sect. 70 of the Child Welfare Act, & sustained the preliminary objection that the notice of appeal had not been filed within 10 days "after the conviction or order." An application for *mandamus* was dismissed. On appeal therefrom:—*Held:* the appeal should be allowed & a *mandamus* issued as prayed for.—DANIELSON *v.* THORDARSON, [1930] 3 W. W. R. 104; [1931] 1 D. L. R. 199; 39 Man. L. R. 182.—**CAN.**

y ii. —— *Grounds for allowing appeal.*]—On appeal to a county ct. judge from an order of filiation made against deft. in a bastardy case by a stipendiary magistrate, the judge, after rehearing the case, disbelieved the evidence of the mother, who was contradicted in important particulars by independent witnesses, & contradicted her evidence before the magistrate, as to the paternity of the child:—*Held:* the appeal from the county ct. judge must be dismissed.—MULGRAVE *v.* CLANCEY (1925), 58 N. S. R. 105.—**CAN.**

y iii. —— *At what place.*]—In a complaint under Children of Unmarried Parents Act, R. S. B. C., 1924 (c. 34), s. 7 (1), "the cause" of the complaint within Summary Convictions Act, R. S. B. C., 1924 (c. 245), s. 77, is the seduction & not the birth of the child; & an appeal from the dismissal of the complaint is properly taken to the county ct. nearest the place where the seduction occurred.—FERGUSON *v.* TAYLOR (B. C.), [1926] 3 W. W. R. 203; 46 Can. Crim. Cas. 149.—**CAN.**

y iv. —— *Not Court of Appeal—From Juvenile Court judge under Child Welfare Act.*]—*Re* KWASNICKI & LAMONT, [1932] 2 W. W. R. 428; 3 D. L. R. 270.—**CAN.**

d i. —— *Under Illegitimate Children's Act, R. S. S., 1920 (c. 156).*]—An order made by a magistrate under s. 5 of the above Act may be varied by him on the application of either of the parties under s. 9, & may be rescinded or varied by him on the application of the putative father under s. 10.—WHEATLEY *v.* HOWARD, [1923] 3 D. L. R. 288; 2 W. W. R. 942.—**CAN.**

sx. *Compliance with order—Whether condition precedent to appeal.*]—It is not a condition precedent to the bringing of an appeal by a deft. from an order under Children of Unmarried Parents Act, 1924 (c. 34), as amended, that proof be furnished that he has complied with the terms of the order.—HYNES *v.* ALTON (B. C.), [1928] 3 W. W. R. 261.—**CAN.**

sy. *To Supreme Court—What court may consider.*]—In an appeal on a point of law under Destitute Persons Act, 1910, from an affiliation order, on the ground that complainant's evidence was not corroborated in a material particular as required by sect. 10 of that Act, the magistrate's notes of evidence should be incorporated in & form part of the case on appeal, & the discretion to admit evidence under sect. 68 of the Act not strictly legally admissible belongs solely to the magistrate & is not controllable by the Supreme Ct. The latter ct., however, is entitled to have regard to the nature of such evidence, once admitted, when considering whether the evidence submitted as corroborative may be regarded as such, its proper function on an appeal on a point of law being to determine whether there was evidence which was corroborative; & if there was such evidence, it is not for the Appellate Ct. but for the magistrate to determine whether or not the evidence satisfied him. *Qu.:* whether the Appellate Ct. on appeal on a point of law is entitled to treat as corroborative evidence not relied on by the magistrate as corroborative.—ANSON *v.* PARKER, [1928] N. Z. L. R. 490.—**N.Z.**

sz. *Right to serve second notice of appeal—Prior appeal dismissed for lack of proof of jurisdiction.*]—Applt. appealed from a conviction under Children of Unmarried Parents Act, R. S. B. C., 1924, c. 34. A prior appeal was dismissed because of lack of proof of a point going to the jurisdiction of the ct.:—*Held:* the time allowed by the Act for appealing not having expired, applt. had a right to serve another notice of appeal & properly prove his right to appeal.—HYNES *v.* ALTON (B. C.), [1929] 1 W. W. R. 863; 52 Can. C. C. 333.—**CAN.**

BANKRUPTCY AND INSOLVENCY.

Part I.—Bankruptcy Jurisdiction.

4. *Add. Annotation :*—**Refd.** *Re* Lister, *Ex p.* Bradford Overseers & Bradford Corpn., [1926] Ch. 149.

15. *Add. Annotation :*—**Refd.** Bundy *v.* Motor Cab Owner Drivers' Assocn. (1930), 143 L. T. 334.

27. *Add. Annotation :*—**Refd.** Bowling *v.* Camp (1922), 128 L. T. 342.

40a. —— —— **How derived.**]—*Re* PRIOR, *Ex p.* PRIOR, No. 1548a, *post.*

60. *Add. Annotations :* — **Consd.** Scranton's Trustee *v.* Pearse, [1922] 2 Ch. 87. **Refd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835 ; *Re* London County Commercial Reinsurance Office, [1922] 2 Ch. 67 ; *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814 ; *Re* Wait, [1927] 1 Ch. 606.

69. *Add. Annotation :*—**Refd.** R. *v.* Customs & Excise Comrs., [1928], A. C. 402.

79a. —— —— **Dependent on intention.**]—*Ex p.* BLACKMORE (1801), 6 Ves. 3 ; 31 E. R. 909, L. C.

Annotation :—**Refd.** *Re* Bryant, *Ex p.* Paterson (1813), 1 Rose, 402.

79b. **Actor.**]—It is certain that no actor, nor any person exhibiting gymnastic feats in public, nor even the proprietor of a theatre, would be a trader within the meaning of the Bkpcy. Act (KELLY, C.B.).—SPEAK *v.* POWELL (1873), L. R. 9 Exch. 25 ; 43 L. J. M. C. 19 ; 29 L. T. 434.

160a. —— —— ——.]—A surgeon dispensing his own medicines :—*Held :* a trader within the bkpt. law.—NICHOLSON *v.* COOPER (1858), 31 L. T. O. S. 184.

177. *Add. Annotation :*—**Refd.** Bonham *v.* Maycock (1928), 138 L. T. 736.

190a. Theatrical proprietor.]—SPEAK *v.* POWELL, No. 79b, *ante.*

218a. *S. P.* R. *v.* COLE (1698), 12 Mod. Rep. 243 ; 1 Ld. Raym. 443 ; Holt, K. B. 360 ; 88 E. R. 1293.

Annotation :—**Refd.** Belton *v.* Hodges (1832), 9 Bing. 365.

218b. *S. P. Re* COOKE, *Ex p.* ADAM (1813), as reported in 1 Ves. & B. 493 ; 2 Rose, 36 ; 35 E. R. 191.

Annotation :—**Refd.** *Re* Smedley (1864), 10 L. T. 432.

223a. —— ——.]—A person who buys goods under age cannot, when he comes of age, be bkpt. in respect of them.—WHITLOCK'S CASE (1725), Cas. *temp.* King, 46 ; 25 E. R. 215.

224. *Add. Annotation :*—**Apld.** *Re* L. A. & B. F. M., Official Receiver *v.* The Debtors (1926), 95 L. J. Ch. 258.

226. *Add. Annotation :*—**Apld.** *Re* L. A. & B. F. M., Official Receiver *v.* The Debtors (1926), 95 L. J. Ch. 258.

226a. ——.]—(1) In the absence of debts actually enforceable against them infants cannot be made bkpt., even on their own petition. (2) *Qu. :* whether if a receiving order & order of adjudication are made in such a case the official receiver can deduct his costs of obtaining the rescission & annulment of those orders out of the assets.—*Re* A. & M., [1926] Ch. 274 ; 70 Sol. Jo. 607 ; *sub nom. Re* L. A. & B. F. M., *Ex p.* OFFICIAL RECEIVER *v.* THE DEBTORS, 95 L. J. Ch. 258 ; 134 L. T. 539 ; [1926] B. & C. R. 19, D. C.

230. *Add. Annotations :*—**Apld.** *Re* A. & M., [1926] Ch. 274. **Refd.** Hawkins & Sunderland *v.* Duché (1921), 90 L. J. K. B. 913 ; *Re* Debtors, *Ex p.* Debtor (1922), 92 L. J. Ch. 120.

235. *Add. Annotation :*—**Apld.** *Re* L. A. & B. F. M., Official Receiver *v.* The Debtors (1926), 95 L. J. Ch. 258.

263. For "*Held :* she was subject . . . under 1883 Act, s. 24" read, "*Held :* such power of appointment was not separate property within Married Women's Property Act, 1882,

PART I. SECT 1.

4 ii. ——.]—IMPERIAL BANK OF CANADA *v.* BARBER, [1921] 20 O. W. N. 282 ; 59 D. L. R. 523 ; 1 C. B. R. 485. —**CAN.**

20 iii. —— ——.]—Bkpcy. Act applies to debts & contracts, including leases, existing when it came into force.—*Re* MCKAY (1921), 51 O. L. R. 86 ; 2 C. B. R. 59 ; 64 D. L. R. 699.—**CAN.**

PART I. SECT. 2.

40 i. *Registrar—General powers & jurisdiction.*]—The registrar was held to have no jurisdiction to assess the damages sustained by a firm of traders by reason of an interim receiving order made upon the petition of a co. & afterwards rescinded. While the registrar has jurisdiction under Bkpcy. Act, s. 159 (*f*), to make any order or exercise any jurisdiction which by any rule in that behalf is prescribed as proper to be made or exercised in chambers by the registrar, his jurisdiction is confined solely to those cases, & does not extend to cases that are by the rules required to be heard by a judge.—*Re* STUART & SUTTERBY, [1930] 2 D. L. R. 689 ; 65 O. L. R. 154 ; 11 C. B. R. 279 ; *affd.*, [1931] 1 D. L. R. 754 ; 66 O. L. R. 427 ; 12 C. B. R. 267.—**CAN.**

40 ii. —— ——.]—A summary motion was made by the trustee of a bkpt.'s estate for an order declaring that he was entitled, as against two claimants, to the proceeds of the sale of certain goods. The motion was made returnable before the judge in bkpcy. ; but the registrar, assuming that he had the jurisdiction of a judge in bkpcy., without any authority from the judge, & without the consent of the parties, assumed to hear & determine the application, & made a declaratory order :—*Held :* the registrar had not the jurisdiction which he assumed to exercise.—*Re* BARTRAM, [1930] 3 D. L. R. 146 ; 65 O. L. R. 182 ; 11 C. B. R. 345.—**CAN.**

PART I. SECT. 3, SUB-SECT. 1.

121 ii. —— —— *Debts of former business unpaid.*]—A person who ceases to carry on his business & becomes a farmer is not a person "engaged solely in farming," etc., so long as his debts in connection with his former business remain unpaid. He must be deemed to be still carrying on that business until all the debts are paid, & he is not protected by Bkpcy. Act, s. 8 (1).—*Re* GARTRELL, *Ex p.* KEARNS, [1923] 3 D. L. R. 406 ; [1923] 2 W. W. R. 855 ; 4 C. B. R. 103.—**CAN.**

121 iii. —— —— *Also dealing in wood.*]—PETIT *v.* GIRARD, [1931] 2 D. L. R. 991.—**CAN.**

PART I. SECT. 3, SUB-SECT. 6.

266 i. *Judgment debt—Bankruptcy Act, 1908, s. 26 (f).*]—A bkpcy. notice under the above sub-sect. cannot be issued against a married woman against whom a creditor has recovered a judgment.—*Re* WALKER, *Ex p.* HINKEY, [1927] N. Z. L. R. 81.—**N.Z.**

s. 1 (5), & she could not be directed to appoint to her trustee in bkpcy. under 1883 Act, s. 24."

Add. Annotations :—**Apld.** *Re* Mathieson, [1927] 1 Ch. 283. **Refd.** *Re* Armstrong, *Ex p.* Boyd (1888), 21 Q. B. D. 264.

267. *Add. Annotations :*—*As to* (1) **Apld.** *Re* Debtor (No. 3 of 1926) (1926), 135 L. T. 689. **Refd.** South Behar Ry. *v.* I. R. Comrs., [1925] A. C. 476.

274a. **What is—Professional artiste producing scenæ.**]—The debtor, a married woman professional singer, had up to May, 1925, been engaged in musical comedy, but had subsequently produced scenæ & vocal acts at various music halls. In the production of these scenæ she had required certain accessories in the way of dresses, etc., in respect of which she had incurred liabilities. On the hearing of a petition against her for a receiving order a number of contracts with music-hall proprietors were put in evidence, from which it appeared that in consideration of a fixed sum per week she undertook to sing & to engage & pay one or more singers to assist her in the production of her scenæ, & also to provide & pay an accompanist. The registrar dismissed the petition on the grounds that Bkpcy. Act, 1914 (c. 59), s. 125, did not include profession or occupation under the term " business " ; that " trade " & " business " were *ejusdem generis* & intended to bring within the scope of the Act women who were actually trading or carrying on a business in the nature of a trade, & that the fact that the debtor was assisted by another singer & a pianist did not make her any the less a professional artist than when she acted on the stage. On appeal :—*Held :* the debtor was carrying on a continuous occupation for the purpose of making profits by entering into contracts under which she bound herself to produce scenæ on the stage & to provide the necessary accessories in the way of assistant singers & accompanist, & that in those circumstances she could properly be described as carrying on a business within sect. 125.—*Re* A DEBTOR (No. 3 of 1926), [1927] 1 Ch. 97; 135 L. T. 689; [1926] B. & C. R. 86, C. A.

Annotation :—**Refd.** *Re* Bankruptcy Notice (No. 292 of 1928) (1928), 44 T. L. R. 533.

274b. —— —— **Engaging in speculative transactions.**]—A series of speculative transactions by a married woman, if they involve the making of genuine commercial contracts extending over a long period of time, may amount to carrying on a " business " within 1914 Act, s. 125 (1), so as to make her subject to the bkpcy. laws.—*Re* BANKRUPTCY NOTICE (No. 292 OF 1928) (1928), 44 T. L. R. 533, C. A.

276. *Add. Annotation :*—**Refd.** Engelke *v.* Musmann, [1928] A. C. 433.

285. *Add. Annotation :*—**Consd.** Food Controller *v.* Cork, [1923] A. C. 647.

286. *Add. Annotations :*—**Consd.** *Re* Webb (Smithfield, London), [1922] 2 Ch. 369. **Refd.** A.-G. *v.* De Keyser's Royal Hotel, [1920] A. C. 508; A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

312. *Add. Annotation :*—**Consd.** *Re* Stanton, Hogg *v.* Maule (1927), 44 T. L. R. 118.

331. *Add. Annotation :*—**Refd.** Hawkins & Sunderland *v.* Duché (1921), 90 L. J. K. B. 913.

333. *Add. Annotation :* — **Apld.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

267 i. *Carrying on business.*]—It is only in cases where a married woman carries on a trade or business that she is subject to Bkpcy. Act, 1919 (c. 36) (Can.).—*Re* STONE, [1925] 4 D. L. R. 518.—**CAN.**

267 ii. —— *In partnership with husband.*]—*Held :* debtor was not carrying on business separately from her husband, & her adjudication in bkpcy. was irregular.—*Re* SCOTT (1924), 20 Tas. L. R. 43.—**AUS.**

267 iii. —— *Debts unpaid after sale of business—Receiving order may be made.*]—A married woman carried on a trade separately from her husband. Having incurred debts, & being unable to meet her creditors, on Feb. 9, 1929, she filed a petition for arrangement & was granted the protection of the ct. on Mar. 1. She was unable to carry out her proposal to pay twenty shillings in the pound, & eventually on July 26, her petition was dismissed, & thereby an act of bankruptcy was committed. On Oct. 30 she was adjudicated a bkpt. on the petition of two of her creditors, wherein she was described as a married woman carrying on a trade separately from her husband, in respect of debts undischarged at the date of the petition. She applied to have this adjudication set aside on the ground that she was not such a trader on the date of adjudication. She stated that during the progress of the arrangement matter she found that she was unable to get any further credit & closed down & went out of trade on Mar. 23, & had not since carried on any trade :—*Held :* there was ample evidence that the debts in respect of which adjudication was sought were trade debts for goods supplied incurred by her while she was carrying on a trade separately from her husband, & the fact of her having trade debts undischarged at the date of the petition was evidence from which it could be inferred that she was still carrying on her trade.—*Re* SOMERS, [1930] I. R. 1.—**IR.**

PART I. SECT. 3, SUB-SECT. 7.

sa. *Assignee of debt—Assigned by debtor with consent of creditor.*]—*Re* STAR FLOORING CO., [1924] 3 D. L. R. 269; 4 C. B. R. 679.—**CAN.**

PART I. SECT. 4, SUB-SECT. 1.

ci. *To deal with prosecution of fraudulent debtors.*]—Under Bkpcy. Act, s. 93, the prosecution may be ordered & proceeded with in the ordinary way before the existing criminal cts. It does not require the judge in bkpcy. to hear evidence &, if he thinks fit, to commit accused to stand trial although under sect. 95 the judge in bkpcy. has a right to do so.—R. *v.* GOLDHAMMER, [1924] 3 D. L. R. 1007; Q. R. 36 K. B. 507; 5 C. B. R. 127.—**CAN.**

sb. *Under Bankruptcy Act,* 1919 (*c.* 36)—*To order stay of execution—Until receiving order dealt with.*]—*Held :* the ct. had such power.—*Re* THOMPSON POWDER CO., *Re* WINDING-UP ACT, [1923] 1 D. L. R. 496; 3 C. B. R. 481.—**CAN.**

sc. *Under Bankruptcy Act, s.* 63.]—The jurisdiction conferred by Bkpcy. Act, s. 63, is confined to the administration of the bkpt.'s estate, & does not extend to persons or matters outside the Act.

The trustee in bkpcy. of R.'s estate moved for an order declaring that T. was a general partner of R. or that T. had wrongfully obtained from the firm of R. Bros. of which R. had been a member a certain sum of money :—*Held :* the trustee did not represent the firm of R. Bros., the authorised assignment having been executed by R. only, & the Bkpcy. Ct. had no jurisdiction to try the questions raised by the trustee's motion.—*Re* REYNOLDS, [1928] 3 D. L. R. 562; 62 O. L. R. 360; 10 C. B. R. 127.—**CAN.**

sd. *To order repayment of money—Paid by assignee to creditor—Mistake of law.*]—*Held :* jurisdiction could not be excluded by a plea of payment by mistake of law.—DEMPSEY *v.* PIPER, —— N. Z. L. R. 753.—**N.Z.**

PART I. SECT. 4, SUB-SECT. 2.

se. —— *Superior Court.*]—The Superior Ct. sitting in any provincial judicial district has jurisdiction to hear a petition in bkpcy. served upon a debtor residing & doing business in any part of the province.—BOILY *v.* MCNULTY, [1928] 1 D. L. R. 926; [1928] S. C. R. 182; 8 C. B. R. 565.—**CAN.**

PART I. SECT. 4, SUB-SECT. 4.

348 ii. —— —— ——.]—The jurisdiction of the Bkpcy. Ct. is confined to the administration by the trustee of the bkpt.'s estate & does not extend to persons or matters outside the Bkpcy. Act; therefore a claim by the trustee with respect to the estate against a stranger to the estate is not subject to the Bkpcy. Ct.'s jurisdiction.—STOBIE FORLONG ASSETS, LTD. *v.* BECK, [1932] 1 W. W. R. 822.—**CAN.**

363 i. —— *With intent to defeat creditors.*]—If debtor before his bkpcy. pays money fraudulently, with a view to concealing from his creditors his

388. *Add. Annotation :*—**Apld.** *Re* A Debtor, [1922] 2 Ch. 470.

389. *Add. Annotation :*—**Consd.** *Re* A Debtor, [1922] 2 Ch. 470.

389a. —— —— —— ——.]—A debtor cannot avoid the operation of a bkpcy. notice, served upon him in England, by himself during the currency of the notice petitioning for & obtaining an award of sequestration of his estate under Bkpcy. (Scotland) Act, 1913 (c. 20). A receiving order made in pursuance of the bkpcy. notice in England will, therefore, be valid, & cannot be set aside on the ground of the sequestration.—*Re* A DEBTOR (No. 199 OF 1922), [1922] 2 Ch. 470; 91 L. J. Ch. 577; 127 L. T. 832; 38 T. L. R. 683; 66 Sol. Jo. 521; [1922] B. & C. R. 151, C. A.

—— —— —— —— ——.]—*Re* A (No. 737 OF 1928). No. 957a, *post.*

Part II.—Acts of Bankruptcy.

409. *Add. Annotation :*—**Consd.** Lipton *v.* Bell, [1924] 1 K. B. 701.

410. *Add. Annotation :*—**Consd.** Lipton *v.* Bell, [1924] 1 K. B. 701.

421. *Add. Annotation :*—**Refd.** Lipton *v.* Bell, [1924] 1 K. B. 701.

427. *Add. Annotation :*—**Consd.** *Re* Simms, [1930] 2 Ch. 22.

428. *Add. Citations :*—*sub nom. Re* PHILLIPS, *Ex p.* PHILLIPS, 69 L. J. Q. B. 604; 82 L. T. 691; 44 Sol. Jo. 469; 7 Mans. 277, D. C.

434a. —— —— —— ——.]—An unstamped deed of arrangement, although admissible in evidence to prove an act of bkpcy., cannot, after it has ceased to be available as an act of bkpcy., be put in evidence without a stamp where the fact that the deed is void for want of registration is relied upon by the trustee in a subsequent bkpcy. of the debtor to establish a title to the property comprised in the deed.—*Re* SHAW, *Ex p.* OFFICIAL RECEIVER (1920), 90 L. J. K. B. 204; [1920] B. & C. R. 156.

SUB-SECT. 2 (p. 52).

NOTE.—13 Eliz. c. 5 is now replaced by Law of Property Act, 1925 (c. 20), s. 172.

451. *Add. Citation :*—1 Sm. & G. 246, n.; 65 E. R. 106.

454a. —— ——.]—By indenture dated Feb. 21, 1921, made between bkpt., a retired produce broker, of the first part, & B., his solr., of the second part, & S. of the third part, after reciting that a receiving order had been made against bkpt. on Oct. 7, 1920, & B. had lodged a proof for £470 9*s.* 2*d.* for moneys expended & advanced as bkpt.'s solr. up to the date of the receiving order, & that since that date B. had continued to act as bkpt.'s solr., & his bill of costs amounted to £217 10*s.* 1*d.*, & that B. had undertaken to pay to a bank certain moneys due to them assets, the ct. will order repayment of such money.—*Re* COHEN & SWEIGMAN, *Ex p.* ROSENBERG, [1925] 1 D. L. R. 248; 5 C. B. R. 346.—**CAN.**

PART I. SECT. 5.

388 xiv. —— *Power of Scottish Court to confirm foreign sequestration & to authorise sale of property in Scotland.*]—A petition was presented by the official receiver appointed by the Ct. of Chile in the sequestration of the estates of a deceased person resident there, craving the ct. to confirm the Chilian sequestration, to authorise petitioner to sell Scottish heritage belonging to deceased's estate, & to authorise petitioner to uplift the proceeds of certain Scottish policies of assurance on the life of deceased. The ct. granted authority to petitioner to sell the Scottish heritage on certain terms, under a declaration that such sale should not operate conversion, & on condition that petitioner should consign the balance of the proceeds in the name of the accountant of ct. to abide the orders of the ct., but refused, as unnecessary, the crave of the petition for authority to uplift the proceeds of the policies of assurance.—ARAYA *v.* COGHILL, [1921] S. C. 462; 58 Sc. L. R. 395.—**SCOT.**

PART I. SECT. 7.

392 iii a. —— *Whether enforceable in Saskatchewan—Necessity for notice to interested parties.*]—*Qu.:* whether the words "British Ct." in Imperial Bkpcy. Act, 1914 (c. 59), s. 122, include a Canadian Ct. exercising bkpcy. jurisdiction, & whether the provisions of said Act apply to immovables in Canada. Even if said words & provisions do so apply, an application to the Saskatchewan Ct. of K. B., by a trustee in bkpcy. appointed in England, for an order giving effect to an order made there under sect. 122 will not be heard if due & proper notice of the application has not been given to all persons interested in the relief sought thereby.—*Re* GRAHAM (Sask.), [1928] 4 D. L. R. 375; [1928] 3 W. W. R. 8; 10 C. B. R. 171.—**CAN.**

392 iii b. ——.]—The words, in Bkpcy. Act, 1914, s. 122, "every British Court elsewhere having jurisdiction in bkpcy," include the Saskatchewan Ct. of King's Bench, &, therefore, the English trustee is entitled to obtain therefrom an order in aid of an order made by the English Ct. under said sect.—*Re* GRAHAM (No. 2), [1929] 3 D. L. R. 353; 1 W. W. R. 309; 23 S. L. R. 297; 10 C. B. R. 340.—**CAN.**

392 ix. —— *Whether enforceable in Irish Free State.*]—Where a person, having real & personal estate in the Irish Free State, was adjudicated a bkpt. in England, & the ct. having bkpcy. jurisdiction in England ordered that a request for the assistance of the ct. having bkpcy. jurisdiction in the Irish Free State be made, & the official receiver in bkpcy. in England having applied to the High Court of Justice in the Irish Free State pursuant to such order for a declaration that the said property became vested in the official receiver as the trustee in the bkpcy. by virtue of the adjudication :—*Held :* the official receiver was entitled to such order, & the bkpcy. ct. of the Irish Free State & its officers, including the official assignee, should act in aid of, & auxiliary to, the English bkpcy. ct.—*Re* BULLEN, [1930] I. R. 82.—**IR.**

o. For "*Order of Canadian Provincial Court—Where good thr… Canada.*" read "*Order of provincial court—Good throughout Union.*"

o i. —— *No request of other provincial court—Subsequent motion to remedy omission.*]—Where a motion was made without such request, the ct. granted a similar motion, made after such request had been obtained, to remedy the omission.—*Re* LEGACE & LEPINAY, [1922] 3 W. W. R. 284; 70 D. L. R. 867.—**CAN.**

PART II. SECT. 1.

sf. *Partner—Retirement more than six months before bankruptcy—Debt incurred during partnership.*]—*Held :* such partner could not be joined as a party in bkpcy. proceedings against the partnership.—*Re* STANDARD COOPERAGE CO., [1924] 2 D. L. R. 703; 4 C. B. R. 673.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.

402 iii. ——.]—An insolvent debtor's disposition of his property for the benefit of his creditors is not void under sect. 9 (7) of the Bkpcy. Act where it is not a conveyance or assignment, in the proper sense of the term, by which the whole of his property is vested in a trustee or trustees for the benefit of his creditors generally.—BLACK *v.* BELIVEAU & NEWTON, [1929] 3 D. L. R. 356; 2 W. W. R. 176; 38 Man. L. R. 222; 10 C. B. R. 577.—**CAN.**

423 ii. —— *Assignment by debtor without property—Valid.*]—JONES *v.* BOUTILLIER, [1932] 2 D. L. R. 708.—**CAN.**

sg. *Assignment where no assets—To procure stay of action—Abuse of Bankruptcy Act.*]—*Re* COULL, [1932] 1 D. L. R. 381.—**CAN.**

by bkpt. on realising his securities, & that there was lodged on behalf of bkpt. the sum of £1,350 with the official receiver to enable him to discharge the provable debts in the bkpcy., debtor assigned to B. so much of the £1,350 as should be payable to bkpt. & £2,050 payable to bkpt. under a certain agreement. B. was to hold the sums assigned to him upon trust, in the first place to pay & discharge all moneys due, or thenceforth becoming due to himself for costs, advances or otherwise, & in the next place to pay & discharge certain alleged debts of bkpt. at X., & lastly to apply the balance for the benefit of S. & her children. On Feb. 3, 1921, the above-mentioned receiving order was rescinded. At the date of the assignment bkpt. was living apart from his wife, to whom he had agreed to pay maintenance at the rate of £10 per week, & judgment had been recovered by H. for £58 6*s.* 11*d.* for the board & lodging of bkpt.'s wife. On Feb. 8, 1921, a writ had been issued by bkpt.'s wife for arrears of maintenance due to her from bkpt. On Feb. 11, 1921, H. issued a bkpcy. notice in respect of her judgment & a petition was filed on Apr. 30, 1921. A receiving order was made on June 3, 1921, & debtor was adjudged bkpt. on June 20, 1921 :—*Held :* on the facts the assignment was executed with the intent to defeat & delay creditors, & was therefore fraudulent & void as an act of bkpcy. under 1914 Act, s. 1 (1) (*b*). —*Re* PRIOR, *Ex p.* TRUSTEE, [1922] B. & C. R. 1, C. A.

468. *Add. Annotations :*—**Expld.** *Re* Fredericke & Whitworth, *Ex p.* Hibbard, [1927] 1 Ch. 253. **Refd.** *Re* Debtors (No. 771 of 1926) (1926), 43 T. L. R. 9.

469. *Add. Annotation :*—**Consd.** Lipton *v.* Bell, [1924] 1 K. B. 701.

471. *Add. Annotations :*—**Consd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515. **Refd.** *Re* Moyle, *Ex p.* Trustee. [1924] B. & C. R. 22 ; *Re* Drage, Palmer & Roberts *v.* Knight (1926), 134 L. T. 765.

471a. —— **Defeat or delay of creditors necessary consequence of sale or charge.**]—*Re* SIMMS, No. 596a, *post.*

479. *Add. Annotation :*—**Refd.** Herbert's Trustee *v.* Higgins, [1926] Ch. 794.

485. *Add. Annotation :*—**Consd.** *Re* Simms, [1930] 2 Ch. 22.

487. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

488. *Add. Annotations :*—**Consd.** *Re* Simms, [1930] 2 Ch. 22. **Refd.** *Re* Prior, *Ex p.* Trustee, [1922] B. & C. R. 1.

489. *Add. Annotation :*—**Refd.** *Re* Stanton, Hogg *v.* Maule (1927), 44 T. L. R. 118.

491. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

501. *Add Annotation :*—**Refd.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808.

502. *Add. Annotation :*—**Consd.** *Re* Simms, [1930] 2 Ch. 22.

533. *Add. Annotation :*—**Refd.** *Re* Davies, *Ex p.* Miles, [1921] 3 K. B. 628.

534. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

539. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

544. *Add. Annotation :*—**Refd.** *Re* Davies, *Ex p.* Miles, [1921] 3 K. B. 628.

550. *Add. Annotation :*—**Refd.** *Re* Stanton, [1929] 1 Ch. 180.

552. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

555. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

558. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

567. *Add. Annotation :*—**Consd.** *Re* Simms, [1930] 2 Ch. 22.

580. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

590. *Citations :*—For " 21 W. R. 422 " read " 21 W. R. 402."

595. *Add. Annotations :*—**Consd.** *Re* Gunsbourg, [1920] 2 K. B. 426. **Refd.** *Re* Simms, [1930] 2 Ch. 22.

596a. —— **In private company formed by debtor & his solicitor.**]—The transfer by a debtor of substantially the whole of his property, whether by way of charge or by way of sale, constitutes an act of bkpcy., if the necessary consequence of the transfer will be to defeat or delay his creditors. The bkpt. was carrying on an increasing business as a builder, but was in need of further capital. He had creditors for some £28,000, & in addition he owed B.'s bank about £6,500. In pursuance of an arrangement with L.'s bank, but without notice to any of the creditors, L.'s bank took over the bkpt.'s account from B.'s bank, paying off to B.'s bank the overdraft of £6,500 ; & a few days later, on Jan. 9, 1929, a private limited co. was formed of which the bkpt. & his solr. were the only directors. There was a contemporaneous agreement for sale to the co. of substantially the whole of the bkpt.'s assets for £17,000 to be satisfied by the issue to the bkpt. of 17,000 £1 shares, the co. undertaking to pay the bkpt.'s liabilities. On Jan. 14 the necessary assignments to the co. were executed, & a debenture for £12,500 was sealed in favour of L.'s bank. On Jan. 17 the bkpt.'s overdraft on L.'s bank was paid off by a transfer from a new account opened by L.'s bank in favour of the co. Upon the formation of the co. & the issue of the debenture becoming known, the bkpt.'s creditors began to press, & some of them were paid off in full. On Feb. 27, 1929, the bkpt. committed an act of bkpcy. by failing to comply with a bkpcy. notice. On Mar. 8 a petition was presented, & on May 9 a receiving order was made, & adjudication followed on May 23. Upon a motion by the trustee for a declaration that the sale agreement of Jan. 9 was void by 1914 Act, s. 1 (1) (*b*), & for ancillary relief :—*Held :* (1) the agreement was a fraudulent transfer & an act of bkptcy., & the whole of the assets comprised therein formed part of the

PART II. SECT. 2, SUB-SECT. 2.—A.

457 1. —— *Transfer of property to near relatives—In return for promissory notes—Not included in statement of affairs.*]—An intent to defraud creditors presumed from the above transfer which took place within six months of the bkpcy.—R. *v.* TESSIER (1921), 62 D. L. R. 479 37 Can. Crim. Cas. 375. —CAN.

assets of the bkpt. divisible amongst his creditors, & as the trustee's title related back to the act of bkpcy. & overrode that of the co., the co. must account to the trustee for such of the assets as had come to the hands of the co. or of any person by the order or for the use of the co. The substitution in the place of a going business & substantial business assets of (*a*) shares in a private co. which has taken over the debtor's assets & liabilities, & (*b*) a right of action by the debtor against the co. on its covenant to discharge his liabilities must necessarily have the result of delaying creditors, & the substituted assets could not be treated as an equivalent which the creditors could reach as satisfactorily as the assets transferred; (2) 1914 Act, s. 45, protects only transactions which are *bonâ fide;* &, as the knowledge of the bkpt. & his solr. of the facts which stamped it in law as a fraudulent transfer was the knowledge of the co., sect. 45 afforded no defence, even although the parties might have thought the transfer to be in the best interest of the creditors.—*Re* SIMMS, [1930] 2 Ch. 22; 99 L. J. Ch. 235; 46 T. L. R. 258; [1929] B. & C. R. 129; *sub nom. Re* SIMMS, *Ex p.* TRUSTEE, 143 L. T. 326.

598. *Add. Annotations:*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426; *Re* Simms, [1930] 2 Ch. 22.

599. *Add. Annotation:*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

600. *Add. Annotations:*—*As to* (1) **Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426. *As to* (2) **Refd.** *Re* Davies, *Ex p.* Miles, [1921] 3 K. B. 628; *Re* Simms, [1930] 2 Ch. 22.

601. *Add. Annotation:*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

669a. -- -.]—Where a trader went to his neighbour & told him that he expected to be arrested, & while he remained there was informed that a sheriff's officer was going towards his house, upon which he concealed himself in the back room & desired his neighbour to watch, & when told that the officer had gone past his house & had left the street, immediately returned home:—*Held:* this was an act of bkpcy. of "otherwise absenting himself to the intent to delay creditors" although it appeared not only that no creditor was delayed, but that none could possibly be delayed.—CHENOWETH *v.* HAY (1813), 1 M. & S. 676; 2 Rose, 137; 105 E. R. 252.

Annotations:—**Consd.** Gimmingham *v.* Laing (1816), 2 Marsh. 236. **Refd.** Toleman *v.* Jones (1824), 9 Moore, C. P. 24; Rouch *v.* Great Western Ry. Co. (1840), 1 Q. B. 51.

768. *Add. Annotation:*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

779. *Add. Annotation:*—**Distd.** *Re* Fredericke & Whitworth, *Ex p.* Hibbard, [1927] 1 Ch. 253.

787. *Add. Annotation:*—**Consd.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76.

788. *Add. Annotation:*—**Consd.** *Re* Debtor, [1929] 1 Ch. 170.

797a. Creditor who has assented to deed of arrangement—Deed void for want of registration.]—On June 11, 1921, applt. co. recovered judgment against debtor for a certain sum & costs. On Apr. 18, 1922, debtor executed a document in the form of a memorandum of agreement by which he assigned his property to trustees for the benefit of his creditors. The agreement provided (*inter alia*) that it should not be registered either as a composition or deed of arrangement or otherwise & contained a schedule of creditors & their debts. At the date of the agreement there were five bkpcy. petitions pending against debtor by creditors other than applt. co. As a result of negotiations between debtor & the five creditors & in consideration of his entering into the agreement of Apr. 18, 1922, the five creditors agreed to the dismissal of their petitions & signed letters dated Apr. 17, 1922, which were all in the same form, & contained a statement that it was understood that it was not intended to register the agreement as a deed of arrangement, by which they respectively agreed that so long as debtor complied with the terms of the agreement of Apr. 18, 1922, they would not bring any action against him in respect of their scheduled debts or attempt to set aside the agreement. On July 18, 1922, applt. co. signed a letter of assent in the same terms, which was also dated Apr. 17, 1922, & agreed to hand it over to debtor on receiving from him a promissory note or bill of exchange of a third party for £300. This condition debtor performed. The letter was not, however, handed over to debtor owing to the refusal by him to pay to applt. co. an agreed sum for costs, a term which the ct. held formed no part of the original bargain. Applt. co. subsequently issued a bkpcy. notice against debtor founded on its judgment debt. The registrar set the bkpcy. notice aside on the ground that applt. co. was bound by the agreement contained in the letter signed by it. On appeal:—*Held:* (1) the agreement of Apr. 18, 1922, being a deed of arrangement, was void for want of registration under 1914 (Deeds) Act, & the letter of assent, being an assent to a void instrument, was also itself void; (2) as debtor & all the

PART II. SECT. 2, SUB-SECT. 8.

q i. ——.]—In a judgment by default recovered against a husband & wife it was declared pltf. should be entitled to recover against defts. jointly & severally the sums therein specified; but it was ordered that execution be limited to the free separate property of the wife. Notwithstanding the precise & restricted terms of the judgment, a *præcipe* was lodged for a writ of sale directed against the real & personal property of both defts. The writ of sale followed the language of the *præcipe*, & a return of *nulla bona* was later made against both defts. On a petition to have the husband adjudicated bkpt. upon the ground of his having committed an available act of bkpcy. within Bkpcy. Act, 1908, s. 26 (*j*):—*Held:* the writ of sale & the return thereto were irregular & ineffectual as against the husband, the ct. had no power in the present proceedings to amend the judgment as entered, & no act of bkpcy. had been established as against the husband upon which an order of adjudication could properly be made.—*Re* GREEN, A DEBTOR, [1928] N. Z. L. R. 531.—N.Z.

PART II. SECT. 2, SUB-SECT. 10.—A. (c).

797a i. *Creditor who has assented to deed of arrangement—Deed void.*]—A debtor being insolvent to the knowledge of his creditors agreed with them to assign all his property to an attorney, to realise upon & distribute the proceeds. In it the creditors undertook not to institute any ct. proceedings against the debtor. One creditor becoming dissatisfied with the arrangement presented a petition in bkpcy.:—*Held:* the debtor being insolvent, the assignment was null & void under Bkpcy. Act, R. S. C., 1927, s. 9 (7), & the petitioning creditor was not estopped under the agreement from presenting a petition.—*Re* BROWN, [1932] O. R. 453; 3 D. L. R. 305.—CAN.

creditors who assented to the agreement knew from the terms of the instrument itself & from the statement contained in the letters signed by them that the agreement was void, & there was no representation that the agreement was valid, there was no question of estoppel, & applt. co. was not estopped from issuing the bkpcy. notice.—*Re* A BANKRUPTCY NOTICE, [1924] 2 Ch. 76; 93 L. J. Ch. 497; 68 Sol. Jo. 458; [1924] B. & C. R. 188; *sub nom. Re* A BANKRUPTCY NOTICE (No. 62 OF 1924), *Ex p.* PETITIONING CREDITORS *v.* DEBTOR, 131 L. T. 307, C. A.

Annotation:—As to (2) **Consd.** Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52.

Compare Nos. 8778a, 8782d, *post*, & original volume, p. 160, No. 1498.

800. *Add. Annotation:*—**Folld.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76.

800a. Change in judgment creditor — Judgment obtained by firm — No leave to issue execution.]—Where a firm consisting of several members has recovered in the firm name judgment against a debtor, the fact that a member has since retired from the firm does not render it necessary that the firm should obtain leave of the ct. under R. S. C., Ord. 42, r. 23, in order that a bkpcy. notice may be issued in the name of the firm, & a bkpcy. petition presented in that name.—*Re* HILL, *Ex p.* HOLT & CO., [1921] 2 K. B. 831; 90 L. J. K. B. 734; 125 L. T. 736; [1921] B. & C. R. 12.

804a. —— —— Notice not good against partners not served.]—*Re* DEBTORS (No. 807 OF 1922), *Ex p.* DEBTOR, No. 887a, *post*.

811. *Add. Annotation:*—**Consd.** *Re* Debtor (1920), 90 L. J. K. B. 513.

828. *Add. Annotation:*—**Expld.** *Re* A Debtor, [1929] 2 Ch. 146.

830. *Add. Annotation:*—**Apld.** *Re* A Debtor, [1929] 2 Ch. 146.

830a. ——.]—Where a bkpcy. notice was issued against the co-resp. in a divorce suit for failure to comply with an order, made before decree absolute, requiring him to pay the costs of the petitioner to the latter's solrs., for lodgment of the money in ct.:—*Held:* the bkpcy. notice was bad & the receiving order made thereon ought to be discharged because (1) it was not issued in the name of petitioner, the real creditor, but in that of his solrs.; (2) the decree not having been made absolute at the date of the order, the incidence of the costs was still open to revision, & the creditor, therefore, had not obtained a "final" judgment or order within 1914 Act, s. 1 (1) (*g*).—*Re* A DEBTOR (No. 76 OF 1929), [1929] 2 Ch. 146; 98 L. J. Ch. 334; 141 L. T. 250; 45 T. L. R. 403; 73 Sol. Jo. 299; [1929] B. & C. R. 48, C. A.

851a. Judgment including excessive interest within Moneylenders Act, 1927 (c. 21).]—The provisions of Moneylenders Act, 1927 (c. 21), s. 9, do not prevent a moneylender who has obtained judgment for a debt which includes interest at a rate exceeding 5 per cent. *per annum* from serving a bkpcy. notice upon the debtor requiring payment of the judgment debt.

A moneylender presented a bkpcy. petition against his debtor upon which a receiving order was made, though the act of bkpcy. relied upon in the petition was non-compliance with a bkpcy. notice requiring the judgment debtor to pay the judgment debt, which in fact included interest at a rate amounting to 270 per cent. *per annum*:—*Held:* the receiving order was rightly made.—*Re* A DEBTOR (247 OF 1930), [1930] 2 Ch. 239; 99 L. J. Ch. 356; 143 L. T. 292; *sub nom.* DEBTOR *v.* PETITIONING CREDITORS, [1929] B. & C. R. 184, C. A.

857. *Add. Annotation:*—**Reld.** *Re* L. A. & B. F. M., Official Receiver *v.* The Debtors (1926), 95 L. J. Ch. 258.

866. *Add. Annotation:*—**Consd.** *Re* A Debtor, *Ex p.* Debtor (1922), 92 L. J. Ch. 410.

870. *Add. Annotation:*—**Reld.** *Re* A Debtor, [1929] 2 Ch. 146.

875. *Add. Citation:*—15 Mans. 304.

Add. Annotation:—**Consd.** *Re* A Debtor, *Ex p.* Debtor (1922), 92 L. J. Ch. 410.

875a. —— Judgment to pay creditor—Notice to pay registrar of county court.]—(1) Where a county ct. judgment in form or effect directs payment to be made to the creditor the bkpcy. notice founded on it properly requires payment to be made to the creditor instead of to the registrar.

(2) The Practice Regulation of Feb. 18, 1890, which requires every notice of motion by way of appeal from a county ct. to state the grounds of the appeal, does not preclude an applt. from relying upon a point not taken in the ct. below, if the ct. thinks fit to give leave to raise the new point.—*Re* A DEBTOR (No. 16 OF 1922), *Ex p.* THE DEBTOR (1922), 92 L. J. Ch. 410; [1922] B. & C. R. 264, D. C.

887a. —— Partner—Not at principal place of business.]—Where a judgment has been recovered against a firm, & a bkpcy. notice following the judgment has been served on one member of the firm, but not at the principal place of business of the firm, & a petition presented against the firm, a receiving order cannot be made against the firm other than the partner who was not served.—*Re* DEBTORS (No. 807 OF 1922), *Ex p.* DEBTOR (1922), 92 L. J. Ch. 120; [1922] B. & C. R. 119, C. A.

898. *Add. Annotation:*—**Consd.** *Re* Debtor, *Ex p.* Debtor, [1918–19] B. & C. R. 221.

923a. —— Issue of second notice by same creditor.]—Creditors having obtained judgment issued a bkpcy. notice for £945 & served it on debtors. Debtors paid a sum of £100, including £5 for costs, nine days later, but in the belief that the notice would be disputed the creditors issued & served a fresh bkpcy. notice about two months later for £857, &, that notice not having been complied with within seven days, a petition based on the

PART II. SECT. 2, SUB-SECT. 10.—A. (*g*).

n. For "*Held:* the objection was sustainable" read "*Held:* the objection was not sustainable."

sg. Costs of unsuccessful execution not included.]—*Re* EVA, [1927] N. Z. L. R. 652.—N.Z.

PART II. SECT. 2, SUB-SECT. 10.—C.

sh. Time of service—Service out of time.]—A debtor summons was personally served on bkpt. two days too late:—*Held:* the condition of bkpcy. prior to the filing of a petition necessarily involved an act of bkpcy. which the ct. would assume was a proper ground for the adjudication.—*Re* GORHAM, [1924] 2 I. R. 46.—IR.

fresh bkpcy. notice was presented & served. Debtors gave notice of an application to set aside service of the petition, but the registrar refused to do so, & made a receiving order on the fresh bkpcy. notice:—*Held:* (1) debtors could not refuse to comply with the fresh bkpcy. notice on the ground that as the previous notice had resulted in an act of bkpcy. this had put it out of the power of debtors to make any payment in compliance with the fresh notice or otherwise deal with their property; (2) if they did make a payment in compliance with the fresh notice it might be that if a trustee were appointed under the previous bkpcy. notice the payment might be set aside, & the money made available for the general body of creditors.—*Re* DEBTORS (No. 771 OF 1926) (1926), 43 T. L. R. 9; 70 Sol. Jo. 1089; *sub nom. Re* FREDERICKE & WHITWORTH, *Ex p.* HIBBARD, [1927] 1 Ch. 253; 96 L. J. Ch. 70; 136 L. T. 268; [1926] B. & C. R. 156, C. A.

938. *Add. Annotations:*—**Refd.** *Re* Debtors (No. 771 of 1926) (1926), 43 T. L. R. 9; *Re* Fredericke & Whitworth, *Ex p.* Hibbard, [1927] 1 Ch. 253.

942. *Add. Annotation:*—**Consd.** *Re* A Debtor, [1929] 1 Ch. 362.

953. *Add. Annotation:*—**Consd.** *Re* A Debtor, [1929] 1 Ch. 362.

954. *Add. Annotation:*—**Refd.** *Re* A Debtor, [1929] 1 Ch. 362.

957. *Add. Annotation:*—**Consd.** *Re* A Debtor, [1929] 1 Ch. 362.

957a. Statement to agent of creditors of insolvency in foreign country.]—A debtor informed a person acting for some creditors in England (*a*) that he owed debts to a very much larger amount in Switzerland; (*b*) that bkpcy. proceedings had been initiated against him there; (*c*) that he intended to offer his Swiss creditors £1,000, which was all the money he had; (*d*) that if the Swiss creditors accepted that, he intended to offer his English creditors 5*s.* in the £1, payment to be spread over a number of years. The creditors proceeded against the debtor, alleging that he had committed an act of bkpcy. under 1914 Act, s. 1 (1) (*h*). A receiving order having been made, the debtor appealed:—*Held:* (1) the statements made by the debtor were not a mere discussion of his affairs, but a "notice" to his creditors that he had suspended or was about to suspend payment within the sect.; (2) the debtor being in England, there being creditors in England, & the jurisdiction here being undoubted, it was not necessary to suspend the making of a receiving order here. The Swiss proceedings could be considered from time to time, & a stay in the proceedings here ordered, if advisable.—*Re* A DEBTOR (No. 737 OF 1928), [1929] 1 Ch. 362; 98 L. J. Ch. 38; 140 L. T. 266; [1928] B. & C. R. 130, C. A.

959. *Add. Annotation:*—**Consd. & Apld.** *Re* A Debtor, [1929] 1 Ch. 362.

963. *Add. Annotations:*—**Refd.** *Re* Debtor (No. 3 of 1926) (1926), 135 L. T. 689; *Re* A Debtor, [1927] 1 Ch. 97.

971. *Add. Annotation:*—**Expld.** *Re* A Debtor, [1929] 1 Ch. 362.

972. *Add. Annotation:*—**Refd.** *Re* A Debtor, [1929] 1 Ch 362.

Part III.—Petition.

997a. —— Proceedings by public officer or agent—Necessity for affidavit of authority.]—Where a bkpcy. petition presented by a co. under Bkpcy. Act, 1883 (c. 52), s. 148, was not accompanied by the affidavit required by r. 258 of the Bkpcy. Rules, 1886, stating that the person presenting the petition was the authorised public officer or agent of such

PART II. SECT. 2, SUB-SECT. 10.—G. (b).

939 i. *Must be mutual & in same right.*]—*Re* ANDERSON, *Ex p.* ALEXANDER (1927), 27 S. R. N. S. W. 296; 44 N. S. W. W. N. 69.—**AUS.**

PART II. SECT. 2, SUB-SECT. 11.—A.

s*t. Whether binding on partner.*]—A partner gave notice of suspension of payment to his firm's creditors:—*Held:* the notice did not affect another alleged partner who had neither expressly nor impliedly authorised this notice.—ABDUL SATTAR *v.* V. E. A. R. M. CHETTYAR FIRM (1932), I. L. R. 10 Ran. 215.—**IND.**

PART II. SECT. 2, SUB-SECT. 12.

s*j. Defaults.*]—Defaults more than six months before presentation of a bkpcy. petition followed by demands for payment are not *per se* an act of bkpcy., but when further defaults take place within six months of the petition the whole form one continuing act of bkpcy.—*Re* RAITBLAT, [1925] 3 D. L. R. 446; 5 C. B. R. 765; *affg.*, [1925] 2 D. L. R. 1219; 5 C. B. R. 714.—**CAN.**

s*k. Failure to meet series of promissory notes.*]—*Held:* an act of bkpcy.—*Re* FOX, LESTER *v.* PORTER, [1925] 1 D. L. R. 198; 5 C. B. R. 328.—**CAN.**

s*l. Failure to meet liabilities as they become due.*]—The words "ceases to meet his liabilities as they become due" do not mean that when in any single case debtor makes default in payment of a debt as & when due he commits an act of bkpcy., but a failure "to meet his liabilities as they become due" in some wider sense.—*Re* CANADIAN CAP CO., *Ex p.* TRUSTEE, [1924] 1 D. L. R. 617; 53 O. L. R. 506; 4 C. B. R. 185.—**CAN.**

s*m.* ——.]—Where there were repeated defaults by a debtor in fulfilling promises to pay made within three months preceding a petition in bankruptcy:—*Held:* an order adjudging the debtor a bkpt., on the ground that it had ceased to meet its liabilities generally as they became due, should be affirmed.—*Re* SHELLBROOK STORE, LTD., [1931] 2 W. W. R. 342.—**CAN.**

s*n.* ——.]—The words "ceases to meet his liabilities as they become due" do not include a continuing default.—BROWN *v.* KELLY-DOUGLAS & CO., [1923] 1 W. W. R. 1340; [1923] 2 D. L. R. 738; 32 B. C. R. 143.—**CAN.**

s*o. Mere insolvency.*]—Insolvency in itself, without an admission of insolvency, is not a ground for the filing of a petition to adjudge a debtor a bkpt.; it must appear that he has committed an act of bkptcy.—*Re* KRONSON, [1931] 3 W. W. R. 22.—**CAN.**

PART II. SECT. 4.

m i. *Not statement showing insolvency prepared by creditors' agent.*]—*Re* TENENBEIN, *Re* BANKRUPTCY ACT (Man.), [1927] 4 D. L. R. 270; [1927] 2 W. W. R. 374—**CAN.**

m ii. ——.]—*Re* SHIRLEY (N. B.), [1927] 2 D. L. R. 969; 8 C. B. R. 235; *affd.*, [1928] 1 D. L. R. 350; 8 C. B. R. 612.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.—A.

is no power in an agent, acting under general power of attorney, to present an insolvency petition on behalf of his principal, unless the power expressly authorises such act.—*Re* OSMAN (1919), 40 N. L. R. 17.—**S. AF.**

b ii. *S.P. Ex p.* GARBUTT (1925), 46 N. L. R. 57.—**S. AF.**

991 ii. —— *Unlicensed company.*]—Extra Provincial Corpns. Act cannot & is not intended to affect the right of an unlicensed foreign corpn. to institute proceedings under Bkpcy. Act.—*Re* SOCIETY SHIRT CO., [1932] 1 D. L. R. 561; O. R. 104.—**CAN.**

998 ii. —— *No evidence when debt accrued—Motion unopposed.*]—*Held:* petitioners were entitled to the relief which they claimed.—FISHER *v.* WILKIE, LTD., [1920] 19 O. W. N. 251; 59 D. L. R. 502; 1 C. B. R. 376.—CAN.**

co. :—*Held :* the petition was rightly refused. —*Re* CRIPPS, ROSS & Co., *Ex p.* ROSS (1888), *as reported in* 5 Morr. 226.

1007a. —— ——.]—*Re* AYRE, *Ex p.* POTTS (1840), 10 L. J. Bcy. 26.

1016a. —— **Exercising powers under Law Distress Amendment Act, 1908 (c. 53).**]—A landlord obtained judgment against his tenant for £204 in respect of rent & fire insurance, & served on him a bkpcy. notice. The notice was not complied with, & a petition for a receiving order was presented. While the petition was pending, the landlord, as the premises were sublet, served on the subtenants a notice, under sect. 6 of the above Act, to pay their rents directly to him, & from one subtenant he received £62, the debt being thus reduced by that amount. A receiving order was afterwards made :—*Held :* as the claim still amounted to more than £50 the landlord had not, by exercising his powers under the above Act, precluded himself from proceeding under the bkpcy. notice in the normal way.—*Re* A DEBTOR (No. 549 of 1928), [1929] 1 Ch. 170 ; 98 L. J. Ch. 35 ; 140 L. T. 165 , 45 T. L. R. 10 ; 72 Sol. Jo. 727 ; [1928] B. & C. R. 125, C. A.

1019a. Solicitor—Petition based on order for payment of costs to client.]—*Re* A DEBTOR (No. 76 of 1929), No. 830a, *ante.*

1025. After this case add, " *See* S. C. J. (Consolidation) Act, 1925 (c. 49), ss. 36–43."

1043. *Add. Annotation :*—**Reld.** *Re* L. A. & B. F. M., Official Receiver *v.* The Debtors (1926), 95 L. J. Ch. 258.

1047a. —— —— **Under voidable contract.**]—A employed L. as his agent to negotiate a loan for him with a money-lender. B., a money-lender, lent A. £60 on his promissory note for £100, & without the knowledge or consent of A. paid L. a commission B. recovered judgment against A. for the amount of the promissory note in default of appearance, & issued a bkpcy. notice based on the judgment, & A. having failed to comply with the bkpcy. notice, B. presented a bkpcy. petition against him. On the hearing of the petition before the registrar it appeared for the first time that a commission had been paid by B. to L. :—*Held :* the act of bkpcy. was founded on a contract which was voidable by A., & the ct. ought not, within 1914 Act, s. 5 (3), to be satisfied with the proof of B.'s debt, & the receiving order must be rescinded.—*Re* A DEBTOR (No. 229 of 1927), [1927] 2 Ch. 367 ; 96 L. J. Ch. 381 ; 137 L. T. 507 ; [1927] B. & C. R. 127, C. A.

1048. *Add. Annotation :*—*As to* (1) **Reld.** Humphery *v.* Wilson (1929), 141 L. T. 469.

1050. *Add. Annotation :*—**Folld.** *Re* Debtors, [1927] 1 Ch. 19.

1051a. ——.]—A debt to be a good petitioning creditor's debt must be a liquidated sum, payable either immediately or at some certain future time at the date of the act of bkpcy. It is not sufficient that the debt should have become a liquidated sum in the interval between the act of bkpcy. & the presentation of the petition.—*Re* DEBTORS (No. 669 of 1926), [1927] 1 Ch. 19 ; 96 L. J. Ch. 33 ; 136 L. T. 182, C. A.

1065. *Add. Annotation :*—**Consd.** *Re* Debtors, [1927] 1 Ch. 19.

1066. *Add. Annotation :*—**Reld.** *Re* Debtors, [1927] 1 Ch. 19.

1067. *Add. Annotation :*—**Apld.** *Re* Debtor, *Ex p.* Lawrence, [1928] Ch. 665.

1077a. Tender before bankrupty notice—Whether creditor bound to accept.]—On Jan. 3, 1928, a creditor obtained judgment for £47, in respect of two overdue instalments of a debt, leaving the remaining £23 instalment, which only became due between the date of the writ & the judgment, untouched by the judgment. On Jan. 9, in response to the creditor's invitation, debtor tendered the £23 in cash, but the tender was refused. On Jan. 27 the creditor filed a bkpcy. notice in respect of the £47 judgment debt, & on Feb. 16 he filed a petition based on the two debts, & on non-compliance with the bkpcy. notice :—*Held :* though the two debts were still owing & amounted to over £50, so that the creditor was formally entitled to present a petition under 1914 Act, s. 4 (1), nevertheless the refusal before the bkpcy. notice of the £23 offered at his invitation, & refused only in order to keep the total debt over £50, was " sufficient cause " within sect. 5 (3) for making no order on the petition.—*Re* DEBTOR, *Ex p.* LAWRENCE (NO. 21 OF 1928), [1928] Ch. 665 ; *sub nom. Re* DEBTOR (NO. 21 OF 1928), *Ex p.* PETITIONING CREDITOR *v.* DEBTOR, 97 L. J. Ch. 255 ; *sub nom. Re* DEBTOR, *Ex p.* LAWRENCE, 139 L. T. 519, D. C.

1078. *Add. Annotation :*—**Consd.** Giles *v.* Kruyer, [1921] 3 K. B. 23.

1110a. Note given for illegal consideration—Bonâ fide holder without notice.]—Where evidence has been given by a petitioner in support of his claim on a promissory note given for illegal consideration, showing his *bona fides* & want of notice of the illegality

PART III. SECT. 1, SUB-SECT. 2.—A.

1026 ii. ——.]—Where there is no privity of contract between the insolvent & the alleged creditor, no debt can exist which may be made the ground for a bkpcy. petition.—*Re* CANADIAN CHOCOLATE CO., [1924] 2 D. L. R. 508.—**CAN.**

1026 iii. ——.]—A bkpcy. ct. should not proceed with a petition on a disputed debt until the ordinary cts. have settled the disputed question.—*Re* WHISTLE CO., [1925] 1 D. L. R. 1110 ; 5 C. B. R. 495.—**CAN.**

s i. *Debt contracted before Bankruptcy Act, 1919, in operation.*]—A receiving order against a co. under the above Act may be based upon a debt owing to the co. by reason of its having undertaken, after the Act came into operation, the liabilities incurred by a firm before the Act came into operation. —*Re* STEWART MERCANTILE CO., LTD., [1921] 1 W. W. R. 740 ; 59 D. L. R. 412 1 C. B. R 367.—**CAN.**

s ii. —— *Judgment founded on cause of action partly arising before Act in operation.*]—*Held :* such judgment was sufficient either as an available act of bkpcy., or as constituting a debt upon which to found a bkpcy. petition.—*Re* MAGUIRE, [1923] 1 D. L. R. 1186 ; 51 O. L. R. 63 ; 3 C. B. R. 880.—**CAN.**

s iii. ——.]—Such a debt cannot be used as a ground for a bkpcy. petition.—*Re* SUTTON, [1924] 4 D. L. R. 315 ; 5 C. B. R. 75.—**CAN.**

sn. *Debt contracted in province in which company not licensed to trade—No residential qualification.*]—When a co. is not licensed to trade in a province & has no assets in that province, the mere fact that members of the co. have purchased raw furs when in that province does not confer on it a sufficient residential qualification to enable a bkpcy. petition to be presented against it in that province.—*Re* ROBINSON (R. S.) & SON, LTD., [1923] 1 D. L. R. 691 ; 3 C. B. R. 537.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.—C. (a).

1050 iv. ——]—It is sufficient if the debt is actually owing, though not actually due or payable —*Re* TUNNELL, LTD., *Ex p.* WILLS & ANDERSON, [1923] 4 D. L. R. 1018.—**CAN.**

of the consideration, & there is no ground for disbelieving him, the ct. will not hold that he has not discharged the *onus* of proof which falls on him to prove the claim, & a receiving order should be made.—*Re* A DEBTOR (No. 4 OF 1922), *Ex p.* PETITIONING CREDITOR, [1922] B. & C. R. 116, C. A.

1127. *Add. Annotations :*—**Consd.** *Re* A Debtor, [1929] 2 Ch. 146. **Refd.** *Re* A Debtor, [1927] 1 Ch. 19.

1135. *Add. Annotation :*—**Refd.** *Re* Debtors, [1927] 1 Ch. 19.

1156a. Failure to comply with bankruptcy notice—Right to petition not confined to creditor serving notice.]—When an act of bkpcy. has been committed by the failure of a debtor to comply with a bkpcy. summons, any creditor may avail himself of it for the purpose of presenting a bkpcy. petition against the debtor; the right to petition is not limited to the creditor who has served the bkpcy. notice.—*Re* HASTINGS, *Ex p.* DEARLE (1884), 14 Q. B. D. 184; 54 L. J. Q. B. 74; 33 W. R. 440; 1 Morr. 281, C. A.

1175. *Add. Annotation :*— **Dbtd.** *Re* A Debtor, *Ex p.* Newburys (1926), 95 L. J. Ch. 199.

1177a. —— —— —— **Delay in presenting petition.**] —*Re* CARR, *Ex p.* JACOBS, No. 1178a, *post.*

1177b. —— —— —— ——.]—A creditor, by his agent, attended a meeting of creditors held on Nov. 4, 1901, at which a resolution was carried approving a deed of assignment for the benefit of creditors. The agent neither assented nor dissented, but stated that he must consult his principal, & expressly reserved his right to take bkpcy. proceedings. On Nov. 30, he wrote to the trustee under the deed saying he was not satisfied with the debtor's affairs, & that he still reserved his right to take steps in bkpcy. The trustee in reply asked him if he intended to proceed in bkpcy. to do so at once in order to save trouble & expense. No further communication was made to the trustee till after the filing of the petition on Jan. 27, 1902. The petition was dismissed on the authority of *Re Carr; Ex p. Jacobs*, No. 1178a :—*Held :* there had been no acquiescence or unexplained delay. The case of *Re Carr; Ex p. Jacobs*, No. 1178a, only applies to the case of a petitioning creditor who has been "sitting on the rail."—*Re* DAY, *Ex p.* HAMMOND (1902), 86 L. T. 238; 50 W. R. 448; 18 T. L. R. 442; 46 Sol. Jo. 361, D. C.

Annotation :—**Consd.** *Re* Beesley (1913), 109 L. T. 910.

1177c. —— —— —— ——.]—On July 22, 1913, B. executed a deed of assignment for the benefit of his creditors, & on Aug. 12 called a meeting of his creditors to approve the deed. At this meeting J., the secretary of S., Ltd., one of the creditors, & N., solr. for S., Ltd., were present, but they did not vote upon the resolutions, & expressed themselves dissatisfied with the deed. Subsequently S., Ltd., on being requested to assent to the deed, notified the trustee on Sept. 2 that they declined to assent; & on Oct. 18 they presented a petition against B., alleging as the act of bkpcy. the deed of July 22 :—*Held :* (1) there had been no assent, express or implied, on the part of the petitioning creditors, such as to disentitle them to set up the deed as an available act of bkpcy., upon which a petition could be founded; (2) in view of the decision in *Re Day, Ex p. Hammond*, No. 1177b, the case of *Re Carr; Ex p. Jacobs*, No. 1178a, could no longer be relied upon as an authority for the proposition that an unexplained delay in presenting a petition might amount to acquiescence in a deed.—*Re* BEESLEY (1913), 109 L. T. 910, D. C.

1177d. —— —— ——.]—Where the agent of certain creditors asked the trustee of a deed of assignment by debtor to furnish particulars of the deed, &, later on, wrote to the trustee enclosing the creditors' account, & asking for an acknowledgment of the claim, & after receipt of particulars of the deed, including information that certain of debtor's property was to be sold, stood by for fourteen days, but subsequently presented a petition founded on the deed of assignment :—*Held :* there was sufficient acquiescence by the creditors to preclude them from relying on the deed as an act of bkpcy.—*Re* A DEBTOR, *Ex p.* NEWBURYS, LTD. (1926), 95 L. J. Ch. 199; [1926] B. & C. R. 23.

1178. *Add. Annotation :*—**Refd.** *Re* A Debtor, *Ex p.* Petitioning Creditors, [1924] B. & C. R. 105.

1178a. ——.]—There is no duty cast on a creditor who receives notice of a deed of assignment for the benefit of creditors to express his dissent; nor does mere attendance at a meeting of creditors where such a deed is agreed to amount to approval. An unexplained delay of two months in presenting a petition or expressing dissent from the deed amounts to acquiescence.—*Re* CARR, *Ex p.* JACOBS (1901), 85 L. T. 552; 50 W. R. 336, D. C.

Annotations :—**Distd.** *Re* Day, *Ex p.* Hammond (1902), 86 L. T. 238. **N.F.** *Re* Beesley (1913), 109 L. T. 910.

1178b. —— —— ——.]—*Re* BEESLEY, No. 1177c, *ante.*

1178c. —— —— **Failure to dissent from deed of assignment.**]—*Re* CARR, *Ex p.* JACOBS, No. 1178a, *ante.*

1179. *Add. Annotation :*—**Refd.** *Re* A Debtor, [1928] Ch. 199.

1179a. —— **Attendance at meeting of committee of inspection.**]—About the end of 1922 debtor made an arrangement to pay his creditors in full by instalments, a committee being appointed to watch over his affairs. His trading was not prosperous & new debts were incurred. On Feb. 21, 1924, he executed a deed of assignment for the benefit of his creditors generally & a circular letter with a form of assent was sent to & received by petitioning creditors, who were new creditors. On Feb. 25, 1924, their director with their accountant attended the office of one of the trustees under the deed & suggested that they or some other new creditor should be represented on the committee of inspection. Petitioning creditors were then invited to attend the meeting of the committee on Mar. 26, 1924, & their director & their solr.

PART III. SECT. 1, SUB-SECT. 2.—G.

80. *Order for alimony.*]—Upon a petition by a woman for a receiving order against her husband, based upon a failure to pay alimony :—*Held :* the order did not create a debt within Bkpcy. Act, s. 44.—*Re* FREEDMAN, [1924] 3 D. L. R. 517; 55 O. L. R. 206; 5 C. B. R. 47.—CAN.

attended accordingly, discussing & advising on certain matters. Petitioning creditors, however, refused to assent to the deed & presented a petition in bkpcy. grounded upon the execution of the deed as an act of bkpcy. :—*Held :* on the facts, petitioning creditors had so far recognised the deed as to preclude them from availing themselves of its execution as an act of bkpcy.—*Re* A DEBTOR, *Ex p.* PETITIONING CREDITORS (No. 24 OF 1924), (1924), 94 L. J. Ch. 42 ; [1924] B. & C. R. 105, D. C.

1182. *Add. Annotation :*—**Apld.** *Re* A Debtor, *Ex p.* Newburys (1926), 95 L. J. Ch. 199.

1210. *Add. Annotation :*—**Refd.** *Re* A Debtor, [1928] Ch. 199.

1211. *Add. Citation :*—39 L. J. Bcy. 46.

1217. *Add. Citation :*—29 W. R. 268.

1253a. **Secretary duly authorised to present petition.**]—The secretary of a limited co. was authorised under seal of the co. to present a bkpcy. petition, & at the commencement of the petition had so described himself, but had signed the petition in his own name without any description either before or after his name. Objection being taken on behalf of debtor that the petition was wrongly signed & attested & the consideration for the debt not truly stated, the county ct. registrar dismissed the petition :—*Held :* the petition amply informed debtor who petitioners were, & what the debt was in respect of which they were petitioning ; there was no defect or irregularity &, even if there were, it would come within 1914 Act, s. 147 (1), & the appeal must be allowed & a receiving order made & dated as of the date on which it should have been made in the county ct.—*Re* MARSDEN, *Ex p.* SELLERS (E. H.) & SONS, LTD. (1921), 91 L. J. Ch. 318 ; 126 L. T. 408 ; [1921] B. & C. R. 188, D. C.

1274a. —— **True copy of bankruptcy notice not made exhibit to affidavit.**]—An original bkpcy. notice on the file of the county ct. was in Form No. 6 in the Appendix of Forms to the Bkpcy. Rules, 1915, intituled " In the High Court of Justice, In Bankruptcy," & was sealed with the county ct. seal, the Form not being adapted in any way to the form of bkpcy. notice to be issued by a county ct. On an appeal from a receiving order, the Div. Ct. discovered that the original bkpcy. notice was in Form No. 6, & the affidavit of service exhibited a copy of the bkpcy. notice sealed with the seal of the county ct. which was not a true copy of the original bkpcy. notice. The ct. held that the bkpcy. notice was bad, allowed the appeal, rescinded the receiving order, dismissed the petition & set aside the bkpcy. notice.—*Re* EVANS, DAVIES *v.* EVANS, [1931] B. & C. R. 48, D. C.

1286a. —— —— **Details of debt—Petition by money-lender.**]—Money-lenders' Act, 1927 (c. 21), s. 9 (2), applies to loans made before, as well as to those made after, the Act.—*Re* DEBTOR (No. 99 OF 1928) (1928), 97 L. J. Ch. 250 ; 139 L. T. 234 ; 72 Sol. Jo. 335 ; [1928] B. & C. R. 40, C. A.

1313. *Add. Citation :*—68 L. T. 589.

1326. *Add. Annotation :*—**Refd.** *Re* Debtors, [1927] 1 Ch. 19.

1332. *Add. Annotation :*—**Refd.** Douglass *v.* Lloyds Bank (1929), 34 Com. Cas. 263.

1345. *Add. Annotation :*—**Consd.** *Re* A Debtor, [1929] 1 Ch. 170.

1347. *Add. Annotation :*—**Consd.** *Re* A Debtor, *Ex p.* Petitioning Creditor (1920), 89 L. J. K. B. 432.

1347a. —— ——.]—The registrar in bkpcy. possesses the widest discretion in respect of granting adjournments of the hearing of petitions, the only limit that the law imposes upon him being that he should exercise a judicial discretion.—*Re* A DEBTOR, *Ex p.* PETITIONING CREDITOR (1920), 89 L. J. K. B. 432 ; [1920] B. & C. R. 1, D. C.

1357. *Add. Annotation :*—**Refd.** *Re* A Debtor, *Ex p.* Petitioning Creditor (1920), 89 L. J. K. B. 432.

1357a. —— —— **Reasonable prospect of satisfaction of debts.**]—Where a debtor applies for the adjournment of a petition, the ct. should be satisfied that there is a reasonable prospect of the debts being satisfied, & the ct. should be put in possession of every possible information as to the position of debtor, & as to the position of the negotiations which, it is said, will result in obtaining funds for the

PART III. SECT. 1, SUB-SECT. 4.

1202 i. *Within six months—When time begins to run—Ceasing to meet liabilities.*]—Where A. had failed to pay liabilities on their due dates eighteen months prior to the presentation of the bkpcy. petition against him :—*Held :* the mere continuance of the failure to pay the same liabilities could not be said to be an act of bkpcy. occurring within six months before the presentation of the petition. —BROWN *v.* KELLY-DOUGLAS & CO., [1923] 2 D. L. R. 738 ; 32 B. C. R. 143 ; [1923] 1 W. W. R. 1340.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.—B.

u i. —— —— ——.]—All members of the firm must be named in a petition for a receiving order against a partnership.—*Re* CLUFF BROTHERS, [1925] 4 D. L. R. 721.—**CAN.**

PART III. SECT. 3, SUB-SECT. 2.

1261 i. —— *On partners.*]—All members of the firm must be served with a petition for a receiving order against a partnership.—*Re* CLUFF BROTHERS, [1925] 4 D. L. R. 721.—**CAN.**

1275 ii. —— *By whom—Solicitor.*]—*Re* X. (1920), 59 D. L. R. 617 ; 1 C. B. R. 459.—**CAN.**

PART III. SECT. 3, SUB-SECT. 3.

1277 va. —— ——.]—*Semble :* the affidavit required by sect. 4 (2) of Bankruptcy Act, R. S. C., 1927, c. 11, in verification of a creditor's petition must be made by petitioner, except in cases under rule 32, *viz.* those where petitioner is a corpn.—*Re* MCKAY OIL CO., [1930] 1 W. W. R. 56 ; 2 D. L. R. 643 ; 11 C. B. R. 248.—**CAN.**

PART III. SECT. 3, SUB-SECT. 7.—B.

1334 iii. —— *Position of sisted creditor.*]—A creditor who had petitioned for sequestration of the estates of his debtor proposed to abandon his petition before sequestration had been awarded. Another creditor thereupon lodged a minute craving to be sisted as a party to the petition. The Lord Ordinary sisted him, & six weeks later, on his petition, granted sequestration. Vouchers, admittedly sufficient to substantiate the creditor's debt, were exhibited to the Lord Ordinary before he granted sequestration, & were subsequently lodged in process, but these particular vouchers had not been produced when the creditor was sisted. Thereafter the debtor presented a petition for recall of the sequestration on the ground that the proceedings were *ab initio* void, in respect that the sisted creditor had not fulfilled the statutory procedure for obtaining sequestration laid down in Bkpcy. (Scotland) Act, 1913, s. 20, in that he had failed timeously to lodge in process the necessary evidence of his debt :—*Held :* a creditor craving to be sisted in terms of Bkpcy. (Scotland) Act, 1913, s. 33, as petitioner to a petition for sequestration did not need to to follow out the statutory procedure prescribed by sect. 20 as essential in the case of an original petitioner, it being sufficient if such sisted creditor, before the award of sequestration was made, satisfied the Lord Ordinary as to the existence of his debt.—STEWART *v.* WETHERDAIR, LTD., [1928] S. C. 577.—**SCOT.**

payment of his debts.—*Re* BOWEN, *Ex p.* THE DEBTOR, [1924] B. & C. R. 32, C. A.

1366. *Add. Annotation :*—**Refd.** *Re* Debtor, [1928] Ch. 199.

1366a. Agreement to withdraw—Bill of exchange given in consideration of—Void.]—DAVIS *v.* HOLDING (1836), 1 M. & W. 159 ; 1 Gale, 380 ; Tyr. & Gr. 371 ; 5 L. J. Ex. 102 ; 150 E. R. 388.

Annotations :—**Refd.** Belcher *v.* Sambourne (1844), 6 Q. B. 414 ; Smith *v.* Salzmann (1854), 9 Exch. 535 ; Whitmore *v.* Farley (1881), 14 Cox, C. C. 617.

1367a. —— After receiving order made.]—A creditor who presented a petition in bkpcy. against debtor failed to disclose a charge which had been given him by debtor some years previously. The registrar allowed the creditor to amend his petition after a receiving order had been made :—*Held :* apart from amending the petition, it was doubtful whether the receiving order could be set aside on the ground of the omission to state the security ; but there was power to amend the petition even after the making of the receiving order.—*Re* A DEBTOR (No. 1507 OF 1921), [1922] 2 K. B. 109 ; 91 L. J. Ch. 471 ; 127 L. T. 344 ; 38 T. L. R. 574 ; 66 Sol. Jo. 472 ; [1922] B. & C. R. 9, C. A.

1378a. —— To remove name of debtor—Proceedings against partnership—One partner a company—Winding up.]—*Re* DOBREE & Co., No. 3793a, *post.*

Part IV.—Receiving Order.

1451a. —— To make order against partners—Act of bankruptcy by other partners.]—*Re* GOWLAND BROTHERS, *Ex p.* PROCTER SHOTTON (1928), 65 L. Jo. 378, D. C.

1453. *Add. Annotation :*—**Refd.** *Re* A Debtor, [1927] 2 Ch. 367.

1454. *Add. Annotation :*—**Consd.** *Re* A Debtor, *Ex p.* Petitioning Creditor (1920), 89 L. J. K. B. 432.

1462. *Add. Annotation :*—**Expld. & Distd.** *Re* A Debtor, *Ex p.* Petitioning Creditor (1920), 89 L. J. K. B. 432.

1467. *Add. Annotations :*—**Consd.** *Re* Forder, Forder *v.* Forder (1927), 96 L. J. Ch. 314. **Refd.** *Re* Debtor, [1928] Ch. 199.

1482. *Citations :*—For "54 L. Jo. 444 ; 148 L. T. Jo. 178" read "89 L. J. K. B. 40."

1483a. Debtor claiming indemnity—As surety for contingent liability of petitioning creditor.]—Petitioning co., of which debtor was formerly chairman, had lent debtor a large sum of money, & recovered judgment against him (on balance of account) for £2,065. A receiving order was made in the county ct. from which debtor appealed, alleging that he had become surety for the co. for their bank overdraft with a limit of £5,000, & that he was entitled to be indemnified against this liability. No payment had been made by debtor on account of the bank overdraft. At a creditors' meeting the creditors were of opinion that debtor was insolvent & there was no alternative but bkpcy. :—*Held :* on the facts, petitioning creditors' obligation to indemnify debtor as surety in respect of his contingent liability for a debt due from petitioning creditors to a bank did not constitute "sufficient cause" for the dismissal of the petition.—*Re* A DEBTOR (No. 13 OF 1922), *Ex p.* THE DEBTOR, [1923] B. & C. R. 54, C. A.

1488. *Add. Annotation :*—**Refd.** *Re* Debtor, [1928] Ch. 199.

1489. *Add. Annotations :*—**Consd.** *Re* Forder, Forder *v.* Forder (1927), 96 L. J. Ch. 314. **Refd.** *Re* Debtor, [1928] Ch. 199.

1490. *Add. Annotation :*—**Consd.** *Re* Debtor, [1928] Ch. 199.

1491. *Add. Annotation :*—**Refd.** *Re* Debtor, [1928] Ch. 199.

1491a. —— ——.]—Debtor furnished a friend with a cheque for £500 as a deposit in connection with the underwriting of shares by a co. in which the friend was interested.

PART III. SECT. 3, SUB-SECT. 12.

1379 iii. —— ——.]—*Re* LITTLE, [1925] 1 D. L. R. 395 ; 56 O. L. R. 196 ; 5 C. B. R. 244 ; *revsg.*, [1924] 2 D. L. R. 1172.—**CAN.**

PART III. SECT. 3, SUB-SECT. 13.—B.

1408 ii. ——.]—Where a judge before whom a bkpcy. petition was being tried had no knowledge of the law of another province, & a question arose concerning that law & he sent the case over to be tried in a competent ct. in that province :—*Held :* this was a reasonable course to pursue. —*Re* FAIRWEATHERS, *Ex p.* MONTREAL (CITY) (1921), 2 C. B. R. 342.—**CAN.**

PART IV. SECT. 1.

1459 ii. —— *Authorised assignment made before conditions of composition deed fulfilled.*]—*Re* LIPSON, [1923] 3 D. L. R. 1171 ; (1922), 52 O. L. R. 352 ; 2 C. B. R. 488.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.

e. Read now "1461 i."

1461 ii. *Authorised assignment—Between service & hearing of bankruptcy petition.*]—Bkpcy. Act, s. 4 (6), does not apply where debtor, with the palpable intention of choosing his own trustee, makes an assignment after he has been served with a petition in bkpcy. & before the return of the notice of hearing.—*Re* CROTEAU & CLARK CO., LTD., [1920] 48 O. L. R. 359 ; 55 D. L. R. 413 ; 1 C. B. R. 364.—**CAN.**

1461 iii. —— *After but on same day as presentation of petition & appointment of interim receiver.*]—Although after the presentation of a petition in bkpcy. & appointment of an interim receiver debtor on the same day makes an assignment for the general benefit of his creditors to an authorised trustee other than the one asked for in the petition, the ct. will hear the petition on its return & may grant the same & appoint as trustee the person named therein.—*Re* PROGRESSIVE FARMERS CO., LTD., [1921] 3 W. W. R. 265 ; 1 C. B. R. 551.—**CAN.**

1461 iv. ——.]—Motion by a creditor for a receiving order, after debtor had made an authorised assignment, dismissed as unnecessary, but without prejudice to its being renewed if any necessity should arise.—*Re* WATERHOUSE (THOMAS) & CO. (1921), 64 D. L. R. 518 ; 50 O. L. R. 476.—**CAN.**

1464 i. *No other creditor—Other facilities for realising debt.*]—It is a sufficient cause for refusing a receiving order that the judgment creditor has equally good facilities for realising under the judgment itself, & that there is no other creditor.—*Re* STONE, [1925] 4 D. L. R. 518.—**CAN.**

sp. *Debtor in position to pay.*]—If debtor is in a position to pay petitioning creditor, no receiving order ought to be made against him without giving him some opportunity of paying or securing the debt.—*Re* MAGUIRE, [1923] 1 D. L. R. 1186 ; 51 O. L. R. 63 ; 3 C. B. R. 880.—**CAN.**

ii. ——.]—The ct. refused an order sequestrating a debtor's estate when it was clear that the sequestration would not be for the benefit of the creditors.—FINDLAY *v.* BEETAR (1921), 42 N. L. R. 19.—**S. AF.**

The cheque was dishonoured & judgment obtained against debtor for £500 & £14 6s. costs. In Dec. 1926, the judgment creditors petitioned for a receiving order against debtor in respect of the judgment debt. From time to time arrangements were made for adjourning the petition, but in Mar. 1927, the petitioning creditors intimated that the conditions on which they would agree to the petition being dismissed were that debtor should pay £100 & provide a guarantee for payment of the balance of the debt & also agree to pay to them the costs of their proceedings against the underwriters as between solr. & client, & the costs of their proceedings against debtor, also as between solr. & client. Payment of the costs of proceedings against the underwriters was refused, but payment by debtor of solr. & client costs was agreed to, & sums of £50 & £144 were paid & the petition dismissed. In July petitioners again commenced proceedings for a receiving order in respect of a sum ascertained by deducting from the original debt & interest & costs as between solr. & client the payments of £50 & £144. A receiving order having been made:—*Held:* the acts of petitioners in seeking to obtain payment of their costs in the proceedings against the underwriters & in obtaining payment by debtor of their solr. & client costs amounted to extortion & an abuse of the process of the ct., & the case fell within 1914 Act, s. 5 (3), as being one where the ct. was satisfied that for sufficient cause no receiving order ought to be made, & the receiving order must be discharged.—*Re* DEBTOR (No. 883 OF 1927), [1928] Ch. 199; 97 L. J. Ch. 120; 138 L. T. 440; 72 Sol. Jo. 85; [1928] B. & C. R. 1, C. A.

1492. *Add. Annotation:*—**Reld.** *Re* Debtor, [1928] Ch. 199.

1493. *Add. Annotation:*—**Reld.** *Re* Debtor, [1928] Ch. 199.

1494. *Add. Annotation:*—**Apld.** *Re* A Debtor, *Ex p.* Newburys (1926), 95 L. J. Ch. 199.

1495. *Add. Annotation:*—**Reld.** *Re* Debtor, [1928] Ch. 199.

1496. *Add. Annotation:*—**Reld.** *Re* Debtor, *Ex p.* Debtor, [1918–19] B. & C. R. 221.

1498. After this case add "*Compare* No. 797a, *ante*."

1498a. Exercising powers under Law of Distress Amendment Act, 1908 (c. 53).]—*Re* A DEBTOR, No. 1016a, *ante*.

1500. *Add. Annotations:*—**Distd.** *Re* Debtors, *Ex p.* Debtor (1922), 92 L. J. Ch. 120. **Reld.** Hawkins & Sunderland *v.* Duché (1921), 90 L. J. K. B. 913; *Re* A. & M., [1926] Ch. 274. **Mentd.** *Re* A Debtor, [1922] 2 K. B. 109.

1500a. Order against firm "other than" partner not served with bankruptcy notice.]—*Re* DEBTORS (No. 807 OF 1922), *Ex p.* DEBTOR, No. 887a, *ante*.

1508. *Add. Annotations:*—**Apld.** *Re* A Debtor, [1922] 2 K. B. 109. **Consd.** *Re* Debtors, *Ex p.* Debtor (1922), 92 L. J. Ch. 120; **Reld.** *Re* A. & M., [1926] Ch. 274.

1513. *Add Annotation:*—**Reld.** *Re* A Debtor, [1920] 1 K. B. 461.

1515a. —— —— Application opposed by official receiver.]—Where debtor applies to the registrar in bkpcy. to rescind a receiving order made against him, on the ground that all his debts have, since the making of the order, been paid in full, & the official receiver states that in his opinion the receiving order should not be rescinded until debtor has undergone a public examination, the registrar is not bound by that opinion, though in the independent exercise of his discretion he ought to give proper weight thereto.—*Re* A DEBTOR (No. 446 OF 1918), [1920] 1 K. B. 461; 89 L. J. K. B. 113; 64 Sol. Jo. 147; [1920] B. & C. R. 31; *sub nom. Re* A DEBTOR, *Ex p.* THE DEBTOR *v.* PETITIONING CREDITORS & OFFICIAL RECEIVER, 122 L. T. 354, C. A.

1519a. —— —— All debts paid in full.]—*Re* A DEBTOR (No. 446 OF 1918), No. 1515a, *ante*.

1520. *Add. Citations:*—[1920] 1 K. B. 461; 89 L. J. K. B. 113; 122 L. T. 354; [1920] B. & C. R. 31.

1541a. —— —— Failure to disclose security.]—*Re* A DEBTOR (No. 1507 OF 1921), No. 1367a, *ante*.

1545a. —— Sequestration in Scotland.] — *Re* A DEBTOR (No. 199 OF 1922), No. 389a, *ante*.

1548a. Power to make charging order on balance of funds in court.]—A debtor, against whom a receiving order had been made, paid money into ct. to satisfy his debts in full. The receiving order was then rescinded by an order which directed the official receiver, after paying the debts & deducting his costs, charges & expenses, to pay the balance in his hands to debtor. A subsequent unsatisfied judgment creditor applied to the registrar in bkpcy. for a charging order upon the balance of the funds in the hands of the official receiver:—*Held:* (1) the registrar had jurisdiction to make the order; (2) the registrar's jurisdiction was derived through the jurisdiction of the judge of the High Ct. to whom for the time being bkpcy. matters were assigned exercising his bkpcy. jurisdiction.—*Re* PRIOR, *Ex p.* PRIOR, [1921] 3 K. B. 333; 90 L. J. K. B. 1222; *sub nom. Re* DEBTOR, *Ex p.* DEBTOR (No. 718 OF 1920), 125 L. T. 727; [1921] B. & C. R. 124, C. A.

1552a. Receiving order discharged subject to condition—Condition not fulfilled—Rescission of discharging order.] — Debtor, a barrister, was entitled on the death of his mother to a vested remainder in tail of considerable value. His mother was seventy-five. The petition was filed on July 19, 1923. His present indebtedness amounted to about £6,000 & negotiations for a loan for that amount with an insurance co. had been going on since July 16, 1923. Owing to a delay in raising this loan, the registrar had made a receiving order on Nov. 21, 1923, from which debtor appealed; & upon debtor undertaking during the interval necessary to raise the loan, to insure his life immediately, *i.e.* from Dec. 1, 1923, to Jan. 1, 1924, in order that, in the event of his death during that period, the unsecured creditors might be safeguarded, the Ct. of Appeal allowed the appeal, discharged the receiving order & dismissed the petition without prejudice to another petition being presented if the loan was not carried through & petitioning creditors' debt not paid on or before Jan. 1, 1924. Up to Dec. 20, debtor had not insured his life pursuant to his undertaking & petitioning creditors then moved to commit debtor for

contempt. The Ct. of Appeal allowed debtor three hours within which to insure his life, & a certificate being produced showing that this had been done, the ct. made no order except that debtor should pay the creditors' costs. Subsequently debtor having again broken his undertaking by not completing the insurance on his life, the Ct. of Appeal rescinded their order, with the result that the receiving order stood as originally made by the registrar.—*Re* A DEBTOR, *Ex p.* THE DEBTOR (No. 1088 OF 1923), [1924] B. & C. R. 1, C. A.

1561. Add the following para :—

Therefore, where a debtor had been arrested under an order of the Ch. Div. made after the date of a receiving order pronounced before, but not drawn up & signed by the registrar (Bkpcy. Rules, 1883, r. 153, App., Forms 29 & 30) until after the arrest, he was ordered to be discharged, notwithstanding that he had by his counsel submitted to the order of attachment.

1569. *Add. Annotation :*—**Consd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

1570. *Add. Annotation :*—**Apld.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76.

1579a. —— **Effect of—On transactions pending appeal from receiving order.**]—*Re* WIGZELL, *Ex p.* HART, No. 1893a, *post.*

Part V.—Adjudication Order.

1586a. .]—An appeal against a decision of a registrar, approving a proposal for a scheme of arrangement, having been allowed, the Ct. of Appeal, upon the application of the official receiver, adjudged the debtor bkpt. under Bkpcy. Act, 1883 (c. 52), s. 20, & Bkpcy. Rules, 1886, s. 191.—*Re* BURR, *Ex p.* BOARD OF TRADE, [1892] 2 Q. B. 467 ; 61 L. J. Q. B. 591 ; 66 L. T. 553 ; 8 T. L. R. 515 ; 9 Morr. 133, C. A.

1603. *Add. Annotations :*—**Refd.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814 ; *Re* Wait, [1927] 1 Ch. 606.

1619. *Add. Citation :*—11 Cox, C. C. 360.

1620. *Add. Annotation :*—**Refd.** Hawkins & Sunderland *v.* Duché (1921), 90 L. J. K. B. 913.

1624. *Add. Annotation :*—**Consd.** Hawkins & Sunderland *v.* Duché (1921), 90 L. J. K. B. 913.

1625. *Add. Annotation :*—**Refd.** Hawkins & Sunderland *v.* Duché (1921), 90 L. J. K. B. 913.

1636. *Add. Annotation :*—**Consd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

1637. *Add. Annotation :*—**Dbtd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

1638. After this case add "**On duty to maintain wife.**]—*See* HUSBAND & WIFE, No. 595a."

1642. *Add. Citation :*—39 L. J. Bcy. 46.

1647. *Add. Annotation :*—**Refd.** Holden *v.* Southwark Corpn., [1921] 1 Ch. 550.

1650. After this case add :—

——.]—*See, now,* Companies Act, 1929 (c. 23), s. 142.

1656. *Add. Annotation :*—**Consd.** *Re* Boulton, *Ex p.* Moncrieff *v.* Official Receiver (1926), 135 L. T. 461.

1657a. —— ——.]—The partners of a firm, which was heavily indebted to the firm's bankers, formed a limited co. to take over the debt. They then, with the consent of the principal creditors of the firm, gave the bank a joint & several guarantee for payment of the transferred debt & of any sums due to the bank from the co. Upon the subsequent bkpcy. of the firm & the individual partners : —*Held :* (1) bkpts. had by the guarantee contracted a "debt provable in the bkpcy. without having at the time of contracting it any reasonable or probable ground of expectation of being able to pay it" within 1914 Act, s. 26 (3) (*d*), which covered not only a new & original debt, but also a debt in renewal of or in substitution for a previously existing debt, & their discharge must be suspended for a period of two years ; (2) the ct., upon the particular facts of the case, granted each

PART IV. SECT. 6.

1554 i. *In general—Debtor consenting to order.*]—Where a petition for a receiving order has been filed & served, debtor should not make an authorised assignment, but should notify petitioning creditor, or his solr., that he, the debtor, consents to a receiving order.—*Re* LALONDE, [1924] 1 D. L. R. 1018 ; 55 O. L. R. 279 ; 4 C. B. R. 416.—**CAN.**

ar. *On person holding himself out as member of partnership.*]—A receiving order made against a partnership will include a person who has held himself out as a member thereof. —*Re* MAIN CLOAK CO., [1925] 1 D. L. R. 290.—**CAN.**

at. *On power to proceed on judgment summons.*]—Sect. 24 of Bkpcy. Act, R. S. C., 1927, c. 11, provides that when a receiving order or an authorised assignment is made no creditor to whom the debtor is indebted in respect of a debt provable in bkpcy. shall have any remedy against the property or person of the debtor except with the leave of the ct. Pltf. herein, a judgment creditor of deft., applied to the judge in Bkpcy. for leave to proceed to obtain an order committing deft. to gaol for non-compliance with an order directing him to pay a monthly sum on account of pltf.'s judgment. The day before the application deft. made an assignment in bkpcy. The application was opposed by deft. through his solr., & also by the custodian :—*Held :* the judge had exercised a proper discretion in refusing to grant leave to proceed.—*Re* MINTZ, MALOUF *v.* MINTZ, [1930] 1 W. W. R. 198 ; 2 D. L. R. 777 ; 24 S. L. R. 290 ; 11 C. B. R. 227.—**CAN.**

PART IV. SECT. 7.

1575 ii. —— *To enable debtor to pay*]—A receiving order directed not to issue for seven days & not then to issue if petitioner's claim, including the costs of the petition, satisfied.—*Re* MAGUIRE, [1923] 1 D. L. R. 1186 ; 51 O. L. R. 63 ; 3 C. B. R. 880.—**CAN.**

PART V. SECT. 1.

d i. —— —— *Want of assets.*]—Where there are no assets the making of an order for adjudication is in the discretion of the ct.—*Re* BARAKAT, [1920] N. Z. L. R. 134.—**N.Z.**

1598 iii. —— ——.]—Sequestration of the estates of a debtor was pronounced in the sheriff ct. of L. in 1900. The trustee was subsequently discharged, but bkpt. never obtained his discharge. He, however, continued to carry on business & incurred new debts. In 1922 one of the new creditors presented a petition in the same ct. for sequestration of debtor's estates :—*Held :* in the circumstances Bkpcy. (Scotland) Act, 1913 (c. 20), s. 16, did not make incompetent a new award of sequestration.—COOK *v.* M'DOUGALL, [1923] S. C. 86.—**SCOT.**

PART V. SECT. 2, SUB-SECT. 1.

sv. *On chattel mortgage by debtor.*]—The validity of a chattel mtge. given by debtor who is subsequently adjudicated bkpt must be determined as at the time of such adjudication.—*Re* SAUNDERS ALBERTA COLLIERIES, LTD., [1925] 3 D. L. R. 323 ; [1925] 2 W. W. R. 122 ; 5 C. B. R. 727.—**CAN.**

partner a certificate that his bkpcy. was "caused by misfortune without any misconduct on his part," the certificate to operate when the discharge took effect. Circumstances which may constitute "misfortune without any misconduct" within sect. 26 (4), discussed. — *Re* BOULTON BROTHERS & Co., [1927] 1 Ch. 79; *sub nom. Re* BOULTON BROTHERS & Co., *Ex p.* MONCRIEFF *v.* OFFICIAL RECEIVER, 96 L. J. Ch. 90; [1927] B. & C. R. 1, C. A.

1666. *Add. Annotation :*—**Refd.** Sevenoaks U. D. C. *v.* Twynam, [1929] 2 K. B. 440.

1667. *Add. Annotation :*—**Refd.** *Re* Debtors, [1927] 1 Ch. 19.

1669. *Add. Annotation :*—**Refd.** Sevenoaks U. D. C. *v.* Twynam (1929), 98 L. J. K. B. 537.

1670. *Citation :*—For "26 L. J. Bcy. 29" read "36 L. J. Bcy. 29."

1731. *Add. Annotation :*—**Refd.** *Re* Debtors, [1927] 1 Ch. 19.

1735. *Add. Annotation :*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625.

1766. *Add. Annotation :*—**Refd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

1771. *Add. Annotation :*—**Refd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

1775a. **—— Surplus assets after payment of composition.**]—Bkpt. made a composition with his creditors, which was approved, & the cash required to satisfy the composition having been deposited with the official receiver, the adjudication was annulled, but the order annulling the adjudication contained no reference to the vesting of surplus assets: —*Held :* although the order of annulment contained no express provision as to the vesting of any surplus assets, on payment of the composition the estate of debtor, *i.e.* the surplus after satisfying the composition, would, by necessary implication, revest in debtor.—FLOWER *v.* LYME REGIS CORPN., [1921] 1 K. B. 488; 90 L. J. K. B. 355; 124 L. T. 463; 37 T. L. R. 145; 65 Sol. Jo. 133; [1920] B. & C. R. 138, C. A.

1781. *Add. Annotation :*—**Refd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

Part VI.—Official Receiver, Special Manager, and Interim Receiver.

1808a. **On grant of administration—Estate of undischarged bankrupt—Whether estate of trustee divested—After-acquired property.**]—An order under 1914 Act, s. 130, for the administration of the estate of a deceased undischarged bkpt. according to the law of bkpcy. is not a second or subsequent receiving order or adjudication within s. 39 so as to divest the estate of the trustee in bkpcy. in favour of the official receiver under the administration order; but bkpt.'s estate, including any after-acquired property, remains vested in his trustee in bkpcy.—*Re* SARJEANT, [1923] 2 Ch. 302; 129 L. T. 825; *sub nom. Re* SARJEANT, *Ex p.* OFFICIAL RECEIVER, 92 L. J. Ch. 626; [1923] B. & C. R. 63.

—— —— —— ——.]— *See, now,* Bkpcy. (Amendment) Act, 1926 (c. 7), s. 3.

1826. *Add. Annotation :* — **Refd.** *Re* A Debtor, [1920] 1 K. B. 461.

1853. *Add. Annotations :* — **Refd.** Everett *v.* Griffiths, [1920] 3 K. B. 163; Hearts of Oak Assurance Co., Ltd. *v.* A.-G. (1931), 47 T. L. R. 579.

1879a. **Application by receiver for annulment of adjudication—Whether receiver entitled to costs.**]—*Re* A. & M., No. 226a, *ante.*

Part VII.—The Trustee and Committee of Inspection.

1889. *Add. Annotations :*—**Apld.** *Re* Regent Finance & Guarantee Corpn. (1930), 69 L. Jo. 283. **Consd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835; Scranton's Trustee *v.* Pearse, [1922] 2 Ch. 87. **Distd.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814. **Refd.** *Re* London County Commercial Reinsurance Office, [1922] 2 Ch. 67; *Re* Wait, [1927] 1 Ch. 606.

1890. *Add. Annotations :* — **Consd.** Scranton's Trustee *v.* Pearse, [1922] 2 Ch. 87. **Distd.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v* Keith, Prowse (1925), 133 L. T. 814. **Refd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835; *Re* London County Commercial Reinsurance Office, [1922] 2 Ch. 67.

1893. *Add. Citations :*—122 L. T. 35; [1918–19] B. & C. R. 249.

Add. Annotations :—**Apld.** *Re* Regent Finance & Guarantee Corpn. (1930), 69 L. Jo. 283.

PART V. SECT. 3, SUB-SECT. 3.

s (p. 188) i. —— *In filing petition—Creditor prejudiced.*]—*Re* HASTIE, [1926] N. Z. L. R. 428.—**N.Z.**

PART VI. SECT. 8.

sw. *When court will appoint.*]—Petitioner must convince the ct. that an interim receiver is necessary to protect the creditors' interests.—*Re* CANADIAN COAL SUPPLY, *Ex p.* STAPLES BELL INC., [1924] 2 D. L. R. 831; 4 C. B. R. 577.—**CAN.**

m i. ——.]—*Re* CANADIAN COAL SUPPLY, *Ex p.* STAPLES BELL INC., [1924] 2 D. L. R. 831; 4 C. B. R. 577.—**CAN.**

sz. *Order of appointment containing undertaking as to damages by petitioning creditor—Undertaking not discharged on termination of appointment.*]—*Re* JACKSON, [1926] 1 D. L. R. 1139; 58 O. L. R. 482.—**CAN.**

sa. *Order appointing—Not appealable.*]—RAMSAY GLASS CO. *v.* ROYAL BANK OF CANADA, [1931] 2 D. L. R. 759.—**CAN.**

sb. *Powers of custodian—Sale of perishable goods—Must be physically perishable.*]—*Re* WEBBER, [1931] 2 D. L. R. 269; 2 M. P. R. 513; 12 C. B. R. 274.—**CAN.**

sc. —— *Disposition of shares.*]—*Re* ESTATE OF H. K. REED & Co., LTD. (No. 1), [1930] 3 W. W. R. 98; 4 D. L. R. 841; 12 C. B. R. 31.—**CAN.**

PART VII. SECT. 1.

sd. *Representative of creditors—To enforce rights.*]—*Re* HERSH, *Ex p.* GOLDSTEIN, [1923] 3 D. L. R. 101; 4 C. B. R. 84.—**CAN.**

Consd. *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835; Scranton's Trustee *v.* Pearse, [1922] 2 Ch. 87. **Distd.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814.

1893a. —— Duty not to take advantage of mistake of fact.]—A receiving order was made against a debtor, who thereupon applied for & obtained a stay of the advertisement of the receiving order & all proceedings thereunder pending an appeal therefrom. The appeal was subsequently dismissed & an order was made adjudicating him bkpt. At the date of the receiving order bkpt. had an account at a bank. After the making of the receiving order & pending the hearing of the appeal bkpt. paid into the bank £165 which he had collected from his debtors, & drew out of his account £199. The bank acted in good faith & received & paid those sums in the ordinary course of business without knowing that a receiving order had been made against bkpt. The trustee in bkpcy. claimed a declaration that the sums paid into the bank after the date of the receiving order vested in him as trustee:—*Held:* (1) the sums paid into the bank by bkpt. after the date of the receiving order became by virtue of 1914 Act, ss. 18 (1), 37 (1), 38 (*a*), the property of his trustee in bkpcy.; (2) the bank were not entitled to credit themselves with the payments out to bkpt., as those transactions took place after the date of the receiving order & were therefore not protected by sects. 45 & 46; (3) there was nothing dishonest in the trustee enforcing the rights given to him by the Act, & the action of the ct. in staying the advertisement & proceedings could not operate in any way in derogation of the rights of the trustee.—*Re* WIGZELL, *Ex p.* HART, [1921] 2 K. B. 835; *sub nom. Re* WIGZELL, *Ex p.* TRUSTEE, 90 L. J. K. B. 897; [1921] B. & C. R. 42; *sub nom. Re* WIGZELL, *Ex p.* TRUSTEE *v.* BARCLAYS BANK, LTD., 125 L. T. 361; *sub nom. Re* WIGZELL, HART *v.* BARCLAYS BANK, 37 T. L. R. 526; 65 Sol. Jo. 493, C. A.

Annotations:—As to (2) **Distd.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814. *As to* (3) **Consd.** Scranton's Trustee *v.* Pearse, [1922] 2 Ch. 87. **Reld.** *Re* London County Commercial Reinsurance Office, [1922] 2 Ch. 67.

—— ——.]—*See* Bankruptcy (Amendment) Act, 1926 (c. 7), s. 4.

1894a. —— Duty to recover statutory debt.]—In 1919 debtor paid deft., a bookmaker, various cheques for bets lost on horse racing, & these cheques were cleared through various banks, as holders. On Aug. 30, 1920, debtor was adjudicated bkpt. & on Mar. 30, 1921, his trustee in bkpcy. by the direction of his committee of inspection, commenced an action to recover £955, the amount admitted to be due, if recoverable. The action was transferred to the judge in bkpcy. under Bkpcy. Rules, 1915, r. 123. Deft. took the point that such an action ought not to be brought by an officer of the ct., as the claim, however legal, was practically dishonest, & that all cts. must apply the rule in *Re Condon, Ex p. James*, No. 60, *ante*:—*Held:* the claim the trustee in bkpcy. was seeking to enforce was in respect of a debt which under Gaming Act, 1835 (c. 41), s. 2, & the decision of the House of Lords in *Sutters* v. *Briggs* (*see* GAMING & WAGERING, Vol. XXV., p. 418, No. 213), was a statutory debt, & there was nothing in *Re Condon, Ex p. James*, or in any of the cases in which the rule in that case had been followed, which entitled the ct. to say that if & when a right of action in respect of such a debt vested in a trustee in bkpcy., it was a dishonest or dishonourable thing for him as an officer of the ct. to enforce it, & judgment for the trustee in bkpcy. must be entered in the action for the amount claimed.—SCRANTON'S TRUSTEE *v.* PEARSE, [1922] 2 Ch. 87; 91 L. J. Ch. 579; 127 L. T. 698; 38 T. L. R. 629; 66 Sol. Jo. 503; [1922] B. & C. R. 52, C. A.

Annotation:—**Reld.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814.

1894b. —— Duty to act equitably—Recovery of money paid to bankrupt with approval of official receiver.]—On June 26, 1924, a receiving order was made against W. on a petition presented on May 25, 1924, in respect of an act of bkpcy. on May 1, 1924. W. was a promoter of boxing contests & had in view at the date of the presentation of the petition boxing competitions, one of which was held at the Stadium, Wembley, on Aug. 9, 1924. He appealed against the receiving order, & pending that appeal the receiving order was not gazetted. His appeal having failed it was then gazetted on July 29, 1924. At an interview between W., his solr., the solr. for the Wembley authorities & A., the assistant official receiver, who under Bkpcy. Rules, 1915, r. 316, represented the official receiver, A. was told of the proposed boxing contest & the judge held on the evidence that at the interview W. told A. he desired notwithstanding the receiving order to be allowed to stage the contest as the only hope of providing assets to meet the claims of his creditors, & that it was arranged he could do so without any interference by the official receiver, on W. undertaking not to use the proceeds of the sale of tickets for his private purposes but only for discharging the expenses of the staging of the contest & to hand over any balance to the official receiver. On that arrangement being made W. proceeded with the negotiations for the contest & an agreement was executed by which he gave the Wembley authorities the right to collect all moneys paid for tickets at the turnstiles, & they were to have those moneys as a security for the payment by W. for the use of the Stadium. Various ticket agents paid W. for blocks of tickets to be sold by them to the public. The contest, which was held at the Stadium on Aug. 9, 1924, only realised after payment of all expenses £730 which W. paid to the official receiver. On Sept. 6, 1924, W. was adjudicated bkpt., & on Sept. 9, S. was appointed trustee in the bkpcy. On a motion by S. to recover from the various ticket agents all sums paid by them since the date of the receiving order to W. for tickets they had bought from him & to recover the money collected by the Wembley authorities at the turnstiles:—*Held:* A. had power to give his sanction to W.'s receipt of the proceeds of the sale of tickets to be applied by him in discharging expenses & the trustee in bkpcy. was bound by the sanction so given, but even if he were not so bound & even if A. exceeded his powers the trustee

could not take the benefit of W.'s activities without accepting their burden, & the payment to W. of the moneys which the trustee claimed, being the direct result of the leave obtained by W. from A. to stage the boxing contests, it would be inequitable & unjust to make resps. pay these moneys over again for the benefit of W.'s creditors & to hold that the charge given to the Wembley authorities was nugatory.—*Re* WILSON, *Ex p.* SALAMAN, [1926] Ch. 21; 95 L. J. Ch. 58; 133 L. T. 814; 70 Sol. Jo. 65; [1925] B. & C. R. 96.

1895. *Add. Annotations:*—**Consd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835; Scranton's Trustee *v.* Pearse, [1922] 2 Ch. 87. **Distd.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814. **Consd.** *Re* Regent Finance & Guarantee Corpn. (1930), 69 L. Jo. 283.

1896. *Add. Annotations:*—**Consd.** *Re* Stokes, *Ex p.* Mellish, [1919] 2 K. B. 256; *Re* Thellusson, *Ex p.* Abdy, [1919] 2 K. B. 735.

1961a. —— Suspension of bankruptcy—Death of trustee.]—Where proceedings in a bkpcy. have been suspended by a resolution of the creditors, passed under 1861 Act, s. 110, & the trustee appointed by the creditors to wind up the estate & effects of the bkpt. has died, the Ct. of Ch. has jurisdiction, under the Trustee Acts, to appoint new trustees.—*Re* RAPHAEL'S TRUST ESTATE (1870), L. R. 9 Eq. 233; 39 L. J. Ch. 200; 18 W. R. 247.

1966a. —— Refusal to convene creditors' meetings.]—*Re* BURN (J.), *Ex p.* DAWSON (E. W. de V.), MCCLELLAN (H. T.) & TRUSTEE, No. 6318a, *post.*

1966b. —— In regard to convening meeting of creditors.]—(1) Creditors who, pursuant to 1914 Act, s. 79, have required the trustee or official receiver to convene a meeting of creditors for the purpose of passing specified resolutions, cannot obtain an order from the ct. compelling the trustee or official receiver to comply with such requisition if the ct. is of opinion that no useful purpose would be served thereby. A trustee is entitled to apply to the ct. for directions under sect. 79 (3) as to whether a meeting ought to be called or not in compliance with a requisition of creditors to convene it.

(2) The ct. is not bound to hear a creditor in opposition to a bkpt.'s application for discharge if satisfied that its attention has been called to all the facts & arguments necessary to enable the ct. to come to a proper decision.—*Re* BURN, DAWSON *v.* MCCLELLAN (No. 2) (1931), 101 L. J. Ch. 113; [1931] B. & C. R. 108.

2028a. —— ——.]—Where a trustee in bkpcy. with the sanction of the committee of in-

PART VII. SECT. 2, SUB-SECT. 2.

1911 ii. —— ——.]—*Re* LONDON BRIDGE WORKS, LTD. (Ont.), [1926] 4 D. L. R. 1121.—**CAN.**

k i. —— *Not secured creditor who has not valued security.*]—*Re* LONDON BRIDGE WORKS, LTD. (Ont.), [1926] 4 D. L. R. 1121.—**CAN.**

1943 i. *Who may appeal against decision on election—Custodian not being creditor.*]—The custodian appointed by the official receiver after an authorised assignment under Bkpcy. Act, if he is not a creditor of the assignor, is not entitled to appeal from the decision of the official receiver as chairman of the first meeting of creditors who, after passing on the admission or rejection of proofs of claim for the purpose of voting, has declared a certain person elected as trustee.—*Re* MCCOUBREY, [1924] 2 D. L. R. 1123; [1924] 2 W. W. R. 348; 4 C. B. R. 642.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 6.

1959 ii. —— *Conflict of interest & duty.*]—Where a trust co. was an authorised trustee in the bkpcy. of a limited co., & certain directors & shareholders of the latter, having large claims against debtors' estate, were also shareholders of the trust co., one being also a director, it was considered undesirable that the trust co. should continue to act, & another trustee was appointed.—*Re* SHAW (WALTER W.) CO., LTD., [1922] 3 W. W. R. 119; 68 D. L. R. 616.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 2.

sb. *To employ bankrupt at remuneration—Approbation of court.*]—*Held:* the employment of bkpt. & the terms of his employment, including his remuneration, must have the approbation of the ct.; the subsequent approbation is unauthorised by Bkpt. & Insolvent Act, 1857, s. 276.—*Re* MACKAY, MCGUINNESS *v.* HOLLINGSHEAD (1921), 55 I. L. T. 89.—**IR.**

sc. *To accept tenders.*]—When the trustee is accepting tenders, he must have the written authority of the inspectors to do so.—*Re* BROWN TAXI CO. & DETROIT RADIATOR CO. (1922), 65 D. L. R. 136.—**CAN.**

sd. *To dispose of property.*]—When the trustee is selling stock or transferring property he must have the written authority of the inspectors to do so.—*Re* BROWN TAXI CO. & DETROIT RADIATOR CO. (1922), 65 D. L. R. 136.—**CAN.**

se. *To dispose of shares—Application for direction of court.*]—*Re* ESTATE OF H. K. REED & CO., LTD. (No. 2), [1930] 3 W. W. R. 158; 4 D. L. R. 923; 12 C. B. R. 33.—**CAN.**

sf. *To lease.*]—On a motion under sect. 84 of Bkpcy. Act by a secured creditor to reverse the trustee's act or decision, authorised by the creditors & inspectors, in leasing the plant of the bkpt. for the current year:—*Held:* a trustee in bkpcy. has no power to lease under sect. 43 of Bkpcy. Act & the lease was accordingly set aside.—SECHART FISHERIES, LTD., *Re* EDWARD RENNEBERG & SONS CO. *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN. (B. C.), [1929] 4 D. L. R. 536; 2 W. W. R. 413; 10 C. B. R. 565.—**CAN.**

1983 i. *Payment—Power to make—To complete contract.*]—Debtor agreed to purchase goods on condition that should he fail to complete payment he should lose all the money paid. When all the payments had been made save the last one debtor became bkpt.:—*Held:* the trustee might pay the last instalment & retain the goods.—*Re* LEMIEUX & COPPING MOTOR DISTRIBUTORIES (1922), 69 D. L. R. 105; 1 C. B. R. 464.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 1.—A.

i. —— *Some creditors not notified.*]—If the trustee discovers that he has failed to send to some of the creditors a notice intended to be sent to all, he should notify those who have been overlooked to file their proofs & should advise them of what has taken place; it is not necessary to call a new meeting.—*Re* CANADIAN CEREAL & FLOUR MILLS CO. (1922), 67 D. L. R. 234; 51 O. L. R. 316; 2 C. B. R. 158.—**CAN.**

2001 i. *To realise to best advantage—Acceptance of tenders.*]—The trustee must be governed by the advice of the inspectors & by ordinary business judgment in delaying the acceptance of any tender for the purchase of debtor's assets.—*Re* CANADIAN CEREAL & FLOUR MILLS CO. (1922), 67 D. L. R. 234; 51 O. L. R. 316; 2 C. B. R. 158.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 1.—B. (b).

2008 ii a. —— *Accountant—Charge for clerk's time.*]—Where an accountant's work is indispensable a trustee under Bkpcy. Act may be allowed to charge against the estate, as a disbursement subject to taxation, a fee for his partner's work as accountant provided the trustee renounces any profit thereby accruing to him. But payments made to the trustee's firm for the work of its employees must be disallowed as disbursements.—*Re* BRYANT, ISARD & CO., [1925] 4 D. L. R. 157; 57 O. L. R. 471; 5 C. B. R. 799.—**CAN.**

sg. *Costs incurred before appointment of inspectors.*]—Solrs.' costs for services rendered prior to the appointment of inspectors are not taxable against the estate.—*Re* STONEBERG (1922), 69 D. L. R. 728; [1922] 2 W. W. R. 1328.—**CAN.**

sh. *Salaries of regular employees.*]—A custodian or trustee in bkpcy. cannot recover as disbursements, the salaries paid its regular employees.—*Re* CHEVRIER & SONS, LTD., [1928] 2 W. W. R. 111; 37 Man. L. R. 444; 10 C. B. R. 27.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 1.—B. (c).

g i. ——.]—The taxation of a trustee in bkpcy.'s bill of fees & disbursements will be reopened when it appears *primâ facie* that improper items have been included. Proof that the taxing master did not understand how far the inspectors had approved the accounts will establish such a *primâ facie* case.—*Re* J. STANLEY WEDLOCK, LTD., [1925] 2 D. L. R. 566; 5 C. B. R. 662.—**CAN.**

spection employs a solr. to do particular business, the principle on which the solr.'s bill of costs against the trustee is to be taxed is that of solr. & client, not as between solr. & his own client but that of " where the client & others are interested in a common fund," *i.e.* bkpt.'s estate, & on such a taxation the taxing master is not bound to allow copies of documents supplied to counsel at his request, nor the whole amount of the fees paid to counsel on the written authority of the trustee. But where the trustee has honestly sanctioned an expenditure which is not excessive, the taxing master should take a liberal view as far as possible in allowing the amounts against the estate which have honestly been incurred on behalf of such trustee.—*Re* LAVEY, *Ex p.* COHEN & COHEN, [1921] 1 K. B. 344 ; 90 L. J. K. B. 246 ; 124 L. T. 572 ; [1920] B. & C. R. 171.

2114. *Add. Annotations :*—**Apld.** *Re* Burn, *Ex p.* Dawson (E. N. de V.), McClellan (H. T.) & Trustee, [1932] 1 Ch. 247. **Refd.** Sevenoaks U. D. C. *v.* Twynam, [1929] 2 K. 440.

2158. *Add. Annotation :*—**Consd.** *Re* Katherine et cie, Ltd., [1932] 1 Ch. 70.

2176. *Add. Annotation :*—**Refd.** Spencer *v.* Ash worth, Partington, [1925] 1 K. B. 589.

2031 i. *Basis of taxation of solicitor's charges—Amount of costs limited.*]—*Re* MESSERVEYS, LTD., [1924] 1 D. L. R. 1037 ; 4 C. B. R. 493.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 1.—C. (a).

2035 i. *Order for payment—When granted—Proceeds of sale handed over to debtor.*]—Where debtor parts with property to a trustee who, in fraud of creditors, disposes of it & hands over the proceeds of the sale to debtor, such a fraudulent trustee may be compelled to pay to the creditors the money which he received as a result of such sale.—CAMERON *v.* MOSELEY, [1923] 3 D. L. R. 267.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 1.—H.

sk. *Trustee giving secret information to purchaser of part of estate—Right to set aside sale.*]—*Re* DAVIES FOOTWEAR CO., UNDERHILL, LTD., *v.* BARBER (1923), 53 O. L. R. 467 ; 4 C. B. R. 131.—**CAN.**

sl. *Effect of Bankruptcy Act*, 1914, s. 80.]—Above sect. is not intended to confer a general jurisdiction upon the Ct. of Bkpcy. to set aside such a sale & thereby affect rights acquired by purchasers.—*Re* CHIRNSIDE ; DIGBY *v.* UNION TRUSTEE CO. OF AUSTRALIA, LTD. (1929), V. L. R. 217.—**AUS.**

PART VII. SECT. 5, SUB-SECT. 2.—A.

2125 iv a. —— —— " *Cash receipts.*"] —The trustee is to be confined to five per cent. of the cash receipts in all circumstances, unless the inspectors in writing increase the amount & the ct. approves.—*Re* BRYANT ISARD & CO., [1925] 4 D. L. R. 157 ; 57 O. L. R. 471 ; 5 C. B. R. 799 ; *varying* [1925] 1 D. L. R. 847 ; 5 C. B. R. 393.—**CAN.**

2125 iv b. —— —— —— *Meaning.*] —*Re* JOHNSTON, [1925] 4 D. L. R. 226. —**CAN.**

2125 iv c. —— ——.]—Bkpcy. Act, 1927 (c. 11), s. 85, does not recognise 5 per cent. of the cash receipts as the ordinary commission allowable to a trustee in bkpcy. ; but merely fixes 5 per cent. as the limit of the charge to be allowed, except with the approval in writing of the inspectors & of the ct. Under the circumstances in the present case a commission of 3 per cent. on both the receipts & on the cash received by the trustee under a composition agreement was held to be reasonable.—*Re* CHEVRIER & SONS, LTD., [1928] 2 W. W. R. 111 ; 37 Man. L. R. 444 10 C. B. R. 27.—**CAN.**

sm. *Right to priority—Over Crown debts.*]—The trustee is entitled to be paid his fees & expenses in priority to the Crown.—*Re* CANADIAN CARPET & COMFORTER MANUFACTURING CO., *Ex p.* A.-G. FOR CANADA, [1924] 4 D. L. R. 1307 ; 5 C. B. R. 54.—**CAN.**

sn. —— *Over claims for taxes.*]—A. trustee in bkpcy. is entitled to retain his fees & expenses out of the estate in priority to the Crown's claim for sales taxes.—*Re* TORONTO METAL & WASTE CO. (1921), 67 D. L. R. 111 ; 51 O. L. R. 287 ; 2 C. B. R. 138.—**CAN.**

so. —— ——.]—The claim of the trustee in bkpcy. for his expenses is payable in priority to the taxes owing by debtor to a municipality.—*Re* ADAMS SHOE CO., *Ex p.* TOWN OF PENETANGUISHENE, [1923] 4 D. L. R. 927.—**CAN.**

sp. —— ——.]—The trustee in bkpcy.'s claim for his fees & expenses always precedes the Crown's claim for taxes under War Revenue Tax Act. —*Re* DAVIS, [1924] 3 D. L. R. 556 ; 4 C. B. R. 698.—**CAN**

sr. —— *Over claims by landlord*]—If the landlord's claim arose anterior to that of the Crown's claim for taxes, the trustee's claim for his fees & expenses will count after the landlord's claim.—*Re* DAVIS, [1924] 3 D. L. R. 556 ; 4 C. B. R. 698.—**CAN.**

Priority of debts generally, *see* cases in Part XII., *post.*

q i. *Power of court to enforce payment.*]—The ct. will not dispose of a petition for an order for immediate payment of the trustee's costs.—MEN'S ATTIRE REGISTERED *v.* HART (1922), 68 D L. R 193 ; 2 C. B. R. 534.—**CAN.**

sv. *Non-payment of fees—Whether ground for setting aside composition.*]—LAKE ST. JOSEPH HOTEL *v* GROSLEAU (1928), Q. R. 45 K. B. 118 ; 10 C. B. R. 14.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 2.—B. (b).

sw. *Duty to obtain indemnity—Value of estate uncertain.*]—Where there is any doubt as to the value of the estate an authorised trustee should before proceeding with its administration, obtain an indemnity from the creditors.—*Re* GUMP (1921), 69 D. L. R. 202 ; 51 O. L. R. 118 ; 2 C. B. R. 56.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 1.—B.

2159 i. *Receiver handing over assets to trustee—Whether lien for charges—Whether locus standi to impeach management of trustee.*]—*Held :* (1) the interim receiver's fees & expenses were a first charge upon the assets, & should be paid in priority to other fees & expenses, in the administration thereof ; (2) no one except the creditors can attack the trustee upon the ground that he has mismanaged the estate.—*Re* GUMP (1921), 69 D. L. R. 202 ; 51 O. L. R. 118 ; 2 C. B. R. 56.—**CAN.**

2159 ii. —— ——.]—Before the making of the receiving order debtor co. made an assignment to T., an authorised trustee, who had no knowledge that a bkpcy. petition had been filed before the assignment :—*Held :* T. having acted innocently, ought to receive remuneration for his services, which must be treated as an expenditure of the trustee, ranking ahead of the claim of the Crown.—*Re* TORONTO METAL & WASTE CO. (1921), 67 D. L. R. 111 ; 51 O. L. R. 287 ; 2 C. B. R. 138.—**CAN.**

sx. *Bankrupt insured for benefit of creditor—Policy moneys held in trust for creditor.*]—*Re* WILNER (Ont.), [1928] 2 D. L. R. 396 ; 8 C. B. R. 616. —**CAN.**

sy. *Trustee carrying on business—Liability for goods supplied.*]—*Re* ALLIED OIL & GAS CO., SMITH *v.* TRUSTEE (Ont.), [1928] 2 D. L. R. 986 ; 10 C. B. R. 69.—**CAN.**

PART VII. SECT. 9, SUB-SECT. 1.—B.

sz. *Who may vote—Wife of bankrupt.*]—Bkpcy. (Scotland) Act, 1913, s. 60, enacts that the wife of the bkpt. shall not be entitled to vote in the election of the trustee, but that in all other respects she may be ranked as a creditor. Sect. 71 enacts that a majority in number & value of the creditors, present at any meeting duly called for the purpose, may remove the trustee :—*Held :* the wife of the bkpt. was not entitled to vote for the removal of the trustee in respect that the removal of the trustee was nothing more than a step in the procedure for electing a new trustee.—MACNAUGHT *v.* SIEVWRIGHT, [1928] S. C. 687.—**SCOT.**

PART VII. SECT. 9, SUB-SECT. 1.—C. (a).

sa. *For good cause.*]—If a trustee in bkpcy. acts throughout with the consent of the creditors, & if his appointment as trustee is confirmed at a general meeting of creditors, there can be no grounds for dismissing him from office.—LANGLOIS *v.* LEMIRE, *Re* GARDNER (1922), 65 D. L. R. 128.—**CAN.**

PART VII. SECT. 9, SUB-SECT. 3.

2285 i. *Revocation of order of release—To enable trustee to administer after-acquired property—Estate administered in ignorance of existence of property.*]—*Re* WATSON (1927), 61 O. L. R. 173.—**CAN.**

PART VII. SECT. 10.

sb. *Power—To override creditors' instructions to trustee.*]—Where at a creditors' first meeting they instruct the trustee to give priority to certain claims :—*Semble :* it is not competent for the inspectors to override such instructions.—*Re* OLYMPIA CAFE CO., LTD., *Ex p.* BEDALI, [1927] 1 D. L. R. 907 ; [1927] 1 W. W. R. 131.—**CAN.**

sc. *Exercise of powers—Must act personally.*]—*Re* BROWN TAXI CO. & DETROIT RADIATOR CO. (1922), 65 D. L. R. 136.—**CAN.**

2298 i. —— *To consent to appointment of solicitor—No particular form necessary—Must be specific.*]—*Re* BRYANT, ISARD & CO. (Ont.), [1926] 4 D. L. R. 440 ; 7 C. B. R. 594 ; *varying*, [1925] 1 D. L. R. 34 ; 7 C. B. R. 93.—**CAN.**

PART VII. SECT. 11.

sd. *Authorised trustee acting for estate without authority.*]—R. was appointed an authorised trustee in bkpcy. F. another authorised trustee, made an

Part VIII.—Proof of Debts.

2344. *Add. Annotation :*—**Consd.** *Re* Moss, *Ex p.* Everitt (1923), 93 L. J. Ch. 98.

2353. *Citations :*—Delete " 1 L. J. Bcy. 44."

2385. *Add. Citations :—affg.* S. C. *sub nom.* MORGAN *v.* HARDY (1887), 18 Q. B. D. 646, C. A.; *revsg.* (1886), 17 Q. B. D. 770.
Add. Annotation :— **Refd.** Baker *v.* Lloyd's Bank, [1920] 2 K. B. 322.

2392. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

2415. *Add. Citation :*—1 Ves. & B. 112.

2429. *Add. Citation :*—15 L. J. Bcy. 9.

2458. *Add. Annotation :*—**Consd.** *Re* Houlder, [1929] 1 Ch. 205.

2463. *Add. Citations :—affg.* S. C. *sub nom.* MORGAN *v.* HARDY (1887), 18 Q. B. D. 646, C. A.; *revsg.* (1886), 17 Q. B. D. 770.
Add. Annotation :—**Refd.** Baker *v.* Lloyd's Bank, [1920] 2 K. B. 322.

2467. *Add. Annotation :*—**Refd.** *Re* Lister, *Ex p.* Bradford Overseers & Bradford Corpn., [1926] Ch. 149.

2508. *Add. Annotation :*—**Expld.** *Re* Houlder, [1929] 1 Ch. 205.

2509. *Add. Annotation :*—**Distd.** *Re* Houlder, [1929] 1 Ch. 205.

2514a. —— **Payments received from other sureties.]** —In Aug. 1921, two borrowers with three sureties borrowed £20,000 from an insurance co. The loan was secured by the joint & several covenant of the borrowers & the sureties & by a mtge. & further charge on the borrowers' life policies. The loan was repayable by instalments spread over five years, but, if a borrower or surety became bkpt., it was immediately repayable. On Jan. 10, 1924, a receiving order was made against one surety, H., on his own petition, & on Jan. 25 he was adjudicated bkpt. At the date of the receiving order the amount due to the insurance co. as creditors was £8,000 principal & £249 interest, & on Jan. 13, 1926, they put in a proof for that amount in H.'s bkpcy. Between the date of the receiving order & the proof, however, the creditors had received some £5,372 made up of £4,910 payments of principal & interest by the other sureties & £462 credited *ex gratia* as the surrender value of the policies which had really lapsed. The trustee in bkpcy. applied to reduce the proof by £5372 :—*Held :* as each surety was liable for the whole debt due at the date of the receiving order, the creditors were entitled to prove for the full amount in the surety H.'s bkpcy. without giving credit for any sums received from the other co-sureties since that date, provided that they did not in the whole recover more than 20*s.* in the pound.—*Re* HOULDER, [1929] 1 Ch. 205; *sub nom. Re* HOULDER, *Ex p.* RABBIDGE *v.* EAGLE STAR DOMINIONS INSURANCE CO., 98 L. J. Ch. 12; 140 L. T. 325; [1928] B. & C. R. 114.

2545. *Add. Annotation :*—**Expld.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

arrangement with R. whereby he purported to transfer to R. the administration of an estate & R. proceeded to deal with the estate as if he had become authorised trustee. In an action upon a security bond given by R. :—*Held :* the security required by the Act applies only to an authorised trustee in bkpcy. after his appointment as trustee of an estate; R. did not act as an authorised trustee under the Act; therefore deft. co. never became liable for his misconduct.—MULVEY *v.* GENERAL ACCIDENT ASSCE. CO., [1930] 2 D. L. R. 657; 65 O. L. R. 110; 11 C. B. R. 273.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 1.

2385 ii. —— *Bankruptcy Act, s.* 44.] —The above sect. does not give persons not otherwise entitled to recover from bkpt. a right to prove against his estate because of an obligation to a third person.—*Re* EXCELSIOR ELECTRIC DAIRY MACHINERY, LTD., [1923] 3 D. L. R. 1176; (1922), 52 O. L. R. 225; 2 C. B. R. 599.—**CAN.**

se. *Debt due from association prohibited from dealing on credit system.*] —*Held :* not provable.—*Re* KELVINGTON GRAIN GROWERS' CO-OPERATIVE ASSOCN., [1924] 1 D. L. R. 249.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 3.—B.

2427 i. *Bankruptcy of purchaser—Part delivery before bankruptcy—Cancellation of contract.*]—The insolvent co. agreed to buy sugar, to be delivered in fixed monthly instalments. After certain deliveries had been made the sugar co. intimated that there would be no more deliveries until the outstanding account for previous deliveries was settled. The insolvent co. made no demand for deliveries & the sugar co. made no tender :—*Held :* the sugar co. could not be permitted to lie by until the whole period of the contract was up & then claim damages for the failure to call for delivery during each of the preceding months.—*Re* ROCKLAND COCOA & CHOCOLATE CO. (1921), 64 D. L. R. 644; 51 O. L. R. 19; 2 C. B. R. 43.—**CAN.**

2428 i. —— *Resale by vendor—Proof for loss on resale.*]—*Held :* the vendors could prove for such damages as they would have been entitled to recover against the insolvent for the breach of the contract.—*Re* HACHBORN (1922), 67 D. L. R. 227; 51 O. L. R. 312; 2 C. B. R. 224.—**CAN.**

2438 i. —— *Payment in foreign currency.*]—*Held :* the vendor entitled to prove for an amount equivalent in value to the amount payable in foreign currency.—*Re* MCKAY (1922), 52 O. L. R. 466; 3 C. B. R. 462.—**CAN.**

2438 ii. —— *Goods not reasonably fit for required purpose.*]—*Held :* the value of the goods should be estimated, the damages incurred by the purchaser deducted, & the balance proved for.—*Re* SCOTLAND WOOLLEN MILLS CO., [1923] 2 D. L. R. 274; 3 C. B. R. 636.—**CAN.**

si. *Sale & purchase in bulk.*]—Claim of purchaser to rank on estate of vendor disallowed.—*Re* WHITE, [1925] 1 D. L. R. 1189; 58 N. S. R. 1; 5 C. B. R. 511.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 3.—C.

2448 iv. —— —— *For full amount of rent due—Notwithstanding agreement for reduction of rent in consideration of compromise—Compromise not carried out.*]—*Re* MARTINS, LTD. (N. S.), [1926] 2 D. L. R. 685; 7 C. B. R. 485.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 3.—D. (a).

2481 iv. —— *Contingent on survivorship of wife.*]—*Re* LAING (1921), 64 D. L. R. 637; 51 O. L. R. 11; 2 C. B. R. 38.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 3.—D. (b) iii.

2526 ii. ——.]—*Re* ANDREW MOTHERWELL ESTATE, [1923] 4 D. L. R. 986; *affd.* 25 O. W. N. 359.—**CAN.**

1 i. ——.]—*Held :* the surety could not rank on the estate before the creditor had been paid in full.—*Re* COUGHLIN & CO., *Ex p.* GUARANTEE CO. OF NORTH AMERICA, [1923] 4 D. L. R. 971; 3 W. W. R. 1177.—**CAN.**

2545 iii. ——.]—The contingent liability of a surety who has not been called on to pay is a debt provable on the bkpcy. of the principal debtor.—*Re* FROMENT, ALBERTA LUMBER CO. *v.* ALBERTA DEPARTMENT OF AGRICULTURE, [1925] 3 D. L. R. 377; [1925] 2 W. W. R. 415; 5 C. B. R. 765.—**CAN.**

2545 iv. ——.]—A surety who has not paid or been excused becomes on the insolvency of the principal debtor a conditional creditor, & may as such prove his claim against the insolvent estate.—ROSSOUW, ETC. *v.* HODGSON, 1925] APP. D. 97.—**S. AF.**

sg. *Creditor agreeing to pay off debt due to another creditor—Agreement not carried out.*]—*Held :* the creditor was entitled to rank as a creditor for the amount which he had agreed to pay off.—*Re* BENSON-JOHNSTON, LTD., [1924] 4 D. L. R. 575; 5 C. B. R. 196; [1925] 1 D. L. R. 999; 5 C. B. R.

2546. *Add. Annotation :*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

2557. *Add. Annotations :*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358. **Refd.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

2560. *Add. Annotation :*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

2591. *Add. Annotation :*—**Consd.** Spencer *v.* Ashworth, Partington, [1925] 1 K. B. 589.

2597. *Add. Citation :*—15 L. J. Bcy. 9.

2646. *Add. Annotation :*—**Distd.** *Re* Houlder, [1929] 1 Ch. 205.

2647. *Add. Annotation :*—**Refd.** *Re* Houlder, [1929] 1 Ch. 205.

2649. *Add. Annotation :*—**Consd.** *Re* Houlder, [1929] 1 Ch. 205.

2650. *Add. Annotation :*—**Refd.** *Re* Houlder, [1929] 1 Ch. 205.

2703. *Add. Annotation :*—**Expld.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

2721a. —— Against general partner—Bankruptcy of limited partnership.]—X. was the sole general partner in two limited partnerships, Firm A. & Firm B. By May 12, 1931, five bills of exchange had been drawn on Firm B., who accepted them by X. as managing partner. Receiving orders were subsequently made against both firms on X.'s petition, & in each case X. was adjudicated bankrupt :—*Held :* the holders of the bills were entitled to prove in the Firm A. bkpcy. —*Re* BARNARD, MARTINS BANK *v.* TRUSTEE, [1932] 1 Ch. 269 ; 101 L. J. Ch. 43 ; 146 L. T. 191 ; [1931] B. & C. R. 73.

2770. *Add. Annotation :*—**Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

2771. *Add. Annotation :*—**Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

2806. *Add. Annotation :*—**Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

2807. *Add. Citations:—sub nom. Re* DODDS, *Ex p.* VAUGHAN'S EXORS., 25 Q. B. D. 529 ; 62 L. T. 837 ; 39 W. R. 125 ; 6 T. L. R. 293 ; 7 Morr. 199.

2812. *Add. Annotation :*—**Consd.** Firman *v.* Royal, [1925] 1 K. B. 681.

2815. *Add. Annotations :*—**Consd.** *Re* Blanchard, *Ex p.* Blanchard (1932), 101 L. J. Ch. 313. **Refd.** Campbell *v.* Campbell, [1922] P. 187.

2829. *Add. Annotation :*—**Refd.** Schlesinger & Joseph *v.* Mostyn, [1932] 1 K. B. 349.

2851a. For what amount company may prove—Shares reissued.]—(1) Where a co. in pursuance of its arts. of assocn. has forfeited shares for non-payment of moneys due on allotment & calls, & the arts. provide that notwithstanding forfeiture the ex-shareholder shall be liable to pay all calls or other money owing upon the shares at the time of the forfeiture & the shares are subsequently sold & re-allotted to other persons with the result of a loss to the co. the co. on the subsequent bkpcy. of the ex-shareholder is only entitled to prove for the actual loss suffered, that is the difference between the amount received on the re-allotment of the forfeited shares & the amount due at the date of the forfeiture.

(2) Any payment of the uncalled capital by the new allottees must enure for the benefit of the original allottee who has forfeited the shares & release him *pro tanto* in respect of the damages for which his breach of contract in failing to pay the calls rendered him liable.—*Re* BOLTON, *Ex p.* NORTH BRITISH ARTIFICIAL SILK, LTD., [1930] 2 Ch. 48 ; 99 L. J. Ch. 209 ; 143 L. T. 425 ; [1929] B. & C. R. 141.

2901. *Add. Annotations :*—**Refd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1 ; *Re* Wait, [1927] 1 Ch. 606 ; Ditcham *v.* Miller (1931), 100 L. J. P. C. 177.

2902. *Add. Annotations :*—**Refd.** *Re* Dent, *Ex p.* Trustee, [1923] 1 Ch. 113 ; Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1.

2902a. -.]—By marriage articles in 1914, made between husband & wife & three trustees, it was agreed that, after the intended marriage, an indenture of settlement should be executed & that the husband would bring into settlement all property to which he then was or thereafter might become entitled, to be held, subject to life interests in favour of husband & wife, upon trusts to be mutually agreed between the trustees of the settlement. It was further agreed that the first trustees of the settlement should be the three trustees of the articles therein named, & that if they or either of them should fail to accept the trusteeship of the settlement, then such other person or persons as the spouses should nominate ; & that in the meantime until the execution of the settlement the persons in whom such property should be vested should hold the same upon the trusts of the settlement. The marriage was solemnised on the day of the execution of the articles. On the death of his father on Feb. 22, 1918, the husband, under his will, became entitled in reversion, subject to the life interest of testator's widow, to a share in his residuary estate. On June 13, 1919, the trustees of the articles gave notice to the will trustees of the execution of the articles. On Oct. 21, 1920, the husband, in pursuance of his contract contained in the articles, executed a settlement by which he assigned to the trustees thereof, of whom there were three & of whom one was also a trustee under the articles, but the other two were not, his interest under his father's will upon trusts for the benefit of his wife & children. On Dec. 5, 1921, the settlor was adjudicated bkpt. The trustee in bkpcy. moved for a declaration that the settlement & the transfer of the property purported to be made thereunder were void as against him :—*Held :* (1) the acquisition by bkpt. on his father's death of the property which was non-existent at the date of the

PART VIII. SECT. 4, SUB-SECT. 3.—D. (b) iv.

2860 1. *Co-surety's liability to contribution.*]—A surety can prove in the bkpcy. of a co-surety for contribution, although the proving surety has not paid the creditor anything.—*Re* FRODSHAM, ALBERTA LUMBER CO. *v.* ALBERTA DEPARTMENT OF AGRICULTURE, [1925] 3 D. L. R. 377 ; [1925] 2 W. W. R. 415 ; 5 C. B. R. 765.—CAN.

PART VIII. SECT. 4, SUB-SECT. 3.—L.

2903 1. *Continuing contracts generally —Debtor failing to complete.*]—*Held :* the creditors were entitled to be paid the damages sustained in respect of the unexpired portions of the contract. —*Re* MCKAY (1922), 52 O. L. R. 466 ; 3 C. B. R. 462.—CAN.

articles did not operate under the well settled doctrine as a complete equitable assignment of that property, as the persons to whom the property was contracted to be assigned & the trusts upon which such persons were to hold it were not ascertained at the date of such acquisition; (2) even if there had been an equitable assignment within that doctrine, it would not have operated as a transfer of property within the true meaning of 1914 Act, s. 42 (3); (3) the assignment contained in the settlement of Oct. 1920, operated as a transfer of property within that sub-sect. & was void by reason of its execution within two years of the commencement of the bkpcy.—*Re* DENT, *Ex p.* TRUSTEE, [1923] 1 Ch. 113; 92 L. J. Ch. 106; 67 Sol. Jo. 32; [1922] B. & C. R. 137.

2905a. —— **Gift by father to children—Investment in father's firm—Bankruptcy of firm.**]—*Re* AIREY (EDWARD) & SONS, *Ex p.* AIREY (H. W.) & AIREY (P. B.) (1931), 72 L. Jo. 25, D. C.

2934. *Add. Annotation:*—**Distd.** *Re* Houlder, [1929] 1 Ch. 205.

2955. *Add. Annotation:*—**Distd.** *Re* Pitchford, [1924] 2 Ch. 260.

2978a. **Proof by plaintiff against bankrupt defendant—Stay of action after bankruptcy—Proof in bankruptcy for amount claimed in action.**] —On Oct. 25, 1920, resp., a mtge. broker, hereinafter called pltf., issued a writ against debtor in the K. B. Div. to recover a sum of £650 for commission earned. On June 20, 1921, the action was set down for trial. On July 19, 1921, a receiving order was made against debtor. On Feb. 2, 1922, on the application of pltf. made in the action the action was stayed with liberty to pltf. to restore. On Mar. 6, 1922, pltf., instead of applying to restore the action, lodged his proof in the bkpcy. of debtor for £650. The official receiver rejected his proof, but on Jan. 17, 1923, the county ct. judge reversed the decision of the official receiver & admitted the proof. On Sept. 29, 1923, pltf. lodged a further proof for £46 17*s.* 9*d.* for his untaxed costs of the action, all of which were incurred before the date of the receiving order. On Oct. 31, 1923, the official receiver rejected that proof. Pltf. appealed, & on Feb. 11, 1924, the county ct. judge reversed his decision & ordered that the proof of the costs, amounting to £46 17*s.* 9*d.*, should be admitted subject to taxation. On the appeal of the official receiver:—*Held:* (1) as pltf. had obtained no judgment dealing either with his claim in the action or the costs thereof, but had elected to stay his action & to prove in bkpcy. for the amount claimed in the action, he was not entitled to prove for his untaxed costs of the action; (2) (ASTBURY, J.) the sum for which pltf. sought to prove in respect of his costs was not a debt or liability certain or contingent to which debtor was subject at the date of the receiving order or to which he might become subject before his discharge by reason of any obligation incurred before that date, within 1914 Act, s. 30 (3), & therefore was not provable.—*Re* PITCHFORD, [1924] 2 Ch. 260; *sub nom. Re* PITCHFORD, *Ex p.* OFFICIAL RECEIVER, 93 L. J. Ch. 541; [1924] B. & C. R. 118; *sub nom. Re* PITCHFORD, *Ex p.* OFFICIAL RECEIVER *v.* HALL, 131 L. T. 669, D. C.

2983. *Add. Annotation:*—**Refd.** *Re* Pitchford, [1924] 2 Ch. 260.

2989. *Add. Annotation:*—**Consd.** *Re* Pitchford, [1924] 2 Ch. 260.

2991. *Add. Annotation:*—*As to* (1) **Refd.** Abraham *v.* Buckley, [1924] 1 K. B. 903.

2993. *Add Annotation:*—**Consd.** *Re* Pitchford, [1924] 2 Ch. 260.

3001. *Add. Citation:*—*sub nom.* R. *v.* SUSSEX JJ., 14 J. P. Jo. 224.

3038. *Add. Annotation:*—**Consd.** *Re* A Debtor, [1927] 2 Ch. 367.

3049. *Add. Annotation:*—**Refd.** *Re* L. A. & B. F. M., Official Receiver *v.* The Debtors (1926), 95 L. J. Ch. 258.

2905 i. *Loan.*]—*Re* NODEN, HALLETT & JOHNSTON, *Ex p.* JOHNSTON (Ont.), [1927] 3 D. L. R. 700; 8 C. B. R. 295; *affd.* [1928] 2 D. L. R. 686; 10 C. B. R. 211.—**CAN.**

sh. *Agency—Bankruptcy of stock brokers—Proof for shares.*]—*Re* ROBERTSON, *Re* WEATHERHEAD, [1931] 2 D. L. R. 995; [1930] 3 W. W. R. 599; 43 B. C. R. 232; 12 C. B. R. 117.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 7.

sa. *Costs of solicitors retained to oppose granting of receiving order.*]—*Held:* the solrs. were entitled to rank upon the estate of debtor for the amount of their costs so incurred.—*Re* TUNNELL, LTD., [1924] 4 D. L. R. 862; 56 O. L. R. 110; 5 C. B. R. 73.—**CAN.**

PART VIII. SECT. 6, SUB-SECT. 1.

3018 v. —— *Name & description of declarant.*]—It is sufficient if the initials of the christian names & the full surname be given, & words setting forth the occupation or station in life of the declarant.—*Re* MCCOUBREY, *Re* STRATTON & GREENSHIELDS, LTD., [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—**CAN.**

3018 vi. —— *Omission of "make oath & say"—Effect of substitution of words having same meaning.*] — The declaration should not be rejected for such variance.—*Re* MCCOUBREY, *Re* STRATTON & GREENSHIELDS, LTD., [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—**CAN.**

3018 vii. —— *Statement of account—Sufficiency of statement.*]—The statement of account is *primâ facie* properly referred to in a declaration only when it is "annexed & marked 'A.'" If, however, the statement is a proper one & is annexed to the declaration, though not so marked, & from an examination thereof in conjunction with the declaration or from other circumstances, it may reasonably be concluded that the statement is that referred to, it may be admitted.—*Re* MCCOUBREY, *Re* STRATTON & GREENSHIELDS, LTD., [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—**CAN.**

3020 i. —— *Proof on behalf of corporation.*]—(1) The declarant need not expressly describe himself as one of the classes authorised to make the declaration.

(2) Where the declaration does not state that the deponent has knowledge of the facts deposed to it is objectionable & should be rejected.—*Re* MCCOUBREY, *Re* STRATTON & GREENSHIELDS, LTD., [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—**CAN.**

sj. *Interlineations & erasures.*]—Although the declaration contains interlineations & erasures not duly initialed, it may be received, in the discretion of the official receiver, chairman, or trustee, if he is satisfied that the change was made before the declaration was sworn.—*Re* MCCOUBREY, *Re* STRATTON & GREENSHIELDS, LTD., [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—**CAN.**

3024 ii. ——.]—It is sufficient if made before a person authorised to take affidavits under Canada Evidence Act, R. S. C., 1906 (c. 145), s. 36.—*Re* MCCOUBREY, *Re* STRATTON & GREENSHIELDS, LTD., [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—**CAN.**

PART VIII. SECT. 6, SUB-SECT. 2.

sk. *Necessity for filing claim.*]—Neither the ct. nor the trustee will consider a creditor's claim against bkpt.'s estate until it has been filed.—*Re* CONTINENTAL PUBLISHING CO., *Ex p.* DAVIS & SIMMONS, [1924] 1 D. L. R. 339; 4 C. B. R. 343.—**CAN.**

PART VIII. SECT. 7, SUB-SECT. 1.

3035 iv a. —— —— ——.]—*Re* UNION, INDIAN SUGAR MILLS CO., LTD. *v.* BRIJ LAL, JAGANNATH (1927), I. L. R. 49 All. 728.—**IND.**

3035 vi. —— ——.]—The judge has power to inquire into the consideration for the judgment debt.—*Re* ALLAN GRAIN GROWERS' CO-OPERATIVE ASSOCN., *Ex p.* ROBINSON, LITTLE & CO. (1922), 65 D. L. R. 347; 15 Sask. L. R. 295; [1922] 2 W. W. R. 142.—**CAN.**

3050. *Add. Annotation :*—**Refd.** *Re* Debtor, [1928] Ch. 199.

3052a. —— —— **Parties represented by independent counsel.**]—Although the ct. has power to go behind a judgment or compromise, in order to ascertain whether a petition founded thereon has been properly presented, it will not do so where the parties were represented by independent counsel at the time of such judgment or compromise, unless there is evidence that counsel acted improperly or without full knowledge of the facts.—*Re* DEBTOR, [1929] 1 Ch. 125 ; 140 L. T. 136 ; *sub nom. Re* DEBTOR (No. 27 OF 1927), *Ex p.* DEBTOR *v.* PETITIONING CREDITOR (1928), 97 L. J. Ch. 167 ; [1928] B. & C. R. 34, D. C.

3054. *Add. Annotation :*—**Refd.** *Re* A Debtor, [1927] 2 Ch. 367.

3058. *Add. Annotation :*—**Refd.** *Re* Home & Colonial Insce. Co., [1930] 1 Ch. 102.

3059. *Add. Annotation :*—**Refd.** Reading Trust, Ltd. *v.* Spero, Spero *v.* Reading Trust, Ltd., [1930] 1 K. B. 492.

3105a. Creditor money-lender—Contract harsh & unconscionable.]—A trustee in bkpcy. has no power to reject or reduce a proof by a money-lender, on the ground that the contract is harsh & unconscionable, such power being vested in the ct. alone.—*Re* ARMSTRONG, *Ex p.* LIPTON (1926), 95 L. J. Ch. 184 ; [1926] B. & C. R. 21.

3134. *Add. Citations :*—*sub nom. Re* BYROM, *Ex p.* ECKERSLEY, 22 L. J. Bcy. 27 ; 17 Jur. 198.

3140. *Add. Annotation :*—**Refd.** *Re* Debtors, [1927] 1 Ch. 19.

3152a. —— —— ——.]—The effect of Bkpcy. Rules, 1915, r. 262 read with rr. 26, 27, 28, is that subject to the ct.'s power to extend the time, which will only be exercised in very special circumstances, no application to reverse or vary the trustee's decision in rejecting a proof can be entertained unless it is made by notice of motion supported by affidavit & set down within 21 days of the decision, so that there is an effective application before the ct. within that period.—*Re* BARLEY, [1923] 1 Ch. 177 ; *sub nom. Re* BARLEY, *Ex p.* HARRISON, 92 L. J. Ch. 419 ; [1922] B. & C. R. 258.

3172. *Add. Annotation :*—**Consd.** *Re* Searle, Hoare, [1924] 2 Ch. 325.

3173a. Debt arising out of harsh & unconscionable contract—Creditor money-lender.]—*Re* ARMSTRONG, *Ex p.* LIPTON, No. 3105a, *ante*.

3200. *Add. Annotations :*—**Apld.** *Re* Home & Colonial Insce. (1928), 44 T. L. R. 718. **Expld.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617. **Refd.** Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65.

3210. *Add. Annotation :*—**Consd.** *Re* Searle, Hoare, [1924] 2 Ch. 325.

3210a. ——.]—Where, after the admission by the trustee of a creditor's proof against bkpt.'s estate & that creditor's participation in a first dividend, it was ascertained that he had proved for & received more than he was entitled to, & upon an application to the ct. his proof was reduced :—*Held :* in the absence of any rule in bkpcy., the well-known principle of equity, that a beneficiary who has been overpaid is not entitled to receive any further payment out of the common fund, until the payments to the other beneficiaries are levelled up to the amount received by the overpaid beneficiary,

3057 i. *Except in regard to assessed taxes.*]—Judgment was recovered by the A.-G. of the Irish Free State against R. for excess profits duty in respect of the four accounting periods ending Dec. 31, 1917, 1918, 1919, 1920. The assessments were made by the revenue officials of the Irish Free State subsequent to Mar. 31, 1923. On the petition of the A.-G., R. was adjudged bkpt. :—*Held :* the position behind the judgment could be examined to determine the question whether the A.-G. was a competent petitioning creditor in respect of the amount of the duties.—*Re* READE, [1927] I. R. 31.—**IR.**

PART VIII. SECT. 7, SUB-SECT. 2.

3071 ii. —— *After commencement of proceedings.*]—The mother of a bkpt. claimed to be ranked in his sequestration in respect of two loans alleged to have been made by her to him before his insolvency. At the date of sequestration no writ existed establishing the loans, but in support of her claim for a ranking the claimant produced, among other evidence, a holograph acknowledgment of the loans granted by the bkpt. after sequestration. The other evidence was by itself insufficient to prove the loans :—*Held :* bkpt.'s holograph acknowledgment, having been granted after sequestration, could not be used as evidence establishing the loans ; & claim rejected.—CARMICHAEL'S TRUSTEE *v.* CARMICHAEL, [1929] S. C. 265.—**SCOT.**

sl. *Proof by relative of bankrupt—Necessity for corroboration.*]—Where a relative of a bankrupt is claiming against the bkpt.'s estate he should, in order to make out a *primâ facie* case, adduce some corroborative evidence of the existence of the debt.—*Re* MORRIS, *Re* SHAUGHNESSEY, [1930] 1 W. W. R. 673.—**CAN.**

sm. —— ——.]—WRIGHT *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1930] 2 W. W. R. 293 ; 4 D. L. R. 1026 ; 11 C. B. R. 432.—**CAN.**

PART VIII. SECT. 8, SUB-SECT. 2.

3075 i. *Effect of delay.*]—The authority conferred on a trustee in bkpcy. by Bkpcy. Act, 1927, c. 11, s. 127 (2), to disallow a creditor's claim may be lost by undue delay in giving the claimant the notice of disallowance called for by said sect., especially where the claimant, if required to undertake the burden of proving his claim after such delay, would be seriously prejudiced by the delay ; but, although in such a case the trustee is held by reason of the delay to have admitted the proof of the claim, he may be permitted to apply to expunge or modify the proof. —*Re* BADGER'S ESTATE, OSTRANDER & CO., LTD. *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN. (Sask.), [1930] 2 D. L. R. 88 ; [1929] 3 W. W. R. 568 ; 24 S. L. R. 229 ; 11 C. B. R. 118.—**CAN.**

PART VIII. SECT. 8, SUB-SECT. 5.

3147 ii. —— —— *To direct issue.*]—*Held :* the bkpcy. judge had power to direct an issue to be tried.—INTERPROVINCIAL FLOUR MILLS, LTD. *v.* WESTERN TRUST CO., [1923] 2 D. L. R. 361 ; 16 Sask. L. R. 401 ; [1923] 1 W. W. R. 1068.—**CAN.**

3147 iii. —— —— *To adjudicate summarily.*]—The jurisdiction of the ct. to summarily adjudicate upon the rights of parties on an appeal under sect. 127 (4) of Bkpcy. Act, R. S. C., 1927, & r. 139, is limited to cases of claims for debt within the Act as to which there has been proper proof filed with, and which claims have been disallowed by, the trustee, & does not extend to cases in which there is a claim to property adverse to the title or rights of the trustee. In the latter cases the proper procedure to have the rights of the parties determined is under Bkpcy. rule 142, by notice of motion, upon the return of which if necessary the ct. may direct an issue or pleadings.—SAKER & SAKER *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., [1931] 3 W. W. R. 175.—**CAN.**

3157 i. —— *Evidence.*]—The authorised trustee, or claimant, may use as evidence the whole or any part of examinations of directors of debtor corpn. taken under Bkpcy. Act, s. 56.—*Re* CHRISTIE GRANT, LTD., [1921] 3 W. W. R. 264 ; 1 C. B. R. 489.—**CAN.**

3157 ii. *S. P. Re* DUMFERMLINE TRADING CO., *Ex p.* RELIABLE TRADING CO. (1922), 66 D. L. R. 813 ; [1922] 2 W. W. R. 1274.—**CAN.**

t i. —— *Jurisdiction of judge in bankruptcy.*]—*Re* MARITIME EDUCATION CO., POWELL & MERSEREAU *v.* AMERICAN HYDRO CARBON CO., [1930] 1 D. L. R. 733 ; 1 M. P. R. 481 ; 11 C. B. R. 338.—**CAN.**

t ii. —— ——.]—*Re* MARITIME EDUCATION CO., AMERICAN HYDRO CARBON CO. *v.* CLAYTON-KENNEDY, [1930] 1 D. L. R. 642 ; 1 M. P. R. 452 ; 11 C. B. R. 333 ; *affg.* 10 C. B. R. 425.—**CAN.**

t iii. —— *No right to substitute new claim on appeal.*]—*Re* MANITOBA METAL & HEATING CO., [1931] 3 W. W. R. 771.—**CAN.**

was applicable with the result that the overpaid creditor was not entitled to participate in any future dividends in respect of his reduced proof without giving credit for the overpayment in respect of his original proof.

The mere fact that the trustee cannot recover either payments made to a creditor whose proof is subsequently expunged or overpayments made to a creditor whose proof is subsequently reduced, does not prevent the operation of that equitable principle in the case of a proof in bkpcy. Nor does the judgment of JESSEL, M.R., in *Re Tait, Ex p. Harper* (*see* No. 3210), contain any statement inconsistent with that application of the principle.—*Re* SEARLE, HOARE & Co., [1924] 2 Ch. 325; 68 Sol. Jo. 755; *sub nom. Re* SEARLE, HOARE & Co., *Ex p.* TRUSTEE, 93 L. J. Ch. 571; 132 L. T. 21; [1924] B. & C. R. 114.

3222. *Add. Citation :*—[1918–19] B. & C. R. 276.

3224. *Add. Annotation :*—**Refd.** *Re* Maxson, *Ex p.* Trustee (1919), 88 L. J. K. B. 54.

3264a. —— —— **Dividend received.**]—Applts. sold a quantity of rice to a purchaser. The purchase-money was not paid, & the vendors brought an action claiming the return of the goods on the ground that they had been obtained by the fraud of the purchaser. The purchaser became bkpt., & resps., who were the trustees in the bkpcy., were added as defts. The vendors afterwards proved for the price of the goods sold in the bkpcy. & received a dividend :—*Held :* they had elected to affirm the contract of sale, & the action could not be maintained.—KIN TYE LOONG *v.* SETH (1920), 89 L. J. P. C. 113; 123 L. T. 639; [1920] B. & C. R. 89, P. C.

Part IX.—Secured Creditors.

3334. *Add. Annotation :*—**Refd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

3355a. ——**1914 Act, s. 4 (2).**]—*Re* DEBTOR, *Ex p.* PETITIONING CREDITORS (NO. 5 OF 1932) (1932), 101 L. J. Ch. 372.

3360. *Add. Annotation :*—**Refd.** *Re* Bueb, [1927] W. N. 299.

3365a. ——.]—*Re* BUEB, *Ex p.* TRUSTEE (1927), 64 L. Jo. 476; 164 L. T. Jo. 408.

3375a. Deposit of securities—To secure joint debt of firm—Debts due under separate personal guarantees of partners.]—The general rule in bkpcy., that, when a creditor seeks to prove against his debtor's estate, he must give up or

PART VIII. SECT. 10.

3218 ii. —— —— ——.]—The creditor was allowed to amend his claim & set out the security which he held.—STERLING CLOTHING CO. *v.* MEN'S ATTIRE REGISTERED (1922), 66 D. L. R. 358; 2 C. B. R. 535.—**CAN.**

3218 iii. —— *Proof made on footing of holding security—Security invalid.*]—Claimant was allowed to amend his claim.—*Re* DUMFERMLINE TRADING CO., *Ex p.* RELIABLE TRADING CO. (1922), 66 D. L. R. 813; [1922] 2 W. W. R. 1274.—**CAN.**

3236 ii. —— ——.]—J., who was adjudicated bkpt. on Sept. 16, 1927, was indebted to the U. Bank. Prior to the adjudication the bank had registered judgment mtges. against two farms belonging to the bkpt. The bank estimated the value of such security & proved as unsecured creditors for the balance of their debt. Subsequently as a result of the bkpt.'s criminal acts the value of the farms was so depreciated that they failed to realise the amount at which they had been assessed by the bank. The Official Assignee had recovered sufficient assets to pay all the unsecured creditors twenty shillings in the pound :—*Held :* the U. Bank were entitled to amend their proof of debt by increasing the amount thereof.—*Re* JOHNSTON, [1929] N. I. 103.—**IR.**

PART VIII. SECT. 12.

si. *Claim rejected in part—Right of creditor to appeal.*]—A creditor received a notice from the trustee disallowing part of his claim & enclosing a cheque for the balance. The creditor clearly showed that he had no intention of accepting the cheque in full accord & satisfaction of his claim, but he cashed the cheque :—*Held :* the creditor was not thereby debarred from appealing from the disallowance by the trustee.—*Re* COHEN & SWEIGMAN, *Ex p.* GELMAN, [1925] 4 D. L. R. 359.—**CAN.**

sm. *Claim of Crown rejected—Position of Crown.*]—*Re* WARDFOLD MANUFACTURING CO., [1926] 3 D. L. R. 333; 59 O. L. R. 195.—**CAN.**

PART IX. SECT. 1.

3332 iv. —— *Appeal from decision of referee—Forbidding creditor to enforce security.*]—*Re* CANADIAN WESTERN STEEL CORPN. (1922), 69 D. L. R. 689; 2 C. B. R. 494.—**CAN.**

b i. *To advise as to validity of lien*]—A judge of the Ct. of K. B. has jurisdiction to advise an assignee for the benefit of creditors on whether certain creditors have a mechanics' lien on the assets of the estate.—*Re* BECK, [1921] 3 W. W. R. 150.—**CAN.**

PART IX. SECT. 2.

sn. *Assignment of unpaid purchase-money under farm sale agreement to secure balance of purchase price of other property.*]—*Held :* pltf. was a secured creditor.—ANDERSON *v.* SERGE, [1924] 2 D. L. R. 1018; [1924] 1 W. W. R. 1260; 18 Sask. L. R. 255.—**CAN.**

so. *Lease of property on crop-payment plan.*]—Lessor held a secured creditor in respect of rent.—*Re* TURNER (1922), 65 D. L. R. 130; 15 Sask. L. R. 381.; [1922] 2 W. W. R. 414.—**CAN.**

sp. ——.]—*Held :* the lessor to the extent of his share of the crop reserved as rent was protected against the creditors of the lessee, notwithstanding a provision in the lease whereby the lessee's share of the crop was to be applied in payment of debts owing by the lessee to the lessor outside of the lease.—*Re* DEMRY & DEMRY, TRUSTEE *v.* HALLAND, [1924] 4 D. L. R. 1275; [1924] 3 W. W. R. 708.—**CAN.**

sq. *Purchase of property by third party—Agreement to transfer on repayment.*]—*Held :* the purchaser was a secured creditor.—*Re* BOURGEOIS, [1923] 2 W. W. R. 204; 3 C. B. R. 841.—**CAN.**

sr. *Judgment recovered before assignment—After passing of Bankruptcy Act, 1919.*]—*Held :* the assignment took precedence over the judgment.—PARKER-EAKINS CO. *v.* ROYAL BANK OF CANADA (1922), 65 D. L. R. 679.—**CAN.**

ss. ——.]—*Re* AYLWARD, *Ex p.* MCMILLAN (P. E. I.), [1927] 4 D. L. R. 305; 8 C. B. R. 352.—**CAN.**

3347 ii. *Seizure of goods under lien notes—Acquired with knowledge of insolvency—By holder of unregistered bill of sale.*]—*Re* MUSTARD, [1923] 2 D. L. R. 922; 4 C. B. R. 140; *affd.*, 24 O. W. N. 513.—**CAN.**

3347 iii. ——.]—Where by a provincial statute certain creditors are given a right of distress similar to that of a landlord for rent, & an actual distraint is made thereunder before the making by the debtor of an assignment in bkpcy., the creditor is a secured creditor within Bkpcy. Act.—*Re* GARRY CAFETERIA (Man.), [1928] 1 W. W. R. 139; 8 C. B. R. 604.—**CAN.**

t (p. 358) **i.** ——.]—The term "secured creditor" in Bkpcy. Act, s. 9, includes a creditor who has obtained a charging order against a fund in ct.—*Re* KAPLAN, MCLEAN (J. H.) ESTATE CO. *v.* NEWTON (Man.), [1926] 3 W. W. R. 593.—**CAN.**

t (p. 358) **ii.** *S. P.* BORTOLUZZI *v.* KAPLAN (Man.), [1927] 1 D. L. R. 183.—**CAN.**

sw. *Distress.*]—When a landlord distrains he becomes a secured creditor under Bkpcy. Act, but, in Alberta, his rights & priorities are not governed by that Act, but are subject to Landlord's Rights (Bkpcy.) Act, Alta., 1924 (c. 12), s. 3.—*Re* HAMILTON & OAKES, [1925] 2 D. L. R. 514; [1925] 1 W. W. R. 172; 5 C. B. R. 465.—**CAN.**

3360 i. *Appointment of receiver.*]—An order appointing a receiver :—*Held :* not to be a charge, & a judgment creditor of bkpt. not by virtue of the order a secured creditor.—*Re* PETERSON, *Re* HOLLOWAY, [1925] 4 D. L. R. 1042; [1925] 3 W. W. R. 708.—**CAN.**

sx. *Judgment for tolls for water supplied by municipality.*]—*Held :* the city of K. was, by virtue of the charge given it by Water Act, B.C., 1914, s. 151, a secured creditor.—*Re* KAMLOOPS COPPER CO., *Ex p.* KAMLOOPS, [1925] 3 D. L. R. 896; [1925] 2 W. W. R. 733; 35 B. C. R. 243.—**CAN.**

s (p. 360) **i.** —— —— *Joint & several note.*]—*Held :* the holder of the notes was not a secured creditor.—HODGE *v.* MCLEAN & UNION BANK OF CANADA, [1919] 3 W. W. R. 1108; 50 D. L. R. 125; 13 Sask. L. R. 85.—**CAN.**

t (p. 362) **i.** *Lien upon mining lands for wages.*]—*Held :* claimants were not secured creditors.—*Re* REEVE DOBIE MINES, WAGE-EARNERS CLAIM (1921), 64 D. L. R. 534; 50 O. L. R. 499; 1 C. B. R. 540.—**CAN.**

sy. *Wife taking security for money advanced to husband for business purposes.*]—HAW *v.* HAW'S OFFICIAL ASSIGNEE, [1927] N. Z. L. R. 866.—**N.Z.**

value any security which if not retained by him would go to augment that estate, presupposes that the security is for the particular debt for which he seeks to prove, & does not apply to a case where the security is for a different debt.

Where, therefore, two of the partners of a firm deposited with the bankers of the firm securities which belonged to them individually to secure a joint debt of the firm, & also gave the bankers their separate personal guarantees up to a limited amount to pay the joint debt of the firm, & the firm subsequently, as debtors, executed a deed of assignment for the benefit of their creditors, which provided that in the administration of the joint & separate estates of the debtors the rules prevailing in bkpcy. should be followed:—*Held:* as the bankers did not hold a charge on the securities so deposited for the debts due under the separate guarantees given by the two partners, &, therefore, were not "secured creditors" within the definition in 1914 Act, s. 167, in respect of those debts, they were entitled to prove for them under the trusts of the deed of assignment against the estates of the two partners without giving credit for the value of those securities.—*Re* DUTTON, MASSEY & Co., *Ex p.* MANCHESTER & LIVERPOOL DISTRICT BANKING Co., [1924] 2 Ch. 199; 93 L. J. Ch. 547; 131 L. T. 622; 68 Sol. Jo. 536; [1924] B. & C. R. 129, C. A.

3378. Add the following paragraph:—

"Also, under the circumstances N. was a party to the fraud, & his debentures were not a charge upon the property of S. in the hands of the trustee."

3383a. ——.]—*Re* DUTTON, MASSEY & Co., *Ex p.* MANCHESTER & LIVERPOOL DISTRICT BANKING Co., No. 3375a, *ante*.

3412. *Add. Annotations:*—**Consd.** *Re* A Debtor, [1922] 2 K. B. 109. **Refd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

3505. *Add. Annotations:*—**Consd.** *Re* Thellusson, *Ex p.* Abdy, [1919] 2 K. B. 735; *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835; *Re* Regent Finance & Guarantee Corpn. (1930), 69 L. Jo. 283. **Refd.** Scranton's Trustee *v.* Pearse, [1922] 2 Ch. 87.

3532. *Add. Annotation:*—**Apld.** *Re* Houlder, [1929] 1 Ch. 205.

3534. *Add. Annotation:*—**Apld.** *Re* Houlder, [1929] 1 Ch. 205.

3535. *Add. Annotations:*—**Apld.** *Re* Houlder, [1929] 1 Ch. 205. **Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

PART IX. SECT. 3

h i. ——.]—An assignment under Bkpcy. Act does not interfere with or lessen the rights of a secured creditor to enforce or retain his security.—WHITE & Co. *v.* THE IONIA (1922), 69 D. L. R. 94; 20 Exch. C. R. 327.—**CAN.**

h ii. ——.]—In bkpcy. the rule of equality is absolute except where Bkpcy. Act itself gives priority to some debts over others.—*Re* ORZY, [1924] 1 D. L. R. 250; 53 O. L. R. 323; 3 C. B. R. 737.—**CAN.**

h iii. ——.]—The rights of secured creditors remain unimpaired in the event of a receiving order or authorised assignment being made, & any proceedings taken to constitute a creditor a secured creditor or to realise on his security shall not, if legal, be interfered with or vacated.—*Re* HAMILTON & OAKES, [1925] 2 D. L. R. 514; [1925] 1 W. W. R. 172; 5 C. B. R. 465.—**CAN.**

h iv. ——.]—*Re* DUMAIS (1927), Q. R. 44 K. B. 79.—**CAN.**

3383 xxi. —— *Mortgage on vessel—Right to enforce security in admiralty court.*]—*Held:* an assignment under Bkpcy. Act did not prevent the holder of a mtge. upon a vessel from enforcing his security before the Exch. Ct. in Admlty.—WHITE & Co., LTD. *v.* THE IONIA, [1921] 20 Exch. C. R. 327; 1 C. B. R. 415.—**CAN.**

3383 xxii. —— *Security not realising sufficient to satisfy debt—Right to prove for balance.*]—If a creditor fails to file his claim in accordance with Bkpcy. Act, s. 46, he cannot proceed against the insolvent, after a composition has been confirmed, for payment of the composition dividend on the unrealised portion of his secured debt.—DALEY & MORIN *v.* FOGEL (1922), 68 D. L. R. 772.—**CAN.**

3386 iv. ——.] —*Held:* a vendor secured by a lien note might seize the goods & obtain an order for sale, though he had not proved in the bkpcy.—*Re* EMPIRE TRACTION Co., LTD., [1920] 3 W. W. R. 515.—**CAN.**

3386 v. ——.]—A secured creditor may proceed to realise his security independently of any bkpcy. or winding-up proceedings.—*Re* CANADIAN WESTERN STEEL CORPN. (1922), 69 D. L. R. 689; 2 C. B. R. 494.—**CAN.**

sz. *Right to sue under Fraudulent Preferences Act, R. S. S.*, 1920 (c 204).]—If the security of a secured creditor is sufficient to satisfy his claim in full he cannot bring action under the above Act.—BARRETT *v.* BARON, [1925] 1 D. L. R. 474; [1925] 1 W. W. R. 87; 19 Sask. L. R. 207; 5 C. B. R. 448.—**CAN.**

sa. *Settlement of claim by trustee & secured creditor.*] — *Held:* creditor estopped from setting up a preference in respect of part of his claim, unless the settlement contains an express stipulation to the contrary.—*Re* MARTIN MILK PRODUCTS, [1925] 1 D. L. R. 533; 5 C. B. R. 281.—**CAN.**

sb. *Sufficiency of security—Presumption.*]—In the absence of evidence to the contrary, it is presumed that the security of a secured creditor is sufficient to realise his claim—ANDERSON *v.* SERGE, [1924] 1 W. W. R. 1260; [1924] 2 D. L. R. 1018; 18 Sask. L. R. 255.—**CAN.**

PART IX. SECT. 4, SUB-SECT. 2.

q i. —— *Guarantee by third party.*]—A guarantee by a third party or a charge on the property of a third party is outside Bkpcy. Act, s. 46 (3), & the creditor is not called upon to value the security.—*Re* COUGHLIN & Co., *Ex p.* GUARANTEE Co. OF NORTH AMERICA, [1923] 3 W. W. R. 1177; 4 D. L. R. 971.—**CAN.**

sc. *Effect of—On creditor's rights against sureties.*]—Where a creditor on filing a claim against bkpt. values his security, & such valuation is accepted, he is not thereby paid to the extent of the valuation so as to relieve the sureties from liability therefor.—KUPROSKI *v.* ROYAL BANK OF CANADA, [1926] 3 D. L. R. 801; [1926] S. C. R. 532; 7 C. B. R. 499.—**CAN.**

PART IX. SECT. 4, SUB-SECT. 3.

e i. —— ——.]—Where a trustee took possession of goods upon which liens were held by virtue of an oral election to redeem at a valuation:—*Held:* he could not contend that it was invalid because not in writing.—*Re* GUARANTEED BATTERIES, LTD., [1923] 3 D. L. R. 743; 53 O. L. R. 45; 3 C. B. R. 695.—**CAN.**

PART IX. SECT. 4, SUB-SECT. 4.—B.

sd. *Necessity for.*]—Under Bkpcy. Act, s. 6, no leave is necessary for a secured creditor to proceed to realise on his security.—IMPERIAL LUMBER Co. *v.* JOHNSON, [1923] 1 D. L. R. 1125; 1 W. W. R. 920; 3 C. B. R. 707.—**CAN.**

PART IX. SECT. 4, SUB-SECT. 5.—D

3500 v. —— ——.]—A bank held liens upon bkpt. co.'s personal property which it valued in pursuance of Bkpcy. Act. The goods were sold for a greater sum than the valuation:—*Held:* the bank was entitled to receive all moneys realised from the sale of the goods under lien, subject only to a claim for wages & the charges of local agents.—*Re* GUARANTEED BATTERIES, LTD., [1923] 3 D. L. R. 743; 53 O. L. R. 45; 3 C. B. R. 695.—**CAN.**

3500 vi. ——.]—A bank paid over to the trustee in bkpcy. the amount realised in excess of its claim, & subsequently it was found that payment of its claim fell short by the amount realised under a forged bill of lading:—*Held:* the bank was entitled to be repaid such shortage by the trustee.—*Re* ADANAC GRAIN Co., LTD., [1922] 1 W. W. R. 849; 66 D. L. R. 772; 31 Man. L. R. 480—**CAN.**

3500 vii. —— *Right to payment in full.*]—A. & B. valued their securities in bkpcy. proceedings at amounts less than the principal sums covenanted to be paid. The trustee in bkpcy. having sold the mortgaged lands:—*Held:* A. & B. were entitled on allocation to payment of the full amount of their claims with interest.—*Re* TURKETINE'S ESTATE, [1920] 1 I. R. 23.—**IR.**

se. *Claim partly unsecured—Appropriation of payments to unsecured claim not permissible.*]—MOORE *v.* WILLIAMS (A. R.) MACHINERY Co., LTD., [1925] 2 D. L. R. 1009.—**CAN.**

3558. *Add. Citation :—sub nom. Re* EMETT, *Ex p.* ANDREWS, 1 Madd. 573.

Add. Annotations :—**Refd.** Dalby *v.* India & London Life Assce. (1854), 18 Jur. 1024; Crompton *v.* Huber (1855), 25 L. T. O. S. 43.

Part X.—Mutual Credit and Set-off in Bankruptcy.

3561. *Add. Annotations :*—**Consd.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293; *Re* Bailey, Duchess Mill, Ltd. *v.* Bailey (1932), 76 Sol. Jo. 560.

3562. *Add. Annotations :*—**Consd.** *Re* National Benefit Assce., [1924] 2 Ch. 539; *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293. **Refd.** Paddy *v.* Clutton, [1920] 2 Ch. 554; *Re* City Life Assce. (1925), 42 T. L. R. 45.

3562a. **1914 Act, s. 31.**]—The right of set-off is not one which depends upon the volition of either party, but upon an absolute statutory rule. Sect. 31 of the Bkpcy. Act, 1914, is directory in form & requires that its terms should be put in force (LORD HANWORTH, M.R.).—*Re* CITY EQUITABLE FIRE INSCE. CO. (2), [1930] 2 Ch. 293; 99 L. J. Ch. 536; 143 L. T. 444; [1929-30] B. & C. R. 233, C. A.

3566a. —— ——.]—*Ex p.* EDWARDS (1745), 1 Atk. 100; 26 E. R. 66, L. C.

Annotation :—**Refd.** *Ex p.* Quinten (1796), 3 Ves. 248.

3580. *Add. Annotation :*—**Refd.** *Re* Lloyd's Furniture Palace, Evans *v.* The Co., [1925] Ch. 853.

3598. *Add. Annotations :*—**Apld.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293. **Refd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

3599. *Add. Annotation :*—**Expld.** Giles *v.* Kruyer, [1921] 3 K. B. 23.

3612. *Add. Annotations :*—**Folld.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293. **Mentd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

3625. *Add. Annotation :*—**Consd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

3631. *Add. Annotation :*—**Refd.** *Re* Douglas, *Ex p.* Douglas' (James) Exors., [1930] 1 Ch. 342.

3637a. Equitable debt—Against legal debt.]—Bkpcy. jurisdiction proceeds upon equitable principles & draws no distinction between equitable & legal rights for the purposes of administration; & deft. is entitled under 1914 Act, s. 31, to set off against a legal debt claimed by a trustee in bkpcy. an equitable debt due to him from bkpt., both debts being in existence before the date of the receiving order.—MATHIESON'S TRUSTEE *v.* BURRUP, MATHIESON & Co., [1927] 1 Ch. 562; 96 L. J. Ch. 148; 136 L. T. 796; [1927] B. & C. R. 47.

3648. *Add. Annotations :*—**Consd.** *Re* Bailey, Duchess Mill, Ltd. *v.* Bailey (1932), 76 Sol. Jo. 560. **Refd.** Paddy *v.* Clutton, [1920] 2 Ch. 554.

3650. *Add. Annotation :*—**Consd.** *Re* Bailey, Duchess Mill, Ltd. *v.* Bailey (1932), 76 Sol. Jo. 560.

3652. *Add. Annotations :*—**Consd.** *Re* Bailey, Duchess Mill, Ltd. *v.* Bailey (1932), 76 Sol. Jo. 560. **Refd.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293.

3653. *Add. Annotations :* — **Folld.** Paddy *v.* Clutton, [1920] 2 Ch. 554. **Distd.** *Re* National Benefit Assce., [1924] 2 Ch. 339. **N.F.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

3654. *Add. Annotation :*—**Consd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

3655. *Add. Annotation :*—**Consd.** *Re* A Debtor, [1927] 1 Ch. 410.

3656. *Add. Annotation :*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

3656a. —F. having guaranteed advances by certain banks to the T. Assocn. in which he was interested, subsequently executed two deeds of arrangement in favour of his creditors. The Assocn. having gone into liquidation, the liquidator lodged a proof against F.'s estate in respect of sums due by F. to the Assocn. The trustee of F.'s estate rejected the proof & claimed to set off the various sums which had been advanced by the banks to the Assocn. for which F. had given his personal guarantee. The banks had proved against F.'s estate under the guarantees but nothing had been paid to them :—*Held :* inasmuch as none of these sums had in fact been paid by F. or his trustee to the banks the trustee was not entitled, under 1914 Act, s. 31, to set off F.'s contingent liability under the guarantees against the sums due by him to the Assocn.—*Re* FENTON, *Ex p.* FENTON TEXTILE ASSOCN., LTD., [1931] 1 Ch. 85; 99 L. J. Ch. 358; 143 L. T. 273; 46 T. L. R. 478; 74 Sol. Jo. 387; [1929] B. & C. R. 189, C. A.

Annotation :—**Consd.** *Re* Fenton (No. 2) *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

PART X. SECT. 1, SUB-SECT. 2.—B. (c).

3600 v. —— —— *Rebates on insurance premiums.*]—Debtor co. were indebted to a broker upon accepted drafts for insurance premiums paid by him on their behalf, & arranged with the broker to cancel the insurance policies upon which he had paid the premiums represented by the unpaid drafts, & to have the amounts allowed by way of rebate for the unearned premiums paid by the insurance cos. to the broker :—*Held :* the broker was entitled to apply the sum paid to him for rebates in reduction of the co.'s indebtedness, or by way of set-off against his claim for the amount of the premiums paid by him.—*Re* FAIRWEATHERS, LTD. (1921), 67 D. L. R. 590; 51 O. L. R. 438; 2 C. B. R. 202.—**CAN.**

3600 vi. —— —— *Creditor for services rendered—Debtor for goods delivered by bankrupt—Agreement for services to be paid for by supply of goods.*]—*Held :* there was a right of set-off.—*Re* MCMURTRY & Co., *Ex p.* JAMES (M. A.) & SONS, [1924] 1 D. L. R. 737.—**CAN.**

PART X. SECT. 1, SUB-SECT. 3.

3646 i. *Arrears of rent—Against sum due for grass seed.*]—*Held :* the landlord could exercise the right of set-off.—*Re* GRANTHAM, *Ex p.* DOYLE, [1923] 3 D. L. R. 94; 4 C. B. R. 168.—**CAN.**

3648 iii. —— ——.]—If shares in a co. are disclaimed by the official assignee upon the bkpcy. of a shareholder, & if for purposes of proof an estimate is made under Bkpcy. Act, 1908, s. 111, of the amount claimable in respect of future calls thereon, the co. may set off against such amount a sum due by the co. to bkpt. for goods supplied by him.—*Re* ANDERSON, [1924] N. Z. L. R. 1163.—**N.Z.**

3660. *Add. Annotation :*—**Refd.** Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451.

3661. *Add. Annotation :*—**Refd.** Ellis' Trustee *v.* Dixon-Johnson (1924), 131 L. T. 652.

3662. *Add. Annotation :*—**Refd.** *Re* A Debtor, [1927] 1 Ch. 410.

3663. *Add. Annotation :*—**Refd.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293.

3665. *Add. Annotations :*—**Refd.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293 ; *Re* Fenton, *Ex p.* Fenton Textile Assocn., Ltd., [1931] 1 Ch. 85.

3667. *Add. Annotations :*—**Distd.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293. **Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

3672. *Add. Annotations :*—**Refd.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293 ; *Re* Fenton, *Ex p.* Fenton Textile Assocn., Ltd., [1931] 1 Ch. 85.

3678. *Add. Annotations :*— **Consd.** Paddy *v.* Clutton, [1920] 2 Ch. 554 ; *Re* National Benefit Assce., [1924] 2 Ch. 339. **Apld.** *Re* City Life Assce. (1925), 42 T. L. R. 45. **Consd.** *Re* City Equitable Fire Insurance Co., [1930] 2 Ch. 293, C. A. ; *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358. **Refd.** Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451.

3679. *Add. Annotation :*—**Refd.** Benton *v.* Campbell, Parker, [1925] 2 K. B. 410.

3680. *Add. Annotations :*—**Consd.** *Re* City Life Assce. (1925), 42 T. L. R. 45. **Refd.** Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451 ; *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

3689. *Add. Annotations :*—**Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358 ; *Re* City Equitable Fire Insurance Co., Ltd., [1930] 2 Ch. 293.

3695. *Add. Annotation :*—**Refd.** Baker *v.* Lloyd's Bank, [1920] 2 K. B. 322.

3696a. Shares deposited as security for debit balance owing to bankrupt—Unauthorised sale by bankrupt.]—Deft. opened a speculative account with a firm of stockbrokers & deposited with them as security for any debit balance which might from time to time be owing by him on that account the indicia of title to various bonds & shares, including certain rubber shares. In 1920 the firm sold the rubber shares without the knowledge or authority of deft., who was kept in ignorance of the sale till after the bkpcy. of the firm. On Feb. 16, 1922, a receiving order was made against the firm & they were adjudicated bkpt. In Feb. 1923, the trustee in bkpcy. of the firm rendered deft. a final account, which, after giving credit to deft. for the proceeds of the sale of the shares, showed a balance due from deft. In an action to recover that balance the trustee claimed that the rights of the parties ought to be adjusted under the mutual credits clause of 1914 Act, as at the date of the receiving order. The judge, in ordering an account to be taken, directed that the value of the shares, to be ascertained when the account was certified, that being the date when the shares ought to have been returned to deft., should be set off against the claim of the trustee :—*Held :* the brokers could not have maintained an action for their debt if they were not in a position to hand over the shares against payment, & the trustee in bkpcy. had no higher right ; no question of set-off arose under the mutual credits clause of 1914 Act, the right of deft. being to a return of the shares *in specie ;* & in the special circumstances of the case the order of the judge was correct.—ELLIS & Co.'s TRUSTEE *v.* DIXON-JOHNSON, [1925] A. C. 489 ; 94 L. J. Ch. 221 ; 133 L. T. 60 ; 41 T. L. R. 336 ; 69 Sol. Jo. 395 ; [1925] B. & C. R. 54, H. L.

3697. *Add. Annotation :*—**Refd.** Baker *v.* Lloyd's Bank, [1920] 2 K. B. 322.

3702. *Add. Annotation :*—**Refd.** Baker *v.* Lloyd's Bank, [1920] 2 K. B. 322.

3707. *Add. Annotations :*—**Folld.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293. **Refd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

3708. *Add. Annotations :*—**Refd.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293 ; *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

3714. *Add. Annotations :—As to* (2) **Consd.** *Re* City Life Assce., [1926] Ch. 191. **Refd.** Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451 ; *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358 ; *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293.

3719. *Add. Annotations :* — **Consd.** Paddy *v.* Clutton, [1920] 2 Ch. 554 ; Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451. **Refd.** *Re* National Benefit Assce., [1924] 2 Ch. 339 ; *Re* City Life Assce. (1925), 42 T. L. R. 45 ; *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293 ; *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

3727. *Add. Annotation :*—**Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

3739. *Add. Annotations :* — **Consd.** Paddy *v.* Clutton, [1920] 2 Ch. 554 ; Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451. **Refd.** *Re* National Benefit Assce., [1924] 2 Ch. 339 ; *Re* City Life Assce. (1925), 42 T. L. R. 45 ; *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293 ; *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

3740. *Add. Annotations :*—**Consd.** *Re* Debtors (No. 771 of 1926) (1926), 43 T. L. R. 9. **Refd.** *Re* Fredericke & Whitworth, *Ex p.* Hibbard, [1927] 1 Ch. 253.

3740a. ——.]—Applt., the managing director of a co. which was insolvent, recovered judgment against the co. for repayment of money lent by him to the co. Shortly afterwards, the provisional liquidator of the co., which was subsequently, in Apr. 1925, ordered to be wound up, paid to applt. the amount for which he had recovered judgment, & in Apr. 1926, an order was made in the winding up upon applt. to repay to the liquidator that

amount, on the ground that the payment to him by the liquidator was void as a fraudulent preference. In consequence of applt.'s non-compliance with that order, a bkpcy. notice was served upon him, & a receiving order made against him, the registrar refusing to allow applt. to set off against the amount he had been so ordered to repay to the liquidator the sum for which he had recovered judgment against the co.:—*Held:* applt. had not, at the date of the receiving order, any valid or effectual right of set-off in respect of the sum he had been ordered to repay to the liquidator.—*Re* A DEBTOR (82 of 1926), [1927] 1 Ch. 410; 136 L. T. 349; *sub nom. Re* MUMFORD, DEBTOR *v.* PETITIONING CREDITOR, *Ex p.* OFFICIAL RECEIVER, 96 L. J. Ch. 75; [1926] B. & C. R. 165, D. C.

3741. *Add. Annotation:*—**Refd.** *Re* A Debtor, [1927] 1 Ch. 410.

3746. *Add. Annotation:*—**Consd.** *Re* Bailey, Duchess Mill, Ltd. *v.* Bailey (1932), 76 Sol. Jo. 560.

3750a. —.]—GROOM *v.* WEST (1838), 8 Ad. & El. 758; 1 Per. & Dav. 19; 1 Will. Woll. & H. 638; 8 L. J. Q. B. 25; 112 E. R. 1025; *sub nom.* GOOM *v.* WEST, 2 Jur. 940.

3769. *Add. Annotations:*—**Distd.** *Re* Pennington & Owen, [1925] Ch. 825. **Consd.** *Re* Binns, Public Trustee *v.* Ingle, [1929] 1 Ch. 677. **Apld.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

3781a.—— **Property conveyed to settlement trustees—Against unpaid sum covenanted to be brought into settlement.**]—Upon the marriage of the bkpt. in 1802, the estate of the wife, consisting of freehold, copyhold & leasehold lands, were conveyed to the use of the bkpt. & his heirs, who covenanted with the trustees within six months after the marriage, to pay to them £4,000 upon the trustes of the settlement. The trustees never demanded payment. In 1806 the bkpt. sold part of the freehold premises, & he & his wife levied a fine of the whole, declaring the uses of that part which was sold to the purchaser, but without making any declaration as to the remainder. In 1812 the bkpt. conveyed all his estates to trustees for the benefit of his creditors. In 1813 the bkpt. covenanted that he & his wife would levy a fine to the uses declared in the deed of 1812, & a fine was levied accordingly. The wife never surrendered the copyhold premises pursuant to the settlement 1802. In 1814 the commission issued, & the husband was declared a bkpt., his execution of the trust deed 1812 being the act of bkpcy. The trustees of the settlement proved the £4,000 under the commission & signed the bkpt.'s certificate:—*Held:* the trustees on behalf of the wife & children of the bkpt., had a lien upon the estates thereby conveyed & remaining unsold by the bkpt. to the amount of the £4,000.—*Re* DICKEN, *Ex p.* DICKEN (1817), Buck. 115, L. C.

Annotations:—**Consd.** *Re* Sewell, White *v.* Sewell, [1909] 1 Ch. 806; Stammers *v.* Elliott (1868), 3 Ch. App. 195.

3781b.—— **Dividend—Against sums paid by debtor on contract of guarantee.**]—F., having guaranteed advances by certain banks to the T. Assocn., in which he was interested, subsequently executed two deeds of arrangement in favour of his creditors. The Assocn. having gone into liquidation, the liquidator lodged a proof against F.'s estate in respect of sums due by F. to the Assocn. The trustee of F.'s estate rejected the proof & claimed to set off the various sums which had been advanced by the banks to the Assocn. for which F. had given his personal guarantee. At that time, although one or more of the banks had proved against F.'s estate under the guarantees, nothing had been paid to any of them. The Assocn. was admitted to prove against F.'s estate for a very large sum, & the trustee declared an interim dividend of 1*s.* in the pound. The banks were paid the dividend in respect of their admitted proofs, which also amounted in the aggregate to a considerable sum. The sums constituting the amount of the banks' proofs represented the amount of the Assocn.'s debt which had been guaranteed by F. The question arose whether the trustee of F.'s estate was under the circumstances entitled to pay to the liquidator of the Assocn. the sum representing the interim dividend declared in respect of the admitted proof. The matter came before the ct. by way of motion on behalf of the trustee, the question being whether this declared dividend was properly payable to the liquidator of the Assocn. or the trustee was entitled to withhold payment of all or any part thereof. On behalf of the Assocn. it was urged that the previous proceedings reported in *Re Fenton, Ex p. Fenton Textile Assocn., Ltd.*, No. 3656a, *ante*, had concluded the matter, that the question was now *res judicata*, & that, notwithstanding the payment to the banks of the amount of the dividend since that decision, the liquidator of the Assocn. was entitled to the full dividend in respect of the Assocn.'s admitted proof:—*Held:* (1) the question raised by the motion had not been determined by the Ct. of Appeal in the previous proceedings; & (2) the claim by the trustee to withhold the payment of any part of the dividends payable in respect of the Assocn.'s proof failed. The rule against double proof afforded an answer to the trustee's claim to retain the dividends on the admitted proof of the Assocn. so long as any part of the debt due to the banks remained unsatisfied.—*Re* FENTON (NO. 2), *Ex p.* FENTON TEXTILE ASSOCN., LTD., [1932] 1 Ch. 178; 146 L. T. 229; [1931] B. & C. R. 59; *sub nom. Re* FENTON (NO. 2), *Ex p.* TRUSTEE UNDER DEED OF ARRANGEMENT *v.* FENTON TEXTILE ASSOCN., LTD., 101 L. J. Ch. 1.

PART X. SECT. 5, SUB-SECT. 1.

3784 i. *How right to retain lost—Proof against bankrupt.*]—*Re* LUSSIER, [1927] 4 D. L. R. 637; 61 O. L. R. 177.—CAN.

Part XI.—Joint and Separate Estates—Bankruptcy of Firm or Partner.

3793a. One partner a company—Compulsory winding up—Rights of trustee.]—Where a receiving order was made against a firm consisting of an individual & a co., & subsequently an order was made for the compulsory winding up of the co., & liquidators were appointed, the ct. directed that the administration of the bkpcy. should be conducted by the trustee in bkpcy. & that assets collected by the special manager who had been appointed in the bkpcy. should be handed over to the trustee in bkpcy. Leave was given to amend the proceedings by making the petition & receiving order against the partners "other than the co."—*Re* DOBREE & Co., [1929] B. & C. R. 1.

3832a. Claim under covenant void against creditors—Postponed to claims of joint creditors of partnership—& of creditors against separate estate.]—*Re* CUMMING & WEST, *Ex p.* NEILSON & CRAIG *v.* TRUSTEE, No. 7155a, *post.*

3900. *Add. Annotations :*—**Refd.** *Re* Biddulph, *Ex p.* Burton (1843), 3 Mont. D. & De G. 364; Stroud *v.* Gwyer (1860), 28 Beav. 130.

3945a. Estate of undischarged bankrupt partner—Second bankruptcy of partner—Unsatisfied balance of joint liabilities in first bankruptcy.]—T. & M., partners in a firm, had been adjudged bkpt.; bkpt. M.'s discharge had been refused, & there were unsatisfied joint debts in the bkpcy. of the firm; & a subsequent receiving order was made against M. under which he was again adjudged bkpt. :—*Held :* under 1914 Act, s. 33 (6) & s. 39 (1), the unsatisfied balance of the joint liabilities of the firm could be proved in the subsequent bkpcy. of M. by the trustee in the first bkpcy. —*Re* MOSS, *Ex p.* EVERITT (1923), 93 L. J. Ch. 98; [1923] B. & C. R. 135.

3981a. Meaning of "solvent."]—*Re* BEAUCHAMP BROS., No. 4116a, *post.*

4069. *Add. Annotations :*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426; Moore *v.* Flanagan, [1920] 1 K. B. 919.

4102a. —— —— Separate personal guarantees of partners.]—*Re* DUTTON, MASSEY & Co., *Ex p.* MANCHESTER & LIVERPOOL DISTRICT BANKING CO., No. 3375a, *ante.*

4108. *Add. Annotation :*—**Consd.** *Re* Dutton, Massey, *Ex p.* Manchester & Liverpool District Banking Co., [1924] 2 Ch. 199.

4116a. Right to administration of partnership assets.]—(1) Where a partnership has been dissolved by the bkpcy. of one partner, the general rule that the solvent partner is entitled to have the administration of the partnership assets does not apply when such solvent partner is an infant, but, *semble*, such solvent infant partner may apply to the ct. by an adult next friend to have such administration. (2) Whoever the liquidating person is, whether the solvent partner or the trustee as representing the bkpt. partner, he holds the partnership assets in trust for discharging the partnership liabilities, & if, to the knowledge of any one dealing with the liquidating person, there has been any misapplication of such assets, the person so dealing is accountable for any part of the assets which he may have received.

(3) I suppose that so long as the members of this partnership were solvent—I mean by "solvent" were not judicially declared bkpt. . . . (VAUGHAN WILLIAMS, J.).—*Re* BEAUCHAMP BROTHERS, *Ex p.* CARR (1896), 75 L. T. 315; 3 Mans. 207.

4152a. Right to follow assets misapplied—Against party with notice of breach of trust.]—*Re* BEAUCHAMP BROTHERS, *Ex p.* CARR, No. 4116a, *ante.*

4165. *Add. Annotation :*—**Distd.** *Re* Douglas, *Ex p.* Douglas' (James) Exors., [1930] 1 Ch. 342.

4167. *Add. Annotation :*—**Consd.** *Re* Douglas, *Ex p.* Douglas' (James) Exors., [1930] 1 Ch. 342.

4172. *Add. Annotation :*—**Refd.** *Re* Douglas, *Ex p.* Douglas' (James) Exors., [1930] 1 Ch. 342.

4186a. —— —— Share of deceased partner ascertained before adjudication.]—The rule that in the bkpcy. of a firm the exors. of a deceased partner may not prove in competition with the creditors of his surviving partners may be inapplicable when the share of the deceased partner has been ascertained before the adjudication in bkpcy., & no joint liability can be shown to exist. On the death of a partner in a London firm a sum was found due to his estate from the surviving partners in respect of his share in the business, & certain claims & accounts between the deceased partner & another firm in Dundee, of which during his life he was also a partner, & which firm was after the death of the deceased partner a creditor of the London firm, were also compromised & settled by his exors. before the bkpcy. of the London firm :—*Held :* the proof of a debt put in by the deceased partner's exors. in the bkpcy. of the London firm ought to be admitted.—*Re* DOUGLAS, *Ex p.* DOUGLAS' (JAMES) EXECUTORS, [1930] 1 Ch. 342; 142 L. T. 379; [1929] B. & C. R. 76; *sub nom. Re* DOUGLAS, DOUGLAS & HILL *v.* MYERS (J. E.), 99 L. J. Ch. 97.

4217. *Add. Annotations :*—**Apld.** Houghton *v.* Nothard, Lowe & Wills, [1928] A. C. 1. **Refd.** Houghton *v.* Nothard, Lowe & Wills (1927), 44 T. L. R. 76.

PART XI. SECT. 1.

3788 v. ——.]—The separate creditors must be satisfied in full before the partnership creditors can rank, & as to partnership assets, the partnership creditors must first be satisfied in full before the separate creditors can rank. —*Re* TAYLOR *v.* LEVEYS, [1923] 3 D. L. R. 1134; 52 O. L. R. 201; 2 C. B. R. 390.—**CAN.**

3788 vi. ——.]—*Re* DAUM & PLAETZER, *Ex p.* MONROE (Ont.), [1927] 4 D. L. R. 744; 8 C. B. R. 446.—**CAN.**

sp. *Effect of authorised assignment by firm.*]—An authorised assignment by a firm operates as an assignment also of the separate estate of each partner.—*Re* COHEN & MAHLIN, CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* SPIVAK, [1927] 1 D. L. R. 577; [1927] 1 W. W. R. 162; 22 Alta. L. R. 487.—**CAN.**

st. *Motion by trustee to have debtor declared partner in bankrupt firm—Debtor entitled to be heard.*]—*Re* POLLARD, [1925] 4 D. L. R. 370.—**CAN.**

PART XI. SECT. 3, SUB-SECT. 2.—C.

sz. *Money paid by partner under partnership agreement on death of bankrupt partner to deceased's estate.*]—*Re* ENGELAND (Ont.), [1926] 4 D. L. R. 1029.—**CAN.**

PART XI. SECT. 6, SUB-SECT. 1.

sa. *Right to claim for money advanced to partner after ineffective dissolution.*]—*Re* WALKRAM, [1926] 1 D. L. R. 274; 58 O. L. R. 141; 7 C. B. R. 4.—**CAN.**

Part XII.—Priority of Debts.

4279. *Add. Annotations :*—**Refd.** *Re* Webb (Smithfield, London, [1922] 2 Ch. 369; A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

4281a. —— **"Local rate"—Land drainage rate.**] —A land drainage rate levied by a drainage board constituted under Land Drainage Acts, 1861 (c. 133), & 1918 (c. 17), is a local rate entitled to preferential payment within 1914 Act, s. 33 (1) (*a*).—*Re* ELLWOOD, [1927] 1 Ch. 455; *sub nom. Re* ELLWOOD, *Ex p.* RIVER DEE DRAINAGE BOARD *v.* HOOSON, 96 L. J. Ch. 170; 136 L. T. 696; [1927] B. & C. R. 53, D. C.

4284. *Add. Annotations :*—**Refd.** *Re* Webb (Smithfield, London, [1922] 2 Ch. 369; A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

PART XII. SECT. 1, SUB-SECT. 3.

sb. *Claim by Workmen's Compensation Board—For arrears of payment of assessments.*]—Claim refused.—WORKMEN'S COMPENSATION BOARD *v.* EDGAR, [1924] 3 D. L. R. 273; [1924] 2 W. W. R. 566; 20 Alta. L. R. 385.—**CAN.**

sc. —— *Extent of priority.*]—*Re* SYER, *Ex p.* WORKMEN'S COMPENSATION BOARD (Ont.), [1927] 3 D. L. R. 802; 8 C. B. R. 275.—**CAN.**

sd. ——.]—Applt. held as trustee for debenture holders a blanket mtge. on the property of a bkpt. which crystallised when the bkpcy. order was made & thereupon became a specific charge upon the property. The bkpt. owed the Workmen's Compensation Board on an assessment for fees due to the Board & applt. claimed priority for the mtge. in the distribution of the bkpt.'s assets :—*Held :* the Board was not entitled to priority over applt.'s charge.—DINNING *v.* WORKMEN'S COMPENSATION BOARD, [1932] 1 W. W. R. 136; 1 D. L. R. 373.—**CAN.**

se. ——.]—WORKMEN'S COMPENSATION BOARD & DINNING *v.* NICHOLS, [1932] 2 W. W. R. 325; 3 D. L. R. 385.—**CAN.**

sf. ——.]—*Re* MOTOR BODIES, LTD., WORKMEN'S COMPENSATION BOARD *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., [1932] 3 D. L. R. 272.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 4.

sd. *General rule*]—The Crown has a prerogative right to be paid upon a distribution in bkpcy. in priority to other unsecured creditors, but it is merely a right of preference in the administration of the estate.—*Re* TORONTO METAL & WASTE CO. (1921), 67 D. L. R. 111; 51 O. L. R. 237; 2 C. B. R. 138.—**CAN.**

sf. ——.]—Where the Crown is an unsecured creditor for taxes owing by bkpt., the Crown will take preference over all other secured creditors in respect of those taxes.—*Re* NOEL, *Ex p.* GRAVELBOURG TOWN (1922), 65 D. L. R. 754; 2 C. B. R. 545.—**CAN.**

sj. ——.]—*Re* STANDARD PHARMACY, LTD., *Re* ALBERTA PROVINCE'S CLAIM (Alta.), [1926] 2 D. L. R. 300; [1926] 1 W. W. R. 773.—**CAN.**

sk. *Trustee entitled to set off payment of taxes against claim of landlord for arrears of rent.*]—*Re* GRANTHAM, *Ex p.* DOYLE, [1923] 3 D. L. R. 94; 4 C. B. R. 108.—**CAN.**

4280 ii. —— —— *Water rate.*]—*Re* AN ARRANGING DEBTOR, [1921] 2 I. R. 1.—**IR.**

4280 iii. —— *Light rates.*] — *Re* MATHESON, *Ex p.* PRINCE ALBERT (CITY), [1924] 1 W. W. R. 129; [1924] 1 D. L. R. 260; 18 Sask. L. R.—**CAN.**

4280 iv. —— *Electric power rates.*]—*Re* DECKER'S DELICATESSEN, [1925] 1 D. L. R. 652; 56 O. L. R. 140; 5 C. B. R. 208.—**CAN.**

4280 v. —— *Crown Timber Act, 1927* (*c.* 38), *s.* 2 (1).]—The word "rates" in above sub-sect. means the price which any licencee is required to pay for the timber to be cut under his licence, & does not mean the "taxes, rates, or assessments" which under Bkpcy. Act, 1927 (c. 11), s. 125, may be levied or imposed upon the debtor or upon any property of a bkpt. under any law, Dominion or of the Province.—*Re* HARDY, [1929] 1 D. L. R. 300; 63 O. L. R. 246; 10 C. B. R. 288.—**CAN.**

b i. —— ——.]—*Re* INTERNATIONAL METAL WORKS, LTD., *Ex p.* R., [1925] 1 D. L. R. 309; 5 C. B. R. 378.—**CAN.**

b ii. —— ——.]—CANADIAN CREDIT MEN'S TRUST ASSOCN. *v.* EDMONTON CITY, [1925] 2 D. L. R. 525; [1925] 1 W. W. R. 747; 21 Alta. L. R. 160; 5 C. B. R. 587.—**CAN.**

b iii. —— *Municipal taxes.*]—*Re* CANADA PRESERVING CO. (Ont.), [1928] 2 D. L. R. 529; 10 C. B. R. 63.—**CAN.**

b iv. —— —— *Necessity for notice of claim.*]—The provisions of sect. 112 (11) of Assessment Act, R. S. O., 1927, as to notice of amount due for taxes, are, by sect. 125 of Bkpcy. Act, 1927, made part of the Bkpcy. Act.—*Re* CANADIAN HORSESHOE CO., [1931] O. R. 402; 12 C. B. R. 485.—**CAN.**

c i. —— *Business taxes.*]—*Re* WEST (F. E.) & Co. (1921), 62 D. L. R. 207; 50 O. L. R. 631; 2 C. B. R. 3.—**CAN.**

c ii. —— ——.]—Where a township or municipality is, by a provincial statute, made a preferred creditor in respect of business taxes, this preference disappears when the statute is repealed by a dominion statute.—*Re* NOEL, *Ex p.* GRAVELBOURG TOWN (1922), 65 D. L. R. 754; 2 C. B. R. 545.—**CAN.**

c iii. —— ——.] — A municipal corpn. is not entitled by Bkpcy. Act, s. 51 (6), to priority over other creditors of bkpt., for business taxes in respect of which no distress has been made.—*Re* CECILIAN CO. (1922), 69 D. L. R. 679; 51 O. L. R. 649; 2 C. B. R. 510.—**CAN.**

c iv. —— ——.] — A city is in respect of business tax a secured creditor.—*Re* MATHESON, *Ex p.* PRINCE ALBERT (CITY), [1924] 1 D. L. R. 260; [1924] 1 W. W. R. 129; 18 Sask. L. R. 3.—**CAN.**

c v. —— ——.]—*Re* STANDARD PHARMACY, LTD., *Re* ALBERTA PROVINCE'S CLAIM (Alta.), [1926] 2 D. L. R. 300; [1926] 1 W. W. R. 773.—**CAN.**

c vi. —— *Dominion taxes—Over taxes due to municipality.*]—*Held :* Dominion taxes preferred.—*Re* ADAMS SHOE CO., *Ex p.* TOWN OF PENETANGUISHENE, [1923] 4 D. L. R. 927.—**CAN.**

c vii. —— *Income tax.*]—*Re* LE BLANC, [1924] 3 D. L. R. 256.—**CAN.**

c viii. —— ——.]—*Held :* balance of income tax entitled to priority.—*Re* ORR, [1924] 2 I. R. 120.—**IR.**

c ix. —— ——.]—R. *v.* LITHWICK & COLE (1921), 20 Exch. C. R. 293.—**CAN.**

c x. —— *Poll tax.*]—*Re* LE BLANC, [1924] 3 D. L. R. 256.—**CAN.**

c xi. —— *Sales taxes.*]—*Held :* the Crown was entitled to priority over all other unsecured creditors in respect of sales taxes.—*Re* WEST (F. E.) & Co. (1921), 68 D. L. R. 772; 50 O. L. R. 631; 2 C. B. R. 3.—**CAN.**

c xii. —— ——.]—*Held :* a creditor could not rank as a secured creditor in priority to the claim of the Crown for taxes on sales of goods to debtor.—*Re* NICHOLSON SALES & SERVICE CORPN., [1924] 3 D. L. R. 593; 4 C. B. R. 692.—**CAN.**

—— *War revenue taxes.*]—*See* cases in Part XII., Sect. 1, sub-sect. 6, *post.*

c xiii. —— *Taxes assessed prior to assignment.*]—*Held :* the city had a preferential lien on the goods of the assignor for the above taxes.—*Re* MCKENZIE, [1924] 1 W. W. R. 159; 4 C. B. R. 492.—**CAN.**

d i. ——.]—*Held :* debtor's chattels subject to seizure for arrears of taxes by the municipality even in the hands of the trustee.—*Re* HARRISON (1922), 69 D. L. R. 658; 51 O. L. R. 634; 2 C. B. R. 360.—**CAN.**

d ii. ——.]—*Re* LAURANCE (1923), 55 O. L. R. 196; 4 C. B. R. 349.—**CAN.**

d iii. ——.]—Where a landlord has distrained prior to bkpcy. of the tenant & there are taxes owing, & subsequent to bkpcy. the municipality gives the notice required by sect. 112 (11) of Assessment Act, R. S. O., 1927, the municipality is entitled to rank for its claim upon the proceeds of the distress, in priority to the claim of the landlord for three months' accelerated rent.—PATERSON (D. S.) Co., [1932] O. R. 3 D. L. R. 279.—**CAN.**

sl. *Claim of inspector of taxation.*] —*Re* MCKENZIE, [1924] 1 W. W. R. 159; 4 C. B. R. 492.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 5.

sm. *Bias of court in favour of creditor.*]—The right of a creditor for arrears of wages to stand as a preferred creditor will be construed by the ct. with a bias in favour of the creditor.—*Re* CORSON SHOE CO., [1924] 1 D. L. R. 555.—**CAN.**

4285 ix. —— *After judgment recovered.*]—The claim of a wage-earner to priority for his wages remains a claim for wages even after judgment has been recovered.—BALL *v.* THORNE (1920), 46 O. L. R. 261; 50 D. L. R. 85.—**CAN.**

4285 x —— *Earned within three months of bankruptcy.*] — *Held :* a workman could only rank as a preferred creditor for wages earned within three months of the bkpcy.—RODDEN *v.* GOODMAN (1922), 67 D. L. R. 635.—**CAN.**

4285 xi. —— ——.]—*Held :* the director & president & the director & secretary-treasurer of bkpt. co. were entitled to priority for wages or salaries in respect of services rendered to bkpt. co. during the three months before the date of the assignment.—*Re* EASTERN ONTARIO MILK PRODUCTS CO., [1923] 1 D. L. R. 591; 52 O. L. R. 67; 21 O. W. N. 483.—**CAN.**

4285 xii. —— ——.] — *Held :* a claim for wages was not entitled to priority not being earned within three months immediately preceding the receiving order.—*Re* CONTINENTAL

4288. After this case add :—
——.]—*See, also,* Bkpcy. (Amendment) Act, 1926 (c. 7), s. 2.

4295a. —— —— **Helping employer to perfect invention—Under agreement for payment out of profits.**]—Where a clerk assisted his master in perfecting an invention, for which a patent had been obtained, upon an agreement to be paid out of the profits, but which agreement had no reference to his duties as clerk :—*Held :* he was not precluded from proving for his remuneration as a clerk, or from receiving three months' salary in full.—*Re* ELLINS, *Ex p.* HICKIN (1850), 3 De G. & Sm. 662 ; 19 L. J. Bcy. 8 ; 14 L. T. O. S. 469 ; 14 Jur. 405 ; 64 E. R. 651.

4298. *Add. Annotation :*—**Consd.** Moriarty *v.* Regent's Garage & Engineering Co. (1920), 90 L. J. K. B. 783.

PUBLISHING CO., *Ex p.* DAVIS & SIMMONS, [1924] 1 D. L. R. 339 ; 4 C. B. R.

4285 xiii. *S. P. Re* OLYMPIA CAFE CO., LTD., *Ex p.* BEDALI (Man.), [1927] 1 D. L. R. 907 ; [1927] 1 W. W. R. 131.—**CAN.**

4285 xiv. —— —— *Commission payable when goods shipped—Services rendered more than three months before bankruptcy—Goods shipped within three months of bankruptcy.*]—*Held :* the salesman could not rank as a preferred creditor in respect of such commission.—*Re* HERCULES RUBBER CO., *Ex p.* ALLAN, [1924] 1 D. L. R. 999 ; 4 C. B. R. 555.—**CAN.**

4285 xv. —— *Allowance for expenses.*]—Where a person is employed as a travelling salesman & is given his expenses in addition to his salary, he may claim to stand as a preferred creditor as regards both his salary & his expenses.—*Re* CORSON SHOE CO., [1924] 1 D. L. R. 555.—**CAN.**

4285 xvi. —— *Truck dricer furnishing truck, gas & oil—Priority for time only.*]—*Held :* an independent contractor in regard to the supply of the truck & so entitled to priority in respect of his services only.—*Re* SEXTON, [1931] 1 D. L. R. 657 ; 66 O. L. R. 313 ; 12 C. B. R. 45.—**CAN.**

4289 i a. —— —— ——.]— A travelling salesman, selling goods on commission, was allowed by debtor co. to sell their goods at specified prices, any goods sold by him to be invoiced to the customer at the price at which he sold, & he to be allowed the difference between the net price & his selling price :—*Held :* not entitled to priority.—*Re* SPECIALITY BAGS, LTD., [1923] 1 D. L. R. 827 ; 53 O. L. R. 355 ; 3 C. B. R. 617.—**CAN.**

4289 i b. —— ——.] —*Re* VANCOUVER DRESS CO., LTD., [1931] 3 W. W. R. 220 ; 44 B. C. R. 283.—**CAN.**

4292 i. —— *Accountant — Monthly salary—Part time employment.*]—*Held :* he was a servant & entitled to rank as a preferred creditor.—*Re* GORDEAN FURNITURE CO., *Ex p.* SLADDEN, [1923] 1 D. L. R. 1198 ; [1923] 3 W. W. R. 630.—**CAN.**

4293 i. —— *Company official — Director.*]—The mere fact that a director who claims priority for wages is a superior officer of a co. does not of itself deprive him of priority. The real question is whether the person making the claim has contracted to render service to the co. beyond what would come within the scope of his duties as a statutory officer.—*Re* EASTERN ONTARIO MILK PRODUCTS CO., [1923] 1 D. L. R. 591 ; 21 O. W. N. 483 ; 52 O. L. R. 67.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 6.

h i. ——.]—The preferential rights of a landlord are restricted as provided by Landlord & Tenant Act, s. 38, & a landlord cannot claim to rank as a preferred creditor in respect of sums voluntarily paid by him for taxes owing by bkpt.—*Re* CRYSTAL, [1926] 2 D. L. R. 840 ; 59 O. L. R. 44.—**CAN.**

h ii. —— *Under Landlord's Rights (Bankruptcy) Act,* 1924 (c. 12) *(Alta.), s.* 3.]—**The above sect. entitles a landlord to priority to the extent of the amount limited thereby over all bkpt.'s secured creditors, including the Crown.**—*Re* STANDARD PHARMACY, LTD., *Re* ALBERTA PROVINCE'S CLAIM (Alta.), [1926] 2 D. L. R. 300 ; [1926] 1 W. W. R. 773.—**CAN.**

h iii. —— *Cannot be deprived of preferential lien—Except by agreement.*] —*Re* MILNER, *Ex p.* FORBES (Ont.), [1926] 2 D. L. R. 988 ; 7 C. B. R. 319.—**CAN.**

s i. —— —— —— *Special covenant.*] —*Held :* notwithstanding a clause in a lease as to acceleration rent, the landlord was only entitled to rent for the time the premises were occupied by the trustee.—CANADIAN CREDIT MEN'S TRUST ASSOCN. *v.* MONKA (1924), 34 B. C. R. 99.—**CAN.**

sn. *Arrears of rent—Priority over —War revenue taxes.*]—*Re* SOLOMONS BOCHNER FUR CO., [1924] 1 D. L. R. 685 ; 53 O. L. R. 497 ; 24 O. W. N. 42.—**CAN.**

sp. —— —— ——.]—The Crown claiming under War Revenue Tax Act & a landlord for arrears of rent rank *inter se* according to their priority in time.—*Re* DAVIS, [1924] 3 D. L. R. 556 ; 4 C. B. R. 698.—**CAN.**

sq. —— —— *Sales tax.*]—*Re* CALCUS CO., LTD., *Ex p.* MCGUIRE, [1925] 3 D. L. R. 809 ; 57 O. L. R. 272 ; 5 C. B. R. 763 ; *revsg.*, [1925] 2 D. L. R. 216.—**CAN.**

sr. —— —— *Taxes due under Income War Tax Act,* 1917.]—*Re* HUMBERSTONE COAL CO., LTD., *Ex p.* NATIONAL TRUST CO., LTD , [1925] 3 D. L. R. 154 ; [1925] 2 W. W. R. 68 ; C. B. R. 719 ; *revsg.*, [1925] 1 W. W. R. 964 ; 5 C. B. R. 639.—**CAN.**

st. —— —— *Fees & expenses of trustee.*]—The trustee's claim for his fees & expenses always precedes the Crown's claim for taxes under War Revenue Tax Act, but if the landlord's claim arose anterior to that of the Crown, then the trustee's claim will count after the landlord's & will precede the Crown's claim.—*Re* DAVIS, [1924] 3 D. L. R. 556 ; 4 C. B. R. 698.—**CAN.**

su. —— *Three months' rent accrued prior to bankruptcy—Construed as "accrued due next prior."*]—*Re* CLAMAN'S, LTD., [1932] 1 W. W. R. 413.—**CAN.**

sv. *Landlord mortgagee—Mortgagor attorned tenant.*]—By virtue of Bkpcy. Act, s. 126, sect. 3 of Landlord's Rights (Bkpcy.) Act, 1924, of Alberta, & sect. 105 of Land Titles Act of Alberta, a mtgee. to whom the mtgor. has attorned as tenant is entitled on the bkpcy. of the mtgor. to be paid out of the proceeds of the distrainable assets in the lands of the trustee, in priority to all other debts, for three months' arrears of rent, & the costs of distress, if any.—*Re* PORTER & CANADIAN BANK OF COMMERCE, [1930] 1 W. W. R. 61 ; [1930] 1 D. L. R. 909 ; 11 C. B. R. 219.—**CAN.**

sw. *Covenant by tenant to pay taxes & other expenses.*]—A landlord can only rank as a preferred creditor in respect of arrears of rent, & this is so even where the lease stipulates that the tenant shall make other payments, namely a portion of the taxes & costs of heating the premises.—*Re* STANLEY MILLS CO. (1924), 27 O. W. N. 123 ; *affg.*, [1924] 3 D. L. R. 40 ; 4 C. B. R. 655.—**CAN.**

sx. *Costs of distress.*]—*Re* MCKENZIE, [1924] 1 W. W. R. 159 ; 4 C. B. R. 492.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 9.

t i. —— —— *Debt not being debt for taxes, rates or assessments.*]—The Crown in the right of a province has no priority over other creditors of bkpt. with respect to a debt due to it which is not a debt for taxes, rates or assessments.—*Re* CARDSTON U. F. A. CO-OPERATIVE ASSOCN., LTD., *Re* PROVINCE OF ALBERTA, [1925] 4 D. L. R. 897 ; [1925] 3 W. W. R. 651.—**CAN.**

t ii. —— —— ——.]—*Re* STANDARD PHARMACY, LTD., *Re* ALBERTA PROVINCE'S CLAIM (Alta.), [1926] 2 D. L. R. 300 ; [1926] 1 W. W. R. 773.—**CAN.**

r i. —— *Sales taxes.*]—Sales taxes due to the Dominion Govt. under Special War Revenue Act (Dom.), 1915 (c. 8), as enacted by 10 & 11 Geo. 5, c. 71, are merely debts due to the Crown, not expressly charged upon the assets of debtor.—*Re* WEST (F. E.) & CO. (1921), 62 D. L. R. 207 ; 50 O. L. R. 631 ; 2 C. B. R. 3.—**CAN.**

r i a. —— ——.]—12 & 13 Geo. V. (c. 47), amending Special War Revenue Act, 1915, & by sect. 17 making the taxes to which it refers a lien or charge upon the property of a debtor in favour of the Crown, & directing that this lien shall prevail, notwithstanding the provisions of the Bkpcy. Act, does not in terms repeal the Bkpcy. Act ; & the repeal of sect. 17, in 1925, by 15 & 16 Geo. V. (c. 26), s. 9, leaves the prerogative right to prior payment in a case of bkpcy. untouched. By sects. 86 & 51 of the Bkpcy. Act, the Crown has surrendered its prerogative to be paid debts due to it in priority to debts due to a subject, save only debts that fall within sect. 51, subsect. 6.—*Re* MOORE (D.) CO., LTD., [1928] 1 D. L. R. 383 ; 61 O. L. R. 434 ; 8 C. B. R. 338, 479.—**CAN.**

r i b. —— ——.]—*Re* WILNER (Ont.), [1928] 2 D. L. R. 396 ; 8 C. B. R. 616.—**CAN.**

r i c. —— ——.]—*Re* A. PUCCINI & CO., [1929] 2 D. L. R. 558 ; 63 O. L. R. 522 ; 10 C. B. R. 408.—**CAN.**

r i d. —— ——.]—*Re* TYRER CO., [1930] 4 D. L. R. 320 ; 11 C. B. R. 479.—**CAN.**

r ii. —— *Charge against goods admitted as settler's effects.*]—*Held :* to take priority over the lien for costs given an execution creditor.—*Re* WILEY, *Re* ANTHONY SALT CO., *Re* CROWN'S CUSTOMS DUTIES CLAIM, [1925] 4 D. L. R. 790 ; [1925] 3 W. W. R. 683.—**CAN.**

r iii. —— *Health Insurance contributions.*]—On a claim for arrears due in respect of Health Insurance contributions, alleged to be recoverable as Crown debts ranking next after the usual preferential payments :—*Held :* Health Insurance contributions were recoverable only as a civil debt.—*Re* LINDSAY, [1926] N. 128.—**IR.**

r iv. —— *Debt due to Land Commission.*]—*Held :* a preferential debt.—*Re* MALONEY, [1926] I. R. 202.—**IR.**

r v. —— *Contributions under Unemployment Insurance Acts.*] *Held :*

4334. After this case add:—
Health Insurance & Unemployment Insurance contributions.]—*See* National Health Insurance Act, 1924 (c. 38), ss. 4–9, 133, & Unemployment Insurance Act, 1920 (c. 30), ss. 5, 26 (4).

4334a. Wife—In respect of annuity for maintenance of husband's household.]—Where an annuity is secured to a wife by an antenuptial settlement to be expended in maintaining the husband's household, the wife cannot, on the husband's bkpcy., claim to be paid the amount in preference to the other creditors.—BIRKETT *v.* PURDOM, [1895] A. C. 371; 11 R. 184, H. L.

4335a. —— —— Bond to secure annuity taken in payment.]—Where a woman lends money to her husband [to help him in his business] & then accepts from him, in lieu of the money lent, a bond to secure an annuity payable by him for her life, & he subsequently is adjudicated bkpt. or dies insolvent, she may claim in the bkpcy., or in the administration by the ct. of his estate, for the value of the annuity in competition with the creditors of the husband.—*Re* SLADE, CREWKERNE UNITED BREWERIES, LTD. *v.* SLADE, [1921] 1 Ch. 160; 89 L. J. Ch. 556; 124 L. T. 232; 64 Sol. Jo. 668.

4336. *Add. Annotations:*—**Consd.** *Re* Slade, Crewkerne United Breweries *v.* Slade, [1921] 1 Ch. 160. **Distd.** *Re* Cumming & West, *Ex p.* Neilson & Craig *v.* The Trustee, [1929] 1 Ch. 534.

4338. *Add. Annotation:*—**Refd.** *Re* Wombwell (1921), 37 T. L. R. 625.

4342. *Add. Annotations:*—**Consd.** *Re* Regent Finance & Guarantee Corpn. (1930), 69 L. Jo. 283. **Refd.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814.

4345. *Add. Annotation:*—**Refd.** Dennistoun *v.* Dennistoun (1925), 69 Sol. Jo. 477.

4353. *Add. Annotation:*—**Refd.** *Re* Slade, Crewkerne United Breweries *v.* Slade, [1921] 1 Ch. 160.

4353a. —— —— Debt left on deposit with debtors.]—A creditor for a sum of £100,000 of a firm of merchant bankers in May, 1918, agreed with the debtors to leave the debt on deposit with them until Jan. 1932, at interest, with commission to be paid to nominees of the creditor—namely, O. & his family; & it was further agreed that O. should be credited with a share of the firm's profits, which in fact he subsequently drew from the firm. In July, 1920, the debt was, by the direction of the creditor, transferred in the books of the debtors to F., who agreed with the debtors to leave the debt on deposit with them until Jan. 1932, upon the conditions expressed in the former agreement, as if F.'s name had been inserted therein instead of the name of the original creditor. On Feb. 24, 1926, F. transferred the debt in equity to O., & on Mar. 2, 1926, the debtors had notice of that assignment. On Mar. 15, 1926, a receiving order was made against the debtors on their own petition, & shortly afterwards they were adjudicated bkpts. Between Mar. 2, 1926, & the date of that order F. became indebted to the firm in the sum of £15,000 for moneys expended by the firm between those dates in taking up accommodation bills drawn by F. on & accepted by the firm for which, as between F. & the firm, F. through not having supplied the necessary funds, was liable, F.'s liability arising in every case from contractual liabilities undertaken by F. towards the firm at dates earlier than Mar. 2, 1926:—*Held:* upon the proper construction of the agreement of May, 1918, the creditor did not advance money to the debtors on a contract that she should receive a share of the profits of their business within Partnership Act, 1890 (c. 39), s. 2 (3) (*d*), with the result that O.'s proof for the £100,000 was not as regards the contributions payable under Unemployment Insurance Act, 1920, by a bkpt. in respect of employed persons, the Minister for Industry & Commerce (to whom all the powers & duties of the Minister of Labour under the Act have been transferred) is entitled to claim, not only the priority given by sect. 26 (5) of the Act to the four months' contributions immediately prior to the date of adjudication but is also entitled to claim priority to ordinary creditors in respect of the anterior arrears of contributions, since they must be placed in the same category as Crown debts.—*Re* HENNESSY, [1932] I. R. 11.—**IR.**

sa. *Surety paying Crown debt.*]—A surety who has paid the indebtedness of the principal debtor to the Crown is entitled to stand in the same position as the Crown & to exercise its remedies for the recovery of the debt.—*Re* PATHÉ FRÈRES PHONOGRAPH CO. OF CANADA (1921), 64 D. L. R. 628; 50 O. L. R. 644; 2 C. B. R. 21.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 10.

Fees & expenses of trustee.]—*See* cases in Part VII., Sect. 5, sub-sect. 2, A., *ante.*

t i. —— ——.]—CRAWFORD & CO. *v.* HUNTERS & CO. (1817), 1 Nfld. L. R. 43.—**NFLD.**

t ii. —— ——.]—FERGUS & GLEN INSOLVENT ESTATE (1831) 2 Nfld. L. R. 27.—**NFLD.**

4331 i. *Judgment creditor—Registr certificate of judgment.*]—A judgment creditor of a bkpt., who has registered a certificate of judgment with the district registrar, is not entitled to a lien against the estate for the costs incurred in obtaining the judgment.—*Re* YAWOSKI (1922), 66 D. L. R. 570; [1922] 1 W. W. R. 296; 2 C. B. R. 181.—**CAN.**

d i. —— ——.]—*Held:* the trustee must pay the sheriff's fees & charges, including poundage & the costs of the execution creditor in priority to all other charges or claims.—*Re* TORONTO METAL & WASTE CO. (1921), 67 D. L. R. 111; 51 O. L. R. 287; 2 C. B. R. 138.—**CAN.**

e i. ——.]—The property of C., Ltd., was destroyed by fire in July, 1930, & on Aug. 27 the co. became bkpt. $29,404 was received on certain fire insurance policies held by the co. One I. had previously sold timber to the co. in which he still retained an interest. When the fire occurred I. advanced $15,000 to the co. on July 30, & by agreement with the co. took as security an assignment of the first $15,000 which should become payable to the co. on the insurance policies. The assignment was not registered under Assignment of Book Accounts Act:—*Held:* in view of sect. 2 of the 1930 Amendment registration was not necessary, as the money was "growing due under a specified contract," & I. was entitled to priority in respect of $15,000.—*Re* CAMPBELL RIVER MILLS, LTD., [1931] 2 D. L. R. 946; 43 B. C. R. 477; *on appeal*, 44 B. C. R. 412.—**CAN.**

sb. *Costs of action continued by trustee—With authority of court.*]—*Held:* costs incurred after the insolvency preferred.—MYERSON *v.* GREEN & HOMES (1922), 68 D. L. R. 209.—**CAN.**

m i. *Price of goods supplied to debtor—With approval of trustee—For continuation of business after bankruptcy.*]—*Held:* accounts for such goods preferred.—*Re* MORRIS, [1923] 3 D. L. R. 848; 53 O. L. R. 36.—**CAN.**

sc. *Money-lender.*]—In no case can a person who lends money to another before the latter's bkpcy. rank as a preferred creditor for the money so loaned.—RODDEN *v.* GOODMAN (1922), 67 D. L. R. 635.—**CAN.**

sd. *Solicitor—Costs of preparing authorised assignment.*]—*Re* JACOBSON, *Ex p.* GOLDBERG (N. B.), [1927] 2 D. L. R. 363; 8 C. B. R. 268.—**CAN.**

se. *Arrears of maintenance of lunatic.*]—A person of unsound mind having died insolvent, arrears due for maintenance to the institution where he had been kept were allowed after debts due to the Crown, & in priority to the taxed costs of his committee.—*Re* MAGUIRE, [1923] 1 I. R. 108.—**IR.**

PART XII. SECT. 2, SUB-SECT. 1.

4335 viii. *Payment of debt of wife as surety for husband.*]—*Held:* wife not a deferred creditor.—*Re* BARRON, *Ex p.* BARRON, [1924] 4 D. L. R. 1307; 4 C. B. R. 624.—**CAN.**

liable to be postponed to the claims of the other creditors.—*Re* PINTO LEITE & NEPHEWS, *Ex p.* DES OLIVAES (VISCONDE), [1929] 1 Ch. 221; 98 L. J. Ch. 211; 140 L. T. 587; [1928] B. & C. R. 188.

4357. *Add. Annotations:*—**Consd.** *Re* Cumming & West, *Ex p.* Neilson & Craig *v.* The Trustee, [1929] 1 Ch. 534. **Reld.** *Re* Slade, Crewkerne United Breweries *v.* Slade, [1921] 1 Ch. 160.

Part XIII.—Distribution of Estate and Payment of Dividends.

4366a. Agreement for distribution contrary to bankruptcy laws—Void.]—STAINES *v.* WAINWRIGHT (1839), 6 Bing. N. C. 174; 8 Scott, 280; 9 L. J. C. P. 107; 133 E. R. 68.

Annotation:—**Distd.** Prince *v.* Haworth, [1905] 2 K. B. 768.

4403. *Add. Annotations:*—**Apld.** *Re* Home & Colonial Insce. (1928), 44 T. L. R. 718. **Expld.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617. **Refd.** *Re* Gurwiez, *Ex p.* Trustee (1919), 88 L. J. K. B. 740; Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65.

4432. *Add. Annotations:*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358. **Refd.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

4433. *Add. Annotation:*—**Distd.** *Re* Houlder, [1929] 1 Ch. 205.

4484a. Proof subsequently reduced.]—*Re* SEARLE, HOARE & Co., No. 3210a, *ante*.

4487. *Add. Annotation:*—**Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

4494. *Add. Annotation:*—**Refd.** *Re* Home & Colonial Insce. (1928), 44 T. L. R. 718.

Part XIV.—Administration in Bankruptcy of Estates of deceased Insolvents.

4545. *Add. Annotation:*—**N.F.** Latter *v.* Juckes (1926), 42 T. L. R. 723.

4547. *Add. Annotation:*—**Refd.** *Re* Sarjeant, [1923] 2 Ch. 302.

4549. *Add. Annotation:*—**Refd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

4551. *Add. Annotation:*—**Refd.** *Re* Cockell, Jackson *v.* A.-G., [1931] 1 Ch. 389.

4555a. —— —— Adjudication before death.]—Debts incurred for necessaries by a bkpt. after adjudication, & also funeral expenses to a reasonable amount, may properly be paid out of money accumulated by the bkpt. since the adjudication.

The sect. does not deprive the bkpt. of those fruits of his personal exertions which are necessary to enable him to live; in other words it is only the surplus over & above that which vests in the trustee (TOMLIN, J.).—*Re* WALTER, SLOCOCK *v.* OFFICIAL RECEIVER, [1929] 1 Ch. 647; 98 L. J. Ch. 403; 141 L. T. 319; [1929] B. & C. R. 63.

4556. *Add. Annotations:*—**Refd.** *Re* Webb (Smithfield, London), [1922] 2 Ch. 369; A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

4559a. —— Administration of estate of undischarged bankrupt—Right to after-acquired property.]—*Re* SARJEANT, No. 1808a, *ante*.

—— —— ——.]—*See, now,* Bkpcy. (Amendment) Act, 1926 (c. 7), s. 3.

Part XVI.—Miscellaneous Practice and Procedure.

4578a. Motion to declare property part of bankrupt's estate—Who may appear.]—On the hearing of an application by the trustee in the bkpcy. to declare certain property alleged to have been transferred by the bkpt. to resps. to be part of the bkpt.'s estate, objection was taken to the motion being heard on the ground that certain of the property claimed by the trustee had been sold by resps. to the parties taking the objection, & that no notice of motion had been served upon them:—*Held:* the objection must fail; any order made upon the motion would affect only the right of the trustee & resps., & would not affect the rights of any other person; & the parties taking the objection had no *locus standi* to be heard.—*Re* VON WEISSENFELD, *Ex p.* HENDRY (1892), 9 Morr. 30.

Annotation:—**Reld.** *Re* Hirth, *Ex p.* Official Receiver (1899), 68 L. J. Q. B. 287.

4578b. Appearance of infant on motion—Appointment of guardian ad litem.]—(1) Where it is desired to bring an infant before the ct. the

PART XII. SECT. 2, SUB-SECT. 3.

se. *Agreement to postpone "personal" claims—Whether claim on mortgage included.*]—BIRKETT *v.* SHERWIN-WILLIAMS, [1931] 3 D. L. R. 485.—**CAN.**

PART XIII. SECT. 6.

sf. *Refund—Action in county court to recover money paid in error.*]—*Held:* not maintainable, it not being open to the judge to go behind the declared dividend.—MCLENNAN *v.* CARTER, [1927] 1 D. L. R. 375; 59 N. S. R. 64.—**CAN.**

PART XIV. SECT. 1, SUB-SECT. 1.

sg. *Time of insolvency.*]—Upon a petition for the administration in bkpcy. of a deceased debtor's estate it is sufficient to establish that the estate was insolvent at the date of the bearing of the petition.—*Re* NONMUS (ALFRED) (1929), 29 S. R. N. S. W. 330; 46 N. S. W. W. N. 111; 1 A. B. C. 39.—**AUS.**

proper course is to apply for the appointment of a guardian *ad litem* for that purpose.

(2) Where, on an appeal from a County Ct., the Div. Ct. in bkpcy. directs such appeal to stand over in order that certain persons, some of whom are infants, may be made parties, it would appear that application for the appointment of a guardian *ad litem* should be made to the County Ct.—*Re* LOWNDES, *Ex p.* TRUSTEE (1887), 3 Morr. 216.

Annotation :—As to (1) **Folld.** *Re* Dent, *Ex p.* Trustee (1922), 92 L. J. Ch. 106.

4585. *Add. Annotation :*—**Expld.** *Re* Gay, Trustee *v.* Bennett & Georges Tiard (1931), 101 L. J. Ch. 127.

(That case did not decide the point. The headnote is inaccurate. It ought not to have been reported, *per* FARWELL, J.)

4586a. —— ——.]—A notice of motion seeking personal relief against a foreigner cannot be served out of the jurisdiction, & in such a case the ct. cannot give leave to serve resp. abroad.—*Re* GAY, TRUSTEE *v.* BENNETT, (A. A.) & GEORGES TIARD (1931), 101 L. J. Ch. 127 ; [1931] B. & C. R. 45.

4612a. Primâ facie evidence of fraudulent preference—No right to appeal reserving right to call rebutting evidence.]—Where a trustee in bkpcy. has called evidence in support of a charge of fraudulent preference by the bkpt., resp. must elect either to call rebutting evidence, or to conclude his case on the footing that the evidence given is the only evidence. He cannot by agreement with his opponent & by leave of the county ct. judge obtain an adjournment & lodge an appeal, reserving the right to call rebutting evidence in case the appeal should result in favour of the trustee.—*Re* MOYNIHAN, *Ex p.* TRUSTEE, [1930] 2 Ch. 356 ; 99 L. J. Ch. 26 ; 143 L. T. 703 ; [1929] B. & C. R. 116, D. C.

4613a. —— **Objection by one party.**]—PRACTICE E, [1899] W. N. 121.

4633. *Add. Annotation :*—**Refd.** *Re* Drage, Palmer & Roberts *v.* Knight (1926), 134 L. T. 765.

4637. *Add. Annotation :*—**Apld.** R. *v.* Tuttle (1929), 140 L. T. 701.

4637a. Admission at preliminary examination—On criminal charge of misappropriating funds.]—The accused, who was a trustee under a will, was charged with having in Mar. 1916, fraudulently converted to his own use certain shares deposited with him by a co-trustee. In an affidavit filed by the accused in defence to proceedings for an account commenced against him by the co-trustee in the Ch. Div. the accused swore that he had, with the approval of his co-trustee, invested the capital in his own business. Subsequently, in his preliminary examination in bkpcy., he made admissions to the Official Receiver in regard to the disposition of the capital by him. He was indicted for fraudulent conversion as a trustee under Larceny Act, 1916 (c. 50), s. 21, but the judge, on his notice being brought to the fact that that Act was not in force at the time when the offence was alleged to have been committed, allowed the indictment to be amended by the substitution of Larceny Act, 1861 (c. 96), s. 80, for the later statute. The two statutes define the offence in almost precisely the same words :—*Held :* the admissions in the preliminary examination in bkpcy. were not admissions made "in any compulsory examination or deposition before any court on the hearing of any matter in bkpcy.," & could, therefore, be given in evidence at the trial without infringing Larceny Act, 1916 (c. 50), s. 43 (3).—R. *v.* TUTTLE (1929), 140 L. T. 701 ; 45 T. L. R. 357 ; 21 Cr. App. Rep. 85 ; 28 Cox, C. C. 610, C. C. A.

4638. *Add. Annotation :*—**Refd.** *Re* Drage, Palmer & Roberts *v.* Knight (1926), 134 L. T. 765.

4665. *Add. Annotation :*—**Consd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

4665a. —— **Necessary before other side entitled to refer to contents.**]—On June 29, 1923, resps., having received from bkpt. an order for goods, on the same day delivered them to bkpt. together with an invoice bearing the same date, which subsequently at bkpt.'s request was post-dated to July 10. On July 20, bkpt., although fully realising his insolvency, sent to resps. & to 107 other creditors cheques which were all post-dated to July 31 in settlement of their several accounts. On July 31 bkpt. gave notice to his creditors that he was about to suspend payment. Not one of those post-dated cheques was paid on presentation ; but on July 30, the day preceding the act of bkpcy., bkpt. paid in cash to resps., who had no knowledge of bkpt.'s financial difficulties, the amount he owed them less discount. On Aug. 30, 1923, on a creditor's petition presented on Aug. 3, an order of adjudication was made against bkpt. Upon a motion by the trustee in bkpcy. for a declaration that the payment to resps. was a fraudulent preference under 1914 Act, s. 44 (1), resps. filed an affidavit in opposition, which contained statements which revealed a voluntary offer on July 30 on the part of bkpt. to resps. to pay the amount due to them in cash ; & the question was then raised whether the trustee had the right, which he claimed, to read those statements as admissions by resps. of the absence of pressure & of the entirely voluntary nature of the payment :—*Held :* (1) the practice in the Bkpcy. Ct., differing in this respect from the practice in the Ch. Div., was that where an affidavit had been filed by a resp. to an application, applt. was only entitled to refer to the contents thereof after resp. on opening his case had elected to read it ; (2) where a bkpt. in imminent expectation of bkpcy. voluntarily pays a particular creditor with the result of giving him a preference in fact, & the

PART XVI. SECT. 3, SUB-SECT. 1.

4606 i. *Part of examination.*]—A portion merely of an examination under Bkpcy. Act of a person alleged to have property of debtor in his possession cannot be admitted in evidence in collateral proceedings.—HOULDING *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1921] 2 W. W. R. 899 ; 14 Sask. L. R. 356.—**CAN.**

d i. —— ——.]—Powers under Presidency Towns Insolvency Act, s. 36, are not to be used when parties are in litigation, as an extra method of discovery in addition to the ample facilities for discovery enjoyed by ordinary litigants under the Code of Civil Procedure.—SARAT KUMAR RAY *v.* NABIN CHANDRA RAM CHANDRA SHAKA (1928), I. L. R. 56 Calc. 667.—**IND.**

PART XVI. SECT. 3, SUB-SECT. 2.

a j. *Motion for trial of bankruptcy action—Adjournment to take oral evidence.*]—*Re* FULTON, [1925] 4 D. L. R. 1001.—**CAN.**

reason for such payment is unexplained, a *primâ facie* case of fraudulent preference is established; therefore, the trustee having proved a *primâ facie* case of fraudulent preference & the creditors having withdrawn their affidavit in opposition, & there being therefore no evidence to the contrary, the trustee was entitled to succeed on his application.—*Re* COHEN, *Ex p.* TRUSTEE, [1924] 2 Ch. 515; 94 L. J. Ch. 73; [1924] B. & C. R. 143; *sub nom. Re* COHEN, *Ex p.* TRUSTEE *v.* SNOW (W. R.) & Co., 69 Sol. Jo. 35, C. A.

Annotation:—As to (2) **Distd.** *Re* Drage, Palmer & Roberts *v.* Knight (1926), 134 L. T. 765.

4671. *Add. Annotation:*—**Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

4704a. —— —— —— **Whether barred by lapse of time.**]—In the circumstances:—*Held:* a solr.'s petition that his bill might be paid was not barred by the fact that the items occurred more than six years before the demand for payment.—*Re* FISHER, *Ex p.* BRUTTON (1845), De G. 116; 1 New Pract. Cas. 159; 14 L. J. Bcy. 15; 4 L. T. O. S. 321; 9 Jur. 96.

4705. *Add. Annotation:*—**Refd.** Knight *v.* Knight, [1925] Ch. 835.

4714a. Direction as to costs as between trustee & claimant against estate—Should not be included in order settling rights of parties.]—It is not, as a general rule, necessary or desirable that the order which determines a contest between a trustee & a person making claims against the estate should contain any direction as to the manner in which the costs of the trustee or costs which he is ordered to pay should be dealt with as between the trustee & the estate.—"PRACTICE NOTE" (1930), 47 T. L. R. 88; *sub nom. Re* SIMMS, *Ex p.* QUAIFE (A. E.), [1929-30] B. & C. R. 275.

4771a. —— —— —WILLASEY *v.* MASHITER (1834), 3 My. K. 293; 40E. R. 112.

4772a. —WHALLEY *v.* WILLIAMSON (1843), 6 Man. & G. 269; 6 Scott, N. R. 948; 134 E. R. 894.

4772b. — ——.]—SHEA *v.* BOSCHETTI, *Re* PEILE (1858), 25 Beav. 561; 53 E. R. 751.

SECT. 6.—**OTHER CASES.**

4790a. Bankruptcy matter in which infant interested—Chancery practice relating to infants applicable.]—"PRACTICE NOTE," [1930] W. N. 254; [1931] B. & C. R. 44.

Part XVII.—Appeals.

4794. *Add. Annotation:*—**Refd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

4808a. Who is "person aggrieved."]—A person who alleges himself to be a creditor under a bkpcy., but who has omitted for several years to prove his debt in the regular way, is not a "person aggrieved" within Bkpcy. Act, 1869 (c. 71), s. 71, by the refusal to make an order the result of which, if made, would be to increase the assets available for the creditors, & is, therefore, not entitled to appeal from the refusal.—*Re* WOODS, *Ex p.* DITTON (1879), 11 Ch. D. 56; 40 L. T. 297; 27 W. R. 401, C. A.

Annotations:—**Expld.** *Re* Sidebotham, *Ex p.* Sidebotham (1880), 14 Ch. D. 458, C. A. **Distd.** *Re* Langtry, *Ex p.* Stephenson (1894), 63 L. J. Q. B. 570.

4808b. ——.]—*Re* BURN (J.), *Ex p.* DAWSON (E. N. de V.), MCCLELLAN (H. T.) & TRUSTEE. No. 6318a, *post.*

4818. *Add. Annotation:*—**Refd.** *Re* Mathieson (1926), 70 Sol. Jo. 1161.

PART XVI. SECT. 4.

sk. *Ex parte order—Rescission—Non-disclosure of true state of affairs.*]—*Re* GORDON BROTHERS, LTD. (Ont.), [1926] 3 D. L. R. 131; 7 C. B. R. 576.—**CAN.**

PART XVI. SECT. 5, SUB-SECT. 1.

sl. —— —— ——.]—*Held:* as the work done by the solr. in collecting the debts due to debtor was of real benefit to his estate, & was done with the tacit sanction of the ct., the costs of the solr. should be paid to him out of the money lodged by him with the official assignee.—*Re* MALONEY, [1928] I. R. 155.—**IR.**

Of successful application for

D. L. R. 407; 7 C. B. R. 631; *varying*, [1926] 2 D. L. R. 1025.—**CAN.**

sp. *Rights of solicitor—Amount of fees—Estate not realised by trustee.*]—*Re* CAPLAN, [1925] 3 D. L. R. 964; 5 C. B. R. 826.—**CAN.**

PART XVII. SECT. 1.

sr. *From registrar in insolvency—To judge exercising insolvency jurisdiction—Order for attendance of witness.*]—SARAT KUMAR RAY *v.* NABIN CHANDRA RAM CHANDRA SHAKA (1928), I. L. R. 56 Calc. 667.—**IND.**

ss. *From judge in insolvency—To Divisional Bench.*]—SARAT KUMAR RAY *v.* NABIN CHANDRA RAM CHANDRA SHAKA (1928), I. L. R. 56 Calc. 667.—**IND.**

sv. *From Divisional Bench—To Full Bench.*]—SARAT KUMAR RAY *v.* NABIN CHANDRA RAM CHANDRA SHAKA (1928), I. L. R. 56 Calc. 667.—**IND.**

PART XVII. SECT. 2.

sz. *Order involving amount exceeding $500.*]—An appeal lies on the question whether a creditor for an amount over $500 shall be entitled to rank on bkpt.'s estate as a secured creditor or merely as an ordinary creditor, being an appeal involving an amount exceeding $500.—APEX LUMBER CO. *v.* JOHNSTONE, [1925] 3 D. L. R. 1050; [1925] 3 W. W. R. 360.—**CAN.**

sa. *Order on question of procedure.*]—No appeal lies from a decision on a question of procedure.—WINTER *v.* CAPILANO TIMBER CO. (1926), 37 B. C. R. 91; [1926] 2 W. W. R. 536.—**CAN.**

PART XVII. SECT. 3.

4815 i. *Application for leave—Within what time—Extension of time—Leave to appeal to Supreme Court of Canada.*]—*Re* HUDSON FASHION SHOPPE, LTD., *Ex p.* ROYAL DRESS CO., [1926] 1 D. L. R. 515; 58 O. L. R. 298.—**CAN.**

sc. *Grounds for granting leave—Landlord's preferential claim for rent endangered—By claim of Crown—Under War Revenue Act, 1915.*]—*Re* CALCUS CO., LTD., [1925] 2 D. L. R. 228; 5 C. B. R. 514.—**CAN.**

sd. —— *Question of great importance & general interest.*]—BOILY *v.* MCNULTY, [1927] 2 D. L. R. 1010; [1927] S. C. R. 275.—**CAN.**

sg. —— *Whether hotel-keeper "trader" within Landlord & Tenant Act, C. S. N. B., 1903 (c. 153), s. 47.*]—*Re* HOTEL DUNLOP, LTD., QUINN *v.* GUERNSEY, [1927] 1 D. L. R. 810; [1927] S. C. R. 134.—**CAN.**

sj. —— *Question of construction.*]—*Held:* leave to appeal should be granted. Among other questions, the meaning of the word "settlements" in Bkpcy. Act, s. 60, appears to be involved in this appeal, the point being whether this word should receive the same construction as that given to it under the English Bkpcy Act, 1914 (c. 59), s. 42.—GARSON *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1928] 3 D. L. R. 937; [1928] S. C. R. 419; 10 C. B. R. 203.—**CAN.**

4819. *Add. Annotation :*—**Refd.** *Re* Mathieson (1926), 70 Sol. Jo. 1161.

4836. *Add. Annotation :*—**Refd.** *Re* A Debtor, [1928] Ch. 199.

4850. *Add. Annotation :*—**Consd.** Bottomley *v.* West Derby Assessment Committee, etc. (1931), 47 T. L. R. 468.

4857. *Add. Annotation :*—**Refd.** *Re* Barley, [1923] 1 Ch. 177.

4860. *Add. Annotation :*—**Consd.** *Re* Barley, [1923] 1 Ch. 177.

4869. *Add. Annotation :*—**Consd.** *Re* Barley, [1923] 1 Ch. 177.

4873. *Add. Annotation :*—**Consd.** *Re* Barley, [1923] 1 Ch. 177.

4876. *Add. Annotation :*—**Refd.** *Re* Barley, [1923] 1 Ch. 177.

4888. *Add. Annotation :*—**Consd.** *Re* Barley, [1923] 1 Ch. 177.

4894. *Add. Annotation :*—**Refd.** *Re* Barley, [1923] 1 Ch. 177.

4907a. —— —— —— **Appeal by Poor Person.**]—*Re* DEBTOR (1932), 74 L. Jo. 291, C. A.

4914a. —— **Point not taken in court below.**]—*Re* DEBTOR (No. 16 OF 1922), *Ex p.* THE DEBTOR, No. 875a, *ante.*

SECT. 10.—**OTHER CASES.**

4970a. Appeal from county court—Documents to be supplied.]—PRACTICE NOTE, [1932] W. N. 172 ; 174 L. T. Jo. 46.

Part XVIII.—Order of Discharge.

To statutory cross-reference add :—" *Sec, also,* Bkpcy. (Amendment) Act, 1914 (c. 7), s. 1."

4996a. **Discretion of court to hear creditor.**]—*Re* BURN, DAWSON *v.* MCCLELLAN (No. 2), No. 1966b, *ante.*

5023. *Add. Annotation :*—**Consd.** *Re* Kutner, [1921] 3 K. B. 93.

5035a. Payment of money in consideration of—Void.]—A., an insolvent, having petitioned the ct. for the relief of insolvent debtors to be discharged out of custody ; & having been brought up before that ct. to be examined, was opposed by B., a creditor, & remanded to a future day. Before that day arrived, C., who acted as the attorney of A., in consideration of B.'s withdrawing his opposition to A.'s discharge, undertook that B. should be the sole assignee of A.'s estate, & should receive £100 out of it within three weeks from his appointment :—*Held :* this agreement was contrary to the policy of the insolvent act, & therefore void.—MURRAY *v.* REEVES (1828), 8 B. & C. 421 ; 2 Man. & Ry. K. B. 423 ; Dan. & Ll. 161 ; 108 E. R. 1099 ; *sub nom.* MURRAY *v.* REID, 6 L. J. O. S. K. B. 348.

Annotations :—**Apld.** Hall *v.* Dyson (1852), 17 Q. B. 785. **Consd.** Levita's Claim, [1894] 3 Ch. 365. **Refd.** Gilmour *v.* King (1833), 3 Tyr. 581.

5035b. —— ——.]—An agreement by the attorney of an insolvent with one of the creditors, who has given notice of opposition to the insolvent's discharge, to pay such creditor's certain sum of money in consideration that he will withdraw his opposition, is void ; such consideration being contrary to the policy of the Insolvent Debtors Act, & a fraud upon the other creditors, although it do not appear that the money is to be paid out of the insolvent's funds.—HALL *v.* DYSON (1852), 17 Q. B. 785 ; 21 L. J. Q. B. 224 ; 18 L. T. O. S. 63, 223 ; 16 Jur. 270 ; 117 E. R. 1481.

Annotations :—**Consd.** McKewan *v.* Sanderson (1873), L. R. 15 Eq. 229 ; McKewan *v.* Sanderson, [1875] L. R. 20 Eq. 65 ; Levita's Claim, [1894] 3 Ch. 365. **Refd.** Hills *v.* Mitson (1853), 8 Exch. 751 ; Lound *v.* Grimwade (1888), 39 Ch. D. 605 ; Kearley *v.* Thomson (1890), 24 Q. B. D. 742 ; Windhill L. B. of Health *v.* Vint (1890), 63 L. T. 366.

PART XVII. SECT. 4, SUB SECT. 3.

4855 ii. ——.]—Where an application to a judge of this ct for leave to appeal from a judgment of a provincial ct. of appeal in a matter arising under the Bkpcy. Act is made within the thirty days specified by Bkpcy. Rule 72, or where the specified fourteen days notice has not been given to the adverse party, the application must be dismissed : the judge has no power to extend the time.—*Re* NORTH SHORE TRADING CO., PROVIDENCE WASHINGTON ASSCE. CO *v.* GAGNON & CLOUTIER, [1928] 2 D. L. R. 136 ; [1928] S. C. R. 180 ; 10 C. B. R. 181.—**CAN.**

4855 iii. ——.]—The Supreme Ct. of Nova Scotia *en banc* cannot, nor can a judge of the Supreme Ct. of Canada, extend the time fixed by Bkpcy. Rule 72 for an application to be made to a judge of the Supreme Ct. of Canada for special leave to appeal to this ct.—*Re* WEBBER, VALINSKY *v.* BACON, [1931] S. C. R. 498.—**CAN.**

4855 iv. ——.]—*Re* WEBBER (No. 2), [1931] 4 D. L. R. 244.—**CAN.**

4855 v. ——.]—The judge sitting in bkpcy. from whose decision an appeal was taken to the Appeal Ct. under sect. 174 of the Bkpcy. Act has power, under s. 163 (5) of the Act, to extend the time limited by Bkpcy. Rule 72 for applying to a judge of the Supreme Ct. of Canada for special leave to appeal to this ct., under sect. 174 (2), from the Appeal Ct.'s decision.—*Re* SMITH & HOGAN, LTD., INDUSTRIAL ACCEPTANCE CORPN., LTD., & CANADIAN ACCEPTANCE CORPN., LTD. *v.* CANADA PERMANENT TRUST CO., [1931] S. C. R. 652.—**CAN.**

PART XVII. SECT. 9.

sk. *Jurisdiction of Court of Appeal of British Columbia.*]—The above ct. when acting as an appeal ct. in bkpcy. has complete jurisdiction over costs.—*Re* KWONG TAI CHONG CO. (ASSIGNMENT OF) (1922), 65 D. L. R. 132 ; [1922] 2 W. W. R. 229 ; *sub nom.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* JANG BOW KEE & YIN SHEE, 31 B. C. R. 40.—**CAN.**

PART XVIII. SECT. 3, SUB-SECT. 1.

5013 i. *Whose interests court must consider—Public interests.*]—On considering the application of a debtor for his discharge under Bkpcy. Act, regard must be had not only to the interests of bkpt. & his creditors, but also to the interests of the public.—*Re* SCEPTRE HARDWARE CO., [1923] 1 D. L. R. 1201 ; [1923] 1 W. W. R. 906 ; 3 C. B. R. 734.—**CAN.**

5014 i. —— *Bankrupt.*]—*Re* JONES, [1926] N. Z. L. R. 318.—**N.Z.**

d i. —— *of trustee's report.*]—*Re* MCKENZIE (Man.), [1926] 4 D. L. R. 210.—**CAN.**

5018 iii. ——.]—It is the policy of the Legislature that normally an insolvent on giving up the whole of his property should be a free man again. But in considering an application by an insolvent for his discharge the ct. must have regard to the interest of the community at large. Where the insolvent has preyed on the public & is still likely to do so if freed from insolvency, & during his insolvency has disregarded the interests of his creditors & has deliberately withheld information from the Official Assignee which it was his duty to disclose, the ct. should refuse to grant him a discharge.—E. A. MAMSA *v.* M. E. MAJID (1931), I. L. R. 9 Ran. 333.—**IND.**

PART XVIII. SECT. 3, SUB-SECT. 2.

11. ——.]—The granting or refusing of a discharge to a bkpt. or the imposition of terms with respect to it are matters for the exercise of judicial discretion ; therefore an appellate ct. will hesitate to interfere with an order made upon reasonable grounds, but it may moderate the conditions imposed if they appear too onerous.—*Re* LOBEL, [1929] 1 D. L. R. 986 ; 1 W. W. R. 326 ; 38 Man. L. R. 48 ; 10 C. B. R. 350.—**CAN.**

5038a. ——.]—A bill of exchange given to buy off opposition to bkpt.'s last examination & the allowance of the certificate:—*Held:* void *ab initio*.—REEVES *v.* HAWKES (1862), 6 L. T. 53.

5039a. ——.]—*Held:* a fraud on other creditors.—ROGERS *v.* KINGSTON (1825), 2 Bing. 441; 10 Moore, C. P. 97; 3 L. J. O. S. C. P. 77; 130 E. R. 376.

Annotation:—**Refd.** Sweenie *v.* Sharp (1826), 12 Moore, C. P. 163.

5039b. ——.]—*Held:* the agreement was illegal.—HILLS *v.* MITSON (1853), 8 Exch. 751; 22 L. J. Ex. 273; 155 E. R. 1555.

Annotation:—**Refd.** Lound *v.* Grimwade (1888), 39 Ch. D. 605.

5039c. *S. P.* HUMPHREYS *v.* WELLING (1862), 1 H. & C. 7; 32 L. J. Ex. 33; 6 L. T. 250; 158 E. R. 780.

5043. *Add. Annotations:*—**Apld.** *Re* National Benefit Assurance Co., [1931] 1 Ch. 46. **Refd.** Anderson *v.* Daniel (1923), 93 L. J. K. B. 97.

5050. *Add. Annotation:*—**Consd.** *Re* Kutner, [1921] 3 K. B. 93.

5052. After this case add "*See, also*, Nos. 1654–1657a, *ante*."

5093a. —— **Meaning of "debt."**]—*Re* BOULTON BROTHERS & Co., No. 1657a, *ante*.

5176. Before this case add, "*See, now*, Bkpcy. (Amendment) Act, 1926 (c. 7), s. 1 (2)."

5262. *Add. Annotation:*—*As to* (2) **Refd.** *Re* Kutner, [1921] 3 K. B. 93.

5264a. —— **Condition suspending discharge until larger dividend than ten shillings in the pound paid.**]—The Ct. of Bkpcy. is not empowered by 1914 Act, s. 26, to suspend the discharge of a bkpt. until a dividend higher than 10*s.* in the pound—in this case 15*s.* in the pound—has been paid to his creditors.—*Re* KUTNER, [1921] 3 K. B. 93; 90 L. J. K. B. 1264; 125 L. T. 458; 37 T. L. R. 667; [1921] B. & C. R. 113; *sub nom. Re* KUTNER, *Ex p.* DEBTOR *v.* OFFICIAL RECEIVER, 65 Sol. Jo. 604, C. A.

5283. *Add. Annotation:*—**Refd.** *Re* Barley, [1923] 1 Ch. 177.

5352a. —— —— **Illegal agreement with creditor—Debt not revived.**] — TABRAM *v.* FREEMAN (1834), 4 B. & Ad. 887; 2 Cr. & M. 451; 4 Tyr. 180; 3 L. J. Ex. 135; 110 E. R. 690.

Annotation:—**Refd.** Wilkin *v.* Manning (1854), 9 Exch. 575.

5364a. Liability under annuity deed.]—DOUGLAS *v.* SMITH (1849), 13 Jur. 294.

5367. *Add. Citation:*—*sub nom. Re* MERCHANT TRADERS' SHIP, LOAN & INSURANCE ASSOCN., *Ex p.* CHAPPELL, 19 L. T. O. S. 29.

5387. *Add. Annotation:*—**Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

5387a. On forfeiture clause—Conditional discharge.]—(1) The discharge from bkpcy. of a life tenant with the common form protected life interest, such discharge being conditional on his paying a sum of money, does not have the effect of putting an end to the operation of the forfeiture clause if the money has not in fact been paid.

(2) Where there is a trust of a fund under the terms of which the trustees are bound to apply the income of the fund in a particular way on a given future contingency, the person who takes the income as a result of that trust on the happening of the contingency is a person who has an interest of a kind which, but for the forfeiture clause, is capable of vesting in his trustee in bkpcy.—*Re* CLARK, CLARK *v.* CLARK, [1926] Ch. 833; 95 L. J. Ch. 325; 135 L. T. 666; 70 Sol. Jo. 344; [1926] B. & C. R. 77.

5397. *Add. Citations:*—Bail Ct. Cas. 151; 17 Jur. 165.

5399a. Revives debt.]—HATT *v.* VERDIER (1770), 2 Wm. Bl. 724; 96 E. R. 425.

PART XVIII. SECT. 5, SUB-SECT. 1.—B.

g i. —— *Insolvency due to world conditions after War—No possibility of payment of debts.*]—*Re* RAFUSE (N. S.), [1929] 4 D. L. R. 321; 10 C. B. R. 570.—**CAN.**

PART XVIII. SECT. 5, SUB-SECT. 1.—C. (b) ii.

5073 ii. —— ——.]—The test as to whether a debtor's book-keeping methods are those usual & proper in the business carried on by him is whether debtor can at any time tell therefrom just how he stands to his assets & liabilities.—*Re* MORDEN (1922), 66 D. L. R. 332; [1922] 1 W. W. R. 519; 2 C. B. R. 189.—**CAN.**

5081 ii. ——.]—Even when a debtor pays less than fifty cents in the dollar to unsecured creditors & has not kept proper books of account, he may obtain his discharge if the bkpcy. appears to have been an honest one & he produces reasonable excuses for his failure to keep account books.—*Re* COVINGTON, [1923] 4 D. L. R. 946.—**CAN.**

5081 iii. ——.]—*Re* NEWSOME (Ont.), [1927] 3 D. L. R. 828; 8 C. B. R. 279.—**CAN.**

PART XVIII. SECT. 5, SUB-SECT. 2.

r i. —— *Until payment of specified dividend.*]—On an application by a bkpt. for an order of discharge the ct. found that the conduct of the debtor prior to & leading up to the assignment had been characterised by various facts of the kind enumerated in sect. 143 of the Bkpcy. Act, & refused an immediate or unconditional discharge; but, while entertaining grave doubts whether appt. was entitled to any discharge at all, made an order suspending the discharge until a dividend of not less than 50 cents on the dollar had been paid to the creditors.—*Re* RUNNER (Man.), [1928] 1 W. W. R. 930.—**CAN.**

5238 i. *For what period—Not less than minimum period—Misconduct.*]—*Re* MCCORMACK (Ont.), [1927] 2 D. L. R. 492; 8 C. B. R. 211.—**CAN.**

z i. —— ——.]—Debtor had misrepresented his financial position for the purpose of obtaining credit. The ct. fixed the time for discharge at three years from the date of the order.—*Re* THIESSEN, [1924] 1 D. L. R. 538; [1924] 1 W. W. R. 197; 34 Man. L. R. 125.—**CAN.**

PART XVIII. SECT. 5, SUB-SECT. 3.

g i. —— *Order for payment out of salary.*]—In exercising the discretion given him by sect. 142 (1) of Bkpcy. Act, R. S. C., 1927, with respect to the salary of a bkpt. a judge in bkpcy. should not make the fulfilment of an order against the debtor's salary a condition of his discharge unless it is clearly established that the salary is more than what the debtor needs for the support of himself & his family.—MASON *v.* CANADIAN BANK OF COMMERCE, [1932] 1 W. W. R. 373.—**CAN.**

5269 iii. —— ——.]—Where the assets of the assignors, a partnership, were not equal to fifty cents in the dollar on their unsecured liabilities, & the ct. was not fully satisfied with explanations on certain matters given by a partner asking for his discharge, an order was made for his discharge on his consenting to judgment against him.—*Re* SCEPTRE HARDWARE CO., [1923] 1 D. L. R. 1201; [1923] 1 W. W. R. 966; 3 C. B. R. 734.—**CAN.**

5269 iv. —— ——.]—*Re* FLETCHER & FLETCHER (Sask.), [1930] 1 D. L. R. 218; 11 C. B. R. 70; [1929] 3 W. W. R. 175.—**CAN.**

PART XVIII. SECT. 6.

g i. —— *Creditor without notice of insolvency.*]—The ct., on the application of a creditor, annulled the composition order & the discharge & made a receiving order.—*Re* MCKAY, *Ex p.* MASON, [1924] 4 D. L. R. 307; 5 C. B. R. 81.—**CAN.**

PART XVIII. SECT. 7, SUB-SECT. 2.—D.

sl. *Liability for necessaries—Medical expenses.*]—*Held:* debtor's discharge did not free him from liability to pay for necessaries which included medical expenses.—*Re* REYNOLDS, [1924] 4 D. L. R. 104; 5 C. B. R. 69.—**CAN.**

sm. *Liability to reimburse surety.*]—K. was surety for payment of a debt due by G. to D. G. applied to be declared insolvent & in due course G. was discharged. D. then sued K. & got a decree against him. Thereafter K. sued G. for recovery of the amount which he had been compelled to pay:—*Held:* the order of discharge was a bar to the suit.—GANGADHAR *v.* KANHAI (1928), I. L. R. 50 All. 606.—**IND.**

5399b. *S. P.* BEST *v.* BARKER (1782), 8 Price, 533, n.; 146 E. R. 1286; *sub nom.* BEST *v.* BARBER, 3 Doug. K. B. 188.
Annotations :—**Consd.** Wilson *v.* Kemp (1815), 3 M. & S. 595. **Apld.** Sweenie *v.* Sharp (1826), 12 Moore C. P. 163. **Refd.** Blackbourn *v.* Ogle (1820), 8 Price, 526; Drew *v.* Jefferies (1820), 8 Price, 531.

5402a. *S. P.* HORTON *v.* MOGGRIDGE (1816), 6 Taunt. 563; 128 E. R. 1154.

5424a. *S. P.* TURNER *v.* SCHOMBERG (1745), 2 Stra. 1233; 93 E. R. 1152.
Annotation :—**Folld.** Bailey *v.* Dillon (1759), 2 Burr. 736.

5424b. *S. P.* WILSON *v.* KEMP (1815), 3 M. & S. 595; 105 E. R. 733.
Annotations :—**N.F.** Blackbourn *v.* Ogle (1820), 8 Price 526. **Consd.** *Re* Ganderer (1822), 1 L. J. O. S. K. B. 16; Peers *v.* Gadderer (1822), 1 B. & C. 116.

5455. *Add. Annotation :*—**Refd.** Indian & General Investment Trust *v.* Borax Consolidated, [1920] 1 K. B. 539.

5457. *Add. Annotation :*—**Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

Part XIX.—Statement of Affairs and Discovery of Property.

5460. *Add. Annotation :*—**Apld.** R. *v.* Tuttle (1929), 140 L. T. 701.

5475. *Citations :*—For "24 Q. B. D. 406" read "24 Q. B. D. 466."

5475a. —— —— —— **Letter returned marked "gone away."**]—Bkpt. cannot escape service of an order of the ct. by leaving his last known address, & there is nothing in 1914 Act, nor in Bkpcy. Rules, to say that a registered letter which does not reach debtor is not good service. Where, therefore, a copy of an order that bkpt. should attend at a specified time & place for his adjourned public examination, had been sent by registered letter & returned through the post, marked "gone away," a warrant was ordered to be issued for his arrest.—*Re* LEVY (1924), 68 Sol. Jo. 419; *sub nom. Re* LEVY, *Ex p.* OFFICIAL RECEIVER, [1924] B. & C. R. 19, D. C.

5482. *Add. Citation :*—*sub nom. Re* TEMPLE, *Ex p.* TEMPLE, 2 Rose, 22.

5495a. —— —— —— ——.]—The object of the public examination of debtor is not merely to obtain a full & complete disclosure of his assets & the facts relating to the bkpcy. in the interests of his creditors, but is also for the protection of the public; & debtor is not entitled to refuse to answer questions put to him at his public examination on the ground that by so doing he may incriminate himself.

In the course of his public examination debtor refused to answer a question on the ground that he might thereby incriminate himself. On the case coming on before the judge he interviewed debtor in his private room & on his return into ct. stated (1) that he was not satisfied that an answer to the question would result in further assets or secure rights for the creditors, & (2) that he was satisfied that there were serious personal reasons why it would be to debtor's detriment to answer the question in public :—*Held :* neither of the reasons given by the judge for declining to order debtor to answer the question was a sufficient reason.—*Re* PAGET, *Ex p.* OFFICIAL RECEIVER, [1927] 2 Ch. 85; 96 L. J. Ch. 377; 137 L. T. 369; 43 T. L. R. 455; 71 Sol. Jo. 489; [1927] B. & C. R. 118, C. A.
Annotation :—**Apld.** *Re* Jawett, [1929] 1 Ch. 108.

5495b. —— —— —— **Answers disclosing secret formulas for manufacturing proprietary articles.**]—*Re* KEENE, No. 5811a, *post.*

5496. For "—— —— **All matters considered on application for discharge**" read **All matters considered on application for discharge."**
Add. Annotations :—**Folld.** *Re* Paget, *Ex p.* Official Receiver, [1927] 2 Ch. 85. **Apld.** *Re* Jawett, [1929] 1 Ch. 108.

5499a. **Questions as to loss of property.**]—*Held :* though the words "with intent to deceive or to defraud" were absent from 1914 Act, s. 157 (1) (*c*), the jury had still to consider whether deft. knowingly & with intent to deceive or to evade the Act either made statements that were unsatisfactory in the sense that they were untrue or grossly exaggerated or intentionally evasive, or made statements without caring whether they were true or not.—R. *v.* PHILLIPS (1921), 85 J. P. 120.

5499b. **Questions in the public interest.**]—In Nov. 1927, the debtor, who had practically no capital of his own, suffered judgment for an injunction & costs for selling lamps in infringement of a patent. In Aug. 1928, the debtor was adjudicated bkpt. on the patentees' petition for non-payment of those costs. At his public examination on Oct. 19, the bkpt., who was admittedly still dealing in electrical goods, on being asked by the registrar where he had obtained the lamps that he sold when he was in business, refused to answer the question :—*Held :* as it was not clear that the disclosure of the source of supply might not lead to the disclosure of further assets, *e.g.* claims to commission or otherwise, or might not be in the public interest, by enabling the supply of infringing lamps to be stopped at its source, the bkpt. must answer the question.—*Re* JAWETT, [1929] 1 Ch. 108; 98 L. J. Ch. 7; 140 L. T. 176; [1928] B. & C. R. 78.

5505. *Add. Annotations :*—**Refd.** *Re* Paget, *Ex p.* Official Receiver, [1927] 2 Ch. 85; *Re* Jawett, [1929] 1 Ch. 108.

5512. *Add. Annotation :*—**Apld.** *Re* National Benefit Assurance Co., [1931] 1 Ch. 46.

5519. For existing paragraph read—
"The jurisdiction conferred on the ct. by 1883 Act, s. 27, to order that any person, who if in England would be liable to be brought before it under the sect. shall be examined in Scotland or Ireland, "or in any other place out of England," must be read with some limitation & does not extend to places abroad which are not within the jurisdiction of the British Crown."

Part XX.—Property Available for Distribution amongst Creditors.

5684. For the words "**Admission or rejection of proofs.**]—*See, generally,* Part VIII., *ante,*" following this case, read "Admission or rejection of proofs, *see, generally,* Part VIII., *ante.*"

5696. *Add. Annotation :*—**Refd.** *Re* Wethered, *Ex p.* Salaman, [1926] Ch. 167.

5738a. Definition of property—1914 Act, s. 167—What included—Passport.]—A passport issued by the British Passport Office on behalf of the Secretary of State for Foreign Affairs to a person who afterwards becomes bkpt. is the property of the Crown & not the "property" of the bkpt. within above sect., & where a bkpt. has passed his public examination & has not been guilty of any misconduct & desires to go abroad to earn his living the ct. will, in a proper case, direct the passport to be handed to the bkpt.—*Re* SUWALKSY, SUWALSKY *v.* TRUSTEE & OFFICIAL RECEIVER, [1928] B. & C. R. 142.

5747. *Add. Annotations :*—**Refd.** *Re* Webb (Smithfield, London), [1922] 2 Ch. 369 ; A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

5749. *Add. Annotations :*—**Consd.** *Re* Debtors (No. 771 of 1926) (1926), 43 T. L. R. 9. **Expld.** *Re* Fredericke & Whitworth, *Ex p.* Hibbard, [1927] 1 Ch. 253.

5754. *Add. Annotations :*—**Apld.** *Re* Collins, [1925] Ch. 556. **Distd.** Earle *v.* Hemsworth R. D. C. (1928), 44 T. L. R. 605.

5760. *Add. Annotations :*—**Consd.** *Re* Debtors (No. 771 of 1926) (1926), 43 T. L. R. 9. **Expld.** *Re* Fredericke & Whitworth, *Ex p.* Hibbard, [1927] 1 Ch. 253.

5760a. —— Money paid in compliance with subsequent bankruptcy notice.]—*Re* DEBTORS (No. 771 of 1926), No. 923a, *ante.*

5761. *Add Annotation :*—**Refd.** *Re* A Debtor, [1928] Ch. 199.

5766. *Add. Annotation :*—**Consd.** Lipton *v.* Bell, [1924] 1 K. B. 701.

5769. *Add. Annotation :*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

5775a.——.]—On Sept. 20, 1917, debtor transferred his assets, including certain furniture, to a co. formed by him. On Sept. 27 he committed an act of bkpcy. upon which a petition was presented on Oct. 8, & a receiving order was made against him on Oct. 24, followed by an adjudication on Dec. 12. After the date of the receiving order part of the furniture was sold by the co. to a *bonâ fide* purchaser for value without notice, by whom it was resold to another purchaser in the same position. On Feb. 3, 1919, the transfer of Sept. 20, 1917, was held to be fraudulent & void & an act of bkpcy., & the co. was ordered to deliver to the trustee all the property comprised in that sale. The value of the property having been found by the registrar, a further order was made against the co. to pay the amount of that value to the trustee. No payment having been made under that order the trustee claimed to recover the furniture or its value from the ultimate purchaser :—*Held :* the title of the trustee related back to the act of bkpcy. of Sept. 20, 1917, & neither the original nor any subsequent transferee could establish any title as against the trustee.—*Re* GUNSBOURG, [1920] 2 K. B. 426 ; *sub nom. Re* GUNSBOURG, *Ex p.* TRUSTEE, 89 L. J. K. B. 725 ; [1920] B. & C. R. 50 ; *sub nom. Re* GUNSBOURG, *Ex p.* COOK, 123 L. T. 353 ; 36 T. L. R. 485 ; 64 Sol. Jo. 498, C. A.

Annotations :—**Apld.** *Re* Dombrowski, *Ex p.* Trustee (1923), 92 L. J. Ch. 415. **Refd.** *Re* Simms, [1930] 2 Ch. 22.

5775b. ——.]—Bkpt., when he was hopelessly insolvent, transferred his business to a one-man co., which was an act of bkpcy. Subsequently the two resps. advanced £1,000 each & received four debentures of £250 each respectively containing a charge on the undertaking & assets of the co. Resps. had no notice of the fact that the transfer to the co. was a fraudulent conveyance within 1914 Act :—*Held :* although resps. were *bonâ fide* purchasers for value without notice, as the transfer was an act of bkpcy. to which the title of the trustee related back, the trustee was entitled to the assets so transferred as property divisible amongst the creditors of bkpt.—*Re* DOMBROWSKI, *Ex p.* TRUSTEE (1923), 92 L. J. Ch. 415 ; [1923] B. & C. R. 32.

Annotation :—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

5776. *Add. Annotation :*—**Refd.** *Re* Gunsbourg [1920] 2 K. B. 426.

5776a. —— **Whether fraction of day regarded.**]—In order to make out an act of bkpcy. by lying in prison for two months, the whole of the

PART XX. SECT. 2.

b i. —— *Trustee ignorant of ... of property.*]—Deft. in replevin pleaded property in himself. He had assigned all his property to trustees for the benefit of his creditors, but kept possession of the goods in question, & the trustees did not know of their existence :—*Held :* the general property in the goods passed to the trustees.—MCINTOSH *v.* HASTINGS (1865), 11 N. B. R. (6 All.) 234.—**CAN.**

5689 iv. —— —— *Registered judgment as security for loan.*]—A judgment by confession given by a person who is at the time solvent as security for a present advance of money & recorded to bind lands under Nova Scotia Registry Act, R. S., 1900 (c. 137), s. 16, is a valid security as against the authorised assignee under an assignment in bkpcy. subsequently made.—*Re* RHODENIZER ESTATE & NOVA SCOTIA TRUST CO., [1923] 1 D. L. R. 1055 ; 56 N. S. R. 179.—**CAN.**

5713 v. ——.]—The authorised trustee is not entitled to possession or control of any property by lien agreements for store fixtures & fittings purchased by debtor, especially if nothing has been paid on account of such purchases, & bkpt. has no official interest in the property.—*Re* ALIOTIS & CLIRIS (1921), 63 D. L. R. 346 ; 55 N. S. R. 64.—**CAN.**

5713 vi. —— *Lease granted to bankrupt free of rent—Stipulation that lease not seizable by creditors.*]—*Held :* the property could not be used for the benefit of bkpt.'s creditors.—L. *v.* DUFRESNE (1922), 66 D. L. R. 11 **CAN.**

t i. —— ——.]—As an assignment only vests the property of debtor in the assignee subject to the rights of secured creditors, it can only affect the equity of redemption in the property.—WHITE & CO. *v.* THE IONIA (1922), 69 D. L. R. 94 ; 20 Exch. C. R. 327.—**CAN.**

PART XX. SECT. 3, SUB-SECT. 2.

an. *Under Canadian Bankruptcy Act.*]—The English Acts & the Canadian Act distinguished as to the time to which the trustee's title relates back.—*Re* COHEN & MAHLIN, CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* SPIVAK (Alta.), [1926] 3 D. L. R. 942 ; [1926] 3 W. W. R. 34 ; *revsd.,* [1927] 1 D. L. R. 577 ; [1927] 1 W. W. R. 162 ; 22 Alta. L. R. 487 ; 8 C. B. R. 23.—**CAN.**

day of arrest may be taken into the account. But a portion of the day may be considered for the purpose of showing a valid act to have been done by the bkpt. before the bkpcy. Goods of the bkpt. having been delivered to a purchaser on the day on which the bkpt. went to prison, & paid for the next day, the payment will be defeated by the relation of the act of bkpcy., by lying in prison for two months, to the day of the arrest.—SAUNDERSON *v.* GREGG (1821), 3 Stark. 72; 171 E. R. 771, N. P.

Annotations :—**Consd.** Hill *v.* Farnell (1829), 9 B. & C. 45. **Refd.** Cannan *v.* Denew (1833), 3 L. J. C. P. 65.

5786. *Add. Annotation :*—**Consd.** *Re* Gunsbourg, [1920] 2 K. B. 426. **Refd.** *Re* Simms, [1930] 2 Ch. 22.

5786a. Fraudulent transfer to private company.]—*Re* SIMMS, No. 596a, *ante*.

5798. To the cross-reference before this case add "*see, also,* COUNTY COURTS, Vol. XIII., p. 498, No. 488."

5804. *Add. Annotation :*—*As to* (1) **Consd.** Bombay Official Assignee *v.* Shroff (1932), 48 T. L. R. 443.

5805. *Add. Annotation :*—**Refd.** Lipton *v.* Bell, [1924] 1 K. B. 701.

5807a. Balance of sequestrator's account in registry.]—*Re* LITTLE HALLINGBURY, ESSEX (1837), 1 Curt. 556; 163 E. R. 195.

5811a. —— Secret formulas for manufacturing proprietary articles.]—Debtor, against whom a receiving order had been made, had carried on business in the manufacture & sale in England, France & America of certain proprietary articles made according to secret formulas invented by him & his brother with whom he was in partnership. In his public examination he was required to disclose these formulas in writing to his trustee. The debtor & his brother had each of them agreed not to disclose the secret. Upon the dissolution of the partnership bkpt. retained the assets & goodwill of the business in England & America, while his brother continued to carry it on in France. The formulas had never been committed to writing. Bkpt. refused to disclose them on the ground that they existed only in his brain as the result of his skill & capacity, & that to disclose them would be a breach of his agreement with his brother :—*Held :* the formulas were part of the goodwill & assets of his business, & he was bound to communicate them to his trustee.—*Re* KEENE, [1922] 2 Ch. 475; 91 L. J. Ch. 484; 127 L. T. 831; 38 T. L. R. 663; 66 Sol. Jo. 503; [1922] B. & C. R. 103, C. A.

5821a. Life interest in remainder.]—*Re* SILBER'S SETTLEMENT, PUBLIC TRUSTEE *v.* SILBER, [1920] W. N. 77.

5826a. ——.]—*Re* CLARK, CLARK *v.* CLARK, No. 5387a, *ante*.

5827. *Add. Annotations :*—**Apld.** *Re* Nelson, Norris *v.* Nelson (1918), [1928] Ch. 920, n. **Refd.** *Re* Evans, Public Trustee *v.* Evans, [1920] 2 Ch. 304; *Re* Smith, Public Trustee *v.* Aspinall, [1928] Ch. 915.

5831. *Add. Annotations :*—**Apld.** *Re* Nelson, Norris *v.* Nelson (1918), [1928] Ch. 920, n. **Refd.** *Re* Evans, Public Trustee *v.* Evans, [1920] 2 Ch. 304; *Re* Smith, Public Trustee *v.* Aspinall, [1928] Ch. 915.

5835. *Add. Annotation :*—**Refd.** *Re* Clark, Clark *v.* Clark, [1926] Ch. 833.

5845. *Add. Annotations :*—**Refd.** *Re* Nelson, Norris *v.* Nelson (1918), [1928] Ch. 920, n.; *Re* Evans, Public Trustee *v.* Evans, [1920] 2 Ch. 304; *Re* Smith, Public Trustee *v.* Aspinall, [1928] Ch. 915.

5850. *Add. Annotations :*—**Consd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291. **Refd.** *Re* Evans, Public Trustee *v.* Evans, [1920] 2 Ch. 304.

5851. *Add. Annotation :*—**Distd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

5855. *Add. Annotation :*—**Refd.** *Re* Salting, Baillie-Hamilton *v.* Morgan, [1932] 2 Ch. 57.

5858. *Add. Annotation :*—**Consd.** *Re* Wombwell (1921), 37 T. L. R. 625.

5859a. —— Of property partly of bankrupt & partly of third party—Good to extent of third party's property.]—Bkpt. was entitled to reversionary interests in certain property subject to mtges. then vested in his father, & before his bkpcy. he joined with his father in executing a settlement in which provision was made that the son's interest should determine in the event of his bkpcy. :—*Held :* bkpt. was to be treated as settlor of the equity of redemption & therefore the provision for forfeiture on bkpcy. was void to that extent, but as to the father's mtges. bkpt. was not the settlor, & therefore the provision for forfeiture was valid to that extent.—*Re* WOMBWELL (1921), 125 L. T. 437; 37 T. L. R. 625; *sub nom. Re* WOMBWELL, *Ex p.* TRUSTEE, [1921] B. & C. R. 17.

5861a. In mortgage—Whether void as against bankruptcy laws.]—A provision in a mtge. to the effect that, if the mtgor. is made bkpt.,

PART XX. SECT. 4, SUB-SECT. 1.—E.

5a. *Money placed in bank to credit of bankrupt.*]—*Held :* the bank could not apply the moneys to satisfy debtor's liability to the bank, it being a fraudulent preference.—*Re* LONGMORE, *Ex p.* ROYAL BANK & RIDER, [1923] 2 D. L. R. 873; 3 C. B. R. 818.—**CAN.**

g i. *Money from sale of chattels—Sold under void bills of sale.*]—The ct. made an order for payment to the official assignee of the value of the chattels seized & sold by the money-lender.—TURNBULL'S ESTATE (OFFICIAL ASSIGNEE OF) *v.* GOLDSTEIN (1921), 29 C. L. R. 377; 21 S. R. N. S. W. 695; 38 N. S. W. W. N. 170.—**AUS.**

sa. *Money paid in circumstances giving bankrupt no right of recovery.*]—*Held :* the assignment did not vest the moneys so paid in the trustee.—SALTER & ARNOLD, LTD. *v.* DOMINION BANK (1922), 68 D. L. R. 757; [1922] 2 W. W. R. 280.—**CAN.**

sd. *Money supplied to provide bail for bankrupt.*]—*Held :* the money never was the property of bkpt.—MORRIS *v.* KLINE, DEMERS, GARNISHEE (1922), 68 D. L. R. 222; 2 C. B. R. 521.—**CAN.**

j i. *Money illegally paid to solicitors by former trustee.*]—The ct. ordered the solrs.' bill to be retaxed & a reference to be made to inquire into the validity of the solrs.' retainer.—*Re* BRYANT ISARD & CO., [1924] 3 D. L. R. 487; 5 C. B. R. 6.—**CAN.**

sf. *Money from sale by lender of securities for loan—Customer's securities wrongfully deposited with lender by bankrupt.*]—Circumstances in which :—*Held :* the money so paid to the trustee belonged to the customer.—*Re* THOMPSON, SONS & CO., NEWTON *v.* HAMILTON, [1927] 1 D. L. R. 943; [1927] 1 W. W. R. 308; 36 Man. L. R. 312.—**CAN.**

PART XX. SECT. 4, SUB-SECT. 2.—D. (a).

5846 iii. —— ——.]—A., by will, inherited property which was declared by the will to be unseizable, but he was given power to dispose of it :—*Held :* A. could not assert the unseizable quality of his property in bkpcy. proceedings.—CRAIG *v.* KENNEDY (1922), 68 D. L. R. 78; 2 C. B. R. 528.—**CAN.**

c i. —— *Clause forfeiting deposit on lessee's bankruptcy.*]—*Re* ABRAHAM (1925), 59 O. L. R. 164; [1926] 3 D. L. R. 971.—**CAN.**

a larger sum shall be paid to the mtgee. than would have been paid had the mtgor. not been made bkpt., is void, as being in contravention of the bkpcy. laws, & the security held by the mtgee. will be, notwithstanding such provision, a security for the amount actually advanced & no more.—*Re* JOHNS, WORRELL *v.* JOHNS, [1928] 1 Ch. 737; 97 L. J. Ch. 346; 139 L. T. 333; 72 Sol. Jo. 486; [1928] B. & C. R. 50.

5865. *Add. Annotation:*—**Consd.** *Re* Wombwell (1921), 37 T. L. R. 625.

5867. *Add. Annotation:*—**Consd.** Bombay Official Assignee *v.* Shroff (1932), 48 T. L. R. 443.

5869. *Add. Annotation:*—**Consd.** Bombay Official Assignee *v.* Shroff (1932), 48 T. L. R. 443.

5870. *Add. Annotation:*—**Apld.** *Re* Johns, Worrell *v.* Johns, [1928] Ch. 737.

5872. *Add. Annotation:*—**Consd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

5884. *Add. Annotation:*—**Consd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

5885. *Add. Annotation:*—**Refd.** *Re* Clark, Clark *v.* Clark, [1926] Ch. 833.

5890. *Add. Annotation:*—**Consd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

5897. *Add. Annotation:*—**Distd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

5898. *Add. Annotations:*—**Consd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291. **Refd.** *Re* Evans, Public Trustee *v.* Evans, [1920] 2 Ch. 304.

5899. *Add. Annotation:*—**Consd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

5902a. **"On bankruptcy or until he suffered any act or thing or any event happened whereby he would be deprived of right to receive income"—Order of Probate Court setting apart whole income for children of beneficiary.**]—In 1887, C. settled the proceeds of property as to the income upon himself for life determinable on his bkpcy. or until he suffered any act or thing or any event happened whereby, if payable to him absolutely, he would be deprived of the right to receive the income or any part thereof. By an order in 1895 after the dissolution of C.'s marriage, it was ordered that the trustees should set apart the whole of the income of the settled funds which was then payable to him, & apply it for the children of the marriage until majority. C. became bkpt. in 1904, & his youngest child attained twenty-one in 1910:—*Held:* the above order was an act or event antecedent to his bkpcy. by which C.'s interest in the whole income was determined for a substantial period, & a forfeiture took place at the time the order was made, & nothing passed to the trustee in bkpcy.—*Re* CAREW'S TRUSTS, GELLIBRAND *v.* CAREW (1910), 103 L. T. 658; 55 Sol. Jo. 140.

5905. *Add. Annotation:*—**Consd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

5908. *Add. Annotation:*—**Consd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

5909a. **"Shall do some act" whereby income would be assigned—Authority to pay income to trustee of composition scheme—No notification of authority to trustee.**]—B. was entitled to the income of one-third share of the residuary estate of testatrix unless & until he should be or become bkpt. or should do or suffer some act or thing whereby such share of income should be wholly or partially assigned, charged or incumbered or until he should die, whichever event should first happen, & from & after his death or bkpcy. or the doing or suffering such act as aforesaid such share & the income thereof should be held upon trust for his issue. Shortly after the death of testatrix B. entered into a scheme for composition with his creditors, & he then signed an authority to the trustees of testatrix's will "until further notice" to pay to the trustee under the scheme "the income now due or to accrue due" to B. from her estate. It appeared that there had been no communication by B. to the trustee of the scheme for composition concerning the authority given to the trustees of the will until after these proceedings had been taken in the matter:—*Held:* in these circumstances the authority given to the trustees of the will did not operate as a good equitable assignment of B.'s interest in testatrix's estate & did not work a forfeiture thereof, inasmuch as in the absence of communication concerning the authority, the same remained simply a bare authority which was revocable.—*Re* HAMILTON, FITZGEORGE *v.* FITZGEORGE (1921), 124 L. T. 737, C. A.

5913. *Add. Annotation:*—**Refd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

5916. *Add. Annotation:*—**Consd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

5920. *Add. Annotation:*—**Consd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

5922. *Add. Annotation:*—**Distd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

5922a. **"By any deed or document anticipate, charge, assign, or otherwise dispose of"—Debtor presenting bankruptcy petition.**]—*Held:* the forfeiture clause had not taken effect.—*Re* GRIFFITHS, JONES *v.* JENKINS, [1926] Ch. 1007; 95 L. J. Ch. 429; 136 L. T. 57; 70 Sol. Jo. 735; [1926] B. & C. R. 56.

5924. *Add. Annotation:*—**Expld.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

5925. *Add. Annotation:*—**Consd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

5931. *Add. Annotations:*—**Consd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291. **Refd.** *Re* Evans, Public Trustee *v.* Evans, [1920] 2 Ch. 304.

5932. *Add. Annotation:*—**Apld.** *Re* Evans, Public Trustee *v.* Evans, [1920] 2 Ch. 304.

5932a. —— **Bankruptcy before death of testator.**]—Testator directed that if an annuitant should become bkpt. or insolvent he should forfeit the annuity:—*Semble:* such a direction applied only to future events, & no forfeiture would be incurred by an insolvency during testator's lifetime.—*Re* DRAPER (1888), 57 L. J. Ch. 942; 58 L. T. 942; 36 W. R. 783.

Annotation:—**Folld.** *Re* Strange, Lamb *v.* Bossi Leu (1916) 60 Sol. Jo. 640.

5932b. **"Until he shall forfeit same in case of bankruptcy"—Existing bankruptcy known to**

testator.]—*Re* EVANS, PUBLIC TRUSTEE *v.* EVANS, No. 5936a, *post.*

5933. *Add. Annotation:*—**Refd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

5934. *Add. Annotation:*—**Refd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

5935. *Add. Annotation:*—**Apld.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch 291.

5935a. **Bankruptcy at & after determination of prior life interest—Annulled after income payable.**]—B. was bequeathed an interest during his life in the income of testator's residuary estate, & by his will testator directed that, if any beneficiary thereunder should become bkpt., such beneficiary should forfeit his share which should thereupon devolve as provided for in the event of his death. Testator died in 1910 & on Apr. 16, 1914, B. was adjudicated bkpt. On Dec. 14, 1925, B.'s life interest fell into possession, & on Apr. 7, 1926, he procured the annulment of his bkpcy. Between Dec. 14, 1925, & the date of the annulment the trustees received income in respect of the residuary estate, but dealt only with such part as did not include the income in respect of B.'s interest, no payment being made in respect of that by them:—*Held:* as after Dec. 14, 1925, the trustees received sums in respect of the income of testator's estate which they could have been asked to hand over to the trustee in the bkpcy. of B. before the annulment of his bkpcy., there existed something upon which the forfeiture could operate, the test being whether there was any actual income of the share which could be treated by the trustees as payable to, or retained for, or appropriated for, the residuary legatee, & the annulment was not in time to prevent the operation of the forfeiture clause.—*Re* FORDER, FORDER *v.* FORDER, [1927] 2 Ch. 291; 96 L. J. Ch. 314; 137 L. T. 538; [1927] B. & C. R. 84, C. A.

5936. *Add. Annotations:*—**Apld.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291. **Refd.** *Re* Evans, Public Trustee *v.* Evans, [1920] 2 Ch. 304.

5936a. **"Unless he attempts to become bankrupt"—Whether applicable to bankruptcy in invitum or generally.**]—Testator, by his will dated Dec. 21, 1911, devised & bequeathed his real & personal estate to his trustees upon trust to sell & convert with power to postpone, & proceeded: "Out of my estate I desire my trustees to pay to my son H. an annuity of £156 to be paid monthly, unless he attempts to assign it or to become bkpt. In these events it shall be entirely optional with my trustees to pay him the annuity, my wish & intention being that the money is to be for his personal use to keep him from want. If they think his conduct or circumstances deserves or requires it, I authorise them to increase the annuity to £260 per annum, payable as & on the condition stated." Testator then directed that the residue of the income of his estate should be paid to his wife during her life or widowhood, & that after her death or remarriage it should be applied for the maintenance of his daughter until she attained the age of twenty-five years, & that upon her attaining that age the whole of the residue of his property should be given to her. By a codicil to his will, dated Sept. 10, 1918, testator devised two freehold farms to his son H. for the term of his life or "until he shall do some act to effectuate a sale or mtge. thereof or which shall forfeit the same in the case of bkpcy.," in either of which events the farms were to fall back into & form part of his residuary estate. Testator died on Sept. 13, 1918, leaving his widow, his daughter, & his son H. surviving. On Nov. 3, 1911, a receiving order had been made against H. on a creditor's petition, the act of bkpcy. being the failure to comply with a bkpcy. notice, & on Nov. 24, 1911, he was adjudged bkpt. Testator made his will & codicil with knowledge of these facts. On Jan. 22, 1919, H. obtained his discharge, but his creditors had not been paid in full, & the bkpcy. had not been annulled. On a summons taken out by the trustees for the determination of the questions whether the legacy given to H. by the will had become forfeited by his bkpcy., & whether the freeholds devised to him by the codicil belonged to him or formed part of the residuary estate:—*Held:* (1) the words "unless he attempts to become bkpt." in the will must be read in their strict grammatical sense & as so read did not apply to a bkpcy. *in invitum* or bkpcy. generally, & therefore no forfeiture of the annuity had occurred on which the discretionary trust arose, & consequently the annuity was payable to the trustee in H.'s bkpcy.; (2) the words of devise in the codicil though phrased in words of futurity applied under the doctrine of *Trappes* v. *Meredith*, No. 5932, *ante*, to the past bkpcy. of H., & there was no principle upon which the ct. would be justified in holding that the doctrine was not applicable to legal estates, & consequently the devised freeholds had ever since the death of testator formed part of his residuary estate.—*Re* EVANS, PUBLIC TRUSTEE *v.* EVANS, [1920] 2 Ch. 304; 89 L. J. Ch. 525; 123 L. T. 735; 36 T. L. R. 674, C. A.

5953. *Add. Annotation:*—**Refd.** *Re* Blyth Shipbuilding & Dry Docks Co., Forster *v.* Blyth Shipbuilding & Dry Docks Co., [1926] Ch. 494.

5958. *Add. Annotations:*—**Consd.** Anglo-Baltic & Mediterranean Bank *v.* Barber, [1924] 2 K. B. 410; *Re* Harrington Motor Co., *Ex p.* Chaplin, [1928] Ch. 105. **Distd.** Hood's Trustees *v.* Southern Union General Insce. Co. of Australasia, [1928] Ch. 793. **Refd.** *Re* Harrington Motor Co. (1927), 44 T. L. R. 58.

5958a. ——.]—H., who had taken out a policy of insurance in deft. co. against third party risks, was involved in an accident whereby C. was seriously injured by H.'s motor car. C. commenced proceedings against H. for damages, but before obtaining judgment H.

PART XX. SECT. 4, SUB-SECT. 2.—E.

5957 iii. ——.]—Pltf. in Feb. 1930, recovered judgment against deft. in respect of injuries sustained on July 14, 1928, in a collision with a motor lorry driven by deft.'s servant. On Jan. 31, 1929, deft. assigned "all his real & personal estate" to trustees for the benefit of his creditors, such assignment being executed as creditor by the insurance co. with which he held a policy indemnifying him against third party risks:—*Held:* deft.'s right to indemnity by the insurance co. having arisen prior to the assignment, passed as a chose in action to the trustee under the deed, & pltf. had no legal or equitable right to the insurance moneys.—SMITH *v.* HORLOR, [1930] N. Z. L. R. 537.—**N.Z.**

was adjudicated bkpt. & the official receiver was appointed the trustee in the bkpcy. The trustee informed the co., in reply to a question put by them, that he did not propose to take any part in C.'s action against H. H. subsequently purported for an agreed sum to release the co. from their liability under the policy to indemnify him in respect of any judgment obtained against him by C. Shortly afterwards C. obtained judgment against H. for damages for the injuries sustained by him. Subsequently H. committed a second act of bkpcy. & was adjudicated bkpt. for the second time, & a trustee was appointed. In an action brought by the two trustees jointly for a declaration (*inter alia*) that deft. co. were liable to indemnify H. & or pltfs. against the damages awarded to C. & that the agreement by which H. purported to release the co. was null & void :—*Held :* (1) the benefit of the indemnity vested in the trustee under the first bkpcy., notwithstanding that C.'s claim, being one in respect of a tort for which judgment was not obtained till after the commencement of the first bkpcy., was not provable in such bkpcy. ; (2) the benefit of the indemnity having vested in the trustee in the first bkpcy., his right thereto could not be affected by any subsequent agreement between deft. co. & H. ; (3) the trustee in the first bkpcy. was not estopped by his refusal to take part in C.'s action against H. from asserting his claim against deft. co.—HOOD'S TRUSTEES *v.* SOUTHERN UNION GENERAL INSURANCE CO. OF AUSTRALASIA, [1928] Ch. 793 ; 97 L. J. Ch. 467 ; 139 L. T. 536 ; [1928] B. & C. R. 95, C. A.

——.]—*See, now,* Third Party (Rights Against Insurers) Act, 1930 (c. 25).

5958b. Arbitration clause in policy.]—FRESHWATER *v.* WESTERN AUSTRALIAN INSURANCE CO., LTD. (1932), 76 Sol. Jo. 888, C. A.

5960. *Add. Annotation :*—**Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

6012a. —— —— Husband surviving wife.]—In the year 1876 a husband during the lifetime of his wife took out a policy on his life with an assurance co., whereby, after a recital that the assured " for the benefit of his wife " in pursuance of Married Women's Property Act, 1870 (c. 93), had proposed to the co. to effect an assurance on his own life for £500, in consideration of the payment of the premiums during the life of the assured, the co. covenanted that the property of the co. should be liable to pay to the exors., administrators & assigns of the assured the sum of £500. In 1918 the wife died, & in 1929 the husband died without having married again. In 1891 the husband was adjudicated bkpt. & obtained his discharge as from Apr. 14, 1899 :—*Held :* upon the true construction of the policy & Married Women's Property Act, 1870 (c. 93), s. 10, the interest in the policy moneys vested in the husband & upon his adjudication in the trustee in his bankruptcy subject to the trust in favour of his wife which enured for her benefit only if she survived her husband ; with the result that as she died before her husband & before the fund fell into possession, the policy moneys belonged & were payable to the trustee in bkpcy.

Semble : Married Women's Property Act, 1870 (c. 93), s. 10, does not enable a husband to confer the benefit of the policy upon any wife who does not by surviving him become his widow.—*Re* COLLIER, [1930] 2 Ch. 37 ; 143 L. T. 329 ; *sub nom. Re* COLLIER, *Ex p.* COLLIER'S EXECUTORS, 99 L. J. Ch. 241 ; [1929] B. & C. R. 173.

Annotation :—**Consd.** Cousins *v.* Sun Life Assurance Society (1932), 48 T. L. R. 614.

6052. *Add. Annotation :*—**Refd.** *Re* Pennington & Owen, [1925] Ch. 825.

5961 ii. —— *Premium paid by bankrupt*]—Where payments due to a co. insuring a policy were not by the policy itself expressed to be payable during the lifetime of the assured or for seven years at least :—*Held :* the policy was not within the protection afforded by Life Insurance Act, 1908, s. 65, & the policy-moneys passed to the official assignee of the deceased policy-holder.—LONDON & LANCASHIRE INSURANCE CO., LTD. *v.* FISHER, [1924] N. Z. L. R. 1286.—**N.Z.**

5961 iii. —— *Property transferred before assignment in bankruptcy.*]—A trustee in bkpcy. is not entitled to recover insurance on a building burned after the assignment in bkpcy., but which stood on land transferred prior to the assignment.—CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* WINNIPEG FIRE UNDERWRITERS' AGENCY (Alta.), [1926] 3 D. L. R. 528 ; [1926] 2 W. W. R. 541.—**CAN.**

5967 ii. —— *In action of tort.*]—Damages for personal injuries do not vest in the trustee in bkpcy.—*Re* HOLLISTER (Ont.), [1926] 3 D. L. R. 707 ; 7 C. B. R. 629.—**CAN.**

h i. *Sums due by way of differences—Transactions closed by special resolution of Stock Exchange.*]—Sums which have become due, in the ordinary course of business from one certified broker to another, by way of differences in respect of Stock Exchange transactions entered into between the parties, as members of the Bombay Native Share & Stock Brokers' Association, form part of the estate of the creditor broker, which passes to his assignee in the case of his insolvency, under Presidency Towns Insolvency Act (III. of 1909), ss. 17 & 52.—KAIKUSHROO TALYARKHAN *v.* BAI GULAB (1928), I. L. R. 53 Bom. 508.—**IND.**

h ii. *Sums due from bankrupt commission agent—Right to recover from principals—Subject to rights of third party.*]—Where commission agents had incurred liability on behalf of their principals, who had agreed to indemnify them, & the agents having subsequently gone into liquidation, official liquidator sued the principals for the amount of liability :—*Held :* he could recover the said amount even though the agents, having gone into liquidation, had not actually paid their vendor.—OSMAN JAMAL & SONS *v.* GOPAL PURSHATTAM (1928), I. L. R. 56 Calc. 262.—**IND.**

sq. *Rights under contract — Cancellation before receiving order.*]—*Held :* the trustee in bkpcy. had no rights under the contract in the name of bkpt., it having been rightly cancelled.—*Re* DOLLAR TAXI CO., *Ex p.* TRUSTEE, [1924] 3 D. L. R. 97 ; 4 C. B. R. 667.—**CAN.**

st. *Proceeds of company's assets—Sold by directors—To discharge personal guarantees of directors.*]—*Held :* the transaction was not fraudulent.—*Re* UNITED EXHIBITORS, [1925] 3 D. L. R. 446 ; 5 C. B. R. 779.—**CAN.**

PART XX. SECT. 4, SUB-SECT. 3.—B·

sv. *Proceeds of sale—Bill of sale by husband to wife—To secure loan by wife.*]—*Held :* the proceeds derived from realisation of the security effected after an act of bkpcy., but before actual adjudication, were money lent to the husband by the wife for the purpose of his trade or business at the date of bkpcy., &, as such, assets in the husband's estate.—*Re* HAW, [1926] N. Z. L. R. 558.—**N.Z.**

sw. *Chattels in ostensible possession of husband—Onus of proof.*]—*Held :* the *onus* was on the wife to prove that they were her property.—*Re* MCELLAND'S ESTATE, [1923] 4 D. L. R. 395 ; 3 C. B. R. 849.—**CAN.**

PART XX. SECT. 4, SUB-SECT. 6.—A.

i i. —— —— *Property part of estate of lunatic under care of court.*]—Lands being real estate, situate in the Irish Free State, devolved upon a person as heir-at-law who had been an undischarged bkpt. in England since the year 1924. The person who died possessed of the property had been a lunatic under the care of the ct. in the Irish Free State. In the winding up of the lunatic's estate by the Chief Justice in Lunacy the rents of the real estate of the lunatic which had accrued after her death were claimed respectively by the Official Receiver in England & the Official Assignee in the Irish Free State for the benefit of the creditors in the respective bkpcies. :—*Held :* the only effective vesting order before the ct. was that made in the Irish bkpcy. matter, the land in question had not become vested in the Official Receiver in England merely

6074. *Add. Annotation :*—**Distd.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814.

6098a. —— **In Irish Free State—In possession of Irish creditors—Claim to lien.**]—Where creditors resident & domiciled in the Irish Free State were in possession of chattels belonging to an English bkpt. on which the creditors claimed a lien, which the trustee admitted, for moneys owing to them by the bkpt., the Div. Ct. were of opinion that, as between the creditors & the trustee, the creditors were entitled to realise their security by the sale of the chattels. But, save as aforesaid, the ct. refused to make any special order declaring a lien on or directing the sale of the chattels, or any order which the High Ct. of the Irish Free State could be asked to enforce by an order in aid.—*Re* SYKES, CLOGHRAN STUD FARM CO. *v.* TRUSTEE (1932), 101 L. J. Ch. 298.

6111. *Add. Annotation :*—**Consd.** Bergerem *v.* Marsh (1921), 91 L. J. K. B. 80.

6113. *Add. Annotation :*—**Apld.** Bergerem *v.* Marsh (1921), 91 L. J. K. B. 80.

6115a. —— **Bankruptcy abroad.**]—Testator by his will declared himself to be residing in London, & domiciled in England. He subsequently resided in Algiers & carried on business as a coal merchant there until his death. On a petition presented by him in his lifetime to the ct. in Algiers he was declared bkpt. by the French ct. after his death, & a "syndic" was appointed there to whom creditors' claims might be sent. The effect of the order on the evidence was to vest in the French "syndic" the whole of bkpt.'s estate, including assets accruing after the commencement of the bkpcy. In a subsequent creditor's administration action in England, K., an English creditor, was appointed administrator & after a grant of administration with the will annexed, proceeded to advertise for creditors. The French "syndic" now claimed that the assets in this country should be transferred to him, admitting that if his application was successful the costs of administration here would have to be deducted :—*Held :* a bkpcy. order having been made by a French ct. of competent jurisdiction the "syndic" was entitled to the whole of the assets wheresoever situate, & these must be handed to him after deducting the costs, charges & expenses of the administration proceedings here.—*Re* BURKE, KING *v.* TERRY (1919), 54 L. Jo. 430 ; 148 L. T. Jo. 175.

Annotation :—**Refd.** Bergerem *v.* Marsh (1921), 91 L. J. K. B. 80.

6115b. —.]—In 1913 deft., a domiciled Englishman, entered into an hotel partnership with other persons in Belgium in connection with the Ghent Exhibition. Deft. became tenant of a house in Ghent for a period of eight months from Apr. 1913, & employed clerks & other persons. The partnership incurred heavy liabilities, & by a decree of the Commercial Ct. at Ghent, dated Aug. 9, 1913, the partnership & its members were declared to be insolvent pursuant to an article of the Belgian Civil Code. The decree was pronounced by the ct. without notice to deft., but subsequently, in accordance with the recognised procedure, he was notified of the decree & appeared by solr. to show cause why it should be dissolved. It was, however, affirmed by the Ct. of Appeal. Pltf., trustee in the bkpcy., brought an action in England alleging that deft. was possessed of assets within the jurisdiction of the English cts. & claiming a declaration that all deft.'s assets had become vested in pltf. as trustee : —*Held :* (1) the decree of the Belgian ct. was valid inasmuch as deft. had submitted to the jurisdiction, (2) the proceedings were not contrary to natural justice, inasmuch as deft. had been afforded an opportunity of being heard ; (3) subject to the decision of other issues not before the ct., there should be a declaration that pltf. was entitled to all the movable assets of deft., wherever situate, & to the appointment of a receiver.—BERGEREM *v.* MARSH (1921), 91 L. J. K. B. 80 ; 125 L. T. 630 ; [1921] B. & C. R. 195.

6116. For catchword "**Real property in England**" read "**Immovables in England.**"

6116a. —— **Bankruptcy abroad.**]—Although an assignment of a bkpt.'s property to the representative of his creditors under the bkpcy. law of a foreign country (other than Scotland, Ireland, or British India) is not & does not operate as an assignment of any immovables of the bkpt. situate in England, nevertheless an English ct. has jurisdiction in such case to appoint a receiver to the bkpt.'s English property for the benefit of his creditors.—*Re* KOOPERMAN, [1928] B. & C. R. 49 ; 72 Sol. Jo. 400.

Annotation :—**Folld.** *Re* Osborn, *Ex p.* Trustee (1932), 74 L. Jo. 134.

6116b. Bankruptcy in Isle of Man.]—*Re* OSBORN, *Ex p.* TRUSTEE (1932), 74 L. Jo. 134.

6121. *Add. Annotations :*—**Refd.** *Re* Wait, [1927] 1 Ch. 606 ; Ditcham *v.* Miller (1931), 100 L. J. P. C. 177.

by the operation of the English vesting declaration, but it was competent for the Irish ct., exercising bkpcy. jurisdiction, if requested to do so, to make that vesting declaration effective.—*Re* CORBALLIS, [1929] I. R. 266.—**IR.**

6103 v. —— ——.]—Land in Canada owned by a bkpt. at the time he is adjudicated a bkpt. under the English Bkpcy. Act, 1914, c. 59, vests in his trustee under the English bkpcy. proceedings.—*Re* GRAHAM (No. 2), [1929] 3 D. L. R. 353 ; 1 W. W. R. 309 ; 23 S. L. R. 297 ; 10 C. B. R. 340.—**CAN.**

PART XX. SECT. 4, SUB-SECT. 6.—B. (b).

r i. —— ——.]—Although a foreign Bkpcy. Act cannot, of its own force, operate beyond the country which enacted it, yet private international law & the comity of nations operating on the general principles relating to movable property will recognise its extra-territorial effect, so far at least as it deals with personal property, especially where, as in the case of the U.S. Bkpcy. Act, the Act does not expressly confine itself to property within the United States, but extends to "all property" of bkpt. ; & the fact that the U.S. Bkpcy. Act is given effect in Canada only by comity of nations is not a ground for holding that it should be given no greater effect in Canada than would be given to the Canadian Bkpcy. Act in the United States.—WILLIAMS *v.* RICE (Man.), [1926] 3 D. L. R. 225 ; [1926] 2 W. W. R. 192.—**CAN.**

sa. *Insolvency in South Africa—Property in Ireland.*]—By an order of the Supreme Ct. of the Union of South Africa the estate of an insolvent was sequestrated for the benefit of his creditors ; subsequently a trustee of the estate was elected, & was declared entitled to administer the estate in accordance with Insolvency Act, 1916. The insolvent was entitled to certain freehold & leasehold property in Ireland. Under the law of the Union of South Africa the trustee was entitled to the immovable property of the insolvent situate in Ireland, so far as such right did not conflict with the law in Ireland. The Supreme Ct. of South Africa having requested the Irish ct. to act in its aid, the trustee applied for an order vesting the property in him :—*Held :* he was entitled to such order.—*Re* BOLTON, [1920] 2 I. R. 324.—**IR.**

PART XX. SECT. 4, SUB-SECT. 7.

6122 i. *Payments to accrue under building contract.*]—B., who had engaged in a partnership with deft. K. in a con-

6123. *Add. Annotation :*—**Refd.** Earle *v.* Hemsworth R. D. C. (1928), 140 L. T. 69.

6124. *Add. Annotation :*—**Refd.** Earle *v.* Hemsworth R. D. C. (1928), 140 L. T. 69.

6126. *Add. Annotations :*—**Apld.** *Re* Collins, [1925] Ch. 556. **Distd.** Earle *v.* Hemsworth R. D. C. (1928), 44 T. L. R. 605.

6128. *Add. Annotations :*—**Apld.** Cotton *v.* Heyl, [1930] 1 Ch. 510. **Consd.** *Re* Wait, [1927] 1 Ch. 606 ; Blakey *v.* Pendlebury's Trustees (1931), 47 T. L. R. 503. **Refd.** *Re* Williams, Richards *v.* Williams, [1930] 2 Ch. 378.

6129. *Add. Annotations :*—**Apld.** *Re* Collins, [1925] Ch. 556. **Distd.** Earle *v.* Hemsworth R. D. C. (1928), 44 T. L. R. 605.

6129a. ——.]—*Re* COLLINS, No. 6059a, *post.*

6135. *Add. Annotation :*—**Apld.** *Re* Caines Mortgage Trusts, [1918–19] B. & C. R. 297.

6150a. —— Transfer of shares bought for client.] —A. instructed his broker to purchase on his behalf two hundred shares in a co. The broker instructed a firm of brokers to effect the purchase. The firm duly purchased the shares & sent a transfer of the shares to the broker, prepared in the name of A. The broker had in the meantime filed his petition in bkpcy. & the transfer passed to the official receiver & from him to the trustee in bkpcy. of the broker. It was claimed by the firm & also by A. :—*Held :* it was " property held by bkpt. on trust " within the exception contained in 1914 Act, s. 38, & it must be handed over to A.—BARBER & SONS *v.* RIGLEY (1922), 38 T. L. R. 650 ; 66 Sol. Jo. 577.

6208a. ——.] — In the circumstances (*see* No. 6208) :—*Held :* C. had a lien on the goods for his debt.—BURN *v.* CARVALHO (1834), 7 Sim. 109 ; 58 E. R. 777 ; *subsequent proceedings* (1839), 4 My. & Cr. 690, L. C.

Annotations :—**Consd.** Frith *v.* Forbes (1862), 31 L. J. Ch. 793. **Refd.** Hutchinson *v.* Heyworth (1838), 9 Ad. & El. 375.

6270. *Add. Annotation :*—**Refd.** Banque Belge *v.* Hambrouck, [1921] 1 K. B. 321.

6272. *Add. Annotations :*—*As to* (1) **Refd.** Banque Belge *v.* Hambrouck, [1921] 1 K. B 321. *As to* (2) **Refd.** Banque Belge *v.* Hambrouck, [1921] 1 K. B. 321; *Re* Wait, [1927] 1 Ch. 606.

tract for the construction of certain works, on June 8, 1927, assigned to pltf. " all my profits up to the sum of £500 plus 10 per cent. interest " that were to accrue to him from the said partnership for the said contract. He was adjudicated bkpt. on an act of bkpcy. committed on June 17 of the same year, of which, however, pltf. had no notice. In an action by pltf. against the official assignee & deft. K. to recover the amount of the assignment :—*Held :* it having been established that on June 17, 1927, the date to which the bkpcy. related back, no profit had been earned by B. to which the assignment could attach, & as the assignment could not give a good title as against the official assignee to profits accruing after the commencement of the bkpcy. pltf. could not succeed against the official assignee, nor could he recover against K., who was bound by law to pay the official assignee bkpt.'s share of the profits of the contract.—HEWITT *v.* OFFICIAL ASSIGNEE OF BARNES & KEEBLE, [1930] N. Z. L. R. 416.—**N.Z.**

6124 i. —— *Retention money.*]—*Held :* moneys already earned by the assignor, although not already due & payable to him, could be assigned by him, & their assignment was not invalidated by bkpcy. intervening before such moneys became due & payable, & this principle was applicable to retention money kept back in respect of progress payments under a building contract.—OFFICIAL ASSIGNEE *v.* SHARPE, [1921] N. Z. L. R. 460.—**N.Z.**

6128 i. *Book debts—Assignment to incorporated bank.*]—*Held :* the assignment of all book debts then due or accruing due or thereafter to become due was a general assignment of book debts within Bkpcy. Act, s. 30, but was valid.—SAPERA TOBACCO CO. *v.* ROYAL BANK OF CANADA (1922), 63 D. L. R. 58 ; 2 C. B. R. 309 ; 52 O. L. R. 131.—**CAN.**

6128 ii. —— *Assignment not registered—No provincial legislation providing for registration.*]—*Held :* assignment void as against trustee in bkpcy. —ROYAL BANK OF CANADA *v.* EASTERN TRUST CO., [1923] 1 D. L. R. 498 ; [1923] S. C. R. 177.—**CAN.**

6128 iii. *Future book debts.*]—*Re* GORDON STORE, LTD., *Ex p.* STANDARD BANK, [1923] 4 D. L. R. 279 ; 3 C. B. R. 816.—**CAN.**

6128 iv. ——.]—To be valid against a trustee in bkpcy. any assignment of future book debts must be rigidly according to Bkpcy. Act, s. 30.—*Re* WALTON, [1924] 4 D. L. R. 706 ; 5 C. B. R. 112.—**CAN.**

PART XX. SECT. 5, SUB-SECT. 1.

6133 iv. ——.]—*Re* STANDARD IMPORTS, LTD., *Ex p.* CANADIAN EXPRESS CO. (1922), 68 D. L. R. 396 ; 2 C. B. R. 206.—**CAN.**

6133 v. ——.]—*Re* WILSON (Ont.), [1926] 1 D. L. R. 584 ; 7 C. B. R. 437.—**CAN.**

PART XX. SECT. 5, SUB-SECT. 2.—A.

6139 iv. —.]—As against an assignee in bkpcy. one who has as principal consigned goods to bkpt. under an agency contract by which the property did not pass to bkpt. may recover the goods or the proceeds thereof, provided & so far as they can be identified.—*Re* COCKS ESTATE & CONSORT TRADING CO. (1922), 65 D. L. R. 778 ; [1921] 3 W. W. R. 434. —**CAN.**

6139 v. —— *Money entrusted to.*]—*Held :* the payer could only rank as a preferred creditor if the trust money could be traced to a particular fund.—*Re* DOMINION TICKET, ETC. CORPN., *Ex p.* AKER, [1924] 2 D. L. R. 807.—**CAN.**

6150 i. *Broker—Securities sold for client—Proceeds paid into broker's general account.*]—*Held :* as the money could not be distinguished in any way from other moneys in the general account of the brokers the client could not claim it & could only sue for breach of contract.—DALPHE *v.* FAIRBANKS, GOSSELIN & CO. (1922), 66 D. L. R. 335 ; 2 C. B. R. 524.—**CAN.**

sb. *Sole beneficiary—Widow's claim to share of estate.*]—Where a widow claims under Widows Relief Act, R. S. A., 1922 (c. 145), s. 10, to the unadministered portion of her husband's estate, such portion does not vest in the trustee in bkpcy. of the sole beneficiary under the husband's will.—*Re* MCINTYRE, [1925] 4 D. L. R. 127 ; [1925] 3 W. W. R. 172.—**CAN.**

PART XX. SECT. 5, SUB-SECT. 2.—B.

sc. *Specific purpose—Stock certificate deposited with agent—For sale.*]—Bkpt. sold a portion of the shares & had the remainder fraudulently transferred into his own name :—*Held :* the trustee must return the shares.—DENMAN *v.* TOUSAW, HART & ANDERSON & BELL TELEPHONE CO. (1922), 66 D. L. R. 572.—**CAN.**

sd. —— —— ——.]—*Held :* it was necessary for petitioner accurately to identify the certificate which he claimed from the insolvent.—MCKAY *v.* TURGEON (1922), 67 D. L. R. 607.—**CAN.**

PART XX. SECT. 5, SUB-SECT. 4.—A.

6261 i. *General rule—Fund undistinguishable.*]—In order to give rise to a right to follow moneys as trust moneys mixed with the trustee's personal moneys there must have existed a trust fund capable of being identified & followed.—*Re* CHRISTIE GRANT, LTD., *Ex p.* CANADIAN EXPRESS CO., [1923] 1 D. L. R. 505 ; 32 Man. L. R. 375 ; [1922] 3 W. W. R. 1161.—**CAN.**

6261 ii. *S.P.* OGILVIE FLOUR MILLS CO., LTD. *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1925] 4 D. L. R. 969 ; [1925] 3 W. W. R. 586.—**CAN.**

6267 i. *Agent to sell goods—Right to proceeds of sale.*]—Money received by a commission agent from sales of his customers' property is, after deduction therefrom of the agent's commission & expenses, money held by him in a fiduciary capacity, & if it is mixed by the agent with his own money in his general banking account & he become bkpt., the money can be followed by the *cestuis que trust* if it is still traceable; otherwise they have no recourse other than proving their claims in the bkpcy.—SALTER & ARNOLD, LTD. *v.* DOMINION BANK, [1923] 3 W. W. R. 257.—**CAN.**

PART XX. SECT 6.

6283 i. " *Working tools* " — *Law agent's library.*]—*Held :* law reports, statutes, & legal text-books, forming the professional library of a practising law-agent, were not necessary " working tools."—PENELL *v.* ELGIN, [1926] S. C. 9.—**SCOT.**

h i. —— ——.]—*Re* TRENWITH, [1922] 3 W. W. R. 1205.—**CAN.**

h ii. —— *Effect of mortgage.*]—Where the owner of an urban homestead mortgages it, the exemption rights of the owner are confined to the equity of redemption.—*Re* BELL, [1922] 1 W. W. R. 1015 ; 67 D. L. R. 66 ; 32 Man. L. R. 9 at p. 13.—**CAN.**

h iii. —— " *Building occupied* "—*By debtor.*]—Debtor was the regis-

6295a. Life interest falling into possession—During third bankruptcy—Right of trustee under previous bankruptcies.]—*Re* SILBER'S SETTLEMENT, PUBLIC TRUSTEE *v.* SILBER, [1920] W. N. 77.

6296. *Add. Annotation :*—**Apld.** *Re* Garrett, [1930] 2 Ch. 137.

6296a. **Police pension.**]—The provision in Police Pensions Act, 1921 (c. 31), s. 14 (1), that on the pensioner's bkpcy. his pension "shall not pass to any trustee or other person" acting on the creditors' behalf merely excludes the pension from being property that vests in the trustee under 1914 Act, s. 18 (1). It does not prevent the ct. from making an order under 1914 Act, s. 51 (2), for payment of all or part of the pension to the trustee for the creditors' benefit. This sect. applies to property whether or not vested in the trustee, & the order does not effect any vesting.—*Re* GARRETT, [1930] 2 Ch. 137 ; 46 T. L. R. 464 ; *sub nom. Re* GARRETT, OFFICIAL RECEIVER & TRUSTEE *v.* THE BANKRUPT, 99 L. J. Ch. 341 ; 143 L. T. 402 ; [1929] B. & C. R. 177.

6298. *Citations :*—For "CHIPPENDALE *v.* TOMLINSON (1752), 1 Cooke's Bankrupt Laws, 7th ed., p. 406" read "CHIPPENDALL *v.* TOMLINSON (1785), 4 Doug. K. B. 318 ; 1 Cooke's Bankrupt Laws, 8th ed., p. 428 ; 99 E. R. 900."

Add. Annotations :—**Distd.** Beckham *v.* Drake (1849), 2 H. L. Cas. 579. **Consd.** *Re* Roberts, [1900] 1 Q. B. 122. **Refd.** *Re* Elswood (1855), 26 L. T. O. S. 96 ; Wadling *v.* Oliphant (1875), 1 Q. B. D. 145.

6315. *Add. Annotation :*—**Apld.** *Re* Walter, Slocock *v.* Official Receiver, [1929] 1 Ch. 647.

6316a. —— **Application of 1914 Act, s. 38.**]—*Re* WALTER, SLOCOCK *v.* OFFICIAL RECEIVER, No. 4555*a*, *ante*.

6318a. Refusal of application for payment by trustee—Whether creditor may appeal.]—(1) In a bkpcy. where an application has been made by the trustee under 1914 Act, s. 51 (2), for the payment to the trustee out of the personal earnings of the bkpt. of such weekly sums as the ct. might direct, & the application has been refused, a creditor is not entitled to appeal under 1914 Act, s. 108 (2), from the refusal as being a "person aggrieved."

(2) Under 1914 Act, s. 105, the ct. having jurisdiction in bkpcy. has the widest possible powers. If, therefore, creditors, in pursuance of a resolution passed at a creditors' meeting, request the trustee or official receiver by virtue of 1914 Act, s. 79 (2), to summon meetings, & the trustee or official receiver refuse to comply with their request, the ct. has ample jurisdiction to decline to order the trustee to carry out the creditors' request to convene the meeting if it considers that the holding thereof would serve no useful purpose & would only result in a useless waste of the assets in the bkpcy. The function of the ct. in such a case is not merely ministerial.—*Re* BURN (J.), *Ex p.* DAWSON (E. N. de V.), MCCLELLAN (H. T.) & TRUSTEE, [1932] 1 Ch. 247 ; 146 L. T. 386 ; [1931] B. & C. R. 103 ; *sub nom. Re* BURN, DAWSON *v.* BANKRUPT, 101 L. J. Ch. 110.

6324. *Add. Annotation :*—**Refd.** Dyster *v.* Randall, [1926] Ch. 932.

6331. *Add. Citation :*—*sub nom. Re* CLAYTON & BEAUMONTS' CONTRACT, 2 Mans. 345.

6334. *Citations :*—For "[1918] 2 Ch. 389" read "[1918] 2 Ch. 339."

6347. *Add. Annotation :*—**Refd.** Chillingworth *v.* Esche, [1923] 1 Ch. 576.

6348. *Add. Annotation :*—**Refd.** Dyster *v.* Randall, [1926] Ch. 932.

6352. *Add. Annotation :*—**Consd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835.

6353a. Liability of after-acquired property for necessaries.]—*Re* WALTER, SLOCOCK *v.* OFFICIAL RECEIVER, No. 4555*a*, *ante*.

6366. *Add. Annotations :*—**Distd.** *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814. **Refd.** *Re* Cohen, *Ex p.* Official Receiver, [1919] 2 K. B. 271 ; *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835.

tered owner of a lot on which was a two-storey building, in the upper storey of which he & his wife had dwelt continuously since his purchase of the lot. The lower storey was used mainly as a store, in which debtor's wife carried on a business, but in the rear part was stored some coal, wood & household furniture. The store & dwelling had an outside entrance as well as an inside one. A lean-to had been erected by debtor, which had an outside entrance only :—*Held :* the property was within Exemptions Act, s. 2, cl. 10, & was under Bkpcy. Act, s. 10, excepted from an assignment under that Act.—*Re* SKEELE, [1923] 1 D. L. R. 589 ; [1923] 1 W. W. R. 117 ; 3 C. B. R. 589.—**CAN.**

h iv. —— —— *By partner—Partnership property.*]—Under Bkpcy. Act a lot & building belonging to a partnership passes to the authorised assignee under an assignment by the partnership, although part of the building is occupied as a home by one of the partners.—*Re* DOBROVITCH, DOBROVITCH *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1925] 1 D. L. R. 21 ; [1924] 3 W. W. R. 681.—**CAN.**

h v. —— *Exempt from seizure under execution.*]—*Held :* not property divisible amongst bkpt.'s creditors.—TRADERS TRUST CO. *v.* COHEN (Man.), [1923] 3 W. W. R. 473.—**CAN.**

PART XX. SECT. 7, SUB-SECT. 1.—A. (a).

6286 iii. ——.]—The after-acquired property of a debtor is available among creditors under a receiving order but not under an authorised assignment.—*Re* LUPSON, [1923] 3 D. L. R. 1171 ; 52 O. L. R. 352 ; 2 C. B. R. 488.—**CAN.**

6291 iv a. —— —— *Under intestacy.*]—*Held :* to vest in the trustee.—*Re* LUSSIER, [1927] 4 D. L. R. 637 ; 61 O. L. R. 177.—**CAN.**

6293 v. —— ——.]—An insolvent has power to dispose of any property he may acquire after being declared insolvent, & all persons dealing with him *bonâ fide* & for a consideration will be discharged from making a further payment to the official assignee, provided the transactions took place before the official assignee intervened & claimed the property on behalf of insolvent's estate.—CHHOTE LAL *v.* KEDAR NATH (1924), I. L. R. 46 All. 565.—**IND.**

PART XX. SECT. 7, SUB-SECT. 1.—A. (b).

6298 iii. ——.]—The evidence of a bkpt. was that he was employed in selling goods for a co., that he was, when examined in Oct. 1927, special representative of the co. on the basis that he was to receive a salary & a guarantee of a certain amount together with a bonus on anything over that amount : but this arrangement was to cease on Nov. 1, 1927, & he expected to make arrangements to sell on a commission basis :—*Held :* applying the English law without deciding whether, under Canadian Bkpcy. Act, subsequent salary, income or compensation is ever assets for the trustee, the bkpt.'s future earnings, not being a fixed salary, could not be applied for the benefit of his creditors.—*Re* RUNG, [1929] 1 D. L. R. 300 ; 62 O. L. R. 557 ; 10 C. B. R. 1.—**CAN.**

si. *Agreement between trustee, bankrupt & employer—Interference by court.*]—*Re* LOUNSBURY (N. B.), [1927] 4 D. L. R. 1040.—**CAN.**

PART XX. SECT. 7, SUB-SECT. 1.—B. (a).

v i. —— *Application to bankruptcy by authorised assignment.*]—*Re* GADSBY, *Ex p.* WHITE & ELLIOTT, [1925] 3 D. L. R. 1159.—**CAN.**

PART XX. SECT. 7, SUB-SECT. 3.

6391 ii. —— ——.]—A person who had been declared bkpt. & whose insolvent estate had been fully administered, but who did not obtain his discharge, went into business & acquired certain assets. The person

6390a. Property acquired between two insolvencies —Assignees under second insolvency entitled.]—CURTIS *v.* SHEFFIELD (1836), 8 Sim. 176; 5 L. J. Ch. 377; 59 E. R. 70.

Estate,

6395. *Add. Annotation:*—**Refd.** *Re* Mathieson (1926), 70 Sol. Jo. 1161.

6398. *Add. Annotation:*—**Refd.** *Re* Mathieson (1926), 70 Sol. Jo. 1161.

6401a. —— To husband & wife jointly.]—A settlor by a voluntary settlement made in 1913 directed the trustees to whom he had transferred certain securities to accumulate & invest the income thereof subject to a proviso under which the settlor reserved to himself power, by notice given to the trustees, to require the income of any year or the residue of such income remaining uninvested to be paid as to one moiety to himself & as to the other moiety to a lady who afterwards became his wife, or if she should then be dead to require the whole income of such year or of the residue of such year to be paid to the settlor, with trusts after the death of the survivor of them in favour of the settlor's children therein named. In Jan. 1927, the settlor gave notice to pltf. as trustee that he required the whole income for that year to be paid as to one moiety to himself & as to the other moiety to his wife. In Aug. 1927, the settlor was adjudicated bkpt.:—*Held:* the power was indivisible, & could not be exercised by the settlor "for his own benefit" within 1914 Act, s. 38 (*b*), but only for the joint benefit of himself & his wife, & therefore did not vest in his trustee in bkpcy.—*Re* TAYLOR'S SETTLEMENT TRUSTS, PUBLIC TRUSTEE *v.* TAYLOR, [1929] 1 Ch. 435; 98 L. J. Ch. 142; 140 L. T. 553; [1929] B. & C. R. 15.

6415. *Add. Annotation:*—*As to* (2) **Refd.** Watson *v.* Haggitt (1927), 44 T. L. R. 90.

6444a. —— ——.]—A lessee erects trade fixtures, firmly attached to the freehold, but removable as between himself & the landlord. He then mortgages the premises by way of demise, by the same description as that in the lease, & without referring to the new erections; the sum secured being a floating balance, limited to an amount greater than the premises would be worth, without the fixtures. He becomes bkpt.:—*Held:* the mtgee. was entitled to the fixtures.—*Re* WEST, *Ex p.* BENTLEY (1842), 2 Mont. D. & De G. 591; 6 Jur. 719.

Annotations:—**Consd.** *Re* Mackie, *Ex p.* Tagart (1847), De G. 531; Walmsley *v.* Milne (1859), 7 C. B. N. S. 115.

6449. *Add. Citation:*—*sub nom. Re* PLIMMER, *Ex p.* SPELLER, 14 C. B. 159, n.

Add. Annotation:—**Refd.** Graham *v.* Furber (1853), 2 C. L. R. 10.

6464. *Add. Annotation:*—**Refd.** Allgemeine Versicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672.

6477. *Add. Annotations:*—**Refd.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808; *Re* Kaufman Segal & Domb, *Ex p.* The Trustee, [1923] 2 Ch. 89.

6483. *Add. Annotations:*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857; Allgemeine Versicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672.

6507a. —— In name of agent—Delivery orders in hands of buyers.]—Bkpt., who carried on business as a merchant, had for some years dealt with pltfs. in vacuum flasks, which came from Germany. The bills of lading in respect of the goods were made out "to order" & the charges were paid by S., a forwarding agent employed by bkpt. The goods on arrival were stored at a wharf in the name, & for the account, of S. When a sale had taken place S. signed a delivery order which bkpt. handed to the buyers against payment for the goods. Between Aug. 3 & Sept. 7, 1927, pltfs. purchased a number of cases of vacuum flasks & paid bkpt. for them prior to the commencement of the bkpcy., the receiving order being made on Sept. 24. Bkpt., upon payment being made for the goods, handed to pltfs. delivery orders for the goods signed by S. & addressed to the wharfingers. These delivery orders had not been presented at the wharf at the date of the bkpcy., & when they were presented shortly afterwards the wharfingers, acting on S.'s instructions, refused to deliver the goods. The trustee in bkpcy. claimed that the goods were in the possession, order or disposition of bkpt. at the date of the receiving order & formed part of bkpt.'s estate under 1914 Act, s. 38 (*c*):—*Held:* pltfs. had not by their conduct in any way induced a belief that the goods were in the possession, order or disposition of bkpt. in such circumstances that he was the reputed owner thereof, & the trustee was not entitled to the goods as forming part of bkpt.'s estate.—SIMEONS (C.) & CO. *v.* DURAND'S TRUSTEE, [1928] 2 K. B. 66; 97 L. J. K. B. 537; 138 L. T. 612; [1928] B. & C. R. 19.

6514. *Add. Annotation:*—**Consd.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808.

6515. *Add. Annotations:*—**Consd.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808; *Re* Kaufman Segal & Domb, *Ex p.* The Trustee, [1923] 2 Ch. 89.

6516a. On business premises.]—The custom of hiring furniture which exists in the case of hotel proprietors, & is so notorious as to exclude the doctrine of reputed ownership in the event of the bkpcy. of the hotel proprietor whether the particular furniture was hired or not, does not extend to furniture in the possession of traders generally, *e.g.* a wholesale grocer.—*Re* TABOR, *Ex p.* CORK, [1920] 1 K. B. 808; *sub nom. Re* TABOR, *Ex p.* TRUSTEE, 89 L. J. K. B. 352; 122 L. T. 799; 36 T. L. R. 191; [1919] B. & C. R. 299.

Annotations:—**Folld.** *Re* Kaufman Segal & Domb, *Ex p.* Trustee, [1923] 2 Ch. 89. **Refd.** French *v.* Gething, [1922] 1 K. B. 236.

who had administered the estate as authorised trustee applied to the registrar in bkpcy. for directions:—*Held:* there was no power in the ct. to appoint or continue appt. as trustee & he had no status to make the application.—*Re* HERMAN, [1930] 2 D. L. R. 471; 65 O. L. R. 43; 11 C. B. R. 239; *affg.*, 10 C. B. R. 379; *revg.*, 10 C. B. R. 323.—CAN.

PART XX. SECT. 9, SUB-SECT. 1.

6416 l. "*Goods*," "*goods & chattels*"—*Goods of third party—Intermingled with bankrupt's property by third party.]—*Held:* the entire property became assets to satisfy the creditors.—*Re* PROGRESSIVE FARMERS, *Re* HOLDEN NATIONAL CO.'S CLAIM (1921), 62 D. L. R. 631; 2 C. B. R. 551.—CAN.

6519. *Add. Annotations :*—**Consd.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808. **Folld.** *Re* Kaufman Segal & Domb, *Ex p.* The Trustee, [1923] 2 Ch. 89.

6523. *Add. Annotation :*—**Refd.** *Re* Blyth Shipbuilding & Dry Docks Co., Forster *v.* Blyth Shipbuilding & Dry Docks Co., [1926] Ch. 494.

6525. *Add. Annotations :*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857; Simeons *v.* Durand's Trustee, [1928] 2 K. B. 66.

6561. *Add. Annotation :*—**Refd.** French *v.* Gething, [1922] 1 K. B. 236.

6613. *Add. Annotation :*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857.

6625. *Add. Annotation :*—**Refd.** *Re* Wethered, *Ex p.* Salaman, [1926] Ch. 167.

6647. *Add. Citations :*—*sub nom. Re* PLIMMER, *Ex p.* SPELLER, 14 C. B. 159, n.

Add. Annotation :—**Refd.** Graham *v.* Furber (1853), 2 C. L. R. 10.

6657. *Add. Annotation :*—**Consd.** *Re* Collins, [1925] Ch. 556.

6659. *Add. Annotation :*—**Apld.** *Re* Collins, [1925] Ch. 556.

6659a. —— ——.]—For some years before his bkpcy. a surveyor & assessment specialist with a staff of clerks had entered into contracts with clients for personal service in the latter capacity. Under these contracts he had to value his clients' properties for rating purposes & give expert evidence on their appeals, his remuneration being a percentage of the reduction of their assessments when obtained. He mortgaged these contracts & the sums to become due on completion thereof to a mtgee., who by special arrangement with the mtgor. gave no notice to the clients so as not to imperil the mtgor 's business position, the mtgor. being allowed to collect the fees when due in his own name & hand them over to the mtgee. At the date of the mtgor.'s bkpcy., some fees (*a*) were due on completed contracts, but some fees (*b*) were still unearned. The trustee employed bkpt. & some of his staff to carry out the uncompleted contracts & earn fees (*b*) :—*Held :* (1) though the work to be done under the contracts required a certain amount of technical skill on which bkpt.'s clients relied, it was nevertheless part of bkpt.'s business, so that the fees (*a*) due at the date of the bkpcy. were due to him " in the course of his trade or business " & being in his order & disposition by the consent of the mtgee. belonged to the trustee under 1914 Act, s. 38 (*c*); (2) the mtge. of fees (*b*) earned since the bkpcy. was inoperative against the trustee.—*Re* COLLINS, [1925] 1 Ch. 556; 133 L. T. 479; *sub nom. Re* COLLINS, *Ex p.* SALAMAN (TRUSTEE), 95 L. J. Ch. 55; [1925] B. & C. R. 90.

6663. *Add. Annotation :*—**Refd.** Blakey *v.* Pendlebury Property Trustees, [1931] 2 Ch. 255.

6689. *Add. Annotation :*—**Refd.** *Re* Wethered, *Ex p.* Salaman, [1926] Ch. 167.

6696. *Add. Annotation :*— **Refd.** Halifax Building Society *v.* Keighley, [1931] 2 K. B. 248.

6701. *Add. Annotations :*—**Folld.** Birmingham Banking Co. (Official Liquidators) *v.* Carter (1872), 20 W. R. 354. **Refd.** Semphill *v.* Queensland Sheep Investment Co. (1873), 29 L. T 737 ; *Re* Pooley, *Ex p.* Rabbinge (1878), 38 L. T. 663.

6706. *Add. Annotation :*—**Refd.** Simeons *v.* Durand's Trustee, [1928] 2 K. B. 66.

6708a. —— **Same day as act of bankruptcy.**]—Though a bkpt. may be up to the ears in insolvency, notice at any fractional period of the day on which the act of bkpcy. is committed, is sufficient to take the case out of the clause of reputed ownership ; if the notice be given before the act of bkpcy. is in fact committed (SIR GEORGE ROSE).—*Re* RICHARDSON, *Ex p.* RICHARDSON (1839), 3 Deac. 496 ; Mont. & Ch. 43, C. of R.

Annotations :—**Refd.** *Re* Worcester, *Ex p.* Agra Bank (1868), 3 Ch. App. 555 ; Colonial Bank *v.* Whinney (1886), 11 App. Cas. 426.

6735. *Add. Annotation :*—**Refd.** English Insce. *v.* National Benefit Assce., [1929] A. C. 114.

6742. *Add. Annotation :*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857.

6744. *Add. Annotation :*—**Distd.** Lamb *v.* Wright, [1924] 1 K. B. 857.

6745. *Add. Annotations :*—**Refd.** Lamb *v* Wright [1924] 1 K. B. 857 ; Allgemeine Versicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672.

6745a. Whether mere visible employment of goods in trade or business sufficient.]—(1) In order that goods may come within 1914 Act, s. 38 (*c*), the consent or permission of the true owner must be given not only to their being in the possession, order or disposition of bkpt., but also to their being used in his trade or business. (2) In order that goods may be in the possession, order or disposition of bkpt. in his trade or business within the clause they must be not merely visibly employed in his trade or business, but acquired & used for the purposes of the business.—LAMB *v.* WRIGHT & CO., [1924] 1 K. B. 857 ; 93 L. J. K B. 366 ; 130 L. T. 703 ; 40 T. L. R. 290 ; 68 Sol. Jo. 479 ; [1924] B. & C. R. 97.

6745b. Fees due on completed contracts to surveyor & assessment specialist.]—*Re* COLLINS, No. 6659a, *ante.*

6746. *Add. Annotation :*—**Refd.** Simeons *v.* Durand's Trustee, [1928] 2 K. B. 66.

6751a. Must be given both to possession & to use in trade or business.]—LAMB *v.* WRIGHT & CO., No. 6745a, *ante.*

PART XX. SECT. 9, SUB-SECT. 3.—B. (b) i.

6621 ii. —— *Second mortgage of.*]—In 1905, C. the owner of a life policy of assurance, mortgaged it to the insurance co. In Apr 1907, C. mortgaged the policy & the lands to B., who gave no notice to the co. till Nov. 1920. In June, 1907, C. was adjudicated bkpt. In 1915 the insurance co. were paid the amount due on their mtge. & handed the policy to the assignees. In 1920 the assignees surrendered the policy to the insurance co., & received its surrender value, & B. applied for payment of the amount due to him on his mtge. :—*Held :* the equity of redemption in the mtge. was " goods & chattels " within Irish Bkpt. & Insolvent Act, 1857 (c. 60), s. 313, & was at the date of the bkpcy. " in the possession, order, or disposition of bkpt." by the consent & permission of the true owner.—*Re* CLANCARTY, [1921] 2 I. R. 377.—**IR.**

PART XX. SECT. 9, SUB-SECT. 5.—A.

6752 i. *Delivery of goods to trustee—after notice stopping goods in transitu—Withdrawal of notice on innocent misrepresentation of trustee.*]—*Held :* the trustee could not rely on a withdrawal so induced.—*Re* ROBERTS, [1924] 1 D. L. R. 386.—**CAN.**

6777. *Add. Annotation :*—**Refd.** *Re* Wethered, *Ex p.* Trustee (1925), 134 L. T. 264.

6794. *Add. Annotation :*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857.

6798. *Add. Annotation :*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857.

6802a. —— —— ——.]—In Jan. 1922, G. purchased from bkpts. certain chattels used by them in their business as clothiers, & subsequently in consideration of the option to purchase & the hire-rent agreed upon let them on hire to bkpts. at a monthly rental. The chattels consisted of cutting tables, work tables, machines, stools, etc. The agreement was determinable in the event (*inter alia*) of a receiving order in bkpcy. being made against the hirers, upon which all payments made by the hirers were forfeitable & the chattels were to be delivered to the owner. On Sept. 6, 1922, a receiving order was made against the hirers; on Sept. 21 they were adjudicated bkpt., & on Sept. 25 a trustee in the bkpcy. was appointed. On motion by the trustee for a declaration that the chattels formed part of the estate of bkpts. as being in their order & disposition with the consent of the true owner :—*Held :* there was no proof of a general custom of hiring out chattels such as were specified in the agreement, nor was such a custom recognised by the cts. The inference of ownership was inevitable that by reason of the possession & user of the goods in the trade or business of the trader they "must" be the property of bkpts.—*Re* KAUFMAN SEGAL & DOMB, *Ex p.* TRUSTEE, [1923] 2 Ch. 89; 92 L. J. Ch. 218; 128 L. T. 650; 67 Sol. Jo. 333; [1923] B. & C. R. 1.

6818. *Add. Annotation :*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857.

6819. *Add. Annotations :*—**Distd.** *Re* Kaufman Segal & Domb, *Ex p.* The Trustee, [1923] 2 Ch. 89. **Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857; Simeons *v.* Durand's Trustee, [1928] 2 K. B. 66.

6821. *Add. Annotations :*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857; Simeons *v.* Durand's Trustee, [1928] 2 K. B. 66.

6824. *Add. Annotation :*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857.

6853. *Add. Annotation :*—**Refd.** English Insce. *v.* National Benefit Assce., [1929] A. C. 114.

6856. *Add. Annotation :*—*As to* (2) **Consd.** Blakey *v.* Pendlebury's Trustees (1931), 47 T. L. R. 503.

6858. *Add. Annotation :*—**Refd.** Blakey *v.* Pendlebury's Trustees (1931), 47 T. L. R. 503.

6858a. ——.]—A trader carried on the business of selling & hiring out of pianos largely by means of hire-purchase agreements, by each of which the trader agreed to let on hire a piano, & in consideration the hirer agreed to pay the trader a sum of £4 on the date of hiring & £1 monthly so long as the hirer continued the hiring. The trader agreed that if the hirer should punctually pay him a specified total sum in these instalments, the piano was to become the absolute property of the hirer, but that until then it was to continue the trader's sole property. Early in 1930 the trader entered into a number of trader's agreements by which he agreed to deposit the hire-purchase agreements with the G. Co., Ltd., & on demand to assign to that co. or its nominees the full benefit of those agreements, & in the meantime to hold them on trust for the G. Co. & its nominees. The G. Co. subsequently assigned the benefit of the trader's agreements to pltf. No notice of the assignment was given until after the trader was adjudicated bkpt. on July 23, 1930 :—*Held :* the monthly sums which, after the commencement of the bkpcy., had or would become payable in advance under the hire-purchase agreements, if the hirer continued the hiring, were "debts . . . growing due to the bkpt. in the course of his trade or business" within Bkpcy. Act, 1914, s. 38 (*c*), & were therefore properly divisible among the bkpt.'s creditors as being things in action "at the commencement of the bkpcy. in the possession, order or disposition of the bkpt., in his trade or business, by the consent & permission of the true owner" within that sect.—BLAKEY *v.* PENDLEBURY PROPERTY TRUSTEES, [1931] 2 Ch. 255; 100 L. J. Ch. 399; 145 L. T. 524; 47 T. L. R. 503; [1931] B. & C. R. 29, C. A.

6858b. Judgment debt.]—S., a customer of bkpt., a stockbroker, became indebted to him in respect of Stock Exchange transactions in a sum for which bkpt., on Dec. 18, 1923, recovered judgment. Later, S. became similarly indebted to bkpt. in a further sum. On Jan. 15, 1924, bkpt. assigned both debts to W. to secure £500, & covenanted with him that, in the event of his refraining from giving notice of the assignment to S., he, bkpt., would, on payment of the debts or any part thereof, hand the cheque or other form of payment to W. On Feb. 27, 1924, bkpt. committed an act of bkpcy. In Mar. 1924, J., who acted as solr. for both bkpt. & W. in the matter of the assignment, on the instructions of both & without disclosing same, made an agreement with S. for the liquidation of the two debts, whereby S. undertook to pay the aggregate amount thereof by monthly instalments, the first instalments being allocated to the payment of the later of the two debts & the subsequent ones to the payment of the judgment debt; & S. further agreed to deliver promissory notes payable to bkpt. or order to cover the instalments allocated to the later debt. J. received the notes from S. &, as agent of W., collected the amounts as they fell due on the notes & paid part thereof to W. & retained the balance. After payment J. returned the notes to S. to be cancelled. At that time neither J. nor W. nor S. had notice of any available act of bkpcy. On Sept. 18, 1924, a receiving order was made, at which date S. had paid & W. had received from J. sums amounting to £90 in respect of the later debt. Upon receiving notice of the receiving order, J. gave notice to S. of the assignment. On

PART XX. SECT. 9, SUB-SECT. 6.—A.

6799 ll. ——————.]—Where there was no immediate delivery of a car to the purchaser nor any change of possession :—*Held:* the sale & transfer were void as against the trustees —FITZGERALD *v.* MCMORROW, [1923] 3 D. L. R. 619; 52 O. L. R. 383; 4 C. B. R. 29.—CAN.

Sept. 25, 1924, an order of adjudication was made, & on Oct. 7, 1924, appct. was appointed trustee. In Apr. 1925, W. died, & his exor. was made resp. to the motion by which a declaration was sought that the two debts were at the commencement of the bkpcy. in the order & disposition of bkpt. & property of bkpt. divisible amongst his creditors:—*Held:* (1) the earlier debt, which, admittedly, arose in the course of bkpt.'s business, was notwithstanding its conversion into a judgment debt, none the less at the commencement of the bkpcy. a debt due in the course of his business & in the order & disposition of bkpt. & divisible amongst his creditors (2) the agreement between bkpt. & S. & the deposit of the notes by bkpt. with W. having been effected after the commencement of the bkpcy., in the absence of knowledge on the part of either S. or W. of an available act of bkpcy., & the ct. inferring an agreement by W. with bkpt., in consideration of the deposit of the notes, not to enforce payment of the advance so long as S. paid the amounts as & when they fell due, constituted valid transactions for valuable consideration within 1914 Act, s. 45, &, apart from such inference, the forbearance of W. on the strength of the deposit of the notes to sue & his acceptance of the instalments constituted sufficient consideration for the deposit of the notes; (3) even if the trustee was entitled to recover the instalments paid after the date of the receiving order, the amount paid before that date was a payment protected by sect. 45 (b); & the judgment debt formed part of the property of bkpt. divisible amongst his creditors, while the claim in respect of the other debt should be dismissed.—*Re* WETHERED, *Ex p.* SALAMAN, [1926] Ch. 167; 70 Sol. Jo. 324; *sub nom. Re* WETHERED, *Ex p.* SALAMAN'S TRUSTEE, TRUSTEE *v.* BANCE, 95 L. J. Ch. 127; 134 L. T. 264; [1925] B. & C. R. 265.

6859. *Add. Annotations:*—**N.F.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808; *Re* Kaufman Segal & Domb, *Ex p.* The Trustee, [1923] 2 Ch. 89.

6863. *Citations:*—For "5 Ch. App. 520" read "8 Ch. App. 520."

6867. *Add. Annotation:*—**Refd.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808.

6868. *Add. Annotation:*—**Folld.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808.

6869. *Add. Annotation:*—**Consd.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808.

6873. *Add. Annotations:*—**Refd.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808; *Re* Kaufman Segal & Domb, *Ex p.* The Trustee, [1923] 2 Ch. 89.

6879. *Add. Annotation:*—**Refd.** Lamb *v.* Wright, [1924] 1 K. B. 857.

6879a. Clothiers—Custom to hire machines.]—*Re* SEGAL & DOMB, *Ex p.* TRUSTEE, No. 6802a, *ante.*

6881. *Add. Annotations:*—**Apld.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808. **Folld.** *Re* Kaufman Segal & Domb, *Ex p.* The Trustee, [1923] 2 Ch. 89.

6881a. —— —— ——.]—*Re* TABOR, *Ex p.* CORK, No. 6516a, *ante.*

6882a. —— —— **Antique furniture.**]—A custom exists in the antique furniture trade to deliver goods to a dealer on approval. In the event of the bkpcy. of such dealer, goods upon his premises are not in his order & disposition within 1914 Act, s. 38.—*Re* FORD, *Ex p.* TRUSTEE, RESTALL, BROWN & CLENNELL'S CASE, [1929] 1 Ch. 134; 140 L. T. 275; 72 Sol. Jo. 517; *sub nom. Re* FORD, *Ex p.* TRUSTEE *v.* RESTELL, BROWN & Co., 97 L. J. Ch. 334; [1928] B. & C. R. 55; *sub nom. Re* FORD, *Ex p.* HAWKINS, 44 T. L. R. 643.

Annotation:—**Apld.** *Re* Ford, *Ex p.* Trustee, Powell's Case, [1929] 1 Ch. 137.

6882b. —— —— —— **Sent by private customer.**]—No trade custom exists of private customers sending articles of furniture to retail dealers for sale on commission or otherwise so notorious as to exempt such articles from the operation of the doctrine of reputed ownership in the event of the bkpcy. of the dealer. But, where such a customer left a table with a retail dealer to be sold on the terms that the dealer should retain the surplus, if any, over an agreed minimum price & upon the bkpcy. of the dealer the table was exposed on his premises with other furniture for sale:—*Held:* as the effect of the custom which was established in *Re Ford, Ex p. Trustee, Restall, Brown & Clennell's Case*, No. 6882a, *ante*, was to prevent the reputation of ownership from attaching to any of the furniture so exposed, the table, which was not distinguished from the other articles of furniture, was not in the bkpt.'s possession in such circumstances that he was the reputed owner thereof.—*Re* FORD, *Ex p.* TRUSTEE, POWELL'S CASE, [1929] 1 Ch. 137; 140 L. T. 276: 72 Sol. Jo 517; *sub nom. Re* FORD, TRUSTEE *v.* POWELL, 98 L. J. Ch. 144; [1928] B. & C. R. 56.

6885. *Add. Annotations:*—**Refd.** Lamb *v.* Wright [1924] 1 K. B. 857; Simeons *v.* Durand's Trustee, [1928] 2 K. B. 66.

6888. *Add. Annotation:*—**Consd.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808.

6889. *Add. Annotations:*—**Apld.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808. **Refd.** French *v.* Gething, [1922] 1 K. B. 236.

6890. *Add. Annotation:*—**Refd.** *Re* Tabor, *Ex p.* Cork, [1920] 1 K. B. 808.

6890a. —— ——.]—*Re* TABOR, *Ex p.* CORK, No. 6516a, *ante.*

6898. *Add. Annotation:*—**Refd.** French *v.* Gething, [1922] 1 K. B. 236.

PART XX. SECT. 9, SUB-SECT. 8.—A.

6859 l. *Duty of court—To take notice of alleged custom.*]—Where it is proved that no less than 57 funeral cars & hearses were supplied in Ireland under hire-purchase agreement by one firm between Nov. 23, 1912, & Mar. 8, 1923, the ct. will draw the conclusion that the custom of hiring funeral hearses on the hire-purchase system is sufficiently notorious. The test in such cases is what is the state of knowledge of persons who have made themselves acquainted with the nature & custom of the particular situation.—*Re* TORRENS, [1924] 2 I. R. 1, 4; 58 I. L. T. 30.—**IR.**

PART XX. SECT. 9, SUB-SECT. 8.—B.

ss. *Undertaker — Custom to hire hearses & funeral carriages.*]—*Re* ——, No. 6859 l., *ante.*—**IR.**

PART XX. SECT. 10, SUB-SECT. 3.—B.

1 (p. 809) l. —— —— ——.]—ROSS JOHNSON, LTD. *v.* VICTORIA MINES, LTD. (B. C.), [1930] 1 D. L. R. 57; 10 C. B. R. 23; [1929] 2 W. W. R. 511.—**CAN.**

b (p. 810). Add "*affd. sub nom.* MARTIN *v.* FOWLER, 48 S. C. R. 119."

f (p. 810) l. —— ——.]—Payment of le:—*Held:* a preferential

6911. *Add. Annotation :*—**Refd.** *Re* Chiandetti, *Ex p.* Trustee (1921), 91 L. J. K. B. 70.

6912. *Add. Annotation :*—**Refd.** *Re* Chiandetti, *Ex p.* Trustee (1921), 91 L. J. K. B. 70.

6912a. —— **Goods sold in interpleader action—Proceeds in court.**] — *Re* CHIANDETTI, *Ex p.* TRUSTEE, No. 7113a, *post.*

6915. *Add. Annotation :*— **Consd.** *Re* Chiandetti (1921), 91 L. J. K. B. 70.

6916a. —— —— ——.]—*Re* CHIANDETTI, *Ex p.* TRUSTEE, No. 7113a, *post.*

6918. *Add. Annotations :*—**Consd.** *Re* Fairley, [1922] 2 Ch. 791. **Apld.** *Re* Brelsford, [1932] 1 Ch. 24.

6918a. —— **Subsequent withdrawal & return of nulla bona.**]—On Jan. 14, 1921, the sheriff, in executing a writ of *fi. fa.* for £144, levied on debtor's goods, but on Jan. 29 being paid £72, on account of the debt in addition to costs, fees, & possession money, he withdrew by arrangement reserving a right of re-entry for £72 balance. He retained the £72 received on account for fourteen days & then paid it to the execution creditors. On Mar. 16 the sheriff made a second levy, but on being paid £53 on account of the debt in addition to fees & possession money, he again withdrew reserving a right of re-entry for the £19 balance. After retaining the £53 for fourteen days he paid it to the execution creditors. On Apr. 26 the sheriff made a third levy, but the goods seized being found on interpleader to belong to a third party, he finally withdrew & made a return of *nulla bona* on May 2. On Sept. 8 a petition in bkpcy. based on an act of bkpcy. of Aug. 19 was presented. A receiving order was made on Sept. 29 followed by an adjudication on Oct. 1 & an order for summary administration on Oct. 3 :—*Held :* the execution was completed within 1914 Act, ss. 40, 41, by the return of *nulla bona* on May 2, & the trustee had no title to the £72 & £53 realised by that completed execution.

Qu : whether the trustee would in any case have been entitled to the moneys paid before June 8, the earliest possible date to which his title could relate back under sect. 37.—*Re* FAIRLEY, [1922] 2 Ch. 791 ; *sub nom. Re* FAIRLEY, *Ex p.* OFFICIAL RECEIVER, 92 L. J. Ch. 140 ; [1922] B. & C. R. 127 ; *sub nom. Re* FAIRLEY, *Ex p.* LOW & BONAR, LTD., 38 T. L. R. 893, D. C.

6918b. —— ——.]—On Sept. 17, 1928, resps. recovered judgment in the High Ct. for £215 & costs. On the following day the sheriff levied execution on the goods of the debtor under a writ of *fi. fa.* issued by resps. to enforce their judgment. On Sept. 24, 1928, it was agreed in writing between resps. & the debtor that in consideration of resps. withdrawing execution, the debtor should pay to resps. £15 on account of the debt & costs & the balance thereof by monthly instalments, the debtor undertaking, in case of default in payment of any of the agreed instalments, to authorise the sheriff to retake possession. In pursuance of the agreement the £15 & the costs of the execution were paid ; whereupon the sheriff withdrew. Up to Oct. 22, 1929, the amount paid in respect of the instalments was £63 & no more, & on Jan. 10, 1930, the sheriff entered a second time into possession to levy execution for the balance of the debt remaining unpaid. On Jan. 13, 1930, while the sheriff was in possession, a receiving order was made against the debtor on his own petition filed on the same day, & he was adjudicated bkpt. On Jan. 14 resps. received notice of the receiving order. On Jan. 16, 1930, the official receiver, as trustee in the bkpcy., claimed from resps. payment of the two sums so received by them, amounting together to £78, as forming part of bkpt.'s estate available for the general body of his creditors, & on Mar. 12, 1931, issued a notice of motion to enforce his claim. On the hearing of the motion before the judge of the Nottingham county ct., on Apr. 30, 1931, a special case was stated under 1914 Act, s. 100 (3), for the opinion of the High Ct., whether resps. were entitled to retain or were bound to account for & pay to the trustee in bkpcy. the two sums of £15 & £63 so received by them or either of those sums :—*Held :* both sums so received by resps. were, within 1914 Act, s. 40, benefits of the execution for which they were liable to account to the trustee in bkpcy.—*Re* BRELSFORD, [1932] 1 Ch. 24 ; 146 L. T. 160 ; *sub nom. Re* BRELSFORD, OFFICIAL RECEIVER & TRUSTEE *v.* SHELL MEX, LTD., 100 L. J. Ch. 365 ; [1931] B. & C. R. 21.

Annotation :—**Follid.** *Re* Kern (P. E. & B. E.), [1932] 1 Ch. 555.

6918c. —— ——.]—Sect. 40 of 1914 Act, which enacts that an execution creditor shall not be entitled to retain the benefit of the execution against the trustee in bkpcy., unless he has completed the execution before the date of the receiving order, is a substantive enactment, & the right of the trustee thereunder is not limited to benefits of execution received by the execution creditor after the date to which the trustee's title to the bkpt.'s property relates back under sect. 37 of 1914 Act.—*Re* KERN (P. E. & B. E.), [1932] 1 Ch. 555 ; 146 L. T. 570 ; *sub nom. Re* KERN (P. E. & B. E.), THOMAS HENRY, LTD. *v.* TRUSTEE, 101 L. J. Ch. 257 ; [1931] B. & C. R. 150.

6919. *Add. Annotation :*—**Consd.** *Re* Fairley, [1922] 2 Ch. 791.

6920. *Add. Annotations :*—*As to* (1) **Consd.** *Re* Fairley, [1922] 2 Ch. 791. **Refd.** *Re* Chiandetti (1921), 91 L. J. K. B. 70. *Generally*, **Refd.** *Re* Brelsford, [1932] 1 Ch. 24.

6921. *Add. Annotation :*—**Consd.** *Re* Fairley, [1922] 2 Ch. 791.

payment & void. — ZEIDMAN & LAMARRE *v.* AMERICAN FURNITURE CO. & LAVERY (1922), 66 D. L. R. 99 ; 3 C. B. R. 547.—**CAN.**

PART XX. SECT. 10, SUB-SECT. 4.—A.

6934 ii. —— *Bankruptcy Act, s.* 11 (3).]—Until a sheriff with whom a writ of execution has been placed receives a copy of the assignment by debtor as provided by the above sect. " or publication of notice in the *Gazette* as provided by the Act," he is not safe in not attaching debtor's goods. A statement made by the solr. for the assignee to a sheriff's officer that an assignment has been made, does not amount to notice to the sheriff, & is not a ground for depriving him of the costs of a levy made after such statement.—TOWERS *v.* SOLOMON, [1922] 1 W. W. R. 1077 ; 2 C. B. R. 579.—**CAN.**

6934 iii. —— *Extra Judicial Seizures Act, R. S. A.*, 1922 (c. 96).]—Bkpcy.

6947. *Add. Annotation :*—**Apld.** *Re* Harris, *Ex p.* Shell-Mex & Official Receiver (1930), 99 L. J. Ch. 448.

6952a. Registrar of county court & sheriff same person—Notice received in capacity of registrar.]—The condition of service within the fourteen days limited by 1914 Act, s. 41 (2), of notice on the sheriff of a bkpcy. petition having been presented is sufficiently complied with, so as to entitle the official receiver to be paid the moneys retained by the sheriff, if during that period he has acquired knowledge of the presentation of a petition.

M., who held the office of high bailiff of a county ct., in pursuance of 1914 Act, s. 41 (2), retained the moneys paid to him to avoid a sale of the debtor's goods. Before the expiration of the prescribed period of retention a bkpcy. petition was presented by the debtor & a receiving order thereon was signed by M., who then held the office of registrar of the same ct. of which he was also high bailiff. A formal notice in writing was sent by the official receiver to M. of the presentation of the petition & of the making of the receiving order, which was not received until after the fourteen days had expired :—*Held :* knowledge of the presentation of the petition acquired by M. as registrar constituted a sufficient compliance with the requirement of s. 41 (2), of service of notice upon him as high bailiff, with the result that the official receiver was entitled to be paid the moneys in the hands of the high bailiff.—*Re* HARRIS, [1931] 1 Ch. 138 ; 99 L. J. Ch. 448 ; 144 L. T. 232 ; [1929] B. & C. R. 211, D. C.

-.]—*See, now,* Bkpcy. Rules, 1915, r. 323B.

6954. *Add. Annotation :*—**Reld.** *Re* Chiandetti (1921), 91 L. J. K. B. 70.

6955. *Add. Annotation :*—**Reld.** *Re* Fairley, [1922] 2 Ch. 791.

6961. *Add. Annotations :*—**Reld.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835 ; *Re* Wilson, *Ex p.* Salaman, The Trustee *v.* Keith, Prowse (1925), 133 L. T. 814 ; *Re* Wait, [1927] 1 Ch. 606 ; *Re* Regent Finance & Guarantee Corpn. (1930), 69 L. Jo. 283.

6964. *Add. Annotation :*—**N.F.** Latter *v.* Juckes (1926), 42 T. L. R. 723.

6965. *Add. Annotation :*—**Consd.** *Re* Sarjeant, [1923] 2 Ch. 302.

6965a. "Any other petition"—Notice not given within fourteen days.]—A sheriff, on behalf of an execution creditor, levied an execution against debtor for more than £20, & received the money from debtor to avoid a sale. Within fourteen days of the payment the sheriff received notice of a bkpcy. petition on which an order would have been made had not debtor in the meanwhile filed his own petition on which a receiving order was made as a matter of course. Notice of this second petition was given to the sheriff more than fourteen days after the payment, but while the money was still in his hands pending the result of the first petition. The trustee in bkpcy. & the execution creditor both claimed the money :—*Held :* the words in 1914 Act, s. 41 (2), "or on any other petition of which the sheriff has notice," were not to be qualified by the addition of the words "within the said fourteen days" so as to permit the sheriff to pay the proceeds of the execution to the execution creditor because notice of the second petition on which the receiving order was made was not given within fourteen days of the receipt of such proceeds. The sheriff must hold, in the first instance, to see whether a receiving order would be made, & if he had notice of another petition, even after the lapse of fourteen days, then he must hold to see whether an order would be made on that other petition, or on any petition.—LATTER *v.* JUCKES & PAGE, [1927] 1 K. B. 17 ; 96 L. J. K. B. 137 ; 136 L. T. 177 ; 42 T. L. R. 723 ; 70 Sol. Jo. 905 ; [1926] B. & C. R. 133, C. A.

6966. *Add. Annotation :*—**Reld.** *Re* British Salicylates, [1918–19] B. & C. R. 160.

6979. *Add. Annotation :*—**Reld.** Latter *v.* Juckes & Page, [1927] 1 K. B. 17.

6995. *Add. Annotation :*—**Consd.** *Re* Woods (Bristol), Ltd., [1931] 2 Ch. 320.

6998a. *S. P.* BLOXHOLM *v.* OLDHAM (1750), cited in 1 Burr. at p. 22 ; 97 E. R. 168.

Annotation :—**Consd.** Balme *v.* Hutton (1831), 2 Cr. & J. 19.

7000a. *S. P.* BELCHER *v.* MAGNAY (1843), 12 M. & W. 102 ; 1 Dow. & L. 441 ; 13 L. J. Ex. 40 ; 2 L. T. O. S. 124 ; 7 Jur. 1160 ; 152 E. R. 1128.

Annotations :—**Reld.** Cheston *v.* Gibbs (1843), 12 M. & W. 111 ; Edwards *v.* Evans (1843), 2 L. T. O. S. 75.

7006a. —— Sale after bankruptcy—Of goods sufficient to satisfy two executions—One delivered after bankruptcy.]—*Held :* the assignees might recover in trover for such of the goods as were sold after the sheriff had raised money enough to satisfy the first execution.—STEAD *v.* GASCOIGNE (1818), 8 Taunt. 527 ; 129 E. R. 488.

Annotations :—**Reld.** Giles *v.* Grover (1832), 9 Bing. 128 ; Batchelor *v.* Vyse (1834), 4 Moo. & S. 552 ; Aldred *v.* Constable (1844), 6 Q. B. 370.

7008a. —— Stay of proceedings—When ordered.]—GIBSON *v.* HUMPHREY (1833), 1 Cr. & M. 544 ; 2 Dowl. 68 ; 3 Tyr. 588 ; 2 L. J. Ex. 234 ; 149 E. R. 516, Ex. Ch.

Annotation :—**Reld.** Moon *v.* Raphael (1835), 2 Bing. N. C. 310.

7030. *Add. Citation :*—*affg.* S. C. *sub nom.* R. *v.* EDWARDS (1853), 9 Exch. 32.

7032. *Add. Annotation :*—**Reld.** *Re* Webb (Smithfield, London), [1922] 2 Ch. 309.

Act, 1919, s. 11 (3), does not apply to property seized under the above Act.—*Re* HAMILTON & OAKES, [1925] 2 D. L. R. 514 ; [1925] 1 W. W. R. 172 ; 5 C. B. R. 465.—**CAN.**

PART XX. SECT. 10, SUB-SECT. 4.—C.

6983 iii. ——.]—While a sheriff is not entitled to poundage unless he has obtained some money for the execution creditor, yet r. 495 contemplates that the sheriff is to receive something, even though no money has been realised by him, since it provides that he is to be entitled to poundage "or such less sum as a judge may deem reasonable."—MOROSCHAN *v.* MOROSCHAN, [1921] 2 W. W. R. 147 ; 14 Sask. L. R. 233 ; 59 D. L. R. 353 ; 1 C. B. R. 493.—**CAN.**

6983 iv. —— *Seizure after authorised assignment.*]—TOWERS *v.* SOLOMON, [1923] 1 W. W. R. 1184 ; 3 C. B. R. 806.—**CAN.**

6990 i. *Possession money—Sheriff continuing in possession—After notice of assignment.*]—The costs to which the execution creditor is entitled are the costs of execution up to the time notice of the assignment is given the sheriff.—BAKER *v.* RICHARDS, [1918] 2 W. W. R. 902 ; *affd.* 59 S. C. R. 566 ; 49 D. L. R. 684.—**CAN.**

7042a. —— **6 Geo. 4, c. 16, s. 81—Two calendar months—Computation.**]—By above sect. all executions, etc., executed or levied more than two calendar months before the issuing of the commission, are valid. Deft., the sheriff, seized the goods of W. on Aug. 13, in execution, upon a judgment on a warrant of attorney at the suit of pltf., at about eleven o'clock, & at about one on Oct. 13 a commission of bkpcy. issued against W.:—*Held:* (1) the ct. would take notice of the fraction of a day, in putting a construction upon that part of the clause; &, therefore, it was clear that more than two calendar months had elapsed; (2) the day of issuing the commission was to be included in the computation.—GODSON *v.* SANCTUARY (1832), 4 B. & Ad. 255; 1 Nev. & M. K. B. 52; 2 L. J. K. B. 19; 110 E. R. 451.

Annotations:—*As to* (1) **Refd.** R. *v.* Middlesex JJ. (1845), 3 Dow. & L. 109. *As to* (2) **Refd.** Whitmore *v.* Robertson (1841), 11 L. J. Ex. 43; Skey *v.* Carter (1843), 11 M. & W. 571; Whitmore *v.* Greene (1844), 2 Dow. & L. 174.

7058. *Add. Annotation:*—**Refd.** Latter *v.* Juckes & Page, [1927] 1 K. B. 17.

7079. *Add. Citation:*—*sub nom. Re* PLUMMER, *Ex p.* TRUSTEE, 69 L. J. Q. B. 936; 48 W. R. 634; 44 Sol. Jo. 572; 7 Mans. 367, C. A.

Add Annotation:—**Refd.** *Re* Mathieson, [1927] 1 Ch. 283.

7085. *Add. Annotation:*—**Refd.** *Re* Mathieson, [1927] 1 Ch. 283.

7086. *Add. Annotation:*—**Refd.** *Re* Mathieson, [1927] 1 Ch. 283.

7087. *Add. Citation:*—*subsequent proceedings* (1805), 11 Ves. 377.

7089a. Declaration of trust without consideration—Credit in account of money to wife.]—*Held:* not binding on bkpt.'s creditors.—*Re* SMITH, *Ex p.* SMITH (1812), 1 Rose, 208.

Annotation:—**Consd.** Parsons *v.* Coke (1858), 27 L. J. Ch. 828.

7091. *Add. Annotation:*—**Refd.** *Re* Mathieson, [1927] 1 Ch. 283.

7094. *Add. Annotation:*—**Refd.** *Re* Mathieson, [1927] 1 Ch. 283.

7096a. Settlement of property in exercise of general power of appointment.]—*Held:* not within 1914 Act, s. 42.—*Re* MATHIESON, [1927] 1 Ch. 283; 71 Sol. Jo. 18; *sub nom. Re* MATHIESON, MOORE (TRUSTEE) *v.* MATHIESON, 96 L. J. Ch. 104; [1927] B. & C. R. 30; *sub nom. Re* MATHIESON, *Ex p.* TRUSTEE, 136 L. T. 528, C. A.

7096b. Property accruing "after marriage in right of wife."]—Property devolving on a husband on the intestacy of his deceased wife is property that has accrued to the husband after marriage in right of his wife within the exception to 1914 Act, s. 42.—*Re* BOWER WILLIAMS, *Ex p.* TRUSTEE, [1927] 1 Ch. 441; 96 L. J. Ch. 136; 136 L. T. 752; 43 T. L. R. 225; 71 Sol. Jo. 122; [1927] B. & C. R. 21, C. A.

7098. *Add. Annotation:*—**Refd.** Jagger *v.* Jagger, [1926] P. 93.

PART XX. SECT. 10, SUB-SECT. 8.

y (p. 830) i. —— —— *Memorandum that title subject to costs of prior execution.*]—On an assignment under Bkpcy. Act, where there are executions recorded against land of the assignor, the registrar of land titles, in making transmission of title to the assignee, should make a memorandum that the title is subject to a lien for costs of the first execution which was lodged with the sheriff & to a lien for costs of registration & sheriff's fees of all the executions.—*Re* LAND TITLES ACT, SASKATCHEWAN GENERAL TRUST CORPN., LTD.'S CASE, [1923] 3 W. W. R. 628.—**CAN.**

7069 i. *Garnishee order.*]—A debt was attached by a garnishee order under a judgment which was still subsisting:—*Held:* a receiving order under Bkpcy. Act, s. 11, did not rank in priority to such garnishment.—*Re* BLOUIN, GAGNON *v.* GRAIN & PROVISION CO., [1924] 1 D. L. R. 332; Q. R. 35 K. B. 161.—**CAN.**

sf. *Payment by contractor to prevent removal & sale by sheriff of sub-contractor's plant & materials—Bankruptcy of sub-contractor—Effect of.*]—*Re* STEWART (Ont.), [1926] 2 D. L. R. 1043; 7 C. B. R. 680.—**CAN.**

PART XX. SECT. 11, SUB-SECT. 1.

7078 ii. —— *Bankruptcy Act, s. 29.*]—"Settlement" in the above sect. discussed.—*Re* COHEN & MAHLIN, CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* SPIVAK (Alta.), [1926] 3 D. L. R. 942; [1926] 3 W. W. R. 34; *revsd.* [1927] 1 D. L. R. 577; [1927] 1 W. W. R. 162; 22 Alta. L. R. 487; 8 C. B. R. 23.—**CAN.**

7078 iii. *S. P.* TRADERS TRUST CO. *v.* COHEN (Man.), [1927] 3 W. W. R. 473.—**CAN.**

7086 ii a. —— ——.]—*Held:* a gift not being hedged about with conditions was not a settlement within Bkpcy. Act, 1908, s. 75.—BRAITHWAITE *v.* BRAITHWAITE, [1923] N. Z. L. R. 1186.—**N.Z.**

j i. —— ——.]—Where insured, under a policy of life insurance, declares it to be for the benefit of his wife, the trust created is not invalidated by his subsequent insolvency, & creditors of insured have no rights which would interfere with the rights of his wife even though the endowment policy matures during the life of insured.—BANK OF BRITISH NORTH AMERICA *v.* EDGECOMBE (1919), 46 N. B. R. 105.—**CAN.**

sg. *Conveyance of property to wife & sons.*]—Where a transfer in the nature of a settlement was made for the purpose of defeating creditors:—*Held:* though it would not be set aside, yet the creditors might seek payment of their claims out of the property transferred.—KIEHL *v.* FUSSEL (1922), 68 D. L. R. 780.—**CAN.**

r i. *Purchase of property & investment of money in wife's name.*]—Where property had been acquired & money invested by a husband in the name of his wife for the purpose of defeating his creditors:—*Held:* the property belonged to the husband, & the proceeds received by the wife from a sale of furniture owned by the husband should be paid to a receiver.—MCCURDY *v.* NEVE (1923), 51 N. B. R. 123.—**CAN.**

sj. *Declaration of trust in favour of wife—In pursuance of alleged antenuptial settlement.*]—*Held:* a settlement within Bkpcy. Act, s. 29 (1), & null & void.—*Re* ALIOTIS & CLIRIS, [1923] 1 D. L. R. 348; 56 N. S. R. 43; 3 C. B. R. 600.—**CAN.**

sk. *Settlement on creditor.*]—On Jan. 29, 1925, J., being in embarrassed circumstances & indebted, amongst others, to M. for £1,200, settled certain land on M., & another upon trust for herself & her only child during her life & after her death for her child absolutely. A private meeting of J.'s creditors was held on Apr. 22, 1925, & a committee appointed to investigate her affairs, & it was agreed to accept £200 from M. to be distributed among the creditors in full payment of their debts. Some of the creditors, including the R. Co., refused to carry out this arrangement, but on the faith that it would be carried out, J., on Apr. 28, paid M. £100 on account of his debt. On June 5 the debtor filed a petition for liquidation, but before the meeting on June 24 the R. Co. served a debtor's summons. The R. Co. had notice of the meeting for June 24, but did not attend. This meeting was attended by creditors whose indebtedness was about two-thirds of the total sum. They unanimously passed a resolution for liquidation by arrangement, & appointed a trustee. On the hearing of an application by the debtor & the trustee to dismiss the debtor's summons it was held that the application must be dismissed, but as the creditors who absented themselves from the liquidation meeting should have & could have attended it, they must pay the costs. The bkpcy. proceedings were continued, & a trustee appointed. The trustee then applied to have the settlement to M. delivered up to be cancelled & for repayment of the £100 paid to M. on Apr. 28, 1925:—*Held:* the settlement was not made in good faith & must be delivered up. The payment of £100 to M. was a fraudulent preference, & it must be repaid to the trustee.—*Re* JEFFREYS (1925), 21 Tas. L. R. 31.—**AUS.**

PART XX. SECT. 11, SUB-SECT. 2.

h i. —— *Purchased by husband for wife—To trustee during minority of wife—Transfer to wife at majority.*]—*Held:* not a settlement on the wife in consideration of marriage & void as against the trustee.—*Re* MCELLAND'S ESTATE, [1923] 4 D. L. R. 395; 3 C. B. R. 849.—**CAN.**

7104. *Add. Annotations :—As to* (1) **Refd.** *Re* Charters, *Ex p.* Trustee, [1923] B. & C. R. 94. *As to* (2) **Consd.** *Re* Charters, *Ex p.* Trustee, [1923] B. & C. R. 94.

7104a. **Plaintiff in compromised action against settlor.**]—*Re* COLE (A. V. & M. E. M. A.), TRUSTEE IN BANKRUPTCY *v.* PUBLIC TRUSTEE, No. 7121a, *post.*

7105. *Add. Annotation :*—**Refd.** *Re* Wombwell (1921), 37 T. L. R. 625.

7106. *Add. Annotation :*—**Consd.** *Re* Charters, *Ex p.* Trustee, [1923] B. & C. R. 94.

7109. *Add. Annotation :*—**Consd.** *Re* Charters, *Ex p.* Trustee, [1923] B. & C. R. 94.

7113a. —— **Gift by brother to sister.**]—By a deed of gift dated Oct. 7, 1919, debtor, who was adjudged bkpt. on Nov. 23, 1920, "in consideration of his natural love & affection for the donee" purported to assign & convey to his sister, resp., "the business carried on by him at 58a, Old Compton Street, Soho, & the stock-in-trade, wine & produce in & about the premises." At the date of the deed petitioning creditors were proceeding to enforce judgment under R. S. C., Ord. 14, & on Mar. 18, 1920, obtained final judgment against debtor for £527 7*s.* 4*d.* for goods sold & costs. On Mar. 20, 1920, execution was levied. Upon such levy being made, resp. claimed under the deed of gift the whole of the furniture & stock seized by the sheriff. An interpleader summons was taken out by the sheriff, & upon the hearing thereof, on Mar. 26, 1920, the master ordered claimant to pay into ct. £600 or give security for such amount, & in default the sheriff was authorised to sell the property seized & pay the proceeds into ct. to abide the result of an issue directed to be tried between claimant & the execution creditors. Pursuant to the order the sheriff sold the goods on Apr. 28, 1920, & on May 20, 1920, paid the sum of £202 12*s.* 2*d.* into ct. On Nov. 3, 1920, the parties to the interpleader summons agreed to divide the money between them & to withdraw the record; these terms were embodied in an order of the master of that date. In the meantime, however, a receiving order was made on Nov. 1, 1920, & petitioning creditors, the execution creditors, informed the official receiver of the sum of money being in ct. & of the terms of settlement so agreed as aforesaid. Thereupon the official receiver intervened, & on Nov. 1, 1920, gave notice in writing to the Paymaster-General of the Supreme Ct. of the receiving order, & this notice had the effect of preventing the order being acted upon. The trustee moved for a declaration that the deed of gift was void as against him :—*Held :* (1) the deed of gift was a voluntary settlement &, being made within two years of the bkpcy., was void; (2) the execution having been completed & the proceeds held by the sheriff for fourteen days, the trustee's title was barred, because, although the execution was not completed before the sheriff had been in possession for twenty-one days, the act of bkpcy. thereby created had not occurred within three months of the presentation of the petition & was not therefore available to establish the trustee's title.—*Re* CHIANDETTI, *Ex p.* TRUSTEE (1921), 91 L. J. K. B. 70; 37 T. L. R. 984; [1921] B. & C. R. 82.

7118. *Add. Annotation :*—**Consd.** *Re* Charters, *Ex p.* Trustee, [1923] B. & C. R. 94.

7119a. —— **Donee taking over liability for mortgage debt.**]—By an indenture dated July 19, 1920, a husband assigned his reversionary interest under a will to his wife, subject to a mtge.; & the wife covenanted expressly to pay the mtge. debt & interest & to indemnify the husband against his liability under the mtge. The husband was adjudged bkpt. on June 20, 1922, within two years of the assignment. On motion by the trustee in the bkpcy. for a declaration that the assignment was void against him as being a voluntary settlement under 1914 Act, s. 42 :—*Held :* there was ample consideration in the assignment, & the wife was a "purchaser" for valuable consideration within the sect.—*Re* CHARTERS, *Ex p.* TRUSTEE, [1923] B. & C. R. 94.

7121a. —— **Compromise of action.**]—A *bonâ fide* compromise of a *bonâ fide* action claiming rights against a deft.'s property is valuable consideration within 1914 Act, s. 42, for a settlement of that property made by deft. under that compromise, & pltf. is the purchaser within that sect. It is not the business of the Ct. of Bkpcy. before which the settlement is subsequently impeached to consider whether the action could possibly have succeeded if fought out to a finish.—*Re* COLE (A. V. & M. E. M.), TRUSTEE IN BANKRUPTCY *v.* PUBLIC TRUSTEE, [1931] 2 Ch. 174; 100 L. J. Ch. 316; 145 L. T. 484; [1931] B. & C. R. 7.

7122. *Add. Citation :—sub nom. Re* MACDONALD, *Ex p.* MCCULLUM, [1920] 1 K. B. 205; 122 L. T. 316.

7124. *Add. Annotation :*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

7125. *Add. Annotation :*—**Consd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

7127. *Add. Annotation :*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

7129. *Add. Annotations :*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426; *Re* Mathieson, [1927] 1 Ch. 283.

7133. *Add. Annotation :*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

7134. *Add. Annotations :*—**Consd.** *Re* Gunsbourg, [1920] 2 K. B. 426. **Refd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835.

PART XX. SECT. 11, SUB-SECT. 3.

7107 iii. —— *Question of fact.*]—*Re* GRANT (N. S.), [1926] 1 D. L. R. 681; 7 C. B. R. 254.—**CAN.**

s1. *Good faith—Onus of proof.*]—*Re* MACKERN (N. S.), [1929] 1 D. L. R. 528; 10 C. B. R. 311.—**CAN.**

PART XX. SECT. 11, SUB-SECT. 4.

y i. —— *Onus of proof.*]—Bkpcy. Ordinance of the Straits Settlements, s. 50 (1), provides that: "Any settlement of property, not being . . . a settlement made in favour of a purchaser . . . in good faith & for valuable consideration, . . . shall, if the settlor becomes bkpt. within two years after the date of the settlement, be absolutely void as against the official assignee"; & by sect. 50 (3): "'Settlement' for the purposes of this sect. includes any conveyance or transfer of property . . ."—*Held :* upon the true construction of the above sect. the onus is upon the official assignee to prove that a conveyance which he is seeking to set aside thereunder was not made in good faith & for valuable consideration.—CHEAH SOO TUAN, OFFICIAL ASSIGNEE OF THE ESTATE OF *v.* KHOO SAW CHEOW, [1931] A. C. 67; 100 L. J. P. C. 45; 144 L. T. 130; [1929-30] B. & C. R. 270, P. C.—**STRAITS SETTLEMENTS.**

7135. *Add. Annotation :*—**Refd.** *Re* Mathieson, [1927] 1 Ch. 283.

7136. *Add. Annotation :*—**Consd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

7138. *Add. Annotation :*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

7142. *Add. Annotation :*—**Refd.** *Re* Mathieson, [1927] 1 Ch. 283.

7148. *Add. Annotation :*—**Refd.** *Re* Mathieson, [1927] 1 Ch. 283.

7153a. ——.]—*Re* DENT, *Ex p.* TRUSTEE, No. 2902a, *ante*.

7155a. Covenant to pay premiums on life policy.]—A. & B. were traders in partnership. In 1927 both partners were adjudicated bankrupt. In 1910, A. on his marriage had executed an ante-nuptial settlement, by which he (*inter alia*) covenanted with the trustees of the settlement to keep up a life policy on his life then existing & to pay the premiums, etc. On the bkpcy. of the two partners the trustees of the settlement lodged a proof in the bkpcy. of A. with regard to the covenant to keep up the policy, for a sum that was arrived at by commuting in a single payment the annual premiums payable to keep up the policy & to make it fully paid. The trustee in bkpcy. rejected the proof on the ground that under 1914 Act, s. 42 (2), their claim was postponed until all the other creditors for valuable consideration in money or money's worth had been satisfied, & he alleged that the assets available would not be sufficient :—*Held :* the covenant fell within 1914 Act, s. 42 (2), & the trustee was right in rejecting the proof, as being a claim for something which was only provable after the other creditors for valuable consideration in money or money's worth had been satisfied ; & also having regard to 1914 Act, ss. 33 (6), 42 (2), & 63 (1), the right of the trustees to put in a proof must depend on all the creditors of the partnership between A. & B., the joint creditors of the partnership, as well as the separate creditors of A., being first satisfied.—*Re* CUMMING & WEST, *Ex p.* NEILSON & CRAIG *v.* TRUSTEE, [1929] 1 Ch. 534 ; 141 L. T. 61 ; *sub nom. Re* CUMMING, *Ex p.* NEILSON & CRAIG *v.* ADAMSON (TRUSTEE), 98 L. J. Ch. 83 ; [1929] B. & C. R. 4.

7156. *Add. Annotation :*—**Refd.** *Re* Debtor, [1929] 1 Ch. 362.

7158. *Add. Annotation :*—**Refd.** *Re* Debtor, [1929] 1 Ch. 362.

7159. *Add. Annotation :*—**Refd.** *Re* Mathieson, [1927] 1 Ch 283.

7161a. Covenant to settle all property to which settlor might become entitled—Settlement of reversionary interest.]—*Re* DENT, *Ex p.* TRUSTEE, No. 2902a, *ante*.

7164. *Add. Annotation :*—**Apprvd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. D. 515.

7165. *Add. Annotation :*—**Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7166a. —— ——.]—To constitute a fraudulent preference three conditions must be fulfilled ; (1) that the payment is made by a person unable to pay his debts as they become due from his own money ; (2) that it in fact prefers one creditor over others ; (3) that the dominant motive with which the payment was made was a desire to prefer that creditor to whom the payment was made. If a voluntary payment in fact gives a creditor a preference & the reason for such payment is unexplained, then a presumption of preference arises. The existence of an explanation ousts the presumption of preference.—*Re* DRAGE (J.) & SONS, PALMER & ROBERTS *v.* KNIGHT (1926), 134 L. T. 765.

PART XX. SECT. 12, SUB-SECT. 1.

7164 x. ——.]—A preference & a fraudulent preference are vitally different. Bkpcy. Act prohibits a fraudulent preference only ; & to constitute a fraudulent preference there must be present two circumstances, a preference in fact & an intention on the part of debtor to prefer.—BURNS *v.* ROYAL BANK OF CANADA, BURNS *v.* GRAHAM (1922), 69 D. L. R. 608 ; 51 O. L. R. 564 ; 2 C. B. R. 241.—**CAN.**

7164 xi. ——.]—Where the delivery of goods was not a disposition in the ordinary course of business & the effect was to prefer defts. :—*Held :* it should be set aside.—JACOBSON, ETC. *v.* JACOBSON, ETC. (1920), App. D. 75.—**S. AF.**

7164 xii. ——.]—The intention to give a preference is an intention in fact, & must be an intention entertained by the debtor. There can be no intention to prefer if the payment is made in the ordinary course of business.—CANADIAN CREDIT MEN'S ASSN., LTD. *v.* JENKINS, [1928] 3 D. L. R. 139 ; 62 O. L. R. 281 ; 10 C. B. R. 77.—**CAN.**

7167 xvi. —— ——.]—Where a mtgee. knew the mtgor. could not meet his current liabilities but believed he had more than sufficient property to pay his debts, & the conveyances were not made to give the mtgee. an unjust preference, who acted *bonâ fide* & without intent to delay creditors :—*Held :* the mtge. was valid.—ROBINSON *v.* PETERS (1919), 47 N. B. R. 1.—**CAN.**

7167 xvii. —— ——.]—Knowledge that debtor has ceased to be able to meet his liabilities as they become due will render payments within three months of the bkpcy. by debtor to a creditor fraudulent & voidable as against the trustee in bkpcy.—STEVENSON *v.* TAYLOR, *Re* CANADIAN CAP CO., LTD. (1922), 70 D. L. R. 853.—**CAN.**

7167 xviii. —— ——.]—Where certain transactions were impeached as being preferential :—*Held :* the *primâ facie* presumption of their invalidity had not been rebutted by showing that they were made as required by Bkpcy. Act, s. 32, since they were made with knowledge on the part of the creditor that debtor was "insolvent," as defined by sect. 2 (*i*), & therefore were not made in good faith.—*Re* LONGMORE (1922), 52 O. L. R. 570 ; 3 C. B. R. 200.—**CAN.**

7167 xix. —— ——.]—Where three partners bought out the fourth & took $1500 from A. for a quarter share in the partnership, & subsequently A. advanced $400 on the security of a chattel mtge. knowing the firm was insolvent :—*Held :* the mtge. was void as against creditors.—*Re* UNITY MANUFACTURING CO., MOORE'S CLAIM, [1923] 1 D. L. R. 84 ; 3 C. B. R. 396.—**CAN.**

7167 xx. —— ——.]—A bank is in no different position from that of any other creditor in relation to the provisions of Bkpcy. Act, & where a bank knows its customer to be insolvent, it cannot within the three months limited by sect. 31 accept from him or appropriate any money standing to his credit towards liquidation of a liability by the customer to the bank.—SALTER & ARNOLD, LTD. *v.* DOMINION BANK, [1923] 3 W. W. R. 257.—**CAN.**

7167 xxi. —— ——.]—To make a security given a creditor a fraudulent preference under Fraudulent Preferences Act, R. S. S. 1920 (c. 204), s. 4, there must be a concurrence of intent on the part of both debtor & creditor. If the person taking the security be innocent of any fraudulent intent, he cannot be affected by the fact that there was such an intent, unknown to him, in the mind of debtor.—WOLFE *v.* SMITH & BRUER, [1923] 3 D. L. R. 54 ; [1923] 3 W. W. R. 375.—**CAN.**

7167 xxii. —— ——.]—*Re* THOMPSON, *Ex p.* TRUSTEES, [1923] 4 D. L. R. 1028.—**CAN.**

7167 xxiii. —— ——.]—*Re* FOX, LESTER *v.* PORTER, [1925] 1 D. L. R. 198 ; 5 C. B. R. 328.—**CAN.**

7167 xxiv. —— ——.]—*Re* VOGUE FUR SHOP, LTD., *Ex p.* PAQUET CO., [1925] 1 D. L. R. 785 ; 5 C. B. R. 386.—**CAN.**

7167 xxv. —— ——.]—*Re* FULTON, [1926] 2 D. L. R. 277 ; 58 O. L. R. 400.—**CAN.**

7167 xxvi. —— ——.]—*Re* CUDNEY (Ont.), [1928] 1 D. L. R. 699 ; 8 C. B. R. 559.—**CAN.**

7167 xxvii. —— —— *Circumstances putting creditor on enquiry.*]—*Re* MCQUILLAN, *Ex p.* ROYAL BANK (Ont.), [1928] 2 D. L. R. 331 ; 10 C. B. R. 73.—**CAN.**

g i. —— *Valuable consideration not* —Lack of consideration will

7171. *Add. Annotation :*—**Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7172. *Add. Annotation :*—**Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7172a. —— ——.]—(1) Debtor was adjudged bkpt. on his own petition on July 6, 1923, & for a long time prior to that date had been hopelessly insolvent. On June 22, 1923, bkpt. paid applt. £146 by a customer's cheque & on June 21 & 23, 1923, he transferred goods to applt. of the value of £378 in discharge of his indebtedness. Debtor was able to pay his creditors 2s. in the pound, but the transfer of the goods to applt. was arranged on a basis that the debt was worth 20s. in the pound & the goods were not of the class with which applt. was in the habit of dealing, & applt. knew that debtor was unable to pay his debts, & the transaction took place on the eve of bkpcy. when debtor must have known he had no chance of pulling round. The threat of applt. to place the matter in other hands, which amounted to consulting a solr., had no terrors for debtor :—*Held :* the payment & transfer were made with a view to prefer applt. & not in consequence of any pressure which applt. brought to bear upon bkpt.

(2) In establishing a case of fraudulent preference in addition to giving evidence of insolvency the trustee must give some evidence of a view to prefer.—*Re* HOYLE, *Ex p.* TRUSTEE, [1924] B. & C. R. 22, D. C.

7176a. —— **Preference by agent of debtor.**]—If a principal leaves the control of his business in the hands of an agent so that the agent is employed to determine which of the creditors of the principal shall be paid, when they shall be paid, & why they shall be paid, a payment made by such an agent with an intention to prefer a creditor of his principal is, in the event of the bkpcy. of the principal, a fraudulent preference by the principal within 1914 Act, s. 44. It makes no difference that the agent had not authority to sign the cheques he drew & presented to his principal, nor that the principal when signing them had no intention to prefer any creditor, but honestly believed the payments so made to be proper & in the ordinary course of business.

A firm of builders, having contracted to erect houses at S., employed T. as their salaried agent to control & manage the purchase of & payment for building materials, & generally to supervise & advise the firm

usually imply a suggestion that a conveyance was made unduly to prefer one creditor, & where the result of such conveyance is that the grantor's creditors will be defrauded the conveyance will be set aside without proof, apart from the nature of the conveyance itself, of the fraudulent intent of the grantor & the grantee.—DOTY *v.* MARKS, [1924] 3 D. L. R. 687 ; 55 O. L. R. 147.—**CAN.**

g ii. —— *Security taken.*]—A person who makes a *bonâ fide* advance to another person or company when it is on the eve of insolvency & takes security therefor does not thereby come within sect. 64 of Bkpcy. Act relating to preferred creditors, if, at least, he is not at the time already a creditor ; & even one who is already a creditor may, in special circumstances, make such an advance & take a valid security therefor as well as for his pre-existing debt. Moreover, if a preferred creditor within the meaning of the Act did not take his security with the intent of procuring a preference to himself over other creditors the transaction stands.—*Re* BRITISH COLUMBIA BOND CORPN., LTD. & LANG, [1931] 1 W. W. R. 286 ; [1931] 2 D. L. R. 985 ; 43 B. C. R. 481 ; 12 C. B. R. 215.—**CAN.**

7169 iii. —— *Transactions between relatives.*]—Where transactions are between near relations, the *onus* is on the parties to those transactions to show that they were not made fraudulently as against creditors, & for this purpose evidence in corroboration is required.—BROWN *v.* BULMER (1922), 65 D. L. R. 180.—**CAN.**

7169 iv. —— ——.]—In transactions between relatives having the effect of defeating the claims of a seller's creditors, even if the purchaser has full knowledge of the seller's intent to defraud, such knowledge is not of itself sufficient to render the transaction void, if it is found to have been *bonâ fide* for full value.—WAGNER *v.* HARTOWS, [1923] 1 D. L. R. 186 ; [1922] 3 W. W. R. 1050.—**CAN.**

7169 v. —— ——.]—*Re* READY & CASS, [1924] 2 D. L. R. 528 ; 33 B. C. R. 371.—**CAN.**

7169 vi. ——.]—Creditors, knowing of the insolvency of debtor, made a composition of their debts giving an extension of time. Within three months debtor was made bkpt. :—*Held : primâ facie* this agreement constituted a fraudulent preference which the creditors preferred must rebut.—*Re* DALE & CARROLL, [1924] 4 D. L. R. 597 ; 5 C. B. R. 139.—**CAN.**

7169 vii. ——.]—The *onus* of proof of an intention by debtor to prefer a particular creditor lies on the official assignee.—*Re* HARDY (No. 2), [1922] N. Z. L. R. 613.—**N.Z.**

7172 i. —— *What must be proved.*]—B., who was in possession of business premises under a lease not in writing from pltf., made an assignment to deft. co. for the benefit of creditors, & on the same day executed a surrender of the lease :—*Held :* as the surrender preceded the assignment, it was not invalid as a fraudulent preference or a fraudulent parting with property in fraud of creditors.—BELL *v.* CHARTERED TRUST & EXECUTOR CO., CHARTERED TRUST & EXECUTOR CO. *v.* BELL & BURSEY (1919), 46 O. L. R. 192 ; 49 D. L. R. 113 ; 17 O. W. N. 88.—**CAN.**

7173 i. " *Transfer.*"]—A mtge. under Sask. Land Titles Act is a " transfer " within the meaning of Bkpcy. Act, s. 2 (2), notwithstanding the provision in the former Act that a mtge. shall have effect as security but shall not operate as a transfer of the land thereby charged.—*Re* CARSON, [1922] 1 W. W. R. 204 ; 2 C. B. R. 187 ; 63 D. L. R. 352 ; 15 Sask. L. R. 94.—**CAN.**

7173 ii. ——.]—*Re* MARITIME RADIO CORPN., LTD. (N. B.), [1927] 2 D. L. R. 450 ; 8 C. B. R. 153.—**CAN.**

PART XX. SECT. 12, SUB-SECT. 2.

m i. *Property conveyed to creditor by registered conveyance—Unregistered reconveyance to debtor without notice.*]—*Held :* property must pass to the trustee in bkpcy.—*Re* MCCUAIG & BRAY, [1924] 3 D. L. R. 44 ; 2 W. W. R. 373 ; 4 C. B. R. 660.—**CAN.**

m ii. *Property covered by Exemptions Act.*]—Sect. 64 of Bkpcy. Act, R. S. C., 1927, which provides that preferential conveyances to creditors within three months prior to an authorised assignment shall be deemed fraudulent & void as against the trustee, does not apply to dealings by the debtor with his exempt property.—CANADIAN CREDIT MEN'S TRUST ASSOCN. *v.* UMBEL & GILLESPIE GRAIN CO., LTD., [1931] 3 W. W. R. 145.—**CAN.**

sa. *Provision in fire insurance policy for payment to bank.*]—A provision in a fire insurance policy that the amount of the loss shall be payable to a bank does not operate as an assignment of the policy to the bank, nor can it be said, in the circumstances of the case, to constitute an illegal preference under Bkpcy. Act, 1927 (c. 12).—TURGEON *v.* DOMINION BANK (Can.), [1930] S. C. R. 67 ; [1929] 4 D. L. R. 1028 ; *affg.*, 47 Que. K. B. 383 ; 10 C. B. R. 212.—**CAN.**

sb. *Effect of Bankruptcy Act—On Assignments & Preferences Act (Ont.).*]—In a proceeding in bkpcy. in Ontario, the trustee in bkpcy. may invoke the aid of the ct. to set aside as preferential a transaction between the bkpt. & a creditor which took place more than three months before the making of the authorised assignment or receiving order, upon the ground that the transaction was preferential under Assignments & Preferences Act, R. S. O., 1927, & the trustee in bkpcy. is a person entitled to set up the provisions of that Act & attack the transaction.—*Re* POMMIER, [1930] 4 D. L. R. 113 ; 65 O. L. R. 415 ; 11 C. B. R. 449.—**CAN.**

sc. *Promissory note.*]—Where a payee of a promissory note negotiates it before maturity to a creditor in settlement of a debt, & within three months of said transfer of the note the payee is adjudicated a bkpt. or makes an authorised assignment under Bkpcy. Act, R. S. C., 1927, the transfer should not, upon the application of the trustee in bkpcy., be set aside as a fraudulent preference under sect. 64 of said Act, when the maker of the notes indicates that he has good defences, legal & equitable, to a claim or an action by the payee, or his or its representative, the trustee in bkpcy. for payment, & also insists upon his right of set-off against such a claim or in such an action for an undisclosed & unascertained amount, & the ct. is unable to determine whether or not the setting aside of the transfer will be of benefit to the creditors whose claims in whole or in part are unsecured.—*Re* SHANNON (H. S.) & CO., LTD., CANADIAN CREDIT MEN'S TRUST ASSOCN. *v.* SNIDER & DUNCAN, [1932] 1 W. W. R. 12.—**CAN.**

on financial matters in relation to the contract. The partners had no knowledge as to the terms upon which the materials supplied had in fact been purchased, nor were they aware of any of the circumstances relating to any payments they in fact made. They signed cheques drawn by the agent as & when he prepared & presented them, but the agent had no right to make any payment except by cheques signed by his principals. The partners having become bkpts. it appeared in the bkpcy. proceedings that less than three months before the date of the receiving order, T., intending to prefer S. & Co., creditors of his principals, & then well aware of his principals' insolvency, presented to F., the managing partner, two cheques which T. had drawn & which F. signed without inquiry in the honest belief that T. intended thereby to make proper payments but which were in fact intended & devoted by T., one to the extent of £100 in payment of a debt due by his principals under a contract other than the S. contract, & the other to the extent of £647 in payment for goods delivered by S. & Co. on credit terms not then expired :—*Held :* the partners as principals were bound by the acts of their agent T. when he, acting within the scope of his employment & as their agent, made the payments in question, & the act of the agent in making the payments with knowledge of the principals' insolvency & with a view of giving a preference must be treated as the act of the principals.—*Re* DRABBLE BROS., [1930] 2 Ch. 211 ; 99 L. J. Ch. 345 ; 143 L. T. 337 ; 74 Sol. Jo. 464, C. A.

7177. *Add. Citation :*—40 L. T. 404.

7181. *Add. Annotation :*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

7183a. Payment to agent of creditor — Whether payment to " person in trust for creditor."]—*Re* MORANT, *Ex p.* TRUSTEES, No. 7414a, *post.*

7220a. -.]—A. being in difficulties, & having been served with writs by several of his creditors, applied to defts., who were attorneys, for their advice & assistance. After several ineffectual attempts to make an arrangement, it was finally resolved, at a meeting of the creditors, that A.'s property should be immediately sold ; thereupon A. employed an auctioneer for that purpose, & directed him to pay the balance of the proceeds, after deducting his own charges, to defts., which was accordingly done. Another meeting of the creditors took place, at which 5*s.* in the pound was offered, which being refused, A. went to prison, & obtained his discharge under the Insolvent Act. Defts. claimed to retain a portion of the money paid to them by the auctioneer in discharge of their bill of costs :—*Held :* this

PART XX. SECT. 12, SUB-SECT. 3.

7186 vi. ——.]—In order to make a payment a fraudulent preference within Bkpcy. Act, 1908, s. 79, it is not necessary that the payment should be made in actual contemplation of bkpcy.—*Re* LINNEY (H.) & CO., LTD., [1925] N. Z. L. R. 907.—**N.Z.**

l (p. 863) i. —— *Creditor having made inquiries.*]—Where in fulfilment of an agreement, a lien note was given by debtor by way of collateral security for advances to be made by the creditor, who had made the fullest inquiries into the financial position of debtor & had failed to discover his insolvency :—*Held :* the giving of the lien note could not be construed as a fraudulent preference.—*Re* HUGHES MUSIC SALES CO., CO-OPERATIVE MUSIC SUPPLY CO. *v.* GOLD MEDAL FURNITURE MANUFACTURING CO., [1924] 2 D. L. R. 706 ; 4 C. B. R. 565. —**CAN.**

PART XX. SECT. 12, SUB-SECT. 4.—A.

r (p. 865) i. —— ——.]—If the ordinary result of a transaction is to prefer one creditor to another, even though there is no intention to prefer, it is void against the trustee. It is not necessary, in such a case to establish anything in the nature of fraud, & provided the effect of the transaction is to diminish the property of the debtor available for division among the creditors, it falls within sect. 95 of Commonwealth Bkpcy. Act, 1924-1929.—*Re* MAZOK, *Ex p.* REES, E. SACHS & CO., [1931] S. R. (Q.) 19 ; 2 A. B. C. 237.—**AUS.**

t (p. 865) i. —— *Creditor with knowledge of insolvency.*]—Actual intent to defraud creditors necessary, although creditor aware of debtor's insolvency.—HICKERSON *v.* PARRINGTON (1892), 18 A. R. 635.—**CAN.**

w i. ——.]—The *bona fides* of a transaction is negatived if the creditor who receives payments from debtor has knowledge of debtor's insolvency. But if the creditor has no such knowledge & the transaction is one arising out of the ordinary course of business, the fact that debtor was insolvent when he made the payments will not render such payments a fraudulent preference.—*Re* SPEAL, *Ex p.* LUCAS, [1924] 1 D. L. R. 191.—**CAN.**

c (p. 865) i. ——.]—To constitute a preference under Bkpcy. Act, s. 31, there must be a common or concurrent view, *i.e.* intent on the part of debtor & the creditor to create a preference.—*Re* BELL, [1922] 1 W. W. R. 1015 ; 2 C. B. R. 271 ; 67 D. L. R. 66 ; 32 Man. L. R. 9.—**CAN.**

c (p. 865) ii. ——.]—*Re* GOLDSTEIN, [1923] 1 D. L. R. 864 ; 53 O. L. R. 60. —**CAN.**

c (p. 865) iii. ——.]—The intention of debtor to yield to the dictates of his conscience & to fear the consequence of his crime, negatives the intention to prefer. At any rate, the intention of debtor is not enough, the creditor, too, must intend to obtain a preference.—*Re* CARSON, [1924] 4 D. L. R. 492 ; 55 O. L. R. 649 ; 4 C. B. R. 683. —**CAN.**

c (p. 865) iv. ——.]—To constitute a fraudulent preference there must be an intention on the part of debtor to prefer the creditor in question & an intention on the part of that creditor to be preferred. Therefore where A. was a creditor of B., bkpt., & C. paid A. what B. owed him, & C. was therefore substituted in the place of A., as creditor of B. :—*Held :* as the money paid by C. never became assets in the hands of B., the transaction could not be set aside.—*Re* NIAGARA HATS, LTD., TRUSTEE *v.* BANK OF MONTREAL, [1924] 4 D. L. R. 953.—**CAN.**

c (p. 865) v. ——.]—If a partner makes a payment to a creditor with intent to prefer him, & there is a like intent on the part of the creditor to be preferred, this will be a fraudulent preference & may be set aside by the trustee.—*Re* ROSEDALE PRODUCE CO., *Ex p.* MCGOWAN, [1924] 1 D. L. R. 321 ; 4 C. B. R. 277.—**CAN.**

c (p. 865) vi. ——.]—SALTER & ARNOLD, LTD. *v.* DOMINION BANK, [1926] 3 D. L. R. 684 ; [1926] S. C. R. 621 ; 7 C. B. R. 639.—**CAN.**

c (p. 865) vii. ——.]—A payment made by debtor to a creditor within three months of an assignment in bkpcy. is not deemed fraudulent, unless both creditor & debtor have a concurrent or mutual view or intent to effect a preference.—*Re* DEMRY & DEMRY, TRUSTEE *v.* HALLAND, [1924] 4 D. L. R. 1275 ; [1924] 3 W. W. R. 708 ; 34 Man. L. R. 534 ; 5 C. B. R. 293 ; *revsg.*, [1924] 4 D. L. R. 309 ; [1924] 3 W. W. R. 147 ; 5 C. B. R. 87. —**CAN.**

c (p. 865) viii. ——.]—*Re* STEEVES, NOVA SCOTIA TRUST CO. *v.* BISHOP, [1925] 2 D. L. R. 233 ; 5 C. B. R. 554.—**CAN.**

c (p. 865) ix. ——.]—Where the trustee in bkpcy. of a partnership seeks to set aside a transfer, charge, or payment as a preference, the trustee must show that such transfer, charge or payment was made by the firm to a firm creditor with concurrent intent on the part of both the debtors & their creditor that, as a result of such transaction, the creditor should obtain a preference over other creditors of the firm.—*Re* COHEN & MAHLIN, CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* SPIVAK (Alta.), [1927] 1 D. L. R. 577 ; [1927] 1 W. W. R. 162 ; 22 Alta. L. R. 487 ; 8 C. B. R. 23.—**CAN.**

c (p. 865) x. ——.]—*Re* BOAK (GEO. E.) & SON (N. S.), [1926] 1 D. L. R. 1179 ; 7 C. B. R. 477.—**CAN.**

(p. 865) xi. -.]—*Re* DEMERY (Ont.), [1926] 2 D. L. R. 120 ; 7 C. B. R. 271.—**CAN.**

c (p. 865) xii. ——.]—*Re* KINNIBURGH (Ont.), [1927] 3 D. L. R. 748 ; 8 C. B. R. 303.—**CAN.**

c (p. 865) xiii. ——.]—ROBINSON *v.* MCCAULEY (Man.) (1913), 24 W. L. R. 617 ; 4 W. W. R. 930 ; 13 D. L. R. 437.—**CAN.**

c (p. 865) xiv. ——.]—BANK OF MONTREAL *v.* SHEAN, [1931] 4 D. L. R. 305 ; O. R. 489 ; 12 C. B. R. 479.—**CAN.**

was not a voluntary transfer in favour of a particular creditor, within sect. 32 of above Act.—WAINWRIGHT *v.* CLEMENT (1838), 4 M. & W. 385; 1 Horn & H. 395; 8 L. J. Ex. 25; 3 Jur. 266; 150 E. R. 1478.

7225. *Add. Citation :*—12 L. T. 22.
Add. Annotation :—**Consd.** *Re* Stanton, [1929] 1 Ch. 180.

7225a. —— ——.]—*Re* COHEN, *Ex p.* TRUSTEE, No. 4665a, *ante*.

7228. *Add. Annotations :*—**Refd.** *Re* Prior, *Ex p.* Trustee, [1922] B. & C. R. 1; *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7236. *Add. Annotation :*—**Consd.** *Re* Davies, *Ex p.* Miles, [1921] 3 K. B. 628.

7237. *Add. Annotation :*—**Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7237a. —— **Payment in fact giving preference.**]—*Re* DRAGE (J.) & SONS, PALMER & ROBERTS *v.* KNIGHT, No. 7166a, *ante*.

7238. *Add. Annotations :*—**Refd.** *Re* Hoyle, *Ex p.* Trustee, [1924] B. & C. R. 22; *Re* Drage, Palmer & Roberts *v.* Knight (1926), 134 L. T. 765.

7239. *Add. Annotation :*—**Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7249. *Add. Citation :*—12 L. T. 22.
Add. Annotation :—**Refd.** *Re* Stanton, [1929] 1 Ch. 180.

7261a. —— ——.]—In order to constitute "pressure," it is not necessary that legal proceedings should have been resorted to, for, if the pressure was such that it overweighed the bkpt.'s own inclination, & induced him to pay against his will, that would be sufficient pressure within the meaning of the bkpt. laws.—GREEN & COX *v.* BRADFIELD (1844), 1 Car. & Kir. 449; 174 E. R. 887.

7267. *Add. Annotation :*—**Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7267a. ——.]—*Re* HOYLE, *Ex p.* TRUSTEE, No. 7172a, *ante*.

7268. *Add. Annotation :*—**Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7224 viii. —— —— ——.]—Preference must be given voluntarily by debtor, & where a creditor demands a transfer or a mtge., such a demand imports pressure & will be sufficient to rebut the suggestion of preferring that creditor.—COPP *v.* WILLIAMS 1922), 65 D. L. R. 377.—**CAN.**

7224 ix. —— —— ——.]—Security given by an insolvent debtor to a creditor with intent to give him a preference over other creditors is void: but the existence of the intent may be negatived by showing that the debtor yielded to the importunity of the preferred creditor, & may also be negatived by proof of the existence of some other motive which may not have had its origin in the creditor, *e.g.* when property is conveyed as the result of fear of a criminal prosecution or where the transaction has its origin in the recognition of a moral obligation to restore property improperly converted. When the idea of giving the security originates with the debtor, pressure plays no part in the transaction.—GOLDMAN *v.* HARRISON, [1928] 3 D. L. R. 73; 62 O. L. R. 291.—**CAN.**

p (p. 866) — *Bankruptcy Act*, 1908, s. 79 (3).]—"Good faith" in the above sub-sect. means absence of knowledge that a preference was intended.—*Re* LINNEY (H.) & Co., LTD., [1925] N. Z. L. R. 907.—**N.Z.**

7228 x. ——.]—A debtor who was unable to pay a certain creditor obtained from her a further loan secured by a mtge. Shortly after debtor made an authorised assignment. The original debt was not included in the mtge., & at the time the creditor was not aware of any available act of bkpcy. on the part of debtor :—*Held :* there was no intention to prefer, & the creditor might reasonably conclude that the loan would enable debtor to carry on his business, & the mtge. was declared valid.—*Re* GOLDSTEIN, [1923] 1 D. L. R 864; 53 O. L. R. 60.—**CAN.**

7228 xi. ——.]—There is no fraudulent preference unless bkpt.'s real, dominant, & substantial motive was a desire to prefer the particular creditor over his other creditors. If his real reason was something else, some benefit, to be obtained for himself, the transaction cannot be attacked as a fraudulent preference.—OFFICIAL ASSIGNEE *v.* WAIRARAPA FARMERS' CO-OPERATIVE SOCIETY, LTD., [1925] N. Z. L. R. 1.—**N.Z.**

7235 ii. —— ——.]—Where an assignment of a book debt had been made within three months preceding the authorised assignment :—*Held :* the burden of establishing that it was not a preference was cast upon the assignee-creditor, & evidence of pressure would be of no avail to support the transaction.—*Re* WEBB (1921), 64 D. L. R. 633; 51 O. L. R. 5; 2 C. B. R. 16.—**CAN.**

7235 iii. —— ——.]—*Re* PROGRESSIVE FARMERS CO., *Ex p.* BROWN BROTHERS & BURNSTAD, LTD., [1923] 1 W. W. R. 833; 3 C. B. R. 702.—**CAN.**

a (p. 868) i. —— ——.]—Where a debtor agreed with a creditor that he should have some special advantage if debtor became bkpt., & the result was to avoid a distribution under Bkpcy. Act of bkpt.'s property :—*Held :* the agreement was void.—*Re* WETMORE, *Ex p.* BAIRD & PETERS, [1924] 4 D. L. R. 66.—**CAN.**

d (p. 868) i. —— —— ——.]—Although a previous agreement to give security may serve to rebut the intention to prefer in giving security by one in insolvent circumstances, if the transaction is attacked after sixty days, yet under Assignments Act, ss. 39 & 41, if the giving of security is attacked within sixty days the transaction is utterly void & nothing will rebut such a result.—HODGE *v.* MCLEAN & UNION BANK OF CANADA, [1919] 2 W. W. R. 855; 12 Sask. L. R. 298.—**CAN.**

d (p. 868) ii. —— —— ——.]—Pltf. co., a creditor of a trading firm, obtained from their debtors a chattel mtge. & an assignment of book-debts. The firm afterwards made an assignment to deft. for the benefit of creditors. Pltf. co. sought to establish its priority over the assignment to deft. :—*Held :* as deft.'s assignment was not made within sixty days after the transaction with pltf. co., & the transaction was not attacked within sixty days, there was no statutory presumption of invalidity under Assignments & Preferences Act, R. S. O. 1914 (c. 134), s. 5.—CRAIG (W. G.) & Co., LTD. *v.* GILLESPIE (1920), 47 O. L. R. 529; 54 D. L. R. 514.—**CAN.**

d (p. 868) iii. —— —— ——.]—A conveyance attacked as a preference within sixty days of its execution is void, regardless of the intent in giving it & of the pressure exerted to obtain it, if at the time of its execution debtor was in insolvent circumstances or unable to pay his debts in full & the conveyance had the effect of giving a preference, as defined by Assignments Act, R. S. M., 1913 (c. 12), s. 42, over the execution creditor attacking it.—TROTTER *v.* PEDLAR, [1921] 1 W. W. R. 233; 56 D. L. R. 717.—**CAN.**

o (p. 869) i. —— —— —— ——.]—The statutory presumption of intent to prefer cannot be rebutted by proof that the debtor had no desire to prefer, but simply yielded to the pressure applied by the creditor.—PELLATT & PELLATT, LTD. *v.* MCLEAN, [1929] 3 D. L. R. 82; 63 O. L. R. 552.—**CAN.**

p (p. 869) i. —— *Transaction within three months of insolvency.*]—BRISCOE *v.* STANDARD BANK (1923), 53 O. L. R. 623; 3 C. B. R. 863.—**CAN.**

p (p. 869) ii. —— ——.]—If a creditor knows debtor is insolvent before he enters into a transaction with him & the effect is to give to that creditor a preference, it makes no difference what was the motive, view, or interest of debtor if bkpcy. intervenes within three months, as the creditor could not possibly rebut the presumption of undue preference, & the transaction will be deemed fraudulent & set aside.—*Re* LAVINE, [1924] 3 D. L. R. 318; 4 C. B. R. 664.—**CAN.**

p (p. 869) iii. —— ——.]—*Held :* a creditor to whom bkpt. had made certain payments within three months prior to the assignment had not met the presumption that such payments were preferential, & such payments were fraudulent & void.—*Re* BLACK & WHITE HAT SHOP, LTD., NEWTON *v.* FINFSILVER, [1925] 4 D. L. R. 245; [1925] 2 W. W. R. 782.—**CAN.**

PART XX SECT. 12, SUB-SECT. 4.—B.

sk. *Pressure — Must be actual.*]—"Pressure," in Bkpcy. Act, s. 31 (2), means actual pressure in its original sense, the pressure which is brought to bear by a creditor upon his debtor, & not some secret motive under the impulse of which debtor acts, but which is not actual pressure.—*Re* BELL, [1922] 1 W. W. R. 1015; 2 C. B. R. 271; 67 D. L. R. 66; 32 Man. L. R. 9.—**CAN.**

sl. —— ——.]—The absence of fraudulent intention in the circumstances in which the fund is taken does not constitute "pressure" within Bkpcy. Act, s. 31 (2).—*Re* CARSON, [1924] 4 D. L. R. 492; 55 O. L. R. 649; 4 C. B. R. 683.—**CAN.**

7258 vi. —— ——.]—GRANT *v.* VAN NORMAN (1882), 7 A. R. 526.—**CAN.**

7258 vii. —— ——.]—MANSOOKHLAL DOLATCHAND & Co. *v.* NAGARDASS MOOLCHAND (1928), I. L. R. 6 Ran. 536.—**IND.**

7270. *Add. Annotation :*—**Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7318. *Add. Annotations :*—**Consd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515. **Refd.** *Re* Hoyle, *Ex p.* Trustee, [1924] B. & C. R. 22; *Re* Drage, Palmer & Roberts *v.* Knight (1926), 134 L. T. 765.

7323. *Add. Citation :*—*sub nom.* MORGAN *v.* BAKER, 2 Jur. 1068.

7334. *Add. Annotation :*—**Consd.** *Re* Davies, *Ex p.* Miles, [1921] 3 K. B. 628.

7337. *Add. Annotation :*—**Refd.** *Re* Stanton, [1929] 1 Ch. 180.

7339a. Agreement to assign interests—In consideration of advance—No memorandum of agreement within Statute of Frauds.]—By a parol agreement between a lender & D., the former agreed to lend & did lend D. £2,000 in consideration of the latter's promise to assign certain interests. About a year later, in pursuance of this agreement, D. assigned these interests to the lender, & became bkpt. immediately afterwards. At the time of the assignment no memorandum of the above agreement within Stat. Frauds, s. 4, was in existence, but it was recited in the assignment :—*Held :* the assignment, notwithstanding the failure of bkpt. to set up the statute in answer to the claim by the lender for the performance of the agreement, did not constitute a fraudulent preference or a fraudulent conveyance under 1914 Act, & was valid as against the trustee in bkpcy.—*Re* DAVIES, *Ex p.* MILES, [1921] 3 K. B. 628; *sub nom. Re* DAVIES, *Ex p.* TRUSTEE, 91 L. J. K. B. 81; [1921] B. & C. R. 92.

7340. *Add. Annotation :*—**Apld.** *Re* Davies, *Ex p.* Miles, [1921] 3 K. B. 628.

7359. *Add. Annotation :*—**Consd.** *Re* Stanley (1924), 69 Sol. Jo. 36.

7360. *Add. Annotation :*—**Consd.** *Re* Stanley (1924), 69 Sol. Jo. 36.

7361a. ——— ———.]—A private co., of which a father & son were the only directors & shareholders, was ordered to be wound up, & within the preceding three months the son paid a sum of £1,503 odd into the co.'s bank to reduce an overdraft of the co. to secure which his father had given a guarantee. The liquidator claimed repayment of the sum as being a fraudulent preference within Cos. (Consolidation) Act, 1908 (c. 69), s. 210, & a preliminary objection being raised that in any event no order for repayment could be made :—*Held :* (1) the real object of the insertion of the words "or any surety or guarantor for the debt due to such creditor," in Bkpcy. Act, 1914 (c. 59), s. 44 (1), was to enable the trustee to recover the payment from the person actually preferred; (2) the motive of the son in making the payment being to keep the business going, there was no fraudulent preference, & the summons must be dismissed.—*Re* STANLEY (G.) & Co., [1925] Ch. 148; 94 L. J. Ch. 187; 133 L. T. 37; 69 Sol. Jo. 36; [1925] B. & C. R. 1.

7365. *Add. Annotation :*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

7271 viii. ——.]—Evidence disclosing a dominant motive such as fear of prosecution or disgrace, impelling debtor to give the security, is admissible to rebut the *primâ facie* presumption raised by Bkpcy. Act, s. 31 (2).—*Re* BELL (1922), 67 D. L. R. 66; 32 Man. L. R. 9; [1922] 1 W. W. R. 1015. —**CAN.**

7307 iii. ——— ———.]—BROCKLESBY *v.* FREEDMAN-ELLIS, [1932] 1 D. L. R. 187; O. R. 56; *revsd. on facts*, [1932] 2 D. L. R. 818; O. R. 439.—**CAN.**

PART XX. SECT. 12, SUB-SECT. 4.—C.

m i. ——.]—Moneys improperly drawn by an exor. from the funds of testator's estate & applied to exor.'s own uses were restored by him within three months before he was declared a bkpt. :—*Held :* the restoration was not a preferential payment within Bkpcy. Act, s. 31. The estate was not a "creditor" of the exor. within the sect., though in some sense a creditor.—*Re* CARSON, [1924] 4 D. L. R. 492; 55 O. L. R. 649; 4 C. B. R. 683. —**CAN.**

PART XX. SECT. 12, SUB-SECT. 4.—E.

F (p. 889) i. *Security to cover advance & past debt.*]—A security given for such a purpose :—*Held :* to be given for valuable consideration & *bonâ fide*, & under pressure, & an action on behalf of other creditors attacking the security was dismissed with costs.—BANQUE D'HOCHELAGA *v.* JEANNOTTE, [1923] 1 W. W. R. 28; 16 Sask. L. R. 523.—**CAN.**

7347 v. ——.]—An incorporated co., being in fact insolvent, made in favour of its president, a creditor, as guarantor, a mtge. on its plant to secure him for moneys paid to the co., & by the co. to its bankers, in reduction of the co.'s liability within two months of the co. being adjudged bkpt. :—*Held :* the transaction was free from any taint of fraud; the co. entered into it for the object & in the *bonâ fide* expectation & belief that it would thereby be enabled to carry on its business successfully, & not with the view of preferring either the president or the bank to the co.'s other creditors.—BURNS *v.* ROYAL BANK OF CANADA, BURNS *v.* GRAHAM (1922), 69 D. L. R. 608; 51 O. L. R. 564; 2 C. B. R. 241.—**CAN.**

7347 vi. ——.]—A debtor gave a creditor a mtge. & the effect of that was to give the mtgee. a preference :—*Held :* when the mtge. was created, as debtor had not been sued by his creditors & his sole reason for giving the mtge. was that he might continue his business & pay off his other creditors, this was not a fraudulent preference.—*Re* BARTER, [1923] 1 D. L. R. 919; 3 C. B. R. 631.—**CAN.**

7347 vii. ——.]—A preference to be fraudulent must be given with the intention of creating rights additional to those possessed by other creditors, & where a preference is given not to give one creditor an unfair advantage over other creditors, but to enable debtor to extinguish a past debt & to carry on his business & the preferred creditor has no knowledge of any available act of bkpcy. on the part of debtor, such a preference is not fraudulent within Bkpcy. Act.—*Re* BUCHANNAN, [1923] 1 D. L. R. 391; 3 C. B. R. 427.—**CAN.**

7347 viii. ——.]—CANADIAN BANK OF COMMERCE *v.* TREACY, [1924] 2 W. W. R. 193; 2 D. L. R. 759.—**CAN.**

PART XX. SECT. 12, SUB-SECT. 4.—F.

7359 ii. ——.]—The trustee in bkpcy. of H. under an authorised assignment sought to recover payments made by H., when in a hopeless state of insolvency, for the purpose, as his creditors, defts., knew, of preferring them so that his guarantors might be as far as possible relieved. The payments were made within a few days of H.'s voluntary assignment, & some were made after the assignment :—*Held :* defts. had not at the times of payment notice of any "available act of bkpcy." committed by H.; the transactions were all before Bkpcy. Act, 1921 (c. 17), s. 3, but the payments were not made "in good faith." —BRISCOE *v.* MOLSONS BANK (1922), 69 D. L. R. 675; 51 O. L. R. 644.—**CAN.**

PART XX. SECT. 12, SUB-SECT. 4.—G.

7381 iv. ——— ———.]—*Re* ASSAF & DABOUS (Ont.), [1927] 1 D. L. R. 24; 7 C. B. R. 689.—**CAN.**

7388 ii. ——— *Conveyance of property for past consideration—Creditor with knowledge of existence of other creditors.*]—*Re* DAVID, [1925] 4 D. L. R. 1046; *affg.*, [1925] 1 D. L. R. 164; 5 C. B. R. 323.—**CAN.**

sm. *Sale by creditor—Collusive sale—Payment of proceeds of sale to creditor.*]—*Held :* the transaction must be set aside for it was not really only a "payment of money to a creditor," saved out of the general provisions of Assignments & Preferences Act; R. S. O. 1914 (c. 134), by sect. 6. The transaction was substantially an appropriation of goods in part payment of a preferred creditor's claim, & the proceeds of the sale could be reached by the assignee under sect. 13.—MACKIE *v.* CATER (1921), 64 D. L. R. 511; 50 O. L. R. 452.—**CAN.**

sn. *Cheque obtained from debtor—Three days before bankruptcy—Accepted by bank on day of bankruptcy.*]—*Held :* a cheque does not operate as an assignment of the funds of drawer in the hands of the person on whom it is drawn; & unless payment was made by the drawee before the assignment it was not a payment protected by Assignments & Preferences Act, s. 6 (1); but if paid before the assignment it was a payment in cash at the date when the cheque was paid by the bank.—ROWLATT *v.* GARMENT (J. & G.) MANUFACTURING CO. (1921), 64 D. L. R. 88; 49 O. L. R. 166.—**CAN.**

7393a. Payment of proceeds of sale of shares—Payment before transfer.]—Certain stock-brokers within a fortnight of a receiving order being made against them sold shares for a client & paid the proceeds to him before the transfer was executed. The sale was effected by what is called " a put through " by which a jobber lends his name as purchaser, but no money is paid :—*Held :* the payment was made without pressure & was a fraudulent preference.—*Re* FELLOWES, O'BRIEN, GORDON & TOOTAL (CARRYING ON BUSINESS AS ELLIS & Co.) (1924), 68 Sol. Jo. 478.

7396. *Add. Annotation :*—**Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7404. *Add. Annotation :*—**Consd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

7414a. Payment to agent of creditor—Agent paying over sum to principal in course of business.]—A payment by a debtor to an agent who receives the money in the ordinary course of his employment for the use of a creditor is not a payment in favour of a " person in trust for any creditor," within 1914 Act, s. 44. The effect of that sect. is not to render the personal liability of an agent to repay a debt, payment of which he has received on behalf of his principal, greater than his liability in a case where money has been paid to him for the use of his principal in circumstances which entitle the person paying it to recover it back, even though it should turn out that, in fact, the payment constituted a fraudulent preference within the sect.

M. being indebted to G. & also to a co. for the price of goods supplied, on Jan. 14, 1921, paid to C. & B., agents of G. & the co. &, to the knowledge of debtor, authorised to receive the payment, the sum of £1,500 in settlement of the amounts respectively owing to G. & the co. The agents in the ordinary course of their employment received that sum for the use of their principals & paid over part thereof to G. & the balance to the co., such payment being made in good faith, in the belief that the payment was a good & valid payment, in ignorance of the impending bkpcy. of debtor & long before any claim by the trustees in the bkpcy. On Feb. 11, 1921, debtor committed an act of bkpcy. by assigning his property in favour of his creditors, & on Mar. 12, 1921, a receiving order was made against him on which he was adjudicated bkpt. Upon a motion by the trustees of bkpt. for an order on C. & B. as agents, neither of their principals having been made resps., to repay the £1,500 on the ground that the payment was void against the trustees as a fraudulent preference :—*Held :* (1) C. & B. received the money merely as agents of &

7395 iii. —— *Mortgagee party to fraud.*]—Debtor granted a mtge. to certain of his creditors. No money changed hands & at the time it was known to debtor & to the creditors, the mtgees., that debtor was insolvent. The mtge. was part of a scheme to give an undue preference :—*Held :* void under Assignments for Benefit of Creditors Act, 1898 (P. E. I) (c. 4), & might be set aside as against the trustee in bkpcy.—CAMPBELL *v.* GALLANT, CROCKETT & ROYAL BANK OF CANADA, *Re* MILLIGAN ESTATE (1922), 70 D. L. R. 320.—**CAN.**

a (p. 901) i. *Assignment for creditors.*]—Creditors who take under a composition affecting substantially the whole of debtor's property are entitled to the protection of Bkpcy. Act, s. 82, as against the official assignee, upon debtor shortly afterwards being adjudicated bkpt., provided the payment was before adjudication & that the creditors had not at the time of such payment notice of any available act of bkpcy committed before that time & acted in good faith.—*Re* COCHRANE, [1925] N. Z. L. R. 15.—**N.Z.**

so. *Dissolution of partnership—Act injurious to partnership creditors—Preference given to separate creditors.*]—*Re* ASSAF & DABOUS (Ont.), [1927] 1 D. L. R. 24 ; 7 C. B. R. 689.—**CAN.**

PART XX. SECT. 12, SUB-SECT. 5.

7407 i. *How time calculated—Assignment executed but not filed—Subsequent re-execution & filing.*]—An authorised assignment dated, executed, & delivered on Aug. 11, was re-executed on Sept. 11, & then filed :—*Held :* the assignment was not revocable at the will of assignor ; as soon as the trustee accepted the assignment it took effect as of the day of its original execution.—*Re* LONGMORE (1922), 52 O. L. R. 570 ; 3 C. B. R. 200.—**CAN.**

f i. —— *Law of Ontario.*]—A chattel mtge. impeached as a fraudulent preference under r. 120 by the trustee was made more than three months before the assignment to the trustee :—*Held :* although the chattel mtge. did not come within Bkpcy. Act, s. 31, the trustee could attack it as fraudulent under the laws of Ontario quite apart from the Act.—*Re* DAVISON, [1923] 4 D. L. R. 1049 ; 52 O. L. R. 244.—**CAN.**

PART XX. SECT. 12, SUB-SECT. 6.

m (p. 903). For " —— *In what court proceedings may be taken* " read " *In what court proceedings may be taken.*"

m (p. 903) i. ——.]—The fact that a fraudulent transfer was made in a province other than that in which the authorised assignment was made, does not deprive the ct. of the latter province with original jurisdiction with respect to the authorised assignment of jurisdiction to set aside the fraudulent transfer.—*Re* COHEN & MAHLIN, CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* SPIVAK (Alta.), [1926] 3 D. L. R. 942 ; [1926] 3 W. W. R. 34 ; *revsd.*, [1927] 1 D. L. R. 577 ; [1927] 1 W. W. R. 162 ; 22 Alta. L. R. 487 ; 8 C. B. R. 23.—**CAN.**

7412 ii. —— *Prior assignment of same property to same parties.*]—The fact of a prior assignment does not affect the right to set aside a later assignment of the same property to the same parties, & the setting aside of the later assignment does not affect rights under the prior assignment.—HODGE *v.* MCLEAN & UNION BANK OF CANADA, [1919] 3 W. W. R. 1108 ; 50 D. L. R. 123 ; 13 Sask. L. R. 85.—**CAN.**

7412 iii. —— *Denial by transferee that property belongs to bankrupt.*]—The words " property belonging to debtor " in Bkpcy. Act, s. 56 (8), have practically the same meaning as " property of debtor " used in sect. 25, & include property of debtor which has been dealt with by himself by transfer to a creditor, & the fact that an alleged fraudulent transferee from bkpt. does not admit that the property in question belongs to bkpt. does not prevent an application being brought under the above sect & Bkpcy. Rule 120, for the delivery of the property to the trustee.—*Re* HOULDING, [1921] 2 W. W. R. 521 ; 14 Sask. L. R. 277 ; 59 D. L. R. 238.—**CAN.**

7412 iv. —— *Discharge of bankrupt's liability by transaction.*]—A trustee in bkpcy. has no right to set aside a transfer made by bkpt. to a creditor whereby bkpt.'s liability to the creditor is discharged, even though the transfer amounts to a fraudulent preference.—*Re* REGAL PHONOGRAPH CO., *Ex p.* TRUSTEE, [1924] 1 D. L. R. 947 ; 4 C. B. R. 418.—**CAN.**

7412 v. —— *As against the Crown.*]—The provisions of Bkpcy. Act, 1908, relating to fraudulent preference do not bind the Crown.—OFFICIAL ASSIGNEE *v.* R., [1922] N. Z. L. R. 265.—**N.Z.**

7413 viii. —— *Person claiming property in question as owner & not as creditor not proper party.*]—*Re* STERNBERG, *Ex p.* TRIEFUS & STRIPP, LTD., [1925] 2 D. L. R. 203 ; 5 C. B. R. 237 ; *varying*, [1924] 2 D. L. R. 492 ; 4 C. B. R. 528.—**CAN.**

7414 iv. —— ——.]—In Assignments Act, R. S. S. 1909 (c. 142), s. 39, " sixty days thereafter " means sixty days after the date of the conveyance & not after the date of some prior agreement upon which such conveyance may have been made, & " such transaction " means the conveyance & not such prior agreement.—HODGE *v.* MCLEAN & UNION BANK OF CANADA, [1919] 3 W. W. R. 1108 ; 50 D. L. R. 123 ; 13 Sask. L. R. 85.—**CAN.**

w (p. 904) i. —— *After settlement by trustee of preferred creditor's claim.*]—*Re* TAYLOR (Ont.), [1926] 2 D. L. R. 877 ; 7 C. B. R. 550.—**CAN.**

sp. —— *Note given by purchaser of debtor's stock-in-trade indorsed to creditor—Note in hands of bonâ fide holder for value.*]—*Held :* the creditor could not be compelled to share ratably with the other creditors.—ROBERTSON *v.* HOLLAND (1888), 16 O. R. 532.—**CAN.**

sq. *Position of trustee — Cannot approbate & reprobate — Promissory notes transferred to & discounted by creditor.*]—*Re* LONGMORE (1922), 52 O. L. R. 570 ; 3 C. B. R. 200.—**CAN.**

st. —— *Estoppel by conduct.*]—S. made a bill of sale of certain chattels to deft. in order to protect the chattels against his creditors. Shortly afterwards S. made an assignment under Bkpcy. Act to pltf., who later sold at public auction the assets of S. not

for the use of the creditors in the ordinary course of their employment, & not as " persons in trust for any creditor " within 1914 Act, s. 44 ; (2) the circumstances under which the money was received & paid over precluded appcts. from recovering the money, even though it were proved that the payment, in fact, constituted a fraudulent preference, as to which the ct. did not consider it to be necessary to decide. *Semble :* (3) the personal liability of a person to whom payment has been made " in trust for any creditor " under 1914 Act, s. 44, must depend upon the facts of each case ; in particular, whether the trustee had acted in good faith & whether he still held the money or had paid it over to the creditor before having received notice that the payment constituted a fraudulent preference.—*Re* MORANT, *Ex p.* TRUSTEES, [1924] 1 Ch. 79 ; 93 L. J. Ch. 104 ; 130 L. T. 398 ; [1923] B. & C. R. 145.

7420. *Add. Citation :*—10 B. & S. 371.

7428. *Add. Annotations :*—**Consd.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76. **Refd.** Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52.

7430. *Add. Annotation :*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

7438. *Add. Annotation :*—**Refd.** *Re* Wigzell, *Ex p.* Hart, [1921] 2 K. B. 835.

7438a. —— ——.]—A father, having a power of appointment over a fund in favour of his children, agreed with his son to pay his debts, & then to appoint to him a portion of the fund equal to the amount of his debts, which he was then to hand over to the father. The father paid the debts, & made the appointment, when the son became bkpt. :—*Held :* the trustee had no right to the fund appointed. —*Re* ANGERSTEIN, *Ex p.* ANGERSTEIN (1874), 9 Ch. App. 479 ; 43 L. J. Bcy. 131 ; 30 L. T. 446 ; 22 W. R. 581, L. JJ.

7440. *Add. Annotation :*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

7442. *Add. Annotation :*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

7446. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

7447. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

7483a. —— **1914 Act, s. 45.**]—*Re* WETHERED, *Ex p.* SALAMAN, No. 6858b, *ante*.

7490. *Add. Annotation :*—**Refd.** *Re* Gunsbourg, [1920] 2 K. B. 426.

7503a. —— **1914 Act, s. 45—Transfer to private company formed by debtor & his solicitor.**]—*Re* SIMMS, No. 596a, *ante*.

7520. *Add. Annotation :*—**Consd.** Herbert's Trustee *v.* Higgins, [1926] Ch. 794.

7521. *Add. Annotation :*—**Refd.** *Re* Harris, *Ex p.* Shell-Mex & Official Receiver (1930), 99 L. J. Ch. 448.

7543. *Add. Annotation :*—**Consd.** Herbert's Trustee *v.* Higgins, [1926] Ch. 794.

7546a. —— **That bankruptcy notice served on debtor—& of petitioning creditor's intention to take bankruptcy proceedings.**]—Deft. to an action, in which the trustee in bkpcy. claimed that certain farm stock in a bill of sale given to deft. by bkpt. was in the reputed ownership of bkpt. & formed part of his estate, had been informed of the service on bkpt. of a bkpcy. notice, & later had been informed by the petitioning creditor that he was going to take bkpcy. proceedings against his debtor :—*Held :* a mere statement of intention to take bkpcy. proceedings amounted at most to a threat to file a petition, &, falling short of a notice of the actual presentation of a petition, it was not constructive notice of an available act of bkpcy.—HERBERT'S TRUSTEE *v.* HIGGINS, [1926] Ch. 794 ; 95 L. J. Ch. 303 ; 135 L. T. 321 ; 42 T. L. R. 525 ; 70 Sol. Jo. 708 ; [1926] B. & C. R. 26.

7574. *Add. Annotation :*—**Refd.** Herbert's Trustee *v.* Higgins, [1926] Ch. 794.

included in the bill of sale. On the same occasion the auctioneer sold, on instructions of S., the chattels included in the bill of sale & paid the proceeds to S. who left Canada without paying them to deft. :—*Held :* pltf., having refrained from attacking the bill of sale earlier & having allowed the sale to proceed & the moneys to be paid to S., it was too late to hold deft. liable.—*Re* STEVENS, IMPERIAL CANADIAN TRUST CO., LTD. *v.* NORTH AMERICAN LUMBER & SUPPLY CO., LTD., [1924] 2 W. W. R. 245 ; 4 C. B. R. 632 ; [1924] 2 D. L. R. 104.—**CAN.**

sw. *Avoidance of transfer fraudulent under general laws.*]—The right of a trustee in bkpcy. to take proceedings to avoid a transfer made by bkpt. which is in fraud of his creditors under general laws is impliedly authorised by Bkpcy. Act & the rules thereunder.—*Re* COHEN & MAHLIN, CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* SPIVAK (Alta.), [1926] 3 D. L. R. 942 ; [1926] 3 W. W. R. 34 ; *revsd.* [1927] 1 D. L. R. 577 ; [1927] 1 W. W. R. 162 ; 22 Alta. L. R. 487 ; 8 C. B. R. 23.—**CAN.**

1 (p. 906) i. —— —— —— *Bankruptcy Act, s.* 35—*Bankruptcy Rules, r.* 120.]—*Re* COHEN & MAHLIN, CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* SPIVAK (Alta.), [1926] 3 D. L. R. 942 ; [1926] 3 W. W. R. 341 ; *revsd.*, [1927] 1 D. L. R. 577 ; [1927] 1 W. W. R. 162 ; 22 Alta. L. R. 487 ; 8 C. B. R. 23.—**CAN.**

PART XX. SECT. 13, SUB-SECT. 1.

7430 v. ——.]—MERCHANTS BANK OF CANADA *v.* KEN MCCLARY & CO., [1921] 1 W. W. R. 940 ; 14 Sask. L. R. 187.—**CAN.**

sz. *Payment of wages.*]—Pltf., trustee in bkpcy. of the property of a co., sued defts. who were the directors & officers of the co., & the only shareholders except their wives, to recover sums of money withdrawn by defts. from the funds of the co. Defts. had earned a large part of the sums withdrawn as employees of the co. :—*Held :* pltf. co. as trustee had no *locus standi* to maintain the action ; its right was no greater than the right of the co. which it represented ; the bkpt. co. could not recover payments actually made by it for wages, nor could its trustee.—CANADIAN CREDIT MEN'S TRUST ASSOCN. *v.* REAUME, [1931] 4 D. L. R. 450 ; O. R. 398 ; 12 C. B. R. 429.—**CAN.**

PART XX. SECT. 13, SUB-SECT. 2.—A. (a).

sa. *Failure to make proper inquiries.*]—By Bkpcy. Act a creditor who takes a mtge. & fails to make the proper inquiries will be held to have knowledge of the insolvency of the mtgor. at the time of giving the mtge., & the mtge. will be set aside as a fraudulent preference.—*Re* THOMPSON, *Ex p.* TRUSTEES, [1923] 4 D. L. R. 1028.—**CAN.**

sb. ——.]—Where the circumstances under which a debt is paid are such that a strong suspicion would arise in the mind of an ordinary business man as to the *bona fides* of the payment, the payee ought to inquire closely into all the circumstances. Otherwise, if the payer becomes bkpt., the payment will be construed as a fraudulent preference. —*Re* STERNBERG (1924), 27 O. W. N. 212 ; *varying*, [1924] 2 D. L. R. 492 ; 4 C. B. R. 528.—**CAN.**

PART XX. SECT. 13, SUB-SECT. 2.—A. (b).

sc. *General rule.*]—When a person knows of an act of bkpcy. or wilfully refrains from making such inquiries as would give him such knowledge, or where the facts are such that an act of bkpcy. had been committed, such a person will be deemed to have notice.—*Re* HERSH, *Ex p.* GOLDSTEIN, [1923] 3 D. L. R. 101 ; 4 C. B. R. 84.—**CAN.**

7537 iv. —— *That debtor financially embarrassed.*]—*Held :* not of itself knowledge of insolvency.—*Re* WEBB (1921), 64 D. L. R. 633 ; 51 O. L. R. 5 ; 2 C. B. R. 16.—**CAN.**

7537 v. —— *That debtor hard pressed for money.*]—*Held :* not sufficient to infer that a creditor had constructive notice of an act of bkpcy.—*Re* ROBBINS, *Ex p.* ROOT, [1924] 3 D. L. R. 90 ; 4 C. B. R. 670.—**CAN.**

7577. *Add. Annotation :*—**Refd.** *Re* Chiandetti (1921), 91 L. J. K. B. 70.

7594. *Add. Annotation :*—**Consd.** *Re* Garrett, [1930] 2 Ch. 137.

7598. *Add. Annotation :*—**Apld.** *Re* Garrett, [1930] 2 Ch. 137.

7601. *Add. Citation :—revsg.* S. C. *sub nom. Re* WIX, *Ex p.* CHATTERBY, 29 W. R. 400.

7603a. —— **Employee of company—Refusal of company to pay—Termination of employment alleged.**]—Bkpt., after his adjudication, entered into an agreement of service in writing for one year at a salary of £1,000, the agreement being signed in the name of a joint stock co., underneath which was the name of the managing director followed by the words, "managing director." An order was subsequently made by a registrar, under 1914 Act, s. 51 (2), that £300 out of a sum of £416 13*s.* 4*d.* due under the agreement from the co. &/or its managing director to bkpt. be forthwith paid by them to the trustee of the estate of bkpt. When the registrar made that order the only parties before the ct. were the trustee & bkpt. Neither the co. nor its managing director paid the £300, but alleged that nothing was due to bkpt. upon the ground that he had broken the agreement by absenting himself from his employment. The trustee then served a notice of motion in the High Ct. upon the co. & its managing director asking for a declaration that he was entitled to the £300 from resps. as forming part of the property of bkpt., & for an order for payment of that amount. The judge found that no dismissal had taken place nor had bkpt., by his conduct, given notice of his intention not to perform the contract which could be treated by resps. as an anticipatory breach. No point was taken as to whether the managing director was properly made a resp. :—*Held :* in the circumstances there must be a declaration & order for payment in terms of the notice of motion.—*Re* LAVEY, *Ex p.* TRUSTEE, [1920] 1 K. B. 674 ; 89 L. J. K. B. 24 ; 122 L. T. 592 ; [1920] B. & C. R. 43 ; *subsequent proceedings*, [1920] B. & C. R. 180.

7607a. Police pension—Notwithstanding Police Pensions Act, 1921 (c. 31), s. 14 (1). *Re* GARRETT, No. 6296a, *ante.*

7610. *Add. Annotation :*—**Refd.** Nixon *v.* A.-G., [1931] A. C. 184.

7612. *Add. Annotation :*—**Consd.** *Re* Garrett, [1930] 2 Ch. 137.

7615a. Application of 1914 Act, s. 51 (2)—Immaterial whether property vested in trustee.] —*Re* GARRETT, No. 6296a, *ante.*

7615b. Effect of order—No vesting.]—*Re* GARRETT, No. 6296a, *ante.*

7626. *Add. Annotation :*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

7638. *Add. Annotations :*—**Refd.** *Re* Leeds & Batley Breweries & Bradbury's Lease, Bradbury *v.* Grimble, [1920] 2 Ch. 548 ; McIlroy *v.* Clements (1923), 67 Sol. Jo. 402 ; Rider *v.* Ford, [1923] 1 Ch. 541.

7639a. Contract for sale of goods.]—HUSSEY *v.* FIDDALL (1699), 12 Mod. Rep. 324 ; Holt, K. B. 95 ; 3 Salk, 59 ; 88 E. R. 1353.

Annotation :—**Refd.** Hitchin *v.* Campbell (1772), 2 Wm. Bl. 827.

7648a. —— **Assuming management of farm.**]—*Held :*—a sufficient election to take the term.—THOMAS *v.* PEMBERTON (1816), 7 Taunt. 206 ; 129 E. R. 83.

7648b. Milking cows.]—*Held :* assignees, having allowed bkpt.'s cows to remain upon the demised premises for two days & ordered them to be milked there, thereby became tenants to the lessor.—WELCH *v.* MYERS (1816), 4 Camp. 368 ; 171 E. R. 117, N. P.

7649a. —— ——.]—Where assignees put a term up to auction, to ascertain whether it was of value, without giving themselves out to be the proprietors, &, there being no bidders, interfered no further in the matter, & never received rents :—*Held :* they were not answerable in covenant to the lessor.—TURNER *v.* RICHARDSON (1806), 7 East, 335 ; 3 Smith, K. B. 330 ; 103 E. R. 129.

Annotations :—**Consd.** Copeland *v.* Stephens (1818), 1 B. & Ald. 593. **Distd.** Hanson *v.* Stevenson (1818), 1 B. & Ald. 303. **Apld.** Lindsay *v.* Limbert (1827), 12 Moore, C. P. 209. **Consd.** Williams *v.* Taylor (1869), 21 L. T. 612 ; Titterton *v.* Cooper (1882), 9 Q. B. D. 473. **Refd.** Hill *v.* Doble (1818), 2 Moore, C. P. 342 ; Williams *v.* Bosanquet (1819), 1 Brod. & Bing. 238 ; Doe d. Palmer *v.* Andrews (1827), 4 Bing. 348 ; Wollaston *v.* Hakewill (1841), 3 Man. & G. 297 ; Mackley *v.* Pattenden (1861), 30 L. J. Q. B. 225 ; Levi *v.* Ayers (1878), 3 App. Cas. 842 ; Hill *v.* East & West India Dock Co. (1884), 9 App. Cas. 448.

7649b. *S. P.* CARTER *v.* WARNE, No. 9026a, *post.*

7649c. —— ——.]—Where assignees for the purpose of preventing a distress paid arrears of rent due, at the same time intimating to the landlord that they did not mean to take to the lease unless it could be advantageously disposed of, & the effects were soon after sold & the lease was at the same time put up to sale by order of the assignees, but there were no bidders for it :—*Held :* they were not liable to the landlord as assignees of the lease.—WHEELER *v.* BRAMAH (1813), 3 Camp. 340 ; 170 E. R. 1404.

Annotations :—**Consd.** Copeland *v.* Stephens (1818), 1 B. & Ald. 593. **Distd.** Hanson *v.* Stevenson (1818), 1 B. & Ald. 303. **Refd.** Hancock *v.* Welsh (1816), 1 Stark. 347 ; Doe d. Palmer *v.* Andrews (1827), 4 Bing. 348 ; Goodwin *v.* Noble (1857), 8 E. & B. 587.

7650a. —— **Carrying on business for benefit of creditors.**]—Where the assignee kept bkpt. in the premises, carrying on the business for the benefit of the creditors from Nov. 15, 1823, until Apr. following, but on Dec. 22, 1823, had disclaimed the lease by letter to the landlord :—*Held :* the assignee, notwithstanding such disclaimer, had elected to

PART XX. SECT. 13, SUB-SECT. 2.—C.

7581 vi. —— ——.]—Every payment made by bkpt. within a short time of his bkpcy. is regarded with suspicion by the ct. as likely to be a fraudulent preference. The *onus* is on the payee to show that he had no knowledge of an available act of bkpcy., actual or constructive, that he gave some consideration for the payment & that he was actuated by no fraudulent motive in accepting such payment.—*Re* HOWARD GRAHAM & Co., *Ex p.* GRAHAM, [1923] 2 D. L. R. 1024 ; 3 C. B. R. 855.—**CAN.**

7581 vii. —— ——.]—*Re* GROCERY SPECIALTY CO., *Re* SHULMAN, [1923] 2 D. L. R. 316 ; 3 C. B. R. 46 ; *affd.*, 24 O. W. N. 90.—**CAN.**

PART XX. SECT. 16, SUB-SECT. 1.

1 i. —— *Right of trustee to give notice of intention to retain—Acceptance of rent by lessors.*]—*Held* Bkpcy. Act, s. 13 (15), extends sect. 52 (5) to all cases where proceedings are taken under sect. 13 so as to enable either trustee or debtor himself to overcome the forfeiture & elect to retain the demised premises for the whole or any part of the term. If this construction of the Act was wrong, the lessors had waived their rights by acceptance of rent with full knowledge of the circumstances & notice of election to retain.—*Re* MCKAY (1921), 51 O. L. R. 86 ; 2 C. B. R. 59 ; 64 D. L. R. 699.—**CAN.**

accept the lease.—CLARK *v.* HUME (1825), Ry. & M. 207; 171 E. R. 995.

7652a. —— —— **To prevent distress.**]—WHEELER *v.* BRAMAH, No. 7649c, *ante*.

7653a. —— ——.]—*Held:* to amount to an acceptance of the lease.—PAGE *v.* GODDEN (1818), 2 Stark. 309; 171 E. R 655.

7670a. —— ——.]—CARTWRIGHT *v.* GLOVER (1861), 2 Giff. 620; 30 L. J. Ch. 324; 3 L. T. 880; 7 Jur. N. S. 857; 9 W. R. 408; 66 E. R. 260.

Annotation:—**Refd.** Wilson *v.* Wallani (1880), 5 Ex. D. 155.

7681a. —— **Statutory tenancy—Under Rent Restriction Acts.**]—PARKINSON *v.* NOEL, No. 7782b, *post*.

7681b. —— —— ——.]—A statutory tenancy under the Rent Restriction Acts is not "property" of the statutory tenant within sect. 167 of the 1914 Act, &, therefore, it does not pass to his trustee in bkpcy. under sect. 63 of that Act, & is not extinguished on a disclaimer of it by the latter.—SUTTON *v.* DORF, [1932] 2 K. B. 304; 101 L. J. K. B. 536; 47 L. T. 171; 96 J. P. 259; 48 T. L. R. 430; 76 Sol. Jo. 359; 30 L. G. R. 312.

7689. *Add. Citation:*—*sub nom. Re* CLAYTON & BEAUMONTS' CONTRACT, 2 Mans. 345.

7689a. Shares—Subject to equitable charge.]—The registered owner of fully paid shares in a private co. charged them in favour of W., & handed him the certificates & a blank transfer. He subsequently gave other equitable charges to other mtgees. On the owner's bkpcy. his trustee disclaimed "all my interest" in the shares under 1914 Act, but, as the blank transfer was not completed & lodged & none of the mtgees. applied for a vesting order, bkpt.'s name remained on the register:—*Held:* (1) as between himself & the co., bkpt., so long as his name remained on the register, was entitled to vote in respect of the shares, though, as between himself & the mtgees., he could only vote as they dictated; (2) the trustee could not have disclaimed more than the equity of redemption in the shares. *Qu.:* whether a trustee can disclaim unincumbered fully paid shares. —WISE *v.* LANSDELL, [1921] 1 Ch. 420; 90 L. J. Ch. 178; 124 L. T. 502; 37 T. L. R. 167; [1920] B. & C. R. 145.

7692. *Add. Annotation:*—**Refd.** *Re* Wait, [1926] Ch. 962.

7693a. Sub-contract for sale of land—Contract for purchase of land need not be disclaimed.]—Where a person, who is subsequently adjudicated bkpt., has entered into a contract for the purchase of land & into a sub-contract to sell the same land with a building thereon to be erected by him, his trustee in bkpcy. is entitled to disclaim the sub-contract of sale without being obliged to disclaim the contract of purchase. If the sub-purchaser has paid a deposit he has a lien upon such interest in the land as bkpt. possessed before his bkpcy., including the right, if any, to specific performance of the contract of purchase of the land; he may also prove in the bkpcy. for any damage for breach of the agreement to build, but he is not entitled to specific performance of the contract to build, & his equity is subject to the overriding equity of the original vendor.—*Re* GOUGH, HANNING *v.* LOWE (1927), 96 L. J. Ch. 239; 71 Sol. Jo. 470; [1927] B. & C. R. 137, D. C.

7702. *Add Annotation:*—**Distd.** *Re* Katherine et cie, Ltd., [1932] 1 Ch. 70.

7704. *Add. Annotations:*—**Refd.** Wise *v.* Lansdell, [1921] 1 Ch. 420; *Re* Lister, *Ex p.* Bradford Overseers & Bradford Corpn., [1926] Ch. 149.

7707. *Add. Annotation:*—**Consd.** *Re* Katherine et cie, Ltd., [1932] 1 Ch. 70.

7735. *Add. Citations:*—*sub nom. Re* WEGG, *Ex p.* HANBURY, 12 L. J. Bcy. 43; *sub nom. Re* WEGG, *Ex p.* BANBURY, 7 Jur. 660.

7751. *Add. Annotations:*—**Consd.** *Re* Hyams, *Ex p.* Lindsay *v.* Hyams (1923), 93 L. J. Ch. 184. **Refd.** *Re* Lister, Bradford Overseers & Corpn. *v.* Durrance (1925), 42 T. L. R. 143.

7756. *Add. Annotation:*—**Consd.** *Re* Lister, Bradford Overseers & Corpn. *v.* Durrance (1925), 42 T. L. R. 143.

7756a. Right to compensation.]—Where the tenant of a farm held on a verbal tenancy becomes bkpt., & the trustee, having entered into possession of the farm, subsequently disclaims the tenancy, he is excluded from all benefit as well as liability thereunder, including the tenant-right or right to compensation under custom or statute for unexhausted improvements by the tenant, & the amount fixed for compensation having been paid by the incoming tenant to the landlord, to whom arrears of rent are due, the landlord is not bound to account for such payment.—*Re* WADSLEY, BETTINSON'S REPRESENTATIVE *v.* TRUSTEE (1925), 94 L. J. Ch. 215; [1925] B. & C. R. 76, D. C.

7764a. —— **Liability for rates for period of occupation until disclaimer.**]—Where a trustee in bkpcy. goes into occupation of onerous property & subsequently disclaims the property, he is liable to pay the rates on the property for the period of his occupation.—*Re* LISTER, BRADFORD OVERSEERS & CORPN. *v.* DURRANCE (1925), 95 L. J. Ch. 145; 42 T. L. R. 143; 89 J. P. Jo. 692, C. A.; *sub nom. Re*

PART XX. SECT. 16, SUB-SECT. 5.—A.

7666 i. *Right to disclaim—Lease.*]—OFFICE SPECIALTY MANUFACTURING CO. *v.* EASTERN TRUST CO., [1931] 3 M. P. R. 526.—**CAN.**

7672 i. *Within what time—Extension of time—Power of court to grant.*]—*Re* ROGERS (DECEASED) (1926), 26 S. R. N. S. W. 526; 43 N. S. W. W. N. 143.—**AUS.**

7676 i. *Sufficiency of disclaimer — Delay in taking decisive steps.*]—By virtue of Bkpcy. Act, s. 52, when the trustee does not decide, within a month after the bkpcy., to retain premises held under a tenancy not yet expired, this is taken to be a disclaimer of the premises & puts an end to the tenancy & also to a sub-tenancy created by the tenant.—SEGUIER *v.* DUFRESNE (1922), Q. R. 60 S. C. 525.—**CAN.**

7676 ii. —— *Verbal disclaimer—No consent of creditors.*]—*Held:* the assignee could not make a disclaimer of a debt without the consent of the creditors.—BROWNE *v.* SIDNEY MILLS, LTD., [1920] 28 B. C. R. 73.—**CAN.**

PART XX. SECT. 16, SUB-SECT. 5.—E.

7761 i. *On trustee—Right to remove fixtures.*]—Where A. purchased a tenant's interest in leased premises including trade fixtures & the last tenant had made an assignment for the benefit of creditors to deft., who gave a disclaimer:—*Held:* the fixtures belonged to deft., & he had the right to remove them within the three months' delay given by Creditors' Trusts Deeds Act, s. 55 (1).—WINTEMUTE *v.* TAYLOR, [1919] 2 W. W. R. 882.—**CAN.**

sd. *On creditors—Disclaimer of assets.*] —A secured creditor put in a claim against bkpt.'s estate for certain assets, which assets the trustee disclaimed:—*Held:* the ct. could not order the trustee to accept those assets as part of the estate.—*Re* CANADIAN CARPET & COMFORTER MANUFACTURING CO., *Ex p.* A.-G. FOR CANADA, [1924] 4 D. L. R. 1307; 5 C. B. R. 54.—**CAN.**

LISTER, *Ex p.* BRADFORD OVERSEERS & BRADFORD CORPN., [1926] Ch. 149; *sub nom. Re* LISTER, *Ex p.* BRADFORD OVERSEERS & CORPN. *v.* DURRANCE, 134 L. T. 178; 90 J. P. 33; 24 L. G. R. 67; [1926] B. & C. R. 5.

7769. *Add. Annotations:* — **Refd.** Harrison *v.* Holland, [1921] 3 K. B. 297; Chillingworth *v.* Esche, [1923] 1 Ch. 576.

7778. *Add. Annotations:* — **Consd.** *Re* Hyams, *Ex p.* Lindsay *v.* Hyams (1923), 93 L. J. Ch. 184. **Refd.** *Re* Lister, Bradford Overseers & Corpn. *v.* Durrance (1925), 42 T. L. R. 143.

7778a. —— ——.]—After a debtor has been adjudicated bkpt. & his trustee has disclaimed a lease belonging to him, the property thereby demised revests in the landlord under 1914 Act, s. 54 (2), & he may obtain an order for delivery of possession. Neither the subsequent annulment of the bkpcy. nor the acceptance by the landlord from debtor of rent due for a period ending before the disclaimer operates to revest any interest in the lease in debtor.—*Re* HYAMS, *Ex p.* LINDSAY *v.* HYAMS (1923), 93 L. J. Ch. 184; 130 L. T. 237; [1923] B. & C. R. 173, C. A.

7782a. —— **Rights as to statutory tenancy—Under Rent Restriction Acts.**]—The effect of a disclaimer by a trustee in bkpcy. of bkpt.'s interest in a quarterly tenancy is to deprive the tenant of any further interest in the demised premises, &, consequently, he is debarred from relying on a statutory tenancy therein under the above Acts.—REEVES *v.* DAVIES, [1921] 2 K. B. 486; 90 L. J. K. B. 675; 125 L. T. 354; 37 T. L. R. 431, C. A.

Annotations:—**Consd.** Roe *v.* Russell, [1928] 2 K. B. 117. **Refd.** Mellows *v.* Low, [1923] 1 K. B. 522; Parkinson *v.* Noel, [1923] 1 K. B. 117.

7782b. —— —— ——.]—A statutory tenancy under Increase of Rent & Mortgage Interest Restrictions Act, 1920 (c. 17), is "property" of the tenant within 1914 Act, s. 167.

Pltfs. having let to deft. a dwelling-house to which the Act of 1920 applied, deft. retained possession of it after the expiration of the term under the provisions of that Act. Deft. was afterwards adjudicated bkpt., & the trustee in bkpcy. disclaimed any interest in the house. In an action by pltfs. against deft. for possession of the house & mesne profits:—*Held:* (1) the statutory tenancy to which deft. became entitled under the Act of 1920 was "property" within 1914 Act, s. 167, & passed under sect. 53 to his trustee in bkpcy; (2) on disclaimer thereof by the trustee that interest in the premises ceased to exist & was no longer available for the benefit of deft., & consequently pltfs. were entitled to judgment.—PARKINSON *v.* NOEL, [1923] 1 K. B. 117; 92 L. J. K. B. 361; 128 L. T. 538; 67 Sol. Jo. 184; 21 L. G. R. 130.

Annotations:—*As to* (1) **Consd.** Keeves *v.* Dean, Nunn *v.* Pellegrini, [1923] 2 K. B. 804. **Expld.** Lovibond *v.* Vincent, [1929] 1 K. B. 687. **Overd.** Sutton *v.* Dorf (1932), 76 Sol. Jo. 359. *As to* (2) **Refd.** Mellows *v.* Low, [1923] 1 K. B. 522; Roe *v.* Russell, [1928] 2 K. B. 117.

7782c. —— —— ——.]—SUTTON *v.* DORF, No. 7681b, *ante*.

7789a. On mortgagee — Of shares — Bankrupt's name still on register.]—WISE *v.* LANSDELL, No. 7689a, *ante*.

7791. *Add. Annotations:*—**Refd.** Wise *v.* Lansdell, [1921] 1 Ch. 420; *Re* Lister, *Ex p.* Bradford Overseers & Bradford Corpn., [1926] Ch. 149.

7793. *Add. Annotation:*—**Refd.** *Re* Katherine et cie, Ltd., [1932] 1 Ch. 70.

7793a. —— —— ——.]—MORRIS (D.) & SONS, LTD. *v.* JEFFREYS (1932), 49 T. L. R. 76.

7801a. —— ——.]—NAISH *v.* TATLOCK (1794), 2 Hy. Bl. 319; 126 E. R. 573

Annotations:—**Consd.** Vincent *v.* Godson (1853), 1 Sm. & G. 384. **Refd.** How *v.* Kennet (1835), 3 Ad. & El. 659.

7801b. —— ——.]—BEARD *v.* DAVIDSON (1843), 1 L. T. O. S 646.

7811. *Add. Annotation:*—**Consd.** *Re* Farrow's Bank, [1921] 2 Ch. 164.

7821. *Add. Annotations:*—**Refd.** *Re* Hyams, *Ex p.* Lindsay *v.* Hyams (1923), 93 L. J. Ch. 184; *Re* Lister, Bradford Overseers & Corpn. *v.* Durrance (1925), 42 T. L. R. 143.

7832. *Add. Annotations:*—**Refd.** *Re* Hyams, *Ex p.* Lindsay *v.* Hyams (1923), 93 L. J. Ch. 184; *Re* Lister, Bradford Overseers & Corpn. *v.* Durrance (1925), 42 T. L. R. 143.

7835. *Add. Annotations:*—**Refd.** *Re* Hyams, *Ex p.* Lindsay *v.* Hyams (1923), 93 L. J. Ch. 184; *Re* Lister, Bradford Overseers & Corpn. *v.* Durrance (1925), 42 T. L. R. 143.

7836. *Add. Annotations:*—**Refd.** *Re* Hyams, *Ex p.* Lindsay *v.* Hyams (1923), 93 L. J. Ch. 184; *Re* Lister, Bradford Overseers & Corpn. *v.* Durrance (1925), 42 T. L. R. 143.

7770 ii. —— *Right to* —— A monthly tenant remained in possession after being adjudicated insolvent. The official assignee having disclaimed interest:—*Held:* the landlord was entitled to an order for possession.—*Re* ABUBAKER HAJI ABDULLA (1924), I. L. R. 48 Bom. 580.—**IND.**

7787 iii. ——.]—A disclaimer of a lease by an assignee for the benefit of creditors:—*Held:* to operate as a forfeiture & not as a surrender, & to effect the termination of a sub-lease granted by the assignor.—KERR *v.* CAPITAL GROCERY, LTD., [1921] 1 W. W. R. 1221; 59 D. L. R. 388; 1 C. B. R. 490.—**CAN.**

7788 i. —— *Liability to ejectment.*]—Where a tenant, who has replaced bkpt. on disclaimer of the lease by the trustee, has begun an action of ejectment against the sub-tenant, who refuses to quit the premises, if the latter does not avail himself of his rights under 11 & 12 Geo. 5, c. 17, s. 43, but contests the action & allows it to proceed to judgment, he cannot then present a petition invoking his rights.—SEGUIER *v.* DUFRESNE (1922), Q. R. 60 S. C. 525.—**CAN.**

PART XX. SECT. 16, SUB-SECT. 6.

7815 i. *In what cases—Trustee electing not to take.*]—The order for possession under Bkpt. & Insolvent Act, 1857 (Ir.), s. 271, is consequential upon the order to assignees to elect, & though the judge has a discretion, yet upon the assignees electing not to take the premises, there is a *primâ facie* duty upon the judge to make the order for possession unless good reason is shown to the contrary, the object of the sect. being to protect the landlord from being left with a bkpt. tenant.—*Re* KEANE (1922), 57 I. L. T. 5.—**IR.**

PART XX. SECT. 17, SUB-SECT. 1.

6 i. ——.]—The debtor co., before its authorised assignment in bkpcy., was indebted to its landlord for rent. The landlord distrained for rent, & the debtor's goods on the demised premises were under seizure by the landlord & in its possession when the debtor's assignment became effective, & a custodian was appointed:—*Held:* the landlord was at that time a secured creditor, within Bkpcy. Act, & the custodian, as custodian, never came into possession of the goods under distress for rent.—*Re* PATERSON (D. S.) & Co., [1931] O. R. 777; 12 C. B. R. 433.—**CAN.**

7847 ii. ——.]—In Saskatchewan the effect of Landlord & Tenant Act, R. S. S., 1930, & of Bkpcy. Act, R. S. C., 1927, is that on a bkpcy. the liquidator or trustee may affirm & retain any tenancy held by his assignor. He may disclaim the tenancy or lease, & as trustee continue in occupation of the leased premises for so long as he shall require the premises for the purposes of the trust estate, paying rental therefor, & that occupation by the trustee is subject to sect. 45 (2) of said Landlord & Tenant Act. If the trustee elects to disclaim the lease or tenancy any acceleration clause in the lease is statutorily avoided, the right of the landlord to distrain or realise his rent by distress ceases, & the landlord is deprived of any right he might have to prove as a creditor for any portion of the unexpired term of the lease. Because of, & only when the landlord is statutorily deprived of these rights, or any of them, & when the lessee has such goods or chattels on which the

7867a. One year's rent due before registration of composition deed.]—WILLIAMS *v.* CADBURY (1867), L. R. 2 C. P. 453; 36 L. J. C. P. 233; 16 L. T. 354; 15 W. R. 905.

Annotations :—**Distd.** Selby *v.* Greaves (1868), L. R. 3 C. P. 594. **Folld.** *Re* Douglas, *Ex p.* Ryder (1871), 6 Ch. App. 418.

7868. *Add. Annotation :*—**Apld.** *Re* Wells, [1929] 2 Ch. 269.

7869. After this case add :—

——.]—*See* Bkpcy. Act, 1914 (c. 59), s. 35 (1).

7869a. ——.]—The lessee of a farm, in respect of which the rent was payable quarterly, died intestate in 1928, & his administratrix entered into possession. Subsequently an order for administration was made in respect of the estate of the lessee, which was insolvent. At the date of the order one quarter's rent was unpaid. A receiver was appointed, & ultimately the lessor, three quarters' rent being by that time due to him, took out a summons, in the administration action, for the purpose of ascertaining whether, having regard to Administration of Estates Act, 1925 (c. 23), s. 34 (1), which applied the law of bkpcy. to the administration of insolvent estates, he was entitled to distrain on the property :—*Held :* there was nothing in 1914 Act which interfered with the landlord's right to distrain, & he was entitled to distrain for the three quarters' rent.—*Re* WELLS, [1929] 2 Ch. 269; 98 L. J. Ch. 407; 141 L. T. 323; [1929] B. & C. R. 119.

7878. *Add. Annotation :*—**Apld.** *Re* Johns, Worrell *v.* Johns, [1928] Ch. 737.

7913. *Add. Citation :*—12 L. T. 25.

7931a. ——.]—Assignees of a bkpt. agreed to sell a part of his estate, & filed a bill for specific performance. It turned out that the estate was vested in an assignee under a previous insolvency. After the master had made his report, upon a reference as to title, the assignee in insolvency offered to concur in the sale :—*Held :* a good title could be made.—SIDEBOTHAM *v.* BARRINGTON (1841), 4 Beav. 110; 10 L. J. Ch. 302; 5 Jur. 429; 49 E. R. 280.

Annotation :—**Reld.** Fraser *v.* Wood (1845), 8 Beav. 339.

7949. *Add. Annotations :*—**Apld.** Farey *v.* Cooper, [1927] 2 K. B. 384. **Reld.** Boorne *v.* Wicker, [1927] 1 Ch 667.

7950. *Add. Annotations :*—**Apld.** Farey *v.* Cooper, [1927] 2 K. B. 384. **Reld.** Boorne *v.* Wicker, [1927] 1 Ch. 667.

7950a. —— ——.]—If bkpt. join with his trustee in selling the goodwill & business previously carried on by bkpt., & agrees with the purchaser not to carry on a similar business within a prescribed district, such agreement is binding on him.—BUXTON & HIGH PEAK PUBLISHING & GENERAL PRINTING CO. *v.* MITCHELL (1885), 1 Cab. & El. 527.

Part XXI.—Actions, Arbitrations, and other Legal Proceedings by and against Trustee and Bankrupt.

7968a. —— ——.]—*Qu. :* whether the assignee of an insolvent can maintain an action against an attorney for negligence in preparing a lease for the insolvent, whereby he failed to obtain possession of the premises demised.—DELAFIELD *v.* FREEMAN (1829), 6 Bing. 294; 3 Moo. & P. 704; 8 L. J. O. S. C. P. 70; 130 E. R. 1293.

landlord has distrained, or would be entitled to distrain, the trustee shall pay to the landlord in the distribution of the estate in priority to all other debts, an amount not exceeding the value of the distrainable assets & not exceeding three months' rent accrued due prior to the date of the receiving order or assignment.—NEW REGINA TRADING CO., LTD. *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1932] 2 W. W. R. 692.—**CAN.**

PART XX. SECT. 17, SUB-SECT. 3.

se. *Property claimed by lienholders & mortgagees.*]—*Held :* the prohibition in Landlord's Rights (Bkpcy.) Act, Alta., 1924 (c. 12), s. 3, as to distress for rent not applicable to above property, the estate having no beneficial interest therein.—*Re* HAMILTON & OAKES, [1928] 2 D. L. R. 514; [1925] 1 W. W. R. 172; 5 C. B. R. 465.—**CAN.**

PART XX. SECT. 17, SUB-SECT. 4.

r i. ——.]—A sheriff who has seized & is in possession under a landlord's distress warrant prior to the tenant making an authorised assignment under Bkpcy. Act, is bound to hand over the goods to the trustee in bkpcy. on demand.—*Re* WORK & DAY ESTATE, [1921] 2 W. W. R. 94; 58 D. L. R. 377; 1 C. B. R. 553.—**CAN.**

PART XX. SECT. 17, SUB-SECT. 5.

7866 vii. —— ——.]—A landlord claimed, in bkpcy. proceedings, the same priority in respect of taxes as for the rent :—*Held :* while a mere covenant to pay taxes is not a covenant to pay rent, the parties to a lease can stipulate that the taxes which the lessee covenants to pay shall be deemed to be rent & may be recovered in the same way; & the landlord has the same priority in respect of the unpaid taxes as he has in respect of rent fixed by the *reddendum.*—*Re* NATIONAL PIANO CO., [1931] 3 D. L. R. 298; 66 O. L. R. 303; 12 C. B. R. 52.—**CAN.**

7868 ii. ——.]—*Re* WILLIAMSON (1927), 38 B. C. R. 479.—**CAN.**

d i. —— *Goods seized by landlord—Liability for costs of seizure.*]—*Held :* the trustee was entitled to the possession of the goods without paying the costs of the seizure.—GARDNER *v.* GUY STREET GARAGE (1922), 70 D. L. R. 57.—**CAN.**

PART XX. SECT. 18, SUB-SECT. 1.

7907 v. —— *Bond—Purchased by bankrupt from trust of which bankrupt sole trustee—Refusal to assign—Person appointed to assign.*]—The estate of bkpt., who was serving a sentence of penal servitude, included an interest amounting to £50 in a bond & disposition in security. He had bought the interest from a trust in which he was sole trustee, but he had never had the title transferred from himself as trustee to himself as an individual. The borrower offered to repay the loan on receipt of a valid discharge, but he would not accept a discharge signed by the trustee in bkpcy. The trustee, therefore, prepared an assignation of the bond by bkpt. to himself, but bkpt. refused to sign it, & persisted in his refusal in spite of an order pronounced upon him in the Sheriff Ct. No pains could follow, as bkpt. was already in prison. The trustee then presented a petition craving the ct. to authorise the clerk of ct. to sign the assignation on bkpt.'s behalf. The parties interested in the execution of the assignation in the manner proposed having lodged in process letters of consent thereto, the ct., in view of the small sum involved, granted the prayer of the petition.—PENNELL'S TRUSTEE, [1928] S. C. 605.—**SCOT.**

PART XX. SECT. 18, SUB-SECT. 2.

h i. —— *Nature of trustee's title.*]—DOE d. RANKIN *v.* ANDREWS (1883), 22 N. B. R. 425.—**CAN.**

sf. *Interference by court.*]—*Re* GOLDBERG (Ont.), [1927] 4 D. L. R. 775; 8 C. B. R. 468.—**CAN.**

PART XX. SECT. 18, SUB-SECT. 4.

sg. *Inadequacy of price—Whether ground for rescission.*]—The ct., under the circumstances of the case, refused, upon the application of a debtor who had assigned all his property in trust for his creditors, to set aside a sale made by the trustees, on the ground of inadequacy of price.—LINTON *v.* MICHIE (1859), 7 Gr. 182.—**CAN.**

7974. Delete the words "the damage suffered, if any . . . claim should be made."

7984. *Add. Annotation :*—**Consd.** Wilson *v.* United Counties Bank, [1920] A. C. 102.

7992. *Add. Annotation :*—*As to* (1) **Refd.** Ellis *v.* Torrington (1919), 89 L. J. K. B. 369.

8002. After this case add "*See, now,* Order of the Lord Chancellor, dated Aug. 15, 1921, [1921] W. N. 362."

8025a. —— **Sale of goods—After making of vesting order.**]—FORD *v.* DABBS (1843), 5 Man. & G. 309 ; 6 Scott, N. R. 192 ; 12 L. J. C. P. 134 ; 134 E. R. 583.

Annotations :—**Refd.** Williams *v.* Chambers (1847), 10 Q. B. 337 ; Jackson *v.* Burnham (1852), 8 Exch. 173.

8033. *Add. Annotation :*—**Refd.** Anglo-Baltic & Mediterranean Bank *v.* Barber, [1924] 2 K. B. 410.

8040a. —— ——.]—A. was in possession, on Oct. 23, 1847, of barges which had belonged to the bkpt. On Oct. 29, A. sold to B. A flat issued Nov. 4 on an act of bkpcy. com-

PART XXI. SECT. 3, SUB-SECT. 1.

k (p. 977) i. *power of attorney.*]—A trustee ——— in Ontario was replaced by a trustee resident in Quebec, who was authorised to proceed with the action of the former trustee but failed to produce any power of attorney :—*Held :* production not necessary.—MORRIS *v.* KLINE, DEMERS, GARNISHEE (1922), 66 D. L. R. 330.—**CAN**

sh. *Duty to sue in official name.*]—Pltf., in his official capacity as trustee in bkpcy., used his own name instead of his official title in an action :—*Held :* to avoid any difficulty the action should be treated as an issue directed under Bkpcy. Rule 120, as the form of action only affected the question of costs. It was of no real consequence as Bkpcy. Act, s. 16, providing that the trustee may sue in his own name, is permissive.—FITZGERALD *v.* MCMORROW, [1923] 4 D. L. R. 619 ; 52 O. L. R. 383 ; 3 C. B. R. 29.—**CAN.**

7998 ii. ——.]—Except in those cases where a creditor is authorised under Bkpcy. Act, s. 35, to take proceedings, any proceeding to be taken for the benefit of bkpt.'s or authorised assignor's estate must be taken by the trustee or authorised assignee.—HOULDING *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1921] 2 W. W. R. 899 ; 14 Sask. L. R. 356.—**CAN.**

8000 iii. —— *Proceedings begun in wrong court—Transfer of proceedings.*] —Where proceedings had been commenced in the wrong ct. :—*Held :* the proceedings should be continued under Bkpcy. Act. r. 120 ; & an order transferring the proceedings to the bkpcy. side should be made if necessary.—SALTER & ARNOLD, LTD. *v.* DOMINION BANK, [1922] 3 W. W. R. 209 ; 68 D. L. R. 762.—**CAN.**

8000 iv. —— *Application at chambers for declaration—Matter within jurisdiction of Bankruptcy Court.*]—Where there was no question in the action that could not be fully & effectually dealt with by the judge in bkpcy. in the summary way provided by r 120 : —*Held :* the application must be referred to the judge in bkpcy. to be dealt with by him, an *interim* injunction to stand in the meantime.—EASTERN TRUST CO. *v.* LLOYD MANUFACTURING CO., [1923] 2 D L. R 852 ; 56 N S. R 246 ; 3 C. B. R. 710.—**CAN.**

8000 v. —— *Action to set aside settlement made by bankrupt.*]—A trustee in bkpcy. brought action in the Supreme Ct. to set aside a settlement made by bkpt. in favour of deft. & voidable under Bkpcy. Act, s. 29 :—*Held :* the action was improperly taken ; the trustee should have proceeded under r. 120, which provides a summary method of disposing of matters of this kind by a motion in chambers, which may afterwards take the form of an issue or trial ; the ct. should discountenance costly proceedings when summary & inexpensive proceedings are open to the trustee.—STILLWATER LUMBER & SHINGLE CO. *v.* CANADA LUMBER & TIMBER CO., [1923] 2 D. L. R. 900 ; 32 B. C. R. 81 ; [1923] 1 W. W. R. 1333.—**CAN.**

8000 vi. —— *Proceedings to set aside sale or transfer by bankrupt.*]—An action by a trustee in bkpcy. to set aside a conveyance by debtor must be commenced as prescribed by r. 120, by summary application to the bkpcy. judge in chambers, & not by a writ of summons in the Ct. of K. B.—*Re* VISCOUNT GRAIN GROWERS CO-OPERATIVE ASSOCN.'S TRUSTEE *v.* BRUMWELL & ROYAL BANK, [1924] 3 D. L. R. 803 ; [1924] 3 W. W. R. 54 ; 5 C. B. R. 94.—**CAN.**

8000 vii. —— *Appellate court—Appeal against judgment in favour of bankrupt—Judgment assigned by bankrupt to third party.*]—*Held :* the trustee in bkpcy. had a right to resume the action in the interest of the estate.—FREEDMAN *v.* HART, *Re* BAITTLE (1922), 68 D L. R. 283 ; 2 C. B. R. 536.—**CAN.**

sj. *Assent of inspectors—Whether necessary—Motion for directions.*]—*Re* JACOBSON, *Ex p.* GOLDBERG (N. B.), [1927] 2 D. L. R. 363 ; 8 C. B. R. 258.—**CAN.**

sk. *Application for interim injunction—Undertaking as to damages.*]—*Held :* should be made binding on a trustee in bkpcy. personally, when suing in his official capacity, unless the ct. is satisfied that the estate in his hands will be sufficient to answer damages. A trustee is under no obligation to take such a proceeding without proper indemnity from the creditors.—BRENNER'S TRUSTEE *v.* BRENNER, [1923] 3 D. L. R. 1097 ; 52 O. L. R. 374 ; 3 C. B. R. 84.—**CAN.**

sl. *Right to take proceedings under State Bankruptcy Act—Effect of Federal Act.*]—Prior to the date of the commencement of the Bkpcy. Act, 1924-192[illegible], an order for the sequestration of the estate of P. was made in the Bkpcy. Ct. of this State. Subsequently to that date the official assignee had taken out a notice of motion under Bkpcy. Act, 1898, s. 134, claiming against E. certain property as part of the bankrupt's estate :—*Held :* the official assignee had, under the State Bankruptcy Act, prior to the commencement of the Bankruptcy Act, 1924-1928, acquired the right, & had a duty imposed on him, to institute the proceedings under sect. 134 of the State Act.—*Re* PARSONS (1928), 28 S. R. N. S. W. 575 ; 45 N. S. W. W. N. 158.—**AUS.**

PART XXI. SECT. 3, SUB-SECT. 2.

Against holder of lien note on]—*Description of chattels alleged insufficient.*]—*Held :* the trustee had no status to attack the lien note & it was valid as against him. The holder of the note must, on demand by the trustee, identify the chattels within ten days.—*Re* GAUDREAU, *Ex p.* CARRUTHERS (1922), 68 D. L. R. 783.—**CAN.**

8028 ii. —— *Action already brought by bankrupt.*]—*Held :* It might be continued by the trustee.—BRENNER *v.* AMERICAN METAL CO., [1920] 19 O. W. N. 239 ; 55 D. L. R. 702 ; 1 C. B. R. 375.—**CAN.**

8034 ii. —— *Unpaid purchase price of shares—Sold by broker.*]—Where a trustee in bkpcy. gave shares belonging to bkpt.'s estate to a broker to be sold by him & the broker became bkpt. :—*Held :* the trustee was entitled to sue the purchaser for the price of the shares.—FINLAYSON *v.* BALFOUR, WHITE & CO., *Re* THORNTON DAVIDSON & CO. (1922), 70 D. L. R. 66.—**CAN.**

sn. *Action to recover money paid by bankrupt in breach of trust.*]—The trustee in bkpcy. has no right of action, at least without authority from the *cestuis que trust,* to recover trust money which was held by bkpt. & paid by him in breach of trust to others.—SALTER & ARNOLD, LTD. *v.* DOMINION BANK, [1922] 2 W. W. R. 280 ; 68 D. L. R. 757.—**CAN.**

k i. *Proceedings to recover land acquired collusively by third party.*]—TRUSTEE, ETC. *v.* PARUK (1921), 42 N. L. R. 1.—**S. AF.**

11. *Proceedings to set aside writ—Issued by mortgagee to enforce security.*] —An assignment under Bkpcy. Act does not prevent the holder of a mtge. upon a vessel from enforcing his security before the Exch. Ct. in Admlty., & a motion by the assignee to set aside the writ of summons & warrant of arrest issued in the ct. by the mtgee. against the ship should be dismissed with costs. The only right of the assignee under Bkpcy. Act is to defend the action & he cannot otherwise interfere therein.—WHITE & CO. *v.* THE IONIA (1922), 69 D. L. R. 94 ; 20 Exch. C. R. 327.—**CAN.**

so. *Proceedings to impeach sale of goods under Bulk Sales Act,* 1917.]—*Re* PACKER, [1927] 3 D. L. R. 330 ; 60 O. L. R. 402.—**CAN.**

sp. *Proceedings to recover debts—Presidency Towns Insolvency Act.*]—Presidency Towns Insolvency Act, s. 7, is not limited in its scope to matters in which the official assignee, by the operation of the insolvency law, claims a higher title than what the insolvent himself would have had, & the official assignee is entitled to proceed by way of motion under sect. 7 in cases where he has a money claim against strangers to the insolvency, the only limitation placed on the jurisdiction of the Insolvency Ct. being that, when once the official assignee has summoned a witness, under sect. 36 of the Act, & that witness disputes his indebtedness, the official assignee has no option but to proceed by way of suit. Where the official assignee, standing in no higher position by reason of the special provisions of the insolvency law than the bkpt. himself seeks to recover a debt which is not admitted, it is a matter of discretion for the judge sitting in insolvency whether in any given case he should deal with such a claim in the Insolvency Ct. or refer it to the machinery of the ordinary cts.—OFFICIAL ASSIGNEE *v.* NARASIMHA MUDALIAR (1929), I. L. R. 52 Mad. 717.—**IND.**

sq. *Action under Deaths by Accident Compensation Act,* 1908.]—The statutory rights of action, given to a person by Deaths by Accident Compensation Act, 1908, does not in the event of such person's bkpcy. pass to the official assignee under Bkpcy. Act, 1908, s. 61.—*Re* RICHTER, [1929] N. Z. L. R. 364.—**N.Z.**

mitted Nov. 3. The barges were demanded from A. in Mar. 1848 :—*Held :* the assignees could not maintain trover against A. upon counts stating the possession of the assignees & a conversion pending their title.—STANFIELD *v.* STAFFF (1849), 13 L. T. O. S. 489.

8044. *Add. Annotation :*—**Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

8064. *Add. Annotation :*—**Refd.** Ord *v.* Ord, [1923] 2 K. B. 432.

8089. *Add. Annotation :*—**Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

8092. *Add. Annotations :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371 ; Sullivan *v.* Constable (1932), 48 T. L. R. 267.

8097. *Add. Annotation :*—**Consd.** Knight *v.* Ponsonby, [1925] 1 K. B. 545.

8104a. —— **Costs of carrying out order of court.**]—Upon a motion by a trustee in bkpcy. to which bkpt.'s wife was resp. a declaration was made that certain furniture which was upon premises occupied by bkpt. & his wife formed part of the property of bkpt. divisible among the creditors, & the ct. ordered the wife to account on oath before a registrar for the furniture & to pay the taxed costs of & incident to the motion. At the end of the declaration & order a provision was inserted, at the request of, & by way of indulgence to, the wife that, with a view to the furniture being bought by or on behalf of the wife from the trustee at a valuation by an independent valuer to be appointed by the parties or in case of difference to be appointed by the judge, & the wife undertaking not to part with or dispose of the furniture, execution should not issue except by leave of the judge. The furniture was valued by a firm of valuers selected by the wife out of three firms suggested by the trustee, & bought by or on behalf of the wife at a price based upon the valuation. Upon the taxation of the trustee's solrs.' bill of costs, the taxing master disallowed as against the wife the fee paid by the trustee to the firm of valuers, upon the ground that the costs relating to the purchase of the furniture by or on behalf of the wife under the valuation did not come within the order, & were not costs of carrying it out. On a motion by the solrs. to review the taxation :—*Held :* the taxation must be reviewed & the fee for the valuation allowed as against the wife, inasmuch as it formed part of the costs of carrying out the order & was therefore within the rule that where costs of suit are given generally by decree at the hearing, the subsequent costs of working out the directions of the decree will be included.—*Re* LAVEY, *Ex p.* COHEN & COHEN, [1920] 3 K. B. 625 ; 90 L. J. K. B. 31 ; [1920] B. & C. R. 182 ; *subsequent proceedings*, [1921] 1 K. B. 344.

8104b. **Costs of transcript of shorthand notes of evidence.**]—The trustee by motion applied against resp. to impeach certain transactions & gave formal notice by letter that he would read in support of the motion the transcript of the shorthand notes of the evidence given by witnesses at a private sitting. This motion was dismissed with costs. On taxing resp.'s bill of costs the taxing master disallowed part of the transcript as irrelevant to the motion & reduced counsel's fees accordingly. On motion for a review of taxation :—*Held :* having regard to the terms of the notice to read the transcript resp.'s solr. was justified in bespeaking & paying for the whole of the transcript, & it was his duty to supply the whole transcript to counsel, &, accordingly, resp. was entitled to all the costs of & consequential upon so doing.—*Re* MARKS, *Ex p.* VANN, [1923] B. & C. R. 92.

8114. *Add. Annotation :*—**Refd.** *Re* Wait, [1926] Ch. 962.

8138a. **After-acquired property.**]—An undischarged bkpt. can maintain an action in relation to after-acquired property subject to the right of his trustee to intervene & claim it.—DYSTER *v.* RANDALL & SONS, [1926] Ch. 932 ; 95 L. J. Ch. 504 ; 135 L. T. 596 ; 70 Sol. Jo. 797 ; [1926] B. & C. R. 113, C. A.

8168a. *S. P.* MATTHEWS *v.* DICKINSON (1817), 7 Taunt. 399 ; 1 Moore, C. P. 104 ; 129 E. R. 160.

Annotation :—**Consd.** Whitworth *v.* Hall (1831), 2 B. & Ad. 695.

8172a. ——.]—OWEN *v.* LAVERY (1900), 16 T. L. R. 375, C. A.

PART XXI. SECT. 3, SUB-SECT. 6.

8099 v. —— —— ——.]—BURNS *v.* GRAHAM, [1923] 4 D. L. R. 1111 ; 53 O. L. R. 226 ; 4 C. B. R. 190.—**CAN.**

8099 vi. —— —— —— *Action commenced without obtaining indemnity from creditors.*]—*Held :* if it were necessary under Bkpcy. Act, s. 68 (2), & r. 54, that a special reason for awarding costs against the trustee personally should be assigned, it was the failure to arrange an indemnity before indulging in speculative litigation knowing that he had no assets.—THORNE *v.* CANADIAN STEERING WHEEL CO., [1923] 4 D. L. R. 1127 ; 52 O. L. R. 160 ; 2 C. B. R. 445.—**CAN.**

8099 vii. —— ——.] — *Held :* Bkpcy. Act, s. 68 (2), provides that "subject to the provisions of this Act & to General Rules, the costs of & incidental to any proceeding in ct. . . . shall be in the discretion of the ct." The word "ct." has impliedly a wider meaning than that given in the interpretation clause, & the sect. applies to the Ct. of Appeal. In the present case the clause making the trustee personally liable should not be struck out.—*Re* KWONG TAI CHONG CO.'S ASSIGNMENT (1922), 65 D. L. R 132 ; [1922] 2 W. W. R. 229, *sub nom.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* JANG BOW KEE & YIN SHEE, (1922), 31 B. C. R. 40.—**CAN.**

PART XXI. SECT. 4.

8105 iv. ——.]—If a creditor desires to proceed against the trustee in another province he must apply to the ct. having original jurisdiction for an order under Bkpcy. Act, s. 71 (2), & the judge possessing discretionary powers would be entitled to consider whether in all the circumstances it was advisable to ask for the assistance of a bkpcy. ct. in another province. When the cts. of any one province are seized with the administration of an insolvent estate, they should not permit any other ct. to interfere except with its leave or concurrence.—*Re* BRYANT, ISARD & CO., [1924] 1 D. L. R. 217 ; 4 C. B. R. 317.—**CAN.**

8r. *Action to recover possession—Of partly built ship—For purpose of completion.*]—A judge of the Bkpcy. Ct. may grant an application for recovery from the trustee in bkpcy. of possession of ships partly built & materials in connection therewith, & the necessary portion of bkpt.'s building yards claimed by appct. under a lien to secure the completion & delivery of ships in accordance with bkpt.'s contract & which prior to the order declaring the bkpcy. had been taken possession of by appct., & subsequently by the trustee. Such appct., although not a "creditor" or "secured creditor" under Bkpcy. Act, comes within the words "any other person aggrieved by any act or decision of the trustee" in sect. 39.—R. *v.* HODGES, [1921] 2 W. W. R. 388 ; 1 C. B. R. 530.—**CAN.**

8t. *Action for goods sold & delivered.*]—*Held :* may be brought in the name of the original creditor, notwithstanding that he has made an assignment for the general benefit of his creditors.—KRIENKE *v.* SCHAFTER, [1919] 1 W. W. R. 990.—**CAN.**

8195. *Add. Annotations :*—**Distd.** *Re* Lee, *Ex p.* Grunwaldt, [1920] 2 K. B. 200. **Consd.** Huddersfield Fine Worsteds *v.* Todd (1925), 134 L. T. 82.

8200. *Add. Annotations :*—**Consd.** Knight *v.* Ponsonby, [1925] 1 K. B. 545. **Refd.** Maatschappij voor Fondsenbezit *v.* Shell Transport & Trading Co., [1923] 2 K. B. 166.

8276a. —— Action for specific performance of agreement—Time for disclaiming agreement unexpired.]—PUTTOCK *v.* DAINTRY (1894), 38 Sol. Jo. 273.

8281a. To apply for judgment in default of defence—Draft minutes to be shown to official receiver.]—Where after action brought a receiving order in bkpcy. was made against deft., on a motion for judgment on minutes in default of defence the ct. made the order in the terms of the minutes, but directed that before it was drawn up the draft minutes should be shown to the official receiver, who was to be at liberty to apply to the ct. with regard thereto if he should think fit.—HATTON *v.* DENISON (1926), 70 Sol. Jo. 565.

8290a. —— Defendant making substantial counterclaim.]—An action against a deft. who makes a substantial counterclaim, & against whom a receiving order has been made after writ issued, will be stayed pending the result of an application to adjudicate him bkpt.—FRANCO *v.* DUTTO, [1923] W. N. 40.

8304. *Annotations :*—For " *Re* Somes, Stewart *v.* Somes (1895), 73 L. J. 359 " read " *Re* Somes, Stewart *v.* Somes (1895), 73 L. T. 359."

8306. *Add. Citations :—previous proceedings, sub nom. Re* SOMES, STEWART *v.* SOMES (1895), 73 L. T. 359, C. A.

8331. *Annotation :*—For " **Mentd.** *Re* Bagley, [1911] 1 K. B. 317, C. A.," read " **N.F.** *Re* Bagley, [1911] 1 K. B. 317."

8332. For " *Held :* it was necessary," etc., read " *Held :* it was not necessary," etc.

Part XXII.—The Debtors Acts and Bankruptcy Offences Generally.

8335. *Add. Annotation :*—**Dbtd.** Cotton *v.* Heyl, [1930] 1 Ch. 510.

8348. *Add. Annotation :*—**Consd.** Cotton *v.* Heyl, [1930] 1 Ch. 510.

8378. *Add. Annotation :* — **Refd.** Green *v.* Weatherill, [1929] 2 Ch. 213.

8398a. Equitable assignor—Undertaking to pay specific sum out of moneys to be received.]—An action for the grant to pltf. by deft. of his proprietary interests in an invention was compromised by an order on certain terms. One of the terms was an undertaking by deft. to pay pltf. a sum of £1,000 forthwith, which was duly paid, & a further sum of £4,000 out of the first moneys received by deft. on a future sale of his rights in the invention. No time for the payment of the sum in question was fixed by the undertaking. At the date of the order pltf. was aware that deft. had already disposed of half his rights. Pltf. having learnt that

PART XXI. SECT. 5, SUB-SECT. 1.—C.

h i. —— ——.]—*Held :* bkpt. had no right of action, such right being vested solely in the official assignee.—TIMMINGS *v* TREADGOLD, [1923] N. Z. L. R. 73.—**N.Z.**

PART XXI. SECT. 6, SUB-SECT. 1.

a i. —— *For debt due from one member of bankrupt firm.*]—*Held :* after an authorised assignment no such action could be brought against bkpt. without leave.—*Re* TAYLOR *v.* LEVEYS, [1923] 3 D. L. R. 1134 ; 52 O. L. R. 201 ; 2 C. B. R. 390.—**CAN.**

f i. —— *Bankruptcy Act Amendment Act*, 1923 (*c.* 31), *s.* 10.]—*Re* CANADIAN HART PRODUCTS, [1927] 2 D. L. R. 359 ; 60 O. L. R. 219.—**CAN.**

f ii. —— *By Canadian creditor in foreign court.*]—*Held :* the Superior Ct. of Quebec sitting in bkpcy. had power to stay proceedings instituted in the United States by a Canadian creditor.—*Re* MOUNT ROYAL LUMBER & FLOORING CO., MORGAN LUMBER CO. *v.* SCOTT, [1927] 2 D. L. R. 866 ; Q. R. 42 K. B. 277.—**CAN.**

f iii. ——.]—PRIBAG *v.* DWORSHIK, [1929] 4 D. L. R. 1067 ; 1 W. W. R. 238 ; 38 Man. L. R. 25 ; 10 C. B. R. 294.—**CAN.**

sg. *Leave of court—When necessary.*]—*Re* DUGGAN, [1931] 3 D. L. R. 815.—**CAN.**

sh. —— ——.]—WHITTEN & CO. *v.* COWPER, [1932] 2 D. L. R. 240.—**CAN.**

PART XXI. SECT. 7, SUB-SECT. 1.—A.

8237 vii. ——.]—A trustee to whom an assignment has been made under Bkpcy. Act may, with the permission of the inspectors, under sect. 20 (1), proceed with an action begun by debtor before the assignment, without any leave to proceed, so far as bkpcy. proceedings are concerned. But the trustee cannot proceed with the action in the name of the insolvent, nor in his own name, but only in the official name of the trustee.—*Re* BRENNER (N.) & CO., LTD., [1921] 49 O. L. R. 71 ; 58 D. L. R. 640 ; 19 O. W. N. 445.—**CAN.**

PART XXI. SECT. 7, SUB-SECT. 1.—B.

m i. ——.]—Where an assignee in insolvency elects, under Insolvency Act, 1915, s. 176, to abandon a common law action commenced by the insolvent prior to his insolvency, the action may be stayed until further order by the ct., but should not be dismissed, as a dismissal of the action might be pleaded in bar as *res judicata* in a future action by the insolvent, should such an action be commenced by him after he has obtained his certificate of discharge.—MILLANE *v.* PRESIDENT, ETC., OF SHIRE OF HEIDELBERG, [1928] V. L. R. 52 ; [1928] Argus L. R. 5.—**AUS.**

PART XXI. SECT. 8.

n i. —— *Order giving creditor right to bring proceedings—Appeal from.*—A judge sitting in bkpcy. having granted a petition by resp., under Bkpcy. Act, s. 35, to be authorised to take certain proceedings in the name of the trustee, but at resp.'s own expense & risk, the Ct. of K. B. held it was a mere preparatory judgment & one not subject to the control of that ct. :—*Held :* special leave to appeal to the Supreme Ct. of Canada should not be granted.—MERCHANTS BANK OF CANADA *v.* ANGERS (1921), 67 D. L. R. 604 ; 62 S. C. R. 354.—**CAN.**

q i. —— —— *To set aside preferential transactions—Rights of creditors not joining in action.*]—*Held :* creditors attacking transactions, & taking all the risk, cannot be compelled, in the event of success, to share the fruits of their success with those creditors who declined to share the risk.—*Re* LONGMORE (1922), 52 O. L. R. 570 ; 3 C. B. R. 200.—**CAN.**

r i. —— —— *To proceed with appeal —To Privy Council.*]—Where one creditor applied for & obtained an order under Bkpcy. Act, s. 35, allowing him to proceed, in the name of the trustee, but at his own expense & for his own benefit :—*Held :* an appeal to the Privy Council did not lie.—*Re* ANDREW MOTHERWELL OF CANADA, LTD. (1924), 55 O. L. R. 294 ; 5 C. B. R. 107.—**CAN.**

PART XXII. SECT. 1, SUB-SECT. 1.

1 i. —— 1924 *Act—Right to discharge —Discretion of court.*]—PING LEE *v.* PAUL WISE, [1929] 3 D. L. R. 410 ; 2 W. W. R. 376 ; 52 Can. C. C. 15 ; 41 B. C. R. 64.—**CAN.**

1 ii. —— ——.]—On an application for discharge from custody under sect. 7 of Arrest & Imprisonment for Debt Act, R. S. B. C., 1924, if the ct. is satisfied that deft. had no intention of quitting the province at the time the writ of *capias* was issued, he should be discharged.—THOMPSON *v.* SCOLLARD (1930), 41 B. C. R. 206.—**CAN.**

sy. *Exemption of Indians from arrest for debt—R. S. C.*, 1927, *ss.* 102–105.]—*Ex p.* TENASSE, [1931] 1 D. L. R. 806 ; 2 M. P. R. 523.—**CAN.**

deft. had agreed to sell the remaining half interest in these rights to one G. for a sum immediately payable & the balance by deferred payments & that he had used the amount received for his own purposes in breach, as the ct. found as a fact, of his undertaking, moved the ct. for the committal of deft. or the issue of a writ of attachment:—*Held:* (1) the undertaking to pay the £4,000, being an undertaking to pay a specific sum out of the moneys to be received in respect of a future sale, constituted a good equitable assignment thereof, & by dealing with the moneys received in disregard of the undertaking deft. had committed a breach of his fiduciary duty to pltf. The act of deft. therefore brought the case within the third exception to Debtors Act, 1869 (c. 62), s. 4; (2) the undertaking to pay out of the first moneys received could not be construed as an order to pay forthwith or within a fixed time after receipt within R. S. C., Ord. 41, r. 5, & therefore the order for committal or for leave to issue a writ of attachment could not be made. The ct., however, fixed a time for the payment of the moneys remaining due.—COTTON *v.* HEYL, [1930] 1 Ch. 510; 99 L. J. Ch. 289; 143 L. T. 16.

Annotation:—As to (1) **Refd.** Williams *v.* Atlantic Assurance Co. (1932), 37 Com. Cas. 394.

8408. *Add. Annotation:*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

8435. *Add. Annotation:*—**Consd.** *Re* Whaley, *Ex p.* Official Receiver, [1921] 2 K. B. 623.

8435a. Motion to commit by official receiver acting as trustee—Necessity for affidavit.]—Bkpts. were musical artists, & on Sept. 16, 1920, the registrar made orders for each of them to pay £4 a week out of their respective salaries under 1914 Act, s. 51 (2). On Jan. 13, 1921, upon the application of the official receiver as trustee, under sect. 53 (1) of the Act, no trustee having been appointed, & it appearing to the ct. that bkpts., as partners, were then in receipt of at least £200 a week under a contract with the A. Co., the above orders were varied, & orders were made that during the continuance of the engagement of bkpts. at the A. each should pay weekly £25 out of his salary to the official receiver during the bkpcy., the first payment to be made on Jan. 15, 1921, with liberty to bkpts. to apply in the event of the employment with the A. Co. being determined. Appeals from these orders were dismissed by the Ct of Appeal. Bkpts. having made default in payment of instalments under the orders, the official receiver as trustee applied for a committal of bkpts. for contempt of ct. under sect. 22 (4) of the Act. It was objected that each application should be supported by affidavit & not by a report of the official receiver:—*Held:* the official receiver's report was sufficient evidence in support of the application in each case, & an order for committal must be made.—*Re* WHALEY, *Ex p.* OFFICIAL RECEIVER, [1921] 2 K. B. 623; 125 L. T. 511; *sub nom. Re* WHALEY, *Ex p.* OFFICIAL RECEIVER, *Re* SCOTT, *Ex p.* OFFICIAL RECEIVER, 90 L. J. K. B. 892; 37 T. L. R. 645; [1921] B. & C. R. 1.

8439a. —— Application by agent for unincorporated association.]—In an action by pltf. against an unincorporated body & seventeen named persons described as its committee, in which pltf. claimed damages for libel, judgment was given in the High Ct. for deft. with costs. On a bkpcy. notice founded on that judgment not being complied with, defts. presented a petition in bkpcy.; but this petition was dismissed by the registrar as being wrong in form, on the ground (*inter alia*) that the petition was by an agent on behalf of an unincorporated assocn. & others, whereas such an assocn. cannot sue or be sued, either in its own name or by a purported agent. Subsequently, defts. took out a judgment summons in the county ct., & the county ct. judge ordered pltf. to pay by instalments the sum due under the judgment of the High Ct., together with the costs of the summons:—*Held:* (1) as procedure by judgment summons is a mode of enforcing a judgment & directly in connection with the action, as distinguished from a bkpcy. petition, which is not, the county ct. judge had jurisdiction to make the order; (2) the death of one of the successful defts. since the judgment did not render it necessary for the survivors to obtain the leave of the ct. before they could enforce the judgment.—BUNDY *v.* MOTOR CAB OWNER DRIVERS' ASSOCN. (1930), 143 L. T. 334; 46 T. L. R. 422, D. C.

8445a. Form of application—Enforcement of Divorce Court order—Affidavit of service.]—When application is made for the issue of a judgment summons to enforce a Divorce Ct. order appct. must state in his application, & be prepared, if necessary, to prove, that the order has been served on resp. & the affidavit of service filed as required by Matrimonial Causes Rules, 1924, r. 79.—PRACTICE NOTE, [1931] W. N. 184; 172 L. T. Jo. 76; [1931] B. & C. R. 44.

8447. *Add. Annotation:*—**Refd.** Smythe *v.* Wiles, [1921] 2 K. B. 66.

8448a. Summonses against co-respondent—For damages & for costs—Priority.]—Where damages & costs are awarded against a co-resp. & petitioner takes out two judgment summonses against him, one in respect of the costs & the other in respect of the damages, an order will go in respect of the payment of costs first.—*Re* WINTER, *Ex p.* WILLIAMS (1927), 44 T. L. R. 41; 71 Sol. Jo. 1002.

8449. *Add. Annotation:*—**Consd.** *Re* A Debtor, [1929] 2 Ch. 146.

8451. *Add. Annotation:*—**Refd.** Bundy *v.* Motor Cab Owner Drivers' Assocn. (1930), 143 L. T. 334.

8459. *Add. Annotation:*—**Consd.** *Re* Blanchard, *Ex p.* Blanchard (1932), 101 L. J. Ch. 313.

PART XXII. SECT. 1, SUB-SECT. 6.—A.

8x. *Duty of debtor to attend & make disclosure.*]—On appeal by the debtor from an order requiring her to pay a certain amount per month, the debtor having asked that a much smaller amount be substituted therefor:—*Held:* under the circumstances, all the materials for coming to a decision as to the debtor's ability to pay were not before the ct., & the order should have directed the debtor to attend again at her own expense & make satisfactory disclosure. The order was, therefore, set aside & one for the further attendance of the debtor substituted.—ROYAL BANK OF CANADA *v.* DIAMOND, [1930] 1 W. W. R. 809; 3 D. L. R. 810; 38 Man. L. R. 585.—CAN.

PART XXII. SECT. 1, SUB-SECT. 6.—B.

8a. *Who may make order for payment—Not local master.*]—BEAVER LUMBER CO., LTD. *v.* BRENNER, [1929] 2 D. L. R. 640; 1 W. W. R. 583; 23 S. L. R. 319.—CAN.

8463. *Add. Annotations :*—**Refd.** Edwards *v.* Porter (1924), 41 T. L. R. 57 ; Green *v.* Weatherill, [1929] 2 Ch. 213 ; Townshend *v.* Child (1932), 48 T. L. R. 575.

8467. *Add. Annotation :*—**Refd.** Bundy *v.* Motor Cab Owner Drivers' Assocn. (1930), 143 L. T. 334.

8471. *Add. Annotations :*—**Refd.** Nesom *v.* Metcalfe, [1921] 1 K. B. 400 ; *Re* Blanchard, *Ex p.* Blanchard (1932), 48 T. L. R. 480.

8475. *Add. Annotation :*—**Refd.** Nesom *v.* Metcalfe, [1921] 1 K. B. 400.

8479. *Add. Annotation :*—**Refd.** Nesom *v.* Metcalfe, [1921] 1 K. B. 400.

8480. *Add. Annotation :*—**Refd.** Nesom *v.* Metcalfe, [1921] 1 K. B. 400.

8484. *Add. Annotations :*—**Consd.** Nesom *v.* Metcalfe, [1921] 1 K. B. 400. **Apld.** *Re* Blanchard, *Ex p.* Blanchard (1932), 48 T. L. R. 480.

8485. *Add. Annotation :*—**Consd.** Nesom *v.* Metcalfe, [1921] 1 K. B. 400.

8486. *Add. Annotation :*—**Refd.** Nesom *v.* Metcalfe, [1921] 1 K. B. 400.

8494a. —— **Non-payment of alimony.**]—It is not the province of the Ct. of Ch. to enforce by committal orders for payment of alimony made by the Divorce Div. Therefore, where a wife moved to commit her husband for non-compliance with an order to pay her £5 a week, of which some £400 were in arrear :—*Held :* to make a committal order at once in such a case was not the usual practice of the Ch. Div., & the right order was that the husband should pay £3 a week towards payment of the arrears, the order made by the Divorce Div. still remaining in force.—*Re* BLANCHARD, *Ex p.* BLANCHARD (1932), 101 L. J. Ch. 313 ; 147 L. T. 222 ; 48 T. L. R. 480 ; 76 Sol. Jo. 459, C. A.

—— —— **Jurisdiction of Divorce Division.**]—*See, now,* Debtors Act (Matrimonial Causes) Jurisdiction Order, 1932, R. S. & O., 1932, No. 503.

8496a. —— **Evidence of means—Sufficiency of evidence.**]—Where a county ct. judge has made an order on a judgment summons for payment of the judgment debt by instalments, & a subsequent application is made for a committal order for non-payment of the instalments, the effective "order or judgment" is the instalment order & not the original judgment, & on the application for a committal order the judge cannot make the order unless he has affirmative evidence of means since the date of the instalment order, & is not entitled to rely on the evidence previously given on the hearing of the application for the instalment order, nor on his disbelief of debtor's evidence denying means, unless there is reasonably direct evidence of means since the date of the instalment order.—NESOM *v.* METCALFE, [1921] 1 K. B. 400 ; 90 L. J. K. B. 273 ; 124 L. T. 606 ; 37 T. L. R. 111, D. C.

8499a. —— —— **Sufficiency of evidence of debtor's means.**] — Prohibition refused. — EDWARD *v.* WYVILL (1885), 2 T. L. R. 210, C. A.

8501. *Add. Annotations :*—**Apld.** *Re* Blanchard, *Ex p.* Blanchard (1932), 48 T. L. R. 480 ; **Refd.** Nesom *v.* Metcalfe [1921] 1 K. B. 400.

8506. *Add. Annotations :*—**Apld.** Morriss *v.* Winter, [1930] 1 K. B. 243. **Refd.** Copper Export Assocn. Inc. *v.* Mersey Docks & Harbour Board (1932), 48 T. L. R. 542.

8513. *Add. Annotation :*—**Consd.** Nesom *v.* Metcalfe, [1921] 1 K. B. 400.

8521. *Add. Annotation :*—**Consd.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

SECT. 3 (p. 1044).—**BANKRUPTCY OFFENCES.**

See, also, Bkpcy. (Amendment) Act, 1926 (c. 7),

8534a. **Intent to defraud—Burden of proof.**]—On the hearing of a charge against bkpt. under 1919 Act, s. 154 (4) (5), proof that deft. has been in possession of property to the value there specified does not throw upon him the burden of showing that he has not concealed or fraudulently removed any part of

PART XXII. SECT. 1, SUB-SECT. 6.—D.

sb. *Attachment in default of payment —Notwithstanding assignment in bankruptcy.*]—*Re* GLENCROSS, JONES *v.* GLENCROSS (N. B.), [1929] 2 D. L. R. 380.—**CAN.**

PART XXII. SECT. 2.

k i. —— ——.]—TOOLE *v.* HENNEBERRY (P. E. I.), [1928] 3 D. L. R. 38.—**CAN.**

k ii. ——.] — Fraudulent Debtors Arrest Act, R. S. O., 1914 (c. 83), enacts that before a writ of *ca. sa.* will be issued, it must be shown that debtor has been guilty of an intent to defraud his creditors. Where debtor had assigned all his property for the benefit of his creditors & then left Ontario & had subsequently returned with the object of settling pltf.'s claim & had resided unmolested in Ontario for some time :—*Held :* no fraudulent intent shown.—CANADA LUMBER CO. *v.* GAFFNEY, [1923] 4 D. L. R. 594.—**CAN.**

k iii. —— *Under Absconding Debtors' Act, R. S. O.,* 1877 (c. 68)—*Debt must be due when writ issued.*]—KYLE *v.* BARNES (1883), 10 P. R. 20.—**CAN.**

sd. *Attachment of aeroplane temporarily landed—For debt incurred in foreign domicil of parties—Invalid.*]—WILLIAMS *v.* COLUMBIA AIRWAYS, [1931] 2 D. L. R. 823.—**CAN.**

PART XXII. SECT. 3, SUB-SECT. 1.

8534 iv. —— *Prosecution—In what court.*]—Upon a motion to quash the orders of a police magistrate on the ground that only a judge in bkpcy. had power to act in such a case :—*Held :* since the offence was an indictable offence it ought to be prosecuted & carried on under the Criminal Code like any other offence of a criminal nature, & motion dismissed.—R. *v.* ROY, [1923] 2 D. L. R. 1182 ; 39 Can. Crim. Cas. 347 ; 4 C. B. R. 90.—**CAN.**

q i. —— *Prosecution an abuse of process.*]—Where criminal proceedings against a debtor for fraudulent concealment are not taken in vindication of public justice but wholly because of his refusal to comply with a demand from his creditors to "dig up the money or take the consequences," the prosecution is an abuse of process which the cts. cannot countenance. The criminal cts. are not to be held *in terrorem* over alleged debtors.—R. *v.* BELL (B. C.), [1929] 3 D. L. R. 931 ; 2 W. W. R. 399 ; 51 Can. Crim. Cas. 388.—**CAN.**

t i. —— —— ——.]—To justify a committal of a judgment debtor under Arrest & Imprisonment for Debt Act for concealing or making away with his property "in order to defeat, delay or defraud his creditors or any of them," a fraudulent intent must be shown. Neither due & reasonable appropriation of property or income to the maintenance & health of himself & his family, according to circumstances, nor, of themselves, improvidence or "great carelessness" in expenditure, import a fraudulent intent. Continuous wilful & extravagant squandering of debtor's income in self-indulgence might be carried to such a degree as would manifest a fraudulent intention to contravene the statute.—CUTLER *v.* CHIFFEY, [1921] 1 W. W. R. 686.—**CAN.**

t ii. —— —— ——.]—Affidavits used on an application for a writ of attachment under Absconding Debtors Act, R. S. S., 1920 (c. 58), s. 3, alleging that defts. were "badly involved" & "financially embarrassed," setting out a newspaper advertisement by defts. of certain chattels for sale & giving deponents' opinions from their "experience" in dealing with defts. that they were attempting to sell with intent to defraud creditors :—*Held :*

it after or within six months before the presentation of the petition; but proof that during that period deft. has concealed or removed a part of his property to that value throws upon him the burden of showing that in doing so he had no intent to defraud.—R. *v.* BRIXTON PRISON (GOVERNOR), *Ex p.* SHURE, [1926] 1 K. B. 127; 95 L. J. K. B. 361; 134 L. T. 317; 28 Cox, C. C. 126; [1926] B. & C. R. 1, D. C.

8557a. Failure to keep account books.]—Under 1914 Act, s. 158, as amended by Bkpcy. (Amendment) Act, 1926 (c. 7), s. 7, an omission to keep books of account though "honest" may not be "excusable."—R. *v.* DANDRIDGE (1931), 22 Cr. App. Rep. 156; [1931] B. & C. R. 40, C. C. A.

8565a. —— —— ——.] — R. *v.* DORRINGTON (1927), 20 Cr. App. Rep. 1, C. C. A.

8587a. —— Obligation to disclose bankruptcy absolute.]—The obligation imposed by 1914 Act, s. 155 (*a*), on an undischarged bkpt. to disclose his position to the person from whom he seeks credit is absolute. It is no defence that he took steps to have such information conveyed or that he had reasonable grounds to believe that it has been conveyed, if in fact it had not.—R. *v.* LEINSTER (DUKE), [1924] 1 K. B. 311; 93 L. J. K. B. 144; 130 L. T. 318; 87 J. P. 191; 40 T. L. R. 33; 68 Sol. Jo. 211; 27 Cox, C. C. 574; 17 Cr. App. Rep. 176; [1924] B. & C. R. 78, C. C. A.

8593a. Time for giving information of bankruptcy.] —If an undischarged bkpt. gives information to a creditor a reasonable time before he obtains credit from him he is not within Bkpcy. Act, 1914 (c. 59), s. 155. The information need not necessarily be given at the moment of obtaining the credit.—*R. v.* ZEITLIN (1932), 23 Cr. App. Rep. 163, C. C. A.

8633a. Bankrupt guilty of gambling—Severity of sentence.]—R. *v.* BREWIN (1926), 19 Cr. App. Rep. 154, C. C. A.

Part XXIII.—Compositions and Schemes and Deeds of Arrangement.

8645. *Add. Annotations* :—**Apld.** *Re* Ellis, [1925] Ch. 564. **Refd.** Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52.

8645a. —— To entertain claim to enforce right adverse to deed—Creditor not entitled to benefit of deed.]—In 1922 applt. entered into the employment of debtor as manageress of his business, & as a condition of such employment she lent him a sum of £500 for the repayment of which he gave her a charge on his share & interest in his business. In 1924 debtor executed a deed of arrangement for the benefit of his creditors generally. The deed was expressed to be made between debtor of the first, the trustee of the second part, three named creditors of the third part, & "the several persons, companies, & partnership firms, being creditors of debtor, whose names & seals are set out & affixed to the schedule hereto, or who shall otherwise in writing assent to these presents, hereinafter called 'the creditors'" of the fourth part. Applt., who refused to consent to the deed, applied under the above sect. for a declaration that she was entitled as against the trustee of the deed to a charge on all the share & interest, with the exception of chattels, of debtor in his business, & for an order that the trustee should hand over & execute such documents as might be necessary for the purpose of transferring the share & interest to applt. The registrar in bkpcy. dismissed the application on the ground that he had no jurisdiction under the sect. to entertain it. On appeal :—*Held :* (1) the object of the sect. was to provide a trustee or *cestui que trust* under a deed of arrangement with a summary means of obtaining a determination of questions arising in the administration of the trusts of the deed similar to that provided by originating summons in the Ch. Div. under R. S. C. Ord. 55, r. 3; (2) applt. was not a creditor entitled to the benefit of the deed; creditors so entitled were those defined as such by the deed, & applt., not having assented to the deed, did not come within that category; (3) applt.'s claim was not for the enforcement

insufficient to justify granting the application.—CANADIAN BANK OF COMMERCE *v.* KENZIE, [1923] 2 W. W. R. 993.—**CAN.**

t iii. —— —— ——.]—*Held :* the affidavit of pltf. stating merely that he had good reason to believe & did verily believe that deft. "has assigned, transferred & disposed of his personal property & effects by a bill of sale with intent & design to defraud his creditors" was insufficient. The affidavit must show "such facts & circumstances as form the grounds of such beliefs," as required by the K. B. Div. Rules.—DOW *v.* DAYMENT, [1923] 1 D. L. R. 772; 32 Man. L. R. 402; [1922] 3 W. W. R. 1119.—**CAN.**

t iv. —— ——.]—On a prosecution under the Criminal Code, s. 417, the intent & not the effect is to be looked at, &, where the effect of a conveyance is merely to prefer one creditor over another, the intent to prefer not being an intent to defraud, there is no offence. —R. *v.* CREW, [1926] 4 D. L. R. 841; 46 Can. Crim. Cas. 123; 59 O. L. R. 201.—**CAN.**

e i. —— *Giving undue preference.*]—A., convicted of a contravention of Insolvency Act, 32 of 1916, s. 139 (3), had shortly before he surrendered his estate made payments to two creditors, & there was no proof to rebut the inference that he intended to prefer these creditors :—*Held :* the conviction should be sustained.—R. *v.* ISMAIL (1920), App. D. 316.—**S. AF.**

PART XXII. SECT. 3, SUB-SECT. 2.

8544 ii. —— *Insolvency Act.* 32 of 1916, *s.* 136 (3).]—The offence created by this sect. consists in the disposal by insolvent otherwise than in the ordinary course of business of property which he has obtained on credit, & the jury should be directed to confine their attention to the mode of disposal of the property purchased on credit.—R. *v.* ABRAHAMSON (1920), App. D. 283.—**S. AF.**

PART XXII. SECT. 3, SUB-SECT. 3.

8555 ii. ——.]—PARAK *v.* R. (1919), 40 N. L. R. 328.—**S. AF.**

PART XXII. SECT. 3, SUB-SECT. 6

sv. *Procedure for commencing & carrying on prosecution.*]—Where bkpt. is charged with indictable offences under Bkpcy. Act, s. 89, & orders to prosecute are made under sect. 93, the prosecution must be commenced & carried on under Criminal Code, & a justice of the peace or police magistrate has jurisdiction to receive the information, hold the preliminary investigation & commit for trial. Upon a committal if the judge who made the order presides at the trial, he acts not as a judge in bkpcy., but as a judge of the Supreme Ct.—R. (EMERY) *v.* ROY, [1923] 2 W. W. R. 400.—**CAN**

sy. *Application for leave to prosecute.*]—R. *v.* MARCOVITZ & APPLEBAUM, [1932] 4 D. L. R. 335.—**CAN.**

of the trusts or the determination of any questions arising under the deed within the above sect., but was a claim to enforce a right adverse & paramount to the deed.—*Re* ELLIS, [1925] Ch. 564; 41 T. L. R. 474; *sub nom. Re* ELLIS, *Ex p.* MYTTENAERE, 94 L. J. Ch. 239; [1925] B. & C. R. 81; *sub nom. Re* A DEED OF ARRANGEMENT (No. 9 of 1924), 133 L. T. 306, C. A.

8645b. Under 1914 (Deeds) Act, s. 11—To extend time for giving security by trustee.]—The registrar has no jurisdiction to extend the period of seven days, allowed by above sect. within which the trustee under a deed of arrangement must give security in the prescribed manner.—*Re* EARLY, SMITH & PAVEY, *Ex p.* TRUSTEE (1928), 98 L. J. Ch. 34; [1928] B. & C. R. 113.

8653a. Proposal in writing under 1914 Act, s. 16—Necessity for signature by debtor.]—At a meeting of creditors of a debtor against whom a receiving order had been made a proposal for a scheme of composition was submitted on behalf of the debtor. The proposal was not signed by the debtor himself but by his solrs. On behalf of the debtor a certificate by an eminent physician was exhibited to an affidavit, in which it was stated that the debtor was " still so seriously ill as to make it quite impossible for him to discuss any matters of business, & that any attempt to explain to him business details or proceedings would have a serious & possibly a fatal effect upon him ":—*Held:* no proposal for a composition had been lodged by the debtor within 1914 Act, s. 16 (1); the words " signed by him " were explicit; there was no ground for altering the words of the statute or giving to the statute a judicial interpretation which would in effect be an amendment or alteration of its plain terms.—*Re* BLUCHER (PRINCE), *Ex p.* DEBTOR, [1931] 2 Ch. 70; 47 T. L. R. 19; 74 Sol. Jo. 735; *sub nom.* BLUCHER (PRINCE), *Re*, DEBTOR *v.* OFFICIAL RECEIVER, 100 L. J. Ch. 292; 144 L. T. 152; [1931] B. & C. R. 1, C. A.

8665. *Add. Annotation:*—**Refd.** Everett *v.* Griffiths, [1924] 1 K. B. 941.

8758. *Add. Annotation:*—**Refd.** Sevenoaks U. D. C. *v.* Twynam, [1929] 2 K. B. 440.

8768. *Add. Annotations:*—**Refd.** *Re* Ellis, [1925] Ch. 564; Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52.

8771a. Unstamped deed—Admissibility in evidence—To prove non-registration.]—*Re* SHAW, *Ex p.* OFFICIAL RECEIVER, No. 434a, *ante*.

8772a. Under 1914 (Deeds) Act—Necessity for assent of majority of creditors—How majority calculated.]—A debtor gave his sister a power of attorney authorising her to execute a deed of arrangement for the benefit of his creditors & to make any affidavit necessary for registering the deed. The deed was accordingly executed by her as his attorney under the power, & she also made the affidavit required by 1914 (Deeds) Act, s. 5 (1), to be made " by the debtor " on the registration of the deed stating the total estimated amount of property & liabilities included under the deed & the names & addresses of the creditors. There were ninety-six creditors

PART XXIII. SECT. 3, SUB-SECT. 1.

sw. *Meeting duly summoned not held—Meeting held on following day—No proper adjournment of first meeting.*]—*Held:* the meeting was irregular & all business done void, because the first proposed meeting was not adjourned according to the rules.—*Re* WHOLESALE GROCERS, LTD., [1923] 2 D. L. R. 491; 3 C. B. R. 650.—CAN.

PART XXIII. SECT. 3, SUB-SECT. 2.

m i. —— *Wife of bankrupt.*]—The wife of bkpt. is not barred by her status as wife from voting on a resolution to wind up her husband's estate under a deed of arrangement, although the effect of the resolution is to prevent the election of a trustee.—MACNAUGHT *v.* SIEVWRIGHT, [1927] S. C. 285.—SCOT.

8677 ii. —— —— —— *Proxy for company.*]—A proxy need not be under the co.'s seal, unless expressly required by the Act of incorporation, or by the articles of assocn.; if it is so required the burden of establishing its necessity is on the person alleging it.

A proxy which purports to be signed by the co., under which is subscribed the name of the person who affixes the signature of the co. & who so describes himself that the chairman can conclude he is an officer or employee of the co., is *prima facie* evidence of authority, & the chairman should receive it & permit the person named therein to vote.—*Re* MCCOUBREY, *Re* STRATTON & GREENSHIELDS, LTD., [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—CAN.

8682 i. —— *In respect of what debts—Unliquidated damages.*]—Where there is a claim for unliquidated damages, they must be assessed before the claimant can have any right to vote.—*Re* ANDREW MOTHERWELL ESTATE, [1923] 4 D. L. R. 986; *affd.* 25 O. W. N. 359.—CAN.

8682 ii. —— —— ——.]—*Held:* valuation by the ct. a condition precedent.—*Re* ARTHUR FUEL CO. (Man.), [1927] 1 D. L. R. 646; [1927] 1 W. W. R. 158.—CAN.

8684 iv. ——.]—Since Bkpcy. Act, 1921 (c. 17), s. 12, Bkpcy. Act, 1919 (c. 36), s. 13 (3) must be construed as meaning that in the calculation of proved debts, the two-thirds in value may be composed partly of debts less than $25, but as regards voting, creditors whose claims are less than $25 are to be excluded. Under Bkpcy. Act, 1919, s. 42, no one whose claim is for less than $25 may vote.—*Re* BLUEBIRD FASHION SHOPS, LTD., [1921] 59 D. L. R. 549.—CAN.

sa. *Appeal from decision of chairman—Rights of creditor who has not filed proof at time of meeting.*]—A creditor is entitled to exercise his rights provided he has duly proven his claim in accordance with Bkpcy. Act & Rules prior to the hearing of the appeal. The ct. may adjourn the hearing of the appeal to permit of such proof, provided that the creditor has not delayed unreasonably in making it.—*Re* MCCOUBREY, *Re* STRATTON & GREENSHIELDS, LTD., [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—CAN.

sb. —— *On technical grounds—Necessity to raise objection before decision given—Discretion of court.*]—*Re* MCCOUBREY, *Re* STRATTON & GREENSHIELDS, LTD., [1924] 4 D. L. R. 1227; [1924] 3 W. W. R. 587.—CAN.

sc. —— *Application by creditor to be added or substituted as appellant.*]—Not allowed, since the latter creditor had a right of appeal, & the rights of the creditor applying to be added would not be affected by the non-joinder or non-substitution.—*Re* MCCOUBREY, *Re* STRATTON & GREENSHIELDS, LTD., [1924] 4 D. L. R. [1924] 3 W. W. R. 587.—CAN.

sd. —— *That creditor entitled to vote—Objection at meeting.*]—*Held:* not a condition precedent—*Re* ARTHUR FUEL CO. (Man.), [1927] 1 D. L. R. 646; [1927] 1 W. W. R. 158.—CAN.

PART XXIII. SECT. 5, SUB-SECT. 1.

sk. *Effect of.*]—A composition or scheme of arrangement, though approved by the ct. & by statute binding on all the creditors, is at bottom only a contract between the parties. Creditors' rights are only suspended during the composition period. There is no obligation, legal or moral, which can debar the composition creditors, if the composition has been annulled, from claiming to rank on the assets of the estate *pari passu* with the creditors whose claims have arisen since the composition.—*Re* LIPSON, [1924] 3 D. L. R. 761; 55 O. L. R. 215; 24 O. W. N. 382.—CAN.

sm. ——.]—*Held:* a judicial hypothec upon real assets of debtor, resulting from registration, was postponed to an authorised assignment subsequently made by debtor for the benefit of his creditors.—ROYAL BANK OF CANADA *v.* LARUE, [1928] A. C. 187; 97 L. J. P. C. 49; 138 L. T. 562; 44 T. L. R. 267.—CAN.

sp. *Authorised assignment by partner on behalf of firm—No authority by other partner.*]—*Held:* invalid.—*Re* SQUIRES BROTHERS, [1922] 3 W. W. R. 30; 68 D. L. R. 571.—CAN.

PART XXIII. SECT. 5, SUB-SECT. 2.—A.

st. *Under Bankruptcy Act—Deed of assignment.*]—The title of an assignee is not complete as against third persons until registration.—TOWERS *v.* SOLOMON, [1922] 1 W. W. R. 1077; 2 C. B. R. 579.—CAN.

in all, of whom sixty-eight were for sums over £10; twenty-five of the sixty-eight did not assent to the deed within the time required by the Act; forty-three with debts over £10 & twenty-eight with debts under £10 assented. The debtor escaped bkpcy. proceedings by reason of the execution of the deed & afterwards recognised it & concurred in the trustee acting under it. He subsequently made an application for a declaration that the deed was void. No creditor was made a party to the application, it being addressed to the trustee of the deed alone:—*Held:* (1) the deed had received the assent of the majority of creditors in number within sect. 3 (5) of the Act, inasmuch as for the purpose of the section creditors whose debts amount to sums not exceeding £10 are not to be reckoned either in calculating the total number of creditors or the majority in number; (2) inasmuch as the creditors did not, under the power of attorney, gain any control over the debtor's property or business, it was not in itself a deed of arrangement within sect. 1 (2) (*e*) of the Act, which required registration in order to be valid.—*Re* WILSON, [1916] 1 K. B. 382; 85 L. J. K. B. 329; 114 L. T. 32; 32 T. L. R. 86; 60 Sol. Jo. 90; [1916] H. B. R. 17, D. C.

8778a. —— ——.]—In 1904 debtor who was heavily indebted, & against whom bkpcy. proceedings were pending, signed an instrument under which a trustee was to receive the whole of debtor's income &, after making certain deductions, to distribute the balance among the creditors, & in consideration of the arrangement the creditors agreed that all proceedings in bkpcy. or otherwise were to be stayed & to accept payment of their debts by instalments & to release debtor from all claims or demands in respect of their debts. The instrument provided that no document executed by debtor should be registered under the above Act. A number of the then creditors including appct. assented to the instrument, which was never registered under the Act. The arrangement was carried out until the death of debtor, which occurred in Nov. 1918, appct. receiving *pro rata* amounts on his debt between Aug. 1905, & July, 1917. The debt carried interest at 4 per cent. & the payments under the arrangement to appct. were not sufficient to cover the interest so that an amount exceeding the original debt was still owing to appct. In Feb. 1919, an administration order under 1914 Act, s. 130, was made upon a creditor's petition for the administration of deceased debtor's estate as being a person who had died insolvent, & the estate was being administered by the official receiver. At the time of debtor's death there was in the hands of the trustee under the instrument a sum of £465 8*s.* 3*d.* which the official receiver claimed on the ground that it formed part of the general estate of debtor, & the trustee paid the amount to him upon the terms that the official receiver was to be in the same position as he would have been if the money had remained in the trustee's hands. On a motion by appct. for a declaration that the £465 8*s.* 3*d.* was held by the trustee on behalf of the assenting creditors, including appct., was divisible amongst them, & that appct. was entitled to prove in the administration of the estate for the balance due to him from debtor after giving credit for all sums received or receivable under the arrangement:—*Held:* (1) the instrument was a deed of arrangement within 1887 Act, s. 4 (2), upon the ground that it was an assignment of property by debtor for the benefit of his creditors generally & also upon the ground that it was an agreement for a composition; (2) not having been registered it was void under sect. 5 of the Act; (3) as the instrument was void it created no trust for the benefit of the creditors, & the trustee under the instrument held the £465 8*s.* 3*d.* to the use of the official receiver as the representative of debtor, & was bound to repay it to him; (4) as the only direction to apply the money received by the trustee was contained in the void instrument & all parties knew & acted upon the assumption that it was invalid, deceased debtor would not have been, nor was the official receiver as his representative, estopped from setting up its invalidity & claiming from the trustee any money still in his hands; (5) equally there was no estoppel which prevented appct. from setting up the invalidity of the instrument & proving in the administration for the balance due to him from debtor; (6) as the instrument was void the release of the debts it contained was of no effect; (7) as under the instrument there was only a provision for payment to the creditors of debtor's income so long as he lived, no promise to pay the balance of the debts could be implied from the payments which had been made so as to take the debts out of the operation of the statutes of limitation, & appct.'s right to prove in the administration for the balance due to him was therefore barred.—*Re* LEE, *Ex p.* GRUNWALDT, [1920] 2 K. B. 200; 89 L. J. K. B. 364; 123 L. T. 31; [1919] B. & C. R. 287.

Annotations:—As to (3), (4), (5) & (6) **Consd.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76. **Reld.** Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52.

8782a. —— **Assignment of property to trustees for benefit of creditors—Assignment not to be registered.**]—*Re* A BANKRUPTCY NOTICE, No. 797a, *ante*.

8782b. **Authority to realise trader's estate & to apply proceeds in payment of creditors.**]—A letter signed by debtor in the following form: "I hereby authorise you to realise my estate including stock-in-trade, book debts, furniture, & all other assets & to apply the proceeds first in payment of the costs, charges, & preferential claims, etc., & secondly to pay the balance to my creditors *pro rata*":—*Held:* (1) not an "assignment of property" within sect. 1 (2) (*a*) of the above Act; (2) not a deed of arrangement within sub-sect. 1.—LIPTON (B.), LTD. *v.* BELL, [1924] 1 K. B. 701; 40 T. L. R. 163; *sub nom.* LIPTON (B.), LTD. *v.* BELL, HAYES *v.* BELL, 93 L. J. K. B. 563; 130 L. T. 749; 68 Sol. Jo. 521; [1924] B. & C. R. 82, C. A.

PART XXIII. SECT. 5, SUB-SECT. 2.—B.

ss. *Necessity for.*]—An assignment under Bkpcy. Act must be accepted for registration though not accompanied by the affidavit provided for by Homesteads Act, 1920, s. 7, & by Assignment Act, s. 7a.—*Re* LAND TITLES ACT, *Re* CITY GARAGE & MACHINE CO., LTD., [1921] 1 W. W. R. 371; 59 D. L. R. 416; 1 C. B. R. 412.—CAN.

8782c. Document discharging debtor—Constituting assignment for benefit of creditors generally.]—Pltf.'s claim was for £148, the amount of two bills of exchange drawn by pltf., accepted by deft. & dishonoured on presentation. Deft. pleaded in his defence that the cause of action was merged in a deed of arrangement executed by him in favour of creditors. By that document the consenting creditors of deft accepted the following terms for the settlement of all debts owing by deft. to them: " (1) all the goods which have been removed from M.'s office & given to M. & Co., in trust on behalf of creditors, should be handed over to the creditors . . . (2) M. undertakes to pay to the above trustee for the creditors £80 payable . . . (3) M. also undertakes to pay on his own account (certain creditors named therein) who shall be excluded from the list of the general creditors. I agree to these terms ":—*Held:* the agreement was for the benefit of three or more creditors, made by a debtor who was at the date of the execution of the deed insolvent, & was a deed of arrangement within sect. 1 of the above Act, & was void owing to non-registration.—LANDSBERG *v.* MENDEL, [1924] W. N. 46.

8782d. —— Deed of arrangement made by insolvent debtor.]—A debtor, who was insolvent, under a scheme for the composition of his debts, which amounted to about £150,000, entered into a deed of arrangement with his creditors under which he agreed to pay his trade creditors, including pltfs., a composition of their claim, together with certain profits out of his business up to Apr. 30, 1926, & he covenanted to carry on that business up to that date, the creditors covenanting to release him from the full amount of his liability. Some of his creditors, whose claims amounted to £150 were not parties to the scheme or deed, &, acting under legal advice, debtor did not register the deed. After paying his trade creditors, including pltfs., a small portion of the composition, debtor sold his business & entered into another scheme of arrangement with his creditors, to which pltfs. refused to be parties, & they sued for the original debt owing to them, less the amount which they had received under the composition:—*Held:* (1) the deed came within Deeds of Arrangement Act, 1914 (c. 47), s. 1 (1) (*b*), &, not being registered, was void; (2) pltfs., who had assented to the deed, were not estopped by such assent from denying the validity of the deed; (3) assuming that they were so estopped, debtor, by selling his business before Apr. 30, 1926, had not fulfilled the conditions of the deed under which he would be released from his original liability, & therefore pltfs. were relegated to their original rights & were entitled to succeed on their claim. The authorities on the doctrine of estoppel as applicable to deeds of arrangement considered. — HUDDERSFIELD FINE WORSTEDS, LTD. *v.* TODD (1925), 134 L. T. 82; 42 T. L. R. 52.

8782e. —— Power of attorney by debtor—Authorising third party to execute deed of arrangement.]—*Re* WILSON, No. 8772a, *ante*.

8787. *Add. Annotations:*—**Refd.** *Re* Ellis, [1925] Ch. 564; Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52.

8788. *Add. Annotation:*—**Refd.** Huddersfield Fine Worsteds *v.* Todd (1925), 134 L. T. 82.

8789. *Add. Annotation:*—**Refd.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76.

PART XXIII. SECT. 6, SUB-SECT. 1.—A.

i. —— —— *Non-assenting creditors not opposing.*]—*Re* HOWE, [1921] 20 O. W. N. 244; 59 D. L. R. 457; 1 C. B. R. 482.—**CAN.**

8810 i. —— *Reasonable security provided.*]—In a composition scheme, if one of the creditors obtains an advantage over the others the ct. will scrutinise the scheme very closely. Where under a scheme all the creditors would receive more than 50 per cent. & it was reasonable & provided for immediate payment of all but one of the creditors, but the creditor who financed the scheme would be entitled to be paid in full, the ct. ratified the composition as the most advantageous that could be proposed.—*Re* GARDNER, *Ex p.* CROFT & SONS, LTD., [1921] 19 O. W. N. 25; 59 D. L. R. 555; 1 C. B. R. 424.—**CAN.**

8811 i. *Whether bound to refuse to approve—Fraudulent conduct.*]—The ct. will approve of a compromise between debtor & his creditors which is in the best interests of the creditors, even where debtor has obtained credit by false & fraudulent representations, where debtor by his discharge is not relieved from liability for the full claim of a creditor from whom he obtained credit by false & fraudulent representations, & he is still liable to prosecution.—*Re* CHMELNITSKY, [1922] 3 W. W. R. 114; 68 D. L. R. 492.—**CAN.**

ab. *Power of registrar—Limited to approval or rejection.*]—The Bkpcy. Act contains no provision which enables the ct. to modify or change the proposal: it must either approve or reject the same.—MARTIN *v.* RIMAN, [1931] 1 D. L. R. 773; 66 O. L. R. 394.—**CAN.**

PART XXIII. SECT. 6, SUB-SECT. 1.—B.

8825 ii. —— ——.]—Where the judge refused to sanction an arrangement on the ground that there was evidence of reckless, not to say dishonest, trading on debtor's part for some years previously, & he adjudged debtor bkpt.:—*Held:* on the facts, there was no sufficient ground for overruling the wishes of the majority of the creditors accepting debtor's proposal for an arrangement, & the order of adjudication must be discharged. Principles which should guide the ct. in dealing with arrangements under Irish Bkpt. & Insolvent Act, 1857 (c. 60), considered.—*Re* C., [1926] I. R. 14.—**IR.**

PART XXIII. SECT. 6, SUB-SECT 2.

8843 iv. ——.]—In special circumstances under Bkpcy. Rule, 68 (2), the ct. may set aside a composition, although it has been ratified, & may order bkpt. to make another which will provide greater security for the creditors. But where a composition has been ratified, & is a reasonable & fair attempt to pay creditors as much as possible, there can be no grounds for setting it aside.—ROSENTHAL *v.* HOPE & HART (1922), 67 D. L. R. 628; 24 Q. P. R. 120.—**CAN.**

a i. —— *Prior to bankruptcy.*]—ELECTRIC MOTOR & MACHINERY CO., LTD. *v.* DUCLOS & BANK OF MONTREAL, [1932] S. C. R. 634; 4 D. L. R. 81.—**CAN.**

af. *Absence of information & undervaluation.*]—*Held:* the proposal was not " reasonable & proper "—*Re* GASTON, [1922] 2 I. R. 179.—**IR.**

ah. *Composition giving discharge against all creditors & persons not in bankruptcy.*]—A proposed composition with a bkpt.'s creditors which provides for the discharge of, not only all the provable debts of the bkpt., but also of all claims of whatsoever nature of all creditors against the bkpt. & also against persons who are not in bkpcy. (in the present instance, the directors, officers & employees of the bkpt. co.) is not one which the ct. can approve; at least, in the absence of the personal assent thereto of every creditor. Nor will such a composition be approved in part only, *i.e.* as to that portion which releases only the bkpt. with respect to his provable debts, where the effect of doing so would be to give a guarantor of performance of the composition only part of that which he stipulated for as consideration for his guarantee.—*Re* KERN AGENCIES, LTD. (No. 2), [1931] 2 W. W. R. 633.—**CAN.**

PART XXIII. SECT. 6, SUB-SECT. 5.

8860 ii. —— ——.]—*Ite* C., No. 8825 ii, *ante*.—**IR.**

8865 i. —— *Enhanced value of assets.*]—An offer of a composition was passed by the requisite majority of creditors, & confirmed by the ct. Later, the property was sold for a price which considerably increased the assets. An opposing creditor then applied for an order setting aside the arrangement:—*Held:* a composition passed by the requisite majority of creditors & confirmed by the ct. cannot be upset except for fraud.—*Re* Q., AN ARRANGING DEBTOR, [1923] 2 I. R. 89.—**IR.**

ak. *Who may appeal—Trustee.*]—An appeal lies by a trustee in bkpcy. from an order refusing to approve a proposal for a composition with creditors.—*Re* KERN AGENCIES, LTD., [1931] 1 W. W. R. 629; 2 D. L. R. 614.—**CAN.**

8872. *Add. Annotations :*—**Apld.** Lazard Bros. & Co. *v.* Brooks (1932), 37 Com. Cas. 224. **Reld.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

8882a. ——.]—Flower *v.* Lyme Regis Corpn., No. 1775a, *ante*.

8923. *Add. Annotation :*—**Reld.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

8929a. —— **Debtor expecting execution—Deed valid.**]—Bowen *v.* Bramidge (1833), 6 C. & P. 140.

8929b. —— **Execution paid out by debtor—Money not recoverable by trustee.**]—[illegible]

8933a. **& sale of effects thereunder by trustees—Property protected—Although purchaser allowing debtor to retain possession.**]—Leonard *v.* Baker (1813), 1 M. & S. 251 ; 105 E. R. 94.

Annotation :—**Reld.** Latimer *v.* Batson (1825), 4 B. & C. 652.

8933b. —— —— —— **Although balance unsold remaining in debtor's possession.**]—Wooderman *v.* Baldock (1819), 8 Taunt. 676 ; 129 E. R. 547 ; *sub nom.* Woodham *v.* Baldock, 3 Moore, C. P. 11.

Annotations :—**Reld.** Aldred *v.* Constable (1844), 3 L. T. O. S. 299 ; Hickman *v.* Cox (1858), 30 L. T. O. S. 279 ; Barker *v.* Furlong, [1891] 2 Ch. 172.

8933c. -.]—*Held :* from the date of the deed of assignment the trustee was the legal owner of debtor's property, & the possession taken by him was effectual, so that there was no property of debtor which the sheriff could seize.—North Eastern Ry. Co. *v.* Spark (1877), 37 L. T. 143.

8965a. *S. P. Re* Price's Trust Deed (1868), L. R. 6 Eq. 460 ; 19 L. T. 113 ; 16 W. R. 907.

Annotations :—**Apld.** *Re* Raphael's Trust Estate (1870), L. R. 9 Eq. 233. **Reld.** Bell *v.* Bird (1868), L. R. 6 Eq. 635.

8970a. Restraint of trustee from acting—Injunction.]—Izard *v.* Colbron (1824), 13 Price, 327 ; M'Cle. 181 ; 147 E. R. 1006.

9022. *Add. Annotation :*—**Folld.** Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292.

9023. *Add. Annotations :*—**Folld.** Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292.

9024. *Add. Annotation :*—**Folld.** Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292.

9025a. Claim for royalties.]—N. & B. were the holders by novation of a licence from pltf. co. to use & exercise certain inventions relating to wireless apparatus which were the subject of letters patent owned or controlled by pltf. co. subject to the payment of certain royalties by N. & B. to pltf. co. N. & B. got into difficulties, & were unable to meet their obligations as they became due owing to overtrading, but they claimed to be still solvent. At a meeting of the trade creditors it was agreed that a committee of inspection should be appointed & that N. & B. should execute a deed of inspectorship. The deed, which was executed on May 6, 1928, was in the usual form, & in all material particulars the same as that considered by the ct. in *Easterbrook* v. *Barker*, No. 9024. By the deed N. & B., the debtors, in consideration of a release of their indebtedness to the assenting creditors, assigned their real & personal estates to C. as inspector upon trust to allow N. & B. " henceforth to manage & carry on their said business " subject to the covenants & conditions of the deed. N. & B. undertook to carry on the business or wind it up as the inspector & committee should think best. In a circular which was sent out by C., the inspector, on Sept. 10, 1928, announcing that the deed of inspectorship had been executed, it was stated that " all orders for goods required for the purpose of carrying

PART XXIII. SECT. 8, SUB-SECT. 3.—A.

k (p. 1090) **i.** ——.]—*Re* Cobourg Felt Co., *Ex p.* Weaver, [1925] 2 D. L. R. 997 ; 5 C. B. R. 622.—**CAN.**

t (p. 1090) **i.** —— *Hom stead lands—Claim of exemption not filed—Sale of homestead lands.*]—P., in Jan. 1912, executed an assignment for the benefit of his creditors of all his property except two lots of land on which he & his family lived, the value of which did not exceed $1,500 : & this assignment was duly registered by the assignees. By transfer dated in Apr. 1912, P. transferred all his right, title & interest in the two homestead lots to pltf., for value ; & P.'s claim to the lots as exempt from seizure & sale under execution was admitted in writing by his assignees. P., however, did not file a claim of exemption within thirty days of the registration of the assignment ; & the registrar refused to register the transfers, on the ground that P. had no right to deal with the land, because of his failure to file a claim of exemption within thirty days under Land Titles Act, R. S. Sask. 1909, c. 41, s. 117 :—*Held :* this statutory provision was not applicable, in the circumstances stated, the registrar should be directed, under Land Titles Act, s. 150, to register the transfers as if the assignment had not been registered.—Leach *v.* Haultain (1913), 24 W. L. R. 154 ; 4 W. W. R. 484 ; 11 D. L. R. 238.—**CAN.**

sl. *Judgment.*]—Under an assignment in trust for the benefit of creditors of all the assignor's property the assignee is entitled to an assignment of a bond which a purchaser under an agreement of sale with the assignor has entered into to protect the assignor against his (the purchaser's) default under the agreement, &, if before such assignment of the bond the assignor has obtained judgment on it, the trustee has a right to an assignment of the judgment.—*Re* Hirsch *v.* Alton, Interior Trust Co. *v.* Mackenzie, [1925] 4 D. L. R. 695 ; [1925] 1 W. W. R. 429 ; 34 Man. L. R. 650 ; 5 C. B. R. 545.—**CAN.**

so. *Assigned property—Collection Act, R. S. N. S.*, 1923 (c. 232).]—*Re* Polson, Trustee *v.* Thompson & Sutherland, Ltd., [1926] 1 D. L. R. 330 ; 58 N. S. R. 345.—**CAN.**

PART XXIII. SECT. 8, SUB-SECT. 3.—B.

8935 ii. —— —— ——.]—Johnson, Ltd. *v.* Victoria Mines, Ltd., [1930] 1 D. L. R. 57 ; 41 B. C. R. 321 ; 11 C. B. R. 23 ; [1929] 2 W. W. R. 511.—**CAN.**

8943 ii. —— ——.]—Payment into ct. under a garnishee summons, under Alberta practice, is not payment to the garnishing creditor under Bkpcy. Act, s. 11 (1), so as to prevent a subsequent authorised assignment taking precedence over the garnishment.—Western Canada Flour Mills Co., Ltd. *v.* White Bakery, [1921] 1 W. W. R. 828 ; 59 D. L. R. 621 ; 1 C. B. R. 390.—**CAN.**

PART XXIII. SECT. 9, SUB-SECT. 1.—C.

sp. *To fix date of creditors' meetings.*]—When an authorised trustee takes over the estate of bkpt. as though he were sequestrator, he has authority to fix the date of the creditors meeting & may change the date where it is impossible to give proper notice, & any meeting held on a date not so finally fixed by the trustee is illegal.—Lefaivre & Gagnon *v.* De Lisle (1922), 66 D. L. R. 264.—**CAN.**

sq. *To apply to court—For approval of composition arrangement.*]—*Re* Shaw (1920), 59 D. L. R. 619 ; 1 C. B. R. 368. —**CAN.**

sr. —— *For directions.*]—A trustee has the right to apply to the ct. for directions in connection with the administration of the estate, but is not entitled, prior to an authorised assignment or receiving order, to bring into ct. persons who may be entitled to certain assets, in order to determine their legal rights.—*Re* Geller Brothers, [1924] 2 D. L. R. 590 ; 54 O. L. R. 283 ; 4 C. B. R. 108.—**CAN.**

ss. *To attack chattel mortgage—For non-compliance with Chattel Mortgage Act.*]—An authorised assignee or trustee in bkpcy. can maintain an action to set aside a transaction for want of compliance with the provisions of Bills of Sale & Chattel Mtge. Act, even although the transaction was complete before Bkpcy. Act came into force.—Houlding *v.* Canadian Credit Men's Trust Assocn., Ltd., [1921] 2 W. W. R. 899 ; 14 Sask. L. R. 356.—**CAN.**

sx. —— ——.]—*Re* Hamer, *Ex p.* Royal Bank of Canada, [1922] 1 W. W. R. 1241 , 66 D. L. R. 800 ; 15 Sask. L. R. 165.—**CAN.**

on the business will be issued on my official order forms in the usual way & will be paid for by me." The inspector & the committee of inspection left the conduct of the business subsequent to the execution of the deed of inspectorship to N. & B. Pltfs. brought an action by which they claimed royalties upon wireless sets constructed & sold by N. & B. since Sept. 6, 1928. The action was brought against N. & B. & also against the inspector & the members of the committee of inspection personally:—*Held:* the deed of inspectorship did not constitute a partnership between N. & B. & their creditors, or between N. & B. & the inspector & the committee, also N. & B. did not become the agents of the inspector or of the committee to carry on the business, but the business remained the business of N. & B. & therefore pltfs.' claim for royalties against the inspector & committee of inspection failed.—MARCONI'S WIRELESS TELEGRAPH CO., LTD. *v.* NEWMAN, [1930] 2 K. B. 292; 99 L. J. K. B. 687; 143 L. T. 471; [1929-30] B. & C. R. 223.

9026a. —— **Putting up property for sale.**]—Assignees of debtor's property, in trust for the creditors, may put up a lease for sale, to try whether it can be made beneficial, without rendering themselves chargeable as assignees of the lease.—CARTER *v.* WARNE (1830), 4 C. & P. 191; Mood & M. 479, N. P.

Annotations:—**Consd.** How *v.* Kennet (1835), 3 Ad. & El. 659; White *v.* Hunt (1870), L. R. 6 Exch. 32.

9032a. ——.]—*Re* LEE, *Ex p.* GRUNWALDT, No. 8778a, *ante.*

9034a. ——.]—*Re* LAMPLOUGH (CLARKSON), *Ex p.* HARDING (1835), 4 Deac. & Ch. 793, Ct. of R.

9074. *Add. Annotation:*—**Reld.** Goldfarb *v.* Bartlett & Kremer, [1920] 1 K. B. 639.

9094. *Add. Annotation:*—**Reld.** *Re* Lee, *Ex p.* Grunwaldt, [1920] 2 K. B. 200.

9109a. —— ——.]—*Re* LEE, *Ex p.* GRUNWALDT, No. 8778a, *ante.*

9115a. ——.]—It would be an obvious fraud on the other creditors who agree to accept a composition payable *pro rata* to all if one creditor was enabled by a secret bargain to obtain a better advantage for himself (DAVEY, L.J.).—MURRAY *v.* REEVES (1828), 8 B. & C. 421; 2 Man. & Ry. K. B. 423; Dan. & Ll. 161; 108 E. R. 1099; *sub nom.* MURRAY *v.* REID, 6 L. J. O. S. K. B. 348, C. A.

Annotations:—**Consd.** *Re* McHenry, McDermott *v.* Boyd, Levita's Claim, [1894] 3 Ch, 365. **Reld.** Gilmour *v.* King (1833), 3 Tyr. 581; Hall *v.* Dyson (1852), 17 Q. B. 735.

9181a. Assent by assignor of debt—Not sufficient assent.]—PINDER *v.* COQUI (1866), 15 W. R. 22.

9198a. —— ——.]—*Re* LEE, *Ex p.* GRUNWALDT, No. 8778a, *ante.*

9198b. —— ——.]—HUDDERSFIELD FINE WORSTEDS, LTD. *v.* TODD, No. 8782d, *ante.*
Compare No. 797a, *ante*, & original volume, p. 160, No. 1498.

9229a. —— ——.]—HUDDERSFIELD FINE WORSTEDS, LTD. *v.* TODD, No. 8782d, *ante.*

9253a. *S. P.* CECIL *v.* PLAISTOW (1794), 1 Anst. 202; 145 E. R. 844.

Annotation:—**Apld.** Britten *v.* Hughes (1829), 5 Bing. 460.

9311a. Right to take proceedings under 1914 (Deeds) Act, s. 23—Claim to enforce right adverse to deed.]—*Re* ELLIS, No. 8645a, *ante.*

9486. *Add. Annotation:*—**Reld.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

9532. *Add. Annotation:*—**Apld.** Beebee & Co. *v.* Turner's Successors (1931), 48 T. L. R. 61.

9538a. —— ——.]—A. instituted a suit against B. & C. respecting a sum of £4,000. D. also was made a party to the suit; but, having no interest, he disclaimed. A., B. & C. afterwards came to a compromise, in pursuance of which they executed a deed, assigning the £4,000 to trustees in trust to pay to D. his costs of the suit, & to divide the rest of the fund amongst A., B. & C. D., though he was not a party, either to the compromise

PART XXIII. SECT. 10, SUB-SECT. 2.—A.

sy. *Assignment to creditor to secure advances—Retention of amount by assignee in excess of amount paid to other creditors.*]—Pltf. having become insolvent, made an assignment for the benefit of creditors, whereupon one of the creditors was appointed assignee. The business was reconveyed to pltf. on his undertaking to pay a composition on the amount of his indebtedness for the payment of which another of defts. became surety, & pltf. subsequently executed several assignments to defts. to secure advances. Defts. having taken possession under the last-mentioned assignments, the matters in difference between pltf. & defts. were referred to a master, with instructions to "take an account & report the sum due from either party to the other of them." The master having reported (*inter alia*) that defts., after paying the other creditors of pltf. their respective claims at the rate of sixty-two & a half cents on the dollar, had paid to themselves the full amount of their claim, & that being of opinion that defts. were not entitled to any greater rate of dividend on their claim than that paid to the other creditors, he had disallowed the surplus with interest, & had credited the same to pltf.:—*Held:* the decision of the Supreme Ct. of Nova Scotia, confirming the report of the master on the reference must be reversed on the ground that the master had exceeded his authority & reported on matters not referred to him.—DOULL *v.* MCILREITH (1886), 19 N. S. R. (7 R. & G.) 341; 7 C. L. T. 406; *revsd.* (1887), 14 S. C. R. 73.—**CAN.**

PART XXIII. SECT. 10, SUB-SECT. 2.—C. (a).

s (p. 1133) i. —— *As regards priority of subsequent creditors.*]—*Re* THOUN, [1925] 4 D. L. R. 242.—**CAN.**

9213 ii. —— *Out of assets in schedule.*]—Under a document signed by one A. & three of his creditors, applt. was appointed to take control on A.'s behalf of certain of his assets enumerated in an annexed schedule & to dispose of them for the benefit of the three creditors. The latter portion of the document was as follows: "& we the undersigned creditors of the said A. do hereby agree to accept as full settlement of the claims we have against him such *pro rata* share as may be found due in respect of the sale of the said assets, & we agree to pay the said applt. the usual commission on all assets realised: applt. having taken possession of the assets & having sold some of them, resp., one of the creditors who had signed the document, in an action against applt., complained that applt. had awarded a preference to one M. a creditor who had signed the document in respect of his claim which was based on two mtge. bonds referred to in the schedule of assets, & that applt. had failed to award resp. a *pro rata* share of the proceeds of the assets realised. It was common cause that if M. was entitled to the preference, resp., an unsecured creditor, would get nothing. The C. P. D. ordered applt. to amend his account by striking out the preference awarded to M. & distributing the proceeds of the assets among the creditors *pro rata* according to the respective amounts of their claims. Extrinsic evidence showing that the parties never intended that the secured creditors should abandon their preference had been led subject to subsequent decision as to its admissibility, but was held by the cts. below to be inadmissible, on the ground that the document was not ambiguous:—*Held:* the words "*pro rata* share" meant that the three creditors were to look to the proceeds of the assets in the schedule alone for the settlement of their claims, if the assets did not realise the full amount of their debts, & that they had reference not to the respective claims of the creditors but to the proportion that the proceeds bore to the total amount of the debts & that there was nothing in the document to show that preferences were to be given up.—SWANEPOEL *v.* VAN HEERDEN, [1928] App. D. 15.—**S. AF.**

or to the deed, filed a bill against A., B. & C. & the trustees, to compel a performance of the trusts & payment of his costs. A demurrer by C., for want of equity, was allowed.—GIBBS *v.* GLAMIS (1841), 11 Sim. 584; 59 E. R. 999; *sub nom.* GIBBS *v.* GIBBON, 5 Jur. 378, L. C.

Annotations :—**Consd.** Steele *v.* Murphy (1841), 3 Moo. P. C. C. 445; Synnot *v.* Simpson (1854), 5 H. L. Cas. 121.

9538b. —— —— **Provisions coming into operation after death of debtor.**]—The doctrine of *Garrard* v. *Lauderdale* (*Lord*), No. 9536, *ante*, does not apply to provisions for creditors which do not come into operation till after the death of the settlor.—*Re* FITZGERALD'S SETTLEMENT, FITZGERALD *v.* WHITE (1887), 37 Ch. D. 18; 57 L. J. Ch. 594; 57 L. T. 706; 36 W. R. 385, C. A.

Annotation :—**Apld.** Priestley *v.* Ellis, [1897] 1 Ch. 489.

9540a. —— ——.]—A., on going abroad, granted & assigned to B. freehold & personal property upon trusts for management & realisation, & for payment of A.'s debts & of the surplus to A.; the deed contained full powers for settling demands. B. communicated with the creditors upon the subject of the trust :—*Held :* the creditors did not thereby acquire any right to sue the trustee for the purpose of having the trusts performed.—CORNTHWAITE *v.* FRITH (1851), 4 De G. & Sm. 552; 64 E. R. 954.

9543. *Add. Annotation :*—**Refd.** *Re* Drage, Palmer & Roberts *v.* Knight (1926), 134 L. T. 765.

9546. *Add. Annotation :*—**Consd.** Rekstin *v.* Severo Sibirsko Gosudarstvernnoe Akcionernoe Olschestro Komseverputj & Bank for Russian Trade, Ltd. (1932), 48 T. L. R. 422.

9547. *Add. Annotation :*—**Distd.** Beebee & Co. *v.* Turner's Successors (1931), 48 T. L. R. 61.

9549. *Add. Annotation :*—**Refd.** Beebee & Co. *v.* Turner's Successors (1931), 48 T. L. R. 61.

9575. *Add. Annotations :*—**Apld.** Farey *v.* Cooper, [1927] 2 K. B. 384. **Refd.** Boorne *v.* Wicker, [1927] 1 Ch. 667.

9576. *Add. Annotations :*—**Apld.** Farey *v.* Cooper, [1927] 2 K. B. 384. **Refd.** Boorne *v.* Wicker, [1927] 1 Ch. 667.

9576a. ——.]—A debtor, who has assigned his business & goodwill to a trustee for the benefit of creditors, is not precluded, in the absence of express stipulation to the contrary, from soliciting the customers of the old business, notwithstanding that the deed of assignment contains a covenant by him to aid to the utmost of his power the realisation of the property assigned & the distribution of the proceeds thereof amongst the creditors. In such a case debtor cannot be restrained from canvassing the customers, nor can a third person be restrained from instigating debtor to do so.—FAREY *v.* COOPER, [1927] 2 K. B. 384; 96 L. J. K. B. 1046; 37 L. T. 720; 43 T. L. R. 803, C. A.

9619. *Add. Annotation :*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

PART XXIII. SECT. 12, SUB-SECT. 1.

9612 iii. ——.]—Where conveyances made by the assignee for the benefit of creditors to pltfs. were made & accepted in satisfaction of pltfs.' claim against debtor :—*Held :* deft. was thereby freed from liability as surety.—UNION BANK OF CANADA *v.* MAKEPEACE (1919), 44 O. L. R. 202; 15 O. W. N. 179; 46 D. L. R. 193.—**CAN.**

sb. *Variation by registrar—Discharge of surety.*]—MARTIN *v.* RIMAN, [1931] 1 D. L. R. 773; 66 O. L. R. 394.—**CAN.**

BENEFICIAL ASSOCIATIONS.

See FRIENDLY SOCIETIES.

BILLS OF EXCHANGE, PROMISSORY NOTES AND NEGOTIABLE INSTRUMENTS.

Part I.—In General.

10. *Add. Annotation :*—**Refd.** Robinson *v.* Marsh, [1921] 2 K. B. 640.

13. *Add. Annotations :*—**Refd.** Robinson *v.* Marsh, [1921] 2 K. B. 640; Sutters *v.* Briggs, [1922] 1 A. C. 1.

14. *Add. Annotation :*—**Consd.** *Re* Swinburne, Sutton *v.* Featherley, [1926] Ch. 38.

14a. —— —— ——.]—A lady, in her last illness, gave a cheque for £700 to a person with whom she had lived for some time, & the cheque was duly presented but not honoured, owing to the signature being of a very shaky & doubtful character. The donor died before the cheque could be again presented :—*Held :* the cheque not having been paid, there was no valid & effectual gift of the money to the donee.—*Re* SWINBURNE, SUTTON *v.* FEATHERLEY, [1926] Ch. 38; 95 L. J. Ch. 104; 134 L. T. 121; 70 Sol. Jo. 64, C. A.

37. *Add. Annotations :*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625; Ouellette *v.* Canadian Pacific Ry., [1925] A. C. 569; Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294; Shotts Iron Co. *v.* Curran, [1929] A. C. 409.

Part II.—Requirements of Form.

81. *Add. Annotation :*—**Refd.** London & Montrose Shipbuilding & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas. 67.

82. *Add. Annotations :*—**Consd.** London & Montrose Shipbuilding & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas. 67. **Refd.** Slingsby *v.* Westminster Bank, Ltd. (1930), 47 T. L. R. 1.

95. *Add. Annotation :*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625.

PART I. SECT. 1.

14 i. —— *Revocable mandate—Revoked by death.*]—The authority of a bank to pay a cheque ceases on notice of the drawer's death.—CURLEY *v.* BRIGGS (ADMINISTRATOR OF DRURY ESTATE), [1920] 2 W. W. R. 1025; 53 D. L. R. 351.—**CAN.**

14 ii. *S. P.* KENDRICK *v.* DOMINION BANK & BOWNAS (1920), 47 O. L. R. 372; 18 O. W. N. 138.—**CAN.**

e i. ——.]—Its nature & negotiability discussed.—CHAMPAKLAL GOPALDAS *v.* KESHRICHAND NAGANMAL (1925), 1. L. R. 50 Bom. 765.—**IND.**

PART II. SECT. 1, SUB-SECT. 1.

sa. *Note made by married woman—Effect of restraint upon anticipation.*]—Where a promissory note was made by a married woman:—*Held :* the promissory note was in fact, as well as in form, a valid unconditional promise on the part of the maker to pay a sum certain in money. Effect of Married Women's Property Act, R. S. O., 1914 (c. 149), ss. 4 (2), 5 (2), discussed.—ANDERSON *v.* MCLAREN, [1924] 4 D. L. R. 1076; 56 O. L. R. 26.—**CAN.**

r i. —— ——.]—An instrument is not a negotiable promissory note where there is not an unconditional promise, as required by Bills of Exchange Act, s. 176.—*Re* MITCHELL & UNION BANK OF CANADA, [1923] 4 D. L. R. 1132; 52 O. L. R. 523, *revsg. sub nom. Re* STEVENS & MITCHELL, 21 O. W. N. 331.—**CAN.**

r ii. —— ——.]—Where a cheque was drawn & given under the condition that it was not to become effective unless a loan was granted by a certain bank :—*Held :* the cheque could not be detached from the condition, &, the condition not having been fulfilled, the cheque could not be recovered on.—JONES *v.* THOMAS & NORMAN (1922), 65 D L. R. 491.—**CAN.**

r iii. —— ——.]—There is nothing in law to debar the maker of a promissory note from pleading as a defence to a suit thereon that as a matter of fact the note was given for a special purpose & was not payable until the happening of a certain specific event which, so far, had not yet happened.—BHOGI RAM *v.* KISHORI LAL (1928), I. L. R. 50 All. 754.—**IND.**

s i. —— ——.]—Where a written promise to pay a specified sum of money at a certain time after date also contains the words "with the privilege of renewals," the instrument is not a promissory note within the meaning of sect. 176 of Bills of Exchange Act, R. S. C., 1927.—ROSS *v.* EMPIRE CONSTRUCTION & INVESTMENT CO., LTD., [1932] 1 W. W. R. 714; 40 Man. L. R. 225; 3 D. L. R. 167.—**CAN.**

58 i. *Promise to pay or do something else.*]—If under the terms of a written promise to pay a sum of money the obligation may be discharged in part, or in full, by the rendering of services, the promise is not an unconditional one to pay a sum certain &, therefore, the document is not a promissory note.—STANDARD TRUSTS CO. *v.* LAVALLEY, [1930] 3 W. W. R. 305; [1931] D. L. R. 149; 25 Alta. L. R. 1; *affd.*, [1931] S. C. R. 595; 4 D. L. R. 634.—**CAN.**

60 vii. —— *Payment on account of specified contract.*]—WILSON *v.* PELLETIER (N. B.), [1928] 1 D. L. R. 716.—**CAN.**

79 i. *As per memorandum of agreement—Memorandum meaningless.*]—*Held :* there was a good promissory note.—CANADIAN BANK OF COMMERCE *v.* LIVINGSTON (P. E. I.) (1909), 6 E. L. R. 459.—**CAN.**

PART II. SECT. 1, SUB-SECT. 2.

f i. —— *Admission by solicitor of maker.*]—ARBUTHNOT *v.* CAMPBELL (No 2), [1931] 1 W. W. R. 240.—**CAN.**

h i. —— —— *Alleged maker denying signature.*]—Where an expert on handwriting said deft.'s signatures were genuine, but the judge held, after seeing enlargements of them, that they were forged :—*Held :* the absence of any evidence by pltf. & the uncertain nature of the other evidence justified the judge in dismissing the action.—EASTERN TOWNSHIPS INVESTMENTS CO. *v.* MCLENNAN (1919), 29 B. C. R. 1.—**CAN.**

PART II. SECT. 1, SUB-SECT. 3.

sb. *"Sixty days after sight"—Sum certain with interest for indefinite period.*]—*Held :* the document was not a bill of exchange.—ROSENHAIN & CO. *v.* COMMONWEALTH BANK OF AUSTRALIA, [1922] V. L. R. 787; 31 C. L. R. 46.—**AUS**

sc. *Cheque payable to "Ministre de la Voirie"—No time for payment stated.*]—An instrument in the form of a cheque drawn upon B. by A. payable to the order of the "Ministre de la Voirie" :—*Held :* not "payable on demand" & not a "cheque" within Bills of Exchange Act, s. 165.—LEDUC *v.* LA BANQUE D'HOCHELAGA, [1926] 1 D. L. R. 433; [1926] S. C. R. 76.—**CAN.**

sd. *Promise to pay by instalments—After future date.*]—MOTOR FINANCE CO. *v.* HARMS, [1930] 3 W. W. R. 302; 4 D. L. R. 1014.—**CAN.**

PART II. SECT. 1, SUB-SECT. 4.

k (p. 25) i. —— —— —— *At stated rate for uncertain time.*]—*Held :* the document was not a bill of exchange.—ROSENHAIN & CO. *v.* COMMONWEALTH BANK OF AUSTRALIA, [1922] V. L. R. 787; 31 C. L. R. 46.—**AUS.**

152 iii. —— —— *Error in calculation of instalment.*]—CONTINENTAL GUARANTY CORPN. OF CANADA *v.* VANCE, [1928] 1 D. L. R. 1134.—**CAN.**

152 iv. —— ——.]—The fact that an instrument in the form of a promissory note contained a promise by the payee written on the back thereof to accept payments by stated instalments :—*Held :* not to prevent it from being a true promissory note.—JACKSON *v.* DIGNEY, [1931] 1 D. L. R. 542; [1930] 3 W. W. R. 460; 39 Man. L. R. 201.—**CAN.**

191. *Add. Annotation :*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625.

205. *Add. Annotation :*—**Apld.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294.

207. *Add. Annotation :*—**Refd.** Lloyds Bank *v.* Chartered Bank of India, etc. (1927), 44 T. L. R. 165.

208. *Add. Annotation :*—**Apld.** Goldman *v.* Cox (1924), 40 T. L. R. 744.

209a. —.]—Pltf., who was a Pole, & could not read English unless it was printed, bought goods from one A. Cohen, & certain cheques were made out in favour of "A. Cohen" by a clerk in the employment of pltf. & were signed by pltf. The clerk afterwards forged the name of the payee by inserting "S" before "A. Cohen" & forged the indorsement & got the cheques cashed by deft., who obtained payment for the cheques on presentation. In an action for money received by deft. to the use of pltf. :—*Held :* as the cheques were, before signature, made out to a real creditor & not to a fictitious person pltf. was entitled to recover.—GOLDMAN *v.* COX (1924), 40 T. L. R. 744; 69 Sol. Jo. 10, C. A.

Annotation :—**Refd.** Slingsby *v.* District Bank Ltd. (1931), 47 T. L. R. 587.

215. *Add. Annotations :*—**Refd.** Robinson *v.* Marsh, [1921] 2 K. B. 640; McDonald *v.* Nash, [1924] A. C. 625.

240. *Add. Annotation :*—**Apld.** Mason *v.* Lack (1929), 140 L. T. 696.

240a. -.]—An instrument purporting to be a bill of exchange was drawn by pltf. At the time when deft. accepted it there was no other name upon it, the only indication of a name being that it was payable at a certain bank at which, in fact, deft. had no account. On a claim by pltf. for the amount of the alleged bill :—*Held :* (1) since the document was not signed by the person giving it & addressed to the person who was to pay it, it was neither upon the authorities nor within 1882 Act, s. 3, a valid bill of exchange; (2) it was a good promissory note upon which, after amendment of the statement of claim, pltf. was entitled to recover.—MASON *v.* LACK (1929), 140 L. T. 696; 45 T. L. R. 363; 73 Sol. Jo. 284.

241. *Add. Annotations :*—**Consd.** London & Montrose Shipbuilding & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas. 67. **Refd.** Slingsby *v.* Westminster Bank, Ltd. (1930), 47 T. L. R. 1.

242. *Add. Annotations :*—**Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40; Slingsby *v.* Westminster Bank, Ltd. (1930), 47 T. L. R. 1.

242a. —— **Cheque drawn by Government official on Bank of England—Dividend warrant for interest on War Loan.**]—The first pltf., who was an executrix & a beneficiary under a will, received from the Bank of England a warrant for interest on War Loan, the warrant being crossed "& Co. Not negotiable" & being expressed to be "A/c Harry Turner, deceased." She signed the warrant & sent it to the exor.'s solr. in pursuance of an arrangement that any warrants received by her should be sent to him for attention. The solr. paid the warrant into his own account with deft. bank, representing to the bank that it was a repayment of a loan which he said he had made to the first pltf. In an action against the bank to recover the amount :—*Held :* (1) although the drawer of the warrant was an official of the Bank of England on which it was drawn, yet, as he was acting as an agent of the Government, the warrant constituted a "cheque"; (2) the word "dividends" in Bills of Exchange Act, 1882 (c. 61), s. 95, included interest on Government stock.—SLINGSBY *v.* WESTMINSTER BANK, LTD., [1931] 1 K. B. 173; 100 L. J. K. B. 195; 144 L. T. 369; 47 T. L. R. 1; 36 Com. Cas. 54.

Annotations :—Generally, **Refd.** Slingsby *v.* District Bank, Ltd., [1932] 1 K. B. 544; Slingsby *v.* Westminster Bank, Ltd. (No. 2), [1931] 2 K. B. 583.

251. *Add. Annotation :*—**Consd.** Mason *v.* Lack (1929), 140 L. T. 696.

252. *Add. Annotation :*—**Refd.** Mason *v.* Lack (1929), 140 L. T. 696.

254. *Add. Annotation :*—**Refd.** Mason *v.* Lack (1929), 140 L. T. 696.

255. *Add. Annotation :*—**Consd.** Mason *v.* Lack (1929), 140 L. T. 696.

260. *Add. Annotation :*—**Expld.** *Re* British Trade Corpn., Ltd., [1932] 2 Ch. 1.

292a. **Memorandum for purchase of goods.**]—*Held :* an agreement, & not a promissory note.—ELLIS *v.* ELLIS (1820), Gow, 216, N. P.

295a. **Statement of sum borrowed & received—"Which I promise never to repay."**]—*Held :* pltf. was well entitled upon the lending on one side, & the borrowing on the other, notwithstanding the words in the conclusion of the note.—ANON. (*circa* 1716), cited in 2 Atk. at p. 32; 26 E. R. 416, N. P.

Annotation :—**Refd.** Simpson *v.* Vaughan (1739), 2 Atk. 31.

297a. **Acceptance of bill without drawer or drawee.**]—MASON *v.* LACK, No. 240a, *ante.*

PART II. SECT. 2, SUB-SECT. 2.

252 i. —— *Bill accepted.*]—An instrument purporting to be a promissory note, in which there is no mention of a drawee, may become a bill of exchange if acceptance is endorsed thereon by a third party. A person who thus endorses an acceptance thereby admits himself to be a drawee & becomes liable under it, even though he is not named as a drawee, provided acceptance by him is not inconsistent with the address on the bill of exchange. The acceptor having signified his acceptance is estopped from contending that he is not the drawee.—CHANDRA DHAR *v.* MAHAMMAD IBRAHIM (1929), I. L. R. 57 Calc. 695.—**IND.**

PART II. SECT. 4, SUB-SECT. 1.

a i. —— ——.]—NORTHERN LUMBER CO., LTD. *v.* BLEICH, NICHOLS & SHEPARD (Sask.), [1929] 4 D. L. R. 274; 2 W. W. R. 538; *revg.*, [1929] 2 D. L. R. 698.—**CAN.**

PART II. SECT. 4, SUB-SECT. 2.

ad. *Promissory note for interest in patent right—Form of indorsement.*]—GALLAGHER *v.* MURPHY (Ont.), [1928] 4 D. L. R. 618; *revsd.*, [1929] 2 D. L. R. 124; S. C. R. 2[illegible]

PART II. SECT. 5.

1 i. —— *Followed by lien agreement.*]—A document which satisfies the statutory definition of a promissory note is not prevented from being a true promissory note by the fact that it is followed on the same paper by a collateral agreement, if such agreement does not qualify the obligation of the maker of the note or restrict the note's negotiability.—BANK OF NOVA SCOTIA *v.* PHILPOTT, [1930] 2 W. W. R. 128; 4 D. L. R. 148; 24 S. L. R. 473.—**CAN.**

Part III.—Classification of Instruments.

341. *Add. Annotations :*—**Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1. **Mentd.** The Joannis Vatis (1921), 91 L. J. P. 182.

Part V.—Computation of Time of Payment.

441a. —— —— —— ——.]—Where a promissory note, repayable by instalments, provides that if any instalment should not be paid "punctually" the whole of the balance is immediately to become payable, the use of the word "punctually" does not deprive the maker of the note of the three days of grace allowed by 1882 Act, s. 14, "in every case where the bill itself does not otherwise provide."—SCHAVERIEN *v.* MORRIS (1921), 37 T. L. R. 366.

Part VI.—Acceptance.

456. *Add. Annotation :*—**Refd.** Mason *v.* Lack (1929), 140 L. T. 696.

468. *Add. Annotations :*—**Consd.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450. **Refd.** *Re* Gooch, *Ex p.* Judd, [1921] 2 K. B. 593; McDonald *v.* Nash, [1924] A. C. 625.

508a. —— ——.]—Defts., merchants in London, were in the habit of purchasing goods for G., a merchant at Petersburg, which they consigned to pltf., his agent at Hamburg, & they drew bills to the amount, pursuant to the credit established for them. In such course of business, they consigned Brazil sugars & indigo to pltf. for G. & other merchants at Petersburg, & transmitted the bills of lading, & drew bills to the amount; upon which pltf. informed them, that he protected their drafts to the amount of all the goods consigned to the merchants at Petersburg, except those consigned to G.; that he accepted the draft for the amount of such goods provisionally, under the guarantee of defts., inasmuch as the sugars against which the bill was drawn were not, as ordered by his principal, Havannah, to the amount of which he was authorised to accept, but Brazil, respecting which he had no directions; that he would communicate with his principal on the subject, & inform defts. of the result. Such communication being made, G. at Petersburg, confirmed the order for the Brazil sugars, & directed pltf. to accept to their amount, & release defts. from their guarantee. Pltf. also informed defts. of their drafts, drawn on him against goods, being confirmed & acknowledged by other merchants at Petersburg, for whose account they were drawn. Upon the bkpcy. of G. & an action by pltf. against defts., for the amount of the bill which he had paid :—*Held :* pltf. was to be considered as having accepted the bill, not for the account of defts. until he, the acceptor, was in funds, but in reference to the confirmation of the order for the Brazil, instead of the Havannah sugars; which confirmation being given, his claim was upon the bkpt. at Petersburg, not upon defts., against whom, consequently, no action could be maintained.—LOHMANN *v.* ROUGEMONT (1840), 6 Bing. N. C. 253; 8 Scott, 520; 9 L. J. C. P. 158; 133 E. R. 100.

545. *Add. Annotation :*—**Refd.** Sassoon *v.* International Banking Corpn., [1927] A. C. 711.

Part VII.—Inchoate Instruments.

555. *Add. Annotation :*—**Consd.** McDonald *v.* Nash, [1924] A. C. 625.

563. *Add. Annotation :*—**Refd.** Smith *v.* Wood (1928), 139 L. T. 250.

564a. —— **Authority to indorse.**]—Bills of exchange drawn by pltfs. to their own order, on & accepted by W. S. & Co., a co. of which deft. was a director, were indorsed by deft. in pursuance of a verbal agreement under which pltfs. sold & delivered goods to the acceptors, in consideration of deft. indorsing the bills with the intention of making himself liable to pltfs. in case of default by the acceptors. Pltfs. subsequently indorsed the bills, writing their name underneath that of deft. Pltfs. sued deft. as indorser :—*Held :* (1) by virtue of Bills of Exchange Act, 1882 (c. 61), s. 20, pltfs. had authority to complete the bills by adding their own indorsement, &

PART III. SECT. 1.

se. *Cheque payable to "cash or order."*]—*Held :* payable to bearer.—JUDMAIER *v.* STANDARD BANK OF CANADA (Alta.), [——] 1 W. W. R. 270.—**CAN.**

PART III. SECT. 3.

sg. *Drawn on resident in British—Wherever drawn.*]—A bill of exchange drawn upon a resident of British India is an inland instrument irrespective of the place where it was drawn.—KIDSTON (A.-G.) & Co. *v.* SETH BROS. (1929), I. L. R. 57 Calc. 730.—**IND.**

PART VI. SECT. 2.

sm. *Acceptance by wife.*]—*Held :* not binding on husband.—ECCLES *v.* MERCHANTS BANK OF CANADA, [1923] 3 D. L. R. 1103; 52 O. L. R. 138.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.

sp. *Indorsement "will accept on arrival of goods."*]—*Held :* the words when applied to a bill on demand meant "will pay," & no further acceptance was necessary.—HUM- —— *v.* TAYLOR, [1921] N. Z. L. R.

the fact that pltfs. wrote their name underneath, instead of above, that of deft. was no answer to pltfs.' claim; (2) although the verbal contract found to have been made between deft. & pltfs. was in one sense a contract of guarantee, Stat. Frauds could not be set up as an answer to a claim under the bills.—MCCALL BROS., LTD. *v.* HARGREAVES, [1932] 2 K. B. 423; 101 L. J. K. B. 733; 147 L. T. 257; 48 T. L. R. 450; 76 Sol. Jo. 433.

565. *Add. Annotations:*—**Consd.** McDonald *v.* Nash, [1924] A. C. 625. **Refd.** Lickbarrow *v.* Mason (1793), 6 East, 20, n.

567a. ——.]—*Re* GOOCH, *Ex p.* JUDD, No. 2096a, *post.*

567b. ——.]—MCDONALD (GERALD) & CO. *v.* NASH & CO., No. 2096b, *post.*

568a. —— **Effect of 1882 Act, s. 12.**]—F., a financier, L., a distiller, D. & M., a firm of shipbrokers, & one A. were minded to load a ship with a cargo of whisky to be carried across the Atlantic & sold in the U.S. or at some point from which it could easily be smuggled into the U.S., in violation of the laws of that country. D. & M. entered into a contract to buy a steamer for £2,565; F. advanced £256 as a deposit on the purchase. On Oct. 26, 1927, an agreement was entered into between F., L. & D. & M., whereby L. agreed to sell to D. & M. 7,500 cases of whisky at 27*s.* 6*d.* a case free on board at Leith or Glasgow to be delivered *ex* warehouse not later than Nov. 26. D. & M. were to take delivery on board a vessel of a regular line of steamers. Payment was to be made by a bill for £5,500 drawn by F., accepted by A. & indorsed to L., & a second bill for £4,812 accepted by A. & D. & M., both bills to be payable ninety days from Nov. 26, & to be drawn & accepted on Oct. 26 & handed to L. to hold as security until he should hand the shipping documents or delivery order from bond on or before Nov. 26. L. agreed to lend D. & M. £2,500 (£1,000 at 8 per cent. *per annum* & £1,500 at 40 per cent. *per annum* interest) for the purchase of the steamer, the loan to be secured by a first mtge. on the steamer. F. agreed to lend D. & M. £1,000 at 40 per cent. *per annum* interest to be secured by a second mtge. on the steamer. D. & M. agreed to insure the steamer for £1,000 against all risks including seizure or confiscation & £2,500 against marine risks & deliver to L. cover notes for £1,500 & £1,000 & to F. a cover note for £1,000. F. & L. agreed jointly to underwrite the insurance for £1,000 against confiscation at a figure to be agreed in the event of the ordinary market rate exceeding thirty guineas per cent. D. & M. agreed to provide £1,600, the estimated balance required for the equipment of the steamer for the voyage. In intended pursuance of the agreement two documents undated, & purporting to be bills of exchange, though written upon unstamped paper, were sent to L.; both were headed "London"; one was drawn by F., accepted by A., & indorsed by F., & was for £5,500, payable ninety days after date; the other not signed by any one as drawer; it was accepted by A. & by D. & M., & was for £1,812 payable ninety days after date. Delay having occurred in naming a liner to take delivery of the whisky & in equipping the steamer for the adventure, L. gave to D. & M. a delivery order addressed to the keepers of the bonded warehouse where the whisky was in store. D. & M. immediately pledged the whisky for £500. F. hearing of this paid off the loan & took a transfer of the delivery order. The so-called bills of exchange for £5,500 & £4,812 were sent to L., who was at Lausanne. He struck out "London" & substituted "Lausanne," added Dec. 3 as the date of each, & signed his name as the drawer of the second, & stamped them both as foreign bills:—*Held:* (1) the so-called bill for £5,500, being drawn, accepted & indorsed in this country on unstamped paper, was void by Stamp Act, 1891 (c. 39), ss. 2, 37 (2), 38 (1); (2) the so-called bill for £4,812 though valid in other respects, as a foreign bill, notwithstanding 1882 Act, s. 64, was invalidated by L. having added a date not in accordance with the contract, & was not protected by 1882 Act, s. 12.—FOSTER *v.* DRISCOLL, LINDSAY *v.* ATTFIELD, LINDSAY *v.* DRISCOLL, [1929] 1 K. B. 470; 98 L. J. K. B. 282; 140 L. T. 479; 45 T. L. R. 185, C. A.

Annotation:—*As to* (2) **Consd.** Koch *v.* Dicks, [1932] W. N. 156.

577a. —— ——.]—Where a bill of exchange on duly stamped paper is presented for signature to the acceptor by the drawer, & the former signs at the request of the latter with knowledge that the drawer intends to convert the document into a bill of exchange & negotiate it as such, it is immaterial, as against a holder in due course, whether the document was in blank or fully filled in when presented to the drawer for signature.—DUNN (M.), LTD. *v.* JEFFERSON (1925), 69 Sol. Jo. 695, 725.

584. *Add. Annotation:*—**Refd.** Guildford Trust *v.* Goss (1927), 136 L. T. 725.

585. *Add. Annotation:*—**Refd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607.

587. *Add. Annotation:*—**Dbtd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

588a. —— **Particular purpose—Fraudulent use for another purpose.**]—A cheque was signed in blank by one of the partners in a syndicate, in the belief that the stamp of the syndicate would be subsequently affixed & the cheque used for the ordinary business of the syndicate. It was made payable to another partner, & was indorsed by a third partner, who believed the same as the drawer, as well as by the payee. The payee, in fraud of the other two partners, did not affix the stamp of the syndicate & used the cheque for the purpose of raising a loan from money-lenders, for which he gave a promissory note binding him to repay an agreed sum by monthly instalments. When one of the instalments fell due, the cheque was tendered in payment & was dishonoured upon presentation, & the money-lenders then sued the drawer &

566 vi. —— *& place of*
Where instead of handing over a note, applt.'s solr. filled in a place for payment, & discounted it with resp. & kept the money, & resp. filled in his own name as payee, & the note was not paid at maturity & no notice of dishonour was given to applt.:—*Held:* the solr. had no authority to negotiate the note, & resp. had no authority to fill in his name as payee, & he could not recover from applt.—KNUST *v.* ABBOT, N. Z. L. R. 1072.—N.Z.

the indorser:—*Held:* the drawer & indorser were liable on the cheque, as there had been nothing to put pltfs. on inquiry whether a fraud was being perpetrated by the payee, & as both defts., when signing the document, had intended that the document should be negotiated as a cheque, the cheque could not be regarded as a document given in escrow.—GUILDFORD TRUST, LTD. *v.* GOSS (1927), 136 L. T. 725; 43 T. L. R. 167.

Part VIII.—Delivery.

595. *Add. Annotation:*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625.

596. *Add. Annotation:*—**Refd.** Lloyds Bank *v.* Chartered Bank of India, etc. (1927), 44 T. L. R. 165.

643. *Add. Annotation:*—**Expld & Distd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

Part IX.—Capacity and Authority of Parties.

687. *Add. Annotation:*—**Refd.** Kreditbank Cassel G.m.b.H. *v.* Schenkers, [1926] 2 K. B. 450.

691a. —— ——.]—*Re* ADANSONIA FIBRE CO., MILES' CLAIM (1874), 9 Ch. App. 635; 43 L. J. Ch. 732; 31 L. T. 9; 22 W. R. 889, L. JJ.

Annotation:—**Consd.** Yorkshire Banking Co. *v.* Beatson (1880), 5 C. P. D. 109.

691b. ——.]—FLEMING *v.* MCNAIR (1812), cited in 3 Dow, at p. 229; 3 E. R. 1048, H. L.

Annotations:—**Consd.** Davison *v.* Robertson (1815), 3 Dow. 218. **N.F.** Yorkshire Banking Co. *v.* Beatson (1880), 5 C. P. D. 109.

692a. —— ——.]—In order to take a case out of the principle, that every partner in a mercantile or ordinary trading partnership is liable upon bills, drawn by a partner in the recognised trading business of the firm, for a transaction incident to the business of the firm, although such partner's name does not appear upon the face of the instrument, & although he be a sleeping & secret partner, it must be established that the holder of the bills knew, at the time he received them, that the transaction was a private contract not within the scope of the partnership.—BUNARSEE DASS *v.* GHOLAM HOSSEIN (1870), 13 Moo. Ind. App. 358; 20 E. R. 585, P. C.

693a. —— ——.]—SUTTON *v.* GREGORY (1797), Peake, Add. Cas. 150; 170 E. R. 226, N. P.

694a. —— —— ——.]—If one partner draw or indorse a bill in the partnership name, it will *primâ facie* bind the firm, although passed by the partner to a separate creditor in discharge of his own debt, unless there be evidence of covin between such separate debtor & creditor, or at least of the want of authority either express or to be implied, in the debtor partner to give the joint security of the firm for his separate debt.—RIDLEY *v.* TAYLOR (1810), 13 East, 175; 104 E. R. 336.

Annotations:—**Consd.** Frankland *v.* M'Gusty (1830), 1 Knapp. 274; *Re* Acraman, *Ex p.* Bushell (1844), 3 Mont. D. & De G. 615. **Distd.** Leverson *v.* Lane (1862), 13 C. B. N. S. 278. **Refd.** Lloyd *v.* Ashby (1825), 2 C. & P. 138; Wintle *v.* Crowther (1831), 1 Cr. & J. 316; *Re* Riches, *Ex p.* Darlington District Joint Stock Banking Co. (1865), 34 L. J. Bcy. 10.

694b. —— —— ——.]—Bills drawn by one partner for a separate debt in the partnership name cannot be recovered upon as against the firm, unless pltf. can prove either a direct assent from the other partners, or circumstances from which such assent might have been reasonably presumed.—FRANKLAND *v.* M'GUSTY (1830), 1 Knapp, 274; 12 E. R. 324, P. C.

Annotations:—**Consd.** *Re* Wardley & Hodson, *Ex p.* Thorpe (1836), 2 Deac. 16. **Refd.** Leverson *v.* Lane (1862), 13 C. B. N. S. 278.

694c. —— **Note made for self & partner—Partner bound.**]—LANE *v.* WILLIAMS (1692), 2 Vern. 277; 23 E. R. 779; *subsequent proceedings* (1693), 2 Vern. 292.

Annotations:—**Consd.** Devaynes *v.* Noble, Sleech's Case (1816), 1 Mer. 539. **Refd.** Bank of Australasia *v.* Breillat (1847), 6 Moo. P. C. C. 152.

694d. —— —— ——.]—SMITH *v.* JERVES & BAILY (1727), 2 Ld. Raym. 1484; 92 E. R. 464; *sub nom.* SMITH *v.* BAILY, 11 Mod. Rep. 401.

695a. —— —— **With addition of partnership name—Firm bound.**]—GALWAY (LORD) *v.* MATTHEW & SMITHSON (1808), 1 Camp. 403;

PART VIII. SECT. 1, SUB-SECT. 15.

ss. *Application of Land Titles Act (Alta.), sects.* 101, 102, 103.]—Sects. 101, 102 & 103 of Alberta Land Titles Act, relative to transfer of mtges., have no application where the mtgor.'s interest in the land has disappeared before transfer & there remains nothing but the personal responsibility of the mtgor. arising under covenant or otherwise.—STANDARD TRUSTS CO. *v.* LA VALLEY, [1931] S. C. R. 595.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.

598 ii. ——.]—Extrinsic evidence is always admissible to show delivery in escrow.—IMPERIAL BANK *v.* HEISZ, IMPERIAL BANK *v.* HUNDT, [1930] 1 D. L. R. 339; 64 O. L. R. 452.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 1.—A.

611 viii. ——.]—Oral evidence is not admissible to show an agreement contemporaneous with the making of a note that the liability of the maker is contingent on the happening of some event.—HUTHENIAN FARMERS ELEVATOR CO. *v.* GNIAZDOSKI, [1922] 3 W. W. R. 19; 68 D. L. R. 656; 32 Man. L. R. 322.—**CAN.**

611 ix. ——.]—MCNEILL *v.* STEWART, [1932] 1 D. L. R. 607; 3 M. P. R. 581. —**CAN.**

628 i. —— *Until death of maker.*]—BONHAM *v.* BONHAM (1920), 48 O. L. R. 434; 57 D. L. R. 459; 19 O. W. N. 268.—**CAN.**

637 iv. ——.]—Evidence of alleged conditions attached to the payment of a promissory note, *e.g.* payment out of a particular fund is not admissible, as it would vary the terms of the written document.—GUGGISBERG *v.* WEBER, [1924] 1 D. L. R. 335; 1 W. W. R. 137; 18 Sask. L. R. 6.—**CAN.**

638 i. *Excluding liability if goods rejected.*]—An action by payee against the maker of a promissory note given for the price of goods was dismissed, on the ground that deft. had exercised, as under a contemporaneous oral agreement he was entitled to do, the right of rejecting & returning the goods.—NATIONAL MANUFACTURING CO. *v.* STEPA, [1922] 1 W. W. R. 814; 65 D. L. R. 284; 17 Alta. L. R. 398.—**CAN.**

PART IX. SECT. 2.

t (p. 96) i. ——.]—POPE *v.* FRASER, [1923] 3 W. W. R. 754.—**CAN.**

170 E. R. 1000, N. P.; *subsequent proceedings, sub nom.* GALLWAY (LORD) *v.* MATHEW & SMITHSON, 10 East, 264.

Annotations :—**Consd.** Rooth *v.* Quin & Janney (1819), 7 Price, 193. **Apld.** *Re* Clarke, *Ex p.* Buckler (1844), 3 L. T. O. S. 284.

696a. —— ——.]—In an action against partners on a bill of exchange, it is no legal objection that the bill has been drawn or indorsed by one in his own name only. The liability of the parties may be collected from their course of business & other circumstances, showing that the partner who drew or indorsed had authority to bind the partnership by that mode of drawing or indorsing. Nor is it sufficient for the other partners to show that, in the particular instance, the partner who drew or indorsed the bill in question violated his private instructions in so doing.—SOUTH CAROLINA BANK *v.* CASE (1828), 8 B. & C. 427; 2 Man. & Ry. K. B. 459; 108 E. R. 1101; *sub nom.* SOUTH CAROLINA BANK *v.* CASE, BECKETT *v.* SAME, Dan. & Ll. 103; 6 L. J. O. S. K. B. 364.

Annotations :—**Expld.** Smith *v.* Craven (1831), 1 Cr. & J. 500. **Dbtd.** Nicholson *v.* Ricketts (1860), 2 E. & E. 497. **Consd.** *Re* Adansonia Fibre Co., Miles' Claim (1874), 9 9 Ch. App. 635; Yorkshire Banking Co. *v.* Beatson (1880), 5 C. P. D. 109. **Refd.** Vere *v.* Ashby (1829), 10 B. & C. 288; Beckham *v.* Knight (1838), 4 Bing. N. C. 243; Trueman *v.* Loder (1840), 11 Ad. & El. 589.

698a. —— —— **After dissolution.**]—A bill drawn & accepted after dissolution of partnership, though dated before, does not bind the retiring partner.—WRIGHT *v.* PULHAM (1816), 2 Chit. 121; *sub nom.* WRIGHTSON *v.* PULLAN, 1 Stark. 375; 171 E. R. 501.

701a. —— —— ——.]—A bill, though drawn on a partnership, & accepted by one of the partners, if for a separate debt of one of them, shall not bind the partnership, if the party knew the consideration of the bill. *Aliter*, if in the hands of a *bonâ fide* indorsee without notice.—WELLS *v.* MASTERMAN (1799), 2 Esp. 731; 170 E. R. 512, N. P.

Annotations :—**Refd.** Leverson *v.* Lane (1862), 13 C. B. N. S. 278; Ellston *v.* Deacon (1866), L. R. 2 C. P. 20.

701b. —— —— ——.]—A partnership acceptance, given in discharge of the several debt of one of two partners, cannot be proved against the joint estate, by a person who took it in discharge of such several debt, though it was left for acceptance at the house of business of the partnership, & thence returned accepted, unless the holder makes out that it was accepted in the partnership name, with the knowledge & assent of the other partner.—*Re* O'NEILL, *Ex p.* GOULDING (1829), 8 L. J. O. S. Ch. 19, L. C.

Annotations :—**Refd.** Leverson *v.* Lane (1862), 13 C. B. N. S. 278; *Re* Riches & Marshall's Trust Deed, *Ex p.* Darlington, etc., Banking Co. (1865), 4 De G. J. & Sm. 581.

702a. —— —— **Bill not addressed to partnership address.**]—Deft., a cheesemonger at A., carried on at W. the hosiery trade in partnership with C., but in his own name. C. accepted, in the name of deft., a bill of exchange drawn for goods supplied to the partnership, & which was addressed to deft. at A. :—*Held :* the acceptance was binding on deft., although the bill was not addressed to the place where the partnership business was carried on.—STEPHENS *v.* REYNOLDS (1860), 5 H. & N. 513; 29 L. J. Ex. 278; 2 L. T. 222; 157 E. R. 1283; *subsequent proceedings*, 2 F. & F. 147.

Annotations :—**Consd.** Yorkshire Banking Co. *v.* Beatson (1), Leeds & County Banking Co. *v.* Same (1879), 4 C. P. D. 204. **Refd.** Yorkshire Banking Co. *v.* Beatson (1880), 5 C. P. D. 109.

709a. —— —— **Not for partnership purposes—Firm not bound.**]—SHEPPARD *v.* DRY (1840), cited in Byles on Bills, 18th ed., p. 56, n. (*l*).

713a. —— —— **For private debt—Firm not bound.**]—ARDEN *v.* SHARPE & GILSON (1797), 2 Esp. 524; 170 E. R. 442, N. P.

713b. —— —— ——.]—RIDLEY *v.* TAYLOR, No. 694a, *ante*.

713c. —— **Bill or note indorsed by partner in own name.**]—SOUTH CAROLINA BANK *v.* CASE, No. 696a, *ante*.

722. *Add. Annotation :*—**Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

726. *Add. Annotation :*—**Refd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607.

734. *Add. Annotations :*—**Distd.** Goldman *v.* Cox (1924), 40 T. L. R. 744. **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

737. *Add. Annotation :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

738. *Add. Annotation :*—**Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

746. *Add. Annotations :*—**Consd.** Goldman *v.* Cox (1924), 40 T. L. R. 423; Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244. **Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Australian Bank of Commerce *v.* Perel, [1926] A. C. 737; Jones *v.* Waring & Gillow, [1926] A. C. 670; Fenton Textile Assocn. *v.* Thomas (1929), 45 T. L. R. 264; Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40; Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465; Midland Bank, Ltd. *v.* Reckitt (1932), 48 T. L. R. 271; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114; Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

755. *Add. Annotations :*—**Consd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Reckitt *v.* Barnett, Pembroke & Slater, [1928], 2 K. B. 244.

757. *Add. Annotations :*—**Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Liggett (Liverpool) *v.* Barclays Bank, [1927] 137 L. T. 443; Lloyds Bank *v.* Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609.

759. *Add. Annotation :*—**Refd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

763a. —— —— **"Directors" added after signatures—Acceptance by company—Drawer requiring indorsement by directors.**]—A bill of exchange addressed to a limited co. was accepted in the following form: "Accepted payable at the W. Bank—A.B. & C.D., directors—Fashions Fair Exhibition, Ltd."

PART IX. SECT. 5.

763 va. —— —— *"President" & "Mgr." added after signatures.*]—*Held :* the individual defts. were personally liable on the note.—LOCZKA *v.* RUTHENIAN FARMERS' CO-OPERATIVE CO., LTD., [1922] 2 W. W. R. 782; 68 D. L. R. 535; 32 Man. L. R. 137.—CAN.

763 vb. —— —— *"Pres." & "Secy." added after signatures.*]—Whether those signing a promissory note signed it as officials of a limited co. or as individuals, is a question of intent, & the intent must be gathered from the face of the document itself, & where, on a series of notes made to the same person at one time, a

The drawer when sending the bill to the co. for acceptance stated in his letter that as a condition of his doing the work for which the bill was drawn he should require it to be indorsed by the directors as well as accepted by the co. Accordingly the same two directors signed the bill also on the back, "Fashions Fair Exhibition, Ltd. A.B. & C.D., directors," & one of them when returning the accepted bill drew attention in his letter to the fact that it was "duly indorsed by two directors of the co. as requested by you." In an action against A.B. & C.D. as indorsers of the bill:—*Held:* (1) they were personally liable, upon the ground that if the indorsement was to be treated as that of the co. it gave no greater validity to the bill than was already contained in the acceptance, & therefore under 1882 Act, s. 26 (2), the construction that it was the personal indorsement of defts. was to be adopted; (2) even if the indorsement stood by itself, as defts.' signature did not in terms say that they were signing on behalf of the co., the addition to their names of the word "directors" must be treated as a word of description only & not as excluding their liability; (3) the ct. were entitled to look at the surrounding circumstances under which the bill was signed, including the letters which passed between the parties on the subject of the indorsement, from which it was to be inferred that defts. by indorsing intended to guarantee the payment of the bill.—ELLIOTT *v.* BAX-IRONSIDE, [1925] 2 K. B. 301; 94 L. J. K. B. 807; 133 L. T. 624; 41 T. L. R. 631, C. A.

——— *As to* (1) **Consd.** Kettle *v.* Dunster & Wakefield (1927), 43 T. L. R. 770.

763b. —— —— **"Receiver" added after signature.**]—Pltf., who had been appointed receiver on behalf of the debenture-holders of a co., sued defts. as acceptors of bills of exchange, which were signed by "R., Receiver, F. Ltd." as drawer. They had been accepted in respect of goods supplied by the co. to defts., & pltf. had stated that it must be "clearly understood that I am in no way accepting any liability or responsibility whatever in respect of the orders themselves":—*Held:* (1) the above were not "surrounding circumstances" from which the intention of the parties could be inferred, & such intention must be gathered from the terms of the document alone; (2) the words "Receiver, F. Ltd." were words of description only, & the bills did not purport to have been drawn on behalf of the co.; (3) pltf. was entitled to recover against defts. upon the bills.—KETTLE *v.* DUNSTER & WAKEFIELD (1927), 138 L. T. 158; 43 T. L. R. 770.

Part X.—Consideration.

772. *Add. Annotation:*—*As to* (1) **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

773. *Add. Annotations:*—**Refd.** Robinson *v.* Marsh, [1921] 2 K. B. 640; Sutters *v.* Briggs, [1922] 1 A. C. 1; *Re* Farrow's Bank, [1923] 1 Ch. 41.

801. *Add. Annotation:*—**Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

803. *Add. Annotations:*—**Distd.** Burrell *v.* Leven (1926), 42 T. L. R. 407; Richardson *v.* Moncrieffe (1926), 43 T. L. R. 32. **Refd.** Robinson

rubber stamp containing the name of the co. & two lines was impressed on the notes & the signers signed on the two lines & added the words "Pres." & "Secy." after their signatures & were in fact the president & secretary of the co. respectively:—*Held:* the notes were made by the co.—SCHAFFER *v.* TUBBY, SMITH & CO., LTD., [1924] 1 D. L. R. 468; 1 W. W. R. 213.—**CAN.**

763 v c. —— —— *"Director" & "Secretary" added after signatures.*]—A promissory note was granted in the following terms: "Four months after date we promise to pay. . . [C. D.] Director, [E. F.] Secretary. The Fraserburgh Empire Ltd." The body of the note & the words appended to the signatures had all been written by the same person, not one of the signatories, before signature:—*Held:* the two signatories were personally liable.—BREBNER *v.* HENDERSON, [1925] S. C. 643.—**SCOT.**

763 v d. —— —— *"Managing Proprietor" added after signature.*]—A suit was brought on three hundis running in the following form: "56 days after date I promise to pay S. C. F., or order the sum of R.'s 600, only for value received in cash (signed) G. V. A., Managing Proprietor, G. & B. Friends, S. Rd. Bombay No. 4":—*Held:* the only person liable on these hundis was G. V. A. who had signed them & not any alleged firm passing under the name of G. & B. Friends, & the words Managing Proprietor, etc., were merely added as a description of his occupation & business address.—SITARAM KRISHNA PADHYE *v.* CHINANDAS FATEHCHAND (1926 I. L. R. 52 Bom. 640.—**IND.**

PART X. SECT. 1, SUB-SECT. 3.

795 i. *Forbearance to sue—Surety.*]—*Held:* the giving of a note to avoid suit contituted deft. a principal debtor, & his equities as a surety were gone.—ALLIANCE TRUST CO. *v.* JOHNSON, [1920] 2 W. W. R. 800; 15 Alta. L. R. 479.—**CAN.**

795 ii. —— *Note given by vice-president of company & wife.*]—Defts., husband & wife, were respectively vice-president & president of a co. which was indebted to pltf. co. & was unable to make payment. Defts. made a joint & several promissory note in favour of pltf. co., payable on demand, for the amount of the debtor co.'s indebtedness. This was done at the solicitation of K., a representative of pltf. co., who said that he would not sue "them" so long as they showed a disposition to pay:—*Held:* by "them" K. meant the debtor co.; forbearance to sue upon the demand note was a sufficient consideration for the giving of it; & the wife deft. was liable upon it.—CITIES SERVICE OIL CO. *v.* RUBEL, [1931] 2 D. L. R. 183; 66 O. L. R. 475.—**CAN.**

PART X. SECT. 1, SUB-SECT. 4.

q i. —— ——.]—*Held:* the forbearance or extension of time limited for the balance of payments which R. obtained by the giving of the note was valuable consideration within the meaning of the common law of England or under sect. 53 of Bills of Exchange Act, R. S. C., 1927.—*Re* ROSS, HUTCHISON *v.* ROYAL INSTITUTION FOR ADVANCEMENT OF LEARNING, [1932] S. C. R. 57; [1931] 4 D. L. R. 689.—**CAN.**

st. *Extension of credit.*]—FULLER & CO. *v.* HOLLAND (N. S.) (1910), 9 E. L. R. 110.—**CAN.**

PART X. SECT. 1, SUB-SECT. 5.

sv. *Sale of improvements by quit-claim deed.*]—DUBE *v.* MORNEAULT (1920), 48 N. B. R. 200; 55 D. L. R. 512.—**CAN.**

sx. *Giving credit.*]—In an action upon promissory notes made by defts. husband & wife, in favour of pltfs. wholesale merchants, it appeared that in Mar. 1921, the wife deft. who had been carrying on a retail business, made an assignment under the Bkpcy. Act, & shortly afterwards made a proposal to compound her debts at 35 cents in the dollar, to be paid in ten equal monthly instalments. The composition was duly approved by the ct. Pltfs. were among the creditors. The debtor did not complete the composition payments within the times proposed, & the final payment was not made until Aug. 1923. After the composition was approved, the debtor continued to do business, & made some purchases from pltfs. In Sept. 1922, the debtor proposed to buy a large quantity from pltfs. on credit, but pltfs. refused to give credit for the quantity desired unless defts. would make some settlement of the old debt, *i.e.* the unpaid balance of pltfs.' compound claim. Defts. thereupon signed the promissory notes now sued upon, delivered them to pltfs.. & received a new supply of goods upon the credit they desired:—*Held:* the notes were not made for the accommodation of pltfs.; but, though representing a compromised debt, were in fact made

v. Marsh, [1921] 2 K. B. 640; Sutters *v.* Briggs, [1922] 1 A. C. 1. **Refd.** Eldridge & Morris *v.* Taylor, [1931] 2 K. B. 416.

823. *Add. Annotation :*—**Refd.** Stott *v.* Shaw & Lee, [1928] 2 K. B. 26.

826a. ——.]—MASCARENHAS *v.* MERCANTILE BANK OF INDIA, LTD., DA SILVA *v.* MERCANTILE BANK OF INDIA, LTD., No. 843a, *post.*

837. *Add. Annotation :*—**Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

843a. Fraudulent pledge of debentures—Surrender for renewal—Rights of pledgee.]—A man, entrusted with certain debenture securities for the purpose of collecting the interest on behalf of the owners, by means of forged endorsements pledged all the debentures with his bankers to secure his own indebtedness. Later the debentures, which constituted negotiable instruments, were surrendered by the bank to the issuing authority, who exchanged them for new debentures of the same total value. All the new instruments were issued directly to & in the name of the surrendering bank, & clear of all previous endorsements. The original securities were then cancelled & retained by the makers. Later the said bank at the request of the pledgor of the securities endorsed the new instruments over to another bank, the present respondents, to whom he had transferred his loan account. On a claim by the owners of the original debentures, the present applts., for the delivery to them of the new instruments by resp. bank :—*Held :* there was nothing in the circumstances of the transaction to put resps. on inquiry. The issue by the makers of the "renewal" debentures constituted in effect a new contract between them & the first bank, &, resp. bank being the holders in due course of those instruments, applts. had no right of action against them. The "renewals" were in form & in substance new & independent obligations in substitution for those under the surrendered instruments.—MASCARENHAS *v.* MERCANTILE BANK OF INDIA, LTD., DA SILVA *v.* MERCANTILE BANK OF INDIA, LTD. (1931), 47 T. L. R. 611, P. C.

868. *Add. Annotation :*—**Consd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

895. *Add. Annotation :*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

898a. —— **Under 1882 Act, s. 21 (2)—Payee.**]—The original payee of a cheque is not a "holder in due course" within the above sect.—JONES (R. E.), LTD. *v.* WARING & GILLOW, LTD., [1926] A. C. 670; 95 L. J. K. B. 913; 135 L. T. 548; 42 T. L. R. 644; 70 Sol. Jo. 756; 32 Com. Cas. 8, H. L.

Annotation :—**Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.

897. *Add. Annotation :*—**Apprvd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

899. *Add. Annotation :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

901. *Add. Annotation :*—**Consd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

902. *Add. Annotations :*—**Consd.** Sutters *v.* Briggs, [1922] 1 A. C. 1. **Refd.** Brown *v.* Swan (1921), 37 T. L. R. 787; Robinson *v.* Marsh, [1921] 2 K. B. 640.

in consideration of the giving of credit in respect of the new sale, & that was sufficient consideration to support the notes & to render defts. liable.—CHAMANDY BROTHERS, LTD. *v.* ALBERT, [1928] 2 D. L. R. 577; 62 O. L. R. 105; 10 C. B. R. 32.—**CAN.**

sy. *Delivery up of void bill.*]—Valuable consideration for a bill of exchange may consist in the delivery up of another bill which the person taking the former bill was entitled to keep, even though the bill delivered up was void.—ROYAL BANK OF CANADA *v.* GROBE & WALBRIDGE (Alta.), [1928] 3 D. L. R. 93; [1928] 2 W. W. R. 55.—**CAN.**

sz. *Credit given to third party.*]—B., having an unauthorised loan from applt. bank, of which he was a director, & wishing that it should cease to appear in the books, persuaded the first resp. to sign a promissory note for Rs. 20,000, dated Dec. 22, 1917, in favour of the bank; B. promised that he would himself pay the principal & interest. The note was credited by the bank to B., the first resp. receiving no part of the money. On Dec. 23, 1918, B. paid to the bank a sum out of which the bank allocated Rs. 908 to the payment of the interest due upon the note. B. had notice of that allocation & adopted it in his own books. On Aug. 9, 1921, applt. bank sued the first resp. upon the note :—*Held :* the first resp. was liable on the note. The giving of credit by the bank to B. was consideration.—NATIONAL BANK OF UPPER INDIA *v.* BANSIDHAR (1929), L. R. 57 Ind. App. 1, P. C.—**IND.**

sa. *Note given for price of car—To father of vendor—Father "backing" son in business — Absence of consideration.*]—MCLEAN *v.* MCDOUGALL, [1930] 1 D. L. R. 713; 1 M. P. R. 77.—**CAN.**

PART X. SECT. 2.

844 ii. ——.]—CANADIAN BANK OF

PART X. SECT. 3.

855 i. *Liability of accommodating party—Not entitled to notice of dishonour.*]—CODVILLE CO. *v.* JORDAN, [1922] 1 W. W. R. 1280; 63 D. L. R. 694.—**CAN.**

856 vi. —— —— —— *Subsequent indorser not entitled to benefit of collateral security.*]—SMITH *v.* FRALICK (1856), 5 Gr. 612.—**CAN.**

sb. *Right of accommodating party—To sue—On warehouse receipt indorsed by accommodated party.*]—*Held :* pltf. could not recover, for there was no debt contracted at the time of the indorsement.—COCKBURN *v.* SYLVESTER (1877), 1 A. R. 471.—**CAN.**

PART X. SECT. 5.

896 iv. —— ——.]—UNION BANK OF CANADA *v.* ANTONIOU, [1921] 1 W. W. R. 649; 56 D. L. R. 338; 61 S. C. R. 253.—**CAN.**

896 v. —— ——.]—WEICKER *v.* MORTIMER, [1922] 2 W. W. R. 725; 15 Sask. L. R. 436.—**CAN.**

896 vi. —— ——.]—ALLAHABAD BANK, LTD., LAHORE *v.* RATTAN CHAND CHAWLA (1927), I. L. R. 8 Lah. 702.—**IND.**

897 vi. —— ——.]—GUNNS, LTD. *v.* WARK, [1924] 1 D. L. R. 377, 51 N. B. R. 292.—**CAN.**

897 vii. —— ——.]—MARSHALL *v.* ROGERS, [1924] 1 D. L. R. 888.—**CAN.**

897 viii. —— ——.]—The origiñal payee of a cheque is not a holder in due course.—JOHNSON *v.* JOHNSON, [1928] 2 D. L. R. 531, 912; [1928] 1 W. W. R. 774; [1928] 2 W. W. R. 63. 23 Alta. L. R. 388.—**CAN.**

907 i. *"Complete & regular on face of it"—Instrument signed in blank.*]—A party who knows that a note has been signed in blank & negotiated to him before being filled out is not a holder in due course.—SAVARD *v.* TREMBLAY (1922), Q. R. 34 K. B. 458.—**CAN.**

913 iii. —— ——.]—Pltf. purchased a 1916 model motor-truck from G. A cash payment was made on account & promissory notes given for the balance. G. assigned the agreement & notes to defts. for valuable consideration, of which pltf. had due notice. Later pltf. found the truck was a 1913 model but continued to use it. He then brought an action for cancellation of the notes: —*Held :* defts. were holders of the notes in due course & had discharged any *onus* for the fraudulent conduct of G. of which they had no notice.—FRASER *v.* MCGREGOR, JOHNSTON & THOMAS, LTD. (1922), 31 B. C. R. 306.—**CAN.**

913 iv. —— ——.]—BANK OF AUSTRALASIA *v.* CURTIS, [1927] N. Z. L. R. 247.—**N.Z.**

916 vi. —— ——.]—In order for a person to whom a bill or note is negotiated to be affected with notice of a defect in the title of the person negotiating it he must have knowledge of the facts or a suspicion of something wrong combined with a wilful neglect of the means of knowledge.—ROYAL BANK OF CANADA *v.* GROBE & WALBRIDGE (Alta.), [1928] 3 D. L. R. 93; [1928] 2 W. W. R. 55.—**CAN.**

916 vii. —— ——.]—Promissory notes for $1,000 & $2,000 were endorsed by defts. respectively for the accommodation of a co. which was a customer of pltf. bank, pursuant to an arrangement made at a conference between the manager of the co., one of defts., & the local manager of pltf. bank, whereby the proceeds of the notes, when endorsed, were to be applied in reduction of a balance due by the co. upon a purchase of land, & that the notes should not be used until the co. had raised a sum of $1,000 to make up the sum of $4,000 to be paid upon the land purchase. Defts. endorsed the notes upon these conditions. The notes were not discounted by pltf. bank, but were pledged to the bank by the co. as

917. *Add. Annotations :*—**Consd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294 ; Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

922. *Add. Annotations :*—**Consd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

935. *Add. Annotation :*—**Refd.** Humphrey & Denman *v.* Kavanagh (1925), 41 T. L. R. 378.

942. *Add. Annotation :*—**Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

943. *Add. Annotations :*—**Distd.** Soc. Anon. des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789. **Apld.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153.

945. *Add. Annotations :*—**Refd.** Maskell *v.* Hill, [1921] 3 K. B. 157 ; Humphery *v.* Wilson (1929), 141 L. T. 469.

946a. Compounding felony.]—GUIBORN *v.* FELLOWS (1717), 2 Eq. Cas. Abr. 160 ; 5 Vin. Abr. 408, pl. 20 ; 22 E. R. 136, L. C.

960. *Add. Annotations :*—**Refd.** Robinson *v.* Marsh, [1921] 2 K. B. 640 ; Sutters *v.* Briggs, [1922] 1 A. C. 1.

964. *Add. Annotation :*—**Apld.** Greenberg *v.* Cooperstein, [1926] Ch. 657.

971. *Add. Annotation :*—**Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

991. *Add. Annotation :*—*As to* (1) **Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

995. *Add. Annotation :*—**Consd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

1033. *Add. Annotation :*—**Refd.** Bernard *v.* Williams (1928), 139 L. T. 22.

1037. *Annotations :*—Delete " Barwick *v.* S. E. & C. Ry. Cos., [1920] 2 K. B. 387 ; Bombay & Persia Steam Navigation Co. *v.* MacLay, [1920] 3 K. B. 402 ; Markwald *v.* A.-G., [1920] 1 Ch. 348."

Add. Annotations :—**Refd.** Maclaine *v.* Eccott (1924), 132 L. T. 173 ; Greenwood *v.* Martin's Bank, Ltd. (1932), 48 T. L. R. 601.

collateral security for advances made to the co. The co. never raised the $1,000 necessary to complete the payment of $4,000 :—*Held :* the local manager of the bank had full notice & knowledge of the arrangement, & when he accepted the notes as pledge he was not acting in good faith & pltf. bank was therefore not a holder in due course.—IMPERIAL BANK *v.* HEISZ, IMPERIAL BANK *v.* HUNDT, [1930] 1 D. L. R. 339 ; 64 O. L. R. 452.—**CAN.**

n (p. 140) i. —— *Notice that transferor not entitled to transfer.*]—Defts. entered into a hire-purchase agreement with the H. Co. in respect of a motor car, & gave promissory notes as collateral security, but not in payment of the instalments payable thereunder. It was a term of the hire-purchase agreement, that defts. should be entitled to determine the hiring by returning the car to the H. Co. &, thereupon, the H. Co. was obliged to surrender all promissory notes given by defts., & not then due. Pltf., in course of an arrangement for financing the H. Co.'s transactions, paid the H. Co. an agreed price for the car, & the H. Co. indorsed deft.'s promissory notes & delivered them to pltf. Thereafter, defts. proposed, in lieu of the instalments, to pay £150 at once, & the residue of the consideration in a single deferred payment. The H. Co. sought to retire the promissory notes held by the pltf., but as the parties could not agree as to the rebate for payment in anticipation of the due dates, nothing eventuated. The H. Co., however, accepted the £150, & later, the balance of the consideration, from defts., & met each note held by pltf. as it fell due, until it went into liquidation. Pltf.'s representative was aware, in another capacity, of what had occurred between the other parties. Pltf. having brought an action against defts. on the promissory notes still held by it :—*Held :* it was a part of the bargain between defts. & the H. Co. that the promissory notes should not be discounted ; of this pltf. was aware ; pltf. was not a holder in due course, & could not recover.—AUTOMOBILE FINANCE CO. OF AUSTRALIA *v.* HENDERSON (1930), 23 Tas. L. R. 9.—**AUS.**

g (p. 141) i. —— ——.]—IMPERIAL BANK *v.* HEISZ, IMPERIAL BANK *v.* HUNDT, [1930] 1 D. L. R. 339 ; 64 O. L. R. 452.—**CAN.**

k (p. 141) i. —— *Private arrangement between parties—Not expressed on face of instrument.*]—An open letter of credit was granted to W., trader, on the guarantee of T. & M., merchants, upon an agreement, not expressed in the letter, that W. should buy produce & consign bills of lading & policy of insurance endorsed to T. & M., as security. W., in fraud & violation of their agreement, drew bills under the letter, & indorsed for value to the Merchants' Bank of Halifax, who had no notice of the above agreement :—*Held :* a negotiable instrument is not to be affected by any private arrangement which the parties to it do not choose to put upon the face of the document. If it were intended to limit W. in the use of the letter of credit as between him & the world at large, to a use for mercantile purposes connected with the purchase of the produce, it would have been very easy to have expressed on the face of the letter of credit that it was to be accepted if presented accompanied by bills of lading & policy of insurance.—MERCHANTS BANK OF HALIFAX *v.* WINTER (1898), 8 Nfld. L. R. 30.—**NFLD.**

PART X. SECT. 6, SUB-SECT. 2.—A.

940 i. *Smuggling.*]—WALLBRIDGE *v.* FOLLETT (1846), 2 U. C. R. 280.—**CAN.**

942 i. *Gaming—Gambling in grain futures.*]—Promissory note unenforceable.—BANK OF TORONTO *v.* SWEENEY, BANK OF TORONTO *v.* COCHRANE, BANK OF TORONTO *v.* BORYS, [1927] 2 W. W. R. 597 ; 21 Sask. L. R. 670.—**CAN.**

946 iii. ——.]—MACWILLIAMS *v.* HIGGINS, [1927] 2 D. L. R. 781 ; [1927] 1 W. W. R. 772 ; 36 Man. L. R. 458.—**CAN.**

946 iv. ——.]—Promissory note unenforceable. The fact that the magistrate consented to the withdrawal of the charge is immaterial.—BECKER *v.* BACHMAN (Alta.), [1927] 2 D. L. R. 1144 ; [1927] 2 W. W. R. 32.—**CAN.**

m. Read now " **946a i.**"

n i. *Transaction in breach of licensing laws.*]—*Held :* pltfs. could not recover on bills of exchange given in payment for intoxicating liquors sold by their agent in a local option district.—WILSON CO. *v.* MAYFLOWER BOTTLING CO. (N. S.) (1913), 13 E. L. R. 489 ; 14 D. L. R. 711.—**CAN.**

n ii. ——.]—*Held :* there was no legal consideration for the cheque on which pltf. sued, & he could not recover.—SKALE *v.* BECKER, [1926] 1 D. L. R. 723 ; 59 O. L. R. 551.—**CAN.**

PART X. SECT. 6, SUB-SECT. 2.—B.

958 iv. —— ——.]—M. drew a cheque, crossed " not negotiable," & payable to D. or order, & delivered it to D. in payment of money won from him by D. under a wagering contract. D. indorsed the cheque to R. but upon presentment to M. for payment it was dishonoured :—*Held :* the cheque having been given for a consideration which by virtue of Gaming & Betting Act, 1912, was not illegal but merely void, D. had acquired a good title to it, & therefore that R. was entitled to recover its value from M.—ROBERTS *v.* MALOUF (1929), 29 S. R. N. S. W. 179 ; 46 N. S. W. W. N. 61.—**AUS**

e i. —— ——.]—A promissory note given to a creditor in order to procure his consent to an assignment in contravention of Act 32, 1916, s. 141 (*b*), is not by reason of that fact alone void in the hands of a person not a party to it, who, subsequently to the illegality, gives value for it in good faith.—VALAYATHAN *v.* FIVE ROSES TEA & COFFEE WORKS (1931), 52 N. L. R. 143.—**S. AF.**

sb. *Amount recoverable.*]—Where the consideration for a promissory note as between the maker & payee was illegal & judgment is recovered thereon against the maker by a holder in due course who took it from the payee as collateral security for a debt, the amount of the judgment should be limited to the amount of the transferees' present indebtedness to the holder. The same result follows even though the original transaction was not illegal, where the maker has already paid the amount of the note to the payee.—ROYAL BANK OF CANADA *v.* GROBE & WALBRIDGE (Alta.), [1928] 3 D. L. R. 93 ; [1928] 2 W. W. R. 55.—**CAN.**

PART X. SECT. 7.

993 v. *Assignment by vendor of rights under contract to third party—Property in goods never passing to purchaser.*]—MONTICELLO STATE BANK *v.* KILLORAN, [1920] 3 W. W. R. 542.—**CAN.**

PART X. SECT. 8, SUB-SECT. 1.

s i. —— *Verbal agreement that note to be operative only on happening of specified event.*]—DENNIS *v.* IVEY & BOYCE, [1920] 3 W. W. R. 744.—**CAN.**

s ii. —— *Note given to show fictitious assets—Estoppel of maker.*]—HAY *v.* ALLEN, [1921] 1 W. W. R. 33.—**CAN.**

s iii. ——.]—KLOTZ *v.* JOUAN, [1925] 3 D. L. R. 105.—**CAN.**

s iv. ——.]—DEVLIN *v.* MOORE'S MILLS CREAMERY, LTD. (N. B.), [1927] 3 D. L. R. 479.—**CAN.**

1038. *Add. Annotations :*—**Reld.** The Penelope, [1928] P. 180; Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557.

1052. *Add. Annotation :*—**Reld.** Robinson *v.* Marsh, [1921] 2 K. B. 640.

1053. *Add. Annotations :*—**Distd.** Guildford Trust *v.* Pohl & Maritch (1928), 72 Sol. Jo. 171. **Reld.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

1054. *Add. Annotation :*—**Reld.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

1054a. —— —— ——.]—GUILDFORD TRUST, LTD. *v.* POHL & MARITCH (1928), 72 Sol. Jo. 171.

1093. *Add. Annotation :*—**Reld.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

1132. *Add. Annotation :*—**Reld.** Robinson *v.* Marsh, [1921] 2 K. B. 640.

Part XI.—Negotiation and Transfer.

1155. *Add. Annotation :*—*As to* (2) **Consd.** Austrian Property Administrator *v.* Russian Bank for Foreign Trade (1931), 47 T. L. R. 550.

1161. *Add. Annotation :*—**Reld.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

1163. *Add. Annotation :*—**Reld.** McDonald *v.* Nash, [1924] A. C. 625.

1178. *Add. Annotation :*—**Reld.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

1188. *Add Annotation :*—**Reld.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

1189. *Add. Annotation :*—**Dbtd.** Mascarenhas *v.* Mercantile Bank of India, Ltd., Da Silva *v.* Mercantile Bank of India, Ltd. (1931), 47 T. L. R. 611.

1190. *Add. Annotation :*—**Reld.** Robinson *v.* Marsh, [1921] 2 K. B. 640.

1196. *Add. Annotation :*—*As to* (2) **Consd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

1248. *Add. Annotations :*—**Consd.** *Re* Gooch, *Ex p.* Judd, [1921] 2 K. B. 593; McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450. **Reld.** McDonald *v.* Nash, [1924] A. C. 625.

1250. *Add. Annotations :*—**Apld.** *Re* Gooch, *Ex p.* Judd, [1921] 2 K. B. 593. **Apprvd.** McDonald *v.* Nash, [1924] A. C. 625. **Apld.** National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188. **Reld.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

PART X. SECT. 8, SUB-SECT. 2.

1040 ii. —— —— ——.]—The maker of a post-dated cheque the consideration for which has failed & payment of which he has stopped, is liable thereon to a bank which in good faith & without knowledge of the facts has before its date received it by indorsement from the payee & given credit therefor to the payee.—UNION BANK OF CANADA *v.* TATTERSALL, [1920] 2 W. W. R. 497; 52 D. L. R. 407; 15 Alta. L. R. 350.—**CAN.**

q (p. 164) i. —— —— —— *Withdrawal of retainer.*]—The rule that partial failure of consideration for a promissory note is a defence *pro tanto*, as against an immediate party, only when the amount of the note referable to such partial failure is ascertained & liquidated, was applied herein to an action on a note given a solr. on being retained to conduct the defence to a charge which was withdrawn before the date set for trial, but with respect to which the solr. prepared for trial.—KRAUSS *v.* LUCIUK, [1928] 1 D. L. R. 1132; [1928] 1 W. W. R. 184; 22 Sask. L. R. 374.—**CAN.**

PART X. SECT. 9, SUB-SECT. 1.

sd. *General rule.*]—In an action against the maker of a promissory note by an alleged holder in due course deft. has the right to plead fraud of the payee.—ARBUTHNOT *v.* CAMPBELL, [1930] 2 W. W. R. 275.—**CAN.**

1053 iii. —— ——.]—ROYAL BANK *v.* WANNAMAKER (Ont.), [1929] 4 D. L. R. 999.—**CAN.**

1059 xv. ——.]—Where notes were nullities for fraud, & the signer was not estopped by any negligence on her part :—*Held :* the third party, although a holder in due course, had no right to recover from her.—DUNSHEA *v.* KESTEVEN, [1922] N. Z. L. R. 1032.—**N.Z.**

1059 xvi. ——.]—Where there was a defect in the payee's title, of which the indorsee had notice :—*Held :* he was not entitled to recover.—DARROCK *v.* BURNS (1927), 48 N. L. R. 320.—**S. AF.**

1059 xvii. ——.] — MCTAVISH *v.* COTSWOLD SCHOOL DISTRICT, [1931] 3 W. W. R. 623.—**CAN.**

PART X. SECT. 9, SUB-SECT. 2.

1073 i. —— *Husband & wife.*]—FRYERS & CO., LTD. *v.* STEEVES (N. B.), [1927] 4 D. L. R. 1077.—**CAN.**

PART X. SECT. 10, SUB-SECT. 1.

1093 i. Add " *varied*, [1917 1 W. W. R. 1177."

sf. *Question for jury.*]—Pltf. sued upon two promissory notes made by deft. to L. & transferred, after maturity, & not for value, to pltf. They were renewals for the balance unpaid of a previous note from deft. to L. There was conflicting evidence as to the reason & consideration for giving the original note. L. asserted that the note was given for the amount owing to him by deft. on a loan. Deft. asserted that the note was for L.'s accommodation; that the loan from L., asserted by L. to have been made to deft., had in fact been made to one R., that subsequently L. wanted the money, R. could not then pay, that deft. gave the note, for the same amount as that owing by R., to enable L. to raise money, but received no consideration, that it was agreed that deft. was not to be called upon to pay the note or any renewals, & that the note or any renewals would not be negotiated after maturity. The trial judge withdrew the case from the jury : —*Held :* there the questions whether the note was given simply for L.'s accommodation or in consideration of a debt due by deft. or by R., & whether there was an agreement, as alleged by deft., that the note should not be negotiated after maturity, should have been submitted to the jury.—GLESBY *v.* MITCHELL, [1932] S. C. R. 260; 1 D. L. R. 641; *affg.*, [1931] 2 D. L. R. 675; 3 M. P. R. 507.—**CAN.**

PART X. SECT. 10, SUB-SECT. 2.—B. (a).

1096 ix. —— ——.]—Fraud is no defence where an action on a note is brought by a holder in due course. It merely shifts the burden to pltf. to show that he took the note before maturity, in good faith, for value & with no notice of the fraud.—CANADIAN BANK OF COMMERCE *v.* PEEBLES, [1924] 1 D. L. R. 225.—**CAN.**

PART XI. SECT. 4.

f (p. 185) i. —— ——.]—To be the holder of a promissory note & entitled to sue on it in his own name, pltf. must be either the payee or the indorsee in possession of the note.—BARNEY *v.* LAUZON, [1923] 2 W. W. R. 19.—**CAN.**

m (p. 188) i. —— —— —— *Assignment to evade counterclaim.*]—Deft. made a note in favour of C., who lost it. C. made an assignment of it to J. in order that J. might bring an action thereon & so prevent deft. bringing a counterclaim against C. Just before trial the note was found & indorsed to J. :—*Held :* C. must be joined as pltf., & deft. allowed ot bring in his counterclaim.—JONES & COLQUHOUN *v.* FINCH (1922), 66 D. L. R. 822.—**CAN.**

m (p. 188) ii. —— —— *Indorsement in consideration of advances—Advances repaid.*]—*Held :* an action might be brought either in the name of the indorser or holder.—CLOW *v.* DOULL, [1920] 1 W. W. R. 1060.—**CAN.**

m (p. 188) iii. —— —— " *On account of* " *payee.*]—An indorsement was not struck out & action was brought on the note in the name of the payee. At the trial the judge allowed pltf. to amend by adding the indorsee as co-pltf., deft. having objected that pltf. had no right of action; & judgment was given for the indorsee, but costs were given deft. against the payee, the original pltf. Deft. appealed on the grounds that no amendment should have been allowed, & pltf. was not entitled to judgment. Appeal dismissed.—JACKSON MACHINES, LTD. *v.* MICHALUCK, [1922] 2 W. W. R. 572; 67 D. L. R. 182; 15 Sask. L. R. 467.—**CAN.**

d (p. 189) i.—*Payee of* BELCHER *v.* DIXON, [1923] N. 273.—**N.Z.**

1254a. —— ——.]—A testator gave a promissory note to G., saying he wished to provide otherwise than by will, for pltf. & afterwards made his will, appointing G., with others, his exor., & to whom, after payment of legacies, he bequeathed a moiety of his personal estate. G. having made some payments on account to the pltf. afterwards denied her title :—*Held :* he was a trustee of the note for pltf.—LLOYD *v.* CHUNE (1860), 2 Giff. 441 ; 3 L. T. 366 ; 6 Jur. N. S. 1365 ; 66 E. R. 184.

Annotation :—**Expld.** *Re* Whitaker (1889), 42 Ch. D. 119.

1306. *Add. Annotation :*—**Refd.** *Re* Wethered, *Ex p.* Salaman, [1926] Ch. 167.

1312. *Add. Annotation :*—**Consd.** Importers Co. *v.* Westminster Bank, [1927] 1 K. B. 869.

1318. *Add. Annotation :*—**Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

1319. *Add. Annotation :*—**Refd.** Robinson *v.* Midland Bank (1925), 41 T. L. R. 402.

1324. *Add. Annotation :*—**Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1.

1334. *Add. Annotation :*—**Consd.** McDonald *v.* Nash, [1924] A. C. 625.

Part XII.—General Duties of Holder.

1397. *Add. Annotations :*—**Refd.** Jaeger *v.* Jaeger Co. (1927), 44 R. P. C. 437 ; Sassoon *v.* International Banking Corpn., [1927] A. C. 711 ; Greenwood *v.* Martin's Bank, Ltd. (1932), 48 T. L. R. 601.

1407. *Add. Annotation :*—**Refd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.

1459. *Add. Annotation :*—**Refd.** Baines *v.* National Provincial Bank (1927), 96 L. J. K. B. 801.

1461. *Add. Annotation :*—**Refd.** Baines *v.* National Provincial Bank (1927), 96 L. J. K. B. 801.

1463. *Add. Annotation :*—**Refd.** Baines *v.* National Provincial Bank (1927), 96 L. J. K. B. 801.

PART XI. SECT. 9.

e i. —— *Bank selling assets to another bank.*]—Where one bank sells its assets to another bank under Bank Act, ss. 99 to 111, & the agreement for sale has been approved by the Governor in Council, the purchasing bank may sue in its own name in respect of a promissory note, part of the assets acquired, notwithstanding that the note has not been indorsed by the selling bank as required by Bills of Exchange Act.—BANK OF MONTREAL *v.* IRVINE & FEINSTEIN, [1924] 3 D. L. R. 752 ; 2 W. W. R. 1047.—**CAN.**

PART XI. SECT. 15, SUB-SECT. 1.

sg. "*Indorsed*" *written opposite signature.*]—A promissory note was signed by W. & M. on the face of the note & opposite M.'s signature the word "indorsed" was written by a salesman in the service of pltf. co., to which the note was made payable :—*Held :* M. did not sign the note with the intention of indorsing it, but as maker, though as between him & W. only as a surety, & the word "indorsed" was merely a memorandum intended to show that M. was a surety.—GORRIE (A. D.) CO., LTD. *v.* WHITFIELD & MICHAUD (1920), 48 O. L. R. 605 ; 58 D. L. R. 326 ; 19 O. W. N. 336.—**CAN.**

sh. "*I hereby assign the moneys payable under the within note.*"]—BANK OF NOVA SCOTIA *v.* PHILPOTT, [1930] 4 D. L. R. 148 ; 2 W. W. R. 128 ; 24 S. L. R. 473.—**CAN.**

PART XI. SECT. 15, SUB-SECT. 2.

k i. —— *Of company.*]—If a co. authorises that its bank may accept for deposit cheques "purporting to be indorsed by any one director or the secretary or treasurer," an indorsement is good which is made by one who is a director & secretary though he does not purport to sign as director or secretary.—UNION BANK OF CANADA *v.* TATTERSALL, [1920] 2 W. W. R. 497 ; 52 D. L. R. 407 ; 15 Alta. L. R. 350.—**CAN.**

k ii. —— ——.]—BRECHT *v.* HEFFEL, [1923] 3 D. L. R. 40 ; 2 W. W. R. 1135.—**CAN.**

k iii. —— ——.]—IMPERIAL BANK OF CANADA *v.* DENNIS, [1925] 3 D. L. R. 488 : 57 O. L. R. 203.—**CAN.**

k iv. —— ——.]—FIDELITY TRUST CO. *v.* TERMINAL LAND & INVESTMENT CO. (Ont.), [1927] 4 D. L. R. 532.—**CAN.**

sj. *Member of syndicate.*]—An indorsement by one of the members of a syndicate, carrying on the business of travelling a stallion, in the syndicate's name of a promissory note made payable to the syndicate or its order :—*Held :* to be a valid indorsement.—RILEY *v.* REED, [1925] 2 D. L. R. 737 ; [1925] 2 W. W. R. 286 ; 19 Sask. L. R. 366.—**CAN.**

PART XI. SECT. 15, SUB-SECT. 3.—A.

1311 i. *Must be written on instrument—Writing on face of note.*]—Where the intention of all parties is that a signature is for the purpose of indorsement, it makes no difference where the signature is placed.—SIMONIN *v.* PHILION, [1922] 2 W. W. R. 1280 ; 66 D. L. R. 673.—**CAN.**

sk. —— *Allonge.*]—Before finding that a sheet of paper is an allonge to a promissory note, the ct. should scrutinise the evidence & material with the greatest care, & the evidence in favour of such a finding should be of the strongest character.—BARNEY *v.* LAUZON, [1923] 3 D. L. R. 140 ; 2 W. W. R. 19.—**CAN.**

1313 i. *Must be signed—Name misspelt—In cheque—Name properly spelt in indorsement.*]—Although the word "limited" be omitted from a payee co.'s name in a cheque, there being no doubt of the co. being the intended payee, an indorsement of the cheque is effective by the proper signature of the payee on the back of it.—UNION BANK OF CANADA *v.* TATTERSALL, [1920] 2 W. W. R. 497 ; 52 D. L. R. 407 ; 15 Alta. L. R. 350.—**CAN.**

PART XI. SECT. 15, SUB-SECT. 3.—E.

sl. *After advance made—Relation back.*]—*Held :* the indorsement related back to the time when the note was given & the money paid.—CANADIAN BANK OF COMMERCE *v.* COLWELL (1923), 56 N. S. R. 347.—**CAN.**

PART XI. SECT. 15, SUB-SECT. 4.

1356 i. —— "*Pay to order of M. Bank to credit of*" *payee.*]—*Held :* a restrictive indorsement, & the indorsee & holder is not entitled to recover from the maker, who has paid in good faith the amount of the note to the payee.—MERCHANTS BANK OF CANADA *v.* BRETT, [1923] 2 D. L. R. 264 ; 32 Man. L. R. 529 ; [1923] 1 W. W. R. 607.—**CAN.**

r i. —— —— ——.]—O'DONOGHUE *v.* HEMBROFF (1871), 19 Gr. 95.—**CAN.**

t i. —— *Right to make equitable assignment.*]—A bill of exchange payable to the order of A. only & endorsed by A. payable to B. only, cannot be further negotiated by mere endorsement. Such a case is one to which sect. 68 of Bills of Exchange Act, 1927, applies. But there may be an assignment of such a bill by B. under the rules governing the assignment of choses in action.—DEALERS FINANCE CORPN., LTD. *v.* SEDGWICK, [1932] 1 D. L. R. 71 ; 2 W. W. R. 598 ; *revsg.*, [1931] 1 D. L. R. 1014 ; 1 W. W. R. 164.—**CAN.**

PART XI. SECT. 16.

1366 ii a. —— ——.]—The right which the transferee for value of a bill has under Bills of Exchange Act, s. 61 (1), to have the endorsement of the transferor does not oblige the transferor to give an unqualified endorsement unless there is some contract or equity which requires him to assume personal responsibility on the bill.—SCOTT *v.* FERGUSON, [1929] 3 D. L. R. 705 ; 2 W. W. R. 37 ; 23 S. L. R. 512.—**CAN.**

PART XI. SECT. 17.

1367 iii. —— *Apparent cancellation of indorsement.*]—*Held :* it is for the holder to prove in order to establish his title by reason of Bills of Exchange Act, ss. 143, 144, that the apparent cancellation was not intended to be one.—ROYAL BANK OF CANADA *v.* ALLEN, [1919] 3 W. W. R. 1063 ; 49 D. L. R. 572 ; 15 Alta. L. R. 171.—**CAN.**

PART XII. SECT 2, SUB-SECT. 1.

1405 xiii. ——.]—RAM SARUP *v.* HARDHO PRASAD (1927), I. L. R. 50 All. 309.—**IND.**

PART XII. SECT. 2, SUB-SECT. 2.—A. (b).

1432 iii. ——.]—Cheque in circulation six months :—*Held :* an unreasonable time & not recoverable.—BALLEM *v.* FRIED, [1923] 4 D. L. R. 1203.—**CAN.**

1434 ii. —— *Cheque mislaid—Delay not causing damage.*]—*Held :* the drawer was not discharged by the cheque not having been presented within a reasonable time.—KING & BOYD *v.* PORTER, [1925] N. 107.—**IR.**

1477. After this case add "**Bill accepted payable at bank—Presentment over counter—Validity.**] —*See* BANKERS, No. 600a, *ante*."

1529. *Add. Annotation :*—**Consd.** *Re* British Trade Corpn., [1932] 2 Ch. 1.

1531. For "SAUNDERSON *v.* BOWES" read "SANDERSON *v.* BOWES."

Add. Annotation :—**Apld.** *Re* British Trade Corpn., Ltd., [1932] 2 Ch. 1.

1542. *Add. Annotation :*—**Apld.** *Re* British Trade Corpn., [1932] 2 Ch. 1.

1546. *Add. Annotation :*—**Apld.** *Re* British Trade Corpn., Ltd., [1932] 2 Ch. 1.

1548a. Bill treated as promissory note.]—On Mar. 23, 1920, the branch of the British Trade Corpn., Ltd., at Batoum, drew a document in the following form : "At sight pay this sole exchange to the order of Mr. B. L. Mailoff the sum of one thousand pounds sterling value received which place to account No. 2." The document was signed "For the British Trade Corpn." by the manager & accountant, & it was addressed at the foot "To the British Trade Corpn., 13, Austin Friars, London, E.C." By successive indorsements pltf. became the holder, & on Dec. 20, 1923, his agents presented the document at the London offices of the corpn. Payment was refused, as it was required that the indorsements should have a banker's certification. On Nov. 23, 1926, a special resolution was passed for the voluntary winding up of the corpn. in connection with an amalgamation with the Anglo-Austrian Bank, Ltd. On Apr. 6, 1931, pltf. sought to prove in the winding up for £1,000 in respect of the document, but the liquidator rejected the proof on the ground that it was barred by the Statute of Limitations, as more than six years had elapsed since the date of the document before the winding-up resolution. The holder took out a summons claiming to have his proof admitted and he elected to treat the document as a promissory note :—*Held :* the document when treated as a promissory note did not need to be presented for payment in order to render the maker liable, because, in order that a place of payment should be specified "in the body" of the note within sect. 87, sub-sect. 1, it must be embodied in the actual terms of the contract for payment. Time therefore began to run under the Statute of Limitations as from the date of the document, & it was barred before the date of the winding-up resolution.—*Re* BRITISH TRADE CORPN., LTD., [1932] 2 Ch. 1 ; 101 L. J. Ch. 273 ; 147 L. T. 46, C. A.

1549. *Add. Annotation :*—**Apld.** *Re* British Trade Corpn., Ltd., [1932] 2 Ch. 1.

1581. *Add. Annotation :*—**Refd.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

1638. *Add. Annotation :*—**Refd.** Smith *v.* Wood (1928), 139 L. T. 250.

1715. *Add. Annotations :*—**Refd.** Brown *v.* Swan (1921), 37 T. L. R. 787 ; Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

1839. *Add. Annotation :*—**Refd.** James *v.* Smith, [1931] 2 K. B. 317, n.

1851. *Add. Annotation :* — **Refd.** The Hayle, [1929] P. 275.

1877. *Add. Annotation :*—**Refd.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

PART XII. SECT. 2, SUB-SECT. 7.—B. (a).

1530 xxv. —— —— —— *Acceleration of date of payment.*]—(1) A promissory note in the body of it made payable at a particular place must be presented for payment there, before an action thereon is brought against the maker. (2) The fact that the date of payment has been accelerated by virtue of a collateral agreement does not render presentment unnecessary.—MORGAN *v.* SHAW, [1926] 1 D. L. R. 828 ; [1926] 1 W. W. R. 483 ; 36 B. C. R. 454.—**CAN.**

PART XII. SECT. 2, SUB-SECT. 9.

1563 ii. —— *Specified place having ceased to exist.*]—SPARKS *v.* HAMILTON (1920), 47 O. L. R. 55 ; 17 O. W. N. 427.—**CAN.**

w i. —— *Agreement for extension of time.*]—NEWMAN *v.* BROWNE (W. R.) & SON, [1925] 1 D. L. R. 676 ; 56 O. L. R. 148.—**CAN.**

sm. *Payee without funds.*]—*Held :* non-presentment of a cheque did not affect the holder's right to recover, there being evidence that the maker had not funds to meet it & no evidence of damage to him through non-presentment.—CLOW *v.* DOULL, [1920] 1 W. W. R. 1060.—**CAN.**

sn. *Not by waiver of notice of non-payment & protest.*]—ROYAL BANK OF CANADA *v.* MCNAUGHTON, [1931] 3 D. L. R. 233.—**CAN.**

PART XII. SECT. 2, SUB-SECT. 10.

g i. ——.]—GUNSOLLY *v.* ENGSTROM, [1924] 2 W. W. R. 382.—**CAN.**

PART XII. SECT. 2, SUB-SECT. 11.

p i. ——.]—Owing to the long period of time before presenting a note for payment, & in the absence of evidence of the circumstances under which it was given & indorsed :—*Held :* the indorser was discharged.—BANK OF MONTREAL *v.* MCNEILL & MCNEILL, [1924] 2 W. W. R. 165 ; 33 B. C. R. 263.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 1.

1625 ii. —— *Surety for note signing below maker.*]—Pltf. sued the two defts. on a promissory note, dated Dec. 1, 1926, whereby they promised to pay pltf. or order $1,000 with interest at 5 per cent. one year after date. Deft. R. signed the note as accommodation to deft. A., & pltf. knew this. A. did not defend. When the note fell due it was not presented to A. & no notice was given to R. that the note had not been paid. In Oct. 1928, the note not being paid, R. told pltf. he would not be surety any longer :—*Held :* it was of no consequence that R. signed not on the back of the note, but on its face, beneath the name of A., & he was liable upon the note as an endorser, & so was entitled to avail himself of the defences of non-presentation for payment, & non-receipt of notice of dishonour.—KUPFERSCHMIDT *v.* AMMONEIT & RUSSWURM, [1931] 4 D. L. R. 550 ; O. R. 678.—**CAN.**

so. *To accommodation maker — Of promissory note.*]—*Held :* he is not entitled to notice of dishonour, even though it be known to the payee that he is such a maker.—CODVILLE CO. *v.* JORDAN, [1922] 1 W. W. R. 1280 ; 63 D. L. R. 694.—**CAN.**

sq. —— ——.]—FRY *v.* JOHNSTON & GRIFFITH, [1932] 4 D. L. R. 416.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 6.—C.

d i. —— —— ——.]—A letter in the following terms : "We humbly demand from you £550, being amount owing on a promissory note made by F. & indorsed by you to the C. Co., & of which we are the holders" :—*Held :* a sufficient notice of dishonour.—NEES *v.* BOTTING, [1928] N. Z. L. R. 209.—**N.Z.**

1807 i. —— *Name of indorser wrongly stated.*]—*Held :* under Bills of Exchange Act, s. 106, notice of dishonour was dispensed with.—BROCK & PATTERSON, LTD. *v.* CROCKETT, [1923] 4 D. L. R. 1204 ; 56 N. S. R. 132.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 8.—B.

1869 iii. —— —— *Express promise.*]—An express promise to pay with full knowledge of the facts & when the indorser is aware that he has had no notice of dishonour is a waiver of his right to notice.—CANADIAN BANK OF COMMERCE *v.* BROOKDALE COLLIERIES, LTD., [1923] 1 D. L. R. 138 ; 1 W. W. R. 877.—**CAN.**

1874 i. —— —— *Coupled with request for time.*]—*Held :* sufficient to hold him liable for payment notwithstanding the previous failure to give the statutory notice of dishonour.—IMPERIAL BANK *v.* TRUSTS & GUARANTEE CO., [1921] 1 W. W. R. 801 ; 57 D. L. R. 693 ; 16 Alta. L. R. 343.—**CAN.**

s i. —— —— ——.]—If there is no express promise, yet there may be such an admission of liability as to warrant the ct. in inferring that notice was actually received, & for this purpose it is not enough to show merely that the indorser did not repudiate his liability.—CANADIAN BANK OF COMMERCE *v.* BROOKDALE COLLIERIES, LTD., [1923] 1 D. L. R. 138 ; 1 W. W. R. 877.—**CAN.**

1884 i. —— *Agreement postponing time of payment—Between maker & indorser.*]—NEWMAN *v.* BROWNE (W. R.) & SON, [1925] 1 D. L. R. 676 ; 56 O. L. R. 148.—**CAN.**

Part XIII.—Liability of Parties.

1983. *Add. Annotation :-* **-Refd.** *Re* Wait, [1927] 1 Ch. 606.

1991. *Add. Annotation :*—**Consd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294.

1993. *Add. Annotation :*—**Refd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.

1994. *Add. Annotation :*—**Consd.** *Re* Swinburne, Sutton *v.* Featherley (1925), 70 Sol. Jo. 64.

2004. *Add. Annotation :*—**Refd.** Akt. Dampskibs Steinstad *v.* Pearson (1927), 137 L. T. 533.

2040a. —— ——.]—DUNN (M.), LTD. *v.* JEFFERSON, No. 577a, *ante.*

2049a. On bills drawn against confirmed credit—Bills not presented to bank.]—Applts., merchants at Calcutta, sold goods to merchants in London at c.i.f. price, payment by drafts against a confirmed credit, to be opened by the buyers. On shipment of the goods applts. drew on the buyers bills payable to resps., who negotiated them with notice that they were drawn against a confirmed credit opened by the buyers with the E. Bank. Applts. handed to resps. with the bills the shipping documents, also a memorandum describing the bills as D/A, *i.e.*, documents against acceptance, drafts. Resps. handed the documents to the buyers against their acceptances, which were dishonoured upon maturity. Resps. sued applts. as drawers of the bills :—*Held :* resps. were entitled & bound to treat the description of the bills as D/A drafts as a direction to hand the documents to the drawers on their acceptance, & applts. had no defence, set-off or counterclaim in respect of the loss of the rights which they would have had under the confirmed credit, if the documents had been handed to the E. Bank for presentation.—SASSOON (M. A.) & SONS, LTD. *v.* INTERNATIONAL BANKING CORPN., [1927] A. C. 711 ; 96 L. J. P. C. 153 ; 137 L. T. 501, P. C.

2060. *Add. Annotations :*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625 ; National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188.

2066. *Add. Annotation :*—**Refd.** National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188.

2070. *Add. Annotations :*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625 ; National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188.

2082. *Add. Annotation :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd. (1932), 48 T. L. R. 601.

2088. *Add. Annotations :*—**Consd.** McDonald *v.* Nash, [1924] A. C. 625. **Refd.** National Sale. Corpn., Ltd. *v.* Bernardi, Bernardi *vs* National Sales Corpn., Ltd., [1931] 2 K. B. 188.

2090. *Add. Annotation :*—**Refd.** National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188.

2092. *Add. Annotations :*—**Distd.** McDonald *v.* Nash, [1924] A. C. 625. **Consd.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450. **Refd.** *Re* Gooch, *Ex p.* Judd, [1921] 2 K. B. 593.

2093a. Order of indorsements immaterial—Intention of parties considered.]—Bills of exchange drawn to the order of the drawer & accepted were indorsed by a third party with the intention of rendering himself liable if the acceptor did not pay. They were afterwards indorsed by the drawer with the intention of completing them & making them enforceable against the third party if necessary, the signature of the drawer being placed below that of the third party on the backs of the bills. The acceptor not having paid the bills at maturity, the drawer brought an action upon them against the third party as indorser :—*Held :* he was entitled to recover, inasmuch as the fact that his signature instead of being above was below that of the third party on the backs of the bills was a mere inadvertence which did not nullify the intentions of the parties or alter the rights which they would otherwise have had.—NATIONAL SALES CORPN., LTD. *v.* BERNARDI, BERNARDI *v.* NATIONAL SALES CORPN., LTD., [1931] 2 K. B. 188 ; 100 L. J. K. B. 386 ; 145 L. T. 48 ; 47 T. L. R. 380 ; 36 Com. Cas. 270.

Annotation :—**Consd.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

2093b. —.]—MCCALL BROS., LTD. *v.* HARGREAVES, No. 564a, *ante.*

2094. *Add. Annotation :*—**Dbtd.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

2095. *Add. Annotations :*—**Consd.** *Re* Gooch, *Ex p.* Judd, [1921] 2 K. B. 593. **Expld.** National

PART XII. SECT. 4, SUB-SECT. 8.—D.

1933 iv. ——.]—ROYAL BANK OF CANADA *v.* MCEACHERN (Sask.), [1929] 4 D. L. R. 978 ; 3 W. W. R. 380.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 9.

1937 i. *On liability of—Indorser.*]—If no notice of dishonour is given to the indorser, he is discharged from his liability as against the payee.—SIMONIN *v.* PHILION, [1922] 2 W. W. R. 1280 ; 66 D. L. R. 673.—**CAN.**

1937 ii. —— ——.]—ARMSTRONG-LOGAN AGENCY, LTD. *v.* EHMANN, [1923] 3 W. W. R. 806.—**CAN.**

PART XII. SECT. 5, SUB-SECT. 1.—A.

1946 i. *General rule.*]—Where the notes are "foreign bills" under Bills of Exchange Act, s. 25, protest upon non-payment is necessary to hold the indorser.—SPARKS *v.* HAMILTON (1920), 47 O. L. R. 55 ; 17 O. W. N. 427.—**CAN.**

PART XII. SECT. 5, SUB-SECT. 1.-

o i. —— —— ——.]—BANK TORONTO *v.* BENNETT (1925), O. L. R. 326.--**CAN.**

PART XIII. SECT. 1.

1994 i. *Cheque—Not equit... assignment.*]—ROWLATT *v.* GARMENT (J. & G.) MANUFACTURING CO. (1921), 64 D. L. R. 88 ; 49 O. L. R. 166.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 1.

1996 v. ——.]—CLARKSON *v.* LAWSON (1856), 14 U. C. R. 67.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 1.

2052 ii. —— ——.]—LEE *v.* BLAKE, [1924] 4 D. L. R. 369 ; 55 O. L. R. 310.—**CAN.**

PART XIII. SECT. 4, SUB-SECT. 1.—A.

2058 v. —— .]—An indorsement does not conclusively establish a liability to pay, but indorsement is *prima facie* evidence of an agreement to pay. —LEE *v.* BLAKE, [1924] 4 D. L. R. 639 ; 55 O. L. R. 310.—**CAN.**

PART XIII. SECT. 4, SUB-SECT. 2.

2085 vi. —— *Indorsement obtained by misrepresentation of drawer—Negligence of indorser.*]—HANCOCK & CO., LTD. *v.* JOHNSTONE, [1923] N. Z. L. R. 639.—**N.Z.**

Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188. **N.F.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

2096. *Add. Annotations :*—**Distd.** *Re* Gooch, *Ex p.* Judd, [1921] 2 K. B. 593; McDonald *v.* Nash, [1924] A. C. 625. **Expld.** National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188. **N.F.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

2096a. —— —— ——.]—J. sold certain goods to C., Ltd., of which G. was managing director & in which he was largely interested. In payment for these goods J. drew a bill of exchange to his own order at three months for £450 upon C., Ltd., who accepted it, & it was indorsed by G. before J. had indorsed it as payee, & his name appeared below that of G. The bill was indorsed by G. in order to enable J. to discount it, & for no consideration moving from J. to G., who was to be under no liability to J. The bill was discounted by J.'s bank & was not met at maturity. An arrangement was subsequently made by which C., Ltd., paid £100 in cash to the bank in part satisfaction & the bank received two bills drawn by J. to his own order & accepted by C., Ltd., for £175 each at one month & two months respectively. These bills were indorsed by G. before they were signed by J. either as drawer or payee. They were afterwards indorsed by J., whose name appeared on the bills below that of G. The first bill not having been met at maturity, J. took it up & sued C., Ltd., & G. upon the bill & recovered judgment, & afterwards presented a petition in bkpcy. in the county ct. against G., founded on the judgment debt, upon which a receiving order was made against him. On appeal :—*Held :* (1) J. had authority under 1882 Act, s. 20, to fill in his own name as drawer & payee; (2) there was sufficient consideration passing from J. to G. to entitle J. to sue G. on the bill notwithstanding the order in which the signatures appeared on the bill; (3) by reason of the agreement between J. & G., G. could not have set up any defence against J. arising out of his own prior indorsement; (4) the judgment debt was a good petitioning creditor's debt & the receiving order was rightly made.—*Re* GOOCH, *Ex p.* JUDD, [1921] 2 K. B. 593; 90 L. J. K. B. 932; 125 L. T. 583; [1921] B. & C. R. 100, C. A.

Annotations :—As to (1) **Apld.** McDonald *v.* Nash, [1924] A. C. 625; McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450. *As to* (2) **Apld.** National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188.

2096b. sold to A. & Co. 19,000 cases of tinned soup at the price of 10*s.* per case, cash against delivery order. A. & Co., being unable to find the money, applied for financial assistance to resps., who undertook as between themselves & A. & Co. to find 75 per cent. of the money, there being then about 16,000 cases which had not been taken up. On Aug. 10, 1920, at a meeting between applts., resps. & A. & Co., it was agreed that resps. should indorse a series of eight bills of exchange, seven for £1,000 each & one for £117 odd, to be drawn by applts. on A. & Co. payable six months after date to applts.' order, & that applts., in consideration of the bills being duly indorsed by resps., should hand to resps. delivery orders for the balance of the cases. These bills were at once drawn by applts. on A. & Co. expressed to be payable to applts.' order, & were accepted by A. & Co & indorsed by resps. Room was left above the name of resps. for the indorsement of the name of any person to whom applts. should direct payment. Resps. then handed the bills to applts. in exchange for the delivery orders. One bill having been discharged, applts. shortly before the remaining bills became due indorsed their name as payee on the bills above resps.' signature. Applts. duly presented the bills to A. & Co., who dishonoured them. They then gave notice of dishonour & claimed payment from resps., who denied liability. In an action by applts. to recover the amount of the bills against resps. as indorsers :—*Held :* (1) on the facts resps. must be taken to have intended to make themselves liable to applts. on the bills; (2) the bills, when handed to applts., were wanting in a material particular within 1882 Act, s. 20, by reason of the absence of any indorsement by applts. above the signature of resps., & applts. had implied authority to fill in their name as payees, as they did, over the name of resps.; & when so filled up, the bills became retrospectively enforceable.—MCDONALD (GERALD) & Co. *v.* NASH & Co., [1924] A. C. 625; 93 L. J. K. B. 610; 131 L. T. 428; 40 T. L. R. 530; 68 Sol. Jo. 594; 29 Com. Cas. 313, H. L.

Annotations :—As to (1) **Expld.** National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188. *As to* (2) **Apld.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450. **Refd.** Elliott *v.* Bax-Ironside, [1925] 2 K. B. 301; Kreditbank Cassel G.m.b.H. *v.* Schenkers, [1926] 2 K. B. 459.

2097. *Add. Annotations :*—**Apld.** *Re* Gooch, *Ex p.* Judd, [1921] 2 K. B. 593. **Apprvd.** McDonald *v.* Nash, [1924] A. C. 625. **Apld.** National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188. **Refd.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

2103. *Add. Annotations :*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625; National Sales Corpn.,

PART XIII. SECT. 6.

2098 v. —— ——.]—PARKER WOOD & Co., LTD. *v.* RICHARDS (1925), 46 N. L. R. 277.—**S. AF.**

2098 vi. —— ——.]—R. signed promissory notes in favour of H. S. also signed the notes below R.'s signature as "surety & co-principal debtor *in solidum*" — *Held :* S.'s liability was that of a surety & not of a joint maker with R.—SHUTER *v.* RIDGWAY (1926), 47 N. L. R. 149.—**S. AF.**

y i. —— ——.]—A person who has placed his signature on a promissory note below that of the maker in the place where the maker usually signs, without adding anything to indicate that he has signed as indorser only, will be held to be a maker unless there is competent evidence to prove that he was not.—TRIGGS *v.* ENGLISH, [1924] 4 D. L. R. 937; 3 W. W. R. 566.—**CAN.**

2101 xxii. —— —— ——.]—A person who has placed his signature on the back of a promissory note, before delivery to or indorsement by the payee, is liable as surety under an *aval*, & is not in the position of an ordinary indorser.—MOTI & Co. *v.* CASSIM'S TRUSTEE, [1924] App. D. 720.—**S. AF.**

2101 xxiii. —— —— ——.]—A person who indorses his name on a promissory note before negotiation thereof is not an indorser, but an *aval* or surety for the maker.—CASSIMJEE *v.* MAHARAJ (1925), 46 N. L. R. 151.—**S. AF.**

Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188.

2118. *Add. Annotations :*—**Refd.** The Kronprinsessan Margareta, The Parana, etc., [1921] 1 A. C. 486; Flatau, Dick & Co. *v.* Keeping (1931), 36 Com. Cas. 243.

2136. *Add. Annotation :*—**Refd.** Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

2142. *Add. Annotation :*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

2143. *Add. Annotation :*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

2161. *Add. Annotations :*—**N.F.** Uliendahl *v.* Pankhurst Wright (1923), 39 T. L. R. 628; Peyrae *v.* Wilkinson, [1924] 2 K. B. 166. **Refd.** *Re* Chesterman's Trusts, Mott *v.* Browning, [1923] 2 Ch. 466.

2169. *Add. Annotation :*—**Refd.** Robinson *v.* Marsh, [1921] 2 K. B. 640.

2205a. —— —— —— **Illegality of payment during war.**]—Bills of exchange which were accepted before the war, & which became due after war was declared, were held by the drawer, who was resident in Germany, & was an enemy for the purpose of the Trading with the Enemy Acts. After the declaration of peace the holder sued the acceptors, claiming interest from the dates when the bills respectively matured :—*Held :* as there was no breach of duty in not paying the bills as long as the war continued, & as payment did not become legal until the declaration of peace with Germany on Jan. 10, 1920, interest was only recoverable from that date.—BIEDERMANN *v.* ALLHAUSEN & Co. (1921), 37 T. L. R. 662.

2225. *Add. Annotation :*—**Folld.** Dresdner Bank *v.* Russo-Asiatic Bank, [1923] 1 Ch. 209.

2249. *Add. Annotation :*—**Refd.** Akt. Dampskibs Steinstad *v.* Pearson (1927), 137 L. T. 533.

Part XIV.—Discharge.

2280. *Add. Annotation :*—**Refd.** des Hôtels Le Touquet Paris-Plage *v.* Cummings, [1922] 1 K. B. 451.

2308. *Add. Annotation :*—**Refd.** Société des Hôtels Le Touquet Paris-Plage *v.* Cummings, [1922] 1 K. B. 451.

2314. *Add. Annotation :*—**Refd.** des Hôtels Le Touquet Paris-Plage *v.* Cummings, [1922] 1 K. B. 451.

2318a. Agreement to pay money—Consideration uncertain.]—A beneficiary under testator's will was a debtor of his who had owed him money under a promissory note given in 1877, & had, in 1882, entered into an agreement with testator to pay him a certain sum of money for which no distinct consideration could be clearly ascertained :—*Held :* (1) there was a presumption of law that the promissory note had been discharged by accord & satisfaction on the entrance into the later agreement : (2) there was no presumption that the money still due under the agreement had been forgone by testator.—WOODCOCK *v.* EAMES (1925), 69 Sol. Jo. 444.

2362. *Add. Annotation :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

2364. *Add. Annotations :*—**Distd.** Goldman *v.* Cox (1924), 40 T. L. R. 744. **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

2368. *Add. Annotation :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

2370. *Add. Annotation :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

2391. *Add. Annotation :*—**Consd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

2393. *Add. Annotation :*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

PART XIII. SECT. 10.

1 i. —— —— *Note signed by surety before principal—Liable as maker.*]—FRASER *v.* CUMMINGS & LEOPOLD (1921), 67 D. L. R. 767.—**CAN.**

r i. ——— ———.]—RICHTER *v.* BARTLEY & MIKKELSON (Sask.), [1928] 4 D. L. R. 919; [1928] 3 W. W. R. 513.—**CAN.**

PART XIII. SECT. 11, SUB-SECT. 2.—A.

2175 iii. ——— ———.]—GANPAT TUKARAM MALI *v.* SOPANA TUKARAM MALI (1927), I. L. R. 52 Bom. 88.—**IND.**

2177 ii. —— ——.]—PUBLIC TRUSTEE *v.* GLADSTONE, [1921] N. Z. L. R. 224.—**N.Z.**

PART XIII. SECT. 11, SUB-SECT. 2.—D.

t i. —— *Legal rate payable after maturity.*]—Where a promissory note provides for the payment of interest at a certain rate "until paid," interest at said rate is payable only until the note is due, & thereafter interest can be recovered at the legal rate only. In order to enable interest at a particular rate to be recovered after maturity, the note must provide in unequivocal terms for payment at that rate after maturity. A demand note which provides for the payment of a certain rate of interest "until paid" carries interest at that rate until payment is demanded and refused; & thereafter at the legal rate.—BEAVER LUMBER CO., LTD. *v.* HOPEAUF, [1932] 1 W. W. R. 357.—**CAN.**

so. *Reasonable rate—Not agreed rate—Promissory note inadmissible for want of stamp.*]—*Held :* where a promissory note is inadmissible in evidence for want of stamp, & the creditor sues for the money lent as on the original contract of loan, he may claim a reasonable rate of interest, but he cannot claim at the rate stated in the promissory note.—ISMAIL HOOSAIN MAMSA *v.* K. PURBHUBHAI (1928), I. L. R. 6 Ran. 415.—**IND.**

PART XIII. SECT. 11, SUB-SECT. 3.

2227 iii. ——.]—*Held :* as defts., the makers of the note, were bound without protest, the notarial fees could not be recovered from them.—GOWANS *v.* CROCKER PRESS CO. (1920), 46 O. L. R. 24; 50 O. L. R. 58.—**CAN.**

PART XIV. SECT. 1.

b. Add "*Revsd.* on other grounds, 56 S. C. R. 165."

PART XIV. SECT. 2, SUB-SECT. 4.

j i. *Mortgage to secure present & future advances—Given during currency of note.*]—*Held :* the mtge. not being strictly coextensive with the note, the remedy on the note was not merged in the mtge., & deft. was liable.—O'NEILL *v.* LYE, [1923] N. Z. L. R. 1039.—**N.Z.**

sp. *Payment under garnishment proceedings by judgment creditor of payee.*]—*Held :* in the circumstances no answer to the indorsee's claim.—CLOW *v.* DOULL, [1920] 1 W. W. R. 1060.—**CAN.**

sr. *Notes given to secure advances—Made in prepayment of purchase-money—Delivery of goods.*]—*Held :* the payees were entitled to recover the balance due on the first note given prior to the contract, but as regards the notes given subsequently the goods delivered must be credited against the advances made, & the plea of payment must prevail.—TYRER CO. *v.* EUREKA LUMBER CO. (1922), 55 N. S. R. 441.—**CAN.**

st. *Note due to deceased—Not sale of goods to executor personally.*]—MCKENZIE *v.* MCDONALD (P. E. I.), [1927] 2 D. L. R. 67.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 10.

q i. —— ——.]—DAVIDSON CO-OPERATIVE ASSOCN., LTD. *v.* WEBBER (Sask.), [1928] 4 D. L. R. 732; 3 W. W. R. 426.—**CAN.**

2393a. Joint maker appointed holder's executor.]—During the lifetime of testator the exor. named in his will & three other persons made a joint & several promissory note payable to him. After the death of testator & probate of the will the exor. brought an action on the promissory note against one of the other makers thereof:—*Held:* the action was not maintainable, inasmuch as the effect of pltf.'s appointment as exor. was at common law that the debt was discharged by release at the date of the death of testator, & in equity that it was discharged by payment at the date of probate, so that in either case the debt had ceased to exist before the action.—JENKINS *v.* JENKINS, [1928] 2 K. B. 501; 97 L. J. K. B. 400; 139 L. T. 119; 44 T. L. R. 483; 72 Sol. Jo. 319, D. C.

2414. *Add. Annotation:*—**Consd.** *Re* Gordon (John) (1931), 75 Sol. Jo. 869.

2414a. —— —— Entry in account book—"All lost."]—*Re* GORDON (JOHN) (1931), 75 Sol. Jo. 869.

2416a. —— —— Verbal agreement for acceptance of composition.]—Pltf. was the holder of a bill of exchange accepted by deft. for goods supplied. Before the bill became due deft. had made a verbal offer to his creditors to pay a composition in discharge of his liabilities. At a meeting of the creditors, which was attended by pltf.'s agent, the creditors passed a resolution accepting deft.'s offer. The resolution was reduced to writing & was signed by a number of the creditors, including pltf.'s agent, but not by deft. The creditors subsequently executed a deed assigning their debts to deft.'s solr. in consideration of deft.'s solr. paying the amounts owing to them under the composition. Pltf. was not a party to that deed. In an action by the holder of the bill against the acceptor, for the amount of the bill:—*Held:* upholding a contention of pltf., which was not raised in the cts. below, 1882 Act, s. 62, had not been complied with, as pltf. had neither renounced his rights under the bill in writing, nor delivered the bill up to the acceptor &, therefore, pltf. was entitled to recover the full amount of the bill.—RIMALT *v.* CARTWRIGHT (1924), 93 L. J. K. B. 823; 132 L. T. 40; 40 T. L. R. 803; 68 Sol. Jo. 788; [1924] B. & C. R. 239, C. A.

2455a. —— ——.]—FOSTER *v.* DRISCOLL, LINDSAY *v.* ATTFIELD, LINDSAY *v.* DRISCOLL, No. 568a, *ante*.

2462a. —— Inland bill altered to foreign bill.]—FOSTER *v.* DRISCOLL, LINDSAY *v.* ATTFIELD, LINDSAY *v.* DRISCOLL, No. 568a, *ante*.

2462b. —— ——.]—KOCH *v.* DICKS (1932), 49 T. L. R. 24, C. A.

2473. *Add. Annotation:*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625.

2475. *Add. Annotation:*—**Refd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587.

2475a. —— Addition of "per" another party.]—Pltfs., exors. of one Turner, deceased, employed a solr., one C., of a firm C. & P., to act for them in matters relating to the deceased's estate. They wished to invest a sum of £5,000 through a firm of stockbrokers, & C. accordingly prepared a cheque for that amount payable to the stockbrokers; pltfs. then signed the cheque & handed it back to C. to deal with as directed. C., however, fraudulently added to the cheque the words "per C. & P.," & then indorsed the cheque with the words "C. & P." & handed it to a branch of deft. bank to be credited to the account which a co. in which he was interested kept at that branch. The cheque was credited to that co. & was passed through the clearing house, & in due course pltfs. were debited by their own bank with the sum of £5,000. On discovering the fraud pltfs. brought this action to recover the £5,000 from defts.:—*Held:* the words added by C. to the cheque constituted a material alteration & rendered the cheque void under Bills of Exchange Act, 1882 (c. 61), s. 64 (1). As therefore the cheque when it came into the hands of defts. was merely a piece of worthless paper no action could be brought on it, & pltfs.' claim failed.—SLINGSBY *v.* WESTMINSTER BANK (No. 2), [1931] 2 K. B. 583; 101 L. J. K. B. 291, n.; 146 L. T. 89; 47 T. L. R. 1; 36 Com. Cas. 61.

Annotation:—**Consd.** Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114.

2475b. —— ——.]—Pltfs., exors. of a will, kept an exors.' account with defts., & retained a firm of solrs., Messrs. C. & P., who used to assist them in matters connected with their testator's estate. The acting member of the firm was one J. C. Pltfs. in conference with J. C. decided to invest through Messrs. J. P. & Co., stockbrokers, a sum of £5,000 part of the estate lodged on deposit with defts. J. C. accordingly drew out a form of cheque for signature by pltfs. It was in the form "Pay J. P. & Co. or order" & was drawn on pltfs.' deposit account with the defts. The cheque was signed by pltfs. & left with J. C. to be posted to J. P. & Co. with instructions to invest the money. J. C., instead of posting the cheque to J. P. & Co., fraudulently inserted the words "per C. & P." in the blank space between the payees' name & the words "or order"; he then indorsed the document with the names C. & P. & paid it so altered & indorsed into the W. Bank to the credit of a co. in

PART XIV. SECT. 4.

2401 i. *At what time—Before maturity—No necessity for evidence of discharge to be in writing.*]—LYONS *v.* SMITH, [1922] 3 W. W. R. 684; 70 D. L. R. 101.—**CAN.**

PART XIV. SECT. 6.

sv. *Surrender to maker for cancellation.*]—A woman, payee of a promissory note, told her husband, who was her exor. & was also the father of the maker of the note, to give it to the maker. The next day she died. The note was destroyed by the maker:—*Held:* his liability was extinguished.—*Re* ILLSLEY, [1931] 2 D. L. R. 799; 3 M. P. R. 441.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 1.

2451 v. —— ——.]—Bills of exchange, payable some sixty, some ninety, & some one hundred & twenty days after sight, drawn on applts., were indorsed for value to resps. who duly stamped them, and after acceptance noted in the corner of each bill the date for presentation. The parties to the bills having mutually agreed that the dates of payment should be postponed, resps. altered the dates so noted, but without making any alteration in the bills as originally drawn. On presentation for payment at the extended dates the bills were dishonoured by applts.:—*Held:* there had been no discharge of the bills by material alteration, nor was a new stamping necessary under Indian Stamp Act, 1899, ss. 14, 35; & applts. remained liable.—PESTONJI (H.) & Co. *v.* COX & Co. (1928), 55 L. R. Ind. App. 353.—**IND.**

2458 ii. —— —— *Deceased.*] a material alteration.—BELLAMY *v.* PORTER (1913), 13 D. L. R. 278; 4 O. W. N. 1171; 28 O. L. R. 572.—**CAN.**

which he was interested & which had an account at that bank. The document was accepted without question by the W. Bank & passed through the clearing house, & the account of pltfs. with defts. was debited, & that of the co. with the W. Bank was credited, with the amount on the face of the document. In an action by pltfs. against defts. for conversion, negligence & breach of duty:—*Held:* (1) the cheque had been "materially altered" within Bills of Exchange Act, 1882 (c. 61), s. 64, & was avoided as between pltfs. & defts. by that sect., & therefore defts. could not rely upon sect. 60 of the Act as excusing them for paying the cheque; (2) for the same reason defts. could not rely on sect. 80 of the Act; (3) assuming the description of the payees, "J. P. & Co. per C. & P." to be a recognised although unusual description, the indorsement of "C. & P." without any reference to "J. P. & Co." was irregular & invalid, & defts. were negligent in honouring the cheque, & for this reason also were not protected by sect. 80, or *semble* by sect. 60 of the Act; (4) the additions & alterations referred to in the proviso to sect. 79 (2) of the Act are additions to & alterations in the original crossing of a crossed cheque & not to or in the body of a cheque.—SLINGSBY *v.* DISTRICT BANK, LTD., [1932] 1 K. B. 544; 101 L. J. K. B. 281; 146 L. T. 377; 37 Com. Cas. 39.

2484. *Add. Annotations:*—**Distd.** Hong Kong & Shanghai Bank *v.* Loo Lee Shi, [1928] A. C. 181. **Apld.** Koch *v.* Dicks, [1932] W. N. 156. **Refd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587; Broken Hill Proprietary Co. *v.* Latham (1932), 48 T. L. R. 630.

2485a. –].—A banknote issued by applt. bank, payable to bearer on demand, was accidentally mutilated. The bank declined to pay on presentation of a document which was proved to have been patched together from the fragments. This document, though it did not show the number of the note, showed clearly its other main features:—*Held:* as the identity of the document as a note of the bank was established, & it contained all the elements necessary to render it valid & effectual as a negotiable instrument, the bank was liable to pay the holder.—HONG KONG & SHANGHAI BANK *v.* LO LEE SHI, [1928] A. C. 181; 97 L. J. P. C. 35; 138 L. T. 529; 44 T. L. R. 233; 72 Sol. Jo. 68, P. C.

SUB-SECT. 4.—WHETHER APPARENT (Vol. VI., p. 383).

After "*See* 1882 Act, s. 64 (1)" add the following case:—

2513a. General rule.]—An alteration is "apparent" within 1882 Act, s. 64 (1), if it is of such a kind that it would be observed & noticed by an intending holder scrutinising the document which he contemplates taking with reasonable care.—WOOLLATT *v.* STANLEY (1928), 138 L. T. 620.

2515. *Add. Annotation:*—*Generally* **Refd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587.

2518. *Add. Annotations:*—**Apld.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294. **Refd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587; Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

2553. *Add. Annotation:*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

2555. *Add. Annotation:*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

2559. *Add. Annotation:*—*As to* (2) **Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

2666. *Add. Annotation:*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

2677. *Add. Annotation:*—**Refd.** Smith *v.* Wood, [1929] 1 Ch. 14.

2682. *Add. Annotation:*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

2686. *Add. Annotation:*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625.

PART XIV. SECT. 9.

2558 i. —— *Release of one.*]—In an action on a promissory note by the original payee against two joint makers, it is no defence for one of the makers, in the absence of any writing or delivery up of the note, to allege that he has been verbally released by the payee.—GOODMAN *v.* ARMSTRONG (1926), 47 N. L. R. 452.—**S. AF.**

2559 iii. —— —— ——.]—BUECKERT *v.* FRIESEN, [1927] 2 D. L. R. 873; [1927] 1 W. W. R. 825; 36 Man. L. R. 462.—**CAN.**

PART XIV. SECT. 10, SUB-SECT. 2.—A.

2600 viii. —— ——.]—If the holder of a promissory note has, without the knowledge or consent of an indorser of the note, agreed to give an extension of time for payment to the maker while the note is still current, the indorser is thereupon discharged from liability.—LIEBENBERG ESTATE *v.* STANDARD BANK OF SOUTH AFRICA, LTD., [1927] App. D. 502.—**S. AF.**

PART XIV. SECT. 11.

o i. —— *First note destroyed.*]—*Held:* the original indebtedness was discharged & the second note was not a renewal but a satisfaction.—CRISTAL *v.* SIMOVITCH (1922), 70 D. L. R. 861.—**CAN.**

2633 viii. —— ——.]—*Re* THOMPSON, [1931] 4 D. L. R. 573; O. R. 714; 12 C. B. R. 498.—**CAN.**

r i. ——.]—The taking of a renewal note, where the original note is retained by the holder, does not of itself discharge the indebtedness represented by the original note, but merely suspends the right of action thereon during the currency of the renewal.—ROYAL BANK *v.* HOGG, [1930] 2 D. L. R. 488; 64 O. L. R. 653.—**CAN.**

PART XIV. SECT. 12, SUB-SECT. 1.

2639 i a. —— ——.]—The relation of principal & surety is created by indorsement of a bill for accommodation, & if a creditor discharges the principal debtor, the surety is also discharged.—HARRIS *v.* LERNER, [1924] 2 D. L. R. 518; 30 R. L. N. S. 63.—**CAN.**

PART XIV. SECT. 12, SUB-SECT. 3

sv. *Deposit with creditor of securities as collateral to notes—Securities entrusted to principal debtor for collection.*]—Premium-notes, indorsed by G. & F., were deposited with pltf. as security collateral to two notes made by G. & indorsed by F. Pltf. entrusted some of these notes to G. for collection, & G. failed to pay over all that he collected:—*Held:* both G. & F. were liable.—ROUTLEY *v.* GORMAN & CORAN (1920), 47 O. L. R. 420; 18 O. W. N. 173.—**CAN.**

PART XVI. SECT. 3.

sw. *Instrument taken in good faith.*]—Pltf. bought stolen bearer bonds in good faith:—*Held:* pltf. had acquired a good title.—GAREY *v.* DOMINION MANUFACTURERS, LTD., [1925] 1 D. L. R. 99; 56 O. L. R. 159.—**CAN.**

Part XVIII.—Conflict of Laws.

2779. *Add. Annotations :*—**Refd.** Soc. Anon. des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789; Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153.

2781. *Add. Annotations :*—**Distd.** Soc. Anon. des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789. **Consd.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153.

2783. *Add. Annotations :*—**Apld.** Soc. Anon. des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789. **Consd.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153.

2784. *Add. Annotations :*—**Apld.** Soc. Anon. des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789. **Refd.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153.

2789. *Add. Annotations :*—**Refd.** Koechlin *v.* Kestenbaum, [1927] 1 K. B. 889; Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

2790. *Add. Annotation :*—**Refd.** Koechlin *v.* Kestenbaum, [1927] 1 K. B. 889.

2791a. —— **Validity of indorsement—Liability of acceptor in England.**]—A bill of exchange was drawn in France by E. upon resps. in London to the order of M. It was sent to London, was accepted by resps. payable at a London bank, & returned to France, where it was indorsed by E. in his own name, on behalf, & with the authority, of M., to applts. On presentation for payment, resps. refused to meet it on the ground that it did not bear the indorsement of M., the payee, but merely the indorsement of E. In an action on the bill against resps. as acceptors evidence was given that by French law an indorsement might be validly made by a duly authorised agent signing his own name :—*Held :* applts. as indorsees obtained a good title to the bill by virtue of 1882 Act, s. 72, & were entitled to recover the amount thereof from resps. as acceptors.—KOECHLIN ET CIE. *v.* KESTENBAUM BROTHERS, [1927] 1 K. B. 889; 96 L. J. K. B. 675; 137 L. T. 216; 43 T. L. R. 352; 32 Com. Cas. 267, C. A.

2792. *Add. Annotation :*—*As to* (2) **Consd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

2794. *Add. Annotations :*—**Apld.** Koechlin *v.* Kestenbaum, [1927] 1 K. B. 889. **Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

2812. *Add. Annotation :*—**Refd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930.

2824. *Add. Annotations :*—**Expld.** *Re* Visser, Holland *v.* Drukker, [1928] Ch. 877. **Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

Part XIX.—Cheques.

2841. *Add. Annotation :*—**Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.

2842. *Add. Annotation :*—**Refd.** Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

2846a. —— ——.]—A further item in the finding of negligence is that some of the cheques were crossed "account of payee," one with the addition of the word "only." While this addition does not affect the negotiability of an order or bearer cheque, I agree with the view of ROWLATT, J., in *House Property Co. of London, Ltd.* v. *London, County & Westminster Bank*, No. 2850, that when such a cheque is paid into the account of a person who is not the payee the bank is put on inquiry, especially when he is a servant of the payee (SCRUTTON, L.J.).—UNDERWOOD (A. L.), LTD. *v.* BANK OF LIVERPOOL, UNDERWOOD (A. L.), LTD. *v.* BARCLAYS BANK, [1924] 1 K. B. 775; 93 L. J. K. B. 690; 131 L. T. 271; 40 T. L. R. 302; 68 Sol. Jo. 716; 29 Com. Cas. 182, C. A.

Annotations :—**Refd.** London & Montrose Shipbuilding & Repairing Co., Ltd. *v.* Barclays Bank, Ltd. (1925), 31 Com. Cas. 67; Robinson *v.* Midland Bank, Ltd. (1925), 41 T. L. R. 402; Kreditbank Cassell G.M.B.H. *v.* Schenkers, Ltd., [1926] 2 K. B. 450; Houghton & Co. *v.* Nothard, Lowe & Wills, Ltd., [1927] 1 K. B. 246; Auchteroni & Co. *v.* Midland Bank, Ltd., [1928] 2 K. B. 294; Liggett, B. (Liverpool), Ltd. *v.* Barclays Bank, Ltd., [1928] 1 K. B. 48; Lloyds Bank, Ltd. *v.* Chartered Bank of India (1928), 97 L. J. K. B. 609; Reckitt *v.* Barnett, Pembroke & Slater, Ltd. (1928), 45 T. L. R. 36; *v.* Westminster Bank, Ltd., [1931] 1 K. B. 173.

2847. *Add. Annotations :*—*Generally*, **Refd.** Sutters *v.* Briggs, [1922] 1 A. C. 1; *Re* Farrow's Bank, [1923] 1 Ch. 41; Importers Co. *v.* Westminster Bank, [1927] 2 K. B. 297.

2849. *Add. Annotations :*—**Consd.** London & Montrose Shipbuilding & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas. 67. **Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.

2850. *Add. Annotation :*—**Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

2851. *Add. Annotations :*—**Consd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244; Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Fenton Textile Assocn. *v.* Thomas (1929), 45 T. L. R. 264; Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465; Midland Bank, Ltd. *v.* Reckitt (1932), 48 T. L. R. 271; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114; Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

2852. *Add. Annotations :*—**Apprvd.** Sutters *v.* Briggs, [1922] 1 A. C. 1. **Refd.** Brown *v.* Swan (1921), 37 T. L. R. 787.

Part XX.—Negotiable Instruments other than Bills of Exchange, Promissory Notes, and Cheques.

2866. *Add. Annotation :*—**Refd.** Royal Trust Co. *v.* A.-G. for Alberta (1929), 46 T. L. R. 25.

2873. *Add. Annotations :*—**Consd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294 ; Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

2887. *Add. Annotations :*—**Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40 ; Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607.

2891. *Add. Annotations :*—*As to* (1) **Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669. *As to* (2) **Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

2897. *Add. Annotation :*—**Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

2901a. —— **1882 Act, s. 95—Warrant for interest on Government stock.**]—SLINGSBY *v.* WESTMINSTER BANK, LTD., No. 242a, *ante*.

2911. *Add. Annotation :*—**Refd.** Commonwealth Trust *v.* Akotey (1925), 94 L. J. P. C. 167.

Part XXI.—I.O.U.'s.

2924. *Add. Annotation :*—**Apld.** Soc. Anon. des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789.

Part XXII.—Actions on and in Connection with Negotiable Instruments.

2976. *Add. Annotation :*—**Consd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

2976a. One joint maker appointed holder's executor—Action by executor against one of other makers.]—JENKINS *v.* JENKINS, No. 2393a, *ante*.

3015. *Add. Annotation :*—*As to* (2) **Folld.** Powszechny Bank Zwiazkowy W. Polsce *v.* Paros (1932), 73 L. Jo. 204.

3019. *Add. Annotation :*—**Folld.** Powszechny Bank Zwiazkowy W. Polsce *v.* Paros (1932), 73 L. Jo. 204.

3019a. —— —— ——.]—In an action brought on a writ specially indorsed under R. S. C., Ord. 3, r. 6, by indorsees against the maker of a promissory note, pltfs. in an affidavit in support of a summons for leave to sign final judgment under R. S. C., Ord. 14, r. 1, stated that they were holders in due course of the note, having taken it in good faith for value from the payees without notice of any defect in their title. Deft. in his affidavit in answer stated facts which, if true, showed that the note had been negotiated in fraud of him. The judge in chambers made an order, under R. S. C., Ord. 14. r. 6, that deft. should have leave to defend the action if he brought a sum of money into ct. within a certain time, but that if he failed to do this, pltfs. should have leave to sign judgment for the amount claimed. On appeal from this order :—*Held :* (1) a triable issue was raised between the parties ; the mere statement in pltfs.' affidavit that they had given value without notice of any defect in their indorsers' title was not sufficient to decide that issue in pltfs.' favour, but that the ct. must have an opportunity of deciding it, & therefore deft. was entitled to leave to defend the action without the condition that he should pay money into ct. ; (2) by GREER, L.J., &

PART XX. SECT. 2, SUB SECT. 5.

2876 ii. ——.]—Pltf. who owned thirty-one debentures of the Bombay Improvement Trust entrusted them to his agent, deft. No. 1, for collection of interest. Deft. No. 1 forged pltf.'s signature on the debentures, & indorsed them in his own favour. Subsequently deft. No. 1 pledged them with a bank, deft. No. 2, to secure an overdraft to himself. The bank surrendered the debentures to the Bombay Improvement Trust for renewal. New debentures were issued payable to the bank or order. These new debentures were subsequently indorsed to another bank (deft. No. 3) for value. Pltf. filed a suit against defts. for a return of the debentures, or in the alternative for their value :—*Held :* the debentures were promissory notes, &, therefore, negotiable instruments within Negotiable Instruments Act, ss. 4 & 13.—MERCANTILE BANK OF INDIA *v.* MASCURENHAS (1928), I. L. R. 52 Bom. 792 ; *on appeal* (1931), 47 T. L. R. 611, P. C.—**IND**

PART XX. SECT. 2, SUB-SECT. 7.

sx. *Lien note.*]—*Held :* not a promissory note.—CANADIAN BANK OF COMMERCE *v.* JOHNSON, [1925] 4 D. L. R. 511 ; [1925] 3 W. W. R. 328.—**CAN.**

sy. ——.]—*Held :* not a promissory note.—METCALFE *v.* ADAIR (Man.), [1927] 1 D. L. R. 982 ; [1927] 1 W. W. R. 331 ; 36 Man. L. R. 255.—**CAN.**

PART XXII. SECT. 1.

2951 via. —— —— ——.]—JOHNSON *v.* RICHARDSON, [1922] 3 W. W. R. 453.—**CAN.**

PART XXII. SECT. 3.

n i. —— *Letter granting delay for payment.*]—On Sept. 3, 1929, applt. sued resp. corpn. on four promissory notes overdue & the defence set up was that the action was premature because, on Aug. 28, 1929, applt. had written a letter to the secretary of the corpn. stating *inter alia* that unless payment was made within fifteen days he would take proceedings ; but he brought his action before the expiry of that time :—*Held :* applt. was entitled to judgment.—LACAILLE *v.* LACAILLE CORPN., [1931] S. C. R. 619 ; 4 D. L. R. 337.—**CAN.**

xi. —— *Letter granting delay—Action before expiry of delay.*]—LACAILLE *v.* LACAILLE CORPN., [1931] S. C. R. 619 ; 4 D. L. R. 337.—**CAN.**

PART XXII. SECT. 7.

sa. *Pleading—Striking out—When ordered.*]—NEEDLES *v.* SLOVARP, [1922] 2 W. W. R. 649 ; 66 D. L. R. 273 ; 15 Sask. L. R. 448.—**CAN.**

sd. *Discovery—Examination for—Action by indorsee.*]—EMPIRE FINANCIERS, LTD. *v.* NANCE, [1920] 1 W. W. R. 694 ; 51 D. L. R. 231.—**CAN.**

semble by SLESSER, L.J., where a deft. is entitled to leave to defend, the judge in chambers cannot under R. S. C., Ord. 14, r. 6, make an order for conditional leave to defend, the effect of which is to give pltf. conditional leave to sign judgment.—POW- ..... BANK ZWIAZKOWY W. POLSCE *v.* PAROS, [1932] 2 K. B. 353; 101 L. J. K. B. 671; 147 L. T. 377, C. A.

3056. *Add. Annotation :*—**Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

Part XXIII.—Securities for Negotiable Instruments.

3120. *Add. Annotation :—As to* (2) **Refd.** Aman *v.* Southern Ry. (1925), 42 T. L. R. 31.

Part XXV.—Stamp Duties.

SUB-SECT. 1.—BILLS OF EXCHANGE AND OTHER ORDERS ON ONE PERSON TO PAY ANOTHER (Vol. VI., p. 493).

3121a. Bill of exchange.]—FOSTER *v.* DRISCOLL, LINDSAY *v.* ATTFIELD, LINDSAY *v.* DRISCOLL, No. 568a, *ante.*

3125. *Add. Annotation :*—**Refd.** Midland Bank *v.* I. R. Comrs., [1927] 2 K. B. 465.

3126. *Add. Annotation :*—Midland Bank *v.* I. R. Comrs., [1927] 2 K. B. 465.

3146a. "Chequelet."]—A bank issued documents to its customers in the form of receipts for payment by them to the customer of sums under £2, & agreed with its customers that they would pay to persons presenting these documents to them signed by a customer the sums named therein & would debit the customer's account therewith, it being their avowed intention that the documents should be used for the same purpose as cheques, & the object being to avoid the stamp duty on cheques :—*Held :* the documents were bills of exchange within Stamp Act, 1891 (c. 39), s. 32.—MIDLAND BANK, LTD. *v.* INLAND REVENUE COMRS., [1927] 2 K. B. 465; 96 L. J. K. B. 1006; 137 L. T. 817; 43 T. L. R. 754; 71 Sol. Jo. 622.

3172. *Add. Annotation :*—**Refd.** Lemon *v.* Austin Friars Investment Trust (1925), 133 L. T. 790.

3173. *Add. Annotation :*—**Refd.** Midland Bank *v.* I. R. Comrs., [1927] 2 K. B. 465.

3209. *Add. Annotations :*—**Refd.** Auchteroni *v.* Midland Bank, [1928] 2 K. B. 294; Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46; Slingsby *v.* District Bank, Ltd., [1931] 2 K. B. 588.

PART XXII. SECT. 11, SUB-SECT. 1.

sf. *Right to jury.*]—BANK OF YORKTON *v.* BRYAN, [1930] 2 W. W. R. 49; 4 D. L. R. 287; 24 Alta. L. R. 576.—**CAN.**

PART XXII. SECT. 11, SUB-SECT. 4.

d i. —— *& to prove collateral agreement—For "working out" of note.*]—MALLOUGH *v.* DICK, [1927] 2 D. L. R. 370; [1927] 1 W. W. R. 544; 22 Alta. L. R. 425.—**CAN.**

d ii. *To show that note signed as trustee only.*]—Evidence not admissible.—CANADIAN CREDIT MEN'S TRUST ASSOCN. *v.* ANDERSON (1917), 37 D. L. R. 805.—**CAN.**

PART XXV. SECT. 1, SUB-SECT. 1.

3123 ii. —— *Issued by one branch on another.*]—Demand drafts, issued by one office of a bank upon another of the same bank, are bills of exchange payable on demand & are exempt from stamp duty.—*Re* DEMAND DRAFTS OF IMPERIAL BANK OF INDIA (1928), I. L. R. 56 Calc. 233.—**IND.**

PART XXV. SECT. 2, SUB-SECT. 1.

sk. *Time for stamping—Whether after acceptance & indorsement.*]—BUTLER *v.* EVANS (1873), 9 N. S. R. (3 G. & O.) 171.—**CAN.**

PART XXV. SECT. 2, SUB-SECT. 2.

sm. *Time for stamping.*]—HENDERSON *v.* GESNER (1866), 25 U. C. R. 124.—**CAN.**

sn. ——.] — *Held :* a promissory note before being negotiated could be stamped by the maker on the day of the making thereof, though after it had been signed & indorsed by the payee.—BANK OF OTTAWA *v.* MCLAUGHLIN (1883), 8 A. R. 543.—**CAN.**

PART XXV. SECT. 4, SUB-SECT. 3.—B.

3254 vii. ——.]—Where a promissory note, being insufficiently stamped, is inadmissible in evidence, a suit to recover the principal debt based on the acknowledgment contained in a contemporaneous receipt mentioning the loan & referring to the promissory note, is maintainable.—GOVIND SINGH *v.* BIJOY BAHADUR SINGH (1929), I. L. R. 52 All. 169.—**IND.**

PART XXV. SECT. 4, SUB-SECT. 8.—C.

3263 v. ——.]—An unstamped cheque is admissible in evidence & may amount to an earnest or part payment.—SYKES *v.* GECK, [1920] 1 W. W. R. 741.—**CAN.**

PART XXV. SECT. 6, SUB-SECT. 1.

f i. —— —— —— ——.]—TRAVIS *v.* GLASIER (1870), 2 Han. 215.—**CAN.**

f ii. —— —— —— ——.]—BANK OF NOVA SCOTIA *v.* CUSHING (1882), 21 N. B. R. 498.—**CAN.**

BILLS OF LADING.

See SHIPPING AND NAVIGATION.

BILLS OF SALE.

Part I.—Objects and Application of Bills of Sale Acts.

6. *Add. Annotation :*—**Refd.** National Provincial & Union Bank of England *v.* Lindsell (1921), 91 L. J. K. B. 196.

Part II.—What Transactions are Bills of Sale and require Registration.

11. *Add. Annotation :*—**Refd.** French *v.* Gething, [1922] 1 K. B. 236.

15a. —— **Sale—Re-letting to seller.**]—BRITISH, RAILWAY TRAFFIC & ELECTRIC CO. *v.* KAHN, [1921] W. N. 52.

35. *Add. Annotation :*—**Refd.** *Re* Wait, [1927] 1 Ch. 606.

41. *Add. Annotation :*—**Refd.** National Provincial & Union Bank of England *v.* Lindsell (1921), 91 L. J. K. B. 196.

44. *Add. Annotation :*—**Expld. & Apld.** French *v.* Gething, [1922] 1 K. B. 236.

82. *Add. Annotations :*—*As to* (1) **Consd.** Wrightson *v.* McArthur & Hutchisons, [1921] 2 K. B. 807. *As to* (2) **Refd.** Wrightson *v.* McArthur & Hutchisons, [1921] 2 K. B. 807.

90. *Add. Annotation :*—**Apld.** *Re* Allester, [1922] 2 Ch. 211.

93. *Add. Annotation :*—**Refd.** Wrightson *v.* McArthur & Hutchisons, [1921] 2 K. B. 807.

93a. —— —— **Room on borrower's premises.**]—Deft. co., in order to secure pltf. against loss on a certain contract & in consideration of pltf. giving further time within which to pay for the goods, set aside certain specified goods in two rooms on defts.' premises, which were locked up & the keys handed to pltf., no other goods being in those two rooms. The terms of the transaction were recorded in

PART I.

g i. —— *Protection of creditors.*]—Bills of Sale Act, R. S. A., 1922, c. 151, is not intended to do anything further than to stop a buyer of goods who has not registered a bill of sale & who is not in possession of the goods from claiming, as against creditors of the person in possession, that he had bought the goods from said person. It is not the intention of the Act that the buyer of a chattel who leaves it in the possession of the vendor until it can be sold again & then sells it & makes delivery to a person who takes it away is to be deprived of the proceeds of the resale by reason of garnishee or other proceedings taken by creditors of the person in possession before the resale & delivery.—*Re* AYLING, ROYAL BANK OF CANADA *v.* HEYLER & AYLING, [1930] 1 W. W. R. 102 ; 1 D. L. R. 68.—**CAN.**

sa. *Bills of Sale & Chattel Act, R. S. M.*, 1913 (c. 17)—*Not applicable to mortgage of equity in mortgaged goods.*]—The above Act does not apply to a chattel mtge. which expressly covers not the goods themselves referred to therein but any interest or equity which mtgor. may have in them after the claim of a prior named mtgee. shall have been satisfied.—BANQUE D'HOCHELAGA *v.* BROWNSTONE, [1925] 3 D. L. R. 176 ; [1925] 2 W. W. R. 348 ; 35 Man. L. R. 62.—**CAN.**

sb. *Crop Payments Act*, 1924 (c. 147), *ss.* 2, 3—*Effect of—Alienation by landlord, vendor or mortgagee.*]—*Re* CROP PAYMENTS ACT, *Re* BILLS OF SALE & CHATTEL MORTGAGE ACT (1926), 36 Man. L. R. 34 ; [1926] 2 W. W. R. 844.—**CAN.**

sd. *Contract made outside jurisdiction —Provincial Act not applicable.*]—NATIONAL CASH REGISTER CO. *v.* LOVETT, MOORE *v.* NATIONAL CASH REGISTER CO. (1906), 1 E. L. R. 321.—**CAN.**

sf. *Who may be "creditor"—Trustee in bankruptcy.*]—A trustee in bkpcy. is a creditor within Bills of Sale Act, R. S. N. S. 1923, c. 201, s. 8.—*Re* SATISFACTION STORES, [1929] 2 D. L. R. 435 ; 60 N. S. R. 357.—**CAN.**

PART II. SECT. 1.

10 ii. Add "*revsd.*, [1920] 3 W. W. R. 421."

14 iii. ——.]—In order to obtain money to purchase new cars for resale, a dealer gave deft. a bill of sale & deft. gave the dealer a conditional sale agreement in respect of each car :—*Held :* the real transaction was a mtge., & there being no chattel mtge. registered, deft. could not claim the cars as against the trustee in bkpcy. of the dealer.—*Re* GRAND RIVER MOTORS, LTD., MARTIN *v.* COMMERCIAL FINANCE CO., [1932] 1 D. L. R. 565 ; O. R. 101.—**CAN.**

PART II. SECT. 2.

sm. *Declaration reserving to maker powers of management & disposition—No power in cestui que trust to seize or take possession.*]—PURCELL *v.* DEPUTY FEDERAL TAXATION COMR. (1920), 28 C. L. R. 77.—**AUS.**

PART II. SECT. 3, SUB-SECT. 2.

28 i. Add "*revsd.*, [1920] 3 W. W. R. 421."

PART II. SECT. 4.

t i. —— *Goods paid for but not delivered.*]—*Held :* registration not required under Bills of Sale Act in order to protect purchaser's right to goods subsequently manufactured & paid for under the agreement, the property in which had passed to him but which were still on vendor's premises.—ALLEN-STOLTZE LUMBER CO., LTD. *v.* SUMMIT LAKE LUMBER CO., LTD., [1920] 3 W. W. R. 895.—**CAN.**

sp. "*Customer's agreement*" — & "*trust receipts.*"]—*Re* DOMINION SHIPBUILDING & REPAIR CO., LTD. (1923), 53 O. L. R. 485 ; 24 O. W. N. 30.—**CAN.**

PART II. SECT. 5, SUB-SECT. 4.

80 i. *Following alleged sale to vendor.*]—C. purchased an automobile, paying partly in cash & partly by post-dated cheque. Later requiring money to finance his business, he borrowed $1,400 from pltf., giving in return a hire-purchase agreement as to the automobile. C. continued in possession of the car :—*Held :* the document was an assurance & came within Bills of Sale Act.—RITHET (R. P.) & CO. *v.* SCARFF (1920), 29 B. C. R. 70.—**CAN.**

80 ii. ——.]—A. an employee of pltf. co., being desirous of obtaining a new motor car for the purposes of his work, arranged with an officer of pltf. that the co. would advance him £200 to enable him to purchase the car. A. selected a car & signed an order for it in his own name, & an invoice addressed to pltf. was issued to A. A cheque for the balance of the amount owing on the car was given by the pltf. to A., who handed it to the vendor. The co.'s ledger showed the amount of the cheque as an advance to A. As security for this advance A. entered into a hire-purchase agreement with the co., whereby the co. purported to let the car to A. upon the usual terms of a hire-purchase agreement. The agreement was not registered as a bill of sale, & A. subsequently sold the car to deft. In an action for detention :—*Held :* the ct. was not concluded by the form into which the parties had thrown the transaction, but was entitled, & indeed bound, to inquire into its real nature ; the transaction between A. & pltf. amounted to an advance by pltf. to A. on the security of the car ; the pltf. could not make out its title independently of the hire-purchase agreement, which contained a licence to take possession of a personal chattel, & was consequently a bill of sale within Instruments Act, 1915, s. 127, & the agreement not being registered as a bill of sale was void, & deft. was entitled to succeed.—AUSTRALIAN METROPOLITAN LIFE ASSURANCE CO., LTD. *v.* LEA, [1928] V. L. R. 29.—**AUS.**

two letters written by deft. co. to pltf., one letter written before the keys were handed over, & the second letter subsequently. The second letter contained the words: "The goods to be locked up, the keys in your possession, & you to have the right to remove same as desired." The co. went into liquidation & the liquidator claimed that the transaction was invalid under Companies Act, 1908 (c. 69), s. 93 (1) (c), as being a charge created or evidenced by an instrument which if executed by an individual would require registration as a bill of sale. Pltf. brought an action claiming a declaration that the goods were in his possession, & that he was entitled to remove them:—*Held:* possession of the goods passed to pltf. by the delivery of the keys of the rooms in which they were locked up, notwithstanding that those rooms were on defts.' premises, inasmuch as defts. had conferred upon pltf. a licence to make the necessary entry in order to use the keys, which licence could not be revoked, & therefore the transaction was valid as against the liquidator, & pltf. was entitled to remove the goods.—WRIGHTSON *v.* MCARTHUR & HUTCHISONS, [1921] 2 K. B. 807; 90 L. J. K. B. 842; 125 L. T. 383; 37 T. L. R. 575; 65 Sol. Jo. 553; [1921] B. & C. R. 136.

97. *Add. Annotation:*—**Consd.** French *v.* Gething, [1922] 1 K. B. 236.

98. *Add. Annotation:*—**Refd.** National Provincial & Union Bank of England *v.* Lindsell (1921), 91 L. J. K. B. 196.

98a. Letter assigning chattel in hands of third party—Or proceeds of sale—As security for overdraft.]—The owner of a motor car which was in the hands of deft., a motor engineer, for the purpose of repairs, & which he had instructed deft. to sell on his behalf when repaired, had an account at pltfs.' bank, which was overdrawn. Being requested by pltfs. to give security for the overdraft he wrote to deft. a letter authorising him "to hold the car to the order of" the bank "or the proceeds when sold," & sent a copy of that letter to pltfs. The letter was not registered as a bill of sale. The car having been sold & the price received by deft., pltfs. claimed the proceeds:—*Held:* the letter in question created one entire charge upon the car & the proceeds which represented it, & the equitable assignment of the proceeds could not be severed from the assignment of the car itself; the letter was consequently a bill of sale & void for want of registration & for non-compliance with the statutory form.—NATIONAL PROVINCIAL & UNION BANK OF ENGLAND *v.* LINDSELL, [1922] 1 K. B. 21; 91 L. J. K. B. 196; 126 L. T. 319; 66 Sol. Jo. (W. R.) 11; [1921] B. & C. R. 209.

:—**Refd.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340.

104. *Add. Annotation:*—**Expld. & Apld.** Shears *v.* Jones, [1922] 2 Ch. 802.

108. *Add. Annotation:*—**Consd.** *Re* Johns, Worrell *v.* Johns, [1928] Ch. 737.

110a. ——.]—An agreement to execute a bill of sale, to secure payment of a debt, in the event of the debt not being paid by a certain date, is a bill of sale within 1882 Act, & is void unless the requirements of that Act as to registration are complied with.—SHEARS & SONS, LTD. *v.* JONES, [1922] 2 Ch. 802; 92 L. J. Ch. 28; 128 L. T. 218; 66 Sol. Jo. 682; [1922] B. & C. R. 211.

112. *Add. Annotation:*—**Refd.** *Re* Wethered, *Ex p.* Trustee (1925), 134 L. T. 264.

117. After this case add
Power of distress as indemnity against rent.]—*See* Law of Property Act, 1925 (c. 20), s. 189 (1).

Part III.—Instruments not within the Expression "Bill of Sale."

128. *Add. Annotations:*—**Folld.** French *v.* Gething, [1922] 1 K. B. 236. **Refd.** Canvey Island Comrs. *v.* Preedy, [1922] 1 Ch. 179.

133. *Add. Annotations:*—**Refd.** The Harlow, [1922] P. 175; Merchants' Marine Insce. *v.* North of England Protecting & Indemnity Assocn. (1926), 42 T. L. R. 724.

138. *Add. Annotation:*—**Refd.** *Re* Allester, [1922] 2 Ch. 211.

138a. Letter of trust on redelivery for realisation of pledged bills of lading.]—A limited co. pledged bills of lading with a bank to secure an overdraft. When it was time to sell the goods, the co. in accordance with the well-established mercantile practice obtained the bills of lading from the bank for realisation on the terms stated in the usual letter of trust given by the co. to the bank, to wit, that the co. received the bills of lading in trust on the bank's account & undertook to hold the goods when received & the proceeds when sold as the bank's trustees & to remit the entire net proceeds as realised:—*Held:* the letter of trust was not a bill of sale at all within the definition of 1878 Act, s. 4. *Semble:* if it had been so, it would on the evidence have been a document "used in the ordinary course of business" within the exception in that definition.—*Re* ALLESTER (D.), LTD., [1922] 2 Ch. 211; 91 L. J. Ch. 707; 127 L. T. 434; 38 T. L. R. 611; 66 Sol. Jo. 486; [1922] B. & C. R. 190.

138b. Agreement for sale of growing crop.]—An agreement for the sale of a growing crop is a transfer of "goods" within 1878 Act, s. 4, & is therefore excepted from the definition of "bill of sale" in that sect. as being a

PART II. SECT. 6

st. To give ... E, TRUSTEE *v.* CANADA METAL CO., LTD. (Ont.), 1925] 2 D. L. R. 889; 5 C. B. R. 629.—CAN.

PART III. SECT. 5.

sw. Lien note—No collateral contract to transfer property in goods back to seller.]—*Held:* not a chattel

O'BRIEN *v.* STEBBINS & MULLEN, [1927 3 D. L. R. 274; [1927] 2 W. W. R. 170; 21 Sask. L. R. 478.—CAN.

" transfer of goods in the ordinary course of business of any trade or calling."—STEPHENSON *v.* THOMPSON, [1924] 2 K. B. 240; 93 L. J. K. B. 771; 131 L. T. 279; 88 J. P. 142; 40 T. L. R. 513; 68 Sol. Jo. 536; 22 L. G. R. 359; [1924] B. & C. R. 170, C. A.

144a. —— —— **Society incorporated under Industrial & Provident Societies Act, 1893 (c. 39).**]—Upon a claim by a debenture-holder in the winding up of a society incorporated under the above Act to be declared a secured creditor, the question arose whether the debenture, by which the property of the society present & future was charged to secure the repayment of the principal sum & interest, was void by reason of Bills of Sale Acts, as to all or any of the assets of the society thereby charged:—*Held:* (1) the society was not an incorporated co. within the exception from 1882 Act, mentioned in sect. 17 of that Act; (2) the property charged by the debenture, although described in general terms, was severable; &, accordingly, the debenture was a valid charge upon such of the assets of the society as did not consist of personal chattels within 1878 Act, s. 4.—*Re* NORTH WALES PRODUCE & SUPPLY SOCIETY, [1922] 2 Ch. 340; 91 L. J. Ch. 415; 127 L. T. 288; 38 T. L. R. 518; 66 Sol. Jo. 439; [1922] B. & C. R. 12.

148. *Add. Annotations:*—**Refd.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340; National Provincial Bank of England *v.* Charnley (1923), 93 L. J. K. B. 241.

149. *Add. Annotations:*—**Refd.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340; National Provincial Bank of England *v.* Charnley (1923), 93 L. J. K. B. 241.

151. *Add. Annotation:*—**Apld.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340.

155. *Add. Annotation:*—**Apld.** Lemon *v.* Austin Friars Investment Trust (1925), 133 L. T. 790.

156. *Add. Annotations:*—**Consd.** Lemon *v.* Austin Friars Investment Trust, [1926] Ch. 1. **Refd.** Dey *v.* Rubber & Mercantile Corpn., [1923] 2 Ch. 528.

158. *Add. Annotation:*—**Refd.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340.

Part IV.—Subject-Matter of Bills of Sale—" Personal Chattels."

160. *Add. Annotation:*—**Refd.** Herbert's Trustee *v.* Higgins, [1926] Ch. 794.

168. *Add. Annotations:*—**Refd.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340; Blakey *v.* Pendlebury Property Trustees, [1931] 2 Ch. 255.

190. *Add. Annotation:*—**Distd.** Stephenson Thompson, [1924] 2 K. B. 240.

196a. Growing crops.]—STEPHENSON *v.* THOMPSON, No. 138b, *ante*.

PART III. SECT. 6.

142 iv. GORDON MACKAY & CO., LTD. *v.* CAPITAL TRUST CO., LTD., [1927] 2 D. L. R. 1150; S. C. R. 374; 8 C. B. R. 216.—**CAN.**

142 v. —— ——.]—Debentures issued by the co. on May 1, 1927, were not registered as chattel mtges. under the Bills of Sale & Chattel Mtge. Act. By each debenture the co. agreed to pay the principal sum therein mentioned on a certain date, with interest. There was no covering deed or trust mtge. Each debenture provided security for its payment by creating a first floating charge on all its assets & undertakings both present & future:—*Held:* the words used in creating the charge did not constitute the debentures a mtge. with Bills of Sale & Chattel Mtge. Act, & they were a charge on the property of the co. in priority to the claims of all other creditors.—*Re* DOMINION CHOCOLATE CO., [1931] 2 D. L. R. 813; O. R. 86; 12 C. B. R. 456.—**CAN.**

PART IV. SECT. 1.

sy. *Sale of dwelling-house for removal.*]—A sale of a dwelling-house with the intention on the part of the vendor & purchaser that it shall be removed from the land on which it is situated is a sale of a chattel within the meaning of sect. 9 of the Bills of Sale Act, R. S. A., 1922, c. 151.—WADE *v.* MUNICIPAL DISTRICT OF GOLDEN CENTRE, [1929] 2 D. L. R. 779; 1 W. W. R. 901; 24 Alta. L. R. 1.—**CAN.**

sz. *Goods not property of grantor.*]—The purchaser of a motor car under an uncompleted conditional sale agreement orally agreed to sell it to his father in consideration (*inter alia*) of the latter's assumption of the payments due the original vendor; but there was not sufficient change of possession to satisfy Bills of Sale Act if it applied to such a transaction. After the father had paid off the vendor the car was seized under an execution against the son:—*Held:* the transaction was not a "sale, assignment or transfer" of the car; its only effect was to give the father an equitable interest in the car which did not depend upon the delivery of possession; &, therefore, it was not affected by Bills of Sale Act then in force, R. S. A., 1922, which did not provide, as does the present Act, 1929, s. 27, that it shall apply to bills of sale although the goods may not be the property of the grantor.—BOYD *v.* HALLING, [1931] 1 W. W. R. 595; 2 D. L. R. 568; 25 Alta. L. R. 243.—**CAN.**

sa. *Property exempt from execution.*]—The Bills of Sale Act, R. S. S., 1930, applies to property exempt from seizure under execution. A herd of hogs in the apparent possession & ownership of an execution debtor were seized under execution. His wife, claiming them as hers, produced a written memorandum, dated five years previously, of a sale to her by the debtor of four hogs; & adduced evidence to show that at that time he owned only four hogs & that the herd seized was their progeny; & contended, that, although the sale had not been registered under Bills of Sale Act & although there had been no actual & continual change of possession, yet as said four hogs were the only hogs owned by her husband at that time they were exempt from seizure, &, therefore, said Act did not apply to them or their progeny:—*Held:* the contention could not be sustained &, therefore, the seizure was valid.—MCGIRR *v.* BELOUS, [1932] 1 W. W. R. 495.—**CAN.**

PART IV. SECT. 2.

a i. —— *Goods in possession of third party—Claiming possession on his own behalf.*]—*Held:* Bills of Sale Act did not apply.—PRETE *v.* LAUZON & FENSOM, [1923] 3 D. L. R. 1152; 52 O. L. R. 334.—**CAN.**

PART IV. SECT. 3.

167 ii. ——.]—The assignment by way of security of a chattel, the subject of a hire-purchase agreement & which at the date of the assignment was in the possession of the hirer, who was not in default under the hire-purchase agreement, is an assignment of a chose in action within s. 3 of Bills of Sale Act, 1898.—MOTOR CREDITS, LTD. *v.* W. F. WOLLASTON, LTD. (IN LIQUIDATION) (1929), 29 S. R. N. S. W. 227; 46 N. S. W. W. N. 48.—**AUS.**

PART IV. SECT. 4. SUB-SECT. 2.

197 iv a. ——.]—JACKSON *v.* PENFOLD, [1931] 1 D. L. R. 808; 66 O. L. R. 410.—**CAN.**

PART IV. SECT. 4, SUB-SECT. 3.

o i. ——.]—When a mtgee. enters into possession, he becomes entitled to any crops growing on the land as against a mtgee. of the crops under a chattel mtge. executed after his mtge. & before possession taken; but, if the crops are cut at the time of possession taken, the holder of the chattel mtge. would have priority.—

Part V.—Statutory Requirements.

213a. **Substantial accuracy—Payment of loan by cheque.**]—Pltf. granted a bill of sale over certain furniture to a money-lender, &, as she was unable to pay him the first instalment when it became due, defts. agreed to advance to her £1,000 on another bill of sale for the purpose of paying him off & of having her furniture released from the first bill of sale. Pltf. accordingly received a cheque for £1,000 from defts., & after receiving it she executed the second bill of sale, which stated that the consideration for it was £1,000 paid to pltf. In an action by pltf. to restrain defts. from disposing of the furniture comprised in the second bill of sale, pltf. relied on 1882 Act, s. 8, & she contended that the real consideration was the payment off of the money-lender & the release of her furniture from the first bill of sale:—*Held:* the consideration for the second bill of sale was the loan of £1,000, & as a cheque was a good payment until dishonoured there was no need to state in the second bill of sale that the payment was by cheque, & therefore, as the consideration was correctly stated in the second bill of sale, the action failed.—D'USEZ *v.* TRAFFICS & DISCOVERIES, LTD. (1924), 40 T. L. R. 441.

220. *Add. Annotations:*—**Consd.** Stott *v.* Shaw & Lee, [1928] 2 K. B. 26. **Refd.** B. S. Lyle, Ltd. *v.* Chappell (1931), 146 L. T. 236.

228a. —— —— **& grantor's creditors paid by grantee.**]—(1) On June 24, 1925, the parties to a bill of sale for £1,000 entered into an agreement that the grantee should pay, as he then did, £600 to creditors of the grantor in satisfaction of their debt, that the existing bill of sale should be cancelled, & that the grantor should give to the grantee a new bill of sale for £1,600. The new bill of sale provided that "in consideration of £1,600 paid to" the grantor "by" the grantee "on June 24, 1925," the grantor assigned the chattels to the grantee:—*Held:* the new bill of sale truly set forth the consideration for which it was given, as required by 1882 Act, s. 8.

(2) A bill of sale provided that the grantor would pay the grantee the principal sum of £1,600 with the interest then due "on

HARRISON *v.* CARBERRY ELEVATOR CO., (Man.) (1908), 7 W. L. R. 535.—**CAN.**

a i. —— *Chattel mortgage including cut grain—Amount of cut grain not specified.*]—*Held:* mtge. not valid even in part.—NORTH AMERICAN LUMBER CO. *v.* BANK OF MONTREAL, [1922] 1 W. W. R. 1265; 65 D. L. R. 348; 15 Sask. L. R. 375.—**CAN.**

a ii. —— *Lease by mortgagee in possession to guarantor of mortgagor's debt to bank—Profits from crop to be applied in reduction of debt.*]—*Held:* the above arrangement did not violate Chattel Mtge. Act, R. S. C., 1920 (c. 200), s. 20, as an attempt to create a security on a growing crop, since it did not come within any instrument mentioned therein.—BURNS & BROWN *v.* ZULAUF & DOEER (Sask.), [1926] 1 W. W. R. 943.—**CAN.**

197 x. ——.]—Security on grain given to a bank in Oct. 1921, in respect to advances made in the spring of 1920:—*Held:* invalid in respect to 1921 crop as there was no proof that 1921 crop was intended as the security, & if there was such an agreement made in 1920 as to 1921 crop it was bad as covering property not then in existence.—NORTH AMERICAN LUMBER CO. *v.* BANK OF MONTREAL, [1922] 1 W. W. R. 1265; 65 D. L. R. 348; 15 Sask. L. R. 375.—**CAN.**

197 xi. ——.]—*Held:* an agreement only intended to operate as security for payment, payable when the crop was harvested, was void under R. S. M., 1913 (c. 17), s. 33.—HASCALL *v.* ROYAL BANK OF CANADA, [1923] 2 W. W. R. 504; 33 Man. L. R. 230.—**CAN.**

197 xii. ——.]—*Held:* a security on crops to be grown *in futuro* was invalid under R. S. S., 1920 (c. 200), s. 20.—RICHLAND FARM, LTD. *v.* VERMETTE, [1923] 3 W. W. R. 74.—**CAN.**

197 xiii. ——.]—DALTON *v.* EATON, [1924] 1 D. L. R. 493; 1 W. W. R. 246; 18 Sask. L. R. 92.—**CAN.**

197 xiv. ——.]—ORPEN *v.* DYER (Alta.), [1929] 4 D. L. R. 1084; 1 W. W. R. 382.—**CAN.**

g i. —— ——.]—PROCTOR *v.* ANDERSON & NORTHERN ELEVATOR CO., LTD., EKMAN & PROCTOR & MALLERY, [1921] 3 W. W. R. 39.—**CAN.**

k i. —— *Transaction not bonâ fide.*]—Pltf. claimed the right to take certain wheat in A.'s possession. A. wanted some of it for seed. It was agreed that pltf. would purchase the wheat from A. at a price which was equal to the amount of A.'s indebtedness to pltf., & pltf. would immediately re-sell it to A. at a price per bushel which made the total price at about the same as on pltf.'s purchase. This was carried out, & to secure the purchase price pltf. took from A. a seed grain mtge. on the crop to be grown:—*Held:* as A. did not require the whole of the wheat for seed, & as the price fixed had no relation to the value of the wheat but was fixed with reference to the debt owing by A. to pltf., the actual value being much less than the price agreed on, the transaction could not be considered a *bonâ fide* sale to A., & pltf.'s mtge. was invalid.—LYNCH *v.* TURNEY (Sask.), [1923] 3 D. L. R. 7; [1923] 2 W. W. R. 876; *revsg.*, [1923] 1 D. L. R. 1198.—**CAN.**

k ii. —— ——.]—*Held:* the chattel mtge. in question, which was given on a growing crop for the purchase-price of seed grain, was *bonâ fide* & valid.—FEIBER *v.* ROMANCIEWICZ, [1928] 4 D. L. R. 400; [1928] 2 W. W. R. 625.—**CAN.**

sa. *Binder twine chattel mortgage—To secure price of twine used in previous year.*]—*Held:* may be validly granted in the following year over the crops of that year, & is entitled to priority.—FENNELL *v.* UNION BANK OF CANADA, [1923] 3 W. W. R. 79.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.—A.

b i. —— —— *Not amount secured.*]—HENTON *v.* INTERNATIONAL HARVESTER CO., [1926] 2 D. L. R. 962; [1926] 2 W. W. R. 118; 22 Alta. L. R. 102.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.—B.

f i. —— *Seed-grain mortgage.*]—A seed-grain mtge. & the affidavit of *bona fides* stated that it was given to secure the price, mentioning it, of 330 bushels of barley "purchased" from the mtgee. The evidence showed that the mtgor. took delivery of only 320 or 321 bushels. There was no evidence indicating that the difference between the price of the quantity referred to in the mtge. & the quantity delivered was to be paid by the mtgor. for anything but barley:—*Held:* it could not be inferred from the above facts that the consideration set forth in the mtge. & affidavit was not truly stated.—HORTNESS *v.* FEFCHAK, [1931] 2 W. W. R. 267; 4 D. L. R. 797.—**CAN.**

rectly specified.]—Under sect. 32 of Bills of Sale Act, 1929, which provides for the giving of security on a growing or future crop for the purchase-price of seed grain, meat, groceries, flour, clothing & binder twine & for money borrowed to pay for machinery repairs & wages, which goods & borrowings are collectively called "necessaries," the correct specifying in the security & the affidavit of *bona fides* of the particular nature of the alleged necessaries is an essential part of both affidavit & security without which the document does not become a security. The term "dry goods" is not a sufficient specification of the nature of the thing referred to in sect. 32 as "clothing"; & the term "borrowing" is too general to specify the nature of borrowing for the particular purposes authorised by the section.—SHARMAN *v.* WHITE, [1932] 1 W. W. R. 30.—**CAN.**

h i. —— *Misstatement as to currency.*—The fact that a bill of sale states that the consideration was paid in "lawful money of Canada," whereas it was in fact paid in United States currency, does not invalidate the bill of sale.—FIRST NATIONAL BANK OF MINNEAPOLIS *v.* MANN & CONWAY, [1925] 3 D. L. R. 648; [1925] 2 W. W. R. 525; 19 Sask. L. R. 546.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.—C. (a).

t i. —— ——.]—MOWAT *v.* CLEMENT (1886), 3 Man. L. R. 585.—**CAN.**

227 viii. —.]—*Re* GAUDREAU. *Ex p.* ROYAL BANK OF CANADA, [1928] 3 W. W. R. 79; 66 D. L. R. 831.—**CAN.**

f i. —— —— *& notes under discount—Notes subsequently taken up by grantee.*]—*Held:* the chattel mtge. was valid.—FISH *v.* HIGGINS (1884), 2 Man.

Dec. 24, 1925." A contemporaneous mtge. of other property, given as part of the same transaction & as a collateral security for the principal sum, provided as follows: "The mtgor." (the grantor of the bill of sale) "hereby covenants with the mtgee." (the grantee) "to pay to him on Dec. 24 next £1,600 with interest thereon, & it is hereby agreed & declared that (subject to the right of the mtgee. to require repayment of the principal on Dec. 24 next according to the foregoing covenant by the mtgor. or at any time thereafter) the principal money hereby secured shall be repaid by instalments of not less than £20" on specified dates; these provisions not being contained in the bill of sale:—*Held:* the bill of sale by being made contemporaneously with, & as part of the same transaction as, the mtge. containing that clause for repayment of the principal by instalments, was not made or given subject to a "defeasance or condition" within 1878 Act, s. 10 (3), & the fact that that clause was not contained in the body of the bill of sale or written on the same paper or parchment therewith did not avoid the registration of the bill of sale under that sub-sect.—STOTT *v.* SHAW & LEE, LTD., [1928] 2 K. B. 26; 97 L. J. K. B. 556; 139 L. T. 302; 44 T. L. R. 493; [1928] B. & C. R. 24, C. A.

237. *Add. Annotation:*—**Distd.** Henshall *v.* Widdison (1923), 130 L. T. 607

237a. —— ——.]—Pltf., H., had had a number of betting transactions with deft., W., a bookmaker, since 1918. Pltf. lost various bets & paid his losses by cheques. He won other bets for which he was paid by various cheques. Eventually, pltf. obtained judgment against deft. for £692 10*s*. Execution was levied at the instance of the judgment creditor whereupon deft.'s wife, claimant in the interpleader proceedings which followed, claimed the goods seized, alleging that they belonged to her because her husband, the judgment debtor, had given her a bill of sale covering them to secure the repayment of a sum of £600 which she had advanced to him. The judgment creditor contended that the bill of sale was bad because it did not truly state the consideration. The bill of sale contained the words "In consideration of a sum of £600 now paid . . ." & the judgment creditor said that the £600 was not paid at the time of making the bill of sale, & therefore was not "now paid," as therein stated, but was paid some time later. It was therefore contended that the bill of sale was not a good bill of sale because the statement that the money was "now paid" was untrue. According to the evidence, deft.'s wife had borrowed the £600 from her mother to help her husband, & she handed the £600 over to her husband to pay his debts at 6 p.m., on the same day that the bill of sale was executed:—*Held:* there was evidence in the present case on which the county ct. judge could find that the £600 was "now paid" within the meaning of the statement in the bill; the bill of sale was executed, & the money was paid over by claimant at substantially the same time the bill was therefore valid & the appeal must be dismissed.—HENSHALL *v.* WIDDISON (1923), 130 L. T. 607, D. C.

249. *Add. Annotation:*—**Refd.** B. S. Lyle, Ltd. *v.* Chappell (1931), 146 L. T. 236.

256. *Add. Annotation:*—**Refd.** B. S. Lyle, Ltd. *v.* Chappell (1931), 146 L. T. 236.

260. *Add. Annotation:*—**Refd.** B. S. Lyle, Ltd. *v.* Chappell (1931), 146 L. T. 236.

273. *Add. Annotation:*—**Refd.** Commercial Credit Co. of Canada *v.* Fulton, [1923] A. C. 798.

279. *Add. Annotations:*—**Refd.** Westen *v.* Fairbridge, [1923] 1 K. B. 667; Gordon *v.* Goldstein, [1924] 2 K. B. 779.

282. *Add. Annotation:*—**Consd.** Wilkins *v.* New Saville Securities & Hawkings (1922), 39 T. L. R. 85.

283a. **Rights under preceding oral agreement.**]—Where, after oral negotiations, a bill of sale of furniture is granted to secure a loan of money with an agreed sum for interest, & the bill is found to be bad, the lender is entitled to recover the principal money lent & interest by virtue of the contract created by the oral negotiations which preceded the granting of the bill of sale.—WILKINS *v.* NEW SAVILLE SECURITIES, LTD. & HAWKINGS (G. F.) & SON (1922), 39 T. L. R. 85.

Annotation:—**Folld.** Bradford Advance Co. *v.* Ayers, [1924] W. N. 152.

283b. -.]—When a bill of sale is void under 1882 Act, s. 9, it is void for all purposes, including the covenant to pay interest. But where a loan has been negotiated purporting to be under a bill of sale which turns out in fact to be void, an action will lie for money had & received, with an obligation to repay the loan & interest at a reasonable rate.—BRADFORD ADVANCE CO., LTD. *v.* AYERS, [1924] W. N. 152.

288. *Add. Annotation:*—**Consd.** Gordon *v.* Goldstein, [1924] 2 K. B. 779.

288a. **Joint parties—Joint assignment—Of property owned by one party.**]—By a bill of sale a husband & wife, who were therein together called "the grantor", purported to assign to the grantee the chattels described in the schedule thereto, which in fact belonged to the wife alone:—*Held:* inasmuch as "the grantor" was not the true owner of the chattels at the time when the bill of sale was executed, except as against the grantor the bill of sale was void under 1882 Act, s. 5.—GORDON *v.* GOLDSTEIN, [1924] 2 K. B. 779; 94 L. J. K. B. 21; 132 L. T. 155; [1924] B. & C. R. 245.

Annotation:—**Expld.** Gamage *v.* Payne (1925), 42 T. L. R. 138.

289. *Add. Annotations:*—**Consd.** Westen *v.* Fairbridge, [1923] 1 K. B. 667; **Distd.** Gordon *v.* Goldstein, [1924] 2 K. B. 779.

PART V. SECT. 2, SUB-SECT. 1.

sb. *Situation of chattels not properly designated—Description by which premises generally known.*]—*Held:* sufficient, if not likely to mislead & chattels capable of being identified.—*Re* COMFORTER & CUSHION MANUFACTURING CO., *Ex p.* HENDERSON (J. B.) & CO. (Ont.), [1926] 1 D. L. R. 30.—CAN.

sd. *One mortgage form attached to part of another mortgage form.*]—*Held:* void for uncertainty.—HENTON *v.* INTERNATIONAL HARVESTER CO., [1926] 2 D. L. R. 962; [1926] 2 W. W. R. 118; 22 Alta. L. R. 102.—CAN.

PART V. SECT. 2, SUB-SECT. 3.

sg. *Sufficiency of—Small present payment—& extension of time for payment.*]—*Held:* sufficient.—IMPERIAL LUMBER YARDS, LTD. *v.* FERGUSON, COCKSHUTT PLOW CO., CLAIMANT, [1922] 2 W. W. R. 133; 65 D. L. R. 758.—CAN.

297. *Add. Annotation :*—**Refd.** Commercial Credit Co. of Canada *v.* Fulton, [1923] A. C. 798.

299. *Add. Annotation :*—**Refd.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340.

301. *Add. Annotation :*—**Expld. & Apld.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340.

302. *Add. Annotations :*—**Expld.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340. **Refd.** Blakey *v.* Pendlebury Property Trustees, [1931] 2 Ch. 255.

302a. —— —— **Other property of industrial society—Charged by debenture.**]—*Re* NORTH WALES PRODUCE & SUPPLY SOCIETY, No. 144a, *ante*.

329. *Add. Annotations :*—**Mentd.** Edwards *v.* Motor Union Insce., [1922] 2 K. B. 249 : *Re* A Bankruptcy Notice, [1924] 2 Ch. 76 ; Russian Commercial & Industrial Bank *v.* Comptoir d'Escompte de Mulhouse, Banque Internationale de Commerce de Petrograd *v.* Goukasson (1924), 40 T. L. R. 837 ; Huddersfield Fine Worsteds *v.* Todd (1925), 42 T L. R. 52.

346. For "does render the bill of sale void," read "does not render the bill of sale void."

372. *Add. Annotation :*—**Refd.** Commercial Credit Co. of Canada *v.* Fulton, [1923] A. C. 798.

417. *Add. Annotation :*—**Consd.** Herbert's Trustee *v.* Higgins, [1926] Ch. 794.

418. *Add. Annotation :*—**Refd.** Herbert's Trustee *v.* Higgins, [1926] Ch. 794.

420. *Add. Annotation :*—**Apld.** Herbert's Trustee *v.* Higgins, [1926] Ch. 794.

420a. —— **"Cows, nineteen short-horns & one Jersey cow."**]—*Held :* farm stock described in the schedule to a bill of sale as above were specifically described within 1882 Act, s. 4.—HERBERT'S TRUSTEE *v.* HIGGINS, [1926] Ch. 794 ; 95 L. J. Ch. 303 ; 135 L. T. 321 ; 42 T. L. R. 525 ; 70 Sol. Jo. 708 ; [1926] B. & C. R. 26.

423. *Add. Annotation :*—**Apld.** Herbert's Trustee *v.* Higgins, [1926] Ch. 794.

435. *Add. Annotation :*—**Refd.** Stott *v.* Shaw & Lee, [1928] 2 K. B. 26.

439. *Add. Annotation :*—**Consd.** Stott *v.* Shaw & Lee, [1928] 2 K. B. 26.

439a. —— —— —— ——.]—STOTT *v.* SHAW & LEE, LTD., No. 228a, *ante*.

444. *Add. Annotation :*—**Refd.** Wilkins *v.* New Saville Securities & Hawkings (1922), 39 T. L. R. 85.

450. *Add. Annotation :*—**Consd.** Stott *v.* Shaw & Lee, [1928] 2 K. B. 26.

453. *Add. Annotation :*—**Consd.** Stott *v.* Shaw & Lee, [1928] 2 K. B. 26.

PART V. SECT. 2, SUB-SECT. 4.

293 v. —— —— *Reference to description in another instrument.*]—*Held :* goods & chattels must be so set out on the face of the instrument as to be easily identifiable, & a reference to another instrument cannot suffice ; & as to subsequently acquired goods the mtge. was null & void.—*Re* RINN, [1923] 3 D. L. R. 986 ; 33 Man. L. R. 153 ; [1923] 1 W. W. R. 1190 ; 3 C. B. R. 328.—**CAN.**

q i. ——.]—When a mtge. of a car was made by H., he was owner of only one undivided half-share in the car :—*Held:* notwithstanding the consent of his partner to the mtge., it was valid only to the extent of H.'s half share ; the fact that shortly after giving the security H. became the sole owner did not operate retrospectively under Chattels Transfer Act, s. 21.—BOWDEN *v.* R., [1921] N. Z. L. R. 249.—**N.Z.**

PART V. SECT. 2, SUB-SECT. 6.—G.

p i. —— *Rights of grantor.*]—The covenant implied in instruments by way of security over stock which, while forbidding the removal of stock without the grantee's consent, permits a sale by the grantor in the ordinary course of business, provided that the number of stock is not thereby reduced below the number stated in the security, does not require as a condition of a valid sale that the proceeds be paid to the grantee.—NATIONAL BANK OF NEW ZEALAND *v.* DALGETY & CO., [1925] N. Z. L. R. 250.—**N.Z.**

PART V. SECT. 2, SUB-SECT. 8.—A.

sh. *Attachment after signature but before delivery.*]—The fact that the inventory of goods & chattels referred to in the chattel mtge. in question herein was not attached thereto when the mtgor. signed the mtge. but was attached subsequently held not to invalidate the mtge. The inventory was attached, under instructions from the mtgor., before the mtge. was delivered to the mtgee. & before the mtgor. had obtained possession of the goods under a bill of sale from the mtgee.—STUBBERT *v.* SCOTT & TEMPLE, [1931] 1 W. W. R. 598.—**CAN.**

PART V. SECT. 2, SUB-SECT. 8.—B.

b (p. 70) i. —— *Clause capable of different constructions—Sufficient.*]—A description is sufficient when it is apparent that the mtge. covers all the chattels of the specified kind owned by the mtgor.—ROYAL BANK OF CANADA *v.* MACKENZIE, [1932] S. C. R. 524 ; 2 D. L. R. 12.—**CAN.**

415 xi. —— —— ——.]—BANQUE D'HOCHELAGA *v.* HAYDEN & GILLESPIE ELEVATOR CO., [1922] 1 W. W. R. 1054 ; 63 D. L. R. 514 ; 17 Alta. L. R. 277.—**CAN.**

415 xii. —— —— ——.]—The description of the goods in the chattel mtge. in question herein held not to be sufficient to satisfy the requirements of sect. 17 of Chattel Mortgage Act, R. S. S., 1920, c. 200, which provides that the goods must be so described as to be "readily and easily known and distinguished."—MANNING *v.* HALL, [1930] 3 W. W. R. 526 ; [1931] 1 D. L. R. 96.—**CAN.**

416 vii. —— —— ——.]—The insolvent assigned to applt. personal chattels described at the foot of the bill of sale situate on block 151 . . . & "all other personal chattels whatsoever whether of the kinds mentioned at the foot hereof or not which are now or during the continuance of this security may be in upon or about the said land & elsewhere." The insolvent had other chattels situated on another block of land :—*Held :* the bill of sale did not satisfy the requirements of s. 9 of Bills of Sale Act, 1886, & the omissions contained in the bill of sale were material omissions.—*Re* ROHRLACH ; RIEDEL *v.* THE OFFICIAL RECEIVER (1928), S. A. S. R. 113.—**AUS.**

m (p. 73) i. —— *"Eight pure bred red poll cows."*]—A bill of sale of cattle described them as "eight pure bred red poll cows named as follows, giving the names, in the possession of W. R. & pasturing on a named timber reserve" :—*Held :* (1) the description was sufficient, in the absence of evidence that claimant had red poll cows other than those covered by the bill of sale so as to make those covered thereby difficult of identification ; (2) the *onus* was on the party attacking the bill of sale to show that the cows described were incapable of identification even on making proper inquiries.—ROBILLARD *v.* MCCULLOUGH, [1926] 3 D. L. R. 178 ; [1926] 2 W. W. R. 350 ; 20 Sask. L. R. 559.—**CAN.**

n (p. 73) i. —— *"Issue of" named "animal."*]—It is not a sufficient description to describe an animal as the issue of another animal when the animal has at the date of the mtge. ceased to follow its dam for nurture.—RESER *v.* BEWLEY, [1922] 1 W. W. R. 1134 ; 65 D. L. R. 58 ; 17 Alta. L. R. 548.—**CAN.**

k (p. 74) i. —— —— ——.]—KING *v.* DOMINION BANK, [1920] 3 W. W. R. 295.—**CAN.**

PART V. SECT. 3.

p i. —— *Reference in schedule to earlier mortgage.*]—OTAGO FARMERS CO-OPERATIVE ASSOCN. OF NEW ZEALAND, LTD. *v.* MCGOWAN, [1925] N. Z. L. R. 482.—**N.Z.**

PART V. SECT. 4, SUB-SECT. 1.

466 i. *Non-compliance with statutory requirements—How far mortgage valid.*]—Bills of Sale Act, N. B. 1903 (c. 142), s. 5, affords no protection for a mtge. not executed & attested in accordance with s. 3 subsequent to another mtge. also not in accordance with s. 3. Such prior mtge. is good as between the parties & those who are not protected by s. 5.—MEADE *v.* DESCHENE, [1923] 2 D. L. R. 332.—**CAN.**

PART V. SECT. 5, SUB-SECT. 1.

c i. ——.]—Chattel mtges. unregistered under such an agreement :—*Held :* void as against a mtgee. of the land claiming the chattels under a distress under an attornment clause in his mtge. —MCDOUGALL & SECORD, LTD. *v.* MERCHANTS BANK OF CANADA, [1920] 1 W. W R. 364 ; 51 D. L. R. 309.—**CAN.**

PART V. SECT. 5, SUB-SECT. 2.

e i. —— *Declaration as to bona fides sworn six days before execution.*]—*Held :* mtge. null & void as against the trustee in bkpcy. of the mtgor.—*Re* GIBBONS, [1924] 3 D. L. R. 619 ; 5 C. B. R. 16.—**CAN.**

495. *Add. Annotation :*—Reld. Commercial Credit Co. of Canada *v.* Fulton, [1923] A. C. 798.

498. *Add. Annotation :*—Consd. Commercial Credit Co. of Canada *v.* Fulton, [1923] A. C. 798.

552. *Add. Annotation :*—Expld. Gordon *v.* Goldstein, [1924] 2 K. B. 779.

Part VI.—Avoidance.

648. *Add. Annotation :*—Consd. Shears *v.* Jones, [1922] 2 Ch. 802.

672. *Add. Annotation:*—Expld. & Apld. French *v.* Gething, [1922] 1 K. B. 236.

PART V. SECT. 5, SUB-SECT. 3.

492 ii. —— ——.]—*Held :* a document not a "true copy" was null & void against purchasers.—COMMERCIAL CREDIT CO. OF CANADA, LTD. *v.* FULTON BROTHERS, [1923] A. C. 798; 93 L. J. P. C. 12; 130 L. T. 72; 39 T. L. R. 684; [1923] B. & C. R. 102. —CAN.

PART V. SECT. 5, SUB-SECT. 4.—A.

o (p. 86) i. —— *Bill for future advances.*]—ROBINSON *v.* PETERS (1919), 47 N. B. R. 1.—CAN.

o (p. 86) ii. —— *Effect of omission—Part of goods delivered.*]—*Held :* bill valid where there was an immediate delivery followed by an actual & continued change of possession, & where goods had been sold & the proceeds were lying in the sheriff's hands.—KIPPAN *v.* MCCAW, [1924] 1 D. L. R. 601; 1 W. W. R. 65; 34 Man. L. R. 64.—CAN.

o (p. 86) iii. ——.]—L., a dealer in cars, being about to buy a car & requiring money for the purpose, applied to pltf. for the money, which was lent. Two documents were executed, a bill of sale by L. to pltf. & an agreement for a conditional sale by pltf. to L. :—*Held :* transaction was a mtge. of the car by L. to pltf.; pltf.'s rights against deft., who had seized the car under a subsequent assignment from L., were governed by Bills of Sale & Chattel Mtge. Act. Affidavits of execution & *bona fides* were not made nor were the documents registered, therefore pltf. could not succeed as against deft. who was a purchaser in good faith & for value.—COMMERCIAL FINANCE CORPN., LTD. *v.* CAPITAL DISCOUNT CORPN., LTD., [1931] 1 D. L. R. 1007; O. R. 22.—CAN.

q (p. 86) i. —— ——.]—*Re* MCDONAGH (Ont.), [1926] 3 D. L. R. 36. 7 C. B. R. 686.—CAN.

m (p. 86) i. —— —— —— *Omission of statement as to knowledge.*]—CRAIG (W. G.) & CO., LTD. *v.* GILLESPIE (1920), 47 O. L. R. 529; 54 D. L. R. 514.—CAN.

q (p. 87) i. —— *Bank taking mortgage—Local manager—Without written authority.*] — *Held :* sufficient. — *Re* GAUDREAU, *Ex p.* ROYAL BANK OF CANADA, [1922] 3 W. W. R. 79; 66 D. L. R. 831.—CAN.

506 va. —— —— ——.]—While it is very desirable, the absence of date is not fatal, as the Ordinance does not prescribe any form of affidavit.—BANQUE D'HOCHELAGA *v.* HAYDEN & GILLESPIE ELEVATOR CO., [1922] 1 W. W. R. 1054; 63 D. L. R. 514; 17 Alta. L. R. 277.—CAN.

PART V. SECT. 5, SUB-SECT. 4.—B.

sk. *Presumption of accuracy—Absence of evidence to rebut.*]—*Re* GAUDREAU, *Ex p.* ROYAL BANK OF CANADA, [1922] 3 W. W. R. 79; 66 D. L. R. 831.—CAN.

g (p. 88) i. *Necessity for affidavit —Bill executed under corporate seal of company.*]—LIVERGOOD *v.* TAYLOR, [1920] 3 W. W. R. 62.—CAN.

g (p. 88) ii. *S. P.* LIVERGOOD *v.* HOME, [1920] 3 W. W. R. 67.—CAN.

k (p. 88) i. —— —— ——.]—The absence of the date of execution of a chattel mtge. from the affidavit of the witness renders the mtge. invalid.—NORTH AMERICAN LUMBER CO., LTD *v.* BANK OF MONTREAL, [1922] 1 W. W. R. 1265; 65 D. L. R. 348; 15 Sask. L. R. 375.—CAN.

k (p. 88) ii. —— —— ——.]—*Re* LAWSON, *Ex p.* SHANKEY, [1925] 1 D. L. R. 1100.—CAN.

n (p. 88) i. —— —— ——.]—The affidavit must strictly comply with the form in the statute, or the mtge. is void against creditors of mtgor.—*Re* RAPER, *Ex p.* JAMIESON, [1924] 4 D. L. R. 789; 5 C. B. R. 184.—CAN.

p (p. 89) i. —— —— —— *Omission of material fact.*]—PROCTOR *v.* ANDERSON & NORTHERN ELEVATOR CO., LTD., ERMAN & PROCTOR & MALLERY, [1921] 3 W. W. R. 39.—CAN.

d (p. 90) i. —— —— *Misstatement—Whether bill vitiated.*]—*Re* BLAIR, *Ex p.* MAPLE LEAF MLLG. CO. (Ont.), [1927] 3 D. L. R. 477; 8 C. B. R. 329.—CAN.

r (p. 91) i. —— —— ——.]—KEOUGH *v.* PRICE (1877), 27 C. P. 309. —CAN.

r (p. 91) ii. —— —— —— *Not filled in.*]—*Held :* the affidavit of *bona fides* was insufficient.—MCINTYRE *v.* UNION BANK (1885), 2 Man. L. R. 305. —CAN.

PART V. SECT. 5, SUB-SECT. 5.—D.

596 iii. —— *Not stated in mortgage—Stated in affidavit.*]—The statement of the address of the agent of mtgee. in the affidavit of *bona fides* is sufficient to satisfy the statutory requirements, although mtgee.'s address is not stated in the mtge. itself.—IMPERIAL LUMBER YARDS, LTD. *v.* FERGUSON, COCKSHUTT PLOW CO., CLAIMANT, [1922] 2 W. W. R. 133; 65 D. L. R. 758.—CAN.

PART V. SECT. 5, SUB-SECT. 8.

l (p. 101) i. —— ——.]—If the mtgee., during the currency of a mtge. & before renewal becomes necessary, takes actual possession of the goods & makes no sale or change of title, the mtge. remains valid & effective without renewal.—MCCABE *v.* COSTE, [1922] 3 W. W. R. 465; 70 D. L. R. 25.—CAN.

l (p. 101) ii. *S.P.*—*Re* BLACKBURN, *Ex p.* MOFFATT, [1925] 2 D. L. R. 1206; 5 C. B. R. 698.—CAN.

n (p. 102) i. —— ——.]—*Re* NATHAN CRYSTAL, *Ex p.* HAWTHORNE, [1925] 4 D. L. R. 1078.—CAN.

o (p. 102) i. —— ——.]—*Re* KERR, *Ex p.* MARTIN (Ont.), [1926] 4 D. L. R. 705; 7 C. B. R. 605.—CAN.

t (p. 102) i. —— *Statement filed after proper time.*]—*Held :* the chattel mtge. was void.—*Re* NATHAN CRYSTAL, *Ex p.* HAWTHORNE, [1925] 4 D. L. R. 1078.—CAN.

616 iii. —— —— ——.]—MCCABE *v.* COSTE, [1922] 3 W. W. R. 465; 70 D. L. R. 25.—CAN.

616 iv. —— —— ——.]—MCDONALD *v.* CAREY, [1923] 3 D. L. R. 1018; 2 W. W. R. 972.—CAN.

616 v. —— —— ——.]—When an order permitting the filing of a renewal statement is obtained on an *ex parte* application while the question of the rights of the chattel mtgee. are *coram judice* in other proceedings, the mtgee.'s position should not be taken to have been bettered in any way thereby.—*Re* BILL'S ESTATE, [1924] 4 D. L. R. 876; 3 W. W. R. 475.—CAN.

616 vi. —— —— *From what date time for subsequent renewals fixed.*]—MCCABE *v.* COSTE, [1922] 3 W. W. R. 465; 70 D. L. R. 25.—CAN.

618 viii. —— ——.]—Where deft. purchased goods from mtgor. paying full value & knew of the mtge., but considered he was entitled as a matter of law to rely upon mtgee.'s failure to file renewal :—*Held :* deft. was not a purchaser in good faith.—CANADIAN BANK OF COMMERCE *v.* MUNROE, [1925] 1 D. L. R. 368; [1925] 1 W. W. R. 1.—CAN.

PART VI. SECT. 2.

r (p. 107) i. —— ——.]—LIVERGOOD *v.* HOME, [1920] 3 W. W. R. 67.—CAN.

r (p. 107) ii. —— ——.]—The creditors entitled to the protection of Chattel Mtge. Act, R. S. S., 1920 (c. 200), are all creditors of the seller, & not merely those whose claims have been prosecuted to judgment.—FIRST NATIONAL BANK OF MINNEAPOLIS *v.* MANN & CONWAY, [1925] 3 D. L. R. 648; [1925] 2 W. W. R. 525; 19 Sask. L. R. 546.—CAN.

r (p. 107) iii. —— ——.]—"Creditor" in Bills of Sale Act, R. S. A., 1922 (c. 151), s. 12, includes a simple contract creditor.—LAPIERRE *v.* TWIN CITY GRAVEL & CONCRETE CO., LTD. & TERWILLEGER (Alta.), [1926] 3 W. W. R. 775.—CAN.

s (p. 107) i. —— —— *Obtaining judgment subsequently to sale.*]—*Held :* "creditors."—MICKELSON *v.* NASH SIMINGTON CO., [1923] 3 W. W. R. 843. —CAN.

t (p. 109) i. —— —— *Before judgment recovered by creditor.*]—*Held :* mtgee. was entitled to maintain her right as such.—HENRY *v.* SEXSMITH (1921), 64 D. L. R. 373; 50 O. L. R. 278.—CAN.

t (p. 109) ii. —— *Subsequent seizure & disposal of goods by grantee.*]—*Held :* a defective bill of sale could not be perfected by a seizure & disposal of the goods thereunder as against creditors who had already seized the goods under execution.—*Re* SCRAGG, [1925] 1 D. L. R. 240; [1924] 3 W. W. R. 905.—CAN.

t (p. 109) iii. —— *Grantor remaining in possession—Whether bill avoided.*]—SHERIFF *v.* MCKEEN (1883), 23 N. B. R. 184.—CAN.

d (p. 109) i. ——.]—SLOAN *v.* OTTAWA CAR MANUFACTURING CO. (1921), 64 D. L. R. 333; 50 O. L. R. 235.—CAN.

o (p. 109) i. —— —— *Seizure under lien subsequently obtained.*]—*Re* MUSTARD, [1923] 2 D. L. R. 922; 4 C. B. R. 140; *affd.*, 24 O. W. N. 513. —CAN.

sk. *Against principal—Agent granting bill without authority.*]—ALLEN *v.* NORFOLK CO-OPERATIVE DAIRY CO., LTD., [1923] N. Z. L. R. 715.—N.Z.

PART VI. SECT. 3, SUB-SECT. 1.—A.

h (p. 110) i. *Chattels subsequently taken by bargainee.*]—A bill of sale void under the statute cannot be made

673. *Add. Annotation :*—**Consd.** French *v.* Gething, [1922] 1 K. B. 236.

673a. —.]—By a post-nuptial deed in May, 1914, a husband gave his wife certain household furniture in the house in which the husband & wife lived together. The furniture remained in the house, which continued to be occupied by the husband & wife. The deed was not registered under 1878 Act. Execution creditors under a judgment recovered in 1920 against the husband levied execution at the house. The wife claimed the furniture. In an interpleader issue between the wife & the execution creditors :—*Held :* the furniture was not in the possession or apparent possession of the husband within 1878 Act, s. 8, nor in his order & disposition or reputed ownership within Married Women's Property Act, 1882 (c. 75), s. 10.—FRENCH *v.* GETHING, [1922] 1 K. B. 236 ; 91 L. J. K. B. 276 ; 126 L. T. 394 ; 38 T. L. R. 77 ; 66 Sol. Jo. 140 ; [1922] B. & C. R. 30, C. A.

678. *Add. Annotation :*—**Consd.** French *v.* Gething, (1921), 91 L. J. K. B. 276.

689. *Add. Annotation :*—**Consd.** National Provincial & Union Bank of England *v.* Charnley, [1924] 1 K. B. 431.

695. *Add. Annotations :*—**Consd.** National Provincial & Union Bank of England *v.* Charnley, [1924] 1 K. B. 431 ; *Re* Wait, [1926] Ch. 962. **Refd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1.

704. *Add. Annotation :*—**Refd.** National Provincial & Union Bank of England *v.* Charnley, [1924] 1 K. B. 431.

706 *Add. Annotations :*—**Consd.** Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 569. **Refd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1 ; *Re* Wait, [1927] 1 Ch. 606 ; Cotton *v.* Heyl, [1930] 1 Ch. 510 ; *Re* Williams, Richards *v.* Williams, [1930] 2 Ch. 378 ; Blakey *v.* Pendlebury's Trustees (1931), 47 T. L. R. 503.

708a. —— —— ——.]—The grantor of a bill of sale described the goods in the schedule thereto as his own, though, in fact, the true owner was pltf., his wife. The bill of sale was given as security for a loan to the grantor from deft., & at the time of its execution the wife made a statutory declaration that the goods were those of her husband. One firm of solrs. acted for all the parties in this transaction. On a claim by the wife to the goods : —*Held :* she was estopped from denying that the goods were those of her husband, & thus showing that the bill of sale was void as against deft. under 1882 Act, s. 5.—WESTEN *v.* FAIRBRIDGE, [1923] 1 K. B. 667 ; 92 L. J. K. B. 577 ; 129 L. T. 221 ; 67 Sol. Jo. 403 ; [1923] B. & C. R. 86.

710a. —— —— **Voluntary deed of gift by husband —Declared void after date of bill.**]—A man who was in debt executed a deed of gift of his furniture in favour of his wife, who thereafter granted a bill of sale upon the furniture to a person who took for value & without notice. Subsequently the deed of gift was declared void under 13 Eliz. c. 5 as being in fraud of creditors. The furniture having been taken in execution by a judgment creditor the bill of sale holder claimed the furniture under the bill of sale. Interpleader proceedings were instituted in which the execution creditor alleged that the bill of sale was void under 1882 Act, s. 5, on the ground that the grantor was not the "true owner" of the furniture at the time of the execution of the bill of sale :—*Held :* until the deed of gift was set aside the donee thereunder was the "true owner" of the furniture, & as she had conveyed the furniture to a purchaser for value without notice before the deed of gift was set aside, claimant obtained a good title under the bill of sale.—HARRODS, LTD. *v.* STANTON, [1923] 1 K. B. 516 ; 92 L. J. K. B. 403 ; 128 L. T. 685 ; [1923] B. & C. R. 70, D. C.

718. *Add. Annotation :*—**Refd.** Wilkins *v.* New Saville Securities & Hawkings (1922), 39 T. L. R. 85.

719. *Add. Annotation :*—**Expld. & Apld.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340.

722. *Add. Annotations :* — **Consd.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76 ; Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52. **Refd.** Edwards *v.* Motor Union Insce., [1922] 2 K. B. 249 ; Russian Commercial & Industrial Bank *v.* Comptoir d'Escompte de Mulhouse, Banque Internationale de Commerce de Petrograd *v.* Goukassow (1924), 40 T. L. R. 837.

723a. **Owner—Statutory declaration that goods belonged to grantor.**]—WESTEN *v.* FAIRBRIDGE, No. 708a, *ante*.

valid by any subsequent possession taken by the bargainee.—KIPTAN *v.* MCCAW, [1924] 1 D. L. R. 601 ; 1 W. W. R. 65 ; 34 Man. L. R. 64.—CAN.

b (p. 114) i. —— ——.]—YOUNG *v.* MAGEE, [1924] 3 D. L. R. 426 ; 2 W. W. R. 816 ; 20 Alta. L. R. 431.—CAN.

675 iii. —— *Grantee daughter of grantor.*]—A father living with his daughter in a house owned by him sold to her the furniture in the house for a sum of money, which she immediately paid, & a sale note specifying the articles sold was signed by him. There was no delivery of possession, & the furniture remained in the house, & both parties continued to live there :—*Held :* the transaction being *bond fide*, possession of the furniture must be deemed to have passed with the title at the time of sale, the sale note therefore was not a document conferring power to seize or take possession & did not require registration as a bill of sale.—BALSARINI *v.* LEWIS, [1931] Argus. L. R. 374.—AUS.

PART VI. SECT. 3, SUB-SECT. 1.—B.

1 (p. 116) i. —— ——.] — The "change of possession" required by Bills of Sale Ordinance, C. O., 1898 (c 43), s. 9, must be open.—DOMINION LUMBER CO. *v.* ALBERTA FISH CO., [1921] 3 W. W. R. 619.—CAN.

r (p. 116) i. —.]—STRAKER *v.* NORTH OF SCOTLAND CANADIAN MTGE. CO., LTD., [1932] 1 W. W. R. 354.—CAN.

si. *Goods sold—Actual change of possession—Knowledge of creditor.*]—Where there has been an actual sale of goods, &, as between the parties, an actual change of possession, knowledge of that change by a particular creditor will be sufficient as to him to satisfy the requirements of Bills of Sale & Chattel Mtge. Act with respect to change of possession, whether the rest of the public knew of it or not.—MARCQ *v.* BERTHOLET, [1928] 2 D. L. R. 691 ; [1928] 1 W. W. R. 843 ; 37 Man. L. R. 307.—CAN.

sm. *Chattel mortgage on crop after hiring agreement lease.*]—FRANCIS *v.* BOCZ (Sask.), [1929] 4 D. L. R. 38.—CAN.

PART VI. SECT. 3, SUB-SECT. 2.—A.

686 xi. ——.]—LIQUID CARBONIC CO. *v.* ROUNTREE, [1924] 1 D. L. R. 1092 ; 54 O. L. R. 75.—CAN.

PART VI. SECT. 6, SUB-SECT. 2.

740 i. *Second bill to cure invalidity—Second bill valid.*]—Where goods have been sold *bond fide* & a bill of sale given which is invalid because it was not duly registered, & the seller gives the buyer a new bill of sale, even after the period for registration dating from the execution of the first, which is registered before the seller's creditors are in a position to proceed against the goods, it will entitle the buyer to hold them as against the creditors.—FIRST NATIONAL BANK OF MINNEAPOLIS *v.* MANN & CONWAY, [1925] 3 D. L. R. 648 ; [1925] 2 W. W. R. 525 ; 19 Sask. L. R. 546 ; *revsg.*, [1925] 1 W. W. R. 899.—CAN.

—.]—Although the

Part VII.—Rights and Liabilities of Parties.

Annotation :— *Re* Wait, [1927] 606.

provisions of Chattels Transfer Act, 1924, require that the true bargain between the parties to an instrument shall be recorded at the time when the instrument is registered, yet there is nothing in the Act from which it can be inferred that a registered instrument is to become void if it be varied by a subsequent agreement which is made between the same parties & which is itself unregistered.—GUARDIAN, TRUST & EXECUTORS CO., LTD. *v.* EQUITABLE LOAN & FINANCE CO., LTD., [1929] N. Z. L. R. 702.—N.Z.

sm. *Second bill invalid—First bill valid only between parties.*]—TOPHAM *v.* MOTOR SECURITIES CO., FEDERAL MOTOR CO. *v.* TOPHAM (B. C.), [1928] 3 D. L. R. 153; *affd.*, [1929] 1 D. L. R. 995; 1 W. W. R. 116; 40 B. C. R. 375.—CAN.

PART VII. SECT. 1, SUB-SECT. 2.

c i. ——.]—TULLY *v.* ANDREWS (1921), 59 D. L. R. 687.—CAN.

PART VII. SECT. 1, SUB-SECT. 3.

756 x. —— ——.]—DORMAN *v.* CRAPPER (1914), 27 W. L. R. 599; 6 W. W. R. 551; 17 D. L. R. 121; 7 Sask. L. R. 229.—CAN.

PART VII. SECT. 2, SUB-SECT. 2.—A.

xi. —— ——.]—WARNER *v.* DORAN (1931), 2 M. P. R. 574.—CAN.

sg. *Seizure under insecurity clause.*]—Insecurity clauses in a chattel mtge. are strictly construed & their terms must be rigidly complied with. In order to avail himself of an insecurity clause in a chattel mtge. the mtgee. must proceed, not upon an imaginary, whimsical or arbitrary belief, but upon an honest, sincere belief based on reasonable grounds, & if he invokes such clause to uphold a seizure he must have made the seizure because of that belief, & not for any other reason.—MEINCKE *v.* CITY DAIRY, LTD. (NO. 2), [1932] 2 W. W. R. 398.—CAN.

PART VII. SECT. 2, SUB-SECT. 2.—B.

d i. —— *Proceedings to cancel principal security.*]—Where it was the intention that a breach of agreement to purchase land should give a right of distress under a collateral chattel mtge.: —*Held :* the right to seize under the mtge. was not curtailed by reason of proceedings to cancel the agreement.—COOK *v.* ORR, [1924] 1 D. L. R. 920; 1 W. W. R. 1027.—CAN.

d ii. —— *Principal security satisfied.*]—AMHERST BOOT & SHOE CO. *v.* CARTER (N. B.) (1922), 70 D. L. R. 110.—CAN.

sn. *Exemptions Act, 1920 (c. 51)—Extent of exemption—Not dependent on prior dealings with property.*]—A chattel mtgor.'s right under Exemptions Act, 1920 (c. 51), s. 3, to claim that certain of the mortgaged chattels are exempt from seizure under the mtge. does not depend in any way on his dealings with the mortgaged property prior to the seizure. Therefore where a mtge. covered thirty horses the fact that prior to the seizure the mtgor. sold ten of them did not disentitle him to claim four of the remaining twenty as exempt; four being the number allowed him by said Act.—BURROWS *v.* JOHNSTON (Sask.), [1928] 4 D. L. R. 865; [1928] 3 W. W. R. 337.—CAN.

so. —— *Debtor resident outside* —The fact that a debtor is not a resident of Saskatchewan does not disentitle him to the benefits of Exemptions Act, R. S. S., 1920.—MCDERMID *v.* WENZEL (Sask.), [1929] 1 D. L. R. 1083; [1929] 1 W. W. R. 780.—CAN.

sp. *Whether seizure amounts to distress.*]—Where there is a legal distress it must be exhausted before concurrent remedies can be enforced. The seizure in question herein, made under a chattel mtge. which gave a right to distrain as for rent :—*Held :* not to be a distress, but an exercise of the other provisions of the mtge. authorising the seizure & sale of the goods.—COMMERCIAL FINANCE CORPN., LTD. *v.* WILSON, [1931] 2 W. W. R. 578; 3 D. L. R. 601.—CAN.

sq. *Necessity for seizure by sheriff—Distress Act, R. S. S.*, 1930, *s.* 6—*What amounts to "chattel mortgage."*]—A document which although in form an absolute bill of sale is in reality a mtge. is a "chattel mtge." within sect. 6 (1) of Distress Act, R. S. S., 1930, which provides that no chattels covered by a chattel mtge. shall be seized or sold except by the sheriff or a person authorised by him, & also within sect. 3 of Exemptions Act, R. S. S., 1930, which provides the right to set up a claim of exemption in the case of a seizure under a chattel mtge.—DRIEDGER *v.* SCHMIDT, [1931] 3 W. W. R. 514.—CAN.

PART VII. SECT. 2, SUB-SECT. 2.—C.

785 ii. —— *Rights of creditors.*]—*Re* BERRINGER, [1930] 1 D. L. R. 882; 11 C. B. R. 221.—CAN.

PART VII. SECT. 2, SUB-SECT. 3.

y i. —— —— ——.]—KNIGHT *v.* T. S. PATTILLO CO., [1927] 3 D. L. R. 13; 59 N. S. R. 357.—CAN.

y ii. —— *Deduction of expenses of realisation.*]—YUKON HARDWARE CO. *v.* MCLENNAN (Y. T.) (1905), 2 W. L. R. 294.—CAN.

y iii. —— ——.]—*See, also,* w (p. 142), *ante.*

sq. *Necessity to obtain leave of court—Jurisdiction of court on application.*]—RUDDER *v.* LUNDIN, *Re* EXTRA-JUDICIAL SEIZURES ACT, [1922] 2 W. W. R. 974; 67 D. L. R. 657.—CAN.

sr. —— *For mortgagee to bid at sale.*]—STEWART *v.* COCCIOLONE, [1930] 3 W. W. R. 141; 4 D. L. R. 876.—CAN.

PART VII. SECT. 2, SUB-SECT. 4.—A. (b).

802 iii. —— —— ——.]—KING *v.* KUHN (1887), 4 Man. L. R. 413.—CAN.

802 iv. —— ——.]—Where a trader gives a chattel mtge. upon his stock-in-trade & it is shown either by the express terms of the mtge., or by necessary implication, that the intention of the parties is that the mtgor. shall remain in possession of the stock-in-trade mortgaged, & carry on business therewith in the ordinary course of trade, a purchaser from him of any of the mortgaged goods, *bonâ fide*, & in the ordinary course of business, will obtain title to such goods freed from the mtge.; but if the mtge. on its true construction does not contemplate that the mtgor. is to be at liberty to dispose of the mortgaged goods in the ordinary course of his trade, a purchaser of such mortgaged goods will hold the same subject to the mtge.—SASKATCHEWAN CO-OPERATIVE ELEVATOR CO., LTD. *v.* CANADIAN PACIFIC RY. CO., [1924] 3 D. L. R. 525; 2 W. W. R. 910.—CAN.

r i. —— *Prior mortgage.*]—The purchaser from a mtgor. in good faith of movables mortgaged without possession takes them free from the mtgee.'s lien.—BACKER, KLORASANCE *v.* AHMED ESMAIL JAMAL (1927), I. L. R. 5 Ran. 633.—IND.

807 ii a. —— —— ——.]—A second chattel mtge. made in good faith, & for valuable consideration, takes priority over a prior unfiled chattel mtge., even if the second mtgee. has actual notice of the prior mtge.—ROFF *v.* KRECKER (1892), 8 Man. L. R. 230.—CAN.

810 i a. —— —— *By bill of sale.*]—D. executed a bill of sale, duly registered, assigning to the Crown (*inter alia*) all after-acquired chattels. D. subsequently executed in favour of deft. another bill of sale over certain farm implements acquired since the first bill of sale. Upon the sale of these implements the Crown claimed the proceeds on the ground that upon their acquisition they became subject to the security of the Crown. Deft. was aware that the Crown held a chattel security, but believed it comprised other chattels than those contained in his security :—*Held :* the title acquired by the Crown was equitable only, & since deft. acquired a good title at law for value & without notice of the special provision in the Crown's security, the legal title prevailed over the equitable title; & deft.'s knowledge of the existence of the former bill of sale did not amount to constructive notice of its contents.—R. *v.* CANTERBURY FARMERS CO-OPERATIVE ASSOCN., LTD., [1924] N. Z. L. R. 513.—N.Z.

PART VII. SECT. 2, SUB-SECT. 4.—B.

r i. —— *Title of chattel mortgagees not derived from "tenant" within Distress Act, R. S. A.*, 1922 (*c.* 97), *s.* 5—*Mortgagees protected from distress.*]—CRYSTALL *v.* OLSEN (Alta.), [1927] 3 D. L. R. 85; [1927] 2 W. W. R. 35.—CAN.

814 ii. —— *After removal of goods by grantor.*]—Deft. leased a house to P., who gave a bill of sale of goods to pltf. & received from him a lease of the goods for two years. Before a quarter's rent came due, P. moved the goods off the premises; deft. followed them & distrained for the rent; pltf. gave notice that he was owner of the goods & forbade the sale, but deft., believing the bill of sale to be fraudulent, sold the goods under the distress :—*Held :* deft. was liable.—PIDGEON *v.* MILLIGAN (1871), N. B. Dig. 282.—CAN.

PART VII. SECT. 2, SUB-SECT. 4.—C.

819 iii. —— *Irrigation district—Postponed to mortgagee to secure price of seed grain.*]—By virtue of the amendment of 1923 (*c.* 26), to Bills of Sale Act, the rights of a mtgee. under a chattel mtge. given to secure the price of seed grain are superior to those of an irrigation district resting on a distress levied on the mortgaged crop for arrears of rates due by the mtgee.—GUELPH & ONTARIO INVESTMENT & SAVINGS SOCIETY *v.* BOARD OF TRUSTEES OF LETHBRIDGE NORTHERN IRRIGATION DISTRICT, [1925] 4 D. L. R. 522; [1925] 3 W. W. R. 475.—CAN.

824. *Add. Annotation :*—**Refd.** Halifax Building Society *v.* Keighley, [1931] 2 K. B. 248.

830a. —— ——.]—In June, 1921, a bill of sale, which was duly registered, was given to secure £400 with interest at 24 per cent. *per annum.* An agreement was afterwards made by which the present claimant agreed with the grantor of the bill of sale to pay to the grantee £450 then owing thereon & to lend to the grantor a further sum of £550 upon having the payment of these sums, making together £1,000 with interest thereon, secured by a transfer of the £450 then owing on the bill of sale & the securities for the same. Subsequently, in Nov. 1921, a deed was made between the parties to the bill of sale & claimant, by which, in pursuance of the agreement & in consideration of £450 then paid to the grantee of the bill of sale by claimant, the grantee assigned to claimant the principal & interest secured by the bill of sale & all securities therefor, & the grantee also at the request of the grantor assigned to claimant the goods comprised in the bill of sale free from all equity of redemption under the bill of sale, but subject to a proviso for redemption in the deed, & the grantor covenanted with claimant to pay to her on a specified date the £1,000 with interest at 6 per cent. *per annum.* The latter deed was not registered as a bill of sale under the Bills of Sale Acts :—*Held :* the deed was not a " transfer or assignment " of the registered bill of sale within 1878 Act, s. 10, but was a new bill of sale which itself required to be registered &, therefore, claimant was not entitled to rely upon the registered bill of sale as assignee thereof.—MARSHALL & SNELGROVE, LTD. *v.* GOWER, [1923] 1 K. B. 356 ; 92 L. J. K. B. 499 ; 128 L. T. 829 ; [1923] B. & C. R. 81 D. C.

831. *Add. Annotation :*—**Consd.** Marshall & Snelgrove *v.* Gower, [1923] 1 K. B. 356.

846. *Add. Annotations :*—**Refd.** Performing Right Soc. *v.* London Theatre of Varieties. [1924] A. C. 1 ; *Re* Wait. [1927] 1 Ch 606; Ditcham *v.* Miller (1931), 100 L. J. P. C. 177.

PART VII. SECT. 3.

a i. —— ——.]—In order for an assignee of a chattel mtge. to recover the debt secured thereby in an action by him alone against mtgor., his assignment must be absolute & in writing & notice thereof in writing must have been given to mtgor.—BELLEMARE *v.* GAMACHE, [1921] 2 W. W. R. 564.—CAN.

b i. ——.]—The assignee of a bill of sale & lien notes, which are in effect a chattel mtge., can stand in no better position than the original holder thereof, & must hold the same subject to existing equities, & he is liable in damages for any unwarranted sale by him of the chattels covered by the bill of sale & lien notes.—SCOTT *v.* MOOSE JAW MOTORS, LTD. & J. HANNA, LTD., [1924] 4 D. L. R. 279 ; 2 W. W. R. 1234.—CAN.

b ii. ——.]—TRADERS TRUST CO. *v.* CRAWFORD, [1926] 1 D. L. R. 1167 ; 58 O. L. R. 381.—CAN.

PART VII. SECT. 4.

g i. —— *Chattels taken by mortgagee.*]—TINANT *v.* SIMON (1922), 67 D. L. R. 773.—CAN.

BONDS.

Part III.—Validity.

119a. **Warden of fleet—Pleading.**]—HUGGINS *v.* BAMBRIDGE (1740), Willes, 241; 125 E. R. 1152.

155a. ——.]—If a bond to secure an annuity contain a recital of the payment of the consideration, & the annuity has been paid for several years, the actual payment of the consideration will be presumed, though there be no receipt indorsed, & though the subscribing witness have no recollection of the subject.—HASLAM *v.* DIGGLES (1824), 1 C. & P. 398; 171 E. R. 1247, N. P.

Part V.—Interpretation.

269. *Add. Annotation:—Generally,* **Refd.** Eshelby *v.* Federated European Bank, Ltd. (1931), 146 L. T. 336.

Part VI.—Operation and Incidents.

313. After this case add :—
——.]—*See, now,* Law of Property Act, 1925 (c. 20), s. 80 (1).

317. *Add. Annotations:*—**Apld.** Lawrence *v.* Hayes, [1927] 2 K. B. 111. **Refd.** Humphery *v.* Wilson (1929), 141 L. T. 469.

338. After this case add :—
——.]—*See, now,* Law of Property Act, 1925 (c. 20), s. 81.

Part VII.—Performance or Breach of Condition.

413. *Add. Citation:—sub nom.* MOORWOOD *v.* DICKENS, 3 Bulst. 148.

456. *Add. Citation:—sub nom.* FOREWOOD *v.* DICTON, 1 Roll. Rep. 296.

536. *Citations:*—For "BROWN'S CASE (1550), Benl. 8; Ben. & D. 35; 73 E. R. 937," read "BROWN'S CASE (1500), cited Benl. 8; Ben. & D. 35; 73 E. R. 937."

547. *Add. Annotation:*—**Refd.** Cantiere Navale Triestina *v.* Russian Soviet Naptha Export Agency, [1925] 2 K. B. 172.

Part VIII.—Amount Recoverable on Breach of Condition.

569. *Add. Annotation:*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

604a. -.]—A joint & several bond was conditioned for payment of the principal money after six months' notice, & in the meantime for payment of interest on the usual quarter days. Default having been made in payment of one quarter's interest, as it was said, through inadvertence, the obligee gave notice to pay the principal, & the next day brought actions on the bond against the several obligors:—*Held:* the ct. had no power to stay the proceedings on payment of the interest due & costs.—WHEELHOUSE *v.* LADBROOKE (1858), 3 H. & N. 291; 27 L. J. Ex. 307; 31 L. T. O. S. 104; 4 Jur. N. S. 417; 157 E. R. 481.

PART III. SECT. 3, SUB-SECT. 11.

sa. *Loan to infant secured by simple bond—Subsequent bond to cover same loan after majority attained.*]—Where a minor borrowed a sum of money, executing a simple bond for it, & after attaining majority executed a second bond in respect of the original loan plus interest thereon:—*Held:* a suit upon the second bond was not maintainable, as that bond was without consideration & did not come under Indian Contract Act, s. 25 (2).—SURAJ NARAIN *v.* SUKHU AHIR (1928), I. L. R. 51 All. 164.—IND.

PART III. SECT. 3, SUB-SECT. 13.

sb. *Penalty bond—Omission of penal sum in obligatory clause.*]—*Held:* this omission did not render the bond uncertain & ineffectual.—GREAT WEST LIFE ASSURANCE CO. *v.* CAMPBELL (Man.), [1928] 1 D. L. R. 263; 37 Man. L. R. 164; [1927] 3 W. W. R. 645.—CAN.

PART VII. SECT. 1, SUB-SECT. 1.

366 ii. —— *On both obligors.*]—*Held:* not necessary.—FORTUNE *v.* COCKBURN (1863), 22 U. C. R. 359.—CAN.

PART VII. SECT. 2, SUB-SECT. 3.

1 i. —— *Delivery at specified destination—Failure to re-land in Canada.*]—R. *v.* VANCOUVER BREWERIES, LTD., [1928] 4 D. L. R. 881.—CAN.

1 ii. —— ——.]—R. *v.* FIDELITY INSURANCE CO., [1928] 4 D. L. R. 965.—CAN.

1 iii. —— *Jurisdiction of Supreme Court of Canada.*]—*Held:* as the bonds sued upon herein were required by a law enacted by the Parliament of Canada in respect of a matter over which it had undoubted jurisdiction, namely excise, this ct. had jurisdiction to hear & determine the present action, & the ct. condemned defts. in the amount of their bond, but with interest only from the date of judgment.—R. *v.* CONSOLIDATED DISTILLERIES, LTD., [1931] Ex. C. R. 85; 2 D. L. R. 879; *on appeal,* [1931] S. C. R. 283.—CAN.

PART VII. SECT. 2, SUB-SECT. 5.

1 i. —— *Selection of land during lifetime of obligor & obligee.*]—BURNHAM *v.* RAMSAY (1872), 32 U. C. R. 491.—CAN.

sc. *To pay over half purchase-money on sale of land—Death of obligor & obligee before sale—Bond not charge on land.*]—J., the owner of certain land, executed a bond, which was registered, whereby, for himself, his heirs, exors. or administrators, he covenanted that, on his effecting a sale of the land, which, however, was to be entirely at his option, he would pay A. half the purchase-money. He died without having effected a sale; & subsequently A. died. J. by his will devised the land to I. for life with remainder in fee to L. & they both joined in an agreement to sell to D.:—*Held:* without deciding whether the bond was in force as between J. & A.'s representatives, it did not constitute a charge on the land the liability thereunder being merely of a personal character.—*Re* EAGAN & DAWSON (1909), 18 O. L. R. 638; 13 O. W. R. 694.—CAN.

PART VIII. SECT. 3.

q i. —— *Conveyance of land—Failure to obtain title.*]—*Held:* the damages were not confined to the purchase-money paid & interest.—PLUMER *v.* SIMONTON (1858), 16 U. C. R. 220.—CAN.

Part IX.—Assignment.

680. *Add. Annotation :*—**Apld.** *Re* City Life Assce., [1926] Ch. 191.

691. *Add. Annotation :*—**Reld.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

Part X.—Discharge.

695. *Add. Annotation :*—*As to* (1) **Reld.** Berry *v.* Berry, [1929] 2 K. B. 316.

700. *Add. Citation :*—Cited 6 Co. Rep. 44 b.
Add. Annotation :—**Reld.** Ene's Case (1627), Litt. 58.

701a. *S. P.* ENE'S CASE (1627), Litt. 58; 124 E. R. 135.

712. *Add. Annotation :*—**Reld.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

796a. —— **Payment by one—Whether co-obligor released.**]—Assignment of bond to co-obligor, who pays it, is of no use.—WOFFINGTON *v.* SPARKS (1754), 2 Ves. Sen. 569; 28 E. R. 363.

Part XII.—Actions on Bonds.

828. *Add. Annotation :*—**Consd.** Way *v.* Bishop, [1928] Ch. 647.

947a. —— ——.]—CANNEL *v.* BUCKLE (1724), 2 P. Wms. 243; 2 Eq. Cas. Abr. 23; 24 E. R. 715, L. C.

Annotations :—**Reld.** Harvey *v.* Ashley (1748), 3 Atk. 607; Drury *v.* Drury (1761), 2 Eden, 39; Wright *v.* Cadogan (1764), 2 Eden, 239; Durnford *v.* Lane (1781), 1 Bro. C. C. 106; Caruthers *v.* Caruthers (1794), 4 Bro. C. C. 500; Field *v.* Moore, Field *v.* Brown (1855), 7 De G. M. & G. 691.

950a. —.]—WATKYNS *v.* WATKYNS (1740), 2 Atk. 96; 26 E. R. 460.

Annotation :—**Reld.** Sleech *v.* Thorington (1754), 2 Ves. Sen. 560.

953. *Add. Annotation :*—**Reld.** Davey *v.* Robinson, [1923] 1 K. B. 563.

PART XII. SECT. 2.

860 iii. —— *Bond in penal sum.*]—Summary judgment cannot be obtained in an action on a bond in a penal sum guaranteeing the payment of a smaller sum.—WESTERN DOMINION INVESTMENT CO. *v.* MCMILLAN, [1925] 1 W. W. R 566.—**CAN.**

PART XII. SECT. 3, SUB-SECT. 3.

3m. *Extension of time for payment in consideration of higher rate of interest.*]—*Held :* the proper time for applying to amend in order to raise the above defence was at the trial, & not on appeal.—WESTERN DOMINION INVESTMENT CO. *v.* MACMILLAN, [1925] 4 D. L. R. 562.—**CAN.**

PART XII. SECT. 6.

d i. —— *Alternative pleas of payment & denial of execution.*]—The plea of payment will not amount to an admission of the bond, & will not relieve pltf. from the necessity of proving the alleged loss of the bond.—MUHAMMAD ZAFAR *v.* ZAHUR HU (1926), I. L. R. 49 All. 78.—**IND.**

f i. —— *Of fulfilment of condition of bond.*]—CONSOLIDATED DISTILLERIES, LTD. *v.* R., [1931] S. C. R. 283; 2 D. L. R. 912.—**CAN.**

PART XII. SECT. 8.

a i. —— *At instance of obligee of earlier bond—Obligor's property insufficient to satisfy both bonds.*]—*Held :* there was no equity to restrain proceedings on the judgment obtained by the obligee of the second bond.—NEWENHAM *v.* MOUNTCASHEL (1872), 19 Gr. 530.—**CAN.**

BOUNDARIES, FENCES AND PARTY-WALLS.

Part I.—Boundaries.

8. *Add. Citation :*—109 L. T. 820.

10. *Add. Annotation :—Generally,* **Refd.** *Re* Boundary between Canada & Newfoundland in Labrador Peninsula (1927), 137 L. T. 187.

39. *Add. Annotation :*—**Refd.** *Re* Boundary between Canada & Newfoundland in Labrador Peninsula (1927), 137 L. T. 187.

94. *Add. Annotation :*—**Consd.** Brighton & Hove General Gas Co. *v.* Hove Bungalows, [1924] 1 Ch. 372.

97. *Add. Annotation :*—**Refd.** Mayhead *v.* Hydraulic Hoist Co. (1931), 100 L. J. K. B. 369.

PART I. SECT. 1, SUB-SECT. 1.

c i. ——.]—A grant of land to within one chain of a river, means to within one chain of the edge of the river, not of the top of the bank.—STANTON *v.* WINDEAT (1843), 1 U. C. R. 30.—**CAN.**

ss *Boundary in plan running in straight line—Deviation for convenience.*]—Lands owned by pltf. & deft. were described as bounded in the one case on the north & in the other on the south side of the " C. Rd." The road in the original grant & the plan attached thereto, was shown to run in a straight line between the lands of the two opposite proprietors. The line as laid out ran through a deep gully & for convenience the road at that point was directed to one side, returning to the described straight line further one :—*Held :* the line as shown upon the plan controlled the line by which the parties bounding upon the road had held.—BANKS *v.* BEAIS, [1928] 1 D. L. R. 459 ; 59 N. S. R. 503.—**CAN.**

PART I. SECT. 1, SUB-SECT. 2.—A.

m (p. 264) i. ——.]—PIERS *v.* WHITING, [1923] 3 D. L. R. 879.—**CAN.**

p (p. 264) i. —— ——.]—KINGSTON *v.* HIGHLAND (1920), 47 N. B. R. 324.—**CAN.**

p (p. 264) ii. *S. P.* KANEEN *v.* MELLISH (1922). 70 D. L. R. 327.—**CAN.**

q (p. 264) i.——*Duty of surveyors.*]—R., who held a licence from the Government to cut timber on Crown lands, claimed that S., licencee of the adjoining lot, was cutting timber on his grant, & replevied logs alleged to be so cut by S. The replevin suit was settled by an agreement between the parties to leave the matter to surveyors to establish the line between the two lots, the agreement providing that the lines of the land held under the licence of R. should be surveyed & established by named surveyors & the stumps counted, etc. :—*Held :* under this agreement the surveyors were bound to make a formal survey, & could not take a line run by one of them at a former time as the said boundary line. —SNOWBALL *v.* RITCHIE (N. B.) (1888), 14 S. C. R. 741.—**CAN.**

b (p. 264) i. —— —— ——.]—A.-G. FOR ONTARIO *v.* BOOTH (1923), 53 O. L. R. 374.—**CAN.**

f (p. 265) i. —— ——.]—Where adjoining owners erroneously assume that a certain line is the boundary between their properties & concur in the erection of a fence thereon, but neither has made any representations to the other & said concurrence is not the settlement of a dispute as to the boundary, the line so adopted is not binding on either owner when the error is discovered. — LES SOEURS DE MISERICORDE *v.* TELLIER, [1932] 2 W. W. R. 357.—**CAN.**

sb. *Fence dividing cleared portions of adjoining lots — Whether uncleared portions divisible by continuation of line of fence.*]—Pltf. & deft. occupied adjoining lots for twenty years by a line & fence extending from the front through the cleared land. *Semble :* that, in the absence of any actual possession beyond the clearing, it must be considered that the possession from thence to the rear of the lot was intended to be a continuation of the line in the front.—BELYEA *v.* BELYEA (1857), 3 All. 588.—**CAN.**

PART I. SECT. 1, SUB-SECT. 3.

e. (p. 266) i. —— —— ——.]—A concession or base line had been run & posts planted on it upon an original survey, but the question was, how the side line of a lot was to be ascertained : —*Held :* the distance between the two nearest ascertained monuments on the base line should be measured & divided proportionately between the lots, making due allowance for roads, & the side line required should be run from the angle of the lot so ascertained. —CULP *v.* CULP (1857), 6 C. P. 466.—**CAN.**

r (p. 267) i. —— —— *Where mound missing.*]—KAJNER *v.* KOVACZ, [1922] 3 W. W. R. 102 ; 68 D. L. R. 793.—**CAN.**

r (p. 267) ii. —— —— ——.]—*Held :* evidence of the existence & location at one time of a certain mound, according to the rules governing surveys, was a proper way of establishing the boundary line.—CAIN *v.* COPELAND, [1922] 2 W. W. R. 1025 ; 67 D. L. R. 581 ; 15 Sask. L. R. 529.—**CAN.**

r (p. 267) iii. —— —— *Where posts destroyed by fire.*]—BARRY *v.* DESROSIERS (1908), 14 B. C. R. 126 ; 9 W. L. R. 633.—**CAN.**

r (p. 267) iv. —— ——.]—ARTLEY *v.* CURRY (1823-1900), 3 Ont. Dig. 5323.—**CAN.**

r (p. 267) v. —— —— *Point of commencement.*]—HOOVER *v.* SABOURIN (1874), 21 Gr. 333.—**CAN.**

t (p. 267) i. —— *When overplus apportioned.*]—Where three lots faced upon a certain street, & upon a survey being made it was found that there was more land upon the ground than was shown upon the plan, & the question arising as to whether this overplus of land should be added to one lot or apportioned between the three :—*Held :* the crucial question being the location of the north-east angle of one lot, & that point being ascertainable by measurement from the true & unalterable lines upon the plan in accordance with Surveyors Act, R. S. O., 1927, s. 12 (1), the principle of apportionment introduced by sect. 12 (3) had no application, as the sub-sect. only applies where the original stakes defining the angles of a lot cannot be found or their position satisfactorily established.—MARTIN *v.* KELLOG, [1932] O. R. 274 ; 2 D. L. R. 496.—**CAN.**

w (p. 269) i. —— *Survey not conclusive.*]—R. *v.* COSBY (1892), 21 O. R. 591.—**CAN.**

sc. *Monuments — Where placed — Whether position selected conclusive.*]—Monuments placed in compliance with R. S. O. 1877, c. 146, ss. 34, 35, 36 & 37, must be placed at the true corners governing points, or off-sets, or at the true ends of concession lines, & there is nothing in these sections making a survey thereunder or the placing of the monuments conclusive, whether right or wrong, & evidence may be received in contradiction.—R. *v.* COSBY (1892), 21 O. R. 591.—**CAN.**

se. —— —— ——.]—*Held :* the intention of sect. 26 of Saskatchewan Surveys Act, 1924, which made sects. 56, 58, & 60-67 of Dominion Lands Surveys Act, 1908, c. 21 (Dom.), applicable to all lands, in the province which were originally Dominion lands, was to adopt the provisions of those sects. for the purpose of all matters falling within the jurisdiction of the province with respect to such lands, & that, therefore, the area of each of the quarter sections in question was determined by reference to the monuments on the ground.—KRISTIANSEN *v.* SILVERSON (Sask.), [1929] 4 D. L. R. 252; 3 W. W. R. 322 ; *revg.*, [1929] 1 W. W. R. 256.—**CAN.**

Part II.—Fences.

138. *Add. Annotation :*—**Consd.** Reigate Corpn. *v.* Surrey County Council, [1928] Ch. 359.

139. *Add. Annotation :*—**Refd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

145. *Add. Annotations :—As to* (1) **Apld.** Noble *v.* Harrison, [1926] 2 K. B. 332. **Refd.** Ilford U. C. *v.* Beal, [1925] 1 K. B. 671 ; St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1.

146. *Add. Annotation :*—**Refd.** Glasgow Corpn. *v.* Taylor, [1922] 1 A. C. 44.

148. *Add. Annotation :*—**Distd.** Sack *v.* Jones, [1925] Ch. 235.

154a. Spiked iron fence—On bank.]—*Held :* not a nuisance.—GIBSON *v.* PLUMSTEAD BURIAL BOARD (1897), 13 T. L. R. 273, C. A.

155. *Add. Annotations :*—**Consd.** Bromley *v.* Mercer, [1922] 2 K. B. 126. **Refd.** Glasgow Corpn. *v.* Taylor, [1922] 1 A. C. 44.

157. *Add. Annotation :*—**Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

158. *Add. Annotation :*—**Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

159. *Add. Annotation :*—**Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

163. *Add. Annotations :*—**Consd.** Hardy *v.* C. L. Ry. (1920), 124 L. T. 136 ; Glasgow Corpn. *v.* Taylor, [1922] 1 A. C. 44 ; Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776. **Refd.** Mersey Docks & Harbour Board *v.* Procter, [1923] A. C. 253 ; Addie (Collieries) *v.* Dumbreck, [1929] A. C. 358 ; Compania Mexicana De Petraleo El Aguila *v.* Essex Transport & Trading Co. (1929), 141 L. T. 106.

168. *Add. Annotations :*—**Consd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776. **Refd.** Sutcliffe *v.* Clients Investment Co., [1924] 2 K. B. 746.

169. *Add. Annotation :*—**Refd.** Ilford U. C. *v.* Beal, [1925] 1 K. B. 671.

171. *Add. Annotations :*—**Folld.** Canvey Island Comrs. *v.* Preedy, [1922] 1 Ch. 179. **Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375. **Refd.** Brighton & Hove Gas Co. *v.* Hove Bungalows (1923), 88 J. P. 61 ; Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

171a. —— ——.]—Pltfs. were incorporated, under Canvey Island (Sea Defences) Act, 1883, for protecting Canvey Island from inundation by the sea. They succeeded former comrs. appointed by an Act of 1729 (32 Geo. 3, c. 31), which contained a power for these comrs. under s. 13 to erect a new sea wall further inward, on giving compensation to the owner whose land was taken for this purpose. In 1813 the new wall was built, & £150 given as compensation to the owner of the land taken. Under the Act of 1883 the property & rights of the former comrs. were vested in pltfs. who had power under that Act to hold lands. Pltfs. claimed to be owners in possession of the foreshore between the new & the old wall. Deft. claimed under a conveyance of Apr. 1919 to be the freeholder in possession of a strip of land comprising part of this foreshore, & to be entitled as of right to excavate & remove shells & other drift even although, as pltfs. alleged, it deprived the new wall of protection & support, & exposed it to injury by the action of wind & water. The greater risk to the wall in consequence of deft.'s action was established by the evidence. In an action by pltfs. to restrain deft. from so removing the drift, & from trespassing on their land :—*Held :* (1) assuming the strip in question to be deft.'s freehold, pltfs. were still entitled to an injunction restraining him from so removing drift from the strip as to expose their wall & works & the lands protected thereby to greater risk of inundations of the sea ; (2) pltfs. had established their statutory title under the Acts of 1792 & 1883 to the whole of the land taken & set out pursuant to s. 13 of the first Act, & had exercised specific acts of ownership over the foreshore ; the possession of pltfs. & of deft. being at most doubtful or equivocal the law attached possession to the title ; deft., therefore, was a trespasser, & must be restrained from excavating or removing stones, shingle, shell or soil from the particular strip of foreshore & from otherwise trespassing on same.—CANVEY ISLAND COMRS. *v.* PREEDY, [1922] 1 Ch. 179 ; 91 L. J. Ch. 203 ; 126 L. T. 445 ; 86 J. P. 21 ; 66 Sol. Jo. 182 ; 20 L. G. R. 125.

Annotation :—**Overd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

172. *Add. Annotation :—As to* (1) **Refd.** A.-G. & Public Trustee *v.* Woolwich Metropolitan B. C. (1929), 93 J. P. 173.

203. After this case add, "Power of commissioners to direct repair of fences, *see* COMMONS, No. 939a."

204. *Add. Annotation :*—**Refd.** Mersey Docks & Harbour Board *v.* Procter, [1923] A. C. 253.

205. *Add. Annotation :*—**Distd.** Sack *v.* Jones, [1925] Ch. 235.

PART II. SECT. 2, SUB-SECT. 1.—A.

sf. *Park adjoining railway—No obligation on municipal corporation to construct fence.*]—RICHARDSON *v.* CANADIAN NATIONAL RY. Co., [1927] 2 D. L. R. 801 ; 32 Can. Ry. Cas. 411 ; 60 O. L. R. 296.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.—C. (a).

135 ii. ——.]—A public road crossed a stream by a bridge. There was a fence between the road & the land adjoining it, erected by the proprietor of the latter. At a point immediately adjoining the bridge there was a gap, 15 feet wide, in the fence. A pedestrian, on a dark night, mistaking this gap for the road, walked through it & fell into the stream & was drowned. In an action of damages against the proprietors of the land adjoining the road :—*Held :* there was no duty on such proprietors to fence a natural, as opposed to an artificially created, danger on their lands, any such duty, where it existed, falling on the road authorities, & action accordingly dismissed.—MORRISON *v.* LONDON MIDLAND & SCOTTISH RY. Co., [1929] S. C. 1.—**SCOT.**

PART II. SECT. 2, SUB-SECT. 3.

p i. *Right to interfere with.*]—City of Victoria Official Map Act, 1880, & amending Acts, have reference to streets only :—*Held :* nothing in those Acts could justify an interference by private individuals with the boundaries of a lot held by purchase & 20 years' possession.—CROWTHER *v.* BEAVEN (1884), 1 B. C. R. pt. 2, 116.—**CAN.**

PART II. SECT. 2, SUB-SECT. 4.

r (p. 294) i. —— *Marsupial-proof—Question of fact.*]—Whether a fence is or is not marsupial-proof within sect. 171 of Land Acts, 1910–1927, is a question of fact for the adjudicating tribunal.—R. *v.* MAGISTRATES' COURT & ESMOND, *Ex p.* BEAZLEY, [1928] St. R. Qd. 349 ; 22 Q. J. P. 97.—**AUS.**

r (p. 294) ii —— *Material benefit to*

Part III.—Party-Walls.

215. Before this case add:—
See, now, Law of Property Act, 1925 (c. 20), s. 38.

240. *Add. Annotations:—As to* (2) **Refd.** Sack *v.* Jones, [1925] Ch. 235; Brooke *v.* Bool, [1928] 2 K. B. 578.

249. *Add. Annotations:*—**Refd.** Sack *v.* Jones, [1925] Ch. 235; St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1.

250. *Add. Annotation:*—**Apld.** Sack *v.* Jones, [1925] Ch. 235.

251. *Add. Annotations:*—**Apld.** Sack *v.* Jones, [1925] Ch. 235; Simpson *v.* Weber (1925), 133 L. T. 46. **Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117; Vanderpant *v.* Mayfair Hotel Co., [1930] 1 Ch. 138.

251a. Right of support—By adjoining house.]—Pltf. & deft. were the owners of adjoining houses, separated by a party-wall, & with implied mutual rights of support. Pltf. alleged that owing to lack of repair & underpinning deft.'s house was subsiding, dragging the party-wall over, & thereby damaging pltf.'s house:—*Held:* pltf.'s allegations had not been substantiated by the evidence. *Semble:* even if they had been substantiated pltf. would have had no cause of action.—SACK *v.* JONES, [1925] Ch. 235; 94 L. J. Ch. 229; 133 L. T. 129.

257. *Add. Annotation:*—**Refd.** Ilford U. C. *v.* Beal, [1925] 1 K. B. 671.

258a. —— ——.]—If a wall is knocked down, the owner may maintain an action for the trespass, but he cannot, by omitting to rebuild it, hold deft. always responsible for any consequential damage (POLLOCK, C.B.).—FIRMSTONE *v.* WHEELEY (1844), 2 Dow. & L. 203; 13 L. J. Ex. 361.

Annotations:—**Refd.** Clegg *v.* Dearden (1848), 12 Q. B. 576; Smith *v.* Kenrick (1849), 7 C. B. 515.

271a. —— **No agreement for lease.**]—TAYLOR *v.* REED (1815), 6 Taunt. 249; 128 E. R. 1030.

Annotation:—**Refd.** Collins *v.* Wilson (1828), 1 Moo. & P. 454.

272. *Add. Annotation:*—**Refd.** London County Council *v.* Stilgoe (1931), 95 J. P. 149.

309. *Add. Annotation:*—**Refd.** Brooke *v.* Bool, [1928] 2 K. B. 578.

310. *Add. Annotations:—As to* (2) **Refd.** Sack *v.* Jones, [1925] Ch. 235; Brooke *v.* Bool, [1928] 2 K. B. 578.

Part IV.—Evidence of Boundaries.

323. *Add. Annotation:*—**Refd.** Aksionairnoye Obschestvo A. M. Luther *v.* Sagor, [1921] 1 K. B. 456.

332. *Add. Annotation:*—**Refd.** British Thomson-Houston Co. *v.* British Insulated & Helsby Cables, [1924] 2 Ch. 160.

343. *Add. Annotation:—As to* (3) **Consd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312.

359. *Add. Annotation:*—**Apld.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312.

402. *Add. Annotation:*—**Consd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 135 L. T. 281.

adjoining lessee — Determination of value.]—Lessees of a holding erected a fence before Nov. 1, 1924. On June 1, 1927, the lessees filed a plaint in the magistrate's ct., whereby they claimed that the fence "is of material benefit," to deft., an adjoining holder. The magistrate determined the benefit as from Nov. 1, 1924:—*Held:* the time from which the magistrate must determine the value of the benefit cannot be earlier than the date of the plaint claiming that benefit under the sect.—R. *v.* POLICE MAGISTRATE AT BLACKALL & HART, *Ex p.* HART, [1928] St. R. Qd. 174; 22 Q. J. P. 47.—**AUS.**

an. *Forest reserve.*]—It is no defence to an action for recovery of a penalty from the owner of stock grazing on a forest reserve without a permit, that the reserve was not enclosed by a "lawful fence" as defined in the Fence Ordinance.—MINISTER OF INTERIOR FOR CANADA *v.* NELSON, [1920] 1 W. W. R. 129.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.

ao. *Duration.*]—Where on the erection of a building on each of two adjoining & separately owned lots, the owners agree to plans calling for a party wall & the use by each owner of part of the premises of the other & the buildings are so constructed, the right to such use will, in the absence of a reference to time, be held to continue during the existence of the two buildings as they were constructed.—SMITH *v.* CURRY (Man.), [1918] 2 W. W. R. 848; 42 D. L. R. 225.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3.—C. (b).

e i. —— *Wall built & used only by adjoining owner.*]—*Held:* deft. was answerable, as the injury was the direct result of negligence in the original construction of the wall.—MCQUILLAN *v.* RYAN (1921), 64 D. L. R. 482; 50 O. L. R. 337.—**CAN.**

e ii. —— *Party wall undermined—Extent of liability.*]—JEFFREY (F. W.) & SONS, LTD. *v.* COPELAND FLOUR MILLS, FINLAYSON *v.* COPELAND FLOUR MILLS, [1923] 4 D. L. R. 1140; 52 O. L. R. 617.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3.—D.

ep. *Remedy—Action for damages.*]—Where a mutual wall has been built so as to encroach on the property of one of the two adjoining owners, but was built in good faith under some mistake as to title & with the knowledge of, but without any protest from, him on whose land it encroaches, the owner of the building should not be compelled to remove the wall back to the boundary line; the remedy is in damages.—O'LEARY *v.* SMITH, [1924] 2 D. L. R. 521; [1924] 2 W. W. R. 227; 34 Man. L. R. 386.—**CAN.**

PART IV. SECT. 1.

318 ii. —— *Conversations between previous owners—Not admissible when title deeds are put in.*]—DUNPHY *v.* PHILLIPS (1929), 1 M. P. R. 227.—**CAN.**

h i. —— *Surveyors giving conflicting evidence— Duty of court to accept evidence of surveyor making first examination.*]—SHUPE *v.* LANGENBURG RURAL MUNICIPALITY, [1920] 3 W. W. R. 706.—**CAN.**

sq. *Subsequent conveyances — Acts of possession.*]—MATTHEWS *v.* GOODE (1923), 56 N. S. R. 543.—**CAN.**

st. *Survey marks of Crown agents.*]—Where a Crown grant describes the subject land by reference to the boundaries of a "measured portion," evidence of the measurements which were made & the survey marks which were erected or adopted on such portion by the Crown or its agents on the last occasion, preceding the grant, when such portion was measured as a portion for sale, is admissible for the purpose of ascertaining the boundaries of the Crown grant.—CURRIE *v.* CLARKE (1929), 29 S. R. N. S. W. 215; 46 N. S. W. W. N. 81.—**AUS.**

PART IV. SECT. 3, SUB-SECT. 2.

334 iii. —— *Not private boundaries.*]—DUNPHY *v.* PHILLIPS (1929), 1 M. P. R. 227.—**CAN.**

PART IV. SECT. 7.

426 iii. —— —— ——.]—MCNEIL & HINGLEY, LTD. *v.* HILL (N. S.), [1928] 2 D. L. R. 954.—**CAN.**

433. *Add. Annotation :*—**Apld.** Chowood *v.* Lyall, [1929] 2 Ch. 406.

436a. —— —— **Title deeds—Nature of document misconceived.**]—There is no clear authority that in proceedings for the production of documents of title to land, the ct. will differentiate cases where boundaries are in dispute from other cases. Although the ct. is more ready to order production of documents in cases where boundaries are in dispute, it will apply to those cases the same principle which is applied to other cases where the title to land is in dispute, namely, the principle adopted by the Ct. of Appeal in *A.-G.* v. *Emerson*, No. 433, *ante*, that the assertion on oath by the party against whom production is sought that the documents which he objects to produce relate solely to his own title & do not tend to prove or support the case of his opponent will not be disregarded, unless the ct. is reasonably certain that the deposing party misconceived the nature or effect of those documents.—CHOWOOD, LTD. *v.* LYALL, [1929] 2 Ch. 406 ; 98 L. J. Ch. 451.

437. *Add. Annotation :*—**Refd.** Clayton *v.* Clayton, [1930] 2 Ch. 12.

BOUNTIES.

See CHARITIES ; PRIZE LAW.

BUILDING CONTRACTS, ENGINEERS AND ARCHITECTS.

Part II.—The Contract.

9. *Add. Citation:*—*revsg.* S. C. *sub nom.* STEWARDS & CO., LTD. *v.* R. (1900), 17 T. L. R. 111, C. A.

11a. —— **Communication of acceptance—What amounts to—Return of opened bills of quantities.**]—WILLCOCKS & BARNES *v.* PAIGNTON CO-OPERATIVE SOCIETY, LTD. (1930), 74 Sol. Jo. 247.

18. *Add. Annotation:*—**Refd.** Boot (London) *v.* Uttoxeter U. D. C. (1924), 88 J. P. 118.

20. *Add. Annotations:*—**Consd.** *Re* Meyrick's Settlmt., Meyrick *v.* Meyrick, [1921] 1 Ch. 311. **Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

21. *Add. Annotation:*—**Refd.** United States Shipping Board *v.* Durrell, [1923] 2 K. B. 739.

34. *Add. Annotation:*—**Refd.** Kelantan Government *v.* Duff Development Co., [1923] A. C. 395.

36a. Contract between employer & third party for supply of materials—No liability to builder for delay.]—GAZE (W. H.) & SONS, LTD. *v.* PORT TALBOT CORPN., No. 58a, *post.*

36b. Contract with owner of building estate—Implied warranties—As to workmanship & materials.]—(1) In a contract with builders or with the owners of a building estate for the purchase of a house to be erected or in course of erection, there is an implied warranty by the vendors that the house shall be built in an efficient and workmanlike manner and of proper materials, and that it shall be fit for habitation.

(2) A representation by builders in conversation with a prospective buyer, that all houses on the estate are of the best material & workmanship, may amount to a warranty collateral to a subsequent formal contract, for breach of which an action will lie.—MILLER *v.* CANNON HILL ESTATES, LTD., [1931] 2 K. B. 113; 100 L. J. K. B. 740; 144 L. T. 567; 75 Sol. Jo. 155.

36c. House reasonably fit for habitation.]—MILLER *v.* CANNON HILL ESTATES, LTD., No. 36b, *ante.*

36d. —— **Representation as to material & workmanship—Amounts to collateral warranty.**]—MILLER *v.* CANNON HILL ESTATES, LTD., No. 36b, *ante.*

38. *Add. Annotation:*—**Refd.** Bean *v.* Flaxton R. D. C., [1929] 1 K. B. 450.

39. *Add. Annotations:*—**Distd.** A.-G. *v.* Denby, [1925] Ch. 596. **Apld.** Bean *v.* Flaxton R. D. C., [1929] 1 K. B. 450.

43. *Add. Annotation:*—**Consd.** Stumbles *v.* Whitley (1929), 46 T. L. R. 37.

47. *Add. Annotation:*—**Refd.** British & Foreign Marine Insce. *v.* Gaunt, [1921] 2 A. C. 41.

51. *Add. Annotation:*—**Consd.** United States Shipping Board *v.* Durrell, [1923] 2 K. B. 739.

PART II. SECT. 1.

11. —— —— *Forfeiture of deposit.*]—BAYNES & HORIE *v.* VANCOUVER BOARD SCHOOL TRUSTEES (B. C.), [1927] 2 D. L. R. 698.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.

8a. *Repugnant provisions.*]—A provision for payment on the basis of cost plus a percentage if the actual cost is more or less than the contract price is repugnant where the contractor has made an absolute covenant to do the work & furnish the material for a definite sum.—GIT *v.* FORBES (1921), 62 S. C. R. 1; 59 D. L. R. 155.—**CAN.**

8b. *Contract to erect house similar to another house.*]—By a building contract it was agreed that a house was to be erected similar to H.'s house:—*Held:* the house was to be similar to H.'s house in the sense that it was to have a general likeness in the principal points of materials, design, & workmanship.—MAYS *v.* ROBERTS (1928), S. A. S. R. 217.—**AUS.**

PART II. SECT. 2, SUB-SECT. 2.—C.

8c. *Contract with Crown—Rent of plant.*]—Claimant contracted to construct certain public works in the harbour of Toronto, on a cost plus basis. It was (*inter alia*) agreed that the claimant would furnish the plant, for which he was to receive as rental thereof a certain percentage of its value per annum for a working season of 150 days; this to be payable when each piece commenced operation, & to cease when determined by resp.'s engineer. A portion of this rented plant became locked in behind a coffer-dam constructed in connection with the works in question. It was properly there engaged on the works, but it could not be removed when its work was completed on account of the coffer-dam, & while so retained was not available for use, which condition of affairs was not due to any fault of the contractor:—*Held:* said portion of the plant never ceased to be part of the rented plant under the terms of the contract & was still retained for use on the works by resp.'s engineer & the claimant was entitled to recover rent therefor.—ROGER MILLER & SONS, LTD. *v.* R., [1930] S. C. R. 293; 2 D. L. R. 751; *affg.*, [1929] Ex. C. R. 136.—**CAN.**

PART II. SECT. 2, SUB-SECT. 3.

8h. *Contract to put old houses "in first class shape."*]—*Held:* the phrase must have reference to their capacity for taking on repairs, which could be only those which their aged condition permitted.—HOUSE REPAIR & SERVICE CO., LTD. *v.* MILLER (1921), 64 D. L. R. 115; 49 O. L. R. 205.—**CAN.**

8k. *"Extra haul" & "overhaul."*]—The view of a contract advanced by resp. was that the contract phrases "extra haul" & "overhaul" have, by usage, in construction contracts, or at all events in railway construction contracts, a special & specific meaning; & that they signify that the length of the haul in respect of which the contractor was entitled to charge for overhaul, was to be ascertained by taking the distance, measured along the centre line of the railway in process of construction, between the projections, first, of the centre of mass of earth, to be excavated in making the cut, & second, of the embankment, & deducting therefrom 500 feet; the projections being for this purpose the several points on the centre line nearest the respective centres of mass:—*Held:* the alleged usage had not been proven. It had been established that there was a practice widely followed of inserting in railway construction contracts a clause providing for the computation of payment for overhaul according to the method contended for by resp.; but in the text books, engineering manuals & writings by engineers produced, there was no basis for the view that the effect of the words used in the present contract is, apart from such special stipulations, what was contended by resp.—GEORGIA CONSTRUCTION CO. *v.* PACIFIC GREAT EASTERN RY. CO., [1929] 4 D. L. R. 161; S. C. R. 630; *revg.*, [1929] 1 D. L. R. 77; 35 C. R. C. 204; 40 B. C. R. 290; [1928] 3 W. W. R. 466; *revg.*, [1928] 3 D. L. R. 26; 35 C. R. C. 197; 40 B. C. R. 81.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—C.

52 iii. —— ——.]—Where the architect ordered additional work, & at that time it was apparent that the work originally contracted for could not be completed within the time fixed, but there was no application for extension nor intimation from the owner of an intention to enforce a claim for damages for delay:—*Held:* the contract should not be construed so as to impose upon the contractor the obligation of completing the work, including additions, within the time fixed.—GRIER *v.* GEORGAS (1923), 54 O. L. R. 580.—**CAN.**

56. *Add. Annotation :*—**Refd.** United States Shipping Board *v.* Durrell, [1923] 2 K. B. 739.

58a. —— **Contract for supply between employer & third party.**]—A. co. carrying on the business of builders & decorators entered into a contract with a corpn. for the erection of two lodges & a park entrance. With the assent of the builders, the corpn. conducted the negotiations with a stone firm for the supply of the stone which was required for the work & fixed the quantity & price. The contract between the builders & the corpn. provided that the corpn. should pay the stone firm the price of the stone, to be deducted from the contract price. Owing to delay in delivering the stone the builders were unable to complete the work until some months after the date fixed for completion by the contract. In an action by the builders against the corpn. in respect of the loss arising to the builders by reason of such delay :—*Held :* there was no implied obligation on the corpn. under the contract between them & the builders to supply the stone ; at the highest there was only an obligation on them to hold the benefit of the contract with the stone firm for the builders ; & that "business efficacy" did not require that there should be implied an obligation on the corpn. to make good to the builders any loss which they might suffer by reason of the failure of the stone firm to deliver in time. Accordingly the corpn. were not liable to the builders for such loss.—GAZE (W. H.) & SONS, LTD. *v.* PORT TALBOT CORPN. (1929), 93 J. P. 89 ; 27 L. G. R. 200.

59. *Add. Annotation :*—**Refd.** United States Shipping Board *v.* Durrell, [1923] 2 K. B. 739.

65a. —.]—By a contract in writing dated Feb. 21, 1912, defts. agreed to build a steamer for, & deliver her to, pltf. on or before Feb. 28, 1913. The contract contained the following exceptions clause :—" If the steamer is not delivered entirely ready to the purchaser at the above-mentioned time, the builders hereby agree to pay to the purchaser for liquidated damages, & not by way of penalty, the sum of £10 sterling for each day of delay & in deduction of the price stipulated in this contract, being excepted only the cause of force majeure &/or strikes of workmen of the building yard where the vessel is being built, or the workshops where the machinery is being made, or at the works where steel is being manufactured for the steamer, or any works of any sub-contractor." As a result of the universal coal strike of 1912 the works from which defts. obtained their materials for other ships they were building got behindhand ; the ship in turn to be built before pltf.'s occupied the berth that was intended to be occupied by pltf.'s much longer than otherwise she should have done, & consequently pltf.'s steamer was late in being laid down. The steamer having been delivered after the contract date, pltf. claimed damages :—*Held :* (1) the general dislocation of the business of defts. & those from whom they obtained materials operating indirectly on the completion of pltf.'s steamer, by preventing the completion of the vessel prior in turn, constituted a case of force majeure within the exceptions clause & excused defts. in respect of the delay so caused ; (2) delay due to breakdown of machinery was, but delay due to bad weather was not, covered by the exception of force majeure.—MATSOUKIS *v.* PRIESTMAN & CO., [1915] 1 K. B. 681 ; 84 L. J. K. B. 967 ; 113 L. T. 48 ; 13 Asp. M. L. C. 68 ; 20 Com. Cas. 252.

Annotation :—**Refd.** Lebeaupin *v.* Crispin, [1920] 2 K. B. 714.

70. *Add. Annotations :*—**Consd** Alexander *v.* Webber, [1922] 1 K. B. 642. **Refd.** *Re* A Debtor, [1927] 2 Ch. 367.

Part IV.—Price.

129. *Add. Annotation :*—**Refd.** Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1923), 92 L. J. K. B. 455.

129a. —— —— **Work abandoned.**]—SMALL & SONS, LTD. *v.* MIDDLESEX REAL ESTATES, LTD., [1921] W. N. 245.

132. *Add. Annotation :*—**Refd.** Colley *v.* Overseas Exporters, [1921] 3 K. B. 302.

PART II. SECT. 4.

e i. —— *Material departure from specification.*]—MCINNIS *v.* GRAY, [1930] 3 D. L. R. 337.—CAN.

PART III. SECT. 1.

73 xxvii. ——.]—DIXON *v.* SOUTH AUSTRALIAN RAILWAYS COMRS. (1923), 34 C. L. R. 71.—AUS.

84 i. —— *Certifier improperly influenced.*]—*Held :* the issue of the certifier's certificate was not a condition precedent to the right of the contractor to recover payment.—NORTHERN CONSTRUCTION CO. *v.* R., [1925] 2 D. L. R. 582.—CAN.

sq. —— *Alteration of contract in many details.*]—*Held :* a final certificate was not a condition precedent to the bringing of an action by the contractor for the balance due.—MCMANUS *v.* GRAVELBOURG, [1925] 1 D. L. R. 995.—CAN.

PART III. SECT. 3, SUB-SECT. 2.—A.

102 iv. —— ——.]—D'AMOURS *v.* TROIS-PISTOLES, [1924] 4 D. L. R. 501.—CAN.

PART III. SECT. 3, SUB-SECT. 2. C.

103 ii. ——.]—*Held :* as soon as a dispute arose & was notified by either party the architect's certificate was eliminated as determining, or as part of the machinery for determining, the amount due to the contractor.—PIGGOTT *v.* TOWNSEND (1926), 27 S. R. N. S. W. 25; 44 N. S. W. W. N. 26.—AUS.

PART IV. SECT. 1.

a i. —— —— ——.]—Under a contract between a building contractor & an owner the former undertook to perform certain work in a substantial & workmanlike manner & to the full satisfaction of the owner, a specified amount of the contract price was to be retained until the completion of the work & " the balance " was to be paid thirty days after the completion, the owner was to make weekly payments to the contractor for labour & material paid for by the contractor during the previous week :—*Held :* under the express terms of the contract, entire performance was a condition precedent to payment of the balance remaining unpaid to the contractor & that substantial performance was not a compliance with the contract enabling the contractor to sue.—PAS CONSTRUCTION CO., LTD. *v.* OLENSKY, [1931] 1 W. W. R. 106 ; 1 D. L. R. 843 ; 39 Man. L. R. 332.—CAN.

e i. —— —— —— ——.]—MODERN CONSTRUCTION CO. *v.* SHAW, [1923] 3 D. L. R. 893 ; 3 W. W. R. 301.—CAN.

r i. —— —— ——.]—TORONTO RADIATOR MANUFACTURING CO. *v.* ALEXANDER (1895), 2 Terr. L. R. 120.—CAN.

st. *Percentage on cost—How calculated.*]—A contract entered into between pltfs. & defts. for the construction of a vessel by pltfs. for defts. provided that defts. were to pay pltfs. an agreed sum for the use of their plant, consisting of yard, sheds, machinery, etc., &, in addition ten per cent. above the cost of all labour & material which entered into the construction of the vessel :—*Held :* the ten per cent. must be restricted to labour & material supplied by

135. *Add. Annotations :*—**Distd.** Eshelby *v.* Federated European Bank, Ltd., [1932] 1 K. B. 423. **Refd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

136. *Add. Annotation :*—**Consd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

138. *Add. Annotation :*—**Refd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

142. *Add. Annotation :*—**Refd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

144. *Annotation :*—For " [1910] " read " [1919]."
Add. Annotations :—**Distd.** Eshelby *v.* Federated European Bank, Ltd., [1932] 1 K. B. 423. **Refd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

145. *Add. Annotation :*—**Refd.** Moriarty *v.* Regent's Garage Co., [1921] 1 K. B. 423.

147a. —— ——.]—Small & Sons, Ltd. *v.* Middlesex Real Estates, Ltd., [1921] W. N. 245.

Part V.—Payment.

171. *Add. Annotations :*—**Consd.** Mahmoud & Ispahani, [1921] 2 K. B. 716. **Apld.** *Re* National Benefit Assurance Co., Ltd. [1931] 1 Ch. 46.

Part VI.—Alterations, Additions and Omissions.

215. *Add. Annotation :*—**Refd.** Wisbech R. C *v.* Ward, [1927] 2 K. B. 556.

Part VII.—Maintenance and Defect Clauses.

222. *Add. Annotation :*—**Consd.** Murphy *v.* Hurly, [1922] 1 A. C. 369.

pltfs. & should not be extended to include engines, tanks, & other articles which were provided by defts. & with the supplying of which pltfs. had nothing to do.—Boehner *v.* Backman (1922), 55 N. S. R. 325.—**CAN**

PART IV. SECT. 2.

135 i. *General rule.*]—Fisher *v.* Cox (1921), 54 N. S. R. 226; 57 D. L. R. 567.—**CAN.**

135 ii. ——.]—La Croix Brothers & Co. *v.* Cook (Sask.), [1926] 4 D. L. R. 747; [1926] 3 W. W. R. 385.—**CAN.**

136 iv. ——.]—Webster *v.* McIntosh (Sask.), [1927] 3 D. L. R. 115; [1927] 2 W. W. R. 838.—**CAN.**

136 v. ——.]—Evans *v.* Draper (Sask.), [1927] 4 D. L. R. 1079; [1927] 3 W. W. R. 507.—**CAN.**

h (p. 367) i. —— —— ——.]—Speirs, Ltd. *v.* Petersen, [1924] S. C. 428.—**SCOT.**

146 iii. —— ——.]—Williams *v.* Stewart & Cameron, Ltd., [1923] 4 D. L. R. 855, 3 W. W. R. 1024.—**CAN.**

149 i. *Work completed after date specified—Waiver.*]—Dufferin Construction Co. *v.* Thorold, [1929] 4 D. L. R. 132.—**CAN.**

sz. *How calculated.*]—The amount to which a contractor is entitled on a *quantum meruit* is the value of the work from the point of view of the value of the services rendered by him, not the benefit to the person for whom the work is done. Meaning of " cost " discussed.—Jamieson Construction Co., Ltd. *v.* Lacombe & North Western Ry., [1926] 2 D. L. R. 653; [1926] 1 W. W. R. 628; 22 Alta. L. R. 165.—**CAN.**

sa. *Illegal contract.*]—Where in the carrying out of an illegal building contract the contractor's work & materials have been incorporated into a building he cannot recover on a *quantum meruit* based on defts.' retention of the premises, since the latter is unable to exercise an option to return the materials. In order to recover upon a *quantum meruit* there must be some evidence of a fresh contract to pay for the work done.—Farrell *v.* Sawitski (Sask.), [1929] 4 D. L. R. 289; 3 W. W. R. 23.—**CAN.**

PART V.

g (p. 373) i. —— *Ascertained by intention of parties.*]—Hanson *v.* Parks, [1925] 3 D. L. R. 1103.—**CAN.**

r i. —— ——.]—*Held :* to make the 20 per cent. retained by the owner a valid security for completion of the work, the architect in certifying 80 per cent. due should base his estimate on the proportion that the value of the work done bore to the cost of the entire undertaking.—Hopgood *v.* Frener (1921), 62 D. L. R. 419; 62 S. C. R. 534.—**CAN.**

h (p. 374) i. —— *Owner giving promissory notes in default of cash—Notes discounted with bank & interest paid.*]—Smith *v.* McCutcheon, [1922] 1 W. W. R. 306; 67 D. L. R. 554; 31 Man. L. R. 413.—**CAN.**

sb. *Under cost plus percentage agreement—Part of material supplied by owner—Right of contractor to percentage on cost of such material.*]—Smith *v.* McCutcheon, [1922] 1 W. W. R. 306; 67 D. L. R. 554; 31 Man. L. R. 413.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 1.

186 i. *Written contract—Evidence to vary inadmissible.*]—Karsgaard *v.* Bailey, [1931] 1 D. L. R. 85.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 2.

195 ii. —— ——.]—Where a contractor chooses to adopt a more expensive method of carrying out his contract than the contract properly interpreted calls for the loss is his own.—Georgia Construction Co. *v.* Pacific Great Eastern Ry. Co. (B. C.), [1929] 1 D. L. R. 77; [1928] 3 W. W. R. 466; *on appeal*, [1929] 4 D. L. R. 161; S. C. R. 630.—**CAN.**

s (p. 380) i. —— ——.]—A contract for the execution of road making works for a municipal council provided that no extra works done by the contractor would be paid for unless there were an order in writing & a certificate of the engineer in respect of them. Pltf. alleged that certain extra works were in fact done at the oral request of the engineer & with his knowledge, & that certain of the extra works were actually paid for by progress payments on the work completed, that deft. stood by & took the benefit of the extra works, & that he thereby had been induced to believe that deft. would not require written orders, & had acted to his detriment in the belief so induced :—*Held :* even if these allegations were proved, they did not establish either waiver or estoppel.—Bysouth *v.* Shire of Blackburn & Mitcham (No. 2), [1928] V. L. R. 562; [1928] Argus L. R. 337.—**AUS.**

sc. *Entire contract.*]—Pltf. contracted to perform the whole of the works required in & about the construction of a concrete retaining wall for deft. for a fixed price according to a certain plan & specification. The contract provided that the specification should form & be construed as forming part of the agreement. It also required pltf. to build the wall in a certain position. This involved removing a sand bank. The plan showed a bank approximately 6 ft. in width. Pltf. claimed that the bank was 12 ft. in width, & he brought an action on the common counts for the work & labour done in removing the extra 6 ft.:—*Held :* the contract was an entire contract to build the wall for a fixed price & that inasmuch as the specification was, & the plan was not, expressly incorporated in the contract, pltf.'s obligation to complete the works for the agreed price was not affected by the alleged understatement in the plan, & therefore he was not entitled to recover payment for extra work occasioned thereby.—Walker *v.* Randwick Municipality Council (1930), 30 S. R. N. S. W. 84; 47 N. S. W. W. N. 20.—**AUS.**

PART VII.

r i. —— *Defect due to unsuitability of subject-matter of contract—Method of repair.*]—*Held*. the obligation of the contractor was not affected by the alleged fact that the material was not suitable to the climatic conditions. If a method of repair as satisfactory but less expensive than that called for by the contract could be secured by the owner, he should be bound to accept it.—Blome *v.* Regina (City), [1920] 1 W. W. R. 311; 50 D. L. R. 93; 13 Alta. L. R. 94.—**CAN.**

sd. *Liability of contractor for defects—Materials supplied by contractor.*]—Webster *v.* McIntosh (Sask.), [1927] 3 D. L. R. 115; [1927] 2 W. W. R. 838.—**CAN.**

222 i. *Notice to remedy defects—Failure to comply with—Liability of contractor.*]—Where a contractor was notified of defects by the owner & wrongly insisted that they were trifling & could be fixed up at slight expense, but the owner refused to accept repairs of that sort & employed a carpenter to do the necessary work :—*Held :* the contractor had all the notice & opportunity to repair properly which he could have claimed, even if the contract had expressly provided for such notice.—Webster *v.* McIntosh (Sask.), [1927] 3 D. L. R. 115; [1927] 2 W. W. R. 838.—**CAN.**

Part VIII.—Breach of the Contract.

225a. Approval of council's surveyor & inspector—Subsequent discovery of breach of contract—Whether approval conclusive.]—Defts. agreed to build for pltfs. a number of houses in accordance with certain plans & specifications, the work to be carried out to the satisfaction of the surveyor and the sanitary inspector of the urban district council. The houses were completed to the satisfaction of the surveyor & the inspector, & pltfs. sold them at a profit. In fact the express agreement to cement & the implied agreement to do the work properly had been broken, & on complaint by the purchasers pltfs. carried out repairs to put the houses in a habitable state, & they sued defts. for the cost of the repairs. Defts. contended that they were under no liability as the surveyor & the inspector had approved of the work, that pltfs., having sold the houses at a profit, had suffered no damage, & that, as the repairs were only an act of generosity, pltfs. could not recover the cost:—*Held:* there being in the contract no statement that the approval of the surveyor & the inspector was to be final & conclusive, their approval was only a superadded protection, & pltfs. were entitled to recover the difference between the value of the houses as they ought to have been when completed & their value in fact.—NEWTON ABBOT DEVELOPMENT CO., LTD. *v.* STOCKMAN BROS. (1931), 47 T. L. R. 616.

225b. Liability for defects limited to defects discovered within five years—Discovery within five years—Effect on subsequent discoveries.]—A district council employed contractors to make a road, the contract containing the following clause: "Should it at any time subsequent to the termination of the period of maintenance up to but not exceeding a period of five years from the date of the completion of the works be discovered that the terms of this specification have been violated by the execution of bad, insufficient or inaccurate work the council shall be at liberty to make good such work & to recover the cost thereof from the contractor . . ." :—*Held:* the council could recover only for the defects discovered within the five years to the actual extent of that discovery, & such discovery did not entitle the council to recover for defects thereafter discovered.—MARSDEN URBAN DISTRICT COUNCIL *v.* SHARP (1931), 48 T. L. R. 23, C. A.

230a. —— Excess of cost of completion over contract price.]—By a contract in writing dated May 12, 1916, deft. agreed to build for pltf. a house, subject to the conditions set forth in the schedule thereto, for the sum of £1,900. The conditions provided (*inter alia*) that deft. should begin the works immediately after possession of the site was given to him, & should regularly proceed with & complete the same within six months after the date of the plans being passed by the local authority, & that if deft. should suspend the works or should not proceed with them with due diligence, pltf. by his architect should have power to give notice to deft. requiring him to proceed, & on failure of deft. to comply with such notice for thirty days pltf. should be entitled to enter upon & take possession of the works & site & employ any other person to complete the works. On July 10, 1916, the plans were duly passed. On July 14, 1916, an order was made by the Minister of Munitions under the powers of the Defence of the Realm (Consolidation) Regulations, 1914, which provided that on & after July 20, 1916, no person should without licence from the Minister of Munitions commence or carry on any building or construction work. On July 21 deft. applied for a licence to proceed, & continued to work fairly well until Aug. 12, when he ceased to proceed with due diligence with the deliberate intention, as the ct. held, of ensuring that the licence should be refused & that he should thereby be enabled to put an end to the contract. On Sept. 9 pltf.'s architect gave him thirty days' notice to proceed with the works. On Sept. 30, before the expiration of the notice, the Minister of Munitions refused to grant the licence to proceed. In an action by pltf. for damages for breach of contract:—*Held:* deft. could not take advantage of the intervention of the Minister of Munitions, which was brought about by his own act, & the proper measure of damages was what it cost pltf. to complete the house substantially as it was originally intended & in a reasonable manner at the earliest moment he was allowed to proceed with the work, less any amount that would have been due & payable to deft. by pltf., had deft. completed the house to the roofing-in at the time agreed by the terms of his contract.—MERTENS *v.* HOME FREEHOLDS CO., [1921] 2 K. B. 526; 90 L. J. K. B. 707; 125 L. T. 355, C. A.

PART VIII. SECT. 1.

k 1. —— *Different contractors for building & joiner work.*]—A builder contracted to carry out the building & plastering work in connection with the erection of a house, & another contractor undertook to carry out the joiner work. The builder finished his work, & the owner accepted possession of the house & paid two instalments of the account. Afterwards the outside walls began to crack, & it was discovered that the walls were off the plumb. In an action by the builder for the balance of his account, the owner averred that the defect in the walls was occasioned by the use of faulty materials in the construction of the concrete floors by the builder. The builder averred that the damage to the walls was caused by the use of unseasoned timber in the construction of the roof by the other contractor. Neither of these averments was established at the proof, but either of them might have been the cause of the cracking of the walls:—*Held:* breach of contract had not been established against pursuer, & he was entitled to decree for the balance of the contract price.—CARRUTHERS *v.* MACGREGOR, [1927] S. C. 816.—SCOT.

PART VIII. SECT. 2, SUB-SECT. 1.

r (p. 389) l. —— —— ——.]—Where no time had been set for the completion of a roof, which deft. agreed to build on pltf.'s hotel, & at the expiration of a reasonable time the contractor left it unfinished, & the owner agreed to the contractor undertaking to complete it within a further period:—*Held:* the contractor was not liable in damages where, within that period, the unfinished condition of the roof resulted in its destruction by a storm & consequential damage by rain to the hotel.—DUMONT *v.* LANDRY (Sask.), [1927] 3 D. L. R. 605; [1927] 2 W. W. R. 869.—CAN.

s (p. 389) l. —— *Right to general damages—Not where no evidence of loss beyond specific damage.*]—EVANS *v.* DRAPER (Sask.), [1927] 4 D. L. R. [1927] 3 W. W. R. 507.—CAN.

230b. —— **House improperly built—Difference between value in fact & proper value.**]—NEWTON ABBOT DEVELOPMENT CO., LTD. *v.* STOCKMAN BROS., No. 225a, *ante.*

238. *Add. Annotation :*—**Refd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co. (1931), 47 T. L. R. 481.

243. *Add. Annotation :*—**Refd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co., Ltd. (1931), 47 T. L. R. 373.

262. *Add. Annotation :*—**Apld.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

263. *Add. Annotation :*—**Refd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

265a. ——.]—A bill will not lie to compel the performance of an agreement to build an house.—ERRINGTON *v.* AYNESLY (1788), 2 Bro. C. C. 341 ; 2 Dick. 692 ; 21 E. R. 440.

273a. —— **Non-compliance with building regulations.**]—Deft. agreed to erect a house according to a plan to be approved by pltfs., & according to the regulations of Metropolitan Building Acts. Pltfs. approved a plan, but it was objected to by the Board of Works :—*Held :* deft. must specifically perform his contract, subject to the plan being modified to conform with the regulations of the Board of Works.—CUBITT *v.* SMITH (1864), 11 L. T. 298 ; 28 J. P. 820 ; 10 Jur. N. S. 1123.

Annotation :—**Refd.** Wolverhampton Corpn. *v.* Emmons, [1901] 1 K. B. 515.

Part IX.—Excuses for Non-Performance.

279. *Add. Annotation :*—**Refd.** Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1923), 92 L. J. K. B. 455.

282. *Add. Annotations :—As to* (2) **Refd.** Mertens *v.* Home Freeholds Co., [1921] 2 K. B. 526 ; Dominion Coal Co. *v.* Maskinonge S.S. Co., [1922] 2 K. B. 132 ; Larrinaga *v.* Soc. Franco-Americaine des Phosphates de Medulla (1923), 92 L. J. K. B. 455 ; Cantiere Navale Triestina *v.* Handelsvertretung der Russe Soz. Fod. Naphtha Export (1925), 94 L. J. K. B. 579 ; Kursell *v.* Timber Operators & Contractors, [1927] 1 K. B. 298 ; The Penelope, [1928] P. 180 ; Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1 ; May *v.* May (1929), 98 L. J. K. B. 770 ; Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274 ; Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

285a. —— —— **Brought about by contractor's own act.**]—MERTENS *v.* HOME FREEHOLDS CO., No. 230a, *ante.*

287a. —— **Indemnity Act, 1920 (c. 48)—"Direct & particular interference with business"—What is.**]—The claimant whose business was that of a steam-trawler owner had a contract with a firm of trawler builders to build for him a number of trawlers. Before the builders had commenced to build the trawlers so contracted for the Admiralty issued an order to them under Reg. 8A of the Defence of the Realm Regulations, directing them not to proceed with any work on vessels for private owners, but to work for the Admiralty instead. At the time of making that Order the Admiralty had full knowledge of the existence of the claimant's contract with the builders. By reason of the order he suffered substantial loss. On a claim being made for compensation under Indemnity Act, 1920 (c. 48), s. 2 (1) (b) & Sched., Part II. :—*Held :* the Admiralty's knowledge of the contract was wholly immaterial, & in so far as the order interfered with claimant's business it was only a secondary & indirect interference, with the result that claimant was not entitled to compensation.—BLACK *v.* ADMIRALTY COMRS., [1924] 1 K. B. 661 ; 93 L. J. K. B. 341 ; 130 L. T. 711 ; 40 T. L. R. 316 ; 68 Sol. Jo. 866, C. A.

Annotation :—**Refd.** Brocklebank, Ltd. *v.* R., [1925] 1 K. B.

Part X.—Forfeiture.

293. *Add. Annotation :*—**Refd.** United States Shipping Board *v.* Durrell, [1923] 2 K. B. 739.

PART VIII. SECT. 3, SUB-SECT. 1.

243 1. —— *Deduction of value of incompleted work with fifty per cent. thereon—Penalty.*]—MACDONALD *v.* NORTH WEST BISCUIT CO., [1924] 1 D. L. R. 987 ; 1 W. W. R. 795.—CAN.

PART VIII. SECT. 3, SUB-SECT. 2.

sf. *Owner taking possession before completion.*]—CASSIDY (A. W.) & Co. *v.* HICKS (Sask.), [1929] 2 D. L. R. 353.—CAN.

PART IX. SECT. 1.

r 1. ——.]—A contractor who entered into a contract with a municipality for the construction of a sewer system is bound to do the work necessary to shore up the sides of the trenches when he is met with a condition of the soil generally known as quicksand ; & that fact is not a sufficient cause which would justify the ct. to set aside the contract on the ground that its performance is impossible. Even if the contract provides that the work will be performed under the supervision of the city engineer, the contractor cannot complain of the fact that the engineers had not given him any instructions or advice as to the way the trenches should be cribbed, as he was at liberty to do such work in his own way without the permission of the engineer as long as the latter was not making any formal objection.—RIVET *v.* LA CORPORATION DU VILLAGE DE ST.-JOSEPH, [1932] S. C. R. 1.—CAN.

PART IX. SECT. 3.

sg. *Supply of defective materials.*]—In an action wherein the contractor sued to recover the balance of the contract price unpaid under a contract to drill an oil well, & the owner pleaded that the contract had not been completed, it was found that the contractor had carried out the contract except with respect to bailing the well, & that he was prevented from doing so because the casing pipe supplied by the owner was too light & had collapsed :—*Held :* therefore, the case was one coming under the principle that where under the terms of a building contract mutual obligations are imposed on both parties with respect to carrying out the contract, & as a result of the failure of the owner to fulfil his obligations the contractor is unable to finish the work completely, the fact that the work was not fully completed does not disentitle the contractor to recover the full contract price.—UNION DRILLING & DEVELOPMENT CO., LTD. *v.* CAPITAL OIL & NATURAL GAS CO., LTD., [1931] 1 W. W. R. 786 ; *affd.*, [1931] 2 D. L. R. 851 ; 2 W. W. R. 508 ; *affd.*, [1931] 3 D. L. R. 656.—CAN.

Part XI.—Materials.

312. *Add. Annotation:—As to* (1) **Apld.** *Re* Blyth Shipbuilding & Dry Docks Co. Forster *v.* Blyth Shipbuilding & Dry Docks Co., [1926] Ch. 494.

316. *Add. Annotation:*—**Refd.** *Re* Blyth Shipbuilding & Dry Docks Co., Forster *v.* Blyth Shipbuilding & Dry Docks Co., [1926] Ch. 494.

318. *Add. Annotation:*—**Apld.** *Re* Blyth Shipbuilding & Dry Docks Co., Forster *v.* Blyth Shipbuilding & Dry Docks Co., [1926] Ch. 494.

319. *Add. Annotation:*—**Distd.** *Re* Blyth Shipbuilding & Dry Docks Co., Forster *v.* Blyth Shipbuilding & Dry Docks Co., [1926] Ch. 494.

319a. -.]—A shipbuilding contract provided for payment of the price of the vessel by instalments, the first to be paid on the signing of the contract, the next when the keel was laid, & others at various stages in the progress of the ship's construction. She was to be constructed under the inspection of the purchasers' surveyor, to whose approval the quality of the material used & the workmanship were to be subject. Clause 6 provided that from & after payment by the purchasers to the builders of the first instalment on account of the price the vessel & all materials & things appropriated for her should thenceforth, subject to the lien of the builders for unpaid purchase-money including extras, become & remain the absolute property of the purchasers. After the first instalments of the purchase-money had been paid & the vessel had been partly constructed, a receiver was appointed in an action commenced by debenture-holders of the shipbuilding co. for enforcing their security:—*Held:* certain worked material lying in the yard ready to be incorporated into the hull of the vessel & approved by the purchasers' surveyor, had not been "appropriated for her" within the above clause so as to become the property of the purchasers.—*Re* BLYTH SHIPBUILDING & DRY DOCKS CO., FORSTER *v.* BLYTH SHIPBUILDING & DRY DOCKS CO., [1926] Ch. 494; 95 L. J. Ch. 350; 134 L. T. 643, C. A.

Annotation:—**Refd.** Behnke *v.* Bede Shipping Co., [1927] 1 K. B. 649.

325a. Erection of temporary building for special purpose—Agreement for return of materials.] —Pltf. agreed with deft., who was mayor of H., to erect the hustings for the election for the borough of H., as before with alterations, for £19 10*s.* by receiving the wood back again. After the election was ended, the mob carried the wood of the hustings away. In *assumpsit* for not returning the wood:—*Held:* deft. was bound to return the wood, by putting the hustings safely into the possession of pltf.—FULLER *v.* PATTRICK (1849), 18 L. J. Q. B. 236; 13 L. T. O. S. 185; 13 Jur. 561.

Part XII.—Assignment and Devolution of Rights and Liabilities.

340. *Add. Annotation:*—**Consd.** Earle *v.* Hemsworth R. D. C. (1928), 140 L. T. 69.

341. *Add. Annotations:—As to* (1) **Consd.** *Re* National Benefit Assce., [1924] 2 Ch. 339; *As to* (2) **Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358. *As to* (3) **Apld.** *Re* City Life Assce., [1926] Ch. 191. *As to* (4) **Consd.** *Re* National Benefit Assce., [1924] 2 Ch. 339.

342. *Add. Annotation:*—**Refd.** Jones *v.* Oceanic Steam Navigation Co., [1924] 2 K. B. 730.

342a. ——.]—Pltfs. claimed £1,000 being retention moneys due from defts. to a firm of contractors. Pltfs. claimed under an assignment dated Apr. 7, 1924. On Nov. 21, 1922, defts. entered into a building contract for a lump sum with S., the contractors, for the construction of a number of cottages under a housing scheme. The contract provided for interim payments, but no money was to become payable to the contractors except on the architect's certificate in writing, & certificates were to be issued when work to the value of £1,000 had been executed & thereafter at monthly intervals as certified by the architect in writing. He was to certify the amount from time to time payable to the contractors under the contract. The amount to be certified by the architect on his first & monthly certificates as due to the contractors was to be at the rate of 90 per cent. of the value of the work, including extras. The balance of 10 per cent. of the value of the work was to be retained until the sum so retained, called a retention fund, should amount to £2,472 after which the contractors were to be paid monthly to the full value of the work done & the materials supplied. The retention fund was to be deposited in a bank until the final adjustment of accounts. The contract was varied by consent, & in the events which happened the retention fund amounted to £1,000 at the beginning of 1924. This was never deposited at the bank & remained a merely notional fund, but both parties treated it as a separate sum capable of being earmarked. It was included without distinction in the architect's final certificate for £1,848 10*s.* 2*d.* on Jan. 28, 1927. Meanwhile pltfs., who were supplying cement to the contractors,

PART XI. SECT. 2, SUB-SECT. 1.

a 1. ——.]—An unpaid builder as such has no lien upon the building in his possession for the balance due to him, unless under the contract for construction.—N. P. A. CHETLIAR FIRM *v.* SHARMA (1927), I. L. R. 6 Rang. 87.—IND.

found that the latter were getting into arrears with their payments & to obtain further credit the contractors, being then indebted to pltfs. in the sum of £671 on Apr. 7, 1924, assigned to them the retention fund by a document dated Apr. 7, 1924, in the following terms: "In part reduction of the amount now, or to be, owing from us to you for goods supplied by you, we hereby assign to you all moneys now or hereafter to become due to us from the Hemsworth R. D. C. for retention moneys in respect of the G. housing scheme. & for which your receipt shall be a sufficient discharge. It is understood that we are only to be credited with the amount actually paid to you under this assignment as & when the same is received by you." Due notice of that assignment was given by pltfs. to defts. on the following day. This was acknowledged by defts. on May 26, 1924. By that time the contractors had issued a number of debentures to the M. & C. Bank. These debentures were dated at various periods from Feb. 1, 1900, to Feb. 2, 1924, & they charged the undertaking & property, both present & future, of the contractors, the charge being a specific charge on their freehold & leasehold property, machinery, goodwill, & uncalled capital & a floating charge on all the co.'s other assets, subject to a proviso that the contractors were not to be at liberty to create any mtge. or charge on any of the assets in priority to the debentures. A receiver for the debenture holders was appointed in Oct. 1924, & he duly entered into possession. Seven days after the appointment of the receiver a resolution was passed for the voluntary winding-up of the co. The receiver refused to recognise the right of pltfs. to payment under their assignment in priority to the debenture holders, & on the architect's certificate being given in Jan. 1927, defts declined to interplead & paid the retention moneys to the receiver for the debenture holders: —*Held:* the assignment in question was a good legal assignment & pltfs. were entitled to sue on it. The retention fund in this case arose out of an existing contract, & although it did not become payable until a date later than that of the assignment, it was a debt or other legal thing in action which could be assigned. The assignment was within Jud. Act, 1873, s. 25, & Law of Property Act, 1925 (c. 20), s. 136. It could be sued on by the assignee without joining the assignor as a party. Pltfs. were therefore entitled to recover on the assignment.—EARLE (G. & T.) (1925), LTD. *v.* HEMSWORTH RURAL DISTRICT COUNCIL (1928), 140 L. T. 69; 44 T. L. R. 758, C. A.

344. *Add. Annotations:* — **Refd.** Cottage Club Estates *v.* Woodside Estate Co. (Amersham) (1927), 97 L. J. K. B. 72; *Re* Wait, [1927] 1 Ch. 606; Earle *v.* Hemsworth R. D. C. (1928), 140 L. T. 69; Williams *v.* Atlantic Assurance Co. (1932), 37 Com. Cas. 304.

345. *Add. Annotations:*—**Refd.** Lawrence *v.* Hayes, [1927] 2 K. B. 111; Earle *v.* Hemsworth R. D. C. (1928), 44 T. L. R. 605.

345a. Effect of—On contractor's rights under arbitration clause.]—Building contractors assigned to a bank all money due & to become due to them under a building contract, which contained an arbn. clause, & the proper notice of the assignment was served on the building owners. Disputes having arisen regarding a claim by the contractors for compensation & extra payment, recourse was had to arbn.:—*Held:* (1) the arbitrator had jurisdiction to entertain the arbn., since the contractors' rights under the arbn. clause did not constitute a "legal" or "other remedy" for the debt within Law of Property Act, 1925 (c. 20), s. 136 (1), & were not passed & transferred to the bank by the assignment; (2) the arbitrator had to consider not merely the terms of the contract within the limits of the document, but also the application & enforcement of those terms, having regard to the whole legal position which the parties had created, including the relinquishment by the contractors themselves by the assignment of their right to claim the debt, & he must make his award in favour of the building owners.—COTTAGE CLUB ESTATES *v.* WOODSIDE ESTATES CO. (AMERSHAM), [1928] 2 K. B. 463; 97 L. J. K. B. 72; 139 L. T. 353; 44 T. L. R. 20; 33 Com. Cas. 97.

Part XV.—Arbitration Clauses.

386. *Add. Annotation:*—**Refd.** Charles *v.* Cardiff Collieries (1928), 44 T. L. R. 448.

387. *Add. Annotation:*—**Consd.** Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478.

PART XIII. SECT. 2, SUB-SECT. 2.

n i. —— *Dismissal of sub-contractor by architect.*]—Deft., a sub-contractor, gave pltf., a contractor, a price for certain work in connection with a building. The contractor was bound by general conditions of contract; those conditions were not defined nor in the contemplation of the parties when the sub-contractor's price was given & accepted, nor did he ever become party to them, although they were referred to & incorporated in certain specifications according to which the sub-contractor was bound to work:—*Held:* the sub-contractor was not bound by a term in the general conditions whereby the architect had power to dismiss a sub-contractor.—OSBURN *v.* LEGGETT, [1930] S. A. S. R. 346.—**AUS.**

372 ii. *Mechanic's lien action pending against sub-contractor—Liability for sales tax.*]—HOPE (HENRY) & SONS, LTD. *v.* SHEEHY (RICHARD) & SONS (1922), 52 O. L. R. 237.—**CAN.**

c i. —— ——.] — Contractors:—*Held:* entitled to damages for breach of contract by sub-contractors by reason of materials not being delivered in time.—HOPE (HENRY) & SONS, LTD. *v.* SHEEHY (RICHARD) & SONS (1922), 52 O. L. R. 237.—**CAN.**

PART XV. SECT. 1.

h i. ——.]—A contract for the construction of a covered way from the mainland to a lighthouse contained an arbn. clause, the first part of which referred all disputes, whenever arising, as to the contract & its execution to the employers' engineer, while the second part referred any dispute or claim arising after, or consequent on, the completion of the contract to another engineer. A dispute having arisen as to the rate payalbe for the removal of certain rock, the contractors refused to continue the work, & the employers took the work out of their hands. An action having been brought by the contractors for payment of sums alleged to be due under the contract & for damages:—*Held:* as the work was still in progress, the first part of the arbn. clause applied, it being immaterial that the work had been taken out of the hands of the pursuers, & action sisted to allow the arbn. to proceed.—CRAWFORD *v.* NORTHERN LIGHTHOUSES COMRS., [1925] S. C. (H. L.) 22.—**SCOT.**

388. *Add. Annotation :*—**Refd.** Czarnikow *v.* Roth, Schmidt, [1922] 2 K. B. 478.

388a. Clause restricting time for opening reference —" Until after completion of works "—Meaning of.]—The form of building contract issued by the Royal Institute of British Architects provides, by condition 31 in the schedule thereto, that should the building owner not pay the builder any sum certified by the architect within the time limited by the contract, the builder is to be at liberty to determine the contract & recover from the building owner payment for all work executed. Condition 32 provides that in case any difference shall arise between the building owner & the builder as to the construction of the contract or as to any matter arising thereunder, such difference is to be referred to arbn., but that " such reference . . . shall not be opened until after the completion of the works." During the progress of certain works which were being carried out under a building contract in the above form the building owner neglected to pay the builder a sum certified by the architect within the stipulated time, & thereupon the builder determined the contract under condition 31. The builder commenced arbn. proceedings while the contract works were still uncompleted, & the arbitrator made an award in his favour for the money due to him under the contract :—*Held :* the words " until after the completion of the works " in condition 32 meant until after completion of the whole of the works contracted for, & not merely until after completion of so much of the works as the builder was under the circumstances bound to perform ; consequently the arbn. was premature & the arbitrator had no jurisdiction to make the award ; or at all events the validity of the award was sufficiently doubtful to render it improper to enforce it summarily.—SMITH *v.* MARTIN, [1925] 1 K. B. 745 ; 94 L. J. K. B. 645 ; 133 L. T. 196, C. A.

Part XVI.—Architects and Engineers.

425. *Add. Annotations :*—**Folld.** Boynton *v.* Richardson (1924), 69 Sol. Jo. 107. **Consd.** Wisbech R. D. C. *v.* Ward (1927), 91 J. P. 200.

425a. —— —— **Interim certificates.**]—Pltfs., a local authority, made a contract with builders under which deft. was the architect. The Ministry of Health had the right to require the use of materials which the Disposals Board had for sale. While the houses were in course of erection deft. gave interim certificates, & he also gave documents under which pltfs. paid the Board for articles supplied by the Board. Under these certificates & documents pltfs. had to pay both the builders & the Board for the same material. In an action by pltfs. to recover the amount from deft. on the ground of negligence :—*Held :* as the certificates were only interim certificates, & as deft. on going into the figures with pltfs. had indicated to them that the amount paid to the Disposals Board was to be deducted from the final balance due to the contractors, deft. had not been guilty of negligence, & the action failed—WISBECH RURAL DISTRICT COUNCIL *v.* WARD, [1928] 2 K. B. 1 ; 97 L. J. K. B. 56 ; 138 L. T. 308 ; 91 J. P. 200 ; 44 T. L. R. 62 ; 26 L. G. R. 10, C. A.

428. *Add. Annotation :*—**Consd.** Wisbech R. C. *v.* Ward, [1927] 2 K. B. 556.

434. *Add. Annotation :*—**Distd.** Nixon *v.* Erith U. D. C., [1924] 1 K. B. 87.

436. *Add. Annotation :*—**Refd.** Nixon *v.* Erith U. D. C., [1924] 1 K. B. 819.

PART XV. SECT. 4.

o i. —— ——.]—A building contract contained a clause referring all disputes arising under the contract to the arbn. of the employers' engineer, who in fact superintended & directed the work :—*Held :* as the contractors had agreed to the appointment of the engineer as arbiter, they could not object to his acting upon the ground that he was an interested party with a bias.—CRAWFORD *v.* NORTHERN LIGHTHOUSES COMRS., [1925] S. C. (H. L.) 22.—**SCOT.**

PART XVI. SECT. 1.

o i. —— —— *Unqualified person.*]—*Held :* a person illegally employed could not thereby found a claim for admission to the Association of Professional Engineers as being a person " practising as a professional engineer " under Engineering Profession Act, Man. 1920 (c. 38), s. 7.—*Re* ENGINEERING PROFESSION ACT, *Re* JOHNSON, [1922] 3 W. W. R. 424 ; 70 D. L. R. 161.—**CAN.**

sf. *Termination of appointment—By verbal cancellation given to architect's assistant—Record of cancellation made by architect.*]—*Held :* effective.—ROWLEY *v.* COOK, [1920] 2 W. W. R. 331 ; 52 D. L. R. 709.—**CAN.**

PART XVI. SECT. 2, SUB-SECT. 1.—A.

sg. *Whether architect liable for mistakes of surveyor.*]—HARRIES, HALL & KRUSE *v.* SOUTH SARNIA PROPERTIES, LTD., SOUTH SARNIA PROPERTIES, LTD. *v.* BAIRD & BAIRD (Ont.), [1928] 4 D. L. R. 872 ; *on appeal*, [1929] 2 D. L. R. 821 ; 63 O. L. R. 597.—**CAN.**

PART XVI. SECT. 2, SUB-SECT. 2.

k i. —— *In giving decisions.*]—Where the owner's engineer is made arbitrator, he must guard against being unduly influenced by his employers ; & if it appears that he is so biased as to be likely not to decide fairly, then the contractor will not be bound by his decision.—BLOME *v.* REGINA (CITY), [1920] 1 W. W. R. 311 ; 50 D. L. R. 93 ; 13 Alta. L. R. 94.—**CAN.**

PART XVI. SECT. 2, SUB-SECT. 3.

sl. *Advertisement by unregistered architect—Formerly on register but struck off.*]—R. *v.* SHEWBROOKS, [1931] 3 W. W. R. 97 ; 56 Can. C. C. 365 ; 44 B. C. R. 313.—**CAN.**

PART XVI. SECT. 3, SUB-SECT. 1.

d i. —— ——.]—Pltf. :—*Held :* entitled to payment for plans adopted & used, although there was no express contract to that effect.—SINCLAIR *v.* LAND SETTLEMENT BOARD (B. C.), [1925] 2 D. L. R. 1050.—**CAN.**

g i. —— *Work done before registration as architect.*]—A person employed as an architect who is not registered, & whose employment is discontinued before he becomes registered, cannot recover for his services.—ROWLEY *v.* COOK, [1920] 2 W. W. R. 331 ; 52 D. L. R. 709.—**CAN.**

PART XVI. SECT. 3, SUB-SECT. 2.

k i. *Plans approved by employer—To be used at future date.*]—*Held :* employer bound to pay, even though the building contemplated was never erected.—QUIRE *v.* TOWN OF SYDNEY MINES (1923), 56 N. S. R. 281.—**CAN.**

PART XVI. SECT. 3, SUB-SECT. 3.

445 ii. ——.]—An architect employed to prepare plans is entitled to be paid a fair remuneration for his work, notwithstanding that the employer does not benefit by the work & does not erect the buildings contemplated by the plans.—HUTCHINSON *v.* (1927), 48 N. L. R. 451.—**S. AF.**

445 iii. ——.]—BRIDGMAN *v.* VOLLANS (Man.), [1928] 3 D. L. R. 679.—**CAN.**

448. *Add. Annotation :*—**Reld.** Graves *v.* Cohen (1929), 46 T. L. R. 121.

452a. —— —— **General Housing Memorandum No. 4.**]—ELKINGTON *v.* WANDSWORTH CORPN. (1924), 41 T. L. R. 76 ; 88 J. P. Jo. 702.

458. *Add. Annotation :*—**Apld.** Higgins *v.* Northampton County Borough (1926), 90 J. P. 82.

SECT. 4.—**REGISTRATION.**

See Architects (Registration) Act, 1931 (c. 33).

PART XVI. SECT. 3, SUB-SECT. 4.

e (p. 445) i. —— ——.]— Pltf., an architect, prepared plans for & superintended the erection of a building estimated to cost £175,000. After £50,000 had been expended, pltf. rendered a partial account based upon the estimated cost at 3½ per cent., amounting to £6,125, intimating that the full charge for his services would be 5 per cent. of the estimated cost. Deft. considered the claim excessive, & dispensed with pltf.'s further services:—*Held:* pltf. should be awarded for his services up to the time of his dismissal, including damages for dismissal, the sum of £8,000.—COBB *v.* ROY, [1921] 54 N. S. R. 135 ; 57 D. L. R. 212.—CAN.

BUILDING SOCIETIES.

Part III.—Rules.

13. *Add. Annotation :*—**Consd.** Hole *v.* Garnsey, [1930] A. C. 472.

14. *Add. Annotation :*—**Consd.** Hole *v.* Garnsey, [1930] A. C. 472.

15. *Add. Annotation :*—**Consd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

17. *Add. Annotation :*—**Apld.** *Re* Quinn & National Catholic Benefit & Thrift Soc.'s Arbitration, [1921] 2 Ch. 318.

19. *Add. Annotation :*—**Consd.** Hole *v.* Garnsey, [1930] A. C. 472.

20. *Add. Annotations :*—**Consd.** *Re* Quinn & National Catholic Benefit & Thrift Soc.'s Arbitration, [1921] 2 Ch. 318; Hole *v.* Garnsey, [1930] A. C. 472.

23. *Add. Annotation :*—**Consd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

Part IV.—Officers.

36. *Add. Annotation :*—**Refd.** Deuchar *v.* Gas Light & Coke Co., [1924] 2 Ch. 426.

37. *Add. Annotation :*—**Refd.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc., [1921] 2 Ch. 438.

65a. *S. P.* R. *v.* HASTIE (1863), Le. & Ca. 269; 1 New Rep. 335; 32 L. J. M. C. 63; 7 L. T. 695; 27 J. P. 85; 9 Jur. N. S. 235; 9 Cox, C. C. 264; 169 E. R. 1391; *sub nom.* R. *v.* HARTIE, 11 W. R. 293, C. C. R.

Part VI.—Shares.

84. *Add. Annotation :*—**Consd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

85. *Add. Annotation :*—**Consd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

86. *Add. Annotation :*—**Consd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

101. *Add. Annotation :*—**Refd.** *Re* Burradon & Coxlodge Coal Co. (1930), 23 B. W. C. C. 7.

Part VII.—Advances.

110. *Add. Citation : — subsequent proceedings,* [1921] 2 Ch. 438, C. A.

Rights & benefits under—Whether transferable.]—SUN BUILDING SOCIETY *v.* SUBURBAN & HARROW ROAD BUILDING SOCIETY, No. 230a, *post.*

112. *Add. Annotations :—As to* (1) **Refd.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc., [1921] 2 Ch. 438. *As to* (3) **Refd.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc., [1921] 2 Ch. 438. *As to* (4) **Refd.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc., [1921] 2 Ch. 438.

119. *Add. Citation : — subsequent proceedings,* [1921] 2 Ch. 438, C. A.

134. *Add. Annotation :*—**Consd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

142. *Add. Annotation :*—**Refd.** *Re* United Citizens' Investment Trust (1931), 146 L. T. 213.

146. *Add. Annotation :*—**Refd.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc. (1921), 91 L. J. Ch. 74.

161. After this case add :—
——.]—*See, now,* Law of Property Act, 1925 (c. 20), s. 115.

174. After this case add :—
——.]—*See, now,* Law of Property Act, 1925 (c. 20), s. 115.

182. After this case add :—
——.]—*See, now,* Law of Property Act, 1925 (c. 20), s. 115 (9).

184. *Add. Annotations :*—**Refd.** Sweet *v.* Macdiarmid (or Henderson) (1920), 7 Tax Cas. 640; Inland Revenue Comrs *v.* Hay (1924), 8 Tax Cas. 636.

PART VII. SECT. 2.

n i. —— —— *Right to partial release of mortgaged property.*]—ALMON *v.* FAIRBANKS (1876), 10 N. S. R. (1 R. & C.) 407.—**CAN.**

PART VII. SECT. 3.

sd. *Assumption of mortgage by purchaser—Monthly instalments unpaid—Rights of purchaser.*]—STARK *v.* SHEPHERD (1881), 29 Gr. 316.—**CAN.**

PART VII. SECT. 4.

124 i. *Determination of amount payable—Liability for losses incurred in management of society.*]—*Held :* under the mtge. in question & the bye-laws & rules of the society, the society could not charge against the mtge. a share of losses incurred in the management of the society.—LEE *v.* CANADIAN MUTUAL LOAN CO. (1908), 23 C. L. T. 165; 5 O. L. R. 471; 2 O. W. R. 370.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 2.

t. For the existing "*Held*" paragraph read "*Held :* pltf. was entitled to foreclose for the whole amount due, to be computed according to the rules."

Part VIII.—Borrowing and Loans.

187a. For purchase of mortgages—Whether purpose of society.]—SUN BUILDING SOCIETY *v.* WESTERN SUBURBAN & HARROW ROAD BUILDING SOCIETY, No. 230a, *post.*

190. *Add. Annotation :*—**Refd.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc., [1921] 2 Ch. 83.

198. *Add. Annotations :*—*As to* (2) **Refd.** Bowling *v.* Cox, [1926] A. C. 751. *Generally*, **Mentd.** Dominion Coal Co. *v.* Mackinonge S.S. Co., [1922] 2 K. B. 132; Boston Corpn. *v.* Fenwick (1923), 129 L. T. 766; Holt *v.* Markham, [1923] 1 K. B. 504; Cantiare San Rocco S. A. *v.* Clyde Shipbuilding & Engineering Co., [1924] A. C. 226; Anchor Donaldson *v.* Crossland, [1929] A. C. 297; Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292.

202. *Add. Annotation :*—**Refd.** Joachimson *v.* Swiss Bank Corpn., [1921] 3 K. B. 110.

208. *Add. Annotation :*—**Refd.** *Re* United Citizens' Investment Trust (1931), 146 L. T. 213.

220. *Add. Annotation :*—**Refd.** Bowling *v.* Cox, [1926] A. C. 751.

Part IX.—Investment or Other Application of Surplus Funds.

228. *Add. Annotation :*—**Refd.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc., [1921] 2 Ch. 438.

230. *Add. Citation : — subsequent proceedings*, [1921] 2 Ch. 438, C. A.

230a. —— —— Insufficient surplus funds to carry out purchase.]—Although a building society may transfer its mtges. either to an individual or to another building society, yet if it agrees to sell those securities to a purchaser & makes no stipulation as to what it is that the purchaser is to take under such agreement for sale, the only conclusion that can be drawn is that it agrees to transfer such benefits as it itself enjoys, & that it cannot do. Pltf. society was in liquidation, & in May, 1919, its liquidators entered into a contract with deft. society for the sale to deft. society of thirty-seven of the freehold & leasehold mtges. of pltf. society for £6,400. Deft. society having declined to complete, pltf. society issued a writ for specific performance. Subsequently the parties by agreement stated a special case for the opinion of the ct. as to, amongst other things, whether the contract was *ultra vires* deft. society, because it had not at the date of the contract surplus funds properly available for investment, & whether pltf. society could transfer the mtges. without the consent of the mtgors. Both these points were decided in favour of pltf. society :—*Held :* (1) although the contract might be *intra vires* in its inception, notwithstanding that deft. society had not sufficient surplus funds to carry it out, yet if at the time when an order was made for its specific performance deft. society had not sufficient surplus funds the effect of the order would be to require the society, which was not an investing society, to invest moneys which were not its surplus funds in a security in which it had no power to invest them; (2) a further effect of the order, if made, would be to require deft. society to borrow money to pay for the mtges.; & as its borrowing powers could not be resorted to except for borrowing for the purposes of the society, & as the purchase of the mtges. was not one of those purposes, the order would be an order requiring deft. society to do an *ultra vires* act; therefore no order for specific performance ought in the circumstances to be made; (3) having regard to the fact that the mtges. in question were building society mtges., pltf. society was not in a position to transfer to deft. society all the rights & benefits to which under them it was itself entitled, pltf. society was not ready & willing to perform its part of the contract, & consequently it could not enforce the contract.—SUN BUILDING SOCIETY *v.* WESTERN SUBURBAN & HARROW ROAD BUILDING SOCIETY, [1921] 2 Ch. 438; 91 L. J. Ch. 74; 125 L. T. 782; 37 T. L. R. 844; 65 Sol. Jo. 734, C. A.

Part X.—Disputes.

242. *Add. Citation :*—37 J. P. 468.

251. *Add. Annotation :*—**Refd.** Northwood L. C. C. (1927), 137 L. T. 49.

277. *Add. Citation :*—37 J. P. 468.

Part XII.—Amalgamation and Transfer.

285a. Amalgamation—Effect of 1874 Act, s. 33—Dissolution of constituent societies unnecessary.]—By a contract dated Sept. 15, 1928, applt. agreed to sell to resp. two freehold plots of land & a dwelling-house. On Nov. 30, 1925, the property so contracted to be sold was mtged. to the H. Equitable B.B. Society, & on Jan. 31, 1928, that society was united in accordance with the provisions of the Building Societies Acts with the

H. Permanent B.B. Society under the name of the H. Building Society. On June 28, 1928, the money due on the mtge. was repaid to the H. Building Society, which society gave a receipt endorsed on the mtge. A note was also endorsed that on Jan. 31, 1928, the H. Equitable B.B. Society & the H. Permanent B.B. Society were united & became one society under the name of the H. Building Society, & that the transaction was duly registered as required by the Building Society Acts. The purchaser required an abstract of the documents effecting the transfer of the mtge. to the H. Building Society from the H. Equitable B.B. Society & asserted that resolutions as to union, the notice to the registrar, & consents in writing of the shareholders in the two societies must be abstracted. The purchaser also claimed to be entitled to see the instrument of union to ascertain that the provisions of the Building Societies Acts had been complied with. The vendor contended that this was not necessary as under 1877 Act, s. 5, the registration operated as a conveyance of the property which was then vested in the H. Equitable B.B. Society. The judge held that under the Building Societies Acts the possibility was contemplated of a union without a dissolution of the uniting societies, & 1877 Act, s. 5, which provided that the registration of the union should operate as a conveyance, must be read as subject to 1874 Act, s. 33, under which the instrument of union might provide that certain properties should be excepted & not transferred, & it was therefore necessary for the purchaser to be furnished with an abstract of the instrument of union to enable him to see whether 1877 Act, s. 5, could operate without any qualification :—*Held :* 1874 Act, s. 33, & 1877 Act, s. 5, contemplated that a union of two societies might be made without a dissolution of each society, & it was putting too much on 1874 Act, s. 33, to say it gave complete union so that no inquiry could be made as to the terms of union, & 1877 Act, s. 5, made it clear that only such properties vested in the united society as the instrument of union provided, therefore it was necessary that the vendor should abstract & verify the resolution of union, the notice to be given to the registrar of the union, & the other instrument of union if any, & until he had done so he had not produced to the purchaser a proper title.—*Re* FRYER & HAMPSON'S CONTRACT (1929), 140 L. T. 680, C. A.

285b. Property vesting in united society—Dependent on terms of instrument of union.]—*Re* FRYER & HAMPSON'S CONTRACT, No. 285a *ante*.

Part XIII.—Dissolution.

293. *Add. Annotation :*—**Consd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

294. *Add. Annotation :*—**Consd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

298. *Add. Annotation :*—**Refd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

307. *Add. Citation :—subsequent proceedings,* [1921] 2 Ch. 438, C. A.

310. *Add. Annotation :*—**Refd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

313. *Add. Annotation :*—**Consd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

314. *Add. Annotation :*—**Consd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

316. *Add. Annotation :*—**Consd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

343. *Add. Annotation :*—**Refd.** *Re* United Citizens' Investment Trust (1931), 146 L. T. 213.

344. *Add. Annotation :—Generally,* **Refd.** *Re* United Citizens' Investment Trust (1931), 146 L. T. 213.

349. *Add. Annotation :*—**Refd.** *Re* United Citizens' Investment Trust, [1932] 1 Ch. 395.

359. *Add. Annotation :*—**Refd.** *Re* United Citizens' Investment Trust (1931), 146 L. T. 213.

365. *Add. Annotation :*—**Consd.** *Re* United Citizens' Investment Trust (1931), 101 L. J. Ch. 17.

370. *Add. Annotation :—As to* (2) **Refd.** Bowling *v.* Cox, [1926] A. C. 751.

BURGLARY AND THEFT INSURANCE.

See INSURANCE.

BURIAL AND CREMATION.

Part I.—Rights and Duties of Executors and Others as to Burial.

20a. **Not freehold estate—No personal estate—3 & 4 Will. 4, c. 104.**]—CARTER *v.* BEARD (1839), 10 Sim. 7; 3 Jur. 532; 59 E. R. 514.

Annotation:—**Refd.** *Re* Rhodes, Rhodes *v.* Rhodes (1890), 44 Ch. D. 94.

45. *Add. Annotation:*—*As to* (2) **Refd.** Kent *v.* Atkinson, [1923] P. 142.

47. *Add. Annotation:*—**Refd.** Barnett *v.* Cohen, [1921] 2 K. B. 461.

56a. —— **Verbal instructions by deceased for elaborate funeral.**]—*Re* READ, GALLOWAY *v.* HARRIS (1892), 36 Sol. Jo. 626.

Part II.—Churchyards.

69. After this case add:—
——.]—*See, now,* Parochial Church Council (Powers) Measure, 1921 (No. 1), s. 4 (1) (ii) (c).

Part III.—Burial in Churches and Churchyards.

77. *Add. Annotation:*—**Refd.** Preston Corpn. *v.* Pyke, [1929] 2 Ch. 338.

81. *Add. Annotation:*—**Consd.** Preston Corpn. *v.* Pyke, [1929] 2 Ch. 338.

101. *Add. Annotation:*—**Refd.** Preston Corpn. *v.* Pyke, [1929] 2 Ch. 338.

121. *Add. Annotation:*—**Refd.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

138. *Add. Annotation:*—**Refd.** Capel St. Mary Suffolk *v.* Packard, [1927] P. 289.

Part V.—Fees on Burial in Churchyard or Cemetery.

165. *Add. Citation:*—*sub nom.* ANON., 1 Vent. 274.

Part VII.—Provision of Land for Burial Grounds.

201. *Add. Annotation:*—*Generally,* **Refd.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

PART I. SECT. 1, SUB-SECT. 1.

sa. *General rule.*]—In the absence of a testamentary disposition providing otherwise, the right to the possession of a dead body for the purposes of preservation & burial belongs to the surviving husband or wife or next of kin, & for any infraction of said right, such as an unlawful mutilation of the remains, an action for damages will lie & recovery may be had therein for mental suffering which results proximately from the wrongful act although no actual pecuniary damage is alleged or proven.—EDMONDS *v.* ARMSTRONG FUNERAL HOME, LTD., [1930] 3 W. W. R. 649; [1931] 1 D. L. R. 676; 25 Alta. L. R. 173.—**CAN.**

sb. *Right of executor.*]—The exor. has a right to the body for the purpose of burial, & in an action by an exor. against the widow & others, an interim injunction was granted & continued until the trial of the action, restraining defts. from preventing pltfs. from carrying out the burial of the body of the deceased.—HUNTER *v.* HUNTER, [1930] 4 D. L. R. 255; 65 O. L. R. 586.—**CAN.**

PART I. SECT. 2, SUB-SECT. 2.

sc. *Coroner—Liability of municipality.*]—An unclaimed human body having been found dead within the area of deft. municipality, a provincial coroner instructed pltf., an undertaker, to prepare it for burial. Pltf. did the necessary work & completed the burial & sued the municipality for his labour & expenses incurred:—*Held:* reading together Coroners Act, R. S. M., 1913, Manitoba Anatomy Act, R. S. M., 1913, & Burials Act, R. S. M., 1913, sect. 5 of Coroners Act placed the duty on the coroner to cause the body to be interred & sect. 19 of Burials Act rendered the municipality liable for the expenses of the interment.—DAVEY *v.* CORNWALLIS, [1931] 1 W. W. R. 1; 2 D. L. R. 80; 39 Man. L. R. 259.—**CAN.**

PART III. SECT. 6, SUB-SECT. 2.

136 i. *Removal—To another part of churchyard.*] — Where a proposed extension of the fabric of a Scottish Episcopal church entailed encroachment on part of the graveyard surrounding the church, the ct., in the exercise of the *nobile officium,* authorised the removal, subject to certain conditions, of the gravestones, & their re-erection upon or near the fabric of the new building.—CHRISTIE, ETC. PETITIONERS, [1926] S. C. 750.—**SCOT.**

Part VIII.—Provision of Burial Grounds under Burial Acts.

204. *Add. Annotations :*—**Consd.** Nicholl *v.* Llantwit Major Parish Council, [1924] 2 Ch. 214 ; L. C. C. *v.* Greenwich Corpn., [1929] 1 Ch. 305.

223. *Add. Annotation :*—**Refd.** Rotunda Hospital, Dublin *v.* Coman (1920), 7 Tax. Cas. 517.

228a. Power to acquire land by exchange.]—NICHOLL *v.* LLANTWIT MAJOR PARISH COUNCIL, No. 291a, *post.*

231. *Add. Annotation :—As to* (1) **Apld.** Hoskyns-Abrahall *v.* Paignton U. D. C., [1929] 1 Ch. 375.

237a. Allotment of unconsecrated part — For parishioners of particular denomination— Extent of rights.]—1853 Act, s. 7, upon its true construction, authorised the allotment by a burial board of portions of the unconsecrated part of a new burial ground for burials exclusively of parishioners belonging to the particular religious denomination for whom an allotment is made.

Under the provisions of the Burial Acts such an allotment was in 1854 made by pltfs., as the burial board, of a portion of the unconsecrated ground for the burial of the Roman Catholic parishioners. Upon an originating summons under R. S. C., Ord. 54, r. 1, taken out by pltfs. to have it determined whether, by virtue of that allotment for the Roman Catholic parishioners, a deceased parishioner not a member of the Roman Catholic denomination could be buried in such allotted portion ; & if he could, whether he could be so buried with the rites or ceremonies of any denomination other than those of the Roman Catholic :—*Held :* (1) the portion so allotted for the Roman Catholics was by virtue of its allotment appropriated exclusively for the burial of the Roman Catholics ; (2) a Roman Catholic parishioner had, under the Burial Acts, no greater rights in the portion so allotted for their burial than a parishioner, as such, had, before those Acts, in his old parish burial ground ; &, consequently, although he still had, under those Acts, a right of interment in that allotted portion, he had no individual right, as a parishioner, to interfere with the burial therein of a parishioner of a different denomination ; (3) the A.-G. was entitled in properly constituted proceedings, if he should think fit to institute them, to an order restraining pltfs. from permitting the burial of persons other than Roman Catholics in the portion allotted to Roman Catholics ; (4) nothing in 1853 Act enabled any particular rites or ceremonies to be enforced in regard to burials within the portion allotted to Roman Catholics or rendered the performance in regard to such burials of any particular rites or ceremonies unlawful.—PRESTON CORPN. *v.* PYKE, [1929] 2 Ch. 338 ; 98 L. J. Ch. 388 ; 141 L. T. 252 ; 93 J. P. 181 ; 45 T. L. R. 398 ; 27 L. G. R. 740.

237b. —— —— **Right of parishioners of other denominations to burial.**]—PRESTON CORPN. *v.* PYKE, No. 237a, *ante.*

237c. —— —— **Restraint of unauthorised burial by Attorney-General.**]—PRESTON CORPN. *v.* PYKE, No. 237a, *ante.*

237d. —— —— **Performance of particular rites & ceremonies — Whether enforceable.**]—PRESTON CORPN. *v.* PYKE, No. 237a, *ante.*

237e. —— —— —— **Whether lawful.**]—PRESTON CORPN. *v.* PYKE, No. 237a, *ante.*

262a. ——.]—The exclusive right of burial in part of a cemetery granted by a local authority under 1879 Act, s. 2, which incorporates 1847 Act, to a grantee who has purchased the right to erect a vault on the space set apart for the purpose of the grant, is a right of interment of the dead therein & of keeping the vault in reasonably good repair subject to such regulations as the local authority think fit. The grantee has no freehold interest in the space or the vault & no right to use them for the purpose of performing private rights or ceremonies, or to open or enter the vault for the purpose of depositing articles therein, without the consent of the local authority.—HOSKINS-ABRAHALL *v.* PAIGNTON URBAN COUNCIL, [1929] 1 Ch. 375 ; 98 L. J. Ch. 103 ; 140 L. T. 397 ; 93 J. P. 93 ; 45 T. L. R. 161 ; 27 L. G. R. 129, C. A.

Part X.—Position of Burial Grounds.

272. *Add. Annotation :—As to* (1) **Refd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1929] A. C. 344.

274. *Add. Annotation :*—**Refd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1929] A. C. 344.

277. *Add. Annotation :*—**Refd.** A.-G. *v.* Hodgson, [1922] 2 Ch. 429.

PART VIII. SECT. 5.

260 i. *Extent of right—To A. "& his heirs & assigns."*]—Under Cemetery Act, R. S. A., 1922 (c. 166), the purchaser of a lot cannot get by a conveyance, even when expressed to be to his heirs & assigns, a title in fee simple without restriction or limitation. The title which he obtains may properly be described as an easement. —STRATHCONA CEMETERY CO. *v.* TAYLOR, [1924] 3 D. L. R. 625 ; 2 W. W. R. 970 ; 20 Alta. L. R. 459.—CAN.

260 ii. —— —— *To whom right of burying passes.*]—The right of burying in the lot succeeds, speaking generally, to the next-of-kin of deceased.—STRATHCONA CEMETERY CO. *v.* TAYLOR, [1924] 3 D. L. R. 625 ; 2 W. W. R. 970 ; 20 Alta. L. R. 459.—CAN.

PART IX. SECT. 1.

sd. *Prohibiting employment of hired labour to improve burial plots.*]—*Held :* reasonable & within the directors' powers.—STRATHCONA CEMETERY CO. *v.* TAYLOR, [1924] 3 D. L. R. 625 ; 2 W. W. R. 970 ; 20 Alta. L. R. 459.—CAN.

Part XI.—Closed and Disused Burial Grounds.

284. *Add. Annotation :*—**Reld.** Swift *v.* Board of Trade, [1925] A. C. 520.

290.—After this case add :—

——.]—*See, now,* Parochial Church Council (Powers) Measure, 1921 (No. 1), s. 4 (1) (ii) (c).

291. *Add. Annotations :*—**Consd.** Nicholl *v.* Llantwit Major Parish Council, [1924] 2 Ch. 214. **Apld.** L. C. C. *v.* Greenwich Corpn., [1929] 1 Ch. 305.

291a. —— ——.]—A parish council being the duly constituted burial authority for the parish took from pltf., in consideration of a covenant to redeem the tithe rentcharges charged on the land being conveyed & on adjoining land retained by pltf., a conveyance of land "to hold the same . . . according to the true intent & meaning" of the Burial Acts. The land proved unfit & was never used for interments, & it was never fenced off or consecrated, nor did it adjoin any burial ground. The council agreed with pltf., with the approval of the parish meeting, to exchange the land for other land suitable for use as a burial ground :—*Held :* (1) the land first acquired by the council had never been "set apart for the purposes of interment" & was not therefore a "disused burial ground," so as to be subject to the restriction imposed by 1884 Act, s. 3 ; (2) the council had power to effect the exchange by virtue of the powers to sell land not required for interments & to buy land for the purposes of interment conferred respectively by 1852 Act, ss. 28 & 26, as extended by 1853 Act, s. 7.—NICHOLL *v.* LLANTWIT MAJOR PARISH COUNCIL, [1924] 2 Ch. 214 ; 93 L. J. Ch. 602 ; 131 L. T. 634 ; 68 Sol. Jo. 718.

Annotation :—As to (1) **Expld.** L. C. C. *v.* Greenwich Corpn., [1929] 1 Ch. 305.

292. *Add. Annotations :*—**Consd.** Nicholl *v.* Llantwit Major Parish Council, [1924] 2 Ch. 214. **Apld.** L. C. C. *v.* Greenwich Corpn., [1929] 1 Ch. 305.

294a. Land set apart for interment—Interments abandoned as to part—Continued as to other part.]—(1) Where a piece of land has been effectually set apart for the purposes of interment it becomes a "burial ground" within the aggregate definition of Metropolitan Open Spaces Act, 1881 (c. 34), 1884 Act, & Open Spaces Act, 1887 (c. 32), & any portion for which the purposes of interment are subsequently abandoned becomes a "disused burial ground" within the similar definition, although interments still go on in other parts of the cemetery.

(2) A sale of a "disused burial ground" by the Admiralty under the general powers of Admiralty Lands & Works Act, 1864 (c. 57), s. 15, is not a sale under the authority of an Act of Parliament within 1884 Act, s. 5, & consequently the disused burial ground still remains subject to the building prohibitions of 1884 Act, s. 3.—LONDON COUNTY COUNCIL *v.* GREENWICH CORPN., [1929] 1 Ch. 305 ; 98 L. J. Ch. 49 , 140 L. T. 456 ; 93 J. P. 123 ; 45 T. L. R. 144 ; 27 L. G. R. 282.

296. *Add. Annotation :*—**Consd.** L. C. C. *v.* Greenwich Corpn., [1929] 1 Ch. 305.

296a. —— Sale by Admiralty.]—LONDON COUNTY COUNCIL *v.* GREENWICH CORPN., No. 294a, *ante.*

300. *Add. Annotations :*—**Apld.** Stevens *v.* Willing & Co. (1929), 167 L. T. Jo. 178. **Consd.** St. Nicholas Acons *v.* L. C. C., [1928] A. C. 469.

300a. Urinal.]—A borough council petitioned for a faculty to authorise the conversion of a consecrated churchyard, which had been wholly closed for interments by Order in Council, into an open space, & the laying out & maintenance of it as such. Authority was sought for laying out & maintaining part of the churchyard as a playground for children & for the erection upon it of urinals & a small toolshed :—*Held :* (1) the proposed urinals were "buildings" within 1884 Act, s. 2, & Open Spaces Act, 1887 (c. 32), s. 4, & the ct. had no jurisdiction to authorise their erection ; (2) the proposed toolshed was necessary for the laying out & maintaining of the churchyard as an open space, & was not a "building" within the above Acts ; (3) the facts proved justified the authorisation of games in the converted churchyard, but organised games, such as cricket & football, the laying out of tennis courts & the erection of swings & other structures should be prohibited. Faculty decreed, but not to issue until the council had made bye-laws embodying the above prohibitions & prescribing the hours during which the churchyard should be open to the public, so as to prevent any nuisance to the occupants of adjoining houses, & had carried a copy thereof into the diocesan registry for approval by the chancellor.—BERMONDSEY BOROUGH COUNCIL *v.* MORTIMER, [1926] P. 87.

300b. Toolshed.]—BERMONDSEY BOROUGH COUNCIL *v.* MORTIMER, No. 300a, *ante.*

300c. Underground chamber.]—ST. NICHOLAS ACONS (RECTOR & CHURCHWARDENS) *v.* LONDON COUNTY COUNCIL, No. 309a, *post.*

309. *Add. Annotation :*—**Distd.** St. Nicholas Acons *v.* L. C. C., [1928] A. C. 469.

309a. -.]—A brick built chamber intended to contain machinery for transforming electric current, with a roof of asphalt supported by steel girders & reinforced concrete, but so constructed that the roof does not project above the ground level, if erected in a churchyard closed for burials by Order in Council, would constitute a "building" erected "upon a disused burial ground" within 1884 Act, s. 3, & an ecclesiastical ct. has no jurisdiction to grant a faculty authorising the erection of such a building in such a situation.—ST. NICHOLAS ACONS (RECTOR & CHURCHWARDENS) *v.* LONDON COUNTY COUNCIL, [1928] A. C. 469 ; 97 L. J. P. C. 113 ; 139 L. T. 530 ; 92 J. P. 185 ; 44 T. L. R. 656 ; 26 L. G. R. 583, P. C.

315. *Add. Annotation :—Generally,* **Reld.** Bermondsey B. C. *v.* Mortimer, [1926] P. 87.

PART XI. SECT. 1, SUB-SECT. 2.—A.

284 1. ***Compulsory sale—Basis of compensation.***]—On expropriation of a cemetery, the trustees can only claim value as cemetery & cannot have the value of sand & gravel deposits beneath it, that not being part of the value to the owners.—R. *v.* MIDDLETON CHURCH TRUSTEES (1920) 56 D. L. R. 60.—**CAN.**

323a. —— Playground for children—Tennis courts & swings.]—BERMONDSEY BOROUGH COUNCIL *v.* MORTIMER, No. 300a, *ante*.

330. *Add. Annotation :*—**Consd.** St. Nicholas Acons. London *v.* L. C. C., [1928] P. 102.

Part XIV.—Burial of Persons Found Drowned.

350. After this case add :—
—— ——.]— *See, now*, Burial of Drowned Persons Act, 1886 (c. 20).

Part XVI.—Registration of Burials.

375. *Add. Annotations :*—*As to* (1) **Consd.** Glamorgan County Council *v* Glasbrook, [1924]. 1 K. B. 879. *As to* (2) **Consd.** Glamorgan County Council *v.* Glasbrook, [1924] 1 K. B. 879; China Navigation Co., Ltd. *v.* A.-G. (1932), 48 T. L. R. 375. **Refd.** Brocklebank *v.* R., [1925] 1 K. B. 52. *As to* (3) **Refd.** Marshal Shipping Co. *v.* Board of Trade, [1923] 2 K. B. 343.

Part XIX.—Taxation and Rating of Burial Grounds and Burial Fees.

389. *Add. Annotations :*—**Refd.** Poplar Assmt. Com. *v.* Roberts, [1922] 2 A. C. 93; Harper *v.* Hedges, [1923] 2 K. B. 314; Ilford Corpn. *v.* Mallinson (1932), 96 J. P. 185.

PART XIX.

sm. *Taxes—Whether land in use for purposes of cemetery.*]—BURNABY DISTRICT CORPN. *v.* OCEAN VIEW DEVELOPMENT, LTD., [1923] 3 D. L. R. 1073; 32 B. C. R. 413.—CAN.

m i. —— —— —— *Method of valuation.*]—FALKIRK PARISH COUNCIL *v.* STIRLINGSHIRE ASSESSOR, [1928] S. C. 405.—SCOT.

m ii. —— —— · —.]—ABERDEEN ASSESSOR *v.* ABERDEEN CEMETERY CO., LTD.; ABERDEEN ASSESSOR *v.* MASTER OF TRADES HOSPITAL, [1929] S. C. (Ct. of Sess.) 275.—SCOT.

CARRIERS.

Part I.—Who is a Common Carrier.

4a. —— ——.]—Defts., furniture removers & warehousemen, contracted to carry pltf.'s furniture from L. to H., the contract being subject to a condition that the contractors would not be responsible for loss or damage caused by fire. Part of the furniture, which was loaded on a motor lorry, was destroyed by fire, occasioned by the negligence of defts' servants, the remaining portion being damaged by the fire. Pltf. sued defts. for the value of the goods damaged & destroyed:—*Held:* defts. were not liable, inasmuch as the condition that they would not be responsible for fire protected them from liability, since the clause would be of no effect unless it referred to fire caused by the negligence of defts., as, not being common carriers, they would not in any event be liable for loss caused by accidental fire.—TURNER *v.* CIVIL SERVICE SUPPLY ASSOCN., LTD., [1926] 1 K. B. 50; 95 L. J. K. B. 111; 134 L. T. 189.

Annotations:—**Folld.** Fagan *v.* Green & Edwards (1925), 70 Sol. Jo. 185. **Refd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

4b. —— ——.]—Defts., furniture removers & warehousemen, contracted to carry pltf.'s goods from L. to O., the contract being subject to a condition that defts. would not be responsible for fire. The goods, which were loaded on a motor van, were destroyed while in transit by fire, which was occasioned by the negligence of defts.' servants. Pltf. sued defts. for the value of the goods:—*Held:* as defts. were bailees only & not common carriers, &, therefore, not liable for an accidental fire, the condition must be construed as exempting them from liability for fire arising from their own negligence, as otherwise the condition would be of no effect.—FAGAN *v.* GREEN & EDWARDS, LTD., [1926] 1 K. B. 102; 95 L. J. K. B. 363; 134 L. T. 191; 70 Sol. Jo. 185.

Annotation:—**Refd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

5a. —— **Upon terms limiting liability.**]—GREAT NORTHERN RY. CO. *v.* L. E. P. TRANSPORT & DEPOSITORY, LTD., No. 234a, *post.*

6. *Add. Annotation:*—*As to* (3) **Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

6a. —— **No fixed terminus.**]—LIVER ALKALI CO. *v.* JOHNSON, No. 31, *post.*

12a. —.]—TURNER *v.* CIVIL SERVICE SUPPLY ASSOCN., LTD., No. 4a, *ante.*

12b. —.]—FAGAN *v.* GREEN & EDWARDS, LTD., No. 4b, *ante.*

14a. —— **Of goods accompanied by passenger.**]—By London County Council (Tramways & Improvements) Act, 1911, s. 42: "Every passenger travelling upon any of the council's tramways may take with him his personal luggage, not exceeding 28 lbs. in weight, without any charge . . . all such luggage to be carried by hand" under certain conditions. In respect to luggage which did not fulfil these conditions the council were entitled to make such charge as they thought fit. Pltf., wishing to send a parcel of goods weighing some 50 lbs. to a customer, instructed his servant to convey it by one of defts.' tramcars. The servant did so, & in addition to paying his own fare paid 2*d.* for the parcel. When he arrived at his destination the servant claimed his parcel, but found that it had been lost. In an action brought by pltf. claiming damages:—*Held:* the provisions of sect. 42 of the private Act being inconsistent with one of the peculiar features of a common carrier, who was bound to carry all goods of the class which he proposed to carry, for all & sundry & irrespective of the fact that the goods were accompanied by a passenger, the London County Council were not common carriers of goods so as to be entitled to the benefit of Carriers Act, 1830 (c. 68).—ROSENTHAL *v.* LONDON COUNTY COUNCIL (1924), 131 L. T. 563; 88 J. P. 157; 22 L. G. R. 527.

16. *Add. Annotation:*—**Consd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

17. *Add. Annotation:*—**Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

18. *Add. Annotation:*—**Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

31. For existing paragraph substitute the following:—

Deft. was a barge-owner, & let out his vessels for the conveyance of goods to any customers who applied to him. Each voyage

PART I. SECT. 1.

4 i. *Carrying on business as carrier—Furniture remover.*]—Deft., a carrier & forwarding agent, tendered for the removal of pltf.'s furniture in the following terms: "We beg to quote £120. This price includes all transit charges, including delivery to house & unpacking, also risk of breakage, the value of any one package not to exceed £10." This tender was accepted:—*Held:* deft. was not in this transaction a common carrier, & Mercantile Law Act, 1918, s. 19, did not apply.—WILSON *v.* NEW ZEALAND EXPRESS CO., LTD., [1923] N. Z. L. R. 201.—**N.Z.**

5 i. *Carrier of goods—Of all persons—For hire.*]—MATHEWSON *v.* MITCHELL, POOLEY *v.* MITCHELL, [1925] 4 D. L. R. 384.—**CAN.**

h i. —— *Right to reject reserved.*]—A carrier who, while inviting all & sundry to employ him, reserves to himself the right of accepting or rejecting their offers of goods for carriage, whether his conveyances are full or empty, being guided in his decision by the attractiveness or otherwise of the particular offer, & not by his ability or inability to carry having regard to his other engagements, is not a common carrier.—CRUM *v.* BIG 4 TRANSFER & STORAGE CO., LTD., [1930] 1 W. W. R. 547; *affd.*, [1930] 4 D. L. R. 486; 2 W. W. R. 337.—**CAN.**

PART I. SECT. 2.

15 i. *Haulage contractor—Person towing damaged motor cars.*]—Persons engaged in the business of towing damaged motor cars are common carriers, & as such are entitled to retain the thing transported until pay ment for services rendered.—TERRY *v.* AUTOMOBILE OWNERS ASSOCN. (1927), Q. R. 65 S. C. 390.—**CAN.**

sb. *Public vehicle under Public Vehicles Act.*]—A public vehicle under Public Vehicles Act, R. S. S., 1930, is not a "common carrier" within sect. 216 (84) of City Act, R. S. S., 1930, which gives a city power to make bye-laws for the licensing of "common carriers," nor, therefore, within the meaning of a city bye-law imposing a licence fee on motor vehicles operated as "common carriers."—LYNE *v.* CHECKER STAGE SERVICE, LTD., [1932] 1 W. W. R. 335.—**CAN.**

was made under a separate agreement, & a barge was not let to more than one person for the same voyage. Deft. did not ply between any fixed termini, but the customer fixed in each particular case the points of arrival & departure. In an action against deft. by the pltfs. for not safely & securely carrying certain goods:—*Held:* deft. in exercising this employment had incurred the liability of a common carrier, & was liable though the goods were lost without negligence on his part.

Deft. was not a common carrier nor liable as such, but was liable as a ship-owner carrying goods for hire, upon the custom applicable to him as such (*per* CUR.).

Add. Annotations:—**Reld.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742; Turner *v.* Civil Service Supply Assocn., [1926] 1 K. B. 50.

Part II.—Private Carriers and Forwarding Agents.

43. *Add. Annotation:*—*As to* (1) **Reld.** Phillips *v.* Britannia Hygienic Laundry Co., [1923] 1 K. B. 539.

44. *Add. Annotations:*—*Generally*, **Consd.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353. **Reld.** Pratt *v.* Patrick, [1924] 1 K. B. 488.

45. *Add. Annotation:*—**Reld.** Troy *v.* Eastern Co. of Warehouses Insce. & Transport of Goods, etc. (Petrograd) (1921), 91 L. J. K. B. 632.

46. *Add. Citation:*—15 Asp. M. L. C. 208.

47. *Add. Citations:*—91 L. J. K. B. 632; 15 Asp. M. L. C. 387.

Part III.—The Contract at Common Law.

51. *Add. Annotation:*—**Reld.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

58. *Add Annotations:*—*As to* (1) **Apld.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369. *As to* (2) **Reld.** Buerger *v.* Cunard S.S. Co., [1925] 2 K. B. 646.

66. *Add. Annotations:*—*As to* (1) **Reld.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742 *As to* (2) **Reld.** G. N. Ry. *v.* L E. P Transport & Depository, [1922] 2 K. B. 742.

82. *Add. Annotation:*—**Reld.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

85. *Add. Annotation:*—**Reld.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353.

90a. —— ——.]—GREAT NORTHERN RY. CO. *v.* L. E. P. TRANSPORT & DEPOSITORY, LTD., No. 234a, *post.*

92a. ——.]—Chests of tea of resps. were delivered to a railway co. for conveyance from A. to C. The railway broke down, & by an arrangement between the railway co. & applts., who were common carriers by water, applts. agreed to convey the tea by a special flotilla by river to a point at which it could be put on the railway again:—*Held:* in so doing, applts. had not so far departed from their usual course of business as to take these journeys out of their usual business as carriers, & they were liable for the loss of the tea which was destroyed by fire while on board one of their boats.—INDIA GENERAL NAVIGATION & RY. CO. *v.* DEKHARI TEA CO. (1923), 93 L. J. P. C. 108; 130 L. T. 554; 16 Asp. M. L. C. 285, P. C.

96. *Add Annotation:*—**Reld.** Pratt *v.* Patrick, [1924] 1 K. B. 488.

PART III. SECT. 3, SUB-SECT. 1.—A.

t i. —— ——.]—The *onus* is on the carrier to prove that the loss is not due wholly or in part to his negligence, & that he took all known means a reasonably prudent carrier should take to preserve goods from damage.—CANADIAN NORTHERN QUEBEC RY. CO. *v.* PLEET, [1923] 4 D. L. R. 1112; 26 Can. Ry. Cas. 238.—**CAN.**

t ii. —— ——.]—In accordance with a rule of the Canadian freight classification approved by Railway Board, goods were loaded by the owners, pltfs., & under the standard bill of lading, carriers are not liable for any loss or damage caused by the act or default of the shipper or owner. An accident happened through the flooring of a car giving way on account of the weight placed on it by pltfs. The defective flooring was known to both parties, but pltfs. alone knew the use the cars were to be put to:—*Held:* the accident should be attributed to pltfs.' method of loading rather than to any breach of duty on part of defts.—CANADIAN WESTINGHOUSE CO., LTD. *v.* CANADIAN PACIFIC RY. CO. (1923), 54 O. L. R. 238.—**CAN.**

t iii. —— *Default of consignee.*]—HATFIELD & CO. *v.* CANADIAN PACIFIC RY. (N. B.), [1926] 2 D. L. R. 93.—**CAN.**

t iv. —— *Position of Indian railways.*]—A railway co. in India under Indian Railways Act, 1890, is not an insurer, but is under the duty of taking a certain measure of reasonable care.—GREAT INDIAN PENINSULA RY. CO., LTD. *v.* JESRAJ PATWARI (1927), I. L. R. 55 Calc. 132.—**IND.**

77 ii a. —— ——.]—NORTHERN GRAIN CO. *v.* CANADIAN NATIONAL RYS. & GRAND TRUNK PACIFIC RY., [1922] 3 W. W. R. 733; 70 D. L. R. 281.—**CAN.**

77 v. —— —— *Through sub-contractor's negligence.*]—When a carrier undertakes for reward to carry goods & entrusts the carriage of them to a sub-contractor, & the goods are subsequently lost through the sub-contractor's negligence or that of his servants, the carrier is liable, because there has been a breach of his undertaking that ordinary care will be exercised in the carriage of the goods.—WILSON *v.* NEW ZEALAND EXPRESS CO., LTD. (No. 2), [1924] N. Z. L. R. 465.—**N.Z.**

77 vi. *S. P.* WILSON *v.* NEW ZEALAND EXPRESS CO., LTD. (No. 3), [1924] N. Z. L. R. 890.—**N.Z.**

77 vii. —— —— *What amounts to negligence.*]—Where goods entrusted to a bailee for reward are lost or destroyed while in his custody, the onus is on him to show that the loss or destruction was not due to his negligence. Where while a motor van carrying goods for hire was being operated with the cut-out open flames occasionally issued from the heater pipes at a point only a few inches from the wooden floor of the van, it cannot be said that this method of operation did not constitute negligence.—CRUM *v.* BIG 4 TRANSFER & STORAGE CO., LTD., [1930] 2 W. W. R. 337; 4 D. L. R. 486.—**CAN.**

85 iii. —— ——.]—Goods were damaged:—*Held:* defts. were not excused from liability by any special contract in the bills of lading issued after delivery taken of the goods, &, having failed to show that the damage was not caused by their fault or neglect, they were liable.—EDGETT, LTD. *v.* PACIFIC GREAT EASTERN RY. CO., [1923] 1 W. W. R. 684; 32 B. C. R. 37.—**CAN.**

91 i. —— *Goods destroyed—No written contract limiting liability.*]—*Held:* applts. were common carriers & were liable to owners for goods destroyed by fire without proof of negligence.—INDIA GENERAL NAVIGATION & RY. CO. *v.* DEKHARI TEA CO., LTD. (1923), L. R. 51 Ind. App. 29.—**IND.**

102. *Add. Citations :*—[1917] 2 K. B. 755; 33 T. L. R. 517.

114. *Add. Annotations :—As to* (1) **Consd.** Frenkel *v.* McAndrews, [1929] A. C. 545. **Refd.** United States Shipping Board *v.* Bunge & Born (1924), 41 T. L. R. 73. *As to* (2) **Refd.** Buerger *v.* Cunard S.S. Co., [1925] 2 K. B. 646.

122. *Add. Annotation :*—**Distd.** Silver *v.* Ocean S.S. Co. (1929), 46 T. L. R. 78.

123. *Add. Annotation :*—**Consd.** Silver *v.* Ocean S.S. Co. (1929), 46 T. L. R. 78.

144a. Contract to carry by particular train—Whether warranty of time of arrival.]—LORD *v.* MIDLAND RY. CO., No. 412, *post.*

149. *Annotations :*—After *to* (2)" add "**Refd.**"

151. *Add. Annotation :*—**Refd.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

201. *Add. Annotation :*—**Refd.** Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

203. *Add. Annotation :*—**Refd.** McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494.

208. *Add. Annotations :*—**Refd.** Transoceanica Soc. Italiana di Navigazione *v.* Shipton, [1923] 1 K. B. 31; Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566.

PART III. SECT. 3, SUB-SECT. 1.—B.

100 i. —— *Goods stolen from carrier's warehouse at destination—Carrier making no warehouse charge.*]—*Held :* holding the goods at owner's risk, defts. could not be found liable for the loss unless they were guilty of wilful neglect or misconduct.—BROWN *v.* DOMINION EXPRESS CO. (1921), 67 D. L. R. 325; 51 O. L. R. 359.—**CAN.**

100 ii. —— —— *Consignee with notice of arrival—Bonded goods—Carrier liable.*]—GEORGE *v.* CANADIAN NORTHERN RY. CO., (1922) 53 O. L. R. 94.—**CAN.**

100 iii. —— —— —— *Carrier not liable—Failure of consignee to remove goods within reasonable time.*]—DYAMENT & PZADKAWOLSKI *v.* CANADIAN EXPRESS CO., [1923] 3 D. L. R. 1122; 52 O. L. R. 114.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.—D.

105 i. *Illegality as defence.*]—Pltf. shipped by deft. co. intoxicating liquor, intending to have it sold in Ontario in violation of provincial statute & of Dominion legislation. Pltf. in the shipping bill declared "that this shipment is of a class & shipped under conditions permitted by law." Part of the goods were stolen from defts.' car at destination :—*Held :* pltf. could not recover, as the cause of action was founded upon an illegal contract.—MAJOR *v.* CANADIAN PACIFIC RY. CO., [1922] 3 W. W. R. 512.—**CAN.**

PART III. SECT. 3, SUB-SECT. 2.—B.

sf. *Who are.*]—White there was in Ireland an internal rebellion, with an army employed to support it, armed raiders took goods from a ry co. who were common carriers :—*Held :* the raiders were "King's Enemies," & the co. was not bound to reimburse the owner.—SECRETARY OF STATE FOR WAR *v.* MIDLAND GREAT WESTERN RY. CO. OF IRELAND, [1923] 2 I. R. 102.—**IR.**

PART III. SECT. 4.

155 i. *Effect of delay—Consignee may refuse goods—Measure of damages.*]—LECLERC *v.* R. (1920), 62 D. L. R. 324; 20 Exch. C. R. 236.—**CAN.**

PART III. SECT. 5.

h i. —— —— ——.]—DEVLIN *v.* GRAND TRUNK RY. CO. OF CANADA (1870), 30 U. C. R. 537.—**CAN.**

159 ix. —— —— —— ——.]—PORTAGE MILLING & TRANSFER CO. *v.* GRAND TRUNK PACIFIC RY. CO., [1923] 3 D. L. R. 84; 33 Man. L. R. 91; [1923] 2 W. W. R. 88.—**CAN.**

159 x. —— —— —— *Delay in delivery.*]—HATFIELD & SCOTT, LTD. *v.* CANADIAN PACIFIC RY. CO. (1921), 57 D. L. R. 453.—**CAN.**

159 xi. —— —— ——.]—INDIA GENERAL NAVIGATION & RY. CO., LTD. *v.* GIRIDHARILAL GOBERDHONE DAS (1927), I. L. R. 54 Calc. 430.—**IND.**

165 ii. —— —— —— *Goods damaged.*]—Where goods are damaged in transit & have been in the hands of a number of carriers, the vendor must prove the damage took place while in the custody of the carrier he is suing.—ROSE & LAFLAMME, LTD. *v.* CAMPBELL, WILSON & STRATHDEE, LTD. & GRAND TRUNK PACIFIC RY. CO., [1923] 1 D. L. R. 397.—**CAN.**

165 iii. —— —— —— *Short delivery.*]—*Held :* defts. had discharged the *onus* of showing that they had transferred the goods in good order & condition to another carrier in the usual course for conveyance or delivery, & they thereupon ceased to be liable.—HARRIS *v.* DUBLIN & SOUTH EASTERN RY. CO., [1927] I. R. 137.—**IR.**

sg. *What consignee must prove—That goods in good condition when shipped—That goods actually passed over line of defendants.*]—NOVA SALES CO. *v.* CANADIAN PACIFIC RY., [1925] 3 D. L. R. 919.—**CAN.**

PART III. SECT. 6.

c i. —— *Goods sent to specified wharf.*]—*Held :* evidence of a constructive delivery, which imposed on the carrier the duty of taking the goods on board.—MORRISON *v.* THOMPSON (1877), 11 N. S. R. (2 R. & C.) 411.—**CAN.**

PART III. SECT. 7, SUB-SECT. 1.

d i. ——.]—Goods carried by defts. for pltf. :—*Held :* at owner's risk while in defts.' warehouse at point of destination. — BROWN *v.* DOMINION EXPRESS CO. (1921), 67 D. L. R. 325; 51 O. L. R. 359.—**CAN.**

d ii. ——.]—When goods entrusted to a shipowner, trading as a common carrier, have reached their destination & been stored pending removal by the consignee, the carrier ceases to be liable as an insurer.—OAKLEY *v.* WHITEHOUSE & CO. (1921), 17 Tas. L. R. 125.—**AUS.**

e i. *S. P.* O'NEILL *v.* GREAT WESTERN RY. CO. (1857), 7 C. P. 203.—**CAN.**

f i. ——.]—SECRETARY OF STATE *v.* HAR KISHAN DAS-KURA MAL (1925), I. L. R. 7 Lah. 370.—**IND.**

PART III. SECT. 7, SUB-SECT. 2.

182 ii. —— ——.]—PREMIER LUMBER CO. *v.* GRAND TRUNK PACIFIC RY. CO., [1923] 1 D. L. R. 649; [1923] S. C. R. 84; 1 W. W. R. 473.—**CAN.**

182 iii. —— ——.]—NORTHERN ELECTRIC CO., LTD. *v.* CANADIAN PACIFIC RY. CO. & FILLMORE RURAL TELEPHONE CO., LTD. & WIBERG, [1923] 3 D. L. R. 781; 3 W. W. R. 278.—**CAN.**

PART III. SECT. 7, SUB-SECT. 3.

p i. —— *Delivery without requiring surrender of bills of lading—Delivery after indorsement of bills of lading as security.*]—*Held :* the carriers were liable.—HICKMAN GRAIN CO. *v.* CANADIAN PACIFIC RY. CO., [1927] 1 D. L. R. 851; 1 W. W. R. 317; 32 C. R. C. 333; 36 Man. L. R. 322; *revsd. sub nom.* CANADIAN PACIFIC RY. CO. *v.* HICKMAN GRAIN CO., [1928] 1 D. L. R. 1069; [1928] S. C. R. 170; 34 C. R. C. 238.—**CAN.**

p ii. ——.]—CAMPBELL *v.* CANADIAN PACIFIC & CANADIAN NATIONAL RY. COS. (1924), 30 Can. Ry. Cas. 380.—**CAN.**

PART III. SECT. 7, SUB-SECT. 5.

s i. ——.]—*Held :* a consignee by delay in accepting delivery cannot extend the period of the contractor's liability as such.—PORTAGE MILLING & TRANSFER CO. *v.* GRAND TRUNK PACIFIC RY. CO., [1923] 2 W. W. R. 88.—**CAN.**

sk. *Rights of carrier — To sell — Must be exercised with reasonable diligence.*]—DAVIS *v.* ELLIOT (1924), 55 O. L. R. 583.—**CAN.**

PART III. SECT. 7, SUB-SECT. 6.

199 i. *When justified—Refusal of consignee to pay charges.*]—PATEL *v.* KEELER & CO., [1923] App. D. 506.—**S. AF.**

PART III. SECT. 7, SUB-SECT. 7.

201 i. *Whether agent for sale of necessity—Perishable goods—Sale without communicating with owner.*]—Where goods carried by a railway co. are liable to perish while in its possession because of the consignee's delay in taking delivery, the co. has the right to advertise & sell the goods without any notice to the consignor, whether or not there are any tolls payable.—ALBERTA POTATO & VEGETABLE CO. *v.* CANADIAN PACIFIC RY. CO. (Alta.), [1927] 2 D. L. R. 813; [1927] 2 W. W. R. 65; 32 Can. Ry. Cas. 356.—**CAN.**

PART III. SECT. 8.

c. Add "*revsd.* (1921), 64 D. L. R. 316; 50 O. L. R. 223."

c i. —— ——.]—NAZZARENO *v.* ALGOMA EASTERN RY. CO. (1922), 70 D. L. R. 268.—**CAN.**

Part IV.—Modifications of the Common Law Contract.

232. *Add. Annotation :—As to* (1) **Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

234a. ——.]—A carrier who regularly receives goods for carriage upon terms limiting his liability may be under the obligations & subject to the liabilities of a common carrier in so far as the limitation of liability does not extend. He does not by limiting his liability assume for all purposes the position of a bailee for reward who is liable only for negligence of himself or his servants, unless the limitation of liability is so extensive as to be inconsistent with the profession or contract of a common carrier.

A consignor who tenders to carriers for carriage goods apparently harmless but in fact dangerous, whether the carriers are common carriers bound by the custom of the realm to carry goods provided they are safe & fit for carriage or whether they are a railway co. bound by statute to afford reasonable facilities for the receiving, forwarding & delivering of goods, must give warning of the danger; otherwise he impliedly warrants that the goods are safe & fit for carriage.

Forwarding agents delivered to a railway co. for carriage certain carboys containing a corrosive fluid & also certain bales of felt goods on the terms of consignment notes exempting the co. from liability in certain events & stating that they did not undertake to carry dangerous goods except on special conditions. The carboys were insufficient to contain the fluid, which escaped & injured the felt goods. The co. professed to carry the felt goods as common carriers. The owner of the felt goods claimed damages against the co., & the co. paid £437 in settlement of the claim. In an action by the co. against the forwarding agents to recover this sum as damages for breach of warranty :—*Held :* (1) the terms of the consignment notes did not prevent the co. from being, as they professed to be, common carriers of the felt goods; (2) the co. were therefore liable as insurers, & without proof of negligence, to the owner of the felt goods; (3) they were entitled to recover from the forwarding agents, as upon an implied warranty that the carboys were fit to be carried, the amount they had paid to the owner of the felt goods for the damage done to his goods.—GREAT NORTHERN RY. CO. *v.* L. E. P. TRANSPORT & DEPOSITORY, LTD., [1922] 2 K. B. 742; 91 L. J. K. B. 807; 127 L. T. 664; 38 T. L. R. 711, C. A.

241. *Add. Annotation :—***Refd.** Dew *v.* United British S.S. Co. (1928), 98 L. J. K. B. 88.

262. *Add. Annotations :—***Refd.** The Christel Vinnen, [1924] P. 61; Elder, Dempster *v.* Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. *v.* Paterson, Zochonis, [1924] A. C. 522.

265. *Add. Annotations :—***Consd.** Turner *v.* Civil Service Supply Assocn., [1926] 1 K. B. 50; Forbes, Abbott & Lennard *v.* G. W. Ry. (1927), 44 T. L. R. 97; Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1930), 145 L. T. 51. **Refd.** Fagan *v.* Green & Edwards, [1906] 1 K. B. 102; Svenssons (C. Wilh.) Travaruaktiebolag *v.* Cliffe S.S. Co. (1931), 37 Com. Cas. 83.

266. *Add. Annotations :—As to* (1) **Apld.** Gosse Millard *v.* Canadian Government Merchant Marine, American Can Co. *v.* Same, [1927] 2 K. B. 432. (*See* [1928] 1 K. B. 717.) **Refd.** Layton *v.* General Steam Navigation Co. (1923), 130 L. T. 662. *As to* (2) **Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1930), 145 L. T. 51. **Refd.** Rutter *v.* Palmer, [1922] 2 K. B. 87; Fagan *v.* Green & Edwards (1925), 70 Sol. Jo. 185.

267. *Add. Annotations :—***Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51. **Refd.** Ambatielos *v.* Anton Jurgens Margarine Works, [1922] 2 K. B. 185; Rutter *v.* Palmer, [1922] 2 K. B. 87.

271. *Add. Annotations :—As to* (1) **Apprvd. & Apld.** L. & N. W. Ry. *v.* Neilson, [1922] 2 A. C. 263. *As to* (2) **Apprvd. & Apld.** L. & N. W. Ry. *v.* Neilson, [1922] 2 A. C. 203. **Consd.** Buerger *v.* Cunard S.S. Co., [1925] 2 K. B. 646.

300. *Add. Annotation :—As to* (2) **Consd.** Ehinger *v.* S. E. & C. Ry. & Pullman Car Co. (1922), 38 T. L. R. 678.

302. *Add. Annotation :—***Refd.** Rosenthal *v.* L. C. C. (1924), 131 L. T. 563.

342. *Add. Annotations :—As to* (1) **Refd.** Rosenthal *v.* L. C. C. (1924), 131 L. T. 563. *As to* (2) **Consd.** Rosenthal *v.* L. C. C. (1924), 131 L. T. 563.

347. *Add. Annotations :—As to* (2) **Apld.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742. *As to* (3) **Apld.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

351. *Add. Annotations :—***Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742; Forbes, Abbott & Lennard *v.* G. W. Ry. (1927), 44 T. L. R. 97.

PART IV. SECT. 1, SUB-SECT. 2.

s1. *Condition requiring notice of loss—Absence of notice bar to right of action.*]—PREMIER LUMBER CO. *v.* GRAND TRUNK PACIFIC RY. CO., [1923] 1 D. L. R. 649; [1923] S. C. R. 84; 1 W. W. R. 473.—**CAN.**

sm. *S. P.* NORTHERN ELECTRIC CO., LTD. *v.* CANADIAN PACIFIC RY. CO. & FILLMORE RURAL TELEPHONE CO., LTD. & WIBERG, [1923] 3 D. L. R. 781; 3 W. W. R. 278.—**CAN.**

sn. *United States freight classification.*]—A contract of carriage of goods from the United States to Canada made according to a freight classification in use in the United States, whereby the carrier's liability was limited to a certain amount :—*Held :* to be authorised by Railway Act, 1919 (c. 68), s. 322 (4), & such classification & limitation were binding on the shipper.—SPORLE *v.* GREAT NORTHERN RY. CO., [1925] 3 D. L. R. 302; [1925] 2 W. W. R. 385; 30 Can. Ry. Cas. 186; 35 B. C. R. 232.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 4.—A.

o i. —— *Goods lost—No proof of misconduct of carrier's servants—Carrier not liable.*]—SOUTH AFRICAN RYS. *v.* CONRADIE, [1922] App. D. 137.—**S. AF.**

PART IV. SECT. 1, SUB-SECT. 7.

s i. —— *"Value at place & time of shipment."*]—*Held :* the value must not be calculated at the cost price to the owner at the place where he bought the goods, but at the market value of the goods at the place & time of shipment.—THOMPSON *v.* CANADIAN PACIFIC RY. CO. (1922), 52 O. L. R. 306.—**CAN.**

so. *Goods exceeding declared value—Shipper bound by declared value.*]—SPORLE *v.* GREAT NORTHERN RY. CO., [1925] 3 D. L. R. 302; [1925] 2 W. W. R. 385; 30 Can. Ry. Cas. 186; 35 B. C. R. 232.—**CAN.**

352. *Add. Annotation :—As to* (1) **Refd.** Brown *v.* Harrison (1927), 96 L. J. K. B. 1025.

376. *Add. Annotation :—As to* (4) **Refd.** Nunan *v.* Southern Ry., [1924] 1 K. B. 223.

381. *Add. Annotation :—As to* (1) **Consd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

403. *Add. Annotation :—As to* (1) **Refd.** G. N. Ry *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

411. *Add. Annotation :—As to* (1) **Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

412. Add the following paragraph :—
A contract by a ry. co. to carry goods by a given train, which ordinarily arrives in London at a particular hour, does not amount to a warranty that it will so arrive, although the co.'s servants be informed that the object of the sender requires that it should arrive.

424. *Add. Annotation :—As to* (3) **Refd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

426. *Add. Annotations :—As to* (2) **Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407. **Refd.** Metropolitan Water Board *v.* L. & N. E. Ry. (1924), 131 L. T. 123.

434. *Add. Annotation :*—**Refd.** Calico Printers Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

436. *Add. Annotation :—As to* (1) **Refd.** Elder, Dempster *v.* Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. *v.* Paterson, Zochonis, [1924] A. C. 522.

442. *Add. Annotations :—As to* (2) **Consd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853 ; Metropolitan Water Board *v.* L. & N. E. Ry. (1924), 131 L. T. 123.

452. *Add. Annotations :*—**Overd.** L. & N. W. Ry. *v.* Neilson, [1922] 2 A. C. 263. **Consd.** Buerger *v.* Cunard S.S. Co., [1925] 2 K. B. 646.

453. *Add. Annotation :*—**Consd.** Neilson *v.* L. & N. W. Ry., [1922] 1 K. B. 192.

454. *Add. Citations :*—[1922] 1 K. B. 192 ; *affd. sub nom.* LONDON & NORTH WESTERN RY. Co. *v.* NEILSON, [1922] 2 A. C. 263 ; 91 L. J. K. B. 680 ; 38 T. L. R. 653 ; 66 Sol. Jo. 502, H. L.
Add. Annotations :—**Apld.** Buerger *v.* Cunard S.S. Co., [1925] 2 K. B. 646. **Refd.** Turner *v.* Civil Service Supply Assocn., [1926] 1 K. B. 50.

460. *Add. Citations :—affd.*, [1922] 1 A. C. 178 ; 91 L. J. K. B. 423 ; 127 L. T. 1 ; 38 T. L. R. 359 ; 27 Com. Cas. 247, H. L.

Part V.—Carriage of Persons.

480. *Add. Annotations :*—**Consd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546. **Refd.** Phillips *v.* Britannia Hygenic Laundry Co., [1923] 1 K. B. 539.

481. *Add. Annotation :*—**Refd.** McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494.

492. *Add. Annotation :—As to* (2) **Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

PART IV. SECT. 2, SUB-SECT. 4.—A.

r i. —— *Package containing scheduled articles—Effect of non-disclosure.*]—Where a package declared to contain stationery, but in fact containing scheduled articles (as under the schedule to Carriers Act) exceeding Rs. 100 in value & also non-scheduled articles is lost in transit the value of the lost non-scheduled articles may be recovered by the consignee from the carrier under sect. 3 of the Act.—RIVER STEAM NAVIGATION CO., LTD. *v.* JAMUNADAS RAMKUMAR (1931), I. L. R. 59 Calc. 472.—**IND.**

PART IV. SECT. 2, SUB-SECT. 4.—B.

p. —— —— —— ——.]—TAMBOLI *v.* GREAT INDIAN PENINSULA RY. Co. (1927), 55 L. R. Ind. App. 67.—**IND.**

s (p. 69) i. —— *Must be approved by Railway Commissioners Board—Onus of proof of approval on carrier.*]—SPORLE *v.* GREAT NORTHERN RY. Co., [1924] 4 D. L. R. 184 ; 3 W. W. R. 136 ; 34 B. C. R. 140.—**CAN.**

s (p. 69) ii. —— *Mistake by company—Recovery of deficiency in freight.*]—Where a consignment of goods was by mistake accepted by a railway at a concession rate which was applicable only to a particular special customer, instead of at the ordinary rate applicable to that class of goods according to the goods tariff, & by one of the conditions of consignment the railway reserved the right of "remeasurement, re-weighment, re-classification & re-calculation of rates" :—*Held :* the railway could lawfully demand at the destination the deficiency in freight calculated at the correct rate.—SECRETARY OF STATE FOR INDIA *v.* HARBANS PRASAD (1929), I. L. R. 52 All. 81.—**IND.**

l (p. 69) i. —— —— —— ——.]—PURAN DAS *v.* EAST INDIAN RY. Co. (1927), I. L. R. 6 Pat. 718.—**IND.**

l (p. 69) ii. —— —— —— ——.]—SHEO NARAIN *v.* EAST INDIAN RY. (1927), I. L. R. 50 All. 246.—**IND.**

n (p. 69) i. —— —— —— ——.]—MASON & RISCH PIANO CO. *v.* CANADIAN PACIFIC RY. Co. (1908), 8 W. L. R. 951 ; 1 Sask. L. R. 213 ; 8 Can. Ry. Cas. 369.—**CAN.**

n (p. 69) ii. —— —— —— ——.]—SECRETARY OF STATE GHANAYA LAL-SRI KISHAN (1928), I. L. R. 10 Lah. 329.—**IND.**

pp i. —— —— —— *When railway protected.*]—So long as it is established that the risk notes, the forwarding note, & the railway receipt refer to the particular consignment in question, the railway co. is amply protected.—MOOLJI SIKKA & Co. *v.* BENGAL NAGPUR RY. Co., LTD. (1929), I. L. R. 56 Calc. 1060.—**IND.**

qq i. —— —— —— ——.]—The word "misconduct" in a risk note suggests that a railway servant has been guilty of doing something which was inconsistent with the conduct required of him by the rules of the co. In the absence of proof that there was any breach of duty by the railway servants or any infringement of the rules which regulate their terms of employment, no fair inference of misconduct could properly arise.—BOMBAY BARODA & CENTRAL INDIA RY. Co. *v.* NAJNAGAR SPINNING, WEAVING, & MANUFACTURING Co. (1929), I. L. R. 54 ; Bom. 106.—**IND.**

rr i. —— —— *Meaning of "robbery."*]—The word "robbery" as used in Risk Note H. is not synonymous with "theft," &. therefore, where there is no robbery from a running train, but theft only, deft. railway co. is not absolved from liability by the proviso to the note.—JAI NARAIN-LACHHMI NARAIN *v.* GREAT INDIAN PENINSULAR RY. Co. (1929), I. L. R. 11 Lah. 158.—**IND.**

rr ii. —— —— *Meaning of deterioration.*]—The word "deterioration" in the risk note, form B., & in Railways Act, s. 72, & Contract Act, s. 161 is wide enough to include depreciation in value of the goods on account of a fall in the market price.—GREAT INDIAN PENINSULAR RY. *v.* JUGUL KISHORE MUKAT LAL (1929), I. L. R. 52 All. 238.—**IND.**

rr iii. —— —— *Damage to goods by cold—Conditions in bill of lading as to ventilation complied with.*]—ROBERT *v.* CANADIAN NATIONAL RY., [1932] 1 D. L. R. 306.—**CAN.**

ss *Liability for delay in delivery—Meaning of deterioration.*]—The word "deterioration" in Railways Act, s. 77, includes loss in value owing to delay in delivery & a fall in the market value of the goods consigned. Hence, a suit for the recovery of such loss is not maintainable without the notice required by the sect.—BHAGWAN DAS LACHMI NARAIN *v.* BENGALNAGPUR RAILWAY (1929), I. L. R. 51 All. 895.—**IND.**

PART V. SECT. 2, SUB-SECT. 1.

483 i. *Not liable for mere accident—Apart from negligence or misconduct.*]—MILLS *v.* CANADIAN PACIFIC STEAMSHIPS, LTD. (1926), Q. R. 65 S. C. 148.—**CAN.**

483 ii. —— ——.]—MARCHESSEAULT *v.* CANADIAN NATIONAL RYS. (1926), Q. R. 42 K. B. 355.—**CAN.**

488 i. —— *Caused by act of stranger.*]—If an accident is due to the train leaving

516. *Add. Annotations:* — **Consd.** Brandon *v.* Osborne Garrett, [1924] 1 K. B. 548; The Paludina, [1925] P. 40. **Refd.** Singleton Abbey (Owners) *v.* Paludina (Owners), The Paludina (1926), 95 L. J. P. 135.

536. *Add. Annotation:*—**Refd.** Singleton Abbey (Owners) *v.* Paludina (Owners), The Paludina (1926), 95 L. J. P. 135.

549. *Add. Annotation:*—**Refd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39.

560. *Add. Annotation:*—*As to* (2) **Refd.** Sharpe *v* Southern Ry. (1925), 133 L. T. 693.

560a. —— **Warning not heard by passenger—Passenger asleep.**]—Pltf. was a passenger on defts.' railway to G. by a train which arrived at that station while it was still daylight. Owing to the train being too long for the platform at G., upon its arrival there the hindmost carriage, in which pltf. was, stopped short of the platform. A porter shouted to the passengers to keep their seats, but pltf., who was asleep, did not hear him. On waking pltf. realised that he was at G. station, & fearing that he might be carried on, got out in a hurry without looking to see what he was stepping on. There being a drop of five feet from the carriage floor to the ground, he fell & was injured:—*Held:* even if in the circumstances defts. were negligent, of which the ct. thought there was no evidence, pltf.'s act in getting out without looking where he was going was contributory negligence, & defts. were not responsible.—SHARPE *v.* SOUTHERN RY. CO., [1925] 2 K. B. 311; 94 L. J. K. B. 913; 133 L. T. 693; 69 Sol. Jo. 775, C. A.

571. *Add. Annotation:*—**Distd.** Sharpe *v.* Southern Ry., [1925] 2 K. B. 311.

572. *Add. Annotation:*—**Refd.** Sharpe *v.* Southern Ry. (1925), 133 L. T. 693.

573. *Add. Annotation:*—*As to* (1) **Consd.** Sharpe *v.* Southern Ry., [1925] 2 K. B. 311.

578. *Add. Annotation:*—**Apld.** Broome *v.* Agar (1928), 138 L. T. 698.

579a. *S. P.* WHITEHOUSE *v.* MIDLAND RY. CO. (1866), 30 J. P. 760.

the metals, *primâ facie* the railway co. is guilty of negligence. If an accident is caused to a train by evilly-disposed persons over whom the railway co. had no control or any reason to anticipate that they intended to carry out their design in the sector in which the accident occurred, the railway co. will not be liable for negligence or for damages.—JEWAN RAM KHETTRY *v.* EAST INDIAN RY. CO. (1924), I. L. R. 51 Calc. 861.—**IND.**

490 ii. —— —— *Opening carriage door.*]—While a street car was backing up to a platform which it had overrun, a passenger opened one of the rear doors without the knowledge of the conductor or motorman. The door, which opened outwards & projected over the platform, struck pltf., who was standing on the platform waiting for a car. The conductor was inside the car collecting fares, & had left the door unlocked & unguarded, although the motorman had informed him that he was going to back up:—*Held:* defts. were liable.—ODEGAARD *v.* WINNIPEG ELECTRIC CO., [1927] 4 D. L. R. 387; [1927] 2 W. W. R. 589; 36 Man. L. R. 592.—**CAN.**

497 ii. —— *Driver of omnibus stooping down to recover tickets on floor.*]—BRADLEY *v.* BELL BUS CO., [1928] N. Z. L. R. 204.—**N.Z.**

501 i. —— *Passenger injured by sudden stopping of train.*]—The fact that a passenger was injured because of the sudden stopping of a railway train establishes a *primâ facie* case of negligence against the railway co.; & in order to rebut that presumption it is not enough for the co. to show that the train was necessarily or reasonably so stopped because, *e.g.*, there was an obstruction on the track, it must also show that it was not because if its negligence that the obstruction got there.—VIVIAN *v.* BRITISH COLUMBIA ELECTRIC RY. CO., [1930] 1 W. W. R. 791; 3 D. L. R. 892; 42 B. C. R. 423.—**CAN.**

501 ii. —— ——.]—The driver of a motor bus owes a duty to his passengers not to drive so close to a vehicle ahead, that, in any emergency created by driver of that vehicle, he will have to apply his brakes so violently that a passenger is thrown from a seat in the bus & injured. Also, while a carrier is not an insurer of his passengers' safety, he owes a duty to his passengers to provide seats so protected that they cannot be injured by being thrown therefrom upon an emergency application of the brakes.—DE COURCEY *v.* LONDON STREET RY., [1932] 2 D. L. R. 319; O. R. 226.—**CAN.**

512 i. —— *Act done in course of employment.*]—Pltf., a passenger upon a south-bound car of an electric street ry. co., got off at a stopping place, & crossing behind the car, attempted to pass over the rails used by the north-bound cars, & was struck by a car & injured. She had followed the directions given her by the conductor of the south-bound car:—*Held:* pltf. was entitled to recover. The way pltf. was directed to take was dangerous & this was known to the conductor.—FORSTER *v.* TORONTO RY. CO. (1921), 67 D. L. R. 441; 51 O. L. R. 136.—**CAN.**

PART V. SECT. 2, SUB-SECT. 3.

k i. —— —— *Bye-law prohibiting passengers from riding on car platforms.*]—Where it was proved that pltf. could not, by exercise of reasonable care, have avoided the accident, that there was standing room inside the car, but standing passengers prevented him from going in:—*Held:* pltf. was entitled to recover.—KIME *v.* HAMILTON RADIAL ELECTRIC RY. CO. (1921), 50 O. L. R. 113; 64 D. L. R. 191.—**CAN.**

PART V. SECT. 2, SUB-SECT. 4.

537 ii. —— ——.]—Pltf. alleged that he had been injured by falling from a train of defts. in which he was a passenger, & charged negligence of defts.' servants in leaving open the vestibule door of a car, through which he fell. To the question "In what did the negligence consist?" the jury answered: "By the south side of rear end of second-class car by trap & door of vestibule being open:—*Held:* this answer, making the negligence the "being open" of the door, & not the opening or leaving of it open, & not indicating who opened it or left it open, was not a finding upon which a judgment for pltf. could be based.—ALEXANDER *v.* CANADIAN NATIONAL RY., [1930] 3 D. L. R. 140; 36 C. R. C. 404; 65 O. L. R. 162.—**CAN.**

PART V. SECT. 2, SUB-SECT. 5.

p. Add "*revsd.* (1920), 48 O. L. R. 386; 19 O. W. N. 221."

p i. *Train stopping before reaching station—No duty to warn passengers.*]—GRAND TRUNK RY. CO. OF CANADA *v.* MURPHY, [1924] 1 D. L. R. 450; [1924] S. C. R. 101; 29 Can. Ry. Cas. 398.—**CAN.**

q i. —— —— —— ——.]—As long as the entrance doors of a street car are open while the car is standing at a passenger landing place there is an implied invitation extended to intending passenger to enter the car, & it is the duty of the conductor in charge of the car to afford them a reasonable opportunity to do so in safety. He is therefore negligent in giving the signal to start the car before the entrance doors are closed & all persons attempting to board the car are safely on.—WILSON *v.* WINNIPEG ELECTRIC RY. CO., [1922] 2 W. W. R. 610; 68 D. L. R. 617.—**CAN.**

s i. —— —— *Conductor not on platform.*]—A tramway conductor, as the car was approaching a "stop if required" station, went on to the top of the car to change the screens which showed the destination of the car, having satisfied himself that there was no one who wished to board the car, & that an elderly woman inside the car, the only passenger, showed no sign of wishing to get off. The passenger, who thought she had given a signal to stop, stepped on to the footboard & was jolted off after the car had passed the station, & was injured:—*Held:* no blame attached to the conductor, & the accident was due to the fault of the passenger.—GRAY *v.* GLASGOW CORPN., [1926] S. C. 967.—**SCOT.**

584 v. —— *Passenger thrown down.*]—*Held:* there was negligence on the part of defts.' servants, & deft. liable in damages.—GUILDAY *v.* WINNIPEG ELECTRIC RY. CO., [1922] 3 W. W. R. 498; 70 D. L. R. 517.—**CAN.**

t i. *Passenger stepping from moving car—Accident avoidable by exercise of reasonable care by carrier.*]—GRIFFIN *v.* CAPE BRETON ELECTRIC CO. (1921), 63 D. L. R. 251; 55 N. S. R. 19.—**CAN.**

t ii. —— *In contravention of bye-law.*]—*Held:* a contravention of an absolute statutory provision precluded a claim for damages.—HILL *v.* GRAND TRUNK RY. CO. (1922), 52 O. L. R. 508.—**CAN.**

u i. —— *What is dangerous condition.*]—ELLIOTT *v.* TORONTO TRANSPORTATION COMMISSION, [1927] 1 D. L. R. 259; 32 Can. Ry. Cas. 200; 59 O. L. R. 609.—**CAN.**

PART V. SECT. 2, SUB-SECT. 6.

586 ii. ——.]—Deft. co. gratuitously & for her own convenience, carried pltf. some four hundred yards past a station, where she was allowed to

597. *Add. Annotation :*—**Apprvd. & Apld.** Letang *v.* Ottawa Electric Ry., [1926] A. C. 725.

598a. —— —— ——.]—Applt. met with an accident on resps.' property by using some slippery steps giving convenient access to their tramline. She sued resps. for damages. Resps. contended that applt. had been guilty of contributory negligence, & that the maxim "*Volenti non fit injuria*" applied to prevent her from receiving compensation :—*Held :* unless resps., who had invited applt. to use the access & were bound to keep it reasonably safe, established that she understood the extent of the danger which she was incurring & that she resolved to undertake the risk, the defence of "*Volenti non fit injuria*" failed.—LETANG *v.* OTTAWA ELECTRIC RY. Co., [1926] A. C. 725 ; 95 L. J. P. C. 153 ; 135 L. T. 421 ; 42 T. L. R. 596, P. C.

598b. —— **Whether escalator dangerous.**]—ALEXANDER *v.* CITY & SOUTH LONDON RY. Co. (1928), 44 T. L. R. 450, D. C.

600. *Add. Annotation :*—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494.

603. *Add. Annotation :*—*As to* (3) **Refd.** Montreal City *v.* Watt & Scott (1922), 128 L. T. 147.

605. *Add. Annotations :*—**N.F.** Oliver *v.* Birmingham & Midland Motor Omnibus Co. (1932), 48 T. L. R. 540. **Refd.** Nunan *v.* Southern Ry., [1923] 2 K. B. 703.

609. *Add. Annotation :*—*As to* (2) **Consd.** Sharpe *v.* Southern Ry., [1925] 2 K. B. 311.

620. *Add. Annotations :*—*As to* (1) **Refd.** Phillips *v.* Britannia Hygienic Laundry Co., [1923] 1 K. B. 539 ; McGowan *v.* Stott (1923), 99 L. J. K. B. 357, n.

629. *Add. Annotation :*—**Refd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75.

631a. —— —— **Running over defective line.**]—In an action against a ry. co. for an injury to a passenger, it is evidence of negligence in the conduct of the carrying, that the train was run over a rail known to have been defective & fractured, the jury considering that this was the cause of the accident.—PYM *v.* GREAT NORTHERN RAIL. CO. (1861), 2 F. & F. 619 ; *subsequent proceedings* (1862), 2 B. & S. 759 ; (1863), 4 B. & S. 396, Ex. Ch.

Annotation :—**Consd.** Readhead *v.* Midland Rail. Co. (1867), L. R. 2 Q. B. 412.

638. *Add. Annotations :*—**Refd.** Pratt *v.* Patrick, [1924] 1 K. B. 488 ; Halliwell *v.* Venables (1930), 99 L. J. K. B. 353.

645. *Add. Annotation :*—**Refd.** Mersey Docks & Harbour Board *v.* Procter, [1923] A. C. 253.

652. *Add. Annotation :*—**Refd.** Ruffy-Arnell, etc. Co. *v.* R., [1922] 1 K. B. 599.

680. *Add. Annotation :*—**Refd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

681a. **Accident in booking-hall.**]—ROGERS *v.* LONDON, MIDLAND & SCOTTISH RY. Co. (1930), 46 T. L. R. 238 ; 74 Sol. Jo. 123 ; 94 J. P. Jo. 155.

683a. —— **Necessity for submission to Rates Tribunal of schedule for standard season tickets.**]—*Re* STANDARD CHARGES SCHEDULES, No. 1323a, *post.*

alight. At this place the ground was not level, & a person living along the line had been permitted for his own convenience to lay down on the right of way a platform, one end of which rested on a plank. Pltf. descended safely to the platform, but in passing from it she fell & was injured, owing, as alleged, to some defect in the condition of the plank supporting it :—*Held :* the co. was not liable.—BURKE *v.* BRITISH COLUMBIA ELECTRIC RY. Co., LTD. (1900), 7 B. C. R. 85.—**CAN.**

592 ii. —— —— ——.]—Where a passenger, arriving at a station at night, walked along a platform, not intended but frequently used as a means of exit, but which was not in any way guarded, &, after leaving the platform, fell into an excavation in the railway co.'s grounds & was injured :—*Held :* the co. were liable.—OLDRIGHT *v.* GRAND TRUNK RY. CO. OF CANADA (1895), 22 A. R. 286.—**CAN.**

sa. *Waiting room—Passage leading to "Ladies Toilet"—Unlighted & unlocked door opening on to stairs to basement.*]—Pltf.'s wife entered a passage leading from a waiting room, above the entrance to which were the words "Ladies Toilet." The passage had three doors leading off it on the left. The first was apparently that of a private office, the second was marked "Ladies Toilet" but was locked, & the third, a few feet beyond, was standing open. There was no artificial light in the passage, & the daylight was waning. Pltf.'s wife passed through the open doorway & immediately fell down a flight of stairs into the basement below, & was severely injured :—*Held :* the third doorway was a trap or concealed place of danger, & was a place to which pltf.'s wife might reasonably have been expected to go in the belief, reasonably entertained, that she was entitled or invited to do so.—KNOWLTON *v.* HYDRO ELECTRIC POWER COMMISSION OF ONTARIO, [1926] 1 D. L. R. 217 ; 58 O. L. R. 80.—**CAN.**

sd. —— *Doors leading from—Duty of carrier.*]—The public cannot assume that access is allowed through all the doors opening into or leading into or leading out of a waiting room. When the doors intended for public use are indicated, failure to put on the other doors notices that ingress through them is forbidden does not amount to negligence ; on the contrary, the absence of any notice should put the public upon inquiry whether it should attempt to open these doors & to proceed further into a place where it has no business. But, even if failure to keep such doors locked may amount to negligence, the carrier will not be liable for an accident to a passenger where the cause of the accident was the passenger's own want of caution in proceeding beyond such a door in the dark & in a strange place.—CANADIAN NATIONAL RYS. CO. *v.* LEPAGE, [1927] 3 D. L. R. 1030 ; [1927] S. C. R. 575.—**CAN.**

PART V. SECT. 2, SUB-SECT. 11.

p i. —— —— ——.]—The form of contract or shipping order used by a ry. co. in connection with the transportation of live stock provided that an attendant should accompany the shipment, but should not have the right to travel free or at a rate less than the ordinary fare, unless he had signed the special form of contract printed on the back of the shipping bill, which contained limitations as to claims for personal injuries sustained while travelling. In an action to recover damages for injuries during transportation, due to the negligence of the ry. co.'s servants :—*Held :* the fact that the attendant had not paid any fare was due to the fact that the ry. co.'s agent made no attempt to collect the fare, & the ry. co. was responsible for the omission ; the attendant was a full-fare passenger & not a trespasser & was entitled to recover damages.—STEWART *v.* GRAND TRUNK PACIFIC RY. Co., [1924] 1 D. L. R. 881 ; 1 W. W. R. 473.—**CAN.**

s i. —— ——.]—When one entrusts himself or his property to another to be carried, there is an implied contract that the traveller shall use ordinary care in the transport, & in the absence of special circumstances the fact that the passenger is the father of the driver has no significance.—KEY *v.* KEY, [1930] 3 D. L. R. 327 ; 65 O. L. R. 232.—**CAN.**

PART V. SECT. 2, SUB-SECT. 12.

sm. *Passenger standing on platform of moving car.*]—A passenger who leaves his seat in a tramway car & goes on to the platform, while the car is in motion, is not necessarily guilty of contributory negligence should he meet with an accident while on the platform, the question depending in each case upon the particular circumstances.—BUCHANAN *v.* GLASGOW CORPN., [1921] S. C. 658.—**SCOT.**

PART V SECT. 3, SUB SECT. 1.

651 iii. —— —— *Another route adopted—Liability for excess fare.*]—A passenger after purchasing a ticket from Agra to M. *via* Aligarh & C. discovered that if he travelled beyond Aligarh & *via* G. he would reach his destination more quickly than by the route indicated on the ticket, although he would be travelling by a longer route. He did travel accordingly & on arrival at M. he was made to pay excess fare. On suit for refund :—*Held :* Indian Railways Coaching Tariff, r. 64, applied to a passenger who was found travelling, either intentionally or by mistake, by a route other than that indicated on the ticket & not to a passenger who had arrived at his destination, & the case was governed by r. 63 & the excess fare was justified.—SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* MURTI MANOHAR (1928), I. L. R. 51 All. 399.—**IND.**

683b. —— **Season ticket rates—Continuation of—1921 Act, s. 34.**] — SOUTHEND CORPN. *v.* LONDON MIDLAND & SCOTTISH RY. CO. (1927), 19 Ry. & Can. Tr. Cas. 216.

684. *Add. Annotations:*—**Consd.** Fagan *v.* Green & Edwards (1925), 70 Sol. Jo. 185. **Refd.** Nunan *v.* Southern Ry., [1924] 1 K. B. 223.

685a. —— **Railway company—Whether applicable—Action under Fatal Accidents Act, 1846 (c. 93).**]—Where a passenger by railway, who has agreed with the railway co. that their liability for personal injury shall not exceed a certain sum, is killed by the negligence of the co.'s servants, the damages recoverable by his dependants in an action under the above Act are not limited to such agreed sum.—NUNAN *v.* SOUTHERN RY. CO., [1924] 1 K. B. 223; 93 L. J. K. B. 140; 130 L. T. 131; 40 T. L. R. 21; 68 Sol. Jo. 139, C. A.

Annotations:—**Consd.** Thompson *v.* L. M. & S. Ry. (1929), 98 L. J. K. B. 615. **Refd.** Penton *v.* Southern Railway, [1931] 2 K. B. 103.

685b. **Injury on journey by special train.**]—Pltf. was engaged as a workman by contractors to the Ministry of Health for the construction of a road near H., & the Ministry made with deft. railway co. arrangements for a special train to take pltf. & other men from C. to H., a distance of twenty-six miles. Pltf. received from his employers a voucher which was addressed to the booking clerk & which contained these words: "On surrender of this voucher please supply the bearer with a return workman's ticket to H. by any ordinary workman's train without payment. This voucher is only available by workman's train." The voucher, on presentation at the booking office, was exchanged for a ticket. One side of the ticket had on it (*inter alia*) the words: "See back. Workmen. By special cheap train for the 'working classes.'" On the other side were (*inter alia*) the words: "This ticket is issued subject to the bye-laws, rules & regulations of the Managing Committee," & "This ticket is issued subject to the conditions mentioned in the Managing Committee's Act (62 & 63 Vict. c. clxviii), & its use by the holder is to be taken as evidence of a special contract upon those conditions. The liability of the co. is limited to a sum not exceeding £100." The above-mentioned Act contained provisions as to the running of workmen's trains on the particular railway within twenty miles of London, & limited the co.'s liability to £100, subject to certain conditions. Pltf. was injured by a collision between his train & another train. In an action for damages defts. admitted negligence, but contended that the issue of the ticket created a special contract between themselves & pltf. whereby their liability was limited to £100. The ct. found that pltf. must be taken to have been aware of the conditions indorsed on the back of the ticket. On the further question whether the terms of the contract applied to the particular journey:— *Held:* although the ticket & the conditions on it had been drafted as applicable to a journey by a train coming under the co.'s private Act, & contained no reference to such a journey as pltf.'s by a special train to a destination beyond twenty miles from London, yet, in the case of a passenger in the position of pltf., the conditions were a plain intimation that one condition on which the contract was made was that the co.'s liability should be limited to £100, & pltf. could recover no more than that amount.—HEARN *v.* SOUTHERN RY. CO. (1925), 41 T. L. R. 305, C. A.

685c. **Time limit for making claim.**] — Pltf. was received by defts. under a contract to be carried in one of their steamships. The contract contained a clause that the shipowners should not be liable for loss, damage or delay to a passenger or his baggage arising from the act of God, or from causes of any kind beyond the carrier's control, even though the loss, damage or delay might have been caused by the neglect or default of the shipowners' servants. A subsequent clause provided that no claim under the contract should be enforceable against the shipowners unless a written notice thereof was delivered to them within three days after the passenger should be landed from the steamer at the termination of her voyage. In the course of the voyage one of pltf.'s hands was injured by reason of the negligence of defts.' servants, but no written notice of any claim was given by pltf. within the time limited by the contract:— *Held:* (1) the clause relieving defts. from liability for the negligence of their servants was valid & enforceable, but applying the *ejusdem generis* rule, the clause did not absolve defts. from liability for pltf.'s injury; (2) as pltf. had failed to give any written notice of his claim within the time prescribed by the contract, he was not entitled to recover.—JONES *v.* OCEANIC STEAM NAVIGATION CO., [1924] 2 K. B. 730; 93 L. J. K. B. 1053; 132 L. T. 207; 40 T. L. R. 847; 69 Sol. Jo. 106; 16 Asp. M. L. C. 432.

688. *Add. Annotation:*—**Refd.** Penton *v.* Southern Railway, [1931] 2 K. B. 103.

PART V. SECT. 3, SUB-SECT. 5.

688 v. —— —— ——.]—*Held:* in view of the smallness of the type in which the condition was printed & the absence of any device to draw attention to it, defts. had not taken reasonable means to bring it to pursuer's notice.—WILLIAMSON *v.* NORTH OF SCOTLAND, ETC. NAVIGATION CO., [1916] S. C. 554.—**SCOT.**

p i. —— —— —— ——.]—In an action by a passenger against a ry. co. to recover damages for personal injury sustained by him while travelling on one of their trains, defenders maintained that, under the contract of carriage, they were exempt from liability. When the accident occurred, pursuer was travelling on a "pleasure party" ticket issued at a fare less than the ordinary fare. The ticket bore on the front, in legible print, "See Back," & on the back, also in legible print, "This ticket is issued subject to the General Notices, Regulations, & Conditions in the co.'s current Time Tables & Bills." Defenders' current Time Tables contained a section headed "General Notices, Regulations, & Condition," which included a condition that the holder of a ticket issued at a fare less than the ordinary fare should have no right of action against the co. in respect of injury, however caused. Pursuer admitted that he knew that there was printing on the back of his ticket, & that he must have read what was printed on the back of a similar ticket when travelling on previous occasions, but deponed that what he read had conveyed nothing to him:—*Held:* the condition formed part of the contract, in respect that the reference of the ticket to the conditions in defenders' time tables was reasonable notice of their existence & terms, & further, as pursuer knew there was printing on the back of the ticket, & admitted that at some time he must have read the printing, he must be taken to have known that it referred to conditions. Defenders assoilzied.—GRAY *v.* L. & N. E. RY. CO., [1930] S. C. 989.—**SCOT.**

q i. —— —— —— —.]—GRAND TRUNK PACIFIC COAST S.S. CO. SIMPSON (1922), 63 S. C. R. 361; 65 D. L. R. 614; [1922] 2 W. W. R. 320. —**CAN.**

s i. *S. P.* ERICKSON *v.* CANADIAN PACIFIC RY. CO., WALSTEAD *v.* CANADIAN PACIFIC RY. CO. (Sask.), [1928] 1 D. L. R. 29; [1927] 3 W. W. R. 749. —**CAN.**

689. *Add. Annotations :*—**Refd.** Nunan *v.* Southern Ry. (1923), 130 L. T. 131 ; Hearn *v.* Southern Ry. (1925), 41 T. L. R. 305.

695. *Add. Annotations :*—**Consd.** Thompson *v.* L. M. & S. Ry. (1929), 98 L. J. K. B. 615. **Refd.** Nunan *v.* Southern Ry. (1923), 130 L. T. 131.

695a. —— —— —— **Conditions ascertainable by reference to time-table.**]—Pltf., who could not read, had an excursion ticket taken for her by her niece on the face of which were printed the words : " Excursion. For conditions see back " ; & on the back was a notice that the ticket was issued subject to the conditions in the deft. co.'s time-tables & excursion bills. On the excursion bills excursion tickets were stated to be issued subject to the conditions shown in the company's current time-tables. The time-tables, which could be obtained for sixpence each, stated : " Excursion tickets . . . are issued subject to the general regulations & to the condition that the holders . . . shall have no rights of action against the co. . . . in respect of . . . injury (fatal or otherwise) . . . however caused." A special jury found that an accident to the pltf. on the journey covered by the excursion ticket was due to negligence on the part of deft. co. To prevent the case going back for a new trial, the jury were asked whether the deft. co. took reasonable steps to bring the conditions to the notice of pltf. & answered " No," & awarded damages. Argument was then allowed whether the jury could so find, & it was held that as a matter of law when the ticket was accepted the contract was complete, & therefore there was no evidence on which the jury could find as they did :—*Held :* (1) the fact that pltf. could not read did not alter the legal position ; she was bound by the special contract made on the excursion ticket on the acceptance of the ticket ; & the indication of the special conditions by reference to the time-tables was sufficient notice of their existence & contents ; (2) the question put to the jury for the sake of convenience as to reasonable notice must be determined upon the law applicable to the conditions upon which thet icket was issued, & those conditions negatived the right of pltf. to recover damages.—THOMPSON *v.* LONDON, MIDLAND & SCOTTISH RY. Co., [1930] 1 K. B. 41 ; 98 L. J. K. B. 615 ; 141 L. T. 382. C. A.

Annotation :—*As to* (1) **Apld.** Penton *v.* Southern Railway, [1931] 2 K. B. 103.

695b. —— —— —— **Plaintiff unable to read.**]—THOMPSON *v.* LONDON, MIDLAND & SCOTTISH RY. Co., No. 695a, *ante*.

695c. —— —— —— **Whether question of law or fact.**]—THOMPSON *v.* LONDON, MIDLAND & SCOTTISH RY. Co., No. 695a, *ante*.

695d. —— —— ——.]—Defts., a railway co., issued to persons asking for tickets between certain hours of the day between certain stations return day tickets at a reduced rate, whether such rate was demanded or not. On the front of these tickets were the words, legibly & clearly printed in large letters, " For conditions see back," & on the back was printed a condition exonerating the co. from liability for injury to the holder of the ticket, however caused. Pltf. asked for " Waterloo return," & was supplied with one of these tickets, which he accepted without objection. He was injured on the journey through the alleged negligence of defts.' servants :—*Held :* in the absence of proof that pltf. actually knew of this condition, defts. must show that they had taken reasonable steps to bring it to his notice, but on the facts there was no evidence for a jury that they had not done so.—PENTON *v.* SOUTHERN RY., [1931] 2 K. B. 103 ; 100 L. J. K. B. 228 ; 144 L. T. 614 ; 75 Sol. Jo. 100.

696. *Add. Annotation :*—**Refd.** Walpole *v.* Canadian Northern Ry., [1923] A. C. 113.

703a. —— ——.]—METROPOLITAN RY. Co. *v.* GREAT WESTERN RY. Co. (1886), 3 T. L. R. 113.

704. *Add. Annotations :*—**Refd.** Paterson Zochonis *v.* Elder Dempster, [1923] 1 K. B. 420 ; Pratt *v.* Patrick, [1924] 1 K. B. 438.

724. *Add. Annotation :*—*As to* (1) **Consd.** Smith *v.* Schilling, [1928] 1 K. B. 429.

725. *Add. Annotation :*—**Refd.** Baker *v.* Dalgleish Steam Shipping Co. (1921), 126 L. T. 482

764. *Add. Annotation :*—**Refd.** Poland *v.* Parr, [1927] 1 K. B. 236.

765. *Add. Annotation :*—**Refd.** Poland *v.* Parr, [1927] 1 K. B. 236.

775. *Add. Annotations :*—**Refd.** Percy *v.* Glasgow Corpn., [1922] 2 A. C. 299 ; Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364 ; *Re* Carroll, [1931] 1 K. B. 317.

777. *Add. Annotation :*—**Refd.** Percy *v.* Glasgow Corpn., [1922] 2 A. C. 299.

781a. —— —— ——.]—Where a passenger on a tramcar makes a sufficient & proper tender of his fare & the conductor mistakenly refuses to accept it & has him arrested under a bye-law, which authorises the conductor, if a passenger's name or residence is unknown to him, to have the passenger arrested for evading payment, the conductor's employers are liable for the act of the conductor, whether he was or was not aware of the name & residence of the passenger, inasmuch as the conductor's act, although done mistakenly, is an act within the scope of his employment.—PERCY *v.* GLASGOW CORPN., [1922] 2 A. C. 299 ; 91 L. J. P. C. 187 ; 127 L. T. 501 ; 86 J. P. 201 ; 38 T. L. R. 722 ; 66 Sol. Jo. 555 ; 20 L. G. R. 605.

PART V. SECT. 6, SUB-SECT. 1.

s o. *Pulling communication cord—Defences—Compartment overcrowded.*]—A railway passenger who pulls the emergency chain because he finds the compartment crowded beyond the prescribed limit commits no offence under Indian Railways Act, 1890, s. 108, merely because he does so for the additional reason of obtaining the names of certain passengers who used abusive language towards him.—EMPEROR *v.* POPATLAL BHAICHAND (1929), I. L. R. 54 Bom. 326.—**IND.**

PART V. SECT. 7.

b 1. —— —— *Refusal to obey conductor—Request unreasonable—Carrier liable.*]—RAINES *v.* BRITISH COLUMBIA ELECTRIC RY. Co. (1921), 70 D. L. R. 738 ; 30 B. C. R. 340.—**CAN.**

g 1. —— —— *Removal exposing passenger to danger—Carrier liable.*]—HOWE *v.* NIAGARA ST. CATHARINES & TORONTO RY. Co., [1925] 2 D. L. R. 115 ; 30 Can. Ry. Cas. 95 ; 56 O. L. R. 202 ; *revsn.*, [1926] 4 D. L. R. 339 ; 55 O. L. R. 387.—**CAN.**

m 1. —— —— *Removal exposing passenger to danger—Carrier liable.*]—HOWE *v.* NIAGARA ST. CATHARINES & TORONTO RY. Co., [1925] 2 D. L. R. 115 ; 30 Can. Ry. Cas. 95 ; 56 O. L. R. 202.—**CAN.**

Part VI.—Carriage of Passengers' Luggage.

804a. Luggage put in luggage van—By order of official.]—EHINGER *v.* SOUTH-EASTERN & CHATHAM RY. CO. & PULLMAN CAR CO., LTD., No. 851a, *post.*

811. *Add. Annotations:—As to* (1) **Refd.** Elder, Dempster *v.* Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. *v.* Paterson, Zochonis, [1924] A. C. 522; Pratt *v.* Patrick, [1924] 1 K. B. 488; Halliwell *v.* Venables (1930), 99 L. J. K. B. 353.

813. *Add. Annotation:*—**Refd.** Elder, Dempster *v.* Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. *v.* Paterson, Zochonis, [1924] A. C. 522.

823. *Add. Annotation:—As to* (3) **Folld.** Vosper *v.* G. W Ry. (1927), 137 L. T. 520.

827a. Luggage put in compartment by porter—Passenger travelling in another compartment.] — Pltf., who had a third-class ticket, got a porter to put his suit-case in a first-class compartment & travelled in another part of the train, third class, with some friends whom he found on the train. At the end of the journey pltf.'s suit-case could not be found. In an action against the railway co. for its value:—*Held:* as the railway had failed to discharge the *onus* of proving that the loss of the hand luggage arose by reason of the negligence of the passenger, pltf. was entitled to recover.—VOSPER *v.* GREAT WESTERN RY. CO., [1928] 1 K. B. 340; 97 L. J. K. B. 51; 137 L. T. 520; 43 T. L. R. 738; 71 Sol. Jo. 605, D. C.

830. *Add. Annotations:—As to* (1) **Refd.** Ehinger *v.* S. E. & C. Ry. & Pullman Car Co. (1922), 38 T. L. R. 678; Vosper *v.* G. W. Ry. (1927), 137 L. T. 520. *As to* (2) **Refd.** Ehinger *v.* S. E. & C. Ry. & Pullman Car Co. (1922), 38 T. L. R. 678. *As to* (3) **Consd.** Ehinger *v.* S. E. & C. Ry. & Pullman Car Co. (1922), 38 T. L. R. 678.

831. *Add. Annotation:—Generally,* **Refd.** Vosper *v.* G. W. Ry. (1927), 137 L. T. 520.

833a. *S. P.* HARRISON *v.* GREAT WESTERN RY. CO. (1875), 39 J. P. 312.

851a. —.]—Pltf., who was a passenger with a ticket from Paris to London *via* Dover, & thence by the railway of deft. railway co., took an additional ticket from the second defts., the Pullman Car Co., for a Pullman car forming part of the train between Dover & London. The Pullman car ticket stated that the Pullman Car Co. accepted no liability for passengers' luggage, & that co. did all that was reasonably necessary to bring this condition to pltf.'s notice. At Dover pltf. took a seat in the Pullman car, but an official refused to allow her to take her suit-case with her & directed a porter to put it in the luggage vestibule at the end of the car. There was no evidence in whose employment the official was, or as to the exact relationship between the two deft. cos. On the arrival of the train in London the luggage was unloaded by the Pullman car officials, but pltf.'s suit-case could not be found. In an action against both cos.:—*Held:* as a railway co. contracted as insurers of passengers' luggage except where the loss was caused by the passenger's own default, the railway co. were liable, but as there was no evidence that lack of care, if any, by the Pullman Car Co.'s officials in unloading had contributed to the loss, the Pullman Car Co. were not liable.—EHINGER *v.* SOUTH-EASTERN & CHATHAM RY. CO. & PULLMAN CAR CO., LTD. (1922), 38 T. L. R. 678; 66 Sol. Jo. 633.

851b. —— —— ——.]—A special contract, entered into between a shipowner & a passenger by sea, contained a provision that the shipowner would not be answerable for loss of baggage "under any circumstances whatsoever":—*Held:* such a stipulation covered the case of wilful default & misfeasance by the shipowner's servants.—TAUBMAN *v.* PACIFIC STEAM NAVIGATION CO. (1872), 26 L. T. 704; 1 Asp. M. L. C. 336.

Annotations:—**Consd.** Price *v.* Union Lighterage Co. (1904), 73 L. J. K. B. 222; Travers *v.* Cooper, [1915] 1 K. B. 73. **Refd.** The Pearlmoor, [1904] P. 286.

852. *Add. Annotation:—Generally,* **Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307.

PART VI. SECT. 3, SUB-SECT. 1.

o i. —— *Sent back by returning steamer after arrival at destination—Carrier liable.*]—SMITH *v.* UNION S.S. CO. (1922), 68 D. L. R. 488.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 2.

806 i. *Luggage placed in compartment with passenger—Whether company liable—Passenger leaving carriage with door open.*]—Pltf. & her sister arrived at Euston Station of defts.' railway shortly after 5 p.m. in order to travel by the 6.10 p.m. train to H. Their luggage included two dressing cases which they directed a porter to put in a carriage in which they had reserved seats. The porter carried out these instructions & placed pltf.'s dressing case on the rack of a corridor carriage which was about the middle of the train. As the porter left, pltf. lifted down her case & placed it on the seat. Having removed a book therefrom, the two ladies left the carriage, without closing the door, & proceeded to a bookstall on the platform about the end of the train. Upon their return seven minutes later pltf.'s dressing case had disappeared:—*Held:* the onus of proving that the loss was due to negligence on the part of the passenger lay upon the co. Pltf., by leaving her dressing case unprotected in a carriage with the door open, was not guilty of such negligence as would exonerate the co., who were, accordingly, liable for the loss.—CARR *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1931), N. I. 94.—**IR.**

PART VI. SECT. 7.

sp. *Luggage left with porter—Passenger telephoning for car.*]—A passenger arrived by train at a railway station with heavy luggage in the van & lighter articles accompanying her in the compartment. All the luggage was taken on a barrow by a porter to a cab-stand in the station, where the passenger expected to be met by friends with a car. Failing to find them, she went to telephone to them, leaving the luggage in charge of the porter along with her two young children. In her absence the porter left the luggage unattended, & a thief having got rid of the children by a device, stole the lighter articles. In an action by the passenger against the railway co.:—*Held:* the co. was liable, in respect that its liability as carrier of passengers' luggage lasted until the passenger, using due diligence, had been afforded a reasonable opportunity of taking delivery of the luggage; & here it was not proved that the passenger had failed to exercise due diligence.—PARKER *v.* L. M. S. RY. CO., [1930] S. C. 822.—**SCOT.**

PART VI. SECT. 8, SUB-SECT. 4.

d i. —— *Special contract.*]—*Held:* it was a valid answer to pltf.'s action that she had assented to be bound by the contract relieving the carrier from liability.—FENNELL *v.* MONTREAL S.S. CO. (1876), 6 Nfld. L. R. 124.—**NFLD.**

d ii. —— —— *Construction.*]—DIXON *v.* RICHELIEU NAVIGATION CO. (1889), 18 S. C. R. 704.—**CAN.**

e i. —— ——.]—*Held:* pltf. was bound by the conditions.—WOOD *v.* ALLAN (1880), 13 N. S. R. (1 R. & G.) 477; *affd.* (1882), 15 N. S. R. (3 R. & G.) 211.—**CAN.**

853. *Add. Annotation :*—**Apld.** Thompson *v.* L. M. & S. Ry. (1929), 98 L. J. K. B. 615.

855. *Add. Annotation :*—*As to* (1) **Refd.** Penton *v.* Southern Railway, [1931] 2 K. B. 103.

857. *Add. Annotation :*—*As to* (1) **Refd.** Brown *v.* Harrison, Hourani *v.* Same (1927), 137 L. T. 549.

858. *Add. Annotations :*—**Consd.** Werner *v.* Det Bergenske Dampskibsselschaft (1926), 134 L. T. 578. **Refd.** Elder, Dempster *v.* Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. *v.* Paterson, Zochonis, [1924] A. C. 522.

863. *Add. Annotations :*—**Refd.** L. & N. W. Ry. *v.* Neilson, [1922] 2 A. C. 263; Nunan *v.* Southern Ry., [1923] 2 K. B. 703; Buerger *v.* Cunard S.S. Co., [1925] 2 K. B. 646; The Refrigerant, [1925] P. 130.

866. *Add. Annotations :*—**Consd.** Ehinger *v.* S. E. & C. Ry. & Pullman Car Co. (1922), 38 T. L. R. 678. **Apld.** Hearn *v.* Southern Ry. (1925), 41 T.L.R. 305. **Consd.** Thompson *v.* L. M. & S. Ry. (1929), 98 L. J. K. B. 615. **Refd.** Nunan *v.* Southern Ry., [1923] 2 K. B. 703.

Part VII.—Carriage of Animals.

885. *Add. Annotation :*—**Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1923] 2 K. B. 742.

890. *Add. Annotation :*—**Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

893. *Add. Annotation :*—**Refd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742.

Part VIII.—Carriage of Explosives and Dangerous Goods.

894. *Add. Annotation :*—**Refd.** McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494.

895. *Add. Annotations :*—**Consd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742; McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494.

896. *Add. Annotations :*—*As to* (1) **Consd.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742. *As to* (2) **Folld.** G. N. Ry. *v.* L. E. P. Transport & Depository, [1922] 2 K. B. 742. *As to* (3) **Refd.** Transoceanica Soc. Italiana di Navigazione *v.* Shipton, [1923] 1 K. B. 31.

896a. ——.]—GREAT NORTHERN RY. CO. *v.* L. E. P. TRANSPORT & DEPOSITORY, LTD., No. 234a, *ante*.

Part IX.—Measure of Damages.

905. *Add. Annotations :*—**Refd.** Patrick *v.* Russo-British Grain Export Co., [1927] 2 K. B. 535; The Edison, [1932] P. 52.

910. *Add. Annotations :*—**Consd.** Patrick *v.* Russo-British Grain Export Co., [1927] 2 K. B. 535. **Apld.** *Re* Hall & Pim's Arbitration (1928), 139 L. T. 50; Banco de Portugal *v.* Waterlow & Sons, Ltd. (1932), 48 T. L. R. 404; The Edison, [1932] P. 52. **Refd.** Pinnock *v.* Lewis & Peat, [1923] 1 K. B. 690; Riley *v.* Brown (1929), 98 L. J. K. B. 739; Herbert Clayton & Jack Waller, Ltd. *v.* Oliver, [1930] A. C. 209; Dobell (C. G.) & Co. *v.* Barber & Garratt (1930), 47 T. L. R. 66.

914. *Add. Annotation :*—**Consd.** The Edison, [1932] P. 52.

918. *Add. Annotations :*—*As to* (1) **Consd.** The Edison, [1932] P. 52. **Refd.** Patrick *v.* Russo-British Grain Export Co., [1927] 2 K. B. 535.

930. *Add. Annotation :*—**Refd.** Aronson *v.* Molga Holzindustrie A./G. Leningrad (1927), 32 Com. Cas. 276.

Part X.—Statutory Control of Carriers' Business.

954a. Side entrance to—Refusal to re-open.]—In deciding an application for the provision of reasonable facilities under 1854 Act, s. 2, & of reasonable facilities & conveniences under

855 iii. —— —— *Inexperienced traveller.*]—*Held :* pltf., a woman of scant education & unaccustomed to travel, was entitled to recover from deft. co. notwithstanding a clause on her ticket limiting defts.' liability, as the clause had been waived, & there was a special contract.—TOLERTON *v.* CUNARD S.S. Co., [1924] 3 D. L. R. 355; 2 W. W. R. 927; 33 B. C. R. 551.—**CAN.**

PART VII. SECT. 1, SUB-SECT. 2.

sb. *To deliver promptly.*]—AVERY *v.* CANADIAN PACIFIC RAILWAY (1929), 1 M. P. R. 502.—**CAN.**

PART VII. SECT. 3.

w i. —— *Animals dying of arsenic poisoning.*]—Action against deft. ry. co. dismissed, as there was no evidence connecting the cause of injury with any alleged negligence, & the cause of the damage was purely a matter of speculation.—TURNER *v.* CANADIAN PACIFIC RY. CO., [1922] 2 W. W. R. 858; 66 D. L. R. 31.—**CAN.**

b i. —— *Unless written notice of claim given at point of delivery.*]—KNIGHT-WATSON RANCHING CO. *v.* CANADIAN PACIFIC RY. CO., [1921] 3 W. W. R. 788; 62 D. L. R. 601; 15 Sask. L. R. 1.—**CAN.**

PART X.

For cases decided by the Board of Railway Commissioners for Canada, *see, generally*, RAILWAYS, Vol. XXXVIII., pp. 254–256, 375–378.

1921 Act, s. 16 (1), the ct. must be satisfied that in refusing such facilities & conveniences the railway co. are acting without due regard to the proper discharge of their obligations, & the facility or convenience asked for will not be ordered where it is only for the benefit of a special class of persons who form a small proportion of the travelling public. Where it is sought to restore a former convenience & conditions have changed, there is nothing in the fact that it was afforded before, & the question will be decided on its merits.

Therefore where an application was made for an order for the re-opening of a subsidiary side entrance to the station of the Midland Ry. Co. at N. which had been closed in pursuance of a general policy of " closed " stations adopted by the co., & it was shown that only 16 per cent. of the passengers using the station, who were mainly season & weekly ticket holders, would be likely to use such entrance, & that no general public inconvenience existed, the ct. refused to make any order.—NOTTINGHAM CORPN. *v.* MIDLAND RY. CO. (1922), 128 L. T. 539; 67 Sol. Jo. 404; 21 L. G. R. 71; 17 Ry. & Can. Tr. Cas. 72.

955. *Add. Annotation:* — **Consd.** Nottingham Corpn. *v.* Mid. Ry. (1922), 128 L. T. 539.

958. *Add. Annotation:—As to* (3) **Consd.** Nottingham Corpn. *v.* Mid. Ry. (1922), 128 L. T. 539.

960. *Add. Annotation:* — **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1930] A. C. 549.

967. *Add. Annotation:—As to* (1) **Refd.** British Trawlers Federation, Ltd. *v.* London & North Eastern Ry. Co. (1932), 48 T. L. R. 491.

976a. —— **Refusal to accept privately owned wagons.**]—Where a railway co. is always ready to provide an adequate supply of wagons for the conveyance of coal from stations on their system, their refusal of an application that they should accept privately owned wagons does not constitute a refusal to afford reasonable facilities for the receiving, forwarding, & delivery of traffic on their railway, or the subjection of appcts., or of the traffic in which they are interested, to undue or unreasonable prejudice or disadvantage.—CHARRINGTON, GARDNER, LOCKETT & CO., LTD. *v.* SOUTHERN RY. CO. (1926), 42 T. L. R. 758; 19 Ry. & Can. Tr. Cas. 1.

980. *Add. Annotation:—As to* (1) **Consd.** Charrington, Gardner, Lockett *v.* Southern Ry. (1926), 42 T. L. R. 758.

1010a. **To continue former facilities—Pending decision as to rights of parties.**]—Upon an application for an interlocutory injunction ordering that certain former facilities for receiving & running through passenger coaches should be continued pending a decision as to the rights of the parties:—*Held:* this not being an application to restrain a threatened act, regard should be made to the balance of convenience, & upon the facts, no interlocutory order should be made.—GREAT CENTRAL RY. CO. *v.* LONDON & NORTH WESTERN RY. CO. (1922), 17 Ry. & Can. Tr. Cas. 89.

1015a. —— **Necessity for submission to Rates Tribunal of schedule for standard workmen's fares.**]—*Re* STANDARD CHARGES SCHEDULES, No. 1323a, *post.*

1025. *Add. Citation:—sub nom.* R. *v.* RAILWAY COMRS., 46 J. P. 35.

1043a. **Amount fixed so as to allow rebate to be made.**] — Coal was conveyed from two collieries over the lines of three railway cos. at a charge equal to the rate by an alternative route. A through rate was ultimately fixed at a sum of 2*d.* per ton in excess of the original charge, in order to allow one of the cos. to make a rebate of that amount in accordance with its practice with respect to other coal traffic. The new rate having been withdrawn, an application was made for a through rate equal to the original charge:—*Held:* (1) the question of rebate had been rightly excluded in fixing the amount of the through rate; (2) the Railway Comrs. had power to apportion the rate in such a way that part of it would be finally handed over to the trader. —GLENAVON GARW COLLIERIES, LTD. *v.* RHONDDA & SWANSEA BAY RY. CO., GREAT WESTERN RY. CO. & BARRY RY. CO. (1915), 16 Ry. & Can. Tr. Cas. 65, C. A.

1049a. —— —— **Applicants not performing functions of ordinary railway company.**]—STOCKSBRIDGE RY. CO. *v.* GREAT CENTRAL RY. CO. (1909), 13 Ry. & Can. Tr. Cas. 335.

1051a.—— **Congested route—Alternative route available.**]—*Held:* (1) the proposed route was reasonable, & it was not sufficient to show that the receiving of the traffic in question would render a difficult task more difficult, unless such traffic would amount to an obstruction; (2) it was material to consider whether the proposed route was the only available route or whether there were other routes available; (3) although an arrangement between railway cos. might be shown to be very widely accepted, it was not open to the ct. to reject evidence as to the proper terminal at any port of shipment.—DEARNE VALLEY RY. CO. *v.* GREAT NORTHERN RY. CO. & GREAT CENTRAL RY. CO., LANCASHIRE & YORKSHIRE RY. CO. *v.* GREAT NORTHERN RY. CO. & GREAT CENTRAL RY. CO. (1914), 15 Ry. & Can. Tr. Cas. 202.

1058a. —— **Terminal costs.**] — DEARNE VALLEY RY. CO. *v.* GREAT NORTHERN RY. CO. & GREAT CENTRAL RY. CO., LANCASHIRE & YORKSHIRE RY. CO. *v.* GREAT NORTHERN RY. CO. & GREAT CENTRAL RY. CO., No. 1051a, *ante.*

1060a. **Payment of rebate to trader.**]-GLENAVON GARW COLLIERIES, LTD. *v.* RHONDDA & SWANSEA BAY RY. CO., GREAT WESTERN RY. CO. & BARRY RY. CO., No. 1043a, *ante.*

1072. *Add. Annotation:*—**Refd.** Sandilands *v.* London, Midland & Scottish Ry. Co. (1927), 20 Ry. & Can. Tr. Cas. 136.

PART X. SECT. 3, SUB-SECT. 2—A.

3a. *Classification causing preference—Validity of bye-law.*]—By Government Railways Act, 1912, s. 24, the Comrs. are empowered to demand tolls in respect of goods carried upon the railways, but subject to the provisions of the Act, such tolls shall be charged equally to all persons, & after the same rate in respect of all goods of the same description:—*Held:* certain bye-laws made in pursuance of the Act, which classified imported galvanised iron in a different class to iron of a similar nature manufactured locally, & which prescribed a toll of a higher rate for the imported than for locally manufactured iron of the nature referred to, were not *ultra vires.*—HARDY'S, LTD. *v.* RAILWAY COMRS. FOR NEW SOUTH WALES (1928), 28 S. R. N. S. W. 318; 45 N. S. W. W. N. 82.—AUS.

1077. *Add. Annotation :—As to* (1) **Consd.** Damps Selsk Svendborg *v.* London, Midland & Scottish Ry. Co. (1929), 20 Ry. & Can. Tr. Cas. 67.

1080. *Add. Annotations :—As to* (4) **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey, [1929] 1 Ch. 686; Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

1096a. —— Regulation affecting one class of goods only—Lower rate necessary in public interest.] —Port of Manchester Warehouses, Ltd. *v.* Cheshire Lines Committee, Great Central Ry. Co. & Great Northern Ry. Co., No. 1219a, *post.*

1098. *Add. Annotation :—As to* (1) **Refd.** York Corpn. *v.* Leetham, [1924] 1 Ch. 557.

1124. *Add. Annotation :—***Refd.** British Trawlers Federation, Ltd. *v.* London & North Eastern Ry. Co. (1932), 48 T. L. R. 491.

1166a. —— Wharfage.]—By its Act a canal co. was precluded from charging for wharfage in respect of private wharves constructed under provisions of the Act, which empowered adjoining owners to construct wharves on the banks of the canal. An oil co. acquired from the canal co. land adjoining the canal bank, under three conveyances, by one of which they were obliged, & by another empowered, to construct a wharf on a line beyond their boundary, so that the front part of the wharf should extend beyond the canal bank over the canal. On a wharf so erected the oil co. fixed a pipe & discharged oil in bulk from vessels lying in the canal. Competitors of the oil co. owning land that was near to but did not adjoin the canal obtained from the canal co. easements to erect valve houses on the canal bank, & discharged their oil in the same way. The canal co.'s sched. of charges contained two classes of oil. As to the one it was stated that the rate was inclusive of a charge for wharfage, as to the other, that the rate was for tolls only but that the use of the canal co.'s wharves was free. The oil co. & their competitors were charged the same rates, which were less than the maximum tolls for the use of the canal :—*Held :* the oil co.'s wharf was not a private wharf, to which the wharfage rate was inapplicable, firstly because it was constructed, not under the powers conferred by the Act on adjoining landowners, but under the obligations imposed as part of the consideration for which the land was acquired; secondly, because the wharf, extending over the canal, was not wholly constructed on the land of the adjoining owner; therefore, the oil co. was not unduly prejudiced by being charged the same rates as their competitors who did not own land adjoining the canal. The Commission found as a fact that the canal co. did not, in certain cases, charge for wharfage, though they charged an inclusive rate which covered the use of their wharves.—Anglo-American Oil Co. *v.* Manchester Ship Canal (1929), 20 Ry. & Can. Tr. Cas. 45.

1166b. Rebate on sidings rate.]—Upon a complaint of undue preference it was admitted that appcts., whose works at S. were connected by a private siding with defts.' railway, paid the same rates as if their traffic used that station, while two of their competitors, whose respective works at B., ten miles from S., were also connected by private sidings with defts.' railway, received a rebate of 2½*d.* per ton off the B. station rates on traffic similar to that of appcts. Appcts. called no evidence. The railway co., while submitting that the *onus* of proof had not shifted on them under 1888 Act, s. 27 (1), called evidence & put in tables based on the Pidcock principle with the object of showing that the value of the private siding services rendered to appcts. at S. was in excess of the amounts included in their rates for station terminals at that station & also of the value of the respective private siding services rendered to appcts.' competitors at B. after allowing for the rebate :—*Held :* without deciding whether the *onus* had shifted to the railway co., but inclining to the view that it had, the Pidcock principle had been properly applied in the dissection of the respective rates, & there was no preference of appcts.' competitors.—Prentice Brothers, Ltd. *v.* London & North Eastern Ry. Co. (1925), 18 Ry. & Can. Tr. Cas. 177.

1169. *Add. Annotation :—As to* (3) **Refd.** Charrington, Gardner, Lockett *v.* Southern Ry. (1926), 42 T. L. R. 758

1171. *Add. Annotation :—***Refd.** Prentice *v.* L. & N. E. Ry. (1925), 18 Ry. & Can. Tr. Cas. 177.

1175. *Add. Annotation :—***Refd.** Sandilands *v.* London, Midland & Scottish Ry. Co. (1927), 20 Ry. & Can. Tr. Cas. 136.

1175a. —— Adoption of exceptional rates.]—Port of Manchester Warehouses, Ltd. *v.* Cheshire Lines Committee, Great Central Ry. Co. & Great Northern Ry. Co., No. 1377a, *post.*

1184. *Add. Annotation :—As to* (1) **Consd.** Port of Manchester Warehouses *v.* Cheshire Lines Committee, G. C. Ry. & G. N. Ry. (1922), 17 Ry. & Can. Tr. Cas. 54.

1193. *Add. Annotations :—As to* (1) **Consd.** Prentice *v.* L. & N. E. Ry. (1925), 18 Ry. & Can. Tr. Cas. 177. **Refd.** Port of Manchester Warehouses *v.* Cheshire Lines Committee, G. C. Ry. & G. N. Ry. (1922), 17 Ry. & Can. Tr. Can. 54.

1219a. —— Injunction—Rate quoted but not actually made.]—Appcts. were owners of a bonded warehouse situated in Trafford Park, Manchester, in close proximity to, but not on, the premises of the Manchester Ship Canal Co. The latter co. also owned a similar warehouse within their dock area at Manchester. A large consignment of cigarettes was conveyed over the Ship Canal to appcts.' warehouse, & was thence consigned to London over the railways of resp. cos., who charged a rate of 107*s.* per ton in two-ton lots, this being the ordinary Manchester town rate, whereas for similar traffic consigned from the warehouse of the Ship Canal Co. they quoted a rate of 54*s.* 6*d.*, the latter being the Liverpool to London rate, which was governed by competitive shipping rates. Upon a complaint that the Manchester Ship Canal Co. were being unduly preferred the above difference in rates was sought to be justified by the railway cos. on the ground that, the ports of Manchester & Liverpool being in

h l. —— —— —— —— —— *Dominion Railway Act,* 1919, *s.* 316.]—R. (Canadian Pacific Ry. Co. & Miller) *v.* Standell, [1923] 2 W. W. R. 728.—CAN.

competition, the lower rate was necessary in order to secure for Manchester in the public interest traffic which otherwise would go to Liverpool, & that the only practical way in which to distinguish between goods consigned from Manchester Town & Manchester Port respectively was to draw a line between goods on the premises of the Ship Canal Co. & those which had passed out of the control of that co.:—*Held:* (1) both rates were properly charged under the circumstances, & the difference between them was justified; (2) where a railway co. quotes a rate constituting an undue preference & asserts a right & intention of charging the same the ct. has jurisdiction to interfere by injunction without waiting till such charge is actually made.—PORT OF MANCHESTER WAREHOUSES, LTD. *v.* CHESHIRE LINES COMMITTEE, GREAT CENTRAL RY. CO. & GREAT NORTHERN RY. CO. (1922), 17 Ry. & Can. Tr. Cas. 54.

1224a. —— —— ——.]—*Held:* "the discovery by the party aggrieved of the matter complained of" in 1888 Act, s. 12, means discovery of the preferential treatment of complainant's competitor, & not discovery of the evidence by which the complaint can be substantiated.—BRITISH REINFORCED CONCRETE ENGINEERING CO., LTD. *v.* LONDON & NORTH EASTERN RY. CO. (1928), 20 Ry. & Can. Tr. Cas. 78.

1236. *Add. Annotation:*— **Refd.** Charrington, Gardner, Lockett *v.* Southern Ry. (1926), 42 T. L. R. 758.

1237a. Continuance of fixed rate—Under subsisting agreement—What amounts to agreement.]—An undertaking given by a railway co. during parliamentary proceedings in connection with an Act not to disturb existing fares for a limited period:—*Held:* not an agreement fixing those rates within 1921 Act, s. 34.—SOUTHEND CORPN. *v.* LONDON MIDLAND & SCOTTISH RY. CO. (1927), 19 Ry. & Can. Tr. Cas. 216.

1237b. What is a fixed rate.]—A rate which bears a fixed relation to an ascertainable standard is a fixed rate, though it may vary in actual amount from time to time, & such a rate should be continued after the appointed day, if made under an agreement for valuable consideration, under 1921 Act, s. 34.—CARDIFF COLLIERIES, LTD. *v.* GREAT WESTERN RY. CO. (1927), 19 Ry. & Can. Tr. Cas. 202.

Annotation:—**Folld.** Forest of Dean Freighters' Assocn. *v.* Great Western Ry. Co. (1928), 20 Ry. & Can. Tr. Cas. 13.

1237c. —— —— ——.]—*Held:* although a fixed quarterly allowance when distributed over a fluctuating quarterly traffic yielded a varying tonnage charge, nevertheless inasmuch as sums payable under an agreement & ascertainable with reference to a fluctuating standard may be considered as fixed by that agreement, the charges payable by appcts. under the agreement in question were special charges fixed by a subsisting agreement for valuable consideration & should be continued under 1921 Act, s. 34.—R. & W. PAUL, LTD. *v.* LONDON & NORTH EASTERN RY. CO. (1927), 19 Ry. & Can. Tr. Cas. 228.

1237d. —— **Under special statutory provision—What amounts to special statutory provision.**]—SOUTHEND CORPN. *v.* LONDON MIDLAND & SCOTTISH RY. CO. (1927), 19 Ry. & Can. Tr. Cas. 216.

1237e. —— —— ——.]—A bill was promoted in Parliament to empower two railway companies to purchase jointly the railway of a third company. Petitioners against the bill withdrew their opposition in consideration of the promoters agreeing to the insertion of a clause limiting the charging powers on the line proposed to be purchased. The bill with the clause so inserted was passed into law:—*Held:* charges were thereby fixed under a special statutory provision, & were originally so fixed for valuable consideration.—FOREST OF DEAN FREIGHTERS' ASSOCN. *v.* GREAT WESTERN RY. CO. (1928), 20 Ry. & Can. Tr. Cas. 13.

1237f. Originally fixed for valuable consideration—What amounts to.]—FOREST OF DEAN FREIGHTERS' ASSOCN. *v.* GREAT WESTERN RY. CO., No. 1237e, *ante*.

1243. *Add. Annotation:*—**Refd.** Rownson, Drew & Clydesdale *v.* G. W., L. M. & S., L. & N. E. & Southern Rys. (1928), 19 Ry. & Can. Tr. Cas. 235.

1245a. "Rolling stock"—Transit of empty wagons needing repair on change of ownership.]—Under the heading "Rolling Stock" of the "General Railway Classification of Goods, 1921," if there is a transit because of a change of ownership or because of a change in the sphere of operations, the full rate for the conveyance of empty wagons is chargeable; if the cause of the transit is repairs only, the half-rate is chargeable; if the repairs are only an accompaniment of the transit due to change of ownership, the full rate is chargeable.—LONDON, MIDLAND & SCOTTISH RY. CO. *v.* INCE WAGON & IRONWORKS CO., LTD. (1924), 131 L. T. 229; 40 T. L. R. 551, C. A.

1245b. "Pipes, rain water & their connections, cast iron or steel"—Include rain water pipes adapted for other purposes.]—ROWNSON, DREW & CLYDESDALE *v.* GREAT WESTERN, LONDON, MIDLAND & SCOTTISH, LONDON & NORTH EASTERN & SOUTHERN RY. COS. (1928), 19 Ry. & Can. Tr. Cas. 235.

1245c. "Coal"—Coal, coke & patent fuel.]—*Re* NATIONAL GAS COUNCIL OF GREAT BRITAIN & IRELAND'S APPEAL (1927), 19 Ry. & Can. Tr. Cas. 163, C. A.

1245d. "Castings, iron or steel of light type"—Includes cantilever wall brackets.]—Small cantilever wall brackets, constructed so that one end of the top bar is let into the wall, are not "cantilevers, iron or steel, as girders," class 7, but "castings, iron or steel of light type," classes 13 to 17.—AMALGAMATED RY. COS. *v.* ASSOCIATED BUILDERS' MERCHANTS, LTD. (1930), 20 Ry. & Can. Tr. Cas. 162.

1245e. Alteration—When granted.]—The standard charges based on the classification are not intended to be the equivalent of the services rendered in each particular case. They are overall charges which the cos. are prepared to make in all the circumstances of all the articles in the classification. The cos. may make more profit out of one carriage than another. That alone is not a ground

for transferring the article which is carried at the greater profit into a lower class.—WOOLWORTH & Co. *v.* AMALGAMATED RY. COS. (1930), 20 Ry. & Can. Tr. Cas. 149.

1245f. Publication—Addition of explanation to statutory classification.]—By 1921 Act, s. 28, the Rates Tribunal have jurisdiction to determine any question as to the class in which any article is classified, & by sect. 54 the railway cos. are required to keep for sale printed copies of the general classification for the time being in force. The railway cos. kept for sale two copies, one a literal copy, known as the Statutory Classification, in which the different articles appeared according to their class, & another, a copy known as the Working Classification, in which the different articles appeared in alphabetical order followed by the number of the class to which they belonged. In the Working Classification were numerous explanatory entries inserted by the railway cos. but not found in the statutory copy. On an application to incorporate into the Statutory Classification the explanations in the Working Classification :—*Held :* granting the application, that the railway cos. had not contravened the provisions of 1921 Act, s. 54.—AMALGAMATED RY. COS. *v.* LONDON CHAMBER OF COMMERCE (1930), 20 Ry. & Can. Tr. Cas. 157.

1285. *Add. Annotations :—As to* (1) **Refd.** G. W. Ry. *v.* Laing (1922), 39 T. L. R. 93 ; Transoceanica Soc. Italiana di Navigazione *v.* Shipton, [1923] 1 K. B. 31.

1286. *Add. Annotations :—As to* (1) **Refd.** Transoceanica Soc. Italiana di Navigazione *v.* Shipton, [1923] 1 K. B. 31; *Re* Standard Charges (Collection & Delivery) (1925), 19 Ry. & Can. Tr. Cas. 53. *As to* (2) **Consd.** G. W. Ry. *v.* Laing (1922), 39 T. L. R. 93.

1287. *Add. Annotations :*—**Consd.** G. W. Ry. *v.* Laing (1922), 39 T. L. R. 93. **Refd.** Transoceanica Soc. Italiana di Navigazione *v.* Shipton. [1923] 1 K. B. 31 ; Prager *v.* Blatspiel, Stamp & Heacock, [1924] 1 K. B. 566; Damps Selsk Svendborg *v.* London, Midland & Scottish Ry. Co. (1929), 20. Ry. & Can. Tr. Cas. 67.

1287a. Stevedoring.]—The London & North Western Railway Co. (Rates & Charges) Order Confirmation Act, after reciting the Railway & Canal Traffic Act, confirms the Order as set out in the Sched. By para. 21 of the Sched., nothing therein contained shall affect the right of the co. to make any charges which they are authorised by any Act of Parliament to make in respect of any accommodation or services provided or rendered by the co. at or in connection with docks or shipping places, & by para. 26 of the Sched. the term " railway " means any railway or steam tramway over which the co. conveys merchandise, & in respect of which no maximum rates & charges other than those authorised in the Sched. are for the time being authorised by Parliament. By Pt. IV. of the Appendix to the Sched. the co. may charge such reasonable sums as they think fit for any accommodation or services rendered within the scope of their undertaking by the desire of a trader, & in respect of which no provisions are made by the Sched. :—*Held :* (1) in construing the Sched. the definition of " railway " in para. 26 of the Sched. is to be applied, & not the definition in sect. 3 of 1873 Act ; (2) the work of stevedoring is incidental to the undertaking of a dock owned by a railway co. ; (3) in doing the work of stevedoring a railway co. is not bound by the limitations of Pt. IV. of the Appendix to the Sched., &, in the absence of any other restrictive enactment, may contract as they please.—DAMPS SELSK SVEND BORG *v.* LONDON, MIDLAND & SCOTTISH RY. Co. (1928), 20 Ry. & Can. Tr. Cas. 67.

1316. *Add. Annotations :*—**Refd.** Bede Steam Shipping Co. *v.* Bunge y Born, Limitada S. A. (1927), 43 T. L. R. 374 ; Wales *v.* Iron Trades Employers' Assocn. (1928), 21 B. W. C. C. 316 ; Great Western Ry. Co. *v.* Boon (1928) 20 Ry. & Can. Tr. Cas. 63.

1316a. —— ——.]—GREAT CENTRAL RY. Co. *v.* SWANN (1913), 48 L. Jo. 47.

1318. *Add. Annotation :*—**Refd.** Great Western Ry. Co. *v.* Boon (1928), 20 Ry. & Can. Tr. Cas. 63.

1323. *Add. Annotations :*—**Refd.** Griffiths *v.* Studebakers, [1924] 1 K. B. 102 ; R. *v.* Leinster [1924] 1 K. B. 311.

SECT. 6.—EXCEPTIONAL RATES AND FARES

(Vol. VIII., p. 207).

1323a. Under 1921 Act—Meaning of " standard " & " exceptional."]—The expression " standard " as applied to charges in Part III. of the above Act is the correlative or complementary term to " exceptional," &, there being therefore no other alternative, every chargeable rate, fare, or charge for conveyance must necessarily be included in one or other of the above categories. Railway cos. are therefore required, under sect. 30 of the above Act, to submit to the Rates Tribunal forms of schedules for standard season tickets & workmen's fares.—*Re* STANDARD CHARGES SCHEDULES (1923), 17 Ry. & Can. Tr. Cas. 147.

1323b. New exceptional rates—Grounds for granting.]—The fact that equal rates were formerly charged from two competing points to a common market unequally distant from them, whereas the corresponding standard charges are unequal, is not a ground on which the Railway Rates Tribunal will grant a new exceptional rate so as to restore the equality. —DOWLOW LIME & STONE Co., LTD. *v.* LONDON, MIDLAND & SCOTTISH RY. Co. (1928), 20 Ry. & Can. Tr. Cas. 41.

1323c. Disintegration—On continuation.]—Where an exceptional rate is referred to the Rates Tribunal for its determination under 1921 Act, s. 36, then, if the Tribunal decides to continue the rate, its duty is to disintegrate it in the manner provided for in sect. 40 of the Act, & the performance of this duty may at its discretion be postponed until some party interested in the rate applies for the disintegration.—DISINTEGRATION OF CONTINUED EXCEPTIONAL RATES (1928), 20 Ry. & Can. Tr. Cas. 1.

1323d. —— Time for.]—A railway co. applied to the Rates Tribunal to sanction a rate, more than 40 per cent. below the standard rate, between a seaport town & the Midlands. Another seaport town competing in the same traffic, having been admitted to oppose the said rate, sought to administer interrogatories

to the railway co. as to the disintegration of the existing rates between the two ports respectively & the Midlands & of the new proposed rate, with a view to showing the effect that the new rate would have on the competition, & the prejudice that would be caused to the opponents of the rate :—*Held :* by the Rates Tribunal, such rates are to be disintegrated by the Rates Tribunal, under 1921 Act, s. 40, at the time when they are sanctioned; it is proper for the railway co. to present the rate for sanction without any proposed disintegration, & there is no procedure for obtaining a preliminary disintegration of such a rate.—BRISTOL CORPN. *v.* GREAT WESTERN RY. CO. (1928), 20 Ry. & Can. Tr. Cas. 28.

SECT. 7.—**OWNER'S RISK RATES** (Vol. VIII., p. 207).

1323e. **Conveyance of goods by passenger train at owner's risk — Application for reduction of rate—Difference in risk negligible—Whether ground for two scales.**]—Appcts. were consignors of gramophone records in the form of flat discs by passenger train. Resps. conveyed these discs at full parcels scale, but under owner's risk conditions. Appcts. claimed that since the discs were conveyed at owner's risk, a reduction should be made from the full parcels scale. It was admitted that when packed by the manufacturers the risk of breakage in transit was negligible. Resps. contended that in the case of goods carried by passenger train the difference between the owner's risk rate & the co.'s risk rate was not intended as a measure of the difference of risk :—*Held :* the difference in the risk to the railway cos. under the two sets of conditions being negligible, on the analogy of 1921 Act, s. 46 (3), there was no ground for directing that there should be two scales, but the discs, when properly packed, should be carried at co.'s risk, &, when not properly packed, at owner's risk. " Properly packed " means packed according to reasonable regulations made by the railway cos., the question of reasonableness to be settled by the Tribunal in case of difference.—BRITISH MUSIC INDUSTRIES FEDERATION *v.* CALEDONIAN RY. CO. (1922), 17 Ry. & Can. Tr. Cas. 121.

1323f. **Grounds for ordering.**]—Revised scales of rates based on the " zone " principle for the carriage of parcels by passenger train at co.'s risk & owner's risk respectively were put into force by resp. cos in Nov. 1918, & were subsequently twice increased in 1920 by uniform percentage additions in accordance with directions of the Minister of Transport. In May, 1923, new & reduced scales for the above traffic were introduced, whereby the above increases of 1920 were reduced in unequal proportions in order to remove what resp. cos. considered to be anomalies between the co.'s risk & owner's risk scales, with the result that the reductions made in the charges under the owner's risk scale were considerably less than those made in the charges under the co.'s risk scale. Upon an application under 1921 Act, s. 60, to reduce the rates for parcels containing sausages, etc., consigned by passenger train at owner's risk : —*Held :* looking to the circumstances in which the above percentage increases had been recommended & imposed & subsequently continued by 1921 Act, s. 60, the railway cos. were not entrusted with them for any purpose connected with the adjustment of relationships between scales of charge but for the purpose of meeting increased expenses, & in the absence of special circumstances the proper practice was to give equal reduction to all; taking the above owner's risk scale of Nov. 1918, & not that of 1914, as sought by appcts., as a basis of calculation, the owner's risk rates by passenger train on appcts.' above traffic should not exceed those in force in Sept. 1920, as reduced, by 25 per cent.—SAUSAGE MANUFACTURERS' ASSOCN. *v.* LONDON, MIDLAND & SCOTTISH RY. CO., LONDON & NORTH EASTERN RY. CO., GREAT WESTERN RY. CO., SOUTHERN RY. CO., & CHESHIRE LINES COMMITTEE (1924), 18 Ry. & Can. Tr. Cas. 59.

1326a. **Charges imposed by Ministry of Transport.**]—Appcts. claimed reductions in the charges made by resps. for the detention of ordinary wagons & sheets, which were in the case of wagons 3*s.* per day for the first two days after the expiration of the free periods allowed for loading & unloading & thereafter 5*s.* per day, & in the case of sheets 6*d.* & 1*s.* for the like periods. These charges had been imposed on & after Jan. 1, 1920, by an order of the Minister of Transport, made in accordance with a recommendation of the Rates Advisory Committee, with the object of diminishing wagon detention & causing traders to exercise more diligence in loading & unloading them. The charges in force in 1913 had been 1*s.* 6*d.* per day for wagons & 3*d.* per day for sheets after the free periods then given. Appcts. also claimed that in reckoning the above periods Saturday should be treated as half a day. Resps. contended that the charges complained of were reasonable, & also that it was not open to the ct. to reverse the policy of the Minister of Transport in making a differentiation between the first two days following the free periods & subsequent days :—*Held :* (1) the ct. had jurisdiction to modify the charges complained of; (2) having regard to the value of wagons & sheets as compared with 1913, the loss of profit to the railway cos. arising from detention, the standing & overall charges & the extra expenses of shunting & occupation of siding involved, the charges of 3*s.* per day for wagons & 6*d.* per day for sheets, while on the high side, were not unreasonable, but the additional charges of 2*s.* & 6*d.* per day upon wagons & sheets respectively after the expiration of the first two days beyond the free periods were no longer justified, & should be discontinued, & the existing arrangements with regard to

PART X. SECT. 9, SUB-SECT. 1.

sq. *Right of Minister of Transport to fix free time for detention—Under Ministry of Transport Act*, 1919 (c. 50), *s.* 3.]—NORTH BRITISH RY. CO. *v.* STEEL CO. OF SCOTLAND, LTD., [1922] S. C. (H. L.) 132; 59 Sc. L. R. 275.—SCOT.

g i. ——.]—R. *v.* FRANK A. GILLIS CO., LTD., [1923] Exch. C. R. 1; 70 D. L. R. 635.—CAN.

g ii. —— *Cars excepted from Rules—" Cars stored on carrier's or private track "—" Private cars on private track of car owner."*]—TORONTO HAMILTON & BUFFALO RY. CO. *v.* STEEL CO. OF CANADA (1923), 55 O. L. R. 63.—CAN.

Saturdays should not be interfered with.—BRITISH HAY TRADERS' ASSOCN. *v.* LONDON, MIDLAND & SCOTTISH RY. CO., LONDON & NORTH EASTERN RY. CO., SOUTHERN RY. CO., & GREAT WESTERN RY. CO., BRITISH INDUSTRIES FEDERATION *v.* SAME (1925), 18 Ry. & Can. Tr. Cas. 169.

1330. *Add. Annotation :—As to* (3) **Consd.** G. W. Ry. *v.* Laing (1922), 28 Com. Cas. 100.

1331a. —— **Congestion caused by increased traffic —Insufficiency of unloading sidings.**]—Pltf. co. had on their railway system at P. a small junction station, where there was a siding with sufficient accommodation for unloading the normal goods traffic consigned to that station. Defts. were contractors who were interested in one of three local building schemes which were started about the same time, involving a large increase in the goods traffic consigned to P. Owing to the congestion brought about in P. station by this increased traffic, & the fact that the unloading siding could only accommodate a limited number of wagons at a time, a number of the wagons arriving with goods at P. on defts.' account had to be put into storage sidings, to await their turn to be taken into the proper siding to be unloaded. Great delay in the discharge of wagons was caused thereby, but all the delay occurred at the storage sidings before the wagons were put into the unloading siding. Pltf. co. claimed from defts. exceptional charges for the detention of wagons in the storage sidings, under an implied contract or for accommodation or services provided or rendered by pltfs. to defts. within the scope of pltfs.' undertaking by the desire of defts. :—*Held :* as, on the facts of the case, the wagons were not put into the storage sidings at the desire of defts. they were not liable to pay the exceptional charges claimed.—GREAT WESTERN RY. CO. *v.* LAING (J.) & CO., LTD. (1922), 39 T. L. R. 93 ; 28 Com. Cas. 100, C. A.

1337. *Add. Annotation :—Generally,* **Refd.** Prentice *v.* L. & N. E. Ry. (1925), 18 Ry. & Can. Tr. Cas. 177.

1337a. -.]—PRENTICE BROTHERS, LTD. *v.* LONDON & NORTH EASTERN RY. CO., No. 1166b, *ante.*

1337b. **Terminal charges not in fact made.**]—Appcts. carried on business as timber merchants at a private siding about half a mile from resps.' station at R. They made no use of the station for their traffic. On an application to reduce the rates on appcts.' traffic on the grounds (1) that they were excessive, inasmuch as they were the same as those charged for similar traffic which made use of the station at R., & (2) that the rates in fact included charges for the use of the station, & resps. were not entitled to make any charge over & above the charge for conveyance :—*Held :* (1) the conveyance of appcts.' traffic started from or ended at a siding in the R. station, & resps. were entitled to charge for any services prior or subsequent to such conveyance, & such services were in fact rendered & the charges were not excessive.

(2) The ct. will not infer that station terminals are being paid simply because a siding rate & a station rate are the same in amount. It is only open to the ct. to do so when comparable traffics are passing from the station & the siding under such rates.—DIXON (T. & M.) LTD. *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1924), 18 Ry. & Can. Tr. Cas. 46.

1342. *Add. Annotation :—As to* (1) **Consd.** G. W. Ry. *v.* Laing (1922), 39 T. L. R. 93.

1349. *Add. Annotation :—As to* (2) **Refd.** Dixon *v.* L. M. & S. Ry. (1924), 18 Ry. & Can. Tr. Cas. 46.

1349a. **Application for increase — Before "appointed day"—1921 Act, s. 60.**]—The Railway Rates Tribunal has jurisdiction under the proviso to the above sect. to entertain, prior to "the appointed day" to be fixed under that Act, an application by a private siding owner for an increase in a rebate allowed him & for a consequent reduction in charge, & that jurisdiction is not qualified or excluded by the provisions of sect. 61 of the above Act, as to charges in connection with private sidings, the expression "charges" in sect. 60 including not only gross charges, but also the net charges payable by a trader after allowing for any rebate to which he may be entitled.—BRITISH EXTRACTING CO., LTD., BRITISH SOAP CO., LTD., & BRITISH CREAMERIES, LTD. *v.* LONDON & NORTH EASTERN RY. CO. (1925), 18 Ry. & Can. Tr. Cas. 102, C. A.

Annotations: —**Apld.** British Hay Traders' Assocn. *v.* L. M. & S. Ry., L. & N. E. Ry., Southern Ry. & G. W. Ry., British Industries Federation *v.* Same (1925), 18 Ry. & Can. Tr. Cas. 169. **Refd.** Paul *v.* L. & N. E. Ry. (1927), 19 Ry. & Can. Tr. Cas. 228.

1364. *Add. Annotation :*—**Refd.** Tate & Lyle *v.* L. & N. E. Ry. & L. M. & S. Ry. (1926), 43 T. L. R. 134.

1373. *Add. Annotation :*—**Consd.** *Re* Standard Charges (Collection & Delivery) (1925), 19 Ry. & Can. Tr. Cas. 53.

SECT. 12.—REDUCTION OF RATES
(Vol. VIII., p. 217).

1377a. Who may apply for—Trader "interested" —Warehouseman & forwarding agent.]—Appcts., who were warehousemen & forwarding agents at Trafford Park, Manchester, & who had unsuccessfully applied to the Railway Comrs. in respect of an alleged undue preference founded on the same facts, applied for a reduction in a rate of 106*s.* 7*d.*, formerly 107*s.*, charged upon cigarettes consigned in two-ton lots from their Trafford Park warehouse, which was near to, but outside, the Manchester Docks, to King's Cross, London, upon the ground that the corresponding rate from Liverpool was 54*s.* 6*d.*, provisionally reduced to 50*s.* The lower rate was also charged on similar traffic consigned from Manchester Docks, while the higher rate was the ordinary Manchester town rate. Appcts. contended that where traffic as to which the conditions were in all respects alike is sent from two places A. & B. in the same district to the same destination, the same railway co. shall not charge a higher sum from A. than from B., unless the distance of the destination

PART X. SECT. 11, SUB-SECT. 3.

1365 ii. —— *Long-standing voluntary toll.*]—Where an increase in a long-standing voluntary toll is sought, the *onus* is on the carrier to establish its reasonableness.—NATIONAL DAIRY COUNCIL *v.* GRAND TRUNK & CANADIAN PACIFIC RY. COS. (MILK RATE CASE) (1919), 26 Can. Ry. Cas. 113.—CAN.

in the case of A. is greater than the distance in the case of B., provided that the rate in the case of A. is a productive rate. They admitted that conditions could not be treated as in all respects alike, if in the one case there was competition which did not exist in the other. Resps. objected that appcts. were not interested traders within 1921 Act, s. 60, & that the rate complained of, which was the ordinary Manchester town rate, was reasonable:—*Held:* (1) while something in the nature of a direct interest must be shown, the interest of appcts. in the above charges was sufficiently direct to entitle them to prosecute these proceedings; (2) in deciding what was a reasonable rate to be charged to appcts., regard should be had to the following considerations: (a) that it was not enough for a trader to show that without a reduction in rate he could not carry on a particular branch of his business; (b) that when railway cos. declared that in their own interests they could not grant facilities or reductions in rates, it would not be right for that ct. to compel them to adopt such a course of business unless appcts. showed that the railway cos. were mistaken; (c) that it was not intended by 1921 Act to establish the principle of equal mileage rates for all places & the consequent adoption of exceptional rates based on competition by water or road as the standard for all rates whether such competition existed in other places or not, & therefore that the existence of a low exceptional rate, not being in fact an undue preference, while a fact to be considered, was not alone a sufficient ground for ordering the reduction of a rate for goods in competition with those having the benefit of the low rate; (3) applying the above principles & taking all the circumstances into account, appcts. should be allowed a rate of 72*s.* 6*d.* subject to any general revision of rates.—PORT OF MANCHESTER WAREHOUSES, LTD. *v.* CHESHIRE LINES COMMITTEE, GREAT CENTRAL RY. CO., & GREAT NORTHERN RY. CO. (1922), 17 Ry. & Can. Tr. Cas. 95.

1377b. Grounds for ordering—Necessity for primâ facie case.]—Confectionery in bottles & jars was carried by the railway cos. originally at co.'s risk, & subsequently under certain agreed packing conditions. In 1920 the cos., without making any reduction in rates, refused to carry confectionery packed as above except at owner's risk, owing to the heavy proportion of claims against them for damage. They continued to carry confectionery not contained in bottles & jars at co.'s risk. Upon an application for a reduction in the rates for confectionery when contained in bottles & jars:—*Held:* (1) an appct. for a reduction in rates must make a *primâ facie* case for the same; (2) such a case had been made upon the above facts; (3) the cos. were not precluded from making special conditions by reason of the fact that they for some time had carried the above goods without conditions; (4) while certain losses in respect of confectionery not contained in bottles & carried at co.'s risk were borne by the cos., which losses did not arise in the case of confectionery in bottles carried at owner's risk, the saving to the cos., *e.g.* 4 or 5 per cent., was not sufficient to justify a reduction in rate.—MANUFACTURING CONFECTIONERS' ALLIANCE, INCORPORATED *v.* CALEDONIAN RY. CO. (1922), 17 Ry. & Can. Tr. Cas. 135.

1377c. ——.]—PORT OF MANCHESTER WAREHOUSES, LTD. *v.* CHESHIRE LINES COMMITTEE, GREAT CENTRAL RY. CO. & GREAT NORTHERN RY. CO., No. 1377a, *ante*.

1377d. —— Experimental rate.]—Upon an application for an experimental reduced rate of 40*s.* per ton for flax straw in full train loads for a transit of approximately 200 miles, resp. railway cos. offered for a period of five months a rate of 45*s.*, plus siding haulage charge. The ordinary class rate was 88*s.* 2*d.*, less 12½ per cent. Similar traffic was being carried to the same destination from places forty or fifty miles away at approximately the same rate as that offered:—*Held:* the rate should be 45*s.* *Qu.*: whether the Tribunal ought to take into account the possibility that an experimental rate will result in bringing a large future traffic.—MARSH *v.* GREAT EASTERN & GREAT WESTERN RY. COS. (1922), 17 Ry. & Can. Tr. Cas. 129.

1377e. —— Removal of flat-rate additions imposed by Minister of Transport.]—Upon applications to remove certain flat-rate additions to the rates on appcts.' traffic which had been imposed by the Minister of Transport in exercise of his powers under Ministry of Transport Act, 1919 (c. 50), s. 3 (1) (*c*):—*Held:* (1) the ct. would not assume that the Minister was wrong in imposing such flat-rate additions; (2) it was not competent to the ct. to remove such flat-rate additions on the ground that the reasons given in support of their imposition by the former Rates Advisory Committee were not applicable to appcts.' traffic; (3) the rates on appcts.' traffic were not excessive, notwithstanding that the percentage increase resulting from such flat-rate additions was greater on traffic carried at low mileage rates than on that carried at higher mileage rates, & that larger reductions in rates had been given to blast furnace than to appcts.', *i.e.*, coal, traffic.

(4) A rate is not necessarily excessive because a railway co. are not handing back on balance to the traders all the savings that they are making in reduced expenses.—MONMOUTHSHIRE & SOUTH WALES COAL OWNER'S ASSOCN. *v.* GREAT WESTERN RY. CO., MONMOUTHSHIRE & SOUTH WALES COKE OVENS & BYE-PRODUCTS WORKS ASSOCN. *v.* SAME, SOUTH WALES PATENT FUEL MANUFACTURERS' ASSOCN. *v.* SAME (1923), 18 Ry. & Can. Tr. Cas. 1.

1377f. —— Reductions granted to other interests.]—Upon an application for the removal of a flat-rate increase of 2*d.* per ton, being part of a larger increase which originally had been imposed on appcts.' traffic in coal, coke & patent fuel in accordance with a second general revision of rates directed by the Minister of Transport which had since been voluntarily reduced by resps., the following grounds were relied upon by appcts. in support of their case: (1) that a greater proportionate reduction in rates had been given to the traffic of certain admittedly necessitous industries than to their traffic; (2) that their traffic, & in particular their short distance traffic, had increased in density since the above increase in rates, thereby producing an exceptional profit for resps.; & (3) that they apprehended in the future an intensive foreign competition which a reduction in railway rates would

assist them to meet:—*Held:* (1) the reductions in rates granted by resps. to the traffic of other industries were justified & did not establish a case of hardship or injustice to appcts.; (2) while it was doubtful as to how far the increase in coal traffic had resulted in increased profit to resp. cos., the period of prosperity in appcts.' trade which was mainly due to the abnormal European political situation was passing away; (3) in an application for a reduction of a rate under 1921 Act, s. 60, the *onus* lay upon an appct. to show the existence of some element of unfairness or of hardship amounting to unfairness, & appcts. had not discharged that *onus* by alleging that a reduction in rates would assist.—MINING ASSOCN. OF GREAT BRITAIN *v* LONDON, MIDLAND & SCOTTISH, LONDON & NORTH EASTERN, GREAT WESTERN, & SOUTHERN RY. COS., & CHESHIRE LINES COMMITTEE, NATIONAL ASSOCN. OF COKE & BYE-PRODUCT PLANT (OWNERS) *v.* SAME (1924), 18 Ry. & Can. Tr. Cas. 14.

1377g. —— **Abolition of free storage facilities.**]—Appcts., the owners of a warehouse at Trafford Park, Manchester, claimed that a rate of 10*s.* 11*d.* per ton for sugar from Liverpool to their private siding at Trafford Park, being the same amount as the corresponding rate from Liverpool to resp. co.'s Oldham Road station at Manchester, should be reduced by an amount equal to the cost incurred by resps. in providing terminal accommodation & services, including twenty-eight days' free warehousing, at their Manchester station. No sugar had been consigned by rail to appcts.' warehouse, nor was there any evidence that any trader desired to consign sugar to it. Prior to the war resps. had given fourteen days' free storage at Manchester for sugar in view of similar free accommodation provided by competing water-carriers from Liverpool to Manchester. This facility having been withdrawn by resps., they had lost as a result a large part of their sugar traffic from Liverpool to Manchester, &, therefore, as from Nov. 1923, had restored the above free storage for an extended period of twenty-eight days:—*Held:* the ct. had no jurisdiction to abolish the facility of free storage, there was no evidence that the 10*s.* 11*d.* rate to Trafford Park was unreasonable or excessive, & there was no presumption that the rate when compared with the corresponding rate to Oldham Road station was unreasonable, because the latter included free storage at that station.—PORT OF MANCHESTER WAREHOUSES, LTD. *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1925), 18 Ry. & Can. Tr. Cas. 81.

1377h. ——.]—Upon an application that the rates on molasses intended to be used for cattle feeding which, with certain exceptions, was in Class 1 of the 1891-2 classification, should be reduced & placed on the same basis as the rates for oilcake & meals, which were in Class 3 of that classification:—*Held:* there was no evidence that the rates complained of were unjust or unreasonable except by comparing them with the treatment of another article in another class, & the ct. had not power at that stage to alter the classification.—NATIONAL ASSOCN. OF CORN & AGRICULTURAL MERCHANTS *v.* LONDON, MIDLAND & SCOTTISH RY. CO., CROSFIELD'S OIL & CAKE CO., LTD. *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1925), 18 Ry. & Can. Tr. Cas. 97.

1377i. —— **Group rates.**]—GOOD (JOHN) & SONS, LTD. *v.* LONDON & NORTH EASTERN RY. CO. (1927), 19 Ry. & Can. Tr. Cas. 191.

1377j. **Burden of proof—On applicant.**]—MINING ASSOCN. OF GREAT BRITAIN *v.* LONDON, MIDLAND & SCOTTISH, LONDON & NORTH EASTERN, GREAT WESTERN, & SOUTHERN RY. COS., & CHESHIRE LINES COMMITTEE, NATIONAL ASSOCN. OF COKE & BYE-PRODUCT PLANT (OWNERS) *v.* SAME, No. 1377f, *ante.*

1377k. —.]—EBBW VALE STEEL, IRON & COAL CO., LTD. *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1927), 19 Ry. & Can Tr. Cas. 207.

1377l. **Power of railway company during transitional period until "appointed day"—To raise reduced rates.**]—Under 1921 Act, s. 60, the rates in existence on Aug. 15, 1921, are maximum rates, & the railway cos. are entitled to reduce them, & to raise them again without applying to the Railway Rates Tribunal, if by so doing they do not exceed the maximum.

Where, on Aug. 15, 1921, there was a rate for sugar & a lower rate for sugar in four-ton lots, & the railway cos. subsequently conceded a still lower rate for sugar in five-ton lots:—*Held:* the five-ton rate was not a new rate, & on Aug. 15, 1921, there was a rate in force for sugar in five-ton lots, namely the rate for sugar in four-ton lots.—TATE & LYLE, LTD. *v.* LONDON & NORTH EASTERN RY. CO. & LONDON, MIDLAND & SCOTTISH RY. CO. (1926), 43 T. L. R. 134; 71 Sol. Jo. 82; 20 Ry. & Can. Tr. Cas. 166, H. L.

Annotation:—**Consd.** Great Western Ry. Co. *v.* Boon (1928), 20 Ry. & Can. Tr. Cas. 63.

What rates—Owner's risk rates.]—*See* Nos. 1323e, 1323f, *ante.*

—— **Charges for detention.**]—*See* No. 1326a, *ante.*

SECT. 13.—OTHER CASES.

1377m. **Power during transitional period to make "such charges as were in force"—Meaning of.**]—"Such charges as were in force," in sect. 60 of 1921 Act, mean such charges as the co. were holding themselves out as claiming for the particular service in question. GREAT WESTERN RY. CO. *v.* BOON (1928), 20 Ry. & Can. Tr. Cas. 63.

1377n. —.]—TATE & LYLE, LTD. *v.* LONDON & NORTH EASTERN RY. CO. & LONDON, MIDLAND & SCOTTISH RY. CO., No. 1377l, *ante.*

Part XI.—Remedies of and against Carriers.

1378. *Add. Annotation :*—**Refd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

1389. *Add. Annotation :*—**Apld.** R. *v.* Harding (1929), 46 T. L. R. 105.

1390. *Add. Annotation :*—**Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

1398. *Add. Annotation :*—*As to* (1) **Refd.** Pennington *v.* Reliance Motor Works, [1923] 1 K. B 127.

1435. *Add. Annotation :*—**Refd.** Oakley *v.* Lyster, [1931] 1 K. B. 148.

1449. *Add. Citation :*—91 L. J. K. B. 39.

Add. Annotations :—**Refd.** Anderson *v.* Equitable Life Assce. Soc. of the United States (1926), 134 L. T. 557; Dexters *v.* Hill Crest Oil Co. (Bradford), [1926] 1 K. B. 348.

PART XI. SECT. 1, SUB-SECT. 2.

sb. *Goods carried under approved bill of lading—Action by connecting carrier against shipper—Not maintainable.*]—NEW YORK CENTRAL RY. CO. *v.* ELLIOTT (N. S.), [1928] 2 D. L. R. 973; 34 Can. Ry. Cas. 246.—**CAN.**

sc. *Agreement as to freight charge—Subsequent additional charges according to "special joint tariff"—No liability to pay.*]—NEW YORK CENTRAL RY. CO. *v.* JOSEPH DOLAN & SONS, LTD., [1929] 1 D. L. R. 817; 35 C. R. C. 333; 63 O. L. R. 341.—**CAN.**

PART XI. SECT. 1, SUB-SECT. 4.—A. (a).

1391 vii. —— *Waiver.*]—CONBOY *v.* MILLSAP, [1930] 3 W. W. R. 161.—**CAN.**

st. *Payment for services rendered—Towing damaged motor car.*]—TERRY *v.* AUTOMOBILE OWNERS ASSOCN., No. 15 1, *ante.*

PART XI. SECT. 2, SUB-SECT. 1.

sx. *Consignee—Damage to goods en route—Owner having paid damage to consignee.*]—Where an owner of goods had indorsed a bill of lading to the buyer: —*Held:* he had parted with all his rights to obtain damages from the carrier. The fact that the owner paid the indorsee the damages suffered by the goods *en route* did not deprive the latter of his right of action against the carrier.—FORD MOTOR CO. *v.* UNION S.S. Co., [1925] 1 D. L. R. 265; [1924] 3 W. W. R. 718.—**CAN.**

CASE, ACTION ON THE.

See ACTION; BAILMENT.

CASE STATED.

See ARBITRATION; MAGISTRATES.

CATCHING BARGAIN.

See FRAUDULENT AND VOIDABLE CONVEYANCES.

CATTLE.

See ANIMALS; COMMONS; DISTRESS; HIGHWAYS; MARKETS.

CATTLEGATE.

See COMMONS.

CAVEAT.

See ADMIRALTY ; EXECUTORS.

CAVEAT EMPTOR.

See SALE OF GOODS ; SALE OF LAND.

CELLAR.

See PUBLIC HEALTH ; RATES.

CHARITIES.

Part I.—Charitable Purposes.

1. *Add. Annotations :—As to* (1) **Consd.** Jackson's Trustees *v.* Lord Advocate (1926), 10 Tax Cas. 460. **Folld.** *Re* Williams, Public Trustee *v.* Williams, [1927] 2 Ch. 283. **Refd.** R. *v.* Income Tax Special Comrs., *Ex p.* Rank's Trustees (1922), 127 L. T. 651 ; Jackson *v.* Voss, [1923] 2 K. B. 357 ; Brighton College *v.* Marriott (1924), 69 Sol. Jo. 229 ; I. R. Comrs. *v.* Glasgow Musical Festival Assocn. (1926), 11 Tax Cas. 154 ; Scottish Woollen Technical College, Galashiels *v.* I. R. Comrs. (1926), 11 Tax Cas. 139 ; Adamson *v.* Melbourne & Metropolitan Board of Works, [1929] A. C. 142. *As to* (2) **Consd.** A.-G. *v.* National Provincial Bank, [1924] A. C. 262 ; Verge *v.* Somerville, [1924] A. C. 496 ; Chesterman *v.* Federal Taxation Comr. (1925), 42 T. L. R. 121 ; R. *v.* Income Tax Special Comrs., *Ex p.* Headmasters' Conference, Same *v.* Same, *Ex p.* Incorporated Assocn. of Preparatory Schools (1925), 41 T. L. R. 651 ; Jackson's Trustees *v.* Lord Advocate (1926), 10 Tax Cas. 460 ; I. R. Comrs. *v.* Yorkshire Agricultural Soc. (1927), 44 T. L. R. 59. **Apld.** General Medical Council *v.* I. R. Comrs., English Branch Council of General Medical Council *v.* Same (1928), 97 L. J. K. B. 578. **Distd.** Geologists' Assocn. *v.* I. R. Comrs. (1928), 14 Tax Cas. 271 ; *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557 ; Hunter (Sir G. B.) (1922) "C" Trust, Trustees *v.* I. R. Comrs. (1929), 14 Tax Cas. 427. **Consd.** Girls' Public Day School Trust *v.* Ereaut (1930), 99 L. J. K. B. 643. **Distd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465. **Refd.** Barber *v.* Chudley (1922), 92 L. J. K. B. 711 ; R. *v.* Income Tax Special Comrs., *Ex p.* Rank's Trustees (1922), 127 L. T. 651 ; *Re* Hummeltenberg, Beatty *v.* London Spiritualistic Alliance, [1923] 1 Ch. 237 ; *Re* Ludlow, Bence-Jones *v.* A.-G. (1923), 93 L. J. Ch. 30 ; *Re* Shakespeare Memorial Trust, Lytton *v.* A.-G., [1923] 2 Ch. 398 ; *Re* Gray, Todd *v.* Taylor, [1925] Ch. 362 ; I. R. Comrs. *v.* Falkirk Temperance Café Trust (1926), 11 Tax Cas. 353 ; I. R. Comrs. *v.* Glasgow Musical Festival Assocn (1926), 11 Tax Cas. 154 ; I. R. Comrs. *v.* Peeblesshire Nursing Assocn. (1926), 11 Tax Cas. 335 ; Scottish Woollen Technical College, Galashiels *v.* I. R. Comrs. (1926), 11 Tax Cas 139 ; *Re* Hood, Public Trustee *v.* Hood (1930), 143 L. T. 691 ; Luipaard's Vlei Estate & Gold Mining Co. *v.* I. R. Comrs., [1930] 1 K. B. 593 ; *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

1a. ——.]—VERGE *v.* SOMERVILLE, No. 199b, *post.*

2. *Add. Annotations :*—**Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258 ; *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

3. *Add. Annotation :*—**Refd.** A.-G. *v.* London & Home Counties Joint Electricity Authority, [1929] 1 Ch. 513.

3a. —— **Motive immaterial.**]—(1) Motive is immaterial in considering whether a bequest is charitable.

(2) A gift to provide a stained glass window in a church is a good charitable gift even though the motive may be said to be neither to beautify the church nor benefit the parishioners, but merely to perpetuate the memory of testatrix & her relatives.

(3) Where a gift is made for a particular charitable purpose which is sufficiently provided for without the gift, the gift must be applied *cy près.*—*Re* KING, KERR *v.* BRADLEY, [1923] 1 Ch. 243 ; 92 L. J. Ch. 292 ; 128 L. T. 790 ; 67 Sol. Jo. 313.

Annotation :—As to (3) **Folld.** *Re* Robertson, Colin Chamberlin, [1930] 2 Ch. 71.

4a. —— —— **Question for court.**]—To be valid a charitable bequest must be for the public benefit, & the trust must be capable of being administered & controlled by the ct. The opinion of the donor of a gift or the creator of a trust that the gift or trust is for the public benefit does not make it so, the matter is one to be determined by the ct. on the evidence before it.—*Re* HUMMELTENBERG, BEATTY *v.* LONDON SPIRITUALISTIC ALLIANCE, [1923] 1 Ch. 237 ; 92 L. J. Ch. 326 ; 129 L. T. 124 ; 39 T. L. R. 203 ; 67 Sol. Jo. 313.

Annotations :—**Consd.** I. R. Comrs. *v.* Temperance Council of Christian Churches of England & Wales (1926), 136 L. T. 27. **Apprvd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

4b. —— ——.]—*Re* GROVE-GRADY, PLOWDEN *v.* LAWRENCE, No. 208a, *post.*

12a. —— —— —— **Beneficiaries formerly helped by testator.**]—*Re* SHEPHERD, SMITHEM *v.* SHEPHERD (1921), 152 L. T. Jo. 18.

21a. —— **Widows with children dependent on them—Valid.**]—*Re* DE CARTERET, FORSTER *v.* DE CARTERET (1932), 48 T. L. R. 555 ; 76 Sol. Jo. 474.

22. *Add. Annotation :*—**Folld.** *Re* Lucas, Rhys *v.* A.-G., [1922] 2 Ch. 52.

23. *Add. Annotation :*—**Refd.** Verge *v.* Somerville, [1924] A. C. 496.

23a. —— —— **Trade union certified to be war charity—Necessity for registration under War Charities Act, 1916 (c. 43).**]—The National League of the Blind of Great Britain & Ireland, a registered trade union whose funds were derived from subscriptions of members, & gifts by the public, was certified by the Charity Comrs. as a charity for the blind, but had not been registered as a charity under the above Act, nor under Blind Persons Act, 1920 (c. 49). Applt. having been con-

PART I. SECT. 1.

1 vi. —— *Estate Duty Assessment Act,* 1914, *s.* 8 (5).]—The word "charitable" in the above sect. is to be construed in its legal & not its popular sense.—CHESTERMAN *v.* FEDERAL COMR. OF TAXATION, [1926] A. C. 128 ; 95 L. J. P. C. 39 ; 134 L. T. 360 ; 42 T. L. R. 121. —AUS.

3 ii. —— *Purpose not source.*]—In determining whether a gift to an assocn. is a gift for charitable purposes, the ct. may inquire into the objects of the assocn. & if these are found to be charitable within Stat. Eliz. the ct. may hold the gift to be for charitable purposes.—PERPETUAL TRUSTEE CO., LTD. *v.* SHELLEY (1921), 21 S. R. N. S. W. 426 ; 38 N. S. W. W. N 132. —AUS.

victed of having solicited & obtained money from members of the public :—*Held :* the League was a charity as well as a trade union, & required to be registered under both those Acts, & the conviction must be affirmed.—BARBER *v.* CHUDLEY (1922), 92 L. J. K. B. 711 ; 128 L. T. 766 ; 87 J. P. 69 ; 21 L. G. R. 114, D. C.

23b. —— **"Oldest respectable inhabitants"—Valid.**]—Testator gave the income to be derived from all his securities to A., for her life, & after her decease to "the oldest respectable inhabitants in G. to the amount of 5*s.* per week each" :—*Held :* the amount of the gift implied poverty, &, coupled with the use of the word "oldest," implying age, was sufficient to render the gift a good charitable bequest.—*Re* LUCAS, RHYS *v.* A.-G., [1922] 2 Ch. 52 ; 91 L. J. Ch. 480 ; 127 L. T. 272 ; 66 Sol. Jo. 368.

Annotation :—**Refd.** *Re* Roadley, Iveson *v.* Wakefield, [1930] 1 Ch. 524.

23c. **Disabled soldiers of former enemy country—Valid.**]—Testator devised & bequeathed the residue of his property "to the German Govt. for the time being for the benefit of its soldiers disabled in the late war . . . in the event of this . . . being for any reason held to be void, then I give devise & bequeath the whole of such residue to General Smuts of the Transvaal, upon trust to retain thereout for himself absolutely the sum of £1,000 . . . & upon trust as to the residue to apply the same at his discretion & in such manner as he may think fit for the benefit of any disabled Boers who have suffered through the South African War. . . ." The German Govt. had notified its willingness to accept the legacy if it should be held to be valid ; General Smuts had also expressed his willingness to accept the alternative trust should it become effective. Upon a summons asking the ct. to determine whether the devise & bequest to the German Govt. was void for uncertainty or otherwise : wise :—*Held :* (1) the gift did not fail for uncertainty ; (2) there was no objection to the gift from the point of view of public policy ; (3) the trustee being abroad, the ct. had no power to direct a scheme, & in such cases the practice was to hand over the fund to be applied according to the trusts of the will.

(4) A scheme directed by this ct. in relation to gifts for charitable purposes is not necessarily or, I think, generally, a scheme for the application of the fund *cy-près* (MAUGHAM, J.).—*Re* ROBINSON, BESANT *v.* GERMAN REICH, [1931] 2 Ch. 122 ; 100 L. J. Ch. 321 ; 145 L. T. 254 ; 47 T. L. R. 264.

Annotation :—*As to* (2) **Consd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465.

27. *Add. Annotation :*—**Consd.** *Re* Lucas, Rhys *v.* A.-G., [1922] 2 Ch. 52.

27a. —— ——.]—Testatrix gave the income of certain shares in a public co. for the education of children of employees of the co. & gave the income of further shares in the co. for the benefit of incapacitated employees, the income in each case to be applied by the governors of the co., in their discretion :—*Held :* both gifts were good charitable bequests, the first being for promoting education & the second for the alleviation of poverty.—*Re* RAYNER, CLOUTMAN *v.* REGNART (1920), 89 L. J. Ch. 369 ; 122 L. T. 577 ; 84 J. P. 61.

29. *Add. Annotation :*—**Consd.** *Re* Lucas, Rhys *v.* A.-G., [1922] 2 Ch. 52.

30. *Add. Annotation :*—**Consd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465.

34a. **Distributing coal & making loans to poor & deserving inhabitants.**]—Testator, a native of F., a small village, bequeathed his residuary estate to trustees upon trust to set aside £800 as a "Coal Fund," the income whereof was to be used for the purchase of coal to be distributed among such poor & deserving inhabitants of F. as a committee should think fit, & to hold the rest of his residuary estate as a "Loans Fund" & to apply the capital & income thereof, under the direction of the committee, "in making loans to poor & deserving inhabitants of the parish of F. in manner hereinafter provided." No loan was to exceed £100, repayable within nine years at longest. No interest was to be charged & no borrower to have more than one loan. Only one-sixth part of the fund was to be lent in any one year, & the borrowers were to be inhabitants or residents of F. not above the age of thirty-five years. Testator directed that "all surplus money forming part of or arising from the 'Loans Fund' over & above £500 & not required for loans shall be invested by the trustees under the direction of the committee, but all investments purchased shall be from time to time sold for the purpose of advancing the produce thereof in loans if & when required" :—*Held :* (1) the will displayed a general charitable intention & contained an immediate & effective gift of the whole of the residue to charity, displacing the claim of the next of kin ; (2) the question of accumulation beyond the period allowed by law did not arise, the possibility of a surplus hereafter not impairing the validity of the immediate gift to charity ; (3) the doctrine of *cy-près* could be at once applied, if necessary, to any surplus income after the period allowed by law for accumulation had expired.—*Re* MONK, GIFFEN *v.* WEDD, [1927] 2 Ch. 197 ; 96 L. J. Ch. 296 ; 137 L. T. 4 ; 43 T. L. R. 256, C. A.

Annotation :—*As to* (1) **Refd.** I. R. Comrs. *v.* Roberts Marine Mansions Trustees (1927), 43 T. L. R. 270.

36. *Add. Annotation :*—**Refd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

42a. —— —— **Maintenance of patients from particular parish.**]—A testator, by his will, gave a sum of £3,000 to his trustees upon trust for investment & directed that the yearly income thereof should be applied "in payment of the expenses & maintenance of patients from the parishes of" S. & S. to & at two named hospitals or either of them :—*Held :* the gift was a trust for the relief of impotent & poor persons within the purposes set out in the preamble to the Statute of Elizabeth & was a valid charitable bequest.—*Re* ROADLEY, IVESON *v.* WAKEFIELD, [1930] 1 Ch. 524 ; 99 L. T. Ch. 232 ; 144 L. T. 64 ; 46 T. L. R. 215.

PART I. SECT. 2, SUB-SECT. 1.

b 1. —— *Indigent gentlewomen.*]—*Held :* a true charitable bequest.—*Re* CAMPBELL, PEACOCK *v.* EWEN, [1930] N. Z. L. R. 713.—N.Z.

45. *Add. Annotations:*—**Apld.** I. R. Comrs. *v.* Roberts Marine Mansions Trustees (1927), 43 T. L. R. 270. **Folld.** *Re* Chaplin, Neame *v.* A.-G. (1932), 76 Sol. Jo. 576; *Re* James, Grenfell *v.* Hamilton (1932), 48 T. L. R. 250. **Refd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407.

46. *Add. Annotations:*—**Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407; *Re* De Carteret, Forster *v.* De Carteret (1932), 76 Sol. Jo. 474. **Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

47a. **Nursing home—Persons of moderate means—Gift charitable.**]—Testator made the following gift in his will: "I give & bequeath all the residue & remainder of my estate not otherwise disposed of by this my will to: (a) such institution, society or nursing home, or nursing homes, or similar institutions as assist or provide for persons of moderate means such as clerks, governesses & others who may not be able or eligible to benefit under the National Health Insurance Act, Old Age Pensions, or other Act of a like character to have either surgical operations performed together with medical treatment or medical treatment alone on payment of some moderate contribution; (b) the Royal National Lifeboat Institution; (c) the Lister Institute of Preventive Medicine; (d) & such other funds, charities & institutions as my exors. in their absolute discretion shall think fit; & I direct that such residue shall be divided amongst the legatees named in the paragraphs (a), (b), (c), & (d) lastly hereinbefore contained in such shares & proportions as my trustees shall determine." It was admitted that the objects under (b) & (c) were charitable. On the question whether the residue was validly disposed of by the will or failed in whole or in part for uncertainty:—*Held:* (1) the objects included under paragraph (a) were charitable since the means of the recipients would necessitate their being unable without the bounty of testator to procure the treatment of which they might stand in need; (2) the objects specified under heading (d) being for such indefinite charitable & non-charitable objects as the exors. should think fit were not exclusively charitable, & therefore though a trust for charitable & non-charitable indefinite purposes indiscriminately failed by reason of uncertainty, this trust being of a part of a fund for charitable purposes & another part for non-charitable indefinite purposes the ct. could ascertain what the parts were.—*Re* CLARKE, BRACEY *v.* ROYAL NATIONAL LIFEBOAT INSTITUTION, [1923] 2 Ch. 407; 92 L. J. Ch. 629; 129 L. T. 310; 39 T. L. R. 433; 67 Sol. Jo. 680.

Annotation:—**Consd.** *Re* De Carteret, Forster *v.* De Carteret (1932), 76 Sol. Jo. 474.

47b. **"Home of Rest"—Lady teachers—Valid.**]—*Re* ESTLIN, PRICHARD *v.* THOMAS, No. 45, *ante*.

47c. **— Sisters of a Community & Clergy—Valid.**]—Testatrix devised a freehold house to her trustees in trust to establish a Home of Rest for the Sisters of a Community, for the Clergy of the Diocese of Truro, & such persons as the Mother Superior of the Community should nominate & appoint, & bequeathed £6,000, the interest of which should be applied to repair the house & maintain & support the inmates. The Sisters of the Community were engaged on charitable work & their individual incomes were pooled. It was doubtful whether it was practicable to carry on the Home of Rest with the resources available:—*Held:* (1) the devise & bequest were a good charitable trust; (2) the Sisters & the Clergy were good objects of a charity; (3) the Mother Superior should only appoint persons who were suitable objects of a charity, & to do otherwise would be a breach of trust; (4) there should be an inquiry in Chambers whether it would be practicable now or at any future time to establish the Home of Rest, & if so to settle a scheme; (5) & if it was found not practicable the question must be determined whether the trust failed or should be applied *cy-près*.—*Re* JAMES, GRENFELL *v.* HAMILTON, [1932] 2 Ch. 25; 101 L. J. Ch. 265; 146 L. T. 528; 48 T. L. R. 250; 76 Sol. Jo. 146.

Annotation:—*As to* (1) **Folld.** *Re* Chaplin, Neame *v.* A.-G., 76 Sol. Jo. 576.

47d. **For means of physical & mental recuperation—Valid.**]—*Re* CHAPLIN, NEAME *v.* A.-G. (1932), 76 Sol. Jo. 576.

48. *Add. Annotations:*—**Consd.** Chesterman *v.* Federal Taxation Comr. (1925), 42 T. L. R. 121. **Apld.** *Re* Williams, Public Trustee *v.* Williams, [1927] 2 Ch. 283. **Consd.** *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383. **Refd.** Geologists' Assocn. *v.* I. R. Comrs. (1928), 14 Tax Cas. 271; *Re* Barclay, Gardner *v.* Barclay, Steuart *v.* Barclay, [1929] 2 Ch. 173; *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276; *Re* Bain, Public Trustee *v.* Ross, [1930] 1 Ch. 224.

49. *Add. Annotations:*—**Consd.** Chesterman *v.* Federal Taxation Comr. (1925), 42 T. L. R. 121. **Apld.** *Re* Williams, Public Trustee *v.* Williams, [1927] 2 Ch. 283. **Refd.** Geologists' Assocn. *v.* I. R. Comrs. (1928), 14 Tax Cas. 271; *Re* Barclay, Gardner *v.* Barclay, Steuart *v.* Barclay, [1929] 2 Ch. 173; *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276.

50. *Add. Annotations:*—*As to* (1) **Refd.** *Re* Stratton, Stratton *v.* A.-G., [1930] 2 Ch. 151. *As to* (2) **Consd.** Geologists' Assocn. *v.* I. R. Comrs. (1928), 14 Tax Cas. 271. **Refd.** *Re* Barclay, Gardner *v.* Barclay, Steuart *v.* Barclay, [1929] 2 Ch. 173. *As to* (2) **Refd.** *Re* Bain, Public Trustee *v.* Ross, [1930] 1 Ch. 224.

57. *Add Annotation:*—*As to* (2) **Apld.** *Re* Gray, Todd *v.* Taylor, [1925] Ch. 362.

62. *Add. Annotation:*—**Refd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

66. *Add. Annotation:*—**Refd.** Brighton College *v.* Marriott (1924), 69 Sol. Jo. 229.

68. *Add. Annotations:*—**Apld.** *Re* Hood, Public Trustee *v.* Hood (1930), 143 L. T. 691. **Refd.** I. R. Comrs. *v.* Temperance Council of Christian Churches of England & Wales (1926), 136 L. T. 27.

68a. **Advancement of Christian principles.**]—H. died on July 12, 1922, having made his will on May 24, 1921, in which he directed that

aa. *Political economy—Furtherance of better relations between employers & employees—Valid.*]—*Re* COBBETT (1921), 17 Tas. L. R. 139.—AUS.

the residue of his estate, about £13,000, should be paid to certain persons to be held by them upon certain trusts as follows: "Whereas I believe in the universality of the Christian religion & that the remedy for the unrest & disorders of the body politic will be found in the application of Christian principles to all human relationships. & whereas I believe the drink traffic to be one of the most subtle & effective forces in preventing the successful application of these principles & I therefore hope & trust that active steps will be taken to minimise & ultimately extinguish this enemy of my country's welfare. Now therefore I declare it to be my wish that my general beneficiaries shall hold the whole of my residuary trust estate together with the income thereof in spreading the Christian principles before mentioned & in aiding all active steps to minimise & extinguish the drink traffic." The public trustee issued a summons to have it determined whether that gift in the will constituted a valid charitable trust or whether the gift so far as given for the minimising of the drink traffic was not charitable & therefore the whole gift was invalid & the next of kin became entitled. The judge held that the gift was a good charitable gift. On appeal by the next of kin:—*Held:* the first recital in the gift was the dominant clause showing that the main object was the advancement of Christian principles with a suggestion as to a particular method by which the advancement could be furthered & that method was subsidiary & ancillary, therefore the whole gift was a good charitable gift, being one for the advancement of Christian principles.

Temperance itself is undoubtedly a charitable object (LAWRENCE, L.J.).—*Re* HOOD, PUBLIC TRUSTEE *v.* HOOD, [1931] 1 Ch. 240; 100 L. J. Ch. 115; 143 L. T. 691; 46 T. L. R. 571; 74 Sol. Jo. 549, C. A.

69. *Add. Annotations:*—**Reld.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258; Geologists' Assocn. *v.* I. R. Comrs. (1928), 14 Tax Cas. 271.

70a. **Zoology—Zoological Society of London—Valid.**]—The objects of the Zoological Society of London as defined by its Charter are "the advancement of zoology & animal physiology & the introduction of new & curious subjects of the animal kingdom":—*Held:* the first object was clearly educational & the second object, being on construction merely in aid of the first, was also educational &, *semble*, it was educational in itself. The Society was therefore an educational charity, although in carrying out its objects it was found necessary to provide its pupils with food & amusement. The second object necessitated & involved the upkeep & improvement of Zoological Gardens. Consequently a bequest of money to the Society upon trust to apply the income for "the upkeep & improvement of the Zoological Gardens, & for the objects of the said Society," was a good charitable gift & not void for perpetuity.—*Re* LOPES, BENCE-JONES *v.* ZOOLOGICAL SOCIETY OF LONDON, [1931] 2 Ch. 130; 100 L. J. Ch. 295; 146 L. T. 8; 46 T. L. R. 577; 74 Sol. Jo. 581.

73a. **—— Trust to erect national theatre—& revive English classical drama—Valid.**]—(1) The Shakespeare Memorial Trust was established to erect & endow a Shakespeare Memorial National Theatre, with the object of performing Shakespeare's plays, reviving English classical drama, & stimulating the art of acting:—*Held:* the trust was a good charitable trust, on the ground either that the objects were for the advancement of education or that they came within the class of purposes beneficial to the community other than by way of the relief of poverty or the advancement of education or religion referred to by LORD MACNAGHTEN in *Income Tax Special Purposes Comrs.* v. *Pemsel*, [1891] A. C. 531.

(2) At the time when a donation of £70,000 was made to the charity, part of which was applied by the charity in the purchase of a site for the theatre, no annual subscription had been received, but within only nine days of that time the first annual subscription was received. On the subsequent sale of the site, the question arose whether, in those circumstances, the consent of the Charity Comrs. was required to the sale by the charity:—*Held:* notwithstanding that in the inception of its formation it was contemplated that the charity should be supported by annual subscriptions as well as by income from endowment, & notwithstanding that there was an interval of nine days only between the donation & the first of the annual subscriptions, the charity was not at the time when the donation was received a mixed charity within 1853 Act, s. 62; & as it was, therefore, not exempted from the jurisdiction of the Charity Comrs., their consent to the sale by the charity was required.—*Re* SHAKESPEARE MEMORIAL TRUST, LYTTON (EARL) *v.* A.-G., [1923] 2 Ch. 389; 92 L. J. Ch. 551; 130 L. T. 56; 39 T. L. R. 610, 676; 67 Sol. Jo. 809.

73b. **Bequest to provide sweets—For all children within parish—Not confined to those attending school—Not valid.**]—Testator by his will, after leaving money for prizes for the best-conducted school children in the parish, left money to provide "a pennyworth of sweets each for all boys & girls below the age of fourteen resident within the parish," & he directed that the income of the residue of his estate should be applied in awarding annual prizes to residents for the best-kept gardens & cottages:—*Held:* since there was no provision as to the gift of sweets being confined to children who had attended school, that gift was not charitable & was void, but the gift to provide prizes for the best-kept gardens & cottages was a good charitable gift as it was one for the benefit of the community.—*Re* PLEASANTS, PLEASANTS *v.* A.-G. (1923), 39 T. L. R. 675.

Annotation:—**Reld.** I. R. Comrs. *v.* Yorkshire Agricultural Soc., [1928] 1 K. B. 611.

75. *Add. Annotations:*—**Apprvd.** Chesterman *v.* Federal Taxation Comr. (1925), 42 T. L. R. 121. **Apld.** *Re* Williams, Public Trustee *v.* Williams, [1927] 2 Ch. 283. **Consd.** Geologists' Assocn. *v.* I. R. Comrs. (1928), 14 Tax Cas. 271; *Re* Barclay, Gardner *v.* Barclay, Steuart *v.* Barclay, [1929] 2 Ch. 173; *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383. **Reld.** *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276; *Re* Bain, Public Trustee *v.* Ross, [1930] 1 Ch. 224.

75a. ——.]—Testator by his will, wherein he described himself as a Clerk in Holy Orders, gave all his property to the Public Trustee upon trust for investment. He then directed that the income should be paid to the Bishops of the dioceses of St. D. & B., the rector of L. & the vicars of two other parishes & their successors, together with a layman appointed by the conference of each of those dioceses, whom he nominated administrative trustees. After stating that his wife left her interest in certain property to him to be used as he wished, but for preference for Church purposes, testator, in expressed accordance with her wish, by clause 3, devised all he should die possessed of as a fund for assisting the education of candidates for Holy Orders in the Church of England, to be administered by the trustees. Clause 12 contained the following proviso: "If for any sufficient reason, whether disendowment may or may not have taken place, the trustees decide that the interests of the Church could be better served by any changes in the method of administering, or even in the object to which the fund is applied under my will, such change or changes may be made with the several consents expressed by a majority of the Diocesan Conferences of B. & St. D." :—*Held:* the objects to which the trustees were, by clause 12, empowered to change the application of the fund were not other than charitable objects & were religious objects in the interests of the Church as an organisation existing for the instruction & edification of the public, & the gift in clause 3 was a valid charitable gift.—*Re* WILLIAMS, PUBLIC TRUSTEE *v.* WILLIAMS, [1927] 2 Ch. 283; 96 L. J. Ch. 449; 137 L. T. 477; 71 Sol. Jo. 605.

Annotation:—**Refd.** *Re* Bain, Public Trustee *v.* Ross, [1930] 1 Ch. 224.

78. *Add. Annotations:*—**Refd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407; *Re* King, Kerr *v.* Bradley, [1923] 1 Ch. 243.

79a. Benefit of Roman Catholic Church—Open to public—Valid.]—(1) A bequest for the benefit of a church belonging to a monastic order of the Roman Catholic Church but open to the public was not rendered invalid by Roman Catholic Relief Act, 1829 (c. 7).

Testatrix by her will dated Sept. 7, 1903, gave the residue of all her property, after the death of G., to whom she had given a life interest, in the following terms: "To the Superior of the Jesuit Church of the Immaculate Conception, Farm Street, London, to the Superior of that Church at the moment of the legacy falling due, & failing him to any other representative Father of the Order of the Society of Jesus . . ." :—*Held:* the gift was to this Superior upon trust for the benefit of the church at Farm Street as he might in his discretion think fit; & this was a valid gift.

(2) Testatrix died in 1910, & G. died in 1928. The Superior of the Church of the Immaculate Conception, Farm Street, London, was not the same person at the death of testatrix as at the death of G.:—*Held:* the gift was a valid gift to the Superior at the moment of G.'s death absolutely.—*Re* BARCLAY, GARDNER *v.* BARCLAY, STEUART *v.* BARCLAY, [1929] 2 Ch. 173; 98 L. J. Ch. 410; 141 L. T. 447; 45 T. L. R. 406, C. A.

Annotation:—*Generally*, **Refd.** *Re* Stratton, Knapman *v.* A.-G. (1930), 47 T. L. R. 32.

82. *Add. Annotation:*—**Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258.

89. *Add. Annotations:*—*As to* (1) **Apld.** Geologists' Assocn. *v.* I. R. Comrs. (1928), 14 Tax Cas. 271. **Consd.** *Re* Bain, Public Trustee *v.* Ross (1929), 45 T. L. R. 617. **Refd.** *Re* Williams, Public Trustee *v.* Williams, [1927] 2 Ch. 283.

90. *Add. Annotation:*—*Generally*, **Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

94. *Add. Annotation:*—**Refd.** *Re* Hummeltenberg, Beatty *v.* London Spiritualistic Alliance (1923), 92 L. J. Ch. 326.

106. *Add. Annotations:*—**Consd.** *Re* Barclay, Gardner *v.* Barclay, Steuart *v.* Barclay, [1929] 2 Ch. 173. **Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

110a. —— —— **Invalid.**]—WALPOOL'S CASE (1349), Duke, 95.

Annotations:—**Consd.** Adams & Lambert's Case (1602), 4 Co. Rep. 104b. **Refd.** Heath *v.* Chapman (1854), 2 Drew. 417.

114. *Add. Annotation:*—**Consd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

119. *Add. Annotation:*—**Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

128a. —— **For benefit of church open to public——Valid.**]—*Re* BARCLAY, GARDNER *v.* BARCLAY, STEUART *v.* BARCLAY, No. 79a, *ante*.

PART I. SECT. 4, SUB-SECT. 1.

8a. *Wakf.*]—A trust in the sense of being an obligation attached to the ownership of the property is known to & recognised by the Muhammadan Law. The distinction between an English trust for charitable & religious purposes & a Muhammadan *wakf* is more historical than legal.—SYED SHAH MOHAMAD KAZIM *v.* SYED ABI SAGHIR (1931) I. L. R. 11 Pat. 288.—**IND.**

PART I. SECT. 4, SUB-SECT. 6.

8. For "[1919] 1 I. R. 443" read "[1919] 1 I. R. 316."

PART I. SECT. 4, SUB-SECT. 7.

106 xi. —— ——.]—A bequest for the saying of masses for the repose of souls is not in this Province void as superstitious. A bequest of the residue of testator's estate (consisting of both realty & personalty) to a church, "to be invested & kept invested . . . for ever & the interest . . . to be applied & expended . . . for the saying of holy masses . . . for the repose of the soul of testator & his descendants for ever":—*Held:* ineffective as creating or tending to create a perpetuity, & not a charitable use. *Semble:* in any case the personalty alone would have been applicable to the trust declared.—*Re* ZEAGMAN (1916), 37 O. L. R. 536.—**CAN.**

106 xii. —— ——.]—*Re* HALLISY, [1932] 4 D. L. R. 516.—**CAN.**

114 iv. —— ——.]—Testator (who died within three months from the date of the execution of his will) directed his interest in a farm of land to be sold, & out of the proceeds of the sale a sum of £200 to be set apart & given to the parish priests & curates of C. Roman Catholic Church to be invested by them; the principal to remain invested for all time in the names of the successive parish priests & curates of C., the interest thereof to be applied in saying masses for the repose of testator's soul. After bequeathing a pecuniary legacy, testator gave the rest, residue & remainder of his property to the Abbot of M., & the Franciscan Friars in C. in equal shares for the purposes of having masses said for the repose of his soul in M. & C. At the dates of the execution of the will & of the death of testator the same person was Abbot of M. & the same three Franciscan Friars were resident in C.:—*Held:* (1) the legacy of £200 was void as a charge upon lands under Charitable Donations & Bequests Act, 7 & 8 Vict. c. 97; (2) in reference to the gift of residue so far as it consisted of pure personalty, there was a gift of one-half to the person who filled the office of Abbot of M. at the date of testator's death in his individual capacity for the offering up of masses & same was valid; there was a gift of the other half for the offering of masses to a specified body, because they were members of the Order of Franciscan Friars bound by monastic vows, which was void as contrary to the policy of Catholic Relief Act, 10 Geo. 4, c. 7.—BURKE *v.* POWER, [1906] 1 I. R. 119.—**IR.**

129. *Add. Annotations :*—**Consd.** Chesterman *v.* Federal Taxation Comr. (1925), 42 T. L. R. 121 ; Geologists' Assocn. *v.* I. R. Comrs. (1928), 14 Tax Cas. 271 ; *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383. **Refd.** *Re* Williams, Public Trustee *v.* Williams, [1927] 2 Ch. 283 ; *Re* Barclay, Gardner *v.* Barclay, Steuart *v.* Barclay, [1929] 2 Ch. 173 ; *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276 ; *Re* Bain, Public Trustee *v.* Ross, [1930] 1 Ch. 224.

130. *Add. Annotation :*—**Consd.** *Re* Barclay, Gardner *v.* Barclay, Steuart *v.* Barclay, [1929] 2 Ch. 173.

135. *Add. Annotation :*—**Consd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

144. *Add. Annotation :*—**Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465.

145. *Add. Annotation :*—**Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465.

155. *Add. Annotation :*—**Consd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

157. *Add. Annotations :*—*As to* (1) **Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407 ; *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225. **Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258 ; *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557 ; *Re* Hood, Public Trustee *v.* Hood (1930), 143 L. T. 691.

163. *Add. Annotation :*—**Consd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

164. *Add. Annotation :*—**Refd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

166. *Add. Annotation :*—**Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs. (1931), 47 T. L. R. 461.

172. *Add. Annotation :*— **Refd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

176. *Add. Annotation :*—**Refd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

179. *Add. Annotation :*—**Consd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

183. *Add. Annotation :*—**Distd.** *Re* Gwyon, Public Trustee *v.* A.-G. (1929), 46 T. L. R. 96.

After this case add :—*Compare*, No. 217b, *post.*

193. *Add. Annotation :*—**Refd.** Institution of Civil Engineers *v.* I. R. Comrs., [1932] 1 K. B. 149.

195a. Shakespeare Memorial Trust—Erection of theatre—Revival of English classical drama—Valid.]—*Re* SHAKESPEARE MEMORIAL TRUST, LYTTON (EARL) *v.* A.-G., No. 73a, *ante.*

196. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Gray, Todd *v.* Taylor, [1925] Ch. 362.

197. *Add. Annotation :*—*As to* (1) **Folld.** *Re* Gray, Todd *v.* Taylor, [1925] Ch. 362.

199a. Promotion of physical efficiency of army—Encouragement of sport—Valid.]—By his will testator gave a sum of £3,000 to form the nucleus of a regimental fund for his regiment "for the promotion of sport, including in that term only shooting, fishing, cricket, football, & polo." He also thereby gave directions as to the management of the fund. Later in the will he directed the payment of a further sum of £2,000, in the events which happened, "to the aforesaid Sporting Fund" to be held upon the same terms as the former legacy :—*Held :* the gifts were gifts for the purpose of promoting the physical efficiency of the army, & were valid charitable gifts.—*Re* GRAY, TODD *v.* TAYLOR, [1925] Ch. 362 ; 94 L. J. Ch. 430 ; 133 L. T. 630 ; 41 T. L. R. 335 ; 69 Sol. Jo. 398.

Annotation :—**Consd.** I. R. Comrs. *v.* Yorkshire Agricultural Soc., [1928] 1 K. B. 611.

199b. Repatriation of soldiers—After war service—Valid.]—(1) A valid charitable trust may exist although in its administration the benefit is not confined by the donor to the poor to the exclusion of the rich.

A resident in New South Wales bequeathed his residuary estate "unto the trustees for the time being of the 'Repatriation Fund' or other similar fund for the benefit of the New South Wales returned soldiers." At the date of the will, & of testator's death, there was established under statutes of the Commonwealth of Australia a repatriation fund for Australian soldiers generally, but there was no repatriation fund, or similar fund, for New South Wales soldiers :—*Held :* (2) the gift created a valid charitable trust ; (3) the trustees of the Commonwealth statutory repatriation fund were not trustees of the charity, & the settlement of a scheme had been rightly directed.—VERGE *v.* SOMERVILLE, [1924] A. C. 496 ; 131 L. T. 107 ; 40 T. L. R. 279 ; 68 Sol. Jo. 419 ; *sub nom.* VERGE *v.* SOMERVILLE, A.-G. FOR AUSTRALIA *v.* SOMERVILLE, 93 L. J. P. C. 173, P. C.

Annotations :—*As to* (1) **Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs. (1932), 48 T. L. R. 459. *As to* (2) **Refd.** General Medical Council *v.* I. R. Comrs., English Branch Council of General Medical Council *v.* Same (1928), 97 L. J. K. B. 578 ; Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs. (1931), 47 T. L. R. 461.

201. *Add. Annotation :*—**Consd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

205. *Add. Annotations :*—*As to* (1) **Consd.** Adamson *v.* Melbourne & Metropolitan Board of Works, [1929] A. C. 142 ; *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

206. *Add. Annotations :*—*As to* (1) **Dbtd.** *Re* Hummeltenberg, Beatty *v.* London Spiritualistic Alliance, [1923] 1 Ch. 237. **Consd.** I. R. Comrs. *v.* Yorkshire Agricultural Soc. (1927), 44 T. L. R. 59 ; *Re* Grove-Grady, Plowden *v.* Lawrence, [1927] 1 Ch. 557. *As to* (2) **Refd.** I. R. Comrs. *v.* Temperance Council of Christian Churches of England & Wales (1926), 136 L. T. 27.

208. *Add. Annotation :*—*As to* (2) **Expld. & Distd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

208a. —— —— **If beneficial to community.**]—Testatrix, who died in 1925, by her will gave her residuary estate to her trustees to form a trust for the founding, establishing & maintaining of a charitable institution to be called the "Beaumont Animals' Benevolent Society" under such rules & regulations & under such committee of management not exceeding ten members & otherwise in all respects as her trustees should in their absolute discretion

PART I. SECT. 5, SUB-SECT. 1.

m i. —— *Improvement.*]—A gift by will to a city council, to be expended for the improvement of the city as the trustee of the will and the council should agree :—*Held :* a good charitable gift. —*Re* BONES, GOLTZ *v.* BALLARAT TRUSTEES, EXECUTORS & AGENCY CO., LTD., [1930] V. L. R. 346 ; A. L. R. 279.—AUS.

think fit, & having regard to her wish that the expense of management should be kept as low as possible; provided that all members of the committee & of the governing body & all officials of the said society should be & always have been declared anti-vivisectionists & opponents of all sport involving the pursuit or death of any stag, deer, fox, hare, rabbit, bird, fish, or any other animal, & to have for its objects (*a*) the acquisition of land, permitted by a judge of the Ch. Div. or the Charity Comrs., for the provision of refuges for the preservation of "all animals, birds or other creatures not human"; (*b*) the distribution of any part of the yearly income of the trust fund amongst such societies or homes for the benefit of animals generally or for the benefit of individual cases British or foreign as the committee of the "Beaumont Animals' Benevolent Society" might think fit; (*c*) the founding, establishing, endowing, supporting, maintaining or providing of hospitals or homes for animals in Great Britain having no declared vivisectionist upon the governing body or bodies thereof or in any way connected with the management thereof:—*Held:* although a trust in perpetuity for animals might be a good charitable trust if in its execution there was necessarily involved a benefit to the community, yet where that element was wanting, the trust would be bad; therefore, trusts in the present case not having been shown to be for purposes beneficial to the community they were not good & valid charitable trusts.—*Re* GROVE-GRADY, PLOWDEN *v.* LAWRENCE, [1929] 1 Ch. 557; 98 L. J. Ch. 261; 140 L. T. 659; 45 T. L. R. 261; 73 Sol. Jo. 158, C. A.; *varied on appeal, sub nom.* A.-G. *v.* PLOWDEN, [1931] W. N. 89; 171 L. T. Jo. 308; 71 L. Jo. 329, H. L.

210. *Add. Annotations:*—**Consd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258. **Apld.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

213. *Add. Annotation:*—**Refd.** *Re* Gray, Todd *v.* Taylor, [1925] Ch. 362.

213a. **Encouragement of gardening—Charitable.**]—*Re* PLEASANTS, PLEASANTS *v.* A.-G., No. 73b, *ante*.

213b. **Provision of public recreation for working-class people—Valid.**]—Testator by his will dated Apr. 30, 1929, gave the residue of his estate to trustees upon trust to make certain payments thereout &, by clause 14 of his will, directed that they should hold the ultimate residue "to be expended in some scheme or schemes to be approved by my trustees for the benefit in the cities of Vancouver, & if in the opinion of my trustees there is some equally deserying object of the nature hereinafter indicated of Nottingham or other places of the working people such as playing fields parks gymnasiums or other plans which will give recreation to as many people as possible but as regards Vancouver I would not exclude some educational purpose being considered by my trustees." By a preceding clause, clause 13, testator had made a disposition of certain moneys, in certain events, in the following terms: "Upon trust for any scheme to be approved by my trustees of a national character excluding hospitals & works of an educational character. Without binding my trustees I would prefer a scheme which would give open-air recreation to as large a number of people as possible." Testator died on Feb. 14, 1931, leaving ultimate residue of the value of about £35,000:—*Held:* (1) upon the true construction of the will, the dominant object of testator was the health & welfare of the working classes, & the benefits authorised by clause 14 were the supply of healthy recreation, mainly in the open air & in particular by providing playing fields, parks and gymnasiums; & (2) through legislative recognition indicated by Mortmain & Charitable Uses Act, 1888 (c. 42), s. 6, of the dedication of land to the public for recreation as a charitable object, the provision of means for public recreation was a charitable object within "the meaning, purview & interpretation" of the preamble to the 43 Eliz. c. 4. Accordingly, the trusts expressed in clause 14 of the will were valid charitable trusts.—*Re* HADDEN, PUBLIC TRUSTEE *v.* MORE, [1932] 1 Ch. 133; 146 L. T. 190; 48 T. L. R. 9; 75 Sol. Jo. 781; *sub nom. Re* HADDEN, PUBLIC TRUSTEE *v.* WARE, 101 L. J. Ch. 52.

215. *Add. Annotations:*—*As to* (2) **Refd.** Verge *v.* Somerville, [1924] A. C. 496; Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs. (1931), 47 T. L. R. 461.

215a. **Of Jews to Palestine—Gift to Jewish National Fund—Valid.**]—A summons asked whether deft. co., the Jüdischer Nationalfonds, Ltd., or some other & what co. was referred to in the devise & bequest in the codicil to testator's will of the residuary estate to the Jewish National Fund, & whether the same was a valid charitable gift. By a codicil to his will made in 1919 testator who died shortly after declared: "whereas it is my desire that members of my family shall make their home in Palestine working & living on the land, I give, devise, & bequeath all the residue of my estate subject as aforesaid to the Jüdischer Nationalfonds which is one of the instruments of the Zionist Organisation, for the purpose of purchasing land there, & enabling such members of my family as are in a direct line of descent from my father, who may desire, to settle in Palestine subject generally to the regulations & conditions that may be necessary for the common weal":—*Held:* the co. was beneficially entitled to the fund to be applied by them so far as was necessary for the purpose indicated by testator, & as to the balance for the general purposes of the co.—*Re* ROSENBLUM, ROSENBLUM *v.* ROSENBLUM (1924), 131 L. T. 21; 68 Sol. Jo. 320.

Compare INCOME TAX, No. 476e, *post*.

217. *Add. Annotations:*—*As to* (1) **Consd.** I. R. Comrs. *v.* Yorkshire Agricultural Soc. (1927), 44 T. L. R. 59; *Re* Cranstoun, National Provincial Bank, Ltd. *v.* Royal Society for Encouragement of Arts, Manufactures & Commerce, [1932] 1 Ch. 537. *Generally*, **Refd.** General Medical Council *v.* I. R. Comrs., English Branch Council of General Medical Council *v.* Same (1928), 139 L. T. 225.

217a. —— ——.]—Testator devised to the Royal Society of Arts two ancient cottages in order that the Society might preserve them in their present condition. He also gave £700 to the

Society upon trust to invest & to apply the income for the maintenance of the cottages. The Society had issued an appeal to form a Fund for the Preservation of Ancient Cottages, of which testator was aware. The Society was by its charter authorised to hold real property in mortmain. The objects of the fund were to preserve ancient cottages as specimens & models of English craftsmanship so as to teach the lessons of such craftsmanship. These cottages were Elizabethan & picturesque :—*Held :* the primary object of the fund was for the good of the community at large, & was charitable in the legal sense ; the cottages fell within the objects of the fund ; & the devise & bequest were charitable.—*Re* CRANSTOUN, NATIONAL PROVINCIAL BANK *v.* ROYAL SOCIETY FOR THE ENCOURAGEMENT OF ARTS, MANUFACTURES & COMMERCE, [1932] 1 Ch. 537 ; 101 L. J. Ch. 152 ; 146 L. T. 568 ; 48 T. L. R. 226 ; 76 Sol. Jo. 111.

217b. Primrose League—Not a charity.]—Testatrix by her will gave a leasehold house " to the Primrose League of the Conservative cause to be used as a habitation in connexion with the league or in a manner which will benefit the cause " :—*Held :* as the gift was impressed with a trust & could not be sold, & as the league was not a charity, the gift failed.—*Re* JONES, PUBLIC TRUSTEE *v.* CLARENDON (EARL) (1929), 45 T. L. R. 259.

217c. Bequest " unto my country England "—Valid as charitable gift to people of England.] —Testator, who died in 1930, by his will gave his residuary estate " unto my country England for—own use & benefit absolutely " : —*Held :* residuary gift was a valid gift for charitable purposes & the residuary estate must be transferred to such person as His Majesty should direct under his sign manual. —*Re* SMITH, PUBLIC TRUSTEE *v.* SMITH. [1932] 1 Ch. 153 ; 100 L. J. Ch. 409 ; 146 L. T. 145 ; 48 T. L. R. 44 ; 75 Sol. Jo. 780. C. A.

217d. Temperance.]—*Re* HOOD, PUBLIC TRUSTEE *v.* HOOD, No. 68a, *ante.*

Compare INCOME TAX, No. 472b, *post.*

225. *Add. Annotations :*—**Consd.** *Re* King, Kerr *v.* Bradley, [1923] 1 Ch. 243. **Refd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407.

230. *Add. Annotation :—As to* (1) **Folld.** *Re* Hooper, Parker *v.* Ward, [1932] 1 Ch. 38.

230a. ——— ——— ——— ———.] — Testator bequeathed to his exors. & trustees money out of the income of which to provide, " so far as they legally can do so & in any manner that they may in their discretion arrange," for the care & upkeep of certain graves, a vault, certain monuments, a tablet & a window. On a summons to determine whether the bequest was valid in whole or in part :—*Held :* the rule against perpetuities not applying to the trust for the upkeep of the tablet & the window, the trust for the upkeep of the graves, the vault & the monuments was valid for twenty-one years from testator's death.—*Re* HOOPER, PARKER *v.* WARD, [1932] 1 Ch. 38 ; 101 L. J. Ch. 61 ; 146 L. T. 208.

231a. -.]—Testator gave £200 to his trustees, on trust to invest it & to pay the income thereof to a cemetery co. " during such period as they shall continue to maintain & keep " two specified graves " in the cemetery in good order & condition with flowers & plants thereon as same have hitherto been kept by me," & he declared that, if the graves should not be kept in such order & condition, his trustees should pay & apply the income in manner therein mentioned :— *Held :* the gift was a valid gift.—*Re* CHARDON, JOHNSTON *v.* DAVIES, [1928] Ch. 464 ; 97 L. J. Ch. 289 ; 139 L. T. 261.

238a. —— In memory of testatrix—Valid.]—*Re* KING, KERR *v.* BRADLEY, No. 3a, *ante.*

240. *Add. Annotation :*—**Apld.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 136 L. T. 60.

241. *Add. Annotations :*—**Refd.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612 ; I. R. Comrs. *v.* Yorkshire Agricultural Soc. (1927), 44 T. L. R. 59 ; *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383.

242. *Add. Annotations :*—**Refd.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612 ; I. R. Comrs. *v.* Yorkshire Agricultural Soc., [1928] 1 K. B. 611.

245. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612.

247. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612.

PART I. SECT. 6, SUB-SECT. 1.

218 iv. ——— ——— ——— ———.]—A direction in a will to the exors. to deposit a sum in a bank or invest it, " the yearly interest to be devoted to the care of my grave," creates, leaving statutory provisions out of consideration, a perpetual trust ; &, as the purpose is not charitable, is void ; but legislative sanction is given to this particular form of perpetual trust, by above sect. — *Re* JONES (1918), 42 O. L. R. 62 ; 13 O. W. N. 405.—**CAN.**

i. ——— ———.]—Bequests made to bodies incapable of contracting, on the condition precedent that they should agree with testator's trustees to care for certain burial lots for all time :—*Held :* void.—*Re* LAING ESTATE, [1927] 1 W. W. R. 699 ; 38 B. C. R. 449.—**CAN.**

232 i. *Erection of monument—To testator's memory—Not charitable use.*]—A will provided that one-half of the residue of the estate be used by the exors. " towards the erection of a monument or some suitable memorial to me." Testator's husband died after the making of the will, & she caused to be erected between his grave & the space reserved for hers a monument to him on which was left a blank space apparently intended to be filled in with an inscription for herself after her death :—*Held :* the provision for the monument was not an enforceable trust nor a charitable bequest which could be worked out *cy-près.*—*Re* JEFFERSON ESTATE (Man.), [1930] 3 D. L. R. 453 ; [1929] 3 W. W. R. 690.—**CAN.**

PART I. SECT. 6, SUB-SECT. 2.

h i. ——— *Society of St. Vincent de Paul—House of Providence.*]—Testator bequeathed £100 to the Society of St. Vincent de Paul, & directed the residue of his estate to be converted into cash, & paid to the House of Providence. These were voluntary unincorporated associations :—*Held :* so far as they could be paid out of personalty these legacies were good ; & should be paid over to the persons having the management of the pecuniary affairs of the institutions named.—ELMSLEY *v.* MADDEN (1867), 18 Gr. 386.—**CAN.**

11. *Fund of Benevolence of Freemasons —Valid.*]—*Re* VOSZ, PUBLIC TRUSTEE *v.* STEELE, [1926] S. A. S. R. 216.—**AUS.**

249. *Add. Annotation:*—**Apld.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 136 L. T. 60.

250. *Add. Annotations:*—*As to* (1) **Refd.** *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276. *As to* (2) **Refd.** *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383.

251. *Add. Citation:*—[1912] 1 Ch. 29.

Add. Annotations:—*As to* (1) **Apld.** *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276. *As to* (2) **Refd.** *Re* Kuypers, Kuypers *v.* Kuypers, [1925] Ch. 244. *Generally*, **Refd.** *Re* Bancroft, Bancroft *v.* Bancroft, [1928] Ch. 577.

251a. —— **London Library.**]—A gift of real & personal estate to the trustees of an unincorporated voluntary assocn. [the London Library], not being a charity, for the general purposes of the assocn. held valid, & not open to objection on the ground of remoteness.—*Re* PREVOST, LLOYDS BANK, LTD. *v.* BARCLAYS BANK, LTD., [1930] 2 Ch. 383; 99 L. J. Ch. 425; 143 L. T. 743; 46 T. L. R. 557; 74 Sol. Jo. 488.

255. *Add. Annotation:*—*As to* (2) **Refd.** Verge *v.* Somerville, [1924] A. C. 496.

259. *Add. Annotation:*—*As to* (1) **Refd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 577.

265. *Add. Annotation:*—**Refd.** Chesterman *v.* Federal Taxation Comr. (1925), 42 T. L. R. 121.

265a. Gift to Jewish National Fund—To enable testator's relations to settle in Palestine.]—*Re* ROSENBLUM, ROSENBLUM *v.* ROSENBLUM, No. 215a, *ante*.

266. *Add. Annotations:*—*As to* (1) **Consd.** *Re* Gray, Todd *v.* Taylor, [1925] Ch. 362. **Apld.** *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276. **Refd.** *Re* Hadden, Public Trustee *v.* More, [1932] 1 Ch. 133.

266a. Provision of knickers for all boys of district—Void.]—(1) Testator devised his residuary estate on trust, the income to be applied for ever in providing knickers for boys who resided in the F. district, who were not supported by any charitable institution, & whose parents were not in receipt of parochial relief:—*Held:* as none of the conditions necessarily imported poverty & therefore the object of the benefaction was not the relief of poverty & as the limitation of area did not make the trust a good charitable trust, the bequest was void as offending against the rule against perpetuities.

(2) A trust which is not a charitable trust cannot be changed into a charitable one by limiting the area in which it is to operate (EVE, J.).—*Re* GWYON, PUBLIC TRUSTEE *v.* A.-G., [1930] 1 Ch. 255; 99 L. J. Ch. 104; 46 T. L. R. 96; 73 Sol. Jo. 833; *sub nom.* PUBLIC TRUSTEE *v.* A.-G., 142 L. T. 321.

Annotation:—*As to* (2) **Apld.** *Re* King, Henderson *v.* Cranmer (1931), 75 Sol. Jo. 781.

267a. Social club—Staff Christmas fund—Invalid.]—Testator gave three legacies in the following terms: "To the Junior Carlton Club, Pall Mall, S.W.: £100 of Funding Loan in trust to pay the interest yearly to the Staff Christmas Fund. To the Union Club, Brighton: £100 of Funding Loan in trust to pay the interest yearly to the Staff Christmas Fund. To the Sussex County Cricket Club: £300 of Funding Loan in trust to pay the interest yearly to the Nursery Fund":—*Held:* the legacies to the clubs were not charitable, &, therefore, invalid.—*Re* PATTEN, WESTMINSTER BANK *v.* CARLYON, [1929] 2 Ch. 276; 98 L. J. Ch. 419; 141 L. T. 295; 45 T. L. R. 504.

267b. Cricket club—Nursery fund—Invalid.]—*Re* PATTEN, WESTMINSTER BANK *v.* CARLYON, No. 267a, *ante*.

270. *Add. Annotations:*—**Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258; *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383; R. *v.* Registrar of Joint Stock Companies, *Ex p.* More, [1931] 2 K. B. 197.

271. *Add. Annotation:*—**Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465.

272a. Gift to Universal Negro Redemption Fund—Valid.]—UNIVERSAL NEGRO IMPROVEMENT ASSOCN. INCORPORATED *v.* MORTER (1928), 44 T. L. R. 331; 72 Sol. Jo. 154, P. C.

272b. Gift for disabled soldiers of former enemy country—Valid.]—*Re* ROBINSON, BESANT *v.* GERMAN REICH, No. 23c, *ante*.

Part II.—Assurances for Charitable Purposes.

295. *Add. Annotation:*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

302. *Add. Annotation:*—**Refd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

316. *Add. Annotation:*—**Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

350. *Add. Annotation:*—**Refd.** I. R. Comrs. *v.* Forth Conservancy Board, [1929] A. C. 213.

351. *Add. Annotation:*—**Refd.** I. R. Comrs. *v.* Forth Conservancy Board, [1929] A. C. 213.

384. *Add. Annotation:*—**Refd.** Cross *v.* Imperial Continental Gas Assocn., [1923] 2 Ch. 553.

397. *Add. Annotation:*—**Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

398. *Add. Annotation:*—**Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

429. *Add. Annotation:*—**Refd.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

432a. Art gallery—Valid—Right of trustees to purchase house & grounds.]—*Re* TOWNER, EASTBOURNE CORPN. *v.* A.-G. (1923), 40 T. L. R. 3.

464. *Add. Annotation:*—**Refd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

466. *Add. Annotation:*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

472. *Add. Annotations:*—**Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Refd.** *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225.

480. *Add. Annotation:*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

502. For cross-reference before this case, read "*See, now*, Settled Land Act, 1925 (c. 18), s. 119, Sched. V."

503. *Add. Annotation :*—**Refd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

534. For cross-reference before this case, read "*See, now*, Settled Land Act, 1925 (c. 18), s. 29 (4)."

625. *Add. Annotation :*—**Refd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

629a. —— **Under Education Act, 1921 (c. 51), s. 117—Assurance of land for erection of sanatorium—Exempt.**]—*Re* HARROW SCHOOL GOVERNORS & MURRAY'S CONTRACT, [1927] 1 Ch. 556 ; 96 L. J. Ch. 267 ; 137 L. T. 119 ; 71 Sol. Jo. 408.

638. *Add. Annotation :*—**Refd.** *Re* Anziani, Herbert *v.* Christopherson, [1930] 1 Ch. 407.

Part III.—Charitable Trusts.

646. After this case add :—
——.]—*See, now*, Law of Property Act, 1925 (c. 20), ss. 53, 55.

653. *Add. Annotations :*—**Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Refd.** *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225.

657a. -.]—A gift to A. "who will at her death dispose of it in such charitable ways for good to result from my hard work in accumulating the property handed over for her use only & to do as she may wish in her lifetime," gives A. only a life estate, & on her death, whether before or after testator, the fund becomes applicable for charitable purposes & is not distributable as on an intestacy.—*Re* CAMMELL, PUBLIC TRUSTEE *v.* A.-G. (1925), 69 Sol. Jo. 345.

658. *Add. Annotations :*—*As to* (1) **Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465. *As to* (3) **Distd.** *Re* Gwyon, Public Trustee *v.* A.-G. (1929), 46 T. L. R. 96. **Refd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

661. *Add. Annotation :*—**Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

673. *Add. Annotation :*—**Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

680. *Add. Annotation :*—**Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

687. *Add. Annotations :*—*As to* (1) **Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Apld.** *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225. **Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258 ; *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557 ; *Re* Hood, Public Trustee *v.* Hood (1930), 143 L. T. 691 ; *Re* James, Grenfell *v.* Hamilton (1932), 146 L. T. 528.

687a. ——.]—A.-G. *v.* NATIONAL PROVINCIAL & UNION BANK OF ENGLAND, No. 740b, *post*.

691a. —— —— **Fund deposited in names of bishop & two archdeacons—Income not drawn upon—Date of deposit coinciding with creation of new diocese.**]—On June 29, 1888, money was deposited in a bank in the names of the Bishop of Wakefield & two archdeacons. In May, 1888, the Diocese of Wakefield was newly formed, & H. was enthroned on June 25, 1888, as first bishop of that diocese. The income of the fund so deposited was not drawn upon, & the fund with £900 accumulated interest was found intact by the exors. of the archdeacon, who was the survivor of the three persons in whose names the money had been deposited. The fund was not contributed to by those in whose names it was deposited :—*Held :* in such circumstances the exors. of the archdeacon who was the survivor were not beneficially entitled to the fund, but the fund was one subject to charitable trusts.—PEASE *v.* HOW (1922), 91 L. J. Ch. 334 ; 126 L. T. 629 ; 66 Sol. Jo. 250.

691b. Limitation of area insufficient.]—*Re* GWYON, PUBLIC TRUSTEE *v.* A.-G., No. 266a, *ante*.

691c. ——.]—*Re* KING, HENDERSON *v.* CRANMER (1931), 75 Sol. Jo. 781.

692a.]—*Re* KEMBLE, NASH *v.* LOMBARDINI (1931), 71 L. Jo. 347.

702. *Add. Annotation :*—**Distd.** *Re* How, How *v.* How, [1930] 1 Ch. 66.

702a. "Missionary purposes"—Valid—Court entitled to regard missionary work of legatee.]—Testatrix bequeathed her residuary estate "for missionary purposes" to J. :—*Held :* (1) the ct. could admit evidence that testatrix had often met J. at conferences of Christian workers & discussed religious subjects with him, & that before she made her will she had sent him considerable sums of money to aid him in the work in which he was so engaged, which was that of pastor of a church belonging to a body created solely for evangelistic purposes ; (2) having regard to that evidence, the gift was not void for uncertainty but was a good charitable gift.—*Re* REES, JONES *v.* EVANS, [1920] 2 Ch. 59 ; 89 L. J. Ch. 382 ; 123 L. T. 567.

Annotations :—*As to* (1) **Consd.** *Re* Bain, Public Trustee *v.* Ross, [1930] 1 Ch. 224. **Distd.** *Re* How, How *v.* How, [1930] 1 Ch. 66.

703a. "Two institutions which I hope to be able to name"—Valid.]—Testatrix, who died in 1919, left her foreign property to "two institutions, one for sailors, the other for soldiers, which I hope to be able to name myself, if not, then by my exors." :—*Held :* the gift ought to be construed, not as a gift

PART II. SECT. 4, SUB-SECT. 5.

sd. *Necessity for registration—Under 24 Vict. c. 43.*]—*Re* STRATFORD BAPTIST CHURCH PROPERTY (1869), 2 Ch. 388.—**CAN.**

PART II. SECT. 6, SUB-SECT. 4.

t i. —— —— *Not applicable to.*]—The above Act is not in force in Manitoba.—*Re* FENTON ESTATE, [1920] 2 W. W. R. 367 ; 53 D. L. R. 82 ; 30 Man. L. R. 246.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.

sm. *By settlement—Settlor divesting himself of income from shares.*]—TUNLEY *v.* FEDERAL COMR. OF TAXATION (1927), 39 C. L. R. 528.—**AUS.**

PART III. SECT. 2, SUB-SECT. 2.—A. (a).

sp. *Gift "for some good public purpose"—"Such as emergency hospital, women's home or park with urinary"—Valid.*]—COX *v.* HOGAN & VICTORIA CORPN. (1925), 35 B. C. R. 286.—**CAN.**

to two institutions which might or might not be charitable, but as a gift to two charitable institutions of the kind specified, & therefore was not too vague but was a good charitable gift.—*Re* SMITH, BLYTH *v.* A.-G. (1920), 36 T. L. R. 416, C. A.

705. *Add. Annotations:*—**Consd.** R. *v.* Income Tax Special Comrs., *Ex p.* Rank's Trustees (1922), 127 L. T. 651; *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Expld.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153. **Refd.** *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225; *Re* Hummeltenberg, Beatty *v.* London Spiritualistic Alliance, [1923] 1 Ch. 237; *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258; Verge *v.* Somerville, [1924] A. C. 496; General Medical Council *v.* I. R. Comrs., English Branch Council of General Medical Council *v.* Same (1928), 97 L. J. K. B. 578; Geologists' Assocn. *v.* I. R. Comrs. (1928), 14 Tax Cas. 271; I. R. Comrs. *v.* Yorkshire Agricultural Soc., [1928] 1 K. B. 611; *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557; *Re* Hood, Public Trustee *v.* Hood (1930), 143 L. T. 691; *Re* Schoales, Schoales *v.* Schoales, [1930] 2 Ch. 75; Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs. (1931), 47 T. L. R. 461.

708. *Add. Annotations:*—**Consd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258. **Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465.

716. *Add. Annotations:*—**Apld.** *Re* Bain, Public Trustee *v.* Ross, [1930] 1 Ch. 224. **Distd.** *Re* Stratton, Stratton *v.* A.-G., [1930] 2 Ch. 151. **Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258.

717a. "For such objects connected with the church as" vicar "shall think fit"—Valid.]—Where testatrix devised & bequeathed all the residue of her estate to the vicar of a church "for such objects connected with the church as he shall think fit":—*Held:* "objects connected with the church" did not mean parochial objects, but meant objects connected with the fabric & services of the church, & therefore the gift created a valid charitable gift.—*Re* BAIN, PUBLIC TRUSTEE *v.* ROSS, [1930] 1 Ch. 224; 99 L. J. Ch. 171; 142 L. T. 344; 45 T. L. R. 617, C. A.

Annotations:—**Apld.** *Re* Stratton, Stratton *v.* A.-G., [1930] 2 Ch. 151. **Folld.** *Re* Martley, Simpson *v.* Bourne (1931), 47 T. L. R. 392. **Consd.** *Re* Davies, Lloyds Bank, Ltd. *v.* Mostyn (1932), 48 T. L. R. 539. **Refd.** *Re* Stratton, Knapman *v.* A.-G. (1930), 47 T. L. R. 32.

717b. "Such parochial institutions or purposes as" vicar "shall select"—Invalid.]—Testatrix, who died in 1929, made a bequest of money in trust for the vicar of a parish for the time being, to be distributed by him "among such parochial institutions or purposes as he shall select":—*Held:* as "parochial institutions or purposes" might include objects which were not charitable the bequest was not a valid charitable gift.—*Re* STRATTON, KNAPMAN *v.* A.-G., [1931] 1 Ch. 197; 100 L. J. Ch. 62; 144 L. T. 169; 47 T. L. R. 32; *sub nom. Re* STRATTON, KNAPMAN *v.* STRATTON, 74 Sol. Jo. 787, C. A.; *affg.* S. C. *sub nom. Re* STRATTON, STRATTON *v.* A.-G., [1930] 2 Ch. 151.

717c. "For the benefit of the work of the Cathedral"—Valid.]—*Re* MARTLEY, SIMPSON *v.* BOURNE (CARDINAL) (1931), 47 T. L. R. 392; 75 Sol. Jo. 279.

717d. "For work connected with the Roman Catholic Church"—Invalid.]—*Re* DAVIES, LLOYDS BANK, LTD. *v.* MOSTYN (1932), 48 T. L. R. 539; 76 Sol. Jo. 474; *affd.* 49 T. L. R. 5, C. A.

718. *Add. Annotations:*—**Consd.** *Re* Williams, Public Trustee *v.* Williams, [1927] 2 Ch. 283; *Re* Bain, Public Trustee *v.* Ross (1929), 45 T. L. R. 617; *Re* Bain, Public Trustee *v.* Ross, [1930] 1 Ch. 224. **Folld.** *Re* Jackson, Midland Bank Executor & Trustee Co. *v.* Wales (Archbp.), [1930] 2 Ch. 389. **Consd.** *Re* Schoales, Schoales *v.* Schoales, [1930] 2 Ch. 75. **Apld.** *Re* Stratton, Stratton *v.* A.-G., [1930] 2 Ch. 151. **Refd.** *Re* Stratton, Knapman *v.* A.-G. (1930), 47 T. L. R. 32.

718a. Trustees empowered to change objects if interests of Church better served.]—*Re* WILLIAMS, PUBLIC TRUSTEE *v.* WILLIAMS, No. 75a, *ante*.

718b. Gift to Archbishop to be applied "in his discretion in any manner as he might think best for helping to carry on the work of the Church in Wales."]—Testatrix made a bequest of half her residuary estate to the Archbishop of Wales for the time being to be paid & applied by him in or towards the General Fund belonging to the Church in Wales, or in his discretion in any manner as he might think best for helping to carry on the work of the Church in Wales:—*Held:* the alternative gift was too indefinite in that it could not be said that the application of it by the Archbishop must be for a charitable purpose, & the whole gift was therefore void.—*Re* JACKSON, MIDLAND BANK EXECUTOR & TRUSTEE CO., LTD. *v.* WALES, ARCHBISHOP OF, [1930] 2 Ch. 389; 99 L. J. Ch. 450; 144 L. T. 102; 46 T. L. R. 558.

720. *Add. Annotations:*—**Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Refd.** *Re* Chapman, Hales *v.* A.-G. (1922), 91 L. J. Ch. 527; *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225; *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258.

721. *Add. Annotations:*—**Consd.** A.-G. *v.* National Provincial Bank, [1924] A. C. 262; *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153. **Refd.** Verge *v.* Somerville, [1924] A. C. 496; *Re* Hadden, Public Trustee *v.* More, [1932] 1 Ch. 133.

PART III. SECT. 2, SUB-SECT. 2.—A. (b).

715 l. "*Among such charitable institutions & schemes already constituted or which may hereafter be constituted as they shall in their absolute discretion select*"—*Valid.*]—CUNNINGHAM *v.* TALBOT, [1932] 2 W. W. R. 638.—**CAN.**

st. "*To be invested in war charities at trustees' discretion to be selected by trustees*"—*Valid.*]—*Re* HAMMOND (1921), 68 D. L. R. 590; 51 O. L. R. 149.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—B.

t l. "*Charitable or other deserving institutions*"—*As trustees think fit—Void.*]—CAMPBELL'S TRUSTEES *v.* CAMPBELL, [1921] S. C. (H. L.) 12; 58 Sc. L. R. 69.—**SCOT.**

b i. "*Benevolent, charitable & religious institutions*"—*As trustees think proper—In limited locality—Valid.*]—EDGAR, ETC. *v.* CASSELLS, [1922] S. C. 395; 59 Sc. L. R. 304.—**SCOT.**

c i. ——.]—By the law of Scotland a trust for "charitable or benevolent" purposes is a trust for "charitable" purposes alone.—JACKSON'S TRUSTEES *v.* INLAND REVENUE, [1926] S. C. 579; 10 Tax Cas. 460.—**SCOT.**

c ii. —— *In particular place—As trustees shall think deserving.*]—*Re* GREAVES (B. C.), [1917] 1 W. W. R. 997.—**CAN.**

723. *Add. Annotation :*—**Consd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258.

724a. **" Charitable or public institutions "—At discretion of trustees—Void.**]—By his will dated May 3, 1918, testator, after making certain specific & pecuniary bequests & giving an annuity to his wife, devised & bequeathed all his real & personal estate not thereby otherwise disposed of upon trust for conversion & investment of the net residue as therein mentioned. He directed his trustees " to hold the residuary moneys & investments upon trust, subject to payment of the wife's annuity, to pay & apply the same for the benefit of one or more charitable or public institutions in Wales as they may deem advisable in their absolute discretion & in such proportions & shares as they may deem fit " :—*Held :* the non-charitable objects of the residuary gift were too vague, & the whole gift failed for uncertainty.—*Re* DAVIS, THOMAS *v.* DAVIS, [1923] 1 Ch. 225 ; 92 L. J. Ch. 322 ; 128 L. T. 735 ; 39 T. L. R. 201 ; 67 Sol. Jo. 297.

725. *Add. Annotation :*—**Refd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407.

728a. **" To such charities or to such religious bodies "—As trustees in their discretion shall think fit—Valid.**]—*Re* TOMKINSON, M'CREA & BELL *v.* A.-G. OF THE DUCHY OF LANCASTER (1929), 74 Sol. Jo. 77.

731. *Add. Annotations :* — **Consd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258. **Distd.** I. R. Comrs. *v.* Roberts Marine Mansions Trustees (1927), 43 T. L. R 270. **Consd.** General Medical Council *v.* I. R. Comrs., English Branch Council of General Medical Council *v.* Same (1928), 97 L. J. K. B. 578; *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557 ; *Re* Smith, Public Trustee *v.* Smith, [1931] 2 Ch. 364. **Refd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407 ; *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225; A.-G. *v.* National Provincial Bank, [1924] A. C. 262 ; Verge *v.* Somerville, [1924] A. C. 496; I. R. Comrs. *v.* Yorkshire Agricultural Soc., [1928] 1 K. B. 611; Midland Counties Institution of Engineers *v.* I. R. Comrs. (1928), 14 Tax Cas. 285; Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs. (1931), 47 T. L. R. 461.

734. *Add. Annotation :*—**Refd.** Verge *v.* Somerville, [1924] A. C. 496.

735. *Add. Annotations :—As to* (1) **Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258. *As to* (2) **Consd.** *Re* Bain, Public Trustee *v.* Ross (1929), 45 T. L. R. 617.

735a. **" Charities & institutions "—" As executors in their absolute discretion think fit "—Void.**] —*Re* CLARKE, BRACEY *v.* ROYAL NATIONAL LIFEBOAT INSTITUTION, No. 47a, *ante.*

739. *Add. Annotations :*—**Consd.** Caldwell *v.* Caldwell (1921), 91 L. J. P. C. 95 ; A.-G. *v.* National Provincial Bank, [1924] A. C. 262 ; *Re* Gwyon, Public Trustee *v.* A.-G. (1929), 46 T. L. R. 96 ; *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153. **Refd.** *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225 ; *Re* Stratton, Stratton *v.* A.-G., [1930] 2 Ch. 151 ; *Re* Hadden, Public Trustee *v.* More, [1932] 1 Ch. 133.

740a. **" Charitable purposes " directed by testator or for such objects as executor selects—Void.**] —*Re* CHAPMAN, HALES *v.* A.-G., No. 1424a, *post.*

740b. **" Patriotic purposes or charitable institutions or objects "—At discretion of trustees—Void.**] —(1) Testator by his will directed his trustees to apply one-fifth of his residuary estate " for such patriotic purposes or objects & such charitable institution or institutions or charitable object or objects in the British Empire " as they in their absolute discretion should select :—*Held :* the words of the gift must be read disjunctively, " patriotic purposes " were not necessarily charitable, & the gift was void for uncertainty.

(2) The general rule is clear that if you are making a will you must declare your wishes, & not leave it in wide & uncertain terms to some one else to make a will for you. Special treatment is meted out to a gift for charitable purposes, & in that case the cts. have recognised that it is open to a testator who declares a charitable purpose to leave it to his trustees to select the particular charities for whose benefit his fund is to be applied. But that does not apply to cases not coming within the description of charity (VISCOUNT CAVE, C.).—A.-G. *v.* NATIONAL PROVINCIAL & UNION BANK OF ENGLAND, [1924] A. C. 262 ; 40 T. L. R. 191 ; 68 Sol. Jo. 235 ; *sub nom. Re* TETLEY, A.-G. *v.* NATIONAL PROVINCIAL & UNION BANK OF ENGLAND, 93 L. J. Ch. 231 ; 131 L. T. 34, H. L. ; *affg.* S. C. *sub nom. Re* TETLEY, NATIONAL PROVINCIAL & UNION BANK OF ENGLAND, LTD. *v.* TETLEY, [1923] 1 Ch. 258, C. A.

Annotations :—As to (1) **Consd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557. **Expld.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153. **Refd.** Verge *v.* Somerville, [1924] A. C. 496 ; I. R. Comrs. *v.* Roberts Marine Mansions Trustees (1927), 43 T. L. R. 270 ; General Medical Council *v.* I. R. Comrs., English Branch Council of General Medical Council *v.* Same (1928), 97 L. J. K. B. 578 ; I. R. Comrs. *v.* Yorkshire Agricultural Soc., [1928] 1 K. B. 611 ; Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs. (1931), 47 T. L. R. 298.

745. *Add. Citation :*—91 L. J. P. C. 95.

748. *Add. Annotation :—As to* (1) **Consd.** Chesterman *v.* Federal Taxation Comr. (1925), 42 T. L. R. 121.

749. *Add. Annotation :*—**Refd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

751. *Add. Annotation :*—**Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258.

751a. **" Objects of charity or any other public objects "—" In parish of F."—Valid.**]—By her will made in 1889 testatrix bequeathed all her residuary estate to trustees upon trust to apply such parts thereof as were applicable by law for charitable legacies, in such manner as her trustees should, in their absolute discretion, think fit, " for the benefit of the schools, & charitable institutions, & poor, & other objects of charity, or any other public objects in the parish of F." : —*Held :* it was a good charitable gift of the whole residuary estate, & was not to be read disjunctively.—*Re* BENNETT, GIBSON *v.* A.-G., [1920] 1 Ch. 305 ; 89 L. J. Ch. 269 ; 122 L. T. 578 ; 84 J. P. 78 ; 64 Sol. Jo. 291.

Annotation :—**Refd.** *Re* Tetley, National Provincial & Union Bank of England *v.* Tetley, [1923] 1 Ch. 258.

754. *Add. Annotations :*—**Refd.** Adamson *v.* Melbourne & Metropolitan Board of Works, [1929] A. C. 142 ; *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

755a. **"Hospital or other charitable or benevolent institution"—Valid.**]—By his will, made in 1917, testator gave his residuary estate to trustees upon trust to apply the same & the income thereof in providing or endowing, or assisting in providing or endowing, any hospital wards, beds, or cots, or other like or similar objects, as his trustees should in their absolute discretion think fit, in memory of his late wife, "for, at, or in connection with, any hospital or convalescent home or other charitable or benevolent institution" ; & testator expressed the wish, but not so as to impose any legal obligation on his trustees, that such hospital or other charitable or benevolent institution should be in, or connected with, the parish of St. Marylebone, London, or at, or in connection with, the town of Kilmarnock :—*Held :* the word "hospital" where it was first used in the will was used in an adjectival sense, & applied to the following words "wards, beds, or cots" ; the primary intention of testator was to provide or endow the same, & the places where they could be provided or endowed must be hospitals or convalescent homes or other charitable institutions, & the words "benevolent institution" must be construed as *ejusdem generis*, with "hospital" ; & therefore the bequest constituted a good & valid charitable gift.—*Re* LUDLOW, BENCE-JONES *v.* A.-G. (1923), 93 L. J. Ch. 30, C. A.

763. *Add. Annotation :*—**Folld.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

765. *Add. Annotation :*—*As to* (2) **Consd.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

769. *Add. Annotation :*—**Consd.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

769a. **Invalid gift for maintenance of family graves—Surplus to rector of B.—Void for uncertainty.**]—FOWLER *v.* FOWLER (1864), 33 Beav. 616 ; 33 L. J. Ch. 674 ; 10 L. T. 682 ; 28 J. P. 707 ; 10 Jur. N. S. 648 ; 12 W. R. 972 ; 55 E. R. 507.

Annotations :—**Distd.** *Re* Williams (1877), 5 Ch. D. 735. **Refd.** Hoare *v.* Osborne (1866), 30 J. P. 309 ; *Re* Rigley's Trusts (1866), 36 L. J. Ch. 147 ; Choa Choon Neoh *v.* Spottiswoode (1869), Wood's Oriental Cases, App. I.

769b. **Gift for maintenance & upkeep of masonic temple—Residue to masonic charities—Whole gift void.**]—By a codicil to his will testator directed his exors., on the death of his wife, to pay from his estate to the trustees of a masonic temple, erected by him to the memory of his son, £10,000, to be invested & the interest applied by the trustees, in their full & sole discretion, to the maintenance & upkeep of the masonic temple, & the balance, if any, to be applied in favour of any masonic charities which the trustees might select. The masonic temple was to be used for masonic ceremonies, & smaller rooms for lodge meetings, business & meetings of a social but not political character. Upon a summons to ascertain whether the legacy was valid or not :—*Held :* (1) the decisions in the "tomb cases" were inapplicable ; (2) the whole income of the fund being charged with a trust, at the discretion of the trustees, for a primary object which was invalid, the ct. was not entitled to control this discretion, & institute an inquiry at chambers as to the amount of income necessary to be applied for maintenance & upkeep of the temple, so that the gift of the balance would be valid ; (3) as the primary gift was not sufficiently defined, the whole legacy was void for uncertainty.—*Re* PORTER, PORTER *v.* PORTER, [1925] Ch. 746 ; 95 L. J. Ch. 46 ; 133 L. T. 812.

770. *Add. Annotation :*—**Consd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

771. *Add. Annotations :*—**Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Refd.** *Re* King, Kerr *v.* Bradley, [1923] 1 Ch. 243.

772. *Add. Annotation :*—**Refd.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

776. *Add. Annotation :*—**Folld.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

786. *Add. Annotations :*—**Consd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Refd.** *Re* King, Kerr *v.* Bradley, [1923] 1 Ch. 243.

794. *Add. Annotations :*—**Apld.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Refd.** *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225.

795. *Add. Annotations :*—**Apld.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407. **Refd.** *Re* Davis, Thomas *v.* Davis, [1923] 1 Ch. 225.

810. For "**appointment**" read "**apportionment.**"

816. *Add. Annotation :*—**Refd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

817. *Add. Annotation :*—**Consd.** *Re* Bain, Public Trustee *v.* Ross (1929), 45 T. L. R. 617.

823a. —— **Description not confined to charitable purposes — Description having particular meaning in religious denomination to which testator belonged.**]—In construing gifts of recent date, evidence is not admissible to show that words having a clear ordinary meaning were used in a special narrower sense.

Testator, a member of the "Brethren," or "Plymouth Brethren," by his will left all his property, subject to a life interest, to his widow, to be divided into two equal parts, one for his sons, & the other for his trustees "to distribute between the various good works which I & my wife have been in the habit of assisting. . . ." After the widow's death this summons was taken out to determine whether that direction created a good charitable trust. Affidavits were tendered to the effect that among the "Brethren" "good works" was a phrase in common use to indicate works distinctly religious, *i.e.* Christian, & suggesting that testator had used it in that sense :—*Held :* there was no evidence of the significance with which the testator had used the words, & the statement as to their use among the "Brethren" was not evidence of constant use in such a sense as would exclude non-religious charitable objects.—*Re* How, How *v.* How, [1930] 1 Ch. 66 ; 99 L. J. Ch. 1 ; 142 L. T. 86.

824 i. *Admitted—Description applying indifferently to more than one charity —"Old People's Home"—Old Folks Home or Maison des Vieux.*]—*Re* SMITH (1912), 22 W. L. R. 630 ; 3 W. W. R. 399 ; 22 Man. L. R. 756 ; 8 D. L. R. 93.—**CAN.**

824 ii. —— —— *Gift to "St. James' Presbyterian Church, $375 which I owe it"—Two St. James' Churches—Evidence of debt.*]—*Re* MCLAURIN LEGACY 1911), 9 E. L. R. 326.—**CAN.**

832. *Add. Annotation :—As to* (1) **Apprvd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

836. *Add. Annotation :*—**Distd.** *Re* How, How *v.* How, [1930] 1 Ch. 66.

B. Names of Charities omitted or left blank (Vol. VIII., p. 305).

For "*See* Nos. 1419 *et seq., post,*" read "*See, also,* Nos. 1419 *et seq., post,*" & add as follows :—

841a. Gift to " two institutions, one for sailors, the other for soldiers, which I hope to be able to name myself, if not, then by my executors "—Valid.]—Testatrix, who died in 1919, left her foreign property to " two institutions, one for sailors, the other for soldiers, which I hope to be able to name myself, if not, then by my exors." :—*Held :* the gift ought to be construed, not as a gift to two institutions which might or might not be charitable, but as a gift to two charitable institutions of the kind specified, & therefore was not too vague but was a good charitable gift.—*Re* SMITH, BLYTH *v.* A.-G. (1920), 36 T. L. R. 416, C. A.

843a. —— Poor of parish where testator buried—Direction as to place of burial—Subsequent parol direction as to different place.]—Testatrix, by her will, directed that her remains should be deposited in the church nearest which she might chance to die ; & in a subsequent part of the will gave a legacy to the poor of the parish where her remains were deposited. Her executrix, in pursuance of parol directions given subsequent to the date of the will, buried her in the neighbouring parish of W. :—*Held :* nevertheless, the poor of the parish of B., where testatrix died, were entitled to the legacy.—SALTER *v.* FAREY (1843), 12 L. J. Ch. 411 ; 1 L. T. O. S. 76 ; 7 Jur. 831.

856. *Add. Annotation :*—**Refd.** *Re* Lucas, Rhys *v.* A.-G., [1922] 2 Ch. 52.

864a. Gift to German Reich—For benefit of disabled German soldiers—Valid.]—*Re* ROBINSON, BESANT *v.* GERMAN REICH, No. 23c, *ante.*

865. *Add. Citation :*—3 Leon. 18.

875. *Citation :*—For " 2 W. R. 154 " read " 21 W. R. 154."

876a. —— —— —— London General Hospital Fund—King Edward's Hospital Fund for London or London Hospital—Former entitled.]—*Re* BORINGER, MEARA *v.* KING EDWARD'S HOSPITAL FUND FOR LONDON (1931), 48 T. L. R. 14.

884a. —— —— " Chelsea Hospital "—Royal Hospital, Chelsea.]—The ct. held that a testamentary gift to " the Chelsea Hospital " went to the Royal Hospital, Chelsea, & not to any other hospital having " Chelsea " as part of its name.—*Re* DE JONG, PUBLIC TRUSTEE *v.* GOLDSMID (1929), 46 T. L. R. 70 ; 73 Sol. Jo. 850.

891a. —— Gift to " Soldiers' Crippled Homes "—Three claimants—Legacy divided.]—Testatrix by her will bequeathed part of her estate to " Soldiers' Crippled Homes." In response to advertisements three institutions put in claims :—*Held :* as there was nothing to show that testatrix knew about these institutions, the fairest course would be to divide the bequest equally between the three.—*Re* HUSBAND, NEAVE *v.* BARNARDO'S HOMES NATIONAL INCORPORATED ASSOCN. (1923), 58 L. Jo. 600.

894a. —— —— " Diocesan Curates' Aid Society "—Testator resident in Oxford—Oxford Diocesan Spiritual Help Society entitled.]—*Re* JOHNSON, GOODRICH *v.* OGLE (1893), 9 T. L. R. 277.

896a. —— —— —— " Southwark Diocesan Society "—Southwark Diocesan & South London Fund.]—*Re* WATT, HICKS *v.* HILL, [1932] 2 Ch. 243, n. ; 101 L. J. Ch. 417, n. ; 147 L. T. 528, n., C. A.

PART III. SECT. 4, SUB-SECT. 2.—C.

830 ii. —— ——.]—Where testator made a bequest to a society, & it was found no society exactly corresponding to the designation given by testator was known :—*Held :* if the society is misdescribed, the ct. will if possible, discover from surrounding circumstances, what society was intended. The ct. will admit extrinsic evidence to determine what testator's words express. Evidence to show that testator subscribed to a particular society will be admitted, to show what was in his mind when he made the bequest.—*Re* ALEXANDER'S WILL (1885), 7 Nfld. L. R. 42.—**NFLD.**

PART III. SECT. 4, SUB-SECT. 3.—A.

sa. *Public institutions in Scotland—Void.*]—Testator directed his trustees, upon the expiry of a life-rent of the residue of his estate, " to pay appropriate & distribute the free residue & remainder of my said estate & effects at such times & in such proportions as my trustees may think fit to & among such poor persons in E. or such charitable, educational, or benevolent societies or public institutions in Scotland as my trustees shall select " :—*Held :* the words " public institutions in Scotland " were to be read as indicative of a separate class ; they were too indefinite to receive effect ; & the whole bequest was void from uncertainty.—REID'S TRUSTEES *v.* CATTANACH'S TRUSTEES, [1929] S. C. 727.—**SCOT.**

sb. " *Any worthy cause* "—*Void.*]—A clause of a will reads as follows : " the balance of my estate I leave entirely in the hands of my exor. to aid & help any worthy cause or causes as he shall think fit :—*Held :* the will did not create a valid charitable trust.—PLANTA *v.* GREENSHIELDS, [1931] 1 W. W. R. 401 ; 2 D. L. R. 189 ; 43 B. C. R. 439.—**CAN.**

sd. " *Pious acts* "—*Void.*]—In construing a will which, after providing for certain pecuniary legacies, directed that the balance income be spent on " pious acts " according to the discretion of the trustees :—*Held :* bequest void for uncertainty.—SATKARHI BHATTACHARYA *v.* HAZARILAL KHANNA (1930), I. L. R. 58 Calc. 1025.—**IND.**

PART III. SECT. 4, SUB-SECT. 3.—C.

sw. *Advancement of art, science or literature.*]—A testator directed his trustees to hold the residue of his estate for behoof of his sister in liferent, with power to encroach on the capital, & on her death to make certain payments. He further provided : " & if there is still any residue left my trustees shall apply it in whatever manner to them may seem most suitable for the advancement of art, science, or literature in the burgh of C." :—*Held :* the bequest was void from uncertainty.—HARPER'S TRUSTEES *v.* JACOBS, [1929] S. C. 345.—**SCOT.**

sx. *Gift to " missions, Corean & Home " —Testator contributor to Presbyterian missions.*]—Where a legacy was to " the missions, Corean & Home," & testatrix had been in the habit of contributing to the Home & Corean Mission Fund in connection with the Presbyterian Church in Canada :—*Held :* the legacy in question should go to the latter fund.—*Re* HENDERSON ESTATE (1914), 14 E. L. R. 401.—**CAN.**

sy. *Gift to the blind.*]—A gift by will to the blind, *simpliciter,* is a good charitable gift.—*Re* BOND ; BRENNAN *v.* A.-G., [1929] V. L. R. 333 ; [1929] Argus L. R. 300.—**AUS.**

PART III. SECT. 4, SUB-SECT. 3.—D.

1 i. —— —— " *Industrial School for Blind, B. Place* "—" *Royal Institution for Blind Incorporated* " *in B. Place entitled.*]—*Re* VOSZ, PUBLIC TRUSTEE *v.* STEELE, [1926] S. A. S. R. 218.—**AUS.**

1 ii. —— —— *Home Mission Extension Fund—Home Mission & Forward Movement entitled.*]—Testatrix after making certain bequests provi ed that " the residue is to be paid to the Home Mission Extension Fund of the Cong. Church & the other to the London Missionary Society to be kept at interest." The Congregational Union had no fund known under the above name ; there was a fund known as the Home Mission & Forward Movement Board :—*Held :* testatrix intended to indicate a certain purpose by the use of the words " Home Mission Extension " & a gift was expressed to the Congregational Union & Home Mission for Home Mission purposes.—*Re* TURNER, ELDER'S TRUSTEE & EXECUTOR CO., LTD. *v.* MORIALTA PROTESTANT CHILDREN'S HOMES INCORPORATED, [1930] S. A. S. R. 223.—**AUS.**

p i. —— *Gift to Society for Prevention of Cruelty to Animals in New Zealand—Several local societies for prevention of cruelty to animals—Legacy divided.*]—*Re* BUCKLEY, PUBLIC TRUSTEE *v.* WELLINGTON SOCIETY FOR PREVENTION OF CRUELTY TO ANIMALS (INC.), [1928] N. Z. L. R. 148.—**N.Z.**

906. *Add. Annotation :*—**Distd.** *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276.

908. *Add. Annotation :—Generally*, **Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

912a. —— —— —— ——.]—*Re* WITHALL *v.* COBB, [1932] 2 Ch. 236; 101 L. J. Ch. 414; 147 L. T. 526.

922. *Add. Annotation :*—**Distd.** *Re* Withall, Withall *v.* Cobb (1932), 174 L. T. Jo. 66.

924. *Add. Annotation :*—**Refd.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

926. *Add. Annotation :*—**Consd.** *Re* Withall, Withall *v.* Cobb (1932), 174 L. T. Jo. 66.

932. *Add. Annotations :*—**Consd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153. **Refd.** Brighton College *v.* Marriott, [1926] A. C. 192.

933. *Add. Annotation :*—**Refd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

945. *Add. Annotation :*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

948. *Add. Annotation :*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

962. *Add. Annotation :*—**Distd.** *Re* How, How *v.* How, [1930] 1 Ch. 66.

980a. Charity for orphans of Established Church—Effect of Welsh Disestablishment—Children of Welsh clergy entitled.]—CLERGY ORPHAN CORPN. *v.* CHRISTOPHER (1932), 49 T. L. R. 79.

981a. Gift to "church"—Construed as gift to congregation—Not to edifice.]—*Re* TYLER (1901), 45 Sol. Jo. 204.

981b. —— **Gift to institution — "Church of England."**]—*Re* BARNES, SIMPSON *v.* BARNES (1922), [1930] 2 Ch. 80, n.; 99 L. J. Ch. 380, n.; 143 L. T. 332, n.

Annotation :—**Folld.** *Re* Schoales, Schoales *v.* Schoales, [1930] 2 Ch. 75.

PART III. SECT. 4, SUB-SECT. 3.—E.

898 ii. ——*Gift to Presbyterian Church—Entry into Union.*]—*Re* PATRIQUIN (N.S.), [1928] 2 D. L. R. 791; *on appeal*, [1929] 2 D. L. R. 197; 60 N. S. R. 343.—**CAN.**

898 iii. —— —— ——.]—Testatrix bequeathed to "aged & infirm ministers & widows of the Presbyterian Church." There was no fund in connection with the church known as a fund for aged & infirm ministers & widows. By the United Church of Canada Act, the Presbyterian Church in Canada became part of the United Church of Canada, but after this union, a Presbyterian Church continued to exist that did not form part of the United Church. Testatrix was opposed to the union :—*Held :* the bequest was not made either to the United Church nor to the continuing Presbyterian Church; the exors. should have possession & control of the corpus & pay the income annually to aged & infirm ministers of the continuing Presbyterian Church & their widows.—*Re* LOGGIE (1927), 53 N. B. R. 395.—**CAN.**

898 iv. —— —— ——.]—WEATHERBY *v.* WEATHERBY (1927), 53 N. B. R. 403.—**CAN.**

898 v. —— —— ——.]—*Held :* the congregation could not take bequests; by becoming a congregation of the United Church of Canada at T., it had become something so different from the congregation for whose benefit the bequests were made, that it did not now come within the description in the will; the present congregation was not the same entity as the congregation which P. contemplated as her beneficiary. As to the bequest to "the Trustees of the T. Presbyterian Church," it was to a corpn. which, even if it continued to exist, was not now one for carrying into effect the testatrix' object, & the same principle applied as in the case of the other bequest.—MCLELLAN *v.* FRASER & FRASER *v.* MCLELLAN, [1930] S. C. R. 344; 3 D. L. R. 241; *affg.*, [1929] 2 D. L. R. 197; 60 N. S. R. 343; *varg.*, [1928] 2 D. L. R. 791.—**CAN.**

898 vi. —— —— ——.]—*Re* GRAY, [1932] 3 D. L. R. 250.—**CAN.**

898 vii. —— *Gift to Congregational Church—Entry into Union.*]—UNITED CHURCH *v.* MURPHY, [1931] 1 D. L. R. 452.—**CAN.**

PART III. SECT. 4, SUB-SECT. 3.—G.

sz. *Bequest to "Protestant Orphan Girls' Home"—Bequest taken by "Protestant Children's Homes"—Formed by amalgamation of "Girls' Home" & "Protestant Orphans' Home."*]—*Re* CARRICK, [1929] 3 D. L. R. 373; 64 O. L. R. 39.—**CAN.**

PART III. SECT. 4, SUB-SECT. 5.—A.

x i. —— *Gift to "that church which is sound & evangelical"—Prior gift to Presbyterian Church.*]—Testator, a minister of the United Presbyterian Church of North America, after bequeathing $1,000 to the said church, proceeded as follows: "I give for a Jewish mission $1,000 to that church which is sound & evangelical in doctrine & pure in worship, using the songs of praise, the inspired book which can unite all nations," etc. The evidence showed that this description applied to the said church :—*Held :* not void, for uncertainty, for that testator clearly intended the said church as the legatee.—GILLIES *v.* MCCONOCHIE (1882), 3 O. R. 203.—**CAN.**

x ii. —— *"Roman Catholic Church in Canada"—General Roman Catholic Church.*]—*Held :* a bequest to "foreign missions in connection with the Roman Catholic Church in Canada," should be paid to the general Roman Catholic Church, to be used for foreign missions in connection with that branch of the church which is in Canada, there being no Roman Catholic Church in Canada as a separate entity.—*Re* UPTON (1913), 24 O. W. R. 54; 4 O. W. N. 815; 9 D. L. R. 373.—**CAN.**

. —— —— **"Roman Catholic Church."**]—Testatrix made a residuary bequest "to the Roman Catholic Church, for the use thereof" : —*Held :* the gift was a valid charitable bequest. — *Re* SCHOALES, SCHOALES *v.* SCHOALES, [1930] 2 Ch. 75; 99 L. J. Ch. 377; 143 L. T. 331; 46 T. L. R. 354; 74 Sol. Jo. 233.

986. *Add. Annotation :*—**Refd.** *Re* Stratton, Stratton *v.* A.-G., [1930] 2 Ch. 151.

987. *Add. Annotation :*—**Refd.** *Re* Stratton, Stratton *v.* A.-G., [1930] 2 Ch. 151.

991a. —— **Gift to Superior of Jesuit Church.**]—*Re* BARCLAY, GARDNER *v.* BARCLAY, STEUART *v.* BARCLAY, No. 79a, *ante*.

991b. —— **"To the rector of St. Thomas' Roman Catholic Church of Newport.**]—*In the Estate of* PESCA (1930), 74 Sol. Jo. 59.

999. *Add. Annotation :*—**Refd.** *Re* Clarke, Bracey *v.* Royal National Lifeboat Institution, [1923] 2 Ch. 407.

1020a. Admission to Home of Rest—Must be suitable objects of a charity.]—*Re* JAMES, GRENFELL *v.* HAMILTON, No. 47c, *ante*.

1041. *Add. Annotation :*—**Refd.** *Re* Robinson, Wright *v.* Tugwell, [1923] 2 Ch. 332.

1041a. —— **Condition subsidiary to main charitable object—Performance of condition likely to defeat main charitable object—Condition dispensed with.**]—Testatrix, who died in 1889, bequeathed £1,500 towards an endowment for a proposed evangelical church at B., provided certain conditions were carried out. An action was commenced for the administration of her estate, & on the further consideration thereof on Nov. 3, 1891, it appeared

PART III. SECT. 4, SUB-SECT. 5.—B.

sa. *Fund for maintenance & repair—Repair of fabric—& conduct of services—& provision of furniture, fittings & vessels.*]—*Re* BOYD (1924), 55 O. L. R. 627.—**CAN.**

PART III. SECT. 4, SUB-SECT. 6.—A.

sd. *Gift to "parish priest"—Curate temporarily in charge at time of death.*]—N. by her will bequeathed the residue of her estate to the parish priest of L., officiating at the time of her decease, to be applied by him for the benefit of the Roman Catholic Church in the parish as he, in his discretion, should think fit, & in the event of the failure of such bequest, testatrix bequeathed the said residue to the said parish priest of L., for his own use & benefit. Testatrix died within three months of the execution of her will, & as the property consisted almost entirely of land, the charitable bequest failed. There was no parish priest of L. at the time of the death of testatrix, but all the duties of the office were being discharged by the curate of the parish :—*Held :* the curate was entitled to the ultimate residue bequeathed to the parish priest for his own use & benefit.—MCALLISTER *v.* STEWART, [1931] N. I. 52.—**IR.**

PART III. SECT. 4, SUB-SECT. 7.

1007 i. *Discretion of trustees—Gift to war charities—Not confined to Canada.*—*Re* HAMMOND (1921), 68 D. L. R. 590; 51 O. L. R. 149.—**CAN.**

that amongst other conditions, which mainly related to the conduct of the services, it was made an " abiding condition " that the black gown should be worn in the pulpit, unless there should be an alteration in the law rendering it illegal. It further appeared that in compliance with the conditions a church had been erected at B. & the other conditions laid down by testatrix fulfilled, except the condition as to wearing a black gown, which condition was held by the judge to be a continuing condition, but not an illegal one; & accordingly, the fund was carried over to the credit of the action, the separate account of " the £1,500 endowment fund for the proposed B. church," with liberty for the incumbent & all persons interested to apply as to the capital or income thereof. This petition was presented by the present incumbent asking that under a scheme or otherwise the fund in ct. might be transferred to the Ecclesiastical Comrs. Evidence was adduced that the use of the black gown in the pulpit was practically unknown in the diocese of the new church, & that its use was calculated to alienate the congregation & to defeat the main objects of testatrix, namely, the teaching & practice of evangelical doctrine & services:—*Held:* the condition requiring the wearing of a black gown in the pulpit was subsidiary to the main charitable object, namely, the endowment of an evangelical church at B., & as the performance thereof had been shown to be impracticable the condition might be dispensed with & the fund be transferred to the Ecclesiastical Comrs. as part of the endowment of the church so erected as aforesaid.—*Re* ROBINSON, WRIGHT *v.* TUGWELL, [1923] 2 Ch. 332; 92 L. J. Ch. 340; 129 L. T. 527; 39 T. L. R. 509; 67 Sol. Jo. 619.

1061. *Add. Annotation:*—**Consd.** *Re* Quintin Dick, Cloncurry *v.* Fenton, [1926] Ch. 992.

1078. *Add. Annotations:*—**Refd.** I. R. Comrs. *v.* Yorkshire Agricultural Soc., [1928] 1 K. B. 611; *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383.

1080. *Add. Annotations:*—**Refd.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612; I. R. Comrs. *v.* Yorkshire Agricultural Soc. (1927), 44 T. L. R. 59; *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383.

1081. *Add. Annotations:*—**Refd.** I. R. Comrs. *v.* Yorkshire Agricultural Soc., [1928] 1 K. B. 611; *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383.

1089a. —— Provision of knickers for all boys of district—Void.]—*Re* GWYON, PUBLIC TRUSTEE *v.* A.-G., No. 266a, *ante.*

1095. *Add. Annotation:*—**Consd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1098. *Add. Annotation:—Generally,* **Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1098a. —— ——.]—*Re* MONK, GIFFEN *v.* WEDD, No. 34a, *ante.*

1099. *Add. Annotations:*—**Consd.** Verge *v.* Somerville, [1924] A. C. 496. **Distd.** *Re* Gwyon, Public Trustee *v.* A.-G. (1929), 46 T. L. R. 96. **Consd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153. **Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465.

1109. *Add. Citation:*—127 L. T. 123.

1114. *Add. Annotation:*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1115. *Citations:*—After " H. L." add " *affg.* S. C. *sub nom.* HARBIN *v.* MASTERMAN (1871), L. R. 12 Eq. 559; [1894] 2 Ch. 184, C. A."

Add. Annotations:— **Consd.** *Re* Deloitte, Griffiths *v.* Deloitte, [1926] Ch. 56. **Apld.** *Re* Knapp, Spreckley *v.* A.-G., [1929] 1 Ch. 341.

1116. *Add. Annotation:—As to* (1) **Consd.** *Re* Deloitte, Griffiths *v.* Deloitte, [1926] Ch. 56.

1116a. Direction for accumulation—Discretion of trustees.]—The expression in a will of a wish that " the interest upon my investments may be allowed to accumulate . . ." followed by an indication of the charitable objects to which the accumulations are to be devoted does not bind the trustees of the will. But it is a directory provision; & the trustees ought to bear it in mind & generally to use their discretion so as to give effect to it.

A will, after certain bequests, including a bequest of residue in trust for " the Trustees of the S.M. Charities," expressed a wish of testator that " the income upon my investments may be allowed to accumulate for a period of twenty-one years or so long as the law will allow," & then set out various charitable objects in the town of S. which testator desired should thereafter benefit by such income only:—*Held:* the wish as to accumulation was not binding, but was in the circumstances a directory provision to which regard should be had in settling a scheme.—*Re* KNAPP, SPRECKLEY *v.* A.-G., [1929] 1 Ch. 341; 98 L. J. Ch. 95; 140 L. T. 533.

1118. *Add. Annotation:*—**Refd.** *Re* Monk, Giffen *v.* Wedd (1927), 137 L. T. 4.

1150. *Add. Annotation:*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1186a. ——.]—Testator gave the residue of his estate on trust to pay the income to his wife for life & after her death to pay £3,000 to the Royal National Lifeboat Institution in order to defray the cost of building two lifeboats, & he directed that after payment of certain legacies to hospitals the remainder of the residue should be paid to the aforesaid institution for the purpose of keeping the two lifeboats in repair & of replacing them when necessary, & that if the remainder of the residue should be insufficient for this purpose the institution might apply it to its general purposes. The legacy of £3,000 was in-

PART III. SECT. 6, SUB-SECT. 4.—B.

k i. —— ——.]—Testator left an estate of $99,000, of which $44,000 was in real estate & Hudson Bay Co. shares. This latter sum was left in trust to supply an income for a Bishop of Cornwall, or if such a Bishop was not elected within twenty-five years after testator's death, the money was to go to the University of Bishop's College, at Lennoxville, for the endowment of a Professorship of Natural Science:—*Held:* there was an immediate gift for charitable uses delayed as to the actual conveyance till the secured debts were paid, &, therefore, vested at the death & effective in law, though the particular application of the gift might be in suspense for twenty-five years, or might never take effect at all, in which contingency there was a valid transfer to another charity at the end of twenty-five years; & the will did not offend against the rule concerning perpetuities.—*Re* MOUNTAIN'S WILL (1912), 21 O. W. R. 866; 3 O. W. N. 1011; 26 O. L. R. 163; 4 D. L. R. 737.—**CAN.**

adequate to provide two lifeboats:—*Held:* on the death of the wife the £3,000 legacy failed & fell into residue, & the institution was entitled to take the whole of the residue, after payment of the legacies to hospitals, & to apply it to its general purposes.—*Re* BECK, CROOK *v.* ROYAL NATIONAL LIFEBOAT INSTITUTION (1926), 42 T. L. R. 245.

1188. *Add. Annotation:*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1189. *Add. Annotations:*—**Distd.** *Re* Beck, Crook *v.* Royal National Lifeboat Institution (1926), 42 T. L. R. 244. **Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1200. *Add. Annotation:*—**Refd.** *Re* Whitrod, Burrows *v.* Base, [1926] Ch. 118.

1225. *Add. Annotation:*—**Refd.** Harper *v.* Hedges, [1923] 2 K. B. 314.

1227. *Add. Annotations:*—**Consd.** Verge *v.* Somerville, [1924] A. C. 496; *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153. **Refd.** *Re* Gwyon, Public Trustee *v.* A.-G. (1929), 46 T. L. R. 96; Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465.

Part IV.—Effectuation of Charitable Trusts by means of Schemes and the Cy-près Doctrine.

1246a. **Not necessarily application cy-pres.**]—*Re* ROBINSON, BESANT *v.* GERMAN REICH, No. 23c, *ante.*

1248. *Add. Annotation:*—**Consd.** *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276.

1252a. —— **No trustees.**]—VERGE *v.* SOMERVILLE, No. 199b, *ante.*

1264. *Add. Annotation:*—**Refd.** *Re* Robinson, Besant *v.* German Reich, [1931] 2 Ch. 122.

1267. *Add. Annotation:*—**Refd.** *Re* Robinson, Besant *v.* German Reich, [1931] 2 Ch. 122.

1269. *Add. Annotation:*—**Refd.** *Re* Robinson, Besant *v.* German Reich, [1931] 2 Ch. 122.

1273a. —— **Object & trustee out of the jurisdiction.**]—*Re* ROBINSON, BESANT *v.* GERMAN REICH, No. 23c, *ante.*

1277. *Add. Annotation:*—**Consd.** *Re* Robinson, Besant *v.* German Reich, [1931] 2 Ch. 122.

1278. *Add. Annotation:*—**Consd.** *Re* Robinson, Besant *v.* German Reich, [1931] 2 Ch. 122.

1312. *Add. Annotation:*—**Refd.** *Re* Hood, Public Trustee *v.* Hood, [1931] 1 Ch. 240.

1371. *Add. Citation:—previous proceedings* (1912), 106 L. T. 295.

Add. Annotation:—Generally, **Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1373a. ——.]—*Re* EDWIN RILEY CHARITIES (1930), 70 L. Jo. 409.

1378b. ROBINSON, BESANT *v.* GERMAN REICH, No. 23c, *ante.*

1382a. **Gift for rebuilding & equipment of hospital —Hospital partially rebuilt at testator's death.**]—Testatrix gave a legacy "towards the rebuilding & equipment" of a hospital "to the satisfaction & under the direction" of her exors. At the death of testatrix the hospital was almost entirely rebuilt, though not equipped. The directors did not at any time direct the rebuilding or equipment:—*Held:* (1) the exors. could not give directions for works already completed, but if they gave their assent to proposed works of which they had a general knowledge they might apply the legacy towards such works when properly executed; (2) "equipment" meant everything required to convert an empty building into a hospital; (3) no limit of time being fixed the discretion of the executors remained exercisable until the hospital was fully rebuilt & fully equipped.—*Re* UNITE, EDWARDS *v.* SMITH (1906), 75 L. J. Ch. 163; 54 W. R. 358; 22 T. L. R. 242; 50 Sol. Jo. 239.

1392. *Add. Annotation:*—**Consd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1394. *Add. Annotation:*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1395. *Add. Annotation:*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1396. *Add. Citation:*—1 Ves. 243.

Add. Annotation:—**Refd.** *Re* Hood, Public Trustee *v.* Hood, [1931] 1 Ch. 240.

1404. *Add. Annotation:*—**Refd.** *Re* King, Kerr *v.* Bradley, [1923] 1 Ch. 243.

1412. *Add. Annotation:*—**Refd.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612.

PART IV. SECT. 1, SUB-SECT. 1.—A.

p i. —— *Funds insufficient.*]—*Re* MITCHNER, [1922] St. R. Qd. 39.—**AUS.**

p ii. —— *Legatee uncertain.*]—Testator, domiciled & dying in Ireland, bequeathed shares to "the Director of the African Mission." There was no society known as "the African Mission," & no individual with the official designation of "Director of the African Mission." There were, however, two societies which carried on missionary work in Africa, one of them being known in English as "The Society of African Missions," its principal officer being the "Provincial." The other Society possessed an Irish Mission to Africa of which the principal officer was the "Secretary," who was also described in a French publication of the Society as "Directeur." Testator had been on terms of intimacy with the latter officer, & had sent him a subscription, & in his letter enclosing the subscription he referred to "the needs of your great African Mission." Testator had also known the Provincial of the former Society, had discussed its work with him, was in regular receipt of its publication, called the "African Missioner," & had also contributed, although a much smaller amount, to its funds:—*Held:* the gift was a good charitable bequest for the propagation of the faith in Africa; & it should be referred to Chambers to settle a scheme, with the approval of the Attorney-General.—*Re* MULCAHY, BUTLER *v.* MEAGHER, [1931] I. R. 230.—**IR.**

r i. ——.]—*Re* WRIGHT (1923), 56 N. S. R. 364.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.—A.

1372 v. ——.]—*Re* MCNAB, [1925] 2 D. L. R. 1100; 56 O. L. R. 676; *affg.* 55 O. L. R. 538.—**CAN.**

1372 vi. ——.]—*Re* DEREMORE ESTATE (Alta.), [1927] 2 D. L. R. 1093; [1927] 2 W. W. R. 113.—**CAN.**

sb. *Purpose unnecessary—Fund to establish free school—Free school established by statute.*]—R. *v.* CUTLER (*circa* 1876), R. E. D. 159.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.—C. (b).

sd. *Hostel ceasing to exist—Work of hostel undertaken by Government—No general charitable intention.*]—*Re* FITZGIBBON (1922), 69 D. L. R. 524; 51 O. L. R. 500.—**CAN.**

1418a. Lack of applicants.]—PHILIPPS *v.* A.-G., [1932] W. N. 100; 173 L. T. Jo. 320.

1424. *Add. Annotation:*—**Refd.** *Re* Chapman, Hales *v.* A.-G., [1922] 2 Ch. 479.

1424a. —— —— Alternative non-charitable gift.]—Testatrix by her will appointed an exor., & after giving various pecuniary legacies, including two for charitable purposes, & £100 to her exor., she left in blank the name of her residuary legatee. By a codicil testatrix desired that her residue should be "applied for charitable purposes as I may in writing direct, or to be retained by my exor. for such objects & such purposes as he may in his discretion select, & to be at his own disposal." She left no written directions as to the charities to be benefited:—*Held:* (1) no good charitable trust was declared, the exor. having a discretion to devote the residue to objects & purposes other than charitable; (2) the trust for those objects & purposes was too indefinite for the ct. to execute, & there being no direct gift to the exor., the added words "to be at his own disposal" were not sufficient to enable the ct. to hold that the exor. took the residue beneficially, & he held it as trustee for the next of kin.—*Re* CHAPMAN, HALES *v.* A.-G., [1922] 2 Ch. 479; 91 L. J. Ch. 527; 127 L. T. 616; 66 Sol. Jo. 522, C. A.

See, also, No. 841a, *ante*.

1431. *Add. Annotation:*—*As to* (1) **Consd.** *Re* Cammell, Public Trustee *v.* A.-G. (1925), 69 Sol. Jo. 345.

1434. *Add. Annotation:*—**Consd.** *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276.

1444a. Fund for erection of stained glass window—Surplus applied to additional stained glass windows.]—*Re* KING, KERR *v.* BRADLEY, No. 3a, *ante*.

1444b. Gift for restoration or maintenance of church.]—Testatrix bequeathed her residue "to be used towards the restoration or maintenance of" a certain church:—*Held:* she intended that the residue should be used either for the restoration or maintenance of the church, or for both purposes, & that, there being a general charitable intention, any surplus must be applied *cy-près*.—*Re* ROBERTSON, COLIN *v.* CHAMBERLIN, [1930] 2 Ch. 71; 99 L. J. Ch. 284; 143 L. T. 36; 46 T. L. R. 276.

1449a. Alternative non-charitable gift.]—*Re* CHAPMAN, HALES *v.* A.-G., No. 1424a, *ante*.

1453. *Add. Annotation:*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

1457a. Particular purpose completed—Resulting trust of surplus.]—By his will, made in 1876, testator gave £5,000 Consols to Cambridge University, to be transferred to the University if accepted "upon trust to be

PART IV. SECT. 2, SUB-SECT. 2.—C. (d).

se. *Lack of applicants.*]—Testator bequeathed a sum of money to trustees for the purpose of founding a bursary to be granted by them "to any deserving young man, being a native of D., attending college in the prospect of becoming a minister of the Established Church of Scotland, or as a missionary." The trustees received payment of the bequest in 1888. In 1907 they presented a petition in which they stated that, although full publicity had been given to the bursary by advertisement & by intimation in the local schools, no application for it had ever been made, & craved the ct. to empower them, failing application from natives of Dunbar, to grant the bursary to otherwise qualified appcts. born in the Presbytery of Dunbar, or failing such appcts. to otherwise qualified appcts. without conditions as to nativity. The ct. granted the petition.—*Re* BORLAND, [1908] S. C. 852.—**SCOT.**

sf. ——.]—Testator, having erected six houses for the residence of six widows who had been the wives of persons who had resided for five years on the F. estates, demised to trustees a yearly rentcharge of £70 a year, charged on the townland of D., & directed them to apply the sum of £10 a year in repairing & improving the six houses, & to pay the remaining sum of £60 a year in six equal shares of £10 each to such six widows during their widowhood. He further directed that the person or persons seized of his real estate under the limitations in his will should have the sole & exclusive control of this charity, & should not be subject to the control of the Comrs. of Charitable Donations & Bequests or any other persons, but should have full power & authority when the houses should become vacant to select such widows qualified as already stated to inhabit the houses & receive the annual pension provided. For many years past there had been a lack of qualified appcts., & since 1913 only two of them had been occupied:—*Held:* the trust was not charitable.—A.-G. *v.* FORDE, [1932] N. I. 1.—**IR.**

sg. *Dispersal of congregation.*]—A church & a manse were held by trustees "for the congregation of United Original Seceders presently worshipping in A. Square under the pastoral charge of the Rev. A. B." Adherence to the principles contained in a document known as the "Testimony" was declared in the trust deed to be a condition of the right of any individual to remain a member of the congregation. The congregation had seceded on a question of doctrine from the Synod of the United Original Secession Church. In 1878 the congregation, which had become reduced to fourteen individuals, ceased to worship together, & the trustees let the property & accumulated the rents. In 1912 the last of the trustees died & his testamentary trustees brought an action of multiplepoinding for the disposal of the property & the accumulations of rent:—*Held:* failing the establishment of a right to the property by any congregation of the United Original Seceders, the trust, being a trust for public purposes, fell to be administered *cy-près*.—ANDERSON'S TRUSTEES *v.* SCOTT, [1914] S. C. 942.—**SCOT.**

PART IV. SECT. 2, SUB-SECT. 2.—D.

c i. ——.]—An association, which had managed an institution for the education & training of destitute boys in an industrial training ship, owing to change of circumstances, whereby it was no longer possible to carry on the institution usefully, was wound up. A petition was presented to the ct. craving approval of a scheme for the funds to be transferred to nine trustees, of whom seven should be nominated by the existing executive committee, & the remaining two by two local shipowners' associations, with power to assume new trustees from time to time, but vacancies among the trustees appointed by the shipowners' associations to be filled by persons nominated by these bodies. The ct. sanctioned the scheme, being satisfied that in the particular circumstances of the case sufficient provision had been made in the constitution of the trust for the due administration of the funds in the future.—CLYDE INDUSTRIAL TRAINING SHIP ASSOCN., [1925] S. C. 676.—**SCOT.**

sk. *Persons eligible to act as administrators no longer available.*]—Trustees presented a petition in which they stated that the administration of a fund had become unworkable through lack of effective machinery for carrying it on, as owing to a change in local conditions, persons eligible to act as administrators were no longer available, & craved the ct. to authorise a transfer of the fund to a general trust having similar objects. The ct. authorised the transfer.—ROSYTH CANADIAN FUND TRUSTEES, [1924] S. C. 352.—**SCOT.**

PART IV. SECT. 2, SUB-SECT. 2.—E.

g i. *Surplus applied to such other purposes as should be deemed proper.*]—Where, after satisfying the prescribed objects of a certain charitable trust, there remained a surplus income of the charitable fund which it was found to be impracticable to spend on the objects so prescribed, the ct., at the suit of the Advocate-General of Bengal, at the relation of the Treasurer for Charitable Endowments, & with the consent of the author of the trust, gave leave for the extension of the objects of the trust so as to apply the surplus to such other purposes as the ct. deemed proper upon the *cy-près* principle.—ADVOCATE-GENERAL OF BENGAL *v.* WEBB-JOHNSON (1924), I. L. R. 52 Calc. 508.—**IND.**

sn. *Erection of church tower—Surplus applied to building Sunday school.*]—ROWE & BROWN *v.* PUBLIC TRUSTEE, [1928] N. Z. L. R. 51.—**N.Z.**

PART IV. SECT. 2, SUB-SECT. 3.

sp. *Administration of charity becoming increasingly arduous & discouraging.*]—It is not a legitimate ground for the application of the doctrine of *cy-près* merely that the administration of a charity has become increasingly arduous & discouraging in its results.—*Re* GLASGOW DOMESTIC TRAINING SCHOOL, [1923] S. C. 892.—**SCOT.**

applied for the express purpose of carrying on to completion & publication my Etymological Dictionary of Anglicised Foreign Words & Phrases," should the same be incomplete at the time of his decease, they applying the annual dividends towards the completing & publishing of the dictionary. Testator constituted one of his exors. residuary legatee & died in 1880. The University accepted the bequest on the terms & for the purpose specified, & published the dictionary in 1892. After all payments had been made in connection with the publication there remained over a surplus of £1,151 14*s.* 10*d.* Consols & £230 derived from income & sales of the dictionary. Upon a summons by the University asking how this surplus should be applied :—*Held :* in the absence of any general charitable intention to be gathered from the terms of the bequest there was no room for the application of the doctrine of *cy-près*, & there was a resulting trust for testator & those claiming under him of the surplus moneys.—*Re* STANFORD, CAMBRIDGE UNIVERSITY *v.* A.-G., [1924] 1 Ch. 73 ; 93 L. J. Ch. 109 ; 130 L. T. 309 ; 40 T. L. R. 3 ; 68 Sol. Jo. 59.

Annotations :—**Distd.** *Re* Robertson, Colin *v.* Chamberlin, [1930] 2 Ch. 71. **Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

Part V.—Trust Property after Trust created.

1480. *Add. Annotation :—As to* (2) **Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

1508. *Add. Annotation :*—**N.F.** Nicholson *v.* England, [1926] 2 K. B. 93.

1511. *Add. Annotations :—As to* (2) **Consd.** Toates *v.* Toates, [1926] 2 K. B. 30. **Refd.** *Re* Blake, *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251. *Generally*, **Refd.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 136 L. T. 60.

1532a. —— **Settled Land Act, 1925 (c. 18), ss. 29, 94.**]—The trust deed of a charity placed the entire management & control of its property, which, whether land or investments, was all revenue, in the hands of a sole trustee, in whom it was vested with full power to sell & give receipts for the purchase-money :—*Held :* (1) the trustee could sell the land under his trust deed & give a receipt for the purchase-money without resorting to his life tenant powers under sect. 29 of the above Act at all ; (2) in any case the proceeds of sale would remain revenue & would not become capital money arising under the Act ; (3) sect. 94 (1) had no application.—*Re* BOOTH & SOUTHEND-ON-SEA ESTATES CO.'S CONTRACT, [1927] 1 Ch. 579 ; 96 L. J. Ch. 272 ; 43 T. L. R. 334 ; *sub nom.* BOOTH *v.* SOUTHEND-ON-SEA ESTATE CO.'S CONTRACT, 137 L. T. 122.

1545. *Add. Annotation :—As to* (2) **Consd.** *Re* Child Villiers' Appln., Villiers *v.* A.-G., [1922] 1 Ch. 394.

1549. *Add. Annotations :—As to* (1) **Consd.** I. R. Comrs. *v.* Glasgow Musical Festival Assocn. (1926), 11 Tax Cas. 154. *As to* (2) **Refd.** *Re* Child Villiers' Appln., Villiers *v.* A.-G., [1922] 1 Ch. 394 ; *Re* Booth & Southend-on-Sea Estates Co.'s Contract, [1927] 1 Ch. 579.

1595. *Add. Annotation :*—**Refd.** *Re* Smith, Public Trustee *v.* Smith (1931), 100 L. J. Ch. 409.

1609a. —— **Not decreed.**]—SOMERVILLE *v.* CHAPMAN (1779), 1 Bro. C. C. 61 ; 28 E. R. 985.

Annotations :—**Expld.** A.-G. *v.* St. John's Hospital, Bath (1865), 1 Ch. App. 92. **Refd.** Browne *v.* Tighe (1834), 2 Cl. & Fin. 396.

1670. *Add. Annotation :—Generally*, **Refd.** Sun Permanent Benefit Bldg. Soc. *v.* Western Suburban & Harrow Road Permanent Bldg. Soc. (1921), 91 L. J. Ch. 74.

Part VII.—Trustees.

1847. *Add. Annotation :*—**Refd.** *Re* How, How *v.* How, [1930] 1 Ch. 66.

1870a. Powers under Settled Land Act, 1925 (c. 18), s. 29—Powers of sale under sects. 29, 94.]—*Re* BOOTH & SOUTHEND-ON-SEA ESTATES CO.'S CONTRACT, No. 1532a, *ante*.

1870b. —— **To what trusts applicable—Public trusts—Trust of society within Literary & Scientific Institutions Act, 1854 (c. 112).**]—Trusts of land belonging to an unincorporated society, confined to members paying an annual subscription, & the object of which is the encouragement of literature, science & art, & which comes within Literary & Scientific Institutions Act, 1854 (c. 112), are "public trusts" within Settled Land Act, 1925 (c. 18), s. 29, & the trustees, appointed by deed since 1925, have the powers conferred on them by that sect.—*Re* CLEVELAND LITERARY & PHILOSOPHICAL SOCIETY'S LAND, BOLCHOW *v.* LAUGHTON, [1931] 2 Ch. 247 ; 100 L. J. Ch. 363 ; 145 L. T. 486.

1938. *Add. Annotation :*—**Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465.

PART V. SECT. 1, SUB-SECT. 4.

1502 iii. *Whether charities within Real Property Limitation Act*, 1833 (*c.* 27)—*Express trust—Charges.*]—*Re* DRAKE'S ESTATE, [1909] 1 I. R. 136, 140.—**IR.**

PART VII. SECT. 2, SUB-SECT. 2.

st. *Power of appointing successor—Reasonable apprehension of death—Implied power of revocation.*]—Where power is given to a trustee to appoint his successor "at his death" for a public charitable trust, there should, if the appointment is made *inter vivos* to take effect at once, be proof of circumstances showing that the appointor had reasonable apprehension of his death, & it is always subject to the condition that, if the appointor recovers, the transfer is not to operate ; & even if the power of revocation is not expressly reserved in the deed, such a deed should always be deemed to be subject to a power of revocation by implication.—CHOCKALINGA MUDALIAR *v.* DURAISWAMI MUDALIAR (1927), I. L. R. 51 Mad. 720.—**IND.**

Part IX.—Jurisdiction over Charities.

1980a. —— —— — **Gift "unto my country England."**]—*Re* SMITH, PUBLIC TRUSTEE *v.* SMITH, No. 217c, *ante*.

1981. *Add. Annotation :*—**Refd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

1998. *Add. Annotation :*—**Refd.** *Re* King, Kerr *v.* Bradley, [1923] 1 Ch. 243.

2001. *Add. Annotation :*—**Consd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

2015. *Add. Annotation :*—**Refd.** R. *v.* All Souls College, Oxford (1681), Skin. 13.

2041. After this case add :—

——.]—*See, now*, S. C. J. (Consolidation) Act, 1925 (c. 49), s. 19 (5).

2111a. *S. P. Ex p.* BULLAR (1857), 28 L. T. O. S. 269 ; 21 J. P. Jo. 84.

2137. For the existing paragraph substitute the following paragraph :—

Not exempt—Gift of land to mixed charity at date of determination of question by commissioner—Not mixed charity at time of donation.]—In order that a donation or bequest may come within the provision in 1853 Act, s. 62, exempting from the jurisdiction or control of the Charity Comrs. a donation or bequest made to a "mixed charity"—*i.e.* a charity maintained partly by voluntary subscriptions & partly by income from endowment—it must be a donation or bequest to a charity which is already, at the date of gift, a mixed charity. It is not sufficient to bring the donation or bequest within the exemption for the charity to become a mixed charity between the date of gift & the determination by the ct. of the question of exemption.

Land within the registered area was conveyed to a charity which at the time, although possessed of other income-bearing land, was not also maintained by any voluntary subscriptions. After the application for registration & pending the determination of the question of exemption by the ct., voluntary subscriptions were received & the charity became a mixed charity :—*Held :* the land not having been given to a charity which at the date of gift was a mixed charity, was not exempt from the jurisdiction or control of the Charity Comrs., & a restriction must be entered on the register against a disposition of the land without their consent.—*Re* CHILD VILLIERS' APPLICATION, VILLIERS *v.* A.-G., [1922] 1 Ch. 394 ; 91 L. J. Ch. 473 ; 126 L. T. 555 ; 38 T. L. R. 291 ; 66 Sol. Jo. 266, C. A.

Annotation :—**Apld.** *Re* Shakespeare Memorial Trust, Lytton *v.* A.-G., [1923] 2 Ch. 398.

2146a. —— **Land purchased out of donation—Donation before first annual subscription.**]—*Re* SHAKESPEARE MEMORIAL TRUST, LYTTON (EARL) *v.* A.-G., No. 73a, *ante*.

Part X.—Practice.

2177a. **Action to restrain exclusion from management of non-provided school.**]—Where an action was begun which claimed an injunction restraining defts. from excluding pltf. from the meetings of the managers of a non-provided school, who had been appointed in pursuance of an order made by the Board of Education under Education Act, 1902 (c. 42), s. 11 (8), & damages, & where the management of such non-provided school had been originally established by a trust deed, the action was not allowed to proceed until, in pursuance of Charitable Trusts Act, 1853 (c. 137), s. 17, & Orders in Council made under Board of Education Act, 1899 (c. 33), s. 2 (2), a certificate from the Board as exercising with regard to educational charities the jurisdiction formerly exercised by the Charity Comrs. had been obtained.—FALCONER *v.* STEARN, [1932] 1 Ch. 509 ; 101 L. J. Ch. 231, 232 ; 146 L. T. 461 ; 30 L. G. R. 187.

2224. *Add. Annotation :*—**Refd.** Key *v.* Bastin, [1925] 1 K. B. 650.

2227a. **Bequests to Irish parishes.**]—*Re* LOVE, NAPER *v.* BARLOW, [1932] W. N. 17 ; 173 L. T. Jo. 116 ; 73 L. Jo. 168.

2246a. **Bequests to Irish parishes—Attorney-General of the Irish Free State not proper party.**]—*Re* LOVE, NAPER *v.* BARLOW, [1932] W. N. 17 ; 173 L. T. Jo. 116 ; 73 L. Jo. 168.

2252. *Add. Annotation :*—**Refd.** Key *v.* Bastin, [1925] 1 K. B. 650.

2271. *Add. Annotation :*—**Refd.** *Re* How, How *v.* How, [1930] 1 Ch. 66.

2283. *Add. Annotation :*—**Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

2289a. —— **Trust to establish Home of Rest—Reference to decide whether practicable.**]—*Re* JAMES, GRENFELL *v.* HAMILTON, No. 47c, *ante*.

2330a. ——.]—An information was filed in the year 1821 against the trustee of a grammar school founded in the reign of Edward VI., praying that a new scheme might be approved of for the management of the school. Pending these proceedings, the trustees, in the year 1838, themselves made new regulations for the school, to which the usher, who was appointed previously to the filing of the information, was ordered to conform. The usher refused to be bound by such new regulations, & was consequently dismissed, & now presented a petition under Charities Procedure Act, 1812 (c. 101), alleging that the trustees of the school had no power to alter the rules, & praying that he might be reinstated :—*Held :* the ct. had no power, except under an information, to decide whether the trustees had power to alter the regulations of the school. Petition dismissed, with costs.—A.-G. *v.* EAST RETFORD GRAMMAR SCHOOL (1848), 17 L. J. Ch. 450.

PART IX. SECT. 3, SUB-SECT. 2.

sv. *Enforcement of provision for schism.*]—When property is given in trust for A., B. & C., etc., forming an association for fraternal & benevolent purposes, if the instrument provides for the case of a schism then the ct. will act upon it.—LINDSAY *v.* EMPY (Alta.) (1915), 32 W. L. R. 246 ; 9 W. W. R. 32 ; 23 D. L. R. 877.—CAN.

2330b. Matters relating to constitution of charity.] —A.-G. *v.* BRISTOL CORPN., *Ex p.* Goodenough, No. 2346a, *post.*

2346a. —— —— **After decree.**]—After a decree had been made, in a suit by information & bill, for the general administration of a charity, one of the objects of which was a free grammar school, the master of the school, who was not a party to the suit, presented a petition in it, with the sanction of the A.-G., stating that, in 1832, which was five years before the decree was made, defts., the trustees of the charity, unlawfully removed him from his office, & praying to be paid the arrears of his salary :—*Held :* (1) the petition could not be entertained, because it was presented by a person who was not a party to the suit, & involved an important question between the petitioner & the trustees, which was not raised at the hearing of the suit ; (2) the ct. would not have had jurisdiction to determine the question, if the petition had been presented under Charities Procedure Act, 1812 (c. 101), but that a new suit must be instituted.

(3) Where the rule laid down for the management of a charity is clear, & the only question is whether the parties have acted according to that rule or not, that is a question which may be determined on petition. But, where the question has reference to the original constitution of the charity, as, for instance, whether certain persons called governors or trustees, have a certain authority, that is a question touching the original constitution of the charity, which can be decided only on information (SHADWELL, V.-C.).—A.-G. *v.* BRISTOL CORPN., *Ex p.* GOODENOUGH (1845), 14 Sim. 648 ; 14 L. J. Ch. 457 ; 5 L. T. O. S. 533 ; 60 E. R. 510.

2353a. Not petition for payment out of funds in court of money for completion of purchase of land.]—*Ex p.* ST. BARTHOLOMEW'S HOSPITAL (GOVERNORS) (1928), 72 Sol. Jo. 225.

2423a. -.]—PHILIPPS *v.* A.-G., [1932] W. N. 100 ; 173 L. T. Jo. 320.

2446. After this case add :—

——.]—*See, now,* S. C. J. (Consolidation) Act, 1925 (c. 49), s. 19 (5).

2537. *Add. Annotation :*—**Reld.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

2576. *Add. Annotation :*—**Reld.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197.

CHATTEL MORTGAGES.

See BILLS OF SALE.

CHEAT.

See CRIMINAL LAW.

CHECKWEIGHER.

See MINES.

CHEESE.

See FOOD AND DRUGS.

CHIMNEY.

See EASEMENTS ; NUISANCE.

CHIMNEY SWEEP.

See MASTER AND SERVANT ; TRADE.

CHOSES IN ACTION.

Part I.—In General.

12a. Rentcharge—Arrears of.]—SALWAY *v.* SALWAY (1770), 2 Dick. 434; Amb. 692; 21 E. R. 338.

13. *Add. Annotations:*—**Distd.** Baker *v.* Archer-Shee, [1927] A. C. 844; A.-G. *v.* Belilios, [1928] 1 K. B. 798. **Refd.** New York Insce. *v.* Public Trustee, [1924] 2 Ch. 101; Brassard *v.* Smith, [1925] A. C. 371; Herbert *v.* I. R. Comrs., I. R. Comrs. *v.* Herbert (1925), 9 Tax Cas. 593; Daw *v.* I. R. Comrs., Duff Dunbar *v.* I. R. Comrs. (1928), 14 Tax Cas. 58.

19. After this case add "**Patent.**]—*See* PATENTS."

20. *Add. Annotations:*—**Dbtd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669. **Refd.** New York Life Insce. *v.* Public Trustee, [1924] 1 Ch. 15.

21. *Add. Citations:*—FAVORKE *v.* STEINKOPFF, [1922] 1 Ch. 174; *sub nom. Re* STEINKOPFF, FAVORKE *v.* STEINKOPFF, 91 L. J. Ch. 165; 126 L. T. 597.

23. *Add. Annotations:*—**Consd.** Royal Trust Co. *v.* A.-G. for Alberta (1929), 46 T. L. R. 25; English, Scottish & Australian Bank, Ltd. *v.* I. R. Comrs. (1931), 48 T. L. R. 170. **Refd.** New York Life Ince. *v.* Public Trustee (1924), 93 L. J. Ch. 449; Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

24. *Add. Annotations:*—**Consd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669. **Refd.** New York Life Insce. *v.* Public Trustee (1924), 93 L. J. Ch. 449.

25. *Add. Annotations:*—**Apld.** New York Life Insce. *v.* Public Trustee, [1924] 2 Ch. 101; Richardson *v.* Richardson, [1927] P. 228. **Refd.** English, Scottish & Australian Bank, Ltd. *v.* I. R. Comrs. (1931), 48 T. L. R. 170.

26. *Add. Annotation:*—**Overd.** English, Scottish & Australian Bank, Ltd. *v.* I. R. Comrs. (1931), 48 T. L. R. 170.

26a. ——.]—An agreement for the sale, among other things, of simple contract debts owed by debtors resident out of the United Kingdom is exempt from stamp duty in respect of such debts on the ground that they are "property locally situate out of the United Kingdom" within the exception in Stamp Act, 1891 (c. 39), s. 59 (1).—ENGLISH, SCOTTISH & AUSTRALIAN BANK, LTD. *v.* I. R. COMRS., [1932] A. C. 238; 101 L. J. K. B. 193; 146 L. T. 330; 48 T. L. R. 170.

27. *Add. Annotations:*—*As to* (1) **Consd.** Favorke *v.* Steinkopff, [1922] 1 Ch. 174. *As to* (2) **Refd.** Favorke *v.* Steinkopff, [1922] 1 Ch. 174.

27a. Assignment executed abroad—Of debt payable in England.]—C., being domiciled in Guatemala, deposited a sum of money with a bank in London. Subsequently he, being then in Guatemala, assigned in writing by way of gift the money so lying to his credit at the bank to N., who was also domiciled in Guatemala, & written notice of that assignment was given to the bank. It was not disputed that if the effect of that assignment had had to be decided by English law it would have been held good. By the law of Guatemala an assignment of money made without consideration is void, unless made by a document executed before a notary on stamped paper, & signed by both parties; & by the same law an infant cannot accept a voluntary assignment himself, it must be made to & accepted by a legal representative appointed by a judge on the infant's behalf. The assignment was on unstamped paper, was not executed before a notary, & was not signed by N. At the time of the assignment N. was an infant & no legal representative had been appointed. The money lying in the bank having been claimed both by the republic of Guatemala & by N. the bankers interpleaded. In an action to determine the issue between the two claimants:—*Held:* the validity of the assignment to N. must be determined by the law of Guatemala, & was therefore bad:

(*Per* BANKES, L.J.) upon the ground that, as the republic & N. were both domiciled & resident in Guatemala at the date of their respective assignments, & as the English depositary claimed no interest in the fund, the question which, if either, of the two claimants was entitled to it must be determined by the law of their domicil & residence, & not by that of this country;

(*Per* SCRUTTON & LAWRENCE, L.JJ.) upon the ground that the question of a person's capacity to take an assignment of personal property is to be governed either by the law of his domicil, or by that of the country where the assignment takes place, & that, as in this case the country of N.'s domicil & that of the assignment to him were the same, it was immaterial to inquire which, had they been different, ought to prevail; but from either point of view N. was incapable, by reason of his infancy, of receiving the donation;

(*Per* SCRUTTON, L.J.) on the further ground that by reason of non-compliance with the formalities relating to stamp, notary, etc., the assignment was, both by the law of the place where it was made, & by that of the domicil of the parties to it, not merely inadmissible in evidence but void;

(*Per* LAWRENCE, L.J.). As the contract of deposit was made in England, & the money was repayable in England where the bank was domiciled, & was recoverable in England, it was an English debt having a local situation in this country, & accordingly the validity of the assignment, as distinguished from that of a contract to assign, must be governed by the *lex loci rei sitæ*, & not by the law of the country where the assignor & assignee were domiciled, or where the assignment took place. Consequently if non-compliance with

d. Add "*revsd.* 17 O. R. 574."

s. Add "*revsd. in part* 4 A. R. 267."

the required formalities had been the only objection he would have held the assignment good.—REPUBLICA DE GUATEMALA *v.* NUNEZ, [1927] 1 K. B. 669; 96 L. J. K. B. 441; 136 L. T. 743; 43 T. L. R. 187; 71 Sol. Jo. 35, C. A.

Annotations:—**Folld.** *Re* Anziani, Herbert *v.* Christopherson, [1930] 1 Ch. 407. **Refd.** Richardson *v.* Richardson, [1927] P. 228.

27b. —— **Exercise of power of appointment over sum in England.**]—An assignment, executed in a foreign jurisdiction by a person there domiciled, of a chose in action locally situate (so far as a chose in action can be) in England, is void if the assignment is void on grounds of substance according to the local law.

A document executed abroad in exercise of powers of appointment conferred by settlements executed in accordance with English law, & expressed to be intended to operate both as an assignment & as a will, may take effect as a conveyance *inter vivos* of the property of the person executing it.

Upon the marriage of testatrix, who was born in Italy, to an Italian, two settlements of property belonging to her, hereinafter respectively called the "A" settlement & the "B" settlement, were executed. The "A" settlement comprised proceeds of sale of English freeholds conveyed to the settlement trustees on trust for sale, & investments & other moneys, the whole fund being settled on trust to pay to the husband during the joint lives of himself & testatrix, £500 a year, & subject thereto to pay the annual income to testatrix for life without power of anticipation, &, after her death, to raise £50,000, as she should by deed or will appoint & pay the sum so raised to such persons as she should appoint. The "B" settlement comprised certain freeholds & certain moneys which were settled on trust to pay the income to testatrix for life, & after her death as she should appoint. Both were English in language & form, & the trustees were resident in the United Kingdom. By a deed of Dec. 10, 1906, to which her husband & the trustees of the "A" settlement were parties, testatrix appointed that the residue of the £50,000, which she then had power to appoint under the "A" settlement should be charged upon & raised out of the property subject to that settlement, &, after her death, should be held in trust for her absolutely as her separate estate. By a deed of May 23, 1912, between herself, her husband, & the "B" settlement trustees, testatrix appointed that, after her death, &, until then, subject to her life interest, the property comprised in the "B" settlement should be held by the trustees upon trust to pay sums which she or her husband should become liable to pay to them under certain covenants of indemnity in the deed, &, subject thereto in trust for testatrix, her heirs, administrators & assigns. Testatrix & her husband lived in Italy, & she was domiciled there at the date of her death. On July 28, 1927, being then domiciled in Italy, she executed an "appointment & assignment," expressed to be supplemental to the "A" settlement, the "B" settlement, & the deed of Dec. 10, 1906, & expressed also to be intended to operate as an assignment *inter vivos* & as a will. By it, she appointed & assigned the property comprised in those documents, subject to certain subsisting trusts, to the trustees of the appointment & assignment whom she appointed exors. upon trust for the payment of certain debts & legacies, & she gave the final residue to one of the trustees absolutely. After the death of testatrix leaving no other testamentary disposition, the deed of appointment & assignment was admitted to probate in the United Kingdom:—*Held:* (1) the deed of appointment & assignment so far as it purported to assign movable property was subject to the law of the country in which it had been executed & in which the testatrix was domiciled, *i.e.* to Italian law, & that, being null & void in Italian law, it did not effectually assign the remainder of the £50,000, appointed by the deed of Dec. 10, 1906; (2) the appointees of the sum of £50,000, were not persons entitled to immovable property. Their right, which was to require the trustees to pay the amount, was a chose in action in the nature of a movable; (3) the deed of appointment & assignment, as it was expressed to be intended to operate as an assignment as well as a will, could take effect as a conveyance *inter vivos* of the immovable property of testatrix situate in England.—*Re* ANZIANI, HERBERT *v.* CHRISTOPHERSON, [1930] 1 Ch. 407; 99 L. J. Ch. 215; 142 L. T. 570.

After this case for "**Assignments executed abroad.**]—*See* Nos. 459–462, 504, 505, *post*," read "——.]—*See, also*, Nos. 459–462, 504, 505, *post*."

Part II.—Assignment in General.

29. *Add. Annotation:*— **Refd.** Public Trustee *v.* Elder, [1926] Ch. 776.

35. Before this case add, "1873 Act, s. 25 (6), is now replaced by Law of Property Act, 1925 (c. 20), s. 136."

40. *Add. Annotation:*—**Refd.** National Provincial & Union Bank of England *v.* Lindsell (1921), 91 L. J. K. B. 196.

Part III.—What may be Assigned.

47. Before this case add, "1873 Act, s. 25 (6), is now replaced by Law of Property Act, 1925 (c. 20), s. 136."

53. *Add. Annotation:*—**Refd.** *Re* Bower-Williams, *Ex p.* Trustee, [1927] 1 Ch. 441.

63. *Add. Annotations :—As to* (1) **Refd.** Cottage Club Estates *v.* Woodside Estate Co. (Amersham) (1927), 97 L. J. K. B. 72; *Re* Wait, [1927] 1 Ch. 606; Earle *v.* Hemsworth R. D. C. (1928), 140 L. T. 69; Williams *v.* Atlantic Assurance Co. (1932), 37 Com. Cas. 304.

67. *Add. Annotations :*—**Consd.** Bank of Liverpool & Martins *v.* Holland (1926), 43 T. L. R. 29. **Distd.** Earle *v.* Hemsworth R. D. C. (1928), 44 T. L. R. 605. **Refd.** Williams *v.* Atlantic Assurance Co. (1932), 37 Com. Cas. 304.

73. *Add. Annotation :—As to* (2) **Apld.** Earle *v.* Hemsworth R. D. C. (1928), 140 L. T. 69.

77a. —— —— **Retention money.**] — *Held :* retention money under a building contract, although not becoming payable until a later date than the assignment, constituted a debt or legal thing in action which could be assigned, & could be sued for in an action without joining the assignors as parties.—G. & T. Earle, Ltd. *v.* Hemsworth Rural District Council (1928), 140 L. T. 69; 44 T. L. R. 758, C. A.

78. *Add. Annotations :*—**Refd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1; *Re* Wait, [1927] 1 Ch. 606.

80. *Add. Annotation :—As to* (2) **Refd.** Allgemeine Versicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672.

81. *Add. Annotation :*—**Apld.** Earle *v.* Hemsworth R. D. C. (1928), 140 L. T. 69.

82. *Add. Annotation :*—**Refd.** Gray *v.* Spyer, [1922] 2 Ch. 22.

84. *Add. Annotation :*—**Refd.** Norwich Union Fire Insce. Soc. *v.* Colonial Mutual Fire Insce., [1922] 2 K. B. 461.

86. *Add. Annotation :*—**Refd.** Rye *v.* Purcell, [1926] 1 K. B. 446.

91. *Add. Annotation :*—**Refd.** Edwards *v.* Motor Union Insce., [1922] 2 K. B. 249.

93. *Add. Annotation :*—**Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

94. *Add. Annotation :*—**Consd.** *Re* Lloyd's Furniture Palace, Evans *v.* Lloyd's Furniture Palace, [1925] Ch. 853.

106a. —— —— **Grantee bound to attend at specified place to receive payments & give receipts.**]—*Held :* assuming such condition to be a valid one, there was nothing to prevent the grantee from assigning the annuity to a third person.—Arden *v.* Goodacre (1852), 11 C. B. 883; 21 L. J. C. P. 129; 18 L. T. O. S. 208; 16 Jur. 529; 138 E. R. 723.

110a. —— ——.]—Testatrix by her will, dated in 1862, gave a fifth share of her residuary estate to her daughter W. for life, with remainder to her children, but if she should die without issue, which event happened, "her share to go to her next of kin as if she had not been married." In 1866 J., another daughter of testatrix, married, & by her marriage settlement covenanted that any real or personal property to which she then

PART III. SECT. 2, SUB-SECT. 1.

s i. —— ——.]—The judgment of a foreign ct. creates a debt, & is *primâ facie* assignable.—Muhammad Moideen *v.* Chinthamani Chettar (1929), I. L. R. 52 Mad. 503.—**IND.**

PART III. SECT. 2, SUB-SECT. 3.

77 ii. —— ——.]—M. who had contracted with defts. to do certain work for them, gave an order upon defts. in favour of H. & M., who assigned it to pltfs. to pay to H. & M. "any moneys due or to become due on my contract . . . in consideration of moneys advanced by them to me for the purpose of financing this contract." Defts. acknowledged the receipt of the order. Afterwards certain payments were made by defts. to sub-contractors on M.'s direction, certain costs in the action were paid to solrs. & execution creditors of M. attached moneys in defts.' hands payable upon the contract, whereupon an interpleader issue was directed & tried :—*Held :* the order under which pltfs. claimed was not a legal assignment of an existing chose in action nor an assignment of the contract: it was nothing more than an equitable assignment of a fund not yet in existence.—Interior Trust Co. *v.* Essex Border Utilities Commission (1928), 62 O. L. R. 551.—**CAN.**

78 i. *Money accruing to assignor by will.*]—An amount which exors. are directed by the will to pay for the maintenance & education of an infant may be assigned by the person to whom they have become liable therefor.—*Re* Grant Estate, Mullin & Mullin *v.* Annable, [1928] 1 W. W. R. 894; 22 Sask. L. R. 483.—**CAN.**

PART III. SECT. 3.

sa. *To construct tramway across grantor's land—Assignable.*]—McDonald *v.* Peddle, [1923] N. Z. L. R. 987.—**N.Z.**

sb. *To execute lease.*]—A right arising under an agreement with an owner of immoveble property to call upon him to execute a lease is a chose in action, and as such movable property.—Wearne Brothers *v.* Russa Engineering Works (1928), I. L. R. 7 Ran. 144.—**IND.**

PART III. SECT. 4.

96 i. *Claim to compensation—Damage to lands—Assignable.*]—By erection of a public work, a dam, the Crown expropriated the right to flood the land of V., who subsequently sold the property to H., with the right to recover compensation from the Crown : —*Held :* it was not an assignment of litigious rights, & H. was entitled to recover compensation.—R. *v.* Hye (1921), 69 D. L. R. 173; 21 Exch. C. R. 76.—**CAN.**

96 ii. ——.]—By a clause in a lease it was provided that in case the demised premises should be resumed by any authority, then out of the compensation moneys payable to the lessor & lessee, the lessor shall be entitled to receive £8,440, & in addition £300 *per annum* or a proportionate part thereof for the unexpired term of the lease & the lessee shall be entitled to the balance :—*Held :* the clause in the lease did not operate as an equitable assignment.—Tooth *v.* Brisbane City Council (1929), 41 C. L. R. 212.—**AUS.**

c i. —— —— ——.]—A right of action in tort is not assignable. The lessee under a crop payment lease, having been served while threshing with a garnishee summons issued in a suit against the lessor, sold all the crop in his own name & paid the lessor's share of the proceeds into ct., meanwhile notifying the lessor that he would do so. The lessor after receiving said notice & a copy of the garnishee summons assigned to pltf. all his claims & demands against the lessee for "debts or rentals now due or to become due" under the lease, & all his interest in the crops grown thereunder. The lease required the lessee to deliver the lessor's share on the day of threshing, &, if required, at a certain elevator in the name of the lessor. The pltf., *i.e.* the assignee of the lessor, sued the lessee for damages on the ground of conversion.—*Held :* the action was not maintainable.—Kozak *v.* Misiura, [1928] 1 D. L. R. 591; [1928] 1 W. W. R. 1; 22 Sask. L. R. 208.—**CAN.**

1 i. —— —— *Claim by insurance company—Having paid loss.*]—Pltfs., insurance cos., had insured premises which were destroyed by a fire which, as they alleged, arose from the negligence of defts. Having paid the owners of the premises the amount of the loss, pltfs. claimed to be subrogated to the right of the owners to recover against defts. & also alleged they had taken assignments in writing by way of subrogation to the right of the owners, & they claimed in this action damages for the negligence of defts. causing the fire :—*Held :* the action was a simple common law action in which the owners' rights were asserted against the alleged wrongdoers, & a motion to strike out a jury notice given by defts. upon the ground that the action was one which, before 1873, was exclusively within the jurisdiction of the Ct. of Chancery, was refused.—Royal Exchange Ass'ce. Co. *v.* Grimshaw Brothers, Ltd., [1928] 2 D. L. R. 412; 62 O. L. R. 25.—**CAN.**

1 ii. —— —— *Nuisance.*]—Canadian Surety Co. *v.* Finch, [1930] 2 D. L. R. 421.—**CAN.**

PART III. SECT. 5.

100 i. *Promise to pay over proceeds of litigation—Compromise of suit—Effect of agreement.*]—Where there was an assignment of part of the fruits of litigation :—*Held :* even if they were to be regarded as non-existing property at the date of the agreement, the agreement attached upon the money being paid.—Vatsavaya Venkata Jagapati *v.* Poosapati Venkatapati (1924), L. R. 52 Ind. App. 1.—**IND.**

was entitled for any estate or interest whatsoever in reversion, remainder, or expectancy should be settled upon the trusts of the settlement. W. died in 1912 without issue, & leaving J. her sole next of kin:—*Held:* the interest which J. had at the date of the settlement in the settled share of W. was either a mere *spes successionis*, or must be treated as such, & was not assignable at law.—*Re* MUDGE, [1914] 1 Ch. 115; 83 L. J. Ch. 243; 109 L. T. 781; 58 Sol. Jo. 117, C. A.

Annotation:—**Refd.** *Re* Lind, Industrials Finance Syndicate *v.* Lind, [1915] 2 Ch. 345.

114. *Add. Annotation:*—*As to* (1) **Refd.** *Re* Wait, [1927] 1 Ch. 606.

118. *Add. Annotations:*—**Refd.** *Re* Dent, *Ex p.* Trustee, [1923] 1 Ch. 113; Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1.

119. *Add. Annotation:*—**Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

124. *Add. Annotations:*—**Consd.** Smith *v.* Smith, [1923] P. 191; Walls *v.* Legge, [1923] 2 K. B. 240.

125. *Add. Annotations:*—**Consd.** Smith *v.* Smith, [1923] P. 191. **Refd.** Campbell *v.* Campbell, [1928] P. 187; *Re* Nelson, Norris *v.* Nelson (1918), [1928] Ch. 920, n.

153. *Add. Annotations:*—**Consd.** Burrowes *v.* Burrowes (1929), 141 L. T. 201. **Refd.** Capron *v.* Capron, [1927] P. 243.

154. *Add. Annotations:*—**Refd.** Capron *v.* Capron, [1927] P. 243; Burrowes *v.* Burrowes (1929), 141 L. T. 201.

160. *Add. Annotation:*—**Refd.** Capron *v.* Capron, [1927] P. 243.

Part IV.—What amounts to an Assignment.

191. *Add. Annotation:*- -**Apld.** The Zigurds (1931), 47 T. L. R. 525.

193. *Add. Annotation:*—*As to* (2) **Apld.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

195. *Add. Annotations:*—**Refd.** Cottage Club Estates *v.* Woodside Estate Co. (Amersham) (1927), 97 L. J. K. B. 72; Earle *v.* Hemsworth R. D. C. (1928), 44 T. L. R. 605.

196. *Add. Annotations:*—*As to* (3) **Refd.** Williams *v.* Atlantic Assurance Co. (1932), 37 Com. Cas. 304. *Generally*, **Refd.** The Zigurds (No. 2) (1932), 48 T. L. R. 559.

200. *Add. Annotation:*—**Consd.** Bank of Liverpool & Martins *v.* Holland (1926), 43 T. L. R. 29.

202. *Add. Annotation:*—**Refd.** Bank of Liverpool & Martins *v.* Holland (1926), 43 T. L. R. 29.

204a. -.]—Pltfs., shipowners & brokers of West Hartlepool, acted as ship's agents for the steamship *Z.*, of Riga, & before making any necessary disbursements on behalf of or incurring any liability in respect of the vessel obtained from the master the following document: "Please pay the freight for my vessel, the *Z.*, & all demurrage which may be payable under the charter, to my agents, Messrs. C. E. & Co., Ltd., & oblige." The persons described in the document as the master's agents were pltfs. In an action by pltfs. for necessaries the evidence showed that this document came into being with the approval of the managing owner of the *Z.* & after he had agreed to assign to pltfs. all freight & demurrage:—*Held:* the document operated as an assignment of the freight & demurrage & pltfs. were entitled to judgment.—THE ZIGURDS (1931), 47 T. L. R. 525.

204b. -.]—Pltf., who had obtained judgment as first mtgee. against the proceeds of sale of a Latvian steamship, further claimed legal assignment to himself of the freight earned on the ship's last voyage. It was argued that by an agreement supplementary to the mtge. the mtgee. was given an equitable assignment, which by reason of notice to or knowledge possessed by the consignee or receiver of the cargo was converted into a legal assignment. The alleged notice consisted in the intervention by the mtgee. in an action by necessaries claimants who had arrested the ship, &/or in the terms of the mtgee.'s affidavit of interest filed in that action. The knowledge of the mtgee.'s claim was said to be proved by a letter written by the solrs. for the consignees or receivers of cargo. The material paragraphs of the supplementary agreement were as follows: "The mtgee. shall be at liberty so long as any moneys may be due under the said first mtge. & this agreement & he is hereby empowered in his own name or in the name of the shipowners . . . to demand, sue for, & receive & give receipt for all moneys due to the shipowners in connection with the said steamship & to institute such legal proceedings as he may think proper. . . ." "In relation to the matters dealt with herein, where they apply, the shipowners hereby appoint the mtgee. their attorney for them & in their name at any time during the currency of this security to collect, sue for, receive & give effective receipts for all freights . . . which may be or become due & owing to the shipowners. . . .":—*Held:* (1) by Law of Property Act, 1925 (c. 20), s. 136, a

PART III. SECT. 13, SUB-SECT. 4.

sc. *Pension Act, s.* 20 (3)—*What amounts to charge—Order under Collection Act, R. S. N. S.* 1923.]—CHIPMAN *v.* ROSCOE (N. S.), [1929] 4 D. L. R. 130.—**CAN.**

PART III. SECT. 14.

a i. ——.]—An option to purchase, contained in a will, is *primâ facie* not purely personal but is assignable by the optionee & transmissible by him to his personal representatives.—PER-L TRUSTEE CO. *v.* UNION TRUSTEE Co. (1927), 28 S. R. N. S. W. 222; 45 N. S. W. W. N. 30.—**AUS.**

sf. *Non-negotiable promissory notes.*]—Promissory notes drawn in such form that they are non-negotiable, can be assigned in the same manner as an ordinary chose in action.—MERCHANTS BANK OF CANADA *v.* GREENLEES, [1923] 2 W. W. R. 931.—**CAN.**

sg. *Land scrip.*]—WRIGHT *v.* BATTLEY (1905), 15 Man. L. R. 322; 1 W. L. R. 563.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 1.

c i. ——.]—MCQUADE & CLARK *v.* MONCRIEFF & VISTAUNET (B. C.), [1929] 1 D. L. R. 782.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 2.

sk. *General rule.*]—An assignment is to be regarded as absolute, although it appears on its face that it is only for the purpose of securing a debt lesser in amount, so long as it does not purport to be by way of charge only.—*Re* BLAND & MORUN (1913), 25 O. W. R. 419; 30 O. L. R. 100; 5 O. W. N. 522.—**CAN.**

legal assignment must be absolute & express notice thereof must be given to the debtor; the constructive notice upon which the mtgee. relied was not sufficient to comply with the statute & the claim to a legal assignment of the freight failed; but there was in the supplementary agreement clear evidence of an equitable assignment of the freight to the mtgee.; (2) in a case where the mtgor. was a shipowner through whose default in business the whole trouble had been occasioned, & against whom judgments had been recovered, in default of appearance, by (*inter alios*) the interveners, it was not a necessary condition that the mtgor. should be joined in the mtgee.'s action.—THE ZIGURDS (No. 2), [1932] P. 113; 101 L. J. P. 81; 48 T. L. R. 559.

204c. —— ——.]—Pltfs., while acting as agents for a foreign steamship in an English port, were asked to make disbursements & incur expenses on behalf of the vessel. Before doing so they obtained the following document, addressed to the receivers of cargo, which was signed by the master with the approval & consent of the managing owner of the ship: "Please pay the freight for my vessel, the *Z.*, & all demurrage which may be payable under the charter, to my agents, E. A. Casper, Edgar & Co., Ltd., & oblige." On June 15, 1931, on an *ex parte* motion, LANGTON, J., gave judgment for pltfs.' claim for necessaries, & pronounced for the validity of an assignment to them of the freight & demurrage. At the reference to assess the amount of the claim the registrar, however, reported that the document was no more than an order to pay the freight & demurrage to pltfs., who, he said, had under it nothing in the nature of a right *in rem* against the freight. He, therefore, disallowed several items on the ground that they were not necessaries. Interveners, who as necessaries men were interested in the fund represented by the freight, moved to set aside the judgment of June 15, 1931, on the ground that the document was merely an ordinary agent's authority to collect the freight, & that even if it amounted to an equitable assignment the action must fail because the assignor was not joined as a pltf.:—*Held:* on the evidence of pltfs., combined with the document itself, there was an equitable assignment of the freight & demurrage to pltfs.; where the ct. was satisfied that there was no danger of fraud or harsh treatment of the assignor it could dispense with the presence of the assignor as a joint pltf.; & pltfs. could maintain their action *in rem*.—THE ZIGURDS (No. 3), [1932] P. 113; 101 L. J. P. 84; 48 T. L. R. 561.

204d. Amount recoverable by assignee limited.]—Deft. owed £285 to W., who owed money to pltf. bank, & W. assigned to the bank the debt owed to him by deft. The assignment, which was in writing, provided that "the amount recoverable under these presents shall not at any time exceed £150." Due notice of the assignment was given to deft. In an action upon the assignment:—*Held:* (1) the assignment was not an assignment of part only of the debt, but an absolute assignment of the whole debt with a proviso that if the bank recovered more than £150 they must hold the balance as trustees for the assignor, & it was a good legal assignment; (2) even if it was an assignment of part only of the debt it would still be a good equitable assignment, & pltfs. were entitled to recover.—BANK OF LIVERPOOL & MARTINS, LTD. *v.* HOLLAND (1926), 43 T. L. R. 29; 32 Com. Cas. 56.

Annotation:—As to (1) **Refd.** Earle *v.* Hemsworth R. D. C. (1928), 44 T. L. R. 605.

205. *Add. Annotations:—As to* (1) **Refd.** National Provincial & Union Bank of England *v.* Lindsell, [1922] 1 K. B. 21; *Re* Pinto Leite, *Ex p.* Dos Olivaes, [1929] 1 Ch. 221. *As to* (2) **Refd.** Allgemeine Versicherungs Gesellschaft Helvetia *v.* German Property Administrator (1931), 144 L. T. 705. *As to* (3) **Consd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1. *Generally*, **Refd.** Williams *v.* Atlantic Assurance Co. (1932), 37 Com. Cas. 304.

211. *Add. Annotation:—As to* (1) **Refd.** Palmer *v.* *v.* Carey, [1926] A. C. 703.

214a. ——.]—Order to pay money out of a particular fund gives the party a specific lien thereon.—SMITH *v.* EVERETT (1792), 4 Bro. C. C. 64; 29 E. R. 780.

Annotations:—**Refd.** Crowfoot *v.* Gurney (1832), 9 Bing. 372; Best *v.* Argles (1834), 2 Cr. & M. 394.

221a. —— **Part of debt.**]—BANK OF LIVERPOOL & MARTINS, LTD. *v.* HOLLAND, No. 204a, *ante*.

236. *Add. Annotation:*—**Apprvd.** *Re* Swinburne, Sutton *v.* Featherley (1925), 70 Sol. Jo. 64.

PART IV. SECT. 2, SUB-SECT. 1.—A.

205 x. —— —— *Building contract apportioning price between builder & third party.*]—GRANT *v.* TRAVIS, [1924] 2 D. L. R. 1164; 2 W. W. R. 503.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.—B. (c).

sm. *Authorising payment of sum in hands of garnishee—Order giving effect to verbal assignment.*]—CLARKE BROTHERS, LTD. *v.* GOODIN & PEDERSON, [1922] 3 W. W. R. 504; 68 D. L. R. 792.—**CAN.**

223 i. *Assigning money due or to become due—Under contract.*]—It is no objection to an equitable assignment of a claim against a third person that the work upon which the claim is based has yet to be performed.—*Re* MATTHEWS SHEET METAL & ROOFING CO., LTD., *Ex p.* MARTIN, [1924] 1 D. L. R. 761; 55 O. L. R. 262; 4 C. B. R. 471.—**CAN.**

223 ii. —— *Under policy.*]—*Held:* the assignment was not vitiated by the fact that, at the time, the fund on which the assignment was intended to operate had not yet come into existence.—LIVERPOOL & LONDON & GLOBE INSURANCE CO., LTD. *v.* HARTLEY & FORD, [1927] V. L. R. 523; 49 A. L. T. 70; [1927] Argus L. R. 417.—**AUS.**

PART IV. SECT. 2, SUB-SECT. 1.—B. (f).

238 i. *Banker's deposit receipt—Surrender to bank—New deposit receipt taken out.*]—In order to transfer the beneficial interest in a deposit receipt, a written assignment is unnecessary. It is sufficient if the deposit receipt is surrendered to the bank, & a new deposit receipt taken out, with intent to pass the beneficial interest, in the names of the persons to whom the depositor intends to pass the beneficial interest. S., the owner of a deposit receipt for £900, surrendered the same to the bank, & directed a new deposit receipt to be made out in the names of himself & his two nephews, with the intention that the interest in the same should at his own death pass to his nephews. S. subsequently died:—*Held:* there had been an effectual transfer of the beneficial interest, & at the death of A. the same passed to the two nephews.—MCENEANEY *v.* SHEVLIN, [1912] 1 I. R. 32.—**IR.**

PART IV. SECT. 2, SUB-SECT. 2.—A.

243 iii. ——.]—It is an essential requisite of an equitable assignment of a chose in action that the fund which is being disposed of shall be indicated in such a way that it can be identified.—DUNNETT *v.* WHITEWATER RURAL MUNICIPALITY, [1932] 1 W. W. R. 749; 40 Man. L. R. 267; 3 D. L. R. 135.—**CAN.**

246 iv. —— ——.]—*Held:* the order set out in the judgment, in the circumstances, was a good equitable assignment of moneys due from the board of a drainage district to a person who had a contract with it.—STIRLING COLLIERIES, LTD. *v.* JONES, [1924] 4 D. L. R. 1305; 3 W. W. R. 955.—**CAN.**

250a. Directions to pay proceeds of cargo to creditor.]—An order by A. to B., directing the latter to pay over to C., a creditor of A., the proceeds of a cargo consigned by A. to B., creates no lien in favour of C.—HOLLAND & HUMBLE'S ASSIGNEES *v.* —— (1815), 1 Stark. 143; 171 E. R. 427; *sub nom.* HEYWOOD *v.* WARING, 4 Camp. 291; *sub nom. Re* HOLMES, *Ex p.* HEYWOOD, 2 Rose, 355, N. P.

Annotations:—**Consd.** Frith *v.* Forbes (1862), 31 L. J. Ch. 793. **Refd.** Giles *v.* Grover (1832), 9 Bing. 128; Malcolm *v.* Scott (1843), 3 Hare, 39.

258. *Add. Annotation:*—**Refd.** National Provincial & Union Bank of England *v.* Lindsell (1921), 91 L. J. K. B. 196.

258a. Agreement to pay proceeds into lender's bank—Advances for purchase of goods.]—By a written agreement made in 1917 a trader was to purchase goods from time to time & resp. was to advance money to pay for them; the trader was to sell the goods & to pay the proceeds to the credit of resp. at his bank; resp., after deducting the amount which he had advanced & one-third of the gross profits, was to pay the remaining two-thirds to the trader. In 1921 the trader became bkpt., & applt. was appointed assignee in the bkpcy. At the time of the bkpcy. a large sum advanced under the agreement had not been repaid, & the trader had in his hands goods purchased under the agreement, & the proceeds of other goods so purchased. Resp. claimed a charge on the above assets in respect of the advances not repaid:—*Held:* as the agreement did not, either contractually or otherwise, create any right of the lender in either the goods or their proceeds, it did not amount to an equitable assignment so as to entitle resp. to the charge claimed.—PALMER *v.* CAREY, [1926] A. C. 703; 95 L. J. P. C. 146; 135 L. T. 237; [1926] B. & C. R. 51, P. C.

269. *Add. Annotation:*—**Refd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

274. *Add. Annotation:*—**Refd.** *Re* Wait, [1927] 1 Ch. 606.

274a. *S. P.* BRADLEY *v.* —— (1744), Ridg. *temp.* H. 194; 27 E. R. 801, L. C.

280. *Add. Annotation:*—*As to* (1) **Refd.** Rekstin *v.* Komseverputj Bureau (Bank for Russian Trade, Ltd.) (1932), 48 T. L. R. 578.

303. *Add. Annotation:*—*As to* (1) **Distd.** *Re* Nelson, Norris *v.* Nelson (1918), [1928] Ch. 920, n.

307. *Add. Citations:*—[1922] 1 K. B. 21; 91 L. J. K. B. 196; 126 L. T. 319; [1921] B. & C. R. 209.

Add. Annotation:—**Refd.** *Re* North Wales Produce & Supply Soc., [1922] 2 Ch. 340.

Part V.—Notice of Assignment.

See, now, Law of Property Act, 1925 (c. 20), ss. 136, 137.

313. *Add. Annotation:*—**Refd.** National Provincial & Union Bank of England *v.* Lindsell (1921), 91 L. J. K. B. 196.

338a. —— ——.]—A. B. was entitled to a reversionary interest in a fund vested in four trustees, of whom he was one. A. B. mortgaged his interest to C. D., another trustee:—*Held:* C. D.'s notice in the transaction was a sufficient notice to the trustees of the mtge.; but A. B.'s notice was not.—WILLES *v.* GREENHILL (No. 1) (1860), 29 Beav. 376; 54 E. R. 673; *affd. on other grounds* (1861), 4 De G. F. & J. 147, L. C.

354. *Add. Annotation:*—**Refd.** H. *v.* H., [1928] P. 206.

PART IV. SECT. 2, SUB-SECT. 2.—B.

256 i. *Directions to agent to sell & pay proceeds into bank—Principal paying for goods by cheques drawn against proceeds.*]—KIDD *v.* HARDEN, MCCONNAL *v.* HARDEN, [1924] 4 D. L. R. 516; 3 W. W. R. 293.—**CAN.**

258 a i. *Agreement to pay proceeds to lender—Advances for purchase of goods.*]—B. being indebted to a co. for the price of sheep which it had purchased on his behalf, by an agreement in writing undertook so long as his indebtedness to the co. should continue not to sell any of the sheep without the written consent of the co., & in the event of any sale with such consent to pay the nett proceeds to the co. in full or to the extent of his indebtedness. Some of the sheep having been sold:—*Held:* the agreement operated as an equitable assignment of the proceeds to the co.—*Re* MCPHERSON, THOM & CO.; SANDHURST & NORTHERN DISTRICT TRUSTEES, ETC., CO., LTD. *v.* COOMBIE PASTORAL CO. PTY., LTD., [1929] V. L. R. 295; Argus L. R. 240.—**AUS.**

PART IV. SECT. 2, SUB-SECT. 2.—C.

c. Add "*revsd.*, [1921] 1 W. W. R. 839."

PART IV. SECT. 2, SUB-SECT. 3.

3B. *Lodging notes as collateral security.*]—A document providing that certain notes "are lodged with the bank as a general & continuing collateral security for the due payment of all advances made or to be made to me by the bank":—*Held:* not a proper assignment; there is a distinction between lodging a document as collateral security & an assignment.—MERCHANTS BANK OF CANADA *v.* GREENLEES, [1923] 2 W. W. R. 931.—**CAN.**

3I. *Indorsement of lien note.*]—*Held:* to constitute a good equitable assignment thereof.—CANADIAN BANK OF COMMERCE *v.* LA BRASH, [1918] 1 W. W. R. 6; 39 D. L. R. 398; 10 Sask. L. R. 408.—**CAN.**

PART IV. SECT. 3.

280 i. *Necessity for communication to & assent by assignee—To constitute assignment.*]—A letter assigning moneys must be shown to have been communicated to the assignee before it will be held to constitute an equitable assignment.—STARR CO. OF CANADA, LTD. *v.* MERRILL, [1922] 3 W. W. R. 926; 70 D. L. R. 557.—**CAN.**

PART IV. SECT. 6.

288 ii. ——.]—LOEPPKY *v.* LANG, [1925] 2 D. L. R. 610; [1925] 1 W. W. R. 1104; 19 Sask. L. R. 337.—**CAN.**

3A. *Assignment of lien agreement—Whether consideration amount due under lien.*]—A. R. WILLIAMS MACHINERY CO., LTD. *v.* MOORE, [1926] 4 D. L. R. 568.—**CAN.**

PART V. SECT. 1, SUB-SECT. 1.

311 i. *Assignment—As security—Of debts.*]—OKELL MORRIS & CO. *v.* DICKSON (1902), 9 B. C. R. 151.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.

3B. *Assignment of lien.*]—HENDSBEE *v.* SONORA TIMBER CO., LTD., [1928] 1 D. L. R. 642; 59 N. S. R. 457.—**CAN.**

PART V. SECT. 3, SUB-SECT. 1.

3C. *To guarantor—Notice not given to debtor.*]—DONALD *v.* JUKES, [1921] 2 W. W. R. 208; 56 D. L. R. 692; 60 S. C. R. 652.—**CAN.**

PART V. SECT. 3, SUB-SECT. 3.

3D. *Of debtor.*]—Notice to the solr. of debtor that the claim against the latter was to be paid to a third party is notice to debtor himself that such claim had been assigned.—ST. JOHN & QUEBEC RY. CO. *v.* BANK OF BRITISH NORTH AMERICA & HIBBARD CO. (1921), 67 D. L. R. 650; 62 S. C. R. 346.—**CAN.**

PART V. SECT. 4.

4I. *Before action—Judicature Act,* 1909, *s.* 19 (6).]—WOODSTOCK ELECTRIC RAILWAY, LIGHT & POWER CO. *v.* DOMINION TANNERIES, LTD. (1918), 45 N. B. R. 408.—**CAN.**

393. *Add. Annotation :*—**Refd.** Garland *v.* Archer-Shee (1930), 142 L. T. 443.

406. *Add. Annotation :*—**Refd.** Garland *v.* Archer-Shee (1930), 142 L. T. 443.

407. *Add. Annotation :*—**Refd.** Garland *v.* Archer-Shee (1930), 142 L. T. 443.

417. After this case add "*See, now,* Law of Property Act, 1925 (c. 20), s. 137."

421. *Add. Annotation :*—**Refd.** Garland *v.* Archer-Shee (1930), 142 L. T. 443.

440. *Add. Annotation :*—**Refd.** Knight *v.* Knight, [1925] Ch. 835.

460. *Add. Annotation :*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

461. *Add. Annotation :*—**Consd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

463. *Add. Annotation :*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

Part VI.—Effect of Assignment.

475. *Add. Annotations :*—*As to* (1) **Refd.** *Re* Bernstein, Barnett *v.* Bernstein (1924), 69 Sol. Jo. 88. *As to* (2) **Refd.** Weld *v.* Petre, [1929] 1 Ch. 33.

483. *Add. Annotation :*—**Apld.** Mabro *v.* Eagle Star & British Dominions Insurance Co., [1932] 1 K. B. 485.

483a. —— ——.]—G. & T. Earle, Ltd. *v.* Hemsworth Rural District Council, No. 77a, *ante.*

485. *Add. Annotations :*—**Refd.** Cheshire County Council *v.* Hopley (1923), 130 L. T. 123; The Koursk, [1924] P. 140; Venn *v.* Tedesco, [1926] 2 K. B. 227.

504. *Add. Annotation :*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

509. *Add. Annotation :*—**Refd.** Performing Right Soc. *v.* London Theatre of Varieties, [1922] 2 K. B. 433.

519. *Add. Annotation :*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

544. *Add. Annotation :*—**Refd.** Garland *v.* Archer-Shee (1930), 142 L. T. 443.

PART V. SECT. 5.

b i. —— *That alleged assignee had possession of notes.*]—Although debtors may have known that notes were in the possession of a bank, the alleged assignee :—*Held :* this was insufficient, being a far different thing from having notice of the assignment, & there was no duty in debtors to inquire of the bank.—Merchants Bank of Canada *v.* Greenlees, [1923] 2 W. W. R. 931. —**CAN.**

PART V. SECT. 6.

381 ii. —— —— ——.]—On an assignment of a debt the express notice in writing to the debtor which under sect. 37 (*m*) of Judicature Act is required to complete the transfer of the legal right to the debt need not be in any special form, it being sufficient if the effect upon the debtor is to convey to him with sufficient certainty the fact that the right to demand payment has been transferred to a certain third person as assignee.—General Motors Acceptance Corpn. & Williamson *v.* Johnson, [1930] 2 W. W. R. 167; 4 D. L. R. 291; 24 Alta. L. R. 475.—**CAN.**

PART V. SECT. 9, SUB-SECT. 1.—A. (a) i.

o. Add "*Revsd.* 47 S. C. R. 313; 10 D. L. R. 232; 23 W. L. R. 445."

p i. ——.] — The assignee of an equitable interest in personal estate without notice of an existing earlier assignment will gain priority simply by the act of giving notice to the person who has the legal dominion over the fund before notice is given by an assignee earlier in point of time.—Gordon *v.* Gordon, [1924] 2 D. L. R. 74; 1 W. W. R. 903; 18 Sask. L. R. 187.—**CAN.**

PART V. SECT. 9, SUB-SECT. 1.—A. (b).

sk. *Assignments of money payable under commission certificates—Certificates not assignable—Order for payment given to first assignee—Certificates handed to second assignee.*]—J. I. Case Threshing Machine Co. *v.* General Motors Acceptance Corpn., [1924] 4 D. L. R. 1297; 3 W. W. R. 694.—**CAN.**

PART V. SECT. 10.

sl. *Registered judgment—Notice given against creditor—Of assignment.*]—If a vendor of land, in order to secure an indebtedness, assigns all the moneys due or to become due under the agreement of sale, such assignment not being registered, but due notice thereof being given to the purchaser, the assignee will be entitled to the moneys as against one who subsequently obtains & registers judgments against the vendor.—Canadian Bank of Commerce *v.* Royal Bank of Canada, [1921] 2 W. W. R. 462; 60 D. L. R. 275; 29 B. C. R. 407.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 1.

sm. *Assignment as security—Payment of debt—Direction by assignee for payment o moneys to assignor—Right of assignor to sue in own name.*]—Elliott *v.* Le Page (Man.), [1929] 3 D. L. R. 912.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 2.

476 ii. —— —— *Money due under agreement for sale—Power to cancel agreement.*]—Where a vendor of land under agreement for sale assigns the moneys due under the agreement for sale & notice of the assignment, equitable or legal, is given to debtor, it is not open to the vendor & debtor to cancel the agreement without the concurrence of the assignee.—Union Bank of Canada *v.* Dutczak, [1924] 3 D. L. R. 457; 2 W. W. R. 864.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.—A.

t i. —— *Of contract for sale of land.*]—Interstate Investment Co., Ltd. *v.* Mobbs (1928), 28 S. R. N. S. W. 572; 45 N. S. W. W. N. 176.—**AUS.**

u. Add '*revsd. in part,* 4 A. R. 267."

e i. —— *Of lien.*]—Pltf., assignee of three several claims of workmen who had liens under Woodmen's Lien Act, commenced an action in his own name without serving any notice of the assignment upon debtor :—*Held :* pltf. could bring an action in his own name without giving the notice referred to in Jud. Act, s. 19 (5).—Barnes *v.* Black, [1925] 3 D. L. R. 65; 58 N. S. R. 69.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.—B. (a).

m i. —— —— *Effect of Land Titles Act, s.* 101.]—Armstrong *v.* Marshall (1915), 8 W. W. R. 300; 19 D. L. R. 183; 8 Alta. L. R. 449.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.—B. (b).

512 ia. —— —— —— ——.] — Pltf. brought action on July 2, 1929, for balance of account for goods sold & delivered. On Oct. 25, following, pltf. assigned the debt to three persons who on the following day assigned the debt to M., & on Jan. 1, 1930, M. re-assigned to pltf. :—*Held :* the several assignments were merely equitable, & pltf. was the proper person in whose name the action should be brought.—Mouat Bros. & Co. *v.* Warnier, [1931] 1 D. L. R. 569; 43 B. C. R. 238.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 2.

550 iii. —— ——]—Shepherd *v.* Livingston, [1924] 1 D. L. R. 723; 1 W. W. R. 455.—**CAN.**

550 iv. —— ——.]—McPherson *v.* Lees (Andrew), Ltd., [1926] N. Z. L. R. 523.—**N.Z.**

sw. *Payment to assignee—Money due under agreement for sale—Covenant by assignor to convey on payment.*]—Where a vendor has covenanted in writing with an assignee to convey the land to the purchaser on payment of the full amount of the purchase-money, the purchaser is protected as to title & may safely make his payments to the assignee; & the assignee can sue on the purchaser's covenant to pay contained in the agreement.—Union Bank of Canada *v.* Dutczak, [1924] 3 D. L. R. 457; 2 W. W. R. 864.—**CAN.**

Part VII.—Assignment subject to Equities.

592. *Add. Annotation :—As to* (2) **Refd.** Lawrence *v.* Hayes, [1927] 2 K. B. 111.

601. *Add. Annotations :*—**Consd.** *Re* Pinto Leite, *Ex p.* Des Olivaes, [1929] 1 Ch. 221. **Refd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

601a. —— **Assignment of debt payable in futuro.**]—In 1918, C., a creditor of a firm, agreed to leave the sum constituting her debt on deposit with the firm for fifteen years from Jan. 1, 1917, upon the terms (*inter alia*) that interest & commission thereon should be paid to V. for his own use, & that in certain events, which subsequently happened, V. should receive a share of the firm's profits, which he in fact received during the years 1918–1921. In 1920, by C.'s direction, the debtor firm transferred C.'s debt by a book entry into the name of F., V. continuing to receive interest & commission as before, & on Feb. 24, 1926, F. made an equitable assignment of the debt to V. Notice of the assignment was given to the debtor firm on Mar. 2, 1926, whereupon the firm transferred the debt by a book entry into the name of V. At the date of the said equitable assignment by F., F. was under a liability to the debtor firm in respect of certain accommodation bills for which, as between F. & the firm, F. was liable, but such liability did not accrue due as a debt until after notice of assignment had been given, namely, when the debtor firm expended £15,000 in taking up the acceptances. On Mar. 15, 1926, the debtor firm presented their petition for a receiving order & were subsequently adjudicated bkpt. In a claim by V. to prove in the firm's bkpcy. :—*Held :* the assignment by F. to V. was subject to all rights of set-off which had accrued due on the part of the firm against F. at the date of the notice of assignment but was not subject to any right of set-off in respect of the £15,000 which had not accrued due at that date ; nor did the fact that the debt assigned was a debt payable *in futuro*, for which the assignor was not at the date of the notice of assignment in a position to sue, affect the general rule governing the assignment of a chose in action.—*Re* PINTO LEITE & NEPHEWS, *Ex p.* DES OLIVAES, [1929] 1 Ch. 221 ; 98 L. J. Ch. 211 ; 140 L. T. 587 ; [1928] B. & C. R. 188.

604. *Add. Annotation :*—**Refd.** Lawrence *v.* Hayes, [1927] 2 K. B. 111.

605. *Add. Annotations :—As to* (2) **Distd.** *Re* Pinto Leite, *Ex p.* Des Olivaes, [1929] 1 Ch. 221. **Refd.** Lawrence *v.* Hayes, [1927] 2 K. B. 111 ; Earle *v.* Hemsworth R. D. C. (1928), 44 T. L. R. 605.

607a. **For breach of warranty by assignor—Against claim for instalments due under assigned agreement—Judgment obtained for damages for breach of warranty.**]—The owner of a business sold it to deft. on terms of payment by instalments, & then assigned the benefit of the agreement to pltf. Before notice of assignment was given to deft., the latter obtained judgment against the assignor for damages for breach of warranty on the above sale. In an action by pltf., as assignee, against deft. for payment of instalments due under the assigned agreement, deft. claimed to set off the amount of the judgment. Pltf. contended that deft.'s right to damages in respect of the breach of warranty had merged in the judgment, & that the latter could not be set off against his claim :—*Held :* the set-off was valid.—LAWRENCE *v.* HAYES, [1927] 2 K. B. 111 ; 96 L. J. K. B. 658 ; 137 L. T. 149 ; 91 J. P. 141 ; 43 T. L. R. 379, D. C.

Part VIII.—Voluntary Assignments.

613. *Add. Annotation :*—**Consd.** Macedo *v.* Stroud, [1922] 2 A. C. 330.

624a. —— ——.]—SLOANE *v.* CADOGAN (1808), cited in 12 Sim. at p. 291.

Annotations :—**Consd.** Edwards *v.* Jones (1836), 1 My. & Cr. 226 ; Beatson *v.* Beatson (1841), 12 Sim. 281. **Distd.** Meek *v.* Kettlewell (1843), 1 Ph. 342. **Apld.** Kekewich *v.* Manning (1851), 1 De G. M. & G. 176 ; Donaldson *v.* Donaldson (1854), Kay, 711. **Refd.** Fenner *v.* Taylor (1831), 2 Russ. & M. 190 ; M'Fadden *v.* Jenkyns (1842), 1 Hare, 458 ; Price *v.* Price (1851), 21 L. J. Ch. 53 ; Bridge *v.* Bridge (1852), 16 Beav. 315 ; Voyle *v.* Hughes (1854), 2 Sm. & G. 18 ; Gilbert *v.* Overton (1864), 4 New Rep. 420 ; Glegg *v.* Rees (1871), 7 Ch. App. 71.

PART VII. SECT. 1.

565 iii. ——.]—Even assuming a proper assignment, notes lodged with a bank as a general & continuing security for the due payment of all advances made, or to be made, must be taken by the assignee subject to any equities existing between the original parties.—MERCHANTS BANK OF CANADA *v.* GREENLEES, [1923] 2 W. W. R. 931.—**CAN.**

565 iv. —— *Effect of express contract.*]—Notwithstanding Choses in Action Act, R. S. S., 1920 (c. 202), s. 5, debtor can contract with his creditor, for good consideration, that he will not avail himself of his right to set up against the creditor's assignee any equity existing between the creditor & himself. If the contract which includes the clause not to set up the equities against an assignee was induced by fraud, such clause falls with the contract, except where debtor is estopped as against the assignee from setting up the fraud.—HAMILTON *v.* RAILTON, [1925] 3 D. L. R. 1090 ; [1925] 3 W. W. R. 136 ; *revsg.*, [1925] 2 W. W. R. 195.—**CAN.**

566 viii. —— —— *Assignment of security by bank.*]—Where a creditor, a bank, held securities for its debt which were subject to orders from the debtor to pay certain other creditors out of the surplus of the proceeds thereof over & above the amount due the bank :—*Held :* a third party by purchasing the securities from the bank with full knowledge of said orders placed himself in the position of the bank & assumed whatever liability the orders imposed upon the bank.—STEPHENS (G. F.) & CO., LTD. *v.* PERDUE, WERNER *v.* PERDUE & EATON, [1931] 3 W. W. R. 90 ; 4 D. L. R. 46.—**CAN.**

q i. —— *Notice of covenant by assignor—Whether assignee bound.*]—MCBRIDE *v.* ONTARIO JOCKEY CLUB, LTD., [1926] 1 D. L. R. 414 ; 58 O. L. R. 97.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 1.

ti. ——.]—ROYAL BANK OF CANADA *v.* GUSTAFSON, [1924] 1 W. W. R. 544 ; 33 B. C. R. 379.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 4.

604 ii. Add "*revsd.* in part, 25 A. R. 179."

604 iv. —— ——.]—ROYAL BANK OF CANADA *v.* GUSTAFSON, [1924] 1 W. W. R. 544 ; 33 B. C. R. 379.—**CAN.**

634. For "*Held:* (1) as it was the intention of the settlor," etc., read "*Held:* (1) as it was not the intention of the settlor," etc.

Add. Annotations:—As to (1) **Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179. *As to* (3) **Consd.** Macedo *v.* Stroud, [1922] 2 A. C. 330.

PART IX.

p i. —— *Under Assignment of Book Debts Act*, 1923 (*c.* 29).]—*Re* RAPORT, DENISON *v.* UNION BANK OF CANADA, [1925] 3 D. L. R. 1058; 57 O. L. R. 374; 5 C. B. R. 811.—**CAN.**

p ii. —— ——.]—K., on June 8, made a chattel mtge. to pltfs. on his stock-in-trade, & by the same instrument purported to assign to pltfs., as additional security, all present & future book debts arising out of or connected with K.'s business. The affidavit of *bona fides* described the instrument as a bill of sale by way of mtge. & asserted that it was not taken for the purpose of protecting the "goods & chattels" mentioned therein against the creditors of the mtgors., etc.:—*Held:* the instrument did not comply with above statute & was invalid as an assignment.—WESTLAKE *v.* MARTIN, [1930] 4 D. L. R. 805; 66 O. L. R. 89; 11 C. B. R. 469; *varg.*, 11 C. B. R. 87.—**CAN.**

p iii. —— *Under Assignment of Book Debts Act, R. S. O.*, 1927.]—The Assignment of Book Debts Act, R. S. O., 1927, confers no greater right upon an assignee of a chose in action than he had before. All it does is to make a general assignment of book debts void, as against creditors & subsequent purchasers or mtgees. in good faith & for value, unless registered. By registration pltf. co had preserved whatever rights it acquired by virtue of the assignment & no more.—SNYDER'S, LTD. *v.* FURNITURE FINANCE CORPN., LTD., [1931] 1 D. L. R. 398; 66 O. L. R. 79.—**CAN.**

sp. *Book account—Under Assignment of Book Accounts Act, R. S. B. C.*, 1924 (*c.* 16).]—VERNON HARDWARE CO. *v.* REID & REINHARD (B. C.), [1927] 2 W. W. R. 117.—**CAN.**

CHURCHYARD.

See BURIALS; ECCLESIASTICAL LAW.

CINEMATOGRAPH.

See THEATRES.

CITIZENS.

See ALIENS; CONSTITUTIONAL LAW; LOCAL GOVERNMENT.

CITY.

See LOCAL GOVERNMENT; METROPOLIS.

CIVIL LAW.

See ECCLESIASTICAL LAW.

CIVIL RIGHTS.

See ALIENS; CONSTITUTIONAL LAW; ROYAL FORCES; and titles *passim*.

CLERKS.

Arraigns, of	*See* CRIMINAL LAW.
Articled	,, SOLICITORS.
Assize, of	,, CRIMINAL LAW.
Barristers'	,, BARRISTERS.
Ecclesiastical	,, ECCLESIASTICAL LAW.
Justices, to	,, MAGISTRATES.
Local Authorities, to	,, LOCAL GOVERNMENT.
Parish	,, ECCLESIASTICAL LAW.
Peace, of the	,, LOCAL GOVERNMENT.
Town	,, LOCAL GOVERNMENT.

CLUBS AND OTHER VOLUNTARY ASSOCIATIONS.

Part II.—Jurisdiction of the Courts.

11. *Add. Annotation :*—**Consd.** Cookson *v.* Harewood (1931), 101 L. J. K. B. 394, n.

Part III.—Constitution and Internal Arrangements.

17. *Add. Annotation :*—**Consd.** Morgan *v.* Driscoll (1922), 38 T. L. R. 251.

18. *Add. Annotations :—As to* (1) **Consd.** Lamberton *v.* Thorpe (1929), 141 L. T. 638. **Refd.** Maclean *v.* The Workers' Union, [1929] 1 Ch. 602; Chapman *v.* Ellesmere (1932), 48 T. L. R. 309.

20. *Add. Annotation :—As to* (1) **Consd.** Morgan *v.* Driscoll (1922), 38 T. L. R. 251.

20a. —— **To alter qualification for membership.**]—GRIMWOOD *v.* ALDENHAM (1928), 72 Sol. Jo. 569.

21a. **Notice of general meeting—Who entitled to.**]—Pltfs. were the captain & the secretary of the women's section of a golf club, of which dcft. co. were the proprietors. At an extraordinary general meeting of the members a resolution was passed deleting from the rules of the club a provision for the election of a women's committee to manage the affairs of the women's section. No woman member of the club received notice of that meeting, as none of the women members held any shares in the co. In an action for a declaration that the resolution was invalid :—*Held :* under the rules women members were not full members & were not entitled to receive notices of general meetings, & the action failed.—COLE *v.* MERTON PARK (WIMBLEDON GOLF CLUB, LTD. (1927), 43 T. L. R. 400.

23. *Add. Annotation :—As to* (1) **Distd.** *R. v.* General Medical Council, [1930] 1 K. B. 562.

35. *Add. Annotation :—As to* (2) **Expld.** Maclean *v.* The Workers' Union, [1929] 1 Ch. 602.

38. *Add. Annotations :*—**Consd.** Amalgamated Soc. of Carpenters, Cabinet Makers & Joiners *v.* Braithwaite, General Union of Operative Carpenters & Joiners *v.* Ashley, [1922] 2 A. C. 440. **Folld.** Wing *v.* Burn (1928), 44 T. L. R. 258. **Refd.** A.-G. *v.* Swan, [1922] 1 K. B. 682.

39. *Add. Annotations :—As to* (1) **Refd.** A.-G. *v.* Swan, [1922] 1 K. B. 682; Bombay Official Assignee *v.* Shroff (1932), 48 T. L. R. 443.

39a. .]—WING *v.* BURN (1928), 44 T. L. R. 258.

—— —— ——.]—In an action against the officers of a club for an injunction restraining them from enforcing a resolution by which the council of the club has excluded pltf. from membership of the club, the questions for the ct. are, (*a*) whether the rules of the club have been observed, (*b*) whether the council has given pltf. a fair hearing, & (*c*) whether the council has acted in good faith.—LAMBERTON *v.* THORPE (1929), 141 L. T. 638; 45 T. L. R. 420.

PART II.

sc. *Validity of rules.*]—Where the rights or privileges of members of a club are not in any way affected, nor the property of the club in any way injured, the ct. has no jurisdiction to consider the legal validity of the rules of the club, nor to grant an injunction against the commission of acts merely criminal or merely illegal.—WATT *v.* MACLAUGHLIN, [1923] 1 I. R. 112.—**IR.**

12 ii. —— *Majority of members acting illegally—Injunction.*]—BRYLINSKI *v.* INKOL (1924), 55 O. L. R. 369.—**CAN.**

sd. *Dispute outside province of domestic tribunal.*]—Where the rules of a voluntary society provide that certain disputes & complaints should come before the domestic tribunals the law cts. will not as a rule usurp their functions, but where a dispute arises with which the rules never designed the domestic tribunals to deal, the law cts. will not refer the matter to the domestic tribunals but will themselves deal with it.—CRISP *v.* SOUTH AFRICAN COUNCIL OF THE AMALGAMATED ENGINEERING UNION, [1930] App. D. 225.—**S. AF.**

PART III. SECT. 1, SUB-SECT. 1.

c i. ——.]—A person on becoming a member of a lawful assocn. or society is, subject to its constitution, bound by the decisions of the society on matters of dispute between him & the society, unless such decision is contrary to natural justice, or in violation of the rules of the society, or done *malâ fide*.—CUTLER *v.* LAW SOCIETY OF MANITOBA, [1930] 3 W. W. R. 387; *affd.*, [1931] 2 W. W. R. 653; 4 D. L. R. 453; 39 Man. L. R. 535.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.

f i. —— —— *Necessity for unanimous vote or consent of all members.*]—BRYLINSKI *v.* INKOL (1924), 55 O. L. R. 369.—**CAN.**

f ii. —— ——.]—A rule prescribed that no future motion to open the links for play on Sundays should be passed unless by a majority of two-thirds of those present & voting :—*Held :* the repeal of the rule did not itself require a two-thirds majority.—WATT *v.* MACLAUGHLIN, [1923] 1 I. R. 112.—**IR.**

PART III. SECT. 2, SUB-SECT. 2.—A.

24 i. *Power to expel after inquiry by committee—Inadequate inquiry.*]—MONTGOMERY *v.* LEE STEERE (1926), 29 W. A. L. R. 70.—**AUS.**

26 i. *Power to expel for infringing rules.*]—Where a club was registered under Cos. Act :—*Held :* the committee were not in law the directors of the co. & had no authority to exercise the powers of directors to exclude pltf. from membership of the club.—MURPHY *v.* SYNNOTT, [1925] N. I. 14.—**IR.**

PART III. SECT. 2, SUB-SECT. 2.—B.

29 iv. —.]—Resp., being charged with having grossly misconducted himself within the meaning of a rule of applt. club, was summoned before a meeting of the club committee to show cause why he should not be dealt with under the rule. He was aware of the details of the charges preferred against him before attending the meeting, but, having attended as requested, & having failed in the opinion of the committee to justify his conduct, was suspended from membership. He took action against the club to have the suspension removed, & for damages, on the ground that the committee's decision, having been arrived at without affording him an opportunity of cross-examining the witnesses against him, was contrary to the principles of natural justice :—*Held :* the committee was not bound by the formal rules of evidence, & the inquiry having been conducted in accordance with the club's rules & the decision of the committee arrived at in good faith, in pursuance of an honest desire to protect the interests of the institution, after resp. had been given every facility for presenting a defence, the suspension was not contrary to the principles of natural justice, notwithstanding that no opportunity was given to cross-examine the witnesses.—PERRY *v.* FEILDING CLUB, [1929] N. Z. L. R. 529.—**N.Z.**

53a. —— **Claim by member for proportion of—On winding up of club.**]—A limited co. was registered with the object of carrying on a proprietary club, & by the articles H. was appointed governing director for life & the management of the club was vested in her. In 1915 H. granted a lease of premises to the club which was carried on there. In 1918 a subscription of four guineas a year for country members & five guineas for town members was charged, & as from Jan. 1, 1919, an entrance fee of five guineas was imposed. From 1917 to Mar. 25, 1919, a notice stating that the club would be carried on permanently was exhibited by H. On Mar. 11, 1919, H., without notice to the executive committee, issued a writ for arrears of rent, & on recovering summary judgment closed the club. The co. then passed a resolution for voluntary winding up & a liquidator was appointed. A., who was a member of the club, claimed to prove as creditor for general damages & a proportion of her subscription for 1919, B., another member, claimed general damages, the return of her entrance fee & the proportion of her subscription for the current year:—*Held:* A. & B. were entitled to prove, not only for the proportion of their subscriptions of which they had lost the benefit for the current year, but also in respect of damages for the loss of the amenities of the club, & in the case of B. to a return of the entrance fee; & the damages should be assessed in the case of A. at £7, which included the proportion of her subscription for 1919, & in the case of B. at £14, which also included the entrance fee & proportion of her subscription.—*Re* CURZON SYNDICATE, LTD. (1920), 149 L. T. Jo. 232.

54. For "**Entrance fee payable by instalments**" read "**Entrance fee—Payable by instalments.**"

54a. —— **Claim by member for return of—On winding up of club.**]—*Re* CURZON SYNDICATE, LTD., No. 53a, *ante*.

61. *Add. Annotation:* — **Apld.** Wimbledon & Putney Commons Conservators *v.* Tuely (1930), 47 T. L. R. 17.

Part IV.—Liability of Clubs and Members.

91a. —— **Liability for loss or damage to member's goods—Effect of negligence—Construction of rule.**]—One of the rules of a proprietary club provided that the proprietors would not be responsible for the loss of or damage to any article brought by members or guests into the club but would take all reasonable care of articles for which a receipt would be given if the same were deposited in the office:—*Held:* the rule covered loss or damage caused by negligence.—ORCHARD *v.* CONNAUGHT CLUB (1930), 46 T. L. R. 214; 74 Sol. Jo. 169.

Part VI.—Debentures.

105. *Add. Citations:*—[1922] 1 Ch. 51; 91 L. J. Ch. 93; 126 L. T. 225.

Part VII.—Duty Payable by Clubs.

106. *Add. Annotation:—As to* (3) **Refd.** A.-G. *v.* Swan, [1922] 1 K. B. 682.

Part VIII.—Sale of Intoxicating Liquors in Clubs.

109. *Add. Annotation:*— **Refd.** A.-G. *v.* Swan, [1922] 1 K. B. 682.

110. *Add. Annotation:*—**Consd.** Watson *v.* Cully, [1926] 2 K. B. 270.

PART III. SECT. 2, SUB-SECT. 2.—E.

49 ii. —— —— ——.]—A club incorporated under Incorporated Societies Act, 1908, which acting by its executive committee wrongfully & in breach of the club's rules excludes a member from the use of the club's premises, commits a breach of contract & the member is entitled to recover damages. The members of the committee, acting within the scope of their authority, are not personally liable in tort for inducing or procuring such breach of contract.—HENDERSON *v.* KANE & PIONEER CLUB, [1924] N. Z. L. R. 1073.—**N.Z.**

sb. *Declaration of membership.*]—Pltf., a member of a society which was incorporated under Societies Act, 1924, & which owned property, was expelled therefrom without having been given notice of the proceedings against him or particulars of the charge or names of the complainants:—*Held:* he was entitled to a declaration that he had been wrongfully expelled & was still a member in good standing of the society.—KLIS *v.* POLISH SOCIETY FOR BROTHERLY AID OF COLEMAN, [1932] 1 W. W. R. 683; [1932] 2 D. L. R. 136; 26 Alta. L. R. 90.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 1.

70 ii. —— *Money lent to lodge.*]—Where a person gives credit to an abstract entity, such as a club or lodge, he can look to those who assumed to act for it & those who authorised or sanctioned that being done, in the absence of anything indicating the contrary.—FINLAY *v.* BLACK, [1921] 2 W. W. R. 907.—**CAN.**

PART IV. SECT. 2.

se. *General rule.*]—If liabilities are to be fastened upon any members of an unincorporated voluntary assocn. it must be by reason of the acts of those members themselves or their agents, & the agency must be made out by the person who relies on it, for none is implied by the mere fact of assocn.—TOEWS *v.* ISAAC, [1929] 2 D. L. R. 719; 1 W. W. R. 817; 38 Man. L. R. 201; *revg. in part*, [1928] 1 W. W. R. 643.—**CAN.**

111a. —— —— **Whether in "club"—Temporary premises.**]—The word "club" as used in Licensing Act, 1921 (c. 42), s. 4, means the premises of a registered club, & not the assocn. of persons who are members of the club.

Where, on the occasion of a fête, a registered club engaged a room adjoining the ground on which the fête was to be held, & there supplied intoxicants to members otherwise than in the permitted hours:—*Held:* as the room in question was not habitually used for the purposes of the club, no offence had been committed under the above sect.—WATSON *v.* CULLY, [1926] 2 K. B. 270; 95 L. J. K. B. 554; 135 L. T. 28; 90 J. P. 119; 42 T. L. R. 529; 24 L. G. R. 357; 28 Cox, C. C. 194, D. C.

Annotation:—**Refd.** Clarke *v.* Griffiths, Peacock *v.* Same (——), 95 L. J. K. B. 905.

111b. —— —— —— **Additional unregistered premises.**]—Applts. were respectively the steward & one of the members of a club which occupied, besides its registered premises, additional premises which were at a considerable distance & which were not registered. At these additional premises the steward supplied to the other applt. beer, which the latter paid for & there consumed. An information having been preferred against the steward for supplying the beer, for consumption off the club premises, otherwise than on the premises of the club, & against the other applt. for unlawfully obtaining the liquor, contrary to Licensing (Consolidation) Act, 1910 (c. 24), s. 94:—*Held:* as the liquor was not supplied in the registered premises of the club it was not supplied "in a club" within the above sect., & the conviction must be quashed.—CLARKE *v.* GRIFFITHS, PEACOCK *v.* GRIFFITHS, [1927] 1 K. B. 226, 95 L. J. K. B. 905; 135 L. T. 58; 90 J. P. 151; 42 T. L. R. 541; 24 L. G. R. 466; 28 Cox, C. C. 240, D. C.

127a. Permitted hours on Sunday—Fixed number between specified hours—Discretion of club to alter limiting hours.]—Licensing Act, 1921 (c. 42), s. 2 (1), provides that "The hours during which intoxicating liquor may be sold or supplied on Sundays . . . in any . . . club . . . shall be as follows, that is to say, five hours, of which not more than two shall be between 12 noon & 3 in the afternoon, & not more than three between 6 & 10 in the evening. . . ."; & s. 2 (2) provides that "Subject to the foregoing provisions, the permitted hours on Sundays shall be such as may be fixed . . . in the case of a club in accordance with the rules of the club. . . ." In a golf club the permitted hours on Sundays were fixed by a rule of the club at five hours, namely, from 12 noon to 1.30 p.m., 2 p.m. to 2.30 p.m., & 4.30 p.m. to 7.30 p.m.; & pursuant to that rule a supply of intoxicating liquor was given to members of the club on a Sunday at 5 p.m.:—*Held:* on the true construction of above sect. the permitted hours on Sundays for a club were a period of not more than two hours, the whole of which should be between 12 & 3 p.m., & a period of not more than three hours, the whole of which should be between 6 & 10 p.m., & consequently that the supply in question was not authorised by the sect.—BROWN *v.* JOYCE, [1931] 1 K. B. 643; 100 L. J. K. B. 168; 144 L. T. 552; 95 J. P. 41; 47 T. L. R. 200; 75 Sol. Jo. 80; 29 L. G. R. 126; 29 Cox, C. C. 273.

Part IX.—Betting and Gaming in Clubs.

136. *Add. Annotations:*—**Apld.** R. *v.* O. K. Social & Whist Club (1929), 45 T. L. R. 570; Daniels *v.* Pinks, [1931] 1 K. B. 374. **Consd.** Davis *v.* Parker, [1931] 2 K. B. 210. **Refd.** Richardson *v.* Moncrieffe (1926), 43 T. L. R. 32; R. *v.* Berg, Britt, Carré & Lummies (1927), 20 Cr. App. Rep. 38.

136a. —— **Whether members' club is.**]—The committee of management of a members' club installed in the club certain machines for the use of members only & for the purpose of giving additional pleasure to the members. The machines were operated by means of pennies inserted in a slot. The player, having first inserted a penny, depressed a handle, causing three cylinders to revolve on which were depicted bells, bars & fruits. On the cylinders ceasing to revolve the player either lost his penny or received winnings up to twenty pennies, according to the combination of fruits &/or bells &/or bars opposite a pointer. The machine automatically filled a jack pot from its winnings, & the pennies in the jack pot were returned to the player who obtained the combination of three bars. The machines were similar in type to other machines for the user of which persons had been convicted under the Gaming Houses Act, 1854 (c. 38), where the persons had used the machines in shops or places of public entertainment or in proprietary clubs. Four members of the committee of management of the club in question were charged under Gaming Houses Act, 1854 (c. 38), s. 4, for being persons having the care & management of certain premises, to wit, the club, which were then being used for the purpose of unlawful gaming being carried on therein. The contention of the members of the committee of management was that the position of a members' club was analogous to that of a private house, & that gaming upon the machines in a members' club was therefore not unlawful

PART VIII. SECT. 3.

sf. *Right of members to store beer at club.*]—Members of a club on purchasing beer from a Govt. vendor may store it at the club, & the club is entitled to charge a fee for storage & service.—R. *v.* ROCK (1923), 32 B. C. R. 67.—**CAN.**

sg. "*Distributing*" *beer by servant of club—What amounts to.*]—R. *v.* ROCK (1923), 32 B. C. R. 67.—**CAN.**

sh. *Supply during prohibited hours—No payment made.*]—Three members of a club were found drinking liquor at the bar of the club premises one Sunday morning. The secretary informed an officer of police, who had come upon the premises, that the members had not paid for the liquor, but that he had given it to them, thinking he was entitled to do so:—*Held:* the secretary had been rightly convicted on a charge of supplying liquor on licensed premises during prohibited hours.—*Re* DUFFEL, *Ex p.* TURNBULL (No. 2) (1931), 31 S. R. N. S. W. 46; 48 N. S. W. W. N. 14.—**AUS.**

gaming :—*Held :* in order that a house should be a common gaming house within Gaming Act, 1845 (c. 109), s. 2, it was not necessary that some person should be keeping the house for his gain, lucre or living ; it was sufficient that it was a house kept or used for playing at any game where the chances of the game being played therein are not alike favourable to all the players ; the chances of the game played on the machines in this club were not alike favourable to all the players, & the fact that the club was a members' club did not prevent the club premises being kept or used for the purpose of unlawful gaming being carried on therein, & therefore the members of the committee of management of the club could be convicted of the offence charged under s. 4 of the Gaming Houses Act, 1854 (c. 38), s. 4.—DANIELS *v.* PINKS, [1931] 1 K. B. 374 ; 100 L. J. K. B. 337 ; 144 L. T. 372 ; 95 J. P. 23 ; 47 T. L. R. 166 ; 75 Sol. Jo. 59 ; 29 L. G. R. 120.

140. *Add. Annotation :*—**Refd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

140a. —— —— —— ——.]—There is a sufficient element of chance in the game popularly called a "whist drive" to make a club where it is played for money a "common gaming house." —R. *v.* O. K. SOCIAL & WHIST CLUB, LTD. (1929), 45 T. L. R. 570 ; 73 Sol. Jo. 451 ; 21 Cr. App. Rep. 119, C. C. A.

Annotation :—**Refd.** R. *v.* Brennand (1930), 47 T. L. R. 22.

Part X.—Dissolution of Clubs.

148a. Claims by members of proprietary club—For damages for loss of club amenities—& for proportion of subscriptions—& return of entrance fee.]—*Re* CURZON SYNDICATE, LTD., No. 53a, *ante.*

PART IX. SECT. 2.

137 i. *Common gaming house—Who are liable as persons assisting in conducting business—Employees.*]—R. *v.* DORGAN, R. *v.* KESSLER, R. *v.* COATES (Sask.) (1927), 47 Can. Crim. Cas. 344. —CAN.

137 ii. —— —— *Steward.*]—R. *v.* SULLIVAN (1930), 53 Can. C. C. 243 ; 42 B. C. R. 435.—CAN.

137 iii. —.]—R. *v.* BAMPTON, [1932] S. C. R. 626 ; 4 D. L. R. 209.—CAN.

COMMERCE.

See AGENCY ; BANKERS ; BILLS OF EXCHANGE ; CARRIERS ; CONTRACT ; INSURANCE ; SALE OF GOODS ; SHIPPING ; STOCK EXCHANGE ; TRADE AND TRADE UNIONS.

COMMON LANDS.

See COMMONS.

COMMONWEALTH OF AUSTRALIA.

See DEPENDENCIES AND DOMINIONS.

COMMORIENTES.

See EVIDENCE ; EXECUTORS.

COMMUNION.

See ECCLESIASTICAL LAW.

COMMUTATION.

Death Duties, of – –	*See* ESTATE AND OTHER DEATH DUTIES.
Railway fares, of – –	,, CARRIERS.
Sentence, of – – –	,, CRIMINAL LAW.
Tithes, of – – –	,, ECCLESIASTICAL LAW.
Workmen's Compensation, of	,, MASTER AND SERVANT.

COMPANIES.

NOTE.—The Act now in force is the Companies Act, 1929 (c. 23), which repealed (*inter alia*) the Companies (Consolidation) Act, 1908 (c. 69). References to sections of the 1908 Act should therefore be checked with the Comparative Table appended below.

1908.	1929.	1908.	1929.	1908.	1929.	1908.	1929.	1908.	1929.	1908.	1929.
1	357, 358	54	60	105	76	152	185, 198	202	259	252	323
2	1	55	57	106	77	153	186	203	260, Sch.	253	324
3	2	56	55, 50	107	78	154	194		IX.	254	325
4	2	57	16	108	131	155	195	204	187	255	326
5	2	58	53	109	135	156	193	205	173, 229,	256	359
6	3	59	49	110	137	157	197		258	257	327
7	4	60	146	111	138	158	192	206	261	258	328
8	17, 19	61	147	112	132, 133	159	196	207	262	259	329
9	5	62	92	113	129, 130,	160	199, 200	208	263	260	330
10	6, 7, 8	63	93		134	161	209	209	264	261	331
11	8 (2)	64	112	114	130	162	307	210	265	262	332
12	9	65	113, 171	115	28	163	203	211	174, 258	263	333
13	10, 319	66	114	116	370	164	204	212	266	264	334
14	20	67	115	117	33	165	205	213	270	265	335
15	12	68	116	118	11, 14 (2),	166	206	214	191, 248,	266	336
16	13, 14	69	117		108 (4),	167	207		260	267	337
17	15	70	118		379, 3rd	168	208	215	276	268	338
18	23	71	120		Sch. F.	169	210	216	272	269	339
19	14	72	140	119		170	211	217	277	270	340
20	18	73	141	120	153	171	213	218	363	271	341
21	21	74	143	121	26	172	221	219	288	272	
22	62	75	144	122	156	173	220	220	282	273	342
23	68	76	29	123	157	174	214	221	212	274	343, 344,
24	25	77	30	124	158	175	216	222	283		346, 348,
25	95	78	31	125	159	176	218	223	294		349, 351,
26	108, 110	79	32	126	160	177	219	224	284, 285		352, Sch.
27	101	80	34	127	161	178	163, 373	225	289		X., III.
28	65	81	35, 355,	128	162	179	222	226	290	275	345
29	64		Sch. IV.	129	168	180	223	227	291	276	366
30	98, 110	82	40	130	169	181	224	228	293	277	367
31	99	83	36	131	163	182	225	229	300	278	371
32	100	84	37	132	164	183	227	230	301	279	372
33	102	85	39	133	165	184	228	231	302	280	375
34	103	86	41	134		185	226	232		281	362
35	104	87	94	135		186	232, 241,	233	303	282	364
36	105	88	42	136	167		247, 248,	234		283	376
37	70, 97, 141	89	43	137	170		249	235	304	284	377
38	72	90	44	138	178	187	250	236	378	285	380
39	48	91	54	139	175	188		237	305	286	
40		92	67	140	172	189	233, 242	238	374	287	
41	50	93	79, 80, 82,	141	171	190		239	297	288	
42	51		83, 87	142	177	191	251	240	298	289	
43	95, 108	94	86	143	176	192	234	241	299	290	
44	7, 52	95	310	144	202	193	252	242	295	291	
45		96	85	145	288	194	235, 244,	243	312, 314	292	
46	55	97	84	146	179		248	244	313	293	
47	56	98	82 (4)	147	181	195	236, 245	245	316	294	
48	57	99	80, 83	148	182	196	254	246	317	295	
49	56	100	88	149	183, 184,	197	255	247	318	296	
50	57	101	89		185, 186,	198		248	319		
51	58	102	73		187, 188	199	256	249	321		
52	58	103	74	150	189	200	257	250	322		
53	59	104	75	151	184, 191	201	288	251	360		

Part I.—Nature, Characteristics, Definitions and Classification.

6. *Add. Annotations :—As to* (1) **Refd.** Deuchar *v.* Gas Light & Coke Co., [1924] 2 Ch. 426. *As to* (2) **Refd.** A.-G. *v.* Leeds Corpn., [1929] 2 Ch. 291.

11. *Add. Annotations :—***Consd.** British Thomson-Houston Co. *v.* Sterling Accessories, Same *v.* Crowther & Osborn, [1924] 2 Ch. 33. **Refd.** Parker & Cooper *v.* Reading, [1926] Ch. 975; Thomas *v.* Evans, Jones *v.* South-West Lancashire Coal-Owners' Assocn. (1926), 42 T. L. R. 401; Colville Estate, Ltd. I. R. Comrs., [1930] 2 K. B. 393.

15. *Add. Annotations :—***Refd.** British Thomson-Houston Co. *v.* Starling Accessories, Same *v.* Crowther & Osborn, [1924] 2 Ch. 33; Prichard & Constance *v.* Amata (1924), 42 R. P. C. 63.

25a. —— **Distinct from component members.**]—DITCHAM *v.* MILLER, No. 5959b, *post.*

Part II.—Domicil, Residence and Nationality of Companies.

26a. —— —— **Business conducted abroad.**]—A trading corpn. was registered in England under Cos. Acts, but the whole administration of the business of the co. was conducted by directors domiciled & resident in Holland. The register of members was kept at the office in England :—*Held :* the domicil of the co. was not in Holland but in England.—BAELZ *v.* PUBLIC TRUSTEE, [1926] Ch. 863; 95 L. J. Ch. 400; 135 L. T. 763; 42 T. L. R. 606; 70 Sol. Jo. 818.

26b. ——.]—To constitute residence by a British co. in a foreign State so as to render the co. subject to the jurisdiction of the cts. of that State, the co. must to some extent carry on business in that State at a definite & reasonably permanent place.—LITTAUER GLOVE CORPN. *v.* F. W. MILLINGTON (1920), LTD. (1928), 44 T. L. R. 746.

27. *Add. Annotations :—***Consd.** New York Life Insce. *v.* Public Trustee, [1924] 2 Ch. 101; *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525. **Refd.** Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255; *Re* Bates, Mountain *v.* Bates, [1928] Ch. 682; Ellerman Lines *v.* Read, [1928] 2 K. B. 144.

27a. -.]—A co. was incorporated by special Act of the Legislature of New York, & had its central office & the bulk of its assets in New York. The co. had a branch in London & in most of the capitals of Europe, the branch in Paris being its head office for Europe :—*Held :* a corpn. might have a dual residence, & there was evidence that pltfs. were resident both in New York & in London carrying on business in both places & in both places were subject to the jurisdiction of the cts.—NEW YORK LIFE INSURANCE CO. *v.* PUBLIC TRUSTEE, [1924] 2 Ch. 101; 93 L. J. Ch. 449; 131 L. T. 438; 40 T. L. R. 430; 68 Sol. Jo. 477, C. A.

*Annotation :—***Refd.** Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255.

Part III.—Companies under Companies (Consolidation) Act, 1908, and Similar Acts.

38. *Add. Annotation :—As to* (6) **Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407

45. *Add. Annotation :—***Consd.** Lever Bros., Ltd. *v.* Bell (1930), 47 T. L. R. 47.

75. For the paragraph " (9) (WARRINGTON, L.J. . . . 1908 Act, s. 82," substitute :—" (9) (LORD SUMNER, LORD DUNEDIN expressing the contrary opinion), an allotment of shares & debentures made before filing a statement in lieu of prospectus as required by 1908 Act, s. 82 (1), is not wholly void."

For the paragraph " (10) (LORD STERNDALE, M.R., . . . was written," substitute :—

PART I. SECT. 1.

sa. *Under statute—Existence apart from members—Conveyance of property by originators to company.*]—Defts. contracted with pltfs. to sell them all the fruit & vegetables to be grown on their land during a specified time. The contract provided that if any transfer should be made by the grower to any corpn., it should be deemed to be made subject to the agreement & the transferee should be bound by the terms thereof. Defts., for the admitted purpose of freeing themselves from the contract, incorporated a joint stock co. for the purpose of holding the land, & transferred the land to it in consideration of the allotment to them of the whole of its capital stock :—*Held :* the co. could not be declared to be a trustee for the growers & bound by the contract.—ASSOCIATED GROWERS OF B. C., LTD. & KELOWNA GROWERS EXCHANGE *v.* EDMUNDS & BYZANT ORCHARDS, LTD., [1926] 1 D. L. R. 1093; [1926] 1 W. W. R. 535; 36 B. C. R. 413.—**CAN.**

se. *One company owning all shares of another—Distinct legal persons.*]—ASSINIBOIA RURAL MUNICIPALITY *v.* SUBURBAN RAPID TRANSIT CO., [1931] 2 D. L. R. 862; 1 W. W. R. 778; 39 Man. L. R. 402.—**CAN.**

PART I. SECT. 2.

se. *Companies limited by guarantee—Assignment of undertaking by third party—Validity.*]—LLOYD'S BANK *v.* MORRISON & SON, LTD., [1927] S. C. 571.—SCOT.

PART II.

n i. —— —— *In several places.*]—A co. is to be treated in matters of trade & commerce as resident not only where its principal place of business is, but wherever it has a place of business.—EHMKA *v.* BORDER CITIES IMPROVEMENT CO. (1922), 52 O. L. R. 193.—**CAN.**

PART III. SECT. 1, SUB-SECT. 5.—A. (a) ii.

sg. *General rule.*]—VITOMEN CEREAL, LTD. *v.* MANITOBA GRAIN CO. (B. C.), [1928] 4 D. L. R. 440.—**CAN.**

" (10) Observations of LORD SUMNER as to the practice of the Registrar of Joint Stock Companies, in cases where everything is in order, of antedating the incorporation of a co. to the date of the application for registration."—JUBILEE COTTON MILLS, LTD. (OFFICIAL RECEIVER & LIQUIDATOR) *v.* LEWIS, [1924] A. C. 958; 93 L. J. Ch. 414; 40 T. L. R. 621; 68 Sol. Jo. 663; [1925] B. & C. R. 16; *sub nom. Re* JUBILEE COTTON MILLS, LTD., 131 L. T. 579, H. L.

Annotation:—As to (9) **Consd.** *Re* Burton, 1927] 2 Ch. 132.

82. *Add. Annotation:—As to* (1) **Refd.** Jubilee Cotton Mills Official Receiver & Liquidator *v.* Lewis, [1924] A. C. 958.

192. *Add. Annotation:*—**Refd.** R. *v.* Registrar of Joint Stock Companies, *Ex p.* More, [1931] 2 K. B. 197.

196. *Add. Annotation:*—**Refd.** Harrods *v.* Harrod (1924), 40 T. L. R. 195.

210. *Add. Citation:*—9 Jur. N. S. 843.

225. *Citation:*—For " 56 Sol. Jo. 36 " read " 56 Sol. Jo. 361."
Add. Annotation:—**Consd.** Harrods *v.* Harrod (1924), 40 T. L. R. 195.

228. *Add. Citation:—On appeal,* 41 R. P. C. 67, C. A.

228a. **" Harrods " — " R. Harrod."**]—The ct. granted an interlocutory injunction to restrain deft. co. from carrying on business under any name comprising the well-known name of pltf. co. on the ground that defts.' use of the name was calculated to lead the public erroneously to believe that defts.' business had some connection with pltfs.' business.—HARRODS, LTD. *v.* HARROD (R.), LTD. (1924), 40 T. L. R. 195; 41 R. P. C. 74, C. A.

Annotation:—**Expld.** Motor Manufacturers' & Traders' Soc. *v.* Motor Manufacturers', etc., Insce., [1925] Ch. 675.

228b. **" Society of Motor Manufacturers & Traders " —" Motor Manufacturers' & Traders' Mutual Insurance Co."**]—A co., carrying on the business of insurance against motor risks, adopted as part of its name the ordinary descriptive words " Motor Manufacturers & Traders," which had already been adopted as part of its name by a society having for its main objects the promotion, encouragement & protection of the motor trade generally. There was no charge of fraud &, in the opinion of the ct., no tangible risk of injury to the society's business reputation owing to the similarity of the names; the names being sufficiently distinguishable & deft. co.'s business wholly different from that of pltf. society:—*Held:* pltf. society was not entitled to a monopoly of its descriptive words, or to any relief against deft. co. —MOTOR MANUFACTURERS' & TRADERS' SOCIETY *v.* MOTOR MANUFACTURERS' & TRADERS' MUTUAL INSURANCE CO., [1925] Ch. 675; 94 L. J. Ch. 410; 133 L. T. 330; 41 T. L. R. 483; 42 R. P. C. 307, C. A.

228c. **" British Legion "—British Legion Club (Street), Ltd.**]—BRITISH LEGION *v.* BRITISH LEGION CLUB (STREET), LTD. (1931), 47 T. L. R. 571; 48 R. P. C. 555.

Annotation:—**Refd.** British Medical Association *v.* Marsh (1931), 47 T. L. R. 572.

228d. **" B. M. A."—" B. M. A. Drug Stores."**]—BRITISH MEDICAL ASSOCN. *v.* MARSH (1931), 47 T. L. R. 472; 48 R. P. C. 565.

237. *Add. Annotation:—As to* (1) **Consd.** Motor Manufacturers' & Traders' Soc. *v.* Motor Manufacturers' & Traders' Mutual Insce., [1925] Ch. 675.

238. *Add. Annotations:*—**Refd.** Harrods *v.* Harrod (1924), 40 T. L. R. 195; Motor Manufacturers' & Traders' Soc. *v.* Motor Manufacturers' & Traders' Mutual Insce. (1925), 94 L. J. Ch. 410.

251. *Add. Annotation:*—**Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

255. *Add. Annotations:—As to* (1) **Refd.** I. R. Comrs. *v.* Cornish Mutual Assce. (1924), 41 T. L. R. 70. *As to* (2) **Refd.** South Behar Ry. *v.* I. R. Comrs., [1925] A. C. 476.

257. *Add. Annotation:*—**Refd.** Greenberg *v.* Cooperstein, [1926] Ch. 657.

260a. **What amounts to—Not acquisition of shares of company to promote its amalgamation with another company.**] — DOMINION IRON & STEEL CO., LTD. *v.* INVERNAIRN, [1927] W. N. 277.

265. *Add. Annotation:*—**Consd.** I. R. Comrs. *v.* Cornish Mutual Assce. (1924), 41 T. L. R. 70.

266. *Add. Annotations:—As to* (1) **Apld.** Cornish Mutual Assce. *v.* I. R. Comrs., [1926] A. C. 281. **Refd.** Greenberg *v.* Cooperstein, [1926] Ch. 657; *Re* United General Commercial Insce. Corpn., [1927] 2 Ch. 51. *As to* (2) **Refd.** Thomas *v.* Evans, Jones *v.* South-West Lancashire Coal-Owners' Assocn. (1926), 135 L. T. 673.

270. *Add. Annotation:*—**Refd.** Greenberg *v.* Cooperstein, [1926] Ch. 657.

271. *Add. Annotation:*—**Folld.** Greenberg *v.* Cooperstein, [1926] Ch. 657.

272a. —— ——.]—An assocn. with four branches was formed to obtain subscriptions from the members of each branch & to lend to members out of the fund so formed money on interest. Each fund, with its accretions of interest, was divided up periodically among the members ratably at a period of the year which differed in each branch. The assocn. & its branches all consisted of more than twenty members. The assocn. was not registered under any Act. Disputes having arisen, a resolution was passed by the members for the dissolution of the assocn., & an action was brought by three members suing on behalf of all members other than defts. against defts., who were the treasurer & secretary of the assocn., claiming administration of the assets of the assocn., an account of the subscriptions received by defts. from members & of their application thereof, payment of the amount found due & other relief. The action was resisted on the ground that the assocn. was illegal & that no relief

PART III. SECT. 4, SUB-SECT. 1.

265 iii. ——.]—An assocn. of more than 20 persons formed for starting a business for gain requires registration in accordance with Cos. Act, s. 4, whatever may be the use to which the gains of the business are to be put, *e.g.* educational & other charitable purposes.—CHHEDI LAL *v.* PUNNU LAL (1929), I. L. R. 52 All. 325.—**IND.**

could therefore be given:—*Held:* (1) the assocn. was rendered illegal by 1908 Act, s. 1 (2), as being an unregistered assocn. of more than twenty persons carrying on a business having for its object the acquisition of gain; (2) the ct. was not debarred from affording relief to the members asking for the return of money paid into the hands of agents for application for an illegal purpose by granting an account.—GREENBERG *v.* COOPERSTEIN, [1926] Ch. 657; 95 L. J. Ch. 466; 135 L. T. 663.

282. *Add. Citation:*—130 L. T. 450.

Add. Annotation:—**Refd.** Drabble *v.* Hycolite Manufacturing Co. (1928), 44 T. L. R. 264.

286. *Add. Annotation:*—**Consd.** Egyptian Salt & Soda Co. *v.* Port Said Salt Assocn., Ltd., [1931] A. C. 677.

298. *Add. Annotation:*—**Refd.** Pickford *v.* Quirke, Pickford *v.* I. R. Comrs. (1927), 138 L. T. 500.

310. *Add. Annotation:*—*Generally*, **Refd.** R. *v.* Registrar of Joint Stock Companies, *Ex p.* More, [1931] 2 K. B. 197.

317. *Add. Annotation:*—**Consd.** *Re* Blucher (Prince), *Ex p. Debtor*, [1931] 2 Ch. 70.

327a. —— —— **Right of export.**]—The E. Syndicate in 1899 was granted by the Egyptian Govt. a concession for manufacturing & selling salt for Egypt from the Mex area, & the sole right to export salt from that area, but the Govt. reserved the right to abolish the salt monopoly at six months' notice. The syndicate then promoted applt. co., which agreed to purchase the rights of the syndicate under the Mex concession, but with the reservation that the co. should not do any export trade in salt, such right of export being reserved by the syndicate from the sale to the co. On Jan. 1, 1906, the Govt. abolished the salt monopoly of the syndicate. The memorandum of association of the applt. co. did not expressly prohibit the co. from exporting salt from Egypt, but stated that one of the objects of the co. was to ratify the agreement with the syndicate, & another object was to deal in salt & soda, & it was conceded that under its memorandum the co. could acquire salt deposits outside Egypt & there engage in the export of salt:—*Held:* the memorandum did not exclude from the permitted objects of the co. the export of salt from Egypt so as to prevent its engaging in that business.—EGYPTIAN SALT & SODA CO. *v.* PORT SAID SALT ASSOCN., [1931] A. C. 677; 100 L. J. P. C. 147; 145 L. T. 313, P. C.

335. *Add. Annotation:*—**Refd.** *Re* Railways Act, 1921, *Re* Standard Charges Schedule (1925), 94 L. J. K. B. 364.

341. *Add. Annotation:*—*As to* (1) **Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769.

343. *Add. Annotation:*—*As to* (1) **Refd.** Bank of N. T. Butterfield *v.* Golinsky, [1926] A. C. 733.

346. *Add. Annotations:*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258; Henry *v.* Foster (Arthur), Henry *v.* Foster (Joseph), Hunter *v.* Dewhurst (1931), 145 L. T. 225.

351. *Add. Annotation:*—**Apld.** Plantations Trust *v.* Bilba (Sumatra) Rubber Lands (1916), 114 L. T. 676.

354. *Add. Annotations:*—*As to* (2) **Refd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743. *As to* (4) **Consd.** Ramsden *v.* David Sharratt & Sons (1930), 35 Com. Cas. 314. *Generally*, **Refd.** Harrods, Ltd. *v.* Lemon (1930), 47 T. L. R. 97.

355a. —— **Liquidator.**]—*Re* HOME & COLONIAL INSURANCE CO., LTD., No. 6858b, *post.*

398. *Add. Annotations:* — **Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769. **Refd.** Hole *v.* Garnsey, [1930] A. C. 472.

406. *Add. Annotations:*—**Consd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1927] 1 K. B. 826; Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443; British Thomson-Houston Co. *v.* Federated European Bank, Ltd., [1932] 2 K. B. 176. **Refd.** Underwood *v.* Bank [1924] 1 K. B. 775; Houghton *v.* Nothard, Lowe & Wills. [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

410. *Add. Annotations:*—**Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

PART III. SECT. 4, SUB-SECT. 5.

sd. *Striking off register—Effect.*]—(1) The intention to dissolve a co. should not be read into a statute providing for the striking of the co. off the register because of a short delay in the payment of its annual fee, unless the language of the statute expressly or by necessary implication imposes that penalty. (2) The conduct of defts., shareholders after the co. had been struck off the register held to make them trustees of the co.'s property for the individual shareholders, who made contributions to conserve the property, & not for the co. It was, therefore, not necessary for pltf., whose suit was for his share of the assets, to have the co. restored to the register & to have the action brought by the co.—DADSON *v.* GREST & GREST, [1928] 1 D. L. R. 479; [1928] 1 W. W. R. 286; 22 Sask. L. R. 253.—**CAN.**

PART III. SECT. 6.

ki — —. *That company duly incorporated.*]—The fact that a co. incorporated under Cos. Act includes in its name the word "Co-operative," contrary to Co-operative Assocns. Act, 1920 (c. 19), s. 4 (2), does not render it an illegal co., since Cos. Act, s. 28, makes a certificate of incorporation conclusive evidence that the co. was duly incorporated.—ASSOCIATED GROWERS OF BRITISH COLUMBIA, LTD. *v.* BRITISH COLUMBIA FRUIT LAND, LTD., [1925] 1 D. L. R. 871; [1925] 1 W. W. R. 505; 34 B. C. R. 533.—**CAN.**

PART III. SECT. 7, SUB-SECT. 6.—A. (a).

358 i. *To take up number subscribed for.*]—P. agreed to purchase shares in a co. & subscribed to the memorandum of assocn., but later asked the promoter to cancel his "requirements." P.'s name was never entered in the register of members:—*Held:* P. was liable.—*Re* J. H. CHANDLER & CO., LTD. (1926), I. L. R. 48 All. 580.—**IND.**

PART III. SECT. 7, SUB-SECT. 6.—A. (c).

388 i. *Where shares subscribed for not lotted.*]—Persons signing a memorandum of assocn. of a co. to be incorporated are contributories, although no shares are allotted.—*Re* T. E. O'REILLY, LTD., [1927] 3 D. L. R. 797; 60 O. L. R. 649.—**CAN.**

395 i. *By transfer.*]—An original subscriber of a co. can withdraw his subscription & transfer his share at the first meeting of provisional directors, & where a majority of original incorporators are present & vote at the meeting such withdrawal does not invalidate anything done at the meeting.—*Re* GEORGE W. GRIFFITHS CO., [1924] 4 D. L. R. 1031.—**CAN.**

PART III. SECT. 7, SUB-SECT. 6.—B.

400 i. *Misrepresentation by promoter—Not ground for rescission.*]—Subscribers to the memorandum of assocn. of a co. cannot repudiate shares for which they have subscribed either on the ground that they were induced to join the co. by fraud or misrepresentation, or on the ground that the truth of the precedent representations made by the promoters of the co. was a condition of the contract: the true remedy of the persons so defrauded is to sue for damages the persons so defrauding them.—PETROTITE & CHALLENGE HEATERS, LTD. *v.* BODLEY, N. Z. L. R. 102.—**N.Z.**

411. *Add. Annotation :*—**Consd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

415. *Add. Annotation :* — **Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769.

423. *Add. Annotation :*—**Refd.** Bombay Official Assignee *v.* Shroff (1932), 48 T. L. R. 443.

427. *Add. Annotation :*—**Refd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853

431a. ——.]—A collateral obligation imposed by the arts. of assocn. of a co. registered under 1908 Act upon a member of the co., which in certain events involves a liability on the part of that member to take further shares in the co., can be enforced notwithstanding that the liability of the member to contribute in a winding up is limited by the Act under which the co. is registered.

The limitation of liability in respect of shares held is distinct from an obligation collaterally imposed upon a member in certain events to take up further shares which will themselves, when taken up, be entitled to a similar limitation of liability. There is nothing in such a collateral obligation which is *ultra vires* or repugnant to the system of limited liability.—AGRICULTURAL WHOLESALE SOCIETY *v.* BIDDULPH & DISTRICT AGRICULTURAL SOCIETY, [1925] Ch. 769; 94 L. J. Ch. 397; 133 L. T. 274; 41 T. L. R. 470; 69 Sol. Jo. 557, C. A.; *affd. sub nom.* BIDDULPH & DISTRICT AGRICULTURAL SOCIETY *v.* AGRICULTURAL WHOLESALE SOCIETY, [1927] A. C. 76, H. L.

Annotation :—**Expld. & Distd.** Hole *v.* Garnsey, [1930] A. C. 472.

432a. **Unless arising from wilful neglect or default.**]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *post*.

432b. —— ——.]—FENTON TEXTILE ASSOCN., LTD. *v.* THOMAS & CLARK (1928), 45 T. L. R. 113; *on appeal* (1929), 45 T. L. R. 264, C. A.

432c. —— **Unless arising from wilful or wrongful act or default.**]—One of the arts. of assocn. of a co. provided that "The directors & other officers shall be indemnified by the co. against all costs, losses, & expenses incurred by them in or about the discharge of their respective duties, except such as may happen from their own respective wilful or wrongful act or default" :—*Held :* the above art. did not protect a director from liability for negligence resulting in loss to the co.—*Re* CITY OF LONDON INSURANCE CO., LTD. (1925), 41 T. L. R. 521; 69 Sol. Jo. 591.

433. *Add. Annotation :*—*As to* (1) **Consd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

437. *Add. Annotation :*—*As to* (1) **Refd.** Biddulph & District Agricultural Soc. *v.* Agricultural Wholesale Soc. (1926), 95 L. J. Ch. 576.

439. *Add. Annotation :*—*As to* (1) **Consd.** Collins *v.* Associated Greyhounds Racecourses (1929), 141 L. T. 529. *As to* (3) **Apld.** R. *v.* Kylsant (Lord), [1932] 1 K. B. 442.

439a. **"Issued" to the public—What amounts to.**]—A co. being in want of further capital, a document was prepared by applt., who was the managing director, & signed by the other directors, stating the position of the co., that it was proposed to issue 20,000 preference shares, & giving an estimate of the profits after the new capital was available. Attached was an application form for preference shares. A second document was also prepared by the applt., written on the co.'s paper & addressed to a fellow director, marked "strictly private & confidential," which, after setting out the amount of nominal & issued capital, stated the purposes for which the additional capital was required, & concluded thus: "I shall be very happy to discuss this proposition in all its details with any one who is really interested." Attached was a form of application for ordinary shares. Several copies of these documents were given to applt.'s fellow director, who sent a copy to a solr., with a request, in substance, that he should find some client willing to provide the capital required. The solr. sent the documents to resp.'s brother-in-law, & he in turn sent them to resp., who, on the faith of the statements they contained, subscribed for 3,000 ordinary shares in the co. Subsequently ascertaining that a considerable part of the issued capital had been issued otherwise than for cash, a fact that was not stated in either of the documents, he sued applt. for damages for the loss he had sustained through the omission by applt. to comply with the requirements of 1908 Act, s. 81 (1) (*c*). At the trial the jury found that the two documents were an offer of shares by the co. to the public. In answer to the question, whether they were in fact issued to the public, the jury said: "There is no proof of this." The jury found that resp. sustained damage to the amount of £2,000 :—*Held :* the documents were not issued as a prospectus within 1908 Act, s. 81 (1) (*c*).—NASH *v.* LYNDE, [1929] A. C. 158; 98 L. J. K. B. 127; 45 T. L. R. 42; 72 Sol. Jo. 873; *sub nom.* LYNDE *v.* NASH, 140 L. T. 146, H. L.

462. *Add. Annotation :*—**Refd.** Collins *v.* Associated Greyhound Racecourses, Ltd., [1930] 1 Ch. 1.

476. *Add. Annotation :*—**Consd.** Nash *v.* Lynde, [1929] A. C. 158.

483. *Add. Annotation :*—**Apld.** R. *v.* Kylsant (Lord), [1932] 1 K. B. 442.

484. For first catchword "——" read "**Notice of contracts.**"

491. *Add. Annotation :*—**Apld.** Coles *v.* White City (Manchester) Greyhound Assocn. (1929), 45 T. L. R. 230.

525a. ——.]—*Held :* pltf. was entitled to the rescission of a contract to take shares, on the ground that the prospectus did not disclose the facts (1) that the land purchased by the co. for its operations had been scheduled to a town-planning resolution, which had been registered as a land charge, & (2) that, unless the consent of the local authority should be obtained before any buildings were erected, the co. would not be entitled to compensation for their possible removal under the town-planning scheme.—COLES *v.* WHITE CITY (MANCHESTER) GREYHOUND ASSOCN., LTD. (1929), 45 T. L. R. 230, C. A.

556a. —— ——.]—If the name of a person is improperly placed in the list of directors in

PART III. SECT. 8, SUB-SECT. 1.

1 i. —— ——].—An advertisement offering the public shares in a co. for sale is a "prospectus" under sect. 2 (14) of Indian Cos. Act (VII. of 1913). —PRAMATHA NATH SANYAL *v.* KALI KUMAR DUTT (1924), I. L. R. 52 Calc. 440.—**IND.**

the prospectus of a co., it must depend upon the circumstances of the case whether it is a material misstatement.—SMITH *v.* CHADWICK (1882), 20 Ch. D. 27; 51 L. J. Ch. 597; 46 L. T. 702; 30 W. R. 661, C. A.; *affd. on other grounds* (1884), 9 App. Cas. 187, H. L.

560. *Add. Annotation:*—**Refd.** Collins *v.* Associated Greyhound Racecourses, Ltd., [1930] 1 Ch. 1.

562. *Add. Annotation:*—**Refd.** Collins *v.* Associated Greyhound Racecourses, Ltd., [1930] 1 Ch. 1.

568. *Add. Annotation:*—**Refd.** Humphrey & Denman *v.* Kavanagh (1925), 41 T. L. R. 378.

577. *Add. Annotation:*—**Consd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

581. *Add. Annotation:*—**Consd.** Collins *v.* Associated Greyhound Racecourses, Ltd., [1930] 1 Ch. 1.

581a. —— —— **Directors without knowledge that misrepresentation basis of contract.**]—Deft. co. had no knowledge, that, so far as pltf. was concerned, his application had been induced by any representations made before the co. was incorporated. In these circumstances I think pltf. fails to establish any right to have any contract to take the shares in question rescinded (LUXMOORE, J.).—COLLINS *v.* ASSOCIATED GREYHOUND RACECOURSES, LTD., [1930] 1 Ch. 1, 14; *affd.*, [1930] 1 Ch. 1, 28, C. A.

581b. —— **Contract between company & agent for undisclosed principal—Whether principal entitled to rescission.**]—Shortly before the incorporation of a co. a draft prospectus, which was afterwards adopted by the co., was circulated for the purpose of obtaining underwriters of shares intended to be offered to the public by the proposed co. An investment co. entered into an underwriting agreement on Nov. 28, 1927, by which they agreed that they would within three days of the issue of the prospectus "either subscribe themselves . . . on the basis of the said prospectus for 1,164,000 . . . shares of 5*s* each or cause the same before the date aforesaid to be subscribed on the terms of the said prospectus by responsible persons," & any reasonable objection might be taken by the co. within two days to persons put forward by the investment co. On Nov. 29, 1927, M. & O. signed & remitted an offer to underwrite 12,000 shares addressed to the investment co. & also an application for the shares addressed to the proposed company, which was accompanied by a cheque for £600. On Dec. 12, 1927, the incorporation of the proposed co. took place, & the underwriting agreement & prospectus were adopted by the co. & the prospectus issued to the public. The public response was insufficient, & 8,160 shares were allotted to M. & O., the allotment letter bearing at the back a form of renunciation. M. & O. were agents for pltf., who had provided the £600. They renounced the shares in favour of pltf., who paid the further sum of £624 due on allotment & sent the allotment letter to the co., who replied stating that it had been duly registered in his name & placed his name on the register of shareholders:—*Held:* pltf. was not entitled to rescission, because (1) the contract between M. & O. & the co. was of such a class that M. & O. must be treated as the principals, so that pltf., as the undisclosed principal, could not sue on the contract or obtain its rescission, & (2) the contract constituted by the co.'s acceptance of pltf.'s authority under the renunciation to place his name on the register could not be treated as a contract entered into on the basis of the draft prospectus.—COLLINS *v.* ASSOCIATED GREYHOUND RACECOURSES, LTD., [1930] 1 Ch. 1; 99 L. J. Ch. 52, C. A.

581c. —— —— **Effect of renunciation by agent in favour of plaintiff.**]—COLLINS *v.* ASSOCIATED GREYHOUND RACECOURSES, LTD., No. 581b, *ante*.

582a. Misrepresentation by promoters.]—If a person is induced to take shares on the faith of a promise by the promoters of a co., which promise is not kept, he is a contributory. His remedy is only against the persons who made the promise.—*Re* UNITED KINGDOM SHIPOWNING CO., LTD., FELGATES CASE (1865), 2 De G. J. & Sm. 456; 11 L. T. 613; 11 Jur. N. S. 52; 13 W. R. 305; 46 E. R. 451, C. A.

614a. -.]—B. signed a printed form issued by the promoters of an intended co., expressing his willingness to become a member of the council of administration of the intended co. M. also wrote to the promoters promising to help the co. Soon afterwards the promoters issued a prospectus in which the co. was described as "to be incorporated under the Cos. Acts," & an extract was given from the proposed articles of assocn. to the effect that there would be a council of administration of members of the co., & a list of members of the council was appended containing the names of B. & M. In reliance on this prospectus, K. applied for shares in the intended co. On Jan. 31, three days after K.'s application, the co. was duly registered under the Cos. Act; & on Feb. 2, the directors allotted K. the shares which he had applied for, & approved a form of prospectus substantially the same as that which had been issued by the promoters. On Feb. 11, K. paid the allotment money on those shares. On June 26, K. discovered that B. & M. had both declined to take shares in the co. & to become members of the council of administration, & took out a summons to have his name removed from the list of shareholders:—*Held:* the effect of the statement in the prospectus was not merely that B. & M. had expressed their willingness to become members of the council of administration, but that they had authorised the publication of their names as members, & as such was a false statement of fact; the prospectus, although issued by the promoters before the formation of the co., was the basis of the contract between the co. & K. for the allotment of shares; that the misstatement in the prospectus was relied on by K., & was material to the contract, & consequently that K. was entitled to rescind the contract & repudiate the shares. The ct., being of opinion that there had been no laches or acquiescence, ordered K.'s name to be removed from the list of shareholders, & the money paid by him in application & allotment to be returned with interest at 4 per cent.—*Re* METROPOLITAN COAL CONSUMERS' ASSOCN.

KARBERG'S CASE, [1892] 3 Ch. 1; 61 L. J. Ch. 741; 66 L. T. 700; 8 T. L. R. 637, C. A.

Anglo-Italian Hemp Spinning Co., [1896] 1 Ch. 178. *Re* Metal Constituents, Ltd., Lurgan's Case, [1902] 1 Ch. 707; Hilo Manufacturing Co., Ltd. *v.* Williamson (1911), 28 T. L. R. 164; Mair *v.* Rio Grande Rubber Estates, Ltd., [1913] A. C. 853; *Re* Pacaya Rubber & Produce Co., Ltd., Burns' Appln., [1914] 1 Ch. 542; Goldrei, Foucard & Son *v.* Sinclair & Russian Chamber of Commerce in London, [1918] 1 K. B. 180; Bisset *v.* Wilkinson, [1927] A. C. 177, P. C.

642. *Add. Annotations :*—**Consd.** Clark *v.* Urquhart, Stracey *v.* Urquhart (1929), 141 L. T. 641. **Refd.** Horwood *v.* Statesman Publishing Co. (1929), 141 L. T. 54.

660. *Add. Annotation :*—**Refd.** Clark *v.* Urquhart, Stracey *v.* Urquhart (1929), 141 L. T. 641.

667. *Add. Annotation :*—**Consd.** Clark *v.* Urquhart, Stracey *v.* Urquhart (1929), 141 L. T. 641.

677. *Add. Annotation :*—**Refd.** Horwood *v.* Statesman Publishing Co. (1929), 98 L. J. K. B. 450.

702. *Add. Annotations :*—**Expld.** Legh *v.* Legh (1930), 143 L. T. 151; Lynn *v.* Bamber, [1930] 2 K. B. 72.

703. *Add. Annotation :*—**Refd.** Aylott *v.* West Ham Corpn., [1927] 1 Ch. 30.

738. *Add. Annotation :*—**Refd.** The Saxicava, [1924] P. 131.

(*i*) *Other Cases* (Vol. IX., p. 139).

770a. Acceptance of sum paid into court—Effect on liability under 1908 Act, s. 84.]—Resp. applied for & was allotted debenture stock in W., C., & Co., Ltd., relying upon the statements contained in a prospectus. The first-named applts. were directors in W., C., & Co., Ltd.; the second-named applts. carried on business as merchant bankers in the name of S. & Co., who were stated in the prospectus to have purchased the whole of the debenture stock of W., C., & Co., Ltd., but who were alleged by resp. to have issued the prospectus as agents for the other applts. Resp. by his writ claimed "damages for false & fraudulent misrepresentation against all applts., & against such of applts. as were directors of W., C., & Co., Ltd., compensation under 1908 Act, s. 84, alternatively damages for conspiracy to defraud, the damages claimed in respect of the three claims being £178." The trial judge dismissed the action against the first-named applts. with costs. The action then proceeded against the second-named applts. until they amended their defence by leave & paid £130 into ct. with a denial of liability, which amount the resp. accepted in lieu of the £178 claimed, in full satisfaction of the cause of action for fraudulent misrepresentation. The Ct. of Appeal set aside the orders & judgment of the trial judge & ordered a new trial of the action as regards the causes of action under 1908 Act, s. 84, & conspiracy to defraud :—*Held :* (1) both on the issue of conspiracy to defraud & the issue of deceit, after the money had been taken out in satisfaction there was no cause of action & no head of damage remained unsatisfied of which there was any evidence or which could be ordered to be tried anew; (2) on the question of compensation under 1908 Act, s. 84, although the case should have been left to the jury there was nothing left to be tried after resp. had taken out in satisfaction money paid in on the issue of conspiracy only. Compensation was not, either as to the amount recoverable or the mode of measuring it something different from or even greater than damages. —CLARK *v.* URQUHART, STRACEY *v.* URQUHART, [1930] A. C. 28; 99 L. J. P. C. 1; 141 L. T. 641, H. L.

771a. Order for new trial—After acceptance of sum paid into court.]—CLARK *v.* URQUHART, STRACEY *v.* URQUHART, No. 770a, *ante*.

777. *Add. Annotation :*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

814. *Add. Annotation :*—*As to* (1) **Refd.** Jacobs *v.* Batavia & General Plantations Trust, [1924] 2 Ch. 329.

814a. Profit sharing deposit notes redeemable in four years—Company bound to redeem.]—Pltf., in reliance upon a prospectus issued in Sept., 1920, by defts. co., hereinafter called "the Trust," applied for & had allotted to him subject to the terms of the prospectus four £100 7½ per cent. profit sharing deposit notes of the Trust. It was stated in the prospectus that the notes would be paid off at 105 per cent. by four annual drawings, &, under the heading "Earlier payments," that the Trust retained the right to pay off at 105 per cent. all or any of the outstanding notes at any time on giving three months' previous notice in writing, but that in the event of the sale of the Trusts' R. B. estates, further referred to in that prospectus, which according to the construction placed upon

PART III. SECT. 8, SUB-SECT. 3.—D. (b).

sl. *Prospectus must be issued by or on behalf of company.*]—Sect. 84 of 1908 Act is confined to prospectuses issued by or on behalf of the co.—URQUHART *v.* STRACEY, [1928] N. I. 162.—**IR.**

678 i. *Measure of damages.*]—URQUHART *v.* STRACEY, No. 747 i, *post*.—**IR.**

PART III. SECT. 8, SUB-SECT. 3.—D. (c).

sm. *Under Criminal Code, s.* 414.]—The above sect. relates to the issuing of a written prospectus, statement or account by a director with the intention of deceiving shareholders of a co., or of inducing some other person to entrust or advance property to the co.; & where deft. obtained subscriptions for stock of a co., of which he was a promoter, upon false oral statements :—*Held :* a conviction under that sect. was not justified.—R. *v.* ANDERSON (1924), 55 O. L. R. 586.—**CAN.**

sn. —— *Ingredients of offence.*]—R. *v.* HARCOURT (Ont.) (1929), 52 Can. Crim. Cas. 342.—**CAN.**

PART III. SECT. 8, SUB-SECT. 3.—F. (c).

747 i. *Claim for damages against directors—& others—Joined with statutory claim for compensation against directors.*]—Pltf. bought debentures in a co. on the faith of statements in a prospectus. Some of defts. were directors in the co., & some were partners in an issuing house called S. & Co. Pltf. claimed against all defts. damages for fraudulent misrepresentations in the prospectus & for conspiracy to defraud, & against such of defts. as were directors in the co. claimed compensation under 1908 Act, s. 84 :—*Held :* (1) pltf. was entitled to have the alternative causes of action for compensation & for misrepresentation & conspiracy submitted to the jury subject to two limitations, (*a*) that he could not get damages more than once in respect of what was in substance the same cause of action, & (*b*) that the causes of action could conveniently be tried or disposed of together; (2) if pltf. succeeded on the cause of action under sect. 84, he would be entitled to such compensation as he might prove, in addition to any damages already received in respect of fraudulent misrepresentation. — URQUHART *v.* STRACEY, [1928] N. I. 162; *varied*, 141 L. T. 641, H. L.—**IR.**

the prospectus by the ct. was not confined to a sale under a certain option of purchase referred to later in the prospectus, but included a sale to anybody whomsoever, the Trust would set aside out of the proceeds of sale a sum sufficient to redeem all the notes then outstanding, & the holders would be given an option of being then paid off in cash at 105 per cent. or of retaining their notes till the date of drawing. Each of the notes, which was in the form of the specimen note referred to in the prospectus, provided that the Trust would, as & when the principal sum of £100 became payable in accordance with the conditions indorsed thereon, pay to pltf. the sum of £105, & was expressed to be subject to & with the benefit of those conditions, which repeated the provisions contained in the prospectus for the redemption of the notes by drawings & the option retained by the Trust to pay off the notes on notice, but did not refer to the promise by the Trust contained in the prospectus as to earlier payments in the event of the sale of the Trust's R. B. estates. The option to purchase referred to in the prospectus having lapsed & the Trust having contracted to sell the R. B. estates without having given notice to pltf. that his option to be paid off or to retain his notes had thereby become exercisable, & the Trust having repudiated their liability to perform their promise contained in the prospectus, pltf. brought an action to have the said liability of the Trust established & for an injunction to restrain them from dealing with the proceeds of sale without in the first place setting aside a sum sufficient to pay off the outstanding notes:—*Held:* pltf. was entitled to the relief claimed on either of two grounds, namely, (1) that the entire contract was contained in two written instruments, namely, the deposit notes & the prospectus, the terms of which the ct. could reconcile by construing the promise in the prospectus as if it were inserted in the note as a proviso to come into operation, if & when the R. B. estates were sold, or (2) that the promise was a binding collateral contract, the consideration for which was the contract by pltf. to take up the notes, & that, as the terms of that promise & an *animus contrahendi* on the part of pltf. & the Trust had been clearly proved, the test laid down by LORD MOULTON in *Heilbut, Symons & Co. v. Buckleton* (*see* No. 1565) was satisfied.—JACOBS *v.* BATAVIA & GENERAL PLANTATIONS TRUST, [1924] 2 Ch. 329; 93 L. J. Ch. 520; 131 L. T. 617; 40 T. L. R. 616; 68 Sol. Jo. 630, C. A.

818. *Add. Annotations:*—**Consd.** *Re* Burton, [1927] 2 Ch. 132. **Refd.** Jubilee Cotton Mills Official Receiver & Liquidator *v.* Lewis, [1924] A. C. 958.

820. *Add. Annotations:*—*As to* (4) **Refd.** Long Acre Press *v.* Odhams Press, [1930] 2 Ch. 196. *As to* (5) **Consd.** Atherton *v.* British Insulated & Helsby Cables, [1925] 1 K. B. 421. *Generally*, **Refd.** Stapley *v.* Read (1924), 131 L. T. 629.

826. *Add. Annotation:*—**Consd.** Oswald Tillotson, Ltd. *v.* I. R. Comrs. (1932), 48 T. L. R. 628.

834a. **Order under 1929 Act, s. 56 (3)—What amounts to special circumstance—Not mere solvency of company.**]—PRACTICE NOTE (1930), 69 L. Jo. 252; 169 L. T. Jo. 283; [1930 W. N. 78.

839a. —— —— **Company in voluntary liquidation.**]—A reduction, reorganisation & increase of capital with a view to continuing to carry on the business of a co. can be directed by the ct., while the co. is in voluntary liquidation, & all further proceedings in a voluntary winding up stayed.—*Re* WALTERS (STEPHEN) & SONS, LTD. (1926), 70 Sol. Jo. 953.

871. *Add. Annotation:*—**Consd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

PART III. SECT. 10, SUB-SECT. 1.

sp. *Includes premiums on sale of stock.*]—TORONTO *v.* CONSUMERS' G Co., [1927] 4 D. L. R. 102.—**CAN.**

PART III. SECT. 10, SUB-SECT. 3. —A.

834a i. *Order under* 1929 *Act, s.* 56 (3)—*What amounts to special circumstances.*]—In a petition at the instance of a shipping co. for confirmation of a reduction of capital, it appeared that the co. had no debentures or debenture stock, that the co.'s only debts, consisted of expenditure incurred by its ships in the course of their voyages, the amount of which would not be ascertained till their return; that such debts were, in practice, regularly discharged as soon as their amount had been ascertained; & that the value of the co.'s ships was ample security for its outstanding debts. On a motion for an order in terms of Cos. Act, 1929, s. 56 (3), the ct. directed that the provisions of Cos. Act, 1929, s. 56 (2), should not apply to the creditors of the co. or any class of them; & confirmed the reduction of capital *simpliciter*.—*Re* UNIFRUITCO STEAMSHIP CO., [1930] S. C. 1104.—**SCOT.**

834a ii. —— ——.]—In a petition at the instance of a colliery co. for confirmation of a reduction of capital, it appeared that the co. had no debentures or debenture stock; that the co.'s principal creditors were trade creditors, mineral owners in respect of lordships, employees in respect of wages, & the collectors of rates & taxes; that, during the dependence of the petition, all these creditors, with one exception, had been paid or had consented to the proposed reduction; that the remaining creditor, the Inland Revenue, whose claim was for £19,690 in respect of unascertained income tax liability had, in accordance with department practice, declined to sign any consent, but had stated no objection to the proposed reduction; & that the value of the co.'s liquid assets was ample security for its outstanding liabilities. On a motion for an order in terms of Cos. Act, 1929, s. 56 (3), the ct. found it unnecessary to apply the provisions of Cos. Act, 1929, s. 56 (2), & confirmed the reduction of capital *simpliciter*.—*Re* CADZOW COAL CO., LTD., [1931] S. C. 272.—**SCOT.**

PART III. SECT. 10, SUB-SECT. 3.—C.

sq. *Cancellation of vendor's shares.*]—Deft. co. was incorporated for the express purpose (*inter alia*) of acquiring the assets & business of a certain boiler works of which pltf. was the principal owner. Under an agreement between pltf. & the co., which modified an earlier agreement, the co. agreed to assume the liabilities of said business and to issue to pltf. fifty-five of the co.'s shares fully paid up in consideration of the transfer of the assets of said works. It was then discovered that the liabilities of pltf.'s business equalled or exceeded the value of its assets, & he & the co. entered into a compromise agreement under which his said shares were surrendered & cancelled & he agreed to take in lieu thereof whatever the shareholders should vote him:—*Held* said compromise agreement was within the power of the co.; it did not bring about a real reduction of capital or constitute a purchase by the co. of its own shares or prejudice creditors.—PATTERSON *v.* VULCAN IRON WORKS, [1930] 1 W. W. R. 640; 2 D. L. R. 961; 42 B. C. R. 300; *affg.*, [1929] 4 D. L. R. 508, C. A.—**CAN.**

PART III. SECT. 10, SUB-SECT. 3.—F. (a) iii.

sr. *Free shares taken by promoters.*]—Where on an unopposed petition by a co. for confirmation of resolutions for the reduction of capital & cancellation of shares, it appeared that the promoters had taken a large holding of free shares & that one of the objects of the petition was probably to free the promoters of a possible liability in respect of these shares:—*Held:* the reduction & cancellation of the shares should be confirmed.—*Re* ADELAIDE MORTGAGE & INVESTMENT CO., LTD. (1928), S. A. S. R. 478.—**AUS.**

887. *Add. Annotation :*—**Refd.** *Re* Bolton, *Ex p.* North British Artificial Silk, Ltd., [1930] 2 Ch. 48.

942a. Resolution before operative date of 1929 Act — Confirmation after such date.]—*Re* GRAYSON, ROLLO & CLOVER DOCKS, LTD. (1930), 69 L. Jo. 151 ; 169 L. T. Jo. 144 ; [1930] W. N. 27.

977a. —— —— **Large fund available to meet liabilities.**]—*Re* ANTWERP WATERWORKS CO., LTD., [1931] W. N. 186 ; 172 L. T. Jo. 75 ; 72 L. Jo. 79.

1015. *Add. Annotation :*—**Refd.** *Re* North Pole Ice Co. & Reduced, [1924] W. N. 131.

1017. *Add. Annotations :*—**Refd.** *Re* Dampney & Reduced (1924), 68 Sol. Jo. 718 ; *Re* North Pole Ice Co. & Reduced, [1924] W. N. 131.

1019a. Passing of special resolution—& confirmation by court.]—(1) The proper form of minute in petitions for reduction of capital is not as set out in *Re Salinas of Mexico*, [1919] W. N. 311, but should state that the capital has been reduced "by a special resolution confirmed by an order of the High Ct. of Justice." (2) With regard to the form of notice of registration pursuant to 1908 Act, s. 51 (3), it is a sufficient compliance with the statute to give such notice in the short form approved in *Re Oceana Development Co.* (1912), 56 Sol. Jo. 537, which removed the objection to the length of the minute.—*Re* NORTH POLE ICE CO., LTD. & REDUCED, [1924] W. N. 131.

Annotation :—As to (1) **Expld.** *Re* Dampney & Reduced (1924), 68 Sol. Jo. 718.

1019b. —— ——.]—Where a petition for reduction of capital does not involve & is not followed by any sub-division, consolidation or reorganisation of share capital, the old form of minute used in cases of simple reduction is correct, & it is not necessary to state that the capital has been reduced by virtue of a special resolution, & with the sanction of an order of the High Ct. of Justice.—*Re* DAMPNEY & CO., LTD. & REDUCED (1924), 68 Sol. Jo. 718.

1029. *Add. Annotation :*—**Refd.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487.

1036. *Add Annotation :*—**Refd.** *Re* North Pole Ice Co. & Reduced, [1924] W. N. 131.

1036a. —— ——.]—*Re* NORTH POLE ICE CO., LTD., & REDUCED, No. 1019a, *ante*.

1080a. —— **Company in voluntary liquidation.**]—*Re* WALTERS (STEPHEN) & SONS, LTD., No. 839a, *ante*.

1087. After this case add :—

—— —— ——.]—*See, now,* 1929 Act, s. 153 (5).

1102. *Add. Annotations :*—**Apld.** Parker & Cooper *v.* Reading & James (1926), 96 L. J. Ch. 23. **Refd.** Kerr *v.* Marine Products (1928), 44 T. L. R. 292 ; *Re* Lee Behrens & Co. (1932), 48 T. L. R. 248.

1108. *Add. Annotation :*—**Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

1124. *Add. Annotations :*—**Consd.** I. R. Comrs. *v.* Doncaster (1924), 93 L. J. K. B. 338 ; *Re* Speir, Holt *v.* Speir, [1924] 1 Ch. 359 ; I. R. Comrs. *v.* Fisher's Exors., [1926] A. C. 395. **Folld.** I. R. Comrs. *v.* Wright (1926), 95 L. J. K. B. 982 ; *Re* Taylor, Waters *v.* Taylor, [1926] Ch. 923. **Distd.** *Re* Bates, Mountain *v.* Bates, [1928] Ch. 682 ; Parker *v.* Chapman (1928), 138 L. T. 729 ; Hill (R. A.) *v.* Permanent Trustee Co. of New South Wales, [1930] A. C. 720. **Refd.** I. R. Comrs. *v.* Burrell, [1924] 2 K. B. 52 ; *Re* Railways Act, 1921, *Re* Standard Charges Schedule (1925), 94 L. J. K. B. 364.

1125. *Add. Annotation :*—**Overd.** A.-G. *v.* Tube Investments, Ltd. (1930), 142 L. T. 561.

On increase of capital.]—After this cross-reference add

1126a. —— **When increase takes place.**]—In Dec. 1927, resp. co. passed an extraordinary resolution that the capital of the co. be increased to £1,550,000 by the creation of 300,000 new ordinary shares & payment was made on the increase of the stamp duty under Stamp Act, 1891 (c. 39), s. 112. On the same day the

PART III. SECT. 10, SUB-SECT. 3.—F. (e).

926 i. *Nominal capital not reduced—Amount returned liable to be called up again.*]—By special resolution under Cos. Act, 1929, s. 55, a limited co. resolved that, in respect of each fully-paid £1 share of its issued capital, the sum of 2*s.* 6*d.* be paid off "upon the footing that the amount so returned or any part thereof may be again called up." In a petition at the instance of the co. for confirmation of the proposed reduction :—*Held :* the form of the reduction was competent & the ct. confirmed the reduction *simpliciter*.—*Re* BROWN, SONS & CO., [1931] S. C. 701.—**SCOT.**

PART III. SECT. 10, SUB-SECT. 3.—G. (b).

f i. —— *Without remit to reporter—Creditors not affected.*]—FOWLERS (ABERDEEN), LTD., [1928] S. C. 186.—**SCOT.**

f ii. —— ——.]—In a petition for reduction of capital presented by a co. in which it was stated that the proposed reduction did not involve either the diminution of liability in respect of any unpaid share capital or the payment to any shareholder of any paid-up share capital, & that the rights of creditors were not affected in any way, & further, that the leading creditors & all the shareholders had assented to the proposed reduction, the ct. dispensed with a remit to a reporter, & granted the prayer of the petition.—*Re* SCOTTISH STAMPING & ENGINEERING CO., LTD., [1928] S. C. 484.—**SCOT.**

f iii. —— ——.]—*Re* HAY & SONS, [1928] S. C. 622.—**SCOT.**

PART III. SECT. 10, SUB-SECT. 3.—G. (c) ii.

961 i. *When dispensed with.*]—Where, on an application by a limited co. for confirmation by the ct. of a reduction of its capital it appears that the co.'s only creditors are those in respect of trade liabilities incurred from day to day during the current month, the ct. may make an order confirming the reduction forthwith & dispensing with the advertisement of the presentation of the petition & the settlement of the list of creditors.—*Re* A. LESSER & CO. PTY., LTD. (1929), V. L. R. 316 ; 1929 A. L. R. 265.—**AUS.**

PART III. SECT. 10, SUB-SECT. 3.—G. (d) i.

967 *Who are creditors — Persons entitled to unclaimed dividends.*]—ARIZONA COPPER CO., PETITIONERS, [1926] S. C. 315.—**SCOT.**

PART III. SECT. 10, SUB-SECT. 3.—G. (e).

st. *Function of court—What court must consider.*]—*Re* MILLS (E. W.), LTD., [1925] N. Z. L. R. 227.—**N.Z.**

PART III. SECT. 10, SUB-SECT. 3.—G. (g) ii.

p i. —— —— *Amount after increase by subsequent resolution.*]—*Held :* when a co. has passed the necessary resolutions to reduce its capital, subject to the approval of the ct., by writing down the par value of the existing shares, &, on such reduction being confirmed by the ct., to increase its capital by the creation of further shares, the minute required to be recorded under Cos. Act, 1908, s. 51, should set forth (*a*) the state of the co.'s capital after giving effect to the reduction as sanctioned, & (*b*) the state of its capital as increased by the resolutions passed conditionally upon such reduction taking effect.—D. SIMPSON, LTD., [1929] S. C. 65.—**SCOT.**

PART III. SECT. 10, SUB-SECT. 4.

g i. —— ——.]—*Held :* the proposed arrangement was so drastic in its destruction of the sinking fund & placed absolute power in the hands of those who controlled the co. to redeem whose stock they pleased, as to make it a violation of the rights of the minority ; & for that reason approval of the arrangement should be refused.—*Re* SECOND STANDARD ROYALTIES, LTD. (1930), 66 O. L. R. 288.—**CAN.**

co. passed an extraordinary resolution altering the Arts. of the co. & adding an Art. 44 (*a*) which provided " the directors of the company for the time being be & they are hereby authorised from time to time by resolution passed by them to increase the existing capital of the co. from £1,550,000 to £2,500,000 by the creation of 950,000 additional shares of £1 each. Such increases within the limits aforesaid may be made successively & such new shares shall have " certain priorities & rights. The Crown asserted that immediately on the creation of Art. 44 (*a*) there was an increase of capital within the meaning of Stamp Act, 1891 (c. 39), s. 112, & stamp duty was payable on the 950,000 new shares:—*Held:* under Art. 44 (*a*) two steps were necessary before an increase of capital was created within the meaning of Stamp Act, 1891 (c. 39), s. 112 : first the introduction of the article & then a step which might not in fact be ever taken, namely, a resolution creating the increase or some of the increase of the capital authorised by the article ; & until the directors exercised the power to increase given to them by the article there was no increase in the registered capital of the company & no duty was attracted under sect. 112.—A.-G. *v.* TUBE INVESTMENTS, LTD. (1930), 142 L. T. 561, C. A.

1127. *Add. Annotation :—As to* (2) **Distd.** Australian Investment Trust, Ltd. *v.* Strand & Pitt Street Properties, Ltd. (1932), 48 T. L. R. 646.

1133. *Add. Annotation :*—**Refd.** Australian Investment Trust, Ltd. *v.* Strand & Pitt Street Properties, Ltd. (1932), 48 T. L. R. 646.

1134. *Add. Annotation :—As to* (2) **Refd.** Lynde *v.* Nash, [1928] 2 K. B. 93.

1153a. —— **Liability of sub-underwriter.**]—ICE RINKS, LTD. *v.* MATHUEN (1930), 74 Sol. Jo. 41.

1169. *Add. Annotation :*—**Consd.** Collins *v.* Associated Greyhound Racecourses, Ltd., [1930] 1 Ch. 1.

1169a. —— —— —— **Directors without knowledge that misrepresentation basis of contract.**]—COLLINS *v.* ASSOCIATED GREYHOUND RACECOURSES, LTD., No. 581a, *ante.*

1169b. —— —— —— **Between company & agent for undisclosed principal—Renunciation by agent in favour of principal.**]—COLLINS' *v.* ASSOCIATED GREYHOUND RACECOURSES, LTD., No. 581b, *ante.*

1205. *Add. Annotations :*—**Distd.** Pailin *v.* Northern Employers' Mutual Indemnity Co., [1925] 2 K. B. 73. **Consd.** Hindmarch *v.* Carterthorne Colliery Co. (1928), 21 B. W. C. C. 44. **Refd.** Wales *v.* Iron Trades Employers' Assocn. (1928), 21 B. W. C. C. 316.

1220. *Add. Annotation :*—**Dbtd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

1226. *Add. Annotations :—As to* (2) **Expld.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769. **Apld.** *Re* Wilts & Somerset Farmers, [1928] Ch. 809.

1226a. ——.] — AGRICULTURAL WHOLESALE SOCIETY *v.* BIDDULPH & DISTRICT AGRICULTURAL SOCIETY, No. 431a, *ante.*

1230. *Add. Annotations :*—**Refd.** Biddulph & District Agricultural Soc. *v.* Agricultural Wholesale Soc. (1926), 95 L. J. Ch. 576; *Re* Wilts & Somerset Farmers, [1928] Ch. 809.

1265. *Add. Annotation :*—**Refd.** Spencer *v.* Ashworth Partington (1925), 94 L. J. K. B. 447.

1265a. —— ——.]—In the absence of fraud or *mala fides*, a *cestui que trust* cannot be put on the list of contributories, though he may be called upon to indemnify his trustee.—*Re* ELECTRIC TELEGRAPH CO. OF IRELAND, BUNN'S CASE (1860), 2 De G. F. & J. 275; 9 W. R. 43; 45 E. R. 627; *sub nom. Re* ELECTRIC TELEGRAPH CO. OF IRELAND, *Ex p.* BUNN, 3 L. T. 567; *sub nom.* ELECTRIC TELEGRAPH CO. OF IRELAND *v.* BUNN, 29 L. J. Ch. 913; 6 Jur. N. S. 1223, L. JJ.

1268. *Add. Annotation :*—**Refd.** *Re* Anderson-Berry, Harris *v.* Griffith, [1928] Ch. 290.

1320. *Add. Annotation :*—**Apld.** *Re* Hobson, Houghton, [1929] 1 Ch. 300.

1342. *Add. Annotation :—Generally,* **Refd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607.

1411a. —— **Where further investigation required.**]—On an application under 1908 Act, s. 32, by summons or motion, for the rectification of the register, if there is some question in dispute requiring investigation the practice is for the judge not to make an order for

PART III. SECT. 11, SUB-SECT. 2. — A. (a).

sc. *Agreement to pay commission—Ultra vires.*]—An agreement was entered into by applt. co., incorporated in New South Wales, for the underwriting by them of a proposed issue of capital of resp. co. The taking up of any of the shares pursuant to the underwriting agreement involved the payment out of resp. co.'s share capital of a commission to applt. co. in respect of such shares. The New South Wales Cos. Acts, 1899 to 1918, contain no provision expressly authorising the payment of underwriting commissions. On a claim by applt. co. that the underwriting agreement was *ultra vires* resp. co. & unenforceable :—*Held :* inasmuch as the agreement would result in applt. co. receiving from resp. co. a discount for which there was no consideration it was *ultra vires* resp. co.—AUSTRALIAN INVESTMENT TRUST, LTD. *v.* STRAND & PITT STREET PROPERTIES, LTD., [1932] A. C. 735; 48 T. L. R. 646, P. C.—**AUS.**

PART III. SECT. 11, SUB-SECT 3.—B.

sw. *To account to company for money received before incorporation of company.*]—Where a co. brought an action against an underwriter, & recovered a verdict for £317 10*s.* :—*Held :* as deft. by his statement of accounts had not admitted that he held any money for the co.'s use, the verdict should be set aside & judgment entered for him. —HARMONIC RESONATOR, LTD. *v.* WALTON (1927), 27 S. R. N. S. W. 81; 44 N. S. W. W. N. 50.—**AUS.**

PART III. SECT. 12, SUB-SECT. 4.—B. (a).

sy. *Company holding franchise—Second company owning shares—Whether liable to Municipal & Public Utility Board.*]—Where a co. has been given a franchise, the fact that all its issued shares, except qualification shares, are held by another co. & that its officers are all officers of such other co. does not impose on the latter co. the obligations with respect to the franchise which the former co. is under &, therefore, does not subject it to orders of the Municipal & Public Utility Board with respect to said obligations.—*Re* SUBURBAN RAPID TRANSIT CO., WINNIPEG ELECTRIC CO. & RURAL MUNICIPALITY OF ASSINI-, [1931] 1 W. W. R. 778.—**CAN.**

PART III. SECT. 13, SUB-SECT. 5.—B. (d) vii.

1374 i. *Wrong entry of nature of shares—Agreement to take paid-up shares—Shares entered as partly paid.*]—*Re* CUSTOM HOUSE MOTOR CO., LTD. (IN VOLUNTARY LIQUIDATION), [1928] St. R. Qd. 338.—**AUS.**

PART III. SECT. 14.

sz. *" Preference shares."*] — " Preference share " is an indefinite term, having a commercial or popular rather than a legal import. Where a preference of any character is given to the holder of a share, the circumstance that in other respects he is deprived of the usual rights of a holder of common shares does not prevent his share from being properly designated a " preference share."—RUBAS *v.* PARKINSON, [1929] 3 D. L. R. 558; 64 O. L. R. 87.—**CAN.**

rectification but to make an order dismissing the summons on motion & leaving it open to appct. to bring an action.—*Re* GREATER BRITAIN PRODUCTS DEVELOPMENT CORPN., LTD. (1924), 40 T. L. R. 488, D. C.

1433. *Add. Annotation :*—**Refd.** Bombay Official Assignee *v.* Shroff (1932), 48 T. L. R. 443.

1448a. —— **Right to issue stock warrants payable to bearer.**]—There is nothing in the Cos. Act, 1929 (c. 23), that, expressly or by implication, deprives a co. of the power to issue warrants to bearer in respect of stock.—PILKINGTON *v.* UNITED RAILWAYS OF THE HAVANA & REGLA WAREHOUSES, LTD., [1930] 2 Ch. 108 ; 99 L. J. Ch. 555 ; 144 L. T. 115 ; 46 T. L. R. 370 ; 74 Sol. Jo. 264.

1448b. Conversion of preference shares into ordinary shares—Whether alteration in status of shareholders.]—Where preference shareholders had the right to give six months' notice converting their shares into ordinary shares, & some of them gave such notice less than six months before the co. went into voluntary liquidation :—*Held :* such notice was valid & effectual to convert their preference shares into ordinary shares, & did not create an alteration of their status after the commencement of the winding up within 1908 Act, s. 205.—*Re* BLAINA COLLIERY CO., LTD. (1926), 70 Sol. Jo. 404.

1455a. —— **Power in memorandum—No provision in articles.**]—CAMPBELL *v.* ROFE, [1932] W. N. 266, P. C.

1461. *Add. Annotation :*—**Consd.** Collaroy Co. *v.* Giffard, [1928] Ch. 144.

1472. *Add. Annotation :*—**Refd.** Leeds Industrial Co-operative Soc. *v.* Slack, [1924] A. C. 851.

1480. *Add. Annotations :*—*Generally*, **Consd.** Australian Investment Trust, Ltd. *v.* Strand & Pitt Street Properties, Ltd. (1932), 48 T. L. R. 646. **Refd.** Humphrey & Denman *v.* Kavanagh (1925), 41 T. L. R. 378.

1515. *Add. Annotation :*—**Refd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

1552. *Add. Annotations :*—*As to* (2) **Distd.** Collins *v.* Associated Greyhounds Racecourses, [1930] 1 Ch. 1. *As to* (4) **Distd.** Collins *v.* Associated Greyhounds Racecourses, [1930] 1 Ch. 1. (In my view the headnote of the report is inaccurate so far as it states what constitutes the fourth head, which should read, "Where the contract is made to the knowledge of the co. on the basis of certain representations, & it turns out that some of them were material & untrue," *per* LUXMOORE, J.).

PART III. SECT. 15 SUB-SECT. 1.

1450 ii. —— —— ——.]—The memorandum of assocn. of a co. provided, *inter alia*, that the preference stock should rank as to dividend & capital in priority to the ordinary stock & all other stock & shares in the capital for the time being of the co., & that it should be "subject to the other provisions with regard to the same contained in the articles of assocn." The arts. of assocn. set forth that the co. might increase its share capital by the creation of new shares, with such preference over other shares or stock as it might direct, provided that no shares or stock should be created with a preference over, or ranking *pari passu* with, the existing preference stock without the sanction of the stockholders affected :—*Held :* upon a sound construction of the memorandum of assocn., the co. had not power at its own hand, even with the sanction of the preference stockholders, to create new preference stock ranking *pari passu* with existing preference stock ; & that an alteration of the memorandum was necessary for that purpose.—*Re* SCOTTISH NATIONAL TRUST CO., [1928] S. C. 499.—**SCOT.**

e i. ——.]—The decision of *Andrews v. Gas Meter Co.*, No. 1459, must be taken as indicating that if the arts. of assocn. of a co. make no reference to the issue of preference shares, preference shares cannot be issued. Under the arts. of assocn. of a co. the directors were empowered to allot or otherwise dispose of shares "on such terms and conditions" as they thought fit, & the co. in general meeting was empowered to increase capital by the creation of new shares to be issued "upon such terms & conditions & with such rights and privileges annexed thereto" as the general meeting should direct. The articles further provided that "subject to the rights attached to shares issued on special conditions" . . . the profits of the co. should be divisible among the members in proportion to the capital paid up or deemed to be paid up on the shares held by them :—*Held :* the directors were authorised to issue preference shares.—*Re* MARLOW ROLLS THEATRES, LTD., 47 N. S. W. W. N. 185.—**AUS.**

PART III. SECT. 15, SUB-SECT. 2.

k i. *Power to modify rights by bye-law —Validity of bye-law—Companies Act, R. S. C.*, 1906 (c. 79).]—HOLMESTED *v.* ALBERTA PACIFIC GRAIN CO., LTD. (Alta.), [1928] 1 D. L. R. 135 ; [1927] 3 W. W. R. 707.—**CAN.**

PART III. SECT. 17, SUB-SECT. 1.—A. (a).

b i. ——.]—*Held :* persons, who, intending to become shareholders in a proposed co., had signed & sealed a "subscribers' agreement," were not shareholders.—*Re* BLUEBIRD CORPN., LTD., [1926] 2 D. L. R. 484 ; 58 O. L. R. 486.—**CAN.**

PART III. SECT. 17, SUB-SECT. 1.—B. (a) i.

s i. —— —— ——.]—Where the evidence was not conclusive :—*Held :* in the circumstances A.'s agreement for employment stood by itself, & his status as a shareholder, which was established by what he had done & omitted to do, was not affected.—*Re* BUFF PRESSED BRICK CO. (1924), 56 O. L. R. 33.—**CAN.**

c i. —— *Balance to be paid on commencement of undertaking by company.*]—A. added on the foot of an application for shares the words : "This subscription is given on the understanding that I am to be called upon for the balance of the money when building operations commence" :—*Held :* this stipulation had nothing to do with his becoming a shareholder ; & failure of the co. to commence building did not entitle A. to rescind his contract.—*Re* NATIONAL STADIUM, LTD. (1924), 55 O. L. R. 199.—**CAN.**

f i. —— —— ——.]—A. relied, as entitling him to rescission, upon the non-fulfilment of a condition that a building should be erected on a certain site :—*Held :* his agreement constituted A. a shareholder *in præsenti*, & the condition should be treated merely as a collateral obligation on the part of the co.—*Re* NATIONAL STADIUM, LTD. (1924), 55 O. L. R. 199.—**CAN.**

PART III. SECT. 17, SUB-SECT. 1.—D. (b).

sy. *Abrogation of original agreement—Ascertainment of terms of substituted oral agreement.*]—LAZIER *v.* MCCULLOUGH (1913), 25 W. L. R. 911 ; 14 D. L. R. 270 ; 6 Alta. L. R. 503.—**CAN.**

PART III. SECT. 17, SUB-SECT. 1.—E.

d i. —— *Not after election to retain shares.*]—MCDONALD *v.* WAIRAKEI, LTD., [1924] N. Z. L. R. 201.—**N.Z.**

f i. —— *Lapse of time.*]—Where the owner of shares held in escrow agreed to sell them, & certificates therefor were issued in the name of the purchaser & retained by the trustee pending fulfilment of the terms of the trust agreement, but no demand had yet been made upon the purchaser for payment :—*Held :* the fact that there was a lapse of about four years without any action being taken by the purchaser displaying any right of ownership or interest in the shares did not show that he had abandoned the contract of purchase.—DALLAS & BIRKE *v.* DALLAS OIL CO., LTD., & WEBSTER, [1930] 2 W. W. R. 301 ; 2 D. L. R. 788 ; 24 Alta. L. R. 445 ; *affd.*, [1931] S. C. R. 220 ; 2 D. L. R. 733.—**CAN.**

PART III. SECT. 17, SUB-SECT. 1.—F.

m i. —— ——.]—The ct. has jurisdiction to decree specific performance of a contract with a co. for the purchase of shares thereof, but the matter is one of judicial discretion, *i.e.* contracts for the sale of shares are treated on the same principles as to the exercise of the ct.'s jurisdiction to decree specific performance as are contracts relating to land.—MCDOUGAL SEGUR EXPLORATION CO. OF CANADA, LTD. *v.* SOLLOWAY MILLS & CO., [1931] 2 W. W. R. 516.—**CAN.**

PART III. SECT. 17, SUB-SECT. 1.—G. (a).

1553 vi. ——.]—MILNE *v.* DURHAM HOSIERY MILLS, LTD., [1925] 3 D. L. R. 725 ; 57 O. L. R. 228.—**CAN.**

1553 vii. ——.]—PATHESCOPE UNION OF SOUTH AFRICA, LTD. *v.* MALLINICK, [1927] App. D. 292.—**S. AF.**

1553 viii. ——.]—ROBERTS *v.* ARNOTT CO., [1932] 1 D. L. R. 798.—**CAN.**

PART III. SECT. 17, SUB-SECT. 1.—G. (b).

sa. *Representation must have induced contract.*]—MARITIME UNITED FARMERS CO-OPERATIVE, LTD. *v.* DICKIE, [1925] 1 D. L. R. 377 ; 52 N. B. R. 42.—**CAN.**

1565. *Add. Annotation :*—**Refd.** Sullivan *v.* Constable (1932), 48 T. L. R. 267.

1585. *Add. Annotations :*—**Refd.** *Re* Royal British Bank (1859), 3 De G. & J. 387; Western Bank of Scotland *v.* Addie, Addie *v.* Western Bank of Scotland (1867), L. R. 1 Sc. & Div. 145.

1589a. Statement by agent—That application purely formal.]—E., acting as agent of pltf. co., represented to deft. that the co. owned valuable rights over certain mines in China, & deft. agreed to go to China & investigate & make a report upon the properties, & he signed an application form for 2,000 £1 shares upon a representation by E. that the application was purely formal, & deft. paid £250 on allotment upon a representation by E. that the payment was for an option on 250 shares to be bought by deft., if he so desired, on his return from China. The shares were allotted to deft. at a meeting at which E. was in the chair, but no notice of the allotment was sent to deft. Deft. went to China & pltf. co. alleged that he returned to England without obtaining any information. Deft., on the other hand, alleged that E.'s representations were false & that the mining rights were valueless. In an action in which pltf. co. in liquidation claimed (*inter alia*) £1,750 for unpaid calls on the shares, the trial judge held that as deft. intended only to take an option on the shares & had never contracted to take them the action failed :—*Held :* although E. was an agent of pltf. co. to come to an agreement with deft., yet by reason of E.'s fraudulent use of the application form signed by deft. the latter could not be treated as having agreed to take the shares, & the decision of the trial judge must be affirmed.—HUMPHREY & DENMAN, LTD. (IN LIQUIDATION) *v.* KAVANAGH (1925), 41 T. L. R. 378, C. A.

1604. *Add. Annotation :*—**Refd.** *Re* United Citizen's Investment Trust (1931), 101 L. J. Ch. 17.

1644a. —— Contract to repay advance after allotment.]—WHEELER *v.* FRADD (1898), 14 T. L. R. 302, 440; 42 Sol. Jo. 364, C. A.

1645. *Add. Annotation :*—**Distd.** Lynde *v.* Nash, [1928] 2 K. B. 93.

1653. After this case add :—

—— ——.]—*See, now,* 1929 Act, s. 39 (1).

1654a. —— What amounts to.]—In Jan. 1920, K. applied, on a form supplied to him by Y., for 100 shares in a co. about to be formed. On Apr. 14, Y. purported to transfer to K.

PART III. SECT. 17, SUB-SECT. 1.—G. (c).

1588 ii. —— ——.]—Deft., director of a co., without putting his signature to any written document, made fraudulent misrepresentations as to the financial position of the co., whereby pltf. was induced to apply & pay for shares :—*Held :* Lord Tenterden's Act had no application to the case, & pltf was entitled to recover from deft. the amount paid for the shares.—DIAMANTI *v.* MARTELLI, [1923] N. Z. L. R. 663.—**N.Z.**

f. Read now "**1588 i.**"

g. Read now "**1588 ii.**"

1588 iii. —— ——.]—PETROTITE & CHALLENGE HEATERS, LTD. *v.* BODLEY, No. 400 i., *ante*.—**N.Z.**

PART III. SECT. 17, SUB-SECT. 1.—G. (d).

r i. ——.]—TRUSTS & GUARANTEE CO. *v.* SMITH, [1924] 2 D. L. R. 211; 54 O. L. R. 144; 4 C. B. R. 195.—**CAN.**

r ii. ——.]—*Re* NATIONAL STADIUM, LTD. (1924), 55 O. L. R. 199.—**CAN.**

r iii. ——.]—If a shareholder desires to rescind his contract to take shares in a co., then, in order to make the rescission effective, he must before the commencement of the winding-up either have his name removed from the register of members, or institute appropriate legal proceedings to have it removed. Pltf. who had been induced to take shares under circumstances which entitled him to repudiate his contract, duly notified deft. co. of his repudiation. Negotiations were then entered into between pltf. & the director of the co. with reference to the mode of repayment to pltf. of the moneys due to him by the co. No agreement was, however, arrived at between the parties, & after some further delay pltf. commenced an action claiming, *inter alia*, an order directing the removal of his name from the register. A few days prior to the commencement of this action, the directors, without any notice to pltf., passed an effective resolution for the voluntary winding up of the co.—*Held :* the claim for the rectification of the register was, under the circumstances, too late & must be refused.—FLEMING *v.* ECLIPSE LAUNDRY CO., [1928] N. Z. L. R. 598.—**N.Z.**

s b. *Failure to repudiate before declaration of insolvency.*]—Apart from the effect of the commencement of winding up, it is too late for a shareholder in a limited co. to apply for rectification of the register of shareholders, on the ground of misrepresentation, after there has been a definite public declaration of insolvency, & this is so whether the business has in fact been kept open as a going concern or not.—*Re* LUCKS, LTD., SERPELL'S CASE, [1928] V. L. R. 466; 49 A. L. T. 270; [1928] Argus L. R. 288.—**AUS.**

PART III. SECT. 17, SUB-SECT. 2.—A.

1606 iii. —— *Agreement to subscribe for shares when called upon.*]—BEARDMORE & CO., LTD. *v.* BARRY, [1928] S. C. 101.—**SCOT.**

PART III. SECT. 17, SUB-SECT. 2.—B. (a).

f i. ——.]—Where a contract to purchase shares was entered into by one of two partners of a trading firm, without authority express or implied, & owing to a clerical error the firm was not entered on the register of members & the name of the other partner alone was entered :—*Held :* the latter was never under any liability to the co. & could not be made a contributory.—MASECAR *v.* MCKENZIE & SON, [1924] 2 D. L. R. 1242; 2 W.W. R. 521.—**CAN.**

PART III. SECT. 17, SUB-SECT. 2.—C.

s c. —— *Whether nominee liable—Nominee incapable of contracting.*]—Petitioner's father signed her name to a stock subscription book of a bank, paid the calls, & received the dividend cheques, which were indorsed by her at her father's request, the moneys being received by him. The bank was put into liquidation by winding-up proceedings, & the order for call against contributories was made three months before she came of age. A year after the liquidation commenced she took proceedings to have her name removed from the list of contributories :—*Held :* she was not liable as a contributory, & her name must be removed from the list.—*Re* CENTRAL BANK & HOGG (1890), 19 O. R. 7.—**CAN.**

PART III. SECT. 17, SUB-SECT. 3.—A.

f i. ——.]—Allotment is the acceptance by a co. of an offer to take shares.—IMPERIAL BANK OF CANADA *v.* DENNIS, [1926] 3 D. L. R. 168; 59 O. L. R. 20; *varying*, [1925] 3 D. L. R. 488; 57 O. L. R. 203.—**CAN.**

PART III. SECT. 17, SUB-SECT. 3.—C. (a).

1654 i. *Allotment before statement in lieu of prospectus filed.*]—*Held :* ineffective to charge persons who had signed a "subscribers' agreement."—*Re* BLUEBIRD CORPN., LTD., [1926] 2 D. L. R. 484; 58 O. L. R. 486.—**CAN.**

s d. *Application before compliance with Sale of Shares Act—Allotment after compliance with Act.*]—Before a co. had obtained the certificate required by Sale of Shares Act, & before its agent for the sale of shares had been licensed thereunder, an agent thereof obtained an application for shares. The shares were allotted after the certificate & licence were issued, & the shareholder paid several sums on the notes given for the shares & appointed proxies at different times to vote. The shareholder did not know until after a winding-up order had been made that the Act had not been complied with at the time of his application :—*Held :* he was not entitled to have his name removed from the list of contributories.—*Re* GREAT NORTH INSURANCE CO., PAINTER'S CASE, [1925] 2 D. L. R. 778; [1925] 1 W. W. R. 1149; 21 Alta L. R. 326; *revsg.*, [1925] 1 W. W. R. 752.—**CAN.**

PART III. SECT. 17, SUB-SECT. 3.—C (b).

1666 i. *Exercise of powers by directors—Directors never properly appointed.*]—An applicant for shares in a co. who accepted the shares allotted him, paid for them in part, allowed his name to appear on the list of shareholders, attended both in person & by proxy shareholders' meetings & accepted a dividend :—*Held :* to be precluded from contending for the first time after a winding-up order had been made that the directors who made the allotment were only *de facto* not *de jure* directors, & from disputing his status as a shareholder.—*Re* ACME PRODUCTS, LTD., HOPPS' CASE, [1932] 2 W. W. R. 586; 4 D. L. R. 330.—**CAN.**

100 shares, but the transfer did not specify the denoting numbers of the shares comprised therein. At a meeting of the directors held on Apr. 16, a resolution was passed purporting to allot all the shares of the co. At that date the co. had not issued a prospectus or filed a statement in lieu thereof. On Apr. 20, the statement in lieu of prospectus was filed. At a meeting of the directors held on Apr. 30, the transfer from Y. to K. came before the board, & a resolution was passed approving the transfer & directing that a share certificate should be forwarded to K. Subsequently K. was registered a member of the co. The certificate, dated May 26, was sent to, & was accepted by, K. On June 8 a bonus, declared at the meeting of Apr. 30, was paid to, & was accepted by, K. K., as purporting to be the owner of the shares, attended a meeting of shareholders on Mar. 24, 1921. Subsequently the co. went into liquidation, & K., on whose shares there was a liability of 10*s.* per share, then denied being a shareholder, contending that the allotment of shares to Y. was void under 1908 Act, s. 82 :—*Held :* (1) although the allotment to Y. was void, K. was a member of the co. at the commencement of the winding up, there having been no agreement between him & the co. until Apr. 30, when the co. was legally in a position to allot shares ; (2) in any event, in view of his subsequent conduct, he was estopped from denying that he was a member of the co.—*Re* BURTON (JAMES) & SONS, LTD., [1927] 2 Ch. 132 ; 96 L. J. Ch. 457 ; 137 L. T. 564 ; 71 Sol. Jo. 491.

1681a. ——— ——— ———.]—In their circular the directors asked whether, should there be any of the reserved shares remaining undisposed of, each shareholder would say if he wished to have any shares in addition to those he might receive as his proportional shares. They also required payment to be made on or before Oct. 1. Appts, answered that they did wish to have some additional shares. In their reply, dated July 18, the directors declared that additional shares had been allotted to them, & that payment thereon must be made on a day specified or the shares would be forfeited. No notice was taken of this communication :—*Held :* there was no complete contract as to these additional shares.—JACKSON *v.* TURQUAND (1869), L. R. 4 H. L. 305 ; 39 L. J. Ch. 11, H. L.

1746. *Add. Annotation :*—**Refd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

1771. After this case add :—

———.]—*See, now,* 1929 Act, s. 41.

1778. *Citation :*—For " 96 L. T. 743 " read " 92 L. T. 743."

1783a. As to compliance with formalities — Authorised affixing of seal.]—SOUTH LONDON GREYHOUND RACECOURSES, LTD. *v.* WAKE, No. 1794a, *post.*

1786. *Add. Annotation :*—**Refd.** South London Greyhound Racecourses, Ltd. *v.* Wake, [1931] 1 Ch. 496.

1794. *Add. Annotations :*—**Apld.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1927] 1 K. B. 826 ; South London Greyhound Racecourses, Ltd. *v.* Wake, [1931] 1 Ch. 496. **Consd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587.

1794a. Seal affixed by secretary without authority.] —The A. co., of which D. was a director & G. was the secretary, being debtors of W. who, on Apr. 23, 1928, had issued a writ to enforce payment of the debt, procured the issue to W. of a certificate No. 528, certifying that W. was the registered holder of 2,000 preferred ordinary shares numbered 40,652 to 42,651 of ten shillings each fully paid in pltf. co., which certificate, early in May,

PART III. SECT. 17, SUB-SECT. 3.—D (a).

sf. *Allotment on terms other than those in application.*]—Where an allotment of shares was made on terms differing substantially from those contained in the application :—*Held :* as the allottee so far from accepting the allotment virtually repudiated it, he could not be held liable on the ground that the shares were duly allotted to him.—WHITTLE *v.* HENLEY, [1924] App. D. 138.—**S. AF.**

sg. *Allotment fraud on company—Company not bound to repudiate.*]—*Re* SUN RAY MANUFACTURING CO., *Ex p.* BIRKETT & SONS, LTD., [1925] 1 D. L. R. 1204 ; 5 C. B. R. 286 ; *affg.,* [1924] 2 D. L. R. 1055 ; 4 C. B. R. 615.—**CAN.**

PART III. SECT. 17, SUB-SECT. 3.—D. (b) i.

n i. —— *Contract to take treasury shares.*]—Deft. applied to a California co. through an agent in Victoria, B.C., for shares in the co. He intended to obtain treasury shares, but the shares which he received were shares owned by one A. Deft.'s name was entered, to his knowledge, on the co.'s register of shareholders, & he received dividends & contributed funds to assist in rehabilitating the co., but it was not until after the present action was brought that he learned that he had not received treasury shares. He thereupon immediately repudiated ownership. The action was one in which creditors of the co. sought, in accordance with the law of California, to fix deft. with a liability for its debts proportionate to the amount of his shares :—*Held :* deft. never became a shareholder since no contract making him such ever came into existence, & that his conduct did not estop him from denying that he was a shareholder.—AMERICAN SEAMLESS TUBE CORPN. *v.* GOWARD, [1930] 2 W. W. R. 31 ; 3 D. L. R. 870 ; 42 B. C. R. 551 ; *affd.,* [1931] 1 W. W. R. 509 ; 1 D. L. R. 878 ; 43 O. L. R. 407.—**CAN.**

n ii. —— ——.]—WITCOMB *v.* TORONTO GENERAL TRUSTS CORPN., [1931] 2 W. W. R. 545.—**CAN.**

n iii. ——— ———.]—An agreement for the sale of treasury shares of a co. is not satisfied by the transfer to the purchaser of an individual shareholder's personal stock.—CLAY *v.* POWELL & CO., LTD., [1932] S. C. R. 210 ; 1 D. L. R. 366.—**CAN.**

PART III. SECT. 17, SUB-SECT. 3.—E. (a).

1707 v. ——— ———.]—An application for shares in a co. is not binding on appct. unless & until it has been accepted by allotment & notice thereof made & given within a reasonable time.—MACLEAN *v.* REIDRUG, LTD., [1932] 1 W. W. R. 223.—**CAN.**

PART III. SECT. 17, SUB-SECT. 3.—E. (d).

1737 i. *Receipt by allottee immaterial—Posting sufficient*]—HOWSON *v.* CROW (Ont.), [1925] 1 D. L. R. 495.—**CAN.**

PART III. SECT. 17, SUB-SECT. 3.—G.

g i. —— *Non-compliance with Sale of Shares Act, R. S. M.,* 1913 (*c.* 175).] —Allotment void, & not merely voidable ; & where a purchaser of shares has not done anything from which an agreement to keep & pay for them can be implied, he can, even after a winding-up order, repudiate the purchase & successfully resist being placed on the list of contributories, where he only became aware, after the winding-up order, that the above Act was not complied with.—*Re* NORTH WESTERN TRUST CO., *Re* MCASKILL *v.* NORTH WESTERN TRUST CO., [1926] 3 D. L. R. 612 ; [1926] S. C. R. 412.—**CAN.**

1773 i. *Effect of avoidance—Right to recover money paid.*]—The right of an appct. to have the register of members of a co. rectified by the removal of his name therefrom under an order of the equity ct. carries with it the right to recover from the co. moneys paid to it by appct. in respect of his contract to take shares, & this is so whether the basis of the rescission of the contract be fraudulent or innocent misrepresentation. — *Re* AUSTRALIAN SLATE QUARRIES, LTD. (1930), 47 N. S. W. W. N. 179.—**AUS.**

PART III. SECT. 18, SUB-SECT. 3.—C.

f i. —— ———.]—An allottee :—*Held :* entitled to rely upon the certificates showing the stock given him to be fully paid up, whether in fact it was actually paid for or not.—*Re* SUPPLIES, LTD., CANADIAN CREDIT MEN'S TRUST ASSOCN. *v.* CALDWELL, [1926] 1 D. L. R. 824 ; 58 N. S. R. 399.—**CAN.**

1928, was accepted by W. as security for the payment of the debt & on the faith of which W. abstained from serving the writ upon the A. co. until June 18, 1928. D. was also managing director & G. was also secretary of pltf. co. The certificate bore the seal of that co., & was attested by the signatures of D. & G. as such director & secretary respectively. Pltf. co. having refused to recognise W.'s title to the shares brought this action against W., in which they claimed a declaration that W. was not entitled to the shares & rectification of their register of members. By art. 105 of the arts. of assocn. of pltf. co. it was provided as follows: "The seal of the co. shall not be affixed, except by the authority of a resolution of the board of directors & in the presence of at least one director & the secretary; & the said one director & the secretary shall sign every instrument to which the seal shall be so affixed in their presence & in favour of any purchaser or person *bonâ fide* dealing with the co. such signature shall be conclusive of the fact that the seal has been properly affixed." The following further facts were held to have been established at the trial: from entries in the register of members it appeared that the shares in dispute had in Nov. 1927, been issued, with other shares, to the English & Foreign Investment Trust, Ltd., & that in respect of those shares three shillings per share were paid up. There was no entry showing when that co. ceased to be a member. There were entries in the register indicating that the 2,000 shares were transferred to W., & that W. was entered on the register as a member on Apr. 30, 1928, as having acquired the shares as fully paid & as having had a certificate No. 528 issued to him. There was no record of any transfer from the English & Foreign Investment Trust, Ltd. In Apr. 1928, while the register & seal of pltf. co. were under their physical control, D. & G. made the entries in the register, &, as director & secretary respectively of pltf. co., affixed the seal of that co. to & signed the certificate issued to W., but without any authority from pltf. co. & fraudulently in the interest of the A. co.:—*Held:* (1) the certificate not having in truth been sealed by pltf. co.'s authority, was, in the circumstances aforesaid, a forgery & not binding upon the co; (2) W., whose ignorance of art. 105 had been proved, was, on that account, precluded from relying on that article to support the contention that pltf. co. was bound in his favour to treat the attesting signatures as conclusive evidence of the fact that the seal of pltf. co. had been properly affixed to the certificate; (3) as affixing the seal was not a matter in which normally a single director would have power to act without the authority of the board of directors, W. was not relieved from the obligation to inquire whether the formalities required by the art. had been complied with.—SOUTH LONDON GREYHOUND RACECOURSES, LTD. *v.* WAKE, [1931] 1 Ch. 496; 100 L. J. Ch. 169; 144 L. T. 607; 74 Sol. Jo. 820.

1810. *Add. Annotation:*—**Consd.** Oswald Tillotson, Ltd. *v.* I. R. Comrs. (1932), 48 T. L. R. 628.

1814a. **"Initial share issue"—Meaning.**]—GAS METER CO., LTD. *v.* DIAPHRAGM & GENERAL LEATHER CO., LTD. (1925), 41 T. L. R. 342.

1815. Before this case add "*see, now,* 1929 Act, s. 47."

1817. *Add. Annotations:—As to* (4) **Apld.** *Re* Wilts & Somerset Farmers, [1928] Ch. 809. *Generally,* **Refd.** Biddulph & District Agricultural Soc. *v.* Agricultural Wholesale Soc. (1926), 95 L. J. Ch. 576.

1821. *Add. Annotations:—As to* (1) **Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769. *Generally,* **Consd.** Australian Investment Trust, Ltd. *v.* Strand & Pitt Street Properties, Ltd. (1932), 48 T. L. R. 646. **Refd.** *Re* Wilts & Somerset Farmers, [1928] Ch. 809.

1826. *Add. Annotation—As to* (2) **Distd.** Australian Investment Trust, Ltd. *v.* Strand & Pitt Street Properties, Ltd. (1932), 48 T. L. R. 646.

PART III. SECT. 19.

1812 i. *Issue for improper purpose—Increase of voting power—Restraint.*]—Where directors, in exercising their powers to issue & allot shares, do so in order to get control of the voting power, the ct. will declare the issue & allotment invalid.—SMITH & TATCHELL *v.* HANSON TIRE & SUPPLY CO., LTD., [1927] 3 D. L. R. 786; [1927] 2 W.W. R. 529; 21 Sask. L. R. 621.—**CAN.**

1812 ii. ——— ——— ———.]—TREASURE TROVE DIAMONDS, LTD. *v.* HYMAN, [1928] App. D. 464.—**S. AF.**

PART III. SECT. 20, SUB-SECT. 1.—A.

1 i. ——— *Issue for future services to be rendered.*]—Defts. procured the incorporation of pltf. co., & made an agreement with the original directors, who were merely the nominees of defts., that, as consideration for services which they promised to perform, defts. should receive practically the whole of the common shares of the capital stock of pltf. co. as fully paid shares:—*Held:* the transaction was *ultra vires* of pltf. co.—BANKING SERVICE CORPN., LTD. *v.* TORONTO FINANCE CORPN. LTD., [1928] A. C. 333; 97 L. J. P. C. 65; 139 L. T. 149, P. C.—**CAN.**

1 ii. ——— ———.]—The manager of a co. incorporated under Ontario Cos. Act agreed with the co. to buy certain shares thereof at their par value & to pay therefor partly by promissory notes & partly by serving the co. as its manager for the next four years. The manager became bkpt. & the co. claimed against his estate for the amount of the notes. The trustee disallowed the claim & the co. appealed:—*Held:* as the evidence showed that the contract was, not illusory, but a *bonâ fide* transaction, the terms of payment were within the powers of the co.—*Re* GIBSON ESTATE, PELICAN LAKE LUMBER CO., LTD. & TRADERS TRUST CO. (Man.), [1929] 4 D. L. R. 1001; 3 W. W. R. 224; 11 C. B. R. 100.—**CAN.**

1 iii. ———.]—AUDITORIUM, LTD. *v.* LUMSDEN, [1926] 4 D. L. R. 976; 59 O. L. R. 496.—**CAN.**

1 iv. ———.]—SIGNAL HILL OILS CO., LTD. *v.* LONDON OIL SECURITIES, LTD. (Alta.), [1927] 3 D. L. R. 984; [1927] 2 W. W. R. 392.—**CAN.**

1 v. ———.]—WASCHYSYN *v.* KILDONAN ICE & FUEL CO. (Man.), [1929] 4 D. L. R. 555.—**CAN.**

sh. *Under Companies Act, 1929, s. 47—Petition to court—Remit to reporter.*]—Where a petition is presented to the ct. under Cos. Act, 1929, s. 47, for authority to issue shares at a discount, the ct. will not dispense with a remit to a reporter.—*Re* EDINBURGH & DUNDEE INVESTMENT CO., [1930] S. C. 681.—**SCOT.**

PART III. SECT. 20, SUB-SECT. 1.—B.

1826 i. *Commission on underwriting.*]—A *bonâ fide* agreement to underwrite an issue of shares by a limited co. is a contract for the performance of services, & not to subscribe for shares. An underwriting agreement is not necessarily *ultra vires,* merely because it involves the payment of commission to the underwriter out of capital. Whether an underwriting agreement is a *bonâ fide* & reasonable contract for services, or merely an attempt to conceal, in the guise of an underwriting agreement, a contemplated allotment & acceptance of shares at a discount, is a question of fact to be determined in each case on a consideration of all relevant materials.—AUSTRALIAN INVESTMENT TRUST, LTD. *v.* STRAND & PITT STREET PROPERTIES, LTD. (1931), 31 S. R. N. S. W. 266; 48 N. S. W. W. N. 73; *revsd.,* [1932] A. C. 735; 101 L. J. P. C. 181, P. C.—**AUS.**

sj. *Issue of shares as bonus.*]—*Held:* a co. agreeing to issue twenty-one

1871. *Add. Annotation :*—**Refd.** Tarrant *v.* Roberts (1930), 47 T. L. R. 199.

1923. *Add. Annotation :*—**Refd.** Excess Insce. *v.* Mathews (1925), 31 Com. Cas. 43.

1929. *Add. Annotation :—As to* (3) **Refd.** Oswald Tillotson, Ltd. *v.* I. R. Comrs. (1932), 48 T. L. R. 582.

1934. *Add. Annotation :*—**Refd.** Oswald Tillotson, Ltd. *v.* I. R. Comrs. (1932), 48 T. L. R. 582.

1935. *Add. Annotation :*—**Consd.** Oswald Tillotson, Ltd. *v.* I. R. Comrs. (1932), 48 T. L. R. 628.

2026. After this case add the following new sub-section:—

SUB-SECT. 3*a*.—UNDER COMPANIES (CONSOLIDATION) ACT, 1908, s. 88.

See case *infra*.

2060. *Add. Annotation :*—**Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

2070. *Add. Annotation :*—**Overd.** Spencer *v.* Ashworth Partington, [1925] 1 K. B. 589.

2070a. ——.]—Where the owner of shares in a co. sells them there arises out of the contract of sale an implied promise by the purchaser to indemnify his vendor against all calls that may be made upon him in respect of the shares at any future date, whether made while the purchaser remains entitled to the shares or after he has parted with them to a sub-purchaser; & it makes no difference in that respect that the transfer which the vendor delivers to the purchaser in completion of his contract is executed in blank.—SPENCER *v.* ASHWORTH PARTINGTON & CO., [1925] 1 K. B. 589; 94 L. J. K. B. 447; 132 L. T. 753, C. A.

2072. *Add. Annotation :*—**Refd.** Spencer *v.* Ashwortb Partington, [1925] 1 K. B. 589.

2087a. Sale by transferee to sub-purchaser.]—SPENCER *v.* ASHWORTH PARTINGTON & CO., No. 2070a, *ante*.

2100. *Add. Annotation :—As to* (1) **Consd.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487.

2168. *Add. Annotation :—As to* (3) **Refd.** *Re* Bolton, *Ex p.* North British Artificial Silk, Ltd., [1930] 2 Ch. 48.

2174. *Add. Annotation :*—**Refd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

2179. *Add. Annotation :—As to* (1) **Refd.** Bank of N. T. Butterfield *v.* Golinsky, [1926] A. C. 733.

2183a. —— **Lien in respect of debt of trustee—Right of trustees to sell shares.**]—Pltfs. were the trustees of the marriage settlement of one of them, who was also a beneficiary under the settlement. They claimed damages from defts. for breach of an agreement, whereby defts. undertook to purchase shares

preferred shares & seven common shares both fully paid, on receipt of only the par value of the twenty-one preferred shares, was making an agreement to issue shares at a discount, which was *ultra vires* & could not be enforced.—AUDITORIUM, LTD. *v.* LUMSDEN, [1926] 4 D. L. R. 976; 59 O. L. R. 496.—**CAN.**

PART III. SECT. 20, SUB-SECT. 2.—C. (b) i.

sk. —— *Credit for accommodation bills met by shareholder.*]—An agreement was entered into by a co. with one of its shareholders to credit moneys which he might be called upon to pay in respect of accommodation bills entered into by him for the co.'s assistance, or which might fall due to him for services rendered to the co. against his liability for shares. Although a sufficient sum had accumulated under these heads to extinguish the shareholder's liability on his shares, the co. went into liquidation before an actual credit had been passed for the amount: —*Held :* the transaction did not amount to payment by the shareholder of the amount due by him on his shares within Cos. Act, 1908, & the actual set-off not having been carried into effect prior to the liquidation, the shareholder was precluded by sect. 68 of the Act from having his name removed from the list of contributories.—HARDING & CO. *v.* HAMILTON, [1929] N. Z. L. R. 338.—**N.Z.**

PART III. SECT. 20, SUB-SECT. 2.—C. (b) ii.

1856 i. *Issue to director—For services rendered—On resolution of shareholders—Application of surplus assets.*]—Where there was a surplus available for distribution by way of dividend among shareholders, & it was open to the shareholders if unanimous to deal with it as they might think fit:—*Held :* no creditor could object, & every shareholder would necessarily be estopped by his own conduct.—*Re* DORENWENDS, LTD., [1924] 3 D. L. R. 118; 55 O. L. R. 413.—**CAN.**

PART III. SECT. 20, SUB-SECT. 3.—B. (a).

m i. —— ——.]—Any *bonâ fide* transaction between a co. & a shareholder which, if the co. brought an action against him for calls, would support a plea of payment, is a "payment in cash."—MOTOR FUELS CORPN. ETC. (IN LIQUIDATION) *v.* LINDER BROTHERS (1927), 48 N. L. R. 279.—**S. AF.**

PART III. SECT. 20, SUB-SECT. 3.—B. (b).

1886 ii. —— ——.]—By an agreement in writing applt. & another agreed to sell & the co. agreed to purchase certain land at the price of £2,610, which price was to be paid & satisfied partly by certain cash instalments & partly by the issue of fully paid shares in the co. Possession of the land was to be given on payment of £10 & the issue of four hundred shares; transfer was to be made after payment of all instalments, the last of which, under the agreement was not payable until Aug. 1928. Possession of the land was given & the shares were issued, but no contract was filed at or before the issue of the shares:—*Held :* under the agreement the shares were not paid or to be paid in cash.—*Re* GOODMAN BROTHERS AUTO & SERVICE CO., LTD., *Ex p.* ROSE, [1927] S. A. S. R. 571.—**AUS.**

st. *Adoption of contract with promoter—Money placed in his hands by intending shareholders.*]—Where a co. on completion of conveyances to it by the vendor gave credit to him for moneys placed in his hands as promoter on the terms of the co.'s prospectus by intending shareholders & specifically appropriated by them in payment *pro tanto* for their shares, registered the shares in their names, & at the same time obtained credit in respect of the payment from the vendor on account of the purchase-money:—*Held :* this was a payment in cash to the co. in respect of those shares within New South Wales Cos. Act, 1874, s. 57, which is substantially identical with Imperial Cos. Act, 1867, s. 25.—NORTH SYDNEY INVESTMENT & TRAMWAY CO. *v.* HIGGINS, [1899] A. C. 263; 68 L. J. P. C. 42; 80 L. T. 303; 47 W. R. 481; 15 T. L. R. 232; 6 Mans. 321, P. C.—**AUS.**

PART III. SECT. 20, SUB-SECT. 3a.

sl. *Filing of contract—Time for filing—Extension of time.*]—Where the failure to comply with 1908 Act, s. 88, was due to inadvertence & when the irregularity was discovered the contract was reduced to writing but more than three years after the proper date for filing, & the co. presented a petition for extension of time:—*Held :* merely to grant relief from the prescribed penalty would be an insufficient remedy, & the time for filing was extended.—*Re* ANDERSON & MUNRO, LTD., [1924] S. C. 222.—**SCOT.**

PART III. SECT. 20, SUB-SECT. 3.—C. (c).

1925 i. *Sufficiency of—Whether court will inquire into.*]—*Held :* the agreement not having been set aside, the adequacy of the consideration could not be inquired into in a winding-up proceeding.—*Re* DOMINION COMBING MILLS, [1930] 3 D. L. R. 98; 65 O. L. R. 65; 11 C. B. R. 189; *revsg.*, 11 C. B. R. 84; *affg.*, 10 C. B. R. 462.—**CAN.**

PART III. SECT. 21 SUB-SECT. 2.

2053 i. *Must state amount of call—& time & place of payment.*]—PIONEER ALKALI WORKS, LTD. *v.* AMIRUDDIN SHALEBHOY TYEBJI (1925), I. L. R. 50 Bom. 461.—**IND.**

PART III. SECT. 21, SUB-SECT. 3.

1 i. ——.]—EUROPEAN & NORTH AMERICAN RY. CO. *v.* DUNN (1876), 16 N. B. R. (3 Pug.) 320.—**CAN.**

PART III. SECT. 21, SUB-SECT. 5.—A. (b).

o i. —— *Estoppel.*] — DOMINION SECURITIES *v.* DUNCAN, [1929] N. Z. L. R. 65.—**N.Z.**

in a certain company. The pltf., who was a beneficiary under the settlement, was, in his individual capacity, indebted to the co. & the co. had, under its articles, a lien upon shares in respect of the debts of a member. In a previous action it had been held that whatever equitable interest the co. had in these shares under its lien was postponed to the interests of the beneficiaries under the settlement, other than the debtor-trustee & persons claiming under him. Defts. now contended that, as the co. would lose its lien, which was admittedly good against the debtor-trustee & persons claiming under him, if the trustees were to sell, the trustees were not in a position to sell the shares free from encumbrances, & therefore the defts. were not bound to carry out their agreement to purchase:—*Held:* the right of the trustees to sell the shares in execution of their trust was not affected by the co.'s lien against the debtor-trustee's personal interest, & the trustees could give an unencumbered title to a purchaser of the shares, although the co. would lose its lien thereby. Defts. were, therefore, bound to carry out their agreement to purchase.—MATHIESON *v.* GRONOW (1929), 141 L. T. 553; 45 T. L. R. 604.

2210a. —— ——.]—PICKERING *v.* APPLEBY (1720), 1 Com. 354; 92 E. R. 1108.

Annotation:—**Refd.** Watson *v.* Spratley (1854), 10 Exch. 222.

2211a. —— —— **Spanish & Portuguese bonds.**]—*Qu.:* whether Spanish & Portuguese Bonds are "goods, wares, & merchandizes," within Stat. Frauds, s. 17.—PAWLE *v.* GUNN (1838), as reported in 1 Arn. 200; 6 Scott, 286; 7 L. J. C. P. 206.

2217. *Add. Annotation:*—**Consd.** Spencer *v.* Ashworth Partington, [1925] 1 K. B. 589.

2224a. —— **Dividend before exercise of option to purchase—Payment postponed.**]—By a contract made in Apr. 1922, it was agreed between the persons interested therein that a business forming part of a testator's estate should be converted into a private co. with a capital of £30,000, divided into £20,000 debentures bearing interest at 7 per cent. & 10,000 ordinary shares of £1 each, fully paid, which were to be allotted to the trustees of the will. One of the trustees, F., was appointed manager of the co., & was given the option, so long as he continued to be both trustee & manager, of purchasing the whole of the debentures & shares at par value In June, 1928, the co. declared a dividend of 57½ per cent. on the ordinary shares for the year ending Mar. 31, 1928, to be paid in three equal instalments on July 1 & Nov. 1, 1928, & Feb. 1, 1929, & the first instalment was paid on July 1, 1928. On July 30, 1928, F. exercised his option to purchase the whole of the shares & debentures for £30,000. At that date there was four months' interest due upon the debentures. The purchase was completed on Nov. 5, 1928. On a summons being taken out to determine the rights of the parties in the unpaid instalments of the dividend, & the debenture interest, as between vendors & purchaser:—*Held:* (1) the four months' accrued interest on the debentures passed to the purchaser; (2) the declaration of the dividend on the shares having created a debt to the trustees as the then registered shareholders, the postponement of the payment did not operate to deprive them of their rights, & therefore the remaining instalments belonged to them & not to the purchaser.—*Re* KIDNER, KIDNER *v.* KIDNER, [1929] 2 Ch. 121; 98 L. J. Ch. 247; 141 L. T. 195.

2228. *Add. Annotation:*—**Refd.** Spencer *v.* Ash worth Partington (1925), 94 L. J. K. B. 447.

2237. *Add. Annotation:*—**Dbtd.** Lever Bros., Ltd. *v.* Bell (1930), 47 T. L. R. 47.

2263. *Add. Annotation:*—**Refd.** Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557.

2269a. —— ——.]—Upon the breach of a contract for the sale of shares, the proper measure

PART III. SECT. 23, SUB-SECT. 1.

g i. —— *Agreement binding—Company entitled to refuse to register transfer.*]—ONTARIO JOCKEY CLUB, LTD. *v.* MCBRIDE, [1927] A. C. 916; 137 L. T. 751, P. C.—**CAN.**

m i. —— *Isolated transaction.*]—MOROZ *v.* KILDONAN ICE & FUEL CO., [1930] 1 D. L. R. 138.—**CAN.**

PART III. SECT. 23, SUB-SECT. 2.—A.

p i. —— *To comply with provision to furnish statement of company's "liabilities"—Meaning of "liabilities."*]—BUTLER *v.* FAIRHALL, [1927] 4 D. L. R. 976; 61 O. L. R. 305.—**CAN.**

PART III. SECT. 23, SUB-SECT. 2.—B.

sp. *Sale of Goods Act, R. S. N. B.*, 1927, s. 4 (1)—*Not applicable to purchase of shares through stockbroker.*]—BEYEA *v.* JOHNSTON & WARD, [1930] 4 D. L. R. 421; *affg.*, [1930] 1 D. L. R. 219.—**CAN.**

PART III. SECT. 23, SUB-SECT. 2.—C. (a).

c i. —— *On failure of transferee to take up shares.*]—*Re* COMPANIES ACT, *Re* BRITISH PETROLEUMS, LTD. (B.C.), [1925] 1 W. W. R. 236.—**CAN.**

d i. *Repudiation—Laches of purchaser's nominee.*]—NESBITT *v.* MCCARTNEY (Alta.) (1922), 63 D. L. R. 93.—**CAN.**

PART III. SECT. 23, SUB-SECT. 2.—C. (d) iii.

st. *Waiver.*]—DOLL *v.* HOWARD (1897), 11 Man. L. R. 577.—**CAN.**

PART III. SECT. 23, SUB-SECT. 2.—C. (e) i.

sv. *Injunction—Breach of pooling agreement—Covenant not to encumber shares.*]—REED *v.* MCVEIGH, [1931] 1 W. W. R. 257.—**CAN.**

PART III. SECT. 23, SUB-SECT. 2.—C. (e) ii.

m i. —— ——.]—GRICE *v.* BARTRAM (1912), 22 O. W. R. 182; 3 O. W. N. 1312; 3 D. L. R. 868.—**CAN.**

m ii. —— *Contract between employer & employee.*]—In an action claiming specific performance of a contract for the repurchase of shares, in which the contracting parties were employer & employee:—*Held:* (1) employee may prove an agreement on the part of the principal shareholder to repurchase on termination of the employment; & (2) employee may also prove an agreement by the principal shareholder to pay dividends at a minimum rate, upon the shares.—MACDONALD *v.* SOULIS, [1925] 2 D. L. R. 926.—**CAN.**

m iii. —— —— *Sale by vendor to third party without notice of prior agreement.*]—DUFF *v.* RUDOLPH & LUNENBURG GAS CO., ADAMS *v.* LUNENBURG GAS CO. (N. S.), [1930] 2 D. L. R. 801; *revsg.*, [1929] 4 D. L. R. 813.—**CAN.**

2260 i. —— *Against purchaser.*]—FRANKLIN *v.* REARDON (N. S.) (1917), 55 S. C. R. 613; 39 D. L. R. 176.—**CAN.**

2260 ii. —— ——.]—MCTAVISH BROS., LTD. *v.* LANGER, [1932] 3 W. W. R. 305.—**CAN.**

2266 i. *Loss of right to relief—Laches—Right to relief from forfeiture of money paid.*]—A purchaser who has never in fact abandoned or receded from his contract, but yet, by reason of laches, or otherwise from causes not falling within abandonment or recession, has deprived himself of the right to specific performance is, if the vendor refuses to accede to specific performance, *prima facie* entitled to relief from forfeiture of the money paid unless some facts are shown which would render this relief inequitable. The jurisdiction to grant this relief is not limited to cases where the overdue payment has been tendered; & the relief granted will not necessarily be the return of the whole amount of the purchase money; the seller is entitled to have such damages deducted as he is proved to have sustained because of the buyer's default; & if he can be so fully compensated that is enough to justify the remedy.—MOSDELL *v.* JARDINE (B. C.), [1929] 4 D. L. R. 617; 3 W. W. R. 95.—**CAN.**

PART III. SECT. 23, SUB-SECT. 2.—C. (e) iii.

2269 i. *Measure of damages—Misrepresentation as to liabilities of company.*]—SISSONS *v.* HASSARD (Alta.), [1923] 4 D. L. R. 186; [1923] 3 W. W. R. 105.—**CAN.**

of damages is, the difference between the contract price & the market price at the time of the breach.—POWELL *v.* JESSOPP (1856), 18 C. B. 336; 139 E. R. 1400.

2269b. —— ——.]—Under a contract for the sale of shares in a co. the measure of damages upon a breach by the buyer is the difference between the contract price & the market price at the date of the breach, with an obligation on the part of the seller to mitigate the damages by getting the best price he can upon that date. If the seller retains the shares after the breach, he cannot recover from the buyer any further loss if the market falls, nor is he liable to have the damages reduced if the market rises.—JAMAL *v.* MOOLLA DAWOOD, SONS & CO., [1916] 1 A. C. 175; 85 L. J. P. C. 29; 114 L. T. 1; 32 T. L. R. 79; 60 Sol. Jo. 139, P. C.

Annotations :—**Refd.** Hill *v.* Showell (1918), 87 L. J. K. B. 1106; Lebeaupin *v.* Crispin, [1920] 2 K. B. 714.

2274a. —— ——.]—The vendee of shares in a projected railway, under a contract to be completed at a future day, may recover, as damages for the non-delivery the difference between the price agreed on & the market price of the day on which the sale should have been completed; but he is not entitled to damages in respect of a further advance of price taking place afterwards at the time of the actual issuing of the scrip.—TEMPEST *v.* KILNER (1846), 3 C. B. 249; 136 E. R. 100.

2283a. Appointment of new trustee.]—*Re* HOBSON, HOUGHTON & CO., No. 2585a, *post.*

2299a. ——.]—An allottee of shares in a completely registered joint stock co. but who has not executed the deed of settlement of the co. cannot under 7 & 8 Vict. c. 110, s. 26, enter into a contract for the sale of his shares. W. was the allottee of shares in a completely registered joint stock co., but had not executed the deed of settlement; his brother T., acting under the authority of a power of attorney, desired Messrs. N., stockbrokers, to sell these shares, & they entered into contracts with purchasers accordingly; before the transfers were registered W. became bkpt. & the brokers were obliged at their own cost to complete the contracts with the purchasers :—*Held :* dismissing a petition by the brokers claiming to have the bkpt.'s shares transferred to them, under the terms of 7 & 8 Vict. c. 110, s. 26, the contracts were null & void, & that the assignees of the bkpt. were entitled to the shares as part of his estate & effects.—*Re* EDMOND, *Ex p.* NEILSON (1853), 3 De G. M. & G. 556; 23 L. J. Bcy. 12; 22 L. T. O. S. 190; 18 Jur. 297; 2 W. R. 121; 43 E. R. 218, L. C. & L. J.; *previous proceedings* (1850), 15 L. T. O. S. 435.

2299b. ——.]—Where a transfer of shares is not returned to the registrar's office the transferor will be liable to the creditor of the company, but not liable to contribute as between himself and the other shareholders.—*Re* BRITISH PROVIDENT LIFE & FIRE ASSURANCE CO., ORPEN'S CASE (1863), 2 New Rep. 225; 9 Jur. N. S. 615; *sub nom. Re* BRITISH PROVIDENT LIFE & FIRE ASSURANCE SOCIETY, *Re* ORPEN, 32 L. J. Ch. 633; 8 L. T. 596; 11 W. R. 741; *on appeal*, 33 L. J. Ch. 67, L. JJ.

Annotation :—**Consd.** *Re* General Provident Assce., Cross's Case (1869), 38 L. J. Ch. 583.

2332. *Add. Annotation :*—**Refd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607.

2332a. –.]—IRVING *v.* SOUTH EASTERN RY. CO. (1857), 29 L. T. O. S. 64.

2343a. ——.]—SPENCER *v.* ASHWORTH PARTINGTON & CO., No. 2070a, *ante.*

2344. *Add. Annotation :*—**Consd.** Spencer *v.* Ashworth Partington, [1925] 1 K. B. 589.

2344a. —— **Transfer of whole interest in company—Indemnity against "outstanding liabilities"—Whether unpaid income tax included.**]—On the purchase by pltfs. in Aug. 1928, of the shares & interests of defts. in a co., defts. undertook to indemnify pltfs. against all outstanding liabilities of co. up to the date of the completion of the purchase :—*Held :* the words "outstanding liabilities" included the payment of the income tax & property tax which ultimately became payable by the co. in respect of the period from Apr. 5, 1928, to the date of the completion of the purchase in Aug. 1928.—UNITED KINGDOM ADVERTISING CO., LTD. *v.* WHITING (1931), 47 T. L. R. 420, C. A.

2344b. As between transferee & other shareholders.]—The holders of shares, bought in open market, although they may have been fraudulently issued by the directors, cannot on that ground claim relief against the other shareholders, whatever may be their rights & remedies against the directors.—*Re* MEXICAN & SOUTH AMERICAN CO., GRISEWOOD & SMITH'S CASE, DE PASS'S CASE (1859), 4 De G. & J. 544; 28 L. J. Ch. 769; 33 L. T. O. S. 322; 5 Jur. N. S. 1191; 7 W. R. 681; 45 E. R. 211, L. JJ.

Annotations :—**Consd.** *Re* Athenæum Life Assce. Soc., Chinnock's Case (1860), John. 714; *Re* Phœnix Life Assce., *Ex p.* Hatton (1862), 31 L. J. Ch. 340; *Re* Discoverers Finance Corpn., [1908] 1 Ch. 111. **Refd.** *Re* Royal British Bank, Mixer's Case (1859), 4 De G. & J. 575; *Re* Mexican & South American Co., Costello's Case (1860), 2 De G. F. & J. 302; *Re* Esgair Mwyn Mining Co., Alexander's Case (1861), 3 L. T. 883; *Re* Consols Insce. Assocn., Benham's Case (1865), 11 Jur. N. S. 381; *Re* National & Provincial Marine Insce., *Ex p.* Parker (1867), 2 Ch. App. 685; *Re* Smith, Knight, Weston's Case (1868), L. R. 6 Eq. 238; Spackman *v.* Evans (1868), 19 L. T. 151; *Re* Asiatic Banking Co., *Ex p.* Collum (1869), 21 L. T. 350; *Re* Bank of Hindustan, China & Japan, *Ex p.* Kintrea (1869), 5 Ch. App. 95; *Re* Consols Insce. Assocn., Glanville's Case (1870), L. R. 10 Eq. 479; *Re* Smith, Knight, Battie's Case (1870), 39 L. J. Ch. 391; *Re* European Bank, Masters' Case (1871), 7 Ch. App. 292; *Re* Great Wheal Busy Mining Co., King's Case (1871), 40 L. J. Ch. 361; R. *v.* Lambourn Valley Ry. (1888), 22 Q. B. D. 463; *Re* Discoverers Finance Corpn., Lindlar's Case, [1910] 1 Ch. 312.

PART III. SECT. 23, SUB-SECT. 3.—D. (b).

2331 ii. ——.]—ABDUL VAHAD, ETC. *v.* HASANALLI ATIBHAI, ETC. (1925), I. L. R. 50 Bom. 229.—**IND.**

2331 iii. —— ——.]—MCLEOD *v.* BRAZILIAN TRACTION LIGHT & POWER CO., LTD., [1927] 2 D. L. R. 875; 60 O. L. R. 253.—**CAN.**

2337 iii. —— —— —— *Cancellation of restrictive endorsement by transferee.*]—MATHERS *v.* ROYAL BANK OF CANADA (1913), 29 O. L. R. 141; 4 O. W. N. 1481.—**CAN.**

PART III. SECT. 23, SUB-SECT. 4.

2344 i. *Inter se—Transfer subject to understanding as to assets of company—Transferee bound.*]—*Re* HOBRECKER'S ESTATE, [1926] 1 D. L. R. 655; 58 N. S. R. 378.—**CAN.**

PART III. SECT. 23, SUB-SECT. 5.—B. (a).

b i. ——.]—A provision in the charter of a co. incorporated under Ontario Cos. Act, that "the shares of the co. shall not be transferred without the consent of the board of directors" is valid.—*Re* PHILLIPS & LA PALOMA SWEETS, LTD. (1921), 66 D. L. R. 577; 51 O. L. R. 125.—**CAN.**

2347. *Add. Annotation :*— **Refd.** Delavenne *v.* Broadhurst, [1931] 1 Ch. 234.

2389. For the paragraph in the original volume substitute the following paragraph :—

—— **Board equally divided.**]—Under an art. equivalent to Table A, art. 22, the extrix. of a deceased member of a co. had the right to be registered as a member, subject to the directors' absolute discretionary right to decline such registration. At a board meeting of the two directors to consider the extrix.'s application for registration, one director proposed & the other opposed registration. The board being equally divided, & there being no casting vote, the proposal was not carried, & the secretary was instructed to write to the extrix.'s solrs. accordingly & to return all the documents, namely, a transfer by the extrix. to herself, certificates & registration fee :—*Held :* the board's right of declining registration required to be actively exercised by a vote of the board *ad hoc*, & the mere failure to pass the proposed resolution for registration was not a formal active exercise of the right to decline ; the extrix.'s absolute right to registration therefore remained intact, & the register must be rectified accordingly. — *Re* HACKNEY PAVILION, LTD., [1924] 1 Ch. 276 ; 93 L. J. Ch. 193 ; 130 L. T. 658.

2409. After this case add :—

—— .]—*Comparc* DISCOVERY, No. 1705a, *post.*

2412. *Add. Annotation :—As to* (1) **Refd.** *Re* King's Settlement, King *v.* King, [1931] 2 Ch. 294.

2419. *Add. Annotation :*—**Refd.** De Tchihatchef *v.* Salerni Coupling, Ltd., [1932] 1 Ch. 330.

2427a. Party registered as executor—Subsequently becoming owner—Duty of company to register without formality of transfer.]—Pltf. was the exor. of a testator who died in 1928 possessed of four debentures in the deft. co. He gave the residue of his estate to pltf. & to his widow in equal shares. Pltf. in due course was registered with the co. in his representative capacity on production of the probate, & on a division of the estate later on he claimed to be registered as owner, he having accepted the debentures as part of his share. The co. refused & required a transfer to be executed to himself under condition 4 endorsed. Pltf. refused to comply & commenced this action, claiming a declaration that he was entitled to be registered as owner without any such formality as required :—*Held :* in the circumstances, the transfer asked by the co. was an idle formality. They were bound to register the person entitled, & had already registered pltf. in his representative capacity & ought now to do so as owner. He was entitled to the declaration asked.—EDWARDS *v.* RANSOMES & RAPIER, LTD. (1930), 143 L. T. 594.

2452a. —— —— **Transfer to director of over payments made to vendor by company.**]—A partnership business was sold to a co. for a sum of money which was satisfied by an allotment to the vendors of a number of fully paid shares in the co. It was subsequently discovered that, owing to mistake in the valuation, the partners had been overpaid by the co., &, in order to adjust the matter, two of them, on behalf of themselves & their co-vendors, voluntarily transferred to the chairman of the board of directors of the co. 3,000 shares upon trust to use or sell them for the benefit of the co. An action was commenced against the chairman of the board of directors & the co. in which the pltfs. claimed that he held the shares as trustee for the individual shareholders & in which they sought an injunction restraining him from voting, at any meeting of the co., as the holder of the shares :—*Held :* (1) on the evidence, the chairman of the board of directors held the shares, not for the benefit of the individual shareholders, but for the benefit of the co., & that he held them on trust, at his discretion, to sell them ; (2) the transfer did not offend against any principle laid down by any of the decided cases, & that the transaction was not made invalid by reason of the transfer having been made to a nominee on trusts which involved an obligation on the trustee to vote in respect of the shares as the co. might from time to time direct.—KIRBY *v.* WILKINS, [1929] 2 Ch. 444 ; 142 L. T. 16.

2463. *Add. Annotations :*—**Refd.** I. R. Comrs. *v* Allan (1925), 9 Tax Cas. 234 ; Royal Exchange Assce. *v.* Hope, [1928] Ch. 179.

PART III. SECT. 23, SUB-SECT. 5.—B. (b) ii.

2373 ii. —— ——.]—*Re* PHILLIPS & LA PALOMA SWEETS, LTD. (1921), 66 D. L. R. 577 ; 51 O. L. R. 125.—**CAN.**

PART III. SECT. 23, SUB-SECT. 8.—A. (b).

2428 ii. —— ——.]—An agreement for the sale of shares does not imply a further agreement to have the transferee's name registered as the holder.—DOMINGO *v.* DE SOUZA (1928), I. L. R. 50 All. 695.—**IND.**

2 i. —— *Claim to registration by assignee of insolvent member.*]—The arts. of assocn. of a proprietary co. provided that the regulations in Table A. in the Companies Act should not apply, but contained no transmission clause providing for the registration as a member of the co. of any person becoming entitled to shares in consequence of the insolvency of a member. The directors were given power in their discretion to refuse to register the transfer of shares to any person they should not approve as transferee. On the insolvency of one of the members the directors declined to register his assignee in insolvency as a member in respect of the insolvent's shares. The assignee applied to the ct. to order rectification of the register of members by inserting therein his name as the holder of the shares :—*Held :* the application must be refused.—*Re* W. & G. DEAN PROPRIETARY, LTD. (1929), V. L. R. 140.—**AUS.**

PART III. SECT. 23, SUB-SECT. 12.—A.

2455 i. *Loss of right to impeach—Transfer acted on by parties & company.*]—WAIRAKEI, LTD. *v.* CLEAVE, [1925] N. Z. L. R. 624.—**N.Z.**

PART III. SECT. 23, SUB-SECT. 13—A.

sc. *Transfer of shares of director's wife.*]—Resp. was the holder of shares not fully paid up in the bkpt. co. Her husband was a director of the co., & she had given him a power of attorney authorising him to indorse & transfer her certificates & transact any l with the co. which she could transact in person. Resp. was also a shareholder in another co. of which her husband was a director. Under the constitution of the bkpt. co. its shareholders could not sell or dispose of their shares except with the leave of the directors evidenced by a resolution of the board. All the directors of the bkpt. co. except one were indebted to it on their shares. At meetings of the directors where as a result of a prearrangement each director in turn, except the one not indebted, refrained from voting on resolutions in which he was interested, resolutions were passed, in pursuance of the prearranged scheme, which resolutions authorised the exchange of resp.'s shares in the bkpt. co. for shares in the other co. & the purchase from her by the bkpt. co. of the shares so received by her from the other co., the purchase-price being payable by crediting her with full settlement of the amount owing by her to the bkpt. co. Similar resolutions were passed with respect to the shares & indebtedness of the

2473a. ——.]—*Re* SMITH, KNIGHT & Co., HAKIM'S CASE (1869), 7 Ch. App. 296, n.

2475. *Add. Annotation :*— **Apld.** Delavenne *v.* Broadhurst, [1931] 1 Ch. 234.

2523. *Add. Annotations :*— **Distd.** *Re* Park Ward, [1926] Ch. 828. **Refd.** Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557.

2578. *Add. Annotation :*—**Refd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

2580. *Add. Annotation :*— **Dbtd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

2585a. Article restricting right of transfer—Construction.]—Arts. of assocn. restricting transfer of shares must be so construed as not unreasonably to prevent shareholders from fairly & reasonably exercising their powers as members of the co.

Testator appointed his wife, a son, & two other persons exors. & trustees of his will, whereby he bequeathed his residuary estate to the trustees on trust to sell & convert & to hold the proceeds, after the wife's death, upon trust as to one-third thereof for the said son, & as to the remaining two-thirds for the other children of testator alive at testator's death. The residue included shares in the co., some in testator's name, the remainder in the name of another as his nominee or as trustee for him. The will was proved by the widow & the son only. They caused these shares to be registered in their own names without qualification, as the arts. of the co. disqualified transferees from receiving notice of or voting at meetings. Later they appointed an additional trustee of the will; & in order to vest the shares jointly in them & him, all three executed a transfer. This was presented to the co. for registration, but registration was refused on the ground that the restrictions on transfer imposed by the articles applied :—*Held :* the transfer could be justified under the arts.—*Re* HOBSON, HOUGHTON & Co., [1929] 1 Ch. 300; 98 L. J. Ch. 140; 140 L. T. 496.

2585b. —— —— **Right to transfer to another member of company.**— Certain shareholders in a private co. commenced an action to restrain certain members of the co. from transferring shares otherwise than in accordance with the arts. of assocn. The substantial question, which came before the ct. upon motion, was whether one member was entitled, under the articles, to transfer shares to another member. The material articles were as follows :—

Art. 5 : "The directors may in their absolute & uncontrolled discretion refuse to register any proposed transfer of shares, & clause 20 of Table A shall be modified accordingly. No shares shall in any circumstances be transferred to any infant, bkpt., or person of unsound mind. Save as hereby otherwise provided, no share shall be transferred to any person who is not a member of the co. so long as any member or failing such member any person selected by the directors is willing to purchase the same at the fair value which shall be determined as hereinafter provided." Art. 6 : "In order to ascertain whether any member or person selected as aforesaid is willing to purchase a share at the fair value, the person whether a member of the co. or not proposing to transfer the same, hereinafter called 'the retiring member,' shall give notice in writing, hereinafter described as a 'sale notice,' to the co. that he desires to sell the same, & until otherwise determined by the co. in general meeting the same shall be offered among the holders of ordinary shares in proportion as near as may be to their existing holdings thereof and any not accepted by them shall be offered to such other persons as the directors shall determine. Such notice shall constitute the co. the agent of the retiring member for the sale of such shares to any member of the co. or a person selected as aforesaid at the fair value. No sale notice shall be withdrawn except with the sanction of the directors" :—*Held :* there was nothing in the language of arts. 5 & 6 which gave rise to the necessity of implying any restriction upon the right of a member of the company to transfer shares therein to another member. —DELAVENNE *v.* BROADHURST, [1931] 1 Ch. 234; 100 L. J. Ch. 112; 144 L. T. 342.

2589a. What amounts to "issue" of shares Finance Act, 1927 (c. 10), s. 55.]—In connection with a scheme for the reconstruction of a company a new co. was formed to enter into a sale agreement to acquire the undertaking of the existing co. The consideration for the agreement was to consist, in addition to the discharge by the new co. of certain liabilities of the old co. of the allotment of shares in the new co. to the shareholders in the old co. Letters of allotment were sent to these shareholders, accompanied by a form of renunciation. Before the original allottees were registered some of them renounced in favour of other persons, with the result that of the first registered shareholders in the new co. those who had been shareholders in the old co. held less than 90 per cent. of the shares in the new co. The question of the stamp duty payable on the sale agreement & other documents was submitted for adjudication, the co. contending that the sending of the letters of allotment constituted an "issue" of shares to the original allottees, & that the conditions of exemption from *ad valorem* duty laid down in the Finance Act, 1927

indebted directors. Her husband voted on the resolutions affecting her :—*Held :* apart from the question of the validity of the resolutions, the transaction should be set aside on the ground that it was a sham & did not fall within the cases in which it has been held that a *bonâ fide* out-&-out transfer of partially paid shares on the eve of insolvency of a co. will be upheld, even though made to an insolvent & for the purpose of getting rid of the liability thereon.—CLARK (R. P.) & Co., *Re*, SHIMMIN *v.* CLARK, [1932] 2 W. W. R. 370.—**CAN.**

PART III. SECT. 23, SUB-SECT. 14.—A.

2521 i. *Contract for sale of shares—Before presentation of petition—Whether void.*]—A share being a *jus in personam*, the mere fact that liquidation has intervened cannot, in the absence of a clear agreement to that effect, prevent enforcement of a purchase of shares concluded at a prior date, the purchaser taking the chance of any depreciation in market value meanwhile.—UNION SHARE AGENCY LIQUIDATORS *v.* HATTON, [1927] App. D. 240.—**S. AF.**

PART III. SECT. 23, SUB-SECT. 15.—A. (b) i.

sa. *Purchase in name of infant—Whether complete gift of shares to infant.*]—A father purchased, with his own funds, shares in a co. in name of his son, then a pupil. The son's name was entered in the co.'s register as proprietor of the shares, & dividend warrants in respect of them were issued in name of the son :—*Held :* the gift of the shares had been completed by the retention of the son's name in the co.'s register after his attainment of minority.—INLAND REVENUE COMRS. *v.* WILSON, [1927] S. C. 733.—**SCOT.**

(c. 10), s. 55, were complied with. The Comrs. of Inland Revenue decided that *ad valorem* duty was payable:—*Held:* the allotment letter accompanied by the form of renunciation was not an issue of shares, but only notice that the allottee was entitled to demand that shares should be issued either to himself or, if he preferred it, to his nominee to be named in the form of renunciation. Therefore the Comrs. were right in claiming *ad valorem* duty.—OSWALD TILLOTSON, LTD. *v.* INLAND REVENUE COMRS. (1932), 101 L. J. K. B. 737; 147 L. T. 481; 48 T. L. R. 628, C. A.

2637. *Add. Annotation:*—**Refd.** Spencer *v.* Ash worth Partington, [1925] 1 K. B. 589.

2646. *Add. Annotation:*—**Refd.** Ellis Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451.

2658. *Add. Annotation:*—**Refd.** Weld *v.* Petre, [1929] 1 Ch. 33.

2667a. —— **What amounts to sale.**]—Stock transferred as a security for a floating balance, & under an agreement to continue it transferred & re-transferred by & to the creditor by way of loan:—*Held:* a sale.—*Ex p.* DENNISON (1797), 3 Ves. 552; 30 E. R. 1152, L. C.

Annotation:—**Apld.** Langton *v.* Waite (1868), L. R. 6 Eq. 165.

2669. *Add. Annotation:*—**Refd.** Ellis Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451.

2689a. —— **Whether mortgagee bound to obtain best price.**]—*Semble:* a mtgee. of shares is not bound to watch the market so as to sell them at the highest price; & he does not by failing to sell at the most favourable opportunity lose his right to prove against the estate of the mtgor.—*Re* MCMURDO, PENFIELD *v.* MCMURDO, [1902] 2 Ch. 684; 71 L. J. Ch. 691; 86 L. T. 814; 50 W. R. 644, C. A.

2694. *Add. Annotation:*—**Apld.** Weld *v.* Petre, [1929] 1 Ch. 33.

2703a. —— **No lien conferred by articles of association.**]—Bye-laws of applt. bank, made under its Act of incorporation, provided: (44.) "the directors may decline to register any transfer of a share made by a shareholder who is indebted to the bank"; (57.) "the directors may deduct from the dividends payable to any shareholder all sums of money due by him to the bank on account of calls or otherwise." In Nov. 1924, the registered holder of two shares assigned them in writing to resp. as security for money due; he executed no transfer but deposited the share certificate with resp. In May 1925, the bank, which had no notice of the assignment, obtained judgment against the shareholder for money due from him, & seized the shares in execution. There was no evidence that the shareholder's liability to the bank existed at the date of the assignment:—*Held:* the bye-laws gave the bank no lien on the shares for the debt to them, & resp. was entitled under the assignment to a charge in priority to the bank's rights under the execution.—BANK OF N. T. BUTTERFIELD & SON, LTD. *v.* GOLINSKY, [1926] A. C. 733; 95 L. J. P. C. 162; 135 L. T. 584, P. C.

2705. *Add. Annotation:*—**Consd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

2706. *Add. Annotation:*—*As to* (1) **Distd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

2707. *Add. Annotation:*—**Consd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

2715. *Add. Annotation:*—**Expld.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

2769. *Add. Annotation:*—**Distd.** *Re* Burradon & Coxlodge Coal Co., Martin's Bank *v.* The Co. (1930), 23 B. W. C. C. 7.

2793. *Add. Annotation:*—**Refd.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487.

2798a. —— **For what amount—Shares reissued.**]—(1) Where a co. in pursuance of its arts. of assocn. has forfeited shares for non-payment of moneys due on allotment & calls, & the arts. provide that notwithstanding forfeiture the ex-shareholder shall be liable to pay all calls or other money owing upon the shares at the time of the forfeiture, & the shares are subsequently sold & reallotted to other persons with the result of a loss to the co., the co. on the subsequent bkpcy. of the ex-shareholder is only entitled to prove for the actual loss suffered, that is the difference between the amount received on the reallotment of the forfeited shares & the amount due at the date of the forfeiture.

(2) Any payment of the uncalled capital by the new allottees must enure for the benefit of the original allottee who has forfeited the shares & release him *pro tanto* in respect of the damages for which his breach of contract in failing to pay the calls rendered him liable. —*Re* BOLTON, *Ex p.* NORTH BRITISH ARTIFICIAL SILK, LTD., [1930] 2 Ch. 48; 99 L. J. Ch. 209; 143 L. T. 425; [1929] B. & C. R. 141.

2799. *Add. Annotation:*—**Refd.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487.

2820a. —— ——.]—*Re* BOLTON, *Ex p.* NORTH BRITISH ARTIFICIAL SILK, LTD., No. 2798a, *ante*.

2821. *Add. Annotation:*—**Consd.** *Re* Bolton, *Ex p.* North British Artificial Silk, Ltd., [1930] 2 Ch. 48.

2822. *Add. Annotation:*—**Apld.** *Re* Bolton, *Ex p.* North British Artificial Silk, Ltd., [1930] 2 Ch. 48.

2823. After this case add:—
——.]—*See, now,* Companies Act, 1929 (c. 23), s. 142.

2850. *Add Citation:*—13 Mans. 316.

2854. *Add. Annotation:* — **Refd.** Neuschild *v.* British Equatorial Oil Co., [1925] Ch. 346.

2856. *Add. Annotation:*—*As to* (3) **Refd.** Kerr *v.* Marine Products (1928), 44 T. L. R. 292.

PART III. SECT. 24, SUB-SECT. 5.

2645 i. *Whether gift complete.*]—Gifts of shares:—*Held:* not complete until at least the transfers were handed to the respective transferees.—COMMISSIONER OF STAMPS *v.* TODD, [1924] N. Z. L. R. 345.—**N.Z.**

PART III. SECT. 26, SUB-SECT. 1.—C.

sb. *Fraudulent cancellation by company—Bar to action—Laches.*]—PATTERSON *v.* VULCAN IRON WORKS, LTD. (B. C.), [1929] 4 D. L. R. 508; *on appeal,* [1930] 1 W. W. R. 640; 2 D. L. R. 961; 42 B. C. R. 300.—**CAN.**

PART III. SECT. 27, SUB-SECT. 5.—A.

m i. —— *Plea of limitation.*]—HABIB ROUJI *v.* STANDARD ALUMINIUM & BRASS WORKS, LTD. (1925), I. L. R. 49 Bom. 715.—**IND.**

PART III. SECT. 28, SUB-SECT. 1.—D.

c. Add "*varied,* 38 O. L. R. 414; 33 D. L. R. 487."

PART III. SECT. 28, SUB-SECT. 2.—A.

a. Add "*varied,* 9 A. R. 620."

2879a. ——— ———.]—(1) A private co. was governed partly by special arts. & partly by Table A. Table A, art. 70, fixed the qualification of a director as "the holding of at least one share." Special art. 20 empowered the directors to appoint any other "qualified person" either to fill a casual vacancy or as an addition to the board. At a full board meeting on Saturday, Nov. 14, transfers of shares to two outsiders were duly passed for registration, after which the transferees were forthwith elected directors. The transfers were registered on the following Monday:—*Held:* though before their appointment the transferees had acquired an absolute right to registration, they were not "qualified persons" before actual registration, & their appointment as directors was invalid.

(2) A director was due to retire by rotation at the annual general meeting on Wednesday, Nov. 11, & part of the business of which notice was given was the election of a director in his place. The retiring director's re-election was moved at the meeting, but the matter, though discussed, was not finally dealt with, & the meeting was adjourned successively to Thursday, Nov. 12, Saturday, Nov. 14, & Tuesday, Nov. 17. At the last adjournment the original motion for the retiring director's re-election was put & lost, & another shareholder was proposed & elected in his place:—*Held:* as the adjourned meeting was merely a continuation of the original meeting at which the question of the retiring director's re-election or replacement was considered, the proceedings were in order, & Table A, art. 82, had no application. (3) *Semble:* Table A, art. 82, only applies to a case where the retirement of a director by rotation & the necessity for his re-election or replacement is entirely lost sight of at the annual meeting.—SPENCER *v.* KENNEDY, [1926] Ch. 125; 95 L. J. Ch. 240; 134 L. T. 591.

Annotation:—As to (3) **Dbtd.** Holt *v.* Catterall (1931), 47 T. L. R. 332. (I am not satisfied that Mr. JUSTICE ASTBURY, by his remarks at p. 135, meant to say anything of the kind, *per* MAUGHAM, J.)

2889. *Annotations:*—For "Howard *v.* Sadler, [1895] 1 Q. B. 1" read "Howard *v.* Sadler, [1893] 1 Q. B. 1.

2895a. Transfers of shares passed before election—Transfers not registered until after election.]—SPENCER *v.* KENNEDY, No. 2879a, *ante.*

2905. Add the following paragraph:—

(3) As to the shares taken for attendance fees, I am also of opinion that applts. are not liable to contribute in respect of those shares. They were taken, &, as it seems to me, improperly taken, as paid-up shares, but the same principles which apply to the 100 shares apply, as I think, to these shares also (TURNER, L.J.).

2922. *Add. Annotation:*—**Refd.** Biddulph & District Agricultural Soc. *v.* Agricultural Wholesale Soc. (1926), 95 L. J. Ch. 576.

2944. *Add. Annotations:*—**Refd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853; *Re* Etic, [1928] Ch. 861.

2965a. Remuneration not authorised by general meeting.]—Pltf. was a director of deft. co., which had adopted Table A with some modifications, & at a meeting of the board a service agreement was approved, signed, & sealed appointing pltf. "overseas director" at a salary of £1,800 a year. Pltf. proceeded overseas & performed his duties under the agreement till differences arose & he resigned. In an action by pltf. for salary due under the agreement:—*Held:* the agreement was *ultra vires* the board, & since pltf.'s remuneration had never been determined by the co. in general meeting, as required by Table A, art. 69, he could not recover, but must repay to the co. on their counterclaim the money paid to him under the agreement.—KERR *v.* MARINE PRODUCTS, LTD. (1928), 44 T. L. R. 292.

2972. *Add. Annotations:*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258; Henry *v.* Foster (Arthur), Henry *v.* Foster (Joseph), Hunter *v.* Dewhurst (1931), 145 L. T. 225.

2973. *Add. Annotation:*—*As to* (2) **Refd.** Henry *v.* Foster (Arthur), Henry *v.* Foster (Joseph), Hunter *v.* Dewhurst (1931), 145 L. T. 225.

2977. *Add. Annotation:*—**Refd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

PART III. SECT. 28, SUB-SECT. 2.—B.

sd. *Shares not required to be held in own right—How far beneficial ownership necessary—Effect of bankruptcy.*]—An insolvent, who is registered as a member of a co. in respect of shares therein, is the holder of the shares & is the person who must be taken to be referred to in an agreement or an art. which declares the tenure of the managing director to depend on his being the "holder of shares." In this respect there is a distinction between the words "holder" & "holder in his own right."—*Re* CAMBERWELL MOTORS PTY., LTD., [1926] V. L. R. 539; [1926] Argus L. R. 421.—**AUS.**

PART III. SECT. 28, SUB-SECT. 3.—A.

2958 ii. ——— ——— *Director acting as secretary-treasurer.*]—*Held:* Cos. Act, R. S. A., 1922 (c. 156), Table A, art. 54, did not deal with the remuneration of a secretary-treasurer, performed by one who was also a director.—ANDERSON *v.* HERBERT PAINT & VARNISH CO., LTD. (Alta.), [1927] 3 W. W. R. 809.—**CAN.**

2958 iii. ——— ——— *Gratuity—Not by way of remuneration for services.*]—Bye-laws passed by the directors of deft. co., & said to have been confirmed by the shareholders at a special general meeting, providing for the transfer by deft. co. to the three individual defts. of shares in another co. as remuneration for past services as directors & officers, were attacked in this action by shareholders in deft. co.:—*Held:* there was no agreement binding on deft. co. to pay for the services rendered by the co-defts. & the payments provided for in the bye-laws must be treated as gratuities.—LUMBERS *v.* FRETZ, [1929] 1 D. L. R. 51; 63 O. L. R. 190.—**CAN.**

PART III. SECT. 28, SUB-SECT. 3.—B. (a).

a i. *Services requiring expert & technical knowledge.*]—Where the services of a director did not fall within the scope of the ordinary unpaid duties of director, but were of a highly technical character, & the proper conduct of the business required expert & technical knowledge which it was not easy to obtain:—*Held:* he was entitled to a reasonable remuneration for such services.—DUROST *v.* HOME-MIXED FERTILIZERS, LTD., [1924] 4 D. L. R. 241; 51 N. B. R. 357.—**CAN.**

PART III. SECT. 28, SUB-SECT. 3.—B. (d).

l i. ——— ———.]—Two of the directors of an Alberta co. who, at the time in question, owned in the aggregate all but 40 of its 1,000 issued shares, & who managed its business virtually as a partnership, agreed to, & did, pay themselves a bonus, in cash & in shares owned by the co., as extra remuneration for their services. Under the arts. of assocn. the bonuses in question could have been authorised by the directors of the co. The only remaining director on learning of the arrangement approved of it; & it appeared that all the shareholders had been willing that all the business of the co. should be carried on by said two directors without consultation with the shareholders. The payment of the bonuses was not, however, authorised at a directors' meeting or by a resolution signed by the directors; nor was any shareholders' meeting held to pass on it, & it was not proven that both of the two remaining shareholders other than the directors had individually assented thereto. Subsequently under an agreement to which the co. was a party, deft. C., one of said two directors, sold his shares to the other at an agreed valuation based on the assumption that the bonuses had been legally paid. In an action by the co. to compel the return of the shares received by C. as such bonus or for damages in lieu thereof:—*Held:* in the absence of a

3014. *Add. Annotation :*—**Distd.** Williams *v.* Barton, [1927] 2 Ch. 9.

3033. *Add. Annotation :*—**Consd.** British America Nickel Corpn. *v.* O'Brien, [1927] A. C. 369.

3055a. Tranfer to director of overpayments made to vendor by company—Discretionary trust for sale.]—KIRBY *v.* WILKINS, No. 2452a, *ante.*

3059. *Add. Annotation :*—**Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3059a. -.]—(1) The manner in which the work of a co. is to be distributed between the board of directors & the staff is a business matter to be decided on business lines. The larger the business carried on by the co. the more numerous & the more important the matters that must of necessity be left to the managers, the accountants, & the rest of the staff.

(2) In ascertaining the duties of a director of a co., it is necessary to consider the nature of the co.'s business & the manner in which the work of the co. is, reasonably in the circumstances & consistently with the arts. of assocn., distributed between the directors & the other officials of the co.

(3) In discharging those duties, a director (*a*) must act honestly, & (*b*) must exercise such degree of skill & diligence as would amount to the reasonable care which an ordinary man might be expected to take, in the circumstances, on his own behalf. But, (*c*) he need not exhibit in the performance of his duties a greater degree of skill than may reasonably be expected from a person of his knowledge & experience; in other words, he is not liable for mere errors of judgment; (*d*) he is not bound to give continuous attention to the affairs of his co.; his duties are of an intermittent nature to be performed at periodical board meetings, & at meetings of any committee to which he is appointed, & though not bound to attend all such meetings he ought to attend them when reasonably able to do so; & (*e*) in respect of all duties which, having regard to the exigencies of business & the arts. of assocn., may properly be left to some other official, he is, in the absence of grounds for suspicion, justified in trusting that official to perform such duties honestly.

(4) A director who signs a cheque that appears to be drawn for a legitimate purpose is not responsible for seeing that the money is in fact required for that purpose, or that it is subsequently applied for that purpose, assuming, of course, that the cheque comes before him for signature in the regular way, having regard to the usual practice of the co. A director must of necessity trust to the officials of the co. to perform properly & honestly the duties allocated to them.

Before any director signs a cheque, or parts with a cheque signed by him, he should satisfy himself that a resolution has been passed by the board, or committee of the board, as the case may be, authorising the signature of the cheque; & where a cheque has to be signed between meetings, he should obtain the confirmation of the board subsequently to his signature.

The authority given by the board or committee should not be for the signing of numerous cheques to an aggregate amount, but a proper list of the individual cheques, mentioning the payee & the amount of each, should be read out at the board or committee meeting & subsequently transcribed into the minutes of the meeting.

(5) It is the duty of each director to see that the co.'s moneys are from time to time in a proper state of investment, except so far as the arts. of assocn. may justify him in delegating that duty to others.

(6) Before presenting their annual report & balance sheet to their shareholders, & before recommending a dividend, directors should have a complete & detailed list of the co.'s assets & investments prepared for their own use & information, & ought not to be satisfied as to the value of their co.'s assets merely by the assurance of their chairman, however apparently distinguished & honourable, nor with the expression of the belief of their auditors, however competent & trustworthy.

(7) It is not the duty of a director of a big insurance co. to supervise personally the

directors' meeting or resolution sighed by the directors, the payment of the bonuses was invalid, & the co. was entitled to judgment.—GRAY & FARR, LTD. *v.* CARLILE, [1931] 2 W. W. R. 526; 3 D. L. R. 785; *affd.*, [1932] 1 D. L. R. 391.—**CAN.**

PART III. SECT. 28, SUB-SECT. 3.—C.

3019 i. Add " *varied.* [1902] A. C. 83."

sm. *Increase of liabilities—Mortgage—Fraud on creditors—Ultra vires.*]—PLAIN, LTD. (TRUSTEE) *v.* KENLEY & ROYAL TRUST CO., [1931] 1 D. L. R. 468; 66 O. L. R. 179; *affd.*, [1931] 2 D. L. R. 801; O. R. 75; 12 C. B. R. 492.—**CAN.**

PART III. SECT. 28, SUB-SECT. 4.—A.

3028 i. *Right to act as director—Attendance of meetings—Conviction for criminal offence.*]—BOAK *v.* WOODS, [1926] 1 D. L. R. 1186; 36 B. C. R. 456.—**CAN.**

3029 i. *Right to act as director—Right to injunction.*]—An injunction may be granted on the application of a director restraining pltf.'s co-directors from wrongfully excluding him from acting as a director.—SARAT CHANDRA CHAKRAVARTI *v.* TARAH CHANDRA CHATTERJEE (1924), I. L. R. 51 Calc. 916.—**IND.**

PART III. SECT. 28, SUB-SECT. 4.—B.

3039 ii. ——.]—R., in his lifetime, while acting in the capacity of managing director of a joint stock co., used moneys of the co. in commercial adventures & other investments for his personal gain & profit. After R.'s death his exors. paid back to the co. the principal money so used, but declined to account for the profits which R. had derived from the use thereof:—*Held:* as R. was to be regarded as a trustee of the co.'s moneys, his executors were liable to the co. in respect of such profits, which, or the equivalent interest, must be paid over to the co.—ROGERS HARDWARE CO. *v.* ROGERS (P. E. I.) (1913), 12 E. L. R. 493; 10 D. L. R. 541.—**CAN.**

3039 iii. —— *Shares acquired in new company by shareholder director—Paid for out of assets of old company in liquidation.*]—CHANDLER & MASSEY *v.* IRISH (1911), 20 O. W. R. 649; 3 O. W. N. 383; 25 O. L. R. 211.—**CAN.**

d i. -Pltf., who was a director & vice-president of deft. co., acted as its solr., although not formally appointed as such, in a great number of matters, & was consulted, & his advice sought, by his co-directors & the officers of the co. His co-directors were aware of his so acting, & he was paid substantial amounts on account of the legal services rendered from time to time. He sued on an account for legal services rendered:—*Held:* he could not recover; his position as director of the co. incapacitated him from engaging as its solr.—CAPE BRETON COLD STORAGE CO., LTD. *v.* ROWLINGS [1929] 3 D. L. R. 577; S. C. R. 505; *revg.*, [1929] 2 D. L. R. 519; 60 N. S. R. 460.—**CAN.**

PART III. SECT. 28, SUB-SECT. 4.—C.

3058 i. —— *Reasonable diligence.*]—In discharging his duties, a director must act honestly & must exercise such degree of skill & diligence as would amount to the reasonable care which an ordinary man might be expected to take in the circumstances in his own behalf.—GOVIND NARAYAN *v.* RANGNATH GOPAL (1929), I. L. R. 54 Bom. 226.—**IND.**

safe custody of the securities of the co. It would be impracticable, on every purchase of securities, for actual delivery thereof to be made to the directors, or, on every sale, for the delivery to the brokers of the securities sold to await a meeting of the board or of a committee of directors. The duty of seeing that the securities are in safe custody must of necessity be left to some official of the co. in daily attendance at the office of the co., such as the manager, accountant, or secretary.

(8) A co.'s stockbrokers, however respectable & responsible they may be, are not proper persons to have the custody of its securities except on such occasions when, for short periods, securities must of necessity be left with them; but immediately such necessity ceases the securities should be lodged in the co.'s strong room or with its bank, or placed in other proper & usual safe keeping.

(9) A director is not responsible for declaring a dividend unwisely. He is liable if he pays it out of capital, but the *onus* of proving that he has done so lies upon the liquidator who alleges it.

Art. 150 of the co.'s arts. of assocn. provided (*inter alia*) that none of the directors, auditors, secretary or other officers for the time being of the co. should be answerable for any loss, misfortune, or damage which might happen in the execution of their respective offices or trusts, or in relation thereto, unless the same should happen by or through their own wilful neglect or default respectively:—*Held:* (10) an act, or an omission to do an act, is wilful where the person who acts, or omits to act, knows what he is doing & intends to do what he is doing, but if that act or omission amounts to a breach of that person's duty, & therefore to negligence, he is not guilty of wilful neglect or default unless he knows that he is committing, & intends to commit, a breach of his duty, or is recklessly careless in the sense of not caring whether his act or omission is or is not a breach of his duty; (11) the immunity afforded by art. 150 was one of the terms upon which the directors held office in the co., & availed them as much on a misfeasance summons by the Official Receiver under 1908 Act, s. 215, as it would have done in an action by the co. against them for negligence; (12) upon the evidence & in accordance with the principles enunciated above, none of the resp. directors, other than the managing director, was liable.

(13) The measure of the auditor's responsibility depends upon the terms of his engagement. There may be a special contract defining the duties & liabilities of the auditors. If there is, then that contract governs the question. The arts. will, however, be looked at if there is no special agreement, because the auditors will presumably have taken their duties upon the terms, among others, set out in the arts. That is not to say that auditors can set aside a statutory obligation. No agreement or art. of assocn. can remove an imperative or statutory duty.

(14) Sect. 113 does not lay down a rigid code. The duty imposed on the auditors by it is not absolute, but depends upon the information given & explanations furnished to them, so that there is abundant scope for discretion. Art. 150 is not in conflict with the sect. The *onus* lies upon the auditors, who would not be excused for total omission to comply with any of the requirements of the sect., or for any consequences of deliberate or reckless indifferent failure to ask for information on matters which call for further explanation.

(15) An auditor is not justified in omitting to make personal inspection of securities that are in the custody of a person or co. with whom it is not proper that they should be left, whenever such personal inspection is practicable.

(16) When an auditor discovers that securities of the co. are not in proper custody, it is his duty to require that the matter be put right at once, or, if his requirement is not complied with, to report the fact to the shareholders, & this whether he can or cannot make a personal inspection.

Auditors should not be content with a certificate that securities are in the possession of a particular co., firm, or person unless the co., etc., is trustworthy, or, as it is sometimes put, respectable, & further is one that in the ordinary course of business keeps securities for its customers. In all these cases the auditor must use his judgment.

Where the auditors did not personally inspect the securities of the co. in the hands of the stockbrokers of the co., & accepted from time to time the certificate of the brokers that they held large blocks of such securities, & did not either insist upon those securities being put in proper custody or report the matter to the shareholders:—*Held:* (17) they committed a breach of duty, but, inasmuch as throughout the audit the auditors honestly & carefully discharged what they conceived to be the whole of their duty to the co., such negligence was not wilful, & art. 150 applied to exonerate them from liability.

Where the auditors after a full investigation in which they were misled & deceived, & their reports to the board suppressed, by the chairman of the co., (*a*) described large sums of money left in the hands of the co.'s stockbrokers & lent to the general manager of the co. as "Loans at call or short notice," "Loans" or "Cash at hand & in bank"; (*b*) failed to discover that the co.'s stockbrokers, in order to reduce their indebtedness to the co. for the purposes of the audit, made purchases, on behalf of the co., immediately before the close of the co.'s financial year, of Treasury Bills which in fact never came into the possession of the co. & were sold immediately the new financial year had opened:—*Held:* (18) they were not guilty of any breach of duty as auditors.

(19) Sect. 215 is a procedure sect. only & creates no new or additional liability.—*Re* City Equitable Fire Insurance Co., Ltd., [1925] 1 Ch. 407; 94 L. J. Ch. 445; 133 L. T. 520; 40 T. L. R. 853; [1925] B. & C. R. 109, C. A.

Annotations:—As to (10) **Distd.** *Re* City of London Insce. (1925), 41 T. L. R. 521. **Consd.** *Re* Munton, Munton *v.* West, [1927] 1 Ch. 262; *Re* Windsor Steam Coal Co. (1901), Ltd., [1929] 1 Ch. 151; *Re* Vickery, Vickery *v.* Stephens, [1931] 1 Ch. 572. *As to* (13) **Refd.** Henry *v.* Foster (Arthur), Henry *v.* Foster (Joseph), Hunter *v.* Dewhurst (1931), 145 L. T. 225.

3060a. City Equitable Fire Insurance Co., Ltd., No. 3059a, *ante*.

3062. *Add. Annotation :*—**Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3063a. —— —— **Proper & honest performance of duties.**]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3063b. —— **Reliance on chairman—Accuracy of balance-sheet.**]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3065. *Add. Annotation :*—**Consd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

3068. For "—— **Signature of cheques to company's prejudice**" read "—— **Signature of cheques—To company's prejudice.**"

3068a. —— ——.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3071. *Add. Annotation :*—**Refd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3077. *Add. Citation :—previous proceedings, sub nom. Re* SOUTH ESSEX GAS LIGHT & COKE CO., *Ex p.* STEARS (1859), John. 480.

3092a. —— **Act by two directors for benefit of one—No right to contribution.**]—Where two directors of a limited co. join in signing a cheque whereby a part of the co.'s funds is used for a purpose not authorised by the arts. of assocn. & one of the directors is subsequently compelled to replace the money so used, he cannot recover contribution from the other if the money has been applied for the sole benefit of the director claiming contribution, even if the other director has assented to its being so used.—WALSH *v.* BARDSLEY (1931), 47 T. L. R. 564.

3105a. Payment of rates due from company—Right to stand in place of overseers.]—The director of a co. in voluntary liquidation guaranteed & paid to the overseers of the poor the rates due from the co. before the date of the liquidation :—*Held :* (1) he was entitled to stand in the place of the creditor, & to use all remedies, &, if need be, the name of the creditor in any action or other proceeding in order to obtain indemnification from the principal debtor for the loss sustained ; (2) in so far as the payment by the surety was made in respect of rates that became due & payable within twelve months before the date of the commencement of the liquidation, it would rank in priority of payment to the other debts of the co., by virtue of 1908 Act, s. 209.—*Re* LAMPLUGH IRON ORE Co., [1927] 1 Ch. 308 ; 96 L. J. Ch. 177 ; 136 L. T. 501 ; [1927] B. & C. R. 61.

3107. After this case add :—

—— ——.]—*See, now,* 1929 Act, s. 152.

3109. *Add. Annotations :*—**Refd.** British Insulated & Helsby Cables *v.* Atherton. [1926] A. C. 205 ; *Re* Golomb & Porter & Co.'s Arbitration (1931), 144 L. T. 583 ; *Re* Lee, Behrens & Co. (1932), 48 T. L. R. 248.

3109a. —— ——.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3112a. Necessity for board-meeting.] *Re* ATHENÆUM LIFE ASSCE. SOCIETY, *Ex p.* EAGLE INSCE. CO., No. 4094a, *post*.

3126a. Adoption of balance sheet — Including directors' fees.]—Balance sheets including fees due to directors, & signed by directors pursuant to Cos. Act, 1908, s. 113, are not acknowledgments of those fees within Statute of Frauds Amendment Act, 1828 (c. 14).

After an order for the compulsory winding up of the co. appct. put in a proof for £950 in respect of directors' fees. The liquidator rejected the proof to the extent of £350, allowing only £600 on the ground that all directors' fees which had accrued due more than six years before the date of the winding-up order were barred by Stat. Limitations. The directors' fees due to appct. appeared from balance sheets duly signed by two directors & passed by the co. Upon a summons taken out by appct. asking that the decision of the liquidator rejecting his proof to the extent of £350 might be reversed, & that the proof might be allowed in the full sum of £950 :—*Held :* (1) a board of directors, acting as a board, & passing a resolution adopting a balance-sheet which includes directors' fees, does not bind the co. to pay those fees ; (2) a balance-sheet so adopted & signed by directors pursuant to Cos. Act, 1908, s. 113, is not a written promise by the co. or its agents to pay the directors' fees.—*Re* COLISEUM (BARROW), LTD., [1930] 2 Ch. 44 ; 99 L. J. Ch. 423 ; 143 L. T. 423 ; [1929-30] B. & C. R. 218.

3127a. —— **Delegation of duty.**]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3128a. Safe custody of company's securities—Delegation of duty—Securities with company's

3062 i. *Standard of dilgence—Reliance on company's officials—Where no ground for suspicion—Examination of company's books.*]—*Re* LOGAN (H. J.) CO. (Ont.), [1926] 2 D. L. R. 946 ; 7 C. B. R. 325.—**CAN.**

e. Add "*varied.* 38 O. L. R. 414 ; 33 D. L. R. 487."

PART III. SECT. 28, SUB-SECT. 4.—D.

3075 i. *Capacity to contract—General rule.*]—A director has a right to contract with the co. subject to certain qualifications involving cases of misrepresentation, bad faith or secret profits, & not where ordinary relation of employer & employee exist. The ordinary objections to such contracts do not apply where all the shareholders were directors, as no question can arise as to directors prejudicing the rights of the shareholders.—DUROST *v.* HOME-MIXED FERTILIZERS, LTD., [1924] 4 D. L. R. 241 ; 51 N. B. R. 357.—**CAN.**

3076 iii. —— ——.] — CANADIAN GUARANTEE TRUST CO. *v.* YOUNG, [1931] 3 D. L. R. 519.—**CAN.**

PART III. SECT. 28, SUB-SECT. 5.—A.

3115 i. *Exercise of powers—Control by members.*]—The directors of a co. constitute its governing & managing body, & except to the extent that their powers are expressly restricted by statute or the arts. of assocn. or otherwise, they possess authority to exercise all the powers of the co., subject to the control of the shareholders.—MID-WEST COLLIERIES, LTD. *v.* MCEWEN-[1925] 2 D. L. R. 529.—**CAN.**

3115 ii. —— *Effect of specifying method in articles.*]—(1) For the purpose of binding a co. in its corporate capacity individual assents of directors or shareholders given separately are not equivalent to the assent of a meeting.

(2) Where the arts. of assocn. of a co. authorise a certain method of procedure by the directors as the equivalent of a formal meeting there is by implication a denial of the validity of any other procedure other than a meeting.—TORONTO GENERAL TRUSTS CORPN. *v.* CARLILE, [1931] 3 W. W. R. 671.—**CAN.**

PART III. SECT. 28, SUB-SECT. 5.—C. (a).

d i. *S. P. Re* PACIFIC COAST COAL MINES, LTD. & HODGES (B. C.), [1926] 4 D. L. R. 759 ; [1926] 3 W. W. R. 378.—**CAN.**

sl. *Contract not authorised by all directors.*]—Where L., a director of deft. co., purporting to act on behalf of the co., agreed with pltf. to enter into a lease, & the directors neither authorised L. to enter into the agreement nor expressly ratified his action : —*Held :* the co. was not bound by the agreement.—LEGG & CO. *v.* PREMIER TOBACCO CO., [1926] App. D. 132.—**S. AF.**

PART III. SECT. 28, SUB-SECT. 5.—C. (d).

3132 i. *Necessary formalities.*]—Where the directors of a co. had power to borrow & mortgage :—*Held :* the president & managing director were, by virtue of their offices, *primâ facie* proper officers to execute mtges., & the mtge., which had the common seal of the co. attached, & was executed by

stockbrokers.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante*.

3157a. —— **Presumption of authority.**]—Pltfs. were a firm of fruit brokers. Defts. & the P. Co. were two cos. engaged in the fruit trade. M. was a director of both cos. By art. 28 of the arts. of deft. co. the directors were empowered to "delegate any of the powers for the time being vested in the directors." The arts. also incorporated Table A. M. purported to make on behalf of defts. an agreement with pltfs. that in consideration of pltfs. advancing a sum of money to the P. Co., pltfs. should have the right to sell on commission all the fruit imported both by defts. & the P. Co., & that pltfs. should be entitled to retain the proceeds of sale of defts.' fruit as well as of that of the P. Co. as security for the advance. M. had no authority from defts. to make such a contract. Pltfs. requiring confirmation of the agreement by deft. co., the secretary of defts. wrote a letter purporting to confirm the agreement on behalf of defts., & pltfs., treating that as a sufficient confirmation, made the advance. The secretary had no authority to give such confirmation. Defts. subsequently repudiated the agreement as made without their authority. At the time that they made the advance pltfs. had no knowledge of the terms of defts.' arts. or that they incorporated Table A:—*Held:* whether the agreement was to be treated as having been made by M. as an ordinary "director" of deft. co., or by the secretary as "agent," or by the two combined, pltfs. were not entitled to assume that any authority to make it had been delegated to them by the board, because (1) although a person who contracts with an individual director or servants of a co., knowing that the board of directors has power to delegate its authority to such an individual, may in certain circumstances assume that power of delegation has been exercised & that he may safely deal with the individual in question as representing the co., he cannot rely on the supposed exercise of such power if he did not know of the existence of the power at the time that he made the contract; (2) there was something so unusual in an agreement to apply the money of one co. in payment of the debt of another that pltfs. were put upon inquiry to ascertain whether the person or persons making the contract had any authority in fact to make it; (3) even if pltfs. had known of the existence of the express power of delegation, they would not have been entitled to assume that it had been exercised in favour of M. or the secretary to any greater extent than was to be inferred from the positions which M. & the secretary respectively occupied or were held out by the co. as occupying.—HOUGHTON & Co. *v.* NOTHARD, LOWE & WILLS, [1927] 1 K. B. 246; 96 L. J. K. B. 25; 136 L. T. 140, C. A.; *affd. on other grounds*, [1928] A. C. 1, H. L.

Annotations:—As to (1) **Consd.** Kredit bank Cassel G. m. b. H. *v.* Schenkers, [1927] 1 K. B. 826. **Dbtd.** British Thomson-Houston Co. *v.* Federated European Bank, Ltd., [1932] 2 K. B. 176. **Refd.** Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443; Newsholme *v.* Road Transport & General Insce., [1929] 2 K. B. 356.

3160. *Add. Annotation:*—**Refd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

3160a. ——.]—A co. is bound in a matter *intra vires* the co. by the unanimous agreement of all its corporators.

If all the individual corporators in fact assent to a transaction that is *intra vires* the co., though *ultra vires* the board, it is not necessary that they should hold a meeting in one room or one place to express that assent simultaneously.—PARKER & COOPER, LTD. *v.* READING, [1926] Ch. 975; 96 L. J. Ch. 23; 136 L. T. 117.

3162. *Add. Annotation:*—**Consd.** British America Nickel Corpn. *v.* O'Brien, [1927] A. C. 369.

3166. *Add. Annotation:*—**Distd.** Watson *v.* Davies, [1931] 1 Ch. 455.

3201. *Add. Annotation:*—**Refd.** *Re* Etic, [1928] Ch. 861.

3216. *Add. Annotation:*—**Refd.** Parker & Cooper *v.* Reading, [1926] Ch. 975.

3231. *Add. Annotation:*—**Refd.** Kerr *v.* Marine Products (1928), 44 T. L. R. 292.

3240. *Add. Annotation:*—**Refd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743.

3248. *Add. Annotation:*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

3249. *Add. Annotation:*—**Apld.** *Re* Home & Colonial Insce. (1929), 45 T. L. R. 658.

3250. *Add. Annotation:—As to* (2) **Refd.** Kerr *v.* Marine Products (1928), 44 T. L. R. 292.

3252. *Add. Annotation:*—**Refd.** *Re* Home & Colonial Insce. (1929), 45 T. L. R. 658.

the president & managing director, was properly executed.—CANADIAN BANK OF COMMERCE *v.* SMITH (1911), 17 W. L. R. 135; 3 Alta. L. R. 299.—**CAN.**

3132 ii. ——.]—Where a mtge by a co. had the seal of the co. affixed in the presence of two directors, one of whom was the secretary, & of M., assistant secretary, there being no appointment proved authorising M. as an assistant secretary, or otherwise, to sign the mtge., or authenticate the affixing of the seal:—*Semble:* the execution was bad.—INNES & GRIFFITH *v.* CAMERON VALLEY LAND CO. (B. C.), [1919] 1 W. W. R. 752.—**CAN.**

3133 i. *Mortgage to directors.*]—Set aside at instance of simple contract creditors of the co.—NORTHERN ELECTRIC & MANUFACTURING CO., LTD. *v.* CORDOVA MINES, LTD. (1914), 31 O. L. R. 221; 6 O. W. N. 210.—**CAN.**

3133 ii. ——.]—GREENSTREET *v.* PARIS HYDRAULIC CO. (1874), 21 Gr.

PART III. SECT. 28, SUB-SECT. 5.—C. (e).

f. Add "*varied*, 9 A. R. 620."

PART III. SECT. 28, SUB-SECT. 5.—E.

r i. —— *Must be with full knowledge of transaction.*]—HINDUSTAN ASSURANCE & MUTUAL BENEFIT SOCIETY, LTD., LAHORE *v.* KHAIRA BANK, LTD., GUJRANWALA (1927), I. L. R. 9 Lah. 360.—**IND.**

d i. ——.]—DAVISON *v.* VICKERY'S MOTORS, LTD. (1925), 37 C. L. R. 1.—**AUS.**

PART III. SECT. 28, SUB-SECT. 6.—A.

sk. *Personal liability—Wrong committed by company.*]—A director of a co. who is a party to a fraud or other wrong committed by the co. is personally liable for the damage caused thereby.—JOHNSON *v.* SOLLOWAY, [1932] 1 W. W. R. 481.—**CAN.**

PART III. SECT. 28, SUB-SECT. 6.—B. (d).

s i. —— *Essentials.*]—A conviction under sect. 414 of the Criminal Code which deals with false statements by directors & promoters of cos. can only be secured if proof is given that (1) the statements are in themselves false in some material particular, & (2) not only so but false to the knowledge of the accused, & (3) made with intent to defraud.—R. *v.* BOWEN (1930), 43 B. C. R. 507.—**CAN.**

PART III. SECT. 28, SUB-SECT. 6.—C. (b).

sm. *Commission.*]—Cos. Act, 1908, s. 57, does not authorise the directors to make presents of the co.'s capital in the guise of commission. Such presents are *ultra vires* of the directors, & recoverable by the co.—WAIRAKEI, LTD. *v.* CLEAVE, [1925] N. Z. L. R. 624.—**N.Z**

PART III. SECT. 28, SUB-SECT. 6.—D. (d) ii.

c i. —— *Extent of liability.*]—Deft., a director of pltf. co., in that he had failed in his duty to hand over to the

3257. *Add. Annotations :*—**Apld.** Parker & Cooper *v.* Reading & James (1926), 96 L. J. Ch. 23. **Refd.** Kerr *v.* Marine Products (1928), 44 T. L. R. 292 ; *Re* Lee Behrens & Co. (1932), 48 T. L. R. 248.

3259. *Add. Annotation :*—**Consd.** Lever Bros., Ltd. *v.* Bell (1930), 47 T. L. R. 47.

3261. *Add. Annotations :—Generally,* **Refd.** *Re* Etic, [1928] Ch. 861 ; *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102.

3280a. —— **Directors relying on chairman's assurance as to value of assets.**]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante.*

3282a. Dividends paid out of capital.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante.*

3284. *Add. Annotation :—As to* (3) **Apld.** *Re* A Debtor, [1927] 1 Ch. 410.

3285. *Add. Annotation :—As to* (2) **Refd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3287. *Add. Annotation :—Generally,* **Refd.** *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102.

3291. *Add. Annotation :*—**Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3305. *Add. Annotation :—As to* (2) **Consd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

3327. *Add. Annotation :*—**Distd.** British Thomson-Houston Co. *v.* Sterling Accessories, Same *v.* Crowther & Osborn, [1924] 2 Ch. 33.

3327a. —— ——.]—The directors of a co. cannot be made liable for an infringement of a patent by the co. merely by reason of their position as directors, even in a case where they are the sole directors & shareholders of the infringing co.—BRITISH THOMSON-HOUSTON CO. *v.* STERLING ACCESSORIES, LTD., BRITISH THOMSON-HOUSTON CO. *v.* CROWTHER & OSBORN, LTD , [1924] 2 Ch. 33 ; 93 L. J. Ch. 335 ; 131 L. T. 535 ; 40 T. L. R. 544 ; 68 Sol. Jo. 595 ; 41 R. P. C. 311.

Annotation :—**Apld.** Prichard & Constance *v.* Amata (1924), 42 R. P. C. 63.

3327b. —— ——.]—Deft. co., incorporated in 1924 for the purpose of carrying on business as manufacturers of toilet preparations & publishers of medical books & publications relating thereto, on letter paper described themselves as "wholesale manufacturers of Amata Toilet Preparations." Pltf. co., who had for many years distinguished their goods by the word "Amami," & in July, 1909, had registered that word as a trade mark to be applied to perfumery, etc., commenced an action against deft. co. & the two only directors thereof who were signatories of their memorandum of assocn. for an injunction :—*Held :* there was no evidence that deft. co. had been formed by the other two defts. for the purpose of doing a wrongful act & no claim had been established by pltfs. against these defts. personally ; & the action as against them must be dismissed with costs.—PRICHARD & CONSTANCE (WHOLESALE), LTD. *v.* AMATA, LTD. (1924), 42 R. P. C. 63.

3335a. —— **Loan for expenses in connection with promotion.**]—ADAMS (FRANCIS), LTD. *v.* FISHWICK (1928), 72 Sol. Jo. 122.

3347. *Add. Annotations :—As to* (4) **Apld.** *Re* A Debtor, [1927] 1 Ch. 410. **Consd.** *Re* Etic, [1928] Ch. 861. **Refd.** *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102.

3353. After cross-ref. following this case add :—

(*l*) *Declaration of Liability.*

See 1929 Act, s. 275.

3353a. Carrying on business with "intent to defraud creditors"—What amounts to.]—(1) The declaration of liability in 1929 Act, s. 275 (1) should state the amount for which the director is liable.

(2) A co. carrying on business & incurring debts when to the knowledge of the directors there is no reasonable prospect of the debts being paid may, in general, be properly inferred to be carrying on business "with intent to defraud creditors" within 1929 Act, s. 275 (1).

(3) *Semble :* sect. 275 is a punitive provision, & the ct. on making a declaration in the winding-up of a co. that a director is personally responsible for all or any of the debts or other liabilities of the co. may in

co. certain shares, was ordered to account to the co. for their value as at the date when he received them : —*Held :* such value was not the intrinsic value at the specified date, but the value in money which pltf. co. could reasonably have obtained on the market, & as pltf. co. had discharged the *onus* of proving that it could have obtained the market price, the value would be fixed at that amount.—ROBINSON *v.* RANDFONTEIN ESTATES GOLD MINING CO., LTD., [1924] App. D. 151.—**S. AF.**

PART III. SECT. 28, SUB-SECT. 6.—E. (f).

3301 i. *Estoppel of shareholders.*]—Deft. brewing co. was incorporated under Dominion Cos. Act in 1924. In 1926 the C. co. was organised, also with a Dominion charter & with substantially the same incorporators & officers, to act as the agent of the brewing co. to promote the sales of its products. By an agreement between the two cos., the prices which the C. co. was to collect from customers upon sales, as well as the rates at which they were to remit when so collected, were fixed, the difference in favour of the C. co. constituting their remuneration for services to be rendered. Pltf. a shareholder & director of both cos. brought this action on behalf of himself & all other shareholders of the two cos. against the two cos. & four individual defts., who were shareholders directors & officers of both cos. to compel the individual defts. to pay back into the treasury or either or both cos. sums alleged to have been improperly paid to them by the cos. in 1927, 1928, & 1929. These sums were paid to the individual defts. for "promotion expenses" :—*Held :* in so far as the action rested upon the contention that the moneys paid by the brewing co. to the C. co. were improperly paid, it failed for the reason that pltf. himself received & still retained a portion of those moneys, & was not therefore in a position to complain either individually, or as a shareholder of the brewing co.—SHIESEL *v.* KIRSH, [1931] 1 D. L. R. 460 ; 66 O. L. R. 174 ; *affd.*, [1931] 2 D. L. R. 791 ; O. R. 41.—**CAN.**

g i. ——.]—The penalty enacted against directors of a co. who participate in the payment of a dividend where the co. is insolvent, & whereby they are made jointly & severally liable to creditors for debts of the co. then existing, is incurred only when they know, or were bound to know, the insolvency of the co. at the time the dividend was declared.—SMITH *v.* HENDERSON, [1924] 1 D. L. R. 863 ; Q. R. 62 S. C. 270.—**CAN.**

sn. *Dividend disposing of entire assets of company.*]—Judgment given against directors.—THOMAS *v.* GALF, [1927] 1 D. L. R. 593 ; S. C. R. 314.—**CAN.**

sp. *Dividend paid out of capital.*]—MEYER MALT & GRAIN CORPN. *v.* COOMBS, [1932] 3 D. L. R. 396.—**CAN.**

PART III. SECT. 28, SUB-SECT. 6.—F. (g).

m. For "26 W. L. R. 626" read "7 Alta. L. R. 245 ; 28 W. L. R. 250."

b (p. 509) i. —— ——.]—Pltfs. sued directors of a co., alleging that judgments recovered by them were for "wages due for services performed for the co." The evidence showed that pltfs. were hired to prospect for oil when so instructed, & they were not to do anything but hold themselves in readiness :—*Held :* the judgments were not for wages due for services performed, as they did no more than wait for the chance of performing them.—MULLEN *v.* MILLAR (1924), 55 O. L. R. 563.—**CAN.**

its discretion make an order not limiting his liability to the amount of the debts due to creditors held to be defrauded within the sect.—*Re* LEITCH (WILLIAM C.) BROS., LTD., [1932] 2 Ch. 71; 101 L. J. Ch. 830.

3353b. Amount for which director liable—Should be stated in declaration of liability.]—*Re* LEITCH (WILLIAM C.) BROS., LTD., No. 3353a, *ante*.

3353c. —— Whether limited to amount of debts due to creditors defrauded.]—*Re* LEITCH (WILLIAM C.) BROS., LTD., No. 3353a, *ante*.

3353d. —— General assets for all creditors.]—*Re* LEITCH (WILLIAM C.) BROS., LTD. (1932), 49 T. L. R. 74; 76 Sol. Jo. 888.

3364. *Add. Annotation:*—**Refd.** Horwood *v.* Statesman Publishing Co. (1929), 98 L. J. K. B. 450.

3376. *Add. Annotation:*—**Refd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743.

3377. *Add. Annotation:*—*As to* (1) **Refd.** Weld *v.* Petre, [1929] 1 Ch. 33.

3398. *Add. Annotation:*—*As to* (2) **Refd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246.

3405. *Add. Annotations:*—**Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

3419a. —— -.]—The directors of a co. personally guaranteed an overdraft granted to the co. by a bank. They subsequently passed a resolution that, subject to the approval of the bank, debentures be issued to the bank as security for the overdraft, & debentures were issued in accordance with the resolution:—*Held:* the directors were "interested" in the arrangement come to with the bank in regard to the issue of the debentures, & the resolution providing for the issue was a nullity.—VICTORS, LTD. *v.* LINGARD, [1927] 1 Ch. 323; 96 L. J. Ch. 132; 136 L. T. 476; 70 Sol. Jo. 1197.

3423. *Add. Annotation:*—**Refd.** Parker & Cooper *v.* Reading, [1926] Ch. 975.

3434. *Add. Annotation:*—*As to* (5) **Consd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 664.

3444. *Add. Annotation:*—*As to* (1) **Distd.** *Re* Windsor Steam Coal Co. (1901), Ltd. (1928), 140 L. T. 80.

3451a. —— Oral resignation—Articles requiring written resignation.]—A co.'s acceptance of the oral resignation of a director constitutes a binding contract, even though the co.'s articles require the resignation of a director to be in writing.—LATCHFORD PREMIER CINEMA, LTD. *v.* ENNION, [1931] 2 Ch. 409; 100 L. J. Ch. 397; 145 L. T. 672; 47 T. L. R. 595.

3455a. —— Re-election of retiring director—Adjournment of meeting.]—SPENCER *v.* KENNEDY, No. 2879a, *ante*.

3455b. —— Failure to re-elect or replace.]—By art. 97 of a co.'s arts., "At the second ordinary general meeting in each calendar year, one-third of the directors . . . shall retire from office. A retiring director shall retain office until the dissolution of the meeting at which his successor is elected." By art. 100, "If at any meeting at which an election of directors ought to take place the places of the retiring directors or some of them are not filled up, then, subject to any resolution reducing the number of directors, the retiring directors, or such of them as have not had their places filled up & may be willing to act, shall be deemed to have been re-elected":—*Held:* if a retiring director was not re-elected, & if his place was not filled up at the same meeting, he retained office until his retirement by rotation, since by art 100 he was to be deemed to have been re-elected & therefore there was no vacancy to which a successor could subsequently be elected.—HOLT *v.* CATTERALL (1931), 47 T. L. R. 332.

3490. *Add. Annotations:*—*As to* (2) **Refd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743. *As to* (4) **Refd.** Ramsden *v.* David Sharratt & Sons, Ltd. (1930), 35 Com. Cas. 314. *Generally*, **Refd.** Harrods, Ltd. *v.* Lemon, [1931] 2 K. B. 157.

3491a. Effect of voluntary winding-up.]—By an agreement in writing made between pltf. & deft. co. pltf. was appointed managing director of the co. for a term of 5½ years at a fixed salary. Before the expiration of that period the co. passed a resolution, which was assented to by pltf., for the voluntary winding up of the co. on the ground that by reason of its liabilities it could not continue its business. Pltf. thereupon brought an action claiming damages for repudiation of the agreement:—*Held:* a term could not be implied in the agreement that if the co. should be wound up voluntarily & pltf. should vote for that course being adopted, his employment should cease so as to disentitle him to damages for breach of the agreement. Pltf. was therefore entitled to damages for breach of the agreement.—FOWLER *v.* COMMERCIAL TIMBER CO., LTD., [1930] 2 K. B. 1; 99 L. J. K. B. 529; 143 L. T. 391, C. A.

3492. *Add. Annotations:*—**Consd.** *Re* Golomb & Porter & Co.'s Arbitration (1931), 144 L. T. 583. **Refd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

3494. *Add. Annotation:*—**Refd.** United Indigo Chemical Co. *v.* Robinson (1931), 49 R. P. C. 178.

PART III. SECT. 28, SUB-SECT. 6.—G. (a).

n i. —— *By servant of company—Unsatisfied return of execution.*]—CROWDER *v.* COLEMAN, [1924] 1 D. L. R. 849; 1 W. W. R. 374; 20 Alta. L. R. 1.—**CAN.**

n ii. —— —— ——.]—When a return of *nulla bona* has been made by the sheriff without a *bona fide* attempt having been made to ascertain whether or not there were assets available to satisfy the execution, & there were in fact exigible assets sufficient for that purpose, the return is not such a return as is contemplated by Cos. Act, 1927, s. 113.—STEVENS *v.* SPENCER (Alta.), [1929] 4 D. L. R. 838; 3 W. W. R. 129.—**CAN.**

PART III. SECT. 28, SUB-SECT. 7.—C. (c).

l i. —— *What constitutes interest—Financial interest.*]—The personal interest which disqualifies a director from voting must be a financial interest, not merely a friendly spirit or a feeling of affection, *e.g.*, that of a husband for his wife.—*Re* CLARK (R. P.) & CO. (VANCOUVER), LTD. (No. 2), [1931] 3 W. W. R. 306.—**CAN.**

PART III. SECT. 28, SUB-SECT. 8.—B. si —— *Not during term of appointment.*]—LONDON FINANCE CORPN. *v.* BANKING SERVICE CORPN. (Ont.), [1925] 1 D. L. R. 319.—**CAN.**

PART III. SECT. 28, SUB-SECT. 9.—C. so. *Remuneration voted by directors—Validity—Action by shareholder—Onus of proof.*]—When a pltf. complains of directors voting a salary & travelling expenses to the managing director, he must show that their action was either *ultra vires* or of a fraudulent character, & although it is beyond the powers of directors to vote the salary & travelling expenses, this defect can be remedied at a shareholders' meeting where the managing director is a majority

3500a. Power to provide for employees—Grant of pension.]—A private co., the articles of which authorised the directors to provide for the welfare of employees & their widows & children, entered into a deed of covenant by which it granted a pension of £500 a year to the widow of a former managing director five years after his death. Some three years later the co. passed a resolution for voluntary winding-up. The widow lodged a proof in the winding-up for the capitalised value of the annuity, but the liquidator rejected it :—*Held :* the transaction was not one for the benefit of the co. or reasonably incidental to the co.'s business. The pension did not come within the terms of the co.'s articles, as a managing or other director is not a person in the employment of a co., & the action of the directors was not confirmed by the shareholders in general meeting convened for the purpose of doing so. The grant of the pension was therefore void & *ultra vires* the co.—*Re* LEE, BEHRENS & CO., LTD., [1932] 2 Ch. 46 ; 101 L. J. Ch. 183 ; 147 L. T. 348 ; 48 T. L. R. 248 ; [1931] B. & C. R. 160.

3502. *Add. Annotations :*—**Consd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246. **Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

3506. *Add. Annotation :—Generally.* **Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

3506a. Cheque — Presumption of authority.]—STEWART (ALEXANDER) & SON, OF DUNDEE, LTD. *v.* WESTMINSTER BANK, LTD., [1926] W. N. 271, C. A.

3526. *Add. Annotations :—As to* (2) **Refd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58. *Generally.* **Refd.** I. R. Comrs. *v.* Fisher's Exors., [1926] A C. 395.

3526a. "Person in the employment of the company"—Director.]—No managing or other director is a "person in the employment of the company."—NORMANDY *v.* IND COOPE & CO., LTD. [1908] 1 Ch. 84 ; 77 L. J. Ch. 82 ; 97 L. T. 872 ; 24 T. L. R. 57 ; 15 Mans. 65.

3532. *Add. Annotations :*—**Refd.** Thomas *v.* Todd, [1926] 2 K. B. 511. **Consd.** Fowler *v.* Commercial Timber Co., [1930] 2 K. B. 1. **Folld.** *Re* Gramophone Records, Ltd. (1930), 69 L. Jo. 201.

3535. *Add. Annotation :*—**Refd.** *Re* Lee, Behrens & Co. (1932), 48 T. L. R. 248.

3536. *Add. Annotation :*—**Refd.** *Re* Lee, Behrens & Co. (1932), 48 T. L. R. 248.

3536a. —— ——.]—*Re* LEE, BEHRENS & CO., LTD., No. 3500a, *ante*.

shareholder.—HOUSTON *v.* VICTORIA MACHINERY DEPOT, LTD., [1924] 2 D. L. R. 657 ; 33 B. C. R. 425.—**CAN.**

PART III. SECT. 28, SUB-SECT. 9.—D.

sp. *Extent of powers.*]—Where a general manager is chosen from the directors & is therefore a managing director, there is an implication of further & larger authority than in the case of a general manager who is not a director ; but when directors appoint a "managing director," they may be taken to have *ipso facto* delegated to him some of their powers as a board of directors.—MID-WEST COLLIERIES, LTD. *v.* MCEWEN, [1925] 2 D. L. R. 529.—**CAN.**

3501 v. —— —— ——.]—Persons dealing with a managing director need only satisfy themselves that he has the power to do what he does, even though it be for his personal advantage.—*Re* J. STANLEY WEDLOCK, LTD., *Ex p.* ROYAL BANK, [1924] 4 D. L. R. 1178 ; 5 C. B. R. 103.—**CAN.**

3501 vi. —— —— ——.]—Where under the arts. of assocn. of a co. its managing director might have the power which he purported to exercise, a person contracting with the co. through him is entitled to assume that he actually did have such power.—*Re* BRITISH COLUMBIA BOND CORPN., LTD., & LANG, [1931] 1 W. W. R. 286 ; 2 D. L. R. 985.—**CAN.**

3501 vii. —— —— ——.]—*Held :* the evidence proved lt.'s position to be that of managing director, &, therefore, it must be presumed, especially since there was nothing adduced by the co. to negative his authority, that he had authority to contract on behalf of the co. to pay pltf. a commission.—WRATHALL *v.* RIPSTEIN & MANITOWAN EXPLORATION CO., LTD., [1932] 1 W. W. R. 801 ; 40 Man. L. R. 272 ; 3 D. L. R. 64 ; *affg.*, [1931] 3 W. W. R. 741.—**CAN.**

f i. —— —— *Presumption as to borrowing power.*]—Money was advanced by pltf. to F., a director, & not to the co. F. was in control of the co.'s business, but the directors had not delegated their borrowing power to him :—*Held :* one director alone had no actual authority from the co. to borrow, & pltf. was not entitled to assume that the directors had delegated their borrowing powers to the one director who had been left in full control of the business.—MERCANTILE FINANCE CORPN., LTD. *v.* FRANCIS & TAYLOR, LTD., [1929] N. Z. L. R. 731.—**N.Z.**

sq. *Fraud of managing director—Secret arrangement for sale of property.*]—LASELL *v.* HANNAH (B. C.) (1906), 37 S. C. R. 324.—**CAN.**

PART III. SECT. 28, SUB-SECT. 10.

r i. —— *Effect of bye-law.*]—The president of a co. has no authority without the authorisation by the board to engage solrs. in the co.'s business, though there be a bye-law giving him a general oversight over the business of the co.—*Re* PETRIE MANUFACTURING CO., *Ex p.* HUGHES, [1924] 4 D. L. R. 1308 ; 4 C. B. R. 311.—**CAN.**

o i. —— *Cheque—Unsatisfied judgment against company.*]—*Held :* the creditor, to whom the cheque was paid, was not prevented from proceeding against the president upon it.—WRIGHT *v.* RITCHIE, [1925] 4 D. L. R. 1050.—**CAN.**

sb. *Not a trustee—As regards funds & securities in his custody.*]—*Ex p.* GIROUX, [1926] 2 D. L. R. 900 ; 45 Can. Crim. Cas. 315 ; (1925), Q. R. 40 K. B. 362.—**CAN.**

PART III. SECT. 29, SUB-SECT. 1.—A.

h i. —— *Mining engineer—Companies Act, 1927, s. 113.*]—STEVENS *v.* SPENCER (Alta.), [1930] 2 W. W. R. 271 ; 3 D. L. R. 993 ; *affg.*, [1929] 4 D. L. R. 838 ; 3 W. W. R. 129.—**CAN.**

PART III. SECT. 29, SUB-SECT. 1.—B.

e i. —— *By president—Confirmation.*]—Where a servant had been orally hired by the president of a co., & his services had been accepted for three & a half years without the president's authority to hire him being questioned :—*Held :* the co. could not repudiate the agreement, on the mere ground that it was not formally authorised or adopted by bye-law.—BLOOMFIELD *v.* MONARCH OVERALL MANUFACTURING CO., LTD. (No. 2), [1927] 2 W. W. R. 18 ; [1927] 3 D. L. R. 146 ; *affd.*, [1927] 3 W. W. R. 502 ; [1927] 4 D. L. R. 1137.—**CAN.**

PART III. SECT. 29, SUB-SECT. 1.—C.

sd. *By whom fixed—Directors.*]—The remuneration of an officer of a co. must be fixed by the directors, & cannot be fixed by the shareholders.—WILSON *v.* WOOLLATT, [1928] 4 D. L. R. 403 ; 62 O. L. R. 620.—**CAN.**

PART III. SECT. 29, SUB-SECT. 1.—D.

g i. —— —— *Contracts for purchase of stock.*]—*Held :* the co., in order to avoid liability, must show that their officers were, to the knowledge of the brokers, abusing their powers & giving directions they had no power to give.—TICONDEROGA PULP & PAPER CO. *v.* COWANS, [1925] 4 D. L. R. 1.—**CAN.**

g ii. —— —— *Agreement for non-shareholders to gain advantages of shareholders.*]—*Held :* express authority necessary.—MCLEOD *v.* UNITED CANNERS, LTD. (P.E.I.), [1925] 3 D. L. R. 767.—**CAN.**

g iii. —— —— *Cancellation of subscription for stock.*]—*Held :* express authority necessary.—*Re* SUN RAY MANUFACTURING CO., *Ex p.* ROBSON (Ont.), [1925] 1 D. L. R. 175 ; 5 C. B. R. 303 ; *affg.*, 4 C. B. R. 597.—**CAN.**

se. *Liabilities — Investigation into conduct.*]—Act 46, 1926, s. 184 (1), is not designed for the purpose of enabling the ct. to hold a general investigation into the conduct of an officer of the co. The examination there intended is for the purpose of fixing liability in respect of a particular claim then before the ct. The sect. does not create any new liability or any new right, but only provides a summary mode of enforcing rights which would otherwise have been enforced by the ordinary procedure of the cts. A person cannot therefore be held liable under the sect. unless he is already liable to pay a sum of money by some principle of ordinary law, or by virtue of a special clause of Cos. Act imposing upon him a particular liability.—ZULULAND MOTOR CO. *v.* SHORT, LIQUIDATOR, ETC. (1928), 49 N. L. R. 368.—**S. AF.**

3540a. Presumption of authority—Due delegation of authority.]—HOUGHTON & Co. *v.* NOTHARD, LOWE & WILLS, No. 3157a, *ante*.

3549. *Add. Annotation :*—**Refd.** De Tchihatchef *v.* Salerni Coupling, Ltd., [1932] 1 Ch. 330.

3553. *Add. Annotation :*—**Refd.** The Hayle, [1929] P. 275.

3560. *Add. Annotations :*—**Consd.** Chibbett *v.* Robinson (1924), 132 L. T. 26. **Distd.** Mudd *v.* Collins (1925), 133 L. T. 186; Reed *v.* Seymour (1927), 11 Tax Cas. 625; Henry *v.* Foster (Arthur), Henry *v.* Foster (Joseph), Hunter *v.* Dewhurst (1931), 145 L. T. 225. **Refd.** Stedeford *v.* Beloe, [1931] 2 K. B. 610; Dewhurst *v.* Hunter (1932), 146 L. T. 510.

3560a. Remuneration by commission—Amount recoverable—How calculated.]—Applt., pltf. in the action, was for many years secretary of resp. co. Originally he received a fixed salary per week, but in 1916 an agreement was made between him & one A. S., managing director of resp. co., to the effect that in addition to his weekly salary he was to receive 10 per cent. on the balance of profits after payment of 12½ per cent. dividend. In 1926 applt. quarrelled with A. S. & left the service of resps., & shortly afterwards he brought this action for an account of the sums due to him as commission & for payment of the amount found to be due. It appeared that nearly all the capital of the resp. co. was held by A. S. & his family, & that he, as managing director, had entire control of the co.'s business. During applt.'s tenure of office A. S., with the connivance & assistance of applt., habitually appropriated funds of the co. to his own purposes. Applt. in framing his claim for commission contended (i) that the 12½ per cent. dividend referred to in the agreement must be a dividend subject to income-tax; (ii) that the 12½ per cent. dividend must be limited to an amount representing 12½ per cent. on the capital of the co. at the date of the agreement & had no application to subsequent increases of capital; & (iii) that for the purpose of calculating his commission he was entitled to reintroduce into the accounts all the sums which had been unlawfully applied for the benefit of A. S. personally :—*Held :* (1) the 12½ per cent. dividend must be a dividend subject to income-tax; the 12½ per cent. dividend must be measured on the capital as it stood in each year when the accounts were made up; & in reckoning the amount on which commission must be paid no account could be taken of the sums which ought to have been included in the profits but had been misappropriated by A. S.; (2) although applt. had been guilty of misconduct in relation to the affairs of resps., he was entitled to recover moneys which were already due to him for work done on resps.' behalf, & the remedy of resps. was an action or counterclaim for damages for breach of duty.—RAMSDEN *v.* SHARRATT (DAVID) & SONS, LTD. (1930), 35 Com. Cas. 314, H. L.

Annotation :—As to (2) **Refd.** Lever Bros., Ltd. *v.* Bell (1930), 47 T. L. R. 47.

3560b. —— —— Effect of misconduct.]—RAMSDEN *v.* SHARRATT (DAVID) & SON, LTD., No. 3560a, *ante*.

3565. *Add. Annotations :*—**Refd.** Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255; Russian Commercial & Industrial Bank *v.* Comptoir d'Escompte de Mulhouse, Banque Internationale De Commerce De Petrograd *v.* Goukassow (1924), 40 T. L. R. 837; Todd *v.* Egyptian Delta Land & Investment Co. [1928] 1 K. B. 152.

3567a. —— Presumption of authority—Due delegation of authority.]—HOUGHTON & Co. *v.* NOTHARD, LOWE & WILLS, No. 3157a, *ante*.

3568a. —— Purchase of goods for company's benefit.]—LEVY *v.* METROPOLITAN CAB CO. (1854), 23 L. T. O. S. 67.

3573. *Add. Annotation :*—**Refd.** Jones *v.* Oceanic Steam Navigation Co., [1924] 2 K. B. 730.

3576. *Add. Annotation :*—**Refd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587.

3590. *Add. Annotation :*—**Refd.** Pickford *v.* Quirke, Pickford *v.* I. R. Comrs. (1927), 138 L. T. 500.

3603a. Bills of exchange drawn by branch manager.]—The arts. of assocn. of a co. empowered the directors to determine who should be entitled to sign & make, draw, accept & indorse on the co.'s behalf bills, notes, receipts, acceptances, indorsements, cheques, etc. The co., whose business was that of forwarding agents, had a branch at Manchester under a branch manager, C. This branch manager, without having in fact received any authority from the co., & acting in fraud of the co., drew seven bills of exchange on behalf of the co. signed "S.C., Manchester manager." The bills were drawn to the order of the co., they were accepted by C. & W. & indorsed on behalf of the co. "S.C., Manchester manager." In an action

PART III. SECT. 29, SUB-SECT. 2.—C. (b).

g 1. —— *By acts of secretary-treasurer.*]—*Held :* (1) a secretary-treasurer, as such, has no authority to bind his co.; (2) on the facts, there was nothing to show that the authority of the secretary-treasurer in this case was other or more extensive than that of any other secretary.—MYERS *v.* UNION NATURAL GAS CO. (1922), 53 O. L. R. 88.—**CAN.**

PART III. SECT. 29, SUB-SECT. 3.—B

3596 i. *Remuneration by commission—Based on profits—& weekly sum—Provision for fixed minimum—Right to minimum although no profits.*]—GALLEGHER *v.* WATERLOO MOTORS, LTD., [1931] 2 D. L. R. 310; 3 M. P. R. 137.—**CAN.**

sk. *Right to remuneration—Absence of bye-law authorising payment—Action not maintainable—Companies Act, R. S. M.*, 1913 (c. 35), *s.* 32.]—MENZIES *v.* TYNDALL QUARRIES CO. (MAN.), [1926] 4 D. L. R. 350; [1926] 2 W. W. R. 864.—**CAN.**

PART III. SECT. 29, SUB-SECT. 3.—C.

g i. —— —— ——.]—Where the manager of a co., acting in good faith under the authority which he thought was vested in him & which could have vested in him under the co.'s arts. of assocn., executes a contract on the co.'s behalf, & the other party accepts him as having authority, the co. is bound by his act.—ASSOCIATED GROWERS OF BRITISH COLUMBIA, LTD. *v.* BRITISH COLUMBIA FRUIT LAND, LTD., [1925] 1 D. L. R. 871; [1925] 1 W. W. R. 505; 34 B. C. R. 533.—**CAN.**

3602 i. *By misrepresentation—Question of authority.*]—RAVENE PLANTATIONS, LTD. *v.* ESTATE H. ABRAY (1927), 48 N. L. R. 174.—**S. AF.**

PART III. SECT. 29, SUB-SECT. 3.—D.

sl. *For judgment against company—In action brought on manager's instructions.*]—*Held :* the manager was not liable.—PACIFIC COAST COAL MINES, LTD. *v.* ARBUTHNOT, [1926] 1 D. L. R. 670; [1926] 1 W. W. R. 478; 36 B. C. R. 321.—**CAN.**

sm. *Undue preference.*]—An officer of a co. who grants an undue preference to himself is guilty of misfeasance & breach of trust within the meaning of Act 46, 1926, s. 184 (1). A part-time secretary is an officer of the co. within the same sect.—ZULULAND MOTOR CO. *v.* BOSWELL, LIQUIDATOR, ETC. (1928), 49 N. L. R. 376.—**S. AF.**

on the bills by the holders in due course against the co. as drawers :—*Held :* (1) pltfs. were not entitled to act on bills drawn by a person in the position of the branch manager ; (2) the bills were forgeries under which pltfs. could have no title.—KREDITBANK CASSEL G. m. b. H. *v.* SCHENKERS, [1927] 1 K. B. 826 ; 96 L. J. K. B. 501 ; 136 L. T. 716 ; 43 T. L. R. 237 ; 71 Sol. Jo. 141 ; 32 Com. Cas. 197, C. A.

Annotations :—As to (1) **Consd.** British Thomson-Houston Co. *v.* Federated European Bank, Ltd., [1932] 2 K. B. 176. **Refd.** Liggett (Liverpool) v. Barclays Bank, [1928] 1 K. B. 48. *As to* (2) **Consd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587 ; South London Greyhound Raceccourses, Ltd. *v.* Wake, [1931] 1 Ch. 496.

3652. *Add. Annotation :—***Refd.** *Re* Glyncorrwg Colliery Co., Railway Debenture & General Trust Co. *v.* The Co., [1926] Ch. 951.

3656. *Add. Annotation :—***Refd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3657. *Add. Annotation :—***Consd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

3661. *Add. Annotation :—***Consd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

3661a. ——.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante.*

3662a. Inspection of securities—Whether in proper custody.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante.*

3664. *Add. Annotation :—***Refd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

3665. *Add. Annotation :—***Apld.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3668. *Add. Annotation :—As to* (1) **Refd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 664.

3670a. —— ——.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante.*

3675. Before this case add " *See. now,* 1929 Act, s. 152."

3684a. Application of Interpretation Act, 1889 (c. 63), s. 1 (1)—To special articles used with Table A.]—By the arts. of assocn. of a co. which was incorporated in 1906 it was provided that Table A in the first sched. to the Cos. Act, 1862, should apply to the co., but that certain clauses of Table A should be excluded. In an action by a director against the co. & its directors, in which he claimed a declaration that a notice purporting to remove him from the office of director was invalid, the question arose whether Interpretation Act, 1889 (c. 63), s. 1 (1), which provides that words in the singular shall include the plural & words in the plural shall include the singular, applied to the special articles which were used with Table A :—*Held :* sect. 1 (1), which governed Table A, also governed the special articles which were used with Table A, &, applying this principle to the notice in question, pltf. was validly removed from his office of director & the action failed.—FELL *v.* DERBY LEATHER CO., LTD., [1931] 2 Ch. 252 ; 100 L. J. Ch. 311 ; 145 L. T. 356.

3692. *Add. Annotation :—***Consd.** Oswald Tillotson, Ltd. *v.* I. R. Comrs. (1932), 48 T. L. R. 628.

3693. *Add. Annotation :—As to* (2) **Consd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

3698. *Add. Annotation :—***Expld. & Distd.** Jacobs *v.* Batavia & General Plantations Trust, [1924] 2 Ch. 329.

PART III. SECT. 29, SUB-SECT. 4.—A.

sn. *Contract to appoint on obtaining control of company—Construction.*]—PURDOM *v.* DOHERTY (Can.), [1929] 3 D. L. R. 719 ; *affg.*, 33 O. W. N. 425.—**CAN.**

PART III. SECT. 29, SUB-SECT. 4.—D

g i. —— —— ——.]—*Re* ALPHA MORTGAGE & INVESTMENT CO. (1916), 34 W. L. R. 483 ; 10 W. W. R. 652.—**CAN.**

PART III. SECT. 29, SUB-SECT. 5.—B.

3661 i. *General rule.*]—Persons who continue from year to year to assume the duties of auditors must be held to have agreed to conduct their work in a reasonably skilful & careful manner. In an action in which defts. auditors were held liable in damages for negligence in not detecting defalcations by the pltf.'s accountant, it was held that there was ample justification for the belief of pltf.'s shareholders that the report pltf. was receiving annually from defts. provided for such an audit as would reasonably catch such thefts & manipulations of the books as said employee had been guilty of. Defts. were not justified in taking directions from another employee, the manager, whom also they were required to check, as to whether it was necessary to do certain work of checking. Since defts. were aware that pltf.'s system of checking was faulty & that the danger of theft was always present, the default of pltf., or of its employees other than the accused in not remedying that situation did not excuse the continuing negligence of defts. The fact that pltf. had received from bonding cos. the greater part of the loss it had sustained was not a defence to the action. Any possible issue arising from such payment might be left to be determined between pltf. & said cos. on defts. making payment, or, alternatively, if defts. so required, the form of judgment might provide for notice to any parties, such as the bonding cos., presumed to have an interest therein.—INTERNATIONAL LABORATORIES, LTD. *v.* DEWAR, [1932] 3 W. W. R. 174.—**CAN.**

PART III. SECT. 29, SUB-SECT. 5.—C.

3679 i. *Misfeasance—Failure to audit.*]—*Held :* the failure to audit & report on the balance sheets of a co., & the sending of summaries purporting to be audited to the registrar of cos. were wilful acts or defaults on the part of the auditor, & he was liable to make good certain sums paid as preference dividends as a result of such default.—*Re* FULTON (JOHN) & CO., LTD., [1932] 1 R. 35.—**IR.**

PART III. SECT. 30, SUB-SECT. 2.—C. (b) ii.

sp. *Rights of members—Forcing additional shares on dissenting member.*] —An art. of assocn. of a co. providing that the directors might require a shareholder to take up additional shares in a certain ratio was altered by a resolution of the majority of the shareholders, applt. (*inter alios*) dissenting. The alteration struck out the words " three shares for every 250 lb. of butter fat " supplied by a member & substituted " one share for every 60 lb. of butter-fat." Applt. was called upon to take up additional shares in accordance with the alteration, but refused to do so :—*Held :* the art. was not one that could be amended under Cos. Act, 1908, s. 122, so as to force additional shares on a dissenting member, & applt. was not bound by the alteration objected to.—MACDONALD *v.* NORMANBY CO-OPERATIVE DAIRY FACTORY CO., LTD., [1923] N. Z. L. R. 122.—**N.Z.**

3698 i. *Alteration a breach of contract.*]—A shareholder in a co. must be taken to know that one of the incidents of membership of a co. is that the co. may, by adopting the proper method, *bonâ fide* alter its articles in a way which may prejudicially affect his interest, & provided that the alteration in the article is not inconsistent with the objects set out in the memorandum of association, & is *bonâ fide* made in the interest of the co., the shareholder would be bound by such an alteration.

A co. cannot commit a breach of contract by altering its articles.—HARI CHANDANA JOGA DEVA *v.* HINDUSTAN CO-OPERATIVE INSURANCE SOCIETY, LTD. (1924), I. L. R. 52 Calc. 239.—**IND.**

3698 ii. ——.]—Resp., a member of applt. co. for a number of years, supplied produce to the co. upon terms set out in certain of the co.'s arts. of assocn. The co. altered the arts. in question in a manner which subsequently proved to be prejudicial to resp., &, declining to be bound by such alteration, he took action to recover the balance due to him on the basis of the original articles :—*Held :* it not having been shown that resp. had in any way assented to the alteration in question, he was not bound thereby, & was entitled to be paid for his produce on the basis of the original arts. as unaltered.—JOHNSON *v.* ELTHAM CO-OPERATIVE DAIRY FACTORY CO., LTD., ELTHAM CO-OPERATIVE DAIRY FACTORY CO., LTD. *v.* JOHNSON, [1931] N. Z. L. R. 216.—**N.Z.**

PART III. SECT. 30, SUB-SECT. 2.—C. (b) iii.

3701 i. *For benefit of company as whole.*]—If a majority of shareholders carry a resolution to alter the articles not in the interests of the co. at large, but entirely for their own benefit & in their own interests, they have not acted *bonâ fide*, & that is fatal to the validity of the alteration. The co. had rescinded an article whereby the " dry "

3702. *Add. Annotation :*—**Refd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

3703. *Add. Annotation :*— **Dbtd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

3704. *Add. Annotation :—As to* (2) **Refd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

3704a. Interference by court.]—It is for the shareholders, & not for the ct., to say whether an alteration of the articles is for the benefit of the co., provided that it is not of such a character as that no reasonable men could so regard it.

The arts. of assocn. of a co. provided that pltf. & four others should be the first directors of the co., & that they should be permanent directors, & that each of them should be entitled to hold office so long as he should live unless he should become disqualified from any one of six specified events. Owing to irregularities in the accounts furnished by pltf. of sums received by him on the co.'s account an extraordinary general meeting of the co. was held & a special resolution was passed that the articles should be altered by adding a seventh event disqualifying a director, namely, a request in writing by all his co-directors that he should resign his office. Such a request was subsequently made to the pltf. There was no evidence of bad faith on the part of the shareholders. In an action by pltf. for breach of an alleged contract contained in the original articles that he should be a permanent director, & for a declaration that he was still a director of the co. :—*Held :* the contract, if any, between pltf. & the co. contained in the articles in their original form was subject to the statutory power of alteration & that if the alteration was *bonâ fide* for the benefit of the co. it was valid & there was no breach of that contract ; there was no ground for saying that the alteration could not reasonably be considered for the benefit of the co. ; therefore, there being no evidence of bad faith, there was no ground for questioning the decision of the shareholders that the alteration was for the benefit of the co. ; &, consequently, pltf. was not entitled to the relief claimed.—SHUTTLEWORTH *v.* COX BROTHERS & CO. (MAIDENHEAD), LTD., [1927] 2 K. B. 9 ; 96 L. J. K. B. 104 ; 136 L. T. 337 ; 43 T. L. R. 83, C. A.

Annotation :—**Folld.** Sugden *v.* Urban Fire Insurance Co., (1930), 75 Sol. Jo. 60.

3704b. —— ——.]—SUGDEN *v.* URBAN FIRE INSURANCE CO., LTD. (1931), 75 Sol. Jo. 60 (Vice-Chancellor of Lancashire).

3724. *Add. Annotations :*— **Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258 ; Henry *v.* Foster (Arthur), Henry *v.* Foster (Joseph), Hunter *v.* Dewhurst (1931), 145 L. T. 225.

3729. Before this case insert " *Compare* CORPORATIONS, Vol. XIII., pp. 339 *et seq.*"

3734a. —— **Preference shareholders whose dividends " in arrear."**]—A co.'s articles of assocn. provided that the original preference shares, carrying a cumulative preferential dividend of 7 per cent., should not confer upon the holders the right to attend & vote at any general meeting or to have notice thereof unless (*inter alia*) the dividend thereon was " in arrear " for more than three months. Subsequently the capital of the co. was increased by the issue of preferred ordinary shares with the right to a non-cumulative preferential dividend of 10 per cent. payable in respect of each year exclusively out of the profits earned in each year & to rank after the preference shares. It was further provided that the holders of these preferred ordinary shares should, *mutatis mutandis*, be subject to the same restrictions as to receiving notices of & attending & voting at general meetings as the holders of original preference shares. Since 1920 no profits had been available to pay dividends, & for the general meeting of 1926 the holders of preferred ordinary shares received no summonses. In an action by holders of such shares against the co. for a declaration that they were entitled to have notice of & to attend & vote at the general meetings :—*Held :* the words " in arrear," in the context in which they appeared in the articles, could not be construed to cover the non-payment of a non-cumulative preference dividend payable out of the profits of each year & not paid because there were no profits available for the dividend, & the action failed.—COULSON *v.* AUSTIN MOTOR CO., LTD. (1927), 43 T. L. R. 493.

3736. *Add. Citation :*—13 Mans. 316.

3746. *Add. Annotation :*—**Folld.** *Re* Newcastle United Football Co., [1932] W. N. 109.

3749a. Where twenty-one days' notice required—Shareholders resident abroad—Notice unnecessary.]—*Re* NEWCASTLE UNITED FOOTBALL CO., LTD., [1932] W. N. 109 ; 173 L. T. Jo. 344.

3753. *Add. Annotation :—Generally,* **Refd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

3770. *Add. Annotation :*—**Refd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

3771. *Add. Annotation :*— **Refd.** Shuttleworth *v.* Cox (Maidenhead) (1926), 43 T. L. R. 83.

3771a. Shareholder with no registered address—No address in United Kingdom for service of notices.]—DICKSON *v.* HALESOWEN STEEL CO., [1928] W. N. 33.

3775. *Add. Annotation :—As to* (2) **Apld.** Wall *v.* Exchange Investment Corpn., [1926] Ch. 143.

3779. *Add. Annotation :*—**Expld.** & **Apld.** Parker & Cooper *v.* Reading, [1926] Ch. 975.

shareholders were entitled to interest on their capital, & substituted another which had the effect of depriving the " dry " shareholders of interest :—*Held :* the article was invalid.—GEARY *v.* MELROSE CO-OPERATIVE DAIRY CO., LTD., [1930] N. Z. L. R. 768.—**N.Z.**

PART III. SECT. 30, SUB-SECT. 3.—A.

sd. *Misdescription of meeting—Effect.*]—E. H. MCGUIRE & H. J. FORESTER, LTD. *v.* CADZOW, [1932] 3 W. W. R. 337.—**CAN.**

PART III. SECT. 30, SUB-SECT. 3.—B. (f).

e i. ——.]—A shareholder, who is present at a meeting of shareholders, can waive his right to be given notice of the intention to move a special resolution ; the giving notice of such intention is only prescribed in order to give shareholders time to consider the matter.—*Re* EXCEL FOOTWEAR CO., *Ex p.* NOVA SCOTIA TRUST CO., [1923] 3 D. L. R. 212 ; 56 N. S. R. 195 ; 3 C. B. R. 748.—**CAN.**

PART III. SECT. 30, SUB-SECT. 3.—D. (b).

sq. *Necessity for quorum at commencement—& at time of voting.*]—At the outset a majority of the issued shares were represented at the meeting, but some of the shareholders withdrew & at the time of the voting there was no longer a quorum :—*Held :* meetings of shareholders are to be governed by the same rules as to quorum & procedure as apply to parliamentary & municipal bodies except where the statute or bye-laws otherwise provide ; & the shareholders' meeting therefore was a nullity failing for want of a quorum & the bye-laws were not properly passed.—LUMBERS *v.* FRETZ, [1929] 1 D. L. R. 51 ; 63 O. L. R. 190, —**CAN.**

3787a. .]—WALL EXCHANGE INVESTMENT CORPN., No. 3811a, *post.*

3802. *Add. Annotation :*—**Consd.** British America Nickel Corpn. *v.* O'Brien, [1927] A. C. 369.

3803a. —— —— **Although proxy given.**]—A co.'s arts. of assocn. provided, art. 74, that votes might be given personally or by proxy; art. 75, that the instrument appointing a proxy should be deposited at the office not less than forty-eight hours before the time of holding the meeting at which it was to be used; &, art. 76, that "a vote given in accordance with the terms of an instrument of proxy will be valid notwithstanding the previous . . . revocation of the proxy . . . provided no intimation in writing of the . . . revocation . . . shall have been received at the office before the meeting":—*Held:* in a case where a proxy had not been validly revoked in accordance with art. 76, the shareholder who had given the proxy was free to attend at the meeting & vote personally; &, when he had done this, the vote tendered by the proxy was properly rejected.—COUSINS *v.* INTERNATIONAL BRICK CO., LTD., [1931] 2 Ch. 90; 100 L. J. Ch. 404; 145 L. T. 471; 47 T. L. R. 217, C. A.

3811. *Add. Annotation :*—**Apld.** Wall *v.* Exchange Investment Corpn., [1926] Ch. 143.

3811a. —— —— —— **Whether decision of chairman final.**]—An art. provided that no objection should be made to the validity of any vote except at the meeting at which it was tendered, & that every vote, whether given in person or by proxy, not disallowed at any meeting should be deemed valid for all purposes:—*Held:* the decision of the chairman, who, in the *bonâ fide* exercise of the power conferred upon him by the art., had refused to disallow a vote by proxy to which objection had been taken at the meeting, was final & would not be reviewed by the ct.—WALL *v.* EXCHANGE INVESTMENT CORPN., [1926] Ch. 143; 95 L. J. Ch. 132; 134 L. T. 399, C. A.

3826. *Add. Annotation :*—**Consd.** Neuschild *v.* British Equatorial Oil Co., [1925] Ch. 346.

3841a. —— **Revocation of proxy received after commencement of meeting but before poll taken — Vote valid.**] — SPILLER *v.* MAYO (RHODESIA) DEVELOPMENT CO. (1908), LTD., [1926] W. N. 78.

Annotation :—**Consd.** Cousins *v.* International Brick Co., [1931] 2 Ch. 90.

3847a. —— —— **Vote valid unless disallowed at meeting — Whether decision of chairman final.**]—WALL *v.* EXCHANGE INVESTMENT CORPN., No. 3811a, *ante.*

3847b. Right of member to vote although proxy given.]—COUSINS *v.* INTERNATIONAL BRICK CO., LTD., No. 3803a, *ante.*

3874. *Add. Annotation :*—**Refd.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487.

3874a. —— —— **Adjournment of second meeting to date more than month from date of first meeting.**]—Where a meeting, held for the purpose of confirming as special resolutions resolutions passed as extraordinary resolutions at a meeting held less than a month before, is adjourned, for *bonâ fide* reasons, to a date more than a month from the date of the meeting at which the resolutions were passed, & the resolutions are confirmed at the adjourned meeting, they are valid within 1908 Act, s. 69 (2).—NEUSCHILD *v.* BRITISH EQUATORIAL OIL CO., [1925] 1 Ch. 346; 94 L. J. Ch. 201; 133 L. T. 227; 41 T. L. R. 414; 69 Sol. Jo. 446.

—— —— —— —.]—*See, now,* 1929 Act, ss. 117 (2), 119, 287.

3878. Before this case insert "*Compare* CORPORATIONS, Vol. XIII., p. 346."

3880. *Add. Annotations :*—*As to* (1) **Consd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58. **Refd.** Cox *v.* National Union of Foundry Workers of Great Britain & Ireland (1928), 44 T. L. R. 345.

3881a. —— ——.]—SPILLER *v.* MAYO (RHODESIA) DEVELOPMENT CO. (1908), LTD., [1926] W. N. 78.

Annotation :—**Refd.** Cousins *v.* International Brick Co., [1931] 2 Ch. 90.

3882. *Add. Annotation :*—**Refd.** Neuschild *v.* British Equatorial Oil Co., [1925] Ch. 346.

3882a. —— —— **Re-election of retiring director.**]—SPENCER *v.* KENNEDY, No. 2879a, *ante.*

3890. *Add. Annotation :*—**Consd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246.

PART III. SECT. 30, SUB-SECT. 3.—D. (o).

3785 ii. —— *To give casting vote—For what purposes to be exercised.*]—*Re* CITIZEN'S COAL & FORWARDING CO. (Ont.), [1927] 4 D. L. R. 275.—**CAN.**

3796 ii. —— .. —.]—At an extraordinary general meeting of a co. a special resolution to increase capital was declared by the chairman to have been carried by the requisite majority. Among the majority voting for the resolution were two shareholders who, in terms of the articles of assocn. were not qualified to vote, in respect that they had been registered owners of their shares for less than a month. If their votes had not been included, the requisite majority in favour of the resolution could not have been obtained. No poll was demanded at the meeting:—*Held:* under 1929 Act, s. 117 (3), as no poll had been demanded at the meeting, the declaration of the chairman that the resolution had been carried by the requisite majority was final & conclusive.—*Re* GRAHAMS' MOROCCO CO., [1932] S. C. 269.—**SCOT.**

PART III. SECT. 30, SUB-SECT. 3.—D. (d) i.

3801 i. —— —— *Interested directors & shareholders.*]—Directors & other shareholders, implicated in a breach of trust with respect to the co.'s property, are not entitled to use their votes at a general meeting, called for the purpose of deciding whether the co.'s name be retained as pltf. or struck out in an action begun in the name of the co. & in that of a shareholder suing on behalf of himself & all other shareholders with respect to such breach.—LEAVENS & CANADA NATIONAL FIRE INSURANCE CO. *v.* GREAT WEST PERMANENT LOAN CO. (No. 2) (Man.), [1927] 3 W. W. R. 486.—**CAN.**

sr. *Necessity for concurrence of joint shareholders.*]—Joint holders of shares must concur in voting upon them unless the bye-laws of the co. otherwise provide. Defts. were not entitled to vote upon shares held by them as trustees jointly with other persons, who were not present or assenting.—LUMBERS *v.* FRETZ, [1929] 1 D. L. R. 51; 63 O. L. R. 190.—**CAN.**

PART III. SECT. 30, SUB-SECT. 3.—D. (d) iii.

st. *No amendment of vote—After vote cast.*]—BARBER, ETC. *v.* NEW ZEALAND SOUNDS HYDRO ELECTRIC CONCESSIONS, LTD., [1927] N. Z. L. R. 589.—**N.Z**

sv. *How demanded—Demand by specified number of members—Proxies not included.*]—Cos. Act, 1892, s. 48 (3), provides that a demand for a poll of members of a co. must be made by at least two members:—*Held:* a demand by a member personally present & holding proxies for two other members not personally present was not a demand within this sect.—*Re* RHODESIAN MANUFACTURING CO., LTD., [1927] S. A. S. R. 310.—**AUS.**

PART III. SECT. 30, SUB-SECT. 3.—G.

3897 i. *When court will interfere—To summon meeting.*]—If on an application to strike out the name of a co. which has been used as pltf. without authority, there is any reasonable doubt as to the wishes of the shareholders, the ct. has power to order the directors to summon forthwith a general meeting of the shareholders to ascertain their wishes.—LEAVENS *v.* GREAT WEST PERMANENT LOAN CO., [1927] 2 W. W. R. 306; 36 Man. L. R. 606.—**CAN.**

3916a. —— —— **Whether "knowingly" party to default.**]—BECK *v.* BOARD OF TRADE (SOLICITOR), GOODCHILD *v.* BOARD OF TRADE (SOLICITOR) (1932), 76 Sol. Jo. 414, D. C.

3917. *Add. Annotation :—As to* (2) **Refd.** Glanvill, Enthoven *v.* I. R. Comrs. (1924), 131 L. T. 818.

3925. *Add. Annotation :—***Consd.** R. *v.* Cory, [1927] 1 K. B. 810.

3933. *Add. Annotations :—***Consd.** Hearts of Oak Assurance Co. *v.* A.-G. (1932), 48 T. L. R. 296. **Refd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579.

3934a. Locality of debt created.]—An English trust investment co. held 3,712 ordinary £1 shares in deft. co., also an English co. with a registered office in London, & deriving its revenue entirely from its shares in four cos. carrying on business exclusively in Australia. Deft. co. had its head office & board of directors in Australia, but had also a register of shares in London. Deft. co. having been assessed to Australian income tax was required by the Deputy Federal Comr. of Taxation, to deduct an amount sufficient to pay the income tax from the dividend payable to the English trust investment co., as being an "absentee" taxpayer for the year ending June 30, 1921. The investment co. sued deft. co. for the amount deducted, & contended that such dividends were not assessable to Australian income tax :—*Held :* the shares held by pltf. co. in deft. co., were locally situate in England, & the dividend due in respect of them was an English debt. The Commonwealth Govt. had therefore no power to impose or alter the incidence of taxation upon the dividend, & the deft. co. was not entitled to deduct any Australian income tax from any dividend payable to English shareholders.—LONDON & SOUTH AMERICAN INVESTMENT TRUST, LTD. *v.* BRITISH TOBACCO CO. (AUSTRALIA), LTD., [1927] 1 Ch. 107 ; 96 L. J. Ch. 58 ; 136 L. T. 436 ; 70 Sol. Jo. 1024 ; *sub nom.* PASS *v.* BRITISH TOBACCO CO. (AUSTRALIA), LTD., 42 T. L. R. 771.

3934b. Every payment other than authorised reduction of capital.]—A limited co. not in liquidation can make no payment by way of return of capital to its shareholders except as a step in an authorised reduction of capital. Any other distribution of money, whether called dividend or bonus or any other name, can only be made by way of dividing profits. —HILL (R. A.) *v.* PERMANENT TRUSTEE CO. OF NEW SOUTH WALES, LTD., [1930] A. C. 720 ; 144 L. T. 65 ; *sub nom. Re* HILL (RICHARD), HILL *v.* PERMANENT TRUSTEE CO. OF NEW SOUTH WAKES, 99 L. J. P. C. 191, P. C.

3943a. —— —— —— —.]—A co. was incorporated as a trust investment co., the objects as defined by clause 3 of its memorandum of assocn. including (*a*) to acquire & hold stocks, shares & securities of the classes therein specified & from time to time to change such investments for others of the like nature, & (*b*) to borrow on debenture stock & to redeem or pay off any moneys so borrowed. The business & accounts of the co. were conducted & kept, as required by the articles of assocn., on the footing that profit or loss on a change of investment was carried to capital account, & net receipts over expenditure were carried to revenue account & became available for payment of dividends without regard to any depreciation in the market value of the co.'s investments. In 1900 the co. issued at par debenture stock. In 1918, owing to the general fall in the value of securities, the directors were enabled to redeem some of this debenture stock at a discount, & they claimed the right to carry the whole amount of this discount to revenue account. The investments forming the assets of the co. had fallen to an extent approximately equivalent to the discount at which the debenture stock had been redeemed :—*Held :* (1) apart from the special provisions of the articles of assocn., the single item of gain by redemption of debenture stock could not be dissociated from the loss of capital assets, & that the amount of the discount was not distributable as dividend ; (2) the issue of loan capital was not one of the objects or part of the business of the co., but was a power to be exercised incidentally to, & in furtherance of, its objects, & even if the discount was otherwise divisible as net profit, such a division would be prohibited by the fact that it did not arise out of the co.'s business.—WALL *v.* LONDON & PROVINCIAL TRUST, LTD., [1920] 2 Ch. 582 ; 90 L. J. Ch. 43 ; 125 L. T. 57 ; 36 T. L. R. 729 ; 64 Sol. Jo. 635.

3948. *Add. Annotation :—***Refd.** *Re* A Debtor, [1927] 1 Ch. 410.

3959a. Arrears of dividend—Distribution.]—The memorandum of assocn. of a co. provided for the payment on the ordinary shares of the co. of a cumulative dividend not exceeding

PART III. SECT. 30, SUB-SECT. 7.—A.

3a. *Must apply rateably to all shareholders of same class.*]—It is of the essence of a dividend that it shall apply rateably to all shareholders of the same class.—PRICEVILLE FOX CO. *v.* JORDAN, [1929] 3 D. L. R. 907 ; 64 O. L. R. 172.—**CAN.**

PART III. SECT. 30, SUB-SECT. 7.—B.

3935 ii. —— *Resolution sufficient—Bye-law unnecessary.*]—JAMES *v.* BEAVER CONSOLIDATED MINES, LTD., [1927] 3 D. L. R. 163 ; 60 O. L. R. 420.—**CAN.**

PART III. SECT. 30, SUB-SECT. 7.—D. (a).

3b. *General rule.*]—A co. cannot realise its entire assets &, having set aside an amount to its nominal capital & discharged its liabilities, divide the surplus as income or profits under the guise of declaring a dividend. —DAVISON *v.* KING, [1926] N. I. 1.—**IR.**

PART III. SECT. 30, SUB-SECT. 7.—E. (a).

3958 ii. —— —— —— —.]—Deft. co. was created by letters patent under Dominion Cos. Act, R. S. C., 1906. Its capital was divided into preferred & common shares & the letters patent provided that the preferred shares "shall confer the right to receive out of the profits of each year a preferential dividend for such year at the rate of eight per centum *per annum* on the capital for the time being paid up thereon & shall rank as regards return of capital in priority to the common shares, but shall not confer the right to any further participation in profit or assets." The by-laws of the co. provided that the directors might before declaring any dividend set aside out of profits such sums as they should think proper as a reserve. Pltf., the owner of both preference & common shares, sought a declaration that the co. had earned profits during certain specified years sufficient to pay said preferred dividends & that it was bound to apply such profits in payment thereof & had no discretion to apply them in providing for a reserve fund or contingencies :—*Held :* whether or not profits had been shown out of which the preferred dividend could be paid, the discretion of the directors to withhold the declaration of a dividend had not been taken away by the letters patent.—DEVALL *v.* WAINWRIGHT GAS CO., LTD., [1932] 1 W. W. R. 281 ; 2 D. L. R. 145 ; *revsg.*, [1931] 3 W. W. R. 251.—**CAN.**

5 per cent. *per annum* & for any balance of profits being applied for the benefit of a garden city or its inhabitants. Art. 129 of the arts. of assocn. provided that, subject to the rights of holders of debentures & preference shares, the net profits of the co., after providing for a reserve fund & for depreciation, "shall be divided by way of dividend among the members in proportion to the amount paid on the ordinary shares held by them respectively, but so that the dividends upon the ordinary shares for any year shall not exceed the aggregate rate of 5 per cent. *per annum*. The surplus of the net profits of the co. after payment of such dividends & the amount necessary to make up dividends for past years to the rate of 5 per cent. *per annum* shall be applied" for the benefit of the town or its inhabitants as therein mentioned. The co. from time to time over a number of years issued ordinary shares. From 1904 to 1917 no dividend was paid on the ordinary shares, & it was only since 1923 that a full dividend of 5 per cent. had been paid. There were now profits available for payment of arrears of dividend, after payment of the dividend for the current year, but not sufficient to pay the whole of the arrears:—*Held:* the fund available should be distributed ratably among the shareholders according to the respective amounts of the arrears of dividend payable on the shares held by them respectively.—FIRST GARDEN CITY *v.* BONHAM-CARTER, [1928] Ch. 53; 97 L. J. Ch. 52; 138 L. T. 222.

3966. *Add. Annotation:*—**Distd.** *Re* Hyde, Hyde *v.* Bryce (1930), 74 Sol. Jo. 467.

3976a. —— —— **Calculation on wrong principle—Acquiescence.**]—The ct. will not grant an injunction to restrain the declaration of a dividend on the co.'s stock, etc., on the ground that the dividend so to be declared was calculated upon an erroneous principle with reference to various accounts of several amalgamated lines of railway, & the profits realised, where the same principle as to the matters of account had been adopted & acted upon for several successive years & acquiesced in by the respective shareholders. A motion for an injunction to this effect directed to stand over until the hearing of the cause, as no immediate injury could accrue to pltfs. (shareholders) until that time.—YOOL *v.* GREAT WESTERN RY. CO. (1869), 20 L. T. 74.

3984. *Add. Annotations:*—**Consd.** *Re* Speir, Holt *v.* Speir, [1924] 1 Ch. 359; I. R. Comrs. *v.* Fisher's Exors., [1926] A. C. 395. **Folld.** I. R. Comrs. *v.* Wright (1926), 95 L. J. K. B. 982; *Re* Taylor, Waters *v.* Taylor, [1926] Ch. 923. **Distd.** *Re* Bates, Mountain *v.* Bates, [1928] Ch. 682; Parker *v.* Chapman (1928), 138 L. T. 729; Hill (R. A.) *v.* Permanent Trustee Co. of New South Wales, [1930] A. C. 720. **Refd.** I. R. Comrs. *v.* Burrell, [1924] 2 K. B. 52; I. R. Comrs. *v.* Doncaster (1924), 93 L. J. K. B. 338; *Re* Railways Act, 1921, *Re* Standard Charges Schedule (1925), 94 L. J. K. B. 364.

3988a. —.]—THORNYCROFT (J. I.) & CO., LTD. *v.* THORNYCROFT (1927), 44 T. L. R. 9.

3990. *Add. Annotation:*—**Refd.** Pass *v.* British Tobacco Co. (Australia) (1926), 42 T. L. R. 771.

3991. *Add. Annotations:*—**Consd.** Collaroy Co. *v.* Giffard, [1928] Ch. 144. **Refd.** Steel Co. of Canada *v.* Ramsay, [1931] A. C. 270.

3992. *Add. Annotation:*—**Consd.** Collaroy Co. *v.* Giffard, [1928] Ch. 144.

3993. *Add. Annotations:*—*As to* (2) **Consd.** Collaroy Co. *v.* Giffard, [1928] Ch. 144. **Folld.** *Re* John Dry Steam Tugs, Ltd., [1932] 1 Ch. 594.

3994. *Add. Annotation:*—**Consd.** First Garden City *v.* Bonham-Carter, [1928] Ch. 53.

4016a. —— —— **Application of profits in reduction of adverse balance.**]—A co. issued notes which entitled the noteholders to a fixed amount per cent. & to an additional share in the "profits available for dividend":—*Held:* the directors were entitled to apply the whole of the profits of any one year, after payment of the fixed amount per cent. to the noteholders, in reduction of the adverse balances of previous years, & the noteholders were not entitled to claim a share in such profits.—LONG ACRE PRESS, LTD. *v.* ODHAMS PRESS, LTD., [1930] 2 Ch. 196; 99 L. J. Ch. 479; 143 L. T. 562.

PART III. SECT. 30, SUB-SECT. 7.—G. (a).

q i. —— *Valid.*]—A co. purported to allot unissued shares to a director in consideration of his services to the co.:—*Held:* there being a surplus available for distribution by way of dividend among the shareholders, it was open to the co. to deal with the surplus as they thought fit, & the shares were validly issued.—*Re* DORENWENDS, LTD., [1924] 3 D. L. R. 118; 55 O. L. R. 413.—**CAN.**

sf. *Allotment of shares held in another company—Validity.*]—JAMES *v.* BEAVER CONSOLIDATED MINES, LTD., [1927] 3 D. L. R. 163; 60 O. L. R. 420.—**CAN.**

PART III. SECT. 30, SUB-SECT. 7.—I·

3991 i. *Rights of shareholders of cumulative preference shares—Company in liquidation.*]—*Re* NEW ZEALAND HARDWARE CO., LTD., [1926] N. Z. L. R. 76.—**N.Z.**

sh. *Undeclared dividend—Whether liability of company—Contract for sale of shares.*]—F. gave an option to purchase a block of common shares of a company, which purchase would give the purchaser control of the co. The optionee required that F. furnish an accountant's statement showing the company's assets & liabilities & profit & loss to Aug. 31, 1926, & an affidavit that the co.'s liabilities would not exceed the amount shown by such statement. A statement & affidavit were furnished, & the acceptance of the option was expressed to be based on said statement. Preference shares had been issued by the co. non-participating & non-assessable, entitling the holders thereof to a first, fixed, cumulative dividend of 8 per cent. *per annum*:—*Held:* cumulative dividends on preference shares, to Aug. 31, 1926, undeclared & unpaid, constituted a liability of the co. within the meaning of the contract, & should have been included as such in the said statement.—FAIRHALL *v.* BUTLER, [1928] 3 D. L. R. 161; [1928] S. C. R. 369.—**CAN.**

sk. *Right to participate in profits in excess of fixed preferential dividend—Construction of charter.*]—The letters patent of a co. incorporated in 1910 under Cos. Act of Canada provided that the net profits from time to time distributed should be applicable first to paying a fixed cumulative dividend at the rate of 7 per cent. *per annum* on the preference shares, & that the holders of those shares should participate ratably with the holders of the ordinary shares in the distribution of net profits after the holders of the ordinary shares should have received "dividends equal to those paid on the preferred shares." Further, that no dividends should be paid on the ordinary shares until after the co. had to the credit of a reserve fund a sum equal to one year's dividend on the issued preference shares:—*Held:* the preference shareholders were not entitled to receive in dividend more than 7 per cent. *per annum* until the ordinary shares should have received dividends which gave them that percentage on their shares since the incorporation of the co.—STEEL CO. OF CANADA, LTD. *v.* RAMSAY (THOMAS), [1931] A. C. 270; 100 L. J. P. C. 81; 144 L. T. 532, P. C.; *affg.*, [1930] 3 D. L. R. 555; 65 O. L. R. 250; *affg.*, [1929] 4 D. L. R. 879; 64 O. L. R. 327.—**CAN.**

4017. *Add. Annotation :*—**Refd.** Long Acre Press *v.* Odhams Press, [1930] 2 Ch. 196.

4019. *Add. Citation :*—93 L. J. Ch. 49.

4020. *Add. Annotations :*—*As to* (1) **Refd.** I. R. Comrs. *v.* Fisher's Exors., [1926] A. C. 395 ; Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58. *As to* (2) **Refd.** British America Nickel Corpn. *v.* O'Brien, [1927] A. C. 369.

4021. *Add. Annotation :*—**Foll.** Long Acre Press *v.* Odhams Press, [1930] 2 Ch. 196.

4023a. —— Writing back to profit account—Profits written off in excess of requirements.] —A co. which applies its profits in writing off a corresponding amount of the value of the goodwill, instead of carrying them to a goodwill depreciation reserve fund, but which has not finally & unreservedly capitalised those profits, may write back to profit account so much of the depreciation written off goodwill as proves to be in excess of proper requirements.—STAPLEY *v.* READ BROTHERS, LTD., [1924] 2 Ch. 1 ; 93 L. J. Ch. 513 ; 131 L. T. 629 ; 40 T. L. R. 442 ; 68 Sol. Jo. 519.

Annotation :—**Refd.** Long Acre Press *v.* Odhams Press, Ltd., [1930] 2 Ch. 196.

4026. *Add. Annotations :*—**Refd.** Parker & Cooper *v.* Reading & James (1926), 96 L. J. Ch. 23; Kerr *v.* Marine Products (1928), 44 T. L. R. 292 ; *Re* Lee, Behrens & Co. (1932), 48 T. L. R. 248.

4035. *Add. Annotation :*—**Refd.** Deuchar *v.* Gas Light & Coke Co., [1924] 2 Ch. 426.

4037. *Add. Annotations :*—**Refd.** Deuchar *v.* Gas Light & Coke Co., [1924] 2 Ch. 426 ; A.-G. *v.* Leeds Corpn., [1929] 2 Ch. 291.

4037a. ——.]—PARKER & COOPER, LTD. *v.* READING, No. 3160a, *ante*.

4046. *Add. Annotation :*—**Consd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

4048. *Add. Annotation :*—**Distd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

4050a. —— Under agreement—To repurchase shares—Allotted in consideration of advance to company—Lender requiring repayment of loan.]—Pltf., with the view to assist his son-in-law in obtaining the appointment of business manager of a limited co. of which the two defts. were directors & shareholders, entered into a written agreement with the co. & defts. to advance to the co. a sum of £1,500 by the purchase of 1,500 £1 preference shares of the co., the repayment of that sum being secured by the co.'s undertaking, in the event of pltf. or his son-in-law terminating that agreement, to procure the repurchase of the shares at par & to secure the purchase money therefor by accepting bills drawn by pltf. ; & in that arrangement the two defts. joined as sureties guaranteeing the due performance by the co. of its part of the agreement. Pltf., accordingly, advanced £1,500 to the co., & accepted transfers from the co. of the same number of its preference shares. Upon the son-in-law desiring to withdraw from the managership, pltf. in pursuance of a power in that behalf contained therein gave the co. notice to terminate the agreement & required the co. to procure the repurchase of the shares & to accept his bills for £1,500 ; but the co. refused to comply with those requirements & denied liability under the agreement on the ground that the performance of it would involve a purchase by the co. of its own shares, & would therefore be *ultra vires* & illegal. In an action against defts. under their guarantees :—*Held :* the agreement, having been entered into between the parties in good faith & in the honest belief that it was *intra vires* & legal, the defence that the agreement was, upon the grounds above mentioned, *ultra vires* the co. & therefore unenforceable could not be maintained ; & pltf. was entitled to judgment for £1,500 with interest.—GARRARD *v.* JAMES, [1925] 1 Ch. 616 ; 94 L. J. Ch. 234 ; 133 L. T. 261 ; 69 Sol. Jo. 622.

4052a. Provision of financial assistance to buy own shares—1929 Act, s. 45.]—1929 Act, s. 45, was declaratory of the law & did not create a new offence.—R. *v.* LORANG (1931), 22 Cr. App. Rep. 167 ; 75 Sol. Jo. 121, C. C. A.

4064a. —— Guarantee of payment by French firm to French Treasury.]—REPUBLIC OF FRANCE (MINISTER OF FINANCE) *v.* PERRY & CO. (BOW), LTD. (1929), 73 Sol. Jo. 268.

4070. *Add. Annotation :*—*Generally*, **Refd.** Egyptian Salt & Soda Co. *v.* Port Said Salt Assocn., Ltd., [1931] A. C. 677.

4072a. —— Subscribing towards costs of litigation between members—Company for protection of interests of medical practitioners.]—BLOXHAM *v.* MEDICAL DEFENCE UNION, LTD. (1894), 10 T. L. R. 384 ; 38 Sol. Jo. 288, C. A.

4074. After this case for "—— **Remuneration of directors.]** " read "—— **Remuneration—Of directors.]** "

PART III. SECT. 31, SUB-SECT. 2.—B.

n i. —— ——.]—*Re* INRIG SHOE CO., [1924] 4 D. L. R. 625 ; 5 C. B. R. 157.—**CAN.**

o i. —— ——.]—The holder of 1,500 £1 shares in a co., on which 5*s.* per share had been paid & on which a call of a further 2*s.* 6*d.* per share had been made but not paid, being unable to pay his debts as they fell due agreed with the co. that the money already paid should be applied towards payment in full of 750 shares, & that he should pay a further amount sufficient to pay those 750 shares in full, & that thereupon the other 750 shares should be cancelled :—*Held :* the transaction amounted to a purchase by the co. of the shares cancelled, & the shareholder was still a member of the co. in respect of the 1,500 shares.—*Re* GREATER MELBOURNE REALTY CO., PTY., LTD., [1931] Argus L. R. 276.—**AUS.**

q i. —— *No reduction of assets.*]—Where the extinguishment of co. shares by their surrender & cancellation involves no actual reduction of assets, the transaction is not illegal. Real capital is not diminished by relinquishing something of no value or by securing relief from liabilities. Each case must be decided on its own facts & the diminution in capital must be, not fanciful nor theoretical, but actual & substantial, before the transaction can be successfully attacked.—BRITISH COLUMBIA RED CEDAR SHINGLE CO., LTD. *v.* STOLTZE MANUFACTURING CO., LTD., [1932] 1 W. W. R. 164 ; 1 D. L. R. 762 ; 44 B. C. R. 458 ; *revsg.*, [1931] 3 D. L. R. 379.—**CAN.**

4051 ii. ——.]—It is not *ultra vires* a co. to receive a transfer of its shares to itself in compromise of an action. At least the co. is estopped from setting up such a plea after taking the benefit of the compromise.—*Re* R. J. LANE, LTD., *Ex p.* MILLIGAN, [1924] 1 D. L. R. 269 ; 4 C. B. R. 308.—**CAN.**

4051 iii. ——.]—KNECHTEL MOTOR CO., LTD. *v.* WORDEN (Sask.), [1923] 2 D. L. R. 839 ; [1923] 2 W. W. R. 154.—**CAN.**

PART III. SECT. 31, SUB-SECT. 2.—I.

n i. ——.]—Where a co. assigned money to secure payment of a debt owing to the assignee by another co., with which the assignor co. had no prior or contemporaneous agreement : —*Held :* the co.'s memorandum of assocn. gave it no such power.—ABBOTSFORD LUMBER CO. *v.* STEVENSON, [1925] 4 D. L. R. 560 ; [1925] 3 W. W. R. 451.—**CAN.**

PART III. SECT. 31, SUB-SECT. 2.—K.

sh. *Power limited to negotiation of investments—No right to registration of mortgage charge.*]—*Re* MUTUAL INVESTMENTS, LTD., [1924] 4 D. L. R. 1070 ; 56 O. L. R. 29.—**CAN.**

4080. *Add. Annotations :—Generally,* **Refd.** British Insulated & Helsby Cables *v.* Atherton, [1926] A. C. 205; *Re* Golomb & Porter & Co.'s Arbitration (1931), 144 L. T. 583; *Re* Lee, Behrens & Co. (1932), 48 T. L. R. 248.

4087. *Add. Annotation :*—**Refd.** British America Nickel Corpn. *v.* O'Brien, [1927] A. C. 369.

4094. *Add. Annotations :* — **Consd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1927] 1 K. B. 826; British Thomson-Houston Co. *v.* Federated European Bank, Ltd., [1932] 2 K. B. 176. **Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

4094a. —].—(1) A question might arise under the 38th clause of the deed, as to whether what the directors are there authorised to do under their general powers must not be done by them at a Board; & it appears to me that it would not be competent to any one, two, or even three directors, by putting their signature to an instrument, to enter into a contract for the society; for, by the 38th section, the contract must be executed at a Board.

(2) I do not think it at all an unreasonable requisition on the part of joint stock cos., that every instrument required in their transactions should be under their common seal. The 44th section of the Act makes such a requisition of the utmost importance; for, according to that section, every contract entered into by an instrument not under their common seal would be unilateral as regards them—a contract under which they would be liable, but of which they could not claim the benefit against those with whom it was entered into.

(3) There is, no doubt, an important distinction to be drawn, & it is drawn in the case of *Royal British Bank* v. *Turquand*, No. 4094, *ante*, between that which, upon the face of it, is manifestly imperfect when tested by the requirements of the deed of settlement of the co., & that which contains nothing to indicate that those requirements have not been complied with. Thus, where the deed requires certain instruments to be under the common seal of the co., every person contracting with the co. can see at once whether that requisition is complied with, & he is bound to do so; but where, as in the case I have last referred to, the conditions required by the deed consist of certain internal arrangements of the co. for instance resolutions at meetings, & the like, if the party contracting with the directors find the acts which they undertake to do to be within the scope of their powers under the deed, he has a right to assume that all such conditions have been complied with. In the case last supposed, he is not bound to inquire whether the resolutions have been duly passed, or the like, otherwise he would be bound to go further back, & to inquire whether the meetings have been duly summoned, & to ascertain a variety of other matters, into which if it were necessary to make such inquiry, it would be impossible for the co. to carry on the business for which it is formed.—*Re* ATHENÆUM LIFE ASSURANCE SOCIETY, *Ex p.* EAGLE INSURANCE CO. (1858), 4 K. & J. 549; 27 L. J. Ch. 829; 4 Jur. N. S. 1140; 6 W. R. 779; 70 E. R. 229.

4095a. ——.]—Deft. bank negligently & in breach of the instructions given by their customer, pltf. co., paid cheques drawn on the co.'s account signed by one director only :—*Held :* the bank being put on inquiry & being negligent, as the jury found, were not entitled to rely on the rule in *Royal British Bank* v. *Turquand*, No. 4094, & assume that a signature purporting to be that of a new director was that of a person duly appointed. —LIGGETT (B.) (LIVERPOOL), LTD. *v.* BARCLAYS BANK, LTD., [1928] 1 K. B. 48; 97 L. J. K. B. 1; 137 L. T. 443, 43 T. L. R. 449.

4100. *Add. Annotation :*—**Consd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

4104a. —— —— **Disputes between directors.**]—STANFIELD *v.* GIBBON, [1925] W. N. 11.

PART III. SECT. 31, SUB-SECT. 3.—C.

4083 iii. —— ——.]—*Re* PACIFIC COAST COAL MINES, LTD. & HODGES (B. C.), [1926] 4 D. L. R. 759; [1926] 3 W. W. R. 378.—**CAN.**

PART III. SECT. 31, SUB-SECT. 3.—D.

4094 i. *Presumption that powers properly exercised.*]—The president & manager of a co., who was personally indebted to a bank, informed it that the co. was indebted to him for salary, & the bank induced him to give it the co.'s note made payable to him & indorsed to the bank. In an action on the note the co. contended that there was no debt due to the manager because no resolution authorising payment of a salary to him had been passed :—*Held :* the passing of such resolution was a matter of internal management, & the bank was not bound to see that it had been passed.—CANADIAN BANK OF COMMERCE *v.* PIONEER FARM CO., LTD. & HALL (Sask.), [1927] 4 D. L. R. 772; [1927] 3 W. W. R. 312.—**CAN.**

4094 ii. ——.]—Deft. co., the owner of mining lands, by an agreement in writing, executed by its president & secretary-treasurer under the co.'s seal, gave L. an option to purchase a portion of the lands. Pltf., a shareholder of deft. co., sought to have the agreement declared null & void because it was not sanctioned by a bye-law of the directors, confirmed by a vote of the shareholders. It appeared that the directors in fact sanctioned the transaction & by a bye-law authorised the president & secretary-treasurer to sell the portion of the lands referred to & to execute documents in connection with any sale, & to affix the co.'s seal thereto :—*Held :* the sale came within the rule in *Royal British Bank* v. *Turquand*.—HERRMANN *v.* CANADIAN NICKEL CO., [1929] 4 D. L. R. 42; 64 O. L. R. 190.—**CAN.**

4094 iii. ——.]—PACIFIC BERRY GROWERS, LTD. *v.* WESTERN PACKING CORPN., LTD., [1929] 1 D. L. R. 814; 1 W. W. R. 426; 41 B. C. R. 78.—**CAN.**

PART III. SECT. 31, SUB-SECT. 3.—E.

d i. —— ——.]—In an action against a co. & its directors, pltf., who was suing on behalf of himself & the other shareholders, applied for an order to continue an interim injunction until after the trial restraining defts. from carrying on as a board of directors. The act complained of was that some of defts. did not wish certain of the other shareholders to be present or represented at the annual general meeting, & prevented such presence or representation by having the meeting take place in an inner office of the place of meeting while some of the other shareholders were waiting to attend in the outer office to the knowledge of defts. :—*Held :* if irregularities were committed in the conduct of the meeting at which resolutions complained of were passed, it could be regularised by the passing of fresh & effective resolutions. The ct. will not interfere in the internal management of the co. Application dismissed.—WATSON *v.* BARRETT (1929), 41 B. C. R. 478.—**CAN.**

d ii. —— ——.]—Whatever should be done by a co. itself through its own internal organisation ought to be left to the co. to do & ought not to be interfered with by the ct. Accordingly, an order, made in an action by a shareholder against the co. appointing a receiver for the co., & a subsequent order, made on an *ex parte* application by the receiver, authorising him to commence an action in the name of himself & the co. to recover property of the co. & for an account of moneys received by two directors of the co. were set aside & the action brought in pursuance of the latter order dismissed, on the motion of one of said two directors.—YOUNG *v.* ALBERTA PETROLEUM CONSOLIDATED, PATTERSON *v.* OKALTA OILS, LTD., & CULBERT, [1930] 1 W. W. R. 86; 1 D. L. R. 903; *sub nom.* PATTERSON *v.* OKALTA OILS, LTD., 24 Alta. L. R. 370.—**CAN.**

4117a. -.]—PARKER & COOPER, LTD. *v.* READING, No. 3160a, *ante*.

4129. *Add. Annotation :*—**Refd.** Leyton U. D. C. *v.* Wilkinson, [1927] 1 K. B. 853.

4136a. ——.]—BRIGHTEN *v.* BOWMAN (1929), 73 Sol. Jo. 748.

4142. *Add. Annotation :*—**Refd.** British Thomson-Houston Co. *v.* Sterling Accessories, Same *v.* Crowther & Osborn, [1924] 2 Ch. 33.

4144. *Add. Annotation :*—**Consd.** Havana Cigar & Tobacco Factories *v.* Oddenino, [1924] 1 Ch. 179.

4145. *Add. Annotation :*—**Refd.** Wiggins *v.* Lavy (1928), 44 T. L. R. 721.

4159. *Add. Annotation :*—**Distd.** Watson *v.* Davies, [1931] 1 Ch. 455.

4166. *Add. Annotations :*—**Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

4170. *Add. Annotations :*—**Consd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246. **Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

4170a. —— —— —— ——.]—HOUGHTON & Co. *v.* NOTHARD, LOWE & WILLS, No. 3157a, *ante*.

4170b. ——.]—By the articles of assocn. of a co. the directors had power to delegate to one or more of their own body such of the powers conferred on the directors as they might consider requisite for carrying on the business of the co., & to determine who should be entitled to sign contracts & documents on the co.'s behalf. A document purporting to be a guarantee was given to pltfs. executed by the co. in this form: "The F. E. B., Ltd., signed N. P." N. P. was a director of the co. During the negotiations for the giving of the guarantee he had written to pltfs., signing the letter "for & on behalf of" the co., "N. P., Chairman." On these facts, in an action on the guarantee: —*Held :* pltfs. were entitled to presume that the directors of the co. had authorised N. P. to sign contracts on behalf of the co., & the co. was liable on the guarantee.—BRITISH THOMSON-HOUSTON CO., LTD. *v.* FEDERATED EUROPEAN BANK, LTD., [1932] 2 K. B. 176; 101 L. J. K. B. 690; 147 L. T. 345, C. A.

4209. *Add. Annotation :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371.

4211. *Add. Annotation :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371.

4232. *Add. Annotation :*—**Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

4236. *Add. Annotation :*—**Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

4237. *Add. Annotation :*—**Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

4239. *Add. Annotations :*—**Consd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1927] 1 K. B. 826; British Thomson-Houston Co. *v.* Federated European Bank, Ltd., [1932] 2 K. B. 176. **Refd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

PART III. SECT. 31, SUB-SECT. 4.—B. (a).

f i. ——.]—*Held :* there was something so out of the ordinary in one co. undertaking to purchase the entire outstanding stock of another as to put pltfs. upon inquiry to ascertain whether the person or persons making the contract had authority in fact to make it.—BROOKS, LTD. *v.* CLAUDE NEON GENERAL ADVERTISING, LTD., [1931] 2 D. L. R. 743; O. R. 92.—**CAN.**

PART III. SECT. 31, SUB-SECT. 4.—B. (b).

sl. *Negligence—Arrest by constable employed by company.*]—Where a co. has statutory power to employ &, practically, to appoint constables & a constable so appointed acts negligently in attempting to effect an arrest in the course of his employment by the co. he renders the co. liable for the damage caused thereby.—VIGNITCH *v.* BOND & CANADIAN PACIFIC RY. CO., [1928] 1 W. W. R. 449; 50 Can. Crim. Cas. 273; 37 Man. L. R. 435.—**CAN.**

PART III. SECT. 31, SUB-SECT. 4.—C.

ki. —— *Agent for sale of bonds—Bonds not issued in compliance with Acts.*]—Where bonds are actually executed by a co. they cannot be said not to exist as bonds even though, because of non-compliance with the requirements of the Cos. Act, they are not legally valid; &, therefore, a person who as agent for the co. & without fraudulent intent induces another to buy such bonds from it cannot be liable in damages merely on the ground of an implied representation that the bonds are legally valid, since, even if such representation can be implied & it proves to be false it is a representation in point of law.—KAVANER *v.* BOWHEY (Alta.), [1928] 4 D. L. R. 907; [1928] 3 W. W. R. 267.—**CAN.**

PART III. SECT. 31, SUB-SECT. 4.—D.

4154 i. *Whether valid.*]—PRICE *v.* INDIANA-ALBERTA OIL CO. (Alta.), [1926] 3 D. L. R. 82.—**CAN.**

PART III. SECT. 31, SUB-SECT. 5.—A. (b) ii.

4176 iv. —— ——.]—*Re* RED DEER MILLING & ELEVATOR CO., STRATFORD MILL BUILDING CO.'S CLAIM (1907), 7 W. L. R. 284; 1 Alta. L. R. 237.—**CAN.**

b i. ——.]—*Re* RED DEER MILLING & ELEVATOR CO., STRATFORD MILL BUILDING CO.'S CLAIM (1907), 7 W. L. R. 284; 1 Alta. L. R. 237.—**CAN.**

c. Read "**4178 i.**"

PART III. SECT. 31, SUB-SECT. 5.—B. (a).

s i. —— ——.]—Before the incorporation of a co. a partner in the name of the partnership entered into an agreement with pltf., under which pltf. undertook the sale of products on a commission basis. The agreement on its face showed that pltf. was to operate on behalf of the co. then in process of incorporation :—*Held :* commissions earned after incorporation of the co. were not recoverable against the partnership; but to recover from the co. pltf. would not be bound to prove an express contract by the co., as the performance & acceptance of his services raised an implied contract to pay.—POWER *v.* EDMONTON LUMBER EXCHANGE (1920), 3 W. W. R. 10; 53 D. L. R. 468.—**CAN.**

a i. —— *Sale of goods.*]—*Re* J. R. MORGAN, LTD., *Ex p.* J. & G. GARMENT MFG. CO. (Ont.), [1926] 1 D. L. R. 882; 8 C. B. R. 52.—**CAN.**

PART III. SECT. 31, SUB-SECT. 5.—B. (b).

4209 vii. ——.]—Prior to the incorporation of pltf. co., a document containing the terms of a proposed contract between it & deft. co. was executed & handed to the organisation committee of pltf. co. as evidence of the fact that defts. were willing to enter into the contract as soon as pltf. co. should have become incorporated. After pltf. co. had become incorporated & received its certificate entitling it to commence business it duly executed the document, & the contract was thereafter acted on :—*Held :* pltf. co. was entitled to sue for damages for breach of such contract.—ASSOCIATED GROWERS OF BRITISH COLUMBIA, LTD. *v.* BRITISH COLUMBIA FRUIT LAND, LTD., [1925] 1 D. L. R. 871; [1925] 1 W. W. R. 505; 34 B. C. R. 533.—**CAN.**

PART III.—SECT. 31, SUB-SECT. 5.—C.

4239 i. *Signature—Promissory note—Authority—Whether bank bound to inquire.*]—The co. was incorporated by Dominion Letters Patent on May 25, 1927, & went into liquidation in June, 1929. Applt. bank filed its claim in respect of five promissory notes made by S., as president, on behalf of the co. & amounting to $28,768.02. The liquidator called upon the bank to prove its claim before the Superior Ct. The notes were signed in blank by S. alone & were handed to L., the New York buying agent of the co., to be filled in & used by L. in payment of goods bought or to be bought by the co. L. filled the blank note forms with the names of two other cos. owned & controlled by him, being also at that time the owner of all the shares of the insolvent co. The notes were indorsed to applt. bank, & it is admitted that the bank was a holder in due course. S. was the only witness at the trial; he produced a by-law of the insolvent co. providing *inter alia* that "all cheques . . . notes . . . shall be signed

4256. *Add. Annotation :*—**Refd.** The Hayle, [1929] P. 275.

4257. *Add. Annotation :*—**Refd.** Lever Bros., Ltd. *v.* Bell (1930), 47 T. L. R. 47.

4267. *Add. Annotations :*—**Apld.** Houghton *v.* Nothard, Lowe & Wills (1927), 44 T. L. R. 76. **Refd.** Newsholme *v.* Road Transport & General Insce., [1929] 2 K. B. 356.

4267a. ——— ———.]—Two rival companies, the N. Co. & the W. Co., formed resp. co. to take over certain branches of their business of fruit importers, the shares of the new co. being equally divided between the two old cos., & the board consisting of two directors of the N. Co., namely, M. & G. Lowe, & two directors of the W. Co. By a brokerage agreement embodied in a letter dated in July, 1924, between M. Lowe & applts., a firm of fruit brokers, it was arranged that applts. should make certain advances to the N. co. & should receive all fruit consigned either to the N. co. or to resp. co. & keep back 70 per cent. of the net proceeds in reduction of the advances, & it was stipulated that resp. co. should subscribe to this arrangement. Applts. also obtained a guarantee of the loan from the two Lowes & a third director of the N. Co., who was also the secretary of resp. co. This arrangement was not ratified by any agreement under the seal of resp. co., but the secretary wrote to applts. purporting to confirm the arrangement on behalf of his co. The directors of resp. co., other than the two Lowes, first became aware of the arrangement after it had been in operation for some months. & it was then put an end to. Applts. had obtained fruit consigned to resp. co. on board several ships without production of the bills of lading, on giving an indemnity to the ships, & they sued resp. co. for delivery of the bills of lading. Resps. counterclaimed for the proceeds of fruit belonging to them & not accounted for :—*Held :* (1) the arrangement contained in the agreement of July was not authorised by resp. co. ; (2) resp. co. were not estopped from denying the existence of the arrangement by the knowledge of the Lowes, inasmuch as they were parties to the wrong done to the co., or by the omission of the other directors to inspect the accounts of the co., which would have disclosed the arrangement.—HOUGHTON (J. C.) & Co. *v.* NOTHARD, LOWE & WILLS, LTD., [1928] A. C. 1 ; 97 L. J. K. B. 76 ; 138 L. T. 210 ; 44 T. L. R. 76, H. L.

Annotations :—As to (2) **Refd.** Kreditbank Cassel G. M. B. H. *v.* Schenkers, Ltd., (1927) 1 K. B. 826 ; Liggett B. (Liverpool), Ltd. *v.* Barclays Bank, Ltd., [1928] 1 K. B. 48 ; Newsholme Bros. *v.* Road Transport & General Insce. Co., [1929] 2 K. B. 356.

4272. *Add. Annotation :*—**Refd.** The Hayle, [1929] P. 275.

4278. *Add. Annotations :—As to* (1) **Refd.** Watt *v* Longsdon (1929), 98 L. J. K. B. 711 ; Chapman *v.* Ellesmere (1932), 101 L. J. K. B. 376.

4282. *Add. Annotations :*—**Refd.** Watt *v.* Longsdon (1929), 98 L. J. K. B. 711 ; Osborn *v.* Boulter (Thomas) & Son, [1930] 2 K. B. 226.

4283. *Add. Annotations :*—**Refd.** Isaacs *v.* Cook, [1925] 2 K. B. 391 ; Osborn *v.* Boulter (Thomas) & Son, [1930] 2 K. B. 226.

4291. *Add. Annotation :*—**Refd.** R. *v.* Registrar of Joint Stock Companies, *Ex p.* More, [1931] 2 K. B. 197.

4297a. ——— ——— **Compulsory form of document to be used by members.**]—*Re* NORTH OF ENGLAND PROTECTING & INDEMNITY ASSOCN. (1929), 45 T. L. R. 296.

by such officer . . . of the co. & in such manner as shall from time to time be determined by resolution of the Board of Directors," & he also produced a resolution of the directors pursuant to the by-law which provides " that all notes . . . be signed by the president & countersigned by the auditor . . .," of which resolution applt. bank had no knowledge :—*Held :* applt. bank, being a holder in due course, was entitled to rank as a creditor of the insolvent co. The notes were made in general accordance with the authority of the president under the by-law of the co., & it was not necessary for applt. bank to inquire into the authority of the president to sign the notes on behalf of the co. Under sect. 106*d* of the Dominion Cos. Act, the president had to be one of the directors ; &, under sect. 37, the only persons who could make notes on behalf of the co. would be those designated in the by-law. Persons dealing with a co. are presumed to have notice of what is contained in the Act under which the co. was incorporated & the Letters Patent ; &, in a case like the present, where the Act refers specifically to the by-laws as the place where the authority of an officer or an agent to sign promissory notes is to be found, the person taking a note made by an officer is under obligation to ascertain from the by-laws that the officer who signed the note might have been authorised to make such note in the course of the co.'s business ; but he is not obliged to go further & inquire whether the directors passed the resolution which would give the officer express authority. That constitutes part of the co.'s " indoor management." If the officer might, under the by-laws, have been authorised to make the note, the making of it was within his ostensible powers & was " in general accordance with his powers as such under the by-laws."—*Re* ALMUR FUR TRADING CO., BANK OF UNITED STATES *v.* ROSS, [1932] S. C. R. 150 ; 2 D. L. R. 128.—**CAN.**

PART III. SECT. 31, SUB-SECT. 6.—A. (c).

k i. ——— *Solicitor.*]—BANK OF BRITISH NORTH AMERICA *v.* ST. JOHN & QUEBEC RY. CO. (N. B.) (1920), 52 D. L. R. 557.—**CAN.**

PART III. SECT. 31, SUB-SECT. 9.—A.

p i. ———.]—*Held :* (1) 1908 Act, s. 9, did not limit alteration of the memorandum of assocn. to an alteration of the objects clause, inasmuch as the whole objects of a co. were not necessarily contained in that clause ; (2) a proposed alteration being designed for the better attainment of the objects of the co., a petition for confirmation of the alteration should be granted.—INCORPORATED GLASGOW DENTAL HOSPITAL *v.* LORD ADVOCATE, [1927] S. C. 400.—**SCOT.**

q i. ——— *Incorporation abroad.*]—A co., registered under Cos. Acts, presented a petition for an alteration of its memorandum of assocn. by the addition of a power " to procure the co. to be incorporated, registered, or recognised in any foreign country." The ct., while sanctioning the power to procure the registration or recognition of the co. in a foreign country, refused to confirm the power to procure its incorporation there.—*Re* TAYSIDE FLOORCLOTH CO., LTD., [1923] S. C. 590.—**SCOT.**

4308 iv. ———.]—A cemetery co. sought additional power to act as " stone & marble cutters, masons, quarriers & sculptors, florists, gardeners, & undertakers." The ct., in the absence of evidence of any convenience or advantage to the co., restricted the new powers by limiting them to powers to be used in connection with, & as incidental to, the co.'s main business of cemetery owners.—EDINBURGH SOUTHERN CEMETERY CO., LTD., [1923] S. C. 867.—**SCOT.**

4308 v. ———.]—A reversionary co. presented a petition for confirmation of a special resolution by which it was proposed to alter its memorandum of assocn. by adding powers to carry on, along with its existing business, that of trust investment, & to sell or otherwise dispose of the whole or any part of its property & assets for such consideration as it might think fit, &, in particular, for shares, stock, debentures, debenture stock, or securities of any company purchasing the same. The ct. confirmed the alteration holding, with regard to the proposed power to sell, that it did not involve a sale of the undertaking but merely of assets, & in view of the extension of the co.'s business, was germane to its operations as an investment co.—METROPOLITAN REVERSIONS, LTD., [1928] S. C. 480.—**SCOT.**

4308 vi. ———.]—The additional business which a co., by an alteration of its objects effected under Cos. Act. 1908, s. 162 (5), is permitted to carry on may be one which is wholly different from & which has no relation to the then existing business of the co., & it may yet be quite capable of being conveniently & advantageously combined with it, provided the new business is

4320. After this case add "*See, now*, 1929 Act, s. 5 (1) (f), (g)."

4321a. Society not for profit.]—A provision in a memorandum of assocn. of a society not for profit, registered under 1867 Act, & authorised by the Board of Trade under sect. 23 of that Act to dispense with the word "limited," that in certain events the liability of members shall be unlimited, is not a provision in the memorandum "with respect to the objects of the co." under 1908 Act, s. 9 (1), & the cancellation of such a provision cannot be confirmed by the ct.—*Re* SOCIETY FOR PROMOTING EMPLOYMENT OF WOMEN (1927), 71 Sol. Jo. 583.

Annotation :—**Folld.** *Re* Scientific Poultry Breeders' Assocn., Ltd., [1932] W. N. 199.

4321b. —— Alteration permitting remuneration of governing body.]—*Re* SCIENTIFIC POULTRY BREEDERS' ASSOCN., LTD. (1932), 101 L. J. Ch. 423; 49 T. L. R. 4; 76 Sol. Jo. 798, C.A.

4369a. Affidavit of notice—Omission to exhibit register of members.]—On an application by petition made by a co. for confirmation of an alteration of the objects of the co., the secretary's affidavit of the posting of notices, contrary to the usual practice, did not exhibit the register of members :—*Held :* the petition would be granted notwithstanding the omission to exhibit the register, the ct. being of opinion that no useful purpose was served by exhibiting it, provided that, as in the present case, the affidavit of the secretary proved that the register was duly kept & contained the name & last known address of every person who was a member of the co. on the material date.—*Re* DEBENTURE CORPN., LTD. (1931), 47 T. L. R. 399.

4377. *Add. Annotation :*—**Consd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

4380. *Add. Annotation :*—**Refd.** Egyptian Salt & Soda Co. *v.* Port Said Salt Assocn., Ltd., [1931] A. C. 677.

4389. *Add. Annotation :*—**Overd.** English, Scottish & Australian Bank, Ltd. *v.* I. R. Comrs. (1931), 48 T. L. R. 170.

4389a. Simple contract debts recoverable out of United Kingdom.]—An agreement for the sale of, amongst other things, simple contract debts owed by debtors resident out of the United Kingdom is exempt from *ad valorem* stamp duty in respect of such debts upon the ground that they are "property locally situate out of the United Kingdom" within Stamp Act, 1891 (c. 39), s. 59 (1).—ENGLISH, SCOTTISH & AUSTRALIAN BANK, LTD. *v.* INLAND REVENUE COMRS., [1932] A. C. 238; 101 L. J. K. B. 193; 146 L. T. 330; 48 T. L. R. 170, H. L.

4393. *Add. Annotation :*—*As to* (1) **Refd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 664.

4423. *Add. Annotation :*—**Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465.

not destructive of or inconsistent with the existing business.—*Re* MATAKANA CO-OPERATIVE DAIRY CO., LTD., [1929] N. Z. L. R. 721.—**N.Z.**

4308 vii. ——.]—A co. whose objects, as stated in its memorandum, were "to manufacture, sell, & trade in ginger beer, lemonade, soda water, & other aerated waters & drinks, & to do all such other acts as might be incidental to the attainment of these objects, presented a petition under sect. 5 craving confirmation of a resolution altering its memorandum by inserting after the word "drinks" the words "& also to bottle, sell & trade in all alcoholic beers." A reporter to whom the petition was remitted stated that, in his view the proposed new line of business could conveniently & advantageously be combined with the existing business. The ct. granted the prayer of the petition.—*Re* DUNDEE AERATED WATER MANUFACTURING CO., [1932] S. C. 473.—**SCOT.**

4308 viii. ——.]—A co., incorporated to carry on the business of maltsters & hop merchants, presented a petition under 1929 Act, s. 5, craving the ct. to confirm a resolution altering its memorandum of assocn., by the insertion of a clause enabling the co. to carry on, along with its existing business, the business of fruit merchants & canners, & preserve manufacturers. It appeared that, in the course of its existing business, the co. was in the habit of purchasing hops from persons who also grew fruit, & of selling hops, malt, & barley to persons engaged in the refreshment trade; & in those circumstances, the co. maintained that it could conveniently engage in business of the character proposed. The ct. confirmed the proposed alteration.—*Re* BAIRD & SONS, [1932] S. C. 455.—**SCOT.**

r i. ——.]—A co. sought the addition of a power to sell, let on rent, or lease the undertaking of the co., or any branch or part thereof. The ct. restricted the power to any branch or part of the undertaking . . . being an adjunct to the main undertaking.—*Re* TAYSIDE FLOORCLOTH CO., LTD., [1923] S. C. 590.—**SCOT.**

PART III. SECT. 31, SUB-SECT. 9.—B. (c).

sc. *Alteration causing breach of lease.*]—The corpn. of G. possessed statutory powers to make & maintain tramways in the streets of G. Sect. 26 of their statute provided that animal power alone should be used on the tramways. The corpn. leased the tramways to a limited co. which was promoted for the purpose of acquiring the lease, & whose objects as specified in the memorandum of assocn., were to carry on the working of the tramways & omnibus traffic in connection therewith under the lease & after the expiration of the lease to carry on the business of omnibus proprietors in the city & vicinity. The co. acquired a large stock of horses & plant, the greater part of which would be rendered useless in the event of the lease not being renewed & accordingly, when about three years of the lease had still to run, the co. applied for an alteration of its memorandum to include (*inter alia*) these objects: "(10) to exercise the powers & carry on the business of a tramway co.; (13) to work & move all or any of the vehicles by means of electrical power, steam power or any other mechanical power." Application opposed by corpn. as being breach of contract to alter constitution & because object (13) was inconsistent with Parliamentary prohibition :—*Held :* promoting & disposing of tramways was an object foreign to the purposes of the memorandum & could not be sanctioned, & that *quoad ultra* the alterations fell to be confirmed.—GLASGOW TRAMWAY & OMNIBUS CO., LTD. *v.* GLASGOW MAGISTRATES (1891), 18 Rettie, 675.—**SCOT.**

PART III. SECT. 32, SUB-SECT. 1.—C.

q i. —— ——.]—Deft. co. bought land from pltfs., & in payment therefor transferred to pltfs. a block of shares in another co., agreeing to re-purchase from pltfs. at a fixed price, on or before a fixed day, the shares, or as many of them as should not have been previously sold or transferred by pltfs. :—*Held :* the agreement to re-purchase was *ultra vires* deft. co. as Cos. Act, s. 44, expressly prohibits a purchase of shares in another co.—GRANT *v.* DOMINION LOOSE LEAF CO. (1924), 56 O. L. R. 43.—**CAN.**

PART III. SECT. 32, SUB-SECT. 2.—A.

sm. *Whether power implied from power to purchase land.*]—Where a joint stock co. is given by its memorandum express power to purchase land, it is implied as part of its constitution that it has power to let the land, & if necessary to sell it.—GUJERAT GINNING & MANUFACTURING CO. *v.* MOTILAL HIRABHAI SPINNING CO. (1928), I. L. R. 53 Bom. 792.—**IND.**

PART III. SECT. 32, SUB-SECT. 2.—B. (a).

4401 i. —— *Under power in memorandum—For shares in another company.*]—Such sale does not necessarily involve winding up, &, where the directors' authority is derived from a vote of the shareholders, a majority vote is sufficient.—HEMSTREET *v.* NORTH WEST BISCUIT CO., [1926] 2 D. L. R. 829; [1926] 2 W. W. R. 150; 22 Alta. L. R. 233.—**CAN.**

g i. —— *Land acquired for carrying on company's undertaking—Companies Act, R. S. O.*, 1914 (c. 178), *s.* 24.]—*Re* ALLAN BROWN'S, LTD. & DRYALL, [1927] 2 D. L. R. 991; 60 O. L. R. 267.—**CAN.**

PART III. SECT. 32, SUB-SECT. 2.—B. (c).

o i. ——.]—DADSON *v.* GREST (Sask.), [1927] 3 D. L. R. 530.—**CAN.**

PART III. SECT. 33, SUB-SECT. 1.

sn. *Institution of proceedings—Necessity to employ solicitor.*]—A co. cannot issue a writ of summons by any one but a solr.—WESTERN PRODUCERS MUTUAL HAIL INSURANCE CO. *v.* STEWART (Sask.), [1928] 1 W. W. R. 320.—**CAN.**

4427. *Add. Annotation :* — **Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769.

4428. *Add. Annotation :*—**Refd.** *Re* Lee, Behrens & Co. (1932), 48 T. L. R. 248.

4436. *Add. Annotation :*—**Refd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

4458. *Add. Annotations :*—**Refd.** Russian Commercial & Industrial Bank *v.* Comptoir d'Escompte de Mulhouse, Banque Internationale De Commerce De Petrograd *v.* Goukassow (1924), 40 T. L. R. 837 ; Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255 ; Todd *v.* Egyptian Delta Land & Investment Co., [1928] 1 K. B. 152.

4488. *Add. Annotation :—As to* (1) **Refd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

4501a. —— **Dissenting—Joinder as defendant.**]— In a representative action by a pltf. on behalf of himself & all other bondholders :—*Held :* a dissentient bondholder, it not appearing that there were any others who dissented, should be added as a deft., but not in a representative character.—WILSON *v.* CHURCH (1878), 9 Ch. D. 552 ; 39 L. T. 413 ; 26 W. R. 735.

Annotations :—**Consd.** McCheane *v.* Gyles (No. 2), [1902] 1 Ch. 911. **Refd.** Cunnach *v.* Edwards (1894), 64 L. J. Ch. 344.

4503. *Add. citation :*—6 Dow. & L. 606.

4513a. General rule—Necessity for solicitor.]—A co. can only appear by attorney (*per* CUR.). —SCRIVEN *v.* JESCOTT (LEEDS), LTD. (1908), 53 Sol. Jo. 101.

4524. For this number read " 4525."

4525. For this number read " 4524."

4526. *Add. Annotation :*—**Refd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

4568. *Add. Annotation :*—**Refd.** A.-G. *v.* Smethwick Corpn. (1932), 96 J. P. 105.

PART III. SECT. 33, SUB-SECT. 3.—A.

e i. —— ——.]—Deft. " as the largest shareholder " of a co. claimed damages for false representations made as to the business of the co., which had the effect of depriving the co. of its clients :—*Held :* the cause of action alleged was not defamation but an *injuria* done merely to the co., for which the co., & not an individual shareholder, was entitled to sue.—GOODALL *v.* HOOGENDOORN, LTD., [1926] App. D. 11.—**S. AF.**

k i. —— —— —— —— *Refusal unnecessary where no one to authorise use of name.*]—MASON *v.* LIVINGSTONE (Alta.), [1928] 2 D. L. R. 799.—**CAN.**

p i. .]—A shareholder suing behalf of himself & all other shareholders can maintain an action alleging illegal use of the co.'s money, when it clearly appears that an application to the co. to authorise such an action would be futile.—HOUSTON *v.* VICTORIA MACHINERY DEPOT, LTD., [1924] 2 D. L. R. 657 ; 33 B. C. R. 425.—**CAN.**

q i. —— ——.]—FARRELL *v.* MAGIC SILVER-BLACK FOX CO., [1924] 3 D. L. R. 132.—**CAN.**

q ii. —— ——.]—SHAW *v.* WAINWELL OILS, LTD. (Alta.), [1929] 3 D. L. R. 621.—**CAN.**

t i. *Using company's name as plaintiff —No authority to use name—Doubt as to wishes of shareholders.*]—If on an application to strike out the name of a co. which has been used as pltf. without authority, there is any reasonable doubt as to the wishes of the shareholders, the name will be allowed to remain until their wishes are ascertained.—LEAVENS *v.* GREAT WEST PERMANENT LOAN CO., [1927] 2 W. W. R. 606 ; 36 Man. L. R. 606.—**CAN.**

4446 i. *Internal management—Conduct of majority ultra vires—Or fraudulent.*]—Although the rule that in order to redress a wrong done to a co. or to recover money or damages due to the co. the action should be brought by the co. itself is subject to the exception that the complaining shareholders may sue in their own names where the persons against whom the relief is sought themselves hold & control the majority of the shares in the co., & will not permit an action to be brought in its name, yet in such an action pltfs. cannot have a larger right to relief than the co. itself would have if it were pltf., & cannot complain of acts which are valid if done with the approval of the majority of the shareholders, or are capable of being confirmed by the majority : therefore, the cases in which the minority can maintain such an action are confined to those in which the acts complained of are of a fraudulent character or beyond the powers of the co.—MASON *v.* LIVINGSTON, [1929] 1 D. L. R. 608 ; 1 W. W. R. 295 ; 24 Alta. L. R. 69 ; *varg.*, [1928] 3 D. L. R. 468.—**CAN.**

so. *Several groups of shareholders claiming to represent company—Stay of proceedings.*]—In company cases where there is an internecine warfare between factions, each claiming to be entitled to represent the co., the practice is to direct the proceedings be stayed until after a meeting of shareholders has been held, & the will of the majority ascertained.—DUMART PACKING CO., LTD. *v.* DUMART, [1928] 1 D. L. R. 640 ; 61 O. L. R. 478.—**CAN.**

PART III. SECT. 33, SUB-SECT. 3.—D. (a).

k i. —— *Action by beneficial owner on behalf of himself & all other shareholders.*] —*Held :* it was not open to pltfs. in a suit framed on behalf of themselves & all other shareholders of the co. to bring a suit as beneficial owners of shares, against the co. for enforcement of their beneficial rights & that the whole of the allegations & relief asked with respect to such suit must be struck out.—MAAS *v.* MCINTOSH (1928), 28 S. R. N. S. W. 441 ; 45 N. S. W. W. N. 107.—**AUS.**

PART III. SECT. 33, SUB-SECT. 3.—D. (b).

sq. —— *Unregistered shareholder.*]—In an action wherein pltf. alleged that he was a shareholder in deft. co. & sued on behalf of himself & all the other shareholders to compel the individual defts. to account to the co. for shares alleged to have been illegally obtained by them, it was held that, although pltf. was not a registered shareholder, he had a *status* to bring the action whether he was the beneficial owner outright of the shares alleged to be his or owned then subject to a charge in favour of the registered holder.—GOODBUN *v.* MITCHELL (Man.), [1928] 1 W. W. R. 495.—**CAN.**

PART III. SECT. 33, SUB-SECT. 6.

k i. —— *Essential condition.*]—Service of a statement of claim on a co. is not good unless the officer or agent served is a person who is likely to bring it to the co.'s notice, even though he is one who under the rules may be served as representing the co.—ROYAL TRUST CO. *v.* SPILLERS CANADIAN MILLING CO., [1931] 2 W. W. R. 841 ; 4 D. L. R. 430 ; 25 Alta. L. R. 542.—**CAN.**

PART III. SECT. 33, SUB-SECT. 12.

4535 i. *Out of what fund—Action by company for benefit of directors.*]—While it is a well established rule that directors may not use the co.'s funds in payment of their own costs, although such costs would not have been incurred if they had not been directors, yet it is equally well established that directors acting as such within such of the co.'s powers as are confided to them & without gross negligence, cannot be called upon to pay out of their own funds the costs of defending resolutions passed by them in the interests of the co., simply because a pltf. has chosen to make them individually co-defts.—NORTHERN LIFE ASSURANCE CO. OF CANADA *v.* MCMASTER, [1928] 3 D. L. R. 497 ; [1928] S. C. R. 512.—**CAN.**

PART III. SECT. 33, SUB-SECT. 13.—A. (b) ii.

sr. " *Credible testimony* " *of inability to pay—What is.*]—In an action for reduction of a lease, brought by a co., defender was assoilzied & obtained an award of expenses. Pursuers having reclaimed, defender, founding upon an unfavourable balance-sheet of pursuers which was about a year old, moved that pursuers should be required to find caution for expenses under 1908 Act, s. 278. The ct. refused the motion, as it did not appear by " credible testimony " that pursuers would be unable to pay defender's expenses if he were successful, in respect that a later balance-sheet showed that the financial depression from which pursuers had been suffering was passing off, &, further, in respect that pursuers had a responsible directorate & a profitable record in the past, & that there was no suggestion that any creditor was pressing them for payment which he was unable to get.—EDINBURGH ENTERTAINMENTS, LTD. *v.* STEVENSON, [1925] S. C. 848.—**SCOT.**

PART III. SECT. 34, SUB-SECT. 1.—A. (a).

4569 ii. ——.] — ZIMMERMAN *v.* ANDREW MOTHERWELL OF CAN., LTD. (TRUSTEE) [1925], 3 D. L. R. 953 ; 3 W. W. R. 42.—**CAN.**

PART III. SECT. 34, SUB-SECT. 1.—A. (b).

sw. *Elevator company—Bond for price of elevator.*]—A co. whose charter provides that it " may acquire, own, lease & sell real estate," & " build, sell, lease & otherwise deal with elevators, etc.," & further " may issue bonds bearing interest to an amount not exceeding the cost of any elevator built by it," has the power to issue such bonds for the price of an elevator bought by it.—ROYAL TRUST CO. *v.* GREAT NORTHERN ELEVATOR CO. (1906), Q. R. 30 S. C. 499.—**CAN.**

4607. *Add. Annotations.*—**Consd.** Garrard *v.* James, [1925] Ch. 616; *Re* George Inglefield, Ltd. (1932), 48 T. L. R. 536.

4623. *Add. Annotations:—As to* (2) **Consd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1927] 1 K. B. 826; British Thomson-Houston Co. *v.* Federated European Bank, Ltd., [1932] 2 K. B. 176. **Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

4625. *Add. Annotations:—As to* (1) **Consd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775. **Refd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

4630. *Add. Annotation:—As to* (2) **Refd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246.

4637. *Add. Annotation:*—**Refd.** Lemon *v.* Austin Friars Investment Trust, [1926] Ch. 1.

4637a. Whether certificate securing income stock is debenture.]—Defts., a limited co., issued certificates for securing income stock, & a certificate was issued to pltfs. whereby the co. certified that it was indebted to them in a certain amount. The certificate stated that three-fourths of the net profits of the co. in each year or a sum equal thereto were to be applied in paying off the income stock *pari passu*. Under conditions indorsed on each certificate a register of the certificates was to be kept at the co.'s registered office, wherein would be entered the names & addresses of the registered holders & particulars of the certificates held by them & by clause 9 of the conditions the rights of the holders might be modified with the consent of the holders of three-fourths in value of the certificates. Pltfs. were refused inspection of the register, & brought an action for an injunction to restrain defts. from interfering with their right, under 1908 Act, s. 102, to inspect the register:—*Held:* (1) the certificates were debentures within the sect., & pltfs. were entitled to the injunction; (2) all the holders of income stock certificates were entitled to inspection of the register thereof kept by the co. in accordance with the conditions.—Lemon *v.* Austin Friars Investment Trust, Ltd., [1926] Ch. 1; 95 L. J. Ch. 97; 133 L. T. 790; 41 T. L. R. 629; 69 Sol. Jo. 762, C. A.

4639. *Add. Annotation:*—**Refd.** Fenton Textile Assocn. *v.* Lodge, [1928] 1 K. B. 1.

4652a. Whether prospectus may be considered.]—*Re* Chicago & North West Granaries Co., Ltd., No. 814, *ante*.

4652b. —.]—In determining a question as to the construction of a debenture the ct. cannot refer to the prospectus pursuant to which the debenture was issued.—*Re* Tewkesbury Gas Co., Tysol *v.* Tewkesbury Gas Co., [1911] 2 Ch. 279; 80 L. J. Ch. 590; 105 L. T. 300; 27 T. L. R. 511; 55 Sol. Jo. 616; 18 Mans. 301; *affd.*, [1912] 1 Ch. 1, C. A.

Annotation:—**Distd.** Jacobs *v.* Batavia, & General Plantations Trusts, Ltd., [1924] 1 Ch. 287; 93 L. J. Ch. 520.

s i. —— ——.]—Although under Rural Telephone Act, 1920 (c. 96), s. 31, deft. co. is impliedly prohibited from borrowing money otherwise than by the issue & sale of debentures, & has no power to make or give a promissory note, yet, held in an action on a promissory note, &, in the alternative for money borrowed, that, since the money was used by deft. in paying its legitimate debts incurred in carrying out the purposes of the co. pltf. was entitled to recover on the alternative claim with interest at the legal rate.—Smith *v.* Elrose Rural Telephone Co., Ltd., [1928] 3 D. L. R. 51; [1928] 1 W. W. R. 970; 22 Sask. L. R. 414.—**CAN.**

sd. *Co-operative livestock company incorporated under Companies Act.*]—*Held:* to have power to borrow.—Canadian Bank of Commerce *v.* Johnson (Alta.), [1926] 4 D. L. R. 1179; [1926] 3 W. W. R. 613.—**CAN.**

PART III. SECT. 34, SUB-SECT. 1.—B.

sk. *Power to borrow & raise money—Mortgage.*]—*Held:* a mtge. over part of a co.'s real estate as security for a loan was justified.—Unique Properties, Ltd. *v.* Endean, [1927] N. Z. L. R. 244.—**N.Z.**

PART III. SECT. 34, SUB-SECT. 1.—D. (b).

4594 i. *Capital only capable of being called up in winding up—Company limited by guarantee.*]—A co. limited by guarantee was formed for the purpose of promoting an exhibition. Among its objects were the formation of a guarantee fund; the receipt of subscriptions thereto from persons, whether members of the co. or not, for the purpose of carrying out its objects & defraying its expenses; & the assignation of the letters of guarantee to any corporation which might give it credit. The co. obtained an undertaking from a firm, which was not one of its members, to pay a proportion of any loss arising in connection with the holding of the exhibition. It subsequently assigned the undertaking to a bank which had given it credit. A loss having occurred, the bank sued the firm upon the guarantee. The defenders contended that the assignation was *ultra vires*, having been made at a time when the co. was not in liquidation:—*Held:* the assignation was valid, in respect that the guarantee fund was not capital of the co. within the meaning of sects. 2 & 4 (1) (*v*) of 1908 Act, which could only come under the control of the co. or its directors in the event of liquidation, but formed an independent fund of credit to which an assignee could make good his right on the happening of the event on which the guarantee was contingent.—Lloyds Bank, Ltd. *v.* Morrison & Son, [1927] S. C. 571.—**SCOT.**

PART III. SECT. 34, SUB-SECT. 2.—A.

sm. *Agreement postponing lien of bondholders to lien of lender—Agreement not signed by all bondholders.*]—*Held:* binding on the bondholders.—Greene *v.* Ruggles (1891), 31 N. B. R. 679.—**CAN.**

PART III. SECT. 34, SUB-SECT. 2.—C. (a) ii.

m i. ——.]—Merchants Bank of Canada *v.* Hancock (1884), 6 O. R. 285.—**CAN.**

PART III. SECT. 34, SUB-SECT. 2.—C. (b) i.

r i. —— *Issue before prospectus filed.*]—Martin *v.* Clarkson, [1926] 3 D. L. R. 29; 58 O. L. R. 618; 7 C. B. R. 619.—**CAN.**

b i. —— *For price of shares sold by one member to another.*]—The mtge. in question herein made by deft. co. held to be *ultra vires*, since it was made for the purpose of enabling one of the shareholders to purchase for his own benefit the shares of another & no case of necessity for the transaction had been established, there being no evidence of any disagreement among the shareholders or that the co. was in jeopardy or that it needed funds to carry on its operations. The mtgee. was held entitled, however, to recover the amount actually advanced with interest thereon.—Martin *v.* Northern Hotel Co., Ltd., [1932] 1 W. W. R. 242.—**CAN.**

sn. *Unauthorised loan—Recoverable.*]—Douglas *v.* Maritime United Farmers Co-op., Ltd., Wilson *v.* Maritime United Farmers Co-op., Ltd. (N. B.), [1928] 3 D. L. R. 166.—**CAN.**

PART III. SECT. 34, SUB-SECT. 2.—C. (b) ii.

k i. —— —— ——.]—Persons lending money to a co. have a right to assume that the essentials of internal management have been carried out by the co.—Martin *v.* Clarkson, [1925] 4 D. L. R. 232; 57 O. L. R. 499; 5 C. B. R. 835.—**CAN.**

PART III. SECT. 34, SUB-SECT. 2.—C. (c).

m i. ——.]—Where debentures were issued before the co. had filed a prospectus:—*Held:* even if the debentures were not valid in the hands of the debenture-holder, they were valid in the hands of the pledgee to whom they had been assigned.—Martin *v.* Clarkson, [1926] 3 D. L. R. 29; 58 O. L. R. 618; 7 C. B. R. 619.—**CAN.**

PART III. SECT. 34, SUB-SECT. 3.—A. (b) i.

p i. —— —— *Whether misfeasance claims included.*]—Where a debenture purports to create a charge on "the undertaking of the co. & all its property present & future including uncalled capital," misfeasance claims are included in such charge.—*Re* Buick Sales, Ltd., [1926] N. Z. L. R. 24.—**N.Z.**

4652c. -.]—JACOBS v. BATAVIA & GENERAL PLANTATIONS TRUST, No. 814a, *ante*.

——.]—*Compare* DEEDS, Vol. XVII., p. 342, No. 1537.

4676. *Add. Annotation:*—**Refd.** Fenton Textile Assocn. *v.* Lodge, [1928] 1 K. B. 1.

4677a. —— **Right to issue originating summons under R. S. C., Ord. 55, r. 3—To ascertain persons entitled.**]—*Re* CHILLAGOE RY. & MINES, LTD., TRUST DEED (1930), 46 T. L. R. 242.

4678a. —— **General rule.**]—*Re* MAGADI SODA CO., LTD., No. 7409a, *post*.

4678b. —— **Wilful neglect or default—What amounts to.**]—*Re* LEEDS CITY BREWERY, LTD.'S TRUSTS, LEEDS CITY BREWERY, LTD. *v.* PLATTS, [1925] 1 Ch. 532, n., C. A.

Annotations:—**Apld.** *Re* City Equitable Fire Insce. Co., [1925] 1 Ch. 407. **Refd.** *Re* Vickery, Vickery *v.* Stephens, [1931] 1 Ch. 572.

4688a. **Refusal to give information to debenture-holders—Acquisition of debentures from cestuis que trust at inadequate prices.**]—*Re* MAGADI SODA CO., LTD., No. 7409a, *post*.

4690. *Add. Annotation:*—**Refd.** *Re* Automatic Bottle Makers, Osborne *v.* Automatic Bottle Makers, [1926] Ch. 412.

4697. *Add. Annotation:*—*As to* (2) **Refd.** National Provincial Bank of England *v.* Charnley (1923), 93 L. J. K. B. 241.

4698. *Add. Annotation:*—**Refd.** Earle *v.* Hemsworth R. D. C. (1928), 44 T. L. R. 605.

4699a. Effect of section—Redemption of debenture—Remedies of liquidator.]—A co., which had become insolvent, issued to a trustee, as security for some of their debts, a debenture which was to rank as a first charge on the co.'s assets & as a floating security only. Subsequently the co. sold the goodwill of its business, & out of the proceeds paid to the trustee the amount required to discharge the debenture. Within three months from the issue of the debenture a different creditor of the co. obtained a winding-up order. The liquidator took out a summons to set aside the charge created by the debenture & to recover the money paid under it:—*Held:* though under 1908 Act, s. 212, the charge was invalid, the amount paid could not be recovered on the summons, but it would be open to the liquidator either to apply to set aside the payment as a fraudulent preference within sect. 210, or to question the validity of the debenture on any other ground.—*Re* PARKES GARAGE (SWADLINCOTE), LTD., [1929] 1 Ch. 139; 98 L. J. Ch. 9; 140 L. T. 174; 45 T. L. R. 11; [1928] B. & C. R. 144, D. C.

4700. *Add. Annotation:*—**Consd.** *Re* Lloyd's Furniture Palace, Evans *v.* Lloyd's Furniture Palace, [1925] Ch. 853.

4708. *Add. Annotation:*—*As to* (1) **Apld.** *Re* Stanton, [1929] 1 Ch. 180.

4709a. -.]—Moneys were advanced on the security of debentures creating a floating charge on the property & assets of the co. Fifty-four days elapsed after the first advance & five days after the last advance before the issue of the debentures on Jan. 20, 1926. The delay in the issue of the debentures was not acquiesced in by the lenders, who when they sent cheques for the advances wrote that the money was in further payment on account of debentures to be issued as arranged. The co. went into liquidation on Jan. 25, 1926. During the period in which the bulk of the advances were made the lenders were unaware that the co. was on the verge of liquidation. The debentures were issued when the co. was unable to pay its debts:—*Held:* the debentures were valid, the payments being made "at the time of" the creation of the charge & in consideration for the charge within 1908 Act, s. 212, & consequently the debentures were not a fraudulent preference within 1908 Act, s. 210.—*Re* STANTON (F. & E.), LTD., [1929] 1 Ch. 180; 98 L. J. Ch. 133; 140 L. T. 372; [1928] B. & C. R. 161.

4716. *Add. Annotation:*—**Folld.** Heaton & Dugard *v.* Cutting, [1925] 1 K. B. 655.

4716a. -.]—Judgment having been recovered in an action against a limited co., which had issued debentures giving a floating charge over its property, execution was issued under a *fi. fa.*, & the sheriff went into possession. In order to avoid a sale the co.'s managing director paid the judgment debt & costs, whereupon the sheriff withdrew. Thereafter, & before the sheriff paid the amount of the debt & costs to the execution creditors, the debenture-holders in deft. co. appointed a receiver, who claimed to be entitled to the money in the hands of the sheriff:—*Held:* the money was paid to the sheriff as a debt owing by defts. to the execution creditors, who were therefore entitled to retain it as against the receiver.—

PART III. SECT. 34, SUB-SECT. 3.—C. (a).

sq. *Mortgage of specific assets.*]—A co. deposited & pledged with & to a bank as security for repayment of a loan all the liquid assets, including stock-in-process now or at any time hereafter to be stored by the co. in its godowns, the keys of which had been delivered to the bank:—*Held:* the charge was not a floating charge, but a mtge. of specific assets, with a licence to the mtgor. to dispose of them in the course of the business subject to prescribed conditions.—BANK OF BARODA, LTD. *v.* H. B. SHIVDASANI (1926), I. L. R. 50 Bom. 547.—IND.

PART III. SECT. 34, SUB-SECT. 3.—C. (c).

sr. "*Cash paid.*"]—Deft. co. was owned by S., who was its managing director. In Feb. 1930, he obtained a loan of £300 from pltfs. for his co. on the security of his own promissory note & also of deft. co.'s debenture for £300, which should have been registered within 21 days, viz., on or before Mar. 13, 1930. As S. was endeavouring to effect a flotation of his co. as a public co., he requested pltfs. not to register the debenture until the last moment, which they agreed to do. On Mar. 13, S. asked for further time, & it was ultimately agreed that in lieu of such registration pltfs. should advance S. £400 on the security of a new promissory note & a debenture for that amount, out of which sum he should forthwith repay the £300 previously borrowed with interest thereon. This was intended to give S. the additional time he required without prejudicing pltfs.' security. In pursuance of this arrangement pltfs. gave S. their own cheque for £400. W., who acted as solr. to both parties, attended with S. at the bank on Mar. 15, when the cheque was presented for payment, & when the latter received the £400 he immediately in pursuance of the agreement handed to W. the sum of £310 in payment of principal & interest on foot of the first loan, which sum the latter immediately lodged to the credit of pltf. co. The debenture for £400 was duly registered. The contemplated flotation did not materialise & the deft. co. went into voluntary liquidation:—*Held:* under Cos. (Consolidation) Act, 1908, s. 212, the mtge. debenture for £400 was invalid except to the extent of £90, the nett amount received by deft. co. on foot of the promissory note & debenture for £400, with interest thereon at 5 per cent.—REVERE TRUST, LTD. *v.* WELLINGTON HANDKERCHIEF WORKS, LTD., [1931] N. I. 55.—IR.

HEATON & DUGARD, LTD. *v.* CUTTING BROTHERS, LTD., [1925] 1 K. B. 655; 94 L. J. K. B. 673; 133 L. T. 41; 41 T. L. R. 286, D. C.

4730a. —— Floating charge over part of assets already charged.]—Where a debenture trust deed, creating a general floating charge over all the undertaking & assets of the co. both present & future, reserves power to the co. in the ordinary course of its business to create specific charges over any of those assets, then although a second general floating charge over all the property comprised in the first charge but ranking *pari passu* with or in priority to that charge, is, under the general law, incompatible with the first charge & ranks subject to it, yet there is no principle of law which forbids the creation of a second floating charge over part only of those assets ranking *pari passu* with, or in priority to, the earlier floating charge, so long as the later floating charge is within the limits of the power reserved.

A debenture trust deed created a general floating charge over all its undertaking & assets both present & future, but reserved to the co. power to create in priority to that charge such mtges. or charges as the co. should think proper "by the deposit of any dock warrants, bills of lading, or other similar commercial documents, or upon any raw materials, or finished or partly finished products & stock for the purpose of raising money in the ordinary course of the business of the co." In pursuance of the power & in the course & for the purposes of its business, the co. raised £12,000 & secured payment thereof by charging all the before-mentioned documents, materials & stock, both present & future, by way of a floating security to rank in priority to the floating charge created by the trust deed:—*Held:* the power reserved to the co., except as to subject-matter & purpose, was unlimited; it enabled the co. to choose the form of a floating charge, if required, & the second charge was valid & entitled to priority over the first charge.—*Re* AUTOMATIC BOTTLE MAKERS, OSBORNE *v.* AUTOMATIC BOTTLE MAKERS, [1926] Ch. 412; 95 L. J. Ch. 185; 134 L. T. 517; 70 Sol. Jo. 402, C. A.

4739a. —— ——.]—By a lump sum building contract entered into in 1922 between S. & Co., the contractors, & defts., provision was made for interim payments on the architect's certificates, to be given monthly at the rate of 90 per cent. of the value of all work executed. The remaining 10 per cent., the retention moneys, was to be retained & deposited in a bank until the final adjustment of accounts. The contract was varied by consent, & in the events which happened the retention moneys amounted to £1,000 at the beginning of 1924; this was never deposited in a bank & remained a merely notional fund, but both parties treated it as a separate sum capable of being earmarked. It was included, without distinction, in the architect's final certificate for £1,848 10*s.* 2*d.* on Jan. 28, 1927. Meanwhile, pltfs., who were supplying cement to the contractors, found that the latter were getting into arrears with their payments, & to obtain further credit the contractors, being then indebted to pltfs. in the sum of £671 on Apr. 7, 1924, assigned to them the retention moneys by a document in these terms: "In reduction of the amount now or to be owing from us to you for goods supplied by you, we hereby assign to you all moneys now or hereafter to become due to us from the H.R.D.C. for retention moneys in respect of the G. Housing Scheme, & for which your receipt shall be a sufficient discharge. . . ." Of that assignment due notice was given by pltfs. to defts. next day. The contractors had at various dates between 1900 & Feb. 2, 1924, issued to the Manchester & County Bank, Ltd., a number of debentures charging the undertaking of the contractors & all their property, both present & future, the charge being a specific charge on the contractors' freehold & leasehold property, machinery, goodwill, & uncalled capital, & a floating charge on all the co.'s other assets, subject to a proviso that the contractors were not to be at liberty to create any mtge. or charge for any of their assets in priority to the debentures. On Oct. 13, 1924, a receiver for the debenture-holders was appointed, who duly entered into possession. On Oct. 20, 1924, a resolution was passed for the voluntary winding-up of the co. The receiver refused to recognise the right of pltfs. to payment under their assignment in priority to the debenture-holders, & on the architect's final certificate being given, in Jan. 1927, defts. declined to interplead & paid the retention moneys to the receiver for the debenture holders, & pltfs. thereupon brought their action upon their assignment:—*Held:* (1) the debentures only created a floating charge on the retention moneys, which the contractors could therefore assign or charge in spite of the clause in the debentures prohibiting the creation of charges in priority to the debentures; (2) pltfs. had no express notice of that clause in the debentures; (3) though the registration of the debentures affect pltfs. with constructive notice that debentures existed, it did not affect them with notice of the terms, including the limitation on prior charges, of those debentures.—EARLE (G. & T.), LTD. *v.* HEMSWORTH RURAL DISTRICT COUNCIL (1928), 44 T. L. R. 605; *affd.*, 140 L. T. 69; 44 T. L. R. 758, C. A.

4755. *Add. Annotations:—As to* (1) **Refd.** Kreditbank Cassel G. m. b. H. *v.* Schonkers, [1926] 2 K. B. 450. *Generally,* **Refd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246. **Mentd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775.

4781. *Add. Citations:*—[illegible] L. J. Ch. 27; 130 L. T. 93.

4783a. Delay in issue to retain credit.]—Where a co. agrees to issue debentures to a creditor as security for past & future loans, but delays issuing them for a considerable time in order to retain its credit with its other creditors, the debentures are not voidable under 13 Eliz. c. 5, when the co. goes into liquidation.—*Re* LLOYD'S FURNITURE

PALACE, LTD., EVANS *v.* LLOYD'S FURNITURE PALACE, LTD., [1925] Ch. 853; 95 L. J. Ch. 140; 134 L. T. 241; [1926] B. & C. R. 29.

Under "**Right to inspect register of debenture holders & have copies.**]—*See* 1908 Act, s. 102," add as follows :—

4796. *Add. Annotation :*—**Refd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

4808. *Add. Annotation :*—**Distd.** *Re* Automatic Bottle Makers, Osborne *v.* Automatic Bottle Makers, [1926] Ch. 412.

4809. *Add. Annotation :*—**Consd.** *Re* Automatic Bottle Makers, Osborne *v.* Automatic Bottle Makers, [1926] Ch. 412.

4821. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

4825a. —.]—LEMON *v.* AUSTIN FRIARS INVESTMENT TRUST, LTD., No. 4637a, *ante.*

4829a. Right of transferee to accrued interest.]—*Re* KIDNER, KIDNER *v.* KIDNER, No. 2224a, *ante.*

4833. *Add. Annotation :*—**Refd.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

4838. *Add. Annotation :*—**Refd.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

4839. *Add. Annotation :*—**Refd.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

4852a. Transferee informed that registration unnecessary.]—The debentures of a co. payable to K. or his " registered assigns " were transferred by him. At the time of the transfer K. was indebted to the co. to a larger amount than the sum secured by the debentures. The co. kept no books for registering transfers, & on K. & his transferee applying to the secretary for registration, he told them it was unnecessary, & made no mention of the co.'s claim against K. On the co. being wound up :—*Held :* the transferee was entitled to prove as a creditor in respect of the debentures.—*Re* COLONIAL & GENERAL GAS CO., LISHMAN'S CLAIM (1870), 23 L. T. 40.

4858. *Add. Annotation :*—**Consd.** British America Nickel Corpn. *v.* O'Brien, [1927] A. C. 369.

4858a. —— ——.]—A co. issued mtge. bonds secured by a trust deed, which gave power to a majority of the bondholders, consisting of not less than three-fourths in value, to sanction any modification of the rights of the bondholders. A scheme for reconstruction of the co. provided for the mtge. bonds being exchanged for income bonds subject to an issue of first income bonds ; also that a committee, one only of whom was to be appointed by the mtge. bondholders, should have power to modify the scheme without confirmation by the bondholders. The scheme was sanctioned by the majority of the bondholders requisite under the trust deed. The required majority would not have been obtained but for the vote of the holder of a large number of bonds, whose support of the scheme was obtained by the promise of a large block of ordinary stock, an arrangement which was not mentioned in the scheme :—*Held :* the resolution was invalid, both because the bondholder in voting had not treated the interest of the whole class of bondholders as the dominant consideration, & because the scheme, so far as it provided for a committee, was *ultra vires.*—BRITISH AMERICA NICKEL CORPN. *v.* O'BRIEN, [1927] A. C. 369 ; 96 L. J. P. C. 57 ; 136 L. T. 615 ; 43 T. L. R. 195, P. C.

4872a. —— **Redemption at figure below par but above market price.**]—MEADE-KING *v.* USHER'S WILTSHIRE BREWERY, LTD. (1928), 44 T. L. R. 298.

4883. *Add. Annotation :*—**Refd.** Jacobs *v.* Batavia & General Plantations Trust, [1924] 2 Ch. 329.

4904a. After twenty years—Reference to debentures in company's published accounts.]—A co. at various dates between 1890 & 1902 issued debentures payable within two years, but paid no part of the principal or interest. The co.'s published accounts habitually referred to the debenture debt as outstanding, & in 1925 the accounts, which were signed by two directors & the secretary, stated the amount of the arrears of interest :—*Held :*

PART III. SECT. 34, SUB-SECT. 3.—G. (c).

s i. —— —— ——.]—The Apatco, Ltd., gave a debenture to M. to secure a certain sum, constituting a floating charge over all the assets of the co. present or future, & prohibiting the creation of any mtge. or charge in priority to it. Afterwards the co. gave a debenture to W. to secure portion of the purchase money of certain goods sold to it by W., & constituting a floating charge over the assets so sold. Subsequently, W. recovered a judgment against the co. for portion of the money secured by his debenture, & issued execution, under which the sheriff seized goods of the co. M. claimed the goods & the sheriff interpleaded. M. then instituted a suit to restrain the sale of the goods by the sheriff :—*Held :* as regards the goods comprised within the second debenture, the rights of deft. under the said debentures were paramount to those of pltf.—MATHIESON *v.* WAHLEN (1928), 28 S. R. N. S. W. 189 ; 45 N. S. W. W. N. 47.—**AUS.**

PART III. SECT. 34, SUB-SECT. 3.—I.

st. *Grounds for allowing or refusing—Under Sale of Shares Act,* 1916 (c. 15).]—*Re* SALE OF SHARES ACT, UNITED GRAIN GROWERS, LTD.'S CASE (Sask.), [1918] 3 W. W. R. 92.—**CAN.**

sv. *Who may be " bearer."*]—There cannot be " a bearer " of a debenture consisting of two or more persons holding the document in severalty, nor can the bearer of a debenture assign a part of the principal sum or sums secured by the debenture so as to create independent rights therein to different persons at one & the same time.—JAFFE (R.), LTD. *v.* JAFFE, [1932] N. Z. L. R. 168.—**N.Z.**

PART III. SECT. 34, SUB-SECT. 3.—K. (a) i.

sw. *By extraordinary resolution—Adjourned meeting—No notice of adjournment—Whether adjournment continuation of original meeting.*]—*Re* ARGYLE MOTOR SERVICES, LTD., [1932] 1 D. L. R. 81 ; 4 M. P. R. 88.—**CAN.**

PART III. SECT. 34, SUB-SECT. 3.—K. (a) ii.

4863 ii. —.] — NATIONAL TRUST CO. *v.* MARITIME COAL, RAILWAY & POWER CO., [1930] 2 D. L. R. 309.—**CAN.**

PART III. SECT. 34, SUB-SECT. 3.—L. (b).

sb. *Debenture stock issued by loan company.*]—Debenture stock issued by a loan co. proceeding under Loan Companies Act, 1914 (c. 40), as amended by 12 & 13 Geo. 5, c. 31, s. 4, is not redeemable at the option of the holder.—SCOTTISH WIDOWS' FUND & LIFE ASSURANCE SOCIETY *v.* CANADA PERMANENT MTGE. CORPN., [1929] 3 D. L. R. 405 ; 63 O. L. R. 637.—**CAN.**

PART III. SECT. 34, SUB-SECT. 3.—M.

sd. *Stamp Act,* 1891 (c. 39), s. 82 (1) (b) (i)—*Marketable security—Debenture.*]—A Canadian co. had agents in the United Kingdom for the purpose of recovering money for loans on debenture. On receipt of the money the agents granted an interim receipt therefor, & informed the co. The debenture was then made out & completed by the co. in Canada, & was dispatched to the co.'s agents in the United Kingdom, for delivery to the lender there in exchange for the interim receipt :—*Held :* the debenture was assessable to duty as a marketable security under Stamp Act, 1871, s. 82 (1) (b) (i) as being issued in the United Kingdom, in respect that it

the statement in the accounts was a written acknowledgment within Civil Procedure Act, 1833 (c. 42), s. 5, & an action to recover the principal & interest was not barred by the twenty years limitation fixed by sect. 3 of that Act.—*Re* ATLANTIC & PACIFIC FIBRE IMPORTING & MANUFACTURING CO., LTD., BURNHAM (VISCOUNT) *v.* ATLANTIC & PACIFIC FIBRE IMPORTING & MANUFACTURING CO., LTD., [1928] Ch. 836; 97 L. J. Ch. 369; 140 L. T. 18; 44 T. L. R. 702; 72 Sol. Jo. 598.

4906. *Add. Annotation :*—**Consd.** Jacobs *v.* Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520.

4925. *Add. Annotation :*— **Consd.** Employers' Liability Assce. *v.* Sedgwick (Collins) (1926), 95 L. J. K. B. 1015.

4928a. —— **Holder of income-stock certificate.**]—LEMON *v.* AUSTIN FRIARS INVESTMENT TRUST, LTD., No. 4637a, *ante*.

4931. *Add. Annotation :*—**Consd.** National Provincial & Union Bank of England *v.* Charnley, [1924] 1 K. B. 431

4933. For the paragraph in the original volume substitute the following paragraph :—

—— —— **Due registration — Particulars of property charged insufficiently entered.**]—A co. with the object of securing payment of its overdraft at pltf. bank "demised" to the bank a certain leasehold factory with all the movable "plant used in or about the premises" for a term of about 996 years. The bank sent the indenture to the registrar of companies for registration under 1098 Act, s. 93. In the particulars required to be filed pursuant to that sect. the instrument was described as a mtge. of the leasehold premises, no mention being made of the chattels. The registrar entered the description of the instrument in the register in similar terms, identifying it by its date, & omitting all mention of any charge on the chattels. Subsequently the sheriff, in execution of a judgment recovered by deft. against the co., seized certain chattels of the co. upon the mortgaged premises, including certain motor vans. The bank claimed the goods in question under their mtge., & obtained from the registrar a certificate "that a mtge. or charge dated "—specifying the date & the parties to the instrument—"was registered pursuant to Cos. Act, s. 93." On an interpleader issue to try the title of the bank as against the execution creditor :—*Held :* as the certificate identified the instrument of charge, & stated that the mtge. or charge thereby created had been duly registered, it must be understood as certifying the due registration of all the charges created by the instrument, including that of the chattels, & it was conclusive evidence of the due registration of the chattels none the less because the register in omitting to mention them was not merely defective but misleading.—NATIONAL PROVINCIAL & UNION BANK OF ENGLAND *v.* CHARNLEY, [1924] 1 K. B. 431; 93 L. J. K. B. 241; 130 L. T. 465; 68 Sol. Jo. 480; [1924] B. & C. R. 37.

4941. *Add. Annotation :—Generally*, **Refd.** National Provincial & Union Bank of England *v.* Charnley, [1924] 1 K. B. 431.

4944a. Assignment of goods to discount company—Financing hire-purchase agreements.]—A co. carried on a furniture business largely by means of hire-purchase agreements, & in order to provide the capital for the purpose entered into a series of agreements with a discount co. by which they assigned to a discount co. the goods comprised in the hire-purchase agreements subject to & with the benefit of the hire-purchase agreements on an immediate payment of 75 per cent. of the total purchase price, which was the same as that payable by the hirer if he continued payments of hire long enough to become the purchaser. From that 75 per cent. there was, however, deducted a percentage called the finance charge, which represented the discount co.'s profit. The balance of 25 per cent. of the purchase price was retained by the vendor co. out of the payments made by the hirer, 75 per cent. of such payments being secured collaterally to the discount co. by the issue of a series of bills of exchange which were equal in number to the instalments payable by the hirer & which were accepted by the vendors. The agreements with the discount co. provided that no notice thereof was to be given to the hirer, so long as there was no breach of the hire-purchase agreement. The vendor did not pass beyond the co.'s control, so as to create an obligation against the co. upon it, until delivery by the co.'s agents in the United Kingdom to the lender.—CANADA PERMANENT MORTGAGE CORPN. *v.* I. R. COMRS., [1932] S. C. 123.—**SCOT.**

PART III. SECT. 34, SUB-SECT. 4.—A. (a).

4920 iii. —— ——.]—*Re* HOLMES (SAMUEL), LTD. (1923), 58 I. L. T. 9.—**IR.**

PART III. SECT. 34, SUB-SECT. 4.—B. (b).

sf. *Agreement to give security.*]—Deft. co., having agreed to purchase from pltf. co. a motor, paid £100 on delivery, & agreed to give security over the motor for the balance, & a bill of sale was prepared, but was not executed :—*Held :* the agreement to give security had not created an equitable mtge., which, not being within the definition of "mtge." in Cos. Act, 1908, s. 130 (11), was not rendered void by that sect. by reason of non-registration.—NEW ZEALAND SERPENTINE CO., LTD. *v.* HOON HAY QUARRIES, LTD., [1925] N. Z. L. R. 73.—**N.Z.**

sm. *Assignment of book debts.*]—Where the assignor is a co. the assignment of book debts must be registered in the offices of the County Court of the county in which the head office of the co. is situate & the head office means the head office designated in the letters patent incorporating the co., or in any bye-law that may be passed by the co. pursuant to Cos. Act, s. 32.—*Re* SMITH TRANSPORTATION CO., [1928] 2 D. L. R. 508; 62 O. L. R. 203; 10 C. B. R. 48.—**CAN.**

PART III. SECT. 34, SUB-SECT. 4.—C. (a).

sy. *Power of court—To impose terms.*]—In making an order under Cos. (Registration of Securities) Act, 1918, s. 7, granting an extension of time for the registration of debentures, the ct. will, in a proper case, impose terms for the protection of the unsecured creditors of the co., although it will not do so except where the circumstances so require.—*Re* A LIMITED COMPANY (1928), 28 S. R. N. S. W. 364; 45 N. S. W. W. N. 91.—**AUS.**

sz. *What must be shown.*]—Where the time prescribed by Cos. Act, 1908, s. 130, within which a mtge. given by a co. is to be registered has expired it is essential that a co. applying for an extension of such time should in the supporting affidavit, in addition to giving full particulars relating to the grounds upon which the application is made, give a very full & complete statement of the financial position of the co., with information (i) as to the amount owing to unsecured creditors & the nature of the accounts, *i.e.* whether ordinary monthly accounts or of long standing; (ii) as to whether there are any judgments outstanding against the co.; (iii) as to whether any proceedings are pending for winding up the co. & generally such full & complete information as may be necessary to enable the ct. to be fully seised of the position & to enable it to determine whether it is necessary to insert in the order any words specifically protecting unsecured creditors.—*Re* DALGETY & CO., [1928] N. Z. L. R. 731.—**N.Z.**

co. went into voluntary liquidation, being insolvent:—*Held:* the agreements in this form were assignments on sale & purchase & not charges &, therefore, did not require registration under 1929 Act, s. 79.—*Re* GEORGE INGLEFIELD, LTD. (1932), 101 L. J. Ch. 360; 147 L. T. 411; 48 T. L. R. 536, C. A.

4975. *Add. Annotations:*—**Apld.** Thomas *v.* Todd, [1926] 2 K. B. 511. **Refd.** Gough's Garages, Ltd. *v.* Pugsley, [1930] 1 K. B. 615.

4977. *Add. Annotation:*—**Refd.** Fenton Textile Assocn. *v.* Lodge (1927), 96 L. J. K. B. 1016.

4979. *Add. Citations:*—93 L. J. Ch. 42; 130 L. T. 178.

4979a. —— Effect of voluntary winding up.]—Where under a debenture deed in the common form made by a limited co. the debenture-holder has appointed a receiver to carry on the business of the co., the authority of the receiver so to do is terminated by the voluntary winding up of the co., & on a contract thereafter made by the receiver as such he will be personally liable.—THOMAS *v.* TODD, [1926] 2 K. B. 511; 95 L. J. K. B. 808; 135 L. T. 377; 42 T. L. R. 494.

4982. *Add. Annotation:*—**Consd.** *Re* Glyncorrwg Colliery Co., Railway Debenture & General Trust Co. *v.* The Co., [1926] Ch. 951.

4982a. Debenture containing floating charge & fixed charge—Priority given only in respect of assets subject to floating charge.]—*Held:* when the receiver is appointed by a debenture holder whose debenture is secured by both a fixed charge & a floating charge the priority given to the preferential debts by 1908 Act, s. 107 (1), applies only in respect of assets subject to the floating charge & not to assets subject to the fixed charge.—*Re* LEWIS MERTHYR CONSOLIDATED COLLIERIES, LTD., LLOYDS BANK *v.* THE CO., [1929] 1 Ch. 498; 98 L. J. Ch. 353; 140 L. T. 321; 73 Sol. Jo. 27; 22 B. W. C. C. 20, C. A.

4982b. Preferential payment of income tax—Assessment after appointment or taking possession of receiver.]—Under 1908 Act, s. 107, where a receiver of a co. is appointed on behalf of holders of debentures secured by a floating charge, or possession is taken by or on behalf of debenture holders of property subject to such a charge, certain debts, including income tax assessed on the co. up to the fifth day of Apr. next before the date of the appointment of the receiver or of possession being taken as aforesaid, but not exceeding one year's assessment, are under 1908 Act, s. 209, to be forthwith paid by the receiver or person taking possession out of any assets coming to his hands in priority to any claim for principal or interest in respect of the debentures:—*Held:* the expression in sect. 209 "assessed up to the fifth day of Apr." means "assessed for a period ending on the fifth day of Apr.," & therefore the right to preferential payment of one year's assessment remains, notwithstanding that the assessment is not made until after the date of the appointment of the receiver or of his taking possession, as the case may be.—GOWERS *v.* WALKER, [1930] 1 Ch. 262; 99 L. J. Ch. 138; 142 L. T. 404; 46 T. L. R. 150; 74 Sol. Jo. 41; 15 Tax Cas. 165; [1929] B. & C. R. 125.

Annotation:—**Apld.** *Re* Cockell, Jackson *v.* A.-G. (1932), 76 Sol. Jo. 495.

4982c. Preferential payment of rates—Increase in rates after taking possession by receiver.]—Where in the assessment of property relief has been claimed & in the first instance allowed in the valuation list under the derating provisions of the Local Government Act, 1929 (c. 17), but subsequently disallowed, the resulting change in the amount of a rate payable in respect of that property takes effect as from the date of the making of the rate, as if the change had been caused by a proposal for the amendment of the rateable value. Consequently, where a receiver for debenture holders has taken possession of the property of the co. which issued the debentures, an increase in the amount of the rates due at the date of taking possession, which increase has been subsequently ascertained by reason of such an alteration in the assessment, is payable by the receiver as a preferential debt.—*Re* AIREDALE GARAGE CO., ANGLO-SOUTH AMERICAN BANK *v.* AIREDALE GARAGE CO. (1932), 101 L. J. Ch. 289; 147 L. T. 372; 96 J. P. 312; 48 T. L. R. 477; 30 L. G. R. 286, C. A.

4987a. —— Same receiver appointed by court—Form of order as to accounts.]—*Re* ARCTIC ELECTRIC SUPPLIES, LTD., ANSELL *v.* THE CO. (1932), 48 T. L. R. 350; *sub nom.* PRACTICE NOTE, [1932] W. N. 79; 173 L. T. Jo. 281.

5011a. Not appointed if hostile to debenture-holders.]—GILES *v.* NUTTALL, *Re* HOUSE IMPROVEMENT ASSOCN., LTD. (1885), 78 L. T. Jo. 352, C. A.

5036a. Right to sue—On bills of exchange drawn by receiver—For goods supplied by company to acceptor.]—Where bills of exchange, signed by "R., Receiver, F. Ltd.," as drawer, had been accepted in respect of goods supplied by the co. to defts., & pltf. had stated that it must be "clearly understood that I am in no way accepting any liability or responsibility whatever in respect of the orders themselves":—*Held:* the words "Receiver, F. Ltd.," were words of description only, & the bills did not purport to have been drawn on behalf of the co., & pltf. was entitled to recover against defts. upon the bills.—KETTLE *v.* DUNSTER & WAKEFIELD (1927), 138 L. T. 158; 43 T. L. R. 770.

5036b. Power of sale—Contract subject to approval of court—Time for obtaining approval—

PART III. SECT. 34, SUB-SECT. 6.—B. (b) i.

4988 i. *Discretion of court—Interference by appellate court.*]—EASTERN TRUST CO. *v.* NOVA SCOTIA STEEL & COAL CO., LTD., [1927] 1 D. L. R. 421; 59 N. S. R. 123.—**CAN.**

PART III. SECT. 34, SUB-SECT. 6.—B. (b) ii.

ss. *What amounts to default in payment of interest.*]—It cannot be said that there has been default until demand has been made for payment at the place, or one of the places, named in the bond for payment of interest.—TRUSTS & GUARANTEE CO., LTD. *v.* DRUMHELLER POWER CO., [1924] 2 D. L. R. 208; [1924] 1 W. W. R. 1029.—**CAN.**

PART III. SECT. 34, SUB-SECT. 6.—B. (f).

sc. *On occupation of company.*]—A receiver appointed by debenture-holders under a debenture deed constituting him agent of the co. that gave the debenture, does not exercise an independent possession of his own, but his entry on & the assumption of control over the co.'s property leaves the co. still in occupation in point of law.—AUSTRALIAN MUTUAL PROVIDENT SOCIETY *v.* PUBLIC CURATOR OF QUEENSLAND, [1931] Argus. L. R. 294; 5 A. L. J. 213.—**AUS.**

Before completion.]—Where, in a debenture-holders' action, the receiver contracts to sell property included in the debentures, subject to the contract being approved & sanctioned by the ct. & no date is fixed for obtaining such approval, it must be obtained before the date fixed for completion of the contract.

On Oct. 31, 1927, the receiver in a debenture-holders' action entered into a conditional contract to sell land & cottages included in the debentures. The contract provided that the purchase should be completed on or before Dec. 31, 1927. By clause 14 it was provided that the contract was subject to its being approved & sanctioned by the ct., & in the event of its not being so approved it was to become void, & the purchasers were to be entitled to be repaid their deposit. The receiver took no effective steps to obtain the sanction of the ct., & on Jan. 10, 1928, the purchasers' solrs. wrote to the debenture-holders' solrs. repudiating the contract & demanding the return of the deposit money under clause 14. On an application for an order that the conditional contract should be confirmed :—*Held :* the purchasers were entitled to repudiate the contract & to be repaid their deposit money, together with all interest earned by such deposit, from the date of its payment to the vendor.—*Re* SANDWELL PARK COLLIERY CO., FIELD *v.* THE CO., [1929] 1 Ch. 277 ; 98 L. J. Ch. 229 ; 140 L. T. 612.

5064a. —— —— ——.]—A deed of floating charge on the assets of a co. gave power to the trustee to appoint a receiver & manager, who was expressed to be the agent of the mtgor. :—*Held :* on a receiver duly appointed under the power entering into possession of the premises & commencing to carry on the business of the co., there was a change of occupancy within Poor Rate Assessment & Collection Act, 1869 (c. 41), s. 16, & Public Health Act, 1875 (c. 55), s. 211 (3).—RICHARDS *v.* KIDDERMINSTER OVERSEERS ; RICHARDS *v.* KIDDERMINSTER CORPN., [1896] 2 Ch. 212 ; 65 L. J. Ch. 502 ; 74 L. T. 483 ; 44 W. R. 505 ; 12 T. L. R. 340.

Annotations :—**Consd.** *Re* Marriage Neave & Co., North of England Trustee, Debenture & Assets Corpn. *v.* Marriage, Neave & Co., [1896] 2 Ch. 663. **Distd.** National Provincial Bank *v.* United Electric Theatres (1915), 85 L. J. Ch. 106.

5067a. —.]—Pltf. assocn. brought an action against defts., C. & Co., & L., managing director of the co. Since the matters relevant to the action the debenture-holders of C. & Co. had gone into possession under the powers of their debentures, & had appointed L. as receiver & manager. L. filed an affidavit of discovery disclosing certain documents which he declined to produce, on the ground that though he had them in his possession at the time when he was managing director of the co., he now held them as receiver & manager of the debenture-holders, & an order could not be made against C. & Co., to produce them :—*Held :* there might be documents which were such that C. & Co. itself would have the right to inspect for the purposes of the action, C. & Co. having a right to redeem them, & the right of inspection of C. & Co. could be used by pltf. assocn. as L., though an agent for the debenture-holders, was also for some purposes the agent of C. & Co.—FENTON TEXTILE ASSOCN., LTD. *v.* LODGE, [1928] 1 K. B. 1 ; 96 L. J. K. B. 1016 ; 137 L. T. 241, C. A.

5067b. —— —— **Right to sue.**]—A debenture of a co. empowered the holder to appoint a receiver & manager, & provided : " A receiver & manager so appointed shall be the agent of the co. & shall have power to take possession of & get in the property hereby charged." A receiver & manager having been appointed, brought an action in the name of the co. for the rescission of an agreement by deft. for the purchase of land from the co. & forfeiture of the deposit, & alternatively for specific performance :—*Held :* the debenture empowered the receiver & manager to bring the action without the co.'s consent.—M. WHEELER & CO., LTD. *v.* WARREN, [1928] Ch. 840 ; 97 L. J. Ch. 486 ; 139 L. T. 543 ; 44 T. L. R. 693, C. A.

5069a. -.]—FENTON TEXTILE ASSOCN., LTD. *v.* LODGE, No. 5067a, *ante*.

5091. *Add. Annotation :*—**Apld.** Thomas *v.* Todd, [1926] 2 K. B. 511.

5095a. —— ——.]—*Re* NEW ZEALAND MIDLAND RY. CO., SMITH *v.* LUBBOCK, [1901] W. N. 105 ; *revsd.* on other grounds, [1901] 2 Ch. 357, C. A.

Annotation :—**Refd.** *Re* Glasdir Copper Mines, Ltd., English Electro Metallurgical, Ltd. *v.* Glasdir Copper Mines, Ltd., [1906] 1 Ch. 365.

5105a. —— —— **All debenture-holders not before court—Sale subject to approbation of judge.**]—In a debenture-holders' action, when the property comprised in debentures is in jeopardy, an immediate sale will be ordered under R. S. C., Ord. 51, r. 1B, on motion for judgment on admissions in the pleadings, but, unless all the debenture-holders subsequent to pltfs. are parties to the action, the order will be for sale with the approbation of the judge, so that the absent debenture-holders may be brought in in chambers on the application to approve the conditional contract for sale.—*Re* CRIGGLESTONE COAL CO., STEWART *v.* CRIGGLESTONE COAL CO., [1906] 1 Ch. 523 ; 75 L. J. Ch. 307 ; 94 L. T. 471 ; 54 W. R. 298 ; 50 Sol. Jo. 240 ; 13 Mans. 181.

PART III. SECT. 34, SUB-SECT. 6.—C. (e).

sb. *Duty to preserve & carry on undertaking as going concern.*]—NATIONAL TRUST CO. *v.* DOMINION IRON & STEEL CO. (N. S.), [1927] 3 D. L. R. 1063.—**CAN.**

PART III. SECT. 34, SUB-SECT. 6.—D. (a).

sd. *Jurisdiction of court to order—In winding-up proceedings—On petition for conveyance to mortgagee of company's equity of redemption.*]—*Re* ESSEX LAND & TIMBER CO., TROUT'S CASE (1891), 21 O. R. 367.—**CAN.**

PART III. SECT. 34, SUB-SECT. 6.—D. (b).

sf. *Jurisdiction of court to order—In winding-up proceedings—On petition for conveyance to mortgagee of company's equity of redemption.*]—*Re* ESSEX LAND & TIMBER CO., TROUT'S CASE (1891), 21 O. R. 367.—**CAN.**

sg. *Jurisdiction to order sale—Foreign immovables.*]—A mining co. incorporated in Victoria executed a debenture whereby it charged all its undertaking & assets. The assets included mineral leases & mineral easement licences in respect of land situate in Tasmania & fixtures on that land. Pursuant to the terms of the debenture the debenture-holder appointed a receiver & manager of the property charged, with power to sell. The debenture-holder took out an originating summons for an order sanctioning the sale of the property by the receiver & manager :—*Held :* there was jurisdiction to entertain the application.—BOND *v.* NORTH MOUNT FARRELL CO., NO LIABILITY, [1931] V. L. R. 144 ; Argus L. R. 88.—**AUS.**

5111a. Short cause—Copies of affidavit in support—Necessity for.]—*Re* CHURCH STRETTON MINERAL WATER CO., LTD. (1904), 52 W. R. 375; 48 Sol. Jo. 299.

5120a. Conduct of action—To whom given—Independent party—When desirable.]—The conduct of a debenture holder's action begun by a person whose transactions with the co. the ct. considers to require investigation, or whose interests are shown to be adverse to those of the remaining debenture holders, may be given by the ct. to an independent party.

One of the objects of the co. was to buy & let premises for use as flats & clubs. Its first directors were pltf. & his nominee, but it was in substance a "one man" co. with pltf. as managing director. It granted leases of certain premises to the S. syndicate, of which the directors were pltf. & the same nominee. The co. agreed to pay a yearly salary to pltf. & guaranteed the issue of debentures by the syndicate. The syndicate soon failed to pay rent, but pltf. took no steps either to enforce payment or forfeit the leases: &, although the co. was carrying on business at a loss, he bought a quantity of furniture with its money on its behalf. The syndicate issued debentures, pltf. becoming the holder of a number of them, & also holding debentures issued by the co. Later, a receiver & manager of the property of the syndicate charged by the debentures was appointed, & pltf. began a debenture holder's action against the co., subsequently selling the furniture which he had bought & the leasehold premises at a loss. Ultimately, he resigned his directorship: & this summons asked that the conduct of the proceedings should be vested in appct., another debenture holder, on the ground that pltf. against whom gross negligence was alleged, had an interest adverse to that of the remaining debenture holders:—*Held:* as the transactions of pltf. with the co. had never been investigated, & as it had so far been impossible to investigate them, it was desirable that the conduct of the action should be given to an independent person.—*Re* SERVICES CLUB ESTATE SYNDICATE, LTD., MCCANDLISH *v.* THE COMPANY, [1930] 1 Ch. 78; 99 L. J. Ch. 33; 142 L. T. 127.

5134a. ——— ———.]—*Re* GUTTA PERCHA CORPN., LTD., THORNTON *v.* GUTTA PERCHA CORPN., LTD., [1899] W. N. 251; 44 Sol. Jo. 133.

5149a. Application of assets—Deficiency.]—In a debenture-holders' action where there is a deficiency, the assets must be applied in the following order: (1) costs of realisation, (2) costs including remuneration of receiver, (3) costs, charges & expenses of debenture trust deed including the trustees' remuneration, (4) pltfs.' costs of action, (5) preferential creditors, (6) debenture-holders.—*Re* GLYNCORRWG COLLIERY CO., RAILWAY DEBENTURE & GENERAL TRUST CO. *v.* THE CO., [1926] Ch. 951; 96 L. J. Ch. 43; 70 Sol. Jo. 857; *sub nom. Re* GLYNCORRWG COLLIERY CO., *Re* RAILWAY DEBENTURE & GENERAL TRUST CO., 136 L. T. 159.

5149b. ———.]—*Re* BURRADON & COXLODGE COAL CO., LTD. [1929], W. N. 15.

5170. *Add. Annotation:*—**Reld.** *Re* Glyncorrwg Colliery Co., Railway Debenture & General Trust Co. *v.* The Co., [1926] Ch. 951.

5184a. On authority of receiver—To carry on business of company.]—THOMAS *v.* TODD, No. 4979a, *ante.*

5184b. ——— To enforce rights under Landlord & Tenant Act, 1927 (c. 36), s. 5.]—A co. was the lessee of certain premises under a lease expiring on June 24, 1930. In 1925 the co. issued a debenture by which it charged all its undertaking & all its property, present & future, including its uncalled capital in favour of the debenture holders. On Apr. 22, 1929, the co. gave notice to the landlords under above sect., requiring them to grant to it a new lease of the premises. In July, 1929, the debenture holders in exercise of the power on that behalf in the debenture appointed a receiver of the property & assets therein comprised. The landlords having failed to comply with the co.'s request for the grant of a new lease the receiver on Sept. 23, 1929, commenced an action in the county court in the name of the co. to obtain the grant of a new lease. On Oct. 15 a compulsory order was made to wind up the co. & a liquidator was appointed: —*Held:* the right to apply for a renewal of the lease under above sect. was a right given by the co. to the debenture holders as part of their security, & the receiver was entitled to enforce that right notwithstanding the liquidation of the co.—GOUGH'S GARAGES, LTD. *v.* PUGSLEY, [1930] 1 K. B. 615; 99 L. J. K. B. 225; 143 L. T. 38; 46 T. L. R. 283; 74 Sol. Jo. 215; 28 L. G. R. 239.

Annotation:—**Reld.** Smith *v.* Metropolitan Properties Co., [1932] 1 K. B. 314.

5186a. ——— ——— ——— Who should sue for contribution—Liquidator.]—Where in a winding up the general assets are insufficient for the payment of the preferential creditors of the co., the proper pltf., in an action under sect. 209 of 1908 Act, to recover contribution from a debenture-holder with a floating charge towards payment of a preferential debt is the liquidator acting in the name of the co.—WESTMINSTER CORPN. & UNITED TRAVELLERS CLUB CO., LTD. *v.* CHAPMAN, [1916] 1 Ch. 161; 85 L. J. Ch. 334; 114 L. T. 63; 80 J. P. 74; [1916] H. B. R. 12.

PART III. SECT. 34, SUB-SECT. 6.—E. (c) ii.

5122 i. *Who may sue.*]—DOWNER *v.* BOUGHNER (1930), 66 O. L. R. 279.—**CAN.**

PART III. SECT. 34, SUB-SECT. 6.—E. (d).

sk. *Affidavits — Made before institution of proceedings—Inadmissible.*]—TRUSTS & GUARANTEE CO., LTD. *v.* DRUMHELLER POWER CO., [1924] 2 D. L. R. 208; [1924] 1 W. W. R. 1029.—**CAN.**

5130 i. *Ex parte application.*]—A receiver ought not to be appointed *ex p.*, especially for the purpose of taking possession of & managing a going business, except in extraordinary circumstances.—TRUSTS & GUARANTEE CO., LTD. *v.* DRUMHELLER POWER CO., [1924] 2 D. L. R. 208; [1924] 1 W. W. R. 1029.—**CAN.**

PART III. SECT. 34, SUB-SECT. 6.—E. (f) ii.

5148 i. *Form of judgment.*]—MARTIN *v.* CLARKSON, [1925] 4 D. L. R. 232; 57 O. L. R. 499; 5 C. B. R. 835.—**CAN.**

PART III. SECT. 34, SUB-SECT. 7.

sj. *Competition between liquidator & receiver—Liquidator preferred.*]—Where there is a question of competition between a liquidator & a receiver appointed by the ct., at the instance of debenture-holders or mtgees., the ct. will ordinarily, in the exercise of its jurisdiction, give preference to the liquidator.—*Re* KHARKHAREE COLLIERIES, LTD. (1930), I. L. R. 58 Calc. 946.—**IND.**

5186b. Debenture given for money bonâ fide advanced—After knowledge of presentation of petition for winding up.]—The fact that a person to whom a debenture was granted after a petition to wind up the co. had been launched had knowledge of the launching of such petition does not prevent the ct. from validating the debenture, if it was given for money advanced by the debenture-holder for the purpose of *bonâ fide* assisting the co. to pay wages, & the costs of appct. to such an application to validate his debenture, notwithstanding 1908 Act, s. 205 (2), & of the liquidator, may be paid out of the assets of the co.—*Re* PARK WARD & CO., LTD., [1926] Ch. 828; 95 L. J. Ch. 584; 135 L. T. 575; 70 Sol. Jo. 670; [1926] B. & C. R. 94.

5194. *Add. Annotation:*—**Consd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

5314. *Add. Annotations:*—**Distd.** *Re* Stanton, Hogg *v.* Maule (1927), 44 T. L. R. 118. **Refd.** *Re* Stanton, [1928] 1 K. B. 464.

5316. *Add. Annotations:*—**Consd.** *Re* Stanton, Hogg *v.* Maule (1927), 44 T. L. R. 118; **Refd.** *Re* Stanton, [1928] 1 K. B. 464.

5316a. —— May decide validity of debentures.]—Less than three months before the commencement of its compulsory winding up in a county ct., a co. having a paid-up capital of less than £10,000 issued debentures to the extent of £4,500 in favour of two persons. The liquidator moved in the county ct. for a declaration that the debentures were invalid either as a fraudulent preference under 1908 Act, s. 210, or as a floating charge created otherwise than for cash under sect. 212, & that the persons named in the debentures had no rights in respect of the sums expressed to be secured thereby except as unsecured creditors:—*Held:* the county ct. judge had jurisdiction to entertain the liquidator's application, &, as he had done so, his discretion could not be interfered with.—*Re* F. & E. STANTON, LTD., [1928] 1 K. B. 464; 97 L. J. K. B. 131; 138 L. T. 175; 44 T. L. R. 118; [1927] B. & C. R. 187, D. C.

5337. *Add. Annotation:*—**Refd.** Loch *v.* Blackwood, [1924] A. C. 783.

5346. *Add. Annotation:*—**Refd.** Williams *v.* Atlantic Assurance Co. (1932), 37 Com. Cas. 304.

5354. *Add. Annotation:*—**Refd.** Loch *v.* Blackwood, [1924] A. C. 783.

5357. *Add. Annotation:*—**Refd.** Loch *v.* Blackwood, [1924] A. C. 783.

5357a. ——.]—A co. was registered in Barbados under Cos. Act, 1910, of Barbados, as a public co., in order to carry on testator's business & to divide the profits of it between members of his family entitled under his will to share them; the managing director had a preponderating voting power. Upon a petition for winding up by shareholders who were not directors, it appeared that the directors had omitted to hold general meetings, or to submit accounts, or recommend a dividend, & that they had laid themselves open to the suspicion that their object in so omitting was to keep petitioners in ignorance of the co's. position & affairs & to acquire petitioners' shares at an under-value:—*Held:* the power to wind up the co. under sect. 127 (vi) of that Act [which was identical with 1908 Act, s. 129] was not confined to cases in which there were grounds analogous to those mentioned earlier in the sect.; & in the circumstances of the case, regard being had to the domestic character of the co., petitioners were entitled under that

PART III. SECT. 34, SUB-SECT. 8.

sk. *Whether interest payable after maturity of bond—Combined effect of trust deed, debenture & bonds.*]—TRUSTS & GUARANTEE CO., LTD. *v.* CONTINENTAL SUPPLY CO., LTD., [1932] 1 W. W. R. 921.—**CAN.**

PART III. SECT. 35.

sm. *Meaning of "being wound up"—Under Companies Ordinance,* 1901 (c. 20), *s.* 47.]—The words do not refer to a winding up under any particular Act in the sense of a dissolution, but mean a winding up of a co. in the sense of a realisation of the assets, a distribution of the proceeds among creditors & an adjustment of the rights of shareholders among themselves, & therefore a co. may be "being wound up" in this sense under Bkpcy. Act, as well as under either Dominion or provincial Winding-up Acts.—*Re* IRMA CO-OPERATIVE CO., LTD., *Re* LOVE & KNUDSON, [1925] 1 D. L. R. 27; [1924] 3 W. W. R. 850.—**CAN.**

sn. *Whether proceedings under Bankruptcy Act condition precedent.*]—Leave may be given a co. to institute proceedings under Winding-up Act, & a winding-up order made, although proceedings have not been instituted in bkpcy. by petition for a receiving order or by authorised assignment.—*Re* MCARTHUR LUMBER & FUEL CO., LTD., 1931] 3 W. W. R. 162; 40 Man. L. R. 299.—**CAN.**

PART III. SECT. 36, SUB-SECT. 1.—A.

o i. —— *To remit to Sheriff Court.*]—*Held:* under Cos. Act, 1929, s. 116 (3), the ct. has power to remit a petition for the winding-up of a co. to the sheriff ct. only where the capital of the co. paid up or credited as paid up does not exceed £10,000.—*Re* CHANEY & BULL, [1930] S. C. 759.—**SCOT.**

t. Add "*revsd.* 14 S. C. R. 624."

PART III. SECT. 36, SUB-SECT. 1.—C. (c).

l i. ——.]—*Re* ALBION MACHINE CO. (N. S.), [1929] 1 D. L. R. 274; 10 C. B. R. 240.—**CAN.**

PART III. SECT. 36, SUB-SECT. 2.—B.

n i —— *Delay not accounted for.*]—*Re* SOUTHLAND WOOLLEN MILLS, LTD., [1929] N. Z. L. R. 289.—**N.Z.**

PART III. SECT. 36, SUB-SECT. 2.—C. (a).

a i. ——.]—Where the notice provided for by Winding-up Act, R. S. C., 1906 (c. 144), s. 4, has not been served, & a petition for a winding-up order is presented, the question whether the co. is "unable to pay its debts as they become due," within sect. 3 (a), must be determined by the ct. upon the material filed.—*Re* MILO WHEAT CO., LTD., [1925] 2 D. L. R. 1170; [1925] 1 W. W. R. 1142; 35 Man. L. R. 1; 5 C. B. R. 707.—**CAN.**

PART III. SECT. 36, SUB-SECT. 2.—D. (a).

d i. —— ——.]—*Re* JAMES LUMBERS CO., LTD., [1926] 1 D. L. R. 173; 58 O. L. R. 100.—**CAN.**

d ii. —— ——.] — *Re* BRITISH EMPIRE STEEL CORPN., LTD. (N. S.), [1927] 2 D. L. R. 964.—**CAN.**

sp. *Control by one shareholder.*]—Under sect. 162 (vi) of Indian Co.'s Act, 1913, which provides that a co. may be wound up by the ct. if the ct. is of opinion that that course is just & equitable, the fact that one shareholder has a preponderating voice in the co.'s affairs, by reason of owning or controlling a large number of shares, is of itself no reason for a winding-up order.—RIPON PRESS & SUGAR MILL CO. *v.* GOPAL CHETTI (1931), 58 L. R. Ind. App 416.—**IND.**

PART III. SECT. 36, SUB-SECT. 2.—D. (b) i.

f i. —— *Property of speculative value.*]—Appct. was a minority shareholder, holding 37,500 shares of the total capitalisation of 2,000,000 shares. The property owned by the co. was an undeveloped mining location of merely speculative value. The location was intact & there were practically no liabilities, but the actual cash in the treasury was trifling:—*Held:* the case was not brought within the class of cases in which a winding-up is ordered, because the whole substratum of the undertaking has disappeared.—*Re* JURY GOLD MINE DEVELOPMENT CO., LTD., [1928] 4 D. L. R. 735; 63 O. L. R. 109.—**CAN.**

f ii. ——.]—The mere fact that there has been depreciation in the value of its assets, or that the assets had become frozen instead of liquid, did not establish the disappearance of the substratum.—*Re* TORONTO FINANCE CORPN., [1930] 3 D. L. R. 882; 65 O. L. R. 351.—**CAN.**

provision to a winding-up order.—LOCH *v.* BLACKWOOD (JOHN), LTD., [1924] A. C. 783; 93 L. J. P. C. 257; 131 L. T. 719; 40 T. L. R. 732; 68 Sol. Jo. 735; [1924] B. & C. R. 209, P. C.

5364a. —— —— ——.]—*Re* ELECTRIC ARMS & AMMUNITION SYNDICATE (1891), 35 Sol. Jo. 818.

5372. *Add. Annotation:*—**Refd.** Loch *v.* Blackwood, [1924] A. C. 783.

5388. *Add. Annotation:*—**Consd.** Loch *v.* Blackwood, [1924] A. C. 783.

5397a. —— Omission to hold general meetings or to submit accounts.]—LOCH *v.* BLACKWOOD (JOHN), LTD., No. 5357a, *ante*.

5454a. Petition for winding up of unregistered foreign company dissolved before 1929 Act.]—*Re* RUSSIAN & ENGLISH BANK, No. 8548b, *post*.

5580. —— Whether vacation included in calculation.]—The seven days required by General Orders No. 2 made upon the Cos. Act, 1862, may be counted in the vacation.—*Re* LONDON INDIA RUBBER CO. (1866), 14 W. R. 594, L. C.

5585. *Add. Citation:*—[1889] W. N. 1.

PART III. SECT. 36, SUB-SECT. 2.—D. (b) ii.

1 i. —— ——.]—*Re* DOMINION STEEL CORPN. (N. S.), [1927] 4 D. L. R. 337.—**CAN.**

m i. ——.]—Where a co. having for its main object the manufacturing & dealing in cement had failed to commence business for a period of 5 years following its incorporation, but an apparent majority of shareholders were then desirous to commence the manufacture of hydrated lime in accordance with one of the subsidiary objects, on a petition by a shareholder for compulsory winding up on the grounds of delay in commencing business, & that it was just & equitable that the co. should be wound up:—*Held:* the delay not having been satisfactorily explained, & it appearing that there was no prospect of the co. commencing business either in accordance with its main object or the subsidiary object, the substratum of the co. had gone & petitioner would appear entitled to an order for compulsory winding-up on either ground alleged.—*Re* NATIONAL PORTLAND CEMENT CO., LTD., [1930] N. Z. L. R. 564.—**N.Z.**

PART III. SECT. 36, SUB-SECT. 2.—D. (d).

5384 i. —.]—Although a co. may be wound up where there is a complete deadlock in its management, where a substantial majority of the shareholders are opposed to the making of the order, where the petition is the outcome of a mere domestic quarrel, & where no substantial advantage will accrue from the granting of the order, an order will not be made.—*Re* SHIPWAY IRON BELL & WIRE MANUFACTURING CO., LTD., [1926] 2 D. L. R. 887; 58 O. L. R. 585.—**CAN.**

t i. —— *Differences between two sole members.*]—Where resp. had treated the co. as his own business in such a way as to destroy his fellow-shareholder's confidence in the impartiality of his administration:—*Held:* it was just & equitable that the co. should be wound up.—THOMSON *v.* DRYSDALE, [1925] S. C. 311.—**SCOT.**

t ii. —— *Deadlock caused by petitioners.*]—Winding-up order refused.—*Re* JAMES LUMBERS CO., LTD., [1926] 1 D. L. R. 173; 58 O. L. R. 100.—**CAN.**

t iii. —— ——.]—At the time of the presentation of the petition there were only four directors, whereas the co. under its bye-laws should have five. The two petitioning directors had recently refused to attend meetings or to discuss with the other directors the management of the co.'s affairs:—*Held:* if any deadlock existed it was created by the petitioners & was not a ground for ordering winding-up.—*Re* TORONTO FINANCE CORPN., [1930] 3 D. L. R. 882; 65 O. L. R. 351.—**CAN.**

PART III. SECT. 36, SUB-SECT. 2.—D. (e).

5397a i. —— —— *Managing director conducting affairs as though company his private business.*]—BAIRD *v.* LEES, [1924] S. C. 83.—**SCOT.**

PART III. SECT. 36, SUB-SECT. 3.—A

sg. *Leave to appeal from order—When granted.*]—Winding-up Act, 1927, s. 103, applies to an application for leave to appeal from an order allowing or dismissing a petition to wind up a co. Leave to appeal should not be granted, however, unless there appears to be some reason for doubting the validity of the judgment in review. "Future rights" in sub-sect. (*a*) of said sect. 103 should be given a wide interpretation; & the question to be raised on the intended appeal from an order dismissing a winding-up petition may involve future rights although the applicant for leave to appeal is merely a shareholder & not a creditor.—*Re* CANADA NATIONAL FIRE INSURANCE CO., [1930] 3 W. W. R. 209; 39 Man. L. R. 195.—**CAN.**

sh. *Security on appeal—Extension of time for giving.*]—The Ct. of Appeal has no power to extend the time for the giving of the security which Companies Winding-up Act, R. S. S. 1920 (c. 82), requires to be given when an appeal is taken from an order or decision in a proceeding under that Act. Resp.'s approval of the appeal book prior to the expiration of the time within which the security had to be given was held not to have been a waiver of his right to the security.—SHAUNAVON BUTCHERS, LTD. *v.* BURNESS, [1930] 1 W. W. R. 760; 3 D. L. R. 656; 24 S. L. R. 399.—**CAN.**

PART III. SECT. 36, SUB-SECT. 3.—B. (b) ii.

c i. —— ——.]—Petitioner herein, the holder of bonds of the co., which gave him in the words thereof a "first floating charge" on "the undertaking & all the assets of the co., both present & future":—*Held:* to have a right to apply for a winding-up order & to have made out a case therefor. He was not obliged to proceed on the covenant to pay in the bonds and by way of judgment & execution rather than by way of the proceedings for a winding-up order.—*Re* MID-WEST GLASS CO., LTD., [1931] 3 W. W. R. 165; 40 Man. L. R. 289.—**CAN.**

PART III. SECT. 36, SUB-SECT. 3.—B. (b) iv.

q i. —— —— ——.]—A petition for the winding up of a co., filed by a creditor with the view of enforcing payment of a disputed debt, is an abuse of the process of the ct. & should be dismissed.—PYDA SATYARAZU *v.* GUNTUR COTTON & PAPER MILLS CO., LTD. (1924), I. L. R. 48 Mad. 267.—**IND.**

5439 ii. —— ——.]—SMITHFIELD COLD STORAGE & EXPORT CO. OF SOUTH AFRICA, LTD. *v.* LEVER (1924), 45 N. L. R. 73.—**S. AF.**

PART III. SECT. 36, SUB-SECT. 3.—B. (c) i.

5484 i. *Executor of deceased shareholder.*]—*Held:* entitled to present a winding-up petition, although his name had not been entered in the books of the co. as the holder of the shares, & notwithstanding that the co.'s Act of incorporation provided that certain formalities must be observed before the co. was obliged to recognise as a shareholder a person who had become such by transmission by law.—*Re* GREAT WEST PERMANENT LOAN CO. & WINDING-UP ACT (Man.), [1927] 2 W. W. R. 15.—**CAN.**

PART III. SECT. 36, SUB-SECT. 3.—D. (a) i.

1 i. *General rule—Winding up detrimental to all concerned.*]—Winding-up order set aside.—*Re* SHIPWAY IRON BELL & WIRE MANUFACTURING CO., LTD., [1926] 2 D. L. R. 887; 58 O. L. R. 585.—**CAN.**

PART III. SECT. 36, SUB-SECT. 3.—D. (a) ii.

q i. —— *Exceptional circumstances.*]—A creditor of a co. presented a petition for the winding up of the co. by the ct. The co. had gone into voluntary liquidation, & the petition was opposed on the ground that the majority of the creditors desired the voluntary winding up to be continued. A statement of the co.'s affairs showed that its liabilities amounted to £335,000, while its assets were estimated at £9,300; that about £116,000, stated to be irrecoverable, had been advanced to directors of the co.; & that the co. had received large advances from associated cos., part of which were completely secured. Creditors to the extent of £300,000, including one whose claim amounted to about two-thirds of the co.'s whole indebtedness, had assented to the voluntary winding up, & petitioner, who was a creditor to the extent of £5,000 only, was the sole creditor who objected to the co. being wound up voluntarily:—*Held:* although as a general rule the co. would have regard to the wishes of a majority of creditors, the circumstances were of such a special character that an exception to the general rule should be made, & a winding-up order pronounced.—BOUBOULIS *v.* MANN, MACNEAL & CO., LTD., [1926] S. C. 637.—**SCOT.**

PART III. SECT. 36, SUB-SECT. 3.—E. (a).

sl. *Creditor's petition—Statement of debt.*]—A petition presented by a creditor for the winding up of a co. under Cos. Act, 1863, s. 81, ought to set forth the debt in respect of which the petitioner claims to be a creditor, together with the particulars of such debt, but, *semble*, he is not precluded from alleging *simpliciter* that he is a creditor. Where a petitioner alleges one debt & gives evidence of another the irregularity may, in case of surprise, be cured by the amendment of the petition or the adjournment of the hearing.—*Re* BARRIER REEF TRADING CO., LTD. (1929), S. R. (Q.) 177.—**AUS.**

5590a. —— Effect on right to costs.]—PRACTICE NOTE, [1929] W. N. 66; 167 L. T. Jo. 245.

5605. After this case add :—

—— ——.]—*See, now,* 1929 Act, s. 295 (5).

5648. *Add. Annotation :*—**Refd.** *Re* City Life Assce., [1926] Ch. 191.

5654a. Discretion of court to allow appearance although no notice given.]—PRACTICE NOTE (1930), 69 L. Jo. 268; [1930] W. N. 78.

5703. *Add. Citation :*—[1889] W. N. 1.

5711. After this case add :—

—— —— ——.]—*See, now,* Winding-up Rules, 1929, r. 36.

5815a. ——.]—*Re* KATHERINE ET CIE, LTD., No. 5959c, *post.*

5819. After this case add :—

——.]—*See, now,* 1929 Act, s. 175.

5829. *Add. Annotation :*—*As to* (3) **Folld.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

5841a. Issue of debenture—For money advanced to company for payment of wages.] — *Re* PARK WARD & CO., LTD., No. 5186b, *ante.*

5881. *Add. Annotations :*—**Distd.** *Re* Stanton, Hogg *v.* Maule (1927), 44 T. L. R. 118. **Refd.** *Re* Stanton, [1928] 1 K. B. 464.

5890. *Add. Annotation :*—**Refd.** Hearts of Oak Assurance Co., Ltd. *v.* A.-G. (1931), 47 T. L. R. 579.

5908a. Application for order under 1908 Act, s. 175 (6), for exculpation—Right of successful applicant to costs.]—*Re* AMUSEMENTS CONSTRUCTION CO., LTD., [1927] W. N. 7.

5938. *Add. Annotation :*—*As to* (2) **Refd.** *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102.

5959a. Duty to refund sum paid to company without consideration.] — *Re* REGENT FINANCE & GUARANTEE CORPN., LTD. (1930), 69 L. Jo. 283; 169 L. T. Jo. 305; [1930] W. N. 84.

5959b. Duty of liquidator of private company.]—The question arose in this case whether resp. had shown through a private co. a title under which he had become the assign of leasehold premises within sect. 95 of St. John's Municipal Act, 1921, & as such entitled on the expiration of the term granted by the lease to compensation for the unexhausted value of improvements made during the term. Resp.'s title was faulty & certain transactions under which he traced his title from the private co. irregular, but he was held by the Supreme Ct. to be an assign, a private co. not being regarded as a corpn. distinct from the persons composing it & irregularities in connection with its liquidation being regarded as permissible :—*Held :* the duties & responsibilities of the liquidator of a private co. are as serious as of any other co., & a private co. is distinct from the persons composing it; a liquidator of a private co. was therefore not justified in paying the creditors merely a dividend on their debts when large surplus assets remained in hand, & in then allowing the contributories without any deed of assignment to take possession for themselves of the surplus assets, & for the future in Newfoundland such irregularities should be without judicial countenance. Resp. had not established his claim to be legal assign of the property, having regard to such irregularities.—DITCHAM *v.* MILLER (1931), 100 L. J. P. C. 177; [1931] B. & C. R. 86, P. C.

Power to disclaim onerous property.]—*See* 1929 Act, s. 267.

5959c. Application for leave—What court will consider—Effect on interested parties.]—(1) Where the liquidator of a co. applies for leave to disclaim leasehold property of the co., the ct., in exercising its discretion, may take into consideration the effect of the disclaimer on interested parties.

The liquidator of a co. holding a lease applied for liberty to disclaim the lease. The lessors, who were relying on certain guarantors for the payment of the rent & performance of the covenants, opposed the application, on which the registrar made no order save as to payment of costs. On a motion before the ct. by way of appeal :—*Held :* as the lessors, who were entitled to appear, would suffer substantial injury if the disclaimer were allowed, the ct., in the exercise of its discretion, would not allow it.

(2) The winding up of a co. does not effect a *cessio bonorum,* & the property of the co. remains vested in the co. as before; whilst in a bkpcy. the property of the bkpt. vests in the trustee (MAUGHAM, J.).—*Re* KATHERINE ET CIE, LTD., [1932] 1 Ch. 70; 101 L. J. Ch. 91; 146 L. T. 226; [1931] B. & C. R. 121.

5972. *Add. Annotation :*—**Refd.** *Re* Windsor Steam Coal Co. (1901), Ltd. (1928), 140 L. T. 80.

5973. After this case add :—

—— ——.]—*See, now,* 1929 Act, s. 191.

PART III. SECT. 36, SUB-SECT. 3.—E. (h).

sm. *Examination of petitioner—Application by shareholders for second application.*]—Application refused.—*Re* WINDING-UP ACT, *Re* GREAT WEST PERMANENT LOAN CO. (Man.), [1927] 2 W. W. R. 433.—**CAN.**

PART III. SECT. 36, SUB-SECT. 4.—B. (g).

m i. —— *Sale of goods—Monthly deliveries—Company in default of payment for previous deliveries.*]—HAMILTON *v.* HAMILTON STEEL CO. (1911), 18 O. W. R. 739; 2 O. W. N. 779; 23 O. L. R. 270.—**CAN.**

PART III. SECT. 36, SUB-SECT. 8.—B.

sp. *Officer of company—Becomes functus officio on dissolution of company.*]—KRISHNASWAMI NAIDU *v.* ANDI CHETTI (1927), I. L. R. 51 Mad. 681.—**IND.**

st. *Liability to justify expenditure—Necessity for proof of misfeasance.*]—Before a liquidator can be called upon to justify an expense incurred by him in the course of liquidation, some particular evidence of negligence or breach of trust must be adduced before the case can be left to a jury.—NEW BRILLIANT FREEHOLD GOLD MINING CO., LTD. *v.* MILLS, [1928] St. R. Qd. 120.—**AUS.**

PART III. SECT. 36, SUB-SECT. 8.—C. (a).

sl. *Power to apply to court for directions—As to what matters—Ownership of bonds.*]—*Re* RANT & KER, LTD., [1930] 2 W. W. R. 274.—**CAN.**

PART III. SECT. 36, SUB-SECT. 8.—C. (b).

k i. —— *Action by company—To recover purchase price of shares—What defences available—Fraud.*]—FARMERS PACK CO., LTD. *v.* TULLY & TULLY, FARMERS PACK CO., LTD. *v.* HAVERS (Man.), [1927] 2 D. L. R. 749; [1927] 1 W. W. R. 902.—**CAN.**

PART III. SECT. 36, SUB-SECT. 8.—C. (c).

ss. *Change of solicitor — When permissible—Under order of court.*]—*Re* CONTINENTAL FIRE & CASUALTY CO., [1924] 3 D. L. R. 9; 2 W. W. R. 440; 34 Man. L. R. 482.—**CAN.**

PART III. SECT. 36, SUB-SECT. 8.—E. (e).

6026 i. *When ordered—Misfeasance summons.*]—MONTREAL TRUST CO. *v.* MCDOUGALL, [1930] 1 W. W. R. 784; 3 D. L. R. 159.—**CAN.**

PART III. SECT. 36, SUB-SECT. 9.—A.

sb. *Notice of meeting — To shareholders.*]—It is the duty of the trustee to give shareholders of an insolvent co. the same notice of the first meeting of

6048a. —— —— —— **After declaration of liability.**]—*Re* LEITCH (WILLIAM C.) BROS., LTD. (1932), 49 T. L. R. 74; 76 Sol. Jo. 888.

6055. *Add. Annotations:*—**Refd.** I. R. Comrs. *v.* City of Buenos Ayres Tramways Co. (1904), Ltd. (1926), 12 Tax Cas. 1125; Madras & Southern Mahratta Ry. Co., Ltd. *v.* I. R. Comrs. (1926), 12 Tax Cas. 1111.

6056a. Damages & costs paid by insurance company in respect of judgment obtained against insured company.]—Appct. obtained judgment against a co. for damages for personal injuries & costs. Afterwards the co. went into liquidation, & the insurance co. with which the co. in liquidation was insured paid the amount of the damages & costs to the liquidator:—*Held:* appct. was not entitled to have the amount paid to him direct by the liquidator, but it formed part of the assets for distribution among the general creditors, including appct.—*Re* HARRINGTON MOTOR CO., *Ex p.* CHAPLIN, [1928] Ch. 105; 97 L. J. Ch. 55; 138 L. T. 185; 44 T. L. R. 58; 72 Sol. Jo. 48; [1927] B. & C. R. 198, C. A.

Annotations:—**Apld.** Hood's Trustees *v.* Southern Union General Insce. Co. of Australasia, [1928] Ch. 793. **Consd.** Ward *v.* British Oak Insurance Co., [1932] 1 K. B. 392.

—— ——.]—*See, now,* Third Parties (Rights Against Insurers) Act, 1930 (c. 25).

6056b. Third Parties (Rights against Insurers) Act, 1930 (c. 25)—Whether retrospective.]—*Held:* Third Parties (Rights against Insurers) Act, 1930 (c. 25), s. 1 (1) is not retrospective so as to affect cases in which the liability had been incurred before July 10, 1930, when the Act came into operation.—WARD *v.* BRITISH OAK INSURANCE CO., LTD., [1932] 1 K. B. 392; 101 L. J. K. B. 240; 146 L. T. 323; 48 T. L. R. 13, C. A.

6058a. —— —— **Money borrowed from company by share-brokers.**]—The share-brokers of a provisionally registered co., who were also holders of shares, & had signed the co.'s deeds, borrowed of the directors part of the co.'s monies, to enable them to complete a large purchase of shares in the market, & deposited as a security the purchased shares & some of their original shares:—*Held:* the moneys borrowed were not due from them as members & contributories of the co., so as to authorise the master summarily to order them, in that character, to pay the amount under Joint-Stock Cos. Act, 1848 (c. 45), s. 66.—*Re* TRING, READING & BASINGSTOKE RY. CO., COX'S CASE (1850), 3 De G. & Sm. 180; 19 L. J. Ch. 167; 14 L. T. O. S. 484; 14 Jur. 387; 64 E. R. 435; *affd.*, 15 L. T. O. S. 389, L. C.

Annotation:—**Refd.** *Re* United English & Scottish Assurance Co., *Ex p.* Hawkins (1868), 3 Ch. App. 787.

6064. *Add. Annotations:*—**Consd.** *Re* Stanton, [1928] 1 K. B. 464. **Refd.** *Re* Stanton, Hogg *v.* Maule (1927), 44 T. L. R. 118.

6111a. —— **Discretion of court.**]—The discretionary power of allowing a question to be put at a public examination given to the ct. by Cos. (Winding-up) Act, 1890 (c. 63), s. 8 (7), is in no way limited by the other provisions of that sect., but is a discretion that must be judicially & carefully exercised under all the circumstances of each particular case.—*Re* LONDON & GLOBE FINANCE CO., LTD. (1902), 50 W. R. 253.

6133. *Add. Annotation:*—**Refd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704.

6137a. —— —— —— ——.]—*Re* OXFORD & WORCESTER EXTENSION & CHESTER JUNCTION RY. CO., POTTER'S CASE (1849), 1 De G. & Sm. 728; 5 Ry. & Can. Cas. 628; 18 L. J. Ch. 247; 13 L. T. O. S. 320; 13 Jur. 691; 63 E. R. 1270.

Annotations:—**Consd.** *Re* South Essex Estuary & Reclamation Co., *Ex p.* Pain & Layton (1869), 17 W. R. 275. **Refd.** *Re* Shrewsbury & Leicester Ry., *Re* Vardy (1851), 20 L. J. Ch. 325; Hope *v.* Liddell (1855), 20 Beav. 438.

6150. *Add. Annotations:*—**Refd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853; *Re* Etic, [1928] Ch. 861.

6150a. ——.]—*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD., No. 3059a, *ante.*

6150b. —.]—(1) The liquidators of a co. issued a summons under 1908 Act, s. 215, against the secretary of the co., asking for a declaration that he was indebted to the co. for sums overdrawn with the consent of the managing director:—*Held:* the operation of sect. 215 was not applicable to all cases in which a co. had a right of action against an officer of the co., but was limited to cases where there had been something in the nature of a breach of duty by an officer of the co. as such, which had caused pecuniary loss to the co., & no order would be made on the summons under the summary jurisdiction under sect. 215.

(2) No set-off is permissible as against a claim under sect. 215.—*Re* ETIC, LTD., [1928] Ch. 861; 97 L. J. Ch. 460; 140 L. T. 219; [1928] B. & C. R. 81.

6154. *Add. Annotations:*—**Distd.** *Re* Stanton, Hogg *v.* Maule (1927), 44 T. L. R. 118. **Refd.** *Re* Stanton, [1928] 1 K. B. 464.

6154a. Discretion of court—As to sum payable by person liable.]—*Re* HOME & COLONIAL INSURANCE CO., LTD., No. 6858b, *post.*

6158. *Add. Annotation:*—**Refd.** Weld *v.* Petre, [1929] 1 Ch. 33.

6161. *Add. Annotations:*—*As to* (1) **Consd.** *Re* Etic, [1928] Ch. 861. *As to* (2) **Refd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R.

creditors as is sent to those who are ordinarily deemed to be creditors, but the trustee's failure to do so does not invalidate the meeting, unless the irregularity has prejudiced the shareholders. — *Ite* PATRICIA APPLIANCE SHOPS, LTD., [1923] 3 D. L. R. 1160; 52 O. L. R. 215; 2 C. B. R. 466.—**CAN.**

PART III. SECT. 36, SUB-SECT. 10.—B. (a).

sc. *Use of information—In subsequent criminal proceedings.*]—Information derived in the course of an examination under Indian Companies Act, s. 195, can be used by a public servant charged with the investigation of a criminal offence, & such officer should be allowed to inform himself as to anything which might have come to light on such examination.—*Re* REGENT PARK SYNDICATE, LTD. (1929), I. L. R. 57 Calc. 424.—**IND.**

PART III. SECT. 36, SUB-SECT. 10.—B. (f) iii.

6110 i. *Whether justified—Examination of officer.*]—An officer of a co. summoned for examination must, on the examination, disclose the information he has concerning the trade, dealings, estate or effects of the co. in liquidation, regardless of whether he acquired it in his official capacity or otherwise, subject to his right to object to incriminating questions & those involving professional privilege.—*Re* MCMILLAN GRAIN CO. & WINDING-UP ACT, [1927] 3 D. L. R. 229; [1927] 1 W. W. R. 899; 36 Man. L. R. 454.—**CAN.**

PART III. SECT. 36, SUB-SECT. 10.—C. (d) i.

sd. *Something in nature of misconduct.*]—To make a person liable under Cos. Act, 1908, s. 254, he must

853. *Generally*, **Refd.** *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102.

6169. *Add. Annotation :*—**Consd.** *Re* Etic, [1928] Ch. 861.

6173. *Add. Annotation :*—**Refd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

6173a. —— Article relieving directors from loss—Unless arising from wilful neglect or default.]—*Re* City Equitable Fire Insurance Co., Ltd., No. 3059a, *ante*.

6173b. ——.]—*Re* Etic, Ltd., No. 6150b, *ante*.

6176a. Transactions in cotton futures.]—*Re* David Healey & Son, Ltd., District Bank, Ltd. *v.* Healey (1929), 74 Sol. Jo. 41.

6180a. Wrongful admission of proof—Failure to investigate claim.]—*Re* Home & Colonial Insurance Co., Ltd., No. 6858b, *post*.

6180b. Extent of liability—Discretion of court.]—*Re* Home & Colonial Insurance Co., Ltd., No. 6858, *post*.

6182. *Add. Annotations :*—*As to* (1) **Consd.** *Re* Etic, [1928] Ch. 861. *As to* (2) **Apld.** *Re* A Debtor, [1927] 1 Ch. 410. **Refd.** *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102.

6183. *Add. Annotation :*—**Apld.** *Re* A Debtor, [1927] 1 Ch. 410.

6183a. ——.]—*Re* Etic, Ltd., No. 6150b, *ante*.

6189. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

6212. *Add. Annotation :*—**Refd.** *Re* City Equitable Fire Insce. (1924), 40 T. L. R. 853.

6222. *Add. Annotation :*—**Refd.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487.

6229. *Add. Annotation :*—**Refd.** Spencer *v.* Ashworth Partington, [1925] 1 K. B. 589.

6293a. —— Excess of liability of contributories—Right to refund.]—An insurance co., the bulk of the shares of which were only partly paid up, was ordered to be wound up by the ct. These shares being held at the date of winding-up by another co., also in liquidation & insolvent, the liquidator of the insurance co. made two calls, the first of 1*s.* a share in 1925, & the second, described as a " final call," of 1*s.* 6*d.* a share in 1927, on the B. contributories who held the shares before they had been transferred to the insolvent co. The proceeds of these calls, together with the other assets of the co., were insufficient to pay all its creditors in full, but, apart from the other assets, exceeded by some £10,000 the total amount of the debts & liabilities of the co. contracted at the date when the B. contributories ceased to be members of the co. :—*Held :* the surplus did not form part of the assets of the co., but must be refunded to the B. contributories. The call must first be enforced against all B. contributories who had not paid it, so as to produce equality of contribution & distribution.—*Re* City of London Insurance Co., Ltd., [1932] 1 Ch. 226 ; 101 L. J. Ch. 124 ; 146 L. T. 296 ; 48 T. L. R. 169 ; 76 Sol. Jo. 29 ; [1931] B. & C. R. 129.

6293b. Enforcement of call—Notwithstanding right to refund—Necessity for equality of contribution & distribution.]—*Re* City of London Insurance Co., Ltd., No. 6293a, *ante*.

be shown to have been guilty of some misconduct by which the co. has suffered loss. There must be actual loss or damage measurable in terms of money.—*Re* Buick Sales, Ltd., [1926] N. Z. L. R. 24.—**N.Z.**

PART III. SECT. 36, SUB-SECT. 10.—C. (d) iii.

se. *Payments to discharge directors' liability on guarantee.*]—When a co. is insolvent to its directors' knowledge, & the directors cease payment of all but small & pressing accounts & pay all the rest of the co.'s takings into the bank to wipe out the co.'s overdraft, not with intention to prefer the bank, but in order to wipe out the directors' liability as sureties under their personal guarantee of the overdraft, such payments do not amount to a misfeasance or breach of trust within Cos. Act, 1908, s. 254.—*Re* Linney (H.) & Co., Ltd., [1925] N. Z. L. R. 907.—**N.Z**

sf. *Failure to have balance sheets prepared—Giving guarantees—Improper payment of dividends.*]—In the winding up of the F. co. under order of ct. it was disclosed, *inter alia*, that its liabilities included a large sum due on foot of guarantees in respect of the debts of the C. co., in which the F. co. owned all the shares, & also that substantial sums had been withdrawn from reserve & utilised in the payment of dividends on preference shares :—*Held :* (1) the failure to have proper balance sheets prepared, & the giving of guarantees to the C. co. & the payment of the preference dividends were wilful acts or defaults on the part of all the directors, & they were accordingly liable to make good the amount payable on foot of the guarantees & also to replace the amounts paid as preference dividends.—*Re* Fulton (John) & Co., Ltd., [1932] I. R. 35.—**IR.**

PART III. SECT. 36, SUB-SECT. 10.—C. (g).

6201 i. *Position of liquidator on summons—Security for costs—Whether court will order.*]—On a summons for an order requiring the liquidator to give security for costs : —*Held :* although the ct., in the exercise of its general jurisdiction, could order security to be given, nevertheless the established practice in the English cts. should be followed, & the summons must be dismissed.—*Re* New Zealand Gun Machine Co., Ltd. (In Liquidation), [1927] N. Z. L. R. 100.—**N.Z.**

PART III. SECT. 36, SUB-SECT. 10.—E. (a) iii.

6221 i. *When liable as contributory—General rule.*]—A past member of a limited co. may be liable to contribute to its assets in a winding up, notwithstanding the fact that the existing members at the date of the commencement of the liquidation hold fully-paid shares only.—*Re* Southern Cross Motor Fuels, Ltd., *Ex p.* Kelleway, [1926] V. L. R. 527 ; 48 A. L. T. 100 ; [1926] Argus L. R. 427.—**AUS.**

sg. *Who are past members—Deceased joint shareholder.*]—Upon the death of one of several joint holders of a share in a limited co., deceased becomes a past member within Cos. Act, 1899, s. 33, &, in the event of the co. going into liquidation prior to the expiration of a period of one year from his death, his personal representatives are liable to be placed upon the B. list of contributories of the co.—*Re* Wool Trading Co., Ltd. (No. 2) (1920), 28 S. R. N. S. W. 435 ; 45 N. S. W. W. N. 113.—**AUS.**

PART III. SECT. 36, SUB-SECT. 10.—E. (b).

6238 i. *Termination of liability—Whether Statute of Limitations applicable.*]—A co.'s Act of incorpn. provided that every shareholder should be liable to the creditors of the co. for the amount not paid up on his shares. The co. was ordered to be wound up under the Winding-up Act (Dom.) :—*Held :* the liability of a shareholder with respect to the amount unpaid on his shares was a statutory one & not dependent on the terms of the contract under which he took the shares, &, therefore, the Statute of Limitations could not be relied on as a defence.—*Re* Imperial Canadian Trust Co. & McKeague, [1929] 4 D. L. R. 381 ; 2 W. W. R. 423 ; 38 Man. L. R. 249 ; *affg.*, [1929] 1 W. W. R. 588.—**CAN.**

sj. *How enforced—Right of liquidator to bring action.*]—Cos. Winding-up Act (Sask.), ss. 15 & 22, which establish a summary statutory procedure, enabling a liquidator to get payment from a contributory under the Act instead of proceeding by action, are only permissive & not obligatory, & the liquidator is not bound to have recourse to that procedure but may proceed by way of action.—Masecar *v.* McKenzie & Son, [1924] 2 D. L. R. 1242 ; 2 W. W. R. 521.—**CAN.**

PART III. SECT. 36, SUB-SECT. 10.—E. (c).

t i. —— ——.]—There is nothing in Winding-up Act to justify the suggestion that in settling the list of contributories regard is to be had only to those shareholders whose liability is subject to call.—*Re* National Stadium, Ltd. (1924), 55 O. L. R. 199.—**CAN.**

sk. —— *Deceased shareholder.*]—*Re* Canadian Cordage & Manufacturing Co. (1923), 54 O. L. R. 486.—**CAN.**

PART III. SECT. 36, SUB-SECT. 10.—E. (e) ii.

6296 ii. —— ——.]—A member of a co. in liquidation is liable in respect of unpaid calls, even though, as against the co., the realisation of such calls

6346. *Add. Annotation :—As to* (1) **Refd.** Swift *v.* Board of Trade, [1925] A. C. 520.

6359. *Add. Annotation :*—**Refd.** Henry *v.* Foster (Arthur), Henry *v.* Foster (Joseph), Hunter *v.* Dewhurst (1931), 145 L. T. 225.

6361. After this case add :—

——.]—*Compare* FOWLER *v.* COMMERCIAL TIMBER CO., LTD., No. 3491a, *ante*.

6362. *Add. Annotation :*—**Apld.** *Re* Snow (W. R.) & Co. (1930), 74 Sol. Jo. 201.

6368a. —— **For salary for dismissal without notice.**]—Where a clerk claimed to be paid out of the assets for services rendered, & a year's salary for dismissal without notice, contrary to agreement :—*Held :* he was entitled to the salary as claimed.—*Re* MADRID BANK, *Ex p.* WILLIAMS (1866), L. R. 2 Eq. 216 ; 35 L. J. Ch. 474 ; 14 W. R. 706 ; *sub nom. Re* MADRID BANK, LTD., *Ex p.* HOLDER, *Ex p.* WILLIAMS, 14 L. T. 456.

Annotations :—**Refd.** *Re* Madrid Bank, Wilkinson's Case (1867), 15 W. R. 331 ; *Re* General Exchange Bank, Preston's Claim (1868), 19 L. T. 138.

6392. *Add. Annotation :*—**Consd.** *Re* Agricultural Wholesale Soc., [1929] 2 Ch. 261.

6394a. —— ——.]—The society, under a loan stock trust deed, issued loan stock bearing interest at 7 per cent. with a quinquennial bonus of 2½ per cent. Under the trust deed, entered into by the society with trustees for the stockholders, an amount equal to 7½ per cent. on the par value of the stock was to be paid to the trustees, for apportionment to the interest & to a fund for the bonus. At the date of an order for the winding up of the society, most of the stockholders had received payment in full of interest at 7 per cent. on the amount of loan stock issued, up to & including a date seven months before the order. The trustees lodged with the liquidator a proof stated to be for cash advanced on loan ; & this summons asked (i) whether the proof should be rejected to the extent of interest proved for above 7½ per cent. up to the date of the commencement of the winding up ; (ii) whether interest should be calculated, at 5 per cent., to the date of the order or to the commencement of the winding up ; & (iii) whether Bkpcy. Act, 1914 (c. 59), s. 66 (2) (*b*), had any application to proof or dividend in respect of the loan stock :—*Held :* (1) the amounts proved for by the trustees were to be computed only to the date of the commencement of the winding up ; (2) Bkpcy. Act, 1914 (c. 59), s. 66, was not incorporated by 1908 Act, s. 207, so as to apply in the winding up of an insolvent co., & that the trustees' proof was therefore calculable at the rate of 7½ per cent.—*Re* AGRICULTURAL WHOLESALE SOCIETY, [1929] 2 Ch. 261 ; 98 L. J. Ch. 396 ; 141 L. T. 551 ; 45 T. L. R. 467 ; [1929] B. & C. R. 54.

Annotations :—*As to* (2) **Apld.** *Re* Wells, [1929] 2 Ch. 269. **N.F.** *Re* Bush, Lipton (B.), Ltd. *v.* Mackintosh, [1930] 2 Ch. 202.

6396a. **Whether bankruptcy rules applicable.**] *-Re* AGRICULTURAL WHOLESALE SOCIETY, No. 6394a, *ante*.

6399a. Adoption of balance sheet including directors' fees—Whether acknowledgment within Statute of Limitations.]—*Re* COLISEUM (BARROW), LTD., No. 3126a, *ante*.

6403. *Add. Annotation :*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

6407. *Add. Annotation :—Generally,* **Refd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

6409. *Add. Annotation :*—**Consd.** *Re* Pitchford, [1924] 2 Ch. 260.

6409a. Rule limiting rate of interest.]—*Re* AGRICULTURAL WHOLESALE SOCIETY, No. 6394a, *ante*.

6409b. Rule relating to copyright or interest in copyright vested in bankrupt.]—A book was published by Co. No. 1 under an ordinary royalty agreement. Thereafter Co. No. 1, with the consent of the author, granted to Co. No. 2 the exclusive right of publishing a cheap edition subject to the payment of a royalty to Co. No. 1, & Co. No. 1 agreed with the author to pay to him a half share of such royalty. Co. No. 1 went into voluntary liquidation, & the liquidator contended that the author was not entitled to payment in full of a half share of the royalty received or to be received from Co. No. 2, but must

may have become barred by limitation. — *Re* DEHRA DUN-MUSSOORIE ELECTRIC TRAMWAY CO., LTD., *Re* PANNA LAL (1927), I. L. R. 50 All. 476.—**IND.**

6298 i. —— *Power of liquidator to make immediate call—For whole of unpaid balance on shares.*]—*Re* IRMA CO-OPERATIVE CO., LTD., *Re* LOVE & KNUDSON, [1925] 1 D. L. R. 27 ; [1924] 3 W. W. R. 850.—**CAN.**

PART III. SECT. 36, SUB-SECT. 11.—A. (c).

6357 ii. —— ——.]—In Oct. 1907, R., J., L., G., & H., five directors of C. & Co., Ltd., entered into agreements under which they became employees of the co., each receiving a salary & one-fifth of the net profits. The agreements were to remain in force for ten years, unless terminated as therein provided. R., being unable to attend to the business of the co., entered into a new agreement dated June 14, 1911, whereby his prior agreement was annulled, & it was agreed that he & his personal representatives should continue to be paid one-fifth of the net profits, so long as he or they retained the share interest in the capital of the co., which he then held, in one undivided holding. The agreements with the other directors were not cancelled, but, by supplemental agreements, it was provided that if they gave up their employment with the co. they also would continue to receive their respective one-fifth shares of the net profits, so long as their respective shares in the co. were retained in one holding. H. died in 1913 ; G. in 1914 ; R. in 1919. In 1920 £3,000 was appropriated in respect of directors' shares of the net profits, payable under their agreements, & was placed to the credit of a directors' remuneration account. This sum was subsequently divided into five sums of £600 & placed to the credit of their respective deposit accounts with the co. The co. had power under its arts. of assocn. to fix the remuneration of directors, & in pursuance of a resolution passed at the annual meeting of the co. on June 11, 1920, a sum of £3,500 was placed at the disposal of the managing directors, then J. & I., & two others, as a bonus for the year 1919-20. Of this sum £1,300 was allotted to J. & I. respectively. These amounts were not paid out, but were retained by the co. & placed to the credit of their deposit accounts in 1925. The co. having become insolvent, went into voluntary liquidation, & up to that time the five sums of £600 & the two sums of £1,300 had not been paid to the persons who claimed them :—*Held :* (1) the sums of £600 claimed by the personal representatives of H., G., & R., were sums due to members of the co. in their character of members by way of dividends, profits, or otherwise, within Cos. Act, 1908, s. 123 (1) (vii), & accordingly the persons claiming these sums were not entitled to compete with the ordinary creditors of the co. in respect thereof ; (2) J. & I., having continued their employment with the co. until after June 11, 1920, the sums of £600 claimed on their behalf were payable to them under their contracts of employment, & not in their character of members of the co., & so did not come within Cos. Act, 1908, s. 123 (1) (vii) ; (3) the sums of £1,300 due to I., & to the personal representatives of J., were sums given to them, not by agreement, but under the arts. of assocn., & so were not payable to them in their character of members within Cos. Act, 1908, s. 123 (1) (vii).—*Re* CINNAMOND PARK & CO., LTD., [1930] N. I. 47.—**IR.**

prove in the liquidation for the value of his contract:—*Held:* the author was entitled to payment in full of the half share of royalty received or to be received by the liquidator from Co. No. 2.—HENHAM *v.* ALSTON RIVERS, LTD. (1916), Macgillivray Copyright Cases (1911–16) 330.

Annotation:—**Distd.** *Re* Health Promotion, Ltd., [1932] 1 Ch. 65.

6409c. —.]—Bkpcy. Act, 1914 (c. 59), s. 60, does not apply in the winding up of an insolvent co.

Two authors entered into agreements with a publishing co. for the exclusive right to print & publish certain books written by them. The copyright in some of the books was to go to the co., in others, to remain to the authors: & royalties were payable to the authors as in the agreements provided. The co. went into voluntary liquidation, & the liquidator sold its assets, including copies of the books: & it was agreed by a later agreement between him & the purchaser that nothing in the agreement should prejudice the purchaser's right to sell them. The co. became insolvent. On a summons to determine whether, where the copyright or some interest in it was vested in the co. at the date of the resolution to wind up, the sale was subject to Bkpcy. Act, 1914 (c. 59), s. 60, & whether, where the copyright was not then vested in the co., the consent of the authors was necessary to the sale:—*Held:* Bkpcy. Act, 1914 (c. 59), s. 60, is not incorporated in Cos. Act, 1929 (c. 23), s. 262, & therefore did not apply to the rights of the authors.—*Re* HEALTH PROMOTION, LTD., [1932] 1 Ch. 65; 101 L. J. Ch. 58; 146 L. T. 211; [1931] B. & C. R. 97.

6414. *Add. Annotation:*—**Refd.** *Re* Katherine et cie, Ltd., [1932] 1 Ch. 70.

6421. *Add. Annotation:*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

6427. *Add. Annotation:*—**Refd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

6428. *Add. Annotation:*—**Refd.** *Re* Bailey, Duchess Mill, Ltd. *v.* Bailey (1932), 76 Sol. Jo. 560.

6431. *Add. Annotation:*—**Refd.** *Re* Bailey, Duchess Mill, Ltd. *v.* Bailey (1932), 76 Sol. Jo. 560.

6436a. ——.]—In a common law action by a co. in liquidation against a shareholder for a call made before the liquidation, deft. has no right of set-off in respect of sums alleged to be due to him from the co.—ALLIANCE FILM CORPN., LTD. *v.* KNOLES (1927), 43 T. L. R. 678.

6442a. ——.]—Applt., the managing director of a co. which was insolvent, recovered judgment against the co. for repayment of money lent by him to the co. Shortly afterwards, the provisional liquidator of the co., which was subsequently, in Apr. 1925, ordered to be wound up, paid to applt. the amount for which he had recovered judgment, & in Apr. 1926, an order was made in the winding up upon applt. to repay to the liquidator that amount, on the ground that the payment to him by the liquidator was void as a fraudulent preference. In consequence of applt.'s non-compliance with that order, a bkpcy. notice was served upon him, & a receiving order made against him, the registrar refusing to allow applt. to set off against the amount he had been so ordered to repay to the liquidator the sum for which he had recovered judgment against the co.:—*Held:* the indebtedness of applt. having been incurred under an order made after the date of the winding up, there were at that date no mutual debits capable of set-off; the payment by the liquidator being void as a fraudulent preference, applt. had not any valid or effectual right of set-off in respect of the sum he had been ordered to repay to the liquidator, & his only right was to prove in the winding up with the other creditors.—*Re* A DEBTOR (82 of 1926), [1927] 1 Ch. 410; 136 L. T. 349; *sub nom. Re* MUMFORD, DEBTOR *v.* PETITIONING CREDITOR, *Ex p.* OFFICIAL RECEIVER, 96 L. J. Ch. 75; [1926] B. & C. R. 165, D. C.

6444. *Add. Annotations:*—**Folld.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293. **Refd.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

6445. *Add. Annotations:*—**Apld.** *Re* A Debtor, [1927] 1 Ch. 410. **Refd.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

6446. *Add. Annotations:*—*As to* (1) **Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358. *As to* (2) **Refd.** *Re* City Life Assce., [1926] Ch. 191.

6447. *Add. Annotations:*—*As to* (2) **Apld.** *Re* City Life Assce., [1926] Ch. 191. **Refd.** *Re* National Benefit Assce., [1924] 2 Ch. 339. *Generally*, **Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

6448. *Add. Annotations:*—**Consd.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293. **Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

6455a. —— **Joint partnership debt — Creditor member of firm.**]—In the winding up of a co. the liquidator sought to set off against a debt due by the co. to a creditor a debt alleged

PART III. SECT. 36, SUB-SECT. 11.—C. (a).

6423 i. ——.]—Shareholders are not entitled to set off against their liability for immediate payment of the amounts unpaid on their shares any dividends owing to them.—*Re* IRMA CO-OPERATIVE CO., LTD., *Re* LOVE & KNUDSON, [1925] 1 D. L. R. 27; [1924] 3 W. W. R. 850.—**CAN.**

o. Add " ***revsd.*** **16 S. C. R. 456."**

o i. —— *Claim to indemnity in respect of shares held as trustee.*]—D. & F. were joint managers of the M. Bank, &, while so acting, a number of stocks, shares, & other securities, & amongst others, £40,000 Consols, & £60,000 New Three Per Cent. Stock, were transferred into their names, as trustees for the bank. There was also assigned to them by certain customers of the bank 801 shares in the bank itself, as security for moneys due, or to become due, from them to the bank; & these shares were, at the date of the liquidation, standing in the names of D. & F. During the years 1883 & 1884 the £40,000 Consols, & £60,000 New Three Per Cent. Stock, were transferred to the Bank of Ireland, as security for advances to the M. Bank on an account entitled in the name of the Governor & Co. of the Bank of Ireland, "in collateral account with D. & F., both of the M. Bank." The M. Bank stopped payment in July, 1885, & was being wound up. F. absconded, & on Oct. 1, 1885, an order was made that the estate & interest of D. & F. in the £40,000 Consols & £60,000 New Three Per Cent. Stock should vest in D. & the liquidators of the M. Bank. The Bank of Ireland having been paid off, the £40,000 Consols & £60,000 New Three Per Cents. were, on Oct. 5, 1885, transferred into the names of D. & the liquidators. The liquidators placed D. on the list of contributories in respect of the 801 shares, & made a call thereon: & they also required D. to join with them in realising the stock. D. claimed to be indemnified against the calls out of these stocks:—*Held:* as against creditors, D. had no such right of indemnity.—*Re* MUNSTER BANK, LTD. (DILLON'S CLAIM) (1886), 17 L. R. Ir. 311.—**IR.**

to be due to the co. by a partnership firm of which the creditor was a member :—*Held :* the alleged debt of the partnership firm being a joint & not a joint & several debt, it could not be set off against the separate debt due by the co. to the partner.—*Re* PENNINGTON & OWEN, LTD., [1925] Ch. 825 ; 95 L. J. Ch. 93 ; 134 L. T. 66 ; 41 T. L. R. 657 ; 69 Sol. Jo. 759 ; [1926] B. & C. R. 39, C. A.

6456. *Add. Annotation :*—**Refd.** *Re* Clemmons Aluminium (1924), 94 L. J. K. B. 487.

6460. *Add. Citations :*—130 L. T. 1 ; [1923] B. & C. R. 114 ; *affg.* S. C. *sub nom. Re* WEBB (H. J.) & CO. (SMITHFIELD, LONDON), LTD., [1922] 2 Ch. 369.

Add. Annotations :—**Refd.** *Re* Winget, Burn *v.* Winget, [1924] 1 Ch. 550 ; *Re* Cockell, Jackson *v.* A.-G., [1931] 1 Ch. 389.

6462. *Add. Annotations :*—**Refd.** *Re* Winget, Burn *v.* Winget, [1924] 1 Ch. 550 ; A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

6465a. —— Rates paid by director—Preferential rights of director.]—*Re* LAMPLUGH IRON ORE CO., No. 3105a, *ante.*

6466. *Add. Annotation :*—**Refd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

6467. *Add. Annotation :*—**Refd.** *Re* Clemmons Aluminium (1924), 94 L. J. K. B. 487.

6472a. —— —— No exclusive employment—Or fixed hours.]—ANGLO-AUSTRIAN CONFECTIONARY CO., LTD., BARTLETT *v.* THE COMPANY (1912), Y. S. C. P.

6477a. —— —— ——.]—*Re* GENERAL RADIO CO., LTD., FIRST CO-OPERATIVE INVESTMENT TRUST, LTD. *v.* THE CO., [1929] W. N. 172.

6500. *Add. Annotation :*—**Refd.** *Re* Houlder, [1929] 1 Ch. 205.

6506. *Add. Annotation :*—**Apld.** *Re* Agricultural Wholesale Soc., [1929] 2 Ch. 261.

PART III. SECT. 36 SUB-SECT. 11.—D. (a).

h i. —— *Rent.*]—A landlord of a co. in liquidation has a preferential claim to payment up to three months' rent, where there are goods on the premises to that value at the date of liquidation.—*Re* SHRIVES & MCKENZIE PTY., LTD., [1926] V. L. R. 563 ; 48 A. L. T. 99 ; [1926] Argus L. R. 442.—**AUS.**

h ii. *S. P. Re* CARPENTER HALES & CO., LTD. (1926), 26 S. R. N. S. W. 420 ; 43 N. S. W. W. N. 116.—**AUS.**

PART III. SECT. 36, SUB-SECT. 11.—D. (b).

sm. *Price of wheat supplied under State wheat scheme.*]—The Minister charged with the administration of Wheat Marketing Acts sold a quantity of wheat to a co. which before payment went into liquidation :—*Held :* the debt being a Crown debt, the Minister was entitled to priority of payment in the administration of the assets of the co. In the winding up of a co. the Crown is not bound by the provisions of Cos. Act, 1893, & its amendments.—*Re* OCKERBY & CO., LTD. (1922), 25 W. A. L. R. 25.—**AUS.**

sn. *Price of coal from State coal mine.*]—The Victorian Railways Comrs. supplied coal from the Victorian State Coal Mine to a co. which subsequently went into voluntary liquidation. The Comrs. lodged a proof of debt with the liquidator in respect of the price of the coal, but, after having received two dividends, they claimed priority over the other creditors on the ground that the amount due was a debt due to the Crown :—*Held :* the debt was one due to the Crown, & was entitled to priority over the other debts of the co., Cos. Act, 1928, ss. 186, 208, not affecting Crown debts.—*Re* ORIENTAL HOLDINGS PTY., [1931] V. L. R. 279 ; Argus L. R. 266.—**AUS.**

so. *Debt due to public Board.*]—Meat Industry Act, 1915, No. 69 (N. S. W.), established a Board to administer the Act. The Governor had power to veto certain of its actions. The Board had wide powers, which it exercised at its discretion ; any power of interference which a Minister of the Crown possessed was not such as to make the acts of administration his acts. Money received by the Board was not paid into the general funds of the State, but to its own fund :—*Held :* a debt due to the Board was not a debt due to the Crown.—METROPOLITAN MEAT INDUSTRY BOARD *v.* SHEEDY, [1927] A. C. 899 ; 137 L. T. 782 ; 43 T. L. R. 701, P. C.—**AUS.**

sp. *Contributions under Unemployment Insurance Acts.*]—A co. was being wound up by the ct. under the provisions of the Companies (Consolidation) Act, 1908, &, in answer to the advertisement for claims against the co., the liquidator received from the Department of Industry & Commerce a claim in respect of unpaid contributions under the Unemployment Insurance Acts in respect of workmen employed by the co. Portion of the amount was claimed as a preferential payment under Unemployment Insurance Act, 1920, s. 26 (1), in respect of contributions payable by the co. during the four months before the commencement of the winding up as specified in that sect., & the balance was claimed as a State debt to rank next after the preferential debts & in priority to the ordinary creditors :—*Held :* the claim of the Department other than such portion as was payable under sect. 26 (1), was not payable in priority to the claims of the general creditors of the co.—*Re* A. & B. TAXIS, LTD., [1931] I. R. 87.—**IR.**

sq. *Damages for breach of contract.*]—*Held :* the Crown, in the right of the Dominion Govt., had priority, in respect of its claim for unliquidated damages for breach by the shipbuilding co. of a contract for the building of ships, over the claims of a city corpn. & electric comrs. for taxes & the price of power supplied.—TORONTO (CITY) & TORONTO ELECTRIC COMRS. *v.* WADE, [1931] 4 D. L. R. 928 ; O. R. 470 ; *affd.*, [1932] 3 D. L. R. 509.—**CAN.**

PART III. SECT. 36, SUB-SECT. 11.—D. (c)

st *Municipal taxes & taxes due to Public Utilities Commission—Payable before Crown claims.*]—*Re* INTERNATIONAL METAL WORKS, LTD., *Ex p.* R., [1925] 1 D. L. R. 309 ; 5 C. B. R. 378.—**CAN.**

PART III. SECT. 36, SUB-SECT. 11.—D. (d).

a i. ——.]—*Held :* a director of the co., the secretary, a floor-manager & host, an entertainer & the members of a band of musicians did not come within the definition of " clerk or servant " in s. 208 (i) (c) of Cos. Act, 1915, & were therefore not entitled under the section to preferential claims for salary or wages.—*Re* ESPLANADE THEATRE, LTD. (IN LIQUIDATION) (1929), V. L. R. 237 ; Argus L. R. 198.—**AUS.**

s (p. 946) **i.** — *Meaning of " going into liquidation."*]—Bkpcy. is a " going into liquidation " within sect. 100 (1) (*b*) of Cos. Act, R. S. O., 1927.—DAVEY *v.* GIBSON, [1930] 3 D. L. R. 606 ; 65 O. L. R. 379 ; 11 C. B. R. 341 ; *affg.*, [1930] 2 D. L. R. 139 ; 64 O. L. R. 627 ; 11 C. B. R. 138.—**CAN.**

st. *Effect of Bankruptcy Act, s.* 48 (4).]—The above sect. does not restrict the amount of the debt for which an officer, director or shareholder of a co., which has made an authorised assignment, may in the first instance prove, & postpone the right to prove for the balance until all other creditors have been paid in full, but while allowing him to prove for the full amount of his claim, it merely restricts the amount of payment or satisfaction in the aggregate which he may receive on account of his claim as proven until claims of other creditors have been satisfied.—*Re* CALGARY FURNITURE STORE, LTD. & HIGGS, [1924] 2 D. L. R. 308 ; [1924] 1 W. W. R. 1137 ; 4 C. B. R. 538.—**CAN.**

PART III. SECT. 36, SUB-SECT. 11.—E. (a).

sv. *Not bondholders under unregistered trust mortgage.*]—*Re* BEAVER TRUCK CO. (Ont.), [1926] 1 D. L. R. 71.—**CAN.**

sw. *Bondholders — Notwithstanding abandonment of lien against purchaser of assets.*]—*Re* ST. JOHN RIVER LOG DRIVING CO. (N. B.), [1927] 3 D. L. R. 800.—**CAN.**

PART III. SECT. 36, SUB-SECT. 11.—E. (b).

6490 i. *Whether proof for total sum due at time of claim—Where securities realised before claim.*]—Where a secured creditor realises on his securities himself without sending in a claim to the liquidator or valuing his securities, he is debarred from ranking on the estate for any deficiency, & must be regarded as standing outside the liquidation proceedings.—MCFARLAND *v.* LONDON & LANCASHIRE GUARANTEE & ACCIDENT CO. (Can.), [1927] 3 D. L. R. 67.—**CAN.**

sy. *Whether interest on balance after security exhausted can be added.*]—In the liquidation proceedings of an insolvent co. a secured creditor after having exhausted his security cannot in proving as regards the balance of his debt unsatisfied include interest after the date of the winding up order.—OPPENHEIMER *v.* MOOLA (1929), I. L. R. 7 Ran. 514.—**IND.**

6517a. Right to consider set-off.]—A liquidator, when examining a proof of debt with a view to its admission or rejection, is entitled also to examine a set-off to such proof, if it is a matter of account, in order to arrive at the amount, if any, for which the proof is to be allowed.—*Re* NATIONAL WHOLE MEAL BREAD & BISCUIT CO., [1892] 2 Ch. 457; 67 L. T. 293; 40 W. R. 591; 36 Sol. Jo. 540.

6533a. On footing that company insolvent—Company found solvent—Right to prove for balance.]—A compulsory order having been made for the winding up of a co. on the ground of its being just & equitable to make such an order, the costs of the co. of the petition were taxed & paid out of the assets on the basis that it was insolvent. The co. was ultimately found to be solvent, & the solr. claimed to prove in the liquidation for the balance of his bill of costs, being solr. & client costs incurred upon the instructions of the co. & its directors in opposing the petition. The liquidator rejected the proof on the ground that the amount claimed represented costs already taxed off the bill, & the registrar upheld his decision on the ground that there was no right of proof for any costs beyond the taxed costs of the petition under r. 192 of the Winding-up Rules, 1929:—*Held:* the solr. was entitled to prove for any unpaid balance of costs due to him from the co., there being nothing to the contrary contained or implied in r. 192, which was concerned with the priorities of different sets of costs incurred in winding up. There being sufficient to pay all creditors in full, the co.'s solr. was entitled to be paid his costs as between solr. & client, & the liquidator was ordered to admit the proof, subject to taxation if he so desired.—*Re* C. B. & M. (TAILORS), LTD., [1932] 1 Ch. 17; 101 L. J. Ch. 6; 146 L.T. 118; [1931] B. & C. R. 69; 75 Sol. Jo. 797.

6549a. Costs of summons by debenture-holders.]—The directors of a co. registered under 1862 Act, being empowered by their articles to borrow on debenture bonds any sums "necessary" for the business of the co., in Dec. 1865, issued twenty debentures of £100 each, all in the same form, by which they pledged "the property belonging to us for the time being during the subsistence of the debenture, with all the buildings & stock on, & connected with, our said property, & all the receipts & revenues to arise therefrom"; & declared that the entire debenture loan & interest should be a first charge on "our undertaking & property & receipts & revenues aforesaid." The business of the co. was to buy & sell land, to build, buy, & sell houses, to furnish houses for hotels, & to carry on the business of hotel keepers. A winding-up order having been made, the liquidator proceeded to sell certain freehold & leasehold estate belonging to the co.; but the purchaser refused to complete unless the debenture-holders were satisfied. The debenture-holders thereupon took out a summons in Chambers:—*Held:* after making all just allowances to the liquidator in realising the fund, the debenture-holders, applying by way of summons in the matter of the winding up, were entitled to their costs, as well as to their principal & interest, out of the fund, in priority to all other charges.—*Re* MARINE MANSIONS CO. (1867), L. R. 4 Eq. 601; 37 L. J. Ch. 113; 17 L. T. 50.

Annotation:—**Folld.** *Re* Oriental Hotels Co., Porry *v.* Oriental Hotels Co. (1871), L. R. 12 Eq. 126.

6555a. Payment of dividend to creditors of private company—Surplus assets handed over to contributories—Validity.]—DITCHAM *v.* MILLER, No. 5959b, *ante*.

6563. *Add. Annotation:*—**Apld.** Sugden *v.* Urban Fire Insurance Co. (1930), 75 Sol. Jo. 60.

6565. *Add. Annotations:*—**Refd.** Biddulph & District Agricultural Soc. *v.* Agricultural Wholesale Soc. (1926), 95 L. J. Ch. 576; *Re* Wilts & Somerset Farmers (1928), 98 L. J. Ch. 17.

6567. *Add. Annotations:*—*As to* (2) **Consd.** Collaroy Co. *v.* Giffard, [1928] Ch. 144. **Folld.** *Re* John Dry Steam Tugs, Ltd., [1932] 1 Ch. 594.

6569a. —— What are.]—A limited co.'s memorandum of assocn. provided that the preference shareholders should be entitled "in a winding up to such a share of the surplus assets as shall provide for the holders of preference shares an amount per share equal to one-half of the amount per share provided for the holders of ordinary shares, but so that the total sum so provided for the holders of the preference shares shall not exceed five shillings per share, the preference shareholders being entitled to no further participation in the profits or assets":—*Held:* the expression "surplus assets" meant what was left after the payment of debts & the repayment of the whole of the preference & ordinary capital.—*Re* DUNSTABLE PORTLAND CEMENT CO., LTD. (1932), 48 T. L. R. 223; 76 Sol. Jo. 95.

6576. *Add. Annotation:*—**Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

6578. *Add. Annotation:*—**Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

6579. *Add. Annotation:*—**Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

6579a. —— —— ——.]—1929 Act, s. 177, by which no action or proceeding shall be continued or begun without the ct.'s leave against a co. after the making of a winding-up order against, or the appointment of a pro-

PART III. SECT. 36, SUB-SECT. 12.—B. (d).

6528 i. *Lien on fund recovered by his exertions—Costs incurred before winding up—Fund not under control of court.*]—A petition for a charging order was presented by a law agent who had recovered a fund for a company registered in England. The ct. granted the order, notwithstanding the voluntary liquidation of the company & the payment over of the fund to the liquidator in England.—PHILIP *v.* WILSON (1911), 48 Sc. L. R. 947.—**SCOT**

PART III. SECT. 36, SUB-SECT. 12.—C.

sz. *Right of judgment creditors to interest.*]—On the liquidation of a co. judgment creditors who obtained their judgments after the commencement of the liquidation as well as those who obtained their judgments prior thereto held alike entitled to interest out of any surplus remaining after payment of all the principal debts.—*Re* COLONIAL ASSURANCE CO. (Man.), [1928] 3 W. W. R. 703.—**CAN.**

PART III. SECT. 36, SUB-SECT. 12.—D. (c).

m i. ——.]—*Re* SMEETONS, LTD. (IN LIQUIDATION), [1928] N. Z. L. R. 190.—**N.Z.**

PART III. SECT. 36, SUB-SECT. 13.—A.

p i. —— —— *Sale by mortgagees in possession.*]—A co. being in liquidation, the mtgees. went into possession prior to the issue of the winding-up order. The liquidator sought to restrain the mtgees. from selling without the sanction of the ct., on the ground that such sale would be a "proceeding against the co.":—*Held:* the mtgees. were proceeding rightfully.—*Re* BRITISH COLUMBIA TIE & TIMBER CO. (1908), 14 B. C. R. 81; 9 W. L. R. 495.—**CAN.**

visional liquidator of, the co., does not apply to proceedings abroad. But proceedings abroad by a person or corpn. within the ct.'s jurisdiction can be restrained by the ct., in the exercise of its equitable jurisdiction *in personam*, if that person has been properly served, within the jurisdiction, with the ct.'s order restraining the proceedings. Where, however, a foreign co. registered in a foreign country & also in England, or other foreign creditor within the ct.'s jurisdiction, has given credit to an English co. registered & trading in the foreign country, knowing the English co. to have attachable assets there, the ct. will not exercise its equitable jurisdiction *in personam* to restrain proceedings abroad, since it would not be just or equitable to restrain them on the ground either that the foreign co. or creditor is within the ct.'s jurisdiction or that the foreign co. or creditor can be served with proceedings in England. If the English co. is wound up by the ct., & its foreign branch is wound up by the foreign ct., the foreign co. or other creditor is free to prove the debt in the foreign country &, subject to the *lex fori*, to bring an action there.—*Re* VOCALION (FOREIGN), LTD., [1932] 2 Ch. 196; 48 T. L. R. 525.

6581. *Add. Citation:— affd.*, [1867]W. N. 178, L.J.J.

6591. *Add. Annotation:*—**Refd.** *Re* Keystone Knitting Mills Trade Mk., [1929] 1 Ch. 92.

6610. *Add. Annotation:*—**Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

6624a. —— Delivery to liquidator—1929 Act, s. 269—Charge for costs of execution—What costs included.]—The costs of the execution referred to in Cos. Act, 1929, s. 269 (1), are limited to the sheriff's costs & do not include the judgment creditors' costs of issuing & serving the writ on the sheriff.—*Re* WOODS (BRISTOL), LTD., [1931] 2 Ch. 320; 100 L. J. Ch. 335; 145 L. T. 444; 47 T. L. R. 464; 75 Sol. Jo. 458; [1931] B. & C. R. 17.

6627. After this case add:—*See, now*, 1929 Act, s. 268.

6649. After this case add:—

—— .]—*See, now*, 1929 Act, s. 268.

6663. *Add. Annotation:*—**Refd.** *Re* South Rhondda Colliery Co. (1898), Ltd. (1928), 72 Sol. Jo. 453.

6731. After this case add:—

—— —— —— .]—*See, now*, 1929 Act, s. 265 (2).

6740. *Add. Annotation:*—**Refd.** *Re* Lloyd's Furniture Palace, Evans *v.* Lloyd's Furniture Palace, [1925] Ch. 853.

6741. *Add. Annotation:*—**Consd.** *Re* A Debtor, [1927] 1 Ch. 410.

6745. *Add. Annotation:*—**Refd.** *Re* Cohen, *Ex p.* Trustee, [1924] 2 Ch. 515.

6746. *Add. Annotation:*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

6746a. Payment to principal creditor—To relieve surety.]—Where a payment has been made to a principal creditor with the intent to prefer a guarantor of the debt, Bkpcy. Act, 1914 (c. 59), s. 44, enables the liquidator in a compulsory winding up to recover payment from the person actually preferred.

A private co., of which a father & son were the only directors & shareholders, was ordered to be wound up, & within the preceding three months the son paid a sum of £1,503 odd into the co.'s bank to reduce an overdraft of the co. to secure which his father had given a guarantee. The liquidator claimed repayment of the sum as being a fraudulent preference within 1908 Act, s. 210, & a preliminary objection being raised that in any event no order for repayment could be made:—*Held:* the motive of the son in making the payment being to keep the business going, there was no fraudulent preference, & the summons must be dismissed.—*Re* STANLEY (G.) & Co., [1925] Ch. 148; 94 L. J. Ch. 187; 133 L. T. 37; 69 Sol. Jo. 36; [1925] B. & C. R. 1.

6746b. Suffering judgment to go by default.]—*Re* M. I. G. TRUST, LTD. (1932), 49 T. L. R. 45; 76 Sol. Jo. 850.

6756a. Order made without jurisdiction.]—By the rules of a mutual marine insurance assocn., which was not registered under the Companies Act, it was provided that all persons who effected an insurance with the assocn. should be members. No ship was to be insured for more than three-fourths of its value, the person insuring paid a deposit of 25*s.* per cent. on the amount of the insurance, & in case of the total loss of a vessel, the members were to pay the loser the amount for which he had insured it rateably, according to the amounts assured to them respectively. The assocn. consisted of more than twenty members. A vessel insured by R. was lost, & the amount of the loss was referred to arbitration. R. assigned his claim to his bankers, who obtained judgment in R.'s name on the award, &, not obtaining payment, presented a petition to wind up the assocn., the petition stating that the assocn.

PART III. SECT. 36. SUB-SECT. 13.—C. (a).

sg. *Action for negligence.*]—*Re* G. B. WOOD, LTD., SPIVAK *v.* LEE, [1932] 3 W. W. R. 525.—**CAN.**

PART III. SECT. 36, SUB-SECT. 13.—D. (a).

n. Add "*revsd.* 23 A. R. 426."

PART III. SECT. 36, SUB-SECT. 13.—D. (c).

sb. *Writ filed after winding-up order.*]—*Held:* not to constitute a lien, even for costs, against the property of a co. in liquidation.—*Re* LEITCH COLLIERIES, LTD. (Alta.), [1926] 1 D. L. R. 1183; [1926] 1 W. W. R. 528.—**CAN.**

PART III. SECT. 36, SUB-SECT. 15.—B.

6741 i. *Debt due to directors—Set-off against amount unpaid on shares.*]—MICHELL *v.* BOOTH (1928), S. A. S. R. 367.—**AUS.**

sd. *General rule.*]—In order to establish a fraudulent preference it must be clear that the substantial & dominant view of debtor was to give a preference, & it is not sufficient that the creditor was in fact preferred.—*Re* NEW ZEALAND ELECTRICAL APPLIANCE & ENGINEERING CO., LTD., [1927] N. Z. L. R. 16.—**N.Z.**

sf. *Deposit of lease—To prevent creditor cashing post-dated cheque.*]—Within the period of three months prior to the bkpcy. of a co. a lease was deposited with a creditor of the co. by way of security & to prevent the creditor from cashing a post-dated cheque which he held from the co.:—*Held:* as the purpose of the payment was to benefit debtor & to save him from creditors' pressure, there was no fraudulent preference.—*Re* DROGHEDA & DISTRICT CO-OPERATIVE SOCIETY, LTD. (1924), 58 I. L. T. 42.—**IR.**

sg. *Loan of stock by directors to company—Mortgage of stock—Assignment of equity of redemption to directors.*]—MICHELL *v.* BOOTH, [1927] S. A. S. R. 576.—**AUS.**

PART III. SECT. 36, SUB-SECT. 17.

sk. *Order of province.*]—To enforce an order of the ct. of another province made under Winding-up Act the registrar should, on production thereof, enter it without direction as an order of the Supreme Ct. of British Columbia & proceed upon it as an ordinary record of that ct.—*Re* HOME BANK OF CANADA & WINDING-UP ACT, [1925] 1 D. L. R. 734; 34 B. C. R. 321.—**CAN.**

PART III. SECT. 36, SUB-SECT. 18.—C.

t. Add "*revsd.* 14 S. C. R. 624."

sl. *Order dismissing winding-up petition.*]—*Re* CANADA NATIONAL FIRE INSURANCE CO., [1931] 1 D. L. R. 751.—**CAN.**

consisted of more than seven members, but not stating that it consisted of more than twenty. The petition was served at the abandoned office of the assocn. which had ceased to carry on business, & the proper advertisements were issued. On May 28, 1880, a winding-up order was made, no one appearing to oppose. In Nov. 1881, another member of the assocn. heard, for the first time, of the winding-up order, & within a week applied for leave to appeal against it :—*Held :* the order having been made by a superior ct. having jurisdiction in winding up, & having authority to decide as to its own competency, must, if the assocn. was one which ought not to be wound up, be treated merely as an erroneous order, & not as an order void for want of jurisdiction, & that the proper manner of getting rid of it was by appeal.—*Re* PADSTOW TOTAL LOSS & COLLISION ASSURANCE ASSOCN. (1882), 20 Ch. D. 137 ; 51 L. J. Ch. 344 ; 45 L. T. 774 ; 30 W. R. 326, C. A.

Annotation :—**Consd.** *Re* Bowling & Welby's Contract, [1895] 1 Ch. 663.

6756b. Order of county court.]—This ct. will not entertain appeals from county ct. orders, unless the order appealed against has been completed & an office copy is produced for our inspection (EVE, J.).—*Re* PARKES GARAGE (SWADLINCOTE), LTD., [1929] 1 Ch. 139 ; 98 L. J. Ch. 9 ; 140 L. T. 174 ; 45 T. L. R. 11 ; [1928] B. & C. R. 144, D. C.

6775. *Add. Annotations :*—**Refd.** Cornish Mutual Assce. *v.* I. R. Comrs., [1926] A. C. 281 ; Greenberg *v.* Cooperstein, [1926] Ch. 657 ; Thomas *v.* Evans, Jones *v.* South-West Lancashire Coal-Owners' Assocn. (1926), 135 L. T. 673.

6787a. ——————.]—*Re* CONSOLIDATED SOUTH RAND MINES DEEP, LTD., [1909] 1 Ch. 491 ; 78 L. J. Ch. 326 ; 100 L. T. 319 ; 16 Mans. 81, C. A.

6823a. —— Motion to validate debenture.]—*Re* PARK WARD & CO., LTD., No. 5186b, *ante*.

6830. After this case add :—

—— **On property.**]—*See, now*, 1929 Act, s. 296.

6857. *Add. Annotation :*—**Consd.** *Re* Windsor Steam Coal Co. (1901), Ltd. (1928), 140 L. T. 80.

6857a. ——.]—A voluntary liquidator of a co. is not a trustee within Trustee Act, 1925 (c. 19), s. 68 (17), & is not entitled to the indemnity given to trustees by sect. 30 (1).—*Re* WINDSOR STEAM COAL CO. (1901), LTD., [1928] Ch. 609 ; 97 L. J. Ch. 238 ; 72 Sol. Jo. 335 ; [1928] B. & C. R. 36 ; *affd.* on other grounds, [1929] 1 Ch. 151, C. A.

Annotation :—**Refd.** *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102.

6858a. — When investigating proof.]—*Re* HOME & COLONIAL INSURANCE CO., LTD., No. 6858b, *post*.

6858b. Whether liable for negligence—On wrongful admission of proof.]—The H. Co. entered into an agreement for reinsuring marine risks with the L. Co. Later, it was voluntarily wound up, & B., the liquidator, agreed the L. Co.'s claim for a large sum, & paid dividends in respect of the claim. Following the practice of the co., B., notwithstanding the provisions of Stamp Act, 1891 (c. 39), & Marine Insurance Act, 1903 (c. 41), treated the agreement & the claim under it as valid. After the dissolution of the H. Co. he was advised that he should have disallowed the claim, & the dissolution was annulled, but an action to recover the money was dismissed, as no mistake of fact by B. was proved. On a misfeasance summons by a creditor of the co. :—*Held :* (1) a liquidator in the voluntary winding up of a limited co. is not, apart from negligence, liable for wrongly admitting a claim by an alleged creditor ; (2) the liquidator did not, in the circumstances, fulfil his duty of investigating the claim of the L. Co., & was therefore liable as for misfeasance under Cos. Act, 1908, s. 215, for admitting the claim of the L. Co. since it was in fact an invalid one ; (3) the Arts. of a limited co. cannot amount to a contract between the co. & its liquidator, & he could not therefore rely on an Art. absolving officers of the co. from liability except for fraud ; (4) the position of a liquidator examining a proof for admission or rejection in a winding-up is the same as that of a trustee in bkpcy. ; (5) in fixing the amount which a person liable for misfeasance under Cos. Act, 1908, s. 215, should be ordered to pay or contribute to the assets of the company, the ct. has a discretion, &, in the

PART III. SECT. 36, SUB-SECT. 18.—D. (a).

e i. *S. P. Re* DOMINION SHIPBUILDING & REPAIR CO., LTD., [1926] 3 D. L. R. 274 ; 59 O. L. R. 89.—**CAN.**

PART III. SECT. 36, SUB-SECT. 18.—H.

sm. *Of directors appealing against order.*]—The directors of a co. that was ordered to be wound up under Cos. Act retained in their hands certain moneys belonging to the co. & spent them on an appeal filed by the co. against the order of the winding up. The appeal was unsuccessful & there was no order of appellate ct., allowing the costs of the co.'s advocates out of the estate :—*Held :* the official liquidator could, under the directions of the ct., allow the expenditure, if incurred *bonâ fide*, & up to a reasonable extent.—MOOLLA *v.* OFFICIAL LIQUIDATOR (1928), I. L. R. 7 Ran. 34.—**IND.**

PART III. SECT. 36, SUB-SECT. 19.—I.

so. *Of creditor—Obtaining charging order.*]—*Re* SASKATCHEWAN CO-OPERATIVE ELEVATOR CO., DAVIDSON *v.* SWANSON (Sask.), [1928] 2 W. W. R. 256.—**CAN.**

sp. *Amount—Application of K. B. rule* 951.]—Although a petition for the winding-up of a co. under Winding-up Act, R. S. C., 1927, is dismissed, it is a proceeding under said Act, & K. B. rule 951, which limits certain costs to $300 & disbursements, does not apply thereto.—*Re* CANADIAN NATIONAL FIRE INSURANCE CO. & BROWNSTONE, [1931] 1 W. W. R. 753 ; 2 D. L. R. 875 ; 39 Man. L. R. 539 ; 12 C. B. R. 338.—**CAN.**

sq. —— ——.]—*Re* CANADA NATIONAL FIRE INSURANCE CO. (No. 2), [1931] 2 W. W. R. 538.—**CAN.**

PART III. SECT. 36, SUB-SECT. 20.

m i. —— *On powers of liquidator—Power to complete formal act after dissolution of company.*]—KRISHNASWAMI NAIDU *v.* ANDI CHETTI (1927), I. L. R. 51 Mad. 681.—**IND.**

q i. —— *Grounds for granting or refusing.*]—*Re* ALBERNI PACIFIC LUMBER CO., THOMAS *v.* LAWSON (B. C.), [1927] 3 D. L. R. 1126 ; [1927] 2 W. W. R. 662.—**CAN.**

PART III. SECT. 37, SUB-SECT. 3.—B.

d i. —— *Sufficiency of resolution.*]—An extraordinary resolution for the winding up of a co., that it cannot " by reason of the passing & enforcement of Prohibition Act continue its business " is not the equivalent of the extraordinary resolution, authorised by Cos. Act, R. S. B. C., 1911 (c. 39), s. 226 (3), as it stood prior to Nov. 1917, to the effect that the co. cannot by reason of its liabilities continue its business.—DUNCAN & GRAY, LTD. *v.* SILVER SPRING BREWERY, [1925] 4 D. L. R. 724 ; [1925] 3 W. W. R. 675.—**CAN.**

d ii. —— *Resolution providing for liquidator to act under supervision of directors.*]—*Held :* highly objectionable.—PARASHURAM DATTARAM SHAMDASANI *v.* TATA INDUSTRIAL BANK, LTD. (1928), 55 L. R. Ind. App. 274.—**IND.**

special circumstances, the liquidator should be ordered to contribute, by way of compensation, only such a sum as would enable all creditors to be paid in full with interest at 5 per cent.—*Re* HOME & COLONIAL INSURANCE CO., LTD., [1930] 1 Ch. 102; *sub nom. Re* HOME & COLONIAL INSURANCE CO., MAY *v.* BARHAM, 99 L. J. Ch. 113; 142 L. T. 207; [1929] B. & C. R. 85.

6874. *Add. Annotations:*—**Consd.** Chibbett *v.* Robinson (1924), 132 L. T. 26; Mudd *v.* Collins (1925), 133 L. T. 186. **Distd.** Reed *v.* Seymour (1927), 11 Tax Cas. 625; Henry *v.* Foster (Arthur), Henry *v.* Foster (Joseph) (1931), 145 L. T. 225. **Refd.** Seymour *v.* Reed, [1927] A. C. 554; Benyon *v.* Thorpe (1928), 97 L. J. K. B. 705; Dewhurst *v.* Hunter (1932), 146 L. T. 510; Stedeford *v.* Beloe, [1931] 2 K. B. 610.

6895. *Add. Annotation:*—**Apld.** *Re* Home & Colonial Insce. (1929), 45 T. L. R. 658.

6904a. By receiver—Liability of receiver.]—THOMAS *v.* TODD, No. 4979a, *ante*.

6922a. Premiums paid to company—In respect of ultra vires extension of objects.]—A joint stock co. was formed under a deed describing its business as life assurance. Resolutions of extraordinary general meetings were regularly passed & confirmed for extending the business to marine insurance. The marine business was mentioned in the annual returns to the registry office, & referred to in reports & circulars, & on one occasion a report on the marine business was sent out with the dividend warrants. A deed extending the purposes of the co. to sea risks was executed by some only of the shareholders; but it did not appear that any shareholder had objected to the marine business being carried on. About one & a half years after the commencement of the marine business the co. was wound up:—*Held:* (1) there was no such acquiescence by the shareholders as to entitle the holders of marine policies to prove in respect of them; (2) the premiums paid might be proved against the co.—*Re* PHŒNIX LIFE ASSURANCE CO., BURGES & STOCK'S CASE (1862), 2 John. & H. 441; 31 L. J. Ch. 749; 7 L. T. 191; 9 Jur. N. S. 15; 10 W. R. 816; 70 E. R. 1131.

Annotation:—**Consd.** Sinclair *v.* Brougham, [1914] A. C. 398.

6924a. —— Claim by manager for loss of salary.]—*Re* SNOW (W. R.) & CO., LTD. (1930), 74 Sol. Jo. 201.

6934. *Add. Annotation:*—**Refd.** *Re* City Equitable Fire Insce. Co., [1930] 2 Ch. 293.

6936. *Add. Citations:*—130 L. T. 1; [1923] B. & C. R. 114; *affg.* S. C. *sub nom. Re* WEBB (H. J.) & CO. (SMITHFIELD, LONDON) LTD., [1922] 2 Ch. 369.

Add. Annotations:—**Refd.** *Re* Winget, Burn *v.* Winget, [1924] 1 Ch. 550; *Re* Cockell, Jackson *v.* A.-G., [1931] 1 Ch. 389, C. A.

6936a. —— Deduction of income tax from payment of interest by company on mortgage.]—A co. having mortgaged all its property & assets, subsequently passed a resolution for voluntary winding up. Between the date of the mtge. & the commencement of the winding up the co. made no profits, but paid three several sums by way of interest on the mtge. less income tax. The co. never paid or accounted for such deductions of tax to the Inland Revenue Comrs.:—*Held:* inasmuch as such deductions could not be said to answer the description of a tax "assessed" on the co. within 1908 Act, s. 209 (1), the Crown could not be treated as having any preferential rights over other creditors in respect of it, & there was nothing in the language of the sub-sect. giving any priority to the debt.—*Re* LANG PROPELLER, LTD., [1927] 1 Ch. 120; 95 L. J. Ch. 516; 136 L. T. 48; 42 T. L. R. 702; 70 Sol. Jo. 836; 11 Tax Cas. 46; [1926] B. & C. R. 127, C. A.

6936b. —— Rates—Payment by director—Preferential rights of director.]—*Re* LAMPLUGH IRON ORE CO., No. 3105a, *ante*.

6958. *Add. Annotations:*—*As to* (1) **Refd.** I. R. Comrs. *v.* Burrell, [1924] 2 K. B. 52. *As to* (2) **Refd.** Naval Colliery Co. *v.* I. R. Comrs. (1928), 138 L. T. 593.

6965. *Add. Annotations:*—**Consd.** Collaroy Co. *v.* Giffard, [1928] Ch. 144; *Re* Metcalfe (William) & Sons, Ltd. (1932), 48 T. L. R. 651.

6974. *Add. Citation:*—[1923] B. & C. R. 139.

PART III. SECT. 37, SUB-SECT. 4.—B.

sm. *Payment to person purporting to be liquidator.*]—Where, after payment made to one purporting to be a liquidator, deft. discovered that the payee was not legally a liquidator:—*Held:* the doctrine of estoppel was not applicable.—DUNCAN & GRAY, LTD. *v.* SILVER SPRING BREWERY, [1925] 4 D. L. R. 724; [1925] 3 W. W. R. 675.—**CAN.**

PART III. SECT. 37, SUB-SECT. 8.

6936 i. *Preferential debts—Crown debts.*]—A co., which had given a mtge. to the Crown under Fruit Preserving Industry Act, 1913, which mtge. was transferred to the State Advances Account, went into voluntary liquidation:—*Held:* the Crown debt had priority.—TASMAN FRUIT PACKING ASSOCN., LTD. *v.* R., [1927] N. Z. L. R. 518.—**N.Z.**

6936 ii. —— ——.]—C. A. S. E., Ltd., a co. incorporated in South Australia, went into voluntary liquidation in South Australia. The co. owed debts (*inter alia*) to the Department of Agriculture & the Railways Comr. in South Australia:—*Held:* in the winding-up, these debts took priority as owing to the Crown. The co. also owed debts to the Railways Comrs. of New South Wales & Queensland:—*Held:* in the winding-up, these debts were due to the Govts. of the two States, & were entitled to priority equally with the debts above mentioned. The co. also owed debts to officers who were carrying out their contracts of employment in New South Wales:—*Held:* in the winding-up, these servants were entitled to priority equally with the South Australian officers.—*Re* COMMONWEALTH AGRICULTURAL SERVICE ENGINEERS, LTD. (1928), S. A. S. R. 342.—**AUS.**

PART III. SECT. 37, SUB-SECT. 9.—A.

sn. *Restraint of distribution—At instance of lessor—Until covenant to build completely performed—Notwithstanding assignment of lease with consent of lessor.*]—*Re* VICTORIA STREET PROPERTIES, LTD. (IN VOLUNTARY LIQUIDATION), [1927] N. Z. L. R. 95.—**N Z.**

PART III. SECT. 37, SUB-SECT. 9.—B.

6949 i. *Liquidator's remuneration & costs—Realisation of security belonging to debenture-holders.*]—The costs of a liquidator properly incurred by him in realising any property comprised in a security belonging to debenture-holders are payable out of the amount so realised upon such securities, but the remaining costs of the liquidator must be borne by the free assets, if any, of the co.—*Re* WILLIS C. RAYMOND, LTD. (IN LIQUIDATION), [1928] N. Z. L. R. 115.—**N.Z.**

PART III. SECT. 37, SUB-SECT. 9.—D. (a).

6975 i. *As between different classes of shares—Right of preference shareholders.*]—*Held:* on the construction of a memorandum & arts. of assocn. in the event of a winding-up or liquidation of the co. the preference shareholders would be entitled to participate rateably with the ordinary shareholders in any distribution of surplus assets remaining after payment of the co.'s liabilities & repayment of all capital paid up on the preference & ordinary shares, since the provision in Art. 10 giving the preference shareholders a fixed cumulative preferential dividend

6977. *Add. Annotations:—As to* (1) **Distd.** *Re* Madame Tussaud, [1927] 1 Ch. 657. **Refd.** I. R. Comrs. *v.* Burrell, [1924] 2 K. B. 52; *Re* Railways Act, 1921, *Re* Standard Charges Schedule (1925), 94 L. J. K. B. 364.

6980. *Add. Annotation:—***Refd.** I. R. Comrs. *v.* Burrell, [1924] 2 K. B. 52.

6984. *Add. Annotations:—As to* (1) **Expld.** Collaroy Co. *v.* Giffard, [1928] Ch. 144. *As to* (3) **Folld.** *Re* John Dry Steam Tugs, Ltd., [1932] 1 Ch. 594.

6984a. Provision in articles for equal ranking with deferred shareholders.]—(1) The arts. of assocn. of a limited co. whose capital was divided into preferred & deferred shares provided that, subject to the difference in dividing the profits, the preferred & deferred shares should rank equally in the co., & that there should be no difference between a preferred & deferred shareholder in respect of his status & liability to the debts & engagements of the co. The articles also provided for the dissolution of the co. On the voluntary winding up of the co. under 1862 Act, s. 133:—*Held:* the two classes of shareholders were in the same position, & entitled to the capital *pro rata.*

(2) People who enter into these partnerships under articles of assocn., that is, articles of partnership, must be taken to have read them, & must be taken to have understood them, & if they are to be taken to have read them, & to have understood them, which they ought to do before entering into these contracts, they cannot complain if the contract is afterwards carried out (JESSEL, M.R.).—GRIFFITH *v.* PAGET (1877), 6 Ch. D. 511; 37 L. T. 141; 25 W. R. 821

Annotations:—As to (1) **Consd.** Sheppard *v.* Seindo Punjaub & Delhi Rail. Co. & Abbott (1887), 56 L. J. Ch. 558; Bishop *v.* Smyrna & Cassaba Rail. Co., [1895] 2 Ch. 265. **Refd.** *Re* Bridgewater Navigation Co., Ltd. (1888), 39 Ch. D. 1.

6986. *Add. Annotation:—As to* (1) **Consd.** Collaroy Co. *v.* Giffard, [1928] Ch. 144.

6987. *Add. Annotation:—***Apld.** *Re* Dominion Tar & Chemical Co., [1929] 2 Ch. 387.

6988. *Add. Annotations:—***Apld.** *Re* Dominion Tar & Chemical Co., [1929] 2 Ch. 387. **Refd.** Coulson *v.* Austin Motor Co. (1927), 43 T. L. R. 493.

6988a. No dividend declared.]—The memorandum of assocn. of a co. provided that in the event of a winding-up the preference shareholders should be entitled to receive in full out of the assets the amount of capital paid up on their shares, & also all arrears of dividend due thereon at the date of winding-up. A resolution was passed for the winding-up of the co. in Apr. 1925, at which date no dividends on the preference shares had been declared or paid for over four years past. After the winding up there was a surplus sufficient to pay arrears of dividend due:—*Held:* no dividends having been declared between 1921 & 1925, none were due, & the preference shareholders were not entitled to be paid anything in respect of arrears.—*Re* ROBERTS & COOPER, LTD., [1929] 2 Ch. 383; 98 L. J. Ch. 450; 141 L. T. 636; [1929] B. & C. R. 74.

6988b. Right to payment without deduction of income tax.]—Where upon the winding up of a co. the preference shareholders are entitled to payment of all arrears of dividend, & there is a fund available for payment, they are entitled to receive the full amount of the dividends in arrear without any deduction of income tax, in priority to any payment to the ordinary shareholders.—*Re* DOMINION TAR & CHEMICAL CO., LTD., [1929] 2 Ch. 387; 98 L. J. Ch. 448; 142 L. T. 15; 45 T. L. R. 601; [1929] B. & C. R. 71.

6989. *Add. Annotations:—***Consd.** Collaroy Co. *v.* Giffard, [1928] Ch. 144. **Folld.** *Re* John Dry Steam Tugs, Ltd. (1932), 1 Ch. 594.

6989a. —— ——.]—A co. issued preference shares, which entitled the holders to a fixed cumulative preference dividend in priority to the ordinary shares, but not conferring any priority as regards capital. By the arts. of assocn. it was provided that subject to the rights of members entitled to shares issued upon special conditions the profits of the co. should be divisible among the members in proportion to the amount paid up on the shares held by them respectively. The co. was wound up voluntarily & the liquidator having paid all dividends & debts, & returned the whole of the paid-up capital to the shareholders, there remained surplus assets:—*Held:* (1) as long as the co. was a going concern the preference shareholders were entitled only to the preferential dividend, but on the voluntary winding up this preference was determined, & thenceforward the preference shares retained no preference or priority over the ordinary shares; (2) according to the constitution of the co. the *primâ facie* presumption in favour of equality of distribution amongst all the shareholders ought to obtain, & the surplus assets, including deposit interest, would be distributed amongst all the shareholders *pro rata* in proportion to the amount paid up on their shares.—*Re* MADAME TUSSAUD & SONS, LTD., [1927] 1 Ch. 657; 96 L. J. Ch. 328; 137 L. T. 516; 43 T. L. R. 289; [1927] B. & C. R. 112.

6989b. -.]—By the memorandum & arts. of assocn. of a co. it was provided that the preference shares should "confer the right to a fixed cumulative dividend" at a certain rate, "& shall rank, both as regards dividends & capital, in priority to the ordinary shares." By the arts. it was provided in the same terms as to the dividends, & that the preference shares should "confer the right in a winding up to repayment of capital in priority to the ordinary shares":—*Held:* the full rights of the holders of preference shares, both as to dividends & capital, were delimited by the contract between them & the co., & they were entitled to no further rights; nothing being said in the contract as to surplus assets, in the event of a winding up they were not entitled to share in any surplus assets.—& the right in the winding up of the co. to priority in payment of capital over ordinary shareholders was not an exhaustive statement of the rights of the preference shareholders, excluding any other right or privilege. Further, on construction of the memorandum & arts. on a distribution of surplus assets the preference shareholders were entitled to participate in such distribution *pro rata* with the ordinary shareholders—CORK ELECTRIC SUPPLY CO., LTD. *v.* CONCANNON, [1932] I. R. 314.—**IR.**

COLLAROY CO., LTD. *v.* GIFFARD, [1928] Ch. 144; 97 L. J. Ch. 69; 138 L. T. 321; [1927] B. & C. R. 217.

Annotations:—**N.F.** *Re* John Dry Steam Tugs, Ltd., [1932] 1 Ch. 594; *Re* Metcalfe & Sons, Ltd. (1932), 48 T. L. R. 651.

6989c. —.]—A co. was incorporated in 1909 with a capital of £25,000, divided equally into preference & ordinary shares of £10 each, a small proportion of which only were fully paid. Under clause 5 of the articles of assocn. the preference shareholders were entitled (1) to a fixed cumulative dividend at the rate of 5 per cent. *per annum* on their paid up capital, & after payment of 5 per cent. on the ordinary shares to an additional one-half per cent. for each 1 per cent. in excess of 5 per cent. paid on the ordinary shares, & (2) to priority in the event of a winding up both as to the cumulative dividend & return of capital.

In 1929, the co. went into voluntary liquidation, & after payment of all debts & return to the shareholders of the capital paid up on their shares there was a surplus available for distribution of £10,000:—*Held:* on a summons taken out by the liquidator, there being nothing in the articles to modify or exclude the normal right of the preference shareholders to share in the distribution of the surplus assets, they were entitled to rank *pari passu* with the ordinary shareholders in such distribution.—*Re* JOHN DRY STEAM TUGS, LTD., [1932] 1 Ch. 594; 101 L. J. Ch. 271; 147 L. T. 493; [1931] B. & C. R. 157.

6989d. —— ——.]—In the absence of a contrary provision in the memorandum or articles the surplus assets of a co. remaining after payment & discharge of all debts & liabilities & the repayment of all the capital paid up on the preference & ordinary shares are distributable rateably among the holders of both the preference & the ordinary shares & do not belong to the latter only.—*Re* METCALFE (WILLIAM) & SONS, LTD. (1932), 49 T. L. R. 23.

6991. *Add. Annotation:*—**Refd.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

7001. *Add. Annotations:*—**Distd.** *Re* Stanton, Hogg *v.* Maule (1927), 44 T. L. R. 118. **Refd.** *Re* Stanton, [1928] 1 K. B. 464.

7014a. —— **Validity of winding-up order in question.**]—The validity of a winding up cannot be questioned on a motion in the winding up, but must be challenged in independent proceedings.—*Re* EMPIRE BUILDERS, LTD., *Re* TRANSVAAL UNITED TRUST & FINANCE CO., LTD. (1919), 88 L. J. Ch. 459; 121 L. T. 238; 63 Sol. Jo. 608.

7034. For the paragraph in the original volume substitute the following paragraph:—

—— **Judgment after winding up—Right of company to recover money from third party based on company's liability to judgment creditor—No ground for not staying execution.**]—The manager of a co. fraudulently & without authority accepted bills of exchange in the co.'s name, & upon those bills the co. was sued to judgment by the holders. After the commencement of the action the co. went into voluntary liquidation. The co. subsequently recovered judgment in an action against a third party for damages for having wrongfully facilitated the commission of the above fraud, & for having thereby rendered the co. liable on the bills. The judgment creditors in the first action then sought to attach under a garnishee order the money so payable to the co. by the third party. On an application by the co. to stay the garnishee proceedings:—*Held:* where a judgment is recovered against a co. which is in voluntary liquidation the invariable practice of the ct. is to stay execution of the judgment unless there are very exceptional reasons for exercising its discretion otherwise, & the fact that the only right of the co. to recover the money claimed from the garnishees was based upon the co's liability to the judgment creditors was not such an exceptional circumstance as to take the case out of the general rule.—ANGLO-BALTIC & MEDITERRANEAN BANK *v.* BARBER & CO., [1924] 2 K. B. 410; 93 L. J. K. B. 1135; 132 L. T. 1; [1924] B. & C. R. 224, C. A.

7036. After this case add:—
—— ——.]—*See, now,* 1929 Act, s. 268.

7043a. —— —— **Preferential debts exceeding assets.**]—*Re* SOUTH RHONDDA COLLIERY CO. (1898), LTD., [1928] W. N. 126.

7044a. —— ——.]—*Re* NATIONAL STORES, LTD. (1898), 42 Sol. Jo. 740.

7051. After this case add:—
—— —— ——.]—*See, now,* 1929 Act, s. 234 (1).

7064. *Add. Annotation:*—**Refd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

7074. *Add. Annotations:* — **Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769. **Refd.** *Re* Wilts & Somerset Farmers, [1928] Ch. 809.

7076. *Add. Annotation:*—**Refd.** Wall *v.* Exchange Investment Corpn., [1926] Ch. 143.

7082. *Add. Annotation:*—*As to* (1) **Refd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

7083. *Add. Annotation:* — **Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769.

7102. *Add. Citation:*—130 L. T. 256.

PART III. SECT. 37, SUB-SECT. 10.

s 1. —— *To give directions to liquidator—What questions may be submitted.*]—*Re* HAMILTON & CO., LTD. (IN LIQUIDATION), [1928] N. Z. L. R. 419.—**N.Z.**

PART III. SECT. 37, SUB-SECT. 11.—D.

sp. *Power of court to order stay—Under Indian Companies Act,* 1913, *s.* 215.]—*Re* SRI YOGASHRAM PHARMACY, LTD. (IN LIQUIDATION), *Re* MOHAN LAL MEHTA (1927), I. L. R. 50 All. 482.—**IND.**

PART III. SECT. 37, SUB-SECT. 13.—E. (b).

st. *Whether member of old company.*]—In 1917 a deed to carry into effect a scheme of liquidation was drawn up, but it was never in fact registered nor executed, although its terms were actually carried out, in that the great majority of shareholders in the co. surrendered their shares & received others in exchange. In 1924 certain of these shareholders held a meeting & appointed two of their number as liquidators & attempted to assume the direction of the liquidation:—*Held:* the shareholders, who in 1917 had relinquished their shares, accepting shares in the other cos. in exchange, had ceased to be either shareholders or contributories & had no right to take any part in the management of the co.'s affairs.—HUNTER *v.* DAMODAR DAS (1924), I. L. R. 46 All. 759.—**IND.**

PART III. SECT. 37, SUB-SECT. 13.—E. (f).

o. Add "*revsd.* 1 O. L. R. 480."

p 1. *On contract—To pay commission.*]
v. AUTOMATIC TOTALISATORS,

7161. *Add. Annotation :*—**Refd.** Soc. Anon. Pecheries Ostendaises *v.* Merchants Marine Insce., [1928] 1 K. B. 750.

7168. *Add. Annotation :*—**Refd.** Morris *v.* Harris, [1927] A. C. 252.

7169. *Add. Annotations :*—**Refd.** Morris *v.* Harris, [1927] A. C. 252 ; *Re* Katherine et cie, Ltd., [1932] 1 Ch. 70.

After this case add :—*See, now,* 1929 Act, s. 296.

7169a. Agreement to transfer land & equitable interest—Vesting order.]—*Re* C. & H. Crichton (1921), Ltd., [1932] W. N. 208 ; 174 L. T. Jo. 306.

7169b. —— Whether new trustee necessary—Trustee Act, 1925 (c. 19), s. 44, para. (ii) (c), s. 51 (1), para. (ii) (c).]—*Re* C. & H. Crichton (1921), Ltd., [1932] W. N. 208 ; 174 L. T. Jo. 306.

7169c. 1929 Act, s. 296—Equity of redemption.]—In 1899 a limited co. mortgaged to the trustees of a will certain leasehold properties by way of absolute assignment subject to the equity of redemption. In 1910 the co. went into liquidation, & in 1913, the trustees having called in the mtge., the co. made default & the trustees appointed a receiver. In 1916 the co. was dissolved, the income of the property being at that time insufficient to meet the mtge. interest, & nothing was done in respect of the equity of redemption as the liquidator considered it to be of no value. The value of the property having since largely increased, the surviving trustee claimed to be entitled to the property absolutely, & the Crown claimed the equity of redemption as *bona vacantia :—Held :* (1) Cos. Act, 1929 (c. 24), s. 296, did not apply, as that sect. was not retrospective ; (2) after the disappearance of the legal entity which had had the right of redemption the Crown was entitled to the property as *bona vacantia.* — *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 101 L. J. Ch. 346 ; 48 T. L. R. 617, C. A.

7169d. —— Whether retrospective.]—*Re* Wells, Swinburne-Hanham *v.* Howard, No. 7169c, *ante.*

7174a. Mode of application for order.]—(1) Where a co. has been dissolved, & on the subsequent discovery of assets a motion is made under 1908 Act, s. 223 (1), to declare the dissolution void, notice of the motion ought to be given to the Treasury Solr., since on dissolution the undistributed assets pass to the Crown as *bona vacantia.* (2) Under sect. 242, as to removal of defunct cos. from the register, the same practice should be adopted where there are undistributed assets.—*Re* Home & Colonial Insurance Co., Ltd. (1928), 44 T. L. R. 718.

7177a. —— Effect of.]—An order of the ct., declaring the dissolution of a co. to have been void, does not affect the validity of proceedings taken during the interval between the dissolution & its avoidance.—Morris *v.* Harris, [1927] A. C. 252 ; 96 L. J. Ch. 253 ; 136 L. T. 587 ; [1927] B. & C. R. 65, H. L.

7203a. Charges of fraud on public.]—Where charges have been made against a co. of having committed frauds, not in any way connected with its promotion or formation, in its dealings with members of the outside public, not being dealings with shareholders as regards their membership in the co., the desirability of investigating such charges under a compulsory winding up is not a ground for saying that creditors will be "prejudiced by a voluntary winding-up" within sect. 145 of 1862 Act.—*Re* Medical Battery Co., [1894] 1 Ch. 444 ; 63 L. J. Ch. 189 ; 69 L. T. 799 ; 42 W. R. 191 ; 38 Sol. Jo. 81 ; 1 Mans. 104 ; 8 R. 46.

7269. *Add. Annotation :*—**Refd.** Houghton *v.* Nothard, Lowe & Wills (1927), 44 T. L. R. 76.

7290. For existing citation read following paragraph & citations & anno. :—

A creditor cannot obtain an order to continue a voluntary winding up under the supervision of the ct. unless he possesses all the qualifications required of a creditor petitioning for a compulsory winding-up order. Therefore, a debt incurred by a co. under an agreement entered into after it has gone into voluntary liquidation is no ground for a petition for a supervision order, although the voluntary liquidation & the agreement formed parts of one scheme.—*Re* Bank of South Australia, [1894] 3 Ch. 722 ; 64 L. J. Ch. 44 ; 43 W. R. 299.

Annotation :—**Dbtd.** *Re* Bank of South Australia, [1895] 1 Ch. 578.

Ltd. (1927), 28 S. R. N. S. W. 76 ; *affd.* 1 A. L. J. 386.—**AUS.**

sv. *On right of shareholder in old company—To contingent asset realised after reconstruction.*]—Anderson *v.* Nor-West Motors, [1929] 2 D. L. R. 175 ; 1 W. W. R. 804 ; 24 Alta. L. R. 90.—**CAN.**

PART III. SECT. 37, SUB-SECT. 14.—B.

sw. *Avoidance—Jurisdiction to order — For limited purpose only.*] — A co. went into voluntary liquidation, & was dissolved. Thereafter intimation was received from the Inland Revenue that a sum was repayable to the co. in respect of excess profits duty, & a petition was presented to the ct. by the co. & the liquidator for an order declaring the dissolution of the co. to have been void, for the purpose of the exercise by the liquidator of authority to receive the payment & to grant receipt therefor :—*Held :* it was incompetent under 1908 Act, s. 223, to declare the dissolution of a co. void for a limited purpose only. The petition was amended by the deletion of all reference to the purpose, & the ct. granted it as amended.—*Re* Champdany Jute Co., Ltd., [1924] S. C. 209.—**SCOT.**

sz. —— *Application more than two years after dissolution.*]—Eight years after a co. was dissolved by order of the ct., it was discovered that the liquidator had not dealt with a feu held by the co. The superior & the liquidator presented a petition craving the ct. to declare the dissolution void, & to authorise the liquidator to grant a disposition of the feu *ad perpetuam remanentiam* in favour of the superior. The ct. refused the order craved.—MacDonald's (Lord) Curator, [1924] S. C. 163-4.—**SCOT.**

sb. —— ——.]—A co. was dissolved for the purpose of reconstruction after the liquidator had entered into an agreement for the transfer of the assets, including certain heritable property, to a new co. The new co. entered into possession of the heritable property, but did not obtain a conveyance, & itself subsequently went into liquidation. More than two years after the dissolution of the old co., a petition was presented to the ct. by the liquidators of both cos. praying the ct. to declare the dissolution of the old co. to have been void, & to empower the liquidator of that co. to grant such titles as might be requisite to vest the heritable property in the new co. The ct. refused the order craved.—Forth Shipbreaking Co., Ltd., Petitioners, [1924] S. C. 489-90.—**SCOT.**

PART III. SECT. 37, SUB-SECT. 15.—A. (b) iii.

s i. ——.]—*Held :* in the absence of proof that creditors' rights or those of the contributories would be prejudiced by the voluntary winding up, applications for compulsory winding up must be dismissed.—Sansar Chand *v.* Karam Chand (1925), I. L. R. 6 Lah. 340.—**IND.**

PART III. SECT. 37, SUB-SECT. 15.—A. (c).

sd. *Handing over of books by voluntary to compulsory liquidator—Lien of voluntary liquidator over books.*] —*Re* Stockbridge & Co., Ltd., [1923] N. Z. L. R. 221.—**N.Z.**

7370. *Add. Annotation:*—**Refd.** Kirby *v.* Wilkins, [1929] 2 Ch. 444.

7371a. —— Scheme involving reduction of capital —Modification of rights of different classes of shareholders.]—*Re* ODHAMS PRESS, LTD., [1925] W. N. 10.

7373. *Add. Annotation:*—**Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

7373a. Arrangement between creditors & voluntary company "about to be wound up"—Meaning of.]—*Held:* (1) 1929 Act, s. 251 (1), applies only to an arrangement entered into during a voluntary winding-up or shortly before the passing of a resolution for a voluntary winding up; (2) a composition by a co. with its creditors, intended to make the co. solvent & therefore to prevent a voluntary winding up, is not an "arrangement" within the sect.

Qu.: whether the word "arrangement" in the sect. is intended to include a compromise.—*Re* CONTAL RADIO, LTD., [1932] 2 Ch. 66; 101 L. J. Ch. 377; 48 T. L. R. 458; 76 Sol. Jo. 359.

7373b. Whether compromise included.]—*Re* CONTAL RADIO, LTD., No. 7373a, *ante.*

7374a. ——.]—*Re* STAR TEA COMPANY (1930), 69 L. Jo. 80; 109 L. T. Jo. 101; [1930] W. N. 4.

7382a. —— Scheme involving reduction, reorganisation & increase of capital.]—*Re* WALTERS (STEPHEN) & SONS, LTD., No. 839a, *ante.*

7385a. Discretion of court as to acquisition of shares of dissentient shareholders—Terms must be adequate & reasonable.]—Upon a petition to sanction a scheme of arrangement & amalgamation under Cos. Act, 1929 (c. 23), s. 155, the ct. has power to determine the terms upon which the shares of shareholders who have dissented from the scheme approved by the majority shall be acquired, notwithstanding that since the original offer was made the scheme has been superseded by a later amalgamation which has absorbed the transferee co., & the fact that petitioners cannot offer to the dissentients the original shares accepted by the majority makes no difference to the jurisdiction of the ct., which is only bound to decide whether the terms offered are adequate & reasonable, & if not, to substitute such other terms of purchase as, in its discretion, are fair & just.—*Re* CASTNER-KELLNER ALKALI CO., LTD., [1930] 2 Ch. 349; 99 L. J. Ch. 453; 144 L. T. 26; 46 T. L. R. 592.

7398a. —— Acquisition of shares of—Discretion of court.]—*Re* CASTNER-KELLNER ALKALI CO., LTD., No. 7385a, *ante.*

7404a. —— Different classes of creditors—Meaning of.]—By sect. 2 of the Joint Stock Cos. Arrangement Act, 1870 (c. 104), where an arrangement is proposed between a co. in the course of being wound up & "the creditors of such co., or any class of such creditors," the ct. may order that a meeting of "such creditors or class of creditors" shall be summoned, & if a majority in number, representing three-fourths in value of "such creditors or class of creditors," agree to the arrangement, it shall, if sanctioned by an order of the ct., be binding on "all such creditors or class of creditors, as the case may be," & also on the liquidator & contributories of the co. The persons summoned to the meeting under the above sect. were the policy-holders of the co., & no separate meeting was summoned of those whose policies had, as distinct from those whose policies had not, matured:—*Held:* the insured persons whose policies had matured formed a distinct class of creditors from those whose policies had not matured; a separate meeting of such class ought to have been held under the Act in order to make the arrangement binding upon the members of that class; & the arrangement did not, therefore, operate as a release by deft. of his claim against pltfs.—SOVEREIGN LIFE ASSURANCE CO. *v.* DODD, [1892] 2 Q. B. 573; 62 L. J. Q. B. 19; 67 L. T. 396; 41 W. R. 4; 8 T. L. R. 684; 36 Sol. Jo. 644; 4 R. 17, C. A.

7407a. —— Omission to advertise—Sufficient majority present.]—Where there was an inadvertent omission to advertise a scheme of arrangement under 1908 Act, s. 120, but it was satisfactorily proved that thirty out of thirty-one shareholders of the co. had

PART III. SECT. 39, SUB-SECT. 1.—B.

i. —— *Preferential treatment of creditor.*]—Where a co. proposed a scheme of arrangement, under which a bank appeared to be secured to the extent of 20*s.* in the pound:—*Held:* the scheme was not one which, in view of the apparent preferential treatment accorded to the bank, the ct. should sanction.—LAINIÈRE DE ROUBAIX *v.* GLEN GLOVE & HOSIERY CO., LTD., [1926] S. C. 91.—**SCOT.**

PART III. SECT. 39, SUB-SECT. 1.—D.

7387 ii. ——.]—The ct. refused to approve of a scheme of arrangement proposed by the insolvent debtor, an incorprated co., & accepted by a majority of its creditors, whereby the preferred & secured creditors were to be paid by debtor, & the unsecured creditors paid in full by the allotment & issue to them of fully paid-up preference shares in the debtor co. or in a new co. to be incorporated. The scheme was not one which should be forced upon an unwilling creditor.—*Re* LINDNERS, LTD. (1921), 64 D. L. R. 717; 51 O. L. R. 116; 2 C. B. R. 49.—**CAN.**

PART III. SECT. 39, SUB-SECT. 1.—E.

si. *Object of scheme—Clarification of rights.*]—(1) The existence of reasonable doubts as to the rights of shareholders under the memorandum of assocn. of a co. is a ground warranting the ct. in sanctioning a scheme of arrangement the effect of which is to remove those doubts.

A limited co. consisted of three classes of shareholders, viz. A., B. & C., whose respective rights were determined by clause 5 of the memorandum of assocn. Questions having arisen as to the rights of the A. shareholders under clause 5, the co. proposed a scheme of arrangement by which clause 5 was to be replaced by a new clause, the effect of which was to determine exactly the rights of the A. shareholders:—*Held:* as the proposed scheme was one which would commend itself to a reasonable business man, it would receive the sanction of the ct.

(2) The unsuccessful objector then moved that the co. should be found liable for his expenses, on the ground that dissentient shareholders should not be discouraged from bringing to the notice of the ct. considerations which might reasonably influence the ct. in arriving at a right decision. The ct. refused this motion, but, on consent of petitioners, found no expenses due to or by either party in connection with the discussion on the objector's note.—EDINBURGH RAILWAY ACCESS & PROPERTY CO. *v.* SCOTTISH METROPOLITAN ASSURANCE CO., [1932] S. C. 2.—**SCOT.**

PART III. SECT. 39, SUB-SECT. 1.—F. (a).

7399 ii. ——.]—Where a bank, being a secured creditor, improperly voted with the unsecured creditors:—*Held:* in the absence of the bank as a voting creditor, the necessary three-fourths in value would not have been obtained, & the procedure had not complied with 1908 Act, s. 120 (2).—LAINIÈRE DE ROUBAIX *v.* GLEN GLOVE & HOSIERY CO., LTD., [1926] S. C. 91.—**SCOT.**

PART III. SECT. 39, SUB-SECT. 1.—F. (b).

si. *Time for lodging.*]—Creditors' proxies need not be lodged at any particular date.

Where proxies lodged by creditors within forty-eight hours of a meeting to approve a scheme of arrangement had been disallowed:—*Held:* the rejection of the proxies was wrong.—LAINIÈRE DE ROUBAIX *v.* GLEN GLOVE & HOSIERY CO., LTD., [1926] S. C. 91.—**SCOT.**

received the notices:—*Held:* the meetings had in substance been held in manner prescribed, & the ct. would not insist on further meetings being convened.—*Re* ANGLO-SPANISH TARTAR REFINERIES, LTD. (1924), 68 Sol. Jo. 738.

7409a. -.]—(1) Proxy papers to be used at meetings to consider schemes of arrangement should follow the form settled by the judge, which empowers the proxy "to vote for me & in my name [ ] the said scheme either with or without modification as my proxy may approve," & contains opposite the blank a marginal note as follows: "If for, insert 'for,' if against, insert 'against,' & strike out the words after 'scheme' & initial alterations." Proxies not according to this form will be properly rejected.

(2) On a scheme of arrangement being sanctioned, the ct. refused to re-appoint the original trustees for the debenture-holders, it having been proved that they had refused to give information to the debenture-holders as to the trust estate, & had in fact acquired debentures from their *cestuis que trust* at inadequate prices, & not in their own names, but in the names of cos. controlled by them.

(3) Trustees for debenture-holders are in no different position from other trustees, except that, unlike many other trustees, they are remunerated for their services, & whether the mtgor. co. is a going concern, or whether the security is being realised for the benefit of debenture-holders, the conduct of the trustees is controlled by the same rules, subjected to the same restrictions, & measured by the same standards as are applied to other fiduciary agents (EVE, J.).—*Re* MAGADI SODA CO., LTD. (1925), 94 L. J. Ch. 217; 41 T. L. R. 297; 69 Sol. Jo. 365; [1925] B. & C. R. 70.

7440. After this case add:—

—— —— ——.]—*See, now,* 1929 Act, s. 295 (5).

7452a. Notice of motion to be given to Treasury Solicitor—Where undistributed assets.]—*Re* HOME & COLONIAL INSURANCE CO., LTD., No. 7174a, *ante.*

7452b. —— Filing of affidavit of notice.]—PRACTICE NOTE, [1931] W. N. 199; 172 L. T. Jo. 299.

Part IV.—Banking Companies.

7462a. —— —— Defences available—Liability for calls.]—*Assumpsit* on a money demand against a joint stock banking co. Plea, after setting out the deed of settlement, to which pltf. was a party, a set-off for calls due on shares held by pltf. Replication, "not indebted":—*Held:* (1) the replication was bad, the set-off being founded entirely on the deed; (2) the plea was good.—MILVAIN *v.* MATHER (1850), 5 Exch. 55; 1 L. M. & P. 220; 19 L. J. Ex. 227; 14 L. T. O. S. 446; 155 E. R. 24.

Annotation:—*Generally,* **Refd.** Smith *v.* Trowsdale (1854), 18 Jur. 552.

7479. *Add. Annotation:*—**Consd.** Spencer *v.* Ashworth Partington (1925), 94 L. J. K. B 447.

7479a. ——.]—BARCLAY *v.* PEARSE (1884), *Times,* Aug. 4, C. A.

Annotations:—**Distd.** Perry *v.* Barnett (1885), 14 Q. B. D. 467. **Apld.** Seymour *v.* Bridge (1885), 14 Q. B. D. 460.

Part V.—Insurance Companies.

7482. *Add. Annotation:*—**Refd.** Jacobs *v.* Batavia & General Plantations Trust, [1924] 2 Ch. 329

7482a. Power of company to vary rate of interest on loans to policy-holders.]—In an action by a policy-holder against an insurance co. for a declaration that the co. were not entitled to charge more than 4 per cent. interest on sums advanced on security of their policies, pltf. based his case on an alleged collateral

PART III. SECT. 40, SUB-SECT. 2.—A.

7449 v. —— ——.]—A co. formed for the purpose of money-lending, which, having discontinued business, had been struck off the register, applied for an order to have its name restored thereto, the main ground of its application being that it desired to recover from a bkpt. estate a dividend which had become payable since the date of striking off:—*Held:* the application should be granted.—CHARLES DALE, LTD., [1927] S. C. 130.—**SCOT.**

oi. —— *Dissolution of company on non-compliance with statutory formalities.*]—A co. which failed to comply with Cos. (Reconstitution of Records) Act (N.I.), 1923, & was thereupon dissolved, may be "replaced on" & "restored to" the register in accordance with sect. 5 (4).—*Re* CLONARD BRICK & ESTATE CO., LTD., [1926] N. 47.—**IR.**

sl. *Effect of.*]—Where a co. has defaulted in complying with Cos. Act, ss. 80–85, & its letters patent have been revoked & cancelled, & the default can be waived by showing that it was due to inadvertence, accident or neglect, the revocation is not complete but conditional, &, on the revival of the charter, the co.'s existence must be considered to have been at no time interrupted.—BANQUE CANADIENNE NATIONALE *v.* SAWCHUK, [1926] 3 D. L. R. 964; [1926] 2 W. W. R. 771; 36 Man. L. R. 1.—**CAN.**

PART IV. SECT. 4.

sn. *Position of depositors.*]—If a co. is deprived of the power to receive money on deposit, then in a subsequent bkpcy. liquidation of the co. the depositors claiming for moneys on deposit prior to its losing such powers will be paid in full, before depositors claiming for deposits made after it lost such powers. Withdrawals made by one of the second class of depositors will be appropriated by the ct. to his deposits made before the loss of such powers.—*Re* NIPPON KINYN SHA, LTD., *Ex p.* TOTARO FUJINO, [1923] 1 D. L. R. 1156; 32 B. C. R. 56; [1923] 1 W. W. R. 880; 3 C. B. R. 673.—**CAN.**

PART V. SECT. 1.

st. *Grounds for granting or refusing licence—Whether company carrying on business in good faith.*]—*Re* ALL RISK INSURANCE AGENCIES, LTD. (B. C.), [1927] 3 D. L. R. 245; [1927] 3 W. R. R. 58.—**CAN.**

7483 i. *Power of directors to contract—Contract to stand surety for debt due by third party.*]—*Held:* not within the co.'s arts. of assocn.—HINDUSTAN ASSURANCE & MUTUAL BENEFIT SOCIETY, LTD., LAHORE *v.* KHALSA BANK, LTD., GUJRANWALA (1927), I. L. R. 9 Lah. 360.—**IND.**

sx. *Superintendent of insurance—Powers—To alter annual statement of company.*]—*Re* SUN LIFE ASSURANCE CO., [1927] 4 D. L. R. 287.—**CAN.**

sy. *Power to write off capital—Extent of power.*]—The power conferred by sect. 70 of Insurance Act, R. S. C., 1927 (c. 101), of writing off paid-up capital is not limited to the writing off of the precise amount of the lost capital.—*Re* CANADA NATIONAL FIRE INSURANCE CO., [1930] 3 W. W. R. 113; 4 D. L. R. 572; 39 Man. L. R. 188; 12 C. B. R. 21.—**CAN.**

contract or on established practice :—*Held :* there was no collateral contract, & the practice proved was to make loans at the rate of interest fixed by the board, & not to charge one fixed rate for all time.—THISELTON *v.* COMMERCIAL UNION ASSURANCE CO., [1926] Ch. 888 ; 95 L. J. Ch. 447 ; 136 L. T. 114 ; 70 Sol. Jo. 892.

7485a. Companies to which Assurance Companies Act, 1909 (c. 49), applies—Employers' liability insurance company—Carrying on business outside United Kingdom—What is.]—The above Act applies to employers' liability insurance business carried on in the United Kingdom, though the risks run, & the liability insured against, originated outside the United Kingdom, as sect. 33 (1) (*i*) of the above Act refers to the place where the business is carried on & not to the place where the risks are run, the act of issuing the policies constituting the carrying on or transacting business.—*Re* UNITED GENERAL COMMERCIAL INSURANCE CORPN., [1927] 2 Ch. 51 ; 96 L. J. Ch. 231 ; 136 L. T. 653 ; 71 Sol. Jo. 141, C. A.

Annotation :—**Refd.** First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922.

7490. After this case add :—

—— **Company carrying on motor vehicle business.]**—*See* Road Traffic Act, 1930 (c.43), s. 42.

7490a. —— Reinsurance of fire risks.]—The business of reinsuring fire risks is fire insurance business within Assurance Companies Act, 1909 (c. 49), & a foreign co., which carries on the business of reinsurance of fire risks in the United Kingdom, but does not otherwise carry on insurance business in England, is bound to deposit with the Paymaster-General the sum prescribed by s. 2 (1) of the Act.—FORSIKRINGSAKT. NATIONAL (OF COPENHAGEN) *v.* A.-G., [1925] A. C. 639 ; 94 L. J. K. B. 712 ; 133 L. T. 151 ; 41 T. L. R. 473 ; 69 Sol. Jo. 543 ; 30 Com. Cas. 252, H. L. ; *affg.* S. C. *sub nom.* A.-G. *v.* FORSIKRINGSAKT. NATIONAL (OF COPENHAGEN) (1924), 93 L. J. K. B. 679, C. A.

Annotations :—**Refd.** First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922 ; *Re* National Benefit Assce., *Ex p.* English Insce., [1928] Ch. 74.

7490b. —— Company carrying on accident insurance business—Charitable association.]—The ct. held that the British Provident Assocn. for Hospital & Additional Services was not a co. carrying on accident insurance business within Assurance Cos. Act, 1909 (c. 49), s. 1 (c).—HALL D'ATH *v.* BRITISH PROVIDENT ASSOCN. FOR HOSPITAL & ADDITIONAL SERVICES (1932), 48 T. L. R. 240 ; 76 Sol. Jo. 111.

7493a. —— —— —— R. S. C., Ord. 50, r. 2 (8).]—*Re* CANADA LIFE ASSURANCE CO. (1930), 167 L. T. Jo. 156 ; [1929] W. N. 46.

7493b. —— —— —— —— —— Depreciation of securities.]—*Re* GENERAL ACCIDENT FIRE & LIFE ASSURANCE CORPN., LTD. (1932), 49 T. L. R. 107.

7498. *Add. Annotation :*—**Refd.** *Re* Profits & Income Insce., [1929] 1 Ch. 262.

7500a. Deposit by company carrying on motor vehicle business.]—*Re* SOUTH-EAST LANCASHIRE INSURANCE CO., LTD. (1932), 49 T. L. R. 25 ; 76 Sol. Jo. 815.

7508a. —— —— ——.] — *Re* UNITED BRITISH INSURANCE CO., No. 7526a, *post.*

7526a. ——.]—Where an assurance co. having power under its memorandum of assocn. to transfer its business or any part thereof to another co. has agreed to transfer all its life business to another assurance co., & the proposed transfer has been sanctioned by the ct. upon a petition presented under Assurance Companies Act, 1909 (c. 49), s. 13, & all statutory requirements in connection with the transfer have been duly complied with, the effect is that all liability of the transferring co. towards its policy holders is completely discharged, & the ct. can order payment out of the deposit money to the transferring co.—*Re* UNITED BRITISH INSURANCE CO., [1929] 2 Ch. 430 ; 98 L. J. Ch. 444 ; 142 L. T. 12.

7536. *Add. Annotation :*—**Refd.** *Re* National Benefit Assurance Co., [1931] 1 Ch. 46.

7542a. —— —— —— ——.]—*Re* BRITANNIC ASSURANCE CO., LTD. & ASSURANCE COMPANIES ACT, 1909 (1927), 71 Sol. Jo. 729.

7549. *Add. Annotation :*—*As to* (1) **Refd.** Cornish Mutual Assce. *v.* I. R. Comrs., [1926] A. C. 281.

7551a. Winding-up of reinsurer—Claim against insuring company—Set-off.]—By a treaty of reinsurance dated Apr. 13, 1920, between two insurance cos. the reinsurer accepted a share of all insurances accepted by or renewed by the insuring co. in its fire department. By Art. VIII. of the treaty the insuring co. was entitled to retain & accumulate out of money due to the reinsurer a sum equal to 40 per cent. of the share of all premiums credited to the reinsurer in the first year, this sum to remain as a deposit to secure the due performance of the reinsurer's obligation. The insuring co. was to be entitled to retain the deposit, or any balance remaining after satisfying any obligation in respect of which the reinsurer might make default, until the determination of the agreement, paying the reinsurer interest at 3½ per cent. *per annum* on any part of the deposit not used in manner aforesaid. By Art. IX. the agreement was immediately determinable by notice on the reinsurer going into liquidation. On Jan. 31, 1922, the reinsurer presented its own winding-up petition, & on Feb. 1, 1922, the insuring co. gave notice determining the agreement. On Feb. 14, 1922, a compulsory order was made for the winding up of the reinsurer. After all obligations under the treaty had been satisfied, there remained in the possession of the insuring co. a sum of over £8,000 out of the deposit & a sum of accrued interest. The liquidator of the reinsurer took out a summons for a declaration that the insuring co. was bound to pay over the deposit & interest in full. The insuring co. claimed to

PART V. SECT. 5.

sa. *British company doing business in Irish Free State.*]—A British insurance co. doing business in the Irish Free State after Dec 1922, claimed not to be liable to make any deposits in the Irish Free State in consequence of Constitution & Adaptation of Enactments Act, 1922, art. 73, & External Cos. Adaptation Order, 1923, on the ground that the Act had been complied in 1914, when deposits were made in England :—*Held :* the co. was bound to make such deposits in the Irish Free State.—WESTERN AUSTRALIAN INSURANCE CO., LTD. *v.* A.-G. & MINISTER FOR INDUSTRY & COMMERCE, [1926] I. R. 57 ; 59 I. L. T. 109.—**IR.**

7498 i. *Application of deposit on winding up.*]—*Re* NATIONAL BENEFIT ASSURANCE CO., LTD., PACIFIC GREAT EASTERN RY. CO.'S CASE, [1927] 3 D. L. R. 289 ; [1927] 2 W. W. R. 348 ; 36 Man. L. R. 549.—**CAN.**

PART V. SECT. 8, SUB-SECT. 4.—A.

o i. —— *Dominion Winding-up Act.*]—*Re* CONTINENTAL FIRE & CASUALTY CO., [1924] 1 W. W. R. 132.—**CAN.**

o ii. —— ——.]—*Re* CONTINENTAL FIRE & CASUALTY CO., [1924] 1 W. W. R. 1080.—**CAN.**

be entitled to set them off against sums due to it from the reinsurer under other treaties & policies of insurance & reinsurance:—*Held:* (1) the interest was a debt due from the insuring co. to the reinsurer & fell therefore within Bkpcy. Act, 1914 (c. 59), s. 31, as being one of a number of mutual credits or debts arising between the parties, & that there was therefore a right of set-off in regard to it; (2) the deposit being money handed over to the insuring co. for a specific purpose, the balance remaining after satisfying the specific purpose continued to be excluded from the course of account between the parties & could not be the subject of a set-off. —*Re* CITY EQUITABLE FIRE INSURANCE CO., LTD. (2), [1930] 2 Ch. 293; 99 L. J. Ch. 536; 143 L. T. 444; [1929-30] B. & C. R. 233, C. A.

7593. *Add. Annotation:*—**Reld.** Biddulph & District Agricultural Soc. *v.* Agricultural Wholesale Soc. (1926), 95 L. J. Ch. 576.

7600. *Add. Annotation:*—*As to* (2) **Consd. & Apld.** *Re* Profits & Income Insce., [1929] 1 Ch. 262.

7609. *Add. Annotations:*—**Consd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769. **Reld.** Hole *v.* Garnsey, [1930] A. C. 472.

7611a. —— **Former actuary—In receipt of pension.**]—On the resignation of the actuary & secretary of an insurance co. which, in addition to other branches of insurance business, carried on the business of ordinary life assurance, both by the issue of policies upon human life & by the granting of annuities upon human life, the directors passed a resolution granting him a pension. The co. was subsequently ordered to be wound up compulsorily, & the late actuary, having lodged a proof in respect of his pension, died before the proof was dealt with:—*Held:* that the annuity was an annuity within the meaning of the Assurance Cos. Act, 1909 (c. 49), & must be valued, as at the date of the winding-up order, in the manner indicated in that statute.—*Re* PROFITS & INCOME INSURANCE CO., [1929] 1 Ch. 262; 98 L. J. Ch. 155; 140 L. T. 526; [1929] B. & C. R. 17.

7612a. ——.]—*Held:* the liquidator had rightly rejected a proof, in that the contract in respect of which the proof of debt was advanced, was a contract of marine insurance & no stamped policy was issued as required by law, so that the contract was invalid.—ENGLISH INSURANCE CO. *v.* NATIONAL BENEFIT ASSURANCE CO. (OFFICIAL RECEIVER), [1929] A. C. 114; 98 L. J. Ch. 1; 140 L. T. 76; [1928] B. & C. R. 67, H. L.; *affg.* S. C. *sub nom. Re* NATIONAL BENEFIT ASSURANCE CO., *Ex p.* ENGLISH INSURANCE CO., [1928] Ch. 74, C. A.

Annotations:—**Distd.** *Re* Norske Lloyd Insce., [1928] W. N. 99. **Reld.** *Re* Home & Colonial Insce. (1929), 45 T. L. R. 658; *Re* National Benefit Assurance Co., Ltd., [illegible] 1 Ch. 46.

7612b. **Effect of compromise under 1908 Act, s. 214, accepted & acted on by parties.**]—*Re* NORSKE LLOYD INSURANCE CO., LTD., [1928] W. N. 99.

7620. *Add. Annotation:*—**Consd.** *Re* Profits & Income Insce., [1929] 1 Ch. 262.

7622. *Add. Annotation:*—**Reld.** *Re* Profits & Income Insce., [1929] 1 Ch. 262.

7622a. —— ——.]—*Re* ARGONAUT MARINE INSURANCE CO., LTD., [1932] 2 Ch. 34; 101 L. J. Ch. 217; 147 L. T. 350; 48 T. L. R. 331.

7623. *Add. Annotations:*—*As to* (1) **Consd.** *Re* Profits & Income Insce., [1929] 1 Ch. 262. **Reld.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

7625. *Add. Annotations:*—**Distd.** *Re* National Benefit Assce., [1924] 2 Ch. 339. **N.F.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

7626. *Add. Annotation:*—**Reld.** *Re* City Life Assce. (1925), 42 T. L. R. 45.

7627. *Add. Annotations:*—**Overd.** *Re* City Life Assce. (1925), 42 T. L. R. 45. **Reld.** *Re* National Benefit Assce., [1924] 2 Ch. 339.

7627a. ——.]—A policy-holder in a life assurance co. borrowed money from the co. on his policy. Before the death of the assured the co. was wound up, & the policy was valued under Assurance Companies Act, 1909 (c. 49). The policy-holder claimed to set off the value of the policy against his debt:—*Held:* Bkpcy. Act, 1914 (c. 59), s. 31, applied, there having been at the date of the winding up contractual obligations the breach of which might give rise to a claim for damages provable in the winding up, & the policy-holder was entitled to set off the value of his policy against his debt.—*Re* NATIONAL BENEFIT ASSURANCE CO., LTD., [1924] 2 Ch. 339; 94 L. J. Ch. 33; 132 L. T. 50; 40 T. L. R. 755; 68 Sol. Jo. 753; [1924] B. & C. R. 231.

Annotation:—**Apprvd. & Folld.** *Re* City Life Assce. Co. (1925), 42 T. L. R. 45.

7627b. ——.]—In the liquidation of a life insurance co. policy holders who have mortgaged their policies to the co. to secure advances are entitled under Bkpcy. Act, 1914 (c. 59), s. 31, as made applicable by 1908 Act, s. 207, to set off the statutory value of their policies in full against the money due on their mtges., if the co. held the mtges. at the date of the commencement of the winding up, but not if, before that date, the co. had equitably assigned the mtges. to trustees to secure a trust fund for the payment of a certain class of the policies. —*Re* CITY LIFE ASSURANCE CO., LTD., [1926] Ch. 191; 95 L. J. Ch. 65; 134 L. T. 207; 42 T. L. R. 45; 70 Sol. Jo. 108; [1925] B. & C. R. 233, C. A.

Annotations:—**Reld.** *Re* Profits & Income Insce., [1929] 1 Ch. 262; *Re* City Equitable Fire Insurance Co., [1930] 2 Ch. 293; *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

Part VI.—Companies Registered Under Repealed Statutes.

7647a. —— **Alteration in objects.**]—*Re* HEWITT BROTHERS, LTD. (1931), 75 Sol. Jo. 615.

Part VII.—Unregistered Companies.

7650. *Add. Annotation :*—**Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

7663. *Add. Annotation :*—**Refd.** *Re* Russian & English Bank (1932), 48 T. L. R. 282.

7669a. Representatives of deceased members.]—An unregistered co. cannot be wound up under Cos. Act, 1862 (c. 89), s. 199, unless there are more than seven existing members at the date of the winding-up petition. Representatives of deceased members, trustees of bkpt. members, & past members, although liable to contribute to the debts of the co., are not members within the sect.—*Re* BOWLING & WELBY'S CONTRACT, [1895] 1 Ch. 663; 64 L. J. Ch. 427; 72 L. T. 411; 39 Sol. Jo. 345; 43 W. R. 417; 2 Mans. 257; 13 R. 125, C. A.

Annotations :—**Apld.** *Re* James *v.* Buena Ventura Nitrate Grounds Syndicate, Ltd. (1895), 11 T. L. R. 568. **Foll.** *Re* New York & Continental Line (1909), 54 Sol. Jo. 117. **Consd.** Llewellyn *v.* Kasintoe Rubber Estates, Ltd., [1914] 2 Ch. 670.

7669b. —— —— Trustees of bankrupt members.]—*Re* BOWLING & WELBY'S CONTRACT, No. 7669a, *ante*.

Part VIII.—Cost-Book Companies and Mining Companies in the Stannaries.

7723a. —.]—COURTEIS *v.* JOHNSON (1853), cited 10 Exch. 242, n.; 156 E. R. 433.

Annotation :—**Refd.** Watson *v.* Spratley (1854), 10 Exch. 222.

7726. *Add. Annotation :*—**Refd.** Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

7737. *Add. Annotation :*—*As to* (2) **Consd.** Spencer *v.* Ashworth Partington, [1925] 1 K. B. 589.

Part IX.—Statutory Companies for Public Purposes.

7843a. —— Capital expenditure out of reserve funds.]—Sums expended by the railways upon capital works, & furnished by drawing upon their own undistributed profits, pension funds & reserves, are not additional capital "raised or provided" within Railways Act, 1921 (c. 55), s. 58 (1) (*b*). Therefore the companies are not entitled to include those sums as capital for the purpose of fixing the standard rates & charges necessary to produce the revenue sufficient to remunerate them upon their capital valuation.—*Re* STANDARD CHARGES SCHEDULE (1925), 94 L. J. K. B. 364; 132 L. T. 682; 89 J. P. 90; 41 T. L. R. 247; 69 Sol. Jo. 326; 23 L. G. R. 209; 18 Ry. & Can. Tr. Cas. 133, C. A.

7862. *Add. Annotation :*—*As to* (1) **Consd.** Witham Outfall Board *v.* Boston Corpn. (1926), 136 L. T. 756.

7904a. —.]—The ct. will not grant a rule under 8 & 9 Vict. c. 16, s. 36, for a *scire facias* against a party as a shareholder in a joint stock co., upon a judgment obtained against the co., unless the affidavits disclose reasonable grounds for believing that the party sought to be charged is a shareholder. The fact of his having applied for & received an allotment of shares, & paid a deposit thereon, is not enough.—EDWARDS *v.* KILKENNY & GREAT SOUTHERN & WESTERN RY. CO. (1863), 14 C. B. N. S. 526; 143 E. R. 526.

7953a. —— —— Extent of statutory powers as to preference shares.]—A statutory co. under its special Acts with which Part II. of the Cos. Clauses Act, 1863 (c. 118), was incorporated, issued certain preference shares. By the conditions endorsed on the certificates

PART VII. SECT. 2, SUB-SECT. 1.

7654 i. *Power of court—Under Companies Acts — Discretionary.*] — The general partner in a limited partnership consisting of two members presented a petition for the winding up of the partnership by the ct. & for the appointment of a liquidator :—*Held :* although it was competent for the ct. to appoint a judicial factor to wind up a limited partnership, the averments of parties showed that questions as to the liability of the limited partner were likely to arise, & it was more expedient that the partnership should be wound up by the ct.—MUIRHEAD *v.* BORLAND, [1925] S. C. 474.—SCOT.

PART VII. SECT. 2, SUB-SECT. 2.—A.

7658 i. "*Unregistered company*"—*Benevolent society.*]—A co. & its directors instituted & endowed a benevolent society, which was not registered under Friendly Societies Act, 1896, & made it a condition in the contract of employment of its manual labourers that they should be members of the society. In addition to income derived from the endowment fund, further income was provided, in terms of the constitution, by the members paying small weekly sums to the society, which were deducted from their wages, & by the co. paying an equal amount. The members & their dependants were respectively entitled to sickness & death benefits. The management was vested in a committee which was elected by the members in annual general meeting. The co., having been bought up by a larger concern, went out of business, & the works were eventually closed down. A special meeting of the society was thereafter held, at which it was resolved to cease receiving contributions & paying benefits. Subsequently certain officers of the society presented a petition for the winding up of the society as an "unregistered co." :—*Held :* the society was not a "partnership, assocn., or co." within Cos. Act, 1908, Part VIII., s. 267, in respect that there was no contractual relation between the members *inter se*, &, accordingly, that it could not be wound up under the Act as an "unregistered co."—*Re* CALEDONIAN EMPLOYEES' BENEVOLENT SOCIETY, [1928] S. C. 633.—SCOT.

PART VII. SECT. 2, SUB-SECT. 2.—D.

7670 i. *Association of less than seven members—At date of petition.*]—*Held :* the ct. may under Cos. Act, s. 271, order the winding up of an unregistered co. even if it is composed at the date of the application for its winding up, of not more than 7 members.—*Re* INDIAN COMPANIES ACT, 1913 (1930), I. L. R. 8 Ran. 409.—IND.

it was provided that, in the event of the co. being wound up, the holders of the preference shares should be entitled to have the surplus assets applied, in the first place, in repaying to them the amount paid up on their preference shares, but should not be entitled to any further participation in such surplus assets:—*Held:* Cos. Clauses Act, 1863 (c. 118), ss. 13, 14, limited a co. to which Part II. of that Act applied in respect of their powers to attach rights of dividend to their preference shares, but did not limit a co. in respect of their powers to attach other privileges; the privilege of having a priority as regards repayment of capital in a winding-up was a privilege which the co. was entitled to attach to the preference shares; &, consequently, the further condition restricting the holders of preference shares in the case of a winding-up to repayment out of the surplus assets of the capital paid up on such shares was not *ultra vires* & was not invalid. —WINDERMERE DISTRICT GAS & WATER CO. *v.* WHITEHEAD, [1931] 1 Ch. 558; 100 L. J. Ch. 147; 144 L. T. 636; [1929-30] B. & C. R. 276.

7956. *Add. Annotation:*—*As to* (2) **Refd.** *Re* King's Settlement, King *v.* King, [1931] 2 Ch. 294.

8045. *Add. Annotations:*—**Distd.** Aylott *v.* West Ham Corpn., Sisson *v.* Same (1926), 95 L. J. Ch. 533. **Refd.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602; Royal Trust Co. *v.* A.-G. for Alberta (1929), 46 T. L. R. 25.

8126. *Add. Annotation:*—*As to* (2) **Refd.** Cotter *v.* National Union of Seamen [1929] Ch. 58.

8129. *Add. Annotations:*—*Generally*, **Refd.** British Insulated & Helsby Cables *v.* Atherton, [1926] A. C. 205; *Re* Golomb & Porter & Co.'s Arbitration (1931), 144 L. T. 583; *Re* Lee, Behrens & Co. (1932), 48 T. L. R. 248.

8176. *Add. Annotations:*—**Refd.** British Insulated & Helsby Cables *v.* Atherton, [1926] A. C. 205; *Re* Lee, Behrens & Co. (1932), 48 T. L. R. 248.

8225. *Add. Annotations:*—**Consd.** Hartland *v.* Diggines (1924), 41 T. L. R. 131. **Refd.** Michelham's Trustees *v.* I. R. Comrs., Michelham (Lady) Exors. *v.* I. R. Comrs. (1930), 144 L. T. 163; Hamilton *v.* I. R. Comrs., [1931] 2 K. B. 495; Thompson *v.* Trust & Loan Co. of Canada (1932), 48 T. L. R. 209.

8243. *Add. Annotations:*—**Refd.** British Insulated & Helsby Cables *v.* Atherton, [1926] A. C. 205; *Re* Lee, Behrens & Co., Ltd. (1932), 48 T. L. R. 248.

8246. *Add. Annotation:*—**Refd.** Morris *v.* Harris, [1927] A. C. 252.

8302. *Add. Annotation:*—**Distd.** Garrard *v.* James, [1925] Ch. 616.

8339. *Add. Citation:*—1 Macq. 461.

Add. Annotations:—**Apld.** *Re* Thomson, Thomson *v.* Allen, [1930] 1 Ch. 203; Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

8361. *Add. Annotation:*—**Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450.

8365. *Add. Annotation:*—**Consd.** Garrard *v.* James, [1925] Ch. 616.

8366. *Add. Annotation:*—**Refd.** Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

8389. *Add. Annotations:*—*As to* (1) **Apld.** Garrard *v.* James, [1925] Ch. 616. **Consd.** *Re* George Inglefield, Ltd. (1932), 48 T. L. R. 536.

8412a. —— ——.]—*Re* MERSEY RY. CO., GIBBS *v.* MERSEY RY. CO. (1895), 11 T. L. R. 390.

8444a. —— ——.]—A receiver & manager was appointed of the undertaking of a tramways co.—BARTLETT *v.* WEST METROPOLITAN TRAMWAYS CO., [1893] 3 Ch. 437; 63 L. J. Ch. 208; 69 L. T. 560.

Annotation:—**Dbtd.** Marshall *v.* South Staffordshire Tram. Co., [1895] 2 Ch. 36.

8463. *Add. Annotation:*—**Consd.** Oswald Tillotson, Ltd. *v.* I. R. Comrs. (1932), 48 T. L. R. 582.

8481a. —— **Priority in winding-up—Validity.**]—WINDERMERE DISTRICT GAS & WATER CO. *v.* WHITEHEAD, No. 7953a, *ante*.

8481b. Condition restricting rights of preference shareholders—Limitation to repayment out of surplus assets paid up on share—Validity.] —WINDERMERE DISTRICT GAS & WATER CO. *v.* WHITEHEAD, No. 7953a, *ante*.

PART IX. SECT. 8, SUB-SECT. 5.—B.

b i. —— *Necessity for.*]—Where the directors of a railway co. at one meeting made several calls, payable at intervals of two months from each other:—*Held:* bad, for the calls cannot be made at less intervals than two months; & a stockholder who had paid the first call thus made, & then transferred his shares, was not responsible for the subsequent calls thus illegally made.—MOORE *v.* MCLAREN (1862), 11 C. P. 534.—**CAN.**

b ii. —— *How calculated.*]—Where calls on stock were to be made "at periods of not less than three months' interval," & one call was made payable on Aug. 10, & another on Nov. 10:—*Held:* an interval of three months had not elapsed between the two calls, & that the second call was therefore bad.—STADACONA FIRE & LIFE INSURANCE CO. *v.* MACKENZIE (1878), 29 C. P. 10.—**CAN.**

PART IX. SECT. 14, SUB-SECT. 1.

8370 i. *By issue of debentures—On completion of portion of railway—Issue before completion.*]—The B. & W. Ry. Co., whose borrowing powers were not to arise until a certain portion of their line should have been open for traffic, entered into an agreement with the S. & W. Ry. Co. that, if the latter co. would advance them a sufficient sum to enable them to complete that portion of the line, they, the B. & W. Co., would, when their borrowing powers arose, issue & deliver to the S. & W. Co. a sufficient amount of debentures to enable them to repay themselves the sum which they should so advance. In pursuance of this agreement, the S. & W. Co. paid, from time to time, the contractor's accounts, until the portion of the line required by the B. & W. Co.'s special Act to be open for traffic before the borrowing powers should arise was completed. The S. & W. Co. advanced in that way £12,000. The B. & W. Co.'s borrowing powers having arisen, they issued & delivered to the S. & W. Co. debentures to secure that advance:—*Held:* there was nothing illegal in that contract, & the debentures were valid to the extent of £12,000, the sum actually advanced.—*Re* BAGNALSTOWN & WEXFORD RY. CO. (1870), 4 I. R. Eq. 505.—**IR.**

PART X. SECT. 6.

8b. *Effect of Act respecting Capacity of Companies*, 1917 (c. 12).]—The above Act deals only with the capacity of cos. to exercise their powers, & does not enlarge the powers themselves.—*Re* NORTH WESTERN TRUST CO., *Ex p.* PURE OIL CO., LTD. (Man.), [1926] 1 D. L. R. 689; [1926] 1 W. W. R. 426; 35 Man. L. R. 483.—**CAN.**

Part XII.—Foreign Companies.

8510. *Add. Annotations :*—**Refd.** Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255; A.-G. *v.* Belilios, [1928] 1 K. B. 798.

8512. *Add. Annotation :*—**Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (192(95 L. J. K. B. 1015.

8514. *Add. Annotation :*—**Refd.** Gilbert *v.* Gilbert & Bougher (1927), 96 L. J. P. 137.

After this case add :—

—— ——.]—*See, now*, 1929 Act, s. 234 (1).

8520. *Add. Annotation :*—**Refd,** Midland Bank *v.* I. R. Comrs., [1927] 2 K. B. 465.

8523. For the portion of the paragraph in the original volume commencing with "*Held :*" substitute the following paragraph :—

Held : (1) upon the construction of the decrees of the Soviet Govt., defts. had not proved that pltf. bank was dissolved or that the property in the bonds was no longer in the bank; (2) it was not open to defts. to raise by way of defence to the action the objection that the London branch manager had no authority to bring the action in the name of pltf. bank, but they ought to have moved to strike out the name of the bank as pltf.—RUSSIAN COMMERCIAL & INDUSTRIAL BANK *v.* COMPTOIR D'ESCOMPTE DE MULHOUSE, [1925] A. C. 112; 93 L. J. K. B. 1098; 132 L. T. 99; 40 T. L. R. 837; 68 Sol. Jo. 841, H. L.

Annotations :—*As to* (1) **Apld.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015. **Distd.** Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65. **Consd.** Russian & English Bank *v.* Baring Bros. & Co. (1932), 48 T. L. R. 193. *As to* (2) **Folld.** Banque Internationale de Commerce de Petrograd *v.* Goukassow, [1925] A. C. 150. **Consd.** The Jupiter (No. 2), [1925] P. 69; The Jupiter (No. 3) (1927), 137 L. T. 333. **Distd.** Page *v.* Scottish Insce. Corpn. (1929), 98 L. J. K. B. 308.

8523a. —.]—A bank incorporated in Russia in 1911, with British shareholders holding a majority of the shares, established a branch in London under separate management in 1915. In 1917 the Bolshevist revolution took place, & the bank ceased to carry on any business in Russia, its last general meeting being held at Petrograd in June, 1917. In 1921 an action was commenced in the name of the bank by British shareholders to recover two sums of £100,000 & £80,000, forming part of a credit lodged by the former Russian Govt. with defts., an English bank, & alleged to have been assigned to pltfs. Pleadings were delivered, but the action lay dormant for several years, after which pleadings were amended & the A.-G. was added as a deft. At some uncertain date, either before or shortly after the action was launched, pltfs. were dissolved & ceased to exist as a corpn. at Russian law by virtue of a decree of the Soviet Government :—*Held :* on a procedure summons taken out by defts., the action must be stayed indefinitely, as pltfs. no longer existed either in Russia or in Great Britain.

Semble : although extinguished in the country of its origin, there is power in the ct. to wind up the English branch of a foreign corpn. as an unregistered co. under 1929 Act, s. 338.—RUSSIAN & ENGLISH BANK *v.* BARING BROS. & CO., LTD., [1932] 1 Ch. 435; 101 L. J. Ch. 157; 146 L. T. 424; 48 T. L. R. 193; 76 Sol. Jo. 68.

Annotation :—**Consd.** *Re* Russian & English Bank, [1932] 1 Ch. 663.

8524. For the paragraph in the original volume substitute the following paragraph :—

—— ——.]—A Russian bank having a head office in Petrograd & a branch in Paris had, through its Paris branch, a series of financial transactions with a customer as the result of which the customer was largely indebted to the bank. In 1920 the Paris manager brought an action in the name of the bank against the customer to recover the amount of the debt. Deft. pleaded that by virtue of the nationalisation of the Russian banks under decrees of the Soviet Govt. pltf. bank had ceased to exist, & that no one had authority to sue in the name of the bank :—*Held :* the case was governed by *Russian Commercial & Industrial Bank* v. *Comptoir d'Escompte de Mulhouse*, No. 8523, *ante*, & the defence failed.—BANQUE INTERNATIONALE DE COMMERCE DE PETROGRAD *v.* GOUKASSOW, [1925] A. C. 150; 93 L. J. K. B. 1084; 132 L. T. 116; 40 T. L. R. 837; 68 Sol. Jo. 841, H. L.

Annotations :—**Distd.** Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65. **Consd.** Russian & English Bank *v.* Baring Bros. & Co. (1932), 48 T. L. R. 193. **Refd.** The Jupiter (No. 3) (1927), 137 L. T. 333.

8527a. Whether company in existence.]—A Russian insurance co., having its principal office in Petrograd & a branch office in London, in accordance with 1908 Act, s. 274, filed with the registrar the name of C. as its authorised representative to accept service of process on its behalf. By a series of decrees passed in 1918 the Soviet Govt.

PART XII. SECT. 4.

t. (top of p. 1200). Read now "w."

w (p. 1200) i. —— *Company holding no licence in mortmain.*]—An insurance co., incorporated in a foreign State & holding no licence under Ontario Mortmain & Charitable Uses Act, but registered as authorised to do business in Ontario, applied to be registered as the transferee of a charge upon land :—*Held :* the co. was entitled to be registered without any qualification as to proceedings that might be taken under that Act or any other Act affecting the holding of land by corpns. —*Re* NEW YORK LIFE INSURANCE CO. (1924), 55 O. L. R. 408.—CAN.

q (p. 1200) i. —— —— *Burden of proof of status to carry on business.*]—LA SALLE EXTENSION UNIVERSITY *v.* FREEMAN (Man.), [1926] 3 W. W. R. 474.—CAN.

c. (p. 1202). Add "*revsd.* 56 S. C. R. 539."

PART XII. SECT. 5.

sc. *General rule.*]—In the absence of evidence of the law of the foreign state in question, the ct. cannot hold that a doctrine of English law applicable to a co. incorporated under local statutes applies to a co. incorporated under a foreign statute.—CLARK *v.* THOMAS J. GAYTEE STUDIOS INCORPORATED, [1930] 3 W. W. R. 89; 4 D. L. R. 1038. —CAN.

PART XII. SECT. 7, SUB-SECT. 1.—A.

se. *Action by creditor—Liquidation in country of domicil.*]—A liquidation in the country of domicil of a co. registered in New South Wales as a foreign co. gives this ct. no jurisdiction to interfere with the rights of creditors in this State.—PRIMARY PRODUCERS BANK OF AUSTRALIA, LTD. *v.* HUGHES (1931), 48 N. S. W. W. N. 240.—AUS.

PART XII. SECT. 8, SUB-SECT. 1.

e i. —— —— ——.]—A winding-up order by a Canadian ct. in the matter of a Scotch co. doing business in Canada, & having assets & owing debts in Canada, which order was made on the petition of a Canadian creditor,

purported to put all insurance cos. in Russia into liquidation & to appropriate their property. In the spring of 1923 C. sent a notice to the registrar that the co. which he represented had ceased to exist, & at his request this notice was placed upon the file. In the summer of the same year resps. brought an action against the co. by specially indorsed writ for payment of a sum of money claimed to be due to them in respect of certain insurance transactions. The writ was served upon C., who protested that he had no power to act for the co., & judgment was signed in default of appearance:—*Held:* (1) at the date of the writ the co. had not ceased to exist by virtue of the decrees of the Soviet Govt.; (2) the service of the writ on C. was valid; (3) the co. by putting on the file the name of a person authorised to accept service of process on its behalf agreed to submit to the jurisdiction of the ct., & it must be assumed that the Russian Govt. would, according to the comity of nations, recognise the judgment as effective.—EMPLOYERS' LIABILITY ASSURANCE CORPN. *v.* SEDGWICK COLLINS & CO., [1927] A. C. 95; 95 L. J. K. B. 1015; 42 T. L. R. 749; *sub nom.* SEDGWICK COLLINS & CO., LTD. *v.* ROSSIA INSURANCE CO. OF PETROGRAD, 136 L. T. 72, H. L.; *affg.* S.C. *sub nom.* SEDGWICK COLLINS & CO. *v.* ROSSIA INSURANCE CO. OF PETROGRAD, [1926] 1 K. B. 1, C. A.

Annotations:—As to (1) **Distd.** Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65. **Refd.** First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922. *As to* (3) **Apld.** Sabatier *v.* Trading Co., [1927] 1 Ch. 495. *Generally.* **Refd.** The Jupiter (No. 3) (1927), 137 L. T. 333; *Re* Russian & English Bank (1932), 48 T. L. R. 282; *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

8527b. —— **Company extinct—Judgment by default—Garnishee proceedings—Invalid.**]—An English firm commenced an action in 1930 against the Moscow Industrial Bank claiming payment of a large sum of money, &, on the strength of an affidavit stating that the Moscow Industrial Bank was domiciled in Russia & that there was no way of effecting personal service on it, obtained leave under R. S. C., Ord. 9, r. 2, to serve notice of the writ by posting it by registered letter to the bank at Moscow where its head office had been. No appearance having been entered, judgment by default was signed against the Moscow Industrial Bank on Nov. 24, 1930. Some days later a letter was received from the London Embassy of the Soviet Republic, stating that notice of the writ could not be delivered, as the Moscow Industrial Bank went out of existence in 1917. After having obtained judgment by default, pltfs. obtained a garnishee order *nisi* against the Midland Bank attaching money alleged to be due from that bank to the Moscow Industrial Bank, & that order was subsequently made absolute. On appeal by the Midland Bank:—*Held:* (1) on the evidence of the Russian decrees as to Russian corpns. & of Russian lawyers as to the effect of those decrees, the Moscow Industrial Bank had ceased to exist as a juristic person in 1930, & therefore the judgment by default obtained against it by pltfs. was a nullity, & consequently no garnishee proceedings could be founded upon it; (2) in any view the garnishee order *nisi* ought not to have been made absolute, inasmuch as service of notice of the writ on the Moscow Industrial Bank was irregular in that the procedure applicable to service in a foreign country, as prescribed by R. S. C., Ord. 11, r. 8, had not been followed.

Per SCRUTTON, L.J.: If it comes to the knowledge of the ct. that it has entered judgment in default of appearance against a man who was at the time dead, or a co. which was at the time dissolved, or non-existent according to the law of its country of origin, the ct. is bound, after hearing the parties interested, of its own motion to set the judgment aside.—LAZARD BROS. & CO. *v.* BANQUE INDUSTRIELLE DE MOSCOU, LAZARD BROS. & CO. *v.* MIDLAND BANK, LTD., [1932] 1 K. B. 617; 101 L. J. K. B. 65; 146 L. T. 240, C. A.; *affd.* 49 T. L. R. 94; 76 Sol. Jo. 888, H. L.

8527c. —— —— —— **Setting aside.**]—LAZARD BROS. & CO. *v.* BANQUE INDUSTRIELLE DE MOSCOU; LAZARD BROS. & CO. *v.* MIDLAND BANK, LTD., No. 8527b, *ante.*

8542. *Add. Annotations:*—**Refd.** Sedgwick Collins *v.* Rossia Insce. of Petrograd, [1926] 1 K. B. 1; *Re* Russian & English Bank (1932), 48 T. L. R. 282.

8543. *Add. Annotations:*—**Refd.** Sedgwick Collins *v.* Rossia Insce. of Petrograd (1925), 133 L. T. 808; *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

8548a. **Company dissolved before 1929 Act—Power to wind up as unregistered company—Winding up of English branch.**]—RUSSIAN & ENGLISH BANK *v.* BARING BROS. & CO., LTD., No. 8523a, *ante.*

8548b. ——————.]—A petition was presented by creditors, whose debt was disputed, for the compulsory winding-up of an unregistered foreign co. which had a branch in England & which was dissolved by the laws of Russia before the 1929 Act came into operation:—*Held:* (1) the provisions of 1929 Act, s. 338, notwithstanding sub-sect. 2 of sect. 338, did not alter the law as it existed, before that statute came into operation, under the corresponding sects. of the Acts of 1862 & 1908, & the ct. had therefore jurisdiction to make an order with the consent of the liquidator previously appointed by the ct. in Scotland, as ancillary to the winding-up proceedings there:—*Held:* a valid order.—*Re* SCOTTISH CANADIAN ASBESTOS CO., ALLEN *v.* HANSON (1890), 18 S. C. R. 667.—**CAN.**

• ii. —— —— ——.]—Where a winding-up order had been made in England against an English co. prior to the making of a Canadian winding-up order:—*Held:* a double liquidation should be avoided, by treating the duties of the Canadian liquidator as ancillary to the English winding-up proceedings.—*Re* NATIONAL BENEFIT ASSURANCE CO., LTD., PACIFIC GREAT EASTERN RY. CO.'S CASE, [1927] 3 D. L. R. 289; [1927] 2 W. W. R. 348; 36 Man. L. R. 549.—**CAN.**

• iii. —— *Remission of funds to foreign liquidator.*]—A co., incorporated in New South Wales & carrying on business in Victoria, was ordered by the Supreme Ct. of New South Wales to be wound up. A similar order, subsequently made by the Supreme Ct. of Victoria, provided that the Victorian winding up should be conducted as ancillary to that in New South Wales. The Victorian liquidator had in hand £1,665, proceeds of realisation:—*Held:* upon the New South Wales liquidator giving security to the satisfaction of the prothonotary in the sum of £1,500 that the Victorian assets would be applied to the satisfaction of the claims of the Victorian creditors *pari passu* with other claims of the same class, all moneys in the hands of the Victorian liquidator, after deducting the costs of the winding-up, including the liquidator's remuneration, should be remitted to the New South Wales liquidator.—*Re* AUSTRALIAN FEDERAL LIFE & GENERAL ASSURANCE CO., LTD. (No. 2), [1931] V. L. R. 317; Argus L. R. 291 (Victoria).—**AUS.**

for the compulsory winding-up of the co. under sect. 338 (1) (*d*); (2) notwithstanding the general rule that a disputed debt may not form the basis of a creditor's petition for the winding-up of a co., petitioners would in the circumstances be otherwise without a remedy & were entitled to proceed by a winding-up petition; & they were entitled to a compulsory order for the winding-up of the co.—*Re* RUSSIAN & ENGLISH BANK, [1932] 1 Ch. 663; 101 L. J. Ch. 226; 147 L. T. 57; 48 T. L. R. 282; 76 Sol. Jo. 201; [1931] B. & C. R. 140.

8554. *Add. Annotation:*—**Refd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

Part XIII.—Illegal Companies.

8571. *Add. Annotations:*—**Refd.** *Re* Prevost, Lloyds Bank *v.* Barclays Bank, [1930] 2 Ch. 383; R. *v.* Registrar of Joint Stock Companies, *Ex p.* More, [1931] 2 K. B. 197.

8574a. —— **Company selling Irish lottery tickets.**]—A co. was formed in England for the sale there of tickets & chances in the Irish lottery:—*Held:* the object of the co. was unlawful, & the Registrar of Joint Stock Cos. was right in refusing to register the co.—R. *v.* REGISTRAR OF JOINT STOCK COMPANIES, *Ex p.* MORE, [1931] 2 K. B. 197; 100 L. J. K. B. 638; 145 L. T. 522; 95 J. P. 137; 47 T. L. R. 383; 29 L. G. R. 452, C. A.

8576a. –.]—HARVEY *v.* COLLETT (1846), 15 Sim. 332; 4 Ry. & Can. Cas. 387; 15 L. J. Ch. 376; 10 Jur. 603; 60 E. R. 646.

Annotation:—**Refd.** Stewart *v.* Austin (1866), 36 L. J. Ch. 162.

8581a. —— **Action against treasurer & secretary—Illegality will not prevent account.**]—GREENBERG *v.* COOPERSTEIN, No. 272a, *ante.*

8582. *Add. Annotation:*—**Refd.** Greenberg *v.* Cooperstein, [1926] Ch. 657.

8583. *Add. Annotation:*—**Refd.** Greenberg *v.* Cooperstein, [1926] Ch. 657.

8587. *Add. Annotations:*—**Refd.** Cornish Mutual Assce. *v.* I. R. Comrs., [1926] A. C. 281; Greenberg *v.* Cooperstein, [1926] Ch. 657; Thomas *v.* Evans, Jones *v.* South-West Lancashire Coal Owners' Assocn. (1926), 135 L. T. 673.

Part XIV.—Companies under Private Acts.

8595a. —— **Name of member omitted from memorial of names of members—Deed not executed.**]—SCOTT *v.* BERKELEY (1847), 3 C. B. 925; 5 Ry. & Can. Cas. 51; 16 L. J. C. P. 107; 8 L. T. O. S. 389; 11 Jur. 242; 136 E. R. 371.

Annotations:—**Refd.** Portal *v.* Emmens (1876), 1 C. P. D. 201; Kipling *v.* Todd (1878), 3 C. P. D. 350; *Re* South London Fish Market Co., Plimsoll's Case (1888), 1 Meg. 92.

8621a. —— ——.]—BROWNE *v.* LONDON NECROPOLIS & NATIONAL MAUSOLEUM CO. (1857), 6 W. R. 188.

8633. *Add. Annotations:*—**Consd.** Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443. **Refd.** Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

PART XIV. SECT. 2, SUB-SECT. 3.

sd. *Subscription books—Conditions as to.*]—MARMORA FOUNDRY CO. *v.* MURNEY (1850), 1 C. P. 29.—**CAN.**

COMMONS AND RIGHTS OF COMMON.

NOTE.—As to commons & rights of common after 1925, *see* Law of Property Act, 1925 (c. 20), ss. 193, 194.

Part II.—Different Kinds of Rights of Common.

18. *Add. Annotation :—As to* (1) **Refd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312.

224. *Add. Annotation :—Generally,* **Refd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

226. *Add. Annotation :—As to* (2) **Refd.** Hodgson *v.* McCreagh (1923), 92 L. J. Ch. 426.

Part V.—Right of Free Warren.

323. *Add. Annotation :*—**Consd.** Hodgson *v.* McCreagh (1923), 93 L. J. Ch. 339.

323a. —— **In demesne land—Is warren in gross.**]—Deft., lord of the manor of B., claimed sporting rights over pltfs.' freehold farms within the manor, basing his claim on a franchise of free warren appurtenant to the manor granted by the Crown to J., in 1301 ; alternatively, on a lost grant, presumed from immemorial user :—*Held :* the grant to J. in 1301 was of a franchise in gross, & even if not in gross, it would have passed by J.'s subsequent alienation of the land, or become a franchise in gross by J.'s reserving the franchise upon the occasion of that alienation ; there was therefore no title in deft. by the grant of the manor, & there was no evidence supporting his claim by prescription to the presumption of a lost grant.—HODGSON *v.* MCCREAGH (1923), 93 L. J. Ch. 339 ; 131 L. T. 340 ; 40 T. L. R. 10 ; 68 Sol. Jo. 58, C. A.

329. *Add. Annotation :*—**Refd.** Hodgson *v.* McCreagh (1923), 93 L. J. Ch. 339.

347. *Add. Annotation :*—**Consd.** Hodgson *v.* McCreagh (1923), 93 L. J. Ch. 339.

347a. Alienation reserving franchise of free warren.]—HODGSON *v.* MCCREAGH, No. 323a, *ante.*

349a. —— **By alienation of soil—Although soil reacquired.**]—R. *v.* SHIRLAND (1314), Y. B. 6 & 7 Edw. 2, VIII. Sel. Soc. (Vol. III., Eyre of Kent) 181.

Part VI.—Creation and Proof of Rights of Common.

366. *Add. Annotations :—As to* (2) **Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465 ; *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

452. *Add. Annotation :*—**Refd.** Green *v.* Matthews & Co. (1930), 46 T. L. R. 206.

Part XIII.—Inclosure of Commons and Common Fields.

884. *Add. Annotation :*—**Refd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

886. *Add. Annotation :*—**Refd.** Back *v.* Daniels' [1925] 1 K. B. 526.

893. *Add. Annotations :—As to* (4) **Refd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135. *As to* (5) **Refd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135.

899. *Add. Annotation :—As to* (1) **Consd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135.

900. *Add. Annotation :*—**Consd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135.

901. *Add. Citation :*—[1922] 2 Ch. 187, n. *Add. Annotation :*—**Folld.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135.

903. For the paragraph in the original volume substitute the following paragraph :—

-.]—By the Lanchester Inclosure Act, 1773, the moors & commons of the manor of Lanchester, Durham, were divided & allotted. The Act provided that the lord of the manor & his assigns should have, hold & enjoy all mines & minerals within & under the allotments, with full & free liberty of searching for, draining, winning & working the mines & minerals by any ways or means then in use or thereafter to be invented as fully & freely as he might or could have had, held, used & enjoyed the same in case that Act had not been made without paying any damages or making any satisfaction for so doing ; & also that the annual rental of a certain allotment to the justices should be applied in or towards the compensation of those allottees whose allotments were damnified by the exercise of the

lord's mining rights, & that any deficiency should be made up by means of a rate levied upon all the allottees :—*Held :* (1) the case was governed by the decision of the Ct. of Appeal in *Consett Waterworks Co.* v. *Ritson*, No. 901, *ante*, which was a decision on the identical question arising on the construction of the same Act & in the same circumstances, & although the reasoning upon which that decision was founded had been disapproved of by the House of Lords in *Butterknowle Colliery Co.* v. *Bishop Auckland Industrial Co.*, No. 905, *post*, the decision itself had not been overruled & was therefore binding upon the ct., & defts. had a right to work the mines so as to let down the surface of the land without paying damages or making any compensation to plts. ; (2) (YOUNGER, L.J.) the decision at which the Ct. of Appeal had felt itself compelled to arrive in deference to authority binding upon it might quite well have been reached on the construction of the Act itself apart altogether from the decision by which it was bound.—CONSETT INDUSTRIAL & PROVIDENT SOCIETY, LTD. *v.* CONSETT IRON CO., [1922] 2 Ch. 135 ; 91 L. J. Ch. 630 ; 127 L. T. 383 ; 38 T. L. R. 584 ; 66 Sol. Jo. 452, C. A.

905. *Add. Annotation :*—**Consd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135.

906. *Add. Annotation :*—**Consd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135.

909. *Add. Annotations :—As to* (2) **Consd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135. *As to* (3) **Consd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135.

911. *Add. Annotation :—As to* (2) **Consd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135.

913. *Add. Annotation :*—**Refd.** Taylor *v.* British Legal Life Assce., [1925] Ch. 395.

929a. Power to stop up highway through "old enclosure."]—By Inclosure Act, 1845 (c. 118), s. 62, power is given to the valuer acting in the matter of any inclosure to set out & make public roads & ways, & widen public roads & ways, in or over the land to be inclosed, & to stop up, divert or alter any of the roads or ways passing through the land to be inclosed, or "through any old inclosures in the parish or respective parishes in which the land to be inclosed shall be situate" :—*Held :* the power of stopping up roads so given is not confined to roads passing through old inclosures or intakes from the waste or common, the subject of inclosure, but extends to roads passing through any old inclosures within the parish.—HORNBY *v.* SILVESTER (1888), 20 Q. B. D. 797 ; 57 L. J. Q. B. 558 ; 59 L. T. 666 ; 52 J. P. 468 ; 36 W. R. 679, C. A.

939a. As to fences—Power to direct maintenance.]—Notwithstanding the omission from Inclosure Act, 1836 (c. 115), of an express power for the comrs. to direct the repair & maintenance of fences, the erection of which by the respective allottees of land that Act empowers them to direct, such a power is nevertheless conferred upon them by the Act by implication.—GARNETT *v.* PRATT, [1926] Ch. 897 ; 95 L. J. Ch. 453 ; 135 L. T. 471 ; 70 Sol. Jo. 736.

942a. Trespass—Power to maintain—Interference with stake.]—DRIVER *v.* SIMPSON (1818), 8 Taunt. 614, n. ; 2 Moore, C. P. 682, n. ; 129 E. R. 523

Annotation :—**Distd.** Newcastle *v.* Clark (1818), 2 Moore, C. P. 666.

1012a. Extent of dedication to public.]—Where the lord of a manor encloses a strip of land by the side of a public highway & within a few feet only from the metalled portion of the road, then, whatever the presumption might have been before, a presumption thereafter arises that what he has left between the metal & his fence is dedicated to the public.—COPESTAKE *v.* WEST SUSSEX COUNTY COUNCIL, [1911] 2 Ch. 331 ; 80 L. J. Ch. 673 ; 105 L. T. 298 ; 75 J. P. 465 ; 9 L. G. R. 905.

1023. *Add. Annotation :—As to* (1) **Refd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135.

Part XIV.—Regulation of Commons.

1089. After this case add "—— **Injunction to restrain promotion—Scheme inconsistent with prior conveyance.**]—*See* INJUNCTION, Vol. XXVIII., pp. 469, 470, No. 789."

COMPULSORY PURCHASE OF LAND AND COMPENSATION.

Part I.—Compulsory Powers over Land.

4. *Add. Annotations :—As to* (2) **Distd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355. **Refd.** York Corpn. *v.* Leetham, [1924] 1 Ch. 557.

7. *Add. Annotations :—As to* (3) **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey, [1929] 1 Ch. 686; Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

19. *Add. Annotation :*—**Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co., [1924] 1 K. B. 171.

Part II.—Conditions attached to the Powers.

28. *Add. Annotations :—As to* (2) **Consd.** Rockingham Sisters of Charity *v.* R., [1922] 2 A. C. 315. **Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

56. *Add. Annotation :*—**Refd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211.

62a. ——.]—The Board of the Railway Comrs. for Canada made an order directing a railway co. to construct a subway so that, owing to the increased traffic the existing roadway should be lowered & pass under the railway instead of crossing it on the level, & ordering that detailed plans be filed for the approval of the chief engineer of the Board :—*Held :* (1) the subway was not part of the undertaking of the railway, so as to enable the co. to take possession of land under Expropriation Act, R. S. C., 1906 (c. 143), for the purpose of the railway proper, & the lowered road still remained part of the road belonging to the municipality; (2) detailed plans must be detailed plans of what was actually lodged as the general plan, & it was not within the liberty of the co. to enlarge the scope of the original plan & provide for a new access to the subway & the taking of land. Detailed plans were only to show the precise way in which the construction was to be made.—BOLAND *v.* CANADIAN NATIONAL RY. CO., [1927] A. C. 198; 95 L. J. P. C. 209; 136 L. T. 197, P. C.

67. *Add. Annotation :*—**Refd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

88. *Add. Annotations :*—**Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey, [1929] 1 Ch. 686; Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

91. *Add. Annotations :*—**Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283; Roberts *v.* Hopwood, [1925] A. C. 578.

98. *Add. Annotation :*—**Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

99a. **Subway.**] — BOLAND *v.* CANADIAN NATIONAL RY. CO., No. 62a, *ante.*

109. *Add. Annotation :—As to* (1) **Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

110. *Add. Annotation :*—**Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

111. *Add. Annotation :—As to* (1) **Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

114. *Add. Annotation :*—**Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

116. *Add. Annotation :*—**Refd.** Sydney Municipal Council *v.* Campbell, [1925] A. C. 338.

116a. —— **Land not bonâ fide intended to be taken for purpose.**]—Applts. had statutory power to acquire compulsorily land required for the purpose of making or extending streets, also land required for "carrying out improvements in or remodelling any portion of the city." In connection with the extension of a street, they resolved to acquire resps.' land for the latter purpose. They had previously been restrained from acquiring the land for the extension, on the ground that it was not really required for that purpose, but that its purchase was desired because of its probable increase in value. No plan for improving or remodelling the area was considered or proposed, & evidence as to proceedings in the council showed that applts. were endeavouring to give a new form to the transaction previously decided upon, rather than considering whether resps.' land was required for improving or remodelling :—*Held :* the evidence sustained the lower ct.'s conclusion of fact that applts. were exercising their powers for a purpose differing from those specified by the statute, & they had rightly been restrained from acquiring resps.' land.—SYDNEY MUNICIPAL COUNCIL *v.* CAMPBELL, [1925] A. C. 338; 133 L. T. 63; *sub nom.* SYDNEY MUNICIPAL COUNCIL *v.* CAMPBELL, SAME *v.* HUGHES MOTOR SERVICE, LTD., 94 L. J. P. C. 65, P. C.

PART II. SECT. 2, SUB-SECT. 1.

sa. *Land in use "otherwise for more convenient occupation" of building —Municipal Act, s.* 325.]—SURREY DISTRICT CORPN. *v.* CAINE (1920), 67 D. L. R. 794; 28 B. C. R. 321.—**CAN.**

m i. —— *Public Works Act, R. S. B. C.,* 1911 *(c.* 189*)—Validity of contract by Minister of Public Works.*]—A contract made by the Minister for the purchase of land for a public purpose does not bind the Crown unless the acquisition of the land has been authorised by an Order in Council, or a resolution in Council amounting to an order, even if the contract is sealed with the seal of the Department. —MACKAY *v.* A.-G. FOR BRITISH COLUMBIA, [1922] 1 A. C. 457.—**CAN.**

m ii. —— *Expropriation Act,* 1906 (c. 143)—*Discretion of Minister.*]—As to the propriety & necessity of expropriation the Minister is the sole judge & the ct. has no jurisdiction to interfere with his discretion.—R. *v.* IMPERIAL BANK OF CANADA, [1923] 3 D. L. R. 345.—**CAN.**

PART II. SECT. 3, SUB-SECT. 3.—B. (a).

sb. *Land taken for building Toronto Viaduct — What Act applicable.*]—CANADIAN NATIONAL RY. CO. *v.* TORONTO IRON WORKS, [1926] Exch. C. R. 133.—**CAN.**

116b. Whether land required—Right of local authority to decide.]—A local authority which has acquired land under its statutory powers must, acting in good faith, be the sole judge, under either Public Health Act, 1875 (c. 55), s. 175, or Public Health Acts Amendment Act, 1907 (c. 53), s. 95, of whether the land is "not required" or "not required for the purposes for which it has been acquired."—A.-G. *v.* MANCHESTER CORPN., [1931] 1 Ch. 254; 100 L. J. Ch. 33; 144 L. T. 112.

126. *Add. Annotation:*—**Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

129. *Add. Annotation:*—**Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

133a. For pleasure gardens & street widening—Part used for pleasure garden—May be subsequently used for street widening.]—A local authority bought land in 1896 for the purposes of: (1) street widening; (2) making new streets; (3) providing public walks & pleasure gardens. The land was conveyed to the local authority for the purposes authorised by the Public Health Acts. A plan & specifications were submitted to the Local Government Board, & subsequently the scheme was carried out in accordance with the plan & specifications. The pleasure gardens were surrounded by railings, & were not dedicated or open to the public. In 1927 the local authority resolved to utilise one of the pleasure grounds for the purpose of street widening & providing a parking place for motor cars. Objections were raised by some of the occupiers of adjoining premises, & an action was brought to restrain the local authority from carrying out their resolution:—*Held:* as one of the purposes for which the land was acquired was street widening, the local authority was not acting *ultra vires* in using part of the pleasure gardens for that purpose.—A.-G. *v.* SUNDERLAND CORPN., [1929] 2 Ch. 436; 45 T. L. R. 618; 93 J. P. Jo. 480; *affd.*, [1930] 1 Ch. 168, C. A.

134. *Add. Annotation:*—**Consd.** A.-G. *v.* Sunderland Corpn. (1929), 142 L. T. 61.

135. *Add. Annotations:*—*As to* (1) **Distd.** A.-G. *v.* Sunderland Corpn. (1929), 46 T. L. R. 10. *As to* (2) **Consd.** A.-G. *v.* Manchester Corpn., [1931] 1 Ch. 254.

136. *Add. Annotation:*—**Distd.** A.-G. *v.* Sunderland Corpn. (1929), 46 T. L. R. 10.

139. *Add. Annotations:*—*As to* (1) **Distd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211. **Consd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355. **Refd.** York Corpn. *v.* Leetham, [1924] 1 Ch. 557.

140. *Add. Annotation:*—*Generally*, **Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

142. *Add. Annotations:*—**Consd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355. **Refd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211.

143. *Add. Annotations:*—**Consd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211. **Refd.** York Corpn. *v.* Leetham, [1924] 1 Ch. 557; Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355.

145. *Add. Annotation:*—**Refd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355.

146. *Add. Annotation:*—*As to* (4) **Refd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211.

Part III.—Principles of the Law of Compensation.

153. *Add. Annotation:*—**Refd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

155. *Add. Annotation:*—**Refd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

155a. —— Right to erect electric advertisement sign.]—The lessees of a hotel entered into two contracts with a firm of advertising agents, under the terms of which the latter were entitled to erect and exhibit, for a term of years, upon the roof of the hotel, electrically illuminated advertisements. An electric sign was duly erected. Before the expiration of the term the local authority, in exercise of its statutory powers, served the lessees with a notice to treat for the purchase of their estate & interest in the hotel, &, ultimately, having acquired the reversion to the lessees' term, took possession, closed the hotel, & began to demolish it. The electric sign was removed by arrangement with the advertising agents, who subsequently commenced an action against the lessees to recover damages for breach of the two contracts:—*Held:* the local authority had acquired defts.' interest in the premises by compulsion; the two contracts did not confer upon pltfs. any proprietary interest or estate in the hotel; &, as it could not be said that both parties to those contracts had made their bargain upon the footing that if the local authority exercised their powers & took the hotel the contracts were to be discharged, there must be a declaration that defts were liable to pltfs. for damages for breach of those contracts.—WALTON HARVEY, LTD. *v.* WALKER & HOMFRAYS, LTD., [1931] 1 Ch. 274; 144 L. T. 331; 29 L. G. R. 241, C. A.

PART II. SECT. 3, SUB-SECT. 4.

119 ii. —— —— *To construct tunnel under river.*]—A co. incorporated for the purpose of constructing a tunnel under a river desired to expropriate a parallelopidedon beneath the surface:—*Held:* what the co. desired to take was not a mere easement, but a hereditament & it had power under its Act of incorporation to do so.—*Re* KOLODZI & DETROIT & WINDSOR SUBWAY CO., [1930] 4 D. L. R. 10; 37 C. R. C. 4; 65 O. L. R. 398; *affd.*, [1931] 3 D. L. R. 337; S. C. R. 523.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.—A.

149 ii. —— *Subsequent conveyance unregistered.*]—If a municipal corpn. takes expropriation proceedings for a highway under Municipal Act, s. 362, & compensation is awarded to the registered owner, the municipal corpn. cannot refuse payment to the registered owner on the ground that after filing his claim he executed a conveyance which remains unregistered.—NORTH COWICHAN CORPN. *v.* GORE-LANGTON, [1921] 2 W. W. R. 484.—**CAN.**

149 iii. —— *Unless right to compensation reserved by vendor.*]—*Re* CODVILLE (1907), 5 W. L. R. 140; 16 Man. L. R. 426.—**CAN.**

o i. —— *After expropriation.*]—The Crown expropriated the right to flood property which belonged to V., who subsequently sold to H. together with V.'s right to recover the compensation from the Crown for all damages caused by flooding & expropriation:—*Held:* H. was entitled to recover compensation for damages to his land by flooding, & by the expropriation of the easement to flood.—R. *v.* HYE (1921), 21 Exch. C. R. 76.—**CAN.**

160. *Add. Citation:*—*Sub nom.* R. *v.* MIDLAND, ETC. RY. CO., *Ex. p.* BROWN, 8 B. & S. 456.

Add. Annotation:—Reid. S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211.

PART III. SECT. 1, SUB-SECT. 3.—A.

156 ii. ——.]—*Re* SCOTT & OSHAWA TOWN (1922), 52 O. L. R. 504.—**CAN.**

156 iii. ——.]—The right to receive compensation for land taken depends upon the statute or order which authorises the taking, & upon the terms of such statute or order will depend the basis upon which the compensation is to be assessed.—*Re* POWELL & TORONTO CORPN., [1925] 2 D. L. R. 796; 56 O. L. R. 541.—**CAN.**

156 iv. ——.]—*Re* POWER COMMISSION ACT (Sask.), [1930] 1 D. L. R. 900.—**CAN.**

f (p. 124) i. —— —— ——.]—Where a county corpn. expropriated certain toll roads:—*Held:* the value to the owner & not to the taker was the basis upon which the compensation should be awarded, & while the roads had become a burden instead of a benefit to their owners, they were entitled to be paid for the physical assets they possessed—road material in place, bridges, culverts, ditches & parts of roads owned in fee.—*Re* OTTAWA & GLOUCESTER ROAD CO. & COUNTY OF CARLETON (1921), 69 D. L. R. 486; 51 O. L. R. 467.—**CAN.**

f (p. 124) ii. —— —— ——.]—*Re* NEW BRUNSWICK POWER COMMISSION & INGLEWOOD PULP & PAPER CO. (N. B.), [1927] 3 D. L. R. 967.—**CAN.**

g (p. 124) i. —— ——.]—Deft. derived its title to the lands expropriated under a grant from the Crown subject to two conditions: (*a*) that the building now being or lately erected by deft. on said lands be such as would be suitable for exhibition purposes & available at all times for the same, & (*b*) that certain water pipes on the lands should be diverted and relaid outside the area of said building:—*Held:* as property may under certain circumstances have a specially high value to the owner over & above its market value, & as it is the value to the owner which the party expropriated is entitled to receive & as the above mentioned conditions or servitudes would be less onerous to the owner than to any one else in the community, the market value of the property in question was not the proper criterion of the amount to be allowed him for the same.—R. *v.* QUEBEC SKATING CLUB, [1931] Ex. C. R. 103; *affd.*, [1932] 2 D. L. R. 799; S. C. R. 539.—**CAN.**

l (p. 124) i. —— *Conflicting evidence.*] —R. *v.* ARCHER, [1925] 3 D. L. R. 355; [1925] S. C. R. 684.—**CAN.**

l (p. 124) ii. —— ——.]—Where the evidence of expert witnesses as to value is conflicting, neither the arbitrators nor the ct. should endeavour to arrive at the true result by "averaging of witnesses," or "splitting the difference."—*Re* LENNOX & TORONTO BOARD OF EDUCATION (1926), 58 O. L. R. 427.—**CAN.**

l (p. 124) iii. —— ——.]—While the "averaging of witnesses" or "splitting the difference" is an improper way of reaching an award, some discretion & freedom may nevertheless be allowed the arbitrators; they are bound to exercise their judicial functions in dealing with the evidence.—WINNIPEG *v.* CROSS, [1927] 3 D. L. R. 1072; [1927] 2 W. W. R. 644; 37 Man. L. R. 40.—**CAN.**

SAN CHIEN *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL & COLLECTOR OF RANGOON (1927), I. L. R. 5 Ran. 799.—**IND.**

c (p. 125) i. —— —— *Equivalent to value to owner.*]—The market value of the land acquired is the price that the owner willing, & not obliged, to sell might reasonably expect from a willing purchaser. There is no difference between the term "value to the owner" as used in the Land Clauses Act, in England, & the expression "market value" as used in Land Acquisition Act, s. 23.—SWARNA MANJURI DASSI *v.* SECRETARY OF STATE FOR INDIA (1927), I. L. R. 55 Calc. 994.—**IND**

k (p. 125) i. —— —— ——.]—Where by reason of expropriation by the Crown the owners of the property taken suffer materially & are put to great trouble in moving, & the site so taken was most advantageous & it took several years of negotiating before they were able to find a new & suitable place for their operation, the ct. should add ten per cent. to the fair market value of the property taken, for contingent losses & inconveniences, in fixing the compensation.—R. *v.* ROYAL NOVA SCOTIA YACHT SQUADRON (1921), 21 Exch. C. R. 160.—**CAN.**

k (p. 125) ii. —— —— ——.]—*Re* TORRANCE & PROVINCE OF ONTARIO, *Re* NOBLE & PROVINCE OF ONTARIO, *Re* PARKDALE BOULEVARD, LTD. & PROVINCE OF ONTARIO, [1923] 3 D. L. R. 1136; 52 O. L. R. 325.—**CAN.**

k (p. 125) iii. —— —— ——.]—There is no foundation for the view that the "allowance for disturbance" usually added in awards to the value found is arbitarily fixed at ten per cent.; an award of six per cent. may be ample.—*Re* LENNOX & TORONTO BOARD OF EDUCATION (1926), 58 O. L. R. 427.—**CAN.**

k (p. 125) iv. —— —— ——.]—An "allowance for disturbance," & the amount thereof, seem to be in the discretion of the arbitrators.—WINNIPEG *v.* CROSS, [1927] 3 D. L. R. 1072; [1927] 2 W. W. R. 644; 37 Man. L. R. 40.—**CAN.**

k (p. 125) v. —— —— ——.]—R. *v.* MCPHERSON (1914), 15 Exch. C. R. 215; 20 D. L. R. 988.—**CAN.**

p (p. 125) i. —— —— *Not value according to quantity survey.*]—R. *v.* IMPERIAL BANK OF CANADA, [1923] 3 D. L. R. 345.—**CAN.**

p (p. 125) ii. —— —— *Not "value in use."*]—*Held:* the productive value of land, or the value of the land to its owner based on the income he is able to derive from its use, is not the measure of compensation, for land expropriated, & is not material, except in so far as it throws light upon the market value. "Value in use" is to be repudiated as a test.—DUSSAULT *v.* R., [1929] Ex. C. R. 8.—**CAN.**

(p. 125) iii. —— —— *Evidence of.*] although under certain circumstances the price paid for land cannot properly be taken as the market value thereof, nevertheless, where a careful purchaser, not obliged to buy, parts with his money, without pressure or inducement from the owner, willing but not obliged to sell, & after carefully considering the matter, and more especially the special advantages the land in question offered for the carrying on of the business he proposed to start, then the price so paid is cogent evidence of market value.—R. *v.* BERUBE, [1930] Ex. C. R. 218; [1931] 1 D. L. R. 685.—**CAN.**

se. —— *Value of assets necessary to operation of undertaking.*]—TORONTO (CITY) CORPN. *v.* TORONTO RAILWAY CORPN., [1925] A. C. 177; 94 L. J. P. C. 25; 132 L. T. 401.—**CAN.**

sd. —— *Where land of college taken for street—Under disputed agreement.*]—ST. MICHAELS COLLEGE *v.* TORONTO CITY CORPN., [1926] 2 D. L. R. 244; [1926] S. C. R. 318; *varying*, 27 O. W. N. 474; *varying*, 26 O. W. N. 413.—**CAN.**

se. —— *Value for commercial purposes.*]—Where the residence & adjoining consulting rooms of a medical practitioner were situated in a position which was more suitable for a business site than a medical practitioner's residence, & compensation was assessed on the basis of the value of the land for a commercial purpose:—*Held:* the correct method of assessing compensation had been adopted.—GUNSON *v.* MUNICIPAL TRAMWAYS TRUST, [1927] S. A. S. R. 276.—**AUS.**

PART III. SECT. 1, SUB-SECT. 3.—B.

u i. ——.]—R. *v.* KELLY (1921), 63 D. L. R. 402; 21 Exch. C. R. 205.—**CAN.**

u ii. ——.]—An owner of property is not entitled to claim some prospective value of the property remote in its character & only realisable upon the expenditure of enormous sums of money.—R. *v.* COLEMAN, [1926] Exch. C. R. 121.—**CAN.**

b (p. 125) i. —— *How estimate to be made.*]—In determining the market value of land acquired under Land Acquisition Act, 1894, the value should be estimated with reference to the most lucrative & advantageous manner in which the land might be used.

The operative effect of the special adaptability of the land or its future utility must be estimated not by idle speculation or unpractical imagination, but by prudent business considerations such as would weigh with a purchaser intending to buy the land in the open market.—MAHARAJADHIRAJA SIR RAMESHWAR SINGH BAHADUR *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL (1929), I. L. R. 8 Pat. 793.—**IND.**

n (p. 126) i. —— *Electric light undertaking.*]—An electric light franchise was granted by applt. municipality to resp. co. for the period of 50 years, subject to the privilege of the municipality to purchase the "undertaking, property & rights" of the co. at any time at a price to be agreed on or, in default of agreement, found by arbitrators. The municipality elected to exercise this privilege & an arbitration ensued in which the co. was awarded $74,000 & the award stated that $36,000 thereof was the value of the physical assets. The municipality, without complaining as to the amount awarded for the physical assets, objected to the allowance of the balance, which was referred to in letters between the solicitors as compensation for prospective profits:—*Held:* since the only right of the municipality was to take over, not merely the physical assets, but the undertaking as a whole, including its privileges, the appeal should be dismissed.—CUMBERLAND (CITY) *v.* CUMBERLAND ELECTRIC LIGHT CO., LTD., [1931] 2 W. W. R. 377; 3 D. L. R. 70; 43 B. C. R. 525; *affd.*, [1931] 4 D. L. R. 459; S. C. R. 718.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3.—C.

o i. ——.]—R. *v.* LYNCH'S, LTD. & COZZOLINO (1920), 20 Exch. C. R. 158.—**CAN.**

o ii. ——.]—*Re* NEW BRUNSWICK POWER COMMISSION & INGLEWOOD PULP & PAPER CO. (N. B.), [1927] 3 D. L. R. 967.—**CAN.**

a i. —— ——.]—"Special value" refers to the present use of the land, & means its added worth to the owners for the actual & peculiar use to which it is being put & for which it is specially fit: while "special adaptability" refers to an apparent but future use to which the property may be put.—*Re* CANADIAN STEAMSHIP LINES, LTD. & TORONTO TERMINALS RY. CO., [1930] 3 D. L. R. 626; 36 C. R. C. 301; 65 O. L. R. 494.—**CAN.**

169. *Add. Annotations:—As to* (2) **Refd.** Swift *v.* Board of Trade, [1925] A. C. 520; Swift *v.* Board of Trade, [1926] 2 K. B. 131.

171. *Add. Annotation:*—**Refd.** Swift *v.* Board of Trade, [1926] 2 K. B. 131.

186. *Add. Annotations:*—**Consd.** Godstone Rural District Council *v.* Croydon Corpn. (1932), 48 T. L. R. 447. **Refd.** Glenboig Union Fireclay Co. *v.* I. R. Comrs. (1922), 12 Tax Cas. 427.

187. *Add. Annotation:—As to* (1) **Apld.** Swift *v.* Board of Trade, [1926] 2 K. B. 131.

197. *Add. Annotation:—As to* (2) **Refd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211.

213. *Add. Annotation:* — **Consd.** Rockingham Sisters of Charity *v.* R., [1922] 2 A. C. 315.

215. *Add. Annotation:—As to* (1) **Apld.** Rockingham Sisters of Charity *v.* R., [1922] 2 A. C. 315.

216. *Add Annotation:* — **Folld.** Rockingham Sisters of Charity *v.* R., [1922] 2 A. C. 315.

216a. —— —— ——.]—Applts. owned land immediately on the west side of a public road & a railway, & had thereon a school; on the east side they owned two small promontories of land on the margin of a public harbour. They had made on the promontories a bathing house & wharf, both of which they used in connection with the school, but no legal right of way across the railway was proved. The Crown took the two promontories for a public purpose, & upon an area wholly to the east of the railway, & including the two small promontories, made a large railway shunting yard. A claim by applts. to compensation for the damage to their property on the west of the railway by reason of the construction of the shunting yard having been rejected:—*Held:* the possession & control of the two promontories gave an enhanced value to applts.' land on the west side of the railway, & in respect of depreciation in value of those lands due to the anticipated legal use of works which might be constructed upon the two promontories, applts. were owners whose lands had been injuriously affected, & accordingly they were entitled to compensation; further, the ct. in assessing the compensation should have regard to the anticipated use of the promontories as part of a shunting yard, not to the actual use at the time of the assessment.—ROCKINGHAM SISTERS OF CHARITY *v.* R., [1922] 2 A. C. 315; 91 L. J. P. C. 198; 127 L. T. 608; 38 T. L. R. 782, P. C.

169 i. For "169 i." read "170 i."

u i. ——.]—CANADIAN PROVINCIAL POWER CO. *v.* NOVA SCOTIA POWER COMMISSION, [1929] 1 D. L. R. 674; 60 N. S. R. 479.—**CAN.**

sf. *Special use by owner.*]—*Held:* the arbitrator did not err in considering certain earnings of the land owner in respect of a special use of a portion of the property for parking cars.—*Re* FORBES & TORONTO, [1930] 2 D. L. R. 650; 65 O. L. R. 34.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3.—D.

p i. —— ——.]—*Re* LETROS & TORONTO CORPN. (1924), 56 O. L. R. 175.—**CAN.**

r i. —— *Flooding of neighbourhood.*]—The Crown expropriated the right to flood a part of L.'s property, on the erection of a dam, a public work. L. claimed, besides compensation for easement taken on his property, that he should be compensated for damages to his trade, resulting from the decrease of population, due to the flooding of neighbouring farms:—*Held:* no claim could arise in respect of an inconvenience common to the public generally.—*It. v.* LAFOND (1921), 69 D. L. R. 127; 21 Exch. C. R. 55.—**CAN.**

176 iii. —— *Cost of removal.*]—While allowance ought not to be made for loss of business or estimated profits, yet where a lessee of a store has suffered a diminution of good-will, he is entitled to compensation although it is in the nature of a business loss. In addition, allowance must be made for the reasonable cost of moving, seeking a new location, loss of time, storage of furniture, depreciation in fixtures & dislocation of business occasioned by such removal.—R. *v.* GOLDSTEIN, [1924] Exch. C. R. 55.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3.—E.

179 i. —— *Cost of acquiring new site.*]—In the course of arbn. proceedings to determine compensation for the portion of a lot taken & injury to the remainder, the corpn. offered to transfer part of an adjoining lot, which it did not own & had as yet taken no steps to expropriate:—*Held:* the offer should be taken into account & dealt with by the arbitrator in his award.—*Re* GARLAND & TORONTO (1924), 55 O. L. R. 646.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3.—I.

187 vi. —— *Subsequent improvements by owner.*]—Where an owner remains on the property after expropriation, & makes repairs to the buildings, & puts up temporary structures, he must assume the responsibility of such a course & its consequences, & nothing will be allowed him therefor.—R. *v.* LYNCH'S, LTD. & COZZOLINO (1920), 20 Exch. C. R. 158.—**CAN.**

187 vii. —— ——.]—R. *v.* MOREAU (1921), 21 Exch. C. R. 82.—**CAN.**

m i. —— *Buildings erected by expropriator before notice to treat given—Whether value of buildings to be considered.*]—The Govt. having resolved to acquire under Land Acquisition Act, 1894, land belonging to applts., took possession by arrangement with sutidars, who occupied part of the land, & erected buildings partly on land occupied by applt. & partly on land occupied by the sutidars. Only after doing so the Govt. notified a declaration under sect. 6 of the Act that the land was required for a public purpose. Applt. was awarded under the Act the value of the land, & interest thereon from the date when possession had been taken:—*Held:* applt. was not entitled to the value of the buildings, since by the law of India they did not form part of the soil, &, even if applt. would have been entitled to compensation for them, if the Govt. had acted as mere trespassers, & without colour of title, the Govt. had not so acted.—VALLABHDAS NARANJI *v.* BANDRA DEVELOPMENT OFFICER (1929), 56 L. R. Ind. App. 259.—**IND.**

PART III. SECT. 1, SUB-SECT. 3.—J.

s i. ——.]—*Held:* where the evidence of value relied upon had reference to a number of sales in the vicinity, only a few of which were for cash, others were never perfected, & others against had been completely abandoned; & further, where it is established that there are large areas of land available for building purposes in the vicinity at reasonable prices; such sales must be considered in such a case as made under special circumstances & at prices that cannot establish a market value & cannot be taken as a criterion of the value of property.—R. *v.* CYR., [1929] Ex. C. R. 225.—**CAN.**

sg. *Conflicting evidence—Duty of court.*]—Where, in expropriation cases, the ct. is faced with conflicting evidence of the optimists on the one hand & the pessimists on the other, it must be guided, in arriving at the true market value of the property, by the reasons supporting each witness' views, bearing in mind the soundness of the same, & the balance of probabilities.—R. *v.* FROST, [1931] Ex. C. R. 176.—**CAN.**

PART III. SECT. 2.

191 i. *What constitutes severance—Part of land taken—Premises not contiguous—No legal right over intervening land.*]—Where by a previous expropriation property was severed by the right of way of a railway co. crossing it, & the use of a culvert under the tracks as a passage was only by sufferance & without legal right or title:—*Held:* if expropriation takes land on each side of the right of way & thus closes access to the culvert it is not a severance of the property which would entitle to compensation.—R. *v.* LOONAN (1920), 20 Exch. C. R. 131.—**CAN.**

a i. —— ——.]—*Held:* the right to additional value & the right to damages for severance must depend on the existence at the time of acquisition of the property of some right of passage between the pieces of land.—*Re* CANAL CO., LTD., & MININSTER OF MARINE, [1927] S. A. S. R. 106.—**AUS.**

PART III. SECT. 3, SUB-SECT. 1.

sf. *General rule.*]—The right to receive compensation for land injuriously affected depends upon the statute or order which authorises the injurious affection, & upon the terms of such statute or order will depend the basis upon which the compensation is to be assessed.—*Re* POWELL & TORONTO CORPN., [1925] 2 D. L. R. 796; 56 O. L. R. 541.—**CAN.**

n i. *Claim must be made within prescribed time.*]—Under Edmonton Charter a claim for compensation, because claimant's land will be injuriously affected by the closing of a street, is absolutely extinguished unless filed within the time fixed by the council in the notice which sect. 506 requires it to publish.—*Re* EDMONTON CHARTER, MICHAEL HRUSHEVSKY UKRAINIAN INSTITUTE *v.* EDMONTON CORPN., [1925] 1 W. W. R. 780.—**CAN.**

223 *Add. Annotation :*—**Refd.** Rockingham Sisters of Charity *v.* R., [1922] 2 A. C. 315.

225. *Add. Citation :*—3 Macq. 833.

231. *Add. Annotation :*—**Consd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt, [1932] 2 K. B. 1.

245. *Add. Annotation :*—**Refd.** Howard-Flanders *v.* Maldon Corpn. (1926), 135 L. T. 6.

259. *Add. Annotation :*—**Consd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

261. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

263a. —— ——.]—By a private Act the President of the Air Council was authorised to enter upon, take & use all or any of certain lands, & also to construct a certain new thoroughfare. By sect. 2 he was authorised to stop up a portion of a certain lane known as Plough-lane. By sect. 5, "subject as hereinafter provided the Lands Clauses Acts are for the purpose of the acquisition of land under this Act incorporated with this Act." Then followed several exceptions, which did not specify sect. 68 of the Lands Clauses Consolidation Act, 1845, which deals with injurious affection. Lands were taken by the President under the special Act, & the said portion of Plough-lane was stopped up.

The claimant owned a dwelling-house in Plough-lane, not the part stopped up. No lands of the claimant were taken by the President under the Act, but his premises were depreciated in value to the extent of £100, through the stopping up of a portion of Plough-lane, rendering his premises less accessible in one direction. The claimant claimed compensation in respect of the stopping up of this portion of Plough-lane. On the hearing of an award in the form of a special case stated by an official arbitrator under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), s. 6 (1), it was contended for the President of the Air Council that the claimant had no right to claim compensation on the ground that no portion of the Lands Clauses Consolidation Act, 1845, was incorporated with the special Act as regards sect. 2 thereof, which was not a sect. for the purpose of the acquisition of land, but one merely authorising the closing of a thoroughfare ; & also on the ground that sect. 68 of the Act of 1845 was not incorporated with the Special Act as its provisions for "injurious affection" were not for the acquisition of land. The official arbitrator asked the following question of the ct. : Was the claimant entitled to be paid compensation in respect of the stopping up of this portion of Plough-lane ? The ct. answered the question in the affirmative.—WRIGHT *v.* AIR COUNCIL, PRESIDENT (1929), 143 L. T. 43.

265. For ("LORD WESTBURY") read ("LORD WESTBURY, *dissenting*").

Add. Annotations :—As to (1) **Distd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401. **Refd.** Rockingham Sisters of Charity *v.* R., [1922] 2 A. C. 315.

270. *Add. Annotation :*—**Consd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401, C. A.

272. *Add. Annotation :—As to* (1) **Consd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

274a. **By construction of bridge.**]—Resps., a county council, were empowered by a private Act to build a bridge across a navigable river giving access to a wharf, which was resorted to by sea-going vessels & was also used for the storage of goods. The bridge, when built, constituted an obstruction to the navigation & interfered with access to the wharf, so that goods destined for the wharf had to be transhipped from sea-going vessels into barges below the bridge, & the owners of the wharf had to acquire a new wharf below the bridge. The owners of the old wharf, *i.e.*, the freeholders, & a mtgee., & the occupiers, who were tenants at will, claimed compensation under the following heads : depreciation of freehold value of the old wharf ; cost of the new wharf ; damage through loss of traffic ;

sg. *Railway Act*, 1919—*Spur track constructed along streets—Measure of compensation to adjacent landowners.*]—BRITISH COLUMBIA PERMANENT LOAN CO. *v.* CANADIAN NORTHERN RY. (NO. 3), [1923] 2 D. L. R. 802 ; [1923] 1 W. W. R. 1072 ; 30 Can. Ry. Cas. 71 ; 16 Sask. L. R. 298.—**CAN.**

sk. *Road laid through land—Expense of keeping up fences.*]—R. *v.* KENT JJ. (1854), 8 N. B. R. (3 All.) 118.—**CAN.**

PART III. SECT. 3, SUB-SECT. 3.

sl. *Adjoining land occupied with hotel —Loss of water supply.*]—*Re* BUSH *v.* NIAGARA FALLS PARK COMRS. (1887), 14 A. R. 73.—**CAN.**

sm. *Land adjoining water-lot — Water-lot taken—Loss of riparian rights.*]—*Re* SNOW & TORONTO, [1924] 4 D. L. R. 1023 ; 56 O. L. R. 100.—**CAN.**

sp. *Land divided into lots—Some lots sold—Five lots taken for sewage plant.*]—*Held :* the owner of the unsold plots was entitled, over & above the actual value of the lots expropriated, to compensation for consequent depreciation in the value of the adjacent lands.—MONTREAL (CITY) *v.* MCANULTY REALTY CO., [1923] 2 D. L. R. 409 ; [1923] S. C. R. 273.—**CAN.**

sa. *Land taken for lowering road—Obstruction of access by road to other land.*]—*Held :* claimant entitled to compensation.—M. E. MOOLLA *v.* COLLECTOR OF RANGOON (1926), I. L. R. 4 Ran. 350.—**IND.**

sc. *Land taken for power line—Intention to use adjoining land as aviation ground.*]—*Held :* claimant entitled to compensation.—SHAWINIGAN WATER & POWER CO. *v.* GAGNON, [1931] S. C. R. 518 ; 3 D. L. R. 665.—**CAN.**

PART III. SECT. 3, SUB-SECT. 4.—A. (a).

227 iv. —— —— ——.]—The Crown not having expropriated any part of suppliant's property or any easement to flood the same :—*Held :* the case did not come within Exch. Ct. Act, s. 20, & the ct. had no jurisdiction to entertain the claim under Expropriation Act or any other provision of law.—YATES *v.* R. (1920), 20 Exch. C. R. 175.—**CAN.**

227 v. —— ——.]—ALEXANDER BROWN MILLING CO. *v.* CANADIAN PACIFIC RY. CO., [1923] 4 D. L. R. 1136 ; 29 Can. Ry. Cas 345 ; 52 O. L. R. 528.—**CAN.**

PART III. SECT. 3, SUB-SECT. 4.—B. (a).

ti. ——.]—*Re* OGILVIE FLOUR MILLS CO., LTD. & WINNIPEG CITY, [1927] 2 D. L. R. 606 ; [1927] 1 W. W. R. 833 ; 33 Can. Ry. Cas. 92 ; 36 Man. L. R. 412.—**CAN.**

PART III. SECT. 3, SUB-SECT. 4.—B. (c) ii.

266 vi. —— ——.]—Where direct access to land on which a business is conducted is not cut off by the closing of a street, the fact that such closing will oblige persons going to & from such place of business & neighbouring properties to use a slightly less convenient route does not give the owner of such land a right to compensation.—*Re* EDMONTON CHARTER, FREEMAN CO., LTD. *v.* EDMONTON CORPN., [1925] 1 W. W. R. 778.—**CAN.**

PART III. SECT. 3, SUB-SECT. 4.—B. (c) iii.

sb. —— —— *Depreciation in value of land.*]—NELSON *v.* PACIFIC GREAT EASTERN RY. CO., OBLATE ORDER OF MARY IMMACULATE *v.* PACIFIC GREAT EASTERN RY. CO., LEFEAUX & CARLISLE *v.* PACIFIC GREAT EASTERN RY. CO. (1919), 67 D. L. R. 792 ; 27 B. C. R. 420.—**CAN.**

damage through extra cost of handling traffic at the new wharf; damage to river sailing-barge traffic; damage through total stoppage of dumb craft with goods for overseas; damage through loss of storage rents:—*Held:* claimants were entitled to compensation only under the first head, & were not entitled to compensation under the other heads.—HEWETT *v.* ESSEX COUNTY COUNCIL (1928), 138 L. T. 742; 44 T. L. R. 373; 72 Sol. Jo. 241.

275a. —— **River frontage of private house.**]—BUCCLEUGH (DUKE) *v.* METROPOLITAN BOARD OF WORKS, No. 215, *ante*.

288a. —— **Wharf.**]—HEWETT *v.* ESSEX COUNTY COUNCIL, No. 274a, *ante*.

289a. -.]—HEWETT *v.* ESSEX COUNTY COUNCIL, No. 274a, *ante*.

323a. .]—ROCKINGHAM SISTERS OF CHARITY *v.* R., No. 216a, *ante*.

Part IV.—Compensation for Mines and Minerals.

328. To the existing paragraph add as follows:
(3) Limestone is a mineral within the above sects.

331. *Add. Annotation:*—**Refd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

332. *Add. Annotation:*—**Refd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

333. *Add. Annotation:*—**Refd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

334. *Add. Annotation:*—**Consd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

335. *Add. Annotation:*—**Consd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

336a. —— —— **Within Act.**]—MIDLAND RY. CO. & KETTERING, THRAPSTON & HUNTINGDON RY. CO. *v.* ROBINSON, No. 328, *ante*.

337. *Add. Annotation:*—**Consd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

355. *Add. Annotation:*—**Consd.** Consett Industrial & Provident Soc. *v.* Consett Iron Co., [1922] 2 Ch. 135.

356. *Add. Annotation:*—**Consd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 145.

359. *Add. Annotation:*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

367. *Add. Annotation:*—**Refd.** Swift *v.* Board of Trade, [1925] A. C. 520.

374. *Add. Annotation:*—**Consd.** Glenboig Union Fireclay Co. *v.* I. R. Comrs. (1922), 12 Tax Cas. 427.

378. To the existing paragraph add as follows:
(3) The word "lands" in sect. 6 of the above Act includes mines.
Add. Annotation:—*Generally*, **Consd.** Graigola Merthyr Co. *v.* Swansea Corpn. (1927), 71 Sol. Jo. 681.

381. *Add. Annotation:*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

383. *Add. Annotation:*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

412. *Add. Annotation:*—**Refd.** Swift *v.* Board of Trade, [1925] A. C. 520.

Part VI.—Procedure to acquire Land otherwise than by Agreement.

475. For existing citations and annotations, substitute (1851), 9 Hare, 436; 7 Ry. & Can. Cas. 92; 18 L. T. O. S. 116; 68 E. R. 580, L. JJ.; *subsequent proceedings* (1852), 2 De G. M. & G. 94, L. JJ.

Annotations:—**Refd.** Salisbury *v.* G. N. Ry. (1852), 17 Q. B. 840; Hedges *v.* Met. Ry. (1860), 28 Beav. 109.

PART III. SECT. 3, SUB-SECT. 4.—C. (a).

292 v. ——.]—The general depreciation of property resulting from being in the vicinage of a public work does not give rise to a claim by any particular owner.—R. *v.* LAFOND (1921), 21 Exch. C. R. 55.—**CAN.**

PART III. SECT. 3, SUB-SECT. 5.

sc. *Payment of mortgage on part of land.*]—The Crown expropriated five lots of land belonging to applt. A mtge. in favour of M. upon four of the lots had been discharged by the Crown by payment to M. of $22,000:—*Held:* the above payment, although satisfying any claim in respect of the four lots covered by the mtge., could not be applied towards compensation for the fifth lot.—STUART *v.* R., [1926] 2 D. L. R. 260; [1926] S. C. R. 284; [1926] Exch. C. R. 101, n.—**CAN.**

sd. *No right to interest.*]—Under Municipal Act, R. S. M., 1913, what is to be paid the owner of land injuriously affected by the construction of municipal works is due compensation for any damage. No provision is made for interest in addition thereto; & neither the arbitrators, nor a judge under an application to him under sect. 706 of the Act to increase the award, have power to award interest.—*Re* BANNATYNE (*Re* TAYLOR ESTATE) & ASSINIBOIA RURAL MUNICIPALITY (No. 2), [1932] 1 W. W. R. 754; 2 D. L. R. 703; 40 Man. L. R. 253.—**CAN.**

PART III. SECT. 4.

g i. —— ——.]—*Held:* the only increase which should be deducted under Public Works Act (Alta.), s. 24 (8), is the increase so caused in the value of the land through which the public work is constructed over & above any such increase as is common to said land & to the land in the immediate vicinity.—*Re* CENTRAL CANADA RY. CO. ARBITRATIONS, [1929] 4 D. L. R. 333; 2 W. W. R. 445; 24 Alta. L. R. 209.—**CAN.**

g ii. —— —— *Municipal Act, R. S. O.*, 1927, *s.* 342 (1).]—ROMAN CATHOLIC EPISCOPAL CORPN. OF LONDON & SANDWICH (TOWN), [1930] 4 D. L. R. 955; 65 O. L. R. 514.—**CAN.**

478. *Add. Annotation :*—**Refd.** Brakspear *v.* Barton, [1924] 2 K. B. 88.

484. For citations read the following para. & citations :—

A ry. co. having given notice of their intention to purchase lands for the undertaking, deposited the purchase-money, & delivered the bond according to sect. 35 of Lands Clauses Act, before the expiration of the period prescribed for the exercise of their compulsory powers ; neither their power to purchase the land, nor their power to enter, is gone by the subsequent expiration of that period.—SPARROW *v.* OXFORD, WORCESTER & WOLVERHAMPTON RY. CO. (1851), 9 Hare, 436 ; 18 L. T. O. S. 116 ; 68 E. R. 580.

500. *Add. Annotation :*—**Consd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt, [1932] 2 K. B. 1.

526. *Add. Annotation :*—*As to* (1) **Refd.** Cardiff Corpn. *v.* Cook, [1923] 2 Ch. 115.

531. *Add. Annotation :*—**Refd.** Cardiff Corpn. *v.* Cook, [1923] 2 Ch. 115.

533a. —— —— **Rights of assignee.**]—A landowner has a right to deal with his property after a notice to treat, although the right must be exercised subject to the rights acquired by the undertakers by virtue of the notice & so as not to increase their obligations, & he is also entitled before acceptance to withdraw & amend his claim. But where a landowner, possessed of a leasehold interest, who has claimed £550 for compensation for disturbance & valued his leasehold interest at nil, subsequently, but before his claim is accepted, assigns his leasehold interest, his assignee stands in the same position as the landowner & can withdraw or amend the claim, either expressly or by sending in a claim in respect of the leasehold interest wholly inconsistent with the original claim, & the undertakers are not then at liberty to disregard the assignee & continue to treat & contract with the original landowner.—CARDIFF CORPN. *v.* COOK, [1923] 2 Ch. 115 ; 92 L. J. Ch. 177 ; 128 L. T. 530 ; 87 J. P. 90 ; 67 Sol. Jo. 315 ; 21 L. G. R. 279.

534. *Add. Annotation :*—**Refd.** Matthey *v.* Curling, [1922] 2 A. C. 180.

558a. Misdescription as to nature of property—Abatement of purchase-money—Not ordered.]—*Re* STEPNEY BOROUGH COUNCIL & SMART'S CONTRACT (1902), 47 Sol. Jo. 159.

562. *Add. Annotation :*—*As to* (1) **Refd.** Greswolde-Williams *v.* Newcastle-upon-Tyne Corpn. (1927), 91 J. P. Jo. 968.

595a. Building consisting of several blocks of offices—Constitutes one "building."]—GRESWOLDE-WILLIAMS *v.* NEWCASTLE-UPON-TYNE CORPN. (1927), 92 J. P. 13 ; 26 L. G. R. 26.

Part VII.—Assessment of Purchase Price and Compensation.

650. For existing paragraph & citations substitute the following :—

The Blackpool Improvement Act, 1917, s. 70, enacted that the provisions of the sect. should, unless otherwise agreed in writing, apply for the benefit & protection of a certain co. as owners of the land referred to in the section. By its terms the owners were to sell & the corpn. was to buy the land therein described at a price to be determined, in default of agreement, by arbitration in the manner provided by the Lands Clauses Acts as modified by that Act, & a notice to treat was to be served by the corpn. within a defined time. It was further provided that the corpn. should not use the land so acquired for certain purposes which might cause a nuisance or annoyance to the owners. By Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), where by any statute, whether passed before or after the passing of this Act, land is authorised to be acquired compulsorily by any local authority, any question of disputed compensation is to be determined in the manner thereby provided, & the provisions of the Act by which the land is authorised to be acquired, or of any Act incorporated therewith, so far as inconsistent with this Act, shall cease to have effect. Notice to treat was served on the owners by the corpn. shortly before the coming into operation of the Act of 1919, but no arbitrator had been appointed to fix the price. A question having arisen whether the compensation was to be assessed under the Act of 1919 or under the private Act of 1917 :—*Held :* the Act of 1919 did not apply, & the compensation was to be ascertained in

PART VI. SECT. 1, SUB-SECT. 2.—D.

490 i. *Effect of—No right of action at common law—Damages for rendering land useless & unsaleable not recoverable.*]—ALEXANDER BROWN MILLING CO. *v.* CANADIAN PACIFIC RY. CO., [1923] 4 D. L. R. 1136 ; 29 Can. Ry. Cas. 345 ; 52 O. L. R. 528.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 1.—B. (a).

566 ii. *Includes all that is necessary for enjoyment of house.*]—The word "house" in Lands Act, 1847, s. 92, is not limited to the four walls of the building, but includes all that is necessary to the convenient occupation of the house.

Promoters of an undertaking :—*Held :* not entitled to take a strip of land immediately in front of a house between it & the wall & containing a tank & fruit trees, when the owner was willing & able to convey the whole of the house.—DRAPER *v.* SOUTH AUSTRALIAN RAILWAYS COMR. (1901), 3 S. A. L. R. 150.—**AUS.**

PART VII. SECT. 1.

sg. *Public Works Act, s. 22—Acquisition of toll road under Provincial Highways Act, 1917.*]—*Re* COBOURG & GRAFTON TOLL ROAD CO. (1921), 64 D. L. R. 241 ; 50 O. L. R. 125.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 1.

sh. *Jurisdiction of Exchequer Court.*]—Property & civil rights being matters within the exclusive powers of the Provincial Legislature, the Exch. Ct. of Canada in ascertaining the estate or interest of persons claiming compensation for property expropriated by the Dominion Crown will have regard to the laws affecting such estate & interest in the province where the property is situated.—R. *v.* HUDSON'S BAY CO. (1921), 20 Exch. C. R. 413.—**CAN.**

sk. *Cannot inquire into validity of mutual agreement for compensation.*]—*Held :* where one of the parties set up an agreement purporting to fix the compensation a dispute as to the existence, validity, & applicability of such agreement must be settled by agreement of the parties or determined by the ct. before a case for arbn. arises ; & the arbitrators exceeded their jurisdiction when they entered upon an inquiry as to the existence & validity of the agreement alleged.—*Re* HARMANS, LTD., & TORONTO CITY, *Re* PORTER & TORONTO CITY, *Re* STEWART & TORONTO CITY, [1928] 4 D. L. R. 781 ; 62 O. L. R. 475.—**CAN.**

the manner provided by the Lands Clauses Acts as modified by the Act of 1917; by VISCOUNT FINLAY, VISCOUNT CAVE, & LORD PHILLIMORE on the grounds, (*a*) that sect. 70 of the private Act embodied an agreement between the parties for the sale & purchase of the land & that the land was not "authorised to be acquired compulsorily"; (*b*) that the general language of the Act of 1919 ought not, in the absence of clear words, to be construed as affecting the special provisions of sect. 70 of the private Act of 1917; by VISCOUNT HALDANE on the second ground; by LORD SHAW OF DUNFERMLINE (dissenting as to the second ground) on the first ground only.—BLACKPOOL CORPN. *v.* STARR ESTATE CO., LTD., [1922] 1 A. C. 27; 91 L. J. K. B. 202; 126 L. T. 258; 86 J. P. 25; 38 T. L. R. 79; 66 Sol. Jo. 17; 19 L. G. R. 721, H. L.

Annotations:—**Distd.** Thurrock Grays & Tilbury Joint Sewerage Board *v.* Thames Land Co., Ltd. (1925), 90 J. P. 1. **Refd.** Thornely *v.* Leconfield (Lord), [1925] 1 K. B. 236; West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1931), 101 L. J. K. B. 229.

650a. —— Acquisition of land & appointment of arbitrator under Public Health Act, 1875, (c. 55.)]—A land co. was the owner in fee simple of certain land through which a sewerage board, under Public Health Act, 1875 (c. 55), after duly serving on the co. notice of intention to do so, carried a sewer & a rising main. Subsequently an agreement in writing was entered into between the parties regarding what had been done. Differences having arisen regarding the compensation to be paid by the board to the co., recourse was had to arbn. The arbitrator was appointed under Public Health Act, 1875, & before entering on the arbn. made the statutory declaration under that Act. Having considered the disputes he made an alternative award in the form of a special case for the opinion of the ct. If the ct. was of opinion that compensation was to be assessed solely under Public Health Act, 1875, he awarded the co. £5,090; if the arbitration was under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), & the basis on which compensation was to be awarded was to be governed by the principles in s. 2 of that Act, he awarded the co. £2,148:—*Held:* as the land had been acquired under powers conferred by Public Health Act, 1875, before the agreement between the parties was entered into, it had been acquired compulsorily, & as there was nothing in the agreement which affected the primary basis of the value of the land nor any other matter, including the appointment of the arbitrator expressly under Public Health Act, 1875, which was inconsistent with the rules laid down by s. 2 of the Act of 1919, that Act applied to the arbn., & the co. should be awarded £2,148.—THURROCK, GRAYS & TILBURY JOINT SEWERAGE BOARD *v.* THAMES LAND CO., LTD. (1925), 90 J. P. 1; 23 L. G. R. 648.

702a. Arbitrator incapable of continuing—Power to replace.]—Where an arbitrator, appointed by the Reference Committee under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), s. 1, becomes incapable of continuing a particular arbn., the authority of the Reference Committee includes the power to replace him by some one else.—GROSS, SHERWOOD & HEALD, LTD. *v.* ESSEX COUNTY COUNCIL, [1927] 1 Ch. 205; 96 L. J. Ch. 21; 136 L. T. 371; 91 J. P. 17; 43 T. L. R. 5; 70 Sol. Jo. 1196; 25 L. G. R. 135.

702b. Effect of appointment under protest—Whether right to compensation admitted.]—*Semble:* a co. does not, by nominating under protest an arbitrator in pursuance of the Lands Act, 1845, admit that the case is one entitling the claimant to any compensation.—SUTTON HARBOUR IMPROVEMENT CO. *v.* HITCHENS (1851), 1 De G. M. & G. 161; 21 L. J. Ch. 73; 18 L. T. O. S. 163; 16 Jur. 70; 42 E. R. 514, L. JJ.

727a. Hearing — Entry in Crown Paper.] — An award made by an official arbitrator under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), in the form of a special case, is rightly entered in the Crown Paper.—HEWITT *v.* ESSEX COUNTY COUNCIL (1927), 97 L. J. K. B. 249; 92 J. P. 36; 44 T. L. R. 111; 72 Sol. Jo. 50; 26 L. G. R. 48 D. C.

PART VII. SECT. 5, SUB-SECT. 1.

n i. —— —— *Passing of bye-law by local authority—Submission before bye-law passed ultra vires.*]—KOKOMSTEDT *v.* RURAL MUNICIPALITY OF EYE HILL, No. 382, [1923] 2 W. W. R. 669.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 2.

f i. —— *Extent of duty.*]—On an application under sect. 408 of Town Act, R. S. S., 1930, for the appointment of an arbitrator of a claim for compensation for lands taken or injuriously affected, it is not the duty of the judge applied to to decide whether or not the claimant has a claim.—MCGILLIVRAY *v.* MELVILLE TOWN, [1932] 2 W. W. R. 635.—**CAN.**

sl. *Under Dominion Railway Act,* 1919.]—Where a judge of the Supreme Ct. of Ontario has made an order for possession, under the above Act, with a term that the ry. co. shall pay money into ct. as security, any judge of the Supreme Ct. has jurisdiction to appoint an arbitrator; & under sect. 220 the judge of the county ct. of the county wherein the expropriated lands lie is the proper person to appoint.—*Re* LITTLE & CAMPBELLFORD LAKE ONTARIO & WESTERN RY. CO. (1924), 55 O. L. R. 581.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 4.

713 iii. —— *Jurisdiction of court.*]—*Re* TAYLOR ESTATE & ASSINIBOIA RURAL MUNICIPALITY, [1931] 2 W. W. R. 719; 4 D. L. R. 249; 29 Man. L. R. 563.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 7.

sm. *Appeal under Municipal Arbitrations Act,* 1927.]—An appeal to a Divisional Ct. of the Appellate Division from an award made under Municipal Arbitrations Act, R. S. O., 1927, lies, but not unless the award is appealed from within six weeks after notice that it has been filed; & the ct. has no jurisdiction to give leave to appeal, or to extend the time for appealing after the time has expired, even in a case where there was fraud in procuring the award. Sect. 3 of Arbn. Act, R. S. O., 1927, is not applicable.—*Re* FAIR & TORONTO, [1930] 3 D. L. R. 76; 65 O. L. R. 176.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 8.

736 i. —— *Claim in respect of several interests—Award not apportioning sums between several interests—Insufficient.*]—STEWART MUNICIPAL DISTRICT *v.* BLIESNER, [1924] 2 W. W. R. 1217.—**CAN.**

s i. —— *Arbitrator not entitled to allow interest.*]—*Re* LETROS & TORONTO CORPN. (1924), 56 O. L. R. 175.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 10.

j (p. 196) **i.** ——.]—On an application, under sect. 706 of Municipal Act, R. S. M., 1913, to vary or increase an award the judge is in the position of sole arbitrator or umpire as well as having the power to set aside or remit the award.—*Re* TAYLOR ESTATE & ASSINOBOIA RURAL MUNICIPALITY (NO. 2), [1931] 3 W. W. R. 408; *on appeal,* [1932] 1 W. W. R. 754.—**CAN.**

m (p. 196) **i.** —— *Under Dominion Railway Act,* 1906 (c. 37).]—*Re* KITSILANO INDIAN RESERVE, VANCOUVER HARBOUR COMRS. *v.* R., [1918] 2 W. W. R. 411.—**CAN.**

m (p. 196) **ii.** —— *Under Dominion Railway Act,* 1919 (c. 68).]—*Re* ARBITRATION UNDER THE RAILWAY ACT, BRITISH COLUMBIA PERMANENT LOAN CO. *v.* CANADIAN NORTHERN RY. CO. (NO. 1), [1922] 2 W. W. R. 577; 65 D. L. R. 735; 15 Sask. L. R. 431.—**CAN.**

m (p. 196) **iii.** —— ——.]—CEDAR

761a. —— **Award embodying decision of court on special case.**]—An official arbitrator stated a case under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), & the Div. Ct. decided adversely to the contention of claimants for compensation. The arbitrator then made his award, embodying therein the decision of the Div. Ct. Claimants applied to another Div. Ct. to set the award aside, on the ground that the award was on the face of it erroneous in law, but the ct. dismissed the application. Claimants appealed:—*Held:* no appeal could be entertained.—NORTHWOOD *v.* LONDON COUNTY COUNCIL (No. 2) (1927), 96 L. J. K. B. 520; 137 L. T. 49; 91 J. P. 93; 43 T. L. R. 347; 25 L. G. R. 254, C. A.

762. *Add. Annotation:—As to* (2) **Apprvd. & Apld.** Matthey *v.* Curling, [1922] 2 A. C. 180.

773a. Award of lump sum—Validity.]—Claimant was the owner of certain land with regard to the acquisition of which an arbn. was held under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57). He claimed £17,362, &, before the hearing of the arbn., the President of the Air Council made an unconditional offer of £10,000. The sum awarded to claimant by the official arbitrator in respect of his interest in the land & the consequential damage thereto was £11,415. In dealing with the costs the arbitrator directed the Council "to pay £100 towards the costs of claimant." Claimant applied to the ct. by motion for the award to be remitted to the arbitrator on the ground that he had, in making the above order as to costs, not properly exercised the discretion conferred upon him by sect. 5 (4) of the above Act:—*Held:* in awarding the lump sum of £100, the arbitrator had in terms awarded to claimant part of his costs of the arbn. within sect. 5, & as it seemed reasonably clear from the Act that, when a sum was awarded by the arbitrator in excess of the amount offered by the authority but less than the sum which claimant had offered to accept, the arbitrator had an absolute discretion as to the costs, the motion to review the award failed.—BRADSHAW *v.* AIR COUNCIL, [1926] Ch. 329; 95 L. J. Ch. 499; 135 L. T. 538; 42 T. L. R. 197; 70 Sol. Jo. 367; 24 L. G. R. 351.

785. For "No. 749, *ante*," read "No. 372, *ante*."

863. For existing citations read "(1865), 19 C. B. N. S. 139; 144 E. R. 739; *previous proceedings* (1863), 4 B. & S. 315."

875. *Add. Citation:—Re* HAYNE (CHARLES), 13 W. R. 492.

930. *Add. Citation:—Sub nom.* R. *v.* NORTH LONDON RY. CO. & WILSON, 51 L. J. Q. B. 241.

948. *Add. Citation:—Sub nom.* R. *v.* NORTH LONDON RY. CO. & WILSON, 51 L. J. Q. B. 241.

966. *Add. Annotation:*—**Refd.** Simbro Trading Co. *v.* Posograph Parent Corpn., [1929] 2 K. B. 266.

Part VIII.—Entry on Lands by Promoters.

1005. *Add. Annotation:—As to* (1) **Refd.** Grant *v.* Derwent, [1929] 1 Ch. 390.

1035. *Add. Annotation:—As to* (1) **Refd.** R. *v.* Webster, *Ex p.* Marshall (1931), 95 J. P. 226.

RAPIDS MANUFACTURING & POWER CO. *v.* LACOSTE, [1927] 2 D. L. R. 83.—**CAN.**

r (p. 196) **i.** —— *Award determined on wrong principle.*]—Where damages were recoverable by reason of lowering of the sidewalk in front of a building, consisting in the decreased value of the property, but were assessed at the cost of lowering the store floor:—*Held:* the award must be set aside as determined upon a wrong principle.—RADISSON TOWN *v.* AMSON, [1919] 3 W. W. R. 580.—**CAN.**

x i. ——.]—WINTER *v.* TORONTO (CITY) (1922), 70 D. L. R. 458.—**CAN.**

x ii. —— *Sum awarded inadequate.*]—ARMSTRONG *v.* NEW WESTMINSTER HARBOUR BOARD, [1929] 2 D. L. R. 150; 1 W. W. R. 755; 41 B. C. R. 1.—**CAN.**

y i. —— *Lump sum awarded—Award good on its face.*]—NORTH COWICHAN CORPN. *v.* GORE-LANGTON, [1921] 2 W. W. R. 484.—**CAN.**

c (p. 197) **i.** —— ——.]—NASH & WILLIAMS *v.* EDMONTON, DUNVEGAN & BRITISH COLUMBIA RY CO., [1917] 3 W. W. R. 553; 36 D. L. R. 601.—**CAN.**

c (p. 197) **ii.** —— ——.]—An appellate ct. should not interfere to vary an award unless it is satisfied that the award does not truly represent the honest opinion of the arbitrators as to damages, or that the basis of valuation was erroneous.—*Re* SCOTT & OSHAWA TOWN, [1922] 52 O. L. R. 504.—**CAN.**

c (p. 197) **iii.** —— ——.]—WINNIPEG *v.* CROSS, [1927] 3 D. L. R. 1072; [1927] 2 W. W. R. 644; 37 Man. L. R. 40.—**CAN.**

c (p. 197) **iv.** —— ——.]—*Re* SULLIVAN & TOWNSHIP OF BERTIE, [1927] 2 D. L. R. 74; 60 O. L. R. 107.—**CAN.**

c (p. 197) **i.** —— ——.]—*Re* ARBITRATION ACT, *Re* WOODS, [1923] 2 D. L. R. 1000; 32 B. C. R. 211; [1923] 1 W. W. R. 1344.—**CAN.**

m (p. 197) **i.** ——.]—*Re* DIXON & TORONTO CORPN. (1924), 56 O. L. R. 167.—**CAN.**

o (p. 197) **i.** —— ——.]—Where a large number of witnesses give evidence to the same effect on a question of value the award of an arbitrator based thereon will not be set aside.—CANADIAN NORTHERN RY. CO. *v.* KETCHESON (1918), 21 Can. Ry. Cas. 104; 32 D. L. R. 629.—**CAN.**

q (p. 197) **i.** —— —— *Question only one of quantum.*]—*Re* LETROS & TORONTO CORPN. (1924), 56 O. L. R. 175.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 11.

sm. *Purchase of easement—Execution of conveyance not condition precedent to enforcement.*]—Where an easement was expropriated by a municipal corpn. under sect. 338 of Municipal Act, R. S. O., 1927, it was held that the corpn. was not entitled to withhold payment of the compensation money until the claimant had executed a conveyance of the easement, for the easement had automatically vested in the corpn.—*Re* MAYO & TORONTO CITY, [1929] 3 D. L. R. 890; 64 O. L. R. 139.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 12.—A.

e i. —— —— *Solicitor & client costs —New Brunswick Electric Power Act.*]—*Re* INGLEWOOD PULP & PAPER CO., LTD., & NEW BRUNSWICK ELECTRIC POWER COMMISSION (1929), 3 M. P. R. 91.—**CAN.**

sn. *Costs follow event—Subject to discretion of court—Principles governing exercise of discretion.*]—The ordinary rule is that costs should follow the event. But the ct. has a discretion to depart from this rule, & such discretion is to be exercised on well recognised principles.—ASSISTANT COLLECTOR SALSETTE *v.* DAMODARDAS TRITHUVANDAS (1928), I. L. R. 53 Bom. 178.—**IND.**

sx. *Application to set aside award—Liability for costs.*]—Where on an application under sect. 332 of the Municipal Act appets. succeeded in having an award set aside, there is no power in the ct. to order the unsuccessful party to pay the costs of appets. in connection with the arbn. proceedings.—*Re* ELDRIDGE ESTATE & DISTRICT OF SUMAS CORPN., [1931] 3 W. W. R. 223; 44 B. C. R. 194.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 1.

so. *Payment or tender of compensation not necessary.*]—CANADIAN PACIFIC RY. CO. *v.* PAUL (1921), 27 Can. Ry. Cas. 417.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 2.—A.

a i. —— *Or expropriation proceedings completed.*]—GODDARD *v.* BAINBRIDGE LUMBER CO. (1920), 29 B. C. R. 186.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 1.

sp. *Application for warrant of possession — Jurisdiction of Exchequer Court to hear.*]—*Re* EXCHEQUER COURT JURISDICTION, [1925] 4 D. L. R. 673.—**CAN.**

sq. —— ——.]—CANADIAN NATIONAL RY. CO. *v.* BOLAND, [1925] 4 D. L. R. 703; [1925] Exch. C. R. 173.—**CAN.**

Part IX.—Assessment of Compensation after Entry or Injurious Affection.

1097. *Add. Annotation :—As to* (1) **Refd.** Cardiff Corpn. *v.* Cook, [1923] 2 Ch. 115.

Part X.—Conveyance of Land and Payment of Purchase-Money.

1122. *Add. Annotation :*—**Refd.** Oxford Corpn. *v.* Oxford Electric Co. (1930), 143 L. T. 577.

1125. *Add. Annotations :—As to* (1) **Refd.** Swift *v.* Board of Trade (1924), 93 L. J. K. B. 529; Swift *v.* Board of Trade, [1925] A. C. 520; Oxford Corpn. *v.* Oxford Electric Co. (1930), 143 L. T. 577.

1158. *Add. Annotation :*—**Consd.** Berners *v.* Fleming, [1925] Ch. 264.

1184a. In Act—Right of vendor to costs of opposing Bill.]—A vendor of land to a ry. co. having filed a bill for specific performance, opposed three Bills in Parliament, & by an Act which was eventually obtained his lien was provided for. It was then arranged that he should be paid principal, interest, & costs :—*Held :* the taxing-master in taxing the costs should allow all reasonable costs, charges, & expenses of appearing before the committee & opposing the Bills in Parliament.—COOPER *v.* LONDON, CHATHAM & DOVER RY. CO. (1867), 17 L. T. 283.

1205a. ——.]—Upon the expropriation of land under statutory power, whether for the purpose of private gain or of good to the public at large, the owner is entitled to interest on the principal sum awarded from the date when possession was taken, unless the Act clearly shows a contrary intention.—INGLEWOOD PULP & PAPER CO. *v.* NEW BRUNSWICK ELECTRIC POWER COMMISSION, [1928] A. C. 492; 97 L. J. P. C. 118; 139 L. T. 593, P. C.

1227. After this case add :—

further, CHARITIES, Vol. VIII., pp. 359, 360, Nos. 1558–1565.

1237. *Add. Annotation :*—**Refd.** Clark *v.* Barnes, [1929] 2 Ch. 368.

1242a. ——.]—*Re* BROMLEY GUARDIANS (1845), 4 L. T. O. S. 430.

Part XI.—Application of Money Deposited in Bank.

1275a. Order for purchase-money to remain on deposit in court—In lieu of investment.]—*Ex p.* TRINITY COLLEGE, CAMBRIDGE (1897), Y. S. C. P.

1279a. ——.]—*Re* ST. MARY MAGDALEN, OXFORD (1898), Y. S. C. P.

1382. *Add. Annotation :*—**Apld.** *Ex p.* Burdett Coutts, [1927] 2 Ch. 98.

1384. *Add. Annotation :*—**Consd.** *Ex p.* Burdett Coutts, [1927] 2 Ch. 98.

1384a. —— **Title not proved to be defective—Payment out ordered.**]—*Ex p.* BURDETT COUTTS, [1927] 2 Ch. 98; 96 L. J. Ch. 453; 137 L. T. 404; 71 Sol. Jo. 389.

1500. *Add. Annotation :*—**Consd.** *Re* Williams' Settlmt., Williams Wynn *v.* Williams, [1922] 2 Ch. 750.

1560a. —— **Encumbrancers otherwise secured need not be served.**]—Where a petition was presented for payment out of ct. of purchase-money paid in in respect of real estate purchased under the General Metropolitan Paving Act, service of the petition upon parties entitled to certain small rent-charges charged on the property purchased, but which were amply secured on other property not included in the purchase, was held to be unnecessary.—*Ex p.* MERCERS' CO. (1879), 10 Ch. D. 481; 18 L. J. Ch. 384; 27 W. R. 424.

1560b. —— **Summons by Representative Body of the Welsh Church.**]—*Re* GREAT WESTERN RAILWAY ACT, 1911, *Ex p.* GREAT WESTERN RY., [1922] W. N. 148; 153 L. T. Jo. 339.

PART X. SECT. 1, SUB-SECT. 2.—B. (c) i.

v i. ——.]—R. *v.* MCKENZIE (1890), 2 Exch. C. R. 198.—CAN.

PART X. SECT. 1, SUB-SECT. 4.

p i. —— *From filing of caveat—Owner remaining in possession.*]—*Re* ARBITRATION ACT, *Re* ROSHKO & WINNIPEG SCHOOL DISTRICT NO. 1, [1924] 4 D. L. R. 1017; 3 W. W. R.

z i. —— *Sydney Corporation (Amendment) Act (No. 7 of 1924), s. 17.*]—SYDNEY MUNICIPAL COUNCIL *v.* TROY, [1927] A. C. 706; 96 L. J. P. C. 124; 137 L. T. 707, P. C.—AUS.

Part XII.—Costs when Money Deposited—Liability of Promoters.

1597. *Add. Annotation :—As to* (2) **Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

1604. *Add. Annotation :—***Refd.** *Re* Letters Patent No. 139207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

1614a. —— ——.]—*Re* LONDON BRIDGE ACTS, *Ex p.* TATHAM (1838), 3 Y. & C. Ex. 67 ; 7 L. J. Ex. Eq. 64 ; 2 Jur. 440 ; 160 E. R. 617.

1686a. -.]—*Ex p.* NORFOLK RY. Co. (1860), Drew. & Sm. 48, n. ; 62 E. R. 296.

*Annotation :—***Apld.** *Re* Cleveland's Harte Estates (1860), 1 Drew. & Sm. 46.

1707. *Add. Citation :—Sub nom. Re* BENYON'S TRUSTS, 8 W. R. 425.

1974. *Citations :*—Delete 5 Ch. App. 1, & add 20 L. T. 940.

1985. *Add. Annotation :—***Refd.** *Re* Booth & Southend-on-Sea Estates Co.'s Contract, [1927] 1 Ch. 579.

1997a. Transfer of fund from charity trustees to official trustees of charitable funds—Costs to be borne equally by promoters.]—*Ex p.* SUNBURY-ON-THAMES URBAN DISTRICT COUNCIL, *Ex p.* STAINES RESERVOIRS JOINT COMMITTEE (1922), 86 J. P. Jo. 153.

Part XIII.—Purchase of Particular Interests in Land.

2017a. Agreement with mortgagor—Binding on mortgagee entering into possession.]—MOLD *v.* WHEATCROFT (1859), 27 Beav. 510 ; 29 L. J. Ch. 11 ; 1 L. T. 226 ; 6 Jur. N. S. 2 ; 54 E. R. 202.

2033. For existing citations substitute the following paragraph & citations :—

A bill filed against a railway co. by the grantee of an annuity charged on land taken by the co. stated that before the grant of the annuity the land was subject to a mtge. in fee, which had since been paid off, but that there had been no reconveyance ; that the defts., under the powers of their act, had given the pltf. notice to treat for the land charged with the annuity, but without any further proceeding had taken possession of the land. The prayer was that the co. might be decreed to pay the arrears of the annuity & to secure the future payment of it. The defence made by the answer & evidence was that the co. had purchased from the prior incumbrancer under a power of sale :—*Held :* pltf. could not on such pleadings enforce a specific performance of the notice to treat regarded as a contract to purchase pltfs.' interest. The prayer for general relief is not available for the purpose of obtaining a decree at variance with the case made by the statements of the bill.—HILL *v.* GREAT NORTHERN RY. Co. (1854), 5 De. G. M. & G. 66 ; 2 Eq. Rep. 1069 ; 23 L. J. Ch. 524 ; 18 Jur. 685 ; 2 W. R. 335, C. A. ; 43 E. R. 794, L.JJ.

2035a. —— **Lease granted after conveyance to promoters—Reference to ascertain validity of agreement for lease.**]—NORFOLK RY. Co. *v.* BAYES (1849), 14 L. T. O. S. 170 ; 13 Jur. 435.

2037. *Add. Annotation :—***Refd.** Cardiff Corpn. *v.* Cook (1922), 92 L. J. Ch. 177.

2038. *Add. Annotation :—***Apld.** Cardiff Corpn. *v.* Cook, [1923] 2 Ch. 115.

2059. *Add. Citation :*—66 L. J. Q. B. 30.

2067. *Add. Annotations :—***Consd.** Matthey *v.* Curling, [1922] 2 A. C. 180 ; Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

2068. *Add. Annotation :—***Refd.** Matthey *v.* Curling, [1922] 2 A. C. 180.

2075. *Add. Annotation :—***Refd.** Cardiff Corpn. *v.* Cook (1922), 92 L. J. Ch. 177.

PART XII. SECT. 8, SUB-SECT. 5.—A.

2 i. —— ——.]—*Re* FORD & CANADIAN PACIFIC RY. Co. (1926), 32 Can. Ry. Cas. 319.—**CAN.**

PART XIII. SECT. 3.

2022 i. *Interest—Rate of—Application to reduce—R. S. O.*, 1897 (*c.* 110), *ss.* 15, 16.]—*Re* KINGSTON LIGHT, HEAT & POWER Co. & KINGSTON CORPN. (1904), 24 C. L. T. 358 ; 8 O. L. R. 258 ; 3 O. W. R. 769.—**CAN.**

ii. *Bonus to mortgagee on payment of loan before maturity—Must be considered in compensation.*]—R. *v.* PICKLEMAN, [1932] Ex. C. R. 202.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 1.

2044 i. —— *Under invalid lease.*]—Land expropriated by the Dominion Crown was leased for a period of five years under an instrument not registered as required :—*Held :* the unregistered lease did not vest any estate or interest in the lessee & he was not entitled to compensation in respect of the expropriation.—R. *v.* HUDSON'S BAY Co. (1921), 65 D. L. R. 569 ; 20 Exch. C. R. 413.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 3.

ar. *General rules.*]—The rights conferred by a lease being a matter of property & civil rights, within the exclusive powers of the provincial legislature, the ct. in ascertaining the estate or interest of persons claiming compensation thereunder in an expropriation by the Dominion Crown, will have regard to the laws affecting such estate or interest in the province where the property is situated, notwithstanding Expropriation Act, ss. 25, 26. The compensation to be made to the lessee for the unexpired term of his lease should cover all reasonable cost of moving, refitting & settling the new premises ; loss of time in seeking new location ; depreciation of valuable business fixtures & fittings & damage thereto due to moving, etc., & a certain amount for dislocation or disturbance of business, which, however, cannot be fixed with mathematical certainty. The customary test of market value is no test of value in arriving at the compensation to be allowed for a leasehold interest expropriated.—R. *v.* ELITE CAFE, LTD., [1929] Ex. C. R. 56.—**CAN.**

b i. —— —— ——.]—*Re* UNION FOUNDRY & MACHINERY WORKS, LTD., & ST. JOHN HARBOUR COMRS. (1929), 1 M. P. R. 267.—**CAN.**

PART XIII. SECT. 6, SUB-SECT. 1.—A.

ti. —— *Entitled to offer—As well as owner.*]—R. *v.* MUSGRAVE, [1924] Exch. C. R. 218.—**CAN.**

PART XIII. SECT. 6, SUB-SECT. 2.

st. *Measure of compensation—Licencee.*]—Where one is in occupation of part of a street under licence from the municipality, by the provisions of which licence he was obliged to vacate upon notice before a given date, & when by reason of the expropriation of the property he was forced to vacate before such date, he becomes entitled to compensation for his loss of the use & occupation, as well as for the extra inconvenience & expense occasioned by reason of having to make an immediate move instead of having the whole life of the licence to do so, but not to include the cost of moving.—VALENCOURT *v.* R., [1928] Exch. C. R. 118.—**CAN.**

Part XIV.—Superfluous Lands.

2136. *Add. Annotation :*—**Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

2175. *Add. Annotation :*—**Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

Part XV.—Compensation for Land taken or used for Special Purposes.

2201. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt, [1932] 2 K. B. 1.

2203a. ——.]—THURROCK, GRAYS & TILBURY JOINT SEWERAGE BOARD *v.* THAMES LAND CO., LTD., No. 650a, *ante*.

2209. *Add. Annotation :*—**Consd.** Holt Bros. & Whitford *v.* Axbridge Rural District Council (1931), 95 J. P. 87.

Before Sub-sect. 2, add :—

(*d*) *By Action.*

2212a. Admission of liability—Right to continue action.]—Where a local authority have intimated that they do not dispute their liability for damage done to premises, the owner of such premises is entitled to continue the action instituted by him before the defts. admitted liability, claiming a declaration that defts. are liable to pay compensation.—HOLT BROS. & WHITFORD *v.* AXBRIDGE RURAL DISTRICT COUNCIL (1931), 95 J. P. 87.

2218. *Add. Annotation :*—**Refd.** Cardiff Corpn. *v.* Cook (1922), 92 L. J. Ch. 177.

2222a. —— —— **Loss of trade & licence & value of trade fixtures not considered.**]—NORTHWOOD *v.* LONDON COUNTY COUNCIL, [1926] 2 K. B. 411 ; 95 L. J. K. B. 862 ; 135 L. T. 159 ; 90 J. P. 128 ; 42 T. L. R. 508 ; 24 L. G. R. 415, D. C. ; *on appeal* (1927), 96 L. J. K. B. 520, C. A.

2225a. —— —— **Must be within three years of confirmation of Order.**]—It is insufficient to serve notice to treat within the three years, & where that had been done, but the hearing of the arbitration to determine compensation was not held within the three years :—*Held :* the powers of the local authority had lapsed, & prohibition would lie to the official arbitrator.—R. *v.* WEBSTER, *Ex p.* MARSHALL (1931), 95 J. P. 226 ; 30 L. G. R. 29, D. C.

2225b. Under Housing, Town Planning, etc., Act, 1919 (c. 35)—Acquisition of land—Extent of powers.]—Under the above Act, defts. made an order, subsequently confirmed by the Minister of Health, for the compulsory acquisition for the purposes of a scheme under sect. 1 of the Act, of three thousand acres for the erection of working-class houses for the accommodation of one hundred & twenty thousand persons. They also proposed to acquire compulsorily a beerhouse within the area with the objects, (*a*) of controlling or regulating the traffic in intoxicating liquor on the site, that control to be based on management by some co. or assocn. whose servants were not to have a pecuniary interest in the sale of alcohol, & (*b*) of providing for the general entertainment & refreshment of the population :—*Held :* the Act contemplated extensive schemes for the provision of working-class houses by local authorities, involving in many cases the acquisition of considerable areas of land & extending even to the creation of a new town ; sect. 12 (1), treated the land within the selected area as a whole, & as something in the nature of a building estate, &, as incidental to the complete control of the development of the building scheme, empowered the local authority to acquire any houses or other buildings, whether the same were or were not required for use as, or as a site for, workmen's dwellings, or for roads or other purposes mentioned in the earlier Housing Acts ; & that power was not limited to houses which it was proposed to adapt for working-class accommodation under the power to alter contained in the later part of the sub-sect. ; upon the above construction of the Act, subject to confirmation by the Minister of Health, defts. had power under sect. 12 (1) of the Act to acquire compulsorily the beerhouse in question for the attainment of the objects above-mentioned.

Semble : both under sect. 12 (2) of the Act, & under Housing of the Working Classes Act, 1903 (c. 39), s. 11, defts. had a similar power for effecting the like objects.—CONRON *v.* LONDON COUNTY COUNCIL, [1922] 2 Ch. 283 ; 91 L. J. Ch. 386 ; 126 L. T. 791 ; 87 J. P. 109 ; 38 T. L. R. 380 ; 20 L. G. R. 131 ; *sub nom.* CONSON *v.* LONDON COUNTY COUNCIL, 66 Sol. Jo. 350.

2225c. Under Housing Act, 1925 (c. 14)—Assessment of compensation—Whether under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), s. 7.]—Housing Act, 1925 (c. 14), s. 46, provides for the assessment of compensation for land acquired compulsorily under an improvement or reconstruction scheme made under that Act in a manner differing in certain respects from that prescribed by the Act of 1919 :—*Held :* even on the assumption that Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), s. 7 (1), purports to apply to future Acts, Housing Act, 1925 (c. 14), s. 46, in so far as its provisions for the assessment of compensation for land acquired thereunder are inconsistent with the provisions of the earlier Act of 1919, repeals by implication these provisions of that earlier Act.

Per AVORY, J. : Sect. 7 (1) of the 1919 Act on its true construction applies only to Acts which existed at the time when that Act was passed, & not to future Acts.—VAUXHALL ESTATES, LTD. *v.* LIVERPOOL CORPN., [1932] 1 K. B. 733 ; 101 L. J. K. B. 779 ; 95 J. P. 224 ; 48 T. L. R. 100 ; 75 Sol. Jo. 886 ; *sub nom.* VAUXHALL ESTATES, LTD. *v.* LIVERPOOL CORPN., GROSVENOR ESTATES, LTD. *v.* LIVER-

POOL CORPN., WHITECHAPEL ESTATES, LTD. *v.* LIVERPOOL CORPN., RYMER *v.* LIVERPOOL CORPN., 146 L. T. 167; 30 L. G. R. 22.

2252. *Add. Annotation :—As to* (3) **Refd.** Conron *v.* L. C. C., [1922] 2 Ch. 283.

2286a. Compensation for damage to land by severance not included.]—COURTAULDS, LTD. *v.* CITY OF LONDON CORPN., [1926] 2 K. B. 506; 95 L. J. K. B. 972; 136 L. T. 275; 90 J. P. 164; 42 T. L. R. 781; 70 Sol. Jo. 1024; 24 L. G. R. 538, D. C.

2298. *Add. citation :*—[1921] 1 Ch. 299.

Add. Annotations :—**Refd.** *Re* Blackpool Corpn. & Barritt, etc. (1931), 95 J. P. 103; West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt, [1932] 2 K. B. 1.

PART XV. SECT. 3, SUB-SECT. 6.

sv. *Amount of land—Amount necessary for contemplated works.*]—Deft. corpn. issued to pltf. notice of its intention to take the whole of her land for a certain public work, although it admitted that the area was larger than that actually required for the contemplated work. It also refused pltf.'s application for a permit to build on the land, on the ground of its intention to take same for the work :—*Held :* it had no power under Public Works Act, 1908, to take a larger area than it actually required for the public work.—QUINLAN *v.* WELLINGTON CORPN., [1929] N. Z. L. R. 491.—**N.Z.**

sw. *Time for valuation—Successive declarations relating to different land.*]—The local government published under Land Acquisition Act, 1894, s. 6, a declaration that land belonging to applts. respectively & land belonging to other persons were required for public purposes. Five months later the govt. published another declaration for the acquisition of applts'. lands only; the declaration stated that the earlier declaration was thereby cancelled :—*Held :* having regard to Land Acquisition Act, 1894, s. 23 (1), the compensation should have been based upon the value of the land at the date of the publication of the later declaration.—MA SIN *v.* RANGOON COLLECTOR (1929), 56 L. R. Ind. App. 210.—**IND.**

PART XV. SECT. 3, SUB-SECT. 7.—C.

sx. *Land taken under Winnipeg Charter—Time for making claim.*]—Defts.' claim was for compensation for their land injuriously affected by the exercise of the powers of the City under the Charter, & had been expressly recognised by a bye-law of the council :—*Held :* the Charter had, under the circumstances, no application to the claim of defts., & they had all the time allowed them by the general law applicable to the case for making their claims.—WINNIPEG CORPN. *v.* TORONTO GENERAL TRUSTS CORPN. (1911), 20 Man. L. R. 545.—**CAN.**

COMPTROLLER.

See PATENTS; TRADE MARKS.

CONFLICT OF LAWS.

Part I.—Principles of Jurisdiction.

1. *Add. Annotation :*—**Refd.** Whitney *v.* I. R. Comrs. (1925), 42 T. L. R. 58.

6. *Add. Annotation :*—**Folld.** *Re* Visser, Holland *v.* Drukker, [1928] Ch. 877.

6a. ——.]—The English cts. will not entertain an action for the enforcement of the revenue law of a foreign State.—*Re* VISSER, QUEEN OF HOLLAND *v.* DRUKKER, [1928] 1 Ch. 877 ; 97 L. J. Ch. 488 ; 139 L. T. 658 ; 44 T. L. R. 692 ; 72 Sol. Jo. 518.

11. *Add. Annotation :*—**Refd.** Kramer *v.* A.-G., [1923] A. C. 528.

12. *Add. Annotation :*—*As to* (1) **Apprvd.** Kramer *v.* A.-G. (1922), 92 L. J. Ch. 1.

After this case add "Who are foreign nationals within Treaties of Peace & consequent Orders generally, *see* ALIENS, Nos. 49a *et seq.*, *ante*.

13. *Add. Citation :*—2 T. L. R. 116, D. C.

14. *Add. Annotation :*—**Consd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

17. *Add. Annotations :*—*As to* (1) **Refd.** The Jupiter (1924), 93 L. J. P. 156 ; Russian Commercial & Industrial Bank *v.* Comptoir D'Escompte De Mulhouse (1924), 93 L. J. K. B. 1098. *As to* (2) **Folld.** White, Child & Beney *v.* Simmons ; White, Child & Beney *v.* Eagle Star & British Dominions Insce. (1922), 127 L. T. 571. **Refd.** Fenton Textile Assocn. *v.* Krassin (1921), 38 T. L. R. 259 ; Banque Internationale De Commerce De Petrograd *v.* Goukassow (1924), 40 T. L. R. 837. *As to* (3) **Consd.** The Jupiter (No. 3) (1927), 137 L. T. 333. *Generally*, **Refd.** Musmann *v.* Engelke (1927), 43 T. L. R. 685 ; Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65.

17a. —— —— ——.] — Pltfs. were an English limited co. of engineers & merchants. Part of its business was transacted in Russia, & for the purpose of that business pltfs., through their London bankers, deposited moneys & Russian Treasury Bonds with the Petrograd branch of the Banque de Commerce de l'Azoff-Don. Having done so, pltfs. took out two policies of insurance to insure themselves against loss or damage to the insured property "directly caused by fire, rioters, civil commotions, war, civil war, revolutions, rebellions, military or usurped power. . . ." No claim was to attach under the policy (*inter alia*) "for confiscation or destruction by the Govt. of the country in which the property is situated." In Dec. 1917, during the currency of the policy, the Banque de Commerce was occupied by soldiers & sailors of the Red Guard, & by the Bolshevists, purporting to act under the authority of an executive committee of the Commissaries of the People. They demanded & obtained control & possession of the bank & everything contained in it, including the insured property. Two actions were brought claiming for losses under the policies, & the question arose with regard to the recognition of the Soviet Govt. as a sovereign power :—*Held :* on the information then available, the act of the military in seizing the insured property was an act of confiscation by the Govt. of Russia which was in existence at the material time, & had since been recognised by His Majesty's Govt. as the *de facto* Govt. of Russia, & was not an act of a usurped authority ; therefore the claim failed by reason of the clause which provided that no claim was to attach under the policy ". . . for confiscation or destruction by the Govt. of the country in which the property is situated."—WHITE, CHILD & BENEY, LTD. *v* SIMMONS, WHITE, CHILD & BENEY, LTD. *v.* EAGLE STAR & BRITISH DOMINIONS INSURANCE CO. (1922), 127 L. T. 571 ; 38 T. L. R. 616, C. A.

Part II.—Domicil.

19. *Add. Annotations :—As to* (2) **Refd.** Fleming *v.* Horniman (1928), 138 L. T. 669. *As to* (3) **Refd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692. **Consd.** Ramsay *v.* Liverpool Royal Infirmary, [1930] A C. 588 ; A.-G. *v.* Yule & Mercantile Bank. of India (1931), 145 L. T. 9. **Refd.** Boldrini *v.* Boldrini & Martini, [1932] P. 9. *As to* (4) **Consd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259. *Generally*, **Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

32. *Add. Annotation :—As to* (1) **Consd.** Boldrini *v.* Boldrini & Martini, [1932] P. 9.

34. *Add. Annotation :—As to* (3) **Refd.** Ramsay *v.* Liverpool Royal Infirmary, [1930] A. C. 588.

36. *Add. Annotations :—As to* (1) **Refd.** A.-G. *v*, Yule & Mercantile Bank of India (1931). 145 L. T. 9. *Generally*, **Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444 ; *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259 ; Ramsay *v.* Liverpool Royal Infirmary, [1930] A. C. 588 ; Boldrini *v.* Boldrini & Martini, [1932] P. 9.

37. *Add. Annotation :*—**Refd.** Fleming *v.* Horniman (1928), 138 L. T. 669.

38. *Add. Annotations :*—**Consd.** Ramsay *v.* Liverpool Royal Infirmary, [1930] A. C. 588 ; Peal *v.* Peal (1930), 143 L. T. 768 ; A.-G. *v.* Yule

PART II. SECT. 1.

sq. *Person settled in province.*]—For purposes of divorce the domicil of a person settled in one of the provinces of Canada is that particular province though the Dominion Parliament has legislative power to dissolve the marriage.—A.-G. FOR ALBERTA *v.* COOK, [1926] A. C. 444 ; 95 L. J. P. C. 102 ; 134 L. T. 717 ; 42 T. L. R. 317.—CAN.

& Mercantile Bank of India (1931), 145 L. T. 9. **Refd.** Rudd *v.* Rudd, [1924] P. 72; Ross *v.* Ross, [1930] A. C. 1; Boldrini *v.* Boldrini & Martini, [1932] P. 9.

40. *Add. Annotation :—As to* (2) **Refd.** Boldrini *v.* Boldrini & Martini, [1932] P. 9.

44. *Add. Annotation :*—**Refd.** A.-G. *v.* Bellilios, [1928] 1 K. B. 798.

48a. —— ——.]—Where a man leaves the country of his domicil of choice with the fixed & settled intention to give up residence there, & thereupon reverts to his domicil of origin, if he afterwards changes his mind, & forms the intention of returning to that country, as permanently residing there, he re-acquires a domicil of choice there, only when with that intention he again resides there. The domicil of choice must be re-acquired by fulfilment of the same conditions as when it was formerly acquired.—FLEMING *v.* HORNIMAN (1928), 138 L. T. 669; 44 T. L. R. 315.

50. *Add. Annotation :—As to* (6) **Refd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692.

51. *Add. Annotation :—As to* (2) **Refd.** Rudd *v.* Rudd, [1924] P. 72.

52a. ——.]—(1) In questions of domicil, less weight is given by the cts. to a testator's declarations than to his acts, & no one act is necessarily *per se* paramount in importance; but the relative importance of all his acts, however trivial, must be considered as evidence of the *animus manendi* or *revertendi*.

(2) The cts. are now slower to hold a change of the domicil of origin, & must be satisfied that testator intended *quatenus in illo exuere patriam*.

(3) The decisions that persons going to India in the service of the East India Co. thereby acquire an Anglo-Indian domicil, are excrescences upon, & anomalous to, the principles of domicil.

(4) The *animus* to change an acquired domicil is not sufficient without the factum of return.—DREVON *v.* DREVON (1864), 4 New Rep. 316; 34 L. J. Ch. 129; 10 L. T. 730; 10 Jur. N. S. 717; 12 W. R. 946.

Annotation :—As to (1) **Consd.** Doucet *v.* Geoghegan (1878), 9 Ch. D. 441.

53a. ——.]—HORN *v.* HORN (1929), 142 L. T. 93; *previous proceedings, sub nom.* H. *v.* H., [1928] P. 206.

54a. **After revival of domicil on abandonment of domicil of choice.**]—FLEMING *v.* HORNIMAN, No. 48a, *ante*.

55a. ——.]—RUDD *v.* RUDD, No 903a, *post*.

58a. **Life to be considered as a whole**].—A.-G. *v.* YULE & MERCANTILE BANK OF INDIA, No. 155a, *post*.

59. *Add. Annotations :—As to* (2) **Distd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61. **Refd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692.

64a. .]—DREVON *v.* DREVON, No. 1

65a. —— **Effect of deportation order.**]—VEITH *v.* VEITH (1929), 73 Sol. Jo. 235.

66. *Add. Annotation :*—**Folld.** *Re* Cunnington, Healing *v.* Webb, [1924] 1 Ch. 68.

67. *Add. Annotations :*—**Consd.** A.-G. *v.* Yule & Mercantile Bank of India (1931), 145 L. T. 9. **Refd.** Fleming *v.* Horniman (1928), 138 L. T. 669.

67a. .]—DREVON *v.* DREVON, No. 52a, *ante*.

68. *Add. Annotations : As to* (1) **Consd.** Ramsay *v.* Liverpool Royal Infirmary, [1930] A. C. 588; Peal *v.* Peal (1930), 143 L. T. 768. **Refd.** Rudd *v.* Rudd, [1924] P. 72. *Generally*, **Refd.** Ross *v.* Ross, [1930] A. C. 1.

68a. —— ——.]—Applt. was the proprietor of a Scotch estate, but left Scotland for America in 1895 to earn his living. In 1901 he married resp., an American lady, & in 1902 they went to Quebec where he carried on the business of manufacturing arms. They lived together there till 1917 with occasional visits to England. In 1917 applt. went to Washington, staying there as an expert adviser on munitions till Sept. 1918, when he stayed a certain time in Great Britain & in 1918 leased a house in London. In 1922 he took a lease of a flat in New York of which he remained tenant when these proceedings for divorce began in Dec. 1923. Up to the year 1920 there was no statement by applt. of his intention to abandon his Scottish domicil, & as late as Dec. 1920, he stated in an affidavit that he was a domiciled Scotchman. Between Dec. 1920, & the institution of these proceedings he was trying for the purposes of taxation to become a resident alien in the United States, & in Apr. 1923, succeeded. In Jan. 1924, after these proceedings he sought to be naturalised as an American citizen. He spent increasing periods of time at his Scottish estate & referred to it as his home in a letter written to resp. in Nov. 1922. Since 1920, however, he had made statements in documents & verbally that he intended to live permanently in New York, though such statements were never made to his wife, nor, with one exception, to any personal friend :—

PART II. SECT. 2, SUB-SECT. 1.

40 iii. —— ——.]—Where a person whose domicil of origin was outside of the United States & who has acquired a domicil of choice in one of the states thereof, resides temporarily in another country with the intention of returning to some place in the United States, though not necessarily to the state in which he formerly lived, he does not revert to his domicil of origin, even with respect to divorce.—NELSON *v.* NELSON, [1925] 3 D. L. R. 22; [1925] 2 W. W. R. 1.—**CAN.**

40 iv. —— ——.]—R. *v.* SINGH (1931), 44 B. C. R. 278; 56 Can. C. C. 211.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—A.

51 ii. —— ——.]—A domicil of origin differs from a domicil of choice mainly in this, that its character is more enduring, its hold stronger & less easily shaken off. Such a domicil continues unless it is shown with perfect clearness & satisfaction that there was a fixed & settled purpose to acquire a new domicil. This *onus* is a heavy one, & is upon those who assert a change of domicil.—*Re* MURRAY'S ESTATE, [1921] 3 W. W. R. 874; 31 Man. L. R. 362.—**CAN.**

51 iii. —— ——.]—A domicil of origin is not easily shaken off. Mere absence from home, roving & wandering, however long pursued, are not in themselves sufficient to effect a change; to do so there must be a fixed & settled purpose to abandon the domicil of origin & to settle in the country of choice.—BARRY *v.* JAMES (1921), *Times*, Apr. 29; [1921] 3 W. W. R. 182.—**S. AF.**

51 iv. ——.]—TAYLOR *v.* TAYLOR (1928), Q. R. 45 K. B. 184.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—B.

60 iii. ——.]—GROTHKOP *v.* GROTHKOP, [1922] N. Z. L. R. 1.—**N.Z.**

60 iv. ——.]—HARRIS *v.* HARRIS (Sask.), [1929] 2 D. L. R. 546.—**CAN.**

60 v. ——.]—The intention necessary to constitute a domicile of choice excludes all contemplation of any event on the occurrence of which the residence would cease.

The domicile of origin of a man found not to have been abandoned at the time of his marriage, despite the facts that he had actually resided & been employed in a certain State in the U.S.A. for over a year & a half; that while there he had sent for his fiancée to join him; that he had married her there & had become a naturalised American citizen.—JOHNSON *v.* JOHNSON, [1931] A. D. 391.—**S. AF.**

PART II. SECT. 3, SUB-SECT. 2.—A.

67 ii. —— ——.]—CROSBY *v.* THOMSON (N. B.), [1926] 4 D. L. R. 56.—**CAN.**

Held: the evidence of declared intention of change of domicil was not established, as such declarations must be examined by considering the person to whom, the purposes for which, & the circumstances in which they were made, & be carried into effect by conduct & action consistent with the declared intention.—ROSS *v.* ELLISON (OR ROSS), [1930] A. C. 1, H.L.; 96 L. J. P. C. 163; 141 L. T. 666, H. L.

Annotation:—**Refd.** A.-G. *v.* Yule & Mercantile Bank of India (1931), 145 L. T. 9.

68b. ——— ———.]—BRYCE *v.* BRYCE (1932), 174 L. T. Jo. 491.

68c. Declarations as to intention—Purpose & circumstances must be considered.]—ROSS *v.* ELLISON (OR ROSS), No. 68a, *ante*.

69. *Add. Annotations:*—*As to* (1) **Expld.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61. **Refd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692.

80a. ———.]—A.-G. *v.* YULE & MERCANTILE BANK OF INDIA, No. 155a, *post*.

84. *Add. Annotation:*—**Refd.** Ramsay *v.* Liverpool Royal Infirmary, [1930] A. C. 588.

84a. ——— ——— **Although subject to Aliens Order.**]—In a husband's suit for dissolution of marriage the wife objected to the jurisdiction on the ground that the domicil of the husband was not English. The husband was a waiter of Italian nationality & was registered as an alien in England, & as such was subject to the restrictions & liabilities by the Aliens Restriction Act, 1914 (c. 12), & the Aliens Order, 1920:—*Held:* (1) the provisions of the Act of 1914 & the Order of 1920 did not preclude the petitioner from acquiring an English domicil of choice; (2) on the facts, petitioner had discharged the *onus* on him of proving that he had acquired an English domicil of choice.—BOLDRINI *v.* BOLDRINI & MARTINI, [1932] P. 9; 101 L. J. P. 4; 146 L. T. 121; 48 T. L. R. 94; 75 Sol. Jo. 868, C. A.

88a. ——— ———.]—It being settled that a change of domicil must be made *animo et facto*, the *animus* may be inferred by the *factum* of residence within the new domicil, but in order to warrant that inference the quality of the residence must be taken into account; mere length of residence is not of itself sufficient.

A testator who died in Liverpool in 1927, aged eighty-two & unmarried, left a holograph will, valid by the law of Scotland but invalid by the law of England. Testator's domicil of origin was Scottish, & he lived the greater part of his life in Glasgow. Originally employed there as a commercial traveller he gave up that employment in 1882 & never worked again. In 1892 he went to Liverpool to be near a brother & sister, & lived there for the last thirty-five years of his life. He was supplied with the means of subsistence by his brother & sister, & on the death of his sister he succeeded to the whole of her estate. With the exception of family ties he had few, if any, ties in either England or Scotland. In an action by beneficiaries under the will against testator's next of kin for a declaration that testator was domiciled in Scotland at the date of his death:—*Held:* in the absence of independent evidence of an intention on the part of testator to change his domicil, the burden which lay on the next of kin of proving that he had abandoned his domicil of origin had not been discharged.—BOWIE OR RAMSAY *v.* LIVERPOOL ROYAL INFIRMARY, [1930] A. C. 588; 99 L. J. P. C. 134; 143 L. T. 388; 46 T. L. R. 465, H. L.

100a. ——— ———.]—Resp., a domiciled Englishman, was an officer in the Indian Army, & consequently, although his true matrimonial & conjugal home had been in England, he was temporarily resident in India when a petition for judicial separation was served upon him:—*Held:* without deciding whether resp.'s English domicile was sufficient to found jurisdiction, in the circumstances, as resp.'s temporary residence in India was independent of his personal volition, but was determined by his superior officers, he had a sufficient matrimonial residence in this country to give jurisdiction to the ct.—WARD *v.* WARD (1923), 39 T. L. R. 440.

104. *Add. Annotations:*—*As to* (1) **Expld.** Graham *v.* Graham, [1923] P. 31. **Refd.** Eustace *v.* Eustace, [1924] P. 45.

112. *Add. Annotation:*—**Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61.

113. *Add. Annotation:*—**Refd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

114. *Add. Annotations:*—*As to* (2) **Consd. & Expld.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61. **Consd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

115. *Add. Annotations:*—**Refd.** Rudd *v.* Rudd, [1924] P. 72; Bartlett *v.* Bartlett, [1925] A. C. 377; *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692; *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61. **Consd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

120a. Health of wife.]—WAHL *v.* A.-G. (1932), 147 L. T. 382, H. L.

128. *Add. Citation:*—4 Notes of Cases, 698, n.

134. *Add. Annotation:*—**Refd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

142. *Add. Annotations:*—*As to* (2) **Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444; H. *v.* H., [1928] P. 206.

145. *Add. Annotation:*—**Consd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692.

150. *Add. Citation:*—3 Macq. 852.

154. *Add. Annotation:*—**Refd.** A.-G. *v.* Yule & Mercantile Bank of India (1931), 145 L. T. 9.

PART II. SECT. 3, SUB-SECT. 2.—B. (b).

97 i. *Naval service.*]—There is no rule of law that a sailor in the Australian Navy cannot, while on service in Australia, acquire a domicile of choice in one of the Australian States.—SCHACHE *v.* SCHACHE & STREETER (1931), 31 S. R. N. S. W. 633; 48 N. S. W. W. N. 230.—**AUS.**

PART II. SECT. 3, SUB-SECT. 2.—B. (j).

146 i. *House or apartments rented in another country—Family estate kept up.*]—Deft., whose domicil of origin was Scottish & who held a Scottish title & owned large landed estates in Scotland, left Scotland in 1895 for Canada, & carried on business there until 1917. Thereafter he took a flat in New York, where he resided for a part of each year, in order to supervise his financial interests, which were in America, & to avoid British income tax. He retained his Scottish estates, & resided on them during some part of each year. In correspondence with his wife, who lived in London, he referred to the family residence on his Scottish estates as "home," & in an affidavit signed by him in 1920 he described himself as a domiciled Scotsman:—*Held:* deft. had failed to prove an intention to abandon his Scottish domicil & to acquire a domicil of choice in America.—Ross *v.* Ross, [1926] S. C. 1038.—**SCOT.**

ar. *Residence in country of origin retained—Residence in another country—Connections with country of origin continued.*]—*Re* MURRAY'S ESTATE, [1921] 3 W. W. R. 874; 31 Man. L. R. 362.—**CAN.**

st. ——— ———.]—DONALD *v.* DONALD, [1922] N. Z. L. R. 237.—**N.Z.**

155a. —— **Material consideration.**]—D., who was born in Edinburgh in 1858, went out to Calcutta, India, in 1875 & worked in his uncle's cotton mills, becoming a partner in his uncle's firm in 1880. In 1883 he returned for a few months, but from 1883 to 1900 remained working in India, making his business his life. He seldom went into society, but was fond of Indians, & chiefly associated with them. In 1900 he returned to England & married his cousin, & took her out with him to Calcutta in 1901, but, the climate not suiting her, she returned in Nov. 1901, to England. From Jan. 1903 to 1910, he paid visits for a substantial time each year to be with his wife in England, where he had bought a house. In 1903 a child was born. From Jan. 1912 to Nov. 1915, D. remained in England, being, it was said, detained by litigation. In 1916 his wife went out to Calcutta, & she & her daughter lived with her husband in his flat over his offices. She returned with her daughter after two months. In 1917 D. followed his wife home, & until his death on July 3, 1928, remained in England, except for short visits to India in 1919, 1920, 1922, 1924, & 1925. In his will dated June 28, 1922, he made a declaration of Indian domicile. On his death, the Crown, on the ground that he was domiciled in the United Kingdom, claimed death duties on his estate, the value of which was many millions of pounds. On the question whether, as the exors. of the will alleged, he had acquired a domicile of choice in India & lost his domicile of origin :—*Held :* the earlier period of D.'s life up to the year 1900 could not be estimated in deciding whether he had acquired a domicile of choice in India in a compartment separate from his later years, & the declaration in his will did not decide the point, but where his wife & children had their permanent residence was material as to a man's domicile. There was a distinction between residence & domicile, & it could not be inferred from the fact of residence that domicile resulted. On the facts there was no clear evidence, as was necessary, of any manifest & concluded intention of change of domicile to overcome the domicile of origin. Therefore the onus of proof of a domicile of choice was not discharged, & D. died domiciled in the United Kingdom.—A.-G. *v.* YULE & MERCANTILE BANK OF INDIA (1931), 145 L. T. 9, C. A.

Annotation :—**Refd.** Boldrini *v.* Boldrini & Martini, [1932] P. 9.

169a. **Declaration of change of domicil.**]—A.-G. *v.* YULE & MERCANTILE BANK OF INDIA, No. 155a, *ante*.

191. *Add. Annotation :*—**Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61.

192. *Add. Annotation :*—**Refd.** Fleming *v.* Horniman (1928), 138 L. T. 669.

214. *Add. Annotations :*—**Apld.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641. **Refd.** Mitford *v.* Mitford & Von Kuhlmann, [1923] P. 130; Inverclyde *v.* Inverclyde, [1931] P. 29.

218. *Add. Annotations :*—*As to* (1) **Consd.** H. *v.* H., [1928] P. 206. **Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444; Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641. *As to* (3) **Apld.** Nachimson *v.* Nachimson, [1930] P. 217. *Generally*, **Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

220. *Add. Annotations :*—*As to* (3) **Consd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444. *Generally*, **Refd.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641; H. *v.* H., [1928] P. 206.

221. *Add. Annotations :*—*As to* (2) **Consd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444; Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641. **Refd.** Nachimson *v.* Nachimson, [1930] P. 217.

223. *Add. Annotation :*—**Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

225. *Add. Annotation :*—**Expld.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

228. *Add. Annotations :*—**Consd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444; Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641; Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44; Inverclyde *v.* Inverclyde, [1931] P. 29. **Refd.** Mitford *v.* Mitford & Von Kuhlmann, [1923] P. 130; Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669; H. & H., [1928] P. 206.

236a. —— ——.]—BOWIE OR RAMSAY *v.* LIVERPOOL ROYAL INFIRMARY, No. 88a, *ante*.

243a. —— **Nature of doctrine.**]—DREVON *v.* DREVON, No. 52a, *ante*.

248. *Add. Annotations :*—**Consd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692; *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61. **Dbtd.** *Re* Askew, Marjoribanks *v.* Askew, (1930), 2 Ch. 259. **Refd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

249. *Add. Annotation :*—**Dbtd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692.

249a. —— ——.]—The question whether a person is or is not domiciled in a foreign country is to be determined in accordance with the requirements of English law as to domicil, irrespective of the question whether the

PART II. SECT. 3, SUB-SECT. 2.—G.

sw. *Income tax paid in country of choice—Claims for income tax in country of origin successfully resisted.*]—*Held :* facts of great importance in determining question of domicil.—BARRY *v.* JAMES (1921), *Times*, Apr. 29; [1921] 3 W. W. R. 182.—**S. AF.**

PART II. SECT. 3, SUB-SECT. 4.

230 x. —— ——.]—BOYLE *v.* BOYLE, [1925] 1 W. W. R. 829.—**CAN.**

230 xi. —— ——.]—JONES *v.* JONES (1923), I. L. R. 1 Ran. 705.—**IND.**

230 xii. —— ——.]—To establish change of domicil, it must be proved that the change was made with a clear intention of settling there, as a person whose ultimate & permanent home was to be in that country. The entire burden of proving change of domicil lies on him who wants to establish it.—LINTON *v.* GUDERIAN (1928), I. L. R. 56 Calc. 530.—**IND.**

230 xiii. —— ——.]—HARRISON *v.* HARRISON, [1929] N. Z. L. R. 668.—**N.Z.**

230 xiv. —— ——.]—BROWN *v.* BROWN, [1928] S. C. 542.—**SCOT.**

PART II. SECT. 4.

239 iii. —— ——.]—The doctrine of Anglo-Indian domicile forms no part of the law of Scotland; held, therefore, the fact of residence in India in the service of the East India Co. was not *per se* sufficient to cause loss of Scottish domicile.—GRANT *v.* GRANT, [1931] S. C. 238.—**SCOT.**

sx. *What may be considered.*]—In the case of a European claiming to be domiciled in India it will be pertinent to inquire where his father lived & died or resides, as the case may be, where he & his father were born, the circumstances in which he came to & resides in India, which will assist in ascertaining whether there exists an *animus revertendi* or *animus manendi* his object in residing in India & generally as to the conditions under which he lives & his habits of life.—WRIGHT *v.* WRIGHT (1930), I. L. R. 58 Calc. 259.—**IND.**

Part VI.—Succession.

439. *Add. Annotation :*—**Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

439a. —— **Interest in proceeds of sale of English freeholds.**]—*Re* BERCHTOLD, BERCHTOLD *v.* CAPRON, No. 302, *ante.*

440a. —— **Will of Egyptian realty made by British subject domiciled in Egypt—Ottoman Order in Council, 1910, art. 90.**]—A Moslem British subject domiciled in Egypt died in 1918 possessed of property which was all in Egypt. He was survived by his mother, who according to the Moslem law of inheritance was entitled to a one-sixth share of his estate. Deceased executed a will in the English form leaving all his property to his widow & children :—*Held :* having regard to the proviso to the above art. testator had no testamentary power over the share of his estate to which his mother was entitled by Moslem law.—BARTLETT *v.* BARTLETT, [1925] A. C. 377 ; 94 L. J. P. C. 100 ; 133 L. T. 23, P. C.

440b. —— **Will of Italian realty by British subject domiciled in Italy.**]—*Re* ROSS, ROSS *v.* WATERFIELD, No. 457a, *post.*

448. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

456. *Add. Annotation :*—**Refd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61.

457. *Add. Annotation :*—*Generally*, **Refd.** Taxes Comr. *v.* Union Trustee Co. of Australia, Ltd., [1931] A. C. 258.

457a. ——.]—(1) The succession to movable property, wherever situate, is governed by the law of testator's domicil, that is to say, the whole law of the country of domicil, including the rules of private international law administered by its tribunals. The inquiry in an English ct. before which such a question of succession comes is, therefore, what the cts. of the country of domicil would decide in the particular case. The result is that, where by the law of the domicil the succession to the movables of a testator depends on the law of that testator's nationality, an English ct. will hold that the succession is governed by the law of the nationality & not by the municipal law of the domicil.

(2) The succession to the immovable property situate in Italy of an English testator domiciled in Italy is to be determined by Italian law, namely, in the same manner as English Courts would determine it if the property belonged to an Englishman & was situate in England.—*Re* ROSS, ROSS *v.* WATERFIELD, [1930] 1 Ch. 377 ; 99 L. J. Ch. 67 ; 142 L. T. 189 ; 46 T. L. R. 61.

Annotation :—*As to* (1) & (2) **Consd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

461. *Add. Annotations :*—**Refd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61. **Refd.** Papadopoulos *v.* Papadopoulos, [1930] P. 55.

463. *Add. Annotations :*—*As to* (1) **Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61. *As to* (2) **Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61.

467a. —— **Law of nationality.**]—*Re* ROSS, ROSS *v.* WATERFIELD, No. 457a, *ante.*

468a. ——.]—English subject resident & dying in England, where his will was proved, but having debts & choses in action in Scotland : —*Held :* the latter were distributable as the rest of his effects.—THORNE *v.* WATKINS (1750), 2 Ves. Sen. 35 ; 28 E. R. 24, L. C.

PART VI. SECT. 1, SUB-SECT. 1.

436 iii. ——.]—Where on the death intestate of an owner of land situate in S. his title is subject to the interest of a purchaser under an outstanding agreement for sale the interest of the deceased in the land is immovable, not movable, property &, therefore, devolves according to the law of S., & is to be administered by the representative of the estate in that province, even though the deceased died domiciled elsewhere.—*Re* BURKE ESTATE, [1928] 1 D. L. R. 318 ; 22 Sask. L. R. 142 ; [1927] 3 W. W. R. 718.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 2.—A.

440 iii. —— *Scottish holograph will of Irish realty.*]—*Held :* a holograph will of a British subject executed in Scotland according to the law of Scotland, but not executed according to the formalities prescribed by Wills Act, 1837, is inoperative to convey registered freehold land of a testatrix purchased under Land Purchase Acts (Ireland) & situate in Northern Ireland, such land being real estate although it vests in the personal representative of the registered owner as if it were a chattel real, & though on intestacy the beneficial interest in it devolves as if it were personal estate. The doctrine of the *lex situs* applied thereto.—M'GINN *v.* DELBEKE (1926), 61 I. L. T. 117.—**IR.**

sy. *Will of Chinese Buddhist domiciled in Burma—Whether Chinese customary law applicable—Right to make will.*]—Chinese customary law governs the succession to the estate of a Chinaman domiciled in Burma. The right of the Chinese to make wills has also been recognised.—CHAN PYV *v.* SAW SIN (1928), I. L. R. 6 Ran. 623.—**IND.**

PART VI. SECT. 2, SUB-SECT. 1.—A.

453 ix. ——.]—Testator who had formerly resided in N.Z. went to Victoria, where according to an affidavit filed by his exor. he acquired & at his death retained a domicil. The bulk of his property was invested in bonds & in mtges. of land in N.Z. :—*Held :* the mtges. were movable property, & the intestate succession to them was governed by the law of deceased's domicil.—*Re* O'NEILL, ETC., [1922] N. Z. L. R. 468.—**N.Z.**

453 x. ——.]—War Stock & National War Bonds are Imperial or British investments, although administered in England, & where testator was domiciled in Scotland :—*Held :* the effect of the destinations fell to be ascertained according to Scots law, & not according to English law.—CUNNINGHAM'S TRUSTEES *v.* CUNNINGHAM, [1924] S. C. 581.—**SCOT.**

453 xi. ——]—A domiciled Scotsman died leaving a will in Scottish form, by which he conveyed his estate to Scottish trustees, & directed them to set aside a certain sum for the use of a liferentrix, & on her death to pay a legacy out of it to a named legatee. He further directed that, in the event of the legatee predeceasing the period of division without leaving issue, the legacy should be paid to the legatee's "nearest heirs." The legatee predeceased the liferentrix without leaving issue. Both at the date of testator's death & his own death he was a domiciled Englishman. On the death of the liferentrix :—*Held :* in the absence of any indication of a contrary intention on the part of testator, the legatee's heirs fell to be ascertained by the law of his domicil, *i.e.*, the law of England.—SMITH'S TRUSTEES *v.* MACPHERSON, [1926] S. C. 983.—**SCOT.**

PART VI. SECT. 2, SUB-SECT. 2.

468 vii. ——.]—Indian Succession Act, therefore, governs the succession to the estates of "Chinese Buddhists," whether born in China or born in Burma, who were domiciled & died in Burma. Even if "Chinese Buddhists" are Buddhists within Burma Laws Act, s. 13 (1), Chinese customary law cannot be applied to their estates, because it is not Buddhist law. The law of justice, equity, & good conscience must, therefore, be applied under Burma Laws Act, s. 13 (3), & Indian Succession Act should govern the succession to the estates of "Chinese Buddhists," as being the law of justice, equity, & good conscience, in view of the fact that it is the general law of succession in India & is the law which governs the succession to the estates of all other Chinese domiciled & dying in Burma, whose personal law is identical with that of "Chinese Buddhists."—PHAN TIYOK *v.* LIM KYIN KAUK (1930), I. L. R. 8 Ran. 57.—**IND.**

sd. *Intestate domiciled abroad leaving shares in Canadian company—Issue as to ownership of shares—By what court determined.*]—*Re* FENWICK (1915), 35 O. L. R. 29 ; 9 O. W. N. 227.—**CAN.**

481. *Add. Annotations :—As to* (3) **Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61; *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

511. For the paragraph in the original volume substitute the following paragraph :—

—— **Share in proceeds of sale of freeholds—Held on trust for sale but not converted.**]—An interest in the proceedings of sale of real estate settled upon a trust for sale, which has not been executed, is personal estate within Wills Act, 1861 (c. 114), s. 1.—*Re* LYNE'S SETTLEMENT TRUSTS, *Re* GIBBS, LYNE *v.* GIBBS, [1919] 1 Ch. 80; 88 L. J. Ch. 1; 120 L. T. 81; 35 T. L. R. 44; 63 Sol. Jo. 53, C. A.

Annotation :—**Refd.** *Re* Berchtold, Berchtold *v.* Capron, [1923] 1 Ch. 192.

517. *Add. Annotation :*—**Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61.

521. *Add. Annotation :*—**Folld.** *Re* Cunnington, Healing *v.* Webb, [1924] 1 Ch. 68.

526a. —.]—By his will made in English form in England testator, who described himself as a British subject residing in France, bequeathed to his sole exor., who was English, all his estate upon trust for conversion, & after payment of certain legacies to domestic servants, to divide all the residue of his estate equally between ten named legatees; & if any of such legatees died in his lifetime the legacy was to belong to the issue of such person. Testator died in France, & his will was proved in England. Two of the residuary legatees died in his lifetime, but neither left any issue. There was no realty & the property comprising the residue was in England. The residuary legatees were all English. On a summons the domicil of testator at his death was held to be French. By French law there was no lapse of the shares of those legatees who had died, & the survivors were entitled :—*Held :* the domicil being French & there being no sufficient indication in the will, either express or implied, that testator desired that it should be construed by English law, the *primâ facie* general rule applied, & the will must be construed by French law.—*Re* CUNNINGTON, HEALING *v.* WEBB, [1924] 1 Ch. 68; 93 L. J. Ch. 95; 130 L. T. 308; 68 Sol. Jo. 118.

528. *Add. Annotation :—As to* (1) **Refd.** *Re* Manners, Manners *v.* Manners, [1923] 1 Ch. 220.

536. *Add. Annotation :*—**Consd.** Favorke *v.* Steinkopff, [1922] 1 Ch. 174.

548a. —— ——.]—Funds in ct. standing to the credit of an infant, having a foreign domicil, ordered to be paid out to her on her attaining the age of eighteen, being her full age according to the law of her domicil.—*Re* SCHNAPPER, [1928] 1 Ch. 420; 97 L. J. Ch. 237; 139 L. T. 42; 72 Sol. Jo. 137.

563a. —— ——.]—Administration, with a copy of the will annexed, of a party domiciled in Scotland, granted, in conformity with the grant of the ct. of competent jurisdiction in Scotland, though great doubt entertained as to the correctness of the grant in Scotland. —*In the Goods of* HENDERSON (1850), 2 Rob. Eccl. 144; 7 Notes of Cases, 378; 163 E. R. 1271.

574. *Add. Annotation :*—**Refd.** *Re* McLaughlin, [1922] P. 235.

580a. **Foreign grant of will & unattested codicil—Followed.**]—*In the Goods of* FOY (1839), 2 Curt. 328; 163 E. R. 428.

587a. —— —— **Will made after death according to directions of deceased—Valid under Spanish law—Grant made.**]—*In the Goods of* OSBORNE (1855), Dea. & Sw. 4; 26 L. T. O. S. 128; 1 Jur. N. S. 1220; 4 W. R. 164.

587b. *S. P. In the Goods of* GUTTIEREZ (1869), 38 L. J. P. & M. 48; 17 W. R. 742; *sub nom. In the Goods of* GUTIERES, 20 L. T. 758; 33 J. P. 535.

590. *Add. Annotation :*—**Consd.** *In the Goods of* Grewe (1922), 127 L. T. 371.

594. *Add. Annotations :*—**Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61. **Refd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692.

594a. —— ——.]—A British born subject, domiciled in Malta, having made his will in England, according to English law, & not according to the law of Malta applicable to wills made in that island, the ct. refused to pronounce against the validity of the will, there being no evidence to show that the cts. at Malta would consider it invalid, but rather the contrary.—FRERE *v.* FRERE (1847), 5 Notes of Cases, 593.

Annotation :—**Consd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61.

615. *Add. Annotation :—As to* (2) **Folld.** *Re* Cunnington, Healing *v.* Webb (1923), 68 Sol. Jo. 118.

621a. ——.]—Testator gave a share of his residuary estate to trustees upon trust for sale & to stand possessed of the proceeds to pay the income to M. for life & then for such persons as she should by will appoint, & in default of appointment for her children at twenty-one in equal shares. M. married a German in 1880 & died in 1922, leaving two daughters who attained twenty-one. By her will, made in German form, she appointed the elder her heiress, the younger to receive only her legal portion :—*Held :* the will was an effectual exercise of the power.—*Re* STRONG, STRONG *v.* MEISSNER (1925), 95 L. J. Ch. 22; 69 Sol. Jo. 693.

PART VI. SECT. 2, SUB-SECT. 3.—D. (a).

521 lv. ——.]—*Re* ROPER (Deceased), [1927] N. Z. L. R. 731.—**N.Z.**

PART VI. SECT. 2, SUB-SECT. 3.—D. (b).

sm. *"Heirs"—In Canadian will—Whether adopted children included.*]—Where in a will of testator domiciled in British Columbia a gift of personalty is made to a person "or his heirs" & such person dies domiciled in a foreign country before the death of testator, the word "heirs" includes an adopted child, where under the law of that country the effect of adoption is to confer on an adopted child all the rights & status of a child born in lawful wedlock.—PURCELL *v.* HENDRICKS & MARKS, (B.C.), [1925] 3 D. L. R. 854; [1925] 2 W. W. R. 689.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 4.—A. (c).

so. *Grant to attorney of executrix.*]—Where a testator domiciled in Quebec made an "authentic will" under the law of that province & the sole executrix resided therein & the attorney appointed by her filed a duly authenticated copy of said will with the Surrogate ct. in Saskatchewan letters of administration with the will annexed were granted to him for the use & benefit of the executrix & until she should duly apply for & obtain probate. —*Re* POIRIER ESTATE (Sask.), [1929] 4 D. L. R. 1080; 1 W. W. R. 904.—**CAN.**

626a. Over stock representing proceeds of sale of real estate in England—& liable to be laid out in purchase of land.]—An Englishwoman, domiciled in France, having a general power of appointment over a sum of stock, representing a share of proceeds of real estate in England sold under the judgment in a partition action, such proceeds being liable to be laid out in the purchase of land under Settled Estates Act, 1877 (c. 18), s. 34, by her will in the French language gave "all her properties & chattels (*tous les biens et droits* ," to T. absolutely:—*Held:* the will must be construed as disposing of everything in the form of personal estate over which testatrix had a general power of disposition, & the fund being personal estate in form, it passed by the will.—*Re* HARMAN, LLOYD *v.* TARDY, [1894] 3 Ch. 607; 63 L. J. Ch. 822; 71 L. T. 401; 8 R. 549.

Annotation:—**Reld.** *Re* Scholefield, Scholefield *v.* St. John *Re* Young, Smith *v.* St. John, [1905] 2 Ch. 408.

638. *Add. Citation:*—127 L. T. 117.

Part VII.—Contracts.

639. To the cross-reference before this case add "No. 1981a."

639a. ——.]—Pltf. was received by defts., a British co., under a contract made in Detroit, to be carried in one of their steamships from New York to Southampton. The contract contained a clause that the shipowners should not be liable for loss, damage or delay to a passenger or his baggage arising from the act of God, or from causes of any kind beyond the carrier's control, even though the loss, damage or delay might have been caused by the neglect or default of the shipowners' servants. It was further provided that all questions arising under the clause should be decided according to English law. A subsequent clause provided that no claim under the contract should be enforceable against the shipowners unless a written notice thereof was delivered to them within three days after the passenger should be landed from the steamer at the termination of her voyage. In the course of the voyage one of pltf.'s hands was injured by reason of the negligence of defts.' servants, but no written notice of any claim was given by pltf. within the time limited by the contract:—*Held:* the language of the contract showed that it was the intention of the parties that it should be wholly governed by English law; the clause relieving defts. from liability for the negligence of their servants, though void by the law in force in Detroit, was valid & enforceable, by English law, but, applying the *ejusdem generis* rule, the clause did not absolve defts. from liability for pltf.'s injury.—JONES *v.* OCEANIC STEAM NAVIGATION CO., LTD., [1924] 2 K. B. 730; 93 L. J. K. B. 1053; 132 L. T. 207; 40 T. L. R. 847; 69 Sol. Jo. 106; 16 Asp. M. L. C. 432.

640. *Add. Annotation:*—**Apld.** Pass *v.* British Tobacco Co. (Australia) (1926), 42 T. L. R. 771.

640a. —— **Inclusion of provisions of local Ordinance.**]—Certain parcels of oranges were shipped at Jaffa upon an Esthonian steamship for carriage to Hull. The ship was under time charter to a British firm, who ran a line of steamships called the Jaffa Union Line. The bills of lading, which were signed by directors of a Palestine corporation, the Jaffa Union Line, Ltd., contained the following clause: "This bill of lading wherever signed is to be construed in accordance with English law." Pltfs. were Hull fruit merchants, two of whom were indorsees of certain of the bills of lading & sued as owners of the cases of fruit therein mentioned; nine others had merely paid the freight & sued on an implied contract with deft. shipowners to deliver the cases in good order & condition according to the terms of the bills of lading. The Palestine Carriage of Goods by Sea Ordinance, No. 43 of 1926, incorporated the rules relating to bills of lading adopted by the International Conference on Maritime Law held at Brussels in 1922–23, generally known as the Hague Rules. Clause 4 of the Ordinance was in the following terms: "Every bill of lading . . . issued in Palestine which contains or is evidence of any contract to which the Rules apply shall contain an express statement that it is to have effect subject to the provision of the said Rules as applied by this Ordinance, & shall be deemed to have effect subject thereto, notwithstanding the omission of such express statement." Pltfs.' action was in respect of damage &/or short delivery. Defts. set up various exceptions in the bills of lading, & pltfs. pleaded in reply that the contracts were governed by the Palestine Ordinance; that accordingly, notwithstanding the omission of a statement to that effect, the Hague Rules should be deemed to be written into the contracts, &, therefore, that the exceptions relied on were of no avail. The question whether the bills of lading were subject to the provisions of the Ordinance was set down for trial as a preliminary issue. The judge held that they were so subject, & that all pltfs. were entitled to succeed on the preliminary issue. Defts. appealed:—*Held:* (1) the express terms of the Ordinance, based on an international convention, could not be defeated by the insertion of a clause in the bills of lading that they were to be construed according to English law, & the bills of lading were subject to the provisions of the Ordinance & the Rules thereunder, &, with those terms read into them, should then be construed according to English law; but (2) the ct. had not sufficient information as to the facts to determine the effect of that decision on the nine pltfs. who sued on implied contracts, &, while the appeal would be dismissed, the judgment must be varied to that extent.—THE TORNI, [1932] P. 78; 101 L. J. P. 44; 147 L. T. 208; 48 T. L. R. 471, C. A.

640b. Agreement for contract to be subject to foreign law—Contract cancelled by decree of

foreign Government.]—In May, 1903, pltf. took out a 20 year endowment life insurance policy with defts. for 10,000 roubles payable at defts.' office in St. Petersburgh, & by the terms of the policy all premiums were to be paid in Russia. Pltf. paid all the premiums in Russia down to 1917, & then in London down to 1919. By the terms of an Imperial Decree of the Russian Empire, dated July 7, 1889, which were incorporated in the policy, it was provided (*inter alia*) that all disputes in connection with insurance operations should be settled according to Russian laws & in Russian cts. of justice. By a Monopolisation Decree of the Russian Soviet Govt., dated Dec. 1918, insurance in all its forms was declared a State monopoly, & in Nov. 1919, a Decree of Cancellation abolished life assurance altogether in the Soviet Republic, & all existing contracts were annulled. In those circumstances pltf., who was prevented by the above decrees of 1918 & 1919 from suing on the policy in Russia, brought an action in England for a declaration that defts. were liable to him under the policy :—*Held :* the proper law of the contract was, according to the policy rules, the law of Russia, & the effect of the Cancellation Decree of Nov. 1919, was that the contract, if in fact there was any contractual *nexus* left in existence between the parties after the Monopolisation Decree of 1918 came into force, was annulled, & pltf. could not recover on it.—PERRY *v.* EQUITABLE LIFE ASSURANCE SOCIETY OF U.S.A. (1929), 45 T. L. R. 468.

641. *Add. Annotation :—As to* (2) **Refd.** N. V. Kwik Hoo Tong Handel Maatschappij *v.* Finlay, [1927] A. C. 604.

642. *Add. Annotation :—As to* (1) **Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

643. *Add. Annotations :*—**Refd.** Jones *v.* Oceanic Steam Navigation Co., [1924] 2 K. B. 730; N. V. Kwik Hoo Tong Handel Maatschappij *v.* Finlay, [1927] A. C. 604.

644. *Add. Annotation :—As to* (2) **Refd.** Cayzer, Irvine *v.* Board of Trade (1926), 95 L. J. K. B. 1054.

645a. ——.]—The master of a North German ship, lying at Constantinople, entered into a charterparty with North German subjects, there resident, to carry a cargo to a port in the United Kingdom or on the continent, to be delivered to English consignees. The charterparty & the bill of lading given under it were in the English language, & it was stipulated that the ship should call at one of three ports of the United Kingdom for orders. The ship duly called at F., & was ordered to proceed to an English port to discharge :—*Held :* as the intention of the parties as to what law should govern was to be gathered from the circumstances of the case, &, as the giving of the orders fixed the seat of the contract in England, the law of England applied. —THE WILHELM SCHMIDT (1871), 25 L. T. 34 ; 1 Asp. M. L. C. 82.

Annotations :—**Consd.** The Adriatic (1931), 47 T. L. R. 638. **Refd.** The San Roman (1872), L. R. 3 A. & E. 583 ; The Dannebrog (1874), 31 L. T. 759.

646. *Add. Annotations :*—**Apld.** Jones *v.* Oceanic Steam Navigation Co., [1924] 2 K. B. 730. **Consd.** The Adriatic (1931), 47 T. L. R. 638. **Expld. & Distd.** The Torni (1932), 48 T. L. R. 471. **Refd.** N. V. Kwik Hoo Tong Handel Maatschappij *v.* Finlay, [1927] A. C. 604.

(c) *Application of Lex loci solutionis* (Vol. XI., p. 392).

650a. **Contract by State—Loan.**]—When the Govt. of a State contracts a loan in another country, the contract is governed by the law of the State whose Govt. contracts the loan, & not by the law of the country in which the contract is made.—SMITH *v.* WEGUELIN (1869), L. R. 8 Eq. 198 ; 38 L. J. Ch. 465 ; 20 L. T. 724 ; 17 W. R. 904.

Annotation :—**Refd.** Goodwin *v.* Robarts (1876), 1 App. Cas. 476.

Before **659** add as follows :—

658a. **General rule.**]—Where a contract made in one country is to be performed in another, the law governing the contract is the law of the country where the performance is to take place.

A contract for the sale of goods, made in Malta, was to be performed by the delivery of the goods on board a ship at Gibraltar selected by the purchaser :—*Held :* as from the moment of such delivery, the vendor had no further control over the goods, & had parted with their possession of & property in them, & the purchaser had, after their arrival in Malta, dealt with them in a manner inconsistent with the ownership of the vendor, he had no right to reject the goods & rescind the contract, which was governed by the law of Gibraltar.—BENAIM & CO. *v.* DEBONO, [1924] A. C. 514 ; 93 L. J. P. C. 133 ; 131 L. T. 1, P. C.

664. *Add. Annotation :*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

668. *Add. Annotations :*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669; *Re* Visser, Holland *v.* Drukker, [1928] Ch. 877.

669. *Add. Annotation :*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

670. *Add. Annotations :*—**Consd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669. **Refd.** *Re* Visser, Holland *v.* Drukker, [1928] Ch. 877.

672. *Add. Annotation :*—**Refd.** Farr, Smith *v.* Messers, [1928] 1 K. B. 397.

676. *Add. Annotation :*—**Refd.** Russian Commercial & Industrial Bank *v.* Comptoir D'Escompte de Mulhouse, [1923] 2 K. B. 630.

PART VII. SECT. 2, SUB-SECT. 1.—B. (b).

652 vi. —— *Assessment of damages.*]—Damages recoverable in an action for breach of contract made abroad will be determined by the proper law of the contract, that is to say, the law which the parties intended should govern their rights & liabilities.—HORST *v.* LIVESLEY, [1924] 2 D. L. R. 1002 ; [1924] 2 W. W. R. 443 ; 34 B. C. R. 19 ; *affd.*, [1925] 1 D. L. R. 159.—**CAN.**

652 vii. ——.]—LUCAS & CO. *v.* MONCTON SUPPLY CO., [1924] 4 D. L. R. 376.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 1.—B. (c).

m. Read now "**658a** i."

PART VII. SECT. 2, SUB-SECT. 4.—A.

so. *Jurisdiction of court to enforce—Contract to be performed abroad—Defendants resident within jurisdiction.*]—Where defts. in a suit reside in this country & the principal office of pltfs. is in England, & a contract is entered into there between the parties which is to be executed in New York, a suit in respect thereof may be instituted in this Province.—DIRECT CABLE CO. *v.* DOMINION TELEGRAPH CO. (1881), 28 Gr. 648 ; (1883) 8 A. R. 416.—**CAN.**

sn. *Offer made & accepted by post—Governed by law of country of offeror.*]—RENFREW FLOUR MILLS *v.* SANSCHAGRIN (1928), Q. R. 45 K. B. 29.—**CAN.**

683. *Add. Annotation :*—**Refd.** The Colorado, [1923] P. 102.

688. *Add. Annotation :*—**Refd.** Benaim *v.* Debono, [1924] A. C. 514.

691a. —— **Charterparty in English—Entered into by master of German ship with Germans abroad—To take cargo to England.**]—THE WILHELM SCHMIDT, No. 645a, *ante*.

692. *Add. Annotation :*—**Consd.** The Adriatic (1931), 47 T. L. R. 638.

694. *Add. Annotation :—As to* (2) **Consd.** The Adriatic (1931), 47 T. L. R. 638.

694a. —— **Charterparty made in Egypt—Documents & consignees English—Ship Swedish.**] —By two freight engagement notes made in Egypt between pltfs., a firm carrying on business in Egypt, & defts., a British co. with a branch office in Egypt, pltfs. agreed to reserve room for certain cottonseed for shipment to London by a steamer to be specified. Under a charterparty made between the owners of the Swedish steamship *A.* & pltfs. as charterers the *A.* loaded the cargo at Alexandria for delivery in London; & pltfs., "as agents only," issued bills of lading whereby the cargo was to be delivered in London to the order of the defts. on payment of freight by them at the specified rate. In the course of the voyage the *A.* came into collision with another vessel, & was so badly injured that she had to be towed to Cadiz, where she was found to be a constructive total loss. The cargo, accordingly, was discharged at Cadiz & delivery was taken there by defts. Pltfs., suing on behalf of the shipowners, claimed distance (*i.e. pro rata*) freight, which they alleged was payable either under the law of the flag (Swedish) or the *lex loci contractus* (Egypt). Defts. alleged that the law of England applied, under which *pro rata* freight is not payable :—*Held :* all the authorities showed that the best criterion of what law was to be applied was to be found in the intention of the parties, &, if the parties intended otherwise, the presumption was rebutted that a contract for the carriage of goods by sea was governed by the law of the flag; looking at the circumstances broadly, & having regard (*inter alia*) to the facts that all the documents were in English & on English forms, that delivery & payment were to be in England, the freight engagement notes did not specify a ship of any particular nationality, defts. were a British firm, & the British position in Egypt had for many years been predominant, the inference was that the parties, who as business people must be taken to have intended what was most convenient, intended English law to apply; & consequently the claim for distance freight failed.—THE ADRIATIC, [1931] P. 241; 100 L. J. P. 138; 145 L. T. 580; 47 T. L. R. 638.

Annotation :—**Refd.** The Torni, [1932] P. 27.

699. *Add. Annotations :*—**Consd.** Cantiere Navale Triestina *v.* Russian Soviet Naphtha Export Agency, [1925] 2 K. B. 172. **Apld.** Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 569. **Consd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470. **Refd.** Equitable Trust Co. of New York *v.* Henderson (1930), 47 T. L. R. 90.

703a. ——, —— **Policy effected in England by foreigner—With foreign company through English office.**]—Pltf. co. was incorporated by special Act of the Legislature of New York, & had its central office & the bulk of its assets in New York. The co. had a branch in London & in most of the capitals of Europe, the branch in Paris being its head office for Europe. The general manager of the London branch had no general authority to issue policies in this country. Certain life policies signed by the president & secretary of the co. & countersigned by the general manager for Europe, were issued in London to German nationals before the outbreak of the war. The policies were not under seal. The policy moneys were expressed to be payable in London, but all premiums were payable either at the central office in New York or at the office where the insurance was payable, & proofs of death were to be furnished at the New York office. An indorsement on the policy provided that it should be construed according to English law :—*Held :* it was permissible & necessary to look at the terms of the contracts & to determine from them at what place the debts would be recoverable; applying that test in the present case, the debts were recoverable in London where they were expressed to be payable.—NEW YORK LIFE INSURANCE CO. *v.* PUBLIC TRUSTEE, [1924] 2 Ch. 101; 93 L. J. Ch. 449; 131 L. T. 438; 40 T. L. R. 430; 68 Sol. Jo. 477, C. A.

Annotations :—**Refd.** Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255; Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

705. *Add. Annotation :—As to* (1) **Refd.** The Colorado, [1923] P. 102; The Zigurds (No. 1) (1932), 48 T. L. R. 556.

705a. Insurance against loss by forged document—Governed by English law—Insurance in London—Business carried on in New York.]—Pltfs., who carried on business in New York, took out a policy of insurance in London against loss which they might incur by having acted upon any document which might prove

PART VII. SECT. 2, SUB-SECT. 4.—B. (b).

f i. —— *Incorporation of Harter Act.*] Pltf. contracted with deft. ship for the carriage of a cargo of wheat from Buffalo to Montreal. Pltf. was an American, the ship was an American ship, & the contract was made in the United States. Deft. alleged that the contract or bill of lading was issued subject to the Harter Act, the terms & conditions of which applied to & formed part of such contract, while pltf. alleged that as this Act was not referred to or made part of the contract it did not apply :—*Held :* the obligations of the parties under this contract were governed by the laws of the United States. Under the laws of the United States the Harter Act did not need to be referred to in the bill of lading to become binding on the parties, & said Act was to be applied in this case.—J. RICHARDSON & SONS, LTD. *v.* SS. BURLINGTON (Que. Adm.), [1931] S. C. R. 96; [1930] 4 D. L. R. 527; *affg.*, [1929] Ex. C. R. 186.—**CAN.**

f ii. —— —— ——.]—Each of two bills of lading, which were similar, for certain goods to be carried from the United States of America to the Irish Free State in a ship, the property of the United States Shipping Board, stated that the shipments were subject to all the terms & provisions of, & all the exemptions from liability contained in, the Harter Act, an Act of Congress of the United States of America :—*Held :* the bills of lading were American contracts, & as such should be construed by American law, & that law must be proved or admitted before the ct. would be competent to decide the questions of law submitted in the special case.—MACNAMARA *v.* S.S. HATTERAS, [1931] I. R. 337.—**IR.**

PART VII. SECT. 2, SUB-SECT. 4.—B. (o).

701 i. *Marine policy—Governed by lex loci contractus.*]—PATTERSON *v.* CONTINENTAL INSURANCE CO. (1859), 18 U. C. R. 9.—**CAN.**

703 ii. —— ——.]—*Re* HEWITT & HEWITT (Ont.) (1918), 14 O. W. N. 300; 43 D. L. R. 716.—**CAN.**

" to have been forged." During the currency of the policy pltfs. were induced to lend money to a firm by a document containing a false statement of the firm's assets & liabilities. Before the whole of the loan had been repaid the firm became bkpt., & the pltfs. sued an underwriter on the policy. By the law of the State of New York forgery includes " a false statement of financial condition." A member of the firm had since been convicted in New York of forgery. Pltfs. contended that the word " forged " in the policy must be construed by the law of New York where the loss occurred, & that therefore it was immaterial if the document was not a forgery according to English law :—*Held :* even if the document was a forged document according to the law of New York the word " forged " was used in the policy merely to describe an existing state of fact & not as a term of art to be construed according to the law of the place where the loss happened, & accordingly the action failed.—EQUITABLE TRUST CO. OF NEW YORK *v.* HENDERSON (1930), 47 T. L. R. 90.

709. *Add. Annotation :*—**Refd.** Behnke *v.* Bede Shipping Co., [1927] 1 K. B. 649.

709a. —— **Contract cancelled by decree of foreign Government.**]—PERRY *v.* EQUITABLE LIFE ASSURANCE SOCIETY OF U.S.A., No. 640b, *ante.*

711. *Add. Annotation :*—*As to* (1) **Refd.** The Colorado, [1923] P. 102.

716. *Citations :*—For " 5 De G. M. & G. 604 " read " 1 De G. M. & G. 604."

719. *Add. Annotation :*—**Refd.** The Colorado, [1923] P. 102.

730. *Add. Annotation :*—**Distd.** Foster *v.* Driscoll Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

732. *Add. Annotation :*—**Distd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

732a. —— **Goods to be smuggled into foreign country—Not enforceable in England.**]—F., a financier, L., a distiller, D. & M., a firm of shipbrokers, & one A. were minded to load a ship with a cargo of whisky to be carried across the Atlantic & sold in the U.S. or at some point from which it could easily be smuggled into the U.S., in violation of the laws of that country. D. & M. entered into a contract to buy a steamer for £2,565 ; F. advanced £256 as a deposit on the purchase. On Oct. 26, 1927, an agreement was entered into between F., L. & D. & M., whereby L. agreed to sell to D. & M. 7,500 cases of whisky at 27*s.* 6*d.* a case free on board at Leith or Glasgow to be delivered *ex* warehouse not later than Nov. 26. D. & M. were to take delivery on board a vessel of a regular line of steamers. Payment was to be made by a bill for £5,500 drawn by F., accepted by A. & indorsed to L., & a second bill for £4,812 accepted by A. & D. & M., both bills to be payable ninety days from Nov. 26, & to be drawn & accepted on Oct. 26, & handed to L. to hold as security until he should hand the shipping documents or delivery order from bond on or before Nov. 26. L. agreed to lend D. & M. £2,500 (£1,000 at 8 per cent. *per annum* & £1,500 at 40 per cent. *per annum* interest) for the purchase of the steamer, the loan to be secured by a first mtge. on the steamer. F. agreed to lend D. & M. £1,000 at 40 per cent. *per annum* interest to be secured by a second mtge. on the steamer. D. & M. agreed to insure the steamer for £1,000 against all risks including seizure or confiscation & £2,500 against marine risks & deliver to L. cover notes for £1,500 & £1,000 & to F. a cover note for £1,000. F. & L. agreed jointly to underwrite the insurance for £1,000 against confiscation at a figure to be agreed in the event of the ordinary market rate exceeding thirty guineas per cent. D. & M. agreed to provide £1,600, the estimated balance required for the equipment of the steamer for the voyage :—*Held :* the object to be attained by this agreement being a breach of international comity, the agreement was contrary to public policy & void.—FOSTER *v.* DRISCOLL, LINDSAY *v.* ATTFIELD, LINDSAY *v.* DRISCOLL, [1929] 1 K. B. 470 ; 98 L. J. K. B. 282 ; 140 L. T. 479 ; 45 T. L. R. 185, C. A.

Annotation :—**Refd.** Carling Export Brewing & Malting Co., Ltd. *v.* R., [1931] A. C. 435.

733. *Add. Annotation :*—**Distd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

740. *Add. Annotation :*—*As to* (2) **Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

748. *Add. Annotations :*—*As to* (1) **Refd.** Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254. *Generally*, **Mentd.** Larrinaga *v.* Soc. Franco Americaine Des Phosphates de Medulla (1923), 92 L. J. K. B. 455.

750. *Add. Annotations :*—**Apld.** Soc. Anon. des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789. **Refd.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153.

752. *Add. Annotations :*—**Apld.** Soc. Anon. des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789. **Refd.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153.

752a. —— —— —— ——.]—Where money is lent in a foreign country for the purposes of gaming & gaming in that country is not illegal, & cheques payable in England are given for the money lent, pltf. can ignore the security & sue as for money lent to deft.—SOCIÉTÉ ANONYME DES GRANDS ETABLISSEMENTS DE TOUQUET PARIS-PLAGE *v.* BAUMGART (1927), 96 L. J. K. B. 789 ; 136 L. T. 799 ; 43 T. L. R. 278.

Annotation :—**Consd.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153.

757. *Add. Annotation :*—*As to* (1) **Apld.** Swiss Bank Corpn. *v.* Boehmische Industrial Bank, [1923] 1 K. B. 673.

PART VII. SECT. 2, SUB-SECT. 6.—D . sp. *Contract to indemnify bail.*]—Where a contract of indemnity against loss with respect to bail given in proceedings in a ct. of a foreign country, is lawful under the law of that country the contract, & the security, if any, given " in implement of the contract," can be enforced in Canada, even though the contract was executed in Canada & said security is a mtge. on Canadian land.—NATIONAL SURETY CO. *v.* LARSEN (B. C.), [1929] 4 D. L. R. 918 ; 3 W. W. R. 299 ; *revg.*, [1929] 3 D. L. R. 79 ; 2 W. W. R. 152.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 8.

756 i. *By act of parties—Payment—In what currency.*]—EHMKA *v.* BORDER CITIES IMPROVEMENT CO. (1922), 52 O. L. R. 193.—**CAN.**

756 ii. —— —— ——.]—MYERS *v.* UNION NATURAL GAS CO. (1922), 53 O. L. R. 88.—**CAN.**

756 iii. —— —— — —.]—Where a payment originating in one country is to be made in another country, & the currency denomination specified is the

Part VIII.—Torts.

777. *Add. Annotation :*—**Refd.** Isaacs *v.* Cook, [1925] 2 K. B. 391.

788. *Add. Citation :—sub nom.* BADTOLPH *v.* BAMFEILD, Cas. *temp.* Finch, 186.

789. *Add. Annotation :*—**Refd.** The Fagernes, [1927] P. 311.

796. *Add. Annotation :—As to* (2) **Refd.** Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271.

Part IX.—Marriage.

800. *Add. Annotations :*—**Consd.** Nachimson *v.* Nachimson, [1930] P. 217. **Refd.** Apted *v.* Apted & Bliss (1930), 143 L. T. 353.

801. *Add. Annotations :*—**Expld. & Distd.** Nachimson *v.* Nachimson, [1930] P. 217. **Refd.** Apted *v.* Apted & Bliss (1930), 143 L. T. 353.

802. *Add. Annotations :*—**Refd.** R. *v.* Moscovitch (1927), 44 T. L. R. 4; Spivack *v.* Spivack (1930), 99 L. J. P. 52.

803. *Add. Annotation :*—**Consd.** Nachimson *v.* Nachimson, [1930] P. 217.

803a. —— **Facilities for dissolution under local law immaterial.**]—Marriage is a voluntary union for life of one man & one woman to the exclusion of all others, & where a marriage in a foreign country complies with these requirements it is immaterial that under the local law dissolution can be obtained by mutual consent or at the will of either party with merely formal conditions of official registration.

A man & a woman, both domiciled Russians, entered in Russia into a contract accepted by the local law as one of marriage. The marriage could, according to the same law, be dissolved by mutual consent or at the will of one of the parties, with merely formal conditions of official registration :—*Held :* on an issue directed in a suit by the woman for judicial separation, that as the union so formed was of one man to one woman to the exclusion of all others, it constituted a valid marriage according to English law, notwithstanding that it could, according to the local law, be dissolved as stated above.—NACHIMSON *v.* NACHIMSON, [1930] P. 217; 99 L. J. P. 104; 143 L. T. 254; 94 J. P. 211; 46 T. L. R. 444; 74 Sol. Jo. 370; 28 L. G. R. 617, C. A.

Annotations :—**Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378; Spivack *v.* Spivack (1930), 99 L. J. P. 52.

806. *Add. Annotations :—As to* (3) **Consd.** Inverclyde *v.* Inverclyde, [1931] P. 29. **Refd.** Mitford *v.* Mitford, [1923] P. 130; Nachimson *v.* Nachimson, [1930] P. 217.

814. *Add. Annotation :—As to* (2) **Refd.** *Re* Askew, Marjoribanks *v.* Askew, [1930] 2 Ch. 259.

same in both countries, the rule is that the payment must be made in the currency of the country where the money is payable, unless by express terms or necessary implication payment in some other currency is required.—SIMMS *v.* CHERNENKOFF, [1922] 1 W. W. R. 967; 62 D. L. R. 703; 15 Sask. L. R. 185.—**CAN.**

PART VIII. SECT. 1.

775 xii. —— —— ——.]—Appellant, resident in Ontario, in the course of his employment was injured in that province owing to the negligence of a fellow servant. He sued for damages in Saskatchewan, in which province common employment was not a defence, although a defence to an action in Ontario :—*Held :* the action could not be maintained.—MCMILLAN *v.* CANADIAN NORTHERN RY. CO., [1923] A. C. 120; 92 L. J. P. C. 44; 128 L. T. 293; 39 T. L. R. 14.—**CAN.**

775 xiii. —— —— ——.]—An application under K. B. Act, 1920 (Sask.), for leave to bring an action for damages for personal injuries incurred in the province of Alberta in the course of pltf.'s employment was refused, on the ground that the acts complained of were not "unjustifiable" according to Alberta law, & an essential condition to found the action was not fulfilled.—WARD *v.* BRITISH AMERICAN OIL CO., LTD., [1923] 1 W. W. R. 1240; 16 Sask. L. R. 526.—**CAN.**

775 xiv. —— —— ——.]—O'CONNOR *v.* WRAY, BOYD *v.* WRAY, [1930] 2 D. L. R. 899; S. C. R. 231, *affg.* [1929] 2 D. L. R. 24; 46 Que. K. B. 190.—**CAN.**

775 xv. —— —— ——.]—CALDWELL *v.* REILLY & BELL, [1931] 3 W. W. R. 513.—**CAN.**

775 xvi. - *Effect of Criminal Code, ss.* 1143, 1144.]—Sects. 1143 & 1144 cannot be invoked as a bar to an action for a tort committed in a foreign country.—CALDWELL *v.* REILLY & BELL, [1932] 3 D. L. R. 14; 1 W. W. R. 890; *affg.*, [1931] 3 W. W. R. 513.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 1.

780 i. *Trespass to person—Damages—Granting of compensation entrusted to special tribunal in country where tort committed.*]—Since in B. C. the board appointed under Workmen's Compensation Act has exclusive jurisdiction in matters of compensation in lieu of all rights of action of a workman or his dependents against his employer for any accident arising out of & in the course of his employment, no action can lie in Saskatchewan on behalf of a widow & child of a workman for his death while domiciled in B. C.—WALPOLE *v.* CANADIAN NORTHERN RY. CO., [1923] A. C. 113; 92 L. J. P. C. 39; 128 L. T. 289; 39 T. L. R. 16.—**CAN.**

b. For "*Trespass — Negligence — Common employment—Lex loci actus*" read "—— *Negligence—Common employment—Lex loci actus.*"

f. After this case add "*See, also,* No. **775 xii.**, *ante.*"

f i. —— ——.]—Defender, whose domicile of origin was Scottish, but who had resided abroad for some years without, however, losing his Scottish domicile, was sued in respect of a delict committed while on a visit to Scotland. The delict consisted in the negligent driving of his motor car, resulting in a collision with another motor car, the owners of which were also cited as defenders. At the date when the action was brought against him he had gone abroad again & he was not personally cited, but he had intimated the claim to an insurance co. with whom he was insured against third-party risks, & they were themselves conducting the defence :—*Held :* defender's Scottish domicile of origin, coupled with the commission of a delict in Scotland, did not suffice to found jurisdiction against him in the absence of personal citation in Scotland.—KERR *v.* FERGUSON (R. & W.), [1931] S. C. 736.—**SCOT.**

PART IX. SECT. 1, SUB-SECT. 1.

811 i. —— *Marriage solemnised according to law of state.*]—If a person domiciled in a country whose laws permit polygamous marriages is, in accordance with its laws, married there to two wives, citizens of that country, & dies while still domiciled there though temporarily residing in B. C., the status of the wives will be recognised by the cts. of B. C. for the purpose of fixing the succession duty payable on movable property in B. C. going under deceased's will to each of the wives.—YEW *v.* A.-G. FOR BRITISH COLUMBIA, [1924] 1 D. L. R. 1166; 1 W. W. R. 753; 33 B. C. R. 109; *revsg.* S. C. *sub nom. Re* LEE CHEONG, [1923] 1 W. W. R. 867.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 2.—B.

814 iii. ——.]—FAFARD *v.* BEAUPRE (1927), Q. R. 66 S. C. 24.—**CAN.**

814 iv. ——.]—The fact that the ceremony of marriage was solemnized in a foreign country wherein such a marriage is valid does not render it valid in a province in which 5 & 6 Will. 4, c. 54, is in force, if the parties were British subjects & only temporarily resident, but not domiciled, abroad.—DEJARDIN *v.* DEJARDIN, [1932] 2 W. W. R. 237.—**CAN.**

817. *Add. Annotation :*—**Refd.** Berthiaume *v.* Dastous (1929), 45 T. L. R. 607.

821. *Add. Annotation :*—**Refd.** Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44.

827. *Add. Annotations :—As to* (1) **Consd.** Inverclyde *v.* Inverclyde, [1931] P. 29. **Refd.** Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44. *As to* (2) **Refd.** Mitford *v.* Mitford, [1923] P. 130.

828a. —.]—PAPADOPOULOS *v.* PAPADOPOULOS, No. 946b, *post.*

828b. —— —— **Incapacity by lex domicilii.**]—Petitioner & resp., Portuguese subjects domiciled in Portugal, & first cousins to each other, came to reside in England in 1858, & in 1866 they went through a form of marriage before the registrar of the district of the City of London. In 1873 they returned to Portugal, & their domicil throughout continued to be Portuguese. By the law of Portugal a marriage between first cousins is illegal, as being incestuous, but may be celebrated under a Papal dispensation :—*Held :* the parties being by the law of the country of their domicil under a personal disability to contract marriage, their marriage ought to be declared null & void.—SOTTOMAYOR *v.* DE BARROS (1877), 3 P. D. 1 ; 47 L. J. P. 23 ; 37 L. T. 415 ; 26 W. R. 455, C. A.

Annotations :—**Consd.** Ingham (falsely called Sachs) *v.* Sachs (1886), 56 L. T. 920 ; Hay *v.* Northcote, [1900] 2 Ch. 262 ; *Re* Bozzelli's Settlement, Hussey-Hunt *v.* Bozzelli, [1902] 1 Ch. 751. **Expld.** Ogden *v.* Ogden, [1907] P. 107. **Consd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669. **Refd.** Bloxam *v.* Favre (1884), 50 L. T. 766 ; Viditz *v.* O'Hagan (1899), 68 L. J. Ch. 553 ; Mitford *v.* Mitford & von Kuhlmann, [1923] P. 130.

829. *Add. Annotations :*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669; Sloggett *v.* Sloggett, [1928] P. 148 ; Nachimson *v.* Nachimson, [1930] P. 217.

835a. ——.]—If there is one question better settled than any other in international law, it is that as regards marriage—putting aside the question of capacity—*locus regit actum.* If a marriage is good by the laws of the country where it is effected, it is good all the world over, no matter whether the proceeding or ceremony which constituted marriage according to the law of the place would or would not constitute marriage in the country of the domicil of one or other of the spouses. If the so-called marriage is no marriage in the place where it is celebrated, there is no marriage anywhere, although the ceremony or proceeding if conducted in the place of the parties' domicil would be considered a good marriage (*per* CUR.).—BERTHIAUME *v.* DASTOUS, [1930] A. C. 79 ; 99 L. J. P. C. 66 ; 142 L. T. 54, P. C.

Annotation :—**Consd.** Nachimson *v.* Nachimson, [1930] P. 217.

836. *Add. Annotations :*—**Folld.** Mitford *v.* Mitford, [1923] P. 130. **Consd.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641 ; Berthiaume *v.* Dastous (1929), 45 T. L. R. 607 ; Inverclyde *v.* Inverclyde, [1931] P. 29.

840. *Add. Annotation :—As to* (2) **Refd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930.

853. *Add. Annotations :*—**Refd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930. **Mentd.** Perlak Petroleum Maatschappij *v.* Deen, [1924] 1 K. B. 111 ; R. *v.* Moscovitch (1927), 138 L. T. 183.

858a. —— —— **Marriage of Roman Catholics in India — Within prohibited degree — Indian statutes inapplicable.**]—(1) Two British Roman Catholics assumed to be domiciled in India went through a ceremony of marriage, though they were within the prohibited degrees of consanguinity according to English law, but a dispensation had been obtained from the local Roman Catholic ecclesiastical authorities for the couple to contract the marriage notwithstanding :—*Held :* there was no sanction in the Indian statutes relating to the marriage of Christians in India for British Roman Catholics to enter into a valid union, & the marriage was declared null & void.

(2) There is no legal impossibility, as far as I know, in retention of domicil of origin during successive generations (LORD MERRIVALE, P.).—PEAL *v.* PEAL, [1931] P. 97 ; 100 L. J. P. 69 ; 143 L. T. 768 ; 46 T. L. R. 645 ; 74 Sol. Jo. 612.

860. *Add. Annotation :*—**Refd.** Berthiaume *v.* Dastous (1929), 45 T. L. R. 607.

Part X.—Divorce and other Matrimonial Causes.

861a. —— **Marriage in Turkey before Treaty of Lausanne.**]—MARTIN *v.* MARTIN & MAY (1928), 72 Sol. Jo. 612.

861b. —— —— ——.]—DOUST *v.* DOUST (1929), 168 L. T. Jo. 113.

868. *Add. Annotation :* — **Apld.** Matthews *v.* Matthews (1930), 99 L. J. P. 143.

873a. ——.]—The jurisdiction in divorce is limited to England & Wales & depends upon domicil there, & it does not necessarily confer any

PART IX. SECT. 1, SUB-SECT. 2.—C.

827 ii. ——.]—In 1911 H., domiciled in the Transvaal, married his deceased wife's sister, W., who was domiciled in Natal. By the common law prevailing in T. at the time, marriage between a man & his deceased wife's sister was prohibited. In N. such a marriage was permitted by statute :—*Held :* the marriage was valid inasmuch as the domicil of W. was in N. & the marriage was celebrated in N., & the N. cts. would not regard the validity of the marriage as affected by an incapacity imposed by the law of the husband's domicil not recognised by the law of N.—FRIEDMAN *v.* FRIEDMAN'S EXECUTORS (1922), 43 N. L. R. 259.—S. AF.

PART X. SECT. 1, SUB-SECT. 1.

sq. *To make order for custody of children—Children living with mother outside province.*]—KILPATRICK *v.* KILPATRICK (B. C.), [1929] 3 W. W. R. 463 ; [1930] 1 D. L. R. 288 42 B. C. R. 88.—CAN.

PART X. SECT. 1, SUB-SECT. 2.—A. (a).

b i. ——.]—*Held :* it is the duty of the district judge, when a petition for dissolution of marriage comes before him, to satisfy himself that the parties to the marriage were domiciled in India at the time when the petition was presented & to see that the petition itself contains a declaration to that effect ; & before hearing the suit, to satisfy himself that the parties are in fact domiciled in India.—MURPHY *v.* MURPHY (1929), I. L. R. 10 Lah. 607.—IND.

b ii. —— *Under Indian Divorce (Amendment) Act,* 1926.]—Under Indian & Colonial Divorce Jurisdiction Acts, s. 1 (1), & Indian Divorce Act, 1869, s. 3, the High Ct. has jurisdiction to grant a decree for dissolution of a marriage ; the words in sect. 1 (1) (*a*)

authority over the property of a person domiciled in a foreign country.—TALLACK *v.* TALLACK & BROEKEMA, [1927] P. 211; 96 L. J. P. 117; 187 L. T. 487; 43 T. L. R. 467; 71 Sol. Jo. 521.

Under Judicature (Consolidation) Act, 1925 (c. 49), s. 191.]—*See* HUSBAND & WIFE, No. 5542a, *post.*

878. To the cross-reference following this case add "*See, now,* Indian & Colonial Divorce Jurisdiction Act, 1926 (c. 40)."

878a. —— —— —— —— **Registration of decree.**]—Where a decree absolute of divorce has been granted in India under Indian & Colonial Divorce Jurisdiction Act, 1926 (c. 40), either party may, on production of the necessary certificate, secure the registration of such decree in the High Ct. in England.—WILKINS *v.* WILKINS (1932), 101 L. J. P. 35; 147 L. T. 17; 48 T. L. R. 425; 76 Sol. Jo. 345.

884. *Add. Annotations:*—**Consd.** Inverclyde *v.* Inverclyde, [1931] P. 29. **Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

885. *Add. Annotations:*—**Consd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444; Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641; Inverclyde *v.* Inverclyde, [1931] P. 29. **Refd.** Graham *v.* Graham (1923), 128 L. T. 639; Eustace *v.* Eustace, [1924] P. 45; Rudd *v.* Rudd, [1924] P. 72; Sasson *v.* Sasson, [1924] A. C. 1007.

894. *Add. Annotations:*—**Consd.** Graham *v.* Graham, [1923] P. 31; Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641. **Refd.** Mitford *v.* Mitford, [1923] P. 130. **Refd.** Inverclyde *v.* Inverclyde, [1931] P. 29.

894a. ——.]—(1) The competent jurisdiction to dissolve a marriage is that of the husband's domicil & deft. must be domiciled in that jurisdiction at the commencement of proceedings. Independent authority to dissolve the marriage cannot exist in two sovereign States simultaneously.

(2) A husband by deserting his wife in one domicil does not become estopped from alleging another domicil after acquiring it, & the wife so deserted is not thereby entitled to determine the forum of her proceedings for dissolution. A decree of judicial separation by reason of a matrimonial offence of the husband does not as from its date fix matrimonial domicil or render it incapable of alteration without the consent of the wife.—H. *v.* H., [1928] P. 206; 97 L. J. P. 116; 139 L. T. 412; 44 T. L. R. 711; 72 Sol. Jo. 598; *subsequent proceedings: sub nom.* HORN *v.* HORN (1929), 142 L. T. 93.

895. *Add. Annotations:—As to* (1) **Refd.** Graham *v.* Graham, [1923] P. 31; Eustace *v.* Eustace, [1924] P. 45.

896. *Add. Annotation:*—**Consd.** Inverclyde *v.* Inverclyde, [1931] P. 29.

899a. -.]—A decree for judicial separation made under Matrimonial Causes Act, 1857 (c. 75), s. 16, does not enable the wife to acquire a domicil different from that of her husband, & thus entitle her to sue for a divorce in a ct. other than that of the husband's domicil. The effect of sects. 25 & 26 of the above Act upon the legal relationship of the spouses after a decree for judicial separation is confined within the precise terms of those sects.—A.-G. FOR ALBERTA *v.*

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of the Act of 1926 are intended to mean that the grounds on which a decree for the dissolution of the marriage of British subjects domiciled in England may be granted by a High Ct. in India shall be those on which such a decree might be granted by the Divorce Ct. in England according to the law for the time being in force in England, *i.e.* according to Supreme Ct. of Judicature (Consolidation) Act, 1925, s. 176.—BARNARD *v.* BARNARD (1928), I. L. R. 56 Calc. 89.—**IND.**

b iii. ——.]—A wife cannot have a domicil distinct from that of her husband, while they continue married, even though the wife has left him for cause or the husband has deserted her; &, in order to give the ct. jurisdiction to decree a divorce, it must be established that the husband was domiciled within the province at the commencement of the proceedings.—BREEN *v.* BREEN (Man.), [1929] 4 D. L. R. 649; 2 W. W. R. 345; *revsd. on facts,* [1930] 1 W. W. R. 30; 1 D. L. R. 1006; 38 Man. L. R. 409.—**CAN.**

b iv. ——.]—Act 25 of 1926 prevents any decree of dissolution of a marriage except where the parties are domiciled in India.—BONHIEM *v.* KA TROLIMON (1929), I. L. R. 57 Calc. 1159.—**IND.**

b v. —— *Statutory domicile of wife—Validity of Divorce & Matrimonial Causes Act,* 1930, *s.* 3.]—Subject to the limitations imposed by the Legislature of Great Britain, the New Zealand Legislature enjoys complete independence & may legislate as it pleases; & Divorce & Matrimonial Causes Amendment Act, 1930, s. 3, being for the peace, order, & good government of the country, & not being repugnant to any statute law relating to New Zealand by the Imperial Legislature, or ambiguous so as to permit the rules of international law to prevail, is *intra vires* the New Zealand Legislature. A wife petitioning under that statute for a divorce from her husband, who was never resident or domiciled in New Zealand:—*Held:* entitled to a decree *nisi.*—WORTH *v.* WORTH, [1931] N. Z. L. R. 1109.—**N.Z.**

878 i. —— —— —— *Indian marriage.*]—Petition by the wife for dissolution of marriage. The husband was a subject of the U.S.A. & domiciled in that country; the marriage was celebrated & both parties resided in India until Jan. 1923, when the husband left for America where he remained. Adultery & cruelty were committed within the jurisdiction of the ct. sufficient to entitle petitioner to a decree *nisi:*—*Held:* the ct. had jurisdiction to pass the decree.—MILLER *v.* MILLER (1924), I. L. R. 52 Calc. 566.—**IND.**

879 iv. —— —— ——.]—The domicil of the married pair at the time when the question of divorce arises is the test of jurisdiction to dissolve their marriage, & the ct. of the *bonâ fide* existing domicil has jurisdiction over persons originally domiciled in another country to undo a marriage solemnised in that other country; & such a divorce will be recognised by the cts. of Ontario, even if granted for a cause which would not be sufficient to obtain a divorce in Ontario.—CROMARTY *v.* CROMARTY (1917), 38 O. L. R. 481; 33 D. L. R. 151.—**CAN.**

887 ii. —— —— ——.]—MYANDUK *v.* MYANDUK, [1931] 1 W. W. R. 755; 2 D. L. R. 673.—**CAN.**

890 iv. —— ——.]—An action by a husband, who had been married in Ontario, in a foreign State for a divorce resulted in favour of the wife, & judgment dissolving the marriage was granted to her, & by it she was awarded alimony. Subsequently the wife sought by action to recover the amount of alimony, & the husband contended that as he had never acquired the necessary domicil to give the foreign ct. jurisdiction to grant the divorce the judgment was invalid:—*Held:* as he had invoked & submitted to the jurisdiction of the foreign ct., he had precluded himself from setting up want of jurisdiction.—SWAIZIE *v.* SWAIZIE (1899), 51 O. R. 324.—**CAN.**

890 v. —— ——.]—In order to found jurisdiction to entertain a suit for divorce it must be shown that the husband was domiciled in South Australia at the commencement of the proceedings. Unconditional submission to the jurisdiction by the husband is insufficient.—SLATER *v.* SLATER, [1928] S. A. S. R. 161.—**AUS.**

PART X. SECT. 1, SUB-SECT. 2.—A. (b).

f i. —— —— ——.]—The words in Marriage Act, 1928, s. 75, "No person shall be entitled to petition under this section who has resorted to Victoria for that purpose only," do not preclude a person from petitioning unless he has resorted to Victoria for the purpose of qualifying himself to present a petition, &, in the absence of collusive arrangement, do not debar a wife who resides abroad from petitioning when her husband is domiciled in Victoria.—BELL *v.* BELL, [1931] V. L. R. 373; Argus L. R. 304.—**AUS.**

f ii. —— *Must be within territorial limits of province.*]—The domicil necessary to confer jurisdiction to dissolve a marriage must be within the territorial limits of the province whose cts. are appealed to.—MARRIAGGI *v.* MARRIAGGI, [1923] 3 W. W. R. 849; 4 D. L. R. 463.—**CAN.**

899 iii. —— —— —— —— wife has obtained a decree of judicial separation, she is entitled to acquire a domicil independently of her husband. — HASTINGS *v.* HASTINGS, [1922] N. Z. L. R. 273.—**N.Z.**

COOK, [1926] A. C. 444; 95 L. J. P. C. 102; 134 L. T. 717; 42 T. L. R. 317, P. C.

Annotations:—**Consd.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641. **Refd.** H. *v.* H., [1928] P. 206.

899b. **Subsequent change of domicil by husband.**]—H. *v.* H., No. 894a, *ante*.

903a. —— —— ——.]—(1) The burden of proving a change of the domicil of origin is strongly on those alleging it.

(2) In this case resp. had not been proved to have acquired at the material time an American domicil, so the American ct., which had granted him a decree of divorce, had no jurisdiction.

(3) Even if the American ct. had jurisdiction petitioner would have not have been bound by proceedings, of which she had no notice or knowledge.

(4) *Semble:* even if resp. has now acquired an American domicil, petitioner can still as a deserted wife obtain relief from the English cts.—RUDD *v.* RUDD, [1924] P. 72; 93 L. J. P. 45; 130 L. T. 575; 40 T. L. R. 197.

Annotation:—*As to* (3) **Refd.** Hughes *v.* Hughes (1932), 48 T. L. R. 328.

903b. **Subsequent change of domicil by husband.**]—H. *v.* H., No. 894a, *ante*.

905. *Add. Annotation:*—**Consd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

906. *Add. Annotation:*—**Consd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

916. *Add. Annotation:*—**Refd.** Graham *v.* Graham, [1923] P. 31.

917. *Add. Annotations:*—**Consd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444; H. *v.* H., [1928] P. 206. **Refd.** Graham *v.* Graham, [1923] P. 31; Raeburn *v.* Raeburn (1928), 138 L. T. 672.

918. *Add. Annotations:*—**Distd.** Eustace *v.* Eustace, [1924] P. 45. **Refd.** Graham *v.* Graham, [1923] P. 31; Mitford *v.* Mitford, [1923] P. 130.

918a.]—It is established by the cases of *Armytage* v. *Armytage*, No. 917, *ante*, & *Anghinelli* v. *Anghinelli*, No. 918, *ante*, that, according to the practice of the ecclesiastical cts., a suit for judicial separation, which is now substituted for the divorce *a mensâ et thoro*, can be entertained in a case where both parties are resident but not domiciled within the jurisdiction. But the ct. has no jurisdiction to maintain a suit against a resp. who at the time of his citation or of the institution of the suit is resident out of the jurisdiction. Statute of Citations, 1531 (c. 9), s. 2, which forbade the ecclesiastical cts. to cite any person out of the diocese where he was inhabiting or dwelling, must be taken to have limited the jurisdiction & not only the power of service of the ecclesiastical cts.; & Matrimonial Causes Act, 1857 (c. 85), which permits service within or without His Majesty's Dominions, cannot extend the jurisdiction.—GRAHAM *v.* GRAHAM, [1923] P. 31; 92 L. J. P. 26; 128 L. T. 639; 39 T. L. R. 139; 67 Sol. Jo. 316.

Annotations:—**Distd.** Eustace *v.* Eustace, [1924] P. 45. **Refd.** Raeburn *v.* Raeburn (1928), 138 L. T. 672; Johnstone *v.* Johnstone [1929] P. 165.

918b. ——.]—Where the parties are not domiciled in England, in a suit for judicial separation the question must be, in order to give jurisdiction in such a suit, whether, at the time when the petition indorsed with the citation was issued out for service, resp. was resident within the jurisdiction.—RAEBURN *v.* RAEBURN (1928), 138 L. T. 672; 44 T. L. R. 384.

918c. **Respondent domiciled in England.**]—There is jurisdiction in the Probate, Divorce & Admlty. Div. to decree judicial separation at the suit of the wife where the husband is domiciled in England, although at the date of the institution of the suit he is not resident in this country.—EUSTACE *v.* EUSTACE, [1924] P. 45; 93 L. J. P. 28; 130 L. T. 79; 39 T. L. R. 687; 67 Sol. Jo. 807, C. A.

903 iv a. —— —— ——.]—The law of domicil governing divorce is that the domicil of the husband is the domicil of the wife; but circumstances may arise, as a result of that rule, which will justify the intervention of the cts. so as to give a deserted wife relief from her marriage tie.—PAYN *v.* PAYN, [1924] 3 D. L. R. 1006; 3 W. W. R. 111.—**CAN.**

903 iv b. —— —— ——.]—Although a married woman has been deserted by her husband & he is moving about from place to place, she cannot acquire an independent domicil; &, therefore, an action for divorce, brought by her in a province in which she is residing & was residing when he deserted her but which is not his domicil at the time of the action must be dismissed.—NELSON *v.* NELSON & ANDREWS (Sask.), [1928] 4 D. L. R. 910; [1928] 3 W. W. R. 291; *affd.*, [1930] 1 W. W. R. 189; 3 D. L. R. 522; 24 S. L. R. 250.—**CAN.**

903 vi. —— —— ——.]—Pltf. husband, when domiciled in N., married deft. in that State. She deserted him while in that State in 1907. In 1917 he came to Q. & acquired a domicil there. Deft. continued to reside in N. In 1927 he brought this action for dissolution of the marriage on the ground of desertion continuously without cause for five years:—*Held:* the ct. had jurisdiction to entertain the action.—ROCHE *v.* ROCHE, [1928] St. R. Qd. 11. **AUS.**—

903 vii. —— —— ——.]—The facts that a wife has been deserted by her husband & he has acquired another domicile while she has continued to reside in the domicile which was his at the time of the desertion, do not afford an exception to the rule that it is only the ct. of his domicile at the time the action is begun which has jurisdiction to grant her a decree of divorce.—HARRIS *v.* HARRIS & HARRIS, [1930] 1 W. W. R. 173; 4 D. L. R. 736; 24 S. L. R. 234; *affg.*, [1929] 2 D. L. R. 546.—**CAN.**

st. *In Ireland—Power to elect to be domiciled either in Northern Ireland or in Irish Free State.*]—EGAN *v.* EGAN, [1928] N. I. 159.—**IR.**

PART X. SECT. 1, SUB-SECT. 2.—B.

sv. *Co-respondent not domiciled in country where divorce sought—Liability to damages & costs.*]—In Manitoba where an action for divorce is based on adultery committed outside the province, & the co-resp. is neither a resident of nor domiciled in Manitoba & has no assets therein, the ct. has no jurisdiction to decree either costs or damages against the co-resp. where he has not submitted himself to its jurisdiction.—RUTA *v.* RUTA & SAMULIAK [1929] 4 D. L. R. 1053; 1 744.—**CAN.**

PART X. SECT. 1, SUB-SECT. 3.

gi. —— ——.]—Where a wife brings an action of separation & aliment against her husband on the ground of a matrimonial offence committed by the husband while domiciled in Scotland, the ct. in Scotland has jurisdiction to entertain the action, although prior to the bringing of the action the husband has taken up his permanent residence & acquired a domicil in a foreign country.—RAMSAY *v.* RAMSAY, [1925] S. C. 216.—**SCOT.**

sx. *Protest to jurisdiction — Procedure.*]—MILLER *v.* MILLER (Man.), [1929] 3 W. W. R. 167.—**CAN.**

PART X. SECT. 1, SUB-SECT. 4.

921 ii. ——.]—The High Ct. of Bombay has jurisdiction to entertain a petition for restitution of conjugal rights by a Christian wife of a Parsi husband if the wife was at the date of the petition residing in Bombay.—DALAL *v.* DALAL (1930), I. L. R. 54 Bom. 877.—**IND.**

li. ——.]—On petition by a wife for restitution of conjugal rights:—*Held:* resp. had an Irish domicil, & the ct. had jurisdiction to give relief, it being immaterial whether resp. was or was not an American citizen.—BELL *v.* BELL, [1922] 2 I. R. 152.—**IR.**

924. *Add. Annotations :—As to* (1) **Expld.** Inverclyde *v.* Inverclyde, [1931] P. 29. **Refd.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641. *As to* (2) **Consd.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641.

925. *Add. Annotation :—***Consd.** Inverclyde *v.* Inverclyde, [1931] P. 29.

926. *Add. Annotations :—***N.F.** Graham *v.* Graham, [1923] P. 31. **Consd.** Inverclyde *v.* Inverclyde, [1931] P. 29. **Refd.** Mitford *v.* Mitford, [1923] P. 130.

926a. Parties domiciled in country where decree sought—Validity of marriage in dispute.]—(1) Where the validity of a marriage is in dispute the ct. of the domicil of the parties has jurisdiction, whether it is an exclusive jurisdiction or not, to pronounce a decree of nullity of marriage.

(2) A decree of nullity of marriage pronounced by a ct. of competent jurisdiction, whatever be the ground of the decree, is a judgment determining status & is equivalent to a judgment *in rem*.

(3) Where the parties are domiciled in a foreign country a decree of nullity of marriage pronounced by a competent ct. of that country will, in the absence of fraud or collusion, be recognised as binding & conclusive by the cts. of England & Scotland, unless it offends against British notions of substantial justice.—SALVESEN (OR VON LORANG) *v.* AUSTRIAN PROPERTY ADMINISTRATOR, [1927] A. C. 641; 96 L. J. P. C. 105; 137 L. T. 571; 43 T. L. R. 609, H. L.

Annotations:—As to (1) **Folld.** Inverclyde *v.* Inverclyde, [1931] P. 29. *As to* (3) **Refd.** H. *v.* H. (No. 2) (1928), 97 L. J. P. 116; Nachimson *v.* Nachimson, [1930] P. 217, C. A.

926b. Jurisdiction dependent on domicil.]—A decree annulling a marriage on the ground of impotence is a judgment *in rem* altering the status of the parties, & can be pronounced only by the ct. of their domicil. A decree annulling a marriage on this ground deals with a marriage which till the date of the decree was voidable only & not void. In substance it is a decree for the dissolution of that marriage, & is thus distinguished from decrees annulling marriages for illegality or informality.—INVERCLYDE (OTHERWISE TRIPP) *v.* INVERCLYDE, [1931] P. 29; 100 L. J. P. 16; 144 L. T. 212; 95 J. P. 73; 47 T. L. R. 140; 74 Sol. Jo. 863; 29 L. G. R. 353.

PART X. SECT. 1, SUB-SECT. 5.

n i. ——— ———.]—An application in a nullity of marriage suit to determine the question of the jurisdiction of the Ct. of K. B. of S. to entertain the action. The marriage was celebrated in S.; the husband, pltf., was domiciled & resident in A. at the time of the commencement of the action, & the wife was residing in M.:—*Held:* the Ct. of K. B. of S. had jurisdiction to make a decree of the nullity of a marriage entered into in S.—G. *v.* G., [1928] 1 W. W. R. 651; 22 Sask. L. R. 376.—**CAN.**

Mc-DONALD, [1932] 1 D. L. R. 96.—**CAN.**

n iii. ———.]—The Ct. of King's Bench of Saskatchewan has jurisdiction to entertain an action for the annulment of a marriage celebrated in Saskatchewan whether or not the husband was domiciled in Saskatchewan at the time of the issue of the writ.—REID (OTHERWISE FRANCIS) *v.* FRANCIS (Sask.), [1929] 4 D. L. R. 311; 3 W. W. R. 102.—**CAN.**

o i. ——— *Respondent resident in country where decree sought—Petitioner not residing in country where decree sought.*]—While residence only is sufficient to found jurisdiction in nullity actions, as distinguished from divorce actions, such residence must be *bonâ fide*. Where a petition setting up grounds for a declaration of nullity was erroneously dismissed, the ct. declined to reinstate the petition, as petitioner was merely a casual visitor, although his wife was a resident, in British Columbia.—PURDY *v.* PURDY, [1919] 2 W. W. R. 551.—**CAN.**

o ii. ——— ———.]—VAMVAKIDIS *v.* KIRKOFF, [1929] 4 D. L. R. 1060.—**CAN.**

o iii. ——— *Necessity for domicile or residence of parties.*]—In the case of a marriage void *ab initio*, the ct. has no jurisdiction to entertain a suit for a declaration of nullity of marriage unless the marriage in question was celebrated in this State, or both parties to the ceremony of marriage either were domiciled or resident in the State at the time of the institution of the suit.—SMART *v.* MAXWELL (1929), 47 N. S. W. W. N. 100.—**AUS.**

p i. ———.]—The ct. cannot entertain a suit for a declaration of the nullity of a marriage where resp. is neither domiciled nor resident within the province & the marriage was not celebrated therein. Where such a suit is brought by the man its dismissal on the ground that resp. has not his domicile is, necessarily, a recognition by the ct. that the alleged marriage is null.—HUTCHINGS *v.* HUTCHINGS (OR BROWNING), [1930] 2 W. W. R. 565; 4 D. L. R. 673; 39 Man. L. R. 66.—**CAN.**

PART X. SECT. 2, SUB-SECT. 1.—A.

q i. ———.]—POTRATZ *v.* POTRATZ (Sask.), [1926] 1 D. L. R. 147.—**CAN.**

q ii. ———.]—A divorce obtained by a wife in a foreign State, when her husband was domiciled in Saskatchewan, not recognised as valid.—BURNFIEL *v.* BURNFIEL, [1926] 2 D. L. R. 129; [1926] 1 W. W. R. 657; 20 Sask. L. R. 407.—**CAN.**

q iii. ———.]—SHEASER *v.* SHEASER, [1926] 3 D. L. R. 196; [1926] 2 W. W. R. 389; 22 Alta. L. R. 261; *varying*, [1926] 2 D. L. R. 906; [1926] 2 W. W. R. 129.—**CAN.**

q iv. ———.]—BROWN *v.* MCINNESS, [1927] 2 D. L. R. 655; [1927] 1 W. W. R. 597; 38 B. C. R. 324.—**CAN.**

q v. ———.]—MCNUTT *v.* CREE (1928), Q. R. 66 S. C. 332; 34 R. de J. 370.—**CAN.**

q vi. ———.]—A decree of divorce obtained in a foreign country is not recognised as valid in Canada if at the time of the decree the husband was domiciled in Canada, even though he had then resided in said foreign country long enough to give the cts. thereof jurisdiction under the law of that country to grant the decree. Where subsequently to such a divorce one of the parties thereto goes through a form of marriage while the other party is still living & the original marriage still subsisting under the law of their domicil, said purported marriage will be declared null & void.—MACDONALD *v.* NASH (Man.), [1929] 4 D. L. R. 1051; 2 W. W. R. 84.—**CAN.**

q vii ———.]—Petitioner & resp., both born in British Columbia, were married in Vancouver in 1917. In the fall of 1923 resp. went to Portland, Oregon, & after remaining there a few weeks went to Los Angeles, California, where he remained until Jan. 1925. Late in 1924 he commenced divorce proceedings in Portland & a decree of divorce was granted him in Apr. 1925. He then returned to Vancouver & in Apr. 1926, he, with another woman, went to Bellingham in Washington, where they went through a form of marriage before a magistrate & returned to Vancouver. Petitioner filed her petition herein in May, 1929. The law of the State of Oregon requires that pltf. in a divorce action must have been a resident & inhabitant of the State of Oregon one year next prior to the commencement of the suit & the Supreme Ct. of the State has defined domicil, residence & inhabitance as synonymous in relation to divorce proceedings:—*Held:* on the evidence, resp. did not renounce his British Columbia domicil, he was not in the ordinary meaning of the words a "resident" or "inhabitant" of the State of Oregon & did not acquire a domicil there. Domicil being the governing factor, there was no jurisdiction in the cts. of the State of Oregon to grant a decree of divorce, & petitioner herein should be granted a decree absolute.—BIGGAR *v.* BIGGAR, [1930] 2 D. L. R. 940; 42 B. C. R. 329.—**CAN.**

q viii. ———.]—The cts. in Canada will recognise the binding effect of a decree of divorce obtained in a foreign country against a husband domiciled outside Canada although he was not domiciled in the country of the ct. which granted the decree, if the cts. of the country of his domicile would recognise the validity of the decree. In the present case the husband was domiciled in the English legal sense in Oregon when the wife obtained a decree of divorce in California on the ground of wilful desertion:—*Held:* after receiving expert evidence of the law of Oregon & of the effect of "the full faith & credit clause" of the U.S. Constitution, that under the law of Oregon the wife could not claim a separate residence from that of her husband so as to transfer jurisdiction over a divorce action between them to another state than that of his domicile unless he had given her cause by wilful desertion; &, since the question whether the wife had acquired the right on said ground to establish a separate domicile or residence in California was one going to the root of the jurisdiction of the California Ct., said "full faith & credit clause" would not compel the Oregon Ct. to recognise the California decree without inquiring whether she had acquired said right.—WYLLIE *v.* MARTIN, [1931] 3 W. W. R. 465; 44 B. C. R. 486.—**CAN.**

927 v. —.]—As the

928. *Add. Annotation :*—**Refd.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641.

929. *Add. Annotation :*—**Refd.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641.

930. *Add. Annotations :*—**Refd.** Rudd *v.* Rudd [1924] P. 72; Hughes *v.* Hughes (1932), 48 T. L. R. 328.

932. *Add. Annotations :—Generally,* **Refd.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641; Nachimson *v.* Nachimson, [1930] P. 217.

935. *Add. Annotations :—As to* (1) **Folld.** Mitford *v.* Mitford (1923), 92 L. J. P. 90. *As to* (2) **Refd.** Nachimson *v.* Nachimson, [1930] P. 217. *As to* (3) **Refd.** Eustace *v.* Eustace, [1924] P. 45.

935a. —— —— ——.]—RUDD *v.* RUDD, No. 903a, *ante.*

943a. -.]—In an action for revocation of letters of administration granted in 1916 pltf. claimed that she was the lawful widow of the deceased inasmuch as a decree of divorce granted to the deceased in Paris in 1911 was invalid by reason of his not being domiciled there at the time & of substantial injustice in the proceedings of the French Ct. Deft., whom the deceased had married in 1915, & who had obtained a grant of administration, claimed that she was his lawful widow :—*Held :* the decree of divorce in Paris was valid, the deceased was domiciled in France at the commencement of those proceedings, & the decree was not obtained in a manner contrary to natural justice. The action therefore failed.—VARDY *v.* SMITH (OTHERWISE VARDY) (1932), 48 T. L. R. 661; *affd.* 49 T. L. R. 36, C. A.

944. *Add. Annotations :*—**Expld.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641. **Refd.** Mitford *v.* Mitford, [1923] P. 130; Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44. **Refd.** Inverclyde *v.* Inverclyde, [1931] P. 29.

944a. ——.]—The husband, of British nationality & domicil, married a woman of German nationality & domicil in Berlin in accordance with German law on Jan. 5, 1914. On Oct. 23, 1914, a German ct. annulled the marriage under a provision of the German Civil Code, & this decree of nullity was upheld on appeal. On Mar. 4, 1920, the woman, resp. in the present suit, contracted in Germany a second marriage, in respect of which the first husband, the present petitioner, claimed relief :—*Held :* the German decision was a conclusive adjudication between the parties, & no marriage was at the commencement of the suit or now subsisting.—MITFORD *v.* MITFORD & VON KUHLMANN, [1923] P. 130; 92 L. J. P. 90; 129 L. T. 153; 39 T. L. R. 350.

Annotation :—**Consd.** Inverclyde *v.* Inverclyde, [1931] P. 29.

944b. -.]—SALVESEN (OR VON LORANG) *v.* AUSTRIAN PROPERTY ADMINISTRATOR, No. 926a, *ante.*

946a. —— —— **No cohabitation.**]—An Englishman married an Englishwoman in England, but there was no cohabitation, & the wife went almost immediately to Canada & the United States, and on her application a ct. in Michigan, U.S.A., granted her a decree of nullity of marriage on the ground that it was a marriage in form of law but not in legal effect. The husband had agreed to the decree being made. Thinking herself free, the wife went through a form of marriage with another man & lived with him as his wife. The first husband, who was domiciled in England, now petitioned for the dissolution of his marriage, citing the second man as co-respondent. The suit was undefended, but was referred by the Assize Comr. to the King's Proctor on the question of connivance : —*Held :* the American decree was invalid.—CLAYTON *v.* CLAYTON & SHARMAN, [1932] P. 45; 101 L. J. P. 23; 146 L. T. 327; 48 T. L. R. 191; 76 Sol. Jo. 96.

Annotation :—**Refd.** Hughes *v.* Hughes (1932), 147 L. T. 20.

946b. Foreign court without jurisdiction to grant decree of nullity.]—The disability of a foreigner to marry in England otherwise than in accordance with the law of his country as regards matters of form is a disability of which he can divest himself at will & therefore constitutes no objection to the validity of a marriage contracted by him in England in English form. A decree of a foreign ct. invalidating such a marriage is recognisable in England only if the foreign ct. has jurisdiction over the marriage & even then is open to examination. Want of jurisdiction cannot be cured by mere consent of the parties. A decree of a foreign ct. purporting to annul an English marriage under these circumstances is not severable, & if it is incompetent to annul the marriage, neither is it competent to award maintenance or a lump sum in lieu of maintenance.

The husband, a domiciled Cypriot, married a Frenchwoman in England in English form. Afterwards he repudiated the marriage on the ground that it was not in form in accordance with the law of his domicil. Later, on proceedings by the wife in a Cypriot ct., the marriage was declared null on the same ground by consent of the parties, & it was further declared that the husband should pay the wife a lump sum in satisfaction of all claims, including maintenance. The Cypriot ct. by the terms of its constitution had no jurisdiction to annul a marriage. Still later, the wife, finding the husband in England, took out a summons against him for neglect to maintain her under the Summary Jurisdiction (Separation & Maintenance) Acts, 1895 to 1925. The summary jurisdiction

domicil of a wife is the husband's domicil & foreign proceedings cannot affect the legal status of a marriage in Canada, where the grounds supporting a foreign decree would not support a decree under Canadian law :—*Held :* a wife's divorce & re-marriage in Minnesota constituted legal adultery, & furnished ground for the husband's claim for dissolution of the Canadian marriage. — CAMPBELL *v.* CAMPBELL, [1921] 2 W. W. R. 849.—CAN

927 vi. —— —— ——.]—Where a husband had left Manitoba for the purpose of obtaining a divorce which he could not have obtained there, & had obtained a divorce abroad & married again :—*Held :* the wife's prayer for divorce should be granted.—YATES *v.* YATES, [1924] 4 D. L. R. 835; 3 W. W. R. 578.—CAN.

936 ii. —— —— ——.]—CROMARTY *v.* CROMARTY, No. 879 iv., *ante.*—CAN.

PART X. SECT. 2, SUB-SECT. 1.—F.

n i. —— —— *Marriage to domiciled Englishman—Effect of English divorce decree.*]—A domiciled Englishman & a domiciled Scotswoman entered into an ante-nuptial marriage contract which contained this clause, "It is hereby declared that these presents shall be interpreted & the rights of the parties regulated by the law of Scotland." The wife obtained decree of divorce in the English cts. :—*Held :* the rights of parties under the contract arising on divorce fell to be regulated in the same manner as if decree of divorce had been pronounced by the Scottish cts.—DRUMMOND *v.* BELL-IRVING, [1930] S. C. 704.—SCOT.

ct., upholding the marriage, ordered the husband to pay maintenance:—*Held:* the marriage was good & the agreement to set it aside illegal, that the decree of the ct. in Cyprus was pronounced without jurisdiction in compromising maintenance as well as in annulling the marriage, & that the order of the ct. of summary jurisdiction must stand, the measure of maintenance within the limits of the Summary Jurisdiction Act being the means of the parties at the time of the proceedings.—PAPADOPOULOS *v.* PAPADOPOULOS, [1930] P. 55; 99 L. J. P. 1; 142 L. T. 237; 94 J. P. 39; 28 L. G. R. 73.

947. *Add. Citation:—sub nom.* SUGDEN *v.* LOLLEY, 2 Cl. & Fin. 567, n.
Add. Annotation:—**Consd.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641.

952. *Add. Annotations:* — **Consd.** Jacobson *v.* Frachon (1927), 44 T. L. R. 103; Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641. **Refd.** Mitford *v.* Mitford, [1923] P. 130; Rudd *v.* Rudd, [1924] P. 72; Papadopoulos *v.* Papadopoulos, [1930] P. 55; Hughes *v.* Hughes (1932), 48 T. L. R. 328.

952a. **Decree made by mistake—Authority to appear for petitioner withdrawn.**]—In this undefended suit the wife petitioned for the dissolution of her marriage on the ground of her husband's adultery in Egypt. Resp., who was engaged in business in Egypt, appeared under protest to the jurisdiction & said that he was domiciled in Egypt. An order was made for the trial of the issue prior to the hearing of the suit, but later resp. abandoned his plea to the jurisdiction. At the hearing the judge drew the attention of counsel to the fact that petitioner had in 1930 petitioned for divorce in Egypt, & had been granted in May, 1930, a decree *nisi* of divorce in H.M. Ct. at Alexandria; that the husband had given evidence in that suit, though it was undefended, & had given evidence that he was domiciled in Egypt. The hearing was adjourned for the production of the ct. record from Alexandria, which was forthcoming at the resumed hearing:—*Held:* the proceedings in Egypt amounted to nothing at all, because petitioner had withdrawn all authority from anybody to appear in the cts. of that country. The judge at Alexandria was not informed of that fact, & he proceeded with the suit on the footing that she was represented, whereas she was not. The domicile was really English. A decree *nisi* was pronounced.—HUGHES *v.* HUGHES (1932), 147 L. T 20; 48 T. L. R. 328; 76 Sol. Jo. 344.

954a. **Award of maintenance by foreign court—Court incompetent to annul marriage.**]—PAPADOPOULOS *v.* PAPADOPOULOS, No. 946b, *ante*.

956. *Add. Annotation:* — **Refd.** Nachimson *v.* Nachimson, [1930] P. 217.

Part XII.—Assignment of Property on Marriage.

966. *Add. Annotation:*—**Refd.** Rudd *v.* Rudd, [1924] P. 72.

969. *Add. Annotation:—As to* (2) **Refd.** Banque Internationale de Commerce de Petrograd *v.* Goukassow, [1923] 2 K. B. 682. *Generally*, **Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

1000. *Add. Annotation:*—**Consd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

1007. For existing citations read "(1854), 18 Beav. 128; 2 Eq. Rep. 593; 23 L. J. Ch. 265; 23 L. T. O. S. 318; 18 Jur. 736; 52 E. R. 51; *affd. on other grounds* (1855), 7 De G. M. & G. 78, L. C."

PART X. SECT. 2, SUB-SECT. 2.

947 iii. ——.]—CROMARTY *v.* CROMARTY, No. 879 iv., *ante*.—**CAN.**

u i —— *Decree for alimony.*]—BURPEE *v.* BURPEE (B. C.), [1929] 3 D. L. R. 18; 2 W. W. R. 128.—**CAN.**

PART X. SECT. 2, SUB-SECT. 3.

952 i. For "14 O. L. R. 234" read "14 O. L. R. 434."

sw. *Presumption in favour of validity of proceedings.*]—FIELDS *v.* FIELDS, [1925] 2 D. L. R. 256; 58 N. S. R. 65.—**CAN.**

sx. *Foreign court without jurisdiction—Doubt as to husband's domicil.*]—A decree of divorce granted to a wife by a ct. of a foreign state wherein the husband was born & had lived continuously up to a time shortly before the date of the commencement of the divorce proceedings should not be pronounced invalid by our cts., when collaterally attacked years afterwards on the ground that at said date the husband had acquired another domicil, unless there is the clearest possible proof that the new domicil had then been acquired by him.—GILBERT *v.* STANDARD TRUSTS CO. (Alta.), [1928] 4 D. L. R. 371; [1928] 3 W. W. R. 111.—**CAN.**

sy. —— *No domicil in country of court granting decree—Decree not recognised.*]—DRAKE (OTHERWISE MACLAREN) *v.* MACLAREN (Alta.), [1929] 3 D. L. R. 159; 2 W. W. R. 87.—**CAN.**

952 ii. ——.]—OWEN *v.* ROBINSON (OTHERWISE OWEN), [1925] N. Z. L. R. 591.—**N.Z.**

PART X. SECT. 2, SUB-SECT. 4.

954 iv. —— ——.]—By decree of the Michigan ct. the mother of infants was granted a divorce from the father & awarded the custody of the infants, until they reached a certain age or until the further order of the ct. The infants were in the custody of the father in Ontario:—*Held:* the decree was not conclusive upon an application to an Ontario ct. for an order for custody, more especially as the judgment of the Michigan ct. was not final.—*Re* GAY, [1926] 3 D. L. R. 349; 59 O. L. R. 40.—**CAN.**

954 v. —— ——.]—Where children were residing with their father in a province where he was engaged in business, & their welfare would be best served by leaving them in his custody:—*Held:* his application to be appointed their guardian should be granted, notwithstanding the fact that their mother, in securing a divorce in an undefended action in a foreign ct., had also obtained as incidental thereto an order giving her their custody.—*Re* SNYDER, SNYDER *v.* SNYDER, [1927] 3 D. L. R. 151; [1927] 2 W. W. R. 240; 38 B. C. R. 336.—**CAN.**

954 vi. —— *On orders for alimony.*]—A judgment of a foreign ct. awarding alimony to a husband is enforceable in Ontario, although the Ontario ct. does not know or recognise any right to alimony in a husband against his wife.—BURCHELL *v.* BURCHELL, [1926] 2 D. L. R. 595; 58 O. L. R. 515.—**CAN.**

r i. ——.]—The only ct. with jurisdiction over the custody of an infant is the ct. of the domicil of the infant.—CODY *v.* CODY, [1927] 3 D. L. R. 349; [1927] 1 W. W. R. 603; 21 Sask. L. R. 391.—**CAN.**

r ii. —— *Divorce proceedings commenced in Alberta—Removal of children by father to another Province.*]—Where the husband is domiciled in Alberta at the time an action for divorce is begun, the Supreme Ct. of Alberta has jurisdiction in such action to make an order awarding the custody of the children to the mother even though they have been removed by the father to a foreign State & are residing therein at the time of the application for the order.—GOFORTH *v.* GOFORTH (Alta.), [1929] 1 D. L. R. 58; [1928] 3 W. W. R. 483.—**CAN.**

Compare No. 1117 i., *post*.

s i. —— *Decree by Serbian court—Whether Scottish court will enforce.*]—Decree of divorce & for the custody of the child of the marriage had been obtained in the Serbian cts. by a Serbian, resident in Belgrade, against his wife, who was a Scotswoman. The child, a girl of 8 years of age, was resident with her mother in Scotland. In a petition to the ct. in Scotland by the father for custody of the child, the mother averred that it would be prejudicial to the health, welfare, & interests of the child that the petition should be granted:—*Held:* while petitioner's

Part XIV.—Foreign Judgments.

1033. For " No. 383, *ante* " read the following :—
The judgment of a foreign ct. [in this case the exors.' Ct. of Dealing at St. Croix], consisting of persons interested in the property in dispute, will be disregarded in the cts. of this country.—PRICE *v.* DEWHURST (1837), 8 Sim. 279 ; Donnelly, 264 ; 6 L. J. Ch. 226 ; 59 E. R. 111 ; *affd. on other grounds* (1838), 4 My. & Cr. 76.

1033a. Due constitution of court—Necessity for strict proof.]—R. *v.* BEECH, POLLITT & STRUDWICK (1928), 20 Cr. App. Rep. 175, C. C. A.

1039. *Add. Annotation :—As to* (1) **Consd.** Dreyfus (C. L.) *v.* I. R. Comrs., Dreyfus (L. L.) *v.* I. R. Comrs. (1929), 14 Tax Cas. 560.

1041. *Add. Annotation :—Generally,* **Refd.** Employers' Liability Assce. Corpn. *v.* Sedgwick, Collins, [1927] A. C. 95.

1044a. Judgment of horning.]—(1) An action lies in the English cts. on a Scotch judgment of horning against a Scotchman born. (2) Where a Scotch decree adjudges interest to be paid, but does not fix the time from which it is to run, it is payable from the day of citation.—DOUGLAS *v.* FORREST (1828), 4 Bing. 686 ; 1 Moo. & P. 663 ; 6 L. J. O. S. C. P. 157 130 E. R. 933.

Annotations :—As to (1) **Refd.** Don *v.* Lippmann (1837), 5 Cl. & Fin. 1 ; Cowan *v.* Braidwood (1840), 9 Dowl. 26 ; Schibsby *v.* Westenholz (1870), L. R. 6 Q. B. 155 ; Rousillon *v.* Rousillon (1880), 14 Ch. D. 351 ; Emanuel *v.* Symon, [1908] 1 K. B. 302 ; Gavin Gibson *v.* Gibson, [1913] 3 K. B. 379.

1052. *Add. Annotation :—* **Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

1054. *Add. Annotation :—***Apld.** Rudd *v.* Rudd, [1924] P. 72.

1069. *Add. Annotation :—***Refd.** The Joannis Vatis (No. 2), [1922] P. 213.

1073. *Add. Annotation :—As to* (1) **Apld.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

1080. *Add. Citation :—*[1921] B. & C. R. 195.

1090a. ——.]—RUDD *v.* RUDD, No. 903a, *ante.*

1098a. General rule.]—A plea of judgment recovered in a foreign ct. of competent jurisdiction must show that the judgment so recovered is final & conclusive between the parties according to the law of the place where such judgment is pronounced.—FRAYES *v.* WORMS (1861), 10 C. B. N. S. 149 ; 142 E. R. 407.

1108. *Add. Annotation :—***Apld.** Beatty *v.* Beatty, [1924] 1 K. B. 807.

1112. *Add. Annotation :—***Consd.** Beatty *v.* Beatty, [1924] 1 K. B. 807.

1113. *Add. Annotation :—***Consd.** Beatty *v.* Beatty, [1924] 1 K. B. 807.

right to custody of the child had already been settled by a competent ct., the Scottish ct. was entitled, before ordering delivery of the child, to be informed of petitioner's arrangements for the conveyance of the child to Belgrade, & for her reception there.—RADOYEVITCH *v.* RADOYEVITCH, [1930] S. C. 619.—**SCOT.**

PART XIII. SECT. 3.

t i. —— —— *Court of husband's domicil.*]—In a petition brought by the wife of a domiciled Scotsman for custody of the only child of the marriage, or otherwise for access, the husband maintained that the Scottish ct., even if it had jurisdiction, could not pronounce any effective order. The husband, when the question of jurisdiction was raised, was residing in New York, where he held a professional appointment ; petitioner was living in London, & the child, under the care of her paternal grandmother, was in France :—*Held :* the Ct. of Session, as the ct. of the husband's domicil, had jurisdiction to determine the questions of custody & access ; the mere fact that the parties were outwith Scotland did not render ineffectual any decree which it might pronounce since such decree being a decision as to status, was a judgment *in rem* universally binding.—PONDER *v.* PONDER, [1932] S. C. 233.—**SCOT.**

PART XIV. SECT. 1.

a i. —— *Order conferring rights on committee of lunatic.*]—The rights conferred upon the committee of a lunatic by a ct. of the lunatic's domicil, with reference to personalty, are entitled to world-wide recognition.—*Re* HICKSON, [1927] 4 D. L. R. 607 ; 61 O. L. R. 180.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 2.—A.

1034 iii. ——.]—Where a suit is brought on a foreign judgment, it is not open to deft. to plead that the ct. which passed the judgment had no jurisdiction to do so, when he himself had submitted to the jurisdiction & had not challenged it.—GANGA PRASAD *v.* GANESHI LAL (1923), I. L. R. 46 All. 119.—**IND.**

1039 i. *Essentials to establishment of jurisdiction.*]—*Held :* the provisions in Jud. Act, 1927 (c. 88), ss. 51, 52, must be confined to actions upon judgments obtained in the Province of Q., which, according to the principles of international law, applicable as between the different Provinces of the Dominion, are entitled to extra-territorial recognition, *i.e.* to those cases in which the writ was served within the Province of Q. upon a person domiciled & resident therein & who owed allegiance to the laws of Q.—LUNG *v.* LEE, [1929] 1 D. L. R. 130 ; 63 O. L. R. 194.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 2.—C.

1054 xiv. —— ——.]—A judgment on an award obtained in England by default cannot be sued on in India, since it is not a judgment " on the merits " within Code of Civil Procedure (Act V. of 1908), s. 13.—OPPENHEIM & Co. *v.* MAHOMED HANEEF, [1922] 1 A. C. 482 ; 91 L. J. P. C. 205 ; 127 L. T. 196 ; 49 L. R. Ind. App. 174.—**IND.**

1054 xv. —— ——.]—Deft., who was resident & domiciled in Ontario, was served there with a writ of summons by which an action for the price of goods sold & delivered was commenced against him in the Superior Ct. of Quebec. The cause of action arose partly at least in Ontario. He did not appear & judgment was entered against him by default. In an action upon that judgment brought in Ontario by same pltf. against same deft., the latter pleaded that the Quebec judgment was of no effect in Ontario :—*Held :* the provisions of Judicature Act, R. S. O., 1927, ss. 51, 52, enacted by an Act of the Province of Canada, 1860, must be confined to actions upon judgments obtained in Quebec which, according to the principles of international law are entitled to extra-territorial recognition, *i.e.* to those cases in which the writ was served within Quebec upon a person domiciled & resident therein & who owed allegiance to the laws of Quebec.—LUNG *v.* LEE, [1929] 1 D. L. R. 130 ; 63 O. L. R. 194.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 2.—E.

c i. —— *Judgment based on joint petition presented by both parties.*]—MUHAMMAD MOIDEEN *v.* CHINTHAMANI CHETTAR (1929), I. L. R. 52 Mad. 503.—**IND.**

PART XIV. SECT. 2, SUB-SECT. 2.—F.

e i. —— *Execution of power of attorney—Authorising agent to appear as plaintiff or defendant—Failure of agent to appear.*]—JANOO HASSAN SAIT *v.* MAHAMAD OHUTHU (1924), I. L. R. 47 Mad. 877.—**IND.**

PART XIV. SECT. 2, SUB-SECT. 3.

o. Read now " **1098a i.**"

p. Read now " **1098a ii.**"

1098a iii. —— *Presumption of finality.*]—The finality & conclusiveness of a foreign judgment will be presumed in favour of a pltf. relying on it, unless it is put in issue by deft.'s pleadings, but a Ct. of Appeal in ordering a new trial can allow such amendments to be made as will enable deft. to raise the issue.—SMITH *v.* SMITH, [1923] 2 D. L. R. 896 ; 2 W. W. R. 389.—**CAN.**

q. Read now " **1098a iv.**"

r. Read now " **1098a v.**"

1098a vi. ——.]—AINSLIE *v.* AINSLIE (1927), 39 C. L. R. 381 ; 27 S. R. N. S. W. 524 ; [1927] Argus L. R. 301. —**AUS.**

1113 ii. —— —— ——.]—Where there did not appear to be any difference proved between the effect in the foreign State & in Ontario of such a judgment :—*Held :* a decree for alimony not being an absolute judgment, pltf. was not entitled to recover upon

1113a. Judgment for payment of sum of money—Amount not subject to variation—Alimony.]—By the law of the State of New York, where a judgment has been pronounced by the proper ct. of that State for the payment of alimony, & instalments under that judgment are due & in arrear, it is not competent for that ct. to vary its judgment in respect of the instalments so accrued due :—*Held :* such a judgment is in that respect a final judgment & an action may be brought to enforce payment of those arrears in this country.—BEATTY *v.* BEATTY, [1924] 1 K. B. 807 : 93 L. J. K. B. 750 ; 131 L. T. 226, C. A.

1114. *Add. Annotation :*—**Refd.** Beatty *v.* Beatty, [1924] 1 K. B. 807.

1122a. Judgment founded on immoral agreement.]—PAPADOPOULOS *v.* PAPADOPOULOS, No. 946b, *ante.*

1126. For " No. 383, *ante* " read " No. 1033, *ante*, & Supp."

1132. *Add. Annotations :*—**Apld.** Ellerman Lines *v.* Read (1927), 44 T. L. R. 7. **Refd.** Jacobson *v.* Frachon (1927), 44 T. L. R. 103.

1135a. ——.]—Pltfs.' steamer stranded in the Black Sea, & L. agreed to try to salve her on the terms that security for payment of his remuneration should be arranged in London, & that he would not arrest the ship unless there was an attempt to remove her before the security had been given. Security was given in London in accordance with the salvage contract, & the ship was refloated & taken to Constantinople for temporary repairs. Before she was ready to leave, L. brought an action against the master in the Turkish ct. on the ground that the ship was about to be removed without security having been given. By order of the Turkish ct. the ship was arrested, &, as the master had no evidence of what had been done in London & L. took an oath that security had not been given, the Turkish ct. awarded L. £23,890. L. then disposed of the ship, & pltfs. brought an action (1) for damages for breach of contract, (2) for a declaration that the Turkish judgment was invalid, & (3) for an injunction to prevent the judgment from being enforced :—*Held :* (1) the Turkish judgment was invalid ; (2) an injunction restraining the enforcement of the judgment abroad should be granted.—ELLERMAN LINES, LTD. *v.* READ, [1928] 2 K. B. 144; 97 L. J. K. B. 366; 138 L. T. 625; 44 T. L. R. 285; 17 Asp. M. L. C. 421; 33 Com. Cas. 219, C. A.; *revsg.* (1927), 44 T. L. R. 7.

1136. *Add. Annotation : — Generally,* **Refd.** Macaulay *v.* Guaranty Trust Co. of New York (1927), 44 T. L. R. 99.

1141. For " No. 383, *ante* " read " No. 1033, *ante*, & Supp."

1147. *Add. Annotation :*—**Refd.** Jacobson *v.* Frachon (1927), 44 T. L. R. 103.

1147a. ——.]—In an action by buyers against foreign sellers for breach of contract alleging failure to deliver goods in the quantity & of the quality agreed to be sold, the defence was set up that the matter had been litigated in the French ct., which had given judgment for defts., & that the judgment was a bar to the action. Pltfs. replied that the judgment was obtained by proceedings contrary to natural justice. The action in France was brought by the sellers against the buyers for cancellation of the contract, & for damages, & the ct. made an order appointing an expert to go to London to examine the goods, compare them with the samples delivered, hear & take down in writing all evidence, & make a full report in writing to the French ct. It was proved in the English action that the expert appointed made a hurried & incomplete examination of the goods, refused to look at certain documents or to hear the evidence of pltfs. & their witnesses, & ultimately made a biased & erroneous report to the ct. :—*Held :* there being evidence that according to French law the ct. was not bound by the expert's report but could reject it, & that pltfs.' case had been properly argued before the French ct., & their evidence heard, there was no defect in the proceedings, &, there being no fraud proved, the judgment in the French action was valid & could not

the foreign judgment in respect of arrears of alimony.—MAGUIRE *v.* MAGUIRE 1921), 64 D. L. R. 180; 50 O. L. R. 100.—**CAN.**

1113 iii. —— —— ——.]—PERRY *v.* PERRY, [1924] 4 D. L. R. 1177 : 54 O. L. R. 613 ; *revsg.*, [1924] 1 D. L. R. 665 ; 53 O. L. R. 502.—**CAN.**

sa. *Judgment made award of court—No notice given to party—No notice required by law of country where judgment given.*]—In an action in Ontario upon a judgment recovered in Holland, it appeared that the judgment was pronounced by a ct. of record & directed that an award of arbitrators should be executed after its form & contents & in the ordinary way of execution ; & that no notice was given to defts. who were parties to the arbn. :—*Held :* the requirement of notice or no notice is a matter of procedure ; as it was shown that in Holland no notice was necessary, the lack of notice did not affect the validity of the judgment in Holland, which was final & conclusive & could be sued on in Ontario. —STOLP & Co. *v.* BROWNE & Co., [1930] 4 D. L. R. 703 ; 66 O. L. R. 73.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 5.

1117 i. *Orders in respect of foreign infant—Custody.*]—The ct. will give effect to the judgment of the ct. of a foreign State awarding the custody of an infant to one of the parents.—*Re* AYERS, [1921] 2 W. W. R. 171 ; *affd.*, [1921] 2 W. W. R. 625.—**CAN.**

—— ——.]—*See, also,* Nos. 954 i–954 v, *ante.*

1117 ii. *Appointment of guardian.*]—Where a child, whose parents had died, was removed from the province of its domicil of origin, its maternal grandfather, resident in that province, obtained from the cts. of that province letters of guardianship of the child & thereafter applied to the cts. of the province to which the child had been removed for a writ of *habeas corpus.* The application was granted on the ground that, other things being equal, the cts. of one province will recognise the proceedings of the cts. of another province in such a case.—*Re* BERGMAN & WALDRON, *Re* INFANTS ACT, [1923] 4 D. L. R. 56 ; 3 W. W. R. 70.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 7.

1127 i. ——.]—DELAPORTE *v.* DELAPORTE, [1927] 4 D. L. R. 933 ; 61 O. L. R. 302.—**CAN.**

1133 iii. —— —— *Not where involving retrial of questions adjudicated on by foreign court.*]—MANOLOPOULOS *v.* PNAIFFE, [1930] 2 D. L. R. 169 ; 1 M. P. R. 366 ; *revsg.*, [1929] 4 D. L. R. 48.—**CAN.**

1133 iv. ——.]—MANOLOPOULOS *v.* PNAIFFE (N. S.), [1929] 4 D. L. R. 48.—**CAN.**

1135 ii. —— ——.]—If it be alleged & proved that a party has obtained a judgment in his favour by some extraneous fraud, such as the clandestine substitution of a false exhibit for the real exhibit, or the deliberate suborning of a witness to testify to the genuineness of false documents or to give any material false testimony, or the giving of false oral testimony material & relevant to the issues, such judgment if a domestic judgment, can be set aside in a new action, or if it is a foreign judgment the fraud may be set up as a defence to an action thereon.—LOCKE *v.* HULETT (Alta.), [1929] 3 D. L. R. 572 ; 2 W. W. R. 558.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 8.

1140 i. *What amounts to repugnancy to " natural justice "—Not merely following lex fori—Lex fori different from law in force in British India.*]—GANGA PRASAD *v.* GANESHI LAL (1923), 1 L. R. 46 All. 119.—**IND.**

be impeached, & was a complete defence to the English action.—JACOBSON *v.* FRACHON (1927), 138 L. T. 386; 44 T. L. R. 103; 72 Sol. Jo. 121, C. A.

1151. *Add. Annotation:*—**Consd.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641.

1170. *Add. Annotation:*—**Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

1195. *Add. Annotations:*—*As to* (2) **Refd.** The Goulandris, [1927] P. 182. *As to* (3) **Refd.** Ingenohl *v.* Wing On (Shanghai) (1927), 44 R. P. C. 343; Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641.

1205a. —— **Inquiry abroad into loss of ship—Report not confirmed by governor of colony.**]—*Held:* the inquiry was not conclusive.—*Re* QUEEN OF THE THAMES (1872), 36 J. P. 72.

1214. After this case add "*See, also,* ESTOPPEL, Vol. XXI., pp. 154–156, Nos. 165–190."

1240. *Add. Annotation:*—**Consd.** Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44.

1241. After the last cross-reference following this case add "—— **Maintenance order made in Dominion—Under Maintenance Orders (Facilities for Enforcement) Act, 1920 (c. 33).**]—*See* HUSBAND & WIFE, No. 6233b."

1241a. —— **Judgment severable.**]—RAULIN *v.* FISCHER, No. 1120, *ante.*

1243a. —— **Since constitution of Irish Free State.**]—Judgments Extension Act, 1868 (c. 54), ceased to operate in Southern Ireland on Dec. 5, 1922.—WAKELY *v.* TRIUMPH CYCLE Co., [1924] 1 K. B. 214; 93 L. J. K. B. 331; 130 L. T. 269; 40 T. L. R. 15; 68 Sol. Jo. 117, C. A.

Annotations—**Folld.** Banfield *v.* Chester (1925), 94 L. J. K. B. 805. **Refd.** Performing Right Society *v.* Bray U. D. C., [1930] A. C. 377.

1243b. —— ——.]—Judgments Extension Act, 1868 (c. 54), has, since Dec. 5, 1922, ceased to apply to the Irish Free State. A certificate of an English judgment can, therefore, no longer be issued under Judgments Extension Act, 1868, s. 1, for registration in the Irish Free State cts.

Semble: such certificate will be registered in the Irish Free State cts., but the application to the English ct. should be for a certificate of the judgment *simpliciter* under R. S. C., Ord. 61, r. 7, & not supported by an affidavit having reference to Judgments Extension Act, 1868.—BANFIELD *v.* CHESTER (1925), 94 L. J. K. B. 805; 133 L. T. 623; 41 T. L. R. 563; 69 Sol. Jo. 692, C. A.

PART XIV. SECT. 3, SUB-SECT. 1.—A.

sa. *General rule.*]—As the judgment was binding on the parties in California it was binding on the parties in British Columbia, & the judgment of the State of California having been proved to the satisfaction of the British Columbia ct., the rights of the pltfs. under the California judgment should be implemented & rendered effective.—ANDLER *v.* DUKE, [1931] 3 D. L. R. 561; 43 B. C. R. 549; *varied,* [1932] 1 W. W. R. 257; 2 D. L. R. 19.—**CAN.**

1155 iii. —— ——.]—In an action in Manitoba upon a foreign judgment the fact that defences have been raised & tried in the foreign ct. does not prevent their being raised & tried again, but there is a discretion in the ct. to allow the defences or to strike them out on the ground of embarrassment or delay: the fact that the case has been tried out in a foreign ct., that an unsuccessful appeal has been taken, or that a consent judgment has been entered will have a very strong bearing, but in each case the discretion must be exercised upon the merits of that case alone.—CALLAGHAN *v.* NICHOLLS, [1921] 3 W. W. R. 476; 31 Man. L. R. 331.—**CAN.**

1167 v. —— —— —— ——.]—The ct. will not entertain defences in an action on a foreign judgment that should have been raised in the foreign ct. or which might properly have been made the subject of appeal in the foreign jurisdiction.—HUTTON *v.* DENT (1922), 70 D. L. R. 582.—**CAN.**

PART XIV. SECT. 3, SUB-SECT. 2.—A.

1189 i. *What is foreign judgment in rem—Adjudication on distribution of personal estate.*]—Where a ct. of the country of domicil adjudicates upon the distribution of personal property that adjudication is binding upon all the world & is not subject to review in the cts. of another country.

It is for the ct. of the domicil to determine whether its own proceedings are *in rem* or merely *in personam,* & when that ct. determines that its proceedings are *in rem* all foreign cts. must so treat the proceedings, although they would not be so recognised by the law of the country where the judgment is set up.—JONES *v.* SMITH, [1925] 2 D. L. R. 790; 56 O. L. R. 550.—**CAN.**

PART XIV. SECT. 4, SUB-SECT. 1.

1215 iv. —— ——.]—*Re* HAMAR, *Ex p.* MCGUINTY & Co. (1921), 63 D. L. R. 241; 2 C. B. R. 137.—**CAN.**

1215 v. —— ——.]—MARSHALL *v.* HOUGHTON, [1923] 2 W. W. R. 553; 33 Man. L. R. 166.—**CAN.**

PART XIV. SECT. 4 SUB-SECT. 3.

sb. *Action in Ontario against Ontario administrator—On foreign judgment against foreign administrator.*]—Where administrations are granted to different persons in different states, they are so far deemed independent of each other that a judgment obtained against one will furnish no right of action against the other, to effect assets received by the latter in virtue of his own administration.—BONN *v.* NATIONAL TRUST Co., [1930] 4 D. L. R. 820; 65 O. L. R. 633.—**CAN.**

PART XIV. SECT. 4, SUB-SECT. 5.

sd. *Effect of—Foreign decree of divorce.*]—On a petition for divorce it was shown that a decree of divorce to the parties had been granted by a foreign ct. on the cross-complaint of petitioner herein, that resp. subsequently married the co-resp. in said suit, & that petitioner had allowed 12 years to elapse without doing anything to question the validity of the foreign decree:—*Held:* even though that decree was invalid here, the petition should be dismissed on the grounds that petitioner had been "accessory to" the adultery of which he now complained & had been guilty of "unreasonable delay" in presenting his petition.—LITTLE *v.* LITTLE, [1930] 3 W. W. R. 222; 39 Man. L. R. 170; *revsd.,* [1931] 1 W. W. R. 5; 1 D. L. R. 823; 39 Man. L. R. 261.—CAN

PART XIV. SECT. 5.

1233 iii. —— ——.]—While her husband, who had deserted her, was domiciled in Alberta, pltf. obtained against him in Colorado, where they had formerly lived, a judgment in the nature of a decree of judicial separation & alimony. She sued in Alberta on that judgment, but abandoned that claim & asked for relief under an alternative claim for alimony:—*Held:* she was not estopped by the foreign judgment, & alimony granted.—DETRO *v.* DETRO, [1922] 3 W. W. R. 690; 70 D. L. R. 61.—**CAN.**

k i. —— *Identity of subject-matter—Onus of proof.*]—QUICKSTAD *v.* MCNEILL, [1932] 4 D. L. R. 427.—**CAN.**

PART XIV. SECT. 6.

1241a i. *Effect of judgment to be considered by enforcing court—Judgment severable.*]—The judgment of a foreign ct. comprising two parts, one of which may be enforced in Canadian cts., but the other not, is deemed to be severable, & one part will be enforced though the other rejected.

It is the duty of the ct. to decide for itself the substance of the right sought to be enforced, irrespective of the opinion which may have been expressed by the foreign ct.—BURCHELL *v.* BURCHELL, [1926] 2 D. L. R. 595; 58 O. L. R. 515.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 1.—A.

1243a i. *To what judgments Act applicable—Since constitution of Irish Free State.*]—The certificate of an English judgment may be registered under Judgments Extension Act, 1868 (c. 54), in the Irish Free State.—GIEVES *v.* O'CONOR, [1924] 2 I. R. 182.—**IR.**

PART XIV. SECT. 7, SUB-SECT. 2.

sm. *By registration of English High Court judgment—No submission to jurisdiction.*]—In a suit for divorce in the Divorce Div. of the High Ct. of Justice in England, an appearance was entered by London agents, on behalf of a co-respondent residing in New Zealand, in error & without any instructions to that effect. On an application to have the judgment for costs of the High Ct. registered in the Supreme Ct. so that it might be enforced in New Zealand:—*Held:* (1) co-respondent did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that ct.; (2) even if such entry of appearance did amount to submitting to the High Ct.'s jurisdiction, it would not be just & convenient for the judgment to be enforced in New Zealand.—REDHEAD *v.* REDHEAD & CROTHERS, [1926] N. Z. L. R. 131.—**N.Z.**

sc. *Reciprocal Enforcement of Judg-*

SUB-SECT. 2.—OF SUPERIOR COURTS OF UNITED KINGDOM AND DOMINIONS (p. 471).

Order to secure lump sum.]—*See* HUSBAND & WIFE, No. 5469a, *post.*

1262a. Date from which interest runs—No date fixed in judgment.]—DOUGLAS *v.* FORREST, No. 1044a, *ante.*

Part XVI.—Practice and Procedure.

1272a. Not payment under garnishee order in England.]—SWISS BANK CORPN. *v.* BOEHMISCHE INDUSTRIAL BANK, No. 1307a, *post.*

1277a. ——.]—(1) Questions of procedure are to be determined by the *lex fori*, not by the *lex loci contractus.*

(2) *Semble:* set-off is matter of procedure, &, as such, determinable by the *lex fori.*—MACFARLANE *v.* NORRIS (1862), 2 B. & S. 783; 31 L. J. Q. B. 245; 6 L. T. 492; 9 Jur. N. S. 74; 121 E. R. 1263.

Annotation:—As to (2) **Refd.** Maspons y Hermano *v.* Mildred (1882), 9 Q. B. D. 530.

1285a. —— Foreign receivers or assignees in bankruptcy.]—Foreign receivers or assignees in bkpcy., who have, according to the law of the country in which they have been appointed, a right to sue in their own names for a chose in action due to a person in respect of whose property they have been appointed, have a similar right of action in England.—MACAULAY *v.* GUARANTY TRUST CO. OF NEW YORK (1927), 44 T. L. R. 99.

1289. *Add. Annotation:*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

1290. *Add. Annotation:*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

1292a. —— —— ——.]—WRIGHT *v.* SIMPSON (1802), 6 Ves. 714; 31 E. R. 1272, L. C.

Annotations:—**Consd.** Newton *v.* Chorlton (1853), 2 Drew. 333. **Refd.** The Vreede (1811), 1 Dods. 1; Pennell *v.* Roy (1853), 3 De G. M. & G. 126; Jackson *v.* Digby (1854), 2 W. R. 540; Strong *v.* Foster (1855), 4 W. R. 151; Madden *v.* M'Mullen (1860), 4 L. T. 180; Bailey *v.* Edwards (1864), 4 B. & S. 761; Belfast Banking Co. *v.* Stanley (1867), 15 W. R. 989; Liverpool Marine Credit Co. *v.* Hunter (1867), L. R. 4 Eq. 62; Barber *v.* Mackrell (1892), 68 L. T. 29.

1306a. Governed by lex fori.]—MACFARLANE *v.* NORRIS, No. 1277a, *ante.*

1307. *Add. Annotations:*—**Distd.** Swiss Bank Corpn. *v.* Boehmische Industrial Bank, [1923] 1 K. B. 673. **Consd.** Sedgwick Collins *v.* Rossia Insce. of Petrograd (1925), 133 L. T. 808; Richardson *v.* Richardson, [1927] P. 228.

1307a. Garnishee proceedings—Payment of debt situate in England—Recognised by international law.]—Judgment having been recovered against a foreign corpn., who submitted to the jurisdiction, a garnishee summons was issued to attach a debt due from a London bank to the foreign corpn.:—*Held:* the judgment creditors were entitled to have an order *nisi* made absolute, inasmuch as payment under a garnishee order operated as a discharge of the amount paid & was recognised by international law as having that effect, & consequently there was no real risk of the garnishees being obliged to pay the debt over again to the foreign corpn., & there was, therefore, nothing inequitable in making the order absolute.

The debt in this case is situate in England, & is discharged in whole or in part by payment under a garnishee order in England, which is not mere procedure & is recognised in international law (BANKES, L.J.).—SWISS BANK CORPN. *v.* BOEHMISCHE INDUSTRIAL BANK, [1923] 1 K. B. 673; 92 L. J. K. B. 600; 128 L. T. 809; 39 T. L. R. 179; 67 Sol. Jo. 423, C. A.

Annotations:—**Apld.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015. **Consd.** Richardson *v.* Richardson, [1927] P. 228.

1307b. —— —— ——.]—Defts., a co. incorporated in Russia, had a branch office in London, & had registered C. as their agent to accept service of any judicial process that might be issued against them. In 1918 defts.' business & its assets were by revolutionary legislation transferred to the Soviet Govt. In 1923 an action was brought in England to recover a debt alleged to be due from defts. to pltfs., the writ being served on C., & in default of appearance judgment was signed against defts. Pltfs. having obtained a garnishee order *nisi* to attach a debt due to defts. from third parties in England:—*Held:* as the debt owing from the garnishees to defts. was governed by English law, pay-

ments Act, 1925—Scope of Act.]—Reciprocal Enforcement of Judgments Act, 1925, does not permit the registration of a judgment obtained in a province or territory of the Dominion of Canada to which the Act applies unless the judgment is one which could be enforced by action thereon in Alberta. The Act does not make the judgments to which it applies any less "foreign" judgments or any more directly enforceable than before the Act was passed, & does not alter the rules of private international law as to the recognition to be given to foreign judgments. Therefore a judgment obtained in another province, under the rules thereof permitting service *ex juris*, against a deft. who was not resident or present in that province & did not submit to the jurisdiction of the ct. by contract or appearance is not one which is registrable under the Act. A partnership is not a "person," within the meaning of the Act, against whom a judgment may be registered.—CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* RYAN (Alta.), [1930] 1 D. L. R. 280; [1929] 3 W. W. R. 403.—**CAN.**

PART XIV. SECT. 8.

1254 i. *Authentication by seal of court—Or signature of judge.*]—To satisfy Evidence Act, N. B., c. 127, s. 58, if the document sought to be proved be a foreign judgment, the authenticated copy must either be sealed with the seal of the ct. in which the original is filed, or, in the event of such ct. having no seal, be signed by the judge, or one of the judges of such ct. with a statement from him in writing that the ct. has no seal.—HARRIS *v.* GARSON (1921), 67 D. L. R. 682; 49 N. B. R. 91.—**CAN.**

PART XVI. SECT. 1.

1266 i. *What are matters of procedure—Disability to sue—Statutes of limitation.*]—The question whether the enforcement of a right of action is barred by a statute of limitations, as distinguished from the question whether the right has been absolutely extinguished, is one of procedure only, & is governed wholly by the *lex fori.*—COLONIAL INVESTMENT & LOAN CO. *v.* MARTIN (Man.), [1927] 3 D. L. R. 360; [1927] 2 W. W. R. 94.—**CAN.**

PART XVI. SECT. 3, SUB-SECT. 1.

sd. —— *Liability to action for damages within jurisdiction—Attempt to return to country of residence.*]—Pltf. claimed $20,000 damages from deft., the cause of action being criminal conversation with pltf.'s wife. Deft. lived in U.S., but was here for a temporary purpose when pltf. had him arrested under an order to hold to bail. Pltf. in his affidavit sworn on Jan. 30, on which the order was granted, stated that deft. had arrived in Toronto that morning, & that he intended to leave for his own country that night, with intent to defraud pltf. of the damages he had sustained:—*Held:* in leaving Ontario he was not doing so with intent to defraud pltf., & was therefore entitled to be discharged.—RICE *v.* FLETCHER (1889), 13 P. R. 46.—**CAN.**

ment by the garnishees of the amount of the judgment debt would be a discharge *pro tanto* of the debt due from them to defts., & it must be assumed that the Soviet Govt. would follow the ordinary rules of international comity & admit the validity of that payment, & the garnishee order ought to be made absolute.—SEDGWICK COLLINS & Co. *v.* ROSSIA INSURANCE CO. OF PETROGRAD, [1926] 1 K. B. 1; 95 L. J. K. B. 7; 133 L. T. 808; 41 T. L. R. 663, C. A.; *affd. sub nom.* EMPLOYERS' LIABILITY ASSURANCE CORPN. *v.* SEDGWICK COLLINS & Co., [1927] A. C. 95, H. L.

Annotations:—**Consd.** Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65. **Refd.** Sabatier *v.* Trading Co., [1927] 1 Ch. 495; First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922; *Re* Russian & English Bank (1932), 48 T. L. R. 282.

1308. *Add. Annotation:*—*As to* (2) **Refd.** The Stream Fisher, [1927] P. 73.

1309a. —— **Rights of mortgagee of ship under French hypothèque—Claim for necessaries.**]—According to French law, the mtgee. of a ship under a French *hypothèque*, although he has not the same right of property as that given by Merchant Shipping Act, 1894 (c. 60), in respect of an English mtge., has a right to arrest the ship in the hands of a subsequent owner. His claim, however, is postponed to that of a necessaries man.

On a motion to determine priorities between English claimants, in respect of necessary repairs effected upon a French ship & claimants under a French *hypothèque* upon the ship:—*Held:* as the rights under the *hypothèque* must be determined according to French law, which gave greater rights than those given by English law to a necessaries man who had merely the right to sue *in rem*, the claim of the necessaries men, according to the *lex fori* by which the question of priorities must be determined, was postponed to the claim of the mtgees.—THE COLORADO, [1923] P. 102; 92 L. J. P. 100; 128 L. T. 759; 16 Asp. M. L. C. 145, C. A.

Annotations:—**Distd.** The Zigurds (No. 1) (1932), 48 T. L. R. 556. **Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

1309b. Rights of "ship's creditors" under German code—As against mortgagee & other necessaries men.]—A German firm supplied bunker coal to a Latvian steamship in a German port under a contract which was said to confer upon them a status known to German law as that of "ship's creditors." The ship was subsequently arrested in England at the suit of other necessaries men & sold by order of the English ct. Further claims were brought against her by a mtgee. & other necessaries men, & these, as well as the German firm, in due course obtained judgment, in default of appearance, against the proceeds of the sale of the ship. On a motion to determine priorities it was argued for the German suppliers of bunkers that the law applicable was the German Commercial Code, by which "ship's creditors" were given priority not only over other necessaries men but also over a mtgee., & also were given the equivalent of a maritime lien, which entitled them to follow the ship or her proceeds into the hands of subsequent owners:—*Held:* any rights possessed by the claimants under German law were of no value unless & until they were enforced by the arrest of the vessel in the German cts.; the question of priorities must be determined by the *lex fori*, under which the claimants as necessaries men had no maritime lien or special rights over the heads of a mtgee. or other necessaries men.—THE ZIGURDS (No. 1), [1932] P. 113; 101 L. J. P. 75; 48 T. L. R. 556.

1313. *Add. Annotation:*—**Distd.** The London, [1931] P. 14.

1315a. —— **Action relating to same subject-matter.**]—An action *in personam* for damage occasioned by a collision in Scottish waters was commenced in the cts. of Scotland by the owners of the *L.* against the owners of the *G.* Subsequently the owners of the *G.* commenced proceedings *in rem* in England for the damage to their vessel against the owners of the *L.* & under threat to arrest obtained security from the owners of the *L.*, who thereupon applied by summons to stay the proceedings in the action in England:—*Held:* the ct. will not, as a matter of course, where there is an action pending in the United Kingdom or any of the British Dominions, stay a second action commenced in respect of the same subject-matter, whether pltf. is or is not the same in both actions; & the matter being one of discretion, in the circumstances of the present case no stay to be granted.—THE LONDON, [1931] P. 14; 100 L. J. P. 57; 144 L. T. 375; 47 T. L. R. 170; 18 Asp. M. L. C. 180.

1328. *Add. Annotation:*—**Consd.** The Golaa, [1926] P. 103.

1331. *Add. Annotation:*—**Refd.** Ellerman Lines *v.* Read, [1928] 2 K. B. 144.

1332. *Add. Annotation:*—**Apld.** Ellerman Lines *v.* Read, [1928] 2 K. B. 144.

1332a. ——.]—ELLERMAN LINES, LTD. *v.* READ, No. 1135a, *ante*.

1340. *Add. Annotations:*—**Consd.** Ellerman Lines *v.* Read, [1928] 2 K. B. 144; *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

1345. *Add. Annotation:*—**Apld.** Ellerman Lines *v.* Read, [1928] 2 K. B. 144.

1348a. —— —— **Scottish action for rectification of settlement.**]—WILSON *v.* WILSON (1895), *Times*, Feb. 14 & Mar. 5.

1351. *Add. Annotation:*—**Consd.** Vardy *v.* Smith (1932), 48 T. L. R. 661.

1370. *Add. Annotation:*—**Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

1372. *Add. Annotation:*—**Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

1378. *Add. Annotation:*—**N.F.** The London, [1931] P. 14.

1378a. —— ——.]—In respect of a collision in the Red Sea the owners of the *J.* issued a writ in the Egyptian cts. against the owners of the *M.* & obtained bail. Shortly afterwards the owners of the *M.* instituted a cross-action against the owners of the *J.*, also in Egypt. In Oct. 1927, the owners of the *M.* issued a writ *in personam* in England against the owners of the *J.*, who entered appearance under protest & set down a motion to set aside the writ. In Dec. the owners of the *M.* discontinued their cross-action in Egypt:—*Held:* if the cross-action had still been pending the owners of the *M.* might have been put to their election, but as they had already elected there was no justification for

staying the action in England, merely because they were defts. to an action in another country in respect of the same subject-matter.—THE JANERA, [1928] P. 55; 97 L. J. P. 58; 138 L. T. 557; 44 T. L. R. 193; 17 Asp. M. L. C. 416.

Annotation:—**Distd.** The London, [1931] P. 14.

1378b. Action in rem in one country—Whether stayed pending proceedings in personam by defendant in another country.]—THE LONDON, No. 1315a, *ante.*

1379a. —— —— —— ——.]—In 1924 pltfs. instituted an action *in rem* in the United States in respect of damage done by defts.' ship to some pipe lines belonging to pltfs. in the bed of the river at Tampico, & the ship was arrested & released on bail being given by defts. Before the action in America had been brought to trial pltfs. issued a fresh writ *in rem* in England, & on Feb. 27, 1926, re-arrested the ship in the Thames. On Mar. 4 defts. served notice of motion to set aside the writ & all subsequent proceedings in the English action. The American action was discontinued on Mar. 8:—*Held:* having obtained bail & so released the ship from any further claim in respect of the particular damage alleged, pltfs.' subsequent discontinuance of the action in America after the re-arrest in England did not cure their breach of good faith in instituting proceedings in England & causing the ship to be arrested again, & the writ & all subsequent proceedings must be set aside.—THE GOLAA, [1926] P. 103; 95 L. J. P. 60; 135 L. T. 208; 42 T. L. R. 414; 70 Sol. Jo. 776; 17 Asp. M. L. C. 35.

1380. *Add. Annotations:*—**Distd.** The Juno (1922), 128 L. T. 671. **Apld.** The Golaa, [1926] P. 103. **Consd.** The London, [1931] P. 14. **Refd.** The Goulandris, [1927] P. 182.

1381. *Add. Annotation:*—**Consd.** The Juno (1922), 128 L. T. 671.

1383. *Add. Annotations:*—**Folld.** The Juno (1922), 128 L. T. 671. **Refd.** The Golaa, [1926] P. 103.

1383a. —— —— ——.]—On June 13, 1922, a British steamer & a Finnish steamer were in collision in the river Maas, Holland. After the collision the Finnish owners threatened arrest in a Dutch port. The owners of the British steamer who were anxious that the litigation should take place in England, reluctantly instructed their agents in Holland to provide bail, & although no proceedings were begun, documents in identical terms in the nature of bank guarantees to provide bail if proceedings were commenced within three months were exchanged on July 29 between the owners. On Sept. 6 the Finnish vessel came within the jurisdiction of the English cts., & an action was commenced, & the ship arrested & bail given under protest at the suit of the owners of the British ship. At that time no proceedings had been begun in Holland, but on Sept. 14 an action was commenced in Holland by the Finnish owners. The Finnish owners moved that the writ & all proceedings in the action by the British owners should be stayed, on the ground that their action was oppressive because it required the Finnish owners to give bail in two cts., & was inequitable as a breach of faith of the agreement in Holland:—*Held:* no legal proceedings having been commenced when the writ was issued in England, & there being no arrest & no bail given prior to the writ now sought to be set aside, there was nothing to debar the British owners from carrying on proceedings in England.—THE JUNO (1922), 128 L. T. 671; 16 Asp. M. L. C. 118.

1387. *Add. Annotation:*—**Refd.** Bristol Corpn. *v.* Virgin, [1928] 2 K. B. 622.

PART XVI. SECT. 5, SUB-SECT. 2.—B.

b i. —— *Indian courts.*]—The case of *Carron Iron Co.* v. *Maclaren* is not an authority for the proposition that a ct. will not grant an injunction against a person who is not within its jurisdiction, so that he would be subject to process of contempt.

The position of cts. in India *inter se* is quite different from that of English cts. as regards foreign cts.—A. MILTON & CO. *v.* OJHA AUTOMOBILE ENGINEERING CO. (1930), I. L. R. 57 Calc. 1280.—**IND.**

PART XVI. SECT. 6, SUB-SECT. 2.

s. Add "*varied on appeal*, 4 A. R. 267."

CONSTITUTIONAL LAW.

Part II.—The Title to the Crown.

2. *Add. Annotation:—As to* (2) **Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

Part III.—Relations between the Crown and the Subject.

7a. —— **In foreign parts.**]—There is no legal duty on the Crown to afford by its military forces protection to British subjects in foreign parts. If, in the exercise of its discretion, the Crown decides to afford such protection, it may lawfully stipulate that it will do so only on the condition that the cost shall be borne by those asking for it.

Pltfs., an English shipping co. trading in the China seas, requested the Crown to provide armed guards to be placed on board their ships as a protection against internal piracy, which was a serious menace at the material time. Armed guards having been provided on the terms that they should be paid for by the pltfs., the latter claimed a declaration that as British subjects they were entitled to protection without payment:—*Held:* there was no duty on the Crown to afford military protection to pltfs. in foreign parts, & if it did afford protection it was entitled to do so on such terms as it thought fit.—CHINA NAVIGATION CO., LTD. *v.* A.-G., [1932] 2 K. B. 197; 101 L. J. K. B. 478; 147 L. T. 22; 48 T. L. R. 375, C. A.

17. *Add. Annotation:*—**Refd.** Falcon *v.* Players Film Co., [1926] 2 K. B. 474.

Part IV.—The Royal Family.

25. *Add. Annotation:*—**Refd.** *Re* Mason (1928), 97 L. J. Ch. 321.

Part V.—The Royal Prerogative.

53. *Add. Annotation:—As to* (2) **Consd.** Nadan *v.* R., [1926] A. C. 482.

54. *Add. Annotation:*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

58a. **Crown cannot seize subject's property without compensation—What amounts to seizure.**]—Assuming that the Crown has no right at common law to take a subject's property for reasons of State without paying compensation, that rule can only apply, if it does apply, to a case where property is actually taken possession of or used by the Govt., or where, by the order of a competent authority, it is placed at the disposal of the Govt., & a mere negative prohibition, though it involves interference with an owner's enjoyment of property, does not, merely because it is obeyed, carry with it at common law any right to compensation.—FRANCE FENWICK & CO. *v.* R., [1927] 1 K. B. 458; 96 L. J. K. B. 144; 136 L. T. 358; 43 T. L. R. 18; 32 Com. Cas. 116.

Annotations:—**Refd.** Ensign Shipping Co. *v.* I. R. Comrs. (1927), 139 L. T. 111; Ensign Shipping Co. *v.* I. R. Comrs. (1928), 12 Tax Cas. 1169.

Part VI.—The Crown in relation to the Executive.

79. *Add. Annotation:*—**Refd.** Nixon *v.* A.-G., [1930] 1 Ch. 566.

80. *Add. Annotations:*—**Refd.** Brown *v.* Dagenham U. C., [1929] 1 K. B. 737; Nixon *v.* A.-G., [1930] 1 Ch. 566.

81. *Add. Annotation:*—**Refd.** Brown *v.* Dagenham U. C., [1929] 1 K. B. 737.

PART III. SECT. 1.

b i. *To govern & protect—Statutory right to compensation for civil commotion—Loss of right by recovery from insurer.*]—LEEN *v.* EXECUTIVE COUNCIL (PRESIDENT), [1928] I. R. 408.—IR.

PART VI. SECT. 2. SUB-SECT. 1.

76 i. *Public officers & servants generally—Suspension of—Holding of inquiry—Court cannot interfere.*]—SCHIERHOUT *v.* UNION GOVERNMENT (MINISTER OF JUSTICE), [1926] App. D. 295.—S. AF.

81 ii. ——.]—Pltf., manager of a railway under a contract made with the Govt. to be paid a stated salary & six months' salary if at any time he should be dismissed without notice, was dismissed without notice:—*Held:* (1) he was entitled to recover his six months' wages; (2) the Crown was not liable for interest. —NOBLE *v.* NEWFOUNDLAND GOVERNMENT (1902), 8 Nfld. L. R. 571, 601.—NFLD.

81 iii. —— —— ——.]—R. was, by Order in Council, appointed a member of the former Federal Appeal Board, which was created by 13 & 14 Geo. 5, c. 62. By 20 & 21 Geo. 5, c. 25, the above statute was repealed, two new tribunals formed, & R.'s position in consequence abolished. R. now claimed that, as he was re-appointed in 1928 for five years, he is entitled to recover from the resp. the balance of his salary for the unexpired term. No provision was made in the repealing statutes with regard to such payments: *Held:* (1) except where there is statutory provision for a higher tenure of office, or, that the power of the Crown is otherwise expressly restricted, the Crown has by law authority to

83. *Add. Annotations :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375. **Refd.** Brown *v.* Dagenham U. C., [1929] 1 K. B. 737 ; Nixon *v.* A.-G., [1930] 1 Ch. 566.

85. *Add. Annotations :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375. **Refd.** Nixon *v.* A.-G., [1930] 1 Ch. 566.

86. *Add. Annotation :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

100. After the cross-reference following this case add as follows :—

—— **Extension of British jurisdiction in British protectorate.**]—*See* DEPENDENCIES, No. 10a.

—— **Effect of recitals in.**]—*See* ESTOPPEL, Vol. XXI., p. 331, No. 1247.

107. *Add. Annotation :*—**Refd.** Eshugbayi Eleko *v.* Nigeria Government, [1928] A. C. 459.

110. *Add. Annotation :*—**Refd.** Ruffy-Arnell, etc. Co. *v.* R., [1922] 1 K. B. 599.

122. Before this case add "*See, also,* CROWN PRACTICE, Vol. XVI., pp. 481–491."

136a. Statement of fact—Whether binding on court.]—Where a collision took place in the Bristol Channel, some 10½ or 12½ miles from the English coast & 9½ or 7½ miles from the Welsh coast, & the judge decided that the waters where the collision occurred were within the *fauces terræ* & within the bodies of the counties of Devonshire & Glamorganshire, &, on appeal, the ct. was informed by the A.-G. that he was instructed by the Secretary of State for Home Affairs that the spot where the collision was alleged to have occurred was not within the limits to which the territorial sovereignty of His Majesty extended :—*Held :* (1) (ATKIN & LAWRENCE, L.JJ.) the statement of the A.-G. was binding on the ct. ; (2) (BANKES, L.J.) the ct. was not necessarily bound to accept the information as conclusive, but having regard to the absence of authority & to the general trend of modern jurists to limit the width of the *fauces terræ* within which there was territorial sovereignty, the ct. should

dismiss at pleasure, either its civil or military officers, a condition to that effect being an implied term of the contract of service ; (2) it is a settled principle of law that public office is a distinctive thing & is not contractual in its nature.—REILLY *v.* R., [1932] Ex. C. R. 14 ; *affd.*, [1932] 3 D. L. R. 529 ; S. C. R. 597.—**CAN.**

83 ii. —— —— ——.]—Apart from some special statutory provision, no action will lie against the Crown for the wrongful dismissal of a servant of Govt. This rule of law is based upon public policy & the prerogative right of the Sovereign. In Government of India Act, 1919, s. 96B, the words "subject to the provisions of this Act & of rules made thereunder every person in the Civil Service of the Crown in India holds office during His Majesty's pleasure," read together with r. 14 of the rules regarding the Civil Services in India made by the Secretary of State providing for—proper departmental inquiry, indicate that certain formalities must be observed before a civil servant can be dismissed. In so far as these formalities are alleged not to have been followed, pltf. has a cause of action.—BARONI *v.* SECRETARY OF STATE FOR INDIA (1929), I. L. R. 8 Ran. 215.—**IND.**

c i. —— *Ordinance made under Northern Territory Acts.*]—Pltf. was a classified officer in the public service of Queensland in 1917. He was then appointed to the Commonwealth office of Director of Lands in the Northern Territory, & he continued to hold the position until 1921, when the Governor-General in Council dispensed with his services :—*Held :* the Crown had power to dispense, at will, with the services of pltf., who was appointed under Ordinance No. 6 of 1913, made under the above Acts, & not under Commonwealth Public Service Act.—TROWER *v.* THE COMMONWEALTH (1924), 34 C. L. R. 587.—**AUS.**

f i. —— —— *Effect of Government of India Act*, 1919.]—Govt. of India Acts, 1919, s. 96B, does not abrogate the right of the Crown to dismiss its civil servants at its pleasure, but reiterates that right & enacts that the same is only limited in so far as there are definite & special or particular rules laying down the method by which, or the circumstances in which, that right is to be exercised.—BIMALACHARAN BATABYAL *v.* INDIAN MUSEUM TRUSTEES (1929), I. L. R. 57 Calc. 231.—**IND.**

f ii. —— —— *Failure to observe conditions precedent—Remedy.*]—Where a public servant has been discharged contrary to Act 27, 1923, that is to say, where the statutory conditions precedent to his lawful discharge have not been observed, he is entitled, notwithstanding that his discharge is a nullity, to claim damages against the Crown for wrongful dismissal & is not limited to the remedy of having the irregular procedure set aside or the proper procedure enforced.

A Minister of the Crown, in discharging or purporting to discharge a public officer under Act 27, 1923, does not act as a servant of the Legislature, but as a servant of the Crown.—BRAMDAW *v.* UNION GOVERNMENT (1931), 52 N. L. R. 57.—**S. AF.**

g i. —— *Retirement by Order in Council—No office named in Order—Retirement from all public offices.*]—BRYCE *v.* R. (Can. Ex.), [1929] 3 D. L. R. 138.—**CAN.**

PART VI. SECT. 3.

100 i. *Order in Council—Under War Measures Act*, 1914, *s. 6—Validity.*]—PUGSLEY *v.* GARSON, p. 383, *post.*—**CAN.**

100 ii. —— *Under Dominion Lands Act, R. S. C.*, 1886 (*c.* 54)—*Validity.*]—STARLEY *v.* NEW MCDOUGALL-SEGUR OIL CO., [1927] 2 W. W. R. 379 ; *affd.*, [1927] 3 W. W .R. 464.—**CAN.**

100 iii. —— *Whether contract constituted.*]—*Held :* Orders in Council issued pursuant to 46 Vict. c. 17 ss. 49 & 50, authorising the Minister of the Interior to grant licenses to cut timber, did not constitute contracts between the Crown & proposed licensees, such Orders in Council being revocable by the Crown until acted upon by the granting of licenses under them.—BULMER *v.* R. (1894), 23 S. C. R. 488.—**CAN.**

100 iv. —— ——.]—STEWART *v.* JONES (1900), 19 P. R. 227.—**CAN.**

100 v. —— *Based on mistake of fact—Whether binding on Crown.*]—The Crown is not bound by an Order in Council passed inadvertently & on mistake of fact.—QUEBEC, MONTREAL & SOUTHERN RY. CO. *v.* R. (1914), 15 Exch. C. R. 237.—**CAN.**

100 vi. —— *Sufficient memorandum in writing of agreement.*]—*Held :* an Order in Council ought to be regarded as a sufficient expression in writing of an agreement to pay on the part of the Crown.—LAMARRE & CO. *v.* R., [1923] Exch. C. R. 174.—**CAN.**

100 vii. —— *Authorising contract—Scope of authority.*]—*Held :* an Order in Council authorising the Minister to enter into a contract for the removal of clay, sand & gravel, tendered for at a given price, does not carry with it any authority to add anything to or to vary the scope of the contract beyond the ambit of the Order in Council. The introduction of a clause purporting to be part of the authorised contract, throwing upon the contractor the obligation to remove, at the same price, material of another class than that mentioned in the Order in Council, is beyond the authority conferred by said Order in Council.—NATIONAL DOCK & DREDGING CORPN., LTD. *v.* R., [1929] Ex. C. R. 40.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 1.—A.

sm. *Whether power to begin action in county court by information.*]—R. *v.* COLMAN, [1930] 1 D. L. R. 523 ; [1929] 3 W. W. R. 385 ; 52 Can. C. C. 186 ; 38 Man. L. R. 330.—**CAN.**

so. *Department of Attorney-General—Manitoba Temperance Act, s.* 68.]—The Department of the A.-G. referred to in the above sect. is to be distinguished from the A.-G. — R. (THOMPSON) *v.* HAMMATT (Man.), [1926] 3 W. W. R. 350.—**CAN.**

sp. *Meaning of—In statute.*]—Wherever the words "Attorney-General" are used without qualification in a code or in a statute of Quebec, they have reference to the Attorney-General for Quebec.—PEOPLE'S HOLDING CO., LTD. *v.* A.-G. OF QUEBEC, [1931] S. C. R. 452.—**CAN.**

sq. *Misapplication of powers delegated by Provincial Legislature.*]—The delegate of a provincial Legislature can no more usurp indirectly the functions of the Parliament of Canada than can the Legislature itself, & it is the duty of the cts. to interfere to protect the subject from such an illegitimate exercise of powers founded upon oblique motives. On appeal from the dismissal of an action for an injunction restraining the defts. from taking further proceedings under Security Frauds Prevention Act, 1930, in alleged pursuance of "delegated authority" under sect. 10 of said Act : —*Held :* deft. A.-G. by & through his delegated representative had unconstitutionally misapplied the powers delegated to him, in that the purpose of his proceedings was to aid a criminal prosecution, something which was not contemplated by the Act, with the result that the federal field had been just as much invaded, even if indirectly, as if the primary invasion had been accomplished directly by the passing of an Act which in its terms was a violation of the B. N. A. Act.—MCGEE *v.* POOLEY, [1931] 3 W. W. R. 65, 140 ; 4 D. L. R. 475 ; 56 Can. C. C. 325 ; 44 B. C. R. 338.—**CAN.**

be guided by the information so given.—THE FAGERNES, [1927] P. 311; 96 L. J. P. 183; 138 L. T. 30; 43 T. L. R. 746; 17 Asp. M. L. C. 326; *sub nom.* THE FAGERNES, CORNISH COAST (OWNERS) *v.* SOCIETA NAZIONALE DI NAVIGAZIONE, 71 Sol. Jo. 634, C. A.

136b. —— ——.]—ENGELKE *v.* MUSMANN, No. 418a, *post.*

152. *Citations:*—For "[1920] 1 Ch. 107" read "[1921] 1 Ch. 107."

153a. Admiralty—Action against—Description in writ.]—By 1 & 2 Geo. 4, c. 93, s. 9, the principal officers & comrs. of the navy for the time being were empowered to bring & maintain any action of ejectment or other proceeding for recovering possession of lands, etc., vested in them, & to bring, maintain, or defend any other action in respect of the said lands, etc.; & it was enacted that, in any such action, they should be called by the name of "the principal officers & comrs. of His Majesty's navy," without naming any of them; & that such action or suit should not abate by the death, resignation, or removal of such comrs., or any of them. By subsequent statutes, the powers & authorities of those comrs. were transferred to & vested in "the comrs. for executing the office of Lord High Admiral of the United Kingdom." A writ of summons, addressed to "the comrs. for executing the office of Lord High Admiral of the United Kingdom," requiring them to appear in an action of debt at the suit of the pltf., was served upon A., one of the comrs., & upon no one else. Upon a motion, on behalf of A., to set aside the writ, & the copy & service thereof, for irregularity, the affidavits disclosed that the action was brought to recover arrears of half-pay alleged to be due to pltf.:—*Held:* that it was not competent to the ct., in dealing with such a motion, to enter into the consideration of whether the action was maintainable or not; for that, inasmuch as 1 & 2 Geo. 4, c. 93, s. 9, enabled some actions to be brought against the comrs. by the description contained in this writ, there was no irregularity in the process itself; & to determine, upon a summary application, that the cause of action was not within the statute, would be to deprive pltf. of his right to review their decision by writ of error.

The comrs. of the navy are not a corpn.: *semble*, therefore, that the proper mode of serving them with process would be by delivering a copy to each of them.—WILLIAMS *v.* ADMIRALTY COMRS. (1851), 11 C. B. 420; 2 L. M. & P. 456; 20 L. J. C. P. 245; 17 L. T. O. S. 200; 16 Jur. 42; 138 E. R. 536.

153b. —— —— **Service of writ.**]—WILLIAMS *v.* ADMIRALTY COMRS., No. 153a, *ante.*

155. *Add. Annotation:*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

157a. Air Council — Whether corporation.]—*Semble:* the Air Council is not a corpn.—MACKENZIE-KENNEDY *v.* AIR COUNCIL, [1927] 2 K. B. 517; 96 L. J. K. B. 1145; 138 L. T. 8; 43 T. L. R. 733; 71 Sol. Jo. 633, C. A.

Part IX.—The Crown in relation to the Law.

175a. —.]—ROOKEWOOD'S CASE (1696), Holt, K. B. 683; 90 E. R. 1277; *sub nom.* R. *v.* ROOKWOOD, 13 St. Tr. 139, 186.

Annotations:—**Refd.** R. *v.* Kinloch (1746), 18 State Tr. 395; Howard *v.* Shipley (1803), 4 East, 180; R. *v.* Duffy (1849), 7 State Tr. N. S. 795; Mulcahy *v.* R. (1867), 15 W. R. 446.

214a. ——.]—R. *v.* CROSBY (*alias* PHILIPS) (1695), 1 Ld. Raym. 39; 5 Mod. Rep. 15; 12 Mod. Rep. 72; 2 Salk. 689; 12 State Tr. 1291; Holt, K. B. 753; Skin. 578; 91 E. R. 923.

Annotations:—**Refd.** R. *v.* Davis & Carter (1695), 5 Mod. Rep. 74; The Ville de Varsovie (1817), 2 Dods. 174; Hinks' Case (1845), 1 Den. 84; *Re* Barber (1850), 15 L. T. O. S. 500.

218a. —— —— ——.]—In 1833, A. was convicted of felony & transported. At this time his wife was entitled to a fund, contingently on her surviving her mother. In 1846, A. obtained a conditional pardon, available in all places except the United Kingdom. The mother died in 1838, & the wife in 1852. On a petition by the Crown for payment, the ct., without deciding the right, merely ordered payment to the administrator of the wife.—*Re* HARRINGTON'S TRUSTS (1860), 29 Beav. 24; 54 E. R. 533.

233. ***Add. Annotations:*—Refd.** Nichol *v.* Fearby, Nichol *v.* Robinson, [1923] 1 K. B. 480; A.-G. *v.* Still (1927), 44 T. L. R. 102.

240a. Claim that right of administration of premises vested in Crown—Crown must be represented.]—Government House, Sydney, was built upon Crown land about 1845 as a residence for the Governor of New South Wales, &, with the stables of a former residence, was continuously so used until 1900. From 1900 to 1912, by an arrangement between the Governments of the Commonwealth & of the State, the premises were occupied by the Governor-General, & another residence was provided for the Governor of the State. In 1912, this arrangement having come to an end, the State Government threw the grounds attached to the house open to the public & took steps to convert the stables into a school of music. By the New South Wales Constitution Act, 1855 (c. 54), s. 2, all "waste lands" in the then colony were placed under the control of the local Legislature. The A.-G. for New South Wales, at the relation of residents in the State, filed an information praying for declarations that the house & grounds were vested in His Majesty, dedicated to the public purpose of a residence for the Sovereign's representative in New South Wales, & that neither the Governor of New South Wales nor the Governor in Council had

PART VI. SECT. 10.

8b. *No power to waive statutory conditions.*]—A department of the Govt. cannot waive the performance of any of the conditions imposed by the legislature.—PECK *v.* R. (1884), 1 B. C. R. pt. 2, 11.—**CAN.**

8c. *Land Settlement Board.*]—The Land Settlement Board created by Land Settlement & Development Act, 1924 (c. 128), is a department of the Government, & there being nothing in said Act or other statutes which gives it a right to sue or be sued, no action lies against it for acts done in its official capacity.—RATTENBURY *v.* LAND SETTLEMENT BOARD, [1928] 3 D. L. R. 382; [1928] 2 W. W. R. 475; 39 B. C. R. 523; *on appeal*, [1929] 1 D. L. R. 242.—**CAN.**

power to interfere with or alter that purpose, & for an injunction restraining the resp. (as representing the State Government & ministers) from otherwise using the house & grounds :—*Held :* (1) the suit was not maintainable, since no trust had been declared or charity established, & the action complained of was that of the State Executive & within its competence, whether the house & grounds were "waste lands" within above sect. or not ; (2) the proceedings were not properly constituted since it was claimed that the right of administration of the premises was in the Crown in the right of the United Kingdom, but the Crown in that right was not represented before the cts.—A.-G. FOR NEW SOUTH WALES *v.* WILLIAMS, [1915] A. C. 573 ; 84 L. J. P. C. 92 ; 112 L. T. 785 ; 31 T. L. R. 171, P. C.

264a. —— ——.]—BIDGOOD *v.* DAVIES (1826), 6 B. & C. 84 ; 9 Dow. & Ry. K. B. 153 ; 5 L. J. O. S. K. B. 64 ; 108 E. R. 384.

266. For "—— **Chaplain to King**" read "—— **Royal chaplain.**"

266a. *S. P.* WINTER *v.* DIBDIN (1844), 13 M. & W. 25 ; 2 Dow. & L. 211 ; 13 L. J. Ex. 263 ; 3 L. T. O. S. 164 ; 153 E. R. 11.

Annotation :—**Apld.** Harvey *v.* Dakins (1849), 3 Exch. 266.

272. *Add. Citation :*—48 L. J. Q. B. 455.

284. *Add. Citations :*—66 Sol. Jo. 218 ; *affd.*, [1922] P. 122.

287. *Add. Annotation :*—**Refd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704.

290. *Add. Annotation :*—**Refd.** Wigg *v.* A.-G. of Irish Free State (1927), 96 L. J. P. C. 88.

291. *Add. Annotation :*—**Consd.** A.-G. for Straits Settlmts. *v.* Pang Ah Yew, [1925] A. C. 555.

292. *Add. Annotations :—As to* (1) **Refd.** Wigg *v.* A.-G. for Irish Free State, [1927] A. C. 674. *As to* (2) **Refd.** A.-G. for Ontario *v.* McLean Gold Mines Co. (1926), 95 L. J. P. C. 217 ; Ruislip-Northwood Urban District Council *v.* Lee (1931), 145 L. T. 208. *Generally*, **Refd.** Jaeger *v.* Jaeger Co. (1927), 44 R. P. C. 437.

293. *Add. Annotation :*—**Expld.** Nixon *v.* A.-G., [1930] 1 Ch. 566.

293a. Indemnity Act as defence.]—In 1918 the suppliant, who was then a jewelry dealer in

PART IX. SECT. 5, SUB-SECT. 5.

sd. *In proceedings concerning questions of legislative jurisdiction.*]—Where, in proceedings between private suitors, the validity of an Act of a provincial legislature is questioned, the A.-G. of the province will be heard on the question of provincial legislative jurisdiction.—CITIZENS INS. CO. *v.* JOHNSTON, Cass. Dig. 2nd. ed. 678.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 1.

h (p. 523) **i.** —— *For tort.*]—An action sounding in tort does not lie against the Crown.—CREELMAN & VERGE *v.* R. (1920), 62 D. L. R. 390 ; 20 Exch. C. R. 198.—**CAN.**

h (p. 523) **ii.** *S. P.* YATES *v.* R. (1920), 20 Exch. C. R. 175.—**CAN.**

h (p. 523) **iii.** *S. P.* MANSEAU *v.* R., [1923] 1 D. L. R. 25 ; [1923] Exch. C. R. 21.—**CAN.**

h (p. 523) **iv.** —— ——.]—An action in tort does not lie against the Crown, except under special statutory authority.—THERIAULT *v.* R. (Que.) (1917), 16 Exch. C. R. 253 ; 39 D. L. R. 705.—**CAN.**

h (p. 523) **v.** —— ——.]—In an action against the Govt. of Ceylon to recover for damage caused to a steamship by grounding in Colombo harbour in a berth to which she had been taken by a Govt. pilot :—*Held :* it was not necessary to decide whether in Ceylon the Crown could be made liable in tort under Roman Dutch law, but having regard to the considered decision of the Supreme Ct. of Ceylon in *Colombo Electric Tramway Co.* v. *A.-G.*, & inasmuch as the question in Ceylon was whether any particular part of Roman Dutch law had been recognised there, very clear arguments would be required to induce the Judicial Committee to reverse that decision.—BRITISH PETROLEUM CO., LTD. *v.* A.-G. FOR CEYLON, [1926] A. C. 147 ; 95 L. J. P. C. 86 ; 134 L. T. 305 ; 42 T. L. R. 166.—**CEYLON.**

h (p. 523) **vi.** —— *For fraud.*]—It is not competent to prove that the Crown has been guilty of fraud ; nor can the Crown be held liable for the fraud of its officers.—*Re* FROST BROTHERS, [1925] 2 D. L. R. 339 ; [1925] 2 W. W. R 459.—**CAN.**

291 xiv. —— —— ——.]—An action of damages does not lie against the Crown in respect of a wrongful act committed by one of its servants.—MACGREGOR *v.* LORD ADVOCATE, [1921] S. C. 847.—**SCOT.**

291 xv. —— (1) no action in tort will lie against the Crown except where & when such right of action is given by Statute ; (2) the act of the Crown in paying the expenses of & incidental to the funeral & burial, is referable to the grace & bounty of the Crown & did not constitute an acknowledgment by it of a right of action.—JOUBERT *v.* R., [1931] Ex. C. R. 113 ; 4 D. L. R. 164.—**CAN.**

j (p. 524) **i.** —— —— —— ——.]—WELDEN *v.* SMITH, [1924] A. C. 484.—**AUS.**

j (p. 524) **ii.** —— —— —— ——.]—ROBINSON *v.* STATE OF SOUTH AUSTRALIA, [1929] A. C. 469, P. C.—**AUS.**

y (p. 524). Add "*revsd.*, 30 S. C. R. 42."

y (p. 525) **i.** —— —— —— ——.]—LECLERC *v.* R. (1920), 62 D. L. R 324 ; 20 Exch. C. R. 236.—**CAN.**

y (p. 525) **ii.** —— —— —— ——.]—*Held :* the Crown was liable in damages under Public Utilities Act, s. 31, for an accident caused by a fallen telephone wire lying on the public highway, being part of a system of wires erected & maintained by the provincial Department of Railways & Telephones.—ZORNES *v.* R., HAMILTON *v.* R., [1922] 2 W. W. R. 1179 ; 67 D. L. R. 733.—**CAN.**

y (p. 525) **iii.** —— —— —— ——.]—The suppliant was wounded by a bullet fired, during target practice, from the rifle range at Cote St. Luc, in the District of Montreal. He filed a petition of right claiming damages for the injury he thereby sustained :—*Held :* the rifle range was not a "public work," within Exchequer Ct. Act, 50 & 51 Vict. c. 16 (D.), s. 16 (c), & the Crown was not liable.—LAROSE *v.* R. (1900), 6 Exch. C. R. 425.—**CAN.**

y (p. 525) **iv.** —— —— —— ——.]—About 11.30 a.m. on Feb. 10, 1928, suppliant, while entering the Ottawa Post Office to purchase stamps, was struck on the head by an icicle falling from the coping of that building, causing her injury. An employee of the Public Works Dept. who had full charge & care of the roofs of Govt. buildings, especially that of the Post Office, & whose duty it was to remove snow & icicles therefrom, passed the building twice on the morning of the accident, first between 8 & 8.30 & again between 9.30 & 10 o'clock, but claims no snow or ice needed to be removed :—*Held :* the omission of the officer, whose duty it was to keep roofs free of snow & ice, to notice the presence of icicles & to remove them, when he had ample time to do so before the accident, constituted negligence, making the Crown liable for the damage resulting from such careless omission.—JOHNSON *v.* R., [1931] Ex. C. R. 163.—**CAN.**

y (p. 525) **v.** —— —— —— ——. *Contributory negligence.*]—At about 9 p.m. on Nov. 15, 1921, one C. drove on to a wharf, Montreal Harbour, with his two children to visit some friends who were employed in transferring freight from a shed on the wharf, rented to private companies, to a warehouse in the city. C. had not been sent by his employer, had no business there & went solely to amuse himself. C. had been drinking & was under the influence of liquor. He was making a nuisance of himself & when told to go, got into his car and drove straight into the canal, & all were drowned :—*Held :* as C. had no business on the wharf on the evening of the accident & was there by tolerance, the Crown under such circumstances was under no obligation or duty to him. The accident was the result of deceased's inebriated condition & he was the victim of his own condition & conduct.—LEGAULT *v.* R., [1931] Ex. C. R. 167.—**CAN.**

y (p. 525) **vi.** —— —— —— ——.]—ROCHON *v.* R., [1932] Ex. C. R. 161.—**CAN.**

h (p. 525) **i.** —— *Services rendered to committee.*]—The Crown is not liable upon a claim for the services rendered by any one to a committee.—KINMITT *v.* R. (1896), 5 Exch. C. R. 130.—**CAN.**

ff i. —— *For excess of salaries fixed & approved by Governor-General in Council.*]—BURROUGHS *v.* R. (1891), 20 S. C. R. 420.—**CAN.**

ff ii. —— *Wrongful acts of police in course of duty.*]—Members of the police force are *primâ facie* servants of the Crown, & by virtue of the Crown Liabilities Act, 1910, the Crown is *primâ facie* liable for wrongful acts committed by a member of that Force in the course of his duty. In order to escape liability it is not sufficient for the Crown to show that the police officer was performing a statutory duty. To take the case out of the Act there must be a lack of one or more of the essentials of the law relating to master & servant such as that the police officer was performing a duty of a personal nature which made him independent of the control of the Crown *pro hac vice*.—UNION GOVT. *v.* THORNE, [1930] App. D. 47.—**S. AF.**

Petrograd, deposited certain jewelry with the British consul, who was in charge of the embassy premises, & owing to difficulties in the way of the consular officers obtaining money the suppliant agreed that the consul might sell the jewelry & use the proceeds for His Majesty's service. The jewelry was put in a locked leather bag kept in a safe at the embassy. Persons claiming to be representatives of the Soviet Govt. entered the embassy & arrested everybody, & afterwards the bag was found to have been cut open & the contents taken. In 1926 the suppliant claimed the value of the jewelry, but the Foreign Secretary repudiated liability, & the suppliant brought a petition of right. The A.-G., by demurrer, submitted that there was no ground of claim as the facts disclosed showed the absence of negligence, &, secondly, he put in an answer & plea that the claim was barred by the Indemnity Act, 1920 (c. 48) :—*Held :* (1) the facts stated in the petition did not negative the possibility of the proof of negligence & the demurrer must be overruled ; (2) the claim was barred by the Indemnity Act, 1920 (c. 48), & there must be judgment for the Crown on the answer & plea relating to that Act.—BUCKNALL *v.* R. (1930), 46 T. L. R. 449, C. A.

305. *Add. Citation :*—48 L. J. Q. B. 455.

317. *Add. Annotation :*—**Refd.** A.-G. for Ontario *v.* McLean Gold Mines Co. (1926), 95 L. J. P. C. 217.

324a. Civil action against Crown servant—By private person—Discretion of court to order trial at bar.]—ANDERSON *v.* GORRIE (1894), 10 T. L. R. 383, C. A.

339a ——.]—In proceedings by information on the revenue side of the K. B. Div. claiming payment of income tax, the taxpayer cannot set off a debt due to him from the Crown.—A.-G. *v.* GUY MOTORS, LTD., [1928] 2 K. B. 78 ; 97 L. J. K. B. 421 ; 139 L. T. 311.

344. *Add. Annotations :*—**Consd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53. **Refd.** Swift *v.* Board of Trade, [1926] 2 K. B. 131.

345. *Add. Annotation :*—**Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

346. *Add. Annotation :*—**Consd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

348a. —— In proceedings under Patents & Designs Acts.]—Appcts. applied by originating summons under Patents & Designs Act, 1907 (c. 29), s. 29, as amended by Patents & Designs Act, 1919 (c. 80), s. 8, for an inquiry as to the remuneration proper to be paid to them for the user by a Govt. department of the patented invention of which they were the registered owners. In the course of the proceedings, preliminary to hearing of the motion, orders were made in which the litigation was treated, with the acquiescence of both litigants, as subject to the ordinary

PART IX. SECT. 6, SUB-SECT. 2.

304 ii. ——.]—R. *v.* PERREAULT (1922), 66 D. L. R. 671 ; 21 Exch. C. R. 355.—**CAN.**

sd. —— *Reference to head of department.*]—Under Exchequer Ct. Act of Canada, s. 38, any claim against the Crown may be prosecuted by petition of right or referred to the ct. by the head of the department in connection with the administration of which the claim arises. A claim by applts. for compensation in respect of the repudiation of a contract was so referred by the Minister of Railways & Canals. Subsequently the Crown applied for leave to withdraw the reference :—*Held :* the claim arose " in connection with the administration " of the Department of Railways & Canals & came within sect. 38, & leave must be refused.—DOMINION BUILDING CORPN., LTD. *v.* R. (1929), 46 T. L. R. 22, P. C. —**CAN.**

PART IX. SECT. 6, SUB-SECT. 3.

sf. *Right to plead & demur together.*]—In a common law action the Crown is entitled to plead & demur together without obtaining leave of the ct.—DEMPSTER *v.* RICHARDSON (1931), 24 Tas. L. R. 75.—**AUS.**

PART IX. SECT. 6, SUB-SECT. 4.

317 i. *Addition of Attorney-General—Action affecting rights of Crown—Petition of right not applicable.*]—This was an appeal by the A.-G. for Manitoba from an order by which he was added as a deft. to an action brought against the University of Manitoba to enforce agreements under which pltfs. had agreed to donate certain land as a site for the University on the condition that the University expended a certain amount of money on the grounds & in the erection of buildings. Pltfs. had transferred to the University all of the land originally contemplated except 25 acres which, under an agreement with the provincial Govt., they transferred to the province as a site for a school for the deaf. The agreements with the University were confirmed by an order-in-council which also authorised the execution of the agreement made with the Crown. Pltfs. alleged that these agreements were interdependent, & that there was in reality a tri-partite bargain whereby the Govt. entered into the arrangement previously made by the Governors of the University, furnishing $500,000 for a school for the deaf as part of the general scheme for the erection of educational buildings. This contention the A.-G. denied. Pltfs. asked for specific performance & for an injunction restraining the University from doing anything at variance with its contract with pltfs., & from accepting any money from the Crown for the erection or maintenance of university buildings elsewhere than on said site. No relief was asked for against the Crown ; all that was sought with respect to it was a declaratory judgment that the contracts and order-in-council were not *ultra vires* :—*Held :* the appeal should be dismissed, for the reasons : (*a*) the A.-G. should be a party to this action to represent public interests which he alone can serve. Moreover his presence was necessary to make any declaratory judgment which might be given binding upon the Crown ; (*b*) petition of right is not the proper remedy in this case, for there was no direct claim made against the Crown ; (*c*) the case falls within the ambit of cases where the A.-G. is properly joined.—TUXEDO HOLDING CO., LTD. *v.* UNIVERSITY OF MANITOBA & A.-G. FOR MANITOBA, [1930] 1 W. W. R. 464 ; 3 D. L. R. 250 ; 38 Man. L. R. 506 ; *affg.*, [1930] 1 D. L. R. 435.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 6.

337 vi. ——.]—Estoppel cannot be invoked against the Crown.—R. *v.* TESSIER (1921), 21 Exch. C. R. 150.—**CAN.**

339 iii. ——.]—A subject has no right to set off in an action brought by the Crown.—R. (MINISTER OF AGRICULTURE FOR SASKATCHEWAN) *v.* BOURKE, [1925] 3 D. L. R. 537 ; [1925] 2 W. W. R. 397 ; 19 Sask. L. R. 483.—**CAN.**

339 iv. ——.]—A right of set-off does not exist against the Crown.—R. *v.* BRITISH AMERICAN BANK NOTE CO. (1901), 7 Exch. C. R. 119.—**CAN.**

o i. ——.]—A counterclaim cannot be pleaded against the Crown as of right.—A.-G. FOR ONTARIO *v.* RUSSELL (1921), 64 D. L. R. 59 ; 49 O. L. R. 103.—**CAN.**

o ii. ——.]—A subject has no right to counterclaim in an action brought by the Crown.—R. (MINISTER OF AGRICULTURE FOR SASKATCHEWAN) *v.* BOURKE, [1925] 3 D. L. R. 537 ; [1925] 2 W. W. R. 397 ; 19 Sask. L. R. 483.—**CAN.**

sm. *Whether action brought in right name.*]—In an action concerning transactions under Soldiers Settlement Act, defts. contended that the action should have been brought in the name of the Soldiers Settlement Board & not in that of the Crown :—*Held :* action properly instituted in that of the Crown.—R. *v.* SAYWARD TRADING & RANCHING CO., LTD., [1924] Exch. C. R. 15.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 7.—A.

sp. *Crown Costs Act, R. S. B. C.*, 1911 (*c.* 61)—*Effect of.*]—*Held :* not to apply to the Crown in right of Dominion, the statute not making it clear in express terms or by necessary intendment that the reference is to the Crown other than in right of the province only.—MONTREAL TRUST CO. *v.* R., [1924] 1 D. L. R. 1030 ; 1 W. W. R. 657 ; 33 B. C. R. 280.—**CAN.**

sq. *Crown Costs Act,* R. S. B. C., 1924.]—Crown Costs Act, R. S. B. C., 1924, forbids the awarding of costs either in favour of or against the Crown as represented by the Govt. of the province of British Columbia.—R. *v.* CONWAY (B. C.), [1929] 3 W. W. R. 268 ; 52 Can. Crim. Cas. 161.—**CAN.**

st. ——.]—Crown Costs Act, R. S. B. C., 1924, does not apply to a prosecution under a Dominion Act. On dismissing an appeal from a conviction under such an Act, costs were, therefore, given to the Crown.—R. *v.* TRONSON, [1932] 1 W. W. R. 537.—**CAN.**

rule as to costs, & on two occasions orders were made requiring appcts. to give security for costs. After the hearing had proceeded for some time appcts. withdrew their claim in view of a prior trial of the invention found to have been made on behalf of the Govt. which, by virtue of the proviso to Patents & Designs Act, 1919, s. 8, entitled the Govt. to make use of it thereafter without payment. On the question how the costs ought to be borne:—*Held:* (1) under that part of Patents & Designs Act, 1919, which authorised proceedings against a Govt. department, there was no express mention of costs, & the authority to deal with them was derived from the general jurisdiction of the ct., & the ct. had, therefore, no authority to depart from the common law rule that the Crown neither paid nor received costs, unless the special circumstances of the particular case justified it in so doing; (2) having regard to the orders that had been made before the hearing of the motion, & particularly to the two orders for security for costs, the ct. would infer an agreement between the parties that each of them should be treated as ordinary litigants as regarded liability for costs.—*Re* LETTERS PATENT No. 139,207, *Re* CARBONIT AKT., [1924] 2 Ch. 53; 93 L. J. Ch. 309; 131 L. T. 89; 40 T. L. R. 421; 68 Sol. Jo. 476; 41 R. P. C. 203, C. A.

Annotation:—As to (1) **Consd.** Swift *v.* Board of Trade [1926] 2 K. B. 131.

348b. —— ——.]—*See, generally,* PATENTS.

348b. —— —— **As to validity of patent—Action against Air Council.**]—*Held:* there was no reason for departing from the ordinary rule that the Crown neither paid nor received costs.—ROWLAND *v.* AIR COUNCIL, [1923] W. N. 72.

367. *Add. Annotation:*—**Apld.** Pathe of France *v.* Harris, Same *v.* Mansbridge (1926), 42 T. L. R. 760.

368. *Add. Annotation:*—**Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

373. *Add. Annotations:—As to* (1) **Apld.** Sterling Trust *v.* I. R. Comrs., I. R. Comrs. *v.* Sterling Trust (1925), 12 Tax Cas. 868. **Consd.** Birmingham Corpn. *v.* I. R. Comrs., [1929] 2 K. B. 187. **Refd.** Luipaard's Vlei Estate & Gold Mining Co. *v.* I. R. Comrs. (1930), 99 L. J. K. B. 330.

373a. **Arbitration to assess compensation for requisitioned goods.**]—In assessing the compensation to be paid for bacon requisitioned by the Food Controller under Defence of the Realms Regulations:—*Held:* the arbitrator had no power to order the Crown to pay the costs of the reference & award.—SWIFT & CO. *v.* BOARD OF TRADE, [1926] 2 K. B. 131; 95 L. J. K. B. 834; 135 L. T. 391; 42 T. L. R. 461, C. A.

Annotation:—**Refd.** Inglewood Pulp & Paper Co. *v.* New Brunswick Electric Power Commission, [1928] A. C. 492.

376. *Add. Annotation:*—**Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

382. *Add. Annotation:*—**Refd.** R. *v.* Provisional Government (General of the Forces) (1922), 67 Sol. Jo. 125.

384a. —.]—WOLFE TONE'S CASE (1798), 27 State Tr. 613.

Part XII.—The Crown in Foreign Relations.

387. *Add. Annotations:—As to* (1) **Follid.** White, Child & Beney *v.* Simmons, White, Child & Beney *v.* Eagle, Star & British Dominions Insce. (1922), 127 L. T. 571. **Consd.** Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65. **Refd.** Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797; Russian Commercial & Industrial Bank *v.* Comptoir D'Escompte de Mulhouse (1924), 93 L. J. K. B. 1098. *As to* (2) **Apld.** The Jupiter (1924), 93 L. J. P. 156. *Generally,* **Refd.** Musmann *v.* Engelke (1927), 43 T. L. R. 685.

387a. —— **Decrees of Russian Soviet Government—Effect of.**]—The English cts. will not inquire into the validity of acts done by a recognised foreign Govt. against its own subjects in respect of property situate in its own territory.

In 1918 a section of Russian revolutionaries took & retained possession of movables in Russia belonging to pltf. against her will. The act of those revolutionaries was subsequently adopted by the Soviet Govt. as the *de jure* Govt. of Russia. In 1928 the movables in question were sold in Russia by the Soviet Republic to defts., who brought them to England. In an action by pltf. to recover those movables or damages for their detention or conversion:—*Held:* the action failed, as the ct. could not inquire into the validity of the acts of a foreign sovereign Power which had been recognised by the Govt. of this country.—PALEY (PRINCESS OLGA) *v.* WEISZ, [1929] 1 K. B. 718; 98 L. J. K. B. 465; 141 L. T. 207; 45 T. L. R. 365; 73 Sol. Jo. 283, C. A.

—— —— ——.]—*See, also,* COMPANIES, Nos. 8523, 8524, 8527a, *ante.*

—— —— —— **On liability of Russian reinsurance company under reinsurance treaties.**]—*See* INSURANCE, No. 712a, *post.*

PART IX. SECT. 6, SUB-SECT. 7.—C.

† i. —— *On appeal.*]—Under Crown Costs Act, R. S. B. C., c. 61, costs of an appeal cannot be given against the Crown, though costs in the lower ct. may by direction of the ct.—R. *v.* CASKIE (1922), 70 D. L. R. 215; 38 Can. Crim. Cas. 198.—**CAN.**

† ii. —— —— *Under Fire Marshal Act,* 1921 (c. 15).]—A local assistant to the fire marshal in carrying out the duties imposed on him by the above Act is an "officer, servant or agent of & acting for the Crown" within Crown Costs Act, R. S. B. C., 1911 (c. 61), & costs of an appeal to the county ct. may be given against a local assistant to the fire marshal.—WATSON *v.* HOWARD, [1924] 4 D. L. R. 564; [1924] 3 W. W. R. 404; 34 B. C. R. 449.—**CAN.**

† iii. —— —— *Under Summary Convictions Act, R. S. B. C.,* 1924 (c. 245).]—Crown Costs Act, R. S. B. C., 1924 (c. 62), is a bar to the awarding of costs against the Crown on an appeal under Summary Convictions Act, R. S. B. C., 1924, form a conviction for an offence against Govt. Liquor Act, R. S. B. C., 1924 (c. 146).—R. *v.* MCLANE, R. *v.* NOON, [1927] 1 W. W. R. 701; 47 Can. Crim. Cas. 208; 38 B. C. R. 306.—**CAN.**

† iv. —— *In proceedings by creditor—Crown administrator of intestate's estate.*]—*Held:* neither the Crown nor the A.-G. liable for costs.—CARVER *v.* A.-G. OF PRINCE EDWARD ISLAND, [1926] 4 D. L. R. 1106.—**CAN.**

Cancellation of life assurance.] —*See* CONFLICT OF LAWS, No. 640b, *ante*.

387b. Declaration by representative of foreign Sovereign as to ownership of property—How far conclusive.]—A declaration by the representative of a foreign Sovereign as to ownership of personal property in this country is not conclusive in an action between private persons, when no question of the immunity of the sovereign State from the jurisdiction of the ct. is concerned.—THE JUPITER (No. 3), [1927] P. 250; 97 L. J. P. 33; 137 L. T. 333; 43 T. L. R. 741; 17 Asp. M. L. C. 250, C. A.

Annotation:—**Refd.** First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922.

388. *Citations:*—For "Coop. Pr. Cas. 501; 9 L. J. O. S. Ch. 215; 47 E. R. 619, L. C.," read "Coop. Pr. Cas. 501; 47 E. R. 619; *sub nom.* THOMPSON *v.* BARCLAY, 9 L. J. O. S. Ch. 215, L. C.; *previous proceedings* (1828), 6 L. J. O. S. Ch. 93."

389. *Add. Annotation:*—**Refd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

391. *Add. Annotations:*—**Refd.** The Tervaete, [1922] P. 259; Engelke *v.* Musmann, [1928] A. C. 433.

392. *Add. Annotation:*—*As to* (2) **Refd.** The Tervaete, [1922] P. 259.

394. *Add. Annotations:*—**Consd.** Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797. **Refd.** The Tervaete, [1922] P. 259; *Re* Bjornstad & Ouse Shipping Co., [1924] 2 K. B. 673; Compania Mercantile Argentina *v.* United States Shipping Board (1924), 93 L. J. K. B. 816; The Jupiter (1924), 93 L. J. P. 156; The Jupiter (No. 3) (1927), 137 L. T. 333; Engelke *v.* Musmann, [1928] A. C. 433.

395. *Add. Annotation:*—*As to* (2) **Refd.** Dickinson *v.* Del Solar (1929), 45 T. L. R. 637.

396. *Add. Annotation:*— **Refd.** Musmann *v.* Engelke (1927), 96 L. J. K. B. 824.

401. *Add. Annotation:*—**Apld.** The Tervaete, [1922] P. 259.

408. *Add. Annotation:*—**Refd.** Fenton Textile Assocn. *v.* Krassin (1921), 38 T. L. R. 259.

409. *Add. Annotation:*—**Consd.** Musmann *v.* Engelke (1927), 96 L. J. K. B. 824.

411. *Add. Annotation:*—**Consd.** Engelke *v.* Musmann, [1928] A. C. 433.

412a. Chief of mail department—Within privilege.] —*Held:* the rule as to immunity from civil proceedings, on the ground of diplomatic privilege, extended to a domiciled subject of the United States who was the chief of the mail department of the United States Embassy in London.—ASSURANTIE COMPAGNIE EXCELSIOR *v.* SMITH (1923), 40 T. L. R. 105, C. A.

413. Transfer paragraphs (2) to (5) to No. 421, *post*.

Annotations:—For the existing annotations read "**Refd.** *Re* Republic of Bolivia Exploration Syndicate, [1914] 1 Ch. 139."

418a. Evidence—Settlement by Attorney-General on instructions of Foreign Office.]—A statement made to the ct. by the A.-G., on the instructions of the Foreign Office, as to the status of a person claiming immunity from judicial process on the ground of diplomatic privilege, whether as ambassador or as a member of the ambassador's staff, is conclusive.

Deft. in an action in the K. B. Div. for arrears of rent took out a summons to set aside the writ, on the ground that he was a member of the staff of the German Embassy, & filed two affidavits in support of his application. Pltf. applied for leave to cross-examine deft. upon his affidavits. The judge ordered deft. to attend for cross-examination. On appeal the A.-G. attended at the request of the Foreign Office, & on the invitation of the ct. informed them that deft. had been appointed a member of the staff of the German Ambassador under the style of consular secretary, & had been received in that capacity by the British Govt.:—*Held:* (1) the statement of the A.-G. was binding on the ct., & deft. was entitled to diplomatic privilege; (2) (LORD DUNEDIN) apart from that statement, the order for the cross-examination of deft. would have been justified.—ENGELKE *v.* MUSMANN, [1928] A. C. 433; 97 L. J. K. B. 789; 139 L. T. 586; 44 T. L. R. 731, H. L.; *revsg.* S. C. *sub nom.* MUSMANN *v.* ENGELKE, [1928] 1 K. B. 90, C. A.

421. After the catchwords insert paragraphs (2) to (5) from No. 413, *ante*, substituting the numbers "(1), (2), (3), (4)," for "(2), (3), (4), (5)."

Citations:—For "No. 413, *ante*," read "(1832), 1 Cr. & M. 117; 1 Dowl. 588; 3 Tyr. 184; 2 L. J. Ex. 13; 149 E. R. 338."

Annotations:—*As to* (1) **Consd.** Parkinson *v.* Potter (1885), 16 Q. B. D. 152. *As to* (3) **Consd.** Parkinson *v.* Potter (1885), 16 Q. B. D. 152. **Refd.** Engelke *v.* Musmann, [1928] A. C. 433.

421a. —— Liability to be cross-examined to ascertain status.]—ENGELKE *v.* MUSMANN, No. 418a, *ante*.

422. *Add. Annotation:*—**Refd.** Engelke *v.* Musmann, [1928] A. C. 433.

425. *Add. Annotation:*— **Refd.** Engelke *v.* Musmann, [1928] A. C. 433.

427. For "No. 413, *ante*," read "No. 421, *ante*."

429. *Add. Annotation:*—**Refd.** Engelke *v.* Musmann, [1928] A. C. 433.

430. *Add. Annotation:*—**Refd.** Musmann *v.* Engelke (1927), 96 L. J. K. B. 824.

431. *Add. Annotation:*—**Refd.** Engelke *v.* Musmann, [1928] A. C. 433.

432. *Add. Annotation:*—**Refd.** Musmann *v.* Engelke, [1928] 1 K. B. 90.

435. *Add. Annotation:*—*As to* (2) **Refd.** Musmann *v.* Engelke (1927), 96 L. J. K. B. 824.

436. For "No. 413, *ante*," read "No. 421, *ante*."

445. For "No. 413, *ante*," read "No. 421, *ante*."

447. *Add. Annotation:*— **Refd.** Musmann *v.* Engelke (1927), 96 L. J. K. B. 824.

447a. ——.]—ENGELKE *v.* MUSMANN, No. 418a, *ante*.

462a. —— No waiver of privilege from execution.] —An ambassador in this country is entitled to complete immunity from the jurisdiction of the local cts. except in cases in which he submits to or invites the jurisdiction. Where an ambassador, sued as administrator to an intestate's estate, has submitted to the jurisdiction down to judgment, & an order has been made determining his liability to

pay money into ct., he can still assert his immunity from process by way of execution & set up Diplomatic Privileges Act, 1708 (c. 12), as an answer to an application for leave to issue execution against his personal property.—*Re* SUAREZ, SUAREZ *v.* SUAREZ, [1917] 2 Ch. 131; 86 L. J. Ch. 673; 117 L. T. 239; 33 T. L. R. 405; 61 Sol. Jo. 524.

465. *Add. Annotations :*—**Consd.** Dickinson *v.* Del Solar (1929), 45 T. L. R. 637. **Refd.** Engelke *v.* Musmann, [1928] A. C. 433.

465a. —— **By order of diplomatic superior.**]—Deft., who was First Secretary of the Peruvian Legation, took out a policy of insurance against legal liability to members of the public in connection with the driving of his motor car, the policy providing that "the assured . . . shall not in any way act to the detriment or prejudice of the (insurance) co.'s interests," & that "the co. is entitled to take absolute control of all negotiations & proceedings." Pltf. brought an action for personal injuries against deft., & the latter served on the insurance co. a third-party notice claiming an indemnity. An appearance without protest was entered in the action on behalf of deft., &, as the Peruvian Minister forbade deft. to raise the plea of diplomatic immunity, no such plea was inserted in the defence. The jury found a verdict for pltf. for damages, & the insurance co. repudiated liability on the ground that deft. had broken the conditions of the policy by insisting that the plea of diplomatic immunity should not be raised :—*Held :* the privilege of diplomatic immunity was waived by the entry of appearance without protest.—DICKINSON *v.* DEL SOLAR, [1930] 1 K. B. 376; 99 L. J. K. B. 162; 142 L. T. 66; 45 T. L. R. 637.

SECT. 5.—**PASSPORTS** (Vol. XI., p. 543).

474a. Property of the Crown.]—A passport issued by the British Passport Office on behalf of the Secretary of State for Foreign Affairs to a person who afterwards becomes bkpt. is the property of the Crown & not the "property" of the bkpt. within Bkpcy. Act, 1914 (c. 59).—*Re* SUWALSKY, SUWALSKY *v.* TRUSTEE & OFFICIAL RECEIVER, [1928] B. & C. R. 142.

Forgery of.]—*See* Criminal Justice Act, 1925 (c. 86), s. 36.

Part XIII.—The Crown in relation to War and Peace.

477. *Add. Annotation :*—*Generally*, **Refd.** Netherlands-American Steam Navigation Co. *v.* Procurator-General (1925), 42 T. L. R. 81.

483. *Add. Annotation :*—*As to* (1) **Refd.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

487a. -.]—By a policy of insurance effected on Nov. 2, 1918, during the European War, deft. agreed to pay to pltf. a certain sum "in the event of peace between Great Britain & Germany not being concluded on or before June 30, 1919." On June 28, 1919, these Powers signed a treaty of peace, but they did not exchange & deposit ratifications of the treaty until Jan. 1920. In an action brought by pltf. against deft. upon the policy in Aug. 1919 :—*Held :* peace had not been concluded between these Powers on or before June 30, 1919, within the policy, & pltf. was therefore entitled to succeed in the action.—KOTZIAS *v.* TYSER, [1920] 2 K. B. 69; 89 L. J. K. B. 529; 122 L. T. 795; 36 T. L. R. 194; 15 Asp. M. L. C. 16.

Annotation :—**Folld.** Lloyd *v.* Bowring (1920), 36 T. L. R. 397.

487b. —.]—For the purpose of a contract to pay a sum of money "if peace is not declared" by a certain date between two nations at war, peace is not declared until the ratification of the treaty of peace.—LLOYD *v.* BOWRING (1920), 36 T. L. R. 397.

487c. —— **Whether subject's debt discharged.**]—TRONER *v.* HASSOLD (1670), 1 Cas. in Ch. 173; 22 E. R. 748.

487d. *S. P.* WEYMBERG *v.* TOUCH (1669), 1 Cas. in Ch. 123; 22 E. R. 724.

PART XII. SECT. 3.

469 i. *Whether consent of legislature necessary—Interference with private rights.*]—In Canada or Great Britain a treaty does not confer, as between the state & the subject, or as between subjects, any rights upon the latter :—*Held :* therefore, the Ashburton Treaty relating to water rights, never having been validated by statute, is no part of the law of this country, but it is binding in honour on the Crown & its successors.—*Re* ARROW RIVER & TRIBUTARIES SLIDE & BOOM CO., [1932] S. C. R. 495; 2 D. L. R. 250.—**CAN.**

PART XIII. SECT. 2.

487 i. *Treaty of peace—Ratification by sovereign authority necessary.*]—*Re* 90TH BATTALION, WINNIPEG RIFLES, [1923] 1 W. W. R. 37.—**CAN.**

487 ii. —— *Between Great Britain & enemy countries—Date of signing—Effect on option to purchase.*]—PARRY *v.* DUNCAN (1921), 65 D. L. R. 761; [1921] 2 W. W. R. 879.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 1.

sf. *Order in Council under War Measures Act*, 1914, *s.* 6—*Validity.*]—*Held :* the omission of an averment that the Governor in Council deemed an Order advisable for the welfare of Canada by reason of the existence of real or apprehended war, did not render the Order in Council invalid.—PUGSLEY *v.* GARSON (1922), 50 N. B. R. 414.—**CAN.**

sg. *Calling out militia—Liability for expenses—Whether on Dominion or Province.*]—The question referred to this ct. was whether the province of Nova Scotia was liable, or not, to pay to the Dominion of Canada all expenses & costs incurred by the latter by reason of part of the active militia of Canada being called out & serving in aid of the civil power in the county of Cape Breton in 1925, in a case of riot, upon a requisition, made by the A.-G. of Nova Scotia in the form prescribed by s. 85 of the Militia Act, which included an undertaking by him that these expenses & costs would be paid to the Dominion Govt. by the province :—*Held :* the question should be answered in the negative. Sects. 80 to 90 of the Militia Act repose certain powers in the person occupying the position of A.-G. in the province for the time being, but the exercise of these powers does not in any way depend upon the consent of the Lieutenant-Governor or of the provincial legislature. The Militia Act envisages the A.-G., not in his capacity as A.-G. to His Majesty as the Sovereign Head of the province, but as a person in whom certain powers are vested & on whom certain duties are laid by the statute. These sects. apply to every province & go into operation independently of the scope of the A.-G.'s authority to bind the province in respect of the expenditure of moneys for such purpose. Therefore these enactments do not contemplate a duty to pay, proceeding from a contract between the province & the Dominion. The revenues of the province are vested in His Majesty as the supreme head of the province, & the right of appropriation of all such revenues belongs to the legislature of the province exclusively. *Semble :* the A.-G., whose duties, in so far as now material, include the supervision of the administration of justice within the province, has no statutory authority to undertake the payment now demanded by the Dominion : the subject matters comprised within the

496. *Add. Annotation:*—**Refd.** Cayzer, Irvine *v.* Board of Trade (1926), 95 L. J. K. B. 1054.

498. *Add. Annotation:*—**Refd.** Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271.

499. *Add. Annotations:*—*As to* (1) **Refd.** Federated Coal & Shipping Co. *v.* R., [1922] 2 K. B. 42. *As to* (4) **Refd.** A. & B. Taxis *v.* Secretary of State for Air, [1922] 2 K. B. 328; Matthey *v.* Curling, [1922] 2 A. C. 180; *Re* Colnbrook Chemical & Explosives Co., A.-G. *v.* The Co., [1923] 2 Ch. 289; Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271; Rowland & Mackenzie-Kennedy *v.* Air Council (1927), 96 L. J. Ch. 470. *Generally*, **Refd.** Netherlands-American Steam Navigation Co. *v.* Procurator-General (1925), 42 T. L. R. 81; France Fenwick *v.* R., [1927] 1 K. B. 458. *Generally*, **Refd.** Austrian Property Administrator *v.* Russian Bank for Foreign Trade (1931), 47 T. L. R. 550.

499a. —— **Under Indemnity Act, 1920 (c. 48)—"Direct loss or damage"—What is.**]—Claimants carried on business as motor garage proprietors in Dublin, where they owned & occupied extensive premises peculiarly well suited to their purposes. These premises were taken by the Govt. under powers conferred by statute for the defence of the realm. Claimants, having tried & failed to acquire premises temporarily, took the only reasonable course; they bought other premises, fitted them for use as a garage, & transferred to them all the appliances of their business which they thus continued to carry on as well as they could. When the Govt. retired from possession of the original premises claimants sold the substituted premises. They alleged that the difference between the amount they had expended in acquiring the substituted premises & fitting them for use as a garage on the one hand, & the sum they received on the sale of the substituted premises on the other hand amounted to £3,429. They claimed this sum as an item of "direct loss or damage incurred or sustained by reason of interference with" their "property or business" within sect. 2 (1) (*b*) of the above Act:—*Held:* "direct loss or damage" may include consequential damage, & the item claimed could not be entirely excluded as indirect loss, but the amount to which claimants might be entitled in respect thereof must be assessed by the War Compensation Ct.—A. & B. Taxis, Ltd. *v.* Secretary of State for Air, [1922] 2 K. B. 328; 91 L. J. K. B. 779; 127 L. T. 478; 38 T. L. R. 671; 66 Sol. Jo. 633, C. A.

499b. —— —— **Duty of tribunal assessing compensation.**]—Observations on the question of the extent of the duty of the War Compensation Ct., in deciding a claim for compensation under the above Act, to differentiate between their findings on issues of fact & their findings on issues of law, in view of there being, under sect. 2 (1) of the Act, no right of appeal except on a point of law.—Moffat Hydropathic Co., Ltd. *v.* Secretary of State for War (1924), 40 T. L. R. 543; 68 Sol. Jo. 535, H. L.

505a. —— **Certificate that taking necessary—Mode of granting.**]—(1) Where land is being acquired compulsorily for military purposes under the above Act, the certificate that the taking of the land is necessary or expedient is duly granted, although the person whose land is being acquired has not been heard; for the granting of such a certificate is not a judicial, but a merely administrative act.

(2) It is not a condition precedent to the summoning of a jury under sect. 19 of the above Act to assess the compensation payable to the owner of the land, that the Secretary of State for War shall have been put into possession of the land under the sect.; but even if it was, that condition precedent would have no application to the assessment of compensation in such a case under Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57).—Hutton *v.* A.-G., [1927] 1 Ch. 427; 96 L. J. Ch. 285; 137 L. T. 20; 43 T. L. R. 166; 71 Sol. Jo. 159.

505b. —— **Conditions precedent to assessment of compensation—Whether Crown in possession.**]—Hutton *v.* A.-G., No. 505a, *ante*.

507a. Costs of establishing claim to fund in Court.]—Three guineas is a proper sum to allow to each successful claimant to a fund in ct. for the costs of establishing his claim.—Waterton *v.* Burt (1870), 39 L. J. Ch. 425.

512. *Add. Annotations:*—*As to* (2) **Refd.** Federated Coal & Shipping Co. *v.* R., [1922] 2 K. B. 42; Rowland *v.* Air Council (1923), 39 T. L. R. 228. *Generally*, **Refd.** France Fenwick *v.* R., [1927] 1 K. B. 458; Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey, [1930] A. C. 549; Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

515a. —— —— **Closing of public footpath over land acquired.**]—The ct. refused an application by the Air Ministry under sect. 6 (3) of the above Act, for leave to close permanently a public footpath over land which they had purchased under sect. 3 of the Act for an air depot.—Secretary of State for War *v.* Middlesex County Council (1923), 39 T. L. R. 357; 21 L. G. R. 291.

supervision of the administration of justice would not embrace authority to enter into such an undertaking.—*Re* Troops in Cape Breton, Reference, [1930] S. C. R. 554 *sub nom.* A.-G. of Canada *v.* A.-G. of N.S., [1930] 4 D. L. R. 82.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 3.—A.

499 i. *Whether owner entitled to compensation—Possession taken for purposes of defence.*]—R. *v.* Brown (1920), 56 D. L. R. 312; 20 Exch. C. R. 30.—**CAN.**

499 ii. ——————.]—*Held:* a portion of a building occupied by the Govt. as a recruiting station was not a "public work" within Exch. Ct. Act, s. 20 (c).—Wolfe Co. *v.* R., Powers *v.* R. (1921), 63 D. L. R. 647; 63 S. C. R. 141.—**CAN.**

499a i. —— *Under Indemnity Act, 1920 (c. 48)—Basis of assessment.*]—A distillery requisitioned during the war, owing to a fire while it was in the Govt.'s possession, could not be used for distilling for nearly three years after Jan. 19, 1919, at which date the prohibition against distilling was withdrawn. The proprietors having claimed compensation for loss of profits during the three years:—*Held:* the loss of profits was due, not to the war, but to the requisition & the fire, & the basis upon which compensation fell to be assessed was the prices obtainable for whisky during the three years, taken in conjunction with the other circumstances actually existing during that period.—Mackenzie Brothers *v.* The Admiralty, [1925] S. C. (H. L.) 32.—**SCOT.**

PART XIII. SECT. 3, SUB-SECT. 7.

sm. *Requisition under Order in Council—Powers of Dominion Government.*]—In virtue of Order in Council dated Nov. 24, 1916, passed under War Measures Act, 1914:—*Held:* the Dominion Govt. was empowered to requisition ships in its own name & as principal & not as agent for the British Govt., & the Minister of Marine & Fisheries, acting thereunder, had no power to vary same by adding to or derogating therefrom.—*Re* Gaston, Williams & Wigmore & Gaston, Williams & Wigmore Steamship Corpn. *v.* R. (1922), 66 D. L. R. 242; 21 Exch. C. R. 370.—**CAN.**

521. *Add. Annotation :—Generally,* **Refd.** France Fenwick *v.* R., [1927] 1 K. B. 458.

526. *Add. Citation :*—15 Asp. M. L. C. 205. *Add. Annotation :—As to* (3) **Distd.** A.-G. *v.* Royal Mail Steam Packet Co., [1922] 2 A. C. 279.

526a. Power to impose payment for licence to sell ship to foreigner—Recovery of money paid—Indemnity Act, 1920 (c. 48), s. 1 (1).]—The Shipping Controller, purporting to act in pursuance of his powers under Defence of the Realm Regulations, imposed upon suppliants as a condition of granting them a licence to sell a steamship to a foreigner the payment to him by suppliants of £30,800. By their petition of right suppliants alleged that the Shipping Controller had no lawful authority to impose a condition or to exact the payment, which suppliants had paid under protest, & that the Shipping Controller thereby became liable to repay the money to suppliants as money had & received to their use. The petition of right was not brought within one year from the termination of the war or within one year from the exaction of the money. The Crown demurred to the petition, on the ground that the case if founded on the alleged tort of the Shipping Controller was barred by the above sub-sect., & if based on an alleged breach of contract, the proceedings not having been brought within the prescribed time failed under proviso (b) of that sub-sect. A further ground of demurrer was that a petition of right would not lie against the Crown for tort, for the King could do no wrong. Suppliants contended that they were entitled to waive the tort & to sue for money had & received by the Shipping Controller & now in the hands of the Crown, & that their claim so grounded was not a proceeding for or in respect or on account of any act of the Shipping Controller, & therefore was not within the terms of the Act :—*Held :* the allegation that suppliants' money had been extorted from them by the wrongful act of the Shipping Controller was an essential part of suppliants' case, from which the claim for money had & received arose ; & as such act was one to which the above sub-sect. applied, the petition of right was barred by that sub-sect.—BRISTOL CHANNEL STEAMERS, LTD. *v.* R. (1924), 131 L. T. 608 ; 40 T. L. R. 550 ; 68 Sol. Jo. 771.

526b. —— —— ——.]—The Shipping Controller, purporting to act under the authority of Defence of the Realm Regulations, required as a condition of a licence to suppliants to sell one of their ships to a foreign firm that they should pay a percentage of the purchase money to the Ministry of Shipping, & suppliants paid the percentage. On a petition of right to recover back the money so paid :—*Held :* (1) the imposition of the condition was illegal, & the payment was not a voluntary payment ; (2) the petition of right was barred by the above sub-sect. ; it was not open to suppliants, by waiving the tort of the illegal exaction & suing for money had & received, to bring the case within par. (b) of the proviso to the sub-sect., for the case fell within the exception to the proviso as being one in which a claim for compensation could have been brought under sect. 2 (1) (*b*) ; (3) (BANKES & SARGANT, L.JJ.) suppliants failed to bring the case within the proviso upon the further ground that the contracts referred to in paragraph (b) are limited to express contracts, & do not include the fictitious contract to repay money improperly extorted, the implication of which arises upon a waiver of the tort.—BROCKLEBANK, LTD. *v.* R., [1925] 1 K. B. 52 ; 94 L. J. K. B. 26 ; 132 L. T. 166 ; 40 T. L. R. 869 ; 69 Sol. Jo. 105 ; 16 Asp. M. L. C. 415, C. A. ; *revsg.*, [1924] 1 K. B. 647.

Annotations :—As to (1) **Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375. *As to* (2) **Folld.** Marshal Shipping Co. *v.* R. (1925), 41 T. L. R. 285. **Consd.** Copper Export Assocn. Inc. *v.* Mersey Docks & Harbour Board (1932), 48 T. L. R. 542. *Generally,* **Refd.** Bristol Channel Steamers *v.* R. (1924), 131 L. T. 608 ; Hardie & Lane *v.* Chilton (1927), 96 L. J. K. B. 1040.

526c. —— —— ——.]—Suppliants were required in 1919 by the Shipping Controller to pay £20,000 to the Exchequer as a condition of his giving them permission to sell a steamship to a foreigner, & they made the payment accordingly. On a petition of right to recover back the amount from the Crown on the ground that the demand was unlawful :—*Held :* as the demand was made in the *bonâ fide* belief that the Shipping Controller was entitled to make it & as he was purporting to act in the execution of his duty the Crown was protected by the above sub-sect. — MARSHAL SHIPPING CO. (IN LIQUIDATION) *v.* R. (1925), 41 T. L. R. 285.

526d. —— —— —— **Transfer of liabilities incurred by Shipping Controller to Board of Trade—Whether action maintainable against Board of Trade.**]—(1) Pltfs. in 1922 brought an action against the Board of Trade for money had & received. The money which it was sought to recover was alleged to have been wrongfully extorted from pltfs. in 1919 by the Shipping Controller under colour of his office, & it was alleged that, on pltfs. electing to waive the tort, he would have been personally liable to refund the money as having been received to their use. By Ministry of Shipping (Cessation) Order, 1921, it was provided that the office of Shipping Controller should cease to exist, & that "All . . . liabilities . . . incurred by the Shipping Controller . . . shall be transferred to the Board of Trade." The "Board of Trade" is the name given by statute to an unincorporated committee of the Privy Council. On an application to strike out the writ on the ground that the Board of Trade, as a department of the Crown, could not be sued :—*Held :* the intention of the Order was to transfer to the Board of Trade as a

525 i. *Compensation for requisitioned ship—To what amount claimant entitled —Comparison with rate in United States better guide than English rate.*]—*Re* GASTON, WILLIAMS & WIGMORE & GASTON, WILLIAMS & WIGMORE STEAMSHIP CORPN. *v.* R. (1922), 66 D. L. R. 242 ; 21 Exch. C. R. 370.—**CAN.**

525 ii. —— —— ——.]—LEMAY *v.* R. (1922), 68 D. L. R. 489 ; 21 Exch. C. R. 364.—**CAN.**

525 iii. —— *Who entitled—Charterer or owner.*]—Whereas the right of action against the Crown is at common law in the owner & not in the charterer :—*Held :* the true intent, meaning & spirit of War Measures Act, 1914, s. 7, is to maintain & preserve to the subject any rights possessed by him at common law, & which he previously had notwithstanding that Act ; & that sect. does not confer upon him any new rights to compensation in addition to those which he otherwise enjoyed.—WARNER QUINLAN ASPHALT CO. *v.* R., [1923] Exch. C. R. 195.—**CAN.**

Govt. department the personal liabilities, if any such there were, of the Shipping Controller for any wrongful acts committed by him in his office, & the Board was liable to be sued in respect of those acts notwithstanding that it was an unincorporated body.

(2) Although the Board of Trade may in the above-mentioned circumstances be sued as a Govt. department, service of the writ must, unless the solr. to the Board accepts service on their behalf, be effected upon the individual constituent members of the Board personally.

(3) Where an official of a Govt. department wrongfully extorts a sum of money from a subject for the use of the Crown & the injured party waives the tort:—*Qu.*: whether he can sue the official personally as for money had & received, or whether his only remedy is not by petition of right against the Crown.—MARSHAL SHIPPING CO. *v.* BOARD OF TRADE, [1923] 2 K. B. 343; 92 L. J. K. B. 901; 129 L. T. 644; 39 T. L. R. 415; 67 Sol. Jo. 639; 16 Asp. M. L. C. 210, C. A.

Annotations:—As to (1) **Refd.** G. S. & W. Ry. of Ireland *v.* R., [1924] 2 K. B. 450. *As to* (3) **Refd.** Brocklebank *v.* R., [1924] 1 K. B. 647. *Generally*, **Refd.** Bristol Channel Steamers *v.* R. (1924), 131 L. T. 608.

Actions against Departments of State generally, *see* AGENCY, Vol. I., pp. 654, 655; PUBLIC AUTHORITIES.

527. *Add. Annotation:—Generally*, **Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

530. *Add. Annotations:—As to* (1) **Refd.** Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271. *Generally*, **Refd.** Newcastle Breweries *v.* I. R. Comrs. (1927), 137 L. T. 426; R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

531. *Add. Annotations:—As to* (5) **Refd.** Swift *v.* Board of Trade (1924), 93 L. J. K. B. 529. *Generally*, **Refd.** Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271; R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

534. *Add. Annotation:*—**Consd.** Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271.

534a. —— —— —— ——.]—A British ship lying in a neutral port & laden with a cargo of timber belonging to neutrals of another country was requisitioned during the war by the British Govt. & brought home with her cargo to England without the consent & against the protest of the cargo owners. The timber was then requisitioned by the Controller of Timber Supplies on behalf of the Board of Trade avowedly under Defence of the Realm Regulations, 2B & 2JJ. The owners of the cargo made a claim in the War Compensation Ct. for compensation & contended that it should be assessed under Indemnity Act, 1920 (c. 48), s. 2 (2) (iii.) (*a*), on the ground that in the circumstances they would but for the Act have had a legal right to compensation:—*Held:* (1) the regulations did not apply to a seizure of goods of a neutral brought into England against his will; (2) the requisition of the timber was justifiable as an exercise of the royal prerogative right of angary & was, therefore, made "in exercise of" a "prerogative right to His Majesty" within s. 2 (1) (*b*) of the Act, & inasmuch as that right involved the obligation to pay full compensation to the owner of the property seized, claimants "would have had apart from" the Act a valid claim for compensation by petition of right, &, the Crown admitting that such a claim constituted "a legal right to compensation," compensation was to be assessed according to the principle laid down in s. 2 (2) (iii.) (*a*) of the Act.—COMMERCIAL & ESTATES CO. OF EGYPT *v.* BOARD OF TRADE, [1925] 1 K. B. 271; 94 L. J. K. B. 50; 132 L. T. 516, C. A.

Annotation:—As to (2) **Consd.** Netherlands-American Steam Navigation Co. *v.* Procurator-General (1925), 42 T. L. R. 81.

535a. Right to compensation—Under Indemnity Act, 1920 (c. 48)—Exercise of right of angary.]—COMMERCIAL & ESTATES CO. OF EGYPT *v.* BOARD OF TRADE, No. 534a, *ante*.

539. *Add. Annotations:—As to* (1) **Refd.** R. *v.* Cannon Row Police Station Inspector, *Ex p.* Brady (1921), 91 L. J. K. B. 98. *Generally*, **Refd.** Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603; Brown *v.* Dagenham U. C. (1929), 98 L. J. K. B. 565; R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

558a. Restriction on right of action.]—Reg. 2A (2) of Defence of the Realm Regulations, which provides that "no person shall, without the consent of the Minister of Munition, take . . . any proceedings for the purpose of obtaining an order or decree for the recovery of possession of, or for the ejectment of a tenant of, any dwelling-house" in which a munition worker is living, & which is situate in an area declared by order of the Minister of Munitions to be a "special area," is not authorised by Defence of the Realm Consolidation Act, 1914 (c. 8), s. 1 (1), & is, therefore, invalid.

The only question for decision is whether this portion of the regulation is *ultra vires* the statute under which it purports to be made, that is to say, Defence of the Realm Consolidation Act, 1914. This depends upon whether it can be said, on any reasonable construction of the statute, to be a regulation for securing the public safety & the defence of the realm, &, particularly under sect. 1 (1) (*e*), whether it can be said to be a regulation to prevent the successful prosecution of the war being endangered (AVORY, J.).

It is true that the power to make a regulation to prevent the successful prosecution of the war being endangered is of a wide & sweeping character, but I decline to hold that Parliament intended by these general words to give to the executive the right to close any of the King's cts. against his subjects unless they obtained the sanction of a minister to resort thereto (SANKEY, J.).—CHESTER *v.* BATESON, [1920] 1 K. B. 829; 89 L. J. K. B. 387; 122 L. T. 684; 84 J. P. 65; 36 T. L. R. 225; 18 L. G. R. 212; 26 Cox, C. C. 591, D. C.

Annotations:—**Consd.** Fowle *v.* Monsell (1920), 90 L. J. K. B. 105; Hudson's Bay Co. *v.* Maclay (1920), 36 T. L. R. 469; Newcastle Breweries, Ltd. *v.* R., [1920] 1 K. B. 854; R. *v.* Wormwood Scrubs Prison Governor (1920), 84 J. P. 94; R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

Part XIV.—The Crown as the Fountain of Honour.

563. *Add. Annotation :*—**Consd.** Rhondda's Claim, [1922] 2 A. C. 339.

Part XV.—The Crown in relation to Ports and Harbours.

568. *Add. Annotation :*—**Distd.** British Trawlers Federation, Ltd. *v.* London & North Eastern Ry. Co. (1932), 48 T. L. R. 491.

Part XIX.—Royal Grants.

661. *Add. Annotation :*—**Refd.** Layzell *v.* Thompson (1927), 137 L. T. 106.

706. *Add. Annotation :*—**Refd.** Hodgson *v.* McCreagh (1923), 93 L. J. Ch. 339.

728a. Grant of land reserving strip of coast land—Effect of confirming grant.]—A.-G. FOR NEW SOUTH WALES *v.* DICKSON, [1904] A. C. 273; 73 L. J. P. C. 48; 90 L. T. 213, P. C.

PART XIX. SECT. 1, SUB-SECT. 1.

e i. ——— ———.]—R. *v.* NEW ENGLAND Co. (1922), 63 D. L. R. 537; 21 Exch. C. R. 245.—**CAN.**

PART XIX. SECT. 2, SUB-SECT. 2.

m i. ———.]—The recital in a Crown grant made under the Great Seal of Canada & duly recorded, *i.e.* enrolled, that it is made " under & by virtue of the statutes in that behalf & pursuant to authority duly granted by our Governor-in-Council," is sufficient to establish a *primâ facie* case of the existence of such an Order in Council, or at least to bring into operation the maxim *omnia præsumuntur rite esse acta.*—BURRARD INLET TUNNEL & BRIDGE Co. *v.* THE SS. EURANA (B. C. Adm.), [1929] 3 D. L. R. 161; 2 W. W. R. 275; *on appeal*, [1931] A. C. 300.—**CAN.**

PART XIX. SECT. 2, SUB-SECT. 3.—A.

602 ii. ———.]—Where a Crown grant of land has been issued by error, but without false misrepresentation on the grantee's part, & whereby he obtains more than that to which he was entitled, the ct. need not set aside the whole grant, but may declare it void only in so far it purported to convey such portion improvidently granted, & will order the grant to be delivered up to be rectified.—R. *v.* SEAMAN, [1927] Exch. C. R. 201.—**CAN.**

q. Add "*revsd.* on other grounds, 9 Gr. 224."

ss. *As to Crown's title—Crown ousted by adverse possession.*]—A. has been in possession of land at T. for over sixty years without having obtained a grant for the same from the Crown. B., a stranger, upon application, obtains a grant of said land. A. takes action to have grant declared null & void :—*Held :* the rights of the Crown in the land have been ousted, & the grant should be set aside.—MILLER *v.* SMITH (1900), 8 Nfld. L. R. 399.—**NFLD.**

sb. *Mistake in description—Cancellation of erroneous patent—Right to new patent.*]—R. *v.* SINCLAIR (1912), 11 E. L. R. 367.—**CAN.**

PART XIX. SECT. 2, SUB-SECT. 3.—B.

607 iii. ———.]—LAWRENCE *v.* POMEROY (1863), 9 Gr. 474.—**CAN.**

PART XIX. SECT. 2, SUB-SECT. 3.—C.

h. Add "*revsd.* on other grounds, 19 A. R. 329."

PART XIX. SECT. 2, SUB-SECT. 4.

sd. *Grants for homesteads—To men only.*]—By R. S. O. 1877, c. 24, free grants of lands for homesteads are authorised to be made only to men.—ROGERS *v.* LOWTHIAN (1880), 27 Gr. 559.—**CAN.**

PART XIX. SECT. 3, SUB-SECT. 2.

656 i. Add "*revsd.* on other grounds, 19 A. R. 329."

662 ii. Add "*revsd.* on other grounds, 19 A. R. 329."

PART XIX. SECT. 3, SUB-SECT. 3.—A.

r i. ———.]—A Crown grant of land, as to part of the land granted, used the words " grant, convey & assure," & as to other land granted, " grant, release & quit claim " :—*Held :* both conveyed the fee simple, & the grantee could convey the fee simple subject to conditions & reservations in the grant.—NORTHERN TRUST Co. *v.* TURNER, [1923] 2 D. L. R. 1176.—**CAN.**

——— *subject to existing timber lease.*]—Pltf. obtained a Crown grant to certain lands, to the timber on which a lease for twenty-one years had been previously given. The grant from the Crown was silent as to the timber lease. At a date subsequent to the said grant, the timber lease had to be surrendered for renewal under the Land Act :—*Held :* the rights given the grantee under his Crown grant were subject to the existing timber lease.—BROHM *v.* BRITISH COLUMBIA MILLS, TIMBER & TRADING Co. (1907), 13 B. C. R. 123.—**CAN.**

PART XIX. SECT. 3, SUB-SECT. 3.—C.

sf. " *Water-power* " — *Water-power from artificial channels.*]—KEEWATIN POWER Co. *v.* KEEWATIN FLOUR MILLS, LTD., KEEWATIN POWER Co. *v.* LAKE OF THE WOODS MILLING Co., [1928] 1 D. L. R. 32; 61 O. L. R. 363; *affd.*, [1929] 3 D. L. R. 199; 63 O. L. R. 667; [1930] A. C. 640.—**CAN.**

sg. *Grant of land to Indians—" Customs & usages "—Fishing with seine net.*]—In an action by an Indian living on an Indian reserve against a fishery inspector & a game & fishery overseer in trover, to recover the value of a seine fishing net, the property of pltf. seized by defts. upon the reserve :—*Held :* the land of the band of Indians occupying the reserve was the property of the King, & the only rights they have in the land came through royal grant—the Simcoe deed of 1793, a grant of land " to be held & enjoyed by them in the most free & ample manner & according to the several customs & usages " with a proviso against alienation. " Customs & usages " are words of tenure & not indicative of the manner in which the Indians are to use the land; moreover, there was no evidence that fishing with a seine was one of the customs of the Indians in 1793. There is nothing in the grant suggesting exclusion from the ordinary laws, & the Indians are subject to those laws.—SERO *v.* GAULT (1921), 50 O. L. R. 27; 64 D. L. R. 327.—**CAN.**

PART XIX. SECT. 3, SUB-SECT. 3.—E.

l i. ——— ———.]—The reservation in a Crown grant of the mines & minerals " with full power to work the same & for this purpose to enter upon & use or occupy the lands or so much thereof & to such an extent as may be necessary for the effectual working of the said minerals " :—*Held :* this confers greater powers than is implied in a bare reservation in an agreement for the sale of the land so granted of " all mines & minerals."—FULLER *v.* GARNEAU (1920), 61 S. C. R. 450; 58 D. L. R. 642.—**CAN.**

l ii. ——— ——— *Includes petroleum & natural gas.*]—CREIGHTON *v.* UNITED OILS, LTD., [1927] 2 W. W. R. 458; *affd.*, [1927] 3 W. W. R. 463.—**CAN.**

l iii. *S. P.* STARLEY *v.* NEW MCDOUGALL-SEGUR OIL Co. (No. 2), [1927] 2 W. W. R. 466; *affd.*, [1927] 3 W. W. R. 464.—**CAN.**

l iv. ——— ——— *Effect of Act to amend Public Lands Act*, 1908 (c. 16).]—*Re* COX, [1927] 4 D. L. R. 556; 61 O. L. R. 182.—**CAN.**

sh. *Exception of lots—Conflict between plan & description—Evidence of physical features of alleged exceptions.*]—THOMPSON *v.* FRASER COMPANIES, LTD. (Can.), [1929] 3 D. L. R. 778; *revg.*, [1929] 1 D. L. R. 168.—**CAN.**

PART XIX. SECT. 3, SUB-SECT. 3.—F.

729 ii. ———.]—*Semble :* the Crown may grant a tract of land by a sufficient description to designate the portion meant, although the township within which the land lies has not been surveyed & laid out into lots & concessions; & the grantee will be entitled to hold it although a subsequent survey made by authority of the Crown makes it by name a different lot, or places it in a different concession, from that named in the patent, or the surveyor laying it out projects a road through it.—HORNE *v.* MUNRO (1857), 7 C. P. 433.—**CAN.**

754. *Add. Annotation :—Generally,* **Refd.** Layzell *v.* Thompson (1927), 137 L. T. 106.

780. *Add. Annotation :—Generally,* **Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

785a. —— **Grant of sole right to draw bills & informations.**]—MOUNSON *v.* LYSTER (1632), W. Jo 231 ; 82 E. R. 122.

786. *Add. Annotations :*—**Refd.** Layzell *v.* Thompson (1927), 137 L. T. 106 ; Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey, [1930] A. C. 549.

Part XXI.—Hereditary and Private Revenues of the Crown.

857. Before this case add " *See* Crown Lands Act, 1927 (c. 23)."

857. *Add. Annotations :—As to* (4) **Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53. *As to* (5) **Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

927. Substitute the following paragraph & citations :—

By virtue of Assessionable Manors Act, 1844 (c. 105), s. 54, His Royal Highness the Prince of Wales, as Duke of Cornwall, was absolutely entitled to the mines & minerals within certain manors including that of C. Sect. 55 of the Act empowered the Duke, his agents & lessees, to enter upon all lands within the said manors, & all mines belonging to the Duke, & to open & work the same, & to erect all such buildings, machinery, etc., & do all such acts as should be " necessary or convenient for working the same mines," on making compensation to the surface owners. By sect. 69 it was provided that it should be lawful for the Duke, his agents & lessees, to pull down & remove all buildings, machinery, etc., no longer used for the purposes aforesaid, or to allow the same to remain, & no buildings should, by non-user or otherwise, be deemed to be abandoned, so as to vest any right or title therein in the owner of the land. Deft. was the owner by purchase of garden land adjoining two cottages at W. E. in the manor of C., & was also in possession of a house & garden at W. Z., the site of which she had purchased in 1902. This house was subsequently enlarged from one of six rooms into one of eleven rooms, with an additional wing. These alterations & some improvements to the garden cost £500, & were known to the mineral agent of the Duchy, who remained passive. The Duchy claimed that under the provisions of sects. 55 & 69 of the Act the two cottages & land at W. E. & the house & land at W. Z. had been originally erected, entered upon, & used in connection with the mines at W. E. & W. Z. respectively, & were now vested in the Duchy. From 1846 onwards licences & leases had been granted by the Duchy for the working of the two mines, but neither had been in fact worked for many years. Upon an information by the A.-G. to His Royal Highness the Prince of Wales claiming declarations of title to the lands & buildings, & an injunction to restrain the deft. from asserting any title to the same :—*Held :* (1) the effect of sect. 55 was not to vest any land in the Duchy, but only compelled the surface owner to permit his land to bear certain burdens, & did not divest him of his title ; nor did it follow from the power in that section to erect " buildings " that a power was given to take land for gardens ; (2) the effect of sect. 69 was not to vest any title in the Duchy, but to prevent the surface owner from resuming full enjoyment of land once taken ; & consequently the Duchy had established no right over, or title to, these lands.—A.-G. TO PRINCE OF WALES *v.* COLLOM, [1916] 2 K. B. 193 ; 85 L. J. K. B. 1484 ; 114 L. T. 1121 ; 32 T. L. R. 448.

PART XIX. SECT. 5, SUB-SECT. 1.

t i. —— *Derogation of rights under earlier grant.*]—KEEWATIN POWER CO., LTD. *v.* KEEWATIN FLOUR MILLS, LTD., KEEWATIN POWER CO., LTD. *v.* LAKE OF THE WOODS MILLING CO. (Ont.), [1928] 1 D. L. R. 32 ; *affd.*, [1929] 3 D. L. R. 199 ; 63 O. L. R. 667, [1930] A. C. 640.—**CAN.**

PART XIX. SECT. 5, SUB-SECT. 6.

c i. —— ——.]—COSTIN *v.* CHAPPELL (1875), 10 N. S. R. (1 R. & C.) 40.—**CAN.**

sk. *Unoccupied land.*]—Land unoccupied in the island of Newfoundland at the time of passing 5 Geo. 4, c. 51, is within that statute, & may be granted out as waste lands under sect. 15, notwithstanding it has been occupied & enclosed before any grant of it was made.—A.-G. OF NEWFOUNDLAND *v.* RYAN (1836), 2 Nfld. L. R. App. 8.—**NFLD.**

sl. *Right of pre-emption.*]—HOGGAN *v.* ESQUIMALT & NANAIMO RY. CO., WADDINGTON *v.* ESQUIMALT & NANAIMO RY. CO. (1892), 20 S. C. R. 235 ; *affd.*, [1894] A. C. 429.—**CAN.**

sm. ——.]—HESELWOOD *v.* JONES (1910), 16 B. C. R. 485.—**CAN.**

PART XIX. SECT. 8.

Evidence of invalidity of first grant Not admissible.]—DOE d. MCKAY *v.* RYKERT (1823-1900), 1 Ont. Dig. 1726. **CAN.**

PART XIX. SECT. 9.

r i. —— *Cancellation for incompetency —Soldiers' settlement—Functions of Minister for Repatriation.*]—*Held :* the Minister had a merely administrative function, & might form an opinion on such materials as he himself thought sufficient without giving resp. an opportunity of being heard or of meeting allegations to his prejudice.—LAFFER *v.* GILLEN (1927), 40 C. L. R. 86.—**AUS.**

so. *Whether Attorney - General necessary party.*]—The bill alleged that the patentees obtained their patent by false representations to the Government, & showed a case in which the patentees would not be entitled to compensation if the patent were set aside & the land given to another :—*Held :* to such a bill the A.-G. was not a necessary party.—REES *v.* A.-G. (1869), 16 Gr. 467.—**CAN.**

sp. *Whether Attorney-General entitled to take proceedings—Soldier Settlement Act, 1919—Notwithstanding Dominion Lands Act, s.* 94.]—*Held :* Sect. 94 does not give the Minister of the Interior the exclusive right to institute such actions & does not take away the usual right & power of the A.-G.—R. *v.* RICHARDS, [1930] Ex. C. R. 222.—**CAN.**

PART XX. SECT. 6.

n i. —— —— *When in possession of Crown lessee or licensee.*]—The prerogative of the Crown & its freedom from interference by a council in the matter of building operations do not extend to Crown lessees or licensees.—HORNSBY, COUNCIL OF THE SHIRE OF *v.* DANGLADE (1928), 29 S. R. 118.—**AUS.**

st. *Sale of land under Soldier Settlement Act, 1919—Failure of soldier to perform agreement—Crown not entitled to warrant of possession.*]—A.-G. FOR CANADA *v.* PUGH, [1924] Exch. C. R. 62.—**CAN.**

PART XXI. SECT. 1, SUB-SECT. 2.

858 iii. —— ——.]—The right to precious metals in the land now held by the Hudson's Bay Co. belongs not to the co., but to the Crown.—HUDSON'S BAY CO. *v.* A.-G. FOR CANADA, [1929] A. C. 285 ; 98 L. J. P. C. 28 ; 45 T. L. R. 47, P. C.—**CAN.**

CONTRACT.

Part I.—Definitions and Classification.

3. *Add. Annotation :*—**Refd.** Rose & Frank Co. *v.* Crompton, [1923] 2 K. B. 261.

4. For the existing paragraph substitute the following paragraph :—

Legal effect expressly excluded.]—By successive arrangements made before 1913 between an American firm & an English co. the American firm were constituted sole agents for the sale in the United States & Canada of tissues for carbonising paper supplied by the English co. The greater part of these tissues was manufactured for this English co. by another English co. By an arrangement made between the American firm & both English cos. in 1913 the English cos. expressed their willingness that the existing arrangements with the American firm, which were then for one year only, should be continued on the same lines for three years & so on for further periods of three years, subject to six months' notice. This document, after setting out the understanding between the parties, including several modifications of the previous arrangements, proceeded as follows : " This arrangement is not entered into, nor is this memorandum written, as a formal or legal agreement, & shall not be subject to legal jurisdiction in the law cts. either of the United States or England, but it is only a definite expression & record of the purpose & intention of the three parties concerned, to which they each honourably pledge themselves, with the fullest confidence—based on past business with each other—that it will be carried through by each of the three parties with mutual loyalty & friendly co-operation. This is hereinafter referred to as the ' honourable pledge ' clause." Disputes having arisen between the parties, the English cos. determined this arrangement without notice. Before the relations between the parties were broken off the American firm had given & the first-mentioned English co. had accepted certain orders for goods. In an action by the American firm for breach of contract & for non-delivery of goods :—*Held :* (1) the arrangement of 1913 was not a legally binding contract ; (2) at the date of the arrangement of 1913 all previous agreements were determined by mutual consent ; (3) the orders given & accepted constituted enforceable contracts of sale.—ROSE & FRANK CO. *v.* CROMPTON (J. R.) & BROTHERS, LTD., [1925] A. C. 445 ; 94 L. J. K. B. 120 ; 132 L. T. 641 ; 30 Com. Cas. 163, H. L.

Annotation :—*As to* (1) **Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1930), 145 L. T. 51.

5. *Add. Annotation :*—**Refd.** *Re* Wait, [1927] 1 Ch. 606.

5a. —— —— ——.]—SNOW *v.* FIREBRASS (1700), Holt, K. B. 609 ; 2 Salk. 557 ; 1 Ld. Raym. 611 ; 12 Mod. Rep. 434 ; 90 E. R. 1237.

5b. —— —— ——.]—Pltfs., the freeholders of certain property, entered into an agreement with defts. to give them the " first option " of purchasing any premises that might be designated for dairy purposes on the said property :—*Held :* this agreement was void through uncertainty as to the intention of the parties as to the meaning of the words " first option."—RYAN *v.* THOMAS (1911), 55 Sol. Jo. 364.

Annotation :—**Refd.** County Hotel & Wine Co. *v.* London & North Western Ry. Co., [1918] 2 K. B. 251.

Part II.—Parties to Contract.

17. *Add. Annotations :*—**Refd.** Johnson *v.* Stephens & Carter & Golding, [1923] 2 K. B. 857 ; *Re* Phillips, Public Trustee *v.* Mayer (1931), 76 Sol. Jo. 10.

25. *Add. Annotation :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371.

48. *Add. Annotations :*—*As to* (1) **Refd.** Clarkson *v.* Davies, [1923] A. C. 100 ; Duffner *v.* Bowyer (1924), 40 T. L. R. 700 ; *Re* Pennington & Owen, [1925] Ch. 825. *As to* (2) **Refd.** Firm of R. M. K. R. M. *v.* Firm of M. R. M. V. L., [1926] A. C. 761.

52. *Add. Annotations :*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307 ; Holder *v.* I. R. Comrs. (1932), 48 T. L. R. 365.

55. *Add. Annotation :*—**Apld.** Berry *v.* Berry, [1929] 2 K. B. 316.

103. *Add. Annotation :*—**Distd.** Way *v.* Bishop, [1928] Ch. 647.

129. After this case add " *See, also,* No. 36, *ante.*"

150. *Add. Annotation :* — **Consd.** Johnson *v.* Stephens & Carter & Golding, [1923] 2 K. B. 857.

163. After this case add " —— **Effect of judgment against one.**]—*See* ESTOPPEL, Vol. XXI., pp. 218–221."

PART I.

2 i. *Definitions—Must be capable of being enforced in court of justice.*]—An arrangement between intending husband & wife for a dress allowance to the wife held not to be a contract because not intended to affect or give rise to legal relations or to be attended with legal consequences.—COHEN *v.* COHEN (1929), 42 C. L. R. 91 ; [1929] Argus L. R. 204.—**AUS.**

PART II. SECT. 2, SUB-SECT. 2.—E.

130 iii. —— *Disclaimer by one.*]—If a contract purports to be made with two covenanters jointly, the disclaimer of one of them, to which the covenantor is not also a party, does not convert it into a contract with the other & entitle him to sue alone, even though the joint covenantor who has disclaimed is an infant.—BENNETT *v.* GREENSILL, [1927] N. Z. L. R. 167.—**N.Z.**

PART II. SECT. 2, SUB-SECT. 2.—F.

151 iii. —— ——.]—In an action to rescind a contract deft. applied to add W. as co-deft. :—*Held :* deft. had no right to force W. upon pltf. as deft., in the character of a joint contractor. —TORONTO & HAMILTON NAVIGATION CO. *v.* SILCOX (1888), 12 P. R. 622.—**CAN.**

163a. Action brought against all—Successful defence by one—Unsuccessful defences by others.]—In an action for breach of contract brought against A., B. & C. as joint contractors, A. set up the defence that pltf. had not performed his part of the contract. B. & C. set up other defences which failed. The judge decided that A. having established an effective defence, the action failed as against him, but succeeded against B. & C.:—*Held:* B. & C. though they had not pleaded it, were entitled to the benefit of a defence set up by A. which went to the whole cause of action, & the action failed altogether.

Where the ct. has before it a fact common to the whole contract & not involving statutory illegality, it is bound to take notice of that fact as applicable to every joint debtor whether he has pleaded it or not. There can only be one judgment against joint contractors, except upon a matter peculiar to one of the contractors.—PIRIE *v.* RICHARDSON, [1927] 1 K. B. 448; 96 L. J. K. B. 42; 136 L. T. 104; 70 Sol. Jo. 1023, C. A.

165. *Add. Annotation:*—**Consd.** United Dairies *v.* Public Trustee, [1923] 1 K. B. 469.

192. *Add. Annotation:*—**Refd.** Hardie & Lane *v.* Chiltern (1927), 96 L. J. K. B. 773.

197. *Add. Annotation:*—**Refd.** Key *v.* Bastin, [1925] 1 K. B. 650.

209. *Add. Annotation:*—**Consd.** York Glass Co. *v.* Jubb (1925), 42 T. L. R. 1.

218. *Add. Annotation:*—**Refd.** *Re* Pinto Leite, *Ex p.* Des Olivaes, [1929] 1 Ch. 221.

231a. —— ——.]—GILBERT (F.) (BOURNEMOUTH), LTD. *v.* MACKAY (1930), 74 Sol. Jo. 788.

255. *Add. Annotation:*—**Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179.

256. *Add. Annotation:*—**Refd.** Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371.

257. *Add. Annotation:*—**Refd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

259. *Add. Annotation:*—**Refd.** *Re* Franklin & Swathling, [1929] 1 Ch. 238.

264. *Add. Annotation:*—**Refd.** Hyman *v.* Hyman, [1929] A. C. 601.

272. *Add. Annotation:*—**Refd.** Edwards *v.* Porter, McNeall *v.* Hawes, [1923] 2 K. B. 538.

273. *Add. Annotations:*—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494. **Refd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

275. *Add. Annotation:*—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494.

Part III.—Formation of Contract.

297a. Offer & acceptance—Though in pursuance of unenforceable agreement.]—ROSE & FRANK CO. *v.* CROMPTON (J. R.) & BROTHERS, LTD., No. 4, *ante*.

298. After this case add "**Course of conduct.**] *See* pp. 52, 67, 114, 115, Nos. 289, 389, 747–751; ESTOPPEL, Vol. XXI., pp. 290, 291, No. 1034."

PART II. SECT. 5.

sa. *Buddhist monk.*]—A Buddhist monk is a person competent to contract within Contract Act, s. 11. There is nothing immoral, although it would be so from the standpoint of his religious Order, or forbidden by law, within Contract Act, s. 23, for a Buddhist monk to enter into a contract for the sale of land. This is a question of contract only & not a question relating to a religious institution or usage.—U PYINNYA *v.* MAUNG LAW (1929), I. L. R. 7 Ran. 677.—**IND.**

PART II. SECT. 6, SUB-SECT. 2.

238 **xvi.** —— ——.]—An agreement between a dealer in automobiles & the maker thereof, providing that it should be construed as an agreement between the dealer signing it & all other dealers "who have signed a similar agreement":—*Held:* to bring about a contractual relationship between such dealers involving an obligation for breach of which an action would lie by one dealer against another who signed such agreement.—MCCANNELL *v.* MABEE MCLAREN MOTORS, LTD., [1926] 1 D. L. R. 282; [1926] 1 W. W. R. 353; 36 B. C. R. 369.—**CAN.**

sc. —— *Member of public—Agreement between street railway & municipality.*]—*Ex p.* NEW BRUNSWICK POWER CO. (N. B.), [1928] 1 D. L. R. 332.—**CAN.**

PART III. SECT. 1.

si. *Contract subject to approval—Effect of approval.*]—*Held:* the effect of a clause in a contract, which made the agreement subject to the approval of the Governor-General in Council, was to suspend the contract pending the giving of such approval, & upon such approval being given the contract took effect & became enforceable.—BANKS PENINSULA ELECTRIC-POWER BOARD *v.* AKAROA BOROUGH COUNCIL, [1923] N. Z. L. R. 880.—**N.Z.**

sj. —— *Sufficiency of approval.*]—A contract contained a provision that it should be deemed executed & become binding only when approved by the proper officers of the vendor co. Beneath the signatures of the contracting parties a form of approval was signed by certain persons as managers. There was evidence that they occupied these positions, but no evidence that they were the proper officers of the vendors for approval of the contract:—*Held:* approval could be shown by the subsequent conduct of the vendors.—GENERAL SUPPLY CO. OF CANADA *v.* O'NEILL MORKIN MACHINERY CO., [1924] 2 D. L. R. 183; 1 W. W. R. 1047.—**CAN.**

sk. *Contract for carriage of goods—Letter expressing wish for insurance of goods.*]—*Held:* the contract was complete when the agent received the goods & gave a receipt, which contained the terms of the contract, & the letter was only a request to insure, & formed no part of the contract.—MCGOLDRICK *v.* EASTERN EXPRESS CO. (1872), 14 N. B. R. (1 Pug.) 138.—**CAN.**

sl. *Statutory debt for taxes.*]—A statutory debt for taxes is not a contract.—A.-G. FOR CANADA *v.* O'REILLY, [1930] 1 W. W. R. 929; 3 D. L. R. 638; 24 Alta. L. R. 450.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.—A. (a).

s i. ——.]—ACME GRAIN CO., LTD. *v.* WENAUS, [1917] 3 W. W. R. 157; 36 D. L. R. 347; 10 Sask. L. R. 305.—**CAN.**

b i. ——.]—In an action brought against exor. of a farmer who had died intestate, the pursuer averred that deceased, a childless widower & an invalid, proposed to him that, if he gave up a situation which he then had, resided with him at the farm, & looked after him & the farm, he would make the pursuer his heir; that, after consideration & induced by the representations of the deceased, he accepted the proposal, lived with the deceased for sixteen years as his companion & nurse without remuneration, & successfully managed the farm; & that, owing to the failure of deceased, in spite of his representations, to make a will in favour of pursuer, he had suffered material loss. He accordingly claimed to be indemnified for this loss, which he estimated at £6,000, or, alternatively, to be recompensed in so far as the estate had benefited from his services. The ct. dismissed the action as irrelevant, holding that pursuer's averments did not import a legal claim enforceable against the deceased's executry, in respect (*a*) that nothing more was disclosed than a mere expression of intention on the part of the deceased to make the pursuer his heir; (*b*) that, even on the assumption that a definite promise of heirship was averred, such a promise could have been proved only by the writ of the deceased, & here admittedly no writ existed; (*c*) that no *primâ facie* case for indemnification on ground of equity was disclosed, the loss averred by the pursuer as a result of the deceased's representations being based solely on hypothetical calculations & not on actual outlay.—GRAY *v.* JOHNSTON, [1928] S. C. 659.—**SCOT.**

sm. *Construction—Ambiguous offer.*]—Where a written offer is ambiguous, it may be construed according to the contemporaneous interpretation put upon it by the maker & receiver.—MANNING *v.* CARRIQUE (1915), 9 O. W. N. 61; 34 O. L. R. 453.—**CAN.**

307. *Add. Annotation :*—**Apld.** Hillas & Co. *v.* Arcos, Ltd. (1931), 36 Com. Cas. 353.

310. *Add. Annotation :*—**Refd.** Kennedy *v.* Thomassen, [1929] 1 Ch. 426.

339a. ——.]—HORSFALL *v.* GARNETT (1858), 6 W. R. 387.

387a. —— **Sale of annuity—Execution of release.**]—KENNEDY *v.* THOMASSEN, No. 3081a, *post.*

396. *Add. Annotations :*—**Apld.** Sullivan *v.* Constable (1932), 48 T. L. R. 267. **Refd.** Jones (Holloway) *v.* Woodhouse, [1923] 2 K. B. 117; Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607.

397. *Add. Annotations :*—**Consd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258. **Refd.** Sullivan *v.* Constable (1932), 48 T. L. R. 369.

415. *Add. Annotation :*—**Distd.** Neale *v.* Merrett (1930), 70 L. Jo. 95.

416. To the existing paragraph, after the word "accepting," add "'subject to the terms of a contract being arranged.'"

PART III. SECT. 2, SUB-SECT. 1.—C. (a).

328 i. *What amounts to—Counter offer.*]—Specific counter offer or rejection puts an end to an offer.—SHAW *v.* JONES, [1924] N. Z. L. R. 1133.—**N.Z.**

328 ii. —— ——.]—Deft., through his agent, sent pltf. an offer to sell him land for $1,800 on terms. Pltf. wired the agent: "Send lowest cash price. Will give $1,600 cash. Wire." The agent replied by wire: "Cannot reduce price." Pltf. then wrote accepting the offer:—*Held:* the telegram reading "Cannot reduce price" was a renewal of the original offer, not merely a rejection of pltf.'s counter offer, & pltf.'s acceptance of it completed a contract of sale.—LIVINGSTONE *v.* EVANS, [1925] 4 D. L. R. 769; [1925] 3 W. W. R. 453.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.—C. (c) i.

337 viii. ——.]—Where a document was no more than an offer & was withdrawn before acceptance:—*Held:* there was no contract.—GOODISON THRESHER CO. *v.* DOYLE (1925), 57 O. L. R. 300.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.—C. (c) iv.

p i. ——.]—Pltf. a member of & holder of a seat upon a Stock & Mining Exchange, in July, 1927, entered into an agreement with defts. S. & M. for the sale to them of his seat for the price of $20,000. In the course & as part of this transaction, a letter was written by deft. M. to pltf. dated July 27, 1927, stating: "I hereby give you an option, & guarantee same, for you to repurchase the . . . seat on or before Sept. 15, 1927, at the price of $21,000:—*Held:* the giving of the option was in consideration of the sale, & an option so given for a valuable consideration, cannot be revoked, & is open for acceptance by the optionee at any time within the period for which the option is given; all that was necessary to operate as an effectual exercise of the option was that pltf., not later than Sept. 15, should notify deft. M. of his acceptance of the offer.—FORREST *v.* SOLLOWAY, [1928] 3 D. L. R. 374; 62 O. L. R. 341.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—A.

366 vi. —— —— *Intention to discuss terms with third party.*]—Where parties have discussed terms, but one before finally accepting them intends to discuss the matter with others:—*Held:* there cannot be said to be a binding contract.—CARBON COAL & CLAY CO. *v.* NANOOSE-WELLINGTON COLLIERIES, [1923] 1 D. L. R. 1160.—**CAN.**

366 vii. —— ——.]—PATERSON (A. & G.), LTD. *v.* HIGHLAND RY. CO., [1927] S. C. (H. L.) 32.—**SCOT.**

368 viii. —— ——.]—BIGELOW *v.* CRAIGELLACHIE-GLENLIVET DISTILLERY CO. (1905), 26 C. L. T. 186; 37 S. C. R. 55.—**CAN.**

366 ix. —— ——.]—WILSON & CO., LTD. *v.* FARQUHARSON (1906), 3 E. L. R. 146.—**CAN.**

370 xiii. —— *Acceptance stating understanding of offer made.*]—The Halifax Graving Dock & plant were wrecked by explosion in 1917, & in Jan. 1918, the Canadian Govt. passed an Order in Council providing that the work of repair should be entrusted to applts. on the condition (*inter alia*) that the latter should contribute the amount of insurance it carried & the Govt. pay the balance. A letter was sent to the co. enclosing a copy of the Order & stating "an agreement is being prepared & will be submitted shortly for signature," but no agreement was ever executed. Two days later the co. wrote to the Minister of Public Works that the terms of the Order were satisfactory & adding, "but in order that all will be quite clear our understanding is that we are to assign our insurances & policies to the Govt., & that the temporary buildings now being constructed are to be replaced by permanent buildings of the same kind as the original":—*Held:* the letter of the co. to the Minister did not contain an unqualified acceptance of the terms set out in the Order in Council.—HALIFAX GRAVING CO. *v.* R. (1921), 62 S. C. R. 338.—**CAN.**

370 xiv. ——.]—CANADA PERMANENT MORTGAGE CORPN. *v.* BARNARD (Sask.), [1926] 1 D. L. R. 153.—**CAN.**

370 xv. ——.]—LEFEBVRE *v.* MOREAU (Alta.), [1928] 1 D. L. R. 1019.—**CAN.**

sp. *Time for—Time limited by contract.*]—Where applt. had not notified his acceptance within the fixed time, & in the absence of proof that resp. had waived his right to demand definite written notice as stipulated:—*Held:* there was no valid acceptance.—LAWS *v.* RUTHERFORD, [1924] App. D. 261.—**S. AF.**

st. —— *Within reasonable time.*]—SHATFORD *v.* B. C. WINE GROWERS, LTD., [1927] 2 D. L. R. 759; 38 B. C. R. 419.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—B. (a).

380 i. *Necessity.*]—BARRETT *v.* RAPELJE (1835), 4 O. S. 175.—**CAN.**

388 iii. ——.]—SHEADY & SMITH *v.* JOHN GILLESPIE & CO., LTD. (Alta.), [1931] S. C. R. 232; 1 D. L. R. 918; *revsg.*, [1929] 4 D. L. R. 745; 3 W. W. R. 247; 24 Alta. L. R. 245; *affg.*, [1929] 4 D. L. R. 23.—**CAN.**

388 iv. —— *Exercise of option.*]—Payment of the purchase-price made by a party purporting to exercise an option to purchase within the time & in the manner provided in the option is insufficient to create a binding contract where acceptance has not been communicated to the other party before the expiry of the option.

Deft., in consideration of payment of £5, gave pltf. "an option of ten days to purchase" his share in a motor-vessel for £150. The agreement provided that the £5 was to be forfeited unless the purchase was completed in the said ten days. Pltf. was given the right to pay the purchase-money into deft.'s bank account at W. instead of paying the same personally to deft. at K. Pltf. told deft. on the telephone that he was paying the money into the bank, & subsequently did pay the money within the ten days & posted a letter of advice which reached the deft. after the expiry of the option. Deft. then refused to transfer his share to pltf.:—*Held:* payment did not amount to communication of acceptance & there was no binding contract.—SOARES *v.* SIMPSON, [1931] N. Z. L. R. 1079.—**N.Z.**

388 v. —— *Order in Council authorising acceptance by Minister.*]—*Held:* No acceptance on behalf of the Crown communicated to F. by any one having authority to do so had been shown; &, therefore, no contract binding on the Crown had been established. The Order in Council did not in itself constitute an acceptance.—R. *v.* DOMINION CORPN., LTD., & FORGIE, [1932] S. C. R. 511; 2 D. L. R. 810.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—B. (b) ii.

sz. *Delivery of goods—Before time laid down in order.*]—Applt. sent an order on June 7 to resp. to send him on hire a binder, to be delivered on or about Oct. 1. The order contained a term that it was not to be binding on resp. until received & ratified in writing or by actual delivery of the goods to applt., & that the order might be cancelled by applt. giving notice to resp. by registered letter at least thirty days prior to date for delivery, with a proviso that if prior to that date or six months thereafter applt. ordered a binder from any other person, resp. might by registered notice revive the order, & deliver the binder within thirty days. An agent of resp. was told by applt. that he wished to cancel the order, as he was buying a harvester, & the agent notified resp., but no notice was given by applt. to resp. On Sept. 2, resp. forwarded by rail a binder to applt., & wrote him stating that the binder had been forwarded per rail. The machine arrived, & applt. refused to take delivery, but admitted he had received the letter:—*Held:* the letter did not amount to a ratification of the order, & a delivery on Sept. 2 did not necessarily imply a delivery pursuant or referable to the stipulation in the contract for delivery on or about Oct. 1, & there was no acceptance of the order.—BLACKETT *v.* CLUTTERBUCK BROTHERS (ADELAIDE), LTD., [1923] S. A. S. R. 301.—**AUS.**

PART III. SECT. 2, SUB-SECT. 2.—C.

403 ii. —— —— *Whether motive for informing material.*]—A reward was publicly offered by the Govt. of Western Australia "for such information as shall lead to the arrest & conviction of the person or persons who committed the murders" of two police officers. C. who knew of the offer, gave information that led to the arrest of one person, & the conviction of that person & another for the murder of one of those officers. By petition of right under Crown Suits Act, 1898, C. claimed payment of the reward:—*Held:* unless petitioner had performed the condition of the offer acting on the faith of or in reliance upon the offer, there was no acceptance of the offer, &, therefore, no contract between the parties.—R. *v.* CLARKE (1927), 40 C. L. R. 227; [1928] Argus L. R. 97.—**AUS.**

418a. —— **"Orders to be acknowledged by return."**]—Defts.' departmental manager orally agreed on their behalf to buy certain goods from pltf. & signed an order form on which was printed the clause, "orders to be acknowledged by return," but this term had not been orally agreed & no acknowledgment was sent to defts. In an action for breach of the contract defts. pleaded that there was merely an offer & no contract, as the only document contained a clause which had not been agreed :—*Held :* (1) the words on the order form, "orders to be acknowledged by return," were not intended to be words of contract ; (2) the words "by return" related only to the time within which, & not to the method by which, acknowledgment was to be made, & therefore there was a concluded contract, & pltf. was entitled to recover.—WILLIS *v.* BAGGS & SALT (1925), 41 T. L. R. 453 ; 69 Sol. Jo. 543.

419a. —— —— **Acceptance "subject to the terms of a lease."**]—Deft. employed house-agents to let shop premises at 155 High Street, Bromley, Kent, & on Dec. 9, 1930, pltf., after inspecting the premises, offered to take a lease. In reply the house-agents wrote to him on the same day : "Corner shop, 155 High Street, Bromley. Referring to our conversation this morning on the telephone, we confirm that, subject to the terms of a lease, our client is prepared to accept your offer to take the above premises on a 7, 14 or 21 years' lease at a rent of £350 *per annum* for the first 14 years, rising to £375 for the last 7 years. . . . We have instructed Mr. B.'s solrs. to put the draft lease in hand immediately to forward to your solrs. . . ." The draft lease was forwarded on the same day, & after negotiations as to its terms deft.'s solrs. wrote on Dec. 29, 1930, to pltf.'s solrs. : "We have now received our client's instructions on the draft lease, & he is prepared to accept your client's alterations. We are, therefore, having the lease engrossed, & will forward you a counterpart for execution by your client in due course." This was done, but deft. then refused to execute the lease, & on Jan. 24, 1931, granted a lease of the premises to some one else. On Feb. 3, 1931, pltf. commenced proceedings for specific performance, or, alternatively, damages :—*Held :* there was no binding contract to grant a lease, as the expression "subject to the terms of a lease" in the letter of Dec. 9, 1930, meant "subject to the terms to be contained in a lease executed by the lessor." It followed that even if deft.'s solrs. were the of deft. to communicate by their letter of Dec. 29, 1930, the fact that deft. had himself agreed to the terms of the lease, so that this letter was a sufficient memorandum of the agreement signed by deft.'s duly authorised agents within Law of Property Act, 1925 (c. 20), s. 40, there was no binding contract, because the result of the letter of Dec. 9, 1930, was that there could be no concluded agreement until the lease had been executed.—RAINGOLD *v.* BROMLEY, [1931] 2 Ch. 307 ; 100 L. J. Ch. 337 ; 145 L. T. 611.

420. *Add. Annotation :—As to* (2) **Dbtd.** Curtis Moffat *v.* Wheeler, [1929] 2 Ch. 224.

420a. —— —— ——.]—LORD CAIRNS indeed seems to have considered that, if the phrase ["subject to the title being approved by our solrs."] meant what the Ct. of Appeal thought it meant, it would follow that the purchaser was at liberty through the medium of his solr. to decline the title from mere caprice ; but none of the judges accepted this extreme view. It is reasonable, they thought, to imply good faith as a necessary ingredient. On the other hand, it seems to be putting an undue strain on the words to construe them, when used by a layman, as connoting not the approval of his own solr., which is their plain, ordinary meaning, but the decision of a ct. of justice after an unknown delay & at an unascertainable cost (MAUGHAM, J.).—CURTIS MOFFAT, LTD. *v.* WHEELER, [1929] 2 Ch. 224 ; 98 L. J. Ch. 374 ; 141 L. T. 538.

422. *Add. Annotation :*—**Distd.** Neale *v.* Merrett (1930), 70 L. Jo. 95.

422a. —— —— **Acceptance of purchase-price—Terms as to method of payment.**]—NEALE *v.* MERRETT (1930), 70 L. Jo. 95 ; 170 L. T. Jo. 99 ; [1930] W. N. 189.

422b. —— —— **Acceptance "subject to surveyor's report."**]—MARKS *v.* BOARD (1930), 46 T. L. R. 424 ; 74 Sol. Jo. 354.

429a. —— **What amounts to—Offer of house & "furniture"—Acceptance of house & "furniture & fittings as it stands."**]—Pltf. having an option from deft. to purchase a freehold house "with furniture for £4,000," wrote accepting deft.'s offer to sell the house "with the furniture & fittings as it stands" :—*Held :* there was a concluded contract between pltf. & deft.—GOFFIN *v.* HOULDER (1920), 90 L. J. Ch. 488 ; 124 L. T. 145.

430a. ——.]—By the arts. of assocn. of the T. Co., a private co., any member desiring to sell any of his shares must notify the Board of the number of shares, the price, & the name of the proposed transferee, & the Board

PART III. SECT. 2, SUB-SECT. 2.—D.

425 viii. ——.]—Deft., through his agent, offered pltf. 300 tons of hay at $22 per ton. Pltf. accepted, & the agent wired his principal asking that shipment be rushed. Deft. replied that he could not confirm the order for immediate delivery, but would book for delivery the last of the month :—*Held :* a contract valid in law was then completed, & deft. could not subsequently vary it by demanding a deposit of $2 per ton as a condition of shipping.—BALLAM *v.* HATFIELD (1922), 55 N. S. R. 508.—**CAN.**

so. *Variation in covering letter to offeror's agent.*]—T., who was desirous of floating a gold mining co. in England, sent, through his broker F., a letter to D., a Dublin stockbroker, offering him a specified fee in consideration of the co. going to allotment, & D. allowing his name to be used as stockbroker, D. signed a letter of acceptance, which had also been forwarded to him by T., through F., & sent the acceptance to F. in a covering letter addressed to F., in which D. mentioned that he signed the acceptance on the distinct understanding that Messrs. H. (an English firm of stockbrokers) also joined. The co.'s prospectus was issued, but instead of the Messrs. H., G. & Co., stockbrokers of equally high standing, appeared as the English stockbrokers of the intended co. D., who was only interested in not being associated with what were commonly known as mining brokers, under no objection to the substitution, did not withdraw his name, & acted as Dublin broker until the co. went to allotment. In an action for the fee :—*Held :* (1) the complete contract in T.'s letter & D.'s acceptance could not be varied by the covering letter addressed to F. as T.'s agent ; (2) the covering letter was not intended to make the contract conditional upon H. being the English brokers ; (3) even if such a condition were imported into the contract, it could be waived by D., being one for his benefit solely.—MACONOCHY *v.* TROWER, [1894] 2 I. R. 663.—**IR.**

must offer to the other shareholders the number of the shares offered at the price, & if the offer is accepted the shares shall be transferred to the acceptors. It is provided that "if the shares or any of them are not so accepted the holder may sell or transfer them or any of them at the same or any higher price . . . to third parties approved by the Board." The capital of the T. Co. was £600,000 in 600,000 shares of £1 each, which shares were held in equal parts by the O. Co., & the P. Co. The P. Co. gave notice to the Board that they were desirous of selling 135,000 of their shares to third parties at the price of £2 per share. The Board offered the 135,000 shares to the O. Co., & the O. Co. desired to exercise their option as regards 5,000 shares only at the proposed price. The P. Co. contended that the whole of the 135,000 shares must be accepted, & that the acceptance of 5,000 shares was not good:—*Held:* the proposed acceptance was not good & the P. Co. were entitled to sell the whole 135,000 shares to third parties; the offer was of the whole 135,000 shares at a certain price per share, & not of 135,000 separate shares at that price; the price to be paid for the whole number of shares might well be less than that payable for a lesser number; & an offer must be accepted according to its terms.—OCEAN COAL CO., LTD. *v.* POWELL DUFFRYN STEAM COAL CO., LTD., [1932] 1 Ch. 654; 101 L. J. Ch. 253; 147 L. T. 10; 48 T. L. R. 290.

437. *Add. Annotation:*—**Folld.** Willis *v.* Baggs & Salt (1925), 41 T. L. R. 453.

448a. ——.]—WILLIS *v.* BAGGS & SALT, No. 418a, *ante*.

465. *Add. Annotations:*—**Consd.** Schiller *v.* Petersen, [1924] 1 Ch. 394; Phipps (Northampton & Towcaster Breweries) *v.* Rogers, [1925] 1 K. B. 14.

466. *Add. Annotation:*—**Refd.** Brakspear *v.* Barton, [1924] 2 K. B. 88.

467a. **Offer & acceptance by telegram.**]—Where an offer is made & accepted by telegram, the contract is complete, & the party accepting cannot repudiate the contract on the ground that his telegram had a meaning which would not be apparent to the other contracting party.—ROTH (L.) & CO., LTD. *v.* TAYSEN, TOWNSEND & CO. & GRANT & GRAHAME (1896), 12 T. L. R. 211; 1 Com. Cas. 306, C. A.

Annotations:—**Refd.** Nickoll & Knight *v.* Ashton, Edridge, [1900] 2 Q. B. 298; Tredegar Iron & Coal Co. *v.* Hawthorn (1902), 18 T. L. R. 716.

467b. **Acceptance by telegram—Effect of word "writing" in telegram.**]—HOWARTH *v.* FORDER (1903), 48 Sol. Jo. 52.

476. *Add. Annotation:*—**Refd.** *Re* Sandwell Park Colliery Co., Field *v.* The Co., [1929] 1 Ch. 277.

478. *Add. Annotation:* — **Consd.** Rawlinson *v.* Ames, [1925] Ch. 96.

480. *Add. Annotation:*—**Refd.** Edwards *v.* Porter, [1925] A. C. 1.

481. *Add. Annotation:*—*Generally*, **Refd.** Watson *v.* Davies, [1931] 1 Ch. 455.

487. For "**Question of law—Not question of fact**" in the catchwords read "**Whether question of law or fact.**"

487a. —— ——.]—Where a contract is made, not in express terms, but is to be collected from a variety of letters between the parties, it is for the jury, & not for the ct., to determine, with reference to the situation & intention of the parties, whether a contract has actually been completed.—RICHARDS *v.* HAYWARD (1841), 2 Man. & G. 574; 2 Scott, N. R. 670; Drinkwater, 136; 10 L. J. C. P. 108; 133 E. R. 875.

487b. —— ——.]—CADDICK *v.* TERRY (1864), 5 New Rep. 137.

489. After the cross-references following this case insert "**Construction of contracts by correspondence.**]—*See* DEEDS, Vol. XVII., p. 245, Nos. 588–592."

492. *Add. Annotations:*—**Folld.** Chillingworth *v.* Esche, [1924] 1 Ch. 97. **Refd.** Hillas & Co. *v.* Arcos, Ltd. (1931), 36 Com. Cas. 353.

496. *Add. Annotation:*—**Refd.** Chillingworth *v.* Esche (1923), 129 L. T. 808.

501a. —— "**Subject to terms of contract being arranged.**"]—HONEYMAN *v.* MARRYATT, No. 416, *ante*.

PART III. SECT. 2, SUB-SECT. 3.—B. (b).

451 iii. —— *Offer not made by post—Acceptance binding only at time of receipt.*]—CHARLEBOIS *v.* BARIL, [1927] 3 D. L. R. 762.—**CAN.**

451a. *At place of posting—Contract under Farm Implement Act, R. S. S.*, 1920 (c. 128).]—ELLARD *v.* WATERLOO MANUFACTURING CO., [1926] 3 D. L. R. 207; [1926] 2 W. W. R. 294; 20 Sask. L. R. 601.—**CAN.**

PART III. SECT. 2, SUB-SECT. 4.

471 xii. ——.]—BRUCE *v.* TOLTON (1879), 4 A. R. 144.—**CAN.**

471 xiii. ——.]—Where it is sought to establish a contract by correspondence, the whole of the correspondence relating to the matter in question must be looked at for the purpose of finding out at what stage there was, if at all, a complete contract between the parties. Where the cardinal points are definitely agreed upon, the mere fact that reference has been made to a more formal agreement, or subsidiary non-essential stipulations, will not prevent the ct. from considering the agreement arrived at by the letters as concluded.—CURRIMBHOY & CO., LTD. *v.* CREET (1929), I. L. R. 57 Calc. 170.—**IND.**

471 xiv. ——.]—CLARKE *v.* PEABODY OVERALL CO., [1931] 2 D. L. R. 832.—**CAN.**

479 v. —— —— *Acceptance by telegram—Fresh term inserted in letter of confirmation.*]—ST. DENIS *v.* WESTERN PRODUCTS, LTD., [1923] 3 W. W. R. 858.—**CAN.**

489 iii. —— *Effect of correspondence coupled with conduct—Substantial part of goods delivered.*]—*Held:* a contract was established whereby plts. became bound to deliver the remainder of the goods.—HAMILTON GEAR & MACHINE CO. *v.* LEWIS BROTHERS, [1924] 3 D. L. R. 367; 54 O. L. R. 585.—**CAN.**

PART III. SECT. 2, SUB-SECT. 5.

490 x. ——.]—Where a proposal to manufacture certain steel rails was accepted in writing by the party to whom it was sent, such acceptance stating that it would be followed by a formal contract, & where it appeared that the formal contract was intended solely to embody the agreement already arrived at:—*Held:* in such a case, looking to the intentions of the parties, the contractual relations between them should be regarded as based upon the terms so agreed upon.—DOMINION IRON & STEEL CO. *v.* R. (1920), 67 D. L. R. 609; 20 Exch. C. R. 245.—**CAN.**

490 xi. ——.]—HARICHAND MANCHARAM *v.* GOVIND LUXMAN GOKHALE (1922), L. R. 50 Ind. App. 25.—**IND.**

[illegible] i. —— ——.]—An option for sale read as follows: "The owners agree to give H. the option to purchase the lands herein leased at any time within the period of lease for $25 per acre, $2,000 cash & the balance at six per cent. interest & half crop payments, by agreement to be drawn up":—*Held:* the words "by agreement to be drawn up" had the same effect as the words "subject to an agreement to be drawn up," &, since the agreement was to be on the crop-payment plan, the ct. could not supply the details necessary to complete it, & the option did not of itself constitute an enforceable contract.—BOCALTER *v.* HAZLE, [1925] 4 D. L. R. 948; [1925] 3 W. W. R. 577; *revsg.* 19 Sask. L. R. 417; [1925] 2 W. W. R. 436.—**CAN.**

504a. **Lease "to be drawn by counsel."**]—STURGION *v.* PAINTER (1608), Noy, 128; 74 E. R. 1092.

Annotation :—**Refd.** Goodtitle d. Estwick *v.* Way (1787), 1 Term Rep. 735.

511. *Add. Annotations :*—**Follld.** Todd *v.* Jones Bros. (1930), 15 Tax Cas. 396. **Refd.** Chillingworth *v.* Esche, [1924] 1 Ch. 97; Keppel *v.* Wheeler, [1927] 1 K. B. 577.

511a. —— ——.]—During Mar. 1928, there were negotiations & detailed correspondence between resp. co. & another co. who were proposing to purchase the business of the resp. co., culminating in a letter dated Mar. 21, 1928, in which the prospective purchasers indicated that the terms contained in the correspondence, & as arranged at interviews between the parties, were generally accepted "subject to such terms being fully set out in a formal contract or agreement, to be submitted to us & finally approved of." On Mar. 29, 1928, two of the directors of resp. co. resigned & entered the service of the purchasers. On Mar. 30 resps. gave notice to their foreign agents terminating their engagements. The formal contract was dated Apr. 16, 1928 :—*Held :* the correspondence did not constitute a contract.—TODD (H.M. INSPECTOR OF TAXES) *v.* JONES BROS., LTD. (1930), 15 Tax Cas. 396.

513a. —— **"The usual public-house contract to be entered into."**]—LUCAS *v.* HALL, [1899] W. N. 92.

514. *Add. Annotation :*—**Refd.** Chillingworth *v.* Esche (1923), 129 L. T. 808.

531. *Add. Annotation :*—**Refd.** Chillingworth *v.* Esche, [1923] 1 Ch. 576.

534. *Add. Annotation :*—**Refd.** Chillingworth *v.* Esche (1923), 129 L. T. 808.

539a. —— ——].—Pltf. wrote to deft. an offer to sell a house to her for a certain sum subject to certain unspecified covenants, & deft. signed at the foot this statement : "I accept the above offer subject to contract." The solrs. of both parties approved a draft formal contract, but deft. refused to execute it. In an action for specific performance :—*Held :* the words "subject to contract" did not mean that deft. bound herself if the parties' solrs. approved a formal contract, but meant, in the circumstances, "subject to the execution by the parties of a formal contract," & therefore the action failed.—WILSON *v.* BALFOUR (1929), 45 T. L. R. 625.

540. *Add. Annotations :*—**Apld.** Chillingworth *v.* Esche, [1924] 1 Ch. 97; Lockett *v.* Norman-Wright (1924), 69 Sol. Jo. 125; Wilson *v.* Balfour (1929), 45 T. L. R. 625. **Refd.** Nevile Reid *v.* I. R. Comrs. (1922), 12 Tax Cas. 545.

540a. —— ——.]—An agreement subject to contract is merely in the stage of negotiation (SARGANT, L.J.).—KEPPEL *v.* WHEELER, [1927] 1 K. B. 577; 96 L. J. K. B. 433; 136 L. T. 203, C. A.

Annotation :—**Apld.** Raymond *v.* Wooten (1931), 47 T. L. R. 606.

545. *Add. Annotations :*—**Consd.** Chillingworth *v.* Esche, [1924] 1 Ch. 97. **Apld.** Lockett *v.* Norman-Wright (1924), 69 Sol. Jo. 125; Wilson *v.* Balfour (1929), 45 T. L. R. 625. **Follld.** Todd *v.* Jones Bros. (1930), 15 Tax Cas. 396. **Refd.** Nevile Reid *v.* I. R. Comrs. (1922), 12 Tax Cas. 545.

546a. —— **"Subject to suitable agreements being arranged between your solicitor & mine."**]—The words "subject to suitable agreements being arranged between your solr. & mine" are indistinguishable in their effect from such words as "subject to formal contract," "subject to contract," or "subject to proper contract to be prepared by the vendor's solr.," & do not import a binding agreement between the parties.—LOCKETT *v.* NORMAN-WRIGHT, [1925] Ch. 56; 94 L. J. Ch. 123; 132 L. T. 532; 69 Sol. Jo. 125.

546b. —— **"Subject to a proper contract to be prepared by the vendor's solicitors."**]—By a document of July 10, 1922, the purchasers agreed to purchase certain freehold land & a nursery from the vendor "subject to a proper contract to be prepared by the vendor's solrs." & acknowledged having paid £240 "as deposit & in part payment of the said purchase-money." Completion was fixed for Nov. 2. The purchasers signed the document & the vendor added & signed a receipt for the deposit confirming the sale. A proper contract was subsequently prepared by the vendor's solrs., approved by the purchasers' solr., executed by the vendor, & tendered to the purchasers for execution. The purchasers, however, refused to sign it, declined to proceed with the transaction, & claimed the return of the deposit :—*Held :* the document of July 10, 1922, was only conditional, & did not constitute a firm contract, & the purchasers were in the circumstances entitled to recover the deposit.—CHILLINGWORTH *v.* ESCHE, [1924] 1 Ch. 97; 93 L. J. Ch. 129; 129 L. T. 808; 40 T. L. R. 23; 68 Sol. Jo. 80, C. A.

Annotations :—**Apld.** Lockett *v.* Norman-Wright, [1925] Ch. 56; Wilson *v.* Balfour (1929), 45 T. L. R. 625. **Refd.** Keppel *v.* Wheeler, [1927] 1 K. B. 577.

546c. —— **"Formal contract to be signed in due course."**]—RONALD FRANKAU PRODUCTIONS, LTD. *v.* BELL (1927), 65 L. Jo. 33; 164 L. T. Jo. 504.

555. *Add. Annotation :*—**Refd.** Chillingworth *v.* Esche (1923), 129 L. T. 808.

543 i. —— *Solicitor to approve form of contract.*]—An option agreement provided that in the event of the purchaser deciding to accept the option by entering into an agreement to purchase the land, "such agreement to purchase shall be on a form approved by the vendor's solr." :—*Held :* the execution of a further contract was not necessary to the existence of an enforceable contract to purchase.—VITALY *v.* BRYAN (Alta.), [1927] 1 D. L. R. 244; [1926] 3 W. W. R. 785.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.

555 xiv. ——.]—COLE *v.* SUMNER (1900), 30 S. C. R. 379.—**CAN.**

555 xv. ——.]—GRAHAM *v.* GRAHAM (Man.) (1914), 27 W. L. R. 263; 16 D. L. R. 485.—**CAN.**

555 xvi. ——.]—Where a person seeks in obtaining another's signature to a printed form to impose an obligation to pay for a service which for many years had been furnished gratuitously, notice of the terms & conditions on which the latter is asked to sign the document should be given in no uncertain language & in no uncertain way; if the document is so printed & arranged that when read it gives the signer thereof the impression that he is merely supplying information when as a matter of fact it contains an obligation to pay money, & the signature is induced by that impression, the ct. will not enforce the obligation.—INTERNATIONAL TRANSPORTATION CO. *v.* WINNIPEG STORAGE LTD., [1931] 2 W. W. R. 664.—**CAN.**

o i. —— *Burden of proof.*]—It is never necessary to prove in the first instance that either party to a contract understood the legal effect of a term thereof; if a party seeks to escape the liability imposed by a term of the contract, he must adduce evidence to establish grounds of excuse.—THORESON *v.* BLAIRMORE SCHOOL DISTRICT BOARD OF TRUSTEES, [1927] 1 D. L. R. 1178;

559. *Add. Annotation :*—**Refd.** Berners *v.* Fleming, [1925] Ch. 264.

563a. ——.]—GUILDFORD TRUST, LTD. *v.* POHL & MARITCH (1928), 72 Sol. Jo. 171.

567. *Add. Annotation :*—**Distd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306.

568. *Add. Annotation :*—**Consd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306.

576. *Add. Annotation :*—**Refd.** Brocklebank *v.* R., [1924] 1 K. B. 647.

581. *Add. Annotation :*—**Distd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306.

587. *Add. Annotation :*—**Refd.** Jones *v.* Waring & Gillow, [1925] 2 K. B. 612.

588. *Add. Annotation :*—**Refd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306.

611. *Add. Annotations :*—**Apld.** *Re* Lloyds Bank, Bomze *v.* Bomze (1930), 47 T. L. R. 38. **Refd.** Shears *v.* Jones (1922), 128 L. T. 218.

613. *Add. Annotation :*—*As to* (3) **Apld.** Inche Noriah *v.* Shaik Allie Bin Omar, [1929] A. C. 127.

614. After this case add "*See, also,* FRAUDULENT & VOIDABLE CONVEYANCES, No. 834a."

630. *Add. Annotation :*—**Consd.** Inche Noriah *v.* Shaik Allie Bin Omar, [1929] A. C. 127.

636. *Add. Annotation :*—**Consd.** Inche Noriah *v.* Shaik Allie Bin Omar, [1929] A. C. 127.

650. *Add. Annotation :*—**Consd.** Inche Noriah *v.* Shaik Allie Bin Omar, [1929] A. C. 127.

662. *Add. Annotation :*—**Folld.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

663. *Add. Annotation :*—**Folld.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

664. *Add. Annotation :*—**Folld.** *Re* Lloyds Bank, Ltd., Bonze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

664a. General rule.]—An agreement of May 6, 1929, between B. & L., who were betrothed, provided that L. should deposit at a bank, in her own name & B.'s, the sum of £4,000, to be re-deposited upon the marriage in a current account in their joint names, & to be used in paying off a mtge. on B.'s premises & in buying him a practice. The amount of the mtge. was stated to be about £1,200. The agreement had been drawn up on the instructions of L.'s brother, who had provided the £400 as her dowry. Despite the terms of the agreement, sums were withdrawn before the marriage, which took place on June 16: On May 15 B. & L. withdrew £1,000, with which the practice was bought, & on June 5 they withdrew £2,350. They also withdrew other sums at later dates. B. had the money, & L. signed documents authorising the withdrawals. The marriage was unhappy, & the parties separated on Sept. 27. There was then only the sum of £150 in the joint account, B. having had £3,850. At the date of the agreement he owed £2,000 to his bank secured by charge on his premises, a fact which he had not told L.'s brother. In an action by L. & her brother to recover the money from B., & asking that the agreement of May 6, 1929, should be set aside or rectified, on the ground that L. was induced by B.'s undue influence to sign the documents authorising the withdrawals :—*Held :* the agreement must stand, but the doctrine of *Huguenin* v. *Baseley*,

[1927] 1 W. W. R. 449 ; 22 Alta. L. R. 415.—**CAN.**

p i. —— —— *Failure to read over whole contract.*]—Where a purchaser of a large farm implement does not read English, Farm Implement Act, R. S. S., 1920 (c. 128), s. 18, is not complied with unless the whole contract is read over & explained to him in his own language, even though he understands some English &, after the whole contract has been read to him in English, those portions of it which he says he does not understand in English are read over & explained to him in his language, & he says he understands it all.—ADVANCE RUMELY THRESHER CO. *v.* YORGA, [1926] 3 D. L. R. 517 ; [1926] S. C. R. 397.—**CAN.**

p ii. —— —— *No request for reading over or explanation.*]—If a person who cannot read a document signs it without requesting to have it read or explained to him & it is not read or explained he is bound by it, where, at least, there is no evidence that the other party knew that the illiterate party was signing under a misunderstanding of its effect.—CANADIAN BANK OF COMMERCE *v.* DEMBECK (Sask.), [1929] 4 D. L. R. 220 ; 2 W. W. R. 586.—**CAN.**

p iii. —— —— *Burden of proof.*]—Where a contract was drawn up by a magistrate, who was employed for that purpose, &, after being reduced to writing, it was read over to deft., who signed by his mark :—*Held :* the burden was upon deft. of establishing that the document was not his agreement.—KEDDY *v.* DAUREY (1913), 47 N. S. R. 229 ; 12 D. L. R. 621 ; 13 E. L. R. 163.—**CAN.**

p iv. ——.]—MILLAR *v.* ELLARD, [1927] 2 D. L. R. 102.—**CAN.**

p v. —— *Party intoxicated.*]—SCHOFIELD *v.* TUMMONDS (1858), 6 Gr. 568.—**CAN.**

564 i. —— *Contract of sale silent as to time & mode of payment.*]—Defts. having ratified by telegram a contract made by their agents, afterwards attempted to repudiate it on the ground of an alleged variation in the terms of the bought note as to the time of delivery. Defts.' letter of repudiation to their agents attempted to impose terms as to the time for payment as a condition of accepting the alleged variation :—*Held :* the contract was complete notwithstanding that the particular mode or time of payment was not stated. —CAMPBELL *v.* MAHLER (1919), 43 O. L. R. 395 ; 14 O. W. N. 348 ; *affd.*, 15 O. W. N. 339.—**CAN.**

PART III. SECT. 3, SUB-SECT. 2.—A. (b).

b i. ——.]—An agreement to pay a debt made by a debtor while under arrest on a *capias* previously issued for said debt, will not be cancelled for duress when the arrest was not illegal & the bare fact of the arrest was the only evidence of duress.—THOMPSON *v.* SCHNEIDER, [1929] 1 D. L. R. 989 ; 60 N. S. R. 329.—**CAN.**

PART III. SECT. 3, SUB-SECT. 2.—C. (a).

599 i. *Contract voidable.*]—An agreement in writing by a wife to the provisions of her husband's will in lieu of the statutory provisions :—*Held :* to have been obtained by duress & not a bar to her application for relief under Devolution of Estates Act, 1920, s. 24. —*Re* BURSAW'S ESTATE, [1924] 3 W. W. R. 807.—**CAN.**

599 ii. ——.]—BURRIS *v.* RHIND (1899), 29 S. C. R. 498.—**CAN.**

PART III. SECT. 3, SUB-SECT. 3.—A. (a).

611 vi a. ——.]—RAGHUNATH PRASAD *v.* SARJU PRASAD (1923), L. R. 51 Ind. App. 101.—**IND.**

r i. ——.]—Where by reason of the confidential relationship existing between pltf. & deft. & the influence he was able to exert over her by asserting knowledge of matters which he alleged could be used to her prejudice, which at the trial he admitted had no existence, he was enabled to procure from pltf. an excessive amount for services performed, which was paid by her even after she had obtained independent advice, pltf. was held entitled to recover the same back, less a reasonable amount for the services performed.—DISHER *v.* CLARRIS (1894), 25 O. R. 493.—**CAN.**

r ii. ——.]—*Re* WHITE, KERSTON *v.* TANE (1876), 24 Gr. 224.—**CAN.**

PART III. SECT. 3, SUB-SECT. 3.—A. (b) i.

s i. ——.]—An aged woman asked her son to inquire into the state of her property. By his report thereon she was induced to make a transfer of the property to him & a daughter :—*Held :* the mother was clearly capable of fully understanding what she was doing, & there was no undue influence or misrepresentation, & proof of independent advice was unnecessary to support the deed.—WEIR *v.* WEIR (B. C.), [1920] 3 W. W. R. 725.—**CAN.**

PART III. SECT. 3, SUB-SECT. 3.—A. (b) iii.

ss. *Donatio mortis causa to parish priest—Valid.*]—BOHAN *v.* WALKER (N. B.), [1928] 4 D. L. R. 630.—**CAN.**

No. 611, applies to the relation between persons engaged to be married; it had not been established that the sum of £2,000, part of the £2,350, withdrawn from the joint account, was a proper gift to deft.; & pltfs. were entitled to judgment for £1,000, half of the £2,000.—*Re* LLOYDS BANK, LTD., BOMZE & LEDERMAN *v.* BOMZE, [1931] 1 Ch. 289; 100 L. J. Ch. 45; 144 L. T. 276; 47 T. L. R. 38.

698. After this case add "*See, also,* FRAUDULENT & VOIDABLE CONVEYANCES, No. 834a."

717. *Add. Annotation:*—**Consd.** Inche Noriah *v.* Shaik Allie Bin Omar, [1929] A. C. 127.

739. *Add. Annotation:*—**Consd.** Pontypridd Grdns. *v.* Drew (1926), 90 J. P. 169.

741. *Add. Annotation:*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307.

743a. —— —— **Outdoor relief afforded to pauper.**]—Guardians who supply goods to a pauper by way of ordinary poor relief have no right to recover from the pauper the reasonable value of the goods so supplied.—PONTYPRIDD UNION *v.* DREW, [1927] 1 K. B. 214; 95 L. J. K. B. 1030; 136 L. T. 83; 90 J. P. 169; 42 T. L. R. 677; 70 Sol. Jo. 795; 24 L. G. R. 405, C. A.

See, further, POOR LAW.

745. *Add. Annotation:*—**Refd.** Winkworth *v.* Raven, [1931] 1 K. B. 652.

747. *Add. Annotation:*—**Refd.** Brandt *v.* Liverpool, Brazil & River Plate Steam Navigation Co., [1924] 1 K. B. 575.

748. *Add. Annotation:*—**Refd.** Rederiakt. Transatlantic *v.* Compagnie Française des Phosphates de l'Oceanie (1926), 136 L. T. 619.

750. *Add. Annotation:*—**Refd.** Brown *v.* Dagenham U. C., [1929] 1 K. B. 737.

755a. ——.]—Covenant for 2*s.* for copying every quire of paper. Breach that he copied four quires & three sheets, for which 8*s.* 3*d.* was due. And that there could be no opportionment, for the covenant was to allow him 2*s.* a quire, but not *pro rata*. If he had averred 3*d.* to be the usual fees for copying three sheets he might have helped himself.—NEEDLER *v.* GUEST (1647), Aleyn. 9; Sty. 12; 82 E. R. 886.

759. *Add. Annotations:*—**Refd.** Pockney *v.* Atkinson (1929), 142 L. T. 135; Eshelby *v.* Federated European Bank, Ltd., [1932] 1 K. B. 423.

763. *Add. Annotation:*—*Generally,* **Refd.** Meyrick *v.* Dyson (1925), 41 T. L. R. 368.

766. *Add. Annotation:*—**Refd.** Importers Co. *v.* Westminster Bank, [1927] 1 K. B. 869.

PART III. SECT. 3, SUB-SECT. 3.—B.

696 i. *Onus on party alleging—Unless transaction primâ facie unconscionable.*]—RAGHUNATH PRASAD *v.* SARJU PRASAD (1923), L. R. 51 Ind. App. 101.—**IND.**

PART III. SECT. 3, SUB-SECT. 3.—C. (a).

715 i. *Principles on which relief granted.*]—UNDERWOOD *v.* COX (1912), 21 O. W. R. 757; 3 O. W. N. 1112; 26 O. L. R. 303.—**CAN.**

722 i. *Transaction voidable.*]—COLP *v.* HUNTER (1911), 1 W. W. R. 314.—**CAN.**

722 ii. ——.]—ERWIN *v.* SNELGROVE (Ont.), [1927] 4 D. L. R. 1028.—**CAN.**

PART III. SECT. 4, SUB-SECT. 1.

741 xii. —.]—KILBORN *v.* FORESTER (1831), 1 Dra. 344.—**CAN.**

741 xiii. —— ——.]—Pltf. having entered into a contract for the supply of horses' food with the Officer Commanding the depot of a cavalry regiment sued the Secretary of State for the balance due to him under the contract:—*Held:* an Officer Commanding a depot, not being one of the officers authorised by the Governor-General in Council under Government of India Act, 1915, s. 30 (2), to enter into contracts on behalf of the Secretary of State, the contract sued upon was *ultra vires* & could not be enforced against the latter. However, under Indian Contract Act, s. 70, pltf., having lawfully supplied foods for the horses belonging to the Secretary of State, not intending to do so gratuitously & the latter having enjoyed the benefit thereof, was entitled to compensation.

Sect. 70 of the Contract Act, although founded on English law, must be interpreted according to its clear & explicit terms & not in reference to the provisions of English law relating to the matter. The sect. is much wider than the English law & goes beyond it.—SECRETARY OF STATE *v.* SARIN & CO. (1929), I. L. R. 11 Lah. 375.—**IND.**

744 i. —— *From circumstances.*]—RICE *v.* BURCKHARDT (1925), 36 B. C. R. 161.—**CAN.**

744 —.]—NORTHERN RY. CO. *v.* LISTER (1867), 27 U. C. R. 57.—**CAN.**

747 ii. —— ——.]—*Held:* an agreement by a co. to repurchase shares was established, as the conduct of the co. was quite inconsistent with any other reason than that it intended & agreed to repurchase the shares.—CLARKE *v.* LANGS & RODDIS, LTD. (1926), 37 B. C. R. 77.—**CAN.**

PART III. SECT. 4, SUB-SECT. 2.—C.

u i. —— *Contract to dig well.*]—When a party contracts to bore a well, with a proviso that he is to be paid a proportion of the price if it is a dry hole, there is an implied promise to go the distance his machinery will bore, & if because of a rock he does not go that distance it is not a "dry hole," & he is not entitled to payment.—WINKLER & MARTIN *v.* HUTTON, [1920] 2 W. W. R. 982; 13 Sask. L. R. 335.—**CAN.**

u ii. —— ——.]—Where a hole is caving in & rendering it dangerous for him to work, & a well-digger abandons the work without having obtained water & without having gone to the full depth of his machine, he is not entitled to payment for the work already performed. A well-digger knows, & must be held to have assumed, these risks when he has not in his contract protected himself against such contingencies.—SAVIDAN *v.* LAPLANTE, [1924] 3 D. L. R. 1089; 2 W. W. R. 1222.—**CAN.**

u iii. —— *Contract for removal of night soil—Special provisions as to cleansing.*]—*Held:* the contract was one entire contract & every provision in it for strict cleanliness & disinfection was of the very essence & nature of the contract.—HUNTER *v.* WEST MAITLAND MUNICIPAL COUNCIL (1923), 23 S. R. N. S. W. 420.—**AUS.**

PART III. SECT. 4, SUB-SECT. 2.—D.

c i. ——.]—ANDERSON *v.* MCINTYRE, [1925] 3 D. L. R. 948.—**CAN.**

c ii. *Agreement to live on & work farm in consideration of father promising to devise farm.*]—*Held:* the father having prevented the son from performing the work contracted for & discharged him from service, the son was entitled to recover on a *quantum meruit* for the work done by him & money & materials furnished.—RENTON *v.* RENTON (1925), 52 N. B. R. 356.—**CAN.**

PART III. SECT. 5, SUB-SECT. 2.

h i. —— *Agreement to accept land in satisfaction of debt.*]—*Held:* binding, though not in writing.—FLEMING *v.* DUNCAN (1870), 17 Gr. 76.—**CAN.**

h ii. —— *Agreement to share commission.*]—*Held:* Alberta Statutes, 1906 (c. 27), not applicable.—HEATON *v.* FLATER (1914), 27 W. L. R. 98; 16 D. L. R. 78; 8 Alta. L. R. 21.—**CAN.**

h iii. *S. P.* KARRAR *v.* SCHUBERT (1914), 29 W. L. R. 540; 7 W. W. R. 189; 8 Alta. L. R. 21; 19 D. L. R. 804.—**CAN.**

Part IV.—The Statute of Frauds.

769. *Add. Annotation :*—**Refd.** Franco-British Ship Store Co. *v.* Compagnie des Chargeurs Francaise (1926), 42 T. L. R. 735.

772. *Add. Annotation :*—**Refd.** Monnickendam *v.* Leanse (1923), 39 T. L. R. 445.

775. *Add. Annotation :*—**Refd.** Newman *v.* Slade [1926] 2 K. B. 328.

793. *Add. Annotation :*—**Expld.** Scott *v.* Pattison, [1923] 2 K. B. 723.

801. *Add. Annotation :*—**Refd.** *Re* Savile Settled Estates, Savile *v.* Savile, [1931] 2 Ch. 210.

803. *Add. Annotations :*—*As to* (1) **Refd.** Lewis *v.* Cammell, Laird & Co. (1929), 22 B. W. C. C. 410 ; Smith *v.* Union Castle S.S. Co. (1931), 24 B. W. C. C. 71.

810. *Add. Annotations :*—*As to* (3) **Consd.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76. **Refd.** Rawlinson *v.* Ames (1924), 69 Sol. Jo. 142 ; Ariff *v.* Rai Jadunath Majumdar Baliadur (1931), 47 T. L. R. 238.

819. *Add. Annotation :*—*As to* (1) **Refd.** Agricultural Wholesale Soc. *v.* Biddulph & District Agricultural Soc., [1925] Ch. 769.

837a. —— **Goodwill & stock-in-trade included—Entire.**]—Deft. orally agreed to buy from pltfs., who were the exors. of a deceased merchant, the business carried on at a named address, including the goodwill, stock in trade, & an interest in the premises, but he failed to carry out his agreement. In an action for damages deft. pleaded that the contract related to an interest in land & that by Law of Property Act, 1925 (c. 20), s. 40 (1), it could not be enforced against him as there was no written evidence of it. Pltfs. contended in answer that there had been part performance by them in looking after the premises and keeping the staff together until the defendant should take possession :—*Held :* that part of the contract which related to the goodwill, etc., was not severable from the part which dealt with taking over the premises, & that there was no part performance sufficient to take the case out of the statute, & the action failed.—HAWKESWORTH *v.* TURNER (1930), 46 T. L. R. 389.

837b. —— **Contract to construct road over land—Divisible.**]—An estate co., by their agent, orally promised an intending purchaser of a building plot that a road, marked on a plan shown to him & giving access to the plot, would be constructed by them & be ready for use within a reasonable time. Relying on this promise, the purchaser entered into a written agreement to purchase, & the plot was duly conveyed to him. The co. did not construct the road within a reasonable time, or at all, & the purchaser brought an action claiming damages for breach of contract :—*Held :* a promise to construct a road, apart from any conveyance of the land over which it was intended to run, was not a " contract for the sale or other disposition of land or any interest in land," & consequently an action would lie upon it, although it was oral, without infringing Law of Property Act, 1925 (c. 20), s. 40 (1).—JAMESON *v.* KINMELL BAY LAND CO., LTD. (1931), 47 T. L. R. 593, C. A.

840. *Add. Annotations :*—**Consd.** Jacobs *v.* Batavia & General Plantations Trust, [1924] 1 Ch. 287. **Refd.** Michael *v.* Phillips (1923), 130 L. T. 142.

841. *Add. Annotations :*—**Consd.** Jacobs *v.* Batavia & General Plantations Trust, [1924] 1 Ch. 287. **Folld.** Jameson *v.* Kinmell Bay Land Co. (1931), 47 T. L. R. 593. **Refd.** Michael *v.* Phillips (1923), 130 L. T. 142.

844. *Add. Annotations :*—**Refd.** Michael *v.* Phillips (1923), 130 L. T. 142 ; Hawkesworth *v.* Turner (1930), 46 T. L. R. 389.

PART IV. SECT. 1, SUB-SECT. 5.—A.

770 i. *Partnership agreement.*]—A contract for a partnership to last longer than a year is within Stat. Frauds.—HOFFMAN *v.* COHEN (Man.) (1914), 27 W. L. R. 127.—**CAN.**

sp. *Agreement to be performed before fixed date — Fixed date more than one year from agreement—Effect of renewals.*]—In 1921 deft. promised to marry pltf. at a date not later than May, 1923. The promise was renewed from time to time up to May, 1922 :—*Held :* the contract was one to be performed within a year, & a memorandum in writing to satisfy Stat. Frauds was unnecessary.—CYR *v.* DUFAULT (1923), 55 O. L. R. 90.—**CAN.**

sq. —— *Whether statute bar to action for dissolution of partnership.*]—WONG *v.* HOU, [1928] 1 W. W. R. 480 ; 39 B. C. R. 425.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 5.—B. (a).

793 ii. *Agreement for maintenance of parent—For indefinite period.*]—Masters & Servants Act, R. S. S., 1920, s. 2, provides that a contract of personal service for a period of more than one year shall be signed by the contracting parties ; &, since a contract of hire of personal services during a lifetime is one which *primâ facie* is not to be performed within a year, a contract by which a father & mother agreed in consideration of maintenance to work for their children as long as the parents should live & their health continue, but which was not signed by the father was void & no answer to the father's claim to financial support as a " dependent " under Parents Maintenance Act.—STE. MARIE *v.* STE. MARIE (Sask.), [1929] 4 D. L. R. 1076 ; 1 W. W. R. 890.—**CAN.**

st. *Agreement for partnership — For indefinite period.*]—A written contract, which provides for the continuance of a partnership from its date until dissolved by mutual consent, unless previously determined by a specified notice, is not an agreement that is not to be performed within the space of one year from the making within Instruments Act, 1915, s. 228.—GIBB *v.* SELL, [1922] V. L. R. 561 ; 28 Argus L. R. 305 ; 44 A. L. T. 1.—**AUS.**

PART IV. SECT. 1, SUB-SECT. 5.—C.

806 ii. *S. P.* DICKSON *v.* JACQUES (1871), 31 U. C. R. 141.—**CAN.**

812 i. —— *To commence on following day.*]—A contract to serve for one year, the service to commence on the day next after that on which the contract is made, is not a contract not to be performed within a year within Stat. Frauds, s. 4.—BELLER *v.* KLOTZ (Sask.), [1917] 1 W. W. R. 585.—**CAN.**

820 ii. —— ——.]—A contract for service, under which deft. is to receive " $700 a year, to be increased per year until it reaches $1,000," is a contract not to be performed within a year within Stat. Frauds.—FAIRGRIEVE *v.* O'MULLIN (1896), 40 N. S. R. 215.—**CAN.**

823 ii. —— *Share-milking agreement—Commencement & termination not stated.*]—*Held :* the contract was one for services not to be performed within one year from the making thereof, & therefore came within the statute.—HALL *v.* GOLDSTONE, [1923] N. Z. L. R. 916.—**N.Z.**

PART IV. SECT. 1, SUB-SECT. 7.

838 i. *Promise to pay debt of another —Subsequent credit given to guarantor as principal debtor—Not entire.*]—*Held :* as to goods supplied before the alleged promise, the promise was one to answer for the debt of another & under Stat. Frauds was unenforceable because of the absence of a memorandum in writing to support it ; but as to goods supplied subsequently, although the account was continued in the buyer's name, it was established that the surety became the principal debtor & the goods were supplied on his account, & no memorandum in writing was required to enforce the claim.—BATEMAN & MATTHEWS *v.* SPENCER, [1923] 4 D. L. R. 170 ; 16 Sask. L. R. 474 ; [1923] 1 W. W. R. 1281.—**CAN.**

845. *Annotations:*—For "**Refd.** Heilbut, Symons *v.* Buckleton, [1913] A. C. 80," read "**Dbtd.** Heilbut, Symons *v.* Buckleton, [1913] A. C. 30."

Add. Annotations:—**Consd.** Jameson *v.* Kinmell Bay Land Co. (1931), 47 T. L. R. 410; Miller *v.* Cannon Hill Estates, Ltd., [1931] 2 K. B. 113. **Refd.** Collins *v.* Hopkins, [1923] 2 K. B. 617.

845a. Parol warranty to let for certain purposes.]—Pltf., in an action for damages for breach of warranty in connection with the letting to him of certain premises, alleged that as a basis of negotiations which culminated in an agreement in writing whereby defts. agreed to let & pltf. agreed to take the premises in question, defts. verbally warranted to let the premises for dancing purposes. Defts. had no power to let the premises for such purposes without the consent of the superior landlord, & such consent was never in fact obtained. Pltf. took possession under the agreement & expended considerable sums in alterations, & now claimed to recover the amount of such expenses less the sums received by him during his possession of the premises. There was no fraudulent misrepresentation:—*Held:* pltf. had failed to establish the alleged parol agreement, & even if the evidence had established that before the contract was entered into pltf. had asked whether the premises could be let for dancing & had been answered in the affirmative, it would only have been evidence as to the subject-matter of the contract & could not control, vary, or add to the terms of the written contract.—CRAWFORD *v.* WHITE CITY RINK (NEWCASTLE-ON-TYNE), LTD. (1913), 29 T. L. R. 318; 57 Sol. Jo. 357; 77 J. P. Jo. 111.

Implied warranties.]—*See, generally,* LANDLORD & TENANT, Vol. XXXI., pp. 176-181.

859. *Add. Annotation:*—**Apld.** Farr, Smith *v.* Messers (1927), 44 T. L. R. 48.

859a. —— What amounts to—Reconstitution of action.]—Defts. on Jan. 9, 1924, agreed to sell a quantity of wood to a partnership firm. The firm, being in financial difficulties, formed a limited co., & duly notified defts. On July 9 it was orally agreed that the new co. should give defts. a cheque & three bills in respect of the indebtedness of the old firm, & that defts. should supply to the new co. the goods sold under the contract of Jan. 9, & accept the new co. as buyers of the goods. The new co. subsequently gave to defts. the cheque & three bills, but defts. did not deliver the goods under the contract of Jan. 9 to the new co. The two partners in the old firm then brought an action against defts. for breach of the contract of Jan. 9. To that action defts. put in a defence signed by counsel in which they pleaded, in par. 3, that it had been agreed by the contract of July 9 that the new co. should give defts. on the following Monday a cheque & three drafts, & that defts. would supply to the new co. instead of to the old firm the goods sold under the contract of Jan. 9, & accept that co. as buyers of the goods. The pleadings were then amended & the action was reconstituted, the partners in the old firm being struck out & the new co. substituted as pltfs., & the cause of action was stated to be a breach of the agreement of July 9. Defts. then amended their defence & relied upon Sale of Goods Act, 1893 (c. 71), s. 4, as a defence to that amended action:—*Held:* (1) par. 3 of the original unamended defence which was signed by counsel constituted a sufficient note or memorandum in writing of the contract signed by an agent of the party to be charged to satisfy the above sect., inasmuch as (2) the new departure with regard to the parties & the cause of action when the action was reconstituted must be treated as the commencement of the action within the rule in *Lucas* v. *Dixon*, No. 859, *ante*.—FARR, SMITH & CO. *v.* MESSERS, LTD., [1928] 1 K. B. 397; 97 L. J. K. B. 126; 138 L. T. 154; 44 T. L. R. 48; 72 Sol. Jo. 14; 33 Com. Cas. 101.

862. *Add. Annotation:*—**Refd.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76.

888. *Add. Annotation:*—*As to* (2) **Refd.** Chillingworth *v.* Esche (1923), 129 L. T. 808.

892. *Add. Annotations:*—**Distd.** McDonald *v.* Nash, [1924] A. C. 625. **Consd.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

893. *Add. Annotations:*—**Consd.** National Sales Corpn. *v.* Bernardi, Bernardi *v.* National Sales Corpn., [1931] 2 K. B. 188. **Dbtd.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450. **Refd.** McDonald *v.* Nash, [1924] A. C. 625.

893a. —— ——.]—Bills of exchange drawn by pltfs. to their own order, on & accepted by W. S. & Co., a co. of which deft. was a director, were indorsed by deft. in pursuance of a verbal agreement under which pltfs. sold & delivered goods to the acceptors, in consideration of deft. indorsing the bills with the intention of making himself liable to pltfs. in case of default by the acceptors. Pltfs. subsequently indorsed the bills, writing their name underneath that of deft. Pltfs. sued deft. as indorser:—*Held:* although the verbal contract found to have been made between deft. & pltfs. was in one sense a contract of guarantee, the Statute of Frauds could not be set up as an answer to a claim under the bills.—MCCALL BROS., LTD. *v.* HARGREAVES, [1932] 2 K. B. 423; 101 L. J. K. B. 733; 147 L. T. 257; 48 T. L. R. 450; 76 Sol. Jo. 433.

900. *Add. Annotation:*—**Consd.** Farr, Smith *v.* Messers (1927), 44 T. L. R. 48.

900a. ——.]—FARR, SMITH & CO. *v.* MESSERS, LTD., No. 859a, *ante*.

900b. Contract rectified by court—On ground of mistake.]—Where owing to a mistake common to both parties to a contract in writing it does not express the true bargain between the parties, the ct. in England has jurisdiction, since Jud. Act, 1873 (c. 66), to rectify the contract & to order specific performance of it as rectified, although apart from the

PART IV. SECT. 2, SUB-SECT. 3.—A.

900a i. *Contract rectified by court.*]—As against a defence of Stat. Frauds, the ct. has no power to reform a writing & then decree specific performance of it as reformed.—SWEITZER *v.* GRANGER (1923), 54 O. L. R. 70.—CAN.

ss. *Order in Council.*]—*Held:* an Order in Council ought to be regarded as a sufficient expression in writing of an agreement to pay on the part of the Crown.—LAMARRE & CO. *v.* R., [1923] Exch. C. R. 174.—CAN.

rectified contract there is no memorandum to satisfy Stat. Frauds.—U.S.A. *v.* MOTOR TRUCKS, LTD., [1924] A. C. 196; 93 L. J. P. C. 46; 130 L. T. 129; 39 T. L. R. 723, P. C.

914. *Add. Annotation:*—**Consd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

923a. Agreement to remain in force so long as another agreement continued.]—Defts. agreed in writing to purchase from pltfs. all the stores that they required in the United Kingdom for their vessels, pltfs.' profits on the net price invoiced by the manufacturers to pltfs. to be discussed every six months, & the agreement was to remain in force as long as another agreement between a third co. & defts. continued. This other agreement had been previously made on the same day, but it was not signed till the following day, & it was to remain in force for ten years unless certain payments were sooner made. After observing the agreement with pltfs. for five months defts. repudiated it:—*Held:* the two agreements were sufficiently connected to enable the second to be read with the first, & Stat. Frauds did not prevent pltfs. from contending that the first agreement was to last for ten years.—FRANCO-BRITISH SHIP STORE CO., LTD. *v.* COMPAGNIE DES CHARGEURS FRANCAISE (1926), 42 T. L. R. 735.

924. *Add. Annotation:*—**Refd.** Franco-British Ship Store Co. *v.* Compagnie des Chargeurs Francaise (1926), 42 T. L. R. 735.

930. *Add. Annotation:*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

933. *Add. Annotation:*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

956. *Add. Annotation:*—**Refd.** Reading Trust *v.* Spero (1929), 46 T. L. R. 117.

980. *Add. Annotation:*—**Consd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

983. *Add. Annotation:*—*As to* (2) **Refd.** Chillingworth *v.* Esche (1923), 129 L. T. 808.

995. *Add. Annotation:*—**Apld.** *Re* Howden & Hyslop's Contract, [1928] Ch. 479.

999. *Add. Annotations:*—*As to* (2) **Apld.** Chillingworth *v.* Esche, [1923] 1 Ch. 576. **Folld.** Monnickendam *v.* Leanse (1923), 39 T. L. R. 445. *Generally*, **Refd.** Bernard *v.* Williams (1928), 139 L. T. 22.

1002. *Add. Annotation:*—**Refd.** Chillingworth *v.* Esche (1923), 129 L. T. 808.

1017. *Add. Annotation:*—**Refd.** Dominion Press *v.* Customs & Excise Minister, [1928] A. C. 340.

1022a. ——.]—On Nov. 21, 1918, pltf. paid deft. £10 & received the following receipt: "Received of Mr. A. £10 on account of house being sold for £500 from Mr. N. Possession to be taken in six weeks after date." Pltf. proved that on Nov. 21, 1918, before signing the receipt deft. verbally agreed to sell him his house & residence, N. Lodge, for £500 with possession in six weeks, & that the £10 was paid as a deposit on account of the purchase-money:—*Held:* the receipt was a sufficient memorandum of the verbal contract.—AUERBACH *v.* NELSON, [1919] 2 Ch. 383; 88 L. J. Ch. 493; 122 L. T. 90; 35 T. L. R. 655; 63 Sol. Jo. 683.

1027a. .]—HOWARD *v.* OKEOVER (1778), 3 Swan. 482; 36 E. R. 933.

1031. *Add. Annotation:*—**Refd.** Koskas *v.* Standard Marine Insce. (1927), 137 L. T. 165.

1032. *Add. Citations:*—92 L. J. Ch. 598; 129 L. T. 659; 39 T. L. R. 576; 67 Sol. Jo. 638, C. A.

PART IV. SECT. 2, SUB-SECT. 3.—B.

8b. *Contract not absolutely recognised—Alleged variation of terms.*]—Deft.'s agents in A., on Oct. 14, 1914, telegraphed to deft. in business in O., that they had sold to pltfs. a carload of apples for shipment on opening of navigation. On Oct. 16, deft. answered accepting. On that day the agents sent deft. a bought note, stating the terms of contract as in the telegram, with additions. On Oct. 20, deft. wrote to the agents: "I will return contract, as I find you have worded contract 'opening of navigation 1915.' I will not accept contract on these terms unless they will pay for the goods when packed":—*Held:* if the terms of the contract had not sufficiently appeared by the telegrams & the bought note, the letter of Oct. 20 would have supplied a sufficient memorandum to satisfy Stat. Frauds, although it contained a repudiation of the contract.—CAMPBELL *v.* MAHLER (1919), 43 O. L. R. 395; 14 O. W. N. 348; *affd.*, 15 O. W. N. 339.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 3.—C. (a).

923 i. *Letter referring to previous correspondence—Contract constructively assented to therein.*]—Vendor's solr. wrote to purchaser's solr.: "B. informs me that he has agreed with R. for the sale to him of his holding in fee-simple for £10,000. Under these circumstances we think it would be possible to reasonably limit the title." The next day purchaser's solr., in acknowledging the letter, stated: "The simple agreement arrived at herein appears in the first part of your letter, & I suggest that we can dispense with any further agreement":—*Held:* the latter letter constituted a note or memorandum sufficient to satisfy Stat. Frauds, although the writer had no intention to sign one.—CLONCURRY (LORD) *v.* LAFFAN, [1924] 1 I. R. 78.—**IR.**

PART IV. SECT. 2, SUB-SECT. 3.—C. (b).

ii. —— *From purchaser to partner—Stating terms of purchase.*]—In an action against D., claiming damages for breach of contract to purchase bonds, a telegram from D. to his partner was produced saying, "I absolutely bought them yesterday after our phone conversation, they agreeing to our terms":—*Held:* parol evidence was properly received to show that terms had been stated by D., over his signature, that they were the only terms & were those referred to in the telegram, & the two constituted a sufficient memorandum within Stat. Frauds.—DORAN *v.* MCKINNON (1916), 53 S. C. R. 609.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 4.—A. (a).

971 i. *General rule.*]—A writing is not sufficient to make a contract of purchase of land comply with Stat. Frauds unless the parties to the contract are specified in the writing, either nominally or by description or reference, & in such a manner that there can be no fair or reasonable dispute as to their identity. A letter signed by a purchaser, addressed to persons who are the vendor's agents, but not mentioning the vendor, & there being nothing creating a contract binding upon the agents personally, is not sufficient to make a contract enforceable against purchaser under Stat. Frauds.—MAHLER *v.* BARKER, [1924] 3 D. L. R. 292; 2 W. W. R. 796; 34 B. C. R. 136.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 4.—B. (b).

1027 ii. —— *Admission of existence of contract.*]—Vendor's solr. wrote to purchaser's solr.: "B. informs me that he has agreed with R. for the sale to him of his holding in fee-simple for £10,000. Under those circumstances we think it would be possible to reasonably limit the title." The next day purchaser's solr. in acknowledging the letter, stated: "The simple agreement arrived at herein appears in the first part of your letter, & I suggest that we can dispense with any further agreement":—*Held:* this letter constituted a note or memorandum signed by purchaser's agent sufficient to satisfy Stat. Frauds, although he had not been specifically authorised to sign such a memorandum, & in writing the letter had no intention to sign one.—CLONCURRY (LORD) *v.* LAFFAN, [1924] 1 I. R. 78.—**IR.**

1059. *Add. Annotation :*—**Refd.** Chillingworth *v.* Esche (1923), 92 L. J. Ch. 461.

1063. *Add. Annotation :*—**Refd.** Rye *v.* Purcell, [1926] 1 K. B. 446.

1068. *Add. Annotation :*—**Refd.** Rawlinson *v.* Ames (1924), 69 Sol. Jo. 142.

1074. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

1077. *Add. Annotations :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945; Behnke *v.* Bede Shipping Co., [1927] 1 K. B. 649.

1078. *Add. Annotation :*—*As to* (1) **Refd.** Koenigsblatt *v.* Sweet, [1923] 2 Ch. 314.

1087. *Add. Annotations :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945; Behnke *v.* Bede Shipping Co., [1927] 1 K. B. 649.

1089. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

1092. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

1104. *Add. Annotation :*—**Refd.** Chaney *v.* Maclow, [1929] 1 Ch. 461.

1107. After this case add "*See, also*, No. 1123a, *post.*"

1109. *Add. Annotation :*—**Refd.** Koenigsblatt *v.* Sweet, [1923] 2 Ch. 314.

1112. *Add. Annotation :*—*As to* (2) **Consd.** Raingold *v.* Bromley, [1931] 2 Ch. 307.

1119. *Add. Annotations :*—**Refd.** Chillingworth *v.* Esche, [1923] 1 Ch. 576; Monnickendam *v.* Leanse (1923), 39 T. L. R. 445.

1121. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

1123a. —— **Purporting to enclose engrossment—Coupled with engrossment.**]—Circumstances (*see* LANDLORD & TENANT, No. 396a, *post*) in which :—*Held :* there was a sufficient memorandum of an oral contract.—HORNER *v.* WALKER, [1923] 2 Ch. 218; 92 L. J. Ch. 573; 129 L. T. 782.

1125. *Add. Annotation :*—**Consd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

1170. *Add. Annotation :*—**Apld.** Koenigsblatt *v.* Sweet, [1923] 2 Ch. 314.

1172. *Add. Annotation :*—**Refd.** Farr, Smith *v.* Messers, [1928] 1 K. B. 397.

1176. *Add. Annotations :*—*As to* (1) **Consd.** *Re* A Bankruptcy Notice, [1924] 2 Ch. 76. *As to* (2) **Refd.** Rawlinson *v.* Ames (1924), 69 Sol. Jo. 142. *Generally*, **Refd.** Houghton *v.* Nothard, Lowe & Wills (1927), 44 T. L. R. 76; Ariff *v.* Rai Jadunath Majumdar Bahadur (1931), 47 T. L. R. 238.

1178a. —— —— ——.]—In cases under Stat. Frauds the general principle has been, not that the legislature has avoided contracts which are not made in accordance with the forms prescribed in the Act, but merely that those contracts shall only be proved in that particular way. In every single case under Stat. Frauds, except in the case of contracts relating to an interest in land, it has been held authoritatively that part performance of a contract which is within the terms of the Act is not sufficient to preclude the party who has made the part performance, or who has received a part performance, from taking advantage of the Act (ATKIN, L.J.).—*Re* A BANKRUPTCY NOTICE, [1924] 2 Ch. 76; 93 L. J. Ch. 497; 131 L. T. 307; 68 Sol. Jo. 458; [1924] B. & C. R. 188, C. A.

Annotation :—**Refd.** Huddersfield Fine Worsteds *v.* Todd (1925), 134 L. T. 82.

1184a. *S. P.* CROYSTON *v.* BANES (1702), Prec. Ch. 208; 24 E. R. 102.

Annotation :—**Consd.** Rondeau *v.* Wyatt (1792), 2 Hy. Bl. 63.

1185. *Add. Citation :*—*sub nom.* CHILD *v.* COMBER, 3 Swan. 423, n.

1186a. ——.]—HOSIER *v.* READ (1724), 9 Mod. Rep. 86; 88 E. R. 332.

1207. *Add. Annotation :*—*Generally*, **Refd.** *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102.

1213a. —— **Refusal to pay for instalments until whole work published.**]—A purchaser contracted to purchase a series of engravings from pltfs., the publishers, by signing a circular to the following effect: 'Please enter my name as a subscriber for 'The Cries of London,' to be sent to me as published, the price of each of the thirteen plates, £10 10*s.*" After pltfs. had delivered the first four plates of the series, they called on

PART IV. SECT. 2, SUB-SECT. 4.—B. (d).

q. Read now "1034 i."

1034 ii. —— *Share-milking agreement.*]—*Held :* an incomplete memorandum of the terms of the contract, & the result was the same as if there were no memorandum at all.—HALL *v.* GOLDSTONE, [1923] N. Z. L. R. 916. —**N.Z.**

1035 ii. —— *Share-milking agreement.*]—HALL *v.* GOLDSTONE, No. 1034 ii., *ante*.—**N.Z.**

PART IV. SECT. 2, SUB-SECT. 5.—A.

1062 i. —— *Parol acceptance of written offer.*]—Subsequent oral recognition of a memorandum previously signed, as containing all the terms of the contract, is a sufficient compliance with Stat. Frauds.—FRIEDMAN *v.* MAYER (1913), 25 W. L. R. 551; 5 W. W. R. 168; 14 D. L. R. 154; 7 Alta. L. R. 60.—**CAN.**

sc. Sale & resale—No signature by sub-purchaser.]—*Held :* where Stat. Frauds applied liability could only be established by an acknowledgment in writing.—WORDDINGTON *v.* BUSH, [1923] 3 D. L. R. 884; 32 B. C. R. 434.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 6.—A.

1144 ii. —— ——.]—Parol evidence received to show that terms had been stated by a purchaser over his signature & were those referred to in a telegram from him to his partner.—DORAN *v.* MCKINNON (1916), 53 S. C. R. 609.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 3.—A.

1195 ii. ——.]—A common law action for a balance of the purchase money of land sold under a verbal agreement cannot be maintained, although the deed has been delivered.—MCMILLAN *v.* WILLIAMS (1894), 9 Man. L. R. 627.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 3.—B. (a).

1200 ii. ——.]—An item in an account stated, being a sum charged for the price of a lot of land, does not make it incumbent on pltf. to prove the agreement respecting such land to have been made in writing.—DALTON *v.* BOTTS (1826), Tay. 281.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 3.—B. (d).

f i. —— *Agreement to work in consideration of employer promising to devise realty—Liability for services rendered.*]—*Held :* the employee was entitled to compensation on a *quantum meruit* for work performed & services rendered for deceased employer.—*Re* MESTON, MESTON *v.* GRAY (Sask.), [1925] 4 D. L. R. 887; [1925] 3 W. W. R. 656.—**CAN.**

f ii. —— *Value of services—Admissibility of contract.*]—In an action brought on a *quantum meruit* for work done & services rendered evidence was given of an agreement, not in writing, whereby deft. agreed to pay a certain weekly salary & also a sum of £200 at the end of two years; it was also proved that deft. had paid the weekly salary but had refused to pay the sum of £200 :—*Held :* although the parol agreement was one to which the provisions of Stat. Frauds were applicable, it was nevertheless admissible as evidence of the value of pltf.'s services.—WARD *v.* GRIFFITHS BROTHERS, LTD. (1928), 28 S. R. N. S. W. 425; 45 N. S. W. W. N. 130.—**AUS.**

deft. to pay for them, but he refused to do so till the entire set was published & delivered :—*Held :* the words " to be sent to me as published " made it clear that the contract was an instalment contract, & not an indivisible contract for the entire set, & the fact that the price of each plate was stated to be ten guineas, while there was no mention of the price of the whole set, showed that each instalment was to be paid for separately.—HOWELL *v.* EVANS (1926), 134 L. T. 570 ; 42 T. L. R. 310, D. C.

1214a. *Add. Citations :*—[1923] 2 K. B. 723 ; 92 L. J. K. B. 886 ; 129 L. T. 830.

1217a. ——.]—ANON (*circa* 1678), 1 Eq. Cas. Abr. 20, pl. 5, L. C.

1217b. ——.]—ANON. (*circa* 1680), cited in 1 Eq. Cas. Abr. 20, pl. 5 ; 21 E. R. 842, L. C.

Annotation :—**Refd.** Maxwell *v.* Montacute (1720), Prec. Ch. 526.

1234a. ——.]—Stat. Frauds not pleadable where the agreement is executed in part.—AYLESFORD'S (EARL) CASE (1727), 2 Stra. 783 ; 93 E. R. 845.

Annotation :—**Consd.** Whitchurch *v.* Bevis (1789), 2 Bro. C. C. 559.

1235. *Add. Annotation :*—**Consd.** Rawlinson *v.* Ames, [1925] Ch. 96.

1245. *Add. Annotation :*—**Refd.** Rye *v.* Purcell, [1926] 1 K. B. 446.

1247. *Add. Annotation :*—**Refd.** Rawlinson *v.* Ames (1924), 69 Sol. Jo. 142.

1248a. ——.]—*Re* A BANKRUPTCY NOTICE, No. 1178a, *ante*.

1263a. —— ——.]—In an action for the specific performance of an agreement, where it does not appear from the statement of claim whether the agreement was in writing or not, a defence founded on the Stat. Frauds cannot be raised by demurrer.—FUTCHER *v.* FUTCHER (1881), 50 L. J. Ch. 735 ; 45 L. T. 306 ; 29 W. R. 884.

1269. *Add. Annotation :*—**Refd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155.

Part V.—Consideration.

1274. *Add. Annotation :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

1285a. —— **Promise to pay debt for which promisor not liable — Agreement void.**]—BREALEY *v.* ANDREW (1837), 7 Ad. & El. 108 ; 2 Nev. & P. K. B. 114 ; Will. Woll. & Dav. 481 ; 6 L. J. K. B. 199 ; 1 Jur. 526 ; 112 E. R. 411.

1285b. —— **Promise to employ person— No obligation on promisee to act.**]—*Held :* there was no consideration for the agreement.—PAYNE *v.* NEW SOUTH WALES COAL & INTERCOLONIAL STEAM NAVIGATION CO. (1854), 10 Exch. 283 ; 24 L. J. Ex. 117 ; 156 E. R. 450.

Annotation :—**Refd.** Kelner *v.* Baxter (1866), L. R. 2 C. P. 174.

PART IV. SECT. 3, SUB-SECT. 4.—A.

1217 i. *General rule.*]—Stat. Frauds & Mineral Act, B. C., s. 19, will not be allowed to be made instruments of fraud.—ROBERTS *v.* ROBERTS, [1923] 2 W. W. R. 137.—**CAN.**

1225 i. *Conveyance of interest in land —Whether evidence of trust admissible.*]—SMITH *v.* BENOR (1913), 24 O. W. R. 521 ; 4 O. W. N. 985 ; 10 D. L. R. 824.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 4.—B. (a).

1237 viii. —— ——.]—The act of part performance relied on must be unequivocally referable to the agreement alleged.—TILLEY *v.* CLEARY & HENDERSON (1887), 7 Nfld. L. R. 209.—**NFLD.**

1237 ix. —— —— ——.]—In order to enforce specific performance of an oral contract, whereby deceased promised to devise land to another in consideration of the latter working for deceased until the latter's death, the acts relied on as part performance excluding Stat. Frauds must be unequivocally referable to the contract asserted.

The fact that a son left his employment & lived & worked on his father's farm for ten years without drawing wages :—*Held :* not to point unmistakably to a contract by the father to leave his property to the son, & the alleged contract, not being evidenced by writing, was not enforceable.—*Re* MESTON, MESTON *v.* GRAY (Sask.), [1925] 4 D. L. R. 887 ; [1925] 3 W. W. R. 656.—**CAN.**

1237 x. —— —— ——.]—A mother undertook verbally to make a will leaving to her son W. two farms in D., & thereby induced W. to convey his farm in B. to A. & to pay A. £200. She afterwards made a will which gave effect to this verbal undertaking, but subsequently revoked it, leaving W. merely a life interest in the two farms : —*Held :* there was a sufficient act of part performance by W. to take the case out of the operation of Stat. Frauds.—LOWRY *v.* REID, [1927] N. 142.—**IR.**

1237 xi. —— —— ——.]—Where there was a parol agreement between pltf. & deft. to the effect that pltf. would grant a permanent lease to deft. in respect of a piece of land, & where no lease was either executed or registered, but deft. was put into possession & erected structures thereon to pltf.'s knowledge, where it appeared that pltf. must have realised deft. would not have constructed the same unless he was assured of the possession of a permanent right in the land, & that if the intention of pltf. was not to grant such a lease it might reasonably be expected that he would have objected to the construction of such a building :—*Held :* in a suit of ejectment by the lessor, that deft. not having obtained a lease in conformity with the provision of Transfer of Property Act, s. 107, read with Registration Act, s. 49, can resist ejectment, only if the case can be brought within the range of one or other of those principles of equity which have been held to apply to this country.—ANIFF *v.* JADU NATH MAJUMDAR (1928), I. L. R. 55 Calc. 1090.—**IND.**

1237 xii. —— —— ——.]—CHIPUKE *v.* SHANDRO, [1930] 2 D. L. R. 567.—**CAN.**

PART IV. SECT. 4.

1258 i. *Since Judicature Acts—Necessity for pleading statute.*]—In an action claiming damages for conversion of goods, if it appears that the title to the goods is based on a contract, deft. may urge that such contract is void under Stat. Frauds, though no such defence is pleaded. It is only where the action is between the parties to the contract, which one of them seeks to enforce against the other, that deft. must plead Stat. Frauds if he wishes to avail himself of it.—KENT *v.* ELLIS (1900), 31 S. C. R. 110 ; 32 N. S. R. 549.—**CAN.**

1258 ii. —— ——.]—The defence of Stat. Frauds cannot be raised, unless it has been pleaded.—DOMINION MEAT CO. *v.* JAMESON (1917), 12 Alta. L. R. 353.—**CAN.**

sb. *Half of net profits in freight savings.*]—MCKENZIE *v.* JOSEPH AZAR, LTD., [1931] 3 M. P. R. 265.—**CAN.**

PART V. SECT. 1.

1274 iv. ——.]—A good cause of action can be founded on a promise made seriously & deliberately & with the intention that a lawful obligation should be established.—CONRADIE *v.* ROUSSOUW, [1919] App. D. 279.—**S. AF.**

PART V. SECT. 2.

1275 xiv. ——.]—Pltf.'s goods being about to be sold under a distress for rent, it was agreed between pltf. & deft. that if deft. would go to the sale & purchase the goods, pltf. would at a future day repay him the price & interest, when deft. was to give him the goods. Deft. went to the sale & purchased the goods ; but, although some months afterwards pltf. tendered the amount & interest, deft. did not deliver the goods :—*Held :* there was no contract on which deft. could be held liable for damages.—TIMMINS *v.* SURPLES (1876), 26 C. P. 49.—**CAN.**

1299. *Add. Annotations :*—**Consd.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450. **Refd.** McDonald *v.* Nash, [1924] A. C. 625.

1350. *Add. Annotation :*—**Refd.** Kennedy *v.* Thomassen, [1929] 1 Ch. 426.

1352. *Add. Annotation :*—**Refd.** Crediton Gas Co. *v.* Crediton U. C., [1928] Ch. 447.

1383. *Add. Annotations :—Generally,* **Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 536 ; Riley *v.* Brown (1929), 98 L. J. K. B. 739.

1421. *Add. Annotation :*—**Refd.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353.

1421a. —— **By agent of joint owner of chattel to co-owner—Part of proceeds of sale of chattel.**] —*Held :* sufficient consideration for a promise to deliver to the agent a bill of exchange or the equivalent amount in cash.—SURTEES *v.* LISTER (1861), 7 H. & N. 1 ; 30 L. J. Ex. 369 ; 158 E. R. 367.

1432a. Agreement to grant annuity.]—A mutual agreement by several to grant an annuity to a third party may be a consideration sufficient to support the grant.—BENTLEY *v.* MACKAY (1862), 31 Beav. 143 ; 31 L. J. Ch. 697 ; 6 L. T. 632 ; 8 Jur. N. S. 857 ; 10 W. R. 593 ; 54 E. R. 1092 ; *affd.*, 4 De G. F. & J. 279, L. JJ.

1459a. ——.]—S., a customer of bkpt., a stockbroker, became indebted to him in respect of Stock Exchange transactions in a sum for which bkpt., on Dec. 18, 1923, recovered judgment. Later, S. became similarly indebted to bkpt. in a further sum. On Jan. 15, 1924, bkpt. assigned both debts to W. to secure £500, & covenanted with him that, in the event of his refraining from giving notice of the assignment to S., he, bkpt., would, on payment of the debts or any part thereof, hand the cheque or other form of payment to W. In Mar. 1924, J., who acted as solr. for both bkpt. & W. in the matter of the assignment, on the instructions of both & without disclosing same, made an agreement with S. for the liquidation of the two debts, whereby S. undertook to pay the aggregate amount thereof by monthly instalments, the first instalments being allocated to the payment of the later of the two debts & the subsequent ones to the payment of the judgment debt ; & S. further agreed to deliver promissory notes payable to bkpt. or order to cover the instalments allocated to the later debt. J. received the notes from S. &, as agent of W., collected the amounts as they fell due on the notes & paid part thereof to W. & retained the balance. After payment J. returned the notes to S. to be cancelled :—*Held :* the forbearance of W. on the strength of the deposit of the notes to sue & his acceptance of the instalments constituted sufficient consideration for the deposit of the notes.—*Re* WETHERED, *Ex p.* SALAMAN, [1926] Ch. 167 ; 70 Sol. Jo. 324 ; *sub nom. Re* WETHERED, *Ex p.* SALAMAN'S TRUSTEE, TRUSTEE *v.* BANCE, 95 L. J. Ch. 127 ; 134 L. T. 264 ; [1925] B. & C. R. 265.

1460. *Add. Annotation :*—**Consd.** Burrell *v.* Leven (1926), 42 T. L. R. 407.

1462. *Add. Annotation :*—**Refd.** Hyde *v.* Tyler (1926), 42 T. L. R. 442.

1475. *Add. Annotation :*—**Consd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

1525. *Add. Annotation :*—**Refd.** Burrell *v.* Leven (1926), 42 T. L. R. 407.

1527. *Add. Annotations :*—**Distd.** Eldridge & Morris *v.* Taylor, [1931] 2 K. B. 416. **Refd.** Burrell *v.* Leven (1926), 42 T. L. R. 407 ; Richardson *v.* Moncrieffe (1926), 43 T. L. R. 32.

1542. *Add. Annotation :*—**Refd.** Burrell *v.* Leven (1926), 42 T. L. R. 407.

1550. *Add. Annotation :*—**Refd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306.

1578. *Add. Annotation :*—**Consd.** Hyde *v.* Tyler (1926), 42 T. L. R. 442.

1590. *Add. Annotations :*—**Refd.** Hall *v.* I. R. Comrs. (1926), 135 L. T. 759 ; Lewis *v.* Cammell, Laird & Co. (1929), 22 B. W. C. C. 410 ; Smith *v.* Union Castle S.S. Co. (1931), 24 B. W. C. C. 71.

1630. *Add. Annotation :*—**Consd.** Rose & Frank Co. *v.* Crompton, [1923] 2 K. B. 261.

1641. *Add. Annotation :*—**Consd.** Brandt *v.* Liverpool, Brazil & River Plate Steam Navigation Co., [1924] 1 K. B. 575.

PART V. SECT. 3, SUB-SECT. 2.—A.

sd. *Promise to allow offer of option to promisor.*]—A promise to allow a third party to offer the promisor an option on shares does not constitute a valuable consideration.—GIBSON *v.* MCVEIGH (No. 1), [1922] 1 W. W. R. 151.—**CAN.**

PART V. SECT. 3, SUB-SECT. 2.—B. (a).

sf. *Abandonment of claim.*]—Where any question arising between the parties on a previous verbal agreement had been compromised, & the compromise embodied in a written agreement ; *Held :* sufficient consideration for the compromise was an abandonment of a claim by each party.—BILODEAU *v.* MCLEAN, [1924] 3 D. L. R. 410 ; 2 W. W. R. 631 ; 34 Man. L. R. 239.—**CAN.**

PART V. SECT. 3, SUB-SECT. 3.—A.

1445 iii. ——.]—MOBERLY *v.* BAINES & SHORTIS (1857), 15 U. C. R. 25.—**CAN.**

PART V. SECT. 3, SUB-SECT. 3.—B. (a).

1453 iii. ——.]—Where a creditor grants an extension of time for payment of a past due debt & at the same time obtains from debtor security for the debt, the proper inference to be drawn, in the absence of evidence to the contrary, is that the extension was granted as a result of the creditor's obtaining the security.—O'BRIEN *v.* STEBBINS & MULLEN, [1927] 3 D. L. R. 274 ; [1927] 2 W. W. R. 176 ; 21 Sask. L. R. 478.—**CAN.**

PART V. SECT. 3, SUB-SECT. 4.—A.

1570 i. *Discontinuance of action.*]—T. a member of a solrs.' partnership, borrowed money on the credit of the partnership, without the knowledge or consent of the remaining partner, W. A demand having been made by the lender against both partners for repayment of the amount of the loan, a compromise was arranged between the lender & W. of the claim against the latter. Subsequently the lender took action against W. to recover the balance of the loan on the ground that the compromise arranged was without consideration & he was not bound thereby : —*Held :* W. entered into the compromise in the honest belief that he had a good defence to the claim, & this fact was sufficient to constitute a valid consideration for the compromise.—O'CONNOR *v.* WALDEGRAVE, [1928] N. Z. L. R. 480.—**N.Z.**

PART V. SECT. 3, SUB-SECT. 4.—B.

1581 ii. —The abandonment of a *bonâ fide* claim of right is a consideration sufficient to support a promise by the other party, even though the claim was in truth unfounded.—MCCONNELL *v.* DETWEILLER, [1930] 1 W. W. R. 79 ; 1 D. L. R. 888 ; 24 S. L. R. 202.—**CAN.**

PART V. SECT. 4.

a i. —— ——.]—Inadequate consideration alone is not sufficient to justify setting aside a settlement, the inadequacy not being so gross as to prove fraud or imposition.—GISSING *v.* EATON (T.) CO. (1911), 20 O. W. R. 324 ; 3 O. W. N. 219 ; 25 O. L. R. 50. —**CAN.**

1653 i. *Whether consideration adequate.*]—GREENHAM *v.* WATT (1866), 25 U. C. R. 365.—**CAN.**

PART V. SECT. 5.

sk. *Third party to be allowed to offer option.*]—M. gave G. an option on shares owned by M. in a co. ; the consideration expressed in the option was G.'s agreement "to make a similar proposition" to another shareholder :—*Held :* the alleged consideration was in effect a mere promise by G. to let such other shareholder give him an option

1662. *Add. Annotation :*—**Refd.** The Lord Strathcona, [1925] P. 143.

1685. *Add. Annotation :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

1701. *Add. Annotation :*—**Refd.** *Re* Wethered, *Ex p.* Salaman, [1926] Ch. 167.

1740a. —— ——.]—Promise by a father to his son-in-law after the marriage raises a consideration.—MARSH *v.* KAVENFORD (1587), Cro. Eliz. 59; 78 E. R. 319; *sub nom.* MARSH & RAINSFORD'S CASE, 2 Leon. 111.

Annotations :—**Consd.** Townsend *v.* Hunt (1635), Cro. Car. 408. **Refd.** Riggs *v.* Bullingham (1599), Cro. Eliz. 715; A.-G. *v.* Royal College of Physicians (1861), 30 L. J. Ch. 757.

1780. *Add. Annotation :*—**Refd.** Hawkesworth *v.* Turner (1930), 46 T. L. R. 389.

1817 *Add. Annotation :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

1822a. ——.]—R. *v.* LOPEN (INHABITANTS) (1788), 2 Term Rep. 577; 100 E. R. 310.

1828a. —— ——.]—GARBREY *v.* BROWN (1588), Gouldsb. 94; 75 E. R. 1018; *sub nom.* BROWNE *v.* GARBOROUGH, Cro. Eliz. 63.

1837. *Add. Annotation :*—**Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

1838. *Add. Annotation :*—**Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

1839. *Add. Annotation :*—**Refd.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353.

1856a. ——.]—DE PARRELL *v.* WALKER (1932). 49 T. L. R. 37; 76 Sol. Jo. 850.

1871. *Add. Annotations :*—**Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450; Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246.

1876. *Add. Annotation :*—**Refd.** Home & Colonial Insce. *v.* London Guarantee & Accident Co. (1928), 45 T. L. R. 134.

1877. *Add. Annotation :* — **Consd.** Rowland *v.* Divall, [1923] 2 K. B. 500.

1878. *Add. Annotation :* — **Consd.** Rowland *v.* Divall, [1923] 2 K. B. 500.

1887a. *Add. Citations :*—[1923] 2 Ch. 452; 92 L. J. K. B. 944 129 L. T. 624; 67 Sol. Jo. 656.

1888. *Add. Annotation :*—**Refd.** *Re* Mason (1928), 97 L. J. Ch. 321.

1903. *Add. Annotation :*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

1905. *Add. Annotations :*—**Consd.** Chillingworth *v.* Esche, [1923] 1 Ch. 576. **Refd.** Monnickendam *v.* Leanse (1923), 39 T. L. R. 445; Bernard *v.* Williams (1928), 139 L. T. 22.

1914a. *S. P.* ANON (1538), Bro. N. C. 16; 73 E. R. 853.

1919. *Add. Annotation :*—**Consd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

Part VI.—Void and Illegal Contracts.

1938. *Add. Annotations :*—*As to* (1) **Refd.** L. *v.* L., [1931] P. 63. *Generally,* **Refd.** Sorrell *v.* Smith, [1925] A. C. 700.

1940. *Add. Annotation :*—**Consd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

1952. *Add. Annotation :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

1961. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

1967. *Add. Annotation :*—**Refd.** Dominion Press *v.* Customs & Excise Minister, [1928] A. C. 340.

1971. *Add. Annotation :*—**Refd.** James *v.* British General Insce., [1927] 2 K. B. 311.

1973. *Add. Annotations :*—*As to* (1) **Apld.** Palmolive Co. (of England) *v.* Freedman (1927), 44 T. L. R. 86. *As to* (3) **Refd.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174.

1977. *Add. Annotation :*—*As to* (2) **Refd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

similar to that given by M., & such promise did not constitute a valuable consideration.—GIBSON *v.* MCVEIGH (No. 1), [1922] 1 W. W. R. 151.—**CAN.**

PART V. SECT. 6, SUB-SECT. 2.—A.

1689 i. *Promise to perform existing agreement.*]—Pltf. agreed to build a house for deft. for $6,464. When the house was nearly finished a fire took place in it, doing considerable damage. Deft. had insured the building & received $2,150 from the insurers. Pltfs. effected no insurance. After the fire, deft. asked pltfs. to go on with & complete the work, & gave them to understand that she would pay over the $2,150 to them :—*Held :* pltfs. were bound to complete the work, & the promise, if there was one, to pay for the work which it was their duty to do, was not binding for want of consideration.—SMITH *v.* DAWSON (1923), 53 O. L. R. 615.—**CAN.**

PART V. SECT. 12, SUB-SECT. 1.

1867 i. *Non-performance of condition.*]—A condition in a special timber licence under Land Act (B. C.), 1908, that no Chinese or Japanese should be employed in connection therewith is a part of the consideration, & the observance thereof is a condition precedent to the renewal of the licence.—A.-G. FOR BRITISH COLUMBIA *v.* BROOKS, BIDLAKE & CO., [1922] 3 W. W. R. 9; 63 S. C. R. 466.—**CAN.**

sl. *Correspondence course in law — Not a qualification for practice.*]—A. signed a contract to receive a correspondence course in law. In Canada this is not sufficient to qualify a person to practice in the law. In an action for the fees agreed to be paid :—*Held :* this insufficiency did not amount to a failure of consideration.—RULE *v.* BRADNER, [1923] 4 D. L. R. 81.—**CAN.**

sm. *Alteration to building — Removed under bye-law.*]—An alteration made to a building proved to be in violation of a bye-law & had to be removed. The owner set up a defence to an action for payment for such alteration that there had been a failure of consideration :—*Held :* the owner was bound to pay.—ORPHEUM THEATRICAL CO. *v.* VULCAN ENGINEERING CONSTRUCTION CO., [1923] 3 D. L. R. 52.—**CAN.**

PART V. SECT. 12, SUB-SECT. 2.

sp. *Option-contract—Non-completion.*]—GOULDING *v.* RABINOVITCH, [1927] 3 D. L. R. 820; 60 O. L. R. 607.—**CAN.**

PART V. SECT. 12, SUB-SECT. 3.—A.

1888 ii. —— ——.]— BUTTERFIELD *v.* CORMACK & MACKIE (1913), 25 W. L. R. 457; 13 D. L. R. 817; 7 Alta. L. R. 26.—**CAN.**

PART VI. SECT. 2.

c i. *S. P.* KANWAR BHAN-SUKHA NAND *v.* GANPAT RAI-RAM JIWAN (1926), I. L. R. 7 Lah. 442.—**IND.**

PART VI. SECT. 3.

1950 iv. —— ——.] — A.-G. FOR BRITISH COLUMBIA *v.* BROOKS, BIDLAKE & CO., [1922] 3 W. W. R. 9; 63 S. C. R. 466; 66 D. L. R. 475.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 1.—A.

st. *Manufacture of goods with false description.*] — Pltf. co.'s salesman purported to enter into contracts for the sale to deft. of quantities of "All British" motor tyres & tubes. The goods would be manufactured in Melbourne, but each contract stipulated that the words "English Manufacture" should be branded upon them, & deft. intended to sell the goods, relying upon the brand to imply that they had been manufactured in England :—*Held :* at common law the proposed brand would be a fraud on the public, & the maxim *ex turpi causa non oritur actio* applied.—BARNET GLASS RUBBER CO., LTD. *v.* MCDONALD, [1922] N. Z. L. R. 767; Gaz. L. R. 213.—**N.Z.**

PART VI. SECT. 4, SUB-SECT. 2.—A.

1977 iv. ——.]—A contract will not be declared unenforceable as being against public policy, unless it belongs to a class of contracts that the law recognises as being within that cate-

The ct. cannot invent a new of public policy.—WADGERY *v.*

1981. *Add. Annotations :—As to* (1) **Consd.** James *v.* British General Insce., [1927] 2 K. B. 311. *As to* (2) **Refd.** *Re* Pitts, Cox *v.* Kilsby, [1931] 1 Ch. 546. *Generally,* **Refd.** Cousins *v.* Sun Life Assurance Society (1932), 48 T. L. R. 614.

1984. *Add. Annotations :*—**Refd.** Burrell *v.* Leven (1926), 42 T. L. R. 407; Richardson *v.* Moncrieffe (1926), 43 T. L. R. 32.

1986. *Add. Annotation :*— **Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

1992. *Add. Annotations :—As to* (3) **Refd.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174. *As to* (4) **Refd.** Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44.

2011a. —— **Knighthood.**]—If a contract which is illegal as being contrary to public policy has any element of turpitude in it the parties to the contract are *in pari delicto,* & if one of the parties to the contract has been defrauded, no action for damages can be maintained by the party defrauded, even though the contract is not of a criminal nature.

The secretary of a charity fraudulently represented to P. that he or the charity was in a position to undertake that P. would receive a knighthood if P. made a large donation to the funds of the charity, & undertook that the title would be conferred if the donation was made. P., relying upon those representations & in the belief that the secretary was authorised by the charity to give the undertaking, made a large donation to the funds of the charity. As P. did not receive the knighthood he brought an action against the charity & its secretary to recover back the money he had paid as money had & received or as damages for deceit or breach of contract :—*Held :* a contract for the purchase of a title, however the money is to be expended, is an improper & illegal contract, as being against public policy, & as P. knew that he was entering into an improper & illegal contract he could not recover back the money he had paid from the charity as money had & received, nor recover damages from the charity or its secretary, nor claim to repudiate the contract as being still executory & recover back the money paid.—PARKINSON *v.* COLLINS OF AMBULANCE, LTD. & HARRISON, [1925] 2 K. B. 1; 93 L. J. K. B. 1066; 133 L. T. 135; 40 T. L. R. 886; 69 Sol. Jo. 107.

(*h*) *Agreements Relating to Bankruptcy* (Vol. XII., p. 248).

To the existing cross-references add as follows :—

Agreement for withdrawal of petition.]—*See* BANKRUPTCY, No. 1366a, *ante.*

Agreement for improper distribution of estate.]—*See* BANKRUPTCY, No. 4366a, *ante.*

Agreements not to oppose discharge.]—*See* BANKRUPTCY, Vol. IV., pp. 546, 547.

Agreements for payment of debts barred by discharge.]—*See* BANKRUPTCY, Vol. IV., pp. 589–592.

Agreements for procuring assent of creditors to composition deeds.]—*See* BANKRUPTCY, Vol. V., pp. 1120, 1139–1145.

2028. *Add. Annotation :*—**Refd.** *Re* Lanyon, Lanyon *v.* Lanyon, [1927] 2 Ch. 264.

2084a. —— **Marine Insurance—Not expressed in sea policy.**]—No contract for sea insurance is valid unless it is expressed in a sea policy. The contract in this case was a contract for sea insurance &, not being expressed in a policy, was unenforceable.

The expression of an agreement for sea insurance otherwise than in a policy is a thing forbidden in the public interest (LORD SUMNER).—NAGOREMULL *v.* TRITON INSURANCE CO., LTD. (1924), 41 T. L. R. 168, P. C.

2089. *Add. Citation :*—15 Asp. M. L. C. 566.

Add. Annotation :—**Distd.** Pinnock *v.* Lewis & Peat, [1923] 1 K. B. 690.

2089a. Agreement for recovery of betting debt.]—Pltf. carried on business as the "Turf Register," which in a prospectus issued by him was called a "society"; but he was the sole proprietor of the business, though he described himself in the prospectus as secretary. In consideration of a subscription, & of a commission on the amounts recovered, he undertook to collect for the subscribers betting debts which, under the provisions of the Gaming Acts, were not recoverable. It was agreed between him &

FALL (Sask.), [1926] 4 D. L. R. 333; [1926] 2 W. W. R. 657.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 2.—B. (f) iii.

sz. Assignment of money due under mail-contract.]—A mail-contract prohibited the assignment of moneys due thereunder without the consent of the Postmaster-General :—*Held :* such an assignment was not void as contrary to public policy, on the analogy of assignments of salaries of public servants.—HODDER & TOLLEY, LTD. *v.* CORNES, [1923] N. Z. L. R. 876.—**N.Z.**

PART VI. SECT. 4, SUB-SECT. 2.—B. (g).

sa. Evasion of revenue laws—False invoice—Claim by vendor particeps criminis.]—Where merchants residing in the United States sold goods to deft., & combined with him in furnishing false invoices to evade the revenue laws of this Province in respect of the amount of duties to be paid on the importation of such goods :—*Held :* pltfs. could not recover their value from deft. in this country.—MULLEN *v.* KERR (1841), 6 O. S. 171.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 2.—B. (t).

2086 iii. ——————.]—Deft. employed pltf., a land agent & member of a municipal council, to sell his land to the Closer Settlement Board under Discharged Soldiers Settlement Acts. Pltf. submitted the land to the Board, but before the sale he had resigned his position on the council. Under the above Acts pltf., as a member of the council, could be called upon to advise the Board in connection with purchase of land within the municipality. In an action by pltf. to recover from deft. commission on the sale :—*Held :* the private interest of pltf. under his agreement with deft. had a tendency to interfere with the proper discharge by pltf. of his public duty, & the agreement was illegal & void as being against public policy.—WOOD *v.* LITTLE, [1922] V. L. R. 11; 29 C. L. R. 564; 27 Argus L. R. 400.—**AUS.**

2086 iv. ——————.]—*Held :* a contract by which pltf. was to use his supposed influence with members of the Govt. for obtaining contracts in return for a commission was contrary to public policy & void.—CARR-HARRIS *v.* CANADIAN GENERAL ELECTRIC CO. (1920), 48 O. L. R. 231; 55 D. L. R. 506; 19 O. W. N. 591.—**CAN.**

2086 v. ——————.]—Where a contract to pay a commission on the sale of property to a provincial Govt. is entered into on the understanding that the agent is a person having influence with the employees of the Govt. & that he will exercise such influence to bring about the sale :—*Held :* the contract is illegal.—MACMILLAN *v.* MOONEY, [1924] 4 D. L. R. 762; 3 W. W. R. 458.—**CAN.**

sb. Agreement between soldier & vendor of land to Soldier Settlement Board for payment to vendor by soldier of additional sum.]—*Held :* not unenforceable as being against public policy.—WADGERY *v.* FALL (Sask.), [1926] 4 D. L. R. 333; [1926] 2 W. W. R. 657.—**CAN.**

sc. Agreement to offer prayers for the success of litigation.]—An agreement, whereby one party consents to remunerate another for the latter to offer prayers to God for the success of litigation in which the former is engaged, is not contrary to public policy.—BALASUNDARA MUDALIAR *v.* MAHAMED OOSMAN SAHEB (1929), I. L. R. 53 Mad. 29.—**IND.**

deft., in the terms of the prospectus, that in consideration of pltf. putting up all the necessary disbursements for the institution & conduct of legal or other proceedings, the net profits accruing directly or indirectly was to be equally divided between claimant & the society. Pltf. brought an action to recover the amount of debts alleged to have been wrongfully collected by deft. in breach of the agreement:—*Held:* the agreement was illegal & void, being contrary to pubilc policy, & pltf. could not recover.—FORD *v.* RADFORD (1920), 36 T. L. R. 658; 64 Sol. Jo. 571.

2089b. Agreement in breach of trade usage.]—The fact that the rules of the London Metal Exchange prohibit a clerk to a member from participating in dealings on the Exchange as a principal does not make the contracts void as being against public policy.—BARNETT *v.* SANKER (1925), 41 T. L. R. 660; 69 Sol. Jo. 824.

2102a. ——.]—GUIBORN *v.* FELLOWS (1717), 2 Eq. Cas. Abr. 160; 5 Vin. Abr. 408, pl. 20; 22 E. R. 136, L. C.

2112. *Add. Annotation:*—**Consd.** Parkinson *v.* College of Ambulance & Harrison (1924), 40 T. L. R. 886.

2114. *Add. Annotation:*—**Refd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607.

2118. *Add. Annotation:*—**Consd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306.

2122. *Add. Annotations:*—*As to* (1) **Refd.** Wylie *v.* Lawrence Wright Music Co. (1932), 96 J. P. 156. *As to* (2) **Apld.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

2153. *Add. Annotation:*—**Apld.** Mansfield *v.* Robinson, [1928] 2 K. B. 353.

2156. *Add. Annotation:*—**Consd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

2190a. —— —— **Inference of new promise after divorce.**]—Pltf., who at the time was a married woman, accepted deft.'s proposal of marriage, provided that she obtained a divorce. Pltf. did obtain a divorce, & deft. then gave her an engagement ring & the date of the wedding was arranged. Ultimately deft. married another woman. In an action for breach of promise of marriage deft. pleaded that the contract was void in law as being contrary to public policy:—*Held:* although the original promise was void yet a new promise, after pltf. had become a free woman, could be inferred from the giving of the ring & the arrangement of the date of the wedding, & pltf. was entitled to recover.—SKIPP *v.* KELLY (1926), 42 T. L. R. 258, P. C.

2195. *Add. Annotation:*—**Distd.** Bradstreets British, Ltd. *v.* Mitchell (1932), 48 T. L. R. 670.

2195a. -.]—A contract between a mercantile inquiry agency, which furnishes reports on the financial stability of cos., firms, & persons engaged in trade, & a trading co., providing that all information furnished by the agency to its subscriber, the trading co., is supplied in strict confidence for the exclusive use of the subscriber in the subscriber's business, & that the subscriber shall indemnify the agency in respect of any loss or damage which it may suffer or incur from the breach by the subscriber of any of the conditions of the contract, is not void as being against public policy on the ground that the fundamental element of the contract is the desire on the part of the agency to protect itself against the risk of actions for libel resulting from reports issued by it to subscribers. If, however, a subscriber does disclose information supplied by the agency with the result that the agency has to pay to a third party damages for a libel on that third party contained in the information in question, no special damage being suffered by the third party, the only damages recoverable by the agency from the subscriber in an action for breach of contract are nominal damages, the *causa causans* of the liability to pay damages being the unlawful act of the agency in publishing a libel & the disclosure by the subscriber being only the *causa sine qua non*.—BRADSTREETS BRITISH, LTD. *v.* MITCHELL (1932), 48 T. L. R. 670.

2199. *Add. Annotation:*—**Distd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1. K. B. 470.

PART VI. SECT. 4, SUB-SECT. 4.—B. (a).

2091 viii. ——.]—HENRY *v.* DICKIE (1896), 27 O. R. 416.—**CAN.**

2091 ix. ——.]—*Held:* a deed was an illegal consideration as being the outcome of a bargain to stifle a prosecution against B. for an indictable offence, & was void. The offence for which B. was liable to prosecution was in the nature of larceny, & was an indictable offence of a public nature.—GOLDSBROUGH, MORT & CO., LTD. *v.* BLACK (1926), 29 W. A. L. R. 37.—**AUS.**

2091 x. ——.]—*Held:* an agreement the consideration of which was the compounding of a compoundable offence was not forbidden by law & was valid; (2) an agreement to compound a non-compoundable offence is void in law.—AHMED HASSAN *v.* HASSAN MAHOMED MALEK (1928), I. L. R. 52 Bom. 693.—**IND.**

2091 xi. ——.]—Pltf. paid deft. $100 & made in deft.'s favour a chattel mtge. for $400 in order to stifle a prosecution for a public offence:—*Held:* pltf. was entitled to a judgment setting aside the chattel mtge.; for pltf., upon the evidence, was not *in pari delicto* with deft.—STEINBERG *v.* COHEN, [1930] 2 D. L. R. 916; 64 O. L. R. 545.—**CAN.**

sd. *Compromise signed in hope of avoiding prosecution—No promise not to prosecute.*]—DIKUR *v.* SHAVCHOOK (Alta.), [1929] 2 D. L. R. 232.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 4.—B. (b).

2096 i. ————.]—A contract is not vitiated because it was induced by a threat of criminal proceedings, for which there was sufficient ground, provided there is no agreement to stifle the prosecution.—BOW *v.* PFEIFFER & GILBERT, [1924] 3 D. L. R. 854; 2 W. W. R. 1149.—**CAN.**

2098 iv. —— —— ——.]—D. was in the employ of pltfs. & was charged with criminal breach of trust in respect of a cheque for Rs.30,000 which he cashed for pltfs. D. paid pltfs. Rs.15,000, & D. & his brother R. executed a mtge. in favour of pltfs. with a view to withdrawal of the prosecution. Pltfs. put in a petition stating the facts, & the prosecution was dropped:—*Held:* the agreement was not against public policy.—DWIJENDRA NATH MULLICK *v.* GOPIRAM GOBINDARAM (1925), I. L. R. 53 Calc. 51.—**IND.**

PART VI. SECT. 4, SUB-SECT. 5.—G.

2190 i. *Promisee married—Promise to marry conditioned on divorce.*]—Where a promise of marriage was made after the hearing of a petition for divorce, but before the passage of the bill of divorce:—*Held:* any promise of marriage to be performed contingently upon a divorce being obtained was against public policy, & no action could be maintained thereon.—CAULFIELD *v.* ARNOLD (No. 1), [1925] 1 D. L. R. 295; [1925] 1 W. W. R. 664; 34 B. C. R. 404.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 5.—H.

sf. *Agreement for support of adulterine bastard.*]—*Held:* a contract by a third party to pay the mother for the support of a child alleged by her to be the result of adultery with him while she was living with her husband is against public policy, void & unenforceable.—KIJKO *v.* BACYZSKI (1922), 51 O. L. R. 225.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 1.

2200 iii. ——.]—If a person contracting to operate a boiler & engine has not a certificate or permit under Boilers Act, R. S. A., 1922 (c. 191),

2214. *Add. Annotation :*—**Refd.** Anderson *v.* Daniel (1924), 130 L. T. 418.

2215. *Add. Annotation :*—**Apld.** Anderson *v.* Daniel, [1924] 1 K. B. 138.

2217. *Add. Annotation :*—**Refd.** *Re* National Benefit Assurance Co., [1931] 1 Ch. 46.

SUB-SECT. 2.—PARTICULAR CONTRACTS RENDERED VOID OR ILLEGAL BY STATUTE (Vol. XII., p. 272).

Add the following cross-reference :—

Sale by other than imperial weights & measures.]—*See* WEIGHTS & MEASURES.

2226. *Add Citation :—See,* [1906] 1 Ch. 747, n.

Add. Annotation : — **Apld.** Anderson *v.* Daniel, [1924] 1 K. B. 138.

2227. *Add. Annotation :*—**Refd.** Anderson *v.* Daniel, [1924] 1 K. B. 138.

2228. *Add. Annotations :*—**Apld.** Anderson *v.* Daniel (1923), 93 L. J. K. B. 97 ; *Re* National Benefit Assurance Co., [1931] 1 Ch. 46.

2229. *Add. Annotation :*—**Consd.** Anderson *v.* Daniel, [1924] 1 K. B. 138.

2231. *Add. Annotation :*—**Refd.** Anderson *v.* Daniel, [1924] 1 K. B. 138.

2232. *Add. Annotations :*—**Consd.** Anderson *v.* Daniel, [1924] 1 K. B. 138. **Apld.** *Re* National Benefit Assurance Co., [1931] 1 Ch. 46.

2233. *Add. Annotation :*—**Refd.** *Re* National Benefit Assurance Co., [1931] 1 Ch. 46.

2236. *Add. Annotation :*—**Refd.** Anderson *v.* Daniel (1924), 130 L. T. 418.

2241. *Add. Annotation :*—**Consd.** Garrard *v.* James, [1925] Ch. 616.

2245. *Add. Annotation :*—**Apld.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

2248a. ——.]—Pltf. cannot recover for goods sold which he knows are to be applied to an illegal purpose, though he be not active himself in their being so applied, & be no sharer in the advantage to be derived therefrom.—HUTTON *v.* WEY (1827), 5 L. J. O. S. K. B. 220.

2251. *Add. Annotation :*—**Refd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

2285. *Add. Annotation :*—**Folld.** Parkinson *v.* College of Ambulance & Harrison (1924), 40 T. L. R. 886.

2288. *Add. Annotations :*—**Consd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470. **Refd.** *Re* National Benefit Assurance Co., [1931] 1 Ch. 46.

2292a. ——.]—NAGOREMULL *v.* TRITON INSURANCE CO., LTD., No. 2084a, *ante*.

2301a. —— **Recovery of wages—Contract in breach of Shops Act.**]—A shop assistant was employed under a contract of employment which had no reference to holidays. An order under Shops Act, 1912 (c. 3), s. 11 (1), had been made by the local authority for the district in which the shop was situated, suspending the general obligation to close shops on the weekly half-holiday, but only on condition that all the assistants in any shop which remained open were given a holiday of not less than two weeks in each year, & a notice to that effect was affixed in the shop. The employers kept the shop

authorising him to operate that particular kind of boiler & engine, the contract is prohibited by the Act, & is unenforceable, & such person is not entitled to recover on a *quantum meruit*.—MILNE *v.* PETERSON, [1925] 1 D. L. R. 271 ; [1924] 3 W. W. R. 957.—**CAN.**

2200 iv. ——.]—Where the legislature has prohibited the making of a contract, & has expressly provided, or, having regard to the language in which the Act is couched, has manifested its intention, that the contract should be void for all purposes, such contract is utterly null & void.—MURSHIDABAD (NAWAB) *v.* BILAS ROY CHOUDHURI (1928), I. L. R. 56 Calc. 252.—**IND.**

2218 i. *Action arising out of illegal contract—Recovery of money paid.*]—Money paid under an illegal contract cannot be recovered back.—MERKEL *v.* MCKENDRY, [1926] 2 D. L. R. 995 ; [1926] 2 W. W. R. 7 ; 35 Man. L. R. 506.—**CAN.**

PART VI. SECT. 7, SUB-SECT. 1.

s i. —— ——.]—In an action upon the covenants for payment contained in two mtges. made by deft. in favour of pltf. C., it was found upon the evidence that the real consideration for the advances made by C. in respect of which the mtges. were professedly made was deft.'s participation in a scheme which involved the defrauding of the Govt. of Canada in the matter of sales tax or income tax, & the smuggling of intoxicating liquor into the United States :—*Held :* to establish the illegality of an agreement it is not necessary that the illegality should be an integral part of it ; it is enough if one of the parties contemplated an illegal act or transaction, & that the other party was aware of it.—HARWOOD & COOPER *v.* WILKINSON, [1929] 4 D. L. R. 734 ; 64 O. L. R. 392 ; *revsd.*, [1930] 2 D. L. R. 199 ; 64 O. L. R. 658.—**CAN.**

c. *Revsd. sub nom.* DOMINION FIRE INSURANCE CO. *v.* NAKATA, 52 S. C. R. 294 ; 26 D. L. R. 722.

PART VI. SECT. 7, SUB-SECT. 2.

2250 i. *Goods supplied for illegal purpose—To knowledge of vendor—Smuggling.*]—An action brought by a brewery co. against the owners of a dock on the Ontario side of the D. river to restrain defts. from shipping from their dock beer other than that brewed by pltfs. in violation of a contract between the parties was dismissed upon the ground that the ct. should not entertain it. It is common knowledge that for several years there has existed in Ontario an industry known as the "liquor export business" or "rum-running," consisting in the exportation of intoxicating liquors to the United States by smuggling & in contravention of the laws of that country. The ct. is bound to take judicial notice of that which is commonly & publicly known. Viewing the evidence before the ct. in the light of that knowledge it clearly indicated that pltfs. were not only the lessees of a dock & warehouse that were being used by them for "rum-running" purposes, but were the employers or abettors of one of the gang of smugglers that infested the D. river frontier.—WALKERVILLE BREWING CO. *v.* MAYRAND, [1928] 4 D. L. R. 500 ; 63 O. L. R. 5 ; *revsd.*, [1929] 2 D. L. R. 945 ; 63 O. L. R. 573.—**CAN.**

2253 i. —— —— *Sale of intoxicating liquor for use in place where Temperance Act in force.*]—Price not recoverable. — FURLONG *v.* RUSSELL (1885), 24 N. B. R. 478.—**CAN.**

2253 ii. —— —— ——.]—SMITH *v.* BENTON (1890), 20 O. R. 344.—**CAN.**

PART VI. SECT. 7, SUB-SECT. 3.

sg. *Letting premises for storage of goods to be smuggled to foreign country.*]—WESTGATE *v.* HARRIS, [1929] 4 D. L. R. 643 ; 64 O. L. R. 358.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 1.—B

2288 ii. ——.]—TURNER & JONES *v.* CURRAN (1891), 2 B. C. R. 61.—**CAN.**

2288 v. —— *Sale of land for immoral purpose.*]—Knowledge of the vendor under a contract for the sale of property, real or personal, that the purchaser intends to apply it to an illegal or immoral purpose will not avoid the contract unless, from the circumstances, such as the particular nature of the property & the character, condition in life & occupation of the purchaser, a just inference can be drawn from the facts in evidence that the agreement was made with the intent & for the purpose, operating in the mind of the vendor, that the property should be applied to the illegal purpose alleged. In other words, if there is a consent to or a participation by the vendor in the subsequent illegal user or if the contract of sale was for the purpose of enabling the purchaser to carry out the illegal, or immoral, purpose the ct. will not aid either party.—ROSE *v.* DONALDSON, ROSE *v.* BRISCOE, ROSE *v.* YATES, [1931] 3 W. W. R. 480.—**CAN.**

sm. *Imposing terms on defendant—At what stage of proceedings.*]—While equitable terms may be imposed on deft. seeking relief from a contract on the ground of illegality, they can be given only when asked for on the dismissal of the action to enforce the contract ; they cannot be enforced as a cause of action, or allowed when first asked for on appeal from such dismissal.—DEMCHENKO *v.* FRICKE, [1926] 2 D. L. R. 1096 ; [1926] 2 W. W. R. 221 ; 20 Sask. L. R. 492.—**CAN.**

open on the weekly half-holiday, but did not fulfil the above conditions. The assistant, who had no holiday for a number of years, brought an action against his employers, claiming wages in lieu of statutory holidays: —*Held:* as the terms of the assistant's employment were in contravention of the Act, both the assistant & his employers had been parties to an illegal contract & neither could have any claim against the other in respect of it. The assistant was, therefore, not entitled to recover.—WYLIE *v.* LAWRENCE WRIGHT MUSIC CO. (1932), 96 J. P. 156; 48 T. L. R. 295; 76 Sol. Jo. 249; 30 L. G. R. 197.

2310a. -.]—Where goods become forfeited in consequence of any fraud or neglect in respect of the revenue laws, the loss, as between the buyer & seller, must fall upon him whose fraud or neglect occasioned the forfeiture; but if the seller be a party to the intended fraud or neglect, or connive at it, he shall not recover, although the act of fraud or the neglect was committed by, or was chargeable upon, the buyers.—STUDDY *v.* SANDERS (1826), 5 B. & C. 628; 8 Dow. & Ry. K. B. 403; 4 L. J. O. S. K. B. 290; 108 E. R. 234.

Annotation:—**Refd.** Johnson *v.* Kirkaldy (1840), 4 Jur. 988.

2317. *Add. Annotations:*—*As to* (2) **Refd.** Cantiare San Rocco S. A. *v.* Clyde Shipbuilding & Engineering Co., [1924] A. C. 226; Bowling *v.* Cox, [1926] A. C. 751.

2325. *Add. Annotation:*—**Refd.** Parkinson *v.* College of Ambulance & Harrison (1924), 40 T. L. R. 886.

2329a. —— **Contract contrary to public policy.**]—PARKINSON *v.* COLLEGE OF AMBULANCE, LTD. & HARRISON, No. 2011a, *ante*.

2333. *Add. Annotations:*—**Apld.** *Re* National Benefit Assurance Co., [1931] 1 Ch. 46. **Refd.** Anderson *v.* Daniel (1923), 93 L. J. K. B. 97.

2337. For the cross-reference following this case, "**Whether parties in pari delicto.**] — *See* Nos. 2356, 2363, *post*," read "Whether parties *in pari delicto*, *see* Nos. 2353–2363, *post*."

2339. *Add. Annotations:*—**Distd.** Hill *v.* Fox (1858), 31 L. T. O. S. 118. **Refd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

2350a. **Subscription to charity—On promise of knighthood—Promise by secretary.**]—PARKINSON *v.* COLLEGE OF AMBULANCE, LTD. & HARRISON, No. 2011a, *ante*.

2351. *Add. Annotation:*—**Refd.** Parkinson *v.* College of Ambulance & Harrison, [1925] 2 K. B. 1.

2356. *Add. Annotation:*—**Apld.** *Re* National Benefit Assurance Co., [1931] 1 Ch. 46.

2358. *Add. Annotation:*—**Consd.** Parkinson *v.* College of Ambulance & Harrison (1924), 40 T. L. R. 886.

2359a. **Marine insurance—Breach of Marine Insurance Act, 1906 (c. 41), s. 84, & Stamp Act, 1891 (c. 39).**]—In 1920 the E. co. & the Y. co. entered into a participation agreement effective as from Jan. 1, 1920, which was a reinsurance treaty binding the E. co. to cede & the Y. co. to accept a participation of all risks therein mentioned of the share retained by the E. co. accepted after Jan. 1, 1920. In Sept. 1921, the E. co. arranged that the N. co. should take over the Y. co.'s position as from Jan. 1, 1920; & in Jan. 1922, an agreement, hereinafter called "the Outwards Treaty," on the same lines & with the same provisions as those of the agreement with the Y. co. was entered into between the E. co. & the N. co. In 1921 the N. co. & the E. co. entered into another participation agreement, hereinafter called "the Inwards Treaty," the N. co. ceding & the E. co. accepting a share of all marine risks. The Inwards Treaty had no provisions for the issuing of policies, or for particulars sufficient to make possible the issuing of policies, to satisfy the provisions of Stamp Act, 1891 (c. 39), & Marine Insurance Act, 1906 (c. 41). No stamped policies were in fact issued under any of the three agreements, & no premiums were ever actually paid to the N. co., which was credited with the proper proportion of the net premiums received by the E. co. On the compulsory winding-up of the N. co. the E. co. claimed to be entitled to prove for sums paid by it for premiums under the Outwards Treaty, after allowing for sums paid or credited to it by the N. co. under the Inwards Treaty. The Official Receiver rejected the claim on the ground that both treaties were invalid & inadmissible in evidence, because they were contracts of marine insurance which did not comply with the requirements of Stamp Act, 1891 (c. 39), & Marine Insurance Act, 1906 (c. 41), & were unlawful; & upon a summons asking for an order that the proof should be allowed:—*Held:* money paid by the E. co. upon the N. co.'s taking over the reinsurance treaty with the Y. co. could not be recovered on the ground of total failure of consideration, as both parties knew that a continuous breach of the law was contemplated, & as the treaty, assuming it to be illegal, had been partially carried into effect.—*Re* NATIONAL BENEFIT ASSURANCE CO., LTD., [1931]

PART VI. SECT. 9, SUB-SECT. 1.—C. (b).

2318 iii. ——.]—*Held:* while money paid for an illegal purpose might have been recovered before the effecting of the illegal purpose, it cannot be recovered after.—LAWSON *v.* FARLEY, [1924] 1 D. L. R. 279; 1 W. W. R. 243; 18 Sask. L. R. 48.—**CAN.**

2318 iv. ——.]—*Held:* where an executory contract is made for illegal sale of goods & the contract has not been carried out but remains totally unperformed, it is open to a party to repudiate the illegal contract & on avoidance to recover any moneys deposited.—HIRJEE DEVRAJ & CO. *v.* MAUNG LYUN SHEIN (1924), I. L. R. 2 Ran. 414.—**IND.**

sp. *Pleading.*] — Where a suit, brought on a contract for illegal sale of goods, was framed for enforcement of the contract & not for damages for breach:—*Held:* a decree for repayment of the money paid could not be passed, unless the plaint was amended. —HIRJEE DEVRAJ & CO. *v.* MAUNG LYUN SHEIN (1924), I. L. R. 2 Ran. 414.—**IND.**

PART VI. SECT. 9, SUB-SECT. 1.—C. (c) i.

2326 iv. ——.]—Pltf., an insurance agent, induced deft. to apply for insurance on the promise that he would share his commission with deft.:—*Held:* the promise to share commission was prohibited by Insurance Act, 1917 (Can.), & the transaction was illegal.—BERNSTEIN *v.* ERICKSON, [1921] 1 W. W. R. 834; 56 D. L. R. 616.—**CAN.**

2326 v. ——.]—*Held:* while money paid for an illegal purpose might have been recoerved before the effecting of the illegal purpose, it cannot be recovered after.—LAWSON *v.* FARLEY, [1924] 1 D. L. R. 279; 1 W. W. R. 243; 18 Sask. L. R. 48.—**CAN.**

2326 vi. *Contract of carriage at prohibited rate.*]—CANADIAN NATIONAL RAILWAY *v.* KOVINSKY & SONS, [1932] 3 D. L. R. 451.—**CAN.**

1 Ch. 46; 100 L. J. Ch. 38; 144 L. T. 171; [1929–30] B. & C. R. 256.

2360. The cross-reference following this case should follow No. 2359.

2372. *Add. Annotation:*—**Refd.** Parkinson *v.* College of Ambulance & Harrison (1924), 40 T. L. R. 886.

2375. *Add. Annotations:*—*As to* (1) **Refd.** Thompson *v.* British Medical Assocn. (New South Wales Branch), [1924] A. C. 764. *As to* (2) **Consd.** *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102. *Generally*, **Refd.** Palmolive Co. (of England) *v.* Freedman (1927), 44 T. L. R. 86.

2391. *Add. Annotation:*—**Refd.** Putsman *v.* Taylor, [1927] 1 K. B. 637.

2391a. ——.]—A promise may be enforceable, notwithstanding that the promisor has in the same document made promises, supported by the same consideration, which are void, provided that the severed parts are independent & that not the kind but only the extent of the promisor's obligations will be changed by the partial enforcement.—PUTSMAN *v.* TAYLOR, [1927] 1 K. B. 637; 96 L. J. K. B. 315; 136 L. T. 285; 43 T. L. R. 153, D. C.; *affd.*, [1927] 1 K. B. 741, C. A.

2401. *Add. Annotation:*—**Refd.** Papadopoulos *v.* Papadopoulos, [1930] P. 55.

2402. *Add. Annotation:*—**Refd.** Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44.

2407. *Add. Annotation:*—**Refd.** *Re* A Debtor (No. 229 of 1927), [1927] 2 Ch. 367.

2412. *Add. Annotation:*—**Distd.** Milsted *v.* Hamp & Ross & Glendinning (1927), 71 Sol. Jo. 845.

2427. *Add. Annotation:*—**Refd.** Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44.

2435a. ——.]—In order to deprive pltf. of his right to relief in equity on the ground of illegality in the transaction in respect of which such relief is sought, there must be such a degree of illegality as is free from all doubt.—BARTON *v.* MUIR (1874), L. R. 6 P. C. 134; 44 L. J. P. C. 19; 31 L. T. 593; 23 W. R. 427, P. C.

Annotations:—**Distd.** Tooth *v.* Power, [1891] A. C. 284. **Refd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 243.

2443. *Add. Annotation:*—**Distd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306.

2454. *Add. Annotation:*—**Refd.** Greenberg *v.* Cooperstein, [1926] Ch. 657.

2456. *Add. Annotation:*—**Refd.** Cantiere Navale Triestina *v.* Russian Soviet Naphtha Export Agency, [1925] 2 K. B. 172.

2496. *Add. Annotations:*—**Refd.** Crown Milling Co. *v.* R., [1927] A. C. 394; English Hop Growers *v.* Dering, [1928] 2 K. B. 174; Palmolive Co. (of England) *v.* Freedman, [1928] Ch. 264.

Part VII.—Performance and Excuses for Non-Performance.

2505a. **Unforeseen contingencies excepted—Goods obtainable from source not contemplated by sellers.**]—A contract provided for the delivery of goods "unforeseen contingencies excepted." No particular source from which they were to come was stipulated. Unforeseen political complications prevented the supply of the goods from the source contemplated by the sellers, but it was not shown that the goods could not have been procured from other sources:—*Held:* the above clause did not protect the sellers from liability to deliver the goods.—WILLS (GEORGE) & SONS, LTD. *v.* CUNNINGHAM (R. S.) SON & Co., [1924] 2 K. B. 220; 93 L. J. K. B. 1008; 131 L. T. 400; 40 T. L. R. 108.

2544. *Add. Annotations:*—**Refd.** Cantiere Navale Triestina *v.* Russian Soviet Naphtha Export Agency, [1925] 2 K. B. 172; Hogarth *v.* Cory (1926), 95 L. J. P. C. 204; United States Shipping Board *v.* Strick, [1926] A. C. 545; Vergottis *v.* Cory (1926), 95 L. J. K. B. 1002.

2545. *Add. Annotations:*—**Refd.** Rederi Akt. Acolus *v.* Hillas (1925), 42 T. L. R. 69; United States Shipping Board *v.* Strick, [1926] A. C. 545.

2547. *Add. Annotations:*—**Consd.** Verelst's Administratrix *v.* Motor Union Insce., [1925]

PART VI. SECT 9, SUB-SECT. 1.—D.

2373 i. *Damages for breach.*]—Pltf. agreed to sell certain leasehold premises to deft., a person of enemy origin within War Legislation & Statute Law Amendment Act, 1918, s. 6, of which fact pltf. was ignorant:—*Held:* pltf. might either (1) sue on the contract & claim damages for deft.'s breach of contract in which case deft. would be estopped from alleging that the contract was illegal & void, or (2) sue for restitution of compensation in respect of acts of part performance by him while ignorant of the illegal nature of the contract, & before its repudiation by deft.—BRANIGAN *v.* SABA, [1923] N. Z. L. R. 97.—**N.Z.**

PART VI. SECT. 9, SUB-SECT. 3.

2384 ii. ——.]—Pltf. in ignorance that deft. was of enemy origin sold to him certain premises, the price to be paid by instalments. Deft. was given possession, but before all instalments were paid he repudiated the agreement. An action by pltf. for unpaid purchase-money having failed on the ground that the contract was illegal:—*Held:* pltf. might either (1) sue deft. on the contract & claim damages for the breach, in which case deft. would be estopped from alleging that the contract was illegal, or (2) sue for restitution of compensation in respect of acts of part performance by him while ignorant of the illegality, & before repudiation of the contract.—BRANIGAN *v.* SABA, [1923] N. Z. L. R. 97.—**N.Z.**

PART VI. SECT. 9, SUB-SECT. 4.—A.

2388 vii. ——.]—FLANNAGHAN *v.* HEALY (1900), 4 Terr. L. R. 391.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 6.

sq. *Contract partly illegal—Performance of illegal part waived—Illegality no defence to action on security.*]—ENGLEBLOM *v.* BLAKEMAN, [1930] 1 W. W. R. 565; 2 D. L. R. 824; 42 B. C. R. 259; *affd.*, [1929] 4 D. L. R. 377; 41 B. C. R. 456.—**CAN.**

PART VII. SECT. 1.

e. *Revsd.*, 51 D. L. R. 509.

i i. *—— Breach of collateral contract—Strict proof necessary.*]—BOURDON *v.* SELWYN, [1926] 3 D. L. R. 561.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 1.

2506 iv. ——.]—Where W. agreed to pay H. £10 as damages for assault & give an admission in writing that the assault was unjustified:—*Held:* a tender of £10 under protest coupled with a statement that the assault was justified was not a compliance with the agreement.—WARREN *v.* HESLOP (1925), 46 N. L. R. 89.—**S. AF.**

PART VII. SECT. 3, SUB-SECT. 1.—A.

2532 vi. ——.]—Where on the sale of a piano to be manufactured for the buyer there was a failure to deliver in four months, no time being specified for delivery:—*Held:* this was not a lapse of a reasonable time.—FOSTER *v.* HEINTZMAN & Co., [1923] 4 D. L. R. 166.—**CAN.**

2532 vii. ——.]—WEBBER *v.* COPEMAN (Sask.) (1912), 21 W. L. R. 961.—**CAN.**

2532 viii. ——.]—HOPE (HENRY) & SONS, LTD. *v.* CANADA FOUNDRY CO. (1917), 40 O. L. R. 338; 39 D. L. R. 308.—**CAN.**

2 K. B. 137. **Refd.** Stag Line, Ltd. *v.* Foscolo Mango & Co (1931), 48 T. L. R. 127.

2558. *Add. Annotations:*—**Consd.** Verelst's Administratrix *v.* Motor Union Insce., [1925] 2 K. B. 137. **Refd.** Hall *v.* Pim (1927), 137 L. T. 585.

2560. *Add. Annotations:*—**Consd.** Bernard *v.* Williams (1928), 139 L. T. 22. **Refd.** Lock *v.* Bell, [1931] 1 Ch. 35.

2564. *Add. Annotation:*—**Consd.** Bernard *v.* Williams (1928), 139 L. T. 22.

2567. *Add. Annotation:*—*As to* (2) **Refd.** Bernard *v.* Williams (1928), 139 L. T. 22.

2579. *Add. Annotation:*—**Refd.** Bernard *v.* Williams (1928), 139 L. T. 22.

2585. *Add. Annotation:*—**Refd.** Bernard *v.* Williams (1928), 139 L. T. 22.

2590. *Add. Annotation:*—**Refd.** Akt. Reidar *v.* Arcos, [1927] 1 K. B. 352.

2597. *Add. Annotation:*—**Refd.** Lock *v.* Bell, [1931] 1 Ch. 35.

2607. *Add. Annotation:* **Consd.** *Re* Wait, [1927] 1 Ch. 606.

2621. *Add. Annotation:* **Consd.** Bernard *v.* Williams (1928), 139 L. T. 22.

2621a. —— **From indefinite to definite date.**]—*Held:* in the circumstances, time was of the essence of the contract.—BERNARD *v.* WILLIAMS (1928), 139 L. T. 22; 44 T. L. R. 437, D. C.

2624. *Add. Annotation:*—**Consd.** Martin *v.* Stout, [1925] A. C. 359.

2652. *Add. Citation:*—*sub nom.* MUFFATT *v.* PARSONS, 1 Marsh, 55.

2693a. ——.]—KRAUS *v.* ARNOLD (1822), 7 Moore, C. P. 59.

2734. *Add. Annotation:*—**Refd.** Broken Hill Proprietary Co. *v.* Latham (1932), 48 T. L. R. 630.

2737. *Add. Annotation:*—**Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

2738. *Add. Annotation:*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

2825. *Add. Annotation:*—**Refd.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48.

2828. *Add. Annotation:*—**Refd.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48.

2829a. Subsequent agreement unenforceable at law.]—ROSE & FRANK CO. *v.* CROMPTON (J. R.) & BROTHERS, LTD., No. 4, *ante*.

2830. *Add. Annotations:*—**Apprvd.** Martin *v.* Stout, [1925] A. C. 359. **Consd.** Guy-Pell *v.* Foster, [1930] 2 Ch. 169. **Refd.** Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

2831. *Add. Annotations:*—**Consd.** Guy-Pell *v.* Foster, [1930] 2 Ch. 169, C. A. **Refd.** The British Trade, [1924] P. 104; Berners *v.* Fleming, [1925] Ch. 264; Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

2832a. —— ——.]—Under agreements made in 1923 & 1925, pltfs. were granted the right to occupy sufficient land of defts. for the purpose of constructing & working a railway until the termination of the exhibition to be held on the grounds of defts. at W. during 1924 & 1925, whereupon pltfs. were to be at liberty to sell all their property & other assets at W. to a purchaser to whom defts. agreed to grant an option to occupy the land for the further period of one year thereafter & a further option to continue such occupation from year to year for a total period not exceeding six years from the closing of the exhibition. Pltfs. constructed a railway on the ground of defts., & worked it until the closing of the exhibition on Oct. 31, 1925. On Dec. 30 defts. purported to terminate their agreements with pltfs. on the ground that same had lapsed owing to pltfs.' delay in exercising the option of calling for a renewal of the licence to occupy defts.' land in

PART VII. SECT. 3, SUB-SECT. 2.—A.

n i. ——.]—Where time is of the essence of the contract, it is the business of the party, who has promised to pay, to see that the money reaches the other party by or before the due date.—RAGHBIR DAS *v.* SUNDAR LAL (1930), I. L. R. 11 Lah. 699.—**IND.**

PART VII. SECT. 3, SUB-SECT. 2.—C. (b).

st. *Extension of contract.*]—JONES *v.* CUSHING (1909), 7 E. L. R. 190.—**CAN.**

sw. *Sale of shares.*]—ROUNTREE *v.* WOOD (1920), 56 D. L. R. 395.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 2.—D. (b).

2607 ii. ——.]—Pltf. contracted to sell to deft. certain Oregon timbers to be procured from America:—*Held:* the contract being a mercantile one, & therefore *primâ facie* one in which time was of the essence of the contract, & there being nothing in the contract or the surrounding circumstances to show that the parties had a different intention, time was of the essence of the contract.—JACKSON & Co., LTD. *v.* CO-OPERATIVE FREEZING CO. OF SOUTH CANTERBURY, LTD., [1922] N. Z. L. R. 2; Gaz. L. R. 176.—**N.Z.**

PART VII. SECT. 3, SUB-SECT. 2.—G.

2620 iii. ——.]—Where the evidence showed no binding agreement to enlarge the time for delivery, but defts. merely permitted pltfs. for their own convenience to postpone the time for delivery:—*Held:* defts. were entitled at any time before delivery to require pltfs. to perform the contract according to its original terms.—JACKSON & Co., LTD. *v.* CO-OPERATIVE FREEZING CO. OF SOUTH CANTERBURY, LTD., [1922] N. Z. L. R. 2; Gaz. L. R. 176.—**N.Z.**

PART VII. SECT. 4, SUB-SECT. 2.—A.

2628 i. *Duty of promisee to attend.*]—GREAT WEST SADDLERY CO., LTD. *v.* PRIME, [1929] 2 D. L. R. 274; 23 S. L. R. 276; [1928] 3 W. W. R. 705.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 2.

2640 i. *Stranger.*]—Where a creditor refuses to entertain the idea of payment by his debtor or by some one acting on his behalf, & puts it out of the power of the tenderor to offer payment in a manner acceptable to the creditor, the offer of performance by a person then able to carry out the promise in its entirety is a valid tender, in spite of the form of it being itself not legal tender.—VENKATRAMA AYYAR *v.* GOPALAKRISHNA PILLAI (1928), I. L. R. 52 Mad. 322.—**IND.**

PART VII. SECT. 5, SUB-SECT. 6.—C.

2704 ii. —— —— ——.]—Deft., an owner of land, informed D. & M., prospective purchasers, that he would sell it at a certain price to that one of the two who would first deposit the purchase-money with deft.'s solr.; & he so instructed his solr. D., pltf., obtained the amount in currency & called on the solr., telling him that he had come to pay the money. The solr. informed him that he was too late, since the night before he had agreed with M.'s solr., who had telephoned him that M. wished to pay the money, that he would treat that as an offer if completed in the morning. A few minutes later a letter arrived from M.'s solr. containing a cheque (there was no evidence adduced that it was certified), & the solr. informed D., pltf., that M. had got the land:—*Held:* what pltf. did constituted a legal tender & therefore brought him within the terms of deft.'s offer & entitled him to the land.—DUNN *v.* HANSON (Alta.), [1928] 4 D. L. R. 606; [1928] 3 W. W. R. 178.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 7.

2778 i. *General rule.*]—A valid tender on a contract of debt is as much a performance & discharge of debtor's duty as an actual payment.—DASHARATHI GHOSE *v.* KHONDKAR ABDUL HANNAN (1927), I. L. R. 55 Calc. 624.—**IND.**

PART VII. SECT. 6, SUB-SECT. 2.

2809 v. ——.]—PENMAN MANUFACTURING CO. *v.* BROADHEAD (1892), 21 S. C. R. 713.—**CAN.**

q i. —— ——.]—*Held:* the agreements relied on to establish a new contract were only in the nature of security.—MCCUTCHEON BRICK CO. *v.* GARDINER (Man.) (1912), 21 W. L. R. 72; 4 D. L. R. 487.—**CAN.**

favour of a purchaser of the railway undertaking:—*Held:* by purporting to terminate the agreements defts. had committed an anticipatory breach thereof, & pltfs. were entitled to damages. — NEVER-STOP RY. (WEMBLEY) *v.* BRITISH EMPIRE EXHIBITION (1924) INCORPORATED, [1926] Ch. 877; 95 L. J. Ch. 411; 135 L. T. 405; 70 Sol. Jo. 735.

2835. *Add. Annotations:*—**Consd.** Martin *v.* Stout, [1925] A. C. 359; Guy-Pell *v.* Foster, [1930] 2 Ch. 169. **Refd.** Tyldesley U. D. C. *v.* Leigh R. D. C. (1925), 23 L. G. R. 243; Robert B. Munro & Co. *v.* Meyer, [1930] 2 K. B. 312.

2835a. ——.]—A party to a contract who desires to avail himself of an act of repudiation by the other party must evidence his election to do so with every reasonable dispatch.—BERNERS *v.* FLEMING, [1925] 1 Ch. 264; 94 L. J. Ch. 273; 132 L. T. 822, C. A.

Annotation:—**Refd.** Never-Stop Ry. (Wembley) *v.* British Empire Exhibition (1924) Incorporated, [1926] Ch. 877.

2841. *Add. Annotations:* — **Consd.** Guy-Pell *v.* Foster, [1930] 2 Ch. 169. **Refd.** Berners *v.* Fleming, [1925] Ch. 264; Martin *v.* Stout, [1925] A. C. 359; Never-Stop Ry. (Wembley) *v.* British Empire Exhibition (1924) Incorporated, [1926] Ch. 877.

2846. *Add. Annotation:*—**Refd.** Akt. Reidar *v.* Arcos, [1927] 1 K. B. 352.

2847. *Add. Annotation:*—**Refd.** Akt. Reidar *v.* Arcos (1926), 42 T. L. R. 737.

2861a. —— **For fixed period—Afterwards determinable on notice—Time for giving notice.**]—By an agreement dated July 12, 1927, pltfs. & defts. agreed that pltfs. were to deal with defts.' entire output of Jarrow pig iron available for delivery in Scotland, pltfs. undertaking to push the sale of the same in Scotland in preference to any other brand. They were to base their prices on the current prices for Middlesbrough pig iron, free on truck makers' works or f.o.b. makers' wharf, excluding Tees dues, & to pay cash on Mondays for the previous week's shipments. The agreement also contained the following clause: "It is understood that the above agreement is to hold good for the period of twelve months from Apr. 22, 1927, with six months' notice thereafter on either side to terminate, & that should any misunderstanding arise in connection with this agreement, an arbitrator should be appointed by the president for the time being of the London Chamber of Commerce." Disputes having

PART VII. SECT. 6, SUB-SECT. 3.—A. (a) i.

2833 viii. ——.]—Although repudiation by a party to a contract of sale entitles *de facto* the other party to recover damages thus incurred, the vendor has the right to insist on preserving the integrity of the contract & to tender the goods for delivery according to the terms of the sale, in which case his claim for damages will be more easily & readily assessed upon refusal to accept by the buyer.—BRILLIANT SILK MANUFACTURING CO. *v.* KAUFINAN, [1925] 2 D. L. R. 91; [1925] S. C. R. 249.—**CAN.**

2833 ix. ——.]—Where a co. renounced a contract before breach & the other party made a new arrangement with the co. with the object of minimising his damages:—*Held:* he had adopted the renunciation & was entitled to damages.—GARRISON *v.* THOMSEN & CLARKE TIMBER CO., [1926] 2 D. L. R. 803; [1926] 2 W. W. R. 81; 37 B. C. R. 224.—**CAN.**

2833 x. ——.]—Y. P. BARLEY PRODUCERS, LTD. *v.* E. C. ROBERTSON PTY., LTD., [1927] V. L. R. 194; 48 A. L. T. 151; [1927] Argus L. R. 116. —**AUS.**

2833 xi. ——.]—Under an agreement between pltf. & defts. the former agreed to cut a certain number of railway ties & saw lumber, & the work was to be begun on Dec. 15 & completed by the following Mar. 15. After pltf. had carried on the work for some weeks defts., on Jan. 31, instructed pltf. to stop work & put their own men on the land to take charge of the work:—*Held:* the fact that at the end of Jan. pltf. did not appear to have completed a proper proportion of the contract did not warrant defts. in concluding that he could not fulfil it by Mar. 15. Defts.' conduct was an inexcusable breach of the contract which justified pltf. in treating it as at an end, & entitled him to recover as damages the amount of the profits which he would have made had he been allowed to complete the work, as well as the contract price for the ties completed.—BOON *v.* BELL & BELL, [1932] 2 W. W. R. 304.—**CAN.**

2838 i a. ——.]—Where the conduct of one of the parties to a contract has been such as would lead a reasonable person to the conclusion that he does not intend to fulfil his part of the obligation, the other party to the contract, whatever in fact may have been the actual intention of the former, may treat such conduct as an intimation that the contract has been repudiated. — FARSHIND, ETC. *v.* BECHELY-CRUNDALL, [1922] S. C. (H. L.) 173.—**SCOT.**

2838 v. ——.]—On the facts:—*Held:* deft. did not refuse to carry out the real contract & what he did in the circumstances did not amount to a repudiation of the real contract so as to entitle pltf. to terminate it.—FREEDMAN *v.* FRENCH (1921), 50 O. L. R. 432.—**CAN.**

2838 vi. ——.]—If a party declares his intention not to be further bound by a contract, this is an anticipatory breach upon acceptance by the other party. It does not matter that the party so declaring is misinstructed at the time as to the facts upon which he bases such declaration.—CLAUSEN *v.* CANADA TIMBER & LANDS, LTD., [1923] 4 D. L. R. 751.—**CAN.**

2838 vii. ——.]—Where a buyer knowing that the seller could not deliver, failed to pay the deposit agreed upon:—*Held:* not a breach of contract nor repudiation.—TOWNSEND *v.* MOON MOTOR CO., [1924] 1 D. L. R. 511.—**CAN.**

2838 viii. —— *Partial non-performance—Agreement substantially performed.*]—By a tripartite agreement between the two applts., A. & B., & resp., it was agreed that A. should grant a sub-lease of one theatre to resp., that B. should grant a lease of another theatre to resp., & that resp. should grant a sub-lease of a third theatre, including all offices, to B. The parties entered into possession, except that B. was excluded from a room which applts. alleged to be an office which B. was entitled to under the agreement:—*Held:* the possession of the office was not essential to the use of the premises as a theatre, & a refusal to give it did not entitle applts. to rescind.—FULLER'S THEATRES, LTD. *v.* MUSGROVE (1923), 31 C. L. R. 524.—**AUS.**

2838 ix. ——.]—ALBERT MINING CO. *v.* SPURR (1883), 22 N. B. R. 346.—**CAN.**

2838 x. ——.]—ROBINSON *v.* PETERS (Sask.), [1927] 3 D. L. R. 131.—**CAN.**

2838 xi. ——.]—STEIN *v.* KILEEL (1929), 1 M. P. R. 263.—**CAN.**

2838 xx. *Contract with Commonwealth—Reasonable belief that contract not being carried out—Powers of Minister.*]—An agreement between the Commonwealth & applt. whereby applt. agreed to provide & maintain an efficient coastal shipping service in the Northern Territory contained a provision that, if at any time the Minister for Home & Territories should "have reason to believe" that the agreement was not being carried out by applt. in accordance with the agreement, the Minister might determine the contract:—*Held:* in exercising the power the Minister's function was administrative & not quasi-judicial, & therefore he might determine the contract without giving applt. an opportunity of being heard.—BOUCAUT BAY CO., LTD. *v.* THE COMMONWEALTH (1927), 40 C. L. R. 98. —**AUS.**

PART VII. SECT. 6, SUB-SECT. 3.—A. (a) ii.

2838 xx. *Contract by correspondence — Refusal to sign formal contract.*]—Certain correspondence & memoranda were relied on by pltfs. to prove an agreement by defts. Subsequently a formal contract was sent to defts., which they refused to sign, objecting to its terms:—*Held:* assuming that the previous documents were sufficient to establish a contract, the terms of the proposed formal contract modified materially to defts.' prejudice the previous undertaking as to time of shipment, & defts. had rejected it & clearly intimated their intention to consider the contractual relations at an end, which they were entitled to do. — FUJITA & CO., LTD. *v.* NORTHERN FRUIT CO., LTD., [1923] 1 D. L. R. 402; 16 Sask. L. R. 414; [1923] 1 W. W. R. 59.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 3.—A. (a) iii.

2851 ii. —— ——.]—Pltf. contracted with deft. for advertising & agreed to pay a weekly rent in advance, if the rent fell into arrears, the agreement to be cancelled. In an action for breach of agreement, deft. pleaded that the contract had been avoided by pltf.'s default in payment of rent:—*Held:* pltf.'s default did not *ipso facto* avoid the contract, & in the absence of an allegation that pltf. had elected to treat the contract as void, the plea was bad.—MANNINGTON *v.* CLIFFORD (1921), 17 Tas. L. R. 13.—**AUS.**

arisen between the parties about the prices which pltfs. ought to charge for the pig iron which they sold, defts. notified pltfs. that they terminated the agreement as from Apr. 22, 1928. Pltfs. acknowledged the notice & accepted it as a notice terminating the agreement at a date six months after Apr. 22, 1928, but defts. insisted that the agreement was terminated on Apr. 22, 1928. Pltfs. brought an action for breaches of contract, (*a*) in terminating the contract before the expiry of the agreed term, & (*b*) because, as they alleged, defts. refused to supply them at "the current prices for the Middlesbrough pig iron":—*Held:* defts. were not entitled to terminate it on Apr. 22, 1928. It could only be terminated by a six months' notice, which could not be given before twelve months had elapsed, but could be given at any time after the expiration of the twelve months.—JACKS (WILLIAM) & CO. *v.* PALMER'S SHIPBUILDING & IRON CO. (1928), 98 L. J. K. B. 366; 140 L. T. 473; 34 Com. Cas. 107, C. A.

2877a. ——.]—Deft. was the chairman of the S. Co. which at the end of 1921 was seeking to issue £15,000. First Lien Debentures to rank *pari passu* with a previous issue of first lien debentures of the same amount; & deft. having interested pltf. in the matter, sent him a letter of indemnity dated Feb. 17, 1922, in these terms: "Regarding the issue of £15,000 First Lein Debentures of the S. Co. at the price of £80 per £100 . . . I understand you are subscribing for £3,000 of the same at a cost to you of £2,400. In consideration of your giving me one-fourth of any profit you may receive on such investment, I hereby indemnify you against any loss thereon. The expression 'any profit' only refers to the redemption price of £100 per £80 which, when received, will show a profit of £20 per bond & the bonus out of the proceeds of any royalties on oil sales from the co.'s properties during the currency of the debentures. . . . The interest you will be entitled to receive from the co. is excluded from the consideration of profits." The debentures were redeemable on July 1, 1925, but they were secured by two debenture trust deeds which gave power to extend the due date, & in Apr. 1925, steps were taken which resulted in its extension to July 1, 1930. In May & June, 1925, a correspondence took place between pltf. & deft. in which pltf. announced his intention of selling the debentures, & deft. protested against this, claiming that they must be kept till their due date. On July 16, 1925, pltf. put the debentures up for sale, & in the absence of other bidders sold them to his son for £25. He then commenced proceedings to recover the amount of his loss, but the House of Lords decided that nothing was payable under the indemnity until the due date arrived. On July 18, 1928, the co. went into liquidation & pltf. having repurchased the debentures from his son, brought these proceedings to recover his loss:—*Held:* in selling the debentures pltf. had committed a breach of an implied term of the contract & having failed to maintain the position essential to enable deft. to receive the consideration for the indemnity, he had committed a breach of a term going to the root of the contract. Deft. had elected by his pleadings in the previous action to treat the contract as at an end & pltf. could not therefore maintain the present action.—GUY-PELL *v.* FOSTER, [1930] 2 Ch. 169; 99 L. J. Ch. 520; 143 L. T. 247, C. A.

2884. *Add. Annotation:*—**Refd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 145.

2888. *Add. Annotations:*—**Apld.** *Re* Gramophone Records, Ltd. (1930), 69 L. Jo. 201. **Refd.** Livock *v.* Pearson (1928), 33 Com. Cas. 188; Fowler *v.* Commercial Timber Co., [1930] 2 K. B. 1.

2896. *Add. Annotation:*—**Consd.** Meyrick *v.* Dyson (1925), 41 T. L. R. 368.

2899a. Effect of part-performance — Major part of consideration received.]—Pltf., a mental specialist, & the proprietor of a nursing home, sued deft. for medical attendance & board & lodgings of deft.'s son, a patient certified to be insane; & deft. counterclaimed for negligence & unskilful treatment. The jury found for pltf. on the claim; & on the counterclaim they awarded deft. 20*s.*, finding that pltf. was guilty of negligence or breach of duty in not entering in a book the occasions when the patient was confined to a bedroom with the door locked, such entries being required by rr. 13 & 16 of the rules made by the Comrs. in Lunacy under Lunacy Act, 1890 (c. 5), s. 338:—*Held:* as deft. had received a substantial part of the consideration, pltf.'s breach of duty did not go to the root of the contract so as to be a defence to pltf.'s entire claim, & judgment must be entered in accordance with the verdict.—MEYRICK *v.* DYSON (1925), 41 T. L. R. 368; *subsequent proceedings*, 41 T. L. R. 575, C. A.

PART VII. SECT. 6, SUB-SECT. 3.—A. (c).

sb. *Provision in contract for liquidated damages.*]—A clause in an agreement provided that a certain sum of money to be paid by resp. should be treated as the amount of compensation in case of his failure to carry out the contract:—*Held:* not to authorise resp. to determine the agreement by a notice to determine & an offer to pay that sum.—FULLER'S THEATRES, LTD. *v.* MUSGROVE (1923), 31 C. L. R. 524. —AUS.

PART VII. SECT. 6, SUB-SECT. 3.—C.

2900 v. ——.]—Where applt. had an election to rescind:—*Held:* he had by his conduct in going on with the agreement & taking advantage under it, irrevocably exercised his election to affirm the agreement.—FULLER'S THEATRES, LTD. *v.* MUSGROVE (1923), 31 C. L. R. 524.—AUS.

2900 vi. ——.]—Defts. ordered certain goods manufactured by pltfs. With some trifling exceptions all the goods were in accordance with the requirements of the contract & reasonably fit for the purpose for which they were supplied. Some of the goods were returned & an adjustment made concerning them:—*Held:* defts. had waived any right they might have had to repudiate the contract because of the delivery of defective goods.—HAMILTON GEAR & MACHINE CO. *v.* LEWIS BROTHERS, [1924] 3 D. L. R. 367.—CAN.

PART VII. SECT. 6, SUB-SECT. 3.—D.

sc. *Contract absolutely terminated.*]—Where there was a distinct & unequivocal refusal by pltfs. to perform their contract:—*Held:* so long as defts. were continuing to urge or demand compliance with the contract, it could not be said to have been terminated, but where finding that pltfs.' attitude was unalterable, defts. decided to acquiesce in it, & communicated such acquiescence to pltfs., the contract between the parties was put an end to.—JHANDOO MALJAGAN NATH *v.* PUHL CHAND-FATEN CHAND (1924), I. L. R. 5 Lah. 497.—IND.

sd. —— *Collateral contract not terminated.*]—MURRAY *v.* DELTA COPPER CO., LTD., [1925] 4 D. L. R. 1061.—CAN.

PART VII. SECT. 6, SUB-SECT. 4.

se. *Agreement under seal.*]—Long

2927. *Add. Annotation :*—**Consd.** Berry *v.* Berry, [1929] 2 K. B. 316.

2932. *Add. Annotation :*—**Consd.** Berry *v.* Berry, [1929] 2 K. B. 316.

2934. *Add. Annotation :*—**Refd.** Berry *v.* Berry, [1929] 2 K. B. 316.

2936a. —— ——.]—By a deed of separation dated Mar. 4, 1920, the husband covenanted to pay a monetary allowance to the wife. By an agreement in writing not under seal dated June 25, 1928, the parties agreed that the terms of the deed regarding the allowance should be varied in certain respects. In Mar. 1929, the wife instituted proceedings claiming arrears of allowance under the deed : —*Held :* applying the rules of equity which must prevail when there is any conflict or variance between them & the rules of the common law with reference to the same matter, the plea by the husband of the simple contract of June 25, 1928, was a good defence to the wife's action under the deed.—BERRY *v.* BERRY, [1929] 2 K. B. 316 ; 98 L. J. K. B. 748 ; 141 L. T. 461 ; 45 T. L. R. 524.

2938. For " **Validity of rescission of parol.**] " read " **Validity of rescission by parol.**]"

2938a. *S. P.* INGE *v.* LIPPINGWELL (1772), 2 Dick. 469 ; 21 E. R. 352.

2938b. *S. P. Ex p.* ILCHESTER (EARL) (1803), 7 Ves. 348 ; 32 E. R. 142.

Annotations :—**Refd.** Andrew *v.* Andrew (1855), 3 Sm. & G. 130 ; Dickenson *v.* Stidolph (1861), 11 C. B. N. S. 341 ; Louis *v.* Louis (1864), 3 New Rep. 369 ; *In the Estate of* Tollemache, [1917] P. 246 ; Ward *v.* Van Der Loeff, Burnyeat *v.* Van Der Loeff, [1924] A. C. 653.

2941. *Add. Annotations :*—**Refd.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48 ; Newsholme *v.* Road Transport & General Insce., [1929] 2 K. B. 350.

2945. *Add. Annotations :*—**Apld.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48 ; Rose & Frank Co. *v.* Crompton, [1925] A. C. 445. **Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179.

2958a. *Add. Citation :*—28 Com. Cas 265.

Add. Annotations :—*As to* (1) **Consd.** Rose & Frank Co. *v.* Crompton, [1925] A. C. 445. **Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179.

2963. *Add. Annotation :*—**Refd.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48.

2964. *Add. Annotation :*—**Refd.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48.

2965. *Add. Annotation :*—**Refd.** Rose & Frank Co. *v.* Crompton, [1923] 2 K. B. 261.

2967. *Add. Annotation :*—**Refd.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48.

2970. *Add. Citation :*—28 Com. Cas. 244.

2975. *Add. Annotations :*—**Refd.** Jacobs *v.* Batavia & General Plantations Trust, [1924] 1 Ch. 287 ; Berners *v.* Fleming, [1925] Ch. 264.

3033. *Add. Annotation :*—**Refd.** Koenigsblatt *v.* Sweet, [1923] 2 Ch. 314.

3038. *Add. Annotation :*—**Refd.** Hong Kong & Shanghai Bank *v.* Lo Lee Shi, [1928] A. C. 181.

delay in bringing action cannot defeat the enforcement of an agreement under seal where the twelve years specified by Stat. Limitations have not expired. —MCCORMACK *v.* ROBINSON, [1924] 3 D. L. R. 876 ; 2 W. W. R. 1110.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 5.

sl. *Rights of parties—Indemnification if party misled from obligations of contract.*]—Where rescission of a contract is ordered the ct. has full power to make a just allowance & to do what is practically just, although it may not be able to restore the parties precisely to the state they were in prior to the contract. The right of the party misled to be put into the position in which he was before the contract, includes the right to be indemnified from the consequences & obligations which are the result of the contract set aside.—LEWIS & LEWIS *v.* HOWSON, [1928] 4 D. L. R. 207 ; [1928] 2 W. W. R. 197 ; 22 Sask. L. R. 624.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 6.—B. (a).

2938 iii. *S. P.* STANLAKE *v.* RINGHAND (Sask.), [1922] 3 W. W. R. 758 ; 70 D. L. R. 546.—**CAN.**

2938 iv. ——.]—Where the real nature of the transaction is a compromise of a claim for breach of warranty, an agreement to rescind a sale of goods of the value of £10 or upwards by the mutual return of the consideration is enforceable although not in writing.—BOOTH, MCDONALD & CO., LTD. *v.* HALL, [1931] N. Z. L. R. 1086.—**N.Z.**

PART VII. SECT. 6, SUB-SECT. 6.—B. (b) i.

2947 iii. —— ——.]—KAULBACH *v.* EICHEL, [1930] 1 D. L. R. 983 ; 1 M. P. R. 383.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 6.—B. (b) ii.

c i. —.]—A contract required to be in writing cannot be varied by a new oral agreement, even if the variation relates to a part of the contract which, if it stood by itself, would not be required to be in writing.—NUGENT *v.* DAVIES, [1923] 1 D. L. R. 1040 ; 53 O. L. R. 458.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 6.—B. (b) iii.

2962 i. *Extension of time—For delivery of goods.*]—*Held :* since the contract of sale was one which was required by Stat. Frauds to be in writing, a verbal postponement of the date of delivery was not a variation of the contract.—DOWLING *v.* RAE, H. G. HAMILTON PTY., LTD. *v.* RAE, KELLY *v.* RAE (1927), 39 C. L. R. 363 ; [1927] V. L. R. 294 ; [1927] Argus L. R. 149.—**AUS.**

e i. *For cutting & removal of timber.*]—LAWRENCE *v.* ERRINGTON (1874), 21 Gr. 261.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 6.—B. (b) iv.

sa. *Contract relating to log scaling.*]—GODO *v.* GALBRAITH & SONS, [1930] 1 D. L. R. 484.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 6.—C. (a).

sb. *What amounts to.*]—Where a clause in an agreement provided that a certain sum of money should be treated as the amount of compensation if the contract was not carried out :—*Held :* the giving of such an offer & notice to determine the agreement did not constitute a rescission by mutual consent.—FULLER'S THEATRES, LTD. *v.* MUSGROVE (1923), 31 C. L. R. 524.—**AUS.**

PART VII. SECT. 6, SUB-SECT. 7.

sc. *On good shipped under contract.*]—BELGIAN INDUSTRIAL CO., LTD. *v.* CANADA CEMENT CO., LTD., [1926] 1 D. L. R. 496 ; [1926] S. C. R. 244.—**CAN.**

PART VII. SECT. 7.

sj. *Distinguished from rescission.*]—There is a difference between cancellation & rescission. The logical consequences of true rescission are the returning by each party of the benefits he has received, or *restitutio in integrum*. Cancellation means determination of the contract without restitution.—PRIMEAU & IMPERIAL LUMBER YARDS, LTD. *v.* MEAGHER, [1923] 4 D. L. R. 1096 ; 3 W. W. R. 1308.—**CAN.**

PART VII. SECT. 8, SUB-SECT. 3.

sk. *Substitution of party.*]—To effect a sale an agent decided to buy the article himself & then sell to the buyer. To do this he altered a contract by substituting his own name for that of his principal :—*Held :* the contract was avoided by this alteration.—ROYAL BANK OF CANADA *v.* FRANK, [1923] 4 D. L. R. 1213.—**CAN.**

sl. *Addition of provision for payment of compound interest.*]—*Held :* an alteration in a material respect.—PARBATI CHARANMUKHERJEE *v.* AMARENDRA NATH BHATTACHARJEE (1925), I. L. R. 53 Calc. 418.—**IND.**

sm. *Alteration in writing of printed form.*]—In the case of a conflict between different clauses of an agreement arising from the expunging or alteration by pen & ink of certain provisions of a printed form in general use, a greater effect is to be attributed to the writing than to the printed words.—KNIGHT SUGAR CO., LTD. *v.* WEBSTER, [1929] 4 D. L. R. 591 ; 2 W. W. R. 505 ; 24 Alta. L. R. 174 ; *revsd. on facts*, [1930] S. C. R. 518 ; 4 D. L. R. 343.—**CAN.**

3040. *Add. Annotation :*—**Refd.** *Re* Whitrod, Burrows *v.* Bax (1925), 70 Sol. Jo. 209.

3069. *Add. Annotation :*—**Consd.** Hong Kong & Shanghai Bank *v.* Lo Lee Shi, [1928] A. C. 181.

3077. *Add. Annotations :*—**Apld.** Kennedy *v.* Thomassen, [1929] 1 Ch. 426. **Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

3078. *Add. Annotations :*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258 ; Robert A. Munro & Co. *v.* Meyer, [1930] 2 K. B. 312.

3078a. ——.]—Barrow, Lane & Ballard, Ltd. *v.* Gilbert J. McCaul & Co. (1929), 73 Sol. Jo. 451.

3081a. -.]—Under the will of her then husband made in 1902, & a separation deed & settlement made in 1903, V. was entitled to two annuities of £200 each. Testator, who was also the settlor, died in 1913, & V. afterwards married a Dutch subject, & for the remainder of her life resided in Holland. In 1927 the trustees of the will offered to redeem both annuities, & after some negotiations were informed by V.'s solrs. that they would advise her to accept £6,000 for redemption, the annuities to be paid in full up to the date of redemption. The trustees sent the solrs. a draft release for their approval. V. having informed her solrs. that she would accept the offer of £6,000, they sent her the release engrossed for her execution, & she executed it on Jan. 12, 1928. On Jan. 17 she died, but no notification of her death was received by her solrs. in London until Jan. 31. In the meantime the trustees having been informed by V.'s solrs. on Jan. 24 that she had accepted the £6,000, on Jan. 30 paid the money to them, being in ignorance of V.'s death :— *Held :* (1) there was no concluded contract for the sale & purchase of the annuities, as the purchasers could not have intended their offer to be accepted by the vendor merely executing a document ; (2) even assuming there was a concluded contract, there was a total failure of consideration, owing to the death of the annuitant before completion, & the trustees were entitled to recover back the £6,000.—Kennedy *v.* Thomassen, [1929] 1 Ch. 426 ; 98 L. J. Ch. 98 ; 140 L. T. 215 ; 45 T. L. R. 122.

3082a. ——.]—Shales *v.* Seignoret, No. 3103a, *post.*

3088. *Add. Annotations :*—**Refd** G. W. Ry. *v.* S.S. Mostyn, [1928] A. C. 57 ; Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

3090. *Add. Annotation :*—**Refd.** Ilford U. D. C. *v.* Beal & Judd, [1925] 1 K. B. 671.

3090a. For the existing paragraph substitute the following paragraph :—

—— **Absolute contract.**]—By a contract dated Aug. 16, 1922, the sellers sold to the purchasers about one thousand boxes of Smyrna sultanas at 60*s.* a cwt. c.i.f. London, to be shipped from Smyrna by steamer to London during Sept. 1922. Smyrna at the date of the contract was in the occupation of the Greeks. On Sept. 9, 1922, it was taken by Turkish forces & shipment became impossible, with the result that the sellers did not ship any of the goods. The buyers claimed damages, & the dispute went before arbitrators, who stated a case for the opinion of the ct. under Arbn. Act, 1889 (c. 49), s. 7. The sellers said that they were excused from performance on the grounds (1) that the contract became illegal when the port of shipment came under Turkish control, as a state of war at that time existed between England & Turkey ; & (2) that a state of circumstances had arisen which made the contract impossible of performance & that differed totally from the conditions with reference to which the contract was made :— *Held :* mere impossibility of performance did not discharge a party where performance was not naturally impossible, unless such a state of affairs had arisen as displaced the fundamental basis of the contract ; in the absence of any strike, war or *force majeure* clause, the buyers were entitled to damages for failure of the sellers to deliver.—Sargant (W. J.) & Sons *v.* Paterson (Eric) & Co. (1923), 129 L. T. 471 ; 39 T. L. R. 378.

3093. *Add. Annotations :*—**Consd.** First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922 ; The Penelope, [1928] P. 180. **Refd.** Larrinaga *v.* Soc. Franco Americaine Des Phosphates De Medulla (1923), 92 L. J. K. B. 455 ; Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 569 ; *Re* Wait, [1926] Ch. 962 ; May *v.* May, [1929] 2 K. B. 386 ; Graves *v.* Cohen (1929), 46 T. L. R. 121 ; Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

3094. *Add. Annotation :*—**Refd.** N. V. Kwik Hoo Tong Handel Maatschappij *v.* Finlay, [1927] A. C. 604.

3094a. ——.]—Sargant (W. J.) & Sons *v.* Paterson (Eric) & Co., No. 3090a, *ante.*

3095. *Add. Annotations :*—**Refd.** Cantiere Navale Triestina *v.* Handelsvertretung der Russe Soz. Fod. Naphtha Export (1925), 94 L. J. K. B. 579 ; Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497.

3099. *Add. Annotation :*—*As to* (1) **Distd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

3099a. —— ——.]—The lessees of a hotel entered into two contracts with a firm of advertising agents, under the terms of which the latter were entitled to erect & exhibit, for a term of years, upon the roof of the hotel, electrically illuminated advertisements. An electric sign was duly erected. Before the expiration of the term the local authority, in exercise of its statutory powers, served the lessees with a notice to treat for the purchase of their estate & interest in the hotel, &, ultimately, having acquired the reversion to the lessees' term, took possession, closed the

PART VII. SECT. 8, SUB-SECT. 8.—A.

3045 i. *General rule.*]—Thorne *v.* (1887), 13 O. R. 577.—**CAN.**

PART VII. SECT. 9, SUB-SECT. 2.—B.

3096 v. ——.]—Where a contract to thresh a whole crop does not provide for the rights & liabilities of the parties in the event of the threshing being interrupted by weather conditions, it will be held that the contract was based on the assumption that the state of the weather would remain such as to permit the threshing being done with nothing more than temporary interruption, &, therefore, although the contract will not be determined by a slight storm, a permanent break in the weather making threshing impossible for an indefinite period will put an end to it ; & when so ended the thresher is entitled to recover for the threshing which he has already done.—Klein *v.* Sanderson, [1928] 3 D. L. R. 294 ; [1928] 2 W. W. R. 289 ; 23 Alta. L. R. 467.—**CAN.**

hotel, & began to demolish it. The electric sign was removed by arrangement with the advertising agents, who subsequently commenced an action against the lessees to recover damages for breach of the two contracts:—*Held:* the local authority had acquired defts.' interest in the premises by compulsion; the two contracts did not confer upon pltfs. any proprietary interest or estate in the hotel; &, as it could not be said that both parties to those contracts had made their bargain upon the footing that if the local authority exercised their powers & took the hotel the contracts were to be discharged, there must be a declaration that defts. were liable to pltfs. for damages for breach of those contracts.—WALTON HARVEY, LTD. *v.* WALKER & HOMFRAYS, LTD., [1931] 1 Ch. 274; 144 L. T. 331; 29 L. G. R. 241, C. A.

3101a. —— **All available shipping requisitioned.**] —In an action brought in Singapore in Aug. 1917, defts. counterclaimed damages for failure by pltf. to deliver sugar sold by him to be shipped & delivered at Bombay. The shipment of the sugar had been prevented by the requisitioning of ships by the British Govt.:—*Held:* Civil Law Ordinance No. III (Str. Sett. No. VIII. of 1909), s. 5 (1), which provides that in all questions which arise for decision in the Colony "with respect to mercantile law generally, the law to be administered shall be the same as would be administered in England in the like case, at the corresponding period, unless in any case other provision is, or shall be made, by statute," made Defence of the Realm Amendment Act No. 2, 1915 (c. 37), & Courts (Emergency Powers) Act, 1917 (c. 26), applicable to the case, & the latter Act gave a good defence to the counterclaim whether the requisitioning was under Defence of the Realm Act, 1914 (c. 29), or under the prerogative power. —SENG DJIT HIN *v.* NAGURDAS PURSHOTUMDAS & Co., [1923] A. C. 444; 92 L. J. P. C. 141; 128 L. T. 780; *sub nom.* HIN *v.* PURSHOTUMDAS & Co., 39 T. L. R. 226, P. C.

3103a. -.]—(1) If a man covenants to accept £1,000 bank stock on three days' notice upon or before a particular day, it is no excuse for him that the party to make the transfer had no stock before the day on which he was to make it. (2) A man cannot be sued for money he covenanted to pay on the performance of a particular act if he prevents such performance.—SHALES *v.* SEIGNORET (1699), 1 Ld. Raym. 440; 12 Mod. Rep. 248; 91 E. R. 1192.

3115. *Add. Annotation:*—**Consd.** Browning *v.* Crumlin Valley Collieries, [1926] 1 K. B. 522.

3121. *Add. Annotation:*—**Refd.** The Penelope, [1928] P. 180.

3123. *Add. Annotation:*—**Refd.** The Penelope, [1928] P. 180.

3124. *Add. Annotation:*—**Refd.** The Penelope, [1928] P. 180.

3137. *Add. Annotation:—As to* (2) **Consd.** Haskell *v.* Marlow, [1928] 2 K. B. 45.

3143. *Add. Annotation:*—**Consd.** Jardine *v.* A.-G. for Newfoundland (1932), 48 T. L. R. 199.

3149. *Add. Annotation:*—**Expld.** *Re* Wait, [1927] 1 Ch. 606.

3153. *Add. Annotation:*—**Refd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

3162. *Add. Annotation:—As to* (3) **Apld.** Sargant *v.* Paterson (1923), 129 L. T. 471.

3166. *Add. Annotations:*—**Consd.** First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922. **Refd.** Browning *v.* Crumlin Valley Collieries, [1926] 1 K. B. 522; Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497; The Penelope, [1928] P. 180; May *v.* May, [1929] 2 K. B. 386; Ottoman Bank *v.* Chakarian, [1930] A. C. 277; Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 145.

3168. *Add. Annotations:*—**Consd.** First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922. **Refd.** Larrinaga *v.* Soc. Franco Americaine Des Phosphates De Medulla (1923), 92 L. J. K. B. 455; Cohen *v.* Sellar, [1926] 1 K. B. 536; The Penelope, [1928] P. 180; Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1; May *v.* May, [1929] 2 K. B. 386; Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

3170. *Add. Annotations:—As to* (2) **Refd.** The Lord Strathcona, [1925] P. 143; The Penelope, [1928] P. 180.

3171. *Add. Annotation:*—**Refd.** The Penelope, [1928] P. 180.

3172a. ——.]—(1) By a charterparty made in Nov. 1916, resps. agreed to place their steamship at the disposal of applts. on Mar. 1, 1917, & applts. agreed to employ her on specified terms for ten months from the date when she was delivered to them. The ship was requisitioned by the Govt. before Mar. 1, 1917, & was not released until Feb. 1919. Applts. then refused to take delivery of her:—*Held:* there had been in 1917 a frustration of the charterparty which forthwith brought to an end the whole contract.

(2) The legal effect of the frustration of a contract does not depend upon the intention of the parties, or their opinions or even knowledge, as to the event which has brought about the frustration, but upon its occurrence in such circumstances as to show it to be inconsistent with the further prosecution of the adventure.—HIRJI MULJI *v.* CHEONG YUE S.S. Co., [1926] A. C. 497; 95 L. J. P. C. 121; 134 L. T. 737; 42 T. L. R. 359; 17 Asp. M. L. C. 8; 31 Com. Cas. 199, P. C.

Annotation:—Generally, **Refd.** De la Garde *v.* Worsnop (1927), 96 L. J. Ch. 446.

3175. *Add. Annotation:*—**Refd.** Hirji Mulji *v.* Cheong Yue S. S. Co., [1926] A. C. 497.

3177. *Add. Annotations:*—**Refd.** Paterson Zochonis *v.* Elder Dempster, [1923] 1 K. B. 420; The Erik Boye (1929), 142 L. T. 335.

3178a. ——.]—In a charterparty there was a marginal memorandum that in the event of "war, blockade, or prohibition of export preventing loading, this charter to be cancelled":—*Held:* the charterparty was put an end to *ipso facto* by the happening of any

an. *Contract to instal furnace & maintain specified temperature of heat—Change of furnace.*]—MILLS *v.* GLACE BAY HOUSING COMMISSION, [1926] 1 D. L. R. 608; 58 N. S. R. 317.—CAN.

or either of the contingencies mentioned in the memorandum to the charterparty.—ADAMSON *v.* NEWCASTLE STEAMSHIP FREIGHT INSURANCE ASSOCN. (1879), 4 Q. B. D. 462; 48 L. J. Q. B. 670; 41 L. T. 160; 27 W. R. 818; 4 Asp. M. L. C. 150, D. C.

Annotations:—**Consd.** Mercantile S.S. Co. *v.* Tyser (1881), 7 Q. B. D. 73; Moel Tryvan Ship Co. *v.* Weir Andrew, [1910] 2 K. B. 844. **Apld.** Capel *v.* Soulidi (1916), 114 L. T. 921. **Refd.** *Re* Jamieson & Newcastle Steamship Freight Insce. Assocn. (1895), 11 T. L. R. 196.

3178b. ——.]—THE PENELOPE, [1928] P. 180; 97 L. J. P. 127; 139 L. T. 355; 44 T. L. R. 597; 72 Sol. Jo. 557; 17 Asp. M. L. C. 486.

3179. *Add. Annotation:*—**Refd.** Cantiere Navale Triestina *v.* Russian Soviet Naphtha Export Agency, [1925] 2 K. B. 172.

3181. *Add. Annotation:*—**Consd.** Cantiere Navale Triestina *v.* Russian Soviet Naphtha Export Agency, [1925] 2 K. B. 172.

3182. *Add. Annotation:*—**Distd.** Cantiere Navale Triestina *v.* Russian Soviet Naphtha Export Agency, [1925] 2 K. B. 172.

3183. *Add. Annotation:*—**Distd.** Cantiere Navale Triestina *v.* Russian Soviet Naphtha Export Agency, [1925] 2 K. B. 172.

3183a. —— —— **Ship ordered to leave port—Subsequent permission to return & load.**]—A charterparty of an Italian ship provided that 216 running hours, Sundays & holidays excepted, weather permitting, should be allowed the charterers for loading & discharging, & that the lay days should commence from the time the steamer was ready to receive or discharge her cargo, the captain giving six hours' notice to the charterers' agents, berth or no berth. The exceptions clause excepted "restraint of princes, rulers & people." The ship arrived at Batoum, & notice of readiness to load was given, & the lay days began to run. Owing, however, to a dispute between the Russian & Italian Govts. the ship was ordered by the port authorities to leave Batoum & also Russian waters, & accordingly the ship went to Constantinople. Subsequently permission was obtained to load the ship at Batoum, & she returned after being absent from the port a little over a fortnight. The owners subsequently claimed demurrage from the charterers, on the basis that the lay days continued to run during the period the ship was absent from Batoum:—*Held:* interference by the Russian Govt. did not amount to such an illegality as to excuse the performance of the contract.—CANTIERE NAVALE TRIESTINA *v.* HANDELSVERTRETUNG DER RUSS. SOZ. FÖD. SOVIET REPUBLIK NAPHTHA EXPORT, [1925] 2 K. B. 172; 94 L. J. K. B. 579; 133 L. T. 162; 41 T. L. R. 355; 69 Sol. Jo. 443; 16 Asp. M. L. C. 501; 30 Com. Cas. 172, C. A.

Annotation:—**Refd.** *Re* Ropner Shipping Co. & Cleeves Western Valleys Anthracite Collieries, [1927] 1 K. B. 879.

3184. *Add. Annotation:*—**Refd.** Akt. Reidar *v.* Arcos (1926), 42 T. L. R. 737.

3185. *Add. Annotations:*—**Refd.** Sargant *v.* Paterson (1923), 129 L. T. 471; Akt. Reidar *v.* Arcos (1926), 42 T. L. R. 737; Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

3188. *Add. Annotations:*—**Consd.** Snia Soc. di Navigazione Industria e Commercio *v.* Suzuki (1924), 29 Com. Cas. 284; Cantiere Navale Triestina *v.* Handelsvertretung der Russ. Soz. Fod. Naphtha Export (1925), 94 L. J. K. B. 579.

3189. *Add. Citations:*—92 L. J. K. B. 455; 129 L. T. 65; 16 Asp. M. L. C. 133; 29 Com. Cas. 1.

Add. Annotation:—**Refd.** Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497.

3193. *Add. Annotation:*—**Refd.** Perry *v.* Equitable Life Assce. Soc. of U.S.A. (1929), 45 T. L. R. 468.

3194. *Add. Annotations:*—**Consd.** Larrinaga *v.* Soc. Franco Americaine Des Phosphates De Medulla (1923), 92 L. J. K. B. 455; First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922; Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274. **Refd.** Willis *v.* Willis (1927), 96 L. J. P. 177; The Penelope, [1928] P. 180; Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1; May *v.* May, [1929] 2 K. B. 386.

3198. *Add. Annotations:*—*As to* (1) **Apld.** Snia Soc. di Navigazione Industria e Commercio *v.* Suzuki (1924), 29 Com. Cas. 284. **Consd.** First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922; The Penelope, [1928] P. 180. *As to* (2) **Apld.** Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497. **Refd.** May *v.* May, [1929] 2 K. B. 386. *Generally*, **Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 536; Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1; Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

3199. *Add. Annotation:*—*As to* (1) **Refd.** Cantiare San Rocco S. A. *v.* Clyde Shipbuilding & Engineering Co., [1924] A. C. 226.

3199a. —— ——.]—HIRJI MULJI *v.* CHEONG YUE S.S. Co., No. 3172a, *ante*.

3201. *Add. Annotation:*—**Refd.** Benaim *v.* Debono, [1924] A. C. 514.

3202. *Add. Annotation:*—*As to* (2) **Consd.** Cantiere Navale Triestina *v.* Handelsvertretung der Russ. Soz. Fod. Naphtha Export (1925), 94 L. J. K. B. 579.

3206. *Add. Annotation:*—**Refd.** Cayzer, Irvine *v.* Board of Trade (1926), 95 L. J. K. B. 1054.

3207. *Add. Annotation:*—**Refd.** Finlay *v.* Kwik Hoo Tong Handel Maatschappij (1928), 98 L. J. K. B. 251.

3208. For "national" read "notional."

3211. *Add. Annotations:*—*As to* (1) **Refd.** Larrinaga *v.* Soc. Franco Americaine Des Phosphates De Medulla (1923), 92 L. J. K. B. 455; Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

3218. *Add. Annotations:*—*As to* (2) **Refd.** Livock *v.* Pearson (1928), 33 Com. Cas. 188; Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

PART VII. SECT. 9, SUB-SECT. 3.—B.

3194 i. *Time charter—Ship requisitioned by Government.*]—*Held:* a condition was not to be implied in the contract that an interruption should excuse the party from the further performance of it, unless substantially the whole contract became impossible of performance.—DOMINION COAL CO. *v.* LORD STRATHCONA S.S. Co., [1924] 2 D. L. R. 66; 57 N. S. R. 113.—**CAN.**

PART VII. SECT. 9, SUB-SECT. 3.—C.

3204 v. *Revsd.*, [1924] A. C. 226; 93 L. J. P. C. 86; 130 L. T. 610.

3217 i. —— *Difficulties in way of shipment.*]—By a contract, made in 1916, deft. sold certain goods, shipment to be from a continental port in six approximately equal monthly parcels:—*Held:* the long delay in shipment caused by war did not frustrate the commercial object of the contract & so put an end to it.—RINGSTAD *v.* GOLLIN & CO. PROPRIETARY, LTD. (1925), 35 C. L. R. 303; 31 Argus L. R. 221.—**AUS.**

3220. *Add. Annotation :*—**Consd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

3221. *Add. Annotation :*—**Refd.** Compagnie Continentale d'Importation *v.* Handelsvertretung der Union der Russian Soviet Republic in Deutschland (1928), 138 L. T. 663.

3225a. Confiscation by foreign Government.]—By a contract the vendors agreed to sell & the purchasers to purchase the timber then standing uncut in a forest in the Republic of Latvia, the purchasers to have fifteen years in which to cut & remove it, such time to be extended if the purchasers were prevented by an act of the Govt., or otherwise by *force majeure*, or by war, from cutting or disposing of the timber. The purchasers took possession of the forest, but shortly afterwards an agrarian law was passed in Latvia under which the forest & all the timber therein became the property of the Latvian State, the agreement became annulled, & all the rights of vendors & purchasers in the forest & the timber became entirely confiscated :—*Held :* the performance of the contract was entirely frustrated by the act of the Latvian State, & the parties were released from it.—KURSELL *v.* TIMBER OPERATORS & CONTRACTORS, [1927] 1 K. B. 298; 95 L. J. K. B. 569; 135 L. T. 223; 42 T. L. R. 435, C. A.

3226. *Add. Annotation :*—**Refd.** Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 569.

3231. *Add. Annotation :*—**Refd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 145.

3233. *Add. Annotations :*—*As to* (2) **Consd.** Cantiere Navale Triestina *v.* Handelsvertretung der Russe Soz. Fod. Naphtha Export (1925), 94 L. J. K. B. 579. **Refd.** Larrinaga *v.* Soc. Franco Americaine Des Phosphates De Medulla (1923), 92 L. J. K. B. 455; Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 569; The Penelope, [1928] P. 180; Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1; May *v.* May (1929), 98 L. J. K. B. 770. *As to* (2) **Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258; Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

3238. *Add. Annotation :*—**Refd.** Browning *v.* Crumlin Valley Collieries, [1926] 1 K. B. 522.

3239. *Add. Annotation :*—**Refd.** Browning *v.* Crumlin Valley Collieries, [1926] 1 K. B. 522.

3240. *Add. Annotation :*—**Refd.** Browning *v.* Crumlin Valley Collieries, [1926] 1 K. B. 522.

3243. *Add. Annotation :*—**Refd.** Browning *v.* Crumlin Valley Collieries, [1926] 1 K. B. 522.

3249. *Add. Annotation :*—**Refd.** Stag Line, Ltd. *v.* Foscolo Mango & Co. (1931), 48 T. L. R. 127.

3275. *Add. Annotations :*—**Refd.** Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528; Pockney *v.* Atkinson (1929), 142 L. T. 135; Eshelby *v.* Federated European Bank, Ltd., [1932] 1 K. B. 423.

3276. *Add. Annotation :*—*As to* (2) **Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1.

3280. *Add. Annotation :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1.

3282. *Add. Annotations :*—**Consd.** Cantiare San Rocco S. A. *v.* Clyde Shipbuilding & Engineering Co., [1924] A. C. 226; Graves *v.* Cohen (1929), 46 T. L. R. 121. **Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 536; Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1.

3303. *Add. Annotation :*—**Refd.** Tredegar *v.* Harwood, [1929] A. C. 72.

3306. *Add. Annotation :*—**Refd.** Tredegar *v.* Harwood (1927), 44 T. L. R. 17.

3310. *Add. Annotation :*—**Refd.** London & North Eastern Ry. Co. *v.* Blundy, Clark & Co. (1931), 20 Ry. & Can. Tr. Cas. 92.

3314. *Add. Annotation :*—**Refd.** London & North Eastern Ry. Co. *v.* Blundry, Clark & Co. (1931), 20 Ry. & Can. Tr. Cas. 92.

3324. *Add. Annotation :*—**Consd.** Curtis Moffat *v.* Wheeler, [1929] 2 Ch. 224.

3327. *Add. Annotations :*—*As to* (2) **Consd.** Sullivan *v.* Constable (1932), 48 T. L. R. 267. **Refd.** Hall *v.* Brooklands Auto-Racing Club (1932),

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3224 i. *Importation restricted by Government.*]—Applt., a manufacturer of yeast, entered into a written contract under which he undertook to supply a certain portion of his output to resp. during 1927. Clause 8 of the contract provided that "in the event of legislation being passed . . . which may in any wise restrict or prohibit the sale of yeast in any quantity or to any class or race, this agreement shall become void," while clause 9 provided that "if such legislation . . . relates only to imported yeast then your selling price . . . may be increased at your option" in certain respects. In June, 1927, by Act 24 of 1927, the importation of yeast into the Union was prohibited except with the permission of the Comr. of Police. Applt. thereupon repudiated the contract, pleaded it was null & void under clauses 8 & 9 thereof :—*Held :* legislation prohibiting the importation of yeast did not fall within the terms of either clause of the contract, inasmuch as it did not prohibit or restrict the sale of yeast.—COMPRESSED YEAST, LTD. *v.* DISTRIBUTING AGENCY, LTD., [1928] App. D. 301.—S. AF.

k i. ——.]—A contract being for export only :—*Held :* its object was frustrated.—MAYER & LAGE INC. *v.* ATLANTIC SUGAR REFINERIES, LTD., [1926] 2 D. L. R. 783; 58 O. L. R. 531.—**CAN.**

PART VII. SECT. 9, SUB-SECT. 3.—D.

sp. *Strike of workmen—Lease of salt works.*]—*Held :* the contract to pay rent had not become impossible of performance.—HARI LAXMAN JOSHI *v.* SECRETARY OF STATE FOR INDIA (1927), I. L. R. 52 Bom. 142.—**IND.**

sq. *Refusal of municipal licence for business contemplated.*] — FONG *v.* KERWIN (Ont.), [1929] 3 D. L. R. 612. —**CAN.**

PART VII. SECT. 9, SUB-SECT. 5.

l i. —— *Lease of hotel.*]—The lessees of an hotel property, upon prohibition coming into force in Alberta, sued for a declaration that the lease of the premises & an agreement to purchase the chattels in the hotel were terminated through failure to obtain a licence :—*Held :* the abolition of the bar was a risk that must be undertaken by the lessee, it being a case not of total destruction of the subject-matter, but a case of sterility.—CHERRIER & ORTON *v.* MCCREIGHT & PENNINGTON, [1917] 2 W. W. R. 8; 11 Alta. L. R. 270; 33 D. L. R. 689.—**CAN.**

PART VII. SECT. 9, SUB-SECT. 6.

3278 i. *Revsd.*, [1924] A. C. 226; 93 L. J. P. C. 86; 130 L. T. 610.

PART VII. SECT. 11, SUB-SECT. 1.—A.

3305 i. *Performance by one to satisfaction of other party—Whether party bound to decide reasonably or entitled to decide arbitrarily—Bonâ fide decision.*]—Pltf. agreed to place sods around defts.' power house to their satisfaction. Defts., not being satisfied with the sods or the work, cancelled the contract. In an action for damages for breach of contract, the jury found that defts. had acted honestly but unreasonably :—*Held :* the judgment of defts. honestly arrived at was final, & pltf. was not entitled to recover.—TRUMAN *v.* FORD MOTOR CO. OF CANADA, LTD., [1926] 1 D. L. R. 960; 58 O. L. R. 317.—**CAN.**

st. *Receipt of money — Duty to collect.*]—A contract provided for a percentage of the moneys received by one party to be paid to the other :—*Held :* liability could not be evaded by failure to collect the moneys; but where there was good reason to suppose that litigation for the purpose of collection would be useless, there was no duty to litigate.—NORTHERN PIPE LINE CO. *v.* CANADIAN GAS CO., [1924] 4 D. L. R. 1111.—**CAN.**

48 T. L. R. 546. *As to* (5) **Apld.** Meyrick *v.* Dyson (1925), 41 T. L. R. 868. *Generally*, **Refd.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328.

3328. *Add. Annotations :*—**Apld.** Baldry *v.* Marshall, [1925] 1 K. B. 260; Barker *v.* Agius (1927), 43 T. L. R. 751; Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528. **Consd.** Sullivan *v.* Constable (1932), 48 T. L. R. 267.

After this case add "*See, also*, COMPANIES, No. 814a."

3330. To the cross-references following this case add "**As regards bills of exchange.**]—*See* BILLS OF EXCHANGE, Vol. VI., pp. 79–93."

3340. *Add. Annotations :*—**Refd.** Guy-Pell *v.* Foster, [1930] 2 Ch. 169; Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

3346. *Add. Annotations :*—**Refd.** Guy-Pell *v.* Foster, [1930] 2 Ch. 169; Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

3351. *Add. Annotations :*—**Consd.** Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528. **Refd.** Guy-Pell *v.* Foster, [1930] 2 Ch. 169.

3379a. —— **Provided "undertaking" carried out.**]—BRUFF *v.* CONYBEARE (1868), 17 L. T. 664, Ex. Ch.; *revsg.* (1862), 13 C. B. N. S. 263.

Annotation :—**Consd.** London Corpn. *v.* Sandon, London Corpn. *v.* Met. Ry., Met. Ry. *v.* London Corpn. (1872), 26 L. T. 86.

3406. *Add. Annotation :*—**Refd.** United Indigo Chemical Co. *v.* Robinson (1931), 49 R. P. C. 178.

3407. *Add. Annotation :*—**Refd.** Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

3408. *Add. Annotations :*—**Consd.** Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528. **Refd.** Guy-Pell *v.* Foster, [1930] 2 Ch. 169.

3447. *Add. Annotation :*—**Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

3487. *Add. Annotations :*—**Refd.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48; Never-Stop Ry. (Wembley) *v.* British Empire Exhibition (1924) Incorporated, [1926] Ch. 877.

3490. *Add. Annotation :*—**Refd.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48.

3494. *Add. Annotations :*—**Refd.** United States Shipping Board *v.* Durrell, [1923] 2 K. B. 739; Anglo-Newfoundland Development Co. *v.* Pacific Steam Navigation Co., [1924] A. C. 406; Cohen *v.* Sellar, [1926] 1 K. B. 536.

3495. *Add. Annotation :*—**Refd.** United States Shipping Board *v.* Durrell, [1923] 2 K. B. 739.

3500. *Add. Annotation :*—**Refd.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48.

3508. *Add. Annotation :*—**Distd.** Chillingworth *v.* Esche, [1923] 1 Ch. 576.

3509. *Add. Annotation :*—**Refd.** Samuel *v* Dumas, [1924] A. C. 431.

3513. *Add. Annotations :*—**Consd.** Acties Nord-Osterso Rederiet *v.* Casper, Edgar (1923), 28 Com. Cas. 222. **Refd.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48.

3514. *Add. Annotation :*—**Refd.** Admiralty Comrs. *v.* Chekiang (Owners), [1926] A. C. 637.

3519. *Add. Annotations :*— **Refd.** Lawrence *v.* Hayes, [1927] 2 K. B. 111; Earle *v.* Hemsworth R. D. C. (1928), 44 T. L. R. 605; *Re* Pinto Leite, *Ex p.* Des Olivaes, [1929] 1 Ch. 221.

3520. *Add. Citation :*—*Revsd. sub nom.* NICHOLS *v.* NORTH METROPOLITAN RAILWAY & CANAL Co. (1894), 71 L. T. 836, C. A.

PART VII. SECT. 11, SUB-SECT. 1.—B. (a).

a i. —— *Agreement to sell dealer's business subject to granting of licence by licensing officer.*]—RAJAH *v.* SULIMAN (1927), 48 N. L. R. 309.—**S. AF.**

PART VII. SECT. 11, SUB-SECT. 1.—D. (a).

c i. ——.]—HALIFAX & CAPE BRETON COAL & RY. CO. *v.* GREGORY, Cass. Dig. 2nd ed. 727.—**CAN.**

PART VII. SECT. 11, SUB-SECT. 1.—D. (o).

3375 i. *Promise by party to pay—Out of particular fund.*]—Deft. insurance assocn. was incorporated on Apr. 10, 1929. Two days later, in a letter on the assocn.'s notepaper, signed by the deft. M. as chairman of directors & by the secretary, & addressed to pltf. co., an agreement was made, in consideration of an advance by pltf. of a sum not exceeding £500 for preliminary expenses to secure members, "to refund the amount advanced as moneys are received from the members' applications." The last paragraph of the letter stated (*inter alia*). "In consideration of your doing this we agree to refund the full amount of money received for expenses." Pltf. co. sued both M. & the assocn. to recover the money so advanced :—*Held :* the letter contained an unequivocal undertaking by deft. assocn. to refund the amount advanced, & did not make the receipt of moneys from members' applications a condition precedent to its liability.—ASSOCIATED INVESTMENT & UNDERWRITERS (N.Z.), LTD. *v.* & DOMINION MUTUAL INSURANCE ASSOCN., [1932] N. Z. L. R. 221.—**N.Z.**

PART VII. SECT. 11, SUB-SECT. 1.—D. (q).

sa. *Timber licence—Condition against employment of Chinese or Japanese.*]—A condition in a special timber licence under Land Act (B. C.), 1908, that no Chinese or Japanese should be employed in connection therewith is one of the essential terms of the licence.—A.-G. FOR BRITISH COLUMBIA *v.* BROOKS, BIDLAKE & Co., [1922] 3 W. W. R. 9; 63 S. C. R. 466.—**CAN.**

sd. *Contract for sale of currency—Payment condition precedent to delivery.*]—WALSH *v.* BROWN (1868), 18 C. P. 60.—**CAN.**

sf. *Selling agency agreement.*]—AUCHTERLONIE *v.* ARMS (1875), 25 C. P. 403.—**CAN.**

sk. *Agreement to sell land for church—If congregation brought together.*]—*Held :* although at first conditional, the contract, by reason of a congregation having assembled, became absolute.—A.-G. *v.* CHRISTIE (1867), 13 Gr. 495.—**CAN.**

PART VII. SECT. 11, SUB-SECT. 1.—E.

3422 i. *General rule.*]—Where a document is sufficiently clear & certain, & payment depends on some simple condition or event, it is sufficient for pltf. to allege that the condition has been complied with or the event has happened. The *onus* then lies on deft. to show that what was intended by the document sued on to be a condition precedent to entitle pltf. to succeed has not been complied with.—UNION SHARE AGENCY & INVESTMENT, LTD. (LIQUIDATORS) *v.* SPAIN (1927), 48 N. L. R. 348.—**S. AF.**

PART VII. SECT. 11, SUB-SECT. 3.—A. (b).

p i. ——.]—The consideration for a quit-claim deed was the maintenance of the grantor & pltf. during their lives. After the death of the grantor, deft. married, & pltf. left & lived elsewhere :—*Held :* as it was clearly meant that pltf. would live in deft.'s house & be maintained there by him, & as she had no valid excuse for leaving him, deft. was not obliged to provide for her support elsewhere.—COMEAU *v.* LEBLANC, [1923] 2 D. L. R. 1076; 56 N. S. R. 201.—**CAN.**

PART VII. SECT. 11, SUB-SECT. 3.—A. (c).

3509 i. *What amounts to waiver.*]—BOWES *v.* CHALEYER, [1923] V. L. R. 295; 32 C. L. R. 159.—**AUS.**

PART VII. SECT. 11, SUB-SECT. 3.—C.

3521 i. *Right of defaulting party to sue other party—Recovery of deposit.*]—Defts. contracted to supply pltf. with a quantity of lumber to be loaded on cars in July, 1920. Defts. hauled the lumber to the railway siding ready for shipment, but pltf. failed to provide cars, as it was his duty to do, upon which the lumber could be loaded :—*Held :* an action by pltf. to recover a deposit paid on the contract must be dismissed.—GLENNIE *v.* RUSHTON (1922), 55 N. S. R. 530.—**CAN.**

Part VIII.—Defences to Actions for Breach of Contract.

3561. *Add. Annotations :*—**Consd.** Rose & Frank Co. *v.* Crompton, [1925] A. C. 445. **Refd.** British & Beningtons *v.* North Western Cachar Tea Co., [1923] A. C. 48. **Mentd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179.

3569. *Add. Annotation :*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

3606. *Add. Annotation :*—**Apld.** Berry *v.* Berry, [1929] 2 K. B. 316.

3614. *Add. Annotation :*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

3622. *Add. Annotation :*—**Consd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

3641. *Add. Annotations :*—**Consd.** Jones *v.* Waring & Gillow, [1925] 2 K. B. 612. **Refd.** Barclay *v.* Malcolm (1925), 133 L. T. 512.

3646. *Add. Annotations :—As to* (1) **Refd.** *Re* British American Continental Bank, Lisser & Rosenkranz's Claim, [1923] 1 Ch. 276; *Re* Chesterman's Trusts, Mott *v.* Browning, [1923] 2 Ch. 466; Peyrae *v.* Wilkinson, [1924] 2 K. B. 166.

3654. *Add. Annotation :*—**Consd.** Sowerby *v.* Lindsay (1928), 44 T. L. R. 501.

3658. *Add. Annotation :*—**Refd.** Reading Trust, Ltd. *v.* Spero, Spero *v.* Reading Trust, Ltd., [1930] 1 K. B. 492.

3661. *Add. Annotation :*—**Refd.** Reading Trust, Ltd. *v.* Spero, Spero *v.* Reading Trust, Ltd., [1930] 1 K. B. 492.

3667. *Add. Annotation :*—**Refd.** Reading Trust, Ltd. *v.* Spero, Spero *v.* Reading Trust, Ltd., [1930] 1 K. B. 492.

3671. *Add. Annotation :*—**Refd.** Reading Trust, Ltd. *v.* Spero, Spero *v.* Reading Trust, Ltd., [1930] 1 K. B. 492.

3673. *Add. Annotation :*—**Refd.** H. *v.* H., [1928] P. 206.

3680. *Add. Annotation :*—**Refd.** Midland Motor Showrooms *v.* Newman, [1929] 2 K. B. 256.

3749. *Add. Annotation :*—**Refd.** *Re* Houlder, [1929] 1 Ch. 205.

3751. *Add. Annotation :*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307.

3752. *Add. Annotation :*—**Refd.** British & North European Bank *v.* Zalzstein, [1927] 2 K. B. 92.

3763. *Add. Annotation :*—**Consd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

3781. *Add. Annotation :*—**Consd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

3784. *Add. Annotation :*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

3784a. ——.]—HALL *v.* PADLEY (1923), 156 L. T. Jo. 83.

3784b. ——.]—Pltf. granted a bill of sale over certain furniture to a moneylender, &, as she was unable to pay him the first instalment when it became due, defts. agreed to advance to her £1,000 on another bill of sale for the purpose of paying him off & of having her furniture released from the first bill of sale. Pltf. accordingly received a cheque for £1,000 from defts. & after receiving it she executed the second bill of sale, which stated that the consideration for it was £1,000 paid to pltf. In an action by pltf. to restrain defts. from disposing of the furniture comprised in the second bill of sale, pltf. relied on Bills of Sale (1878) Amendment Act, 1882 (c. 43), s. 8, & she contended that the real consideration was the payment off of the moneylender & the release of her furniture from the first bill of sale :—*Held :* the consideration for the second bill of sale was the loan of £1,000, & as a cheque was a good payment until dishonoured there was no need to state in the second bill of sale that the payment was by cheque, & therefore, as the consideration was correctly stated in the second bill of sale, the action failed.—D'USEZ *v.* TRAFFICS & DISCOVERIES, LTD. (1924), 40 T. L. R. 441.

PART VIII. SECT. 2, SUB-SECT. 2.—A.

3452 i. *General rule.*]—WHITEFORD *v.* MCLEOD (1868), 28 U. C. R. 349.—**CAN.**

3547 ii. ——.]—Prior to foreclosure proceedings on a mtge. given by deft., pltf.'s solr. wrote deft.'s solr. that the registered owner was willing to give a quit-claim deed to pltf. to clear up the title & avoid litigation if deft. would give a quit-claim deed to pltf. This was agreed to, but subsequently deft.'s solr. received a letter from pltf.'s solr. purporting to withdraw from all negotiations to accept a quit-claim deed :—*Held :* there was an accord but no satisfaction.—CAIRNS *v.* BROWN, [1924] 4 D. L. R. 590; 3 W. W. R. 409.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 3.—D.

sl. *Discharge of mortgage on execution of agreement between mortgagor & mortgagee.*]—WEST *v.* ACCIDENTAL FIRE INSURANCE CO., [1927] 3 D. L. R. 260.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 5.—C.

3614 i. *Satisfaction by one.*]—Judg- pltf. & against eleven defts. were assigned to a co. These judgments remaining unpaid, T., one of defts., under a compromise agreement arrived at in 1925 after negotiations with the co., paid to the co. a sum which he contended was paid to & accepted by the co. in full satisfaction of his indebtedness. Originally all defts. were jointly & severally liable in respect of the judgment debts. After the agreement was made, the co. sought to examine deft. W. as a judgment debtor :—*Held :* the effect of the agreement was to release T. unqualifiedly in respect of the two judgments & to release his co-defts. also; &, therefore, W. was not examinable as a judgment debtor.—LUGSDIN *v.* BALL, [1929] 4 D. L. R. 543; 64 O. L. R. 251.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 3.

sm. *Payment by instalments—First payment to be expedited.*]—The question was as to the meaning of the following clause : "It is hereby agreed that the said E. will, upon the 11th day of every month, beginning upon the 11th day of Aug., A.D. 1927 (with the exception of the first payment, which is to be made upon the signing, sealing, & delivery of these presents) pay to the said L. the sum of $40 per month." etc. A payment was made on July 11, the date of the agreement :—*Held :* the payments were to be made on the 11th day of every month, beginning upon Aug. 11. The payment due on Aug. 11 was to be expedited, &, therefore, no fresh payment would be due on Aug. 11.—ATKINSON *v.* ATKINSON (1928), 60 N. S. R. 138.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 4.

3655 viii. —— ——.]—If there is no special covenant for payment of a debt elsewhere, the presumption of law is that the borrower ought to seek out the lender for payment.—GOKUL DAS *v.* NATHU (1925), I. L. R. 48 All. 310.—**IND.**

3656 i. —— —— *Unless creditor abroad.*]—The duty which English law imposes upon a debtor to find his creditor & pay him is imposed upon him only if the creditor is within the realm. If in India a debtor is subject to the same duty, it is similarly limited.—BANSILAL ABIRCHAND *v.* GHULAN MAHBUB KHAN (1925), 53 L. R. Ind. App. 58.—**IND.**

p i. —— ——.]—PLATT *v.* MCFAUL (1854), 4 C. P. 293.—**CAN.**

p ii. —— ——.]—DORNBERG *v.* SOMERVILLE, [1929] 1 D. L. R. 811; 40 B. C. R. 415.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 5.—F.

sp. *Manager of debtor agent of creditor—Fraudulent entry of payment.*]—MCMORRIS *v.* EMPRESS THEATRE CO., LTD., [1923] 2 D. L. R. 555; 16 Sask. L. R. 504; [1923] 1 W. W. R. 1144.—**CAN.**

PART VIII. SECT. 3, SUB-SECT 5.—G. (b) i.

3766 iv. ——.]—BABINEAU *v.* BOURQUE, [1925] 1 D. L. R. 852.—**CAN.**

3784c. ——.]—If a bill of exchange or note be taken on account of a debt & nothing be said at the time, the legal effect of the transaction is that the original debt remains, but the remedy for it is suspended till the maturity of the instrument in the hands of the creditor, If the bill or note is given not by the debtor but by a stranger, the action for the original debt is equally suspended.—ALLEN *v.* ROYAL BANK OF CANADA (1925), 95 L. J. P. C. 17; 134 L. T. 194; 41 T. L. R. 625, P. C.

3806. *Add. Annotation:*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

3813. *Add. Annotation:*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

3817. *Add. Annotation:*—**Consd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

3818. *Add. Annotation:*—**Consd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

3833. *Add. Annotation:*—**Consd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

3864. *Add. Annotation:*—**Refd.** *Re* Houlder, [1929] 1 Ch. 205.

3868a. Payment into bank to account of creditor's solicitors.]—VANBERGEN *v.* ST. EDMUNDS PROPERTIES, LTD., [1932] W. N. 261; 174 L. T. Jo. 426; 74 L. Jo. 423.

SUB-SECT. 6.—IN WHAT CURRENCY AND AT WHAT RATE OF EXCHANGE PAYMENT MUST BE MADE.

See MONEY AND MONEY-LENDING, Vol. XXXV., pp. 169–176, & Supp.

3874. *Add. Annotation:*—**Refd.** Abram S.S. Co. *v.* Westville Shipping Co., [1923] A. C. 773.

3880. *Add. Annotation:*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307.

3905. *Add. Annotations:*—**Apld.** Albemarle Supply Co. *v.* Hind (1927), 43 T. L. R. 652. **Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307.

3909. *Add. Annotation:*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307.

3930. *Add. Annotations:*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307; *Re* Blake, *Re* Minahan's Petition of Right, [1932] 1 Ch. 54.

3949a. —— —— ——.]—Where a creditor appropriates his debtor's payments in his books without communicating the appropriation to the debtor, the creditor is not bound by the appropriation.—LONDON & WESTMINSTER BANK *v.* BUTTON (1907), 51 Sol. Jo. 466.

3961. *Add. Annotations:*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307; Holder *v.* I. R. Comrs. (1932), 48 T. L. R. 365.

PART VIII. SECT. 3, SUB-SECT. 5.—G. (b) ii.

3799 i. *Acceptance in satisfaction question of fact.*]—The keeping & using of a cheque handed to a creditor on debtor's condition that it is to be taken in satisfaction of a claim for a larger amount, & with words on the cheque so intimating, is not conclusive in law of an accord & satisfaction; whether it was accepted in satisfaction of the claim is a question of fact.—PETERSON *v.* FLACK, [1923] 3 D. L. R. 132; 16 Sask. L. R. 493; [1923] 1 W. W. R. 1289.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 5.—K.

sr. *Agreement by creditors to work mine—Conditional on mine proving valuable—Mine valueless—Formation of company by creditors—Whether conclusive as to accord & satisfaction.*]—WHITLA *v.* PHAIR (1898), 12 Man. L. R. 122.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 7.—A.

3871 i. *By debtor—How far creditor bound by debtor's appropriation.*]—A creditor cannot appropriate in opposition to his debtor's expressed intention.—DASHARATHI GHOSE *v.* KHONDKAR ABDUL HANNAN (1927), I. L. R. 55 Calc. 624.—**IND.**

3871 ii. ——.]—KAULBACH *v.* EICHEL, [1930] 1 D. L. R. 983; 1 M. P. R. 383.—**CAN.**

3876 i. ——.]—A debt owing from a creditor to his debtor cannot be considered as a payment by debtor until he consents to the creditor retaining it & applying it on his indebtedness.—MATTHEWSON *v.* THOMPSON, [1925] 2 D. L. R. 1211; [1925] 2 W. W. R. 161; 19 Sask. L. R. 420.—**CAN.**

3876 ii. ——.]—A person who pays money has a right to apply that payment to any of the debts which he owes.—ALBERT *v.* STOREY, [1925] 4 D. L. R. 374.—**CAN.**

3884 iii. ——.]—Where a debtor, who owes more than one debt to the same creditor, makes a payment without appropriating it towards the discharge of any particular debt, the right of the creditor to appropriate the amount paid towards any of the debts due to him continues up to the time when he applies the payment towards the discharge of a particular debt.—MANISTY *v.* JAMESON (1925), I. L. R. 5 Pat. 326.—**IND.**

3884 iv. —— ——.]—Where a debtor owes several debts to one person & makes a payment to him, but has not taken advantage of the privilege conferred upon him by Indian Contract Act, s. 59, the creditor is at liberty to apply the payment in liquidation of any lawful debt actually due & payable to him from debtor.—RELU MAL *v.* AHMAD (1925), I. L. R. 7 Lah. 17.—**IND.**

3884 v. —— ——.]—FRASER *v.* LOCIE (1863), 10 Gr. 207.—**CAN.**

3884 vi. —— ——.]—DASHARATHI GHOSE *v.* KHONDKAR ABDUL HANNAN (1927), I. L. R. 55 Calc. 624.—**IND.**

PART VIII. SECT. 3, SUB-SECT. 7.—C.

3913 i. —— *Mortgage debt—Or simple contract debt.*]—A mtgee., in receipt of the rents & profits of the mortgaged premises, sold goods to the mtgor., & the latter assented to the receipts being applied first in payment of the account for goods sold:—*Held:* an incumbrancer, whose rights accrued after the settlement, was not entitled to take the position that the rents & profits necessarily & irrevocably reduced the mtge. as they were received.—MITCHELL *v.* SAYLOR (1901), 21 C. L. T. 224; 1 O. L. R. 458.—**CAN.**

3913 ii. —— —— ——.]—*Re* BROWN (A BANKRUPT) (1851), 2 Gr. 111.—**CAN.**

n i. —— *Running account.*]—PETRIE (L.), LTD. *v.* FRIZZLE, [1925] 4 D. L. R. 845; *on appeal*, [1926] 2 D. L. R. 419; [1926] 1 W. W. R. 905.—**CAN.**

3926 ii. —— —— ——.]—Although, in the absence of an appropriation by the debtor, a creditor may apply a payment or part thereof towards satisfaction of a statute-barred debt, such an appropriation will not revive the residue of that debt.—BURTON *v.* HUNTER, [1931] 2 W. W. R. 301.—**CAN.**

3934 i. —— *Earlier debt.*]—Under an agreement whereby defts. undertook to pay through a co-operative assocn. for goods supplied up to a certain amount by pltf. to the assocn.:—*Held:* money paid to pltf. by the assocn. after the execution of the agreement could not be appropriated to a debt owing to pltf. under a former agreement of the same kind.—CODVILLE CO., LTD. *v.* GODDARD, [1926] 1 W. W. R. 602; 22 Alta. L. R. 41.—**CAN.**

3934 ii. —— —— *Arrears of salary—Unless appropriation by debtor to current salary.*]—*Re* LOGAN (H. J.) CO. (Ont.), [1926] 2 D. L. R. 946; 7 C. B. R. 325.—**CAN.**

q i. —— ——.]—MCGREGOR *v.* GAULIN (1848), 4 U. C. R. 378.—**CAN.**

s i. —— *Disputed debt.*]—*Semble:* where a creditor is owed more than one debt by the same debtor, but the amount of one of the debts is disputed, a payment made by the debtor generally cannot be appropriated by the creditor to the disputed debt.—JONES *v.* UZELMAN, [1929] 2 D. L. R. 464; 1 W. W. R. 143; 23 S. L. R. 354.—**CAN.**

t i. —— ——.]—ROSS *v.* PERRAULT (1867), 13 Gr. 206.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 7.—E. (a).

3961 i. *Statement of rule.*]—SCOTT & PEDEN *v.* ELLIOTT, [1926] 2 D. L. R. 504; [1926] 2 W. W. R. 154; 37 B. C. R. 143.—**CAN.**

3961 ii. ——.]—The rule in *Clayton's Case* is at best merely a presumption.—CANADIAN BANK OF COMMERCE *v.* SMITH (1911), 17 W. L. R. 135; 3 Alta. L. R. 299.—**CAN.**

3962 v. —— ——.]—CANADIAN BANK OF COMMERCE *v.* SMITH (1911), 17 W. L. R. 135; 3 Alta. L. R. 299.—**CAN.**

3962 vi. —— ——.]—LAKE *v.* CROSBIE (1911), 9 Nfld. L. R. 490.—**NFLD.**

3962 vii. —— ——.]—A debtor has the right to apply a payment in any way he thinks fit, & if there are several debts he has a right to say to which of the debts the payment shall be applied. When there is no appropriation by the debtor, the creditor has the right

3977. *Add. Annotations :*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307; Near East Relief *v.* King, Chasseur & Co., [1930] 2 K. B. 40.

3990. *Add. Annotation :*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307.

4000. *Add. Annotation :*—**Refd.** *Re* Wait, [1927] 1 Ch. 606.

4009. *Add. Annotation :*—**Refd.** Houghton *v.* Nothard, Lowe & Wills (1927), 44 T. L. R. 76.

4017. *Add. Annotation :*—**Refd.** Smith *v.* Wood, [1929] 1 Ch. 14.

4059a. ——.]—FEENEY *v.* FIRBECK MAIN COLLIERIES, LTD., [1926] 2 K. B. 218; 95 L. J. K. B. 689; 134 L. T. 745; 19 B. W. C. C. 33, C. A.

4077. *Add. Annotation :* — **Refd.** Saunders *v.* Young's Brewery (1925), 42 T. L. R. 136.

4130. *Add. Annotation :*— **Refd.** Richmond *v.* Savill, [1926] 2 K. B. 530.

4133. *Add. Annotation :—As to* (2) **Consd.** Smith *v.* Wood, [1929] 1 Ch. 14.

4193. *Add. Annotation :*—**Refd.** Akt. Ocean *v.* Harding, [1928] 2 K. B. 371.

4203. *Add. Annotation :*—**Folld.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

4285. *Add. Annotations :*—**Refd.** Lawrence *v.* Hayes, [1927] 2 K. B. 111; Humphery *v.* Wilson (1929), 141 L. T. 469.

4317a. ——.]—(1) One bond, be it of record or not, cannot merge another bond.—HIGGENS' CASE (1605), 6 Co. Rep. 44 b; 77 E. R. 320.

Part IX.—Constructive Contracts.

4340a. Double payment by bank to client's order.]—Pltfs., a London bank, on telegraphic instructions from a bank in Warsaw, which was acting for a Polish co., paid to defts. £2,000 on account of a sum of over £4,000 owed by the Polish co. to defts. The Warsaw bank then wrote a letter of confirmation, but pltfs. mistook the letter for a direction to pay defts. a further sum of £2,000 & did so. Afterwards the Polish co., believing the sum paid off to be £2,000, told the Warsaw bank to arrange for the payment of another £1,000, but the instructions accordingly sent by the Warsaw bank to pltfs. were lost in transmission & were never received. On discovering the facts pltfs. were willing to credit defts. with the above-mentioned £1,000 & brought an action to recover £1,000, the balance of the £2,000, as money paid under a mistake of fact :—*Held :* (1) there was no such mistake of fact as entitled pltfs. to maintain that the amount claimed was money paid to their use, & the action failed; (2) pltfs. had been negligent as between themselves & defts.—BARCLAY & CO., LTD. *v.* MALCOLM & CO. (1925), 133 L. T. 512; 41 T. L. R. 518; 69 Sol. Jo. 675

4358a. Payment of rates on tithe rentcharge by occupier—Demand after Tithe Act, 1891 (c. 8).]—At the date of the passing of the above Act rates upon a tithe rentcharge were due & in arrears, owing to the omission of the overseers to demand payment thereof from the occupiers of the land out of which the tithe rentcharge issued. The tithe rentcharge for the period in respect of which the rates in

to appropriate, & it seems that he may appropriate a payment to an unguaranteed debt. If neither the debtor nor the creditor makes any appropriation, the law appropriates the payment upon equitable principles, & *primâ facie* to the earliest debt.—NASH-SIMINGTON CO., LTD. *v.* CALDWELL, [1931] 1 W. W. R. 183.—**CAN.**

a i. ——.]—PARADIS & SONS *v.* SILESSE, [1931] 3 M. P. R. 565.—**CAN.**

PART VIII. SECT. 3. SUB-SECT. 8.

g i. —— *Defence to action on I.O.U.*]—A. & B. were in partnership for some years up to 1907. In that year the partnership was dissolved, &, as the result of an arbn. for the settlement of matters outstanding between the partners, A. paid B. £2,000. Thereafter the two were on unfriendly terms, & B. was in poor circumstances. B. died in 1923, & A. in 1927. In 1928, when the arbiter & the clerk to the arbn. were both dead, & the papers relating to it could not be traced, B.'s executrix found, lying among some papers of no value, an I.O.U. for £200, dated 1897, granted by A. in favour of B. She thereupon brought an action against A.'s trustees for payment of the sum in the I.O.U. :—*Held :* in order to establish that the debt had been discharged, it was sufficient to prove a state of facts inconsistent with its continued subsistence, &, particularly in view of the creditor's delay in asserting the claim, defenders had discharged that onus.—M'KENZIE'S EXECUTRIX *v.* MORRISON'S TRUSTEES, [1930] S. C. 830.—**SCOT.**

PART VIII. SECT. 3, SUB-SECT. 9.—A. (a).

4028 iv. ——.]—ONTARIO EQUITABLE LAW & ACCIDENT INSURANCE CO. *v.* BAKER, [1926] 2 D. L. R. 289; [1926] S. C. R. 297.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 5.—A.

4134 ii. ——.]—MOODIE *v.* MACKENZIE, [1925] 1 D. L. R. 801.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 7.—A. (a).

4200 iii. ——.]—Where several debtors are bound jointly, a release given to one discharges the others, unless the creditor, when granting the release, reserves his right against them: this rule applies as much to a judgment debt as to any other obligation.—CASTLE *v.* BILSKY (1921), 50 O. L. R. 536.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 9.

sr. *On security for debt.*]—The release of a debt operates as a release of any security held in respect of it.—A.-G. *v.* SMITH & FRANCE, [1925] N. Z. L. R. 217.—**N.Z.**

PART VIII. SECT. 5, SUB-SECT. 1.—B. (a).

4282 i. *Whether court will give effect to intention—Gathered from instrument.*]—MCKEIGAN *v.* MCQUEEN, [1931] 2 D. L. R. 993; 3 M. P. R. 235.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 1.—A.

4325 i. *General rule.*]—WILSON *v.* MASON, LAMB *v.* WILSON (1876), 38 U. C. R. 14.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 1.—C.

st. *Payment to enable fulfilment of contract.*]—Where a timber contract contained the terms that Govt. & all other dues should be paid by the contractor, & deft. co. reserved the right to retain Govt. dues from the contractor until clearance had been furnished :—*Held :* money paid by deft. co. to furnish the clearance was paid on behalf of the contractor to fulfil his contract & was chargeable against him.—KEANE *v.* CANADIAN PACIFIC RY. CO. (1924), 34 B. C. R. 127.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 1.—D. (a).

4341 iii. ——.]—A volunteer cannot recover over the debt of another paid without request of such other & without any legal obligation on his part.—MARTELL *v.* WHITTEM (1867), 5 Nfld. L. R. 200.—**NFLD.**

4341 iv. ——.]—The principle that a payment made by one person for the benefit of another cannot be recovered from the latter, no matter how clearly he has benefited therefrom, if he had not expressly or impliedly requested the making of it or has not elected to adopt its benefit; & that the mere fact that he accepted the benefit of that which he had no opportunity to refuse is not evidence of his adoption or ratification was applied herein in an action brought to recover amounts paid for freight & for the feeding in transit of cattle shipped by deft.—MCKISSICK ALCORN, MAGNUS & CO. *v.* HALL (Sask.), [1929] 1 D. L. R. 48; [1928] 3 W. W. R. 509.—**CAN.**

arrear were due had been paid to the tithe-owner in full. After the passing of the Act, the overseers, purporting to act under Tithe Act of 1837 (c. 69), s. 8, demanded payment of the arrears of rates from the occupiers of the land, who paid them, & were allowed the amount thereof by their landlord, the owner of the land, out of the half-year's rent next becoming due. Subsequently thereto a half-year's tithe rentcharge became payable by the landowner. The landowner claimed to deduct therefrom the amount which he had allowed to the occupiers out of their rent in respect of the arrears of rates paid by them:—*Held:* having regard to the Act of 1891, s. 6, the payment of the arrears of rates by the occupiers was a voluntary payment, & they were not entitled to deduct the amount so paid from their rent; consequently the landowner was not entitled to deduct the amount which he had allowed to the occupiers from the tithe rentcharge due by him.—*Re* TITHE ACT, 1891, ROBERTS *v.* POTTS, JONES *v.* COOKE, [1894] 1 Q. B. 213; 58 J. P. 333; 42 W. R. 294; 9 R. 230; *sub nom.* JONES *v.* POTTS, JONES *v.* COOKE, 63 L. J. Q. B. 381; 69 L. T. 849; 10 T. L. R. 111, C. A.

Annotation:—**Distd.** Lewis *v.* Hughes, [1916] 1 K. B. 831.

4359. For "—— **Payment to clear off maritime lien—No request from mortgagees**" read "**Payment to clear off maritime lien—No request from mortgagees.**"
Add. Annotations:—**Refd.** The St. George, [1926] P. 217; The Goulandris, [1927] P. 182; The Stream Fisher, [1927] P. 73.

4360. For "—— **Premiums on husband's life policy paid by wife—First life interest under settlement of policies taken by wife**" read "**Premiums on husband's life-policies paid by wife—First life interest under settlement of policies taken by wife.**"

4372. *Add. Annotation:*—**Refd.** Christoforides *v.* Terry, [1924] A. C. 566.

4377a. Double payment by bank.]—BARCLAY & CO., LTD. *v.* MALCOLM & CO., No. 4340a, *ante.*

4379. *Add. Annotation:*—**Refd.** Akt. Dampskibs Steinstad *v.* Pearson (1927), 137 L. T. 533.

4382. *Add. Annotation:*—**Consd.** Spencer *v.* Ashworth Partington, [1925] 1 K. B. 589.

4385. *Add. Annotation:*—**Refd.** Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443.

4390. *Add. Annotation:*—**Consd.** Smith, Hogg *v.* Bamberger, [1929] 1 K. B. 150.

4410. *Add. Annotation:*—*As to* (2) **Refd.** Akt. Dampskibs Steinstad *v.* Pearson (1927), 137 L. T. 533.

4418. *Add. Annotation:*—**Dbtd.** Lowther *v.* Clifford (1926), 95 L. J. K. B. 576.

4429. *Add. Annotation:*—*As to* (1) **Refd.** Akt. Dampskibs Steinstad *v.* Pearson (1927), 137 L. T. 533.

4435. *Add. Annotations:*—**Consd.** The Chekiang, [1925] P. 80. **Apprvd.** Admiralty Comrs. *v* Chekiang (Owners), [1926] A. C. 637.

4437. *Add. Annotation:*—**Overd.** Spencer *v.* Ashworth Partington, [1925] 1 K. B. 589.

4438. After this case add "*See, further,* COMPANIES, Vol. IX., pp. 328–331."

4478. *Add. Annotations:*—**Refd.** *Re* Mason (1928), 97 L. J. Ch. 321; Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292.

4487. *Add. Annotations:*—**Refd.** Holt *v.* Markham, [1923] 1 K. B. 504; Cantiare San Rocco S. A. *v.* Clyde Shipbuilding & Engineering Co., [1924] A. C. 226; Bowling *v.* Cox, [1926] A. C. 751; Anchor Donaldson *v.* Crossland, [1929] A. C. 297; Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292.

4523. *Add. Annotation:*—**Distd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

4534. *Add. Annotations:*—**Apld.** Holt *v.* Markham, [1923] 1 K. B. 504. **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670; British & North European Bank *v.* Zalzstein, [1927] 2 K. B. 92.

4534a. —— ——.]—By certain military regulations officers in the Royal Air Force were on demobilisation entitled to a gratuity varying in amount according to circumstances. If their names were on a certain list, called the Emergency List, they were only entitled to a gratuity at a lower rate than if they were not on that list. Deft. was a demobilised officer of the Royal Air Force. Pltfs., who acted as Govt.'s agents for the payment (*inter alia*) of gratuities to demobilised officers of that force, in ignorance of the fact that deft. was on the Emergency List, but also in forgetfulness of the regulation which provided that the gratuities of officers on the Emergency List should be paid at the lower rate, & not appreciating the materiality of an officer being on that list, paid deft. his gratuity at the higher rate to which he would have been entitled if he had not been on that list. More than a year afterwards, & before notice of the mistake, deft. spent the money. In an action to recover back the excess payment as money paid under a mistake of fact;—*Held:* pltfs. could not recover on the grounds that plfts.' mistake was not a mistake of fact causing the payment; & that as deft. had been led by plfts.' conduct to believe that he might treat the money as his own, & in that belief had altered his position by spending it, pltfs. were estopped from alleging that it was paid under a mistake.—HOLT *v.* MARKHAM, [1923] 1 K. B. 504; 92 L. J. K. B. 406; 128 L. T. 719; 67 Sol. Jo. 314, C. A.

Annotations:—**Consd.** Jones *v.* Waring & Gillow, [1926] A. C. 670. **Refd.** British & North European Bank *v.* Zalzstein, [1927] 2 K. B. 92; Reckitt *v.* Barnett, Pembroke & Slater (1927), 44 T. L. R. 63; Home & Colonial Insce. *v.* London Guarantee & Accident Co. (1928), 45 T. L. R. 134; Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292; Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557.

PART IX. SECT. 1, SUB-SECT. 2.—D.

4441 l. *Action defended at request of defendant.*]—SPLAN *v.* BARRETT-LENNARD, [1931] 2 D. L. R. 857.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 1.—A.

sv. *Effect of arrangement between co-contractors.*]—Where co-contractors arrange between themselves that one of them, although liable to their creditor, is not to be called upon by the others to pay any portion of the debt, no action lies against him for contribution with respect to payments made by one of said others to the creditor.—STAINSLEIGH *v.* FISHER (Alta.), [1928] 3 D. L. R. 136; [1928] 2 W. W. R. 205.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 1.

m l. ——.]—BARNHART *v.* ROBERTSON (1342), 6 O. S. 542.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 2.—A.

sw. *Company & municipality.*]—A suit by a co. for the recovery of a sum wrongfully collected by a municipality under Madras Municipalities Act, V. of 1920, s. 92, is essentially an equitable action for "money had & received" & not a suit for "damages & compensation."—DINDIGUL MUNICIPAL COUNCIL *v.* BOMBAY CO. (1928), I. L. R. 52 Mad. 207.—**IND.**

4542. *Add. Annotations:—Generally,* **Refd.** Holt *v.* Markham, [1923] 1 K. B. 504; British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328; Jones *v.* Waring & Gillow, [1926] A. C. 670.

4558a. Goods consigned to two agents for sale—Sale by one.]—Goods were consigned to two for sale by commission; upon a dissolution of partnership the commission to sell was assumed by one:—*Held:* he, having sold, was rightly sued for money had & received, which action could not have been maintained against both, although an action for not accounting would have lain against both.—WELLS *v.* ROSS (1817), 7 Taunt. 403; 129 E. R. 161.

4563. *Add. Annotation:*—**Consd.** Jones *v.* Waring & Gillow, [1925] 2 K. B. 612.

4569a. Damages recovered by holder of bill of exchange against sheriff—Bill held in trust for plaintiff.]—Where the holder of a bill of exchange, who held it in trust for pltf., sued the drawer, &, pending that suit, became bkpt., & his assignees afterwards brought an action against the drawer in bkpt.'s name, in which action, the sheriff having been guilty of an escape on mesne process, the assignees recovered against the sheriff in an action for the escape, damages to the amount of the bill:—*Held:* pltf. might maintain money had & received against the assignees for the damages so recovered, allowing to them the costs & expenses.—RANDOLL *v.* BELL (1813), 1 M. & S. 714; 105 E. R. 266.

Annotation:—**Distd.** Neale *v.* Reid (1823), 1 B. & C. 657.

4578. *Add. Annotation:*—**Refd.** Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461.

4578a. Solicitor acting as banker—Cheque paid out of funds belonging to plaintiff—To party indebted to plaintiff.]—Pltfs. were a limited co. formed to amalgamate certain firms & cos. controlled by F., two of the directors of pltfs. being F. & deft. T. The latter was a member of the firm of T. & C., who were the solrs. of pltfs. & also of F. Pltfs. had moneys standing to their credit in the books of T. & C., & F. also had a running account with T. & C. During a period when F. was in debt to pltfs. he drew for his own purposes on the moneys standing to the credit of pltfs. in the books of T. & C. At the time of these transactions deft. T. was not aware of F.'s indebtedness to pltfs., but the ct. found that deft. T. knew enough of F.'s methods to be put on inquiry as to what F. was doing. Subsequently pltfs. brought the present action against T. in respect of these moneys on the ground of conversion & for money had & received & for breach of duty & negligence as one of their directors & as their solr. Deft. T. pleaded acquiescence by pltfs.:—*Held:* deft. T. was liable in conversion, & even if there had been acquiescence he was liable for money had & received, & pltfs. were entitled to recover.—FENTON TEXTILE ASSOCN., LTD. *v.* THOMAS (1929), 45 T. L. R. 264, C. A.

4583. *Add. Annotations:*—**Refd.** Underwood *v.* Bank of Liverpool & Martins, Same *v.* Barclays Bank, [1924] 1 K. B. 775; Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443; Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40; Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292.

4587. *Add. Annotation:*—**Refd.** Brocklebank *v.* R., [1925] 1 K. B. 52.

4590a. —— —— To bank named by principal—Money returned by bank to agent.]—Pltfs. in London sold to a New York co. a quantity of Belgian francs to be delivered to defts. as the purchasers' agents in Brussels on Dec. 31, at a price to be paid in dollars on the same day in New York, & the purchasers instructed defts. to pay the francs when received to the C. Bank. On Dec. 30 bkpcy. proceedings were commenced against the purchasers in New York & a receiver was appointed, & on the same day the purchasers cabled to pltfs. not to pay the francs to defts., as they, the purchasers, were unable to complete their contract. Before that cable arrived pltfs. had already paid the francs to defts., & defts. had paid them to the C. Bank. Pltfs. then requested the C. Bank to return them, & the C. Bank returned them to defts., with an explanation that they did so for the purpose of cancelling defts.' payment to them. In these circumstances defts. claimed that, the money having been returned to them, they were entitled to hold it on behalf of their principals, & refused to pay it over to pltfs., who brought an action to recover the francs as being money had & received by defts. to their use:—*Held:* (1) as at the time pltfs. paid the francs to defts. the purchasers had already repudiated their contract, although pltfs. did not know that fact & consequently had not accepted the repudiation, pltfs. were under no legal obligation to pay, &, having paid under a mistaken belief of legal liability, they would have been entitled to recover the money back if they had discovered their mistake before defts. had paid it to the C. Bank; (2) the effect of the money being returned by the C. Bank was to restore pltfs. to the same position as that which they occupied before defts paid it away, & that position was unaffected by the fact that

PART IX. SECT. 3, SUB-SECT. 3.—C.

4556 i. *General rule.*]—The corpn. by one resolution directed that $300 should be granted to each councillor, deft. being one, to be by them expended on the roads; & by another, that $100 should be placed to the credit of each councillor, to be expended by them on the roads & bridges in their respective divisions. This was in accordance with an established practice, by which the councillors superintended the laying out of moneys in their respective divisions. Deft. granted several orders on the treasurer to different persons as for "work done," which were paid, & it appeared that such work, though contracted for, had not been performed. There was no evidence, however, of any fraud or collusion on deft.'s part, or of any gain to himself, except the usual charge to the corpn. of the commission on such moneys as were expended:—*Held:* there could be no recovery on the common counts, for deft. had received no money.—CHATHAM TOWNSHIP CORPN. *v.* HOUSTON (1868), 27 U. C. R. 550.—CAN.

PART IX. SECT. 3, SUB-SECT. 3.—D.

sx. *General rule.*]—Deft. having sold a cargo & remitted the proceeds to C. & S., an action was brought by pltfs. on the common counts as for money received to their use:—*Held:* after the sale deft. held the proceeds for the benefit of pltfs., & in remitting them to C. & S. did so in his own wrong, & the verdict for deft. should be set aside.—MORTON *v.* MCLEOD (1874, 10 N. S. R. (1 R. & C.) 71.—CAN.

sy. *Money paid to revenue officer—Representing value of seizure & fine—Action by informer for share.*]—WRIGHT *v.* CURLESS (1888), 21 N. S. R. 232.—CAN.

before redemand of the money by pltfs. the trustee in bkpcy. of the purchasers had directed defts. not to part with it, & defts. in compliance with that direction had credited the purchasers with it in their books; (3) defts. were bound to repay it to pltfs.—BRITISH AMERICAN CONTINENTAL BANK *v.* BRITISH BANK FOR FOREIGN TRADE, [1926] 1 K. B. 328; 95 L. J. K. B. 326; 134 L. T. 472; 42 T. L. R. 202, C. A.

4591. *Add. Annotation :*—**Refd.** *Re* A Debtor, [1928] Ch. 199.

4597. *Add. Annotations :*—**Refd.** Abram S.S. Co. *v.* Westville Shipping Co., [1923] A. C. 773; Rowland *v.* Divall, [1923] 2 K. B. 500.

4598. *Add. Annotation :*—**Refd.** Abram S.S. Co. *v.* Westville Shipping Co., [1923] A. C. 773.

4623. *Add. Annotation :*—**Distd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306.

4635. *Add. Annotation :*—**Consd.** Brocklebank *v.* R., [1924] 1 K. B. 647.

4639. *Add. Annotation :*—**Consd.** China Navigation Co., Ltd. *v.* A.-G. (1932), 48 T. L. R. 375.

4640. *Add. Annotations :*—**Consd.** Brocklebank *v.* R., [1925] 1 K. B. 52; China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375. **Refd.** Glamorgan County Council *v.* Glasbrook, [1924] 1 K. B. 879.

4644. *Add. Annotations :*—**Apld.** Marshal Shipping Co. *v.* Board of Trade, [1923] 2 K. B. 343. **Consd.** Brocklebank *v.* R., [1925] 1 K. B. 52; China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375. **Refd.** Glamorgan County Council *v.* Glasbrook, [1924] 1 K. B. 879.

4649. After this case add "**Payment as condition of licence to sell ship to foreigner.**]—*See* CONSTITUTIONAL LAW, Nos. 526a–526d, *ante*."

4650. *Add. Annotation :*—**Refd.** Catton *v.* Ashwell & Nesbit, [1928] Ch. 484.

4676a. ——.]—Pltf. cannot abandon his claim in tort & still pursue his claim for money had & received which depends upon the alleged tort.—HARDIE & LANE, LTD. *v.* CHILTERN, [1928] 1 K. B. 663; 96 L. J. K. B. 1040; 138 L. T. 14; 43 T. L. R. 709; 71 Sol. Jo. 664, C. A.

4700. *Add. Annotation :*—**Refd.** Woollatt *v.* Stanley (1928), 138 L. T. 620.

4713. *Add. Annotation :*—*As to* (2) **Refd.** Ellis *v.* Stenning & Son, Ltd. (1932), 76 Sol. Jo. 232.

4716. *Add. Annotations :*—**Refd.** London & Montrose Shipbuilding & Repairing Co. *v.* Barclays Bank (1925), 31 Com. Cas. 67; Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

4725a. —— **Conversion by creditor of bankrupt—Proceeds paid to defendant.**]—A. after committing an act of bkpcy. in order to procure his discharge from an arrest at the suit of B. draws & indorses to B. a bill of exchange, which C. accepts in expectation of receiving goods of A.'s into his hands. C. receives the goods, sells them, & pays the amount of the bill to B.; the assignees of A. cannot maintain an action against B. for this money as money had & received to their use.—WALLER *v.* DRAKEFORD (1816), 1 Stark. 481; 171 E. R. 536.

4742. *Add. Annotation :*—**Consd.** Jones *v.* Waring & Gillow, [1925] 2 K. B. 612.

4751. *Add. Annotations :*—**Consd.** Jones *v.* Waring & Gillow, [1925] 2 K. B. 612; *Re* Mason, [1929] 1 Ch. 1. **Refd.** *Re* Blake, *Re* Minahan's Petition of Right, [1932] 1 Ch. 54.

4770a. ——.]—PRESTON *v.* STRUTTON (1792), 1 Anst. 50; 145 E. R. 797.

Annotation :—**Consd.** Rawson *v.* Samuel (1841), Cr. & Ph. 161.

4824. *Add. Annotation :*—**Refd.** British & North European Bank *v.* Zalzstein, [1927] 2 K. B. 92.

4853a. ——.]—The H. Co. entered into an agreement for reinsuring marine risks with the L. Co. Later, it was voluntarily wound up, & B., the liquidator, agreed the L. Co.'s

PART IX. SECT. 3, SUB-SECT. 3.—H.

4596 i. *General rule.*]—*Re* CAIRNS & MCNAIRN, [1927] 2 D. L. R. 444; 60 O. L. R. 194.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 4.—B. (a).

ss. *Money paid under decree—Decree unreversed.*]—Money recovered under a decree cannot be recovered back in a fresh suit while the decree remains in force: but if the decree has been reversed or superseded the money paid is recoverable.—NAGANNA *v.* VENKATAPPAYYA (1923), I. L. R. 46 Mad. 895.—**IND.**

sd. *Money paid to obtain possession of goods.*]—WILSON *v.* MASON, LAMB *v.* WILSON (1876), 38 U. C. R. 14.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 4.—B. (b).

m i. ——.]—RICHARDS *v.* TAYLOR (1896), 28 N. S. R. (16 R. & G.) 311.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 4.—B. (c).

4616 ii. ——.]—Pltf.'s action against deft. was dismissed with costs. Pltf. appealed. After service of notice of appeal deft. threatened to distrain for the costs, & pltf.'s solr. paid the amount to deft.'s solr. The appeal was allowed & deft. ordered to pay the costs of the action & of the appeal. Neither deft. nor his solr. would refund the amount paid for the costs :—*Held :* the money could be recovered from deft. as money received to pltf.'s use.—BURKE *v.* BEATTY & WHITE, [1928] I. R. 91.—**IR.**

PART IX. SECT. 3, SUB-SECT. 4.—B. (f).

se. *Excessive tolls for electric light—Threat to cut off supply.*]—LEWIS *v.* ANDOVER & PERTH ELEC. L. COMRS. (N. B.), [1929] 1 D. L. R. 34.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 4.—B. (h).

4654 i. *Cause of action known to defendant.*]—BANK OF MONTREAL *v.* WEISDEPP, [1917] 2 W. W. R. 615; 24 B. C. R. 73, 81; 34 D. L. R. 26.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 4.—B. (i).

sf. *Payment made to clear title.*]—Pltf., believing that certain taxes imposed upon his land by the council of the municipality in which he lived were illegally imposed under Local Improvement Act, declined to pay them but subsequently paid them under protest to rid his land of the burden of the taxes, which he was obliged to do in order to obtain a loan upon mtge. of the land :—*Held :* pltf. was under such compulsion as prevented the payment from operating as a voluntary payment & he was entitled to recover the money paid.—PILLSWORTH *v.* COBOURG, [1930] 4 D. L. R. 757; 65 O. L. R. 541.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 4.—C. (i).

sg. *Proceeds of sale of crop—Agreement for delivery of part of crops.*]—DUCAT *v.* SWEENEY (1839), 2 Ont. Dig. 4259.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 4.—E.

sk. *Purpose illegal—Purpose partly fulfilled.*]—If A. gives to another as his agent a cheque to make a purchase forbidden by law, & the agent makes the purchase & indorses the cheque to the vendor, A. cannot recover from the agent an alleged balance unaccounted for of the amount of the cheque as money paid to the agent for A.'s use. While the money might have been recovered before the effecting of the illegal purpose, it cannot be recovered after.—LAWSON *v.* FARLEY, [1924] 1 D. L. R. 279; 1 W. W. R. 243; 18 Sask. L. R. 48.—**CAN.**

PART IX. SECT. 4, SUB-SECT. 1.

4764 vii. ——.]—An account stated may be constituted by an admission of existing indebtedness, although there is no definite balance struck on mutual accounts.—CANADIAN FERTILIZER CO. *v.* MARITIME UNITED FARMERS CO-OPERATIVE, [1931] 4 M. P. R. 106.—**CAN.**

PART IX. SECT. 4, SUB-SECT. 5.—B. (a).

sm. *Casual observation to third party—Insufficient.*]—CURTIS *v.* FLINDALL (1847), 3 U. C. R. 323.—**CAN.**

claim for a large sum, & paid dividends in respect of the claim. Following the practice of the co. B., notwithstanding the provisions of Stamp Act, 1891 (c. 39), & Marine Insurance Act, 1903 (c. 41), treated the agreement & the claim under it as valid. After the dissolution of the H. Co. he was advised that he should have disallowed the claim, & the dissolution was annulled, but an action to recover the money was dismissed, as no mistake of fact by B. was proved. On a misfeasance summons by a creditor of the co.: —*Held:* where an agreement is wholly void, items alleged to be due in respect of it are not a proper basis for an action on an account stated, & that a proof based on an account stated in such circumstances must be rejected. —*Re* HOME & COLONIAL INSURANCE CO., LTD., [1930] 1 Ch. 102; *sub nom. Re* HOME & COLONIAL INSURANCE CO., MAY *v.* BARHAM, 99 L. J. Ch. 113; 142 L. T. 207; [1929] B. & C. R. 85.

4859. *Add. Annotation:*—**Refd.** *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102.

4868. *Add. Annotations:—As to* (1) **Refd.** Thompson *v.* British Medical Assocn. (New South Wales Branch), [1924] A. C. 764. *Generally,* **Refd.** Palmolive Co. (of England) *v.* Freedman (1927), 44 T. L. R. 86.

Part X.—Personal Contracts.

4907. *Add. Annotation:*—**Refd.** Public Trustee *v.* Elder, [1926] Ch. 776.

4908a. ——.]—The element of personal confidence which renders a contract unassignable is not confined to cases where the purchaser relies on the personal skill of the vendor or manufacturer, or where the manufacturer relies on the personal idiosyncrasies of the buyer with regard to his requirements or with regard to his performance to the covenants other than his obligation to pay. Where the ability of the buyer to pay is the subject-matter of personal confidence, the contract is just as much taken out of assignability as where the manufacturing skill of the seller is the subject-matter of the buyer's personal confidence.

Defts. entered into a contract with H. to supply him with 10,000 tons of coal, the delivery of which was to be extended over two years. H. had been carrying on the business of a coal merchant for some years, the business consisting of carting coals from defts.' depots round the streets of a certain district & there selling it to the working classes by weight in relatively small quantities, it being a regular practice to give short credit. H. assigned the contract to pltf., who up to the time of the assignment had no experience of the coal trade:—*Held:* there was that degree of difference between H.'s & pltf.'s knowledge of the business, which, having regard to the nature of the business, constituted an element of personal confidence in the matter personal to H. which made the contract unassignable.—COOPER *v.* MICKLEFIELD COAL & LIME CO., LTD., COOPER *v.* RAYNER (1912), 107 L. T. 457; 56 Sol. Jo. 706.

4913. *Add. Annotation:*—**Refd.** Messager *v.* British Broadcasting Co., [1928] 97 L. J. K. B. 251.

4915. *Add. Annotation:*—**Refd.** Messager *v.* British Broadcasting Co., [1927] 2 K. B. 543.

4916. *Add. Annotation:*—**Refd.** Messager *v.* British Broadcasting Co., [1927] 2 K. B. 543.

4918. *Add. Annotation:*—**Refd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

4921. *Add. Annotation:*—**Distd.** Graves *v.* Cohen (1929), 46 T. L. R. 121.

4922a. Agreement as to right to perform play.]—By an agreement pltf. grant to E. "the sole & exclusive right of representing or performing" in certain areas a play, of the music of which pltf. was the composer:—*Held:* the agreement was not limited to performance at a theatre & was not a mere licence, but was an assignment to E. of rights which either he or his exors. could assign.—MESSAGER *v.* BRITISH BROADCASTING CO., LTD., [1929] A. C. 151; 98 L. J. K. B. 189; 140 L. T. 227; 45 T. L. R. 50, H. L.

4929a. Contract by jockey to ride horses.]—A contract by a jockey to ride the horses of an owner is dissolved by the death of either party.

That it was a personal contract . . . is clear beyond words. A jockey is chosen because of the confidence reposed in his personal skill & judgment & his ability in racing (WRIGHT, J.).—GRAVES *v.* COHEN (1929), 46 T. L. R. 121.

4931a. ——.]—COOPER *v.* MICKLEFIELD COAL & LIME CO., LTD., COOPER *v.* RAYNER, No. 4908a, *ante.*

4934. *Add. Annotation:*—**Consd.** Graves *v.* Cohen (1929), 46 T. L. R. 121. (Reference has been made to the headnote, not justified by anything in the judgment, in *Stubbs* v. *Holywell Ry. Co., per* WRIGHT, J.)

4935. *Add. Annotation:*—**Refd.** Graves *v.* Cohen (1929), 46 T. L. R. 121.

4936a. *S. P.* JACKSON *v.* BRIDGE (1702), 12 Mod. Rep. 650; 88 E. R. 1580.

Annotations:—**Refd.** Tasker *v.* Shepherd (1861), 6 H. & N. 575; Farrow *v.* Wilson (1869), L. R. 4 C. P. 744; Hinkins *v.* Alder (1906), 50 Sol. Jo. 258.

4936b. —— ——.]—GRAVES *v.* COHEN, No. 4929a, *ante.*

PART X. SECT. 1.

sb. *Advertising agreement.*]—An agreement whereby defts. granted to J. S., carrying on business as J. S. Co., the exclusive rights of screen advertising, J. S. Co. to attend to all matters connected with the obtaining of advertising contracts, which it took in its own name:—*Held:* not assignable.—SWINSON (JOHN) CO., LTD. *v.* CRYSTAL PALACE, LTD., [1922] N. Z. L. R. 250; Gaz. L. R. 69.—**N.Z.**

sb. *Agreement for easement — Construction & use of tramway.*]—Deft. & another in 1916 granted to S. a right to lay down a tramway through deft.'s land for the purposes of removing S.'s timber. In 1919 S. assigned his rights under the agreement to pltf. The assignment was known to deft., who raised no objection. Deft. in 1922 put gates across the tramway, removed part of the tramline, & destroyed part of a trestle bridge:—*Held:* the grant or contract was not a personal one, & pltf. had an equitable interest by assignment from S. in the easement.—MACDONALD *v.* PEDDLE, [1923] N. Z. L. R. 987.—**N.Z.**

Part XII.—Assignment of Contracts.

4956. *Add. Annotations :*—**Refd.** Anderson *v.* Equitable Life Assce. Soc. of the United States (1926), 134 L. T. 557; Bennett *v.* Whitehead, [1926] 2 K. B. 380.

4957. *Add. Annotation :*—**Refd.** Public Trustee *v.* Elder, [1926] Ch. 776.

4957a. —— —— ——.]—An agreement for the purchase & sale of a newspaper business contained a term or condition that the vendors should sell, & the purchasers should purchase "the full benefit of all pending contracts & engagements & of all other property to which the vendors are or may be entitled in connection with the said journal": —*Held :* the purchasers took the burden of pending contracts, & did not merely acquire an option to take the benefit of such contracts.—BOWATER & SONS *v.* MIRROR OF LIFE CO., LTD. (1902), 50 W. R. 381.

4963. *Add. Annotation :*—**Consd.** Greer *v.* Downs Supply Co., [1927] 2 K. B. 28.

4966. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Russian & English Bank (1932), 48 T. L. R. 282.

4985. *Add. Citations :*—33 L. T. 760; *sub nom. Re* EUROPEAN ASSURANCE SOCIETY ARBITRATION ACTS, 1872, 1873 & 1875, *Re* ANGLO-AUSTRALIAN & UNIVERSAL FAMILY LIFE ASSURANCE CO., HARMAN'S CASE, PRATT'S CASE, 45 L. J. Ch. 332.

Part XIII.—Interpretation of Contracts.

5031. *Add. Annotations :*—**Refd.** Larrinaga *v.* Soc. Franco Americaine Des Phosphates De Medulla (1923), 92 L. J. K. B. 455; Cohen *v.* Sellar, [1926] 1 K. B. 536; First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922; The Penelope, [1928] P. 130; Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1; May *v.* May, [1929] 2 K. B. 386.

5032. *Add. Annotations :*—**Refd.** Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461; Livock *v.* Pearson (1928), 33 Com. Cas. 188; Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

5033. *Add. Annotations :*—**Refd.** Sack *v.* Jones, [1925] Ch. 235; O'Cedar *v.* Slough Trading Co., [1927] 2 K. B. 123; Aldridge *v.* Wright, [1929] 2 K. B. 117; Vanderpant *v.* Mayfair Hotel Co., [1930] 1 Ch. 138.

5041a. -.]—Defts., manufacturers, sold goods to pltfs., retailers, upon condition that pltfs. should not resell the goods to the public at less than a specified price. After business had been carried on upon this condition for three years defts., without giving pltfs. notice of their intention to change their method of business, began to sell goods direct to the public without the intervention of middlemen, at a price very much lower than that which pltfs. were obliged to charge under their contract with defts., & as a result pltfs. were left with goods which they had bought from defts. & had in stock, & could not dispose of the goods except at a loss. They claimed damages on the ground that a term must be implied in the contract that defts. would not themselves sell the goods to the public at a price below that which pltfs. were bound by the contract to charge, or at least that before beginning to sell goods to the public they would give pltfs. sufficient notice to enable them to dispose of their stock of goods at a profit :—*Held :* no such term as pltfs. required could be implied in the contract.—LIVOCK *v.* PEARSON BROTHERS (1928), 33 Com. Cas. 188.

5042. *Add. Annotations :*—*As to* (1) **Apld.** Livock *v.* Pearson (1928), 33 Com. Cas. 188; Gaze *v.* Port Talbot Corpn. (1929), 93 J. P. 89. **Refd.** Cockburn *v.* Smith (1923), 40 T. L. R. 113; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395; Larrinaga *v.* Soc. Franco Americaine Des Phosphates De Medulla (1923), 92 L. J. K. B. 455; Transoceanica Soc. Italiana Di Navigazione *v.*

PART XII. SECT. 2, SUB-SECT. 1.

4957 i. *When implied.*]—MORRISON *v.* GALE (1872), 1 N. B. R. (Pug.) 203.—**CAN.**

PART XII. SECT. 2, SUB-SECT. 2.—A. (a).

4958 iii. —— ——.]—A business was transferred to a new co. Pltf. brought an action for an unpaid balance against the old firm. Evidence showed that pltf. had disclosed no intention to accept the new co. as the debtor :—*Held :* the old firm were liable.—SIMPSON & ORS *v.* COUSINS, [1923] 1 D. L. R. 106.—**CAN.**

4958 iv. —— ——.]—SWINSON (JOHN) CO., LTD. *v.* CRYSTAL PALACE, LTD., [1922] N. Z. L. R. 250; Gaz. L. R. 69.—**N.Z.**

4958 v. —— ——.]—MCCULLY *v.* MARITIME UNITED FARMERS' CO-OPERATIVE, CARTER *v.* MARITIME UNITED FARMERS' CO-OPERATIVE (N. B.), [1926] 4 D. L. R. 727.—**CAN.**

PART XII. SECT. 2, SUB-SECT. 2.—A. (b) i.

4967 i. *Clear proof of intention required—Onus on party alleging novation.*]—CRAYTHORNE *v.* JENKINS, [1926] N. Z. L. R. 858.—**N.Z.**

PART XII. SECT. 2, SUB-SECT. 2.—B.

4999 iv. ——.]—MCCANNELL *v.* TYREMAN, [1925] 1 D. L. R. 911.—**CAN.**

sd. *What constitutes — Bill of exchange of new firm taken in payment—Bill dishonoured.*]—Pltf. co., a creditor of a firm, had no notice of the dissolution of the partnership between the partners, C. & S., until Feb. 7, when H., pltfs.' manager, was told of it. H. took an acceptance of S. for the amount due to pltfs. down to Feb. 1, dating it as of Feb. 7, receipted the bill & continued to supply goods to S. down to Mar. 4 when the business was closed. On Mar. 10 the draft taken by H. was dishonoured, & on Mar. 31, the whole dealing was closed by H. taking a demand note from S. for the whole amount then due to pltf. co. :—*Held :* C. was not released from his liability to pltfs. until after notice of dissolution given by S. on Feb. 7. There was no novation & pltfs. were entitled to recover from the members of the firm their account down to the date of notice.—HANTSPORT FRUIT CO., LTD. *v.* COLDWELL, [1923] 4 D. L. R. 65; 56 N. S. R. 222.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 1.—B.

5034 ii. ——.]—In construing a contract, a term or condition not expressly stated may, in certain circumstances, be implied by the ct., if it is clear, from the nature of the transaction, that the contracting parties must have intended such a term or condition to be a part of the agreement between them. The implication is founded upon the presumed intention of the parties & upon reason.—PIONEER BANK *v.* CANADIAN BANK OF COMMERCE (1915), 9 O. W. N. 96; 34 . L. R. 531.—**CAN.**

Shipton, [1923] 1 K. B. 31; United States Shipping Board *v.* Durrell, [1923] 2 K. B. 739; Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461; Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99. *As to* (2) **Refd.** *Re* Windsor Steam Coal Co. (1901), Ltd. (1928), 140 L. T. 80; Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

5045. *Add. Annotations:*—**Consd.** United States Shipping Board *v.* Durrell, [1923] 2 K. B. 739. **Refd.** Anglo-Newfoundland Development Co. *v.* Pacific Steam Navigation Co., [1924] A. C. 406; Cohen *v.* Sellar, [1926] 1 K. B. 536.

5047a. -.]—Pltfs. & defts. entered into an agreement, which contained a recital that defts. had purchased some land & were intending to build a theatre thereon, & by which it was agreed that pltfs. should contribute in a certain proportion towards the expenses of building, & should become managing directors of the theatre at a salary for a term of years:—*Held:* there was no implied obligation on defts. to build the theatre.—MORELL *v.* NEW LONDON DISCOUNT Co. (1902), 18 T. L. R. 507.

5048. *Add. Annotations:*—**Consd.** Cockburn *v.* Smith (1923), 40 T. L. R. 113; Kelantan Government *v.* Duff Development Co., [1923] A. C. 395; Forbes, Abbott & Lennard *v.* G. W. Ry. (1927), 138 L. T. 286. **Apld.** Silverman *v.* Imperial London Hotels (1927), 137 L. T. 57; Wallems Rederij A./S. *v.* Muller, Batavia, [1927] 2 K. B. 99; G. W. Ry. *v.* Durnford (1928), 139 L. T. 145; Livock *v.* Pearson (1928), 33 Com. Cas. 188; G. W. Ry. *v.* Monmouthshire County Council (1929), 93 J. P. 142. **Consd.** Campbell *v.* Hopkins & Sons (Clerkenwell), Ltd. (1931), 49 R. P. C. 38; Lamb & Sons *v.* Goring Brick Co., [1932] 1 K. B. 710. **Refd.** Larrinaga *v.* Soc. Franco Americaine Des Phosphates De Medulla (1923), 92 L. J. K. B. 455; United States Shipping Board *v.* Durrell, [1923] 2 K. B. 739; British Petroleum Co. *v.* A.-G. for Ceylon, [1926] A. C. 147; Browning *v.* Crumlin Valley Collieries, [1926] 1 K. B. 522; United States Shipping Board *v.* Strick, [1926] A. C. 545; Marbe *v.* George Edwardes (Daly's Theatre) (1927), 43 T. L. R. 460; Gaze *v.* Port Talbot Corpn. (1929), 93 J. P. 89; Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99; Miller *v.* Cannon Hill Estates, Ltd., [1931] 2 K. B. 113; Rogerson *v.* Scottish Automobile & General Insurance Co. (1930), 144 L. T. 460.

5051. *Add. Annotation:*—*As to* (1) **Refd.** Fowler *v.* Commercial Timber Co., [1930] 2 K. B. 1.

5052. *Add. Annotations:*—**Refd.** Livock *v.* Pearson (1928), 33 Com. Cas. 188; Fowler *v.* Commercial Timber Co., [1930] 2 K. B. 1.

5054. *Add. Citation:*—15 Asp. M. L. C. 544.
Add. Annotations:—**Apld.** Gaze *v.* Port Talbot Corpn. (1929), 93 J. P. 89. **Refd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

5054a. ——.]—Pltf. & defts., who were respective owners of patents for conveying apparatus, entered into an agreement whereby each was granted a licence to use the invention of the other. The agreement recited the acknowledgment by the parties of the validity of the respective patents of the other, & contained a covenant by defts. not at any time hereafter to dispute the validity of pltf.'s patent. The agreement also contained a clause referring to arbn. any dispute between the parties other than the question of infringement or the recovery of royalties. In an action for royalties under the agreement & damage for infringements committed prior to it defts. pleaded that pltf.'s patent was invalid & that there was an implied term in the agreement that pltf. should accept the same in satisfaction of all claims in respect of infringements then outstanding. The questions as to whether in view of the covenant in the agreement defts. could put the validity of pltf.'s patent in issue, & whether such a term as pleaded in the defence could be implied were set down for hearing as preliminary questions of law:—*Held:* in view of the covenant in the agreement defts. were not entitled to dispute the validity of pltf.' patent, & such a term as pleaded in t. defence must be implied in the agreement] order to give business efficacy to the contr... —CAMPBELL *v.* HOPKINS (G.) & SONS (CLERKENWELL), LTD. (1931), 49 R. P. C. 38.

5056. *Add. Annotations:*—**Refd.** Willis *v.* Willis, (1927), 96 L. J. P. 177; First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922; The Penelope, [1928] P. 180; Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1; May *v.* May, [1929] 2 K. B. 386.

5059. *Add. Annotation:*—**Apld.** Kelantan Government *v.* Duff Development Co., [1923] A. C. 395.

5060. *Add. Annotation:*—**Co...** A.-G. *v.* G. S. & W. Ry. of Ireland, [1925] ... C. 754.

5066a. **Term customary during war.**]—The ct. found that since the outbreak of war in 1914 it had been a universal custom in the dried fruit trade to insert in all contracts for the sale of sultanas a clause as follows: "Should shipment be prevented by *force majeure* such as prohibition of export, blockade, war, or any consequence of warlike operations, this contract or the then unfulfilled part thereof to be cancelled without claim." The ct., therefore, rectified certain bought & sold notes by the addition of this clause on the ground that the parties must be taken

PART XIII. SECT. 2, SUB-SECT. 1.—C.

5048 ii. ——.]—While the ct. must not by implication actually make a contract for the parties, yet it may hold that on a reasonable consideration of the terms of the contract there is necessarily implied an obligation for the purpose of giving efficacy to the transaction & preventing such a failure of consideration as cannot have been within the contemplation of either side.—CONNORS *v.* Mc- [1924] 2 D. L. R. 86; 2 W. W. R. 294; 20 Alta. L. R. 289.—CAN.

5048 iii. ——.]—A term or condition may be implied by the ct., if it is clear, on a reasonable & business like consideration of all the terms of the contract, that the parties must have intended such a term or condition.—WELLS *v.* BLAIN, [1927] 1 D. L. R. 687; [1927] 1 W. W. R. 223; 21 Sask. L. R. 194.—CAN.

5048 iv. —— *Whether period of agency included.*]—A contract of agency contained no express stipulation as to the term of the agency:—*Held:* it was not necessary, in order to give business efficiency to the contract or to carry into effect the intention of the parties, to imply a term that the contract could be terminated only on reasonable notice, & such a term could not therefore be implied.—POLLARD *v.* GIBSON, [1924] 4 D. L. R. 354; 55 O. L. R. 424.—CAN.

5048 v. ——.]—MORGAN *v.* HUDSON BAY MINING & SMELTING CO., [1930] 2 D. L. R. 587.—CAN.

to have contracted on this basis.—CARAMAN ROWLEY & MAY *v.* APERGHIS (1923), 40 T. L. R. 124.

5067. *Add. Annotation :*—**Refd.** Winkworth *v.* Raven, [1931] 1 K. B. 652.

5073. *Add. Annotation :*—**Refd.** Einar Bugge *v.* Bowater (1925), 31 Com. Cas. 1.

5085. *Add. Annotations :*—**Refd.** Boorne *v.* Wicker, [1927] 1 Ch. 667 : Farey *v.* Cooper, [1927] 2 K. B. 384; Livock *v.* Pearson (1928), 33 Com. Cas. 188.

5086. *Add. Annotations :*—**Apld.** Boorne *v.* Wicker, [1927] 1 Ch. 667. **Refd.** Farey *v.* Cooper, [1927] 2 K. B. 384; Livock *v.* Pearson (1928), 33 Com. Cas. 188.

5087. *Add. Annotation :*—**Refd.** Martin *v.* Stout, [1925] A. C. 359.

5088. *Add. Annotation :*—*As to* (2) **Refd.** Franco-British Ship Store Co. *v.* Compagnie des Chargeurs Francaise (1926), 42 T. L. R. 735.

5102. *Add. Annotations :*—**Consd.** First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922; The Penelope, [1928] P. 180. **Refd.** Larrinaga *v.* Soc. Franco Americaine Des Phosphates Des Medulla (1923), 92 L. J. K. B. 455; Kursell *v.* Timber Operators & Contractors (1926), 95 L. J. K. B. 569; *Re* Wait, [1926] Ch. 962; May *v.* May, [1929] 2 K. B. 386. **Refd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

5103. *Add. Annotation :*—**Refd.** Larrinaga *v.* Soc. Franco Americaine Des Phosphates Des Medulla (1923), 92 L. J. K. B. 455.

5104. *Add. Annotation :*—**Expld.** *Re* Wait, [1927] 1 Ch. 606.

5105. *Add. Annotation :*—**Refd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

5107. *Add. Annotation :*—**Refd.** The Penelope, [1928] P. 180.

5113. *Add. Annotations :*—**Consd.** Marbé *v.* George Edwardes (Daly's Theatre) (1927), 96 L. J. K. B. 980. **Overd.** Herbert Clayton & Jack Waller, Ltd. *v.* Oliver, [1930] A. C. 209.

5117. *Add. Annotation :*—**Refd.** Sweet *v.* Williams (1922), 128 L. T. 379.

5119. *Add. Annotation :*—**Refd.** Brown *v.* Dagenham U. C., [1929] 1 K. B. 737.

5120. *Add. Annotations :*—**Consd.** Marbé *v.* George Edwardes (Daly's Theatre) (1927), 96 L. J. K. B. 980. **Distd.** *Re* Golomb & Porter & Co.'s Arbitration (1931), 144 L. T. 583.

5121. *Add. Annotations :*—**Consd.** Marbé *v.* George Edwardes (Daly's Theatre) (1927), 96 L. J. K. B. 980; Herbert Clayton & Jack Waller, Ltd. *v.* Oliver, [1930] A. C. 209.

5122a. Actor.]—Applts., theatrical producers, agreed to engage resp., an American actor, to play one of the three leading comedy parts in a musical play about to be produced at the London Hippodrome for six weeks certain at a salary of £55 per week, & the contract contained a provision prohibiting resp. during the continuance of his engagement from acting elsewhere without the consent of the applts. Resp. objected that the part assigned to him was not one of the three leading comedy parts &, on the refusal of applts. to recast him, declined to appear in the play & sued applts. for damages for breach of contract. At the trial of the action before a judge & jury the jury found for resp. for £1,000 damages for loss of publicity & for three weeks' salary, & judgment was entered accordingly. The Ct. of Appeal affirmed the verdict & judgment except as to the salary :—*Held :* (1) upon the construction of the contract, it bound applts. to give resp. an opportunity of appearing in public in a part answering the stipulated description; (2) it was competent to the jury, having regard to the character of the contract, to give damages to resp. for loss of publicity.—HERBERT CLAYTON & JACK WALLER, LTD. *v.* OLIVER, [1930] A. C. 209; 99 L. J. K. B. 165; 142 L. T. 585; 46 T. L. R. 230; 74 Sol. Jo. 187, H. L.

5123. *Add. Annotation :*—**Refd.** *Re* Windsor Steam Coal Co. (1901), Ltd. (1928), 140 L. T. 80.

5126. *Add. Annotations :*—**Refd.** Sweet *v.* Williams (1922), 178 L. T. 379; *Re* Windsor Steam Coal Co. (1901), Ltd. (1928), 140 L. T. 80.

5132. *Add. Annotations :*—**Consd.** Browning *v.* Crumlin Valley Collieries, [1926] 1 K. B. 522; SAGAR *v.* RIDEHALGH (H.) & SON, LTD., [1930] 2 Ch. 117. **Refd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

5152. *Add. Annotation :*—**Refd.** Crediton Gas Co. *v.* Crediton U. C., [1928] Ch. 447.

PART XIII. SECT. 2, SUB-SECT. 1.—G. (e).

sk. *Agreement to buy goods—Obligation to supply.*]—Implied.—CANADA CYCLE & MOTOR CO., LTD. *v.* MEHR (1919), 45 O. L. R. 576; 48 D. L. R. 579; 16 O. W. N. 253.—**CAN.**

sl. *S. P.* BERLINER GRAMAPHONE CO., LTD. *v.* N. H. PHINNEY & CO., LTD. (1921), 54 N. S. R. 295; 57 D. L. R. 596.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 1.—H. (a) i.

sm. *Lease of tobacco stall with electric light connected—Implied promise to continue supply.*]—Pltf. took a lease from deft. of a tobacco stall in the city. At the time the lease was granted, the stall was supplied with electric light, connected with the city electricity supply through portion of the premises retained by deft. For some time after the lease, pltf. used the electricity to light the stall for business purposes. The lease was silent as to the supply of electricity. Deft. later cut off the supply. He then brought an action for damages, & in his claim alleged a promise by deft. not to interfere with the supply of electricity nor to prevent the continuance of such supply :—*Held :* there was an implied promise by deft. in the terms sued upon by pltf.—JENKINS *v.* LEVINSON (1929), 29 S. R. N. S. W. 151; 46 N. S. W. W. N. 38.—**AUS.**

PART XIII. SECT. 2, SUB-SECT. 1.—H. (a) iii.

sn. *Commission payable out of purchase-money.*]—Pltf., an agent, made a special contract with deft. whereby he was to obtain a portion of the purchase price :—*Held :* in the absence of express provision, there was no obligation on deft. to keep the contract of sale alive in order that pltf. might obtain his commission, & upon the cancellation of the contract of sale pltf.'s right was determined.—GOWAN *v.* BOWERN, [1924] App. D. 550.—**S. AF.**

st. *Agreement to sell & share in proceeds of sale of goods—Obligation to supply.*]—LOCK *v.* PURDON (1850), 7 N. B. R. (2 All.) 33.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 1.—H. (b).

5133 i. *Agreement fixing prices.*]—The military authorities accepted a tender from pltf. whereby he agreed to supply at prices specified so much of the goods mentioned therein as the officer in charge might require during the period mentioned in the tender :—*Held :* pltfs.' tender amounted merely to an offer to supply the goods mentioned at the prices specified, & the military authorities were not bound by their acceptance of the tender to purchase all or any of the said goods needed by them from pltf. in the absence of a covenant to that effect.—SECRETARY OF STATE *v.* MADHO RAM (1928), I. L. R. 10 Lah. 493.—**IND.**

PART XIII. SECT. 2, SUB-SECT. 1.—N.

sw. *Agreement to furnish planters for fishery with supplies—Obligation to turn*

5161. *Add. Annotation:*—**Consd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

5167. *Add. Annotation:*—**Consd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

After this case add "*See, further*, GIFTS, Vol. XXV., p. 525."

5168. *Add. Annotation:*—**Apld.** London & South American Investment Trust *v.* British Tobacco Co. (Australia), [1927] 1 Ch. 107.

5168a. Agreement to "exert influence"—No obligation to pay money if necessary.]—Deft. co. made an agreement with pltf. co. to use such "rights" as they might possess & such influence as they could exercise to procure a third co. to deliver to pltfs. a percentage of the crude oil produced from a concession belonging to the third co., in which defts. had the preponderating shareholders' vote. No delivery of oil from the concession in question was made by defts. to pltfs., &, in answer to an inquiry by pltfs. as to when delivery was to begin, defts. replied that they were not in a position to make delivery as they could not enforce it against the other members of the third co. without making a payment to them & that they were under no obligation to make such payment. In an action for breach of contract defts. admitted that if they gave consideration there would be no impossible barrier to their getting the oil:—*Held:* as defts. could not use their preponderating vote in the third co. to dispose of a product of the third co. in order to satisfy an obligation of their own to the detriment of the interests of the minority shareholders, & as the word "rights" in the agreement did not mean that defts. were bound to exercise their right of spending money to procure the oil, the action failed.—GENERAL ASPHALT CO. *v.* ANGLO-SAXON PETROLEUM CO., LTD. (1932), 48 T. L. R. 276, H. L.; *revsg.*, 75 Sol. Jo. 191.

5168b. Contract to print bank-notes—Implied duty not to use plates for unauthorised purpose.]—Pltfs., a Portuguese bank, made with defts., who were printers, a contract which provided that defts. should print the authorised notes for the bank, the plates being left in defts.' possession & being intended to be available only for the purposes of the bank. By means of an elaborate fraud defts. were induced by an unauthorised person to print from the plates a large quantity of notes & to deliver the notes to him, & the result was that these notes were put into circulation. In consequence of the fraud pltfs. honoured a large number of the spurious notes, & on learning the facts they found it necessary to withdraw all the genuine notes of the same issue from circulation as they had, at that time, no means of distinguishing the genuine from the spurious notes. In an action for breach of contract, negligence, or conversion:—*Held:* it was an implied term of the contract that there was to be no use of the plates for any purpose not authorised by pltfs., & there was an absolute duty on defts. not to print or deliver notes of pltf. bank without the authority of the bank, &, even if defts. were bound only to take reasonable care to avoid such acts, defts. had, on the facts, fallen short of the standard of care required by the special nature of the business, & pltfs. were entitled to recover.—BANCO DE PORTUGAL *v.* WATERLOW & SONS, LTD. (1930), 47 T. L. R. 214; 75 Sol. Jo. 81; *on appeal* (1931), 100 L. J. K. B. 465, C. A.; [1932] A. C. 452.

Annotation:—**Refd.** The Edison (1931), 47 T. L. R. 635.

SUB-SECT. 3.—IMPLIED WARRANTIES (Vol. XII., p. 628).

Add the following case:—

5168c. Of fitness—Turkish baths.]—Defts. were the owners of Turkish baths, & customers who came late at night were permitted to use the beds in the cubicles till early the next morning. Pltf. & his brother slept one night at the baths, & when they woke up they found that they had been bitten badly by insects, proved afterwards to be bugs:—*Held:* there had been a breach of an implied warranty that the beds or couches supplied for the use of customers should be reasonably fit for the purpose, & defts. owed a duty to pltfs. to take reasonable care that no bugs or other dangerous insects should infest their premises.—SILVERMAN *v.* IMPERIAL LONDON HOTELS, LTD. (1927), 137 L. T. 57; 43 T. L. R. 260.

5168d. Gridiron berth.]—EASTER *v.* MARVIN (1930), 74 Sol. Jo. 122.

For the cross-reference "**Of fitness—Sale of animals.**]—*See, generally*, ANIMALS, Vol. I., pp. 260 *et seq.*" read "—— **Sale of animals.**]—*See, generally*, ANIMALS, Vol. I., pp. 260 *et seq.*"

in produce to supplier.]—Implied.—JOHNSON *v.* FINLAY (1882), 6 Nfld. L. R. 363.—**NFLD.**

sy. *Supply of water—For particular period—Expiration of original contract—Continuation under terms of old contract.*]—R. *v.* PUBLIC UTILITIES BOARD OF COMRS., *Ex p.* TOWN OF MILLTOWN (N. B.) (1919), 47 D. L. R. 219.—**CAN.**

sz. *Agreement for use of hockey arena—Proceeds divisible between parties—Obligation to use arena.*]—CANADA HOCKEY CLUB *v.* ARENA AMUSEMENTS, LTD., [1930] 1 D. L. R. 127.—**CAN.**

tb. *Sale of tickets to queue—Duty of seller to preserve order of priority.*]—Pltf. claimed damages for an alleged breach of contract in that deft. had failed to preserve the order of priority in queue & had failed to offer for sale the full number of tickets stated to be available. Deft. advertised tickets for sale & limited the number to which each person was entitled to four. Pltf. who had been commissioned by a large number of people to secure tickets, employed men who stood with others in a queue all night waiting for the office to open. Others who came later took up positions ahead of pltf.'s men, with the result that some of them failed to secure tickets:—*Held:* the number of tickets sold was but a reasonable shortage of the estimated number & as there was no express contract between the parties & pltf. had not proved a custom binding upon deft. to preserve the order of priority in the queue, the claim must fail.—BELL *v.* NEW ZEALAND RUGBY FOOTBALL UNION (1931), 26 M. C. R. 39 (New Zealand).—**N.Z.**

COPYHOLDS.

NOTE.—As to copyhold tenure & manorial incidents after 1925, *see* Law of Property Act, 1922 (c. 16), ss. 128–145, scheds. 12–15; Law of Property (Amendment) Act, 1924 (c. 5), sched. 2.

Part I.—The Manor.

41. *Add. Annotation:—As to* (1) **Refd.** Hodgson *v.* McCreagh (1923), 93 L. J. Ch. 339.

122. *Add. Citation:*—92 L. J. Ch. 55.

128. *Add. Annotation:—As to* (1) **Refd.** Jay *v.* Jay, [1924] 1 K. B. 826.

Part III.—Custom of the Manor.

229. For catchwords **In consideration of assistance to persons wrecked—Good.]"** read **"To seize best anchor & cable—Of ship wrecked on shore of manor—In consideration of assistance to persons wrecked—Good.]"**

Part IV.—Manorial Courts.

325. *Add. Annotation:—As to* (1) **Apld.** *Re* Holliday, [1922] 2 Ch. 698.

Part V.—The Court Rolls and other Manorial Documents.

393. *Add. Annotation:*—**Consd.** Beaumont *v.* Jeffery (1924), 40 T. L. R. 796.

394a. —— **Purchaser for value.**]—(1) Pltf., as lord of the manor of Great Tey, which he acquired by purchase in 1923, brought the present action of detinue to recover possession of certain ancient ct. rolls of that manor, which were of mere historical interest & which before his purchase pltf. had seen advertised for sale by deft., who, having purchased them in 1902, from one P., a waste paper dealer, had commenced advertising them for sale ten years before the commencement of the present action:—*Held:* in the absence of evidence to the contrary, it must be presumed that P. acquired the rolls lawfully in the ordinary course of his business from either the lord or the steward of the manor, & as the position of pltf.'s predecessor in title as trustee of the rolls, while they remained in his possession, did not make it illegal for him to part with them to a stranger, who came under the same obligation as the lord to produce them, pltf. was not entitled to recover the rolls.

Held: (2) even if an action of detinue would lie, yet, upon the true construction of Limitation Act, 1623, s. 3, the words "goods & chattels" were mentioned only in reference to actions of replevin, & that as the action was an action of detinue & the cause of action, namely, the assertion by deft. of an adverse title by advertising the rolls for sale, arose more than six years before the commencement of the action, the action was barred by the statute.—BEAUMONT *v.* JEFFERY, [1925] Ch. 1; 93 L. J. Ch. 532; 132 L. T. 246; 40 T. L. R. 796; 68 Sol. Jo. 867.

—— ——.]—*See, now,* Law of Property Act, 1922 (c. 16), s. 144a, *added by* Law of Property (Amendment) Act, 1924 (c. 5), Sched. II., para. 2.

404a. Recovery of possession—Limitation of action—When time begins to run.]—BEAUMONT *v.* JEFFERY, No. 394a, *ante.*

423. *Add. Citation:*—2 Dowl. N. S. 20.

461. *Add. Annotation:*—**Refd.** Love *v.* Bentley (1707), 11 Mod. Rep. 134.

482. *Add. Annotation:* — **Refd.** Beaumont *v.* Jeffery (1924), 40 T. L. R. 796.

Part VI.—Officers of the Manor.

491. *Add. Citations:*—2 Show. 21; Freem. K. B. 473.

Part IX.—Particular Estates in Land of Copyhold and Customary Tenure.

798a. —— **Grandnephew as subsequent taker.**]—*Qu.:* whether it is a good & reasonable custom that upon the death of a tenant in possession of lands holden of a manor for lives, the next life in reversion for which the estate is holden shall be entitled to enjoy the estate; & if such custom be good & reasonable, whether, where a party takes a grant of such lands for the life of himself & his grandnephews & dies, the grant shall operate as an advancement for the grandnephews, so as to rebut a resulting trust in favour of other parties claiming under the purchaser.—EDWARDS *v.* EDWARDS (1836), 2 Y. & C. Ex. 123; 6 L. J. Ex. Eq. 79; 160 E. R. 337.

992. For existing citations read "37 Ch. D. 312; 57 L. J. Ch. 466; 58 L. T. 620; 36 W. R. 393; *affd. on other grounds* (1888), 40 Ch. D. 14, C. A."

Part XI.—Relationship of Lord and Tenant as affecting Services, Dues, etc.

1157a. Fine payable by executor—Effect of Law of Property Act, 1922 (c. 16), s. 128, & Administration of Estates Act, 1925 (c. 23), ss. 1, 3, 22.]—The custom of a manor was that copyholders pay fines "upon descent or alienation when they take up their several lands & tenements." A copyholder in fee of settled copyholds died in 1928 after the copyholds had been enfranchised under Law of Property Act, 1922 (c. 16), s. 128, but before the manorial incidents (including fines) saved thereby had been extinguished under sect. 138. He had devised the property under a testamentary power:—*Held:* his special exor. in whom the settled land was vested under Administration of Estates Act, 1925 (c. 23), ss. 1, 3, 22, must pay a fine on the death, although he had not assented to the devise, or conveyed the property to a purchaser, or done any other act formerly involving admittance & payment of a fine.—A.-G. TO THE PRINCE OF WALES *v.* BRADSHAW, [1930] 2 Ch. 279; 99 L. J. Ch. 433; 143 L. T. 430; 46 T. L. R. 551.

1164. *Add. Annotation:*—**Refd.** Bradford *v.* Price (1923), 92 L. J. K. B. 871.

1176. *Add. Annotation:*—**Consd.** Cheshire County Council *v.* Hopley (1923), 130 L. T. 123.

1192 *Citations:*—For "12 E. R. 1126" read "125 E. R. 1126."

1241. *Add. Annotation:*—**Refd.** United Dairies *v.* Public Trustee, [1923] 1 K. B. 469.

1272a. —.]—Though a bill in equity lies to recover a small quit-rent, yet it ought to appear that pltf. has no remedy for the same at law. Lord of a manor brings a bill against a tenant to hold a down belonging to the manor, discharged of the tenant's claim of a right of common thereto; this an improper bill. But a bill for a quit-rent may be proper in some circumstances & what.—HOLDER *v.* CHAMBURY (1734), 3 P. Wms. 256; 24 E. R. 1052, L. C.

Annotations:—**Consd.** Bouverie *v.* Prentice (1783), 1 Bro. C. C. 200; Leeds (Duke) *v.* New Radnor Corpn. (1789), 2 Bro. C. C. 518; Basingstoke Corpn. *v.* Bolton (Lord) (1852), 1 Drew. 275; Searle *v.* Cooke (1890), 43 Ch. D. 519.

1274. *Add. Annotations:*—**Refd.** Purnell *v.* Roche, [1927] 2 Ch. 142; Barratt *v.* Richardson & Cresswell, [1930] 1 K. B. 686.

Part XII.—Descent of Copyholds.

1326. *Add. Citation:*—39 L. J. Ch. 426.

1354. For existing citations read "(1852), Bail. Ct. Cas. 111; 22 L. J. Q. B. 39.

Part XIV.—Mortgage of Copyholds.

1461a. —.]—FRASER *v.* THOMAS (1852), 3 Seton's Judgments & Orders, 7th ed. 2171.

Annotation:—**Folld.** Ashton *v.* Corrigan (1871), L. R. 13 Eq. 76.

Part XV.—Devise of Copyholds.

1506. *Add. Annotation:* — **Refd.** *Re* Brooke, Brooke *v.* Dickson, [1923] 2 Ch. 265.

1508. *Add. Annotation:* — **Refd.** *Re* Brooke, Brooke *v.* Dickson (1923), 92 L. J. Ch. 504.

1533a. —— Remainder to his heir-at-law—Rule in Shelley's Case applies.]—By his will testator, among other devises of freeholds & copyholds, devised his two copyhold houses, gardens, & premises situate in the parish of B., & also a piece of copyhold land adjoining, to his nephew G. for life without impeachment of waste, & after his death he devised the same premises to the "heir-at-law" of the said G. There was no special custom of descent in the manor of B. affecting these copyholds:—*Held:* the use of the expression "heir-at-law" did not exclude the operation of the rule in *Shelley's Case*, which accordingly applied, & G. was entitled in customary fee simple for an estate to him & his heirs according to the custom of the manor.—*Re* HACK, BEADMAN *v.* BEADMAN, [1925] Ch. 633; 94 L. J. Ch. 343; 133 L. T. 134; 69 Sol. Jo. 662.

See, now, Law of Property Act, 1922 (c. 16), ss. 128–145, Scheds. 12–15; Law of Property Act, 1925 (c. 20), s. 131.

Part XVIII.—Mode of Transmission of Copyholds inter vivos.

1772. After this case add:—

Endorsement of assurances of enfranchised land by stewards.]—*See* Law of Property Act, 1922 (c. 16), s. 129.

Part XIX.—Determination and Suspension of Tenant's Estate.

1947. *Add. Citation:*—1 Eq. Cas. Abr. 121.

1978. *Add. Annotation:*—**Refd.** *Re* Price, [1928] Ch. 579.

Part XX.—Enfranchisement.

1989. *Add. Annotation:*—**Consd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

1998. *Add. Annotation:*—**Refd.** *Re* Price, [1928] Ch. 579.

2032. After this case add as follows:—

SECT. 3a.—**UNDER LAW OF PROPERTY ACTS.**

2032a. Estate tail in undivided share—Interest in personalty.]—Where before 1926 an undivided share in copyhold land was the subject of an estate tail, the enfranchisement of such copyhold land after 1925 can result in turning the estate tail into an absolute interest; & where, by reason of the statutory trusts under Law of Property Act, 1925 (c. 20), such land becomes personalty, the absolute interest into which the estate tail is turned is an interest in personalty.—*Re* PRICE, [1928] Ch. 579; 97 L. J. Ch. 423; 139 L. T. 339.

Annotations:—**Refd.** *Re* Kempthorne, Charles *v.* Kempthorne (1929), 46 T. L. R. 15; *Re* Newman, Slater *v.* Newman, [1930] 2 Ch. 409; *Re* Thomas's Will Trusts, Powell *v.* Thomas, [1930] 2 Ch. 67.

2032b. Equitable joint tenancy in copyholds—Subject to rentcharge—Vesting of legal estate.]—On July 5, 1802, Bryan Abbs & another trustee who predeceased him were admitted to certain copyhold plots A., B. & C. upon trust out of the rents & profits to raise & pay an annual rent of £7 10*s.* to Harrison & his heirs & subject thereto in trust for Wilson & his heirs. Many years after Bryan Abbs' death his customary heir H. C. Abbs, since deceased, was admitted to A. & C., but no one was admitted to B.; so that on Dec. 31, 1925, the best right to admittance was in the customary heirs of H. C. Abbs & Bryan Abbs. On the same date the equitable title to the land stood vested in Thompson & Collins as joint tenants in fee, subject to the equitable rentcharge then vested in Aylmer, subject to proof of his title. On Jan. 1, 1926, the Law of Property Acts came into operation & the copyhold plots were enfranchised. The ct. being asked to determine in whom the legal estates in the land & the rentcharge vested:—*Held:* (1) under the 1922 Act, Sched. XII., para. 8 (*b*), the freehold estate in the land vested in the first instance in the personal representative of H. C. Abbs & the customary heir of Bryan Abbs as trustees, Bryan Abbs having no known personal representative; (2) either under the 1922 Act, Sched. XII., para. 8 (*d*), or under the 1925 Act, Sched. I., Part II., paras. 4, 6 (*d*), the rentcharge vested as a legal rentcharge in Aylmer or other the persons entitled thereto; (3) on the rentcharge becoming a legal rentcharge the trustees became bare trustees with no longer any active duties to perform; (4) under the 1925 Act, Sched. I., Part II., paras. 3, 6 (*d*), the initial vesting in the trustees was divested, & the legal estate subject to the legal rentcharge vested in Thompson & Collins as joint tenants in fee simple; (5) sect. 36 of the 1925 Act did not come into operation until after the vesting provisions had done their work. It then merely attached a trust for sale to the joint legal estate in Thompson & Collins. It did not previously attach a trust for sale to the initial estate in the trustees so as to put the divesting provisions of the 1925 Act, Sched. I., Part II., out of operation. Still less did it bring in the undivided share provisions of the 1925 Act, Sched. I., Part IV. —*Re* KING'S THEATRE, SUNDERLAND, DENMAN PICTURE HOUSES *v.* THOMPSON & COLLINS ENTERPRISES, [1929] 1 Ch. 483; 98 L. J. Ch. 109; 140 L. T. 463.

2032c. —— —— Vesting of rentcharge.]—*Re* KING'S THEATRE, SUNDERLAND, DENMAN PICTURE HOUSES *v.* THOMPSON & COLLINS ENTERPRISES, No. 2032b, *ante*.

COPYRIGHT AND LITERARY PROPERTY.

Part I.—Nature of Copyright.

4. *Add. Annotation:*—**Refd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1.

16. *Add. Annotation:*—**Refd.** Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762.

16a. **Dramatic work—No "first publication" within 1911 Act, s. 1 (3)—Owner entitled to substituted copyright under 1911 Act, sched. 1.]** —Under Dramatic Copyright Act, 1833 (c. 15), a foreign author dwelling outside British territory was entitled to secure dramatic copyright within the British Empire of the first performance of his play given in this country. By an agreement in writing dated June 30, 1898, G., the author & sole proprietor of the right to perform a certain play, granted to pltf. the sole & exclusive right to perform, or have performed, the play in Great Britain & Ireland. On Sept. 22, 1898, G.'s agent wrote to pltf. stating that the play had been first performed in Great Britain on a certain date & at a certain place:—*Held:* a copy of the letter of Sept. 22, 1898, the original having been lost, was admissible as evidence in a copyright action between pltf. & third parties who claimed a right to produce cinematograph films of the play under an agreement for value with G., dated Sept. 6, 1919, to prove that the first performance of the play took place in this country as stated in the letter since, (1) being written by G.'s agent, it constituted an admission by G., a person who, although not named on the record, had a substantial interest in the result, & (2) it constituted an admission by defts.' predecessors in title.

(3) An entry in the register of first performances of dramatic productions at Stationers' Hall is admissible in evidence as a public register. If such an entry is incorrect, the party producing a certified copy of it may be precluded from relying on it as *primâ facie* proof of a right to produce or reproduce the play to which it relates, but it can be regarded by the ct. as corroboration of other evidence of title.

(4) 1911 Act, s. 1 (1) (*a*) & s. 1 (3), which provide that copyright shall subsist in every dramatic work if it has been first published in His Majesty's dominions, but that the performance in public shall not be deemed to be publication, prescribe conditions for the future, but do not inflict them on past events so as to destroy existing rights.

(5) Where the owner of dramatic copyright possessed [by assignment] the sole right to perform, or permit the performance of, a certain play before 1911 Act came into operation he acquired, by sect. 2 (1) (*b*), coupled with sects. 24 & 35 of the Act, & sched. 1 to the Act, the right to the cinematograph & film rights of that play also.

An American corpn. made a film & sent a negative & two positives of it to an English co., who made further copies of the film & handed them to another English co., who let them to a British exhibitor. The American corpn. & the two British cos. were interworking organisations linked together by complex agreements, & they all three shared in part of the receipts from the exhibition of the film by the exhibitor. The exhibitor in exhibiting the film, infringed pltf.'s copyright:—*Held:* (6) the American corpn. & the two British cos. had actively directed, counselled or aided the infringement by the exhibitor, & had infringed pltf.'s rights within 1911 Act, s. 2 (1), the operative effect of which sub-sect. is extended & not limited by sect. 2 (2) & (3).

(7) Where an infringement of copyright is proved under 1911 Act, s. 2 (1), the question of knowledge of infringement by the infringer does not arise except possibly with reference to the exemption from penalties for infringement provided by sect. 8 of the Act.—FALCON *v.* FAMOUS PLAYERS FILM CO., LTD., [1926] K. B. 393; 95 L. J. K. B. 148; 134 L. T. 246; 42 T. L. R. 91; *affd.*, [1926] 2 K. B. 474; 96 L. J. K. B. 88; 135 L. T. 650; 42 T. L. R. 666; 70 Sol. Jo. 756, C. A.

Annotations:—*As to* (6) **Refd.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174. *Generally,* **Refd.** Messager *v.* British Broadcasting Co., [1927] 2 K. B. 543.

Part II.—Subject-Matter.

18. *Add. Annotation:*—**Refd.** Macmillan *v.* Cooper (1923), 93 L. J. P. C. 113.

22. *Add. Annotation:*—*As to* (1) **Follid.** Macmillan *v.* Cooper (1923), 93 L. J. P. C. 113.

23. *Add. Annotation:*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

41. *Add. Annotation:*—*As to* (3) **Refd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

42. *Add. Annotations:*—*As to* (1) **Consd.** Macmillan *v.* Cooper (1923), 93 L. J. P. C. 113. **Follid.** Masson Seeley *v.* Embosotype Manufacturing

PART I. SECT. 1.

——— ——— ———.]—"Copyright" in Commonwealth Copyright Act, 1912, s. 13 (1), includes the right to perform.—POLLOCK *v.* WILLIAMSON (J. C.), LTD., [1923] V. L. R. 225; 29 Argus L. R. 133; 44 A. L. T. 161.—**AUS.**

PART II. SECT. 3, SUB-SECT. 1.

o i. —— *Form of contract for sale of land.*]—*Held:* such a document was capable of copyright, but if copies were sold, there might be an implied authority to reproduce them where necessary in connection with the transaction for which they were purchased.—REAL ESTATE INSTITUTE OF N.S.W. *v.* WOOD (1923), 23 S. R. N. S. W. 349; 40 N. S. W. W. N. 60.—**AUS.**

o ii. —— *Compilation.*]—A compilation may be an "original literary work" within Copyright Act.—PASICKNIAK *v.* DOJACEK, [1928] 2 D. L. R. 545; [1928] 1 W. W. R. 865; 37 Man. L. R. 265.—**CAN.**

o iii. —— *Translation.*]—Translations are original literary works.—PASICKNIAK *v.* DOJACEK, [1928] 2 D. L. R. 545; [1928] 1 W. W. R. 865; 37 Man. L. R. 265.—**CAN.**

Co. (1924), 41 R. P. C. 160. **Consd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383. *As to* (5) **Consd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1. *Generally*, **Refd.** British Broadcasting Co. *v.* Wireless League Gazette Publishing Co., [1926] Ch. 433.

43a. —— **Letter written by manufacturer to trade customer.**]—(1) A letter written by manufacturers to a trade customer, offering their goods at a low price if the customer agrees to take such goods exclusively from them, is an "original literary work" within 1911 Act, s. 1 (1), & the writers are entitled to copyright therein. Such a letter is not contrary to public policy as being in restraint of trade.

(2) The publication of the letter by rival manufacturers, together with a covering letter of criticism, is not "fair dealing" within sect. 2 (1) (*i*) of the Act.—BRITISH OXYGEN CO. *v.* LIQUID AIR, LTD., [1925] Ch. 383; 95 L. J. Ch. 81; 133 L. T. 282.

43b. —— **Single sentence.**]—Pltf. had, since 1925, dealt with the treatment of the human face, & had advertised extensively in connection with that treatment. He claimed to have the copyright in a slogan in connection with those advertisements. The phrase was, "Beauty is a social necessity, not a luxury." Sometimes there were variations in the words used. Sometimes the words "youthfulness," or "good looks," or "youthful appearance" were substituted for "beauty." In May 1926 deft. inserted an advertisement containing the phrase "A youthful appearance is a social necessity." Some years before 1925 an advertiser had used a similar phrase, "Beauty is a modern necessity":—*Held:* (1) the only originality, if any, in pltf.'s phrase consisted in the substitution of the word "social" for the word "modern," & pltf.'s phrase was not an original composition; (2) although copyright might subsist in an advertisement, to quote a piece of a sentence from a literary work was too small a matter to afford ground for an action for infringement of copyright; (3) the doctrine *de minimis non lex curat* applied, & the matter in which copyright was claimed was too small for the ct. to attach any importance to it.—SINANIDE *v.* LA MAISON KOSMEO (1928), 139 L. T. 365; 44 T. L. R. 574, C. A.

51. *Add. Annotation:*—**Consd.** Macmillan *v.* Cooper (1923), 93 L. J. P. C. 113.

55. *Add. Annotation:*—*As to* (5) **Refd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383.

60. *Add. Annotation:*—**Consd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383.

65. *Add. Annotation:*—**Refd.** British Broadcasting Co. *v.* Wireless League Gazette Publishing Co., [1926] Ch. 433.

73. *Add. Annotation:*—**Refd.** British Broadcasting Co. *v.* Wireless League Gazette Publishing Co., [1926] Ch. 433.

74. *Add. Annotation:*—*As to* (1) **Consd.** British Broadcasting Co. *v.* Wireless League Gazette Publishing Co., [1926] Ch. 433.

76. *Add. Annotation:*—**Consd.** Sinanide *v.* La Maison Kosmeo (1928), 139 L. T. 365.

77a. —— —— **For type—Protected.**]—Pltf. co., which carried on the business of supplying cutter-crush machines & type & other materials used therewith, issued a catalogue consisting for the most part of a number of words which illustrated the products of the several sizes & shapes of type supplied by the co. & customers ordered a particular class of type by referring to such words. Nearly all the words were selected by the managing director of the co. In 1922 defts., who were carrying on a similar business, circulated price lists which were practically copies of the price lists of pltf. co., the words used in pltf. co.'s catalogue & price lists to indicate the style of type being copied in defts.' price lists without alteration. Pltf. co. commenced proceedings for an injunction to restrain infringement of copyright in their catalogue & passing off of goods which were not their goods as being their goods. On the question of copyright defts. contended (*inter alia*) that pltfs.' catalogue was a design or collection of designs capable of registration under Patents & Designs Acts, 1907 (c. 29), & 1919 (c. 80), & not the subject of protection under 1911 Act:—*Held:* on the question of copyright the contentions put forward by defts. failed, & an injunction restraining infringement of the copyright of pltfs. in their catalogue was granted.—MASSON SEELEY & CO., LTD. *v.* EMBOSOTYPE MANUFACTURING CO. (1924), 41 R. P. C. 160

80. *Add. Annotation:*—*Generally*, **Refd.** United Indigo Chemical Co. *v.* Robinson (1931), 49 R. P. C. 178.

85a. Programmes.]—Pltfs. were a limited co. formed to acquire the Postmaster-General's licence for the establishment & working of

PART II. SECT. 3, SUB-SECT. 2.—B.

sd. *Slight alterations — Works of foreign author.*]—Where a publisher in Scotland brought out an edition of the works of a foreign author, which had all been originally published abroad, & in which there was no copyright in this country:—*Held:* alterations upon the writings, neither important nor extensive, made with the assistance of the author, did not create a copyright in the edition, so as to give the publisher a right to prevent the publication of a reprint of it in a different form.—HEDDERWICK *v.* GRIFFIN (1841), 3 Dunl. (Ct. of Sess.) 383.—**SCOT.**

PART II. SECT. 3, SUB-SECT. 2.—C.

54 i. *Immoral works.*]—There is nothing in the Copyright Act to deny an author a copyright on the grounds that his work is indecent, obscene or immoral. Where his work is of such a character that the law will not permit him to publish it, the cts. will deny him damages, since if he cannot sell it he cannot prove damages. But apart from damages, there is no reason why the pirating of an author's original work should not be restrained by injunction, provided it is honest work, & not a fraud on the public.—PASICKNIAK *v.* DOJACEK, [1928] 2 D. L. R. 545; [1928] 1 W. W. R. 865; 37 Man. L. R. 265.—**CAN.**

PART II. SECT. 3, SUB-SECT. 3.

sk. *Plan—Of harbour.*]—LYSHAR *v.* GISBORNE HARBOUR BOARD, [1924] N. Z. L. R. 13.—**N.Z.**

PART II. SECT. 3, SUB-SECT. 4.—A.

77 i. *Illustrated catalogue—Collection of designs—Not protected.*]—Copyright Act, 1912, Sched., s. 22 (1), read in conjunction with sect. 9 (c) of the Act, provides as follows: "This Act shall not apply to designs capable of being registered under Designs Act, 1906, except designs which, though capable of being so registered, are not used or intended to be used as models or patterns to be multiplied by any industrial process":—*Held:* (1) the term "multiplied by any industrial process" in that sub-sect. is not limited to the multiplication of the design as a design, but extends to & includes the multiplication by any industrial process of that design in any material form whatsoever; (2) consequently, a manufacturer of articles of metal who had published a catalogue containing illustrations of designs of those articles, with appropriate letterpress, & was registered under Copyright Act as the owner of the copyright in such catalogue, was not entitled to copyright under that Act in respect of such of the designs as had been or could be registered under Designs Act, 1906–1912.—BUZACOTT & CO., LTD. *v.* DUTCH (1929), 30 S. R. N. S. W. 22.—**AUS.**

broadcasting stations, & to carry on any other business ancillary, incidental, or conducive thereto. Under the terms of their licence & a supplementary agreement pltfs. were required to transmit efficiently every day a programme of broadcast matter to the reasonable satisfaction of the Postmaster-General. They were not allowed to alter their memorandum as to objects without his written consent. He might revoke their licence if they failed to transmit satisfactory programmes, & within one month from their ceasing to hold the licence they were bound to pass a special resolution for voluntary winding up. Their profits from all sources beyond a 7½ per cent. cumulative dividend on their paid-up capital belonged to the Postmaster-General. Nine months after the licence, with the approval of the Postmaster-General pltfs. began publishing the *Radio Times* every Friday, including therein the advance daily programmes for the ensuing week Sunday to Saturday. These programmes gave the day & hour of each performance, the artist's name, appropriate headings for items or groups of items, & translations of unfamiliar foreign titles of songs or music. The preparation, arrangement, & editing of the actual programmes involved considerable time, skill, labour & expense, although the preliminary work of fixing the days & hours, engaging the artists, & choosing the items had all been done some time beforehand. Defts. having selected & copied numerous items from a set of advance programmes so published, pltfs. sued for infringement of copyright:—*Held:* (1) whether there was or was not copyright in an individual programme, there was undoubtedly copyright in the compilation of the seven advance programmes; (2) although the programmes were subject to the approval or veto of the Postmaster-General, who had power to revoke the licence if they included improper matter, they were not a work "prepared or published by or under" his "direction or control" within 1911 Act, s. 18, & so long as pltfs. were allowed to trade & publish them, the copyright belonged to pltfs. & not to the Crown. (3) *Semble:* there may be copyright in an individual programme.—BRITISH BROADCASTING CO. *v.* WIRELESS LEAGUE GAZETTE PUBLISHING CO., [1926] Ch. 433; 95 L. J. Ch. 272; 135 L. T. 93; 42 T. L. R. 370.

88. *Add. Annotation:—As to* (2) **Refd.** Bowling *v.* Camp (1922), 128 L. T. 342.

91a. **Slogan or catch-phrase.**]—SINANIDE *v.* LA MAISON KOSMEO, No. 43b, *ante*.

92a. **Abridgment—May be new work.**]—While there may be copyright in an abridgment of a larger work, in a case in which accurate knowledge, sound judgment, & literary skill in presenting in a condensed form the material of the original author are displayed, there can be no copyright in a book consisting merely of extracts taken verbatim from a work in which there is no copyright, & strung together by connecting sentences, so as to make the extracts read as a consecutive narrative. There may, however, be copyright in notes appended to such a book, although there is no copyright in the text.—MACMILLAN & CO. *v.* COOPER (1923), L. R. 51 Ind. App. 109; 93 L. J. P. C. 113; 130 L. T. 675; 40 T. L. R. 186; 68 Sol. Jo. 235, P. C.

Annotation:—**Refd.** Masson Seeley *v.* Embosotype Manufacturing Co. (1924), 41 R. P. C. 160.

After this case for "**Abridgment—May be new work.**]—*See* Nos. 422, 426, *post*," read "——.]—*See, also*, Nos. 422, 426."

97. *Add. Annotation:*—**Refd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

99a. —— **Of descriptive character.**]—(1) A song which relates the burning of a ship at sea, & the escape of those on board, describes their feelings in vehement language, & sometimes expresses them in the supposed words of the suffering parties, is dramatic, & therefore at all events within the meaning of the statute, though it be sung only by one person, sitting at a piano, giving effect to the verses by his delivery, but not assisted by scenery or appropriate dress.

(2) A room where the song is performed, & to which persons paying for tickets are admitted for the purpose of hearing it, is, for the time, a place of dramatic entertainment within the meaning of the statutes, though the room be ordinarily used for different purposes.—RUSSELL *v.* SMITH (1848), 12 Q. B. 217; 17 L. J. Q. B. 225; 11 L. T. O. S. 286; 12 Jur. 723; 116 E. R. 849.

Annotations:—As to (1) **Apld.** Clark *v.* Bishop (1872), 25 L. T. 908. **Distd.** Fuller *v.* Blackpool Winter Gardens & Pavilion Co., [1895] 2 Q. B. 429. **Refd.** Hatton *v.* Kean (1859), 29 L. J. C. P. 20. *As to* (2) **Consd.** Wall *v.* Taylor, Wall *v.* Martin (1882), 9 Q. B. D. 727. **Apld.** Duck *v.* Bates (1883), 12 Q. B. D. 79. *Generally*, **Refd.** Lacy *v.* Rhys. (1864), 4 B. & S. 873; Edwardes *v.* Cotton (1902), 19 T. L. R. 34.

111a. —— **Wolf-cub head for Boy Scouts' pole—1911 Act, s. 22.**]—Apart from 1911 Act, s. 22, a model of a wolf-cub's head produced from a mould in papier mache & intended to be displayed as their totem on the tops of poles by the Boy Scouts Assocn., is an artistic work in which copyright would subsist under that Act. But, as the model consisted of "features of shape, configuration, pattern, or ornament applied to any article" of manufacture or artificial substance by an industrial process, & was therefore a design within Patents & Designs Act, 1907 (c. 29), s. 93, as amended by Patents & Designs Act, 1919 (c. 80), s. 19, & consequently was capable of being registered under the Act of 1907 &, further, was not a design which was "not used or intended to be used as a model or pattern to be multiplied by any industrial process," it was by Copyright Act, 1911 (c. 46), s. 22, excluded from the operation of that Act & not the subject of copyright thereunder.

In an action by pltfs. for infringement of copyright which they claimed in the model, against the defts. who admittedly had copied & reproduced the model:—*Held:* for the reasons stated above, pltfs. had no copyright in the model under 1911 Act, & the design not having been registered as a design under the Patents & Designs Act, 1907 (c. 29), the action failed.

Semble: if pltfs. had had copyright in the model, the defts. could not successfully plead, under 1911 Act, s. 8, that they had no reasonable ground for suspecting the subsistence of copyright in the model owing to the absence of registration marks under Patents & Designs Act, 1907 (c. 29), under which they alleged that in their view of the

law the model was capable of registration, since, relying upon that view, they abstained from making any inquiries whether copyright in the model was claimed.—PYTRAM, LTD. *v.* MODELS (LEICESTER), LTD., [1930] 1 Ch. 639; 99 L. J. Ch. 381; 143 L. T. 227; 46 T. L. R. 290.

118a. Adaptation of old play—Original musical composition.]—1911 Act has extended the protection of copyright, & there is musical copyright in an arrangement of previous music which amounts to a new work.

Pltf. composed music for an opera which was an adaptation of an old play. Defts. prepared an orchestral score from the same source, records of which they offered to the trade. Pltf. complained that defts. were passing off these records as records of pltf.'s music:—*Held:* defts. had borrowed from pltf.'s work in a way which was more than mere coincidence, & had infringed pltf.'s copyright.—AUSTIN *v.* COLUMBIA GRAPHOPHONE CO. (1923), 67 Sol. Jo. 790.

Annotation:—**Refd.** Samuelson *v.* Producers Distributing Co. (1931), 48 R. P. C. 447.

119. *Add. Annotation:*—**Refd.** Austin *v* Columbia Graphophone Co (1923), 67 Sol. Jo. 790.

120. *Add. Annotations:*—**Consd.** Falcon *v.* Famous Players Film Co., [1926] 2 K. B. 474; Thompson *v.* Warner Pictures, [1929] 2 Ch. 308.

125. *Add. Annotation:*—**Refd.** Rex Co. & Rex Research Corpn. *v.* Muirhead & Comptroller General of Patents (1926), 44 R. P. C. 38.

133. *Add. Annotation:*—**Apld.** Sinanide *v.* La Maison Kosmeo, (1928) 139 L. T. 365.

135a. —— "Official Guide" — Protected.]—REUTER'S TELEGRAM CO., LTD. *v.* INTERNATIONAL GUIDE SYNDICATE & INTERNATIONAL EXPRESS, LTD. (1893), 37 Sol. Jo. 325.

137. *Add. Annotation:*—*As to* (2) **Follid.** Ridgway Co. *v.* Hutchinson (1923), 40 R. P. C. 335.

Part III.—Publication.

151. *Add. Annotation:*—**Refd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

164. *Add. Annotation:*—*As to* (1) **Consd.** Falcon *v.* Famous Players Film Co., [1926] 2 K. B. 474.

165. *Add. Annotation:*—**Follid.** Falcon *v.* Famous Players Film Co., [1926] 2 K. B. 474.

180a. What documentary evidence admissible—Letters—From author's agent to assignee of performing rights.]—FALCON *v.* FAMOUS PLAYERS FILM CO., LTD., No. 16a, *ante.*

180b. —— Entry in register at Stationers' Hall — Entry incorrect.]—FALCON *v.* FAMOUS PLAYERS FILM CO., LTD., No. 16a, *ante.*

Part IV.—Ownership.

190. *Add. Annotation:*—**Refd.** Austin *v.* Columbia Graphophone Co. (1923), 67 Sol. Jo. 790.

194. *Add. Annotations:*—**Consd.** Macmillan *v.* Cooper (1923), 93 L. J. P. C. 113. **Refd.** British Broadcasting Co. *v.* Wireless League Gazette Publishing Co., [1926] Ch. 433.

196. *Add. Annotation:*—**Apld.** Black *v.* Stacey, [1929] 1 Ch. 177.

196a. —— By compiler of book of reference—From information received from biographees.]—Where the compiler of a biographical book of reference receives from the biographees information to be used as material from which the book may be compiled, the persons supplying the information are not, for the purposes of 1911 Act, the authors of the paragraphs containing the information.—A. & C. BLACK, LTD. *v.* CLAUDE STACEY, LTD., [1929] 1 Ch. 177; 98 L. J. Ch. 131; 140 L. T. 402; 44 T. L. R. 347.

197a. Automatic writing by medium.]—A woman journalist, engaged as a medium in psychical research, claimed copyright in a production written by her in automatic writing & alleged to be communicated by a spiritual agent. Deft. was present at some of the séances & alleged that the communication was addressed to him. He claimed that the copyright was in him, or that it was a joint copyright, or that there was no copyright in any one:—*Held:* pltf. was the sole owner of the copyright.—CUMMINS *v.* BOND, [1927] 1 Ch. 167; 76 L. J. Ch. 81; 136 L. T. 368; 70 Sol. Jo. 1003.

198. *Add. Annotation:*—**Refd.** Samuelson *v.* Producers' Distributing Co. (1931), 146 L. T. 37.

205. *Add. Annotation:*—**Refd.** Sasha *v.* Stoenesco (1929), 45 T. L. R. 350.

206. *Add. Annotation:*—**Refd.** Sasha *v.* Stoenesco (1929), 45 T. L. R. 350.

206a. ——. —— ——.]—SASHA, LTD. *v.* STOENESCO (1929), 45 T. L. R. 350.

210. *Add. Annotation:*—**Refd.** Sasha *v.* Stoenesco (1929), 45 T. L. R. 350.

211. *Add. Annotation:*—**Refd.** Sasha *v.* Stoenesco (1929), 45 T. L. R. 350.

226. *Add. Annotation:*—*Generally,* **Refd.** Drabble *v.* Hycolite Manufacturing Co. (1928), 44 T. L. R. 264.

PART IV. SECT. 1, SUB-SECT. 2.—A.

s1. *Contract of service—What amounts to.*]—B. was engaged as an "artist contributor" to a newspaper under agreement to supply each week certain drawings at a weekly remuneration, to comply with all orders, directions & regulations of the co. to properly conduct himself, & to refrain from divulging the co.'s affairs or from accepting engagement in any undertaking in competition with the co.:—*Held:* B. was employed under a "contract of service" within sect. 5 (1) (*b*) of the Sched. to Copyright Act, 1912.—SUN NEWSPAPERS, LTD. *v.* WHIPPIE (1928), 28 S. R. N. S. W. 473; 45 N. S. W. W. N. 126.—**AUS.**

229a. Sketches for advertisement show cards—Ordered by & made for advertiser for valuable consideration—Design not registered under Patents & Designs Act, 1907 (c. 29).]—Pltfs. claimed to be the assignees from the author of two sketches for cut-out advertisement show cards representing a pierrot & pierrette respectively with large faces & diminutive bodies. These sketches were shown by the author to defts. with defts.' name upon them with the view of being used by them for advertisement purposes. At the suggestion of defts. the colour of the costumes of the figures was changed from mauve to green & yellow; the colour of the lettering of defts.' name was also changed from red to green & yellow. Defts. ordered a number of the sketches so altered at a price which gave the author a very considerable profit. Subsequently defts. obtained a number of the sketches from sources other than pltfs.' Neither pltfs. nor the author had registered the sketches as designs under the above Act. In an action by pltfs. for infringement of copyright:—*Held:* (1) under 1911 Act, s. 5 (1) (*a*), defts. were the first owners of the copyright in the original sketches, as the sketches were ordered by, & were made for, them for valuable consideration & were "engravings" within that sub-sect.; (2) the sketches were designs which were capable of being registered under Patents & Designs Act, 1907, & as they were used or intended to be used as models or patterns to be multiplied by an industrial process, 1911 Act, by reason of sect. 22, did not apply to them, & as the sketches had not been registered as designs under the Act of 1907 pltfs. could not succeed.—CON PLANCK, LTD. *v.* KOLYNOS INCORPORATED, [1925] 2 K. B. 804; 94 L. J. K. B. 923; 133 L. T. 798.

229b. Advertisement—Prepared by advertisement agent.]—Where an advertisement agent prepares an advertisement on instructions & information given to him by the advertiser, the ct. will, in the absence of evidence to the contrary, draw the inference that it was the intention of both parties that the copyright in the advertisement should belong to the advertiser.—HAROLD DRABBLE, LTD. *v.* HYCOLITE MANUFACTURING CO. (1928), 44 T. L. R. 264; 72 Sol. Jo. 102.

235. *Add. Annotation:*—**Refd.** Messager *v.* British Broadcasting Co., [1927] 2 K. B. 543.

Part V.—Assignment, Licence and Royalties.

247. *Add. Annotation:*—**Refd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

251. *Add. Annotation:*—**Refd.** Messager *v.* British Broadcasting Co. (1928), 97 L. J. K. B. 251.

254. *Add. Annotation:*—**Refd.** Messager *v.* British Broadcasting Co. (1928), 97 L. J. K. B. 251.

256. *Add. Annotation:*—*As to* (1) **Consd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1.

268. *Add. Annotation:*—**Refd.** Messager *v.* British Broadcasting Co. (1928), 97 L. J. K. B. 251.

275. After this case add "**Assignment on bankruptcy—Bankruptcy Act, 1914 (c. 59), s. 60—Whether applicable to winding up.**]—*See* COMPANIES, Nos. 6409a, 6409b, *ante*."

278. *Add. Annotation:*—**Refd.** The Lord Strathcona, [1925] P. 143.

289. *Add. Annotation:*—**Refd.** Messager *v.* British Broadcasting Co., [1927] 2 K. B. 543.

290a. ——— **Rights of assignee as to mechanical performance.**]—Where the author of a musical work has made an assignment of his rights in the work before July 1, 1912, the exclusive right conferred upon him by 1911 Act, of making or authorising the making of contrivances by means of which the work may be mechanically performed, does not enable him to restrain the assignees from performing or authorising the performance of the work by means of such contrivances.—THOMPSON *v.* WARNER BROTHERS PICTURES, LTD., [1929] 2 Ch. 308; 98 L. J. Ch. 427; 141 L. T. 411; 45 T. L. R. 553, C. A.

294. *Add. Annotation:*—**Refd.** Messager *v.* British Broadcasting Co., [1927] 2 K. B. 543.

302. *Add. Annotations:*—**Consd.** Messager *v.* British Broadcasting Co. (1928), 97 L. J. K. B. 251. **Refd.** Messager *v.* British Broadcasting Co., [1927] 2 K. B. 543.

305. *Add. Annotation:*—**Consd.** Messager *v.* British Broadcasting Co. (1928), 97 L. J. K. B. 251.

305a. Grant of licence giving sole & exclusive right of representation—Assignment.]—Applt. was the composer of the music of a French opera, an English version of which was produced at a London theatre on the terms of an agreement of Mar. 23, 1905. By this agreement, made between the composer (the applt.) & the authors of the opera (thereinafter called "the licencors") of the one part & the proprietor of the theatre (thereinafter called "the licencee") of the other part, after reciting that the licencors had delivered the play to the licencee, with the score of the music, with a view to its production in London & elsewhere "on the terms hereinafter mentioned," the licencors granted the licencee the sole & exclusive right of representing the play in the U.K., America, & the British Colonies & Dominions. The agreement further provided that the copyright in the music of the play should remain the property of applt.; that on the failure of the licencee to produce the play in London within a certain time all rights of representation as aforesaid should revert to & become again the absolute property of the licencors; that the licencee should pay to the licencors as royalties certain percentages of the gross profits; that the licencee should keep proper books showing the gross receipts of the theatres at which the play should be represented, & that the licencors should be entitled to inspect the books, so as to enable them to verify the amount of the percentage payable to them. Resps., in pursuance of a permission granted to them by a theatrical co., to whom on the death of the licencee the benefit of the agreement had been assigned by his exors., gave a broadcast performance of the opera

at their studio in London. In an action by applt. against resps. for infringement of copyright:—*Held:* upon the construction of the agreement, (1) it operated as an absolute assignment of the performing rights of the opera within the prescribed area & was not a mere licence, & (2) it was not limited to representations on the stage of a theatre, & the action failed.—MESSAGER *v.* BRITISH BROADCASTING CO., [1929] A. C. 151; 98 L. J. K. B. 189; 140 L. T. 227; 45 T. L. R. 50, H. L.

308. *Add. Annotation:*—**Refd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

308a. —— —— ——.]—Pltf. was the sole authoress of & owner of the copyright in a novel called "The Scarlet Pimpernel." In 1903 in collaboration with her husband, she composed a dramatic version of the novel. By an agreement dated June 10, 1903, pltf. & her husband, as authors, granted to defts. T., as theatrical managers, the right of production of the play during a then forthcoming tour, & at a first-class West End London theatre, for two years; & the agreement further provided that if the production took place within that period then "the entire rights for the United Kingdom, the United States of America, & the Dominion of Canada in the play became theirs inalienable, & they shall present it when & where they will within the countries aforesaid," paying to the authors 5 per cent. on the gross weekly takings. Defts. fulfilled the specified condition. In an action by pltf. claiming a declaration that she had the sole right to perform the work by means of cinematograph films:—*Held:* the entire performing rights in the play became vested in defts. by virtue of the agreement, & when 1911 Act came into operation the right so vested included the right to the cinematograph reproduction of the play; & therefore pltf.'s action failed.—BARSTOW *v.* TERRY, [1924] 2 Ch. 316; 93 L. J. Ch. 607; 132 L. T. 53.

Annotations:—**Folld.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91. **Refd.** Messager *v.* British Broadcasting Co., [1927] 2 K. B. 543.

308b. —— —— ——.]—FALCON *v.* FAMOUS PLAYERS FILM CO., LTD., No. 16a, *ante*.

308c. Assignment of sole & exclusive right of representation—Includes right to broadcast.]—MESSAGER *v.* BRITISH BROADCASTING CO., No. 305a, *ante*.

325. *Add. Annotations:*—*Generally*, **Refd.** Falcon *v.* Famous Players Film Co., [1926] 2 K. B. 474; Thompson *v.* Warner Pictures, [1929] 2 Ch. 308.

325a. Whether labels must be capable of adhering to particular type of record.]—*Held:* when the copyright owner had supplied a maker of gramophone records with "adhesive labels" within the meaning of Copyright Royalty System (Mechanical Musical Instruments) Regulations, 1912, the onus was on the maker to show that there were no means by which the labels could be made to adhere to the records. The words "adhesive labels" in the Regulations could not be construed by implication to mean that the labels should be fitted to adhere & capable of adhering to any substance of which the maker might choose to manufacture his records.—BOOSEY & CO., LTD. *v.* GOODSON GRAMOPHONE RECORD CO., LTD., [1930] 1 Ch. 448; 99 L. J. Ch. 192; 142 L. T. 417; 46 T. L. R. 190; 74 Sol. Jo. 89, C. A.

325b. Onus of proof that labels incapable of adhering to particular records.]—BOOSEY & CO., LTD. *v.* GOODSON GRAMOPHONE RECORD CO., LTD., No. 325a, *ante*.

325c. Reproduction of two works in one volume.]—Where a person reproduces in one volume, under the conditions set out in the proviso to 1911 Act, s. 3, two copyright works by the same author, the provision as to the payment of a royalty "of 10 per cent. on the price at which he publishes the work" is satisfied by the payment of a royalty of 10 per cent. on the price at which he publishes the volume, inasmuch as the word "work" includes "works" by Interpretation Act, 1889 (c. 63), s. 1 (1) (*b*).—OSBOURNE *v.* DENT (J. M.) & SONS, LTD., [1925] Ch. 369; 94 L. J. Ch. 308; 133 L. T. 362; 41 T. L. R. 419; 69 Sol. Jo. 590.

Part VII.—Crown Copyright.

332a. Programmes prepared by British Broadcasting Company—Whether "published by or under direction or control" of Crown.]—BRITISH BROADCASTING CO. *v.* WIRELESS LEAGUE GAZETTE PUBLISHING CO., No. 85a, *ante*.

332b. Telephone directory—Copyright in Postmaster-General.]—A.-G. *v.* COLMAN'S PUBLICITY SERVICE (1928), *Times*, Mar. 16.

343a. —— Writs, bonds and indentures — Grant void.]—YARMOUTH (EARL) *v.* DARREL (1685), 3 Mod. Rep. 75; 87 E. R. 48.

Part IX.—Letters.

355. *Add. Annotation:*—**Consd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383.

360. *Add. Annotation:*—**Consd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383.

364. *Add. Annotation:*—**Consd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383.

366. *Add. Annotation:*—**Consd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383.

sm. *Gramophone records—Owner of copyright in work on one side unknown—Division of royalties due.*]—ALBERT *v.* GRAMOPHONE CO., LTD. (1927), 28 S. R. N. S. W. 70.—**AUS.**

367a. —— ——.]—A. brought an action against B., the editor of a newspaper, for stating in his paper that pltf. was the author of a certain libellous article which had appeared in the paper. To this action B. pleaded by way of justification, that the matter from which the article had been drawn up had been furnished by pltf. in letters written to him by deft. Upon the action coming on for trial, deft. submitted to a verdict of 40*s.* in favour of pltf. Deft. afterwards showed some of the letters to third persons. Upon a motion before answer, to dissolve an injunction which pltf. had obtained to restrain the publication & production of the letters, the ct. refused the application; more especially as upon the motion for the injunction pltf. had produced an affidavit to the effect that the verdict was taken under an arrangement that the letters should be delivered up, which affidavit was not sufficiently contradicted on the motion to dissolve. —PALIN *v.* GATHERCOLE (1844), 1 Coll. 565; 4 L. T. O. S. 251; 63 E. R. 545.

Annotation:—**Consd.** Philip *v.* Pennell, [1907] 2 Ch. 577.

Part XIa.—Application to British Possessions.

See 1911 Act, ss. 25–28.

389a. Irish Free State.]—(1) As by 1911 Act, s. 25 (1), that Act extended throughout His Majesty's dominions, except to a self-governing dominion which did not adopt it, & s. 35 (1) restricted the meaning of "self-governing dominion" to the dominions which are therein specifically named, Ireland not being included, the Act was in force in the Irish Free State when the constitution came into operation, & consequently by art. 73 thereof continued of full force & effect until it was repealed by the Industrial & Commercial Property (Protection) Act, 1927, of the Irish Free State. Sect. 174 (1) of that Act which provides that rights acquired under the Act of 1911 before Dec. 6, 1921, shall not be affected by the repeal, preserves rights the inception of which was before that date although they have been assigned after it.

The Judicial Committee, although of opinion that the judgment of the Supreme Court was wrong in holding that the appellants were not entitled to any remedy in respect of an infringement in 1926 of their rights under 1911 Act, advised that the judgment should be discharged only so far as it dealt with costs, as the Copyright (Preservation) Act, 1929, passed by the Irish Free State legislature after the grant of special leave to appeal, while enacting that rights under 1911 Act were to be deemed always to have subsisted in the Irish Free State, provided by sect. 4 that no remedy or relief should be granted in respect of any infringement which had there taken place before the passing of the Act.

(2) A local authority commits an infringement under 1911 Act, s. 2 (1), if a band which it has engaged to perform in public plays, without consent, copyrighted musical works which are included in a programme approved by the local authority, & the performance is for the "private profit" of the local authority, within sect. 2 (3), although any profit resulting will be applied to the relief of ratepayers.—PERFORMING RIGHT SOCIETY, LTD. *v.* BRAY URBAN DISTRICT COUNCIL, [1930] A. C. 377; 99 L. J. P. C. 116; 143 L. T. 97; 46 T. L. R. 359; 74 Sol. Jo. 284, P. C.

Part XII.—Registration.

To the cross-references in this Part add as follows:—

Effect of—Admissibility of entry in register—To prove first performance of dramatic work in England.]—*See* No. 16a, *ante.*

Part XIII.—Infringement.

394a. Knowledge of infringement — Whether material.]—FALCON *v.* FAMOUS PLAYERS FILM CO., LTD., No. 16a, *ante.*

After this case for "**As to knowledge as a defence.**]—*See* No. 47, *ante*; Nos. 506. 539, 540, 541, 557, *post*," read "—— ——.]—*See, also,* No. 47, *ante*; Nos. 506, 539–541, 557, *post.*"

PART XI.

h 1. *Effect of Canadian Copyright Act on rights of British subject.*]—In the case of a British subject, whether resident in Canada or not, the protection which he is given under sect. 4 (1) of Copyright Act, R. S. C., 1927, is not dependent upon or qualified by the provisions of the Revised Convention of Berne of 1908, to which, & the protocol thereto of 1914, Canada gave its adherence in 1923. Therefore there is infringement when a newspaper article, of the class which is the subject of copyright, written by a British subject & first published in His Majesty's Dominions is reproduced in a Canadian newspaper, without the consent of the author or the assignee, if any, of his rights, even though it cannot be protected under the Berne Convention because no notice expressly forbidding its reproduction has been given.—GRIBBLE *v.* MANITOBA FREE PRESS CO., LTD., [1931] 3 W. W. R. 570; [1932] 1 D. L. R. 169; 40 Man. L. R. 42.—**CAN.**

PART XII.

l 1. —— —— —— *Copyright Act, 1921 (c. 24), s. 39 (2).*]—CANADIAN PERFORMING RIGHT SOCIETY *v.* FAMOUS PLAYERS CANADIAN CORPN., [1929] A. C. 456; 98 L. J. P. C. 70; 140 L. T. 657; 45 T. L. R. 232, P. C.—**CAN.**

PART XIII. SECT. 1, SUB-SECT. 1.

c 1. —— *No infringement—If works produced independently.*]—DEEKS *v.* WELLS, [1930] 4 D. L. R. 513; *affd.*, [1931] 4 D. L. R. 513; O. R. 818.—**CAN.**

394b. Authorising publication of unpublished work —Sale of rights in manuscript.]—To sell the rights in relation to an MS. to another with the view of its production, it being, in fact, produced as a result of such a sale, is " to authorise " the printing & publication within 1911 Act, s. 1 (2), & it is not necessary that there shall be an actual sanction of the acts being done by the servant or agent of the person affecting to give the authority on his behalf.—EVANS *v.* HULTON (E.) & Co., LTD. (1924), 131 L. T. 534; 40 T. L. R. 489; 68 Sol. Jo. 616.

Annotation :—**Apprvd.** Falcon *v.* Famous Players Film Co., [1926] 2 K. B. 474.

See, also, Nos. 489a, 489b, 489c, 510, *post.*

398a. —— By manufacturer—Of letter written by rival manufacturer—Covering letter of criticism.]—BRITISH OXYGEN Co. *v.* LIQUID AIR, LTD., No. 43a, *ante.*

408a. ——.]—SINANIDE *v.* LA MAISON KOSMEO, No. 43b, *ante.*

414. *Add. Annotation :*—**Reld.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1.

420a. Book of selected essays—Second book of selected essays including essays in first book.] —Pltfs. were the publishers of, & owners of the copyright in, a book entitled " Hazlitt's Selected Essays," edited by G. S., which included thirteen essays & notes on the essays. Defts. published & sold a book entitled " Hazlitt's Selected Essays, Edition Hollingworth " containing twenty of such essays, including the thirteen selected by G. S. :—*Held :* there was no infringement of copyright.—CAMBRIDGE UNIVERSITY PRESS *v.* UNIVERSITY TUTORIAL PRESS (1928), 45 R. P. C. 335.

426a. —.]—MACMILLAN & Co. *v.* COOPER, No. 92a, *ante.*

441. *Add. Annotation :*—**Reld.** British Broadcasting Co. *v.* Wireless League Gazette Publishing Co., [1926] Ch. 433.

442. *Add. Annotation :*—**Reld.** Macmillan *v.* Cooper (1923), 93 L. J. P. C. 113.

451. *Add. Annotation :*—**Reld.** Messager *v.* British Broadcasting Co., [1927] 2 K. B. 543.

483. *Add. Annotation :*—**Reld.** Harms (Incorporated) *v.* Embassy Club (1926), 43 T. L. R. 21.

483a. In public—What amounts to.]—The question whether the performance of a musical work was a performance in public, so as to constitute an infringement of copyright, is a question of fact, &, in determining that question, the *quantum* of damage likely to accrue & the number & class of persons having a right to be present at the performance are factors to be noted.—HARMS INCORPORATED & CHAPPELL & Co. *v.* MARTANS CLUB, [1927] 1 Ch. 526; *sub nom.* HARMS INCORPORATED *v.* EMBASSY CLUB, LTD., 96 L. J. Ch. 84; 136 L. T. 362; 43 T. L. R. 21; 70 Sol. Jo. 1219, C. A.

Annotation :—**Reld.** Messager *v.* British Broadcasting Co., [1927] 2 K. B. 543.

483b. —— —— —— Broadcasting.]—To broadcast an opera by wireless telephony is to " perform " it " in public " within 1911 Act, s. 1 (2).—MESSAGER *v.* BRITISH BROADCASTING Co., [1927] 2 K. B. 543; 97 L. J. K. B. 65; 137 L. T. 810; 43 T. L. R. 818; *revsd.* without touching this point, [1928], 1 K. B. 660 C. A.; [1929] A. C. 151, H. L.

483c. —— " For private profit "—Local authority engaging band.] — PERFORMING RIGHT SOCIETY, LTD. *v.* BRAY URBAN DISTRICT COUNCIL, No. 389a, *ante.*

484. *Add. Annotation :*—**Reld.** Austin *v.* Columbia Graphophone Co. (1923), 67 Sol. Jo. 790.

488a. —.]—AUSTIN *v.* COLUMBIA GRAPHOPHONE Co., No. 118a, *ante.*

489a. By authorising performance—Director of theatrical syndicate with power to prevent performance.]—Pltfs. were the proprietors of the right of performing in public certain musical pieces, & deft. syndicate were producers of plays at a theatre, & the second deft. was their managing director, & had power to prevent the orchestra from playing any particular piece of music. The orchestra, which was paid by the syndicate, played the pieces in question. In an action for infringement :—*Held :* since on the facts the second deft. had not authorised or permitted the performance within 1911 Act, s. 1 (2), pltfs. were not entitled under sect. 2 (1) of the Act to an injunction or damages against him.—PERFORMING RIGHT SOCIETY *v.* CIRYL THEATRICAL SYNDICATE, [1924] 1 K. B. 1;

PART XIII. SECT. 1, SUB-SECT. 4.

482 i. *By performance—Permitting place of entertainment to be used.*]—Applt. corpn. let its town hall to W. far a series of four vocal concerts. Resp. informed applt. that a song in which resp. had the copyright would be sung without its authority in the town hall at concerts given by W. The song was sung at two concerts. Applt. did nothing beyond acknowledging the receipt of the information :—*Held :* no inference should be drawn that applt. " permitted " the song to be sung, & therefore there was no infringement of copyright within Copyright Act, 1911 (c. 46), s. 2 (3).—CORPORATION OF CITY OF ADELAIDE *v.* AUSTRALASIAN PERFORMING RIGHT ASSOCN., LTD. (1928), 40 C. L. R. 481; [1928] Argus L. R. 127.—**AUS.**

486 i. *By mechanical contrivance—Consent to manufacture.*]—Deft. applt. made certain gramophone records in New South Wales of a song in which pltf.'s copyright existed, & which, apart from Copyright Act, 1912, s. 19, would have been an infringement of pltf.'s copyright. Gramophone records of the song in which pltf.'s copyright existed had been made in England, & also in America with the consent of the owner of the copyright before the alleged infringement in New South Wales :—*Held :* proof of the consent given by pltf. resp. to the manufacture of contrivances in England was sufficient to satisfy the condition imposed by British Copyright Act, 1911, s. 19 (2) (*a*); Federal Copyright Act, 1912, brings into force in Australia British Copyright Act, 1911, & consequently, the making of contrivances, with the consent of the owners of the copyright, in any part of the area to which the Act applies, releases the work throughout the area of the operation of the Act.—GRAMOPHONE Co., LTD. *v.* LEO FEIST INCORPORATED, [1928] V. L. R. 420; 49 A. L. T. 196; [1928] Argus L. R. 257; *affd.*, 41 C. L. R. 1.—**AUS.**

486 ii. —— *Broadcast records.*]—Pltf. was the owner of the performing right in certain musical works. Without the authority of pltf. deft., a wireless broadcasting co., broadcast those works by reproducing them from gramophone records & pianola rolls :—*Held :* deft. had thereby committed an infringement of pltf.'s copyright in the musical works.—AUSTRALASIAN PERFORMING RIGHT ASSOCN., LTD. *v.* 3DB BROADCASTING CO. PROPRIETARY, LTD., [1929] V. L. R. 107; [1929] Argus L. R. 109.—**AUS.**

488 i. *By sale of records.*]—Gramophone records which infringe copyright are " infringing copies " of a work within Imperial Copyright Act, 1911, s. 35.—ALBERT *v.* HOFFNUNG & Co., LTD. (1921), 22 S. R. N. S. W. 75; 39 N. S. W. W. N. 5.—**AUS.**

so. *By broadcasting.*]—Defts., who carried on, for reward, the business of broadcasters, included in their programmes, caused to be sung by vocalists in their studio & broadcast, certain musical works, of the copyright in which pltf. was the owner :—*Held :* defts. had infringed pltf.'s copyright.—CHAPPELL & Co., LTD. *v.* ASSOCIATED RADIO CO. OF AUSTRALIA, LTD., [1925] V. L. R. 350; 47 A. L. T. 12; 31 Argus L. R. 297.—**AUS.**

92 L. J. K. B. 811; 129 L. T. 653; 39 T. L. R. 460; 68 Sol. Jo. 83, C. A.

Annotations:—**Consd.** Evans *v.* Hulton (1924), 131 L. T. 534. **Refd.** Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762; Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

489b. —— **Effect of 1911 Act, s. 1 (2).**]—The word "authorise" in the above sub-sect. is superfluous, & there is nothing in the sub-sect. which cuts down the liability under sect. 2 (1) of the Act, in respect of an infringement of copyright.

Defts., who were the occupiers of a dancing hall, engaged on the terms of a written agreement a band to provide music therein. The agreement provided that the band should not, in the music played, infringe any copyright, & should be liable for damages & costs caused by any infringement. There was also a notice posted in the hall that "only such music as may be played without fee or licence is allowed to be played in this hall." On one occasion the band played certain music, the copyright of which belonged to pltfs., without pltfs.' licence; but defts. did not know, & had no reasonable ground for suspecting, that this infringement would take place. In an action by pltfs. for damages & an injunction:—*Held:* on its true construction, the agreement between defts. & the band constituted the latter the servant of defts., & not independent contractors; the band on the occasion in question were acting in the course of their employment; defts. were liable under 1911 Act, s. 2, for the infringement of copyright; & pltfs. were entitled to damages & an injunction.—PERFORMING RIGHT SOCIETY, LTD. *v.* MITCHELL & BOOKER (PALAIS DE DANSE), LTD., [1924] 1 K. B. 762; 93 L. J. K. B. 306; 131 L. T. 243; 40 T. L. R. 308; 68 Sol. Jo. 539.

Annotations:—**Consd.** Evans *v.* Hulton (1924), 131 L. T. 534. **Refd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

489c. —— **Local authority engaging band.**]—PERFORMING RIGHT SOCIETY, LTD. *v.* BRAY URBAN DISTRICT COUNCIL, No. 389a, *ante*.

See, also, Nos. 394a, 510, 510a.

502. *Add. Annotation:*—**Refd.** Harms (Incorporated) *v.* Embassy Club (1926), 43 T. L. R. 21.

506a. —— —— **Room to which public admitted on payment—Ordinarily used for other purpurposes.**]—RUSSELL *v.* SMITH, No. 99a, *ante*.

507. *Add. Annotations:*—**Consd.** Harms (Incorporated) *v.* Embassy Club (1926), 43 T. L. R. 21. **Refd.** Messager *v.* British Broadcasting Co., [1927] 2 K. B. 543.

509. *Add. Annotation:*—**Consd.** Falcon *v.* Famous Players Film Co., [1926] 2 K. B. 474.

510. *Add. Annotations:*—**Consd.** Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762; Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

510a. ——.]—FALCON *v.* FAMOUS PLAYERS FILM CO., LTD., No. 16a, *ante*.

See, also, Nos. 394a, 489a, 489b, *ante*.

513a. —— —— ——.]—Pltfs. were the publishers of a magazine, published in America at frequent intervals, called "Adventure." Defts. proposed to publish a monthly magazine called "Hutchinson's Adventure Story Magazine." In an action by pltfs. to restrain such publication:—*Held:* where any one adopted a descriptive word, as pltfs. had done, they must not object if other persons made use of it, as descriptive of similar articles; pltfs. had no monopoly of the word "Adventure," & on the evidence no real confusion existed between pltfs.' & defts.' periodicals.—RIDGWAY CO. *v.* HUTCHINSON (1923), 40 R. P. C. 335.

523a. —— **Title of film.**]—(1) Pltfs. who were the trustees of the will of the late S. H., the author of a play called "The Younger Generation," brought this action to restrain defts., Film Booking Offices, Ltd. & Universal Pictures, Ltd., from selling, letting for hire or exhibiting in public a cinematograph film under the title "The Younger Generation" in such a way as to represent to the trade or public that such cinematograph film was a film version of the play by S. H. The play was first performed in Manchester in 1910, & in 1912 it was produced in London & subsequently was performed at intervals by touring companies up to the commencement of the action. The play was published in 1910 & the demand for copies was still active. There was a continuing demand for the play in respect of amateur performances. Three films having nothing in common with the subject-matter of, & from their nature unlikely to be confused with, the pltfs.' play had been shown in this country under the title "The Younger Generation" in the years 1913, 1915, & 1926. Defts.' film was released for exhibition to the public in Sept. 1929:—*Held:* the evidence fell short of establishing the fact that the title "The Younger Generation" used in connection with a film meant in the mind of the film-going public a film based on the play of that name by S. H.

(2) Defts., Universal Pictures, Ltd., by their defence denied all liability to pltfs., & at the same time paid five guineas into ct. in satisfaction of any claim for damages & offered to submit to an injunction or to give an undertaking in the terms claimed by pltfs. Upon the undertaking being drawn up these defts. refused to pay pltfs. the costs of a motion for an interlocutory injunction which they contended should be apportioned between defts. Accordingly the action was continued against these defts. No order was made on the motion except costs to be costs in the action. The action against both defts. was dismissed with costs.—HOUGHTON *v.* FILM BOOKING OFFICES, LTD. (1931), 48 R. P. C. 329.

Annotation:—*As to* (1) **Refd.** Samuelson *v.* Producers Distributing Co. (1931), 48 R. P. C. 447.

523b. —— ——.]—Pltf., whose professional name was L. W., wrote a sketch which was first produced under the title "Washing a Car." He sent it to G. C., a comedian, who thought he could improve it, & only left in eight passages of pltf.'s, the *dramatis personæ* & the *mise-en-scène*. The sketch so altered was produced, & after a time was called "The New Car." In 1928 it was acted for six months by G. C., & in 1930 was acted by him at a Command Performance. Afterwards a paragraph appeared in a newspaper: "The King's Enjoyment. . . . It was George Clarke in Laurie Wylie's capital sketch 'The New Car' who first set the fun going." Pltf. had received payment for the scenic rights of

the sketch. Defts. then made a film which in fact did not follow the lines of "The New Car," but in May, 1930, they sent a notice to the newspapers: "The man who made the Queen laugh, George Clarke, in 'His First Car.' Come & see the talking version. A. P. D. C. Picture." The writ was then issued by pltf. for damages for passing off & for an injunction; defts. paid £5 into ct. in satisfaction of all claims. On a motion in the action defts. undertook not to repeat the advertisements until trial. Defts. shortly after giving the undertaking, made an announcement at a trade performance that their film "His First Car" had no connection with a sketch by Laurie Wylie entitled "Washing a Car" or "The New Car." Pltf. had parted with the performing rights of his sketch for five years from 1928. The judge held that pltf. was the owner of the copyright in the sketch "The New Car," & entitled to prevent defts. from passing off their film as a film version of that sketch. The injunction was not granted owing to what was said by the directors of deft. co. at the trial preventing its necessity, but an inquiry was ordered as to damages:—*Held:* in substance the sketch renamed "The New Car" was the production of pltf., who was entitled to the copyright in it; there had been an attempt to pass off & the action was rightly made a passing off action, &, though by what had taken place at the trial an injunction had become unnecessary, pltf. was entitled to go to trial. The inquiry as to damages was not necessary, however, as the £5 paid into ct. was sufficient, having regard to the fact that pltf. had parted with his film rights for five years & that there had appeared shortly after the advertisements an account in the newspapers of the interlocutory proceedings, & having regard to the announcement made at the trade show. Decision affirmed, with the exception that the order for an inquiry as to damages was held to be unnecessary.—SAMUELSON *v.* PRODUCERS DISTRIBUTING CO., LTD., [1932] 1 Ch. 201; 101 L. J. Ch. 108; 146 L. T. 37; 48 R. P. C. 580, C. A.

525. *Add. Annotation:*—**Consd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1.

531. *Add. Annotations:*—*As to* (1) **Consd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91. **Refd.** Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762.

536. *Add. Annotation:*—**Refd.** Osbourne *v.* Dent, [1925] Ch. 369.

546a. **Joint tortfeasor.**]—Where printers know that what they are printing is a piracy, & the purposes for which it is intended to use the pirated copies when delivered, they are tortfeasors, jointly with the persons for whom such copies are printed, & are jointly liable in damages to the persons whose copyright is infringed.—LAMB *v.* EVANS, [1895] W. N. 156.

548. *Add. Annotations:*—*As to* (1) **Refd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485. *As to* (2) **Refd.** Haynes *v.* Aldridge Colliery Co. (1923), 130 L. T. 282; Hughes *v.* Satchell (1925), 134 L. T. 93. *Generally*, **Mentd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441.

553. *Add. Annotation:*—**Consd.** Performing Right Soc. *v.* Ciryl Theatrical Syndicate, [1924] 1 K. B. 1.

555. *Add. Annotation:*—**Consd.** Performing Right Soc. *v.* Ciryl Theatrical Syndicate, [1924] 1 K. B. 1.

560a. —— **Printer & person ordering pirated copies.**]—LAMB *v.* EVANS, [1895] W. N. 156.

Part XIV.—Remedies.

601. *Add. Annotation:*—**Consd.** Macmillan *v.* Cooper (1923), 23 L. J. P. C. 113.

635a. ——.]—MACMILLAN & CO. *v.* COOPER, No. 92a, *ante*.

638. *Add. Annotation:*—**Consd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1.

642. *Add. Annotation:*—**Consd.** Performing Right Soc. *v.* London Theatre of Varieties, [1924] A. C. 1.

644. *Add. Citations:*—*Affd.*, [1924] A. C. 1; 93 L. J. K. B. 33; 130 L. T. 450; 40 T. L. R. 52; 68 Sol. Jo. 99, H. L.

Add. Annotations:—**Refd.** Imperial Tobacco Co. of India *v.* Bonnan, [1924] A. C. 755; Drabble *v.* Hycolite Manufacturing Co. (1928), 44 T. L. R. 264.

657a. —— ——.]—ASTRA-NATIONAL PRODUCTIONS, LTD. *v.* NEO-ART PRODUCTIONS, LTD., [1928] W. N. 218.

670a. —— —— **After payment into court with denial of liability.**]—HOUGHTON *v.* FILM BOOKING OFFICES, LTD., No. 523a, *ante*.

693. *Add. Annotations:*—*As to* (1) **Consd.** Preston *v.* Raphael Tuck, [1926] Ch. 667; Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485.

694a. —— **Sale must be of work represented to be unaltered.**]—Pltf., the author of two original

PART XIII. SECT. 2.

531 ii. —— *Of performing rights.*]—An assocn. was the registered owner of the performing rights of two pieces of music, & pltf. in a suit to restrain deft. from permitting the use of his hall for infringing copyrights. Another pltf. was the assignor of those rights, but there was no evidence that he was the legal owner of the remaining part of the copyright:—*Held:* the assocn., as the legal owner of the performing rights, could maintain the suit.—AUSTRALIAN PERFORMING RIGHT ASSOCN. & J. LEIST, INCORPORATED *v.* TURNER & SON (1927), 27 S. R. N. S. W. 344; 44 N. S. W. W. N. 76.—**AUS.**

PART XIV. SECT. 2, SUB-SECT. 1.

570 ii. ——.]—A person, whose copyright in a book has been infringed, is entitled to demand delivery of all the copies of the offending work in the possession of the person who has infringed the copyright, & payment of the full price received by such person for all copies of the work which have been sold.—BRABY *v.* DONALDSON, [1926] App. D. 337.—**S. AF.**

PART XIV. SECT. 3.

sp. *Under Copyright Act, R. S. C.*, 1906 (c. 70).]—Pltf. seeking to recover penalties under sect. 39 of the above Act cannot succeed if the ct. is satisfied that, in committing the act or the acts charged as an infringement of copyright, deft. did not act "with intent to evade the law."—NATIONAL BREWERIES *v.* PARADIS, [1925] 3 D. L. R. 875; [1925] S. C. R. 666; *affg.*, [1924] 1 D. L. R. 1082; 30 R. L. N. S. 429.—**CAN.**

drawings, sold the copyright to defts. Defts. afterwards published & sold two drawings, which were made by alterations of pltf.'s original drawings, but which had titles different from the titles of pltf.'s drawings. Defts. did not in any way expressly represent that the drawings made by such alterations were pltf.'s. Pltf. brought against defts. a passing-off action in which she alleged that her work had a distinctive character & could be recognised without bearing her name, & she claimed an injunction & penalties under sect. 7 of the above Act:—*Held:* to satisfy the sect. there must be a selling or publishing in conditions under which, to the knowledge of the seller or publisher, there was made either expressly or by necessary implication a representation that the author was the author of the work in the form in which it was sold or published, & since, although there was in many of pltf.'s productions a measure of distinctiveness, the mere seeing of defts.' productions did not necessarily suggest the inference that they were the unaltered work of pltf., the action failed.—PRESTON *v.* RAPHAEL TUCK & SONS, [1926] Ch. 667; 95 L. J. Ch. 382; 135 L. T. 93; 42 T. L. R. 440.

700a. Under Dramatic & Musical Performers' Protection Act, 1925 (c. 46)—Effect of Act—No right of property given.]—Above Act does not give a right of property to persons who perform a musical work for the purpose of enabling another person to make a record of it.—MUSICAL PERFORMERS' PROTECTION ASSOCN., LTD. *v.* BRITISH INTERNATIONAL PICTURES, LTD. (1930), 46 T. L. R. 485.

CORONERS.

Part I.—Status of Coroner and Coroner's Court.

1. *Add. Annotation :—Generally*, **Refd.** R. *v.* Divine, *Ex p.* Walton, [1930] 2 K. B. 29.

Part III.—Appointment and Removal of Coroners.

14. After this case add :—
——.]—*See, now,* Coroners (Amendment) Act, 1926 (c. 59), s. 1.

23. After this case add :—
Abolition.]—*See* Coroners (Amendment) Act, 1926 (c. 59), s. 4.

Part IV.—Remuneration and Compensation payable to Coroners.

37. In place of cross-references before this case, " *See, now,* Coroners (Amendment) Act, 1926 (c. 59), s. 5."

48. After this case add :—
——.]—*See* note *after* No. 23, *ante.*

Part VI.—Deputy Coroners.

108. To cross-reference before this case add " *See* Coroners (Amendment) Act, 1926 (c. 59), ss. 9–11."

Part VII.—Inquests.

137. Before this case add " *See, now,* Coroners (Amendment) Act, 1926 (c. 59), s. 13."

147. *Add. Annotation :—As to* (2) **Refd.** R. *v.* Haslewood, *Ex p.* Margerison, [1926] 2 K. B. 468.

152a. **Summoning "regular jurymen" — Improper.**]—(1) *Semble :* for a coroner before an inquest is held to take a person who is subsequently to serve on the jury, & privately investigate with him any of the facts of the case, whether or not it can be shown that there was anything in the nature of discussion between them, is contrary to public policy, " misconduct " at common law, & ground for quashing the inquisition under Coroners Act, 1887 (c. 71), s. 6 (1).

(2) *Semble :* the fact that at a view, by a coroner's jury, of the scene of a collision where two vehicles had collided, a police constable, who had already been sworn & given evidence at the inquest, was allowed to point out to the jury where had been the marks in the roadway of the two vehicles which were said to have met, & where one of the vehicles had come to rest, the distance between which points the jury measured, is ground for quashing an inquisition under sect. 6, sub-sect. (1), of the Coroners Act, 1887 (c. 71), s. 6 (1).

The ct. expressed the following opinions :—

(3) The practice of summoning eleven jurors to serve on a coroner's jury from a list or panel of only sixteen or seventeen persons in a large city so that some of the same persons are summoned time after time, is very objectionable, & is contrary to the principle of the jury system. The practice of calling a small panel of " regular jurymen," whether or not it is illegal, is improper.

(4) Probably, as a general rule, it is better that a coroner should not accompany his jury upon a view of the scene of a collision between vehicles or upon a view of the vehicles. (5) But if he does so accompany the jury he should carefully abstain from any discussion of the case with the jury at such view.

(6) A coroner is not bound to allow others, such as those concerned or their representatives, to be present on such a view by the jury. It is a matter for his discretion.

(7) There is no statutory requirement that

PART V. SECT. 1, SUB-SECT. 3.—A. 52 iv. —— —— *Writ of fieri facias.*]—If the sheriff of a jurisdiction is a deft., a writ of *fi. fa.* against his goods may be directed to & executed by the coroner. The right to adopt this practice is not affected by Sheriffs Act, ss. 8, 9, or by the fact that there is a deputy sheriff appointed by the Crown.—WILLIAMS *v.* RICHARDS, [1923] 1 W. W. R. 1021; 32 B. C. R. 58.—CAN.

the depositions of a witness at the coroner's ct. should be read over to him. The High Ct. has no right to add such a requirement to those which Parliament has enacted. But if a coroner thinks there is any uncertainty as to what a witness meant, & particularly if a witness, before he signs his deposition, requests that it be read over to him, the coroner ought to do so. No doubt a witness would be entitled to refuse to sign until this had been done.—R. *v.* DIVINE, *Ex p.* WALTON, [1930] 2 K. B. 29; 99 L. J. K. B. 433; 143 L. T. 235; 94 J. P. 129; 46 T. L. R. 321; 28 L. G. R. 283, D. C.

153. To cross-reference before this case add "*See* Coroners (Amendment) Act, 1926 (c. 59), s. 14."

156a. -.]—The failure by a coroner at an inquest to view the body makes the inquest a nullity, & is not merely an irregularity giving the ct. a discretion as to whether it will order another inquest, &, since on such failure there has been no inquest, the ct. will quash the proceedings before the coroner & order an inquest to be held.—R. *v.* HASLEWOOD, *Ex p.* MARGERISON, [1926] 2 K. B. 468; 95 L. J. K. B. 975; 136 L. T. 276; 90 J. P. 158; 42 T. L. R. 746; 70 Sol. Jo. 906; 24 L. G. R. 505, D. C.

SUB-SECT. 4A.—VIEW OF PLACE.

165a. Whether coroner should accompany jury.]—R. *v.* DIVINE, *Ex p.* WALTON. No. 152a, *ante*.

165b. Duty of coroner—Not to discuss case with jury at view.]—R. *v.* DIVINE, *Ex p.* WALTON, No. 152a, *ante*.

165c. Presence of persons other than jury—Discretion of coroner.]—R. *v.* DIVINE, *Ex p.* WALTON, No. 152a, *ante*.

171a. ——.]—R. *v.* DIVINE, *Ex p.* WALTON, No. 152a, *ante*.

180. For cross-reference before this case add "*See, now,* Coroners (Amendment) Act, 1926 (c. 59), ss. 21–24."

186. Before this case add "*See, now,* Coroners (Amendment) Act, 1926 (c. 59), s. 20."

193. For cross-reference before this case, *now,* Coroners (Amendment) Act, 1926 (c. 59), s. 15."

237. *Add. Annotations:—As to* (5) **Refd.** R. *v.* Divine, *Ex p.* Walton, [1930] 2 K. B. 29. *As to* (6) **Refd.** R. *v.* Divine, *Ex p.* Walton, [1930] 2 K. B. 29. *As to* (7) **Refd.** R. *v.* Divine, *Ex p.* Walton, [1930] 2 K. B. 29. *Generally,* **Refd.** R. *v.* Haslewood, *Ex p.* Margerison, [1926] 2 K. B. 468.

308a. Coroner present during jury's deliberations.]—At the conclusion of the evidence in an inquest the jury retired, & after some time sent for the coroner, who went into the jury room & remained with the jury in private for a quarter of an hour:—*Held:* in going into the jury room during the deliberations of the jury, the coroner was guilty of misconduct, & the inquisition must be quashed & a fresh inquest held before the coroner for an adjoining district.—R. *v.* WOOD, *Ex p.* ANDERSON, [1928] 1 K. B. 302; 97 L. J. K. B. 113; 138 L. T. 224; 91 J. P. 185; 44 T. L. R. 23; 25 L. G. R. 501; 28 Cox, C. C. 446, D. C.

Annotations:—**Consd.** R. *v.* Divine, *Ex p.* Walton, [1930] 2 K. B. 29. **Refd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

308b. Private investigation by coroner & member of jury.]—R. *v.* DIVINE, *Ex p.* WALTON, No. 152a, *ante*.

310. *Add. Annotation:*—**Refd.** R. *v.* Divine, *Ex p.* Walton, [1930] 2 K. B. 29.

313. *Add. Annotation:*—**Refd.** R. *v.* Divine, *Ex p.* Walton, [1930] 2 K. B. 29.

xi. *Other Cases.*

320a. Permitting constable to give information to jury at view.]—R. *v.* DIVINE, *Ex p.* WALTON, No. 152a, *ante*.

345. After this case add:—
To adjourn inquest until termination of criminal proceedings.]—*See* Coroners (Amendment) Act, 1926 (c. 59), s. 20.

403a. —— **As to insanity.**]—*Re* PITTS, Cox *v.* KILSBY (1931), *as reported in* 47 T. L. R. 293.

408. *Add. Annotations:*—**Consd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284; *Re* Pitts, Cox *v.* Kilsby (1931), 47 T. L. R. 293.

PART VII. SECT. 4, SUB-SECT. 4.

153 i. *Essential to jurisdiction of coroner.*]—Resp., a justice of the peace, began on Oct. 17, 1929, an inquiry into the death of a young woman who had died from taking strychnine on Aug. 20, 1929. Her body had been subjected to a post-mortem examination by the Govt. medical officer, & buried soon afterwards, without having been viewed by resp. At the inquiry, resp. was asked by counsel, on behalf of a subpœnaed witness, whether he had received a request in writing, but refused to give any such information. Upon application by the witness in question for a prohibition directed to resp., & restraining him from proceeding further with the inquiry:—*Held:* it was immaterial whether he had received a written request to hold such inquest, since his jurisdiction arose independently of it; notwithstanding the abolition of the coroner's jury by Inquests of Death Act, 1866, s. 5, he had no jurisdiction to hold the inquiry except *super visum corporis;* & appct. was entitled to prohibition.—R. *v.* STAINES, *Ex p.* O'CONNOR (1930), S. R. (Q.) 142; 24 Q. J. P. 19.—**AUS.**

PART VII. SECT. 4, SUB-SECT. 6.

sa. *Refusal of witness to testify—Power of coroner to imprison for contempt.*]—A coroner has power to imprison for contempt witnesses who refuse to testify when present at an inquisition held by him, even though they were not duly summoned or in any way ordered to appear, but were brought *nolens volens* before him by the police when in their custody after being arrested without warrant.—R. *v.* LITTLE, R. *v.* MILLER (Man.), [1926] 2 W. W. R. 762; 46 Can. Crim. Cas. 136.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 5.—A. (b) v.

n. Read now "**308a i.**"

CORPORATIONS.

Part I.—Nature and Attributes.

41. *Add. Annotations:* — **Refd.** Mackenzie-Kennedy *v.* Air Council, [1927] 2 K. B. 517; Metropolitan Meat Industry Board *v.* Sheedy, [1927] A. C. 899.

79. *Add. Annotations:*—**Refd.** Everett *v.* Griffiths, [1924] 1 K. B. 941; Aylott *v.* West Ham Corpn., Sisson *v.* West Ham Corpn. (1926), 90 J. P. 99.

133a. —— —— ——.]—A legacy was given to the Provost & Fellows of Queen's College. The proper name of the corpn. was "The Provost & Scholars":—*Held:* the Provost & Scholars were entitled.—QUEEN'S COLLEGE, OXFORD *v.* SUTTON (1842), 12 Sim. 521; 11 L. J. Ch. 198; 6 Jur. 906; 59 E. R. 1233.

176. *Add. Annotations:*—**Distd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246. **Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443.

179. *Add. Annotations:*—**Consd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40. **Refd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607; Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

181. *Add. Annotations:*—**Apld.** Kreditbank Cassel G. M. B. H. *v.* Schenkers, [1927] 1 K. B. 826. **Folld.** South London Greyhound Racecourses, Ltd. *v.* Wake (1930), 74 Sol. Jo. 820. **Refd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587.

After this case add:

—.]—*See, also*, COMPANIES, No. 1794a, *ante*.

182. After this case add:—

Presumption of due execution of deed.]—*See* Law of Property Act, 1925 (c. 20), s. 74.

182a. —— **What amounts to deed—Share certificate.**]—SOUTH LONDON GREYHOUND RACECOURSES, LTD. *v.* WAKE, [1931] 1 Ch. 496, 503.

190. *Add. Annotation:*—**Refd.** Stoke Newington B. C. *v.* Richards (1929), 45 T. L. R. 650.

Part II.—Creation of Corporations.

243. *Add. Annotation:*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Ry. Co., [1931] 2 K. B. 334.

265. *Add. Annotation:*—**Refd.** Mackenzie-Kennedy *v.* Air Council, [1927] 2 K. B. 517.

304. *Add. Annotation:*—**Refd.** *Re* British Celanese, Ltd., Patents (Nos. 326777 & 326778) (1932), 49 R. P. C. 283.

Part III.—The Members.

326. *Add. Annotation:*—**Refd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

326a. S.P.—BROWNSCOMBE *v.* JOHNSON (1898), 78 L. T. 265; 62 J. P. 326; 19 Cox. C. C. 25; 14 T. L. R. 328 D. C.

327. *Add. Annotation:*—**Refd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

340. *Add. Annotations:*—**Folld.** Dodd *v.* Amalgamated Marine Workers' Union (No. 2) (1923), 93 L. J. Ch. 100. **Consd.** Dodd *v.* Amalgamated Marine Workers' Union (1923), 129 L. T. 401.

340a. —.]—Trade Union Act, 1871 (c. 31), s. 14, & sched. 1 (6), gives every member of a trade union a right to inspect the books of the union, "under proper conditions." That right entitles a member to inspect them by a skilled accountant, but the accountant should not be objectionable to the union on personal grounds, & should undertake not to disclose the information obtained by him except to his client. The fact that the trade union officials believe that the member desiring to inspect the books by an accountant is acting *mala fide*, & for purposes hostile to the union, does not give them an implied discretion to refuse the inspection. The *onus* of establishing that the right of inspection should not be exercised lies on the trade union.—DODD *v.* AMALGAMATED MARINE WORKERS' UNION, [1924] 1 Ch. 116; 93 L. J. Ch. 100; 129 L. T. 819; 40 T. L. R. 44; 68 Sol. Jo. 117, C. A.

Trade unions generally, *see* TRADE & TRADE UNIONS.

345a. —— ——.]—DODD *v.* AMALGAMATED MARINE WORKERS' UNION, No. 340a, *ante*.

PART I. SECT. 1.

7 v. ——.]—The effect of incorporating a number of persons into a body corporate is to make that body corporate a separate legal entity or *persona*.

The juridical conception of a body corporate under the Indian law is not different from that under the English law.—HARIHAR PRASAD *v.* BANSI MISSIR (1932), I. L. R. 11 Pat. 174.—**IND.**

PART I. SECT. 2, SUB-SECT. 2.

sa. *Miner's union.*]—CENTRE STAR MINING CO., LTD. *v.* ROSSLAND MINERS' UNION (1902), 9 B. C. R. 190.—**CAN.**

PART I. SECT. 2, SUB-SECT. 3.

sd. *Sheriff—Of Bombay.*]—*Held:* not a corpn. sole.—BOMBAY (SHERIFF) *v.* HUKMOJI MOTAJI & CO. (1926), I. L. R. 51 Bom. 749.—**IND.**

PART I. SECT. 4, SUB-SECT. 5.—C.

sf. *Conviction.*]—A corpn. can be convicted of an offence only under the exact name which it legally possesses.—R. *v.* PELISSIERS, LTD., [1926] 1 D. L. R. 574; [1926] 1 W. W. R. 189; 45 Can. Crim. Cas. 161; 35 Man. L. R. 404.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.

sg. *Commissions created by municipalities—Under New Brunswick Electric Power Act*, 1920.]—ST. JOHN POWER COMMISSION *v.* NEW SYSTEM LAUNDRY, LTD. (N. B.), [1928] 2 D. L. R. 661.—**CAN.**

Part IV.—Officers.

416. *Add. Annotation :*—**Refd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

421. *Add. Annotation :*—**Refd.** Everett *v.* Griffiths, [1924] 1 K. B. 941.

474. *Add. Annotation :*—**Refd.** Cayzer, Irvine *v.* Board of Trade, [1927] 1 K. B. 269.

512. *Add. Annotations :*—**Refd.** Short *v.* Poole Corpn. (1925), 42 T. L. R. 107 ; Brown *v.* Dagenham U. D. C., [1929] 1 K. B. 737.

Part V.—Election to Corporate Office.

583. For " **How tested—Not by mandamus directed against person elected.]** " read " **How tested —Not by quo warranto directed against person elected.]** "

Part VI.—Regulations and Bye-laws.

631. *Add. Annotations :*—**Consd.** A.-G. *v.* Denby, [1925] Ch. 596 ; Roberts *v.* Hopwood, [1925] A. C. 578. **Apld.** Everton *v.* Walker (1927), 137 L. T. 594. **Refd.** Owner *v.* King (1922), 128 L. T. 307 ; Mills *v.* L. C. C. (1924), 41 T. L. R. 122 ; R. *v.* Roberts, *Ex p.* Scurr, [1924] 2 K. B. 695 ; Short *v.* Poole Corpn. (1925), 42 T. L. R. 107.

652. *Add. Annotation :*—**Refd.** Everton *v.* Walker (1927), 137 L. T. 594.

691. *Add. Annotation :*—*As to* (1) **Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

700a. —.]—WOOLLEY *v.* IDLE (1766), 4 Burr. 1951 ; 98 E. R. 16.

Annotations :—**Apld.** York Corpn. *v.* Welbank (1821), 4 B. & Ald. 438. **Refd.** Graves *v.* Colby (1838), 9 Ad. & El. 356.

707a. —— —— ——.]—SHAW *v.* POPE (1831), 2 B. & Ad. 465 ; 109 E. R. 1215.

736a. ——.]—CLARK'S CASE, No. 751, *post.*

770a. Presumption of—From non-observance.]—A.-G. *v.* MIDDLETON (1751), 2 Ves. Sen. 327 ; 28 E. R. 210, L. C.

Annotations :—**Refd.** A.-G. *v.* Foundling Hospital (1793), 4 Bro. C. C. 165 ; A.-G. *v.* Smythies (1836), 2 My. & Cr. 135.

Part VII.—Meetings.

794. *Add. Annotation :*—**Refd.** Neuschild *v.* British Equitorial Oil Co., [1925] Ch. 346.

861a. Validity—Proxy by annual subscriber—What amounts to payment.]—By the rules of an infirmary, which is a voluntary assocn. supported by voluntary contributions, for the purpose of providing medical advice & assistance gratis, the medical officers are to be elected by the governors. Any person subscribing one guinea or more annually is a governor during the continuance of his subscription ; on the occasion of the election of a candidate to the office of surgeon, all ladies, who are governors, subscribers of one

PART IV. SECT. 2, SUB-SECT. 2.

sh. *Proceeding by corporation against former member—Whether maintainable.]* —Two of defts. & another were duly elected school trustees in Oct. 1873. In Dec. defts., without the concurrence of the third trustee, removed the school house from its then site. In June, 1874, the comrs. of schools dismissed the three trustees, & appointed three others. The newly appointed trustees brought an action of trespass against the two trustees who had removed the school house, & their servants, for such removal :—*Held :* no action would lie at their suit against defts. for acts committed during their term of office.—SCHOOL SECTION 16 TRUSTEES *v.* CAMERON (1877), 11 N. S. R. (2 R. & C.) 328.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 2.—A.

631 i. *Test of reasonableness—General rule.]*—Every bye-law, whether made under a power to prohibit or a power to restrain or a power to regulate, must contain adequate information as to the duties of those who are to obey it, & such information must appear from the bye-law itself.—MILLER *v.* CITY OF BRIGHTON, [1928] V. L. R. 375 ; 49 A. L. T. 249 ; [1928] Argus L. R. 209. —**AUS.**

PART VI. SECT. 3, SUB-SECT. 4.

713 i. *Whether bye-law void in toto.]*—A municipal bye-law may be good in part & bad in part.—BROWN TRANSFER Co. *v.* TOWNSHEND (Sask.), [1927] 1 W. W. R. 916.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 1.

sk. *Who may sue.]*—Where the law resulting from the exercise of a statutory power to make a bye-law operates for the general advantage of the public at large, none but the A.-G. may sue in respect of its breach.—A.-G. & LUMLEY *v.* T. S. GILL & SON PTY., LTD., [1927] V. L. R. 22 ; [1927] Argus L. R. 223.—**AUS.**

PART VI. SECT. 7.

sl. *Bye-laws made under statute—Not abrogated by repeal of statute.]*—A bye-law passed by the police comrs. of a city in 1915, admittedly valid when passed, provided that it should not be lawful for any person to use any vehicle in the " jitney " bus service " for gain without being licensed so to do. S. had a " jitney " licence, but it expired on June 30, 1928. He continued to operate without a licence, & was convicted of a breach of the bye-law. The comrs. had ceased to issue jitney licences, because of an Ontario Statute passed in 1927, validating an agreement between the city corpn. & a street railway co., which provided that the corpn. should not issue any new jitney licences, & that existing licences should not continue in force after June 30, 1928 :—*Held :* the validity of the bye-law was not destroyed.—*Re* SHAWRA, [1929] 1 D. L. R. 321 ; 50 Can. Crim. Cas. 267 ; 63 O. L. R. 158.—**CAN.**

sm. *Statute forbidding future bye-law—Existing bye-law valid—Where no repeal of existing bye-law.]*—R. *v.* SHAWRA, [1929] 1 D. L. R. 321 ; 50 Can. Crim. Cas. 267 ; 63 O. L. R. 158.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 1.—C.

g i. —— *Voting for improper payment—Municipal Act, R. S. M.*, 1913—*Meaning of " any other purpose."]*—WOULD *v.* HERRINGTON, [1932] 2 W. W. R. 385 ; 4 D. L. R. 308.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 1.—D.

836 i. *Must be exercised in accordance with constitution.]*—KAIK *v.* BORASKI (Sask.), [1926] 3 D. L. R. 916.—**CAN.**

guinea *per annum*, whose subscriptions are not more than one year in arrear, are allowed to vote by proxy, other governors voting in person; & all annual subscriptions become due on Aug. 1, in each year. Pltf. was a candidate with two others at an election on Dec. 29, of a medical officer; a governor tendered proxies for him which were refused by the chairman, on the ground that they appeared by their dates to have been signed before the persons signing them had become subscribers. The proxies were signed by persons who each, about the time of signing, paid over one guinea as a first subscription to the infirmary, to the governor who tendered the proxies. Just before the meeting this governor gave the treasurer of the infirmary his cheque for the whole amount, the treasurer giving him a separate receipt for each guinea in the name of each person subscribing. The chairman declared one of the other two candidates elected, although pltf. would have the majority of votes, if his proxies had been received. The governor who tendered the proxies that same day stopped the payment of his cheque, but three days afterwards he paid the amount to the treasurer. Pltf. subsequently entered the infirmary, & claimed the right to do the duties of medical officer. Defts., who were the chairman & honorary secretary of the governors, resisted his claim & used force sufficient to turn him out, for which pltf. brought an action for assault at a county ct. The judge found a verdict for defts., on the ground that the subscriptions of those persons, whose proxies were rejected, had not been paid before the election, but reserved the question for the ct. on appeal:—*Held:* these facts constituted payment before the election by the persons whose proxies were rejected, but the validity of the proxies might depend upon the intention of those persons to be annual subscribers; also pltf., not having been in fact elected medical officer, could not question the validity of the election in this action.—WORTHINGTON *v.* HARGOOD (1873), 27 L. T. 786; 37 J. P. 484.

Part VIII.—Corporation Books and Documents.

865. *Add. Citations:—sub nom.* R. *v.* SANKEY, 5 Ad. & El. 423; 6 Nev. & M. K. B. 839; 5 L. J. K. B. 255; 111 E. R. 1226.

Add. Annotation:—**Distd.** Newington L. B. *v.* Eldridge (1879), 12 Ch. D. 349.

866. *Add. Citations:—sub nom.* R. *v.* RYE (MAYOR), 2 Keny. 485; 96 E. R. 1253.

Part IX.—Powers and Liabilities Generally.

880. *Add. Annotations:*—**Apld.** The Devon (1923), 130 L. T. 448. **Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159; Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401. **Refd.** Sutcliffe *v.* Clients Investment Co., [1924] 2 K. B. 746; British Petroleum Co. *v.* A.-G. for Ceylon, [1926] A. C. 147; Silverman *v.* Imperial London Hotels (1927), 137 L. T. 57; Guilfoyle *v.* Port of London Authority, [1932] 1 K. B. 336; Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

888. *Add. Annotation:*—**Refd.** Wimbledon & Putney Commons Conservators *v.* Tuely, [1931] 1 Ch. 190.

891. *Add. Annotations:*—**Consd.** A.-G. *v.* Walkergate Press, Ltd.; A.-G. *v.* Bloomfield; A.-G. *v.* Carlton (1930), 142 L. T. 408. **Apld.** Orpen *v.* Haymarket Capitol, Ltd. (1931), 145 L. T. 614. **Refd.** Davies *v.* Winstanley (1930), 47 T. L. R. 104.

898. *Add. Annotation:*—**Apld.** Orpen *v.* Haymarket Capitol, Ltd. (1931), 145 L. T. 614.

902. *Add. Annotations:*—**Consd.** A.-G. *v.* Walkergate Press, Ltd.; A.-G. *v.* Bloomfield; A.-G. *v.* Carlton (1930), 142 L. T. 408. **Refd.** Suttle *v.* Cresswell (1925), 42 T. L. R. 75.

902a. —— ——.]—A limited co. is not liable to the penalties prescribed by the above sect., but directors, who have issued a proposal jointly with a limited co., are liable. They are, however, liable only for one penalty between them in respect of each offence committed.—A.-G. *v.* WALKERGATE PRESS, LTD.; A.-G. *v.* BLOOMFIELD; A.-G. *v.* CARLTON (1930), 142 L. T. 408; 94 J. P. 90; 46 T. L. R. 177; 74 Sol. Jo. 106; 28 L. G. R. 235; 29 Cox, C. C. 68.

PART VIII. SECT. 3.

878 i. *By strangers—Ratepayer—In Ontario.*]—JOURNAL PRINTING CO. *v.* MCVIETY (1915), 33 O. L. R. 166; 7 O. W. N. 633, 796; 21 D. L. R. 81.—**CAN.**

PART IX. SECT. 1.

88. *Exercise of—Must be by bye-law.*] —In Ontario, when a municipal council is acting under the Municipal Act, its powers must be exercised by bye-law unless it is otherwise expressly authorised.—DONOVAN *v.* BELLEVILLE, [1930] 3 D. L. R. 434; 65 O. L. R. 246; *affd.*, [1931] 4 D. L. R. 288; O. R. 731.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 1.

ri. —— *British Columbia Government Liquor Act, ss. 26, 46—Does not include Army & Navy Veterans in Canada (Victoria Unit)—Branch association established by corporation.*]—R. *v.* VICTORIA UNIT (ARMY & NAVY VETERANS), [1921] 3 W. W. R. 594; 66 D. L. R. 512; 36 Can. Crim. Cas. 285; 30 B. C. R. 248.—**CAN.**

r ii. —— *Liquor Act, 1912, s. 156—Includes corporation.*]—SMITH *v.* TROCADERO DANSANT, LTD., [1927] S. R. O. 39; 21 Q. J. P. 6.—**AUS.**

Interpretation Act, 1924—Includes company—Order in Council relating to summary offences.]—On Jan. 11, 1930, an Order in Council, called Samoa Seditious Organisations Regulations, 1930, was made under Samoa Act, 1921, s. 46, being primarily directed at an organisation known as the "Mau," which had been creating very serious trouble in Samoa:—*Held:* except in the particular sub-clauses of clause 3 of the regulations in which it appears from the context that "person" is to be read as meaning only a physical person, in the construction of the Order in Council relating to offences punishable on summary conviction the expression "person" must be construed according to the Acts Interpretation Act, 1924, as including a co.—NELSON (O. F.) & CO., LTD. *v.* POLICE, [1932] N. Z. L. R. 337.—**N.Z.**

903a. **Settled Land Act, 1925 (c. 18), ss. 19 (1), 20 (1).**]—The above sub-sects. are applicable to a corpn., because the words "person of full age" are used throughout the new legislation in contrast with the word "infant," & merely mean "not being an infant," so that they are appropriate to a corpn.—*Re* CARNARVON'S (EARL) CHESTERFIELD SETTLED ESTATES, *Re* CARNARVON'S (EARL) HIGHCLERE SETTLED ESTATES, [1927] 1 Ch. 138; 96 L. J. Ch. 49; 136 L. T. 241; 70 Sol. Jo. 977.

Annotations:—**Refd.** *Re* Alington & L. C. C.'s Contract, [1927] 2 Ch. 253; *Re* Ogle's S. E., [1927] 1 Ch. 229; *Re* Pedley, Wallace *v.* Wallace, [1927] 2 Ch. 168.

903b. —— **Sunday Observance Act, 1781 (c. 49).**]—A limited co. can be the "keeper" of a house, or a "person managing or conducting an entertainment," within Sunday Observance Act, 1781 (c. 49), s. 1. But, where a co. has committed an offence against that sect., the directors are not liable merely because they are directors. To make the directors liable under sect. 2 of the Act there must be evidence that in respect of a particular Sunday they acted as persons having the management of the house.—ORPEN *v.* HAYMARKET CAPITAL, LTD. (1931), 145 L. T. 614; 95 J. P. 199; 47 T. L. R. 575; 75 Sol. Jo. 589; 29 L. G. R. 615; 29 Cox, C. C. 348.

907a. —— **Local tramway Act.**]—A local tramway Act authorised the Board of Trade to make bye-laws providing that engines should be brought to a stand at cross streets, & a penalty was imposed on any person offending: —*Held*: the word "person" included a co., & there was no contrary intention to that effect shown in the other words of the sect.—ST. HELENS TRAMWAYS CO. *v.* WOOD (1891), 56 J. P. 71, D. C.

910. *Add. Annotation*:—**Consd.** *Re* Gibbs & Houlder's Lease, Houlder *v.* Gibbs, [1925] Ch. 575.

911. *Add. Annotation*:—**Refd.** Curtis Moffat *v.* Wheeler, [1929] 2 Ch. 224.

914. For cross-references before this case read "*See, now*, S. C. J. (Consolidation) Act, 1925 (c. 49), s. 161.

922. *Add. Annotations*:—*As to* (2) **Refd.** Deuchar *v.* Gas Light & Coke Co., [1924] 2 Ch. 426; A.-G. *v.* Leeds Corpn., [1929] 2 Ch. 291; A.-G. *v.* Smethwick Corpn. (1932), 96 J. P. 105.

928. *Add. Annotation*:—**Consd.** Garrard *v.* James, [1925] Ch. 616.

932. *Add. Annotations*:—**Apld.** Deuchar *v.* Gas Light & Coke Co., [1925] A. C. 691; A.-G. *v.* Leeds Corpn., [1929] 2 Ch. 291. **Consd.** A.-G. *v.* Smethwick Corpn. (1932), 96 J. P. 105. **Refd.** A.-G. *v.* Tynemouth Union, [1930] 1 Ch. 616.

935. *Add. Annotation*:—*As to* (2) **Refd.** Morris *v.* Harris, [1927] A. C. 252.

935a. —— ——.]—Pltfs. were by statute entrusted with the control & management of part of the navigations of the Rivers Ouse & Foss, in Yorkshire, with power to charge such tolls, within limits, as the corpn. deemed necessary to carry on the two navigations in which the public had an interest. In 1888 the corpn. entered into two agreements with the firm of H. L. & Sons. By the Ouse agreement the corpn. covenanted to allow the firm, their successors & assigns, the right to carry cargoes on the Ouse in consideration of the annual payment of £600 in place of the authorised dues & charges, with a proviso that there should each year be refunded to the firm, their successors & assigns, the difference between the £600 & the amount ordinarily charged on the traffic actually carried. By the Foss agreement the firm covenanted to pay the corpn. £200 *per annum* for twenty years as a composition for the ordinary tolls, & the corpn. covenanted to allow the firm, their successors & assigns, the free use of the Foss navigation, on payment of £200 *per annum* in lieu of tolls, for such further term or terms as the firm, their successors or assigns, might from time to time desire. Defts. were the successors of H. L. & Sons:—*Held*: the agreements were *ultra vires*, because during their currency, which depended on the wishes of defts., the corpn., no matter what emergency might arise, had disabled itself from exercising its statutory powers to increase the tolls so far as might be necessary; &, being *ultra vires* at the date of their execution, the agreements did not become *intra vires* by reason of estoppel, lapse of time, ratification, acquiescence or delay.—YORK CORPN. *v.* LEETHAM (HENRY) & SONS, LTD., [1924] 1 Ch. 557; 94 L. J. Ch. 159; 131 L. T. 127; 40 T. L. R. 371; 68 Sol. Jo. 459; 22 L. G. R. 371.

Annotations:—**Dbtd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355 **Consd.** Brown *v.* Dagenham U. D. C., [1929] 1 K. B. 737.

948. *Add. Annotation*:—**Consd.** Deuchar *v.* Gas Light & Coke Co., [1924] 2 Ch. 426.

952. *Add. Annotation*:—**Consd.** Deuchar *v.* Gas Light & Coke Co., [1924] 2 Ch. 426.

955. *Add. Annotations*:—**Consd.** Deuchar *v.* Gas Light & Coke Co., [1925] A. C. 691. **Refd.** *Re* Jubilee Cotton Mills, [1923] 1 Ch. 1; A.-G. *v.* Smethwick Corpn. (1932), 96 J. P. 105.

962. *Add. Annotation*:—**Apld.** A.-G. *v.* London & Home Counties Joint Electricity Authority, [1929] 1 Ch. 513.

964. *Add. Annotation*:—**Refd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355.

972. *Add. Annotation*:—**Consd.** A.-G. *v.* Leeds Corpn., [1929] 2 Ch. 291.

974. *Add. Annotation*:—**Refd.** A.-G. *v.* Leeds Corpn., [1929] 2 Ch. 291.

986a. Expenses of running omnibuses—Power to run omnibuses on authorised routes—Omnibuses run to connect up authorised routes.]—The corpn. of L., a municipal corpn., had by virtue of their special Act power to maintain & run a service of omnibuses within the city or outside the city boundaries. In the latter case, their special powers only extended to

PART IX. SECT. 5, SUB-SECT. 2. A. d i. —— *Power to take mortgage.*]—An insurance co. was, by its charter, authorised to hold real estate for the immediate accommodation of the co., "or such as shall have been *bonâ fide* mortgaged to it by way of security, or conveyed to it in satisfaction of debts previously contracted in the course of its dealings, or purchased at sales upon judgments which shall have been obtained for such debts"; & having sold & conveyed a vessel, took from their vendee mtges. on real estate for securing the purchase money: —*Held*: a transaction within the charter, the price of the vessel being a debt existing previously to the execution of the mtge.—WESTERN ASSURANCE CO. *v.* TAYLOR (1862), 9 Gr. 471.—CAN.

the running of omnibuses along the route of any tramways which the corpn. should be authorised to construct. There were in fact two such authorised tramway routes. The expenditure in connection with the running of these authorised tramways could, under the corpn.'s statutory powers, be borne out of the city fund. The corpn. began an omnibus service in pursuance of their statutory powers, but it appeared that for a very small portion of the omnibus route, namely, for a distance of forty yards, the service of omnibuses ran outside the boundaries of the city, joining up with the tramway routes slightly further on, & that the expenses in connection therewith were borne by the city fund. An action was commenced by a ratepayer for a declaration (*inter alia*) that the running of these omnibuses over this particular stretch, & payment of the expenses in connection therewith out of the city fund, was *ultra vires* the statutory powers of the corpn., & ought to be prohibited. The question at issue was whether, so far as the forty yards stretch was concerned, the corpn. were entitled to spend moneys out of the city fund in connecting an authorised route of omnibuses outside the city with a route of omnibuses within the city boundaries. Under their statutory powers the corpn.'s service of omnibuses along the route of a tramway outside the city which they were authorised to construct was a part of their tramways undertaking, & they were also authorised to apply the city fund in discharging the expenses in connection with the tramways undertaking:—*Held:* the expense of running omnibuses over the forty yards so as to connect the two routes was an expense fairly incidental to the tramways undertaking, & that it was not *ultra vires* the corpn.'s statutory powers to expend any part of the city fund in working & running the omnibuses over the forty yards which connected the two services, & which were branches of the corpn.'s tramways undertaking.—A.-G. *v.* LEEDS CORPN., [1929] 2 Ch. 291; 99 L. J. Ch. 9; 141 L. T. 658; 93 J. P. 153; 27 L. G. R. 351.

991a. Purchase of land for street widening & pleasure garden—Subsequent use of pleasure garden for street widening.]—A local authority bought land in 1896 for the purposes of: (*a*) street widening; (*b*) making new streets; (*c*) providing public walks & pleasure gardens. The land was conveyed to the local authority for the purposes authorised by the Public Health Acts. A plan & specifications were submitted to the Local Government Board, & subsequently the scheme was carried out in accordance with the plan & specifications. The pleasure gardens were surrounded by railings, & were not dedicated or open to the public. In 1927 the local authority resolved to utilise one of the pleasure grounds for the purpose of street widening & providing a parking place for motor cars. Objections were raised by some of the occupiers of adjoining premises, & an action was brought to restrain the local authority from carrying out their resolution:—*Held:* as one of the purposes for which the land was acquired was street widening, the local authority was not acting *ultra vires* in using part of the pleasure gardens for that purpose.—A.-G. *v.* SUNDERLAND CORPN., [1929] 2 Ch. 436; 45 T. L. R. 618; 93 J. P. Jo. 480; *affd.*, [1930] 1 Ch. 168, C. A.

994. *Add. Annotations:*—**Consd.** Deuchar *v.* Gas Light & Coke Co., [1924] 2 Ch. 426. **Refd.** A.-G. *v.* Westminster City Council, [1924] 2 Ch. 416; Damps Selsk Svendborg *v.* London, Midland & Scottish Ry. Co. (1929), 20 Ry. & Can. Tr. Cas. 67.

996. *Add. Annotations:*—**Apld.** A.-G. *v.* County of London Electric Supply Co., [1926] Ch. 542. **Consd.** Damps Selsk Svendborg *v.* London, Midland & Scottish Ry. Co. (1929), 20 Ry. & Can. Tr. Cas. 67.

997. *Add. Annotation:*—*As to* (1) **Apld.** A.-G. *v.* County of London Electric Supply Co., [1926] Ch. 542.

997a. Power to erect information bureau on promenade—Discretionary powers to erect "conveniences" for persons using promenade for pleasure or health.]—A.-G. *v.* BLACKPOOL CORPN. (1928), 92 J. P. 50; 26 L. G. R. 160, C. A.

998. *Add. Annotations:*—**Apld.** Deuchar *v.* Gas Light & Coke Co., [1925] A. C. 691; A.-G. *v.* Leeds Corpn., [1929] 2 Ch. 291. **Consd.** A.-G. *v.* Smethwick Corpn. (1932), 96 J. P. 105. **Refd.** A.-G. *v.* Westminster City Council, [1924] 2 Ch. 416; A.-G. *v.* Tynemouth Union, [1930] 1 Ch. 616.

1000. *Add. Annotation:*—**Refd.** *Re* Lee, Behrens & Co. (1932), 48 T. L. R. 248.

1000a. —— **By commons conservators.**]—It is within the powers conferred upon the Wimbledon & Putney Commons Conservators, a corpn. constituted under the provisions of the Wimbledon & Putney Commons Act, 1871, c. cciv., to pay pensions, annuities, or superannuation allowances to persons in their service who shall retire from such service by reason of age, infirmity, or otherwise.—WIMBLEDON & PUTNEY COMMONS CONSERVATORS *v.* TUELY, [1931] 1 Ch. 190; 100 L. J. Ch. 77; 144 L. T. 310; 47 T. L. R. 17; 74 Sol. Jo. 819; 29 L. G. R. 78.

1002. *Add. Annotation:*—*As to* (2) **Refd.** Deuchar *v.* Gas Light & Coke Co., [1925] 5 A. C. 691.

1006. *Add. Annotations:*—**Distd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246. **Consd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1927] 1 K. B. 826. **Refd.** Underwood *v.* Bank of Liverpool, Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443; British Thomson-Houston Co. *v.* Federated European Bank, Ltd., [1932] 2 K. B. 176.

1033. *Add. Annotation:*—**Refd.** Attwood *v.* Llay Main Collieries (1925), 70 Sol. Jo. 265.

1043. *Add. Annotation:*—**Refd.** The Jupiter, No. 3, [1927] P. 122.

PART IX. SECT. 5, SUB-SECT. 2.—D. (b).

sn. *Power to change rates charged for public utilities.*]—*Ex p.* MONCTON TRAMWAY ELECTRICITY & GAS CO. (N. B.), [1927] 3 D. L. R. 1112.—**CAN.**

st. *Power to erect shops—On land vested in corporation.*]—There is no power in a municipal corpn. to expend money in the erection of shops on land vested in it either as endowments or otherwise.—TAURANGA BOROUGH CORPN. *v.* A.-G., [1927] N. Z. L. R. 875.—**N.Z.**

PART IX. SECT. 6, SUB-SECT. 5.—B. (a).

sa. *Corporation under Native Land Act, 1909—To member of committee.*]—TATAURANGI, TAIRUAKENA *v.* MUA CARR, [1927] N. Z. L. R. 688.—**N.Z.**

Part X.—Contracts.

1103. *Add. Annotation :—As to* (1) **Apld.** Higgins *v.* Northampton County Borough (1926), 90 J. P. 82.

1126. *Add. Annotation :*—**Refd.** Nixon *v.* Erith U. C., [1924] 1 K. B. 819.

1127a. —— —— **Local authority acting under Housing of Working Classes Act, 1890 (c. 70).**] —The words of sect. 56 of the above Act must be read distributively, & as meaning that if the local authority's district is an urban district it shall have the same power of contracting that an urban sanitary authority has under the Public Health Acts, & if its district is a rural district the power which a rural sanitary authority has under those Acts, with the result that in the former case the authority cannot, when acting under the Act of 1890, contract otherwise than under its common seal if the value or amount of the contract exceeds £50. — NIXON *v.* ERITH URBAN COUNCIL, [1924] 1 K. B. 819 ; 93 L. J. K. B. 756 ; 131 L. T. 303 ; 88 J. P. 115 ; 40 T. L. R. 373 ; 68 Sol. Jo. 537 ; 22 L. G. R. 448, C. A.

1127b. —— ——.]—Pltfs. claimed to have a written contract dated Mar. 17, 1921, under which they agreed to erect fifty-eight concrete workmen's dwellings for deft. borough rectified so as to give effect to what was alleged to have been the common intention " of the parties " when the contract was drawn up. The contract was entered into between H. & deft. borough & was under their seal. H. subsequently assigned the contract to pltfs. : —*Held :* even if there were a common mistake the contract of Mar. 17, 1921, could not be rectified because, having regard to sect. 174 of the above Act, deft. borough were incapable of entering into a contract with H. other than a contract under seal, so that when a tender was made by H. & accepted, there was no contract come to.—HIGGINS (W.), LTD. *v.* NORTHAMPTON CORPN., [1927] 1 Ch. 128 ; 96 L. J. Ch. 38 ; 136 L. T. 235 ; 90 J. P. 82.

1131. *Add. Annotation :*—**Refd.** Nixon *v.* Erith U. C., [1924] 1 K. B. 87.

1133. *Add. Annotation :*—**Refd.** Crediton Gas Co. *v.* Crediton U. C., [1928] Ch. 447.

1134a. —— —— —— ——.]—A firm, of which deft. was the sole surviving member, were employed as architects. Four years after the work was completed dry rot broke out in floors laid over concrete, a large area of which was laid on the ground floor of the new buildings. It was alleged that, in correspondence which passed between the parties after the dispute arose, deft., in consideration of the corpn. refraining from suing, undertook to put the work right at his own expense :— *Held :* deft. was liable under the subsidiary contract, although that contract was not under seal, as the seal was unnecessary.—LEICESTER GUARDIANS *v.* TROLLOPE (1911), 75 J. P. 197 ; 2 Hudson's B. C., 4th ed., 419.

1135. *Add. Annotation :*—**Consd.** Nixon *v.* Erith U. C., [1924] 1 K. B. 819.

1165. *Add. Annotation :*—**Apld.** Crediton Gas Co. *v.* Crediton U. C., [1928] Ch. 447.

1176. *Add. Annotation :*—**Refd.** Berners *v.* Fleming, [1925] Ch. 264.

1193. *Add. Annotation :*—**Distd.** Nixon *v.* Erith U. C., [1924] 1 K. B. 87.

1205. *Add. Annotation :*—**Consd.** Michaud *v.* Montreal (City) (1923), 92 L. J. P. C. 161.

1214. After this case add :— —— ——.]—*See* Law of Property Act, 1925 (c. 20), s. 180 (3).

PART IX. SECT. 6, SUB-SECT. 5.—B. (d).

1059 ii. ——.]—Pltfs. had demised by parol for one year the land to F. & put him in possession. Shortly afterwards defts. entered, turned him out & retained possession. On the trial it was contended that F. being tenant in possession the action should have been brought in his name, & not in that of pltfs., & pltfs. were non-suited. In support of a rule to set this non-suit aside it was contended that the corpn. could only demise under seal & the parol demise to F. was therefore void & the corpn. properly made pltfs. :—*Held :* the demise was void.—ST. ANDREW'S COLLEGE TRUSTEES *v.* GRIFFIN (1853), 1 P. E. I. 80.—**CAN.**

PART X. SECT. 1, SUB-SECT. 1.

sd. *Co-operative association—Formed to carry on labour or trade—Right to contract for work or services—R. S. O.*, 1877 (*c.* 158).]—ONTARIO CO-OPERATIVE STONE CUTTERS' ASSOCN. *v.* CLARKE (1880), 31 C. P. 280.—**CAN.**

PART X. SECT. 2, SUB-SECT. 1.

a i. —— —— *Position of purchaser from corporation.*]—TRUST & LOAN CO. *v.* MONK (1868), 14 Gr. 385.—**CAN.**

PART X. SECT. 2, SUB-SECT. 4.

1128 i. *General rule—Contract over £50 in value—How calculated.*]—The " value or amount " of a contract within Public Health (Ireland) Act, 1878, s. 210 (1), is the amount which, in the light of the facts within the contemplation of the parties, & in reference to which the contract is made, would be recoverable by the contractor from the sanitary authority on completion. —MUNRO *v.* MALLOW URBAN DISTRICT COUNCIL, [1911] 2 I. R. 130.—**IR.**

PART X. SECT. 5, SUB-SECT. 1.—A. (a).

t i. —— ——.]—Where a workman is hired to do work for a corpn. by a person who has no authority to hire him, & the corpn. has not ratified the employment, the fact that he does the work does not create the relationship of employer & workman between him & the corpn.—STUART *v.* PENNANT SCHOOL DISTRICT, [1927] 2 D. L. R. 940 ; [1927] 1 W. W. R. 949 ; 21 Sask. L. R. 465.—**CAN.**

PART X. SECT. 5, SUB-SECT. 1.—B.

ss. *Right of corporation to enforce contract.*]—The municipal committee held an auction to sell to the highest bidder a contract entitling him to take for one year all the sweepings of that town, that were to be collected regularly in certain godowns belonging to the municipal committee. The contract was knocked down to deft., who paid one-third down & agreed to pay the balance by monthly instalments, & signed the list of bids, as well as a document embodying all the terms of the contracts, both of which documents were also signed by the president of the committee, but neither of which was under the seal of that corporate body. The committee sued deft. for the unpaid balance of the price of the contract :—*Held :* notwithstanding the imperative provisions of Punjab Municipal Act, 1911, s. 47, if deft. had received benefit from the contract at the expense of the committee, he must pay for what he had actually received & enjoyed, as if there was an implied contract between the parties : & the absence of a contract under the seal of the corpn. was therefore no answer to the action brought by the committee. — GUJRANWALA MUNICIPAL COMMITTEE *v.* FAZAL DUN (1929), I. L. R. 11 Lah. 121.—**IND.**

PART X. SECT. 7.

sf. *Ultra vires contract — Benefit received by corporation — Duty to account.*]—COUNTY OF HALTON *v.* TOWNSHIP OF TRAFALGAR, [1927] 4 D. L. R. 184 ; 61 O. L. R. 45.—**CAN.**

Part XI.—Liability and Remedies in Tort.

1218. *Add. Annotation :*—**Distd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

1223. *Add. Annotations :*—**Distd.** Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226. **Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85 ; Blundy, Clark & Co. *v.* London & North Eastern Ry. Co., [1931] 2 K. B. 334.

1224. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

1225. *Add. Annotations :*—**Consd.** Scammell *v.* Hurley, [1929] 1 K. B. 419. **Refd.** Phillips *v.* Britannia Hygienic Laundry Co., [1923] 2 K. B. 832.

1227. *Add. Annotations :*—**Consd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401. **Refd.** Welden *v.* Smith, [1924] A. C. 484.

1228. *Add. Annotation :*—**Refd.** Guilfoyle *v.* Port of London Authority, [1932] 1 K. B. 336.

1229. *Add. Annotation :*—**Consd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

1230. *Add. Annotation :*—**Consd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

1231. *Add. Annotation :*—**Consd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

1235a. ——.]—By a local Act a canal was vested in applts., who were required by the Act to keep the navigation & locks, & all works to be thereafter executed for the improvement thereof, in an efficient state for the traffic thereon. Applts. raised the coping on both sides of one of their locks & the banks behind it to prevent the lock from being flooded. Resps., adjacent landowners, objected that the effect of the works was to pen back the water in the part of the canal above the lock & to occasion the flooding of their lands, & applts. removed the coping without prejudice to their rights, but they did not reduce the height of the banks :—*Held :* there being no evidence of negligence, applts., in constructing works in the exercise of their statutory powers for the protection of their navigation, were not liable for the flooding of resps.' lands.—Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226 ; 96 L. J. P. C. 25 ; 136 L. T. 417 ; 91 J. P. 46 ; 25 L. G. R. 1, H. L.

1236. *Add. Annotation :*—**Consd.** Howard—Flanders *v.* Maldon Corpn. (1926), 135 L. T. 6.

1243. *Add. Annotation :*—**Refd.** Manchester Corpn. *v.* Farnworth (1929), 45 T. L. R. 85.

1261. *Add. Annotations :*—**Apld.** Percy *v.* Glasgow Corpn., [1922] 2 A. C. 299. **Consd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364. **Refd.** *Re* Carroll, [1931] 1 K. B. 317.

1262. *Add. Citations :*—86 J. P. 201 ; 20 L. G. R. 605.

1262a. —— **By solicitor conducting proceedings for corporation—Corporation not liable.**]—Eggington *v.* Lichfield Corpn. (1855), 5 E. & B. 100 ; 24 L. J. Q. B. 360 ; 26 L. T. O. S. 27 ; 19 J. P. 819 ; 1 Jur. N. S. 908 ; 119 E. R. 418.

Annotation :—**Refd.** Flood *v.* Jackson, [1895] 2 Q. B. 21.

1262b. —— **By police appointed by watch committee—Borough corporation not liable.**]—The police appointed by the watch committee of a borough corpn., if they arrest & detain a person unlawfully, do not act as the servants or agents of the corpn. so as to render that body liable to an action for false imprisonment.—Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364 ; 99 L. J. K. B. 569 ; 143 L. T. 281 ; 94 J. P. 132 ; 46 T. L. R. 390 ; 74 Sol. Jo. 299 ; 28 L. G. R. 293 ; 29 Cox, C. C. 154.

1263. *Add. Annotations :*—**Refd.** Tolley *v.* Fry (1929), 46 T. L. R. 108 ; Watt *v.* Longsdon (1929), 98 L. J. K. B. 711 ; Chapman *v.* Ellesmere (1932), 101 L. J. K. B. 376.

1266. *Add. Annotation :*—**Refd.** Sorrell *v.* Smith, [1925] A. C. 700.

1275a. ——.]—A public corporate body, although not formed for the acquisition of gain & making no profits, is liable to pay damages in respect of injury caused by its negligence.—A.-G. & Dommes *v.* Basingstoke Corpn. (1876), 45 L. J. Ch. 726 ; 24 W. R. 817.

Annotation :—**Refd.** Glossop *v.* Heston & Isleworth L. B. (1879), 12 Ch. D. 102.

1277. *Add. Annotation :*—**Refd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

Part XII.—Criminal and Quasi-Criminal Proceedings.

1286. *Add. Annotation :*—**Refd.** R. *v.* Cory, [1927] 1 K. B. 810.

1288. *Add. Annotations :*—**Consd.** Griffiths *v.* Studebakers, [1924] 1 K. B. 102. **Refd.** R. *v.* Leinster, [1924] 1 K. B. 311 ; Allen *v.* Whitehead (1929), 45 T. L. R. 655.

1292. *Add. Annotation :*—*As to* (2) **Refd.** R. *v.* Cory, [1927] 1 K. B. 810.

1292a. —(1) An indictment will not lie against a corpn. either for a felony or for a misdemeanour involving personal violence under Offences against the Person Act, 1861 (c. 100), s. 31.

(2) Criminal Justice Act, 1925 (c. 86), s. 33, is mere machinery to avoid the inconvenience arising from the fact that previously a corpn. could not be indicted at assizes, &

PART XI. SECT. 4, SUB-SECT. 1.

1252 ii. ——.]—Burris *v.* Dartmouth Corpn. (1927), 59 N. S. R. 227. —**CAN.**

PART XI. SECT. 4, SUB-SECT. 2.

l i. —— ——.]—*Hospital liable for the negligence of nurses after an operation.*—Nyberg *v.* Provost Municipal Hospital Board, [1927] 1 D. L. R. 969 ; [1927] S. C. R. 226.—**CAN.**

t i. —— *Dangerous step—Of public library.*]—Library Board liable.—Nickell *v.* City of Windsor, [1927] 1 D. L. R. 379 ; 59 O. L. R. 618.—**CAN.**

PART XII.

n i. —.]—Objection to a magistrate proceeding with a preliminary inquiry against an accused on the ground that being a corpn. the offence charged could be prosecuted by indictment only, is without force since the passing of sect. 782 of the Criminal Code.—R. *v.* Robertson's Bakeries, Ltd. (1931), 3 D. L. R. 437 ; 55 Can. C. C. 163 ; 43 B. C. R. 377.—**CAN.**

does not alter the substantive law so as to render a corpn. liable to be indicted where previously it was not liable.—R. *v.* CORY BROTHERS & Co., [1927] 1 K. B. 810; 96 L. J. K. B. 761; 136 L. T. 735; 28 Cox, C. C. 346.

1293. *Add. Annotation:*—**Refd.** Gough *v.* Rese (1929), 46 T. L. R. 103.

1297. *Add. Annotations:*—**Consd.** R *v.* Cory, [1927] 1 K. B. 810. **Refd.** Griffiths *v.* Studebakers, [1924] 1 K. B. 102.

1298. *Add. Annotation:*—**Refd.** R. *v.* Cory, [1927] 1 K. B. 810.

1303. *Add. Annotation:*—**Refd.** Leyton U. C. *v.* Wilkinson, [1927] 1 K. B. 853.

1303a. **Effect of Criminal Justice Act, 1925 (c. 86), s. 33.**]—R. *v.* CORY BROTHERS & Co., No. 1292a, *ante*.

1304. *Add. Citations:*—27 Cox, C. C. 225; 16 Cr. App. Rep. 131.
After this case add "*See, now*, Criminal Justice Act, 1925 (c. 86), s. 33."

1307. *Add. Annotation:*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

1308. After this case add "**Appeal by case stated from justices—Recognisance—How made.**]—*See* MAGISTRATES, Vol. XXXIII., p. 413, No. 1229."

Part XIII.—Delegation of Authority for Particular Purposes.

1313. *Add. Annotation:*—**Refd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355.

Part XV.—Legal Proceedings by and against Corporations, their Members and Officers.

1329. *Add. Annotation:*—**Refd.** Leyton U. C. *v.* Wilkinson, [1927] 1 K. B. 853.

1330. *Add. Annotation:*—**Refd.** Leyton U. C. *v.* Wilkinson, [1927] 1 K. B. 853.

1365. *Add. Citation:*—*on appeal* (1880), 5 App. Cas. 473, H. L.
Add. Annotations:—**Refd.** Deuchar *v.* Gas Light & Coke Co., [1925] A. C. 691; A.-G. *v.* Leeds Corpn., [1929] 2 Ch. 291.

1366. *Add. Annotation:*—**Consd.** Brown *v.* Dagenham U. D. C., [1929] 1 K. B. 737.

1370. *Add. Annotations:*—*As to* (1) **Consd.** Brown *v.* Dagenham U. D. C., [1929] 1 K. B. 737. **Refd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

1377. *Add. Annotation:*—**Consd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

1409. *Add. Annotation:*—**Refd.** Everett *v.* Griffiths, [1924] 1 K. B. 941.

SECT. 9A.—**HABEAS CORPUS.**

1411a. **To whom addressed.**]—If it had been necessary to enforce the writ [of *habeas*], the writ would have had to have been amended by adding to it the name of Mr. B. or some other responsible officer of the Society. I am unable to find in the books any record of any case where *habeas corpus* has issued against a corporation *eo nomine*. Crown Office rule 55, which provides for a writ of *mandamus* directed to companies & corporations being served on such & so many persons as are competent to do the act required to be done, is silent with regard to *habeas corpus* (SLESSER, L.J.).—*Re* CARROLL, [1931] 1 K. B. 317; 100 L. J. K. B. 113; 144 L. T. 383; 95 J. P. 25; 47 T. L. R. 125; 75 Sol. Jo. 98; 29 L. G. R. 152, C. A.

1438. *Add. Annotation:*—*As to* (1) **Refd.** Chowood *v.* Lyall, [1929] 2 Ch. 406.

1493. *Add. Annotation:*—**Refd.** Iberian Trust, Ltd. *v.* Founders Trust & Investment Co. (1932), 48 T. L. R. 292.

1493a. —— —— ——.]—Pltf. co., which had transferred certain shares in another co. to deft. co. upon certain terms, brought an action against deft. co. in order to recover a certain proportion of those shares, & obtained an order against deft. co. for the "return"

PART XV. SECT. 4.

sa. *For transgression of statutory powers—Action by Attorney-General.*]—If a public body constituted under the laws of the Commonwealth transgresses its statutory power, the A.-G. for the Commonwealth on behalf of the public, whether private injury has or has not been alleged, has a right to complain & to obtain a declaration of transgression, &, if necessary, an injunction.—COMMONWEALTH & A.-G. FOR COMMONWEALTH *v.* AUSTRALIAN COMMONWEALTH SHIPPING BOARD (1926), 39 C. L. R. 1; [1927] Argus L. R. 61.—**AUS.**

sb. *In what name—Trustees of schools.*]—Pltf. brought action against defts. for a *mandamus* to compel them to provide for a debt due to him by the trustees of a school section. The writ was against defts. personally, but contained a statement that they were trustees, etc., & that deft. D. was secretary. Evidence was taken as to the existence of the debt, & the case came on for hearing under the pleadings & evidence:—*Held:* the trustees could only be sued in their corporate name.—COOK *v.* DAVIDSON (1877), R. E. D. 37.—**CAN.**

PART XV. SECT. 6.

1394 i. *To whom addressed.*]—When mandamus proceedings lie against a municipal corporation, it is the better practice to make parties the members of council & officers whose alleged delinquencies are involved.—R. (READ) *v.* PEMBINA MUNICIPAL DISTRICT No. 552, [1922] 3 W. W. R. 857; 70 D. L. R. 559.—**CAN.**

PART XV. SECT. 10, SUB-SECT. 3.—C.

sd. *Bye-laws.*]—A clerk in the office of the treasurer of a municipal corpn., not being the custodian of the bye-laws of the corpn., is not compellable to produce any of them, upon his cross-examination on an affidavit made by him on behalf of the corpn. for use on a motion to which the corpn. is a party.—WILSON *v.* FLEMING (1900), 19 P. R. 303.—**CAN.**

of those shares within fourteen days of the date of the order. That order was not served upon deft. co. or its directors until the lapse of six weeks from the date of the order. The copy of the order which was served upon deft. co. & upon its directors did not have indorsed upon it, as required by R. S. C., Ord. 41, r. 5, a memorandum stating the penal consequences of disobedience to the order. Deft. co. having failed to comply with the order pltf. co. sought to enforce the order by attachment of two of the directors of deft. co. under R. S. C., Ord. 42, r. 31 :—*Held :* (1) the order could not be enforced by attachment of the directors of deft. co., because they had not been served with a copy of the order indorsed with a memorandum as to the penal consequences of disobedience, as required by R. S. C., Ord. 41, r. 5 ; (2) the remedy against a director of a co. by attachment given by R. S. C., Ord. 42, r. 31, was an alternative remedy, & pltf. co. could not pursue that remedy unless they were also in a position to proceed against deft. co., & that they could not do because the copy of the order served upon deft. co. did not comply with R. S. C., Ord. 41, r. 5.—IBERIAN TRUST, LTD. *v.* FOUNDERS TRUST & INVESTMENT CO., LTD., [1932] 2 K. B. 87 ; 101 L. J. K. B. 701 ; 147 L. T. 399 ; 48 T. L. R. 292 ; 76 Sol. Jo. 249.

1495. *Add. Annotation :*—**Folld.** R. *v.* Poplar B. C., *Ex p.* L. C. C., R. *v.* Poplar B. C. (No. 2), [1922] 1 K. B. 95.

1496. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

1502. *Add. Annotation :*—**Refd.** Iberian Trust, Ltd. *v.* Founders Trust & Investment Co. (1932), 48 T. L. R. 292.

1520. After this case insert "*See, further,* CROWN PRACTICE, Vol. XVI., pp. 405, 406."

1526. *Add. Annotations :—As to* (1) **Refd.** New York Life Insce. *v.* Public Trustee, [1924] 2 Ch. 101 ; Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255. *As to* (2) **Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

1527. *Add. Annotations :*—**Refd.** New York Life Insce. *v.* Public Trustee, [1924] 2 Ch. 101 ; Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

1528. *Add. Annotation :—As to* (1) **Refd.** Sabatier *v.* Trading Co., [1927] 1 Ch. 495.

1529. *Add. Annotations :*—**Consd.** New Zealand Shipping Co. *v.* Thew (1922), 8 Tax Cas. 208 ; Bradbury *v.* English Sewing Cotton Co., [1923] A. C. 744 ; Swedish Central Ry. *v.* Thompson, [1925] A. C. 495. **Apld.** Egyptian Delta Land & Investment Co. *v.* Todd, [1929] A. C. 1. **Refd.** Baelz *v.* Public Trustee, [1926] Ch. 863.

1532. *Add. Annotation :*—**Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

1536. *Add. Annotation :*—**Refd.** Wilcocks *v.* Pinto (1924), 69 Sol. Jo. 178.

1536a. Agent primarily carrying on own business.]—THE LALANDIA (1932), 49 T. L. R. 69.

1537. *Add. Annotations :*—**Refd.** New York Life Insce. *v.* Public Trustee, [1924] 2 Ch. 101 ; Swedish Central Ry. *v.* Thompson, [1924] 2 2 K. B. 255.

1540. *Add. Annotations :*—**Refd.** New York Life Insce. *v.* Public Trustee, [1924] 2 Ch. 101 ; Swedish Central Ry. *v.* Thompson, [1924] 2 K. B. 255.

1544a. Manager of London branch.]—Pltf. issued a writ against deft. co. & A., its managing director, & the writ was served upon A. Some years ago the co. had established a branch of their business in London under the management of A., who had, in obedience to Cos. (Consolidation) Act, 1908 (c. 69), s. 274, on behalf of the co. registered himself as a person resident in the United Kingdom authorised to accept service of process, & the evidence showed that, although at the date of the service of the writ upon A. the co. had long ceased to carry on trade in London, yet certain administrative activities, *e.g.*, the remittance of dividends to shareholders, were then being carried out there, & at no other place, on behalf of the co. :—*Held :* (1) upon the evidence, deft. co., at the date of the service of the writ upon A., had a place of business within the United Kingdom, within sect. 274 of the above Act, & service upon A. was effective service upon the co. ; (2) even if the co. had not at the date aforesaid a place of business within the United Kingdom, such service was effective service upon the co.—SABATIER *v.* TRADING Co., [1927] 1 Ch. 495 ; 96 L. J. Ch. 211 ; 136 L. T. 574 ; 71 Sol. Jo. 104.

1544b. —— On person authorised to accept service—Sufficiency of indorsement of writ & affidavit of service.]—FESTER FOTHERGILL & HARTUNG *v.* RUSSIAN TRANSPORT & INSURANCE CO., [1927] W. N. 27, C. A.

See, also, COMPANIES, No. 8527a, *ante.*

1546. *Add. Annotation :*—**Refd.** Sabatier *v.* Trading Co., [1927] 1 Ch. 495.

1548. *Add. Annotations :*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669 ; Richardson *v.* Richardson, [1927] P. 228.

1557. *Add. Annotation :*—**Refd.** Employers' Liability Assce. *v.* Sedgwick Collins (1926), 95 L. J. K. B. 1015.

PART XV. SECT. 12, SUB-SECT. 4.—B. (b).

m i. —— —.]—A writ was issued against a co., registered & carrying on business in England, but not registered nor carrying on business in Tasmania. The writ was served in London :—*Held :* the writ must be set aside, as there was no authority for the issue of a writ for service upon the co. in London.—PORT HUON FRUITGROWERS' CO-OPERATIVE ASSOCN., LTD. *v.* LARKINSON (SAMUEL), LTD. (1924), 20 Tas. L. R. 1.—**AUS.**

Part XVI.—Dissolution.

1603a. On equity of redemption—Companies Act, 1929 (c. 23), s. 296.]—In 1899 a limited co. mortgaged to the trustees of a will certain leasehold properties by way of absolute assignment subject to the equity of redemption. In 1910 the co. went into liquidation, & in 1913, the trustees having called in the mtge., the co. made default & the trustees appointed a receiver. In 1916 the co. was dissolved, the income of the property being at that time insufficient to meet the mtge. interest, & nothing was done in respect of the equity of redemption as the liquidator considered it to be of no value. The value of the property having since largely increased, the surviving trustee claimed to be entitled to the property absolutely, & the Crown claimed the equity of redemption as *bonâ vacantia*:—*Held*: (1) Cos. Act, 1929 (c. 23), s. 296, did not apply, as that sect. was not retrospective, & (2) after the disappearance of the legal entity which had the right of redemption the Crown was entitled to the property as *bonâ vacantia*.—*Re* WELLS, SWINBURNE-HANHAM *v.* HOWARD (1932), 101 L. J. Ch. 346; 48 T. L. R. 617, C. A.

1604. *Add. Annotations*:—**Refd.** Morris *v.* Harris, [1927] A. C. 252; *Re* Katherine et cie, Ltd., [1932] 1 Ch. 70.

After this case add:—

—— —— ——.]—*See, now*, Companies Act, 1929 (c. 23), s. 296.

COUNTY COURTS.

Part I.—Courts, Judges and Officers Generally.

14. *Add. Citation :*—15 B. W. C. C. 91.

18. "above Act" in the holding refers to 15 & 16 Vict. c. lxxvii.

19. Before this case add "*See, now,* County Courts Act, 1924 (c. 17)."

21. Before this case add "*See, now,* County Courts Act, 1924 (c. 17)."

22. *Add. Annotation :—As to* (1) **Consd.** A. W. *v.* Cooper & Hall, [1925] 2 K. B. 816.

Part II.—Liability and Protection of Judges and Officers of Court.

61. *Add. Annotations :*—**Apld.** Freeborn *v.* Leeming, [1926] 1 K. B. 160; Morriss *v.* Winter (1929), 45 T. L. R. 643. **Refd.** Copper Export Assocn. Inc. *v.* Mersey Docks & Harbour Board (1932), 48 T. L. R. 542.

Part III.—Jurisdiction.

65. *Add. Annotation :*—**Apld.** Parsons *v.* Burgess (1927), 43 T. L. R. 713.

66. *Add. Annotation :*—**Consd.** Upton *v.* Farmer (1930), 142 L. T. 526.

70a. **Action for breach of promise of marriage.**]—Resp. brought a county ct. action against appct. for the return of money & articles, alleging that the parties had promised to marry one another & that appct. had broken the promise. Resp. contended that the action was brought on a bailment, which was within the county ct. jurisdiction :—*Held :* in substance the claim was for damages for breach of promise of marriage, & a writ of prohibition must issue.—PARSONS *v.* BURGESS (1927), 96 L. J. K. B. 787; 138 L. T. 134; 43 T. L. R. 713.

71. *Add. Annotation :*—**Follld.** Brakspear *v.* Barton, [1924] 2 K. B. 88.

71a. **Question of repairs—Under Increase of Rent & Mortgage Interest (Restrictions) Act, 1920 (c. 17).**]—Deft. was the tenant of a tied public-house with living accommodation, of which pltfs. were the landlords. In 1910, the house was let to deft. at a rent of £75 *per annum* for three years. At all material times the ratable value was £68. After certain intermediate tenancies at rents less than two-thirds of the ratable value, deft. in Dec. 1920, took from pltfs. a new lease : "To hold the said premises with the appurtenances unto the tenant from Mar. 25, 1920, for the term of seven years . . . at the yearly rent of £120." The reason for the increased rent was a trade revival which had caused a great improvement in the licensed trade of the house. The conditions of the new lease as to repairs were more onerous for the tenant than those of the old. In an action by the landlords for rent, the tenant contended that the repairing clause amounted to a prohibited increase :—*Held :* the question as to repairs could only be decided by the county ct., & the High Ct. had no jurisdiction on this point.—BRAKSPEAR (W. H.) & SONS, LTD. *v.* BARTON, [1924] 2 K. B. 88; 93 L. J. K. B. 801; 131 L. T. 538; 40 T. L. R. 607; 68 Sol. Jo. 718.

83. *Add. Citation :—sub nom.* GLENNIE *v.* DELMAR, 1 L. M. & P. 402.

99. *Add. Annotation :*—**Consd.** Egyptian Delta Land & Investment Co. *v.* Todd, [1929] A. C. 1.

106. *Add. Annotation :*—**Consd.** Egyptian Delta Land & Investment Co. *v.* Todd, [1929] A. C. 1.

139a. —— —— **Issue of summons before leave obtained—Irregularity.**]—On Jan. 30, 1924, a tenant of a dwelling-house within the Rent Restrictions Acts lodged two plaints in the West London county ct., the one under sect. 12 (3) of the Act of 1920 for apportionment of rent, & the other under sect. 14 (1) of the same Act for certain sums paid by him in respect of rent which, as he alleged, was irrecoverable by his landlord. These sums were, by sect. 8 (2) of the Act of 1923, recoverable on or before Jan. 31, 1924, but not afterwards. The claim for apportionment could regularly be brought in the West London ct., but the claim for repayment could not be brought in that ct. without the leave of the judge or registrar on an application supported by an affidavit. No affidavit was sworn until Feb. 5, 1924. Notwithstanding this the plaint was entered, a plaint note under the seal of the ct. was given to pltf., & a summons was issued, all bearing the date Jan. 30, 1924. By Ord. 7, r. 2, a summons to appear to a plaint shall be dated of the day on which the plaint was entered, & the date thereof shall be the commencement of the action :—*Held :* (1) the irregular entry of the plaint & issue of the summons before the necessary leave had been obtained did not deprive the county ct. of jurisdiction to hear the action, but the irregularity could be waived by deft.; (2) as deft. had appeared to the summons & raised a defence in no way challenging the jurisdiction of the ct., he had

waived the irregularity; the action must therefore be taken to have commenced on Jan. 30, & pltf. was entitled to recover.—PRINGLE *v.* HALES, [1925] 1 K. B. 573; 94 L. J. K. B. 458; 132 L. T. 785, C. A.

143a. Partnership action—Commencement in wrong county court—Jurisdiction to hear under 1919 Act, s. 10.]—R. *v.* LAILEY, JUDGE, *Ex p.* KOFFMAN, No. 244a, *post.*

147a. —— Claim for declaration as to future payments—Involving payment of sums exceeding prescribed limit.]—Where an action was brought in the county ct. to recover a money claim under an agreement, & also for a declaration as to future payments under the agreement:—*Held:* the county ct. judge had no power to make a declaration which might involve the payment of sums of money by deft. in excess of the limit of £100 prescribed by 1888 Act, s. 56.—SMITH *v.* SMITH, [1925] 2 K. B. 144; 94 L. J. K. B. 813; 133 L. T. 345, D. C.

Annotation:—**Reld.** Humber Conservancy Board *v.* Federated Coal & Shipping Co., [1928] 1 K. B. 492.

148. After this case add "**Sum lent beyond jurisdiction—Action for relief under Money-lenders Act, 1900 (c. 57).**]—*See* MONEY & MONEY-LENDING, No. 377a."

197. *Add. Annotation:*—**Consd.** Dudley & District Benefit Bldg. Soc. *v.* Gordon, [1929] 2 K. B. 105.

198a. Duty of judge to make order—On proof of right to possession.]—The words "may order" in 1888 Act, s. 138, are enabling words only, but where the legal right of a landlord to the possession of premises has been established it is the duty of the judge, notwithstanding the permissive form of the sect., to make an order for possession. In exercising the discretion given him as to the period for the coming into operation of the order, the judge must fix a period reasonably adjusted to the circumstances of the case, including the nature & term of the tenancy. The county ct. judge in two cases of weekly tenants whose tenancies had been validly terminated by notice to quit, refused to make any order in one case, & in the other, while making an order, postponed its operation for twelve months:—*Held:* this was not a judicial exercise of his discretion, in either case.—SHEFFIELD CORPN. *v.* LUXFORD, SAME *v.* MORRELL, [1929] 2 K. B. 180; 98 L. J. K. B. 512; 141 L. T. 265; 93 J. P. 235; 45 T. L. R. 491; 73 Sol. Jo. 367, D. C.

198b. Terms of order—Postponement of operation—What must be considered.]—SHEFFIELD CORPN. *v.* LUXFORD, SAME *v.* MORRELL, No. 198a, *ante.*

205. *Add. Annotation:*—**Reld.** Rye *v.* Purcell, [1926] 1 K. B. 446.

206. *Add. Annotation:*—**Reld.** *Re* Keystone Knitting Mills Trade Mk., [1929] 1 Ch. 92.

206a. Claim for declaration.]—(1) The county ct. has no jurisdiction to entertain a claim for a declaration in an action in which no sum of money is claimed. *Stiles* v. *Ecclestone*, No. 211, *post*, overd.

Upon a contract for the sale of real property at a price exceeding £500 the vendor brought an action in the county ct. against the purchaser, claiming a declaration that deft. had forfeited the deposit paid under the contract by deft. to stake-holders, who were not parties to the action, & that he was entitled to receive payment of the deposit from the stake-holders. No other claim appeared in the plaint or the summons or the particulars of claim:—*Held:* the county ct. had no jurisdiction to entertain the claim, (1) on the above ground, & (2) on the further ground that the claim was for partial specific performance of an agreement for the sale of property within 1888 Act, s. 67, where the purchase-money exceeded £500, the amount limited by that sect.—DE VRIES *v.* SMALLRIDGE, [1928] 1 K. B. 482; 97 L. J. K. B. 244; 138 L. T. 497, C. A.

Annotation:—**Consd.** Upton *v.* Farmer (1930), 142 L. T. 526.

206b. ——.]—Observations as to declarations in county cts.—HUMBER CONSERVANCY BOARD *v.* FEDERATED COAL & SHIPPING CO., LTD., [1928] 1 K. B. 492; 97 L. J. K. B. 136; 138 L. T. 334; 17 Asp. M. L. C. 338, D. C.

——.]—*See, also,* Nos. 147a, 212.

208. *Add. Annotation:*—**Consd.** Smith *v.* Smith, [1925] 2 K. B. 144.

209. *Add. Annotation:*—**Reld.** Upton *v.* Farmer (1930), 142 L. T. 526.

211. *Add. Annotation:*—**N.F.** De Vries *v.* Smallridge, [1928] 1 K. B. 482.

212. *Add. Annotations:*—**Distd.** Davey *v.* Robinson, [1923] 1 K. B. 563. **Apld.** Smith *v.* Smith, [1925] 2 K. B. 144. **Folld.** De Vries *v.* Smallridge, [1928] 1 K. B. 482. **Consd.** Upton *v.* Farmer (1930), 142 L. T. 526. **Reld.** Humber Conservancy Board *v.* Federated Coal & Shipping Co., [1928] 1 K. B. 492; Woodrow *v.* Trawlers (White Sea) & Grimsby (1929), 141 L. T. 676.

213. *Add. Annotations:*—**Consd.** Upton *v.* Farmer (1930), 142 L. T. 526. **Reld.** De Vries *v.* Smallridge, [1928] 1 K. B. 482.

After this case add "**In remitted action.**]—*See* No. 373a, *post.*"

221. To cross-reference before this case add "*See* S. C. J. (Consolidation) Act, 1925 (c. 49), s. 203."

235. For "**Not within jurisdiction**" read "**Within jurisdiction.**"

235a. ——.]—DE VRIES *v.* SMALLRIDGE, No. 206a, *ante.*

244a. Partnership—Action for dissolution or winding up—Effect of denial of partnership on jurisdiction.]—(1) The jurisdiction conferred by 1888 Act, s. 67 (7), which gives the county ct. power to entertain actions for the dissolution or winding-up of a partnership where the property does not exceed the value specified, is not limited to an action in which the existence of the partnership alleged by pltf. is admitted by the deft., but extends to an action in which it is not so admitted.

(2) An action in which pltf. claims a declaration of partnership between himself & deft. & an account of his share of the profits of the partnership business is in substance an action for the dissolution or winding up of a partnership within 1888 Act, s. 67 (7).

(3) Where, contrary to 1888 Act, s. 75, an action in the county ct. for the dissolution or winding up of a partnership is brought in a district other than that in which the partnership is being carried on, the county ct. judge before whom the action comes has a discretion under 1919 Act, s. 10, to hear & determine it.—R. *v.* LAILEY, JUDGE, *Ex p.*

KOFFMAN, [1932] 1 K. B. 568; 101 L. J. K. B. 321; 146 L. T. 316; 48 T. L. R. 208, C. A.

244b. —— —— **What amounts to—Action for declaration & account.**]—R. *v.* LAILEY, JUDGE, *Ex p.* KOFFMAN, No. 244a, *ante*.

249. *Add. Annotations:* — **Consd.** Rossiter *v.* Langley, [1925] 1 K. B. 741; Russoff *v.* Lipovitch (1925), 94 L. J. K. B. 355. **Reld.** De Vries *v.* Sparks (1927), 137 L. T. 441. **Mentd.** Turner *v.* Watts (1927), 44 T. L. R. 105.

272a. —— —— ——.]—*Re* BANE *v.* FOXALL & CANFOR IN THE COUNTY COURT OF NORFOLK (1856), 20 J. P. Jo. 293.

295. *Add. Annotation:*—**Reld.** Salter *v.* Lask, [1923] 2 K. B. 798.

297. *Add. Annotation:*—**Reld.** Salter *v.* Lask, [1923] 2 K. B. 798.

315a. —— **Disputes in relation to fishing boats—Merchant Shipping Act, 1894 (c. 60), s. 387.**]—Pltfs., who were the owners of a steam fishing boat, brought an action in the county ct. against deft., who was a member of the crew of the boat, claiming a sum as money lent by them to deft. Deft. alleged in defence that the sum claimed had been paid to him as wages; &, further, that the county ct. had no jurisdiction, the question between the parties being a dispute concerning wages within above sect. which could only be dealt with by a superintendent thereunder. At the trial it was found as a fact that the sum claimed had been lent to deft., & that there was no real dispute concerning wages: —*Held:* the county ct. had jurisdiction to entertain the action notwithstanding the sect., inasmuch as that ct. had all along had jurisdiction to entertain an action for money lent & the sect. did not either expressly or by implication exclude that jurisdiction; &, further, the jurisdiction of the superintendent under the sect. did not arise until a party to the dispute called him to decide it, & here no party had called upon him to do so.—STURLEY *v.* POWELL, [1930] 1 K. B. 677; 99 L. J. K. B. 197; 142 L. T. 484; 46 T. L. R. 236; 18 Asp. M. L, C. 97.

327a. —— **Appearance—Raising defence not challenging jurisdiction.**]—PRINGLE *v.* HALES, No. 139a, *ante*.

Part IV.—Remitted Actions.

331. After this case add "**Action for relief under Money-lenders Act, 1900 (c. 51).**]—*See* MONEY & MONEY-LENDING, No. 434a."

335a. —— **Meaning of "amount . . . remaining in dispute"—Discount retained on payment of claim.**]—LEE (A.) & CO., LTD. *v.* BEATRICE STEPHENSON, LTD., [1932] W. N. 33; 173 L. T. Jo. 75, C. A.

352. *Add. Citation:*—91 L. J. K. B. 771.
After this case add:—
—— ——.]—*See, now,* County Court Rules, Ord. 33, r. 20.

360. *Add. Annotation:*—**Distd.** Koffman *v.* Sunshine, [1932] 1 K. B. 606.

373a. On jurisdiction of county court—Reduction of claim for damages—Alternative claim for injunction.]—Where an action, commenced in the High Ct., has been transferred to a county ct. under 1919 Act, s. 1, the effect of sect. 4 of that Act is to give the county ct. jurisdiction to deal with the matter equal to or the same as that of the High Ct.

Pltf. & deft. entered into an agreement, which provided that in the event of any breach thereof by deft. he should pay to pltf. in respect of each such breach a sum of £150 by way of agreed & liquidated damages. Pltf. alleged that deft. had broken the agreement, & he brought an action in the High Ct. claiming the sum of £150 & an injunction. Pltf. afterwards applied, under 1919 Act, s. 1, to have the action remitted to a county ct., reducing the money claim to £90, & claiming an injunction in the alternative. The master made an order for remittal. Pltf. then delivered particulars of claim, asking for £90 damages or in the alternative an injunction. He admitted, however, that the real object of the action was to obtain an injunction. On the action coming on for trial the county ct. judge declined jurisdiction on the ground that in substance the action was for an injunction alone. On appeal to a Div. Ct., that ct. held that the county ct. judge had jurisdiction to entertain the action, & sent it back to him for trial:—*Held:* the decision of the Div. Ct. was correct.—DAVEY *v.* ROBINSON, [1923] 1 K. B. 563; 92 L. J. K. B. 336; 128 L. T. 513; 39 T. L. R. 163; 67 Sol. Jo. 246, C. A.

379. *Add. Annotation:*—**Consd.** Davey *v.* Robinson, [1923] 1 K. B. 563.

382. *Add. Annotation:*—**Consd.** Upton *v.* Farmer (1930), 142 L. T. 526.

404a. Duty of county court judge to specify scale of costs.]—In an action remitted from the High Ct. to the county ct., it is advisable that the county ct. judge should specify the scale on which costs are to be taxed. *Semble:* in the absence of any direction by him as to scale, the costs must be taxed in accordance with the scale applicable to the amount recovered.—GOLD BROTHERS & NASH, LTD. *v.* FULLER (1925), 134 L. T. 151; 70 Sol. Jo. 284, D. C.

Annotation:—**Consd.** Davies *v.* Davies (1927), 96 L. J. K. B. 1066.

404b. Order for costs on higher scale—Necessity for certificate.]—A county ct. judge cannot award to pltf. in a remitted action costs on a scale higher than that applicable to the amount recovered without giving a certificate in accordance with 1888 Act, s. 119. —DAVIES *v.* DAVIES, [1928] 1 K. B. 364; 96 L. J. K. B. 1066; 137 L. T. 567, D. C.

408. *Add. Annotation:*—**Reld.** Hives *v.* Dawson (1927), 44 T. L. R. 37.

410a. Discretion of county court judge—To deprive successful party of costs.]—Where a pltf. has begun an action in the High Ct. & within twenty-one days from issue of the writ has obtained, under R. S. C., Ord. 14, an order in respect of part of his claim whereby he may sign judgment for £20 or upwards either unconditionally or unless that sum is paid into ct. or to pltf.'s solr., & the remainder of pltf.'s claim is remitted to a county ct.

with leave to defend, the judge of the county ct. has the same jurisdiction as a judge of the High Ct. over the costs of the whole proceedings, & he may order them to be taxed on the High Ct. or on the county ct. scale. But in deciding the scale on which they are to be taxed he must exercise his discretion judicially, & he is not entitled to deprive pltf. of the High Ct. costs of the High Ct. proceedings unless pltf. has been guilty of some misconduct.—JENKINS & Co. *v.* SIMON, [1926] 1 K. B. 111; 95 L. J. K. B. 97; 134 L. T. 88; 42 T. L. R. 39; 70 Sol. Jo. 162, D. C.

Annotation :—**Reld.** Gallivan *v.* Warman (1930), 169 L. T. Jo. 327.

420a. Recovery of less than £50—Joinder of actions—Whether total sums recovered to be considered.]—GALLIVAN *v.* WARMAN (1930), 169 L. T. Jo. 327; [1930] W. N. 96.

Part V.—Procedure.

438. *Add. Annotation :—Generally,* **Reld.** Friern Barnet U. C. *v.* Adams, [1927] 2 Ch. 25.

455 *Add. Citations :*—91 L. J. Ch. 627; [1922] B. & C. R. 155.

472. *Add. Citation :*—20 L. G. R. 567.

472a. Increase of Rent & Mortgage Interest (Restrictions) Act, 1920 (c. 17), s. 5—Recovery of possession.]— (1) Sect. 5 of Rent (Restrictions) Act, 1920, is not a statutory defence or one of which notice must be given under County Ct. Rules, 1903, Ord. 10, r. 18.

(2) The Div. Ct. thought that as no one had expressly mentioned the Rent (Restrictions) Act in the county ct. they ought not to consider its effect. I do not agree with that decision. In my opinion the Act imposes upon the county ct. judge the duty of deciding whether the property comes within its provisions &, if it does, whether he should make or refuse an order for possession (SCRUTTON, L.J.).—SALTER *v.* LASK, [1924] 1 K. B. 754; 93 L. J. K. B. 685; 130 L. T. 323; 68 Sol. Jo. 420; 22 L. G. R. 290, C. A.

Annotation :—*As to* (2) **Folld.** Lefevre *v.* Hirst (1931), 100 L. J. K. B. 733.

497a. —— Application under Administration of Justice Act, 1920 (c. 81), s. 3—Discretion of judge to order trial without jury.]—On May 10, 1923, pltf. commenced proceedings claiming from defts. damages for personal injuries caused by the alleged negligence of defts.' servants. Defts. filed a defence denying negligence & afterwards gave pltf. notice of an application to dispense with a jury. The application for trial without a jury was made under the above sect. The county ct. judge, without giving any reasons for his decision, ordered the trial of the action without a jury, & pltf. appealed against that order & alleged that the learned judge had not properly exercised his discretion :—*Held :* the above sect. did not give the county ct. judge an absolute power to order the trial of an action without a jury; the sect. gave him a discretion which must be exercised judicially; in this case there were no proper materials on which the learned judge could exercise his discretion judicially; it would not be a proper exercise of the learned judge's judicial discretion to dispense with a jury merely because it was inconvenient; on the other hand it is not necessary for the judge to give his reasons for dispensing with a jury, but there must be some grounds for so exercising his discretion.—WINN *v.* LONDON COUNTY COUNCIL (1923), 130 L. T. 350; 88 J. P. 31; 40 T. L. R. 106; 68 Sol. Jo. 502, D. C.

497b. —— —— Onus on party objecting to jury.]—On an application in the county ct. for an order that an action be tried with a jury the county ct. judge is bound in law to make the order asked for, unless the party desiring to dispense with a jury under the above sect. establishes to his satisfaction that the action could be as conveniently tried without a jury. Further, the fact that the lists are congested is not a ground on which the county ct. judge is entitled to suspend a litigant's right to trial by jury.—CALCRAFT *v.* LONDON GENERAL OMNIBUS CO., [1923] 2 K. B. 608; 92 L. J. K. B. 1092; 129 L. T. 794; 39 T. L. R. 466; 67 Sol. Jo. 641, D. C.

Annotation :—**Consd.** Winn *v.* L. C. C. (1923), 130 L. T. 350.

499a. —— Action in which fraud alleged—Whether mere allegation sufficient.]—To come within the proviso to Administration of Justice Act, 1920 (c. 81), s. 2 (1), a relevant issue of fraud must be raised, which will have to be decided in order to determine the rights of the parties, & it is not sufficient for pltf. merely to allege that deft. acted fraudulently.—EVERETT *v.* ISLINGTON GUARDIANS, [1923] 1 K. B. 44; 92 L. J. K. B. 250; 128 L. T. 447; 87 J. P. 61, D. C.

Part VI.—Trial, Judgment and Execution.

534a. —— —— Damages claimed.]—In an action for damages & an injunction in respect of alleged trespass, neither the *præcipe* nor the particulars of claim stated the amount of the damages claimed. The particulars of claim stated that neither the value nor the reserved rent of the dominant tenement exceeded £100 *per annum*, but did not state the value or reserved rent of the servient tenement. The judge allowed two amendments of the particulars of the claim, the first, a statement that the damages claimed were £25; & the second, an allegation that neither the value nor the reserved rent of the servient tenement exceeded the value of £100 by the year :—*Held :* the county ct. judge had power under the above sect. to make the second amendment, & the first amendment also.—UPTON *v.*

FARMER (1930), 142 L. T. 526; *sub nom.* FARMER *v.* UPTON, 46 T. L. R. 252; 94 J. P. Jo. 136.

534b. **Rent of servient tenement.**] UPTON *v.* FARMER, No. 534a, *ante.*

535a. **Action for ejectment—Action for recovery of possession appropriate.**]—Where an action for ejectment is brought in the county ct. under County Courts Act, 1888 (c. 43), s. 59, & the proper course would have been to claim recovery of possession under sect. 138, the judge has power & ought, under sect. 87, to allow the amendments necessary to enable him to deal with the real rights of the parties.—DAVY *v.* MAGNUS (1931), 47 T. L. R. 609; 75 Sol. Jo. 660, D. C.

554. *Add. Annotation :*—**Consd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155.

563. *Add. Annotations :*—**Consd.** Jaeger Co. *v.* Jaeger (1929), 46 R. P. C. 336. **Refd.** Mackenzie-Kennedy *v.* Air Council, [1927] 2 K. B. 517.

565. *Add. Annotations :*—**Consd.** Ord *v* Ord, [1923] 2 K. B. 432; The Koursk, [1924] P. 140; Debenhams *v.* Perkins (1925), 133 L. T. 252. **Apld.** Conquer *v.* Boot, [1928] 2 K. B. 336.
See, also, ESTOPPEL, No. 447a, *post.*

578. *Add. Annotation :*—**Refd.** Scammell *v.* Hurley, [1929] 1 K. B. 419.

593. *Add. Annotation :*—*As to* (2) **Refd.** Campbell *v.* Pollak (1927), 43 T. L. R. 495.

617. *Add. Citation :*—15 B. W. C. C. 43.

619. *Add. Annotation :*—**Refd.** R. *v.* Copestake, *Ex p.* Wilkinson (1926), 90 J. P. 191.

621. *Add. Annotation :*—**Refd.** R. *v.* Newport (Salop) JJ., *Ex p.* Wright, [1929] 2 K. B. 416.

645a. —— **Goods already in possession of sheriff.**] —A. W., LTD. *v.* COOPER & HALL, LTD., No. 783a, *post.*

648a. —— **Sum deposited by claimant to goods less than value of goods—More than judgment debt & costs.**]—Goods which had been taken in execution under a county ct. judgment were claimed by a claimant. The execution creditor did not admit the claim & claimant deposited with the bailiff under 1888 Act, s. 156, the sum of £26 which was considerably less than the value of the goods claimed, but was more than sufficient to cover the judgment debt & costs of the execution. The money was paid into ct. by the bailiff, who remained in possession of the goods, & an interpleader summons was issued. Before the return day of the interpleader summons the execution creditor gave notice that he admitted the title of claimant to the goods, & the bailiff withdrew from possession. Upon the taxation of the costs the bailiff claimed possession fees up to the date when the execution creditor admitted claimant's title, upon the ground that under sect. 156 he was bound to remain in possession until the amount of the value of the goods was deposited with him :—*Held :* as the £26 was deposited with & taken by the bailiff under sect. 156 of the Act, he must be deemed to have taken it upon the assumption that it represented the amount of the value of the goods, & therefore he had no right to remain in possession or to possession fees after the date of the deposit.—NEWSUM, SONS & CO., LTD. *v.* JAMES, [1909] 2 K. B. 384; 78 L. J. K. B. 761; 100 L. T. 852; 53 Sol. Jo. 521, D. C.

652. *Add. Annotation :*—**Refd.** Sheffield Corpn. *v.* Luxford, Same *v.* Morrell, [1929] 2 K. B. 180.

Part VII.—Costs.

677. *Add. Annotation :*—**Refd.** Russoff *v.* Lipovitch (1924), 69 Sol. Jo. 276.

684. After this case insert "*See, also,* Nos. 566-573, *ante.*"

686. *Add. Annotation :*—**Refd.** Temperance Loan Fund *v.* Erwood (1927), 137 L. T. 449.

690. After this case add **Action by money-lender.**]—*See* MONEY & MONEY-LENDING, No. 442a."

691. *Add. Annotation :*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

691a. —— **Order for costs on lower scale.**]—When the amount found due to pltf. is between £20 & £50 the scale of costs applicable is Scale B, & a county ct. judge has no jurisdiction to make an order for costs on a lower scale unless it be shown that pltf.'s action is frivolous or oppressive, or that there has been misconduct or dishonesty on his part.—HUGHES (W.) & SON *v.* SATCHELL (1925), 134 L. T. 93, D. C.

691b. —— **In remitted action.**]—JENKINS & CO. *v.* SIMON, No. 410a, *ante.*

693. *Add. Annotation :*—**Refd.** Campbell *v.* Pollak (1927), 43 T. L. R. 495.

695a. ——.]—Pltf.'s motor car, whilst being driven by his wife, was injured, as pltf. alleged, through the negligent driving of a motor lorry by a servant of defts. At the trial of the action in the county ct. the judge held that both sides were to blame, & gave judgment for defts., but allowed no costs. On appeal on the question of costs :—*Held :* on the facts found at the trial there had been negligence on the part of pltf.'s wife, & therefore pltf. could not have succeeded whether there had or had not been negligence on the part of defts., & the county ct. judge had no discretion to deprive the successful defts. of their costs.—JACKSON *v.* ANGLO-AMERICAN OIL CO., [1923] 2 K. B. 601; 92 L. J. K. B. 1000; 129 L. T. 792; 67 Sol. Jo. 640, D. C.

695b. —— **Order for costs on lower scale.**]—On a claim by an unsuccessful deft. against an insurance co. as third parties, for indemnity to an amount exceeding £50, judgment was given for the third parties. The county ct. judge, without giving any reasons, ordered the unsuccessful defts. to pay costs to the third parties on Scale B, applicable to cases where the amount does not exceed £50, the scale where that amount exceeds £50 being Scale C. It was not suggested that any facts existed to justify a special direction as to costs under 1888 Act, s. 113 :—*Held :* there was no jurisdiction to make the order.—BEVINGTON *v.* PERKS & BELL ASSURANCE

SOCIETY, [1925] 2 K. B. 229; 94 L. J. K. B. 829; 133 L. T. 511, D. C.

Annotation:—**Apld.** Hughes *v.* Satchell (1925), 134 L. T. 93.

750. *Add. Annotation:*—**N.F.** Warwick *v.* Butler & Lauritzen, [1925] 2 K. B. 294.

750a. ——.]—Where under the above rule the registrar, on the application of a deft. who alleges that he neither resides nor carries on business within twenty miles from the ct., makes an order directing pltf. to deposit in ct. a sum of money as security for the costs of deft., the county ct. judge under r. 11, sub-r. 8, has power to vary or rescind the order so made.—WARWICK *v.* BUTLER & LAURITZEN [1925] 2 K. B. 294; 94 L. J. K. B. 657; 133 L. T. 240, D. C.

750b. **"Court in which plaint is entered"—Court to which remitted action sent.**]—Where an action of tort commenced in the High Ct. has been remitted to a county ct. in default of security for costs, that county ct. becomes "the ct. in which the plaint was entered," & the judge may order pltf. to give security for costs under Ord. XII., r. 9, of the county ct. rules on the application of a deft. who neither resides nor carries on business within twenty miles of the ct.—RIDDLE *v.* PLAYLE, [1930] 1 K. B. 363; 99 L. J. K. B. 64; 142 L. T. 92; 46 T. L. R. 27; 73 Sol. Jo. 796, D. C.

Part VIII.—Appeals.

761. *Add. Annotation:*—**Refd.** Hives *v.* Dawson (1927), 44 T. L. R. 37.

763a. —— ——.]—WARWICK *v.* BUTLER & LAURITZEN, No. 750a, *ante*.

770a. **On ground of perverse verdict.**]—CREED *v.* WRIGHT (1932), 73 L. Jo. 412, C. A.

776a. **Debt or damage claimed not exceeding £20.**]—An appeal to the High Ct. against the decision of a county ct. judge granting a new trial is an appeal "in an action" within 1888 Act, s. 120, & where the debt or damage claimed did not exceed £20 the High Ct. has no jurisdiction to hear the appeal unless applt. has obtained leave of the county ct. judge to appeal.—WARD *v.* SNEIMAN (1925), 133 L. T. 560; 41 T. L. R. 598, D. C.

Annotation:—**Refd.** Hives *v.* Dawson (1927), 44 T. L. R. 37.

779a. —— **Claim less than £20.**]—There is no appeal without leave from a county ct. judge's refusal to review a taxation of costs, where the amount claimed is less than £20.—HIVES *v.* DAWSON (1927), 138 L. T. 238; 44 T. L. R. 37, D. C.

783a. **Order for payment of possession fees of high bailiff—Under Ord. 27, r. 1 (2).**]—(1) A Div. Ct. has jurisdiction to hear an appeal from the decision of a county ct. judge who, under the above sub-rule has, on the application of the high bailiff, made an order against the execution creditors, who have directed the high bailiff to withdraw, for the payment of his fees.

On May 15, 1924, the high bailiff of a county ct. under a warrant of execution purported to levy upon the goods of judgment debtors at their premises, & put a man in possession. The sheriff was then in possession of the goods under process of an earlier date, but not to the knowledge of the high bailiff, as the county ct. judge found. The high bailiff on taking possession received from judgment debtors a document which stated that in consideration of his withdrawing from possession they authorised him at any time to re-enter & undertook not to remove any of the goods. On June 12, 1924, the high bailiff on the instruction of the judgment creditors withdrew from possession. The execution was ineffective, except in so far as it brought the parties into negotiation with a view to a settlement. The high bailiff made an application to the county ct. judge under the above rule, for an order for payment by the judgment creditors of his fees for keeping possession from May 15 to June 12. The county ct. judge found that the high bailiff did not withdraw from possession, but was in actual possession & not in mere walking possession of the goods, & made an order for payment of the fees claimed:—*Held:* (2) the possession of the sheriff did not in the circumstances prevent the high bailiff from taking & keeping such possession as would entitle him to claim fees; (3) there was evidence to support the finding of the county ct. judge that the high bailiff did not withdraw from possession, but kept actual as distinct from walking possession; & therefore the order of the county ct. was right.—A. W., LTD. *v.* COOPER & HALL, LTD., [1925] 2 K. B. 816; 94 L. J. K. B. 831; 133 L. T. 508.

787a. —— **Preliminary question of law—Whether "judgment" within 1888 Act, s. 120.**]—DAWS *v.* NETTLESHIP, LTD. (1929), 168 L. T. Jo. 518.

789. *Add. Annotations:*—**Consd.** Ward *v.* Sneiman (1925), 133 L. T. 560. **Distd.** Lefevre *v.* Hirst (1931), 100 L. J. K. B. 733. **Refd.** Lloyd *v.* Cook, Goudge *v.* Broughton, Simson *v.* Miatt, Bartram *v.* Brown, Barker *v.* Hutson, [1929] 1 K. B. 103.

797a. **Exception from rule—Appeal under Rent Restriction Acts.**]—SALTER *v.* LASK, No. 472a, *ante*.

797b. —— ——.]—The general rule that it is a condition precedent to the raising by an applt. of a point of law on appeal from a county ct. that that point should have been raised at the trial of the action does not apply to cases within r. 18 of Increase of Rent & Mtge. Interest (Restrictions) Rules, 1920.—LEFEVRE *v.* HIRST (1931), 100 L. J. K. B. 733.

809. *Add. Annotation:*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

818. *Add. Annotation:*—*As to* (1) **Refd.** Phillips *v.* Britannia Hygienic Laundry Co., [1923] 1 K. B. 539.

832. *Add. Annotations:*—*As to* (1) **Distd.** Martin *v.* Stanborough (1924), 41 T. L. R. 1. **Refd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75.

851. After this case add the following cross-reference:—**Order directing arbitrator under Agricultural Holdings Acts to state special case.**]—*See* AGRICULTURE, No. 2664.

852. *Add. Annotation :*—**Consd.** Leyton U. C. *v.* Wilkinson, [1927] 1 K. B. 853.

900. *Add. Citation :*—20 L. G. R. 653.

903. *Annotations :*—For the existing annotations substitute as follows :—

Annotations :—**Overd.** Abrahams *v.* Dimmock, [1915] 1 K. B. 662. *Cook* v. *Gordon* was wrongly decided (BUCKLEY, L.J.). **Refd.** The Crescent, Great Northern S.S. Fishing Co. *v.* S.S. Crescent (1893), 62 L. J. P. 63.

913. *Add. Annotation :*—**Refd.** Simmons *v.* Crossley, [1922] 2 K. B. 95.

928a. Reference to statutory & other orders & to private & local Acts—Duty to supply copies for use of court.]—PRACTICE NOTE, [1926] W. N. 308, D. C.

938. *Add. Annotation :* — **Distd.** Rackham *v.* Tabrum (1923), 129 L. T. 24.

945. *Add. Annotation :*—**Refd.** United States Shipping Board *v.* Strick, [1926] A. C. 545.

954. *Add. Annotation :*—**Folld.** Koffman *v.* Sunshine, [1932] 1 K. B. 606.

962a. Appeal under Poor Persons Rules.]—The ct. may award costs against applt. who appeals under the Poor Persons Rules, if the appeal is entirely frivolous & vexatious & is an abuse of the process of the ct.—DRUMMOND *v.* HERVEY (1927), 138 L. T. 200; 44 T. L. R. 14, D. C.

Part IX.—Certiorari, Prohibition and Mandamus.

979. *Add. Annotation :*—**Apld.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

980a. —— Not action voluntarily brought in county court not having jurisdiction.]—(1) A pltf. who voluntarily sues in a county ct. which, owing to a defence there raised, has no jurisdiction, is not entitled to remove the proceedings to the High Ct. by *certiorari*.

(2) If such a pltf. succeeds in obtaining an *ex parte* order for *certiorari* deft. need not enter an appearance in the High Ct. Pltf. is not entitled to judgment in default of appearance, & such a judgment, if obtained by him, will be set aside for irregularity.—GIUSTI PATENTS & ENGINEERING WORKS, LTD. *v.* MAGGS, [1923] 1 Ch. 515; 92 L. J. Ch. 345; 40 R. P. C. 199; *sub nom.* GUISTI PATENTS & ENGINEERING WORKS, LTD. *v.* MAGGS, 129 L. T. 438.

1008a. On obligation of defendant to appear—Judgment in default of appearance—Validity.]—GIUSTI PATENTS & ENGINEERING WORKS, LTD. *v.* MAGGS, No. 980a, *ante*.

1016. *Add. Annotations :*—**Consd.** *Re* Stanton, [1928] 1 K. B. 464. **Refd.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

1038. *Add. Annotations :*—**Consd.** St. Magnus, etc. Parochial Church Council *v.* London Diocese Chancellor, [1923] P. 38. **Refd.** Hunter *v.* Stadtische Hochseefischerei Gemeinnützige Gesellschaft (1925), 133 L. T. 488; Mansfield *v.* Robinson [1928] 2 K. B. 353.

1064. *Add. Annotation :*—**Apld.** Pringle *v.* Hales, [1925] 1 K. B. 573.

1076. *Add. Annotation :*—**Expld. & Apld.** Simbro Trading Co. *v.* Posograph Parent Corpn., [1929] 2 K. B. 266.

1085. *Add. Annotation :*—**Folld.** Koffman *v.* Sunshine, [1932] 1 K. B. 606.

1086. *Add. Annotation :*—**N.F.** Koffman *v.* Sunshine, [1932] 1 K. B. 606.

1087a. —— —— ——.]—*Held :* 1888 Act, s. 131, enables the High Ct. to make an order as to costs incurred in the county ct., & not merely as to costs in the proceedings before the ct. itself.—KOFFMAN *v.* SUNSHINE, [1932] 1 K. B. 606; 101 L. J. K. B. 784; 147 L. T. 199.

1093. *Add. Annotation :*—**Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

Part XI.—Rules and Fees.

1133. *Add. Annotation :*—**Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

Part XII.—Statutes Conferring Special Jurisdiction.

1146. In the cross-reference following this case for "*See, generally,* INDUSTRIAL, PROVIDENT & SIMILAR SOCIETIES" read "*See, generally,* INSURANCE."

Landlord & Tenant Act, 1927 (c. 36).]—*See* LANDLORD & TENANT, Vol. XXXI.

CRIMINAL LAW AND PROCEDURE.

NOTE.—After June 1, 1926, *see* Criminal Justice Act, 1925 (c. 86).

Part I.—Principles of Criminal Liability.

Add. Annotations :—**Consd.** Sorrell *v.* Smith, [1925] A. C. 700. **Refd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383.

5a. **Prevention of Crimes Act, 1871 (c. 112), s. 20.**]—Attempted burglary is not a "crime" within Prevention of Crimes Act, 1871 (c. 112), s. 20.—R. *v.* BATES (1930), 22 Cr. App. Rep. 49, C. C. A.

21. *Add. Annotation :*—**Refd.** R. *v.* Cory, [1927] 1 K. B. 810.

22. *Add. Annotation :*—**Refd.** Jarvis *v.* Surrey County Council, [1925] 1 K. B. 554.

23. *Add. Annotation :*—**Refd.** Jarvis *v.* Surrey County Council, [1925] 1 K. B. 554.

36. *Add. Annotation :—As to* (1) **Distd.** Abercromby *v.* Morris (1932), 48 T. L. R. 635.

38. *Add. Annotation :*—**Refd.** R. *v.* Denyer, [1926] 2 K. B. 258.

40. *Add. Annotation :*—**Consd.** Allard *v.* Selfridge (1924), 88 J. P. 204.

40a. **Right of defendant to give evidence—As to his state of mind.**]—(1) Evidence that deft. is an accessory after the fact does not support an indictment for being a principal, or accessory before the fact.

(2) On the question of *mens rea*, deft. is entitled to give evidence of the state of his mind at the relevant time.—R. *v.* FITZPATRICK (1926), 19 Cr. App. Rep. 91, C. C. A.

45. *Add. Annotation :*—**Folld.** Bridges *v.* Griffin, [1925] 2 K. B. 233.

55. *Add. Annotation :*—**Refd.** Anderson *v.* Daniel (1923), 130 L. T. 418.

72. *Add. Annotation :*—**Distd.** Farey *v.* Welch, [1929] 1 K. B. 388.

72a. —— ——.]—*Held :* above sect. applies the general law of larceny to pigeons so far as it does not apply to them already : & consequently, a taker who honestly believed the pigeon taken to be his own was not within the sect.—FAREY *v.* WELCH, [1929] 1 K. B. 388 ; 98 L. J. K. B. 318 ; 140 L. T. 560 ; 93 J. P. 70 ; 45 T. L. R. 277 ; 27 L. G. R. 153 ; 28 Cox, C. C. 604, D. C.

72b. **Refusal to maintain wife & family.**]—It is no defence to a charge of "wilfully refusing & neglecting to maintain" a wife & family, whereby they have become chargeable to the common fund of a union, that the husband

PART I. SECT. 1.

sa. *Misdemeanour.*] — *Semble :* at common law disobedience to a statute is a misdemeanour.—O'DEA *v.* MIDWIVES REGISTRATION BOARD (1924), 26 W. A. L. R. 129.—**AUS.**

e i. —— *Proceedings under Liquor Control Act*, 1930 (*N. S.*).]—R. *v.* MACK (1931), 56 Can. C. C. 368.—**CAN.**

24 i. *Statutory offences—"Offence"—Prevention of Crimes Act*, 1871 (*c.* 112), *s.* 7.]—STRATHERN *v.* PADDEN, [1926] S. C. (J.) 9.—**SCOT.**

24 ii. —— ——.]—The word "offence" in Indian Penal Code, s. 149, is confined to offences under the Code & does not include within its meaning offences under Indian Railways Act.—*Re* VASUDEVA MUDALI (1929), I. L. R. 52 Mad. 882.—**IND.**

24 iii. —— *"Crime"—Prevention of Crimes Act*, 1871 (*c.* 112), *ss.* 7, 20.]—To be relevant a charge of a contravention of sect. 7 must libel upon its face a conviction on indictment of an offence, & a previous conviction of an offence, both of which offences must be "crimes" as defined in sect. 20.—MURRAY *v.* MACMILLAN, [1927] S. C. (J.) 14.—**SCOT.**

PART I. SECT. 2, SUB-SECT. 1.

29 ii. —— *Criminal Code, s.* 247.]—R. *v.* HURT (1923), 48 Can. Crim. Cas. 82 ; 55 O. L. R. 48.—**CAN.**

29 iii. —— ——.]—R. *v.* CANADIAN ALLIS-CHAMBERS, LTD. (1923), 48 Can. Crim. Cas. 63 ; 54 O. L. R. 38.—**CAN.**

30 ii. ——.]—A fish merchant was convicted on a charge of clandestinely taking possession of fish boxes, the property of various fish merchants, well knowing that he had not, & would not have, received permission from the owners to his doing so, & with using the boxes by filling them with fish & dispatching them to the fish market at Glasgow :—*Held :* as there was nothing clandestine in the conduct of accused, he was not guilty of the offence charged.—MURRAY *v.* ROBERTSON, [1927] S. C. (J.) 1.—**SCOT.**

PART I. SECT. 2, SUB-SECT. 2.—A.

38 ii. —— ——.]—R. *v.* CRAWFORD (N. B.), [1927] 2 D. L. R. 565 ; 47 Can. Crim. Cas. 134.—**CAN.**

o i. —— ——.]—The general rule that when on a trial for murder the Crown succeeds in establishing such a *primâ facie* case as, in the absence of any explanation, will justify the jury in finding the accused guilty of murder, the burden then devolves upon him of making out such circumstances of alleviation, excuse or justification as will afford a foundation for his defence, does not apply to the case where such circumstances arise out of the evidence against him. Therefore, where various circumstances were brought out in the course of the Crown's own case which bore materially on the question of the accused's intent, & the issue was raised thereon whether the Crown had adduced sufficient proof to discharge its own burden of establishing the offence of murder :—*Held :* the judge in charging the jury should have given them to understand, without imposing any *onus* on the accused, that if, in view of such circumstances, they entertained any reasonable doubt as to the prisoner having a murderous intent, they could not properly find him guilty of murder.—R. *v.* PRIMAK, [1930] 1 W. W. R. 755 ; 3 D. L. R. 345 ; 53 Can. C. C. 203 ; 24 S. L. R. 417.—**CAN.**

p i. —— *Assisting police.*]—On a charge of burglary the accused stated he was instructed by a police officer to take part in a burglary in order to assist the police in bringing a criminal to justice. He informed the police before the burglary as to where & when it was to take place, accompanied the real burglar in his breaking into a house & taking goods, then instructed the police where the goods were to be found & gave information leading to the arrest of the criminal. There was conflict between the evidence of the accused & that of the police officer who instructed him. The magistrate convicted the accused, stating he was relieved from weighing the evidence of the police officer & the other witnesses, as the evidence showed that accused helped to commit the crime :—*Held :* reversing the decision of the magistrate, if accused's evidence is believed, what he did was not with the intention of committing felony, but with the intention of helping the police.—R. *v.* GILMORE (1930), 43 B. C. R. 57.—**CAN.**

PART I. SECT. 2, SUB-SECT. 2.—B.

59 i. *Notification of contagious disease—Public Health Act, R. S. O.*, 1914 (*c.* 218), *s.* 55 (1).]—Where deft., a qualified medical practitioner, honestly believed that a disease was not communicable :—*Held :* there was no *mens rea*, & he could not be guilty of a criminal offence.—R. *v.* GORDON, [1924] 2 D. L. R. 358 ; 42 Can. Crim. Cas. 26 ; 54 O. L. R. 355.—**CAN.**

o (p. 38) i. ——.]—*Mens rea* is an essential ingredient of the offence of possessing apparatus suitable for the manufacture of spirits contrary to Inland Revenue Act, s. 180 (*e*). This does not mean that guilty motive or intention must be shown. *Mens rea* can be shown by the presumptions of fact which may be raised against accused by the nature of the apparatus found in his possession & the circumstances surrounding that possession.—R. (JACKSON) *v.* HUTCHINSON, [1925] 3 W. W. R. 744.—**CAN.**

sb. *Keeping beer over legal strength—Ontario Temperance Act*, 1916 (*c.* 50),

bonâ fide but erroneously believed that he was not legally bound to maintain them in the circumstances. *Mens rea* is immaterial. —BIGGS *v.* BURRIDGE (1924), 89 J. P. 75; 22 L. G. R. 555, D. C.

102. *Add. Annotation :*—**Refd.** Orpen *v.* Haymarket Capital, Ltd. (1931), 145 L. T. 614.

122. *Add. Annotation :*—**Refd.** Allen *v.* Whitehead, [1930] 1 K. B. 211.

133. *Add. Annotation :*—**Apld.** Allen *v.* Whitehead (1929), 45 T. L. R. 655.

134. *Add. Annotation :*—**Refd.** Allen *v.* Whitehead (1929), 45 T. L. R. 655.

147. *Add. Annotation :—As to* (1) **Refd.** Allen *v.* Whitehead (1929), 45 T. L. R. 655.

150. *Add. Annotation :*—**Refd.** Allen *v.* Whitehead (1929), 45 T. L. R. 655.

167. *Add. Annotation :*—**Refd.** R. *v.* Denyer, [1926] 2 K. B. 258.

177. *Add. Annotation :*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

178. *Add. Annotation :*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

180. *Add. Annotation :*—**Refd.** R. *v.* De Montalk (1932), 23 Cr. App. Rep. 182.

181a. —— ——.]—(1) The offence of uttering & publishing an obscene libel is established as soon as the prosecution has proved the publication & obscenity of the matter charged, & a jury should not be directed that, beyond this, they must find an intent to corrupt public morals.

(2) The test of obscenity is that laid down by COCKBURN, C.J., in *R.* v. *Hicklin*, No. 8070, "whether the tendency of the matter charged as obscenity is to deprave & corrupt those whose minds are open to immoral influences."

(3) *Semble :* it is a good defence to the charge that the publication of matter *primâ facie* obscene was for the public good, as being necessary or advantageous to religion, science, literature or art, provided that the manner & extent of the publication does not exceed what the public good requires.—R. *v.* DE MONTALK (1932), 23 Cr. App. Rep. 182, C. C. A.

212. *Add. Annotations :—As to* (3) **Consd.** R. *v.* Bailey, [1924] 2 K. B. 300. **Refd.** R. *v.* Southern (1929), 142 L. T. 383.

229. *Add. Annotations :—As to* (1) **Refd.** R. *v.* Kenneally (1930), 22 Cr. App. Rep. 52. *Generally*, **Refd.** Dixon *v.* Sutton Heath & Lea Green Colliery, Ltd. (No. 2) (1930), 23 B. W. C. C. 135.

230a. —.]—The Ct. of Criminal Appeal has no power to alter the rules in *McNaghten's Case*, No. 229, *ante*.—R. *v.* FLAVELL (1926), 19 Cr. App. Rep. 141, C. C. A.

244a. *S.P.*—R. *v.* KORSCH (1925), 19 Cr. App. Rep. 50, C. C. A.

302. *Add. Annotation :—As to* (1) **Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

s. 40.]—*Held : mens rea* necessary element.—R. *v.* HYDE, [1925] 2 D. L. R. 958; 44 Can. Crim. Cas. 1.—**CAN.**

sc. —— ——.]—*Held : mens rea* not necessary element.—R. *v.* BURKE, [1925] 3 D. L. R. 625; 44 Can. Crim. Cas. 234.—**CAN.**

sf. *Using bottle for liquor incorrectly labelled.*]—*Held : mens rea* essential ingredient.—R. *v.* SAVICH (Ont.) (1927), 47 Can. Crim. Cas. 262.—**CAN.**

sj. *Branding animal without authority of owner—Brand Act, R. S. S.*, 1920 (*c.* 123), *s.* 17(*b*).]—*Held : mens rea* essential ingredient.—CLARK *v.* LAWSON (Sask.), [1926] 1 W. W. R. 173; 46 Can. Crim. Cas. 118.—**CAN.**

PART I. SECT. 2, SUB-SECT. 5.—B. (c).

253 iv. —— ——.]—R. *v.* BROCKENSHIRE & CLARKSON, [1932] 1 D. L. R. 156; [1931] O. R. 806; 56 Can. C. C. 340.—**CAN.**

PART I. SECT. 3, SUB-SECT. 3.—A.

ii. —— *Driving motor—Breach of provisions of Motor Vehicle Act.*]—R. *v.* DOYLE (Ont.), [1928] 50 Can. Crim. Cas. 233.—**CAN.**

PART I. SECT. 3, SUB-SECT. 3.—B.

o. Delete the word "not."

PART I. SECT. 5, SUB-SECT. 1.—B. (b).

201 ii. —— *Proof that accused under fourteen—Onus of proof lies on accused.*]—R. *v.* SCHNEIDER (Sask.), [1927] 1 D. L. R. 999; [1927] 1 W. W. R. 306; 47 Can. Crim. Cas. 61.—**CAN.**

PART I. SECT. 5, SUB-SECT. 2.—B. (b).

229 xiii. —— ——.]—A man may appreciate the nature & quality of his deed as an illegal act, & may yet be insane in respect that he fails to recognise that the act is morally wrong; & it is sufficient to justify a finding that accused is incapable of instructing his defence that, although sane in ordinary matters, he is insane in regard to the particular subject-matter of the charge which is made against him.—H.M. ADVOCATE *v.* SHARP, [1927] S. C. (J.) 66.—**SCOT.**

229 xiv. —— ——.]—TOLA RAM *v.* R. (1927), I. L. R. 8 Lah. 684.—**IND.**

229 xv. —— ——.]—The word "and" in Criminal Code, R. S. C., 1927, s. 19, should be construed as "or."—R. *v.* JEANOTTE, [1932] 2 W. W. R. 283.—**CAN.**

e i. —— —— ——.]—A man may be suffering from some form of insanity, in the sense in which the word would be used by an alienist, but may not be suffering from unsoundness of mind, as defined in Indian Penal Code, s. 84. The law recognises nothing but incapacity to realise the nature of the act, & presumes that where a man's mind or his faculties of ratiocination are sufficiently clear to apprehend what he is doing, he must always be presumed to intend the consequences of the action he takes.—MANI RAM *v.* R. (1926), I. L. R. 8 Lah. 114.—**IND.**

PART I. SECT. 5, SUB-SECT. 2.—B. (c).

245 iii. —— ——.]—The driver of a motor car was charged with causing the death of a pedestrian by his reckless driving. He stated that he was not guilty "in respect that by the incidence of temporary mental dissociation due to toxic exhaustive factors he was unaware of the presence of deceased on the highway & of his injuries & death, & was incapable of appreciating his immediately previous & subsequent actions." It was not disputed that the pedestrian's death had been caused by the excessive speed & dangerous manœuvring of the car :—*Held :* if accused was otherwise in a condition which justified his driving a car, & if, through no fault of his own & for some cause outwith his control & which he was not bound to foresee, he became either gradually or suddenly not master of his action, through some mental defect, & was in that state at the time of the accident, the jury were entitled to return a verdict of not guilty.—H.M. ADVOCATE *v.* RITCHIE, [1926] S. C. (J.) 45.—**SCOT.**

PART I. SECT. 5, SUB-SECT. 2.—E.

279 i. *Need not be scientific evidence.*]—R. *v.* MCCOSKEY, [1927] 2 D. L. R. 539; 47 Can. Crim. Cas. 122; 60 O. L. R. 44.—**CAN.**

e i. —.]—R. *v.* BROCKENSHIRE & CLARKSON, [1932] 1 D. L. R. 156; [1931] O. R. 806; 56 Can. C. C. 340.—**CAN.**

PART I. SECT. 5, SUB-SECT. 3.—A.

h i. —— ——.]—WARYAM SINGH *v.* R. (1926), I. L. R. 7 Lah. 141.—**IND.**

PART I. SECT. 5, SUB-SECT. 3.—B.

297 iv. ——.]—Evidence of drunkenness falling short of a proved incapacity in accused to form the intent necessary to constitute the crime, & merely establishing that his mind was affected by drink so that he more readily gave way to some violent passion, does not rebut the presumption that a man intends the natural consequences of his acts.—SHERU & GAMA *v.* R. (1923), I. L. R. 7 Lah. 50.—**IND.**

303 viii. —— ——.]—The accused appealed from his conviction for murder. It had been contended in his defence that at the time of his act his condition from drink was such that the act could not be murder; & he alleged misdirection by the trial judge to the jury on this question, which involved the law as to what state of incapacity resulting from drink will reduce a crime from murder to manslaughter :—*Held :* in the circumstances of the case, an essential question for the jury was : given the existence of some degree of capacity in the accused, & assuming the facts deposed to by Crown witnesses, if credited, in describing the accused's act in striking the fatal blow & his conduct & expressions before &

306. *Add. Annotations :*—**Consd.** R. *v.* Betts & Ridley (1930), 144 L. T. 526. **Refd.** R. *v.* Canham (1925), 18 Cr. App. Rep. 163.

359. After this case add :—

—— **Abolition of presumption.**]—*See* Criminal Justice Act, 1925 (c. 86), s. 47.

417. *Add. Annotations :*—**Consd.** A.-G. for Straits Settlmt. *v.* Pang Ah Yew, [1925] A. C. 555. **Refd.** Badman *v.* R., [1924] 1 K. B. 64.

466. *Add. Annotation :*—**Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

478. *Add. Annotation :*—**Refd.** Towle *v.* Improved Industrial Dwellings Co., [1931] 1 K. B. 263.

528. *Add. Annotation :*—**Refd.** R. *v.* Betts & Ridley (1930), 144 L. T. 526.

528a. —— **Common design to commit robbery with violence.**]—Where, in pursuance of a common design to commit robbery with violence, one prisoner strikes a blow which results in death, & another is present aiding & abetting the robbery, as a principal in the second degree, both are guilty of murder, although the latter may have consented to the use of only a limited degree of violence & the former may have departed from the agreed method of attack.—R. *v.* Betts & Ridley (1930), 144 L. T. 526 ; 22 Cr. App. Rep. 148 ; 29 Cox, C. C. 259, C. C. A.

572a. —— —— ——.]—To convict a co-deft. of more than one crime on the ground of common design there must be satisfactory evidence that the concert extended to each such crime.—R. *v.* Short (1932), 23 Cr. App. Rep. 170, C. C. A.

611. *Add. Annotation :*—**Apld.** Gough *v.* Rees (1929), 46 T. L. R. 103.

612. *Add. Annotation :*—**Distd.** Gough *v.* Rees (1929), 46 T. L. R. 103.

613. *Add. Annotation :*—**Apld.** Gough *v.* Rees (1929), 46 T. L. R. 103.

613a. Overloading omnibus — Railway Passenger Duty Act, 1842 (c. 79), ss. 13, 15.]—The conductor of an omnibus was convicted of permitting the omnibus to be overloaded contrary to Railway Passenger Duty Act, 1842 (c. 79), s. 13, which by sect. 15 imposed a penalty for this offence on the "driver, conductor, or guard." His employer was not present at the time :—*Held :* the employer was liable to be proceeded against for "aiding & abetting, counselling & procuring" the commission of the offence.—Gough *v.* Rees (1929), 142 L. T. 424 ; 94 J. P. 53 ; 28 L. G. R. 32 ; 46 T. L. R. 103 ; 29 Cox, C. C. 74, D. C.

616. *Add. Annotation :*—**Apld.** Allen *v.* Whitehead (1929), 45 T. L. R. 655.

616a. —— ——.]—Resp., the proprietor of a refreshment-house was charged with harbouring prostitutes contrary to Metropolitan Police Act, 1839 (c. 47), s. 44. It was proved that, though resp. received the profits of the business, he did not manage it, but left it in charge of a manager, to whom he had given express instructions not to allow prostitutes to assemble on the premises. Resp. only visited the premises once or twice a week, & there was no evidence that any offence had been committed in his presence or with his knowledge :—*Held :* having delegated all his authority to the manager & become a mere absentee, he was responsible for the acts of the manager, & was liable to conviction. — Allen *v.* Whitehead, [1930] 1 K. B. 211 ; 99 L. J. K. B. 146 ; 142 L. T. 141 ; 94 J. P. 17 ; 45 T. L. R. 655 ; 27 L. G. R. 652 ; 29 Cox, C. C. 8, D. C.

708a. —— **Not supported by evidence that defendant accessory after the fact.**]—R. *v.* Fitzpatrick, No. 40a, *ante*.

732a. -.]—R. *v.* Fitzpatrick, No. 40a, *ante*.

after that act, whether or not he was so affected by drink as to be incapable of having the intent to kill or of having the intent, in reckless disregard of the consequences, to cause some bodily injury, "known" to him to be "likely to cause death." That question was one upon which the jury must pass in order to enable them to determine the existence or non-existence of the intent in fact. As the trial judge, while properly directing the jury's attention to the defence as put forward by accused's counsel, that accused was in such a state that his mind was not functioning, that his "mind was gone," that he was incapable of a degree of "thought" enabling him to be aware of the nature of his physical acts, did not direct them to the question above defined, there should be a new trial.—MacAskill *v.* R., [1931] S. C. R. 330 ; 3 D. L. R. 166 ; 55 Can. C. C. 81 ; *revsg.*, S. C. *sub nom.* R. *v.* McAskill, [1931] 1 D. L. R. 979.—**CAN.**

303 ix. —— ——.]—Prisoner was indicted for the murder of a police officer. The only defence was that he was so drunk as to be incapable of forming an intent & therefore was at most guilty of manslaughter. The judge charged the jury thus : "What you must determine is if this man can show that his mind was so affected by the drink he had taken that he was incapable of knowing that what he was doing was dangerous & so likely to inflict serious injury. That is your test. If upon the whole evidence you feel honestly that this man was drunk to the extent that he did not know what he was doing was dangerous & likely to cause serious injury, then the offence ought to be reduced to manslaughter, but that is for you" :—*Held :* a misdirection.—R. *v.* Kovach, [1931] 1 D. L. R. 977 ; 66 O. L. R. 398 ; 55 Can. C. C. 40.—**CAN.**

303 x. —— ——.]—R. *v.* McAskill, [1930] 3 M. P. R. 469.—**CAN.**

PART I. SECT. 6, SUB-SECT. 2.—B.

456 iv. —— ——.]—Where several persons join in beating another with *lathis*, & inflict such serious injuries on him that he dies shortly after the beating, all are guilty of the offence of murder without distinction.—R. *v.* Umed (1923), I. L. R. 45 All. 727.—**IND.**

456 v. —— ——.]—The doing to death of one person at the hands of several persons, in circumstances in which it could never be known by which hand life was actually extinguished, amounts to murder, & not merely attempted murder, on the part of each of the persons concerned.—Ghosh *v.* R. (1924), 41 T. L. R. 27 ; L. R. 52 Ind. App. 40.—**IND.**

PART I. SECT. 6, SUB-SECT. 3.—A. (a) i.

f i. —— *Rape—Putting hand over girl's mouth.*]—R. *v.* Hewston & Goddard (1930), 55 Can. C. C. 13.—**CAN.**

PART I. SECT. 6, SUB-SECT. 3.—B. (a).

n i. ——.]—A person cannot be said to have aided & abetted another, where the latter had no consciousness of his act & exercised no volition in the matter.—R. *v.* Rasool, [1924] App. D. 44.—**S. AF.**

PART I. SECT. 6, SUB-SECT. 3.—B. (b).

530 i. *Manslaughter—Death in a fight.*]—R. *v.* Silverstone, [1931] 3 D. L. R. 769 ; O. R. 50 ; 55 Can. C. C. 270.—**CAN.**

sd. *Assault.*]—M. assaulted S. with intent to rob him. D. was not present at the assault, but there was evidence that he had been seen earlier in the evening driving in his car with M., that M., when pursued by S., immediately after the assault, took refuge in D.'s car, in which D. was then seated, & which was stationary by the roadside, with its lights off, in a dark spot close to where the assault had been committed :—*Held :* the jury was entitled to draw the inference that the assault was committed in pursuance of a common purpose agreed upon by M. & D.—M. & D. R. *v.* Dunn (1930), 30 S. R. N. S. W. 210 ; 47 N. S. W. W. N. 79.—**AUS.**

PART I. SECT. 6, SUB-SECT. 3.—B. (f) ii.

se. *Common design to escape—Shooting with intent to murder by one.*]—The mere fact that two men were attempting together to escape arrest does not justify a conviction of both of them for an offence committed by one in resisting apprehension.—R. *v.* Scott & Killick, [1932] 2 W. W. R. 124.—**CAN.**

750. *Add. Annotation :*—**Apld.** R. *v.* Woods (1930), 143 L. T. 311.

751. *Add. Annotation :*—**Consd.** R. *v.* Woods (1930), 143 L. T. 311.

751a. —.]—On a charge of attempting to obtain by false pretences, "intent" & "attempt" must be carefully distinguished.—R. *v.* PUNCH (1927), 20 Cr. App. Rep. 18, C. C. A.

751b. ——.]—Two letters were written by the accused to a man who had advertised for a situation & were sent to him by post. The letters, which were couched in obscene & lecherous terms, purported to be written by a woman, & invited the recipient to come to the place where the accused lived, & to have immoral relations. The recipient, on reading them, believed they were written by a woman. He did not go to the place where the accused lived, & no meeting between them took place. The accused was charged with attempting to procure the commission of an act of gross indecency by the recipient of the letters with himself. At the trial the jury were asked to say only (i) whether the accused was the writer of the letters, & (ii) if so, whether the letters amounted to an attempt to procure the commission of the offence charged. The jury received no direction in regard to what was necessary in law to constitute an attempt, as distinguished from mere intention, to commit an offence. The jury convicted the accused :—*Held :* the accused's acts were only remotely, & not immediately, connected with the commission of the offence, & the jury should have been directed that such acts did not in law constitute an attempt to procure the commission of the offence charged. The conviction must, accordingly be quashed.—R. *v.* WOODS (1930), 143 L. T. 311 ; 46 T. L. R. 401 ; 29 Cox, C. C. 165 ; 22 Cr. App. Rep. 41, C. C. A.

751c. -.]—R. *v.* FREEDMAN, No. 10779a, *post.*

755. *Add. Annotation :*—**Refd.** R. *v.* Punch (1927), 20 Cr. App. Rep. 18.

756. *Add. Annotations :*—**Apld.** R. *v.* Woods (1930), 143 L. T. 311. **Refd.** R. *v.* Punch (1927), 20 Cr. App. Rep. 18.

799. *Add. Annotation :*- -**Distd.** R. *v.* Woods (1930), 143 L. T. 311.

812. *Add. Annotations :*—**Consd.** Sorrell *v.* Smith, [1925] A. C. 700. **Refd.** British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383.

814. *Add. Annotations :*—*As to* (1) **Refd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306. *As to* (2) **Consd.** Sorrell *v.* Smith, [1925] A. C. 700. *Generally*, **Refd.** G. W. K. *v.* Dunlop Rubber Co. (1926), 42 T. L. R. 376.

861. *Add. Annotation :*—*Generally*, **Refd.** R. *v.* Berg, Britt, Carré & Lummies (1927), 20 Cr. App. Rep. 38.

862a. Conspiracy to procure admission to Inn of Court—Forged certificates.]—The Benchers of the Inns of Ct. owe a duty to the public in respect of admission to the Bar : therefore a fraud committed upon them to procure such admission is a mischief against public policy none the less because its intent is not to procure money for the offender.—R. *v.* BASSEY (1931), 47 T. L. R. 222 ; 75 Sol. Jo. 121 ; 22 Cr. App. Rep. 160, C. C. A.

902. *Add. Annotation :*—**Refd.** R. *v.* Gordon (1925), 133 L. T. 734.

930. *Add. Annotation :*—**Refd.** R. *v.* Luberg (1926), 135 L. T. 414.

933a. —— Though no direct communication between conspirators.]—R. *v.* MEYRICK, R. *v.* RIBUFFI (1929), 45 T. L. R. 421 ; 21 Cr. App. Rep. 94, C. C. A.

PART I. SECT. 6, SUB-SECT. 6.—B. (a).

750 v. ——.]—R. *v.* RUMP, [1929] 2 D. L. R. 824 ; 1 W. W. R. 649 ; 51 Can. Crim. Cas. 236 ; 41 B. C. R. 36.—**CAN.**

PART I. SECT. 6, SUB-SECT. 6.—B. (b).

763 vi. ——.]—R. *v.* DUFFY, [1931] 4 M. P. R. 81.—**CAN.**

PART I. SECT. 6, SUB-SECT. 6.—C.

772 i. *Liability for attempt—Larceny.*]—R. *v.* SHAID, [1926] 3 D. L. R. 553 ; [1926] 2 W. W. R. 319 ; 46 Can. Crim. Cas. 209 ; 36 Man. L. R. 64.—**CAN.**

PART I. SECT. 6, SUB-SECT. 6.—D.

sf. *Charge of assault with intent to commit rape—Amounts to charge of attempted rape.*]—R. *v.* MACINTYRE (1925), 43 Can. Crim. Cas. 356.—**CAN.**

PART I. SECT. 6, SUB-SECT. 7.—A.

h i. —— ——.]—Every person of legal responsibility who knowingly & voluntarily co-operates with, or aids or assists or advises or encourages another in the commission of a crime is an accomplice, without regard to the degree of his guilt.—R. *v.* GALLAGHER, [1924] 4 D. L. R. 1059 ; 3 W. W. R. 357.—**CAN.**

h ii. —— ——.]—An [illegible] be convicted on a charge of counselling an offence, although the person counselled did not actually commit the offence.—R. *v.* YEE JAM HONG (Sask.), [1929] 1 D. L. R. 179 ; 50 Can. Crim. Cas. 372 ; [1928] 3 W. W. R. 490.—**CAN.**

PART I. SECT. 6, SUB-SECT. 8.—A.

s i. ——.]—Conspiracy cannot exist unless two or more persons are parties to an agreement to do an illegal act, or to do a legal act illegally, both knowing, or being deemed to know, that the carrying out of the purpose involves the commission of an indictable offence.—R. *v.* SEGAL, [1925] 4 D. L. R. 762 ; Q. R. 39 K. B. 436.—**CAN.**

s ii. *What amounts to—Conspiring with another ignorant of intended fraud.*]—R. *v.* SEGUIRE (Ont.) (1928), 49 Can. Crim. Cas. 266.—**CAN.**

PART I. SECT. 6, SUB-SECT. 8.—C.

831 i. *One alone cannot conspire.*]—There can be no conspiracy unless two or more minds are *ad idem* as to their object.—HARRIS *v.* R. (1927), 48 N. L. R. 330.—**S. AF.**

835 i. *Husband & wife.*]—Husband & wife cannot conspire together so as to be guilty of the crime of conspiracy.—R. *v.* MCKECHIE, [1926] N. Z. L. R. 1.—**N.Z.**

PART I. SECT. 6, SUB-SECT. 8.—N.

894 ii. —— ——.]—R. *v.* BOOKHALTER & LANIN, [1924] 3 D. L. R. 122 ; 42 Can. Crim. Cas. 186.—**CAN.**

894 iii. —— ——.]—R. *v.* PORTER & MARKS (B. C.), [1928] 4 D. L. R. 825 ; 50 Can. Crim. Cas. 399.—**CAN.**

PART I. SECT. 6, SUB-SECT. 8.—O (a).

921 i. *Conspiracy may be inferred from facts proved.*]—R. *v.* SIMINGTON (B. C.) (1926), 45 Can. Crim. Cas. 249.—**CAN.**

921 ii. *S. P.* R. *v.* THORNTON (B.C.) (1926), 46 Can. Crim. Cas. 249.—**CAN.**

q i. —— ——.]—If an information charges a conspiracy between A., B., C. & D., together & with E. & F. & others, & a conviction finds A. guilty of a conspiracy with B. & with E. & F. & others, the conspiracy on which A. is convicted is not a different conspiracy from the one on which he was charged.—R. *v.* MARINO & CRISOFI, [1927] 2 W. W. R. 468 ; 47 Can. Crim. Cas. 348 ; 38 B. C. R. 452.—**CAN.**

PART I. SECT. 6, SUB-SECT. 8.—O. (c).

935 x. —— ——.]—The rule of evidence that, on charges of conspiracy, the acts & declarations of each conspirator in furtherance of the common object are admissible against the rest, is applicable on a charge of bribery, since the crime of bribery involves corrupt conduct of, & the acting in concert by, & the existence of a common purpose between, the persons concerned. It is immaterial whether the existence of the common purpose or the participation therein of those alleged to have participated in the crime be proved first, though either element is nugatory without the other.—R. *v.* LEVY, [1929] App. D. 312.—**S. AF.**

Part II.—Original Criminal Jurisdiction.

960a. —.]—GREY'S (LORD) CASE (1541), 1 State, Tr. 439.

961a. Right of Scotch peer.]—SANCHAR'S (LORD) CASE (1612), 9 Co. Rep. 117a; 77 E. R. 902; *sub nom.* SANQUIRE'S (LORD) CASE, 2 State Tr. 743.

Annotations:—**Consd.** R. *v.* Graham (1791), 2 Leach, 547. **Refd.** Clarendon's Case (1667), 6 State, Tr. 291.

967a. —— **Not by articles exhibited by peer in House of Lords.**]—CLARENDON'S (EARL) CASE (1667), 6 State, Tr. 291.

975a. ——.]—SOMERSET'S (DUKE) CASE (1551), 1 State, Tr. 515.

986. *Add. Annotation:*—**Consd.** R. *v.* Judge, *Ex p.* Isle of Ely Justices, [1931] 2 K. B. 442.

989. For "R. *v.* ELLIOT" read "R. *v.* ELLIOT, HOLLIS & VALENTINE."

Add. Annotations:—**Refd.** R. *v.* Paty (1704), 2 Ld. Raym. 1105; Burdett *v.* Abbot (1811), 14 East, 1.

991. *Add. Annotation:*—**Consd.** R. *v.* Cory, [1927] 1 K. B. 810.

992. *Add. Annotation:*—**Refd.** Leyton U. C. *v.* Wilkinson, [1927] 1 K. B. 853.

1005. *Add. Annotation:*—**Refd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485.

1016a. Power to order payment of taxes in respect of honorarium payable to clerk of court.]—An order made by the Central Criminal Ct. directing that any taxes demanded by the Inland Revenue authorities in respect of an honorarium payable to the clerk of that ct. shall be paid by the public bodies by which the salaries of the ct.'s officials are payable is not invalid & not in excess of the powers of the ct. under Central Criminal Ct. Act, 1834 (c. 36).—R. *v.* CENTRAL CRIMINAL COURT JJ., *Ex p.* LONDON COUNTY COUNCIL, [1925] 2 K. B. 43; 94 L. J. K. B. 479; 132 L. T. 666; 89 J. P. 65; 41 T. L. R. 269; 69 Sol. Jo. 381; 27 Cox, C. C. 734, D. C.

1022a. ——.]—R. *v.* DEVON JJ., *Ex p.* PUBLIC PROSECUTIONS DIRECTOR, No. 1138, *post.*

1030. *Add. Annotation:*—**Distd.** R. *v.* Teesdale (1927), 138 L. T. 160.

1031. *Add. Annotation:*—**Distd.** R. *v.* Teesdale (1927), 138 L. T. 160.

1031a. —— —— ——.]—It is not necessary in order that a person may be dealt with as an incorrigible rogue under Vagrancy Act, 1824 (c. 33), s. 5, on a second conviction for any of the offences named in sect. 4 of that Act, that the previous conviction should use the actual words "rogue & vagabond." since the statute itself provides that a person convicted of any of those offences "shall be deemed a rogue & vagabond."—R. *v.* TEESDALE (1927), 138 L. T. 160; 91 J. P. 184; 44 T. L. R. 30; 28 Cox, C. C. 438; 20 Cr. App. Rep. 113, C. C. A.

1032. *Add. Annotation:*—**Folld.** R. *v.* Dixon, Southampton Justices, *Ex p.* Porteous (1929), 142 L. T. 597.

1032a. —— —— —— **Before charge gone into.**]—Deft., who was represented by a solr., was charged before a ct. of summary jurisdiction with an offence for which, if convicted, he would be liable to imprisonment for a term exceeding three months. He was not informed of his right to trial by a jury on appearing before the ct., before the charge was gone into, but he was so informed afterwards, when all the evidence had been heard, but before the ct. had announced their decision. Deft. protested twice by his solr. that he could not at that stage be put to this election, but on being informed by the chairman that if he did not elect, the case would be sent for trial, he stated by his solr. that he would be dealt with summarily. Deft. was then convicted & fined:—*Held:* the proceedings were a nullity as the giving of that information to the person charged on his appearing before the ct., "before the charge is gone into," in accordance with Summary Jurisdiction Act, 1879 (c. 49), s. 17, is a condition precedent to the validity of the subsequent proceedings. Accordingly the conviction was quashed.—R. *v.* DIXON, SOUTHAMPTON JUSTICES; *Ex p.* PORTEOUS (1929), 142 L. T. 597, 598; *sub nom.* R. *v.* HAMPSHIRE JUSTICES, *Ex p.* PORTEOUS, 94 J. P. 70; 46 T. L. R. 157; 28 L. G. R. 84; 29 Cox, C. C. 113, D. C.

PART II. SECT 1, SUB-SECT. 5.

sa. *Election for speedy trial.*]—R. *v.* CUMMINS (N. S.) (1928), 50 Can. Crim. Cas. 375.—**CAN.**

sb. ——.]—When a prisoner has elected a speedy trial, his consent to be so tried, on additional charges which it is sought to prefer against him, is required only when they are not founded on the facts or evidence disclosed in the depositions.—R. *v.* DUFF (Sask.), [1929] 1 D. L. R. 152; 50 Can. Crim. Cas. 246; [1928] 3 W. W. R. 550.—**CAN.**

sc. ——.]—R. *v.* YEE JAM HONG (Sask.), [1929] 1 D. L. R. 179; 50 Can. Crim. Cas. 372; [1928] 3 W. W. R. 490.—**CAN.**

sd. ——.]—R. *v.* SPEIDEL (Alta.) (1929), 52 Can. Crim. Cas. 311.—**CAN.**

se. ——.]—When a prisoner has consented to a speedy trial before the district ct. judge's criminal ct. on the charge for which he has been committed for trial, he may be so tried without any further consent on any other charge founded on the facts or evidence disclosed in the depositions.—R. *v.* DIEDERICH & LIBERTY (Alta.), [1929] 3 W. W. R. 748; 52 Can. Crim. Cas. 370.—**CAN.**

sf. ——.]—A good election for a speedy trial was held not to be affected by the fact that a subsequent election, made after a slight correction in the charge, may not have been taken in the proper manner.—R. *v.* WONG CHEUN BEN, [1930] 3 W. W. R. 281.—**CAN.**

sg. *Right of accused to be tried by jury—Receiving stolen property.*]—(1) Although property alleged to have been stolen or to have been received knowing it to have been stolen does not exceed $10 in value & the offences are, therefore, triable summarily by a police magistrate under Part VI. of the Criminal Code, they are nevertheless indictable offences & need not be tried summarily. (2) Where there was nothing to suggest that the judge was of the opinion, & he could not properly be of the opinion, that the property alleged to have been received knowing it to be stolen did not exceed $200 in value, the case fell under sect. 67 of North-West Territories Act, 1886 (which is still in force), & when the accused elected for a jury trial a jury of six was a properly constituted tribunal. (3) When the stolen property alleged to have been knowingly received consisted of cancelled share certificates which appeared to be when received by the accused valid certificates with a market value far in excess of $200, & it was not shown that he was implicated in any way in the erasing of the cancellation marks:—*Held:* it could not properly be said, for the purpose of the application of sect. 67, that their value did not exceed $200.—R. *v.* DUSENBERG, [1930] 1 W. W. R. 717; 53 Can. C. C. 166; 24 Alta. L. R. 415.—**CAN.**

1034. *Add. Annotation:*—**Folld.** R. *v.* Dixon, Southampton Justices, *Ex p.* Porteous (1929), 142 L. T. 597.

1042. *Add. Annotation:*—*As to* (1) **Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

1079a. —— **Fraudulent conversion begun abroad—Receipt of proceeds in England.**]—A fraudulent conversion begun abroad, even though triable there, but completed by receipt of the proceeds in this country, is justiciable in this country.—R. *v.* LYLE (1924), 18 Cr. App. Rep. 59, C. C. A.

1090. *Add. Annotation:*—*As to* (1) **Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

1100. *Add. Annotation:*—**Refd.** The Fagernes, [1926] P. 185.

1101. *Add. Annotation:*—**Distd.** The Fagernes, [1927] P. 311.

1124. *Add. Annotations:*—*As to* (2) **Refd.** The Fagernes, [1926] P. 185. *As to* (4) **Refd.** The Fagerness, [1926] P. 185. *Generally*, **Refd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

1138. For the existing paragraph in original volume substitute the following paragraph:—

—— —— —— —— ——.]—A person on board one of His Majesty's ships, which was then in commission & lying in the tidal waters of the Firth of Forth above the Forth Bridge, was alleged to have committed larceny as a clerk or servant to the Navy, Army & Air Force Institutes. He was placed under arrest by an executive officer of the ship, &, some days later, by which time the vessel had arrived in Torbay, he was apprehended by the Devon police & charged before the justices, who committed him for trial at the Devon quarter sessions. The indictment charged an offence contrary to Larceny Act, 1916 (c. 50), s. 17 (1) (a), committed on the high seas. Prisoner was arraigned & pleaded not guilty & a jury was impanelled, but quarter sessions declined to proceed with the indictment upon the ground that Larceny Act, 1861 (c. 96), s. 115, which was said to give them jurisdiction, did not extend to offences committed in estuaries or rivers in Scotland, & that the offence charged was properly triable only by the Scottish cts.:—*Held:* quarter sessions had jurisdiction to try the indictment inasmuch as it alleged an offence which, by virtue of Naval Discipline Act, 1866 (c. 109), was committed within the jurisdiction of the Admlty. of England, & therefore, being an offence mentioned in Larceny Act, 1861, it was triable, under sect. 115 of that Act, in the county where the offender was apprehended.—R. *v.* DEVON JJ., *Ex p.* PUBLIC PROSECUTIONS DIRECTOR, [1924] 1 K. B. 503; 93 L. J. K. B. 284; 130 L. T. 640; 88 J. P. 73; 40 T. L. R. 213; 68 Sol. Jo. 422; 27 Cox, C. C. 593, D. C.

SUB-SECT. 2.—STATUTORY PROVISIONS.
(Vol. XIV., p. 147.)

See, now, Criminal Justice Act, 1925 (c. 86), s. 11.

SUB-SECT. 3.—CHANGE OF VENUE.
(Vol. XIV., p. 150.)

See, now, Criminal Justice Act, 1925 (c. 86), s. 11 (1).

Part III.—Limitation of Time for Criminal Proceedings.

1269. *Add. Annotation:*—**Apld.** R. *v.* Hewitt (1925), 89 J. P. Jo. 721.

PART II. SECT 2, SUB-SECT. 1.

r i. *Offence committed before jurisdiction granted—Trial subsequent to grant.*]—R. *v.* HEISLER (N. S.), [1928] 3 D. L. R. 221; 49 Can. Crim. Cas. 341.—**CAN.**

PART II. SECT. 2, SUB-SECT. 5.

c i. ——.]—Sect. 591 of the Criminal Code does not apply to an offence committed on a ship moored at Lapointe Pier in Burrard Inlet.

Even where the sect. applies, the leave of the Governor-General is effective if obtained before the committal of the accused for trial.—R. *v.* FURUZAWA (No. 2), [1930] 1 W. W. R. 953, 955; 53 Can. C. C. 398; 42 B. C. R. 541, 548.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—A.

1148 iv. —— ——.—Accused, charged with inflicting grievous bodily harm, was arrested on a warrant & brought before two justices for summary trial in a judicial district other than that in which the offence was committed. Justices of the peace in Saskatchewan have jurisdiction as such throughout the Province. He pleaded to the charge & made his defence, & it was not until he appealed from his conviction that he objected to the place of trial:—*Held:* applying Criminal Code, s. 577, applt. was properly charged & tried, even if s. 884 did apply; & even if he had a right to be tried in the district where the offence was committed, his objection to the place of trial was raised too late.—R. *v.* ROBERTS, [1928] 1 D. L. R. 260; 49 Can. Crim. Cas. 171; 22 Sask. L. R. 242; [1927] 3 W. W. R. 844.—**CAN.**

1162 i. *Where act is act of omission—Embezzlement — Non-accounting for money received—Place to which account should have been rendered.*]—In a case of criminal breach of trust by a servant whose duty it is to render account at one place, & there is no evidence to show where the alleged misappropriation was committed other than the fact of non-accounting, the *venue* may be laid in the place where the accused failed to account. If, however, there is evidence to show where the misappropriation was committed, the *venue* must be laid either in that place or the place where the property was received or retained. In the latter case there is no alternative *venue* in the place where the account was to be rendered. — PAUL DE FLONDOR *v.* EMPEROR (1931), I. L. R. 59 Calc. 92. —**IND.**

PART II. SECT. 3, SUB-SECT. 1.—C. (a).

t i. —— ——.]—*Held:* a letter written by deft. from a city in Pennsylvania to Ontario, enclosing money for travelling expenses & containing instructions to proceed to Montreal, was deft.'s act committed in Ontario, & a taking & enticing away within sect. 316 of the Code.—R. *v.* LOFTUS (1926), 45 Can. Crim. Cas. 390; 59 O. L. R. 65.—**CAN.**

PART II. SECT. 3, SUB-SECT. 3.

1254 xvi. —— ——.]—R. *v.* DE BRUGE (1927), 47 Can. Crim. Cas. 311; 60 O. L. R. 277.—**CAN.**

1254 xvii. —— ——.]—A change of venue will not be granted on the ground of local prejudice against the accused unless it plainly appears that such prejudice exists as will prevent a fair & impartial trial being had at the place where the offence is alleged to have been committed.—R. *v.* BRONFMAN, [1930] 1 W. W. R. 382; 53 Can. C. C. 32; 24 S. L. R. 321.—**CAN.**

sd. *Appeal from refusal to change—British Columbia.*]—Accused was convicted at Prince Rupert on a charge of murder. The Supreme Ct. of Canada on appeal set aside the conviction & ordered a new trial. An application was then made by accused to change the venue & was dismissed. An appeal from the order was dismissed for want of jurisdiction, as no appeal has been provided for by the Dominion Statute nor by the law of England applicable to this province.—R. *v.* SANKEY (1927), 49 Can. Crim. Cas. 195; 39 B. C. R. 247.—**CAN.**

Part IV.—Bail.

1334a. Estreatment — Removal of.] — R. *v.* STEWART (1931), 23 Cr. App. Rep. 82, C. C. A.

1337. *Add. Annotation :*—**Apld.** *Ex p.* Hatry, (1929), 168 L. T. Jo. 303.

1345a. ——.]—*Ex p.* HATRY (1929), 168 L. T. Jo. 303.

1410a. Pending appeal to Privy Council—From Colonial Court.]—SUTTON *v.* R., [1932] W. N. 272 ; 74 L. Jo. 440.

1411a. —— When granted—Only in special circumstances.]—R. *v.* GREGORY (1928), 20 Cr. App. Rep. 185, C. C. A.

1416. *Add. Annotation :*—**Apld.** R. *v.* Williams (1925), 19 Cr. App. Rep. 67.

1436a. —— When term of imprisonment short.] —In the case of a short sentence, where an

PART IV. SECT. 1.

1301 vii. ——.]—R. *v.* COOPERBLOOM (1924), 43 Can. Crim. Cas. 394. —**CAN.**

1301 viii. ——.]—The main, although not necessarily the only, consideration that should determine the exercise of a magistrate's discretion is the question of securing the attendance of accused.—KOK *v.* R. (1927), 48 N. L. R. 267.—**S. AF.**

m i. ——.]—Criminal Code, s. 696, provides that where the offence is punishable by imprisonment for more than five years a justice of the peace, jointly with some other justice, may in certain circumstances admit the accused to bail. One justice has no jurisdiction to take the recognisances, &, if he does so, no liability is imposed, at least no liability which can be enforced in a summary manner.—R. *v.* MOORE, [1924] 1 W. W. R. 111 ; 41 Can. Crim. Cas. 164 ; 18 Sask. L. R. 60.—**CAN.**

m ii. —— *Justice of the peace.*]—Under s. 664 of the Criminal Code a justice of the peace has jurisdiction to admit an accused to bail before he is brought before the justice in ct. on the charges preferred against him.—R. *v.* MCKENZIE, [1929] 3 D. L. R. 799 ; 2 W. W. R. 421 ; 51 Can. C. C. 423 ; 38 Man. L. R. 241 ; *affg.* [1929] 1 W. W. R. 249.—**CAN.**

sf. *Amount of bail—Power to increase.*]—Bail was fixed by a magistrate at the close of a preparatory examination of accused who was committed for trial. The examination was reopened to ascertain whether accused admitted eight previous convictions. Upon his admission, prosecutor applied for an increase of bail, which the magistrate granted. Accused then applied for an order that the bail as originally fixed should stand :—*Held :* it was competent for the magistrate to reconsider the amount of the bail.—SWART *v.* R. (1923), 44 N. L. R. 133.—**S. AF.**

sg. *Effect of bail—Whether reckoned as part of imprisonment.*]—The time during which prisoner is out on bail under an order for bail made at his request cannot be reckoned as part of his term of imprisonment, even though such order was *ultra vires*.—R. *v.* IACI, [1925] 2 W. W. R. 129 ; 43 Can. Crim. Cas. 363.—**CAN.**

sh. ——.]—The time of imprisonment for an offence against Manitoba Temperance Act does not continue to run while prisoner is out on bail pending an appeal.—R. *v.* SIPES, [1925] 3 D. L. R. 361 ; [1925] 2 W. W. R. 325 ; 44 Can. Crim. Cas. 60 ; 35 Man. L. R. 151.—**CAN.**

sj. *Estreatment of bail.*]—The procedure to be followed on an application to estreat bail is to be found in Bail Act, s. 12 (2).—R. *v.* BRIGGS (1923), 33 B. C. R. 297.—**CAN.**

sk. —— *Application to remit—Appeal.*]—No appeal lies from the refusal by a county ct. judge of a motion to remit & discharge the estreat of appet.'s bail-bond.—R. *v.* SCHNEIDER (1923), 40 Can. Crim. Cas. 206 ; 56 O. L. R. 215.—**CAN.**

sl. —— *No right where act of State prevents discharge of bond.*]—R. *v.* GETLIN (1930), 54 Can. C. C. 225.—**CAN.**

sm. —— *Record must be before court.*]—R. *v.* GALLIVAN (1930), 54 Can. C. C. 223.—**CAN.**

so. *Failure to surrender.—Liability of surety.*]—SALTER *v.* OGILVIE, [1931] 2 D. L. R. 384 ; 2 M. P. R. 488.—**CAN.**

PART IV. SECT. 2.

p i. ——.]—R. *v.* MURRAY (1926), 59 N. S. R. 119.—**CAN.**

p ii. ——.]—In non-capital criminal cases, the general rule is that an accused person is entitled to bail unless there are reasonable grounds for supposing that he will not answer to his bail at the trial. As to what constitutes such reasonable grounds there is no definite rule. It is in the discretion of the judge, who is entitled to take into consideration, not only matters before him in evidence, but also such things as are matters of common knowledge.—R. *v.* MCIVER, [1929] V. L. R. 50.—**AUS.**

1336 iii. ——.]—The fundamental test on bail motions is the probability of prisoner's evading justice.—THE STATE *v.* PURCELL, [1926] I. R. 207 ; 59 I. L. T. 141.—**IR.**

1344 i. —— —— *Severity of punishment.*]—The ct. may have regard to (*a*) the seriousness of the crime charged ; (*b*) the severity of the punishment ; (*c*) the strength of the case on the depositions ; (*d*) the prospect of a reasonably speedy trial ; & (*e*) the opposition of the A.-G.—THE STATE *v.* PURCELL, [1926] I. R. 207 ; 59 I. L. T. 141.—**IR.**

1344 ii. —— —— ——.]—KRISHNA CHANDRA JAGATI *v.* R. (1927), I. L. R. 6 Pat. 802.—**IND.**

d i. —— *Punishable with long term—Rich prisoner.*]—Except in exceptional circumstances persons accused of crimes punishable with long terms of imprisonment should not be released on bail. The richer the accused & the more easy it is for him to find bail, the less it is desirable that he should be released, & in no circumstances whatever, without an order of the High Ct., should any person accused of murder be allowed bail.—HIKAYAT SINGH *v.* KING-EMPEROR (1932), I. L. R. 11 Pat. 280.—**IND.**

1349 i. *Conduct of prisoner—Tampering with Crown witnesses.*]—Tampering with the prosecution witnesses may be a good reason for refusing bail.—KRISHNA CHANDRA JAGATI *v.* R. (1927), I. L. R. 6 Pat. 802.—**IND.**

1349 ii. ——.]—Where bail was opposed, on the ground that accused had been arrested before investigations were complete to prevent his tampering with Crown witnesses :—*Held :* the magistrate was not warranted in refusing bail for that reason.—KOK *v.* R. (1927), 48 N. L. R. 267.—**S. AF.**

PART IV. SECT. 4.

1361 v. ——.]—R. *v.* STAGG (1925), 44 Can. Crim. Cas. 128.—**CAN.**

1361 vi. ——.]—THE STATE *v.* PURCELL, [1926] I. R. 207 ; 59 I. L. T. 141.—**IR.**

1361 vii. —— ——.]—R. *v.* NGA SAN HTWA (1927), 5 I. L. R. Ran. 276. —**IND.**

o i. ——.]—The opposition of the A.-G. to the giving of bail, while entitled to great weight, does not bind the discretion of the ct.—THE STATE *v.* PURCELL, [1926] I. R. 207 ; 59 I. L. T. 141.—**IR.**

PART IV. SECT. 5.

1383 ii. ——.]—After conviction for rape & a new trial ordered bail was refused. Rape is an offence punishable with death, & unless there is unreasonable & unjust delay in bringing on the second trial, bail will not be granted.—R. *v.* AUGER (1929), 52 Can. C. C. 80 ; 64 O. L. R. 198.—**CAN.**

1383 iii. ——.]—*Re* R. *v.* AUGER (Ont.) (1929), 52 Can. C. C. 281.—**CAN.**

st. *Obtaining by false pretences.*]—R. *v.* GIFFORD, [1931] 2 W. W. R. 414.—**CAN.**

PART IV. SECT. 8.

1401 v. —.]—Where a police magistrate refused to allow accused to be released on bail pending the preliminary hearing, an application by way of *habeas corpus* for accused's release on bail was granted.—R. *v.* MACDONALD, [1925] 2 W. W. R. 643.—**CAN.**

PART IV. SECT. 12.

sb. *Grounds for granting.*]—While it is not possible to lay down an inflexible rule as to when a person convicted of an offence & sentenced to imprisonment, who appeals against his conviction, should or should not be admitted to bail pending the determination of his appeal, it is important to bear in mind that every one is presumed to be innocent until legally convicted, & that so far as is humanly possible the law should be so administered as not to do injustice to an innocent person.—R. *v.* SMITH, R. *v.* BARNARD (1924), 43 Can. Crim. Cas. 24 ; 56 O. L. R. 244.—**CAN.**

sd. ——.]—A prisoner who had been convicted on a charge of shop & warehouse breaking & sentenced to two years & four calendar months' imprisonment, applied for bail pending the hearing of an appeal against his conviction. The grounds of his application were that he might search for two persons who might prove that his identity had been mistaken ; the prisoner did not know the names or addresses of these persons, but knew their descriptions ; further grounds were personal to himself & family, such as a statement that he surrendered to his bail during trial & a desire to assist his family. There was little prospect of the appeal being successful :—*Held :* bail should not be granted.—R. *v.* RYAN, [1930] S. A. S. R. 125.—**AUS.**

sf. ——.]—R. *v.* VERIGIN (No. 1), [1932] 2 W. W. R. 489.—**CAN.**

sm. *By Supreme Court of Canada.*]—A judge of the Supreme Ct. has no jurisdiction to admit to bail an accused person pending his appeal, such jurisdiction being conferred by Criminal Code, s. 1019 (1), upon the Chief Justice of the appellate ct. or a

appeal cannot be speedily heard, the ct. may grant bail.—R. *v.* SELKIRK (1925), 18 Cr. App. Rep. 172, C. C. A.

1437. After this case add :—

—— —— —— ——.]— *See, now,* Criminal Justice Act, 1925 (c. 86), s. 16 (2).

1442a. ——— ——.] —The ct. grants bail only in exceptional circumstances.—R. *v.* KLEIN (1932), 23 Cr. App. Rep. 173, C. C. A.

1443a. —— **Vacation intervening.**]—In considering applications for bail the ct. has regard to the interval of a vacation.—R. *v.* CHARAVANMUTTU (1929), 21 Cr. App. Rep. 184, C. C. A.

1443b. —— ——.]—R. *v.* WAXMAN (1930), 22 Cr. App. Rep. 81, C. C. A.

1443c. —— —— **Intricate case.**]—Bail granted in view of complexity of the case & of the interval of the Long Vocation.—R. *v.* NEWBERY & ELMAN (1931), 23 Cr. App. Rep. 66, C. C. A.

1443d. —— ——.]—Bail granted in view of the interval of the Long Vocation.—R. *v.* STEWART (1931), 23 Cr. App. Rep. 68, C. C. A.

1443e. —— ——.]—The interval of the Christmas vacation before an appeal can be heard may be a ground for the ct.'s granting bail.—R. *v.* HARDING, TURNER & KING (1931), 23 Cr. App. Rep. 143, C. C. A.

1445. *Add. Citation :*—87 J. P. Jo. 536.

Add. Annotation :—**Refd.** R. *v.* Davidson (1927), 20 Cr. App. Rep. 66.

1445a. ——.]—The ct., in granting an application for leave to appeal against conviction & sentence, offered appct., in view of the interval before the hearing, bail on his own recognisance of £50 & that of a surety in the same sum.—R. *v.* MACDONALD (1928), 21 Cr. App. Rep. 26, C. C. A.

1446a. ——.]—R. *v.* DAVIDSON, No. 3129b, *post.*

Part V.—Proceedings Preliminary to Indictment.

1458. *Add. Annotation :*—**Refd.** Conn *v.* Turnbull (1925), 89 J. P. Jo. 300.

1459. *Add. Annotation :*—**Refd.** Conn *v.* Turnbull (1925), 89 J. P. Jo 300.

1467. After cross-references following this case add "**Person outside jurisdiction.**]—*See* Criminal Justice Act, 1925 (c. 86), s. 31."

1467a. —— **Joint trial with another person necessary or expedient.**]—TURF PUBLISHERS, LTD. *v.* DAVIES, [1927] W. N. 190, D. C.

1484. *Add. Citation :*—31 T. L. R. 401.

1513a. ——.]—R., *v.* BOULTON (1871), 12 Cox, C. C. 87.

1536a. —.]—R. *v.* BOULTON (1871), 12 Cox, C. C. 87.

1555a. ——.]—WHITE *v.* TAYLOR (1801), 4 Esp. 80 ; 170 E. R. 648.

1583. *Add. Annotation :*—**Refd.** Glamorgan County Council *v.* Glasbrook, [1924] 1 K. B. 879.

1611. *Add. Annotation :*—**Refd.** Poland *v.* Parr, [1927] 1 K. B. 236.

1622. *Add. Annotation :*—**Folld.** Isaacs *v.* Keech, [1925] 2 K. B. 354.

1622a. —— **Town Police Clauses Act, 1847 (c. 89), s. 28.**]—Under the above sect. in order to entitle a constable to take a person into

judge of that ct. designated by him.—STEELE *v.* R., [1924] 2 D. L. R. 470 ; [1924] S. C. R. 1 ; 42 Can. Crim. Cas. 47.—**CAN.**

e i. —— *Time for entering into recognisance.*]—On an appeal from a summary conviction, since there is now no time limit for filing the notice of appeal under Criminal Code, s. 750, there is no time limit for entering into the recognisance which may be given under sub-sect. *c*.—R. *v.* BARILKO, [1924] 4 D. L. R. 832 ; 3 W. W. R. 424.—**CAN.**

e ii. ——. DESJARLAIS, [1924] 3 W. W. R. 145.—**CAN.**

sn. *When application for release can be made—Before return by gaoler showing cause of commitment.*]—*Re* HOOD, [1928] 1 D. L. R. 624 ; 49 Can. Crim. Cas. 191 ; 59 N. S. R. 471.—**CAN.**

PART IV. SECT. 13.

so. *Refusal by sheriff—Summary complaint.*]—*Held :* an appeal to the High Ct. of Justiciary against a refusal of bail was not confined to cases tried upon indictment. — LIDDELL *v.* STRATHERN, [1926] S. C. (J.) 107.—**SCOT.**

PART V. SECT. 1, SUB-SECT. 2.—A.

1488 ii. —— ——.]—Where a man who knows that he is under detention acquiesces in the situation there is an arrest, even though there has been no actual touching of his person.—HIGGINS *v.* MACDONALD (B. C.), [1928] 4 D. L. R. 241 ; [1928] 3 W. W. R. 115 ; 50 Can. Crim. Cas. 353.—**CAN.**

1498 i. *Necessary to inform prisoner under what power constable acting.*]—A person about to be arrested is entitled to know under what power the constable is arresting him &, if he specifies a certain power, which the person knows the constable has not got, he is entitled to object to such arrest & escape from custody, such custody not being a lawful one.—APPASANU MUDALIAR *v.* R. (1924), I. L. R. 47 Mad. 442.—**IND.**

sp. *Second arrest justified—First arrest irregular.*]—*Ex p.* MALATSKY, [1925] 2 D. L. R. 242 ; 43 Can. Crim. Cas. 306.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.—E. (b).

1555 v. —— ——.]—Telegrams from the "police" of a Native State which, in addition to personal description of the fugitive & suggestions of his possible movements, merely alleged that he was wanted for embezzlement of money to the value of two lakhs, do not constitute credible information or reasonable suspicion sufficient to justify his arrest without a warrant in British India.—SUBODH CHANDRA ROY CHOWDHRY *v.* R. (1924), I. L. R. 52 Calc. 319.—**IND.**

PART V. SECT. 1, SUB-SECT. 2.—E. (c) ii.

—— —— —— offence which a police officer can find a person committing & can legally arrest him without warrant.—R. *v.* SELOCK, [1931] 2 W. W. R. 745 ; 56 Can. C. C. 243 ; 25 Alta. L. R. 504.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.—E. (e) i.

a i. —— *Liquor Act, R. S. A.*, 1922 (*c.* 226), *s.* 85.]—Two police officers, suspecting that accused sold liquor contrary to the above Act, went to his —— &, without disclosing their identity, asked him to serve them with liquor, which he did. Having consumed the liquor they ordered more, which was being served but not consumed when, disclosing their identity, they arrested accused without a warrant :—*Held :* accused was "found actually committing" an offence, & could be arrested without a warrant.—R. *v.* HILLS, [1924] 1 W. W. R. 651 ; 44 Can. Crim. Cas. 329 ; 20 Alta. L. R. 156.—**CAN.**

a ii. —— *Manitoba Temperance Act, C. A.*, 1924 (*c.* 118), *s.* 114.]—R. *v.* ZENICK (Man.), [1927] 3 W. W. R. 424 ; 48 Can. Crim. Cas. 398.—**CAN.**

e i. —— ——.]—While where an offence consists not of an individual act but of a course of conduct, *e.g.*, the keeping of a disorderly house, it may be that if a peace officer saw over a period of time all the essential elements of the offence he could be said to have found the accused committing it, &, therefore, would be justified under s. 648 of the Code in arresting without warrant, yet, if the evidence is not sufficient to warrant a conviction, it follows that the peace officer who made the arrest could not have found the accused committing the offence.—R. *v.* BOTTLEY, [1929] 3 D. L. R. 766 ; 2 W. W. R. 76 ; 51 Can. Crim. Cas. 384 ; 24 Alta. L. R. 43.—**CAN.**

PART V. SECT 1, SUB-SECT. F. (a)

k i. *Warrant prematurely issued—Discharge on habeas corpus—Re-arrest.*]—*Ex p.* DAVID (N. B.), [1928] 3 D. L. R. 237 ; 49 Can. Crim. Cas. 381.—**CAN.**

l i. —— ——.]—R. *v.* LEADBETTER (N. S.), [1929] 1 D. L. R. 666 ; 51 Can. C. C. 66.—**CAN.**

custody without a warrant it is not necessary that the person should be in fact committing the offence, provided that the constable honestly & on reasonable grounds believes that the person is committing it.—ISAACS *v.* KEECH, [1925] 2 K. B. 354; 94 L. J. K. B. 676; 133 L. T. 347; 89 J. P. 189; 41 T. L. R. 432; 23 L. G. R. 444; 28 Cox, C. C. 22, D. C.

1663a. ——.]—BROWN'S CASE (1647), cited in 2 Hale, P. C. at p. 111.

Annotation :—**Refd.** Howard *v.* Gossett (1845), 5 L. T. O. S. 144.

1674. *Add. Annotation :*—**Consd.** Horsfield *v.* Brown, [1932] 1 K. B. 355.

1675. *Add. Annotation :*—**Refd.** Horsfield *v.* Brown, [1932] 1 K. B. 355.

1676. *Add. Annotation :*—**Consd.** Horsfield *v.* Brown, [1932] 1 K. B. 355.

1676a. —— **Application of Criminal Justice Act, 1925 (c. 86), s. 44.**]—Pltf. having left his wife & two children, his wife obtained a maintenance order under Summary Jurisdiction (Married Women) Act, 1895 (c. 39), for the payment by him of a weekly sum. Pltf. having failed to comply with the order, his wife made complaint to a magistrate at D., which was within the county of Chester, that £19 12*s.* 6*d.* was then in arrear under the order, & thereupon the magistrate issued a warrant, addressed to each & all of the constables of the county of Chester, commanding them to apprehend pltf. & convey him before a ct. of summary jurisdiction at D. to be dealt with according to law. The warrant showed on its face that £19 17*s.* was payable by pltf. & was in the form prescribed by the Bastardy (Forms) Order, 1915, but it did not contain the words "unless the said sum & all costs & charges be sooner paid" which were directed to be inserted in such warrants by the Bastardy (Forms) Amendment Order, 1921. The warrant was delivered to deft., the superintendent of police at D., & some time later pltf. was arrested by a constable acting under deft.'s orders. Pltf. was taken in custody through the streets & placed in a cell by deft.'s order. At the time the arrest was effected the warrant was in deft.'s possession at the police station & was not in the possession of the constable who made the arrest. Pltf.'s father immediately after the arrest tendered £19 17*s.* to deft. & asked for his son's release. but deft. refused to accept the money, Pltf.'s solr. then sent a letter to deft. enclosing the £19 17*s.* & demanding pltf.'s release. but deft. did not open the letter & pltf. was kept over-night in the cell. Pltf. was brought on the following morning before a court of summary jurisdiction at D., when solr.'s letter was produced & found to contain £19 17*s.*, whereupon the magistrates ordered pltf.'s immediate release. Pltf. brought an action against deft. for false imprisonment, & the jury returned a verdict in pltf.'s favour & awarded £175 as damages for the arrest, & £175 as damages for the unlawful detention at the police station after the tender of the money :—*Held :* (1) the warrant was invalid by reason of the omission therefrom of the words "unless the said sum & all costs & charges be sooner paid," inasmuch as the provision in the Summary Jurisdiction (Married Women) Act, 1895 (c. 39), that "the payment of any sum of money directed to be paid by any order under this Act may be enforced in the same manner as the payment of money is enforced under an order of affiliation," refers not to the date when that Act was passed, but to the date when it was sought to enforce the order, & in the present case at that date the Bastardy (Forms) Amendment Order, 1921, requiring the insertion of those words in the warrant, was in force; (2) the arrest was wrongful, because the constable had not the warrant in his possession at the time he effected the arrest; (3) deft. was not protected by Criminal Justice Act, 1925 (c. 86), s. 44, for in order to obtain that protection the warrant must have been lawfully issued, & the person apprehended must have been charged with an "offence," whereas in fact the warrant was invalid & pltf. was not charged with an "offence" within Criminal Justice Act, 1925 (c. 86).—HORSFIELD *v.* BROWN, [1932] 1 K. B. 355; 101 L. J. K. B. 177; 146 L. T. 280; 96 J. P. 123; 30 L. G. R. 153; 29 Cox, C. C. 422.

1678a. —— ——.]—BLATCHER *v.* KEMP (1782), 1 Hy. Bl. 15, n.; 126 E. R. 10.

Annotations :—**Consd.** R. *v.* Weir (1823), 1 B. & C. 288. **Apld.** A.-G. *v.* Jefferys (1824), M'Cle. 270.

1678b. —— —— **Except when issued to A. & constable.**]—WEATHERELL *v.* WATSON (1822), 1 L. J. O. S. K. B. 2.

1 ii. —— ——.]—*Re* DI LORENZO (1931), 55 Can. C. C. 326; 3 M. P. R. 214.—**CAN.**

sq. *Warrant must be in constable's possession.*]—Sect. 50 of Police Act, 1916, has not altered the rule that at the time when an officer executes a warrant of commitment for non-payment of a fine imposed under Motor Omnibus Act, 1926, he must have the warrant of commitment in his possession.—BULL *v.* LAING (1929), S. A. S. R. 65.—**AUS.**

PART V. SECT. 1, SUB-SECT. 2.—F. (b).

sr. *Inclusion of words not applicable.*]—Where deft.'s arrest was justified, as he was not prejudiced in any way :—*Held :* application for his discharge should be dismissed, notwithstanding the inclusion in the warrant of words which were not applicable & should have been omitted.—OVERSEERS OF THE POOR *v.* MARRYATT (1924), 42 Can. Crim. Cas. 132; 57 N. S. R. 315.—**CAN.**

st. *Description of prisoner—Sufficiency.*]—Appct. was arrested under the name of "Mrs. Richard F. Wade" :—*Held :* the description was sufficient as no one could possibly be misled by the description of the person contained in the warrant.—*Re* WADE (1918), 53 N. B. R. 424.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.—F. (c).

1674 iii. ——.]—Where an arrest is not justified without a warrant, it is necessary for the constable making the arrest to have the warrant in his personal possession, even although the person arrested does not demand its production. It is not sufficient that a warrant has been issued directed to "all or any of the police officers" of the province, & is in possession of a constable on whose instructions by telephone another constable at a different place makes the arrest & delivers the person arrested to the constable who holds the warrant.—R. *v.* LINDER, [1924] 3 D. L. R. 505; 2 W. W. R. 646; 20 Alta. L. R. 415.—**CAN.**

1680 v. ——.]—R. *v.* WARD (1923), 53 O. L. R. 569.—**CAN.**

1685 v. ——.]—An arrest on a Sunday under a warrant issued for an offence against Manitoba Temperance Act, C. A., 1924 (c. 118), is not illegal.—R. *v.* SMITH, [1927] 2 D. L. R. 982; [1927] 1 W. W. R. 734; 47 Can. Crim. Cas. 345; 35 Man. L. R. 386.—**CAN.**

sv. *Accused illegally under arrest without warrant.*]—Where, when a warrant was issued, accused was illegally under arrest because previously arrested without a warrant :—*Held :* it did not affect the validity of the warrant.—R. *v.* BARILKO, [1924] 1 W. W. R. 60; 41 Can. Crim. Cas. 193; 20 Alta. L. R. 126.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.

d i. —— *By other constables acting in concert.*]—The authority given by a search warrant to the constable to

1704a. —— **To rehear charge—Justices equally divided.**]—Appct. was charged with the indictable offence of causing grievous bodily harm by the reckless & wanton driving of a motor car. The justices were equally divided on the question whether appct. should be committed for trial, & they decided that appct. was not, in these circumstances, entitled to be discharged, & that they would adjourn & have the case reheard on a later date by a reconstituted bench. Appct. then obtained a rule *nisi* for a mandamus to the justices to order his discharge in pursuance of Indictable Offences Act, 1848 (c. 42), s. 25 :—*Held :* under that sect. the duty of the justices to discharge the accused arose only when they had reached an actual opinion that the evidence was not sufficient to put the accused upon his trial, &, as they had not reached such an opinion, they were entitled to adjourn the hearing for the purpose of having the bench reconstituted, & the rule must be discharged.—R. *v.* HERTFORDSHIRE JJ., *Ex p.* LARSEN, [1926] 1 K. B. 191; 95 L. J. K. B. 130; 134 L. T. 143; 89 J. P. 205; 42 T. L. R. 77; 28 Cox, C. C. 90, D. C.

1708. After this case add :—

—— **Right to free legal aid.**] — *See* Poor Prisoners' Defence Act, 1930 (c. 32), s. 2.

1714. After this case add :—

—— —— ——.]—*See, now,* Criminal Justice Act, 1925 (c. 86), s. 12; Indictable Offences Rules, 1926, Sched. (N.).

1718. After this case add :—

——.]—*See, now,* Criminal Justice Act, 1925 (c. 86), s. 12.

1790a. —— **Under Criminal Justice Act, 1925 (c. 86).**]—R. *v.* STROUD, *Ex p.* STROUD (1928), 72 Sol. Jo. 826, D. C.

whom it is addressed extends to the other constables acting in concert with him under it.—R. *v.* DIAMOND, [1924] 1 D. L. R. 1033; 1 W. W. R. 444; 42 Can. Crim. Cas. 90; 20 Alta. L. R. 60.—**CAN.**

d ii. —— *On Sunday—Invalid unless authorised by statute.*]—R. *v.* BOUGHNER (1930), 53 Can. C. C. 170.—**CAN.**

l i. —— *Validity of information.*]—The ct. refused to set aside a search warrant issued under the above Act, where the grounds of suspicion were written on a separate piece of paper attached to the information but not initialled.—R. *v.* WILSON, *Ex p.* HARRINGTON (1911), 40 N. B. R. 384.—**CAN.**

l ii. —— ——.]—A search warrant issued under the above Act will be quashed where no grounds of suspicion are stated in the information.—R. *v.* NICKERSON, *Ex p.* WESTON (1911), 40 N. B. R. 382.—**CAN.**

m i. ——.]—A search warrant issued under the Criminal Code which does not state or refer to the offence with respect to which the search is to be made is invalid.—*Re* R. & SOLLOWAY MILLS & CO., LTD., [1930] 1 W. W. R. 779; 3 D. L. R. 293; 53 Can. C. C. 261; 24 Alta. L. R. 410.—**CAN.**

sw. *Necessity for—Seizure of goods.*]—An officer of police, not acting under a search warrant, has no power to seize goods for the purpose of preserving them as evidence in a prosecution which he intends to launch against the person in possession of them, except as an incident of the arrest of that person.—LEVINE *v.* O'KEEFE, [1929] Argus L. R. 330.—**AUS.**

sx. *To search disorderly house—Form of police officer's report.*]—The objection that the police officer's report on which a search warrant was issued under sect. 641 of Criminal Code for an alleged disorderly house stated that the premises are "kept or used as a disorderly house as defined by the Criminal Code," although the words of sect. 641 are "kept or used as disorderly house as defined by sect. 229," was overruled, on the ground that since sect. 229 is the only section of the Code which defines a "disorderly house" the objection was without substance.—R. *v.* PLUMMER (Man.), [1930] 1 D. L. R. 766; 38 Man. L. R. 391; [1929] 3 W. W. R. 518; 52 Can. Crim. Cas. 288.—**CAN.**

sw. *Presumption of proper warrant—On search by constable.*]—R. *v.* MARTIN (Sask.) (1929), 52 Can. Crim. Cas. 367.—**CAN.**

sx. *Duty of magistrate.*]—*Held :* it was the duty of a constable who seized books & papers of defts. under a search warrant to carry them before the magistrate who issued the warrant or some other magistrate in the same territorial division, as required by sect. 629 of the Criminal Code, & it then became the magistrate's duty to deal with them according to law; that duty is a judicial one, not to be exercised arbitrarily, & the owner of the things seized is entitled to be heard by the magistrate before he decides what disposition is to be made of them. —R. *v.* SOLLOWAY & MILLS (1930), 54 Can. C. C. 248; 65 O. L. R. 667; *affg.* Can. C. C. 335; 65 O. L. R. 218.—**CAN.**

sy. ——.]—Where a charge was laid in Alberta a search warrant issued by a magistrate for that province with the intention of having it backed by a magistrate in British Columbia & which was so backed was held lawfully issued & backed &, therefore, one which could be lawfully executed in the latter province; & another warrant which was issued by a magistrate for the province of British Columbia authorising a search of a building therein with respect to the same prosecution was also held one which could be lawfully executed.—SOLLOWAY MILLS & CO., LTD. *v.* FRAWLEY, [1930] 2 W. W. R. 231; *sub nom.* SOLLOWAY MILLS & CO. *v.* A.-G. OF ALBERTA, [1930] 4 D. L. R. 235; 53 Can. C. C. 306; 42 B. C. R. 524; *revg.*, [1930] 4 D. L. R. 238; 53 Can. C. C. 234; 42 B. C. R. 513.—**CAN.**

sz. ——.]—*Re* R. *v.* SOLLOWAY & MILLS (1930), 54 Can. C. C. 214; 65 O. L. R. 677.—**CAN.**

sc. *Existence of warrant—Presumption from search.*]—When a constable has searched the premises of a person suspected of an offence it will be presumed, in the absence of proof to the contrary, that the constable was armed with the proper authority to make the search, especially when the evidence of the findings of the constable while making the search was admitted without objection.—R. *v.* MARTIN, [1930] 1 W. W. R. 598; 53 Can. C. C. 407.—**CAN.**

se. *Issue in one Province—In aid of prosecution in another.*]—A justice of the peace in the Province of Ontario has power to issue a search warrant in aid of a criminal prosecution in another Province.—R. *v.* SOLLOWAY & MILLS, [1930] 3 D. L. R. 770; 53 Can. C. C. 271; 65 O. L. R. 303.—**CAN.**

PART V. SECT. 2, SUB-SECT. 1.

a i. —— ——.]—R. *v.* MLAKER, [1923] 2 W. W. R. 296; 39 Can. Crim. Cas. 384.—**CAN.**

a ii. —— *To try charge without inquiring as to arrest.*]—Where an accused person is before a magistrate who has jurisdiction over the offence, the magistrate need not inquire how he came there, but may proceed to try the case, notwithstanding objection by accused that he was wrongfully arrested without warrant.—R. *v.* ALBERTS, [1924] 2 D. L. R. 863; 1 W. W. R. 863.—**CAN.**

c i. ——.]—If accused be found guilty of a lesser included offence, it is unnecessary to amend the charge.—QUN *v.* R., [1924] 4 D. L. R. 182.—**CAN.**

e i. —— *To hear charge on subsequent information—Prior illegal arrest.*]—If a person is duly charged with an offence on an information under oath, & is arrested on a warrant duly issued & brought before the magistrate, the magistrate's jurisdiction is not ousted by the fact that at the time of the information & arrest accused was under detention as the result of an illegal arrest without warrant.—R. *v.* JOHNSON, [1924] 3 D. L. R. 470; 1 W. W. R. 828; 34 Man. L. R. 100.—**CAN.**

e ii. —— *Prior illegal search.*]—*Held :* assuming a search to have been illegal, it did not affect subsequent proceedings under a warrant, & there was nothing to affect the jurisdiction of the magistrate.—R. *v.* DIPENTA (1924), 42 Can. Crim. Cas. 152; 57 N. S. R. 204.—**CAN.**

PART V. SECT 2, SUB-SECT. 2.—E.

sw. *Admissibility of—Whether notice to accused essential.*]—BRUNET *v.* R., [1928] 2 D. L. R. 254; [1928] S. C. R. 161; 49 Can. Crim. Cas. 257.—**CAN.**

PART V. SECT. 2, SUB-SECT. 3.

1781 i. *When remand granted.*]—On a prisoner being brought before a magistrate for trial on the day of the arrest the magistrate was informed both by the prisoner & by telegram from a counsel that the latter had been retained for the defence & was requested by them to grant an adjournment to permit of the counsel's attendance :—*Held :* the refusal under such circumstances of a reasonable remand was a wrongful denial to the accused of the right given him by the Criminal Code to make a full defence & have his counsel present.—R. *v.* HALICHUK (ELCHUK) (Man.), [1928] 1 D. L. R. 731; [1928] 1 W. W. R. 646.—**CAN.**

PART V. SECT. 2, SUB-SECT. 4.

a i. —— —— *Justifiable homicide.*]—R. *v.* DU GUAY, [1928] 2 W. W. R. 596; 50 Can. Crim. Cas. 318; 37 Man. L. R. 403.—**CAN.**

1793. *Add. Annotations:*—**Consd.** R. *v.* Beebe (1925), 133 L. T. 736. **Refd.** Statham *v.* Statham, [1929] P. 131.

1794. *Add. Annotation:*—**Refd.** R. *v.* Brixton Prison, *Ex p.* Shure, [1926] 1 K. B. 127.

1798a. Several prisoners charged on same facts—Differentiation of charges—One prisoner punishable summarily—Other prisoner punishable on indictment.]—When charges are to be brought against more than one prisoner on the same set of facts, it is desirable that the charges should not be so differentiated that one prisoner is tried by a jury, while another has no right to such mode of trial, unless there is good reason to the contrary.—R. *v.* COPE (1925), 94 L. J. K. B. 662; 132 L. T. 800; 89 J. P. 100; 41 T. L. R. 418; 27 Cox, C. C. 778; 18 Cr. App. Rep. 181, C. C. A.

1804. *Add. Annotation:*—**Consd.** R. *v.* Ely JJ., *Ex p.* Mann (1928), 93 J. P. 45.

1810a. *Add. Citations:*—[1924] 1 K. B. 248; 93 L. J. K. B. 65; 130 L. T. 414; 27 Cox, C. C. 581.

1810b. —— How proved.]—(1) An appeal lies to the Ct. of Criminal Appeal against a sentence passed on an alleged breach of a recognisance to be of good behaviour for a certain time, on the ground that applt. has not broken the recognisance.

(2) Breach of recognisance must be proved like any other fact alleged in a criminal ct. —R. *v.* SMITH, [1925] 1 K. B. 603; 94 L. J. K. B. 592; 132 L. T. 799; 89 J. P. 79; 41 T. L. R. 359; 27 Cox, C. C. 782; 18 Cr. App. Rep. 170, C. C. A.

1810c. —— ——.]—Breach of recognisance must be strictly proved.—R. *v.* BUTLER (1926), 19 Cr. App. Rep. 127, C. C. A.

Part VI.—Indictments.

1821. *Add. Annotation:*—**Consd.** The Torni (1932), 48 T. L. R. 471.

1823. *Add. Annotations:*—**Apld.** Stevens *v.* Aldershot Gas, Water & District Lighting Co. (Now Mid-Southern District Utility Co.) (1932), 74 L. Jo. 95. **Refd.** Scammell *v.* Hurley, [1929] 1 K. B. 419.

1826. *Add. Annotation:*—**Apld.** Hart *v.* Hudson, [1928] 2 K. B. 629.

1867. *Add. Annotation:*—**Consd.** The Torni (1932), 48 T. L. R. 471.

1900a. Receiving property—Known to have been obtained by fraud or false pretences.]—To receive goods knowing that the vendor obtained them on credit under false pretences or by means of fraud other than false pretences is not an offence known to the law. —R. *v.* SCHWELLER (1924), 18 Cr. App. Rep. 52, C. C. A.

1910a. Fresh indictment in respect of another offence—Founded on facts disclosed in depositions.]—Where a person has been committed for trial for one offence a fresh indictment cannot be preferred against him in respect of another offence, which comes within Vexatious Indictments Act, 1859 (c. 17), without the leave of the ct., even though such fresh indictment is founded on facts disclosed in the depositions.—R. *v.* MORGAN, [1925] 1 K. B. 752; 94 L. J. K. B. 672; 133 L. T. 94; 89 J. P. 135; 28 Cox, C. C. 1; 18 Cr. App. Rep. 180, C. C. A.

1913a. Multiplication of indictments—Disapproved.]—(1) The ct. entirely approves of a ct. of trial dealing with all outstanding charges against a convicted prisoner, at his request, whenever it can legally do so.

(2) The ct. disapproves of the multiplication of indictments when the allegations can be conveniently made in one indictment.—

1801 i. *Form of commitment—Omission of time of offence.]*—A warrant of commitment did not comply with Summary Convictions Act, B.C., 1915, in not fixing the time when the offence was committed:—*Held:* bad.—R. *v.* RODGERS, [1923] 3 W. W. R. 955; 41 Can. Crim. Cas. 190; 33 B. C. R. 16.—**CAN.**

1801 ii. *Error in statutory description of offence.]*—The use in the warrant of commitment of the words "ceremony of marriage" instead of "form of marriage," as in the statutory description, is no ground for setting aside a conviction, the meaning in both cases being the same & not distinguishable.—R. *v.* ROOP, [1924] 3 D. L. R. 985; 57 N. S. R. 325.—**CAN.**

PART V. SECT. 2, SUB-SECT. 5.

g i. ——.]—R. *v.* MCARTHUR'S BAIL (1897), 3 Terr. L. R. 37.—**CAN.**

sz. *Estreatment of recognisance.]*—The estreating of a recognisance by a magistrate may be carried out under Criminal Code, s. 1099, & any further necessary proceedings follow under the subsequent sects. without the requirement of any order of the cts.—R. *v.* MCCOY & BROWN (1921), 34 B. C. R. 14.—**CAN.**

sb. ——.]—R. *v.* MARRIOTT (1924), 57 N. S. R. 227.—**CAN.**

sc. —— *Notice of motion to accused & sureties necessary.]*—R. *v.* MCTAVISH, *Ex p.* BROWN (Man.), [1927] 1 D. L. R. 893; [1927] 1 W. W. R. 182; 47 Can. Crim. Cas. 251.—**CAN.**

se. —— *When ordered.]*—R. *v.* LEPICKI, [1925] 4 D. L. R. 170; [1925] 2 W. W. R. 726; 44 Can. Crim. Cas. 263.—**CAN.**

sf. —— —— *One surety bound instead of two.]*—R. *v.* CARVERY, *Ex p.* HOWE, [1925] 3 D. L. R. 414; 44 Can. Crim. Cas. 69.—**CAN.**

sg. —— ——.]—R. *v.* SULLIVAN (1914), 29 W. L. R. 115; 18 D. L. R. 535; 23 Can. Crim. Cas. 174.—**CAN.**

sl. —— —— *Within discretion of court.]*—The necessity of notice to an accused & his sureties of a motion for an order to estreat a recognisance does not depend on the existence of a Rule to that effect. Natural justice requires that before such an order be made the accused & his sureties should be given an opportunity of being heard. A judge before whom a motion for the estreat of a recognisance is made has a discretion, in view of all the circumstances, to refuse the order.—R. *v.* MCTAVISH, *Ex p.* BROWN (Man.), [1927] 1 D. L. R. 893; [1927] 1 W. W. R. 182; 47 Can. Crim. Cas. 251.—**CAN.**

sm. —— *Discharge of.]*—R. *v.* SCHRAM (1845), 2 U. C. R. 91.—**CAN.**

so. —— *Avoidance of.]*—R. *v.* MACDONALD (1925), 43 Can. Crim. Cas. 381. —**CAN.**

PART VI. SECT. 1.

sq. *Proceedings must be carried on in the King's name.]*—R. *v.* WOO TUCK (1928), 51 Can. C. C. 365; 46 Que. K. B. 437.—**CAN.**

sr. ——.]—CLARK *v.* MACWORTH (1931), 55 Can. C. C. 268.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 1.—A.

1814 iii. —— *Newly created offence.]* —A statute comes into force on the first moment of the day on which it receives the Royal assent, & if it be one creating a crime, an offence committed on that day, even although before the actual time at which the Royal assent was given, is within the Act.—R. *v.* ROCCO, [1924] 1 D. L. R. 501; 41 Can. Crim. Cas. 101.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.

1907 i. *Separate indictments in respect of same transaction—Where act constitutes more than one offence—Attempted carnal knowledge of young girl & indecent assault.]*—R. *v.* LANGLEY (N. B.), [1927] 3 D. L. R. 934; 48 Can. Crim. Cas. 293.—**CAN.**

R. *v.* TAYLOR (*alias* SAUNDERS, *alias* WALLACE) (1924), 18 Cr. App. Rep. 25, C. C. A.

Annotation:—*Generally*, **Refd.** R. *v.* Taylor (1926), 19 Cr. App. Rep. 146.

1913b. —— ——.]—R. *v.* CLARKE, No. 2115a, *post.*

1913c. —— ——.]—R. *v.* TYREMAN, No. 5359b, *post.*

1913d. —— ——.]—Offences which may lawfully be charged in one indictment ought not to be distributed into more.—R. *v.* SMITH (1926), 19 Cr. App. Rep. 151, C. C. A.

1913e. *S. P.* R. *v.* CARVER (1927), 20 Cr. App. Rep. 3, C. C. A.

1934. *Add. Annotation:*—**Folld.** R. *v.* Mosley, [1924] 2 K. B. 187.

1937a. —— ——.]—Counts for offences within Vexatious Indictments Act, 1859 (c. 17), may be added to the indictment without the leave of the ct. where they are founded on facts disclosed on the depositions.—R. *v.* MOSLEY, [1924] 2 K. B. 187; 93 L. J. K. B. 894; 130 L. T. 831; 88 J. P. 91; 68 Sol. Jo. 757; 27 Cox, C. C. 635; 18 Cr. App. Rep. 69, C. C. A.

Annotation:—**Refd.** R. *v.* Morgan, [1925] 1 K. B. 752.

1978a. Larceny—Specific articles stolen must be set out.]—R. *v.* DOUGLAS (1926), 19 Cr. App. Rep. 119, C. C. A.

1981a. —— ——.]—An indictment for obtaining by false pretences that omits the false pretence alleged is bad.—R. *v.* THOMAS (1931), 23 Cr. App. Rep. 21, C. C. A.

1992a. *S. P.* R. *v.* DRAKE (1850), 14 J. P. 483; 4 Cox, C. C. 333.

2076. *Add. Annotation:*—**Refd.** R. *v.* Friend (1930), 22 Cr. App. Rep. 130.

2102a. —— Prejudice to one defendant.]—Persons arrested together need not be tried together, &, if any one of them is likely to be embarrassed in his defence, ought not to be so tried. —R. *v.* TOWNSEND, R. *v.* HILDER (1924), 18 Cr. App. Rep. 117, C. C. A.

2105a. ——.]—When a statement by one accused intended to be put in evidence implicates another, the ct. should consider whether accused should not be tried separately.—R. *v.* SEYMOUR (1927), 20 Cr. App. Rep. 98, C. C. A.

2108. *Add. Annotation:*—**Folld.** R. *v.* Lonsdale (1930), 47 T. L. R. 80.

2109. *Add. Annotation:*—**N.F.** R. *v.* Lonsdale (1930), 47 T. L. R. 80.

2115a. —— ——.]—Indictments should not be multiplied, but where the law permits separate offences should be charged in separate counts of one indictment.—R. *v.* CLARKE (1925), 18 Cr. App. Rep. 166, C. C. A.

2119a. Leaving counts on file — Undesirable practice.]—R. *v.* TEAPE-WHITE (1930), 22 Cr. App. Rep. 93, C. C. A.

2119b. —— **When justified.**]—(1) If, on a crucial part of the case, the prosecution intend to ask the jury to disbelieve the evidence of a witness called for the defence, counsel for the prosecution ought to cross-examine that witness or, at any rate, to make it plain, while the witness is in the box, that his evidence is not accepted.

(2) An indictment should be allowed to remain on the file only in exceptional circumstances, as, for example, where it appears that the conviction on the first indictment may be quashed on appeal on some technical ground, & the indictment left on the file relates to a similar matter.—R. *v.* HART (1932), 23 Cr. App. Rep. 202, C. C. A.

2119c. Offence must be of similar character.]—R. *v.* HILL (1930), 22 Cr. App. Rep. 54, C. C. A.

PART VI. SECT. 4, SUB-SECT. 1.

t i. ——.]—Where the indictment was in the words of the enactment describing the offence:—*Held:* sufficient.—R. *v.* MCLACHLAN (1923), 56 N. S. R. 413; 41 Can. Crim. Cas. 249.—**CAN.**

k i. ——.]—R. *v.* CANADIAN ALLIS-CHALMERS, LTD. (1923), 54 O. L. R. 38.—**CAN.**

n i. *Identity of language with that of statute creating offence—"Car" used instead of "motor car."*]—R. *v.* YOUNG, [1928] 3 D. L. R. 225; 49 Can. Crim. Cas. 349; 60 N. S. R. 128.—**CAN.**

o i. —— *Value of stolen property.*]—An information should, therefore, state the value of the property alleged to have been stolen so as to determine to which class of crime the offence belongs & the nature of the proceedings to be taken.—R. *v.* THOMPSON, [1928] 4 D. L. R. 859; 50 Can. Crim. Cas. 183; 62 O. L. R. 610.—**CAN.**

sa. *Rape.*]—R. *v.* Ross, [1927] 1 D. L. R. 911; 47 Can. Crim. Cas. 71; 59 N. S. R. 55.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 2.

a i. ——.]—The inclusion of a number of *aliases* unnecessarily in a bill of indictment is contrary to the practice, is a deviation from the ordinary course of criminal justice, & should be deprecated. Whether it amounts to a substantial wrong to the accused is a question of degree.—R. *v.* NOLAN (1930), 43 B. C. R. 357.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 7.

sm. *Indecent exposure—"With intent to offend."*]—Where the facts alleged necessarily implied that the act charged was committed "wilfully": —*Held:* notwithstanding the omission of that word, the information was sufficient.—R. *v.* SMOTHERS (1924), 57 N. S. R. 179.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 8.—B. (a).

f i. ——.]—Where ingredients of two distinct offences had been mixed together in a charge contrary to the settled principles of criminal procedure & in violation of Criminal Code, s. 710 (3):—*Held:* prisoner was entitled to his discharge.—R. *v.* CHUE, [1924] 4 D. L. R. 300; 34 B. C. R. 177.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 9.—B.

2087 iii. ——.]—R. *v.* MCDONALD (Ont.), [1928] 2 D. L. R. 787; 50 Can. Crim. Cas. 65.—**CAN.**

2087 iv. ——.]—R. *v.* JENKINS, [1932] 3 W. W. R. 505.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 9.—C.

r. Read now "**2102a i.**"

s. Read now "**2102a ii.**"

t. Read now "**2102a iii.**"

a. Read now "**2102a iv.**"

2102a v. —— ——.]—R. *v.* WISER & MCCREIGHT, [1930] 1 W. W. R. 976; 54 Can. C. C. 117; 42 B. C. R. 517.—**CAN.**

2103 iii. ——.]—A man & a woman were tried jointly on the charge of having murdered the husband of the woman. They were convicted & sentenced to death. Each of the accused had applied to the trial judge for a separate trial, on the ground that statements had been made by each which would be admissible in evidence against the person making the statements, but which tended to incriminate the other accused, against whom the statements would be inadmissible. The trial judge had refused the applications:—*Held:* the refusal of the trial judge to grant separate trials did not amount to a miscarriage of justice, & afforded no ground of appeal. —A.-G. *v.* JOYCE, A.-G. *v.* WALSH, [1929] I. R. 526.—**IR.**

sc. *Charge of vagrancy.*]—*Ex p.* WRIGHT, *Ex p.* PARKER (1910), 54 Can. C. C. 310.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 10.—A.

g i. —— *Acquittal on two counts—Conviction on third—Validity.*]—*Held:* it was open to the jury to find as they did.—BARTON *v.* R., [1929] 1 D. L. R. 634; S. C. R. 42; 51 Can. C. C. 1; *affg.*, 63 O. L. R. 299.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 10.—B.

2120 v. ——.]—Where the trial judge had tried together fifteen charges against the prisoner for different offences:—*Held:* there was no reason disclosed to question his discretion in doing so, since he sat without a jury, & the offences were all of a similar character & connected together by being parts of a systematic course of criminal conduct pursued by prisoner. —R. *v.* DUFF (Sask.), [1929] 1 D. L. R. 152; 50 Can. Crim. Cas. 246; [1928] 3 W. W. R. 550.—**CAN.**

2120 vi. ——.]—The judge has jurisdiction to try separate counts at the same time whether or not the accused consents to their trial together.—R. *v.* NECEMBER, [1931] 2 W. W. R. 810;

2150. *Add. Annotation :*—**Consd.** R. *v.* Southern (1929), 142 L. T. 383.

2151. *Add. Annotation :*—**Consd.** R. *v.* Kendrick & Smith (1931), 144 L. T. 748.

2155a. —— -.]—R. *v.* LUBERG, No. 3156d, *post.*

2195. *Add. Annotation :*—**Refd.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

2204a. Wrong statute inserted—Later statute in similar words.]—The accused, who was a trustee under a will, was charged with having in Mar. 1916, fraudulently converted to his own use certain shares deposited with him by a co-trustee. In an affidavit filed by the accused in defence to proceedings for an account commenced against him by the co-trustee in the Ch. Div., the accused swore that he had, with the approval of his co-trustee, invested the capital in his own business. Subsequently, in his preliminary examination in bkpcy., he made admissions to the Official Receiver in regard to the disposition of the capital by him. He was indicted for fraudulent conversion as a trustee under Larceny Act, 1916 (c. 50), s. 21, but the judge, on his notice being brought to the fact that that Act was not in force at the time when the offence was alleged to have been committed, allowed the indictment to be amended by the substitution of Larceny Act, 1861 (c. 96), s. 80, for the later statute. The two statutes define the offence in almost precisely the same words :—*Held :* (1) the indictment was defective within Indictments Act, 1915 (c. 90), s. 5 (1), by reason of the wrong statute having been inserted, but in view of the fact that the offence under the earlier Act was defined in almost the same words as those used in the later Act, applt. could not have been prejudiced by the amendment, nor could injustice have been done to any defence that he might have had. The amendment was, therefore, rightly allowed ; (2) the accused was not protected from prosecution by Larceny Act, 1861 (c. 96), s. 85, either in regard to acts disclosed by his affidavit or in regard to acts disclosed by his preliminary examination in bkpcy., as such disclosures were not " in consequence of any compulsory process of any court of law " ; (3) the admissions in the preliminary examination in bkpcy. were not admissions made " in any compulsory examination or deposition before any ct. on the hearing of any matter in bkcpy.," & could, therefore, be given in evidence at the trial without infringing Larceny Act, 1916 (c. 50), s. 43 (3).—R. *v.* TUTTLE (1929), 140 L. T. 701 ; 45 T. L. R. 357 ; 21 Cr. App. Rep. 85 ; 28 Cox, C. C. 610, C. C. A.

2219a. ——.]—Applt. was accused of having obtained sums of money by way of deposit from persons, who desired to be employed as managers of public-houses, by representing to them that he would appoint them to those positions. The indictment contained eighteen counts, relating to nine distinct offences, which were charged alternatively as obtaining sums of money by false pretences, & as larceny by a trick of the same sums. In every one of the counts relating to false pretences, the indictment as originally framed ran : " by falsely pretending that he would appoint . . . as manager." At the close of the case for the prosecution the judge thought it right to amend the counts relating to false pretences so as to read " by falsely pretending that he was in a position to appoint," etc. The jury convicted applt. on all counts :—*Held :* (1) the conviction for false pretences must be quashed, as the amendment of an indictment allowed by Indictments Act, 1915 (c. 90), s. 5 (1), is an amendment of a defect in form, & not the alteration & revision of the substance of a charge, such as had taken place in this case, which must necessarily prejudice accused ; (2) the conviction for larceny must be quashed, because there was no evidence of larceny, as the persons seeking employment had in each case intended to part with their money ; (3) Larceny Act, 1916 (c. 50), s. 44 (3), could not apply where the indictment had charged false pretences & was up to the last moment wrong in substance.—R. *v.* HUGHES (1927), 136 L. T. 671 ; 91 J. P. 39 ; 43 T. L. R. 250 ; 28 Cox, C. C. 336, C. C. A.

56 Can. C. C. 110 ; 44 B. C. R. 210.—**CAN.**

2120 vii. ——.]—R. *v.* NECEMBER (No. 2), [1931] 3 W. W. R. 356 ; 56 Can. C. C. 391.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 10.—C.

p i. —— ——.]—R. *v.* CARTER, [1931] 2 W. W. R. 127 ; 55 Can. C. C. 196.—**CAN.**

p ii. —— *Suborning perjury & fabricating evidence.*]—The accused, who was charged in the one indictment with suborning perjury &, also, with fabricating evidence in connection with said offence, applied for an order requiring the Crown to sever the indictment & elect to proceed first on one or other of the two charges :—*Held :* the joinder was not conducive to the ends of justice &, therefore, the order should be granted.—R. *v.* BRAUN (Sask.), [1928] 3 W. W. R. 226 ; 50 Can. Crim. Cas. 292.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 10.—D.

r i. —— *Shopbreaking & receiving stolen goods.*]—R. *v.* CROSS (Sask.), [1927] 4 D. L. R. 923 ; [1927] 3 W. W. R. 432 ; 49 Can. Crim. Cas. 77.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 10.—E.

2152 i. *Cases requiring separate trial—Indecent assault & theft—Acts forming part of one transaction.*]—R. *v.* CASSIDY (Ont.), [1927] 4 D. L. R. 1106 ; 49 Can. Crim. Cas. 93.—**CAN.**

2161 i. *Cases not requiring separate trials—Similar acts—Separate indecent assaults.*]—An indictment charged accused with indecent assault upon one little girl, & indecent assault, involving murder, upon another little girl. Both offences were libelled as having been committed on the same day at S. :—*Held :* the offences charged were so connected in time, circumstances, & character as to justify their inclusion in one indictment, & no sufficient reason had been shown for separation of the charges.—H.M. ADVOCATE *v.* BICKERSTAFF, [1926] S. C. (J.) 65.—**SCOT.**

PART VI. SECT. 4, SUB-SECT. 13.

k i. —— *Attempt to give jurisdiction.*]—A person committed on a charge which a district ct. judge has no jurisdiction to try under any circstances, cannot be tried by such judge on a substituted charge, over which the judge has jurisdiction, on the election of accused.—R. *v.* CROVI, [1924] 4 D. L. R. 1072 ; 3 W. W. R. 534.—**CAN.**

r i. —— ——.]—An indictment disclosing no offence & bad in law, was amended at the trial so as to make it an entirely different charge :—*Held :* the amendment ought not to have been made.—R. *v.* LOFTUS (1926), 45 Can. Crim. Cas. 390 ; 59 O. L. R. 65.—**CAN.**

a (p. 236) **i.** —— ——.]—Defts. were convicted that they " did wrongfully & unlawfully break & enter by night the shop of S. with intent to commit an indictable offence ; to wit, to assault one S. contrary to the form of the statute in that behalf made & provided." The Crown intended to prefer a charge of shop breaking within sect. 461 of the Criminal Code :—*Held :* charge defective as lacking an averment of intent to commit an indictable offence in the shop.—R. *v.* MCNEIL, [1931] 3 M. P. R. 423.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 14.

2241 i. *Application must be made to court of trial.*]—R. *v.* HANEY, [1925] 2 D. L. R. 83 ; 43 Can. Crim. Cas. 297 ; 65 O. L. R. 293.—**CAN.**

2295a. Bill for rape—True bill found for indecent assault—Necessity for fresh indictment.]—An indictment for rape was put before the grand jury & they indorsed on it, "No true bill for rape. A true bill for indecent assault (aggravated)," but no indictment for indecent assault was put before the grand jury. The prisoner was convicted:—*Held:* as there was no true bill for rape, & as there was no indictment for indecent assault, the conviction must be quashed.—R. *v.* KITCHING (1929), 141 L. T. 687; 45 T. L. R. 569; 21 Cr. App. Rep. 116, C. C. A.; *subsequent proceedings*, 21 Cr. App. Rep. 144, C. C. A.

2316. For "Criminal Law Amendment Act, 1835 (c. 35)," read "Criminal Law Amendment Act, 1885 (c. 69)."

Part VII.—Trial of Indictments.

2365 *Add. Annotations:*—**Folld.** R. *v.* Dennis, R. *v.* Parker, [1924] 1 K. B. 867. **Apld.** R. *v.* McDonnell (1928), 20 Cr. App. Rep. 163. **Refd.** R. *v.* Williams (1925), 19 Cr. App. Rep. 67.

2365a. -.]—A criminal ct. has no jurisdiction to try two separate indictments against two defts. at one & the same time, even with the consent of counsel for the prosecution & counsel for defts.—R. *v.* DENNIS, R. *v.* PARKER, [1924] 1 K. B. 867; 93 L. J. K. B. 388; 130 L. T. 830; 88 J. P. 84; 40 T. L. R. 420; 68 Sol. Jo. 503; 27 Cox, C. C. 632; 18 Cr. App. Rep. 39, C. C. A.

2365b. —— ——.]—R. *v.* MCDONNELL (1928), 20 Cr. App. Rep. 163, C. C. A.

2404a. —— **Warranted in case of alibi.**]—(1) The police have no right to suggest by questions to a person detained in custody that they have evidence of his guilt; answers to such a suggestion are not admissible in evidence. (2) When the defence is an alibi defts. would do well to disclose it in the ct. below. Such a defence usually warrants legal aid.—R. *v.* BROWN & BRUCE (1931), 23 Cr. App. Rep. 56, C. C. A.

2409. After this case add:—
——.]—This Act is now replaced by Poor Prisoners' Defence Act, 1930 (c. 32).

2567. *Add. Annotations:*—**Folld.** R. *v.* Hussey (1924), 18 Cr. App. Rep. 121; R. *v.* Hancock (1931), 145 L. T. 168.

2567a. ——.]—(1) Applt. was charged upon an indictment with breaking & entering a house with intent to commit a felony. At the trial applt. pleaded guilty to entering only, which plea was treated as a plea of guilty generally:—*Held:* there was no plea of guilty & the case must go back, & prisoner asked to plead again to the indictment.
(2) Applt. at the trial asked that five charges of false pretences might be taken into consideration when awarding sentence, but the ct. refused as they were not offences of a similar nature to housebreaking:—*Held:* the ct. would not make an order that the ct. of quarter sessions should take into consideration the five cases of false pretences, but it might take them into consideration if certain conditions were fulfilled.—R. *v.* LLOYD (1923), 130 L. T. 319; 27 Cox, C. C. 576; 17 Cr. App. Rep. 184, C. C. A.

2571a. Plea of guilty—By person fit to plead but not responsible for his actions—Effect of plea.]—R. *v.* TEBBITT (1912), *Times*, Apr. 26,

2582. *Add. Annotation:*—**Refd.** R. *v.* Gordon (1925), 133 L. T. 734.

2585a. Crime involving more serious offence in foreign country—Possibility of prosecution by foreign Government.]—R. *v.* FRIEDERIKSEN (1927), 164 L. T. Jo. 45.

PART VI. SECT. 6.

2353 i. *Reasons for entering.*]—A *nolle prosequi* is usually granted where any improper & vexatious attempts are made to oppress deft., as by repeatedly preferring defective indictments for the same supposed offence or if it is clear that an indictment is not suitable against deft.—SHER SINGH *v.* JITENDRANATH SEN (1931), I. L. R. 59 Calc. 275.—**IND.**

PART VII. SECT. 1.

2365 i. *Separate indictments—Cannot be tried jointly.*]—A purported trial of two or more persons on separate charges for different offences is a nullity, even though their counsel offers no objection, or consents, thereto.—R. *v.* THEIRLYOCK (Alta.), [1928] 4 D. L. R. 431; [1928] 3 W. W. R. 225; 50 Can. Crim. Cas. 296.—**CAN.**

2365 ii. —— ——.]—R. *v.* HART, R. *v.* KOZARUK (1929), 51 Can. Crim. Cas. 145; 24 Alta. L. R. 15; [1929] 1 W. W. R. 425.—**CAN.**

a i. —— *Stealing parcels from mails & receiving parcels so stolen.*]—*Held:* accused entitled to be tried by a jury, even though the value of the property stolen did not exceed $200.—R. *v.* IWANCHUK, [1927] 3 D. L. R. 539; [1927] 2 W. W. R. 325; 48 Can. Crim. Cas. 213; 22 Alta. L. R. 595.—**CAN.**

a ii. —— *Right to elect for trial by judge without jury—After true bill found—Criminal Code, s.* 825.]—R. *v.* THOMPSON, R. *v.* FOULKES (1908), 16 Man. L. R. 608.—**CAN.**

a iii. —— —— *Effect of election.*]—R. *v.* RELF (Alta.), [1927] 1 D. L. R. 874; [1927] 1 W. W. R. 29; 47 Can. Crim. Cas. 38.—**CAN.**

sa. *Offence punishable on indictment or on summary conviction—Decision as to method of trial.*]—Where a statute makes an offence punishable on indictment or on summary conviction, it makes it either an indictable offence or a non-indictable offence, & confers on the Crown prosecutor or on the trial magistrate, perhaps partly on each, the right or "option" of deciding how each particular offence shall be considered, tried & punished.—R. *v.* DENIS (Man.), [1927] 3 W. W. R. 400; 49 Can. Crim. Cas. 8.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 1.—B. (b).

2399 i. *Defence by counsel—Accused must consent to representation.*]—No ct. has any authority to force upon a prisoner the services of a counsel if he is unwilling to accept them.—R. *v.* SUKH DEV (1929), I. L. R. 11 Lah. 220.—**IND.**

PART VII. SECT. 5, SUB-SECT. 1.

p i. —— *Effect of—Accused estopped from calling on prosecution to establish guilt.*]—R. *v.* ROVONELLI (1925), 44 Can. Crim. Cas. 354.—**CAN.**

p ii. -.]—A plea of guilty a plea to the charge & does not necessarily amount to a confession of all the facts alleged.—SUPERINTENDENT & REMEMBRANCER OF LEGAL AFFAIRS, BENGAL *v.* JNANENDRA NATH GHOSH (1929), I. L. R. 56 Calc. 1145.—**IND.**

p iii. —— *Induced by mistake—Right to withdraw.*]—R. *v.* AH TOM, [1928] 2 D. L. R. 748; 49 Can. Crim. Cas. 204; 60 N. S. R. 1.—**CAN.**

p iv. —— *Power of court to enter plea of not guilty.*]—Where an accused pleads guilty the ct. has inherent power to enter a plea of not guilty if for any reason the ct. deems it advisable in the interests of justice to put such a plea on the record.—R. *v.* KUMALO, [1930] App. D. 193.—**S. AF.**

q i. —— ——.]—Where accused is indicted for murder, the question of insanity is raised by a plea of not guilty as much as the fact of killing.—R. *v.* MCCOSKEY, [1927] 2 D. L. R. 539; 47 Can. Crim. Cas. 122; 60 O. L. R. 44.—**CAN.**

2710. *Add. Annotation :*—**Refd.** R. *v.* Birch (1924), 93 L. J. K. B. 385.

2730. *Add. Annotations :*—**Refd.** R. *v.* Birch (1924), 93 L. J. K. B. 385; R. *v.* Harris (1927), 20 Cr. App. Rep. 144.

2730a. —— —— ——.]—Where, at the trial of an accused person for a criminal offence, a witness for the prosecution denies statements contained in the deposition sworn by the witness at the police ct., & leave has been obtained to treat the witnesses as hostile, counsel for the prosecution is entitled to cross-examine the witness on the statements contained in the depositions taken before the justices. But the depositions are not evidence at the trial, though they may be used to impeach the credit of the witness.—R. *v.* Birch (1924), 93 L. J. K. B. 385; 88 J. P. 59; 40 T. L. R. 365; 68 Sol. Jo. 540; 18 Cr. App. Rep. 26, C. C. A.

2731a. After close of case for defence.]—A judge at a criminal trial has the right to call a witness not called by either the prosecution or the defence, without the consent of either the prosecution or the defence, if in his opinion that course is necessary in the interests of justice, but in order that injustice should not be done to accused, a judge should not call a witness in a criminal trial after the case for the defence is closed, except in a case where a matter arises *ex improviso*, which no human ingenuity can foresee, on the part of prisoner.—R. *v.* Harris, [1927] 2 K. B. 587; 96 L. J. K. B. 1069; 137 L. T. 535; 91 J. P. 152; 43 T. L. R. 774; 28 Cox, C. C. 432; 20 Cr. App. Rep. 86, C. C. A.

Annotation :—**Distd.** R. *v.* Liddle (1928), 21 Cr. App. Rep. 3.

2731b. Where defence of alibi raised.]—R. *v.* Liddle (1928), 21 Cr. App. Rep. 3, C. C. A.

2810. *Add. Citation :*—1 Chit. 352.

2823. *Add. Annotation :*—**Apld.** R. *v.* Baggott (1927), 20 Cr. App. Rep. 92.

2839a. Reference to fact that photographs of accused shown to witnesses.]—(1) Counsel for the prosecution should not employ as part of his case the fact that certain witnesses have been shown a photograph of prisoner, even if the showing of the photograph was perfectly proper.

(2) Where a police witness has been asked by prisoner "where did I stay on the night of the alleged crime?" &, in his answer, has launched a series of fresh charges against the accused, relating to his stay at that place, but based on mere suspicion & not included in the indictment or referred to in the depositions, an irregularity has occurred which goes to the root of a conviction & necessitates that it should be quashed.

(3) Where a successful applt. has a previous unexpired sentence to serve, the ct. will generally order that the time that has elapsed between the notice & the determination of the appeal which has succeeded shall count towards the completion of the earlier sentence, even though there has been no application by applt. to that effect.—R. *v.* Haslam (1925), 134 L. T. 158; 28 Cox, C. C. 105; 19 Cr. App. Rep. 59, C. C. A.

Annotation :—*As to* (1) **Refd.** R. *v.* Daily Mirror, *Ex p.* Smith, [1927] 1 K. B. 845.

2839b. Second trial—Reference to quashed conviction.]—(1) On an allegation of breaking & entering the jury must be directed on the issue of breaking.

(2) When a trial has been set aside on a *venire de novo* the conviction quashed should not be mentioned to the jury at the second trial.—R. *v.* Lloyd (1924), 18 Cr. App Rep. 12, C. C. A.

2839c. Overstatements.]—R. *v.* Driscoll & Rowlands (1928), 20 Cr. App. Rep. 161, C. C. A.

2840a. Duty of prosecution to disclose everything.]—(1) The prosecution ought to disclose at the trial all relevant evidence. (2) Deft. who gives evidence of his previous conviction cannot set up that that evidence has been wrongly admitted.—R. *v.* Guerin (1931), 23 Cr. App. Rep. 39, C. C. A.

2867. *Add. Annotations :*—**Refd.** R. *v.* Harris, [1927] 2 K. B. 587; R. *v.* Liddle (1928), 21 Cr. App. Rep. 3.

E. Reading Deposition of Absent Witness.
(Vol. XIV., p. 276.)

See, now, Criminal Justice Act, 1925 (c. 86), s. 13.

PART VII. SECT. 6, SUB-SECT. 2.—B.

e i. —— *Evidence must be shown to be material.*]—R. *v.* Carrier (Sask.) (1929), 51 Can. Crim. Cas. 420.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 6.—C.

sc. *Effect of cross-examination of party's own witness.*]—Where a party is allowed to cross-examine his own witness, the effect of that cross-examination must be to discredit that witness altogether & not merely to get rid of part of his testimony, & hence that witness's evidence must be excluded altogether. In the case of a witness for the prosecution, this means, so far as it supports the case for the prosecution, for obviously the defence is entitled to rely on so much of his evidence as supports their case.—R. *v.* Mokbul Khan (1928), I. L. R. 56 Calc. 145.—**IND.**

PART VII. SECT. 7, SUB-SECT. 6.—D.

se. *After close of case for prosecution—Witness called to supply omission in evidence.*]—It. *v.* Hepworth, [1928] App. D. 205.—**S. AF.**

sf. *After plea of guilty—Taking evidence of complainant—For purpose of deciding sentence.*]—While it is within the power of the judge, after a plea of guilty has been entered & before sentence is passed, to hear the evidence of the complainant in order to assist him in deciding on the proper sentence, he must avoid the danger of giving consideration, in passing sentence, to aggravating circumstances disclosed by such evidence which may change the character of the offence charged against the prisoner.—R. *v.* Whepdale, [1927] 3 W. W. R. 704; 49 Can. Crim. Cas. 62; 22 Sask. L. R. 148.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 7.—B.

2816 iii. —— ——.]—The duty of a Public Prosecutor is to represent, not the police, but the Crown, & this duty should be discharged fairly & fearlessly & with a full sense of the responsibility attaching to the position. In a capital case the duty of the Crown is to place before the ct. all materials irrespective of the question as to whether they exculpate accused or incriminate him. —Kunja Subudhi *v.* R. (1928), I. L. R. 8 Pat. 289.—**IND.**

PART VII. SECT. 7, SUB-SECT. 7.—D. (a).

2859 i. *Accused may insist on witness being called—By prosecution.*]—R. *v.* Mackinnon, [1930] 3 W. W. R. 548.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 7.—E. (a).

h i. ——.]—*Held :* the mere fact that accused did not have the assistance of a legal adviser did not show that he had not had a full opportunity for cross-examination, as he was present when the deposition was taken & made no request for time or delay.—R. *v.* McDonald, [1927] App. D. 110.—**S. AF.**

k i. ——.]—R. *v.* McDonald, [1927] App. D. 110.—**S. AF.**

p i. —— —— *Whether attendance procurable under subpœna.*]—G. was indicted for incest. S., a daughter of accused, who had made a deposition at petty sessions in which she swore that accused had committed the alleged offence, was called as a witness at the trial, & failed to appear, having gone into the Irish Free State. Her deposition was read to the jury, who having heard the accused's evidence, convicted him of the offence charged: —*Held :* the conviction should be quashed, as it had not been shown that the attendance of the witness, whose

2879a. —.]—On a plea of guilty (1) there must be legal proof of any previous convictions given in evidence, & (2) no deposition of a witness, absent through illness, should be put in if all the statutory requirements in such a case have not been fulfilled. —R. *v.* FINNEY (1924), 18 Cr. App. Rep. 41, C. C. A.

2895a. *S. P.* R. *v.* HUNT (1847), 2 Cox, C. C. 261.

2986a. Defence of alibi—Should be raised at earliest possible moment.]—R. *v.* JONES (1928), 21 Cr. App. Rep. 27, C. C. A.

2986b. —— Should be raised in court below.]—R. *v.* BROWN & BRUCE, No. 2404a, *ante*.

2988a. —— Should not refer to probable consequences of verdict of guilty in murder trial.] —R. *v.* FRAMPTON (1928), 21 Cr. App. Rep. 17, C. C. A.

2995a. ——.]—If the ct. is of opinion that there is no case against accused, it ought to be withdrawn from the jury.—R. *v.* HASLAM (1926), 19 Cr. App. Rep. 163, C. C. A.

3007a. ——.]—(1) On a trial for larceny as a bailee there must be a direction on the point whether the conversion was fraudulent or not.

(2) An accused person must be asked whether he wishes to give evidence on oath or call witnesses.—R. *v.* MOORE (1924), 18 Cr. App. Rep. 29, C. C. A.

3008. *Add. Annotation :*—**Distd.** R. *v.* Villars (1927), 20 Cr. App. Rep. 150.

3009. *Add. Annotation :*—**Folld.** R. *v.* Villars (1927), 20 Cr. App. Rep. 150.

3010a. Should give evidence from witness box.]—A deft. is entitled under Criminal Evidence Act, 1898 (c. 36), to give his evidence from the witness box. The ct. in ordering otherwise must exercise a judicial discretion.—R. *v.* SYMONDS (1924), 18 Cr. App. Rep. 100, C. C. A.

3011a. ——.]—A deft. witness may in a proper case be asked in cross-examination whether he imputes improper motives to the witnesses against him.—R. *v.* WILSON (1924), 18 Cr. App. Rep. 108, C. C. A.

3051. *Add. Annotation :*—**Refd.** R. *v.* Dunkley (1926), 134 L. T. 632.

3056. *Add. Annotation :* — **Refd.** R. Harris, [1927] 2 K. B. 587.

3060. *Add. Annotation* —**Refd.** R. *v.* Harris, [1927] 2 K. B. 587.

3063. *Add. Annotation :*—**Refd.** R. *v.* Harris, [1927] 2 K. B. 587.

3065. *Add. Annotation :*—**Refd.** R. *v.* Harris, [1927] 2 K. B. 587.

3090a. Accused writing & handing in signature.]—Counsel for the prosecution is not entitled to a second speech against accused, because at the jury's request the latter writes his signature & hands it in.—R. *v.* BAGGOTT (1927), 20 Cr. App. Rep. 92, C. C. A.

3120a. —— To assist undefended prisoner—To cross-examine.]—The ct. should assist an undefended prisoner in putting questions by way of cross-examination.—R. *v.* BARKER (1927), 20 Cr. App. Rep. 70, C. C. A.

deposition had been put in evidence, could not have been procured by service on her of a writ of subpœna under the Irish Free State Act, 1924.—R. *v.* GILCHRIST, [1925] N. 27.—**IR.**

p ii. —— ——.]—R. *v.* BELL, [1930] 2 D. L. R. 647 ; 53 Can. C. C. 44 ; 42 B. C. R. 136.—**CAN.**

p iii. —— —— *Seaman.*]—On applying sect. 999 of the Criminal Code, with respect to the depositions of certain witnesses alleged to have recently left Vancouver as part of the Japanese crew of a steamer bound for the Orient & therefore to be "absent from Canada" :—*Held :* the fact that names appeared on the crew list similar to the names of said witnesses was, in the absence of evidence to the contrary, & in view of the regulations governing the landing of Japanese sailors & the other circumstances, sufficient to show the identity of said members of the crew with said witnesses & to justify the inference that the witnesses were absent from Canada.—R. *v.* FURUZAWA (No. 1), [1930] 1 W. W. R. 953 ; 955 ; 53 Can. C. C. 398 ; 42 B. C. R. 541, 548.—**CAN.**

p iv. —— *Witness dangerously ill—Use of.*]—Under Crimes Act, 1900, s. 406, only so much of a deposition tendered in evidence should be read to the jury as is relevant & properly admissible in evidence.—R. *v.* GLOVER (1928), S. R. N. S. W. 482 ; 45 N. S. W. W. N. 148.—**AUS.**

sp. *Proof of absence.*]—CAUFIELD *v.* R. (1926), 48 Can. Crim. Cas. 109 ; Q. R. 42 K. B. 449.—**CAN.**

sr. *Evidence given in former trial—Admission by counsel of facts essential to admission.*]—Applts. were convicted of removing, & two of them of importing, goods of over $200 in value & liable to forfeiture, contrary to Customs Act, R. S. C., 1927. At their trial the Crown proposed to put in, under sect. 999 of the Code, evidence given at previous trials, at which the juries had disagreed, by one W. Counsel for the accused admitted "every fact essential to the admission of the evidence," & the evidence offered was put in :—*Held :* the admission of counsel, while it rendered unnecessary the establishment of the various facts required by sect. 999 to be proved before the evidence of W. could have been admitted, did not in any way identify the documents read to the jury as the evidence given by W. on the former trials ; &, there being no proof that the statements put in were in fact the evidence of W., & there being no consent that they were, they were wrongly received, & applts. were entitled to a new trial.—MCDONALD, CONTER & O'HEARN *v.* R., [1930] S. C. R. 569 ; 54 Can. C. C. 349.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 8.—B.

sq. *Full cross-examination impossible through act of prosecution—Right to acquittal.*]—QUEBEC LIQUOR COMMISSION *v.* GOULET (Que.) (1929), 52 Can. Crim. Cas. 392.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 8.—C.

k i. —— ——.]—Where a person is charged with stealing goods, & the fact that the goods were sold & delivered to him is proved in evidence, the case must not be allowed to go to the jury.—R. *v.* FIESSEL (1924), 42 Can. Crim. Cas. 150.—**CAN.**

st. *Trial without jury—Defending counsel entitled to make submission that evidence for Crown insufficient.*]—R. *v.* JONES (Sask.), [1927] 3 D. L. R. 679 ; 47 Can. Crim. Cas. 380 ; [1926] 3 W. W. R. 313.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 8.—D.

3011 iii. —— *As to previous conviction.*]—R. *v.* CIPPOLA (Ont.) (1928), 49 Can. Crim. Cas. 129.—**CAN.**

o i. —— ——.]—Two panels, tried together on one complaint, each gave evidence under Criminal Evidence Act, 1898, s. 1. In the opinion of the judge the evidence of neither incriminated the other :—*Held :* neither was entitled to cross-examine the other, such right of cross-examination being limited to the case where, in the opinion of the judge, the evidence given incriminated, or tended to incriminate, the fellow panel.—GEMMELL & M'FAYDEN *v.* MACNIVEN, [1928] S. C. (J.) 5.—**SCOT.**

PART VII. SECT. 7, SUB-SECT. 9.—A.

3061 i. —— *Evidence omitted inadvertently.*]—R. *v.* GREGOIRE (1927), 47 Can. Crim. Cas. 288 ; 60 O. L. R. 363.—**CAN.**

k i. ——.]—*Held :* it was incompetent for the prosecutor to recall a witness after the case for the prosecution had been closed ; the only circumstances in which a witness might be recalled after the case had been closed being when this was done by the judge *ex proprio motu* in order to clear up an ambiguity in the witness's evidence.—M'NEILIE *v.* H.M. ADVOCATE, [1929] S. C. (J.) 50.—**SCOT.**

PART VII. SECT. 7, SUB-SECT. 10.—B.

f i. ——.]—Where it was objected that the A.-G. exercised the right of reply, although deft. had called no witnesses :—*Held :* the A.-G. was not bound to sum up for the Crown on the conclusion of the evidence of the prosecution, but had the right of reply.—R. *v.* MCLACHLAN (1923), 56 N. S. R. 413 ; 41 Can. Crim. Cas. 249.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 11.

h i. —— *To decide whether evidence admissible.*]—If evidence is tendered to prove the inadmissibility of evidence *primâ facie* admissible, it is the duty of the judge to receive & to decide the question of admissibility before the evidence is given in the hearing of the jury.—R. *v.* TREANOR, R. *v.* FLOOD, R. *v.* TREANOR, R. *v.* KELLY, [1924] 2 I. R. 193.—**IR.**

3120b. **To inform prisoner of right to give evidence on oath.**]—R. *v.* VILLARS (1927), 20 Cr. App. Rep. 150, C. C. A.

3122a. —— **Does not include making disparaging suggestions.**]—There ought not to be a suggestion from the judge that deft. on trial has previously appeared in a criminal ct.—R. *v.* MILLER (1926), 19 Cr. App. Rep. 84, C. C. A.

3129a. ——.]—A direction must make it clear that the *onus* of proof is on the prosecution.—R. *v.* HAYTON (1925), 18 Cr. App. Rep. 169, C. C. A.

3129b. ——.]—

facts is in direct conflict, the jury should be directed that, if they are in doubt which version of the facts to accept, they should acquit.

Observations on (2) the granting of bail by the trial judge, & on (3) the relation of his opinion of the verdict to the appeal.—R. *v.* DAVIDSON (1927), 20 Cr. App. Rep. 66, C. C. A.

3129c. ——.]—A summing up must make it clear to the jury, especially where there is conflicting evidence, that the *onus* of proof is on the prosecution.—R. *v.* REES (1928), 21 Cr. App. Rep. 35, C. C. A.

3133a. —— —— ——.]—While a judge is entitled to express his view of any evidence, he ought not to " invite " the jury to make a definite finding: any expression of his own views ought to be accompanied by a direction that the right of deciding on the facts is solely theirs.—R. *v.* MASON (1924), 18 Cr. App. Rep. 131, C. C. A.

3136a. Avoidance of unhappy expressions suggesting guilt of accused.]—(1) In a direction upon the evidence of children of tender years, there must be a clear warning about the nature of such evidence.

(2) It is wrong to invite a jury to consider whether deft. is " the sort of person " likely to commit the offence charged.—R. *v.* MARSHALL (1925), 18 Cr. App. Rep. 164, C. C. A.

3136b. Abandoned counts not to be referred to.]—(1) A summing-up must not call attention to counts that have been abandoned.

(2) On an indictment for obtaining by false pretences representations which did not lead to delivery of the property must be carefully distinguished from those which did.

(3) In dealing with intent to defraud the possibility of mistake should be considered in directing the jury.—R. *v.* GREEN (1930), 22 Cr. App. Rep. 46, C. C. A.

3137a. Where identity of accused in issue.]—(1) When the issue is identity of accused, especial care is needed in the charge to the jury; there ought to be a direction to them on his silence, if & when he hears a prejudicial statement.

(2) After notice of appeal, supplementary grounds should only be presented to the ct., if they disclose new matter.—R. *v.* PORTER (1927), 20 Cr. App. Rep. 55, C. C. A.

Annotation :—Generally, **Refd.** R. *v.* Walters (1927), 20 Cr. App. Rep. 69.

3145a. ——.]—A judge in summing up is bound to put deft.'s case to the jury. A mere

h ii. —— *To decide whether witness by his admission is accomplice.*]—It is for the judge, & not for the jury, to decide on an admission by a witness whether he is or is not an accomplice.—R. *v.* YOUNG, [1923] S. A. S. R. 35.—**AUS.**

l i. —— ——.]—Since it is competent for a judge trying a criminal case with a jury to express his own opinions on the evidence, provided he makes it clear to them that they are the judges of the facts, including the credibility of the witnesses, the fact that during the cross-examination of a witness the judge interjected without qualification the remark, " She is telling the truth," thereby invading the exclusive province of the jury, was held, in view of his full & very careful charge which left them in no doubt that it was their exclusive duty to pass on the truth of the evidence, not to have brought about a miscarriage of justice within the Criminal Code, s. 1014 (*c*).—R. *v.* OLSON, [1929] 2 D. L. R. 300; 1 W. W. R. 431; 51 Can. Crim. Cas. 122; 23 S. L. R. 321.—**CAN.**

3122 i. *Function of judge—Includes asking leading questions—& suggesting to counsel to waive their rights to address jury.*]—R. *v.* WEST (1925), 44 Can. Crim. Cas. 109; 57 O. L. R. 446.—**CAN.**

3122 ii. —— *Does not include asking leading questions.*]—A judge is not entitled to put leading questions to a witness, the answers to which are calculated to prejudice accused.—R. *v.* LAUBSCHER, [1926] App. D. 276.—**S. AF.**

PART VII. SECT. 7, SUB-SECT. 12.—A.

3129 i. *Direction as to onus of proof.*]—R. *v.* KOLOMEJYC (Man.), [1926] 2 W. W. R. 126; 46 Can. Crim. Cas. 35.—**CAN.**

3133 iv. —— —— ——.]—A judge, in summing up to a jury in a criminal case, is entitled to comment strongly on the facts.—R. *v.* SUTHERLAND, [1927] App. D. 88.—**S. AF.**

3133 v. —— —— ——.]—R. *v.* GALLEN (1930), 53 Can. C. C. 396.—**CAN.**

g (p. 297) **i.** —— *Where jury disagree.*]—A direction which amounted to no more than telling the jury that it was the duty of the minority not to allow any wilful or obstinate adherence to their own view to prevent them from giving full consideration to the view of the majority :—*Held :* not a misdirection.—R. *v.* OLHOLM & MCPHERSON, [1925] V. L. R. 377; 47 A. L. T. 10; 31 Argus. L. R. 228.—**AUS.**

g (p. 297) **ii.** ——.]—It is advisable, but not essential, for the judge to explain to the jury that they are the sole judges of fact & are to rely upon their recollection of the evidence.—R. *v.* BECKETT (1931), 3 D. L. R. 660; 55 Can. C. C. 304; 3 M. P. R. 416.—**CAN.**

g (p. 298) **i.** —— *Distinction between evidence of facts & expert opinions.*]—Where there is not only no direct testimony of eye-witnesses that an alleged criminal act was committed, but there is the direct testimony of an eye-witness called by the Crown that the act had not been committed, & the Crown relies on a chain of circumstantial evidence in which the opinions of scientific witnesses are referred to as an important link, the charge to the jury should point out the importance of the distinction between evidence of scientific opinion & evidence of actual material facts & sufficiently remind the jury that such opinions were not testimony as to facts, & should specifically direct that the circumstances proven as actual objective facts must not only be consistent with the guilt of accused but must also be inconsistent with any reasonable hypothesis which would leave him innocent.—R. *v.* HISLOP, [1925] 1 W. W. R. 887; 43 Can. Crim. Cas. 384.—**CAN.**

a i. —— —— *Statements as to powers of Court of Criminal Appeal.*]—A judge in his charge to the jury made statements to the effect that " In the Ct. of Criminal Appeal, in the event of your finding a verdict of guilty, prisoner's counsel is entitled to have the whole matter reviewed," & " When a case goes to the Ct. of Criminal Appeal the natural bent of their minds is to give prisoner the benefit of the doubt " :—*Held :* the statements, taken in their proper context, did not amount to misdirection of such a character as to render the trial unsatisfactory, though it was desirable that such references to the Ct. of Criminal Appeal should not be made.—A.-G. *v.* MURRAY, [1926] I. R. 266.—**IR.**

a ii. —— —— *Reading passages from law reports.*]—Though reading passages from law reports is, as a rule, undesirable, it is not a misdirection.—R. *v.* NGA TIN GYI (1926), I. L. R. 4 Ran. 488.—**IND.**

a iii. —— —— *Reference to opinion in text book.*]—It is irregular & improper for the presiding judge in his summing up to the jury in a criminal trial to refer to an opinion expressed in a text-book, even though another passage in the same book has been put to a witness during the course of the trial.—R. *v.* MOFOKENG, [1928] App. D. 132.—**S. AF.**

k (p. 298) **i.** —— *Failure to make Effect.*]—A fair test of the propriety of a trial judge's charge to the jury is that no objection was taken to it at the time it was delivered.—R. *v.* MELYNIUK & HUMENIUK, [1930] 2 W. W. R. 179; 4 D. L. R. 462; 53 Can. C. C. 296; 24 Alta. L. R. 545; *affd.*, [1931] S. C. R. 143; 2 D. L. R. 518.—**CAN.**

expression of the view of the judge is not sufficient to dispense with the duty of putting the case for the defence to the jury.—R. *v.* MARRIOTT (1924), 18 Cr. App. Rep. 74, C. C. A.

3145b. ——.]—A summing-up must deal carefully with statements by deft. which are not necessarily admissions though they may be so construed. Full effect must be given to the evidence of witnesses for the defence.—R. *v.* ROSEN (1931), 23 Cr. App. Rep. 70, C. C. A.

3146. *Add. Annotations:*—**Folld.** R. *v.* Thorpe (1925), 133 L. T. 95. **Refd.** R. *v.* Canham (1925), 18 Cr. App. Rep. 163.

3146a. —— ——.]—Where a prisoner is charged with murder, & there is evidence on which a verdict of manslaughter could be found, it is the duty of the judge to leave to the jury the question whether the crime committed has or has not been reduced to manslaughter, even though that defence has not been raised & even though that defence is inconsistent with the defence actually raised; but a judge should not leave the question of manslaughter to the jury, where there is no evidence upon which such a verdict could be based.—R. *v.* THORPE (1925), 133 L. T. 95; 89 J. P. 143; 41 T. L. R. 468; 69 Sol. Jo. 525; 28 Cox, C. C. 4; 18 Cr. App. Rep. 189, C. C. A.

3151a. —— **Defendant's explanation of facts.**]—The direction to the jury should deal with deft.'s explanation of facts alleged against him.—R. *v.* MORDECAI (1930), 22 Cr. App. Rep. 146, C. C. A.

3151b. —— **Alibi.**]—(1) Detailed evidence of an *alibi* & other evidence must be carefully dealt with in the charge to the jury. (2) The judge should not put questions to a witness suggesting that he, the judge, is satisfied of deft.'s guilt.—R. *v.* RABBITT (1931), 23 Cr. App. Rep. 112, C. C. A.

3151c. Must warn jury against accepting mere suggestion by prosecution in cross-examination—No evidence in support.]—The jury must be warned against the acceptance of a mere suggestion by the Crown in cross-examination unsupported by evidence on a material point.—R. *v.* ALEXANDER (1924), 18 Cr. App. Rep. 139, C. C. A.

3156a. Indictment alleging several offences—Cases must be clearly distinguished.]—When an indictment alleges specific offences on distinct dates the jury should be warned to deal with each occasion separately, & not to permit inadequate evidence in the one to supplement inadequate evidence in the other.—R. *v.* Ross (1924), 18 Cr. App. Rep. 141, C. C. A.

3156b. —— ——.]—Where an indictment for indecent assault contains a number of counts, each count charging a separate assault on a different person, the jury should be directed not to return a general verdict but to return a verdict on each count, & they should also be warned to draw a careful distinction between the evidence on each count & the evidence on every other count & not to supplement the evidence on any particular count by looking at the evidence as a whole.—R. *v.* BAILEY, [1924] 2 K. B. 300; 93 L. J. K. B. 989; 132 L. T. 349; 88 J. P. 72; 27 Cox, C. C. 692; 18 Cr. App. Rep. 42, C. C. A.

Annotation:—**Apld.** R. *v.* Southern (1929), 142 L. T. 383.

3156c. —— ——.]—If counts for fraudulent conversion & for obtaining by false pretences are left to the jury, they must be directed on each offence.—R. *v.* MACLENNAN (1925), 19 Cr. App. Rep. 37, C. C. A.

3156d. —— —— **Indictment containing count for conspiracy.**]—(1) Where several prisoners are tried together upon an indictment containing counts for various offences against them individually & also a general count for conspiracy against them all, great care should be taken in directing the jury to keep the issues clear & to explain the relation of each count to the general count for conspiracy. In such a case it is a misdirection for the judge to tell the jury: "You must take the case as a whole & not in bits."

(2) Observations on the practice of charging a specific crime & adding a charge of conspiracy to commit that crime.—R. *v.* LUBERG (1926), 135 L. T. 414; 90 J. P. 183; 28 Cox, C. C. 264; 19 Cr. App. Rep. 133, C. C. A.

3156e. —— -.]—(1) In cross-examination of a person accused of a sexual offence, questions should not be asked tending to show that he is a person likely to commit the offence alleged.

(2) If separate charges are included in an indictment, the jury should be carefully cautioned against allowing one to corroborate the other.—R. *v.* COULMAN (1927), 20 Cr. App. Rep. 106, C. C. A.

3156f. —— ——.]—(1) A prisoner was charged with two distinct sexual offences, one against a young boy, & the other against a girl aged five. The charges were included in one indictment & were tried together. In his summing-up the judge referred first to the evidence relating to one offence, & subsequently to the evidence relating to the other, but he did not warn the jury that they must be careful to distinguish the evidence relating to one offence from the evidence relating to the other, & that they must not supplement the evidence in regard to one of the offences by looking at the evidence as a whole, nor were the jury directed to find separate verdicts on each charge:—*Held:* the conviction must be quashed.

(2) With regard to the offence against the girl, corroboration was required by Children Act, 1908 (c. 67), s. 30, & there was evidence which might be regarded as corroboration of her story. The judge, in his summing-up, referred to this evidence, but made no reference either to the statute or to the necessity for corroboration in this case:—*Held:* though the mere omission to refer to the statute would not in itself be a ground for quashing the conviction, yet since neither the statute nor the necessity for corroboration had been brought to the attention of the jury, the conviction must be quashed on that ground also.

(3) Where corroboration is not required by statute but only as a rule of practice, the jury should be directed in regard to corro-

boration in the terms laid down in *R.* v. *Cratchley*, 9 Cr. App. Rep. 235.

(4) *Qu.:* whether the evidence of a young child can be admitted unsworn under Children Act, 1908 (c. 67), s. 30, unless the judge has affirmatively satisfied himself, in the presence of the accused & jury, that the child possesses a degree of intelligence sufficient to justify the reception of its evidence & understands the duty of speaking the truth.—R. *v.* SOUTHERN (1929), 142 L. T. 383; 29 Cox, C. C. 61; 22 Cr. App. Rep. 6, C. C. A.

3156g. Need not include all defendant's evidence.]—(1) A summing-up need not include a reading of the whole of deft.'s evidence.

(2) Severity of sentence in the case of a subordinate acting under orders.—R. *v.* SPELLEN (1931), 23 Cr. App. Rep. 130, C. C. A.

3157. For "second trial before same jury—Clear direction essential—Same defendant" read "Second trial—Before same jury—Clear direction essential—Same defendant."

3157a. —.]—A jury trying a second or other charge against accused should be warned to disregard the evidence in the previous trial.—R. *v.* LEE (1927), 20 Cr. App. Rep. 68, C. C. A.

3158. For "——— ——— Different defendants" read ——— Different defendants.'

3158a. — First trial set aside on venire de novo —Reference to first conviction.]—R. *v.* LLOYD, No. 2839b, *ante*.

3165a. ——— ———.]—(1) When prisoners are tried together, the direction to the jury must carefully discriminate between the respective cases.

(2) In Prevention of Crime Act, 1908 (c. 59), s. 10 (4), "seven days" means seven clear days.—R. *v.* DEAN (1924), 18 Cr. App. Rep. 21, C. C. A.

3165b. ——— ——— **Counts for other offences included.**]—When two persons are jointly indicted for conspiracy, & also, in other counts, for other offences, it is wrong to lead the jury to believe that unless both are convicted, neither may be convicted on one of the other counts.—R. *v.* TAYLOR (1924), 18 Cr. App. Rep. 153, C. C. A.

3165c. — —.]—When several accused are jointly charged with knowingly receiving stolen property, there must be a careful ruling about the possession of each.—R. *v.* PECKHAM (THE YOUNGER) (1927), 20 Cr. App. Rep. 72, C. C. A.

3165d. ——— ———.]—A charge to a jury trying co-defts. must carefully distinguish between the cases of each.—R. *v.* MACDONALD (1928), 21 Cr. App. Rep. 33, C. C. A.

3165e. ——— ———.]—**In charging the jury the judge must distinctly put the defence of each prisoner to them.**—R. *v.* BROOKS (1929), 21 Cr. App. Rep. 112, C. C. A.

3165f. ——— ———.]—On the trial of an indictment for breaking & entering & receiving stolen property against more than one deft., care must be taken to put the defence of each deft. to the jury & to warn them against convicting on mere suspicion of breaking or of possession.—R. *v.* SMITH (1931), 23 Cr. App. Rep. 135, C. C. A.

3165g. ——— ———.]—A summing-up on a joint indictment containing several counts must carefully distinguish the evidence against each deft., & when fraudulent intent is the gist of the offence must insist that guilty knowledge must clearly be found to justify a conviction.—R. *v.* NEWBERY & ELMAN (1931), 23 Cr. App. Rep. 105, C. C. A.

3172a. Where unsworn statement & evidence on oath of witness in conflict.]—R. *v.* HARRIS (1927), 20 Cr. App. Rep. 144, C. C. A.

3174a. ———.]—On a trial for murder the defence of manslaughter ought not to be withdrawn from the jury where there is evidence to support it.—R. *v.* BALL (1924), 18 Cr. App. Rep. 149, C. C. A.

3178. *Add. Annotation:*—**Consd.** R. *v.* Thorpe (1925), 133 L. T. 95.

3179. *Add. Annotation:*—**Consd.** R. *v.* Thorpe (1925), 133 L. T. 95.

3179a. ——— ———.]—R. *v.* THORPE, No. 3146a, *ante*.

3179b. ——— **Where defence of manslaughter raised.**]—R. *v.* HALL, No. 8338a, *post*.

3180. After this case add "*See, also*, Nos. 5933–5938, *post*."

3180a. ——— ———.]—On an indictment for obtaining by false pretences, the jury must be charged that intent to defraud is of the essence of the offence.—R. *v.* MARCK (1928), 21 Cr. App. Rep. 65, C. C. A.

3180b. ——— **Possibility of mistake.**]—R. *v.* GREEN, No. 3136b, *ante*.

3180c. Direction as to breaking & entering—Defence of bonâ fide claim of right.]—A defence of breaking & entering under a *bonâ fide* claim of right must be definitely put & explained to the jury, & the issue of felonious intent must be distinctly raised.—R. *v.* CURTISS (1925), 18 Cr. App. Rep. 174, C. C. A.

3180d. Direction as to larceny by trick—Facts pointing to false pretences.]—On the trial of an indictment for larceny by a trick, the essential elements of that offence should be explained to the jury, & if the facts of the case point to an obtaining by false pretences,

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3172a i. *Where unsworn statement & evidence on oath of witness in conflict.*]—When a witness whom the party calling him is allowed to treat as hostile admits making or is proved to have made a previous statement inconsistent with his present testimony said party may be permitted to cross-examine him upon that statement; but the use which may be made before the jury of the statement is a limited one; it can be so used only to impeach the witness' credit & thus remove any prejudicial effect which his present testimony might otherwise have on the case of said party, but not as evidence of the allegations of fact contained in the statement. Therefore the duty devolves upon the trial judge, in summing up, to make the limitation of such use clear to the jury; & his failure to make it clear constitutes a misdirection which may be held to have occasioned a substantial wrong or miscarriage.—R. *v.* FRANCIS & BARBER, [1929] 3 D. L. R. 593; 2 W. W. R. 104; 51 Can. Crim. Cas. 343; 23 S. L. R. 517.—**CAN.**

3177 i. ——— *Where defence of manslaughter is not raised.*]—Where, on a trial for murder, there is no evidence which would justify the jury in finding a verdict of manslaughter, there is no duty on the judge to leave to the jury that defence.—R. *v.* BURGESS & MCKENZIE, [1928] 2 D. L. R. 694; [1928] 1 W. W. R. 633; 49 Can. Crim. Cas. 243; 39 B. C. R. 492.—**CAN.**

sa. *Incorrect statement as to effect of evidence.*]—Where in his summing up to the jury in a criminal case the trial judge made a statement of the evidence which was not exactly correct, the fact that there was sufficient evidence apart from that with respect to which the mistake occurred to justify the verdict of guilty does not justify the ct., on appeal, from disregarding the mistake under the Code, s. 1014 (2), if it is impossible for it to say that the jury "must" have reached the same conclusion regardless of the mistake.—R. *v.* BRAND (Alta.), [1929] 1 D. L. R. 815; 51 Can. Crim. Cas. 46; 24 Alta. L. R. 5; [1928] 3 W. W. R. 641.—**CAN.**

the difference between the two offences must be made clear to them in view of a possible verdict of guilty of the latter.—R. *v.* FISHER (1926), 19 Cr. App. Rep. 166, C. C. A.

3180e. Direction as to larceny by bailee—Defence of sale on credit.]—R. *v.* WARD (1928), 20 Cr. App. Rep. 167, C. C. A.

3180f. Obtaining by false pretences—Duty to distinguish representations.]—R. *v.* GREEN, No. 3136b, *ante*.

3185. *Add. Annotation :*—**Refd.** Godman *v.* Times Publishing Co., [1926] 2 K. B. 273.

3243. After this case add :—

—— ——.]—*See, now*, Criminal Justice Act, 1925 (c. 86), s. 15.

3261. *Add. Annotation :*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

3272. *Add. Annotation :*—**Refd.** Broome *v.* Agar (1928), 138 L. T. 698.

3277a. ——.]—R. *v.* MOORE (1931), 23 Cr. App. Rep. 138, C. C. A.

3283a. —— ——.]—R. *v.* ABRAHAMS & GERSTEIN (1928), 20 Cr. App. Rep. 183, C. C. A.

3286a. Effect of rider.]—(1) Mere suspicion of adultery by a wife is not enough to reduce killing by the husband from murder to manslaughter.

(2) A finding of guilty is not affected by a rider to the verdict.—R. *v.* MILLWARD (1931), 23 Cr. App. Rep. 119, C. C. A.

3287a. Necessity for—Withdrawal of plea of not guilty.]—After a prisoner charged on indictment has pleaded "Not Guilty" & been given in charge of the jury, he can only be convicted by a verdict of that jury. Until a verdict is given the record is not complete & he can neither be convicted nor sentenced. Where therefore a prisoner who had duly been given in charge of the jury admitted his guilt during the progress of the trial & was thereupon treated as having been convicted on his own confession & was sentenced to a term of penal servitude without any verdict having been given by the jury :—*Held :* the conviction must be quashed & the prisoner re-tried.—R. *v.* HANCOCK (1931), 100 L. J. K. B. 419 ; 145 L. T. 168 ; 75 Sol. Jo. 345 ; 23 Cr. App. Rep. 16 ; 29 Cox, C. C. 294, C. C. A.

3288. *Add. Annotation :*—*As to* (3) **Refd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

3318a. —— ——.]—Where an indictment charges two persons with certain offences "with one another," if one is acquitted the other may sometimes but not always be convicted.—R. *v.* EDWARDS (1924), 18 Cr. App. Rep. 140, C. C. A.

3318b. —— ——.]—Where in separate counts of an indictment a man & a woman are charged with incest, & there are separate trials of each count, the conviction of the man is good although the woman is acquitted.—R. *v.* GORDON (1925), 133 L. T. 734 ; 89

3180 i. *Direction as to intent to defraud—Charge of obtaining by false pretences.*]—A jury should, in cases under Crimes Act, 1915, s. 181 (a), be told that an intent to defraud is an essential element of the offence, unless in the exceptional cases where the intent is necessarily involved in the false statements made.—R. *v.* O'SULLIVAN, [1925] V. L. R. 514 ; 547 A. L. T. 3 ; 31 Argus L. R. 263.—**AUS.**

q i. ——.]—R. *v.* TONG WAH (1931), 44 B. C. R. 260 ; 56 Can. C. C. 194.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 12.—C.

b i. —— —— ——.]—R. *v.* BRAYDEN (N. B.), [1926] 4 D. L. R. 765 ; 46 Can. Crim. Cas. 336.—**CAN.**

b ii. —— —— ——.]—BIGAOUETTE *v.* R., [1927] 1 D. L. R. 1147 ; [1927] S. C. R. 112 ; 47 Can. Crim. Cas. 271.—**CAN.**

b iii. —— —— ——.]—On the trial of a charge of stealing a pencil from the person by means of violence, it was shown that the pencil had been found in the accused's pocket on his arrest two days after the robbery. The accused's counsel did not call any witness in defence ; & the Crown counsel in his address to the jury said : "I think there should be some explanation. . . ." [The ct. here warned him to "be careful."] He proceeded : "Should not there be some explanation on the part of the defence ?" On appeal from the conviction :—*Held :* said words did not constitute a violation of sect. 4 (5) of Canada Evidence Act, R. S. C., 1927, prohibiting comments by the judge or counsel for the prosecution on the failure of an accused to testify.—R. *v.* FERRIER, [1932] 3 W. W. R. 113.—**CAN.**

sc. *To express his own view.*]—In summing up the judge is entitled to express his own view.—COULTER & TREFFENE *v.* R. (1926), 29 W. A. L. R. 40.—**AUS.**

sd. *To read definitions of law from cases & textbooks.*]—LEBLANC *v.* R. (1927), 49 Can. Crim. Cas. 207 ; Q. R. 42 K. B. 503.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 14.—B.

3217 ii. ——.]—*Primâ facie* any complete separation of the jury during a trial in a capital case will make the verdict bad, but where the separation occurs through inadvertence, & the result of the trial has not been influenced by what has occurred, the verdict ought to stand.—R. *v.* WALTERS, [1926] 1 D. L. R. 501 ; 45 Can. Crim. Cas. 77 ; 58 N. S. R. 306.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 15.—A.

o i. —— *Evidence ruled inadmissible after it has been given.*]—R. *v.* TREANOR, R. *v.* FLOOD, R. *v.* TREANOR, R. *v.* KELLY, [1924] 2 I. R. 193.—**IR.**

PART VII. SECT. 7, SUB-SECT. 15.—B.

k i. —— ——.]—Where evidence given before a judge in a criminal trial was exhibited in a trial *de novo* before a succeeding judge :—*Held :* such procedure was irregular, & consent of accused did not cure the irregularity.—UMAR HAJEE *v.* R. (1922), I. L. R. 46 Mad. 117.—**IND.**

PART VII. SECT. 7, SUB-SECT. 16.—A.

3270 viii. ——.]—In a criminal trial, with the help of a jury, a judge is not obliged to accept an absurd verdict, either as a verdict of guilty or as a verdict of not guilty. It is no part of a judge's duty to accept & interpret for himself a verdict of an unintelligible character, when the members of the jury are there & can give a proper verdict.—HAMID ALI HALDAR *v.* KING-EMPEROR (1929), I. L. R. 57 Calc. 61.—**IND.**

3275 viii. —— ——.]—On an indictment charging accused with assault the jury returned a verdict of "guilty of common assault under provocation" :—*Held :* the verdict was one of guilty.—R. *v.* BROGAN, [1926] N. Z. L. R. 635.—**N.Z.**

3281 iv. —— ——.]—An indictment contained three separate counts, viz., rape, assault with intent to commit rape, & indecent assault. The jury, although properly instructed, found the prisoner guilty without assigning the verdict to any one or more of the said counts ; & the judge sentenced the prisoner on the assumption that the conviction was one for rape. On appeal :—*Held :* while it was open to the ct. to sustain the verdict on the least of the three counts & to reduce the sentence to one appropriate thereto, it was also open to the ct. to order a new trial ; & that under all the circumstances the latter was the better course to adopt.—R. *v.* Ross (B. C.), [1929] 3 W. W. R. 601 ; 52 Can. Crim. Cas. 315.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 16.—D. (a).

m i. —— —— *Not where prosecution for lesser offence barred by lapse of time.*]—R. *v.* HOSKINS (Alta.) (1929), 52 Can. Crim. Cas. 365.—**CAN.**

m ii. —— ——.]—Where a prosecution for a certain offence created by statute must be begun within a period prescribed by the statute & that time limit has expired without the proper proceedings having been taken pursuant to the enactment creating the offence, it is not competent for the ct. on a prosecution for a greater offence to convict for the offence already barred.—R. *v.* HOSKINS, [1930] 1 W. W. R. 84.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 16.—D. (b).

3348 v. —— —— *Effect of verdict.*]—*Held :* the finding was to be regarded as an acquittal on the charge of murder, & Code of Criminal Procedure, s. 439 (4), precluded the High Ct. from having jurisdiction upon revision to convict on that charge.—KISHAN SINGH *v.* R. (1928), 55 I. L. R. Ind. App. 390.—**IND.**

n (p. 320). Read now "3362a i."

o (p. 320). Read now "3362a ii."

J. P. 156; 41 T. L. R. 611; 28 Cox, C. C. 41; 19 Cr. App. Rep. 20, C. C. A.

3362a. Indictment for shooting with intent to murder—Verdict of assault.]—On an indictment for shooting with intent to murder or to cause grievous bodily harm, prisoner cannot be convicted of common assault.—R. *v.* STOKES (1925), 134 L. T. 479; 28 Cox, C. C. 140; 19 Cr. App. Rep. 71, C. C. A.

3366. *Add. Annotation:*—**Refd.** R. *v.* Stokes (1925), 134 L. T. 479.

3388. *Add. Annotation:*—**Apld.** R. *v.* Friend (1930), 22 Cr. App. Rep. 130.

3389. *Add. Annotation:*—**Apld.** R. *v.* Friend (1930), 22 Cr. App. Rep. 130.

3389a. —— Of fruit—Verdict of larceny at common law.]—On an indictment for stealing under Larceny Act, 1861 (c. 96), s. 36, larceny at common law cannot be found: hence the direction to the jury must make it clear that fruit, etc., the subject of the charge, was growing & had not been severed at the material time.—R. *v.* FRIEND (1930), 22 Cr. App. Rep. 130, C. C. A.

3391a. —— By trick—Verdict of false pretences—Indictment charging larceny by trick & false pretences alternatively—Indictment for false pretences wrong in substance.]—R. *v.* HUGHES, No. 2219a, *ante*.

3394. *Add. Annotation:*—**Refd.** R. *v.* Stokes (1925), 134 L. T. 479.

3398a. Duty of jury to find.]—R. *v.* LLOYD (1927), 20 Cr. App. Rep. 139, C. C. A.

3402. *Add. Annotation:*—**Refd.** *Re* Pitts, Cox *v.* Kilsby, [1931] 1 Ch. 546.

3407. For "**Second indictment to be tried—Right of prosecution to trial by another jury.**" read "**Second indictment to be tried—Whether trial by another jury.**"

3407a. —— ——.]—It cannot be laid down as a general rule that a jury which has acquitted deft. on one indictment should not try him on another, but it must depend on the circumstances of each case; when it occurs they must be warned that the evidence in the two cases is not cumulative.—R. *v.* KLEIN (1926), 19 Cr. App. Rep. 161, C. C. A.

3413. *Add. Annotation:*—**Refd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

3424. *Add. Annotation:*—**Refd.** R. *v.* Thorpe (1925), 133 L. T. 95.

3452. After this case add:—

—— ——.]—*See, now*, Sentence of Death (Expectant Mothers) Act, 1931 (c. 24).

3495. *Add. Annotation:*—**Mentd.** Broome *v.* Agar (1928), 138 L. T. 698.

3526. *Add. Annotation:*—*Generally*, **Refd.** R. *v.* Southern (1929), 142 L. T. 383.

3538. *Add. Annotation:*—**Consd.** R. *v.* Hertfordshire JJ., *Ex p.* Larsen (1925), 89 J. P. 205.

Part VIII.—Special Pleas.

3566. *Add. Annotation:*—**Consd.** R. *v.* Kendrick & Smith (1931), 144 L. T. 748.

3567. *Add. Annotation:*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

3371 v. —— ——.]—R. *v.* O'BRIEN (1926), 50 Can. Crim. Cas. 369; 60 N. S. R. 17.—**CAN.**

3371 vi. —— .]—On a trial for rape upon G., the latter swore to occurrences which, if true, proved the crime charged, & was corroborated. The jury after retiring announced that they were not inclined to bring in a verdict of guilty, adding that if the charge were indecent assault it would be different. They were informed by the trial judge that it was rape or nothing. They then brought in a verdict of guilty:—*Held:* on the evidence there was nothing upon which to base a charge of a lesser offence, & deft.'s appeal must be dismissed.—R. *v.* O'BRIEN, [1929] 1 D. L. R. 266; 50 Can. Crim. Cas. 369; 60 N. S. R. 17.—**CAN.**

1 (p. 322) **i.** —— —— *Carnal knowledge of girl under fourteen—Verdict set aside.*]—R. *v.* MARCUS & RICHMOND (1931), 55 Can. C. C. 322.—**CAN.**

t (p. 323) **i.** *Indictment for robbery—Verdict of receiving stolen property.*]—A verdict of receiving stolen property well knowing it to have been stolen is not competent on an indictment for robbery.—R. *v.* PAPIAH (1929), 50 N. L. R. 19.—**S. AF.**

PART VII. SECT. 7, SUB-SECT. 16.—G.

3411 iii. ——.]—R. *v.* WALTERS, No. 3217 ii, *ante*.

PART VII. SECT. 7, SUB-SECT. 16.—K.

g i. —— *Meaning of "new trial."*]—Where by statute provision is made in the case of a jury disagreeing for a new trial, there is meant by the words "new jury" a jury entirely composed of new or fresh jurymen to the exclusion of all the jurymen who formed the first jury.—R. *v.* WONG O. SANG, [1924] 3 W. W. R. 45; 34 B. C. R. 8.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 17.—F.

o i. *Right of public to copy.*]—Any member of the public has a right to obtain a copy of a judgment of any criminal ct.—EMPEROR *v.* LADLI PRASAD ZUTSHI (1931), I. L. R. 53 All. 724.—**IND.**

se. *Omission of essential element of crime—Conviction invalid.*]—R. *v.* ING YICK ING (1924), 43 Can. Crim. Cas. 392.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 17.—G.

3536 ii. —— *In prisoner's absence.*]—*Held:* the ct. was not *functus officio*.—R. *v.* HUGHES (1924), 35 B. C. R. 55.—**CAN.**

3536 iii. —— *After removal of conviction by certiorari.*]—R. *v.* KNAPP (1925), 44 Can. Crim. Cas. 338.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 1.

g i. ——.]—Where a person has been charged with two offences arising out of the same circumstances, & he pleads guilty to one of the charges, is convicted & fined, & then pleads guilty to the other charge, the previous conviction & penalty cannot be pleaded as a bar to punishment for the other offence.—R. *v.* GEIGER, [1923] 3 W. W. R. 763; 41 Can. Crim. Cas. 185; 17 Sask. L. R. 412.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 3.—A.

3567 iv. —— ——.]—A. was prosecuted for selling liquor illegally & convicted. Based on the same facts a second prosecution was brought for keeping liquor for sale. A. pleaded *autrefois convict.*:—*Held:* a good plea.—QUEBEC LIQUOR COMMISSION *v.* DUBOIS, [1924] 2 D. L. R. 861; 42 Can. Crim. Cas. 65.—**CAN.**

3567 v. —— ——.]—REED & ROBERTS (*alias* MCLEAN) *v.* R. (1926), 47 Can. Crim. Cas. 142; Q. R. 42 K. B. 35.—**CAN.**

3567 vi. —— ——.]—YEOK KUK *v.* R. (1928), I. L. R. 6 Ran. 386.—**IND.**

3567 vii. —— —— *Offences under different statutes.*]—*Re* WILNEFF (N. S.), [1928] 4 D. L. R. 869; 50 Can. Crim. Cas. 196.—**CAN.**

3567 viii. —— ——.]—R. *v.* TRACHUK, R. *v.* KOLYK (No. 2), [1929] 2 W. W. R. 418; 51 Can. Crim. Cas. 404; 38 Man. L. R. 238.—**CAN.**

si. *Meaning of "same matter"—Criminal Code, s.* 730.]—R. *v.* BADIUK (No. 2), [1930] 1 W. W. R. 210; 2 D. L. R. 318; 53 Can. C. C. 63; 38 Man. L. R. 421.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 3.—B.

a i. *Indictment for occasioning bodily harm—Previous acquittal for murder.*]—After being acquitted on a trial for murder accused were charged with assault & battery occasioning actual bodily harm to the man whom they had been acquitted of murdering. They pleaded *autrefois acquit*:—*Held:* the plea of *autrefois acquit* furnished no answer to the charge in question.—R. *v.* GOSSELIN & GOSSELIN (Man.), [1928] 1 W. W. R. 134; 50 Can. Crim. Cas. 287.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 3.—C.

ah. *Preparation of still—Previous acquittal for possessing still—No bar to prosecution.*]—R. *v.* SLAUGHENWHITE (1930), 54 Can. C. C. 104.—**CAN.**

3603. *Add. Annotation :*—**Refd.** R. *v.* Kendrick & Smith (1931), 144 L. T. 748.

3608a. Demanding with menaces—Threatening to print or publish with intent to extort.]—The test whether a plea of *autrefois convict* has been established is not whether the facts relied on by the Crown are the same in the two trials, but whether the accused has been convicted of an offence which is the same, or practically the same, as that with which he is charged on the second trial. The offences of threatening to publish with intent to extort, contrary to Larceny Act, 1916 (c. 50), s. 31 (2), & of uttering a letter demanding money with menaces, contrary to sect. 29 (1) (i), of the same Act, are quite distinct & separate, & the fact that the accused has already been convicted of the former will not sustain a plea of *autrefois convict* if he is subsequently charged with the latter, even though the two charges be supported by the same evidence.—R. *v.* KENDRICK & SMITH (1931), 144 L. T. 748 ; 23 Cr. App. Rep. 1 ; 29 Cox, C. C. 285, C. C. A.

3644a. Acquittal for absence of jurisdiction.]—R. *v.* WALLACE (1928), 166 L. T. Jo. 339.

3647a. —— Contradictory endorsement on indictment.]—An indictment against applt. for rape was endorsed by the grand jury : "No true bill for rape. A true bill for indecent assault (aggravated)," but no indictment for indecent assault was put before the grand jury. Applt., having been convicted, appealed, & the conviction was quashed on the grounds that there was no true bill for rape & that there was no indictment for indecent assault. On the same facts applt. was afterwards indicted for indecent assault, & he pleaded *autrefois acquit* but was convicted :—*Held :* although the first conviction had been recorded on the first indictment, applt. was never in peril on that self-contradictory document, & the plea of *autrefois acquit* failed, & the second conviction must be affirmed.—R. *v.* KITCHING (1929), 45 T. L. R. 634 ; 21 Cr. App. Rep. 144 ; 28 Cox, C. C. 671, C. C. A.

3650. *Add. Annotation :*—*As to* (1) **Consd.** Pointon *v.* Cox (1926), 136 L. T. 506.

Part X.—Informations.

3665. *Citations :*—For "17 W. R. 567" read "47 W. R. 567."

3718. *Add. Annotation :*—**Refd.** R. *v.* Evening News, *Ex p.* Hobbs, [1925] 2 K. B. 158.

3751a. By constables to extort money.]—*Held :* there being *bonâ fide* instructions to the constables to watch appct., on which they had acted without unduly harrassing him, & there being no evidence of any conspiracy on the part of the constables, no criminal information could be granted.—*Ex p.* WOLFF (1863), 28 J. P. 23.

Part XII.—Evidence and Proof.

3790a. —— Identification of handwriting.]—R. *v.* MCCARTNEY & HANSEN (1928), 20 Cr. App. Rep. 179, C. C. A.

3792a. —.]—R. *v.* TAYLOR, WEAVER & DONOVAN (1928), 21 Cr. App. Rep. 20, C. C. A.

PART VIII. SECT. 1, SUB-SECT. 3.—D.

3619 i. *Perjury — Previous acquittal for forgery.*]—The accused, who had been acquitted on a charge of forging the endorsement of a cheque, was subsequently tried & convicted on a charge of perjury committed on the first trial in swearing that he had not endorsed the cheque. On the second trial the evidence for the prosecution, apart from that proving the making of the alleged false statements, was confined strictly to the alleged endorsement by the accused. Two witnesses swore on both trials that they had seen the accused sign the endorsement. No evidence was offered for the defence. The accused pleaded *res judicata :—Held :* the conviction must be sustained.—R. *v.* BAYN, [1932] 2 W. W. R. 113 ; 56 Can. C. C. 356.—**CAN.**

b i. —— *Previous acquittal for assaulting constable while discharging another duty.*]—A mere variation in the nature of the duty, which the officer is alleged to have been engaged in, cannot be considered as a variation in the nature of the offence charged against accused.—R. *v.* DIAMOND, [1924] 3 D. L. R. 359 ; 2 W. W. R. 621 ; 20 Alta. L. R. 419.—**CAN.**

sm. *Prosecution under Customs Act, R. S. C.*, 1906 (c. 48), *s.* 215—*Previous conviction under Customs Act, R. S. C.*, 1906 (c. 48), *s.* 185.]—R. *v.* SACCO (Ont.), [1926] 3 D. L. R. 771 ; 46 Can. Crim. Cas. 243.—**CAN.**

so. *Offences under Lottery & Gaming Act.*]—Resp. was charged with the breach of Lottery & Gaming Act, 1917, s. 39, & the complaint was dismissed owing to the rejection of secondary evidence of a document. Later resp. was charged under s. 63 with being the occupier of a tobacconist shop which was used for the purpose of the occupier betting with persons resorting thereto. Resp. pleaded *autrefois acquit :—Held :* as the two offences were substantially different, this plea did not avail.—ALLCHURCH *v.* BERESFORD, [1928] S. A. S. R. 450.—**AUS.**

sp. *Prosecution under Prohibition Act (P. E. I.), s.* 52—*Previous acquittal on prosecution under Excise Act, R. S. C.*, 1927, *s.* 181—*Failure of plea.*]—R. *v.* FITZPATRICK (P. E. I.), [1929] 4 D. L. R. 95 ; 52 Can. Crim. Cas. 119.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 4.

p i. —.]—Unless it can be said on the facts of the particular case that there has been an adjudication on the merits, the permission of the ct. to withdraw a charge is not equivalent to a dismissal which can be pleaded in bar of subsequent proceedings.—R. *v.* SOMERS (B. C.), [1929] 3 D. L. R. 772 ; 2 W. W. R. 366 ; 51 Can. Crim. Cas. 356.—**CAN.**

p ii. ——.]—BLANCHARD *v.* JENKINS, [1931] 1 D. L. R. 985 ; 55 Can. C. C. 77.—**CAN.**

sr. *No conviction—Proceedings adjourned.*]—*Re* R. *v.* ECKER, *Re* R. *v.* FRY, [1929] 3 D. L. R. 760 ; 51 Can. Crim. Cas. 409 ; 64 O. L. R. 1.—**CAN.**

st. *Conviction under Provincial statute—No bar to conviction under Federal Statute.*]—BULLER *v.* WINDOVER, [1931] 1 D. L. R. 986 ; 55 Can. C. C. 143.—**CAN.**

sv. —— ——.]—R. *v.* RUNIONS, R. *v.* MACDONALD (1931), 56 Can. C. C. 390.—**CAN.**

PART X. SECT. 1.

sf. *Offence charged under repealed Act.*]—R. *v.* CHEW DEB, [1928] 1 W. W. R. 966 ; 49 Can. Crim. Cas. 332 ; 39 B. C. R. 559.—**CAN.**

PART X. SECT. 2, SUB-SECT. 1.

c i. —— *Inland revenue officer—Statement of capacity.*]—Since only inland revenue officers can lay an information for an offence under Excise Act, such an information must state that the person laying the information is an inland revenue officer.—R. *v.* WITSIEWICZ (Man.), [1928] 2 W. W. R. 19 ; 49 Can. Crim. Cas. 330.—**CAN.**

PART XII. SECT. 1.

3786 i a. ——.]—Evidence is not admissible of the actions of dogs while engaged in tracking down a person accused of a crime, even though the owner of the dogs testifies as to their character & training & their fitness for tracking men.—R. *v.* WHITE, [1926] 3 D. L. R. 1 ; [1926] 2 W. W. R. 481 ; 45 Can. Crim. Cas. 328 ; 37 B. C. R. 43.—**CAN.**

3801. *Add. Annotation :*—**Consd.** R. *v.* Daily Mirror, *Ex p.* Smith, [1927] 1 K. B. 845.

3801a. —— ——.]—(1) It is permissible for a police officer who is in doubt upon the question who shall be arrested for a particular offence to show a photograph to persons in order to obtain information or a clue.

(2) It is, however, not permissible for a police officer to show beforehand to persons who are afterwards to be called as identifying witnesses photographs of those persons whom they are about to be asked to identify.

(3) Where photographs are used for the purpose of obtaining information a series of photographs, & not merely one or two, ought to be shown to the person who is expected to give the required information.—R. *v.* DWYER, R. *v.* FERGUSON, [1925] 2 K. B. 799; 95 L. J. K. B. 109; 132 L. T. 351; 89 J. P. 27; 41 T. L. R. 186; 27 Cox, C. C. 697; 18 Cr. App. Rep. 145, C. C. A.

Annotations :—As to (1) **Refd.** R. *v.* Daily Mirror, *Ex p.* Smith, [1927] 1 K. B. 845. *As to* (2) **Consd.** R. *v.* Daily Mirror, *Ex p.* Smith, [1927] 1 K. B. 845. **Refd.** R. *v.* Wainwright (1925), 19 Cr. App. Rep. 52.

3801b. —— —— **But may be shown before arrest.**]—A prosecutor identified a photograph as that of a prisoner whom the police subsequently arrested. After arrest prisoner was picked out by the prosecutor from a number of men in a room :—*Held :* there was no ground for complaint against the method of identification.—R. *v.* MELANY (1924), 18 Cr. App. Rep. 2, C. C. A.

Annotation :—**Refd.** R. *v.* Dwyer, R. *v.* Ferguson, [1925] 2. K. B. 799.

3801c. —— —— ——.]—R. *v.* DWYER, R. *v.* FERGUSON, No. 3801a, *ante.*

3810. *Add. Annotations :*—**Folld.** R. *v.* Berg, Britt, Carré & Lummies (1927), 20 Cr. App. Rep. 38. **Consd.** R. *v.* Tidmarsh (1931), 23 Cr. App. Rep. 79. **Refd.** R. *v.* Chesshire, Lucas & Bottom (1927), 20 Cr. App. Rep. 47.

3817a. —— ——.]—The prosecution is not entitled to put in police photographs for the purpose of identification as part of the evidence in chief. Where identification has been obtained by means of such photographs, the facts of such identification ought not to be given in evidence.—R. *v.* WAINWRIGHT (1925), 19 Cr. App. Rep. 52, C. C. A.

3820a. —— **Reference to meritorious discharge from army.**]—A mere reference to a meritorious discharge from the army by an undefended prisoner in a statement handed to the ct. of trial does not necessarily expose him to cross-examination on his character generally, though it may do so on his career in the army. Such a statement should be looked through in his interest & nothing read to the jury of the legal consequences of which he is not aware.—R. *v.* PARKER (1924), 18 Cr. App. Rep. 14, C. C. A.

3820b. —— **Evidence suggesting normal respectability.**]—(1) Questions inviting a witness to make suggestions should not be put in cross-examination, especially when they may have the effect of inducing a prisoner to make an attack on the prosecution, which will let in evidence otherwise inadmissible.

(2) A defending counsel should refrain from putting questions to prisoner giving evidence which suggest normal respectability, but which fall just short of giving evidence of good character.—R. *v.* BALDWIN (1925), 133 L. T. 191; 89 J. P. 116; 69 Sol. Jo. 429; 28 Cox, C. C. 17; 18 Cr. App. Rep. 175, C. C. A

Annotations :—As to (1) **Consd.** R. *v.* Eidinow (1932), 23 Cr. App. Rep. 115. **Refd.** R. *v.* Coulson (1927), 20 Cr. App. Rep. 106.

3820c. ——.]—"Good character" of accused within Criminal Evidence Act, 1898 (c. 36), s. 1 (*f*) (ii), means not only general good character, but any claim to good character incidentally put forward by accused.—R. *v.* WALKER (1927), 20 Cr. App. Rep. 31, C. C. A.

3827. *Add. Annotation :*—**Consd.** R. *v.* Noble (1928), 20 Cr. App. Rep. 191.

3834. *Add. Annotation :*—**Refd.** R. *v.* Noble (1928), 20 Cr. App. Rep. 191.

3834a. *S. P.* R. *v.* NOBLE (1928), 20 Cr. App. Rep. 191, C. C. A.

3835. *Add. Annotation :*—**Refd.** R. *v.* Dunkley (1926), 134 L. T. 632.

3786 iii. ——.]—GHANSHYAM SINGH *v.* R. (1927), I. L. R. 6 Pat. 627.—**IND.**

3786 iv. ——.]—The rule against a mere *scintilla* is especially applicable in a case in which a state of facts is alleged that would make the opposite party guilty of a crime.—TOBER *v.* LAMPMAN, [1930] 3 D. L. R. 269; 65 O. L. R. 236.—**CAN.**

3791 i. *Circumstantial evidence—Exclusion of other causes.*]—It is not admissible to convict a person on circumstantial evidence if such evidence can be interpreted to give any other explanation than the accused person's guilt.—R. *v.* TYMKO (1924), 42 Can. Crim. Cas. 147.—**CAN.**

a i. *S. P.* GAUNS *v.* R. (1926), I. L. R. 7 Lah. 561.—**IND.**

b i. —— ——.]—R. *v.* DEMETRIO (1926), 46 Can. Crim. Cas. 133; 59 O. L. R. 249.—**CAN.**

b ii. —— ——.]—R. *v.* YOK YUEN, [1930] 1 D. L. R. 716; 52 Can. C. C. 300.—**CAN.**

sg. *Commercial documents — When admitted.*]—On a charge of theft from railway cars, documents, such as shipping bills, car checkers' records, etc., not made by the accused & of which he had no knowledge, have no probative value *per se ;* &, therefore, should not be admitted as evidence against the accused where it is not shown that the persons who made them are dead.—R. *v.* DUFF (Sask.), [1929] 1 D. L. R. 152; 50 Can. Crim. Cas. 246; [1928] 3 W. W. R. 550.—**CAN.**

PART XII. SECT. 2.

3807 iv. —— —— ——.]—Fingerprint impressions of accused, compulsorily taken before his committal to gaol, are admissible in evidence against him.—R. *v.* MANGOLD, [1926] App. D. 440.—**S. AF.**

p i. —— *Reference by magistrate to exhibits.*]—A magistrate at a trial was called to prove the identifications of accused in gaol & the methods adopted. Instead of stating the details & results, witness referred to documents, described as exhibits, in which he stated his evidence was to be found. The documents were put on the record as his evidence :—*Held :* the attempt to record evidence in this manner was not only contrary to law, but violated the first principles of evidence, & must be entirely ignored.—LAL SINGH *v.* R. (1924), I. L. R. 5 Lah. 396.—**IND.**

3814 ii. —— ——.]—*Held :* not a ground for allowing accused's appeal against his conviction.—R. *v.* BAGLEY (B. C.), [1926] 3 D. L. R. 717; [1926] 2 W. W. R. 513; 46 Can. Crim. Cas. 257.—**CAN.**

3814 iii. —— ——.]—R. *v.* HARRISON (B. C.), [1928] 3 D. L. R. 224; [1928] 1 W. W. R. 973; 49 Can. Crim. Cas. 356.—**CAN.**

PART XII. SECT. 3, SUB-SECT. 1.—A.

3835 i. *Confined to general reputation —What amounts to.*]—Evidence of general repute does not mean the placing of a heterogeneous mass of more or less general statements by any witness who can be produced to say something on hearsay or otherwise & label it "general repute." A man's general repute is just as much a fact as any other fact which can be proved by a witness, & the witness should be asked questions to show that he is in a position to know what the general reputation of the accused is, & as to when & in what circumstances he has heard the character of accused discussed.—EMPEROR *v.* RAM LAL (1929), I. L. R. 51 All. 663.—**IND.**

PART XII. SECT. 3, SUB-SECT. 1.—B.

3848 vii. ——.]—Evidence cannot be given on a prosecution to prove that the accused is a bad character, or has a propensity to commit criminal acts of

3850a. —— **Cross-examination of witness for defence constituting attack on character of accused.**]—Questions must not be put in cross-examination to a witness called for the defence in such a way as to have the effect of constituting an attack on the character of the accused, when that is not in issue, even though the object of such questions may be to attack the credit of the witness & not the character of the accused.—R. *v.* MCCRAIG (1925), 134 L. T. 160; 90 J. P. 64; 42 T. L. R. 215; 28 Cox, C. C. 109; 19 Cr. App. Rep. 68, C. C. A.

3855a. ——.]—A reference in evidence to accused's previous conviction may become relevant by the nature of the cross-examination.—R. *v.* LESTER (1927), 20 Cr. App. Rep. 25, C. C. A.

3924. *Add. Annotation:*—**Refd.** Godman *v.* Times Publishing Co., [1926] 2 K. B. 273.

3925. *Add. Annotation:*—**Consd.** R. *v.* Tidmarsh (1931), 23 Cr. App. Rep. 79.

3925a. —— ——.]—R. *v.* TIDMARSH (1931), 23 Cr. App. Rep. 79, C. C. A.

3943a. ——.]—On an indictment for embezzlement evidence that, on a series of occasions before & after those mentioned in the indictment, precisely similar errors [to those alleged against prisoner] had been made, & advantage taken of them, by him:—*Held:* admissible to explain motives & intentions.—R. *v.* RICHARDSON (1861), 2 F. & F. 343; 8 Cox, C. C. 448.

Annotations:—**Consd.** R. *v.* Stephens (1888), 58 L. T. 776. **Refd.** R. *v.* Balls (1871), L. R. 1 C. C. R. 328; R. *v.* Francis (1874), L. R. 2 C. C. R. 128; R. *v.* Bond, [1906] 2 K. B. 389.

3971. *Add. Annotation:*—**Refd.** R. *v.* Berg, Britt, Carré & Lumnies (1927) 20 Cr. App. Rep. 38.

3972. *Add. Annotation:*—**Refd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

3992. *Add. Annotation:*—**Refd.** Godman *v.* Times Publishing Co., [1926] 2 K. B. 273.

4009. *Add. Annotation:*—**Apld.** R. *v.* Hewitt (1925), 89 J. P. Jo. 721.

4009a. —— ——.]—In a charge of unlawful carnal knowledge of a girl under sixteen years of age, evidence independent of the girl's evidence may be given that the accused on a previous occasion indecently assaulted the same girl, & the fact that a considerable time has elapsed since the earlier act of indecency affects only the weight & not the admissibility of the evidence.—R. *v.* HEWITT (1925), 134 L. T. 157; 90 J. P. 68; 42 T. L. R. 216; 28 Cox, C. C. 101; 19 Cr. App. Rep. 64, C. C. A.

4048. *Add. Annotation:*—**Refd.** R. *v.* Stuart, R. *v.* Leonard, R. *v.* Maples, R. *v.* Tannen, R. *v.* Taylor (1927), 43 T. L. R. 715.

similar nature to the offence charged.—TAYLOR *v.* R., 22 Tas. L. R. 22.—**AUS.**

3848 viii. ——.]—R. *v.* SCHEER, [1932] 3 W. W. R. 555.—**CAN.**

s i. —— ——.]—The fact that a person has on a previous occasion been bound over may be stated & proved as one of the grounds on which the witnesses to general repute believe the accused to be a habitual offender.—R. *v.* KUMERA (1928), I. L. R. 51 All. 275.—**IND.**

sa. *What is evidence of bad character—Not statements by witness as to disposition & demeanour of prisoner & prisoner's sister.*]—A.-G. *v.* O'LEARY, [1926] I. R. 445.—**IR.**

PART XII. SECT. 3, SUB-SECT. 2.

c i. *Charge of indecent assault.*]—R. *v.* BELL, [1930] 1 W. W. R. 433; 2 D. L. R. 414; 53 Can. C. C. 80; 24 Alta. L. R. 519.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 2.—A.

l i. —— ——.]—R. *v.* BRISTOL (N. S.), [1926] 4 D. L. R. 753; 46 Can. Crim. Cas. 156.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 2.—B. (a).

3920 iii. ——.]—On a charge of theft evidence tending to show that accused has been guilty of criminal acts, other than that upon which he has been charged, is inadmissible, & when allowed entitles accused to a new trial.—R. *v.* MORRISON (1923), 33 B. C. R. 244.—**CAN.**

3923 ii. ——.]—Evidence of other similar acts done by accused is not admissible merely for the purpose of proving that accused by reason of his character or habits is likely to have committed the offence with which he is charged, but it is admissible if it is relevant in any other manner whatever to the guilt of accused, & it is not necessary before evidence of other similar but unconnected acts can be admitted that the prosecution should first lay a foundation for such evidence by establishing a *primâ facie* case against accused, sufficient without the help of any such evidence to go to the jury.—R. *v.* COOPER, [1923] N. Z. L. R. 1237: Gaz. L. R. 528.—**N.Z.**

3923 iii. ——.]—R. *v.* DZIWRA (Ont.), [1928] 1 D. L. R. 828; 49 Can. Crim. Cas. 229.—**CAN.**

3923 iv. ——.]—Prisoner was indicted for the murder of his wife by strychnine poisoning. Evidence adduced in support of the indictment was that of three children of a former marriage by prisoner, going to show the latter's persistent cruelty towards his wife over a considerable period, in the case of two of the children terminating two years & of the third one year before the wife's death. Other evidence of happenings between the time up to which the children were able to testify & the wife's death tended to show that prisoner had become tired of her:—*Held:* the children's evidence was properly admitted both as evidence of the malicious mind with which prisoner killed his wife & of the fact that he killed her, & also as rebutting the possible defences that the wife had taken the poison herself, either suicidally or accidentally.—R. *v.* MUNN, [1930] N. Z. L. R. 1017.—**N.Z.**

PART XII. SECT. 4, SUB-SECT. 2.—B. (b).

3943 ii. ——.]—HTIN, GYAW *v.* R. (1927), I. L. R. 6 Ran. 6.—**IND.**

3943 iii. ——.]—Evidence admitted to prove a system or course of conduct.—HARRIS *v.* R. (1927), 48 N. L. R. 330.—**S. AF.**

3943 iv. ——.]—R. *v.* PUBLICOVER (1930), 53 Can. C. C. 265; 1 M. P. R. 333.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 2.—B. (e).

3960 i. *General rule.*]—Evidence admitted to rebut a suggestion of accident or mistake.—HARRIS *v.* R. (1927), 48 N. L. R. 330.—**S. AF.**

PART XII. SECT. 4, SUB-SECT. 2.—B. (h) i.

p i. —— *Disguise as revenue officer.*]—B. & others were convicted of the murder of the captain of a boat containing a cargo of liquor intended to be illegally delivered in the United States. It was proved that B. had bought a yachtman's cap with a white top & ornamented with gold braid in order to give himself the appearance of a revenue officer, & in concert with the others had attacked the crew of the boat, under the pretence that he & his associates were officers of the law. Evidence was offered by the Crown that B. on one occasion recently, & on another at a considerably earlier date, had employed similar equipment & precisely the same ruse for the purpose of deceiving & disarming the opposition of bootleggers while he took over their illegal possessions:—*Held:* such evidence was admissible as tending to establish a practice.—BAKER *v.* R., SOWASH *v.* R., [1926] 1 D. L. R. 115; [1926] S. C. R. 92; 45 Can. Crim. Cas. 19.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 2.—B. (h) iv.

k i. —— *Indecent assault involving murder on another child.*]—In reaching a conclusion on a charge of indecent assault, involving murder, upon a little girl:—*Held:* the jury were neither bound, nor entitled, to shut their eyes to what they might consider to have been proved under a charge of indecent assault upon another little girl, in view of the close association in time, character, & circumstances of the incidents alleged with regard to the two charges.—H. M. ADVOCATE *v.* BICKERSTAFF, [1926] S. C. (J.) 65.—**SCOT.**

PART XII. SECT. 4, SUB-SECT. 2.—B. (h) viii.

4052 xiv. —— ——.]—A person accused of obtaining goods on false pretences from B. & S. was convicted on the two counts. The pretence consisted, in the B. case, of representations that accused was a bank officer, at a certain place, was low in clothes & was about to take a holiday, & giving an assumed name; in the S. case, accused wrote a letter with similar false statements of his name & employment & stating that he desired to obtain personal requirements, as he was about to be married. Subsequently accused called & obtained goods at S.'s warehouse. The statements as to the holiday & the marriage were not proved to be untrue. Accused wrote a similar letter to M., but it was not shown that he obtained goods there. Accused also obtained credit from F. The only false representation to F. was the giving of the false name:—*Held:*

4129a. Statement by wife—In absence of husband.]—A statement by deft.'s wife to third persons is not evidence against deft. on his trial of the facts therein contained, but may be given in evidence with his remarks on them when it is repeated to him.—R. *v.* FINDEN (1926), 19 Cr. App. Rep. 144, C. C. A.

4129b. Statement by co-defendant—In answer to questions by police.]—(1) A statement relative to a pending charge, obtained in the course of a question addressed by a police officer to a person under arrest on that charge, is not a voluntary statement.

(2) Such a statement is not evidence against a co-deft., but if the jury have been adequately warned on that point the ct. will not interfere on the ground of an ambiguous sentence in the summing up.—R. *v.* TURNER (1926), 19 Cr. App. Rep. 171, C. C. A.

4189. *Add. Citation :*—27 Cox, C. C. 510.

4194. *Add. Annotations :*—**Distd.** R. *v.* Whitehead, [1929] 1 K. B. 99. **Refd.** R. *v.* Coulson (1927), 20 Cr. App. Rep. 106.

4199. *Add. Annotations :*—**Distd.** R. *v.* Whitehead, [1929] 1 K. B. 99. **Refd.** R. *v.* Coulson (1927), 20 Cr. App. Rep. 106.

4216a. —— ——.]—On the trial of an indictment for corruptly giving or receiving a gift, a paper found on accused, which may refer to the bribery charged, is admissible in evidence against him.—R. *v.* CHESSHIRE, LUCAS & BOTTOM (1927), 20 Cr. App. Rep. 47, C. C. A.

4222a. ——.]—(1) A disorderly house at common law is a house which is so conducted as to violate law & good order.

(2) Letters, if found in such a house referring to unnatural practices, may be given in evidence against a person charged with keeping such a house.—R. *v.* BERG, BRITT, CARRÉ & LUMMIES (1927), 20 Cr. App. Rep. 38, C. C. A.

evidence of the representations to M. & F. was rightly admitted on the question of intent.—R. *v.* REYNOLDS, [1927] S. A. S. R. 228.—**AUS.**

4052 xv. —— —— *Similar crime abroad.*]—In an indictment the charges against accused were that, having conceived a fraudulent scheme for obtaining money from the public in Scotland & elsewhere by means of counterfeit drafts, he (*a*) on Sept. 21, 1927, uttered in a bank in Dundee a forged document which purported to be a draft of a finance co. in New York, & (*b*) on Sept. 23, in the same bank pretended, by telephone from London, that the draft was genuine. The indictment further charged accused with pretending, in pursuance of the scheme, in an hotel in Brussels, in Oct., that a forged document was a genuine draft of the same finance co. :—*Held :* while admittedly the incident in Belgium could not be made the subject of a substantive charge, that incident & the crime charged were sufficiently closely connected to admit of evidence relating to that incident being used by the prosecution for the purpose of supporting the other charges.—H.M. ADVOCATE *v.* JOSEPH, [1929] S. C. (J.) 55.—**SCOT.**

PART XII. SECT. 4, SUB-SECT. 2.—B. (h) xi.

f i. —— —— *Previous fires on insured property.*]—R. *v.* PETRISOR, [1931] 2 W. W. R. 712 ; 56 Can. C. C. 389.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 5.—A.

4129a i. *Statement by wife — In absence of husband.*]—A statement made by the wife of accused was handed to him at his own request, & he admitted the signature was that of his wife, & made the remark, "I did not think she would let me down like this. Anyhow, it is not true I was sacked from. . . . I got testimonials from both places when I left" :—*Held :* an acknowledgment of the truth of the statement in whole or in part might be inferred, & the contents of the statement were properly submitted to the jury, the question of admission or not of the truth of the contents being left to them.—R. *v.* GRIGG, [1926] N. Z. L. R. 784.—**N.Z.**

t i. ——.]—R. *v.* BROWN (Sask.), [1927] 4 D. L. R. 779 ; [1927] 3 W. W. R. 335 ; 49 Can. Crim. Cas. 37. —**CAN.**

ss. *May be admissible as showing state of mind.*]—R. *v.* WYSOCHAN (1930), 54 Can. C. C. 172.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 5.—C.

4147 i. —— —— *Should be excluded unless some evidence of admission by accused.*]—It is only when accused, by "word or conduct, action or demeanour," has accepted what they contain, & to the extent that he does so, that statements made by other persons in his presence have any evidentiary value.—STEIN *v.* R., [1929] 1 D. L. R. 143 ; 50 Can. Crim Cas. 311 ; [1928] S. C. R. 553.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 5.—E.

4175 ii. —— ——.]—Applt. & twenty-one others were convicted of faction fighting within Act 11, 1896. In the course of the fight a native was stabbed & subsequently died. At least a quarter of an hour after he was wounded he stated that it was applt. who had wounded him. The magistrate admitted evidence of this statement as part of the *res gestæ* &, in consequence thereof, sentenced applt. to 18 months' imprisonment with hard labour, none of the other accused receiving more than 6 months : —*Held :* the statement was not part of the *res gestæ* & was wrongly admitted. —KAWULA *v.* R. (1929), 50 N. L. R. 39.—**S. AF.**

PART XII. SECT. 4, SUB-SECT. 6.—B.

4200 viii. ——.]—On a charge of incest there was evidence of prosecutrix having complained to her stepmother six days after the alleged crime was committed, & further evidence of prosecutrix & her sister was allowed in that two days later she had complained to her sister of the crime :—*Held :* evidence of the statements made by prosecutrix to her sister eight days after the occurrence when she had had ample opportunity to complain before, was inadmissible, & by its admission a substantial wrong was done to accused, & there should be a new trial.—R. *v.* PROTEAU (1923), 33 B. C. R. 39.—**CAN.**

q i. —— ——.]—Upon appeal from a conviction for rape it was argued that evidence of a complaint, made by complainant to her husband many hours after the alleged offence, was improperly admitted, she having had earlier opportunities to complain to others, though not to her husband :—*Held :* it was for the trial judge to decide whether the complaint was made in circumstances which rendered it properly admissible—the material point was whether it was made on the first reasonable opportunity—& the judge found that it would not have been reasonable for the woman to have complained to other persons.—R. *v.* HILL, [1928] 2 D. L. R. 736 ; 49 Can. Crim. Cas. 161 ; 61 O. L. R. 645. —**CAN.**

4209 vi. —.]—R. *v.* STONEHOUSE & PASQUALE, [1928] 1 D. L. R. 506 ; [1928] 1 W. W. R. 161 ; 49 Can. Crim. Cas. 122 ; 39 B. C. R. 279.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 7.

4221 iii. ——.]—It was objected that the trial judge improperly received in evidence a book found in prisoner's house, entitled "Theses & Statutes of the Third (Communistic) International of Moscow," published in the interests of an organisation with which prisoner had voted to amalgamate :—*Held :* the evidence was admissible.—R. *v.* MCLACHLAN (1923), 56 N. S. R. 413 ; 41 Can. Crim. Cas. 249.—**CAN.**

4232 i. *Must be material—Charge of acts of gross indecency—Evidence of possession of lewd pictures—Admitted on general issue.*]—Upon a charge of gross indecency, evidence that indecent photographs were found in accused's possession is not admissible, unless there is some specific connection between the articles & the participation of accused in the crime.—R. *v.* DAVIS, [1925] App. D. 30.—**S. AF.**

PART XII. SECT. 5, SUB-SECT. 1.

1 i. *Actual words & not substance of confession should be given.*]—The ct. ought to ascertain as far as possible the very words spoken by accused who is said to have confessed. There is no rule of law which precludes the ct. from holding that a confession has been proved even in cases where the evidence gives the substance, though not the actual words of the statement made by accused, if the ct. believes that evidence.—NUR ALI *v.* R. (1924), I. L. R. 5 Lah. 140.—**IND.**

1 ii. ——.]—It is not the law that the statement of accused must be rejected if not in his *ipsissima verba*, but it is a matter for consideration by the judge in arriving at his decision as to the admission or not of the statement.—A.-G. *v.* M'CABE, [1927] I. R. 129.—**IR.**

sd. *Previous written statement inconsistent with prisoner's evidence at trial.*]—*Held :* admissible.—A.-G. *v.* MURRAY, [1926] I. R. 266.—**IR.**

se. *Statement inculpating co-prisoners.*]—Three applts. together with a woman were convicted of the crime of murder. After arrest the woman had made a statement inculpating applts. under whose compulsion she said she had been acting :—*Held :* the statement was not a confession, & had been improperly admitted in evidence against applts.—R. *v.* CAMANE, [1925] App. D. 570.—**S. AF.**

sf. *Statement overheard in cells.*]—At the trial of four persons, on charges

4254a. the judge at the trial is satisfied that deft. was properly cautioned before he made a statement, that statement is admissible in evidence: deft. is not entitled at that stage to give evidence that the statement was improperly obtained.—R. *v.* BALDWIN (1931), 23 Cr. App. Rep. 62, C. C. A.

4275a. —— —— —— **Preliminary examination.**]—R. *v.* TUTTLE, No. 2204a, *ante*.

4279. *Add. Annotation :*—**Apld.** R. *v.* Tuttle (1929), 140 L. T. 701.

4286. *Add. Annotation :*—**Apld.** R. *v.* Tuttle (1929), 140 L. T. 701.

4308. *Add. Annotation :*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

4317a. —— ——.]—The fact that an accused person makes a voluntary confession without a caution does not exclude its admissibility at the trial.—R. *v.* PATTISON (1929), 21 Cr. App. Rep. 139, C. C. A.

4348. *Add. Annotation :*—**Apld.** R. *v.* Brown & Bruce (1931), 23 Cr. App. Rep. 56.

including a charge of murder against three of the number, a police-officer, who had been on duty on the morning after the murder at the office in which two of the persons charged were being detained, gave evidence. He deponed that prisoners were shouting to each other in the cells to see who was in. He was then asked by counsel for the Crown, "What did you hear?":—*Held :* the question must be disallowed.—H.M. ADVOCATE *v.* KEEN, [1926] S. C. (J.) 1.—**SCOT.**

sg. *What amounts to—Under* 1917 *Act* (*c.* 31), *s.* 273.]—The test to be applied in determining whether a statement made by accused is a confession within 1917 Act (c. 31), s. 273, is whether the acknowledgment of guilt on the part of the accused is such that, if made in a ct. of law, it would have amounted to a plea of guilty.—R. *v.* BECKER, [1929] App. D. 167.—**S. AF.**

PART XII. SECT. 5, SUB-SECT. 2.

o i. —— ——.]—Where a magistrate translated what he had written down to accused, who acknowledged it to be correct & affixed his thumb impression :—*Held :* the confession was admissible, any defects in the mode of recording it being cured by Code of Criminal Procedure, s. 533.—R. *v.* DEO DAT (1922), I. L. R. 45 All. 166.—**IND.**

PART XII. SECT. 5, SUB-SECT. 3.

s (p. 406) **i.** —— *Document marked for identification only—Not admissible.*]—R. *v.* SMITH (1931), 3 M. P. R. 97.—**CAN.**

t (p. 408) **i.** ——.]—The evidence of a judgment debtor on an examination for discovery in aid of execution is admissible against him on a subsequent criminal charge, unless he at the time objected to answer on the ground that his answers might tend to incriminate him.—R. *v.* NOZAKI, [1926] 4 D. L. R. 955; [1926] 3 W. W. R. 332; 46 Can. Crim. Cas. 168; 37 B. C. R. 305.—**CAN.**

ri. —— *Subsequent charge of perjury.*]—At the preliminary hearing of another charge, accused, who was in custody, was questioned by the magistrate, when asking for an adjournment. He was not represented by counsel, & had not offered himself as a witness or been sworn, & his answers were not taken down in writing. At the trial accused was questioned as to alleged admissions to the magistrate & he denied them. His denial was the subject of the perjury charge :—*Held :* the conviction for perjury should be quashed.—R. *v.* CIESLENSKI, [1924] 1 W. W. R. 82; 41 Can. Crim. Cas. 195.—**CAN.**

PART XII. SECT. 5, SUB-SECT. 4.

4303 x. ——.]—Neither the fact that accused was not cautioned before making a statement to a person in authority, nor the fact that it was made in answers to questions put by a police officer, is sufficient to render it inadmissible in law, but they are circumstances which the judge should consider in exercising his discretion to exclude or admit the statement.—R. *v.* KOOTEN, [1926] 4 D. L. R. 771; [1926] 1 W. W. R. 178; 46 Can. Crim. Cas. 159; 35 Man. L. R. 461.—**CAN.**

4303 xi. ——.]—*Held :* evidence as to a voluntary statement made by prisoner to the police, after being cautioned, was admissible, although the effect of the statement was to indicate the previous bad character of accused.—H.M. ADVOCATE *v.* M'FADYEN, [1926] S. C. (J.) 93.—**SCOT.**

4303 xii. ——.]—R. *v.* HAGERUP (Sask.) (1927), 48 Can. Crim. Cas. 95.—**CAN.**

4303 xiii. ——.]—BOISSEAU *v.* R. (1927), 49 Can. Crim. Cas. 222; Q. R. 43 K. B. 105.—**CAN.**

4303 xiv. —— *Effect of retraction.*]—A retracted confession is admissible in evidence, but should have no weight attached to it unless it is corroborated in material particulars, or the tribunal comes to the conclusion that the statement as a whole is a truthful statement. In either of these cases the retracted statement must be given full weight, & may be used against a co-accused.—SHEONARAIN SINGH *v.* R. (1928), I. L. R. 8 Pat. 262.—**IND.**

m p. (411) **i.** —— ——.]—R. *v.* PRICE, [1931] 3 D. L. R. 155; 55 Can. C. C. 206.—**CAN.**

s (p. 412) **i.** —— ——.]—If based on an admission or confession to the police, when they were interrogating accused, a conviction on a summary trial will be set aside, unless it can be proved that accused made the admission or confession voluntarily.—R. *v.* WARD (1924), 41 Can. Crim. Cas. 418.—**CAN.**

s (p. 412) **ii.** —— ——.]—The burden is upon the prosecution to satisfy the judge that statements made by the prisoner on interrogation by a person in authority were voluntary.—R. *v.* NELSON PRICE, [1931] 3 M. P. R. 303.—**CAN.**

b (p. 412) **i.** —— *Though not in accused's native tongue—Confession read over & explained.*]—R. *v.* IWANCHUK (Alta.), [1929] 1 D. L. R. 279; 50 Can. Crim. Cas. 405.—**CAN.**

4311 vi. ——.]—A confession made to any person under the influence of a promise or threat held out by a person in authority, calculated to induce the confession, is inadmissible, unless it be clearly proved to the satisfaction of the judge, whose duty it is to decide the question, that the promise or threat did not operate upon the mind of the accused, & that the confession was voluntary.—R. *v.* TREANOR, R. *v.* FLOOD, R. *v.* TREANOR, R. *v.* KELLY, [1924] 2 I. R. 193.—**IR.**

4311 vii. —— *Made under influence of mental suggestion.*]—R. *v.* BOOHER (Alta.), [1928] 4 D. L. R. 795; [1928] 3 W. W. R. 203; 50 Can. Crim. Cas. 271.—**CAN.**

m (p. 413) **i.** —— *Officer must be called.*]—R. *v.* BRYGA (1930), 53 Can. C. C. 198.—**CAN.**

sc. *Admissibility question of law for judge.*]—The question of the admissibility of an alleged confession made by an accused is one of law & for the judge alone. The proper practice is to have all the evidence on the preliminary point whether the confession is admissible taken at one time as a "trial within a trial" & in the absence of the jury.—R. *v.* BASCHUK, [1931] 2 W. W. R. 713; 56 Can. C. C. 208; 39 Man. L. R. 554.—**CAN.**

PART XII. SECT. 5, SUB-SECT. 5.

4326 i. *Before accused is in custody—Inquiries as to offences may be made—Answers admissible in evidence—Caution not necessary.*]—R. *v.* KOOTEN, [1926] 4 D. L. R. 771; [1926] 1 W. W. R. 178; 46 Can. Crim. Cas. 159; 35 Man. L. R. 461.—**CAN.**

4326 ii. —— —— —— ——.]—It is not the law that a statement must be excluded on the sole ground that either the statement was made in answer to questions put by a police officer to accused, or that it was made without a caution having been first administered. It is a matter for the judge to decide whether, in his discretion, he will admit the statement or not, having regard to all the circumstances, & observing the legal requirement that the statement shall be voluntary, though not necessarily volunteered.—A.-G. *v.* M'CABE, [1927] I. R. 129.—**IR.**

4326 iii. —— —— —— ——.]—Where a statement made by accused, at the time suspected but not then arrested, to a police officer was freely & voluntarily made :—*Held :* the fact that such officer failed to caution accused did not render the statement inadmissible.—R. *v.* BARLIN, [1926] App. D. 459.—**S. AF.**

4336 xvi. —— —— ——.]—A statement made to the police by a boy, between sixteen & seventeen years of age, detained on suspicion of murder, not admitted, in view of the youth of accused, his abnormal physical & mental condition at the time he made the statement, a doubt as to the adequacy of the warning given by the police, the fact that he had not the benefit of the advice of a lawagent, & the fact that the statement had followed upon a conversation with an inspector in which questions put to accused had some bearing on the subject-matter of the charge.—H.M. ADVOCATE *v.* AITKEN, [1926] S. C. (J.) 83.—**SCOT.**

4336 xvii. —— —— ——.]—A statement made to the police by a man detained on suspicion of murder, in reply to a question addressed by one police officer to another, not admitted, as prisoner might have thought that the question was addressed to him, & his statement could not be regarded as voluntary.—H.M. ADVOCATE *v.* LIESER, [1926] S. C. (J.) 88.—**SCOT.**

4336 xviii. —— —— —— *Burden of establishing voluntary character of statement on Crown.*]—R. *v.* BELLOS, [1927] 3 D. L. R. 186; [1927] S. C. R. 258; 48 Can. Crim. Cas. 126.—**CAN.**

4336 xix. —— —— —— —— *How burden discharged.*]—SANKEY *v.* R., [1927] 4 D. L. R. 245; [1927] S. C. R. 436; 48 Can. Crim. Cas. 97.—**CAN.**

4336 xx. —— —— ——.]—R. *v.* SEABROOKE, [1932] 4 D. L. R. 116.—**CAN.**

4351. *Add. Annotation :*—**Refd.** R. *v.* Turner (1926), 19 Cr. App. Rep. 171.

4351a. —— —— ——.]—R. *v.* BOOKER, No. 8793a, *post.*

4351b. -.]—R. *v.* TURNER, No. 4129b, *ante.*

4351c. -.]—R. *v.* BROWN & BRUCE, No. 2404a, *ante.*

4351d. -.]—Evidence of conversation between a prisoner in custody & a police officer may not be admissible on the trial of the accused, if the prisoner has not been cautioned.—R. *v.* DWYER (1932), 23 Cr. App. Rep. 156, C. C. A.

4357a. —— **Form of statement.**]—R. *v.* O'DONOGHUE, No. 8266a, *post.*

4526. *Add. Annotation :*—**Consd** Minter *v.* Priest, [1929] 1 K. B. 655.

4534. *Add. Annotation :*—**Refd.** Minter *v.* Priest, [1929] 1 K. B. 655.

4588. *Add. Annotation :*—**Refd.** Broome *v.* Agar (1928), 138 L. T. 698.

4606. *Add. Annotation :*—**Refd.** R. *v.* De Montalk (1932), 23 Cr. App. Rep. 182.

4620. *Add. Annotation :*—**Refd.** Shapiro *v.* La Morta (1923), 130 L. T. 622.

4645. *Add. Annotation :*—**Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

4650. *Add. Annotation :*—**Consd.** Pointon *v.* Cox (1926), 136 L. T. 506.

4659. *Add. Citation :*—1 Leach, 300, n.

Add. Annotation : — **Refd.** R. *v.* Elworthy (1867), 37 L. J. M. C. 3.

4662a. —— ——.]—A deft. is entitled to see a written description of himself given by a police officer to his superior, with a view to cross-examining that officer on alleged discrepancies between the contents of that document & his sworn testimony.—R. *v.* CLARKE (1930), 22 Cr. App. Rep. 58, C. C. A.

4662b. —— ——.]—R. *v.* THOMAS, No. 5910a, *post.*

4692. In the cross-reference following this case, for "*See* Part XXIII., Sect. 1, sub-sect. 1, Q. (*b*). *post*," read "*See* Part XXXIII., Sect. 1, sub-sect. 1, Q. (*b*), *post.*"

4693a. —— **During hearing.**] — (1) When one joint deft. pleads guilty to two larcenies, the summing-up must not assume against another only indicted in respect of one that he is implicated.

(2) A witness who has been present at the proceedings before being called is not thereby disqualified from giving evidence.—R. *v.* BRIGGS (1930), 22 Cr. App. Rep. 68, C. C. A.

4705a. Duty of counsel—To apply for leave to cross-examine as to character.] — When counsel for the prosecution proposes to cross-examine prisoner on character, under Criminal Evidence Act, 1898 (c. 36), s. 1 (*f*), it is desirable that he should make an express application for leave to the judge before proceeding to that line of cross-examination. —R. *v.* MCLEAN (1926), 134 L. T. 640, C. C. A.

4705b. **To refrain from cross-examining as to character.**]—R. *v.* DUNKLEY, No. 4734a, *post.*

4711a. —— ——.]—R. *v.* BALDWIN, No. 3820b, *ante.*

4712. *Add. Annotation :*—**Consd.** R. *v.* Baldwin (1925), 133 L. T. 191.

4712a. —— **Cross-examination tending to show accused likely to commit offence charged.**]—R. *v.* COULMAN, No. 3156e, *ante.*

4712b. What amounts to imputation of crime—Question as to having been at industrial school

PART XII. SECT. 5, SUB-SECT. 6.—A.

4380 viii. ——.]—Where the village panch told accused that the truth had come out, & that he had better say what he knew, & accused thereupon confessed his guilt :—*Held :* the confession was inadmissible in evidence. —KUNJA SUBUDHI *v.* R. (1928), I. L. R. 8 Pat. 289.—**IND.**

4380 xiv. ——.]—A police officer to whom a confession was said to have been made had said to deft. that "It would be better to tell the truth" :—*Held :* such an expression imports the probability of benefit to be derived by the accused from telling the truth & therefore a statement so induced is inadmissible.—R. *v.* BROWN, [1931] 3 D. L. R. 592 ; O. R. 154 ; 55 Can. C. C. 258.—**CAN.**

PART XII. SECT. 5, SUB-SECT. 6.—C. (b).

q i. ——.]—A collecting & an assistant "pancharget" are persons in authority within Evidence Act, s. 24, when they have taken an important part in the inquiry into the circumstances of the commission of the offence.—R. *v.* GANESH CHANDRA GOLDAR (1922), I. L. R. 50 Calc. 127.—**IND.**

PART XII. SECT. 6, SUB-SECT. 1.

4540 iii. ——.]—In a criminal prosecution the charge against accused must be proved absolutely. If there is a reasonable doubt the conviction must be quashed.—R. *v.* DERBY (1924), 42 Can. Crim. Cas. 152.—**CAN.**

4540 iv. ——.]—R. *v.* MYERS (Ont.) (1928), 50 Can. Crim. Cas. 350.—**CAN.**

k i. ——.]—R. *v.* BRYANT (Sask.) (1929), 52 Can. Crim. Cas. 410.—**CAN.**

PART XII. SECT. 6, SUB-SECT. 2.

s (p. 430) **i.** —— *Lawful posession of liquor in lawful place.*]—R. *v.* CAIN (Ont.) (1929), 52 Can. Crim. Cas. 179.—**CAN.**

s (p. 430) **ii.** —— *When discharged.*] —R. *v.* SMITH (Alta.) (1929), 52 Can. Crim. Cas. 193.—**CAN.**

c (p. 431) **i.** —— —— ——.]—Where, on a charge of unlawfully wounding a certain person with intent to maim or disable him, the Crown proves that the accused discharged a firearm in the direction of a crowd of persons & wounded the person named, it establishes its case, & the *onus* then shifts to the accused to satisfy the ct. that it was either an accident or that he did not intend to wound.—R. *v.* SMART, [1927] 3 W. W. R. 753 ; 49 Can. Crim. Cas. 75 ; 23 Alta. L. R. 349.—**CAN.**

PART XII. SECT. 6, SUB-SECT. 3.—B.

4610 i. *Sufficiency of proof—Question of fact for jury.*]—The question of intent is for the jury & not for the Crown.—R. *v.* MCLACHLAN (1923), 56 N. S. R. 413 ; 41 Can. Crim. Cas. 249.—**CAN.**

4620 i. *Whether special intent must be proved—In malicious damage to property.*]—R. *v.* MASHARIGN, [1924] App. D. 11.—**S. AF.**

PART XII. SECT. 6, SUB-SECT. 4.—A.

sh. *Admissibility not affected by means of procuring evidence.*]—R. *v.* PERRY (P. E. I.) (1929), 52 Can. Crim. Cas. 166.—**CAN.**

PART XII. SECT. 6, SUB-SECT. 4.—C.

sm. *Matter for discretion of court.*]—Act 31 of 1917, s. 256 (1), which makes provision for the taking of evidence on commission in criminal proceedings, is permissive & confers on a superior ct. the discretion, whether, under the circumstances of any particular case, it is in the interest of justice to have the evidence of a witness taken on commission or not.—R. *v.* LEVY, [1929] App. D. 312.—**S. AF.**

PART XII. SECT. 12, SUB-SECT. 1.

b i. —— *Policemen or spotters—Sale of intoxicating liquors.*]—R. *v.* CANCILLA, [1928] 2 D. L. R. 783 ; [1928] 1 W. W. R. 852 ; 50 Can. Crim. Cas. 48 ; 37 Man. L. R. 315.—**CAN.**

ff i. —— *Informer.*]—HARRIS *v.* R. (1927), 48 N. L. R. 330.—**S. AF.**

PART XII. SECT. 12, SUB-SECT. 2.—A.

b i. *Can be compelled to furnish specimen of handwriting.*]—A witness, in a criminal trial, though he be accused testifying on his own behalf, while under cross-examination may be ordered to write certain words dictated to him, & when accused is the witness an effect of such writing may be that a letter, otherwise unproved, is admitted in evidence against him.—R. *v.* WHITTAKER, [1924] 3 D. L. R. 63 ; 2 W. W. R. 706 ; 42 Can. Crim. Cas. 162. —**CAN.**

g i. —— —— *Breach of city bye-law.*] —R. *v.* HART (1891), 20 O. R. 611.—**CAN.**

4695 i. *May be cross-examined.*]—A.-G. *v.* MURRAY, [1926] I. R. 286.—**IR.**

—**Admissible.**]—R. *v.* CRAVITZ (1931), 172 L. T. Jo. 324; 23 Cr. App. Rep. 74; 76 Sol. Jo. 50, C. C. A.

4715. *Add. Annotations :*—**Consd.** R. *v.* Pollinger (1930), 22 Cr. App. Rep. 75. **Refd.** R. *v.* Dunkley (1926), 134 L. T. 632; R. *v.* McLean (1926), 134 L. T. 640.

4716. *Add. Annotation :*—**Distd.** R. *v.* King (1927), 20 Cr. App. Rep. 158.

4717b. —— **Suggesting other offences.**]—A prisoner was asked in cross-examination questions tending to show that he had committed other offences. The jury were warned in the summing up that they ought to disregard the effect of those questions :—*Held :* the mischief caused by the questions was incurable & the conviction must be quashed.—R. *v.* MORRISSEY (1932), 23 Cr. App. Rep. 188, C. C. A.

4717c. Prisoner's character in issue—Statement that prisoner struck off Medical Register.]—R. *v.* STARKIE (1932), 76 Sol. Jo. 780, C. C. A.

4733. *Add. Annotation :*—**Refd.** R. *v.* Dunkley (1926), 134 L. T. 632.

4734a. —— **Suggestion that witness deliberately committing perjury.**]—(1) To suggest that a witness for the prosecution is deliberately committing perjury because he believes that he has a grievance against prisoner is an imputation on the character of that witness within Criminal Evidence Act, 1898 (c. 36), s. 1 (*f*), so as to render cross-examination of prisoner as to character admissible.

(2) Even where such a line of cross-examination is admissible in law, counsel for the prosecution should refrain from adopting it, unless the circumstances are such as to make it appear to be a positive duty on his part so to cross-examine.—R. *v.* DUNKLEY, [1927] 1 K. B 323; 96 L. J. K. B. 15; 134 L. T. 632; 90 J. P. 75; 28 Cox, C. C. 143; 19 Cr. App. Rep. 78, C. C. A.

4735. *Add. Annotations :*—**Refd.** R. *v.* Dunkley (1926), 134 L. T. 632; R. *v.* McLean (1926), 134 L. T. 640.

4742. *Add. Annotation :*—**Refd.** R. *v.* Dunkley (1926), 134 L. T. 632.

4747. *Add. Annotation :*—**Refd.** R. *v.* Dunkley (1926), 134 L. T. 632.

4748. *Add. Annotations :*—**Refd.** R. *v.* Dunkley (1926), 134 L. T. 632; R. *v.* McLean (1926), 134 L. T. 640.

4749. *Add. Annotation :*—**Refd.** R. *v.* Dunkley (1926), 134 L. T. 632.

4750. *Add. Annotation :*—**Refd.** R. *v.* Dunkley (1926), 134 L. T. 632.

4751a. ——.]—Statements by a defendant in evidence which do not *per se* import "imputations" within Criminal Evidence Act, 1898 (c. 36), s. 1 (*f*) (ii), may do so by reason of "the nature or conduct of the defence."—R. *v.* POLLINGER (1930), 22 Cr. App. Rep. 75, C. C. A.

4754a. ——.]—(1) Questions ought not to be put in cross-examination to a prisoner in such a form as may involve him inadvertently in an attack on the character of a witness for the Crown.

(2) A threat to a prisoner-witness that his character may be disclosed as the result of his not withdrawing an imputation on the truthfulness of a witness for the Crown, which leads to such withdrawal is, in effect, preventing his defence being put to the jury. —R. *v.* EIDINOW (1932), 23 Cr. App. Rep. 145, C. C. A.

4764a. —— —— **Grievous bodily harm.**]—Upon an indictment for inflicting grievous bodily harm, the wife of prisoner must not be called as a witness for the Crown.—R. *v.* KING (1925), 19 Cr. App. Rep. 34, C. C. A.

4770. *Add. Annotation :*—**Refd.** Statham *v.* Statham, [1929] P. 131.

4771a. —— —— ——.]—At common law, on a charge against a husband of assaulting his wife, the wife is not only a competent but a compellable witness.—R. *v.* LAPWORTH, [1931] 1 K. B. 117; 100 L. J. K. B. 52; 144 L. T. 126; 95 J. P. 2; 29 L. G. R. 61; 29 Cox, C. C. 183; 47 T. L. R. 10; 74 Sol. Jo. 735; 22 Cr. App. Rep. 87, C. C. A.

4800. *Add. Annotation :*—**Distd.** R. *v.* Lapworth, [1931] 1 K. B. 117.

4804. After this case add :—

Criminal Law Amendment Act, 1912 (c. 20), s. 7 (6).

4816a. —— ——.]—It. *v.* SOUTHERN, No. 3156f, *ante*.

PART XII. SECT. 12, SUB-SECT. 2.—C. (e).

4755 ii. —— ——.]—Two prisoners, tried together on one complaint, each gave evidence under Criminal Evidence Act, 1898 (c. 36), s. 1. In the opinion of the judge the evidence of neither incriminated the other :—*Held :* neither was entitled to cross-examine the other, such right of cross-examination being limited to the case where, in the opinion of the judge, the evidence given incriminated, or tended to incriminate, the fellow prisoner.—GEMMELL & M'FADYEN *v.* MACNIVEN, [1928] S. C. (J.) 5.—**SCOT.**

PART XII. SECT. 12, SUB-SECT. 3.—B.

q i. —— ——.]—On the trial of a person charged with an offence other than one within the classes of offences excepted by sub-sect. (2) of sect. 4 of Canada Evidence Act from the operation of sub-sect. (1) thereof, neither the accused nor the husband or wife, as the case may be, of the accused is competent to give evidence on behalf of the prosecution; but either the accused or the husband or wife of the accused may, but *semble* the husband or wife is not compellable, give evidence on behalf of the defence; provided, however, that in no case shall the husband or wife be compellable to disclose any communication made to him or her by his or her spouse during their marriage. —R. *v.* ARNESON, [1930] 3 W. W. R. 163; 54 Can. C. C. 330.—**CAN.**

s i. *Children Act*, 1908 (c. 67)—*Whether competent—Offence involving bodily injury.*]—A man was tried upon a charge of using certain lewd, indecent & libidinous practices towards a girl aged six :—*Held :* an offence involving bodily injury to the child within the above Act, although no actual physical hurt had been done to her, & the wife of accused could under that Act & Criminal Evidence Act, 1898, be called & examined by the Crown as a witness. —H.M. ADVOCATE *v.* LEE, [1923] S. C. (J.) 1.—**SCOT.**

s ii. —— —— ——.]—A man was tried upon indictment for striking at, & attempting to cut with a razor, a child aged six weeks :—*Held :* an offence involving bodily injury to the child within the above Act, although the child had not been physically injured or actually touched, & the wife of accused could be called & examined by the Crown as a witness.—H.M. ADVOCATE *v.* MACPHIE, [1926] S. C. (J.) 91.—**SCOT.**

PART XII. SECT. 12, SUB-SECT. 4.—B.

4816 i. *Admissibility under Children Act*, 1908 (*c.* 67), *s.* 30—*Conditions of reception.*]—*Held :* the purpose of sect. 30 of Children Act, 1908, was to enable a child "of tender years," age not defined by the statute, who does not, in the opinion of the ct., understand the nature of an oath, to give evidence not upon oath if, in the opinion of the ct., the child has sufficient intelligence to justify the reception of the evidence & understands the duty of speaking the truth. The sect. did not alter the previous law as to the reception of the evidence of children on oath, which was & is a question, not of age, but of the intelligence & actual mental capacity of the child witness, his sense & reason of the danger & impiety of falsehood. Strictly speaking, the objection to the reception of the child's evidence on oath should be taken, & the witness interrogated by the ct., on the *voir dire*, but the practice became established that the objection might be taken on facts elicited, after the person was sworn as witness, during the direct examination or even during the cross-examination, &, if it prevailed, the judge would strike out the evidence & withdraw it from the jury.—A.-G. *v.* O'SULLIVAN, [1930] I. R. 552.—**IR.**

a i. —— *Criminal Code, s.* 1003.]—R. *v.* GEMMILL (1924), 43 Can. Crim. Cas. 360.—**CAN.**

4818. *Add. Annotations :*—**Consd.** R. *v.* Bailey, [1924] 2 K. B. 800. **Reld.** R. *v.* Southern (1929), 142 L. T. 383.

4819. *Add. Annotation :*—**Reld.** R. *v.* Southern (1929), 142 L. T. 383.

4822. *Add. Annotation :*—**Reld.** R. *v.* Southern (1929), 142 L. T. 383.

4823a. —— —— ——.]—R. *v.* Southern, No. 3156f, *ante*.

4824a. —.]—R. *v.* Stevens (1913), 135 L. T. Jo. 442 ; 9 Cr. App. Rep. 132.

4826a. —— —— ——.]—Appct. was convicted of unlawful carnal knowledge of a girl under thirteen, & was sentenced to three years' penal servitude. The girl, whose age was eight & a half years, gave unsworn testimony under the above sect., proviso (a) of which renders necessary corroboration of such evidence " by some other material evidence in support thereof implicating the accused." The only corroboration of the child's testimony was the evidence of an older girl to whom she stated her version of what had occurred immediately after the alleged offence had taken place :—*Held :* corroboration must not only connect, or tend to connect, the accused with the crime, but must come from an independent quarter, & the evidence of the older girl originated from prosecutrix herself.—R. *v.* Evans (1924), 88 J. P. 196 ; 18 Cr. App. Rep. 123, C. C. A.

4826b. —— —— ——.]—Corroboration of the unsworn evidence of a child must be " material evidence implicating accused."—R. *v.* Stanley (1927), 20 Cr. App. Rep. 58, C. C. A.

4878a. —— ——.]—R. *v.* Smith, No. 6066a, *post*.

4891. *Add. Annotation :*—**Reld.** R. *v.* Beebe (1925), 133 L. T. 736.

4900. *Add. Annotation :*—**Consd.** R. *v.* Beebe (1925), 133 L. T. 736.

4902. *Add. Annotations :*—**Consd.** R. *v.* Beebe (1925), 133 L. T. 736. **Reld.** Statham *v.* Statham, [1929] P. 131.

f i. —— ——.]—Prisoner was indicted for an indecent assault on a girl under thirteen. At the trial there was admitted the unsworn testimony of the child alleged to have been assaulted & of two other children of tender years, & the evidence of the mother of the girl that she had asked the child what she was crying about, & that the child's reply was a complaint of prisoner's conduct to her :—*Held :* (1) the unsworn testimony of a child of tender years could not be corroborated by the unsworn testimony of any number of such children ; (2) the answers of the girl to her mother's questions were not evidence of the facts complained of, & could not constitute corroboration of those facts.—R. *v.* Coyle, [1926] N. 208.—**IR.**

f ii. —.]—A panel was tried before a sheriff & jury upon an indictment which set forth certain lewd, indecent & libidinous practices towards a boy six years of age. The boy gave evidence in support of the charge, & his father & mother deponed to the condition of his person & clothing shortly after the offence, &, also, to the statements which he had made to them *de recenti*. The sheriff charged the jury that the evidence was sufficient in law to entitle them to convict, & the panel was convicted. On appeal : —*Held :* the boy's evidence was sufficiently corroborated in law by the evidence of his parents, & evidence of statements made by a victim *de recenti* afforded corroboration of that victim's evidence.—M'Lennan *v.* H.M. Advocate, [1928] S. C. (J.) 39.—**SCOT.**

n i. *S. P.* R. *v.* Lamond, [1926] 1 D. L. R. 826 ; 45 Can. Crim. Cas. 200 ; 58 O. L. R. 264.—**CAN.**

PART XII. SECT. 13, SUB-SECT. 1.

r i. ——.]—The question whether a witness is an accomplice is one of fact for the jury, after the judge has instructed them as to what constitutes an accomplice & has decided that there is evidence from which the jury can reasonably infer that the witness comes within that category.—R. *v.* Gallagher, [1924] 4 D. L. R. 1059 ; 3 W. W. R. 357.—**CAN.**

4828 ii a. *S. P.* R. *v.* Rodgers (Ont.), [1926] 4 D. L. R. 609 ; 46 Can. Crim. Cas. 372.—**CAN.**

4828 ii b. *S. P.* R. *v.* Bandel (Ont.) (1927), 47 Can. Crim. Cas. 266.—**CAN.**

4828 xvi. ——.]—R. (Lesley) *v.* Morel, [1931] 1 W. W. R. 209 ; 25 S. L. R. 262.—**CAN.**

4828 xvii. —.]—R. *v.* Tommy, R. *v.* Kinney, R. *v.* McKinley, [1930] 1 D. L. R. 973 ; 52 Can. C. C. 321 ; *on appeal*, [1931] 3 D. L. R. 668 ; 55 Can. C. C. 350 ; 2 M. P. R. 242.—**CAN.**

c i. *Person giving bribe.*]—A. & B. were charged with conspiring to obtain money from C. by unlawful means. The Crown case was that prisoners had conspired to obtain, & had obtained, a large sum of money from C. as a bribe to refrain from taking criminal proceedings against C. or his daughter, both of whom gave evidence for the Crown. Accused denied having asked for or received any money :—*Held :* C. was not an accomplice.—R. *v.* Olholm & McPherson, [1925] V. L. R. 377 ; 47 A. L. T. 10 ; 31 Argus L. R. 228.—**AUS.**

so. *Person implicated in crime—whether as principal or accessory.*]—A person implicated, either as principal or as accessory in the crime under investigation, is an " accomplice " within the rule.—A.-G. *v.* Linehan, [1929] I. R. 19.—**IR.**

sp. *Person cognisant of act of accused.*] —A witness, whose evidence had been admitted as corroborating a girl, was shown to have known of the act of accused & to have assisted him to procure certain drugs to be used to bring about a miscarriage, but there was no evidence to show he knew of the girl's age :—*Held :* there was no evidence to show that the witness was an accomplice & the judge was right in not directing the jury that his evidence was not corroborative.—R. *v.* Kennewell, [1927] S. A. S. R. 287. —**AUS.**

sq. *Person taking woman to accused to perform illegal operation.*]—R. *v.* Synowizswa, [1931] 2 D. L. R. 65 ; 55 Can. C. C. 63.—**CAN.**

PART XII. SECT. 13, SUB-SECT. 4.—A.

sr. *Whether evidence corroborates—Functions of judge & jury.*]—It is a preliminary question of law for the judge to determine whether there is any evidence that does corroborate the story of the approver, so far as the complicity of the accused is concerned. The judge must not tell the jury that such or such witness does in fact corroborate the approver. That is the function of the jury & depends upon whether they believe the witness or not.—Rebati Mohan Chakavarty *v.* R. (1928), I. L. R. 56 Calc. 150.—**IND.**

PART XII. SECT. 13, SUB-SECT. 4.—B.

4891 xi. ——.]—R. *v.* Davidson (1925), 44 Can. Crim. Cas. 311.—**CAN.**

4891 xii. ——.]—After trial before a judge & jury, deft. was convicted of the offence of stealing cattle. The cattle were in fact stolen—the defence was that deft. was not the thief. The only evidence against deft. was the testimony of an accomplice, one L. ; & the trial judge, in charging the jury, told them that if they agreed that there was no evidence, but that of an accomplice, it was not safe to convict upon that, but if they were satisfied they might convict :—*Held :* the jury were properly directed.—R. *v.* Skelly, [1928] 1 D. L. R. 619 ; 49 Can. Crim. Cas. 179 ; 61 O. L. R. 497.—**CAN.**

4904 ii a. *S. P.* R. *v.* Rodgers (Ont.), [1926] 4 D. L. R. 609 ; 46 Can. Crim. Cas. 372.—**CAN.**

4904 xii. ——.]—R. *v.* Switzer (Ont.) (1925), 45 Can. Crim. Cas. 377.—**CAN.**

4904 xiii. ——.]—A charge cannot be said to be established merely on the unsuported testimony of an accomplice. —R. *v.* Satish Chandra Singha (1927), I. L. R. 54 Calc. 721.—**IND.**

4904 xiv. ——.]—*Held :* it is not a rule of law that the evidence of an accomplice must be corroborated, but it is the general practice to require corroboration.—Coulter & Treffene *v.* R. (1926), 29 W. A. L. R. 40.—**AUS.**

4904 xv. ——.]—The rule that it is dangerous to convict on the uncorroborated evidence of an accomplice applied in quashing on appeal a conviction for unlawfully purchasing from the Govt. Liquor Board a greater quantity of liquor than is allowed to be purchased on any one day.—R. *v.* Beale, [1928] 2 D. L. R. 325 ; [1928] 1 W. W. R. 657 ; 49 Can. Crim. Cas. 292 ; 22 Sask. L. R. 293.—**CAN.**

4904 xvi. ——.]—R. *v.* Milligan (Sask.) (1929), 52 Can. Crim. Cas. 400. —**CAN.**

PART XII. SECT. 13, SUB-SECT. 4.—C.

g i. ——.]—General hostility to the victim cannot be considered to be corroboration of a direct statement connecting accused with a particular crime. Corroboration must point to the identification of the person charged with the particular act with which the direct evidence connects him.—R. *v.* Kalwa (1926), I. L. R. 48 All. 409.—**IND.**

sb. *Possession of safe-breaker's outfit.*]—Applt. was convicted by a police magistrate of shop-breaking with intent. The only direct evidence was

4934. *Add. Annotations :*—**Apld.** R. *v.* Evans (1924), 88 J. P. 196 ; R. *v.* Beebe (1925), 133 L. T. 736. **Consd.** Statham *v.* Statham, [1929] P. 131. **Apld.** R. *v.* Charavanmuttu (1930), 22 Cr. App. Rep. 1. **Consd.** R. *v.* Davies (1930), 22 Cr. App. Rep. 33. **Refd.** R. *v.* Ross (1924), 18 Cr. App. Rep. 141 ; R. *v.* Harris, [1927] 2 K. B. 587.

4942. *Add. Annotations :*—**Distd.** R. *v.* Whitehead, [1929] 1 K. B. 99. **Consd.** Statham *v.* Statham, [1929] P. 131.

4943a. ——.]—(1) It is an insufficient direction to the jury that material witnesses may be accomplices ; it must be added that if this is found, there ought not to be a conviction unless there is corroboration.

(2) The silence of the accused, on being charged, is not a matter to be left to the jury.

(3) Where similar offences are indicted on different dates the greatest care must be taken in charging the jury that evidence concerning one date should not be used as corroboration of that concerning another.—R. *v.* CHARAVANMUTTU (1930), 22 Cr. App. Rep. 1, C. C. A.

4972a. ——.]—R. *v.* SMITH, No. 6066a, *post.*

4972b. ——.]—R. *v.* BEEBE, No. 6066b, *post.*

Part XIII.—Punishment and Prevention of Crime.

4974a. ——.]—R. *v.* JONES, R. *v.* POOLE, R. *v.* TERRY (1924), 18 Cr. App. Rep. 135, C. C. A.

4974b. ——.]—R. *v.* WRIGHT (1925), 19 Cr. App. Rep. 19, C. C. A.

4974c. ——.]—R. *v.* BUGGS (1910), 6 Cr. App. Rep. 74, C. C. A.

4985a. —— ——.]—A sentence of greater severity than the sentence appropriate to a particular offence ought not to be imposed merely because a prisoner has, in the opinion of the trial judge, committed perjury in the witness-box.—R. *v.* QUINN (1932), 23 Cr. App. Rep. 196, 198, C. C. A.

4994a. —— —— ——.]—The mere fact that a man has been convicted many times is not in itself sufficient reason for passing a heavy sentence on him for an offence which is trivial in itself.—R. *v.* TAYLOR (1924), 18 Cr. App. Rep. 143, C. C. A.

4994b. —— —— ——.]—The fact that a prisoner has committed some serious offences is no reason for giving him a sentence of penal servitude for such an offence as breaking into a railway station booking-office & stealing some cigarettes & bottles of horse medicine. —R. *v.* PRICE (1924), 18 Cr. App. Rep. 138, C. C. A.

4994c. -.]—Prisoner obtained various small sums of money from a tobacconist by falsely representing that he had obtained certain appointments, & was sentenced to three years' penal servitude. He had a bad record both in South Africa & in England :—*Held :* in considering whether the sentence was proper the ct. had to beware of treating an offence as serious in itself because it had been committed by a man who previously had committed a series of offences, & the sentence should be reduced to eighteen months' imprisonment with hard labour.—R. *v.* DURAND (1924), 18 Cr. App. Rep. 137, C. C. A.

4994d. -.]—R. *v.* WALLS (*alias* RUSSELL) (1925), 19 Cr. App. Rep. 35, C. C. A.

that of a confessed accomplice. In a room occupied by applt. in a rooming house there were found a revolver, sticks of dynamite, a battery & other articles used by safe-breakers :—*Held :* although there was nothing but the accomplice's testimony, & applt.'s lies with respect to some of the articles, to connect the articles so found with the crime, &, although neither the fact that the revolver was identified by the accomplice & proven to be applt.'s property by an independent witness, nor the separate finding of any of the other articles, would in itself constitute corroboration, nevertheless in view of the fact that those articles constituted, as a whole, the usual & complete outfit of a safe-breaker, their finding did constitute corroboration.—R. *v.* WURCH, [1932] 2 W. W. R. 183.—**CAN.**

PART XII. SECT. 13, SUB-SECT. 4.—E.

4960 viii. ——.]—Where the evidence of an accomplice has not been corroborated, & the charge to the jury merely tells them that if they believe the accomplice they should convict accused, the jury is not properly directed ; &, where it is impossible to say that if properly directed they must inevitably have come to the same conclusion, the conviction must be quashed.—R. *v.* STASIUK (Sask.), [1926] 4 D. L. R. 811 ; [1926] 2 W. W. R 723 ; 46 Can. Crim. Cas. 129.—**CAN.**

4960 ix. ——.]—In charging the jury the trial judge said : "Unless you are convinced beyond any real doubt that the girl has given testimony which is true in the material particulars, namely : the date & place of connection with the accused, then the accused is entitled to your verdict. But if you are so convinced, then, of course, it will be your duty to declare your verdict accordingly." *Held :* as there was corroborative evidence, this direction, together with other parts of the summing up, was sufficient.—R. *v.* KENNEWELL, [1927] S. A. S. R. 287.—**AUS.**

b i. —— ——.]—R. *v.* GALLAGHER, No. 6064 vii, *post.*—**CAN.**

h i. —— ——.]—A woman was charged with the murder of the illegitimate child of her granddaughter. The case against her rested entirely on the evidence of her granddaughter, & this evidence, as regards the main facts, was practically wholly uncorroborated. This evidence went to show that the granddaughter was implicated in the crime. The woman was convicted & sentenced to death :—*Held :* the rule requiring corroboration of the evidence of an accomplice applied to the facts of the case, & the jury should have been warned as to the danger of acting upon the granddaughter's evidence alone without corroboration. Accordingly the conviction was reversed, & a re-trial ordered under Courts of Justice Act, 1928, s. 5. —A.-G. *v.* LINEHAN, [1929] I. R. 19.—**IR.**

h ii. —— *Extent of corroboration necessary.*]—It is not sufficient for a trial judge to explain to a jury that, where witnesses are accomplices, they must be corroborated in some material particular before it is safe for a jury to convict. He must go further & explain that the evidence should confirm in some material particular not only the evidence that the crime has been committed but, also, that the prisoner committed it.—R. *v.* GLOVER (1928), 28 S. R. N. S. W. 482 ; 45 N. S. W. W. N. 148.—**AUS.**

o i. —— ——.]—Where the judge called the attention of the jury to the rule as to the danger of convicting on the uncorroborated testimony of an accomplice, at the same time pointing out that it was within their province to do so :—*Held :* the conviction should be affirmed.—R. *v.* SHEMIT, [1925] 2 D. L. R. 1004 ; 44 Can. Crim. Cas. 10 ; 58 N. S. R. 116.—**CAN.**

See, also, cases in Part XIV, Sect. 7, Sub-sect. 7, B, *post.*

PART XIII. SECT. 1, SUB-SECT. 1.

p i. —— ——.]—R. *v.* LEAF, [1926] 1 W. W. R. 888 ; 45 Can. Crim. Cas. 236 ; 20 Sask. L. R. 542.—**CAN.**

4991 i. *Sentence must be proportionate to offence—Trifling offence—Previous convictions.*]—R. *v.* CROSS, [1927] 3 W. W. R. 432.—**CAN.**

st. *Power of judge to hear evidence of complainant to decide on proper sentence —After plea of guilty—Must avoid consideration of aggravating circumstances likely to change character of offence charged.*]—R. *v.* WHEPDALE (Sask.), [1927] 3 W. W. R. 704 ; 49 Can. Crim. Cas. 62.—**CAN.**

4994e. —— —— ——.]—R. *v.* DENT (1925), 19 Cr. App. Rep. 18, C. C. A.

4994f. —— —— ——.]—R. *v.* GUMBS (1926), 19 Cr. App. Rep. 74, C. C. A.

4994g. —— —— ——.]—In imposing sentence on persons often previously convicted, regard must be had to the gravity of the offence in question.—R. *v.* D'ARCY (1926), 19 Cr. App. Rep. 22, C. C. A.

4994h. —— —— ——.]—R. *v.* CHARLES (1927), 20 Cr. App. Rep. 129, C. C. A.

4994j. —— —— ——.]—The mere fact that a prisoner has been previously convicted is not necessarily a ground for inflicting a severe sentence for dishonestly obtaining goods of small value.—R. *v.* WOODWARD (1929), 21 Cr. App. Rep. 137, C. C. A.

4994k. —— —— ——.]—R. *v.* SMITH (1929), 21 Cr. App. Rep. 138, C. C. A.

4994l. —— —— ——.]—R. *v.* WILLIAMS (1930), 22 Cr. App. Rep. 78, C. C. A.

4994m. —— —— ——.]—R. *v.* EDWARDS (1930), 22 Cr. App. Rep. 79, C. C. A.

4994n. —— —— ——.]—Sentence mitigated, despite a very bad "record," in view of the trifling nature of the offence.—R. *v.* JONES (1931), 23 Cr. App. Rep. 69, C. C. A.

4998a. —— ——.]—Sentence reduced, in view of the small value of the property stolen & of prisoner's youth.—R. *v.* ROATH (1927), 20 Cr. App. Rep. 138, C. C. A.

4998b. —— ——.]—Sentence reduced, in view of the small value of the property stolen, notwithstanding previous convictions.—R. *v.* WATSON (1927), 20 Cr. App. Rep. 119 C. C. A.

4998c. —— ——.]—Sentence reduced, in view of the small value of the property obtained by false pretences & of prisoner's youth, notwithstanding previous convictions.—R. *v.* BOREHAM (1928), 20 Cr. App. Rep. 182, C. C. A.

5003a. —— ——.]—R. *v.* UPTON (1929), 21 Cr. App. Rep. 156, C. C. A.

5003b. —— ——.]—R. *v.* TEARNE (1930), 22 Cr. App. Rep. 15, C. C. A.

5012a. Offence under Criminal Law Amendment Act, 1922 (c. 56), s. 2—Acquittal on major charge—Conviction on minor charge.]—The ct. declines to lay down a general rule concerning sentence in cases under above sect. where deft. is acquitted of the major charges therein referred to but convicted of a minor charge.—R. *v.* KEECH (1929), 21 Cr. App. Rep. 125, C. C. A.

Annotation:—**Refd.** R. *v.* Blackman (1929), 21 Cr. App. Rep. 132.

5012b. —— —— ——.]—R. *v.* BLACKMAN (1929), 21 Cr. App. Rep. 132, C. C. A.

5014a. Evasion of military service.]—The ct. will usually treat offences committed to escape military service as ordinary crimes.—R. *v.* CHISWELL (1930), 22 Cr. App. Rep. 67, C. C. A.

5018a.]—R. *v.* DEALER (1929), 21 Cr. App. Rep. 165, C. C. A.

5024a. —— ——.]—R. *v.* POWELL (1928), 21 Cr. App. Rep. 67, C. C. A.

5024b. —— ——.]—R. *v.* ATKINSON (1929), 21 Cr. App. Rep. 111, C. C. A.

5028a. —— **Prisoners jointly accused.**] — There should be discrimination between the sentences of persons jointly accused, in view of their previous records & ages, & account should be taken of the period of detention before trial.—R. *v.* ANDREWS (1927), 20 Cr. App. Rep. 37, C. C. A.

5035a. ——.]—(1) Despite a plea of guilty, the ct. will review a conviction when there is a good defence in law.

(2) The ct. does not accept the principle that a sentence must necessarily be severer than that passed on the prisoner on a previous conviction.

(3) A deft. must distinctly consent to the ct. of trial taking into consideration charges other than those in the indictment before it can do so.—R. *v.* GRIFFITHS (1932), 23 Cr. App. Rep. 153; 76 Sol. Jo. 148, C. C. A.

5036a. *S. P.* R. *v.* MOLDON (1926), 19 Cr. App. Rep. 116, C. C. A.

5039a. —— ——.]—Previous convictions of a prisoner on trial must be strictly proved.—R. *v.* TURNER (1924), 18 Cr. App. Rep. 161, C. C. A

Annotation:—**Refd.** R. *v.* O'More (1926), 19 Cr. App. Rep. 175.

5046a. —— ——.]—R. *v.* DRIVER (1926), 19 Cr. App. Rep. 86, C. C. A.

5046b. —— ——.]—R. *v.* BERRY (1928), 21 Cr. App. Rep. 47, C. C. A.

5046c. —— ——.]—R. *v.* DOBSON (1930), 22 Cr. App. Rep. 141, C. C. A.

5046d. —— ——.]—R. *v.* WESTGATE (1931), 23 Cr. App. Rep. 15, C. C. A.

5046e. —— ——.]—R. *v.* BRAY (1931), 23 Cr. App. Rep. 30, C. C. A.

5046f. Subsequent sentence need not be heavier.]—R. *v.* GRIFFITHS, No. 5035a, *ante*.

5049a. -.]—Where prisoner, a young man, had made a real effort to retrieve his character & to get continuous work:—*Held:* (1) a sentence to penal servitude was not necessary, & prisoner's sentence of five years' penal servitude might suitably be reduced to twenty-one months' imprisonment with hard labour.

(2) The term of first sentence to penal servitude must depend on the circumstances: there is no general rule that it is three years.—R. *v.* TOWNSEND (1924), 18 Cr. App. Rep. 99, C. C. A.

PART XIII. SECT. 1, SUB-SECT. 2.

sw. *Perjury.*]—R. *v.* ZIZU NATANSON (No. 2) (Sask.), [1927] 2 W. W. R. 154; 49 Can. Crim. Cas. 89.—**CAN.**

sx. *Attempted theft.*]—On a trial by a magistrate, by consent under sect. 773 (*b*) of the Criminal Code, of a charge of attempted theft, where the sum attempted to be stolen exceeds $200, the accused is liable on conviction to a sentence of two years & six months' imprisonment.—R. *v.* BLACKMAN & SMITH, [1931] 2 W. W. R. 111; 56 Can. C. C. 48; 44 B. C. R. 115.—**CAN.**

sy. *Effect of Prisons & Reformatories Act,* 1927, *s.* 46.]—A person convicted in Ontario of non-support of his wife, under s. 242 of the Criminal Code, may be lawfully sentenced to the term of imprisonment mentioned in sect. 46 of Prisons & Reformatories Act, R. S. C., 1927. While sect. 242 declares what shall generally be the sentence throughout Canada, sect. 46 enacts an exception applicable to Ontario in the circumstances therein mentioned.—R. *v.* OLDAKER, [1930] 1 D. L. R. 648; 52 Can. C. C. 318; 64 O. L. R. 564.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 1.—A.

5028 ii. ——.]—R. *v.* NGA BA SHEIN (1928), I. L. R. 6 Ran. 391.—**IND.**

5036 i. *Previous acquittals must not influence adversely.*]—R. *v.* JOHNSON (1925), 44 Can. Crim. Cas. 319.—**CAN.**

—— ——.]—R. *v.* BOURNE, R. *v.* COLEMAN (1925), 19 Cr. App. Rep. 17, C. C. A.

5049c. —— ——.]—R. *v.* TROTT (1927), 20 Cr. App. Rep. 120, C. C. A.

5049d. —— ——.]—R. *v.* ETTRIDGE (1927), 20 Cr. App. Rep. 126, C. C. A.

5049e. —— ——.]—R. *v.* HINKS (1927), 20 Cr. App. Rep. 137, C. C. A.

5049f. —— ——.]—R. *v.* HILL (1928), 20 Cr. App. Rep. 170, C. C. A.

5049g. —— ——.]—R. *v.* WAYE (1928), 20 Cr. App. Rep. 171, C. C. A.

5057a. —— ——.]—Sentence mitigated in view of a long period of honest work.—R. *v.* WINTER (1924), 18 Cr. App. Rep. 139, C. C. A.

5057b. —— ——.]—Sentence reduced in view of a long period of honest work.—R. *v.* PORTER (1926), 19 Cr. App. Rep. 90, C. C. A.

5057c. —— ——.]—Sentence mitigated in view of an interval of three years' honest life.—R. *v.* GUNTRIP (1925), 19 Cr. App. Rep. 45, C. C. A.

5057d. —— ——.]—R. *v.* WHITBY (1926), 19 Cr. App. Rep. 115, C. C. A.

5057e. —— ——.]—R. *v.* PEARCY (1929), 21 Cr. App. Rep. 160, C. C. A.

5057f. —— ——.]—Sentence for "outstanding charges" should not ignore a long period without conviction.—R. *v.* GREEN (1930), 22 Cr. App. Rep. 94, C. C. A.

5057g. —— ——.]—R. *v.* ROCHE (1931), 23 Cr. App. Rep. 28, C. C. A.

5057h. —— ——.]—R. *v.* SCHOFIELD (1931), 22 Cr. App. Rep. 194, C. C. A.

5057j. —— ——.]—R. *v.* WILLIAMS (1931), 23 Cr. App. Rep. 103, C. C. A.

5065. *Add. Citations:*—130 L. T. 319; 27 Cox, C. C. 576.

5065a. ——.]—R. *v.* ANDREWS, No. 5028a, *ante*.

5074a. —— ——.]—R. *v.* LLOYD, No. 2567a, *ante*.

5081a. —— ——.]—R. *v.* TAYLOR (*alias* SAUNDERS, *alias* WALLACE), No. 1913a, *ante*.

5092a. —— **Duty of police to supply list of charges.**]—Appct. had been convicted at quarter sessions of larceny & had been sentenced to five years' penal servitude. Offences which he admitted & which were other than those charged against him in the indictment were taken into consideration by the ct. of quarter sessions in passing sentence. He applied for leave to appeal against his sentence:—*Held:* as it was difficult to see what other cases had been taken into consideration by the ct. of quarter sessions in passing sentence on appct., it would be convenient if in such a case the police would file at the ct. of trial a list showing (*a*) the places where the other offences had been committed; (*b*) the dates & (*c*) the nature of such offences; (*d*) if possible, whether or not warrants had been issued in respect of such offences.—R. *v.* HICKS (1924), 88 J. P. 68; 18 Cr. App. Rep. 11, C. C. A.

5092b. Other court should be informed before sentence passed.]—R. *v.* TAYLOR, No. 5314a, *post*.

5097a. —— ——.]—R. *v.* PEACE (1925), 19 Cr. App. Rep. 58, C. C. A.

5099. *Add. Annotation:*—**Refd.** R. *v.* Peace (1925), 19 Cr. App. Rep. 58.

5108a. Mistake of law]—R. *v.* GIBSON (1930), 22 Cr. App. Rep. 13, C. C. A.

5110a. —— **Great provocation.**]—R. *v.* CARMICHAEL (1930), 22 Cr. App. Rep. 142, C. C. A.

5110b. ——.]—R. *v.* CURTIS (1932), 23 Cr. App. Rep. 158, C. C. A.

5111a. ——.]—There is no rule of law or practice that a co-prisoner should receive a lighter sentence, in view of his giving evidence for the Crown.—R. *v.* O'DARE, DAVIS & MORTON (1927), 20 Cr. App. Rep. 79, C. C. A.

5116a. Long interval free from conviction.]—Sentence mitigated.—R. *v.* HODSON (1927), 20 Cr. App. Rep. 11, C. C. A.

5116b. Inability to obtain work.]—R. *v.* POMFRET (1931), 23 Cr. App. Rep. 31, C. C. A.

5116c. Attempt to earn honest living.]—Sentence reduced in view of a period of honest work.—R. *v.* MARTIN (1931), 23 Cr. App. Rep. 52, C. C. A.

5116d. ——.]—Mitigation of sentence in view of a period of honest work.—R. *v.* PHILLIPS (1931), 23 Cr. App. Rep. 127, C. C. A.

5119a. —— ——.]—Applts. treated as first offenders, & sentences reduced.—R. *v.* SEATON & FLANAGAN (1928), 20 Cr. App. Rep. 192, C. C. A.

5125a. ——.]—R. *v.* COX (1924), 18 Cr. App. Rep. 152, C. C. A.

5125b. ——.]—R. *v.* HURRELL (1926), 19 Cr. App. Rep. 89, C. C. A.

5125c. ——.]—R. *v.* WARD (1926), 19 Cr. App. Rep. 126, C. C. A.

5125d. ——.]—Sentence reduced, although the case was serious, in view of the fact that it was prisoner's first offence, & on account of her youth.—R. *v.* CHICK (1925), 19 Cr. App. Rep. 57, C. C. A.

5125e. ——.]—R. *v.* GREENWOOD (1929), 21 Cr. App. Rep. 186, C. C. A.

5125f. ——.]—R. *v.* WOOD (1930), 22 Cr. App. Rep. 53, C. C. A.

5125g. ——.]—R. *v.* FISHER (1931), 22 Cr. App. Rep. 191, C. C. A.

5125h. ——.]—R. *v.* VARLOW (1931), 22 Cr. App. Rep. 189, C. C. A.

5125j. ——.]—R. *v.* BETTS, QUINT, & CRESSET TRUST, LTD. (1931), 23 Cr. App. Rep. 10, C. C. A.

5125k. ——.]—R. *v.* WILSON (1931), 23 Cr. App. Rep. 104, C. C. A.

5125l. ——.]—R. *v.* ORMESHER (1932), 23 Cr. App. Rep. 172, C. C. A.

5129a. —— ——.]—R. *v.* HOLMES (1931), 23 Cr. App. Rep. 46, C. C. A.

5148a. ——.]—Sentence mitigated in view of youth.—R. *v.* HARDY (*alias* EMMETT) (1925), 18 Cr. App. Rep. 168, C. C. A.

5148b. ——.]—R. *v.* CHICK, No. 5125d, *ante*.

5148c. ——.]—Sentence mitigated in view of youth, notwithstanding prisoner had been detained in a Borstal institution & had also served a sentence of three months' imprisonment with hard labour.—R. *v.* LEATHERLAND (1926), 19 Cr. App. Rep. 85, C. C. A.

5148d. ——.]—R. *v.* GETHING (1926), 19 Cr. App. Rep. 112, C. C. A.

5148e. ——.]—R. *v.* GREENWOOD (1929), 21 Cr. App. Rep. 186, C. C. A.

5148f. ——.]—R. *v.* COOK (1931), 23 Cr. App. Rep. 47, C. C. A.

5148g. ——.]—R. *v.* HUGHES & ADAMS (1930), 22 Cr. App. Rep. 145, C. C. A.

5148h. ——.]—R. *v.* FISHER (1931), 22 Cr. App. Rep. 191, C. C. A.

5148j. ——.]—R. *v.* MORGAN (1931), 22 Cr. App. Rep. 177, C. C. A.

5148k. ——.]—R. *v.* MALT (1931), 23 Cr. App. Rep. 45, C. C. A.

5148l. ——.]—R. *v.* HAYWOOD (1931), 22 Cr. App. Rep. 193, C. C. A.

5148m. ——.]—R. *v.* BROWN (1931), 23 Cr. App. Rep. 38, C. C. A.

5148n. ——.]—R. *v.* JONES (1932), 23 Cr. App. Rep. 162, C. C. A.

5148o. ——.]—R. *v.* HANSLOW (1932), 23 Cr. App. Rep. 160, C. C. A.

5148p. ——.]—R. *v.* TROWBRIDGE (1932), 23 Cr. App. Rep. 162, C. C. A.

5148q. ——.]—R. *v.* SCHOLES (1932), 23 Cr. App. Rep. 161, C. C. A.

5155a. ——.]—R. *v.* HURRELL (1926), 19 Cr. App. Rep. 89, C. C. A.

5156a. —— —— **What is post office offence.**]—Where a postman had altered the time on a letter in order to make it appear to have been sent before the result of a competition for which he had entered :—*Held :* a sentence of three years' penal servitude was too severe, as the offence was not a post office offence in the ordinary sense.—R. *v.* TANNER (1910), 6 Cr. App. Rep. 62, C. C. A.

5170a. Failure to make restitution—After postponement.]—The ct. does not approve of a sentence being increased because, after a postponement, prisoner has failed to make fuller restitution.—R. *v.* PRITCHARD (1929), 21 Cr. App. Rep. 152, C. C. A.

5173. *Add. Annotation :*—**Refd.** R. *v.* Roberts & Morriss (1926), 134 L. T. 635.

5174. *Add. Annotation :*—**Refd.** R. *v.* Roberts & Morriss (1926), 134 L. T. 635.

5175. *Add. Annotation :*—**Refd.** R. *v.* Roberts & Morriss (1926), 134 L. T. 635.

5175a. —— ——.]—There is no rule of law or of practice forbidding a sentence of simple imprisonment being given to follow a sentence of two years' imprisonment with hard labour. —R. *v.* ROBERTS & MORRISS (1926), 134 L. T. 635 ; 42 T. L. R. 373 ; 28 Cox, C. C. 150 ; *sub nom.* R. *v.* MORRISS, 90 J. P. 84 ; 42 T. L. R. 373 ; 70 Sol. Jo. 426 ; 19 Cr. App. Rep. 75, C. C. A.

5180. After this case add :—

—— **Substitution of penal servitude.**]—*See* Penal Servitude Act, 1926 (c. 58).

5181. For " in the case of consecutive sentences " read " in the case of concurrent sentences."

5184. *Add. Annotation :*—**Refd.** R. *v.* Fielder (1926), 135 L. T. 64.

5190a. —— ——.]—The term of a sentence must precede the serving of a *remanet*.—R. *v.* HARVEY (1927), 20 Cr. App. Rep. 37, C. C. A.

5190b. —— ——.]—A *remanet* term cannot be served concurrently with a fresh sentence.—R. *v.* NALL (1927), 20 Cr. App. Rep. 85, C. C. A.

5190c. —— ——.]—A sentence of penal servitude to run concurrently with a *remanet* cannot be imposed.—R. *v.* REYNOLDS (1932), 23 Cr. App. Rep. 173, C. C. A.

5194. *Add. Annotation :*—**Apld.** Morriss *v.* Winter (1929), 45 T. L. R. 643.

5194a. —— **Not interrupted by period of special treatment pending appeal against another conviction.**]—In a proper case the ct. will order that the period of " special treatment " under Criminal Appeal Act, 1907 (c. 23), s. 14, of an applt. already serving a sentence shall not be added to that term.—R. *v.* FOX (1925), 18 Cr. App. Rep. 192, C. C. A.

5194b. —— ——.]—R. *v.* HASLAM, No. 2839a, *ante*.

5198a. **No previous conviction.**]—R. *v.* EMMOTT (1928), 21 Cr. App. Rep. 42, C. C. A.

5201a. -.]—The ct. leans against a longer term of imprisonment with hard labour than two years.—R. *v.* LONG (1927), 20 Cr. App. Rep. 101, C. C. A.

5208a. —— ——.]—The fact that a convicted prisoner has undergone terms of penal servitude does not of itself justify sentence to a further term ; all the circumstances of the case must be considered, including the magnitude of the latest offence.—R. *v.* KNELL (1926), 19 Cr. App. Rep. 169, C. C. A.

5208b. —— —— **Second offence of different nature.**]—A previous sentence to penal servitude is not *per se* a ground for the infliction of penal servitude on a subsequent conviction, especially for an offence of a different nature.—R. *v.* FITT (1928), 21 Cr. App. Rep. 41, C. C. A.

5211a. When to be awarded under Penal Servitude Act, 1926 (c. 58).]—R. *v.* ASCOLI (1927), 20 Cr. App. Rep. 156, C. C. A.

5217. *Add. Annotation :*—**Refd.** R. *v.* Townsend (1924), 18 Cr. App. Rep. 90.

5217a. —— ——.]—R. *v.* TOWNSEND, No. 5049a, *ante*.

PART XIII. SECT. 3, SUB-SECT. 1.

5182 l. *Concurrent sentences—Imprisonment & penal servitude.*]—A prisoner having been found guilty upon two charges, the ct. sentenced him to five years' penal servitude in respect of the first charge & to imprisonment for one year in respect of the second charge, the two sentences to run concurrently.—H.M. ADVOCATE *v.* CARSON, [1927] S. C. (J.) 70.—**SCOT.**

PART XIII. SECT. 3, SUB-SECT. 2.

s i. —— —— *Sentence imposed under provincial statute.*]—Sect. 3 of Prisons & Reformatories Act, R. S. C., 1927 (c. 163), & sect. 42 (2) of Penitentiary Act, R. S. C., 1927 (c. 154), which provide that a term of imprisonment shall, unless otherwise directed in the sentence, begin to run from the date of the sentence, do not apply to sentences imposed under a provincial statute unless the provincial statute itself, either directly or indirectly, makes them applicable. At common law the period of imprisonment is reckoned from the time the defendant is received into custody.—HIRSCH *v.* ANDERSON & WEDDERSPOON, [1930] 1 W. W. R. 405 ; 2 D. L. R. 576 ; 53 Can. C. C. 359 ; 24 S. L. R. 358.—**CAN.**

t i. —— *Release on bail—Whether time counts.*]—*Re* Hoon, [1928] 1 D. L. R. 624 ; 49 Can. Crim. Cas. 191 ; 59 N. S. R. 471.—**CAN.**

sy. *Of accused acquitted on ground of insanity—Powers of Lieutenant-Governor.*]—R. *v.* COLEMAN (N. S.) (1927), 47 Can. Crim. Cas. 148.—**CAN.**

sz. *Alternative sentences—Prisons & Reformatories Act, R. S. C., 1927, s. 46—Criminal Code, s. 242 (3).*]—R. *v.* OLDAKER (Ont.) (1929), 52 Can. Crim. Cas. 318.—**CAN.**

5217b. —— ——.]—There is no rule of law or practice that the term of a first sentence of penal servitude is limited to three years.—R. *v.* BASIRE (1926), 19 Cr. App. Rep. 174, C. C. A.

5238a. —— **Power of court to call for expert reports.**]—R. *v.* HOBBS (1928), 21 Cr. App. Rep. 14, C. C. A.

5239a. When justified—Necessity for compliance with statute.]—The mere fact that accused is within the statutory limits of age does not justify a sentence to Borstal discipline; the other statutory conditions of Prevention of Crime Act, 1908 (c. 59), s. 1 (1), must be fulfilled.—R. *v.* STENSON & WINTERBOTTOM (1930), 22 Cr. App. Rep. 18, C. C. A.

5239b. —— ——.]—Whether a young offender is a person "of criminal habits & tendencies" or in "association with persons of bad character," within Prevention of Crime Act, 1908 (c. 59), s. 1 (1) (*b*), is a question of fact in each case; but, *semble:* the evidence of such facts must be clear & certain: trifling offences or casual association with one criminal are not sufficient to satisfy the statute.—R. *v.* CONNELL & IRVINE (1930), 22 Cr. App. Rep. 102, C. C. A.

5239c. —— ——.]—R. *v.* GREENWOOD (1931), 23 Cr. App. Rep. 55, C. C. A.

5239d. —— ——.]—A number of offences committed on the same day are not conclusive of "criminal habits or tendencies" as they might be if they had taken place at some intervals of time.—R. *v.* STEWART (1931), 23 Cr. App. Rep. 61, C. C. A.

5239e. —— ——.]—In certain circumstances the very nature of the offence of which a young offender is convicted may justify a ct. in drawing the inference that he is of "criminal habits or tendencies," & accordingly amenable to a sentence of detention in a Borstal institution.—R. *v.* WALDING (1931), 144 L. T. 672; 22 Cr. App. Rep. 178; 29 Cox, C. C. 283, C. C. A.

5240. *Add. Annotation:*—**Refd.** R. *v.* Scoffin, [1930] 1 K. B. 741.

5240a. —— **Misstatement of age—Subsequent true statement & good conduct—Sentence changed in favour of detention in Borstal.**]—R. *v.* CURRAN (1930), 22 Cr. App. Rep. 57, C. C. A.

5240b. —— **Time for ascertaining age—Date of sentence.**]—Where an accused person is convicted at petty sessions & remitted to quarter sessions or assizes for sentence under Criminal Justice Administration Act, 1914 (c. 58), s. 10, as amended, the material time at which to ascertain his age in connection with the power of the ct. to order his detention in a Borstal institution is that when sentence is passed, not that of his conviction.—R. *v.* SCOFFIN, [1930] 1 K. B. 741; 99 L. J. K. B. 521; 143 L. T. 121; 46 T. L. R. 311; 74 Sol. Jo. 216; 29 Cox, C. C. 151; 22 Cr. App. Rep. 27, C. C. A.

5241a. —— **Youth of prisoner.**]—Detention in a Borstal institution substituted for a sentence of imprisonment with hard labour passed on a boy sixteen years of age.—THORPE'S CASE (1918), 13 Cr. App. Rep. 176, C. C. A.

5241b. —— ——.]—R. *v.* RANKIN (1932), 23 Cr. App. Rep. 200, C. C. A.

5243a. —— ——.]—Sentence of detention quashed.—R. *v.* SMEE (1928), 20 Cr. App. Rep. 192, C. C. A.

5244a. —— **Sentence manifestly excessive.**]—R. *v.* GORE (1929), 21 Cr. App. Rep. 175, C. C. A.

5244b. —— ——.]—R. *v.* THOMPSON (1931), 23 Cr. App. Rep. 76, C. C. A.

5244c. —— ——.]—R. *v.* PHELPS & ROBERTS (1931), 23 Cr. App. Rep. 77, C. C. A.

5244d. —— **Corruption of others in Institute likely.**]—The ct. will not permit youths with very bad records, who are likely to corrupt others, to be sent to Borstal institutions.—R. *v.* KNEALE (1931), 23 Cr. App. Rep. 73, C. C. A.

5246a. —— ——.]—As a general rule, the term of detention in a Borstal institution should be three years.—R. *v.* REVILL (1925), 19 Cr. App. Rep. 44, C. C. A.

5246b. —— ——.]—Term of detention in a Borstal institution increased to the maximum in applt.'s own interest.—R. *v.* FRIER (1927), 20 Cr. App. Rep. 30, C. C. A.

PART XIII. SECT. 3, SUB-SECT. 4.

viction on a charge of robbery with violence the judge ordered prisoner to be whipped, &, not having stated the number of times he was to be whipped, provided for this in the record of conviction in prisoner's absence:—*Held:* the sentence was not illegal.—R. *v.* HUGHES (1924), 35 B. C. R. 55.—**CAN.**

g i. —— *Seduction offences.*]—The maximum punishment under Criminal Code, s. 213, is two years, & whipping is not authorised & cannot be added to the punishment provided.—R. *v.* HIRSCH, [1924] 2 W. W. R. 342; 42 Can. Crim. Cas. 153.—**CAN.**

g ii. —— *Assault—By young person under sixteen.*]—MACKAY *v.* LAMB, [1923] S. C. (J.) 16.—**SCOT.**

5230 i. —— *First offenders.*]—Circumstances in which:—*Held:* whipping should not be imposed on a first offender only twenty years old.—R. *v.* WHEPDALE (Sask.), [1927] 3 W. W. R. 704; 49 Can. Crim. Cas. 62.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 5.

h i. *Power of court.*]—HALIFAX CORPN. *v.* BROWN (1885), 18 N. S. R. (6 R. & G.) 103.—**CAN.**

h ii. —— ——.]—Where an offence is punishable by imprisonment for more than five years, a sentence of a fine & imprisonment in default of payment is improper.—R. *v.* ENGLAND (1925), 43 Can. Crim. Cas. 11; 19 Sask. L. R. 165; [1925] 1 W. W. R. 237.—**CAN.**

h iii. —— *Jurisdiction of Supreme Court.*]—Applt. was tried in the Supreme Ct. of the Northern Territory on an information charging him with maliciously publishing a defamatory libel, was convicted & was sentenced to pay a fine & directed to be imprisoned until the fine was paid:—*Held:* apart from statutory restriction the direction for imprisonment was lawful, & the direction was not made unlawful by Criminal Law Consolidation Act, 1876 (S. A.), ss. 365–367, for the enforcement of fines.—MCKINNON *v.* R. (1927), 40 C. L. R. 217.—**AUS.**

m i. —— *Fine not paid—Warrant not acted on for five years.*]—Arrest after five years upheld.—R. *v.* MONDSHEIN (Man.), [1927] 1 D. L. R. 964; [1927] 1 W. W. R. 101; 47 Can. Crim. Cas. 63.—**CAN.**

o i. *Fine for violation of Criminal Code—Judge may not order payment to private individual.*]—R. *v.* ENGLAND (1925), 43 Can. Crim. Cas. 11; 19 Sask. L. R. 165; [1925] 1 W. W. R. 237.—**CAN.**

ta. *Reduction of fine on appeal—Effect of—On person by whom fine paid.*]—LEVINE *v.* WANLESS (Ont.) (1927), 47 Can. Crim. Cas. 273.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 8.

sb. *Under Probation of Offenders Act*, 1907 (c. 17).]—A licensed publican pleaded guilty to opening his licensed premises for the sale of intoxicating liquor during prohibited hours. His house was well conducted, & this was his first offence. The magistrate having given deft. the benefit of the above Act:—*Held:* as there was nothing in the evidence as to character to bring the case within sect. 1, & the offence was not a trivial one, & there were no extenuating circumstances, the magistrate was not correct in law in giving deft. the benefit of the Act.

Before a magistrate deals with a case under the above Act, he should be satisfied that the case falls under one of the specific heads of sect. 1, & should state explicitly on which of the grounds he relies if he exercises the discretion conferred on him by the Act.—GILROY *v.* BRENNAN, [1926] I. R. 482.—**IR.**

sc. *"Suspended sentence" — Meaning of.*]—The expression as used in Criminal Code, s. 1081, does not mean or infer that sentence must be passed & its operation then suspended; it means that no sentence will be passed unless & until the offender is called

5255. *Add. Annotation:*—**Apld.** R. *v.* Baxter (1924), 18 Cr. App. Rep. 127.

5258. *Add. Annotation:*—**Folld.** R. *v.* Dean (1924), 18 Cr. App. Rep. 21.

5261a. —— —— ——.]—R. *v.* DEAN, No. 3165a, *ante.*

5269. *Add. Annotation:*—**Reld.** R. *v.* Hayward (1927), 137 L. T. 64.

5279a. —— —— **Effect of failure to refer to remanet.**]—R. *v.* MURRAY, No. 5309a, *post.*

5282. *Add. Annotation:*—**Consd.** R. *v.* Norman, [1924] 2 K. B. 315.

5283a. —— —— **Nothing must be stated to jury about charge until substantive offence dealt with.**]—R. *v.* TYREMAN, No. 5359b, *post.*

5285a. —— ——.]—An allegation of being a habitual criminal ought to be tried.—R. *v.* NASH (1927), 20 Cr. App. Rep. 1, C. C. A.

Annotation:—**Folld.** R. *v.* Rutt (1928), 20 Cr. App. Rep. 186.

5285b. —.]—R. *v.* RUTT (1928), 20 Cr. App. Rep. 186, C. C. A.

5288. *Add. Annotation:*—**Folld.** R. *v.* Lonsdale (1930), 47 T. L. R. 80.

5289. *Add. Annotation:*—**N.F.** R. *v.* Lonsdale (1930), 47 T. L. R. 80.

5289a. —— ——.]—No two or more persons should be tried together on charges of being habitual criminals, even though they have been included in one indictment for the purpose of trial for the crime of which they have been convicted immediately before the preferring of the charges of being habitual criminals.—R. *v.* LONSDALE, [1931] 1 K. B. 191; 100 L. J. K. B. 212; 144 L. T. 192; 47 T. L. R. 80; 29 Cox, C. C. 209; 22 Cr. App. Rep. 122, C. C. A.

5290a. Admission of being habitual criminal—Duty of court to explain charge.]—Before an admission of being a habitual criminal is accepted, it should be made clear to prisoner that the allegation is that he was a habitual criminal at the time of his arrest.—R. *v.* DONOVAN (1925), 19 Cr. App. Rep. 2, C. C. A.

5290b. Plea of guilty—Meaning should be explained.]—A plea of guilty on the allegation of being a habitual criminal should not be accepted until its meaning has been explained to the prisoner.—R. *v.* WALLACE (1929), 21 Cr. App. Rep. 70, C. C. A.

5290c. Direction to jury—Necessary contents.]—R. *v.* DINSDALE (1926), 19 Cr. App. Rep. 123, C. C. A.

5290d. —— ——.]—R. *v.* WEALE (1927), 20 Cr. App. Rep. 153, C. C. A.

5299. *Add. Annotation:*—**Reld.** R. *v.* Stokell (1924), 18 Cr. App. Rep. 155.

5300. *Add. Annotation:*—**Consd.** R. *v.* Stokell (1924), 18 Cr. App. Rep. 155.

5303a. ——.]—During the trial of accused as a habitual criminal the judge asked a police witness whether he knew anything of accused beyond his participation in the substantive offence which accused had confessed. The answer was: "I know he has been associating with convicted persons." Association with convicted persons was not one of the grounds set out in the statutory notice to accused:—*Held:* evidence of facts not included in the statutory notice to accused must not be given at the trial by the prosecution or by any of its witnesses, & the conviction as a habitual criminal must be quashed.—R. *v.* BAXTER (1924), 132 L. T. 256; 27 Cox, C. C. 689; 18 Cr. App. Rep. 127, C. C. A.

5303b. ——.]—No misconduct, whether criminal or not, may be given in evidence on the trial of an allegation of being a habitual criminal unless the statutory notice thereof has been served.—R. *v.* STOKELL (1924), 18 Cr. App. Rep. 155, C. C. A.

5303c. —.]—R. *v.* TYREMAN, No. 5359b, *post*

5303d. ——.]—Evidence that accused is an associate of thieves is not admissible, as an allegation of being a habitual criminal, unless notice has been given of it.—R. *v.* YARWOOD (1928), 21 Cr. App. Rep. 25. C. C. A.

5303e. —— **Unless verdict unaffected by admission of other matters.**]—Despite irregular admissions in evidence of offences not in the list of the statutory notice to persons alleged to be habitual criminals, the ct. may refuse to interfere if it is satisfied that in the absence of such evidence the jury would have found the same verdict.—R. *v.* HERBERT (1931), 23 Cr. App. Rep. 123, C. C. A.

5304a. Admission of offence made before trial—For particular purpose.]—When a prisoner is charged with being a habitual criminal an admission by the prisoner that he has committed an offence made before the trial may be given in evidence at the trial, & cannot be excluded on the ground that it was made for some particular or limited purpose.—R. *v.* WILLIAMS (1929), 141 L. T. 544; 21 Cr. App. Rep. 121; 28 Cox, C. C. 654, C. C. A.

5304b. Must go to question whether prisoner habitual criminal when charged.]—R. *v.* WINN, No. 5355a, *post.*

5307. *Add. Annotation:*—**Consd.** R. *v.* Hayward (1927), 137 L. T. 64.

5308a. ——.]—When accused is charged with being a habitual criminal, the three convictions forming the basis of the charge under Prevention of Crime Act, 1908 (c. 59), s. 10 (2) (*a*), must be strictly proved; but evidence of other convictions may be given, without production of the record & evidence identify-

upon to appear & receive judgment.—R. *v.* HIRSCH, [1924] 2 W. W. R. 342; 42 Can. Crim. Cas. 153.—**CAN.**

sd. *Release on probation—No power to impose fine.*]—Where an offender is released on probation under Criminal Procedure Code, s. 562 the imposition of a fine is illegal.—KARIM BAKHSH *v.* R. (1928), I. L. R. 10 Lah. 722.—**IND.**

ART XIII. SECT. 4, SUB-SECT. 3.—A.

sx. *By accused to rebut charge—Though previous sentence of preventive detention proved.*]—Where accused is charged, under Prevention of Crime Act, 1908, with being a habitual criminal, & it is proved that he has on a previous occasion been found to be a habitual criminal & has been sentenced to preventive detention, the jury are not bound to convict him: the accused is entitled to lead evidence to show that he is not, at the date of the charge, a habitual criminal, & it is for the jury to determine, as a question of fact, whether, on the whole evidence adduced, the charge has or has not been established.—M'DONALD *v.* H.M. ADVOCATE, [1929] S. C. (J.) 76.—**SCOT.**

PART XIII. SECT. 4, SUB-SECT. 3.—C.

5307 ii. ——.]—Where a person is charged under Prevention of Crime Act, 1908, with being a habitual criminal, Criminal Procedure (Scotland) Act, 1887, s. 67, does not apply & the sched. of previous convictions appended to an extract conviction which is itself competently proved cannot be used as evidence of those convictions for the purpose of supporting the charge.—O'DONNELL *v.* H.M. ADVOCATE, [1930] S. C. 1. (J.).—**SCOT.**

ing accused with those convictions, as "evidence of character & repute" under sect. 10 (5), on the question whether accused is or is not leading persistently a dishonest or criminal life. Even apart from the statutory provision, such evidence can be given if there is any evidence that accused has admitted the convictions.—R. *v.* HAYWARD (1927), 137 L. T. 64; 28 Cox, C. C. 342; *sub nom.* R. *v.* HAYWARD, R. *v.* LAWRENCE, 43 T. L. R. 356; 20 Cr. App. Rep. 33, C. C. A.

5309a. —— **Conviction in Scotland.**]—(1) Upon a charge against a person in England of being a habitual criminal under Prevention of Crime Act, 1908 (c. 59), s. 10, a previous conviction of that person in Scotland upon indictment of a crime may be proved as one of the three previous convictions of a crime which must be proved against him under sect. 10 (2) before he can be found to be a habitual criminal, provided that the offence of which he was convicted in Scotland would also be a "crime" in England within the definition of that expression as set out in the Sched. to Prevention of Crime Act, 1908 (c. 59).

(2) The notice of intention to charge the prisoner with being a habitual criminal wrongly stated the particulars of one of his previous convictions in that the sentence was for two years' imprisonment plus a period of 522 days *remanet*, & in the notice there was no information as to the *remanet*:—*Held:* the notice sufficiently informed the prisoner of what was alleged against him & was therefore a valid notice.—R. *v.* MURRAY, [1932] 1 K. B. 599; 146 L. T. 487; 48 T. L. R. 255; 76 Sol. Jo. 166; 29 Cox, C. C. 441; 23 Cr. App. Rep. 166; *sub nom.* R. *v.* MORRISON (1932), 101 L. J. K. B. 257, C. C. A.

5312a. —— ——.]—Applt. was convicted of shopbreaking, & was sentenced to three years' penal servitude. He was also found to be a habitual criminal on the ground that he had been convicted on three previous occasions & that he was leading persistently a dishonest or criminal life, & he was sentenced to five years' preventive detention. In Sept. 1923 applt. was sentenced to twelve months' imprisonment as a suspected person, & he was released on July 23, 1924. From Sept. to Dec. 1924 he was in honest employment. He committed the shopbreaking for which he had now been sentenced on Jan. 2, 1925:—*Held:* it was questionable whether, on these facts, the jury could properly have found applt. to be a habitual criminal, but if they had done so it must be on a direction to them that the burden of proof always rested on the prosecution to show that during the relevant period applt. had been leading, persistently, a dishonest or criminal life; as there were passages in the summing up which might have conveyed to the jury that, when the prosecution had gone a certain length, the burden rested on applt. to show that he had turned over a new leaf, the conviction must be quashed.—R. *v.* DRISCOLL (1925), 89 J. P. 104; 41 T. L. R. 425; 18 Cr. App. Rep. 184, C. C. A.

5312b. —— ——.]—A jury trying the issue of being a habitual criminal or not must be expressly warned, where the Crown proves such a previous finding, that the onus of proving that the accused is still a habitual criminal at the material period rests on the Crown & not that of disproving it on him.—R. *v.* KNIGHT (1929), 21 Cr. App. Rep. 72, C. C. A.

5314a. —— ——.]—(1) On the trial of an allegation that prisoner is a habitual criminal the direction that if the three statutory convictions are proved, he must be so found, is incorrect; his whole career must be considered by the jury.

(2) When a ct. in passing a sentence takes into account charges pending in another ct., the latter ought to be informed thereof, before passing sentence upon such other charges.—R. *v.* TAYLOR (1926), 19 Cr. App. Rep. 146, C. C. A.

5319a. —— —— ——.]—R. *v.* HAYWARD, No. 5308a, *ante*.

5322. *Add. Annotation:*—**Refd.** R. *v.* White & Shelton (1927), 20 Cr. App. Rep. 61.

5331a. —— ——.]—On the trial of an allegation of being a habitual criminal, the interval between the last two convictions is only one of several elements to be considered by the jury; others are accused's silence on his life during that interval, the nature of the crime, & the possession of housebreaking instruments & their number & character at the time of arrest.—R. *v.* WHITE & SHELTON (1927), 20 Cr. App. Rep. 61, C. C. A.

5341a. ——.]—R. *v.* WHITE & SHELTON, No. 5331a, *ante*.

5347. *Add. Annotations:*—**Refd.** R. *v.* Lavender (1927), 20 Cr. App. Rep. 10; R. *v.* White & Shelton (1927), 20 Cr. App. Rep. 61.

5352a. —— ——.]—The mere fact that accused has done honest work in his latest interval of liberty is not a defence to the allegation that he is a habitual criminal.—R. *v.* HAYES (1926), 90 J. P. 190; 19 Cr. App. Rep. 157, C. C. A.

5355a. **Duty of judge.**]—(1) The direction on the allegation of being a habitual criminal must explain the merits of an interval of honest work in each case.

(2) The essential question is whether prisoner is a habitual criminal at the time when he is so charged.—R. *v.* WINN (1925), 69 Sol. Jo. 574; 19 Cr. App. Rep. 1, C. C. A.

5355b. —— —— ——.]—A direction on the allegation of being a habitual criminal must deal with an interval of honest work.—R. *v.* HARRY (1928), 21 Cr. App. Rep. 21, C. C. A.

5355c. —— ——.]—On the charge of being a habitual criminal, it is not a conclusive defence that accused has done honest work since his last release; it is for the jury on all the facts, including the most recent offence proved against him, to say whether he was, at the time of its commission, "leading persistently a dishonest or criminal life."—R. *v.* LAVENDER (1927), 20 Cr. App. Rep. 10, C. C. A.

PART XIII. SECT. 4, SUB-SECT. 3.—D. (a).

5328 iii. —— ——.]—To support a charge of habitually consorting with reputed thieves it must be shown that the persons with whom the accused habitually consorts are thieves with the reputation of being thieves, but evidence that they are so reputed amongst the police is sufficient evidence of reputation.—GABRIEL *v.* LENTHALL, [1930] S. A. S. R. 318.—**AUS.**

5356a. Periods without conviction—Should be put to jury.]—R. *v.* MILLICHAMP (1929), 21 Cr. App. Rep. 106, C. C. A.

5357. *Add. Annotation:*—**Consd.** R. *v.* Norman, [1924] 2 K. B. 315.

5358. *Add. Annotation:*—**Consd.** R. *v.* Norman, [1924] 2 K. B. 315.

5359a. For the existing paragraph in original volume substitute the following paragraph:—

—— —— ——.]—Where a person who has been found to be a habitual criminal & has been sentenced to preventive detention subsequently commits another crime & a notice is served upon him under the above sub-sect., the jury are not bound to find prisoner to be at the time when the verdict is given a habitual criminal. In every case it is a question of fact for the jury to say whether or not prisoner is still a habitual criminal, & prisoner is entitled, notwithstanding that he has previously been found to be a habitual criminal & sentenced to preventive detention, to call evidence to show that he is not at the material time a habitual criminal.—R. *v.* NORMAN, [1924] 2 K. B. 315; 93 L. J. K. B. 883; 131 L. T. 29; 88 J. P. 125; 40 T. L. R. 693; 68 Sol. Jo. 814; 27 Cox, C. C. 621; 18 Cr. App. Rep. 81, 119, C. C. A.

Annotation:—**Reld.** R. *v.* Tyreman (1925), 19 Cr. App. Rep. 4.

5359b. —— —— —— **Conviction remitted.**]—(1) There ought not to be two indictments when all charges may be preferred in one.

(2) Nothing must be stated in the presence of jurors about the allegation of being a habitual criminal until the primary charge is disposed of.

(3) When a conviction as a habitual criminal has been remitted in view of the opinion of the Ct. of Criminal Appeal, it ought not to be alleged against prisoner on a subsequent trial.

(4) On the issue whether prisoner has been leading an honest life, no evidence is admissible of periods or of facts which has not been set out in the statutory notice.—R. *v.* TYREMAN (1925), 19 Cr. App. Rep. 4, C. C. A.

5361a. —— ——.]—Before a sentence of preventive detention can be passed three things are requisite: first, that prisoner shall have been convicted of being a habitual criminal; secondly, that the ct. shall have taken such a view of the substantive crime of which prisoner has then been convicted as to think it right, by reason of that crime & not for any other reason, to pass a sentence of penal servitude; & thirdly, that the ct., in the exercise of its independent discretion, shall be of opinion that by reason of the criminal habits & mode of life of prisoner it is expedient for the protection of the public that he should be kept in detention for a lengthened period of years. Sentence of preventive detention quashed where the judge at the trial had not exercised such independent discretion, but had treated the sentence as necessarily following the conviction as a habitual criminal.—R. *v.* PAUL, [1925] 1 K. B. 77; 94 L. J. K. B. 63; 132 L. T. 159; 88 J. P. 200; 41 T. L. R. 35; 69 Sol. Jo. 293; 27 Cox, C. C. 660; 18 Cr. App. Rep. 128, C. C. A.

Annotation:—**Expld.** R. *v.* Turnbull (1926), 19 Cr. App. 155.

5369a. —— —— ——.]—A term of penal servitude must not be inflicted, merely to found the jurisdiction of the ct. to impose preventive detention; it must be warranted by the primary offence.—R. *v.* TURNBULL (1926), 19 Cr. App. Rep. 155, C. C. A.

5369b. —— —— ——.]—R. *v.* THOMAS (OTHERWISE WILLIAMS) (1928), 20 Cr. App. Rep. 172, C. C. A.

5372a. ——.]—R. *v.* PAUL, No. 5361a, *ante*.

5373a. ——.]—R. *v.* MCCARTHY (1910), 4 Cr. App. Rep. 198, C. C. A.

5373b. ——.]—R. *v.* HENRY (1927), 20 Cr. App. Rep. 117, C. C. A.

5385a. —— ——.]—R. *v.* BEARD (1927), 20 Cr. App. Rep. 155, C. C. A.

5398. *Add. Annotations:*—**Distd.** R. *v.* Douglas (1926), 19 Cr. App. Rep. 119. **Expld.** R. *v.* Williams (1929), 141 L. T. 544.

5414a. —— Not certified lunatic.]—There is a legal presumption that a certified lunatic is incapable of entering into a recognisance.—R. *v.* GREEN-EMMOTT (1931), 144 L. T. 671; 22 Cr. App. Rep. 183; 29 Cox, C. C. 280, C. C. A.

5448a. Recognisance imposed by Court of Appeal—Breach of—Restoration of original sentence.]—R. *v.* WOOD (1930), 22 Cr. App. Rep. 128, C. C. A.

5448b. —— —— **Offence of different character from original offence—Imposition of fresh recognisance.**]—R. *v.* GORE (1930), 22 Cr. App. Rep. 129, C. C. A.

5452. *Add. Annotations:*—**Apld.** Freeborn *v.* Leeming (1925), 89 J. P. 179. **Refd.** Morriss *v.* Winter, [1930] 1 K. B. 243.

5458. *Add. Annotation:*—**Refd.** Lewis *v.* Guest, Keen & Nettlefold, Watkins *v.* Same, Tucker *v.* Same, Ingram *v.* Crawshay (Cyfarthfa) (1927), 96 L. J. K. B. 664.

5466a. Prevention of Crimes Act, 1871 (c. 112), s. 20—Attempted burglary.]—R. *v.* BATES, No. 5a, *ante*.

PART XIII. SECT. 6.

k i. —— *Conviction for assault—May be sentenced to whipping.*]—MACKAY *v.* LAMB, [1923] S. C. (J.) 16.—**SCOT.**

q i. —— ——.]—*Re* R. *v.* SLINN (1926), 47 Can. Crim. Cas. 77; 37 B. C. R. 275.—**CAN.**

PART XIII. SECT. 8.

t i. —— *Given after illegal arrest.*]—R. *v.* HOLTZER, *Re* LEVINE & PYZER (Man.), [1928] 3 D. L. R. 222; [1928] 1 W. W. R. 910; 49 Can. Crim. Cas. 352.—**CAN.**

t ii. —— *Appeal re-opened—No direction as to person to whom surrender to be made.*]—R. *v.* WAH LUNG (*alias* WONG WA) (B. C.), [1928] 3 W. W. R. 232; 50 Can. Crim. Cas. 182.—**CAN.**

t iii. —— *Notice of motion must be given to sureties.*]—R. *v.* RUNNER, [1928] 1 W. W. R. 921; 22 Sask. L. R. 478.—**CAN.**

t iv. —— *Whether discretion in court to refuse application.*]—On an application on behalf of the Crown for the estreat of a recognisance of bail under Crown Suits Act, 1908, s. 5, the ct., on proof of the particular case, is bound to estreat, leaving the person affected to the remedy provided by sect. 7 of the Act.—*Re* KING & SCOTT, [1931] N. Z. L. R. 162.—**N.Z.**

PART XIII. SECT. 10, SUB-SECT. 1.

k i. —— ——.]—Pltf., after conviction for manslaughter, began an action for possession of premises in which she & her husband, deft., lived, the property standing in her name & being registered under Real Property Act:—*Held:* there was no disability or incapacity of bringing the action, by virtue of Forfeiture Act, 1870 (c. 23).—ZAWOJOWSKA *v.* ZAWOJOWSKA (Man.), [1922] 3 W. W. R. 492.—**CAN.**

PART XIII. SECT. 11, SUB-SECT. 2.

sq. *Previous conviction—Second offence not identical—Both included in one section.*]—Under Liquor Act, 1925, 1924-25, c. 53, a person convicted for

5478a. ——.]—(1) In order that a person may be convicted under Larceny Act, 1916 (c. 50), s. 28 (2), of being "found by night having in his possession without lawful excuse implements of housebreaking", it must be proved that he was found by night, in possession by night, of housebreaking implements. The finding & the possession must both be by night, & the possession must be possession by a free man.

(2) Where a person has pleaded "Not guilty" to an indictment & is about to stand his trial, he ought not to be invited to plead, in the presence of those who, as jurors, will have to try him, to another indictment which recites a previous conviction.—R. *v.* HARRIS (1924), 94 L. J. K. B. 164; 132 L. T. 672; 89 J. P. 37; 41 T. L. R. 205; 27 Cox, C. C. 746; 18 Cr. App. Rep. 157, C. C. A.

5481a. ——.]—*Qu.*: whether in an indictment in which it is necessary to allege a previous conviction under above sect., the fact that at the same time prisoner was convicted of being a habitual criminal should be alleged.—R. *v.* WESTFALL (1928), 21 Cr. App. Rep. 40, C. C. A.

Part XIV.—Appeal to Court of Criminal Appeal.

5523. *Add. Annotation:*—**Refd.** R. *v.* Birch (1924), 93 L. J. K. B. 385.

5528. *Add. Annotation:*—**Consd.** R. *v.* Parkin (1928), 20 Cr. App. Rep. 173.

any one of the acts which s. 78 declares to be offences & who is subsequently convicted for another of such acts is guilty of a second offence even though the two offences are not exactly of the same kind.—R. *v.* POLLARD (Sask.), [1928] 4 D. L. R. 623; [1928] 3 W. W. R. 78; 50 Can. Crim. Cas. 157. —**CAN.**

sr. —— *Under repealed Act.*]—"Previous conviction" in Government Liquor Control Act, 1928, c. 31, s. 178, means a conviction under that Act, & does not refer to convictions under prior Acts now repealed.—R. *v.* RICEBERG (Man.), [1929] 1 D. L. R. 220; 50 Can. Crim. Cas. 387; [1928] 3 W. W. R. 534.—**CAN.**

st. *Interval between prosecutions longer than period limited for prosecutions under Act.*]—*Ex p.* WOODS (N. S.), [1928] 2 D. L. R. 771; 49 Can. Crim. Cas. 141.—**CAN.**

PART XIII. SECT. 11, SUB-SECT. 4.

b i. ——.]—A document headed "Certificate of Conviction" & purporting to be a copy of a conviction under Manitoba Temperance Act, 1924, is not proof, under s. 151 (4) of Govt. Liquor Control Act, 1928, of a conviction under the former Act.—R. *v.* RICEBERG (Man.), [1929] 1 D. L. R. 220; 50 Can. Crim. Cas. 387; [1928] 3 W. W. R. 534.—**CAN.**

PART XIII. SECT. 11, SUB-SECT. 5.

5504 i a. ——.]—Deft. was convicted of a second offence against Liquor Licence Act, the only evidence of the previous conviction being the production of a certificate under the Act, from which it appeared that a person of the same name & address as deft. had been previously convicted before the same magistrate:—*Held:* the evidence was sufficient.—R. *v.* ATKINSON (N.S.) (1910), 44 N. S. R. 521; 9 E. L. R. 212.—**CAN.**

PART XIV. SECT. 1. SUB-SECT. 1.

ti. ——.]—An appeal lies to the Supreme Ct. of Canada under Criminal Code, s. 1024, read with sect. 1013, only where a dissenting opinion has been expressed by a member of the ct. of appeal, upon a question which that ct. deems a question of law & pursuant to its direction.—DAVIS *v.* R., [1924] 4 D. L. R. 843; [1924] S. C. R. 522.—**CAN.**

t ii. ——.]—R. *v.* DE BERTOLI, [1927] 3 D. L. R. 193; [1927] S. C. R. 454; 48 Can. Crim. Cas. 118.—**CAN.**

a i. —— ——.]—R. *v.* BOAK, [1926] S. C. R. 481; 46 Can. Crim. Cas. 164.—**CAN.**

a ii. —— ——.]—GURDITTA *v.* R., [1927] 2 D. L. R. 577; [1927] S. C. R. 80 47 Can. Crim. Cas. 154.—**CAN**

a iii. —— ——.]—BARRE *v.* R., [1927] 2 D. L. R. 1097; [1927] S. C. R. 284; 48 Can. Crim. Cas. 91.—**CAN.**

a iv. —— ——.]—HOWLEY *v.* R., [1927] 3 D. L. R. 265; [1927] S. C. R. 529; 48 Can. Crim. Cas. 139.—**CAN.**

a v. —— ——.]—CARDINAL *v.* R., [1927] 4 D. L. R. 325; [1927] S. C. R. 541; 48 Can. Crim. Cas. 243.—**CAN.**

a vi. ——.]—The general appellate jurisdiction of the Supreme Ct. of Canada is confined to civil matters; to found an appeal to the ct. in any criminal matter, resort must be had to some special statutory provision enacted by the Dominion Parliament. Save for the special case provided for by sect. 1025 of the Criminal Code, the only right of appeal to the ct. in any criminal cause is that conferred by sect. 1023. For an appeal to come within sect. 1023, the conviction must have been affirmed by the ct. below & there must have been dissent by some member thereof on a question of law.—STEINBERG *v.* R., [1931] S. C. R. 421; 4 D. L. R. 8; 56 Can. C. C. 9.—**CAN.**

a vii. ——.]—An appeal from the judgment of Appellate Div. Ont. affirming applt.'s conviction for stealing was dismissed, on the ground that there was no jurisdiction to hear the appeal, the questions raised, & on which there was dissent in the Appellate Div., being all questions of fact, in regard to which there was no right of appeal to this ct. Assuming that the question whether there was any evidence to support a conviction should be deemed a question of law, yet the question whether the proper inference has been drawn by the trial judge from facts established in evidence, is not a question of law but one of fact.—GAUTHIER *v.* R., [1931] S. C. R. 416; 4 D. L. R. 582; 56 Can. C. C. 113.—**CAN.**

a viii. —— *Conflict of judgments.*]—Applt. was an insolvent trader & had been convicted under sect. 417*c* Cr. C. for not having kept proper books of account. Application for leave to appeal under sect. 1025 Cr. C. was made on the ground that, inasmuch as sect. 417*c* Cr. C. was alleged to have been virtually abrogated by sect. 193 of Bkpcy. Act subsequently enacted, the decision of the appellate ct. in affirming the conviction failed to apply the principle of law that a subsequent statutory enactment has the effect of abrogating an anterior enactment which is inconsistent with it; &, at the hearing, counsel for appct. cited three judgments which were alleged to be in conflict with the above decision:—*Held:* the application for leave to appeal should be dismissed as the judgments cited were not rendered "in a like case" & by an "other ct. of appeal" within the provisions of sect. 1025 Cr. C.; they were not in conflict with the decision intended to be appealed from: the appellate ct. had clearly admitted the principle of law above cited; but it had held that sect. 193 of the Bkpcy. Act was not inconsistent with the provisions of sect. 417*c* Cr. C.—LIEBLING *v.* R., [1932] S. C. R. 101; [1932] 1 D. L. R. 232.—**CAN.**

a ix. —— ——.]—The provisions of sect. 1025 of the Criminal Code, giving right of appeal to the Supreme Ct. of Canada, upon leave to appeal being granted, "if the judgment appealed from conflicts with the judgment of any other ct. of appeal," must be taken to refer to cts. within the jurisdiction of the Dominion Parliament & not to cts. outside the Canadian territory.—ARCADI *v.* R., [1932] S. C. R. 158; [1932] 2 D. L. R. 429.—**CAN.**

ax. —— *Plea of autrefois convict.*]—R. *v.* BALLARD, [1932] 4 D. L. R. 461. —**CAN.**

aa i. —— *Effect of repeal of provisions for stating case pending appeal.*]—Where the trial judge reserved a case for the ct., but before it came on for argument, the sects. of the Code allowing a stated case were repealed, & the ct. set aside the conviction & ordered a new trial:—*Held:* the amendment of the Code did not abrogate the rights possessed by prisoners on the date when they were convicted, but such rights must be determined under the old & not under the new provisions of the Code, which were not then in force.—R. *v.* TAYLOR & YOUNG (1924), 41 Can. Crim. Cas. 212; 56 N. S. R. 500.—**CAN.**

kk i. ——.]—R. *v.* COWELL (Sask.) (1928), 50 Can. Crim. Cas. 381.—**CAN.**

kk ii. ——.]—R. *v.* WIGGINS (N. B.) (1928), 50 Can. Crim. Cas. 193.—**CAN.**

kk iii. —— *Evidence to support conviction.*]—R. *v.* FLETCHER & PINEL (1930), 54 Can. C. C. 116.—**CAN.**

sd. *Jury illegally constituted—Leave of Court of Appeal necessary.*]—R. *v.* BOAK, [1925] 3 D. L. R. 887; [1925] S. C. R. 525; 44 Can. Crim. Cas. 218. —**CAN.**

se. *After dismissal of information—Failure of informant to appear.*]—The right of appeal given by Criminal Code, s. 749, against the dismissal of an information or complaint does not exist when the dismissal is due to the complainant's or informant's failure to appear.—GHITTERMAN *v.* RALPH (Sask.), [1928] 2 W. W. R. 631; 50 Can. Crim. Cas. 282.—**CAN.**

5528a. —— In what circumstances.]—R. *v.* PARKIN (1928), 20 Cr. App. Rep. 173, C. C. A.

5532. *Add. Annotation :*—**Refd.** *Re* Pitts, Cox *v.* Kilsby, [1931] 1 Ch. 546.

5534. *Add. Annotation :*—**Refd.** R. *v.* Cope (1925), 94 L. J. K. B. 662.

5535. *Add. Annotation :*—**Refd.** R. *v.* Teesdale (1927), 91 J. P. 184.

5536a. —— ——.]—The ct. will not review a summary conviction of an incorrigible rogue, but it will insist that quarter sessions, for the purpose of sentence, shall hear nothing but legal evidence.—R. *v.* DEAN (1924), 18 Cr. App. Rep. 133, C. C. A.

Annotations :—**Refd.** R. *v.* Cope (1925), 94 L. J. K. B. 662; R. *v.* Cadwell (1927), 20 Cr. App. Rep. 60.

5536b. —— ——.]—The machinery of Vagrancy Act, 1824 (c. 83), must not be used merely because a crime is suspected, but the legal evidence to establish it fails. Sentence reduced.—R. *v.* CADWELL (1927), 20 Cr. App. Rep. 60, C. C. A.

5542a. —— Good defence in law.]—R. *v.* GRIFFITHS, No. 5035a, *ante*.

v. LAMBERT (1926), 19 Cr. App. Rep. 131, C. C. A.

5550. *Add. Annotation :*—**Consd.** R. *v.* Smith, [1925] 1 K. B. 603.

5550a. ——.]—R. *v.* SMITH, No. 1810b, *ante*.

5554a. Order for payment of compensation—Forfeiture Act, 1870 (c. 23), s. 4.]—There is an appeal to the Ct. of Criminal Appeal against an order made under above sect., for the payment of compensation by a person convicted of felony to a person aggrieved by loss of property suffered by him through the felony, because by the sect. such compensation constitutes & is enforceable as a judgment debt, & is therefore a "sentence" within Criminal Appeal Act, 1907 (c. 23), s. 21.—R. *v.* JONES, [1929] 1 K. B. 211; 98 L. J. K. B. 174; 140 L. T. 144; 21 Cr. App. Rep. 59; 28 Cox, C. C. 572, C. C. A.

5570a. ——.]—R. *v.* MACWILLIAM (1928), 21 Cr. App. Rep. 31, C. C. A.

5570b. —— Computation of time—Whether Sunday included.]—For the purpose of the statutory notice of appeal Sunday is not a *dies non*.—R. *v.* GREVILLE (1929), 21 Cr. App. Rep. 108, C. C. A.

sf. *Objection to transcript of evidence—Translation.*]—Part of the evidence on a charge of murder was given in Irish, which was translated into English, so that it might be understood by the judge, the jury, & others concerned in the case. This evidence was not officially recorded in Irish as given, but only as it was translated into English, & objection to the transcript was taken on behalf of the accused, who sought leave to amend their notices of application for leave to appeal (which had already been served) by including this objection :—*Held :* as it is not an essential requisite for the purpose of an application for leave to appeal to have a complete transcript or any transcript of the evidence before the ct., the ct., being satisfied that the transcript of the note of the interpreter's rendering of the evidence was a completely accurate record & fully adequate for the purpose of disposing of the applications for leave to appeal, & having regard to all the facts, refused to allow the notices of application for leave to appeal to be amended.—A.-G. *v.* JOYCE, A.-G. *v.* WALSH, [1929] I. R. 526.—**IR.**

sg. *To county court—Under Summary Convictions Act—Whether trial de novo.*]—R. *v.* LAURIENTE (B. C.), [1928] 3 W. W. R. 265.—**CAN.**

5528 i. *Certificate granted — Only where judge has doubt on case.*]—The trial judge must have an opinion or belief of the fitness of the appeal upon questions of fact or mixed questions of law & fact involved; the burden on him would appear, therefore, to be greater than if he were asked to grant leave to appeal.—R. *v.* PAYETTE, [1925] 1 D. L. R. 112; [1924] 3 W. W. R. 863.—**CAN.**

5528 ii. —— *Form of certificate.*]—A certificate stated generally that the case was a fit one for appeal :—*Held :* not such a certificate as 13 & 14 Geo. 5, c. 41, contemplated.—R. *v.* SCOTT & WILLIAMSON (1924), 56 O. L. R. 325; 43 Can. Crim. Cas. 364.—**CAN.**

5528 iii. *Whether applicable to trial without jury.*]—R. *v.* TEWS, [1926] 1 W. W. R. 321 : 45 Can. Crim. Cas. 116; 22 Alta. L. R. 161.—**CAN.**

sh. *No formal conviction before court.*]—On an appeal from a summary conviction under the Government Liquor Act, R. S. B. C., 1924, c. 146 :—*Held :* applt. was not deprived of his right to appeal by the fact that on the opening of the appeal no formal conviction had yet been drawn up & returned to the ct.; nor by the fact that the fine & costs imposed by the magistrate & paid by applt. had been remitted by the magistrate to a government department & were not in his possession when the notice of appeal was served on him.—R. *v.* KAMWAY (B. C.), [1929] 3 W. W. R. 165; 52 Can. Crim. Cas. 188.—**CAN.**

PART XIV. SECT. 1, SUB-SECT. 2.

si. ——.]—Where it was for the trial judge to decide whether prisoner's explanation could reasonably be true, & it was to be assumed from the fact of his finding prisoner guilty that he thought it could not reasonably be true, in which the ct. concurred :—*Held :* not the function of the ct. to retry the case.—R. *v.* COOKE (1923), 57 N. S. R. 362.—**CAN.**

sk. *Meaning of conviction.*]—A conviction, at common law, in strictness, consists of verdict, judgment, & sentence. The word, however, is sometimes used as meaning the verdict of a jury &, at other times, the sentence of the ct. Criminal Procedure Code uses the word in both senses. The meaning of the word "conviction" in sect. 439 (6), in relation to a case like the present, limits the accused to impugning the judgment of the ct. which sentenced him.—SUPERINTENDENT & REMEMBRANCER OF LEGAL AFFAIRS, BENGAL *v.* JNANENDRA NATH GHOSH (1929), I. L. R. 56 Calc. 1145.—**IND.**

PART XIV. SECT. 1, SUB-SECT. 3.

s i. —— *What is—Not sentence for rape.*]—R. *v.* DE YOUNG, R. *v.* LIDDIARD, R. *v.* DARLING (1927), 47 Can. Crim. Cas. 207; 60 O. L. R. 155.—**CAN.**

sl. *Jurisdiction of Supreme Court of Canada—To hear appeal from addition to sentence by lower court.*]—There is no jurisdiction in the above ct. to entertain an appeal against an addition to sentence by appellate cts., as under Criminal Code, s. 1024, the right of appeal is restricted to an appeal against the affirmance of a conviction.—GOLDHAMMER *v.* R., [1924] 3 D. L. R. 1009; [1924] S. C. R. 290; 5 C. B. R. 129.—**CAN.**

sm. *Leave to appeal — Adequate reason must be shown.*]—R. *v.* HARLTON (Ont.) (1929), 52 Can. Crim. Cas. 310.—**CAN.**

PART XIV. SECT. 2.

5566 i. —— *Discretion of court.*]—It is not the practice of the Ct. of Criminal Appeal to entertain any application for an extension of time, whether to apply to the trial judge for a certificate for leave to appeal, or to give notice of appeal, or to give notice of application for leave to appeal, if appct. does not, at the time of applying for such extension of time, show that he proposes to rely upon grounds of appeal, or grounds for applying for leave to appeal, which are grounds such as can be entertained by the ct. in the exercise of its statutory jurisdiction.—A.-G. *v.* M'GANN, [1927] I. R. 503.—**IR.**

sn. —— *Notice of appeal defective.*]—R. *v.* MOYLE (Ont.), [1927] 3 D. L. R. 639; 47 Can. Crim. Cas. 349.—**CAN.**

so. *Under Criminal Code, s. 750.*]—R. *v.* NORMAN (Ont.) (1923), 49 Can. Crim. Cas. 405.—**CAN.**

sp. ——.]—R. *v.* FRASER (P. E. I.), [1928] 1 D. L. R. 803; 49 Can. Crim. Cas. 189.—**CAN.**

sq. ——.]—R. *v.* WENN (Ont.) (1928), 49 Can. Crim. Cas. 401.—**CAN.**

sr. *Under Criminal Code, s. 750 (b).*]—R. *v.* BOUTILIER (N. S.) (1928), 50 Can. Crim. Cas. 186.—**CAN.**

t i. *Want of means.*]—On an application for an extension of time within which to appeal, which was not made until six months after conviction :—*Held :* (1) want of means was not a sufficient ground on which to base the application; & (2) in view of the delay in applying, very exceptional circumstances would have to be established before the ct. would be justified in granting the application.—R. *v.* SUNDERLAND & SUNDERLAND (1927), 28 S. R. N. S. W. 26.—**AUS.**

t ii. —— *After removal to penitentiary — Special reasons must be shown.*]—R. *v.* SCOTT, [1929] 1 D. L. R. 842; 1 W. W. R. 320; 51 Can. Crim. Cas. 104; 24 Alta. L. R. 42.—**CAN.**

st. *Application for—To whom made.*]—When the Ct. of Appeal is sitting an application under sect. 1018 (2) of the Criminal Code for an extension of the time for an appeal should be made to the ct. & not to a judge thereof in Chambers.—R. *v.* HARRY CHOW (B. C.), [1929] 1 W. W. R. 270.—**CAN.**

5572. *Add. Annotation:*—**Refd.** R. *v.* Porter (1927), 20 Cr. App. Rep. 55.

5574a. —— —— **Registrar must be informed at earliest possible moment.**]—When leave is sought to add new grounds of appeal they should be communicated to the registrar at the earliest possible moment.—R. *v.* HODGSON (1924), 18 Cr. App. Rep. 7, C. C. A.

5577a. —— —— ——.]—Substantial particulars of misdirection, & of any other objections to the summing up, must be included in the notice of appeal, or must be sent to the registrar with the notice of appeal.—R. *v.* CAIRNS (1927), 43 T. L. R. 455; 20 Cr. App. Rep. 44, C. C. A.

5577b. —— **Supplementary grounds — When allowed.**]—R. *v.* PORTER, No. 3137a, *ante*.

5579. *Add. Annotation:*—**Consd.** R. *v.* Van Dyn (1932), 23 Cr. App. Rep. 150.

5581a. ——.]—Only in special circumstances will the ct. allow the abandonment of a withdrawal of a notice of appeal.—R. *v.* VAN DYN (1932), 76 Sol. Jo. 112; 23 Cr. App. Rep. 150, C. C. A.

5585. *Add. Annotation:*—**Refd.** R. *v.* Thompson (1925), 18 Cr. App. Rep. 167.

5585a. ——.]—An applt. may only in exceptional circumstances consent by counsel to be absent.—R. *v.* THOMPSON (1925), 18 Cr. App. Rep. 167, C. C. A.

5595a. Appellant not entitled to be heard—When represented by counsel.]—R. *v.* CHUNG YI MIAO (1928), 21 Cr. App. Rep. 56, C. C. A.

5595b. No argument heard—Appeal pro forma as condition precedent to appeal to House of Lords.]—R. *v.* INMAN (1929), 21 Cr. App. Rep. 159, C. C. A.

5596a. Official transcript of judgment at trial—How far binding.]—The ct. is bound by the official transcript of a judgment of the trial ct., in the absence of evidence of error therein.—R. *v.* MARTIN (1927), 20 Cr. App. Rep. 103, C. C. A.

5604. *Add. Annotation:*—**Refd.** R *v.* Porter (1927), 20 Cr. App. Rep. 55.

5605. *Add. Annotation:*—**Refd.** R. *v.* Porter (1927), 20 Cr. App. Rep. 55.

5605a. Application to three judges—Reference to larger court.]—R. *v.* CHAPMAN (1931), 23 Cr. App. Rep. 45, C. C. A.

5607a. ——.]—In each of the following cases—(1) a convict under sentence of penal servitude & preventive detention who appeals only against the sentence of preventive detention; (2) a prisoner under sentence of imprisonment & flogging who appeals only against the flogging; (3) a prisoner under sentence of imprisonment & a recommendation to deportation who appeals only against deportation; (4) a prisoner under concurrent sentences of imprisonment & penal servitude who appeals only against the penal servitude; (5) a prisoner under one sentence who appeals only against a sentence consecutive thereon—the person appealing is an applt. within Criminal Appeal Act, 1907 (c. 23), s. 14, & should be treated as such pending the determination of his appeal.—R. *v.* ROSS, R. *v.* FRIEND, R. *v.* BEATTIE, R. *v.* LLEWELLYN, R. *v.* YOUNG (1924), 131 L. T. 26; 88 J. P. 90; 40 T. L. R. 617; 27 Cox, C. C. 615; 18 Cr. App. Rep. 55, C. C. A.

5616a. —— ——.]—In a proper case, especially with the concurrence of the Crown, the ct. will allow an application for leave to appeal against conviction to be treated as one for leave to appeal against sentence, & may thereupon deal with it as such.—R. *v.* TOWERS (1929), 21 Cr. App. Rep. 74, C. C. A.

5624a. —— ——.]—Where an application has been adjourned for allegations by applicant to be investigated, the ct. may exceptionally on the hearing of the application allow the time of custody to run for sentence.—R. *v.* SYKES (1930), 22 Cr. App. Rep. 84, C. C. A.

5628a. Consecutive sentences—One quashed.]—(1) When consecutive sentences have been passed on two convictions & the ct. quashes one of them, it may allow the sentence for the other to run from the date of conviction.

In summing-up larceny & obtaining credit by fraud must be carefully distinguished.—R. *v.* LEE (1930), 22 Cr. App. Rep. 85, C. C. A.

5628b. —— **Fresh evidence heard—Appeal dismissed.**]—R. *v.* MEDCRAFT (1931), 23 Cr. App. Rep. 116, C. C. A.

5628c. —— **Sentence of penal servitude—Sentence of preventive detention set aside.**]—R. *v.* TAUMAN (1931), 23 Cr. App. Rep. 125, C. C. A.

5629a. Sentence runs from session in which convicted—Although passed in later session.]—Sentence generally runs from the date of the first sitting of the ct. of trial, at whatever date it may be passed.—R. *v.* ROBERTS (1929), 21 Cr. App. Rep. 69, C. C. A.

5629b. —— **No power to antedate beyond commencement of sessions.**]—Sentence cannot be antedated beyond the first day of the sessions in which it is inflicted.—R. *v.* CROCKETT (1929), 21 Cr. App. Rep. 164, C. C. A.

5629c. —— ——.]—The ct. below cannot antedate a sentence before the first day of the sessions.—R. *v.* HATCH (1930), 22 Cr. App. Rep. 83, C. C. A.

5629d. Sentence ordered to run from passing of sentence—Abnormal delay in preparing transcripts for court.]—R. *v.* MEYRICK, R. *v.* RIBUFFI (1929), as reported in 21 Cr. App. Rep. 94, C. C. A.

5643a. ——.]—R. *v.* TURKINGTON, No. 5965a, *post*.

PART XIV. SECT. 3.

5572 iii. —— ——.]—*Re* R. *v.* LEBLANC, [1928] 1 D. L. R. 539; 49 Can. Crim. Cas. 136.—**CAN.**

PART XIV. SECT. 5, SUB-SECT. 1.—A.

5630 v. ——.]—The ct. hearing an appeal is not warranted in weighing probabilities & substituting its view for that of the jury, to which the greatest weight must still be given.—R. *v.* DE BRUGE, [1924] 4 D. L. R. 496; 55 O. L. R. 507.—**CAN.**

5630 vi. ——.]—R. *v.* BURKE (1924), 44 Can. Crim. Cas. 205.—**CAN.**

PART XIV. SECT. 5, SUB-SECT. 2.—A.

5666 i. —— *Insanity.*]—At the trial of accused for murder there was, in the ct.'s opinion, evidence which, had the point been taken, would of necessity have raised in the mind of the trial judge a doubt whether accused was then, on account of insanity, capable of conducting his defence: but the point was not brought to the attention of the trial judge, & the course prescribed by Criminal Code, s. 967, was not adopted:—*Held:* the omission of counsel ought not to deprive accused of the right given him by the sect. & new trial directed.—R. *v.* WILLIAMS, [1929] 1 D. L. R. 843; 50 Can. Crim. Cas. 230; 63 O. L. R. 191.—**CAN.**

5673a. —— ——.]—The ct. will, if it thinks fit, hear a plea of insanity even though it was not raised at the trial.—R. *v.* CANHAM (1925), 18 Cr. App. Rep. 163, C. C. A.

5739a. *S. P.* R. *v.* HATCH & SMITH (1928), 20 Cr. App. Rep. 181, C. C. A.

5783a. Not evidence of appellant.]—R. *v.* MEDCRAFT (1931), 23 Cr. App. Rep. 116, C. C. A.

PART XIV. SECT. 5, SUB-SECT. 2.—C.

sb. *Objection to conviction on ground of defect in information.*]—R. *v.* BOUTILIER (N. S.) (1928), 50 Can. Crim. Cas. 186.—**CAN.**

PART XIV. SECT. 5, SUB-SECT. 3.

f i. —— *What amounts to.*]—The trial judge prepared, two or three months after the trial, a certificate containing a number of statements made by him in answer to a corresponding number of objections to his charge which formed the grounds of appeal & stating, according to his recollection, that in fact his direction was precisely the contrary of that reported:—*Held:* such certificate of the trial judge was not a report within sect. 1020 Criminal Code: it did not contain the judge's "notes of the trial" nor was it a "report giving his opinion upon the case or upon any point arising in the case."—BARON *v.* R., [1930] S. C. R. 194; 2 D. L. R. 945; 53 Can. C. C. 154; *revsg.* 47 Que. K. B. 371.—**CAN.**

PART XIV. SECT. 6, SUB-SECT. 1.

sd. *In Ireland.*]—Practice & procedure, as to applications to allow fresh evidence on appeal, laid down by the Ct. of Criminal Appeal.—A.-G. *v.* M'GANN, [1927] I. R. 503.—**IR.**

PART XIV. SECT. 6, SUB-SECT. 2.

sf. *Conviction improper—Claim to substitute sentence for lesser offence—Leave to obtain further evidence—Confined to lesser offence.*]—Where on an appeal from a conviction for unlawfully having carnal knowledge of a girl 14 years of age, it appeared that the accused had not been properly convicted, but there being no majority of the ct. in favour of directing a new trial, the Crown asked the ct. to proceed under Criminal Code, s. 1016 (2), & substitute a sentence for indecent assault, whereupon the accused's counsel moved for leave to obtain & present new evidence from one Z., who would have been a compellable witness at the trial:—*Held:* such leave should be granted, the additional evidence to be confined to the charge of indecent assault, & the hearing of the appeal should stand over until further order, &, in the meantime, the evidence of said witness should be taken before the registrar of the Supreme Ct. & forwarded by him to the registrar of the Ct. of Appeal.—R. *v.* SHUMARIN (B. C.), [1928] 1 W. W. R. 300.—**CAN.**

PART XIV. SECT. 6, SUB-SECT. 3.

5740 iii. ——.]—An application must be refused, where the person whom it was sought to call had been present in ct. at the time of the trial & available to be called by accused or his counsel if they desired to do so.—R. *v.* CRONAN (1924), 41 Can. Crim. Cas. 320; 57 N. S. R. 25.—**CAN.**

5766 ii. ——.]—The defence having been permitted for the purpose of securing a new trial to read the affidavit of one who it contended should have been called as a witness by the prosecution:—*Held:* the omission to call such witness did not result in such a miscarriage of justice, or the possibility of it, as to warrant a new trial.—R. *v.* GALLAGHER, [1924] 4 D. L. R. 1059; 3 W. W. R. 357.—**CAN.**

5766 iii. ——.]—R. *v.* CHOW KEE (1929), 42 B. C. R. 67.—**CAN.**

st. *No opportunity of cross-examining former witness on statement at trial.*]—R. *v.* VYE (1925), 44 Can. Crim. Cas. 249; [1925] 3 W. W. R. 100.—**CAN.**

PART XIV. SECT. 6, SUB-SECT. 4.

sv. *Evidence material & relevant to show verdict wrong.*]—The purpose of the ct. in allowing applt. to lead additional evidence under Criminal Appeal (Scotland) Act, 1926, s. 6 (*b*), is to give him an opportunity of showing that the verdict was pronounced in the absence of matter material & relevant to lead to a contrary result.—SLATER *v.* H.M. ADVOCATE, [1928] S. C. (J.) 94.—**SCOT.**

PART XIV. SECT. 6, SUB-SECT. 5.

m. Read now "**5793 i.**"

5793 ii. —— ——.]—R. *v.* HUBLEY (1925), 57 N. S. R. 537.—**CAN.**

5793 iii. —— *Evidence not incompatible with evidence at trial.*]—R. *v.* ADORE (1930), 54 Can. C. C. 211.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 1.

p i. —— *Criminal Appeal (Scotland) Act,* 1926 (*c.* 15).]—The Ct. of Criminal Appeal is not a ct. of review in the sense in which that term is used in civil procedure; it cannot upset a verdict merely because it disagrees with the view either of the evidence or of the credibility of the witnesses on which it proceeded; it cannot interfere unless it thinks the verdict unreasonable. The test of unreasonableness is similar to that applied to verdicts obtained in civil jury trials, viz., was the verdict so flagrantly wrong that no reasonable jury, acting honestly under proper direction, could have given it.—WEBB *v.* H.M. ADVOCATE, [1927] S. C. (J.) 92.—**SCOT.**

p ii. ——.]—*Held:* an appellate ct. could not, under Criminal Code, s. 1016 (2), substitute for the conviction under s. 405 a conviction under s. 406.—R. *v.* LEROUX, [1928] 3 D. L. R. 688; 50 Can. Crim. Cas. 52; 62 O. L. R. 336.—**CAN.**

p iii. ——.]—Applt. was tried for murder by intentionally causing the death of another native. He was convicted by the Additional Sessions judge & four assessors of culpable homicide not amounting to murder, & was sentenced to a term of rigorous imprisonment. The Govt. applied for a revision of the judgment, & the High Ct. altered the conviction to one of murder & sentenced the applt. to death:—*Held:* on an application for revision, as distinguished from an appeal, the High Court had no jurisdiction to convert the finding of an acquittal of murder into one of conviction & to sentence the man to death.—KISHAN SINGH *v.* R. (1928), 44 T. L. R. 690, P. C.—**IND.**

p iv. ——.]—R. *v.* RIWMY (1930), 53 Can. C. C. 196.—**CAN.**

p v. ——.]—R. *v.* HENDERSON (1929), 1 M. P. R. 277.—**CAN.**

q i. ——.]—On an appeal, from a conviction for theft, based on the ground that a statement made by the trial judge when imposing sentence indicated that he entertained reasonable doubt of the accused's guilt:—*Held:* taking the judgment as a whole, the contention could not be supported, & the appeal should be dismissed.—R. *v.* WALKER, [1931] 1 W. W. R. 584; 55 Can. C. C. 102; 25 Alta. L. R. 336.—**CAN.**

b i. ——.]—Deft. was tried on an indictment charging commission of an offence & was convicted of an "attempt to commit" that offence:—*Held:* the evidence was sufficient to sustain the verdict, & his appeal must be dismissed.—R. *v.* GING (1924), 57 N. S. R. 196.—**CAN.**

b ii. ——.]—Where accused is charged with having committed a crime at a named place in a named county & province, & a place with such name is referred to in the evidence at the trial, the fact that there is nothing in the evidence to show that the place is within such county or province:—*Held:* not such an omission as to give ground for an appeal.—R. *v.* PAYETTE, [1925] 1 D. L. R. 112; [1924] 3 W. W. R. 863.—**CAN.**

b iii. ——.]—Where the Crown's case was founded on the evidence of a very young child, who contradicted herself on the vital point in the trial, & on several minor matters:—*Held:* a conviction founded on such evidence could not be sustained.—R. *v.* GIRONE (1925), 34 B. C. R. 554.—**CAN.**

b iv. ——.]—R. *v.* MCKENZIE (1926), 58 N. S. R. 464.—**CAN.**

b v. ——.]—Findings of the ct. or a jury on questions of fact are only to be set aside where the findings are obviously & palpably wrong, or are unreasonable & cannot be supported by the evidence.—R. *v.* M. (1926), 46 Can. Crim. Cas. 80; 58 N. S. R. 512.—**CAN.**

b vi. ——.]—Appeal dismissed.—R. *v.* DAVIDSON (1926), 47 Can. Crim. Cas. 80; 59 N. S. R. 179.—**CAN.**

b vii. ——.]—Appeal dismissed.—R. *v.* NICHOLSON (1926), 47 Can. Crim. Cas. 113; 59 N. S. R. 323.—**CAN.**

b viii. ——.]—Appeal dismissed.—R. *v.* HADDAD (1927), 47 Can. Crim. Cas. 163; 59 N. S. R. 187.—**CAN.**

b ix. ——.]—Circumstances in which an appeal against a conviction for forgery, by making interlineations in a document, was allowed.—R. *v.* ZEREBKO (Sask.) (1927), 48 Can. Crim. Cas. 87.—**CAN.**

b x. —— *Variance between evidence & charge—As to date of offence.*]—Conviction quashed.—R. *v.* DAVIES (Alta.), [1927] 2 W. W. R. 605; 49 Can. Crim. Cas. 86.—**CAN.**

b xi. ——.]—The Ct. of Criminal Appeal quashed a verdict & sentence, where the evidence was defective in ome important respects, & the evidence, such as it was, was not presented to the jury in such a way as to bring sufficiently clearly before them the questions they had to determine.—A.-G. *v.* SMITH, [1927] I. R. 564.—**IR.**

b xii. ——.]—If the evidence is sufficient to justify a conviction, & the jury are properly directed, the Ct. of Appeal cannot interfere with their verdict because in the opinion of the presiding judge it is based on evidence which was untrustworthy & ought not to have been accepted.—R. *v.* THOMAS (1928), 28 S. R. N. S. W. 490; 45 N. S. W. W. N. 146.—**AUS.**

st. *Court may reduce sentence—Although no appeal from sentence.*]—R. *v.* MUSGRAVE (N. S.) (1926), 46 Can. Crim. Cas. 45.—**CAN.**

sv. *Non-indictable offence tried as indictable offence.*]—R. *v.* THOMPSON, [1928] 4 D. L. R. 859; 50 Can. Crim. Cas. 183; 62 O. L. R. 610.—**CAN.**

sw. *Conviction not in form required by Act—Omission of order for forfeiture.*]—Deft. was convicted by a district justice of an offence under Fisheries Act, 1924, but the district justice omitted to order a forfeiture of the fish as required by the Act:—*Held:* the omission invalidated the conviction.—TANGNEY *v.* DISTRICT JUSTICE FOR COUNTY OF KERRY, [1928] I. R. 358.—**IR.**

sb. *Interference with jury — Committal for contempt—Prisoner not prejudiced.*]—R. *v.* STEWART (1930), 2 M. P. R. 400.—**CAN.**

5800a. Conflicting medical views.]—The mere fact that conflicting medical views of the evidence in a case were put before the jury is not a ground for granting leave to appeal.—R. *v.* THORNE (1925), 69 Sol. Jo. 493; 18 Cr. App. Rep. 186, C. C. A.

5802a. Unsatisfactory identification.]—Conviction quashed.—R. *v.* HITCHCOCK (1926), 19 Cr. App. Rep. 181, C. C. A.

5802b. Photograph of accused published in newspaper.]—R. *v.* MORRISON (1911), 6 Cr. App. Rep. 159, C. C. A.

5802c. Insanity — Supervening after trial.]—R. *v.* DRISCOLL & ROWLANDS (1928), 20 Cr. App. Rep. 161, C. C. A.

5805. *Add. Annotation:*—**Refd.** R. *v.* Friend (1930), 22 Cr. App. Rep. 130.

5806a. —— Indictment alleging offence under repealed section of statute.]—Where a person is convicted on an indictment framed under a repealed section of a statute, the Ct. of Criminal Appeal will quash the conviction. —R. *v.* TAYLOR (1924), 93 L. J. K. B. 912; 88 J. P. 152; 40 T. L. R. 836; 69 Sol. Jo. 12; 22 L. G. R. 681; 18 Cr. App. Rep. 105, C. C. A.

5816a. ——.]—If a judge has distinctly reached the conclusion that the case against a deft. is merely one of suspicion, he ought to withdraw it from the jury.—R. *v.* JOHNSON (1928), 21 Cr. App. Rep. 66, C. C. A.

5816b. ——.]—If the ct. is of opinion that at the close of the case for the prosecution there is no evidence to go to the jury it will, in the absence of evidence of such evidence from the defence, quash a conviction.—R. *v.* HOCHGLICK (1929), 21 Cr. App. Rep. 161, C. C. A.

5840a. —— ——.]—R. *v.* DANIELS (1927), 20 Cr. App. Rep. 127, C. C. A.

5840b. —— ——.]—Conviction quashed on the ground of there being no evidence of guilt.—R. *v.* TAUMAN (1931), 23 Cr. App. Rep. 44, C. C. A.

5840c. —— ——.]—The ct. will quash a conviction founded on mere suspicion.—R. *v.* WALLACE (1931), 75 Sol. Jo. 459; 23 Cr. App. Rep. 32, C. C. A.

5840d. —— ——.]—There ought not to be a conviction when the evidence is equally consistent with innocence & guilt.—R. *v.* BOOKBINDER (1931), 23 Cr. App. Rep. 59, C. C. A.

5840e. —— ——.]—R. *v.* CARTER (1931), 23 Cr. App. Rep. 101, C. C. A.

5850. *Add. Annotation:*—**Refd.** R. *v.* Rice (1927), 20 Cr. App. Rep. 21.

5850a. —— ——.]—The exercise of the jurisdiction under Criminal Appeal Act, 1907 (c. 23), s. 4, depends on the circumstances of the particular case, whatever may be the opinion of the judge who tried it.—R. *v.* RICE (1927), 20 Cr. App. Rep. 21, C. C. A.

Annotation:—**Refd.** R. *v.* Davidson (1927), 20 Cr. App. Rep. 66.

5850b. —— -.]—R. *v.* DAVIDSON, No. 3129b, *ante*.

5855a. Conviction of one co-defendant quashed—Quashing conviction of other co-defendant.]—As a general rule if the conviction of one of two defts. only for conspiracy is quashed, that of the other will be quashed.—R. *v.* HILLMAN (1931), 23 Cr. App. Rep. 53, C. C. A.

5856a. ——.]—R. *v.* RICHARDS, No. 6230a, *post*.

5856b. -.]—Conviction quashed on the grounds of non-direction & of receipt of inadmissible evidence.—R. *v.* HOWARTH (1926), 19 Cr. App. Rep. 102, C. C. A.

5856c. ——.]—R. *v.* BERRY (1926), 19 Cr. App. Rep. 113, C. C. A.

5858. *Add. Annotation:*—**Consd.** R. *v.* Tidmarsh (1931), 23 Cr. App. Rep. 79.

5863a. —— ——.]—It is a misdirection, on a charge of obtaining credit by fraud, that the jury may consider other cases of alleged stealing, which have not been established in evidence.—R. *v.* HILL (1930), 22 Cr. App. Rep. 54, C. C. A.

PART XIV. SECT. 7, SUB-SECT. 4.

5824 v. —— ——.]—R. *v.* BERGER, [1925] 2 D. L. R. 237; 43 Can. Crim. Cas. 301.—**CAN.**

5824 vi. -.]—Defts. were convicted of the offences of to defraud a city corpn. of money due to the corpn. for taxes:—*Held:* an inference of guilty knowledge or belief could not properly be drawn beyond all reasonable doubt, & with such degree of certainty as would warrant the convictions, which were accordingly quashed.—R. *v.* EPSTEIN, R. *v.* WALKER, R. *v.* SPERON (1925), 43 Can. Crim. Cas. 348; 56 O. L. R. 587.—**CAN.**

5824 vii. —— ——.]—Deft. was convicted of rape:—*Held:* having regard to the evidence, the verdict was unreasonable & could not be supported & must be set aside.—R. *v.* HUBLEY (1925), 58 N. S. R. 113.—**CAN.**

5824 viii. —— ——.]—R. *v.* WAH SING CHOW (B. C.) (1927), 48 Can. Crim. Cas. 144.—**CAN.**

5824 ix. —— ——.]—*Held:* a finding that deft., while intoxicated, was in charge of a motor-vehicle, did not justify a conviction for driving while intoxicated, nor could deft. be convicted of the alternative offence, for Criminal Code, s. 285 (4), cannot apply to a vehicle which is out of commission & cannot be operated by its own power.—R. *v.* HIGGINS, [1929] 1 D. L. R. 269; 50 Can. Crim. Cas. 381; 63 O. L. R. 101.—**CAN.**

5824 x. —— ——.]—R. *v.* J., [1929] 1 W. W. R. 625; 52 Can. Crim. Cas. 72; 38 Man. L. R. 144.—**CAN.**

5824 xi. —— ——.]—Where on an appeal from a conviction by a judge without a jury it was apparent that the evidence of one or both of the two witnesses for the Crown was perjured & in direct conflict with that of two of the defence witnesses, one of whom at least was a completely disinterested witness:—*Held:* the charge had not been proved beyond a reasonable doubt & the conviction was quashed.—R. *v.* SMITH, [1929] 3 W. W. R. 387; 1 D. L. R. 605; 52 Can. C. C. 174; 38 Man. L. R. 325.—**CAN.**

1 i. —— —— *Evidence circumstantial only.*]—R. *v.* YOK YUEN (Ont.) (1929), 52 Can. Crim. Cas. 300.—**CAN.**

1 ii. —— —— *Criminal Code*, 1927, s. 1014.]—On an appeal from a conviction for murder, held that the case fell within sect. 1014 of the Criminal Code in that the verdict was one which could not be supported by the evidence, &, therefore, must be set aside. There being no question of a new trial or a verdict of manslaughter, the conviction was quashed.—R. *v.* NAHIRNIAK, [1931] 2 W. W. R. 604; 56 Can. C. C. 225; 39 Man. L. R. 509.—**CAN.**

5843 viii. —— ——.]—R. *v.* NICHOLSON (1926), 47 Can. Crim. Cas. 113; 59 N. S. R. 323.—**CAN.**

5843 ix. —— ——.]—R. *v.* MAY (Sask.), [1927] 1 D. L. R. 753; 47 Can. Crim. Cas. 118.—**CAN.**

sx. *Conviction for offence not charged in summons.*]—HALIFAX CORPN. *v.* O'CONNOR (1882), 15 N. S. R. (3 R. & G.) 190.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 5.

5856 vii a. *S. P.* R. *v.* CHIN CHONG (1921), 29 B. C. R. 527.—**CAN.**

5856 xvi. ——.]—R. *v.* ORTYNSKY, [1927] 2 D. L. R. 973; [1927] 1 W. W. R. 957; 47 Can. Crim. Cas. 319; 21 Sask. L. R. 448.—**CAN.**

s (p. 522) **i.** —— *Irregularities at former trial—Prosecution for perjury.*]—The ct. can take into consideration circumstances & irregularities as to evidence, which occurred not at the trial, the verdict at which is in appeal, but at a former trial where the perjury for which accused has been convicted was alleged to have been committed.—R. *v.* CIESLENSKI, [1924] 1 W. W. R. 82; 41 Can Crim. Cas. 195.—**CAN.**

e (p. 523) **i.** —— ——.]—R. *v.* BARCLAY (Ont.) (1929), 52 Can. Crim. Cas. 134.—**CAN.**

k (p. 524) **i.** —— *Evidence of previous bad character.*]—CASSIDY *v.* R., [1931] 4 D. L. R. 192; 56 Can. C. C. 194.—**CAN.**

s (p. 526) **i.** —— *Admission of confession—No prejudice.*]—R. *v.* BARCLAY, [1930] 1 D. L. R. 489; 52 Can. C. C. 134.—**CAN.**

5867. *Add. Annotation :*—**Distd.** R. *v.* King (1927), 20 Cr. App. Rep. 158.

5870a. —— ——.]—Convictions quashed on the ground of evidence of previous convictions having been wrongly admitted.—R. *v.* Graham, R. *v.* Anderson (1924), 18 Cr. App. Rep. 8, C. C. A.

5870b. —— ——.]—R. *v.* King (1927), 20 Cr. App. Rep. 158, C. C. A.

5870c. —— —— **Disclosed by prisoner.**]—R. *v.* Guerin, No. 2840a, *ante*.

5870d. —— **Evidence of bad character.**]—R. *v.* Fleming, No. [illegible]

5873a. —— ——.]—R. *v.* Haslam, No. 2839a, *ante*.

5873b. —— **Evidence by witnesses on abandoned charge.**]—R. *v.* Dunnico (1931), 23 Cr. App. Rep. 77, C. C. A.

5877a. —— ——.]—R. *v.* Homer (1926), 19 Cr. App. Rep. 118, C. C. A.

5884. *Add. Annotation :*—**Refd.** Godman *v.* Times Publishing Co., [1926] 2 K. B. 273.

5887. *Add. Annotations :*—**Refd.** R. *v.* Dunkley (1926), 134 L. T. 632 ; R. *v.* McLean (1926), 134 L. T. 640 ; R. *v.* Pollinger (1930), 22 Cr. App. Rep. 75.

5906. *Add. Annotation :*—**Consd.** R. *v.* Baldwin (1925), 133 L. T. 191.

5910a. —— ——.]—(1) Rejection of evidence legally admissible may be ground for quashing a conviction. (2) The prosecution, *semble*, should put in at the trial all documents put in below.—R. *v.* Thomas (1931), 23 Cr. App. Rep. 36, C. C. A.

5915a. —— ——.]—An inadequate summing up may be a ground for quashing a conviction.—R. *v.* Breed (1931), 22 Cr. App. Rep. 166, C. C. A.

5926a. ——.]—R. *v.* Howarth, No. 5856b, *ante*.

5927a. —— ——.]—Where the defence is an *alibi*, the jury must be pointedly directed on the identification.—R. *v.* Phillips (1924), 89 J. P. 16 ; 41 T. L. R. 190 ; 18 Cr. App. Rep. 151, C. C. A.

5927b. —— **Direction as to time.**]—R. *v.* Smith, No. 6066a, *post*.

5927c. ——.]—Where an *alibi* is set up as a defence, the jury must be directed that if it fails they must consider the facts of the case on their merits.—R. *v.* Chew (1926), 19 Cr. App. Rep. 73, C. C. A.

5927d. Contradictory statements by sole witness to identity.]—Where the only witness to identification of the accused has at one time expressed doubt about his own correctness, the attention of the jury ought to be drawn to this fact.—R. *v.* McLocklin (1930), 22 Cr. App. Rep. 138, C. C. A.

5929a. —— ——.]—When in a trial for larceny asportation of documents has been proved, there must be a direction whether it took place *animo furandi* or not.—R. *v.* Jones (1925), 19 Cr. App. Rep. 39, C. C. A.

5932a. —— **By bailee—Intent to defraud.**]—R. *v.* Moore, No. 3007a, *ante*.

5932b. —— **Shopbreaking.**]—On an indictment for shopbreaking & larceny the jury should be informed of the various verdicts open to them on the evidence.—R. *v.* Neville (1931), 22 Cr. App. Rep. 163, C. C. A.

5932c. Breaking & entering—Breaking.]—R. *v.* Lloyd, No. 2839b, *ante*.

5932d. —— ——.]—On an indictment charging breaking & entering, a breaking in law must be proved, & the jury must be distinctly charged on this point.—R. *v.* Brierley (1924), 18 Cr. App. Rep. 136, C. C. A.

5934. *Add. Annotation :*—**Folld.** R. *v.* Smith (1931), 22 Cr. App. Rep. 180.

5936. *Add. Annotation :*—**Folld.** R. *v.* Smith (1931), 22 Cr. App. Rep. 180.

5938a. —— ——.]—The gist of the crime of obtaining by false pretences is an intent to defraud : direction on this point must be clear.—R. *v.* Renton (1925), 19 Cr. App. Rep. 33, C. C. A.

5938b. —— ——.]—On a charge of obtaining by false pretences there must be a direction on the issue of intent.—R. *v.* Kay (1925), 19 Cr. App. Rep. 42, C. C. A.

5938c. —— ——.]—On an indictment for obtaining by false pretences the jury must be explicitly charged that they should not convict unless they find an "intent to defraud," the legal purport of which should, except in the clearest cases, be indicated.—

PART XIV. SECT. 7, SUB-SECT. 6.

5909 i. *Conviction quashed—Evidence for defence excluded.*]—Winning *v.* Torrance, [1928] S. C. (J.) 79.—**SCOT.**

PART XIV. SECT. 7, SUB-SECT. 7.—A. (a).

a i. —— ——.]—R. *v.* Averill, [1927] 2 W. W. R. 310 ; 48 Can. Crim. Cas. 121 ; 21 Sask. L. R. 679.—**CAN.**

a ii. —— ——.]—R. *v.* Cooper (Ont.), [1927] 4 D. L. R. 1093 ; 49 Can. Crim. Cas. 87.—**CAN.**

5920 iii. ——.]—Accused & one M. left a room in an hotel together, both intoxicated. On reaching the rotunda of the hotel M. said to the night clerk "I got hit in the eye, but the other fellow got worse than I did," & the clerk saw that there was blood on both of M.'s hands. Immediately after they had left the hotel, a third man, who came to the hotel with them, was found dead & in a battered condition in the room they had left. On appeal from the conviction of accused for manslaughter :—*Held :* there was non-direction amounting to misdirection in the charge of the judge, to the jury, the result of which was that the strongest evidence in favour of accused, viz., M.'s appearance after coming out of the room & his statement of his actions, was not submitted to the jury's consideration as it ought, & there should be a new trial.—R. *v.* Nicholson (1927), 49 Can. Crim. Cas. 228 ; 39 B. C. R. 264.—**CAN.**

5920 iv. ——.]—An indictment was presented against three accused persons for breaking & entering & for stealing. The trial judge left the case to the jury as being one of breaking & entering only, & did not point out to the jury that it was, under Criminal Code, s. 575, open to the jury to find the prisoners, or some of them, guilty of stealing :—*Held :* this omission was in itself sufficient to amount to a miscarriage of justice.—R. *v.* Short, Grealey & Plint, [1928] St. R. Qd. 246 ; 22 Q. J. P. 108.—**AUS.**

5920 v. ——.]—On an appeal from a conviction on a trial for perjury on which an interpreter had been employed it was contended that the judge in his charge to the jury had failed to refer to the fact that objection had been taken by the defence counsel to the ability of the interpreter, & it was contended that this non-direction amounted to misdirection :—*Held :* since even had the judge placed the matter before the jury they could not, as reasonable men, have concluded otherwise than that the interpreter was well qualified & had translated the accused's answers correctly, the objection could not be sustained.—R. *v.* Verigin (No. 2), [1932] 2 W. W. R. 491.—**CAN.**

sy. *Direction alleged to be unfair.*]—R. *v.* Hum King, [1928] 2 D. L. R. 687 ; 49 Can. Crim. Cas. 174 ; 60 N. S. R. 5.—**CAN.**

sz. *Failure to direct jury how to view circumstantial evidence.*]—R. *v.* Thibeault, [1930] 3 D. L. R. 312 ; 53 Can. C. C. 178 ; 1 M. P. R. 345.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 7.—A. (b).

sb. *Bigamy — Felonious intent.*]—Where the trial judge directed the jury that if accused intended to be married a second time, his first wife being alive to his knowledge & the first marriage being a lawful marriage, there was felonious intent :—*Held :* this direction was right.—R. *v.* Kennedy [1923] S. A. S. R. 183.—**AUS.**

R. *v.* SMITH (1931), 22 Cr. App. Rep. 180, C. C. A.

5938d. —— ——.]—It is a misdirection to suggest that evidence on a charge of obtaining by false pretences which tends to disprove an intent to defraud is "subsidiary" to the real issue, even though that evidence *per se* does not constitute a defence.—R. *v.* PICKUP (1931), 22 Cr. App. Rep. 186, C. C. A.

5938e. —— ——.]—It depends on the circumstances of each case whether a jury must be *expressly* directed that an intent to defraud is an essential ingredient of the offence.—R. *v.* MOSS (1931), 23 Cr. App. Rep. 132, C. C. A.

5939a. —— ——.]—R. *v.* NEWBERY & ELMAN, No. 3165g, *ante*.

5943a. —— **Larceny.**]—On a charge of knowingly receiving stolen goods it is imperative that the jury should be directed that the larceny implied must be proved.—R. *v.* MCGUIRE (1930), 22 Cr. App. Rep. 31, C. C. A.

5943b. —— **"For & on account of" person defrauded.**]—On an indictment for fraudulent conversion the jury must be directed on the question whether what was received by deft. was "for & on account of" the person(s) alleged to be defrauded.—R. *v.* BROWN (1931), 23 Cr. App. Rep. 18, C. C. A.

5947. *Add. Annotation:*—**Consd.** R. *v.* Woods (1930), 143 L. T. 311.

5947a. ——.]—R. *v.* WOODS, No. 751b, *ante*.

5947b. ——.]—R. *v.* KILBRIDE (1931), 23 Cr. App. Rep. 12, C. C. A.

5947c. Failure to distinguish larceny & obtaining credit by fraud.]—R. *v.* LEE, No. 5628a, *ante*.

5959. *Add. Annotations:*—**Consd.** R. *v.* Thorpe (1925), 133 L. T. 95. **Refd.** R. *v.* Canham (1925), 18 Cr. App. Rep. 163.

5965a. ——.]—(1) An alternative theory put forward by the defence which is consistent with the evidence ought not to be ignored in the summing-up & the ct. will consider it.

(2) The ct. will not interfere with the findings of fact by a jury if they have been properly directed & could reasonably arrive at the verdict.—R. *v.* TURKINGTON (1930), 22 Cr. App. Rep. 91, C. C. A.

5965b. ——.]—If a summing-up ignores evidence of a prisoner's attempt to get honest work it may be quashed.—R. *v.* COUNTER (1931), 23 Cr. App. Rep. 22, C. C. A.

5965c. ——.]—R. *v.* SMITH, No. 3165f, *ante*.

5976. *Add Annotation:*—**Folld.** R. *v.* Moore (1924), 18 Cr. App. Rep. 29.

5992a. ——.]—R. *v.* TAVENER & TOBITT (1928), 21 Cr. App. Rep. 63, C. C. A.

5992b. ——.]—A misdirection on a material fact is sufficient to invalidate conviction.—R. *v.* DAVIES (1930), 22 Cr. App. Rep. 24, C. C. A.

5992c. ——.]—A definite mistake in a summing-up about the identification of a chattel charged in the indictment to have been stolen may be ground for quashing a conviction.—R. *v.* BRIDGER (1930), 22 Cr. App. Rep. 21, C. C. A.

6013. *Add. Annotation:*—**Refd.** R. *v.* Fisher (1926), 19 Cr. App. Rep. 166.

6034a. ——.]—R. *v.* BRIGGS, No. 4693a, *ante*.

6034b. ——.]—A summing-up must distinguish clearly between the charge of larceny & that of knowingly receiving, &, if there is more than one deft., between their respective shares in the offences alleged.—R. *v.* EBBAGE (1930), 22 Cr. App. Rep. 50, C. C. A.

6034c. ——.]—On an indictment against more than one person the summing-up must discriminate carefully the case against each deft.—R. *v.* BROWN (1930), 22 Cr. App. Rep. 139, C. C. A.

6047a. Comment on failure to disclose defence at preliminary hearing.]—At the preliminary investigation of an indictable offence before a magistrate, at the close of the case for the prosecution, the formula prescribed by

PART XIV. SECT. 7, SUB-SECT. 7.—A. (c).

5948 vi. *Whether ground for quashing conviction.*]—BROOKS *v.* R., [1928] 1 D. L. R. 268; 48 Can. Crim. Cas. 333; [1927] S. C. R. 633.—**CAN.**

5948 vii. ——.]—R. *v.* YOUNG (1931), 3 M. P. R. 221; 55 Can. C. C. 372.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 7.—C. (a).

6006 v. —— —— ——.]—In directing the jury, the judge gave them the impression that mere knowledge of the crime without any aiding or abetting thereof was sufficient to make accused a principal offender:—*Held:* a misdirection, & new trial ordered.—R. *v.* DUTCHAK, [1924] 4 D. L. R. 973.—**CAN.**

6016 iv. —— ——.]—It was contended that the judge misdirected the jury in reading to them a sect. of the Criminal Code which had been repealed before the trial took place:—*Held:* as the sect. in question was simply a statement of the common law & could not prejudicially affect prisoner, the case was within the Code, s. 1014 (*c*), & the objection had no effect.—R. *v.* MCLACHLAN (1923), 56 N. S. R. 413; 41 Can. Crim. Cas. 249.—**CAN.**

6016 v. —— ——.]—The fact that the trial judge in charging the jury misstated the law will not, in view of his subsequent correction of this statement after the jury were called back, justify the setting aside of the conviction.—STEELE *v.* R., [1924] 4 D. L. R. 175; [1924] 1 W. W. R. 1146.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 7.—C. (b) i.

6019 iii. ——.]—Where homicide was proved & was not denied, but the defence of temporary insanity caused by intoxicating liquor was set up:—*Held:* the omission from the trial judge's charge of an instruction that accused was entitled to the benefit of a reasonable doubt was a substantial wrong entitling him to a new trial.—R. *v.* PAYETTE, [1925] 2 W. W. R. 747; 44 Can. Crim. Cas. 209; 35 B. C. R. 81.—**CAN.**

6019 iv. ——.]—Upon the trial of an indictment charging receiving stolen goods, knowing them to have been stolen, the jury was charged "the possession of recently stolen property throws on the possessor the *onus* of showing that he got it honestly. If he fail to give a reasonable account of it, he is reasonably presumed to be in possession of it dishonestly":—*Held:* the charge was not in accordance with the principles of law as laid down in *R. v. Schama*, No. 6019, & the conviction must be set aside & a new trial had.—R. *v.* MORTON, [1929] 1 D. L. R. 720; 51 Can. Crim. Cas. 96; 60 N. S. R. 302.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 7.—C. (b) ii.

d i. ——.]—The omission to place clearly before the jury the law as to the right of private defence of the person, as bearing on the facts set up, & to direct their attention to the point whether, & how far, accused was justified in attacking deceased, in order to prevent injury to himself:—*Held:* a misdirection vitiating the trial.—R. *v.* ASERUDDIN (1926), I. L. R. 53 Calc. 980.—**IND.**

d ii. ——.]—R *v.* DELL 'OSPEDALE, [1929] 1 D. L. R. 892; 51 Can. Crim. Cas. 117; 60 N. S. R. 336.—**CAN.**

se. *Rape.*]—R. *v.* HALL (ONT.) (1927) 49 Can. Crim. Cas. 146.—**CAN.**

sf. *Criminal negligence—Sufficient to read Code with brief comment.*]—DE BEAUJEU *v.* R., [1931] 4 D. L. R. 661; 56 Can. C. C. 217.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 7.—C. (b) iv.

sd. *Direction that evidence as to accused's immoral character relevant—Presumption of innocence.*]—The judge directed the jury that the facts proved with reference to prisoner's character were relevant for their consideration, & that the presumption of innocence applied with less effect to prisoner than to a man of proved good character. The jury found the prisoner guilty by a narrow majority:—*Held:* the judge had misdirected the jury in law, in respect that the immoral character of the panel was irrelevant, & the presumption of innocence applied equally in all cases, & could only be displaced by evidence relevant to prove the crime charged.—SLATER *v.* H.M. ADVOCATE, [1928] S. C. (J.) 94.—**SCOT.**

Criminal Justice Act, 1925 (c. 86), s. 24, asking the prisoner whether he wished to say anything in answer to the charge, was read to the prisoner, who merely said, "I don't wish to say anything except that I am innocent." In the summing-up at the trial, severe comments were made on the fact that the prisoner had not disclosed his defence in the ct. below:—*Held:* in view of the language of the statutory formula, the comments ought not to have been made, & the conviction must be quashed.—R. *v.* NAYLOR (1932), 147 L. T. 159; 23 Cr. App. Rep. 177, C. C. A.

6047b. ——.]—R. *v.* PARKER (1932), 147 L. T. 502.

6049a. Failure to warn jury that they cannot safely convict.]—R. *v.* O'CONNELL, No. 6112b, *post.*

6049b. Failure to direct jury as to weight of evidence of identification.]—R. *v.* HINDS (A. G.), [1932] 2 K. B. 644; 101 L. J. K. B. 762; 147 L. T. 501, C. C. A.

6056. *Add. Annotations:*—**Consd.** R. *v.* Evans (1924), 88 J. P. 196. **Apld.** R. *v.* Beebe (1925), 133 L. T. 736. **Consd.** Statham *v.* Statham, [1929] P. 131. **Apld.** R. *v.* Charavanmuttu (1930), 22 Cr. App. Rep. 1. **Consd.** R. *v.* Davies (1930), 22 Cr. App. Rep. 33. **Refd.** R. *v.* Ross (1924), 18 Cr. App. Rep. 141; R. *v.* Harris, [1927] 2 K. B. 587.

6063. *Add. Annotation:*—**Refd.** R. *v.* Roberts & Morriss (1926), 134 L. T. 635.

6064. *Add. Annotations:*—**Consd.** Statham *v.* Statham, [1929] P. 131. **Refd.** R. *v.* Whitehead, [1929] 1 K. B. 99.

6066a. Direction that corroboration exists not warranted on facts.]—(1) It is a ground for quashing a conviction, if the jury is directed that there is corroboration of an accomplice's evidence, when the ct. thinks there is none.

(2) In dealing with the defence of an *alibi*, the ct. of trial ought to direct the jury on any part of the period of time which is relevant.

(3) Without saying that in every case it is proper to sentence an accomplice pleading guilty before he gives evidence for the Crown, it is obvious that where he is not sentenced it is more than ever necessary to warn the jury about accepting his testimony, because his object is to mitigate his own punishment (AVORY, J.).—R. *v.* SMITH (1924), 18 Cr. App. Rep. 19, C. C. A.

6066b. -.]—Where the evidence against a prisoner is the uncorroborated evidence of an accomplice the judge must warn the jury that, while they may convict on such evidence, it is always, not generally, dangerous to do so. It is wrong for the judge to tell the jury that if they are quite certain in such a case that the accomplice is telling the truth they ought to act on it.—R. *v.* BEEBE (1925), 133 L. T. 736; 89 J. P. 175; 41 T. L. R.

PART XIV. SECT. 7, SUB-SECT. 7.—C. (b) v.

s6. *Failure to direct jury as to degree of proof necessary.*]—R. *v.* MEGILL, [1929] 2 D. L. R. 279; 1 W. W. R. 470; 51 Can. Crim. Cas. 377; 23 S. L. R. 209.—**CAN.**

s7. *Reference to possibility of commutation.*]—The judge told the jury that, if they found murder the man's sentence would be reduced perhaps to imprisonment for life, but that was not to influence their verdict:—*Held:* a misdirection.—R. *v.* CRACKNELL, [1931] O. R. 634; 4 D. L. R. 657; 56 Can. C. C. 190.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 8.—A.

r i. —— *Criminal Code, s.* 1002.]—Deft. was convicted of having had carnal knowledge of a feeble-minded girl:—*Held:* as there was no evidence in corroboration, the conviction must be quashed.—R. *v.* SIMMS (1924), 43 Can. Crim. Cas. 28; 57 N. S. R. 476.—**CAN.**

r ii. —— ——.]—HUBIN *v.* R., [1927] 4 D. L. R. 760; [1927] S. C. R. 442; 48 Can. Crim. Cas. 172.—**CAN.**

r iii. —— ——.]—R. *v.* HAMLIN (Alta.), [1930] 1 D. L. R. 497; 24 Alta. L. R. 296; [1929] 3 W. W. R. 258; 52 Can. Crim. Cas. 149.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 8.—B.

6064 vii. —— ——.]—The rule as to the danger of convicting upon the uncorroborated testimony of an accomplice is not a strict rule of law, but merely one of practical wisdom & carefulness, & the omission of the trial judge to give the customary warning, even if technically an error, does not constitute such a miscarriage of justice or substantial wrong as to vitiate the conviction.—R. *v.* GALLAGHER, [1924] 4 D. L. R. 1059; 3 W. W. R. 357.—**CAN.**

6064 viii. —— ——.]—A charge to the jury, that, while it was dangerous to convict on the evidence of an accomplice without corroboration, yet in this case it was the right & duty of the jury, if on the accomplice's evidence they felt no reasonable doubt of the guilt of accused, to convict him:—*Held:* a misdirection.

If a judge discusses the evidence of an accomplice & points out its consistency, he should explain to the jury the considerations which prompt an accomplice to testify against accused.—R. *v.* SLEE, [1926] 1 D. L. R. 729; 45 Can. Crim. Cas. 190; 58 O. L. R. 313.—**CAN.**

6064 ix. —— ——.]—When the evidence against a prisoner is the uncorroborated evidence of an accomplice, it is wrong for the judge to tell the jury that, if they are quite certain that the accomplice is telling the truth, they have not only the right to convict prisoner but that it is their duty to do so. In such a case, the judge should follow the rule laid down in *R.* v. *Baskerville*, No. 6056; the judge should warn the jury of the danger of convicting prisoner on the uncorroborated testimony of an accomplice &, in his discretion, may advise them not to convict upon such evidence, but he should point out to the jury that it is within their legal province to convict upon such unconfirmed evidence.—GOUIN *v.* R., [1926] S. C. R. 539.—**CAN.**

6064 x. —— ——.]—Where the evidence of accomplices is uncorroborated, juries should be instructed as nearly as possible in the language in which the rule of practice laid down in *Gouin* v. *R.*, No. 6064 ix, *ante*, is expressed.

A charge which in effect puts the evidence of an accomplice on the same footing as that of an ordinary witness amounts to a miscarriage of justice.—R. *v.* BACHIU (Sask.), [1927] 3 D. L. R. 1179; [1927] 2 W. W. R. 171; 48 Can. Crim. Cas. 53.—**CAN.**

6064 xi. —— ——.]—*Held:* it was the first duty of the trial judge to have instructed the jury as to what in law would constitute a man an accomplice; he should then have proceeded to direct their attention particularly to any facts in evidence which would serve to indicate B.'s complicity in the conspiracy at any stage thereof, & to submit to them the issue as to whether what he was proved to have done made him, having regard to the direction in law already given, an accomplice; he should then have instructed the jury that, if they concluded that the witness was, at any stage of the proceedings, an accomplice in the crime charged against the accused, there would be danger in convicting them of that crime upon his evidence standing alone and uncorroborated, although the law did not preclude their doing so.—VIGEANT *v.* R., [1930] S. C. R. 396; 54 Can. C. C. 301; [1931] 3 D. L. R. 512.—**CAN.**

6064 xii. —— ——.]—R. *v.* GAUM (1930), 54 Can. C. C. 166.—**CAN.**

6064 xiii. —— ——.]—Where the judge's charge to the jury, after warning them that it was unsafe to convict on the evidence of an accomplice without corroboration, proceeded to give reasons why the evidence of the accomplice in the case before them should be accepted, & impliedly invited them to act on that evidence if they believed it, the warning was held defective; & the conviction quashed & a new trial ordered.—R. *v.* SEGAL, [1930] 1 W. W. R. 372; 3 D. L. R. 301; 53 Can. C. C. 192; 38 Man. L. R. 474.—**CAN.**

6064 xiv. —— ——.]—BOULIANNE *v.* R., [1931] S. C. R. 621; [1932] 1 D. L. R. 285; 56 Can. C. C. 338.—**CAN.**

6064 xv. —— —— *Question whether witness accomplice left to jury.*]—R. *v.* YAUM, [1930] 3 M. P. R. 464.—**CAN.**

6064 xvi. —— ——.]—*Held:* certain unsatisfactory comments in the judge's warning to the jury as to the danger of convicting on the evidence of an accomplice unless corroborated were not so material as to cause a substantial miscarriage of justice. The fact, also, that after directing their attention to such danger he proceeded to tell them where such corroboration might be found was not objectionable, for in doing so he was only performing his duty.—R. *v.* TODOREK, [1932] 1 W. W. R. 328.—**CAN.**

6064 xvii. —— ——.]—It is a misdirection on a material matter for a judge to direct the jury that if he believes the uncorroborated evidence of accomplices it must or should or ought to convict.—R. *v.* HAYMAN, [1932] 1 W. W. R. 86; 2 D. L. R. 525; 40 Man. L. R. 204.—**CAN.**

See, also, cases in Part XII., Sect. 13, Sub-sect. 4, E., *ante.*

635; 28 Cox, C. C. 47; 19 Cr. App. Rep. 22, C. C. A.

Annotation:—**Refd.** R. *v.* Harris, [1927] 2 K. B. 587.

6067a. —.]—The correct direction on a charge of indecent assault is that it is not safe to convict on the uncorroborated evidence of prosecutrix, but that the jury, if they are satisfied of her veracity, may, after paying attention to that warning, nevertheless convict.—R. *v.* JONES (1925), 19 Cr. App. Rep. 40, C. C. A.

6067b. —— —— ——.]—R. *v.* SOUTHERN, No. 3156f, *ante*.

6068a. —— —— —— ——.]—When consent is the defence to a charge of rape, the jury must be warned of the absence of corroboration of the female's story.—R. *v.* SALMAN (1924), 18 Cr. App. Rep. 50, C. C. A.

6068b. —— —— —— ——.]—R. *v.* DRAPER (1929), 21 Cr. App. Rep. 147, C. C. A.

6069a. —— —— —— ——.]—When the only witness for the Crown on a charge of larceny is the receiver of the stolen property, the jury should be warned that they may require corroboration.—R. *v.* DIXON (1925), 19 Cr. App. Rep. 36, C. C. A.

6072a. —— ——.]—Summing up must be emphatic on the danger of accepting the uncorroborated evidence of accomplices & care must be taken that suggested corroboration is in fact adequate.—R. *v.* CLIVE (1930), 22 Cr. App. Rep. 19, C. C. A.

6072b. —— ——.]—R. *v.* CHARAVANMUTTU, No. 4943a, *ante*.

6072c. —— **Evidence of young children.**]—R. *v.* MARSHALL, No. 3136a, *ante*.

6073a. —— **Similar offences on different dates.**]—R. *v.* CHARAVANMUTTU, No. 4943a, *ante*.

6076. *Add. Annotation:*—**Refd.** R. *v.* Southern (1929), 142 L. T 383.

6078. *Add. Annotation:*—**Refd.** R. *v.* Southern (1929), 142 L. T. 383.

6078a. —— —— ——.]—Even though a summing-up omits express direction on the relation of accomplices to corroboration of their evidence, the ct. may, if it is satisfied that throughout the trial it has been made clear that the issue is whether the testimony of accomplices is adequately confirmed by that of other witnesses, decline to quash a conviction.—R. *v.* DAVIES (1930), 22 Cr. App. Rep. 33, C. C. A.

6078b. —— —— ——.]—R. *v.* MEDCRAFT (1931), 23 Cr. App. Rep. 116, C. C. A.

6078c. —— —— ——.]—R. *v.* GREGG (1932), 96 J. P. 511, C. C. A.

6078d. —— **Corroboration required by rule of practice only.**]—R. *v.* SOUTHERN, No. 3156f, *ante*.

6088a. Offence under Road Traffic Act, 1930 (c. 43), ss. 11, 15—Verdict of guilty of being under influence of drink—Ambiguous verdict.]—R. *v.* HAWKES (1931), 75 Sol. Jo. 247; 22 Cr. App. Rep. 172, C. C. A.

6090. *Add. Annotations:*—**Folld.** R. *v.* Dennis, R. *v.* Parker, [1924] 1 K. B. 867. **Apld.** R. *v.* Williams (1925), 19 Cr. App. Rep. 67; R. *v.* McDonnell (1928), 20 Cr. App. Rep. 163.

6094. *Add. Annotations:*—**Folld.** R. *v.* Hussey (1924), 18 Cr. App. Rep. 121; R. *v.* Hancock (1931), 145 L. T. 168.

6097a. —— **Necessity for proof.**]—When no reason is shown to the ct. to believe that a plea of

6067 iii. —— —— ——.]—A verdict of indecent assault founded solely on the testimony of prosecutrix not allowed to stand, where the judge did not warn the jury properly with respect to corroboration.—R. *v.* ELLERTON (Sask.), [1927] 4 D. L. R. 1126; [1927] 3 W. W. R. 564; 49 Can. Crim. Cas. 94.—**CAN.**

6067 iv. —— —— ——.]—On the trial of a charge for indecent assault on a girl of under sixteen years, the trial judge, in the course of warning the jury of the danger of convicting on the uncorroborated testimony of the girl, said: "In such a case, it is usual, in fact, necessary, to caution the jury against the danger of acting upon the uncorroborated testimony of the girl," &, also, "unless she is supported by independent testimony which implicates the accused, her evidence is not an entirely safe or satisfactory foundation for a verdict against him":—*Held:* this direction was sufficient.—R. *v.* KENNEWELL, [1927] S. A. S. R. 287.—**AUS.**

6067 v. —— ——.]—R. *v.* MUDGE (Sask.) (1929), 52 Can. Crim. Cas. 402.—**CAN.**

6067 vi. —— —— ——.]—On the trial of a charge of rape there is a misdirection where the judge, although he warns the jury that it is unsafe to convict on the uncorroborated evidence of the prosecutrix, goes on to say in effect that corroboration is necessary only if they are not satisfied from the girl's story alone that she is telling the truth.—R. *v.* MUDGE, [1930] 1 W. W. R. 193; 1 D. L. R. 617; 52 Can. C. C. 402; 24 S. L. R. 257.—**CAN.**

6068 i. —— —— —— *Consenting party.*]—Upon a trial for rape, the vital issue was consent or non-consent, & the only evidence of non-consent was that of prosecutrix, so that her evidence on the vital issue was uncorroborated:—*Held:* while the jury might have convicted upon the uncorroborated evidence of prosecutrix, it was the duty of the trial judge to direct their attention to the absence of corroboration, the danger of convicting on her uncorroborated testimony, &, therefore, the necessity of their exercising great care in determining the weight to be attached to her evidence. His not having done so was non-direction, equivalent to misdirection, & constituted a miscarriage of justice within sect. 1014 of the Criminal Code.—R. *v.* AUGER, [1929] 4 D. L. R. 864; 52 Can. Crim. Cas. 2; 64 O. L. R. 181.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 10.

a (p. 538) **i.** *One juryman not sworn.*]—Where one of the additional panel of jurymen summoned, who was present & answered to his name when first called by the clerk, was not called to be sworn by the clerk who announced that the panel was exhausted, which made it necessary to secure an additional juryman from among those who had stood aside:—*Held:* an objection could not be allowed, as no substantial wrong or miscarriage of justice had occurred.—R. *v.* MCLACHLAN (1923), 56 N. S. R. 413; 41 Can. Crim. Cas. 249.—**CAN.**

r (p. 541) **i.** *Mental incompetence of juror.*]—Apart altogether from the Jury Act it is a fundamental principle of law that where an accused is tried by a jury all the members thereof must be qualified to act. On an appeal from a conviction for murder on the ground that one of the members of the jury was disqualified from acting as such owing to mental infirmity & impairment:—*Held:* the juror in question was afflicted with mental infirmity incompatible with the discharge of duties of a juror & therefore there had been a mistrial.—R. *v.* WESTGATE, [1929] 1 D. L. R. 699; 1 W. W. R. 49; 51 Can. Crim. Cas. 52; 38 Man. L. R. 34.—**CAN.**

sf. *Policeman informant making arrest, conducting prosecution & giving evidence—Failure to employ counsel or attorney.*]—The fact that, in a summary conviction proceeding, the informant, who was the policeman in charge of the case, acted as the prosecutor at the hearing, & was also a witness thereon, & had sworn to & executed the search warrant in person & arrested the accused held not a ground for setting aside the conviction.—R. *v.* CRUIT, [1928] 4 D. L. R. 581; [1928] 2 W. W. R. 377; 50 Can. Crim. Cas. 143; 22 Sask. L. R. 525.—**CAN.**

sg. *Failure to call witness.*]—The error of counsel in omitting to call witnesses is no ground for setting aside a verdict or for granting any relief.—R. *v.* FONTAINE & LACASSE (1930), 53 Can. C. C. 164; 65 O. L. R. 173.—**CAN.**

sj. *Disqualification of juror.*]—Under sect. 6 of Jury Act, R. S. B. C., 1924, a person convicted of an indictable offence is disqualified for service as a juror unless he has obtained a free pardon. Applt.'s motion for leave to appeal from a conviction by a jury was on the ground that one of the jury was so disqualified. The disqualification was not discovered until after the conviction, & no attempt was made to answer the appellant's affidavits setting it out. The ct. was informed by counsel that no further evidence would be introduced on the hearing of the appeal if the motion succeeded:—*Held:* the verdict could not stand & a new trial should be had.—R. *v.* STEWART, [1932] 1 W. W. R. 912; *revsd.* [1932] S. C. R. 612; 4 D. L. R. 337.—**CAN.**

ty has been improperly accepted, it will decline to interfere.—R. *v.* CLARK (1929), 21 Cr. App. Rep. 81, C. C. A.

6106a. Disagreement of first jury—Second jury hearing way in which first divided.]—(1) If a jury, unable to agree, has announced in open ct., & therefore in presence of the jurors in waiting, the numbers of their members for & against a conviction, it is wrong to proceed with the second trial before such jurors. Even if there is no other jury available the Bench ought not to threaten to deprive accused of bail, unless he will consent to be tried by those jurors.

(2) Inadmissible evidence of accused's bad character volunteered by a witness may invalidate a conviction.—R. *v.* FLEMING (1929), 21 Cr. App. Rep. 149, C. C. A.

6110. *Add. Annotation:*—**Distd.** R. *v.* Villars (1927), 20 Cr. App. Rep. 150.

6111. *Add. Annotation:*—**Folld.** R. *v.* Villars (1927), 20 Cr. App. Rep. 150.

6112a. Improper question put to prisoner—Prisoner undefended.]—R. *v.* WEEKS (1928), 20 Cr. App. Rep. 188, C. C. A.

6112b. Prisoner giving evidence—Unfair treatment.]—When the ct. thinks that at the close of the case for the prosecution the judge, though he cannot hold that there is no case to go to the jury, might well suggest to them that in view of the evidence of the principal witness they could not safely convict & fails to lay sufficient stress on the need of corroboration, it may quash a conviction, as not being supported by the evidence & a miscarriage of justice within sect. 4, sub-sect. (1) of the Criminal Appeal Act, 1907 (c. 23), s. 4 (1). The ct. disapproves of a deft.-witness in the box being treated by any one engaged in the case in such a way that he cannot give his evidence in his ownway.—R. *v.* O'CONNELL (1931), 23 Cr. App. Rep. 8, C. C. A.

6114a. Questions by judge implying belief in guilt.]—R. *v.* RABBITT, No. 3151b, *ante*.

6136. *Add. Annotation:*—**Refd.** R. *v.* Morter (1927), 20 Cr. App. Rep. 53.

6144a. Refusal to permit accomplice to be called in mitigation—Count against accomplice withdrawn.]—Proviso to Criminal Appeal Act, 1907, s. 4, applied despite a manifest error in procedure.—R. *v.* GASKELL (1929), 21 Cr. App. Rep. 83, C. C. A.

6144b. Omission to order production of police report.]—R. *v.* CLARKE, No. 4662a, *ante*.

6152. *Add. Citation:*—31 T. L. R 401.

6169a. —— ——.]—R. *v.* BROMBILLA (1930), 22 Cr. App. Rep. 74, C. C. A.

6169b. —— ——.]—R. *v.* BISHOP (1930), 22 Cr. App. Rep. 136, C. C. A.

6169c. —— ——.]—R. *v.* CANHAM & CUSHING (1929), 21 Cr. App. Rep. 174, C. C. A.

6169d. —— ——.]—R. *v.* O'BRIEN (1930), 22 Cr. App. Rep. 20, C. C. A.

6169e. —— ——.]—R. *v.* BROWN (1931), 23 Cr. App. Rep. 48, C. C. A.

6169f. —— ——.]—The Ct. of Criminal Appeal does not make slight reductions of sentences. The ct. only interferes on matters of principle & on the ground of substantial miscarriages of justice.—R. *v.* DUNBAR (1928), 21 Cr. App. Rep. 19, C. C. A.

6169g. —— ——.]—R. *v.* BROOKS (1931), 22 Cr. App. Rep. 172, C. C. A.

6169h. —— ——.]—R. *v.* JONES (1931), 22 Cr. App. Rep. 165, C. C. A.

6169j. —— ——.]—R. *v.* ADAMS (1931), 23 Cr. App. Rep. 51, C. C. A.

6169k. —— ——.]—R. *v.* BLAKE & HINES (1931), 22 Cr. App. Rep. 175, C. C. A.

6169l. —— ——.]—R. *v.* WILLIAMS (1930), 22 Cr. App. Rep. 137, C. C. A.

6169m. —— ——.]—R. *v.* SLENDER (1931), 23 Cr. App. Rep. 11, C. C. A.

6169n. —— ——.]—R. *v.* SHARP (1931), 23 Cr. App. Rep. 7, C. C. A.

6169o. —— —— **Subordinate acting under orders.**]—R. *v.* SPELLEN, No. 3156g, *ante*.

6169p. —— ——.]—R. *v.* MCGRATH (1932), 32 Cr. App. Rep. 176, C. C. A.

PART XIV. SECT. 7, SUB-SECT. 11.—D.

6115 vi. —— ——.]—R. *v.* DE BERTOLI, [1927] 3 D. L. R. 193; [1927] S. C R. 454; 48 Can. Crim. Cas. 118.—**CAN.**

6115 vii. —— ——.]—BROOKS *v.* R., [1928] 1 D. L. R. 268; 48 Can. Crim. Cas. 333.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 11.—E.

q i. —— *After juryman called—By person on panel.*]—*Held:* a miscarriage of justice.—R. *v.* MCNAMARA, [1926] 4 D. L. R. 880; 46 Can. Crim. Cas. 230; 59 O. L. R. 342.—**CAN.**

sj. *Disqualification of juror.*]—*Held:* such disqualification did not cause a miscarriage of justice.—R. *v.* BOAK, [1925] 3 D. L. R. 887; [1925] S. C. R. 525; 44 Can. Crim. Cas. 218; *revsg.*, [1925] 2 D. L. R. 803; [1925] 2 W W. R. 40; 43 Can. Crim. Cas. 402; 35 B. C. R. 256.—**CAN.**

PART XIV. SECT. 8, SUB-SECT. 1.—A.

sk. *Jurisdiction of court.*]—R. *v.* FOX, R. *v.* SANSOME (1925), 44 Can. Crim. Cas. 262.—**CAN.**

h i. ——.]—No definite principle can be laid down upon which a ct. of appeal should proceed in dealing with appeals for the reduction of sentences on the ground of excessive severity; all the circumstances should be carefully taken into account in each instance & full consideration given to matters of mitigation.—R. *v.* FINLAY, [1924] 4 D. L. R. 829; 3 W. W. R. 427.—**CAN.**

h ii. ——.]—A sentence should be interfered with by a ct. of appeal only where the trial judge proceeded on some wrong principle or gave too great weight to particular circumstances: the fact that individual members of the ct. would have imposed a different sentence is not sufficient.—R. *v.* GALLAGHER, [1924] 4 D. L. R. 1059; 3 W. W. R. 357.—**CAN.**

h iii. ——.]—In considering the adequacy of a sentence, the ct. should be guided by the same considerations whether the appeal be taken for the reduction or increase of the sentence.—R. *v.* HICKS, [1925] 2 D. L. R. 1000; [1925] 1 W. W. R. 1155; 44 Can. Crim. Cas. 13; 19 Sask. L. R. 359.—**CAN.**

h iv. ——.]—DUSTOOR *v.* R. (1927), Q. R. 42 K. B. 520.—**CAN**

h v. ——.]—Where prisoner was convicted of rape & sentenced to death:—*Held:* circumstances, such as low mentality & baneful environment, which were not brought to the attention of the judge, were sufficient to warrant a reduction of the penalty to twenty years' imprisonment & twenty lashes.—R. *v.* MCCATHERN, [1927] 2 D. L. R. 1142; 48 Can. Crim. Cas. 54; 60 O. L. R. 334.—**CAN.**

k i. —— *Abortion.*]—An appeal by an abortion-monger against a sentence of four years' imprisonment imposed on her on a conviction for abortion, dismissed.—R. *v.* PETCH, [1925] 4 D. L. R. 671; [1925] 3 W. W. R. 434; 35 Man. L. R. 299.—**CAN.**

k ii. ——.]—Deft. was convicted of breaking & entering with intent to commit an indictable offence. On appeal, there was sufficient evidence to support the conviction, & the trial judge having had the advantage of seeing prisoner & hearing his evidence, & no sufficient reason having been shown for reducing the sentence:—*Held:* the conviction be affirmed & deft.'s appeal dismissed.—R. *v.* JOHNSON (1927), 59 N. S. R. 385.—**CAN.**

sl. *Variation of sentence—Assistance given to police.*]—Where an accused, convicted on his own confession, has given assistance to the police by denouncing & giving evidence against a guilty receiver, although there is no evidence of restitution or repentance on the part of the prisoner, the sentence may be reduced.—R. *v.* PAUL, [1928] S. A. S. R. 16.—**AUS.**

6169q. —— ——.]—R. *v.* CARR (1932), 23 Cr. App. Rep. 176, C. C. A.

6177a. —— ——.]—Reduction of term of sentence in order to carry out intention of the trial judge.—R. *v.* FIELDER (1926), 135 L. T. 64; 90 J. P. 96; 28 COX, C. C. 186; 19 Cr. App. Rep. 87, C. C. A.

6178a. Certificate of insanity after conviction.]—R. *v.* KENNEALLY (1930), 22 Cr. App. Rep. 52, C. C. A.

6178b. —— **Adjournment of appeal—Accidental delay.**]—When an appeal has been adjourned through no fault of appellant the ct. may for that reason make a reduction in the sentence. —R. *v.* HILDEBRAND & HILDEBRAND (1930), 22 Cr. App. Rep. 79, C. C. A.

6178c. —— **Court in doubt as to facts.**]—R. *v.* SAUNDERS (1931), 22 Cr. App. Rep. 169, C. C. A.

6178d. —— **Other disciplinary action pending—Army deserter.**]—Sentence reduced in view of other disciplinary action.—R. *v.* SOANES (1931), Cr. App. Rep. 142, C. C. A.

6181a. —— —— **Relative severity.**]—A sentence of three years' penal servitude is now to be regarded as more severe than one of two years' imprisonment with hard labour.—R. *v.* JONES (1932), 23 Cr. App. Rep. 208, C. C. A.

6183a. —— ——.]—The ct. will amend an incorrect record, though it may not vary the sentence.—R. *v.* SHARMAN (1925), 19 Cr. App. Rep. 43, C. C. A.

6186a. —— ——.]—R. *v.* PILLEY (1926), 19 Cr. App. Rep. 101, C. C. A.

6186b. —— ——.]—Rectification of sentence not warranted in law.—R. *v.* TREMAYNE (1932), 23 Cr. App. Rep. 191, C. C. A.

6187a. —— **Sentence illegal.**]—Sentence reduced in view of its illegality.—R. *v.* JACKSON (1926), 19 Cr. App. Rep. 159, C. C. A.

6187b. —— ——.]—R. *v.* IRVING (1927), 20 Cr. App. Rep. 131, C. C. A.

6187c. —— ——.]—R. *v.* MILLICHAMP (1929), 21 Cr. App. Rep. 106, C. C. A.

6187d. —.]—R. *v.* DALE (OTHERWISE MANDERS) (1929), 21 Cr. App. Rep. 114, C. C. A.

6199a. ——.]—R. *v.* CLUE (1928), 21 Cr. App. Rep. 68, C. C. A.

6203a. Previous conviction—Court reluctant to hear evidence of in justificaton of sentence—No previous conviction proved at trial.]—R. *v.* GANS (1928), 21 Cr. App. Rep. 1, C. C. A.

6203b. Youth & provocation.]—R. *v.* LINES (1929), 21 Cr. App. Rep. 175, C. C. A.

6209a. Offer of employment—By old employer.]—Sentence reduced.—R. *v.* JACKSON (1927), 20 Cr. App. Rep. 130, C. C. A.

6209b. *S. P.* R. *v.* USHER (1927), 20 Cr. App. Rep. 130, C. C. A.

6209c. Inaccurate statements as to previous record.]—The ct. will revise a sentence when after conviction or plea inaccurate statements by the police about prisoner's record may have influenced that sentence.—R. *v.* BOLTOLPH (1928), 21 Cr. App. Rep. 37, C. C. A.

6209d. Several charges for same offence.]—R. *v.* KENNY (1929), 21 Cr. App. Rep. 78, C. C. A.

6209e. Improper discrimination between co-defendants.]—R. *v.* LEAF (1931), 22 Cr. App. Rep. 171, C. C. A.

6209f. Delay between conviction & appeal.]—When there has been an unusually long interval between the setting down & the hearing of an appeal the ct. may take it into consideration for the purpose of sentence.—R. *v.* TURNER (1932), 23 Cr. App. Rep. 175, C. C. A.

6215a. *v.* READE (1927), 20 Cr. App. Rep. 60, C. C. A.

6215b. —— ——.]—R. *v.* MARTIN (1928), 20 Cr. App. Rep. 187, C. C. A.

6219a. —— ——.]—R. *v.* LLOYD (1927), 20 Cr. App. Rep. 139, C. C. A.

PART XIV. SECT. 8, SUB-SECT. 1.—B.

6170 i. *Whether fresh sentence can be substituted—Plea of guilty.*]—On an appeal against sentence in a case wherein accused pleaded guilty the Ct. of Appeal is in as good a position as the trial judge to determine the sentence which should be imposed.—R. *v.* VINEGRATSKY (*alias* VINE), [1928] 3 D. L. R. 201; [1928] 1 W. W. R. 542; 49 Can. Crim. Cas. 298; 37 Man. L. R. 327.—**CAN.**

6170 ii. —— ——.]—R. *v.* ALTOMARE (B. C.), [1928] 3 W. W. R. 487.—**CAN.**

6172 i. *Variation of sentence—Increase of sentence.*]—The Ct. of Appeal is justified in increasing a sentence, if it clearly deems it justice to do so.—R. *v.* GASCO (1927), Q. R. 43 K. B. 116; 8 C. B. R. 291.—**CAN.**

6185 ii. —— ——.]—R. *v.* ROBINSON (1930), 53 Can. C. C. 173.—**CAN.**

n i. —— ——.]—Where an illegal punishment has been imposed, as imprisonment with hard labour where hard labour is not authorised for the offence in question, the ct. will not exercise its powers under Criminal Code, s. 1124, by striking out the unauthorised portion of the penalty in order to uphold the conviction after the illegal punishment has been suffered in whole or in part.—R. *v.* LOW QUONG, [1924] 3 D. L. R. 666; 2 W. W. R. 695; 33 B. C. R. 522.—**CAN.**

n ii. —— *Recommendation to mercy—Effect of misunderstood by trial judge.*]—R. *v.* WHITTAKER (1928), 28 S. R. N. S. W. 411; 45 N. S. W. W. N. 172; [1928] Argus L. R. 303.—**AUS.**

n iii. —— *Petition for leniency—Improperly received.*]—R. *v.* LIM GIM, [1928] 1 D. L. R. 1038; 49 Can. Crim. Cas. 255; 39 B. C. R. 457.—**CAN.**

n iv. ——.]—R. *v.* GASCO, [1928] 2 D. L. R. 751; 49 Can. Crim. Cas. 196; Q. R. 43 K. B. 116.—**CAN.**

n v. —— *Imprisonment substituted for fine—Fine inadequate.*]—R. *v.* SYDORIK & ZOWATSKI (Sask.), [1926] 3 W. W. R. 458.—**CAN.**

n vi. —— *Not after sentence partly served.*]—R. *v.* NORTHUP (N. S.) (1926), 46 Can. Crim. Cas. 74.—**CAN.**

n vii. —— *Imposed by mistake.*]—R. *v.* HALE (1926), 49 Can. Crim. Cas. 253.—**CAN.**

n viii. —— *Youth of prisoner—Previous good character.*]—R. *v.* BURNS (Sask.), [1929] 3 W. W. R. 675; 53 Can. C. C. 87.—**CAN.**

n ix. —— *Sentence inadequate.*]—R. [1931] 4 M. P. R. 85.—**CAN.**

sp. —— *Discretion of Court of Criminal Appeal.*]—The Ct. of Criminal Appeal, in the exercise of the powers vested in it by Criminal Appeal Act, 1912, s. 6 (3), has an unfettered judicial discretion to review sentences imposed upon convicted persons without the necessity of considering whether in imposing any sentence under review, the trial judge proceeded upon any wrong principle, or upon any misapprehension of the facts.—R. *v.* GOSPER (1928), 28 S. R. N. S. W. 568; 45 N. S. W. W. N. 165.—**AUS.**

sq. —— *Conviction for perjury.*]—R. *v.* ZIZU NATANSON (No. 2) (Sask.), [1927] 2 W. W. R. 154; 49 Can. Crim. Cas. 89.—**CAN.**

sr. *Reduction of sentence—Mitigating circumstances.*]—R. *v.* ERICKSON, [1931] 2 W. W. R. 710; 57 Can. C. C. 111.—**CAN.**

PART XIV. SECT. 8, SUB-SECT. 1.—C.

6202 i. *Prisoner's state of health.*]—While a convict's physical state may be taken into consideration in passing sentence, yet changes in his health thereafter more properly afford ground for an application for the clemency of the Crown than for an appeal against the sentence.—R. *v.* ZIMMERMAN, [1926] 2 W. W. R. 882; 46 Can. Crim. Cas. 78; 37 B. C. R. 277.—**CAN.**

6222a. Full offence—To attempt—Incest.]—R. *v.* KILBRIDE (1931), 23 Cr. App. Rep. 12, C. C. A.

6228a. Attempted larceny—To attempt to obtain by false pretences.]—On an indictment for attempted larceny the ct. has no power to substitute a conviction for an attempt to obtain by false pretences.—R. *v.* GALLAGHER (OTHERWISE HEMINGWAY) (1929), 21 Cr. App. Rep. 172, C. C. A.

6230a. Housebreaking—To receiving stolen property.]—(1) Evidence improperly admitted at the trial may be a ground for quashing a conviction.

(2) On an indictment charging housebreaking, & knowingly receiving stolen property, if the latter count was not effective, the ct., when quashing the conviction in the former, will not substitute a verdict for receiving, as applt. was not, in fact, called upon to explain his possession.—R. *v.* RICHARDS (1924), 18 Cr. App. Rep. 144, C. C. A.

6230b. Breaking, entering & stealing—To breaking & entering with intent to steal.]—When on an indictment for breaking & larceny there is no evidence of the latter, the jury must be directed so to find.—R. *v.* CROSS (1931), 22 Cr. App. Rep. 192, C. C. A.

6234a. —— —— Exclusion of women from jury.]—The discretion which a judge at a trial has of excluding women from a jury must be exercised judicially, & unless it is shown that it has not been so exercised the ct. will not order a *venire de novo*.—R. *v.* VAQUIER (1924), 18 Cr. App. Rep. 112, C. C. A.

6234b. —— —— Denial of right of challenge.]—If deft. is wrongfully denied his right to challenge, the ct. will award a *venire de novo*.—R. *v.* WILLIAMS (1925), 19 Cr. App. Rep. 67, C. C. A.

6237a. —— ——.]—R. *v.* LLOYD, No. 2567a, *ante*.

6237b. —— ——.]—*Venire de novo* awarded in the case of a deft. whose plea of guilty had possibly been misunderstood.—R. *v.* HUSSEY (1924), 18 Cr. App. Rep. 121, C. C. A.

Annotation :—**Folld.** R. *v.* Hancock (1931), 145 L. T. 168.

6237c. —— ——.]—R. *v.* HANCOCK, No. 3287a, *ante*.

6249a. —— —— Procedure.]—R. *v.* KNIGHTON (1927), 20 Cr. App. Rep. 45, C. C. A.

6249b. —— —— Fresh evidence.]—R. *v.* FRATSON (1930), 22 Cr. App. Rep. 29, C. C. A.

6263. *Add. Annotation* :—**Refd.** R. *v.* Harris, [1927] 2 K. B. 587.

6271. Before this case insert "*See, also*, CROWN PRACTICE, No. 797a."

Add. Annotations :—**Folld.** R. *v.* Maidstone Prison. *Ex p.* Maguire (1925), 133 L. T. 710. **Refd.** *Re* Carroll (1930), 100 L. J. K. B. 62.

6273. *Add. Annotation* :—**Refd.** *Re* Carroll, [1931] 1 K. B. 104.

6284. *Add. Annotation* :—**Refd.** R. *v.* Maidstone Prison, *Ex p.* Maguire (1925). 133 L. T. 710.

6293a. Order to repair highway—Highway Act, 1862 (c. 61), s. 18.]—*Held* : not a judgment in a "criminal cause or matter."—LOUGHBOROUGH HIGHWAY BOARD *v.* CURZON (1886), 17 Q. B. D. 344; 55 L. J. M. C. 122; 55 L. T. 50; 50 J. P. 788; 34 W. R. 621; 2 T. L. R. 678, C. A.

Annotations :—**Refd.** R. *v.* Poole Corpn. (1887), 19 Q. B. D. 602; Payne *v.* Wright (1892), 61 L. J. M. C. 114.

6298a. —— Invalidity of bye-law.]—Applt. was charged with frequenting a street for the purpose of betting contrary to a bye-law of a borough, but the charge was dismissed on the ground that the bye-law was *ultra vires* & unreasonable. On a case stated, the High Ct. held that the bye-law was valid :—*Held* : this being a "criminal cause or matter," there was no appeal except for error of law apparent on the record, &, even if the

PART XIV. SECT. 9.

6222 i. *Carnal knowledge—To indecent assault.*]—R. *v.* GIRONE (1925), 34 B. C. R. 554.—**CAN.**

6225 i. *Obtaining by false pretences—To attempting to obtain.*]—Where a party has been convicted of obtaining goods by false pretences, & on the indictment the jury could have found him guilty of some other offence, *e.g.* attempting to obtain, & it clearly appears by the jury's finding that they must have been satisfied of facts which proved him guilty of attempting :—*Held* : a ct. of appeal, instead of allowing or dismissing the appeal, may substitute a verdict of guilty of attempting to obtain.—R. *v.* MCMANUS, [1924] 3 D. L. R. 297; 42 Can. Crim. Cas. 248; 51 N. B. R. 255.—**CAN.**

aa. *Breaking & entering dwelling-house by day—To stealing in dwelling-house.*]—R. *v.* SAM CHIN, [1926] 2 D. L. R. 287; 45 Can. Crim. Cas. 291; 36 B. C. R. 397.—**CAN.**

ab. *Smuggling—Not to attempting to smuggle—Latter offence only triable summarily.*]—R. *v.* JONES (N. S.), [1926] 3 D. L. R. 659; 46 Can. Crim. Cas. 8.—**CAN.**

ac. *Wounding with intent to do bodily harm—To common assault.*]—R. *v.* LEE FOON, [1928] 1 W. W. R. 747; 49 Can. Crim. Cas. 233; 39 B. C. R. 298.—**CAN.**

PART XIV. SECT. 10.

aa i. —— —— *Fresh evidence available not given at trial.*]—R. *v.* MCDONALD (N. S.) (1927), 49 Can. Crim. Cas. 35.—**CAN.**

aa ii. —— —— —— *Raising doubt as to correctness of verdict.*]—R. *v.* HASKINS (Ont.), [1929] 1 D. L. R. 282; 50 Can. Crim. Cas. 412.—**CAN.**

ee i. —— *Insanity—Plea not raised at trial.*]—R. *v.* SLOANE, [1930] 4 D. L. R. 129; 53 Can. C. C. 342.—**CAN.**

sf. —— *Misleading statements in summing up.*]—*Held* : as there was a probability that some statements in the summing up had misled the jury, a miscarriage of justice had occurred; & a new trial was ordered.—R. *v.* WILLIAMS, R. *v.* MCLAUGHLIN, [1928] St. R. Qd. 133; 22 Q. J. P. 53.—**AUS.**

sg. —— *Failure to charge jury as to need for corroboration.*]—R. *v.* GOODFELLOW (N. B.), [1928] 2 D. L. R. 598; 49 Can. Crim. Cas. 268.—**CAN.**

sh. —— *Admission of depositions.*]—A new trial may be directed under Criminal Code, s. 1014 (3) (*b*), on the ground that it was not proved that certain of the conditions precedent prescribed by s. 999 for the admission of depositions had been fulfilled, & one, at least, of the depositions might have turned the scale of the jury's verdict against the accused.—R. *v.* MORELLE, [1928] 1 W. W. R. 68; 49 Can. Crim. Cas. 15; 39 B. C. R. 140.—**CAN**

sj. —— *Statement by prisoner—Admission of erroneous translation.*]—A written exculpatory statement made by the accused in a foreign language while he was in custody & handed by him to the constable in whose custody he was, was received as evidence & was given to the jury & referred to by the judge in his charge. On appeal from the conviction it was shown that the translation admitted at the trial was erroneous in certain respects alleged to be prejudicial to the accused : —*Held* : since in so far as the translation was incorrect it undoubtedly gave rise to an inference prejudicial to the accused it had resulted in a miscarriage of justice, &, therefore, a new trial must be directed.—R. *v.* FREDERICK, [1931] 3 W. W. R. 747; 44 B. C. R. 547.—**CAN.**

sk. *Duty of court on trial de novo—To give weight to findings of court below.*]—R. *v.* AULENBACH, [1930] 1 D. L. R. 865; 52 Can. C. C. 374; 1 M. P. R. 129.—**CAN.**

sb. *Difference between trial & trial de novo.*]—R. *v.* RICE, [1930] 3 D. L. R. 911; 53 Can. C. C. 322.—**CAN.**

PART XIV. SECT. 15.

sl. *To Supreme Court—Condition precedent—Certificate—By what court granted.*]—The ct. to grant a certificate that a decision of the Ct. of Criminal Appeal involves a point of law of exceptional public importance, & that it is desirable in the public interest that an appeal should be taken, is the Ct. of Criminal Appeal, & not the Supreme Ct.—A.-G. *v.* MURRAY (NO. 2), [1926] I. R. 300.—**IR.**

bye-law were, on the face of it, invalid, that would not be an error of law apparent on the record.—BURNETT *v.* BERRY (1896), 60 J. P. 550; 12 T. L. R. 464; 40 Sol. Jo 564, C. A.

Annotations :—**Apld.** McVittie *v.* Bolton JJ., [1924] W. N. 149. **Refd.** Godwin *v.* Walker (1896), 12 T. L. R. 367; Teale *v.* Harris (1896), 60 J. P. 744; Jones *v.* Walters, (1898), 78 L. T. 167; Kitson *v.* Ashe, [1899] 1 Q. B. 425; White *v.* Morley, [1899] 2 Q. B. 34; Thomas *v.* Sutters, [1900] 1 Ch. 10; Sutton Harbour Improvement Co. *v.* Foster (1920), 123 L. T. 549; Everton *v.* Walker (1927), 137 L. T. 594.

6298b. "Error of law apparent on record."]—BURNETT *v.* BERRY, No. 6298a, *ante*.

6298c. -.]—The effect of Jud. Act, 1873 (c. 66), s. 47, & Criminal Appeal Act, 1907 (c. 23), s. 20, is that there is no right of appeal to the Ct. of Appeal in a criminal cause or matter, even where the error is apparent on the record. —MCVITTIE *v.* BOLTON JJ., [1924] W. N. 149, C. A.

After this case add the following new section :—

SECT. 15.—**APPEALS.**

To House of Lords.]—*See* Part XV.

Part XV.—Appeal to House of Lords and Judicial Committee of the Privy Council.

6301. *Add. Annotations* :—*As to* (1) **Apld.** R. *v.* Berg, Britt, Carré & Lummies (1927), 20 Cr. App. Rep. 38. **Distd.** R. *v.* Chesshire, Lucas & Bottom (1927), 20 Cr. App. Rep. 47. **Consd.** R. *v.* Tidmarsh (1931), 23 Cr. App. Rep. 79. *Generally*, **Refd.** Statham *v.* Statham, [1929] P. 131.

Part XVI.—Costs, Compensation, Rewards and Restitution.

6408. *Add. Annotation* :—**Refd.** R. *v.* Ely JJ., *Ex p.* Mann (1928), 93 J. P. 45.

6434. After this case add :—

Costs of poor prisoners.]—*See* Poor Prisoners' Defence Act, 1930 (c. 32), s. 3.

6446a. —— —— Appeal from order—To Court of Criminal Appeal.]—R. *v.* JONES, No. 5554a, *ante*.

6496a. *S. P.* R. *v.* D'EYNCOURT (1888), 21 Q. B. D. 109; 57 L. J. M. C. 64; 52 J. P. 628; 37 W. R. 59; 4 T. L. R. 455, D. C.

Annotations :—**Refd.** Inkpin *v.* Roll (1922), 126 L. T. 517; Conn *v.* Turnbull (1925), 89 J. P. Jo. 300.

6505. *Add. Annotation* :—**Refd.** Lake *v.* Simmons, [1926] 2 K. B. 51.

Part XVII.—Offences against the Sovereign.

6722. For "(1628)" read "(1541)."

6723. For "(1628)" read "(1539)."

6726. For "(1628)" read "(1443)."

6727. For "(1628)" read "(1494)."

6732. For "(1628)" read "(1453)."

6733. For "(1628)" read "(1462)."

PART XVI. SECT. 1, SUB-SECT. 3.

6441 i. *Costs of defendant on ac. —Libel.*]—In Criminal Code, s. 1045, the word "information" means "criminal information," & a dismissal by the magistrate of a charge laid in the usual way by information & complaint is not a "judgment for deft."—BUCZKO *v.* CHOBOTAR (B. C.), [1926] 1 D. L. R. 1024; [1926] 1 W. W. R. 379; 45 Can. Crim. Cas. 216.—**CAN.**

PART XVI. SECT. 3, SUB-SECT. 3.—A.

sm. *Offence tried on summary conviction.*]—Sects. 795, 817, & 1050 of the Criminal Code dealing with the restitution of stolen property do not apply to an offence tried on summary conviction under Part XV. of the Code. —R. *ex rel.* ARNOLD *v.* WESTERLAND (Alta.), [1929] 3 W. W. R. 408; 52 Can. Crim. Cas. 127.—**CAN.**

PART XVII. SECT. 1, SUB-SECT. 1.

6515 i. *Breach of allegiance to the Crown—Status of State possessing internal sovereignty.*]—The crime of high treason can be committed against a State which possesses internal sovereignty, even though its external powers may be limited in certain respects. The Govt. of the Union of South Africa, as mandatory of South-West Africa, possesses sufficient internal sovereignty to warrant a charge of high treason against an inhabitant of the mandated territory who takes up arms with hostile intent against the Govt. of that territory.—R. *v.* CHRISTIAN, [1924] App. D. 101.—**S. AF.**

PART XVII. SECT. 1, SUB-SECT. 4.

e i. ——.]—The crime of treason is constituted by the perpetration of armed attacks upon the State or Govt. with hostile intent. The existence or otherwise of such hostile intent is to be gathered from all the circumstances of the case. Where accused committed acts of hostility towards the State by taking up arms with the express intention of coercing the Govt. & enforcing the will of himself & those acting with him upon the Govt. :—*Held* : accused had been properly convicted of treason. —R. *v.* ERASMUS, [1923] App. D. 73.—**S. AF.**

e ii. ——.]—When a multitude arises & assembles to attain by force & violence any object of a general public nature, it amounts to levying war against the King. A deliberate & organised attack upon the Crown forces would amount to a waging of war if the object of the insurgents was by armed force & violence to overcome the servants of the Crown & thereby prevent the general collection of the capitation tax.—AUNG HLA *v.* KING EMPEROR (1931), I. L. R. 9 Ran. 404. —**IND.**

Part XVIII.—Offences against Public Tranquillity.

6735a. Effecting public mischief—False allegation of robbery.]—R. *v.* MANLEY (1932), 96 J. P. Jo. 847; 174 L. T. Jo. 491, C. C. A.

6887. *Add. Annotation :*—**Refd.** Motor Union Insce. *v.* Boggan (1923), 130 L. T. 588.

6890. *Add. Annotation :*—**Refd.** Jarvis *v.* Surrey County Council, [1925] 1 K. B. 554.

6931. *Add. Annotation :*—**Refd.** Glamorgan County Council *v.* Glasbrook, [1924] 1 K. B 879.

7026. *Add. Annotation :*—**Refd.** Anchor Trust Co. *v.* Bell, [1926] Ch. 805.

7033a. ——.]—ANON. (1701), 12 Mod. Rep. 495; 88 E. R. 1472.

Part XX.—Offences relating to Administration of Justice.

7276. *Add. Annotation :*—**Refd.** Conn *v.* Turnbull (1925), 89 J. P. Jo. 300.

PART XVIII. SECT. 2, SUB-SECT. 3.—A.

6750 iii. —— ——.]—Advocating expressly any form of rebellion is not a necessary element in an offence under Indian Penal Code, s. 124A. It is quite possible by the abuse of Govt. officials to make an endeavour to bring into hatred or contempt the Govt. established by law in British India.—EMPEROR *v.* SATYA RANJAN BAKSHI (1929), I. L. R. 56 Calc. 1085.—**IND.**

h i. —— ——.]—Where a book, which professes to be a history of the East India Co., is in no sense merely a history of the times with which it deals, but teems with propaganda directed against British rule, & the intention & general trend of the book is to bring into contempt & hatred the present Govt., the book is rightly prescribed under sect. 99A of the Criminal Procedure Code.—EMPEROR *v.* SAIGAL (1930), I. L. R. 52 All. 775.—**IND.**

PART XVIII. SECT. 7.

6821 ii. —— —— *Meaning of "prize-fight."*]—R *v.* PELKEY (1913), 24 W. L. R. 804; 4 W. W. R. 1055; 11 D. L. R. 701; 6 Alta. L. R. 103.—**CAN.**

6821 iii. —— —— *Restaurant.*]—A restaurant is not a public place within Criminal Code, s. 238 (*f*), since the public has no rights, as such, to resort there; &, therefore, the causing of a disturbance therein by one of the methods referred to in s. 238 (*f*), does not render the disturber subject to conviction thereunder.—R. *v.* BENSON, [1928] 3 W. W. R. 605; 50 Can. Crim. Cas. 426.—**CAN.**

PART XVIII. SECT. 8, SUB-SECT. 1.

6841 ii. —— *Unemployed rushing town hall.*]—R. *v.* BEATTIE, [1931] 1 W. W. R. 764; 55 Can. C. C. 380; 39 Man. L. R. 394.—**CAN.**

6841 iii. ——.]—Deft. led a parade of unemployed men through the streets of a city, the purpose being to demonstrate the extent of unemployment & to excite public sympathy. The chief constable forbade deft. to lead the parade through a certain restricted area in the city, but deft. refused to obey & was arrested by the police; he then instructed his followers to enter the restricted area in defiance of the police, & they, pushing the police aside, carried the parade through the restricted area. No physical violence doing bodily harm resulted, apparently because the police realised the wisdom of yielding to a crowd of men who were unarmed & apparently harmless :—*Held :* deft. was a member of an assembly lawful in its inception, but unlawful in its execution, because it was determined to meet force by force & to resist the officers of the law.—R. *v.* PATTERSON, [1931] 3 D. L. R. 267; 66 O. L. R. 461; 55 Can. C. C. 218.—**CAN.**

sn. *Meeting to maintain right bonâ fide believed to be possessed.*]—Where five or more persons assemble for maintaining by force, or show of force, a right which they *bonâ fide* believe they possess, & not for enforcing by such force, or show of force, a right or supposed right of theirs, they do not constitute an unlawful assembly punishable under India Penal Code, s. 143.—*Re* VEERABADRA PILLAI (1927), I. L. R. 51 Mad. 91.—**IND.**

so. *Circumstances to be considered.*]—To constitute an "unlawful assembly" within sect. 87 of Criminal Code there need be no intention on the part of any member of the assembly to commit an offence, but it is the manner in which the assembly conducts itself that brings it within the purview of the sect. All the circumstances, including the conditions of the time, must be considered in determining whether a particular assembly was in the beginning or had become an unlawful one. The common purpose of the members & the likelihood of a disturbance resulting from the assembly are matters which are ordinarily not determined by direct evidence but by inference from the conduct of the meeting & all the circumstances surrounding it. Therefore, the reception of evidence that on the day before the assembly in question a circular, urging the unemployed to refuse to accept relief work & to "strike," was distributed in the city was held not to afford a valid ground of appeal from a conviction on a charge of being a member of an unlawful assembly although no connection of the accused with the circular was shown.—R. *v.* JONES & SHEININ, R. *v.* THERNES, R. *v.* FARBY & DWORKIN, R. *v.* CAMPBELL, [1931] 3 W. W. R. 716; 57 Can. C. C. 81, 90, 92; 26 Alta. L. R. 97.—**CAN.**

sq. *Membership of Communist party.*]—R. *v.* BUCK, [1932] 3 D. L. R. 97.—**CAN.**

PART XVIII. SECT. 9, SUB-SECT. 7.

st. *Whether municipal corporation liable.*]—GLOBE & RUTGERS FIRE INSURANCE CO. *v.* GLACE BAY CORPN. (N. S.), [1927] 1 D. L. R. 80.—**CAN.**

PART XVIII. SECT. 10, SUB-SECT. 1.—C.

sv. *Vacant premises.*]—The gist of the offence of forcible entry under sect. 102 of Criminal Code is the forcible depriving of another person of actual & peaceable possession in a manner likely to cause a breach of the peace or reasonable apprehension thereof. An entry by the breaking of the lock of vacant premises is not one likely to cause a breach of the peace &, therefore, not within sect. 102. "Forcible entry" as defined in the decisions under the English statutes is distinguishable from "forcible entry" as defined by sect. 102.—R. *v.* [illegible]

[1931] 1 W. W. R. 480; 55 Can. C. C. 114.—**CAN.**

PART XIX. SECT. 4.

sb. *Judicial officer—Mmember of licensing court.*]—*Held :* an attempt to bribe a member of a licensing ct., in order to influence his vote on an application for a licence, was an offence indictable at common law, in respect that the functions & procedure of a licensing ct. were of a judicial character.—LOGUE *v.* H.M. ADVOCATE, [1932] S. C. (J.) 1.—**SCOT.**

PART XX. SECT. 2, SUB-SECT. 1.

7236 i. *Nature of the offence.*]—Perjury is in itself a contempt of ct.—R. *v.* ZIZU NATANSON, [1927] 3 D. L. R. 758; [1927] 2 W. W. R. 155; 48 Can. Crim. Cas. 227; 21 Sask. L. R. 532.—**CAN.**

PART XX. SECT. 2, SUB-SECT. 5.—A.

r i. *Absence of examiner—Failure to file affidavit.*]—An examination for discovery in a county ct. action not conducted in the presence of the deputy clerk is not an examination taken pursuant to County Cts. Act, R. S. M., 1913 (c. 44), & perjury does not lie against the person examined, even though the solrs. agreed that the clerk need not remain during the examination.

The fact that no affidavit was filed prior to such examination is not a bar to a prosecution for perjury, where accused voluntarily agreed to submit to & attended the examination & was sworn & examined.—R. *v.* ALLEN, [1925] 1 D. L. R. 57; [1925] 1 W. W. R. 718; 43 Can. Crim. Cas. 118.—**CAN.**

r ii. *S. P.* R. *v.* KOHEL (Sask.), (1926), 46 Can. Crim. Cas. 279; [1926] 3 W. W. R. 478.—**CAN.**

c i. —— *Investigation by Canadian National Railway—Not a judicial proceeding—Although a justice on the Board.*]—BOIVIN *v.* R. (1929), 54 Can. C. C. 290; 48 Que. K. B. 81.—**CAN.**

PART XX. SECT. 2, SUB-SECT. 7.

s i. —— ——.]—R. *v.* FERRISH & DE VASSE (1926), 58 N. S. R. 370.—**CAN.**

PART XX. SECT. 2, SUB-SECT. 8.—A.

a i. —— *Witness protected by Evidence Act,* 1912 (c. 27).]—Evidence given at a trial at which the witness is granted the protection of Canada Evidence Act, 1912, is not receivable against him on a prosecution for perjury on other occasions, *e.g.*, on an inquest & preliminary hearing.—R. *v.* KRUSCHKOVSKI, [1925] 2 D. L. R. 167; [1925] 1 W. W. R. 426; 43 Can. Crim. Cas. 299.—**CAN.**

a ii. ——.]—Accused was convicted of perjury in testifying in a civil action brought by the Crown against his

7416. *Add. Annotation :*—**Refd.** Conn *v.* Turnbull (1925), 89 J. P. Jo. 300.

7434. *Add. Annotation :*—*As to* (2) **Consd.** R. *v.* Southern (1929), 142 L. T. 383.

7523. *Add. Annotation :*—**Refd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579.

7564a. On constables to execute warrant.]—COLEMAN'S CASE (1619), 2 Roll. Rep. 78; 81 E. R. 671.

Annotation :—**Refd.** Miller *v.* Knox (1838), 4 Bing. N. C. 574.

Part XXI.—Offences relating to Arrest, the Prosecution and Punishment of Criminals, and the Execution of Civil Process.

7641. *Add. Annotation :*—**Consd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306.

7657a. —.]—SMITH *v.* STEVENS (1929), 45 T. L. R. 429.

brother for evading the payment of the proper duty on goods introduced into Canada by accused. The perjury was charged in respect of the statement by accused that he had intended such goods for the members of his family :—*Held :* the testimony of customs officials as to statements made by accused's brother to the customs appraiser on the strength of which the goods had been cleared, should not have been admitted.—R. *v.* NATANSON (No. 2) (Sask.), [1927] 4 D. L. R. 1035; [1927] 3 W. W. R. 550; 49 Can. Crim. Cas. 80.—**CAN.**

sy. *Circumstantial evidence.*]—A conviction for perjury may be founded on circumstantial evidence alone.—R. *v.* NATANSON, [1927] 3 D. L. R. 308; [1927] 2 W. W. R. 127; 48 Can. Crim. Cas. 158; 21 Sask. L. R. 505.—**CAN.**

PART XX. SECT. 2, SUB-SECT. 8.—B.

7380 iv. ——.]—On a trial for perjury with respect to testimony taken by a magistrate on a preliminary inquiry based on a sworn information, the information itself must be produced to establish that the magistrate had power to hold the inquiry & that it was, in consequence, a "judicial proceeding" under the Code; &, in the absence of proof that the original information had been lost or destroyed so as to admit secondary evidence thereof, the oral testimony of the magistrate or of the official reporter on the inquiry as to the nature of the proceedings before the magistrate, although received without objection, is insufficient to prove that the inquiry in which the alleged perjury was committed was held in respect to an indictable offence & was a "judicial proceeding."—R. *v.* CHEER, [1930] 2 W. W. R. 498; 54 Can. C. C. 297; 24 Alta. L. R. 610.—**CAN.**

ss. *Writ of summons.*]—*Held :* the evidence that the proceeding was a judicial proceeding was sufficient, although the writ of summons therein had not been produced.—R. *v.* GURDITTA, [1927] 1 W. W. R. 273; 47 Can. Crim. Cas. 103; 38 B. C. R. 66.—**CAN.**

sb. *Certified copy of record—Prior notice not necessary where admission by accused that impeached statements were made in judicial proceedings.*]—R. *v.* KOBOLD, [1927] 3 W. W. R. 294; 49 Can. Crim. Cas. 290; 37 Man. L. R. 37.—**CAN.**

PART XX. SECT. 2, SUB-SECT. 8.—C.

t i. —— *Copy of affidavit.*]—Where deft. was charged with making a false affidavit in the United States of America :—*Held :* a copy of the false affidavit duly authenticated by a witness called before the judge was rightly admitted.—UNITED STATES *v.* ——, [1925] 1 D. L. R. 200; 43 Can. Crim. Cas. 092; 57 N. S. R. 421.—**CAN.**

PART XX. SECT. 2, SUB-SECT. 8.—D.

m i. ——.]—The dictum of English common law that the testimony of a single witness is not sufficient to sustain an indictment for perjury is not a safe guide for the Indian cts., which are bound by the statute law enacted in sects. 3 & 134 of Evidence Act.—EMPEROR *v.* ARJUN SINGH (1931), I. L. R. 53 All. 598.—**IND.**

7415 iii. ——.]—Although a person charged with perjury cannot be convicted upon the evidence of one witness, unless such witness is corroborated in some material particular by evidence implicating the accused, there need not be two witnesses to prove every fact necessary to make out the offence; corroboration is required merely for the perjured fact as a whole, & not of every detail or constituent part of it.—R. *v.* MCKENZIE, [1930] 2 W. W. R. 602; 54 Can. C. C. 153.—**CAN.**

PART XX. SECT. 2, SUB-SECT. 11.

sd. *Evidence—Of falsity of statement—Corrobation unnecessary.*]—R. *v.* MCBETH, [1926] 2 D. L. R. 801; [1926] 1 W. W. R. 931; 45 Can. Crim. Cas. 357; 22 Alta. L. R. 222.—**CAN.**

PART XX. SECT. 2, SUB-SECT. 12.—B.

a i. —— *To obtain permit to purchase liquor.*]—Sect. 176 of Criminal Code does not apply to a statement which is neither under oath nor a statutory declaration made "knowing it to have the same force & effect as if made under oath."—R. *v.* WHITE (B. C.), [1929] 3 W. W. R. 729.—**CAN.**

PART XX. SECT. 2, SUB-SECT. 12.—C.

m i. —— *Affidavit required by foreign law.*]—Where deft. was charged with making in America a false affidavit, which affidavit was required by American law :—*Held :* notwithstanding the affidavit had not been made in a judicial proceeding, the crime charged constituted perjury under the law of Canada.—UNITED STATES *v.* SNYDER, [1925] 1 D. L. R. 200; 43 Can. Crim. Cas. 92; 57 N. S. R. 421.—**CAN.**

PART XX. SECT. 4.

7496 i. *Persuading witness—To induce complainant to withdraw charge.*]—The essence of the crime of attempting to defeat the course of justice consists in the wilful intent to obstruct the due administration of justice, coupled with an act calculated to further & done in furtherance of that intent. If these elements are present it does not matter that what was done was done under a mistaken belief that it would have the effect intended. An attempt to induce, by threats or other corrupt means, a witness to prevail upon complainant to withdraw a criminal complaint amounts to an attempt to defeat the course of justice, notwithstanding that the attempt was made before a criminal charge had been preferred by the prosecuting authority.—HATTINGH *v.* R. (1929), 50 N. L. R. 105.—**S. AF.**

se. *Liability for fabricating—Although no proceeding pending.*]—R. *v.* SEVICK (1930), 54 Can. C. C. 92.—**CAN.**

PART XX. SECT. 12.

b i. —— ——.]—Where a defeated litigant wrote, subsequent to the judgment, insulting letters to the special magistrate presiding, there being no litigation pending :—*Held :* neither an instant order for imprisonment nor a rule for the issue of a writ of attachment should be made, there being no reason why the ordinary remedy of information for criminal libel should not be adopted.—*Ex p.* SANDERSON (1928), S. A. S. R. 448.—**AUS.**

PART XXI. SECT. 4.

l i. —— ——.]—A search warrant issued under Liquor Act, 1922, s. 90, does not authorise the constable, who suspects that a person is leaving the premises with liquor, when no liquor has been found on the premises, to follow him & forcibly bring him back to the premises where the search is being made. If in doing so he is assaulted by such person, the latter cannot be convicted of assaulting the constable while acting in the discharge of his duty under the search warrant.—R. *v.* DIAMOND, [1924] 1 D. L. R. 1033; 1 W. W. R. 444; 42 Can. Crim. Cas. 90; 20 Alta. L. R. 60.—**CAN.**

l ii. —— *Evidence that person assaulted an officer.*]—Where on a trial on a charge of assaulting a police officer in the discharge of his duty the person alleged to have been assaulted is asked whether he is a constable in a certain police force & answers "yes," there is, in the absence of anything to qualify it, sufficient evidence of his status or occupation as a police officer not only at the time of the trial but also a few days previously.—R. *v.* SMITH, [1930] 3 W. W. R. 287; 54 Can. C. C. 359.—**CAN.**

7666 v. —— *Keeping constable at arm's length—Whether flight to avoid arrest.*]—The fact that a person violently assaulted by a police officer who is attempting to arrest him, tries to evade a repetition of the assault by keeping at arms' length from the officer, does not constitute a taking to "flight to avoid arrest" within Criminal Code, s. 41.—VIGNITCH *v.* BOND & C. P. Ry. Co., [1928] 1 W. W. R. 449; 50 Can. Crim. Cas. 273; 37 Man. L. R. 435.—**CAN.**

7674. *Add. Annotation :*—**Consd.** Horsfield *v.* Brown, [1932] 1 K. B. 355.

7683. *Add. Annotation :*—**Reld.** Glamorgan County Council *v.* Glasbrook, [1924] 1 K. B. 879.

7685a. Assaulting warder on duty.]—A convict who assaults a warder on duty is liable to be sentenced by a ct. of summary jurisdiction to six months' hard labour, that being the punishment provided by Prevention of Crimes Act, 1871 (c. 112), s. 12, for assaulting a constable when in the execution of his duty. —POINTING *v.* WILSON, [1927] 1 K. B. 382; 96 L. J. K. B. 309; 136 L. T. 307; 91 J. P. 5; 43 T. L. R. 44; 70 Sol. Jo. 1091; 28 Cox, C. C. 291, D. C.

Part XXII.—Offences affecting the Property and Prerogative of the Crown.

7758. *Add. Annotation :*—*As to* (2) **Reld.** Best *v.* Butler (1932), 48 T. L. R. 481.

7785. *Add. Annotation :*—**Reld.** R. *v.* Stokes (1925), 134 L. T. 479.

Part XXIV.—Offences on the High Seas.

7840. *Add. Annotation :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

7864. *Citation :*—Delete 33 J. P. 791.

7866. *Add. Annotation :*—**Reld.** Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271.

7873. *Add. Annotation :*—**Reld.** *Re* Letters Patent No. 189,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

Part XXV.—Offences relating to Foreign Nations.

7899. *Add. Annotation :*—**Reld.** Browning *v.* Crumlin Valley Collieries, [1926] 1 K. B. 522.

7903. *Add. Annotation :*—**Reld.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

Part XXVI.—Offences against Religion.

7948. *Add. Annotation :*—**Reld.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

Part XXVII.—Offences relating to Marriage.

7950. In citation delete " 2 F. & F. 551."

7959. *Add. Annotation :*—**Reld.** R. *v.* Moscovitch (1927), 138 L. T. 183.

7960. *Add. Annotation :*—**Reld.** R. *v.* Moscovitch (1927), 138 L. T. 183.

7675 vi. —— —— *Failing to stop vehicle when ordered to do so.*]—R. *v.* GALLANT (P. E. I.), [1929] 1 D. L. R. 671; 51 Can. Crim. Cas. 209.—**CAN.**

7675 vii. —— —— ——.]—R. *v.* D'ENTREMONT, [1932] 2 D. L. R. 236; 4 M. P. R. 142.—**CAN.**

PART XXI. SECT. 6, SUB-SECT. 2.

o i. —— *Prisoner at large—Unlawful act of magistrate.*]—R. *v.* POKITRUSKI (1931), 55 Can. C. C. 152.—**CAN.**

PART XXII. SECT. 2, SUB-SECT. 1.

7761 iii. —— ——.]—For a thing to be termed " counterfeit " according to the definition given in Indian Penal Code, s. 28, there should be some sort of resemblance sufficient to cause deception. In a case of counterfeiting currency notes, where the ability of the accused persons, & the capacity of the materials with which they worked, were not such as to produce a currency note which would take in even the most ignorant villager :—*Held :* there could be no conviction under Indian Penal Code, s. 489a, read with s. 511.—R. *v.* JWALA (1928), I. L. R. 51 All. 470.—**IND.**

PART XXII. SECT. 4.

o i. *Possession of package received from unknown source—No proof given that duty not paid.*]—R. *v.* MOYLE (Ont.) (1928), 49 Can. Crim. Cas. 375.—**CAN.**

sf. *What constitutes smuggling—Customs Act, s.* 206.]—R. *v.* MAYALL (1926), 45 Can. Crim. Cas. 366; 37 B. C. R. 211.—**CAN.**

sg. —— ——.]—R. *v.* JOBES (N. S.), [1926] 3 D. L. R. 659; 46 Can. Crim. Cas. 8.—**CAN.**

sh. *Burden of proof—That goods imported legally—On accused.*]—*Re* R. *v.* MCKENZIE (1926), 45 Can. Crim. Cas. 144; 58 N. S. R. 313.—**CAN.**

sk. —— —— ——.]—R. *v.* LE BLANC (N. B.), [1927] 2 D. L. R. 793; 47 Can. Crim. Cas. 302.—**CAN.**

sl. —— —— ——.]—*Held :* where goods alleged to have been smuggled are found & seized in the possession of any person, the onus, under Customs Act, s. 264, is upon such person to explain how the goods had come into his possession or how they had been imported into Canada, &, if so, to prove that the duty upon them was paid.—WEISS *v.* R., [1928] Exch. C. R. 106.—**CAN.**

sm. *Indictment for smuggling—No power to substitute conviction for attempting to smuggle—Latter offence only triable summarily.*]—R. *v.* JOBES (N. S.), [1926] 3 D. L. R. 659; 46 Can. Crim. Cas. 8.—**CAN.**

PART XXVII. SECT. 1, SUB-SECT. 1.—A.

7956 ii. —— —— ——.]—On an indictment for bigamy the first marriage must be strictly proved, but where the person charged has pleaded guilty, it is an admission that strict proof of the marriage can be made & precludes the necessity for proof.—R. *v.* ROOP, [1924] 3 D. L. R. 985; 57 N. S. R. 325.—**CAN.**

PART XXVII. SECT. 1, SUB-SECT. 1.—B.

sd. *Marriage between Roman Catholics —Domiciled in Quebec—By Protestant clergyman.*]—*Held :* valid, & subsequent marriage therefore bigamous, notwithstanding belief in invalidity of first marriage.—R. *v.* SIMARD (1931), 56 Can. C. C. 269.—**CAN.**

7980. *Add. Annotation :*—**Refd.** R. *v.* Moscovitch (1927), 44 T. L. R. 4.

7989a. ——.]—On an indictment for bigamy the validity of a foreign marriage must be proved by the evidence of a professional lawyer, or of a person who is to be deemed by reason of his office to be skilled in the law of the country where it was celebrated.—R. *v.* MOSCOVITCH (1927), 138 L. T. 183; 44 T. L. R. 4; 28 Cox, C. C. 442; 20 Cr. App. Rep. 121, C. C. A.

7991. *Add. Annotation :*—**Refd.** Monckton *v.* Tarr (1930), 23 B. W. C. C. 504.

7992. *Add. Annotation :*—**Refd.** Pilot *v.* Gainfort (1931), 145 L. T. 22.

7996. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

8026. *Add. Annotation :*—**Refd.** R. *v.* Denyer, [1926] 2 K. B. 258.

8031. *Add. Annotations :* — **Consd.** Spivack *v.* Spivack (1930), 99 L. J. P. 52. **Refd.** R. *v.* Moscovitch (1927), 44 T. L. R. 4.

8035. *Add. Citation :—sub nom.* SUGDEN *v.* LOLLEY, 2 Cl. & Fin. 567, n.

8038. *Add. Annotation :*—**Refd.** R. *v.* Denyer, [1926] 2 K. B. 258.

Part XXVIII.—Offences against Decency and Morality.

8070. *Add. Annotation :*—**Folld.** R. *v.* De Montalk (1932), 23 Cr. App. Rep. 182.

8070a. ——.]—R. *v.* DE MONTALK, No. 181a, *ante.*

8087a. ——.]—R. *v.* DE MONTALK, No. 181a, *ante.*

8087b. Advancement of literature as defence.]—R. *v.* DE MONTALK, No. 181a, *ante.*

8098. *Add. Annotation :*—**Folld.** R. *v.* De Montalk (1932), 23 Cr. App. Rep. 182.

8104. *Add. Annotation :*—**Refd.** Statham *v.* Statham, [1929] P. 131.

8110. *Add. Annotations :*—**Refd.** R. *v.* Bailey, [1924] 2 K. B. 300; R. *v.* Southern (1929), 142 L. T. 383.

8112. *Add. Annotations :*—**Consd.** R. *v.* Whitehead, [1929] 1 K. B. 99; Statham *v.* Statham, [1929] P. 131.

8123. *Add. Annotation :*—**Distd.** R. *v.* Woods (1930), 143 L. T. 311.

8123a. —— **By letter purporting to be written by woman.**]—R. *v.* WOODS, No. 751b, *ante.*

8127. *Add. Annotation :*—**Consd.** R. *v.* Kendrick & Smith (1931), 144 L. T. 748.

8128a. —— **What is disorderly house.**]—R. *v.* BERG, BRITT, CARRÉ & LUMMIES, No. 4222a, *ante.*

8129. *Add. Annotation :*—**Refd.** R. *v.* Berg, Britt, Carré & Lummies (1927), 20 Cr. App. Rep. 38

8133. *Add. Annotation :*—**Consd.** Winter *v.* Woolfe, [1931] 1 K. B. 549.

PART XXVII. SECT. 1, SUB-SECT. 3.—A.

8013 v. ——.]—R. *v.* WELCH, [1931] 4 M. P. R. 149.—**CAN.**

PART XXVII. SECT. 1, SUB-SECT. 3.—C.

n i. —— *Sufficiency of belief—Onus of proof.*]—In Nov. 1924, M. went through a form of marriage with D. & lived with him until 1928 when they separated. In Nov. 1929, she went through a form of marriage with E., who then knew of her marriage with D. & that D. was still alive. M. & E. were prosecuted for bigamy. The defence was that D. was a married man in 1924. In May, 1915, D. married R. In Jan. 1927, she left him & disappeared & he had never since learned whether she was alive or dead. According to his evidence, she had been continuously absent for more than seven years immediately preceding his marriage with M., & it was not proved that he knew his first wife was alive at any time during those seven years :—*Held :* the Crown having proved the unexplained absence of D.'s first wife for seven years immediately preceding his marriage with M., & the presumption that she was then dead arising & discharging the *onus* which was upon the Crown, it was for the accused to rebut it; that they had not done, & therefore were rightly convicted.—R. *v.* MCCRORY; R. *v.* EDDY (1931), 55 Can. C. C. 117; 66 O. L. R. 530.—**CAN.**

p i. ——.]—Accused & his wife were Roman Catholics; they had never lived together, as accused left for active service immediately after the marriage. On his return he informed the priest who had performed the ceremony that he & his wife were first cousins, & asked whether the marriage was valid. The priest replied that in the eyes of the Church the marriage was null & void, & as though it had never taken place. Accused, honestly believing he was free, went through the form of marriage with another woman :—*Held :* accused had been under no mistake of law & was rightly convicted.—R. *v.* KENNEDY, [1923] S. A. S. R. 183.—**AUS.**

PART XXVII. SECT. 1, SUB-SECT. 3.—D.

8038 i. *Effect of mistaken belief.*]—It is a defence in law to a charge of bigamy that prisoner, at the time of the alleged bigamous marriage, believed, in good faith & on reasonable grounds, that he had been divorced from the bond of his first marriage, if in fact he had not been divorced.—R. *v.* CARSWELL, [1926] N. Z. L. R. 321.—**N.Z.**

PART XXVIII. SECT. 3.

8079 ii. —— ——.]—The Glasgow Corpn. Order Confirmation Act, 1914, s. 21, penalises the keeping for sale of indecent or obscene prints, photographs, or other representations. In a prosecution of a shopkeeper for a contravention of the section, it was proved that the accused had kept for sale a large number of photographs of nude women, which were exhibited in the windows of his shop. The magistrate, who convicted the accused, stated that he considered that, while a picture similar to those which were the subjects of the complaint might fittingly be exhibited in a public gallery, yet the indiscriminate exposure, sale, & circulation of such prints were calculated to prejudice good morals :—*Held :* the magistrate, in considering whether the photographs were indecent or obscene, was entitled to take into account the circumstances in which they were kept for sale; & assuming that similar pictures might fittingly be exhibited in a public gallery, yet the circumstances in which the photographs were kept for sale by the accused entitled the magistrate to hold that a contravention of the section had been committed.—MCGOWAN *v.* LANGMUIR, [1931] S. C. (J.) 10.—**SCOT.**

m i. —— *Medicine intended to restore virility.*]—R. *v.* DAVIDSON, [1931] 1 W. W. R. 474; 55 Can. C. C. 203; 25 Alta. 332.—**CAN.**

PART XXVIII. SECT. 5, SUB-SECT. 1.

8109 i. —— *Evidence — Complaint — Effect of delay.*]—R. *v.* ELLIOTT, [1928] 2 D. L. R. 244; 49 Can. Crim. Cas. 302; 62 O. L. R. 1.—**CAN.**

PART XXVIII. SECT. 5, SUB-SECT. 2.

8120 vii. ——.]—Consent or non-consent makes no difference so far as accused is concerned in offences against Criminal Code, ss. 202 & 203.—R. *v.* ELLIOTT, [1928] 2 D. L. R. 244; 49 Can. Crim. Cas. 302; 62 O. L. R. 1.—**CAN.**

PART XXVIII. SECT. 6, SUB-SECT. 1.—A.

d i. —— ——.]—Evidence of the general reputation of a house is admissible to show that it is a bawdy house.—R. *v.* THEIRLYNCK, [1931] 1 W. W. R. 352; *affd.*, [1931] S. C. R. 478; 4 D. L. R. 591; 56 Can. C. C. 156.—**CAN.**

d ii. —— ——.]—R. *v.* MCEWAN & LEE, [1932] 3 W. W. R. 564.—**CAN.**

PART XXVIII. SECT. 6, SUB-SECT. 1.—B.

r (p. 755) i. ——.]—During a period of six weeks prostitutes resorted to a furnished flat, of which two men were the tenants & occupiers. Some of them went on the invitation of the tenants, others were taken by friends

8140. *Add. Annotation :*—**Refd.** Winter *v.* Woolfe, [1931] 1 K. B. 549.

8143. *Add. Annotation :*—**Refd.** Winter *v.* Woolfe, [1931] 1 K. B. 549.

8143a. —— —— By sub-lessee—Whether "lessee" within statute.]—Deft. was & had been for about seven years the lessee of premises consisting of four floors & a basement. He used the ground floor & basement as a shop in which he carried on the business of a tailor. He sub-let unfurnished the first & second floors respectively as flats to two women. These flats were approached not through the shop but by a separate entrance, & apart from his position as landlord deft. had no right to enter them & did not occupy them. It was stated by the police that the women were known to them as prostitutes, each of whom took men to her own flat. Deft. was charged for that he being the lessee of the premises unlawfully & knowingly permitted part of them, namely, the first & second floors, to be used for the purposes of habitual prostitution contrary to Criminal Law Amendment Act, 1885 (c. 69), s. 13 (2): —*Held :* deft. was not the "lessee" of the flats within the sub-sect. & the charge should be dismissed.—SIVIOUR *v.* NAPOLITANO, [1931] 1 K. B. 636; 100 L. J. K. B. 151; 144 L. T. 408; 95 J. P. 72; 47 T. L. R. 202; 75 Sol. Jo. 80; 29 L. G. R. 195; 29 Cox, C. C. 236, D. C.

8143b. —— What must be proved—Frequenting by prostitutes & receipt of money unnecessary.]—On an information under Criminal Law Amendment Act, 1885 (c. 69), s. 13 (2), against the occupier of premises, for unlawfully & knowingly permitting them to be used as a brothel, it is not necessary for the Crown to prove that the women resorting to the premises are prostitutes, known, as such, to the police, or that they received payment for acts of fornication, or of indecency, committed by them with men; it is sufficient to prove that with the knowledge of the occupier persons of opposite sexes were permitted there to have illicit sexual intercourse.—WINTER *v.* WOOLFE, [1931] 1 K. B. 549; 100 L. J. K. B. 92; 144 L. T. 311; 95 J. P. 20; 47 T. L. R. 145; 29 L. G. R. 89; 29 Cox, C. C. 214, C. C. A.

8154. *Add. Citations :—sub nom.* GUAGLIENI *v.* MATTHEWS, 34 L. J. M. C. 116; 29 J. P. 439; 11 Jur. N. S. 636; 13 W. R. 679.
Add. Annotation :—As to (1) **Distd.** R. *v.* Tucker (1877), 2 Q. B. D. 417.

8176. *Add. Annotation :*—**Consd.** R. *v.* London County Council, *Ex p.* Entertainments Protection Assocn., Ltd., [1931] 2 K. B. 215.

8177a. —— Company.] — The expressions "keeper" of a house & "person managing or conducting an entertainment" in Sunday Observance Act, 1781 (c. 49), s. 1, must be taken to include a limited co., but the directors are not liable merely because they are directors. To make them liable it must be shown that they acted as persons having the management of the house on the particular Sunday on which the performance complained of took place.—ORPEN *v.* HAYMARKET CAPITAL, LTD. (1931), 145 L. T. 614; 95 J. P. 199; 47 T. L. R. 575; 75 Sol. Jo. 589; 29 L. G. R. 615; 29 Cox, C. C. 348.

Part XXIX.—Offences affecting Public Health, Safety and Convenience.

SECT. 2.—**OFFENCES BY INNKEEPERS.**
(Vol. XV., p. 761).
After this sect. add the following new sect :—

SECT. 3.—**DANGEROUS DRUGS.**
See FOOD & DRUGS, Vol XXV., pp. 115. 116, No. 388, *&, generally,* MEDICINE & PHARMACY.

of the tenants, with their knowledge & consent :—*Held :* if the prostitution had been with the occupiers of the flat only, no offence would have been committed, in respect that the occupiers could not "permit" their own acts; & it was immaterial that no profit was made by accused. —GIRGAWAY *v.* STRATHERN, [1925] S. C. (J.) 31.—**SCOT.**

c (p. 756) l. —— *Arrest under search warrant.*]—R. *v.* FRIEDMAN (Sask.) (1927), 49 Can. Crim. Cas. 225.—**CAN.**

h (p. 757) l. —— *Omission of "knowingly."*]—A conviction which does not state that accused "knowingly" permitted his premises to be used for the illegal purpose described, is materially defective.—R. *v.* ROZONOWSKI, [1926] 1 D. L. R. 732; [1926] 1 W. W. R. 241; 45 Can. Crim. Cas. 198; 36 B. C. R. 327.—**CAN.**

sf. *House must be "common" & "public."*]—R. *v.* LAPORTE (1931), 56 Can. C. C. 158.—**CAN.**

sh. *Punishment.*]—*Held :* the measure of punishment on summary conviction for keeping a bawdy house is governed by sects. 228 (2), 779 of the Criminal Code, & under sect. 779 there are three alternative punishments: imprisonment for six months, a fine not exceeding $200, or both fine & imprisonment.—*Ex p.* THOMAS, [1931] 3 M. P. R. 350.—**CAN.**

PART XXVIII. SECT. 7, SUB-SECT. 3.

8176 i. *Concert—Free admission—Collection taken.*]—Applt. corpn. existed for the purpose of disseminating the doctrines of Rationalism. Without a consent of any kind from the Municipal Corpn., it held a concert on a Sunday evening in a picture theatre, to which no charge was made for admission. There was a notice reading, "Unless you contribute sixpence we run at a loss," & a silver-coin collection was made. The concert consisted, in part, of a lecture which might have had some educational value, &, in part, of diversions of a light character. Applt. was convicted of an offence under Municipal Corpns. Act, 1928, s. 309. On an appeal by way of rehearing :—*Held :* an entertainment had been held & applt. had been rightly convicted.—NEW ZEALAND ASSOCN. FOR ADVANCEMENT OF RATIONALISM, INC. *v.* HOGAN, [1931] N. Z. L. R. 907.—**N.Z.**

sn. *Exhibition of films—Integral part of function.*]—Where the exhibition of motion-picture films constitutes an integral, although possibly a merely subsidiary, part of a function to which the public are invited & have access, there is an "entertainment" within Municipal Corpns. Act, 1920, s. 309, which provides as follows: "No concert or entertainment of any kind which is open to the public, whether by the purchase of tickets or otherwise, shall be held or given on any Sunday, Good Friday, or Christmas Day without the written consent of the Council, & then only subject to such conditions in every respect as the Council may impose."—MARTIN *v.* HOGAN, [1932] N. Z. L. R. 427.—**N.Z.**

Part XXXI.—Offences relating to Trade.

8195 *Add. Annotations:*—**Apld.** Reynolds *v* Shipping Federation, [1924] 1 Ch. 28. **Consd.** Sorrell *v.* Smith, [1925] A. C. 700. **Refd.** Brimelow *v.* Casson, [1924] 1 Ch. 302; Thompson *v.* British Medical Assocn., [1924] A. C. 764; British Oxygen Co. *v.* Liquid Air, [1925] Ch. 383; L. *v.* L., [1931] P. 63.

8198. *Add. Annotations:*—**Distd.** Reynolds *v.* Shipping Federation, [1924] 1 Ch. 28. **Consd.** Sorrell *v.* Smith, [1925] A. C. 700. **Refd.** Brimelow *v.* Casson, [1924] 1 Ch. 302; G. W. K. *v.* Dunlop Rubber Co. (1926), 42 T. L. R. 376; Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306.

8219. *Add. Annotations:*—*As to* (1) **Apld.** Pointon *v.* Cox (1926), 136 L. T. 506. *As to* (2) **Consd.** Pointon *v.* Cox (1926), 136 L. T. 506.

8236a. Conviction—Acts of intimidation must be set out.]—A conviction under Conspiracy & Protection of Property Act, 1875 (c. 86), for intimidation is bad, & will be quashed on appeal, unless it sets out the particular act or acts of intimidation proved in evidence.—METCALFE *v.* WISEMAN (1888), 52 J. P. 439.

Part XXXIII.—Offences against the Person.

8247. *Add. Annotation:*—**Consd.** R. *v* Bateman (1925), 94 L. J. K B. 791.

8266a. "**Newly-born**" **child.**] — (1) Applt. was charged with the murder of her child, who had been born on Aug. 19, 1927, & had been strangled by her on Sept. 21, 1927. The trial judge held that there was no evidence to go to the jury that the child was "newly-born" within Infanticide Act, 1922 (c. 18), s. 1 (2):—*Held:* that ruling was correct.

(2) Observations on the form of statements made by accused persons while under arrest.—R. *v.* O'DONOGHUE (1927), 97 L. J. K. B. 303; 133 L. T. 240; 91 J. P. 199; 44 T. L. R. 51; 71 Sol. Jo. 897; 28 Cox, C. C. 461; 20 Cr. App. Rep. 132, C. C. A

8284. *Add. Annotations:*—**Consd.** Williams *v.* Guest, Keen & Nettlefolds, [1926] 1 K. B. 497. **Refd.** Carr *v.* Port of Glasgow (1923), 16 B. W. C. C. 331; Hutchinson *v.* Kiveton Park Colliery Co., [1926] 1 K. B. 279.

8317. *Add. Annotation:*—**Apld.** R. *v.* Hall (1928), 140 L. T. 142.

8338. *Add. Annotations:*—**Consd.** R. *v.* Thorpe (1925), 133 L. T. 95. **Refd.** R. *v.* Canham (1925), 18 Cr. App. Rep. 163.

8338a. —— ——.]—(1) If in a trial for murder the defence of manslaughter is raised the judge ought not to ignore that defence in his charge to the jury.

PART XXXI. SECT. 3, SUB-SECT. 3.—B.

8221 a. *Nature of offence.*]—On an indictment under Conspiracy & Protection of Property Act, 1875 (c. 86), s. 7, for persistently following employer & watching his place of business & his private residence with a view to coerce him to take back a dismissed employee into his employment, the evidence being that defts. with other persons had continually watched & walked up & down before prosecutor's business premises, & had followed him through the streets to his private residence:—*Held:* (1) under the circumstances if the acts of "watching" & "persistently following" were done with the intention of coercing the employer to take back the dismissed employee, defts. ought to be found guilty; (2) Trade Disputes Act, 1906 (c. 47), s. 2 (1), did not apply as regards the "watching" of the private residence.—R. *v.* WALL (1907), 21 Cox, C. C. 401.—IR.

PART XXXI. 3, SUB-SECT.

8a. *Besetting "wrongfully & without lawful authority"—What amounts to.*]—Defts. were convicted under sect. 501 of the Criminal Code of besetting a theatre, wrongfully & without lawful authority, with a view to compel the manager of the theatre to enter into a contract to employ operators belonging to a trades union. The besetting was admitted & also the fact that the acts proved were done with the view stated. The acts proved were parading in front of the theatre wearing coats on which were printed, "This theatre is trying to destroy union working conditions" & other similar legends. The conduct of defts. was peaceable; there was no uproar or disturbance, no one accosted, no crowd gathered; & there was no evidence of any threats, obstruction, molestation, or incommoding of patrons:—*Held:* proof merely that defts. acted with the view stated in sect. 501 was not proof that they acted "wrongfully & without lawful authority."—R. *v.* BALDASSARI, [1931] O. R. 169; 55 Can. C. C. 318.—**CAN.**

PART XXXIII. SECT. 1, SUB-SECT. 1.—A.

h i. —— —— ——.]—H.M. ADVOCATE *v.* SAVAGE, [1923] S. C. (J.) 49.—**SCOT.**

PART XXXIII. SECT. 1, SUB-SECT. 1.—D.

8285 iii. —— ——.]—Criminal Code, s. 258, which provides for the case of the causing of an injury of a dangerous nature, the treatment of which brings about death, does not apply to a case wherein there is no evidence from which it might be inferred that the injury was in any way increased or its consequences accelerated by the treatment which was given the deceased with the obvious object of overcoming the effects thereof. Where a person alleged to have been murdered was operated on for the injuries alleged to have been inflicted by the accused, but there is no apparent reason for inferring that said treatment was the immediate cause of death, there is no authority for holding that the *onus* is, nevertheless, on the Crown of calling the surgeon to describe the operation in detail.—R. *v.* BURGESS & MCKENZIE, [1928] 2 D. L. R. 694; [1928] 1 W. W. R. 633; 49 Can. Crim. Cas. 343; 39 B. C. R. 492.—**CAN.**

PART XXXIII. SECT. 1, SUB-SECT. 1.—F. (a).

8312 i. *Provocation answered by use of weapon.*]—Appct., who had grounds of suspicion that his wife had misconducted herself with another man, stabbed her in the legs & lower part of the body with a long knife, causing her to bleed to death in a few minutes:—*Held:* an application for leave to appeal from a conviction for murder must be dismissed.—R. *v.* BUTELEZI, [1925] App. D. 160.—**S. AF.**

PART XXXIII. SECT. 1, SUB-SECT. 1.—F. (d) i.

sp. *Refusal to cohabit.*]—On an appeal from a conviction for murder held that the refusal of the victim, the wife of the accused, to cohabit with him was not provocation within sect. 261 of the Criminal Code.—R. *v.* MCGRATH, [1932] 1 W. W. R. 385; 40 Man. L. R. 139.—**CAN.**

PART XXXIII. SECT. 1, SUB-SECT. 1.—F. (d.) ii.

d i. ——.]—The fact that while a child is flouting its father's authority its mother "eggs it on" may be found to constitute provocation within Criminal Code, s. 261, under which culpable homicide, which would otherwise be murder, may be reduced to manslaughter.—R. *v.* PAYETTE, [1925] 2 W. W. R. 747; 44 Can. Crim. Cas. 209; 35 B. C. R. 81.—**CAN.**

PART XXXIII. SECT. 1, SUB-SECT. 1.—H. (a).

m i. —— —— ——.]—R. *v.* BEVIS, [1925] 1 D. L. R. 747; 43 Can. Crim. Cas. 220; 57 N. S. R. 513.—**CAN.**

m ii. —— ——.]—R. *v.* HARLTON (Ont.), [1929] 3 D. L. R. 688; 51 Can. Crim. Cas. 329.—**CAN.**

(2) The rule on provocation in *R.* v. *Hayward*, No. 8317, *ante*, accepted.—R. *v.* HALL (1928), 140 L. T. 142; 21 Cr. App. Rep. 48; 28 Cox, C. C. 567, C. C. A.

8384a. —.]—R. *v.* MILLWARD, No. 3286a, *ante*.

8459a. —— —— —— s. (1523), Y. B. 14 Hen. 8, fo. 16, pl.

Annotations:—**Consd.** Howard *v.* Gosset (1845), 10 Q. B. 359. **Refd.** Marshalsea Case (1613), 10 Co. Rep 68b.

8468. *Add. Annotation:*—**Refd.** Horsfield *v.* Brown, [1932] 1 K. B. 355.

8498. *Add. Annotations:*—**Consd.** R. *v.* Betts & Ridley (1930), 144 L. T. 526. **Refd.** R. *v.* Canham (1925), 18 Cr. App. Rep. 163.

8575. *Add. Annotation:*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8640. *Add. Annotation:*—**Refd.** James *v.* British General Insce., [1927] 2 K. B. 311.

8640a. ——.]—R. *v.* ROSE (1928), 20 Cr. App. Rep. 164, C. C. A.

8644. *Add. Annotation:*—**Refd.** R. *v.* Baldessare (1930), 22 Cr. App. Rep. 70.

8645. *Add. Annotation:*—**Refd.** Pratt *v.* Patrick, [1924] 1 K. B. 488.

8652a. Liability of persons other than driver—Common purpose.]—Both of two persons, in pursuit of a common purpose, may be guilty of criminal negligence by driving, although only one of them actually drives.—R. *v.* BALDESSARE (1930), 144 L. T. 185; 29 Cox, C. C. 193; 22 Cr. App. Rep. 70, C. C. A.

8665. *Add. Annotation:*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8666. *Add. Annotation:*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8666a. *S. P.* R. *v.* MARKUSS (1864), 4 F. & F. 356.

Annotation:—**Refd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8667. *Add. Annotation:*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8667a. —— —.]—R. *v.* MARKUSS (1864), 4 F. & F. 356.

Annotation:—**Refd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8668. *Add. Annotation:*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8672a. —— ——.]—Where a doctor is consulted, as possessing medical skill & knowledge, by or on behalf of a patient he owes a duty to that patient to use due caution in undertaking the treatment. If he accepts the responsibility & undertakes the treatment & the patient submits to his direction & treatment accordingly he owes a duty to the patient to use a fair & reasonable degree of diligence, care, knowledge, skill, & caution in administering the treatment. To support an indictment for the manslaughter of a patient, however, the prosecution must satisfy the jury that the negligence or incompetence of the doctor went beyond a mere matter of compensation & showed such disregard for the life & safety of the patient as to amount to a crime against the State & conduct deserving punishment.—R. *v.* BATEMAN (1925), 94 L. J. K. B. 791; 133 L. T. 730; 89 J. P. 162; 41 T. L. R. 557; 69 Sol. Jo. 622; 28 Cox, C. C. 33; 19 Cr. App. Rep. 8, C. C. A.

8674. *Add. Annotation:*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8676. *Add. Annotation:*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8677. *Add. Annotation:*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8679. *Add. Annotation:*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8680. *Add. Annotation:*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8681. *Add. Annotation:*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8682. *Add. Annotation:*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

PART XXXIII. SECT. 1, SUB-SECT. 1. —I.

8506 iii. —.]—A man who strikes another in the throat with a knife must know that the blow is so imminently dangerous that it must in all probability cause death, & the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. — JUDAGI MALLAH *v.* KING-EMPEROR (1929), I. L. R. 8 Pat. 911.—**IND.**

8a. *Wrongful act.*]—Where, although there is no intent to do injury to the person or property of another, death results from the doing of an act which is merely *malum prohibitum*, the wrongful act is not the kind of act that the criminal law requires as a foundation for a charge of manslaughter, unless the statute or prohibition violated is one designed & intended to prevent injury to the person, or the prohibited act is accompanied by negligence.—R. *v.* D'ANGELO, [1927] 4 D. L. R. 593; 48 Can. Crim. Cas. 127; 60 O. L. R. 512.—**CAN.**

PART XXXIII. SECT. 1, SUB-SECT. 1. —N. (a).

8584 iii. —.]—A Christian Science practitioner who gave a sick child "absent treatment," *i.e.* prayer, but who prescribed no medicine or other treatment, & who was not shown to have advised the parents not to call in a physician or to have aided, abetted or counselled them to abstain from providing proper medical attendance for the child:—*Held:* wrongly convicted of manslaughter of the child.—R. *v.* ELDER, [1925] 3 D. L. R. 447; [1925] 2 W. W. R. 545; 44 Can. Crim. Cas. 75; 35 Man. L. R. 161.—**CAN.**

PART XXXIII. SECT. 1, SUB-SECT. 1. —N. (c) i.

8612 i. *Must be calculated to endanger life.*]—Criminal Code, s. 247, attaches no criminal responsibility to the mere omission, without lawful excuse, to perform the duty of taking reasonable precautions against & of using reasonable care to avoid endangering human life. To entail criminal responsibility there must be some physical consequences resulting from such omission; the danger itself is not a consequence within the sect.—R. *v.* HURT (1923), 55 O. L. R. 48.—**CAN.**

PART XXXIII. SECT. 1, SUB-SECT. 1. —O. (b).

8639 iv. ——.]—Where accused, driving a motor car at night, entered a road which being under repairs was closed to traffic & ran over & killed two coolies, who were sleeping on the road with their bodies completely covered up, except for their faces:—*Held:* accused was not guilty of causing death by a rash & negligent act.—SMITH *v.* R. (1925), I. L. R. 53 Calc. 333.—**IND.**

8639 v. —— *Gross negligence or wanton misconduct necessary.*]—R. *v.* GREISMAN, [1926] 4 D. L. R. 738; 46 Can. Crim. Cas. 172; 59 O. L. R. 156.—**CAN.**

8639 vi. —— ——.]—To constitute criminal negligence within sect. 284 of the Criminal Code, the unlawful act must result in gross negligence or wanton misconduct. Therefore an accused who drove a wagon on the highway a short time after dusk, without a light, contrary to Highway Traffic Act, R. S. O., 1927, was not *ipso facto* guilty under sect. 284.—R. *v.* COSTELLO, [1932] 2 D. L. R. 410; O. R. 213.—**CAN.**

8639 vii. ——.]—A direction to the jury which sufficiently brought to their mind the difference between the quantum of negligence required to be found in a civil & a criminal trial:—*Held:* sufficient.—MOORE *v.* R., [1926] S. A. S. R. 52.—**AUS.**

8639 viii. ——.]—The test of negligence to be applied in criminal trials is the same as that applied in civil cases, namely, the standard of skill & care which would be observed by a reasonable man.—R. *v.* MEERING, [1927] App. D. 41.—**S. AF.**

8639 ix. ——.]—Proof of ordinary negligence justifies a conviction for manslaughter under Criminal Code, s. 247.—R. *v.* FIELD (Alta.), [1928] 3 W. W. R. 757.—**CAN.**

8639 x. ——.]—R. *v.* COUPLAND, [1930] 3 W. W. R. 410.—**CAN.**

8684. *Add. Annotation :*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8688. *Add. Annotation :*—**Consd.** R. *v.* Bateman (1925), 94 L. J. K. B. 791.

8793a. —.]—(1) The question whether or not a statement made by a person on whom a fatal attack has been made is a dying declaration, *i.e.* whether or not it has been made by that person while in a hopeless & settled anticipation of immediate dissolution, is for the judge at the trial of the person charged with the murder or manslaughter of the person in question &, to answer it, all the circumstances of each case must be regarded.

(2) Rules as to questions by police officers to detained persons commented on.—R. *v.* BOOKER (1924), 88 J. P. 75; 18 Cr. App. Rep. 47, C. C. A.

8927. *Add. Annotation :*—**Refd.** R. *v.* Punch (1927), 20 Cr. App. Rep. 18.

9023a. Within Children Act, 1908 (c. 67), s. 12 (1).] —An assault within the above sect. must be one which is likely to cause unnecessary suffering or injury to the health of the child.

Applt., who was the stepfather, & had the custody or care, of a girl of eleven years of age, was charged under the above sect. with wilfully assaulting the girl in a manner likely to cause her unnecessary suffering. The evidence of the girl was that applt. committed acts of indecency, not to her, but in her presence, & that when she screamed he put his hand over her mouth :—*Held :* this was not an assault within the sect.—R. *v.* HATTON, [1925] 2 K. B. 322; 94 L. J. K. B. 863; 133 L. T. 735; 89 J. P. 164; 41 T. L. R. 637; 28 Cox, C. C. 43; 19 Cr. App. Rep. 29, C. C. A.

9036. *Add. Annotation :*—**Refd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75.

9042. *Add. Annotation :*—**Apld.** R. *v.* Newport (Salop) JJ., *Ex p.* Wright, [1929] 2 K. B. 416.

9042a. —.]—At a school for boys there was a rule prohibiting smoking by pupils during the school term whether on the school precincts or in public. During the term a pupil rather less than sixteen years old, after having left the school for the day & returned home, smoked a cigarette in the public street, & next day the schoolmaster administered to him five strokes of the cane as a punishment for breach of the rule. On the hearing of an information against the schoolmaster for an alleged assault on the boy the justices found that the rule in question was reasonable, that the father of the boy by sending him to the school authorised the schoolmaster to administer reasonable punishment to the boy for breach of a school rule, & that the punishment administered was reasonable; & they dismissed the information. An order *nisi* having been obtained calling upon the justices to show cause why they should not state a case on a question of law :—*Held :* the decision of the justices was right, no question of law arose on which they could state a case, & that the order *nisi* should be discharged.—R. *v.* NEWPORT (SALOP) JJ., *Ex p.* WRIGHT, [1929] 2 K. B. 416; 98 L. J. K. B. 555; 141 L. T. 563; 93 J. P. 179; 45 T. L. R. 477; 73 Sol. Jo. 384; 27 L. G. R. 518; 28 Cox, C. C. 658, D. C.

PART XXXIII. SECT. 1, SUB-SECT. 1. —O. (g).

8694 v. ——.]—R. *v.* CHOTEM (1924), 42 Can. Crim. Cas. 156.—**CAN.**

8694 vi. ——.]—The negligence of the victim is not a defence to a charge of manslaughter unless it was the sole cause of the accident.—R. *v.* FIELD (Alta.), [1928] 3 W. W. R. 757.—**CAN.**

PART XXXIII. SECT. 1, SUB-SECT. 1. —Q. (b) i.

8 i. —— ——.]—In a murder trial where the victim's throat had been cut so that he was unable to speak, evidence of questions put to deceased by the prosecution's witnesses & answers giving by nodding the head & making signs, amount to "verbal statements" under Evidence Act, s. 32, & are admissible as a dying declaration. —RANGA *v.* R. (1924), I. L. R. 5 Lah. 305.—**IND.**

PART XXXIII. SECT. 1, SUB-SECT. 1. —Q. (b) iii.

8741 xix. ——.]—A native when dying from injuries inflicted upon him said that he was "dead" or had been "killed." He then sent for his children & relatives, but did not take farewell of them, saying that he would say more when the pain allowed or when he was better. He then made a statement inculpating applt. :—*Held :* deceased when he made the statement had not a settled hopeless expectation of death, & the statement should not have been admitted in evidence as a dying declaration.—R. *v.* NGCOBO, [1925] App. D. 561.—**S. AF**

8746 i. *Must believe death to be imminent.*]—A statement made when deceased had no expectation of death, but confirmed when he had a belief in impending death :—*Held :* admissible. —DEBORTOLI *v.* R., [1926] 4 D. L. R. 722; [1926] S. C. R. 492; 46 Can. Crim. Cas. 115.—**CAN.**

PART XXXIII. SECT. 1, SUB-SECT. 2.

8838 ii. —— ——.]—The necessity of dispersing a riotous crowd, which would become dangerous unless dispersed, & which threatens serious injury to persons & property, justifies a peace officer in using firearms to prevent violent & felonious outrage to persons & property. A ringleader who, under such conditions & while assaulting a peace officer, is shot dead, dies by justifiable homicide; & the peace officer who fired is free from any liability in damages.—HEBERT *v.* MARTIN, [1931] S. C. R. 145; 2 D. L. R. 484; 54 Can. C. C. 257.—**CAN.**

o i. —— —— ——.]—R. *v.* PURVIS (Ont.) (1929), 51 Can. Crim. Cas. 273.—**CAN.**

PART XXXIII. SECT. 6, SUB-SECT. 1. —C.

d i. —— *Injury resulting in death.*]—Deft. was convicted upon two charges of criminal negligence causing bodily or grievous bodily harm under Criminal Code, ss. 284 & 285 :—*Held :* deft. was properly convicted, notwithstanding that death resulted from the injuries inflicted by his negligence.—R. *v.* STARK, [1927] 3 D. L. R. 433; 47 Can. Crim. Cas. 356; 60 O. L. R. 375.—**CAN.**

PART XXXIII. SECT. 6, SUB-SECT. 1. —D.

sd. *Meaning of "actual bodily harm."*]—The above words in sect. 295 of the Code mean little, if anything, more than "battery."—R. *v.* TRESEGNE (1926), 45 Can. Crim. Cas. 270; 58 O. L. R. 634.—**CAN.**

PART XXXIII. SECT. 6, SUB-SECT. 2. —B.

m i. —— *Burden of proof.*]—Where on a charge of unlawfully wounding a person with intent to maim or disable him, the Crown proves that accused discharged a firearm in the direction of a crowd of persons & wounded the person named, it establishes its case, & the *onus* then shifts to accused to satisfy the ct. that it was either an accident or that he did not intend to wound.—R. *v.* SMART (Alta.), [1927] 3 W. W. R. 753; 49 Can. Crim. Cas. 75.—**CAN.**

PART XXXIII. SECT. 7, SUB-SECT. 1.

sb. *Running down by motor car—No intent to assault.*]—Prisoner was indicted for assault occasioning bodily harm. The evidence showed that the injury in question, a fracture of the collar bone, was due to an accident caused by a motor car driven by prisoner in a public thoroughfare at 2.50 a.m. There being no evidence of an intention to assault, the indictment was amended, at the suggestion of the learned trial judge, so as to allege negligence in the control of a dangerous thing, in substitution for the charge of assault.—R. *v.* MCIVER, 22 Q. J. P. 173.—**AUS.**

PART XXXIII. SECT. 7, SUB-SECT. 2. —C. (a).

9041 i. *Schoolmaster & scholar.*]—Teacher entitled to inflict reasonable punishment.—R. *v.* METCALFE (Sask.), [1927] 3 W. W. R. 194.—**CAN.**

9043. *Add. Annotation :*—**Consd.** R. *v.* Newport (Salop) JJ., *Ex p.* Wright, [1929] 2 K. B. 416.

9057. *Add. Annotations :*—**Consd.** Place *v.* Searle (1932), 48 T. L. R. 428. **Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

9103a. —— ——.]—The old law that the owner of a house, or members of his family, may kill a trespasser who would forcibly dispossess him of the house, although such householder, or members of his family, has not previously retreated until no means of escaping his assailant are left to him, has not been amended or modified by modern practice.—R. *v.* HUSSEY (1924), 89 J. P. 28 ; 41 T. L. R. 205 ; 18 Cr. App. Rep. 160, C. C. A.

9154. *Add. Annotation :*—**Apld.** Morriss *v.* Winter (1929), 45 T. L. R. 643.

9154a. —— **Detention after receipt of remission marks.**]—M. was convicted in Dec. 1925, of certain misdemeanours & sentenced to two years' imprisonment with hard labour & twelve months' imprisonment, the sentences to run consecutively. An order was made by the ct. directing that he should be detained in prison in conformity with the sentences passed. He was first detained in Portsmouth Prison & afterwards in Pentonville Prison. In Dec. 1927, after M. had been removed to Pentonville Prison, the Governor of Portsmouth Prison indorsed on M.'s stage card the forfeiture of five remission marks, to make it agree with M.'s record. There was a dispute whether or not the Governor of Portsmouth Prison had ordered the forfeiture of those marks on May 10, 1926, & the jury differed with regard to it. As a result of the forfeiture of those five marks M. was released by the Governor of Pentonville Prison on July 21, 1928, instead of on July 20. On Aug. 2, 1928, M. brought an action against the Governors of both prisons to recover damages for his detention in prison during that one day. The jury found that the Governor of Portsmouth Prison had not acted maliciously nor with intention to injure M. & that he had not made a false statement :—*Held :* the Prison Rules did not confer upon M. any legal right to an earlier discharge by the obtaining of remission marks, & that therefore the action could not succeed against either of the Governors ; having regard to the findings of the jury the action could not succeed against the Governor of Portsmouth Prison ; the Governor of Pentonville Prison was protected, as he had merely acted in pursuance of the order of the ct.—MORRISS *v.* WINTER, [1930] 1 K. B. 243 ; 99 L. J. K. B. 101 ; 142 L. T. 67 ; 45 T. L. R. 643 ; 28 Cox, C. C. 687.

9207. After this case add :—

SUB-SECT. 4.—CHILD DESTRUCTION.

See Infant Life (Preservation) Act, 1929 (c. 34).

9307a. ——.]—On the trial of a prisoner for having had unlawful carnal knowledge of a girl under sixteen years of age, the judge directed the jury that although what the girl said to her mother several months after the offence was committed was not evidence, yet the jury could infer what the girl said, namely, that the prisoner was responsible for her condition, from what the mother did, because the prisoner was at once accused, & that that amounted to corroboration of the girl's story. Further, that the fact that the prisoner when he was charged by a police officer & cautioned made no denial of the charge was also corroboration of her story :—*Held :* both directions were wrong. Any inference as to what the girl told her mother could not amount to corroboration of the girl's story, as it proceeded from the girl herself, & the girl could not corroborate herself. The fact that the prisoner when

PART XXXIII. SECT. 7, SUB-SECT. 2. —C. (b).

9066 iv. ——.]—Punishment causing temporary pain & discolouration of the flesh for a few days :—*Held :* not excessive.—R. *v.* METCALFE (Sask.), [1927] 3 W. W. R. 194.—**CAN.**

9071 ii. ——.]—R. *v.* METCALFE (Sask.), [1927] 3 W. W. R. 194.—**CAN.**

PART XXXIII. SECT. 7, SUB-SECT. 2.—D.

9078 v. ——.]—On appeal from a conviction for an assault occasioning actual bodily harm :—*Held :* the force used by the accused, in defending himself, as he did, against an assailant armed with a hammer, was not disproportionate to the nature of the attack made on him, although it caused the fracture of his assailant's skull, & he had brought himself within, & was justified by, Criminal Code, s. 23.—R. *v.* OGAL, [1928] 3 D. L. R. 676 ; [1928] 2 W. W. R. 465 ; 50 Can. Crim. Cas. 71 ; 23 Alta. L. R. 511.—**CAN.**

PART XXXIII. SECT. 7, SUB-SECT. 2. —E.

sj. *Defence of son by father.*]—The conviction of a father for assaulting a boy who had been kicking & punching his boy set aside.—R. *v.* WIGGS, [1931] 3 W. W. R. 52 ; 44 B. C. R. 364.—**CAN.**

PART XXXIII. SECT. 7, SUB-SECT. 2.—G.

9119 i. *To effect arrest—Must not use unnecessary force.*]—R. *v.* MCDONALD ; R. *v.* HUNTER, [1932] 3 W. W. R. 418.—**CAN.**

PART XXXIII. SECT. 9.

sk. *Injury caused in attempting to stop breach of peace.*]—A person using the force necessary to prevent a continuance or renewal of a breach of the peace, & struck by the party he was attempting to control :—*Held :* justified in striking back.—R. *v.* MANSON (1925), 43 Can. Crim. Cas. 30 ; [1925] 1 W. W. R. 671.—**CAN.**

sm. *What is unlawful act—Not breach of municipal bye-law.*]—R. *v.* GOSLING (Alta.) (1927), 47 Can. Crim. Cas. 211.—**CAN.**

sn. *Criminal negligence — Under Criminal Code, s.* 284—*What amounts to.*]—R. *v.* BAKER, [1929] 2 D. L. R. 282 ; S. C. R. 354 ; 51 Can. Crim. Cas. 352 ; 63 O. L. R. 641 ; *affg.*, [1929] 1 D. L. R. 785 ; 51 Can. Crim. Cas. 71 ; 63 O. L. R. 275.—**CAN.**

PART XXXIII. SECT. 11, SUB-SECT. 3.

9206 i. *Woman not pregnant.*]—*Held :* an indictment charging accused with performing an operation on a woman, in the belief that she was pregnant, for the purpose of causing her to abort, & with attempting to cause her to abort, was irrelevant, in respect that it did not set forth that the woman was at the time pregnant.—H.M. ADVOCATE *v.* ANDERSON, [1928] S. C. (J.) 1.—**SCOT.**

PART XXXIII. SECT. 13, SUB-SECT. 1. —D.

9281 i. *Consent obtained by fraud—What amounts to fraud.*]—Cohabitation following a feigned marriage is not rape under the law of Canada. It cannot be said as a general proposition, with regard to rape, that fraud vitiates consent. The only sorts of fraud which destroy the effect of a woman's consent are frauds as to the nature of the act itself or as to the identity of the person who does the act.—PEOPLE OF CALIFORNIA STATE *v.* SKINNER, [1924] 2 W. W. R. 209 ; 33 B. C. R. 555.—**CAN.**

c. For "**c.** *By misrepresentation or fraud—Personation of husband*" read "**9295 i.** *Conditions negativing consent—Personation of husband.*"

d. Read now "**9295 ii.**"

9295 iii. —— —— *Former husband.*]—*Held :* an indictment for rape was relevant which bore that the woman was the wife of a second husband who was alive, while the person said to be personated was the woman's former husband who had been officially reported as killed in action.—H.M. ADVOCATE *v.* MONTGOMERY, [1926] S. C. (J.) 2.—**SCOT.**

PART XXXIII. SECT. 13, SUB-SECT. 1 —E.

9307 i. *What amounts to corroboration.*]—Evidence of a witness that he saw accused & the girl leave a dance hall under suspicious circumstances at 11.30 on the night of the alleged seduction amounts to corroboration so as to justify the charge going to the jury.—STEELE *v.* R., [1924] 4 D. L. R. 175 ; [1924] 1 W. W. R. 1146.—**CAN.**

charged & cautioned made no denial of the charge could not be corroboration.—R. *v.* WHITEHEAD, [1929] 1 K. B. 99; 98 L. J. K. B. 67; 139 L. T. 640; 92 J. P. 197; 27 L. G. R. 1; 28 Cox, C. C. 547; 21 Cr. App. Rep. 23, C. C. A.

Annotations:—**Folld.** R. *v.* Charavanmuttu (1930), 22 Cr. App. Rep. 1. **Extd. & Apld.** R. *v.* Naylor (1932), 23 Cr. App. Rep. 177.

9311. *Add. Annotation:*—**Consd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

9320a. -.]—In charges of sexual offences corroboration of the testimony of prosecutrix is not in law essential, but is in practice required.

If, on the trial of such a charge, there is corroboration on one count referring to one date, but there is none on another about another date, & the ct. rejects the corroboration on the former, it being possible that the jury gave credit to it on both counts, it may quash a conviction on both.—R. *v.* BERRY (1924), 18 Cr. App. Rep. 65, C. C. A.

9320b. What amounts to corroboration.]—The mere fact that the accused preserves a letter written to him by prosecutrix of a charge of a sexual offence is not corroboration of her evidence: nor is his mere silence when he is charged with the offence.—R. *v.* MARSH (1925), 19 Cr. App. Rep. 27, C. C. A.

9323a. All sources of belief must be put to jury.]—On an indictment for rape & carnal knowledge full & sufficient direction must be given to the jury on the need of corroboration of the story of the prosecutrix, & on the issue of deft.'s belief about her age every source from which the jury may infer her age must be referred to, even though each one separately may be open to criticism.—R. *v.* SIMMONS (1931), 23 Cr. App. Rep. 25, C. C. A.

—— **Reasonable cause for belief in marriage.**] —*See* Age of Marriage Act, 1929 (c. 36), s. 1 (1), proviso.

9323b. Defence that prisoner "of twenty-three years of age or under"—Prisoner between twenty-three & twenty-four—Defence available.]—R. *v.* DUMONT (1930), 69 L. Jo. 234; 169 L. T. Jo. 239 (Recorder of London).

9323c. —— —— ——.]—R. *v.* WOOLLEY (1931), 171 L. T. Jo. 209.

9323d. - —— ——.] — By Criminal Law Amendment Act, 1922 (c. 56), s. 2, a certain defence is open to "a man of twenty-three years of age." The accused was twenty-three years & six months of age at the time the offence charged was committed. He contended that he was "a man of twenty-three years of age":—*Held:* the language of the sect. being ambiguous, the accused was entitled to the benefit of the doubt, & was entitled to rely on the said defence.—R. *v.* CHAPMAN, [1931] 2 K. B. 606; 100 L. J. K. B. 562; 146 L. T. 120; 95 J. P. 205; 47 T. L. R. 620; 75 Sol. Jo. 660; 29 L. G. R. 487; 23 Cr. App. Rep. 63; 29 Cox, C. C. 407, C. C. A.

9333. *Add. Annotation:*—**Consd.** R. *v.* Woods (1930), 143 L. T. 311.

9336. *Add. Annotation:*—**Refd.** R. *v.* Mosley, [1924] 2 K. B. 187.

9337. *Add. Annotation:*—**Consd.** Winter *v.* Woolfe' [1931] 1 K. B. 549.

9340. *Add. Annotation:*—**Refd.** R. *v.* Roberts & Morriss (1926), 134 L. T. 635.

9340a. —— **What amounts to.**]—A letter to a woman in fact procured, alluding to the writer as her future husband, is corroboration of evidence that he procured her by "false pretences," etc., within Criminal Law Amendment Act, 1885 (c. 69), s. 3.—R. *v.* BROWN (1929), 21 Cr. App. Rep. 185, C. C. A.

9347. In the cross-reference before this case, for "Vagrancy Act, 1878" read "Vagrancy Act, 1898."

9361a. —— —— **Prosecutrix over sixteen**].—If on any of the material dates alleged in an indictment for incest the female has reached the age of sixteen, she may be liable as an accomplice &, therefore, if she is a witness she must be corroborated. It is a misdirection in such a trial to tell the jury that they must first decide whether they believe

9307 ii. ——.]—Evidence of facts which are open to two interpretations is not corroborative of either. To constitute corroboration in a criminal case there must be independent evidence of facts which are not consistent with the innocence of the accused.—R. *v.* GALSKY, [1930] 1 W. W. R. 690; 53 Can. C. C. 219; 38 Man. L. R. 581, C. A.—**CAN.**

9307 iii. ——.]—R. *v.* GALSKY (No. 2), [1930] 2 W. W. R. 577; 54 Can. C. C. 199; 39 Man. L. R. 74, C. A.—**CAN.**

PART XXXIII. SECT. 13, SUB-SECT. 2.

9308 v. ——.]—R. *v.* (Ont.) (1927), 47 Can. Crim. Cas. 318.—**CAN.**

9316 v. ——.]—On a charge of attempting to have carnal knowledge of a girl under fourteen:—*Held:* corroboration was not necessary.—R. *v.* LIZOWYJ (1927), 48 Can. Crim. Cas. 255; 61 O. L. R. 93.—**CAN.**

9316 vi. ——.]—Nature of corroboration required under Criminal Code, s. 1002, on a charge of carnally knowing a girl under fourteen.—HUBIN *v.* R., [1927] 4 D. L. R. 760; [1927] S. C. R. 442; 48 Can. Crim. Cas. 172.—**CAN.**

9316 vii. ——.]—R. *v.* BROWN (N. S.), [1928] 3 D. L. R. 214; 49 Can. Crim. Cas. 334.—**CAN.**

9316 viii. ——.]—R. *v.* HAMLIN (Alta.), [1930] 1 D. L. R. 497; 24 Alta. L. R. 296; [1929] 3 W. W. R. 258; 52 Can. Crim. Cas. 149.—**CAN.**

sp. *Charge of seduction under Criminal Code, s. 211—Burden of proof.*]—R. *v.* SCHEMMER (Sask.), [1927] 3 W. W. R. 417.—**CAN.**

sq. *Seduction under promise of marriage—Sufficiency of promise.*]—R. *v.* SEYMOUR, [1931] 3 W. W. R. 271; 57 Can. C. C. 95.—**CAN.**

sr. *Charge of attempted carnal knowledge—Sufficiency of evidence.*]—R. *v.* YELDS, [1928] N. Z. L. R. 18.—**N.Z.**

PART XXXIII. SECT. 13, SUB-SECT. 5.

—C.

sv. *Meaning of seduction.*]—"Seduction" in the sect. is not used in the narrow sense of inducing a girl to part with her virtue for the first time, but includes subsequent seduction for further acts of illicit intercourse.—PRAFULLAKUMAR BASU *v.* EMPEROR (1929), I. L. R. 57 Calc. 1074.—**IND.**

sw. ——.]—A person may be guilty of kidnapping a girl for the purpose of seducing her to illicit intercourse even though he had also had such intercourse prior to the kidnapping.—KRISHNA MAHARANA *v.* KING EMPEROR (1929), I. L. R. 9 Pat. 647.—**IND.**

sx. *Girl under eighteen—Necessity for corroboration.*]—Prisoner was tried & convicted before a county ct. judge of having seduced a girl of previously chaste character & under the age of 18 years, contrary to sect. 211 of the Criminal Code:—*Held:* under sect. 1002, the evidence of the girl must be corroborated in some material particular by evidence implicating the accused, & that means that there must be corroboration as to commission of the crime & also as to the prisoner's identity or connection with or implication in that commission.—R. *v.* AUGER (1930), 54 Can. C. C. 209; 65 O. L. R. 448.—**CAN.**

PART XXXIII. SECT. 13, SUB-SECT. 7.

m 1. —— ——.]—DAWSON *v.* R. (1927), 40 C. L. R. 206.—**AUS.**

sy. *Daughter of deceased wife's brother.*]—*Held:* sexual intercourse between a man & the daughter of his deceased wife's brother constitutes the crime of incest by the law of Scotland.—C. & W. *v.* H.M. ADVOCATE, [1929] S. C. (J.) 1.—**SCOT.**

sz. *Corroboration of one witness—Unnecessary.*]—BERGERON *v.* R. (1930), 56 Can. C. C. 62.—**CAN.**

such a female witness; they should be instructed not to make up their minds until they find that she is corroborated.—R. *v.* DRAPER (1929), 21 Cr. App. Rep. 147, C. C. A.

9364a. What is an aggravated assault.]—MUNDAY *v.* MAIDEN (1875), 33 L. T. 377; 39 J. P. 742; 24 W. R. 57.

9367. *Add. Annotation:*—**Expld.** R. *v.* Keech (1929), 21 Cr. App. Rep. 125.

9367a. —— ·.]—The ct. disapproves the defence open under above sect. to a charge of carnal knowledge, not being open on that of indecent assault.—R. *v.* LAWS (1928), 21 Cr. App. Rep. 45, C. C. A.

Annotations:—**Consd.** R. *v.* Keech (1929), 21 Cr. App. Rep. 125. **Refd.** R. *v.* Blackman (1929), 2 Cr. App. Rep. 132.

—— **Reasonable cause of belief in marriage.**] —*See* Age of Marriage Act, 1929 (c. 36), s. 1 (1), proviso.

9399a. —— ——.]—Resp. married his wife in 1916 & a child was born in 1917. In 1920 resp. entered into a written separation agreement with his wife, whereby resp. was to pay his wife 25*s.* a week & his wife was to maintain herself & the child, of which she was to have the sole custody & control without any interference by resp., but resp. was entitled to have reasonable access to the child. Resp. failed to make the payments under the agreement & fell into arrears to the amount of about £100. An information was preferred against resp. for neglecting the child in a manner likely to cause her unnecessary suffering or injury to her health, contrary to Children Act, 1908 (c. 67):—*Held:* the fact of the separation agreement, without regard to the way in which its obligations had been performed, did not get rid of the legal presumption that resp. had the custody of the child, & the case must be remitted to the justices to decide whether in fact resp. had wilfully neglected the child in the manner alleged.—BROOKS *v.* BLOUNT, [1923] 1 K. B. 257; 92 L. J. K. B. 302; 128 L. T. 607; 87 J. P. 64; 39 T. L. R. 168; 67 Sol. Jo. 299; 21 L. G. R. 150; 27 Cox, C. C. 399, D. C.

9414. *Add. Annotation:*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

9458. *Add. Annotation:*—**Refd.** R. *v.* Denyer, [1926] 2 K. B. 258.

9480. *Add. Annotation:*—**Apld.** R. *v.* Surrey Justices, *Ex p.* Witherick, [1932] 1 K. B. 450.

9480a. —— —— ·.]—Appct. was summoned under Motor Car Act, 1903 (c. 36), s. 1, for, & convicted of, driving a motor car on a highway "recklessly & at a speed which was dangerous to the public, having regard to all the circumstances of the case, including the nature, condition & use of the said highway, & to the amount of traffic which actually was at the time, or might reasonably have been expected to be, on the said highway":—*Held:* as the driving of the car was one indivisible act which might constitute both the offences charged, the conviction was not bad for duplicity.—R. *v.* JONES, *Ex p.* THOMAS, [1921] 1 K. B. 632; 90 L. J. K. B. 543; 124 L. T. 668; 85 J. P. 112; 37 T. L. R. 299; 19 L. G. R. 354; 26 Cox, C. C. 706, D. C.

Annotation:—**Apld.** R. *v.* Surrey Justices, *Ex p.* Witherick, [1932] 1 K. B. 450.

9482. *Add. Citation:*—*sub nom.* HOUGHTON *v.* MANNING (1905), 49 Sol. Jo. 446.

9488. *Add. Annotation:*—*As to* (1) **Refd.** Pointon *v.* Cox (1926), 136 L. T. 506.

9490. After this case add:—

——.]—*See, now,* Road Traffic Act, 1930 (c. 43), ss. 10, 11, 12.

9490a. —— **Motor coach—Advertised times of departure & arrival—Necessitating speed in excess of statutory maximum.**]—Resps. owned a motor coach which was a heavy motor car fitted with pneumatic tyres, & was restricted under Heavy Motor Car Order, 1904, to a maximum speed limit of twelve miles per hour. The vehicle was driven by

PART XXXIII. SECT. 14, SUB-SECT. 1. —A.

q i. ——.]—A person having a domicil out of Canada, who leaves his family in Canada without means, may be convicted of failing to support his family in Canada.—R. *v.* SCOTT (1925), 44 Can. Crim. Cas. 117.—**CAN.**

PART XXXIII. SECT. 15, SUB-SECT. 1.

t i. —— *Girl out of parents' control.*]—R. *v.* JOE (Ont.) (1928), 50 Can. Crim. Cas. 152.—**CAN.**

PART XXXIII. SECT. 15, SUB-SECT. 3.

sz. *Taking from custody of mother.*]—Applt. was convicted of the offence of taking an unmarried girl under the age of 18 from the custody of her mother with the intent that she might be unlawfully carnally known by him. The evidence showed that immoral relations had existed between the applt. & the girl for some prior to the alleged offence, & that when applt. informed the girl that he was leaving N. on a visit to C., she expressed a desire to go with him, so he paid her railway fare & she accompanied him:—*Held:* the conviction should be quashed.—STEPHENS *v.* R. (1930), W. A. L. R. 9. —**AUS.**

PART XXXIII. SECT. 15, SUB-SECT. 4.

9458 i. *Belief that girl over sixteen no defence.*]—It is not a good defence to a charge of kidnapping under sect. 366 of the Penal Code that the accused honestly believed the kidnapped girl to be over 16 years of age.—KRISHNA MAHARANA *v.* KING EMPEROR (1929), I. L. R. 9 Pat. 647.—**IND.**

PART XXXIII. SECT. 18.

g i. —— ——.]—R. *v.* WILMOT (Ont.) (1926), 52 Can. Crim. Cas. 336.—**CAN.**

g ii. —— ——.]—Deft. was convicted for that he did, having charge of an automobile, by wanton or furious driving, cause bodily harm to N. There was conflicting evidence as to speed & evidence that the cause of the accident was the car "shimmying":—*Held:* there was absence of conclusive evidence that deft. was driving furiously, & he was entitled to the benefit of the doubt.—R. *v.* WILMOT, [1930] 1 D. L. R. 778; 52 Can. C. C. 336; 64 O. L. R. 605.—**CAN.**

g iii. —— *Insufficient brakes.*]—It would not be sufficient merely that a car was insufficiently braked to warrant a charge of reckless or negligent driving. It would depend on the pace of the car & other considerations. —SHERALLY *v.* R. (1929), 50 N. L. R. 309.—**S. AF.**

g iv. —— *Crowded front seat & "shimmying" wheels.*]—R. *v.* STRICKY, [1931] 1 D. L. R. 993; 55 Can. C. C. 68; 2 M. P. R. 448.—**CAN.**

g v. —— *Projecting unlighted load.*] —The mere fact that a motor car is driven at night with materials projecting beyond the body of the car & without lights on the projections is not in itself an unlawful act.—R. *v.* GILBERTSON & FULLER, [1930] 2 W. W. R. 10; 53 Can. C. C. 286; 24 S. L. R. 380.—**CAN.**

sa. *Wilful misconduct—Sufficiency of evidence.*]—Where on the trial of a charge under s. 285 of the Criminal Code of causing bodily harm by wanton or furious driving, etc., it is found that anterior to the collision the accused was driving at a very fast rate of speed & was under the influence of liquor, either of these findings is sufficient to show the existence of that anterior wilful misconduct or wilful negligence leading to the collision which the tribunal trying the case must find before convicting on said charge.—R. *ex rel.* KENDALL *v.* O'SULLIVAN (Alta.), [1929] 2 W. W. R. 322; 51 Can. Crim. Cas. 422.—**CAN.**

9478 i. *Motor car—High speed in fog.*] —R. *v.* WILLIS (1931), 55 Can. C. C. 107.—**CAN.**

PART XXXIII. SECT. 21.

sc. *Of wife & children—Genuine inability to provide necessaries.*]—*Held:* a "lawful excuse."—R. *v.* BUNTING (1926) 45 Can. Crim. Cas. 135; 58 O. L. R. 373.—**CAN.**

a servant of resps. between London & Plymouth. Resps. advertised times of departure & arrival which necessitated an average speed of eighteen miles per hour without allowing for stops. While driving the coach at thirty-five miles per hour on one of the scheduled journeys, resps.' servant was stopped by the police, & resps. were summoned for counselling, procuring, aiding & abetting the commission of the offence :—*Held :* resps. ought to have been convicted of counselling & procuring.—NEWMAN *v.* OVERINGTON, HARRIS & ASH, LTD. (1928), 93 J. P. 46 ; 27 L. G. R. 85, D. C.

Part XXXIV.—Offences against Property.

9498. *Add. Annotation :*—**Refd.** Lake *v.* Simmons, [1926] 1 K. B. 366.

9499. *Add. Annotations :*—**Refd.** Lake *v.* Simmons, [1926] 2 K. B. 51 ; Lowther *v.* Harris (1926), 43 T. L. R. 24 ; Buller & Co., Ltd. *v.* Brooks (T. J.), Ltd. (1930), 142 L. T. 576.

9500. *Add. Annotations :*—**Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586 ; Lowther *v.* Harris (1926), 43 T. L. R. 24.

9537. *Add. Annotations :*—**Consd.** Lowther *v.* Harris (1926), 43 T. L. R. 24 ; Lake *v.* Simmons, [1927] A. C. 487. **Refd.** Buller & Co. Ltd., *v.* Brooks (T. J.), Ltd. (1930), 142 L. T. 576.

After this case add "*Sce, also,* INSURANCE, Vol. XXIX., p. 417, No. 3258."

9553. *Add. Annotation :*—**Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

9557. *Add. Annotation :*—**Refd.** R. *v.* Fisher (1926), 19 Cr. App. Rep. 166.

9614a. -.]—R. *v.* HUGHES, No. 2219a, *ante.*

9702a. *S. P.* R. *v.* BANKS (1821), Russ. & Ry. 441, C. C. R.

Annotation :—**Refd.** R. *v.* Stear (1848), 1 Den. 349.

9769. *Add. Annotation :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

9778a. ——.]—Where a clerk or servant, who has the mere custody of goods, disposes of them for his own benefit, & in a manner alien from the purposes for which he was intrusted with them, he is guilty of larceny.—R. *v.* ROBINSON (1840), 4 J. P. 620.

9900. *Add. Annotation :*—**Refd.** Stoke-on-Trent Revenue Officer *v.* Stoke-on-Trent Assessment Committee & Potteries Electric Traction Co. (1930), 143 L. T. 650.

9944. *Add. Annotation :*—**Distd.** Farey *v.* Welch, [1929] 1 K. B. 388.

9954. For "—— ——."] read "**Live animals feræ naturæ—Larcenable if reduced into possession.]**"

9956. *Add. Annotation :*—**Consd.** Farey *v.* Welch, [1929] 1 K. B. 388.

PART XXXIV. SECT. 1, SUB-SECT. 1. —A. (a) iii.

9510 iii. ——.]—Where the driver of a motor car had it supplied with gasoline & oil at a service station without arranging for credit &, on the proprietor requesting payment & stating that the car must be left until the goods were paid for, he drove the car away without paying :—*Held :* he was guilty of theft.—R. *v.* THOMAS, [1928] 2 W. W. R. 608 ; 50 Can. Crim. Cas. 177 ; 23 Alta. L. R. 523.—**CAN.**

PART XXXIV. SECT. 1, SUB-SECT. 1. —B.

9587 i. *Property in goods parted with —Induced by fraud.*]—Where the owner of an article, being induced thereto by the fraud of another, delivers the article to that other for the purpose of his endeavouring to find a purchaser, & empowers him to pass the property in the article to the purchaser, the case is not one of larceny by a trick. M. handed a ring to P. "on sale or return on demand," giving P. the power to dispose of it to anybody he chose at a price fixed by M. or at any price provided he accounted to M. for the price fixed. P., who had a fraudulent intent when he received the ring, pledged it with C. :—*Held :* as M. had conferred on P. a power to dispose of the ring, P. had not been guilty of larceny by a trick & was able to pass the property in the ring to C.—LAMBELL *v.* MOORE, [1929] V. L. R. 149 ; [1929] Argus L. R. 146.—**AUS.**

PART XXXIV. SECT. 1, SUB-SECT. 4. —A.

9647 iii. ——.]—Where the trial judge directed the jury that, where a person is found to be in possession of anything stolen, shortly after it has been stolen, he may be convicted of the stealing or of receiving ; that the accused might get rid of this fact by a satisfactory explanation, but the burden is on him to give this explanation :—*Held :* this was sufficient direction when the accused was found guilty of larceny by finding, but would have been insufficient on a conviction for larceny or receiving.—R. *v.* WESTON, [1927] S. A. S. R. 439.—**AUS.**

PART XXXIV. SECT. 1, SUB-SECT. 7. —B.

e i. —— *Taking car without consent of owner.*]—R. *v.* SCHMIDT & EDLUNG, [1930] 2 W. W. R. 497 ; 54 Can. C. C. 168 ; 42 B. C. R. 479.—**CAN.**

PART XXXIV. SECT. 1, SUB-SECT. 7. —C.

m i. ——.]—KENNEDY *v.* R. (Que.), (1929), 52 Can. Crim. Cas. 324.—**CAN.**

sg. *Taking property pledged.*]—HAMMOND *v.* R. (1931), 55 Can. C. C. 301.—**CAN.**

PART XXXIV. SECT. 1, SUB-SECT. 8.—B.

9810 ii. ——.]—R. *v.* KRATHY (1931), 55 Can. C. C. 150.—**CAN.**

PART XXXIV. SECT. 1, SUB-SECT. 9. —B. (b).

sl. *Goods on approval—Conversion of good.*]—Where a person takes goods on approval under an agreement that property therein was to pass only if he exercised his option to take them, & paid cash in full for certain articles & in part for others :—*Held :* the trust continues till the option is exercised & cash payments made, & he commits a criminal breach of trust if he sells them without such payments.—KHITISH CHANDRA DEB ROY *v.* R. (1924), I. L. R. 51 Calc. 796.—**IND.**

PART XXXIV. SECT. 1, SUB-SECT. 11.

9859 i. *What constitutes.*]—A bank official was sorting banknotes on the counter of the bank when the accused entered. The official placed the notes on a shelf under the counter in front of him. One of the accused presented a revolver at him, & another passed round the counter, struck the official on the back of the head with a tyre-lever, & took the money from under the counter. They then left the bank : —*Held :* the statutory offence of larceny from the person had been established.—R. *v.* STEWART (1929) S. A. S. R. 500.—**AUS.**

PART XXXIV. SECT. 1, SUB-SECT. 12.

sm. *Crop-payment lease—Lessee disposing of whole crop & appropriating proceeds—Not offence of theft.*]—R. *v.* HANDSBEE, [1924] 1 D. L. R. 1194 ; 41 Can. Crim. Cas. 177 ; [1923] 2 W. W. R. 661.—**CAN.**

PART XXXIV. SECT. 1, SUB-SECT. 14.—A.

9880 i. *From sheriff—Valid seizure must be proved.*]—R. *v.* LUCIUK (Sask.), [1926] 3 W. W. R. 453.—**CAN.**

PART XXXIV. SECT. 1, SUB-SECT. 17. —C.

so. *Obtaining signature to promissory note.*]—Deft. was convicted under Criminal Code, s. 405, of the offence of obtaining by false pretences a promissory note for $1,000 from one B. The evidence showed that deft. procured the signature of B. to a form of promissory note, giving his own note in exchange therefor. The printed form was not the property of B. :—*Held :* merely inducing B. to sign his name was not "obtaining anything capable of being stolen" within s. 405. —R. *v.* LEROUX, [1928] 3 D. L. R. 688 ; 50 Can. Crim. Cas. 52 ; 62 O. L. R. 336.—**CAN.**

10,013. *Add. Annotation :*—**Apld.** R. *v.* Friend (1930), 22 Cr. App. Rep. 130.

10,015. *Add. Annotation :*—**Apld.** R. *v.* Friend (1930), 22 Cr. App. Rep. 130.

10,027. After this case add :—

I. Motor Vehicles.

See Road Traffic Act, 1930 (c. 43), s. 28.

10,050. *Add. Annotation :*—**Apld.** R. *v.* Harding (1929), 46 T. L. R. 105.

10,060a. ——.]—Applt. broke into a dwelling-house which was then occupied only by a maidservant, & he attacked her & demanded money & clothes. The servant handed over a mackintosh belonging to her master. Applt. was convicted of robbing the servant of the mackintosh :—*Held :* as the servant was in charge of her master's belongings she had a special property in the mackintosh, & applt.'s conviction for robbing her of it was right.—R. *v.* HARDING (1929), 142 L. T. 583; 94 J. P. 55; 46 T. L. R. 105; 73 Sol. Jo. 853; 28 L. G. R. 69; 21 Cr. App. Rep. 166; 29 Cox, C. C. 108, C. C. A.

10,116. *Add. Citations :*—93 L. J. K. B. 236; 130 L. T. 320; 68 Sol. Jo. 389; 27 Cox, C. C. 579.

Add. Annotation :—**Consd.** R. *v.* Hughes (1927), 136 L. T. 671.

10,143. *Add. Annotations :*—**Refd.** Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762; R. *v.* Davies, *Ex p.* Penn (1932), 48 T. L. R. 666.

10,200a. Steward & clerk to guardians.]—*Held :* guilty of embezzlement, though not duly appointed, nor even appointed at all under the common seal.—R. *v.* BEACALL, R. *v.* WELLINGS (1824), 1 C. & P. 457.

10,315a. —— Question of fact for jury.]—(1) Where a deft. is charged with the fraudulent conversion of money the question whether he has been entrusted with the money or has received it for or on behalf of the persons specified in the indictment is a question of fact for the jury on which the judge must adequately direct them.

(2) Counts charging the fraudulent conversion on a certain date of a general deficiency are bad unless it is the duty of deft., on the date specified, to hand over the lump sum in his hands to the person who is entitled to it.—R. *v.* SHEAF (1925), 134 L. T. 127; 89 J. P. 207; 42 T. L. R. 57; 28 Cox, C. C. 86; 19 Cr. App. Rep. 46, C. C. A.

10,315b. —— ——.]—Whether a transaction is an "entrusting" within Larceny Act, 1916 (c. 50), s. 20 (1), or a loan, entitling the recipient of the property to use it, is a question of fact for the jury.—R. *v.* SMITH, [1924] 2 K. B. 194; 93 L. J. K. B. 1006; 131 L. T. 28; 88 J. P. 108; 69 Sol. Jo. 37; 27 Cox, C. C. 619; 18 Cr. App. Rep. 76, C. C. A.

Annotation :—**Folld.** R. *v.* Sheaf (1925), 89 J. P. 207.

PART XXXIV. SECT. 1, SUB-SECT. 17.—E.

sr. *Crops.*]—Where a provincial statute provides that in the case of a crop-payment lease the lessor shall be deemed to be & to have been the owner of the share of the crop reserved to him as rent from the moment of the sowing of the crop, his ownership & interest in said share is such as may be the subject of theft thereof by the lessee under sect. 347 & sect. 352 of the Criminal Code.—R. *v.* CASSILS, [1932] 1 W. W. R. 572; 26 Alta. L. R. 180.—**CAN.**

PART XXXIV. SECT. 1, SUB-SECT. 20.

10,121 i. For "R. *v.* MCINTYRE (1898), 31 N. S. R. 422," read "R. *v.* MCCAFFREY (1900), 33 N. S. R. 232."

10,123 xiii. —— ——.]—R. *v.* ANDREWS (N.B.) (1925), 44 Can. Crim. Cas. 201.—**CAN.**

10,123 xiv. —— ——.]—R. *v.* WILSON (1924), 35 B. C. R. 64.—**CAN.**

10,123 xv. —— ——.]—R. *v.* JONES (Sask.), [1926] 3 W. W. R. 313; [1927] 3 D. L. R. 679; 47 Can. Crim. Cas. 380.—**CAN.**

10,123 xvi. —— ——.]—Accused was found on May 17 in possession of a bicycle stolen on Feb. 11 :—*Held :* the period of three months was not too long to cast upon accused the duty of accounting, or giving some reasonable explanation, for his possession, & in the absence of a reasonable explanation the ct. might infer guilt & convict. —JAMES *v.* R. (1927), 48 N. L. R. 289. —**S. AF.**

10,123 xvii. —— ——.]—Recent possession of stolen goods is evidence of stealing or of receiving according to the circumstances of the case. It is open to question whether the possession of goods stolen six weeks prior to the finding of them in the possession of the accused can be considered recent under some circumstances.—R. *v.* IWANCHUK & IWANCHUK, [1929] 1 D. L. R. 279; 1 W. W. R. 125; 50 Can. Crim. Cas. 405; 24 Alta. L. R. 8. —**CAN.**

10,123 xviii. ——.]—Where on a trial of a charge of theft the Crown relies on the fact that property proved to have been recently stolen was in the accused's possession, he is entitled to an acquittal if his explanation of the possession is one which may reasonably be true, even though the tribunal is not convinced of its truth.—R. *v.* KORINEY, [1931] 2 W. W. R. 566; 56 Can. C. C. 90.—**CAN.**

10,129 i. *Possession of recently stolen property—When explanation required—Reasonableness of explanation for magistrate.*]—R. *v.* MURPHY, KITCHEN, & SLEEN, [1931] 4 M. P. R. 158.—**CAN.**

PART XXXIV. SECT. 2, SUB-SECT. 3.

d. For "AUS." read "S. AF."

PART XXXIV. SECT. 2, SUB-SECT. 6.

10,298 iv. ——.]—Where a law-agent did not account for sums collected for a client, notwithstanding repeated applications made for the money, & only remitted the sums after he had been arrested :—*Held :* a conviction for embezzlement was justified.—EDGAR *v.* MACKAY, [1926] S. C. (J.) 94.—**SCOT.**

10,298 v. —— *Sufficient money of agent in possession of principal—No mens rea.*]—PIKE *v.* R. (1930), 54 Can. C. C. 375; 48 Que. K. B. 239.—**CAN.**

PART XXXIV. SECT. 3, SUB-SECT. 1.

10,314 ii. ——.]—H. entered the offices of F., Ltd., in V., & in exchange for $1,000 received £23 in cash & a draft for £200 drawn on P. Bank, Ltd., London, reciting "pay from our credit balance to the order of H. £200," & signed F., Ltd. H. indorsed the draft "pay to the order of L. Bank, Ltd., for deposit to my credit." When H. presented the draft at L. Bank, Ltd., Liverpool, payment was refused. On a charge against F. under Criminal Code, s. 355, for converting the money to his own use & for failing to account for it, it was found by the trial judge that F., Ltd., was an *alias* for F. himself; that F. knew of the transaction carried out by his clerk; that F., Ltd., had no credit either at L. Bank, Liverpool, or at P. Bank, London, & they did not remit H.'s money to London as undertaken :—*Held :* on the facts stated the case did not come within sect. 355, & the conviction was set aside.—R. *v.* FAULDS (1922), 40 Can. Crim. Cas. 300; 31 B. C. R. 421.—**CAN.**

10,314 iii. ——.]—Where a person hands over money to another pursuant to a proposal & undertaking of the latter to invest the money in certain securities, there is in substance a "direction," within Criminal Code, s. 357, so to invest it.—R. *v.* CAMPBELL (1926), 45 Can. Crim. Cas. 159; 22 Alta. L. R. 219; [1926] 1 W. W. R. 671.—**CAN.**

10,314 iv. ——.]—R. *v.* MILES (1931), 56 Can. C. C. 383.—**CAN.**

10,315a i. —— *Question of fact for jury.*]—*Held :* on a charge of fraudulent conversion under sect. 20 (1) (iv) (*b*) of Larceny Act, 1916, the question whether money has been received by the accused "for or on account of" other persons is a fact to be decided by the jury; as it is vital, they must be expressly directed to find on the point, it is not sufficient that it has not been withdrawn from them; accordingly, as no such direction had been given by the trial judge, the trial was unsatisfactory, & the accused must be re-tried.—A.-G. *v.* LAWLESS, [1930] I. R. 247.—**IR.**

sb. *Conversion by stockbroker.*]—There is no authority which justifies a stockbroker in speculating with his customers' margins & securities for his own account. Appeal from the conviction of a stockbroker for theft from a co., a "one man co." of which he had sole control & was practically the sole owner, affirmed. The money in question represented cash & securities which had been deposited with the co. by its customers as security for their trading accounts.—R. *v.* MARTIN, [1932] 3 W. W. R. 1.—**CAN.**

10,315c. -.]—The true test in a charge under Larceny Act, 1916 (c. 50), s. 20 (1) (iv) (*a*), is whether accused had control of the property charged or not, in circumstances whereby he became entrusted.—R. *v.* MORTER (1927), 20 Cr. App. Rep. 53, C. C. A.

10,316. *Add. Annotations :*—**Apld.** R. *v.* Tuttle (1929), 140 L. T. 701. **Refd.** R. *v.* Smith, [1924] 2 K. B. 194.

10,317. *Add. Annotation :*—**Refd.** R. *v.* Morter (1927), 20 Cr. App. Rep. 53.

10,322. *Add. Annotation :*—**Dbtd.** R. *v.* Smith, [1924] 2 K. B. 194

10,326a. Indictment—Necessary averments.]—R. *v.* SHEAF, No. 10,315a, *ante*.

10,333. *Add. Annotation :*—**Refd.** R. *v.* Smith, [1924] 2 K. B. 194.

10,345. *Add. Annotation :*—**Apld.** R. *v.* Tuttle (1929), 140 L. T. 701.

10,345a. —— —— **Preliminary examination in bankruptcy.**]—R. *v.* TUTTLE, No. 2204a, *ante*.

10,345b. —— —— **Affidavit in defence to action for account by co-trustee.**]—R. *v.* TUTTLE, No. 2204a, *ante*.

10,352a. —— **Prospectus to be read as a whole—Effect of omissions.**]—A prospectus for the issue of debenture stock issued by a co. of which applt. was chairman was composed of statements which in themselves were perfectly true, but it omitted information about the co.'s affairs, with the result that the prospectus, taken as a whole, gave a false impression of the position of the co. On the trial of applt. for an offence under Larceny Act, 1861 (c. 96), s. 84, the judge directed the jury that a written statement might be false within the meaning of the section not only because of what it stated, but also because of what it concealed, or omitted, or implied :—*Held :* this was a correct statement of the effect of the section, & applt. was rightly convicted of an offence under it.—R. *v.* KYLSANT (LORD), [1932] 1 K. B. 442 ; 101 L. J. K. B. 97 ; 146 L. T. 21 ; 48 T. L. R. 62 ; 75 Sol. Jo. 815 ; 23 Cr. App. Rep. 83 ; 29 Cox, C. C. 379.

10,354. *Add. Annotation :*—**Consd.** R. *v.* Bassey (1931), 47 T. L. R. 222.

10,410a. ——.]—Any violence is sufficient in law to sustain an indictment of robbery with violence.—R. *v.* HARRISON (1930), 22 Cr. App. Rep. 82, C. C. A.

10,480. *Add Annotations :*—**Refd.** R. *v.* Denyer, [1926] 2 K. B. 258 ; Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306.

10,487a. Demand of money as alternative to inclusion in stop list—Protection of trade interests.]—D., a servant & stop list superintendent of the Motor Trade Assocn., wrote a letter to R., a garage proprietor, stating that the assocn. offered an alternative to R. to inclusion in the stop list of the assocn., namely, the payment of a certain sum, & the publication of an undertaking to observe protected prices of motor cars, etc. :—*Held :* D. was rightly convicted of uttering a letter demanding money with menaces contrary to Larceny Act, 1916 (c. 50), s. 29 (1), & it was immaterial that his motive in writing the letter was the protection of a trade interest.—R. *v.* DENYER, [1926] 2 K. B. 258 ; 95 L. J. K. B. 699 ; 134 L. T. 637 ; 42 T. L. R. 452 ; 28 Cox, C. C. 153 ; 19 Cr. App. Rep. 93, C. C. A.

Annotations :—**N.F.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306. (NOTE.—For the purposes of the administration of criminal law, unless & until *R.* v. *Denyer* is reversed by the only competent tribunal [viz., the House of Lords], it is binding upon, & will be enforced by, the Ct. of Criminal Appeal against any person or persons offending in like manner (LORD HEWART, C.J.) (1928), 20 Cr. App. Rep., at pp. 185 & 186). **Refd.** Auto-Mart (London) *v.* Chilton (1927), 43 T. L. R. 463.

10,505a. ——.]—Applts. were convicted of threatening to accuse of a crime within Larceny Act; 1916 (c. 50), s. 29 (2) (*b*), with intent to extort money. They had enticed a man into a compromising situation with one of themselves & then threatened to accuse him of "improper conduct" :—*Held :* the mere fact of the words being capable of being

PART XXXIV. SECT. 3, SUB-SECT. 2.

10,327 iv. ——.]—To be guilty of theft under Criminal Code, s. 355, accused must have received money, valuable security, or other things on terms requiring him to hand over the thing received, or the proceeds thereof, to some person other than the person from whom he received it, & have fraudulently converted it to his own use.—R. *v.* CONNORS (1923), 51 N. B. R. 247.—**CAN.**

10,327 v. ——.]—Where A. delivers goods to B. requiring him to account to him, A., for them, the case is not within Criminal Code, s. 355.—R. *v.* LUCIUK (Sask.), [1926] 3 W. W. R. 453.—**CAN.**

sd. *Intention to repay—Offence committed.*]—R. *v.* THOMSON (1930), 54 Can. C. C. 175.—**CAN.**

PART XXXIV. SECT. 3, SUB-SECT. 3.

10,334 v. ——.]—On the trial of a charge under Criminal Code, s. 357, the jury should be instructed to determine, leaving aside any directions which may be in evidence with respect to the disposition of the money alleged to have been misapplied, whether without such directions the relationship of debtor & creditor would exist between the parties, & that if it would the directions must have been in writing, & that, if it would not, oral directions would be sufficient to support the charge.—R. *v.* SWITYK, [1925] 1 D. L. R. 1015 ; [1925] 1 W. W. R. 656 ; 43 Can. Crim. Cas. 245.—**CAN.**

PART XXXIV. SECT. 4.

s i. *Knowledge of falsity.*]—Accused, who was managing director of a mining co., in the statements which he made, adopted & relied upon reports made by the mine manager, which he believed to be accurate & true :—*Held :* his statements did not go beyond the meaning to be attributed to the mine manager's reports of the result of the work upon the ground ; & it could not therefore be said that accused published statements which were false to his knowledge in any material particular, within sect. 414 of the Criminal Code.—R. *v.* HARCOURT, [1930] 1 D. L. R. 736 ; 52 Can. C. C. 342 ; 64 O. L. R. 566.—**CAN.**

PART XXXIV. SECT. 8, SUB-SECT. 2.

10,459 i. —— *Letter addressed to non-existent person.*]—Deft. was convicted of sending a threatening letter addressed to "Sir James W. Moir" at 40, Duke St., Halifax. There was no such person as "Sir James W. Moir," but 40 Duke St. was the business address of James W. Moir, by whom the letter was received :—*Held :* deft.'s appeal from the conviction failed.—R. *v.* VARBEFF (1922), 57 N. S. R. 415.—**CAN.**

PART XXXIV. SECT. 8, SUB-SECT. 3. —B.

10,465 ii. —— ——.]—Where a person is indicted on a charge under Crimes Act, 1900, s. 99, of having by menaces demanded property with intent to steal the same, & where the threats or menaces used for the purpose of obtaining the property are manifestly of such a character that there can be no doubt that they would operate on the mind, not only of the victim, but of any reasonable person, a judge may in his summing up direct the jury as a matter of law, that if they believe the evidence for the Crown, the threats or menaces used would constitute a menace within the meaning of the sect.—R. *v.* RASMUSSEN & SPIEGELGLASS (1928), 28 S. R. N. S. W. 349 ; 45 N. S. W. W. N. 87.—**AUS.**

p i. —— —— *Extortion by constable.*]—R. *v.* LAPHAM (1913), 24 O. W. R. 111 ; 4 O. W. N. 838 ; 21 Can. Crim. Cas. 79 ; 10 D. L. R. 315.—**CAN.**

PART XXXIV. SECT. 9, SUB-SECT. 1. —D.

10,594 ii. —— ——.]—BAKER *v.* R. (1930), 54 Can. C. C. 353 ; 49 Que. K. B. 193.—**CAN.**

understood to mean some offence not within the sect. was no defence, as it was a question for the jury what was the effect on the mind of the man on whom they were intended to operate, & as there was evidence on which the jury could properly come to the conclusion that the threat was a threat to accuse of the particular crime mentioned in the indictment, & the convictions must be affirmed.—R. *v.* STUART, R. *v.* LEONARD, R. *v.* MAPLES, R. *v.* TANNEN, R. *v.* TAYLOR (1927), 43 T. L. R. 715; 20 Cr. App. Rep. 74, C. C. A.

10,603. *Add. Annotation :*—**Refd.** Towle *v.* Im proved Industrial Dwellings Co., [1931] 1 K. B. 263.

10,725a. Finding must be by night.]—R. *v.* HARRIS, No. 5478a, *ante*.

10,729a. —— —— Electric torch, pliers, & gloves.] —ROWLATT, J., said that he very much doubted whether an electric torch could be described as an instrument for housebreaking any more than could a pair of gloves. The pliers, too, were a tool anybody might possess with no intention of housebreaking.—R. *v.* STEWART (1932), 96 J. P. Jo. 137.

10,731a. Possession must be by night.]—R. *v.* HARRIS, No. 5478a, *ante*.

10,752. *Add. Citation :*—68 Sol. Jo. 254.

Add. Annotation :—**Follld.** R. *v.* Klein (1932), 23 Cr. App. Rep. 185.

10,752a. ——.]—Applt. was convicted on an indictment which charged him with receiving sums of money knowing them to have been obtained under circumstances amounting to misdeameanour, to wit, conspiracy to defraud, contrary to Larcency Act, 1916 (c. 50), s. 33 (1). It was contended on his behalf that, as the actual obtaining of the goods by the conspirators had been effected by a different misdemeanour, namely, false pretences, the indictment was bad in law :—*Held :* as the words of the Act are " obtained . . . under circumstances which amount to . . . misdemeanour " & not " obtained . . . by misdemeanour," the indictment was properly laid & the conviction must be upheld.—R. *v.* KLEIN (1932), 23 Cr. App. Rep. 185, C. C. A.

10,754a. ——.]—R. *v.* HYMAN (1926), 19 Cr. App. Rep. 125, C. C. A.

10,754b. —— Or obtained — Meaning.]—" Obtained " in Larceny Act, 1916 (c. 50), s. 33, means obtained physically.—R. *v.* MISSELL, R. *v.* RINGLE, R. *v.* ERRINGTON (1926), 19 Cr. App. Rep. 109, C. C. A.

10,762a. —— Necessity for.]—On a charge of knowingly receiving stolen goods there must be unequivocal evidence of the receiving of a chattel proved to be stolen.—R. *v.* EVENS (1930), 22 Cr. App. Rep. 16, C. C. A.

10,779. *Add. Annotation :*—**Refd.** Conn *v.* Turn bull (1925), 89 J. P. Jo. 300.

10,779a. ——.]—(1) To sustain an indictment for knowingly receiving stolen property some possession or control must be proved.

(2) Evidence of intention to commit a crime is not sufficient for a conviction of that crime.—R. *v.* FREEDMAN (1930), 22 Cr. App. Rep. 133, C. C. A.

10,815a. Under Frauds by Workmen Act, 1777 (c. 56), s. 10—" Dwelling-house "—Includes warehouse not attached to dwelling-

PART XXXIV. SECT. 9, SUB-SECT. 3.

10,679 i. *Intent must be alleged.*]—R. *v.* ROSS, [1927] 1 D. L. R. 911; 47 Can. Crim. Cas. 71; 59 N. S. R. 55.—**CAN.**

PART XXXIV. SECT. 10, SUB-SECT. 3.

n i. —— *Form of indictment.*]—The charge, intended to be of an offence under sect. 461, lacked an allegation essential to constitute the crime, namely, that the intent was to commit the assault, that is, on C. P., as charged, in the shop that was broken into; & there was no evidence that supplied this omission, so as to give foundation for an amendment under sect. 889 (2) that would make it in reality a charge under sect. 461. Without amendment, & without proof of the crime intended to be described, there was a finding of guilty of the charge, as set out, which did not describe any crime. The conviction must therefore be quashed.—MCNEIL *v.* R., [1931] S. C. R. 505; 3 D. L. R. 762; 55 Can. C. C. 253.—**CAN.**

PART XXXIV. SECT. 13.

sm. *Found disguised—No intention to commit indictable offence—Intent to interfere with private rights.*]—R. *v.* PHILLIPS, [1931] 2 D. L. R. 461; 55 Can. C. C. 49.—**CAN.**

so. *Essentials of offence.*]—The fact that a man has housebreaking instruments in his household or business repositories ordinarily used by him for the conservation of his personal belongings does not bring him within the purview of sect. 464 (*a*) of Criminal Code until he takes them out & goes with them abroad at night as if to use them. It is of the essence of the offence under said section that the offender be discovered in the possession of the instrument rather than that it should be discovered in his possession. —R. *v.* MITCHELL & MCLEAN, [1932] 1 W. W. R. 657.—**CAN.**

PART XXXIV. SECT. 14, SUB-SECT. 1.

o i. —— *Distinct from receiving goods knowingly stolen.*]—R. *v.* YEAMAN, [1924] 2 D. L. R. 1116; 2 W. W. R. 452; 42 Can. Crim. Cas. 78; 33 B. C. R. 390.—**CAN.**

51 Can. Crim. Cas. 128; 24 Alta. L. R. 37.—**CAN.**

PART XXXIV. SECT. 14, SUB-SECT. 3. —A.

10,773 iv. —— *Proof of suspicion that goods stolen.*]—Where, on a charge of unlawful possession, neither of the arresting police constables swore that he actually entertained a suspicion that the article had been stolen or unlawfully obtained, & the evidence only rendered it probable that such suspicion existed :—*Held :* deft. could not be convicted.—CORSTEN *v.* NOBLET, [1927] S. A. S. R. 421.—**AUS.**

10,773 v. —— *What evidence necessary.*]—A person cannot be called on to account for his possession of property under Police Act, XIII of 1856, s. 35 (1), unless there is evidence which satisfies, not the police officer, but the ct., after judicial consideration, that such property " may be reasonably suspected of being stolen or fraudulently obtained."—R. *v.* DHANJIBHAI EDULJI (1895), I. L. R. 20 Bom. 348.—**IND.**

PART XXXIV. SECT. 14, SUB-SECT. 3. —B.

10,789 iii. ——.]—The mere finding of stolen property in the house where accused lived is not of itself sufficient to prove possession by him, where there are other inmates of the house. There must be control, exclusive or joint, as well. Especially is this the case where accused was only a casual inmate of the house & where the place where the property was found hidden was accessible, not only to the other inmates of the house, but to outsiders as well.—R. *v.* PAWLETT, [1923] 1 W. W. R. 1453; 40 Can. Crim Cas. 312; 33 Man. L. R. 103.—**CAN.**

h i. ——.]—Applt. was charged on complaint with having in his possession on premises of which he was the reputed tenant or occupier, gold reasonably suspected of being stolen or unlawfully obtained. He was present when police officers discovered in an old underground working on a mining lease of which he was the holder a lighted furnace, which was well hidden, & a considerable quantity of gold-bearing ore in a crucible in the furnace. Applt. stated he had abandoned the lease, denied all knowledge of the existence of the furnace, expressed his opinion that the gold had been stolen, & blamed some Indian miners who were in the vicinity :—*Held :* (1) applt. was the tenant of premises upon which gold reasonably suspected of being stolen or unlawfully obtained was found, & that by Police Act Amendment Act, 1902, s. 3, the *onus* of proving he was not in possession of such gold lay on applt.; (2) applt. had failed to prove that he was not in possession of such gold.—HOEPNER *v.* MANNING, [1929] W. A. L. R. 42.—**AUS.**

PART XXXIV. SECT. 14, SUB-SECT. 4. —A.

10,828 i. *Onus of proof.*]—R. *v.* BERELOVITCH (N. S.) (1926), 46 Can. Crim. Cas. 148.—**CAN.**

house.]—R. *v.* EDMUNDSON (1859), 2 E. & E. 77; 28 L. J. M. C. 213; 33 L. T. O. S. 237; 23 J. P. 710; 5 Jur. N. S. 1351; 7 W. R. 565; 8 Cox, C. C. 212; 121 E. R. 30.

10,878a. ——.]—R. *v.* DAWSON (1926), 19 Cr. App. Rep. 128, C. C. A.

10,878b. .]—The proper direction on a charge of receiving with guilty knowledge is that, if the jury are satisfied that deft.'s explanation is consistent with his innocence, they ought to, not may, acquit, even if they do not accept the explanation given by a witness for the defence.—R. *v.* KETTERINGHAM (1926), 19 Cr. App. Rep. 159, C. C. A.

10,898. *Add. Annotation:*—**Reld.** Eadie *v.* I. R. Comrs., [1924] 2 K. B. 198.

10,905a. .]—R. *v.* REYNOLDS (1927), 20 Cr. App. Rep. 125, C. C. A.

10,906a. ——.]—On the trial of an indictment for receiving with guilty knowledge, the jury must be clearly warned that the contents of a statement made by the thief before the trial are not evidence against deft., & if the former is called at the trial before he is sentenced, there must be a careful direction on his testimony.—R. *v.* BAGULEY (1925), 19 Cr. App. Rep. 54, C. C. A.

10,927a. **Several accused charged with receiving—Direction as to possession.**]—R. *v.* PECKHAM (THE YOUNGER), No. 3165c, *ante*.

10,940. *Add. Annotation:*—**Reld.** R. *v.* Berg, Britt, Carré & Lummies (1927), 20 Cr. App. Rep. 38.

10,954. *Add. Annotation:*—*As to* (2) **Apld.** R. *v.* Woods (1930), 143 L. T. 311.

10,997. *Add. Annotation:*—**Reld.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

11,032. *Add. Annotation:*—**Folld.** R. *v.* Smith (1931), 22 Cr. App. Rep. 180.

11,038a. ——.]—False pretences are not proved, unless the falsity of the words used is unequivocal & intentional.—R. *v.* SEELY (1928), 21 Cr. App. Rep. 18, C. C. A.

11,120. *Add. Annotation:*—**Reld.** R. *v.* Punch (1927), 20 Cr. App. Rep. 18.

PART XXXIV. SECT. 14, SUB-SECT. 5.

s i. ——.]—While it is true that the recent possession of stolen property raises a presumption of fact that, if not reasonably explained, the possessor is the thief, yet for the raising of such a presumption the exclusiveness of the possession or access is material.—R. *v.* PAWLETT, [1923] 1 W. W. R. 1453; 40 Can. Crim. Cas. 312; 33 Man. L. R. 103.—**CAN.**

10,851 i. *What is recent—Materiality of nature of article.*]—R. *v.* JONES Sask.), [1926] 3 W. W. R. 313: [1927] 3 D. L. R. 679; 47 Can. Crim. Cas. 380.—**CAN.**

10,852 iv. —— ——.]—R. *v.* ANDREWS (N.B.) (1925), 44 Can. Crim. Cas. 201.—**CAN.**

10,852 v. —— ——.]—R. *v.* JONES (Sask.), [1926] 3 W. W. R. 313; [1927] 3 D. L. R. 679; 47 Can. Crim. Cas. 380.—**CAN.**

PART XXXIV. SECT. 14, SUB-SECT. 8.

10,901 i. *Recent possession of stolen property—As evidence of receiving.*]—R. *v.* JONES (Sask.), [1926] 3 W. W. R. 313; [1927] 3 D. L. R. 679; 47 Can. Crim. Cas. 380.—**CAN.**

PART XXXIV. SECT. 14, SUB-SECT. 9.

sn. *Several articles received by different persons—Receivers triable jointly.*]—MUSSAMMAT GULJANIA *v.* R. (1927), I. L. R. 6 Pat 583.—**IND.**

PART XXXIV. SECT. 16, SUB-SECT. 1.

10,975 ii. ——.]—In order to constitute the offence of obtaining money by false pretences, it is not necessary that the fraud should operate in precisely the way intended or expected by prisoner. If in fact the fraud operated as a direct cause of the payment of money, it is immaterial that the chain of causation was different from that which prisoner intended or expected.—R. *v.* LAMBASSI, [1927] V. L. R. 349; 49 A. L. T. 23; [1927] Argus L. R. 297.—**AUS.**

so. *Liability although facts amount to larceny.*]—A charge of unlawfully obtaining goods from F., by false pretences, with intent to defraud. F. was not the owner of the goods, but the bailee for a special purpose:—*Held:* when deft., by fraud, with intent to obtain the goods from F., induced him to part with them, he deprived F. of the special property in them which he had as bailee, as well as of the possession thereof, & he was rightly convicted.—R. *v.* CRAMGLY (1931), 3 D. L. R. 640; O. R. 145; 55 Can. C. C. 292.—**CAN.**

PART XXXIV. SECT. 16, SUB-SECT. 2.—A.

e i. —— *Waiver of lien rights.*]—*Held:* not a valuable security.—R. *v.* HOLMES (1931), 56 Can. C. C. 353.—**CAN.**

PART XXXIV. SECT. 16, SUB-SECT. 2.—B.

11,001 ii. —— ——.]—Where accused was found guilty of an offence under Crimes Act, 1915, s. 181 (a), for obtaining goods by false pretences:—*Held:* under the above sect. it was not necessary that the property in the goods obtained should pass to accused, the passing of the property from the person defrauded being sufficient.—R. *v.* O'SULLIVAN, [1925] V. L. R. 514; 547 A. L. T. 3; 31 Argus L. R. 263.—**AUS.**

PART XXXIV. SECT. 16, SUB-SECT. 2.—D.

m i. —— ——.]—Where a party is induced by false representation to part with possession of goods, but does not part with the right of property therein, there can be no conviction for obtaining goods under false pretences.—R. *v.* MCMANUS, [1924] 3 D. L. R. 297; 42 Can. Crim. Cas. 248; 51 N. B R. 255.—**CAN.**

PART XXXIV. SECT. 16, SUB-SECT. 3.—B.

11,114 i. *By advertisement.*]—Advertisements published in newspapers & followed by circular letters addressed to persons who answered the advertisements, related to an alleged puzzle for the correct solution of which prizes were offered, but it was in fact no puzzle & the advertisements & letters contained misrepresentations which deluded those who supposed themselves to be competing for prizes into sending money to deft.:—*Held:* deft. was guilty of obtaining by false pretences with intent to defraud. It is not necessary that the false pretence should be made in express words, if the idea is conveyed.—R. *v.* MARSHALL, [1930] 2 D. L. R. 855; 53 Can. C. C. 118; 65 O. L. R. 279.—**CAN.**

PART XXXIV. SECT. 16, SUB-SECT. 3.—D. (a).

sa. *Property represented as adequate security.*]—R. *v.* HAMILTON, [1931] 3 D. L. R. 121; 66 O. L. R. 537; 55 Can. C. C. 85.—**CAN.**

PART XXXIV. SECT. 16, SUB-SECT. 3.—D. (d).

11,191 i. *Value or extent of business.*]—R. *v.* PENNY (1925), 35 B. C. R. 414.—**CAN.**

11,191 ii. ——.]—R. *v.* BOYD, [1931] 1 W. W. R. 332; 55 Can. C. C. 168; 25 Alta. L. R. 462.—**CAN.**

so. *Sale of patent rights—Representation by vendor as to possibility of sales.*]—R. *v.* BAILEY (1931), 55 Can. C. C. 170.—**CAN.**

PART XXXIV. SECT. 16, SUB-SECT. 3.—D. (e).

so. *Authority to purchase.*]—Applt. was convicted of theft by false pretences upon evidence which proved that he had obtained goods on credit from the C. Co. by falsely representing that he had authority to purchase them on behalf of the E. Co. Applt. did not give evidence but made an unsworn statement that he had used the E. Co.'s name in order to obtain the goods at a lower price:—*Held:* applt.'s representation that the E. Co. would pay for the goods could only mean that he himself did not intend to pay for them, & he was therefore rightly convicted.—CHIPPS *v.* R. (1931), 52 N. L. R. 18.—**S. AF.**

PART XXXIV. SECT. 16, SUB-SECT. 3.—D. (h).

so. *Misrepresentation by building company—Property represented as free from mortgages.*]—R. *v.* JOHNSTON, [1932] 1 D. L. R. 655; O. R. 79.—**CAN.**

PART XXXIV. SECT. 16, SUB-SECT. 4.

11,266 i. —— —— *Reasonable belief in ability to pay.*]—R. *v.* REYNOLDS, [1927] S. A. S. R. 228.—**AUS.**

PART XXXIV. SECT. 16, SUB-SECT. 7.

n i. —— *Alleged false representation of market value of bonds—No averment that market value not as represented.*]—R. *v.* ROBERTSON (N. S.), [1928] 4 D. L. R. 778; 50 Can. Crim. Cas. 179.—**CAN.**

sf. *Obtaining contract with hotel to supply banquet—Criminal Code, s. 405, is appropriate section.*]—R. *v.* HALL (1930), 53 Can. C. C. 312.—**CAN.**

11,346. *Add. Annotations :*—**Refd.** R. *v.* Punch (1927), 20 Cr. App. Rep. 18; R. *v.* Woods (1930), 143 L. T. 311.

11,375. *Add. Citations :*—[1924] 1 K. B. 311; 93 L. J. K. B. 144; 130 L. T. 318; 27 Cox, C. C. 574; [1924] B. & C. R. 78.

SUB-SECT. 1 (p. 1012.)

13 Eliz. c. 5, is now replaced by Law of Property Act, 1925 (c. 20), s. 172.

11,467. *Add. Annotation :*—**Refd.** Shapiro *v.* La Morta (1923), 130 L. T. 622.

11,642a. Charge under Metropolitan Police Courts Act, 1839 (c. 71), s. 38—Time for bringing—Existing tenancy.]—Where a landlord, during the existence of a tenancy, charged his tenant under the above sect. with having three months before wilfully damaged his premises : —*Held :* the charge should have been made within one month.—DOWELL *v.* BENINGFIELD (1841), Car. & M. 9.

11,686. *Add. Annotation :*—**Refd.** British Broadcasting Co. *v.* Wireless League Gazette Publishing Co. (1926), 95 L. J. Ch. 272.

11,709. *Add. Annotation :* — **Refd.** Barnard *v.* Evans, [1925] 2 K. B. 794.

11,738. *Add. Annotation :*—**Refd.** Conn *v.* Turnbull (1925), 89 J. P. Jo. 300.

Part XXXV.—Forgery.

11,748. To cross-references following this case add "*See, also,* Criminal Justice Act, 1925 (c. 86), s. 35 (1)."

11,797. *Add. Annotation :*—**Refd.** McDonald *v.* Nash, [1924] A. C. 625.

11,834. *Add. Annotations :*—**Consd.** Reckitt *v* Barnett, Pembroke & Slater, [1928] 2 K. B. 244. **Refd.** Goldman *v.* Cox (1924), 40 T. L. R. 423; Underwood *v.* Bank of Liverpool. Underwood *v.* Barclays Bank, [1924] 1 K. B. 775; Fenton Textile Assocn. *v.* Thomas (1929), 45 T. L. R. 264; Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40; Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465; Midland Bank, Ltd. *v.* Reckitt (1932), 48 T. L. R. 271; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114; Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

11,837. *Add. Annotation :*—**Refd.** Mason *v.* Lack (1929), 140 L. T. 696.

11,935. To cross-reference before this case add "*See, also,* Criminal Justice Act, 1925 (c. 86), s. 38.

11,962. *Add. Annotation :*—**Refd.** R. *v.* FERGUSON (1845), 5 L. T. O. S. 458.

12,061a. Certificates procuring admission to Inn of Court.]—R. *v.* BASSEY, No. 862a, *ante.*

12,123a. Forged certificates—Obtaining admission to Inn of Court.]—R. *v.* BASSEY, No. 862a, *ante.*

PART XXXIV. SECT. 21, SUB-SECT. 2.

11,383 i. *Who is a "creditor."*]—A person who sells goods, other than necessaries, to an infant, & who has no enforceable claim for the price, is not a "creditor" within Criminal Code, s. 417.—R. *v.* RASH (1923), 41 Can. Crim. Cas. 215; 53 O. L. R. 245. —**CAN.**

PART XXXIV. SECT. 25, SUB-SECT. 1.

sc. *Sale of land.*]—An appeal from a conviction on a charge of conspiring to defraud affirmed. The accused induced one B. to agree to buy for $21,000 certain land, worth not more than $3,300, by representing to B. that another man had already taken an option to buy the land for $31,000. B. had never seen the land & knew nothing of its value. In pursuance of the scheme, the accused had given an option to one W. & introduced him to B. as a *bonâ fide* purchaser at the advanced price, when in fact he was but a dummy with whom it had been arranged that he should make a substantial payment on the purchase from B. practically out of B.'s own money, & then default on the contract. Appeal dismissed.—R. *v.* BURNS, [1931] 2 W. W. R. 58; 1 D. L. R. 914; 55 Can. C. C. 70; 25 Alta. L. R. 306. —**CAN.**

PART XXXIV. SECT. 26, SUB-SECT. 1.

—**B.**

sd. *Intentional wrongful injury.*]—To constitute the crime of malicious injury to property, all that is necessary is an intentional wrongful injury to another's property. Upon proof of the wrongful intention the ct. will presume malice, though that presumption may be rebutted.—R. *v.* MASHARIGN, [1924] App. D. 11.—**S. AF.**

PART XXXIV. SECT. 26, SUB-SECT. 6.

se. *Possession of explosive substance—Explosive Substances Act, s. 4—Meaning of "unlawfully" & "maliciously."*]—*Held :* the word "unlawfully" in Explosive Substances Act, s. 4, signifies "not for a lawful object," & the word "maliciously" means & implies an intention to do an act which is wrongful, to the detriment of another person.—DULA SINGH *v.* R. (1928), I. L. R. 9 Lah. 531.—**IND.**

PART XXXIV. SECT. 26, SUB-SECT. 17.

11,699 ii. ——.]—The fact that a stray bull is castrated, in accordance with a local custom among stock breeders to protect pure-bred stock, is not a defence to a prosecution under Criminal Code, s. 510 (B) (b), for maiming or wounding the stray bull.—R. *v.* ENGLAND (1925), 43 Can. Crim. Cas. 11; 19 Sask. L. R. 165; [1925] 1 W. W. R. 237.—**CAN.**

st. *What is "wilfully" killing.*]—A charge laid under Criminal Code, s. 537, of wilfully killing a silver black fox which had escaped from its cage was dismissed on the ground that the accused's shooting of the fox was not done "wilfully," within the meaning of that term in said section, but was justified to protect his property.—R. *v.* PETERSON (Sask.), [1928] 3 W. W. R. 516.—**CAN.**

PART XXXIV. SECT. 26, SUB-SECT. 20.

11. ——.]—The form of conviction should state the amount of injury done, although it should adjudge the whole penalty, including the amount to be applied according to law.—R. *v.* KRUTZEL, [1924] 1 D. L. R. 621; 1 W. W. R. 342; 41 Can. Crim. Cas. 279; 20 Alta. L. R. 19.—**CAN.**

PART XXXV. SECT. 2, SUB-SECT. 2.

11,762 i. *Ante-dating.*]—The ante-dating of a document is not a forgery, unless it has or could have operated to the prejudice of any one.—R. *v.* GOBIND SINGH (1926), I. L. R. 5 Pat. 573.—**IND.**

PART XXXV. SECT. 6, SUB-SECT. 9.

s. *Seal & stamps of Liquor Control Board.*]—R. *v.* MILLER (1931), 56 Can. C. C. 97.—**CAN.**

PART XXXV. SECT. 8, SUB-SECT. 1.

sz. *Uttere need not be actual forger.*]—BARR *v.* H.M. ADVOCATE, [1927] S. C. (J.) 51.—**SCOT.**

Part XXXVI.—Deceit by Fortune Telling, Witchcraft, Sleight of Hand, etc.

12,169a. —.] — The offence under Vagrancy Act, 1824 (c. 83), s. 4, of professing to tell fortunes is complete without any allegation or proof that deft. did not believe in the possession of the powers claimed Merely to tell fortunes is an offence in itself, whatever the state of mind of deft.—STONEHOUSE *v.* MASSON, [1921] 2 K. B. 818; 91 L. J. K. B. 93; 125 L. T. 463; 85 J. P. 167; 37 T. L. R. 621; 19 L. G. R. 477; 27 Cox, C. C. 23, D. C.

Annotation:—**Foll.** Irwin *v.* Barker (1925), 69 Sol. Jo. 589.

12,169b. —— ——.]—It is not necessary to prove a deceitful purpose or fraudulent intent as a condition precedent to a conviction under Vagrancy Act, 1824 (c. 83), s. 4, of a person professing to tell fortunes.—IRWIN *v.* BARKER (1925), 69 Sol. Jo. 589, D. C.

CONTEMPT OF COURT, ATTACHMENT AND COMMITTAL.

Part I.—Contempt of Court Generally.

1. *Add. Annotation :—As to* (2) & (3) **Apld.** *Re* William Thomas Shipping Co., Dillon (H. W.) & Sons, Ltd. *v.* The Co., *Re* Thomas (Sir Robert), [1930] 2 Ch. 368.

3. *Add. Annotation :*—**Reld.** Apted *v.* Apted & Bliss, [1930] P. 246.

Part III.—Jurisdiction to Commit or Fine for Contempt.

28. *Add. Annotation :*—**Consd.** R. *v.* Judge, *Ex p.* Isle of Ely Justices (1931), 100 L. J. K. B. 350.

43. *Add. Annotation :*—**Consd.** R. *v.* Judge, *Ex p* Isle of Ely Justices (1931), 100 L. J. K. B. 350.

46. *Add. Citations :—sub nom.* R. *v.* BROWNELL, 1 Ad. & El. 598; 3 L. J. M. C. 118; 110 E. R. 1335.

Add. Annotation :—**Folld.** R. *v.* Judge, *Ex p.* Isle of Ely Justices (1931), 100 L. J. K. B. 350.

46a. —— —— —— ——.]—The King's Bench Div. has no power to attach for contempt a witness who has disobeyed a *subpœna* from quarter sessions. A clear distinction still exists between contempt which consists in interfering with the administration of justice by acts done or writings published, & contempt which consists in interfering with an order or other process of the inferior cts.—R. *v.* JUDGE, *Ex p.* ISLE OF ELY JUSTICES, [1931] 2 K. B. 442; 100 L. J. K. B. 350; 144 L. T. 647; 95 J. P. 97; 47 T. L. R. 263; 75 Sol. Jo. 120; 29 L. G. R. 418, D. C.

49. *Add. Annotation :*—**Consd.** R. *v.* Judge, *Ex p.* Isle of Ely Justices (1931), 100 L. J. K. B. 350.

54. *Add. Annotation :*—**Consd.** R. *v.* Daily Herald Editor, etc., & Davidson, *Ex p.* Norwich (Bp.), R. *v.* Empire News Editor, etc., & Davidson, *Ex p.* Norwich (Bp.) (1932), 48 T. L. R. 253.

54a. **Consistory Court.**]—The publication of a statement tending to prejudice the fair hearing of a complaint preferred in a Consistory Ct. constitutes a contempt of that ct., & the K. B. Div. of the High Ct. has inherent jurisdiction to protect the Consistory Ct. by issuing a writ of attachment for contempt of ct. against the person or persons making the statement with a view to publication or publishing it or causing it to be published.—R. *v.* DAILY HERALD, EDITOR, PRINTERS & PUBLISHERS OF, *Ex p.* NORWICH (BP.), R. *v.* EMPIRE NEWS, EDITOR, PRINTERS & PUBLISHERS OF *v.* NORWICH (BP.), [1932] 2 K. B. 402; 101 L. J. K. B. 305; 146 L. T. 485; 48 T. L. R. 253; 76 Sol. Jo. 165, D. C.

Part IV.—Criminal Contempt.

98. *Add. Citation :—sub nom. Re* DAVIES, BUTSON *v.* DAVIES, 4 T. L. R. 580.

164a. ——.]—Observations on the distinction between legitimate criticism of a judge & such an imputation of unfairness & lack of impartiality as constitutes contempt of ct.—R. *v.* NEW STATESMAN (EDITOR), *Ex p.* PUBLIC PROSECUTIONS DIRECTOR (1928), 44 T. L. R. 301, D. C.

165a. ——.]—R. *v.* NEW STATESMAN *Ex p.* PUBLIC PROSECUTIONS DIRECTOR, No. 164a, *ante*.

166. *Add. Annotations :—As to* (1) **Apld.** R. *v.* New Statesman, *Ex p.* Public Prosecutions Director (1928), 44 T. L. R. 301. *As to* (2) **Apld.** R. *v.* New Statesman, *Ex p.* Public Prosecutions Director (1928), 44 T. L. R. 301.

PART III. SECT. 2.

h i. ——.]—Under Letters Patent of the Patna High Ct., clause 28, a Div. Bench has power to issue a rule to show cause against committal for contempt. — *Re* MURLI MANOHAR PRASAD (1928), I. L. R. 8 Pat. 323.—**IND.**

k i. —— *Irish Free State.*]—The High Ct. of Justice of the Irish Free State has jurisdiction to commit for contempt of ct.—A.-G. *v.* O'KELLY, [1928] I. R. 308.—**IR.**

sb. *Contempt of inferior courts.*]—No power to punish for contempt of an inferior ct. now exists independently of the Indian Penal Code & the Contempt of Courts Act.—MAHANT SHANTANAND GIR *v.* MAHANT BASUDEVANAND GIR (1930), I. L. R. 52 All. 619.—**IND.**

PART IV. SECT. 1.

97 iv. —— ——.]—The phrase "contempt of ct." does not in the least describe the true nature of the class of offence committed, viz., interfering with the administration of the law in impeding & preventing the course of justice. Imprisonment for breach of interdict being in vindication of public law, it must not be assumed that an order for release will follow upon an apology & promise of obedience to the orders of the ct., even though such apology is accompanied by a statement on behalf of complainer that he no longer requires the protection which the original interdict gave him.—JOHNSON *v.* GRANT, [1923] S. C. 789.—**SCOT.**

PART IV. SECT. 2, SUB-SECT. 10.

sd. *Disposal of subject-matter of action.*]—There is no rule of law or practice which prevents a litigant from disposing of property merely because it is the subject-matter of the action. Unless some proceeding prescribed for the preservation of the property *pendente lite* is availed of, a party disposing of the property after the action has been brought cannot be said to be guilty of contempt of ct.—AUSTMAN & ODDSON *v.* BJARNASON, [1932] 2 W. W. R. 20.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 1.

sp. *Sending letter to judge containing offensive references to judgment.*]—*Re* MILLER (1921), 54 N. S. R. 529.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 2.

166 ii. ——.]—A newspaper in the course of an article called a judge "sycophantic," & accused him of having decided a case not according to the dictates of justice but in order to please others:—*Held :* (1) the publication of an article referring to a case which had been decided might amount to contempt; (2) an article scandalising a ct. or judge was a contempt of ct.—R. *v.* SAYYAD HABIB (1925), I. L. R. 6 Lah. 529.—**IND.**

167. *Add. Annotation:*—**Refd.** R. *v.* People, *Ex p.* Hobbs (1925), 69 Sol. Jo. 494.

177a. —— —— **Poster implying that charge amounts to murder.**]—R. *v.* DAILY HERALD (EDITOR, PRINTERS & PUBLISHERS), *Ex p.* ROUSE (1931), 75 Sol. Jo. 119.

179. *Add. Annotations:*—**Refd.** R. *v.* Evening Standard, *Ex p.* Public Prosecutions Director. R. *v.* Manchester Guardian, *Ex p.* Same, R. *v.* Daily Express, *Ex p.* Same (1924), 40 T. L. R. 833; R. *v.* Daily Mirror, *Ex p.* Smith, [1927] 1 K. B. 845.

179a. —— —— ——.]—R. *v.* "SURREY COMET" (EDITOR, PRINTER & PUBLISHER), *Ex p.* BALDWIN (1931), 75 Sol. Jo. 311.

179b. —— —— **Results of investigations of private detectives.**]—When an accused person is under arrest on a criminal charge, it is contempt of ct. for the persons responsible for conducting a newspaper to employ amateur detectives for the purpose of investigating the facts of the alleged crime & to publish the results of that investigation.—R. *v.* EVENING STANDARD, *Ex p.* PUBLIC PROSECUTIONS DIRECTOR, R. *v.* MANCHESTER GUARDIAN, *Ex p.* SAME, R. *v.* DAILY EXPRESS, *Ex p.* SAME (1924), 40 T. L. R. 833, D. C.

180a. **Charge to grand jury.**]—A charge to the grand jury delivered by the Recorder of London in a place to which the public & reporters are admitted is a public judicial proceeding in a ct. of justice, of which newspapers have a right to publish a fair & accurate report.

Consideration of the question whether or not a report published in a newspaper of a charge by the Recorder of London to the grand jury was a fair & accurate report & should be regarded as privileged.—R. *v.* EVENING NEWS, *Ex p.* HOBBS, [1925] 2 K. B. 158; 94 L. J. K. B. 511; 132 L. T. 767; 41 T. L. R. 291; 27 Cox, C. C. 764, D. C.

180b. **Anticipation of defence—Similar statement made by accused before arrest.**]—When appct. was under remand on a charge of murdering his son, defts. published, in addition to the formal evidence which had been given before the magistrates, the following statement: "It was suggested that he met his death in an accidental manner through the family dog, Prince, knocking over a fully loaded double-barrelled gun left against the barn door." On an application to commit defts. for contempt of ct. in publishing what purported to be a statement of the defence which would be put forward & so prejudicing the defence, it appeared that a similar statement had been made by the accused man himself to the police before his arrest:—*Held:* in the circumstances the statement complained of did not come within the mischief against which proceedings for contempt were directed.—R. *v.* NEWS OF THE WORLD, EDITOR, PRINTERS & PUBLISHERS, *Ex p.* KITCHEN (1932), 48 T. L. R. 234; 76 Sol. Jo. 147, D. C.

182a. **Publication of statement that money paid into court—Libel action against newspaper—Libel Act, 1845 (c. 75), s. 2.**]—(1) The amount of a payment into ct. by deft. under Libel Act, 1845 (c. 75), s. 2, amending Libel Act, 1843 (c. 96), s. 2, is not to be communicated to the jury, &, where money has been so paid in, it is contempt of ct. to publish before the trial a statement that a particular sum has been paid by deft. to pltf.'s solr., inasmuch as the publication of such a statement is calculated to prejudice the fair trial of the action.

(2) In such a case the proper procedure to be adopted by deft., who alleges that pending the trial of the action pltf. has been guilty of contempt of court, is not to apply for a rule *nisi* for attachment, but to proceed by notice of motion in the action.—R. *v.* WEALDSTONE NEWS & HARROW NEWS (EDITOR, PRINTER & PUBLISHER), HARLEY *v.* SHOLL (1925), 41 T. L. R. 508; 69 Sol. Jo. 642, D. C.

190. *Add. Annotations:*—*As to* (1) **Apld.** R. *v.* Wealdstone News & Harrow News, Harley *v.* Sholl (1925), 41 T. L. R. 508. *As to* (1) **Consd.** *Re* William Thomas Shipping Co., Dillon (H. W.) & Sons, Ltd. *v.* The Co., *Re* Thomas (Sir Robert), [1930] 2 Ch. 368; R. *v.* Daily Herald, *Ex p.* Rouse (1931), 75 Sol. Jo. 119. **Apld.** R. *v.* News of the World, Editor, Printers & Publishers, *Ex p.* Kitchen (1932), 48 T. L. R. 234. **Refd.** R. *v.* Evening Standard, *Ex p.* Public Prosecutions Director, R. *v.* Manchester Guardian, *Ex p.* Same, R. *v.* Daily Express, *Ex p.* Same (1924), 40 T. L. R. 833; R. *v.* People, *Ex p.* Hobbs (1925), 69 Sol. Jo. 494; R. *v.* Daily Mirror, *Ex p.* Smith, [1927] 1 K. B. 845; R. *v.* Daily Mail, *Ex p.* Factor (1928), 44 T. L. R. 303. *As to* (2) **Consd.** *Re* William Thomas Shipping Co., Dillon (H. W.) & Sons, Ltd. *v.* The Co., *Re* Thomas [1930] 2 Ch. 368.

192a. —— ——.]—A publication made with the clear intention of prejudicing the fair trial of an issue pending before a ct. is obviously a contempt of ct., & will be punished as such. But where the ct. is satisfied that there was no such intention & yet the publication might prejudice a pending trial, the ct. will, in considering whether a writ of attachment should issue, take into account the circumstances of the case, & no attachment will be granted unless (*inter alia*) the ct. is satisfied that the pending proceeding is a genuine proceeding, brought & intended to be prosecuted to effect its avowed purpose.—R. *v.* DAILY MAIL (EDITOR), *Ex p.* FACTOR (1928), 44 T. L. R. 303, D. C.

PART IV. SECT. 3, SUB-SECT. 3.—A. (a).

1 i. —— ——.]—*Re* SMITH'S NEWSPAPERS, LTD., *Ex p.* HIGGS (1927), 28 S. R. N. S. W. 85.—**AUS.**

170 i. —— *No proceedings pending.*]—Applt. was fined for contempt in respect of matter published by him:—*Held:* (1) there being no attack on any ct. or its members, there could be no contempt of ct. in respect of anything tending to obstruct the course of justice in the absence of any pending proceedings to which the published matter could apply; (2) there was nothing in the published matter which was calculated to prejudice the course of justice; (3) the order must be set aside.—PORTER *v.* R., *Ex p.* CHIN MAN YEE (1926), 37 C. L. R. 433.—**AUS.**

178 i. *Prisoner committed for trial—Antecedent character of prisoner.*]—Appct. was charged with breaking & entering with intent, & on the morning of the hearing of the proceedings in the police ct. & the subsequent morning an account of the alleged crime & other offences apparently connected therewith was published in a newspaper. Appct. was committed for trial at the criminal sessions. The articles contained statements that the accused was concerned in the commission of crimes other than that with which he was charged, & that the arrest of the accused, with another man, was a "clean-up" of many recent burglaries:—*Held:* these statements might prejudice the fair trial of the accused, & constituted a contempt of ct.—*Re* THOMAS (1928), S. A. S. R. 210.—**AUS.**

200. *Add. Annotations :*—**Refd.** R. *v.* Daily Mail, *Ex p.* Factor (1928), 44 T. L. R. 303; *Re* William Thomas Shipping Co., Dillon (H. W.) & Sons, Ltd. *v.* The Co., *Re* Thomas (Sir Robert), [1930] 2 Ch. 368.

218. *Add. Annotation :* — **Consd.** *Re* William Thomas Shipping Co., Dillon (H. W.) & Sons, Ltd. *v.* The Co., *Re* Thomas (Sir Robert), [1930] 2 Ch. 368.

224a. —— —— **Appointment of receiver for debenture holders.**]—Contempt of ct. may include conduct which, while it cannot directly influence a judge's mind, is calculated to affect the conduct of parties to proceedings, & the ct.'s jurisdiction to commit for contempt is not confined to cases in which its orders may directly be affected.

On the application of pltfs. in a debenture holders' action, a receiver of the shipping co. was appointed on the ground of jeopardy. A director of a co. which managed the shipping co.'s business, who was also a guarantor of debentures issued by the shipping co., authorised newspapers to publish interviews in which he adversely criticized the conduct of pltfs. in having obtained the appointment of a receiver, & he further stated that by so doing they had "smashed the goodwill & organisation of the business in a day" & that "no one in shipping circles can understand this line of conduct." The interviews did not state that the appointment was on the ground of jeopardy or that, as was the fact, the co. could not continue to carry on business unless money was immediately found. On a motion by pltfs. for an order to commit the director, & also the managing editor & the owners & publishers of the newspapers :—*Held :* the publication of injurious misrepresentations concerning parties to proceedings in relation to those proceedings may amount to contempt of ct., because it may cause those parties to discontinue or to compromise, & because it may deter persons with good causes of action from coming to the ct., & is thus likely to affect the course of justice.—*Re* William Thomas Shipping Co., Ltd., Dillon (H. W.) & Sons, Ltd. *v.* The Co., *Re* Thomas (Sir Robert), [1930] 2 Ch. 368; 99 L. J. Ch. 560; 144 L. T. 104.

224b. —— —— **Appeal against Clearance Order.**]—*Re* South Shields (Thames Street) Clearance Order, 1931 (1932), 173 L. T. Jo. 76, D. C.

234. *Add. Annotation :*—**Refd.** R. *v.* Daily Mail, *Ex p.* Factor (1928), 44 T. L. R. 303.

236. *Add. Annotation :*—**Dbtd.** R. *v.* Payne, [1896] 1 Q. B. 577. In my opinion, in some instances, the cts. have gone rather too far (Lord Russell, C.J.).

274. *Add. Annotation :*—**Refd.** *Re* William Thomas Shipping Co., Dillon (H. W.) & Sons, Ltd. *v.* The Co., *Re* Thomas (Sir Robert), [1930] 2 Ch. 368.

283a. **Photograph of prisoner—Identity in issue.**]—It is a contempt of ct. in a newspaper to publish the photograph of a person charged with a criminal offence, where it is reasonably clear that the question of the identity of accused with the criminal has arisen or may arise, & such publication is calculated to prejudice a fair trial.—R. *v.* Daily Mirror, *Ex p.* Smith, [1927] 1 K. B. 845; *sub nom.* R. *v.* "Daily Mirror" (Editor & Proprietors), R. *v.* "Daily Mail" (Editor & Proprietors), *Ex p.* Smith, 96 L. J. K. B. 352; 136 L. T. 539; 43 T. L. R. 254; 28 Cox, C. C. 324.

298a. **Advertisement misrepresenting result of proceedings.**]—Gillette Safety Razor Co. *v.* Gamage (A. W.), Ltd. (1906), 24 R. P. C. 1.

Annotation :—**Refd.** St. Mungo Manufacturing Co. *v.* Hutchison Main (1908), 25 R. P. C. 356.

301. *Add. Annotations :*—*As to* (1) **Refd.** Greenway *v.* A.-G. (1927), 44 T. L. R. 124. *As to* (2) **Consd.** *Re* A. B.'s Petn. (1927), 97 L. J. P. 104. *As to* (6) **Refd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579.

341. *Add. Annotation :*—**N.F.** R. *v.* Jones, *Ex p.* McVittie, [1931] 1 K. B. 664.

341a. —— ——.]—Pltf. obtained judgment in a county ct. against deft. for a sum of money & costs, & an appeal to the Div. Ct. by deft. was dismissed with costs. Pltf.'s solr. made various but futile efforts to obtain the fruits of the judgment. Deft. disobeyed a bkpcy. notice & an order for payment of the judgment debt & costs by instalments. Several judgment summonses were obtained against deft., but deft. evaded service of them. Eventually pltf.'s solr. served deft. with a judgment summons within the precincts of a ct. of justice where deft. was waiting for a case, in which he was pltf., to be called on. Deft. applied for a writ of attachment against pltf.'s solr. for contempt of ct. in so doing :—*Held :* in the circum-

PART IV. SECT. 3, SUB-SECT. 3.—A. (d) i.

193 ii. —— ——.]—R. *v.* McInroy, *Re* Whitkside (1915), 32 W. L. R. 764; 9 W. W. R. 846.—**CAN.**

193 iii. —— ——.]—Meriden Britannia Co., Ltd. *v.* Walters, *Re* Lewis (1915), 9 O. W. N. 87; 34 O. L. R. [illegible]

193 iv. ——.]—The publication of comments on a case pending trial in a ct. amounts to contempt of ct., if the comments are such as are likely to prejudice the administration of justice in the case.—R. *v.* Maung Tin Saw (1927), I. L. R. 6 Ran. 39.—**IND.**

PART IV. SECT. 3, SUB-SECT. 3.—A. (d) iv.

sq. *General rule.*]—A newspaper may not, in the guise of reporting public judicial proceedings, indicate the writer's own opinion of the demeanour of a witness & so comment on that demeanour.—A.-G. *v.* Davidson, [1925] N. Z. L. R. 849.—**N.Z.**

PART IV. SECT. 3, SUB-SECT. 3.—A. (e).

• i. —— *Liability of printer.*]—A printer cannot escape liability, by alleging a contract with the owner of the press that he was not to be responsible for the contents of the publications.—R. *v.* Maung Tin Saw (1927), I. L. R. 6 Ran. 39.—**IND.**

PART IV. SECT. 3, SUB-SECT. 3.—C.

sm. *Will.*]—The publication, as an advertisement, by a newspaper of the copy of a will, with the knowledge that the will was being propounded by one party & impugned by the other in a pending suit, the object of the publication obviously being to create an atmosphere in favour of the will & adverse to the contesting party by making the public believe in the existence & genuineness of the will, was calculated to interfere with the fair administration of justice & amounted to a contempt of ct.—Guru Charan Prasad *v.* Baburao Vishnu Pararkar (1931), I. L. R. 53 All. 712.—**IND.**

PART IV. SECT. 3, SUB-SECT. 4.

sr. *Necessity for interference with administration of justice.*]—It is contempt of ct. to publish an article in a newspaper commenting on the proceedings in a pending criminal prosecution or civil action; but the summary jurisdiction possessed by a High Ct., to punish for contempt, ought only to be exercised when it is probable that the publication will substantially interfere with the due administration of justice.—The Government Advocate, Burma *v.* Saya Sein (1929), I. L. R. 7 Ran. 344.—**IND.**

stances, no contempt had been committed & the rule must be discharged.

The rule laid down in *Cole* v. *Hawkins*, No. 341, that the serving of process upon a party attending his cause in ct. was a contempt of ct. is now obsolete.—R. *v.* JONES, *Ex p.* MCVITTIE, [1931] 1 K. B. 664; 100 L. J. K. B. 193; 144 L. T. 597.

351a. **Dissuading witness from giving evidence.**]—The ct. refused to grant an attachment against deft. for an attempt to persuade a material witness for pltf. not to give evidence at the trial, it not being shown that the witness was prevented from being subpœnaed by means of deft.'s interference.—SCHLESINGER *v.* FLERSHEIM (1845), 2 Dow. & L. 737; 14 L. J. Q. B. 97; 4 L. T. O. S. 340; 9 Jur. 282.

377. *Add. Annotation :*—**Refd.** Apted *v.* Apted & Bliss, [1930] P. 246.

378. *Add. Annotation :*—**Refd.** Apted *v.* Apted & Bliss, [1930] P. 246.

386. *Add. Annotation :*—**Refd.** Apted *v.* Apted & Bliss, [1930] P. 246.

389. *Add. Annotation :*—**Refd.** Apted *v.* Apted & Bliss, [1930] P. 246.

393a. **Exercise of discretion sought by petitioner in divorce—Effect of suppression of facts or false statement.**]—A party to a divorce proceeding who is asking to have the discretion of the ct. exercised, & who in doing so acts in such a manner as to obstruct or divert the course of justice is guilty of a contempt of ct. & liable to its consequences.—APTED *v.* APTED & BLISS, [1930] P. 246; 99 L. J. P. 73; 143 L. T. 353; 46 T. L. R. 456; 74 Sol. Jo. 338.

Part V.—Contempt in Procedure.

406a. -.]—OWEN *v.* PRITCHARD, [1876] W. N. 147 3 Char. Pr. Cas. 367.

406b. -.]—RANSOM *v.* BOYD, [1877] W. N. 236.

429a. - **Consent order—Breach of scheduled terms.**]—There is a distinction between a case where there is in the body of an order an express direction or undertaking, & a case where the ct. is merely staying an action on terms which the parties have agreed, & only keeping the action alive for the purpose of enforcing those terms. In the latter case the terms are not an order of the ct. capable of being enforced by proceedings for contempt, but must be enforced by an action for specific performance of the terms or for an injunction to restrain breach of the terms, followed by proceedings for contempt in the event of further breach, while in the former case contempt proceedings can be launched forthwith on breach.—DASHWOOD *v.* DASHWOOD (1927), 71 Sol. Jo. 911.

432. Add the following paragraph :—

The proper course was for an order to be made, under R. S. C., Ord. 37, r. 13, before the writ of attachment was issued.

484. *Add. Annotation :*—**Consd.** Cotton *v.* Heyl, [1930] 1 Ch. 510.

Part VI.—Attachment and Committal.

487. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

528a. **Must be order to do an act.**]—Pltf. co., which had transferred certain shares in another co. to deft. co. upon certain terms, brought an action against deft. co. in order to recover a certain proportion of those shares, & obtained an order against deft. co. for the "return" of those shares within fourteen days of the date of the order. That order was not served upon deft. co. or its directors until the lapse of six weeks from the date of the order. The copy of the order which was served upon deft. co. & upon its directors did not have indorsed upon it, as required by R. S. C., Ord. 41, r. 5, a memorandum stating the penal consequences of disobedience to the order. Deft. co. having failed to

PART IV. SECT. 5, SUB-SECT. 4.

sm. *Barristers—Slander tending to embarrass conduct of case.*]—Aspersions cast upon an advocate, with reference to the conduct of his case, which tends to embarrass him in the further conduct of his client's case is contempt of ct.—ANANTALAL SINGHA *v.* WATSON (1930), I. L. R. 58 Calc. 884.—**IND.**

PART V. SECT. 1, SUB-SECT. 1.—B. (a).

st. *Discretion of court to commit—Party unable to obey order.*]—Where a party could neither be said to have refused nor neglected to comply with an order of the ct. :—*Held :* he was not guilty of contempt.—R. *v.* OTTY, *Ex p.* ROBERTS, R. *v.* WHITE, *Ex p.* ROBERTS (1922), 50 N. B. R. 401, 411. —**CAN.**

PART V. SECT. 2, SUB-SECT. 3.—K.

sw. *To hand over papers—By one solicitor to another—Offer to comply subject to condition.*]—A solr. was ordered by the ct. to hand over papers to another solr. & failed to do so :—*Held :* guilty of contempt.

An offer was made to hand over subject to certain specified conditions : —*Held :* a refusal of this offer was justified.—*Re* BRYANT, ISARD & CO., *Ex p.* LANGLEY, [1924] 1 D. L. R. 49.—**CAN.**

sx. *To refrain from interference with business.*]—CUMBERLAND RAILWAY & COAL CO. *v.* MCDOUGALL (N. S.) (1911), 9 E. L. R. 289.—**CAN.**

sy. *To re-invest money—In purchase of house—Registration in specified names.*]—An order made in a divorce action commanded resp., in the event of his selling his residue, to reinvest the purchase-moneys "immediately" in the purchase of a new home & to register it in the joint names of the official guardian & resp. in trust for his children :—*Held :* the failure of resp. to comply with the terms of the order as to the registration of the new home in which he had invested the proceeds of the sale of the home referred to in the order constituted a contempt of ct. which under its inherent powers the ct. could punish by committal, although the order was made when the applicable Divorce rules did not contain any provision similar to sect. 79 or sect. 97 of the present Divorce rules.—MIDGLEY *v.* MIDGLEY (B. C.), [1929] 3 W. W. R. 121.—**CAN.**

comply with the order pltf. co. sought to enforce the order by attachment of two of the directors of deft. co. under R. S. C., Ord. 41, r. 31:—*Held:* (1) the judgment or order for the "return" of the shares was not a judgment or order to do an act & therefore could not be enforced by attachment; (2) the order was unenforceable also, because it was not served on deft. co. or its directors until after the expiration of the time limited by the order for the "return" of the shares; (3) the order could not be enforced by attachment of the directors of deft. co., because they had not been served with a copy of the order indorsed with a memorandum as to the penal consequences of disobedience, as required by R. S. C., Ord. 41, r. 5.—IBERIAN TRUST, LTD. *v.* FOUNDERS TRUST & INVESTMENT CO., LTD., [1932] 2 K. B. 87; 101 L. J. K. B. 701; 147 L. T. 399; 48 T. L. R. 292; 76 Sol. Jo. 249.

536. *Add. Annotation:—As to* (2) **Consd.** Burrowes *v.* Burrowes (1929), 141 L. T. 201.

537. *Add. Annotation:*—**Refd.** Iberian Trust, Ltd. *v.* Founders Trust & Investment Co. (1932), 48 T. L. R. 292.

564. *Add. Annotation:*—**Refd.** Iberian Trust, Ltd. *v.* Founders Trust & Investment Co. (1932), 48 T. L. R. 292.

607. *Add. Annotation:*—**Refd.** Capron *v.* Capron, [1927] P. 243.

631. *Add. Annotation:*—**Refd.** Iberian Trust, Ltd. *v.* Founders Trust & Investment Co. (1932), 48 T. L. R. 292.

631a. —— ——.]—IBERIAN TRUST, LTD. *v.* FOUNDERS TRUST & INVESTMENT CO., LTD., No. 528a, *ante*.

689a. —— **Not enforceable by attachment.**]—IBERIAN TRUST, LTD. *v.* FOUNDERS TRUST & INVESTMENT CO., LTD., No. 528a, *ante*.

698. *Citations:*—For "3 Bing. 223; 11 Moore, C. P. 55; 4 L. J. O. S. C. P. 57; 130 E. R. 498" read "3 Bing. 223; 130 E. R. 498; *sub nom.* THORPE *v.* GISBOURNE, 11 Moore, C. P. 55; 4 L. J. O. S. C. P. 57."

709. *Add. Annotation:*—**Folld.** R. *v.* Wealdstone News & Harrow News, Harley *v.* Sholl (1925), 41 T. L. R. 508.

709a. ——.]—R. *v.* WEALDSTONE NEWS & HARROW NEWS (EDITOR, PRINTER & PUBLISHER), HARLEY *v.* SHOLL, No. 182a, *ante*.

710. *Add. Annotation:—As to* (1) **Refd.** Shrager *v.* Dighton, [1924] 1 K. B. 274

776a. Substituted service—When ordered.]—*Re* A SOLICITOR, [1892] W. N. 22; 36 Sol. Jo. 271.

781a. On former clerk—At place where solicitor's name on door.]—*Held:* the service was not sufficient.—BRAGG *v.* HATCHARD (1858), 28 L. J. Ex. 35; *sub nom. Re* BRAGG & HATCHARD, 32 L. T. O. S. 132.

894. *Add. Annotation:—As to* (1) **Refd.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

SUB-SECT. 7.—SECOND ORDER.

(Vol. XVI., p. 75.)

926a. First not executed—Whether second irregular.]—It is no objection to the regularity of a writ of attachment that another similar writ has previously issued against the same party, but which has not been acted on.—ANDREWS *v.* WALTON (1845), 1 Ph. 619; 41 E. R. 768.

931a. —— **Irregularity of attachment.**]—*Re* BEVAN & GIRLING (1863), 12 W. R. 196, L. JJ.

950a. Accused already in custody—Need not be brought into court.]—It is not necessary to bring up a party who is in custody for non-payment of costs.—OLDFIELD *v.* COBBETT (1849), 12 Beav. 91; 50 E. R. 995.

1039a. —— ——.]—After an order for a writ of attachment had been made against a solr. in default further time was given by his client, the creditor, on part payment being made. On further default the writ was executed, & the solr. imprisoned:—*Held:* the right to enforce the writ had not been waived.—*Re* A SOLICITOR (1895), 64 L. J. Ch. 894.

1071a. Deposit of permit or passport in court—Imprisonment for taking infant out of jurisdiction.]—ADAMI *v.* ADAMI (1929), 73 Sol. Jo. 557.

PART VI. SECT 5, SUB-SECT. 3.—B. (a) ii.

574 i. *General rule—Notice sufficient without service.*]—If a person enjoined by a prohibitory injunction becomes aware without personal service of the existence of the order & nevertheless commits a fault, he is just as liable to attachment as if he had been personally served.—ELLIOTT *v.* APPLETON (1923), 19 Tas. L. R. 20.—**AUS.**

PART VI. SECT. 5, SUB-SECT. 5.—C.

697 iv. —— ——.]—On an application by notice of motion for committal for an alleged contempt of ct. by publishing an article in a newspaper, it was shown that a space of over three months had elapsed between the publication & the motion:—*Held:* the jurisdiction of the ct. should not be exercised on notice of motion.—R. *v.* JOYCE, *Ex p.* PORT PIRIE CORPN., [1930] S. A. S. R. 56.—**AUS.**

PART VI. SECT. 6, SUB-SECT. 4.

sz. *Direction to issue writ of attachment may be to clerk of Supreme Court—Writ to be entitled in Supreme Court.*]—*Re* DROUGHT AREA RELIEF ACT, SNOWDEN *v.* BAKER, [1922] 3 W. W. R. 1002.—**CAN.**

PART VI SECT. 7, SUB-SECT. 3.

974 i. *Attachment—Whether sheriff can take bail—Before return of writ.*]—LANE *v.* KINGSMILL (1850), 6 U. C. R. 579.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 2.—A.

h i. —— *Not breach of undertaking by solicitor.*]—*Re* KEAN & BIRD, [1927] 4 D. L. R. 561; [1927] 3 W. W. R. 369; 48 Can. Crim. Cas. 363.—**CAN.**

PART VI. SECT. 10, SUB-SECT. 6.—A.

b i. ——.]—HARRIS *v.* MYERS (1864), 1 Ch. Ch. 229.—**CAN.**

PART VII. SECT 1, SUB-SECT. 5.

1144 iii. —— *By filing objections to report of official referee.*]—In a case where a deft., having been peremptorily ordered by the ct. to file her accounts before the official referee, failed to do so, but subsequently wanted to file her exceptions to the report of the referee:—*Held:* she could do so even though she continued to be in contempt, confining herself strictly to the defence of her rights.—CHANDRA DAS *v.* RASESWARI CHAUDHURANI (1928), I. L. R. 55 Calc. 1110.—**IND.**

COURTS.

Part I.—What is a Court.

2. *Add. Annotations :*—**Refd.** Collins *v.* Whiteway, [1927] 2 K. B. 378; Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579.

3. *Add. Annotations :*—**Consd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579. **Refd.** Collins *v.* Whiteway, [1927] 2 K. B. 378.

5. *Add. Annotations :*—**Consd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579. **Refd.** R. *v.* Bath Compensation Authority, [1925] 1 K. B. 685; Collins *v.* Whiteway, [1927] 2 K. B. 378.

6. *Add. Annotations :* — **Refd.** Frome United Breweries Co. *v.* Bath JJ., [1926] A. C. 586; R. *v.* Leicester JJ., *Ex p.* Allbrighton, [1927] 1 K. B. 557.

9. *Add. Annotation :*—**Refd.** Frome United Breweries Co. *v.* Bath JJ., [1926] A. C. 586.

10. *Add. Annotations :*—**Consd.** R. *v.* Bath Compensation Authority, [1925] 1 K. B. 685. **Apld.** R. *v.* London County Council, *Ex p.* Entertainments Protection Assocn., Ltd., [1931] 2 K. B. 215. **Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171; R. *v.* Sheffield JJ., *Ex p.* Rawson (1927), 138 L. T. 234.

11. *Add. Annotations :*—**Consd.** Veal *v.* Heard (1930), 46 T. L. R. 448. **Refd.** Bottomley *v.* West Derby Assessment Committee, etc., etc. (1931), 47 T. L. R. 468.

11a. —— **Assessment Committee.**]—It may be that, like some kinds of licensing justices, the Assessment Committee is not a " court "; it does not hear evidence on oath, & has no particular rules of procedure, though it acts under a statutory duty & authority (SCRUTTON, L.J.).—BOTTOMLEY *v.* WEST DERBY ASSESSMENT COMMITTEE, MERSEY DOCKS & HARBOUR BOARD *v.* WEST DERBY ASSESSMENT COMMITTEE, BOTTOMLEY *v.* MERSEY DOCKS & HARBOUR BOARD, BOTTOMLEY *v.* LIVERPOOL GRAIN STORAGE & TRANSIT CO., LTD., [1932] 1 K. B. 40; 145 L. T. 592; 95 J. P. 186; 47 T. L. R. 468; 29 L. G. R. 576, C. A.

15. *Add. Annotation :*—**Consd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579.

17a. **Court of referees—Under Unemployment Insurance Act, 1920 (c. 30).**]—*Held :* a ct. discharging administrative duties only.—COLLINS *v.* WHITEWAY (HENRY) & CO., [1927] 2 K. B. 378; 96 L. J. K. B. 790; 137 L. T. 297; 43 T. L. R. 532.

Annotation :—**Consd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579.

17b. **Matters for consideration.**]—(1) A tribunal is not necessarily a ct. in the strict sense of exercising judicial power because it gives a final decision; (2) nor because it hears witnesses on oath; (3) nor because two or more contending parties appear before it between whom it has to decide; (4) nor because it gives decisions which affect the rights of subjects; (5) nor because there is an appeal to a ct.; (6) nor because it is a body to which a matter is referred by another body (*per* CUR.).—SHELL CO. OF AUSTRALIA, LTD. *v.* FEDERAL COMR. OF TAXATION, [1931] A. C. 275; 100 L. J. P. C. 55; 144 L. T. 421.

Part IV.—Jurisdiction.

22a. **Death of judge during trial—Jurisdiction of another judge to continue hearing.**]—*Semble :* a judge has no jurisdiction to continue the hearing of a case, in which witnesses have been called in ct. in the course of a trial before a jury & another judge.—COLESHILL *v.* MANCHESTER CORPN., [1928] 1 K. B. 776; 97 L. J. K. B. 229; 138 L. T. 537; 92 J. P. 37; 44 T. L. R. 258; 26 L. G. R. 124, C. A.

Annotation :—**Distd.** British Reinforced Concrete Engineering Co. *v.* London & North Eastern Ry. Co. (1928), 20 Ry. & Can. Tr. Cas. 78.

22b. —— ——.]—Where during proceedings without a jury, after some of the witnesses have been called, the presiding judge dies, another judge, if there is no conflict of evidence, may at the request of the parties preside at the continuation of the hearing, after reading the shorthand notes of the evidence, & need not have the witnesses recalled.—*Re* BRITISH REINFORCED CONCRETE ENGINEERING CO., LTD.'S APPLICATION (1929), 45 T. L. R. 186; 20 Ry. & Can. Tr. Cas. 78.

22c. **Retirement of judge after judgment reserved—Judgment read by consent.**]—HALLAM *v.* HALLAM (1930), 47 T. L. R. 207; 75 Sol. Jo. 157.

22d. **Court with local jurisdiction—Acts to be done within jurisdiction—In absence of contrary intention.**]—Where an Act of Parliament establishes a ct. for a particular part of the United Kingdom, the true construction of it is, that everything which is to be done under the authority of the ct. is to be done within the jurisdiction of the ct., unless the Act either in express terms or by necessary implication says that it may be done out of the jurisdiction.—*Re* O'LOGHLEN, *Ex p.*

PART I.

sa. *Not income tax board of appeal.*]—A board of appeal created under Income Tax Assessment Act, 1922-1923, s. 41, is not a High Ct. or a federal ct.—BRITISH IMPERIAL OIL CO., LTD. *v.* FEDERAL COMR. OF TAXATION (1925), 35 C. L. R. 422; 31 Argus L. R. 129.—AUS.

sb. *Not Medical Council of Physicians.*]—The Medical Council of Physicians & Surgeons of Saskatchewan acting under Medical Profession Act, R. S. S., 1920 (c. 135), s. 40, is not a ct.—HUNT *v.* COLLEGE OF PHYSICIANS & SURGEONS OF SASKATCHEWAN, [1925] 4 D. L. R. 834; [1925] 3 W. W. R. 758.—CAN.

(1871), 6 Ch. App. 406; 40 L. J. Bcy. 28; 23 L. T. 878; 19 W. R. 459, L. JJ.

Annotation:—**Refd.** *Re* Morton, *Ex p.* Robertson (1875), L. R. 20 Eq. 733.

25. *Add. Annotation:*—**Consd.** Sassoon *v.* Graham & Oriental Navigation Co. (1925), 133 L. T. 805.

30. *Add. Annotation:*—**Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

33a. **Will not try hypothetical case.**]—It is not the function of a ct. of law to advise parties as to what would be their rights under a hypothetical state of facts (LORD LOREBURN, C.).—GLASGOW NAVIGATION CO. *v.* IRON ORE CO., [1910] A. C. 293; 79 L. J. P. C. 83; 102 L. T. 435; 11 Asp. M. L. C. 387, H. L.

33b. **Will not decide academical question.**]—TINDALL *v.* WRIGHT (1922), 127 L. T. 149; 86 J. P. 108; 38 T. L. R. 521; 66 Sol. Jo. 524; 27 Cox, C. C. 212, D. C.

35. *Add. Annotations:*—**Refd.** Duff Development Co. *v.* Kelantan Government, [1923] 1 Ch. 385; Compania Mercantil Argentina *v.* United States Shipping Board (1924), 93 L. J. K. B. 816; Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797.

37. *Add. Annotation:*—**Consd.** The Fagernes, [1926] P. 185.

37a. —— **Waters within fauces terrae.**]—Defts., an Italian co., moved to set aside an order for service of notice of a writ *in personam* upon them in Italy, in respect of a collision between their vessel, which sank, & pltfs.' vessel in the Bristol Channel some 10½ or 12½ miles from the English coast & 9½ or 7½ miles from the Welsh coast according to the respective cases. The ct. was informed by the A.-G. that he was instructed by the Secretary of State for Home Affairs that the spot where the collision was alleged to have occurred was not within the limits to which the territorial sovereignty of His Majesty extended:—*Held:* having regard to the statement of the A.-G. (*see* CONSTITUTIONAL LAW, No. 136a, *ante*), the place where the collision took place was not within the jurisdiction of the High Ct., & the order for service of notice of the writ on defts. in Italy must be set aside.—THE FAGERNES, [1927] P. 311; 96 L. J. P. 183; 138 L. T. 30; 43 T. L. R. 746; 17 Asp. M. L. C. 326; *sub nom.* THE FAGERNES, CORNISH COAST (OWNERS) *v.* SOCIETA NAZIONALE DI NAVIGAZIONE, 71 Sol. Jo. 634, C. A.

38. *Add. Annotations:*—*As to* (1) **Consd.** The Fagernes, [1926] P. 185. *Generally,* **Refd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

PART IV. SECT. 1.

sc. *Judgment written on leave—Or in retirement.*]—There does not appear to be any ground for drawing a distinction between the writing of a judgment while a judge is on leave & the writing of a judgment by a judge who has gone on retirement. Both are validly pronounced.—BARAMDEO PANDE *v.* DEBIDATT SINGH (1930), I. L. R. 53 All. 133.—**IND.**

PART IV. SECT. 2, SUB-SECT. 1.

24 vi. ——.]—The ct. is an institution organised by the people through their representatives for the purpose of giving to those applying to it their rights according to law, the law not being made by the ct. but laid down for it by authority.—SCOTT *v.* SCOTT, [1930] 1 D. L. R. 53; 640 L. R. 422.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 1.—A.

sd. *Power to act as appeal court from inferior court.*]—Where an inferior ct. is acting within its jurisdiction, the Superior Ct. has no power at common law to assume the function of an appellate ct. & review its conclusions by means of a writ of *habeas corpus* either with or without *certiorari.*—*Re* CHINESE IMMIGRATION ACT & LEE CHOW YING (1928), 49 Can. Crim. Cas. 168; 39 B. C. R. 322.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 2.

45 vii a. —— —— ——.]—DEPUTY FEDERAL COMR. OF TAXATION FOR TASMANIA *v.* THOMAS (1924), 35 C. L. R. 299.—**AUS.**

45 vii b. —— —— ——.]—Jurisdiction of a county ct. action against a non-resident of the judicial division in which the action is entered cannot be sustained on the ground that the cause of action arose within the division, unless the whole cause of action arose therein.—COMBA *v.* SIMPSON, [1925] 4 D. L. R. 1002; [1925] 3 W. W. R. 541; 35 Man. L. R. 235.—**CAN.**

45 vii c. —— —— ——.]—*Re* NOBLE *v.* CLINE (1889), 18 O. R. 33.—**CAN.**

45 vii d. —— —— ——.]—*Re* LEWIS, *Ex p.* ELECTROLUX, LTD. (1928), 28 S. R. N. S. W. 578; 45 N. S. W. W. N. 185.—**AUS.**

45 vii e. —— —— ——.]—In County Cts. Act, R.S.M. 1913, c. 44, s. 69, which provides that any suit may be entered & tried in the ct. holden in the judicial division in which the cause of action arose, or in which deft. or one of defts. resides or carries on business at the time the action is brought, the words "carries on business" are not to be read literally, but confer jurisdiction only when the business is carried on by deft. in person; *i.e.* if the cause of action did not arise within the division the condition of jurisdiction is presence of deft. within the division either by residence or by carrying on business therein.—MILLER *v.* AIKINS (Man.), [1929] 1 D. L. R. 140; [1928] 3 W. W. R. 520.—**CAN.**

45 xii a. —— —— ——.]—*Re* PIKE *v.* WALKER, [1926] 3 D. L. R. 439; 59 O. L. R. 47.—**CAN.**

45 xiv. —— —— *Municipal Courts Act, R. S.,* 1923 (*c.* 219), *s.* 9 (4).]—BISHOP *v.* KILCUP, [1927] 1 D. L. R. 231; 59 N. S. R. 109.—**CAN.**

45 xv. —— —— *Suit against non-resident foreigner.*]—*Held:* Code of Civil Procedure, s. 21, applied only to cts. which are subject to the provisions of the Code, & does not apply to a suit instituted in a British Indian ct. against a non-resident foreigner on a cause of action which arose wholly outside British territory, &, therefore, the decree passed in this case must be set aside as being without jurisdiction.—BHAMBOO MAL *v.* RAM NARAIN (1928), I. L. R. 9 Lah. 455.—**IND.**

• (p. 105) i. —— ——.]—HUTTON, MCLEA & CO. *v.* KELLY (1818), 1 Nfld. L. R. 105.—**NFLD.**

• (p. 105) ii. —— ——.]—MORRIS *v.* CAMERON (1862), 12 C. P. 422.—**CAN.**

• (p. 105) iii. —— ——.]—FLEMING *v.* LIVINGSTONE (1873), 6 P. R. 63.—**CAN.**

• (p. 105) iv. —— ——.]—CANADIAN OIL COS., LTD. *v.* MARGESON (1917), 51 N. S. R. 331.—**CAN.**

• (p. 105) v. —— —— *Whether may abandon part of claim.*]—

• (p. 105) vi. —— —— *Application to mining jurisdiction.*]—County Courts Act, s. 34, which provides *inter alia* that, if in any action of tort pltf. shall claim over $250, & deft. objects to the action being tried in the county ct. & gives security for trial in the Supreme Ct., the proceedings in the county ct. shall be stayed, applies to proceedings in the county ct. under its mining jurisdiction.—MUIRHEAD *v.* SPRUCE CREEK POWER CO., LTD. (1904), 2 M. M. Cas. 155; 11 B. C. R. 1.—**CAN.**

• (p. 105) vii. —— —— *Amount ascertained by act of parties.*]—Deft. employed pltfs. as his brokers to sell on his account 200 shares of stock at a named price, pltfs. undertaking that, in the event of loss, deft.'s liability should not exceed $200. In an action upon this contract pltfs. recovered $200 & interest:—*Held:* the amount of $200 recovered was ascertained by the act of the parties within County Courts Act, R. S. O. 1897, c. 55, s. 23, &, therefore, recoverable in a county ct.—THOMPSON *v.* PEARSON (1899), 18 P. R. 420.—**CAN.**

• (p. 105) viii. —— —— *Legacy charged on land—Value of land beyond limit.*]—A county ct. has jurisdiction under 59 Vict. c. 19 (O.), s. 3 (13), in an action brought by the legatee against the devisee of land, to recover a legacy of $5 charged on the land, as involving equitable relief in respect of a matter under $200. The subject-matter involved in such an action is the amount of the legacy & not the value of the land.—RUSTIN *v.* BRADLEY (1896), 28 O. R. 119.—**CAN.**

† (p. 105) i. ——.]—CURRIE *v.* NICHOLSON (1925), 58 N. S. R. 234.—**CAN.**

† (p. 105) ii. —— *Whether amount liquidated by act of parties.*]—WALLBRIDGE *v.* BROWN (1859), 18 U. C. R. 158.—**CAN.**

† (p. 105) iii. —— ——.]—WATSON *v.* SEVERN (1881), 6 A. R. 559.—**CAN.**

† (p. 105) iv. —— ——.]—BROWN *v.* HOSE (1890), 14 P. R. 3.—**CAN.**

† (p. 105) v. —— ——.]—OSTROM *v.* BENJAMIN (1894), 21 A. R. 467.—**CAN.**

† (p. 105) vi. —— ——.]—EVANS *v.* CHANDLER (1900), 19 P. R. 160.—**CAN.**

66. *Add. Annotation :—Generally,* **Refd.** *Re* Keystone Knitting Mills Trade Mk., [1929] 1 Ch. 92.

72. *Add. Annotation :*—**Consd.** *Re* Coletta (1931), 146 L. T. 180.

74. *Add. Annotation :*—**Refd.** Owl Mill Co. (1920) *v.* Croft, Elliott *v.* Duchess Mill (1926), 95 L. J. K. B. 635.

137a. ——.]—LEADER *v.* MOXON (1773), 2 Wm. Bl. 924 ; 3 Wils. 461 ; 95 E. R. 1157.

142. *Add. Annotations :*—**Apld.** Witham Outfall Board *v.* Boston Corpn. (1926), 136 L. T. 756. **Refd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485.

143a. ——.]—Where an issue arises upon the proceedings before the Court the jurisdiction of the Court to dispose of that issue can only be ousted by plain words (HAMILTON, J.).—A.-G. *v.* BODEN, [1912] 1 K. B. 539 ; 81 L. J. K. B. 704 ; 105 L. T. 247.

147. *Add. Annotations :*—**Consd.** Clark *v.* Epsom R. D. C., [1929] 1 Ch. 287. **Apld.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485. **Consd.** Ruislip-Northwood Urban District Council *v.* Lee (1931), 145 L. T. 208. **Refd.** Everett *v.* Griffiths, [1924] 1 K. B. 941 ; Whitney *v.* I. R. Comrs. (1925), 42 T. L. R. 58 ; Wigg *v.* A.-G. of Irish Free State (1927), 96 L. J. P. C. 88.

148. *Add. Annotation :*—**Refd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485.

149. *Add. Annotations :*—**Apld.** Hallen *v.* Spaeth, [1923] A. C. 684. **Consd.** Caven *v.* Canadian Pacific Ry. (1925), 133 L. T. 774. **Apld.** Cayzer, Irvine *v.* Board of Trade, [1927] 1 K. B. 269. **Refd.** Board of Trade *v.* Cayzer, Irvine, [1927] A. C. 610 ; Gowar *v.* Hales (1927), 96 L. J. K. B. 1088 ; Wales *v.* Iron Trades Employers' Assocn. (1928), 21 B. W. C. C. 316 ; Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1 ; Sturley *v.* Powell, [1930] 1 K. B. 677.

150. *Add. Citations :*—15 Asp M. L. C. 566 ; *affg.* S. C. *sub nom.* DREYFUS & Co. *v.* ATLANTIC SHIPPING & TRADING Co. (1921), 37 T. L. R. 417, C. A.

Add. Annotations :—As to (1) **Consd.** Ford *v.* Compagnie Furness (France), [1922] 2 K. B. 797. **Refd.** Pinnock *v.* Lewis & Peat, [1923] 1 K. B. 690. *As to* (2) **Refd.** Reed *v.* Page & East, [1927] 1 K. B. 743 ; Cosmopolitan Shipping Co. (Inc.) *v.* Hatton & Cookson, Ltd. (Liverpool) (1929), 143 L. T. 296.

170. *Add. Annotations :*—**Refd.** St. Magnus Parochial Church Council, etc. *v.* London Diocese Chancellor, [1923] P. 38 ; Hunter *v.* Stadtische Hochseefischerei Gemeinnützige Gesellschaft (1925), 133 L. T. 488 ; Mansfield *v.* Robinson, [1928] 2 K. B. 353.

172. *Add. Annotation :*—**Refd.** Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797.

g (p. 106) i. —— —— *Right of appeal.*]—By Division Courts Act, s. 125, an appeal lies "where the sum in dispute exceeds $100, exclusive of costs." The "sum in dispute" means the sum in dispute at the time of the appeal ; & where in a division ct. action pltf. claimed $55.88 & deft. admitted $47.15, part of pltf.'s claim, disputed the balance, & counterclaimed for $103.55, & the judge in the division ct. allowed pltf. the disputed portion of his claim, & wholly disallowed the counterclaim, & deft. appealed generally :—*Held :* even assuming that deft. could not counterclaim for more than $100, the amount in dispute on the appeal exceeded $100, & the appeal lay.—CAMPBELL *v.* MCGREGOR, [1928] 2 D. L. R. 70 ; 61 O. L. R. 649.—**CAN.**

k (p. 106) i. *May not entertain counterclaim—Amounting to action for specific performance.*]—A counterclaim by a vendor for the moneys alleged to be due under an agreement for the sale of land being in reality an action for specific performance is beyond the jurisdiction of the district ct.—BURRELL *v.* WATT & HARDINGE (Sask.), [1928] 3 D. L. R. 505 ; [1928] 2 W. W. R. 482.—**CAN.**

n i. —— —— *Unconnected items.*]—READ *v.* WEDGE (1870), 29 U. C. R. 456.—**CAN.**

b (p. 107) i. ——.]—Where in matters of tort relating to personal chattels, title to land is brought in question, though incidentally, the ct. has no jurisdiction.—TRAINOR *v.* HOLCOMBE (1850), 7 U. C. R. 548.—**CAN.**

e (p. 107) i. —— *Exceptions to rule—District court of Thunder Bay—*47 *Vict. c.* 14 (*O.*).]—MCQUAID *v.* COOPER (1886), 11 O. R. 213.—**CAN.**

e (p. 107) ii. ——.]—Summary Ejectment Act (Consol. Stat. c. 83 s. 22), is not applicable to a case where the title to the land is brought in question. If, in such a case, the question of title is *bonâ fide* raised, the county ct. judge or justices should not continue the trial.—*Ex p.* TOWER (1889), 28 N. B. R. 159.—**CAN.**

63 i. *May set aside judgment—For matters of irregularity.*]—*Re* MOMBROQUETTE (N. S.) (1928), 50 Can. Crim. Cas. 308.—**CAN.**

sk. *Injunction — Power of district court.*]—ROSE *v.* DILKE VILLAGE, [1926] 1 D. L. R. 190 ; [1926] 1 W. W. R. 85 ; 20 Sask. L. R. 259.—**CAN.**

sl. *Action for rescission—Agreement for sale of land—Cannot be entertained by county court.*]—RICHARDS *v.* TROTTIER (1914), 28 W. L. R. 553 ; 18 D. L. R. 508 ; 6 W. W. R. 1123 ; 24 Man. L. R. 473.—**CAN.**

sm. *Action for specific performance—Agreement for sale of land—Cannot be entertained by district court.*]—BYERS *v.* SINGLETON, [1921] 2 W. W. R. 71 ; 14 Sask. L. R. 195.—**CAN.**

sn. *Application under Vendors & Purchasers Act—Cannot be entertained by local judge.*]—*Re* LEVY & JACOBS, [1927] 4 D. L. R. 937 ; 61 O. L. R. 296.—**CAN.**

sp. *Petition for amendment of registered plan of land—Under Registry Act, R. S. O.,* 1897 (*c.* 136)—*Jurisdiction of county court other than that of county in which land lay.*]—*Re* MCDONALD & LISTOWEL (1903), 24 C. L. T. 8 ; 6 O. L. R. 556 ; 2 O. W. R. 1000.—**CAN.**

st. *Local masters—Jurisdiction* — LORCH *v.* OLSON (Sask.), [1927] 3 W. W. R. 780.—**CAN.**

sw. —— —— *To order transfer of action.*]—HAMELIN *v.* PHILLIPS (Sask.), [1927] 4 D. L. R. 1107 ; [1927] 3 W. W. R. 504.—**CAN.**

sx. *Action for breach of contract—Neglect in using horse.*]—A plaint in a division ct. charging that deft. hired of pltf. a horse, etc., to go from A. to B. & back, & agreed to take good care of the same as bailee, with an averment that deft. so carelessly, etc., drove said horse, etc., that the horse was killed, etc., is a plaint in contract & not in tort, & therefore within the jurisdiction.—*Re* RUMBLE *v.* WILSON (1869), 5 P. R. 38.—**CAN.**

sy. —— ——.]—Pltf. sued in a division ct. for $90 as the value of his horse employed by deft., the injury complained of being that deft. allowed the horse to be worked after he took sick, by which his death was occasioned : —*Held :* this was an action for breach of contract in not taking proper care of the horse, & that the division ct. had jurisdiction.—O'BRIEN *v.* IRVING (1878), 7 P. R. 308.—**CAN.**

sz. *Right to order writ or process outside jurisdiction.*]—Since the passing of Judicature Act, 1909, under County Cts. Act, 11 Geo. 5, 1921 (N. B.), c. 3, s. 71, a county ct. judge can order a writ or process outside the jurisdiction.—SMITH *v.* GORDON (1927), 53 N. B. R. 316.—**CAN.**

PART IV. SECT. 9. SUB-SECT. 1.

137 x. ——.]—The Minister of Pensions & National Health, under sect. 30 (8) of 18-19 Geo. 5, c. 38, referred to this ct. a dispute as to the jurisdiction of the Appeal Board to render a certain judgment :—*Held :* the jurisdiction of a ct. of record, when it has once obtained, cannot be ousted by any forced interpretation, & the jurisdiction of this ct. to proceed with the present reference was not taken away by 20-21 Geo. 5, c. 35.—*Re* SKITCH, [1931] Ex. C. R. 12.—**CAN.**

PART IV. SECT. 10, SUB-SECT. 1.—A.

153 xv. —— ——.]—The consent, or request, of the parties concerned does not empower the Supreme Ct. in its equitable jurisdiction to entertain a suit involving the determination of purely legal claims.—PRESCOTT, LTD. *v.* PERPETUAL TRUSTEE Co., LTD. (1928), 28 S. R. N. S. W. 324 ; 45 N. S. W. W. N. 80.—**AUS.**

185. *Add. Annotation :*—**Folld.** Pringle *v.* Hales, [1925] 1 K. B. 573.

199. *Add. Annotation :*—**Refd.** Hunter *v.* Städtische Hochseefischerei Gesellschaft, [1925] 2 K. B. 493.

Part VI.—Right of Public to Admission.

260a. ——.]—A judge of a ct. of justice in England (save in a few exceptional cases) has no discretion whether he will sit in private or in public (LAWRENCE, L.J.).—HEARTS OF OAK ASSURANCE CO., LTD. *v.* A.-G., [1931] 2 Ch. 370 ; 100 L. J. Ch. 340 ; 145 L. T. 662 ; 47 T. L. R. 579 ; 75 Sol. Jo. 615, C. A. ; *revsd. on other grounds*, [1932] A. C. 392, H. L.

276. *Add. Annotations :*—**Folld.** *Re* A. B.'s Petn. (1927), 97 L. J. P. 104. **Consd.** Greenway *v.* A.-G. (1927), 44 T. L. R. 124 ; Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579.

277a. -.]—In cross suits for divorce the case for the wife having been opened in public & the wife on being called as a witness finding it almost impossible to give her evidence by reason of the presence of people in ct., the President directed this part of the case to be heard *in camerâ*.—MOOSBRUGGER *v.* MOOSBRUGGER. MOOSBRUGGER *v.* MOOSBRUGGER & MARTIN (1913), 29 T. L. R. 658.

280a. **In proceedings under Legitimacy Act, 1926 (c. 60).**]—A petition filed under the above Act for the legitimation of a person who was born illegitimate, but whose parents were married subsequently to his birth, is not a proceeding which entitles petitioner to a hearing *in camerâ*.—*Re* A. B.'s PETITION (1927), 97 L. J. P. 104 ; *sub nom. Re* C. D.'s PETITION, 138 L. T. 208 ; *sub nom.* GREENWAY *v.* A.-G., 44 T. L. R. 124 ; 71 Sol. Jo. 882.

285a. **To inquiry under Industrial Assurance Act, 1923 (c. 8), s. 17.**]—An inspector appointed by the Industrial Assurance Comr. under Industrial Assurance Act, 1923 (c. 8), s. 17 (1), for the purpose of examining into & reporting on the affairs of an industrial assurance co. is not entitled to conduct the inspection in public, but this shall not prevent him from admitting from time to time any persons the presence of whom is reasonably necessary to enable him to carry out his duty under the statute ; & he is not entitled to make public the information gained by him in the course of such examination or of the exercise of the powers conferred upon him by the said subsect. & by Friendly Societies Act, 1896 (c. 25), s. 76 (5), or otherwise to make use of such information save for the purposes of carrying out his examination & of preparing his report on the affairs of the co. & for purposes ancillary thereto. The same principle applies where the Comr. himself makes the examination.—HEARTS OF OAK ASSURANCE CO., LTD. *v.* A.-G., [1932] A. C. 392 ; 101 L. J. Ch. 177 ; 147 L. T. 41 ; 48 T. L. R. 296 ; 76 Sol. Jo. 217, H. L.

289a. **Includes justices hearing ex parte application for summons.**]—KIMBER *v.* PRESS ASSOCN., [1893] 1 Q. B. 65 ; 62 L. J. Q. B. 152 ; 67 L. T. 515 ; 57 J. P. 247 ; 41 W. R. 17 ; 9 T. L. R. 6 ; 37 Sol. Jo. 8 ; 4 R. 95, C. A.

Annotation :—**Consd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579.

Part VII.—Classification of Courts.

292. *Add. Annotation :*—**Consd.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

293. *Add. Annotation :*—**Consd.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

302a. **Justices.**]—ANON. (1523), Y. B. 14 Hen. 8 fo. 16, pl. 3.

Annotations :—**Refd.** Nector *v.* Gennet (1596), Cro. Eliz. 466 ; Marshalsea Case (1613), 10 Co. Rep. 68b ; Butt *v.* Conant (1820), 1 Brod. & Bing. 548 ; Howard *v.* Gossett (1845), 10 Q. B. 359.

Part IX.—Court of Lord High Steward.

320. After this case for "*See, also*, PARLIAMENT," read "*See, also*, CRIMINAL LAW, Vol. XIV., pp. 125, 126, Nos. 965–985."

PART IV. SECT. 10, SUB-SECT. 1.—B.

8a. *Effect of acquiescence—Accused present but not professionally represented—Objections by judge.*]—At the hearing of a summons charging an offence under Customs Acts, deft. was present, but was not professionally represented. No preliminary objections to the jurisdiction of the district justice were made by her, but certain objections were made by the district justice himself :—*Held :* there had not been any waiver of such objection by deft.—A.-G. *v.* HEALY, [1928] I. R. 460.—IR.

PART IV. SECT. 12.

8b. *Claim reduced below amount conferring jurisdiction—Claim dismissed.*]—In an action by pltf., a seaman, to recover a balance of wages alleged to be due to him, the evidence showed that with respect to two months' wages, part of the time claimed for, pltf. had received an amount which reduced his claim below the jurisdiction of the ct., &, as to the balance of the time claimed for, pltf. had forfeited his claim to wages by desertion :—*Held :* pltf.'s claim be dismissed with costs.—FORBES *v.* WASSON (1928), 60 N. S. R. 20.—CAN.

PART VI.

259 1. *General rule.*]—A criminal trial must be conducted in open ct. except where justice cannot be secured otherwise than by ordering the ct. to be cleared.—R. *v.* HAMILTON (1929), 30 S. R. N. S. W. 277 ; 47 N. S. W. W. N. 84.—AUS.

PART VII. SECT. 3, SUB-SECT. 1.

8d. *Board of Valuation & Revision—Under Winnipeg Charter, s. 341.*]—*Re* WINNIPEG CHARTER, *Re* COMMUNITY OF SISTERS OF THE HOLY NAMES OF JESUS & MARY, [1922] 2 W. W. R. 253 ; 68 D. L. R. 506.—CAN.

8e. *Local court continued under Local Courts Act, 1926.*]—The local ct. continued by Local Cts. Act, 1926, s. 6, is the ct. of record, not the officers or instrumentalities by whom the jurisdiction was formerly exercised.—METROPOLITAN ABATTOIRS BOARD *v.* SCHOLE, [1927] S. A. S. R. 444.—AUS.

Part X.—The Judicial Committee of the Privy Council.

329. *Add. Annotation:*—**Refd.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

339. *Add. Annotation:*—**Apprvd.** Campbell *v.* Pollak, [1927] A. C. 732.

341. *Add. Annotation:*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

342. *Add. Annotation:*—**Consd.** Campbell *v.* Pollak, [1927] A. C. 732.

344. *Add. Annotation:*—**Refd.** Campbell *v.* Pollak (1927), 96 L. J. K. B. 1093.

345. *Add. Annotation:*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

348a. Interlocutory order.]—As a general rule an interlocutory order is not a suitable subject for review by the Judicial Committee.—BEVOY KRISHNA MUKHERJIR *v.* SATISH CHANDRA GIRI (1927), 55 L. R. Ind. App. 131.

350. *Add. Annotation:*—**Refd.** Ware *v.* Whitlock, [1923] 2 K. B. 418.

352a. Affidavit of service of notice of intended application—Necessity for lodging—Judicial Committee Rules, 1925, r. 4.]—PRACTICE NOTE, [1925] W. N. 164, P. C.

373. *Add. Citations:—sub nom. Ex p.* KENSINGTON, 15 Moo. P. C. C. 209; 15 E. R. 473.

388a. —— —— **When further security ordered.**]—CORPORATION AGENCIES, LTD. *v.* HOME BANK OF CANADA, [1926] W. N. 58, P. C.

403a. ——.]—In a suit claiming property by adoption, one of defts. denied the alleged adoption & claimed widow's maintenance. The first ct. found for the alleged adoption but decreed maintenance at a sum less than that claimed. The appellate ct. varied the decree by increasing the amount of maintenance, & refused leave to appeal:—*Held:* special leave to appeal should be granted limited to the question of the maintenance allowance.—ANNAPURNABAI *v.* RUPRAO (1924), L. R. 51 Ind. App. 319, P. C.

427a. —— **Immaterial documents—Inclusion disapproved.**]—Documents not material to an appeal should not be included in the record. If one party wishes a document to be included, but the other party considers it unnecessary, the matter should be referred to the High Ct. or its registrar. It does not follow that because unnecessary documents have been printed in India they should be included in the books for the Judicial Committee. It is the duty of the solr. in England to make a selection of the necessary documents, the other papers being ready in case they are required. In cases of doubt, the solr. should take counsel's advice, for which purpose, on application being made, a fee will be allowed.—SONATON PAL *v.* GALSTAUN (1927), 54 L. R. Ind. App. 118; 43 T. L. R. 224, P. C.

453a. —— —— **Of some respondents—Practice where parties numerous.**]—In an appeal in which there were very numerous resps. whose interests were not conflicting, delay in the hearing having been caused by the death of some of them & the consequent substitution & revivor proceedings in compliance with the rules, & further similar delay being apprehended from that cause, the Judicial Committee ordered & directed (1) that the appeal be set down that day against such of resps. as had appeared or had been served with notice of any Order in Council bringing them upon the record; & (2) all questions how any other resps. should be proceeded against should stand for determination if necessary

PART X. SECT. 1.

321 i. *Status of Judicial Committee—Advisers of Crown.*]—The Judicial Committee sit in the capacity of judges; their report is acted on by the Sovereign in full Privy Council, so that proceedings before the Committee are in substance strictly judicial. The Judicial Committee is not an English body in any exclusive sense: it is not a body with any location. The Sovereign is everywhere throughout the Empire in the contemplation of the law. He may as well sit in Dublin, or at Ottawa or in South Africa, or in Australia, or in India, as in London, & it is only for convenience & because the members of the Privy Council are conveniently in London that the Judicial Committee do sit there.—HULL *v.* M'KENNA, "FREEMAN'S JOURNAL" *v.* FERNSTROM & TRAESLIBERI, [1926] I. R. 402.—IR.

PART X. SECT. 2, SUB-SECT. 8.

348 ii. ——.]—A question of procedure is not one upon which an appeal to the Privy Council will be entertained.—A.-G. FOR ONTARIO *v.* DALY, [1924] A. C. 1011; 94 L. J. P. C. 21; 132 L. T. 210; 40 T. L. R. 814.—CAN.

si. *Maintenance granted to wife—No miscarriage in method of computing.*]—The Judicial Committee is extremely reluctant to interfere with the amount of a decree for maintenance unless there has been some miscarriage in the way the amount has been arrived at.—EKRADESHWARI BAHUASIN *v.* HOMESHWAR SINGH (1929), 56 L. R. Ind. App. 182.—IND.

PART X. SECT. 3, SUB-SECT. 1.—A. (c).

sg. *Time occupied in prosecuting application for review—Addition to prescribed period.*]—Applt. allowed to add the time occupied by the prosecution in good faith of an application for review to the period prescribed for presenting a petition for leave to appeal.—NARIMAN RUSTOMJI MEHTA *v.* HASHAM ISMAYAL VALAD HAJI KHAMISA (1924), I. L. R. 49 Bom. 149.—IND.

PART X. SECT. 3, SUB-SECT. 1.—B.

371 iii. ——.]—An order directing a new trial is not a final judgment or order within Order in Council of Jan. 10, 1910, r. 2, & there is consequently no jurisdiction to grant leave to appeal therefrom to the Privy Council.—BLACK & WHITE CABS, LTD. *v.* ANSON, [1928] N. Z. L. R. 613.—N.Z.

sh. *Point settled by previous decision.*]—Where their Lordships of the Privy Council have clearly laid down the law which is applicable to a particular set of facts, leave to appeal to His Majesty in Council under such circumstances would be refused.—MAUNG SHWE AN *v.* MA THE NU (1929), I. L. R. 7 Ran. 271.—IND.

sj. *Appeal from refusal to grant habeas corpus—Period of detention expiring before appeal can be heard.*]—The ct. will not grant leave to appeal to the Privy Council from a decision refusing a writ of *habeas corpus* where the period of detention will have expired before the appeal can be heard & the matter is not of general or public importance.—HAZLETT *v.* BUTTIMORE (No. 2), [1931] N. Z. L. R. 32.—N.Z.

PART X. SECT. 3, SUB-SECT. 1.—C.

379 iia. —— ——.]—BATTLE CREEK TOASTED CORN FLAKE CO. *v.* KELLOGG TOASTED CORN FLAKE CO., [1924] 2 D. L. R. 1238; 54 O. L. R. 629.—CAN.

389 iia. —— —— ——.]—The ct. can, under Civil Procedure Code (Act V. of 1908), 1908, Ord. 45, r. 17, read with Privy Council Rules, 1920, r. 9, enlarge the time for furnishing security & making the deposit, beyond the period prescribed by Ord. 45, r. 7.—NILKANTH BALWANT NATU *v.* SHRI SATCHIDANAND VIDYA NARSINHA BHARATI (1927), I. L. R. 51 Bom. 430.—IND.

390 i. —— *Form of security.*]—An order to furnish security for costs of resp. in an appeal to the Privy Council in a form other than cash or Govt. Bonds can be made only at the time of granting the certificate & not afterwards.—ARUNACHALA NAIDU *v.* BALAKRISHNA & CO. (1924), I. L. R. 48 Mad. 559.—IND.

PART X. SECT. 3, SUB-SECT. 5.

447 i. *When allowed—Suits involving same question.*]—Actions brought by pltf. against three cos. were based on separate contracts, precisely similar in form. On an appeal to the Privy Council, application was made to the Ct. of Appeal (B.C.) to consolidate the appeals. Application refused.—VAN HEMELRYCK *v.* NEW WESTMINSTER CONSTRUCTION & ENGINEERING CO. (No. 2) (1920), 29 B. C. R. 60.—CAN.

at the hearing of the appeal.—ZAHID HUSAIN *v.* MOHAMMAD ISMAIL (1929), 57 L. R. Ind. App. 94, P. C.

483a. Form of case—Necessity for signature of one of counsel appearing at hearing.]—MONTREAL LIGHT, HEAT & POWER CO. *v.* MONTREAL (CITY) (1924), 68 Sol. Jo. 419, P. C.

486. *Add. Annotations:*—**Consd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155; Green *v.* Weatherill, [1929] 2 Ch. 213.

493a. For bail—Application to High Court.]—SUTTON *v.* R., [1932] W. N. 272; 74 L. Jo. 440.

503a. ——.]—The Code of Civil Procedure does not restrict the power of the Judicial Committee to admit evidence rejected by the High Ct.—PARSOTIM *v.* LAL MOHAR (1931), 58 L. R. Ind. App. 254, P. C.

513a. Official translation.]—The practice of the Judicial Committee is to accept an official translation.—RAJENDRA PRASAD BOSE *v.* GOPAL PRASAD SEN. (1930), 57 L. R. Ind. App. 296, P. C.

532a. ——.]—The Judicial Committee does not sit as a ct. of criminal appeal. It will not interfere with a criminal sentence unless there has been something so irregular or so outrageous as to shock the very basis of justice. —PRACTICE NOTE (1932), 48 T. L. R. 300; *sub nom.* MOHINDAR SINGH *v.* KING EMPEROR, 59 L. R. Ind. App. 233, P. C.

535a. ——.]—It is no part of the functions of the Judicial Committee, generally speaking, to interpret an Order in Council unless it be brought before them in the ordinary way of appeal. In the present case, however, in which a suit had been remitted to the High Ct. to assess damages & that ct. had adjourned an appeal in order that the parties might apply to the Board to ascertain the intention & effect of the Order made, their Lordships entertained a petition by resp. with that object, though upon the facts the declaration prayed for was refused with costs.—HURNANDRAI FULCHAND *v.* PRAGDAS BUDHSEN, *Ex p.* PRAGDAS BUDHSEN (1924), L. R. 52 Ind. App. 118.

546a. —— —— ——.]—It is only in very exceptional circumstances that an issue dropped in the intermediate ct. of appeal can be revived upon appeal to the Privy Council.—AHAMATH *v.* SARIFFA UMMA, [1931] A. C. 799; 100 L. J. P. C. 211; 145 L. T. 650, P. C.

548a. ——.]—Where it is sought to raise a point of law for the first time before a ct. of last resort the ct. may exercise a discretion not to entertain the point when it would involve the consideration of matters of fact with which the cts. below were in a more advantageous position to deal & with which they have in fact dealt.—MOOLLA (M. E.) SONS, LTD. (OFFICIAL LIQUIDATOR OF) *v.* BURJORJEE (1932), 48 T. L. R. 279; 76 Sol. Jo. 185, P. C.

551. *Add. Annotations:*—**Refd.** Bell *v.* Lever Bros., Ltd., [1932] A. C. 161. **Consd.** Moolla (M. E.) Sons, Ltd. (Official Liquidator) *v.* Burjorjee (P. R.) (1932), 48 T. L. R. 279.

555. *Add. Annotation:* — **Consd.** Chesebrough Manufacturing Co., Consolidated *v.* Kudhoos (1929), 47 R. P. C. 25.

578a. —— ——.] — Applt. obtained leave to appeal conditionally upon entering into a bond, & the native agent of applt., who had conducted the litigation, executed a bond on his behalf in the presence of the chief registrar of the ct., who accepted it without objection. Upon the appeal coming on for hearing, the appellate ct. dismissed it, upon a preliminary objection that the authority of the agent to execute the bond should have been strictly proved. Under the rules of the ct. there was power to make any order which was considered necessary for doing justice:—*Held:* there had been a failure to do justice between the parties, & the case should be remitted to be heard, the appellate ct. giving an opportunity to prove the authority, if that was deemed necessary in the circumstances.—KOJO PON *v.* ATTA FUA, [1927] A. C. 693; 96 L. J. P. C. 121; 137 L. T. 706, P. C.

585a. ——.]— A Chinese resident in Penang executed a deed settling a fund upon his "sons & grandsons" equally. Applt. having claimed that his father, T., was a "son" of the settlor entitled to share in the gift, an inquiry whether T. was legitimate, as being a son by a "t'sip," or secondary wife, was remitted for rehearing, applt. not having had an opportunity of adducing certain evidence upon which he relied, & because the view of

PART X. SECT. 3, SUB-SECT. 9.—A.

487 iv. ——.]—The operation of a judgment restraining defts. from selling certain goods under certain trade names is not stayed pending an appeal of defts., to the Privy Council, although under Privy Council Appeals Act, 1914, ss. 3, 4, upon the perfecting of security by defts., execution shall be stayed in the original cause.—BATTLE CREEK TOASTED CORN FLAKE CO. *v.* KELLOGG TOASTED CORN FLAKE CO. (1924), 55 O. L. R. 127.—**CAN.**

PART X. SECT. 3, SUB-SECT. 10.—B.

ak. *Documents not produced at trial.*]—The Judicial Committee has unrestricted power to admit documents where sufficient ground is shown for their not having been produced at the initial stage of the litigation.—INDRAJIT PRATAP SAHI *v.* AMAR SINGH (1923), L. R. 50 Ind. App. 183.—**IND.**

PART X. SECT. 3, SUB-SECT. 10.—C. (a).

524 i. *To assess damages—Remuneration of agent—Quantum meruit.*]—LEVESQUE *v.* TRUCHON, [1930] 1 D. L. R. 705, P. C.—**CAN.**

529 i. *To order new trial.*]—Where the trial judge after reserving judgment decided the case in deft.'s favour on an issue or plea that had not, throughout the proceedings, been raised or tried, & on appeal the Ct. of Appeal amended the record in favour of defts. & dismissed pltf.'s appeal on the point discovered by the trial judge, but no opportunity had been given pltfs. of dealing with the matters involved on the new basis which the amendment established, the Judicial Committee ordered a new trial.—LUIGI AMBROSINI, LTD. *v.* BAKARE TINKO, [1930] 1 W. W.R . 63.—**CAN.**

PART X. SECT. 3, SUB-SECT. 10.—C. (b).

536 v. ——.]—The Privy Council will only deal with the original issues raised at the trial, & cannot consider new pleadings & the issues raised therein.—BROWN *v.* MOORE, [1924] 2 D. L. R. 545; *affg.*, 69 D. L. R. 14; 55 N. S. R. 460.—**CAN.**

536 vi. ——.]—A new contention, which involves an amendment of the plaint, cannot be entertained.—GAJADHAR MAHTON *v.* AMBIKA PRASAD TIWARI (1925), I. L. R. 47 All. 459.—**IND.**

536 vii. ——.]—The Privy Council declined to entertain an argument which had not been presented to, or sifted by, the cts. in India, especially as the subject to be decided concerned the diversified & complicated law of India as to tenure of land.—SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* RAJA JYOTI PRASHAD SINGH (1926), 53 L. R. Ind. App. 100.—**IND.**

536 viii. ——.]—Where a question whether minor members of a family were bound by a decree in a former suit brought by the managing member, has been abandoned in the High Ct., it cannot be raised before the Judicial Committee, as the question is one of mixed law & fact.—LINGANGOWDA *v.* BASANGOWDA (1927), 54 L. R. Ind. App. 122.—**IND.**

PART X. SECT. 3, SUB-SECT. 10.—C. (c).

sm. *Effect of order—Case remitted "to the jury" for assessment of damages—Not order for assessment by original jury.*]—LEW *v.* WING LEE, [1926] 1 D. L. R. 678; 37 B. C. R. 81.—**CAN.**

the lower ct. that a Christian woman could not be a "t'sip" required reconsideration, seeing that no ceremony was needed to constitute that status. Further consideration was also needed of the possible jural conceptions: (a) that a child might be legitimate, although its parents were not, & could not be, legitimately married; & (b) that a father might legitimatise his natural child by a mother free to contract a legitimate union.—KHOO HOOI LEONG *v.* KHOO HEAN KWEE, [1926] A. C. 529; 95 L. J. P. C. 94; 135 L. T. 170, P. C.

592a. —— ——.]—CHEESEBROUGH MANUFACTURING CO. *v.* KUDHOOS (1929), 46 T. L. R. 95; 47 R. P. C. 25, P. C.

599a. —— ——.]—Where, on an application made *ex parte*, special leave to appeal had been granted on the ground that there was a right of appeal under Code of Civil Procedure, 1908, s. 110, but it appeared at the hearing that applts. had not that right, the Board dismissed the appeal as incompetent, resps. having given due notice of the objection.—MUKHLAL SINGH *v.* KISHUNI SINGH (1930), 57 L. R. Ind. App. 279, P. C.

609. *Add. Citation:*—128 L. T. 10.

611a. Matter of terms.]—In default of evidence the Judicial Committee will accept the decision of the local ct. as to what terms are proper in a particular case, that ct. being better informed on the subject than the Board can be.—SUNDER MULL *v.* SATYA KINDER SAHANA (1927), 55 L. R. Ind. App. 85.

653. *Add. Annotation:*—**Refd.** Robins *v.* National Trust Co., [1927] A. C. 515.

653a. —— **Applicable to appeals from every court in Empire.**]—ROBINS *v.* NATIONAL TRUST CO., [1927] A. C. 515; 96 L. J. P. C. 84; 137 L. T. 1; 43 T. L. R. 243; 71 Sol. Jo. 158, P. C.

Annotation:—**Consd.** Pope Appliance Corpn. *v.* Spanish River Pulp & Paper Mills, [1929] A. C. 269.

653b. ——.]—*Held:* it would be a procedure contrary to the practice of the Privy Council to permit an appeal to succeed where a finding dependent upon a definite fact was agreed to by a Ct. of Appeal, & applt.'s claim could be defeated on other grounds. The appeal was dismissed with costs.—GROAT *v.* HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (1929), 47 R. P. C. 1, P. C.

668a. Separation of joint Hindu family.]—Whether a member of a joint Hindu family has affected a separation is a question of fact, & the Judicial Committee will not interfere with concurrent findings that he has so separated where they are supported by evidence.—BAL KRISHNA *v.* RAM KRISHNA (1931), 58 L. R. Ind. App. 220, P. C.

676. *Add. Annotation:*—**Refd.** Robins *v.* National Trust Co., [1927] A. C. 515.

685. *Add Annotation:—Generally,* **Consd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 242.

685a. —— ——.]—The Judicial Committee of the Privy Council has jurisdiction to recommend the alteration of a former Order in Council on the ground that, by inadvertence, it did not give effect to the intention of the Board as expressed in their judgment. — RAI JATINDRA NATH CHOWDHURY *v.* UDAY KUMAR DAS (1931), 47 T. L. R. 274; 58 L. R. Ind. App. 141, P. C.

690. *Add. Annotation:*—**Consd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 242.

690a. *Add. Annotation:*—**Consd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 242.

690b. ——.]—There is no inherent incompetency in the Judicial Committee of the Privy Council to order the rehearing of a case which has already been decided by the Judicial Committee, even where a question of a right of property has been involved, but such an indulgence will only be granted in very exceptional circumstances.—*Re* TRANSFERRED CIVIL SERVANTS (IRELAND) COMPENSATION, [1929] A. C. 242; *sub nom. Re* IRISH CIVIL SERVANTS, 98 L. J. P. C. 39; 140 L. T. 254; *sub nom. Re* ARTICLE X. OF ARTICLES OF AGREEMENT FOR TREATY BETWEEN GREAT BRITAIN & IRELAND, 45 T. L. R. 57, P. C.

701a. —— —— ——.]—Where there has been unexplained delay in proceedings a successful applt. to the Privy Council may be refused costs.—LOUIS DREYFUS & Co. *v.* ARUNACHALA AYYA (1931), 58 L. R. Ind. App. 381, P. C.

PART X. SECT. 3, SUB-SECT. 10.—D. (a).

607 i. *Matter of discretion—Exercised by Indian courts.*]—The Judicial Committee is extremely reluctant to interfere with the amount of a decree for maintenance unless there has been some miscarriage in the way the amount has been arrived at.—EKRADESHWARI BAHUASIN *v.* HOMESHWAR SINGH (1929), 56 L. R. Ind. App. 182.—**IND.**

PART X. SECT. 3, SUB-SECT. 10.—D. (b) i.

sn. *Amount of maintenance.*]—The Judicial Committee is extremely reluctant to interfere with the amount of a decree for maintenance unless there has been some miscarriage in the way the amount has been arrived at.—EKRADESHWARI BAHNASIN *v.* HOMESHWAR SINGH (1929), I. L. R. 8 Pat. 840.—**IND.**

PART X. SECT. 3, SUB-SECT. 10.—D. (b) ii.

650 vi. ——.]—Where all the cts. below have concurred in the findings of fact, the Judicial Committee will ordinarily accept them & not review them.—LAING *v.* TORONTO GENERAL TRUSTS CORPN., [1924] 4 D. L. R. 1138.—**CAN.**

650 vii. ——.]—MONTREAL TRANSPORTATION CO., LTD. *v.* R., [1926] 2 D. L. R. 862.—**CAN.**

650 viii. ——.]—When in a suit to set aside a sale for arrears of revenue both cts. in India have found that there were no arrears, the Judicial Committee, in accordance with its practice as to concurrent findings, will not interfere, although the findings depend upon the meaning & effect of somewhat obscure revenue records, & are based upon the view that the records show payments in advance.—NARENDRA NATH DUTTA *v.* ABDUL HAKIM (1928), 55 L. R. Ind. App. 380.—**IND.**

650 ix. ——.]—GROAT *v.* ONTARIO HYDRO-ELECTRIC POWER COMMISSION, [1930] 1 D. L. R. 481.—**CAN.**

PART X. SECT. 3, SUB-SECT. 10.—D. (c).

680 i. *Want of prosecution—Jurisdiction of Court of Appeal over costs.*]—CLEAVE *v.* MCDONALD, [1927] N. Z. L. R. 433.—**N.Z.**

PART X. SECT. 3, SUB-SECT. 11.

t i. —— *Against legal representatives of respondents.*]—Where some of resps. in the appeal before the Privy Council were dead, & their legal representative had not been brought on the record when the appeal was heard & judgment delivered by the Privy Council:—*Held:* the decree against them was not a nullity under Judicial Committee Act, 1833, s. 23.—KALYANI PILLAI *v.* THIRUVENKADASWAMI AYYANGAR (1924), I. L. R. 47 Mad. 618.—**IND.**

t ii. —— *Order directing restitution.*]—Where an application is made to obtain restitution as the necessary result of an order of His Majesty in Council, that application must be taken as one to "enforce" an order in Council & will be governed by Art. 183, & not by the general Art. 181 of Indian Limitation Act, 1908.—SOHAN BIBI *v.* BALNATH DAS (1928), I. L. R. 50 All. 767.—**IND.**

PART X. SECT. 3, SUB-SECT. 13.—A. (a) i.

719 ii. —— *Not appearing but lodging case.*]—Resps., who did not appear, but had lodged a case, allowed costs

Part XI.—The Supreme Court of Judicature.

775. In the cross-reference before this case for "Judicature Acts, 1873 (c. 66) to 1902 (c. 31)" read "Judicature (Consolidation) Act, 1925 (c. 49); Administration of Justice Act, 1928 (c. 26).

779. *Add. Annotation:*—**Apld.** Horrell *v.* St. John of Bletso, [1928] 2 K. B. 616.

781. *Add. Annotation:*—**Refd.** Ideal Films *v.* Richards, [1927] 1 K. B. 374.

784. *Add. Annotation:*—*As to* (1) **Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

786. *Add. Annotation:*—**Refd.** Lowe *v.* Bentley (1928), 44 T. L. R. 388.

789. *Add. Annotation:*—**Refd.** Earle *v.* Hemsworth R. D. C. (1928), 140 L. T. 69.

790. *Add. Annotation:*—**Refd.** The Fagernes, [1926] P. 185.

809. *Add. Annotation:*—**Refd.** Rackham *v.* Tabrum (1923), 129 L. T. 24.

816. To cross-reference before this case add "*See* S. C. J. (Consolidation) Act, 1925 (c. 49), ss. 24, 25."

819. For cross-reference at head of this section read "*See, now*, S. C. J. (Consolidation) Act, 1925 (c. 49), s. 56 (2)."

820. For cross-reference at head of this section read "*See, now*, S. C. J. (Consolidation) Act, 1925 (c. 49), s. 56 (1)."

827. For cross-reference before this case read "*See, now*, S. C. J. (Consolidation) Act, 1925 (c. 49), s. 56 (3)."

Add. Annotation:—**Refd.** Capron *v.* Capron, [1927] P. 243.

831a. —— ——.]—When a judge adjourns a chambers summons into ct. under R. S. C., Ord. 54, r. 22, & does not direct that it is to be heard in ct. as chambers, the matter is in ct. for all purposes & is open to the press.—HARDIE & LANE *v.* CHILTERN (1927), 96 L. J. K. B. 773; 43 T. L. R. 477; *on appeal*, [1928] 1 K. B. 663; 96 L. J. K. B. 1040; 138 L. T. 14, C. A.

834a. —— ——.]—HARDIE & LANE *v.* CHILTERN, No. 831a, *ante*.

840a. To order amendments—Judge trying causes in short cause list.]—Although it may be a condition precedent to the master's power to order a cause to be tried in the short cause list, that the claim specially indorsed on the writ should be for a liquidated demand, yet when once he has made the order giving leave to defend, & has ordered the cause to be put in the short cause list, there is no restriction whatever on the powers of the judge to order such an amendment as he is authorised to make under the rules of ct. The judge trying causes in the short cause list has the full powers of amendment that are given to him by the rules of ct. as though he were hearing the cause in the ordinary list.—THOMAS *v.* ALDERTON, LTD., [1928] 1 K. B. 638; 97 L. J. K. B. 259; 138 L. T. 315, C. A.

865. *Add. Annotation:*—**Refd.** Capron *v.* Capron, [1927] P. 243.

889. For cross-references before this case read "*See, now*, S. C. J. (Consolidation) Act, 1925 (c. 49), ss. 6–8."

891. For cross-references before this case read "*See, now*, S. C. J. (Consolidation) Act, 1925 (c. 49), ss. 26–29."

895a. Enforcement of undertaking given to Court of Appeal.]—The Ct. of Appeal have jurisdiction to deal with the enforcement of an undertaking given to that ct.—JONESCO *v.* EVENING STANDARD CO., LTD., *Re* AN UNDERTAKING BY WINGFIELDS, HALSE & TRUSTRAM, [1932] 2 K. B. 340; 110 L. J. K. B. 447; 147 L. T. 49, C. A.

902. *Add. Annotation:*—**Foll.** *Re* Carroll (1930), 47 T. L. R. 20.

903a. —— ——.]—The Ct. of Appeal has no original jurisdiction in *habeas corpus*, & where an appeal is brought from a refusal of a Div. Ct. to give leave to issue a writ of *habeas corpus* the fact that the matter of the appeal is *habeas corpus* will not prevent the Ct. of Appeal from making an order requiring security for the costs of the appeal to be given if applt. is an impecunious person.—*Re* CARROLL, [1931] 1 K. B. 104; 100 L. J. K. B. 62; 144 L. T. 154; 47 T. L. R. 20; 74 Sol. Jo. 770, C. A.

915. *Add. Annotation:*—**Apld.** Smith *v.* Tsakyris (1929), 167 L. T. Jo. 92.

919. *Add. Citation:*—*sub nom.* R. *v.* ILLINGWORTH, 32 W. R. 451.

After this case add "*See, now*, Judicature (Consolidation) Act, 1925 (c. 49), s. 25."

944. *Add. Annotations:*—**Refd.** Davey *v.* Robinson, [1923] 1 K. B. 563; Shrager *v.* Dighton, [1924] 1 K. B. 274.

up to the date of doing so.—GAJADHAR MAHTON *v.* AMBIKA PRASAD TIWARI (1925), I. L. R. 47 All. 459.—**IND.**

PART X. SECT. 3, SUB-SECT. 13.—A (c).

sm. *Out of sum deposited as security—Order for payment to solicitors.*]—Solrs. in England may, in a proper case, obtain from the High Ct. an order for payment to them of moneys deposited in the High Ct., as security for their clients' costs of an appeal to the Privy Council.—BIKRAMKISHORE MANIKYA *v.* ALI AHMAD (1930), I. L. R. 58 Calc. 1034.—**IND.**

PART XI. SECT. 2, SUB-SECT. 1.—A. (a).

sp. *To hear action.*]—A judge of the High Ct. may direct the whole of a case which comes before him for hearing to be argued before the Full Ct.—STATE OF NEW SOUTH WALES *v.* COMMONWEALTH (1926), 38 C. L. R. 74.—**AUS.**

PART XI. SECT. 2, SUB-SECT. 3.

st. *To rescind patent—Although voidable or void at law.*]—MARTIN *v.* KENNEDY (1850), 2 Gr. 80.—**CAN.**

sw. *To try validity of will—Important questions involved—Transfer of action from surrogate court.*]—Where the validity of a will relating to both real & personal estate was in dispute, the personal property being worth, at least, £2,000, & it was sworn & not denied that the questions to be determined were of such importance that they could be more effectually tried & disposed of in the ct. of chancery than in the surrogate ct. an order for removal was made.—*Re* ECCLES (1865), 1 Ch. Ch. 376.—**CAN.**

PART XI. SECT. 2, SUB-SECT. 6.—A.

sy. *Local masters—Jurisdiction of.*]—Local masters have no authority to sit on the final hearing & adjudge the merits on applications to the summary jurisdiction of a judge of the K. B. over exors., administrators & trustees, no matter how such applications may be commenced; nor have they jurisdiction to refer such applications to a judge of the K. B. The office of a master or local master in Saskatchewan is to be distinguished from that of a master in England & from that of a county ct. judge exercising jurisdiction as a local judge of the Superior Ct. in those Provinces in which he is appointed a local judge.—LORCH *v.* OLSON (Sask.), [1928] 1 D. L. R. 365; [1927] 3 W. W. R. 780.—**CAN.**

SECT. 5.—OFFICERS AND CENTRAL OFFICE
(Vol. XVI., p. 189).

Add the following case :—

949a. Officer—Right to institute suit—Personal interest.]—It is against public policy to allow an officer of the ct. to institute suits, in the conduct of which he may have a direct personal interest.—HOSANNA ARATHOON KERAKOOSE *v.* SERLE (1844), 3 Moo. Ind. App. 329; 4 Moo. P. C. C. 459; 18 E. R. 523.

Part XVI.—Consular Courts.

954. *Add. Annotations :*—**Refd.** Rudd *v.* Rudd, [1924] P. 72; Bartlett *v.* Bartlett, [1925] A. C. 377.

956a. To make declaration as to validity of divorce—Granted on grounds not authorised by English law.]—Resp. & his wife, applt., who were British subjects of the Jewish religion & resident in Egypt, were divorced by the Grand Rabbinat at Alexandria in accordance with the Jewish religion, but upon grounds which would not have supported a decree for divorce according to English law. Applt. brought an action against resp. in the Supreme Ct. for Egypt for a declaration that the divorce was effectual to dissolve the marriage. The Order in Council of 1910, by which civil jurisidiction over British subjects was conferred, provided by art. 90 that " in all matters relating to marriage, inheritance, or other questions involving religious law or custom the ct. shall, in the case of persons belonging to non-Christian communities, recognise & apply the religious law or custom of the persons concerned." Art. 103 conferred " all such jurisdiction in matrimonial causes, except the jurisdiction relative to dissolution or nullity or jactitation of marriage, as for the time being belongs to the High Ct. in England " :—*Held :* applt. was entitled to the declaratory decree which she sought.—SASSON *v.* SASSON, [1924] A. C. 1007; 94 L. J. P. C. 13; 132 L. T. 163, P. C.

Annotation :—**Refd.** Bartlett *v.* Bartlett, [1925] A. C. 377.

956b. —— —— To try action for damages for breach of contract—Breach in England.]—By the Ottoman Order, 1910, the jurisdiction of the Supreme Ct. thereby established extends, as regards Egypt, to, so far as material : " (i) British subjects, as herein defined, within the limits of this Order. (ii) The property & all personal & proprietary rights & liabilities within the said limits of British subjects, whether the said subjects are within the said limits or not." Rules of ct. made under the order contain a provision for substituted service, but none for service out of the jurisdiction. Applt., a British subject resident in England, contracted in England to buy from resp., who was resident in Egypt, a concession granted by the Egyptian Govt. in connection with irrigation, & for the employment of resp. in Egypt. Applt. repudiated the contracts by a cable despatched from England. Resp. issued a writ in the Supreme Ct. for Egypt claiming damages from applt. for breach of the contracts, & obtained an order for substituted service in Egypt :—*Held :* the cable repudiating the contracts having been despatched in England, the breach took place there, & the Supreme Ct. had no jurisdiction in the case.—MARTIN *v.* STOUT, [1925] A. C. 359; 94 L. J. P. C. 71; 132 L. T. 673; 41 T. L. R. 176, P. C.

969a. —— Transfer of jurisdiction—Effect of Treaty of Peace (Turkey) Act, 1924 (c. 7).]—Petitioner, the wife of a British subject domiciled in Turkey, obtained in His Britannic Majesty's Supreme Ct. for the Dominions of the Sublime Porte (Matrimonial Jurisdiction) a decree *nisi* for a divorce on the ground of her husband's adultery. In consequence of the ratification of the Treaty of Lausanne the above ct. ceased to exist before the decree was made absolute :—*Held :* by virtue of the combined effect of the above Act, art. 16 of the Convention between Turkey & Great Britain of the same date as the Treaty, & art. 2 of the Treaty of Peace (Turkey) Order, 1924, the Divorce Division of the High Ct. had jurisdiction to make the decree absolute.—SEAGER *v.* SEAGER, [1925] P. 105; 94 L. J. P. 66; 133 L. T. 319; 69 Sol. Jo. 724.

Part XVII.—Forest Courts.

974a. Court books—Duty of clerk to produce for inspection.]—A.-G. *v.* BROWN (1844), 2 L. T. O. S. 424; 8 J. P. 711.

Part XXI.—Palatine Courts.

1014a. ——.]—DYKE *v.* STEPHENS (1885), 29 Sol. Jo. 682.

1016. For cross-reference after this case read " *See, now,* S. C. J. (Consolidation) Act, 1925 (c. 49), s. 28."

Part XXIII.—Borough and Local Courts of Record.

1024a. *S. P.* PENDRED *v.* CHAMBERS (1591), Cro. Eliz. 256; 78 E. R. 512.
Annotation:—**Refd.** Goodson v. Duffield (1612), Cro. Jac. 313.

1053. To the reference before this case add "; Liverpool Corporation Act, 1921 (c. lxxiv), ss. 224-263."

Part XXV.—Judicial Commissioners.

1126. *Add. Annotations*:—**Refd.** Salisbury & Fordingbridge District Drainage Board *v.* Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566; Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

CROWN PRACTICE.

Part I.—Proceedings on the Revenue Side of the King's Bench Division.

35. *Add. Annotation :*—**Consd.** Toronto (City) Corpn. *v.* R., [1932] A. C. 98.

46a. **Bail to answer & pay penalties—Liability of sureties.**]—Where a person is proceeded against in the High Ct. by writ of *capias*, under Customs Consolidation Act, 1876 (c. 36), s. 247, for the recovery of penalties for offences against the Customs Acts he shall be bound to answer & pay all the penalties sued for with two or more sureties who shall be jointly & severally sufficient for the amount of the bail indorsed on the writ.—*Re* ATTFIELD (1924), 93 L. J. K. B. 1064.

166. *Add. Annotation :*—**Refd.** Food Controller *v.* Cork (1923), 130 L. T. 1.

240a. —— **Bills of exchange—Transmitted rom abroad by foreign agents.**]—R. *v.* HUNTER (1817), 4 Price, 258 ; 146 E. R. 457.

246a. **Rights of landlord—Not entitled to payment from sheriff of rent due before writ.**]—R. *v.* DE CAUX (1815), 2 Price, 17 ; 146 E. R. 7.

246b. —— **Subsequent arrears of rent—Goods kept locked up by sheriff for long time.**]—The ct. refused to interfere, so far as to order the effects to be sold, & the rent in arrear to be paid out of the produce.—R. *v.* HILL (1818), 6 Price, 19 ; 146 E. R. 720.

248a. —— ——.]—R. *v.* BINGHAM (1831), 2 Cr. & J. 130 ; 2 Tyr. 46 ; 1 L. J. Ex. 62 ; 149 E. R. 55.

293. *Add. Annotation :*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617.

298a. **Secret profits received by agent of Crown.**]—An English information will lie against a servant employed by the Crown in making confidential inquiries, in respect to secret profits alleged to have been made in the course of his employment.—A.-G. *v.* GODDARD (1929), 98 L. J. K. B. 743 ; 45 T. L. R. 609 ; 73 Sol. Jo. 514.

308. *Add. Annotation :*—**Apld.** Chowood *v.* Lyall, [1929] 2 Ch. 406.

309. *Add. Annotation :*—**Refd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704.

313. *Add. Annotation :*—**Refd.** *Re* Kent Coal Concessions, Burn *v.* The Co., [1923] W. N. 328.

Part II.—Petition of Right.

319. *Add. Annotation :*—**Refd.** Constantinesco *v.* R. (1927), 11 Tax Cas. 730.

320. *Add. Annotation :*—**Refd.** Badman *v.* R., [1924] 1 K. B. 64.

322. *Add. Annotations :*—**Distd.** Gilleghan *v.* Minister of Health (1931), 47 T. L. R. 439. **Refd.** Rowland *v.* Air Council (1923), 39 T. L. R. 228.

322a. —— —— —— **Ministry of Health.**]—By Ministry of Health Act, 1919 (c. 21), s. 7 (1), "The Minister may sue & be sued by the name of the Minister of Health, & may for all purposes be described by that name" : —*Held :* this provision does not enable an action to be brought against the Minister for alleged breach of a contract made by the Minister as a servant of the Crown, & the proper remedy is against the Crown by petition of right.—GILLEGHAN *v.* MINISTER OF HEALTH, [1932] 1 Ch. 86 ; 101 L. J. Ch. 81 ; 146 L. T. 231 ; 47 T. L. R. 439.

323. *Add. Annotation :*—**Refd.** *Re* Mason, [1928] Ch. 385.

323a. **Claim against Dominion.**]—A petition of right cannot be brought in the High Ct. of Justice of England which has for its object a judgment against the Crown, which is to be satisfied out of the Exchequer of a Dominion.—A.-G. *v.* GREAT SOUTHERN & WESTERN RY. CO. OF IRELAND, [1925] A. C. 754 ; 94 L. J. K. B. 772 ; 133 L. T. 568 ; 41 T. L. R. 576 ; 69 Sol. Jo. 744, H. L. ; *revsg.* S. C. *sub nom.* Great Southern & Western Ry. Co. of Ireland *v.* R., [1924] 2 K. B. 450, C. A.

PART I. SECT. 1, SUB-SECT. 4.—A.

8a. *Power of court to give relief to debtor.*]—R. *v.* BONTER (1843), 6 O. S. 551.—**CAN.**

PART I. SECT. 1, SUB-SECT. 4.—C. (c).

8b. *General issue pleaded—Subsequent of Crown's title to reversion—Withdrawal of plea—Costs.*]—In an information of intrusion, the rule to plead was served on Nov. 21, 1832. Deft. from time to time obtained further time to plead, & on Apr. 15, 1833, pleaded the general issue. Notice of trial was served for the sittings after Michaelmas term, 1837 ; & the trial was postponed at the instance of deft. On Jan. 23, 1838, deft. discovered certain documents, showing, as he alleged, that the reversion was vested in the Crown. The ct. allowed him to withdraw the plea of the general issue, & plead his title specially, upon payment of all costs incurred by the Crown, consequent on the plea of the general issue.—A.-G. *v.* LANGFORD (LORD) (1838), 2 Jo. Ex. Ir. 619.—**IR.**

PART I. SECT. 1, SUB-SECT. 4.—C. (d).

85ii. —— —— ——.]—R. *v.* WATSON (1828), N. B. Dig. 447.—**CAN.**

PART I. SECT. 2, SUB-SECT. 1.

8d. *Effect of writ — On accrual of prerogative rights.*]—Prerogative rights which might accrue to the Crown by virtue of a writ of extent are dependent upon the issue of the writ itself. As it was too late to issue the writ :—*Held :* there was no direct liability to the Crown by the insolvent co.—*Re* EXCELSIOR ELECTRIC DAIRY MACHINERY, LTD., [1923] 3 D. L. R. 1176 ; 52 O. L. R. 225 ; 2 C. B. R. 599.—**CAN.**

PART II. SECT. 1.

317 i. *Purposes.*]—Upon petition of right there is no power in the ct. to compel the Crown to make a grant of land.—KEEWATIN POWER CO., LTD. *v.* KEEWATIN FLOUR MILLS CO., LTD., KEEWATIN POWER CO., LTD. *v.* LAKE OF THE WOODS MILLING CO., LTD., [1926] 4 D. L. R. 531 ; 59 O. L. R. 406.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.

o i. —— *Property in possession of third party.*]—A.-G. FOR ONTARIO *v.* MCLEAN GOLD MINES, LTD., [1927] A. C. 185 ; 95 L. J. P. C. 217 ; 136 L. T. 194, P. C.—**CAN.**

333. *Add. Annotation :*—**Refd.** A.-G. for Ontario *v.* McLean Gold Mines Co. (1926), 95 L. J. P. C. 217.

347. *Add. Citation :*—15 Asp. M. L. C. 574.

Add. Annotation :—**Refd.** Brocklebank *v.* R., [1925] 1 K. B. 52.

351. *Add. Annotation :*—**Distd.** A.-G. for Straits Settlements *v.* Pang Ah Yew, [1925] A. C. 555.

352. *Add. Annotations :—As to* (1) **Distd.** A.-G. for Straits Settlements *v.* Pang Ah Yew, [1925] A. C. 555. **Refd.** Jamieson *v.* Downie, [1923] A. C. 691; Badman *v.* R., [1924] 1 K. B. 64.

353a. —— —— **Detinue.**]—BUCKLAND *v.* R. (1932), 49 T. L. R. 39; 76 Sol. Jo. 850.

353b. —— **Compensation for injury to property in Ireland.**]—No claim for compensation for injuries done to property in Ireland is maintainable against the Crown in an English ct.—PRICE *v.* R. (1925), 42 T. L. R. 179.

355. After this case add "—— **Effect of Indemnity Act, 1920 (c. 48).**]—*See* CONSTITUTIONAL LAW, Nos. 293a, 499a, 499b, 526a–526d, 534a, *ante.*"

356. *Add. Annotation :*—**Folld.** A.-G. for Straits Settlements *v.* Pang Ah Yew, [1925] A. C. 555.

356a. —— ——.]—Under Crown Suits Ordinance No. 22 of the Straits Settlements a petition of right can be maintained to recover damages arising from a collector of land revenue selling land under Ordinance No. 35 for arrears of revenue without first serving a written notice of demand as required by s. 4. The collector in selling is an agent of the Crown although he acts under statutory authority, & the fact that he has carried out his duties in an unauthorised manner does not prevent the Crown from being liable.—A.-G. FOR STRAITS SETTLEMENTS *v.* PANG AH YEW, [1925] A. C. 555; 94 L. J. P. C. 150; 133 L. T. 106, P. C.

357. *Add. Annotation :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

360. *Add. Annotations :*—**Distd.** Wigg *v.* A.-G. for Irish Free State, [1927] A. C. 674. **Consd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 242. **Refd.** Nixon *v.* A.-G. (1930), 100 L. J. Ch. 70.

361. *Add. Annotations :*—**Distd.** Wigg *v.* A.-G. for Irish Free State, [1927] A. C. 674. **Consd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 242. **Refd.** Nixon *v.* A.-G. (1930), 100 L. J. Ch. 70.

After this case add :—

——.]—*See, further,* REVENUE, Vol. XXXIX., pp. 307, 308, Nos. 836–841.

363a. Bona vacantia—Recovery by next of kin.]—*Re* MASON, No. 374b, *post.*

368. *Add. Annotations :*—**Consd.** Commercial & Estates Co. of Egypt *v.* Board of Trade, [1925] 1 K. B. 271. **Refd.** Netherlands-American Steam Navigation Co. *v.* Procurator-General (1925), 42 T. L. R. 81.

369. *Add. Annotations :*—**Folld.** Civilian War Claimants Assocn. *v.* R. (1930), 46 T. L. R. 581. **Refd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930.

370. *Add. Annotations :*—**Consd.** Hungarian Property Administrator *v.* Finegold (1931), 100 L. J. K. B. 383. **Apprvd.** Civilian War Claimants Assocn., Ltd. *v.* R., [1932] A. C. 14.

370a. —— ——.]—By Art. 232 of the Treaty of Versailles Germany undertook to make compensation for all damage done to the civilian population of the Allied & Associated Powers & to their property during the period of the belligerency of each as an Allied or Associated Power against Germany by the aggression of Germany & her Allies, & moneys were received by the Crown under this article. By a petition of right the suppliants, as assignees of civilian claimants who had suffered loss or damage by German aggression out of the War, claimed on their behalf payment of compensation out of the moneys paid or payable as reparations under the above article. The case made by the petition was that the claimants had sent particulars of their claims, first, to the Foreign Claims Office, &, afterwards, to the Reparation Claims Department in accordance with the instructions of His Majesty's Government, that these claims had been duly verified by the Government, & were included in the agreed total of claims for reparations which Germany was required to pay under the treaty, & that the Crown in inviting the claimants to submit their claims had constituted itself an agent or a trustee for the claimants in respect of any money received by it from Germany on account of reparations, & that any such money was money had & received by the Crown to the use of the claimants :—*Held :* on demurrer by the Crown, the petition afforded no ground for the contention that the money received under the treaty was received by the Crown as an agent or a trustee for the claimants, or as money had & received to their use, & was bad as disclosing no ground of claim cognisable by the ct.—CIVILIAN WAR CLAIMANTS ASSOCN., LTD. *v.* R., [1932] A. C. 14; 101 L. J. K. B. 105; 146 L. T. 169; 48 T. L. R. 83; 75 Sol. Jo. 813, H. L.

371. After this case add "**Compensation for use of Invention by Crown.**] — *See* PATENTS, No. 1673a, *post.*"

372. *Add. Annotation :*—**Refd.** Brown *v.* Dagenham U. C., [1929] 1 K. B. 737.

374. *Add. Annotation :*—**Apld.** Badman *v.* R., [1924] 1 K. B. 64.

374a. —— —— **When allowed.**]—Under Petitions of Right Act, 1860 (c. 34), s. 7, the ct. has jurisdiction to allow a petition of right to be amended, provided the amendment does not

PART II. SECT. 2, SUB-SECT. 3.—A.

346 ii. —— ——.]—MAUNSELL *v.* R., [1925] Exch. C. R. 133.—**CAN.**

346 iii. ——.]—R. *v.* CANADA STEAMSHIP LINES, LTD., [1927] 1 D. L. R. 991; [1927] S. C. R. 68.—**CAN.**

346 iv. ——.]—KENNEY *v.* R. (1882), 1 Exch. C. R. 68.—**CAN.**

vi. *Refund of part of price of mineral rights in land under sea.*]—KETCHEN *v.* R. (B. C.), [1927] 3 W. W. R. 152.—**CAN.**

PART II. SECT. 2, SUB-SECT. 3.—C.

351 viii. —— ——.]—KENDALL *v.* R., [1926] Exch. C. R 34.—**CAN.**

PART II. SECT. 3.

374a i. —— *May be amended by court—When allowed.*]—Where a suppliant seeks to substitute or add a substantially new cause of action, the amendment should not be allowed in the absence of the Lieutenant-Governor's fiat or the consent of the A.-G.; but if the substance of the case is not changed, the ct. can help the suppliant by amendment.—NORTHERN CONSTRUCTION CO. *v.* R., [1923] 3 D. L. R. 1069; 2 W. W. R. 759.—**CAN.**

involve a substantial alteration in the cause of action, so that the allowance of it without a fresh fiat would operate in derogation of the prerogative of the Crown. The test whether a particular amendment ought to be allowed is this: if the petition had originally been presented in the form in which it stands after amendment, is there a reasonable probability that the fiat would not have been refused?—BADMAN BROTHERS *v.* R., [1924] 1 K. B. 64; 93 L. J. K. B. 132; 130 L. T. 264; 68 Sol. Jo. 166, C. A.

374b. —— **Service of copy on person in possession of property claimed—Petitions of Right Act, 1860 (c. 34), s. 5.**]—A lunatic, at the date of her death in 1798, was entitled to certain funds in Court representing the residuary estate of her father. In 1794 the master had reported that the lunatic had no heir-at-law or next of kin. In 1798 & 1801 the Crown made *ex gratia* grants of these funds to certain persons & obtained an indemnity in respect of these grants. In 1926 a petition was presented by persons claiming to be the next of kin of the lunatic for the payment to them of the whole of her personal estate. The parties agreed to confine themselves, for the present, to seeking a determination of the following questions: (*a*) whether the petition was maintainable on the assumption that no part of the funds in question ever came into the hands of or was dealt with by his present Majesty or his nominees or grantees or was carried to the Consolidated Fund; (*b*) whether the petition was barred by any Statute of Limitations; (*c*) whether in view of Petitions of Right Act, 1860 (c. 34), s. 5, the suppliants could proceed without serving the petition upon the successors in title of the persons to whom the *ex gratia* grants had been made: —*Held:* Petitions of Right Act, 1860 (c. 34), s. 5, did not apply to the case.—*Re* MASON, [1928] 1 Ch. 385; 97 L. J. Ch. 321; 139 L. T. 477; 44 T. L. R. 225; *on appeal*, [1929] 1 Ch. 1, C. A.

Annotation:—**Refd.** *Re* Blake. *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251.

375. *Add. Annotations:*—**Refd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930. **Mentd.** Civilian War Claimants Assocn. *v.* R. (1930), 46 T. L. R. 581.

381. *Add. Annotations:*—*As to* (1) **Refd.** Jamieson *v.* Downie, [1923] A. C. 691. *As to* (3) **Apprvd.** Badman *v.* R., [1924] 1 K. B. 64.

388. *Add. Annotations:*—*As to* (1) **Consd.** *Re* Mason, [1929] 1 Ch. 1. **Refd.** Cayzer, Irvine *v.* Board of Trade (1925), 95 L. J. K. B. 134; Hungarian Property Administrator *v.* Finegold (1931), 100 L. J. K. B. 383.

Part III.—Scire Facias.

426. *Add. Annotation:*—**Consd.** Austrian Property Administrator *v.* Russian Bank for Foreign Trade (1931), 47 T. L. R. 550.

449. *Add. Annotation:*—**Consd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

Part V.—Habeas Corpus.

464. *Add. Annotation:*—**Refd.** Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603.

469. *Add. Annotations:*—*As to* (1) **Distd.** Secretary of State for Home Affairs *v.* O'Brien, [1923]

374a ii. —— —— ——.]—Even if the ct. has power in some cases to amend a petition without the consent of the Crown, that power must be limited to minor matters, & cannot go the length of allowing a suppliant to change the character of his claim against the Crown, either by adding to it or withdrawing part of it or by adding parties as co-defts. with the Crown.—FLEXLUME SIGN CO. *v.* MACEY SIGN CO., [1923] 1 D. L. R. 1185; 51 O. L. R. 595.—**CAN.**

374a iii. —— —— ——.]—A petition cannot be amended, unless one month's notice of the substance of the petition is given to a law officer.—OFFICIAL ASSIGNEE *v.* R., [1922] N. Z. L. R. 265.—**N.Z.**

374a iv. —— —— ——.]—FITZPATRICK *v.* R. (1925), 57 O. L. R. 178.—**CAN.**

379 i. *Parties—Joinder of—Not Crown with another respondent.*]—I can find no authority in which it has been decided that a resp. may be joined with the Crown in a petition of right, & as applts. object to being so joined, I think they are entitled to succeed (DRAPER, J.).—MCNEIL'S EXORS. & DE BERNALES *v.* R. & PENDERGAST (1930), W. A. L. R. 4.—**AUS.**

380 iii. —— ——.]—The Crown expropriated certain lands, & in the plan & description deposited in the registry office, named M. as the owner of a part. M., then, having obtained a fiat from the Crown, filed a petition of right in this ct. claiming the value of the land expropriated. M. later discovered that his wife & not himself was the owner of the land expropriated, & a motion was made for leave to amend the petition of right by substituting the wife's name for that of M. as suppliant:—*Held:* as no action can be taken against the Crown without first obtaining its fiat which gives the ct. jurisdiction, such an amendment could not be allowed & the motion was, under the circumstances, dismissed without costs.—MORENCY *v.* R., [1927] Exch. C. R. 238.—**CAN.**

g i. —— *Defence—When particulars ordered.*]—O'BRIEN & DOHENY *v.* R., [1925] Exch. C. R. 1.—**CAN.**

sk. *Claim against individual as well as Crown—Necessity for separate action against individual—Action & petition of right tried together.*]—NORTHERN CONSTRUCTION CO. *v.* R., [1923] 3 D. L. R. 1069; 2 W. W. R. 759.—**CAN.**

393 i. *Discovery—Suppliant's right as against Crown.*]—In proceedings by petition of right against the Crown, an order will not be made for the examination by petitioner of an officer of the Crown for discovery before trial.—CROMBIE *v.* R., [1923] 2 D. L. R. 542; 52 O. L. R. 72.—**CAN.**

393 ii. —— ——.]—A suppliant proceeding by way of petition under Part II. of Crown Suits Act, 1908, is not entitled to an order for discovery of documents against the Crown.—RAYNER *v.* R., [1929] N. Z. L. R. 805.—**N.Z.**

394 i. *Evidence—Burden of proof—Negligence charged against officers & servants of Crown.*]—The burden of proof is upon the suppliant, who must show that there was negligence, & the maxim *res ipsa loquitur* cannot be invoked to relieve him of the *onus* in such actions under Exch. Ct. Act, 1908, s. 20.—MONTREAL TRANSPORTATION CO. *v.* R., [1924] 4 D. L. R. 808.—**CAN.**

PART III. SECT. 1.

sl. *Whether writ will issue against heir—After return of nulla bona by administrator.*]—A *sci. fa.* will not issue against an heir under 5 Geo. 2, although an execution may have issued against the goods & chattels in the hands of the administrator & been returned *nulla bona*.—PATERSON *v.* MCKAY (1823), Tay. 43.—**CAN.**

PART V. SECT. 1, SUB-SECT. 1.

sm. *Civil proceeding—Appeal to Court of King's Bench.*]—The writ of *habeas corpus* is a civil proceeding whatever may be the cause of detention, whether a criminal or supposed criminal or civil matter or any other illegal

A. C. 603. *As to* (4) **Refd.** R. *v.* Maidstone Prison, *Ex p.* Maguire, [1925] 2 K. B. 265. *Generally*, **Refd.** *Re* Carroll, [1931] 1 K. B. 317.

470. *Add. Citations :*—[1928] 2 K. B. 361 ; 92 L. J. K. B. 797 ; 129 L. T. 419 ; 87 J. P. 166 ; 21 L. G. R. 419 ; 27 Cox, C. C. 433 ; *sub nom.* O'BRIEN *v.* SECRETARY OF STATE FOR HOME AFFAIRS, 67 Sol. Jo. 553 ; *on appeal, sub nom.* SECRETARY OF STATE FOR HOME AFFAIRS *v.* O'BRIEN, [1923] A. C. 603, H. L.

Add. Annotation :—**Refd.** Campbell *v.* Pollak, [1927] A. C 732.

492. *Add. Annotation :*—**Refd.** Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603.

493. *Add. Annotation :*—*As to* (1) **Consd.** Sobhuza II. *v.* Miller, [1926] A. C. 518.

498. *Add. Annotations :*—**Refd.** R. *v.* Home Secretary, *Ex p.* Bressler (1924), 131 L. T. 386; Eshugbayi Eleko *v.* Nigeria Government, [1931] A. C. 662.

508. *Add. Annotations :*—*As to* (1) **Apld.** Campbell *v.* Pollak, [1927] A. C. 732. **Refd.** *Re* Carroll (1930), 47 T. L. R. 20. *Generally*, **Refd.** Eshugbayi Eleko *v.* Nigeria Government, [1928] A. C. 459.

553. *Add. Annotation :*—**Refd.** R. *v.* Brixton Prison, *Ex p.* Shure, [1926] 1 K. B. 127.

554. *Add. Annotations :*—**Consd.** R. *v.* Brixton Prison, *Ex p.* Shure, [1926] 1 K. B. 127. **Refd.** R. *v.* Brixton Prison, *Ex p.* Perry, [1924] 1 K. B. 455.

555. *Add. Annotation :*—**Consd.** Kossekechatko *v.* A.-G. of Trinidad, [1932] A. C. 78.

detention. A judgment maintaining a writ of *habeas corpus* is a judgment in a civil case, & is susceptible of appeal to the Ct. of K. B.—*Ex p.* FONG, *Ex p.* YOU, *Ex p.* CHALIFOUX, [1929] 1 D. L. R. 223 ; 50 Can. Crim. Cas. 213 ; Q. R. 44 K. B. 476.—**CAN.**

sn. ——.]—*Ex p.* FONG, *Ex p.* YOU, *Ex p.* CHALIFOUX, [1929] 1 D. L. R. 223 ; 50 Can. Crim. Cas. 213 ; 44 Que. K. B. 476.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.—A.

c i. —— —— *Commitment not in any criminal case under any Act of Parliament of Canada.*]—Petitioner was convicted, in July & October, 1928, on charges under Intoxicating Liquor Act of New Brunswick, & was committed to gaol in York County, N.B. He applied to a judge of this ct. for a writ of *habeas corpus*, alleging that, on & prior to Dec. 10, 1917, Canada Temperance Act was in force in said county, that, on that date, an Order in Council, passed pursuant to Statutes of Canada, 1917, c. 30, became effective, suspending the operation of the Canada Temperance Act in said county : that, at the time of the passing of said Order in Council, there was in force the New Brunswick Intoxicating Liquor Act, 1916, referred to in said Order in Council as being as restrictive as the Canada Temperance Act ; that, in 1927, New Brunswick Intoxicating Liquor Act, 1927, c. 3, came into force, which repealed the 1916 Act, & was less restrictive than Canada Temperance Act ; & he contended that, as a result, the said suspension of the operation of Canada Temperance Act automatically ceased, & that Act came into force in said county, & that the offences for which he was convicted & committed to gaol were offences against that Act & not against the Provincial Act :—*Held :* a judge of this ct. had no jurisdiction to issue the writ applied for, as the commitment was not " in any criminal case under any Act of Parliament of Canada " within Supreme Court Act, s. 57.—DOHERTY *v.* HAWTHORNE, [1929] 1 D. L. R. 136 ; 50 Can. Crim. Cas. 209 ; [1928] S. C. R. 559.—**CAN.**

c ii. —— —— ——.]—The jurisdiction of the Supreme Ct. of Canada in respect of *habeas corpus* extends only to cases of commitment following upon charges of offences which are criminal by virtue of statutes enacted by the Parliament of Canada ; it does not extend to cases of commitment for offences at common law or under statutes enacted prior to Confederation which are still in force, even if these last offences have also been declared to be criminal by a federal statute.—SMITH *v.* R., BLACKMAN *v.* R., [1931] S. C. R. 578 ; 4 D. L. R. 405 ; 56 Can. C. C. 51.—**CAN.**

so. *Right to apply to different judges successively—Extradition proceedings.*]—The common law right to make successive applications to different judges for a writ of *habeas corpus* still exists with respect to extradition proceedings.—*Re* O'CONNOR, [1928] 1 D. L. R. 588 ; [1928] 1 W. W. R. 65 ; 49 Can. Crim. Cas. 151 ; 39 B. C. R. 271.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—A.

501 iv. ——.]—REID *v.* DRAKE (1867), 4 P. R. 141.—**CAN.**

501 v. —— *Not granted where detention lawful—Not available as means of appeal.*]—A writ of *habeas corpus* will not issue where the accused is being held in custody in virtue of a valid judgment of a ct. having jurisdiction. It is not intended & cannot be used as a means of appeal.—HOWLEY *v.* PIEUZE (1927), Q. R. 65 S. C. 483.—**CAN.**

501 vi. —— —— ——.]—*Ex p.* BOUCHER (Que.) (1928), 50 Can. Crim. Cas. 161.—**CAN.**

501 vii. ——.]—In order to make a case for *habeas corpus* in criminal matters, there must be an actual confinement or, at least, the present means of enforcing it. A person may apply for the writ while in the custody of a constable, immediately upon being arrested, & need not wait until he is actually incarcerated. But a person at large on bail is not so restrained of his liberty as to entitle him to the writ.—*Re* ISBELL, [1930] S. C. R. 62 ; 1 D. L. R. 393 ; 52 Can. C. C. 170.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—B. (a).

511 ii. ——.]—*Ex p.* BURNS (No. 2), [1932] 3 D. L. R. 29.—**CAN.**

512 v. —— —— *Costs not stated.*]—*Ex p.* HENDERSON, *Ex p.* BRODER, *Ex p.* STEWART, *Ex p.* JOE GO GET (Can.), [1930] 1 D. L. R. 420 ; 52 Can. Crim. Cas. 95.—**CAN.**

519 i. *Indictment for murder—Committal by magistrate—Evidence disclosing criminal negligence.*]—R. *v.* RIESY (1931), 55 Can. C. C. 328.—**CAN.**

sb. *Detention after purging contempt.*]—*Re* SINGER (Ont.) (1929), 52 Can. Crim. Cas. 243.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—B. (b).

523 i. *Where warrant prima facie valid.*]—R. *v.* WONG YUEN (1925), 44 Can. Crim. Cas. 338.—**CAN.**

sf. *Power of court to amend.*]—*Re* MCNEILL (1931), 3 M. P. R. 185.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—B. (e).

sq. *Commissioner under Combines Investigation Act.*]—The jurisdiction of a judge of the Supreme Ct. of Canada, under Supreme Ct. Act, 1927, s. 57, to issue a writ of *habeas corpus*, held not to extend to the case of a commitment by a comr. appointed under Combines Investigation Act, 1927, for contempt of an order made by the comr. under sect. 22 thereof.—*Re* SINGER, [1929] 4 D. L. R. 878 ; S. C. R. 614 ; 52 Can. Crim. Cas. 1.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—B. (h).

sr. *Applicant at liberty on bail—Writ refused.*]—VERRAULT *v.* LACHANCE (Que.), [1929] 2 D. L. R. 900.—**CAN.**

st. —— ——.]—*Re* ISBELL (Can.), [1930] 1 D. L. R. 393 ; 52 Can. Crim. Cas. 170.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—C.

552 iv. —— ——.]—Where an inferior ct. is acting within its jurisdiction, the superior ct. has no power, at common law, to assume the function of an appellate ct. & review its conclusions by means of a writ of *habeas corpus* either with or without *certiorari*.—*Re* CHINESE IMMIGRATION ACT & LEE CHOW YING (1928), 49 Can. Crim. Cas. 168 ; 39 B. C. R. 322.—**CAN.**

554 i. —— —— *On ground that decision against weight of evidence.*]—Application by way of *habeas corpus* & *certiorari* in aid to quash a conviction made by a police magistrate on a charge, under Excise Act, s. 181. of unlawful possession of spirits unlawfully manufactured :—*Held :* assuming that the evidence before the magistrate might be examined to determine its sufficiency, the magistrate having had some evidence before him on which to base his finding, the ct. was not justified in interfering with the conclusion or inference drawn by him therefrom.—R. *v.* SCHARF (Man.), [1928] 3 W. W. R. 398.—**CAN.**

554 ii. —— ——.]—R. *v.* HILL (N. S.), [1929] 1 D. L. R. 349 ; 50 Can. Crim. Cas. 319.—**CAN.**

557 i. —— *Acting without jurisdiction—Magistrate.*]—*Ex p.* MOHAMET ALI (N. S.) (1919), 32 Can. Crim. Cas. 65.—**CAN.**

557 ii. —— —— *County court judge.*]—*Habeas corpus* lies where a county ct. judge sitting in appeal from a summary conviction has exceeded his jurisdiction.—R. *v.* PETIT, [1932] 1 W. W. R. 161 ; 40 Man. L. R. 207.—**CAN.**

o. For " 4 C. L. R. 101 " read " 4 V. L. R. 101."

r i. —— —— ——.]—R. *v.* MOORE, [1924] 3 W. W. R. 923.—**CAN.**

sv. *Where proceedings so irregular as to preclude fair trial.*]—Accused discharged upon a writ of *habeas corpus*.—R. *v.* CAMPBELL (1924), 43 Can. Crim. Cas. 340.—**CAN.**

sw. *Not decisions of court of record—County court judge's criminal court.*]—*Ex p.* MARTIN, [1927] 3 D. L. R. 1134 ; 48 Can. Crim. Cas. 23 ; 60 O. L. R. 577.—**CAN.**

562. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

585a. —— **Form of summons.**]—A summons taken out during the long vacation with a view to obtaining a writ of *habeas corpus* to bring the body of appct. before the High Ct. should require the parties concerned to show cause, not why the writ should not issue, but why an order *nisi* for the writ should not issue, inasmuch as the former procedure does not, whereas the latter does, disclose the grounds upon which the application is made. —R. *v.* BRIXTON PRISON (GOVERNOR), *Ex p.* SHURE, [1926] 1 K. B. 127 ; 95 L. J. K. B. 361 ; 134 L. T. 317 ; 28 Cox, C. C. 126 ; [1926] B. & C. R. 1, D. C.

601. *Citations :*—For "*sub nom.* R. *v.* HOME SECRETARY, *Ex p.* O'BRIEN, 39 T. L. R. 487, C. A. ; *sub nom.* HOME SECRETARY *v.* O'BRIEN, *Times*, May 15, H. L.," read "*sub nom.* R. *v.* SECRETARY OF STATE FOR HOME AFFAIRS, *Ex p.* O'BRIEN, [1923] 2 K. B. 361, C. A. ; *sub nom.* SECRETARY OF STATE FOR HOME AFFAIRS *v.* O'BRIEN, [1923] A. C. 603, H. L."

Add. Annotation :—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

611. *Add. Annotations :*—**Consd.** Eshugbayi Eleko *v.* Nigeria Government, [1928] A. C. 459. **Refd.** Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603.

613a. May be made to successive judges.]—Each judge of the High Ct. established by Jud. Act, 1873 (c. 66), has jurisdiction to entertain an application for a writ of *habeas corpus*, in term time or in vacation, & is bound to hear & determine the application on its merits, notwithstanding that some other judge has already refused a similar application ; & this principle applies in the case of the judges of the Supreme Ct. of Nigeria.—ESHUGBAYI ELEKO *v.* NIGERIA GOVERNMENT (ADMINISTERING OFFICER), [1928] A. C. 459 ; 97 L. J. P. C. 97 ; 139 L. T. 527 ; 44 T. L. R. 632 ; 72 Sol. Jo. 452, P. C.

Annotation :—**Consd.** *Re* Carroll (1930), 47 T. L. R. 20.

356a. ——.]—RUDYARD'S CASE (1670), 2 Vent. 22 ; 86 E. R. 286.

Annotations :—**Refd.** R. *v.* Wilkes (1763), 2 Wils. 151 ; Wood's Case (1771), 3 Wils. 172 ; R. *v.* Dunn (1840), 12 Ad. & El. 599.

660a. ——.]—Assuming that an order transferring a convict sentenced to penal servitude in Northern Ireland to an English prison was not valid to justify the transfer between the Irish & the English prisons, it is a sufficient answer by the governor of the English prison, to whom a rule *nisi* for a writ of *habeas corpus* has been directed, that appct. was lawfully sentenced to a term of penal servitude, which is still current, & that he detains him under an order lawfully made by the Home Secretary.—R. *v.* MAIDSTONE PRISON (GOVERNOR), *Ex p.* MAGUIRE, [1925] 2 K. B. 265 ; 94 L. J. K. B. 679 ; 133 L. T. 710 ; 89 J. P. 89 ; 41 T. L. R. 456, D. C. ; *on appeal*, 95 L. J. K. B. 55, C. A.

666. *Add. Annotation :*—*As to* (3) **Consd.** Eshugbayi Eleko *v.* Nigeria Government, [1928] A. C. 459.

682a. ——.]—SECRETARY OF STATE FOR HOME AFFAIRS *v.* O'BRIEN, No. 801, *post*.

PART V. SECT. 1, SUB-SECT. 3.—D. (c).

sx. *Person outside British India.*]—The High Ct. can issue a writ of *habeas corpus* for the production of a person outside British India, provided he is in the custody, or under the control, of a person within its jurisdiction.—MAHOMEDALLI ALLABUX *v.* ISMAILJI ABDULALI & SARDAR SYEDNA TAHER SAIFUDDIN MULLAJI SAHEB (1926), I. L. R. 50 Bom. 616.—**IND.**

PART V. SECT. 1, SUB-SECT. 4.—A. (b).

sz. *To court in another province—Conviction under Opium & Narcotic Drug Act, 1923—Not without good reason.*]—R. *v.* JUNGO LEE (No. 2), [1927] 1 W. W. R. 578 ; 47 Can. Crim. Cas. 255 ; 38 B. C. R. 313.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.—A. (c).

595 v. ——.]—An application for *habeas corpus* must be supported by an affidavit of prisoner, or an affidavit showing that his affidavit cannot be obtained.—R. *v.* MURRELL, [1924] 2 D. L. R. 647 ; 40 Can. Crim. Cas. 298. —**CAN.**

595 vi. ——.]—R. *v.* LEE (B. C.), [1926] 3 W. W. R. 264.—**CAN.**

599 ii a. —— —— ——.]—R. *v.* MURRELL, No. 595 v., *ante*.—**CAN.**

599 ii b. *S. P.* R. *v.* BANNITI, [1926] 1 D. L. R. 424 ; 45 Can. Crim. Cas. 75 ; 58 O. L. R. 165.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.—A. (d).

611 vi. —— ——.]—An appct. for a writ of *habeas corpus* is not at liberty to go from judge to judge of the Supreme Ct. in his quest of release.—*Re* LOO LEN (No. 2), [1924] 1 D. L. R. 910 ; 1 W. W. R. 735 ; 41 Can. Crim. Cas. 388 ; 33 B. C. R. 213.—**CAN.**

611 vii. —— ——.]—An appct. for a writ of *habeas corpus* whose discharge is refused by one judge, may make another application before another judge, even of the same ct., on the same or on different grounds, & so on from judge to judge, each judge being uncontrolled by the previous decisions. —R. *v.* GEE DEW (No. 1), [1924] 3 D. L. R. 153 ; 2 W. W. R. 773 ; 42 Can. Crim. Cas. 188 ; 33 B. C. R. 524.—**CAN.**

611 viii. —— ——.]—When an application for a writ of *habeas corpus* has been refused on its merits by a judge of the Ct. of K. B. in Manitoba, the only ct. of original jurisdiction in Manitoba in questions of that kind, the application cannot be renewed before any other single judge.—R. *v.* ROMANCHUK, [1924] 3 D. L. R. 229 ; 2 W. W. R. 351 ; 42 Can. Crim. Cas. 231 ; 34 Man. L. R. 371.—**CAN.**

611 ix. —— ——.]—The dismissal of a *habeas corpus* application or applications is not a bar to the making of a new application for *habeas corpus* before the same judge.—R. *v.* JACI, [1925] 2 W. W. R. 129 ; 43 Can. Crim. Cas. 363.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.—B.

sb. *Order nisi—Notification of prosecutor & magistrate not necessary.*]—R. *v.* KUZYCK, [1924] 1 W. W. R. 872 ; 42 Can. Crim. Cas. 144.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.—C. (c).

641 i. *General rule—Original writ.*]—There is nothing in King's Bench Act or Rules which expressly or impliedly provides that a writ of *habeas corpus* in a civil proceeding can be properly served by the delivery of a copy.—BUSSELL *v.* STONER (Man.), [1928] 1 W. W. R. 749.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.—C. (d).

g i. —— ——.]—Where a judge of the Ct. of Appeal grants a writ of *habeas corpus*, the Ct. of Appeal has the right to quash the judge's order if granted erroneously.—R. *v.* ROMANCHUK, [1924] 3 D. L. R. 229 ; 2 W. W. R. 351 ; 42 Can. Crim. Cas. 231 ; 34 Man. L. R. 371.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.—D. (f) ii.

726 v. —— ——.]—The ct. is entitled, on a *habeas corpus* application, to receive affidavit evidence to show that the magistrate had no jurisdiction or has exceeded his jurisdiction in convicting appct.—R. *v.* MONTEMURRO, [1924] 2 W. W. R. 250.—**CAN.**

726 vi. —— ——.]—If, on an application to make absolute an order for a writ of *habeas corpus*, no want or excess of jurisdiction appears on the face of the documents filed with the return to the rule *nisi*, affidavits are admissible to establish such want or excess of jurisdiction, even although they may directly contradict facts stated in the documents filed with such return.—*Re* CAVENETT, [1926] N. Z. L. R. 755.—**N.Z.**

726 vii. —— ——.]—R. *v.* CHIN YOW HING (B. C.), [1929] 2 W. W. R. 73 ; 51 Can. Crim. Cas. 407.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.—D. (i).

sm. *Detained person sent to immigration station outside province.*]—Upon the return to a writ of *habeas corpus* directed to F., a certain officer of the R.C.M.P., it was shown that, in pursuance of an order addressed to said officer by the Minister of Immigration & Colonisation, the prisoner in question had been duly arrested & proceeded against under Immigration Act, R. S. C., 1927, & had thereupon been sent under escort from Winnipeg to the custody of the chief immigration officer at Halifax, & was beyond the control of F. :—*Held :* the return made by F. was a sufficient answer to the writ.—R. *v.* HOLMES (OR CHOMICKI), [1932] 3 W. W. R. 76.—**CAN.**

750. *Add. Annotation :—As to* (2) **Refd.** Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603.

784. *Add. Annotation :*—**Refd.** Kossekechatko *v.* A.-G. of Trinidad, [1932] A. C. 78.

787. *Add. Citation :*—17 Jur. 1163.

792. *Add. Annotations :—As to* (1) **Consd.** Eshugbayi Eleko *v.* Nigeria Government, [1928] A. C. 459. *As to* (2) **Refd.** Campbell *v.* Pollak, [1927] A. C. 732. *Generally*, **Refd.** *Re* Carroll (1930), 47 T. L. R. 20.

793. *Add. Annotations :*—**Distd.** Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603. **Refd.** G. *v.* G. (1928), 45 T. L. R. 7; *Re* Carroll, [1931] 1 K. B. 317.

795. *Add. Annotations :*—**Refd.** R. *v.* Maidstone Prison, *Ex p.* Maguire (1925), 133 L. T. 710; *Re* Carroll (1930), 47 T. L. R. 20.

796. *Add. Annotation :*—**Apld.** *Re* Carroll (1930), 47 T. L. R. 20.

797. After this case add "—— ——.]—*See, now*, S. C. J. (Consolidation) Act, 1925 (c. 49), s. 31 (1) (*a*)."

797a. —— —— **Person sentenced to penal servitude.**]—Where, on an application for a writ of *habeas corpus*, a Div. Ct. has held that a person sentenced to penal servitude by a ct. in Northern Ireland has been lawfully transferred to a convict prison in England to serve his sentence, no appeal lies to the Ct. of Appeal as the question of the legality of the transfer & detention is one arising out of a criminal cause or matter.—R. *v.* Maidstone Prison (Governor), *Ex p.* Maguire (1925), 95 L. J. K. B. 55; 133 L. T. 710; 89 J. P. 161; 41 T. L. R. 554, 69 Sol. Jo. 691, C. A.

801. For the existing paragraph in original volume substitute as follows :—

From order declaring prisoner's right to liberty—Order not directing discharge—Order of Court of Appeal—No appeal to House of Lords.]—No appeal lies from an order of a competent ct. for the issue of a writ of *habeas corpus* where the ct. determines the illegality of appct.'s detention & his right to liberty, although the order does not direct his discharge.

Upon the application of a man whom the Home Secretary had caused to be arrested & deported to Dublin, where he was interned by the Govt. of the Irish Free State, the Ct. of Appeal, reversing the decision of the Div. Ct., granted an order *nisi*, which they subsequently made absolute, for the issue of a writ of *habeas corpus* directed to the Home Secretary, the ct. holding that the detention was illegal as the Home Secretary had no power to order a person to be interned in the Irish Free State; &, owing to a doubt whether the Home Secretary had control of the body, the order allowed him a week within which to make his return to the writ. Before the week had elapsed an appeal by the Home Secretary to the House of Lords was heard on the question of competency :—*Held :* notwithstanding the generality of the language of Appellate Jurisdiction Act, 1876 (c. 59), s. 3, the House had no jurisdiction to entertain the appeal.—Secretary of State for Home Affairs *v.* O'Brien, [1923] A. C. 603; 92 L. J. K. B. 830; 129 L. T. 577; 87 J. P. 174; 39 T. L. R. 638; 67 Sol. Jo. 747; 21 L. G. R. 609; 27 Cox, C. C. 466, H. L.; *previous proceedings, sub nom.* R. *v.* Secretary of State for Home Affairs, *Ex p.* O'Brien, [1923] 2 K. B. 361, C. A.

Annotation :—**Consd.** Campbell *v.* Pollak, [1927] A. C. 732.

804a. From refusal to grant—Power of Court of Appeal to order security for costs.]—The Ct. of Appeal has no original jurisdiction in *habeas corpus*, & where an appeal is brought

PART V. SECT. 1, SUB-SECT. 4.—E.

sd. *Duty of court—To consider all evidence, records & proceedings taken.*]—R. *v.* Page (1923), 41 Can. Crim. Cas. 59.—**CAN.**

se. *S. P. Re* Hillman (N. S.), [1927] 1 D. L. R. 725; 46 Can. Crim. Cas. 308.—**CAN.**

sb. —— *Findings of fact—Right to question.*]—R. *v.* Hill (N. S.), [1929] 1 D. L. R. 349; 50 Can. Crim. Cas. 319.—**CAN.**

sc. —— *To raise technical points—Extradition proceedings.*]—Since the judge must look at the evidence to ascertain whether the conditions of the extradition treaty & statute have been fulfilled, it is not the duty of the *habeas corpus* judge to interfere with the proceedings on merely technical grounds.—*Re* O'Connor, [1928] 1 D. L. R. 558; [1928] 1 W. W. R. 65; 49 Can. Crim. Cas. 151; 39 B. C. R. 271.—**CAN.**

sm. *What may be considered—Destruction of notes of evidence—Necessity for certiorari in aid.*]—*Ex p.* Won Lai (1930), 54 Can. C. C. 143.—**CAN.**

sp. *Jurisdiction of judge to refer to appeal court.*]—R. *v.* Keeper of King's County Gaol, *Ex p.* Dunn (1929), 2 M. P. R. 37.—**CAN.**

sr. *Reference to Appeal Division for advice—Not permissible.*]—*Ex p.* Burns (No. 1), [1932] 3 D. L. R. 27.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.—G.

788 i. *Re-arrest on same cause—Warrant of commitment prematurely issued.*]—*Ex p.* David (N. B.), [1928] 3 D. L. R. 237; 49 Can. Crim. Cas. 381.—**CAN.**

788 ii. —— *First arrest premature.*]—R. *v.* Ransome, [1931] 3 D. L. R. 193; 55 Can. C. C. 193.—**CAN.**

f (p. 269) **i.** *Not where prisoner detained under warrant of arrest from another Province—Legality of arrest not questioned.*]—*Re* Nettleton (B. C.), [1929] 1 D. L. R. 692; 51 Can. Crim. Cas. 413; 40 B. C. R. 413; [1928] 3 W. W. R. 735.—**CAN.**

g (p. 269) **i.** —— *Commitment for default of payment of fine—Fine partly paid.*]—*Ex p.* Whynot (N. S.), [1928] 1 D. L. R. 528; 49 Can. Crim. Cas. 155.—**CAN.**

g (p. 269) **ii.** —— *Unauthorised order as to costs.*]—In making a conviction under Liquor Act, 1925, 1924-25, c. 53, a justice of the peace has no authority to order that the costs be paid to him & such a provision in the conviction cannot be treated as a nullity on an application for *habeas corpus*.—R. *v.* Rabiuk, [1928] 1 W. W. R. 588; 50 Can. Crim. Cas. 348; 22 Sask. L. R. 479.—**CAN.**

so. *Discretion of court.*]—*Ex p.* Leadley (N. S.) (1926), 46 Can. Crim. Cas. 298.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.—H.

q i. ——.]—The Ct. of Appeal in British Columbia has no jurisdiction to hear an appeal from the refusal of a judge to grant a writ of *habeas corpus* in aid of criminal matters.—R. *v.* McAdam, [1925] 4 D. L. R. 33; [1925] 3 W. W. R. 257; 44 Can. Crim. Cas. 155; 35 B. C. R. 168.—**CAN.**

a i. —— *Grounds for allowing or refusing.*]—*Re* Wood (N. S.), [1927] 4 D. L. R. 537; 48 Can. Crim. Cas. 146.—**CAN.**

798 v. —— ——.]—When a judge or the full Ct. of K. B. has granted a writ of *habeas corpus* & discharged prisoner, there is no appeal.—R. *v.* Romanchuk, [1924] 3 D. L. R. 229; 2 W. W. R. 351; 42 Can. Crim. Cas. 231; 34 Man. L. R. 371.—**CAN.**

798 vi. —— ——.]—R. *v.* Dunn (N. B.), [1928] 3 D. L. R. 674; 50 Can. Crim. Cas. 37.—**CAN.**

sg. *Appeal from discretionary order as to custody of infants—Whether Court of Appeal will interfere.*]—*Re* Paisley (N. B.), [1928] 1 D. L. R. 403.—**CAN.**

sh. *Time for—More than sixty days after date of judgment.*]—On appeal to the Supreme Ct. of Canada in matters of *habeas corpus* the first step is the filing of the case in appeal with the registrar. Judgment of the Ct. of Appeal in a *habeas corpus* proceeding was pronounced Nov. 13, 1888; notice of appeal was immediately given, but the case in appeal was not filed in the Supreme Ct. until Feb. 18, 1889 :—*Held :* the appeal was not brought within sixty days from the date on which the judgment sought to be appealed from was pronounced, & there was no jurisdiction to hear it.—*Re* Smart (Ont.) (1889), 16 S. C. R. 396.—**CAN.**

from a refusal of a Div. Ct. to give leave to issue a writ of *habeas corpus* the fact that the matter of the appeal is *habeas corpus* will not prevent the Ct. of Appeal from making an order requiring security for the costs of the appeal to be given if applt. is an impecunious person.—*Re* CARROLL (1930), 47 T. L. R. 20; 74 Sol. Jo. 770, C. A.

Part VI.—Mandamus.

894a. Proper practice must be followed.]—Upon an application for a high prerogative writ, such as a writ of *mandamus*, it is important that the proper practice should be followed, & that the precise order asked for & made should be carefully defined.—LOCAL GOVERNMENT LANDS & SETTLEMENT COMR. *v.* KADERBHAI, [1931] A. C. 652; 100 L. J. P. C. 124; 145 L. T. 265, P. C.

Annotation:—**Refd.** Eshugbayi Eleko *v.* Nigeria Government (Officer Administering), [1931] A. C. 662.

899. *Add. Annotation*:—**Consd.** R. *v.* West Norfolk Assessment Committee, *Ex p.* Ward (F. B.) (1930), 94 J. P. 201.

900. *Add. Annotations*:—*As to* (1) **Refd.** Mersey Docks & Harbour Board *v.* Hay, [1923] A. C. 345; Tate & Lyle *v.* L. & N. E. Ry. & L. M. & S. Ry. (1926), 43 T. L. R. 49; Sheffield Corpn. *v.* Luxford, Same *v.* Morrell, [1929] 2 K. B. 180.

912. *Add. Annotation*:—**Refd.** A.-G. *v.* Denby, [1925] Ch. 596.

925a. ——.]—It is not appropriate to order a body to hear & determine an application which they had no power to hear (AVORY, J.).—R. *v.* LONDON COUNTY COUNCIL, *Ex p.* ENTERTAINMENTS PROTECTION ASSOCN., LTD. (1930), 47 T. L. R. 111, D. C.

925b. ——.]—The powers of the Ct. of K. B. are not unlimited. That ct. has general power to direct other persons to do that which by law they ought to do; it has no power to require a body to do something which in fact it has no power to do (HUMPHREYS, J.).—R. *v.* STEPNEY CORPN., *Ex p.* WALKER (JOHN) & SONS, LTD. (1932), 96 J. P. 360; 48 T. L. R. 660; 30 L. G. R. 416, D. C.; *on appeal*, 49 T. L. R. 103, C. A.

926a. ——.]—*Re* HEWARD (1845), 2 Dow. & L. 753; *sub nom. Re* HEYWARD, 14 L. J. Q. B. 113.

957. *Add. Annotation*:—**Refd.** R. *v.* Stepney Corpn., *Ex p.* Walker & Sons (1932), 96 J. P. 360.

958. *Add. Annotation*:—**Apld.** R. *v.* Harris, [1927] 2 K. B. 587.

1003. *Add. Annotation*:—*As to* (3) **Apld.** R. *v.* L. C. C., *Ex p.* Swan & Edgar (1927) (1929), 141 L. T. 590.

1022. *Add. Annotation*:—**Refd.** Clark *v.* Epsom R. D. C., [1929] 1 Ch. 287.

1066. *Add. Citation*:—*sub nom.* R. *v.* POPLAR BOROUGH COUNCIL, *Ex p.* LONDON COUNTY COUNCIL, R. *v.* POPLAR BOROUGH COUNCIL, *Ex p.* METROPOLITAN ASYLUMS BOARD, 2 B. R. A. 810.

1091. *Add. Annotation*:—**Refd.** R. *v.* Leicester JJ., *Ex p.* Allbrighton, [1927] 1 K. B. 557.

1095. *Add. Annotation*:—**Consd.** *Re* Wingate's Patent (1931), 47 T. L. R. 541.

PART V. SECT. 1, SUB-SECT. 4.—I.

g i. *Not against informant—Nova Scotia Judicature Act.*]—*Re* BROWN, [1928] 3 D. L. R. 234; 49 Can. Crim. Cas. 402; 60 N. S. R. 76.—**CAN.**

sm. *When not given—Application of Crown Costs Act.*]—R. *v.* TEN CHINAMEN (1924), 34 B. C. R 349.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 1.

so. *Who may issue—Patna High Court.*]—The Patna High Ct., which was constituted long after Specific Relief Act, 1877, had been passed, cannot be said to have inherited any power from the High Ct. of Calcutta to issue a writ of *mandamus*.—SURAJMULL BRIJLAL *v.* INCOME TAX COMR., BIHAR & ORISSA (1931), I. L. R. 10 Pat. 218.—**IND.**

PART VI. SECT. 1, SUB-SECT. 2.

895 iv. ——.]—The granting or refusal of a mandamus is a matter of discretion.—*Re* PIONEER SAVINGS & LOAN SOCIETY, *Re* REGISTRAR OF COMPANIES, [1928] 1 D. L. R. 830; [1928] 1 W. W. R. 361; 39 B. C. R. 372.—**CAN.**

895 v. ——*Where order not for public benefit.*]—PETERSON *v.* MONTREAL (1928), 31 Q. P. R. 164.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 3.—A.

919 i. *Writ sought for ulterior motive—To satisfy personal enmity & spite—Mandamus refused.*]—*Ex p.* SWIM (1921), 49 N. B. R. 207.—**CAN.**

919 ii. ——.]—Applts. seek a mandamus to compel resp. municipality to accept payment by a third party of an alleged debt of its secretary-treasurer:—*Held*: applts. could not succeed, as they had failed to bring their case within the terms of Article 1141 C.C. or to establish agency of such third party in making the payment for the alleged debtor. On the first point, the debt of the secretary-treasurer was not admitted by resp. & was even contested by the former; it could not then be said that the payment was "for the advantage of the debtor." On the second point, the evidence showed that the payment by the third party was not made by him as agent of the debtor but on his own behalf.—PERRON *v.* CORPORATION DU VILLAGE DU SACRE-CŒUR DE JESUS, [1929] 1 D. L. R. 197; [1928] S. C. R. 326.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 3.—B. (b).

949 ii. ——.]—An application for a mandamus was dismissed, where it was an attempt to secure the performance of an alleged private right by a public body, & not to secure the performance of any public duty.—R. (BUTLER) *v.* NAVAN URBAN DISTRICT COUNCIL, [1926] I. R. 92, 466.—**IR.**

PART VI. SECT. 1, SUB-SECT. 3.—C.

954 vi. ——.]—Before a mandatory order can be obtained, appct. must show that he has some specific right in law to enforce the duty, performance of which he asks the aid of the ct. to compel.—*Re* WATSON & COBOURG TOWN, [1924] 4 D. L. R. 459; 55 O. L. R. 531.—**CAN.**

954 vii. ——.]—R. *v.* REGISTRAR OF TITLES, *Ex p.* MOSS, [1928] V. L. R. 411; 49 A. L. T. 275; [1928] Argus L. R. 293.—**AUS.**

954 viii. ——.]—When the extraordinary remedy of *mandamus* is sought to compel a municipality to issue a building permit the applicant must show that there was a reasonably strict compliance with the provisions of the bye-law regulating the issue of such permits. In the present case an order granting such a *mandamus* was set aside on appeal because the bye-law was not complied with in that the application for the permit was not made by the "owner"; although on the application for the *mandamus* the relator, who was the owner, swore that the permit application was made on his behalf.—R. *v.* WINNIPEG, [1930] 1 W. W. R. 914; 4 D. L. R. 205; 38 Man. L. R. 621.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 3.—E. (a).

1004 viii. ——.]—CONDS *v.* KABOTA, [1925] 3 D. L. R. 376; [1925] 2 W. W. R. 620.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 3.—F. (a).

1038 iv. ——.]—An application for a mandamus was dismissed, where appcts. had an adequate alternative remedy.—R. (JOHANNESSON) *v.* CARTIER RURAL MUNICIPALITY, [1922] 2 W. W. R. 670; 68 D. L. R. 741.—**CAN.**

1038 v. ——.]—A mandamus is not available if another remedy is given by statute.—*Re* VIKING MUNICIPAL HOSPITAL DISTRICT NO. 10, [1923] 4 D. L. R. 1123.—**CAN.**

1141a. Income Tax Act, 1918 (c. 40), s. 125, Sched. A., No. V., rr. 7, 8—Remedy by way of appeal.]—As a result of information disclosed in connection with a claim to relief for the year 1920–21 under the above r. 8 the Inspector of Taxes discovered that the rents of certain properties had been increased during that year & that, by the above r. 7 (2), the owners were not entitled to the deductions in respect of repairs which had previously been granted from the Sched. A. assessments on the properties for that year. Additional assessments to income tax, Sched. A., were accordingly made in respect of the tax undercharged, & the Inspector of Taxes refused to certify the claim under r. 8 on the ground that relief under that rule applied only to assessments which were reduced for purposes of collection under r. 7. Notice of appeal was given by the owners against the additional assessments & against the refusal of the Inspector to certify the claim under r. 8, but at the owners' request the hearing of the appeals was postponed pending the decision of the ct. on rules *nisi*, which the owners had applied for & obtained, calling upon (*a*) the General Comrs. & the Inspector of Taxes to show cause why a writ of prohibition should not issue, prohibiting them from proceeding with the additional assessments; & (*b*) the Inspector of Taxes to show cause why writs of *certiorari* & mandamus should not issue, quashing his refusal to certify the claim under r. 8, & commanding him to furnish the requisite certificate in connection with the claim:—*Held:* discharging the rules *nisi*, the General Comrs. & the Inspector of Taxes had acted within their jurisdiction, &, as the statute prescribed procedure for appealing against the additional assessments & against the Inspector's refusal to certify the claim under r. 8, prohibition, *certiorari* & mandamus would not lie.—R. *v.* KINGSLAND PARISH INSPECTOR OF TAXES, *Ex p.* PEARSON, KINGSLAND ESTATE, R. *v.* KINGSLAND PARISH INCOME TAX COMRS. & INSPECTOR OF TAXES (1922), 8 Tax Cas. 327.

Annotations:—**Refd.** R. *v.* Swansea Income Tax Comrs., *Ex p.* English Crown Spelter Co., [1925] 2 K. B. 250; Anderton & Halstead, Ltd. *v.* Birrell, [1932] 1 K. B. 271.

1150. *Add. Annotations:*—**Consd.** Clark *v.* Epsom R. D. C., [1929] 1 Ch. 287. **Refd.** Phillips *v.* Britannia Hygienic Laundry Co., [1923] 2 K. B. 832; Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485.

1152. *Add. Annotation:*—**Refd.** R. *v.* Lancashire JJ., *Ex p.* Tyrer, [1925] 1 K. B. 200.

1156. *Add. Annotation:*—*As to* (1) **Apld.** R. *v.* L. C. C., *Ex p.* Swan & Edgar (1927) (1929), 141 L. T. 590.

1162. *Add. Annotation:*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

1185. *Add. Annotations:*—*As to* (2) **Refd.** St. Magnus, etc. Parochial Church Council *v.* London Diocese Chancellor, [1923] P. 38, *Generally*, **Refd.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

1186. *Add. Annotation:*—**Consd.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

1218. *Add. Annotation:*—**Distd.** Port of London Authority *v.* I. R. Comrs. (1919), 12 Tax Cas. 122.

1217. *Add. Annotations:*—**Refd.** R. *v.* Roberts, *Ex p.* Scurr, [1924] 2 K. B. 695; Roberts *v.* Hopwood, [1925] A. C. 578; Short *v.* Poole Corpn. (1925), 42 T. L. R. 107.

1219. *Add. Annotation:*—**Refd.** Short *v.* Poole Corpn., [1926] Ch. 66.

1221. *Add. Citations:*—3 Nev. & M. K. B. 802; 3 L. J. M. C. 117.

1225. *Add. Citations:*—3 L. T. O. S. 180; 8 J. P. 662.

1228. *Add. Citation:*—*sub nom.* R. *v.* LEICESTER, DEPUTIES OF FREEMEN, 15 Q. B. 671; 117 E. R. 613.

Add. Annotations:—**Folld.** R. *v.* Monmouth Corpn., R. *v.* Bolton Corpn. (1870), L. R. 5 Q. B. 251. **Refd.** *Ex p.* Portingell, [1892] 1 Q. B. 15; R. *v.* Somerset JJ. (1900), 16 T. L. R. 166.

1230a. No fresh grounds for rehearing advanced.]—Appct. was the owner of certain houses situated in West Norfolk. These houses were entered in the valuation list for 1929 at £30 gross & at £22 rateable value. On July 30, 1929, appct. made a proposal in writing to the rating authority for the amendment of the list under Rating & Valuation Act, 1925 (c. 90), s. 37 (1), with the result that the assessments were reduced to £25 gross & £18 rateable value. Not being satisfied with that decision, appct., acting under sect. 37 (8) of the Act, on Nov. 18, gave notice of appeal to the clerk of the peace, but by reason of delay a copy of such notice was not served on the assessment committee within the period specified in Sched. V., Part I. of the Act & the appeal was withdrawn. A second proposal was then made by appct. on Dec. 30, 1929, for the amendment of the valuation list upon the ground (*inter alia*) that the assessment

PART VI. SECT. 1, SUB-SECT. 4.—A.

1157 iv. —— —— ——.]—A mandamus lies against a minister of the Crown to compel the discharge of a duty laid upon him in the interest of the public.—MORIN *v.* PERRON (1927), Q. R. 44 K. B. 181.—**CAN.**

a i. *Income Tax Commissioner—To perform a discretionary act.*]—*Held:* inasmuch as Specific Relief Act, s. 45, did not apply to this High Ct. it has no power to issue a mandamus directing the Income Tax Comr. to do what the Act gives him a discretion to do.—MOHAMMAD FARID-MOHAMMAD SHAFI *v.* LAHORE INCOME TAX COMR. (1927), I. L. R. 9 Lah. 317.—**IND.**

a ii. —— *To state case on points of law not raised at hearing.*]—*Held:* where an assessee seeks for a mandamus from the High Ct. against the Comr. of Income Tax requiring him to state a case on points of law different from those he had urged before the Comr. to state a case, his application cannot be entertained.—A. K. A. C. T. V. CHETTYAR (FIRM) *v.* INCOME TAX COMR. (1928), I. L. R. 6 Ran. 492.—**IND.**

PART VI. SECT. 1, SUB-SECT. 5.—A. (b).

a i. —— *Architects Registration Board.*]—Where an application by resp. for registration as an architect had been refused by the above Board:—*Held:* mandamus would not lie directing the Board to register resp.—ARCHITECTS REGISTRATION BOARD OF VICTORIA *v.* HUTCHISON, [1925] V. L. R. 195; 35 C. L. R. 404; 31 Alta. L. R. 93.—**AUS.**

PART VI. SECT. 1, SUB-SECT. 5.—A. (d).

1221 vii. —— *Not to hear case without its jurisdiction.*]—R. *v.* BRINDA, [1924] 3 D. L. R. 1092; 57 N. S. R. 323.—**CAN.**

1221 viii. —— *In criminal matter.*]—The Supreme Ct. of Ontario has jurisdiction to mandamus a county ct. judge's criminal ct. to try, according to the procedure of Criminal Code, s. 827, a person against whom an indictment has been found by a grand jury for the county. The fact that no rules have been made as to the issue of a mandamus in a criminal matter does not preclude the Supreme Ct. from exercising its full powers.—A.-G. FOR ONTARIO *v.* DALY, [1924] A. C. 1011; 94 L. J. P. C. 21; 132 L. T. 210; 40 T. L. R. 814.—**CAN.**

was excessive, but without proposing what the amendment should be. On Feb. 7, 1930, the rating authority caused notice to be served on the appct. that they intended to object to appct.'s proposal on the ground that the present assessments were fair & reasonable. The proposal then came before the assessment committee on Feb. 18, 1930, when the chairman intimated that the committee refused to give a decision or to hear & determine the said proposal, whereupon the appct. applied for a rule *nisi* for a *mandamus*:—*Held:* the assessment committee ought in fulfilment of their statutory duty to have heard & determined the application made to them, but appct. had not satisfied the ct. that there were any merits additional to those put forward at the first hearing, & on that ground the ct. in its discretion refused to make the rule absolute. —R. *v.* WEST NORFOLK ASSESSMENT COMMITTEE, *Ex p.* WARD (F. B.) (1930), 94 J. P. 201; (1926–31), 1 B. R. A. 418, C. A.

1293. *Add. Annotation*:—*As to* (1) **Consd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

1308. *Add. Annotation*:—**Refd.** Reigate Corpn. *v.* Surrey County Council, [1928] Ch. 359.

1317. *Add. Annotation*:—**Refd.** Brown *v.* Dagenham U. C., [1929] 1 K. B. 737.

1323. *Add. Annotation*: — **Refd.** Everett *v.* Griffiths, [1924] 1 K. B. 941.

1337. *Add. Annotation*: — **Refd.** Everett *v.* Griffiths, [1924] 1 K. B. 941.

1375. *Add. Annotation*:—*As to* (2) **Apld.** R. *v.* L. C. C., *Ex p.* Swan & Edgar (1927) (1929), 141 L. T. 590.

1433a. **Reference to statutory & other orders & to private & local Acts—Duty to supply copies for use of court.**]—PRACTICE NOTE, [1926] W. N. 308.

1466a. —— **Cross-examination of deponent—When ordered—Only in very special circumstances.**] —R. *v.* KENT JJ., *Ex p.* SMITH, [1928] W. N. 137, D. C.

1486a. —— ——.]—R. *v.* HANCOCK, ALDERMAN OF NORTH WEST WARD OF BOROUGH OF POOLE (1839), 3 J. P. 723.

1580a. —— ——.]—Undoubtedly the principle is true, that returns must be certain, & not argumentative (LORD MANSFIELD, C.J.).—R. *v.* LYME REGIS CORPN. (1779), 1 Doug. K. B. 177; 99 E. R. 116.

Annotations:—**Refd.** R. *v.* Brewer's Case (1824), 4 Dow. & Ry. K. B. 492; R. *v.* Bowman (1834), 6 C. & P. 337.

PART VI. SECT. 1, SUB-SECT. 5.—A. (e).

c i. ——.]—The Supreme Ct. of Ontario has jurisdiction to grant a mandamus to a judge of a division ct. to hear an appeal from a conviction of deft., by a police magistrate, of an offence contrary to Inland Revenue Act, 1906, s. 180 (f).—R. *v.* SPEIRS (1924), 55 O. L. R. 290.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 5.—A. (g).

1237 ii. —— ——.]—*Re* HOLLAND (1875), 37 U. C. R. 214.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 5.—A. (h).

sp. *To sign record of acquittal—After retirement of judge.*]—A retired judge of a county ct. criminal ct. cannot be compelled by mandamus to sign a record of acquittal for lack of jurisdiction, after a long interval of time. If there is any right to have the record signed, the only competent person is the present judge.—*Re* HALL (1922), 38 Can. Crim. Cas. 55.—**CAN.**

sq. *To grant administration—Surrogate Court.*]—The Surrogate Ct. is subject to *mandamus* from the Ct. of King's Bench.

On the application by the daughter & sole heir of an intestate for a grant of administration, the Surrogate Ct. judge offered to grant temporary administration to a trust co. The appct. refused to accept this offer, & applied to the Ct. of King's Bench for a *mandamus* requiring the Surrogate Ct. to issue letters of administration in the terms of her petition. No material was produced at the hearing of this application contradicting the statements in the affidavit filed in support of the application or showing that there was any lack of qualification or capacity in the appct., or that there was in fact any opposition to her petition, or that any one else had any interest in the estate:—*Held:* an order directing the judge of the Supreme Ct. & the clerk thereof to issue letters of administration to the appct. should be granted.—*Re* MACDONALD ESTATE, *Re* SURROGATE COURTS ACT (Man.), [1929] 3 W. W. R. 693; *varied*, [1930] 1 W. W. R. 242; 2 D. L. R. 177; 38 Man. L. R. 446.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 5.—B.

1270 iv. —— *Not where dismissal justified.*]—*Re* MONAGHAN (1924), 57 N. S. R. 242.—**CAN.**

1270 v. ——.]—ADAMS RIVER LUMBER CO. *v.* KAMLOOPS SAWMILLS, LTD. (1921), 70 D. L. R. 863; 30 B. C. R. 354.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 5.—D.

1292 i. *General rule—Bill pending to repeal Act.*]—Where a duty is imposed upon a local authority to carry out an Act, the fact that a bill has been introduced to repeal that Act does not justify the local authority in refusing to carry out the duty, & mandamus lies to compel performance.—R. *v.* RATHMINES URBAN DISTRICT COUNCIL, [1928] I. R. 260.—**IR.**

1294 ii. ——.]—Health Act, 1919, s. 147, gives the Commission of Public Health power to order a municipal council to combine with other councils in providing, equipping & maintaining a common hospital. On the refusal by a council to obey such an order the Commission obtained an order *nisi* for the issue of a writ of mandamus:—*Held:* where the issue of a writ is obligatory under the statute, vagueness in the order sought to be enforced is immaterial & the writ must issue.—R. *v.* ROCHESTERSHIRE COUNCIL, *Ex p.* PUBLIC HEALTH COMMISSION, [1928] V. L. R. 492; [1928] Argus L. R. 315. —**AUS.**

PART VI. SECT. 1, SUB-SECT. 5.—E.

To register transfer.]—R. *v.* OF TITLES, *Ex p.* MOSS, [1928] V. L. R. 411; 49 A. L. T. 275; [1928] Argus L. R. 293.—**AUS.**

sr. *Municipal council—Imposing conditions to permission to erect petrol pump outside legitimate scope of council's functions.*]—*Held:* a mandamus should be granted.—*Re* RANDWICK MUNICIPAL COUNCIL, *Ex p.* BOWSER & CO. (1927), 27 S. R. N. S. W. 209; 44 N. S. W. W. N. 57.—**AUS.**

st. *Mayor—Refusing to put motion to meeting.*]—R. *v.* FOLEY, *Ex p.* MILLER, [1928] V. L. R. 1.—**AUS.**

sv. *Municipal corporation—Refusal to accept payment of money.*]—Applts. sought a *mandamus* to compel the resp. municipality to accept payment by a third party of an alleged debt of its secretary-treasurer:—*Held:* applts. could not succeed, as they had failed to bring their case within the terms of art. 1141 C. C. or to establish agency of such third party in making the payment for the alleged debtor.—PERRON *v.* CORPN. DU VILLAGE DU SACRE-KŒUR DE JESUS, [1929] 1 D. L. R. 197; [1928] S. C. R. 326; *affg.*, 44 Que. C. B. 400.—**CAN.**

PART VI. SECT. 2.

1326 iv. —— ——.]—CASTLEMAN *v.* JOHNSON, [1921] 3 W. W. R. 830; 70 D. L. R. 862; 30 B. C. R. 354.—**CAN.**

PART VI. SECT. 3.

1341 i. *When action for mandamus pending.*]—An interlocutory mandamus should not be granted, unless it can be shown that pltf. will suffer injury by waiting for the result of the trial. Proof of the claim for damages is not a condition precedent to the granting of an interlocutory mandamus.—RIDINGS *v.* ELMHURST SCHOOL TRUSTEES (Sask.), [1926] 4 D. L. R. 81; [1926] 2 W. W. R. 752.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 1.—A. (a).

1350 i. *Necessary parties—Mandamus against municipal corporation.*] —In mandamus proceedings against a municipal corpn. it is the better practice to make parties to the proceedings the members of council & officers whose alleged delinquencies are involved.—R. (READ) *v.* PEMBINA MUNICIPAL DISTRICT NO. 552, [1922] 3 W. W. R. 857; 70 D. L. R. 559.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 1.—A (d). i.

1373 i. *Effect of delay—Poverty of applicant.*]—An appct. for a writ of *mandamus* must apply to the ct. within a reasonable time of the happening of the event on which he grounds his claim, &, in view of the benefits conferred on poor persons by Poor Persons Legal Remedies Act, 1918, want of means is not a sufficient excuse for unreasonable delay.—*Re* MANUFACTURERS' MUTUAL INSURANCE, LTD., *Ex p.* ANLEZARK (1931), 31 S. R. N. S. 53; 48 N. S. W. W. N. 24.—**AUS.**

1644a. —.]—The mandamus issued, reciting the book to be in deft.'s custody, power, & control; & was tested the day on which the rule for the mandamus was made absolute. Return, that the book was not at the time of the *teste*, nor since, nor at the time of the return, in the custody, etc. The ct. refused to take the return off the file, or quash it, on motion, upon affidavit of the facts as above stated, & of the belief of deponents that deft.'s object was to evade the process of the ct. But the ct. refused deft. the costs of the last motion, though moved with costs.—R. *v.* PAYN (1837), 6 Ad. & El. 392; 1 Nev. & P. K. B. 524; Nev. & P. M. C. 214; Will. Woll. & Dav. 142; 6 L. J. M. C. 62; 1 J. P. 37; 1 Jur. 54; 112 E. R. 150.

1726a. —— ——.]—A peremptory writ of mandamus was duly served on ten members of a borough council in 1897, commanding the corpn. to obey an order of the Local Govt. Board limiting a time for the carrying out of a sewerage scheme, pursuant to a local Act passed in 1885. The writ after service was left in the hands of one of the members, who lost it. In Mar. 1903, of the forty-eight members of the council only seven remained who were originally served in 1897, & in that month all forty-eight members were served with an order of the ct. to make a return to the peremptory writ served in 1897, a copy of which accompanied the order. On a rule *nisi* to show cause why the return should not be taken off the file, & calling on the forty-eight individual members to show cause why writs of attachment should not issue against them for disobedience to the peremptory writ, the ct. was of opinion that, under the circumstances, all forty-eight members were duly served with the peremptory writ in Mar. 1903. It was ordered that writs of attachment should issue against the seven members originally served, the writs to lie in the Crown Office until a certain date, leaving the onus on the seven members to satisfy the ct. that the writ was obeyed. The matter was allowed to stand over as against the other forty-one.—R. *v.* WORCESTER CORPN. (1903), 68 J. P. 130; 2 L. G. R. 51, D. C.

1736. *Add. Annotation :*—**Refd.** R. *v.* Cory, [1927] 1 K. B. 810.

1739. After this case add "—— —.]—*See, now*, S. C. J. (Consolidation) Act, 1925 (c. s. 31 (1) (*a*)."

1740. *Add. Citation :*—2 B. R. A. 639.

Add. Annotation :—**Refd.** Bottomley *v.* West Derby Assessment Committee, etc., etc. (1931), 47 T. L. R. 468.

1749a. —— ——.]—R. *v.* VAYLE (1844), 8 J. P. Jo. 212.

1809. *Add. Annotations :*—**Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53; Swift *v.* Board of Trade, [1926] 2 K. B. 131.

Part VII.—Quo Warranto.

1837. *Add. Annotations :*—**Refd.** Metcalfe *v.* Boyce, [1927] 1 K. B. 758; Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey, [1929] 1 Ch. 686.

For cross-reference at end of section read "*See, now*, S. C. J. (Consolidation) Act, 1925 (c. 49), s. 48."

1846. *Add. Annotation :* — **Refd.** Everett *v.* Griffiths, [1924] 1 K. B. 941.

1847. *Add. Annotation :* — **Refd.** Everett *v.* Griffiths, [1924] 1 K. B. 941.

1852. *Add. Annotation :*—**Refd.** Brown *v.* Dagenham U. C., [1929] 1 K. B. 737.

1952. *Add. Annotation :* — **Refd.** Everett *v.* Griffiths, [1924] 1 K. B. 941.

1954. *Add. Annotation :* — **Refd.** Everett *v.* Griffiths, [1924] 1 K. B. 941.

PART VI. SECT. 6, SUB-SECT. 5.—C. (e).

sw. *To named county court judge—To hear appeal from conviction—Compliance by another judge—Prohibition.*]—*Re* R. *v.* POCHREBNY, R. *v.* STACPOOLE & STUBBS, [1930] 3 W. W. R. 48; *sub nom. Ex p.* POCHREBNY, 54 Can. C. C. 185; 39 Man. L. R. 177.—**CAN.**

PART VII. SECT. 2.

1840 i. *Discretion of court—Court found to consider all circumstances.*]—On application for a *quo warranto*, the ct. will consider whether in all the circumstances the public interest calls for the exercise of its discretion in favour of appct.—R. (BOUDROT) *v.* JOHNSTON, [1923] 2 D. L. R. 278; 56 N. S. R. 214.—**CAN.**

1840 ii. —— ——.]—Where an application for *quo warranto* is made to the Ct. of K. B., the granting or withholding of leave is in the discretion of the ct., & the discretion ought to be exercised upon a sound consideration of the particular circumstances of each case.—R. (MATHESON) *v.* HUBER, [1924] 2 D. L. R. 905; 2 W. W. R. 596.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 1.—A. (d).

1871 iii. ——.]—An application for a *quo warranto*, to test the validity of the appointment of an inspector, on the ground that the appointment was illegal because there was already an inspector in office, was dismissed, as the municipality had power to appoint "one or more inspectors."—R. *v.* THIBAULT (1926), 59 N. S. R. 93.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 1.—F.

sx. —— *Failure to post name of candidate.*]—Where after being legally nominated as a councillor for a rural municipality, a candidate informs the clerk & returning officer that he is considering withdrawing, but does not withdraw, & the returning officer does not post his name as one of the nominees but declares another candidate elected by acclamation, a *quo warranto* proceeding is the correct method for testing the latter's right to the office.—R. (MACKAY) *v.* GOOD, [1922] 1 W. W. R. 712; 66 D. L. R. 763.—**CAN.**

sy. —— *Disqualification of candidate.*]—Where a person elected to a municipal office is at the time of his election disqualified for election, the election can only be attacked by an election petition; but where he is disqualified from holding municipal office his case comes under the category of continuing disqualifications which afford good ground for a proceeding by *quo warranto*.—R. (NUTTALL) *v.* BROWN [1923] 2 W. W. R. 511; 33 Man. L. R. 184.—**CAN.**

sz. —— *Statutory remedy available.*]—The remedy by *quo warranto* is not excluded by another statutory remedy, unless the Legislature has so declared expressly or by necessary implication.—R. (MCARTHUR) *v.* MAYCOCK, [1924] 4 D. L. R. 1222; 3 W. W. R. 540.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 2.—B. (a).

t i. —— —— *Proof of interest.*]—R. *v.* MCKENZIE (1851), 2 C. L. Ch. 36.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 2.—B. (b).

ti. ——.]—R. (MATHESON) *v.* HUBER, [1924] 2 D. L. R. 905; 2 W. W. R. 596.—**CAN.**

2007. *Add. Annotation:* — **Refd.** Everett *v.* Griffiths, [1924] 1 K. B. 941.

2046a. —— **Reference to statutory & other orders & to private & local Acts—Duty to supply copies for use of court.**]—PRACTICE NOTE, [1926] W. N. 308.

2093. *Add. Annotation:*—**Apld.** R. *v.* L. C. C., *Ex p.*, Swan & Edgar (1927) (1929), 141 L. T. 590.

Part VIII.—Prohibition.

2109. *Add. Annotation:*—**Consd.** R. *v.* Daily Herald, Editor, etc., & Davidson, *Ex p.* Norwich (Bp.), R. *v.* Empire News, Editor, etc., & Davidson, *Ex p.* Norwich (Bp.) (1932), 48 T. L. R. 253.

2110. *Add. Annotations:*—**Refd.** St. Magnus, etc. Parochial Church Council *v.* London Diocese Chancellor, [1923] P. 38; Hunter *v.* Stadtische Hochseefischerei Gemeinnützige Gesellschaft (1925), 133 L. T. 488; Mansfield *v.* Robinson, [1928] 2 K. B. 353.

2112. *Add. Annotation:—As to* (1) **Refd.** St. Magnus, etc. Parochial Church Council *v.* London Diocese Chancellor, [1923] P. 38.

2121. *Add. Annotation:—As to* (2) **Folld.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

2129. *Add. Annotations:*—**Apld.** St. Magnus, etc. Parochial Church Council *v.* London Diocese Chancellor, [1923] P. 38. **Refd.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

2130. *Add. Annotations:*—**Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171; R. *v.* Powell, *Ex p.* Camden, [1925] 1 K. B. 641.

2132. *Add. Annotations:*—**Consd.** R. *v.* Swansea Income Tax Comrs., *Ex p.* English Crown Spelter Co., [1925] 2 K. B. 250; R. *v.* North Worcestershire Assessment Committee, *Ex p.* Hadley, [1929] 2 K. B. 397. **Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171; Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

2132a. -.]—R. *v.* KINGSLAND PARISH, INSPECTOR OF TAXES, *Ex p.* PEARSON, KINGSLAND ESTATE, R. *v.* KINGSLAND PARISH INCOME TAX COMRS. & INSPECTOR OF TAXES, No. 1141a, *ante.*

2142a. ——.]—A writ of prohibition will not lie to restrain justices in petty sessions from enforcing a warrant of imprisonment on an order for payment of rates where no remedy of a preventive, as distinct from a corrective, nature can result from the issue of the writ.—R. *v.* NORFOLK JJ., *Ex p.* DAVIDSON (1925), 69 Sol. Jo. 558, D. C.

2149a. -.]—Appcts. having obtained a rule for a writ to prohibit the General Comrs. from making, allowing, confirming, enforcing, or otherwise proceeding upon an assessment to income tax:—*Held:* prohibition would not lie to the General Comrs., who had acted in accordance with their statutory duty in making the assessment & had not exceeded their jurisdiction.—R. *v.* SWANSEA INCOME TAX COMRS., *Ex p.* ENGLISH CROWN SPELTER CO., [1925] 2 K. B. 250; 94 L. J. K. B. 718; 133 L. T. 143; 41 T. L. R. 505; 9 Tax Cas. 437; *sub nom.* R. *v.* INCOME TAX GENERAL COMRS., *Ex p.* ENGLISH CROWN SPELTER CO., LTD., 69 Sol. Jo. 606.

PART VII. SECT. 4, SUB-SECT. 2.—B. (c).

1958 iii. -.]—R. *v.* ADAMS (1850), 1 C. L. Ch. 203.—**CAN.**

1969 i. *What is acquiescence.*]—Acquiescence by a relator in the alleged offence, to be fatal, must be acquiescence at the time the alleged offence is committed. The subsequent conduct of a relator in agreeing to overlook the equal alleged guilt of others does not constitute disqualifying acquiescence.—R. (MATHESON) *v.* HUBER, [1924] 2 D. L. R. 905; 2 W. W. R. 596.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 3.

1990 i. *Effect of delay.*]—Unnecessary delay in making an application for a rule *nisi* for *quo warranto* is a bar to that remedy. A delay from Oct. to Apr., the ct. having sat twice in the meantime, is a delay of such length.—*Re* CROSMAN & MCLEOD'S, ELECTION, *Ex p.* HOWARD (1922), 70 D. L. R. 589.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 4.—A.

sa. *Necessity for — That motion made at instance of relator.*]—On a motion for a *quo warranto*, an affidavit stating that the motion is made at the instance of the relator must be filed before the service of the notice of motion or petition, & where it has not been so filed the motion will fail.—R. (MACKAY) *v.* GOOD, [1922] 1 W. W. R. 712; 66 D. L. R. 763.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 4.—C.

2017 i. *Acceptance of office—Acceptance or acting in office need not be stated.*]—R. *v.* STEPHENSON (1851), 1 C. L. Ch. 270.—**CAN.**

PART VII. SECT. 5.

2025 ii. —— ——.]—An appeal from an order *nisi* for a *quo warranto* information. Appct. sought the removal of a police comr. from his office on the ground that he had been convicted of a criminal offence. The objections to the order appealed from were: (*a*) that there had been too long a delay, about seven weeks, in making the application after the relator discovered the alleged disqualification; (*b*) that an amendment to the notice of motion, by which the citation of the sects. of the Act which applied to the case were changed, should not have been allowed; (*c*) that the alleged convictions, which were by a police magistrate, were not properly proved:—*Held:* all the objections should be overruled & the appeal dismissed.—R. (JONES) *v.* BURGESS, [1932] 1 W. W. R. 662; 2 D. L. R. 181.—**CAN.**

1 i. —— ——.]—R. (MCARTHUR) *v.* DOUCET, [1924] 3 D. L. R. 812.—**CAN.**

1 ii. —— *Burden of proof.*]—On the hearing of an information in the nature of *quo warranto* proceedings to oust resp. from his office as one of the committee of adjustment under Dairy Products Sales Adjustment Act, the onus is on resp. to prove that he is entitled to hold the office so attacked.—R. *v.* SHANNON (1930), 43 B. C. R. 129.—**CAN.**

sb. *Defence—Failure to answer objection—Is admission of truth of objection.*]—R. *v.* SCOTT (1851), 2 C. L. Ch. 98.—**CAN.**

sc. *Service of notice of motion—Time for—Mistake as to day of week subsequently amended.*]—R. *v.* PONSFORD (1902), 3 O. L. R. 410; 22 C. L. T. 146; 1 O. W. R. 645.—**CAN.**

PART VIII. SECT. 1.

2109 i. *Whether grantable ex debito justitiæ—On excess or want of jurisdiction—Apparent from proceedings.*]—Where want of jurisdiction is apparent on the face of the proceedings a stranger is entitled to a writ of prohibition, *ex debito justitiæ.*—R. *v.* KNYVETT *Ex p.* WEBER (1928), 22 Q. J. P. 138.—**AUS.**

PART VIII. SECT. 2.

h i. —— —— ——.]—MINISTER FOR LABOUR & INDUSTRY (N. S. W.) *v.* MUTUAL LIFE & CITIZENS ASSURANCE CO., LTD. (1922), 30 C. L. R. 488; 28 Argus L. R. 252; 22 S. R. N. S. W. 610; 39 N. S. W. W. N. 94; (1922), N. S. W. Ind. Arbn. Cas. 20.—**AUS.**

PART VIII. SECT. 4, SUB-SECT. 1.

a i. —— *Interference with discretion of judge.*]—*Ex p.* BORG (1928), 28 S. R. N. S. W. 564; 45 N. S. W. W. N. 167.—**AUS.**

PART VIII. SECT. 4, SUB-SECT. 2.

2150 vi. ——.] — Prohibition is granted where there is want of juris-

2168. *Add. Annotation :*—**Apprvd.** R. *v.* North, *Ex p.* Oakey, [1927] 1 K. B. 491.

2187a. ——.]—In the case of the misinterpretation of an Act by an inferior ct., the consideration of which arises incidentally in the course of a proceeding which is confessed to be within its jurisdiction, a prohibition will not lie, unless it be made appear to the superior ct. that the party applying for the prohibition has, in the course of the proceedings in the inferior ct., alleged the grounds for a contrary interpretation of the Act on which he applies for the prohibition, & that the inferior ct. has proceeded notwithstanding such allegation.—HOME *v.* CAMDEN (EARL) (1795), 6 Bro. Parl. Cas. 203 ; 2 Hy. Bl. 533 ; 126 E. R. 687 ; *affg.* S. C. *sub nom.* CAMDEN (LORD) *v.* HOME (1791), 4 Term Rep. 382.

Annotations :—**Consd.** Gould *v.* Gapper (1804), 5 East, 345. **Distd.** Wadsworth *v.* Spain (1851), 17 Q. B. 171. **Apld.** R. *v.* Greenwich County Court Judge (1888), 60 L. T. 248. **Refd.** Gare *v.* Gapper (1803), 3 East, 472 ; Veley *v.* Burder (1841), 12 Ad. & El. 265 ; *Re* Appledore Commutation (1845), 8 Q. B. 139 ; Egyptian Bonded Warehouses Co. *v.* Yeyasu Goshi Kaisha, [1922] 1 A. C. 111.

2200. *Add. Annotations :*—**Consd.** St. Magnus, etc. Parochial Church Council *v.* London Diocese Chancellor, [1923] P. 38 ; R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

2220. *Add. Annotations :*—**Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171 ; R. *v.* Health Minister, *Ex p.* Davis (1929), 141 L. T. 6.

2221. *Add. Annotations :*—**Consd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171 ; R. *v.* Health Minister, *Ex p.* Davis, [1929] 1 K. B. 619.

2237. *Add. Annotation :*—**Consd.** R. *v.* Daily Herald, Editor, etc., & Davidson, *Ex p.* Norwich (Bp.), R. *v.* Empire News, Editor, etc., & Davidson, *Ex p.* Norwich (Bp.) (1932) 48 T. L. R. 253.

2254. *Add. Annotations :*—**Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171 ; R. *v.* Health Minister, *Ex p.* Davis (1929), 141 L. T. 6.

2287. *Add. Annotation :*—**Consd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171.

2287a. Assessment committee.]—A rating authority had appointed a sub-committee to fix the values of properties in the district for the purpose of the preparation of the valuation list. They appointed P. & G. members thereof, & subsequently appointed the same two persons as their representatives on resp. assessment committee. The applicant had given notice of objections to his assessment to resp. committee, & on learning the above facts, obtained a rule *nisi* for a prohibition to that committee from hearing & determining his objection :—*Held :* a writ of prohibition would lie to an assessment committee.—R. *v.* NORTH WORCESTERSHIRE ASSESSMENT COMMITTEE, *Ex p.* HADLEY, [1929] 2 K. B. 397 ; 98 L. J. K. B. 605 ; 141 L. T. 557 ; 93 J. P. 199 ; 45 T. L. R. 525 ; 27 L. G. R. 458 ; (1926-31), 1 B. R. A. 279.

2289. *Add. Annotation :*—**Consd.** *Re* Wingate's Patent, [1931] 2 Ch. 272.

2290. *Add. Annotations :*—**Consd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171. **Refd.** Hearts of Oak Assurance Co. *v.* A.-G. (1932), 48 T. L. R. 296.

2303. For the existing paragraph in original volume substitute as follows :—

Electricity Commissioners.]—The powers of the Electricity Comrs. are to be exercised judicially & not ministerially, & a writ of prohibition will issue if they make an order giving effect to an *ultra vires* scheme.—R. *v.* ELECTRICITY COMRS., *Ex p.* LONDON ELECTRICITY JOINT COMMITTEE CO. (1920), LTD., [1924] 1 K. B. 171 ; 93 L. J. K. B. 390 ; 130 L. T. 164 ; 88 J. P. 13 ; 39 T. L. R. 715 ; 68 Sol. Jo. 188 ; 21 L. G. R. 719, C. A.

Annotations :—**Apld.** R. *v.* Church Assembly Legislative Committee & Church Assembly, *Ex p.* Haynes Smith (1927), 44 T. L. R. 68 ; R. *v.* Health Minister, *Ex p.*

diction in an inferior ct.—ROSENBERG *v.* THE MACCABEES, [1923] 2 W. W. R. 320.—**CAN.**

2150 vii. ——.]—*Re* WOODROOF, [1925] 3 D. L. R. 966 ; 44 Can. Crim. Cas. 199.—**CAN.**

2150 viii. ——.]—*Re* R. *v.* LAMBTON (Ont.) (1926), 46 Can. Crim. Cas. 13.—**CAN.**

2150 ix. ——.]—Prohibition should not issue, unless it is clear on the face of the proceedings that there is want of jurisdiction. — CHILDREN'S AID SOCIETY OF ST. ADELARD *v.* STE. ROSE RURAL MUNICIPALITY (Man.), [1926] 4 D. L. R. 466 ; [1926] 3 W. W. R. 8 ; 46 Can. Crim. Cas. 305.—**CAN.**

2150 x. ——.]—The writ of prohibition may be resorted to only where there is a complete lack of jurisdiction. —R. *v.* DEE (Man.), [1927] 4 D. L. R. 1065 ; [1927] 3 W. W. R. 529 ; 49 Can. Crim. Cas. 57.—**CAN.**

2150 xi. *S. P.* R. *v.* JOYCE, *Ex p.* MEREDITH, [1927] V. L. R. 481 ; 49 A. L. T. 57 ; [1927] Argus L. R. 348.—**AUS.**

PART VIII. SECT. 4, SUB-SECT. 4.—A.

2184 iv. —— ——.]—*Re* WILTON FARMERS' CO-OPERATIVE ASSOCN. *v.* BURGESS, [1924] 4 D. L. R. 435 ; 55 O. L. R. 534.—**CAN.**

2187 iii. —.]—TUFTS *v.* THOMSON, [1929] 1 D. L. R. 896 ; 1 W. W. R. 329 ; 38 Man. L. R. 51 ; *affg.*, [1928] 3 W. W. R. 666.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 4.—B.

2192 iii. ——.]—Prohibition does not lie where the lower ct., having properly entered upon an inquiry, has erroneously found a fact which, though essential to the validity of its order, it was competent to try.—R. *v.* MAGISTRATES COURT & ESMOND, *Ex p.* BEAZLEY, [1928] St. R. Qd. 349 ; 22 Q. J. P. 97.—**AUS.**

PART VIII. SECT. 5, SUB-SECT. 1.

sc. *Before hearing.*]—A writ of prohibition prohibiting a district ct. judge from hearing an appeal from a summary conviction, on the ground of want of jurisdiction :—*Held :* good.—R. (LAMSON) *v.* SHARPE & INGLIS, [1921] 3 W. W. R. 674 ; 66 D. L. R. 521 ; 36 Can. Crim. Cas. 326 ; 15 Sask. L. R. 35.—**CAN.**

sd. ——.]—A motion for prohibition being commenced before the magistrate has heard the evidence in a charge may be dismissed without prejudicing appet. as to any motion he may make at a later stage.—R. *v.* JAEGER CO. (1922), 38 Can. Crim. Cas. 180.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 2.

2217 vi. ——.]—The want of jurisdiction appearing on the face of the proceedings, prohibition may be granted either before or after judgment. —*Re* MONARCH DRESS CO. *v.* AARONSON, [1929] 2 D. L. R. 514 ; 63 O. L. R. 525.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 3.—A.

sf. *Before defence filed or matter dealt with.*]—Where want of jurisdiction does not appear on the face of the proceedings, the application should be made before judgment. The fact that a defence has not been filed, or that the matter has not been dealt with by the inferior ct., is not a ground against deft. applying for prohibition. —ROSENBERG *v.* THE MACCABEES, [1923] 2 W. W. R. 320.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 3.—B.

2257 ii. ——.]—NEARLY *v.* CREDIT SERVICE EXCHANGE (B. C.), [1929] 3 D. L. R. 107 ; 2 W. W. R. 287.—**CAN.**

PART VIII. SECT. 6.

2287 i. —— *Not to persons without lawful authority purporting to act at court.*]—R. (KELLY) *v.* MAGUIRE & O'SHEIL, [1923] 2 I. R. 58.—**IR.**

n i. *S. P.*—WATERSIDE WORKERS' FEDERATION OF AUSTRALIA *v.* GILCHRIST, WATT & SANDERSON, LTD. (1927), 34 C. L. R. 482.—**AUS.**

b. Add "*revsd.* on other grounds 16 S. C. R. 707."

Davis, [1929] 1 K. B. 619; R. *v.* North Worcestershire Assessment Committee, *Ex p.* Hadley, [1929] 2 K. B. 397. **Consd.** A.-G. *v.* London & Home Counties Joint Electricity Authority, [1929] 1 Ch. 513. **Refd.** R. *v.* Electricity Comrs., *Ex p.* Yorkshire Electric Power Co. (1927), 91 J. P. 191; Shell Co. of Australia, Ltd. *v.* Federal Comr. of Taxation (1930), 47 T. L. R. 115; R. *v.* London County Council, *Ex p.* Entertainments Protection Assocn., Ltd., [1931] 2 K. B. 215; R. *v.* Webster, *Ex p.* Marshall (1931), 95 J. P. 226.

2309. *Add. Annotation :*—**Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171.

2310. *Add. Annotation :*—**Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171.

2310a. —— ——.]—Prohibition will not lie against the Comptroller-General in respect of any act or decision which is either done or taken at the direction of the Law Officer, or which is subject to an appeal to him, nor in these respects against the Law Officer.—*Re* WINGATE'S PATENT, [1931] 2 Ch. 272; 100 L. J. Ch. 370; 145 L. T. 572; 47 T. L. R. 541; 48 R. P. C. 416.

2310b. —— **Law officer.**]—*Re* WINGATE'S PATENT, No. 2310a, *ante*.

2312. *Add. Annotation :*—**Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171.

2321. *Add. Citation :*—[1923] P. 88.

2322. *Add. Annotation :*—*Generally*, **Refd.** Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65.

2326a. Reference to statutory & other orders & to private & local Acts—Duty to supply copies for use of court.]—PRACTICE NOTE, [1926] W. N. 308.

2345. *Add. Annotation :*—**Refd.** Engelke *v.* Musmann, [1928] A. C. 433.

2382. *Add. Annotation :*—**Refd.** St. Magnus, etc. Parochial Church Council *v.* London Diocese Chancellor, [1923] P. 38.

2388. *Add. Annotations :*—**Refd.** Pickford *v.* Quirke, Pickford *v.* I. R. Comrs. (1927), 43 T. L. R. 659; R. *v.* St. Marylebone Income Tax Comrs., *Ex p.* Schlesinger (1928), 13 Tax Cas. 746; R. *v.* L. C. C., *Ex p.* Swan & Edgar (1927), (1929), 141 L. T. 590.

2400. *Add. Annotation :*—**Consd.** Simbro Trading Co., Ltd. *v.* Posograph (Parent) Corpn., [1929] 2 K. B. 266.

2401. *Add. Annotation :*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

Part IX.—Certiorari.

2421. *Add. Annotations :*—*As to* (1) **Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171. *As to* (1) **Refd.** R. *v.* London County Council, *Ex p.* Entertainments Protection Assocn., Ltd., [1931] 2 K. B. 215. *As to* (3) **Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171; R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

2422a. —— **Remedy by way of appeal—Notice of appeal given.**]—R. *v.* KINGSLAND PARISH INSPECTOR OF TAXES, *Ex p.* PEARSON, KINGSLAND ESTATE, R. *v.* KINGSLAND PARISH INCOME TAX COMRS. & INSPECTOR OF TAXES, No. 1141a, *ante*.

2448. *Add. Annotation :*—**Folld.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

2449a. —— **Not to quash order.**]—The K. B Div. of the High Ct. of Justice has no jurisdiction to issue a writ of *certiorari* for the purpose of

PART VIII. SECT. 7.

2319 via. ——.]—Circumstances in which :—*Held :* resp., by applying to the judge of the Division Ct., under Division Cts. Act, to set aside a judgment, had not waived his rights to move for prohibition.—*Re* ORR *v.* KREPSKY, [1925] 3 D. L. R. 1018; 57 O. L. R. 353.—**CAN.**

2319 viii. —— ——.]—Where a person appears at the hearing of an affiliation summons only to protest & to object to the jurisdiction, he does not, by remaining there after his objection is overruled, & by endeavouring to discredit complainant's story, voluntarily submit himself to the jurisdiction or deprive himself of the right to apply for a prohibition.—*Ex p.* HOLMES (1927), 27 S. R. N. S. W. 253; 44 N. S. W. W. N. 82.—**AUS.**

PART VIII. SECT. 8, SUB-SECT. 4.

sg. *Against parties.*]—Prohibition lies against parties as well as against the judge of the inferior ct.—ROSENBERG *v.* THE MACCABEES, [1923] 2 W. W. R. 320.—**CAN.**

PART VIII. SECT. 8, SUB-SECT. 6.

sh. *Admissibility of statements made on information & belief.*]—An application for prohibition is not an interlocutory motion, hence, under K. B. Rule 392, statements made on information & belief in the affidavits filed thereon are not admissible.—BEAUCHENE & PELTIER *v.* GUNSON (Sask.), [1928] 3 D. L. R. 692; [1928] 2 W. W. R. 497; *sub nom. Ex p.* BEAUCHENE, 50 Can. Crim. Cas. 57.—**CAN.**

PART VIII. SECT. 8, SUB-SECT. 10.

2401 i. *Not from order as to costs.*]—On granting a writ of prohibition preventing a magistrate from proceeding with the hearing of a charge, costs were given against the informant. On appeal as to costs: *Held :* the appeal should be dismissed.—R. *v.* LEONARD, [1921] 3 W. W. R. 768; 66 D. L. R. 497; 36 Can. Crim. Cas. 255; 15 Sask. L. R. 29.—**CAN.**

PART IX. SECT. 1.

g i. —— ——.]—R. *v.* DENNY (1921), 61 D. L. R. 663; 36 Can. Crim. Cas. 77; 51 O. L. R. 121.—**CAN.**

g ii. —— ——.]—R. *v.* WOODSTOCK, TOWN ASSESSORS, *Ex p.* BANK OF NOVA SCOTIA (1922), 68 D. L. R. 48.—**CAN.**

g iii. —— ——.]—R. *v.* WOOD (1924), 43 Can. Crim. Cas. 382.—**CAN.**

g iv. —— ——.]—MAHAMMAD RAZA SAHEB BELGAMI *v.* SADASIVA RAO (1925), I. L. R. 49 Mad. 49.—**IND.**

g v. —— ——.]—R. *v.* O'BRIEN, *Ex p.* THERIAULT (1917), 45 N. B. R. 275; 29 Can. Crim. Cas. 141; 41 D. L. R. 97.—**CAN.**

g vi. —— ——.]—Where a party has ample remedy by appeal *certiorari* will not be granted unless some satisfactory reason is given why the remedy by way of appeal was not taken advantage of.—R. *v.* LEBLANC, *Ex p.* MCDONALD (1926), 53 N. B. R. 37.—**CAN.**

g vii. —— ——.]—*Ex p.* GAUTREAU (N. B.), [1928] 1 D. L. R. 271; 49 Can. Crim. Cas. 182.—**CAN.**

z i. —— ——.]—R. *v.* OLSEN (1923), 32 B. C. R. 516.—**CAN.**

PART IX. SECT. 3.

sk. *County court judge in Nova Scotia—Imprisonment on civil process.*] *Re* METZLER (1930), 53 Can. C. C. 244.—**CAN.**

sl. *High Courts in India.*]—Subject to a statutory exception in respect of the Acts or orders of the Governor-General & Council & of the Governor & Council, done or made by them in their public capacity, the High Cts. in India possess the same jurisdiction to issue writs of *certiorari* as the Ct. of King's Bench in England. VENKATARATNAM *v.* SECRETARY OF STATE FOR INDIA (1930), I. L. R. 53 Mad. 979.—**IND.**

PART IX. SECT. 4.

sm. *General rule — Persons illegally purporting to act as court.*]—Where the assumption of authority by a tribunal is illegal from the beginning, it is not subject to *certiorari*.—R. (KELLY) *v.* MAGUIRE & O'SHEIL, [1923] 2 I. R. 58.—**IR.**

removing into that ct. an order of the Central Criminal Ct. with a view to its being quashed. —R. *v.* CENTRAL CRIMINAL COURT JJ., *Ex p.* LONDON COUNTY COUNCIL, [1925] 2 K. B. 43; 94 L. J. K. B. 479; 132 L. T. 666; 89 J. P. 65; 41 T. L. R. 269; 69 Sol. Jo. 381; 27 Cox, C. C. 734, D. C.

2458. *Add. Annotations:—As to* (3) **Apld.** R. *v.* Church Assembly Legislative Committee & Church Assembly, *Ex p.* Haynes Smith (1927), 44 T. L. R. 68. **Refd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171; R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

2521. *Add. Annotation:*—**Refd.** R. *v.* Cory, [1927] 1 K. B. 810.

2522. *Add. Annotation:*—**Refd.** Leyton U. C. *v.* Wilkinson, [1927] 1 K. B. 853.

2556. *Add. Citation:*—4 Jur. 151.

2566. *Add. Annotation:*—**Refd.** R. *v.* Harris, [1927] 2 K. B. 587.

2699a. ——.]—*Ex p.* KYLSANT & MORLAND (1931), 75 Sol. Jo. 489, D. C.

2713. *Add. Annotations:*—**Consd.** R. *v.* Electricity Comrs., *Ex p.* London Electricity Joint Committee Co. (1920), [1924] 1 K. B. 171. **Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

2730. *Add. Annotations:*—**Refd.** R. *v.* Sheffield JJ., *Ex p.* Rawson (1927), 91 J. P. 193; R. *v.* Southampton County Confirming Committee, *Ex p.* Slade, [1929] 1 K. B. 263.

2734. *Add. Annotation:—As to* (2) **Refd.** Frome United Breweries Co. *v.* Bath JJ., [1926] A. C. 586.

2735. *Add. Annotations:*—**Refd.** Frome United Breweries Co. *v.* Bath JJ., [1926] A. C. 586; Maclean *v.* Workers' Union, [1929] 1 Ch. 602; R. *v.* Huntingdon Confirming Authority, [1929] 1 K. B. 698.

2735a. —— Order of County Council—Improper grant of cinematograph licence.]—It was the practice of a certain County Council, in granting licences to use premises for cinematograph exhibitions, to impose the condition that the premises should not be so used on Sundays, Christmas Day or Good Friday; but also to entertain applications for permission to open the premises for cinematograph entertainments on those days. A co. applied for a licence to open & use premises for cinematograph entertainments, & also for permission to open the premises for such purposes on Sundays, Christmas Day & Good Friday. In compliance with this application the County Council made an order to the effect that, "subject to arrangements at the premises being completed to its satisfaction, the Council will take no action for the present in the event of the above named premises being opened for cinematograph entertainments on Sundays, Christmas Day & Good Friday as from & including Sunday, July 6, 1930, provided: (i.) that a sum of £35 be paid to charity in respect of each Sunday, Christmas Day & Good Friday on which the premises are opened for cinematograph entertainments." The permission was also subject to conditions relating to the auditing of receipts & expenses, the character & hours of the entertainments, & the employment of servants:—*Held:* a writ of *certiorari* should issue to bring up & quash the order of the County Council as having been made without jurisdiction, the council having no power to dispense with the provisions of the Sunday Observance Act, 1780 (c. 49).

I am unable to distinguish in principle between the application for a licence under Cinematograph Act, 1909 (c. 30), & an application made with regard to a licence for a public-house, which for many years . . . has been held to be a judicial act (SLESSER, L.J.).—R. *v.* LONDON COUNTY COUNCIL, *Ex p.* ENTERTAINMENTS PROTECTION ASSOCN., LTD., [1931] 2 K. B. 215; 100 L. J. K. B. 760; 144 L. T. 464; 95 J. P. 89; 47 T. L. R. 227; 75 Sol. Jo. 138; 29 L. G. R. 252, C. A.

2736a. —— Certificate of Post Office medical officer—Workmen's Compensation Act, 1925 (c. 84).]—Appct., a telegraphist in the employment of the Postmaster-General, complained to the Post Office medical officer at G. that she was suffering from telegraphist's cramp. In accordance with the regulations of the Post Office medical service, the case was referred to the chief medical officer, who had special knowledge of telegraphist's cramp, & he certified that appct. was not suffering from it:—*Held:* (1) the giving of a certificate was a judicial act, in respect of which *certiorari* would lie; (2) it issued *ex*

PART IX. SECT. 5, SUB-SECT. 2.—A.

2495 ii. —— ——.]—A writ of *certiorari* is not granted *ex debito justitiæ* or as a matter of legal right, but is an application to the sound discretion of the ct., & where there are disputed questions of fact which cannot be satisfactorily tried out on affidavits, but should be tried by *viva voce* testimony, & the questions involved are pending for decision in the Ct. of K. B., the application for *certiorari* will not be granted.—WORKMEN'S COMPENSATION BOARD *v.* BATHURST LUMBER CO., [1923] 4 D. L. R. 84.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 1.—A.

t i. ——.]—Where the inferior ct. has, & the ct. above has not, jurisdiction, *certiorari* cannot be had.—PINSENT *v.* BOYD & MCDOUGALL (1865) 4 Nfld. L. R. 727.—**NFLD.**

t ii. ——*One of judges prejudiced.*]—Where a legal practitioner, having no direct interest in a local ct. action, on the morning on which judgment in the action was to be delivered, discussed the action with one of the justices who heard the action, & made certain statements calculated to prejudice him against one of the parties:—*Held:* an order in the nature of a writ of *certiorari* should be granted removing the hearing of the action into the Supreme Ct.—*Re* AN ACTION IN THE LOCAL COURT OF ADELAIDE, BURKE *v.* STAEHR, [1927] S. A. S. R. 180.—**AUS.**

PART IX. SECT. 6, SUB-SECT. 2.—A.

2711 i. —— —— *Distress warrant for liquor exportation tax.*]—Where the duty of assessing a tax rested with the A.-G. for the province, & the provincial Secretary-Treasurer had power only to determine whether the tax should be recovered by distress or by action:—*Held: certiorari* would not lie to bring into the Supreme Ct. a distress warrant signed by the Secretary-Treasurer for an amount so assessed, his act being ministerial & not judicial.—HETHERINGTON *v.* SECURITY EXPORT CO., LTD., [1924] A. C. 988; 94 L. J. P. C. 1; 132 L. T. 215. —**CAN.**

d i. —— *Decision of county court reversing dismissal of offender.*]—Where on the trial of an offence punishable by summary conviction the magistrate dismisses the charge, & on appeal to the county ct. he is reversed & accused convicted, redress may be sought by *certiorari.*—R. *v.* MEEHAN, [1925] 2 D. L. R. 411; [1925] 1 W. W. R. 819; 43 Can. Crim. Cas. 325.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 2.—B. (a).

2763 i. *General rule.*]—R. *v.* BARRY, *Ex p.* LINDSAY (1922), 70 D. L. R. 193; 38 Can. Crim. Cas. 190.—**CAN.**

2763 ii. ——.]—The question whether a decision of a wreck comr. sitting as a ct. under Canada Shipping Act, R. S. C., 1906 (c. 113), Part X., was made in excess of his jurisdiction can be inquired into on *certiorari.*—*Re* BERQUIST, [1925] 2 D. L. R. 696; [1925] 1 W. W. R. 1084.—**CAN.**

2763 iii. ——.]—*Ex p.* JONES (N.B.) [1926] 1 D. L. R. 587; 45 Can. Crim Cas. 169.—**CAN.**

debito justitiæ at the instance of an aggrieved person; (3) an appeal to a medical referee under sect. 43 (1) (*f*) of the above Act was not equally beneficial, since he could only deal with the medical correctness of the certificate & could not inqure into its validity.—R. *v.* POSTMASTER-GENERAL *Ex p.* CARMICHAEL, [1928] 1 K. B. 291; 96 L. J. K. B. 347; 137 L. T. 26; 91 J. P. 43; 43 T. L. R. 228; 21 B. W. C. C. 226, D. C.

2771. *Add. Citation :*—2 B. R. A. 612.

2795. *Add. Citation :*—27 Cox, C. C. 253.

Add. Annotation :—**Refd.** R. *v.* Lincolnshire JJ., *Ex p.* Brett, [1926] 2 K. B. 192.

2797. *Add. Annotation :*—**Refd.** R. *v.* Sheffield JJ., *Ex p.* Rawson (1927), 91 J. P. 193.

2812. *Add. Annotation :*—**Expld. & Distd.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

2822. *Add. Annotations :—As to* (2) **Apld.** R. *v.* Postmaster-General, *Ex p.* Carmichael (1927), 96 L. J. K. B. 347. **Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

2830. *Add. Annotation :*—**Refd.** Palmer *v.* Crone, [1927] 1 K. B. 804.

2834. *Add. Annotations :*—**Refd.** R. *v.* Adams, *Ex p.* Pope, [1923] 1 K. B. 415; Palmer *v.* Crone, [1927] 1 K. B. 804.

2846. *Add. Annotation :*—**Consd.** Andrews *v.* Carlton (1928), 93 J. P. 65.

2862. *Add. Annotations :*—**Apld.** R. *v.* North Worcestershire Assessment Committee, *Ex p.* Hadley, [1929] 2 K. B. 397. **Refd.** Frome United Breweries Co. *v.* Bath JJ., [1926] A. C. 586.

2869. *Add. Annotations :*—**Consd.** Frome United Breweries Co. *v.* Bath JJ., [1926] A. C. 586. **Refd.** Maclean *v.* Workers' Union, [1929] 1 Ch. 602.

2923. *Add. Annotation :*—**Refd.** Kenney *v.* Kenney (1925), 133 L. T. 400.

2941. *Add. Citation :*—7 Dowl. 616.

2955. *Add. Annotation :*—**Distd.** R. *v.* Central Criminal Court JJ., *Ex p.* L. C. C., [1925] 2 K. B. 43.

3058. *Add. Annotation :*—**Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

3069. *Add. Annotation :*—**Refd.** R. *v.* Adams, *Ex p.* Pope (1923), 128 L. T. 597.

3075. *Add. Annotation :*—**Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

3131a. Who may apply—Not plaintiff.]—SOWTON *v.* CUTLER & CLERKE (1675), 2 Rep. Ch. 108; 21 E. R. 630.

Annotation :—**Apld.** Giusti Patents & Engineering Works *v.* Maggs, [1923] 1 Ch. 515.

3131b. *S. P.* GIUSTI PATENTS & ENGINEERING WORKS, LTD. *v.* MAGGS, [1923] 1 Ch. 515; 92 L. J. Ch. 345; 40 R. P. C. 199; *sub nom.* GIUSTI PATENTS & ENGINEERING WORKS, LTD. *v.* MAGGS, 129 L. T. 438.

3142a. Reference to statutory & other orders & to private & local Acts—Duty to supply copies for use of court.]—PRACTICE NOTE, [1926] W. N. 308.

3168a. —— Removal of cause applied for by plaintiff.]—SOWTON *v.* CUTLER & CLERKE (1675), 2 Rep. Ch. 108; 21 E. R. 630.

Annotation :—**Apld.** Giusti Patents & Engineering Works *v.* Maggs, [1923] 1 Ch. 515.

3168b. —— —— No appearance by defendant in proceedings in superior court.]—GIUSTI PATENTS & ENGINEERING WORKS, LTD. *v.* MAGGS, [1923] 1 Ch. 515; 92 L. J. Ch. 345; 40 R. P. C. 199; *sub nom.* GIUSTI PATENTS & ENGINEERING WORKS, LTD. *v.* MAGGS, 129 L. T. 438.

3185a. —— —— ——]—GUNN. *v.* MACKHENRY (1750), 1 Wils. 277; 95 E. R. 617.

2789 i. *Sufficiency of evidence in court below—Conviction under Temperance Act, R. S. C.*, 1920 (c. 194).]—Application for a *certiorari* to quash a conviction under the above Act on the above grounds, dismissed.—R. *v.* GRANT (Sask.), [1922] 2 W. W. R. 624; 69 D. L. R. 718; 38 Can. Crim. Cas. 234.—**CAN.**

2789 ii. ——.]—When a county ct. judge has acted entirely within his jurisdiction & has decided a question of fact upon evidence properly before him, *certiorari* does not lie to remove & quash such decision, merely upon the ground that it is not warranted by the evidence or weight of evidence.—*Ex p.* SMITH LUMBER CO., LTD. (1924), 51 N. B. R. 440.—**CAN.**

2789 iii. ——.]—*Re* HILLMAN (N. S.) (1926), 46 Can. Crim. Cas. 308.—**CAN**

sm. *Plea of "guilty" disputed.*]—Deft. having pleaded guilty & being summarily convicted by a police magistrate, moved for a *certiorari*, denying that he had so pleaded :—*Held :* deft. had pleaded guilty, & the motion was dismissed.—R. *v.* ARMSTRONG (1922), 38 Can. Crim. Cas. 98.—**CAN.**

sn. ——.]—Where deft. had been summarily convicted by a magistrate, who had been informed by a sworn interpreter that deft. pleaded guilty :—*Held : certiorari* was not available, unless the presumption that the proceedings were regular was rebutted.—R. *v.* LEE WAH DAI (1923), 41 Can. Crim. Cas. 152.—**CAN.**

sp. ——.]—The ct. on *certiorari* will quash a conviction by a magistrate, made without evidence being taken but on the statement of the sworn interpreter that accused pleaded guilty, where it appears to the ct. that accused did not really understand what offence he was charged with. In such a case, accused cannot be taken to have pleaded guilty & the magistrate had no jurisdiction to convict.—R. *v.* MLAKER, [1923] 3 W. W. R. 988; 40 Can. Crim. Cas. 287.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 2.—B. (b) i.

2801 i. *General rule.*]—Want of jurisdiction in a magistrate & irregularities in procedure which touch the substantial rights of appct. constitute those exceptional circumstances which justify relief by way of *certiorari*, even though appct. has a right of appeal.—OKREY *v.* SPANGLER, [1925] 1 D. L. R. 859; [1925] 1 W. W. R. 518; 19 Sask. L. R. 256.—**CAN.**

2801 ii. ——.]—R. *v.* RYAN, [1925] 1 D. L. R. 877; 43 Can. Crim. Cas. 223; 52 N. B. R. 104.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 2.—B. (b) iii.

2826 i. *General rule.*]—Where the jurisdiction of an inferior ct. depends upon a fact collateral to the actual matter which that ct. has to try, it cannot by a wrong decision with regard to that fact give itself jurisdiction which it would not otherwise possess. The lower ct. must decide as to the collateral fact in the first instance, but the superior ct. may upon *certiorari* inquire into the correctness of that decision.—R. (GREENAWAY) *v.* ARMAGH JJ., [1924] 2 I. R. 55.—**IR.**

PART IX. SECT. 6, SUB-SECT. 2.—B. (d).

2870 i. *General rule.*]—Where a conviction was bad on its face :—*Held :* a writ of *certiorari* should issue & the conviction be quashed.—R. (EUSTACE) *v.* TIPPERARY COUNTY DISTRICT JUSTICE, [1924] 2 I. R. 69.—**IR.**

2888 i. *Convictions—Formal defect in.*]—It is the duty of the ct. on *certiorari* to see that convictions are perfectly regular in form.—R. *v.* HING HOP, [1926] 1 W. W. R. 799; 45 Can. Crim. Cas. 239; 37 B. C. R. 158.—**CAN.**

2888 ii. —— —— *Unauthorised sentence.*]—CHIN KOW *v.* MOQUIN (1927), Q. R. 44 K. B. 1.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 2.—B. (e).

st. *Perjury.*]—A conviction can be attacked on *certiorari* on the ground of perjury or other fraud.—R. *v.* SAFRUK, [1924] 1 D. L. R. 695; 40 Can. Crim. Cas. 222; 19 Alta. L. R. 677; [1923] 2 W. W. R. 1126.—**CAN.**

PART IX. SECT. 7, SUB-SECT. 2.—C. (a).

3042 i. *Right not taken away—Unless expressly stated.*]—Where a statute takes away the right of *certiorari*, it does not disentitle the Crown to *certiorari*, where the Crown is not named & there are no words necessarily implying a reference to the Crown.—R. *v.* ON SING, [1924] 2 W. W. R. 258.—**CAN.**

3185b. -.]—On the removal of a cause from an inferior to a superior ct., if pltf. declares *de novo*, he is not bound to declare in the same form of action as that in the inferior ct.—BOWERBANK *v.* WALKER (1787), 2 Chit. 517.

3209a. Reference to statutory & other orders & to private & local Acts—Duty to supply copies for use of court.]—PRACTICE NOTE, [1926] W. N. 308.

3350. *Add. Annotation :—Generally,* **Refd.** Maclean *v.* Workers' Union, [1929] 1 Ch. 602.

3352a. *S. P. Re* KAYE (1822), 1 Dow. & Ry. K. B. 436 ; 1 Dow. & Ry. M. C. 114.

3433a. -Cross-examination of deponent—When ordered—Only in very special circumstances.] —R. *v.* KENT JJ., *Ex p.* SMITH, [1928] W. N. 137.

3456a. Reference to statutory & other orders & to private & local Acts—Duty to supply copies for use of court.]—PRACTICE NOTE, [1926] W. N. 308.

3560. *Add. Citation :*—2 L. M. & P. 130.

3581. After this case add "*See, now,* Judicature (Consolidation) Act, 1925 (c. 49), s. 25."

3596. *Add. Annotation :*—**Refd.** R. *v.* L. C. C., *Ex p.* Swan & Edgar (1927) (1929), 141 L. T. 590.

Part X.—The Attorney-General.

3637. *Add. Annotations :*—**Folld.** A.-G. *v.* Westminster City Council, [1924] 2 Ch. 416. **Consd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441. **Refd.** A.-G. *v.* Denby, [1925] Ch. 596.

3637a. ——.]—Where the A.-G. has exercised his discretion by issuing his fiat for the prosecution of an action against a public body to restrain an unauthorised exercise of its powers, the ct. will not consider whether the action is one proper to be brought in the circumstances.—A.-G. *v.* WESTMINSTER CITY COUNCIL, [1924] 2 Ch. 416 ; 93 L. J. Ch. 573 ; 131 L. T. 802 ; 88 J. P. 145 ; 40 T. L. R. 711 ; 68 Sol. Jo. 736 ; 22 L. G. R. 506, C. A.

3651. *Add. Annotations :—As to* (1) **Consd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441. **Refd.** A.-G. *v.* Denby, [1925] Ch. 596.

3678a. -.]—In cases of *ultra vires*, delay is not a ground for refusing relief in a suit by the A.-G.—A.-G. *v.* SOUTH STAFFORDSHIRE WATERWORKS CO. (1909), 25 T. L. R. 408.

PART IX. SECT. 9, SUB-SECT. 2.—I.

3287 i. *No appeal lies—Criminal matter.*]—The Ct. of Appeal in British Columbia has no jurisdiction to hear an appeal from the refusal of a judge to grant a writ of *certiorari* in aid in criminal matters.—R. *v.* MCADAM, [1925] 4 D. L. R. 33 ; [1925] 3 W. W. R. 257 ; 44 Can. Crim. Cas. 155 ; 35 B. C. R. 168.—**CAN.**

PART IX. SECT. 9 SUB-SECT. 3.—A. (a).

3336 i. *Who may apply—"Person aggrieved."*]—A licensing inspector lodged notice of intention to object to an application for the grant of a licensed victualler's licence, &, on the hearing of the application, stated that the objection was lodged as a mere formal objection, & that he did not desire to give or offer evidence or to address the ct., &, after the licence had been granted by the ct., treated the licence as being valid in subsequent proceedings before the licensing ct. He subsequently moved for a writ of *certiorari* to quash the grant of the licence :—*Held :* he was a person aggrieved, & competent to make the application.—R. *v.* DALBY LICENSING AUTHORITY, *Ex p.* KELLY, [1928] St. R. Qd. 151.—**AUS.**

PART IX. SECT. 9, SUB-SECT. 3.—A. (b).

g i. —— *Application more than thirty days after conviction — Intoxicating Liquor Act,* 1927.]—*Ex p.* CROWLEY, *Ex p.* KENNETH STAPLES DRUG CO. (N. B.), [1928] 4 D. L. R. 561 ; 50 Can. Crim. Cas. 378.—**CAN.**

g ii. —— —— ——.]—R. *v.* BEGIN, *Ex p.* CARON (N. B.) (1928), 50 Can. Crim. Cas. 69.—**CAN.**

h i. —— *Alberta—No jurisdiction.*]—*Re* BROWN & MACHINE MOTORS, LTD., [1931] 2 W. W. R. 114.—**CAN.**

PART IX. SECT. 9, SUB-SECT. 3.—A. (c).

3373 ii. —— *May be amended.*]—Leave may be given to amend a notice of motion to quash a conviction by including additional particulars intended to be relied upon.—R. (LESLIE) *v.* MARCOVICH, [1923] 2 W. W. R. 975.—**CAN.**

PART IX. SECT. 9, SUB-SECT. 3.—A. (d) ii.

3410 i. *Absence or excess of jurisdiction—May be shown by affidavit.*]—While on *certiorari* the depositions before the magistrate cannot be considered by the ct. in determining whether his jurisdiction was established, yet appct. who seeks to quash a conviction, on the ground of want of or excess of jurisdiction, may incorporate in proper material, & thus present to the ct., any facts, whether within or outside the depositions, which would affect the jurisdiction of the magistrate.—R. *v.* ROZONOWSKI, [1926] 1 D. L. R. 732 ; [1926] 1 W. W. R. 241 ; 45 Can. Crim. Cas. 193 ; 36 B. C. R. 327.—**CAN.**

PART IX. SECT. 9, SUB-SECT. 3.—A. (e).

sw. *Affidavits tending to establish guilt of accused—Not admissible.*]—R. *v.* MLAKER, [1923] 3 W. W. R. 988.—**CAN.**

PART IX. SECT. 9, SUB-SECT. 3.—K.

3556 i. *General rule—Whether court will examine evidence—Summary conviction.*]—In the case of a summary conviction for an indictable offence the ct. on *certiorari* is not precluded from examining the evidence to ascertain if there was any legal evidence upon which accused could be or ought to have been convicted.—R. *v.* OAKES, [1923] 1 W. W. R. 1220 ; 39 Can. Crim. Cas. 329.—**CAN.**

3556 ii. —— —— ——.]—R. *v.* JACKSON, [1924] 1 W. W. R. 847 ; 41 Can. Crim. Cas. 416.—**CAN.**

3556 iii. —— —— ——.]—R. *v.* BRANDELINA, [1927] 1. W. W. R. 832 ; 47 Can. Crim. Cas. 166 ; 38 B. C. R. 87.—**CAN.**

PART IX. SECT. 9, SUB-SECT. 3.—M.

sy. *Whether appeal lies—Criminal proceedings.*]—No appeal lies to the Ct. of Appeal from an order made by a judge of the King's Bench on an application for *certiorari*, with respect to a conviction under the Criminal Code.—*Re* NAGY, NAGY *v.* GALL (Sask.), [1926] 3 W. W. R. 759 ; 46 Can. Crim. Cas. 333.—**CAN.**

PART IX. SECT. 9, SUB-SECT. 3.—N.

d i. —— ——.]—*Re* HIGGINBOTHAM, [1932] 4 M. P. R. 140.—**CAN.**

PART X. SECT. 3, SUB-SECT. 1.

sz. *Cannot sue in official name on behalf of himself personally.*]—A.-G. FOR ONTARIO *v.* RUSSELL (1921), 64 D. L. R. 59 ; 49 O. L. R. 103.—**CAN.**

sa. *Right to issue summons under Customs Acts—No prosecution instituted by Minister, Department of State, or authorised person.*]—A district justice raised a preliminary objection to the hearing of a summons charging an offence under Customs Acts, viz. that the complainant was the A.-G., the district justice being of opinion that under Customs & Inland Revenue Act, 1879, s. 11, an officer of the customs & excise must be the complainant :—*Held :* the objection was unsustainable as Criminal Justice Administration Act, 1924, s. 9 (2), authorised the A.-G. to prosecute in any ct of summary jurisdiction in all cases in which a prosecution is not instituted by a Minister, Dept. of State, or authorised person.—A.-G. *v.* HEALY, [1928] I. R. 460.—**IR.**

PART X. SECT. 3, SUB-SECT. 2.

3681 i. *General rule.*]—The A.-G. is exclusively the legal representative of the public & the rights of the public, whether for the purpose of bringing an action to assert those rights, or of defending an action, in which the rights of the public are assailed.—MOORE *v.* A.-G., [1930] I. R. 471.—**IR.**

3682. *Add. Annotations :*—**Consd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441. **Refd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485.

3684. *Add. Annotations :*—**Refd.** A.-G. *v.* Westminster City Council, [1924] 2 Ch. 416; A.-G. *v.* Leeds Corpn., [1920] 2 Ch. 291.

3686. *Add. Annotation :*—**Refd.** A.-G. *v.* County of London Electric Supply Co., [1926] Ch. 542.

3688. *Add. Annotations :*—**Consd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441. **Refd.** A.-G. *v.* Denby, [1925] Ch. 596.

3705. After this case add :—

—— **Forfeiture of funds of alien—Construction of Treaty of Peace Order.**]—*See* ALIENS, No. 49c, *ante*.

3708. *Add. Annotation :*—**Refd.** R. *v.* Copestake, *Ex p.* Wilkinson, [1927] 1 K. B. 468.

3715. *Add. Annotation :*—**Refd.** Salisbury & Fordingbridge District Drainage Board *v.* Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566.

3718. *Add. Annotation :*—**Refd.** Hardie & Lane *v.* Chiltern (1927), 96 L. J. K. B. 773.

3719. *Add. Annotation :*—**Apld.** Hurley *v.* Stepney B. C. (1923), 67 Sol. Jo. 767.

3720. *Add. Annotations :*—**Consd.** Salisbury & Fordingbridge District Drainage Board *v.* Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566; A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441, C. A.

3722a. Proceedings to restrain borough council from reducing wages of employees.]—In an action by three members of a borough council for a declaration that a resolution of the council reducing the wages of the council's employees was *ultra vires* & invalid, on the ground that the resolution was not passed by a two-thirds majority in accordance with the council's bye-laws :—*Held :* the A.-G. must be a party to the action.—HURLEY *v.* STEPNEY BOROUGH COUNCIL (1923), 67 Sol. Jo. 767.

3733. *Add. Annotations :*—**Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53; R. *v.* Copestake, *Ex p.* Wilkinson (1926), 96 L. J. K. B. 65.

3736. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

3683 ii. ——.]—*Semble :* a bill to remove a fixed bridge across a navigable river as impeding navigation, & to erect instead a drawbridge, as provided for by statute, should be by the A.-G., where the statute was passed for the general benefit of the public.—CULL *v.* GRAND TRUNK RY. Co. (1864), 10 Gr. 491.—**CAN.**

3683 iii. ——.]—The Crown, as *parens patriæ*, represents the interests of His Majesty's subjects, & the A.-G. for a province, acting as the officer of the Crown, is empowered to go before the cts. to prevent the violation of the rights of the public of that province, even if the perpetrator of the deeds complained of be a creature of the federal authority. In other words, the A.-G. of a province has not only the right, but the duty, to suppress the civil offences committed within the limits of the province.—PEOPLE'S HOLDING CO., LTD. *v.* A.-G. OF QUEBEC, [1931] S. C. R. 452; 4 D. L. R. 317.—**CAN.**

PART X. SECT. 4.

3b. *Questions raised as to jurisdiction of Provincial Court—Or right of Provincial Attorney-General to intervene—Notice to Attorney-General before appeal heard.*]—VALOIS *v.* BOUCHERVILLE, [1928] 1 D. L. R. 343.—**CAN.**

PART X. SECT. 5.

3723 i. *Effect of fiat—On amount recoverable.*]—An award for a sum in excess of that named in the A.-G.'s fiat :—*Held :* void, even though A.-G.'s consent was afterwards obtained.—BEACH *v.* HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO, [1925] 4 D. L. R. 513; *affg.*, [1924] 4 D. L. R. 995; 56 O. L. R. 35.—**CAN.**

3 i. —— *To maintain set-off or counterclaim.*]—*Held :* to allow a counterclaim or set-off the ct. must as a condition precedent be vested with the jurisdiction of hearing both the action & the counterclaim or set-off, & that this ct. has no jurisdiction to hear the counterclaim until a fiat has been given to hear the same.—R. *v.* COSGRAVE EXPORT BREWING CO., LTD., R. *v.* JOHN LABATT, LTD., [1928] Exch. C. R. 103.—**CAN.**

3 ii. —— *To action by ratepayer—Representative action.*] — LOGGIE *v.* CHATHAM MUNICIPALITY (N. B.), [1928] 2 D. L. R. 583.—**CAN.**

3 iii. —— *To prosecution for ing pedigree—Whether applicable to pedigrees of animals.*]—The offences contemplated by Criminal Code, s. 597, which require the consent of the A.-G. before certain prosecutions are commenced, are those created by s. 419 thereof, & the pedigree referred to therein is one which is of importance in determining the title to property. Such consent is not necessary to a prosecution under Live Stock Pedigree Act, R. S. C. 1927, c. 121, s. 17, with respect to a false or fraudulent statement of the pedigree of an animal.—R. *v.* DAVENPORT (Alta.), [1928] 2 D. L. R. 852; [1928] 1 W. W. R. 876; 50 Can. Crim. Cas. 40.—**CAN.**

PART X. SECT. 6.

b i. —— *Attorney-General represented by salaried officer.*]—Where costs are awarded the A.-G. in litigation in which he was represented by a barrister who is a salaried officer of the A.-G.'s department & who has no agreement with the A.-G. that he is to have costs in addition to his salary, & there is no statute which enables him to recover on his own account, the costs which the A.-G. is entitled to tax are limited to disbursements.—BRANDON CITY *v.* MANITOBA MUNICIPAL COMR. & A.-G. FOR MANITOBA (No. 2), [1932] 1 W. W. R. 41; 1 D. L. R. 478; 40 Man. L. R. 100.—**CAN.**

CUSTOM AND USAGES.

Part I.—Custom.

48. *Add. Annotation :*—**Refd.** The Harkaway, [1928] P. 199.

65. *Add. Annotation :*—**Refd.** Busby *v.* Avgherino, [1927] 2 Ch. 33.

74. *Add. Annotations :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375. **Refd.** Glamorgan County Council *v.* Glasbrook, [1924] 1 K. B. 879.

75. *Add. Annotation :*—**Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

77. *Add. Annotation :*—**Consd.** Busby *v.* Avgherino, [1928] A. C. 290.

164. *Add. Annotation :*—**Refd.** Moser *v.* Ambleside U. D. C. (1925), 89 J. P. 118.

Part II.—Usages Generally.

303. *Add. Annotation :*—**Refd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

304. *Add. Annotations :*—**Refd.** Layton *v.* General Steam Navigation Co. (1923), 130 L. T. 662; Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

359. *Add. Annotation :*—*As to* (7) **Apprvd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

396. *Add. Annotation :*—**Refd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743.

434. *Add. Annotation :*—**Refd.** Schiller *v.* Petersen (1924), 130 L. T. 810.

462. *Add. Annotation :*—**Refd.** Elder, Dempster *v.* Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. *v.* Paterson, Zochonis, [1924] A. C. 522.

492a. *Add. Annotation :*—**Consd.** Smith, Hogg *v.* Bamberger, [1929] 1 K. B. 150.

497. *Add. Annotation :*—**Refd.** Scriven *v.* Schmoll Fils Insce. (1924), 40 T. L. R. 677.

501. *Add. Annotation :*—**Refd.** Rederi Akt. Acolus *v.* Hillas (1925), 134 L. T. 184.

510. *Add. Annotation :*—**Refd.** United States Shipping Board *v.* Strick, [1926] A. C. 545.

537. *Add. Annotations :*—**Consd.** Smith, Hogg *v.* Bamberger, [1929] 1 K. B. 150. **Refd.** Rederi Akt. Acolus *v.* Hillas (1925), 134 L. T. 184.

543. *Add. Citation :*—*affg.* S. C. *sub nom.* THE TURID, [1921] P. 146, C. A.

Add. Annotations :—**Folld.** Hillas *v.* Rederi Akt. Acolus (1926), 43 T. L. R. 67. **Consd.** Dampsselskab Svendborg *v.* L. M. & S. Ry. Co. (1929), 141 L. T. 521; Smith, Hogg & Co. *v.* Bamberger & Sons, [1929] 1 K. B. 150. **Refd.** The Rensfjell, The Ornesfjell, The Uppland, The Fritioff, The Svein Jarl (1924), 131 L. T. 764; Akt. Dampskibs Steinstad *v.* Pearson (1927), 137 L. T. 533.

544. *Add. Annotation :*—**Refd.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 458.

544a. ——.]—Pltfs., shipowners, chartered a steamer to defts. to carry a cargo of timber from the Baltic to Hull. The charterparty contained a clause as follows: "Cargo to be loaded & discharged with customary steamship dispatch according to the custom of the respective ports. The cargo to be brought to & taken from alongside the steamer at charterer's risk & expense as customary." The steamer discharged the cargo at Hull in due course, but disputes arose between pltfs. & defts. as to the division of the cost of discharging the cargo. Pltfs. brought an action to recover a sum which they had paid in effecting the discharge which they said should have been paid by defts. Defts. refused to pay on the ground that by the custom of the port of Hull the expense in question should be borne by the shipowners: —*Held :* the custom relied on by defts. was inconsistent with the language of the charterparty & was not admissible in order to decide upon whom the expense in question should rest.—REDERI AKT. ACOLUS *v.* HILLAS

PART I. SECT. 5, SUB-SECT. 1.—A.

50 iv. *Not essential to validity of custom.*]—The English common law rule of immemorial user is not required to establish a custom in India. It is sufficient if the ct. is satisfied of its reasonableness, certainty, & existence for a sufficiently long time to have become the customary law of the particular locality, the user being neither permissive nor fraudulent.—PRANNATH KUNDU *v.* EMPEROR (1929), I. L. R. 57 Calc. 526.—**IND.**

57 i. *Time of legal memory.*]—The legal recognition of a custom in British India depends upon its antiquity, certainty & uniformity. As to antiquity or the period of "legal memory," a British ct. need not extend its inquiries beyond its own establishment. Moreover a series of legal decisions confirming a custom is cogent evidence that such custom has the force of law.—CHAN PYU *v.* SAW SIN (1928), I. L. R. 6 Ran. 623.—**IND.**

PART I. SECT. 9, SUB-SECT. 1.

p 1 —— *Riwaj-i-am—Unsupported by instances.*]—A *riwaj-i-am* is admissible in evidence to prove the facts entered thereon, subject to rebuttal, & that the statements therein may be accepted, even if unsupported by instances. Manuals of customary law, in accordance with *riwaj-i-am*, issued by authority for each district, stand on much the same footing as the *riwaj-i-am* itself as evidence of custom.—VARSHNO DITTI *v.* RAMESHRI (1928), L. R. 55 Ind. App. 407.—**IND.**

sb. *Question of fact.*]—The question of the existence of a custom is substantially a question of fact.—RAM SARAN DAS *v.* PEAREY LAL (1930), I. L. R. 53 All. 308.—**IND.**

PART II. SECT. 3, SUB-SECT. 1.—A.

303 vii. ——.] — The question whether a trade custom or usage exists is one of fact, & clear & convincing testimony is required to prove its existence; it must be shown that the custom or usage relied on is certain & reasonable, & so universally recognised that everyone engaged in the trade knows, or should know, of it. —YEATES *v.* BARRETT (Sask.), [1927] 3 D. L. R. 812; [1927] 3 W. W. R. 286.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.

340 iv. ——.]—YEATES *v.* BARRETT No. 303 vii, *ante*.—**CAN.**

PART II. SECT. 3, SUB-SECT. 3.

350 ii. ——.]—YEATES *v.* BARRETT, No. 303 vii, *ante*.—**CAN.**

PART II. SECT. 6, SUB-SECT. 2.—B. (a).

472 ii. ——.]—HOLMES, WILSON & CO., LTD. *v.* BATA KRISTO DE (1927), I. L. R. 54 Calc. 549.—**IND.**

& Co., LTD. (1926), 96 L. J. K. B. 186; 136 L. T. 385; *sub nom.* HILLAS (W. N.) & Co., LTD. *v.* REDERI AKT. ACOLUS, 43 T. L. R. 67; 32 Com. Cas. 69; 17 Asp. M. L. C. 193, H. L.

Annotations:—**Consd.** Smith, Hogg & Co. *v.* Bamberger & Sons, [1929] 1 K. B. 150. **Refd.** Dampsselskab Svendborg *v.* London Midland & Scottish Ry. Co. (1929), 141 L. T. 521.

545. *Add. Annotation:*—**Refd.** Rederi Akt. Acolus *v.* Hillas (1925), 134 L. T. 184.

546. *Add. Annotation:*—**Consd.** Rederi Akt. Acolus *v.* Hillas (1925), 42 T. L. R. 69.

587. *Citations:*—For "9 App. Cas. 508," read "8 App. Cas. 508."

588. *Add. Annotations:*—**Refd.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 458; Dampsselskab Svendborg *v.* L. M. & S. Ry. Co. (1929), 141 L. T. 521.

Part III.—Particular Usages.

602. *Add. Annotation:*—**Refd.** Sagar *v.* Ridehalgh (H.) & Son, Ltd., [1930] 2 Ch. 117.

616. *Add. Annotation:*—**Refd.** United States Shipping Board *v.* Strick, [1926] A. C. 545.

625. *Add. Annotations:*—**Consd.** Michalinos *v.* Drefus (1924), 131 L. T. 177; Bunge y Born Co. *v.* Brightman, [1925] A. C. 799. **Refd.** Brightman *v.* Bunge y Born, [1924] 2 K. B. 619; Matheos S.S. *v.* Dreyfus, [1925] A. C. 654.

635a. Lancashire—Weaving trade—Deduction for bad work in estimating value of work to be paid for.]—Pltf. was a weaver in defts.' employment & his wages were calculated on the amount & kind of cloth woven in each week in accordance with a uniform list of prices agreed between the employers' & workmen's unions. According to the list of prices, pltf. became entitled for the week ending Aug. 1, 1928, after agreed deductions, to a sum of £2 5*s.* 0½*d.*, but defts. only paid him £2 4*s.* 0½*d.*, claiming the right to deduct 1*s.* in respect of three yards of cloth woven with a fault rendering them unmerchantable. The evidence showed that it had been the practice of the mill for many years to make deductions for work not done with reasonable care & skill, the deductions not exceeding in amount the loss sustained by the employers & often not being exacted. A similar usage existed in the bulk of the mills carrying on the Lancashire weaving trade, though some of the mill owners were trying to do without deductions:—*Held:* the established practice in defts.' mill resulted in the incorporation in the contract of employment of pltf. as of all other weavers employed at the mill of a term enabling the employers to make a deduction, not exceeding the actual or estimated loss occasioned, from the specific sum payable for each piece of cloth woven, if the workman did not exercise reasonable care & skill in weaving the cloth.

A usage in the Lancashire weaving mills allowing an employer to make at his discretion deductions from wages for bad work, not exceeding a certain defined limit, is neither unreasonable nor uncertain; & the fact that it at present exists at about 85 per cent. only of the mills does not prevent it from being a good legal usage on the ground of want of universality (*per* CUR.).—SAGAR *v.* RIDEHALGH (H.) & SON, LTD., [1931] 1 Ch. 310; 100 L. J. Ch. 220; 144 L. T. 480; 95 J. P. 42; 47 T. L. R. 189; 29 L. G. R. 421, C. A.

636. *Add. Annotation:*—**Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

643. *Add. Annotation:*—**Refd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414.

646. *Add. Annotations:*—**Apld.** Hart *v.* Riversdale Mill Co. (1927), 96 L. J. K. B. 691. **Folld.** SAGAR *v.* RIDEHALGH & SON, LTD., [1931] 1 Ch. 310.

700. *Add Annotation:*—**Distd.** Mikkelsen *v.* Arcos (1925), 42 T. L. R. 3.

703a. Usage as to arbitration.]—Pltfs. sold to defts. a quantity of paraffin wax under a contract providing, "any dispute arising under this contract to be settled by arbitrators in London in the usual way." A claim was made by defts. against pltfs., & the arbitrators, being unable to agree, appointed an umpire by a document headed, "the use of this form constitutes a submission to the rules of the assocn.," *i.e.* the London Oil & Tallow Trades Assocn. The

PART III. SECT. 1, SUB-SECT. 8.

sa. *Contract of grain grower with wheat pool—Failure to deliver—Remedies.*]—The refusal of a member of the Manitoba Wheat Pool to deliver his grain to the Pool constitutes a breach of his contract with the Pool. In view of the nature of the Pool & the terms of the contract, the Pool's appropriate remedy is by way of injunction & decree for specific performance.—MANITOBA WHEAT POOL *v.* TRACEY, [1931] 1 W. W. R. 745; 2 D. L. R. 805; 39 Man. L. R. 385.—**CAN.**

sb. —— —— *What amounts to.*]—In an action against a farmer for breach of the Wheat Pool contract, under which he agreed to deliver to the Pool all the wheat produced or acquired by him during a certain year, except such as he might retain for his own food, seed, etc., the Pool makes out a *primâ facie* case when it shows that he had in that year a very large quantity of wheat in his possession & that he delivered only a very small part of it to the Pool.—SASKATCHEWAN CO-OPERATIVE WHEAT PRODUCERS, LTD. *v.* LUCIUK, [1931] 2 W. W. R. 51; 2 D. L. R. 981.—**CAN.**

sc. *Grain broker—Authority to close transactions—Margin running out.*]—Pltf., who had been carrying wheat on margin with deft. brokers & had been sold out by them had on the occasion of his first transaction with them signed a printed buying order which provided that: "It is further understood & agreed that on all marginal business the right is reserved to close the transactions when margins are running out without further notice," & on subsequent occasions during the course of the transactions sale & purchase accounts & confirmations of orders, all of which contained said words, were sent to him by the brokers:—*Held:* the question whether the customer must be taken to have assented to this condition being a term of his contract with the brokers was one of fact, & under the circumstances, it should be found that he had so assented.—PATTERSON *v.* BRANSON-BROWN & CO., LTD., [1930] 2 W. W. R. 236; 4 D. L. R. 222; 43 B. C. R. 26.—**CAN.**

sn. —— *Bankruptcy — Priority of customers.*]—*Re* KERN AGENCIES, LTD. (No. 4), [1932] 1 W. W. R. 660.—**CAN.**

sp. *Certificate of membership of grain exchange—Lien of other members.*]—A bye-law of a grain exchange providing that certificates of memberships in the exchange shall be subject to a lien with respect to the claims of other members arising out of contracts made on the exchange held valid.—NEWTON *v.* WHITE, [1930] 2 W. W. R. 1; 3 D. L. R. 930; 11 C. B. R. 348; *affd.*, [1931] 1 W. W. R. 836; 2 D. L. R. 733; 39 Man. L. R. 455; 12 C. B. R. 332.—**CAN.**

st. —— ——.]—NEWTON & Co. *v.* WOLVIN, [1930] 2 W. W. R. 194; 4 D. L. R. 1028; 11 C. B. R. 414; *on appeal*, [1931] 1 W. W. R. 55; 2 D. L. R. 337; 39 Man. L. R. 285.—**CAN.**

umpire awarded that defts.' claim failed & that they were to pay the costs of the arbitration. The rules of the assocn. provided for an appeal to an appeal committee, & defts. claimed a right of appeal. Pltfs. thereupon brought an action against defts. to recover the costs of the arbn., & the evidence was that in the trade in paraffin wax the usual way of settling a dispute by arbn. was to appoint arbitrators who could appoint an umpire whose decision would be final :— *Held :* the heading did not apply & the umpire was really appointed in pursuance of the original agreement as to arbn. & not under the rules of the assocn., & pltfs. were entitled to recover.—PALMER & Co., LTD. *v.* PILOT TRADING CO., LTD. (1929), 45 T. L. R. 214.

710. *Add. Annotations :*—**Refd.** Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461 ; Hirji Mulji *v.* Cheong Yue S.S. Co., [1926] A. C. 497 ; The Varing, [1931] P. 79.

712. *Add. Annotation :*—**Refd.** Williams *v.* Manissalian Frères (1923), 29 Com. Cas. 42.

729a. Carriage of wool.]—The contract of carriage customary in the trade for the carriage of wool from import ship in London to Bradford *via* Goole is one by which the carrier undertakes to deliver the wool in a good condition as he receives it, the act of God & the King's enemies excepted.—FRANCE, FENWICK & Co. *v.* MANNHEIM INSURANCE CO. (1905), 10 Com. Cas. 242.

734a Metal trade—Rules of London Metal Exchange—Clerk prohibited from dealing as principal.]—The fact that the rules of the London Metal Exchange prohibit a clerk to a member from participating in dealings on the Exchange as a principal does not make the contracts void as being against public policy. —BARNETT *v.* SANKER (1925), 41 T. L. R. 660 ; 69 Sol. Jo. 824.

DAMAGES.

Part I.—Definitions, Nature and Classification.

1. *Add. Annotations :*—**Apld.** *Re* Golomb & Porter & Co.'s Arbitration (1931), 144 L. T. 583. **Refd.** Marbé *v.* George Edwardes (Daly's Theatre) (1927), 43 T. L. R. 460.

1a. **Damages compared with statutory compensation.**]—Compensation under Cos. Act, 1908 (c. 69), s. 84, is not, either as to the amount recoverable or the mode of measuring it something different from or even greater than damages.—CLARK *v.* URQUHART, STRACEY *v.* URQUHART, [1930] A. C. 28; 99 L. J. P. C. 1; 141 L. T. 641, H. L.

8. *Add. Annotation :*—**Refd.** Peyrae *v.* Wilkinson, [1924] 2 K. B. 166.

9. *Add. Annotations :*—**Consd.** Admiralty Comrs. *v.* S.S. Chekiang, [1926] A. C. 637; Admiralty Comrs. *v.* S.S. Susquehanna, [1926] A. C. 655. **Refd.** The Edison, [1932] P. 52.

12. *Add. Annotation :*—**Refd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co., [1931] 2 K. B. 393.

14. *Add. Annotations :*—**Refd.** Performing Right Society *v.* Mitchell & Booker, [1924] 1 K. B. 762; Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

15. *Add. Annotation :*—**Consd.** Shapiro *v.* La Morta (1923), 130 L. T. 622.

19. *Add. Annotation :*—**Consd.** Ilford U. D. C. *v.* Beal, [1925] 1 K. B. 671.

Part II.—Rules and Principles in Awarding Damages.

22. *Add. Annotation :*—**Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609.

26. *Add. Annotations :*—**Consd.** The Chekiang, [1925] P. 80; The Susquehanna, [1925] P. 196; A.-G. *v.* Glen Line, Ltd., & Liverpool & London War Risks Insce. Assocn. (1929), 34 Com. Cas. 309. **Refd.** The Edison (1932), 48 T. L. R. 224.

28. *Add. Annotation :*—**Refd.** The Edison [1932] P. 52.

29. *Add. Annotations :*—**Consd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1932), 48 T. L. R. 404. **Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 47 T. L. R. 359.

29a. —— —— **Property destroyed by fire.**]—A cottage was almost completely destroyed by fire caused by a spark emitted from a steam-roller which was found to constitute a nuisance. In assessing the damages recoverable by the owner of the cottage :—*Held :* the measure of damage was not the fair cost of rebuilding the cottage & making it as good & habitable as before the fire, but the difference between the money value of the owner's interest before & after the fire.—MOSS *v.* CHRISTCHURCH RURAL DISTRICT COUNCIL, ROGERS *v.* SAME, [1925] 2 K. B. 750; 95 L. J. K. B. 81; 23 L. G. R. 331.

30. *Add. Annotation :*—**Refd.** York Glass Co. *v.* Jubb (1925), 134 L. T. 36.

34. *Add. Annotation :*—**Apprvd.** Swift *v.* Board of Trade, [1925] A. C. 520.

PART I.

7 i. *Nominal damages—Defined.*]—Nominal damages does not necessarily mean small damages.—MCGEE *v.* CLARKE, [1927] 1 W. W. R. 593; 38 B. C. R. 156.—**CAN.**

c i. —— ——.]—LUNDY *v.* MCLEOD *v.* POWELL (Sask.), [1922] 3 W. W. R. 991; 70 D. L. R. 659.—**CAN.**

PART II. SECT. 3.

27 i. *Application of rule—In tort—Property destroyed by fire.*]—Where damages were recovered for loss through destruction of property by fire caused by deft.'s negligence :—*Held :* the measure of damages was not the cost of replacing the property destroyed, but the value of the property as it stood at the time of the destruction. The cost of replacing may be taken into account in arriving at such value.—STEVENS *v.* ABBOTSFORD LUMBER CO., [1924] 1 D. L. R. 1163; 1 W. W. R. 660; 33 B. C. R. 299.—**CAN.**

27 ii. —— —— ——.]—Where there had been misdirection as to the damages, viz. that they should be assessed on a replacement basis :—*Held :* there should be a new trial.—O'NEIL *v.* DOMINION COAL CO., [1924] 1 D. L. R. 961; 57 N. S. R. 126.—**CAN.**

27 iii. *Depreciation in selling value.*]—In an action for damages in respect of injury done to the land, the trial judge assessed pltf.'s damages at $4,500, estimating the actual damage which flowed from deft.'s wrong-doing at $3,500; but, taking into account deft.'s whole course of conduct & persistence in the wrong which he was doing, fixed the total damages at $4,500 :—*Held :* having regard to the evidence & to the fact that the measure of damages is not the sum necessary to restore the property, but the depreciation in its selling value, the finding of $3,500, for the actual damage done, could not be said to be clearly wrong.—PAFFARD *v.* CAVOTTI, [1929] 1 D. L. R. 111; 63 O. L. R. 171.—**CAN.**

30 v. —— ——.]—AICKIN *v.* BAXTER (B. C.), [1929] 4 D. L. R. 327.—**CAN.**

30 vi. —— *Where plaintiff has alternative claim—Duty to elect.*]—Damages cannot be recovered both in tort & for breach of contract, when the tort & the breach of contract result from the same act; in such a case pltf. must elect or be deemed to have elected; &, if he seeks to recover damages for breach of contract, they must be measured upon that basis, & not upon the basis of any coincident or concomitant act of tort.—TORONTO HOCKEY CLUB *v.* ARENA GARDENS, LTD., [1924] 4 D. L. R. 384; 55 O. L. R. 509; *affd.*, [1925] 4 D. L. R. 546; 57 O. L. R. 610; *affd.*, [1926] 4 D. L. R. 1; [1926] 3 W. W. R. 26.—**CAN.**

30 vii. ——.]—AICKIN *v.* BAXTER (B. C.), [1929] 4 D. L. R. 327.—**CAN.**

PART II. SECT. 4.

38 xii. —— —— *Goods not of warranted description—Allowance made.*]—Certain goods supplied under a contract not answering the warranted description were taken back & an adjustment made in respect of them :—*Held :* the purchaser could not claim damages for the breach.—HAMILTON GEAR & MACHINE CO. *v.* LEWIS BROTHERS, [1924] 3 D. L. R. 367; 54 O. L. R. 583.—**CAN.**

38 xiii. —— ——.]—FRENCH *v.* PARIS, [1928] 3 D. L. R. 555.—**CAN.**

42 iv. —— ——.]—In an action for wrongfully obstructing the flow of a river by increasing the height of a weir, whereby pltf.'s lands, abutting on the river, were flooded, the judge declined to direct the jury that actual damage was essential to maintain the action :—*Held :* the direction was right.—M'GLONE *v.* SMITH (1888), 22 L. R. Ir. 559.—**IR.**

44. *Add. Annotation :*—**Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

53. *Add. Annotations :*—**Consd.** Admiralty Comrs. *v.* S.S. Chekiang, [1926] A. C. 637 ; Admiralty Comrs. *v.* S.S. Susquehanna, [1926] A. C. 655. **Refd.** The Edison, [1932] P. 52.

54. *Add. Annotations :*—**Consd.** Admiralty Comrs. *v.* S.S. Chekiang, [1926] A. C. 637. **Refd.** Admiralty Comrs. *v.* S.S. Susquehanna, [1926] A. C. 655 ; The Edison, [1932] P. 52.

57. *Add. Annotation :*—**Consd.** The Chekiang, [1925] P. 80.

58. *Add. Annotations :*—**Refd.** Admiralty Comrs. *v.* S.S. Susquehanna, [1926] A. C. 655 ; The Edison (1931), 47 T. L. R. 635 ; The Edison (1932), 147 L. T. 141.

61. *Add. Annotation :*—**Refd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

63. *Add. Annotations :*—**Refd.** The Koursk, [1924] P. 140 ; Debenham *v.* Perkins (1925), 133 L. T. 252 ; Conquer *v.* Boot, [1928] 2 K. B. 336.

64. *Add. Annotations :*—**Refd.** Huyton & Roby Gas Co. *v.* Liverpool Corpn. (1925), 42 T. L. R. 116 ; Conquer *v.* Boot, [1928] 2 K. B. 336.

98. *Add. Annotation :*—*As to* (1) **Refd.** Franco-British Ship Store Co. *v.* Compagnie des Chargeurs Francaise (1926), 42 T. L. R. 735.

Part III.—Directness and Remoteness.

101. *Add. Annotations :*—*As to* (1) **Consd.** *Re* Hall & Pim (1928), 139 L. T. 50. **Distd.** Riley *v.* Brown (1929), 98 L. J. K. B. 739. **Consd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1932), 48 T. L. R. 404. **Apld.** The Edison, [1932] P. 52. **Refd.** Patrick *v.* Russo-British Grain Export Co., [1927] 2 K. B. 535 ; Dobell (C. G.) & Co., Ltd. *v.* Barber & Garratt (1930), 47 T. L. R. 66 ; Herbert Clayton & Jack Waller, Ltd. *v.* Oliver, [1930] A. C. 209 ; The Edison (1931), 47 T. L. R. 635. *As to* (2) **Consd.** Patrick *v.* Russo-British Grain Export Co., [1927] 2 K. B. 535 ; Banco de Portugal *v.* Waterlow & Sons, Ltd. (1932), 48 T. L. R. 404.

110. *Add. Annotation :*—**Refd.** The Edison (1932), 147 L. T. 141.

113. *Add. Annotations :*—**Refd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369 ; The Edison (1932), 147 L. T. 141.

114. *Add. Annotations :*—**Consd.** Sorrell *v.* Smith, [1925] A. C. 700. **Refd.** Black *v.* Admiralty Comrs. (1924), 93 L. J. K. B. 341 ; Rely-A-Bell Burglar & Fire Alarm Co. *v.* Eisler, [1926] Ch. 609 ; Scammell *v.* Attlee (1928), 45 T. L. R. 75 ; Scammell G. & Nephew *v.* Hurley, [1929] 1 K. B. 419.

114a. —— **Admiralty cases.**]—Damages must be the direct & natural consequence of the breach of obligation complained of. The law is the same in this respect with regard both to contract & to tort, subject to the qualification that, in the case of the former, the law does not consider too remote damage which may

51 iv. —— *No reasonable expectation of pecuniary benefit—Death of young child in accident.*]—*Held :* a verdict of damages awarded to parents of young children killed in an accident arising from negligence could not stand, where there was no reasonable expectation of future pecuniary benefit. In a case of this kind damages are not awarded as a solatium nor from sentimental considerations.—HOGAN *v.* R., [1924] 2 D. L. R. 1211 ; 2 W. W. R. 307 ; 17 Sask. L. R. 37.—**CAN.**

51 v. —— *Accident to wife—No deprivation of services or society.*]—Pltf. having suffered physical injury through a street accident causing nervous shock :—*Held :* an award of damages to pltf.'s husband could not stand as he had not been deprived of his wife's services or society.—HOGAN *v.* R., [1924] 2 D. L. R. 1211 ; 2 W. W. R. 307 ; 17 Sask. L. R. 37.—**CAN.**

51 vi. —— *Furnishing false news to newspaper.*]—One who intentionally & fraudulently causes a newspaper to become the innocent disseminator of false news does its proprietor a wrong for which substantial damages are recoverable without proof that pecuniary harm was an actual result of the fraud.—CALGARY HERALD, LTD. *v.* BARNES CORPN., [1929] 1 D. L. R. 114 ; [1928] 3 W. W. R. 543.—**CAN.**

PART II. SECT. 5.

59 vii. ——.]—Pltf. cannot recover damages on the ground of the permanence of existing personal injuries unless the evidence goes the length of showing that there is no reasonable prospect of permanent recovery. The test is the same in the case of consequences non-existent at the date of action, but which may or may not supervene.—HARMSWORTH *v.* SMITH (1928), 49 N. L. R. 174.—**S. AF.**

74 i. *Cause of action independent of damage—Whether prospective damage recoverable—Repudiation of contract.*]—Defts., the owners of a cotton ginning mill, contracted in Oct. 1919, that, for a period of six months, they would put their mill at the disposal of pltf., a cotton merchant, for half its working time, at fixed rates in order to gin raw cotton which pltf. contemplated buying & which he agreed to supply to them for the purpose. In Nov. before any of pltf.'s cotton had been taken by the mill, defts. repudiated the contract. Pltf. sued defts. for damages :—*Held :* the breach being anticipatory the damages recoverable were not confined to the extra cost which pltf. had paid to the other millers for ginning such cotton as he had tendered to defts., but were the estimated loss of profit to pltf. by reason of the contract not being carried out ; pltf. was not bound to buy cotton & have it ginned at other mills under his obligation to mitigate the damages.—RAMGOPAL *v.* DHANJI JADHAVJI BHATIA (1928), L. R. 55 Ind. App. 299.—**IND.**

83 i. *Damages caused the gist of the action—Prospective damage—Whether recoverable.*]—A married woman having suffered from nervous shock as the result of an accident, but not so as to deprive her husband of her services or society :—*Held :* that he might be put to expense in the future was a consideration too remote to entitle him to damages.—HOGAN *v.* R., [1924] 2 D. L. R. 1211 ; 2 W. W. R. 307 ; 17 Sask. L. R. 37.—**CAN.**

83 ii. —— —— ——.]—In an action for damages resulting, not from the construction of works, but from the operating thereof, as, *e.g.*, the putting of water into a canal, damages are assessable only for the injury done up to the trial, & prospective damages cannot be assessed, but pltf. must seek further damages from time to time as he suffers injury.—LETHBRIDGE NORTHERN IRRIGATION DISTRICT BOARD TRUSTEES *v.* MUNSELL, [1926] 4 D. L. R. 690 ; [1926] S. C. R. 603.—**CAN.**

PART II. SECT. 8.

97 i. *Ascertainment difficult — No ground for refusal to award.*]—H. passed a mtge. bond over his farm, a condition being that H. would, on demand by the mtgee., pass a collateral bond over his movable property on the farm. In breach of this condition, H. sold & delivered such movables to a third party :—*Held :* although the damages, if any, were difficult to assess, the mtgee. was entitled to some damages for a wilful invasion of his rights.—CATO *v.* ALION (1923), 44 N. L. R. 113.—**S. AF.**

97 ii. —— ——.]—What pltf. lost by the refusal of deft. to bore two more wells was a sporting or gambling chance that valuable oil or gas would be found when two more wells were bored. It might not be easy to compute what that chance was worth to pltf., but the difficulty in estimating the quantum was no reason for refusing to award any damages.—CARSON *v.* WILLITTS, [1930] 4 D. L. R. 977 ; 65 O. L. R. 456.—**CAN.**

PART III. SECT. 1.

101 v. —— —— ——.]—Damages must be limited to such as arise naturally from the breach of contract or such as might reasonably be supposed to have been in the contemplation of the parties.—TORONTO HOCKEY CLUB *v.* ARENA GARDENS, LTD., [1924] 4 D. L. R. 384 ; 55 O. L. R. 509 ; *affd.*, [1925] 4 D. L. R. 546 ; 57 O. L. R. 610 ; *affd.*, [1926] 4 D. L. R. 1 ; [1926] 3 W. W. R. 26.—**CAN.**

be reasonably supposed to have been in the contemplation of the parties when the contract was made. Speaking generally, the measure of damages is the same in Admiralty as at common law.—THE EDISON, [1932] P. 52; 101 L. J. P. 12; 147 L. T. 141; 48 T. L. R. 224; 37 Com. Cas. 182, C. A.

Annotation :—**Refd.** The Castor (1932), 147 L. T. 359.

118. *Add. Annotation :*—**Consd.** The Edison, [1932] P. 52.

123. *Add. Annotation :*—**Refd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83.

126. *Add. Annotation :*—**Refd.** Browning *v.* Crumlin Valley Collieries, [1926] 1 K. B. 522.

141. *Add. Annotation :*—**Consd.** Finlay James & Co. *v.* N. V. Kwik Hoo Tong H. M., [1929] 1 K. B. 400.

141a. Agreement not to arrest ship—Arrest & disposal of ship.]—Circumstances (*see* CONFLICT OF LAWS, No. 1135a, *ante*), in which :—*Held :* pltfs. were entitled to damages, & were entitled to recover the value of the ship as at the date when pltfs. were first deprived of her use by arrest.—ELLERMAN LINES, LTD. *v.* READ, [1928] 2 K. B. 144; 97 L. J. K. B. 366; 138 L. T. 625; 44 T. L. R. 285; 17 Asp. M. L. C. 421; 33 Com. Cas. 219, C. A.; *revsg.* (1927), 44 T. L. R. 7.

146a. —— —— **As result of shock.**]—Defts.' servant had a motor lorry at the top of an incline in a street, with the handbrake on, the engine running, & the wheels straight. The lorry began to run down the incline & it struck & injured pltf.'s daughter, a child, & pltf.'s wife suffered a severe shock & died in hospital about ten days later. Pltf. claimed damages under Fatal Accidents Act, 1846 (c. 93), for negligence causing the death of his wife :—*Held :* pltf. would establish a cause of action if he established that the death of his wife resulted from the shock occasioned by negligence involved in the running away of the lorry, that the shock resulted from what pltf.'s wife either saw or realised by her unaided senses & not from something which some one told her, & that the shock was due to a reasonable fear of immediate personal injury either to herself or to her children.—HAMBROOK *v.* STOKES BROTHERS, [1925] 1 K. B. 141; 94 L. J. K. B. 435; 132 L. T. 707; 41 T. L. R. 125, C. A.

149. *Add. Annotation :*—**Consd.** Hambrook *v.* Stokes (1924), 41 T. L. R. 125.

150. *Add. Annotation :*—**Consd.** Hambrook *v.* Stokes (1924), 41 T. L. R. 125.

151. *Add. Annotation :*—**Apprvd.** Hambrook *v.* Stokes (1924), 41 T. L. R. 125.

152. *Add. Annotation :*—**Consd.** Hambrook *v.* Stokes (1924), 41 T. L. R. 125.

161. *Add. Annotation :*—**Consd.** The Edison, [1932] P. 52.

165. *Add. Annotation :*—**Refd.** Leeds Industrial Co-op. Soc. *v.* Slack, [1924] A. C. 851.

PART III. SECT. 2, SUB-SECT. 2.

115 iii. ——.]—In an action claiming damages for breach of contract the damages recoverable are such as naturally would be the result of the breach.—KEITH *v.* LINCOLN PULPWOOD CO. (1927), 59 N. S. R. 466.—**CAN.**

ss. *Sale of goods—Refusal to take delivery—Loss of time in urging acceptance.*]—In an action for damages for breach of contract by refusal to take delivery of goods :—*Held :* a claim for time lost in going to deft.'s residence to urge him to take delivery could not stand.—BRADLEY *v.* BAILEY & JASPERSON, [1923] 2 D. L. R. 504; 52 O. L. R. 439.—**CAN.**

sb. *Contract for work & labour—Work unperformed—Cost of performance.*]—Resp. gave applt. an option to purchase a mine. On the first instalment falling due, applt. negotiated for an extension of time for payment, which was granted by resp. on condition that applt. should do certain development work not mentioned in the option. Applt. failed to pay, & subsequently relinquished possession of the mine & surrendered the option without having done the work :—*Held :* resp. entitled to recover damages amounting to the cost of the work.—CUNNINGHAM *v.* INSINGER, [1924] 2 D. L. R. 433; [1924] S. C. R. 8.—**CAN.**

PART III. SECT. 2, SUB-SECT. 3.

142 i. *Injury to feeling — General rule.*]—Mental anguish is properly taken into consideration in awarding damages in an action for tort based on a wilful or wrongful act, *e.g.* an action for assault, trespass, defamation, seduction, malicious prosecution, false imprisonment.—EDMONDS *v.* ARMSTRONG FUNERAL HOME, LTD., [1931] 1 D. L. R. 676; [1930] 3 W. W. R. 649; 25 Alta. L. R. 173; *revsg.*, [1930] 4 D. L. R. 901; 3 W. W. R. 290.—**CAN.**

147 i. *Pain & suffering.*]—In an action for damages for personal injuries arising from negligence :—*Held :* items which should go to make up pltf.'s damages were (*inter alia*) a sum, not to compensate for, but to represent the inconvenience of his condition, & his pain & suffering, past & future.—COSGROVE *v.* CANADIAN NATIONAL RAILWAYS, [1923] 4 D. L. R. 818; 3 W. W. R. 1152.—**CAN.**

147 ii. —— *Ejectment from tramcar—Illness from exposure to cold.*]—*Held :* not too remote a cause for damages.—TORONTO RY. CO. *v.* GRINSTED (1895), 24 S. C. R. 570.—**CAN.**

147 iii. ——.]—In an action for damages for personal injuries pltf. if successful is entitled to fair compensation for pain & suffering; & a charge to the jury which tells them that they may make an allowance therefor but are not bound to do so is a misdirection which, if the jury make no such allowance, may afford ground for ordering a new trial, even though not objected to at the trial.—HEITNER *v.* GILLSTROM, [1930] 2 W. W. R. 113; 3 D. L. R. 860; 24 S. L. R. 462; *revsg.*, [1929] 4 D. L. R. 670; 3 W. W. R. 227; 24 S. L. R. 53.—**CAN.**

149 i. —— *Nervous shock—Actual impact.*]—Damages claimed for nervous shock, as a result of an accident arising from negligence, cannot be recovered where the nervous shock produces only a mental disturbance unaccompanied by any actual physical injury. If impact is not necessary, it is a question of fact in each case whether or not pltf. sustained physical injury & whether such injury was the natural & reasonable result of deft.'s negligence.—HOGAN *v.* R., [1924] 2 D. L. R. 1211; 2 W. W. R. 307; 17 Sask. L. R. 37.—**CAN.**

149 ii. —— ——.]—Damages cannot be recovered for nervous shock unaccompanied by any physical impact.—PENMAN *v.* WINNIPEG ELECTRIC RY. CO., [1925] 1 D. L. R. 497; [1925] 1 W. W. R. 156.—**CAN.**

149 iii. —— —— *False statement.*]—Deft. falsely stated that pltf.'s son had hanged himself. The report was told to pltf., who, believing it, suffered a violent shock & became ill :—*Held :* the damage was the natural & probable cause of deft.'s act, & pltf. had a good cause of action.—BIELITSKI *v.* OBADISK, [1922] 2 W. W. R. 238; 65 D. L. R. 627; 15 Sask. L. R. 155; *affd.* 61 D. L. R. 494.—**CAN.**

149 iv. —— ——.]—A man & a woman to whom he was engaged were knocked down by a motor omnibus. The man was struck by the omnibus & received considerable physical injury. The woman did not appear to have been actually struck, & she received no direct physical injury, but she suffered severely from shock. In an action of damages at her instance the judge directed the jury that, if by the fault of defts. pursuer had suffered nervous shock through apprehension for her own safety, they were entitled, in assessing damages, to include any aggravation of that shock occasioned by the fact that her companion was involved in the catastrophe. The jury found that pursuer had suffered personal injury resulting in nervous shock involving apprehension for her own safety, aggravated by anxiety for the safety of her companion, & awarded damages :—*Held :* in the circumstances the jury could not be asked to discriminate between the amount of shock suffered by pursuer due to apprehension for her own safety & the amount due to anxiety for her companion.—CURRIE *v.* WARDROP, [1927] S. C. 538.—**SCOT.**

149 v. —— —— *Assault on husband in wife's presence—Loss of consortium.*]—An action lies for mental anguish, ill health or shock sustained by reason of acts done to a third person, & not causing any apprehension of danger to pltf., & an action *quare consortium amisit* lies at the suit of a wife.—JOHNSON *v.* COMMONWEALTH (1927), 27 S. R. N. S. W. 133; 44 N. S. W. W. N. 54.—**AUS.**

149 vi. —— ——.]—WALKER *v.* PITLOCHRY MOTOR CO., [1930] S. C. 565.—**SCOT.**

166. *Add. Annotations :*—**Refd.** Leeds Industrial Co-op. Soc. *v.* Slack, [1924] A. C. 851. **Mentd.** Light *v.* West, [1926] 2 K. B. 238.

167. *Add. Annotation :*—**Consd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

172. *Add. Annotation :*—**Consd.** The Edison, [1932] P. 52.

174. *Add. Annotation :*—**Refd.** Patrick *v.* Russo-British Grain Export Co., [1927] 2 K. B. 535.

176a. —— **Withdrawal of appointment as school outfitters.**]—SIMON *v.* PAWSON & LEAFS, LTD. (1932), 174 L. T. Jo. 383, C. A.

181. *Add. Annotations :*—**Dbtd.** Marbé *v.* George Edwardes (Daly's Theatre), [1928] 1 K. B. 269. **Overd.** Herbert Clayton & Jack Waller, Ltd. *v.* Oliver, [1930] A. C. 209. **Refd.** Marbé *v.* George Edwardes (Daly's Theatre) (1927), 96 L. J. K. B. 980.

181a. —— ——.]—Pltf., an actress, was engaged by defts. to play in a play for the period of rehearsal & for the run of the play, & there was a collateral agreement that defts. would advertise her in a prominent position. Defts. refused to allow pltf. to play, but they paid her the whole of her salary down to the end of the run of the play. In an action for breach of contract the jury awarded to pltf., over & above her salary already paid, damages for loss of reputation through her not being employed to play the part :—*Held :* as there was an express agreement to advertise pltf. this necessarily implied an obligation to give pltf. an opportunity of acting, & pltf. was entitled, in addition to her salary already paid, to the damages awarded by the jury for loss of reputation.—MARBÉ *v.* GEORGE EDWARDES (DALY'S THEATRE), LTD., [1928] 1 K. B. 269; 96 L. J. K. B. 980; 138 L. T. 51; 43 T. L. R. 809, C. A.

181b. —.]—Applts., theatrical producers, agreed to engage resp., an American actor, to play one of the three leading comedy parts in a musical play about to be produced at the London Hippodrome for six weeks certain at a salary of £55 per week, & the contract contained a provision prohibiting resp. during the continuance of his engagement from acting elsewhere without the consent of the applts. Resp. objected that the part assigned to him was not one of the three leading comedy parts &, on the refusal of applts. to recast him, declined to appear in the play & sued applts. for damages for breach of contract. At the trial of the action before a judge & jury the jury found for resp. for £1,000 damages for loss of publicity & for three weeks' salary & judgment was entered accordingly. The Ct. of Appeal affirmed the verdict & judgment except as to the salary :—*Held :* it was competent to the jury, having regard to the character of the contract, to give damages to resp. for loss of publicity.—HERBERT CLAYTON & JACK WALLER, LTD. *v.* OLIVER, [1930] A. C. 209; 99 L. J. K. B. 165; 142 L. T. 585; 46 T. L. R. 230; 74 Sol. Jo. 187, H. L.

182. *Add. Annotations :*—**Refd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83; Dobell (C. G.) & Co., Ltd. *v.* Barber & Garratt (1930), 47 T. L. R. 66.

189. *Add. Annotation :*—**Refd.** Dobell (G. C.) & Co., Ltd. *v.* Barber & Garratt (1930), 46 T. L. R. 420.

193. *Add. Annotations :*—**Distd.** *Re* Hall & Pim (1928), 139 L. T. 50. **Refd.** Patrick *v.* Russo-British Grain Export Co., [1927] 2 K. B. 535.

194. *Add. Annotation :*—**Refd.** Hall *v.* Pim (1927), 137 L. T. 585.

162 i. *Loss of or injury to property—Collision at sea—Loss of musical manuscripts.*]—In an action of damages against steamship owners, arising out of the sinking of one of their ships, pursuer claimed £15,000 in respect of the loss of certain music & orchestral settings in manuscript used by a concert party of which she was manager. She averred that the lost manuscripts were the sole copies of the compositions in question, & that she had the sole right to publish, perform, or issue mechanical reproductions, & to obtain copyright thereof. The compositions had cost pursuer about £2,000, but she averred that, through her concert party, they had acquired a reputation among the public which had greatly enhanced their value, & she further averred that she would have made substantial profits from the lost music in respect of copyright royalties, publication & sale, & disposal of performing & mechanical rights, apart from the use of it by her concert party : —*Held :* (1) pursuer's averments as to loss of contingent profits from copyright royalties, publication & sale, & disposal of performing & mechanical rights, were irrelevant ; (2) the measure of her damages in respect of the lost music was the cost of its replacement as nearly as might be, ascertained either by the market price of actual replacement, or by consideration of the commission which would have to be paid to composers of music of the class to which the lost compositions belonged. —REAVIS *v.* CLAN LINE STEAMERS, LTD., [1926] S. C. 215.—**SCOT.**

sd. *Loss of earning power—Physical or mental.*]—In an action for damages for personal injuries arising from negligence :—*Held :* items which should go to make up pltf.'s damages were (*inter alia*) a sum to compensate for loss of earning power by reason of physical injury & any incidental mental injury. — COSGROVE *v.* CANADIAN NATIONAL RAILWAYS, [1923] 4 D. L. R. 818; 3 W. W. R. 1152.—**CAN.**

sf. *Loss of time—Injury in motor-car collision.*]—In an action for damages for injuries arising out of a motor collision, where it was found that the accident was caused by pltf.'s negligence :—*Held :* damages should be given deft. for loss of time, repairs to the car & costs.—TIEMAN *v.* MCKENZIE, [1923] 1 D. L. R. 1189.—**CAN.**

PART III. SECT. 3, SUB-SECT. 2.

sk. *Depreciation in price—Machinery components purchased by vendor to perform contract.*]—*Held :* the vendor was not entitled, as damages for breach of contract to purchase an ammonia gas compressing outfit, to a sum for loss through decrease in price of the parts purchased for the purpose of the contract, this not being a loss "directly & naturally resulting in the ordinary course of events from the buyer's breach of contract," as there was nothing in the negotiations for the contract to give the purchaser to understand that the vendor would have to go into the market & buy the various parts to make up the plant.—GENERAL SUPPLY CO. OF CANADA *v.* O'NEILL MORKIN MACHINERY CO., [1923] 2 W. W. R. 928.—**CAN.**

sl. *Loss of custom—Defective goods sold but replaced.*]—Certain goods supplied under contract not complying with the warranted description :—*Held :* it could not reasonably be supposed to have been in the contemplation of the parties, at the time they made the contract, that pltfs. were to compensate defts. for such loss of business as defts. might incur by the withdrawal of their customers on account of a few of the articles resold being defective, such articles being replaced when complaint was made.—HAMILTON GEAR & MACHINE CO. *v.* LEWIS BROTHERS, [1924] 3 D. L. R. 367; 54 O. L. R. 585.—**CAN.**

PART III. SECT. 3, SUB-SECT. 3.

194 i. —— *Loss of profit.*]—W. entered into a contract to supply a paper co. with pulpwood. He had previously made a contract with M., who agreed to deliver certain pulpwood at a lower price & who was informed of the first-mentioned contract, though not of all its terms. At the end of the season M. was short of the quantity he agreed to deliver :—*Held :* W. was entitled to recover damages from M. for non-performance of his contract, & the measure of those damages was the profit W. would have made under his contract with the paper co.—MONDOR *v.* WILLETS, [1923] 2 D. L. R. 964; [1923] S. C. R. 433; 2 W. W. R. 486.—**CAN.**

PART III. SECT. 4, SUB-SECT. 1.

p (p. 107) **i.** ——— ———.]—In an action for damages for breach of contract by refusal to take delivery of goods :—*Held :* a claim for expenses incurred in going to deft.'s residence to urge him to take delivery could not stand.—BRADLEY *v.* BAILEY & JASPERSON, [1923] 2 D. L. R. 504; 52 O. L. R. 439.—**CAN.**

k (p. 108) **i.** —— —— *Medical* an action for damages

214. *Add. Annotations :*—**Folld.** Bennett *v.* Kreeger (1925), 41 T. L. R. 609. **Apld.** Slavonski *v.* La Pelleterie de Roubaix Soc. Anon. (1927), 137 L. T. 645. **Consd.** *Re* Hall & Pim (1928), 139 L. T. 50; Dobell (C. G.) & Co., Ltd. *v.* Barber & Garratt (1930), 47 T. L. R. 66. **Refd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83; Kasler & Cohen *v.* Slavouski (1927), 96 L. J. K. B. 850; Patrick *v.* Russo-British Grain Export Co., [1927] 2 K. B. 535; Finlay *v.* N. V. Kwik Hoo Tong Handel Maatschappij, [1928] 2 K. B. 604.

215. *Add. Annotations :*—**Folld.** Bennett *v.* Kreeger (1925), 41 T. L. R. 609. **Consd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83. **Refd.** Kasler & Cohen *v.* Slavouski (1927), 96 L. J. K. B. 850.

215a. —— —— ——.]—Pltfs. bought a coat with fur collar attached, for re-sale, from deft. & sold it to a customer. Owing to the colouring matter with which the fur was dyed, the customer contracted a skin disease & brought an action against pltfs., claiming damages. Pltfs. informed deft. thereof & requested him to undertake the defence of the action. Deft. denied liability but never suggested that pltfs. had no answer to the action, with the result that pltfs. defended the action & a jury awarded the customer damages for her suffering, & pltfs. had to pay the costs of the action :—*Held :* pltfs. were entitled to recover from deft. the damages so awarded, together with the customer's taxed costs of the action & their own costs of defending the action as between solr. & client.—BENNETT (SIDNEY) LTD. *v.* KREEGER (1925), 41 T. L. R. 609.

217. *Add. Annotation :*—**Refd.** Sheppy Glue & Chemical Works *v.* Medway River Conservators (1926), 24 L. G. R. 457.

220. *Add. Annotation :*—**Refd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83.

223. *Add. Annotation :*—**Refd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T.

227a. **Several sub-sales.**]—Defts. sold skins to pltfs., who resold to a sub-vendee. That sub-vendee sold to a second sub-vendee, who sold one of the skins, which had been made into the collar of a fur coat, to a third sub-vendee. The third sub-vendee sold to a woman who wore the coat & developed dermatitis on the face in consequence of antimony contained in the skin. In each sale the vendor knew the particular purpose for which the goods were required by the purchaser, & there was an implied warranty that the goods were reasonably fit for such purpose. The ultimate purchaser brought an action for breach of contract against her supplier, the third sub-vendee. The third sub-vendee defended the action, & in so doing acted reasonably; but in the result the ultimate purchaser recovered damages & costs against him. The third sub-vendee, who had incurred certain additional costs in connection with the action, claimed to be reimbursed by the second sub-vendee, & after some resistance, incurring further costs, the second sub-vendee paid. The second sub-vendee then claimed against the first sub-vendee, who after some dispute incurring further costs, also paid. The first sub-vendee claimed against pltfs., who, after taking advice, occasioning further costs, paid. Pltfs. sued defts. for breach of contract, claiming as damages the damages recovered by the ultimate purchaser, the costs on both sides in that action, & the costs of the intermediate actions :—*Held :* pltfs. were entitled to recover the damages which might reasonably be supposed to have been in the contemplation of the parties at the time of the contract; the parties must have contemplated that damages would be claimed, if there were a breach of contract of the kind that had occurred, by parties separated by several contractual steps from each of the immediate parties to each of the contracts along the line : pltfs.' damages should include (1) the damages recovered by the ultimate purchaser, (2) the costs on both sides in that action, inasmuch as it was reasonably defended, & (3) the costs of the intermediate actions, in so far as they were reasonably incurred.—KASLER & COHEN *v.* SLAVOUSKI, [1928] 1 K. B. 78; 96 L. J. K. B. 850; 137 L. T. 641; *subsequent proceedings, sub nom.* SLAVONSKI *v.* LA PELLETERIE DE ROUBAIX SOCIETE ANONYME (1927), 137 L. T. 645.

235a. —— **Costs awarded in previous proceedings, but not recovered.**]—Pltfs. sought to recover from defts., as special damage, the costs which they themselves had incurred in previous litigation in which they were defts. Pltfs. in the present action sent a motor lorry to be overhauled by defts. The repairs were carried out & the lorry was returned. Very shortly afterwards, while the lorry was in use on the highway, one of the wheels came off & damaged the van of pltf. in the previous litigation, who brought an action in the county ct. to recover damages against present pltfs. He won the action at the hearing, but the decision was reversed on appeal. He was a man of straw & unable to pay the costs incurred. Present pltfs. sued present defts. for damages for alleged breach of contract & negligence, & a common jury found in pltfs.' favour. After argument as to the right of pltfs. to recover as special damage against defts., on account of their breach of contract & negligence, the costs of all previous litigation :—*Held :* such damage was not

for personal injuries arising from negligence :—*Held :* the items which should go to make up pltf.'s damages were (*inter alia*) medical & hospital bills. — COSGROVE *v.* CANADIAN NATIONAL RAILWAYS, [1923] 4 D. L. R. 818; 3 W. W. R. 1152.—**CAN.**

k (p. 108) ii. —— —— —— *On wife.*]—S. & his wife brought an action against deft. for damages for personal injuries. Deft. was found guilty of negligence, but the action by S. was dismissed on account of contributory negligence. The ct. awarded damages to the wife against deft. It was sought to give in evidence the wife's medical & hospital bills :—*Held :* the bills had been contracted by the wife as her husband's agent & were his liability alone.—SCOBLE *v.* WOODWARD, [1924] 1 W. W. R. 1040.—**CAN.**

r (p. 108) i. —— *Injury to chattel—Costs of repairs—& depreciation.*]—*Held :* recoverable. — WALTER *v.* SEIBEL, [1927] 2 D. L. R. 1005; [1927] 1 W. W. R. 967 21 Sask. L. R. 452.—**CAN.**

PART III. SECT. 4, SUB-SECT. 2.

209 v. ——.]—Solr. & client costs incurred by the driver of a motor car in successfully defending an action brought against him by a passenger in another car with which his car had collided cannot be recovered by him in an action for negligence brought against the driver of the other car.—LONDON GUARANTEE & ACCIDENT CO., LTD. *v.* GIBSON, [1928] 3 D. L. R. 610; [1928] 2 W. W. R. 532; 23 Alta. L. R. 518.—**CAN.**

too remote.—BRITANNIA HYGIENIC LAUNDRY Co. *v.* THORNYCROFT & Co. (1925), 94 L. J. K. B. 858; 41 T. L. R. 667; *on appeal*, 95 L. J. K. B. 237; 135 L. T. 83; 42 T. L. R. 198.

237. *Add. Annotations :*—**Consd.** Harnett *v.* Bond, [1924] 2 K. B. 517. **Apld.** Bradstreets British, Ltd. *v.* Mitchell (1932), 48 T. L. R. 670. **Refd.** Hambrook *v.* Stokes (1924), 41 T. L. R. 125; Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461; Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83; Singleton Abbey (Owners) *v.* Paludina (Owners), The Paludina (1926), 95 L. J. P. 135; The Edison (1932), 147 L. T. 141.

237a. ——.]—A contract between a mercantile inquiry agency, which furnishes reports on the financial stability of companies, firms, & persons engaged in trade, & a trading co., providing that all information furnished by the agency to its subscriber, the trading co., is supplied in strict confidence for the exclusive use of the subscriber in the subscriber's business, & that the subscriber shall indemnify the agency in respect of any loss or damage which it may suffer or incur from the breach by the subscriber of any of the conditions of the contract, is not void as being against public policy on the ground that the fundamental element of the contract is the desire on the part of the agency to protect itself against the risk of actions for libel resulting from reports issued by it to subscribers. If, however, a subscriber does disclose information supplied by the agency with the result that the agency has to pay to a third party damages for a libel on that third party contained in the information in question, no special damage being suffered by the third party, the only damages recoverable by the agency from the subscriber in an action for breach of contract are nominal damages, the *causa causans* of the liability to pay damages being the unlawful act of the agency in publishing a libel & the disclosure by the subscriber being only the *causa sine qua non*.—BRADSTREETS BRITISH, LTD. *v.* MITCHELL (1932), 48 T. L. R. 670.

260a. *S. P.* HARRISON *v.* MCSHEEHAN, [1885] W. N. 207.

265. *Add. Annotations :*—**Refd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83; Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

268. *Add. Annotations :*—**Consd.** Addie R. & Sons (Collieries) *v.* Dumbreck, [1929] A. C. 358. **Refd.** Sutcliffe *v.* Clients Investment Co., [1924] 2 K. B. 746; Compania Mexicana De Petroleo El Aguila *v.* Essex Transport & Trading Co. (1929), 141 L. T. 106.

279. *Add. Annotations :*—**Refd.** Noble *v.* Harrison, [1926] 2 K. B. 332; Smith *v.* G. W. Ry. (1926), 135 L. T. 112; Pontardawe Rural Council *v.* Moore-Gwyn, [1929] 1 Ch. 656.

280. *Add. Annotation :*—**Refd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369; The Edison (1932), 147 L. T. 141.

282. *Add. Annotations :*—*As to* (1) **Distd.** Martin *v.* Stanborough (1924), 41 T. L. R. 1. **Refd.** Gayler & Pope *v.* Davies, [1924] 2 K. B. 75.

284. *Add. Annotation :*—**Refd.** Oldham *v.* Sheffield Corpn. (1927), 136 L. T. 681.

288. *Add. Annotations :*—**Consd.** The St. Nicolai (1925), 133 L. T. 640. **Distd.** G. W. Ry. *v.* S.S. Mostyn, [1928] A. C. 57. **Refd.** British-American Tobacco Co. *v.* Jones (1925), 134 L. T. 405; Witham Outfall Board *v.* Boston Corpn. (1926), 136 L. T. 756. **Refd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

Part IV.—Aggravation and Mitigation.

290. *Add. Annotation :*—**Refd.** Martin *v.* Stout, [1925] A. C. 359.

298. *Add. Annotation :*—**Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

301. *Add. Annotations :*—**Consd.** Riley *v.* Brown (1929), 98 L. J. K. B. 739. **Refd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

302. *Add. Annotation :*—**Consd.** Riley *v.* Brown (1929), 98 L. J. K. B. 739.

304. *Add. Annotations :*—**Refd.** Curtis Moffat, Ltd. *v.* Wheeler, [1929] 2 Ch. 224; Barnes *v.* Cadogan Developments, Ltd., [1930] 1 Ch. 479.

327. *Add. Annotation :*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

330. *Add. Annotation :*—**Refd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

341. *Add. Annotations :*—**Refd.** Ellis' Trustee *v.* Dixon-Johnson (1924), 131 L. T. 652; Martin *v.* Stout, [1925] A. C. 359; Never-Stop Ry. (Wembley) *v.* British Empire Exhibition (1924) Incorporated, [1926] Ch. 877.

PART IV. SECT. 1 SUB-SECT. 2.

d i. —— *Trespass — Abusive conduct*].—An appeal from a judgment whereby pltf., in an action for trespass, was awarded vindictive damages in addition to special damages :—*Held :* in view of deft.'s persistence in trespassing in defiance of pltf.'s requests to desist, his violent & abusive conduct towards pltf., & the particularly injurious & malicious manner in which certain of the trespasses were committed, the allowance of vindictive damages was justified & the amount thereof should not be reduced.—SPENCER *v.* GRANT, [1928] 1 D. L. R. 820; [1928] 1 W. W. R. 190; 22 Sask. L. R. 365.—**CAN.**

d ii. —— —— *Violent behaviour.*]—A city corpn., constructing a sewer, expropriated an easement over pltf.'s land for that purpose. Deft. contracted with the corpn. to construct that part of the sewer which ran through pltf.'s land. In performing his contract, deft. did not confine himself to that part of the land which was subject to the easement, but unlawfully cut down trees & deposited sand & silt upon the land outside the part subject to the easement, & thereby depreciated the value of the land :—*Held :* the amount of damages in such an action as this may be indefinitely enhanced by evidence of violent & arrogant conduct on the part of deft.—PAFFARD *v.* CAVOTTI, [1929] 1 D. L. R. 111; 63 O. L. R. 171.—**CAN.**

d iii. —— —— *High-handed behaviour.*]—In an action for damages for trespass founded on the wrongful seizure of a motor car which pltf. had bought from deft. under a conditional-sale agreement :—*Held :* because of the high-handed conduct of deft. which injured pltf.'s feelings, the trial judge was justified in awarding exemplary damages.—GRIFFITHS *v.* FORDYCE MOTORS, LTD., [1930] 2 W. W. R. 698; 4 D. L. R. 451; 43 B. C. R. 119.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.—B.

341 x. ——.]—CANADIAN FLEXIBLE SKATE CO., LTD. *v.* MONARCH BRASS MANUFACTURING CO., LTD., [1925] 2 D. L. R. 387; 56 O. L. R. 362.—**CAN.**

341 xi. ——.]—MCKENNY *v.* DRUMMOND & DVORETSKY (1926), 29 W. A. L. R. 6.—**AUS.**

342. *Add. Annotation :*—**Consd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 47 T. L. R. 359.

343. *Add. Annotations :*—**Consd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 47 T. L. R. 359. **Refd.** Finlay *v.* N. V. Kwik Hoo Tong Handel Maatschappij, [1928] 2 K. B. 604.

347a. ——.]—Pltf.'s duty to minimise damage is limited to doing what is reasonable in all the facts of the case, the *onus* of showing a breach of that duty being on deft.—FINLAY (JAMES) & CO. *v.* N. V. KWIK HOO TONG HANDEL MAATSCHAPPIJ, [1928] 2 K. B. 604; 97 L. J. K. B. 817; 139 L. T. 582; 44 T. L. R. 643; 72 Sol. Jo. 468; 17 Asp. M. L. C. 566; *affd.*, [1929] 1 K. B. 400, C. A.

Annotations :—**Refd.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48; Banco de Portugal *v.* Waterlow & Sons, Ltd. (1932), 48 T. L. R. 404; The Edison (1932), 147 L. T. 141.

349. *Add. Annotation :*—**Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

350a. Contract of employment for fixed period—Voluntary liquidation of employer before end of period.]—*Re* GRAMOPHONE RECORDS, LTD. (1930), 69 L. Jo. 201; 169 L. T. Jo. 193; [1930] W. N. 42.

351. *Add. Annotation :*—**Refd.** Finlay *v.* N. V. Kwik Hoo Tong Handel Maatschappij, [1928] 2 K. B. 604.

352. *Add. Annotation :*—**Refd.** Martin *v.* Stout, [1925] A. C. 359.

356. *Add. Annotation :*—**Refd.** Ellis' Trustee *v.* Dixon-Johnson (1924), 131 L. T. 652.

376. *Add. Annotation :*—*As to* (1) **Apprvd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

377. *Add. Annotation :*—**Refd.** Martin *v.* Benson, [1927] 1 K. B. 771.

Part V.—Measure of Damages.

391. *Add. Annotation :*—**Apld.** Kaye Steam Navigation Co. *v.* Barnett, Ltd. (1932), 48 T. L. R. 440.

393. For the cross-reference following this case, "**As to interest under Civil Procedure Act, 1833 (c. 42), s. 28, & damages in lieu of such interest.**]—*See* MONEY & MONEY LENDING," read "As to interest under Civil Procedure Act, 1833 (c. 42), s. 28, & damages in lieu of such interest, *see* MONEY & MONEY-LENDING."

352 i. *Sale of goods—Refusal to accept.*]—Unless a purchaser has by the contract of sale a right to repudiate, he cannot repudiate the sale. If he does so, the vendor may sue the purchaser for the price, or re-sell the article; & if by such sale he incurs a loss, then the purchaser must make it good. But the vendor must take into consideration such payments as the purchaser may have made on account.—FOSTER *v.* HEINTZMAN & Co., [1923] 4 D. L. R. 166.—**CAN.**

352 ii. —— ——.] — BRADLEY *v.* BAILEY & JASPERSON, [1923] 2 D. L. R. 504; 52 O. L. R. 439.—**CAN.**

354 i. —— *Anticipatory breach.*]—Where there had been a breach of contract by defts.:—*Held :* pltfs. were entitled to nominal damages only, as when pltfs. found that defts. would not carry out the contract, they should have gone into the market & done the best they could with a similar contract.—CAMPBELL *v.* MAHLER (1919), 43 O. L. R. 395; 14 O. W. N. 348; *affd.* 15 O. W. N. 339.—**CAN.**

sm. —— *Trouble & risk attending performance of contract.*]—In allowing damages for wrongful repudiation of a contract to accept delivery of poles not yet cut:—*Held :* there should be taken into consideration the risks of disappointment & difficulty in cutting & delivery that might arise from unexpected sources; & an allowance in reduction of damages should be made for the release from the care, trouble & risk attending a full execution of the contract.—CONNORS *v.* MCGREGOR, [1924] 2 D. L. R. 86; 2 W. W. R. 294; 20 Alta. L. R. 289.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.

364 iv. —— —— *To assault.*]—On appeal from a judgment for pltf. in an action for assault the damages were reduced to $10, the assault having been merely a technical one, which apparently had been courted by pltf. with a view to an action for damages.—HODGKINSON *v.* MARTIN, [1928] 3 W. W. R. 763.—**CAN.**

m i. —— *Continuing contract with doctor.*]—Where a person has a contract with a doctor whereunder he is entitled to the doctor's services when they are required as a result of disease, accident or other causes, he cannot, in an action for damages for personal injuries, recover as damages the amount which such services would have cost had he not entered into such contract.—TAYLOR *v.* TURNER, [1925] 3 D. L. R. 574; [1925] 2 W. W. R. 490.—**CAN.**

PART IV. SECT. 3.

q i. —— *Conversion—Onus of proof.*]—Where it was found that there was no authority in deft. bank to sell shares pledged as collateral security without judicial process:—*Held :* as to damages, the burden was on the bank to show it got full value for the shares.—GEORGESON *v.* DOMINION BANK, [1924] 3 D. L. R. 607; 2 W. W. R. 931.—**CAN.**

PART V. SECT. 1, SUB-SECT. 1.

380 xi. ——.]—In an action for damages for breach of contract, the measure of damage is the estimated loss directly & naturally resulting from the breach thereof.—HATFIELD & Co. *v.* CRONKHITE (1922), 50 N. B. R. 456.—**CAN.**

380 xii. ——.]—In an action for damages for non-acceptance of goods, the measure of damages is the estimated loss directly & naturally resulting in the ordinary course of events from the buyer's breach of contract.—RECORD FOUNDRY & MACHINE CO. *v.* GARSON, [1923] 2 D. L. R. 142; 50 N. B. R. 110.—**CAN.**

380 xiii. —— *Goods manufactured or partly manufactured.*]—In respect of goods manufactured or partly manufactured & ready or partly ready for delivery, before defts. repudiated their contract:—*Held :* pltfs. were entitled to recover, as damages for breach of contract, a sum equal to the contract price of the finished or partly finished goods, less their value at the time of or within a reasonable time of the breach.—HAMILTON GEAR & MACHINE CO. *v.* LEWIS BROTHERS, [1924] 3 D. L. R. 367; 54 O. L. R. 585.—**CAN.**

380 xiv. ——.]—In an action for negligence causing damage to goods the measure of damages is the depreciation in the value of the goods as the result of the accident.—COPLEY *v.* FINKELSTEIN, [1928] 3 D. L. R. 671; [1928] 3 W. W. R. 89.—**CAN.**

sn. *Consignment of wheat for sale—Failure to sell.*]—Where grain is consigned for sale & the consignee is instructed to sell it as soon as it is unloaded, if the price be then a certain figure or better, but he neglects to carry out such instructions, the consignor is entitled in damages to the difference between the price at the time of unloading & the lower price on the day when he learns that the grain has not been sold, even though he does not immediately notify the consignee that his instructions have not been carried out.—PARADIS *v.* FEDERAL GRAIN CO., LTD., [1925] 2 W. W. R. 164.—**CAN.**

sw. *Agreement to exchange & sell timber berths—Loss of profits—Substantial damages.*]—KNOX & LEWIS *v.* HALL, [1927] 2 D. L. R. 1128; [1927] 3 W. W. R. 27; 38 B. C. R. 348; *revsd. sub nom.* HALL *v.* KNOX, [1928] 1 D. L. R. 193; [1928] S. C. R. 87.—**CAN.**

sb. *Agreement to pay for mineral claim & keep up assessment work—Claim allowed to lapse.*]—*Held :* the measure of damages was the value, if any, of the property lost.—MCGEE *v.* CLARKE, [1927] 1 W. W. R. 593; 38 B. C. R. 165.—**CAN.**

sd. *Wrongful eviction of lessee.*]—In regard to damages recoverable by a wrongfully evicted lessee, the case is governed by the general rule applicable to all breaches of contract, namely, that the party wronged is, so far as money can do it, to be placed in the same situation, with respect to damages, as if the contract had been performed. Compensation to the lessee will not be confined to the value of the unexpired term, but will include all loss naturally resulting from the eviction.—HAACK *v.* MARTIN, [1927] 3 D. L. R. 19; [1927] S. C. R. 413.—**CAN.**

sf. *Lease of racehorse to trainer for specified period—Owner taking horse away before expiration of period—Loss of prospective winnings recoverable.*]—HOWE *v.* TEEFY (1927), 27 S. R. N. S. W. 301; 44 N. S. W. W. N. 102.—**AUS.**

sg. *Measure selected by plaintiff.*]—

393a. Agreement to pay debt into bank—Subsequent issue of bankruptcy notice by creditor.]—VANBERGEN *v.* ST. EDMUNDS PROPERTIES, LTD., [1932] W. N. 261; 174 L. T. Jo. 426; 74 L. Jo. 423.

408a. Option to purchase—Profit on resale lost by improper withdrawal.] — Pltf., having an option from deft. to purchase a freehold house for £4,000, agreed to sell the property to S. for £4,500, & then wrote accepting deft.'s offer to sell the house. In the meantime deft. had sold the property to B. for £4,000:—*Held:* as specific performance of the contract was impossible by reason of deft.'s own act, pltf. was entitled to recover from deft. as damages £500, the difference between the price at which the property was offered to pltf. & that at which pltf. contracted to sell it.—GOFFIN *v.* HOULDER (1920), 90 L. J. Ch. 488; 124 L. T. 145.

411a. Contract to print bank-notes—Unauthorised use of plates.]—A firm of printers employed by the Bank of Portugal to print a series of bank notes known as Vasco da Gama 500 escudo notes delivered to the Bank 600,000 notes which were put into circulation in Portugal. Subsequently, in breach of their contract of employment, the printers delivered to one M., the head of a band of criminals, 580,000 notes of the same type, printed from the original plates or from plates made from the same die, in the belief that he had the authority of the Bank. M. & his associates introduced these false notes into Portugal & put a large number of them into circulation. The Bank on discovering that unauthorised notes were in circulation issued notices withdrawing the whole of this issue of Vasco da Gama notes & undertaking, within a limited time, to exchange all notes of this type presented to the Bank for other notes. The Bank had an exclusive licence to issue bank notes as legal tender in Portugal, but the amount of the notes to be issued was controlled by law. At all material times the currency was inconvertible. In an action by the Bank against the printers for breach of contract defts. maintained (*a*) that the loss suffered by the Bank was due to their own voluntary action in paying the unauthorised notes; (*b*) that the loss to the Bank was limited to the cost of printing & paper in regard to the new issue:—*Held:* (1) the loss arose naturally from the breach of contract; (2) the proper measure of damages was the exchange value expressed in sterling of the genuine currency given in exchange for the spurious notes, together with the cost of printing the genuine notes withdrawn.—BANCO DE PORTUGAL *v.* WATERLOW & SONS, LTD., WATERLOW & SONS, LTD. *v.* BANCO DE PORTUGAL, [1932] A. C. 452; 101 L. J. K. B. 417; 147 L. T. 101; 48 T. L. R. 404; 76 Sol. Jo. 327, H. L.

Annotation:—**Consd.** The Edison (1932), 147 L. T. 141.

412a. Continuation of contract depending on third party.]—Defts. agreed in writing to purchase from pltfs. all the stores that they required in the United Kingdom for their vessels, pltfs.' profits on the net price invoiced by the manufacturers to pltfs. to be discussed every six months, & the agreement was to remain in force as long as another agreement between a third co. & defts. continued. This other agreement had been previously made on the same day, but it was not signed till the following day, & it was to remain in force for ten years unless certain payments were sooner made. After observing the agreement with pltfs. for five months defts. repudiated it:—*Held:* as the continuation of the agreement between pltfs. & defts. for more than six months depended on the volition of a third party, & as the agreement contained nothing to prevent defts. from buying their stores outside the United Kingdom, pltfs. were entitled only to damages in respect of a period of one month.—FRANCO-BRITISH SHIP STORE CO., LTD. *v.* COMPAGNIE DES CHARGEURS FRANÇAISE (1926), 42 T. L. R. 735.

413. *Add. Annotations:*—**Refd.** Watt *v.* Longsdon (1929), 98 L. J. K. B. 711; Tolley *v.* Fry (J. S.) & Sons, Ltd., [1930] 1 K. B. 467.

418. *Add. Annotations:*—*As to* (1) **Apld.** Smith *v.* Schilling, [1928] 1 K. B. 429. *As to* (2) **Refd.** Martin *v.* Benson, [1927] 1 K. B. 771.

Part VI.—Liquidated Damages or Penalty.

424. *Add. Annotations:*—*Generally*, **Refd.** Admiralty Comrs. *v.* S.S. Chekiang, [1926] A. C. 637. *Generally*, **Refd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co. (1931), 47 T. L. R. 481.

425. *Add. Annotation:*—*As to* (2) **Consd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co. (1931), 47 T. L. R. 373.

426. *Add. Annotations:*—*As to* (1) **Apld.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate

BURKARD & CO., LTD. *v.* WAHLEN (1928), 28 S. R. N. S. W. 607; 45 N. S. W. W. N. 201.—**AUS.**

sh. *Breach of contract to summerfallow.*]—A lessee under a crop-payment lease broke his covenant to summerfallow. The lessor, who had the work done at his own expense, contended that the delay in doing it would reduce the crops to be grown & claimed damages on that head:—*Held:* since it was impossible to say with any degree of certainty that the crops in the subsequent years would be less than they would have been had deft. performed his covenant, such damages could not be awarded.—UGLUM *v.* TORKELSON, [1930] 3 W. W. R. 26; 4 D. L. R. 1022.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.

414 ii. *Revsd.* on other grounds, Q. R. 15 K. B. 11; [1907] A. C. 454.

414 viii. ——.]—PAFFARD *v.* CAVOTTI, [1929] 1 D. L. R. 111; 63 O. L. R. 171.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 2.

424 vii. ——.]—A rate of damages provided for in a contract between a co-operative co. & a grower of fruits & vegetables, under which the latter agreed to deliver all his products to the co. to be marketed by it, for the breach thereof:—*Held:* to be liquidated damages & not a penalty.—ASSOCIATED GROWERS OF BRITISH COLUMBIA, LTD. *v.* BRITISH COLUMBIA FRUIT LAND, LTD., [1925] 1 D. L. R. 871; [1925] 1 W. W. R. 505; 34 B. C. R. 533.—**CAN.**

424 viii. ——.]—A contract between pltfs. & deft. provided that should deft. fail to deliver to pltfs. all the wheat covered by the contract, he would pay to pltfs. as liquidated damages 25 cents per bushel for all wheat which he should have failed to deliver:—*Held:* the 25 cents per bushel was not a penalty but liquidated damages.—SASKATCHEWAN CO-OPERATIVE WHEAT PRODUCERS, LTD. *v.* ZUROWSKI (Sask.), [1926] 3 D. L. R. 810; [1926] 2 W. W. R. 604.—**CAN.**

424 ix. ——.]—BOUCAUT BAY CO., LTD. *v.* THE COMMONWEALTH, [1927] Argus L. R. 415.—**AUS.**

Silk Co. (1931), 47 T. L. R. 481. *As to* (2) **Apld.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174.

426a. ——.]—Deft. was a member of pltf. society, which was formed to organise the marketing of home-grown hops by their sale through pltfs., & by a written agreement deft. undertook to deliver to pltfs. all hops grown or produced by him in 1926 on certain land. The agreement also provided that if deft. failed to deliver to pltfs. the hops or disposed of them otherwise than through pltfs., he would pay to pltfs. as & for liquidated damages £100 per acre or proportionately on a less acreage :—*Held :* as a breach of the agreement might occasion serious damage which it might be difficult to value exactly or ascertain beforehand, the sum fixed by the parties as a pre-estimate of the damage, namely, £100 per acre, was not a penalty but liquidated damages.—ENGLISH HOP GROWERS *v.* DERING, [1928] 2 K. B. 174 ; 97 L. J. K. B. 569 ; 139 L. T. 76 ; 44 T. L. R. 443, C. A.

426b. ——.]—A contract entered into by pltfs. for the manufacture, delivery & erection of an acetone recovery plant for defts. to be used by defts. in the process of manufacturing artificial silk, provided that the plant should be delivered & erected in 18 working weeks from the receipt of final approval of the drawings. The contract stipulated by clause 10 that : "If this period of 18 working weeks is exceeded you (pltfs.) to pay by way of penalty the sum of £20 per working week you exceed the 18 weeks. . . ." There was a delay of 30 weeks by pltfs. in delivering & erecting the recovery plant ; & in an action by them claiming the agreed price defts. counterclaimed for damages for delay, the actual loss which they suffered having considerably exceeded the "penalty" of £20 for each of the 30 weeks :—*Held :* the sum of £20 a week was agreed damages & was the only sum that defts. were entitled to recover.—CELLULOSE ACETATE SILK CO., LTD. *v.* WIDNES FOUNDRY (1925), LTD. (1932) ; 101 L. J. K. B. 694 ; 147 L. T. 401 ; 48 T. L. R. 595, H. L. ; *affg.*, S. C. *sub nom.* WIDNES FOUNDRY (1925), LTD. *v.* CELLULOSE ACETATE SILK CO., LTD., [1931] 2 K. B. 393, C. A.

455. *Add. Annotation :*—**Refd.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174.

461. *Add. Annotations :*—**Consd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co. (1931), 47 T. L. R. 373. **Refd.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174.

483. *Add. Annotation :*—**Refd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co. (1931), 47 T. L. R. 373.

487. *Add. Annotation :*—**Folld.** Lock *v.* Bell, [1931] 1 Ch. 35.

487a. —— —— ——.]—By a contract dated Oct. 19, 1928, pltf. agreed to sell to deft. all her right, title, & interest in a licensed house known as T. of which she was the licensee. The contract provided that the purchase-money should be paid "on or about" Nov. 10, 1928, & that deft. should forfeit the deposit of £120 which he had paid if he should fail to fulfil his part of the contract ; also that either party refusing to comply with or neglecting to perform any part of the agreement should pay to the other, on demand, the sum of £200. On Oct. 3, 1928, deft. had given to the brewers who were the freeholders of T. references which they had accepted by Oct. 10. He went to the magistrates' clerk & signed the ordinary notices on reference to a request for a temporary transfer on Nov. 10, & for full transfer on Dec. 8. At least a week before Nov. 10 deft. knew that he would be unable to complete the purchase of T. unless he could raise a loan. His brokers acting in the matter sent him a notice to attend on Nov. 10. He did so, & first saw the brewers, telling them that he could not complete, & that the notice of application for transfer would have to be withdrawn & another one given. He then arranged with pltf. that completion should take place on Dec. 8. Deft., however, did not attend to complete. On Dec. 22 deft. stated that he would complete on Jan. 30. In an action by pltf. for a declaration that the contract had been rescinded & the deposit of £120 forfeited, & for damages :—*Held :* under the terms of the contract, the sum of £200 damages was in the nature of a penalty, & therefore not recoverable.—LOCK *v.* BELL, [1931] 1 Ch. 35 ; 100 L. J. Ch. 22 ; 144 L. T. 108.

506. *Citation :*—For "*on appeal*" read "*subsequent proceedings.*"

Annotation :—Delete '*Generally.* **Mentd.** *Re* Hall (1861), 11 L. T. 579."

527a. Covenant to pay excess over given amount—Penalty.]—A covenant by deft. that the debts of a certain firm into which pltf. was about to be admitted as partner did not exceed a specific sum, & that if they did deft. would pay on demand of the pltf. the sum by which the debts might exceed the specific amount : —*Held :* (1) to be a covenant for an unliquidated sum ; (2) it was properly left to the jury to say what loss pltf. had sustained by a breach of the covenant by deft.—

PART VI. SECT. 1, SUB-SECT. 3.

442 i. —— —— *Onus of disproof.*]—If the sum mentioned in a bond is expressed to be a penalty, the *onus* of showing that it was intended as liquidated damages is on the person asserting it.—R. (A.-G. OF CANADA) *v.* LONDON GUARANTEE & ACCIDENT CO., LTD., [1920] 2 W. W. R. 83.—**CAN.**

448 iii. —— ——.]—Where a sum is stipulated to be paid as liquidated damages, & is payable, not on the happening of a single event, but of one or more of a number of events, some of which might result in inconsiderable damage, the ct. may decline to construe the words "liquidated damages" according to their ordinary meaning & may treat such a sum as a penalty. — SHATILLA *v.* FEINSTEIN, [1923] 3 D. L. R. 1035 ; 16 Sask. L. R. 454 ; [1923] 1 W. W. R. 1474.—**CAN.**

453 iv. —— ——.]—*Held :* having regard to the language in a clause of a contract of service, fixing a sum as liquidated damages for violation by deft. of any or all of the provisions of the contract, the sum fixed was not in the nature of a penalty.—DOMINION ART CO., LTD. *v.* MURPHY (1923), 54 O. L. R. 332.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 5.

471 ii. —— —— ——.]—The sum mentioned in a bond given under Canada Grain Act by one licensed to operate a country elevator :—*Held :* to be a penalty & only recoverable to the extent of the actual loss shown, there being no evidence to show it was intended as liquidated damages, & because the conditions of the bond consisted in the performance of many acts, some of which might be of great & others of trifling importance.—R. (A.-G. OF CANADA) *v.* LONDON GUARANTEE & ACCIDENT CO., LTD., [1920] 2 W. W. R. 83—**CAN.**

ii. —— ——.]—FRIED *v.* GEORGES, [1930] 3 D. L. R. 664.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 6.

p i. —— *Agreement for share of profits under option—Failure to take up option—Liquidated damages.*]—KENNEDY *v.* HARRIS (1912), 23 O. W. R. 179 ; 4 O. W. N. 183 ; 7 D. L. R. 291.—**CAN.**

WALKER *v.* BROADHURST (1853), 8 Exch. 889; 23 L. J. Ex. 71.

Annotation : —**Consd.** Johnson *v.* Diamond (1855), 11 Exch. 73.

542. *Add. Annotation :*—**Refd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co., Ltd. (1931), 47 T. L. R. 373.

543. *Add. Annotation :*—**Refd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co., [1931], 2 K. B. 393.

544. *Add. Annotation :*—**Consd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co. (1931), 47 T. L. R. 373.

Part VII.—Pleading, Proof and Assessment.

557. *Add. Annotation :*—**Folld.** Hinton *v.* Hinton & Spillett (1930), 46 T. L. R. 585.

557a. —— —— —— ——.]—In a divorce case, where co-resp. has not appeared, & where the jury award damages in excess of the amount claimed, the claim should not be amended until a summons for leave to amend has been served on the co-resp.—HINTON *v.* HINTON & SPILLETT (1930), 46 T. L. R. 585, C. A.

574a. **Contingent damages.**]—When a verdict is found for deft. upon an issue which bars the action, the jury cannot assess contingent damages for pltf., without the assent of deft.—NEWTON *v.* HARLAND (1840), 1 Man. & G. 644; 1 Scott, N. R. 474; 2 Jur. 350; 133 E. R. 490.

576. After this case add "—— **In matrimonial causes.**]—*See* HUSBAND & WIFE, No. 4677a."

576a. **Assessment by Court of Appeal—Case tried without jury.**]—REANEY *v.* CO-OPERATIVE WHOLESALE SOCIETY, LTD., [1932] W. N. 78; 73 L. Jo. 292; 173 L. T. Jo. 262, C. A.

592a. ——.]—Where a jury has improperly awarded an annuity by way of damages instead of a lump sum the judge should redirect the jury; he has no power to enter judgment for the capitalised amount of the annuity.—FOURNIER *v.* CANADIAN NATIONAL RY. CO., [1927] A. C. 167; 95 L. J. P. C. 177; 135 L. T. 609; 42 T. L. R. 629, P. C.

594. *Add. Annotation :*—**Refd.** Martin *v.* Stout, [1925] A. C. 359.

598. *Annotation :*—For "**Refd.** S.S. Celia *v.* S.S. Volturno, [1921] 2 A. C. 544," read "**Expld.** S.S. Celia *v.* S.S. Volturno, [1921] 2 A. C. 544."

599. *Add. Annotation :*—**Expld.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

601. *Add. Annotation :*—**N.F.** Peyrae *v.* Wilkinson, [1924] 2 K. B. 166.

602. *Add. Annotations :*—**Refd.** Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451; Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 47 T. L. R. 359.

604. *Add. Annotations :*—**Refd.** Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451; Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465. **Mentd.** Richardson *v.* Richardson, [1927] P. 228.

611. *Add. Annotation :*—**Folld.** Peyrae *v.* Wilkinson, [1924] 2 K. B. 166.

PART VI. SECT. 1, SUB-SECT. 7.

529 iii. —— ——.]—Pltf. gave deft. the exclusive agency for six months for the sale of certain land. Deft. covenanted that if he failed to effect a sale of 1,000 acres in the first six months he would pay as liquidated damages an amount equal to $2 per acre for each acre of the 1,000 acres unsold. Deft. failed to effect a sale: —*Held :* not a penalty, but liquidated damages arising on proof of failure to make the sales, without having to show actual loss.—NORTHERN TRUSTS CO. *v.* RASMUSSEN, [1924] 2 W. W. R. 1015.—**CAN.**

529 iv. —— ——.]—OLIVER *v.* BELIK, [1931] 1 W. W. R. 24.—**CAN.**

PART VII. SECT. 1.

549 xv. —— ——.]—To recover special damages, a pltf. must expressly claim them in his pleadings & prove them strictly at the trial.—CARROLL *v.* BAER, [1924] 2 D. L. R. 452; 1 W. W. R. 1249; 18 Sask. L. R. 292. —**CAN.**

549 xvi. *S. P.* BUTT *v.* OSHAWA CORPN., WILKINSON *v.* OSHAWA CORPN., [1926] 4 D. L. R. 1138; 59 O. L. R. 520.—**CAN.**

549 xvii. —— ——.]—In an action for breach of covenant by delaying the completion of a railway crossing, which afforded the best road to pltf.'s saw mill :—*Held :* evidence of special damage was not admissible, none being alleged in the declaration, & pltf. not having notified defts. at the time of the fact of his suffering the loss of profit, which constituted the alleged damages. —SHAVER *v.* GREAT WESTERN RY. CO. (1857), 6 C. P. 321.—**CAN.**

PART VII. SECT. 2.

559 i. *Necessity for proof of special damage.*]—On a claim for damages for personal injuries, pltf. cannot claim for special damages for nursing where he fails to show that he has either paid or is under any legal obligation to pay for the nursing done; the fact that he intends to pay a sum to his nurse is not sufficient.—CARROLL *v.* BAER, [1924] 2 D. L. R. 452; 1 W. W. R. 1249; 18 Sask. L. R. 292. —**CAN.**

c i. —— ——.]—CLAUSEN *v.* CANADIAN TIMBER & LANDS, LTD. (1925), 35 B. C. R. 461.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 1.

sa. *Default judgment—Assessment by master—No jurisdiction.*]—PIERSON & PIERSON *v.* LAY, [1931] 1 W. W. R. 398.—**CAN.**

sb. *Necessity for judgment.*]—An assessment of damages should not be ordered except under a judgment declaring the plaintiff entitled thereto. —STONE *v.* VULCAN MUNICIPAL HOSPITAL DISTRICT, [1930] 1 W. W. R. 839; 3 D. L. R. 210.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 2.

575 ii. —— *On same principles as jury.*]—In assessing damages against a member of the Winnipeg Grain Exchange for wrongfully closing out the account of a customer, a judge is not bound to take the highest peak as the measure thereof, but may base his assessment upon the principal adopted by juries.—NELSON *v.* BAIRD & BOTTERELL (1915), 30 W. L. R. 822; 8 W. W. R. 144; 25 Man. L. R. 244.— **CAN.**

579 vi. ——.]—When the writ in an action, under Wrongs Act, 1915, Part III., has been endorsed for tria with a jury, sect. 16 of that Act makes the jury the tribunal to assess the damages. If interlocutory judgment be entered in default of appearance, Ord. XIII., r. 5, does not, in the absence of consent of the parties, enable the prothonotary to ascertain the damages. The deft. is entitled to notice of the assessment of damages by the jury.— WALSH *v.* MCMICHAEL, [1928] V. L. R. 345; [1928] Argus L. R. 195.—**AUS.**

PART VII. SECT. 3, SUB-SECT. 3.—B.

598 i. *Amount due in foreign currency —Date of judgment sued on.*]—Where deft. in a suit in Bombay contended that the rate of exchange should be that on the day on which the ct. pronounced judgment :—*Held :* the rate to be taken was that prevailing on the day judgment was given in the High Ct. in England, which gave pltf. the cause of action for the suit in Bombay. —MADHAVJI VISRAM *v.* RAMNIKLAL VADILAL (1921), I. L. R. 47 Bom. 487.—**IND.**

si. —— ——.]—*Held :* the rate for conversion of dividends payable in foreign currency was the rate ruling on the date when each dividend became due.—THE CUSTODIAN *v.* BLUCHER, [1927] 3 D. L. R. 40; [1927] S. C. R. 420.—**CAN.**

603 iii. —— ——.]—In cases of breach of contract, the date on which the rate of exchange is to be taken for the purpose of converting one set of currency into another is the date on which under the agreement the money was to be paid & on which a breach occurred by its not being paid.— SHAKOOL & Co. *v.* FINLAY FLEMING & Co. (1923), I. L. R. 1 Ran. 339.— **IND.**

612. For the existing paragraph in original volume substitute the following paragraph :—

—— ——.]—In an action in this country for a debt payable in a foreign currency the debt must be converted into English currency at the rate of exchange prevailing at the date when the debt became due & payable, & not at the rate of exchange prevailing at the date of judgment. — PEYRAE *v.* WILKINSON, [1924] 2 K. B. 166; 93 L. J. K. B. 121; 130 L. T. 511.

612a. —— ——.]—Between 1903 & 1909 pltfs., Russian subjects, effected with defts., an American insurance co. then having a branch in Russia, insurances in the form of four endowment life policies & paid the premiums in Russia in roubles down to 1918. The amounts secured by two of the policies having become payable :—*Held :* judgment should be entered for pltfs. for the sterling equivalent of the amounts due in chervonetz roubles at the date when those amounts became due.—BUERGER *v.* NEW YORK LIFE ASSURANCE CO. (1927), 96 L. J. K. B. 930; 137 L. T. 431; 43 T. L. R. 601, C. A.

Annotation :—**Refd.** Perry *v.* Equitable Life Assce. Society of U. S. A. (1929), 45 T. L. R. 468.

613. *Citations* :—Add " 15 Asp. M. L. C. 570." Delete " *revsg.* S. C. *sub nom.* DREYFUS & CO. *v.* ATLANTIC SHIPPING & TRADING CO. (1921), 37 T. L. R. 417, C. A."

Annotations :—Delete " **Mentd.** Czarnikow *v.* Roth, Schmidt (1922), 92 L. J. K. B. 81; Ford *v.* Compagnie Furness (France), [1922] 2 K. B. 797; Pinnock *v.* Lewis & Peat, [1923] 1 K. B. 690."

614. *Add. Annotation* :—**Consd.** Anderson *v.* Equitable Life Assce. Soc. of United States (1926), 134 L. T. 557.

615. After this case add " *See, also,* INSURANCE, Vol. XXIX., p. 389, No. 3104."

618. *Add. Citations* :—93 L. J. Ch. 263; 130 L. T. 109.

Add. Annotations :—*As to* (1) **Consd.** Anderson *v.* Equitable Life Assce. Soc. of United States (1926), 134 L. T. 557; Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930. *Generally,* **Refd.** Ellis' Trustee *v.* Dixon-Johnson, [1924] 2 Ch. 451.

625. *Add. Annotations* :—*As to* (1) **Refd.** Chapman *v.* Ellesmere (1932), 146 L. T. 538. *As to* (2) **Refd.** Tolley *v.* Fry J. S. & Sons (1929), 46 T. L. R. 108. *Generally,* **Refd.** Watt *v.* Longsdon (1929), 98 L. J. K. B. 711.

625a. —— ——.] — CHAPMAN *v.* ELLESMERE (LORD), [1932] 2 K. B. 431.

626. *Add. Annotation* :—**Refd.** The Koursk, [1924] P. 140; Pirie *v.* Richardson, [1927] 1 K. B. 448.

631. *Add. Annotation* :—**Refd.** Chapman *v.* Ellesmere (1932), 48 T. L. R. 309.

637. *Add. Annotation* :—**Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1932), 48 T. L. R. 404.

638. *Add. Annotation* :—**Consd.** The Koursk, [1924] P. 140.

648. *Add. Annotations* :—**Consd.** Wing Lee *v.* Lew, [1925] A. C. 819. **Distd.** Reaney *v.* Co-operative Wholesale Society, Ltd. (1932), 173 L. T. Jo. 262. **Refd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

673. *Add. Annotation* :—**Refd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369.

721a. ——.]—The Ct. of Appeal may set aside the assessment of damages by a jury where the amount assessed is so small or so large as that twelve sensible jurors could not reason-

PART VII. SECT. 3, SUB-SECT. 4.

627 ii. ——.]—GAY CO., LTD. *v.* TRICK, [1927] 1 D. L. R. 1091; 60 O. L. R. 8.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 5.

g i. —— *Right of—Defendant not entitled to examine plaintiff with view to assessment of damages.*]—FONG YOUNG *v.* SHING WAH, [1928] 3 D. L. R. 481; 62 O. L. R. 370.—**CAN.**

st. *When assessment must be by master.*]—HENNIGAR *v.* HENNIGAR (N. B.), [1926] 1 D. L. R. 891.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 1.

sv. *Trial without jury—Power of appellate court to assess.*]—An appellate ct., where an action has been tried without a jury, has power, without the consent of counsel, to assess damages itself without ordering a new trial.—GENDERS *v.* SOUTH AUSTRALIAN RYS. COMR., [1928] S. A. S. R. 272.—**AUS.**

PART VII. SECT. 4, SUB-SECT. 3.—A.

661 x. —— ——.]—COGHLIN *v.* LA FONDERIE DE JOLIETTE (1903), 34 S. C. R. 153.—**CAN.**

661 xi. —— ——.]—Where damages are claimed for the depreciation in value of an article, the basis of assessment is the difference between the value of the article immediately before it was damaged & its value immediately afterwards. Where damages have been assessed on a wrong principle a new trial will be ordered.—DRYDEN *v.* ORR (1928), 28 S. R. N. S. W. 216; 45 N. S. W. W. N. 44.—**AUS.**

661 xii. —— ——.]—BRENNER *v.* CISEK, [1929] 3 D. L. R. 457; 2 W. W. R. 158; 23 S. L. R. 573.—**CAN.**

661 xiii. —— ——.]—MIDDLETON *v.* MCMILLAN (B. C.), [1929] 1 D. L. R. 977.—**CAN.**

661 xiv. —— ——.]—MACNAMARA *v.* DESBRISAY, [1930] 4 D. L. R. 73.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 3.—B. (a).

680 v a. —— ——.]—*Held :* although the damages were excessive, the ct. would not interfere upon that account.—MCMONAGLE *v.* ORTON (1888), 5 Man. L. R. 193.—**CAN.**

680 xi. ——.]—New trial granted on payment of costs on the ground of excessive damages.—STOCK *v.* GREAT WESTERN RY. CO. (1858), 7 C. P. 526.—**CAN.**

689 i. —— *Misconduct of jury.*]—Where an assessment of damages is not thought to be unconscionable but only excessive, it ought to be set aside if the jury took into account something which they ought not to have taken into account & failed to take into account something which they ought to have taken into account.—COSGROVE *v.* CANADIAN NATIONAL RAILWAYS, [1923] 4 D. L. R. 818; [1923] 3 W. W. R. 1152.—**CAN.**

692 viii a. —— —— ——.]—Where the damages were excessive :—*Held :* there should be a new trial, unless pltf. consented to reduce his verdict.—CLARKE *v.* MURRAY (1877), *Temp.* Wood, 127.—**CAN.**

692 xviii. —— —— ——.]—In an action for damages for breach of contract, the jury awarded pltf. £30 for special damages, including law costs, for loss of profits, & £20 for general damages. Deft. moved for a new trial upon the ground that the award of anything more than a merely nominal sum as general damages was excessive :—*Held :* as no substantial wrong or miscarriage of justice had been occasioned, a new trial ought not to be ordered, but the judgment should stand, subject to pltf. consenting to the elimination of the amount awarded as general damages.—STEWART *v.* O'BRIEN, [1925] N. Z. L. R. 400.—**N.Z.**

692 xix. —— —— ——.]—GOLDMAN *v.* KIRBY & SONS, LTD., [1927] S. R. S. 58.—**AUS.**

705 ii a. —— ——.]—In an action for work & labour, the second tria being before a special jury struck by defts., & the verdict being larger than before, the ct. declined to interfere for excessive damages.—STOCK *v.* GREAT WESTERN RY. CO. (1858), 9 C. P. 134.—**CAN.**

705 iii. ——.]—MASON *v.* SOUTH NORFOLK RY. CO. (1889), 19 O. R. 132.—**CAN.**

705 iv. —— *Assessment by jury in excess of claim—Statement of claim amended by trial judge.*]—In an action of trespass to a certain lot of land & expulsion of pltf. therefrom, pltf. claimed $500, the jury assessed the damages at $1,500, & the trial judge amended the statement of claim accordingly :—*Held :* the damages were excessive, & a new trial was granted.—ROBINSON *v.* HALL (1882), 1 O. R. 266.—**CAN.**

705 v. —— *Unless party agreed to reduction of damages.*]—SIBBALD *v.* GRAND TRUNK RY. CO., TREMAYNE *v.* GRAND TRUNK RY. CO. (1890), 19 O. R. 164.—**CAN.**

ably have given the verdict, or as to lead the ct. to the conclusion that the jury must have taken into consideration matter which they ought not to have considered, or that they have omitted to pay regard to matter which they ought to have considered.—SMITH *v.* SCHILLING, [1928] 1 K. B. 429; 97 L. J. K. B. 276; 138 L. T. 475; 44 T. L. R. 109, C. A.

737. *Add. Annotations :*—**Apld.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1. **Refd.** Tolley *v.* Fry J. S. & Sons (1929), 46 T. L. R. 108.

751. *Add. Annotation :*—**Refd.** Smith *v.* Schilling, [1928] 1 K. B. 429.

751a. —— ——.]—SMITH *v.* SCHILLING, No. 721a, *ante.*

753. *Add. Annotation :*—**Refd.** Croker *v.* Croker (1932), 48 T. L. R. 597, C. A.

764. *Add. Annotation :*—**Refd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

784. *Add. Annotation :*—**Refd.** Smith *v.* Schilling, [1928] 1 K. B. 429.

784a. ——.]—SMITH *v.* SCHILLING, No. 721a, *ante.*

820a. **Failure to assist trial judge.**]—HILLAS & Co., LTD. *v.* ARCOS, LTD. (1932), 147 L. T. 503; 38 Com. Cas. 23, H. L.

830. After this case add "*See, also,* JURIES, Vol. XXX., pp. 245, 246."

832a. ——.]—SMITH *v.* SCHILLING, No. 721a, *ante.*

731 ix. —— ——.]—In an action to recover an amount due under a contract for purchase of an hotel, deft. set up a breach of warranty, but at the trial a plea of misrepresentation was substituted. The jury were directed that the proper measure of damages recoverable by deft. would be that applicable in an action on a breach of warranty :—*Held :* there should be a new trial, for the purpose of assessing damages upon the basis of the difference between the market price at the date of the contract & the contract price.—HARDMAN *v.* MCLEOD (1926), 26 S. R. N. S. W. 578; 43 N. S. W. W. N. 194.—**AUS.**

PART VII. SECT. 4, SUB-SECT. 3.—B. (b).

711 vi. ——.]—The ct. will not interfere, although the damages are greater than the ct. would have allowed.—CLARKE *v.* CANADIAN NORTHERN RY., [1931] 4 M. P. R. 164.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 3.—B. (c).

748 i. *Mistake—Acting upon wrong principle.*]—Where a jury assessed damages on a wrong principle :—*Held :* the ct. would set aside the verdict on the ground of excessive damage having been given.—FENERTY *v.* HALIFAX COUNTY (1858), 3 N. S. R. (2 Thom.) 412.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 3.—C. (a).

785 ix. ——.]—PAT *v.* ILLINOIS PUBLISHING & PRINTING CO., [1929] 3 D. L. R. 376; 2 W. W. R. 14; 23 S. L. R. 564.—**CAN.**

785 x. ——.]—Where on an appeal for an increase of damages assessed by a trial judge it does not appear that the judge failed to take into consideration some element of damage which he should have considered, his award should not be disturbed.—MCCULLOUGH *v.* ROBINSON, [1931] 1 D. L. R. 620; [1930] 3 W. W. R. 534; 25 S. L. R. 158.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 3.—C. (d).

831 vii. ——.]—A Ct. of Appeal will not increase the amount of damages awarded by a trial judge on the verdict of a jury unless it appears that the jury has failed to consider some element of damage which should have been considered.—STROUD *v.* DESBRISAY & COLGAN (1930), 42 B. C. R. 507.—**CAN.**

DEEDS AND OTHER INSTRUMENTS.

Part I.—Deeds.

57. *Add. Annotation :*—**Refd.** Messager *v.* British Broadcasting Co. (1928), 97 L. J. K. B. 251.

61. *Add. Annotation :*—**Consd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 145.

74. *Add. Annotation :*—**Refd.** Importers Co. *v.* Westminster Bank, [1927] 1 K. B. 869.

108. For cross-reference before this case read " *See, now,* Law of Property Act, 1925 (c. 20), s. 73."

166. *Add. Annotation :* — **Refd.** Humphrey & Denman *v.* Kavanagh (1925), 41 T. L. R. 378.

364. *Add. Annotation :*—**Folld.** *Re* Morton, Morton *v.* Morton, [1932] 1 Ch. 505.

370a. Uncertain whether one party alive—Execution by others—Subsequent refusal to concur.] —A family arrangement for the division of an estate entered into in the absence or without the knowledge of one of the parties or persons interested in & affected thereby is not binding on any of the parties unless his concurrence is subsequently obtained. On the death of W. M. without having made an effective will, & leaving his five brothers his next of kin, four of them joined with a niece in executing a deed of family arrangement, whereby the niece, who had been living with W. M. & his wife, who predeceased him, & for whom W. M. desired to make provision, was to be given an equal one-fifth share with the four brothers. The fifth brother T. M. was not a party to the deed, as at the date thereof he had not been heard of for over twelve years, and it was uncertain whether he was living or dead. Since the date of the deed the whereabouts of T. M. had been discovered, and he refused to concur in it :—*Held :* the arrangement was not binding on any of the parties thereto.—*Re* MORTON, MORTON *v.* MORTON, [1932] 1 Ch. 505; 101 L. J. Ch. 269; 146 L. T. 527.

449. *Add. Annotations :*—**Consd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628. **Refd.** Guildford Trust *v.* Pohl & Maritch (1928), 72 Sol. Jo. 171.

453. *Add. Annotation :*—**Refd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

457. *Add. Annotation :*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

464. *Add. Annotation :*—**Apld.** *Re* Clout & Frewer's Contract, [1924] 2 Ch. 230.

470. *Add. Annotation :*—**Refd.** Swift *v.* Board of Trade (1924), 93 L. J. K. B. 529.

490. *Add. Annotation :*—**Refd.** *In the Estate of* Southerden, Adams *v.* Southerden, [1925] P. 177.

500. *Add. Annotation :*—*As to* (1) **Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

501. *Add. Annotation :*—**Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

Part II.—Instruments Under Hand—Non-Testamentary.

555. *Add. Annotations :*—**Consd.** Swift *v.* Board of Trade, [1925] A. C. 520. **Refd.** Maine & New Brunswick Electrical Power Co. *v.* Hart, [1929] A. C. 631; Simpson *v.* Maurice's Exors. (1929), 45 T. L. R. 581.

PART I. SECT. 2, SUB-SECT. 1.

17 ii. —— *Whether gift intended.*]—Where a conveyance or mtge. is expressed to be for valuable consideration, but the fact is that none was paid, nothing but the clearest evidence can avail to show that a gift was intended. —JOHN DEERE PLOW CO., LTD. *v.* PETERS & SPOHN, [1929] 2 D. L. R. 103; 23 S. L. R. 218; [1928] 3 W. W. R. 686. —**CAN.**

PART I. SECT. 5, SUB-SECT. 1.—A.

sa. *Proof of execution—Deeds within county*—9 *Vict. c.* 34, *s.* 7.]—*Re* YORK COUNTY REGISTRAR (1847), 3 U. C. R. 188.—**CAN.**

PART I. SECT. 5, SUB-SECT. 1.—E.

183 iii. —— *Attestation required by statute—Deed improperly attested—Execution admitted by grantor.*]—*Held :* as the mtge. deed was not attested within Transfer of Property Act, s. 59, it was invalid in spite of the grantor's admission.—HIRA BIBI *v.* RAM HARI LAL (1925), L. R. 52 Ind. App. 362.—**IND.**

189 ii. ——.]—The manager of a bank, a justice of the peace, is not incapacitated from acting as attesting witness to the execution of a mtge., under the Transfer of Land Statute (No. 301) to his bank.—BANK OF VICTORIA *v.* MICHALL (1882), 8 V. L. R. 11.—**AUS.**

sb. *Certificate of—Sufficiency of—Absence of date.*]—*Held :* the deed was properly recorded.—MCKENZIE *v.* LAMONT (1877), 11 N. S. R. (2 R. & C.) 517.—**CAN.**

PART I. SECT. 5, SUB-SECT. 2.—C.

231 vii. —— ——.]—HUGGARD *v.* ONTARIO & SASKATCHEWAN LAND CORPN. (1908), 1 Sask. L. R. 526; 6 W. L. R. 645; 8 W. L. R. 866.—**CAN.**

PART I. SECT. 5, SUB-SECT. 2.—D.

d i. —— *Whether deed revocable.*]—HEBERT *v.* GALLIEN, [1931] 2 D. L. R. 150; 66 O. L. R. 554; 3 M. P. R. 67.—**CAN.**

250 i. *Deed conditioned to take effect from death of grantor—Deed reserving rent for life.*]—RIDDELL *v.* JOHNSTON, [1931] 2 D. L. R. 479.—**CAN.**

PART I. SECT. 5, SUB-SECT. 3.

f i. ——.]—MCDONALD *v.* MCDONALD, 1 D. L. R. 93.—**CAN.**

PART I. SECT. 5, SUB-SECT. 4.

h i.—— —— *Land Act,* 1888, *s.* 26.] —HJORTH *v.* SMITH (1897), 5 B. C. R. 369—**CAN.**

PART I. SECT. 5, SUB-SECT. 7.—A.

e i. ——.]—Some of the persons named as joining in a covenant cannot be bound, where the others who are named, & whose concurrence is necessary to the accomplishment of the object recited in the deed, have not joined.—MOORE *v.* IRWIN, [1926] 4 D. L. R. 1120; 59 O. L. R. 546.—**CAN.**

PART I. SECT. 6, SUB-SECT. 1.

406 iv. ——.]—A deed under seal cannot bind a person who is not a party to the deed.—BATTLE CREEK TOASTED CORN FLAKE CO. *v.* KELLOGG TOASTED CORN FLAKE CO., [1923] 4 D. L. R. 543.—**CAN.**

406 v. ——.]—FAULKNER *v.* FAULKNER (1893), 23 O. R. 252.—**CAN.**

PART I. SECT. 7.

425 v. —— ——.]—BENNETT *v.* KIDD, [1926] N. 50.—**IR.**

PART I. SECT. 8, SUB-SECT. 3.

b i. ——.]—DYNES *v.* BALES (1878), 25 Gr. 593.—**CAN.**

PART I. SECT. 8, SUB-SECT. 5.

454 vi. —— ——.]—Under an agreement between pltf. & defts. for the sale of a business the latter undertook to incorporate a co. & to assume & pay the amount due on a chattel mtge. In carrying out the agreement pltf. signed what he thought was a mere transfer of the business to the co., but which was in fact a new agreement which expressly released defts. from its obligation to pay off the chattel mtge. There was no evidence of anything being said to or by pltf. with respect to such release, & the evidence as to whether he read the new agreement over before signing it was conflicting :—*Held :* the release had been fraudulently inserted, & pltf. was entitled to be indemnified by defts. against his liability on the mtge.—JACK *v.* NANOOSE WELLINGTON COLLIERIES, LTD., [1925] 3 D. L. R. 398; [1925] 2 W. W. R. 267; 35 B. C. R. 295.—**CAN.**

Part III.—Interpretation of Deeds and Non-Testamentary Instruments.

581. *Add. Annotations :*—**Refd.** Sharpe & Dohme Inc. *v.* Boots Pure Drug Co. (1927), 44 R. P. C. 367; British Thomson-Houston Co. *v.* Metropolitan-Vickers Electrical Co. (1928), 45 R. P. C. 1; Société Anonyme Servo-Frein Dewandre *v.* Citroen Cars, Ltd. (1929), 47 R. P. C. 221.

582. *Add. Annotation :*—**Refd.** Finlay *v.* N. V. Kwik Hoo Tong Handel Maatschappij, [1929] 1 K. B. 400.

587. *Add. Annotations :*—**Refd.** Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461; Livock *v.* Pearson (1928), 33 Com. Cas. 188; Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

592. After this case insert "*See, generally*, CONTRACT, Vol. XII., pp. 79 *et seq.*"

597. *Add. Annotation :*—**Refd.** Schiller *v.* Petersen (1924), 130 L. T. 810.

608. *Add. Annotation :*—**Refd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607.

622. *Add. Annotations :*—**Apld.** G. W. Ry. *v.* S.S. Mostyn, [1928] A. C. 57. **Refd.** Abrahams *v.* MacFisheries [1925] 2 K. B. 18; British-American Tobacco Co. *v.* Jones (1925), 134 L. T. 405; Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

627. *Add. Annotation :*—**Refd.** Greenhill *v.* Federal Insce. (1926), 95 L. J. K. B. 717.

631. *Add. Annotations :*—**Consd.** Sherwood *v.* Tucker, [1924] 2 Ch. 440. **Refd.** Batchelor *v.* Murphy (1924), 41 T. L. R. 153.

665. *Add. Annotation :*—**Apld.** Saunders *v.* Young's Brewery (1925), 42 T. L. R. 136.

697. *Add. Annotations :*—**Consd.** Lazard Bros. & Co. *v.* Brooks (1932), 37 Com. Cas. 224. **Refd.** Samuel *v.* Dumas, [1924] A. C. 431; Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

700. *Add. Annotation :*—**Refd.** Russell *v.* Russell, [1924] A. C. 687.

701. *Add. Annotation :*—**Refd.** The Penelope, [1928] P. 180.

743. *Add. Annotation :*—**Refd.** Herbert's Trustee *v.* Higgins, [1926] Ch. 794.

750. *Add. Annotation :*—**Refd.** *Re* Hammond, Parry *v.* Hammond, [1924] 2 Ch. 276.

773. Before this case add "*See, now*, Law of Property Act, 1925 (c. 20), s. 61."

786. *Add. Annotations :*—**Apld.** *Re* Jenkins, Jenkins *v.* Davies (1931), 100 L. J. Ch. 265. **Refd.** The Ruapehu, [1927] P. 47; Shaw *v.* Public Trustee (1929), 141 L. T. 465.

792. *Add. Annotation :*—**Consd.** Lorden *v.* Brooke-Hitching, [1927] 2 K. B. 237.

810. *Add. Annotation :*—**Refd.** *Re* Morgan & Provincial Insurance Co., [1932] 2 K. B. 70.

815a. Recurring words—Same construction.]—There is no rule of general application that in construing a document the same meaning must be assigned to an expression throughout; it is only in cases of doubt or ambiguity that it is necessary or permissible to resort to the device.—WATSON *v.* HAGGITT, [1928] A. C. 127; 97 L. J. P. C. 33; 138 L. T. 306; 44 T. L. R. 90; 71 Sol. Jo. 963, P. C.

PART III. SECT. 1.

sd. *Parent & child bearing same name —No addition of "senior" or "junior" —Presumption in favour of parent.*]—NEW BRUNSWICK POWER CO. *v.* PRICE HATT (1924), 52 N. B. R. 1.—**CAN.**

PART III. SECT. 2.

576 x. ——.]—INCHES *v.* FOGG & DOWLING (1870), 13 N. B. R. (2 Han.) 149.—**CAN.**

PART III. SECT. 3, SUB-SECT. 3.—A.

632 ii. —— ——.]—MANUFACTURERS LIFE INSURANCE CO. *v.* SWINNEY, [1925] 2 D. L. R. 503.—**CAN.**

PART III. SECT. 3, SUB-SECT. 3.—B.

686 vi. —— —— *Contract with Crown.*]—*Held :* (1) where the real intention of the parties can be clearly collected from the language within the four corners of a deed or instrument in writing, cts. are bound to give effect to it by supplying anything necessarily to be inferred from the terms used, & by rejecting as superfluous what is repugnant to the real intention so gathered; (2) a contract ought to receive that construction which will best effectuate the intention of the parties to be collected from the whole agreement, greater regard being had to the clear intention of the parties than to any particular words which may have been used in the expression of their intent. The terms of the agreement are to be drawn partly from the written document & partly from all the surroundings of the written document, such as the nature of the transaction with regard to which the document is brought into life; (3) the Crown is not bound by the error or inadvertence of its officers, nor by any deliberate intention of its officers without proper authority to alter the terms of a written agreement.—R. *v.* PEAT FUELS, LTD., [1930] Ex. C. R. 188.—**CAN.**

705 xi. —— —— ——.]—In deciding whether a given transaction is an out & out sale with a condition for re-purchase or a mtge. by conditional sale, it is the intention of the parties at the time of entering into the transaction which must be regarded. That intention must be gathered from the terms of the deed itself & the surrounding circumstances.—BISKAWBAD *v.* MUKAMNAD (1923), I. L. R. 45 All. 58.—**IND.**

705 xii. —— —— ——.]—The intention of the parties to an instrument must be collected from the language of the instrument, & may be elucidated by the conduct they have pursued.—MIDNAPORE ZAMINDARI CO., LTD. *v.* MUKTAKESHI PATRANI (1926), I. L. R. 6 Pat. 51.—**IND.**

PART III. SECT. 3, SUB-SECT. 4.

716 xxi. ——.]—When a person agrees to purchase, he impliedly covenants to pay in the absence of terms exhibiting a different intention, but the whole document must be construed & may show that such implication is not to be drawn.—GRIEVE MCGLORY, LTD. *v.* DOME LUMBER CO., LTD. & THOMPSON, [1923] 2 D. L. R. 154; 1 W. W. R. 989.—**CAN.**

716 xxii. ——.]—BARTEL *v.* BEVEA (N. B.), [1926] 1 D. L. R. 1196.—**CAN.**

716 xxiii. ——.]—When under the terms of a Kabuliyat a rent in kind is reserved & its price is also mentioned the intention is to be gathered with reference to expressions used in other parts of the document.—JURAM MANDAL *v.* RAM MANDAL (1927), I. L. R. 55 Calc. 808.—**IND.**

716 xxiv. ——.]—The rule governing the interpretation of a deed is that the deed must be read as a whole in order to ascertain the true meaning of several clauses, & that the words of each clause should be so construed as to bring them into harmony with the other provisions of the deed, if that interpretation does no violence to the meaning of which they are naturally susceptible. Indeed, it is competent to the ct. to disregard the literal meaning if the words are sufficiently flexible to bear that interpretation. The duty of the ct. is to find out the intention of the executant from the language used by him, but parol evidence to vary the contents of the document cannot be admitted.—YUSAF ALI *v.* ALIBHOY (1928), I. L. R. 10 Lah. 671.—**IND.**

PART III. SECT. 3, SUB-SECT. 8.—A.

773 xxx. ——.]—*Held :* the words "net proceeds" did not mean "net profits."—SCOTT *v.* MONTGOMERY, [1920] 1 W. W. R. 140; 50 D. L. R. 394; 30 Man. L. R. 90.—**CAN.**

d. Read now "**815a i.**"

815a ii. —— ——.]—*Held :* evidence to show that a word was used in a different sense in one sentence from that in which it was used in a preceding sentence, was rightly excluded.—MCDONALD *v.* HALIFAX CORPN. (1895), 28 N. S. R. (16 R. & G.) 84.—**CAN.**

825. *Add. Annotations :*—**Consd.** Schiller *v.* Petersen, [1924] 1 Ch. 394. **Refd.** Phipps *v.* Rogers, [1925] 1 K. B. 14.

842. *Add. Annotation :*—**Refd.** Brakspear *v.* Barton, [1924] 2 K. B. 88.

852. *Add. Annotation :*—**Refd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co., [1931] 2 K. B. 393.

853. *Add. Annotation :*—**Refd.** *Re* Whitrod, Burrows *v.* Base, [1926] Ch. 118.

877. *Add. Annotation :*—**Refd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

882. *Add. Annotation :*—**Refd.** United States Shipping Board *v.* Strick, [1926] A. C. 545.

883. *Add. Annotation :*—**Refd.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

893. *Add. Annotation :*—**Consd.** *Re* Ellwood, [1927] 1 Ch. 455.

895. *Add. Annotation :*—**Refd.** Wilston S.S. Co. *v.* Weir (1925), 31 Com. Cas. 111.

900. *Add. Annotations :*—**Refd.** Jones *v.* Oceanic Steam Navigation Co., [1924] 2 K. B. 730; A.-G. *v.* Blackpool Corpn. (1928), 92 J. P. 50; Lazard Bros. & Co. *v.* Brooks (1932), 37 Com. Cas. 224.

969. *Add. Annotation :*—**Refd.** Busby *v.* Avgherino, [1927] 2 Ch. 33.

976. After this case add :—
Age of parties to conveyance.]—*See* Law of Property Act, 1925 (c. 20), s. 205 (1) (ii).

981. *Add. Annotation :*—*Generally*, **Refd.** Berners *v.* Fleming, [1925] Ch. 264.

1007. *Add. Annotation :*—**Refd.** Lowther *v.* Clifford (1926), 95 L. J. K. B. 576.

1015. *Add. Annotation :*—**Refd.** Westminster Bank *v.* Hilton (1926), 136 L. T. 315.

1028. *Add. Annotation :*—**Consd.** R. *v.* Kylsant (Lord), [1932] 1 K. B. 442.

1032. *Add. Annotation :*—**Refd.** Callard *v.* Beeney, [1930] 1 K. B. 353.

1065. *Add. Annotation :*—**Consd.** Taylor *v.* British Legal Life Assce. (1925), 94 L. J. Ch. 284.

1067. *Add. Annotation :*—**Refd.** Elder, Dempster *v.* Paterson, Zochonis, Griffiths Lewis Steam Navigation Co. *v.* Paterson, Zochonis, [1924] A. C. 522.

1075. *Add. Annotation :*—**Refd.** Eshelby *v.* Federated European Bank, Ltd. (1931), 101 L. J. K. B. 245.

1076a. .]—I do not see that a guarantor stands in any better position than any other contractor, & I do not see that this contract is to be construed in any different way from any other contract. . . . It is to be construed with reasonable & proper strictness, as every other contract has to be construed (SWIFT, J.). —ESHELBY *v.* FEDERATED EUROPEAN BANK, LTD., [1932] 1 K. B. 254; *on appeal*, [1932] 1 K. B. 423, C. A.

1081. *Add. Annotations :*—**Refd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4. **Mentd.** Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

1090. *Add. Annotation :*—**Refd.** Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

1093. *Add. Annotation :*—**Consd.** Aldridge *v.* Wright (1929), 98 L. J. K. B. 582.

1097. *Add. Annotation :*—**Refd.** Jardine *v.* A.-G. for Newfoundland (1932), 48 T. L. R. 199.

1098. *Add. Annotation :*—**Refd.** Gregg *v.* Richards, [1926] Ch. 521.

1099. *Add. Annotation :*—**Refd.** Humphery *v.* Wilson (1929), 141 L. T. 469.

1106. *Add. Annotation :*—**Refd.** Gregg *v.* Richards, [1926] Ch. 521.

1107. *Add. Annotations :*—**Refd.** Gregg *v.* Richards, [1926] Ch. 521; Inland Revenue Comrs. *v.* Dalgety & Co. (1929), 98 L. J. K. B. 542; Diggins *v.* Forestal Land, Timber & Railways Co. (1930), 142 L. T. 509; I. R. Comrs. *v.* Dalgety & Co., [1930] A. C. 527.

1109. *Add. Annotations :*—**Refd.** Reed *v.* Page & East (1926), 42 T. L. R. 744; Svenssons (C. Wilh.) Travaruaktiebolag *v.* Cliffe S.S. Co. (1931), 37 Com. Cas. 83.

PART III. SECT. 3, SUB-SECT. 9.

874 ii. ——.]—SHUKIN *v.* DEMOSKY (Sask.), [1927] 1 D. L. R. 649.—**CAN.**

PART III. SECT. 3, SUB-SECT. 13.—B. (b).

948 vi. ——.]—As soon as there is an adequate & sufficient definition, with convenient certainty, of what is intended to pass by a deed, any subsequent erroneous addition will not vitiate it.—DARAPALE, ETC. *v.* NAZIR (1923), I. L. R. 50 Calc. 394.—**IND.**

949 xvi. ——.]—WILSON *v.* R., [1926] Exch. C. R. 8.—**CAN.**

PART III. SECT. 3, SUB-SECT. 14.

951 ii. ——.]—PRICE BROTHERS & Co., LTD. *v.* R., [1926] 3 D. L. R. 642. —**CAN.**

PART III. SECT. 3, SUB-SECT. 15.

11. —— *Crown grants.*]—The doctrine of *omnia præsumuntur rite esse acta* should apply in its fullest extent in respect to the compliance with statutory conditions in the obtaining of Crown grants for purchase or pre-emption under the Land Act, &, though it may be shown in a proper case that irregularity, error or deception have in fact led to the issuance of such a grant, yet before it can be attacked the Crown must be, at least, a party to the proceedings & the issue will, in many cases, depend upon the attitude taken by the Crown.—NORTH PACIFIC LUMBER CO. *v.* SAYWARD, [1918] 2 W. W. R. 771; 24 B. C. R. 273.—**CAN.**

PART III. SECT. 3, SUB-SECT. 16.

r i. —— *Grant of easement—Reference to plan—Plan omitted.*]—*Held :* where there was no plan, parol evidence was admissible to identify the land.—BANKS PENINSULA ELECTRIC POWER BOARD *v.* AKAROA BOROUGH COUNCIL, [1923] N. Z. L. R. 880.—**N.Z.**

PART III. SECT. 3, SUB-SECT. 18.—A.

988 vi. ——.]—Where there are two possible interpretations of a contract & one would lead to an obvious absurdity or injustice, the other interpretation is to be accepted.—THOMPSON *v.* NORTH BATTLEFORD, [1924] 1 D. L. R. 159; 1 W. W. R. 51.—**CAN.**

988 vii. ——.]—*Re* FORD & HARDY (Ont.), [1926] 2 D. L. R. 749.—**CAN.**

988 viii. ——.]—CANADIAN STEVEDORING CO., LTD. *v.* ROBIN LINE S.S. Co., CANADIAN STEVEDORING CO., LTD. *v.* SEAS SHIPPING CO. (B. C.), [1927] 4 D. L. R. 614; [1927] 2 W. W. R. 737.—**CAN.**

PART III. SECT. 3, SUB-SECT. 21.

b i. —— *Award—Computation of hours worked.*]—An award made by the Commonwealth Ct. of Conciliation & Arbitration between the Seaman's Union & various resps., of whom deft. co. was one, provided in respect of deckhands that "the time taken for meals partaken while the vessel is under way shall not be included." Deft. co. in reckoning the hours worked by an employee claimed to deduct the time occupied by him at meals while the vessel was in port :—*Held :* in the absence of a custom or usage to support such a deduction, the maxim *expressio unius est exclusio alterius* applied, & the appeal was allowed.—THE FEDERATED SEAMEN'S UNION OF AUSTRALASIA *v.* THE HUON, CHANNEL & PENINSULA STEAMSHIP CO., LTD., [1925] Tas. L. R. 1.—**AUS.**

PART III. SECT. 4, SUB-SECT. 1.

1144 x. *Blanks in printed form not filled in.*]—*Re* DEMPSEY & MIDLAND L. & S. Co., [1925] 4 D. L. R. 570.—**CAN.**

1144 xi. ——.]—CANADIAN COLLIERIES (DUNSMUIR), LTD. *v.* DUNSMUIR, DUNSMUIR *v.* MACKENZIE (1911), 18 B. C. R. 538.—**CAN.**

1144 xii. ——.]—LACHMAN DAS *v.* RAM PRASAD (1927), I. L. R. 49 All. 680.—**IND.**

1144 xiii. ——.]—Parol evidence to vary a written instrument rejected, although it was doubtful if it contained all the agreement between the parties. —MCALPINE *v.* HOW (1862), 9 Gr. 372. —**CAN.**

h i. ——.]—WILLARD *v.* MCNAB (1851), 2 Gr. 601.—**CAN.**

h ii. ——.]—PAPINEAU *v.* GUARD (1851), 2 Gr. 512.—**CAN.**

h iii. ——.]—MCGILL *v.* MCGLASHAN (1857), 6 Gr. 324.—**CAN.**

1157a. ——]—ANON. (1849), 13 L. T. O. S. 325.

1171. *Add. Citation :*—109 L. T. 820.

1177a. ——.]—DAVIS *v.* SYMONDS (1787), 1 Cox, Eq. Cas. 402 ; 29 E. R. 1221.

1185. *Add. Annotation :*—**Refd.** Newsholme Bros. *v.* Road Transport & General Insce. Co., [1929] 2 K. B. 356.

1192. *Add. Annotation :*—**Refd.** Kimber Coal Co. *v.* Stone & Rolfe, [1926] A. C. 414.

1205. *Add. Annotations :*—**Consd.** United States Shipping Board *v.* Bunge & Born (1924), 41 T. L. R. 73. **Refd.** Frenkel *v.* MacAndrews, [1929] A. C. 545 ; Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48 ; The Torni, [1932] P. 27.

1230. *Add. Annotation :*—**Refd.** Jacobs *v.* Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520.

1235. *Citations :*—For the existing citations substitute " GREVILLE *v.* ATTKINS (1829), as reported in 4 Man. & Ry. K. B. 372 at p. 379."

1237. *Add. Annotation :*—**Refd.** *Re* Gardner, Ellis *v.* Ellis, [1924] 2 Ch. 243.

1248. *Add. Annotation :*—**Refd.** Jacobs *v.* Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520.

1322. *Add. Annotation :*—**Refd.** Nagoremull *v.* Triton Insce. (1924), 41 T. L. R. 168.

1327. *Add. Annotation :*—**Refd.** Cohen *v.* Roche (1926), 95 L. J. K. B. 945.

1329a. —— ——.]—Parol evidence is admissible to show that a party to a written agreement to purchase entered into it as agent to another.—MARSTON *v.* ROE d. FOX (1838), 8 Ad. & El. 14 ; 2 Nev. & P. K. B. 504 ; Will. Woll. & Dav. 712 ; 8 L. J. Ex. 293 ; 112 E. R. 742, Ex. Ch.

Annotations :—**Consd.** Israell *v.* Rodon (1839), 2 Moo. P. C. C. 51. **Refd.** Matson *v.* Magrath (1849), 1 Rob. Eccl. 680.

1338. *Add. Annotation :*—**Refd.** Callard *v.* Beeney, [1930] 1 K. B. 353.

1364. *Add. Annotation :*—**Consd.** Boot *v.* Uttoxeter U. D. C. (1924), 88 J. P. 118.

1383. *Add. Annotation :*—**Consd.** Stumbles *v.* Whitley (1929), 46 T. L. R. 37.

1174 i. *As to nature of transaction—Absolute conveyance—Relationship of mortgagor & mortgagee.*]—Where a registered instrument clearly shows a transaction between the parties to be a sale, oral evidence to show that it was intended to be a mtge. is inadmissible in evidence.—MAUNG SHWE PHOO *v.* MAUNG TUN SHIN (1927), I. L. R. 5 Ran. 644.—**IND.**

PART III. SECT. 4, SUB-SECT. 2.

1176 xxviii. ——.]—Where parties to a contract have set out its terms & conditions in writing, which is presumably intended to be a record of the transaction, the law does not permit the introduction of other terms by means of oral evidence.—STEINE *v.* MATHIEU, [1923] 3 W. W. R. 493.—**CAN.**

1176 xxix. ——.]—Where an original agreement has complied with Stat. Frauds, evidence of an alleged parol variation of its terms is inadmissible.—HALL *v.* GOLDSTONE, [1923] N. Z. L. R. 916.—**N.Z.**

1176 xxx. ——.]—KASTER *v.* COWAN, [1925] 2 D. L. R. 742 ; [1925] 2 W. W. R. 186 ; 21 Alta. L. R. 366 ; *revsg.*, [1923] 4 D. L. R. 491 ; [1923] 3 W. W. R. 610.—**CAN.**

1176 xxxi. ——.]—Defts. excepted to a declaration on the ground that pltf. could not vary the terms of a written deed of transfer by evidence of a prior agreement, unless or until he expressly claimed a cancellation, ratification, or reformation of the deed of transfer :—*Held :* the exception should be upheld.—ADAM *v.* JHAVARY (1925), 46 N. L. R. 190.—**S. AF.**

1176 xxxii. ——.]—BARTEL *v.* BEYEA (N. B.), [1926] 1 D. L. R. 1196.—**CAN.**

1176 xxxiii. ——.]—TYSON *v.* ABERCROMBIE (1888), 16 O. R. 98.—**CAN.**

1176 xxxiv. ——.]—LILLY *v.* PITTMAN (1899), 8 Nfld. L. R. 170.—**NFLD.**

1176 xxxv. ——.]—Where an agreement signed by deft. was not accepted by pltf., & there was no memorandum in writing of the agreement actually entered into between the parties :—*Held :* the rule prohibiting the introduction of oral evidence to vary the terms of a writing had no application.—DOREY *v.* GRAY (1908), 42 N. S. R. 259.—**CAN.**

1176 xxxvi. ——.]—The rule of law that extrinsic evidence is not, in general, admissible to contradict, vary or explain written instruments, must be enforced in cases that fairly come within it.—FORMAN *v.* UNION TRUST CO., LTD., [1927] S. C. R. 1.—**CAN.**

1176 xxxvii. ——.]—KEEWATIN POWER CO. *v.* KEEWATIN FLOUR MILLS, LTD., KEEWATIN POWER CO. *v.* LAKE OF THE WOODS MILLING CO., [1928] 1 D. L. R. 32 ; 61 O. L. R. 363 ; *affd.*, [1929] 3 D. L. R. 199 ; 63 O. L. R. 667.—**CAN.**

1176 xxxviii. ——.]—LAKE OF THE WOODS MILLING CO. *v.* VINCENT, [1928] 2 D. L. R. 145.—**CAN.**

1176 xxxix. ——.]—SOURCE RESEARCH BUREAU *v.* FOSTER, [1931] 2 D. L. R. 335 ; 2 M. P. R. 537.—**CAN.**

1189 i. ——.]—*Held :* parol evidence was not admissible to contradict a statement in a document as to ownership by showing that a wife, in signing it, was acting as agent of her husband.—KATZMAN *v.* OWNAHOME REALTY CO., [1924] 1 D. L. R. 201 ; [1924] S. C. R. 18.—**CAN.**

1222 iv. —— ——.]—ADVANCE RUMELY THRESHER CO. *v.* MANSKE, [1920] 3 W. W. R. 78.—**CAN.**

1228 ii. —— ——.]—BLAKIE *v.* MCLENNAN (1901), 33 N. S. R. 558.—**CAN.**

PART III. SECT. 4, SUB-SECT. 3.

1237 v. ——.]—When the ct. infers that a written document was not intended by the parties to contain the whole agreement, evidence of other terms not included in it may be given if they are not inconsistent with what is written. This intent must be sought in the conduct & language of the parties & the surrounding circumstances.—CONNORS *v.* MCGREGOR, [1924] 2 D. L. R. 86 ; 2 W. W. R. 294 ; 20 Alta. L. R. 289.—**CAN.**

1237 vi. ——.—Extrinsic evidence to add a condition to a concluded contract :—*Held :* not admissible.—FORMAN *v.* UNION TRUST CO. (Can.), [1927] 1 D. L. R. 68.—**CAN.**

1237 vii. ——.]—BAKKER *v.* WINKLER, [1931] S. C. R. 233 ; [1930] 4 D. L. R. 266 ; *revsg.*, [1930] 1 D. L. R. 557 ; 24 Alta. L. R. 258 ; [1929] 3 W. W. R. 465 ; *revsg.*, [1929] 4 D. L. R. 107.—**CAN.**

1237 viii. ——.]—In a vendor's action for specific performance of an agreement for the sale of land deft. pleaded (*inter alia*) that pltf. had represented that the lands in question included a certain number of acres of irrigated land for which she held water rights, whereas the fact was that she knew that the quantity of water she was entitled to receive was sufficient for only a part of said acreage. The formal agreement for sale made no reference to any of the lands as irrigated or to any water rights with respect to the land sold. It was contended, although the point had neither been raised by the pleadings nor any amendment thereof sought, that the written agreement did not contain all of the contract, but that the correspondence preceding the agreement should be treated as part of the contract :—*Held :* there was nothing in the present case to bring it within any of the exceptions to the rule that extrinsic evidence is not admissible to add to an agreement reduced to writing.—WHITNEY *v.* MACLEAN, [1932] 1 W. W. R. 417.—**CAN.**

PART III. SECT. 4, SUB-SECT. 4.

e i. ——.]—LIVELY *v.* SHUBENACADIE LUMBER CO., [1931] 1 D. L. R. 985.—**CAN.**

1265 xix. —— ——]—A latent defect in a grant cannot be remedied by parol evidence. In order to correct an error in the descriptive part of a grant by parol evidence, the evidence must be such as to leave no doubt of the intention of the grantor.—BRENNOCK *v.* FRASER (1853), 2 N. S. R. (James), 178.—**CAN.**

PART III. SECT. 4, SUB-SECT. 5.—A.

m i. ——.]—*Held :* oral evidence was admissible to explain the surrounding circumstances.—SCHECTER *v.* SCHNIER, SCHNIER *v.* SCHECTER (Man.), [1927] 3 D. L. R. 1167 ; [1927] 3 W. W. R. 111.—**CAN.**

o i. ——.]—HERRON *v.* MAYLAND (Alta.), [1927] 4 D. L. R. 171 ; [1927] 2 W. W. R. 768 ; *affd.*, [1928] 2 D. L. R. 858 ; [1928] S. C. R. 225.—**CAN.**

PART III. SECT. 4, SUB-SECT. 6.—B.

1341 xiii. ——.]—LEWIS & SILLS *v.* HUGHES (1906), 13 B. C. R. 228.—**CAN.**

1341 xiv. ——.]—An agreement for the sale of land was evidenced by a receipt, which did not specify the land : —*Held :* parol evidence was admissible, in an action for specific performance of the agreement, to show what was the subject-matter.—BAXTER *v.* ROLLO (B. C.) (1912), 21 W. L. R. 892 ; 5 D. L. R. 764 ; 2 W. W. R. 786.—**CAN.**

sp. *Account.*]—*Held :* parol evidence was admissible, to show what an account referred to in an agreement was, & to identify such account.—DES BRISAY *v.* GLENCROSS (1850), 12 N. B. R. (1 Han.) 105.—**CAN.**

1401. *Add. Annotation:* — **Refd.** Sherwood *v.* Tucker, [1924] 2 Ch. 440.

1443. *Add. Annotation:*—**Refd.** Marbé *v.* George Edwardes (Daly's Theatre) (1927), 96 L. J. K. B. 980.

1451. *Add. Annotation:*—**Refd.** Reading Trust *v.* Spero (1929), 46 T. L. R. 117.

1459. *Add. Annotations:*—**Refd.** *In the Estate of* Musgrove, Davis *v.* Mayhew, [1927] P. 264; Smith *v.* Thompson (1931), 146 L. T. 14.

1469. *Add. Annotation:*—**Distd.** Crediton Gas Co. *v.* Crediton U. C., [1928] Ch. 447.

1471. *Citations:*—For the existing citations read "MILDMAY'S CASE (1584), 1 Co. Rep. 175 a; Jenk. 247; 76 E. R. 379; *sub nom.* MILDMAY *v.* STANDISH, Cro. Eliz. 34; Moore, K. B. 144."

1485. *Add. Annotation:*—**Refd.** Bird *v.* I. R. Comrs. (1924), 12 Tax Cas. 785.

1513. *Add. Annotations:*—**Refd.** Michael *v.* Phillips (1923), 130 L. T. 142; Hawkesworth *v.* Turner (1930), 46 T. L. R. 389.

1516. *Add. Annotation:*—**Consd.** Lawrence *v.* Cassel, [1930] 2 K. B. 83.

1534. *Add. Annotation:*—**Refd.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 725.

1537. *Add. Annotation:*—**Consd.** Jacobs *v.* Batavia & General Plantations Trust, [1924] 2 Ch. 329.

1562. *Add. Annotation:*—**Consd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

1576. *Add. Annotations:*—**Folld.** Miller *v.* Cannon Hill Estates, Ltd., [1931] 2 K. B. 113. **Refd.** Collins *v.* Hopkins, [1923] 2 K. B. 617; Jameson *v.* Kinmell Bay Land Co. (1931), 47 T. L. R. 410.

1576a. Condition of houses on building estate.]—A representation by builders in conversation with a prospective buyer, that all houses on the estate are of the best material & workmanship, may amount to a warranty collateral to a subsequent formal contract, for breach of which an action will lie.—MILLER *v.* CANNON HILL ESTATES, LTD., [1931] 2 K. B. 113; 100 L. J. K. B. 740; 144 L. T. 567; 75 Sol. Jo. 155.

1582. *Add. Annotations:* — **Consd.** Jacobs *v.* Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520. **Refd.** Michael *v.* Phillips (1923), 130 L. T. 142.

1583. *Add. Annotations:*—**Folld.** Jameson *v.* Kinmell Bay Land Co. (1931), 47 T. L. R. 593. **Consd.** Jacobs *v.* Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520. **Refd.** Michael *v.* Phillips (1923), 130 L. T. 142.

1588a. —— Sale of land—Agreement to construct road.]—An estate co., by their agent, orally promised an intending purchaser of a building plot that a road, marked on a plan shown to him & giving access to the plot, would be constructed by them & be ready for use within a reasonable time. Relying on this promise, the purchaser entered into a written agreement to purchase, & the plot was duly conveyed to him:—*Held:* the oral promise did not form part of the contract to purchase, but was a separate contract, & that evidence of its terms could be given without contravening the rule that parol evidence may not be given to vary the provisions of a written agreement.—JAMESON *v.* KINMELL BAY LAND CO., LTD. (1931), 47 T. L. R. 593, C. A.

PART III. SECT. 4, SUB-SECT. 7.

g i. —— "*Right of way clearing.*"]—*Held:* extrinsic evidence was properly admitted to show that amongst railway contractors, & in railway construction work, the above words had acquired a special & technical meaning, & applied only to land requiring to be cleared & not to the full area of the right of way.—LAINE *v.* KENNEDY (1914), 43 N. B. R. 173.—**CAN.**

g ii. —— "*Wood cutting voyage.*"]—Where an insurance policy contained an exception that the ship was not covered if lost when engaged on a wood cutting voyage, the ct. refused to allow parol evidence to be given in explanation of the word "wood."—THOMAS *v.* MARINE INSURANCE CO. (1857), 4 Nfld. L. R. 173.—**NFLD.**

g iii. —— "*Stock-in-trade.*"]—By a contract in writing applts. sold to resp. "the business . . . including the goodwill & stock-in-trade in connection therewith":—*Held:* the word "stock-in-trade" might in certain circumstances mean something more than merchandise, & evidence was therefore admissible to explain its meaning.—KAJEE BROS. *v.* MOOSA (1930), 51 N. L. R. 273.—**S. AF.**

PART III. SECT. 4, SUB-SECT. 8.—A.

1396 x. —— —— ——.]—The doctrine of *contemporanea expositio* is applied, speaking generally, only where the contract is ambiguous.—MYERS *v.* UNION NATURAL GAS CO. (1922), 53 O. L. R. 88.—**CAN.**

1396 xi. —— —— ——.]—*Re* CANADIAN NORTHERN RY. CO. & OTTAWA, [1924] 4 D. L. R. 1217; 56 O. L. R. 153.—**CAN.**

PART III. SECT. 4, SUB-SECT. 11.—D.

st. *To prove illegality of consideration —Evidence inadmissible.*]—DAUPHINEE *v.* DAUPHINEE (1924), 57 N. S. R. 506.—**CAN.**

PART III. SECT. 4, SUB-SECT. 11.—E. (a).

1496 iv. —— ——.]—AVERBACH *v.* BLOOM & DWORKIN (Can.), [1927] 3 D. L. R. 721.—**CAN.**

1509 vi. —— ——.]—Where a party enters into a written agreement, under seal, for the sale for a certain sum of all his right, title, share & interest in a certain business, evidence is inadmissible to prove a prior verbal agreement for the sale of the goodwill of the business for a sum in addition to the amount so specified in the written agreement. In this case the prior collateral agreement was not interfered with by the subsequent written agreement. It was a parol condition on which the written agreement depended.—AUSTIN *v.* BOONE (1866), 6 N. S. R. (2 Old.) 149.—**CAN.**

1509 vii. —— ——.]—As between the actual parties to an outright conveyance a contemporaneous oral agreement to allow repurchase cannot be proved, but if the party who alleges the contemporaneous oral agreement was not actually a party to the conveyance, although the conveyance was given on his behalf, he can prove that there was such an agreement.—MA MI *v.* MAUNG AUNG DUN (1928), I. L. R. 6 Ran. 376.—**IND.**

PART III. SECT. 4, SUB-SECT. 11.—E. (b).

1529 ii. —— ——.]—*Held:* the trial judge had been in error in construing a deed in the light of antecedent correspondence between the parties, it being well settled that even a formal antecedent contract cannot be looked at to control the terms of a conveyance.—WADIA *v.* SECRETARY OF STATE FOR INDIA (1928), L. R. 56 Ind. App. 51.—**IND.**

PART III. SECT. 4, SUB-SECT. 11.—G. (a).

h i. ——.]—MCLEAN *v.* JOHNSON, [1923] 4 D. L. R. 178; 32 B. C. R. 495; [1923] 3 W. W. R. 913.—**CAN.**

h ii. —— *Contemporary oral agreement acted on by parties.*]—In an action for foreclosure & sale on default in payment of principal, according to the written terms of a mtge.:—*Held:* an oral agreement that payment would not be exacted until a subsequent date could be proven & enforced.—JOHNSON INVESTMENTS, LTD. *v.* PAGRITIDE, [1923] 2 D. L. R. 985; [1923] 2 W. W. R. 736.—**CAN.**

m i. —— *Mortgage.*]—DICK *v.* SCHWARTZ (Man.), [1926] 3 D. L. R. 894.—**CAN.**

PART III. SECT. 4, SUB-SECT. 11.—G. (b).

1573 i. *Evidence admissible—Proof of consideration.*]—Regard may be had to a collateral oral agreement to show that a deed is in fact founded on a valuable consideration.—KIRK *v.* GREAVES, [1924] N. Z. L. R. 260.—**N.Z.**

m i. —— —— ——.]—Where a complete agreement was contained in a written contract & it satisfied Stat. Frauds:—*Held:* an oral arrangement as to remuneration was a separate collateral agreement.—PERRY *v.* ESPLEY, [1924] 4 D. L. R. 1280; 3 W. W. R. 674.—**CAN.**

m ii. —— —— ——.]—When the ct. infers that a written document was not intended by the parties to contain the whole agreement, evidence of other terms not included in it may be given if they are not inconsistent with what is written.—CONNORS *v.* MCGREGOR, [1924] 2 D. L. R. 86; 2 W. W. R. 294; 20 Alta. L. R. 289.—**CAN.**

PART III. SECT. 5, SUB-SECT. 1.

f i. ——.]—Parties to a written contract are not bound by its punctuation.—WALKER *v.* BOTHWELL, [1931] App. D. 70.—**S. AF.**

1607. *Add. Annotations :*—**Consd.** United States Shipping Board *v.* Bunge y Born Limitada Sociedad (1925), 134 L. T. 303. **Refd.** Cunard S.S. Co. *v.* Buerger (1926), 135 L. T. 494 ; Frenkel *v.* McAndrews & Co., [1929] A. C. 545 ; Kaufmann *v.* British Surety Insce. Co. (1929), 45 T. L. R. 399 ; Stag Line, Ltd. *v.* Foscolo Mango & Co. (1931), 48 T. L. R. 127.

1628. *Add. Annotation :*—**Consd.** Jacobs *v.* Batavia & General Plantations Trust (1924), 93 L. J. Ch. 520.

1652. *Add. Annotation :*—**Refd.** *Re* Carnarvon's Chesterfield S. E., *Re* Carnarvon's Highclere S. E. (1926), 70 Sol. Jo. 977.

1675. *Add. Annotation :*—**Refd.** Excess Insce. *v.* Mathews (1925), 31 Com. Cas. 43.

1678a. Printed words deleted.]—Words deleted in a printed form of mercantile contract are to be treated as if they had not formed part of the printed contract ; they cannot be used to construe added words.—SASSOON (M. A.) & SONS, LTD. *v.* INTERNATIONAL BANKING CORPN., [1927] A. C. 711 ; 96 L. J. P. C. 153 ; 137 L. T. 501, P. C.

1735a. Incorporation of guarantee clause—Identity of clause uncertain—Clause not available.]—Pltfs., a ship-repairing co., requiring a new intermediate pressure cylinder for the engines of a steamer which they had contracted to repair, obtained a quotation from defts., marine engineers. At the head of defts.' letter was a printed notice, "All offers are subject to our usual strike & guarantee clauses, accidents, etc." Pltfs. ordered the cylinder, but after it had been delivered & fitted it was found to be defective. A new cylinder was subsequently supplied by defts., but owing to the delay pltfs. were not able to complete the repairs in accordance with their contract with the shipowners & had to pay them damages. In an action to recover the amount of the damages defts. alleged that the contract for the supply of the cylinder was made subject to "our usual" guarantee clause & that their guarantee clause provided (*inter alia*) that "the contractors shall not in any case be liable for any detention of the vessel or other consequential damages howsoever arising" :—*Held :* as it was not clear what guarantee clause was incorporated, since the clause suggested by defts. was the clause in their usual engine agreement which was drawn to meet the case of engines being supplied to a shipowner & not to meet such a case as the present, & as it was not proved that defts. had made it clear that they intended to limit their liability, pltfs. were entitled to recover.—ALISON (J. GORDON) & CO., LTD. *v.* WALLSEND SLIPWAY & ENGINEERING CO., LTD. (1927), 43 T. L. R. 323, C. A.

1744. *Add. Annotations :*—**Refd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007 ; Lazard Bros. & Co. *v.* Brooks (1932), 37 Com. Cas. 224.

SUB-SECT. 2 (Vol. XVII., p. 372).

NOTE.—*Conveyancing Act*, 1881 (*c.* 41), *s.* 55, *is now replaced by Law of Property Act*, 1925 (*c.* 20), *s.* 68.

1865. For cross-reference before this case, *See, now*, Law of Property Act, 1925 (c. 20), s. 62.

1869a. —— Curtilage, garden & adjoining close.]—ANON. (1531), Bro. N. C. 86 ; 73 E. R. 885.

PART III. SECT. 5, SUB-SECT. 4.

r i. —— *Meaning to words given though grammatical construction faulty.*]—*Re* DEMPSEY & MIDLAND L. & S. Co., [1925] 4 D. L. R. 570.—**CAN.**

PART III. SECT. 6.

t i. ——.]—The date mentioned in a deed is not conclusive, & the actual date of the execution may be shown.—DOE d. CONNEL *v.* DICKINSON (1869), 12 N. B. R. (1 Han.) 456.—**CAN.**

PART III. SECT. 7, SUB-SECT. 1.—A. (a).

f i. —— —— —— *Such other part as may from time to time be required.*]—RENE *v.* CARLING EXPORT BREWING & MALTING CO., [1929] 2 D. L. R. 881 ; 63 O. L. R. 582.—**CAN.**

PART III. SECT. 7, SUB-SECT. 2.

sw. "*Et cetera.*"]—The phrase "*et cetera*" does not render a contract uncertain, if its application appears from the context.—AVERBACH *v.* BLOOM & DWORKIN (CAN.), [1927] 3 D. L. R. 721—**CAN.**

PART III. SECT. 8, SUB-SECT. 1.—A. (a).

1737 i. *General rule.*]—If both the recitals & the operative part of a deed are clear & unambiguous, but are inconsistent with each other, the operative part must prevail.—HUSSAIN *v.* CHIN CHONG (1924), I. L. R. 3 Ran. 53.—**IND.**

PART III. SECT. 9, SUB-SECT. 1.—A.

r i. —— *Registration of statutory memorial.*]—By a deed of 1917 resp. assigned leasehold premises in Hong Kong to A. & B. as joint tenants, the deed stating that the property had been sold to them for $16,000, the receipt of which was acknowledged. The deed was registered under the Hong Kong Land Registration Ordinance, 1844, with a memorial which, as required by the Ordinance, was verified on oath & gave full particulars of the deed, including the receipt. In 1929 B. mortgaged a half interest in the property to applt. as security for an advance of $25,000 ; the mtge. was registered under the Ordinance. Before the advance was made, applt.'s solr. inspected the registered memorial of the deed of 1917, but he did not demand production of the original. B., unknown to applt. or his solr., was a son of resp. Resp. brought an action claiming to be entitled to the property freed from the mtge. By his evidence, which the cts. in Hong Kong accepted as reliable after an objection to its admissibility, resp. stated that the name A. was an alias for himself, that there was no consideration for the deed of 1917, & that it had remained in his possession, no beneficial interest being intended to be conveyed to his son B. :—*Held :* the action failed, both because resp.'s evidence was inadmissible to contradict the plain terms of the deed, & because the registered memorial estopped resp. from alleging a trust ; having regard to the full particulars contained in the statutory memorial, there was no negligence in not having required production of the deed itself.—TSANG CHUEN *v.* LI PO KWAI, [1932] A. C. 715 ; 101 L. J. P. C. 193, P. C.—**HONG KONG.**

PART III. SECT. 10, SUB-SECT. 1.—D.

t i. ——.]—DAVISON *v.* BENJAMIN (1874), 9 N. S. R. (3 G. & O.) 474.—**CAN.**

PART III. SECT. 10, SUB-SECT. 1.—E.

1840 ii. —— ——.]—In case of conflict the description in the text of a grant of land when clear & unambiguous must prevail over the diagram attached to the grant.—UNION GOVT. *v.* LOVEMORE, [1930] App. D. 13.—**S. AF.**

1844 ii. —— ——.]—Pltf. held a certificate of indefeasible title to lots 1 & 2, part of the north-east quarter of a certain section of land, & the Crown grant to his predecessor in title described the land by reference to a plan annexed & numbered the north-east quarter of said section. Deft.'s title was as purchaser under the grantee from the Crown of land, also described in the grant by reference to a plan annexed & numbered the south-east quarter of the same section. Neither quarter was a full quarter section, & the plans showed that pltf.'s land had for its southerly boundary a certain creek & that said creek was the northerly boundary of deft.'s land. Pltf. claimed a small point of land in possession of deft. which extended into the creek & north of the quarter-section line :—*Held :* while the quarter sections were referred to in words in the deeds, yet on the true construction of them it was clear that the plans were to govern.—KIPP *v.* SIMPSON, [1928] 4 D. L. R. 421 ; [1928] 3 W. W. R. 331.—**CAN.**

1844 iii. —— —— *Grant of easement.*]—BROWN *v.* NORBURY, [1931] 2 W. W. R. 863 ; 4 D. L. R. 507 ; 25 Alta. L. R. 591.—**CAN.**

PART III. SECT. 10, SUB-SECT. 2.—D.

1877 ii. ——.]—Where a contract for the sale of land rests *in fieri*, the purchaser, if the quantity be considerably less than it was stated, will be entitled to an abatement, although the agreement contains the words "more or less" or "by estimation."—MURPHY *v.* HORN, [1929] 4 D. L. R. 693 ; 64 O. L. R. 354.—**CAN.**

1902. After this case add :—
Reservation operates immediately.]—*See* Law of Property Act, 1925 (c. 20), s. 65 (1), (2).

1913. *Add. Annotation :*—**Apprvd.** Public Trustee *v.* Lancaster Duchy, [1927] 1 K. B. 516.

1930. After this case add :—
——.]—*See, now,* Law of Property Act, 1925 (c. 20), s. 63.

1944a. Limitation to commence after existing lease—Lease void.]—A conveyance which is limited to commence after an existing lease takes effect presently, if that lease is void.—BLACKMORE *v.* CUMBERFORD (1680), 1 Freem. K. B. 527 ; 89 E. R. 395.

Part IV.—Covenants and Provisoes.

2006. *Add. Annotation :*—**Refd.** Flexman *v.* Corbett, [1930] 1 Ch. 672.

2111. *Add. Annotation :*—**Refd.** Wise *v.* Whitburn, [1924] 1 Ch. 460.

2131. *Add. Annotation :*—**Consd.** Everett *v.* Griffiths, [1924] 1 K. B. 941.

2163. *Add. Annotation :*—**Refd.** Leeming *v.* Jones (1929), 141 L. T. 472.

PART IV. SECT. 1, SUB-SECT. 2.—A.

1990 i. *General rule.*]—Cts. always construe clauses in deeds as covenants rather than conditions if they reasonably do so.—WOLFE *v.* CROFT (N. S.) (1911), 9 E. L. R. 402.—**CAN.**

PART VII. SECT. 8, SUB-SECT. 3.

sb. *Insertion of consideration.*]—The alteration, without authority from the promisors, of the sealed instrument in question herein, by the insertion of a certain statement of consideration :—*Held :* not to have been merely a case of the writing into the document of the intended consideration, but to have constituted a substitution of another contract for the original contract, &, therefore, to have nullified the deed.—NYKIFORUK & NYKIFORUK *v.* CONROY, [1931] 1 W. W. R. 522 ; 2 D. L. R. 407 ; 25 S. L. R. 265.—**CAN.**

DEPENDENCIES.

INCLUDING DOMINIONS, DEPENDENCIES, COLONIES AND BRITISH POSSESSIONS.

Part I.—In General.

After this case add "*See, now,* Statute of Westminster, 1931 (c. 4), s. 11."

Add. Annotation:—**Refd.** Sobhuza II. *v.* Miller, [1926] A. C. 518.

Right of Crown to legislate for protectorate—Notwithstanding grant of territory within protectorate.]—The legislative authority over the territory of a Crown Protectorate belongs to the Crown & is controllable only by the Imperial Parliament.

Under the Foreign Jurisdiction Act, 1890 (c. 37), the prerogative power of legislation in respect of Protectorates is exercised by Orders in Council, & these Orders have statutory effect. A grant of land in a Protectorate by the Crown is an executive & not a legislative act, & cannot by itself impose a fetter on the legislative power of the Crown. Where therefore by a subsequent Order in Council the Crown has exercised legislative powers in respect of the land previously granted, the legislative power so exercised is valid. The doctrine of derogation from grant cannot be applied in the case of a grant by the Crown so as to deprive it of its paramount right to legislate for the Protectorate in which the subject of the grant is situate. The Crown cannot renounce or fetter its legislative authority by the mere fact that in the exercise of its prerogative it makes a grant of land within the territory over which the legislative authority exists.—NORTH CHARTERLAND EXPLORATION CO. (1910), LTD. *v.* R., [1931] 1 Ch. 169; 99 L. J. Ch. 483; 143 L. T. 623; 46 T. L. R. 566.

Add. Annotations:—*As to* (1) **Consd.** Abeyesekera *v.* Jayatilake (1931), 146 L. T. 193. *As to* (6) **Distd.** North Charterland Exploration Co. (1910) *v.* R. (1930), 99 L. J. Ch. 483.

7. *Add. Annotation:*—**Refd.** Sobhuza II. *v.* Miller, [1926] A. C. 518.

10a. —— ——.]—An extension of British jurisdiction in a British protectorate by Orders in Council may be referred to an exercise of power by an act of State, unchallengeable in any British ct., or to statutory powers given by Foreign Jurisdiction Act, 1890 (c. 37), under which the jurisdiction acquired by the Crown in a protected country is indistinguishable in legal effect from that acquired by conquest. The Crown cannot, except by statute, deprive itself of freedom to make Orders in Council, even such as are inconsistent with previous Orders.

Before the conquest & annexation of the South African Republic Swaziland was an independent native State, treated as a protected dependency of that Republic, by which it was administered under a Convention made in 1894 between Great Britain & the Republic. The Convention provided for the preservation of native law, & the agricultural & grazing rights of the natives. The annexation did not extend to Swaziland. Subsequently under Orders in Council certain lands in Swaziland were expropriated to the Crown, to the extinguishment of the use & occupation of them by natives under native law, certain lands being allotted exclusively to the natives:—*Held:* the Orders in Council were effective, even if they were not within the powers recognised by the Convention.—SOBHUZA II. *v.* MILLER, [1926] A. C. 518; 95 L. J. P. C. 137; 135 L. T. 215; 42 T. L. R. 446, P. C.

13. *Add. Annotation:* — **Refd.** Netherlands American Steam Navigation Co. *v.* Procurator-General (1925), 42 T. L. R. 81.

Part II.—Colonial and Dominion Government.

17a. **Order imposing liability to penalty—Power to make action void—Ceylon.**]—An Order in Council of 1923 made provision as to the Legislative Council in Ceylon, but reserved to His Majesty power to revoke, alter or amend the Order. Applt., as common informer, brought an action to recover penalties under the Order from resp., who he alleged had sat and voted after his seat had become vacant under its provisions by reason of his having a pecuniary interest in a contract with the Govt. In 1928, after the action had been brought, but before its trial, an amending Order in Council was made providing that the action should be dismissed; it also amended the Order of 1923 so as to except the office held by the respondent from its operation:—*Held:* the Order of 1928 was valid, having regard to the power reserved by the Order of 1923, & was an effective defence to the action, although it was retrospective in its operation.—ABEYESE-*v.* JAYATILAKE, [1923] A. C. 260; 101 L. J. P. C. 40; 146 L. T. 193. 48 T. L. R. 71; 75 Sol. Jo. 884, P. C.

20a. **Power of expropriation in mandated territory.**]—By the Mandate for Palestine, dated July 24, 1922, the Council of the League of Nations, acting under art. 22 of the Covenant of the League, entrusted to Great Britain the administration of Palestine. Art. 2 of the Mandate provided that Great Britain should be responsible for "safeguarding the civil & religious rights of the inhabitants of Palestine irrespective of race & religion." In 1923 an Order in Council authorised the High Comr. for Palestine to promulgate such ordinances as might be necessary for the peace, good order, & government of the country, & were not inconsistent with the Mandate. The High Comr. promulgated an ordinance expropriating certain springs for the purpose of supplying water to Jerusalem, with certain provisions for compensation.

In an action by the owners of the springs the Supreme Ct., sitting as a ct. of first instance, held that the ordinance was *ultra vires*, on the ground that it was inconsistent with the Mandate in that the provisions for compensation were inadequate. Special leave to appeal was granted, all questions of jurisdiction being left open. An Order in Council had made provision for appeals to the Privy Council, but only from orders of the Supreme Ct. sitting as a Ct. of Appeal:—*Held:* (1) the appeal was competent, since the jurisdiction under the Mandate was jurisdiction in a foreign country within the description in the preamble to Foreign Jurisdiction Act, 1890 (c. 37); (2) it was the right & duty of the ct. to consider whether the ordinance was consistent with the Mandate, but art. 2 had been misconstrued, & the ordinance was valid; (3) art. 2 did not mean that in every case of expropriation for a public purpose full compensation must be given. Natural justice required that in the absence of exceptional circumstances, fair provision should be made for compensation, but that depended not upon civil right, but upon the principles of sound administration, & it was not within the province of the ct. to consider whether an ordinance was within those principles. Further, the ordinance did make adequate provision for compensation.—JERUSALEM-JAFFA DISTRICT GOVERNOR *v.* SULEIMAN MURRA, [1926] A. C. 321; 95 L. J. P. C. 46; 134 L. T. 609; 42 T. L. R. 299, P. C.

23. *Add. Annotation:*—**Consd.** A.-G. *v.* G. S. & W. Ry. of Ireland, [1925] A. C. 754.

24a. —— **Grant of proprietary right in river—Canada.**]—By letters patent issued by the Lieutenant-Governor of Quebec in 1910 under Companies Act of that province, applt. co. was incorporated for the purpose of carrying on the business of producers of electricity, & with power to construct & maintain dams in a river of the province within certain limits, after having acquired from the riparian proprietors the properties necessary for that purpose. In 1923 applts. not having then constructed any works, the provincial Govt. granted to resps. a lease of the water power & bed of the river within limits which overlapped those referred to in applts.' letters patent. Applts. brought an action against resps., claiming a declaration that applts. had a vested right in the river to construct dams, & an injunction:—*Held:* the action failed, since the letters patent contained no grant of a proprietary right in, or power to take possession of, any part of the river or its bed.—UNITED MANUFACTURING CO. *v.* ST. MAURICE POWER CO., [1926] A. C. 708; 95 L. J. P. C. 149; 135 L. T. 389; 42 T. L. R. 495, P. C.

31a. **Authority to promulgate Ordinance under Government of India Act, 1915, s. 72—Validity of Ordinance.**]—In proceedings under an Ordinance promulgated by the Governor-General under the Government of India Act, 1915, s. 72, which authorises him in cases of emergency to promulgate Ordinances for the peace & good government of British India, it cannot be disputed that an emergency existed & that the Ordinance is one for the peace & good government of British India. Those are matters of which the Governor-General is sole judge; he is not bound to give any reasons for promulgating an Ordinance under the sect. An Ordinance so promulgated constituting a special tribunal for the trial of a criminal case is not invalid in that it deprives the accused of the right of appeal to the High Ct. which they would otherwise have had.—BHAGAT SINGH *v.* KING EMPEROR (1931), 58 L. R. Ind. App. 169, P. C.

31b. **Authority to promulgate Berar Alienated Villages 192 Tenancy Law, 1.**]—Having regard to Foreign Jurisdiction Act, 1890 (c. 57), s. 1, & the authority delegated to the Governor-General in Council by the Indian (Foreign Jurisdiction) Order, 1902, the Governor-General in Council had power to

PART II. SECT. 2, SUB-SECT. 1.—A.

sa. *Duty to accept advice of Executive Council—Decision by Governor-General in Council.*]—Where a statute directs that a matter shall be decided by the Governor-General in Council, the Governor-General is bound to accept the advice of the Executive Council, there being no discretion in the Governor-General personally, & there is no legal duty upon him to peruse documents placed before him & make up his mind upon them.—SCHIERHOUT *v.* UNION GOVERNMENT, [1927] App. D. 94.—**S. AF.**

t (p. 419) i. —— *Proclamation fixing importation duties.*]—The Governor-General purporting to act under Act 35 of 1922, s. 5, issued two proclamations, the first fixing an exchange duty for asbestos cement sheets imported from Belgium & the second confining the first to certain cheaper kinds of asbestos sheets:—*Held:* the proclamations were *intra vires* the Governor-General.—CUSTOMS COMR. *v.* AIRTON TIMBER CO., LTD., [1926] App. D. 1.—**S. AF.**

t (p. 420) i. —— *No liability to entertain.*]—There is no legal obligation upon a Lieutenant-Governor, flowing from his appointment as such, to entertain socially; & no implied contract exists between him & the Crown, by reason of his appointment & the taking of the oath of office, from which flows any obligation with respect to expenditures for social entertainments. Such expenditures are voluntary, & the failure to so entertain could not be a cause for removal or dismissal.—*Re* LIEUTENANT-GOVERNORS SALARY, [1931] Ex. C. R. 232.—**CAN.**

p (p. 420) i. —— *Government of India Act, 1910, s. 72—State of "emergency."*]—The power of legislation by Ordinance, conferred by s. 72 of Government of India Act, on the Governor-General, is subject to threefold restrictions. There must be an "emergency" to justify the exercise of the power; the power can only be exercised for the peace & good government of British India or any part thereof; the Ordinance must not go beyond the power of the Indian Legislature to make laws. There being nothing in the language of sect. 72 to indicate that the Governor-General's opinion on the points referred to above is to be taken as final, the initial presumption is that a ct. of law will have jurisdiction to go into such matters if it becomes necessary to do so, in order to determine any question properly coming before it for decision.—DES RAJ *v.* R. (1930), I. L. R. 12 Lah. 26.—**IND.**

p (p. 420) ii. —— —— ——.]—The High Ct. has power, on application for *habeas corpus*, to inquire into the legality of sentences passed by the military authorities unless such acts were validated by a Bill of Indemnity; but held, on account of an Ordinance promulgated by the Governor-General validating the sentences, the ct. could not question their legality. Under Government of India Act, 1910, s. 72, the Governor-General is the sole judge of the existence of the emergency, & all cts. can do is to inquire whether there was evidence upon which the Governor-General might reasonably conclude that an emergency existed.—EMPEROR *v.* CHANAPPA SHANTIRAPPA (1930), I. L. R. 55 Bom. 263.—**IND.**

p (p. 420) iii. —— —— ——.]—In proceedings under an Ordinance promulgated by the Governor-General under Government of India Act, 1915, s. 72, it cannot be disputed that an emergency existed & that the Ordinance is one for the peace & good government of British India, as those are matters of which the Governor-General is the sole judge.—BHAGAT SINGH *v.* CROWN (1931), I. L. R. 12 Lah. 280.—**IND.**

sb. *Invalidity of Ordinance when repugnant to Commonwealth Act.*]—*Held:* the Governor-General in Council could not confer upon the Federal Capital Commission the powers contained in the Building & Services Ordinance by recourse to sect. 12 of Seat of Government (Administration) Act, 1910, as the Ordinance was repugnant to the provisions of Seat of Government (Administration) Act, 1924-28.—FEDERAL CAPITAL COMMISSION *v.* LARSTAN BUILDING & INVESTMENT CO. PROPRIETARY, LTD. (1929), 42 C. L. R. 582.—**AUS.**

promulgate the Berar Alienated Villages Tenancy Law, 1921, relating to territory of H.H. the Nizam leased in perpetuity to the British Govt. The said Law of 1921 is not void under sect. 12 of the Act of 1890 so far as it is repugnant to the Waste Land Rules, 1865 (Berar), because the Acts, Orders & Regulations referred to in that sect. are Acts, Orders & Regulations applying to British subjects & do not include the said rules of 1865, which did not purport so to apply. Further, the said rules of 1865 were merely administrative orders. The Law of 1921, so promulgated, accordingly operates as a legislative Act, & effectively interferes with rights in property held under leases granted pursuant to the rules of 1865.—DATTATRAYA KRISHNA RAO KANE *v.* SECRETARY OF STATE FOR INDIA (1930), 57 L. R. Ind. App. 318, P. C.

34. For "(1774)" read "(1775)".

Add. Annotation:—**Refd.** Tallack *v.* Tallack & Broekema, [1927] P. 211.

47. *Add. Annotation:*—**Refd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704.

52a. Legislative Council of Nova Scotia—Appointment to.]—The Lieutenant-Governor of Nova Scotia, acting by & with the advice of the Executive Council of Nova Scotia, has power to appoint in the name of the Crown so many members of the Legislative Council of Nova Scotia that the total number would (*a*) exceed twenty-one or (*b*) exceed the total number at the union mentioned in British North America Act, 1867 (c. 3), s. 88. The membership of the Council is not limited in number. The tenure of office of members of the Council appointed before May 7, 1925, is during the pleasure of His Majesty the King, represented in that behalf by the Lieutenant-Governor of Nova Scotia acting by & with the advice of the Executive Council of Nova Scotia.—A.-G. FOR NOVA SCOTIA *v.* NOVA SCOTIA LEGISLATIVE COUNCIL, [1928] A. C. 107; 97 L. J. P. C. 27; 138 L. T. 114; 44 T. L. R. 1; 71 Sol. Jo. 864, P. C.

52b. —— Membership of—Tenure of office.]—A.-G. FOR NOVA SCOTIA *v.* NOVA SCOTIA LEGISLATIVE COUNCIL, No. 52a, *ante*.

52c. Canadian Senate—Membership of—Who are qualified persons—Women.]—(1) The words "qualified persons" in British North America Act, 1867 (c. 3), s. 24, include women, & therefore women are eligible for membership of the Senate of Canada.

(2) The provisions of British North America Act, 1867 (c. 3), enacting a constitution for Canada should not be given a narrow & technical construction, but a large & liberal interpretation, so that the Dominion to a great extent, but within certain fixed limits, are mistresses in theirs.—EDWARDS *v.* A.-G. FOR CANADA, [1930] A. C. 124; 99 L. J. P. C. 27; 142 L. T. 98; 46 T. L. R. 4; 73 Sol. Jo. 711, P. C.

56a. —— Future exercise—Cannot be fettered.]—Acting within the constitution, the legislature of a self-governing Colony or State is supreme, & no act of the executive Govt. can fetter in any legal sense the future exercise of its powers, or give to any person a title other than such as could be conferred under existing legislation.

When New South Wales Consitution Act, 1855, was enacted, Garden Island, in Port Jackson, was part of the waste lands of the Crown, the entire management & control of which were vested by sect. 2 of that Act in the legislature of the Colony. By notices published in 1865 & 1866, pursuant to Crown Lands Alienation Act, 1861 (N.S.W.), the island was dedicated as a naval depot. It continued to be so used by the Imperial naval authorities until 1913, but since that date it had been occupied by the Commonwealth naval authorities for the use of the naval forces which it provided & maintained. An Imperial Order in Council made in 1899 under Colonial Fortifications Act, 1877, recited an agreement by which the Government of New South Wales were to erect buildings & carry out works, partly on Garden Island, & the Imperial Government agreed that when the buildings & works were completed & the sites "conveyed, granted, or dedicated in perpetuity for the use of Her Majesty's navy in the same way as Garden Island had been," the Imperial Government would surrender certain lands which were not within 1855 Act, s. 2; the Order then, in consideration of the agreement, vested the lands in the Government of New South Wales. In 1923 the Minister administering the Crown Lands Consolidation Act, 1913 (N.S.W.), acting under sect. 25 of that Act, revoked the dedication of Garden Island:—*Held:* the recital in the Order in Council of 1899 did not preclude the Minister from revoking the dedication in the manner provided by the Act of 1913, & the revocation was effectual under sect. 25 of that Act, although the notice did not state the manner in which it was proposed to deal with the island. Judgment of the High Ct. affirmed, subject to the declaration made, that resp. State was entitled to possession of Garden Island, being varied to a declaration, in the words of Crown Lands Consolidation Act, 1913, s. 25, that by virtue of the revocation the island had become Crown lands within that Act, & liable to be dealt with in accordance therewith.—AUSTRALIA COMMONWEALTH *v.* NEW SOUTH WALES STATE, [1929] A. C. 431; 98 L. J. P. C. 81; 140 L. T. 537; 45 T. L. R. 216, P. C.

PART II. SECT. 3, SUB-SECT. 2.—A.

s1. *Cannot suspend Habeas Corpus Act.*]—The Imperial Parliament alone can suspend the above Act.—*Re* BLANSHAY (Que.) (1918), 24 R. de J. 578.—**CAN.**

s1. *Disqualified member voting—Liability to penalties.*]—Since Constitution Act, R. S. B. C., 1924 (c. 45), imposes but one penalty for each day on which a disqualified person sits & votes as a member of the Legislative Assembly, there is but one cause of action for each such day, & where an action is brought on such cause of action that penalty, if recovered, belongs to pltf. therein, who thereby attaches or appropriates it to himself. Such action, even though dismissed, is a bar to a subsequent action for the same penalty, unless such prior action was collusive.—KEENE *v.* COLLEY, [1925] 4 D. L. R. 229; [1925] 3 W. W. R. 250.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—B.

59 iv. ——.]—When an Act of the Dominion Parliament is in part repugnant to an imperial Act, effect will be given to its enactments in so far as they agree.—*Re* THE RAREWELL (1881), 7 Q. L. R. 380.—**CAN.**

59 v. *Transfer of schools—By Education Act (Northern Ireland), 1923 (c. 21)—Whether repugnant to Government of Ireland Act, 1920 (c. 67).*]—Education Act (Northern Ireland), 1923 (c. 21), which relates to the transfer of schools, is not void under Govt. of Ireland Act, 1920, c. 67, s. 5.—LONDONDERRY COUNTY COUNCIL *v.* M'GLADE, [1929] N. I. 47.—**IR.**

60. After this case add :—
——.]—*See, now,* Statute of Westminster, 1931 (c. 4), s. 2.

66. After this case add :—
——.]—*See, now,* Statute of Westminster, 1931 (c. 4), s. 3.

68. *Add. Annotation :—As to* (1) **Refd.** The Fagernes, [1927] P. 311.

90. *Add. Annotations :*—**Consd.** Toronto Electric Comrs. *v.* Snider, [1925] A. C. 396 ; Croft *v.* Dunphy, (1932), 48 T. L. R. 652.

90a. Principle of construction of British North America Act, 1867 (c. 3).]—EDWARDS *v.* A.-G. FOR CANADA, No. 52c, *ante.*

91a. Enactment preventing King in Council from granting leave to appeal—Criminal case.]—Sect. 1025 of the Criminal Code of Canada, if & so far as it is intended to prevent the King in Council from giving effective leave to appeal against an order of a Canadian ct. in a criminal case, is invalid. The legislative authority of the Parliament of Canada as to criminal law & procedure, under British North America Act, 1867 (c. 3), s. 91, is confined to action to be taken in Canada. Further, an enactment annulling the royal prerogative to grant special leave to appeal would be inconsistent with Judicial Committee Acts, 1833 (c. 41) & 1844 (c. 69), & would be invalid under Colonial Laws Validity Act, 1865 (c. 63), s. 2. The royal assent to the Criminal Code could not give validity to an enactment which was void by Imperial statute ; exclusion of the prerogative could be accomplished only by an Imperial statute.

According to the well-settled practice of the Judicial Committee His Majesty is advised to intervene in a criminal case only if it is shown that, by a disregard of the power of legal process, or by some violation of natural justice, or otherwise, substantial & grave injustice has been done.

Applt. was convicted in Alberta of an offence under Govt. Liquor Control Act of Alberta, which did not incorporate sect. 1025 of the Criminal Code of Canada, & of an offence under Canada Temperance Act, R. S. Can., 1906 (c. 152). For each offence he was sentenced to a fine, & in default imprisonment. The Supreme Ct. of Alberta, rejecting contentions as to the construction & invalidity of the material sects., affirmed the convictions, but gave leave to appeal to the Privy Council. The Crown petitioned the Judicial Committee to quash the appeals as incompetent, having regard to sect. 1025. Applt. petitioned for special leave to appeal. The petitions were heard with the appeals :—*Held :* (1) each appeal was in a "criminal case" to which sect. 1025 applied, so far as it was valid ; (2) in the absence of argument to the contrary, sect. 1025 prevented the Appellate Div. from giving effective leave to appeal ; (3) sect. 1025 did not exclude the prerogative right to give leave to appeal ; (4) the cases were clearly not within the category of the exceptional cases in which special leave to appeal was advised in a criminal matter.—NADAN *v.* R., [1926] A. C. 482 ; 95 L. J. P. C. 114 ; 134 L. T. 706 ; 42 T. L. R. 356 ; 28 Cox, C. C. 167, P. C.

Annotation :—As to (3) **Folld.** Chung Chuck *v.* R., [1930] A. C. 244.

94. *Add. Annotation :*—**Refd.** Croft *v.* Dunphy (1932), 48 T. L. R. 652.

96. *Add. Annotations :*—**Refd.** Lord's Day Alliance of Canada *v.* A.-G. for Manitoba, [1925] A. C. 384 ; *Re* Aeronautics in Canada (Regulation & Control of), [1932] A. C. 54.

97. *Add. Annotations :*—**Apld.** A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328. **Distd.** Toronto Electric Comrs. *v.* Snider, [1925] A. C. 396 ; Proprietary Articles Trade Assocn. *v.* A.-G. for Canada, [1931] A. C. 310.

98. For the paragraph in the original volume substitute the following paragraph :—

Bona vacantia—Right of Crown in right of province.]—*Bona vacantia* are "royalties" within British North America Act, 1867 (c. 3), s. 109, & accordingly belong to the province in which they are situate or arise, & not to the Dominion. The word "royalties" is used in the sect. as the equivalent of *jura regalia.* Its meaning is not limited by its association with the words "lands, mines, minerals."—R. *v.* A.-G. OF BRITISH COLUMBIA, [1924] A. C. 213 ; 93 L. J. P. C. 76 ; 130 L. T. 231 ; 40 T. L. R. 13 ; 68 Sol. Jo. 138, P. C.

Annotation :—**Consd.** Toronto (City) Corpn. *v.* R., A. C. 98.

98a. —— ——.]—(1) Land in Alberta granted by the Crown either before or after Sept. 1, 1905, when Alberta Act, 1905 (c. 3 Dom.), came into force, in the absence of heirs, escheats to the Crown in the right of the Dominion.

(2) Effect of Land Titles Act, 1894 (c. 28 Dom.), & Land Titles Act, 1906 (Alta.).

(3) Meaning of "royalties" in Alberta Act, s. 21.

(4) *Bona vacantia* in Alberta belong to the Crown in the right of the province. The effect of Alberta Act, s. 3, was to place the Province of Alberta in the same position in regard to property as the provinces previously constituted save so far as the Act provided

PART II. SECT. 3, SUB-SECT. 4.—A. (a).

sn. *Recital in preamble to private Act —Effect of.*]—A recital in the preamble to a special private Act enacted by the Parliament of Canada is not such a declaration as that contemplated by B. N. A. Act, 1867, s. 92 (10) (c), in order to bring the subject-matter of the legislation within the jurisdiction of Parliament.—HEWSON *v.* ONTARIO POWER CO. (1905), 36 S. C. R. 596.—**CAN.**

so. *Incidental subjects included.*]—BENNETT *v.* QUEBEC PHARMACEUTICAL ASSOCN. (1881), 1 D. C. A. 336 ; 2 Cart. 250.—**CAN.**

98 i. *Bona vacantia—Right of Crown in right of Dominion—Saskatchewan.*]—In 1916, H. domiciled in the province of S. died, leaving no heirs or other persons legally entitled to his estate. Both the Dominion & the province claimed the estate as *bona vacantia* by right of escheat :—*Held :* as the province of S. was not at the date of its establishment owner of the lands, nor had any vested rights in any duties or revenues in respect to the lands from which the province was carved, differing in this respect from the original provinces of Confederation, B. N. A. Act, ss. 102, 109 did not apply, notwithstanding Saskatchewan Act, s. 3, & in any event, these sects. did not purport to transfer any "property" or rights to the provinces.—R. *v.* WESTERN TRUST CO., A.-G. OF PROVINCE OF SASKATCHEWAN & SHULZE (1921), 21 Exch. C. R. 1 ; 59 D. L. R. 597.—**CAN.**

sr. *"Royalties" — British North America Act,* 1867, s. 109—*Construction.*]—"Royalties" in this sect. does not embrace all kinds of royalties, but is limited in its meaning by the text to such as are connected with lands, mines & minerals ; such as (*inter alia*) the right to *bona vacantia* & of escheat arising by reason of a failure of heirs. —R. *v.* WESTERN TRUST CO., A.-G. OF PROVINCE OF SASKATCHEWAN & SHULZE (1921), 21 Exch. C. R. 1 ; 59 D. L. R. 597.—**CAN.**

otherwise, either expressly or by reasonable implication.

(5) Ultimate Heir Act, R. S. A., 1922 (c. 144), is *ultra vires* so far as it purported to affect real property.—A.-G. FOR ALBERTA *v.* A.-G. FOR CANADA. [1928] A. C. 475; 97 L. J. P. C. 106; 139 L. T. 532; 44 T. L. R. 651, P. C.

Annotation:—As to (1) **Consd.** *Re* Natural Resources (Saskatchewan), [1932] A. C. 28.

99. *Add. Annotation:—As to* (2) **Refd.** A.-G. for Canada *v.* A.-G. for British Columbia (1929), 46 T. L. R. 1.

101. *Add. Annotations:*—**Consd.** Toronto Electric Comrs. *v.* Snider, [1925] A. C. 396. **Refd.** A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328.

102. *Add. Annotations:*—**Refd.** A.-G. for Canada *v.* A.-G. for British Columbia (1929), 46 T. L. R. 1; A.-G. for Quebec *v.* A.-G. for Canada (1932), 48 T. L. R. 238.

105. *Add. Annotations:*—**Apld.** A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328. **Consd.** *Re* Insurance Act of Canada, [1932] A. C. 41. **Refd.** Toronto Electric Comrs. *v.* Snider, [1925] A. C. 396.

106. *Add. Annotations:*—**Consd.** Toronto Electric Comrs. *v.* Snider, [1925] A. C. 396; *Re* Aeronautics in Canada (Regulation & Control of), [1932] A. C. 54. **Refd.** A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328; A.-G. for Manitoba *v.* A.-G. for Canada, [1929] A. C. 260; A.-G. for Canada *v.* A.-G. for British Columbia (1929), 46 T. L. R. 1.

108. *Add. Citations:*—93 L. J. P. C. 101; 130 L. T. 101.

Add. Annotations:—**Distd.** Toronto Electric Comrs. *v.* Snider, [1925] A. C. 396. **Consd.** *Re* Aeronautics in Canada (Regulation & Control of), [1932] A. C. 54.

108a. —— —— **Question of substance, not of form.**]—(1) The Parliament of Canada cannot, by purporting to create penal sections under head 27 of the above sect., appropriate to itself exclusively a field of jurisdiction in which, apart from that procedure, it could exert no legal authority; if, when examined as a whole, legislation in form criminal is found, in aspects & for purposes exclusively within the provincial sphere, to deal with matters committed to the provinces, it cannot be upheld as valid.

Reciprocal Insurance Act 1922, of Ontario, authorised any person to exchange, through the medium of an attorney, with persons, whether in Ontario or elsewhere, reciprocal contracts of insurance, subject to provisions as to licences & other conditions; & it was provided that actions in respect of such contracts might be maintained in the cts. of the province. A Dominion Act of 1917 inserted in the Criminal Code (R. S. Can. 1906, c. 146), sect. 508c, by which it was made an indictable offence for any person to solicit or accept any insurance risk except on behalf of a co. or assocn. licensed under Insurance Act, 1917, of Canada. In answer to questions referred by the Lieutenant-Governor of Ontario to the Appellate Div.:—*Held:* (2) the Act of 1922 was *intra vires* the province, since (a) its provisions were capable of receiving a meaning according to which, whether enabling or prohibitive, they applied only to persons & acts within the territorial jurisdiction of the province, & (b) although it might incidentally affect aliens & dominion cos., it did not deal with them as such, but was an Act dealing with contracts of insurance; (3) the making & carrying out of contracts licensed pursuant to the Act were not rendered illegal, or otherwise affected, by Criminal Code, s. 508c; that sect. was invalid, since, in substance though not in form, it was in regulation of contracts of insurance, subjects not within the legislative competence of the Dominion; (4) the answers under (2) & (3) would be the same if any of the persons subscribing to a reciprocal insurance contract was (a) a British subject not resident in Canada immigrating into Canada, or (b) an alien. In so answering this question no opinion was expressed as to the competence of the Dominion Legislature to enact Insurance Act, 1917, ss. 11 & 12 (1), whereby restrictions were placed upon aliens & British cos. in the matter of carrying on insurance business in Canada; but sect. 12 (2) was held to be invalid in relation to the subject of immigration.—A.-G. FOR ONTARIO *v.* RECIPROCAL INSURERS, [1924] A. C. 328; 130 L. T. 738; 68 Sol. Jo. 383; *sub nom.* A.-G. FOR ONTARIO *v.* RECIPROCAL INSURERS, CRAIGON *v.* R., OTTE *v.* R., 93 L. J. P.C. 137; 40 T. L. R. 273, P. C.

Annotations:—As to (1) **Folld.** Toronto Electric Comrs. *v.* Snider, [1925] A. C. 396; *Re* Insurance Act of Canada, [1932] A. C. 41. **Refd.** A.-G. for Alberta *v.* A.-G. for Canada, [1928] A. C. 475.

PART II. SECT. 3, SUB-SECT. 4.—A. (b) i.

h i. ——.]—R. *v.* HANEL, R. *v.* YELLE Que.) (1925), 45 Can. Crim. Cas. 381. —**CAN.**

h ii. ——.]—Provincial legislation repugnant to B. N. A. Act, 1867, s. 93 (2), is "absolutely void & inoperative," & is not appealable under sub-sect. 3 to the Governor in Council.—HIRSCH *v.* MONTREAL PROTESTANT BOARD SCHOOL COMRS., [1926] 2 D. L. R. 8; [1926] S. C. R. 246; *varying*, 31 R. de J. 440; *on appeal*, [1928] A. C. 200, P. C.—**CAN.**

h iii. ——.]—Any provincial legislation repugnant to B. N. A. Act, 1867, s. 93 (1), is to the extent of such repugnancy absolutely void & inoperative.—TINY SEPARATE SCHOOL TRUSTEES *v.* R. (1926), 59 O. L. R. 96. —**CAN.**

h iv. ——.]—*Held:* there is a conflict between Bkpcy. Act, 1927 (c. 11), s. 64 & Fraudulent Preferences Act, R. S. B. C., 1924 (c. 97), s. 3 (2); & the Dominion enactment prevails.—CANADIAN CREDIT MEN'S TRUST ASSOCIATION, LTD. *v.* HOFFAR, LTD., [1929] 2 D. L. R. 73; 1 W. W. R. 557; 40 B. C. R. 454; 10 C. B. R. 369.—**CAN.**

k. For "**k.** ——.]—" substitute "**101 ii.** —— ——.]—"

101 iii. —— ——.]—Where both the Dominion Parliament & a provincial legislature have legislated on the same subject & with the same object, & the legislation is within the powers of the Dominion Parliament, the provincial legislation is inoperative.—R. *v.* SHENDAN, [1924] 3 D. L. R. 339; 3 W. W. R. 617; 34 B. C. R. 161.—**CAN.**

106 i. —— *Power to repeal local Act.*]—RUMSEY *v.* HARE (1877), 3 R. & C. 4.—**CAN.**

st. *Creation of new province—Restriction of legislative powers.*]—In exercising the authority to establish new provinces given to it by B. N. A. Act, 1871, the Dominion Parliament had power to enact Alberta Act, s. 17 with its protective provisions restricting full legislative power as to education, notwithstanding that those provisions are a modification of B. N. A. Act, 1867, s. 93.—R. (BROOKS) *v.* ULMER, [1923] 1 D. L. R. 304; 1 W. W. R. 1; 38 Can. Crim. Cas. 207; 19 Alta. L. R. 12.—**CAN.**

sv. *Legislation inconsistent with provincial rights—Powers conferred on Board of Commerce.*]—The Dominion Parliament cannot confer on the Board of Commerce jurisdiction that would restrict the liberty of the inhabitants of a province.—A.-G. FOR ONTARIO *v.* CANADIAN WHOLESALE GROCERS ASSOCN., [1923] 2 D. L. R. 617; 39 Can. Crim. Cas. 272.—**CAN.**

PART II. SECT. 3, SUB-SECT. 4.—A. (b) ii.

m (p. 431) i. ——.]—KINNEY *v.* DUDMAN (1876), 2 R. & C. 19; 2 Cart. 412.—**CAN.**

m (p. 431) ii. ——.]—PEEK *v.*

115. *Add. Annotation :*—**Refd.** A.-G. for Manitoba *v.* A.-G. for Canada, [1929] A. C. 260.

116. *Add. Annotations :*—**Consd.** A.-G. for Quebec *v.* A.-G. for Canada (1932), 48 T. L. R. 235. **Refd.** A.-G. for Quebec *v.* Nipissing Central Ry. & A.-G. for Canada, [1926] A. C. 715.

117. *Add. Annotations :*—**Apld.** A.-G. for Manitoba *v.* A.-G. for Canada, [1929] A. C. 260. **Consd.** *Re* Insurance Act of Canada, [1932] A. C. 41. **Distd.** Lymburn *v.* Mayland (1932), 48 T. L. R. 231. **Refd.** A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328; Toronto Electric Comrs. *v.* Snider, [1925] A. C. 396; Proprietary Articles Trade Assocn. *v.* A.-G. for Canada, [1931] A. C. 310.

117a. —— —— ——.]—Sale of Shares Act, 1924, & Municipal & Public Utility Board Act, 1926, both of Manitoba, are *ultra vires* under British North America Act, 1867 (c. 3), s. 92, in so far as they purport to prohibit Dominion cos. from selling their own shares within the Province without the consent of a Provincial Comr. or Board, since thereby they interfere, directly & substantially, with the status & capacity conferred on the cos. by Dominion legislation *intra vires* under British North America Act, 1867 (c. 3), s. 91.—A.-G. FOR MANITOBA *v.* A.-G. FOR CANADA, [1929] A. C. 260; 98 L. J. P. C. 65; 140 L. T. 386; 45 T. L. R. 146, P. C.

Annotation :—**Distd.** Lymburn *v.* Mayland (1932), 48 T. L. R. 231.

119. *Add. Annotations :*—*As to* (1) **Refd.** Montreal Corpn. *v.* Montreal Harbour Comrs., Tetreault *v.* Montreal Harbour Comrs., A.-G. for Quebec *v.* A.-G. for Canada (1925), 42 T. L. R. 98; A.-G for Quebec *v.* Nipissing Central Ry. & A.-G. for Canada, [1926] A. C. 715. *Generally*, **Refd.** *Re* Aeronautics in Canada (Regulation & Control of), [1932] A. C. 54.

119a. —— ——.]—(1) Fisheries Act, 1914, ss. 7a, 18, requiring persons who operate for commercial purposes a fish cannery, & in British Columbia a salmon cannery or salmon curing establishment, to obtain a licence from the Canadian Minister of Fisheries are *ultra vires* of the Parliament of Canada.

(2) The Special Fishery Regulations made for British Columbia under sect. 45 of the same Act do not give the Minister a discretion to refuse an application by a properly qualified person for such a fishing licence as is required by those regulations.—A.-G. FOR CANADA *v.* A.-G. FOR BRITISH COLUMBIA, [1930] A. C. 111; 99 L. J. P. C. 20; 142 L. T. 73; 46 T. L. R. 1, P. C.

Annotations :—*Generally*, **Consd.** Aeronautics in Canada (Regulation & Control of), [1932] A. C. 54; A.-G. for Quebec *v.* A.-G. for Canda (1932), 48 T. L. R. 238.

120. *Add. Annotation :*—**Refd.** The Fagernes, [1927] P. 311.

121. *Add. Annotation :*—**Refd.** A.-G. for Quebec *v.* Nipissing Central Ry. & A.-G. for Canada, [1926] A. C. 715.

121a. —— —— **Safeguarding navigation of river obstructed by bridge included.**]—British North America Act, 1867 (c. 3), s. 91 (10), gives to the Parliament of the Dominion exclusive legislative authority over navigation & shipping, & sect. 92 (10) excludes from the jurisdiction of the provincial legislatures railways & other works extending beyond the limits of the province, & any works which, although wholly situate within the province, have been declared by the Parliament of Canada to be for the general advantage of Canada. In the case of two railway bridges, one of them authorised by dominion statute, which fell within the exception :—*Held :* (1) the right & power of safeguarding the navigation of the river passing under & alleged to be obstructed by them was also in the hands of the Dominion; (2) the rights & powers of the Dominion were not affected by the provisions of a treaty entered into between Great Britain & the United States in 1842, the Ashburton Treaty, which proceeded on the assumption that the Govt. of New Brunswick had power to make regulations as to the navigation of the river in question, there being no undertaking or guarantee, either to the United States or to New Brunswick, that such powers should remain unaltered for all time, & the change made being wholly consistent with the treaty.—A.-G. FOR NEW BRUNSWICK *v.* CANADIAN PACIFIC RY. CO., A.-G. FOR

SHIELDS (1881), 6 A. R. 639; 3 Cart. 266.—**CAN.**

o (p. 431) i. —— *Bankruptcy Act*, 1920 (c. 34), *s.* 11 (1) (10)—*Intra vires.*]—BELANGER, ETC. *v.* ROYAL BANK OF CANADA, [1926] 2 D. L. R. 929; [1926] S. C. R. 218; *affd. sub nom.* ROYAL BANK OF CANADA *v.* LARUE, [1928] A. C. 187; 139 L. T. 562, P. C.—**CAN.**

sw. *Building societies—In Quebec—Liquidation of—Ultra vires.*]—MCCLANAGHAN *v.* ST. ANN'S MUTUAL BUILDING SOCIETY (1880), 24 L. C. J. 162; 2 Cart. 237.—**CAN.**

sy. *Cheese factories—Act to prevent fraud against—Valid.*]—R. *v.* STONE (1892), 23 O. R. 46.—**CAN.**

sz. *Copyright.*]—SMILES *v.* BELFORD (1877), 1 A. R. 436; 1 Cart. 576.—**CAN.**

sb. *Education.*]—*Held :* Alberta Act (D., 1905, c. 3), s. 17, was within the powers of the Dominion Parliament.—*Re* ALBERTA ACT, SECTION 17, [1927] 2 D. L. R. 993; [1927] S. C. R. 364.—**CAN.**

114 iv. —— ——.]—Part IV. added to Canada Temperance Act, prohibiting the importation of intoxicating liquor into those provinces where its sale for beverage purposes is forbidden by provincial law, is *intra vires* the Dominion Parliament.—GOLD SEAL, LTD. *v.* DOMINION EXPRESS CO. & A.-G. FOR ALBERTA PROVINCE (1921), 62 D. L. R. 62; 62 S. C. R. 424; [1921] 3 W. W. R. 710; *affg.* 58 D. L. R. 51; 34 Can. Crim. Cas. 259; 16 Alta. L. R. 113.—**CAN.**

115 iii. —— *By* 45 *Vict. c.* 119—*Valid.*]—*Re* QUEBEC TIMBER CO. (1882), Cout. 43.—**CAN.**

s (p. 432) i. —— *Regulation of time & manner.*]—The regulation of the manner of fishing & the establishing of close seasons are within the exclusive legislative jurisdiction of the Dominion Parliament. Sect. 29 of Fisheries Act, R. S. C., 1927, is *intra vires.*—R. *v.* TOMASSON, [1932] 2 W. W. R. 176.—**CAN.**

r (p. 432) i. —— *Regulations as to inland fisheries—Valid.*]—BAYER *v.* KAIZER (1894), 26 N. S. R. 280.—**CAN.**

r (p. 432) ii. —— ——.]—The provisions of Fisheries Act, 1914 (c. 8) (Dom.), ss. 7A, 18, for the licensing & taxing of fish canneries :—*Held : ultra* ;—R. *v.* SOMERVILLE CANNERY CO., LTD. (B. C.), [1927] 4 D. L. R. 494; [1927] 3 W. W. R. 215; 49 Can. Crim. Cas. 65.—**CAN.**

r (p. 432) iii. —— ——.]—A regulation made by Order in Council pursuant to the power given by Dominion Fisheries Act, s. 45, & adopted from a provincial regulation, to the effect that no one shall fish by means other than by angling & trolling except under license from a duly authorised officer of the Provincial Govt. was not open to objection on the principle that Parliament has no power to divest the Dominion in favour of the Province of a legislative power conferred on it by the B. N. A. Act.—SERO *v.* GAULT (1921), 50 O. L. R. 27; 64 D. L. R. 327.—**CAN.**

r (p. 432) iv. —— *Customs & Fisheries Protection Act, s.* 10 (*c*)—*Intra vires.*]—R. *v.* AUXILIARY FISHING SCHOONER NATALIE S., [1932] Ex. C. R. 155.—**CAN.**

h (p. 432) i. —— *Guarding of crossings.*]—*Re* CANADIAN PACIFIC RY. CO. & COUNTY & TOWNSHIP OF YORK (1896), 27 O. R. 559.—**CAN.**

y i. —— *Dominion Insurance Act, ss.* 11, 12 (1), 71, 71A, 134, 134A—*Ultra vires.*]—*Re* INSURANCE CONTRACTS, [1926] 2 D. L. R. 204; 58 O. L. R. 404.—**CAN.**

sd. *Interest—Amount of—R. S. C.*, 1886 (c. 127), *s.* 7—*Intra vires.*]—BRADBURN *v.* EDINBURGH LIFE ASSURANCE CO. (1903), 23 C. L. T. 199; 5 O. L. R. 657; 2 O. W. R. 253.—**CAN.**

e (p. 433). For "e" substitute

CANADA INTERVENING (1925), 94 L. J. P. C. 142; 133 L. T. 436, P. C.

122. *Add. Annotation:*—**Refd.** A.-G. for Quebec *v.* Nipissing Central Ry. & A.-G. for Canada [1926] A. C. 715.

122a. —— **Expropriation of provincial Crown lands.**]—Railway Act, 1919 (c. 68), s. 189, which empowers any railway co., with the consent of the Governor-General, to take for the use of the railway provincial Crown lands as well as Dominion Crown lands, was within the legislative powers of the Parliament of Canada under British North America Act, 1867 (c. 3), ss. 91 (29), 92 (10).—A.-G. FOR QUEBEC *v.* NIPISSING CENTRAL RY. CO. & A.-G. FOR CANADA, [1926] A. C. 715; 95 L. J. P. C. 221; 135 L. T. 520; 42 T. L. R. 591, P. C.

Annotation:—**Distd.** A.-G. for Quebec *v.* A.-G. for Canada (1932), 48 T. L. R. 238.

124. *Add. Annotations:*—**Refd.** Canadian Pacific Ry. Co. *v.* Toronto Transportation Commission; Toronto Transportation Commission *v.* Canadian National Railways, [1930] A. C. 686.

125. *Add. Annotations:*—**Refd.** *Re* Aeronautics in Canada (Regulation & Control of), [1932] A. C. 54; A.-G. for Quebec *v.* A.-G. for Canada (1932), 48 T. L. R. 235.

125a. —— **Regulation of running rights.**]—Applts. owned a short railway line in Alberta branching from a line which branched from the Canadian Northern Railway at a point within the province. Both branches were operated by the Canadian Northern Railway Co. under agreements, & traffic could pass from applts.' line without interruption into such other provinces as were served by that co.'s railway. The Railway Board made an order declaring its power to grant an application by first resp. for running rights over applts.' line, with permission to construct a short track joining it:—*Held:* the Railway Board had power to grant the application, since applts.' line was part of a system of railways operated together, & connecting one province with another, & it was within the legislative authority of the Dominion under British North America Act, 1867 (c. 3), s. 92 (10) (*a*).—LUSCAR COLLIERIES *v.* MCDONALD, [1927] A. C. 925; 97 L. J. P. C. 21; 137 L. T. 779; 43 T. L. R. 801, P. C.

126. *Add. Annotation:*—**Refd.** Croft *v.* Dunphy (1932), 48 T. L. T. 652.

128a. **Question of substance, not of form.**]—A.-G. FOR ONTARIO *v.* RECIPROCAL INSURERS, No. 108a, *ante*.

128b. —— **Insurance Act, 1927, ss. 11, 12, 65, 66—Validity.**]—By sect. 11 of the Insurance Act of Canada, R. S. C., 1927, c. 101, a licence was made necessary from the Minister of Canada for any Canadian co. or any alien to carry on insurance business within Canada, &, by sect. 12, a licence was also required for any British co. or subject not resident in Canada who immigrated into Canada to carry on insurance business, & sects. 65 & 66 imposed penalties for insuring without such licences. The Special War Revenue Act, R. S. C., 1927, c. 179, imposed taxation on persons who insured with insurers so prohibited. British & foreign insurers obtained licences under the Quebec Insurance Act, & the Govt. of Canada required them to take out licences under sects. 11 & 12, & attempted to recover taxes from persons who had insured with them under the Special War Revenue Act. The Lieutenant-Governor of Quebec referred to the ct. the questions: "(1) Is a foreign or British insurer who holds a licence under the Quebec Insurance Act to carry on business within the Province obliged to observe & subject to sects. 11, 12, 65, 66 of the Insurance Act of Canada, or are those sections unconstitutional as regards such insurer? (2) Are sects. 16, 20 & 21 of the Special War Revenue Act within the legislative competence of the Parliament of Canada? Would there be any difference between the case of an insurer who has obtained or is bound to obtain under the Provincial law a licence to carry on business in the Province and any other case?":—*Held:* the answers must be to the first part of question 1, "No"; & to the second part, "Yes"; to the second question in both branches, "No." The conduct of insurance had been declared to be exclusively subject to Provincial law, & the Insurance Act of Canada, 1927, was not properly framed alien legislation within sect. 91 of the British North America Act, 1867 (c. 3), & therefore was not within the legislative powers of the Dominion, neither was that Act properly framed law as to immigration within the meaning of sect. 95 of the Act of 1867. The taxation imposed by the Special War Revenue Act was void in that the tax was linked up with a Dominion licence which had already by this decision been held illegal.—*Re* INSURANCE ACT OF CANADA, [1932] A. C. 41; *sub nom.* A.-G. OF QUEBEC *v.* A.-G. OF CANADA, BELDING CORTICELLI, LTD., A.-G. OF CANADA *v.* A.-G. OF QUEBEC (BELDING CORTICELLI, LTD., A.-G. OF BRITISH COLUMBIA & A.-G. OF ONTARIO, INTERVENERS) (1931), 101 L. J. P. C. 26; 146 L. T. 28; 48 T. L. R. 73; 76 Sol. Jo. 10, P. C.

128c. **Power to impose customs duty—Alcoholic liquor imported by province.**]—Customs & other duties imposed by the Dominion of Canada upon alcoholic liquors imported into Canada can be levied upon alcoholic liquors imported by the Govt. of British Columbia for the purpose of sale by it. The power of the Dominion under British North America Act, 1867 (c. 3), s. 91, heads 2 & 3, to impose duties upon the importation of goods into Canada is not limited by sect. 125, which exempts the "property" of a province from taxation.—A.-G. OF BRITISH COLUMBIA *v.* A.-G. OF CANADA, [1924] A. C. 222; 130 L. T. 257; 40 T. L. R. 4; 68 Sol. Jo. 58, P. C.

128b ii. —— *Imposition of additional customs duties.*]—*Held:* 53 Vict. c. 20, s. 19, was not *ultra vires* the Dominion Parliament.—A.-G. OF CANADA *v.* FOSTER (1892), 31 N. B. R. 153.—**CAN.**

si. *Migratory Birds Protection Act* 1917 (*c.* 18)—*How far intra vires.*]—R. *v.* STUART, [1925] 1 D. L. R. 12; [1924] 3 W. W. R. 648.—**CAN.**

sj. *Soldier Settlement Act, ss.* 33, 34—*Intra vires.*]—R. *v.* POWERS, [1923] Exch. C. R. 131.—**CAN.**

sk. *Judges Act, R. S. C.*, 1906 (*c.* 138), *ss.* 33-35.]—In so far as the above sects. attempt to disqualify or prohibit a judge of the King's Bench from acting as an arbitrator in matters lying wholly within provincial control, they are *ultra vires*.—WINNIPEG CORPN. *v.* CROSS (Man.), [1926] 4 D. L. R. 318; [1926] 2 W. W. R. 868.—**CAN.**

sl. *Live-stock & Live-stock Products Act*, 1923, *& regulations made thereunder—How far ultra vires.*]—R. *v.* COLLINS, [1926] 4 D. L. R. 548; 46 Can. Crim. Cas. 282; 59 O. L. R. 453.—**CAN.**

128d. —— What is—Export tax.]—A.-G. FOR BRITISH COLUMBIA *v.* MCDONALD MURPHY LUMBER CO., LTD., No. 135e, *post.*

128e. Customs legislation—Extension of extra-territorial limit—Validity.]—British North America Act, 1867 (c. 3), did not in terms impose any restriction on the Parliament of the Dominion of Canada with regard to enacting customs legislation designed to extend the extra-territorial limit. Further, in view of the history of the Imperial legislation in that respect, where plenary powers to pass customs legislation have been conferred on the Dominion Parliament, there is no justification for inferring such a restriction, & accordingly a Dominion statute extending such extra-territorial limit to 12 marine miles from the Canadian coast in the case of vessels registered in Canada was competently enacted before the passing of the Statute of Westminster, 1931, by which the Parliament of a Dominion now has in terms express & full power to make laws having extra-territorial operation.—CROFT *v.* DUNPHY (1932), 48 T. L. R. 652, P. C.

—— —— ——.]—*See, now,* Statute of Westminster, 1931 (c. 4), s. 3.

130a. "Peace, order & good government of Canada"—Whether trade disputes included.]—TORONTO ELECTRIC COMRS. *v.* SNIDER, No. 179a, *post.*

130b. Taxation—Income tax.]—(1) The Parlia-

129 i. *Pilotage.*]—R. *v.* PETERS (1873), N. B. Dig. 138.—**CAN.**

l (p. 434) i. ——.]—*Held:* Criminal Code, 1892, ss. 865 & 866, were *intra vires* the Dominion Parliament.—FLICK *v.* BRISBIN (1895), 26 O. R. 423.—**CAN.**

o (p. 434) i. ——.]—If an act prohibited by the Dominion Parliament is one that may be considered a criminal matter, its prohibition & the subject of evidence establishing such act are within the powers of Parliament, even though the act is one that relates to property & civil rights.—R. *v.* POULIN (Alta.), [1925] 1 D. L. R. 618; [1925] 1 W. W. R. 16; 43 Can. Crim. Cas. 242.—**CAN.**

o (p. 434) ii. ——.]—Criminal Code, s. 734:—*Held: intra vires.*—DOWSETT *v.* EDMUNDS (Alta.), [1926] 4 D. L. R. 796; [1926] 3 W. W. R. 447; 46 Can. Crim. Cas. 330.—**CAN.**

o (p. 434) iii. ——.]—Sect. 734 of the Canadian Criminal Code, so far as it purports to prohibit civil proceedings in respect of an assault after the discharge of the penalty imposed in a criminal prosecution under the Code, is *ultra vires* of the Parliament of Canada.—RICE *v.* MESSENGER, [1929] 2 D. L. R. 669; 51 Can. Crim. Cas. 147; 60 N. S. R. 399.—**CAN.**

o (p. 434) iv. ——*Issue of certificate releasing from all further proceedings civil or criminal.*]—*Held:* 32 & 33 Vict. c. 20, s. 45, is not *ultra vires.*—WILSON *v.* CODYRE (1866), 26 N. B. R. 516.—**CAN.**

q (p. 434) i. ——.]—O'BRIEN *v.* ROYAL GEORGE CO., LTD., [1921] 1 W. W. R. 559; 57 D. L. R. 301; 16 Alta. L. R. 373; 35 Can. Crim. Cas. 22.—**CAN.**

q (p. 434) ii. ——.]—Legislation of a prohibitive character passed for the purpose of compelling observance of the Lord's Day falls within B. N. A. Act, s. 91 (27), which confers on the Dominion Parliament exclusive jurisdiction to legislate with respect to criminal law.—CLARKE *v.* WAWKEN RURAL MUNICIPALITY, [1930] 2 D. L. R. 596; 1 W. W. R. 319; 53 Can. C. C. 366; *sub nom. Ex p.* CLARKE, 24 S. L. R. 327.—**CAN.**

s (p. 434) i. —— *Canada Grain Act,* 1919, s. 95 (7)—*Whether ancillary to or necessary for operation of Dominion law.*]—The above Act is not in the nature of an ancillary provision which, whilst encroaching upon matters assigned to the provincial legislatures, is required to prevent a scheme of a Dominion law being defeated; nor is it a case where, in order to operate a validly enacted law, procedure must be adopted to make effective that law even though it invades the legislative fields of the provinces in respect of property or civil rights.—R. *v.* EASTERN TERMINAL ELEVATOR CO., [1925] S. C. R. 434.—**CAN.**

s (p. 434) ii. —— ——.]—The provisions of the above Act, requiring a primary grain-dealer to take out a licence thereunder, & prescribing the form of contract to be used on the purchase of grain, are *ultra vires.*—TRIMBLE *v.* CAPLING, [1927] 1 D. L. R. 717; [1927] 1 W. W. R. 188; 22 Alta. L. R. 536.—**CAN.**

s (p. 434) iii. —— *War legislation—Establishment of Canada Wheat Board.*]—*Held:* the legislation & Orders in Council establishing the Board were *intra vires* the Dominion Parliament as being either (a) legislation arising out of war, or (b) regulation of trade & commerce.—A.-G. FOR CANADA *v.* ALEXANDER BROWN MILLING & ELEVATOR CO., [1923] 4 D. L. R. 443; 53 O. L. R. 298.—**CAN.**

dd i. *Courts—Power to establish—Maritime court—Jurisdiction limited to Ontario—Valid.*]—THE PICTON (1879), 4 S. C. R. 648; 1 Cart. 557.—**CAN.**

dd ii. —— *Power to extend jurisdiction—Court created by Imperial Act—Valid.*]—A.-G. OF CANADA *v.* FLINT (1884), 16 S. C. R. 707; 4 Cart. 288.—**CAN.**

dd iii. —— ——.]—*Held:* the Dominion Parliament had power to confer jurisdiction on a ct. to try offences against Inland Revenue Act, R. S. C. c. 34.—R. *v.* KENNEDY (1902), 35 N. S. R. 266.—**CAN.**

sp. *Appeal to Supreme Court of Canada—42 Vict. c. 39, s. 6—Ultra vires.*]—GRAND TRUNK RY. CO. *v.* CREDIT VALLEY RY. CO. (1875-1908), 1 Cout. Dig. 282.—**CAN.**

st. *Jury—Selection of jurors—In criminal cases.*]—R. *v.* O'ROURKE (1882), 32 C. P. 388.—**CAN.**

sw. *Opium & Narcotic Drug Act.*]—The Opium & Narcotic Drug Act, 1923, now R. S. C. 1927, c. 144, is *intra vires.*—R. *v.* GORDON, [1928] 2 D. L. R. 315; [1928] 1 W. W. R. 678; 49 Can. Crim. Cas. 272.—**CAN.**

sx. ——.]—R. *v.* WAKABAYASHI, R. *v.* LORE YIP, [1928] 3 D. L. R. 226; [1928] 1 W. W. R. 487; 49 Can. Crim. Cas. 392; 39 B. C. R. 310—**CAN.**

sy. *Agriculture—Live Stock Pedigree Act.*]—"Agriculture" within B. N. A. Act, s. 95, is not restricted to the cultivation of the fields. The purpose of Live Stock Pedigree Act being to improve the quality of live stock on the farms of the Dominion, it is *intra vires* of the Dominion under said section.—R. *v.* DAVENPORT, [1928] 2 D. L. R. 852; [1928] 1 W. W. R. 876; 50 Can. Crim. Cas. 40.—**CAN.**

sz. *Gold & Silver Marking Act intra vires.*]—*Held:* Gold & Silver Marking Act, 7 & 8 Edw. 7, c. 30, s. 16 (*b*), is *intra vires* of the Dominion Parliament.—R. *v.* LEE (1911), 18 O. W. R. 845; 2 O. W. N. 933; 23 O. L. R. 490; 18 Can. Crim. Cas. 480.—**CAN.**

sc. *Power to prohibit harbouring goods within territorial waters.*]—The Parliament of Canada, in legislating for the effective observance of its customs law & the protection of its revenue, may prohibit the harbouring of goods within the territorial waters of Canada, & thus s. 217 (4) of the Customs Act, R. S. C., 1927 (c. 42), is *intra vires.*—R. *v.* BOUTILIER, [1929] 2 D. L. R. 849; 51 Can. Crim. Cas. 314; 60 N. S. R. 492.—**CAN.**

sd. *Water power—Powers relating to.*]—*Re* WATERS & WATER POWERS REFERENCE, [1929] 2 D. L. R. 481; S. C. R. 200.—**CAN.**

sf. —— *Regulation—Condition as to wages — Intra vires.*]—OUTEN *v.* STEWART, GRANT *v.* WINNIPEG CITY, [1932] 3 W. W. R. 193.—**CAN.**

sk. *Sales tax.*]—Special War Revenue Act, s. 58:—*Held: intra vires.*—R. *v.* MILLER COURT & CO., [1930] 3 D. L. R. 745.—**CAN.**

so. *Federal District Commission Act.*]—The Federal District Commission Act, 1927, is within the powers of the Parliament of Canada; & the Commission's bye-law forbidding the operation upon the Commission's driveway of any vehicle for the transportation of passengers for hire, & its bye-laws providing a penalty for non-compliance, & its agreement giving the Ottawa Electric Ry. Co. the exclusive right to operate sight-seeing busses for hire on the driveway, are within the powers of the Commission.—R. *v.* RED LINE, LTD. (1930), 54 Can. C. C. 271; 66 O. L. R. 53.—**CAN.**

sq. *Customs Act,* 1927—*Liability of vessel hovering within twelve miles to seizure—Intra vires.*]—CROFT *v.* DUNPHY (1932), 48 T. L. R. 652, P. C.—**CAN.**

sr. —— —— ——.]—TRENHOLM *v.* MCCARTHY, [1930] 1 D. L. R. 674.—**CAN.**

st. *Trade Unions Act,* 1927.]—The Trade Unions Act is a statute dealing solely with property & civil rights, & therefore *ultra vires* of the Dominion Parliament & quite ineffectual to confer any valid status on a trade union.—AMALGAMATED BUILDERS COUNCIL *v.* HERMAN, [1930] 2 D. L. R. 513 65 O. L. R. 296.—**CAN.**

sv. *Civil servants—Exclusive powers of salaries—Who are—Not harbour commissioners.*]—*Re* HAMILTON HARBOUR COMRS., [1930] 2 D. L. R. 509; 65 O. L. R. 149.—**CAN.**

sw. *Power to authorise inter-provincial endorsement of search warrants.*]—The Dominion Parliament has power to authorise peace officers & others to act beyond the limits of the ordinary scope of their provincial duties & can, in a criminal prosecution or for the purpose thereof, under sect. 91 of the British North America Act, deal with the personal property of citizens in any Province & authorise its seizure by a constable or peace officer acting under sect. 629 of the Criminal Code.—*Re* R. *v.* SOLLOWAY & MILLS (1930), 54 Can. C. C. 214; 65 O. L. R. 677.—**CAN.**

sb. *Soldier Settlement Act—Security to Board — Priorities.*]—Those provisions of the "Soldier Settlement Act," 1919, purporting to provide security to the Board without registration of said security and in priority to other *bonâ fide* creditors whose security has been registered are *intra vires* of the powers of the Parliament of Canada.—R. *v.* RICHARDS, [1930] Ex. C. R. 222.—**CAN.**

ment of Canada had power under British North America Act, 1867 (c. 3), s. 91, head 3, to enact Income War Tax, 1917, & the amending Act of 1919, whereby every person residing, or ordinarily residing, or carrying on business in Canada is rendered liable to pay income tax.

(2) A minister of the Govt. of a province is liable under the Acts in respect of the salary & sessional indemnity payable to him under statutes of the province.—CARON *v.* R., [1924] A. C. 999; 94 L. J. P. C. 9; 132 L. T. 218; 40 T. L. R. 874, P. C.

130c. —— Salary of provincial official—Whether liable.]—CARON *v.* R., No. 130b, *ante*.

130d. Navigation of river—Formerly considered as in provincial control—Ashburton Treaty.]—A.-G. FOR NEW BRUNSWICK *v.* CANADIAN PACIFIC RY. CO., A.-G. FOR CANADA INTERVENING, No. 121a, *ante*.

130e. Criminal Code, s. 1036 (1)—Disposal of fines—Intra vires.]—Assuming, without deciding, that the term "royalties" in British North America Act, 1867 (c. 3), s. 109, includes fines imposed for infractions of the criminal law, any right conferred by sect. 109 on the Province of Ontario to claim fines as "royalties" extends only to such fines as have not been otherwise appropriated by competent authority, & the Parliament of Canada, having by sect. 91, head 27, exclusive authority as to the criminal law, is competent to direct that fines shall be otherwise appropriated, & in what manner. Parliament therefore had power to enact the proviso to sect. 1036 (1) of the Criminal Code of Canada directing that in the Province of Ontario fines are to be paid over to a municipal or local authority bearing, in whole or in part, the expense of administering the law under which the fine was imposed.—TORONTO (CITY) CORPN. *v.* R., [1932] A. C. 98; 101 L. J. P. C. 33; 146 L. T. 74; 48 T. L. R. 69, P. C.

130f. Combines Investigation Act, 1927—Validity.]—Combines Investigation Act, R. S. Can., 1927 (c. 26), by sect. 36 makes it an indictable offence, punishable by fine or imprisonment, to be a party to the formation or operation of a "combine" as defined by sect. 2, that is, shortly stated, a combine which is to the detriment of the public & restrains or injures trade or commerce. Inquiries whether a combine exists are to be conducted by appointed officials, who are given powers to examine books, demand returns, & summon witnesses. By sects. 29 & 30, customs duties may be reduced, & licences revoked, where the duties are used to facilitate a combine, or when the holder of a patent uses it so as unduly to limit manufacture or increase the price of any article. The Criminal Code, R. S. Can., 1927 (c. 36), s. 498, makes it an indictable offence, punishable by fine or imprisonment, to conspire, combine, or agree unduly to limit transportation facilities, restrain commerce, or lessen manufacture or competition:—*Held:* sect. 498 of the Code & the Act, excepting sects. 29 & 30, were *intra vires* the Parliament of Canada under British North America Act, 1867, s. 91, head 27 (criminal law), & sects. 29 & 30 could be supported under sect. 91, heads 3 & 22. The legislation being in its path & substance within enumerated heads of sect. 91, it was not material that it affected property & civil rights in the Provinces (sect. 92, head 13), or if it affected, which it did not, the administration of justice in the Provinces (sect. 92, head 14). The Dominion could employ its own executive officers to carry out legislation which was within its constitutional authority. It was unnecessary to discuss whether the legislation was *intra vires* also under sect. 91, head 2 (the regulation of trade & commerce), but the Judicial Committee did not assent to a contention that the power under that head was confined to the furtherance of a general power which the Dominion possessed independently of it. —PROPRIETARY ARTICLES TRADE ASSOCN. *v.* A.-G. FOR CANADA, [1931] A. C. 310; 100 L. J. P. C. 84; 144 L. T. 577; 47 T. L. R. 250, P. C.

130g. Aviation—Exclusive power of Dominion Legislature.]—The whole field of legislation in relation to aerial navigation in Canada belongs to the Dominion.

Having regard to (*a*) sect. 132 of the British North America Act, 1867 (c. 3), which gives to the Parliament & Govt. of Canada all powers necessary or proper for performing the obligations of Canada, or of any Province thereof, under treaties between the British Empire & foreign countries, (*b*) the fact that an international Convention of 1919, a treaty under sect. 132, covered almost every conceivable matter relating to aerial navigation, & (*c*) the further powers of the Parliament of Canada under sect. 91, heads 2 (trade & commerce), 5 (postal services) & 7 (military & naval services), substantially the whole field of legislation in regard to the subject belongs to the Dominion. Any small portion not vested in the Dominion by specific words in the Act of 1867 is not so vested in the Provinces, & necessarily belongs to the Parliament of Canada under its authority to make laws for the peace, order and good government of Canada. Further, the subject of aerial navigation, & the fulfilment of Canadian obligations under sect. 132, are matters of national interest & importance; aerial navigation is a class of subject which has attained such dimensions as to affect the body politic of the Dominion. Consequently, the Dominion powers under sect. 132 in relation to the obligations under the Convention were exclusive powers, & the Parliament of Canada had authority to enact the Aeronautics Act, R. S. C., 1927 (c. 3), s. 4, & the Air Regulations, 1920, respecting the licensing of pilots, navigators, etc., & the regulation & licensing of all aircraft, aerodromes & air stations.—*Re* AERONAUTICS IN CANADA (REGULATION & CONTROL OF), [1932] A. C. 54, P. C.; *sub nom.* A.-G. OF CANADA *v.* A.-G. OF ONTARIO, A.-G. OF QUEBEC & A.-G. OF MANITOBA, 101 L. J. P. C. 1; 146 L. T. 76; 48 T. L. R. 18; 75 Sol. Jo. 796, P. C.

Annotations:—**Apld.** *Re* Radio Communication in Canada, [1932] A. C. 304. **Refd.** A.-G. for Quebec *v.* A.-G. for Canada (1932), 48 T. L. R. 235.

130h. Special War Revenue Act, 1927, ss. 16, 20, 21—Validity.]—*Re* INSURANCE ACT OF CANADA, No. 128b, *ante*.

130i. Special War Revenue Act, 1922, s. 17—Validity.]—There is only one Crown, but by legislation assented to by the Crown revenue & property vested in the Dominion are distinguished from revenue & property vested in a Province. There are two separate

statutory purses; in each the ingathering & expending authority is different.

By sect. 17 of the (Dominion) Special War Revenue Act, 1915, as amended in 1922, but since repealed, liability to the Crown for the excise taxes thereby imposed was to rank for payment in priority to all other claims of whatsoever kind save administration expenses. By sect. 1357 of the R. S. Que., 1909, all sums due to the Crown in respect of Provincial taxes are to constitute a privileged debt ranking after law costs. By sect. 16 of the Interpretation Act (R. S. Can., 1906, c. 1) no provision in any Act is to affect the Crown unless it is expressly stated therein that the Crown is to be bound thereby. In a bkpcy. in the Province of Quebec the assets were insufficient to discharge both a sum due for tax under the Dominion statute above mentioned & a sum due for Provincial taxes: —*Held:* that it would have been competent to the Parliament of Canada under the British North America Act, 1867, s. 91, head 21 (bankruptcy), or head 3 (taxation), to enact the statute of 1915 so as to prejudice the rights of the Province, but having regard to sect. 16 of the Interpretation Act the statute had to be read as though it provided that the priority enacted should not operate so as to diminish any right of the Crown in any Province; the result was that the two debts would run *pari passu* as claimed by the Province.—*Re* SILVER BROS., LTD., A.-G. FOR QUEBEC *v.* A.-G. FOR CANADA, [1932] A. C. 514; 101 L. J. P. C. 107; 146 L. T. 556; *sub nom.* A.-G. FOR QUEBEC *v.* A.-G. FOR CANADA, 48 T. L. R. 238.

130j. —— **Effect of Interpretation Act, 1906, s. 16—On priority of Crown debt.**]—*Re* SILVER BROS., LTD., A.-G. FOR QUEBEC *v.* A.-G. FOR CANADA, No. 130i, *ante*.

130k. Radio communication—Exclusive power of Dominion Legislature.]—The Parliament of Canada has exclusive legislative power to regulate & control radio communication in Canada.

Great Britain, Canada, & other Dominions & Colonies, having entered separately into a convention on the subject with foreign countries, the Parliament of Canada, under the general powers conferred upon it by sect. 91 of the British North America Act, 1867 (c. 3), to make laws for the peace, order, & good government of Canada, had in relation to the obligations under the convention power similar to that which it would have had under sect. 132 if the convention had been a treaty between the British Empire as an entity & foreign countries. The legislative power of the Dominion extended to inter-provincial radio communication on the same grounds that it extended to inter-provincial aeronautics, & because the matter was within "telegraphs" & "works & undertakings connecting the Provinces with any other, etc.," subjects which sect. 92, head 10 (*a*), excepted from the authority of the Provincial legislatures, & sect. 91, head 29, brought within the Dominion authority.—*Re* RADIO COMMUNICATION IN CANADA, A.-G. OF QUEBEC *v.* A.-G. OF CANADA, A.-G. OF ONTARIO, A.-G. OF NEW BRUNSWICK, A.-G. OF MANITOBA, A.-G. OF SASKATCHEWAN, A.-G. OF ALBERTA & CANADIAN RADIO LEAGUE, [1932] A. C. 304; 101 L. J. P. C. 94; 146 L. T. 409; 48 T. L. R. 235, P. C.

131. *Add. Annotation:*—**Refd.** Royal Bank of Canada *v.* Larne, [1928] A. C. 187.

132. *Add. Annotations:*—**Apld.** Royal Bank of Canada *v.* Larne, [1928] A. C. 187. **Refd.** A.-G. for Canada *v.* A.-G. for British Columbia, [1930] A. C. 111.

134. *Add. Annotation:*—**Consd.** A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328.

135. *Add. Annotations:*—**Refd.** A.-G. for Manitoba *v.* A.-G. for Canada, [1925] A. C. 561; Erie Beach Co. *v.* A.-G. for Ontario (1929), 46 T. L. R. 33.

135a. —— **Direct—What is.**]—A tax is not "direct taxation" within British North America Act, 1867 (c. 3), s. 92, head 2, unless in substance it is one which is demanded from the person who it is intended should pay it, even if the Act imposing it declares that it is to be a direct tax upon the person who pays.

In answer to questions referred by the Governor-General, namely: (1) whether

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PART II. SECT. 3, SUB-SECT. 4.—A. (b) iii.

w i. —— *Nova Scotia Railway Arrangement Act—Ultra vires.*]—MURDOCH *v.* WINDSOR & ANNAPOLIS RY. CO. (1877), 3 Cart. 368.—**CAN.**

w ii. —— *Nova Scotia Winding-up Act—Valid.*]—*Re* WALLACE HUESTIS GREY STONE CO. (1881), 3 Cart. 374.—**CAN.**

a (p. 435). For "a. *Taxation—Direct—Power to impose.*]—" substitute "**135a i.** *Taxation—Direct—What is.*]—"

b (p. 435). For "b" substitute "**135a ii.**"

c (p. 435). For substitute "**135a iii.**"

135a iv. ——.]—City Act (Sask.), s. 415a, which empowers the city council to enact a bye-law requiring every person attending a place of amusement to pay a tax upon each admission to such place, is *intra vires*, as it is a direct tax & comes within the taxation powers of B. N. A. Act, s. 92 (2).—CLARKE *v.* MOOSE JAW (CITY), [1923] 2 D. L. R. 216; 16 Sask. L. R. 332; [1923] 1 W. W. R. 1126.—**CAN.**

135a v. —— —— ——.]—A municipal tax sought to be imposed on a trustee on assessment under Ontario —— —— Act, R. S. O., 1914 (c. 195), s. 13 (3), as enacted by 1922 (c. 78), s. 12, in respect of income "not wholly distributed annually," is an indirect tax & *ultra vires*.—CITY OF WINDSOR CORPN. *v.* MCLEOD, [1926] 2 D. L. R. 97; [1926] S. C. R. 450; 57 O. L. R. 15.—**CAN.**

135a vi. —— —— the body incorporated by the British Columbia Land Settlement & Development Act, took proceedings under ss. 46–55 of the Act, R. S. B. C., 1924, c. 128, with respect to lands of which pltf. was the registered owner, & penalty taxes provided for by s. 53 were imposed. Pltf. sued deft., attacking said legislation as *ultra vires*, as providing for indirect taxation, & claimed damages, an injunction, etc.:—*Held:* the taxation effected upon the land & the owner was direct & *intra vires*.—RATTENBURY *v.* LAND SETTLEMENT BOARD, [1929] 1 D. L. R. 242; S. C. R. 52; *affg.*, [1928] 3 D. L. R. 382; 2 W. W. R. 475; 39 B. C. R. 523.—**CAN.**

135a vii. —— —— ——.]—By sect. 3 of the Produce Marketing Act of British Columbia, 1926–27, a "Committee of Direction" was constituted, "with the exclusive power to control & regulate the marketing of all tree fruits & vegetables . . . being products grown or produced in that portion of the province contained within" boundaries therein specified. By sect. 10 (1), it was provided that, "for the purpose of controlling & regulating, under this Act, the marketing of any product within its authority, the Committee shall, so far as the legislative authority of the province extends, have power to determine at what time & in what quantity, & from & to what places, & at what price the product may be marketed, & to make orders & regulations in relation to such matters." By sect. 10 (*k*), the committee was also given the power "for the purpose of defraying the expenses of operation, to impose levies on any product marketed." By sub-sect. (3) of sect. 16, as enacted by Amendment Act of 1928, it was provided that "the committee may fix licence fees to be paid by shippers":—*Held:* this legislation is *ultra vires* of the provincial legislature.—LAWSON *v.* INTERIOR TREE FRUIT & VEGETABLE COMMITTEE OF DIRECTION, [1931] S. C. R. 357; 2 D. L. R. 193; *revsg.*, [1930] 2 W. W. R. 23; 4 D. L. R. 1027; 42 B. C. R. 493.—**CAN.**

135a viii. —— —— ——.]—The taxes which under Municipal Com-

the legislature of Manitoba had authority to enact c. 17 of its statutes for 1923, entitled "An Act to provide for the collection of a tax from persons selling grain for future delivery," & (2), if the Act was *ultra vires* in certain parts, then in what particulars it was *ultra vires*:—*Held:* the Act was wholly *ultra vires*, since in many transactions to which it related the person paying the tax would indemnify himself at the expense of others, & it was not possible to assume that the legislature intended to pass it in a truncated form.—A.-G. FOR MANITOBA *v.* A.-G. FOR CANADA, [1925] A. C. 561; 94 L. J. P. C. 146; 133 L. T. 193; 41 T. L. R. 409; 69 Sol. Jo. 445, P. C.

Annotation:—**Consd.** A.-G. for British Columbia *v.* Canadian Pacific Ry., [1927] A. C. 934.

135b. —— —— ——.]—A tax imposed by a provincial legislature, in respect of a commodity, is an indirect tax, & *ultra vires* under British North America Act, 1867 (c. 3), s. 92 (2), if from the terms of the Act there appears an expectation & intention that the person required to pay the tax will indemnify himself upon a resale of the commodity taxed, even if in the case under consideration no resales have taken place.

An Act of the legislature of British Columbia, Fuel-Oil Tax Act, R. S. B. C., 1924 (c. 251), requiring that every person who shall purchase within the province fuel-oil for the first time after its manufacture in, or importation into, the province, shall pay a tax thereon, is invalid.—A.-G. FOR BRITISH COLUMBIA *v.* CANADIAN PACIFIC RY. CO., [1927] A. C. 934; 96 L. J. P. C. 149; 137 L. T. 745; 43 T. L. R. 750; 71 Sol. Jo. 761, P. C.

Annotation:—**Consd.** Erie Beach Co. *v.* A.-G. for Ontario (1926), 46 T. L. R. 33.

—The Halifax Corpn. charter provided that the owner of property let to the Crown, or to any person exempt from taxation, should be deemed to be in occupation thereof, & should be assessed & rated to business tax if the premises were used for business purposes:—*Held:* the tax was a direct tax falling within the authority of British North America Act, 1867 (c. 3), s. 92 (2), & was within the powers of the province.—HALIFAX CORPN. *v.* FAIRBANKS' ESTATE (1927), 44 T. L. R. 5; 71 Sol. Jo. 946, P. C.

—— **Succession duty.**]—*See* Nos. 140-142a, *post.*

135d. —.]—Mine Owners Tax Act, 1923 (c. 33), of Alberta, purported to impose upon every mineowner, as therein defined, a percentage tax upon the gross revenue of his mine during each preceding month:—*Held:* the tax was not direct taxation within British North America Act, 1867 (c. 3), s. 92 (2), & the Act was *ultra vires*.—R. *v.* CALEDONIAN COLLIERIES, [1928] A. C. 358; 97 L. J. P. C. 94; 139 L. T. 525; 44 T. L. R. 622, P. C.

Annotation:—**Refd.** A.-G. for British Columbia *v.* McDonald Murphy Lumber Co., [1930] A. C. 357.

135e. —— —— ——.]—Forest Act, 1924, s. 58, of British Columbia, imposed a tax upon all timber cut within the Province, except that upon which a royalty was payable, but provided that in the case of timber used or manufactured in the Province there should be a rebate of nearly the whole tax. The Act prohibited under penalty the export of any timber without a certificate that the tax due in respect of it had been paid:—*Held:* (1) the tax was invalid because it was an export tax, & so fell within the category of duties of customs & excise, which the Dominion legislature had exclusive power to impose by British North America Act, 1867 (c. 3), s. 122; (2) also because it was indirect taxation, & therefore not within the legislative power of the Province under sect. 92, head 2, of that Act; (3) a tax levied on a commercial commodity upon the occasion of its exportation in pursuance of trading transactions cannot be described as a tax whose incidence, by its nature, is such that it is finally borne by the first payer & is not susceptible of being passed on.—A.-G. FOR BRITISH COLUMBIA *v.* MCDONALD MURPHY LUMBER CO., LTD., [1930] A. C. 357; 99 L. J. P. C. 113; 143 L. T. 1; 46 T. L. R. 266, P. C.

136. *Add. Annotations*:—**Consd.** Halifax Corpn. *v.* Fairbanks' Estate (1927), 44 T. L. R. 5; R. *v.* Caledonian Collieries, [1928] A. C. 358; Erie Beach Co. *v.* A.-G. for Ontario (1929), 46 T. L. R. 33. **Refd.** Caron *v.* R., [1924] A. C. 999; A.-G. for Manitoba *v.* A.-G. for Canada, [1925] A. C. 561; A.-G. for British Columbia *v.* Canadian Pacific Ry., [1927] A. C. 934; A.-G. for Manitoba *v.* A.-G. for Canada, [1929] A. C. 260.

138. *Add. Annotations*:—**Refd.** A.-G. for Manitoba *v.* A.-G. for Canada, [1925] A. C. 561; A.-G. for British Columbia *v.* Canadian Pacific Ry., [1927] A. C. 934.

140. *Add. Annotation*:—**Refd.** English, Scottish & Australian Bank, Ltd. *v.* I. R. Comrs. (1931), 48 T. L. R. 170.

141. *Add. Annotations*:—**Consd.** A.-G. for Manitoba *v.* A.-G. for Canada, [1925] A. C. 561. **Refd.** Halifax Corpn. *v.* Fairbanks' Estate (1927), 44 T. L. R. 5; Erie Beach Co., Ltd. *v.* A.-G. for Ontario (1929), 46 T. L. R. 33.

——s' Act, R. S. M., 1913, he may equire municipal councils to levy & ollect are direct taxes on property & *ntra vires*.]—BRANDON CITY *v.* MUNIPAL COMR., [1931] 3 D. L. R. 397; W. W. R. 65; *affd.*, [1931] 3 W. W. R. 25; 4 D. L. R. 830; 3 W. W. R. 225; 9 Man. L. R. 582.—**CAN.**

135 ix. —— —— ——.]—The "adstments" imposed by Dairy Products ales Adjustment Act (B.C.), 1929, as ell as the "levy" provided for thereder to defray the expenses of the peration of the Act, are indirect taxes; , therefore, the Act is *ultra vires* in its ntirety.—LOWER MAINLAND DAIRY RODUCTS SALES ADJUSTMENT COM- *v.* CRYSTAL DAIRY, LTD., [1932] 2 W. W. R. 41; *affd.* (1932), 49 T. L. R. 104, P. C.—**CAN.**

135 x. —— —— ——.]—Tax on non-resident contractors held indirect & *ultra vires*.—CHARLOTTETOWN *v.* FOUNDATIONS MARITIME, LTD., [1932] 3 D. L. R. 353; 3 M. P. R. 196.—**CAN.**

• (p. 435) **i.** —— —— ——.]—PLUMMER WAGON CO. *v.* WILSON (1885), 3 Man. L. R. 68.—**CAN.**

141 iii. —— —— ——.]—The tax under Succession Duty Act (B. C.), as applied to "movables" outside the province belonging to a person who died domiciled within the province, is a direct tax & *intra vires*.—*Re* INVERARITY ESTATE, [1924] 1 D. L. R. 1020; 1 W. W. R. 901; 33 B. C. R. 318.—**CAN.**

141 iv. —— —— ——.]—Succession Duty Act, R. S. O., 1914 (c. 24):—*Held: intra vires*.—A.-G. FOR ONTARIO *v.* BABY, [1926] 3 D. L. R. 928; 59 O. L. R. 181.—**CAN.**

141 v. —— —— ——.]—Succession Duty Act, 1915, s. 10 (6):—*Held: intra vires*.—R. *v.* DONEGAL (MARCHIONESS) (1923), 51 N. B. R. 309; [1924] 2 D. L. R. 1191.—**CAN.**

the taxation imposed under Succession Duty Act, R. S. B. C., 1924, was direct taxation, & *intra vires*.—UNTERMYER ESTATE *v.* A.-G. FOR BRITISH CO-

142. *Add. Annotations :*—**Consd.** A.-G. for Manitoba *v.* A.-G. for Canada, [1925] A. C. 561; Erie Beach Co., Ltd. *v.* A.-G. for Ontario (1929), 46 T. L. R. 33. **Refd.** Brassard *v.* Smith, [1925] A. C. 431.

142a. —— —— ——.]—Certain shares in applt. co., which was registered in Ontario, were registered in the name of a person domiciled in the State of New York. By Ontario Succession Duty Act, s. 10 (2), " No property in Ontario belonging to any deceased person at the time of his death . . . whether such deceased person was at the time of his death domiciled in Ontario or elsewhere shall be transferred . . . until the duty, if any, is paid, or security given therefor, & any corporation or person allowing such property to be so transferred . . . contrary to this subsection shall be liable for such duty " :—*Held :* on the death of the shareholder, as the co.'s share register was required by law to be kept in Ontario & as the shares could therefore be effectively dealt with only in Ontario, the shares were situate in Ontario & subject to succession duty there, & that as there was no provision for reimbursement of the co. the statute did not impose indirect taxation & was not *ultra vires* of the Provincial Legislature.—ERIE BEACH CO., LTD. *v.* A.-G. FOR ONTARIO, [1930] A. C. 161; 99 L. J. P. C. 38; 142 L. T. 156; 46 T. L. R. 33, P. C.

144. *Add. Annotation :*—**Refd.** Halifax Corpn. *v.* Fairbanks' Estate (1927), 44 T. L. R. 5.

145. *Add. Annotations :*—**Consd.** *Re* Insurance Act of Canada, [1932] A. C. 41. **Refd.** A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328; Caron *v.* R., [1924] A. C. 999; Toronto Electric Comrs. *v.* Snider, [1925] A. C. 396; A.-G. for Manitoba *v.* A.-G. for Canada, [1929] A. C. 260; Proprietary Articles Trade Assocn. *v.* A.-G. for Canada, [1931] A. C. 310.

145a. —— **Construction of legislation—Limitation to provincial jurisdiction.**]—A.-G. FOR ONTARIO *v.* RECIPROCAL INSURERS, No. 108a, *ante*.

148. *Add. Annotation :*—**Refd.** A.-G. for Manitoba *v.* A.-G. for Canada, [1929] A. C. 260.

149. *Add. Annotation :*—**Consd.** Chung Chuck *v.* R., [1930] A. C. 244.

150. *Add. Annotations :*—**Consd.** Chung Chuck *v.* R., [1930] A. C. 244. **Refd.** Nadan *v.* R. [1926] A. C. 482.

LUMBIA, [1929] 1 D. L. R. 315; S. C. R. 84; *affg.*, [1928] 3 D. L. R. 311; 2 W. W. R. 209; 39 B. C. R. 533.—**CAN.**

141 vii. —.]—Sect. 7 of Succession Duties Act, R. S. A., 1922, is *ultra vires* in so far as it purports to impose duties upon property situate outside the province of Alberta, even though the owner thereof was at the time of his death domiciled within Alberta & the beneficiaries are domiciled therein. Said Act is *intra vires* with respect to its imposition of duties on real property within the province & on personal property within the province belonging to a deceased who at the time of his death was domiciled in the province, including therein shares & other securities of cos. with a head office & transfer office within the province.—KERR *v.* ALBERTA PROVINCIAL TREASURER & A.-G. FOR ALBERTA, [1932] 2 W. W. R. 705.—**CAN.**

j i. —— *Exemption from.*]—*Held :* the power & authority to raise revenue for Dominion purposes was specially given to the Parliament of Canada, & any legislation passed by the Old Province of Canada, denying the right to tax or exempting any subject in Ontario to pay such tax, could not be valid after the passing of B. N. A. Act, 1867.—HOLMSTEAD *v.* MINISTER OF CUSTOMS & EXCISE, [1927] Exch. C. R. 68.—**CAN.**

l (p. 436) i. —— ——.]—Hawkers & Pedlers Act, R. S. S., 1920 (c. 147), applies to a hawker & pedler acting as such as the agent of a Dominion co., even though its letters patent give it the power to sell & make known its products through " salesmen & agents going from house to house & displaying samples," etc., the licence fee imposed by the Act not being an indirect tax, & not being made so by the fact that an employer pays it for his agents.—R. (SINCLAIR) *v.* GEBHARDT, [1926] 2 D. L. R. 950; [1926] 2 W. W. R. 235; 45 Can. Crim. Cas. 321; 20 Sask. R. L. 85.—**CAN.**

n (p. 436) i. —— *Of Dominion notes forming part of bank reserve—Valid.*]—WINDSOR *v.* COMMERCIAL BANK OF WINDSOR (1882), 3 R. & G. 420; 3 Cart. 377.—**CAN.**

q (p. 437) i. ——.]—Ontario Insurance Act, 1924, ss. 168, 180 :—*Held*, *intra vires.*—*Re* INSURANCE CONTRACTS, [1926] 2 D. L. R. 204; 58 O. L. R. 404.—**CAN.**

q (p. 437) ii. ——.]—*Held :* the right to empower the imposition of license fees on insurance cos. was *intra vires.*—HALIFAX CITY CORPN. *v.* WESTERN ASSURANCE CO. (1885), 18 N. S. R. (6 R. & G.) 387.—**CAN.**

q (p. 437) iii. ——.]—*Held :* Ordinance incorporating City of Calgary (No. 33 of 1893), s. 117 (41), was *intra vires.*—ENGLISH *v.* O'NEILL (1899), 4 Terr. L. R. 74.—**CAN.**

q (p. 437) iv. ——.]—*Held :* sect. 85 (1) of Insurance Act, R. S. O., 1927 (c. 222), is *ultra vires* of the Ontario Legislature.—YORKE *v.* CONTINENTAL CASUALTY CO. OF CAN., [1929] 3 D. L. R. 662; 64 O. L. R. 109; *on appeal*, [1930] S. C. R. 180; 1 D. L. R. 609.—**CAN.**

146 iii a. —— ——.]—LEPINE *v.* LAURENT (1891), 17 Q. L. R. 226.—**CAN.**

146 xii. —— ——.]—Govt. Liquor Act, 1921 (c. 30), which vests in a Board of Control the exclusive sale of intoxicating liquor within the province, is *intra vires.*—R. *v.* FERGUSON (B.C.), [1922] 2 W. W. R. 473; 69 D. L. R. 153; 37 Can. Crim. Cas. 89.—**CAN.**

146 xiii. —— ——.]—The imposition by Govt. Liquor Act, 1921 (c. 30), s. 55, of a tax upon any liquor not purchased from a vendor at a govt. liquor store, is *intra vires* the provincial legislature.—LITTLE *v.* A.-G. FOR BRITISH COLUMBIA (B.C.), [1922] 2 W. W. R. 359; 65 D. L. R. 297; 37 Can. Crim. Cas. 189; *affg.*, 60 D. L. R. 335; 30 B. C. R. 343.—**CAN.**

146 xiv. —— ——.]—Saskatchewan Temperance Act, R. S. S., 1920 (c. 194), s. 11 (2), requiring every brewer, distiller, & liquor exporter to make certain returns to the Commission is *intra vires* the provincial legislature, even in respect to a liquor export co. incorporated by the Dominion Parliament.—R. *v.* REGINA WINE & SPIRIT, LTD., R. *v.* PRAIRIE DRUG CO., LTD., [1922] 1 W. W. R. 195; 65 D. L. R. 258; 36 Can. Crim. Cas. 348; 15 Sask. L. R. 100.—**CAN.**

146 xv. —— —— *Suspension of Canada Temperance Act.*]—SHEEHAN *v.* SHAW, [1928] 2 D. L. R. 468; 49 Can. Crim. Cas. 357.—**CAN.**

146 xvi. —— ——.]—*Held :* reading sect. 141 of Liquor Control Act (Ontario), 17 Geo. 5, c. 70, in connection with sect. 72 (1), the latter must be regarded as limited to cases over which the Ontario Legislature had jurisdiction, & not as an attempt to invade the field of Dominion Legislature.—R. *v.* RUDDICK, [1928] 3 D. L. R. 208; 49 Can. Crim. Cas. 323; 62 O. L. R. 248.—**CAN.**

t (p. 438) i. —— —— ——.]—KEEFE *v.* MCLENNAN (1876), 2 R. & C. 5; 2 Cart. 400.—**CAN.**

c (p. 438). For " —— *Prohibition Act—Confiscatory provisions* " read " —— *Confiscatory provisions—Prohibition Act.*"

c (p. 438) i. —— —— *Act of 188* (*c.* 3), *s.* 55.]—*Held :* the right to impose forfeiture under the above sect. of an offender's goods as punishment was within the powers of the provincial legislature.—R. *v.* GARDNER (1892), 25 N. S. R. (13 R. & G.) 48.—**CAN.**

d (p. 438) i. —— *Alberta Liquor Control Act*, 1924 (c. 14).]—*Held :* sect. 113 (3) of the above Act was *ultra vires.*—R. *v.* FORHAN (Alta.), [1927] 1 W. W. R. 689; 48 Can. Crim. Cas. 86.—**CAN.**

f (p. 438) i. —— *Restrictions on export.*]—The requirements in Saskatchewan Temperance Act, that all warehouses in which liquor is kept for export be located in cities having a population of 10,000, is *intra vires.*—CANADA DRUGS, LTD. *v.* A.-G. FOR SASKATCHEWAN (SASK.), [1922] 2 W. W. R. 1089; 67 D. L. R. 3; 38 Can. Crim. Cas. 69; 15 Sask. L. R. 506; *varying*, 66 D. L. R. 815; 37 Can. Crim. Cas. 367.—**CAN.**

k (p. 438) i. —— *Creation of criminal offences.*]—Saskatchewan Temperance Act, R. S. S., 1920 (c. 194), s. 68 (2), as amended, is *ultra vires* the provincial legislature, in so far as it professes to set up certain acts as a criminal offence, namely, the obstruction of the " officer " mentioned in sect. 2 (7a) in the execution of his duties under the Act.—R. (WILBUR) *v.* MAGEE (Sask.), [1923] 3 W. W. R. 55.—**CAN.**

k (p. 438) ii. —— *Imposition & recovery of fines & penalties—Valid.*]—R. *v.* MCMILLAN (1873), 2 Pug. 110; 2 Cart. 489.—**CAN.**

k (p. 438) iii. *S. P.* R. *v.* RONAN (1891), 23 N. S. R. 421.—**CAN.**

k (p. 438) iv. —— *Amendment of Temperance Act*, 1884 (*c.* 18)—*Validity.*]—COOEY *v.* BROME MUNICIPALITY (1877), 2 Cart. 385.—**CAN.**

153. *Add. Annotations:*—**Refd.** The Fagernes, [1927] P. 311; *Re* Aeronautics in Canada (Regulation & Control of), [1932] A. C. 54.

154a. —— **No power to confirm transfer of federal railway.**]—BOURGOIN *v.* COMPAGNIE DU CHEMIN DE FER DE MONTRÉAL, OTTAWA, ET OCCIDENTAL (1880), 5 App. Cas. 381; 49 L. J. P. C. 68; 42 L. T. 414, P. C.

158. *Add. Annotations:*—**Consd.** Canadian Pacific Ry. Co. *v.* Toronto Transportation Commission; Toronto Transportation Commission *v.* Canadian National Railways (1930), 144 L. T. 37.

159. *Add. Annotations:*—**Refd.** A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328; *Re* Insurance Act of Canada, [1932] A. C. 41.

161. *Add. Citations:*—[1924] A. C. 203; 93 L. J. P. C. 33; 130 L. T. 227.

162a. —— **Legislation incidentally affecting.**]—A.-G. FOR ONTARIO *v.* RECIPROCAL INSURERS, No. 108a, *ante*.

164. *Add. Annotations:*—**Distd.** Lord's Day Alliance of Canada *v.* A.-G. for Manitoba, [1925] A. C. 384. **Refd.** Proprietary Articles Trade Association *v.* A.-G. for Canada, [1931] A. C. 310.

164a. —.]—Lord's Day Act (R. S. Can., 1906, c. 153) made it a punishable offence to run or conduct Sunday excursions "except as provided by any provincial Act or law now or hereafter in force." An Act passed by the legislature of Manitoba in 1923 to amend Lord's Day Act of that province, enacted that it should be lawful to run or conduct Sunday excursions to resorts within the province. Sunday excursions were not unlawful by the laws of England existing in 1870, which were part of the law of Manitoba by 51 Vict. c. 33 (Dom.):—*Held:* the Manitoba statute of 1923 being merely permissive, & not dealing with a matter brought within the criminal law, was competent to the provincial legislature under British North America Act, 1867 (c. 3), s. 92, heads 13, 16; &, that being so, the Act was a provincial Act "now or hereafter in force" within Lord's Day Act of Canada; it was unnecessary to consider whether the Act of 1923 could be justified as Dominion legislation by delegation or reference.—LORD'S DAY ALLIANCE OF CANADA *v.* A.-G. FOR MANITOBA, [1925] A. C. 384: 94 L. J. P. C. 84; 132 L. T. 678; 41 T. L. R. 225, P. C.

151 i. *Barristers — Provision authorising remuneration by share of proceeds of action.*]—It is *ultra vires* a provincial legislature to alter the law relating to champerty, authorising barristers & solrs. within the province to contract with clients for payment for professional services by way of a share of the proceeds of actions in lieu of the usual costs.—TAYLOR *v.* MACKINTOSH, [1924] 3 D. L. R. 926; 3 W. W. R. 97; 34 B. C. R. 56.—**CAN.**

151 ii. *S. P. Re* CONSTITUTIONAL QUESTIONS DETERMINATION ACT, *Re* LEGAL PROFESSIONS ACT (B. C.), [1927] 4 D. L. R. 195; [1927] 2 W. W. R. 808; 48 Can. Crim. Cas. 278.—**CAN.**

152 i. *Fisheries — Powers of provincial legislature.*]—The Dominion Parliament has exclusive jurisdiction to legislate with respect to the time, mode & manner of fishing; but, subject thereto, any proprietary rights, *e.g.* the leasing of fishing rights, & rights over fish as an article of commerce within the province are within provincial jurisdiction. Sect. 100 (1) of Game & Fisheries Act, 1930 (Man.), is *ultra vires*.—R. *v.* WAGNER (NO. 2), [1932] 2 W. W. R. 162.—**CAN.**

o (p. 439) i. —— —— —— —.]—It is not competent to the legislature of the Province of Alberta to enact legislation authorising the construction & operation of railways in such a manner as to interfere with the physical structure or with the operation of railways subject to the jurisdiction of the Parliament of Canada.—*Re* ALBERTA RAILWAY LEGISLATION (1913), 24 W. L. R. 630; 4 W. W. R. 608; 48 S. C. R. 9; 12 D. L. R. 150; 15 Can. Ry. Cas. 213.—**CAN.**

o (p. 439) ii. —— *Nova Scotia Railway Arrangement Act—Valid.*]—*Re* WINDSOR & ANNAPOLIS RY. CO. (1883), 4 R. & G. 312; 3 Cart. 387.—**CAN.**

160 ii. —— ——.]—Coal Mines Regulation Act, s. 4, as amended by Coal Mines Regulation Amendment Act, 1890, s. 1, provides that "no Chinaman shall be employed in, or allowed to be for the purpose of employment in, any mine to which this Act applies, below ground," is within the constitutional power of the provincial Legislature as being a regulaton of Coal Mines, & is not *ultra vires* as an interference with the subject of aliens.—*Re* COAL MINES REGULATION AMENDMENT ACT, 1890 (1896), 5 B. C. R. 306; 1 M. M. Cas. 116.—**CAN.**

q (p. 440) i. —— *Chinese Regulation Act, 1884, s. 14—Ultra vires.*]—R. *v.* GOLD COMR. OF VICTORIA DISTRICT (1886), 1 B. C. R. pt. 2, 260.—**CAN.**

164 v. ——.]—*Held:* Lord's Day Ordinance, s. 3, was *intra vires*.—FALLIS *v.* DALTHASER (1912), 21 W. L. R. 171; 2 W. W. R. 132; 4 D. L. R. 705; 4 Alta. L. R. 361.—**CAN.**

165 vi. —— ——.]—KERLEY *v.* LONDON & LAKE ERIE RY. & TRANSPORTATION CO. (1913), 28 O. L. R. 506; 4 O. W. N. 1234.—**CAN.**

165 vii. —— *Restrictions on sale of shares.*]—Sale of Shares Act, R. S. S. (1920), s. 4, in so far as it purports to apply to the sale of its own shares by a Dominion co., is *ultra vires* the provincial legislature.—LUKEY & A.-G. FOR SASKATCHEWAN *v.* RUTHENIAN FARMERS ELEVATOR CO., LTD., [1924] 1 D. L. R. 706; [1924] S. C. R. 56; 1 W. W. R. 577.—**CAN.**

165 viii. —— ——.]—Sale of Securities Act, 1923 (N. B.), s. 4, so far as it purports to apply to sales of shares of Dominion cos., is *ultra vires* the provincial legislature.—R. *v.* HENDERSON, *Ex p.* QUEEN (1924), 51 N. B. R. 346.—**CAN.**

165 ix. —— ——.]—Sale of Shares Act, 1924 (c. 175) (Man.), & Municipal & Public Utility Board Act, 1926 (c. 33) (Man.), so far as they purport to apply to the sale of its own shares by a Dominion co.:—*Held: ultra vires*.—*Re* SALE OF SHARES ACT & MUNICIPAL & PUBLIC UTILITY BOARD ACT, [1927] 2 W. W. R. 480; 36 Man. L. R. 583.—**CAN.**

165 x. —— ——.]—Security Frauds Prevention Act, 1930 (Ont.), does not in any way impair the status or powers of a Dominion co. coming within its provisions, & is therefore *intra vires*.—R. *v.* HAZZARD, SECURITY FRAUDS PREVENTION BOARD *v.* CONROY, [1932] 1 D. L. R. 575; O. R. 139.—**CAN.**

165 xi. —— *Provincial legislation as to foreign companies.*]—(1) Since the provincial Legislature's jurisdiction with respect to Dominion cos. is limited, it cannot delegate to an official an unfettered discretion which it does not itself possess. Therefore the power given the registrar by sect. 135 of Companies Act, 1929 (Alta.), which requires certain information to be given by a foreign co. when applying for registration, cannot apply to a Dominion co.

(2) The latter part of sub-sect. (1) of sect. 145 of said Companies Act & sub-sect. (2) of sect. 145, dealing with prospectuses, are invalid with respect to Dominion cos.

(3) A provision that foreign cos. shall pay such fees for registration as may be prescribed by order in council is invalid with respect to Dominion cos., since the fees being subject to order in council, may be altered at any time & may be increased so as to make it practically impossible for foreign cos. to come into the province at all & in that way prevent a Dominion co. from carrying on its business in the province.

(4) Requirements of a provincial Act for the payment of fees by foreign cos. & the furnishing of statements & returns are valid with respect to Dominion cos. if reasonable & uniform & if not such as to prevent such cos. from carrying on business in the province.

(5) Sect. 141 of Companies Act, 1929 (Alta.), requiring the painting, affixing & legible printing of a co.'s name, can be interpreted as intended, although not so expressed, to apply only to transactions within the province & to that extent it is valid with respect to Dominion cos.—*Re* ROYALITE OIL CO., LTD., [1931] 1 W. W. R. 484; 2 D. L. R. 418; 25 Alta. L. R. 206.—**CAN.**

—— *Provincial legislation as to Dominion companies.*]—*See* No. 165 xi, *ante*.

165 xii. —.]—The basic idea underlying the Confederation scheme is that there shall be co-ordinate governments, the Dominion on the one hand & the provinces on the other, dividing between them all legislative power in Canada, the one not subordinate to the other, but each enjoying sovereign power within its own field of legislative competency as fixed & limited by the B. N. A. Act. A provincial Legislature may enact laws, province-wide, of general application in respect of any of the subjects enumerated in sect. 92, & in so doing may completely paralyse all activities of a Dominion trading co., provided that in enacting such laws it does not enter the field of co. law & in that field encroach upon the status & powers of a Dominion co. as such. An enactment of a provincial Legis-

168. *Add. Annotations :*—**Apld.** A.-G. for Manitoba *v.* A.-G. for Canada, [1929] A. C. 260. **Distd.** Lymburn *v.* Mayland (1932), 48 T. L. R. 231. **Refd.** A.-G. for Ontario *v.* Reciprocal Insurers, [1924] A. C. 328 ; Canon *v.* R., [1924] A. C. 999.

latnre, limited in direct effect by provincial boundaries, which relates to a particular trade or business carried on within its boundaries, regardless of whether or not that trade or business is carried on by natural persons or cos., is valid ; but the moment that a provincial Legislature legislates concerning cos. as such, then, if such legislation constitutes regulation or impairment or sterilisation of the powers & capacities which the Dominion has conferred, the legislation is invalid. Such last-mentioned legislation is not saved by the fact that all kinds of cos., provincial as well as Dominion, are aimed at without special discrimination against Dominion cos. The distinction between provincial enactments affecting Dominion cos. that are of general application & those that may be termed co. law is this : In the former case there is no attempt to interfere with powers validly granted to the co. by the Dominion nor with the status of the co. as such. The circumstance that because of the general laws of the province the co. may not exercise those powers does not destroy or impair the powers. In the latter case the enactment prohibits or imposes conditions upon the exercise of the powers of Dominion cos. as such. It is aimed at & affects Dominion co. powers as distinguished from being aimed at & affecting a trade or business in the province which Dominion cos. may happen to be engaged in in common with provincial cos. & natural persons. In the one case the legislation has to do with a provincial matter, Dominion cos. being only incidentally affected ; in the other case the legislation is aimed either at Dominion cos. or at all cos., which includes Dominion cos., & so the province with power to legislate only as to provincial cos. must be said to have entered the Dominion field. Coal Miners' Wages Security Act, 1928 (Alta.), as amended by 1930 (c. 23), s. 2, is *intra vires*, even with respect to Dominion cos. operating coal mines in the province & shipping coal therefrom to places outside the province. It is legislation provincial in character applicable to all mine owners, whether cos. or natural persons ; it does not affect the status and powers of Dominion cos. as such ; & it does not encroach upon the Dominion's power to regulate "trade & commerce" as judicially defined.—R. *v.* Arcadia Coal Co., Ltd., [1932] 1 W. W. R. 771 ; 2 D. L. R. 475.—**CAN.**

f (p. 442) i. —— ——.]—*Held :* the Dominion Parliament had power under B. N. A. Act, 1871, to enact Alberta Act, s. 17 with its protective provisions restricting full legislative power as to education, notwithstanding that those provisions are a modification of B. N. A. Act, 1867, s. 93, & School Attendance Act does not violate any of the protective provisions preserved by Alberta Act, s. 17.—R. (Brooks) *v.* Ulmer, [1923] 1 D. L. R. 304 ; 38 Can. Crim. Cas. 207 ; 19 Alta. L. R. 12 ; [1923] 1 W. W. R. 1.—**CAN.**

o (p. 442) i. —— ——.]—*Ex p.* Johnston (1930), 54 Can. C. C. 99.—**CAN.**

o (p. 442) ii. *Jurisdiction of judge of Division Court to appoint deputy.*]—Sect. 19 of Division Cts. Act, authorising "the judge" to appoint a barrister to act as his deputy, is within the powers of the Ontario Legislature.—French *v.* McKendrick, [1931] 1 D. L. R. 696 ; 66 O. L. R. 306.—**CAN.**

o (p. 442) iii. —— ——.]—Workmen's Compensation Commission Act, 1928 (Que.), & sect. 36 of Workmen's Compensation Act, 1928 (Que.), are *ultra vires.*—Slanec *v.* Grimstead, [1932] 3 D. L. R. 81.—**CAN.**

q (p. 442) i. —— ——.]—A local legislature can fix the number of grand jurors who shall compose the panel, but not the number of grand jurors necessary to find a good bill of indictment.—R. *v.* Cox (1898), 31 N. S. R. 311.—**CAN.**

s (p. 442) i. —— *Remuneration of judges.*]—Having regard to B. N. A. Act, 1867, ss. 92 (14), 96–101, the matters dealt with in Judges Act, R. S. C. 1906, s. 34 are within the exclusive authority of the provincial legislatures in so far as the judges of the provincial cts. are concerned.—*Re* Judges Act, [1923] 2 D. L. R. 604 ; 52 O. L. R. 105.—**CAN.**

s (p. 442) ii. —— *Appointment of commissioner with judicial powers.*]—McLean Gold Mines, Ltd. *v.* A.-G., [1923] 1 D. L. R. 10 ; 54 O. L. R. 573.—**CAN.**

s (p. 442) iii. —— *Alteration of constitution of court.*]—An amendment altering the quorum of the Ct. of Appeal, making it unnecessary for the judge ordinary to sit as a member of the ct. :—*Held : intra vires.*—King *v.* King (1904), 37 N. S. R. 204.—**CAN.**

s (p. 442) iv. —— *Power to restrict bringing of action.*]—A local legislature can enact that no civil action for damages shall be brought against any particular person or persons, including members of the legislature.—Thomas *v.* Haliburton (1893), 26 N. S. R. 55.—**CAN.**

s (p. 442) v. —— *Paymen to debt by instalments.*]—An Act authorising the making of a judge's order for such a payment :—*Held : intra vires.*—Gould *v.* Ryan (1894), 26 N. S. R. 461.—**CAN.**

s (p. 442) vi. —— *Imprisonment of fraudulent judgment debtors—Valid.*]—*Ex p.* Ellis (1878), 1 P. & B. 593 ; 2 Cart. 527.—**CAN.**

t (p. 443) i. —— ——.]—38 Vict. c. 88 :—*Held :* not *ultra vires* as being an interference with trade & commerce. —*Ex p.* Fairbairn (1878), 18 N. B. R. (2 P. & B.) 4.—**CAN.**

t (p. 443) ii. —— ——.]—Jonas *v.* Gilbert (1881), 5 S. C. R. 356.—**CAN.**

t (p. 443) iii. *S. P.* Jonas *v.* Marshall (1880), 20 N. B. R. 61.—**CAN.**

s (p. 443) i. —— ——.]—Fortier *v.* Lambe (1895), 25 S. C. R. 422.—**CAN.**

s (p. 443) ii. —— —— *Company incorporated abroad.*]—Halifax City *v.* Jones (1896), 28 N. S. R. 452.—**CAN.**

s (p. 443) iii. —— —— *of music teachers.*]—R. *v.* Burnett, [1930] 3 W. W. R. 347 ; 54 Can. C. C. 405.—**CAN.**

s (p. 443) iv. —— ——.]—Segal *v.* Montreal City, [1931] S. C. R. 460 ; 4 D. L. R. 603 ; 56 Can. C. C. 114.—**CAN.**

s (p. 443) v. —— ——.]—Bridgetown *v.* Patterson, [1930] 3 D. L. R. 830.—**CAN.**

m (p. 443) i. —— ——.]—Female Employment Act, R. S. S. 1920, c. 185, is supportable only as a police regulation & not under the Legislature's power of making laws with respect to licences.—Yee Clun *v.* City of Regina, [1925] 4 D. L. R. 1015 ; [1925] 3 W. W. R. 714.—**CAN.**

170a. Legislation incidentally affecting.]—A.-G. for Ontario *v.* Reciprocal Insurers, No. 108a, *ante.*

176a. —— Protection of denominational schools—Meaning of Protestant.]—The Quebec Legislature in 1903 passed an Act, 3 Edw. 7, c. 16,

n (p. 443) i. —— *Vancouver Island Settlers Rights Act, 1904—Intra vires.*]—McGregor *v.* Esquimalt & Nanaimo Ry. Co., [1907] A. C. 462.—**CAN.**

o (p. 443) i. —— —— ——.]—Canadian Pacific Ry. Co. *v.* Ottawa Fire Insurance Co. (1907), 39 S. C. R. 405.—**CAN.**

o (p. 443) ii. —— *Works wholly within province.*]—R. *v.* Mohr (1881), 7 Q. L. R. 183 ; 2 Cart. 257.—**CAN.**

o (p. 443) iii. —— *Conservation of natural gas.*]—Turner Valley Gas Conservation Act, 1932 (Alta.), which defines & applies to a certain area in Alberta & constitutes a Board & invests it with powers purporting to effect the conservation of natural gas, is *intra vires*. Its pith & substance is the restriction of the wastage of gas in the production of naphtha in said area ; it, therefore, deals with a matter of a "merely local or private nature in the province" & does not infringe on the Dominion's powers over the "regulation of trade & commerce," & its effect on Dominion cos. engaged in said area is merely to prescribe the way in which their business shall be carried on therein.—Spooner Oils, Ltd., & Spooner *v.* Turner Valley Gas Conservation Board & A.-G. for Alberta, [1932] 2 W. W. R. 454 ; *affd.*, [1932] 3 W. W. R. 477.—**CAN.**

oo (p. 443) i. —— *Penalties for fraudulent conveyances.*]—Stat. 13 Eliz. c. 5, s. 3, is not in force in Alberta. 13 & 14 Geo. v, c. 5 (Alta.), s. 46, declaring this stat. to have been in force, could not have the effect of introducing s. 3. The Federal Parliament having made the commission of fraudulent acts a crime, the subject-matter is criminal law & beyond the competence of the provincial legislature. — Connors *v.* Egli, [1924] 2 D. L. R. 59 ; 1 W. W. R. 1050 20 Alta L. R. 205.—**CAN.**

oo (p. 443) ii. —— *Collection of freight & wharfage & warehouse charges—Ultra vires.*]—Eastern Development Co. *v.* McKay (1888), 20 N. S. R. (8 R. & G.) 325.—**CAN.**

dd (p. 443) i. —— ——.]—A provincial Legislature has power to prohibit the carrying on of a particular business within the province as well as the power to prohibit certain persons from carrying it on within the province ; & it may authorise a municipal council to pass bye-laws imposing such prohibitions within the municipality.—Micas *v.* A.-G. for Saskatchewan, [1928] 3 W. W. R. 523.—**CAN.**

dd (p. 443) ii. —— ——.]—Produce Marketing Act, 1926–27, c. 54, amended 1928, c. 39, is *intra vires* with respect to sales made within the province whether delivery thereunder is made therein or by shipping the goods beyond the province to purchasers residing outside it ; even, *semble*, though the contract of sale was made outside the province.—R. *v.* Chung Chuck, R. *v.* Wong Kit, R. *v.* Sales Services, Ltd., R. *v.* Associated Growers of British Columbia, Ltd., [1929] 1 D. L. R. 756 ; 1 W. W. R. 394 ; 51 Can. Crim. Cas. 260 ; 40 B. C. R. 512.—**CAN.**

d (p. 444) i. —— ——.]—Murne *v.* Morrison (1882), 1 B. C. R. pt. 2, 120.—**CAN.**

p (p. 444) i. *Power to limit jurisdiction of courts.*] — No exercise by a provincial legislature of the legislative, powers given it by the B. N. A. Act can be questioned or interfered with by the cts., no matter how arbitrary or unjust it may be. Therefore, where a pro-

which provided that persons professing the Jewish religion should, for school purposes, be treated as Protestants & have the same rights & privileges; that their children should have the same right of education as Protestant children; & that school taxes paid by them should go to the support of the Protestant schools. Under statutes of Lower Canada consolidated in 1861 by 24 Vict., c. 15, there were outside the cities of Quebec & Montreal (the rural area) common schools & dissentient schools, & within those cities Roman Catholic separate schools & Protestant separate schools. British North America Act, 1867, by s. 93, conferred on Provincial Legislatures exclusive power to make laws in relation to education, but, by proviso 1, preserved "any right or privilege with respect to denominational schools which any class of persons had by law," & by proviso 2 enacted that privileges conferred by law on separate Roman Catholic schools in Upper Canada should be extended to dissentient schools of Roman Catholics & Protestants in Quebec:—*Held:* (1) the word "Protestant" in the statutes consolidated in 1861 could not be construed as "non-Catholic," & so as including Jews; & the Protestant community, though divided for certain purposes into denominations, was itself a denomination & capable of being regarded as "a class of persons" within British North America Act, 1867 (c. 3), s. 93 (1); (2) having regard to the provisions of the Act of 1861 as to management & control, the dissentient schools in the rural area, & the separate schools in the two cities, had rights & privileges within sect. 93, proviso 1, but that the common schools in the rural area had not, as although each school might in fact be controlled by persons of the faith of the majority, that was not a right or privilege which "a class of persons had by law"; (3) the Act of 1861 impliedly reserved the right of attendance at dissentient schools in the rural area to children of the religion of the dissentients; in any case sect. 93, proviso 2, of the Act of 1867 had that effect; (4) the provisions as to the management & control of separate schools in the two cities gave them a denominational stamp which could not be effaced by the attendance of a certain number of children of a divergent faith; (5) 3 Edw. 7, c. 16 (Quebec), although otherwise *intra vires*, was *ultra vires* so far as it would enable persons professing the Jewish religion to be appointed to the Protestant Board of School Comrs. in the cities of Quebec or Montreal or on any Protestant Board of Examiners, or take part with Protestants in the establishment of a dissentient school outside those cities, & except so far as it would confer the right of attendance at dissentient schools outside those cities upon persons of religious faith different from that of the dissentient minority; (6) it would be possible to frame legislation for establishing separate schools for non-Christians without infringing the rights of the two Christian communities, & that legislation so limited would be valid.—HIRSCH *v.* MONTREAL PROTESTANT SCHOOL COMRS., [1928] A. C. 200; 97 L. J. P. C. 40; 138 L. T. 650; 44 T. L. R. 287; 72 Sol. Jo. 137, P. C.

Annotation:—Generally, **Refd.** Roman Catholic Separate School Trustees *v.* R., [1928] A. C. 363.

177a. —— **Separate schools—Roman Catholic separate schools—Courses of study & grades of education in—Right to share in legislative grants.**]—ROMAN CATHOLIC SEPARATE SCHOOL TRUSTEES *v.* R., [1928] A. C. 363; 97 L. J. P. C. 69; 139 L. T. 493; 44 T. L. R. 611, P. C.

177b. —— **Act affecting Protestant or Roman Catholic minority—Appeal to Governor-General in Council.**]—BROPHY *v.* A.-G. OF MANITOBA, [1895] A. C. 202; 64 L. J. P. C. 70; 72 L. T. 163; 11 T. L. R. 198; 11 R. 385, P. C.

Annotations:—**Consd.** Hirsch *v.* Protestant School Comrs. of Montreal, [1928] A. C. 200; Roman Catholic Separate School Trustees *v.* R., [1928] A. C. 363. **Refd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

177c. —— —— ——.]—ROMAN CATHOLIC

vincial statute empowers a municipal council to grant, refuse, & revoke trade licences, in its discretion, a provision therein that the council's actions with respect thereto "shall not be open to question or review by any ct." is not *ultra vires.*—MICAS *v.* CITY OF MOOSE JAW & A.-G. FOR SASKATCHEWAN, [1929] 3 D. L. R. 89; 1 W. W. R. 725; 23 S. L. R. 422; *revg., sub nom.* MICAS *v.* A.-G. FOR SASKATCHEWAN, [1928] 3 W. W. R. 523; 23 S. L. R. 412.—**CAN.**

aa (p. 444) **i.** *Power to authorise erection of booms.*]—MCMILLAN *v.* SOUTHWEST BOOM CO. (1878), 17 N. B. R. (1 P. & B.) 715; 2 Cart. 542.—**CAN.**

gg (p. 444) **i.** —— *Jurisdiction—Power to define.*]—The power given to provincial Govts. to legislate regarding the constitution, maintenance, & organisation of provincial cts. includes the power to define the jurisdiction of such cts. territorially as well as in other respects, & also to define the jurisdiction of the judges who constitute such acts.—*Re* COUNTY COURTS OF BRITISH COLUMBIA (1892), 21 S. C. R. 446; 5 Cart. 490.—**CAN.**

l (p. 445) **i.** —— —— *No power to alter or amend.*]—*Held:* Revised Statutes (3rd series), c. 159, being part of the criminal law of Canada, the legislature of Nova Scotia had no power to alter or amend any of its provisions.—R. *v.* HALIFAX ELECTRIC TRAMWAY CO. (1898), 30 N. S. R. 499. —**CAN.**

m (p. 445) **i.** —— *What are—Not Act to prevent fraud against cheese factories.*]—R. *v.* WASON (1890), 17 A. R. 221; 4 Cart. 578.—**CAN.**

(p. 445) **ii.** —— —— *Not Act to appeals on prosecutions to enforce penalties & punish offences under provincial Acts.*]—R. *v.* WASON (1890), 17 A. R. 221; 4 Cart. 578.—**CAN.**

m (p. 445) **iii.** —— —— *Dental Association Act, R. S. M.*, 1913, s. 33.]—*Held:* not *ultra vires* as relating to criminal law within sect. 91 of B. N. A. Act.—R. *v.* SIRKIS, [1930] 2 W. W. R. 93.—**CAN.**

m (p. 445) **iv.** —— —— *Regulation of traffic.*]—Sect. 52 of Vehicles & Highway Traffic Act, 1924 (Alta.), which provides that a motorist involved in an accident who fails to return to the scene thereof shall be liable to a fine, is *intra vires;* since its purpose is to effect the regulation of traffic on a highway & of motor vehicles being operated thereon, subjects which fall within the province's jurisdiction over "Property & Civil Rights in the Province."—R. (TAYLOR) *v.* CORRY, [1932] 1 W. W. R. 853; 4 D. L. R. 399.—**CAN.**

m (p. 445) **v.** —— —— ——.]—Since, by sect. 285 (4) of the Criminal Code, the Dominion Parliament has made it a crime to drive or be in control of a motor car while intoxicated or under the influence of narcotics, a provincial Act which deals with the same kind of conduct by prohibiting it under penalty of fine & imprisonment & suspension or cancellation of the offender's licence, is invalid, except with respect to the provision for suspending or cancelling the licence.—R. *v.* OTTENSON, [1932] 1 W. W. R. 36. —**CAN.**

m (p. 445) **vi.** —— —— *Ill-treatment of children.*]—R. *v.* DOWDELL, [1932] 3 W. W. R. 297.—**CAN.**

m (p. 445) **vii.** —— *Creation of offence by local legislature—Already an offence by Criminal Code—Ultra vires.*]—R. *v.* GALLANT (P. E. I.), [1929] 1 D. L. R. 671; 51 Can. Crim. Cas. 209.—**CAN.**

s (p. 445) **i.** —— *Powers of medical council.*] — Medical Profession Act, R. S. S., 1920 (c. 135), s. 40, is not *ultra vires* on the ground that it infringes on the powers of the Governor-General under B. N. A. Act, 1867, s. 96.—HUNT *v.* COLLEGE OF PHYSICIANS & SURGEONS OF SASKATCHEWAN, [1925] 4 D. L. R. 834; [1925] 3 W. W. R. 758.—**CAN.**

d (p. 445) **i.** ——.]—A provincial enactment altering the law relating to champerty, by authorising solrs. within the province to contract with clients for payment for professional services by way of a share of the proceeds of actions in lieu of the usual costs, is an invasion of the legislative domain of the Dominion Parliament relative to criminal law.—TAYLOR *v.* MACKINTOSH, [1924] 3 D. L. R. 926; 3 W. W. R. 97; 34 B. C. R. 56.—**CAN.**

SEPARATE SCHOOL TRUSTEES *v.* R., [1928] A. C. 363; 97 L. J. P. C. 69; 139 L. T. 493; 44 T. L. R. 611, P. C.

177d. Building & public health—Application to denominational schools.]—British North America Act, 1867 (c. 3), s. 93, does not prevent the provisions of Municipal Act of Ontario with reference to building, & other matters relating to the health & convenience of the population, from applying to denominational schools.—TORONTO CORPN. *v.* ROMAN CATHOLIC SEPARATE SCHOOLS TRUSTEES, [1926] A. C. 81; 95 L. J. P. C. 12; 133 L. T. 779; 41 T. L. R. 658, P. C.

178. *Add. Annotation:*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

178a. Property & civil rights—Ultimate Heir Act, R. S. A., 1922 (c. 144)—Ultra vires.]—A.-G. FOR ALBERTA *v.* A.-G. FOR CANADA, No. 98a, *ante*.

178b. —— Procedure relating to expropriation—Intra vires.]—Having regard to sect. 129 of British North America Act, 1867 (c. 3), the president or acting-president of the commission appointed under the (Quebec) Public Service Commission Act by the Lieutenant-Governor in Council, when assessing, under art. 429 of the City of Montreal Charter, the compensation to be paid for land expropriated by the city, does not act as a judge of a superior district or county ct., so as to make the appointment invalid under sect. 96 of the Act in that it is not by the Governor-General, & the tribunal consequently incompetent. At confederation compensation was assessed by comrs., appointed by the Superior Ct. under an Act of 1864, who did not act as judges of any ct. referred to in sect. 96; they were a legal commission or authority within sect. 129, so that the legislature of Quebec under that section, combined with sect. 92, head 13, had exclusive authority to repeal the Act of 1864 & to assign the assessment of compensation to the present commission, the alteration in the mode of appointment being a matter of procedure within the legislative competence. As by art. 429 awards made thereunder are to be final & not open to appeal, they can be questioned only for want of jurisdiction.—MARTINEAU (O.) & SONS, LTD. *v.* MONTREAL

178a i. *Property & civil rights—Closing disorderly house.*]—10 Geo. V., c. 81 (Q.), authorising a judge to order the closing of a disorderly house, is *intra vires* the provincial legislature, as it deals with matter of property & civil rights by providing for the suppression of a nuisance & not with criminal law by aiming at the punishment of a crime.—BEDARD *v.* DAWSON & A.-G. FOR QUEBEC, [1923] 4 D. L. R. 293; [1923] S. C. R. 681; 3 W. W. R. 412.—**CAN.**

178a ii. —— *Prevention of fraudulent sale of shares.*]—A provincial statute which aims at preventing by injunction such trading in securities, or attempts to trade therein, as are founded on fraud, or fraudulent practices as defined by the Act, is *intra vires*, even in so far as it applies to the selling of, or the attempting to sell, shares in a Dominion co. Such a statute does not impair in a substantial degree the essential capacities of a Dominion co., nor does it invade the Dominion's jurisdiction over criminal law, but deals with a matter within provincial jurisdiction under the headings "property & civil rights in the province" & "matters of merely local or private nature in the province."—A.-G. FOR MANITOBA *v.* ROSENBAUM (Man.), [1930] 1 D. L. R. 152; [1929] 1 W. W. R. 148; 40 Man. L. R. 179.—**CAN.**

sb. *Labour in industrial undertakings.*]—The matter of labour in industrial undertakings in Canada is primarily within the competence of provincial legislatures, but Parliament can legislate as to labour in territories not yet organised into, or forming part of, a province, & as to labour of servants of the Dominion, if these are within the scope of the draft convention adopted by the International Labour Conference of the League of Nations in 1919.—*Re* TREATY OF VERSAILLES, *Re* HOURS OF LABOUR, [1925] 3 D. L. R. 1114; [1925] S. C. R. 505.—**CAN.**

sk. *Marriage.*]—Marriage Act, R.S.O., 1914 (c. 148), ss. 15 & 36, as amended by Marriage Law Amendment Act, 1919 (c. 35), ss. 2 & 4, are within the powers of the provincial legislature.—STEWART *v.* STEWART, [1925] 1 D. L. R. 1; 56 O. L. R. 57.—**CAN.**

sl. ——.]—Marriage Act, R. S. O., 1914 (c. 148), & its amendments, are *intra vires* the provincial legislature, in so far as they provide for dissolution or nullity of a marriage.—DOYLE *v.* DEADY, [1925] 3 D. L. R. 317; 57 O. L. R. 44.—**CAN.**

sm. —— *Affecting status of husband & wife.*]—A provincial statute which purports to give a married woman the right to sue her husband in tort is *ultra vires* on the ground that it alters the common law status of husband & wife, a subject which under the term "marriage" is assigned exclusively to the Dominion Parliament.—HILL *v.* HILL, [1928] 4 D. L. R. 161; [1928] 3 W. W. R. 673; *affd.*, [1929] 2 D. L. R. 735; 2 W. W. R. 41; 24 Alta. L. R. 105.—**CAN.**

sn. —— ——.]—ROYAL BANK OF CANADA *v.* DIAMOND, [1929] 3 D. L. R. 390; 2 W. W. R. 267; 38 Man. L. R. 301.—**CAN.**

so. —— *Consent of parents.*]—MARQUARDT *v.* GORR, [1929] 1 D. L. R. 206.—**CAN.**

sp. —— ——.]—Provisions of Marriage Act, R. S. O., 1927, ss. 17, 34, are *intra vires* except in so far as they impose conditions with regard to consummation & cohabitation & make the marriage voidable only at the instance of one party & within a certain period. Sect. 34 (2) of the Marriage Act dealing with pre-marital incontinence is *ultra vires*.—KERR *v.* KERR, [1932] O. R. 289; 2 D. L. R. 349; *revsd.*, [1932] 4 D. L. R. 289.—**CAN.**

sq. *Wide Tire Act*, 1889 (c. 22)—*Intra vires.*]—R. *v.* HOWE, MCNEIL *v.* HOWE (1890), 2 B. C. R. 36.—**CAN.**

sq. *Habeas corpus.*]—The provincial statute known as "An Act Respecting *Habeas Corpus*," R. S. P. Q. 1925, c. 167, is *intra vires*, & has general application to all judgments, irrespective of the cause of detention.—*Ex p.* FONG, *Ex p.* YOU, *Ex p.* CHALIFOUX, [1929] 1 D. L. R. 223; 50 Can. Crim. Cas. 213; *sub nom.* MOQUIN *v.* FONG, Q. R. 44 K. B. 476.—**CAN.**

sr. *Water power—Powers relating to.*] *Re* WATERS & WATER POWERS REFERENCE, [1929] 2 D. L. R. 481; S. C. R. 200.—**CAN.**

st. *Grain Marketing Act*, 1931.]—Grain Marketing Act, 1931 (Sask.), is *ultra vires*, since in its true nature & character it is legislation enacted with the object of controlling the export of grain from Saskatchewan to other provinces & foreign countries, & it is, therefore, an interference with the Dominion Parliament's exclusive powers over the "Regulation of Trade & Commerce."

The right of a resident of a province to export therefrom & sell elsewhere grain grown therein is not a matter of "Property & Civil Rights within the Province," within clause 13 of sect. 92 of B. N. A. Act, nor is it a "matter of merely local or private nature in the Province," within clause 16 thereof.—*Re* GRAIN MARKETING ACT, 1931, [1931] 2 W. W. R. 146; 25 S. L. R. 273.—**CAN.**

sv. *Soldiers' Taxation Relief Act.*]—A provincial Act, such as Soldiers' Taxation Relief Act, 1924, the object of which is to assist ex-soldiers because of their disabilities, is not an Act which falls within the Dominion Parliament's exclusive legislative authority with respect to "Militia, Military & Naval Services & Defence."—BRANDON CITY *v.* MUNICIPAL COMR., [1931] 3 D. L. R. 397; 2 W. W. R. 65; *affd.*, [1931] 3 W. W. R. 225; 4 D. L. R. 830; 3 W. W. R. 225; 39 Man. L. R. 582.—**CAN.**

sx. *Navigation.*]—The Lakes & Rivers Improvement Act does not purport to restrict or interfere with the navigation of the river & cannot be regarded as invading the rights of the Dominion in its control over navigation; it is therefore *intra vires* of the Ontario legislature.—*Re* ARROW RIVER & TRIBUTARIES SLIDE & BOOM CO., [1932] S. C. R. 495; 2 D. L. R. 250.—**CAN.**

sy. *Domestic Relations Act*, 1927 (*Alta.*)—*Ultra vires.*]—A provincial Act which purports to invest a magistrate appointed by the province with powers theretofore exercisable only by a judge of a Superior Ct., as that term is understood in sect. 96 of the B. N. A. Act, is *ultra vires*. Therefore, sect. 26 of Domestic Relations Act, 1927 (Alta.), is *ultra vires*.—ROSKIWICH *v.* ROSKIWICH (No. 2), [1931] 3 W. W. R. 614; [1932] 1 D. L. R. 135; 26 Alta. L. R. 137.—**CAN.**

sf. *Game laws.*]—Accused, who was not an Indian, was convicted under Game Act, R. S. B. C., 1924, for killing a pheasant during a close season. The act was committed on an Indian Reserve. The accused did not hold a permit from the superintendent of the reserve to hunt thereon:—*Held:* the Act was *intra vires* with respect to its application to the accused & the conviction should be sustained.—R. *v.* MORLEY, [1932] 2 W. W. R. 193; 4 D. L. R. 483.—**CAN.**

(CITY), [1932] A. C. 113; 101 L. J. P. C. 49; 146 L. T. 291; 48 T. L. R. 95, P. C.

178c. —— Security Frauds Prevention Act, 1930 (Alta.).]—Security Frauds Prevention Act, 1930, of Alberta, provided that no person might trade in securities unless he was registered with the approval of the A.-G.; a corpn. could be registered, & in that case its officials did not need registration. In effect, the Act precluded a public co. from selling its shares unless it did so through a registered person or was itself registered. By sect. 9 the A.-G., or his delegate, could examine any person or co. to ascertain whether any "fraudulent act," which was very widely defined, had been, was being, or was about to be, committed. The Act imposed penalties for breaches of its provisions, & by sect. 20 made it an offence to commit any "fraudulent act" not punishable under the Criminal Code of Canada:—*Held:* the Act was within the scope of the powers of the Provincial legislature under sect. 92 of the British North America Act, 1867. It was not invalid in relation to Dominion cos., as it did not wholly preclude them from selling their shares unless they were registered, but merely subjected them to competent provisions applying to all persons trading in securities. Nor was it, as a whole, a colourable attempt to encroach upon the legislative power of the Dominion as to the criminal law; so far as sect. 20 was invalid as so encroaching it was clearly severable.—LYMBURN *v.* MAYLAND, [1932] A. C. 318; 101 L. J. P. C. 89; 146 L. T. 458; 48 T. L. R. 231, P. C.

179a. Trade disputes.]—Industrial Disputes Investigation Act, 1907, of Canada, provided that upon a dispute occurring between employers & employees in any of a large number of important industries in Canada the Minister for Labour for the Dominion might appoint a board of investigation & conciliation. The board was to make investigations, with power to summon witnesses & inspect documents & premises, & was to try to bring about a settlement; if no settlement resulted, they were to make a report with recommendations as to fair terms, but the report was not to be binding upon the parties. After a reference to a board, a lock-out or strike was to be unlawful & subject to penalties:—*Held:* the Act was not within the competence of the Parliament of Canada under British North America Act, 1867 (c. 3); it clearly was in relation to property & civil rights in the provinces, a subject reserved to the provincial legislatures by sect. 92 (13), & was not within any of the overriding powers of the Dominion Legislature specifically set out in sect. 91; the Act could not be justified under the general power in sect. 91 to make laws "for the peace, order, & good government of Canada," as it was not established that there existed in the matter any emergency which put the national life of Canada in anticipated peril.—TORONTO ELECTRIC COMRS. *v.* SNIDER, [1925] A. C. 396; 94 L. J. P. C. 116; 132 L. T. 738; 41 T. L. R. 238; 69 Sol. Jo. 325, P. C.

180. *Add. Annotation:*—**Consd.** Martineau (O.) & Sons, Ltd. *v.* Montreal (City), [1932] A. C. 113.

181a. Appointment of judges.]—Judicature Act, 1924, of Ontario, s. 2 (2—6), & s. 4 (1) & (2), are *ultra vires* the legislature of the province, since their effect is to authorise the Lieutenant-Governor of the province to assign, that is to say to appoint, certain judges of the High Ct. Div. of the Supreme Ct. to be judges of the Appellate Div. of that ct., & also to designate, that is to say to appoint, certain judges to hold the offices of Chief Justice of Ontario & Chief Justice of the High Ct. Div., & consequently the provisions are inconsistent with British North America Act, 1867 (c. 3), s. 96, under which the powers of appointment referred to are given to the Governor-General of Canada. Sect. 4 (3), however, which provided that upon a vacancy occurring among the judges of the Appellate Div. or of the High Ct. Div. before the provisions of the Act came fully into force, the Divs. were to consist of the remaining judges, was not open to objection.—A.-G. FOR ONTARIO *v.* A.-G. FOR CANADA, [1925] A. C. 750; 94 L. J. P. C. 132; 133 L. T. 434, P. C.

181b. —— Members of Quebec Public Service Commission.]—MARTINEAU (O.) & SONS, LTD. *v.* MONTREAL CITY, No. 178b, *ante*.

PART II. SECT. 3, SUB-SECT. A. (c).

37 Vict. c. 32, was *ultra vires*.—SEVERN *v.* R. (1878), 2 S. C. R. 70; 1 Cart. 414.—CAN.

a i. —— *Liquor Act, 1902, s. 2.*]—*Held:* although unusual, it was well within the powers of the legislature.—R. *v.* WALSH (1903), 23 C. L. T. 186; 5 O. L. R. 527; 2 O. W. R. 222; 3 O. W. R. 31.—CAN.

b i. —— *Right to appeal to Supreme Court of Canada—Restrictions on—Ultra vires.*]—CLARKSON *v.* RYAN (1890), 17 S. C. R. 251; 4 Cart. 439.—CAN.

d i. —— *Betting Information Act, 1923 (c. 5)—Ultra vires.*]—R. *v.* LICHTMAN (1923), 42 Can. Crim. Cas. 1; 54 O. L. R. 502.—CAN

l i. —— *Succession Duties Act, 1914 (c. 10)—Valid.*]—BARTHE *v.* SHARPLES (1918), Q. R. 55 S. C. 301.—CAN.

l ii. —— *Liquor laws relating to navigable rivers & wharves—Wharves property of Federal Government—Validity.*]—COTE *v.* QUEBEC LIQUOR COMMISSION, FORTIN *v.* QUEBEC LIQUOR COMMISSION, [1931] 4 D. L. R. 137; 56 Can. C. C. 371.—CAN.

PART II. SECT. 3, SUB-SECT. 4.—B. (a).

o (p. 447) i. ——.]—Customs Tariff (Industries Preservation) Act, 1921-1922, deals only with the imposition of taxation, & does not infringe the first paragraph of sect. 55 of the Constitution. Customs Tariff (Industries Preservation) Act, 1921-1922, s. 8, deals with duties of customs only, & does not infringe the second paragraph of sect. 55 of the Constitution. The tax imposed by sect. 8 is imposed by the Commonwealth Parliament, & is not an infringement of sect. 90 of the Constitution.—NOTT BROTHERS & CO., LTD. *v.* BARKLEY (1925), 36 C. L. R. 20; 31 Argus L. R. 256.—AUS.

o (p. 447) ii. ——.]—*Held:* neither Income Tax Assessment Act, 1922-1924, nor Income Tax Assessment Act, 1922-1925, nor either of Income Tax Acts which incorporated those Assessment Acts, was obnoxious to any of the provisions of sect. 55 of the Constitution.—FEDERAL TAXATION COMR. *v.* MUNRO, BRITISH IMPERIAL OIL CO., LTD. *v.* FEDERAL TAXATION COMR. (1926), 38 C. L. R. 153.—AUS.

o (p. 447) iii. ——.]—*Held:* Wartime Profits Tax Assessment Act, 1917-1918, s. 14 (5), was not obnoxious to sect. 55 of the Constitution.—FEDERAL TAXATION COMR. *v.* HIPSLEYS, LTD. (1926), 38 C. L. R. 219.—AUS.

e (p. 447) i. —— *Commonwealth Shipping Act, 1923—Validity.*]—COMMONWEALTH & A.-G. FOR COMMONWEALTH *v.* AUSTRALIAN COMMONWEALTH SHIPPING BOARD (1927), 39 C. L. R. 1; [1927] Argus L. R. 61.—AUS.

h (p. 447) i. ——.]—Judiciary Act, 1903-1920, s. 39 (2) (a) [as interpreted in No. 605 i. *post*], is a valid exercise of the power conferred by sect. 77 (iii.) of the Constitution.—LIMERICK S.S. CO. *v.* COMMONWEALTH OF AUSTRALIA (1921), 25 S. R. N. S. W. 293; 35 C. L. R. 69; 31 Argus L. R. 153.—AUS.

h (p. 447) ii. *S. P.* THE COMMONWEALTH *v.* KREGLINGER & FERNAU, LTD. & BARDSLEY (1926), 37 C. L. R. 393; [1926] V. L. R. 331; [1926] Argus L. R. 161.—AUS.

o (p. 448) i. —— *Election for Senate.*]—*Held:* Commonwealth Electoral Act, 1918-1925, s. 128A (12), was a valid exercise of the power conferred by sect. 9 of the Constitution upon the Commonwealth Parliament to make laws "prescribing the method of

184a. Power to compel British company to deduct income tax from dividends on shares situate in England.]—Pltfs., a British co., held shares in deft. co., which was a British co., but which had its head office & board of directors in Australia, though it had a London committee for registering transfers of shares & issuing certificates. Deft. co. having declared a dividend, the Australian income tax authorities, acting under Australian Income Tax Acts, required deft. co. to deduct the Australian income tax from the dividend due to pltf. co. In an action claiming the amount so deducted:—*Held:* the debt created by the declaration of a dividend was situate in England, & the Commonwealth legislature had no power to impose taxation on pltf. co. in respect of such debt, & the action succeeded.—LONDON & SOUTH AMERICAN INVESTMENT TRUST, LTD. *v.* BRITISH TOBACCO CO. (AUSTRALIA), LTD., [1927] 1 Ch. 107; 96 L. J. Ch. 58; 70 Sol. Jo. 1024; *sub nom.* PASS *v.* BRITISH TOBACCO CO. (AUSTRALIA), LTD. (1926), 42 T. L. R. 771.

186a. Commonwealth Acts—Presumption in favour of validity.]—SHELL CO. OF AUSTRALIA, LTD. *v.* FEDERAL COMR. OF TAXATION, No. 205a, *post.*

choosing senators."—JUDD *v.* MCKEON (1926), 38 C. L. R. 380.—**AUS.**

st. *Removal of proceedings to High Court.*]—Judiciary Act, 1903–1920, s. 40, is a valid exercise of the powers conferred by sects. 76 & 77 of the Constitution.—*Re* YATES, *Ex p.* WALSH, *Re* YATES, *Ex p.* JOHNSON (1925), 37 C. L. R. 36; [1926] Argus L. R. 46.—**AUS.**

sv. ——.]—Judiciary Act, 1903–1920, s. 40A, is a valid exercise of the power conferred by sects. 77 (ii) & 51 (xxxix) of the Constitution.—PIRRIE *v.* MCFARLANE (1925), 36 C. L. R. 170.—**AUS.**

sw. *Trading by Commonwealth—Through agents — War Precautions (Wool) Regulations.*]—During the war & after the making of the above regulations, the Executive Govt. of the Commonwealth entered into agreements with a co., engaged in the manufacture & sale of wool tops. Each of these agreements was either an agreement to give consent to a sale of wool tops by the co. in return for a share of the profits, called by the parties a "licence fee," or an agreement that the business of manufacturing wool tops should be carried on by the co. as agent in consideration of an annual sum from the Commonwealth, or a combination of both these agreements:—*Held:* apart from any authority conferred by an Act of Parliament of the Commonwealth or by regulations thereunder, the Executive Govt. had no power to make or ratify any of the agreements.—COMMONWEALTH & CENTRAL WOOL COMMITTEE *v.* COLONIAL COMBING, SPINNING & WEAVING CO., LTD. (1922), 31 C. L. R. 421.—**AUS.**

sy. *Power to confer judicial powers.*]—The powers which Income Tax Assessment Act, 1922–1923, by ss. 44, 50 & 51, purports to confer upon a Board of Appeal created under the Act are part of the judicial power of the Commonwealth, which under sect. 71 of the Constitution can only be vested in the High Ct. or a federal ct., & a Board of Appeal not being such a ct., the conferring of those powers is *ultra vires* the Commonwealth Parliament.—BRITISH IMPERIAL OIL CO., LTD. *v.* FEDERAL COMR. OF TAXATION (1925), 35 C. L. R. 422; 31 Argus L. R. 129.—**AUS.**

sz. *Power to give appellate jurisdiction to High Court—Appeal from non-federal court.*]—The Commonwealth Parliament may confer upon the High Ct. jurisdiction to entertain an appeal from a ct. established by the Parliament in a territory, notwithstanding that the ct. so established is not a federal ct. within sect. 71 of the Constitution; & jurisdiction to entertain an appeal from the Supreme Ct. of the Northern Territory is lawfully conferred upon the High Ct. by Supreme Ct. Ordinance, 1911–1922, s. 21, & Northern Territory (Administration) Act, 1910, s. 13.—PORTER *v.* R., *Ex p.* CHIN MAN YEE (1926), 37 C. L. R. 433.—**AUS.**

sa. *Discovery—Against State.*]—Judiciary Act, 1903–1920, s. 64, in so far as it gives pltf., resident of one State, in an action against another State, the ..... to obtain discovery of documents from, & to administer interrogatories to, defts., is within the legislative power of the Commonwealth Parliament.—GRIFFIN *v.* SOUTH AUSTRALIA (STATE) (1924), 35 C. L. R. 200; 31 Argus L. R. 81.—**AUS.**

sb. *Immigration.*]—Immigration Act. 1901–1925, s. 8AA, is a valid exercise of the power conferred by sect. 51 (xxvii) of the Constitution.—*Re* YATES, *Ex p.* WALSH, *Re* YATES, *Ex p.* JOHNSON (1925), 37 C. L. R. 36; [1926] Argus L. R. 46.—**AUS.**

sc. ——.]—Immigration Act, 1901–1925, s. 5 (3) (3A) (3B):—*Held:* valid.—WILLIAMSON *v.* AH ON (1927), 39 C. L. R. 95; [1927] Argus L. R. 13.—**AUS.**

sd. *Power to grant financial aid to States.*]—*Held:* Federal Aid Roads Acts, 1926, was a valid exercise of the power conferred upon the Commonwealth Parliament by sect. 96 of the Constitution, to grant financial assistance to any State on such terms & conditions as the Parliament might think fit.—STATE OF VICTORIA *v.* COMMONWEALTH (1926), 38 C. L. R. 399.—**AUS.**

se. *Bankruptcy—State Acts not affected as to matters not dealt with in Commonwealth Act—Or as to pending proceedings.*]—*Re* PARSONS (1928), 28 S. R. N. S. W. 575; 45 N. S. W. W. N. 158.—**AUS.**

sf. *Interference with freedom of inter-State trade.*]—The validity of a Federal Act or regulations made thereunder cannot be attacked on the ground of interference with freedom of inter-State trade & commerce; s. 92 of the Constitution protects inter-State trade against State interference, but does not affect the legislative power of the Commonwealth. The Dried Fruits Act, 1928, does not give preference to one State over another State, but the regulations made thereunder do & are therefore invalid as being obnoxious to s. 99 of the Constitution.—JAMES *v.* THE COMMONWEALTH OF AUSTRALIA (1929), 41 C. L. R. 442; 2 A. L. J. 322.—**AUS.**

sh. *Powers as to State Courts.*]—(1) Sect. 77 (iii) of the Constitution does not enable the Parliament to make a Commonwealth officer a functionary of a State Court & authorise him to act on its behalf & administer part of its jurisdiction; (2) although sect. 51 (xxxix) of the Constitution confers power upon the Parliament to make laws with respect to matters which attend, or arise in, the execution of any power vested by the Constitution in the Federal Judicature, as distinct from matters incidental to the subjects assigned to the Commonwealth, nevertheless it does not authorise the reconstitution of a State Court which is invested with Federal jurisdiction or of the organisation through which its powers & jurisdiction are exercised, because sect. 77 (iii) contemplates the selection by the Parliament of an existing judicial organ which depends alike for its structure & its being upon State law & the grant to it of powers of adjudication upon specified subjects of Federal jurisdiction.—LE MESURIER *v.* CONNOR (1930), 42 C. L. R. 481.—**AUS.**

sk. *Bankruptcy.*]—*Held:* sects. 12 (5), 18 (1) (*b*), 23 & 24 of Bkpcy. Act, 1924–1928, are *ultra vires.*—LE MESURIER *v.* CONNOR (1930), 42 C. L. R. 481.—**AUS.**

sl. *Immigration—Extent of powers.*]—The power of Parliament to make laws with respect to immigration enables it to impose upon the ship's agent, who is authorised on its behalf to perform the duties imposed by laws in force in the port, an absolute liability to a penalty upon entry of an immigrant from the vessel.—ORIENT STEAM NAVIGATION CO., LTD. *v.* GLEESON (1931), 44 C. L. R. 254; [1931] Argus L. R. 61; 4 A. L. J. 371.—**AUS.**

sn. *Forfeiture of fishing boat — Whether Admiralty jurisdiction.*]—*Held:* jurisdiction to condemn a fishing boat as forfeited was not in its nature Admiralty jurisdiction & therefore it was not necessary to reserve Fisheries Act, 1925, for Royal assent in order validly to confer such jurisdiction on a ct. of petty sessions.—CHALLENGER *v.* RAE (1931), 24 Tas. L. R. 53.—**AUS.**

PART II. SECT. 3, SUB-SECT. 4.—B. (b).

r i. —— *Power to impose customs & excise duties.*]—*Held:* Taxation (Motor Spirit Vendors) Act, 1925 (S. A.), was invalid.—COMMONWEALTH & COMMONWEALTH OIL REFINERIES, LTD. *v.* STATE OF SOUTH AUSTRALIA, LTD. (1926), 38 C. L. R. 408, [1927] Argus L. R. 40.—**AUS.**

r ii. —— ——.]—*Held:* Finance (Newspapers Taxation) Act, 1926 (N. S. W.), & Finance (Taxation Management) Act, 1926 (N. S. W.), ss. 2, 3, 5, 6 & 7, were invalid.—FAIRFAX (JOHN) & SON, LTD. & SMITH'S NEWSPAPERS, LTD. *v.* NEW SOUTH WALES STATE (1927), 39 C. L. R. 139; [1927] Argus L. R. 87.—**CAN.**

t i. ——.]—JAMES *v.* THE STATE OF SOUTH AUSTRALIA (1927), 40 C. L. R. 1.—**AUS.**

t ii. —— *Prohibition of importation of stock—Validity of Stock Act,* 1901 (*N. S. W.*).]—*Ex p.* NELSON (No. 1) (1928), 42 C. L. R. 209; [1929] Argus L. R. 21.—**AUS.**

t iii. —— *Validity of Farm Produce Agents Act,* 1926 (*N. S. W.*).]—*Held:* the provisions of Farm Produce Agents Act, 1926 (N. S. W.), were not obnoxious to the provisions of sect. 92 of the Constitution.—ROUGHLEY *v.* THE STATE OF NEW SOUTH WALES, *Ex p.* BEAVIS (1928), 42 C. L. R. 162; 1929 A. L. R. 1.—**AUS**

c i. ——.]—Sect. 7A of Constitution Act, 1902–1929 (N.S.W.) provided: "7A (1) The Legislative Council shall not be abolished nor, subject to the provisions of sub-sect. (6) of this section, shall its constitution or powers be altered except in the manner provided in this section. (2) A Bill for any purpose within sub-sect. 1 of this section shall not be presented to the

188a. Interference with freedom of inter-State trade.]—(1) Dried Fruits Act, 1924, s. 28, of South Australia, does not authorise the Minister of Agriculture to make orders for the compulsory acquisition of dried fruits with the object of forcing the surplus of dried fruits off the Australian market, as that object involves directly, & not merely incidentally, an interference with the freedom of inter-State trade contrary to sect. 92 of the Commonwealth Constitution, to which section the powers given by sect. 28 of the Dried Fruits Acts are expressly subject.

(2) The decision of the High Ct. of Australia as to the validity of the orders was not a decision as to the limits *inter se* of the constitutional powers of the Commonwealth & of any State or States within sect. 74 of the Commonwealth Constitution so as to render an appeal to the Privy Council incompetent in the absence of a certificate by the High Ct.; that was so whether or not sect. 92 of the Constitution bound the Commonwealth as well as individual States.—JAMES *v.* COWAN, [1932] A. C. 542; 101 L. J. P. C. 149; 147 L. T. 321; 48 T. L. R. 564, P. C.

192a. Bill relating to abolition of Legislative Council—Condition precedent to presentation.]—The Constitution Act, 1902, enacted by the legislature of New South Wales, was amended in 1929 by adding sect. 7A, which provided that no Bill for abolishing the Legislative Council should be presented to the Governor for His Majesty's assent until it had been approved by a majority of the electors voting upon a submission to them made in accordance with the section; & that the same provision was to apply to a Bill to repeal the section. In 1930 both houses of the legislature passed two Bills, one to repeal sect. 7A & the other to abolish the Legislative Council. By Colonial Laws Validity Act, 1865 (c. 63), s. 5, the legislature of the State had full power to make laws respecting the constitution, powers & prodecure of the legislature, provided that the laws should have been passed in such "manner and form" as might from time to time be required by any Act of Parliament, letters patent, Order in Council, or colonial law in force in the colony:—*Held:* the whole of sect. 7A of the Constitution Act, 1902, was within the competence of the legislature of the State under Colonial Laws Validity Act, 1865 (c. 63), s. 5; the provision that Bills of the nature stated must be approved by the electors before being presented was a provision as to "manner & form" within the proviso; & accordingly the Bills could not lawfully be presented unless & until they had been approved by a majority of the electors voting.—A.-G. FOR NEW SOUTH WALES *v.* TRETHOWAN, [1932] A. C. 526; 101 L. J. P. C. 158; 147 L. T. 265; 48 T. L. R. 514; 76 Sol. Jo. 511, P. C.

Governor for His Majesty's assent until the Bill has been approved by the electors in accordance with this section. . . . (6) The provisions of this section shall extend to any Bill for the repeal or amendment of this section":—*Held:* a repeal of this provision cannot be enacted unless it is submitted to & approved by a majority of the electors because it requires a manner & form in which a law shall be passed respecting powers of the Legislature within Colonial Laws Validity Act, 1865, s. 5.—A.-G. FOR STATE OF NEW SOUTH WALES *v.* TRETHOWAN (1931), 44 C. L. R. 394; 4 A. L. J. 407; [1931] Argus L. R. 101.—**AUS.**

sg. *Validity of Secret Commissions Prohibition Act*, 1919, *s.* 3.]—*Held:* the provisions of the Secret Commissions Prohibition Act, 1919 (N. S. W.), s. 3, were not invalid.—R. *v.* GATES, *Ex p.* MALING (1928), 41 C. L. R. 519; 2 A. L. J. 330.—**AUS.**

sh. *Power to alter Federal award.*]—When an award has been made by the Commonwealth Ct. of Conciliation & Arbn. pursuant to Commonwealth Conciliation & Arbn. Act, 1904-1921, the Parliament of a State cannot alter the terms of the award, or confer or impose on the parties to it rights or obligations which are inconsistent with such terms.—CLYDE ENGINEERING CO., LTD. *v.* COWBURN, METTERS, LTD. & LEVER BROTHERS, LTD. *v.* PICKARD (1926), 37 C. L. R. 466; [1926] Argus L. R. 214.—**AUS.**

si. *State Act repugnant to Commonwealth Act—Invalid.*]—On an information for an offence under sect. 4 of Masters & Servants Act, 1902, N.S.W., deft. was convicted & fined for neglecting to fulfil the contract made between the informant, his employer, & himself in pursuance of an award, made by the Commonwealth Ct. of Conciliation & Arbn., which bound both parties & required them to perform the contract. The very same conduct by the same persons was therefore punishable, but somewhat differently, under Commonwealth Conciliation & Arbn. Act, 1904-1928, & the New South Wales Masters & Servants Act, 1902:—*Held:* the State Act was invalid, *pro tanto*, by virtue of sect. 109 of the Constitution.—*Ex p.* MCLEAN (1930), Argus L. R. 377; 4 A. L. J. 103; 43 C. L. R. 472.—**AUS.**

sp. *Masters & Servants Act*, 1902, *s.* 4.]—*Held:* sect. 4 of Masters & Servants Act, 1902, was inconsistent with the provisions of Commonwealth Conciliation & Arbn. Acts, 1904-1928, & was, to the extent of such inconsistency, invalid.—MCKECHNIE *v.* RAY (1931), 31 S. R. N. S. W. 67; 48 N. S. W. W. N. 12.—**AUS.**

PART II. SECT. 3, SUB-SECT. 4.—C.

sj. *Samoa Act*, 1921—*Valid.*]—TAGALON *v.* INSPECTOR OF POLICE, FUATAGA *v.* INSPECTOR OF POLICE, [1927] N. Z. L. R. 883.—**N. Z.**

sn. *Divorce & Matrimonial Causes Amendment Act*, 1930, *s.* 3—*Intra vires.*]—Subject to the limitations imposed by the Legislature of Great Britain, the New Zealand Legislature enjoys complete independence & may legislate as it pleases; & Divorce & Matrimonial Causes Amendment Act, 1930, s. 3, being for the peace, order, & good government of the country, & not being repugnant to any statute law relating to New Zealand by the Imperial Legislature, or ambiguous so as to permit the rules of international law to prevail, is *intra vires* the New Zealand Legislature. A wife petitioning under that statute for a divorce from her husband, who was never resident or domiciled in New Zealand:—*Held:* entitled to a decree *nisi*.—WORTH *v.* WORTH, [1931] N. Z. L. R. 1109.—**N.Z.**

PART II. SECT. 3, SUB-SECT. 4.—D.

h i. —— —— *Distribution of dividends.*]—The tax imposed upon financial cos. by Transvaal Provincial Ordinance 8 of 1923, s. 3, of one shilling for each pound of dividend distributed after a certain date, is a direct tax *intra vires* the Provincial Council under South Africa Act, s. 85 (1).—JOHANNESBURG CONSOLIDATED INVESTMENT CO., LTD. *v.* TRANSVAAL PROVINCIAL ADMINISTRATION, [1925] App. D. 477.—**S. AF.**

h ii. —— —— *Receipt of premiums.*]—The tax imposed by Tax Ordinance of 1923 (Transvaal) upon insurance cos., on premiums received, is a direct tax *intra vires* the Provincial Council under South Africa Act, s. 85 (1).—INLAND REVENUE COMR. *v.* ROYAL EXCHANGE ASSURANCE CO., [1925] App. D. 223.—**S. AF.**

h iii. —— *Control of trading licences.*]—*Held:* Transvaal Provincial Ordinance 12 of 1926 was *ultra vires* the Provincial Council.—RELOOMAL *v.* RECEIVER OF REVENUE, [1927] App. D. 401.—**S. AF.**

k i. —— *Proclamation of local areas.*]—Natal Provincial Ordinance 7 of 1923, which confers on the Administrator power to proclaim local areas & provides for the election of committees to function therein, such committees being established with the sole object of carrying out Public Health Act 36 of 1919, & not of creating any form of local self-government, is *ultra vires* the Provisional Council under South Africa Act, s. 85 (6).—ISIPINGO HEALTH COMMITTEE *v.* JADWAT, [1926] App. D. 113.—**S. AF.**

k ii. —— *Municipal franchise.*]—Ord. 19, 1924, s. 13 (1):—*Held: intra vires.*—ABRAHAM *v.* DURBAN CORPN. (1926), 47 N. L. R. 356.—**S. AF.**

k iii. —— *Enrolment of burgesses.*]—*Held:* Natal Ordinance 19 of 1924, s. 13 (1), was *intra vires* the Provincial Council.—ABRAHAM *v.* DURBAN CORPN., [1927] App. D. 444.—**S. AF.**

k iv. —— *Qualification of attorneys.*]—The proviso to R. S. C., Ord. 32, r. 47, as originally framed in 1909 provided that any person admitted as an attorney by virtue of qualifications acquired by him elsewhere than in South Africa should not be entitled to practise as an advocate until he had served under articles in Natal for at least 18 months. In 1923 the words "Province of Natal," were substituted for "South Africa" by a rule framed by Judge-President & Judges of Natal Provincial Division:—*Held:* the amending rule was not *ultra vires* as being repugnant to sect. 115 of South Africa Act.—INCORPORATED LAW

197. *Add. Annotation:*—**Refd.** Croft *v.* Dunphy (1932), 48 T. L. R. 652.

199. *Add. Annotation:*—**Refd.** Bhagchand Dagdusa Gujrathi *v.* Secretary of State for India in Council (1927), 43 T. L. R. 617.

200a. Appointment — What constitutes.] — A.-G. FOR ONTARIO *v.* A.-G. FOR CANADA, No. 181a, *ante.*

200b. —— Rights of existing judge—On constitution of new court.]—Judicature Act, 1919, of Alberta, s. 6, requires for its working the appointment of two Chief Justices, one of the Appellate Div., & the other of the Trial Div., of the Supreme Ct., & the fact that before the passing of the Act the Chief Justice was Chief Justice of the Supreme Ct. did not necessarily entitle him to be, or to be appointed, Chief Justice of the Appellate Div., & his non-appointment to that office did not constitute an infringement of any legal right to which he was entitled.—SCOTT *v.* A.-G. FOR CANADA (1923), 40 T. L. R. 6, P. C.

205a. Right to hold office for life—Members of Board of Review under Australian Income Tax Assessment Acts, 1922–25—Commonwealth of Australia Constitution Act, 1900, ss. 71, 72.]—An Act of the Commonwealth Parliament should not be held to infringe the Constitution of Australia unless it is clear beyond reasonable doubt that it does so. In that view, the Board of Review created by sect. 41 of the Federal Income Tax Assessment Act, 1922–1925, to review the decisions of the Comr. of Taxation, & whose members are to hold office for seven years, is not a ct. exercising the judicial power of the Commonwealth within sect. 71 of the Constitution of Australia, but is an administrative tribunal. Although it became unnecessary so to decide, the Judicial Committee desired to make it quite clear that, as at present advised, they were not prepared to assent to the view that it was competent, either with or without legislation of the Federal Parliament, to appoint justices of the High Ct., or of the other cts. created under sect. 71 of the Constitution, with other than a life tenure of their office, subject to the power of removal contained in sect. 72.—SHELL CO. OF AUSTRALIA, LTD. *v.* FEDERAL COMR. OF TAXATION, [1931] A. C. 275; 100 L. J. P. C. 55; 144 L. T. 421; 47 T. L. R. 115, P. C.

Annotation:—**Consd.** Martineau (O.) & Sons, Ltd. *v.* Montreal (City), [1932] A. C. 113.

208. *Add. Annotation:*—**Refd.** Palmer *v.* Crone, [1927] 1 K. B. 804.

SOCIETY OF NATAL *v.* VAN AARDT, [1930] N. L. R. 69; *affd.*, [1930] App. D. 385.—**S. AF.**

sk. *Rhodesia—Taxation of non-residents carrying on business within territory.*]—Under the power conferred upon the legislature of Southern Rhodesia by the Order in Council of 1898, s. 35, it is *intra vires* for that legislature to levy a tax upon income accruing to a non-resident from a source not within the territory, where such non-resident carries on business within the territory.—RHODESIA RYS. *v.* COMR. OF TAXES, [1925] App. D. 438.—**S AF.**

sl. *Transkeian Territories — Immigration of Asiatics.*]—*Held:* Proclamation 261 of 1904 was *ultra vires.*—R. *v.* BARMANIA, [1927] App. D. 537.—**S. AF.**

sm. *Qualifications of voters—Powers of Union Parliament.*]—The powers of the Union Parliament to prescribe the qualifications of voters are derived from sect. 35 of the South Africa Act & are strictly limited by the provisions of that sect. By that sect. the Union Parliament, as usually constituted, is vested with plenary powers of making laws dealing with that subject-matter except in the cases mentioned in the two sub-sects. These exceptions only arise where the new law would have the effect of disqualifying a person on the ground of race or colour only.—R. *v.* NDOBE, [1930] App. D. 484.—**S. AF.**

PART II. SECT. 3, SUB-SECT. 4.—E.

so. *Crown grants.*]—Crown Grants Act, XV. of 1895, which enacts that grants by the Crown of estates unknown to the law are not invalid, is not *ultra vires* the Indian legislature.—SECRETARY OF STATE FOR INDIA *v.* RAJA PARTHASARATHY APPA RAO (1926), I. L. R. 49 Mad. 349.—**IND.**

sp. *Taxation.*]—*Held:* Income Tax Act, s. 67, was not *ultra vires.*—DR. R. N. SINGHA *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL (1927), I. L. R. 5 Ran. 825.—**IND.**

sq. *Acts of local Legislature—Extent of operation.*]—The United Provinces Ct. of Wards, like the Acts of many other local Legislatures dealing with the local Ct. of Wards, has no effect beyond the jurisdiction of its own Legislature. Civil Procedure Code (Act V. of 1908) gives a local Act local validity & special procedure validity in its own sphere. No local Legislature can prescribe procedure for any ct. beyond its territorial jurisdiction, & any Act passed by a local Legislature for its own cts. cannot be enforced beyond those territories.—CHHATTOO LAL MISSER *v.* NARAINDAS BAIJNATH PRASAD (1928), I. L. R. 56 Calc. 704—**IND.**

PART II. SECT. 4, SUB-SECT. 1.—A.

oi. —— *Whether presumed—Commissioner with judicial powers.*]—To appoint a comr. under Mining Act (Ont.), s. 123, & then invest him with powers exercisable by a superior ct., as that term is to be understood in B. N. A. Act, is to enable the provincial authority in effect to appoint a judge of a superior ct., which is beyond its power; & it could not be presumed that the Governor-General had given the provincial appointee a patent designating him a judge of a superior ct.—*Re* MCLEAN GOLD MINES, LTD. *v.* A.-G., [1923] 1 D. L. R. 10; 54 O. L. R. 573.—**CAN.**

sr. *Remuneration — Restrictions on.*]—*Held:* Judges Act, R. S. C. 1906, s. 34, has no application to the remuneration of a judge whose appointment to perform the duty or service was made before the enactment of that sect.—*Re* JUDGES ACT, [1923] 2 D. L. R. 604; 52 O. L. R. 105.—**CAN.**

PART II. SECT. 4, SUB-SECT. 2.—A.

sw. *Canada—Districtcourt.*]—Except as to matters for which particular statutory directions provide otherwise, a district ct. has jurisdiction over persons & property throughout the province & may entertain an action irrespective of where within the province the cause of action arose, the property is situated, or defts. reside.—POLAR AERATED WATER WORKS *v.* WINNIKOFF, [1921] 3 W. W. R. 370; 62 D. L. R. 403; 17 Alta. L. R. 150.—**CAN.**

sx. —— ——.]—When a district ct. action is not commenced in the ct. of that district in which deft. or one of defts., dwells or carries on business, the ct. has now no jurisdiction unless the action is one with respect to which the District Courts Act or some particular statutory direction provides otherwise, or unless deft. by his conduct has submitted to the jurisdiction.—KULYK *v.* KLEIN, [1929] 4 D. L. R. 159; 2 W. W. R. 334; 24 Alta. L. R. 200.—**CAN.**

sb. —— *Exchequer Court.*]—Exchequer Ct. Act, s. 22 (*c*), means that where the subject-matter of the action primarily, but not incidentally, concerns a patent of invention, trademark or copyright, the ct. may grant any appropriate remedy known to the common law or equity.—MCCRACKEN *v.* WATSON, [1932] Ex. C. R. 83.—**CAN.**

sc. —— ——.]—The actions were for the recovery of the amounts of bonds given by applts. to the Crown in respect of liquors entered at a port for export, the form of bond being expressed to secure actual exportation to the place provided for in the entry & production of proof thereof. Applts. denied liability on the bonds & alleged that, in any event, the Crown could not recover interest, & that the Exchequer Ct. of Canada had no jurisdiction in the matter, the matter being one of contract & not one arising out of the administration of the laws of Canada & the provincial cts. only having jurisdiction:—*Held:* the Exchequer Ct. of Canada had jurisdiction to hear & determine the claims.—CONSOLIDATED DISTILLERIES & HUME *v.* R., CONSOLIDATED DISTILLERIES & SMITH *v.* R., [1932] S. C. R. 419; 2 D. L. R. 631.—**CAN.**

sz. *Prince Edward Island.*]—The ct. of last resort in Prince Edward Island is the Supreme Ct. in that province.—KELLY *v.* SULLIVAN (1876), 1 S. C. R. 1.—**CAN.**

sl *Northern Ireland — Power to make order against "neighbouring counties"—Limited to counties in Northern Ireland.*]—Under Grand Jury (Ireland) Act, 1836, s. 140, the expression "neighbouring counties" must be taken to mean "neighbouring counties" in Northern Ireland. The jurisdictions respectively set up by Govt. of Ireland Act, 1920, are mutually independent & exclusive of each other within the respective areas.—PLUMB & ORR *v.* FERMANAGH COUNTY COUNCIL, [1923] 2 I. R. 54.—**IR.**

sm. *High Court of Australia—Proceedings involving the interpretation & application of Commonwealth of Australia Constitution Act, s. 92.*]—The question of the validity of determinations made pursuant to the Dried

234a. Court of civil judge of Secunderabad—Limitation of action.]—Applt. sued resps. in the ct. of the civil judge at Secunderabad to recover money lent to a deceased relative. Both the borrower & the alleged surety & their representatives were residents in Hyderabad, in which the civil judge's ct. had no jurisdiction. If the suit had been brought in the Nizam's ct. at Hyderabad, it would have been barred by Stat. Limitations, but, in the Secunderabad ct. foreign residence could be claimed by way of exemption from limitation. Judgment of the Resident at Hyderabad dismissing the suit affirmed, no part of the cause of action having arisen within the local limits of the ct. of the civil judge at Secunderabad.—RAI BAHADUR BANSILAL ABIRCHAND *v.* GHULAN MAHBUB KHAN (1925), 42 T. L. R. 5, P. C.

K. Other Particular Courts.

234b. Bechuanaland Protectorate — Magistrates' Court—Limited to criminal matters.]—By a proclamation issued in 1891 pursuant to Foreign Jurisdiction Act, 1890 (c. 37), Magistrates' & other cts. were established in the Bechuanaland Protectorate. By clause 8 the jurisdiction of the cts. was not to extend to any matter in which natives only were concerned, unless exercise of the jurisdiction was necessary in the interests of peace, or for the prevention or punishment of acts of violence. By clause 9 where jurisdiction was exercised the decision was to follow the laws & customs of the natives concerned, unless those laws & customs were incompatible with peace, order, & good government. Three natives were parties to an armed & murderous attack upon their tribal chief. As punishment the chief, after consulting & with the approval of his native council, caused their houses to be burnt. The action of the chief was in accordance with the custom of the tribe in the case of an armed rebellion. Two of the natives were convicted by a Magistrate of attempted murder, & sentenced to imprisonment; the sentences were reduced, as the houses of the accused had been burnt. Subsequently the three natives brought civil suits in the Magistrates' ct. against the chief for damages in respect of the house burning, & the chief counter-claimed:—*Held:* the ct. had no jurisdiction in the civil suits having regard to clause 8 of the proclamation, as the matter was one in which natives only were concerned, & there was no evidence of the probability of any further breach of the peace or acts of violence.

Semble: the custom of house burning, above referred to, was incompatible with peace, order, & good government within the meaning of clause 9.—KHAMA *v.* RATSHOSA, [1931] A. C. 784; 100 L. J. P. C. 229; 145 L. T. 657, P. C.

Part III.—Laws of the Colonies.

238a. Rule of English law as to parliamentary control of revenue—Application in New Zealand.]—It is a principle of the British constitution, inherited in the constitution of New Zealand, that no money can be taken out of the Consolidated Fund into which the revenues of the State have been paid, except under a distinct authorisation by Parliament itself; a payment made without that authority is illegal & *ultra vires*, & the money, if it can be traced, can be recovered by the Govt.

An agreement made in 1913 provided (*inter alia*) that the Minister of Railways of New Zealand, representing the Crown, should pay to applts. £7,500 when applts. granted a lease to B. & Co. The making of the agreement had been authorised by an Act of 1912, which empowered the Minister, without further appropriation, to pay to applts. out of the Public Works Fund such sum as might be payable in accordance with the agreement. Owing to an alteration in the scheme to which the agreement related, the Minister did not require applts. to grant the lease, & it was not granted. Nevertheless the £7,500

Fruits Acts fixing the quantity of dried fruits which might be marketed within the Commonwealth raises an issue directly involving the interpretation & application of s. 92 of the Constitution, & the question of the validity of acquisitions of dried fruits pursuant to those Acts, also, raises an issue directly involving the interpretation of the Constitution, & an action raising those questions is, therefore, within the original jurisdiction of the High Ct. conferred by Judiciary Act, 1903-1926, s. 30.—JAMES *v.* THE STATE OF SOUTH AUSTRALIA (1927), 40 C. L. R. 1.—**AUS.**

sn. —— *To make order refused by court of co-ordinate jurisdiction.*]—JONES *v.* JONES (1928), 40 C. L. R. 315; [1928] V. L. R. 112; [1928] Argus L. R. 45.—**AUS.**

so. —— *Proceedings between residents of different States—One plaintiff & defendant resident in same State.*]—An action instituted in the High Ct. in which there is on each side of the record a resident of the same State who is a necessary party to the action is not a matter between residents of different States within the Constitution, s. 75, & the High Ct. has no jurisdiction to entertain it.—WATSON & GODFREY *v.* CAMERON (1928), 40 C. L. R. 446; [1928] Argus L. R. 44.—**AUS.**

PART II. SECT. 4, SUB-SECT. 2.—J.

228 ii. —— —— *"Suit for land."*]—HATIMBHAI HASSANALLY *v.* EDULJEE DINSHAW (1927), I. L. R. 51 Bom. 516.—**IND.**

c i. —— *At Calcutta—To direct appellant to Privy Council to provide funds to enable minor to be represented.*]—The High Ct. is not entitled after the final admission of a Privy Council appeal to make an order directing applt. in the Privy Council case to put the guardian of the minor resp. in funds to have the case argued on behalf of the minor before the Judicial Committee.—BIR BIKRAM KISHORE MANIKYA *v.* ALI AHAMAD (1927), I. L. R. 55 Calc. 758.—**IND.**

c ii. —— *Allahabad.*]—The inherent powers of the Supreme Ct. of Calcutta were not conferred on the Allahabad High Ct. by the Indian High Courts Act, 1861.—MAHANT SHANTANAND GIR *v.* MAHANT BASUDEVANAND GIR (1930), I. L. R. 52 All. 619.—**IND.**

sp. *Jurisdiction of Supreme Court of Bengal—Limitation to British subjects—Who are.*]—Sect. 14 of 13 Geo. 3, c. 63, confines the jurisdiction of the Supreme Ct. beyond the limits of Calcutta to British subjects. In the early statutes relating to India, the words "British subject" mean a subject of the King of British birth.—*Re* PHANINDRA-CHANDRA SET (1930), I. L. R. 58 Calc. 919.—**IND.**

sr. *Foreign courts—What included.*]—In the contemplation of the general law of British India there are only two kinds of cts.—British Indian Cts. & Foreign Cts.—& whatever is not a British Indian Ct. is a Foreign Ct. Therefore, *quoad* the cts. of British India, the cts. of foreign countries, British Colonies, & assigned tracts like Secunderabad stand upon an equal footing as Foreign Cts.—SECUNDERABAD OFFICIAL RECEIVER *v.* LAKSHMINARAYANA (1930), I. L. R. 54 Mad. 727.—**IND.**

was paid by the Minister of Railways to applts. in 1914 out of a vote included in the Public Works Schedule to the Appropriation Act for the year, & the Controller & Auditor-General passed the sum as being so payable: —*Held:* as the lease had not been granted the payment of the £7,500 was not authorised by the Act of 1912, & it was recoverable by the Govt. & could be deducted from a larger sum admittedly due to applts.—AUCKLAND HARBOUR BOARD *v.* R., [1924] A. C. 318; 93 L. J. P. C. 126; 130 L. T. 621, P. C.

Annotations:—**Refd.** A.-G. *v.* G. S. & W. Ry. of Ireland, [1925] A. C. 754; North Charterland Exploration Co. (1910) *v.* R. (1930), 99 L. J. Ch. 483.

241. *Add. Annotation:*—**Consd.** Arseculeratne *v.* Perera, [1928] A. C. 173.

242. *Add Annotations:*—**Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444; Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641.

243. *Add. Annotation:*—**Refd.** Abeyesekera *v.* Jayatilake, [1932] A. C. 260.

250. *Add. Annotation:*—**Distd.** Performing Right Society, Ltd. *v.* Bray U. D. C., [1930] A. C. 377.

251. *Add. Annotation:*—**Refd.** Khoo Hooi Leong *v.* Khoo Chong Yeok, [1930] A. C. 346.

252a. —— **Revenue laws.**]—When a foreign colony becomes a British colony the British laws of revenue immediately attach.—THE FRIENDSHIP (1814), 1 Dods. 373; 165 E. R. 1346.

263. *Add. Annotation:*—**Refd.** Berthiaume *v.* Dastous (1929), 45 T. L. R. 607.

265a. Recognition of existing proprietary rights—Effect of proclamation.]—After a sovereign State has acquired territory, either by consent, or by cession under treaty, or by the occupation of territory theretofore unoccupied by a recognised ruler, or otherwise, an inhabitant of the territory can enforce in the municipal cts. only such proprietary rights as the Sovereign has conferred or recognised. Even if a treaty of cession stipulates that certain inhabitants shall enjoy certain rights that gives them no right which they can so enforce. The meaning of a general statement in a proclamation that existing rights will be recognised is that the Govt. will recognise such rights as upon investigation it finds existed. The Govt. does not thereby renounce its right to recognise only such titles as it considers should be recognised, nor confer upon the municipal cts. any power to adjudicate in the matter.

Applts. brought a suit for a declaration that they were proprietors of certain lands situated within territory which in 1860 had been ceded to the British Govt. under a treaty:—*Held:* upon the facts, & applying the above principles, the suit failed.—VAJESINGJI JORAVARSINGJI *v.* SECRETARY OF STATE FOR INDIA (1924), L. R. 51 Ind. App. 357, P. C.

271a. —— ——.]—WIJEYEWARDENE *v.* JAYAWARDENE (1924), 94 L. J. P. C. 44; 132 L. T. 161; 69 Sol. Jo. 793.

284a. Native custom originally barbarous—Recognition by court on modification.]—A native custom which originally was barbarous, & therefore one to which a ct. could not give effect, may have become recognised by the native community in a milder & acceptable form without losing its essential character of custom, but the ct. cannot itself transform a barbarous custom into a milder one.—ESHUGBAYI ELEKO *v.* NIGERIA GOVERNMENT (ADMINISTERING OFFICER), [1931] A. C. 662; 100 L. J. P. C. 152; 145 L. T. 297, P. C.

290. *Add. Annotation:*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

293. *Add. Annotation:*—**Distd.** Performing Right Society, Ltd. *v.* Bray U. D. C., [1930] A. C. 377.

297. Before this case add "*See, now,* Statute of Westminster, 1931 (c. 4), s. 4."

PART III. SECT. 1, SUB-SECT. 1.

239 i. *Introduction of English law by colonial statute.*]—The custom whereby, when marine insurance was effected through a broker, the broker & not the assured was liable to the underwriter for the premium, while the underwriter was directly responsible to the assured for the loss, was not so firmly established as part of the law of England in 1792 that it was to be deemed to have been introduced into Upper Canada by 32 Geo. 3, c. 1.—O'KEEFE & LYNCH OF CANADA, LTD. *v.* TORONTO INSURANCE & VESSEL AGENCY, LTD., [1926] 4 D. L. R. 477; 59 O. L. R. 235.—**CAN.**

239 ii. ——.]—The rule in *Shelley's Case* is not part of the law of Alberta, since it was not "applicable" within North-West Territories Act, 1884, to the Territories.—*Re* SIMPSON ESTATE (Alta.), [1927] 4 D. L. R. 817; [1927] 3 W. W. R. 534.—**CAN.**

239 iii. ——.]—*Held:* the English common law, as it was established on July 15, 1870, was introduced into the North-West Territories by Statute of Canada, 1886, c. 25, s. 3, & the same was neither expressly nor by implication altered or amended, in its application to riparian rights, by any subsequent Canadian legislation.—FARES *v.* R., [1929] Ex. C. R. 114; *on appeal,* [1932] S. C. R. 78; 1 D. L. R. 421.—**CAN.**

239a. *Legal & equitable estates—British India.*]—There is no distinction between legal & equitable estates in British India.—SURENDRAMOHAN RAY CHANDHURI *v.* MAHENDRANATH BANERJI (1931), I. L. R. 59 Calc. 781.—**IND.**

PART III. SECT. 1, SUB-SECT. 2.—A.

k i. —— *Inapplicability to specified community.*]—In order to show that the English law on its introduction to India in 1726 was inapplicable to a particular community, it is not enough to prove that the community had, prior to that date, been governed by a law differing from English law. What must be shown is that the English law is based on or presupposes social or political conditions peculiar to the country of its origin & it is impossible or inexpedient to apply the provisions of it to the community in question.—*In the Goods of* EZRAH (1930), I. L. R. 58 Calc. 761.—**IND.**

k ii. —— *Common law not engrafted on local statutes.*]—In India, where there are definite statutes enacted, they have to be followed. The rules of the common law of England, or the legal maxims embodying certain judicial principles, however wholesome they may be, cannot be engrafted upon the Indian Penal Code.—EMPEROR *v.* JOTI PRASAD GUPTA (1931), I. L. R. 53 All. 642.—**IND.**

PART III. SECT. 2, SUB-SECT. 1.—A.

h i. *Mode of exclusion — Subject-matter covered by colonial legislation.*]—The provisions, relating to fraudulent & preferential assignments, of Assignments Act, 1907, repealed in 1921, re-enacted in 1922, & consolidated in Fraudulent Preferences Act, R. S. A. 1922, constituted a complete code upon the subject which had the effect of excluding Stat. 13 Eliz. c. 5, s. 3, as to a penal action.—CONNORS *v.* EGLI, [1924] 2 D. L. R. 59; 1 W. W. R. 1050; 20 Alta. L. R. 205.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.—B.

l (p. 463) **i.** —— *Examination of petitioner—Evidence Amendment Act,* 1869.]—Sect. 43 of Divorce & Matrimonial Causes Act, 1857, was, *semble,* completely superseded & covered by Evidence Amendment Act, 1869; &, in any event, is not in force in Alberta since it is in direct conflict with sect. 8 of Alberta Evidence Act, R. S. A., 1922, c. 87.—EMENY *v.* EMENY (Alta.), [1929] 1 D. L. R. 253; [1929] 3 W. W. R. 577; 24 Alta. L. R. 303.—**CAN.**

p (p. 463) **i.** *Expropriation—Land Clauses Act,* 1845—*Not applicable in Ontario.*]—*Re* MAYO *v.* TORONTO CITY, [1929] 3 D. L. R. 890; 64 O. L. R. 139.—**CAN.**

r (p. 463) **i.** —— *Not applicable to New South Wales.*]—REID *v.* FITZGERALD (1931), 48 N. S. W. W. N. 25. —**AUS.**

w (p. 463) **i.** *Forfeiture Act,* 1870 (*c.* 23)—*Not applicable to Saskatchewan.*]—*Re* NOBLE (Sask.), [1927] 1 W. W. R. 938.—**CAN.**

dd (p. 463) **i.** —— *Apportionment Act,* 1870.]—*Held:* not in force in Saskatchewan.—UGLUM *v.* TORKELSON, [1930] 3 W. W. R. 26; 4 D. L. R. 1022. —**CAN.**

oo (p. 463) **i.** *Applicable to*

307. *Add. Annotation:*—**Consd.** *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

315a. —— **Limitation Act, 1623 (c. 16)—Extends to India.**]—EAST INDIA CO. *v.* ODITCHURN (1850), 7 Moo. P. C. C. 85; 5 Moo. Ind. App. 43; 14 Jur. 253; 13 E. R. 811, P. C.

Annotation:—**Folld.** Ruckmaboye *v.* Mottichund (1853), 8 Moo. P. C. C. 4.

315b. *S. P.* RUCKMABOYE *v.* LULLOOBHOY MOTTICHUND (1853), 8 Moo. P. C. C. 4; 5 Moo. Ind. App. 234; 22 L. T. O. S. 203; 14 E. R. 2, P. C.

324. After this case add:—

——.]—*See, now,* Statute of Westminster, 1931 (c. 4), s. 3.

Part IV.—Ecclesiastical Law.

345a. Canada—United Church of Canada—Decision not to enter union—Subsequent decision to enter in accordance with provincial legislation—Invalid.]—By an Act to come into force on June 10, 1925, the Dominion legislature incorporated the United Church of Canada so as to give effect to an agreed basis of union between the Presbyterian, Methodist, & Congregational Churches throughout Canada. The congregations of the uniting Churches were to become congregations of the United Church, & their property was to vest therein. By sect. 10, however, if any congregation voted at a meeting held within six months before June 10, 1925, not to enter the union it was not to be affected by the Act, &, by sect. 4 (*c*), it was to be deemed not to have become a member of the United Church. The legislature of Nova Scotia had passed an Act, to come into force upon the United Church being incorporated, enacting that property of uniting congregations in the Province should vest in the United Church. Sect. 8 (*a*) provided that if a congregation, at a meeting held within six months after the incorporation, voted not to enter the union its property was not to be affected, but that if the congregation decided later to enter the union the Act was to apply to it & its property. A Presbyterian congregation in Nova Scotia voted at a meeting held within six months before June 10, 1925, not to concur in the union, but at a meeting held within six months after that date voted to enter the United Church:—*Held:* as by the Dominion Act which incorporated the United Church of Canada the effect of the earlier vote was that the congregation was not a constituent member of that body, it could not by virtue of Provincial legislation become a member, nor could its property vest upon the footing that it was so; further, that the later vote could not be treated as a decision to apply to the United Church for admission, with the effect that, if the application was acceded to, its property vested therein under s. 8 (*a*). The earlier vote, however, did not necessarily for ever debar the congregation from entering the United Church, as the Dominion Act recognised that a non-concurring congregation might become a member at a later time, though the Dominion legislature at present had not provided means whereby a later union could be effected.—ST. LUKE'S PRESBYTERIAN CONGREGATION OF SALTSPRINGS TRUSTEES *v.* CAMERON, [1930] A. C. 673; 99 L. J. P. C. 206; 143 L. T. 601, P. C.

Alberta.]—The "prohibited degrees of consanguinity or affinity" referred to in 5 & 6 Will. 4, c. 54, are those set out in Archbishop Parker's Table of 1563, which is printed in the Book of Common Prayer of the Church of England, & this Act is in force in Alberta, except in so far as said table is altered by R. S. C., 1927, c. 127.—*Re* SEIDLER & MACKIE (Alta.), [1929] 4 D. L. R. 478; 2 W. W. R. 645.—**CAN.**

ooo (p. 463) ii. —— —— *Applicable to Alberta.*]—5 & 6 Will. 4, c. 54, is in force in Manitoba.—DEJARDIN *v.* DEJARDIN, [1932] 2 W. W. R. 237.—**CAN.**

r (p. 464) i. —— *Judicature Acts—Rules under—Not applicable in Ontario.*]—The effect of rule 2 of the rules of 1913 is to make those rules a complete code of procedure, either by special provisions or by analogy, & the practice in England no longer obtains in Ontario.—KEMP *v.* BEATTIE, [1929] 1 D. L. R. 55; 63 O. L. R. 176.—**CAN.**

r (p. 464) ii. —— *Procedure in forma pauperis—11 Hen. 7, c. 12—Applicable in British Columbia.*]—BLAND *v.* AGNEW, [1932] 3 W. W. R. 222; 4 D. L. R. 464.—**CAN.**

t (p. 464) i. *Real Estate Charges Act, 1867 (c. 69), s. 2—Applicable to Saskatchewan.*]—*Re* MACDOUGALL, [1927] 3 D. L. R. 464; [1927] 1 W. W. R. 612; 21 Sask. L. R. 397.—**CAN.**

ss (p. 464) i. —— *Charging order.*]—Solicitors Act, 1860, s. 28, is in force in Saskatchewan & must be given full effect in matters of practice & procedure in the cts. thereof. Under its provisions, the ct. has power, in any proceedings, to make a charging order in favour of a solr., with respect to his taxed costs, against any property recovered through his instrumentality; & the charge may be granted not only upon the interest in the preserved property of those by whom the solr. was employed but also upon the interests of others interested in the preserved property who get the benefit of its preservation, even though they were not parties to the action.—BLOOMAERT *v.* DUNLOP, [1930] 1 W. W. R. 270; 2 D. L. R. 30; 24 S. L. R. 261.—**CAN.**

mm (p. 464) i. —— *Applicable to Alberta.*]—LAMB *v.* LAMB, [1925] 4 D. L. R. 526 [1925] 3 W. W. R. 397.—**CAN.**

b (p. 465) i. —— —— *Applicable to India.*]—The above Act extends to India, & applies to Hindoos & Mahomedans as well as Europeans, in civil actions in the Supreme Ct.—RUCKMABOYE *v.* LULLOOBHOY MOTTICHUND (1853), 5 Moo. Ind. App. 234.—**IND.**

e (p. 465) i. —— *Mercantile Law Amendment Act, 1856, s. 14—Applicable in Saskatchewan.*]—IMPERIAL BANK OF CANADA *v.* KUSZKS, [1932] 3 W. W. R. 186.—**CAN.**

PART IV.

s i. —— *Requisites of conversion to Hinduism.*]—In the Indian Succession Act (XXXIX. of 1925), the term "Hindu" is used in a theological, as distinguished from a national or racial sense. A person of non-Hindu origin can become a Hindu by conversion. Membership of a caste is not a necessary pre-requisite for being a Hindu. It is a question of fact in each case whether a given person is a Hindu or not. A European does not become a Hindu merely because he professes a theoretical allegiance to the Hindu faith, or is an ardent admirer & advocate of Hinduism, & its practices; but if he resides long in India, abdicates his religion by a clear act of renunciation, & adopts Hinduism by undergoing formal conversion, gives up, along with Christianity, his Christian name & deliberately assumes a Hindu name, marries, in accordance with Hindu religious rites, a person who is a Hindu by race & religion, & cuts himself off from his old environments, & takes to the Hindu mode of life, in such a case the Ct. may justly come to the conclusion that he is a Hindu within Indian Succession Act. A European who becomes a Hindu is governed by Hindu law, the test in such case being not domicil, but religion.—MORARJI *v.* ADMINISTRATOR-GENERAL OF MADRAS (1928), I. L. R. 52 Mad. 160.—**IND.**

s ii. ——.]—Whether a Chinese is a Buddhist or not is a question of fact.—TAN MA SHWE ZIN *v.* TAN MA NGWE ZIN (1932), I. L. R. 10 RAN. 97.—**IND.**

Canada—United Church of Canada.]—*See cases* in ECCLESIASTICAL LAW, Part VIII., Sect. 9.

Part VIII.—Property in Land.

369. *Add. Annotation :*—**Refd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

372a. —— —— **Vesting of lands now forming Saskatchewan.**]—The effect of the Order in Council of June 23, 1870, whereby Rupert's Land & the North-Western Territory were admitted into & became part of the Dominion of Canada, & of sect. 5 of the Rupert's Land Act, 1868, was that the lands therein which were then vested in the Crown, & now are within the boundaries of the Province of Saskatchewan, became so vested in the right of the Dominion, & the Dominion was given full control to administer them for the purposes of Canada as a whole, not merely for the inhabitants of the area. The Dominion Lands Act, 1872, & sect. 21 of the Alberta & Saskatchewan Acts, 1905, were therefore validly enacted by the Parliament of Canada. —*Re* NATURAL RESOURCES (SASKATCHEWAN), [1932] A. C. 28, P. C.; *sub nom.* A.-G. OF SASKATCHEWAN & A.-G. OF ALBERTA *v.* A.-G. FOR CANADA, 101 L. J. P. C 11; 146 L. T. 50, P. C.; 48 T. L. R. 24; 75 Sol. Jo. 780, P. C.

378a. —— **Foreshore & bed of navigable river—St. Lawrence.**]—The King, as representing the Province of Quebec, is the sole owner of the foreshore & bed of the St. Lawrence River at the place where the Montreal harbour comrs. constructed works which necessitated the outlet of a sewer in the city of Montreal being changed. The Dominion statutes did not authorise the harbour comrs. to take possession of the lands of the Province of Quebec without compensation.—MONTREAL CORPN. *v.* MONTREAL HARBOUR COMRS., TETREAULT *v.* MONTREAL HARBOUR COMRS., A.-G. FOR QUEBEC *v.* A.-G. FOR CANADA, [1926] A. C. 299; 95 L. J. P. C. 60; 134 L. T. 578; 42 T. L. R. 98, P. C.

378b. —— **Boundary between Canada & Newfoundland.**]—The effect of various Orders in Council, Proclamations, & Statutes being to give the Govt. of Newfoundland, not mere rights of inspection & regulation upon a line of shore, but territory which became as much a part of the colony as the island of Newfoundland itself & was capable of being defined by metes & bounds :—*Held :* the boundary between Canada & Newfoundland in the Labrador Peninsula was along the crest of the watersheds of the rivers flowing into the sea on the shore of Labrador.—*Re* BOUNDARY BETWEEN CANADA & NEWFOUNDLAND IN LABRADOR PENINSULA (1927), 137 L. T. 187; 43 T. L. R. 289, P. C.

Annotation :—**Refd.** Jardine *v.* A.-G. for Newfoundland (1932), 48 T. L. R. 109.

381. *Add. Annotations :*—**Apld.** A.-G. for Alberta *v.* A.-G. for Canada, [1928] A. C. 475. **Refd.** Toronto (City) Corpn. *v.* R., [1932] A. C. 98.

381a. —— —— ——.]—A.-G. FOR ALBERTA *v.* A.-G. FOR CANADA, No. 98a, *ante*.

PART VIII. SECT. 1.

370 i. *Canada—Respective rights of Dominion & Province—Territory ceded to Indians—British North America Act, 1867 (c. 3).*]—PROVINCE OF QUEBEC *v.* DOMINION OF CANADA, *Re* DOMINION OF CANADA & PROVINCES OF ONTARIO & QUEBEC, *Re* INDIAN CLAIMS (1898), 30 S. C. R. 151.—**CAN.**

e i. —— *Rights of Dominion & private person—Grant of land by province before confederation.*]—Where pltf. claimed under a grant issued by the province, in 1857, prior to confederation :—*Held :* the Crown, as represented by the Dominion under B.N.A. Act, 1867, s. 91 (12), could not grant by licence power to erect a weir on private property.—DELAP *v.* HAYDEN [1924] 3 D. L. R. 11; 57 N. S. R. 346. —**CAN.**

e ii. —— *Indian Reserves—Indians not entitled to alienate by lease or sale—Right of Crown to recover possession.*]—R. *v.* MCMASTER, [1926] Exch. C. R. 68.—**CAN.**

e iii. .]—By a document dated Mar. 10, 1821, "the British Indian Chiefs of St. Regis,' "for themselves & on behalf of their tribe, whom they represent," purported to lease to C., his heirs & assigns, certain land, part of Crown land reserved for the Indians, & not ceded or surrendered to the Crown by the Indians, on Cornwall Island in the river St. Lawrence, for 99 years, "& at the expiration thereof for another & further like period of 99 years & so on until the full end & term of 999 years shall be fully ended & completed." The Chiefs covenanted "that they are the representatives of the said tribe of St. Regis as well as trustees of their estate & as such that they have a perfect right" to make the lease. The consideration was $100 cash & a yearly rent of $10. C. entered into possession on Mar. 10, 1821, & possession was continued in successive assignees, & it was admitted in this action that deft. was in possession as assignee of whatever rights C. had under the lease. The rent was paid yearly to Mar. 10, 1920, when the Crown refused to accept further rents. From about 1875 the rent was paid to the Department of Indian Affairs, for the benefit of the Indians. The lease was registered at the Department of Indian Affairs in 1875. There was in evidence a letter of Feb. 26, 1875, from an official of the Department to one B., an Indian, in reply to a letter from B., not produced, in terms apparently recognising rights of C. under the lease. The Crown notified deft. to give up possession at the expiration, Mar. 10, 1920, of the term of 99 years; &, deft. not complying, it took proceedings to recover possession of the land, as ungranted Crown lands reserved for the Indians :—*Held :* the Crown was entitled to possession. The lease was invalid in law; the chiefs had no power to make it, & the taking of it violated the Proclamation of 1763 respecting Indians & Indian lands, & subsequent enactments.—EASTERBROOK *v.* R., [1931] S. C. R. 210; 1 D. L. R. 628; [1929] Ex. C. R. 28.—**CAN.**

e iv. —— —— *Boundaries—Whether extended by acts of possession by Indians.*]—R. *v.* HEISLER (N. S.) (1913), 13 E. L. R. 375.—**CAN.**

e v. —— —— *Right to sell cordwood cut on unsurrendered reserve land.*]—FEGAN *v.* MCLEAN (1869), 29 U. C. R. 202.—**CAN.**

e vi. —— *Indian lands—Sale by Indian before receipt of Crown patent—Indian Act, R. S. C. 1906, c. 81, s. 102.*]—SANDERSON *v.* HEAP (1909), 11 W. L. R. 238.—**CAN.**

379 i. *South Africa—Restriction of prospecting & mining—Whether Proclamation ultra vires.*]—R. *v.* NOLTE, [1928] App. D. 377.—**S. AF.**

sp. *India—Land held by East India Company.*]—A village not permanently assessed was granted by the East India Co. in 1843 to the predecessor of pltf. with a condition restraining its alienation without the Govt.'s previous sanction :—*Held :* though the formal assumption of sovereignty in India by the Crown was only in 1858, yet the possessions were, as provided by the previous Charter Acts, held by the East India Co. only as the delegates of & in trust for the Crown.—SECRETARY OF STATE FOR INDIA *v.* RAJA PARTHASARATHY APPA RAO (1926), I. L. R. 49 Mad. 349.—**IND.**

PART VIII. SECT. 2.

q i. —— —— *Whether sale of ordnance land cancelled.*]—MURPHY *v.* R. (1892), 3 Exch. C. R. 75.—**CAN.**

q ii. —— *Timber cut on Crown lands—Necessity for marking.*]—HARRISON BAY CO., LTD. *v.* GAUTHIER (1925), 35 B. C. R. 498.—**CAN.**

q iii. —— *Decision of Minister of Lands, Forests & Mines—Effect of.*]—The decision of the above Minister in favour of the issuing of a patent is merely an intimation that he will recommend such issue; it is not a final adjudication & does not bind the Crown.—FITZPATRICK *v.* R., [1926] 4 D. L. R. 239; 59 O. L. R. 331.—**CAN.**

r i. —— *Canal Reserve, Ottawa.*]—*Held :* legislation with respect to Ordnance lands vested in the Province of Canada the lands comprised in 19 Vict. c. 45, sched. 2, & any trust with which the lands were impressed was put an end to as to the lands under that schedule by such legislation, & 7 Vict. c. 11 gave power to sell any vacant land not required for military or canal purposes or for the Ordnance Dept.—OTTAWA (CITY) *v.* GRAND TRUNK RY. CO., OTTAWA (CITY) *v.* OTTAWA & NEW YORK RY. CO. (1920), 64 D. L. R. 337; 50 O. L. R. 239.—**CAN.**

t i. *S. P.* R. *v.* CUDDIHY (1831), 2 Nfld. L. R. 8.—**NFLD.**

t ii. *S. P.* R. *v.* RYAN (1831), 2 Nfld. L. R. 47.—**NFLD.**

a i. —— *Agreement to exchange—Necessity for consent of Commissioner of Crown Lands—Duty of transferor.*]—MAY *v.* DALY, [1927] S. A. S. R. 428.—**AUS.**

385. After this case add :—

—— ——.]—*See, also,* British North America Act, 1930 (c. 26).

390a. —— —— **Dedication as naval depot—Revocation of dedication.**]—AUSTRALIA COMMONWEALTH *v.* NEW SOUTH WALES STATE, No. 56a, *ante.*

390b. —— **Land held under Discharged Soldiers' Settlement Acts—Eviction.**]—If a person holding Crown land in South Australia under Australian Discharged Soldiers' Settlement Act, 1917, & amending Acts, fail to carry out the conditions laid down in his agreement with the Govt., he can be ejected without a judicial or quasi-judicial inquiry.—LAFFER *v.* GILLEN, [1927] A. C. 886; 96 L. J. P. C. 166; 137 L. T. 701; 43 T. L. R. 694, P. C.

391. *Add. Annotations :*—**Apld.** Sunmonu *v.* Disu Raphael, [1927] A. C. 881. **Distd.** Sakariyawo Oshodi *v.* Moriamo Dakolo, [1930] A. C. 667, P. C. **Refd.** Sobhuza II. *v.* Miller, [1926] A. C. 518; Bakare Ajakaiye *v.* Southern Provinces Lieutenant-Governor, [1929] A. C. 679; Eshugbayi Eleko *v.* Nigeria Government (Officer Administering), [1931] A. C. 662.

391a. —— **Lands acquired under Public Lands Acquisition Ordinance—Right of chief to compensation.**]—The Govt. of Nigeria acquired under the Public Lands Acquisition Ordinance a compound in Lagos, which with other compounds was held by applt. as paramount chief for the use of his family & household, members of which occupied houses in the compound & used the land in common. The occupants had heritable rights in their holdings subject to a reversion in the chief in the event of the family of an occupant becoming extinct. A Govt. grant had been made to a headman placed in charge of the compound :—*Held :* the occupants were entitled to the compensation awarded, but subject to applt. receiving some small portion of it in respect of his reversionary right; the Govt. grant did not affect the respective rights of the chief & the occupants to the compensation.—SAKARIYAWO OSHODI *v.* MORIAMO DAKOLO, [1930] A. C. 667; 99 L. J. P. C. 233; 144 L. T. 35; 46 T. L. R. 599, P. C.

392a. **Kenya—Sale of Crown lands by auction—Restriction to Europeans.**]—Under the terms of the Crown Lands Ordinance, No. 12 of 1915 of Kenya, for the lease or sale of Crown lands :—*Held :* there was power for the Comr., whether the sale was by auction or not, to restrict the user of a house to Europeans, except such Asiatics or Africans as were employed therein as domestic servants, & the sale or lease might be confined by him to bidding by Europeans only. Restricted auction could be held under the ordinance, & whether the restriction should be based on racial distinctions was not a question of law but of policy. The procedure followed of postponing the sale ordered by the Comr. for Aug. 11, 1928, on an *ex parte* application for *mandamus* by appct. who was an Indian subject of His Majesty resident in Mombasa, made by him on Aug. 8 not approved.—LOCAL GOVERNMENT LANDS & SETTLEMENT COMR. *v.* KADERBHAI, [1931] A. C. 652; 100 L. J. P. C. 124; 145 L. T. 265, P. C.

Annotation :—**Refd.** Eshugbayi Eleko *v.* Nigeria Government (Officer Administering), [1931] A. C. 662.

Part IX.—Judicial Committee of the Privy Council.

393a. —— **Not refusal of Governor-General of Canada to grant fiat under Petition of Right Act.**]—The Governor-General of Canada, in deciding under sect. 4 of Petition of Right Act of Canada whether to grant his fiat, does not act as a "judicial officer" within the meaning of Judicial Committee Act, 1833 (c. 41), s. 3, & consequently an appeal from his refusal does not lie to His Majesty in Council.—LOVIBOND *v.* CANADA, GOVERNOR-GENERAL, [1930] A. C. 717; 99 L. J. P. C. 178; 144 L. T. 47; 46 T. L. R. 618; 75 Sol. Jo. 278, P. C.

394. *Add. Annotations :*—**Folld.** Strickland (Lord) *v.* Grima, [1930] A. C. 285. **Refd.** Nadan *v.* R., [1926] A. C. 482.

394a. —— —— **Special jurisdiction given by Letters Patent.**]—The Malta Constitution Letters Patent, 1921, provide by art. 33 "all questions which may arise as to the right of any person to be or remain a member of the senate or the legislative assembly shall be referred to & decided by our Ct. of Appeal in Malta." The Ct. of Appeal having held that the election of the second & third applts. to the senate was null & void, & special leave to appeal to His Majesty in Council having been granted :—*Held :* the intention of the above article of the letters patent was to designate the Ct. of Appeal a special tribunal finally to determine all questions of the nature stated without annexing to the jurisdiction the ordinary incident of an appeal to the Crown under the prerogative to admit an appeal; & accordingly that the appeal should be dismissed.—STRICKLAND (LORD) *v.* GRIMA, [1930] A. C. 285; *sub nom.* PARNIS *v.* AGIUS, 99 L. J. P. C. 81; 142 L. T. 386; 46 T. L. R. 194, P. C.

398a. **Supreme Court of Palestine—Sitting as court of first instance.**]—JERUSALEM-JAFFA DISTRICT GOVERNOR *v.* SULEIMAN MURRA, No. 20a, *ante.*

401. *Add. Annotation :*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

405. *Add. Annotation :*—**Consd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 242.

406. *Add. Annotation :*—**Consd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 242.

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386 i. *Australia—Right of New South Wales—To Garden Island.*]—*Held :* New South Wales was entitled as against the Commonwealth, which claimed in right of the Imperial Govt., to possession to Garden Island.—STATE OF NEW SOUTH WALES *v.* COMMONWEALTH (1926), 38 C. L. R. 74.—**AUS.**

sc. *India — Transfer — Necessity for deed.*]—A deed duly executed by the officers named in 22 & 23 Vict. c. 41, is necessary in order to transfer the ownership of Crown lands.—RUPAN SINGH *v.* AKHAJ SINGH (1930), I. L. R. 10 Pat. 203.—**IND.**

439a. Not concerned with matters of procedure.]—ATTA MOHAMMAD *v.* R., No. 532a, *post.*

444a. —— Creation of special tribunal—To try election petitions.]—STRICKLAND (LORD) *v.* GRIMA, No. 394a, *ante.*

445. *Add. Annotation :*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

462a. Freedom of speech of members of legislature.]—MAHOMED ABDUL CADER *v.* KAUFMAN, [1928] W. N. 264; 66 L. Jo. 425, P. C.

465. *Add. Annotation :*—**Apld.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

466a. —— —— Patent cases.]—As no question of general importance usually arises in a patent case, their Lordships deprecated the granting of special leave to appeal in cases of that nature in which there were concurrent judgments.—POPE APPLIANCE CORPN. *v.* SPANISH RIVER PULP & PAPER MILLS, LTD., [1929] A. C. 269; 98 L. J. P. C. 50; 140 L. T. 409; 46 R. P. C. 23, P. C.

482a. —— ——.]—In the Code of Civil Procedure, 1908, s. 110, dealing with appeals to the King in Council from a decree or final order of a High Ct., the words "the amount or value of the subject-matter of the suit in the ct. of first instance" mean the amount or value at the institution of the suit, not at the date of the decree in the ct. of first instance, & that meaning is not affected by the alternative condition which follows in the sect.—GUDIVADA MANGAMMA *v.* MADDI MAHALAKSHMAMMA (1929), 57 L. R. Ind. App. 56; 99 L. J. P. C. 78; 142 L. T. 313; 46 T. L. R. 130, P. C.

485a. —— Directly or indirectly involved—Successful appeal rendering possible prosecution of claim for larger sum.]—Upon a dispute as to a contract for the sale of goods, arbitrators awarded Rs. 18,000 to petitioner & Rs. 3,900 to resps. The award in favour of petitioner having been set aside, he brought a suit to set aside the award in favour of resps. The appellate ct. in India made a decree dismissing the suit & refused to certify under Code of Civil Procedure, 1908, s. 110, that the case was a fit one for appeal to the Privy Council in that it would "involve, directly or indirectly, some claim or question to or respecting property" of Rs. 10,000, or upwards. Petitioner contended that he had a right of appeal under the above words of sect. 110, since if the appeal succeeded he could proceed with a suit, which had been stayed, claiming Rs. 81,000 damages under the contract :—*Held :* without defining the meaning of "property" as used in sect. 110 petitioner's claim upon the contract was too remote to be considered as being property indirectly involved, & his petition should be dismissed.—UDOYCHAND PANNALAL *v.* GUZDAR (P. E.) & Co. (1925), L. R. 52 Ind. App. 207, P. C.

PART IX. SECT. 4, SUB-SECT. 2.—A.

448 i. *General rule.*]—Special leave to appeal should only be granted where the case involves matters of public interest or some important question of law.—RICHES *v.* CITY OF MOOSE JAW, [1925] 4 D. L. R. 326; [1925] 3 W. W. R. 399.—**CAN.**

e i. ——.]—The main question for decision was whether a certain agreement between the Muhammedan & Hindu communities of a town regarding religious processions which had been brought about by the Sub-Divisional Officer a few years ago, & which had been signed by certain persons of each community was of permanent effect & binding on all members of both communities :—*Held :* the case involved a matter which was of general importance to both communities, & although the valuation was very small the case was "otherwise a fit one for appeal to His Majesty in Council."—SUBHAN' *v.* BABURAM SINGH (1929), I. L. R. 52 All. 329.—**IND.**

466 i. —— *Not if important only to parties.*]—Ordinarily none but the parties to a litigation are concerned with the result of a case. In every such case, where the valuation is less than the prescribed limit, there is no right of appeal to His Majesty in Council. It is only when a case is of larger importance & the principle when finally decided by the Privy Council will be of benefit, not only to the people who are directly involved, in the litigation, but to a considerable body of other people, that leave to appeal should be granted.—RUCHCHA SAITHWAR *v.* HANSRANI (1928), I. L. R. 50 All. 640.—**IND.**

468 v. ——.]—Where in a petition for leave to appeal to His Majesty in Council the subject-matter of the suit is more than Rs. 10,000, & the High Ct. affirmed the decision of the trial ct., &, therefore, the only question to be determined was whether there was a substantial question of law involved in the case :—*Held :* the certificate for leave to appeal could not be granted, as the question involved, whether, if the marriage of the mother has been positively disproved, the acknowledgment by the father is sufficient for the legitimation of a son, having been definitely settled by their Lordships of the Privy Council, was not a substantial question of law within Civil Procedure Code, s. 110.—FEROZE DIN KHAN *v.* NAWAB KHAN (1928), I. L. R. 9 Lah. 582.—**IND.**

476 i. *Leave granted on terms—By what court imposed.*]—Where leave to appeal to the Privy Council is granted, the conditions attached to such leave, & the terms on which it is allowed, should be left to the Judicial Committee.—STEVENSON *v.* FLORANT, [1926] 1 D. L. R. 601; [1926] S. C. R. 90.—**CAN.**

477 i. —— *Security—By whom allowed—Privy Council Appeals Act, R. S. O., 1914 (c. 54), s. 11.*]—MCBRIDE *v.* ONTARIO JOCKEY CLUB, LTD., [1926] 1 D. L. R. 743; 58 O. L. R. 267.—**CAN.**

PART IX. SECT. 4, SUB-SECT. 2.—B. (a).

483 iv. —— *Partnership suit.*]—Where leave to appeal to the Privy Council was applied for, petitioner contending that the decree involved a claim respecting property of Rs. 10,000 within the meaning of Civil Procedure Code, 1908, s. 110 (2) :—*Held :* it was the value of applt.'s share in the partnership that must be looked to, & not the value of the whole of the partnership property.—NARIMAN RUSTOMJI MEHTA *v.* HASHAM ISMAYAL VALAD HAJI KHAMISA (1924), I. L. R. 49 Bom. 149.—**IND.**

483 v. —— *"Property"—Loss of trade & goodwill.*]—Where the result of a judgment was to destroy or prevent defts. from trading by depriving them of goodwill & of trade names which they had hitherto used :—*Held :* these were "property"; & as any of the matters in controversy was worth more than $4,000, the matter was a "pecuniary amount" exceeding that sum within Privy Council Appeals Act, s. 2.—BATTLE CREEK TOASTED CORN FLAKE CO. *v* KELLOGG TOASTED CORN FLAKE CO., [1924] 2 D. L. R. 1238; 54 O. L. R. 629.—**CAN.**

483 vi. ——.]—In a suit for an easement of light & air claimed by the owner of property A. against the owner of property B., it is the value of the easement & not the value of property A. that determines the appealable value for leave to appeal to the Privy Council under Civil Procedure Code, 1908, s. 110.—LALLUBHAI PRAGJI *v.* BHIMBAI DAJIBHAI (1929), I. L. R. 53 Bom. 552.—**IND.**

483 vii. ——.]—In Code of Civil Procedure, 1908, s. 110, dealing with appeals to the King in Council from a decree or final order of a High Ct., the words "the amount or value of the subject-matter of the suit in the ct. of first instance" mean the amount or value at the institution of the suit, & not at the date of the decree in the ct. of first instance; & that meaning is not affected by the alternative condition which follows in the sect.—MANGANNA *v.* MAHALAKSHMAMMA (1929), I. L. R. 53 Mad. 167.—**IND.**

483 viii. ——.]—*Semble :* if a plaint merely claims a sum of or under Rs. 10,000 as rent, the recurring nature of rent does not make the case fit for appeal to the Privy Council under sect. 110 of the Code of Civil Procedure, 1908.—JOGESH CHANDRA ROY *v.* EMDAD MEAH (1931), 59 L. R. Ind. App. 29.—**IND.**

h ii. —— ——.]—On an application for leave to appeal to the Privy Council mesne profits subsequent to the date of the High Ct. decree cannot be taken into account in making an estimate of value under Civil Procedure Code, 1908, s. 110 (2).—SESHGIRI SHAMBHULINGAM *v.* MANJAYYA (1925), I. L. R. 50 Bom. 160.—**IND.**

st. *Not amount of penalty imposed by fine or forfeiture under penal statute.*]—R. *v.* REGINA WINE & SPIRIT, LTD. (No. 2), [1928] 2 W. W. R. 1166; 67 D. L. R. 436.—**CAN.**

PART IX. SECT. 4, SUB-SECT. 2.—B. (b).

• i. —— *Motion for injunction—Passing-off action.*]—These were motions on behalf of resps. for conditional leave to appeal to the Privy Council. Resps. brought passing-off actions against

497. *Add. Annotation :*—**Refd.** Gudivada Mongamma *v.* Maddi Mahalakshmamma (1929), 99 L. J. P. C. 78.

501. *Add. Annotation :*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

502. *Add. Annotation :*—**Expld. & Distd.** Davis (Lady) *v.* Shaughnessy (Lord), [1932] A. C. 106.

525. *Add. Annotation :*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

526a. From Canadian court.]—NADAN *v.* R., No. 91a, *ante.*

527. *Add. Annotation :*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

532a. .]—Their Lordships do not act as a Ct. of Criminal Appeal, & are not concerned to regulate the procedure of cts. in India, or to criticise what is mere matter of procedure.—ATTA MOHAMMAD *v.* R. (1929), 57 L. R. Ind. App. 71, P. C.

534. *Add. Annotation :*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

538a. Question of jurisdiction of colonial court—To issue mandamus to inferior court.]—The Supreme Ct. of Ontario has jurisdiction to mandamus a county ct. judges criminal ct. to try, according to the procedure provided by Criminal Code of Canada, s. 827, a person against whom an indictment has been found by a grand jury for the county. The fact that no rules have been made as to the issue of a mandamus in a criminal matter does not preclude the Supreme Ct. from exercising its full powers.

Special leave to appeal to the Privy Council was granted upon a petition alleging two grounds : (1) that the Supreme Ct. had not jurisdiction to issue a mandamus in the circumstances above referred to, & (2) that under the Criminal Code the persons indicted had not the option given by sect. 827 to be tried without a jury. Special leave was granted on the first ground ; the question whether the appeal could be entertained was reserved :—*Held :* the appeal should be dismissed, since the ground upon which special leave was given failed, & the second ground was merely a question of procedure & was not one upon which an appeal would be entertained.—A.-G. FOR ONTARIO *v.* DALY, [1924] A. C. 1011 ; 94 L. J. P. C. 21 ; 132 L. T. 210 ; 40 T. L. R. 814, P. C.

Annotation :—**Refd.** Nadan *v.* R., [1926] A. C. 482.

538b. Question of procedure.]—A.-G. FOR ONTARIO *v.* DALY, No. 538a, *ante.*

542. *Add. Annotations :*—**Distd.** Practice Note (1932), 48 T. L. R. 300. **Refd.** Umra *v.* R. (1924), 41 T. L. R. 86 ; Nadan *v.* R., [1926] A. C. 482 ; Kishan Singh *v.* R. (1928), 44 T. L. R. 690 ; Knowles *v.* R., [1930] A. C. 366.

549. *Add. Annotation :*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

549a. ——————.]—NADAN *v.* R., No. 91a, *ante.*

549b. —— —— **Misinterpretation of statute.**]—The contention that in a criminal case a ct. in India has come to a wrong conclusion upon the interpretation of an Indian statute is not necessarily tantamount to an allegation of substantial & grave injustice such as to induce the Privy Council to give special leave to appeal.—UMRA *v.* R. (1924), 41 T. L. R. 86, P. C.

558a. Trial for murder—Failure to consider possibility of verdict of manslaughter.]—KNOWLES *v.* R., No. 564a, *post.*

559. *Add. Annotations :*—*As to* (1) **Consd.** Umra *v.* R. (1924), 41 T. L. R. 86 ; Nadan *v.* R., [1926] A. C. 482.

560. *Add. Annotations :*—**Refd.** Nadan *v.* R., [1926] A. C. 482 ; Knowles *v.* R., [1930] A. C. 366.

564a. Trial for murder by judge alone—Trial by jury impracticable or not permitted by local circumstances.]—Applt. was convicted of the murder of his wife, & sentenced to death upon a trial in Ashanti without a jury. By sect. 9 of Ashanti Administration Ordinance, 1902, "so far as it is practicable & local circumstances permit" the procedure, civil & criminal, in the Ashanti ct. was to be the same as in the Supreme Ct. of the Gold Coast Colony ; in that ct. it was imperative by Ordinance that a trial for murder should be with a jury. The trial judge had not stated that a trial with a jury was not practicable or not permitted by local circumstances. It appeared on the appeal that there never had been trial by jury in Ashanti. The death of applt.'s wife resulted from a wound inflicted by a shot from a revolver while she & the applt. were together alone in a room. By a dying declaration she had stated that the revolver had been fired accidentally by herself in a manner which she described. The applt. in his evidence also attributed the wound to an accident by her. There was

applts., to obtain an injunction against each of them to prevent them from keeping their taxicabs painted in such a manner as to be calculated to deceive the public into thinking that their cabs were those of resps. The actions came on for trial & injunctions were granted against both applts. Defts. appealed, & the Ct. of Appeal in April last allowed the appeals in both cases & dissolved the injunctions. Resps. moved for conditional leave to appeal to the Privy Council against this order :—*Held :* proposed appeal did not directly or indirectly involve a claim or question to or respecting a civil right of the value of £500, & the motion should accordingly be dismissed.—NICHOLSON *v.* BLACK & WHITE CABS, LTD., [1928] N. Z. L. R. 610.—**N.Z.**

e ii. —— *Questions of public importance involved—Power to grant publicans' licences.*]—On a motion for conditional leave to appeal to the Privy Council from a decision of the Ct. of Appeal in which the question involved was the right of a licensing committee to grant publicans' licences in a district originally forming part of a no-license district, but which by an alteration of boundaries had become merged in a license district :—*Held :* even if the proceedings did not involve a civil right of the value of £500 or upwards, the questions involved were of such general & public importance that conditional leave to appeal should be granted without special terms.—SCALES *v.* YOUNG, [1930] N. Z. L. R. 327.—**N.Z.**

PART IX. SECT. 4, SUB-SECT. 3.—A.

532 i. *Not a court of criminal appeal.*]—The Judicial Committee will neither accept nor share the responsibility for the administration of criminal justice in India, unless there has been some violation of the principles of justice or some disregard of legal principles.—RUSTOM *v.* R., RANDIR SINGH *v.* R., TABA SINGH *v.* R., RHUDA BAKSH *v.* R. (1923), I. L. R. 48 Bom. 515.—**IND.**

532 ii. ——.]—The power of the Judicial Committee to entertain appeals from a lower ct. is not that of a ct. of criminal appeal, but as the Privy Council advising the Sovereign with regard to the exercise of the prerogative, which is a remnant of the powers of the Crown to interfere with tribunals of justice, which do not exist in this country at all. There must be proof that there was no proper trial & that the forms of all judicial procedure were disregarded, not only according to local ordinances, but according to the unvarying character which is common to all.—HUNMANTRAO *v.* R. (1924), I. L. R. 49 Bom. 455.—**IND.**

PART IX. SECT. 4, SUB-SECT. 3.—B. (a).

538 ii. ——.]—R. *v.* SCOTT (No. 2) (1924), 57 N. S. R. 201.—**CAN.**

538 iii. —— *Evidence improperly admitted.*]—*Held :* the use made in evidence of books & documents found in the library of a suspected person presented a question of "great general & public importance."—R. *v* MCLACHLAN, [1924] 1 D. L. R. 1109 ; 42 Can. Crim. Cas. 86 ; 56 N. S. R. 549.—**CAN.**

much circumstantial evidence:—*Held:* it should be presumed that a trial with a jury was not practicable, or was not permitted by local circumstances, & accordingly that the appeal failed so far as it was based upon want of jurisdiction; but the appeal should be allowed upon the ground that the applt. had not the substance of fair trial, & had suffered substantial & grave injustice, in that the trial judge, having come to the conclusion that the revolver had been fired by the applt., had entirely failed to consider whether the evidence justified a conviction for murder as opposed to manslaughter, & the Board was clearly of opinion that it did not.—KNOWLES *v.* R., [1930] A. C. 366; 99 L. J. P. C. 108; 143 L. T. 28; 46 T. L. R. 270; 29 Cox, C. C. 199, P. C.

586a. Discretion of court below—Judicial Committee will not interfere—Though members of court below disagree.]—Under Civil Code of Quebec, art. 189, a husband or wife may demand a separation on the ground of "outrage, ill-usage, or grievous insult"; & by art. 190: "The grievous nature & sufficiency of such outrage, ill-usage & insult, are left to the discretion of the ct., which, in appreciating them, must take into consideration the rank, condition & other circumstances of the parties." In such a case the Judicial Committee will be very reluctant to interfere with the discretion of the ct. below, even where there has been a great difference of judicial opinion, unless it appears that there has been a miscarriage of justice.—BALDWIN *v.* BALDWIN (1922), 91 L. J. P. C. 208; 128 L. T. 10, P. C.

598. *Add. Annotation:*—**Consd.** *Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53.

606. *Add. Annotation:*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

608. *Add. Annotation:*—**Refd.** A.-G. of British Columbia *v.* A.-G. of Canada, [1924] A. C. 222.

609. *Add. Annotation:*—**Distd.** James *v.* Cowan, [1932] A. C. 542.

610a. —— —— ——.]—JAMES *v.* COWAN, No. 188a, *ante*.

613. *Add. Annotation:*—**Refd.** Eurana S.S. *v.* Burrard Inlet Tunnel & Bridge Co., [1931] A. C. 300.

618a. From Court of King's Bench of Quebec—In respect of what matters.]—(1) In Art. 68 of the Code of Civil Procedure of Quebec, which provides that an appeal lies to the Privy Council from final judgments rendered in appeal by the Ct. of King's Bench in cases, among others, "concerning titles to lands or tenements, annual rents or other matters in which the rights in future of the parties may be affected," the "other matters" are not necessarily *ejusdem generis* with the matters previously mentioned.

(2) Upon an application to admit an appeal it is the duty of the ct. to decide whether there is a right of appeal under the statutory provisions applicable.—DAVIS (LADY) *v.* SHAUGHNESSY (LORD), [1932] A. C. 106; 101 L. J. P. C. 37; 146 L. T. 289.

PART IX. SECT. 7.

m i. —— *Plaintiff domiciled abroad.*]—On an application by pltf. for leave to appeal *per saltum* to the Judicial Committee of the Privy Council:—*Held:* the question involved in the proposed appeal was one of great general & public importance & leave to appeal should be given; but since pltf. had established his domicile abroad, he should be required to give security for the costs of the trial & of the appeal to the Ct. of Appeal, as well as the usual security on appeals to the Judicial Committee.—YOUNG *v.* CANADIAN NORTHERN RY. CO., [1930] 1 W. W. R. 764; 3 D. L. R. 413; 37 C. R. C. 1; 38 Man. L. R. 567.—**CAN.**

PART IX. SECT. 8, SUB-SECT. 1.

o i. *Question relating to freedom of inter-State trade.*]—On applications to the High Ct. for certificates under sect. 74 of the Constitution that questions of law as to the limits *inter se* of the constitutional powers of the Commonwealth & of the State of New South Wales involved in the decision in *Ex p. Nelson* (No. 1), 42 C. L. R. 209, were questions which ought to be determined by His Majesty in Council:—*Held:* the applications should be refused.—*Ex p.* NELSON (No. 2) (1929), 42 C. L. R. 258; 3 A. L. J. 66; 1929 A. L. R. 177.—**AUS.**

605 i. —— —— *Operation of Australian Judiciary Act,* 1903.]—Judiciary Act, 1903–1920, s. 39 (2) (a), excludes an appeal as of right to the Privy Council from a decision of the Supreme Ct. exercising Federal jurisdiction, & gives to the High Ct. jurisdiction to entertain an appeal from such a decision.—LIMERICK S.S. CO. *v.* COMMONWEALTH OF AUSTRALIA (1924), 35 C. L. R. 69; 25 S. R. N. S. W. 293; 31 Argus L. R. 153.—**AUS.**

PART IX. SECT. 8, SUB-SECT. 2.

sb. *Competency of appeal — From Divisional Court of Appellate Division.*]—No appeal lies, unless the case falls within Privy Council Appeals Act, R. S. O., 1914 (c. 54), or unless leave to appeal is granted by the Judicial Committee.—BOLAND *v.* CANADIAN NATIONAL RY. CO., [1926] 1 D. L. R. 420; 58 O. L. R. 225.—**CAN.**

sd. —— *From advisory opinion—"Final judgment."*]—Where questions were referred to the ct. for its consideration, & the matter was heard before a ct. composed of four judges who were equally divided in opinion:—*Held:* (1) for the purpose of appeal to the Privy Council the opinion of the ct., although advisory only, could be treated as a final judgment between parties; (2) the words "final judgment" in the Privy Council Rules mean that which is regarded as a final judgment under Canadian law.—*Re* NOVA SCOTIA LEGISLATIVE COUNCIL (No. 2) (1926), 59 N. S. R. 49.—**CAN.**

sf. —— *Order for trial by jury.*]—Leave to appeal to the Privy Council from an order refusing to set aside an order providing for a jury trial of an action for damages for personal injuries, refused.—BRADSHAW *v.* BRITISH COLUMBIA RAPID TRANSIT CO., LTD., [1927] 1 W. W. R. 425; 38 B. C. R. 111.—**CAN.**

q i. —— *Necessity for.*]—Ever since 34 Geo. 3, c. 2, s. 36, now found, substantially unchanged, in Privy Council Appeals Act, R. S. O., 1914 (c. 54), s. 2, the right of appeal in cases falling within its terms has stood unchallenged, & no leave to appeal, either to be given by the Judicial Committee or by the ct. below, has been regarded as necessary. Although the Act is absolute in prohibiting an appeal in cases which do not fall within it, this does not deprive his Majesty of the prerogative right to grant leave to appeal in any case in which he sees fit to exercise that right.—MCBRIDE *v.* ONTARIO JOCKEY CLUB, LTD., [1926] 1 D. L. R. 743; 58 O. L. R. 267.—**CAN.**

t i. ——.]—Applt. co., having been held liable for approximately $7,000, appealed giving security only for $500 for the costs of the appeal. The appeal having been dismissed, applts. applied for a stay of proceedings pending a projected appeal to the Judicial Committee of the Privy Council:—*Held:* the application as made could not be granted.—FIDELITY PHENIX FIRE INSURANCE CO. OF NEW YORK *v.* MCPHERSON, [1925] 3 D. L. R. 131; [1925] S. C. R. 104.—**CAN.**

t i. —— ——.]—An application for special leave to appeal to the Privy Council, & even the granting of such leave, do not *ipso facto* operate as a suspension of proceedings in execution of the judgment rendered by the Supreme Ct. of Canada.—STEVENSON *v.* FLORANT, [1926] 1 D. L. R. 601; [1926] S. C. R. 90.—**CAN.**

k (p. 498) **i.** ——.]—(1) Leave to appeal to the Privy Council should not be granted in a criminal case, but parties desiring to appeal should be left to their remedy by application to the Privy Council for such leave.

(2) Assuming the ct. to have power to grant leave to appeal, such leave should be refused in any case not coming within the principles laid down in *Re Dillet*, No. 542, *ante*.—R. *v.* R. (1926), 46 Can. Crim. Cas. 367; 58 N. S. R. 457.—**CAN.**

sk. *Appeals pending in Supreme Court & before Privy Council—Stay of proceedings in Canadian appeal.*]—Where, A. & B. being co-defts., A. had first inscribed an appeal for hearing in the Supreme Ct. of Canada, & B. later on had inscribed an appeal to the Judicial Committee of the Privy Council, upon motion on behalf of B. the proceedings on the first appeal were stayed pending the decision of the Privy Council upon B.'s appeal.—ASHBRIDGE *v.* SHAVER & HARRISON, [1925] 4 D. L. R. 1048; [1925] S. C. R. 694.—**CAN.**

618b. **Duty of court on application to admit appeal.**]—DAVIS (LADY) *v.* SHAUGHNESSY (LORD), No. 618a, *ante*.

621. *Add. Annotation :*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

621a. —— **From Court of Appeal of British Columbia—No power to grant leave in criminal matter — What is "criminal matter."**] — Upon the true construction of the Order in Council of Jan. 23, 1911, regulating appeals from the Ct. of Appeal of British Columbia to His Majesty in Council, the power of that ct. under r. 2 (*b*), in conjunction with the definition of "judgment" in r. 1, to grant leave so to appeal from any "decree, order, sentence, or decision" does not apply to a criminal matter. A prosecution under a statute of British Columbia, whereby a person summarily convicted of an offence thereunder is liable to a penalty & imprisonment, & consequent proceedings by way of *habeas corpus certiorari*, or case stated, raising the question whether the statute is *ultra vires*, are criminal matters for the above purpose.—CHUNG CHUCK *v.* R., [1930] A. C. 244 ; *sub nom.* CHUNG CHUCH *v.* R., WONG KIT *v.* R. 99 L. J. P. C. 71 ; 142 L. T. 266 ; 46 T. L. R' 134, P. C.

626. *Add. Annotation :*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

640a. —— —— **If merely advisory.**] — Applts. claimed to deduct from the income on which they had been assessed a sum paid to underwriters on an issue of preference shares on the ground that it was "expenditure incurred for making profits in their business" within Indian Income Tax Act, 1918. The collector of taxes, the chief revenue authority, & the High Ct. successively decided against them. They then appealed to His Majesty in Council :—*Held :* on a preliminary objection, the decision, judgment, or order made by the High Ct. under Indian Income Tax Act, 1918, s. 51, was merely advisory & not final, & the appeal to His Majesty in Council was, therefore, incompetent.—TATA IRON & STEEL CO. *v.* BOMBAY CHIEF REVENUE AUTHORITY (1923), L. R. 50 Ind. App. 212 ; 39 T. L. R. 288, P. C.

640b. —— **Order of High Court—On appeal from application to district judge to file award.**]—An appeal to the Privy Council lies under Code of Civil Procedure, 1908, s. 109, from a decree or final order of a High Ct. made upon appeal from an order of a district judge upon an application to him to file an award in ct. The appeal is not precluded by sect. 104 (2) of the Code ; that provision applies only to an appellate order of a district judge where the application has been made to a subordinate judge.—RAMLAL HARGOPAL *v.* KISHANCHAND (1923), L. R. 51 Ind. App. 72, P. C.

640c. **Probate suit.**] — Where competing applications under Probate & Administration Act, 1881, for the probate of different alleged wills of a testator have been heard by the

PART IX. SECT. 8. SUB-SECT. 3.

p i —— ——.]—A judgment of the High Ct. on the Appellate Side, granting probate to a person, is a final decree, from which an appeal lies to His Majesty in Council.—VELLASAWMY SERVAI *v.* L. SIVARAMAN SERVAI (1926), I. L. R. 5 Ran. 119.—**IND.**

t i. —— ——.]—SYED KHAN SYED EBRAHIM (1927). I. L. R. 6 Ran. 169.—**IND.**

t ii. ——.]—Where competing applications under Probate & Administration Act, 1881, for probate of different alleged wills of a testator, have been heard by the district judge as a regular suit, an appeal from the decree or final order passed on appeal by the High Ct. lies to the Privy Council under, & subject to the requirements of, the Code of Civil Procedure, 1908, ss. 109, 110.—VELLASAWMY SERVAI *v.* SIVARAINAN SERVAI (1929), I. L. R. 8 Ran. 179.—**IND.**

a i. —— *From interlocutory judgments.*]—Appeals on matters interlocutory in their nature should be allowed to be preferred to His Majesty in Council only when their decision will practically put an end to the litigation & finally decide the rights of the parties.—BHAGWATI DAYAL *v.* DHAN KHUNWAR (1925), I. L. R. 48 All. 329. —**IND.**

a ii. —— *Not from High Court—Sitting in criminal appeal from Court of Sessions.*]—No appeal lies to the Privy Council against a judgment of the High Ct. sitting in criminal appeal from a trial by the Ct. of Sessions.—HEMAYETUDDIN AHMED *v.* EMPEROR (1930), I. L. R. 58 Calc. 344.—**IND.**

639 ii. —— *From order refusing to enrol legal practitioner.*]—An order of the High Ct. refusing to enrol a person as a legal practitioner under Legal Practitioners Acts, 1879, is not one from which the High Ct. has jurisdiction to grant leave to appeal to the Privy Council.—*Re* MISS (1922), I. L. R. 1 Pat. 590.—**IND.**

——.]—*Re* AN ADVOCATE (1929), I. L. R. 8 Ran. 40.—**IND.**

b ii. —— *Valuation of property compulsorily acquired.*]—In appeals involving the valuation of property in India, the Judicial Committee will entertain an appeal under Act XIX, 1921, s. 2, as to the value of property compulsorily acquired only upon questions of principle, including errors in appreciating or applying the rules of evidence, or the judicial methods of weighing evidence.—NOWROJI RUSTOMJI WADIA *v.* BOMBAY GOVERNMENT (1925), I. L. R. 49 Bom. 700.—**IND.**

b iii. —— *Not from decree affirming court below—What amounts to.*]—Pltfs. obtained a mtge. decree in the ct. of the subordinate judge, but their claim to interest *pendente lite* was disallowed. Defts. appealed to the High Ct. while pltfs. preferred a cross-appeal in respect to interest *pendente lite*. Defts.' appeal was dismissed while pltfs.' cross-appeal was allowed, the decree of the High Ct. being in the following terms : "The decree of the Ct. below be modified to this extent that interest at the bond rate shall run on the principal up to the expiry of the period of grace." Defts. applied for leave to appeal to His Majesty in Council. The value of the subject-matter of the suit & the appeal was above ten thousand rupees : —*Held :* the decree of the High Ct. was not one "affirming the decision of the ct. immediately below" within Code of Civil Procedure, 1908, s. 110, & appcts. were entitled as of right to appeal to His Majesty in Council. Further, the appeal could not be limited to the question of interest only, upon which point there was variation in the decree, but appcts. were entitled to appeal from the entire decree.—THAKUR JAMUNA PRASAD SINGH *v.* JAGARNATH PRASAD SINGH (1929), I. L. R. 9 Pat. 558.—**IND.**

b iv. —— —— ——.]—Matters in dispute in a pending suit having been referred to arbn., an award was made to the effect that deft. should, within a time fixed, give possession of a certain factory to pltf., & in default should pay pltf. Rs. 13,000. Objections to the award were made by deft. which were disallowed, & the award was ordered to be filed. but as the time fixed for delivery of the factory had by then expired, the ct. considering it unnecessary to incorporate in its decree a direction relating to the delivery of the factory, granted a decree to pltf. only for the Rs. 13,000. Deft. appealed to the High Ct. & his appeal was accepted only to the extent that the decree of the trial ct. was modified to bring it into conformity with the award. Deft. then applied for leave to appeal to His Majesty in Council :—*Held :* as the High Ct. had in substance affirmed the decision of the trial ct. the alteration made by it in the decree not being of a substantial nature, leave to appeal to His Majesty in Council under Code of Civil Procedure, s. 110, could not be granted.—BANSI LAL *v.* GOPAL LAL (1928), I. L. R. 10 Lah. 688.—**IND.**

f i. —— ——.]—The question of law involved need not be of general importance ; it is sufficient if there is a substantial question of law between the parties.—RAGHUNATH PRASAD SINGH *v.* PARTABGASH DEPUTY COMRS. (1927), 54 L. R. Ind. App. 126.—**IND.**

f ii. —— ——.]—DELHI CLOTH & GENERAL MILLS CO., LTD. *v.* DELHI INCOME TAX COMRS. (1927), 54 L. R. Ind. App. 421.—**IND.**

f iii. —— ——.]—MATHURA, KURMI *v.* JAGDEO SINGH (1927), 1. L. R. 50 All. 208.—**IND.**

f iv. —— —— *Order made without jurisdiction.*]—KISHAN SINGH *v.* THE KING EMPEROR (1928), L. R. 55 Ind. App. 390.—**IND.**

f v. —— *Matter of general importance.*]—*Held :* a case was a fit one for appeal to the Privy Council, where the question in dispute was of general importance, as the execution of documents with an option of re-purchase was very common & a considerable amount of litigation came before the cts. in connection therewith.—JIVANGIRI GURU CHAMELGIRI *v.* GAJANAN NARAYAN PATKAR (1926), I. L. R. 50 Bom. 753.—**IND.**

District judge as a regular suit, an appeal from the decree or final order passed on appeal by the High Ct. lies to the Privy Council under, & subject to the requirements of, the Code of Civil Procedure, 1908, ss. 109, 110.—VELLASAWMY SERVAI *v.* SIVARAMAN SERVAI (1929), 57 L. R. Ind. App. 96, P. C.

640d. —— **Not on question of compensation for land compulsorily acquired.**]—Act XIX. of 1921 has not the effect of giving a right of appeal to the Privy Council from a decision of the High Ct. upon an appeal from an award of the Tribunal appointed under Calcutta Improvement Act, 1911, assessing compensation in respect of land acquired under the provisions of that Act.—SECRETARY OF STATE FOR INDIA *v.* HINDUSTHAN CO-OPERATIVE INSCE. SOCIETY (1931), 58 L. R. Ind. App. 259, P. C.

641a. High Court of Bengal—Claim relating to cantonment land.]—BARRACKPORE CANTONMENT COMMITTEE SECRETARY *v.* SATISH CHANDRA SEN (1930), 47 T. L. R. 3, P. C.

656a. Gold Coast—Native tribunal—Attitude of Judicial Committee to decision.]—The Native Jurisdiction Ordinance, 1883, of the Gold Coast provides by sect. 11 that the civil jurisdiction of a native tribunal shall extend to hearing & determining certain classes of suits, including all suits relating to the ownership or possession of lands held under native tenure & situated within its jurisdiction; & by sect. 17 that when it appears to any ct. that a case brought before it is one cognisable by a native tribunal the ct. shall, unless satisfactory reasons to the contrary be shown, refer the parties thereto. A suit of the class mentioned above having been tried & decided by a native tribunal, the decision was reversed upon the evidence by the Provincial Comr., & his judgment was affirmed upon a further appeal to the Supreme Ct.:—*Held:* having regard to the provisions of the Ordinance the decision of a native tribunal in a matter of the above kind, being one peculiarly within its knowledge, if arrived at after a fair hearing & on relevant evidence, should not be disturbed without very clear proof that it was wrong, & in the present case there was no such proof.—ABAKAH NTHAH *v.* ANGUAH BENNIEH, [1931] A. C. 72; 100 L. J. P. C. 47; 144 L. T. 161, P. C.

662. *Add. Annotation:*—**Refd.** Nadan *v.* R., [1926] A. C. 482.

662a. —— **Appeal from deportation order made by Administration of Western Samoa.**]—NELSON *v.* R., [1928] W. N. 197, P. C.

Part XIa.—Other Islands.

712a. Lundy Island—Whether part of Great Britain.]—On a charge of an offence on Lundy Island against Coinage Act, 1870 (c. 10), s. 5, the justices for the Bideford Division of Devon held that they had jurisdiction & convicted the defendant, in spite of his contention that Lundy Island was not part of Great Britain:—*Held:* there was evidence before the justices to support the conclusion that Lundy Island was part of Great Britain, & their decision must be affirmed. *Semble:* if the justices had found the contrary, the ct. would have reversed their finding on the ground that there was no evidence to support it.—HARMAN *v.* BOLT (1931), 47 T. L. R. 219; 75 Sol. Jo. 99, D. C.

712b. Ceylon—Validity of Order in Council.]—ABEYESEKERA *v.* JAYATILAKE, No. 17a, *ante*.

Part XII.—Irish Free State.

713. *Add. Citation:*—21 L. G. R. 419, C. A.

714. For the paragraph in the original volume substitute the following paragraph:—

—— **Transference of liabilities of British Government to Irish Free State.**]—By agreements made in 1917, during the war with

651 i. *Sum below appealable value—When appeal lies.*]—MAUNG BA. THAN. *v.* PEGU DISTRICT COUNCIL (1927), I. L. R. 6 Ran. 43.—**IND.**

sl. *Limitation of right to appeal—Letters Patent of Calcutta High Court of 1927.*]—The new clause of the Letters Patent of the Calcutta High Ct., passed 1927, takes away, in all second appeals decided by a single judge, without his giving a certificate that the case is a fit one for appeal, the right to go to the Privy Council under the ordinary law, though the right of the Judicial Committee to give special leave is not of course affected. The new Letters Patent cannot be applied to pending cases without taking away existing rights of appeal.—SADAR ALI *v.* DALIMUDDIN (1928), I. L. R. 56 Calc. 512.—**IND.**

sp. *Desirable to avoid two appeals.*]—It is desirable that in some manner recourse to two appeals to the Privy Council should be avoided where one is from a decree of the High Ct. under sect. 98 (2) of the Code of Civil Procedure & the other is from the decree in a Letters Patent Appeal varying the former decree.—JATONDRANATH CHANDHURI *v.* UDAYKUMAR DAS (1931), I. L. R. 58 Calc. 1281.—**IND.**

PART IX. SECT. 8, SUB-SECT. 4.

k (p. 503) **i.** ——. *Judges equally divided.*]—The Ct. of Appeal granted leave to appeal to the Privy Council from a decision of the Ct. of Appeal reversing an order for a new trial, the verdict of the jury being for more than £500, & the judges, including the trial judge, being equally divided.—TREMAIN *v.* MANAWATEE DRAINAGE BOARD, [1926] N. Z. L. R. 416.—**N.Z.**

sm. *Irish Free State—Leave to appeal—When granted.*]—The general principles governing applications for leave to appeal stated.—HULL *v.* M'KENNA, "FREEMAN'S JOURNAL" *v.* FERNSTROM & TRAESLIBERI, [1926] I. R. 402.—**IR.**

sn. —— —— ——.]—Leave to appeal refused. — O'CALLAGHAN *v.* O'SULLIVAN, [1926] I. R. 586.—**IR.**

—— —— ——.]—*See also*, No. 715.

so. *High Court of Western Samoa—Criminal matter—No public interest involved—Leave refused.*]—SLIPPER *v.* BRAISBY (No. 2), [1931] N. Z. L. R. 268.—**N.Z.**

PART IX. SECT. 9.

sp. *Stay of execution pending appeal—What must be shown—Ability of plaintiff to pay in event of reversal.*]—GEORGIA CONSTRUCTION CO., LTD. & BANK OF TORONTO *v.* PACIFIC GREAT EASTERN RY. CO. (B. C.), [1929] 4 D. L. R. 607; 3 W. W. R. 92.—**CAN.**

PART XII.

714 i. *Irish Free State Constitution Act, 1922 (session 2) (c. 1)—Transference of assets of British Government to Irish Free State.*]—*Held:* a debt due to the Land Commission, although

Germany, it was agreed between the British Govt. & resp. co., that the co. should make certain alterations in their railway lines in order to facilitate the carriage of coal from certain collieries for purposes connected with the war, the Govt. undertaking to reinstate the lines after the conclusion of the war. In 1922, Irish Free State (Agreement) Act, 1922 (c. 4), & Irish Free State Constitution Act, 1922 (session 2) (c. 1), were passed. At the date of the passing of these Acts the contracts with the Govt. were still executory :—*Held :* the effect of these Acts, & of the Orders made under them, was to transfer the liability under the contracts of 1917 from the British Govt. to the Govt. of the Irish Free State.—A.-G. *v.* GREAT SOUTHERN & WESTERN RY. CO. OF IRELAND, [1925] A. C. 754 ; 94 L. J. K. B. 772 ; 133 L. T. 568 ; 41 T. L. R. 576 ; 69 Sol. Jo. 744, H. L. ; *revsg.* S. C. *sub nom.* GREAT SOUTHERN & WESTERN RY. CO. OF IRELAND *v.* R., [1924] 2 K. B. 450, C. A.

714a. —— Effect of on Judgments Extension Act, 1868 (c. 54).]—The effect of Irish Free State Constitution Act, 1922 (session 2) (c. 1), s. 1, & art. 73 of the Schedule thereto, & of Irish Free State (Consequential Provisions) Act, 1922 (session 2) (c. 2), s. 1 (1). is that Judgments Extension Act, 1868, has, since Dec. 5, 1922, ceased to apply to the Irish Free State.—BANFIELD *v.* CHESTER (1925), 94 L. J. K. B. 805 ; 133 L. T. 623 ; 41 T. L. R. 563 ; 69 Sol. Jo. 692, C. A.

—— ——.]—*See, also,* No. 716.

714b. Government of Ireland Act, 1920 (c. 67), s. 56 (6), Sched. VIII—Constitution of Irish Free State (Saorstat Eireann) Act, 1922 (No. 1 of 1922), Sched. I, art. 78—Right of transferred civil servants to compensation on retirement in consequence of change of government.]—WIGG *v.* A.-G. OF IRISH FREE STATE, [1927] A. C. 674 ; 96 L. J. P. C. 88 ; 137 L. T. 460 ; 43 T. L. R. 457, P. C.

Annotations :—**Folld.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 242. **Refd.** Nixon *v.* A.-G. (1930), 100 L. J. Ch. 70.

714c. *S.P. Re* TRANSFERRED CIVIL SERVANTS (IRELAND) COMPENSATION, [1929] A. C. 242 ; *sub nom. Re* IRISH CIVIL SERVANTS, 98 L. J. P. C. 39 ; 140 L. T. 254 ; *sub nom. Re* ARTICLE X OF ARTICLES OF AGREEMENT FOR TREATY BETWEEN GREAT BRITAIN & IRELAND, 45 T. L. R. 57, P. C.

Annotation :—**Consd.** Nixon *v.* A.-G., [1930] 1 Ch. 566.

715. After this case add " *See, also,* cases in Part IX., Sect. 8, sub-sect. 4, *ante.* "

716. *Add. Citations :*—[1924] 1 K. B. 214 ; 93 L. J. K. B. 331 ; 130 L. T. 269.

Add. Annotations :—**Folld.** Banfield *v.* Chester (1925), 94 L. J. K. B. 805. **Refd.** Performing Right Society, Ltd. *v.* Bray U. D. C., [1930] A. C. 377.

716a. Summons relating to bequests to Irish parishes—Whether Attorney-General of Irish Free State proper defendant.] — *Re* LOVE, NAPER *v.* BARLOW, [1932] W. N. 17 ; 173 L. T. Jo. 116 ; 73 L. Jo. 168.

Notes on Canadian Constitutional Cases

(Vol. XVII., p. 508).

The cases referred to in the late Mr. Cameron's Note are digested in Vol. XVII., pp. 427–446, or in other relevant Titles. Cases coming under this head decided since the publication of the original volume therefore appear in their appropriate sections & not as supplementary to the Notes in Vol. XVII., p. 508.

incurred in 1922, was an " asset " that had been transferred from the former Govt. of the United Kingdom of Great Britain & Ireland to the Govt. of the Irish Free State.—*Re* MALONEY, [1926] I. R. 202.— **IR.**

714 ii. —— *Effect on jurisdiction of existing courts—Pending establishment of courts for Irish Free State.*]—R. *v.* WICKLOW COUNTY COURT JUDGE, [1924] 2 I. R. 139.—**IR.**

714 iii. —— *Public Safety Act,* 1927 (c. 31)—*Ordinary legislation.*]—A.-G. *v.* M'BRIDE, [1928] I. R. 451.—**IR.**

714 iv. —— *Effect of on Fugitive Offenders Act,* 1881.]—*Held :* the Fugitive Offenders Act, 1881, continues to be of full force & effect in the Irish Free State by virtue of the provisions of Art. 73 of the Constitution, & it is not inconsistent with the provisions of the Constitution.—THE STATE (KENNEDY) *v.* LITTLE, [1931] I. R. 39.—**IR.**

714 b i. *Government of Ireland Act,* 1920 (c. 67), *ss.* 54, 55, *Sched. VIII—Constitution of Irish Free State (Saorstat Eireann) Act,* 1922 (*No.* 1 *of* 1922), *Sched. I, Art.* 78—*Right of transferred civil servants to compensation on retirement in consequence of change of Government.*]—LONSDALE *v.* A.-G., [1928] I. R. 35.—**IR.**

714 b ii. —— —— ——.]—CASSIDY *v.* A.-G. OF THE IRISH FREE STATE, [1930] I. R. 65.—**IR.**

714 b iii. —— —— —.]—FITZGIBBON *v.* A.-G. OF THE IRISH FREE STATE, [1930] I. R. 49.—**IR.**

716 i. *Liability to give security for costs—Resident in position of foreigner.*]—Application on behalf of defts., resident in Northern Ireland that pltfs., who resided in the Irish Free State, might be ordered to give security for costs on the ground that in the event of defts. obtaining judgment, they would be unable to have it extended in the Irish Free State, as Judgments Extensions Act, 1868, no longer applied to that country :—*Held :* pltfs. must give security for costs.—CALLAN *v.* M'KENNA, [1929] N. I. 1.—**IR.**

st. *Irish Free State (Agreement) Act,* 1922 (*c.* 4)—*Effect on Companies Acts.*]—On petition by a shareholder for the compulsory winding up of a co. as an unregistered co. :—*Held :* notwithstanding the provisions of the above act & of the Orders thereunder, the Cos. Acts remain in full force until revoked or altered by a competent legislature, & the cts. of Southern Ireland had no jurisdiction to make the order.—*Re* PORTARLINGTON ELECTRIC LIGHT & POWER CO., LTD., [1922] 1 I. R. 100.—**IR.**

sw. *Power of Oireachtas.*]—Within the whole area of the Irish Free State, the Oireachtas is a free & unfettered legislature, & there is nothing in the treaty, the constitution, or the statute confirming them, to limit the power of the Oireachtas to authorise the detention of untried persons.—R. (O'CONNELL) *v.* HARE PARK CAMP (MILITARY GOVERNOR), [1924] 2 I. R. 104.—**IR.**

sz. —— *Public Safety (Powers of Arrest & Detention) Temporary Act (I. F. S.),* 1924—*Intra vires.*]—R. (O'CONNELL) *v.* HARE PARK CAMP (MILITARY GOVERNOR), [1924] 2 I. R. 104.—**IR.**

sb. *Duty of Attorney-General to represent the State.*]—The A.-G. alone could be heard making any claim on behalf of the State or community of citizens of the Irish Free State under Art. 11 of the constitution.—MOORE *v.* A. G., [1930] I. R. 471.—**IR.**

sc. *Illegal arrest & removal from jurisdiction—Right to injunction.*]—The provisions of this Art. 6 of the Constitution of the Irish Free State do not exclude jurisdiction to grant an injunction in an appropriate case, *e.g.*, if it were sought to arrest a person illegally & remove him out of the jurisdiction before he could apply for a writ of *habeas corpus.*—O'BOYLE & RODGERS *v.* A.-G. & GENERAL O'DUFFY [1929] I. R. 558.—**IR.**

DESCENT AND DISTRIBUTION.

NOTE.—For the references to Law of Property Act, 1922 (c. 16), substitute references to Administration of Estates Act, 1925 (c. 23), ss. 45-52.

For cases decided under 1925 Act, *see* new Part Va., *post*.

Part II.—Intestacy.

8a. Contingent partial intestacy.]—*Re* McKEE, PUBLIC TRUSTEE *v.* McKEE, No. 283b, *post*.

Part III.—Devolution of Real and Personal Estate.

Citations :—Delete " C. A."

10. After this case add "—— **Death after 1925.**]—*See, now*, Administration of Estates Act, 1925 (c. 23), s. 9."

Part IV.—Descent of Real Estate.

17. For cross-reference before this case read "*See* Law of Property (Amendment) Act, 1924 (c. 5), s. 9, Sched. IX. (1), by which Inheritance Act, 1833, remains in force for certain purposes."

74. *Add. Annotation* :—**Refd.** *Re* Price, [1928] Ch. 579.

102a. —— ——.]—PHILPOTTS d. PHILPOTTS *v.* JAMES (1784), 3 Doug. K. B. 425; 99 E. R. 730.

Annotations :—**Distd.** *Re* Sheppard, Sheppard *v.* Manning, [1897] 2 Ch. 67. **Expld.** *Re* Inman, Inman *v.* Inman, [1903] 1 Ch. 241.

113a. Lease pur autre vie—To A. & his heirs—Heir special occupant.]—PHILPOTTS d. PHILPOTTS *v.* JAMES (1784), 3 Doug. K. B. 425; 99 E. R. 730.

Annotations :—**Distd.** *Re* Sheppard, Sheppard *v.* Manning, [1897] 2 Ch. 67. **Consd.** *Re* Inman, Inman *v.* Inman, [1903] 1 Ch. 241.

132a. —.]—RAWLINSON *v.* MONTAGUE (DUCHESS) (1710), 2 Vern. 667; 3 P. Wms. 264, n.; 23 E. R. 1035.

Annotation :—**Consd.** Bearpark *v.* Hutchinson (1830), 7 Bing. 178.

133. After this case insert "—— **Liability to legacy duty.**]—*See* ESTATE & OTHER DEATH DUTIES, Vol. XXI., p. 58, No. 377."

133a. *S. P.* LOCK *v.* LOCK (1710), 2 Vern. 666; 23 E. R. 1035.

134a. Construction of ancient customary — "Nepos."]—WHITLOCK *v.* WHITLOCK (1924), 40 T. L. R. 566, D. C.

150a. Copyholds subject to custom of gavelkind—Enfranchisement by Law of Property Acts—Destruction of custom of gavelkind.]—T. died on Jan. 28, 1926, without issue & without having confirmed or republished his will which he had made on July 20, 1925. He was, before Jan. 1, 1926, when the Law of Property Act, 1925, came into operation, tenant of one undivided ninth share in customary tail special by descent in land formerly of copyhold tenure subject to the custom of gavelkind, but at that date by virtue of sect. 128 & Sched. 12, para. 1, sub-s. (*a*), of Law of Property Act, 1922 (c. 16), & sect. 202 of the Law of Property Act, 1925 (c. 20), of freehold tenure, the entirety of the land which then became vested by virtue of Part IV. of Sched. I. para. 1, sub-para. 4 of Law of Property Act, 1925 (c. 20), in the Public Trustee, having subsequently become vested in trustees appointed in his place upon the statutory trusts mentioned in sect. 35 of Law of Property Act, 1925 (c. 20):—*Semble*: in the absence of a statutory conversion of land into personal estate, the share of T. in the land on his death descended under the Inheritance Act to the heir at common law of the body of the last purchaser & not to the heir in gavelkind of the last purchaser; the effect of the enfranchisement having been to destroy the gavelkind custom. —*Re* PRICE, [1928] 1 Ch. 579; 97 L. J. Ch. 423; 139 L. T. 339.

Annotations :—**Refd.** *Re* Kempthorne, Charles *v.* Kempthorne (1929), 46 T. L. R. 15; *Re* Newman, Slater *v.* Newman, [1930] 2 Ch. 409; *Re* Thomas's Will Trusts, Powell *v.* Thomas, [1930] 2 Ch. 67 *Re* Warren, Warren *v.* Warren, [1932] 1 Ch. 42.

PART I.

a i. *Meaning of "legally represent" & "legal representatives of"—Ontario Devolution of Estates Act, s. 30.*]—*Re* MACKENZIE, [1927] 4 D. L. R. 825; 61 O. L. R. 230.—**CAN.**

aa. *Murderer—Not entitled to share in estate of victim.*]—*Re* MEDAINI ESTATE, [1927] 4 D. L. R. 1137; [1927] 2 W. W. R. 38; 38 B. C. R. 319.—**CAN.**

ab. *Marriage Ordinance, 1884, of Southern Nigeria, ss. 38, 39—Construction.*]—MARTINS *v.* FOWLER, [1926] A. C. 746; 95 L. J. P. C. 189; 135 L. T. 582.—**NIGERIA.**

PART III. SECT. 1.

ad. '*Devolve*"—*Local of Title Act, s. 84.*]—M'DONNELL *v.* STENSON, [1921] 1 I. R. 80.—**IR.**

af. ——.]—COLLINS *v.* COLLINS, [1924] 1 I. R. 72.—**IR.**

PART IV. SECT. 1.

h i. ——.]—MACLEAN & GRAHAM *v.* SMITH & MACKINTOSH, [1927] N. 109. —**IR.**

h ii. —— *Who are.*]—LEE *v.* BRANSCOMBE (1925), 52 N. B. R. 239.—**CAN.**

aj. *Effect of Dominion Land Titles Act, 1894 (c. 28), s. 3.*]—*Re* JENSEN (Alta.), [1927] 1 D. L. R. 76; [1926] 3 W. W. R. 737.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.—A. (a).

ak. *Heir of half-blood—Onus of proof.*]—Where a party claims as one of the heirs of the half-blood of an intestate, & in his bill professes to set out how his interest arises, it is necessary for him to negative the fact of the intestate having obtained the land by gift or devise from his ancestor; or, if he did so obtain it, the claimant must show that he is of the blood of such ancestor. —TRYON *v.* PEER (1867), 13 Gr. 311.—**CAN.**

PART IV. SECT. 4, SUB-SECT. 2.

h. Read now "**113a i.**"
k. Read now "**113a ii.**"
l. Read now "**113a iii.**"

Part V.—Distribution of Personal Estate.

161. *Citation :*—For "Skin. 212" read "Skin. 218."

165. *Add. Annotation :*—**Refd.** *Re* McKee, Public Trustee *v.* McKee, [1931] 2 Ch. 145.

165a. **Subject to interest of posthumous child.**] —Distributory share vests on the intestate's death, but not so as to exclude a posthumous child.—EDWARDS *v.* FREEMAN (1727), 2 P. Wms. 435 ; 24 E. R. 803, L. C.

Annotations :—**Folld.** Wallis *v.* Hodson (1740), Barn. Ch. 272. **Refd.** Villar *v.* Gilbey, [1907] A. C. 139.

165b. -.]—J. W. died intestate in 1724, & left issue T. W. who died within a week after his father, & his wife enceinte, & on May 29 following pltf. was born ; she is entitled to her share under the Statute of Distributions, as much as if she had existed in his lifetime.—WALLIS *v.* HODSON (1740), 2 Atk. 114 ; Barn. Ch. 272 ; 26 E. R. 472, L. C.

Annotations :—**Folld.** Burnet *v.* Mann (1748), 1 Ves. Sen. 156 ; Thellusson *v.* Woodford (1799), 4 Ves. 227. **Refd.** Thellusson *v.* Woodford (1805), 1 Bos. & P. N. R. 357 ; Villar *v.* Gilbey, [1907] A. C. 139.

165c. -.]—A child *en ventre sa mère* may take under the Statute of Distribution.—THELLUSSON *v.* WOODFORD (1799), 4 Ves. 227 ; 31 E. R. 117, L. C. ; *affd.* (1805), 1 Bos. & P. N. R. 357, H. L.

Annotations :—**Refd.** Blackburn *v.* Stables (1814), 2 Ves. & B. 367 ; *Re* Burrows, Cleghorn *v.* Burrows, [1895] 2 Ch. 497 ; *Re* Wilmer's Trusts, Moore *v.* Wingfield, [1903] 1 Ch. 874 ; Villar *v.* Gilbey, [1907] A. C. 139.

See, now, Administration of Estates Act, 1925 (c. 23), ss. 47 (1), 55 (2).

170. *Add. Annotation :*—**Dbtd.** *Re* Pitts, Cox *v.* Kilsby, [1931] 1 Ch. 546.

170a. -.]—*Semble :* the rule of public policy which prevents a sane murderer from taking any benefit under his victim's will prevents him also from taking a distributive share under his victim's intestacy.

In the present case the murderer was insane, but if the point arose for decision, the views of FRY, L.J., in *Cleaver* v. *Mutual Reserve Fund Life Association*, [1892] 1 Q. B. 147, 157, 158, would probably prevail over those of JOYCE, J., in *In re Houghton*, No. 170, & the peremptory provisions of Administration of Estates Act, 1925 (c. 23), s. 46, would be read & construed subject to the public policy rule.—*Re* PITTS, Cox *v.* KILSBY, [1931] 1 Ch. 546 ; 100 L. J. Ch. 284 ; 145 L. T. 116 ; 47 T. L. R. 293.

173. *Add. Annotation :*—**Consd.** *Re* Jones, Johnson *v.* A.-G., [1925] Ch. 340.

180. *Add. Annotation :*—**Refd.** *Re* Bower Williams, *Ex p.* Trustee, [1927] 1 Ch. 441.

181. *Add. Annotation :*—**Consd.** *Re* Bower Williams, *Ex p.* Trustee, [1927] 1 Ch. 441.

187. *Add. Annotation :*—**Consd.** *Re* Bower Williams, *Ex p.* Trustee, [1927] 1 Ch. 441.

232. *Add. Annotation :*—**N.F.** *Re* Brooks, Public Trustee *v.* White, [1928] Ch. 214.

234. In the cross-reference following this case for "p. 148, No. 374," read "p. 374, No. 148."

239. For "**Mother, brothers & sisters—Mother takes half & brothers & sisters half—Subject to right of widow.**]" read "**Mother, brothers & sisters—Share moiety equally—Widow taking half.**]"

256. *Add. Annotation :* — **Consd.** *Re* Merrall, Greener *v.* Merrall, [1924] 1 Ch. 45.

PART V. SECT. 1.

n i. —— *As amended by* 17 *Geo.* 5, *c.* 35, *s.* 2—*Effect of.*]—*Re Shier, ante,* not overruled, & the practice adopted since that decision not altered. —*Re* ALLISON, [1927] 4 D. L. R. 729 ; 61 O. L. R. 261.—**CAN.**

PART V. SECT. 3, SUB-SECT. 1.

f i. *Provision made for widow—Less than amount receivable on intestacy—What relief granted.*]—The discretion conferred on the ct. in favour of the widow, who applies for relief under Married Women's Relief Act is restricted by implication to the portion of her deceased husband's estate which she would have received on an intestacy.—MCBRATNEY *v.* MCBRATNEY (1919), 59 S. C. R. 550 ; [1919] 3 W. W. R. 1000 ; 50 D. L. R. 132.—**CAN.**

PART V. SECT. 3, SUB-SECT. 2.

sk. *Effect of charge.*]—*Held :* the widow is not entitled to any portion of the real estate in specie.—CUNNINGHAM *v.* CUNNINGHAM, [1920] 1 I. R. 119. —**IR.**

sl. *S. P.* DUNICAN *v.* DUNICAN, [1920] 1 I. R. 212.—**IR.**

PART V. SECT. 3, SUB-SECT. 3.—A.

213 i. *Covenant to secure payment of sum of money—Satisfaction pro tanto.*]—F. on his marriage executed a bond, whereby, in the event of his death in the lifetime of his wife, a sum of money was to be paid to two trustees in trust for his wife. F. predeceased his wife, intestate & without issue :—*Held :* the sum secured by the bond was to be regarded, in the absence of evidence of any other intention, as satisfaction *pro tanto* of the widow's share of her husband's estate.—MATHEWS *v.* DONEGAN & COOKE, [1925] 1 I. R 201.—**IR.**

PART V. SECT. 4, SUB-SECT. 1.

229 v. ——.]—The words "child or children of a deceased brother or sister" in Intestate Successions Act, R. S. A., 1922 (c. 143), s. 7 (2), mean issue in the first generation only, & do not include grandchildren or more remote descendants. — *Re* EMSLEY (Alta.), [1925] 1 W. W. R. 816.—**CAN.**

a i. —— ——.]—*Held :* such child not entitled in Saskatchewan to share in the estate of the father dying intestate & domiciled in Saskatchewan before the coming into force of Adoption of Children Act, 1922.—BURNFIEL *v.* BURNFIEL, [1926] 2 D. L. R. 129 ; [1926] 1 W. W. R. 657 ; 20 Sask. L. R. 407.—**CAN.**

a ii. —— ——.]—The word "child" in a will made in Saskatchewan by testator domiciled therein, who died before the coming into force of Adoption of Children Act, 1922, held not to include an adopted child, even though under the law of the foreign state where the child & its adopting parents were domiciled & in which it was adopted the effect of the adoption was to entitle it to all the rights of a child of its adopting father born in lawful wedlock.—*Re* DONALD ESTATE, BALDWIN *v.* MOONEY, [1928] 4 D. L. R. 181 ; [1928] 2 W. W. R. 636 ; *affd.*, [1929] 2 D. L. R. 244 ; S. C. R. 306 ; *subsequent proceedings*, [1928] 4. D. L. R. 771.—**CAN.**

a iii. —— *Child Welfare Act—Rights of inheritance.*]—Child Welfare Act does not create a new canon for the construction of wills. Therefore, where the adopted daughter was the niece of the foster father's wife & his will, after making provision for said adopted daughter by name, gave part of the residue of his estate to his & his wife's next-of-kin, said daughter took under the residuary bequest as his wife's niece & not as the testator's child.—*Re* SCOTT ESTATE, [1928] 1 W. W. R. 168.—**CAN.**

PART V. SECT. 6.

sp. *Not widow of only brother predeceasing intestate.*]—*Re* HENDERSON, [1926] 2 D. L. R. 536.—**CAN.**

st. *Brothers & sisters—Of infant dying after father who predeceased grandfather—Infant's share in grandfather's estate—Devolution of Estates Act, R. S. S.*, 1920 (c. 73), *ss.* 18, 23.]—*Re* GEORGET ESTATES (Sask.), [1928] 1 D. L. R. 230 ; [1927] 3 W. W. R. 769.—**CAN.**

PART V. SECT. 7.

249 ii. —— —— ——.]—M. who was unmarried died intestate. He had one sister still living, & another sister who had predeceased him, left one son living. One brother was still living. A second brother who had predeceased him left three children still living, & a third brother (A.) who had predeceased him left nine children still living, & a tenth child (E.) who had predeceased M. left four children (grandchildren of M.) still living. On a petition for directions :—*Held :* the one-fifth share of the estate to which the brother A. would have been entitled should be divided into ten parts, & one of the ten parts should be divided equally amongst Edward's four

Part Va.—Distribution under Administration of Estates Act, 1925.

See Administration of Estates Act, 1925 (c. 23), ss. 33 (4), 45–52.

283a. Rights of surviving spouse—Interest on sum charged—Payable out of corpus of estate.]—Under Administration of Estates Act, 1925 (c. 23), s. 46 (1) (i), interest becoming payable on the sum of £1,000, thereby charged on the estate of an intestate in favour of a surviving wife or husband is not a charge upon the income but upon the corpus of the estate.—*Re* SAUNDERS, PUBLIC TRUSTEE *v.* SAUNDERS, [1929] 1 Ch. 674; 98 L. J. Ch. 303; 141 L. T. 27; 45 T. L. R. 283.

283b. Contingent partial intestacy.]—Testator devised & bequeathed his residuary estate upon trust for his widow for life, with remainder to such of his brothers & sisters as should survive her. The last of the brothers & sisters died in the widow's lifetime:—*Held:* the widow's estate would be entitled upon her death, as a result of the intestacy consequent upon the widow's survival, to a sum of £1,000, with interest at the rate of 5 per cent. per annum from the date of testator's death, under Administration of Estates Act, 1925 (c. 25), s. 46, but the widow was not entitled to have the reversion expectant on her death sold & the proceeds of sale invested, in order that she might enjoy the interest on such investments during her life as part of testator's estate devolving as upon an intestacy.—*Re* MCKEE, PUBLIC TRUSTEE *v.* MCKEE, [1931] 2 Ch. 145; 100 L. J. Ch. 325; 145 L. T. 605; 47 T. L. R. 424; 75 Sol. Jo. 442, C. A.

283c. Descent to heir—Estate of lunatic—No committee or trustee appointed.]—For six years before her death a lady was a certified patient at a mental home, & without any testamentary capacity. She was not, however, a lunatic so found by inquisition, & never had a committee or receiver. She died at the home on Feb. 1, 1929, a spinster & intestate, aged seventy-six:—*Held:* her real estate went to her heir-at-law under Administration of Estates Act, 1925 (c. 23), s. 51 (2), which exemption section, read with the definition section, sect. 55 (1) (viii.), was not confined to cases where a lunatic or defective had a committee or receiver.—*Re* GATES, GATES *v.* GATES, [1930] 1 Ch. 199; 99 L. J. Ch. 161; 142 L. T. 327.

283d. —— Estate tail—1925 Act, s. 51 (3)—Application to notional settlement on intestacy.]—In 1925 an infant S. inherited land as eldest son & heir of an intestate, subject to his mother's right to dower. On Jan. 1, 1926, the Settled Land Act, 1925 (c. 18), came into operation, & under sect. 1 (2) S. was treated as deriving his title under the settlement deemed to have been made by the intestate, his mother's right to dower being preserved by sect. 1 (3). On Oct. 8, 1930, S. died an infant & unmarried:—*Held:* Administration of Estates Act, 1925 (c. 23), s. 51 (3), applies to the case of a notional settlement on intestacy, so that S.'s interest had become an entail & ceased on his death as an unmarried infant. Consequently the estate went to S.'s younger brother as next heir of the intestate & not to S.'s mother under Administration of Estates Act, 1925 (c. 23), s. 46 (1) (iv.).—*Re* TAYLOR, PULLAN *v.* TAYLOR, [1931] 2 Ch. 242; 100 L. J. Ch. 374; 145 L. T. 417.

Part VII.—Escheat and bona vacantia.

285. *Add. Annotations:*—**Consd.** A.-G. for Alberta *v.* A.-G. for Canada, [1928] A. C. 475. **Refd.** Toronto (City) Corpn. *v.* R., [1932] A. C. 98.

292. *Add. Annotations:*—**Consd.** *Re* O'Hagan, O'Hagan *v.* Lloyd's Bank, Ltd., [1932] W. N. 188. **Refd.** *Re* Deloitte, Griffiths *v.* Deloitte, [1926] Ch. 56; *Re* Tong, Hilton *v.* Bradbury (1930), 144 L. T. 260.

311. *Add. Citations:*—[1924] 2 Ch. 19; 93 L. J. Ch. 483; 130 L. T. 800; 68 Sol. Jo. 419.

312. *Add. Annotation:*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617.

315. After this case add "**Land in Alberta granted by Crown.**]—*See* DEPENDENCIES, No. 98b."

319. *Add. Annotation:*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617.

323. *Add. Annotation:*—**Refd.** Austrian Property Administrator *v.* Russian Bank for Foreign Trade (1931), 47 T. L. R. 550.

328a. Funds appointed — Appointor illegitimate—Death of appointee in lifetime of appointor.]—*Re* LADD, HENDERSON *v.* PORTER, [1932] 2 Ch. 219; 101 L. J. Ch. 392; 147 L. T. 433.

329. *Add. Annotation:*—**Refd.** *Re* Cullum, Mercer *v.* Flood, [1924] 1 Ch. 540.

children.—*Re* MCKAY (1927), 39 B. C. R. 51.—**CAN.**

251 iii. —— —— ——.]—*Re* GRANT ESTATE, GRANT *v.* MORRISON (B. C.), [1929] 3 W. W. R. 644; [1930] 1 D. L. R. 365; 41 B. C. R. 511.—**CAN.**

PART V. SECT. 8.

h i. —— *Uncle & children of deceased uncles.*]—*Re* KROESING ESTATE, [1928] 1 D. L. R. 643; [1928] 1 W. W. R. 224.—**CAN.**

PART V. SECT. 9.

273 iv a. *S. P. Re* JENSEN (Alta.), [1927] 1 D. L. R. 76; [1926] 3 W. W. R. 737.—**CAN.**

273 vi. —— *Exception as to ancestral property.*]—*Held:* the proviso to sect. 126 of Administration Act, R. S. B. C., 1924, excludes, without qualification, those who are not of the blood of the ancestor. "Ancestor," within the meaning of the sect. is the person from whom the estate in question is derived. He need not be a progenitor of the successor or lineal ancestor so long as he really preceded in the estate, & may be brother, aunt, uncle, nephew or cousin.—*Re* PARSHALLE ESTATE, SHAW *v.* COX, [1930] 1 W. W. R. 767; 3 D. L. R. 438; 42 B. C. R. 413.—**CAN.**

330. After this case add "**Property in Alberta.**]—*See* DEPENDENCIES, No. 98b."

331. *Add. Annotation:*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617.

336a. —— ——.]—A lunatic, at the date of her death in 1798, was entitled to certain funds in ct. representing the residuary estate of her father. In 1794 the master had reported that the lunatic had no heir-at-law or next of kin. In 1798 & 1801 the Crown made *ex gratiâ* grants of the funds to certain persons & obtained an indemnity in respect of the grants. In 1926 a petition was presented by persons claiming to be the next of kin of the lunatic for the payment to them of the whole of her personal estate. The parties sought a determination of the following questions: (1) whether the petition was maintainable on the assumption that no part of the funds ever came into the hands of or was dealt with by his present Majesty or his nominees or grantees or was carried to the Consolidated Fund; (2) whether the petition was barred by any Statute of Limitations; (3) whether in view of Petitions of Right Act, 1860 (c. 34), s. 5, suppliants could proceed without serving the petition upon the successors in title of the persons to whom the *ex gratiâ* grants had been made:—*Held:* the first question must be answered in favour of suppliants.—*Re* MASON, [1928] Ch. 385; 97 L. J. Ch. 321; 139 L. T. 477; 44 T. L. R. 225; *affd.*, [1929] 1 Ch. 1, C. A.

Annotation:—**Consd.** *Re* Blake, *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251.

337a. —— ——.]—*Re* MASON, No. 336a, *ante.*

—— **Limitation of action.**—*See* LIMITATION OF ACTIONS, Nos. 1761a, 1761b, *post.*

DISCOVERY, INSPECTION, AND INTERROGATORIES.

Part II.—Discovery of Documents.

77a. —— **Inquiry as to damages.**]—There is no different principle applicable to an application for discovery of documents on an inquiry as to damages from that which prevails on an application for discovery where any other issue has to be tried between opposing parties.—BRITISH UNITED SHOE MACHINERY CO., LTD. *v.* LAMBERT HOWARTH & SONS, LTD. (1929), 46 R. P. C. 315.

86. *Add. Annotation :*—**N.F.** Wakefield *v.* Board (1928), 45 R. P. C. 261.

87a. —— ——.]—WAKEFIELD & CO., LTD. *v.* BOARD (TRADING AS J. P. BOARD & CO.) (1928), 45 R. P. C. 261.

99. *Add. Annotation :—As to* (2) **Apld.** Cavendish *v.* Cavendish (1925), 42 T. L. R. 134.

126. *Add. Annotation :*—**Folld.** Seddon *v.* Commercial Salt Co. (1924), 69 Sol. Jo. 159.

127. *Add. Annotation :*—**Overd.** Seddon *v.* Commercial Salt Co., [1925] Ch. 187.

127a. —— ——.]—By an underlease lands & works were demised to the first defts. for the term of twenty-one years less one day. The underlease contained a covenant by these defts. that they would not assign, transfer or part with possession of the demised premises or any part thereof without the consent of the underlessor, & that in case of the breach of such covenant it should be lawful for the underlessor to re-enter upon the demised premises, & that thereupon the demise should absolutely determine. Pltf., the purchaser of the reversion on the underlease, brought an action to recover possession of the premises. By his statement of claim he alleged that the first defts., in breach of their covenant, had transferred, underlet or parted with the possession of the premises to the second defts., &/or the third defts. By their respective defences defts. traversed the allegations in the statement of claim. On a summons taken out by pltf. asking that the second defts. might be ordered to file a full & sufficient affidavit of documents, the judge, considering himself bound by *Powis (Earl)* v. *Negus*, No. 127, made the order asked for :—*Held :* there was one issue only between pltf. & the three defts., namely, whether the underlease, subject to which pltf. as he alleged derived his title to the possession of the land in question, was still subsisting or had been determined by the exercise by pltf. of his right of re-entry, & that being so, the well-established rule that the ct. would not assist a forfeiture by ordering discovery of documents applied, & the order made against the second defts. must be discharged. *Powis (Earl)* v. *Negus*, No. 127, *overd.*—SEDDON *v.* COMMERCIAL SALT CO., LTD., [1925] Ch. 187 ; 94 L. J. Ch. 225 ; 132 L. T. 437 ; 69 Sol. Jo. 159, C. A.

135. *Add. Annotation :*—**Folld.** Gale *v.* Denman Picture Houses, Ltd., [1930] 1 K. B. 588.

162. *Add. Annotation :—Generally,* **Refd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704.

171. *Add. Annotations :—As to* (2) **Consd.** Soviet Republics Union *v.* Belaiew (1925), 42 T. L. R. 21. **Refd.** Duff Development Co. *v.* Kelantan Government, [1924] A. C. 797.

214a. ——.]—The ct. will not, save in very exceptional circumstances, order a deft. to produce documents in his possession before pltf. has delivered his statement of claim.—GALE *v.* DENMAN PICTURE HOUSES, LTD., [1930] 1 K. B. 588 ; 99 L. J. K. B. 351 ; 143 L. T. 31 ; 46 T. L. R. 282 ; 74 Sol. Jo. 187, C. A.

PART I. SECT. 1.

8a. *Whether experiments ordered—Not necessary for proper determination of issues.*]—NICHOLS *v.* T. T. C., [1928] 2 D. L. R. 364 ; 34 Can. Ry. Cas. 252 ; 62 O. L. R. 124.—**CAN.**

PART II. SECT. 4, SUB-SECT. 1.

130 iv. ——.]—BAILIE *v.* INGLIS & CO., LTD. & JAMISON, [1926] N. 53.—**IR.**

130 v. ——.]—Deft. co. sought production of a diary which had been kept by one of pltfs.' solrs., & which, it was alleged, recorded an interview between such solr. & a person other than pltfs. in the action, at which interview the preparation of a debenture was discussed :—*Held :* the diary was the solrs.' property, & as they were not parties to the action, there was no power in the present proceedings to order production & inspection of their diary.—KEEP BROS. *v.* BIRCH & BRADSHAW, [1928] N. Z. L. R. 360.—**N.Z.**

k i. —— ——.]—In an action by an injured workman against three defts. claiming damages for injuries suffered through the breaking of the gear used in lifting a heavy weight, where discovery had been ordered in favour of one deft. against another deft. on a motion to review the order so made :—*Held :* as in the event of the ct. holding that the accident was due to the gear used being defective there was still an issue between defts. in question, namely, as to which was responsible for the use of the gear, the stevedore or the shipowner, on the implied warranty that the gear supplied was effective there were consequently rights to be adjusted between defts., & the order for discovery was properly made.—CLARKE *v.* ELLERMAN, BUCKNALL & CO., LTD., [1930] N. Z. L. R. 722.—**N.Z.**

8b. *Miners' union—Defence filed raising question whether defendants legal entity.*]—A miners' union entered an appearance in an action, & by statement of defence raised the objection that it was not shown that deft. was a legal entity capable of being sued :—*Held :* deft. by so pleading must be deemed, before the trial of the action, to be a corpn. for the purpose of the litigation, & so compellable to make discovery.—CENTRE STAR MINING CO., LTD. *v.* ROSSLAND MINERS' UNION (1902), 9 B. C. R. 190.—**CAN.**

PART II. SECT. 4, SUB-SECT. 2.

a. *Citation :*—For "[1908] S. C. 335" read "[1909] S. C. 335."

PART II. SECT. 4, SUB-SECT. 3.

d i. —— *Discovery against infant.*]—SAGAN *v.* PATAN, [1931] 3 W. W. R. 772.—**CAN.**

PART II. SECT. 4, SUB-SECT. 4.—A.

182 i. *Whether next friend may make affidavit.*]—The ct. will not order a party to an action who is of unsound mind, or his next friend or the Public Trustee administering such person's estate under Mental Defectives Act, 1911, s. 100 (*h*), to make an affidavit of documents in compliance with an order for discovery under Rule 161A ; & Rule 167A does not apply to persons of unsound mind.—TASKER *v.* ALGAR, [1928] N. Z. L. R. 529.—**N.Z.**

PART II. SECT. 5, SUB-SECT. 1.

8c. *Not till issues defined.*]—When it is necessary, before an order for discovery can be made, that certain questions in the suit should first be decided, the proper order to make is that the suit should be set down for the settlement of the issues. The judge will then be in a position to decide which of the issues are necessary to be determined before the question of inspection or discovery can be decided.—EAGLE STAR & BRITISH DOMINIONS INSURANCE CO. *v.* DINANATH (1922), I. L. R. 47 Bom. 509.—**IND.**

PART II. SECT. 5, SUB-SECT. 3.

218 i. *Not till after defence delivered—Interlocutory judgment signed.*]—After pltf. had signed interlocutory judgment against deft. in an action of tort, deft.

238. *Add. Annotation:*—**Refd.** Tecalemit *v* Ex.-A-Gun (1926), 44 R. P. C. 62.

242. *Add. Annotation:*—**Consd.** Godman *v.* Times Publishing Co., [1926] 2 K. B. 273.

254a. **Liberty to apply reserved.**]—POISSON & WOODS *v.* ROBERTSON & TURVEY (1902), 86 L. T. 302; 50 W. R. 260; 46 Sol. Jo. 196, C. A.

254b. **Pursuant to undertaking on injunction.**]—FARROW *v.* SMITH (1915), Yearly Supreme Court Practice.

SECT. 7.—GROUNDS FOR RESISTING.

(Vol. XVIII., p. 71).

For "Sect. 3, sub-sect. 2, *ante*," read "Part III., sect. 9, *post*."

279. *Citations:*—For "BITT. PRAC. CAS. 1" read "BITT. PRAC. CAS. 13."

324. *Add. Annotation:*—**Consd.** Godman *v.* Times Publishing Co., [1926] 2 K. B. 273.

372. *Add. Annotation:*—**Consd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704.

373. *Add. Annotation:*—**Refd.** Minter *v.* Priest, [1930] A. C. 558.

373a. —— ——.]—THE CITY OF BARODA, No 874a, *post*.

377. *Add. Annotation:*—**Refd.** Minter *v.* Priest [1930] A. C. 558.

380. *Add. Annotation:*—*As to* (1) **Consd.** Reddaway & Co., Ltd. *v.* Hartley (1930), 48 R. P. C. 10.

382. *Add. Annotation:*—**Apld.** Reddaway *v.* Hartley (1928), 72 Sol. Jo. 502.

389. *Add. Annotation:*—*As to* (1) **Apld.** Chowood *v.* Lyall, [1929] 2 Ch. 406.

394. *Add. Annotations:*—*As to* (2) **Folld.** The Hopper No. 13, [1925] P. 52. **Apld.** The City of Baroda (1926), 134 L. T. 576. **Refd.** Ankin *v.* London & North Eastern Ry. Co., [1930] 1 K. B. 527.

437a. **Effect of rule.**]—REDDAWAY (F.) & Co. *v.* HARTLEY (1928), 72 Sol. Jo. 502; 45 R. P. C. 432.

437b. ——.]—Before the hearing of the action, an application by pltfs. that deft. be ordered to make a further & better affidavit of documents, or in the alternative, that an order be made, under R. S. C., Ord. 31, r. 19A (3), was refused by the master, on the ground that such an order would be contrary to practice. Pltfs. appealed. It appeared from certain letters that had been disclosed that there were certain letters relative to the issues in the action, as well as other documents, which had not been disclosed; but it was contended on behalf of deft. that, since the coming into operation of the rule, it was no longer open to a pltf. in such a case to ask for a general further & better affidavit, but that he was confined to the remedy given to him by the rule. It was held by ROMER, J., that the rule did give to persons objecting to an affidavit of documents certain rights which did not exist before the rule was framed; but that it should not be read as interfering with the rights which were possessed before it came into force; & that it sought to examine the pltf. for discovery, the action being about to come on at the assizes for assessment of damages. R. 489 states that the examination of pltf. by deft. may take place at any time after such deft. has delivered his statement of defence:—*Held:* deft. could not examine pltf.—ASHLEY *v.* BRENTON (1889), 13 P. R. 98.—**CAN.**

218 ii. —— ——.]—FONG YOUNG *v.* SHING WAH, [1928] 3 D. L. R. 481; 62 O. L. R. 370.—**CAN.**

PART II. SECT. 5, SUBsSECT. 4.

p i. —— ——.]—BRITISH COLUMBIA LIQUORS CO., LTD. *v.* CONSOLIDATED EXPORTERS CORPN., LTD., [1930] 2 W. W. R. 379; [1931] 1 D. L. R. 195; 42 B. C. R. 481.—**CAN.**

240 ii. —— —— ——.]—In a case wherein it appears that deft. knows the facts & pltf. does not, deft. should give discovery before pltf. delivers particulars. In such a case where the order for particulars provided that they should be given by pltf. after examination of deft. for discovery, the order also extended the time for delivery of the defence until after the delivery of the particulars.—ALBERTA WHEAT POOL *v.* NAHAJOWICZ, [1930] 1 W. W. R. 483; 2 D. L. R. 759; 24 Alta. L. R. 400; *affg.*, [1930] 1 D. L. R. 344; [1929] 3 W. W. R. 673.—**CAN.**

sf. Discretion of judge.]—BLYGH *v.* SOLLOWAY MILLS & Co., LTD., [1930] 2 W. W. R. 208; 4 D. L. R. 582; 42 B. C. R. 531.—**CAN.**

PART II. SECT. 6.

255 iii. ——.]—Resp., a member of the Permanent Defence force of the Union & discharged therefrom as medically unfit, applied for an order on appt. to furnish him with a true copy of the medical certificate issued under Act 27 of 1923, s. 54. He alleged he had sustained injuries in the discharge of & specially attributable to his duties, that he was entitled to receive compensation in manner provided under the sect., that he was desirous of bringing an action to obtain compensation & that it was imperative that a copy of the prescribed medical certificate referred to in sect. 54 should be disclosed to him before any legal steps were taken to enable him to determine the form of relief to which he was entitled. A Provincial Div. having granted the application:—*Held:* as the real dispute between the parties was whether resp.'s ill-health was occasioned in the discharge of his official duties or not &, as it was only when the cause of his ill-health had been established in his favour as a fact, that the necessity for the inspection of the certificate might arise, the application was premature & should have been refused.—UNION GOVERNMENT MINISTER OF DEFENCE *v.* VAN ZYL, [1929] App. D. 131.—**S. AF.**

256 i. —— —— *Alleged partnership.*]—HARNAM SINGH *v.* KAPOOR SINGH (1927), 39 B. C. R. 485.—**CAN.**

PART II. SECT. 9, SUB-SECT. 4.

p i. —— *"Pleadings & proceedings" in specified action.*]—ISITT & ISITT *v.* HAMMOND & NATIONAL RESOURCES SEC. CO. (1924), 34 B. C. R. 133.—**CAN.**

PART II. SECT. 9, SUB-SECT. 5.

369 v. —— ——.]—REID *v.* VANCOUVER TUG BOAT CO., LTD., [1928] 2 D. L. R. 244; [1928] 1 W. W. R. 800; 39 B. C. R. 479.—**CAN.**

370 iii. ——.]—When in an affidavit of discovery privilege is claimed in respect of any document or documents, such document or documents must be specified individually in the schedule attached to the affidavit of discovery, & not referred to as being included among others contained in a bundle.—RUSHBROOKE *v.* O'SULLIVAN & HIBERNIAN FIRE INSURANCE CO., LTD., [1926] I. R. 500; 59 I. L. T. 161.—**IR.**

370 iv. ——.]—Where privilege is claimed with respect to documents deponent is not required to describe the documents in such a manner as would disclose the nature or particulars of such documents. "A bundle of documents marked 'A' & numbering 1 to 160, all of which documents were initialled by this deponent," is a sufficient identification of the documents.—CAMPBELL *v* WOODS, IRMIE & THE CANADIAN PRESS (Alta.), [1926] 2 D. L. R. 805; [1926] 2 W. W. R. 99.—**CAN.**

PART II. SECT. 10.

385 iv. —— ——.]—Where deft. obtained an order for discovery, & in the affidavit of discovery it was sworn on behalf of pltf. that a document in his possession related solely to pltf.'s case & did not support deft.'s case, & the Supreme Ct. had refused an application by deft. for inspection of the document:—*Held:* on the evidence there was no substantial ground upon which to base a conclusion that the statement in the affidavit was made erroneously or under a misconception of the character of the document, & the application was properly refused.—SMITH, ETC. *v.* SUNDAY TIMES (1923), 31 C. L. R. 552.—**AUS.**

388 i. —— *Claim of privilege.*]—Where an affidavit sets out positively & definitely that privilege is claimed for certain documents, on the ground that they arose out of negotiations carried on "without prejudice," that statement cannot be contradicted by affidavits or material from the other side; but it can be attacked or impugned only by some admission or qualification coming from that side.—BLACK *v.* OCEAN ACCIDENT & GUARANTEE CO. (Man.), [1926] 2 D. L. R. 985; [1926] 1 W. W. R. 883.—**CAN.**

was apparent, from sources which might be referred to, that the deft. had in his possession other documents not disclosed in his affidavit. Deft. was ordered to file a further affidavit. Deft. appealed to the Ct. of Appeal, where the appeal was dismissed on the ground that the service of the notice was out of due time. Deft. filed a further affidavit, whereupon pltfs. applied for a further & better affidavit before MAUGHAM, J., who made an order under R. S. C., Ord. 31, r. 19A (3), ordering deft. to state by affidavit whether the particular documents referred to by the judge, including any documents relating to distribution by deft. of samples of belting & including other specific documents, had at any time been in deft.'s possession, & if not then in his possession, when he parted with them & what had become thereof. Pltfs. appealed, by leave, to the Ct. of Appeal:—*Held:* the appeal should be allowed with costs in any event; R. S. C., Ord. 31, r. 19A (3), did not cut down the powers of the ct. as expressed in the case of *Jones* v. *Monte Video Gas Co.*, L. R. 5 Q. B. D. 556; the order of ROMER, J., must be complied with; it was an order which was intended to be based upon *Jones* v. *Monte Video Gas Co.*, & there were materials which showed that a further affidavit was necessary; & a further affidavit must be made by deft.—REDDAWAY (F.) & Co., LTD. *v.* HARTLEY (1930), 48 R. P. C. 10, C. A.

440a. ——.] — ASTRA - NATIONAL PRODUCTIONS, LTD. *v.* NEO-ART PRODUCTIONS, LTD., [1928] W. N. 218.

442. *Add. Annotation:*—**Consd.** Leon *v.* Casey (1932), 48 T. L. R. 452.

447. *Add. Annotation:*—**Consd.** Leon *v.* Casey (1932), 48 T. L. R. 452.

449. *Add. Annotation:*—**Consd.** Leon *v.* Casey (1932), 48 T. L. R. 452.

450. *Add. Annotation:*—**Consd.** Leon *v.* Casey (1932), 48 T. L. R. 452.

451. *Add. Annotation:*—**Follld.** Leon *v.* Casey (1932), 48 T. L. R. 452.

451a. —— —— ——.]—By a policy in the form of a Lloyd's policy of marine insurance underwriters insured certain goods & merchandise upon the steamship *L*, or other steamers or conveyances at & from Cairo to Jaffa. The risks insured against included damage by fire, & the policy contained a warehouse to warehouse clause. The adventure consisted of a journey by land from Cairo to Alexandria & thence by sea on the steamship *L.* to Jaffa. In an action upon the policy the assured alleged that the goods had been damaged by fire in the course of transit by lorry from Cairo to Alexandria:—*Held:* upon a summons for directions an order was properly made that pltfs. should make an affidavit of ship's papers, the policy being substantially one of marine insurance.—LEON *v.* CASEY, [1932] 2 K. B. 576; 101 L. J. K. B. 578; 147 L. T. 165; 48 T. L. R. 452; 37 Com. Cas. 330, C. A.

452. *Add. Annotation:*—**Consd.** Leon *v.* Casey (1932), 48 T. L. R. 452.

453. *Add. Annotation:*—**Expld. & Distd.** Leon *v.* Casey (1932), 48 T. L. R. 452.

454. *Add. Annotation:*—**Consd.** Leon *v.* Casey (1932), 48 T. L. R. 452.

455. *Add. Annotation:*—**Refd.** Leon *v.* Casey (1932), 48 T. L. R. 452.

456. *Add. Citations:*—93 L. J. K. B. 169; 130 L. T. 139; 16 Asp. M. L. C. 236.

Add. Annotation:—**Consd.** Leon *v.* Casey (1932), 48 T. L. R. 452.

457. *Add. Annotation:*—**Expld.** Leon *v.* Casey (1932), 48 T. L. R. 452.

461. *Add. Annotation:*—**Refd.** Leon *v.* Casey (1932), 48 T. L. R. 452.

462a. —— —— **Effect of.**]—Where in an action on a marine policy the usual order is made for the filing of an affidavit of ship's papers & for a stay of proceedings meanwhile, this stay does not operate to paralyse the activities of either party & prevent him preparing his case; & on a taxation of costs it is for the taxing master to determine, having regard to the stay & all other material factors, whether the costs were reasonably or prematurely incurred.—PÊCHERIES OSTENDAISES (SOC. ANON.) *v.* MERCHANTS' MARINE INSURANCE Co., [1928] 1 K. B. 750; 97 L. J. K. B. 445; 138 L. T. 532; 44 T. L. R. 270; 72 Sol. Jo. 102; 17 Asp. M. L. C. 404, C. A.

Annotation:—**Refd.** The Channel Queen, [1928] P. 157.

468. After this case add "For form of order for production of ship's papers, *see* R. S. C. (No. 1), 1915, r. 11."

Part III.—Production and Inspection.

494. After this case add "**Receiver & manager appointed by debenture-holders—Liability to produce.**]—*See* COMPANIES, No. 5067a, *ante.*"

528a. —— **Action on bill of exchange—Deed giving time to principal debtor.**]—Where an action on bills of exchange was brought

PART III. SECT. 3.

ss. *County court.*]—The county ct. has power to make an order for the production of documents apart from an examination for discovery.—MCDONALD *v.* HOWIE, [1931] 3 W. W. R. 773; 40 Man. L. R. 302.—**CAN.**

PART III. SECT. 4, SUB-SECT. 2.

sb. *Right to examine officers & employees in any order.*]—In the absence at least of special circumstances, the right of pltf. to examine for discovery the officer & employees of a deft. co. in whatever order he wishes will not be interfered with.—COTE *v.* CANADIAN NATIONAL RY. Co., [1930] 1 W. W. R. 591; 2 D. L. R. 999.—**CAN.**

sc. *Solicitor acting as servant of company.*]—Where duties which can be, & usually are, performed by an official, servant or agent of a co. are performed by a solr., the fact that he is a solr. does not render him immune from examination for discovery with respect to the transactions so performed.—CANARY *v.* VESTED ESTATES, LTD., [1930] 1 W. W. R. 996; 3 D. L. R. 989; 43 B. C. R. 1.—**CAN.**

sd. *Officer — Who is — Architect.*]—HYSLOP *v.* NEW WESTMINSTER BOARD OF SCHOOL TRUSTEES, [1930] 3 W. W. R. 227; 4 D. L. R. 1030.—**CAN.**

se. —— —— *Insurance adjuster.*]—The adjuster who had been engaged by the fire insurance cos. to make the adjustment of pltf. lumber co.'s loss held not to have been under the circumstances of this case, an "officer" of the insurance cos. within rule 370c (1) providing for the examination for discovery of one who has been an officer of a corpn.—KAPOOR LUMBER CO., LTD. *v.* CANADIAN NORTHERN PACIFIC RY. Co., [1932] 2 W. W. R. 417; 3 D. L. R. 487.—**CAN.**

against deft., who pleaded that he was liable, if at all, as a surety only :—*Held :* he was not entitled to the inspection of a deed in pltf.'s possession, by which it was suggested time had been given to the principal debtor, but to which deed the surety was no party.—SMITH *v.* WINTER (1838), 3 M. & W. 309 ; 6 Dowl. 386 ; 1 Horn & H. 45 ; 7 L. J. EX. 79 ; 150 E. R. 1162.

539. *Add. Annotation :*—**Refd.** Godman *v.* Times Publishing Co., [1926] 2 K. B. 273.

539a. —— **Action for slander.**]—DAY *v.* TUCKETT (1846), 7 L. T. O. S. 234.

544. *Add. Annotation :*—*As to* (2) **Apld.** Chowood *v.* Lyall, [1929] 2 Ch. 406.

555a. ——.]—In an action of slander imputing to pltf. that he was the writer of a scandalous letter reflecting upon deft., the latter in one of his pleas set forth the letter & justified the words spoken :—*Held :* pltf. should inspect the letter with witnesses, in order that he might be prepared at the trial to show that it was not in his handwriting.—CURTIS *v.* CURTIS (1833), 3 Moo. & S. 819.

575a. Applies to answers to interrogatories.]—I am of opinion that the word "affidavits" in r. 15 is wide enough to include an answer to interrogatories, & I cannot see why the meaning should be narrowed so as to exclude it (DENMAN, J.).—MOORE *v.* PEACHEY, [1891] 2 Q. B. 707 ; 65 L. T. 750 ; 39 W. R. 592 ; 7 T. L. R. 748, D. C.

588 *Add. Annotation :*—**Refd.** Minter *v.* Priest, [1930] A. C. 558.

597a. ——.]—Where one party has a document in his possession in which both parties have a common interest, as, for instance, a document containing the terms of the contract sued upon, & the other party seeks inspection of such document, he is entitled to discovery at common law & independently of the . . . rules (MATHEW, J.).—BROWN *v.* LIELL (1885), 16 Q. B. D. 229 ; 55 L. J. Q. B. 73 ; 2 T. L. R. 4.

614. After this case add :—

—— —— **In possession of director after appointment as receiver for debenture-holders.**]—*See* COMPANIES, No. 5067a, *ante*.

640a. Broker's book.]—BROWNING *v.* AYLWIN (1827), 7 B. & C. 204 ; 9 Dow. & Ry. K. B. 801 ; 5 L. J. O. S. K. B. 320 ; 108 E. R. 699.

Annotations :—**Distd.** Smith *v.* Winter (1838), 3 M. & W. 309 ; Day *v.* Tuckett (1846), 10 J. P. Jo 358. **Refd.** Mutter *v.* Eastern & Midland Ry. (1888), 38 Ch. D. 92.

650a. —— ——.]—ROSS *v.* LAUGHTON (1813), 1 Ves. & B. 349 ; 35 E. R. 136.

Annotations :—**Consd.** Griffiths *v.* Griffiths (1843), 12 L. J. Ch. 397 ; Simmonds *v.* G. E. Ry. (1868), 3 Ch. App. 797 ; *Re* Hawkes, Ackerman *v.* Lockhart, [1898] 2 Ch. 1 ; *Re* Rapid Road Transit Co., [1909] 1 Ch. 96. **Refd.** Bozon *v.* Bolland, Husband *v.* Bolland (1839), 4 My. & Cr. 354.

651a. —— ——.]—BAKER *v.* HENDERSON (1830), 4 Sim. 27 ; 58 E. R. 11.

Annotations :—**Distd.** Warburton *v.* Edge (1839), 9 Sim. 508. **Refd.** *Re* Hawkes, Ackerman *v.* Lockhart, [1898] 2 Ch. 1.

653. *Add. Annotations :*—**Apld.** *Re* Cameron's Coalbrook, etc., Ry. (1859), 25 Beav. 1. **Refd.** Lockett *v.* Cary (1864), 3 New Rep. 405 ; Fowler *v.* Fowler (1881), 29 W. R. 800 ; *Re* Hawkes, Ackerman *v.* Lockhart, [1898] 2 Ch. 1.

PART III. SECT. 4, SUB-SECT. 7.

se. *Deponent on application for security for costs—Production of documents referred to in affidavit.*]—COLLEGE BRAND CLOTHES CO., LTD. *v.* BROWN & FITZPATRICK, [1928] 2 D. L. R. 502 ; [1928] 1 W. W. R. 778 ; 23 Alta. L. R. 363.—**CAN.**

sf. *Employee — Who is — Agent — Burden of proof.*]—Where an order for the examination for discovery of an employee is sought under rule 234 & there is a dispute as to whether the persons sought to be examined are in fact employees, the burden of proving the employment rests on the party asking for the examination. An agent is not an employee within the meaning of said rule.—HOSKINS *v.* MINNEAPOLIS THRESHING MACHINE CO., [1930] 1 W. W. R. 369 ; 2 D. L. R. 696 ; 24 Alta. L. R. 437.—**CAN.**

PART III. SECT. 5, SUB-SECT. 1.

525 ii. ——.]—HAMILTON *v.* STREET (1850), 1 Gr. 327.—**CAN.**

525 iii. —— *Documents supporting case—Or repelling defendant's case.*]—As a general rule pltf. in equity is entitled to a discovery, not only of that which constitutes his own title, but also of whatever is material to repel the case set up by deft. ; &, as a part of that discovery, to the production of such documents as are material for the same purpose.—LAWLOR *v.* MURCHISON (1852), 3 Gr. 553.—**CAN.**

r i. —— ——.]—In an action on a policy of insurance against liability for damages, to recover the amount of a judgment which the insured had paid & which had been recovered against them in an action in which the insurance co. had conducted the defence :—*Held :* pltfs. were entitled on discovery to know all that was done by the insurance co. in defending the action & to see all papers & documents connected therewith, & also were entitled to the benefit of all investigations made, & opinions obtained, by the co.—WILLIAMS *v.* LONDON GUARANTEE & ACCIDENT CO., LTD., [1925] 1 W. W. R. 1023.—**CAN.**

PART III. SECT. 5, SUB-SECT. 3.

577 iii. ——.]—BRADBURY *v.* MOFFATT & CARMAN (1884), 1 Man. L. R. 92.—**CAN.**

583 i. *Possession of agent—Agency must be established—Pay-in slips in hands of banker.*]—A bank, retaining pay-in slips which have accompanied payments into a customer's account, does not hold them as the agent of the customer, who, consequently, will not be ordered in an action to which he is a party to produce them as documents in his possession or power. In such an action the ct. also declined to make any order relating to those documents under Evidence Act, 1915, s. 89.—LEVER *v.* MAGUIRE, [1928] V. L. R. 262 ; [1928] Argus L. R. 169. —**AUS.**

sg. *Documents not produced at first hearing—Official records needed to assist court—Leave granted to admit at later stage.*]—Where a party has not produced at the first hearing, as required by Ord. 13, r. 1, the documents in his possession or power on which he relies, the leave of the ct. under r. 2, admitting them at a later stage, should not ordinarily be refused if the documents are official records of undoubted authenticity which may assist the ct. to decide rightly the issues before it. —GOPIKA RAMAN ROY *v.* ATAL SINGH (1929), L. R. 56 Ind. App. 119.—**IND.**

sh. *Documents voluntarily delivered to agent of Attorney-General.*]—It appearing from the affidavits filed on an application by pltfs. for an order that defts. file a further & better affidavit of documents, that the books & documents in question had been voluntarily turned over to the duly authorised representative of the Attorney-General of British Columbia & that the documents were now in the sole possession & power of the representative, the application was refused. —MACKEE *v.* SOLLOWAY MILLS & CO., LTD. (NO. 2), [1931] 1 W. W. R. 624 ; 2 D. L. R. 822 ; 44 B. C. R. 42.—**CAN.**

PART III. SECT. 5, SUB-SECT. 5.—F.

sj. *General rule.*]—In the case of public documents there is a common law right of inspection, but that right must necessarily be exercised within certain limits. The right ought to be restricted to those persons who can prove themselves to be interested, & there are documents which, for reasons of State, ought not to be disclosed.—*Re* FITZGERALD, [1925] 1 I. R. 42.—**IR.**

sk *Register of titles to land kept under Local Registration of Title (Ireland) Act*, 1891 (c. 66).]—The above register is a public register, & the documents kept in the office for registration of titles are public documents.—*Re* FITZGERALD, [1925] 1 I. R. 42.—**IR.**

PART III. SECT. 6.

o i. —— *May be dispensed with.*]—The master has jurisdiction to provide, in an order for directions which calls for the production of documents, that "the service of a notice to produce such documents be dispensed with & that the service of a copy of this order upon the solrs. of the respective parties shall have the same effect as the service of a notice to produce."—ROYAL TRUST CO. *v.* CANADIAN PACIFIC RY. CO., [1925] 4 D. L. R. 772 ; [1925] 3 W. W. R. 571.—**CAN.**

PART III. SECT. 9, SUB-SECT. 1.—A.

r i. —— *Letter dictated by solicitor—& reply thereto.*]—*Held :* privileged.—MERCHANTS BANK *v.* MOFFATT (1876), 6 P. R. 348.—**CAN.**

r ii. —— *Notes of evidence taken during arbitration.*]—*Held :* not privileged from discovery & inspection in a subsequent action between the same parties.—EAST TAMAKI CO-OPERATIVE DAIRY CO. *v.* NORNEN, [1928] N. Z. L. R. 895.—**N.Z.**

r iii. —— *Confined to legal advisers—*

714. *Add. Annotations :—As to* (1) **Distd.** The City of Baroda (1926), 134 L. T. 576. **Folld.** Ankin *v.* London & North Eastern Ry. Co., [1930] 1 K. B. 527, C. A. *As to* (2) **Expld.** Bank of Russian Trade, Ltd. *v.* British Screen Productions, Ltd., [1930] 2 K. B. 90.

736. *Add. Annotation :—***Apld.** Minter *v.* Priest, [1929] 1 K. B. 655.

740. *Add. Annotation :—***Apprvd.** Minter *v.* Priest, [1929] 1 K. B. 655.

743. *Add. Annotation :—***Consd.** Minter *v.* Priest, [1929] 1 K. B. 655.

754. *Add. Annotation :—As to* (2) **Refd.** Minter *v.* Priest, [1930] A. C. 558.

757. *Add. Annotation :—***Consd.** Minter *v.* Priest, [1929] 1 K. B. 655.

759. *Add. Annotation :—***Apprvd.** Minter *v.* Priest, [1929] 1 K. B. 655.

763. *Add. Annotation :—***Apld.** Minter *v.* Priest, [1929] 1 K. B. 655.

805a. ——.] — Completed drafts of documents [settled by counsel] in support of an application for the fiat of the A.-G. to counterclaim for revocation of a patent are privileged documents, & defts. are not bound to produce them for inspection by pltfs.—VIGNERON-DAHL (BRITISH & COLONIAL), LTD. *v.* PETTIT (1925), 69 Sol. Jo. 693 ; 42 R. P. C. 431.

821. *Add. Annotation :—***Refd.** Minter *v.* Priest, [1930] A. C. 558.

823. *Add. Annotations :—As to* (1) **Apld.** The City of Baroda (1926), 134 L. T. 576. **Consd.** Ankin *v.* London & North Eastern Ry. Co., [1930] 1 K. B. 527.

843a. —— ——.]—ANKIN *v.* LONDON & NORTH EASTERN RY. CO., No. 1209a, *post.*

874a. —— ——.]—Pltfs. claimed for short delivery of certain parcels of bristles, in respect of which they were holders of bills of lading, loaded at Shanghai upon defts.' steamship. Defts. denied liability alleging that the loss was due to pilferage by an organised band of thieves. Defts. had called for reports from the first, second, third, & fourth officers of the steamer, in order to investigate the question of the management of the vessel & the conduct of their officers in the prevention of theft, which reports were in due course obtained through defts.' agents in China. Defts. claimed that these reports were privileged from discovery :—*Held :* (1) the reports were not privileged. (2) Observations upon the form & contents of an affidavit claiming privilege from discovery for deponent's documents.—THE CITY OF BARODA (1926), 134 L. T. 576 ; 70 Sol. Jo. 1044 ; 17 Asp. M. L. C. 27.

Annotation :—Generally, **Refd.** Ankin *v.* London & North Eastern Ry. Co., [1930] 1 K. B. 527.

890. *Add. Annotation :—***Refd.** Ankin *v.* London & North Eastern Ry. Co., [1930] 1 K. B. 527.

891a. ——.]—In obedience to general instructions issued by the Port of London Authority to the masters of their vessels that, in the event of a casualty, the circumstances of the occurrence were to be reported on a printed form supplied for the purpose, the master of one of the Authority's dredgers reported the details of a collision with a sailing barge belonging to pltfs. The form was headed, "Confidential report for the information of the Authority's solr. . . ." The report was sent to the master's superior officers, who passed it on to the manager of the Authority's insurance department, & he in turn sent it to the solrs. who acted for the Authority's underwriters. Pltfs. contended that the report must be produced :—*Held :* there having been a collision it was to be anticipated that there would be litigation, & although the report went through various hands, it was made for the purpose of being put before the solrs. ; the report therefore complied with the tests laid down by BUCKLEY, L.J., in *Birmingham & Midland Motor Omnibus Co.* v. *London & North Western Ry. Co.*, No. 394, *ante*, & was privileged from production.—THE HOPPER No. 13, [1925] P. 52 ; 94 L. J. P. 45 ; 132 L. T. 736 ; 41 T. L. R. 189 ; 16 Asp. M. L. C. 473, D. C.

*Annotations :—***Distd.** The City of Baroda (1926), 134 L. T. 576. **Refd.** Ankin *v.* London & North Eastern Ry. Co., [1903] 1 K. B. 527.

893. *Add. Annotation :—***Distd.** Ankin *v.* London & North Eastern Ry. Co., [1930] 1 K. B. 527.

904. *Add. Annotation :—***Refd.** Ankin *v.* London & North Eastern Ry. Co., [1930] 1 K. B. 527.

Patent agent—Communications in respect of pending application for patent —Not privileged.]—MCKERCHER *v.* VANCOUVER-IOWA SHINGLE CO., LTD. (B. C.), [1929] 4 D. L. R. 231 ; 2 W. W. R. 287.—**CAN.**

r iv. —— *Solicitor acting employee of party.*]—DE LA GIRODAY *v.* MCCAFFERY, [1930] 2 W. W. R. 576.—**CAN.**

PART III. SECT. 9, SUB-SECT. 1.—C. (a).

s i. —— —— ——.]—KEEP BROS. *v.* BIRCH & BRADSHAW, [1928] N. Z. L. R. 360.—**N.Z.**

PART III. SECT. 9, SUB-SECT. 1.—C. (b).

807 ii. —— *Letter included in—Not privileged.*]—MOFFATT *v.* HANGAR, [1923] N. Z. L. R. 448.—**N.Z.**

PART III. SECT. 9, SUB-SECT. 1.—F. (a).

856 i. *No privilege—Litigation not contemplated.*]—SMITH *v.* C. N. RY. (Alta.), [1926] 2 D. L. R. 372.—**CAN.**

g i. —— —— *Report of local manager —To head office of insurance company.*] —*Held :* privileged.—GRAIN CLAIMS BUREAU, LTD. *v.* CANADIAN SURETY CO. (Man.), [1927] 4 D. L. R. 297 ; [1927] 2 W. W. R. 407.—**CAN.**

PART III. SECT. 9, SUB-SECT. 1.—F. (b) ii.

e i. *S. P.* STEPHENSON *v.* E. D. & B. C. R. (Alta.), [1926] 2 D. L. R. 680.—**CAN.**

e ii. —— ——.]—Where following a railway accident in which personal injury or property damage is incurred the railway co. obtains reports thereof from its employees for the use of its solr. as material on which he may give it his professional advice & conduct its defence with respect to an action or actions which it anticipates will, in default of settlement be brought against it as a result of the accident, said reports are privileged from production even though made before such an action has been actually brought or threatened, & although obtained, not solely for such use by the solr., but also for the use of other officials of the co. in determining, *e.g.*, what, if any, discipline should be given the employees in the accident.—MAYGARD *v.* CANADIAN PACIFIC RY. CO. (Alta.), [1929] 2 D. L. R. 953 ; 2 W. W. R. 27 ; 35 C. R. C. 288.—**CAN.**

e iii. —— *Reports of claims agent.*]—STEPHENSON *v.* E. D. & B. C. R. (Alta.), [1926] 2 D. L. R. 680.—**CAN.**

f i. —— *Report of investigator for insurance co.*]—In an action by an insurance co. to recover from a person whose fidelity it had insured the amount paid by it under the bond :—*Held :* reports made to it by an investigator whom it had instructed to investigate after the insured had given notice of the loss were privileged from production, since there was nothing to suggest any lack of good faith in the setting up of the claim & the affidavit in support thereof satisfied the requirements for such a claim in that it showed that the reports were obtained for the co.'s solr. as material on which his advice should be taken with respect to an anticipated action.—GILLESPIE GRAIN CO., LTD. & GRAIN INSURANCE & GUARANTEE CO. *v.* WACOWICH, [1932] 1 W. W. R. 916 ; 3 D. L. R. 255.—**CAN.**

886 ii. ——.]—LAURENSON *v.* WELLINGTON CITY CORPN., [1927] N. Z. L. R. 510.—**N.Z.**

PART III. SECT. 9, SUB-SECT. 1.—F. (c).

Citation :—For "[1908] S. C. 335" read "[1909] S. C. 335."

905. *Add. Annotation :*—**Refd.** The Hopper No. 13, 92 5] P. 52.

926. *Add. Annotation :*—**Refd.** Bradstreets British, Ltd. *v.* Mitchell (1932), 48 T. L. R. 670.

933. *Add. Annotation :*—**Consd.** Minter *v.* Priest, [1930] A. C. 558.

941. *Add. Annotation :*—**Refd.** Minter *v.* Priest, [1929] 1 K. B. 655.

1039a. —— ——.]—GREENWOOD *v.* ROTHWELL (1844), 7 Beav. 291; 13 L. J. Ch. 226; 2 L. T. O. S. 496; 49 E. R. 1077.

1087a. —— **Deed pleaded.**]—PENARTH HARBOUR, DOCK & RY. CO. *v.* CARDIFF WATERWORKS CO (1860), 7 C. B. N. S. 816; 29 L. J. C. P. 230; 1 L. T. 551; 6 Jur. N. S. 942; 8 W. R. 215; 141 E. R. 1036.

Annotation :—**Consd.** Price *v.* Harrison (1860), 8 C. B. N. S. 617.

1090a. *S. P.* A.-G. OF PRINCE OF WALES *v.* LAMBE (1848), 11 Beav. 213; 17 L. J. Ch. 154; 10 L. T. O. S. 498; 12 Jur. 386; 50 E. R. 798.

1144. *Add. Citation :*—1 Leach, 300, n.

Add. Annotation :—**Refd.** R. *v.* Elworthy (1867), 37 L. J. M. C. 3.

1197. *Add. Annotation :*—**Refd.** Seddon *v.* Commercial Salt Co., [1925] Ch. 187.

1198. *Add. Annotation :*—**Refd.** Waterhouse *v.* Barker (1924), 132 L. T. 15.

1202. *Add. Annotation :*—**Consd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704.

1209a. —.]—(1) In an action to recover damages for personal injury incurred in an accident on defts.' railway, an order having been made for discovery of documents, defts. in an affidavit stated that they had in their possession a copy of a report made by them to the Ministry of Transport under Regulation of Railways Act, 1871 (c. 78), s. 6. They objected to produce this document on the ground that it was a copy of a confidential document made in discharge of their duty to the Crown & that it was privileged inasmuch as it could not be disclosed without injury to the public interest. The deponent also produced & verified a copy of a letter written by him to the Minister of Transport, & the reply thereto of the Minister to the effect that reports made in pursuance of sect. 6 of the Act aforesaid were furnished for his own information & guidance & that it was his practice in the public interest to decline any request to inspect these reports or to obtain copies of them :—*Held :* it was the practice of the ct. to accept the statement of a Minister of the Crown upon the question whether production of a document would be contrary to the public interest; & consequently the document in question was privileged from production.

(2) Privilege was also claimed for other documents on the ground that they were "confidential communications at the instance & request & for the use of defts.' solr. between the officials of the deft. co. & between those

PART III. SECT. 9, SUB-SECT. 1.—H.

924 i. *Privileged — Communication with view to compromise—Copy not retained by solicitor.*]—*Held :* although the occasion on which the document was written was not privileged, the document, owing to its nature & effect, was privileged from production.—MOFFATT *v.* HANGAR, [1923] N. Z. L. R. 148.—**N.Z.**

924 ii. —— —— *Stipulation in event of failure to agree.*]—Negotiations carried on "without prejudice," & with a view to the settlement of an action, & all letters & communications arising out of such negotiations, are privileged from production.—BLACK *v* OCEAN ACCIDENT & GUARANTEE CO. (Man.), [1926] 2 D. L. R. 985; [1926] 1 W. W. R. 883.—**CAN.**

PART III. SECT. 9, SUB-SECT. 2.—A.

b i. —— *Adjuster's report to fire insurance company.*]—In an action on a fire-insurance policy held that a confidential report made by an adjuster to deft. was protected from inspection by pltf., where it was objected in deft.'s affidavit on production, that the report related solely to the case of deft. & not to that of pltf. & did not tend to support the latter.—LITWIN *v.* GREAT AMERICAN INSURANCE CO., [1932] 2 W. W. R. 472; 4 D. L. R. 195. —**CAN.**

PART III. SECT. 9, SUB-SECT. 4.

1116 ii. ——.]—SYDNEY CHEESE & BUTTER FACTORY ASSOCN. *v.* BROWER (1900), 19 P. R. 152.—**CAN.**

sh. *Servant.*]—A servant cannot be compelled to produce the documents of his master where the suit or proceeding is one to which the master is not a party & it is not shown that he has given authority for their production, even though the master is outside the jurisdiction of the ct.—CHAPMAN & SONS *v.* STODDART & CO., [1930] 3 W. W. R. 171; 4 D. L. R. 1013.—**CAN.**

PART III. SECT. 9, SUB-SECT. 5.

1132 i. *Objection attaches to production not discovery.*]—MILLS *v.* MERCER CO., LTD. (1893), 15 P. R. 276.—**CAN.**

1136 i. *Discovery tending to incriminate—Not enforced.*]—Where a person who has been required to make an affidavit of documents refuses to produce certain documents on the ground that they are privileged because they may criminate him or, where he makes the affidavit as an officer of a co., may criminate the co., & after inspection thereof the judge finds that the documents may be criminating to him or the co., their production cannot be compelled, where such ground of privilege is not taken away by statute or by a rule having the force of a statute. There is no such statute or rule in force in Alberta.—WEBSTER & KIRKNESS *v.* SOLLOWAY MILLS & CO., LTD. (No. 2), [1931] 1 D. L. R. 831; [1930] 3 W. W. R. 445; 25 Alta. L. R. 8; *affg.*, [1930] 3 W. W. R. 381.—**CAN.**

1136 ii. —.]—The fact that the party against whom the inspection is sought has already been prosecuted & there is no probability of any further prosecution does not deprive him of the privilege, where, at any rate, the judge is not prepared to say that there is really no possibility of any prosecution by any one & that, therefore, the documents have lost the criminating tendency which they otherwise would have.—LOCKETT *v.* SOLLOWAY MILLS & CO., LTD. (No. 2), [1931] 3 W. W. R. 389.—**CAN.**

b i. —— *Not taken away by Alberta Evidence Act, R. S. A.*, 1922 (c. 87), *ss.* 3, 7.]—CAMPBELL *v.* WOODS, IRMIE, & THE CANADIAN PRESS (Alta.), [1926] 2 D. L. R. 805; [1926] 2 W. W. R. 99.—**CAN.**

sj. *Waiver of objection—Propriety of production cannot be raised on appeal.*]—On the trial of an action for conversion deft. co. refused at first to produce its books, its ground being that their production might tend to criminate the co. The trial judge ruled that unless they were produced he would strike out the statement of defence. Thereupon deft.'s counsel produced them & evidence founded on them was taken, & judgment given for pltf. :—*Held :* by so electing the objection was in effect withdrawn & the question whether the co. had been improperly compelled to produce the books could not be raised on an appeal from the judgment.—LOCKETT *v.* SOLLOWAY MILLS & CO., LTD., [1932] 1 W. W. R. 886; 3 D. L. R. 600; *affg.*, [1931] 3 W. W. R. 302.—**CAN.**

PART III. SECT. 9, SUB-SECT. 8.

f i. —— ——.]—HELLET *v.* SOUTH AFRICAN RAILWAYS & HARBOURS (1927), 48 N. L. R. 65.—**S. AF.**

h i. —— ——.]—In an action for damages for personal injuries sustained in 1928 in a motor car collision, defender averred that certain knee injuries which pursuer ascribed to the collision were due to gunshot wounds received by pursuer during war service, & he craved a diligence for recovery of the medical history sheets & other military records applicable to pursuer. The War Dept. objected to produce these documents :—*Held :* while the ct. has power to order production of documents in the custody of a public dept., even though the dept. pleaded public interest as a ground for refusing to produce them, the documents here in question did not appear to be of such material value to the case as to warrant an order for their production. —CAFFREY *v.* INVERCLYDE (LORD), [1930] S. C. 762.—**SCOT.**

o. *Citation :*—For "[1908] S. C. 335" read "[1909] S. C. 335."

sk. *Publication against public policy —Objection by Attorney-General.*]—Where, in an action to which a State is a party, the State objects to produce for inspection documents which are in fact State papers, a statement by the A.-G. for that State, that their production for inspection would be prejudicial to the public interests, is conclusive & an answer to an application for an order for inspection.—GRIFFIN *v.* STATE OF SOUTH AUSTRALIA (1925), 36 C. L. R. 378.—**AUS.**

officials & third persons after this action was threatened or anticipated for the purpose of obtaining for & furnishing to the defts.' solr. evidence & information as to the evidence which will be obtained & otherwise for the use of the said solr. to enable him to defend this action & to advise defts." :—*Held:* these documents were also privileged.—ANKIN *v.* LONDON & NORTH EASTERN RY. Co., [1930] 1 K. B. 527; 99 L. J. K. B. 293; 142 L. T. 368; 46 T. L. R. 172; 74 Sol. Jo. 26, C. A.

1210. *Add. Annotation :*—**Refd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704.

1212. *Add. Annotation :*—**Consd.** Isaacs *v.* Cook, [1925] 2 K. B. 391.

1213. *Add. Annotation :*—**Consd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704.

1218. *Add. Annotations :*—**Consd.** Isaacs *v.* Cook, [1925] 2 K. B. 391; Ankin *v.* London & North Eastern Ry. Co., [1930] 1 K. B. 527. **Refd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704.

1223. *Add. Annotation :*—*As to* (2) **Refd.** Brown *v.* Dagenham Urban District Council, [1929] 1 K. B. 737.

1223a. Report of railway company to Ministry of Transport—Under Regulation of Railways Act, 1871 (c. 78), s. 6.]—ANKIN *v.* LONDON & NORTH EASTERN RY. Co., No. 1209a, *ante.*

1283a. ——— ———.]—AKT. FÜR AUTOGENE ALUMINIUM SCHWEISSUNG *v.* LONDON ALUMINIUM CO., LTD. (No. 2) (1921), 38 R. P. C. 361.

1309. *Add. Annotation :*—**Refd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704.

Part IV.—Interrogatories.

1314. *Add. Annotation :*—*As to* (1) **Consd.** Sutherland *v.* British Dominions Land Settlmt. Corpn., [1926] Ch. 746.

1316a. By whom settled.]—On application being made by motion in an action in regard to reserved costs of interrogatories delivered, the question arose as to the persons to settle them :—*Held :* it was no part of the business of the judge in chambers nor the master. They had to see that they were neither oppressive nor irrelevant. The duty of settling was on the party who drew them.—"PRACTICE NOTE" (1930), 169 L. T. Jo. 123; [1930] W. N. 24.

PART III. SECT. 12.

o i. ———.]—The party who has obtained an order for production of documents may insist on obedience to that part of the order which requires the documents produced to be deposited with the prothonotary.—BLOOMFIELD *v.* MONARCH, ETC., Co. (No. 1), [1927] 1 W. W. R. 140; *affd.*, [1927] 3 D. L. R. 335; [1927] 2 W. W. R. 196; 36 Man. L. R. 603.—**CAN.**

sa. *Purpose — Criminal trial in progress—Making copies available for civil trial.*]—When the criminal trial of defts. now in progress is completed, it is at present entirely uncertain what will become of the books & documents in question. They may be handed over to defts. if they are acquitted, & thereupon removed out of the jurisdiction, or, if retained by the Crown, it may become necessary to remove them out of Ontario in connection with criminal prosecutions in other Provinces of Canada. It is therefore proper that an order should be made under rule 350, not for discovery, but so that certified copies of these documents & papers may be available as evidence at the trial of this action.—WALKER *v.* SOLLOWAY MILLS & Co., [1931] 4 D. L. R. 296; O. R. 650.—**CAN.**

PART III. SECT. 15.

1311 ii a. ———.]—Ord. 31, r. 14, sub-r. (2), of the South Australian Rules of Court—which, like R. S. C., Ord. 31, r. 19A, sub-r. (2), of the English rules, provides that where on an application for an order for inspection privilege is claimed for any document, it shall be lawful for the ct. or a judge to inspect it for the purpose of deciding as to the validity of the claim, applies where privilege is claimed for an official document on the ground that its disclosure would be contrary to the interests of the public, even though the claim is supported by a statement to that effect by the Minister responsible. The ct. has always had in reserve the power to inquire into the nature of the document for which protection is so sought, & to require some indication of the injury which would result from its production. When a State, being a party to litigation & bound to give discovery, claims privilege for documents upon the ground above stated, the claim should be made under oath by a responsible Minister whose mind has been directed to the material question. A claim to protection in the case of documents relating to the trading, commercial or contractual activities of a State can rarely be sustained, especially in time of peace. That documents would prejudice the case of the State in the litigation, or assist the other party, is a compelling reason for their production only to be overborne by the gravest reasons of State policy or security. Applt. brought an action in the Supreme Ct. of South Australia against resp. State claiming damages for alleged negligence in the care of wheat placed in the control of the State under Wheat Harvest Acts, 1915–17. Upon an order for discovery the respondent State, by an affidavit made by a civil servant, claimed privilege in respect of 1,892 documents tied in three bundles, & stated to be State documents, comprising communications between officers administering the department concerned; there was exhibited to the affidavit a minute by the responsible Minister stating (*inter alia*) that disclosure of the documents would be contrary to the interests of the State & of the public :—*Held :* the minute was inadequate to support the claim of privilege, as it was too vague in the circumstances of the case, & was not a statement on oath showing that the Minister had himself considered each of the documents, or indicating the nature of the suggested injury to the interests of the public; & the Supreme Court should exercise its power under Ord. 31, r. 14, sub-r. (2), to inspect the documents, that course being less likely to cause delay than an order for a further and better affidavit of documents.—ROBINSON *v.* SOUTH AUSTRALIA STATE (No. 2), [1931] A. C. 704; 100 L. J. P. C. 183; 145 L. T. 408; 47 T. L. R. 454; 75 Sol. Jo. 458, P. C.—**AUS.**

1311 v. ———.]—Where a claim of privilege is made in an affidavit on production of documents, it is not necessary that it should first be made to appear that the claim of privilege is improper before the judge can direct the production for his inspection under rule 372 (2) of the documents for which privilege is claimed.—WEBSTER *v.* SOLLOWAY MILLS & Co., LTD., [1931] 1 D. L. R. 749; [1930] 2 W. W. R. 514; 24 Alta. L. R. 632.—**CAN.**

PART IV. SECT. 1.

1314 vii. ———.]—With respect to the scope of an examination for discovery, the practice is now settled in favour of a full examination "touching the matters in question in the action," & is not confined to matters respecting which discovery might have been sought under the old Chancery practice in England.—HARVIE *v.* CANADIAN PACIFIC RY. Co. & HURST ENGINEERING & CONSTRUCTION CO., LTD., [1928] 1 D. L. R. 696; [1928] 1 W. W. R. 187; 22 Sask. L. R. 361.—**CAN.**

r i. ——— ———.]—Under r. 328 a foreign pltf. has not a *primâ facie* right to be examined for discovery at his place of residence. The place & manner of his examination are matters to be determined by the ct., having regard to what is "just & convenient."—SWEENY *v.* MANUFACTURERS HOLDING CORPN., [1924] 2 D. L. R. 296; 54 O. L. R. 250.—**CAN.**

r ii. ——— ——— *Temporary absence—Rules* 270, 272, 275.]—ABRAMSON *v.* UNITED STATES FIRE INSURANCE CO., [1927] 1 D. L. R. 834; [1927] 1 W. W. R. 252; 21 Sask. L. R. 372.—**CAN.**

sl. *Oral examination—Restriction by Order* 31*a of New Brunswick Rules.*]—DUNN *v.* MCLEAN (N. B.), [1929] 1 D. L. R. 106.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.

sl. *Probate of will.*]—Probate Rules, 1916, r. 32, makes provision for discovery of documents but not for discovery by interrogatories.—IN THE WILL OF DENIS, [1928] V. L. R. 266; [1928] Argus L. R. 136.—**CAN.**

1374a. ——.]— As regards the person from whom the information is to be obtained, *primâ facie* the secretary is the best person; but I quite admit that they were entitled to have information from such persons as can best give it with respect to the matters which are the proper subject for the interrogatories, though I am not prepared at present to decide who should answer them; except that, as at present advised, I do not think the traffic manager would be the proper person for the purpose (NORTH, J.).—A.-G. *v.* NORTH METROPOLITAN TRAMWAYS CO., [1892] 3 Ch. 70; 61 L. J. Ch. 693; 67 L. T. 283; 36 Sol. Jo. 665; *affd.* (1895), 72 L. T. 340, C. A.

1422. *Add. Annotation:*—**Retd.** Wakefield *v.* Board (1928), 45 R. P. C. 261.

PART IV. SECT. 3.

f (p. 184) i. ——.]—Rule 267 (Sask). provides that a person for whose immediate benefit an action is prosecuted or defended shall be regarded as a party for the purpose of examination in discovery, but where a party to the action wishes to avail himself of the rule & the pleadings do not disclose that the action has been brought for the immediate benefit of the person sought to be examined, the registrar is not in a position to say that the party seeking the appointment is entitled to examine such person, & he should therefore not issue an appointment without an order of the ct. or a judge.—JOHNSON *v.* HAWKES, [1924] 3 D. L. R. 524; [1924] 2 W. W. R. 965.—**CAN.**

f (p. 184) ii. ——.]—In order to obtain an order for the examination for discovery of a person who is not a party to the action, appct. must show that pltf. in whose name the action was brought is not really pltf., but that the person whose examination is asked for is the real pltf. & that the action is being prosecuted for his benefit.—CANADIAN CREDIT MEN'S TRUST ASSOCN. *v.* MORTON, [1925] 1 W. W. R. 772.—**CAN.**

f (p. 184) iii. ——.]—An order is necessary for the examination for discovery under rule 267 of a person for whose immediate benefit an action is prosecuted or defended.—IMPERIAL LUMBER YARDS, LTD. *v.* MCMANUS, [1928] 2 D. L. R. 150; [1928] 1 W. W. R. 409; 22 Sask. L. R. 278.—**CAN.**

sm. *Person for whose immediate benefit action defended—Beneficiary under will—Action against trustees.*]—In an action against trustees under a will to rescind a contract for the sale of property of the estate:—*Held:* a beneficiary who was entitled to the rents & profits of such property, whether sold or not, was not "a party for whose immediate benefit the action was defended," & was not examinable for discovery.—WOOLWORTH CO. *v.* POOLEY, [1925] 2 W. W. R. 481.—**CAN.**

g (p. 185) i. —— *Co-defendant not actively defending.*]—Where pltfs. sued C. & G. to recover the balance of the purchase-price of land, & C. did not defend otherwise than by delivering demand of notice, & G. alleged that C. shared in a secret commission paid by one of the pltfs. to procure G. to enter into the agreement of purchase:—*Held:* G. was not a person "adverse in interest" to C. so as to make C. examinable for discovery by G. under r. 234.—HEGLER *v.* MACNAB, [1924] 3 D. L. R. 501; [1924] 2 W. W. R. 649.—**CAN.**

m (p. 185) i. *Counterclaim for balance of account—Assignment from assignee of insolvent stockbroker.*]—*Held:* the stockbroker was examinable, at the instance of pltf., under r. 285, O. J. Act.—CARNEGIE *v.* COX (1886), 11 P. R. 311.—**CAN.**

r (p. 186) i. *Defendant out of jurisdiction.*] — SHANDLY *v.* HERNDON (Alta.), [1929] 4 D. L. R. 1086; 1 W. W. R. 240.—**CAN.**

s (p. 186) i. *Employee.*]—In order to be examinable for discovery under r. 234 an employee of a party must have been directly connected with the transaction in issue, not merely as a witness, but because of the character of his employment.—WEISS *v.* SCHIESCEL (Alta.), [1926] 1 W. W. R. 154.—**CAN.**

s (p. 186) ii. —— *Does not include minister of Crown.*]—R. (PROVINCIAL TREASURER OF ALBERTA) *v.* SMITH, [1927] 2 D. L. R. 69; [1927] 1 W. W. R. 474; 22 Alta. L. R. 544.—**CAN.**

c (p. 186) i. ——.]—Under County Ct. Ord. 8, r. 17, an infant, a party to an action, may be examined by the opposite party for discovery before the trial.—LANCASTER *v.* VAUGHAN (1924), 33 B. C. R. 159.—**CAN.**

c (p. 186) ii. ——.]—An infant pltf., who is competent to testify at the trial, is subject to examination for discovery.—WATSON *v.* MOTOR LIVERY CO. (Alta.), [1926] 1 W. W. R. 652.—**CAN.**

l (p. 186) i. —— ——.]—Deft., in an action by a corpn., has a right to select the officer of the corpn. whom he will examine.—TRINITY COLLEGE *v.* LEVINTER, [1924] 2 D. L. R. 584; 54 O. L. R. 290.—**CAN.**

l (p. 186) ii. —— ——.]—In an action for libel against the publishers of a newspaper, wherein the only questions in issue were those of malice & damages, an order was made designating an officer of deft. co. as its officer to be examined for discovery as to matters affecting damages.—KAFT *v.* STAR PUBLISHING CO., [1925] 1 W. W. R. 774.—**CAN.**

e (p. 187) i. —— —— ——.]—*Held:* an officer of the railway co.—GORDANIER *v.* C. N. R. (1904), 15 Man. L. R. 1.—**CAN.**

m (p. 187) i. —— —— *Street foreman.*]—*Held:* not an officer examinable for discovery.—WEBSTER *v.* TORONTO CORPN. (1892), 15 P. R. 21.—**CAN.**

n (p. 187) i. —— —— *Fire warden.*]—*Held:* an officer examinable for discovery.—KING LUMBER MILLS *v.* CANADIAN PACIFIC RY. CO. (1912), 19 W. L. R. 950; 17 B. C. R. 26; 2 D. L. R. 345.—**CAN.**

s (p. 188) i. —— —— *Whether limited to officers employed when cause of action arises.*]—The pltf. having examined for discovery, under rule 266, an officer of each of the two deft. cos., applied for leave to examine, as servants, two other men who at the time of the accident in question were employed by one deft., a contracting co., & at the time of the application were employed by the other deft., a railway co.:—*Held:* the leave should be given, but, in view of the facts disclosed in the material filed, pltf. should be allowed by this order to examine only one of said servants, she to elect which one. Rule 266 did not limit the examination to officers & servants who were employed by the corpn. when the cause of action arose.—HARVIE *v.* CANADIAN PACIFIC RY. CO. & HURST ENGINEERING & CONSTRUCTION CO., LTD., [1928] 1 D. L. R. 696; [1928] 1 W. W. R. 187; 22 Sask. L. R. 361.—**CAN.**

s (p. 188) i. —— ——.]—An order may be made for the examination of a deft. corpn. by its officer outside the jurisdiction. The question is one of convenience.—CAVEN *v.* CANADIAN PACIFIC RY. CO., [1924] 2 D. L. R 1112; [1924] 2 W. W. R. 200.—**CAN.**

f (p. 188) i. ——.]—In an action against a landlord for damages for illegal distress, the bailiff not being a party to the action is not examinable for discovery.—HARVEY *v.* SYLVIA COURT, LTD., [1924] 3 W. W. R. 849.—**CAN.**

sp. *Minister of Crown.*]—*Held:* not an officer within r. 250.—R. (PROVINCIAL TREASURER OF ALBERTA) *v.* SMITH, [1927] 2 D. L. R. 69; [1927] 1 W. W. R. 474; 22 Alta. L. R. 544.—**CAN.**

PART IV. SECT. 4.

m i. ——.]—While a judge or master in chambers has jurisdiction to direct that a party shall not examine an opposite party for discovery until the examining party has himself made discovery of documents, such jurisdiction should be exercised only under special circumstances.—MILLER *v.* GREAT WEST NATURAL GAS CORPN. PAGE HERSEY IRON TUBE & LEAD CO. *v.* GREAT WEST NATURAL GAS CORPN. (1923), 20 Alta. L. R. 379; [1924] 1 W. W. R. 1100.—**CAN.**

sr. *After amendment of pleadings.*]—If a party, after all discovery ordered has been made, desires to amend his pleadings & then desires to have a further examination for discovery, this can be granted by a judge or master under r. 234.—MILLER *v.* GREAT WEST NATURAL GAS CORPN., PAGE HERSEY IRON TUBE & LEAD CO. *v.* GREAT WEST NATURAL GAS CORPN. (1923), 20 Alta. L. R. 379; [1924] 1 W. W. R. 1100.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 6.

1416 v. ——.]—A party cannot be required to state what course he proposes to adopt at the trial, or to disclose the names of his informants or witnesses.—NEMEROVSKY *v.* MCBRIDE (No. 2) (Man.), [1927] 1 D. L. R. 148; [1926] 3 W. W. R 436.—**CAN.**

1428 iv. ——.]—Pltf. having marked judgment by default in an action brought to recover damages for trespass to & flooding pltf.'s lands, defts. applied to set aside the judgment. In support of this application an affidavit was filed on behalf of defts. by their solrs., setting out their defence to the action, & in that affidavit documents were made exhibits for the purpose of substantiating the defence alleged. The interlocutory judgment was set aside on July 11, 1890, after which no further steps were taken in the action, owing to proposals for a compromise being made. On Jan. 21, 1891, pltf. applied to defts. for inspection of the documents made exhibits in the affidavit:—*Held:* pltf. was entitled to inspection.—HUNTER *v.* DUBLIN, ETC. RY. CO. (1891), 28 L. R. Ir. 489.—**IR.**

PART IV. SECT. 5, SUB-SECT. 7.

1432 iii. ——.]—If the answers to an interrogatory can disclose anything which can be fairly said to be material to enable pltf. either to maintain his own case, or to destroy that of his adversary, the interrogatory ought to be answered, but if the answers cannot be material for either of these purposes deft. ought not to be ordered to answer.—HEIDNER & CO. *v.* THE HANNA NIELSEN, [1926] 2 D. L. R. 1059; [1926] 2 W. W. R. 397; 37 B. C. R. 207.—**CAN.**

1434 iv. ——.]—Under r. 423, imported into county ct. procedure, interrogatories must be directly relevant to the matters in issue.—DUNLOP DRUG DEPOT *v.* HARTT BOOT & SHOE CO. (Man.), [1926] 2 W. W. R. 92.—**CAN.**

1442a. -.]—Deft., a shipowner, was sued by the cargo owners & charterers for non-delivery of the cargo. Deft. alleged that the non-delivery was caused by perils of the sea excepted in the charterparty & bill of lading: —*Held:* interrogatories asking pltfs. whether the cargo was insured, & if so, with whom, by whom, & to what amount, were irrelevant & inadmissible.—BOLCKOW, VAUGHAN & Co. *v.* YOUNG (1880), 42 L. T. 690; 4 Asp. M. L. C. 301.

1444. *Add. Annotation:*—**Consd.** Sutherland *v.* British Dominions Land Settlmt. Corpn., [1926] Ch. 746.

1462a. —— —— ——.]—The owners of the steamship *N.*, one of two ships found jointly to blame in a collision action, limited their liability & paid the amount into ct. Claims against the fund were in due course filed by the owners of the *N.* & the owners of the other ship, the *S.*, & also by the owners of cargo on the *S.* The same solrs. presented the claims on behalf of the owners of both ships. The owners of cargo on the *S.*, who were not parties to the collision action, then sought leave to administer four interrogatories to the owners of the *S.* Nos. 1 & 2 asked whether there had been, as between the owners of the two ships, a mutual abandonment of claim or a settlement on other terms. No. 3 inquired whether there had been any assignment of the claim of the owners, master, & crew of the *S.*; & No. 4 asked by whom the particular solrs. were instructed to present the claim of the owners of the *S.*:—*Held:* the first three interrogatories were necessary either for disposing fairly of the cause or matter or for saving costs, within R. S. C., Ord. 31, r. 2, & must be allowed. No. 4 was not pressed.—THE NEDENES (1924), 41 T. L. R. 243.

1464. *Add. Annotation:*—**Refd.** Perlak Petroleum Maatschappij *v.* Deen (1923), 93 L. J. K. B. 158.

1465. *Add. Citations:*—93 L. J. K. B. 158; 130 L. T. 234.

Add. Annotation:—**Refd.** La Radiotechnique *v.* Weinbaum, [1928] Ch. 1.

1531. *Add. Annotation:*—**Consd.** Isaacs *v.* Cook, [1925] 2 K. B. 391.

1532. *Add. Annotation:*—**Refd.** Aga Khan *v.* Times Publishing Co., [1924] 1 K. B. 675.

1549. *Add. Annotation:* — **Refd.** Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461.

1555. *Add. Annotation:*—**Refd.** Aga Khan *v.* Times Publishing Co., [1924] 1 K. B. 675.

1556. *Add. Annotation:*—*As to* (1) **Consd.** Hearts of Oak Assurance Co. *v.* A.-G., [1931] 2 Ch. 370.

1571. *Add. Annotation:*—**Refd.** Aga Khan *v.* Times Publishing Co., [1924] 1 K. B. 675.

1625a. —— ——.]—In an action for infringement of a patent, defts. alleged prior user by V., & prior publication by J.:—*Held:* (1) defts. alleging that the prior user was by machine, they ought to state whether any such machine existed, &, if so, whether any such machine was in their possession, custody, or power, & the present address of V.; (2) defts. alleging that the prior publication was by document, they ought so to state & sufficiently identify the document & the present address of J.—GENERAL ELECTRIC Co. (1900), LTD. *v.* SAFETY LIFT & ELEVATOR Co. (1903), 21 R. P. C. 109.

1626a. Prior publication.]—GENERAL ELECTRIC Co. (1900), LTD. *v.* SAFETY LIFT & ELEVATOR Co., No. 1625a, *ante*.

1631a. Chemical composition of infringing substance.]—This is a summons by pltfs. in the action asking for liberty to interrogate defts. The few interrogatories which it is desired to make have been amended in certain respects by the master. Pltfs. are not satisfied entirely with these amendments, & in order to make the matter clearer pltfs. themselves have before now suggested an amendment to the proposed interrogatory No. 1 in lieu of the amendment proposed by the master . . . of course, it is perfectly plain that interrogatories may be delivered in a case of this kind as to the chemical composition & constitution of the alleged infringing substances (ASTBURY, J.).—SHARPE & DOHME,

PART IV. SECT. 5, SUB-SECT. 9.

1457 i. *How far admissible.*]—In a suit to set aside an agreement on the ground of fraudulent misrepresentations:—*Held:* deft. was entitled to ask for the substance of the conversations.—WEST *v.* CONWAY (1923), 23 S. R. N. S. W. 344; 40 N. S. W. W. N. 50.—**AUS.**

1457 ii. ——.]—WEDIN *v.* ROBERTSON (1907), 7 W. L. R. 72.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 12.

1476 i. —— *Material in part.*]—On an application to set aside interrogatories, on the ground that they were prolix, oppressive, & unnecessary:—*Held:* they should be set aside as a whole, even though some of them, taken by themselves, might be unobjectionable.—LYTE *v.* CURREY, [1927] V. L. R. 472; 49 A. L. T. 47; [1927] Argus L. R. 353.—**AUS.**

PART IV. SECT. 5, SUB-SECT. 15.—E (a).

1535 i. *Persons to whom libel published.*]—In an action against a mercantile agency for libel pltf. in his statement of claim & particulars gave the names of certain cos. to whom the alleged defamatory reports were published & added "& other individuals, organisations & cos. at present unknown to pltf." Deft.'s affidavit on production of documents, after referring to a certain document, denied that there was in its possession or power any other document relating to the matter in question. The deponent was examined on the affidavit &, he, in answer to certain questions, stated that he did not know & he refused to answer other questions. Pltf. obtained an order from the master that the deponent submit to another examination & answer the questions set out in the order. Deft. appealed, contending that pltf. had no right to the disclosure of any matter relating to reports to persons other than those named by pltf.:—*Held:* since the admitted document containing the libel bore intrinsic evidence of having emanated from deft. & there was also evidence that similar reports had been received by other persons, it could not be said that the claim was "a sham or bogus claim" or that the application was mere "fishing," &, therefore, the master was right.—CHERTKOW *v.* RETAIL CREDIT Co., [1932] 1 W. W. R. 905; 3 D. L. R. 390.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 15.—F.

1590 i. *Document in hands of third party.*]—On examination for discovery the party being examined can be asked to tell what are the contents of a document not under his control & not produced to him.—HARRISON *v.* KING, [1925] 1 D. L. R. 1072; [1925] 1 W. W. R. 649; 21 Alta. L. R. 373.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 15.—G.

1596 ii. ——.]—HILLMAN *v.* IMPERIAL BANK OF CANADA, [1926] 3 D. L. R. 192; [1926] 2 W. W. R. 276; 20 Sask. L. R. 507.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 15.—H.

1601 i. *Circumstances in which injury occurred.*]—In an action for negligence arising out of a collision deft. was interrogated about his speed & the position of the colliding vehicles. In his answers he stated that he was unable to answer these interrogatories except as to his opinion upon the matters involved, & did not answer what the speed & position were:—*Held:* these answers were insufficient.—MAY *v.* BOWERING, [1928] S. A. S. R. 226.—**AUS.**

PART IV. SECT. 5, SUB-SECT. 15.—I.

1614 i. *Partnership accounts.*]—MACDONALD *v.* MCARTHUR (1887), 4 Man. L. R. 56.—**CAN.**

INCORPORATED *v.* BOOTS PURE DRUG CO., LTD. (1927), 44 R. P. C. 69.

1631b. General question as to process used in manufacturing infringing article.]—*Held:* inadmissible.—OSRAM LAMP WORKS *v.* POPE'S ELECTRIC LAMP CO., LTD. (1914), 31 R. P. C. 313, C. A.

1677a. —— Ownership—Alleged fraudulent representations by seller.]—In an action against an auctioneer for the price of a horse sold by him for pltf., deft., who pleaded fraud, was not allowed to ask whether the horse was pltf.'s & if so how did it become his.—SIVIER *v.* HARRIS (1876), Bitt. Prac. Cas. 98; 2 Char. Cham. Cas. 54.

1690a. As to ingredients of infringing articles.]—COCA COLA CO. *v.* DUCKWORTH & CO. (1928), 45 R. P. C. 225.

1705a. Shares—Refusal of company to register transfer—Grounds for refusal.]—Art. 27 of a co.'s arts. of assocn. was as follows: "The directors may without assigning any reason decline to register any transfer of shares not fully paid up made to any person not approved by them or made by any member jointly or alone indebted or under any liability to the co." Pltf. was the holder of 10,000 partly paid cumulative preference shares of £1 each in the co., & in Dec. 1925, executed a transfer of 8,000 of these shares to a transferee. Registration of the transfer was refused, & pltf. brought an action claiming a declaration that deft. co. was not entitled to refuse registration of the transfer & rectification of the co.'s register accordingly. Earlier in 1925 the co. had issued debentures secured by a debenture trust deed, in which the co. covenanted with the trustees that it would not in regard to 100,000 preference shares register until the shares were fully paid any transfer of any of them to any proposed transferee not approved by the trustees, & would not, except with the previous written consent of the trustees, release any of the holders of these shares from any money payable or which might become payable in respect of such shares. Pltf. alleged by his statement of claim that deft. co. had wrongfully refused to register the transfer, that the directors did not exercise any proper discretion under the arts., & that they had abdicated their discretion by entering into the above covenant with the trustees. Defts. by their defence claimed to have exercised the discretion under the art. *bonâ fide*. Pltf. sought to interrogate deft. co. by asking: (1) Whether the co. said that the directors had declined registration in exercise of the power to decline to register any transfer made to any person not approved by them or in exercise of the power to decline to register any transfer by a member jointly or alone indebted to the co.; (2) whether they said that the transfer was to a person of whom the directors did not approve; (3) whether they said pltf. was in fact a person jointly or alone indebted to the co.; (4) whether the debenture trust deed was referred to by any one at any meeting at which the question of registering the transfer was discussed:—*Held:* all the interrogatories were proper to be allowed. Deft. co. was not entitled to refuse to state which of the grounds mentioned in the art. the directors had acted under, although it might refuse to say what reasons influenced them in exercising their discretion upon that ground.—SUTHERLAND (DUKE) *v.* BRITISH DOMINIONS LAND SETTLEMENT CORPN., LTD., [1926] Ch. 746; 95 L. J. Ch. 542: 135 L. T. 732.

1710. *Add. Citations:*—93 L. J. K. B. 158; 130 L. T. 234.

Add. Annotation:—**Refd.** La Radiotechnique *v.* Weinbaum (1927), 137 L. T. 638.

1740. *Add. Annotation:*—**Consd.** Bank of Russian Trade, Ltd. *v.* British Screen Productions, Ltd., [1930] 2 K. B. 90.

1757. *Add. Annotation:*—**Consd.** Bank of Russian Trade, Ltd. *v.* British Screen Productions, Ltd., [1930] 2 K. B. 90.

PART IV. SECT. 5, SUB-SECT. 15.—R.

1700 i. *Agency—Whether representations made by agent—Name of agent—Disallowed.*]—WEST *v.* CONWAY (1923), 23 S. R. N. S. W. 344; 40 N. S. W. W. N. 50.—**AUS.**

1709 i. *Wrongful dismissal—Acts justifying dismissal.*]—Pltf., a doctor, sued defts. for wrongful dismissal. He had been dismissed on the ground that he had recommended, as a suitable person to be a nurse in defts.' hospital, a woman with whom he had lived in adultery. Upon an application to compel pltf. to answer questions as to his relations with the woman:—*Held:* he was bound to answer such as referred to his alleged adultery.—INES *v.* CALGARY GENERAL HOSPITAL (1899), 4 Terr. L. R. 58.—**CAN.**

sa. *Action for alienation of affections.*]—On examination for discovery in an action for alienation of affections, the wife having been deft.'s housekeeper, he may be required to answer the question whether he ever heard from her of any objection by her husband to her working at his house.—HARRISON *v.* KING, [1925] 1 D. L. R. 1072; [1925] 1 W. W. R. 649; 21 Alta. L. R. 373.—**CAN.**

PART IV. SECT. 6, SUB-SECT. 1.

t i. —— *Whether interfered with by Court of Appeal.*]—The discretion of the local ct. judge or a special magistrate in allowing some interrogatories & not allowing others should not be reviewed unless the need for the interference of the Supreme Ct. is clearly made out, & only on very strong grounds.—BLUSTON *v.* DALLY, [1930] S. A. S. R. 89.—**AUS.**

sk. *Under Marginal Rules, rr.* 344 (2), 348.]—ESQUIMALT & NANAIMO RY. CO. *v.* GRANBY CONSOLIDATED MINING, SMELTING & POWER CO. (B. C.), [1926] 3 W. W. R. 240.—**CAN.**

PART IV. SECT. 8, SUB-SECT. 1.

1732 xiv. ——.] — The person examined must make full disclosure of information which he has secured from others that has a bearing on the issue; & he must give his belief, if any, with reference to the matters in issue; this belief may be founded on information which he has secured from others, but he must state what it is; & he may also give his reasons therefor.—KIRKPATRICK *v.* CANADIAN PACIFIC RY. CO. (Sask.), [1926] 3 D. L. R. 542; [1926] 2 W. W. R. 861.—**CAN.**

1748 ix. —— ——.]—Where a party is interrogated as to matters in issue done by his agents or servants, or done or omitted in their presence in the course of their employment, he is bound to obtain the information they have, & does not sufficiently answer by saying that he does not know & has no information on the subject.—DUNLOP DRUG DEPOT *v.* HARTT BOOT & SHOE CO. (Man.), [1926] 2 W. W. R. 92.—**CAN.**

1748 x. —— ——.]—A witness on his examination for discovery as an officer of a co. must not only answer as to his individual knowledge, but must also inquire & get such information as he can from the other officers & servants of the co. who have personal knowledge of the facts.—GOODBUN *v.* MITCHELL, [1928] 3 D. L. R. 709; [1928] 2 W. W. R. 594; 37 Man. L. R. 451.—**CAN.**

1748 xi. —— ——.]—A party under examination for discovery is bound to impart any information touching the matters in question which at the time discovery is sought he has either of his own knowledge or has actually received from third persons.—CULVER & CULVER *v.* LLOYDMINSTER TOWN, [1928] 2 D. L. R. 93; [1928] 1 W. W. R. 406; 22 Sask. L. R. 314.—**CAN.**

1748 xii. —— ——.]—ROGERS *v.* BELEY, [1928] 3 W. W. R. 584.—**CAN.**

PART IV. SECT. 8, SUB-SECT. 3.

1803 i. *Officers acting as solicitor—Claim of professional privilege.*]—*Held:* the fact that the chancellor of pltf. corpn. was a member of the firm acting for the corpn. was not a reason for refusing to allow him to be examined: if he had as solr. information which pltf. corpn. had the privilege of preventing him from disclosing, the privilege could be exercised when a question was put as to something which he had learned in his professional capacity.—TRINITY COLLEGE *v.* LEVINTER, [1924] 2 D. L. R. 584; 54 O. L. R. 290.—**CAN.**

1806a. Answer by one officer—No inquiry as to information available to other officers.]—In an action by indorsees of a number of bills of exchange alleged to have been drawn by a German co., accepted by defts., an English co., indorsed to the pltfs. & dishonoured, defts. among other pleas denied the drawing & indorsement of the bills. Pltfs. administered to defts. the following, among other, interrogatories: (1) "Were not all or some or one & which of the said bills drawn by" the German co. "or their agent or agents duly authorised in that behalf?" (2) "Were not all or some or one & which of the said bills indorsed by" the German co. "or their agent or agents duly authorised in that behalf to the order of" certain named indorsees? (3) "Was not" the German co. "at all material times a corpn. duly incorporated under the laws of the German Republic?" Appended to the interrogatories was a direction that defts. should answer them by their secretary to the best of his knowledge, information & belief. To each of them the secretary answered simply: "I say that I do not know":—*Held:* the answer was insufficient, inasmuch as other officers of defts. might in the course of their duties have acquired the requisite information; if they had, this would have been the information of the co., & it did not appear from the answer whether the secretary had made any inquiries to ascertain whether such information was available.—BANK OF RUSSIAN TRADE, LTD. *v.* BRITISH SCREEN PRODUCTIONS, LTD., [1930] 2 K. B. 90; 99 L. J. K. B. 562; 143 L. T. 305; 74 Sol. Jo. 337, C. A.

1817. *Add. Annotation:*—**Refd.** Cavendish *v.* Cavendish (1925), 42 T. L. R. 134.

1855. *Add. Annotation:*—**Refd.** Tournier *v.* National Provincial & Union Bank of England, [1924] 1 K. B. 461; Minter *v.* Priest, [1929] 1 K. B. 655.

1856a. Communications between solicitors of opposite parties.]—*See* EVIDENCE, Vol. XXII., p. 415, No. 4252.

1895. *Add. Annotation:*—**Refd.** British Thomson-Houston Co. *v.* British Insulated & Helsby Cables, [1924] 2 Ch. 160.

1806 i. *Officer's information acquired in course of employment—Whether answers amount to admissions by company.*]—*Qu.:* whether, when an officer of a co. has been examined for discovery under rule 266 (3), answers of his which are qualified as being based on information acquired by him from the co.'s servants & other officers can be read against the co. as an admission.—ANWEILER *v.* G. T. P. R. Co., [1928] 3 D. L. R. 626; [1928] 2 W. W. R. 514.—**CAN.**

q i. —— *Equivalent to examination of corporation.*]—Under the present Alberta rules as to examination for discovery, there is no room for making any distinction between individual parties & corpn. parties, & the examination of a corpn.'s officer, selected in accordance with r. 250, is the examination of the corpn.—CAVEN *v.* CANADIAN PACIFIC RY. CO., [1924] 2 D. L. R. 1112; [1924] 2 W. W. R. 200.—**CAN.**

PART IV. SECT. 8, SUB-SECT. 4.—B.

1813 xii. ——.]—The provisions of Canada Evidence Act, R. S. C., 1906 (c. 145), & Alberta Evidence Act, R. S. A., 1922 (c. 87), that a witness shall not be excused from answering a question on the ground that the answer may tend to criminate him, do not apply to an examination for discovery, but his common law right to refuse to answer a question tending to criminate does apply; & on discovery the person examined may on such ground refuse to answer the question whether he has committed adultery.—HARRISON *v.* KING (No. 2), [1925] 3 D. L. R. 395; [1925] 2 W. W. R. 407; 21 Alta. L. R. 381; *revsg.*, [1925] 2 D. L. R. 1111; [1925] 2 W. W. R. 276.—**CAN.**

1813 xiii. ——.]—Under the English practice relating to interrogatories, deft. is excused from answering questions that may tend to criminate him. Sect. 5 of British Columbia Evidence Act provides that no witness shall be excused from answering any question upon the ground that the answer to the question may tend to criminate him. On an application to compel deft. to answer interrogatories: —*Held:* a party being examined on interrogatories is not treated as a witness & is in the same position as a party being examined on interrogatories in England & is protected.—BLUMBERGER *v.* SOLLOWAY MILLS & CO., LTD., [1931] 2 W. W. R. 56; [1931] 2 D. L. R. 201; 44 B. C. R. 41.—**CAN.**

PART IV. SECT. 8, SUB-SECT. 4.—C.

1847 i. *Communication with legal adviser or agents—Contract of employment or agency not established.*]—*Re* U.S.A. *v.* MAMMOTH OIL CO., [1925] 2 D. L. R. 966; 56 O. L. R. 635; *affg.*, [1925] 2 D. L. R. 66; 56 O. L. R. 307. —**CAN.**

t i. ——.]—While members of the Executive Council of the Irish Free State, sued as corpn. sole, are liable to the ordinary orders for discovery by way of interrogatories & discovery of documents, & to orders for better discovery on filing inadequate answers to interrogatories, a claim to privilege made by them on grounds of public interest is conclusive, & must be recognised as paramount, on the same principle as that underlying the recognition of a similar claim by a British Minister under the royal prerogative.—LEEN *v.* PRESIDENT OF THE EXECUTIVE COUNCIL, ETC., [1926] I. R. 456.—**IR.**

PART IV. SECT. 8, SUB-SECT. 4.—D.

st. *Disclosure of name of person on whose behalf privilege claimed.*]—Privilege may be claimed without disclosing to the ct. the name of the client or person on whose behalf it is claimed.—*Re* U.S.A. *v.* MAMMOTH OIL CO., [1925] 2 D. L. R. 966; 56 O. L. R. 635; *affg.*, [1925] 2 D. L. R. 66; 56 O. L. R. 307.—**CAN.**

PART IV. SECT. 9.

1877 iv. ——.]—Where the only question which appct. for an order for a re-examination for discovery wished to put was one which the party to be examined was entitled to refuse to answer, & his counsel stated that he would instruct him to refuse to answer it, the order was refused.—HARRISON *v.* KING (No. 2), [1925] 3 D. L. R. 395; [1925] 2 W. W. R. 407; 21 Alta. L. R. 381.—**CAN.**

1877 v. ——.]—SHANNON *v.* KING (No. 2), [1932] 1 W. W. R. 156; 1 D. L. R. 700.—**CAN.**

PART IV. SECT. 10.

m i. —— *Effect of consent to use inadmissible evidence.*]—The parties to an action cannot by consent make something evidence which is not evidence; although in a proper case they may be estopped from taking the objection. Therefore they cannot by consent provide that the examination for discovery of employees may be used at the trial as evidence against their respective employers, where there is no rule making their examinations available as evidence.—DENCH *v.* ALBERTAN PUBLISHING CO., [1931] 2 W. W. R. 116; 3 D. L. R. 260; 25 Alta. L. R. 326.—**CAN.**

p i. ——.]—A trial judge should not use as evidence a portion of the examination for discovery not put in at the trial.—GWIN *v.* STARRS (Sask.), [1929] 3 W. W. R. 704; [1930] 2 D. L. R. 54; 24 S. L. R. 221.—**CAN.**

p ii. ——.]—Where on the trial of an action or issue pltf. had put in certain parts of the examination of the opposite party, it is the duty of the judge, either *ex mero motu* or at the request of counsel to "look at the whole of the examination," to see if he could form the "opinion that any other part of it is so connected with the part to be used that the last-mentioned part ought not to be used without such other part," & in so doing the object sought to be accomplished by putting in the original part must be taken into consideration as one of the elements in the forming of that opinion.—CANARY *v.* VESTED ESTATES, LTD., [1931] 1 D. L. R. 997; 43 B. C. R. 365.—**CAN.**

PART V. SECT. 1, SUB-SECT. 1.

1898 i. *Contempt of court—Answer to interrogatories.*] — HARWOOD & COOPER *v.* WILKINSON, [1929] 4 D. L. R. 734; 64 O. L. R. 392: *revsd.*, [1930] 2 D. L. R. 199; 64 O. L. R. 658.—**CAN.**

PART V. SECT. 3.

a i. —— *Service of copy of appointment on examinee's solicitor.*]—STAFFORD *v.* MACKENZIE (Alta.), [1929] 1 D. L. R. 605; 1 W. W. R. 271.—**CAN.**

sw. *Conditions precedent to order—Decision that questions properly put & refusal to answer questions on further examination.*]—HANSON *v.* GLEANER, LTD., [1925] 3 D. L. R. 189.—**CAN.**

sz. *Effect of concluding examination without adjournment.*]—SOBKOW *v.* ANDRUCHOW, [1930] 2 W. W. R. 272, 368. —**CAN.**

DISTRESS.

Part II.—Distress for Rent.

43. For the paragraph " Defts. were partners in business . . . for his quiet tenantship " substitute :—" Defts. were partners in business & one of them, in the name of the firm, signed a warrant of distress authorising a broker to levy off the goods of pltf. for rent due 'to me.' Pltf. held under a lease from the Board of Ordnance & defts. were sureties for pltf. :—*Held :* it was an illegal distress because the rent was not due to the partner authorising the distress but to the Board of Ordnance."

Add. Annotations : — **Refd.** The Koursk, [1924] P. 140 ; Performing Right Soc. *v.* Mitchell & Booker, [1924] 1 K. B. 762.

63. *Add. Annotations :—As to* (1) **Distd.** Borman *v.* Griffith, [1930] 1 Ch. 493. **Refd.** Carrington Manufacturing Co. *v.* Saldin (1925), 133 L. T. 432 ; Ariff *v.* Rai Jadunath Majumdar Bahadur (1931), 47 T. L. R. 238.

128. *Add. Annotation :*—**Refd.** Prout *v.* Hunter, [1924] 2 K. B. 736.

175. *Add. Annotation :—As to* (1) **Refd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

229. *Add. Annotation :*—**Refd.** Smith *v.* Tsakyris (1929), 167 L. T. Jo. 92.

234. *Add. Citation :—sub nom.* HUDSON *v.* SNELLGAR, 2 Roll. Rep. 212.

319. *Add. Annotation :—Generally,* **Refd.** Spyer *v.* Phillipson, [1931] 2 Ch. 183.

369. For existing citations read " (1836), 1 M. & W. 633 ; Tyr. & Gr. 1086 ; 2 Gale, 158 ; 6 L. J. Ex. 34 ; 150 E. R. 588."

PART II. SECT. 3, SUB-SECT. 2.—A.

44 viii. —— ——.]—When a new lease is substituted for an existing one, the right of distress for rent due under the prior lease is at an end.—CRYSTALL *v.* OLSEN (Alta.), [1927] 3 D. L. R. 85 ; [1927] 2 W. W. R. 35.—**CAN.**

d i. —— —— *Alleged lessors unable to enter into lease—Unincorporated body.*]—CANADA MORNING NEWS, LTD. *v.* THOMPSON, [1930] S. C. R. 338 ; 3 D. L. R. 833 ; *revsg.*, [1929] 2 D. L. R. 144 ; 1 W. W. R. 548 ; 41 B. C. R. 24 ; *revsg.*, [1928] 4 D. L. R. 628 ; [1928] 3 W. W. R. 35.—**CAN.**

PART II. SECT. 3, SUB-SECT. 5.

m i. —— *Based on price of gasoline.*]—Pltf. leased an automobile service station from deft. oil co. at a rental of $200 per month payable in advance. A few days later it was agreed that the rent should be paid by the addition of a charge of two & a half cents per gallon, payable on delivery, to the price of the gasoline to be bought by the lessee from deft. The lease provided that it should be at the pleasure of the lessor & determinable forthwith on the delivery of a written notice to the lessee. The original lease provided that the first payment of rent should be on July 1, but pltf. went into occupation on June 16 & agreed to pay one-half of the previous tenant's rent for that month. On Aug. 1, seizure was made under a warrant of distress stated to be for one & a part month's rent due on July 1, & pltf. being unable to pay the amount demanded, agreed to deft.'s demand that he take a certain amount for his goods from a suggested new tenant who was then present. Out of this amount the alleged rent was paid & pltf. drove away. The written notice provided for in the lease had not been given to pltf. In an action for illegal distress & eviction :—*Held :* even if the sum mentioned in the warrant was due for rent on Aug. 1, the distress was wrongful. The distress was expressed to be for rent due on July 1, but under the arrangement varying the lease no fixed rent fell due & payable on any day & no sum was in fact due & payable on July 1, & since the rent for the part of June had been all paid at the time of the seizure it was wrongful to include it in the distress.—DENYER *v.* BRITISH AMERICAN OIL CO. (Man.), [1929] 4 D. L. R. 1063 ; 2 W. W. R. 677.—**CAN.**

PART II. SECT. 4, SUB-SECT. 7.—B. (a) i.

160 vii. ——.]—A mtgee. of land who under an attornment clause distrains for arrears of interest or principal due under his mtge. can make a valid distress only on the goods & chattels of the mtgor. or his assigns, & the word " assigns " does not include a purchaser from the mtgor. under an executory contract of sale of land, even though such purchaser be actually in possession.—KLENMAN *v.* ISMAN, [1924] 2 D. L. R. 146 ; 1 W. W. R. 883 ; 18 Sask. L. R. 171.—**CAN.**

160 viii. —— *Distress Act, R. S. A.*, 1922 (c. 97), *s.* 6—*Effect.*]—BANK OF MONTREAL *v.* LYON (Alta.), [1927] 4 D. L. R. 1012 ; [1927] 3 W. W. R. 520.—**CAN.**

160 ix. ——.]—Default having been made in irrigation rates levied against land in the L. N. Irrigation District, proceedings were taken which resulted in the land becoming vested in the board of trustees for the district. The land was subject to a mtge., containing an attornment clause, the mtge. having been given prior to the formation of the district. The board rented the land on the crop-payment plan, & its tenant, having disposed of his share of the crop, the mtgee. caused the share reserved to the board to be seized for arrears of interest under its mtge. :—*Held :* the mtgee. was not entitled to distrain for interest on the goods of the board, &, therefore, the board was entitled to said share of the crop.—INCORPORATED SYNOD OF HURON DIOCESE *v.* LETHBRIDGE NORTHERN IRRIGATION DISTRICT TRUSTEES, [1930] 2 W. W. R. 503 ; 4 D. L. R. 1035.—**CAN.**

sa. *Effect of judgment on covenant for payment.*]—The right to distrain for rent due under an attornment clause in a mtge. is not merged in a judgment on the covenant for payment in the mtge. even though the judgment is for the whole of the principal & all the interest then due.—COMMERCIAL LIFE ASSURANCE CO. OF CANADA *v.* CADENHEAD, [1931] 3 W. W. R. 653.—**CAN.**

PART II. SECT. 5, SUB-SECT. 1.

q (p. 303) i. —— *Goods in which tenant has beneficial interest.*]—Under Distress for Rent Act, 1888, a landlord, who has distrained for rent on goods, the property of another, in which his tenant has a beneficial interest under agreement to purchase at the time of distress, is entitled to exercise his remedies against such goods, notwithstanding that at the time of making the declaration referred to in sect. 10 such other person may have rightfully determined the tenant's beneficial interest.—STALLEY *v.* HAIGH, [1928 S. A. S. R. 239.—**AUS.**

sb. *Goods sold after seizure for taxes & left in charge of city chamberlain.*]—*Held :* liable to seizure for rent due to the original landlord.—LANGTON *v.* BACON (1859), 17 U. C. R. 559.—**CAN.**

PART II. SECT. 5, SUB-SECT. 3.

261 ii. ——.]—The remedy of distress is not available against the Crown, & the interest of the Crown cannot be affected by any distress made by the landlord.—A.-G. FOR CANADA *v.* GORDON, [1925] 1 D. L. R. 654 ; 56 O. L. R. 48.—**CAN.**

PART II. SECT. 5, SUB-SECT. 4.—C.

285 ii. —— ——.]—L. was the tenant of deft., & carried on a public trade of salesman of motor supplies, & he also acted as agent of pltf. co., receiving goods manufactured by pltf. for sale or return, subject to certain conditions. These goods were delivered under a memorandum, which on its face was a delivery note, to L. as agent. A consignment account was kept showing the goods sold & in stock. This was signed by L. as consignment agent, & given from time to time to pltf. L. fell into arrears with his rent, & secretly left the premises. Deft. distrained on L.'s property on the premises, including goods which had been delivered by pltf. to L. on sale or return :—*Held :* under the memorandum the goods delivered to L. by pltf., & unsold, remained the property of pltf. ; at the time of distress L. was tenant of deft. & had custody of pltf.'s goods upon the premises ; the goods were exempt from liability to distress, & deft. was ordered to deliver them to pltf.—PERDRIAU RUBBER CO., LTD. *v.* SADEK, [1928] S. R. Q. 144.—**AUS.**

PART II. SECT. 5, SUB-SECT. 4.—D.

sd. *Market—Goods in.*]—Where pltf. was not using premises as a market, but simply as a shop in which to offer, in the ordinary way, goods purchased to be sold for a profit :—*Held :* a claim for exemption, on the ground that the goods seized were in a public market for sale, failed.—BENT *v.* MCDOUGALL (1881), 2 R. & G. 468 ; 2 C. L. T. 202.—**CAN.**

PART II. SECT. 5, SUB-SECT. 10.

sf. *Not grain removed & sold under execution before claim for rent made.*]—DOUGLAS *v.* CARRINGTON (1914), 29 W. L. R. 90 ; 7 W. W. R. 59 ; 7 Sask. L. R. 80 ; 20 D. L. R. 919.—**CAN.**

400. For "No. 369, *ante*," read "No. 251, *ante*."

421a. —— —— **Agreement with one of two joint tenants.**]—Premises were demised to two persons jointly: one of them hired from applts. a piano under a hire-purchase agreement:—*Held:* the piano was liable to distress for arrears of rent of the premises under Law of Distress Amendment Act, 1908 (c. 53), s. 4 (1), although the other of the joint tenants had not been a party to the hire-purchase agreement.—GAMAGE (A. W.), LTD. *v.* PAYNE (1925), 134 L. T. 222; 90 J. P. 14; 42 T. L. R. 138, D. C.

423. *Add. Annotation:*—**Distd.** Smart Bros., Ltd. *v.* Holt, [1929] 2 K. B. 303.

424. *Add. Annotation:*—**Distd.** Smart Bros., Ltd. *v.* Holt, [1929] 2 K. B. 303.

424a. —— ——.]—The tenant of a dwelling-house hired goods from pltfs. under a hire-purchase agreement, by which he agreed to pay punctually the instalments & also the rent of the premises on which the goods might be. By a clause of the agreement, in case of any breach, the owners might, by written notice, forthwith determine the agreement, & thereupon neither party thereafter should have any rights under it. The instalments being in arrear, pltf. served on the hirer a notice terminating the agreement, & claiming a return of the goods. A distress was subsequently levied on behalf of the landlord, & the goods the subject of the hire-purchase agreement were seized. In an action by the owners for illegal distress, the county ct. judge gave judgment for pltfs.:—*Held:* as soon as the notice terminating the agreement was given the right of the hirer to possession of the goods was at an end, & neither party to the agreement had any rights under it. When the distress was levied there was therefore no hire-purchase agreement in force relating to the goods, & they were not at that time "comprised in any hire-purchase agreement" within Law of Distress Amendment Act, 1908 (c. 53), s. 4. & the distress was illegal.—SMART BROS., LTD. *v.* HOLT, [1929] 2 K. B. 303; 98 L. J. K. B. 532; 141 L. T. 268; 45 T. L. R. 504; 35 Com. Cas. 53.

460. *Add. Annotation:*—**Refd.** Oakley *v.* Lyster, [1931] 1 K. B. 148.

475. *Add. Annotation:*—**Refd.** Barratt *v.* Richardson & Cresswell, [1930] 1 K. B. 686.

517. *Add. Annotation:*—**Refd.** Barratt *v.* Richardson & Cresswell, [1930] 1 K. B. 686.

523. *Add. Annotation:* — **Consd.** Drughorn *v.* Moore, [1924] A. C. 53.

524. *Add. Annotation:*—**Refd.** Tredegar Viscount *v.* Harwood, [1929] A. C. 72.

581. *Add. Annotation:*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

583. *Add. Annotation:*—*As to* (1) **Refd.** Allen *v.* Royal Bank of Canada (1925), 41 T. L. R. 625.

623. *Add. Annotation:*—**Refd.** Barratt *v.* Richardson & Cresswell, [1930] 1 K. B. 686.

654a. —— —— —— **Distress by landlord in person.**]—There is nothing in the above Act to prevent an uncertificated landlord from distraining in person.—JACKSON *v.* BENNAN (1893), 37 Sol. Jo. 282.

PART II. SECT. 5, SUB-SECT. 11.

h i. —— ——.]—BLOEMFONTEIN MUNICIPALITY *v.* JACKSONS, LTD., [1929] App. D. 266.—S. AF.

q i. —— *Goods assigned.*]—FARR *v.* ANNABLE, [1926] 2 D. L. R. 127; 58 O. L. R. 387.—CAN.

PART II. SECT. 5, SUB-SECT. 12.—A.

405 i. *General rule — Goods not privileged.*]—When a lessee sublets premises to a sub-lessee, the head landlord may distrain upon the goods of the sub-lessee for all the rent owing by the lessee.—*Re* CHAMBERLAIN & PEERLESS BUMPER & ACCESSORIES, LTD., [1924] 4 D. L. R. 298.—CAN.

PART II. SECT. 5, SUB-SECT. 13.

sj. *Conditional Sales Act—Interest of seller under conditional sale.*]—A landlord is not entitled to distrain on the interest of a seller in goods bought by the tenant under a conditional sale agreement, even though the above Act has not been complied with.—BELL & SCHIESEL *v.* JACOBSON & WEITZER, [1925] 2 D. L. R. 393; [1925] 1 W. W. R. 913.—CAN.

PART II. SECT. 6, SUB-SECT. 1.

440 iv. ——.]—ALBERT *v.* STOREY, [1925] 4 D. L. R. 374.—CAN.

440 v. ——.]—The attornment clause in question herein, which was contained in an agreement for the sale of land, held not to be affected by the acceleration clause in said agreement; &, therefore, since there was no rent due under the attornment clause at the time the distress, with respect to which this action was brought, was made, the distress was bad & the purchaser entitled to damages therefor.—BURRELL *v.* WATT & HARDINGE, [1928] 3. D. L. R. 505; [1928] 2 W. W. R. 482.—CAN.

PART II. SECT. 6, SUB-SECT. 4.

sk. *Covenant to summer-fallow—Forfeiture clause on execution.*]—A lease of farm lands on the crop-payment plan also provided by a clause following the *habendum* that the lessee should pay yearly a certain sum per acre for each acre of the portion agreed to be summer-fallowed which should not be summer-fallowed, & a further sum per acre at the expiration of the term for every acre not left ploughed as agreed. A forfeiture clause provided that in the event (*inter alia*) of the goods of the lessee being taken in execution or a writ of execution being issued against them, the then current year's rent should immediately become due & payable & the term should immediately become forfeited & void. On a motion, in an action for wrongful distress, to continue an injunction until trial:—*Held:* assuming but without deciding that the clause following the *habendum* was part thereof, the forfeiture clause could not be applied so as to render immediately payable the amount agreed on as payable for failure to summer-fallow; such amount did not fall due until the day after the latest day the lessee had to do the work, &, since that period had not expired when the lessor distrained with respect to said amount, the distress was *semble* illegal.—GARROW *v.* BAIRD, [1931] 1 W. W. R. 129; 39 Man. L. R. 367.—CAN.

PART II. SECT. 6, SUB-SECT. 5.

456 iii. —— ——.]—A distress for rent, when made at night, is invalid even as against a third party, when the tenant has not waived the objection.—ROACH *v.* LAPPAS, [1926] 1 D. L. R. 391; [1926] 1 W. W. R. 74; 20 Sask. L. R. 246.—CAN.

461 i. *Waiver of irregularity by tenant—Whether distress valid as against third party.*]—ROACH *v.* LAPPAS, [1926] 1 D. L. R. 391; [1926] 1 W. W. R. 74; 20 Sask. L. R. 246.—CAN.

PART II. SECT. 6, SUB-SECT 6.—B.

482 ii. ——.]—8 Anne, s. 7, when continues the right to distrain for six months after the expiration of the term if the landlord's title & the possession of the tenant continue, is inapplicable where the term has been put an end to by a forfeiture. The question whether a tenant's term has been ended does not depend upon the fact of possession but upon the continued existence of his right to possession. The taking by a vendor of an order for specific performance of the agreement for sale & for a writ of possession is inconsistent with the continuance of the relationship of landlord & tenant created by the agreement between him & the purchaser; & a distress made after the issue of the writ of possession is wrongfully made. — SWENSON *v.* MCILMOYLE, [1930] 2 W. W. R. 382; 3 D. L. R. 959.—CAN.

PART II. SECT. 7.

496 i. *General rule—Land out of which rent issues.*]—The distress was void *ab initio* on the ground that it was not made on the premises in respect to which the rent was claimed.—BURRELL *v.* WATT & HARDINGE, [1928] 3 D. L. R. 505; [1928] 2 W. W. R. 482.—CAN.

PART II. SECT. 8, SUB-SECT. 1.

g i. *Not limited to one year's rent.*]—The contention that a distress cannot be made for more than one year's rent cannot be upheld.—COMMERCIAL LIFE ASSURANCE CO. OF CANADA *v.* CADENHEAD, [1931] 3 W. W. R. 653.—CAN.

PART II. SECT. 9, SUB-SECT. 3.

566 iii. ——.]—Where there was a crop payment lease, & prior to the lease there was a mtge. over the property & the mtgees. had exercised their right to take possession:—*Held:* the lessor had no right to distrain.—R. *v.* SULLIVAN, [1924] 2 D. L. R. 429; 42 Can. Crim. Cas. 44.—CAN.

723. *Add. Annotation :*—**Expld.** Davies *v.* Property & Reversionary Investments Corpn., Ltd., [1929] 2 K. B. 222.

731. *Add. Citation :*—after " Ex. Ch." add " *revsg.* S. C. *sub nom.* LEYLAND *v.* TANCRED (1850), 16 Q. B. 664."

732. *Add. Annotation :*—*As to* (1) **Follid.** Davies *v.* Property & Reversionary Investments Corpn., [1929] 2 K. B. 222.

737a. —— ——.]—(1) A notice of distress which specifically sets out each article that has been distrained, or which, while not specifically setting them out, is to be interpreted as meaning that all the goods on the premises have been distrained, is good.

(2) A notice which, after setting out certain specified articles, continued " & all other goods upon the premises (unless specially exempt) sufficient to satisfy the amount of this distress " :—*Held :* bad.—DAVIES *v.* PROPERTY & REVERSIONARY INVESTMENTS CORPN., [1929] 2 K. B. 222 ; 98 L. J. K. B. 515 ; 141 L. T. 256 ; 93 J. P. 167 ; 45 T. L. R. 434 ; 73 Sol. Jo. 252 ; 27 L. G. R. 500, D. C.

738. *Add. Annotation :*—*As to* (2) **Refd.** Davies *v.* Property & Reversionary Investments Corpn., [1929] 2 K. B. 222.

739. *Add. Annotation :*—*As to* (3) **Refd.** Davies *v.* Property & Reversionary Investments Corpn., [1929] 2 K. B. 222.

PART II. SECT. 11, SUB-SECT. 1.—B. (b).

752 i. *Expulsion from premises—Not permissible.*]—A landlord distraining is not entitled to lock up the whole of the demised premises so as to exclude the tenant therefrom.—BLACK *v.* STEBNICKI, [1930] 4 D. L. R. 715 ; 2 W. W. R. 656 ; 39 Man. L. R. 123 ; *revsg.*, [1930] 2 D. L. R. 675 ; 1 W. W. R. 437.—**CAN.**

PART II. SECT. 12, SUB-SECT. 3.—A.

779 iv. ——.]—MACDONALD *v.* CUMMINGS (1892), 8 Man. L. R. 406.—**CAN.**

PART II. SECT. 12, SUB-SECT. 3.—C. (e).

833 i. *Effect of—Property seized under Absconding Debtors Act.*]—Property seized upon a warrant issued under the above Act is not liable to the landlord for a year's rent, though notice of his claim is given to the sheriff before the delivery of the property to the trustees. —STANTON *v.* JOHNSTON (1858), 4 All. 54.—**CAN.**

PART II. SECT. 13, SUB-SECT. 1.

sv. *Orderly Payment of Debts Act, 1932—Whether applicable to landlord holding under distress.*]—BERMACK *v.* BLANK, [1932] 3 W. W. R. 507.—**CAN.**

PART II. SECT. 13, SUB-SECT. 2.

880 i. *Bar to action for rent—Goods insufficient to satisfy rent.*]—The existence of a distress is, until the sale, an answer to an action for rent, regardless of whether the distress be sufficient or not to satisfy the amount for which the levy is made.—FAWELL *v.* ANDREW, [1917] 2 W. W. R. 400 ; 34 D. L. R. 12 ; 10 Sask. L. R. 162.—**CAN.**

PART II. SECT. 13, SUB-SECT. 7.

k i. ——.]—In the absence of an agreement with all parties interested, a landlord cannot be the purchaser at a sale under a distress for rent.—HART *v.* YARWOOD, [1932] 2 W. W. R. 74 ; 4 D. L. R. 169.—**CAN.**

PART II. SECT. 13, SUB-SECT. 10.

sl. *On goods sold under conditional sale by wife to husband—Bailiff's sale a mere pretence.*]—BARLOW *v.* BREEZE (B. C.), [1917] 1 W. W. R. 270.—**CAN.**

PART II. SECT. 13, SUB-SECT. 11.

sn. *Taxes unpaid—Sale valid as between landlord & tenant.*]—MATHESON *v.* CALKIN (1931), 3 M. P. R. 9.—**CAN.**

PART II. SECT. 14.

b i. —— *Costs of Distress Act, R. S. O., 1927—Agreement between finance company & bailiff—No offence by bailiff.*]—R. *v.* ANDERSON (1931), 55 Can. C. C. 190.—**CAN.**

PART II. SECT. 17, SUB-SECT. 1.—C.

t i. —— *Removal must be during tenancy.*]—*Held :* the rights of the landlord, under Distress for Rent Act, 1737 (c. 19), s. 1, to follow goods removed by the tenant, applies only to goods removed during the tenancy. —*Re* MCKAY & ADAMS, *Ex p.* VEST (1929), 47 N. S. W. W. N. 88.—**AUS.**

a i. ——.]—To entitle a landlord to follow & distrain & sell goods which his tenant has removed from the demised premises it is necessary that the rent should be actually due at the time of the tenant's removal of the goods. If no rent is due at the date of removal, & the landlord follows & distrains & sells the goods for rent subsequently falling due, the distress & sale are illegal & the landlord is liable in damages.—ZUROUVINSKI *v.* DUKE, [1924] 4 D. L. R. 326 ; 3 W. W. R. 49.—**CAN.**

e i. —— *Necessity for.*]—A landlord on becoming aware that his tenant who was in arrear with his rent was removing the *invecta et illata*, prevented the tenant from doing so by force without any application to the ct. for an attachment or interdict :—*Held :* the landlord's hypothec was inoperative until an order of attachment was obtained from the ct., & the landlord was not entitled to prevent forcibly the removal of the *invecta et illata*.— REDDY *v.* JOHNSON (1923), 44 N. L. R. 190.—**S. AF.**

PART II. SECT. 17, SUB-SECT. 1.—F.

1000 iv. ——.]—A lease to C. provided that in case the lessee attempted to abandon the premises or to remove his goods & chattels so that there would not be a sufficient distress for three months' rent, the rent for the current & ensuing three months should immediately become due. The premises were in fact occupied by a co., of which C. was a shareholder & official, though no assignment of the lease was made. The co. proceeded to abandon the premises & to remove its goods, & the lessor distrained :—*Held :* this clause did not justify a seizure of the co.'s goods, upon which there was no right to distrain for rent not in arrear.—CRYSTAL. LTD. *v.* WILLARD KITCHEN, LTD., [1924] 2 D. L. R. 1051 ; 2 W. W. R. 344.—**CAN.**

PART II. SECT. 18, SUB-SECT. 2.

1064 i. *What constitutes—Goods not in actual possession of distrainor.*]—Where goods distrained for rent have been impounded on the premises, it is not essential that the landlord or any one on his behalf should remain on the premises in possession of the goods ; & where such goods are afterwards removed by a person claiming them as the true owner thereof under a bill of sale, the landlord, in the absence of proof of abandonment of such distress, may maintain an action for pound breach for treble the value of the goods so removed.—CLEAVE *v.* COMMERCIAL LOAN & FINANCE CO., LTD., [1930] N. Z. L. R. 925.—**N.Z.**

g i. —— *Distress on goods subject of hire-purchase agreement—Repossession by owner without knowledge of distress.*]—FORREST *v.* WASHING, [1929] W. A. L. R. 49.—**AUS.**

PART II. SECT. 18, SUB-SECT. 3.

1071 i. *Reception — Upon fresh pursuit—Loss of right.*]—In the case of pound breach or rescue of goods distrained, the right of reception on fresh pursuit, which is explained to mean without delay, is not defeated by mere lapse of time, but by some want of diligence on the part of the party seeking to exercise the right.—MAY *v.* MORRIS (1929), 30 S. R. N. S. W. 355 ; 47 N. S. W. W. N. 152.—**AUS.**

PART II. SECT. 19, SUB-SECT. 3.

m i. —— ——.]—A distress is excessive when the value of the goods seized was unreasonably greater than the amount of rent due, &, in such a case, nominal damages will be presumed.—ROWAN *v.* COSTELLO, [1928] 3 D. L. R. 744 ; [1928] 2 W. W. R. 343. —**CAN.**

PART II. SECT. 19, SUB-SECT. 4.—C. (a).

t i. ——.] — DICKS *v.* BARBOUR (P. E. I.), [1927] 4 D. L. R. 478.—**CAN.**

PART II. SECT. 19, SUB-SECT. 4.—E. (b).

g i. ——.]—*Held :* a replevin bond with one surety was sufficient.— TAYLOR *v.* BURPEE (1861), 10 N. B. R. (5 All.) 191.—**CAN.**

PART II. SECT. 19, SUB-SECT. 4.—E. (c) i.

s i. —— ——.]—P. brought a replevin action, & the goods were delivered to him. The judgment in his favour was reversed, but return of the goods or damages for their detention was neither demanded nor adjudged : —*Held :* as the obligees could in the replevin action have claimed & obtained an order for return of the goods or for damages, they could not claim it in an action on the replevin bond.— PETRIE *v.* RIDEOUT, [1925] 1 D. L. R. 1078 ; [1925] S. C. R. 347.—**CAN.**

s ii. —— ——.]—TRAVIS *v.* SMITH, [1930] 3 D. L. R. 231 ; 1 M. P. R. 57. —**CAN.**

a i. —— *Goods liable to seizure.*]— MARTIN *v.* PASSARINI, [1928] 1 D. L. R. 636 ; 59 N. S. R. 460.—**CAN.**

PART II. SECT. 19, SUB-SECT. 4.—F. (a).

p (p. 380) i. —— *Breach of covenant forfeiting rent claimed—Admissible.*]— In an action of replevin by a sub-lessee against the lessor, plff. is entitled to prove, on cross-examination of the lessor, that there had been a breach of a covenant in the lease which forfeited the rent claimed, the sub-lessee being entitled to the benefit of such covenant, though there has been no assignment of the lease in writing.— RIGNUETTE *v.* HEBERT (1905), 37 N. B. R. 68.—**CAN.**

st. *Stay of proceedings—When ordered.*]—DEWHURST *v.* MCCOPPIN (1870), 17 Gr. 572.—**CAN.**

1065a. & Co., LTD. O'LEARY (1932), 49 T. L. R. 83; 76 Sol. Jo. 869.

1266a. —— **Evidence—Terms of tenancy.**]—If a tenant suing his landlord for a wrongful distress does not put in the agreement of tenancy, the jury, as against him, may infer its terms from his own admission or his own evidence in the case.—COWNE *v.* CORDERY (1862), 10 W. R. 347.

1271. *Add. Annotation :*—**Refd.** Elliott *v.* Boynton, [1924] 1 Ch. 236.

Part III.—Distress for Rates.

1376. After this case add :—

——.]—*See, now,* Rating & Valuation Act, 1925 (c. 90), s. 62.

1396. *Add. Annotation :*—**Refd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

1409. *Add. Citation :*—2 B. R. A. 949.

1412. *Add. Citation :*—1 B. R. A. 450.

Add. Annotation :—**Consd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

1413. *Add. Annotation :*—**Folld.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

1413a. —— ——.]—Where a rate, duly made & confirmed, has been levied in respect of a vacant building, occupied by a caretaker only, not being held in readiness for use, & not being fitted for any use, & a distress warrant has been issued by justices in enforcement of payment of such rate, an action of replevin will not lie; the jurisdiction of the justices depends simply on occupation within the parish, & not on beneficial occupation.—LONDON COUNTY COUNCIL *v.* HACKNEY BOROUGH COUNCIL, [1928] 2 K. B. 588; 97 L. J. K. B. 694; 139 L. T. 407; 92 J. P. 138; 44 T. L. R. 592; 26 L. G. R. 366; (1926-31), 1 B. R. A. 249.

1414. *Add. Citation :*—2 B. R. A. 919.

Add. Annotations :—**Refd.** Kingston Mill, Stockport *v.* Owen (1928), 92 J. P. Jo. 782; L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

1419a. —— ——.]—The poor rate payable in respect of a dwelling-house of which pltf. was weekly tenant was £5 10*s.* a year. A demand note for a half-year's rate, namely £2 15*s.*, was served on pltf., but he failed to pay the money & a summons was issued against him. Pltf. did not appear before the justices, who refused to hear his landlord's daughter on his behalf. Evidence having been given on the part of the overseers, the justices issued a distress warrant against pltf.'s goods, although, before they signed the warrant, the landlord's daughter had addressed them again & intimated that pltf. was a weekly tenant, a fact of which one of the justices was aware:—*Held:* although, if the full facts had been proved, it would have been apparent to the justices that they had no jurisdiction to issue the warrant, they ought to consider only facts known to them in their judicial capacity from materials properly before them, & they had acted

PART II. SECT. 19, SUB-SECT. 4.—F. (d).

1 i. —— *Warehouseman—Joinder of parties.*]—In a replevin action against a warehouseman :—*Held:* a co. in whose name the warehouse receipts were taken was entitled to be added as a party deft.—NORTHERN FISH CO. *v.* WINNIPEG COLD STORAGE, LTD., [1932] 2 W. W. R. 231; 3 D. L. R. 427.—**CAN.**

sv. *By what persons—"Owner" of goods.*]—Pltf. offered for sale at public auction certain cattle, for which deft. bid & was declared the purchaser. The terms of the sale were that for any cattle sold the purchaser was either to pay cash or deliver an endorsed promissory note to be approved of by pltf. Deft. having a money claim against pltf. & desiring to make a settlement with him, openly took the stock to his farm without paying cash or giving an approved note :—*Held:* pltf. was not, when he commenced this action for replevin, the "owner" of the cattle & there was not a wrongful taking within Replevin Act, R. S. O., 1927, s. 2.—MCKEE *v.* FISHER, [1930] 2 D. L. R. 14; 64 O. L. R. 634.—**CAN.**

PART II. SECT. 19, SUB-SECT. 4.—F. (e).

a i. —— *Effect of.*]—ALEXANDER *v.* COWIE (1880), 19 N. B. R. (3 P. & B.) 599.—**CAN.**

PART II. SECT. 19, SUB-SECT. 4.—F. (f).

sd. *Plaintiff ordered to return goods.*]—Pltf. obtained possession of goods by virtue of an order for replevin & subsequently discontinued his action :—*Held:* the ct. had power to order the return of the goods.—PASSARINI *v.* MARTIN, [1925] 2 D. L. R. 914; 58 N. S. R. 121.—**CAN.**

PART II. SECT. 19, SUB-SECT. 5.—A. (a).

1259 i. *Against landlord—Pleading.*]—SCOTT *v.* MCCABE (1871), 31 U. C. R. 220.—**CAN.**

so. *Whether proof of value of goods necessary—Value admitted by defendant accepted.*]—MARTIN *v.* PASSARINI, [1928] 1 D. L. R. 636; 59 N. S. R. 460.—**CAN.**

sp. *Against bailiff & auctioneer—Right of defendants to protection of Magistrates Courts Act,* 1908.]—Where a bailiff acting in good faith seizes goods belonging to A., under a distress warrant directed against B., & where an auctioneer at the request of the bailiff & in good faith sells such goods, both the bailiff & the auctioneer are entitled to the protection afforded by above Act.—KEWENE *v.* BUCHLAND & SONS, [1928] N. Z. L. R. 818.—**N.Z.**

PART II. SECT. 19, SUB-SECT. 5.—A. (b).

1275 i. *Illegal entry—Entry at night—Prevention of removal of goods—Actual damage.*]—BALDRY *v.* DIXON, [1931] 2 D. L. R. 437; 1 W. W. R. 21; 39 Man. L. R. 273.—**CAN.**

d i. ——— —.]—Where a landlord follows & distrains & sells goods for rent subsequently falling due, & the distress & sale are illegal :—*Held:* the *quantum* of damages is the full value of the goods lost to the tenant after allowing for depreciation, but exemplary damages cannot be awarded where the landlord considered that he was acting within his rights & did not act in a wanton or insolent manner in making the seizure.—ZUROUVINSKI *v.* DUKE, [1924] 4 D. L. R. 326; 3 W. W. R. 49.—**CAN.**

PART II. SECT. 19, SUB-SECT. 5.—C. (a).

a i. —— ——.]—While it seems that an action for distraining for more rent than is due cannot be maintained without a tender of the sum that is actually due, this principle does not apply to an action for an excessive distress.—ROWAN *v.* COSTELLO, [1928] 3 D. L. R. 744; [1928] 2 W. W. R. 343.—**CAN.**

PART III. SECT. 1. SUB-SECT. 1.

p i. —— —— —.]—Where a tenant under a lease has covenanted to pay all municipal taxes, the landlord, against whom the taxes are assessed, is a person liable therefor with the tenant under Mercantile Law Amendment Act, 1856, s. 5, & payment by the landlord to the creditor, the city, is a prerequisite to the landlord becoming entitled to the securities or to use the remedies of the city. But the city's right of distress is not a security under the Act, nor is it a remedy which, upon payment, the landlord can use.—*Re* HINGSTON-SMITH, *Ex p.* MACPHERSON ESTATE, [1924] 3 D. L. R. 844; 2 W. W. R. 1081; 34 Man. L. R. 312; 5 C. B. R. 41.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.

sg. *Goods held as purchaser under conditional sale agreement.*]—Under the Medicine Hat Charter goods in the possession of the person taxed may be seized & sold for such taxes as are made a lien on land, even though his interest therein is only that of a vendee under a conditional sale agreement; where, however, the taxes with respect to which the distress is made are not a lien on land, it is only the interest of the taxpayer in goods held by him under a conditional sale agreement that may be sold.—CANADIAN HOFFMAN MACHINERY CO., LTD. *v.* MEDICINE HAT CITY, [1931] 2 W. W. R. 121; 3 D. L. R. 196.—**CAN.**

correctly in point of law on the evidence which had been so proved.—PALMER *v.* CRONE, [1927] 1 K. B. 804; 96 L. J. K. B. 604; 137 L. T. 88; 91 J. P. 67; 43 T. L. R. 265; 25 L. G. R. 161.

1420. *Add. Annotation :*—**Reld.** Gateshead Assessment Committee *v.* Redheugh Colliery, [1925] A. C. 309.

1422. *Add. Annotations :*—**Reld.** Palmer *v.* Crone, [1927] 1 K. B. 804; Lowery *v.* Kingston-upon-Hull Corpn., [1930] 1 K. B. 368.

1423. *Add. Annotation :*—**Reld.** Palmer *v.* Crone [1927] 1 K. B. 804.

1424. *Add. Annotation :*—**Reld.** Pigg *v.* Weardale Union Tow Law Overseers (1923), 22 L. G. R. 17.

1431. *Add. Annotation :*—*As to* (2) **Reld.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

1438. *Add. Annotation :*—*As to* (1) **Reld.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

1446. *Add. Annotation :*—*As to* (2) **Reld.** R. *v.* London County Council, *Ex p.* Entertainments Protection Assocn., Ltd., [1931] 2 K. B. 215.

1459. *Add. Annotation :*—**Reld.** *Re* Airedale Garage Co., Anglo-South American Bank, Ltd. *v.* Airedale Garage Co. (1932), 101 L. J. Ch. 289.

1462. *Add. Annotation :*—**Reld.** Palmer *v.* Crone, [1927] 1 K. B. 804.

1471. *Add. Annotation :*—*As to* (1) **Consd.** R. *v.* Norfolk JJ., *Ex p.* Porter (1926), 43 T. L. R. 53.

1472. *Add. Annotation :*—**Folld.** R. *v.* Norfolk JJ., *Ex p.* Porter (1926), 43 T. L. R. 53.

1484. *Add. Annotation :*—**Reld.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

1489. *Add. Annotation :*—**Reld.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

1491. *Add. Annotation :*—**Consd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

1506. *Add. Annotation :*—*As to* (1) **Reld.** Palmer *v.* Crone, [1927] 1 K. B. 804.

1532. *Add. Citation :*—*sub nom.* BLETCHINGDON SURVEYOR *v.* DAND, 3 New Sess. Cas. 640.

1542. *Add. Citation :*—1 B. R. A. 570.

1548. *Add. Annotation :*—**Reld.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

1576. Before this case add "*See, now,* Land Drainage Act, 1930 (c. 44), s. 31."

1582. *Add. Citation :*—*sub nom.* NEARE *v.* WALKER, 7 J. P. 143.

1584a. **What may be distrained—Goods outside area of Drainage Board—Land of person liable partly within area.**]—Pltf. owned land part of which was outside the area administered by defts. The amount claimed from him in respect of drainage rates on his land, which was situate within the area of defts., having remained unpaid, defts. claimed to be entitled to levy distress upon the goods outside their area :—*Held :* the distress warrant, being properly issued against a person liable to the rate, might be executed upon the goods of pltf., even though not within the limits of the area administered by defts.—MORSE *v.* THE OUSE DRAINAGE BOARD, [1931] 1 K. B. 109; 100 L. J. K. B. 238; 144 L. T. 182; 94 J. P. 127; 28 L. G. R. 196.

1588. *Add. Annotation :*—**Apld.** R. *v.* Clements Judge, *Ex p.* Ferridge (1932), 76 Sol. Jo. 414.

1588a. **Costs of distress—Power to levy.**]—The power given to Comrs. of Sewers by Sewers Act, 1833 (c. 22), s. 55, to levy the costs of a distress is limited in the cases of distress for sums under £20 by Distress (Costs) Acts, 1817 (c. 93) & 1827 (c. 17).—R. *v.* NORFOLK JJ., *Ex p.* PORTER (1926), 96 L. J. K. B. 158; 136 L. T. 327; 91 J. P. 14; 43 T. L. R. 53; 70 Sol. Jo. 1198; 25 L. G. R. 44, D. C.; *sub nom.* R. *v.* SMITH, *Ex p.* PORTER, [1927] 1 K. B 478.

1604. *Add. Citation :*—*sub nom.* R. *v.* LINDSEY, Parts of, Lincolnshire, JJ., *Ex p.* Bower, 107 L. T. 170.

Part IV.—Distress for Assessed Taxes.

1607. *Add. Annotations :*—**Reld.** R. *v.* Swansea Income Tax Comrs., *Ex p.* English Crown Spelter Co., [1925] 2 K. B. 250. **Mentd.** Ingle *v.* Farrand, [1927] A. C. 417.

1609. *Add. Annotations :*—*As to* (1) **Reld.** Glamorgan County Council *v.* Glassbrook, [1924] 1 K. B. 879. *Generally,* **Reld.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

1636. *Add. Annotation :*—**Reld.** Pickford *v.* Quirke, Pickford *v.* I. R. Comrs. (1927), 138 L. T. 500.

PART III. SECT. 1, SUB-SECT. 4.—A.

1427 i. *By whom made—Collector.*]—The right to serve notice & the right to receive payment of municipal taxes rest in the collector of taxes & not in the city, & the service of the notice is not a remedy of the city which, upon payment, the landlord is entitled to use against his tenant.—*Re* HINGSTON-SMITH, *Ex p.* MACPHERSON ESTATE, [1924] 3 D. L. R. 844; 2 W. W. R. 1081; 34 Man. L. R. 312; 5 C. B. R. 41.—**CAN.**

1427 ii. —— *Under Village Act, R. S. S.,* 1920 (*c.* 88).]—The duties of the secretary-treasurer of a village under this Act do not include that of levying distress. Where no person is appointed by the Act for such purpose, the village must appoint some person when necessary, & where distress has been levied by a person not authorised, the village may subsequently ratify & adopt his acts.—MANITOBA OIL PRODUCTS, LTD. *v.* LANGENBURG VILLAGE, [1923] 4 D. L. R. 260; 3 W. W. R. 308.—**CAN.**

PART III. SECT. 1, SUB-SECT. 6.—A. (b).

sk. *Measure of damages.*] — The seizure of goods, worth over $5,000 to satisfy a debt of $178 is an excessive seizure, & a village corpn. having made or ratified such an unauthorised seizure, was found liable in damages; & the measure of damages was the difference between the full value of the goods seized & the value of the goods necessary to be sold to realise the amount of the taxes & the incidental costs.—MANITOBA OIL PRODUCTS, LTD. *v.* LANGENBURG VILLAGE, [1923] 4 D. L. R. 260; 3 W. W. R. 308.—**CAN.**

PART IV. SECT. 1.

g i. —— ——.]—Where several quarter sections are separately assessed, a seizure for taxes of goods belonging to a person other than the person taxed or owner of the land in possession thereof can be made only for the taxes owing with respect to the particular quarter section on which the goods are found.—SPRINGBANK MUNICIPALITY *v.* WALKER, [1925] 1 D. L. R. 925; [1925] 1 W. W. R. 697; 21 Alta. L. R. 344.—**CAN.**

g ii. —— ——.]—Under Municipal District Act, R. S. A., 1922 (c. 110), the right to seize chattels lying on the land taxed, but not belonging to the person taxed, is limited to the case in which the person assessed is in actual occupation of the land.—SCOTT *v.* MUNICIPAL DISTRICT OF WOODFORD (Alta.), [1925] 4 D. L. R. 783; [1925] 3 W. W. R. 727; *affg.*, [1925] 2 W. W. R. 578.—**CAN.**

q i. —— *On second distress—First distress obstructed.*]—When the levying of a distress is obstructed by the party

Part VI.—Distress under Summary Jurisdiction Acts.

1668. *Add. Annotation :*—**Reld.** R. *v.* Judge, *Ex p.* Isle of Ely Justices (1931), 100 L. J. K. B. 350.

Part VII.—Distress Damage Feasant.

1732a. ——.]—HARRINGTON *v.* BUSH (1709), 11 Mod. Rep. 219 ; Fortes. Rep. 255 ; Holt, K. B. 23 ; 88 E. R. 1000.

1732b. —— ——.]—OSWAY *v.* BRISTOW (1711), 10 Mod. Rep. 37 ; 88 E. R. 615.

1780. *Add. Annotation :*—**Reld.** Back *v.* Daniels (1924), 69 Sol. Jo. 160.

whose goods are being distrained & the distrainer is thereby prevented from realising the fruits of the distress, he is entitled to levy again ; & on the second distress he is not confined to seizing the goods previously distrained. —GISLASON *v.* RURAL MUNICIPALITY OF FOAM LAKE & WARD, [1929] 2 D. L. R. 386 ; 1 W. W. R. 233 ; 23 S. L. R. 359.—**CAN.**

q ii. —— *Goods subject of security under Bank Act, s.* 88.]—*Held :* the bank was in actual & exclusive possession of the premises & business at the time when the city corpn. seized the goods for taxes upon the realty & for business tax ; the seizure was therefore invalid.—BRANTFORD CITY *v.* IMPERIAL BANK, [1930] 4 D. L. R. 658 ; 65 O. L. R. 625 ; 12 C. B. R. 39 ; *affg.*, [1930] 2 D. L. R. 669 ; 64 O. L. R. 671 ; 11 C. B. R. 319.—**CAN.**

sm. *Right of sheriff to sell land—Insufficient distress.*]—DOE d. BEEL *v.* BEAUMORE (1834), 3 O. S. 243.—**CAN.**

sn. —— ——.]—FOLEY *v.* MOODIE (1858), 16 U. C. R. 254.—**CAN.**

so. —— ——.]—FRAZER *v.* MATTICE (1860), 19 U. C. R. 150.—**CAN.**

st. *Sale of mortgaged land—Purchase by mortgagee—Right of mortgagee—To surplus.*]—*Re* GRANT (1891), 7 Man. L. R. 468.—**CAN.**

sv. —— —— —— *To whole security.* —FARROW *v.* MASSEY-HARRIS CO., LTD., [1927] 3 D. L. R. 997 ; [1927] 2 W. W. R. 539 ; 21 Sask. L. R. 610.—**CAN.**

sw. —— *Validity—Failure to give notice to "persons interested."*]—STANDARD TRUSTS CO. *v.* HIRAM MUNICIPALITY, [1927] 1 D. L. R. 1063 ; [1927] S. C. R. 50.—**CAN.**

sx. —— —— *Notice to mortgagee of application for title sent to wrong address.*]—HOWE *v.* KIPP, [1927] 3 D. L. R. 1048 ; [1927] 2 W. W. R. 522 ; 21 Sask. L R. 637.—**CAN.**

PART IV. SECT. 3.

sg. *Suspension of poinding—Grounds for.*]—Complainer, who resided in Scotland, was assessed to Income Tax, Sched. E., for the year 1928-29, by a body of General Comrs. in England in respect of director's fees received from an English co. He duly appealed against this assessment & it was averred by the resp. that a notice was sent to complainer summoning him to a meeting of the Comrs. for the hearing of his appeal. Complainer denied that such a notice was sent to, or received by him. He did not attend the appeal meeting & the assessment was confirmed by the Comrs. Subsequently, the Comrs. issued a certificate that complainer had been duly assessed & charged with the tax, which was unpaid, &, upon application by the collector of taxes for the Galashiels district of Selkirk, the sheriff-substitute for the county issued a warrant for recovery. Goods belonging to complainer having been poinded by the sheriff officer, complainer presented a note of suspension in the Bill Chamber in terms of sect. 21 of Exchequer Court, (Scotland) Act, 1856. The note having been duly passed, it was thereafter enrolled as an exchequer cause. In the note complainer craved the ct. to suspend the notice of poinding on the following grounds : (*a*) that complainer had duly appealed against the assessment under which the tax was charged, & that since, as he alleged, no notice of the hearing of the appeal had been sent to or received by him, the appeal had not been determined according to law, & the tax charged was not recoverable ; (*b*) that the sched. of poinding served by the sheriff officer upon complainer was defective in that it stated that the goods poinded would be sold in default of payment of the tax within four days instead of five days, as prescribed by Income Tax Act, 1918 (c. 40), s. 166 (3) :—*Held :* the note of suspension fell to be refused on the ground that the decision of the General Comrs. confirming the assessment upon complainer could only be set aside by an order of an English ct. & the poinding was not invalid by reason of the inaccurate statement in the sched. of poinding.—RUTHERFORD *v.* LORD ADVOCATE (1931), 16 Tax Cas. 145.—**SCOT.**

PART VI. SECT. 3. SUB-SECT. 1.

t i. —— *Masters & Servants Act,* 1920.]—Under Masters & Servants Act, R. S. S., 1920 (c. 205), as it stood prior to its amendment by 1930, a justice of the peace had no power in making an order against a master to impose imprisonment in default of distress. *Qu. :* whether since said amendment, which eliminates from the Act the power to enforce payment against a master by distraining on his goods, the provisions of sect. 739 of the Criminal Code now apply.—BURBANK *v.* ZIMMERMAN, [1930] 2 W. W. R. 744 ; 3 D. L. R. 816 ; 54 Can. C. C. 238.—**CAN.**

sa. *Imposition of hard labour—Validity—Criminal Code, s.* 739 (2).]—R. *v.* RILEY (N. S.) (1905), 14 Can. Crim. Cas. 346.—**CAN.**

PART VII. SECT. 5.

1782 i. *Failure to maintain fences—Cattle straying on to land.*]—BOLTON *v.* MACDONALD (1894), 3 Terr. L. R. 269. —**CAN.**

sb. *Cattle wandering on public road—Right of adjoining occupier to impound.*] —Where cattle are wandering on a public road in the circumstances specified in Pounds Act, 1915, s. 17, they may lawfully be impounded under that section by the occupier of land adjoining the road, notwithstanding that the council of the municipality in which the road is situated has consented to their being on the road, & has thereby waived the right to impound them given by Local Government Act, 1915, ss. 497, 498.—MOLONEY *v.* WILSON, [1929] V. L. R. 265 ; Argus L. R. 223.—**AUS.**

PART VII. SECT. 8, SUB-SECT. 1.—A.

e (p. 445) **i.** —— *Notice — Under Stray Animals Act.*]—On an appeal from a summary conviction under the above Act for illegal impounding :—*Held :* the conviction should be quashed as the record did not show that the notice required by s. 34 was given to the poundkeeper.—STAHN *v.* PEUTERT (1922), 70 D. L. R. 285 ; [1922] 2 W. W. R. 835.—**CAN.**

e (p. 445) **ii.** —— *To detain animals as security for expenses.*]—When animals wrongfully taken under colour of *damage feasant* are impounded in a municipal pound & the pound-keeper receives them in ignorance of the wrongfulness of the taking & without participating in the wrong, he has a right to detain them as security for his expenses in feeding them & for his fees under the bye-law.—MCCAW *v.* RYCZOKOSKI, [1931] 1 W. W. R. 86 ; 1 D. L. R. 849 ; 39 Man. L. R. 339.—**CAN.**

PART VII. SECT. 8, SUB-SECT. 1.—B.

1818 i. *Must be a fit & proper pound.*] —Under Stray Animals Act, 1920, animals impounded must be placed in the pound provided by the municipal council under s. 9 ; & where a poundkeeper placed & kept horses upon a fenced quarter section owned by him & separated by a road allowance from the pound provided by the municipality & the fence being broken down, the horses escaped or were driven off :—*Held :* the municipality was liable under s. 9, as it must be taken to have assumed the risk of placing & keeping the horses in a place other than an authorised pound.—SINWICK *v.* ELFROS, [1924] 2 W. W. R. 755.—**CAN.**

PART VII. SECT. 8, SUB-SECT. 1.—E.

k i. ——.]—Where under Stray Animals Act, 1915, s. 27 (1), the posting of notices of sale of impounded animals were not complied with :—*Held :* the sale amounted to a conversion & the pound-keeper, & the municipality employing him, were liable in damages, as (1) the posting of two notices within the municipality & one outside it was not a compliance with the Act ; (2) where animals are branded, the pound-keeper is guilty of negligence in failing to mention the brands in the notices.—LEACH *v.* MANTARIO RURAL MUNICIPALITY No. 262 & MOIR, [1921] 1 W. W. R. 132 ; 56 D. L. R. 735 ; 14 Sask. L. R. 25.—**CAN.**

k ii. —— ——.]—Where there is nothing indicating the presence of a brand on an impounded animal the poundkeeper is not obliged to feel all over its body in search of a possible brand, in order properly to describe the animal in the prescribed advertisement.

The sale of an impounded horse by a poundkeeper :—*Held :* defective because notices of the impounding & of the sale had not been properly posted, & both the pound-keeper & the municipality which employed him were

Part VIII.—Distress for other Purposes.

1870. *Add. Citations:—sub nom.* R. *v.* FORDHAM, L. R. 8 Q. B. 501; 42 L. J. M. C. 153; 22 W. R. 85.

liable in conversion for the value of the horse at the time of sale.—BROWN *v.* RURAL MUNICIPALITY OF ST. FRANCOIS XAVIER & BRELAND (Man.), [1925] 1 W. W. R. 42.—**CAN.**

l i. —— —— ——.]—Where the posted & published notices of the impounding of an animal under Stray Animals Act, R. S. S., 1920, c. 124, the owner of the animal was unknown, did not describe the brand correctly & the description of the animal was insufficient to satisfy the requirements of sect. 26 (1) of the Act, it was held that the sale was invalid, & that the municipality & the poundkeeper were liable for the value of the animal, which was placed at the amount for which it was sold at said sale.—MILLER AND MUTCH *v.* LOREBURN AND KELLY RURAL MUNICIPALITY, [1928] 4 D. L. R. 251; [1928] 2 W. W. R. 66; 22 Sask. L. R. 486.—**CAN.**

sd. *Payment of residue to owner—Domestic Animals Act*, 1921 (c. 50)—*Municipal District Act*, 1911 (c. 3).]—The effect of the amendment made by ss. 27, 28 of the former Act extends the period of twelve months provided by s. 213 of the latter Act, for application for payment to the owner of the residue of the proceeds of sale of an impounded animal, to twenty-four months from the date of sale.—GOLLAN *v.* STERLING, [1924] 3 W. W. R. 209.—**CAN.**

PART VII. SECT. 8, SUB-SECT. 2.—A.

1838 **ii.** —— —— *Payment by uncertified cheque.*]—The delivery of an uncertified cheque to the poundkeeper is not a "deposit of the amount claimed for damages" within Stray Animals Act, R. S. S., 1920, c. 124, s. 34 (1), even though the poundkeeper treats the cheque as cash. What the Act contemplates is the payment of money. The deposit of the money is a condition precedent to the right of the owner of the impounded animal, which is released under the sect., to institute proceedings against the person impounding it.—WILEY *v.* BOOKER, [1928] 2 W. W. R. 329.—**CAN.**

PART VII. SECT. 9.

sl. *Conviction — Under Stray Animals Act*, 1920 (c. 124).]—Where the evidence showed that accused had been wrongfully convicted of an offence of unlawfully rescuing cattle under a provincial Act, in that he had merely made an attempt:—*Held:* (1) the offence, not being an indictable offence, could not be remitted to the magistrate to convict of an attempt under Criminal Code, s. 949; (2) s. 49 (d) of the above Act did not apply to the portion of the province within which the offence was charged to have been committed.—R. *v.* GURSKI (1922), 69 D. L. R. 191; 38 Can. Crim. Cas. 139; [1922] 3 W. W. R. 540.—**CAN.**

PART VII. SECT. 12.

g i. —— —— *Measure of damages.*]—Damages were fixed on the basis of prices obtained at auction sales, for while it may be that prices paid at auction sales are not as large as are usually obtained at private sales, still the prices obtained at auction sales very often have a great deal to do with fixing the price of an animal in he community.—SINWICK *v.* ELFROS, [1924] 2 W. W. R. 755.—**CAN.**

g ii. —— —— *Allowance for poundkeeper's fees & expenses.*]—In an action for damages for the conversion of animals illegally sold at a pound-sale, defts. have no right to an allowance for the pound-keeper's fees or expenses.—LEACH *v.* MANTARIO RURAL MUNICIPALITY NO. 262 & MOIR, [1921] 1 W. W. R. 132; 56 D. L. R. 735; 14 Sask. L. R. 25.—**CAN.**

k i. —— —— ——.]—Pltf. impounded with a poundkeeper cattle which had come on to his land through a wire fence & claimed damages. The poundkeeper, without obtaining payment of the damages or security therefor, released the cattle to the owner on receipt of the latter's cheque, payment of which was stopped. On appeal by the owner the council of the municipality decided that the fence was not a lawful fence & that pltf. was not entitled to damages. Pltf. sued the poundkeeper & the municipality for the damages:—*Held:* pltf. was entitled as against both defts. to the damages claimed.—JOHNSON *v.* MUNICIPAL DISTRICT OF BEAVER DAM, [1925] 4 D. L. R. 299; [1925] 3 W. W. R. 569.—**CAN.**

PART VIII. SECT. 5.

sg. *Effect of Distress Act, R. S. S.*, 1930, *s.* 8.]—BAILEY *v.* MILLER & BROATCH, [1932] 3 W. W. R. 260.—**CAN.**

EASEMENTS AND PROFITS À PRENDRE.

Part I.—Nature and Characteristics of Easements.

4. *Add. Annotation :—As to* (1) **Refd.** Sack *v.* Jones, [1925] Ch. 235.

25. For "**Distinguished from running powers over railway.**] " read " ——.]"

27. *Add. Annotations :*—**Refd.** Simpson *v.* Weber (1925), 133 L. T. 46 ; Aldridge *v.* Wright, [1929] 2 K. B. 117 ; Vanderpant *v.* Mayfair Hotel Co., [1930] 1 Ch. 138 ; Keewatin Power Co., Ltd. *v.* Lake of the Woods Milling Co., [1930] A. C. 640.

35. *Add. Annotation :—As to* (1) **Refd.** Callard *v.* Beeney, [1930] 1 K. B. 353.

48. *Add. Annotations :*—**Refd.** Back *v* Daniels (1924), 69 Sol. Jo. 160 ; Hackney B. C. *v.* Metropolitan Asylums Board (1924), 131 L. T. 136.

60. For words at commencement of para. (2) " There is no distinction " read " There is a distinction."

Add. Annotation :—As to (2) **Refd.** Aldridge *v.* Wright, [1929] 1 K. B. 381.

68. *Add. Annotation :—As to* (1) **Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

69. *Add. Annotation :*—**Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

73. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt, [1932] 2 K. B. 1.

Part III.—Creation of Easements.

89. *Add. Annotation :*—**Refd.** Lord Strathcona S.S. Co. *v.* Dominion Coal Co. [1926] A. C. 108.

97. *Add. Annotations :*—**Expld. & Distd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211. **Consd.** York Corpn. *v.* Leetham, [1924] 1 Ch. 557. **Refd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355.

98. *Add. Annotations :*—**Consd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211. **Refd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355.

121. *Add. Annotation :*—**Consd.** Keewatin Power Co., Ltd. *v.* Lake of the Woods Milling Co., [1930] A. C. 640.

124. *Annotations :*—For "**Mentd.** Poulton *v.* Moore (1913), 83 L. J. K. B. 875," read "**Consd.** Poulton *v.* Moore (1913), 83 L. J. K. B. 875."

139. *Add. Annotation :—As to* (1) **Distd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

145. *Add. Annotation :*—**Consd.** Callard *v.* Beeney, [1930] 1 K. B. 353.

147a. According to intention of parties — Common approach—Not effective until approach cleared.]—SWAN *v.* SINCLAIR, No. 515, *post.*

156. *Add. Annotation :*—**Apld.** Borman *v.* Griffith, [1930] 1 Ch. 493.

166. *Add. Annotation :—As to* (1) **Expld.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

173. *Add. Annotation :*—**Refd.** Aldridge *v.* Wright (1929), 98 L. J. K. B. 582.

178. *Add. Annotation :—As to* (2) **Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

C. (Vol. XIX., p. 35).

Conveyancing Act, 1881 (c. 41), s. 6, is now replaced by Law of Property Act, 1925 (c. 20), s. 62.

181a. Right of way struck out of draft conveyance.]—CLARK *v.* BARNES, No. 196a, *post.*

182. *Add. Annotation :*—**Refd.** Clark *v.* Barnes, [1929] 2 Ch. 368.

183. *Add. Annotations :*—**Consd.** Gregg *v.* Richards (1926), 95 L. J. Ch. 209. **Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

185. *Add. Annotation :*—**Consd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

PART I. SECT. 2, SUB-SECT. 2.

20 v. ——.]—GAPES *v.* FISH, [1927] V. L. R. 88 ; 48 A. L. T. 161 ; [1927] Argus L. R. 111.—**AUS.**

PART II.

76 i. *Distinguished from profits à prendre.*]—BRATT *v.* TOWNSHIP OF MALDEN, [1927] 1 D. L. R. 1116 ; 60 O. L. R. 102.—**CAN.**

80 i. *Distinguished from licence.*]—WHIPP *v.* MACKEY, [1927] I. R. 372.—**IR.**

PART III. SECT. 1, SUB-SECT. 1.

sa. *Public right.*]—Though the public cannot acquire ownership of a land, it can acquire over it an easement by grant.—USSAN KASIM SAIT *v.* SECRETARY OF STATE FOR INDIA (1923), I. L. R. 47 Mad. 116.—**IND.**

PART III. SECT. 1, SUB-SECT. 2.—A.

98 i. *Must not be ultra vires.*]—A corpn. having agreed to grant an easement to lay pipes over certain land :—*Held :* the granting of such easement being quite consistent with the purposes for which the corpn. was authorised to hold land, it was competent for the corpn. to make such grant.—BANKS PENINSULA ELECTRIC POWER BOARD *v.* AKAROA BOROUGH COUNCIL, [1923] N. Z. L. R. 880.—**N.Z.**

98 ii. —— *Quebec Public Utility Commission.*]—*Held :* the above commission had no power to create a servitude, or any other right, in property of a "public utility."—MONTRÉAL TRAMWAYS CO. *v.* MONTRÉAL-NORD VILLE, [1924] A. C. 994.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.

107 i. *Easement cannot be reserved or excepted.*]—An easement cannot strictly be made the subject either of exception or reservation in a deed of conveyance of land.—OTTAWA ELECTRIC RY. CO. *v.* FEDERAL DISTRICT COMMISSION, [1931] 1 D. L. R. 437 ; 66 O. L. R. 154.—**CAN.**

PART III. SECT. 1, SUB-SECT. 5.

sb. *Devise of adjoining plots to two devisees—Condition for maintenance of right of way.*]—VANSICKLE *v.* KELLY (1877), 42 U. C. R. 274.—**CAN.**

PART III. SECT. 1, SUB-SECT. 6.—A.

n. For " **n** " substitute " **147a i.**"

o. For " **o** " substitute " **147a ii.**"

p. For " **p** " substitute " **147a iii.**"

186a. —.]—In the conveyance to pltf. of a house & land there was an express grant to her of a way described as coloured green on the plan indorsed on the deed. The part coloured green was four feet wide & formed part of a wider roadway running along the back of the adjoining houses to the back premises of pltf.'s house. At the time of the conveyance a right of access for vehicles to pltf.'s back premises over the whole roadway was enjoyed with the house conveyed. The habendum in the conveyance was " to hold same with the benefit of all such easements & privileges in the nature of easements as are now subsisting in respect of the property hereby conveyed." Pltf. claimed that the right to use the whole width of the roadway for the purpose of access of vehicles to her back premises passed to her under her conveyance :—*Held :* that the right claimed passed to pltf. by virtue of sect. 6 (2) of the above Act, there being no unequivocal " contrary intention " expressed in the deed within sect. 6 (4), sufficient to negative the passing of such right.—GREGG *v.* RICHARDS, [1926] Ch. 521 ; 95 L. J. Ch. 209 ; 135 L. T. 75 ; 70 Sol. Jo. 443, C. A.

189. *Add. Annotation :—As to* (1) **Refd.** Barlett *v.* Tottenham, [1932] 1 Ch. 114.

190. *Add. Annotation :—As to* (1) **Refd.** Gregg *v.* Richards (1926), 95 L. J. Ch. 209.

195. *Add. Annotation :—As to* (1) **Distd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

196a. —— **Right reputed to be enjoyed with land.**] —Pltf. at the date of the action was the owner in fee simple of certain plots of land in the village of C. in the county of Sussex, numbered on the Ordnance Survey Map 634, a portion of 635 & 636 ; also of a strip of land coloured brown on the plan on the conveyance to pltf., leading from the plot 634 & part of 635 to the high road running from C. to a common. Deft. became in Oct. 1926, the owner of other plots, numbered 652, 653, 654 & 618 in the same parish. Pltf. had previously purchased the strip coloured brown in 1925, the parcels being as follows : " All that strip of land leading from W. Fields "—which were the plots 652 & 653— " to the high road running from the village of C. to . . . C. common in the parish of P. . . ."; the *habendum* being to pltf. in fee simple " to the use that the vendor his heirs & successors in title owner or owners . . . of the hereditaments coloured red "—which were the plots 634, 653 & 652—" . . . shall have full right & liberty . . . to pass & repass . . . over & along the piece of land coloured brown on the said plan . . ." Pltf. subsequently, in June, 1925, purchased at an auction sale the plots referred to above, 634, part of 635, 652 & 653 ; deft. also bought the plots numbers 618 & 654. The plots purchased by pltf., being Lot 24 in the sale, were described as including a right of way for all purposes over the brown strip. By that purchase pltf., having become the legal owner of the dominant & servient tenements, the right of way became merged. Pltf. subsequently contracted to sell plots 653 & 652 to deft. In the draft conveyance submitted to pltf.'s solrs. by deft.'s solrs., a right of way was inserted in favour of the purchaser (deft.) over pltf.'s land to the brown strip. This was struck out by the solrs. for the vendor (pltf.) ; & no grant was shown in the conveyance ultimately executed by the parties in Oct. 1926, of any right of way. Pltf. found later that deft. was passing over a track in plot 634 in order to make use of the brown strip for the purpose of taking farm carts from his own land over pltf.'s property to the high road ; & he claimed a right of way. Pltf. sought a declaration that deft. was not entitled to any such right of way as he claimed, & further that the conveyance to deft. of plots 652 & 653 might be rectified by the express exclusion therefrom of any implied right of way which might arise under Law of Property Act, 1925 (c. 20), s. 62 :—*Held :* though the right to use the track was one reputed to be enjoyed with the land, that was plots 653 & 652, & to that extent deft. was entitled to succeed, yet pltf. was entitled to have the conveyance rectified. The evidence showed that neither pltf. nor deft. intended that any such right should pass on the conveyance of plots 653 & 652. The conveyance therefore would be rectified by the insertion therein of proper words limiting the implication of any right of way which might arise under the Law of Property Act, 1925 (c. 20), s. 62.—CLARK *v.* BARNES, [1929] 2 Ch. 368 ; 99 L. J. Ch. 20 ; 142 L. T. 88.

Annotation :—**Refd.** Borman *v.* Griffith, [1930] 1 Ch. 493.

196b. What amounts to " assurance of property or of an interest therein "—Agreement for lease exceeding three years.]—By an agreement in writing dated Oct. 10, 1923, J. agreed to demise to pltf. The Gardens, " with the paddock, orchard, & adjoining gardens." for seven years from Sept. 29, 1923. These premises were situate in a large park called Wood Green Park, & were not approached by any public road. The agreement did not expressly reserve any right of way to pltf. In 1926, J. executed a lease to deft. of The Hall, & the remainder of the park, for fourteen years from Mar. 25, 1926. The Hall had previously been let to H., who had surrendered his lease. A carriage drive ran from a public highway called Silver Street, through Wood Green Park, by the side of the front door of The Gardens, & on to The Hall. At the date of the agreement of Oct. 1923, J. was constructing, & afterwards completed, an unmetalled way from Silver Street to the back of The Gardens : but after that date pltf. constantly used the drive. Deft. obstructed pltf. in his use of the drive. In an action by pltf., claiming to be entitled to a right of way over the drive :—*Held :* (1) an agreement for a lease exceeding a term of three years is not an " assurance of property or of an interest therein," within Law of Property Act, 1925 (c. 20), s. 205 (1) (ii), & therefore cannot be deemed to include the general words of sect. 62 of that Act ; (2) the tenant was in the same position as if the ct. had granted

PART III. SECT. 2, SUB-SECT. 1.—A.

† i. —.]—NANTAIS *v.* PAZNER, [1926] 4 D. L. R. 258 ; 59 O. L. R. 318.—**CAN.**

† ii. ——.]—EDINBURGH LIFE ASSURANCE CO. *v.* BARNHART (1886), 17 C. P. 63.—**CAN.**

† iii. —.]—LANCASTER *v.* LLOYD (1927), 27 S. R. N. S. W. 379 ; 44 N. S. W. W. N. 89.—**AUS.**

specific performance of the agreement, *i.e.*, in regard to rights of way, as if, before the coming into force of the Conveyancing Act, 1881, the property had been demised with no mention of rights of way; &, in the circumstances, a demise to pltf. of a right to use the drive upon terms must be implied.—BORMAN *v.* GRIFFITH, [1930] 1 Ch. 493; 99 L. J. Ch. 295; 142 L. T. 645.

204a. —— **Intention of parties—No evidence of intention to determine status quo.**]—Two adjoining houses, originally belonging to one person, subsequently became vested in pltf. & deft. respectively. For some years before the severance of ownership, a creeper had been growing in what was now deft.'s garden with its foliage spreading along the wall of pltf.'s house. Also, again before the severance of ownership, the post of a gate leading from what was now deft.'s garden had been fastened by plugs & nails into pltf.'s wall. The growth of the creeper had from time to time reached pltf.'s gutter, & he had been obliged to cut it back. Pltf. brought an action for trespass in respect of the two above-mentioned acts, & the county ct. judge found both acts to be trespasses:—*Held:* both the growth of the creeper on pltf.'s wall & the fastening of the gate to pltf.'s wall would amount to trespasses, unless they could be justified by the existence of an easement; the implied reservation of an easement in a grant of property depends on the common intention of the parties; here there was no evidence that it was not the intention of the parties to the conveyance that creeper & gate-post should remain, & therefore an easement in each case was impliedly reserved; there was, however, a duty on the part of the grantee to use care that the grantor's property was not unduly interfered with; deft. in allowing the creeper to obstruct pltf.'s gutter had failed to use necessary care, & as to this part of the case the award as to damages must stand.—SIMPSON *v.* WEBER (1925), 133 L. T. 46; 41 T. L. R. 302, D. C.

210a. —— —— **Matter of convenience & not necessity.**]—Where real property is severed by the grant of a part of it, there can be no implied reservation, in favour of the property retained, of an easement of convenience; but only of an easement of necessity.

Two adjoining messuages in a terrace, Nos. 28 & 30, in common ownership, were leased on a ninety-nine years' lease, which, in 1896, was assigned to G., who in 1901 assigned the lease of No. 30 to pltf.'s predecessors in title, without reserving expressly in favour of No. 28, the property retained, any right of way across the garden of No. 30. In 1904 G. assigned the lease of No. 28 to deft.'s predecessor in title. Pltf. claimed in the county ct. an injunction restraining deft. from crossing on a path across the garden of No. 30 from a gate in the fence between the two properties, to a gate opposite, which led into a passage-way giving access to the road in front of the terrace. Deft. claimed a right of footway across this path by reason of her occupation of No. 28. The county ct. judge found that both at the time when there was unity of possession of Nos. 28 & 30, & from the time when the lease of No. 30 had been assigned, the path had always been used for the limited purpose of removing dust & refuse & for bringing in coal, & for no other purpose. But he did not find whether this user was by pltf.'s leave & courtesy, or whether there was an apparent & continuous easement from some certain time. Confusing the dates & thinking that the lease of the alleged dominant tenement, No. 28, was first assigned, when in fact the lease of No. 30 was first assigned, he held that although deft. had no unrestricted right of way across the path, yet, in 1901, there was an implied grant of an apparent quasi-easement enuring to deft. for the limited purpose of removing refuse & bringing in coal, & he made a declaration to that effect:—*Held:* there was no evidence that on the grant in 1901 to the pltf.'s predecessor in title where was an implied reservation of a right of way in favour of deft. across the garden of pltf. for the removal of dust & refuse & the delivery of coal.—ALDRIDGE *v.* WRIGHT, [1929] 2 K. B. 117; 98 L. J. K. B. 582; 141 L. T. 352, C. A.

215. *Add. Annotation:—As to* (1) **Consd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

216. *Add. Annotation:—As to* (1) **Reld.** Aldridge *v.* Wright, [1929] 1 K. B. 381.

223. *Add. Annotations:*—**Reld.** Sack *v.* Jones, [1925] Ch. 235; Aldridge *v.* Wright, [1929] 2 K. B. 117; Vanderpant *v.* Mayfair Hotel Co., [1930] 1 Ch. 138.

226. *Add. Annotation:—As to* (4) **Consd.** Aldridge *v.* Wright, 1929] 1 K. B. 381.

229. *Add. Annotations:*—**Apld.** Sack *v.* Jones, [1925] Ch. 235. **Reld.** Simpson *v.* Weber (1925), 133 L. T. 46; Aldridge *v.* Wright, [1929] 2 K. B. 117; Vanderpant *v.* Mayfair Hotel Co., [1930] 1 Ch. 138.

PART III. SECT. 2, SUB-SECT. 1.—B.

223 1. *Whether reservation will be implied—Easement of necessity—Support—Subsequent sale by grantor.*]—NATIONAL TRUST CO. *v.* WESTERN TRUST CO. (1912), 21 W. L. R. 571; 2 W. W. R. 667; 4 D. L. R. 455.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.—C.

§ i. —— —— —— *Land bounded by private road.*]—Pltf., a lessee, claimed to be entitled to a right of way over a private road existent at the time of the lease & maintained by the lessor, owner of adjoining lands, as one of the approaches from the highway to his own house, & permitted to be used by tenants in prior years without objection. The leased property as described in the lease did not embrace this road, but the lessee claimed that be & prior occupiers of the leased house had the use of it, &, as one of the named boundaries was the roadway, the lease impliedly gave him a right of way over it:—*Held:* the lessee was not entitled to the right-of-way.—BREADY *v.* MCLENNAN (No. 2), [1924] 3 W. W. R. 924; 33 B. C. R. 460.—**CAN.**

§ ii. —— —— —— *Land bounded by lane.*]—A conveyance or lease of land described as abutting on, or bounded by, a lane or right of way, or a conveyance by reference to a plan indicating that the land in fact abuts on, or is bounded by, a lane or right of way, is equivalent to a grant to the conveyee or lessee of access to & fro over that lane or right of way, if the ownership of the same is vested in the conveyor or lessor.—COWLISHAW *v.* PONSFORD (1928), 28 S. R. N. S. W. 331; 45 N. S. W. W. N. 94.—**AUS.**

§ iii. —— —— ——.]—The decisions in England prior to 1881 were not uniform on the question whether a right of way was a continuous easement or not; but the Indian Easements Act adopted the view that it was not. Hence on a partition of two tenements, a right of way even over a well-formed & metalled road does not pass to the grantee as a continuous easement. It is this view, as enacted in the Act, that must govern wherever the Act is in force, in preference to the now well-established view in England. The way may, however, pass to the grantee if it is an easement of necessity; but an easement of way cannot be termed "necessary" though the way was used as a way before the partition or even though it may be the most convenient or reasonable means of access, if in fact there is another way.—NARAYONA GAJAPATIRAJU *v.* RATNAYAMMAJI (1929), I. L. R. 53 Mad. 449.—**IND.**

238a. —— **Way.**]—BORMAN *v.* GRIFFITH, No. 196b, *ante.*

250. *Add. Annotations :—As to* (1) **Consd.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114. *As to* (3) **Reld.** Aldridge *v.* Wright (1929), 98 L. J. K. B. 285.

252a. —— —— ——.]—Pltf. was the owner of a cottage & farm land (the pink land) under two conveyances made to his predecessors in title in 1919, & deft. was the owner of adjoining land (the blue land) conveyed to her in 1929 by the same common owners. More than forty years ago the common owners constructed a collecting tank for water, mainly on the pink land, which fed a tank (Tank Z) on the edge of the blue land. Tank Z was used as a drinking trough for cattle & horses, & it had no outlet, but was tipped towards the south so that it overflowed on to the pink land through a wall between the pink & the blue land. The overflow was then conducted by a stone drain to an open watercourse along which the water flowed to the southern boundary of the pink land. The watercourse then turned & flowed along inside the southern boundary, being joined at the bend by a natural stream. At least from the bend the watercourse was a natural stream, & at two points along it were dipping points, one used for watering pltf.'s cattle & the other used by cottagers & other persons, including the occupants of the cottage on the pink land & of two other cottages near by which also belonged to pltf. In Feb. 1920, deft. substituted for Tank Z a covered brick tank connected by an underground pipe laid along the southern boundary of the blue land to a ram which pumped water to deft.'s house. There was also an overflow outlet to the new tank by which the overflow still passed through the boundary wall on to the pink land, but the flow was substantially diminished. In laying the pipe along the southern boundary of the blue land in a trench, springs were tapped & damage was said to have resulted from the escape of this water on to the surface of the pink land :—*Held :* (1) as Tank Z had been constructed simply for supplying water to cattle & horses grazing on the blue land & not for the benefit of the pink land, there could be no expectation that the overflow from it would be other than temporary, & the right to the continuance of the overflow did not pass under the general words implied in the conveyances of the pink land in 1919 by Conveyancing Act, 1881 (c. 41), s. 6, now Law of Property Act, 1925 (c. 20), s. 62 ; (2) pltf. had no prescriptive right to have the water naturally flowing in the stream along the southern boundary of the pink land augmented by the overflow from Tank Z along an artificial watercourse which had been constructed for a temporary purpose only.—BARTLETT *v.* TOTTENHAM, [1932] 1 Ch. 114 ; 101 L. J. Ch. 160 ; 145 L. T. 686.

253. *Add. Annotations :—As to* (1) **Apld.** Aldridge *v.* Wright, [1929] 2 K. B. 117. **Reld.** Simpson *v.* Weber (1925), 133 L. T. 46. *As to* (2) **Consd.** Aldridge *v.* Wright, [1929] 2 K. B. 117 ; Borman *v.* Griffith, [1930] 1 Ch. 493 ; Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

261. *Add. Annotations :—As to* (1) **Reld.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114. *As to* (6) **Reld.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

264. *Add. Annotation :*—**Reld.** O'Cedar *v.* Slough Trading Co., [1927] 2 K. B. 123.

267. *Add. Annotation :*—**Reld.** Vanderpant *v.* Mayfair Hotel Co., Ltd., [1930] 1 Ch. 138.

267a. —— **Intention to use property for working mill.**]—KEEWATIN POWER CO., LTD. *v.* LAKE OF THE WOODS MILLING CO., LTD., No. 273a, *ante.*

271. *Add. Annotation :*—**Reld.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

273a. —— **Right to take water from artificial channel—Limited to capacity of channel at time of grant.**]—In 1894 the Crown, by an Ontario patent, granted to applts. the banks & bed of a natural outflow from a very large lake, & the adjoining water power. The grant provided that it was not to be construed as conferring exclusive rights elsewhere upon the lake or upon other streams, nor as authority to restrict any powers or privileges therebefore enjoyed by the Crown. Applts. used water power from the outflow to work an electrical power plant. In 1892 & 1891 the Crown had similarly granted to resps.' predecessors in title land the boundaries of which, in each case, included a mill & an artificial channel from a bay of the lake. The mills had been erected & the channels made by the grantees with the approval of the Crown ; the grants mentioned the mill races, but did not expressly include water power. Resps. used water power from the channels to work their mills. Water passing through the channels & the mill sluices, when open, flowed into the river formed by the outflow at a point below applts.' works. Applts. brought actions to restrain resps. from diverting water from the lake :—*Held :* having regard to the circumstances in which the grants of 1892 & 1891 were made they each conferred an easement upon the respective resps. to use water from the channel for the purpose of working a mill, & the grant to applts. was subject to that easement. The easement was limited only by the capacity of the respective channels when granted, not by the size or character of the mill then existing thereon ; although the water could be used only for working a mill, it could be used to develop electrical power to work or light a mill.—KEEWATIN POWER CO., LTD. *v.* LAKE OF THE WOODS MILLING CO., LTD., [1930] A. C. 640 ; 100 L. J. P. C. 1 ; 143 L. T. 633, P. C.

274. *Add. Annotation :*—**Reld.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

278. *Add. Annotation :*—**Consd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

282. *Add. Annotations :—As to* (2) **Apprvd.** Gregg *v.* Richards, [1926] Ch. 521. *As to* (3) **Distd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

291. *Add. Annotations :—As to* (1) **Reld.** Simpson *v.* Weber (1925), 133 L. T. 46. *As to* (2) **Consd.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

299. In the last line of the first paragraph add the word "not" after the word "ought."

Add. Annotations :—**Consd.** Yorkshire East Riding County Council *v.* Selby Bridge Co., [1925] Ch. 841. **Refd.** Winsford Entertainments *v.* Winsford U. D. C. (1924), 23 L. G. R 254; Layzell *v.* Thompson (1926), 43 T. L. R. 58; Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1930] A. C. 549.

309. *Add. Annotation :*—**Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

320. *Add. Annotation :*—**Refd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355.

329. *Add. Annotation :—As to* (1) **Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

346. *Add. Annotations :—Generally,* **Refd.** Layzell *v.* Thompson (1927), 137 L. T. 106; Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1930] A. C. 549.

347. *Add. Annotations :*—**Refd.** Stoney *v.* Eastbourne R. D. C., [1927] 1 Ch. 367; Hue *v.* Whiteley, [1929] 1 Ch. 440.

358. *Add. Annotation :—As to* (2) **Refd.** Wirral Estates, Ltd. *v.* Shaw (1932), 48 T. L. R. 281.

359. *Add. Annotation :*—**Refd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355.

360. *Add. Annotation :—As to* (1) **Consd.** Green *v.* Matthews & Co. (1930), 46 T. L. R. 206.

361. *Add. Annotation :—As to* (5) & (6) **Folld.** Green *v.* Matthews & Co. (1930), 46 T. L. R. 206.

361a. ——.]—A person cannot set up a right either by prescription or under the doctrine of lost grant to cause sewage or trade refuse to fall or flow into a stream or watercourse, & thereby to pollute it, where the right claimed would be in contravention of a statutory prohibition such as is contained in Rivers Pollution Prevention Act. 1876 (c. 75).—GREEN *v.* MATTHEWS & Co. (1930), 46 T. L. R. 206.

363. *Add. Annotation :*—**Refd.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

389. *Add. Annotation :—As to* (3) **Refd.** Slack *v.* Leeds Industrial Co-op. Soc. (1924), 94 L. J. Ch. 46.

PART III. SECT. 3, SUB-SECT. 2.

sm. *The public.*]—To a suit by a private person against the Govt. for a declaration of his ownership of a land, the acquisition of an easement over it by the public is no defence. Though the public cannot acquire ownership of a land, it can acquire over it an easement by prescription.—USSAN KASIM SAIT *v.* SECRETARY OF STATE FOR INDIA (1923), I. L. R. 47 Mad. 116.—**IND.**

oi. —— *In land of lessor.*] —Although a tenant cannot acquire a prescriptive right of easement in land belonging to his lessor, he may claim a right of easement based on immemorial user.—TINKOWRI, ETC. *v* RAM, ETC. (1922), I. L. R. 50 Calc. 356.—**IND.**

PART III. SECT. 3, SUB-SECT. 3.

s i. ——.]—In India a tenant can establish his right to irrigate his field from his landlord's tank by proof of open & continuous user from time immemorial.—TINKOWRI, ETC. *v.* RAM, ETC. (1922), I. L. R. 50 Calc. 356.—**IND.**

sw. *Not right to use railway.*]—MEAGHER *v.* CANADIAN PACIFIC RY. Co. (1912), 42 N. B. R. 46.—**CAN.**

sz. *Right to trap.*]—RICI LAKE FUR CO., LTD. *v.* MCALLISTER, [1925] 2 D. L. R. 506; 56 O. L. R. 440.—**CAN.**

PART III. SECT. 3, SUB-SECT. 4.—A.

326 x. ——.]—Pltf. claimed that he & his predecessors in title for 20 years preceding the commencement of the action had enjoyed as of right a way for themselves & their servants on foot & with horses, carriages, vehicles, cattle, sheep & other farming stock from the public highway over deft.'s land to pltf.'s land & from pltf.'s land to such public highway & that deft. had wrongfully obstructed him in the enjoyment of such right of way. Deft. pleaded that there had been no such user or enjoyment of the way claimed by pltf. as supported a prescriptive right or claim thereto, & alleged (*inter alia*) that deft.'s predecessor in title had no knowledge of the alleged claim, & further, that pltf. during the said period of 20 years had himself claimed the ownership of part of the land over which the way was claimed to have been enjoyed:—*Held :* deft.'s predecessor in title in any event had had a reasonable opportunity of becoming aware of the enjoyment by pltf. of a right over his land & for that reason the enjoyment of the right of way could not be alleged to be secret.—HOUGH *v.* TAYLOR, [1927] W. A. L. R. 97.—**AUS.**

326 xi. ——.]—*Held :* where a person has possessory rights over a piece of land, the title to the land being vested in Govt., another person may establish a right of access to a tomb erected on such land & to worship there. Such a right must have been openly enjoyed without leave, stealth, or force for a length of time which suggests originally an agreement or an usage that has become a customary law of the place in respect of the persons or things in which it is concerned.—DAWSON *v.* ROUHAE ZAMANI BEGUM (PRINCESS) (1928), I. L. R. 6 Ran. 456.—**IND.**

sa. *User as one of public.*]—To constitute a legal possession of land, not only must there be a corporeal detention, or that quasi-detention which, according to the nature of the right, is equivalent thereto, but, also, the intention to act as owner of the land; no legal possession is acquired by the exercise of a supposed right as one of the public. The rear portions of pltf.'s & deft.'s lands abutted on a public lane, a strip of land between the fence erected on deft.'s land & the boundary of the lane being unenclosed. Pltf., for over 20 years, believing this strip to be a part of the lane, had been accustomed to drive over it to get to his stable, doing so in the exercise of a supposed right as one of the public, & not as an easement to his land :—*Held :* he had not acquired any right to use the strip.—ADAMS *v.* FAIRWEATHER (1906), 7 O. W. R. 785; 8 O. W. R. 886; 13 O. L. R. 490.—**CAN.**

sb. *Dominant & servient tenement in same occupation—Occupation of servient tenement wrongful.*]—The time for acquisition of an easement by prescription does not run while the dominant & servient tenements are in the occupation of the same person, even though the occupation of the servient tenement be wrongful & without the privity of the true owner.—INNES *v.* FERGUSON (1894), 21 A. R. 323; *affd.* (1895), 24 S. C. R. 703.—**CAN.**

PART III. SECT. 3, SUB-SECT. 4.—B.

339 iv. —— ——.]—Pltfs. & defts. occupy lands very near each other, the land of a third party intervening between. Defts. had been taking water, flowing through an artificial channel, into their land, for the purpose of irrigation, for nearly thirty-two or thirty-five years without interruption, every monsoon through the land of the third person, by cutting the ridge (ail) of a plot of land, belonging to pltfs., in one place. Pltfs. sued for permanent injunction to restrain defts. from cutting the ail :—*Held :* defts. had acquired a prescription right to take water by cutting the ail.—BIPIN BEHARI GHATAK *v.* RAMNATH GHATAK (1929), I. L. R. 56 Calc. 161.—**IND.**

sc. *Continuous user—Right exercised from year to year.*]—*Held :* where deft., in an action for trespass to land, claimed a right of way by prescription over the land, it was necessary for him to show continuous user of a definite way & exercise of the right from year to year.—PETIPAS *v.* MYETTE (1913), 12 E. L. R. 537.—**CAN.**

sd. —— *Whether as of right or by permission.*]—Pltf. & deft. were the owners & occupiers of adjoining farms, & deft. claimed to have acquired, by prescription, a right of way over a road or track on pltf.'s property. The way over pltf.'s property had been used by deft. whenever he wished to visit his brother or whenever he wished to go past his brother's house into the main road. Deft. used the way for all the purposes for which he required to use it in connection with his farm. This user commenced at a time when pltf.'s farm was owned by deft.'s brother & continued through subsequent changes of occupancy until & since pltf. became the owner & occupier of the farm. Pltf. alleged & deft. denied that permission had been given to deft. to use the road, & that the use of the road by deft. was not as a right:—*Held :* deft.'s right of way over the road had been established.—AUSTIN *v.* WRIGHT, [1927] W. A. L. R. 55.—**AUS.**

PART III. SECT. 3, SUB-SECT. 5.—A.

345 i. *Origin of doctrine.*]—When enjoyment of a right of easement has continued uninterrupted for a long series of years, such enjoyment should be attributed to a legal origin, & the ct. should presume a grant or an agreement.—TINKOWRI, ETC. *v.* RAM, ETC. (1922), I. L. R. 50 Calc. 356.—**IND.**

PART III. SECT. 3, SUB-SECT. 5.—E.

se. *Proof of commencement of tenancy — User immemorial.*] — Where the origin of a tenancy is known, but the origin of a right of easement has not been traced, the tenancy does not

435. *Add. Annotation :—As to* (1) **Refd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312.

452. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

Part V.—Preservation and Repair of Easements.

482. *Add. Annotation :*—**Refd.** Sack *v.* Jones, [1925] Ch. 235.

483. *Add. Annotation :*—**Refd.** Metropolitan Water Board *v.* L. & N. E. Ry. (1924), 131 L. T. 123.

Part VI.—Extinguishment of Easements.

487. *Add. Annotation :—Generally,* **Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

493. *Add. Annotations :—As to* (1) **Apld.** Swan *v.* Sinclair, [1924] 1 Ch. 254. **Refd.** Swan *v.* Sinclair, [1925] A. C. 227.

494. *Add. Annotation :—As to* (2) **Refd.** Swan *v.* Sinclair, [1925] A. C. 227.

502. *Add. Annotation :*—**Refd.** Swan *v.* Sinclair, [1925] A. C. 227.

505. *Add. Annotation :*—**Refd.** Swan *v.* Sinclair, [1925] A. C. 227.

511. *Add. Annotation :—As to* (1) **Refd.** Swan *v.* Sinclair, [1925] A. C. 227.

515. For the paragraph in the original volume substitute the following paragraph :—

—— **Acquiescence in obstruction of way.**]—In 1870 a row of houses was put up for sale by auction in eleven lots. One of the conditions was that a strip of land fifteen feet in width, running the entire length of the lots & being the rear portions of the back gardens of the houses, was intended to form a right of way from the back garden of each house into Church Road, which bounded the side of lot 1 on the south, & that the lots would be sold subject to & with the benefit of such right of way, & that the respective purchasers should at the earliest possible moment remove the fifteen feet of end garden wall & form the right of way. This condition was recited in each of the conveyances. Lot 1 was conveyed subject to the right of way of the owners of the other lots & lots 2 & 3 with the benefit of & subject to the right of way. The purchaser of lot 1 let it for a term of fifty years, which expired on June 15, 1922, subject to the right of way. In 1904 pltf. took an assignment of this lease, & in 1911 he purchased the fee simple of lots 2 & 3, with the benefit & subject to the right of way. Deft. was the present owner of lot 1. For fifty years from the date of the original sale no attempt was made to form the proposed roadway, the garden walls dividing the several lots remained intact, & the wall separating lot 1 from Church Road was not breached. Church Road was six feet above the level of the back gardens. In 1883 the original lessee of lot 1 in the course of erecting some stables

rebut the presumption of a grant which arises upon proof of immemorial user. —TINKOWRI, ETC. *v.* RAM, ETC. (1922), I. L. R. 50 Calc. 356.—**IND.**

PART III. SECT. 3, SUB-SECT. 6.—C. (b) i.

t i. *S. P.* SUBBA RAO *v.* LAKSHMANA RAO (1925), I. L. R. 49 Mad. 820.—**IND.**

t ii. ——.]—CARPET IMPORT CO., LTD. *v.* BEATH & CO., LTD., [1927] N. Z. L. R. 37.—**N.Z.**

PART III. SECT. 3, SUB-SECT. 6.—C. (b) ii.

413 i. *Evidence that user not of right —Parol licence granted during statutory period.*]—Parol licence is of no moment unless it is applied for & granted within the period of forty years prescribed by Limitations Act, R. S. O., 1914, s. 35, in which case it will negative the enjoyment of the easement as of right for forty years.—BOWES *v.* REID, [1924] 2 D. L. R. 399; 54 O. L. R. 253.—**CAN.**

PART III. SECT. 3, SUB-SECT. 6.—C. (b) iii.

e i. —— *Way.*]—FERGUSON *v.* INNES 1895), 24 S. C. R. 703.—**CAN.**

PART III. SECT. 3, SUB-SECT. 6.—C. (c) i.

si. *Forty years — Whether conclusive.*] — Limitations Act, R. S. O., 1914, s. 35, makes a right which has been enjoyed for the full period of forty years indefeasible, unless it appears that it was enjoyed by virtue of some consent or agreement expressly given by deed or writing.—BOWES *v.* REID, [1924] 2 D. L. R. 399; 54 O. L. R. 253.—**CAN.**

433 i. *Against whom time computed—Reversioner.*]—EISENHAUER *v.* WHYNACHT (1902), 35 N. S. R. 295.—**CAN.**

PART III. SECT. 5, SUB-SECT. 2.

sg. *Plea of user—Road within well-defined limits—Slight variation of via trita—Sufficient.*]—BOWES *v.* REID, [1924] 2 D. L. R. 399; 54 O. L. R. 253.—**CAN.**

PART IV. SECT. 1.

sh. *Whether assignable.*]—In July, 1916, deft. & another granted to S. a right to lay down a tramway through deft.'s land for the purpose of removing S.'s timber. In 1919 S. assigned his rights under the agreement to pltf., who continued to use the tramway. The assignment was known to deft., who raised no objection. Deft., in Aug. 1922, placed obstructions across the tramway. On a motion for an injunction, deft. contended that the contract granting the tramline was not assignable :—*Held :* the grant was not a personal one, & pltf. had an equitable interest by assignment from S. in the easement.—MACDONALD *v.* PEDDLE, [1923] N. Z. L. R. 987.—**N.Z.**

PART VI. SECT. 2, SUB-SECT. 2.—B.

507 i. *Non-user alone as presumption of abandonment—Abandonment question of fact.*]—While mere non-user is not sufficient to amount to abandonment of a right of way, it is a fact to be taken into consideration, as it is from all such facts that the ct. has to decide whether or not a clear intention to abandon can be inferred or is indicated. Where pltf. & his predecessors in title had failed to exercise a right of way, had fenced off their land, so as to shut off the right of way & had omitted any specific mention of the right in various conveyances :—*Held :* an abandonment was established.—CHRISTOPHER *v.* COHEN (1924), I. L. R. 2 Ran. 534.—**IND.**

508 v. ——.]—Non-user is not of itself evidence of abandonment.—NANTAIS *v.* PAZNER, [1928] 4 D. L. R. 258; 59 O. L. R. 318.—**CAN.**

508 vi. —— *Onus of proof.*]—LISCOMBE *v.* MAUGHAN, [1928] 3 D. L. R. 397; 62 O. L. R. 328. **CAN.**

g i. ——.]—A mutual right of way was established in 1907 & 1908 by grants conveying adjoining parcels of land respectively to the predecessors in title of pltf. & deft. covering 5 feet in width of one parcel & 2 feet in width of the other, extending from the westerly limit of a street westerly for 75 feet. There was a dispute as to the westerly 15 feet, as to which deft. alleged that pltf.'s right of way had been abandoned :—*Held :* the evidence did not justify the inference that the right of way had been abandoned, although it was first used by deft. or her predecessor only.—BAKER *v.* HARRIS, [1930] 1 D. L. R. 354; 64 O. L. R. 513.—**CAN.**

in his back garden raised the surface of the strip of land at the end of his lot to the level of Church Road, with the result that there was a drop of six feet from that strip into lot 2. In 1919 pltf., in anticipation of the expiration of his lease, proposed to build a garage on lots 2 & 3. With that object in view he pulled down part of the wall which separated the rear portion of lot 1 from Church Road & erected gates there, & he also raised the level of the rear portion of lot 2; & subsequently he caused a car to be driven through the gates over the strip in lot 1 into lot 2. On the expiration of the lease deft. blocked up the gates & obstructed the way. In an action by pltf. as owner of lots 2 & 3 to enforce his right of way against the deft.:—*Held:* (1) until the land was cleared there could be no effectual creation of a right of way; (2) having regard to the time which had elapsed before any purchaser attempted to assert his rights under the original conveyance, the inevitable inference was that the arrangement made in 1870 had been abandoned by common consent.—SWAN *v.* SINCLAIR, [1925] A. C. 227; 94 L. J. Ch. 104; 132 L. T. 577; 89 J. P. 38; 41 T. L. R. 158; 22 L. G. R. 705, H. L.

Part VII.—Rights of Way.

580. *Add. Annotation:*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

581. In the cross-refcrences following this case for "**Church ways.**]—*See* HIGHWAYS," substitute "**Church ways.**]—*See* ECCLESIASTICAL LAW, p. 307, *post.*"

598. *Add. Annotation:*—**Refd.** Taylor *v.* British Legal Life Assce. (1925), 94 L. J. Ch. 284.

607. *Add. Annotations:*—**Distd.** Aldridge *v.* Wright, [1929] 2 K. B. 117. **Apld.** Borman *v.* Griffith, [1930] 1 Ch. 493.

641. *Add. Annotation:*—**Refd.** Taylor *v.* British Legal Life Assce. (1925), 94 L. J. Ch. 284.

658. *Add. Annotation:*—*Generally*, **Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

664. *Add. Annotation:*—**Refd.** Callard *v.* Beency, [1930] 1 K. B. 353.

683. *Add. Annotation:*—**Refd.** Callard *v.* Beency, [1930] 1 K. B. 353.

684. *Add. Annotation:*—**Consd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211.

687. *Add. Citations:*—[1924] 1 Ch. 211; 130 L. T. 273; 88 J. P. 37.

Add. Annotation:—*As to* (2) **Refd.** Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355.

PART VI. SECT. 3, SUB-SECT. 1.

1 i. ——.]—The unity of the dormant & servient estates in the same person extinguishes the easement appurtenant to the dominant estate.—TINKOWRI, ETC. *v.* RAM, ETC. (1922), I. L. R. 50 Calc. 356.—**IND.**

1 ii. —— *Easement of support.*]—BACKUS *v.* SMITH (1880), 5 A. R. 341.—**CAN.**

549 i. *Unity of possession without unity of seisin—Suspension of easement—Water.*]—TINKOWRI, ETC. *v.* RAM, ETC. (1922), I. L. R. 50 Calc. 356.—**IND.**

——————— may be revived after it has been extinguished, by the union of the dominant & servient tenements in one owner, by their subsequent severance, provided the easement is apparent, continuous & essential to the enjoyment of the dominant tenement.—TINKOWRI, ETC. *v.* RAM, ETC. (1922), I. L. R. 50 Calc. 356.—**IND.**

PART VI. SECT. 4.

sk. *Sale of servient tenement for taxes under statutory power.*]—Under Calgary Charter a sale for taxes of the servient tenement does not extinguish a true easement.—HUTCHINGS *v.* CAMPBELL, WILSON & HORNE, LTD., [1924] 2 D. L. R. 299; 1 W. W. R. 1070; 20 Alta. L. R. 275.—**CAN.**

PART VII. SECT. 1.

566 ii. —— *Agreement between co-owners.*]—Deft. & B., each of whom owned one-half of a lot of land, entered into an agreement for a right of way to a building in the rear, each contributing from his half one foot nine inches, so as to make a right of way, three feet six inches in width:—*Held:* the deed providing for the establishment of the way must be construed as a mutual conveyance from each party to the other of an interest in the land necessary to be used in common for the alleged right of way, & not as an agreement to establish a right of way by grant or otherwise.—TRAVIS INVESTMENT CO. *v.* POWER, [1925] 1 D. L. R. 232; 57 N. S. R. 432.—**CAN.**

r. For "BADHANATH" read "RADHANATH."

PART VII. SECT. 2, SUB-SECT. 5.

602 i. *Extent of user of way—Grant subject to existing obstruction.*]—When a right of way is granted over land on which there exists an obstruction at the date of the grant, it is a question of interpretation of the grant whether the easement is subject to the obstruction or free from it.—SPEAR *v.* ROWLATT, [1924] N. Z. L. R. 801.—**N.Z.**

PART VII. SECT. 3, SUB-SECT. 2.—B.

620 vi. —.]—A side door in the wall of the back garden of pltf.'s premises opened into an avenue leading to deft.'s house. Pltf. claimed a right of way from this door, along the avenue, to the avenue gates. Pltf.'s premises were the end house of a terrace of six similar houses, which formed the base of a triangle in the apex of which stood deft.'s house. The avenue from the latter house ran alongside the garden wall of pltf.'s house, & its gates opened on the same street as the front entrance of the terrace of houses. All seven houses had been built by the same person, & continued for some years in the ownership of members of his family. But, by the will of his daughter, who died in 1919, a severance of ownership as between pltf.'s house & deft.'s house was created; &, subsequently, pltf. purchased the fee simple of his house. He gave evidence that he had entered the premises in 1917 under an agreement for a twelve-months' letting, & continued as tenant until he acquired the fee simple interest; & that he had used the door in the garden wall for the purpose of bringing in coal & manure, & of bringing bicycles in & out. Evidence was also given by the tenant of the premises from 1899 to 1907 that he received the key for the door or found it hanging in the premises, that he used the door for the purpose of getting in coal & for porters delivering goods, that his original landlord, who died in 1905, used to get a little path connecting the door with the avenue cindered, & that he gave up the key on the expiration of his tenancy; & evidence was given by the tenant from 1911 to 1916 that he used the door for bringing goods in & out & for getting in coal & manure. Pltf.'s tenancy agreement was not proved, nor was there evidence of any agreement as to a right of way or easement. Only one other house in the terrace of six houses had a back entrance, & this back entrance, which also opened into deft.'s premises, had become disused before action brought. There was no evidence as to its previous user, nor was there any evidence as to the origin of either back entrance:—*Held:* pltf. had failed to establish his claim.—M'DONAGH *v.* MULHOLLAND, [1931] I. R. 110.—**IR.**

PART VII. SECT. 3, SUB-SECT. 2.—D.

g i. ——.]—FIELDER *v.* BANNISTER (1860), 8 Gr. 257.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 3.—B. (a).

683 v. ——.]—TRAVIS INVESTMENT CO. *v.* POWER, [1925] 1 D. L. R. 232; 57 N. S. R. 432.—**CAN.**

si. —— ——.]—Where there was a grant of way to & from claimant's warehouse solely for the purpose of taking goods to & from the warehouse, & at the time of the grant claimant had no building which could be described as a warehouse, but was then contemplating the building of one:—*Held:* when the grant was made the parties must have intended to create a right of way in connection with the warehouse to be erected in the future, & the grant ought to be so considered.—PATERSON & BARR, LTD. *v.* OTAGO UNIVERSITY, [1925] N. Z. L. R. 191.—**N.Z.**

687a. -.]—In 1923 pltf. conveyed a freehold farm to defts.' predecessor in title by a deed which contained the following words: " & together also with a right of way 14 feet wide as shown on the said plan marked A in & over the portion of the field numbered 171 belonging to the vendor for the purpose of access to & from the point marked X on the said plan to the field numbered 169." The property consisted of seventy acres, forming part of a property of 102 acres originally conveyed to pltf., of which pltf. retained the manor house & park:—*Held:* the dominant tenement in this grant was the whole of the lands assured by the deed, that the right of way was appurtenant to those lands, & was not limited to the right to use the way for purposes connected with field 169 only.—CALLARD *v.* BEENEY, [1930] 1 K. B. 353; 99 L. J. K. B. 133; 142 L. T. 45.

700a. ——— ———.]—ROBERTSON *v.* ADAMS (1930), 69 L. Jo. 301; *sub nom.* ROBERTSON *v.* ABRAHAMS, 169 L. T. Jo. 305; [1930] W. N. 79.

702. *Add. Annotation:*—*As to* (2) **Consd.** Callard *v.* Beeney, [1930] 1 K. B. 353.

706. *Add. Annotation:*—**Consd.** Callard *v.* Beeney, [1930] 1 K. B. 353.

721a. Includes motor cars.]—A.-G. *v.* HODGSON, [1922] 2 Ch. 429; 91 L. J. Ch. 426; 127 L. T. 329; 87 J. P. 121; 38 T. L. R. 601; 66 Sol. Jo. 538; 20 L. G. R. 425.

738. *Add. Annotation:*—**Consd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211.

743. *Add. Annotation:*—**Consd.** S. E. Ry. *v.* Cooper, [1924] 1 Ch. 211.

754. *Add. Annotation:*—**Refd.** Taylor *v.* British Legal Life Assce. (1925), 94 L. J. Ch. 284.

783. *Add. Annotation:*—*As to* (2) **Refd.** Robertson *v.* Adams (1930), 69 L. Jo. 301.

787. *Add. Annotation:*—*As to* (3) **Consd.** Callard *v.* Beeney, [1930] 1 K. B. 353.

795. *Add. Annotation:*—*As to* (1) **Apld.** Oldham *v.* Sheffield Corpn. (1927), 136 L. T. 681.

Part VIII.—Light.

829. *Add. Annotation:*—**Consd.** News of the World, Ltd. *v.* Fairhead (Allen) & Sons, Ltd., [1931] 2 Ch. 402.

830. *Add. Annotations:*—*As to* (1) **Folld.** Price *v.* Hilditch, [1930] 1 Ch. 500. *As to* (3) **Consd.** Sheffield Masonic Hall Co. *v.* Sheffield

PART VII. SECT. 6, SUB-SECT. 3.—B. (b).

690 i. *Limited by user proved—Only when terminus ad quem of special nature.*]—The only cases in which servitudes of way acquired by prescription are limited by reference to the purposes of the traffic carried by them are those cases in which there is some special feature attached to the terminus to which the roadway leads, as in a way to a mill, kirk, or peat moss.—CARSTAIRS *v.* SPENCE, [1924] S. C. 380.—**SCOT.**

PART VII. SECT. 6, SUB-SECT. 3.—B. (c).

701 i. *Whether over whole width—Via trita.*]—The right of pltf. to a way over a fenced driveway or lane, 49 feet in width, part of a parcel of land owned by deft., was held to have been established by prescription, but the right was limited to the *via trita* or the part of the lane actually used by pltf. & his predecessors in passing over it with horses & vehicles.—PICKARD *v.* KERNICK, [1929] 1 D. L. R. 493; 63 O. L. R. 225.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 3.—B. (f).

716 i. *Whether way for general purposes.*]—Where proprietors of certain lands sought to interdict the proprietor of adjoining lands from carting building materials for dwelling-houses over a roadway or track which traversed their lands:—*Held:* during a period defenders had acquired a servitude right of access for cart traffic; & the fact that the carting had been for agricultural purposes did not limit the servitude to a right of passage for such purposes, but a right of access by cart for all purposes, including the carting of building materials, had been acquired.—CARSTAIRS *v.* SPENCE, [1924] S. C. 380.—**SCOT.**

716 ii. ——.]—Where a dominant owner, who has acquired a right of way over the servient heritage for the agricultural uses of his land, seeks to use that right of way for non-agricultural purposes, he has a right to do so, provided that additional burden is not thereby imposed on the servient heritage.—MANCHERSHA SORABJI *v.* VIRJIVALLABHDAS JEKISONDAS (1926), I. L. R. 50 Bom. 635.—**IND.**

PART VII. SECT. 6, SUB-SECT. 3.—D. (a).

754 i. —— *Method of—Whether reasonable.*]—Deft. leased to pltf. an island, standing in a shallow lake, which in the dry season became a muddy marsh. The land surrounding the island belonged to deft., & the lease provided that pltf. should have a right of way across it, nothing being said as to the mode of exercising the right. Pltf. having built a trestle bridge from the island to the main land:—*Held:* pltf.'s mode of user was reasonable, & deft. was not justified in interfering with the bridge.—BUTCHART *v.* DOYLE (1897), 24 A. R. 615.—**CAN.**

s i. *Removal of existing obstruction—Way granted free of obstruction.*]—Where a right of way is granted over land on which there exists an obstruction at the date of the grant, but free from it, it is for the grantee to get rid of the obstruction by his own act. The grantor is not under any obligation in the absence of a contract to that effect.—SPEAR *v.* ROWLATT, [1924] N. Z. L. R. 801.—**N.Z.**

PART VII. SECT. 6, SUB-SECT. 3.—D. (b).

759 i. *General rule.*]—Apart from special custom or express contract, the owner of a servient tenement is not bound to execute any repairs necessary to ensure the enjoyment of the easement by the owner of the dominant tenement.—SPEAR *v.* ROWLATT, [1924] N. Z. L. R. 801.—**N.Z.**

PART VII. SECT. 8.

p i. ——— ———.]—Deft. having, by grant, a right of way over a strip of land, the property of pltf.:—*Held:* pltf. was entitled to erect a fence upon the boundary between the strip & deft.'s land, allowing deft. reasonable access by a gate or gates to the way.—LEWIS *v.* WAKELING (1923), 54 O. L. R. 647.—**CAN.**

s i. ——— ——— *Whether duty on dominant owner to close.*]—A landowner over whose holding an adjoining owner had a general right of way erected a gate across the passage over which the right existed. There was no intention on the part of the servient owner to derogate from the rights of the dominant owner, but the latter, objecting to the obstruction, left the gate open after he had used the way. The servient owner, suing by civil bill, claimed damages for the failure & refusal by the dominant owner to close the gate. No actual damage was caused:—*Held:* the gate having been erected by the servient owner in the reasonable & proper exercise of his rights in his own property, that an obligation was cast upon the dominant owner to shut it.—GEOGHEGAN *v.* HENRY, [1922] 2 I. R. 1—**IR.**

s ii. ——— ——— ———.]—When a gate is erected across a private road there is no absolute obligation on the owner of the dominant tenement to close such gate after passing or repassing on the private road.—HENDER *v.* GOHL, [1928] S. A. S. R. 325.—**AUS.**

s iii. ——— ——— ———.]—Where, in respect of land held in fee simple under Real Property Act, 1886, there was a grant to an adjoining owner of "fee & unrestricted right of way," which words, by sect. 89 of the Act, imply "full & free right & liberty to pass & repass," the erection of a gate was not in the circumstances disclosed in evidence an obstruction or interference with that right. There is a duty on the owner of the dominant tenement & others using & enjoying the right of way through him in normal circumstances to shut the gate after opening & passing through it if leaving it open occasions damage to the owner of the servient tenement or others claiming through him.—GOHL *v.* HENDER, [1930] S. A. S. R. 158.—**AUS.**

Corpn. (1932), 48 T. L. R. 336. *As to* (6) **Consd.** Slack *v.* Leeds Industrial Co-op. Soc. (1924), 94 L. J. Ch. 46. *As to* (10) **Refd.** News of the World, Ltd. *v.* Fairhead (Allen) & Sons, Ltd., [1931] 2 Ch. 402.

834. *Add. Annotation :—As to* (2) **Refd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

841. *Add. Annotation :—As to* (3) **Consd.** News of the World, Ltd. *v.* Fairhead (Allen) & Sons, Ltd., [1931] 2 Ch. 402.

842. *Add. Annotation :—As to* (2) **Consd.** Sheffield Masonic Hall Co. *v.* Sheffield Corpn. (1932), 48 T. L. R. 336.

850. In passage commencing "*Held :* (3) in order to satisfy Prescription Act, 1832 (c. 71), s. 2," for "s. 2" read "s. 3."

858. *Add. Annotation :—***Consd.** Foster *v.* Lyons (1926), 70 Sol. Jo. 1182.

896. *Add. Annotation :—As to* (1) **Refd.** Rye *v.* Purcell, [1926] 1 K. B. 446.

898. *Add. Annotations :—As to* (1) **Folld.** Foster *v.* Lyons (1926), 70 Sol. Jo. 1182. *As to* (2) **Consd.** Spillers, Ltd. *v.* Cardiff Assessment Committee, [1931] 2 K. B. 21.

898a. —— —— ——.]—A reservation in a lease empowering the lessor to build on adjoining land, notwithstanding such building might obstruct any lights on the demised land, prevents the lessee from acquiring a right to light under Prescription Act, 1832 (c. 71), s. 3.—FOSTER *v.* LYONS & Co., [1927] 1 Ch. 219; 96 L. J. Ch. 79; 136 L. T. 372; 70 Sol. Jo. 1182.

910. *Add. Annotation :—***Consd.** Sheffield Masonic Hall Co. *v.* Sheffield Corpn. (1932), 48 T. L. R. 336.

932. *Add. Annotation :—***Consd.** Sheffield Masonic Hall Co. *v.* Sheffield Corpn. (1932), 48 T. L. R. 336.

934a. ——.]—The standard as to the amount of light required to be left so as to prevent a nuisance is an absolute one, & if an obstruction to an ancient light renders a room inadequately lighted & causes an actionable nuisance, the obstruction does not cease to be actionable because the room is situated in a manufacturing town.—HORTON'S ESTATE, LTD. *v.* BEATTIE, LTD., [1927] 1 Ch. 75; 96 L. J. Ch. 15; 136 L. T. 218; 42 T. L. R. 701; 70 Sol. Jo. 917.

934b. ——.]—A right of light by prescription to a room in a residential house is not to be measured by the use to which the room has been put in the past.

Pltf. owned a freehold house built in & occupied since 1907, & continuously having adequate light to the windows & openings, including kitchen & scullery windows, on its north side, on which it was bounded by deft.'s house. Up to Jan. 1929, the two houses were separated by narrow passages on either side of a dwarf boundary wall belonging to deft., which was also the boundary wall between the back gardens. At the beginning of Jan. 1929, without intimation to pltf., building operations were begun on deft.'s premises, the boundary wall being raised to form a side wall of the new building. On Jan. 28 pltf.'s solrs. wrote to deft., her builders & her architect, asking that the work should cease at once. Two days later the building was still proceeding, & on Feb. 4 the wall was 15 feet high. On the next day pltf. issued a writ, & on Feb. 15 a motion came before the ct. By that date the wall had been raised to its full height of 23 feet, & an undertaking by deft. not to raise it further was useless. In an action by pltf. for a mandatory injunction & damages: —*Held :* (1) pltf.'s right of light to the scullery windows was not limited by the use to which the scullery had been put in the past; (2) in the circumstances, the case was not one for a mandatory injunction.—PRICE *v.* HILDITCH, [1930] 1 Ch. 500; 99 L. J. Ch. 299; 143 L. T. 33.

934c. ——.]—SMITH *v.* EVANGELIZATION SOCIETY INCORPORATED TRUST (1932), 49 T. L. R. 32; 76 Sol. Jo. 815.

934d. Light received through windows on different sides of building—Extent of right to each window.]—When a room in a building receives light through windows on different sides which are ancient lights, the owner of land on either side as a general rule can build only to such a height as, if a building of like height were erected on the other side, would not deprive the room of so much light as to cause a nuisance.—SHEFFIELD MASONIC HALL CO., LTD. *v.* SHEFFIELD CORPN., [1932] 2 Ch. 17; 101 L. J. Ch. 328; 147 L. T. 474; 48 T. L. R. 336.

953. *Add. Annotations :—As to* (4) **Consd.** Price *v.* Hilditch, [1930] 1 Ch. 500. **Refd.** Sheffield Masonic Hall Co. *v.* Sheffield Corpn. (1932), 48 T. L. R. 336.

956. *Add. Annotation :—***Consd.** Slack *v.* Leeds Industrial Co-op. Soc., [1924] 2 Ch. 475.

982. *Add. Annotation :—As to* (1) **Refd.** Slack *v.* Leeds Industrial Co-op. Soc., [1924] 2 Ch. 475.

983. *Add. Annotation :—As to* (2) **Refd.** News of the World, Ltd. *v.* Fairhead (Allen) & Sons, Ltd., [1931] 2 Ch. 402.

985. *Add. Annotation :—***Consd.** News of the World, Ltd. *v.* Fairhead (Allen) & Sons, Ltd., [1931] 2 Ch. 402.

987a. —— **Increase of burden on servient tenement.**]—An owner of ancient light cannot so diminish his ancient-light area as to increase the burden on the servient tenement.

The observations of LORD LINDLEY in *Colls* v. *Home & Colonial Stores*, No. 830, to the effect that in considering whether a proposed obstruction would amount to a nuisance, non-ancient light from other quarters of which the dominant owner might be deprived at any time ought not to be taken into account were not intended to interfere with this paramount principle. If, therefore, the dominant tenement is rebuilt in such a way that the area of coincidence between an old & new window is much smaller than the old window, so that the ancient-light area is greatly diminished, the dominant owner cannot ask the ct. to measure the nuisance, if any, by treating the rest of the new window, rendered obstructible by his own act, as blocked up.—NEWS OF THE WORLD, LTD. *v.* FAIRHEAD (ALLEN) & SONS, LTD., [1931] 2 Ch. 402; 100 L. J. Ch. 394; 146 L. T. 11.

Part IX.—Water.

997a. —— —— **Water from pond.**]—A right to take water from the pond of another is a mere easement, & not a *profit à prendre.*—MANNING *v.* WASDALE (1836), 5 Ad. & El. 758; 2 Har. & W. 431; 1 Nev. & P. K. B. 172; 6 L. J. K. B. 59; 111 E. R. 1353.

Annotations :—**Apld.** Franks *v.* Quinsee (1839), 2 Will. Woll. & H. 58; Race *v.* Ward (1855), 4 E. & B. 702.

1012. *Add. Annotation :*—**Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

1016. *Add. Annotation :*—**Apld.** Attwood *v.* Llay Main Collieries (1925), 70 Sol. Jo. 265.

1046. *Add. Annotation :*—**Consd.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

1054. *Add. Annotation :*—*As to* (2) **Consd.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

1055. *Add. Annotation :*—**Refd.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

1055a. —— ——.]—BARTLETT *v.* TOTTENHAM, No. 252a, *ante.*

1070. *Add. Annotation :*—*As to* (1) **Consd.** Keewatin Power Co., Ltd. *v.* Lake of the Woods Milling Co., [1930] A. C. 640.

1092a. —— ——.]—GREEN *v.* MATTHEWS & Co., No. 361a, *ante.*

1117. *Add. Annotations :*—**Consd.** Ilford U. D. C. *v.* Beal & Judd, [1925] 1 K. B. 671. **Refd.** Noble *v.* Harrison, [1926] 2 K. B. 332.

Part X.—Support.

1155. *Add. Annotation :*—**Refd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

1165. *Add. Annotation :*—**Refd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1928] Ch. 31.

1174. *Add. Annotation :*—**Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

1193. *Add. Annotation :*—**Consd.** Ilford U. D. C. *v.* Beal & Judd, [1925] 1 K. B. 671.

1206. *Add. Annotation :*—**Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

1223. *Add. Annotation :*—**Apld.** Sack *v.* Jones, [1925] Ch. 235.

1226a. Whether party-wall entitled to support—From adjacent building.]—Pltf. & deft. were the owners of adjoining houses, separated by a party-wall, & with implied mutual rights of support. Pltf. alleged that owing to lack of repair & underpinning deft.'s house was subsiding, dragging the party-wall over, & thereby damaging pltf.'s house :—*Held :* pltf.'s allegations had not been substantiated by the evidence. *Semble :* even if they had been substantiated pltf. would have had no cause of action.—SACK *v.* JONES, [1925] Ch. 235; 94 L. J. Ch. 229; 133 L. T. 129.

1231. *Add. Annotation :*—*As to* (2) **Refd.** Brooke *v.* Bool, [1928] 2 K. B. 578.

PART IX. SECT. 2, SUB-SECT. 2.—A.

1000 i. *Subterraneous water.*]—The principles of English law regarding underground streams (defined or undefined) do not apply to irrigation channels taking sub-surface water in India.—BASAVANA GOWD *v.* NARAYANA REDDI (1930), I. L. R. 54 Mad. 793.—**IND.**

PART IX. SECT. 2, SUB-SECT. 2.—B.

sl. *By natural right.*]—Applt. & resp. were the owners of adjoining agricultural farms, the natural fall of which was from that of resp. to that of applt. In the farming of his property resp. kept open certain surface drains constructed many years before, the effect of which was to convey the surface water from his farm to that of applt. On a claim by applt. for an injunction to restrain resp.'s action :—*Held :* when two contiguous fields, one of which stands upon higher ground than the other, belong to different proprietors, nature itself may be said to constitute a servitude on the inferior tenement by which it is obliged to receive the water which falls from the superior; & if the water which would otherwise fall from the higher ground without hurting the inferior tenement should be collected in one body by the owner of the superior in the natural use of his property for draining or otherwise improving it, the owner of the inferior is, without the positive constitution of any servitude, bound to receive that body of water on his property. Injunction refused.—BAILEY *v.* VILE, [1930] N. Z. L. R. 829.—**N.Z.**

PART IX. SECT. 2, SUB-SECT. 2.—C.

1035 iii. ——.]—CARTER *v.* SUDDABY (Ont.), [1927] 1 D. L. R. 812.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 3.—D. (c).

o i. —— ——.]—*Held :* pltf. corpn. had obtained by prescription an easement to cast upon the land of defts. surface waters to the same extent as at a date 20 years before the commencement of the action, but it had no right to increase the volume & force of the current beyond that which existed 20 years ago, to the extent to which the volume & force of the current at times of flood was now greater than it was 20 years ago, pltf. corpn. was a trespasser.—WEST FLAMBOROUGH *v.* PRETUSKI, [1931] 1 D. L. R. 520; 66 O. L. R. 210.—**CAN.**

PART IX. SECT. 3.

1133 iii. ——.]—FORTIN *v.* CARON (Can.), [1927] 4 D. L. R. 936.—**CAN.**

sm. *Irrigation from tank—Prescription by lessee.*]—In India, a tenant can establish his right to irrigate his field from his landlord's tank by proof of open & continuous user from time immemorial.—TINKOWRI, ETC. *v.* RAM, ETC. (1922), I. L. R. 50 Calc. 356.—**IND.**

PART IX. SECT. 4.

sn. *Unity of seisin for different estates—Enjoyment of irrigation rights continued by tenant.*]—Where the tenancy in execution of a rent decree was sold & purchased by the landlord, but the tenant continued in occupation in the undisturbed enjoyment of the right of irrigation & the rent was substantially enhanced :—*Held :* in such circumstances the right of irrigation was not extinguished, but momentarily suspended & revived.—TINKOWRI, ETC., *v.* RAM, ETC. (1922), I. L. R. 50 Calc. 356.—**IND.**

PART X. SECT. 1, SUB-SECT. 1.—A. (a).

1139 iii. —— ——.]—Every owner of land in its natural state has a right to lateral support of his land by the adjacent land of another landowner. Such a right is not an easement, but is a right of property. The ct. will interfere by injunction to prevent irreparable damage to land when anything is done by the owner of the adjacent land in his own land so as to let the former land slip or go down or subside even if no actual damages are sustained by the former land.—TAMLUK TRADING & MANUFACTURING CO., LTD. *v.* NABADWIPCHANDRA NANDI (1932), I. L. R. 59 Calc. 363.—**IND.**

PART X. SECT. 1, SUB-SECT. 1.—A. (b).

1143 i. *General rule — Support in natural state.*]—A person must not excavate on his land so as to destroy the lateral support sufficient to maintain the soil on his neighbour's adjoining land in its natural state.—METROPOLITAN LIFE ASSURANCE CO. *v.* MCQUEEN, [1924] 2 D. L. R. 942; 2 W. W. R. 981.—**CAN.**

PART X. SECT. 1, SUB-SECT. 1.—B. (b).

1189 i. *Weight of building contributing to subsidence.*]—Where a person by an excavation on his land causes subsidence on his neighbour's land, because of the added weight of a building thereon, he is not liable. The neighbour is not entitled to sufficient support to maintain his building.—METROPOLITAN LIFE ASSURANCE CO. *v.* MCQUEEN, [1924] 2 D. L. R. 942; 2 W. W. R. 981.—**CAN.**

Part XI.—Miscellaneous Easements.

1270. *Add. Annotation :*—**Refd.** Vanderpant *v.* Mayfair Hotel Co., Ltd., [1930] 1 Ch. 138.

1282. *Add. Annotations :*—**Consd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588. **Refd.** Back *v.* Daniels (1924), 69 Sol. Jo. 160; Hackney B. C. *v.* Metropolitan Asylums Board (1924), 131 L. T. 136.

1322a. To attach creeper to wall.]—SIMPSON *v.* WEBER, No. 204a, *ante*.

1322b. To attach post to wall.]—SIMPSON *v.* WEBER, No. 204a, *ante*.

Part XII.—Disturbance of Easements.

1330a. —— —.]—PENWARDEN *v.* CHING (1829), Mood. & M. 400; 173 E. R. 1203, N. P.*

Annotations :—**Consd.** Bryant *v.* Foot (1867), L. R. 2 Q. B. 161; Dalton *v.* Angus (1881), 6 App. Cas. 740.

1352. *Add. Annotation :*—*As to* (2) **Consd.** Freeborn *v.* Leeming, [1926] 1 K. B. 160.

1356. *Add. Annotations :*—*As to* (1) **Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159. *As to* (2) **Consd.** Slack *v.* Leeds Industrial Co-op. Soc., [1924] 2 Ch. 475; Horton's Estate *v.* Beattie (1926), 42 T. L. R. 701. **Apld.** Price *v.* Hilditch, [1930] 1 Ch. 500. **Refd.** Farnworth *v.* Manchester City Corpn., [1929] 1 K. B. 533.

1396. *Add. Annotation :*—**Refd.** Slack *v.* Leeds Industrial Co-op. Soc., [1924] 2 Ch. 475.

1399. For the paragraph in the original volume substitute the following paragraph :—

——.] — Chancery Amendment Act, 1858 (c. 27), s. 2, confers on the Ct. of Ch. jurisdiction to award damages in lieu of an injunction in the case of a threatened injury. Notwithstanding the repeal of that Act by Statute Law Revision & Civil Procedure Act, 1883 (c. 49), the combined effect of Jud. Act, 1873 (c. 66), s. 16, & Statute Law Revision Act, 1898 (c. 22), s. 1, is to maintain in force the jurisdiction conferred by Chancery Amendment Act, 1858, s. 2.

Where therefore an action was brought in the Ch. Div. for an injunction to restrain an obstruction of ancient lights, & the ct. found that defts.' buildings when completed would cause an actionable obstruction to pltf.'s lights, but that no such obstruction had yet taken place :—*Held :* the ct. had jurisdiction to award damages in lieu of an injunction.—LEEDS INDUSTRIAL CO-OPERATIVE SOCIETY, LTD. *v.* SLACK, [1924] A. C. 851; 93 L. J. Ch. 436; 131 L. T. 710; 40 T. L. R. 745; 68 Sol. Jo. 715, H. L.; *revsg.* S. C. *sub nom.* SLACK *v.* LEEDS INDUSTRIAL CO-OPERATIVE SOCIETY, LTD., [1923] 1 Ch. 431, C. A.; *subsequent proceedings*, [1924] 2 Ch. 475, C. A.

Annotation :—**Refd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

1399a. ——.]—In an action brought by pltf. against deft. society for an injunction & damages in respect of an alleged obstruction of ancient lights, the judge found that defts.' buildings when completed would cause an actionable obstruction to pltf.'s lights, but that no such obstruction had yet taken place, & he expressed the opinion that the interference with pltf.'s legal rights when the building was completed would be small, & could be adequately compensated by damages, but held, contrary to his own opinion, that he was bound by the opinion of the Ct. of Appeal in *Dreyfus* v. *Peruvian Guana Co.* (1889), 43 Ch. D. 316, that there was no jurisdiction under Chancery Amendment Act, 1858 (c. 27), to give damages in lieu of an injunction where the injury was threatened but had not been sustained, & he therefore granted an injunction. The Ct. of Appeal, without going into the merits, by a majority, upheld the view that the ct. had no jurisdiction in such a case to award damages in lieu of an injunction. The House of Lords, by a majority, reversed this decision, & remitted the case to the Ct. of Appeal to deal with it on its merits :—*Held :* the findings of the judge brought the case within the "good working rule" suggested by A. L. SMITH, L.J., in *Shelfer* v. *City of London Electric Lighting Co.*, No. 1356, *ante*, as that which might guide the ct. in exercising the discretion given it by Chancery Amendment Act, 1858, to award damages in lieu of an injunction; that was still the rule to be adopted by the ct. as a guide & was not affected by anything that was decided in *Colls* v. *Home & Colonial Stores*, No. 830, *ante*; therefore, there being evidence to support the findings of the judge, the injunction granted by him, contrary to his own opinion, ought to be discharged, & in lieu thereof an inquiry directed as to damages.—SLACK *v.* LEEDS INDUSTRIAL CO-OPERATIVE SOCIETY, LTD., [1924] 2 Ch. 475; 94 L. J. Ch. 46, C. A.

1406a. —— **Erection of building interfered with acquiesced in by defendant.**]—Where pltf. & deft. held adjoining pieces of ground under a common landlord, & pltf., with the licence of the landlord, & without objection by deft., had erected a manufactory, an injunction was granted to restrain deft. so building as to obstruct the lights of pltf.'s manufactory pending trial.—CROOK *v.* WILSON (1855), 3 W. R. 378.

1408. *Add. Annotation :*—*As to* (1) **Consd.** Slack *v.* Leeds Industrial Co-op. Soc. (1924), 94 L. J. Ch. 46.

1433a. —— —— ——.]—PRICE *v.* HILDITCH, No. 934b, *ante*.

1442a. —— **Against lessee—Freeholder not party to action—Light.**]—BARNES *v.* ALLEN (1927), 64 L. Jo. 92; 164 L. T. Jo. 83.

PART XII. SECT. 2, SUB-SECT. 2.—B. (a).

st. *Mortgagee—Though not in possession.*]—A mtgee. of land, though not in possession, has a right to have his security left unimpaired, & if the owner of adjoining land excavates on the mortgaged land, although the mtgee. may not be entitled to maintain an action for trespass, he has a right of action for injunction or damages, independent of any that the owner of the mortgaged land might have.—METROPOLITAN LIFE ASSURANCE CO. *v.* MCQUEEN, [1924] 2 D. L. R. 942; 2 W. W. R. 981.—CAN.

1444a. ——.]—SLACK *v.* LEEDS INDUSTRIAL CO-OPERATIVE SOCIETY, LTD., No 1399a, *ante*.

1471. *Add. Annotations :*—**Folld.** Horton's Estate *v.* Beattie (1926), 42 T. L. R. 701. **Consd.** Sheffield Masonic Hall Co. *v.* Sheffield Corpn. (1932), 48 T. L. R. 336.

Part XIII.—Profits à Prendre.

1490. *Add. Annotation :*—**Refd.** Grant *v.* Edmondson, [1931] 1 Ch. 1.

1494. After this case add :—

—— ——.]—Stat. Frauds, s. 4, is now replaced by Law of Property Act, 1925 (c. 20), s. 40.

1497. *Add. Annotations :*—**Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537. **Apld.** Nicholls *v.* Ely Beet Sugar Factory, [1931] 2 Ch. 84.

1499. *Add. Annotations :*—*As to* (1) **Refd.** Peech *v.* Best (1930), 99 L. J. K. B. 537. *As to* (2) **Refd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

1501. *Add. Annotation :*—**Refd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

1503. *Add. Annotation :*—*Generally*, **Refd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. K. B. 312.

1570. *Add. Annotation :*— *As to* (2) **Refd.** The Fagernes, [1926] P. 185.

1589. *Add. Annotations :*—**Refd.** Abrahams *v.* Mac Fisheries, [1925] 2 K. B. 18; Roe *v.* Russell, [1928] 2 K. B. 117.

PART XII. SECT. 2, SUB-SECT. 2.—D. (b) i.

1451 iii. —— ——.]—Under Specific Relief Act, 1877, the question of an injunction to restrain a party from erecting a building so as to interfere with his neighbour's easements of light & air presents itself in a different light to what it does in the English cts.; & the ct. has a discretion, & may issue an injunction where the injury is such that pecuniary compensation would not afford adequate relief.—MAHOMED AUZAM ISMAIL *v.* JAGANATH JAMNADAS (1925), I. L. R. 3 Ran. 230.—**IND.**

PART XIII. SECT. 4, SUB-SECT. 1.—A.

sw. *Who may acquire — Public.*]—Though the public cannot acquire ownership of a land it can acquire *profits à prendre* over it by grant.—USSAN KASIM SAIT *v.* SECRETARY OF STATE FOR INDIA (1923), I. L. R. 47 Mad. 116.—**IND.**

PART XIII. SECT. 4, SUB-SECT. 2.—B.

1536 i. *The public.*]—Though the public cannot acquire ownership of a land, it can acquire *profits à prendre* over it by prescription.—USSAN KASIM SAIT *v.* SECRETARY OF STATE FOR INDIA (1923), I. L. R. 47 Mad. 116.—**IND.**

ECCLESIASTICAL LAW.

Part I.—In General.

1a. **Church Assembly—Legislative Committee.**]—Neither the Legislative Committee of the Church Assembly, nor the Church Assembly itself, is a body to which a writ of *certiorari* or of prohibition will issue, as neither of them is a body which is under a duty to act in a judicial capacity.—R. *v.* CHURCH ASSEMBLY LEGISLATIVE COMMITTEE & CHURCH ASSEMBLY, *Ex p.* HAYNES SMITH, [1928] 1 K. B. 411; 97 L. J. K. B. 222; 138 L. T. 399; 44 T. L. R. 68; 71 Sol. Jo. 947, D. C.

2a. **Compulsory acquisition of freehold in premises used for "public religious worship"—Part of public only admitted.**]—Two tenements known respectively as "the Salvation Army Hall" or "the Citadel of the Salvation Army, Weston-super-Mare" & "the Young People's Hall" & comprised in one lease were held under a trust deed executed after the lease upon trust to be used as a place of worship. The Salvation Army Hall was in fact used for religious worship: the rooms in the upper part of the Young People's Hall were used for teaching. The two buildings were separated by a yard. The lessees, in pursuance of the powers given by Places of Worship (Enfranchisement) Act, 1920 (c. 56), gave to the lessors notice in writing requiring the lessors to treat contract & agree with the lessees for the sale to the lessees of all the lessors' estate & interest in the premises, subject to the provisions of the Act, & to give particulars of the lessors' estate & interest in the premises & of their claims in respect thereof & of their claim for compensation. The lessors contended that under the trust deed the premises demised by the lease were not held on trust for the purposes of a place of worship, either at the date of the notice or at the date of the Act. In an action by the lessors claiming a declaration that the lessees were not entitled, under the Act or otherwise, to acquire the freehold reversion in all or any part of the premises, & an injunction to restrain them from proceeding under the notice:—*Held:* (1) "public religious worship" may include worship to which, on any or all occasions, only certain sections of the public are admitted; (2) a trust for the use of premises for the purposes of public religious worship is carried out although minor parts of the premises are not so used.—STRADLING *v.* HIGGINS, [1932] 1 Ch. 143; 101 L. J. Ch. 119; 146 L. T. 383.

2b. —— **Minor parts of premises not so used.**]—STRADLING *v.* HIGGINS, No. 2a, *ante*.

Part III.—Constitution of the Church of England.

16. *Add. Annotation:—Generally,* **Refd.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

19. *Add. Annotation:*—**Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

41. *Add. Annotation:—As to* (2) **Consd.** Notley *v.* Birmingham (Bp.), [1931] 1 Ch. 529.

70. *Add. Annotation:—As to* (1) **Refd.** *Re* Mason (1928), 97 L. J. Ch. 321.

135. *Annotations:*—For "*Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1923] 2 Ch. 504," read "*Re* Letters Patent No. 139,207, *Re* Carbonit Akt., [1924] 2 Ch. 53."

185. *Add. Annotation:—As to* (2) **Consd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

185a. —— **Former Royal chapel—Grant by Crown for use as parish church.**]—The ct. held that the rector & the parish church of St. Mary, Stafford, in the diocese of Lichfield, were subject to the ordinary episcopal jurisdiction, including the right of visitation.—LICHFIELD (BISHOP) *v.* LAMBERT (1929), 46 T. L. R. 24.

199. *Add. Annotation:—As to* (3) **Consd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

204. *Add. Annotation:*—**Consd.** Notley *v.* Birmingham (Bp.), [1931] 1 Ch. 529.

270. *Add. Annotation:*—**Refd.** R. *v.* Church Assembly Legislative Committee & Church Assembly, *Ex p.* Haynes Smith (1927), 44 T. L. R. 68.

276. *Add. Annotation:—As to* (2) **Refd.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

292. *Add. Citations:—sub nom.* AYER *v.* ORME, 2 Dyer 221b; Ben. 129; *sub nom.* ANON., Dal. 53: 1 And. 9.

Add. Annotations:—**Refd.** Cromwel's Case (1601) 2 Co. Rep. 69b; Lyn *v.* Wyn (1665), O. Bridg. 122.

346. After this case add:—

—— ——.]—*See, now,* Cathedrals Measure 1931 (No. 7), s. 24.

388. Before this case add "*See* Parochial Registers and Records Measure, 1929 (No. 1).

PART I.

1 i. *Church—Religious community—Schism—Whether provided for by constitution.*]—BRENDZIJ *v.* HAJDIJ, [1927] 1 D. L. R. 1051; [1927] 1 W. W. R. 301; 36 Man. L. R. 300.—**CAN.**

1 ii. —— —— —— *What amounts to.*]—BRENDZIJ *v.* HAJDIJ, [1927] 1 D. L. R. 1051; [1927] 1 W. W. R. 301; 36 Man. L. R. 300.—**CAN.**

1 iii. —— —— —— *Effect of—Members adhering to original constitution entitled to use of church property.*]—BRENDZIJ *v.* HAJDIJ, [1927] 1 D. L. R. 1051; [1927] 1 W. W. R. 301; 36 Man. L. R. 300.—**CAN.**

1 iv. *S. P.* HENNIG *v.* [illegible] (Alta.), [1926] 2 D. L. R. 280; [1926] 1 W. W. R. 912.—**CAN.**

401. *Add. Annotation :*—**Consd.** A.-G. *v.* Mallock (1931), 48 T. L. R. 107.

415. *Add. Annotation :*—**Consd.** A.-G. *v.* Mallock (1931), 48 T. L. R. 107.

472. *Add. Annotation :*—**Apld.** Hauxton Parochial Church Council *v.* Stevens, [1929] P. 240.

472a. —— **Liability of lay-impropriation to sequestration.**]—WALWYN *v.* AWBERRY, No. 2599a, *post.*

472b. —— **Personal liability.**]—The impropriator of an impropriate rectory in the receipt of the profits thereof is personally liable for the repair of the chancel of the parish church, although at the time of the conveyance to him of the lands forming part of the rectory he had no notice of the liability.—HAUXTON PAROCHIAL CHURCH COUNCIL *v.* STEVENS, [1929] P. 240.

472c. —— **No notice of liability—At time of conveyance of lands.**]—HAUXTON PAROCHIAL CHURCH COUNCIL *v.* STEVENS, No. 472b, *ante.*

475. *Add. Annotation :*—**Refd.** Hauxton Parochial Church Council *v.* Stevens, [1929] P. 240.

482a. —— —— ——.]—A tenant of premises rated at £125, who sublet the greater part & retained for his personal occupation a portion which was over £40 in ratable value, but not separately assessed :—*Held :* qualified as a vestryman under Metropolis Management Acts, 1855 (c. 120), & 1856 (c. 112).—GORDON *v.* WILLIAMSON, [1892] 2 Q. B. 459; 61 L. J. Q. B. 820; 67 L. T. 214; 57 J. P. 166; 40 W. R. 692; 8 T. L. R. 705, C. A.

Annotation :—**Refd.** London & India Docks Co. *v.* Woolwich Borough (1902), 71 L. J. K. B. 394.

569. *Add. Annotation :*—*As to* (3) **Refd.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

627. After this case add :—
Right of presentation where patronage vested in parishioners.]—*See* No. 1981a, *post.*

758. *Add. Annotation :*—**Consd.** A.-G. *v.* Mallock (1931), 48 T. L. R. 107.

983. *Add. Annotation :*—**Refd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

1016. *Add. Annotation :*—*As to* (2) **Consd.** R. *v.* Daily Herald Editor, etc. & Davidson, *Ex p.* Norwich (Bp.), R. *v.* Empire News Editor, etc. & Davidson, *Ex p.* Norwich (Bp.) (1932), 48 T. L. R. 253.

1063. *Add. Annotation :*—*As to* (1) **Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

1065. *Add. Annotation :*—**Refd.** Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465.

Part IV.—Ecclesiastical Courts.

1069. *Add. Annotation :*—*As to* (1) **Consd.** R. *v.* Daily Herald Editor, etc. & Davidson, *Ex p.* Norwich (Bp.), R. *v.* Empire News Editor, etc. & Davidson, *Ex p.* Norwich (Bp.) (1932), 48 T. L. R. 253.

1115. *Add. Annotations :*—*As to* (1) **Folld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289. **Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

1145. *Add. Annotations :*—*As to* (1) **Consd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 243. *As to* (8) **Consd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1. *Generally,* **Refd.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

1146. *Add. Annotations :*—*As to* (1) **Refd.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289. *As to* (2) **Consd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 243.

1148. *Add. Annotation :*—*As to* (2) **Refd.** R. *v.* North, *Ex p.* Oakey, [1927] 1 K. B. 491.

1149. *Add. Annotation :*—**Consd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 243.

1150. *Add. Annotation :*—*As to* (1) **Refd.** Huntley *v.* Norwich (Bp.), [1931] P. 210.

1280a. —— **Alternative remedy.**]—Prohibition will issue in respect of an order of an ecclesiastical ct. made without jurisdiction, notwithstanding an appeal lie from such order to a higher ecclesiastical ct. & thence to the Privy Council.—R. *v.* NORTH, *Ex p.* OAKEY, [1927] 1 K. B. 491; 96 L. J. K. B. 77; 136 L. T. 387; 43 T. L. R. 60; 70 Sol. Jo. 1181, C. A.

1349. *Add. Annotation :*—**Refd.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

1372. *Add. Annotation :*—*As to* (1) **Refd.** Raeburn *v.* Raeburn (1928), 138 L. T. 672.

1400. *Add. Annotation :*—**Refd.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

1585. *Add. Annotation :*—**Consd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579.

1605. *Add. Annotation :*—**Refd.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

1721. *Add. Annotations :*—**Refd.** Eshugbayi Eleko *v.* Nigeria Government, [1928] A. C. 459; *Re* Carroll, [1931] 1 K. B. 317.

1755. *Add. Annotation :*—**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

1756. *Add. Annotation :*—**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

1768a. —— —— ——.]—*Held :* a faculty ought to issue for the removal of (1) a tabernacle, (2) a sacring gong, (3) four out of six candlesticks on the retable, (4) two candlesticks on the credence which had been used ceremonially, (5) a censer which had been used ceremonially, (6) the Stations of the Cross, (7) a second Holy Table introduced after a faculty for it had been refused, (8) an image of the Blessed Virgin Mary with candles & vases, (9) a holy water stoup, (10) two brass candelabra used in a service of adoration of the Sacrament, & a hanging

PART IV. SECT. 6, SUB-SECT. 2.—D.

1217 i. *Interpretation of statutes—Concerning spiritual matters.*]—In an action involving the construction of United Church of Canada Act, 1924 (c. 100) :—*Held :* the ecclesiastical cts. only had jurisdiction.—STOVER *v.* DRYSDALE, [1925] 4 D. L. R. 994.—CAN.

lamp in the chancel used to denote the presence of the reserved Sacrament; a faculty ought not to issue for the removal of (11) books & pamphlets displayed on tables in the church, (12) notices as to times when confessions could be heard, (13) notices asking for prayers for deceased persons, (14) a kneeling stool used by persons making their confessions, & (15) the rector's books of devotion on the Holy Table, but these articles were not proper subjects for a confirmatory faculty; a faculty ought not to issue for the removal of (16) a crucifix on the wall above the kneeling stool, used to assist the devotions of those making their confessions, & a confirmatory faculty till further order ought to issue in respect of it; a faculty ought not to issue for the removal of (17) a crucifix behind the Holy Table which had been proved to have been the object of veneration, the rector having undertaken not to genuflect to it or cense it, & not to allow any other officiating clergymen to do so, & a confirmatory faculty till further order ought to issue in respect of it.

(18) Memorials purporting to be signed by parishioners, as to which no evidence is given in proof of the signatures or of the representations made to those who sign them, are inadmissible in a faculty suit.—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, [1927] P. 289; *subsequent proceedings*, [1928] P. 69.

1775a. —— —— **"Till further order."**]—(1) Where a cause of faculty has been remitted by the Ct. of Arches to a consistory ct. to decree a faculty as directed by the Ct. of Arches, a party to the suit who is aggrieved by a condition proposed to be inserted in the faculty may appeal to the Ct. of Arches by way of the assertion of a grievance, & the Ct. of Arches may hear & determine the appeal without retaining the cause.

(2) A condition in a confirmatory faculty "that if any of the articles included in the faculty are treated with superstitious reverence we reserve to ourselves the right to order their removal at any time hereafter upon being satisfied hereon" is an improper condition, & such a condition is not substantially similar to, but wholly different from, a condition that the faculty is granted "till further order."

(3) Observations upon the object & effect of granting a faculty till further order, the proceedings required by the practice of the cts. before such further order can be made, the distinction between the order of the ct. in a faculty suit & the faculty, & the matters which are proper to be included in each.—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, [1928] P. 69.

1784. *Add. Annotation:*—**Refd.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

1789a. Cause remitted to decree faculty—Objection to condition proposed to be inserted in faculty—Right of aggrieved party to appeal.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1775a, *ante*.

Part V.—Clergy.

1821. For "**Who are exempt—Military Service Act, 1916 (c. 104), Sched. I. (4)—Lay member**" read "**Who are exempt—Military Service Act, 1916 (c. 104), Sched. I. (4)—Lay reader.**"

1851. *Add. Annotation:*—**Apld.** *Re* Clerical Disabilities Act, 1870, *Ex p.* Cowan (1927), 71 Sol. Jo. 272.

1851a. *S. P. Re* CLERICAL DISABILITIES ACT, 1870, *Ex p.* COWAN (1927), 137 L. T. 515; 71 Sol. Jo. 272.

1971. *Add. Annotation:*—*Generally*, **Refd.** Notley *v.* Birmingham (Bp.) (1930), 99 L. J. Ch. 305.

1981. *Add. Annotation:*—**Refd.** *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153.

1981a. Patronage vested in parishioners—Transfer to parochial church council—Parochial Church Council (Powers) Measure, 1921 (No. 1), s. 4 (1).]—*Re* LICHFIELD CATHEDRAL GRANT, CHAPEL-EN-LE-FRITH PAROCHIAL CHURCH COUNCIL *v.* BAGSHAW (1929), 45 T. L. R. 583.

SUB-SECT. 2.—TRANSFER AND TRANSMISSION OF PATRONAGE (p. 379).

To cross-reference add "*See, also*, Benefices (Transfer of Rights of Patronage) Measure, 1930 (No. 8).

2104a. Whether vendor bound to make marketable title—Whether stamp necessary.]—WILMOT *v.* WILKINSON (1827), 6 B. & C. 506; 9 Dow. & Ry. K. B. 620; 5 L. J. O. S. K. B. 196; 108 E. R. 538.

Annotation:—**Refd.** Doogood *v.* Rose (1850), 9 C. B. 132.

2105a. Non-completion of purchase—Default of vendor.]—WEDDALL *v.* NIXON (1853), 17 Beav. 160; 22 L. J. Ch. 939; 21 L. T. O. S. 147; 17 Jur. 642; 51 E. R. 994.

2198. After this case add:—

——.]—*See* Benefices (Exercise of Rights of Presentation) Measure, 1931 (No. 3), s. 5.

2272. *Add. Annotation:*—*Generally*, **Consd.** Notley *v.* Birmingham (Bp.), [1931] 1 Ch. 529.

After this case add:—

——.]—*See, now*, Benefices Act, 1898 (Amendment) Measure, 1923 (No. 1), s. 3.

2320. Before this case add "*See, now*, Benefices (Exercise of Rights of Presentation) Measure, 1931 (No. 3), s. 1.

2355a. Jurisdiction of court of equity to order admission—No lawful excuse for refusal shown.]—A ct. of equity can make an order on a bishop to admit & licence to a perpetual curacy a duly qualified nominee who has been duly presented by the patron, unless lawful excuse for refusal by the bishop to admit & licence be shown.—NOTLEY *v.* BIRMINGHAM, BISHOP (1930), 99 L. J. Ch. 305; 46 T. L. R. 347.

2355b. —— **Refusal to obey order—Discharge of order.**]—A bishop refused to admit & licence X., a clerk in holy orders, to the perpetual curacy of Z. on the presentation of the patrons. The patrons then commenced an action in the Ch. Div., claiming that the bishop was bound to admit & licence X. to the benefice. The bishop not having entered

an appearance the action came before the ct. on Apr. 2, 1930, as a short cause, upon a motion for judgment in default of appearance, & an order was made that the bishop should admit & licence X. to the benefice in due form according to law. The bishop refused or neglected to admit & licence X. to the benefice, & to comply with the order. The patrons then moved the ct. that a writ should issue to the Archbishop of Canterbury, commanding him to admit & licence X. to the benefice at the nomination or presentation of the patrons:—*Held:* so much of the order of Apr. 2, 1930, as ordered the bishop to admit & licence X. to the benefice might be discharged, & in lieu thereof & in substitution thereof it might be ordered that a writ should issue directed to the Archbishop of Canterbury commanding him to admit a fit person to the benefice at the nomination or presentation or other legal requisition of pltfs. as patrons thereof.—NOTLEY *v.* BIRMINGHAM (BISHOP) (No. 2), [1931] 1 Ch. 529; 100 L. J. Ch. 303; 145 L. T. 251; 47 T. L. R. 257.

2355c. —— —— **Issue of writ to Archbishop.**]—NOTLEY *v.* BIRMINGHAM (BISHOP) (No. 2), No. 2355b, *ante.*

2437. *Add. Citation:*—2 B. R. A. 932.

2440. *Add. Citation:*—2 B. R. A. 831.

2443a. Grounds for approval or disapproval of scheme.]—Although it may seem desirable on grounds of economy & administration to unite two country benefices with small populations, yet a scheme for such union will not be affirmed on special reference by the Judicial Committee of the Privy Council if there is united opposition to it on the part of the inhabitants.—*Re* GUSSAGE ALL SAINTS & GUSSAGE ST. MICHAEL, DORSET, PARISHES (1925), 69 Sol. Jo. 493, P. C.

Annotation:—**Folld.** Great Massingham & Little Massingham (Benefices), [1931] A. C. 328.

2443b. ——.]—Having regard to Union of Benefices Measure, 1923, s. 2 (6), which subsect. contains the only statement in the Measure as to the principles governing the union of benefices thereunder, it is not enough, in order to justify a union, to show that one incumbent could serve the parishes affected, & that the union would save man power and might also produce surplus income available for other benefices. The circumstances & interests of the parishes themselves must be regarded.—*Re* GREAT MASSINGHAM & LITTLE MASSINGHAM, BENEFICES OF, [1931] A. C. 328; 100 L. J. P. C. 93; 144 L. T. 654; 47 T. L. R. 294, P. C.

2488. *Add. Annotation:*—*As to* (2) **Refd.** Ladies Hosiery & Underwear, Ltd. *v.* Parker, [1930] 1 Ch. 304.

2496. *Add. Citation:*—*sub nom.* CURLEWS *v.* BUTTS, 9 L. J. O. S. K. B. 69.

2539. *Add. Annotation:*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

2595. *Add. Annotation:*—*As to* (2) **Consd.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

2599a. —— **Failure to repair chancel.**]—(1) A justification in trespass, that pltf. was the rector of such a church, & that the goods were taken under a sequestration of the profits of the rectory, for the reparation of the chancel, must aver that no more was taken than was necessary to the expense of reparation. (2) But the profits of a lay-impropriation cannot be sequestered for the repair of the chancel.—WALWYN *v.* AWBERRY (1677), 1 Mod. Rep. 258; 2 Mod. Rep. 254; Freem. K. B. 230; 86 E. R. 866; *sub nom.* ANON., 2 Vent. 35; 3 Keb. 829.

Annotation:—*As to* (2) **Consd.** Hauxton Parochial Church Council *v.* Stevens, [1929] P 240.

2607. *Add. Annotation:*—*As to* (1) **Consd.** R. *v.* North, *Ex p.* Oakey (1926), 43 T. L. R. 60.

2715. Before this case add "*See* Benefices (Ecclesiastical Duties) Measure, 1926 (No. 8).

2717a. Appointment of commission under Benefices (Ecclesiastical Duties) Measure, 1926, s. 3 (1)—Necessity for notice to incumbent—In respect of what duties.]—By Benefices (Ecclesiastical) Duties) Measure, 1926, s. 3 (1), where the bishop has reason to think that the ecclesiastical duties of a benefice are inadequately performed he may appoint a commission to inquire into the facts, & on their report that the inadequate performance of the duties is due to the negligence of the incumbent, has power under sect. 5 (1) to inhibit him. By sect. 2 (*a*) "ecclesiastical duties" include the observance of ordination promises, & also (iii) "an obligation binding the incumbent to manifest in his acts, conduct & course of life, due respect for his sacred office, & a due solicitude for the moral & spiritual welfare of his parishioners." A commission reported to the bishop that the ecclesiastical duties of a benefice were inadequately performed owing to the negligence of the incumbent, & also found certain charges proved which were a violation both of the ordination promises of the incumbent & of the provisions of sect. 2 (*a*) (iii). By sect. 2 (*b*): "No incumbent shall be deemed to have been negliegnt in the observance or performance of any of his ordination promises . . . unless such observance or performance has been required of him in writing by the bishop, who shall give him opportunity of replying, before issuing any commission under the provisions of section three of this Measure." No such requirement was made: —*Held:* the commission had jurisdiction to hold the inquiry, although the above notice had not been given, because the inadequate performance of ecclesiastical duties charged was that of ecclesiastical duties not expressly set out in sect. 2 (*b*), it being in respect of the inadequate performance of the latter only that such notice is required. The requirement in sect. 2 (*b*) applies only where the neglect charged is that of ordination promises, as such, or of duties imposed by the Rules for the Representation of the Laity, as such, & the charges against applt. were not charges of this character.—HUNTLEY *v.* NORWICH (BISHOP), [1931] P. 210.

2719a. Conduct.]—RICE *v.* OXFORD (BP.), No. 1150, *ante.*

——.]—*See, now,* Benefices (Ecclesiastical Duties) Measure, 1926 (No. 8), s. 2 (*a*) (iii.).

2719b. ——.]—HUNTLEY *v.* NORWICH (BISHOP), No. 2717a, *ante.*

Part VI.—Public Worship and Church Ministrations.

2751. *Add. Annotation:—Generally,* **Refd.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

2762. *Add. Annotation:—As to* (1) **Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2764a. —— —— ——.]—VINCENT *v.* ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), No. 2831, *post.*

2768. *Add. Annotations:—As to* (7) **Folld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289. *As to* (8) **Folld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289. *As to* (9) **Folld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289. *Generally,* **Refd.** Capel St. Mary, Suffolk *v.* Packard, [1928] P. 69.

2786. *Add. Annotation:—As to* (1) **Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2797. *Add. Annotation:—As to* (3) **Refd.** St. Margaret's, Toxteth Park (1924), 40 T. L. R. 687.

2801a. ——.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante.*

2809a. —— ——.]—CAPEL *v.* ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante.*

2812. *Add. Annotation:—As to* (3) **Folld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

2816a. —— —— —— **Must be limited to two.**]—(1) The old English use in parish churches being to place not more than two & at least one light on the Holy Table in service time, this was retained at the Reformation. Consequently the use of six lights on the Holy Table or a retable is unlawful. The vicar of a parish having introduced without a faculty six candlesticks placed on a retable behind the Holy Table, the Chancellor granted a confirmatory faculty for two of them. Upon an undertaking being given by the vicar that the remaining four should not be used on or in connection with the Holy Table, their removal from the church was not insisted on.

(2) In the absence of evidence of superstitious reverence or use the placing of a crucifix so as to be visible to the penitent during confession is not unlawful.—*Re* ST. SAVIOUR'S, HAMPSTEAD, [1932] P. 134.

2818a. —— —— **On credence table.**]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante.*

2824a. ——.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante.*

2825. For the paragraph in the original volume substitute the following paragraph:—

—— **As of course.**]—VINCENT *v.* ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), No. 2831, *post.*

2831. For the paragraph in the original volume substitute the following paragraph:—

—— —— **Approval of decorations & fittings.**]—On the hearing in the Consistory Ct. of London of a petition as to the furniture & fittings of the Church of St. Magnus-the-Martyr, in the City of London, a faculty was granted for, amongst other things: (1) a second Holy Table; (2) an image of the Virgin & Holy Child placed behind the second Holy Table; & (3) a crucifix fixed to a pillar at a considerable height from the floor & near the pulpit. On appeal the Ct. of Arches dismissed the appeal as to (1) & (3), but allowed it as to (2):—*Held:* (1) the law was the same for every kind of sacred image in a church, including a crucifix or rood, & although such an image was not illegal *per se,* it could not lawfully be placed in a church without a faculty.

On an application for such a faculty, the question to be considered is whether, if the faculty be granted, there is or is not, in the particular case, a danger of the image being used for purposes of worship or adoration condemned by Article of Religion 22. After discussion of the kind of evidence proper to this inquiry:—*Held:* (2) there was a danger of the proposed image of the Virgin & Holy Child being so used; (3) an image used for purposes of worship or adoration was an ornament & was illegal, because not included amongst the ornaments of the church sanctioned by the Ornaments Rubric in the Book of Common Prayer; (4) a faculty authorising the erection of an image in a church should not be absolute, but until further order.

(5) The other matter of appeal is the second Holy Table. The church holds, or will hold, between three hundred & four hundred people, & there are a large number of celebrations every week. In those circumstances it would be a matter of course to allow a second Holy Table, but for the exceptional character of the ceremonial & services of this church. I am not, however, disposed to interfere with the exercise of the learned Chancellor's discretion in this part of the case. I think there ought to be full plans & particulars of the decorations & fittings of & surrounding the second Holy Table, & these fittings ought to be subject to the approval of the learned Chancellor & to be specifically included in the faculty (SIR LEWIS DIBDIN).—VINCENT *v.* ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), [1925] P. 1; *sub nom.* ST. MAGNUS THE MARTYR, LONDON BRIDGE, 41 T. L. R. 3.

Annotation:—Generally, **Refd.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

2842. *Add. Annotation:*—**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2844. *Add. Annotation:*—**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2859. *Add. Annotation:—As to* (3) **Dbtd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2861. *Add. Annotation:—As to* (1) **Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2862. *Add. Annotation:*—**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2871. *Add. Annotation:*—**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2872. *Add. Annotation:*—**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2873. For the paragraph in the original volume substitute the following paragraph:—

—— —— —— **Ordinary rules as to images apply.**]—VINCENT *v.* ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), No. 2831, *ante.*

2874. *Add. Annotation :*—**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1895] P. 1.

2875. *Add. Annotation :*—**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1895] P. 1.

2876. *Add. Annotation :*—**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2882. *Add. Annotation :*—**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2883. *Add. Annotations :*—**Apld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289. **Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2888. *Add. Annotation :*—**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2889. *Add. Annotation :*—**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2892. *Add. Annotation :—Generally,* **Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2893. *Add. Annotation :*—**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

2893a. —— —— **When visible to penitent during confession.**]—*Re* ST. SAVIOUR'S, HAMPSTEAD, No. 2816a, *ante.*

2896. For the paragraph in the original volume substitute the following paragraph :—

—— —— ——.]—VINCENT *v.* ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), No. 2831, *ante.*

2899a. —— **Above confessional stool—Whether permissible.**]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante.*

2899b. Behind Holy Table—Whether permissible.] — CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante.*

2900. *Add. Annotations :—As to* (2) **Consd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1. *As to* (3) **Folld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

2903. *Add. Annotations :—As to* (3) **Folld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289. *As to* (5) **Folld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289. *As to* (6) **Folld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289. *As to* (7) **Folld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289. *Generally,* **Refd.** Capel St. Mary, Suffolk *v.* Packard, [1928] P. 69.

2904a. ——.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante.*

2906. For the paragraph in the original volume substitute the following paragraph :—

——.]—VINCENT *v.* ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), No. 2831, *ante.*

2913. *Add. Annotation :*—**Refd.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

2915a. With candles & vases—Whether permissible.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante.*

2916. For the paragraph in the original volume substitute the following paragraph :—

The Virgin & Child—Probability of veneration.]—VINCENT *v.* ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), No. 2831, *ante.*

2924a. -.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante.*

(*n*) *Lights* (Vol. XIX., p. 449).

Add the following cross-references :—

Used in service of adoration of Sacrament.]—*See* No. 1768a, *ante.*

To denote presence of reserved Sacrament.]—*See* No. 1768a, *ante.*

2947a. Books & pamphlets displayed in church.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante.*

2947b. Notices—Times for hearing of confessions.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante.*

2947c. —— **Asking for prayers for dead.**]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante.*

2947d. Confessional stool.] — CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante.*

2948. *Add. Annotation :—As to* (1) **Folld.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

2965a. Books of devotion—On Holy Table.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante.*

2972a. —— ——.]—CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante.*

2975. *Add. Annotation :*—**Refd.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

2985. After this case, for

"**Registration of baptism.**]—*See* REGISTRATION OF BIRTHS, MARRIAGES & DEATHS," read "**Registration of baptism.**]—*See* Canon 70 of 1603; Parochial Registers Act, 1812 (c. 146).

—— **Admissibility in evidence.**]—*See* EVIDENCE, Vol. XXII., pp. 336, 337, Nos. 3358–3378."

3006. *Add. Annotation :—Generally,* **Refd.** Capel St. Mary, Suffolk *v.* Packard, [1927] P. 289.

3015a. Sounding sacring gong—Whether permissible.] — CAPEL ST. MARY, SUFFOLK (RECTOR & CHURCHWARDENS) *v.* PACKARD, No. 1768a, *ante.*

Part VII.—Property of the Church of England.

3049. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

3112. *Add. Annotation :*—**Refd.** Vincent *v.* St. Magnus the Martyr, etc., [1925] P. 1.

3113a. Whether faculty absolute—Erection of image.]—VINCENT *v.* ST. MAGNUS THE MARTYR, ETC. (RECTOR & CHURCHWARDENS), No. 2831, *ante.*

3391a. —— —— **Tithable where landed.**]—By custom, fish taken in the sea is tithable where landed.—ANON (1632), Cro. Car. 264; 79 E. R. 830.

3406. *Add. Annotation :—As to* (1) **Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

3449. *Add. Citation :*—West. Tithe Cas. 44.
Add. Annotation :—**Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

3451. *Add. Annotation :—As to* (1) **Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

3454a. —— **Whether premises exempted from prescribed rate—Onus of proof.**]—By the above Act & a decree made pursuant to it & having the force of a statute, the lessees of houses & all other hereditaments, with certain immaterial exceptions, situated in the City of London, are liable to pay a tithe of 2*s.* 9*d.* for every rent of 20*s.* by the year, " & so above the rent of 20*s.* by the year by the rate aforesaid." The decree contained a proviso that in the case of premises in respect of which less sums had been accustomed to be paid for tithes before 1545, the date of the above Act, the premises should be exempted from the prescribed rate. In an action by the owners of tithes against the occupiers of premises in the City for tithe at the rate prescribed by the Act :—*Held :* (1) the *onus* was on defts. to prove that the tithe paid before 1545 in respect of the premises was less than the sum prescribed by the Act; (2) defts. had not discharged the *onus*.—BUSBY *v.* AVGHERINO, [1928] A. C. 290; 97 L. J. Ch. 291; 139 L. T. 170; 92 J. P. 129; 44 T. L. R. 551; 26 L. G. R. 401, H. L.

3455a. —— **Whether payable on reserved or improved rent.**]—A lease of premises was granted at the yearly rent of £102 10*s.* in consideration of the lessee expending £2,000 in building thereon. The improved annual value was £250 :—*Held :* tithes were payable upon the annual value, & not on the rent reserved.—VIVIAN *v.* COCHRANE (1855), 4 De G. M. & G. 818; 25 L. J. Ch. 553; 26 L. T. O. S. 17; 19 J. P. 131; 1 Jur. N. S. 809; 3 W. R. 254; 43 E. R. 728, L. C.

3455b. —— **Whether non-payment a defence.**]—Mere non-payment of tithes under the Act is not an answer.—ST. PAUL'S WARDEN, ETC. *v.* KETTLE (1813), 2 Ves. & B. 1; 35 E. R. 218, L. C.

Annotations :—**Refd.** Payne *v.* Esdaile (1888), 13 App. Cas. 613; Busby *v.* Avgherino, [1928] A. C. 290.

3455c. -.]—PAYNE *v.* ESDAILE, No. 3451, *ante*.

3456. *Add. Annotation :*—**Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

3465a. —— **What words operate to pass.**]—A tithe rentcharge will not, upon a conveyance of land without more, pass to the purchaser by virtue of Conveyancing Act, 1881 (c. 41), s. 63. Tithe rentcharge is, like tithe, a hereditament separate from the land, & express words are necessary to pass it.—PUBLIC TRUSTEE *v.* LANCASTER DUCHY, [1927] 1 K. B. 516; 96 L. J. K. B. 188; 136 L. T. 468; 43 T. L. R. 163; 71 Sol. Jo. 19, C. A.

3466. After this case add " **Transfer to Queen Anne's Bounty.**]—*See* Tithe Act, 1925 (c. 87), s. 3."

3466a. —— **Meaning of " rectory with cure of souls "—Sinecure.**]—Pltf. having been instituted & inducted to a rectory by the Bishop in 1917, read himself in & presented himself to the vicarage. He was the only person in the parish with cure of souls, & since his institution he had been in receipt of the tithes in respect of the vicarage & also of the rectory, & had resided throughout in the parish. Since 1849 the rectory & vicarage had been held by the same person, & for many years the rectory had been what is commonly called a sinecure. If the rectory was a benefice with cure of souls the tithe rentcharge attached to the rectory would vest in Queen Anne's Bounty & be paid to pltf. free of rates; if not, pltf. would be liable for certain rates. In an action by pltf. against Queen Anne's Bounty for a declaration that by the Tithe Act, 1925, the rectorial tithe rent which was attached to the benefice was transferred to & became vested in defts. for all the interest therein & for the purposes of the Act :—*Held :* though pltf. was the vicar with cure of souls, yet, since the expression " rectory with cure of souls " in Tithe Rentcharge (Rates) Act, 1899 (c. 17), meant a real cure of souls *actualiter* & did not include a rectory which was a sinecure, & since a sinecure could not be turned by residence into a rectory with cure of souls, pltf. was not a rector with cure of souls within the definition of " benefice " in Tithe Rentcharge (Rates) Act, 1899 (c. 17), & the action failed.—GREENING *v.* QUEEN ANNE'S BOUNTY, [1932] 1 Ch. 348; 101 L. J. Ch. 260; 146 L. T. 447; 48 T. L. R. 155; 76 Sol. Jo. 10; 30 L. G. R. 181.

3466b. —— **Meaning of " benefice."**]—GREENING *v.* QUEEN ANNE'S BOUNTY, No. 3466a, *ante*.

3468. *Add. Annotation :—As to* (2) **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

3470. *Add. Annotation :*—**Refd.** Hauxton Parochial Church Council *v.* Stevens, [1929] P. 240.

3475a. -.]—UNIVERSITY COLLEGE, OXFORD (MASTER & FELLOWS) *v.* GARTON (1847), 10 Q. B. 760; 16 L. J. Q. B. 381; 9 L. T. O. S. 245; 11 Jur. 907; 116 E. R. 289.

Annotation :—**Refd.** R. *v.* England & Wales Tithe Comrs. (1852), 21 L. J. Q. B. 208.

3487. After this case add :
—— ——.]—*See, now,* Extraordinary Tithe Act, 1897 (c. 23), s. 1 (1).

3488. For " *Held :* the ct. had jurisdiction to deal with the costs, & they would have to be paid by W., the landlord seeking compulsory redemption " read " *Held :* (1) the ct. had jurisdiction to deal with the costs; (2) they must be paid by W., the landowner seeking compulsory redemption."

Add. Annotations :—As to (1) **Apprvd.** *Re* Wartling Tithe Redemption, [1924] 2 Ch. 123. *As to* (2) **Overd.** *Re* Wartling Tithe Redemption, [1924] 2 Ch. 123.

3492a. —— **Abortive sale by auction—Second distress & sale by auction—Jurisdiction to order.**]—Upon the application of the tithe owners a county ct. judge made an order for the recovery of tithe rentcharge issuing out of certain lands, & he directed that an officer of the ct. should distrain upon those lands for the sum. The officer of the ct. distrained & offered the goods seized for sale by auction. A number of persons attended the sale & by their conduct prevented it from being successful, not bidding themselves & pre-

venting others from bidding. The tithe owners thereupon applied to the county ct. for a further order for the recovery of the same tithe rentcharge, together with the costs & expenses of the abortive sale. The county ct. judge accordingly made an order that a second distress be levied for the recovery of the same tithe rentcharge, together with the costs, & directed that the goods seized should be sold by tender. A rule *nisi* for *certiorari* was obtained to remove the second order of the county ct. judge into the High Ct. upon the ground that he had no jurisdiction to entertain or adjudicate upon the application or to make the order:—*Held:* (1) the county ct. judge had not exceeded his jurisdiction in ordering a second distress, in view of the fact that there was a combination of persons to prevent the sale on the first distress from being effective, or in ordering that the goods seized should be sold by tender; (2) the application for the second distress was properly made by the tithe owners, & it was not necessary that it should be made by the officer of the ct.—R. *v.* CLEMENTS (JUDGE), *Ex p.* FERRIDGE, [1932] 2 K. B. 535; 76 Sol. Jo. 414; *sub nom.* R. *v.* KENT COUNTY COURT JUDGE, *Ex p.* FERRIDGE, 101 L. J. K. B. 603; 147 L. T. 353.

3492b. —— —— Who may apply for second distress — Tithe owner.] — R. *v.* CLEMENTS (JUDGE), *Ex p.* FERRIDGE, No. 3492a, *ante.*

3506. *Add. Annotation:*—**Refd.** R. *v.* Customs & Excise Comrs., [1928] A. C. 402.

3513a. Mode of payment of compensation—At election of limited owner—Whether election revocable.]—*Re* WARTLING TITHE REDEMPTION, No. 3513b, *post.*

3513b. Cost of investment of redemption money—Compulsory redemption—Jurisdiction of court to deal with.]—By a settlement dated in 1893 certain tithe rentcharges payable out of lands situate at W. were settled, subject to certain life interests which had determined, to the use of H. for life with remainders over. The settlement contained a proviso appointing the trustees of the settlement trustees for the purposes of the Settled Land Acts, & providing that a sole trustee should be competent to act for all the purposes of the Acts, including the receipt of capital money. In 1899 H. assigned his life interest in the rentcharges to C. In 1905 C. died, having by his will devised his real & personal estate to resps. & appointed them his exors. In 1922 applt., who was the owner of the land out of which certain of the tithe rentcharges were payable, in exercise of the power given him by Tithe Act, 1918 (c. 54), s. 3, applied to the Ministry of Agriculture & Fisheries for the redemption of certain of these charges, amounting to £48 10*s.* 8*d.* & 5*s.* respectively, & for the determination by the Minister of the amount of the consideration money payable in respect thereof. On Sept. 20, 1922, resps., in exercise of their option under Tithe Act, 1846 (c. 73), s. 9, signed a form of consent which had been sent to them by the Ministry to the payment of the consideration money to the surviving trustee of the settlement of 1893. A month later they wrote to the Ministry revoking their consent & requesting that the money might be paid into ct. The Ministry thereupon wrote to applt. directing him to pay the money into ct., which he accordingly did. On Feb. 12, 1923, resps. took out an originating summons for an order that the fund in ct. might be invested & the income therefrom paid to resps. or the survivor of them as & when received during the life of the tenant for life:—*Held:* (1) on an application to invest money paid into ct. representing compensation paid under the Tithe Acts on the redemption of rentcharges, there was no general principle that required the ct. to direct that the person exercising the compulsory powers under the Acts should bear the burden of the costs, but the costs were, under Jud. Act, 1890 (c. 44), s. 5, in the discretion of the ct. entirely unfettered by any such general principle; the ct. below ought to have exercised its discretion by holding that applt., who had been brought before the ct. solely for the purpose of making him liable for costs, was not so liable, & to have dismissed the application as against him with costs.

(2) *Semble:* there is no power in the Tithe Acts which enables a tithe owner who has once exercised the option given him by the Act of 1846, s. 9, to revoke or alter the exercise of it.—*Re* WARTLING TITHE REDEMPTION, [1924] 2 Ch. 123; 93 L. J. Ch. 562; 131 L. T. 185; 88 J. P. 133; 68 Sol. Jo. 518; 22 L. G. R. 349, C. A.

Compare original volume, p. 492, No. 3488.

3543. *Add. Citations:*—[1924] 1 K. B. 151; 93 L. J. K. B. 116; 130 L. T. 383; 88 J. P. 33; 68 Sol. Jo. 541.

3579a. —— What amounts to incumbrance affecting land.]—WRENCH *v.* LORD (1837), 3 Bing. N. C. 672; 4 Scott, 381; 6 L. J. C. P. 193; 132 E. R. 569.

3614. *Add. Citations:* — 1 And. 47; 3 Dyer, 338 b; *sub nom.* BELFORD *v.* FOORD (1595), Cro. Eliz. 447; *sub nom.* BETFORD *v.* FORD, Cro. Eliz. 472; *sub nom.* FOORD'S CASE, 5 Co. Rep. 81 a.

Add. Annotation:—**Refd.** Betesworth *v.* St. Paul's (Dean) (1726), Cas. *temp.* King, 66.

3615. *Add. Citations:*—*sub nom.* BETFORD *v.* FORD, Cro. Eliz. 472; *sub nom.* FOORD'S CASE, 5 Co. Rep. 81 a; *sub nom.* ANON.

PART VII. SECT. 5, SUB-SECT. 4.—I.

sd. *Necessity for consent of Ministry of Finance.*]—The estate of G., which vested in the Land Purchase Commission by Northern Ireland Land Act, 1925, was subject to two ecclesiastical tithe rentcharges. The vendor served notice of motion to redeem these charges, & the redemption price was fixed by the Judicial Comr. at nineteen years' purchase in each case, the Ministry of Finance objected:—*Held:* ecclesiastical tithe rentcharges cannot be redeemed under Land Purchase Acts without the consent of the Ministry of Finance as representing the Treasury.—*In the Estate of* GUNNING, [1929] N. I. 61.—**IR.**

PART VII. SECT. 6, SUB-SECT. 3.

3536 i. *Proceeds of sale—Application—Church of Scotland (Property & Endowments) Act, 1925 (c. 33), s. 30.*]—MILLIGAN, PETITIONER, [1927] S. C. 692.—**SCOT.**

d i. —— —— *Action for trespass.*]—Where land is granted to a church corpn. as a glebe, & a rector has been duly inducted, he has the possession, & an action of trespass for entering on the land & cutting down trees must be brought in his name, & not in the name of the corpn.—ST. STEPHEN RECTOR *v.* TORTELOT (1842), 1 Kerr, 537.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 2.—A.

sk. *Ontario Act of 1889 simplifying sales of property held in trust for Church ect of.*]—*Re* ST. JOHN'S, 3 D. L. R. 535; 60

(1574), 1 And. 47 ; 3 Dyer, 338 b ; Ben. 238. *Add. Annotation :*—**Refd.** Betesworth *v.* St. Paul's (Dean) (1726), Cas. *temp.* King, 66.

3648. To cross-reference before this case add "*See* Ecclesiastical Dilapidations (Amendment) Measure, 1929 (No. 3)."

3787. After this case add :—

"**Extinguishment or redemption of first fruits & tenths.**]—*See* First Fruits & Tenths Measure, 1926 (No. 5)."

3827. *Add. Annotation :*—**Refd.** R. *v.* Customs & Excise Comrs., [1928] A. C. 402.

3900. The order of the cross-references following this case should be inverted.

3907. *Add. Annotations :*—**Apld.** Patton (W. R.) *v.* Toronto General Trusts Corpn., [1930] A. C. 629. **Consd.** *Re* May, Eggar *v.* May, [1932] 1 Ch. 99.

Part VIII.—Religious Bodies other than the Church of England.

3967. After this case add :—

See, now, Minister of Religion (Removal of Disqualifications) Act, 1925 (c. 54).

4017a. Premises of Salvation Army—Whether used for public religious worship—Places of Worship (Enfranchisement) Act, 1920 (c. 56).]—Stradling *v.* Higgins, No. 2a, *ante.*

4027. *Add. Citation :*—3 Macq. 827.

4033a. —— ——.]—Doe d. Kirk *v.* Roe (1838), 2 Jur. 945.

4034. *Add. Citation :—sub nom.* —— *v.* ——, 3 Jur. 460.

4034a. —— ——.]—Special service in ejectment where possession of a chapel is sought to be recovered.—Doe d. Somers (Earl) *v.* Roe (1840), 8 Dowl. 292.

4034b. —— ——.]—Special service in an action of ejectment for the recovery of a chapel & free school.—Doe d. Smith *v.* Roe (1840), 8 Dowl. 509 ; *sub nom.* Doe d. Smythe *v.* Roe, 4 Jur. 338.

PART VII. SECT. 16, SUB-SECT. 1.

aa. *Spiritual corporation aggregate—Power to borrow.*]—An ecclesiastical corpn., being a non-trading corpn., has no implied power to borrow money, unless such power is expressly or impliedly given by its constitution. Although an Act constituting such a corpn. does not expressly give power to borrow or to erect a church, but does expressly give power to mortgage, the power to borrow for the purpose of erecting a church is implied, since the erection of a church is the principal reason for the incorporation. — Leonard *v.* St. Patrick's Parish, [1922] 1 W. W. R. 601 ; 66 D. L. R. 304 ; 17 Alta. L. R. 262. —**CAN.**

PART VIII. SECT. 2, SUB-SECT. 1.

ti. —— ——.]—The canon law of the Roman Catholic Church is foreign law, which must be proved accordingly.—O'Callaghan *v.* O'Sullivan, [1925] 1 I. R. 90.—**IR.**

ai. —— *Power to remove parish priest.*]—Applt., a parish priest, was removed from his parish by a decree of removal issued by the bishop of the diocese in which the parish was situated. Applt. claimed a declaration that the decree was illegal & void on the grounds that (1) there was no power under the canon law to issue such a decree unless a "citation" had been first served on him, & he had an opportunity to meet the charges made against him ; (2) alternatively, if the canon law did not require the service of a "citation" or the granting of a personal hearing, yet the making of the decree without notice to him was contrary to natural justice :—*Held :* the decree was not illegal on either ground.—O'Callaghan *v.* O'Sullivan, [1925] 1 I. R. 90.—**IR.**

ah. *Corporation — Parish — Borrowing for church building.*]—Leonard *v.* St. Patrick's Parish, [1922] 1 W. W. R. 601 ; 66 D. L. R. 304 ; 17 Alta. L. R. 262.—**CAN.**

ad. *Relation to civil law — Archbishop of Edmonton—As to parishes in Calgary diocese.*]—Leonard *v.* St. Patrick's Parish, [1922] 1 W. W. R. 601 ; 66 D. L. R. 304 ; 17 Alta. L. R. 262.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 3.—A.

qi. —— ——.]—Land was conveyed to certain persons in trust for a religious body called the United Brethren in Christ, & a congregation was organised & a church built. Subsequently a division took place in the religious body, & it was held that the party to which the congregation in question adhered were seceders. This congregation continued to use the church, &, some of the original trustees having died, appointed new trustees to act with the survivors, & these trustees refused to give up possession to the representative of what had been declared to be the true body :—*Held :* the trustees must be treated as being trustees for the true body, who were entitled to enforce the trust & to have possession of the church, & it was not necessary to organise another congregation & appoint new trustees for that congregation under Religious Institutions Act.—Brewster *v.* Hendershot (1900), 27 A. R. 232.—**CAN.**

sg. *Transfer by trustees to church corporation—Representing denomination of original congregation.*]—Pltfs. claimed certain land & a church edifice thereon, the title to which was in defts. until they transferred it to the congregation incorporated under the name of "The Evangelical Lutheran Trinity Church of the Synod of Missouri, Ohio, & other States at Neudorf, Saskatchewan" ; & the question in dispute was, whether pltfs. or defts. represented the congregation for which the land was bought & the edifice erected :—*Held :* all the original members of the congregation belonged to the Missouri Synod of the Evangelical Lutheran Church in the United States & Canada, & the church was built & dedicated as a mission church of the Missouri Synod, & not as an independent church, & the question in litigation should be decided in favour of defts., & it should be declared that it was no breach of trust on their part to transfer the property to the above-mentioned church corpn. —Stein *v.* Hauser (1913), 26 W. L. R. 452 ; 5 W. W. R. 971 ; 15 D. L. R. 223 ; 6 Sask. L. R. 383.—**CAN.**

sh. *Church books—Right to retain—Clerk of sessions of Presbyterian church.*] *v.* Fraser, [1928] 2 D. L. R. 540 ; 60 N. S. R. 71.—**CAN.**

sj. *Church records, correspondence, etc.—Right to inspect—Church member—Whether court will interfere.*]—The principle that the ct. will not interfere with the decision of the members of a voluntary assocn., professing to act under their rules, where it is not shown that there was *mala fides* in arriving at the decision, or that the rules were contrary to natural justice, or that anything was done which was contrary to the rules themselves, was applied herein to the decision of the board of directors of a local church, ratified by the congregation, refusing to allow a member thereof to inspect all the records, correspondence & files of said local church.—Wetmon *v.* Bayne, [1928] 1 D. L. R. 848 ; [1928] 1 W. W. R. 519 ; 23 Alta. L. R. 446.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 3.—C.

4026 ii. —— ——.]—Pltfs. & those associated with them, being a minority of the members of a Regular Baptist Church, refused to sign an acceptance of certain "articles of faith" proposed to them by defts. representing the majority, & were, in consequence of their refusal, if certain resolutions passed at meetings of the congregation, pltfs. dissenting, were to govern, excluded from membership :—*Held :* there was no inherent or other power in defts. to change the statement of doctrines, & the trustees had no authority to hold the property on any other trusts than those declared by the deed.—Wodell *v.* Potter, [1929] 3 D. L. R. 525 ; 64 O. L. R. 27 ; *varied,* 1 D. L. R. 726 ; *on appeal,* 2 D. L. R. 449.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 3.—E.

sk. *Power to sell—With consent of governing body—Contract to sell by representative of congregation—Invalid.*]—Irving *v.* McLachlan (1856), 5 Gr. 625.—**CAN.**

sq. "*Waisenamt*" *of Mennonite Church—Power to sue.*]—Pltfs. who were elected orphan-administrators by the Reinland Mennonite congregation held to constitute the "Waisenamt," a special department of the congregation

4047a. Who are.]—The word "Jew" in English law has almost always been confined to persons practising the Jewish religion; the disabilities of Jews have not attached to persons of Jewish race who have become baptised (SLESSER, L.J.).—KEREN KAYEMETH LE JISROEL, LTD. *v.* INLAND REVENUE COMRS., [1931] 2 K. B. 465; 100 L. J. K. B. 596; 145 L. T. 320; 47 T. L. R. 461, C. A.; *on appeal*, [1932] A. C. 650, H. L.

4055. After this case add the following new sections:—

SECT. 9.—**PRESBYTERIANS.**

See cases *infra*.

SECT. 10.—**GREEK CHURCH.**

See case *infra*.

organised for the purpose of managing the estates of deceased members, & to be entitled to sue in their own names to recover moneys loaned by them out of the funds thereof.—NEUFELD & NEUFELD *v.* FEHR, [1929] 4 D. L. R. 1070; 1 W. W. R. 908; 38 Man. L. R. 194.—**CAN.**

PART VIII. SECT. 4.

sl. *Authority of the yearly meeting—Right to hold property—Members refusing to accept book of discipline.*]—The supreme or governing body of the Society of Friends, or Quakers, in Canada, as well in respect to matters of discipline as to the general govt. of the society, is the Canada yearly meeting. The Canada yearly meeting having adopted a book of discipline which certain members of the society refused to accept, these dissentient members, therefore, could not hold, nor exercise any right over, property granted to a subordinate brauch of the society to which they had formerly belonged.—JONES *v.* DORLAND (1886), 14 S. C. R. 39.—**CAN**

PART VIII. SECT. 7.

b 1. —— *Irregular marriage in presence of minister followed by prayer—Minister not guilty of offence under Marriage Notice (Scotland) Act*, 1878 (*c.* 43), *s.* 12.]—STRATHERN *v.* STUART, [1926] S. C. (J.) 114.—**SCOT.**

sl. *Minister's stipend—Obligation to provide.*]—GREENOCK (PROVOST) *v.* PETERS, [1893] A. C. 258.—**SCOT.**

PART VIII. SECT. 9.

sm. *Plan of co-operation adopted by Presbyterian & Methodist congregations—Whether unit for voting on church union.*] — *Re* CONN PRESBYTERIAN CHURCH (Ont.), [1926] 4 D. L. R. 385.—**CAN.**

so. *Members—Who are—Name on roll.*]—RODNEY CASE (Ont.), [1926] 2 D. L. R. 516.—**CAN.**

sp. —— —— —— *Name also on roll of another church.*]—*Re* MAPLE VALLEY PRESBYTERIAN CHURCH (Ont.), 1926] 4 D. L. R. 378.—**CAN.**

sq. —— —— —— *Old roll.*]—*Re* BURLINGTON PRESBYTERIAN CHURCH (Ont.), [1926] 4 D. L. R. 380.—**CAN.**

sr. *S. P. Re* DALHOUSIE MILLS PRESBYTERIAN CHURCH (Ont.), [1926] 4 D. L. R. 383.—**CAN.**

st. —— —— —— *Reserve or appendix roll.*]—WICK CASE (Ont.), [1926] 1 D. L. R. 829.—**CAN.**

sv. —— —— —— ——.]—*Re* RICHMOND HILL PRESBYTERIAN CHURCH (Ont.), [1926] 4 D. L. R. 365.—**CAN.**

sw. *Meetings—Calling—How regulated—Meeting relating to entry into Church Union.*] — CAMERON *v.* ST. LUKE'S SALT SPRINGS (TRUSTEES), [1927] 2 D. L. R. 760; 59 N. S. R. 272; *affd. sub nom.* ST. LUKE'S SALT SPRINGS (TRUSTEES) *v.* CAMERON, [1929] 3 D. L. R. 497; S. C. R. 452; *affd.*, [1930] A. C. 673.—**CAN.**

sy. *Property—Statutory disposal of.*] —*Re* UNITED CHURCH (P. E. I.), [1927] 2 D. L. R. 1169.—**CAN.**

sz. ——.]—MCLEAN *v.* BALLANTYNE, [1928] 4 D. L. R. 37; 62 O. L. R. 443.—**CAN.**

sa. —— ——.]—A majority of the congregation of a Presbyterian Church at G. in Jan. 1925, voted in favour of union with two other denominations. Pltf., who had voted against union, brought this action, on behalf of himself & other members of the congregation who had voted against union, for an injunction restraining the trustees of the property of the church at G. from using or disposing of it otherwise than by transferring it to pltf. or trustees for pltf. & other members of the Presbyterian Church in Canada at G.; & for other relief:—*Held:* the congregaton of the Church at G. after entering the union, was entitled to consent, & did effectually consent to the application of United Church of Canada Act, 1925, s. 4, to the property in question; & the Act having vested in the United Church the power of determining how the trusts upon which the property was held were to be performed, & having provided that what was done in pursuance of the Act should not be deemed a breach of the trusts, but a compliance therewith, the ct. had no jurisdiction to grant the relief asked.—AIRD *v.* JOHNSON, [1929] 4 D. L. R. 664; 64 O. L. R. 233.—**CAN.**

sb. —— ——.]—Pltfs., as representing all communicants, pewholders & adherents of St. James Presbyterian Church, Newcastle, N.B., not concurring in church union, claimed the church property, or a share therein, attacking the legality of the congregational votes, one taken under the provincial Act & the other under the Dominion Act, aforesaid, in favour of union, & contending that, in any case, the property fell within sect. 6 of 14 Geo. 5, N.B., & therefore, there having been no "consent" under that sect., the property had not vested in the United Church but belonged to the continuing Presbyterians of the congregation:—*Held:* the congregation not having passed a vote of non-concurrence, it became, by statutory operation, a congregation of the United Church, &, even if the property fell within sect. 6 of 14 Geo. 5, N.B., yet, after the Union, it was held for the benefit of the congregation as a congregation of the United Church; the absence of consent under sect. 6 merely leaving the property unaffected by the trusts, & not subject to the terms & conditions, set out in the Model Deed.—FERGUSON *v.* MACLEAN, [1930] S. C. R. 630; [1931] 1 D. L. R. 61; *affg.*, 2 M. P. R. 61.—**CAN.**

PART VIII. SECT. 10.

sc. *Selection of priests—Right of majority of members.*]—DWIRNICHUK *v.* ZAICHUK (Sask.), [1926] 3 W. W. R. 508.—**CAN.**

EDUCATION.

Part I.—In General.

5. *Add. Annotation :*—**Refd.** B. *v.* B., [1924] P. 176.

Part II.—Central and Local Education Authorities.

13. *Add. Annotation :—As to* (2) **Folld.** Richardson *v.* Abertillery U. D. C., Thomas *v.* Same (1928), 44 T. L. R. 333.

14a. —— ——.]—Pltfs., assistant teachers in the employ of deft. council. claimed injunctions to restrain the council from acting on resolutions to dismiss them from their employment & notices sent to them in pursuance thereof. The council were in financial difficulties, & had approached the Minister of Health with a view to obtaining a further loan. This had been refused, unless the finances were placed on a sound footing & expenses reduced. With a view to achieving this result they appointed a sub-committee with full powers to scrutinise expenditure & effect reductions & savings. This committee recommended that pltfs., who were remunerated on the Burnham scale, should have their engagements determined by notice. Acting in pursuance thereof the committee passed the resolutions complained of, & notices were

PART I.

sa. *Right of child—To receive instruction.*]—The governing principle of School Act, R. S. S. 1920, c. 110, is that children between the ages referred to in sect. 202 (2) (as amended by 1928, c. 48, s. 18) have the right to attend school & receive instruction. The right is the right of the child itself; & it is not a matter left to the discretion of its parents or the school board.—WILKINSON *v.* THOMAS (Sask.), [1928] 2 W. W. R. 700.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.

sb. *School board—Election—Method of voting.*]—*Re* EDMONTON SCHOOL BOARD ELECTION (Alta.), [1927] 1 D. L. R. 411.—**CAN.**

sc. *Education Board—Distinct entity from Crown—Right of sub-contractor—Charge on money due from board to contractor.*]—The effect of Education Act, 1924, s. 24, is to constitute an Education Board an entity separate & distinct from the Crown, & in consequence a claim of charge can be validly established by a sub-contractor upon moneys due to a contractor by an Education Board in respect of work done for the Board by such contractor.—MCCALLUM *v.* OFFICIAL ASSIGNEE OF SAGAR & LUSTY, [1928] N. Z. L. R. 292.—**N.Z.**

sd. —— *Inability to act as landlord—& tenant of same school.*]—Where a demand was made upon a municipal council for $25,000 to be spent in repairing, improving & enlarging one public school building in the town in order that it might serve as the sole public school for the town, another building erected & paid for by public school supporters being used for high school purposes only, & the intention being to charge the high school an adequate rental :—*Held :* this purpose of the board was not authorised by clause (*s*) or clause (*v*) of sect. 88 of Public Schools Act, R. S. O., 1927, & was *ultra vires* of the board.—*Re* ALMONTE BOARD OF EDUCATION & ALMONTE, [1930] 1 D. L. R. 568; 64 O. L. R. 505.—**CAN.**

se. *Duty of trustees—To summon meeting—Requisition by majority of ratepayers—Powers of inspector on refusal.*]—If a requisition is made to the trustees of schools, by a majority of the ratepayers of a district, to call a special meeting for a purpose authorised by Common School Act, 1871, it is their duty to call the meeting under sect. 28 of the Act; & if they refuse, the inspector is authorised to appoint new trustees, under sect. 37 of the Act.—*Ex p.* GILBERT (1873), 14 N. B. R. (1 Pug.) 231.—**CAN.**

sf. —— *To take legal advice—In important matters of law.*]—School trustees should not act with respect to important matters of law, such as the legal right of a child to receive instruction in the school, without consulting their solr. & counsel; &, if they do so, it must be at the risk of having to pay costs if they are wrong.—WILKINSON *v.* THOMAS, [1928] 2 W. W. R. 700.—**CAN.**

sg. —— *Meeting not formally summoned—All trustees present—Necessity to record waiver of proper notice.*]—Where all the members of a board of school trustees are present at a meetng thereof & tacitly waive the written notice called for by School Act, R. S. S. 1920, c. 110, s. 104 (1), the fact that their consent to the waiver is not recorded in the minutes & subscribed by each member of the board is a mere informality.—WATERMAN-WATERBURY MANUFACTURING CO., LTD. *v.* SLAVANKA SCHOOL DISTRICT, [1928] 4 D. L. R. 522; [1928] 3 W .W. R. 16.—**CAN.**

sh. —— *Contract—Formalities necessary—Executed contract.*]—The contention that a contract in the form prescribed by School Act, R. S. A. 1922, c. 51, s. 194, between a school teacher & a school district was not binding on the latter because not entered into pursuant to a resolution of the board of trustees or adopted at a meeting of the board was held not applicable to an executed contract, &, in any event, was completely met by School Act, R. S. A. 1922, c. 51, s. 195, which provides that "The contract shall be deemed valid & binding if signed by the teacher & by the chairman on behalf of the board."—SOMERS *v.* LIBERTY SCH. DIST., [1928] 2 D. L. R. 334; [1928] 1 W. W. R. 884.—**CAN.**

si. —— —— —— *Tenders not called for.*]—The fact that before awarding a contract for the erection of a schoolhouse the board of trustees did not advertise for or obtain formal written tenders held to have been a mere informality in the internal management of the board which did not affect the rights of the contractor to whom the contract was awarded.—WATERMAN-WATERBURY MANUFACTURING CO., LTD. *v.* SLAVANKA SCHOOL DISTRICT, [1928] 4 D. L. R. 522; [1928] 3 W. W. R. 16; *revsd.*, [1929] 2 D. L. R. 161; 1 W. W. R. 598; 23 S. L. R. 338.—**CAN.**

sk. —— —— —— *Benefits of contract accepted.*]—School Act, R. S. S. 1920, c. 110, s. 105, is imperative; & where it has not been complied with in respect to a contract the contract is absolutely void; & the fact that the work has been done & the benefits thereof accepted by the board does not entitle the contractor to recover from the board an amount due thereunder.—WATERMAN-WATERBURY MFG. CO., LTD. *v.* SOUTH ARCOLA SCHOOL DIST., [1929] 2 D. L. R. 214; 23 S. L. R. 227; [1928] 3 W. W. R. 690.—**CAN.**

sl. —— —— —— *Hiring of teacher.*]—MCDONALD *v.* ELDON SCHOOL DISTRICT No. 3 (1929), 1 M. P. R. 253.—**CAN.**

sb. —— —— —— ——.]—Where a statute provides that no act or proceeding of certain corpns., in this instance a school corpn., "which is not adopted at a regular or special meeting of the trustees, shall be valid or binding on any person affected thereby," a proposed contract is not binding on the corpn., unless a formal vote on the question of its approval was put to the trustees, even though the contract has been signed with the corpn.'s seal. Evidence that the chairman & secretary were warranted in inferring that the majority assented to a motion which was made, but not put to the meeting, for the adoption of the proposed contract, is not sufficient.—WARDROP *v.* WHITEMOUTH SCHOOL DISTRICT, [1931] 3 W. W. R. 499; 4 D. L. R. 861; 40 Man. L. R. 1.—**CAN.**

sd. *Removal of trustees—By Board of Commissioners—Under 4th R. S., c. 32.*]—*Held :* where no vacancy had occurred & no proof was produced of any refusal or neglect by & on the part of the trustees to act or perform their duties as such, their dismissal by the Board of Comrs. was *ultra vires*—SCHOOL SECTION 16 TRUSTEES *v.* CAMERON (1877), 11 N. S. R. (2 R. & C.) 328.—**CAN.**

sf. —— *Improper dealings with trust funds—Action—Whether Attorney-General necessary party.*]—In an action by an incorporated educational institute for the removal of one of the trustees, who also acted as secretary, for alleged improper dealing with the corporate funds, judgment was given, but without any finding of wilful misconduct, directing such trustee's removal, on the ground that so much doubt was cast

sent out determining the contracts signed by their clerk :—*Held :* (1) it was clear that it had become necessary to practise strict economy, & judicial notice could be taken of the fact that at the time pltfs. were remunerated on the highest scale of the Burnham award. The council in considering these questions were acting in pursuance of their statutory obligations, & no objection could be entertained as to the validity of the notices on the ground of motive. (2) There was power to delegate under 1921 Act, s. 4 (2), & the committee had vested in them the duty of ascertaining how best savings could be brought about. On their report the notices of dismissal had been prepared & sent to pltfs., signed by the clerk of the council. That was a sufficient ratification of what the committee had done, & pltfs.' claim failed.—RICHARDSON *v.* ABERTILLERY URBAN DISTRICT COUNCIL, THOMAS *v.* SAME (1928), 138 L. T. 688 ; 92 J. P. 59 ; 44 T. L. R. 333 ; 72 Sol. Jo. 226.

21a. —— **Order to play alleged dangerous game.**]—The infant pltf., who was 17 years of age & was an unemployed person undergoing a compulsory course of instruction at a county council instruction centre, was ordered by the council's instructor, a man of experience, to take part in an organised game called " riders & horses," in which one boy mounted the back of another & endeavoured to bring to the ground the foot of the boy who was acting as " rider " in an opposing pair. During the game the infant pltf., who was taking the part of a " horse," fell on the wooden floor & seriously injured his arm. In an action against the council for negligence, on the ground that the game was so dangerous in itself that to order a boy to play it amounted to negligence, the evidence of the instructor was that for 20 years he had seen the game played without serious accident :—*Held :* there was no evidence of negligence, & therefore the action failed.—JONES *v.* LONDON COUNTY COUNCIL (1932), 96 J. P. 371 ; 48 T. L. R. 577 ; 30 L. G. R. 455, C. A.

23. *Add. Annotation :*—**Consd.** Langham *v.* Wellingborough School Governors & Fryer (1932), 96 J. P. 236.

upon his dealings with the trust funds that it would not be proper to allow him to remain a member of the board. Such an action is maintainable without making the A.-G. a party.—WILBERFORCE EDUCATIONAL INSTITUTE *v.* HOLDEN (1887), 17 O. R. 439.—**CAN.**

so. —— *Neglect of duty—Proceedings for removal informal—One applicant not ratepayer.*]—Although on an appeal by school trustees from a judgment removing them from office the Ct. of Appeal agreed with the judge appealed from that applts. had been guilty of a neglect of duty in disregarding School Act, R. S. S. 1920, c. 110, with respect to procuring a new site for a school house, it was held, nevertheless, that the appeal must be allowed on the ground, raised apparently for the first time in the notice of the appeal, that one of the five persons by whom the proceedings for removal were commenced was not at the time they were commenced on the last revised assessment roll for the district, &, therefore, was not a " ratepayer " within the meaning of sect. 124 of the Act.—R. *v.* RIWNY & PESECHNICK, [1929] 2 D. L. R. 317 ; 23 S. L. R. 281 ; [1928] 3 W. W. R. 728.—**CAN.**

sq. *Appointment of trustee—Whether valid—Made at annual meeting of ratepayers—No notice of special business.*]—The election of a trustee at the annual meeting of ratepayers in question herein to fill a vacancy on the board caused by resignation was held invalid, since by School Act, R. S. S. 1920, c. 110, s. 125, such a vacancy must be filled at a special meeting ; &, since sect. 92 (2) requires the notice of a special meeting to set forth its purpose, & the notice of said annual meeting made no mention of the election of a trustee to fill the vacancy, it could not be said that the annual meeting was such a special meeting.—LACOURSE *v.* MCLELLAN & DEGRAW, [1929] 3 D. L. R. 73 ; 23 S. L. R. 159 ; [1928] 3 W. W. R. 680.—**CAN.**

sr. —— —— *Reports not read as directed in School Act.*]—An election of trustees under School Act, R. S. S. 1920, c. 110, is not rendered invalid by the fact that the reports referred to in sect. 70 were not read before they were elected.—LACOURSE *v.* MCLELLAN & DE GRAW, [1929] 3 D. L. R. 73 ; 23 S. L. R. 159 ; [1928] 3 W. W. R. 680.—**CAN.**

ss. *Qualification of trustees—" Able to read & write "—Whether " in the English language " implied.*]—The words " able to read & write " in Public Schools Act, R. S. M. 1913, c. 165, s. 24 (2) (C. A. 1924, c. 165, s. 8), which prescribes the qualifications of school trustees, are not to be read as if modified by the addition of the words " in the English language."—*Re* MACZEWSKI, [1928] 2 W. W. R. 24.—**CAN.**

sw. *Effect of trustee teaching in public school—Office vacated.*]—*Re* EAST YORK PUBLIC SCHOOL BOARD & MACKENZIE, [1931] 2 D. L. R. 558.—**CAN.**

sx. *School district—Annual meeting—Commenced after time fixed by School Act—Whether valid.*]—The fact that the annual meeting of a school district was not commenced until after two o'clock in the afternoon, the hour appointed by School Act, R. S. S. 1920, c. 110, s. 64, does not render the proceedings at such meeting invalid.—LACOURSE *v.* MCLELLAN & DE GRAW, [1929] 3 D. L. R. 73 ; 23 S. L. R. 159 ; [1928] 3 W. W. R. 680.—**CAN.**

PART II. SECT. 2, SUB-SECT. 2.

k i. —— *Meaning of " residence " in Schools Act, R. S. N. B., 1927—Residence of child.*]—*Ex p.* LAMBERT (1930), 1 M. P. R. 12.—**CAN.**

PART II. SECT. 2, SUB-SECT. 4.

17 l. *Negligence of education authority—Defective state of playground.*]—Applts. planted a number of young trees upon a portion of the playground of a school under their control, & erected wooden stakes with sharp & jagged points round each tree. These stakes were pressed into the ground & brought together at the top in the form of a pyramid. The area covered by the trees had become overgrown with grass, & in that area a hole had been dug, & the earth heaped up at the side of it, forming a mound two or three feet in height. Resp.'s daughter, a child of six years, when playing fell on one of the stakes, which pierced her eye :—*Held :* applts. had been negligent in not taking steps to obviate the danger, & were liable in damages.—TRANSVAAL PROVINCIAL ADMINISTRATION *v.* COLEY, [1925] App. D. 24.—**S. AF.**

17. ii. —— *Defective playground equipment.*]—A school board which provides a piece of playground equipment, *e.g.* a " teeter-totter," for the use of its pupils is, apart from its statutory duty of keeping the school property in repair, under the duty of seeing that the thing provided is so constructed & kept in repair as to be reasonably fit for the purpose for which it is intended ; & is liable in damages where injuries sustained by a pupil were caused by its negligence with respect to such suty.—SCHULTZ *v.* GRASSWOLD SCHOOL DISTRICT TRUSTEES, [1930] 1 W. W. R. 579 ; 3 D. L. R. 600.—**CAN.**

o i. —— *Supervision of rifle-shooting competition.*]—A school board has a duty to see that the school premises are not used in a manner dangerous to the children. If it authorises or permits a shooting competition with rifles in the course of school sports on a holiday granted for such purpose, it must provide efficient supervision, including efficient inspection of the rifles used, & a breach of that duty will subject it to damages for injury to a boy caused through his having a defective rifle.—WALTON *v.* VANCOUVER BOARD OF SCHOOL TRUSTEES, [1924] 2 D. L. R. 387 ; 2 W. W. R. 49 ; 34 B. C. R. 38.—**CAN.**

o ii. *Pupil injured on dangerous ground near school premises.*]—A school board is not liable for injuries caused a pupil while on a highway close to but outside the school grounds by the falling of a dead tree which stood on the property of a third person.—PATTERSON *v.* BOARD OF SCHOOL TRUSTEES OF NORTH VANCOUVER, PATTERSON *v.* CANADIAN ROBERT DOLLAR CO., [1929] 3 D. L. R. 33 ; 2 W. W. R. 181 ; 41 B. C. R. 123.—**CAN.**

o iii. —— *Pupil left with unguarded chemicals.*]—An action by a pupil against a board of school trustees for damages for personal injuries resulting from the alleged negligence of a master in leaving chemicals, furnished to him by the board, unguarded in a schoolroom, must be brought within the time limited by Public Schools Act, R. S. B. C., 1924 (c. 226), s. 81.—DUNCAN *v.* LADYSMITH, BOARD SCHOOL TRUSTEES, [1930] 3 W. W. R. 175 ; 1 D. L. R. 176 ; 43 B. C. R. 154.—**CAN.**

Part III.—Schemes as to Powers and Duties.

24a. For organisation of education—What amounts to "scheme."]—In determining whether proposals put forward by a local education authority for the development & organisation of education in its area & submitted to the Board of Education for approval constitute a "scheme" within Education Act, 1921 (c. 51), s. 11, so as to render necessary to its validity the performance by the authority of the conditions precedent to the submission of a scheme specified in sect. 14 (2) of the Act, the test to be applied is whether both the education authority & the Board of Education intend that which is put forward to be a "scheme" within sect. 11 so as to make the education authority bound, under sect. 15 (1), to give effect to it. The magnitude & quality of the proposals are not material considerations.—R. *v.* EAST HAM BOROUGH COUNCIL, *Ex p.* HUNT, [1930] 2 K. B. 64; 99 L. J. K. B. 497; 143 L. T. 709; 94 J. P. 135; 46 T. L. R. 334; 28 L. G. R. 646, D. C.

Part IV.—Elementary Schools.

30. *Add. Annotation :*—**Consd.** Northern Theatres Co. *v.* Shillito, [1925] 2 K. B. 100.

32a. —— Provision of concrete paving in playground.]—A local education authority paid for the concrete paving & flagging of the playgrounds of two non-provided schools. The expenses so incurred were disallowed by the district auditor on the ground that the local education authority had no statutory authority to expend money on alterations or improvements of a schoolhouse not provided by them. On a case stated by the Minister of Health under Audit (Local Authorities) Act, 1927 (c. 31), s. 2 :—*Held :* the concrete paving or flagging of the playgrounds was not an alteration or improvement in the buildings, & that therefore the obligation to pay for such work was not thrown upon the managers of the schools by Education Act, 1921 (c. 51), s. 29 (2) (*d*), but the local education authority were bound to pay for such work under their obligation to maintain & keep efficient all public elementary schools within their area which are necessary.—LANCASTER (COUNTY PALATINE) COUNCIL *v.* CROWE (No. 1), [1929] 1 K. B. 587; 98 L. J. K. B. 353; 140 L. T. 554; 93 J. P. 38; 45 T. L. R. 170; 73 Sol. Jo. 13; 27 L. G. R. 96, D. C.; *subsequent proceedings*, [1929] 1 K. B. 604, D. C.

45a. Variation of order as to foundation managers —Powers of Board of Education.]—The Board of Education has power under Education Act, 1902 (c. 42), s. 11 (8), to make an order varying any order previously made, & this power, subject to due observance of the conditions of the sect., is practically unfettered. Therefore, when under a trust deed of 1860 the vicar & wardens of a parish were made managers of a non-provided school, & by an order of the Board made in 1903 it was provided that there should be four foundation managers of the school, one of which should be the vicar as *ex officio* manager, it was not *ultra vires* the Board to make in 1922 a varying order under Education Act, 1902 (c. 42), s. 11 (8), excluding the vicar & appointing as managers one warden & three nominees of the Archdeacon of Suffolk. The provisions of sect. 11 (1), (2), did not make the order of 1903 part of the trust deed in such a way that it was impossible to vary that order without showing that all the provisions of the trust deed as to managers were insufficient, inapplicable, or inconsistent with the Act.—FALCONER *v.* STEARN, [1932] 1 Ch. 509; 101 L. J. Ch. 231, 232; 146 L. T. 461; 30 L. G. R. 187.

47. *Add. Annotation :*—**Refd.** Sadder *v.* Sheffield Corpn., Dyson *v.* Sheffield Corpn., [1924] 1 Ch. 483.

PART IV. SECT. 2, SUB-SECT. 1.

q 1. ——.]—THURGOOD *v.* VIGNEAU (N. S.), [1929] 4 D. L. R. 857.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.

26 i. *Duty to "maintain & keep efficient"—School transferred to local authority.*]—Trustees of a voluntary Episcopal school transferred it to the local education authority, the school then being conducted as a primary school, with a supplementary course. Two years after the transfer, the education authority altered the system & began to conduct it in sequence with a neighbouring school. In an action against the education authority at the instance of the former trustees :—*Held :* under Education (Scotland) Act, 1918, s. 18 (3), defenders were bound to hold, maintain, & manage the transferred school as a public school of the same character & status as at the date of the transfer & provide similar instruction to that provided at that date.—NORFOR *v.* ABERDEENSHIRE EDUCATION AUTHORITY, [1924] S. C. 590.—**SCOT.**

26 ii. —— *Performance of duty disputed—Jurisdiction of court.*]—*Held :* while questions as to due fulfilment or observance by the education authority of their statutory obligations were questions of fact which fell to be determined by the Education Department under Education (Scotland) Act, 1918, s. 18 (4), where the question involved the measure of these obligations, that was a question of law, with regard to which the jurisdiction of the ct. had not been excluded.—NORFOR *v.* ABERDEENSHIRE EDUCATION AUTHORITY, [1923] S. C. 881.—**SCOT.**

PART IV. SECT. 2, SUB-SECT. 3.

se. *Teachers—Employment of sisters of Order of Roman Catholic Church—Whether sectarian education.*]—ROGERS *v.* BATHURST SCHOOL DISTRICT NO. 2 (TRUSTEES) (1896), 1 N. B. Eq. Rep. 266.

sd. *Contracts of trustees to confirm.*]—DES ROSIERS *v.* BALMORAL & DALHOUSIE SCHOOL DISTRICTS NO. 1 (N. B.), [1927] 3 D. L. R. 505.—**CAN.**

PART IV. SECT. 5.

se. *Contribution by one education authority to another—Parents not residing in area in which school situate.*]—The B. education authority granted bursaries to a number of children of persons resident in Arran for the purpose of facilitating their secondary education. There was no secondary school in Arran, & the children attended Ardrossan Academy, which is within the education authority. Except for two months in summer, the children left Arran for Ardrossan on Monday mornings, & they were boarded during the week with persons resident in Ardrossan, with whom they lived in family. On Saturday they returned home for the week-end, & they spent their holidays at their homes in Arran.

Part V.—School Attendance.

62. *Add. Annotation :*—**Apld.** Woodward *v.* Oldfield (1927), 96 L. J. K. B. 796.

72. *Add. Annotation :—As to* (3) **Consd.** Thomas *v.* Hughes (1928), 139 L. T. 613.

78. *Add. Annotation :*—**N.F.** Rednall *v.* Beamish (1926), 135 L. T. 155.

78a. — — ——.]—Where an education authority has refused an application for exemption from school attendance on the ground of employment, the fact of such employment can be neither a " reasonable excuse " for non-attendance, nor an extenuating circumstance entitling the justices under Probation of Offenders Act, 1907 (c. 17), to dismiss a summons against the parent.—THOMAS *v.* HUGHES, [1929] 1 K. B. 226; 98 L. J. K. B. 42; 139 L. T. 613; 92 J. P. 169; 44 T. L. R 818; 28 Cox, C. C. 542; 26 L. G. R. 545, D. C.

79a. —— ——.]—Resp., a share-fisherman & the father of a boy of fourteen years of age & of six other children of school age, placed the boy out at work at 5*s.* 6*d.* a week, & applied to the local education authority to exempt the boy from school attendance. Exemption was refused, &, on an information against resp. for failing, without reasonable excuse, to cause the boy, being between five & fifteen years of age, to attend school, as required by the bye-laws of the education authority, the justices held that the fact of the boy's having obtained regular employment of a beneficial nature was a reasonable excuse, & they dismissed the information :—*Held :* the fact of the boy's employment was not a reasonable excuse, & the case must be remitted to the justices.—REDNALL *v.* BEAMISH (1926), 135 L. T. 155; 90 J. P. 153; 42 T. L. R. 538; 24 L. G. R. 391; 28 Cox, C. C. 245, D. C.

82. *Add. Annotation :*—**Distd.** L. C. C. *v.* Maher, [1929] 2 K. B. 97.

88a. —— ——.]—The words " under efficient instruction in some other manner " mean that the child is receiving the whole of its instruction in some other manner, & do not entitle a parent to withdraw a child for one hour a week for the purpose of attending private lessons in a subject not approved by the Board of Education for elementary schools.—OSBORNE *v.* MARTIN (1927), 138 L. T. 268; 91 J. P. 197; 44 T. L. R. 38; 25 L. G. R. 532, 28 Cox, C. C. 465, D. C.

96a. -.]—1921 Act (c. 51), s. 49, provides that any of the three reasons therein set out, which may be summarised as follows : (*a*) sickness; (*b*) no school open within three miles; (*c*) efficient instruction in some other manner, shall be a reasonable excuse for not causing a child to attend school :—*Held :* those three reasons were not an exhaustive

The A. education authority claimed repayment of the cost of educating the children at Ardrossan from the B. education authority :—*Held :* pursuers were entitled to recover the cost of the children's education from defenders. Education (Scotland) Act, 1918 (c. 48), s. 10, discussed.—AYRSHIRE EDUCATION AUTHORITY *v.* BUTESHIRE EDUCATION AUTHORITY, [1926] S. C. 169.—**SCOT.**

PART IV. SECT. 6.

sf. *Alteration of school section boundaries—Sufficiency of notice.*]—By a township bye-law, certain land was detached from one school section & added to another. Notice of the proposed alteration had been given by the township council by posting fourteen notices, seven in each of the sections, & publicity was given in the public press, though not by advertisement containing the formal notice. On an application for a declaration that the bye-law was invalid :—*Held :* Public Schools Act, 1920, s. 15 (1) (*b*), should be construed as leaving the notice to be given entirely to the discretion of the township council.—*Re* HOYLAND & YORK (1923), 55 O. L. R. 185.—**CAN.**

sj. *Alteration of school districts—By whom sanctioned—7 Vict. c. 29, ss. 14, 24.*]—MCFEE *v.* DUNDAR (1860), 10 C. P. 94.—**CAN.**

sk. —— *Award under Public Schools Act,* 1896 (c. 70) (*Ont.*)—*Validity.*]—*Re* CHESTERVILLE PUBLIC SCHOOL BOARD (1898), 29 O. R. 321.—**CAN.**

sm. *Union of sections—40 Vict. c. 16 (Ont.)—Effect of.*]—*Re* MINISTER OF EDUCATION PETITION (1877), 28 C. P. 325.—**CAN.**

so. *Refusal of some trustees to join in transfer—Right of majority of trustees to require execution by minority.*]—The managers & a majority of the trustees of B. public elementary schools decided that the schools should be transferred to the County Council of L. under Education Act (Northern Ireland), 1923. Four trustees refused to join in the necessary deed of conveyance :—*Held :* the majority of the trustees could require the minority to join in the deed for the purpose of transferring the schools under the Act.—LONDONDERRY C. C. *v.* M'GLADE, [1929] N. I. 47.—**IR.**

sq. *Under Education (Scotland) Act,* 1918 (*c.* 48), s. 18 (7)—*Necessity for consent of Education Authority.*]—The trustees of a Roman Catholic school, established after the passing of Education (Scotland) Act, 1918, obtained in 1926 the consent of the Department to the transfer of the school to the Education Authority, & thereafter they intimated to the Authority their intention to transfer the school. The Authority refused to accept the proposed transfer, &, in an action of declaration brought by the trustees, maintained that its consent was a condition precedent to a valid transfer :—*Held :* the consent of the Authority was not a condition precedent to a valid transfer, &, as the Education Department had given its consent, the authority was bound to accept the transfer.—BONNYBRIDGE ROMAN CATHOLIC SCHOOL *v.* STIRLINGSHIRE EDUCATION AUTHORITY, [1930] S. C. 27; *sub nom.* SMITH *v.* STIRLINGSHIRE EDUCATION AUTHORITY, 46 T. L. R. 137.—**SCOT.**

PART V. SECT. 1, SUB-SECT. 2.

st. *By whom taken.*]—A father, charged with failure to provide efficient education for his child upon a complaint at the instance of " the person appointed by the education authority for the county of Lanark to prosecute," objected on the ground that the proper prosecutor was the school management committee for the area, or the person appointed by them :—*Held :* the power, previously vested in school boards, to prosecute for education offences was included in the powers transferred to the education authority by 1918 Act, & had not been restricted by s. 3 (2); & the education authority, or the person appointed by them, could competently prosecute.—HIDDLESTON *v.* WILSON, [1924] S. C. (J.) 62.—**SCOT.**

sb. *Under Education (Scotland) Act,* 1872 (*c.* 62), *s.* 70.]—The above sect. has not been impliedly repealed by Education (Scotland) Act, 1908 (c. 63), s. 8, & a prosecution under sect. 70 is competent, even though the real question at issue between the parent & the education authority is the selection of the school which the children are to attend. *Semble :* proceedings should not be taken under sect. 70 where there is a question of principle at issue between the parties.—CALDER *v.* ALEXANDER, [1926] S. C. (J.) 51.—**SCOT.**

PART V. SECT. 2.

sd. *To regulate age of admission of pupils to grade I—Power of town district trustees.*]—The power which School Act, R. S. S. 1920, c. 110, s. 110 (27), gives the trustees in town districts to determine in the case of graded schools at what time pupils may be admitted to grade I. is not conferred on the trustees of districts which are not town districts.—WILKINSON *v.* THOMAS, [1928] 2 W. W. R. 700.—**CAN.**

PART V. SECT. 3.

89 i. —— *No school within three miles—Parent's refusal of offer of travelling facilities.*]—A father was charged with failure to provide efficient education for his son aged twelve years, contrary to Education (Scotland) Act, 1908 (c. 63), s. 7 (1). The boy had passed out of the primary school, & there was no secondary school within three miles of his place of residence. The education authority offered to pay an allowance towards the cost of conveying the boy to a secondary school. The father refused the offer :—*Held :* the father had a " reasonable excuse " for failure to provide education within Education (Scotland) Act, 1883 (c. 56), s. 11.—MACKENZIE *v.* SMITH, [1927] S. C. (J.) 47.—**SCOT.**

enumeration of what would be a reasonable excuse, but that if facts were established showing an excuse within one of the categories (*a*), (*b*) & (*c*), the tribunal must accept the excuse as being a reasonable excuse. If, however, parents sought to find a reasonable excuse outside the named categories (*a*), (*b*) & (*c*), the tribunal were not bound to accept it; the tribunal must decide whether the facts, in their opinion, showed a reasonable excuse. —LONDON COUNTY COUNCIL *v.* MAHER, [1929] 2 K. B. 97; 98 L. J. K. B. 492; 142 L. T. 69; 93 J. P. 178; 45 T. L. R. 534; 73 Sol. Jo. 269; 29 Cox, C. C. 1; 27 L. G. R. 444, D. C.

Part VI.—Blind, Deaf, Defective and Epileptic Children.

99a. —— —— **Who is "parent."**]—The parent, whose consent is required to be given or unreasonably withheld before a defective child can be ordered, under 1921 Act, s. 54 (1), to be sent to a special school which is not within reach of the child's residence or to a boarding school, is the parent who has *de facto* custody of the child; & where the father of a defective child was a convict serving a term of penal servitude, & the child resided with its mother:—*Held:* the mother was the parent for the purposes of the sect.—WOODWARD *v.* OLDFIELD, [1928] 1 K. B. 204; 96 L. J. K. B. 796; 136 L. T. 731; 91 J. P. 151; 43 T. L. R. 488; 25 L. G. R. 296; 28 Cox, C. C. 363, D. C.

PART VII. SECT. 1.

se. *Duty of education authority—Whether bound to provide free secondary education.*]—An education authority, with the approval of the Education Department, provided free post-primary education in certain schools in their area. They also provided a bursary scheme, under which children who passed a qualifying examination, & whose parents required financial assistance, might receive free secondary education at certain additional schools. The fathers of two children, one of whom had failed to pass the authority's bursary examination, while the other had passed the examination, but its father had failed to satisfy the authority that he required financial assistance, brought actions against the authority concluding, *inter alia*, for declarator that the defenders were bound to provide free secondary education for their respective children: —*Held:* (1) Education (Scotland) Act, 1918 (c. 48), s. 6 (1) (*a*), does not impose upon an education authority any obligations to provide free secondary education for all children within its area, but merely imposes an obligation to submit a scheme dealing with free secondary education, & (2) it was for the Education Department, & not for the ct., to determine whether the scheme submitted was or was not adequate; & actions accordingly dismissed.—QUINN *v.* DUNDEE EDUCATION AUTHORITY, HAY *v.* DUNDEE EDUCATION AUTHORITY, [1930] S. C. 77.—SCOT.

PART VIII.

105 i. *Conveyance of children to school—Duty of school trustees—Under School Act, R. S. S., 1920 (c. 110), ss. 188, 207 (1).*]—RIDINGS *v.* ELMHURST SCHOOL DISTRICT NO. 3665 BOARD OF TRUSTEES (NO. 2), [1927] 3 D. L. R. 173; [1927] 2 W. W. R. 159; 21 S. C. R. 471.—**CAN.**

sm. *Lease by school trustees—Validity.*]—NIAGARA PUBLIC SCHOOL BOARD *v.* QUEENSTON WOMEN'S INSTITUTE, [1926] 4 D. L. R. 13; 59 O. L. R. 213.—**CAN.**

PART X.

m i. —— —— *Penalty for non-compliance with School Act—Whether applicable where schoolhouse rebuilt on same site.*]—WATERMAN-WATERBURY MANUFACTURING CO., LTD. *v.* SLAVANKA SCHOOL DISTRICT, [1928] 4 D. L. R. 522; [1928] 3 W. W. R. 16; *revsd.*, [1929] 2 D. L. R. 161; 1 W. W. R. 598; 23 S. L. R. 338.—**CAN.**

o i. —— *Who is "owner."*]—There can be no "owner" within sect. 70 (2) of School Act, R. S. A., 1922, until the land in question has been patented & a certificate of title issued to some one. The sect. was never intended to apply to a case where the ownership of the land was still in the Crown.—*Re* BALLAS & MINISTER OF EDUCATION, [1931] 1 W. W. N. 290; 25 Alta. L. R. 359.—**CAN.**

o ii. ——"*Adjoining*" *land—Meaning of.*]—The word "adjoining" as applied to parcels of land does not necessarily imply that the parcels are in physical contact with each other. Therefore under sect. 135 of Public Schools Act, 1930, land may be "adjoining" an existing school site although separated therefrom by a public highway. — MCKENZIE *v.* MINIOTA MUNICIPAL SCHOOL DISTRICT, [1931] 2 W. W. R. 105; 2 D. L. R. 695.—**CAN.**

o iii. —— *Appropriate tribunal for assessing compensation.*]—By sect. 20 of School Sites Act, 1928, the Official Arbitrator is the sole tribunal for fixing the price of school sites in a municipality for which an arbitrator has been appointed. Such an arbitrator having been appointed, proceedings before a county ct. judge were declared *coram non judice*, & his award was set aside.—*Re* NORTH YORK PUBLIC SCHOOL BOARD & DUFF, [1931] 1 D. L. R. 198; 66 O. L. R. 1.—**CAN.**

p i. —— *Power of trustees—Sale of old site.*]—Under School Act, R.S.A., 1922, a board of trustees has power to purchase a new site for a school & remove the school building to it, &, with the Minister's approval, to sell the old site.—OLSTEAD *v.* COAL VALLEY SCHOOL DISTRICT NO. 1053, [1924] 1 W. W. R. 211.—**CAN.**

1 (p. 574) **i.** —— *Validity of bye-law prohibiting.*]—A bye-law passed by a city council under Municipal Act of Ontario, s. 399A, prohibiting in a certain district the erection of buildings except for use as private residences, is enforceable in respect of a school erected by the trustees of a separate school under their statutory powers.—TORONTO CORPN. *v.* ROMAN CATHOLIC SEPARATE SCHOOLS TRUSTEES, [1926] A. C. 81; 95 L. J. P. C. 12; 133 L. T. 779; 41 T. L. R. 658.—**CAN.**

PART XI.

d i. —— —— *Submission condition precedent to payment by municipal council.*]—*Re* BEAVERTON PUBLIC SCHOOL BOARD OF TRUSTEES & THORAH TOWNSHIP, [1932] 4 D. L. R. 458.—**CAN.**

g i. —— *Annexation by urban municipality—Effect of.*]—WINDSOR *v.* TURNER, [1925] 2 D. L. R. 684; [1925] S. C. R. 413; *revsg.* 26 O. W. N. 221.—**CAN.**

g ii. —— *Assessment by—Whether properly temporarily in district liable.*]—*Re* EDMONTON, DUNVEGAN & BRITISH COLUMBIA RY. CO. & MCLELLAN SCHOOL DISTRICT, *Re* MANNIX & WALGREN & MCLELLAN SCHOOL DISTRICT, [1928] 2 W. W. R. 684.—**CAN.**

k i. —— —— *For county pupils attending urban collegiate institute.*]—*Re* GRIMSBY & LINCOLN COUNTY, [1928] 4 D. L. R. 589; 62 O. L. R. 470.—**CAN.**

o (p. 576) **i.** —— —— ——.]—By sect. 9 of the award dated Sept. 3, 1870, made in pursuance of British North America Act, 1867 (c. 3), s. 142, it was directed that all moneys received by the Province of Ontario since June 30, 1867, from the school lands set apart by Canadian statutes & called the common school fund should be paid to the Dominion, & that the income derived therefrom should be paid to the Provinces of Ontario & Quebec in the proportions specified in sect. 5 of that statute.

On Apr. 10, 1893, the three Govts. of the Dominion, Ontario, & Quebec entered under statutory authority into an agreement of submission as to matters in difference in the settlement of accounts between them under the award of 1870, & for the ascertainment & distribution of the said school fund. Thereunder Quebec claimed that certain moneys, which it was admitted had not been actually received by Ontario, had been constructively received, since they were deductions which Ontario was not authorised to make except at her own expense, & should be the subject of distribution between them:—*Held:* the Supreme Ct. was right in affirming an award to the effect that the arbitrators had no jurisdiction. Moneys actually received by Ontario were alone the subject of the submission, the terms of which could not be extended so as to force a contribution from a large constructive receipt.—A.-G. FOR QUEBEC *v.* A.-G. FOR ONTARIO, [1910] A. C. 627, P. C.—**CAN.**

p (p. 576) **i.** —— *Demand upon for money collected for erection of school—Resolution of trustees insufficient—Subsequent bye-law invalid.*]—*Re* SANDWICH TOWN SCHOOL TRUSTEES & SANDWICH TOWN (1864), 23 U. C. R. 639.—**CAN.**

p (p. 576) **ii.** —— *Demand upon for expenses of conducting high school—Alleged irregularity in description of applicants, etc.*]—*Re* PORT ROWAN HIGH SCHOOL TRUSTEES & WALSINGHAM TOWNSHIP CORPN. (1873), 23 C. P. 11.—**CAN.**

p (p. 576) **iii.** —— *Money raised by sale of debentures—For erection of school building—Right to unexpended balance.*]—It is the duty of a municipal council to pay over to a school board or boards, from time to time, upon request, moneys raised by the sale of municipal debentures for the erection of a school building. The unexpended balance of such moneys is not the property of the municipality in its own right, at most it is a trustee or custodian of the

Part XII.—Reformatory and Industrial Schools.

135. *Add. Annotation :*—**Refd.** L. C. C. *v.* Wiltshire County Council (1927), 137 L. T. 526.

137a. —— —— ——.]—A youthful offender committed an offence while on a temporary visit to the place in W. where it was committed. Until about three weeks previously he had resided in L., but at the date of the offence had neither home nor employment in L. to which he could have returned. He was ordered to be sent to a reformatory school, & his place of residence was specified to be L. :—*Held :* as there was no proof of his actual residence in L. at the date of the offence, his place of residence should have been specified as W., not because of his actual residence there, which was admittedly only temporary, but because the presumed residence in the place where the offence was committed provided for by the above sect. had not been successfully displaced.—LONDON COUNTY COUNCIL *v.* WILTSHIRE COUNTY COUNCIL (1927), 137 L. T. 526 ; 91 J. P. 122 ; 43 T. L. R. 563 ; 25 L. G. R. 384 ; 28 Cox, C. C. 416, D. C.

138. *Add. Citations :*—[1924] 1 K. B. 248 ; 93 L. J. K. B. 65 ; 130 L. T. 414 ; 27 Cox, C. C. 581.

Part XIII.—Powers and Duties of Poor Law Authorities.

See, now, Poor Law Act, 1930 (c. 17), ss. 53–58.

Part XIV.—Universities and Public Schools.

176. *Add. Annotation :*—*As to* (2) **Refd.** Short *v.* Poole Corpn. (1925), 42 T. L. R. 107.

178. *Add. Annotation :*—**Expld.** Girls' Public Day School Trust *v.* Ereaut (1930), 99 L. J. K. B. 643.

180. *Add. Annotation :*—**Consd.** Girls' Public Day School Trust *v.* Ereaut (1930), 99 L. J. K. B. 643.

182. *Add. Annotation :*—**Apld.** Girls' Public Day School Trust *v.* Ereaut (1930), 99 L. J. K. B. 643.

182a. —— ——.]—The Girls' Public Day School Trust was incorporated as a co., but its memorandum & articles were framed with the object of establishing schools that would give a good education at the lowest possible cost. The Trust School was open to the general public, a large proportion of its pupils were scholars

moneys for the boards.—CLARKSON *v.* ALLISTON CORPN., [1928] 2 D. L. R. 715 ; 62 O. L. R. 149.—**CAN.**

p (p. 576) lv. —— *Agreement exempting taxpayer from taxes—Whether school taxes included.*]—*Ex p.* BATHURST CO., [1928] 4 D. L. R. 65.—**CAN.**

p (p. 576) v. —— *Appeal against equalised assessment—Duty of equaliser.*] —On an appeal against the equalised assessments made under Public Schools Act, s. 133, as amended by 1928, c. 48, s. 13, the only question for the judge to decide is whether the equaliser has done what the statute as amended requires him to do, *i.e.* made his equalisation on the basis of the equalisation made by Manitoba Tax Commission.—*Re* BRAUSEJOUR SCHOOL DISTRICT (Man.), [1928] 3 W. W. R. 310.—**CAN.**

sn. *City board—School in adjoining rural section—Equalisation of assessment.*]—An agreement was made in 1917 between the trustees of a rural school section adjoining a city & the board of education for the city for the erection & maintenance by the latter of a school house in the rural section, the pupils in the rural section to have the right to attend the school & the higher grade schools in the city, & the trustees of the rural section agreeing to pay a fixed annual sum to be raised by taxation :—*Held :* assuming the agreement was a valid one, School Law Amendment Act, 1922, s. 14, did not apply to the agreement, as it was not one for payment of any proportion of the cost of erecting & maintaining the school ; & a judgment restraining the city board & arbitrators appointed to equalise the assessment in respect of the school from proceeding to do so, was affirmed.—YORK PUBLIC SCHOOL BOARD *v.* TORONTO BOARD OF EDUCATION (1923), 54 O. L. R. 216.—**CAN.**

so. *School board—Liability for cost of vocational training—Refused by school board—Granted by vocational board.*]—FREDERICTON SCHOOL TRUSTEES *v.* KINGSCLEAR SCHOOL TRUSTEES, [1928] 4 D. L. R. 13.—**CAN.**

sd. —— *Payment to member—Whether breach of School Act, R. S. S., 1930, s. 239.*]—MCNABB & JARNAGIN *v.* FINDLAY, [1932] 3 W. W. R. 255.—**CAN.**

sp. *Joint board of grammar & common school trustees—Claim against district municipality—Joint board illegal.*]—*Re* TRENTON SCHOOL TRUSTEES & TRENTON VILLAGE CORPN. (1867), 26 U. C. R. 353.—**CAN.**

sq. —— *Remittance to bank of county treasurer for grammar school trustees—Failure of bank—Liability of county treasurer.*]—CALEDONIA GRAMMAR & COMMON SCHOOL TRUSTEES *v* FARRELL (1868), 27 U. C. R. 321.—**CAN.**

PART XII. SECT. 1.

b i. —— ——.]—*Re* R. *v.* ST. PETERS (1927), 47 Can. Crim. Cas. 204 ; 59 N. S. R. 198.—**CAN.**

PART XIV. SECT. 1.

st. *Taranaki scholarships—Meaning of "worthy."*]—The University Senate, in exercise of the powers conferred by New Zealand University Amendment Act, 1914, s. 18, enabling it to make regulations for the carrying out of the objects of sect. 17 of that Act, which established Taranaki Scholarships that were to be awarded on the conditions set out therein, made a regulation containing the words that "no scholarship shall be awarded to a candidate unless he obtains credit in the examination & is deemed worthy by the Council." Pltf. qualified for a scholarship within sect. 17 by obtaining credit in an examination, but the Senate refused to award him one. On a claim by him for a declaration that he was entitled to a scholarship, the funds available being sufficient for the purpose, it was contended for defts. that the word "worthy" in the regulation meant worthy from the scholastic point of view :—*Held :* granting the declaration as prayed, the word "worthy," if so interpreted, would make the regulation invalid, as being inconsistent with the provisions of sect. 17, & must be construed in its primary sense as meaning worthy from the point of view of character, &, the Senate having misinterpreted its regulations, pltf. was entitled to the relief sought.—SYME *v.* NEW ZEALAND UNIVERSITY, [1931] N. Z. L. R. 952. —**N.Z.**

PART XIV. SECT. 2, SUB-SECT. 4.

n i. —— ——.]—When pltf. was appointed to a professorship in 1916, no definite term was fixed :—*Held :* the ordinary rule that such a contract of employment could be terminated by reasonable notice on either side would apply, unless the particular nature of the contract or the circumstances in which it was made overrode the rule ; & an appointment to a professorship without limitation of time could not be an appointment for life, subject only to good behaviour & ability to perform his duties, as such a contract must be mutual, & could be binding neither on the university nor on the professor.—CRAIG *v.* UNIVERSITY OF TORONTO (GOVERNORS) (1923), 53 O. L. R. 312.—**CAN.**

from the public elementary schools, & a great proportion of its governing body were nominated by the local education authority, &, further, the school was largely maintained by public moneys, & in the view of the Board of Education the school satisfied the regulation which prohibited any Parliamentary grant to a school conducted for private profit. In accordance with the Board's wishes it was provided that the co should be converted into an educational trust at the end of a period & exceeding fifty years from 1905, & that in the event of a winding up before the end of that period the surplus assets of the co. should be subject to an educational trust & should not be distributed among the shareholders; that during the period above-mentioned the dividend paid on share capital should not exceed a sum equal to 4 per cent. a year. The Comrs. found on the facts the Trust School was a public school, & as such entitled to the benefit of the exemption from income tax:—*Held:* there was ample evidence on which the Comrs. could find that this school was a public school, & the possibility of profit arising to an individual in the course of carrying on a school did not of necessity prevent the school having the character of a public school.

The existence of a perpetual foundation is not by itself conclusive but only one of the factors to be considered. There is no distinction between money used for a public school raised by debentures at interest, & money raised by preference shares with limited interest. The judgments in *Blake* v. *London Corpn.*, No. 178, were not intended to lay down a rule that no school from the conduct of which any person could derive pecuniary benefit could in any circumstances be a public school.—GIRLS' PUBLIC DAY SCHOOL TRUST *v.* EREAUT (INSPECTOR OF TAXES), [1931] A. C. 12; 99 L. J. K. B. 643; 95 J. P. 3; 46 T. L. R. 638; 74 Sol. Jo. 612; *sub nom.* EREAUT *v.* GIRLS' PUBLIC DAY SCHOOL TRUST, LTD., 143 L. T. 715; 28 L. G. R. 603; 15 Tax Cas. 529, H. L.

Part XVII.—Schoolmasters and Teachers.

268a. —— ——.]—Wrongful expulsion of a pupil from a school does not of itself, without more, constitute an actionable tort.—HUNT *v.* DAMON (1930), 46 T. L. R. 579.

273. *Add. Annotation:*—**Consd.** R. *v.* Newport (Salop) Justices, *Ex p.* Wright, [1929] 2 K. B. 416.

275. *Add. Annotation:*—**Apld.** R. *v.* Newport (Salop) Justices, *Ex p.* Wright (1929), 98 L. J. K. B. 555.

275a. —— ——.]—At a school for boys there was a rule prohibiting smoking by pupils during the school term, whether on the school precincts or in public. During the term a pupil rather less than sixteen years old, after having left the school for the day & returned home, smoked a cigarette in the public street, & next day the schoolmaster administered to him five strokes of the cane as a punishment for breach of the rule. On the hearing of an information against the schoolmaster for an alleged assault on the boy the justices found that the rule in question was reasonable, that the father of the boy by sending him to the school authorised the schoolmaster to administer reasonable punishment to the boy for breach of a school rule, & that the punishment administered was reasonable; & they dismissed the information. An order *nisi* having been obtained calling upon the justices to show cause why they should not state a case on a question of law:—*Held:* the decision of the justices was right, that no question of law arose on which they could state a case, & that the order *nisi* should be discharged.—R. *v.* NEWPORT (SALOP) JUSTICES, *Ex p.* WRIGHT, [1929] 2 K. B. 416; 98 L. J. K. B. 555; 141 L. T. 563; 93 J. P. 179; 45 T. L. R. 477; 73 Sol. Jo. 384; 27 L. G. R. 518; 28 Cox, C. C. 658, D. C.

PART XV. SECT. 8, SUB-SECT. 2.—A.

192 i. *Modification of scheme—Powers under Educational Endowments (Scotland) Act,* 1882 (c. 59).]—Where a scheme approved by the Education Department is submitted which is reasonable & consistent with the Act, it is not the function of the ct. to remodel or alter it.—*Re* CAMPBELL ENDOWMENT TRUST, ARGYLL EDUCATION AUTHORITY *v.* CAMPBELTOWN CORPN., [1928] S. C. 171.—**SCOT.**

PART XVII. SECT. 4, SUB-SECT. 1.

ss. *Duty of teacher to obey order of school board to suspend pupil.*]—If a teacher knows of no reason why a pupil be suspended or expelled & has received no complaint against the pupil, he is justified in refusing to obey an order of the school board to suspend such pupil.—LECLERC *v.* PERIGORD SCHOOL DISTRICT No. 850, BOARD OF TRUSTEES, [1925] 3 D. L. R. 578; [1925] 2 W. W. R. 312; 19 Sask. L. R.

sv. *Duty of master—*
" wilful opposition to [illegible] pupil who remains away from school because he finds certain school work uninteresting, or because he does not like the teacher's manner of teaching, is guilty of "wilful opposition to authority" within School Act, R. S. A., 1922 (c. 51), s. 202, & it is not only the teacher's right, but his duty, to suspend him.—FINLAYSON *v.* POWELL, TUCKER *v.* POWELL, [1926] 2 D. L. R. 383; [1926] 1 W. W. R. 939; 22 Alta. L. R. 171.—**CAN.**

PART XVII. SECT. 4, SUB-SECT. 2.

sw. *General rule.*]—Where a child is sent by its parent or guardian to a school, they must be held to have given an implied consent to the infliction of such reasonable punishment as may be necessary for the purpose of school discipline, & the purpose with which the parental authority is delegated to the schoolmaster must to some extent include authority over the child when it is outside the school walls; but when the school is closed for any length of time for a period of regular holidays, the child then returns to the charge of its parent or guardian & the authority of the schoolmaster ceases.—R. *v.* MAUNG BA THAUNG (1925), I. L. R. 3 Ran. 659.—**IND.**

1 i. *Moderate & reasonable.*]—A schoolteacher has the right to inflict corporal punishment on a pupil for violating the rules of the school, provided the punishment is not excessive, the instrument with which it is inflicted is a proper one for the purpose & there is no malice or ill will on the part of the teacher.—R. *v.* METCALFE (Sask.), [1927] 3 W. W. R. 194.—**CAN.**

PART XVII. SECT. 5.

q i. —— *Night school teacher—Liability of school board.*]—A night school teacher may recover on his contract with a school board, although it is not in the prescribed form or in writing.—LECLERC *v.* PERIGORD SCHOOL DISTRICT No. 850, BOARD OF TRUSTEES, [1925] 3 D. L. R. 578; [1925] 2 W. W. R. 312; 19 Sask. L. R. 435.—**CAN.**

q ii. —— *Computation of teaching period—Teacher prevented from teaching.*]—Where a school board wrongfully prevents a teacher from teaching, the time during which he is thereby unable to teach will be counted in his favour in determining whether he has been teaching continuously for the four

288a. —— Right to withhold "carry-over"—Unsatisfactory service.]—Pltf. was appointed head teacher of a non-provided school in 1904, & in 1921 the Burnham Report was adopted by the local education authority. The effect of the adoption of the report was that pltf. became entitled to an increase of salary, & it was agreed that the payment of the "carry-over," *i.e.* the difference between the salary which pltf. would have received at the date of the adoption of the report by the local education authority, if throughout pltf.'s service the Burnham scale had been in operation, & the salary which at that date pltf. was in fact receiving, should be spread over three years. The education committee refused to pay the instalment for the year ending Mar. 31, 1924, on the ground that in 1923 pltf.'s service had been unsatisfactory: —*Held:* the local education authority had no power, under the terms of the report, to withhold from a teacher any part of the "carry-over" by reason of unsatisfactory service after the date of the adoption of the report.—WITTS *v.* MACKAY (1927), 43 T. L. R. 535; 71 Sol. Jo. 666, D. C.

290. *Add. Annotation:—As to* (2) **Refd.** Short *v.* Poole Corpn. (1925), 42 T. L. R. 107.

SECT. 6.—PENSION SCHEMES.

(Vol. XIX., p. 602.)

See, now, Teachers (Superannuation) Act, 1925 (c. 59).

293a. Death gratuity granted to legal personal representative of deceased teacher—Devolution on death of grantee.]—A death gratuity granted by the Board of Education under the power conferred by School Teachers Superannuation Act, 1918 (c. 55), s. 3, to the legal personal representative of a deceased teacher, who died intestate & insolvent, leaving a widow & an infant daughter, will be treated as forming part of the estate of the intestate, & be primarily applicable in payment of the intestate's debts, & ought not to be held upon trust for his next of kin.—*Re* HAWKINS, HAWKINS *v.* DEW & SONS, [1926] Ch. 428; 95 L. J. Ch. 402; 135 L. T. 89; 42 T. L. R. 286.

months or more required to entitle him to the benefits of School Act, R. S. S., 1920 (c. 110), s. 195 (1). Holidays under sect. 177 of the Act should not be counted as actual teaching days under sect. 195 (1).—LECLERC *v.* PERIGORD SCHOOL DISTRICT NO. 850, BOARD OF TRUSTEES, [1925] 3 D. L. R. 578; [1925] 2 W. W. R. 312; 19 Sask. L. R. 435.—**CAN.**

q iii. —— —— *School arbitrarily closed.*]—Where a school is closed arbitrarily by a school board, & a teacher, who is ready, willing & able to teach, is thereby prevented from teaching for the full two hundred & ten days on which, under School Act, R. S. A., 1922 (c. 51), s. 199 (1), his salary is based, he is entitled in a claim for salary to have the days during which the school was so closed credited to him as "actual teaching days."—STEPHENS *v.* GEM CONSOLIDATED SCHOOL DISTRICT, NO. 60, TRUSTEES, [1925] 1 W. W. R. 745.—**CAN.**

q iv. —— —— —— *Whether teacher entitled to full year's salary.*]—School Act, R. S. A. 1922, c. 51, does not guarantee to a teacher a full year's salary in any event; but bearing in mind the whole scheme of the Act, & more particularly the plan adopted for the calculation of salary, the statutory obligation of the school board to provide teaching during every day which is not excepted, & the basis of a yearly period of hiring, there is a legal obligation upon the board to place at the disposal of the teacher every available teaching day without deduction, except as provided by statute & the contract, & the teacher is entitled to be paid for every available teaching day so long as there was no default on his part.—PETERSON *v.* YOUNGSTOWN SCHOOL DISTRICT TRUSTEES, [1928] 1 D. L. R. 344; [1928] 1. W. W. R. 128.—**CAN.**

q v. —— *Scale—Head teacher in secondary school.*]—As regards head teachers of secondary schools, the Craik scale is prescribed, until a defined & fixed scale of salaries is introduced. —SMART *v.* PERTHSHIRE EDUCATION AUTHORITY, [1927] S. C. (H. L.) 22.—**SCOT.**

q vi. —— *School Ordinance, s.* 155.]—PORTER *v.* FLEMING SCHOOL DISTRICT (1906), 3 W. L. R. 186; 6 Terr. L. R. 348.—**CAN.**

q vii. —— *Receipt for "final payment"—Effect of.*]—A receipt given by a school teacher to a school district for a payment of salary, which was expressed to be the "final payment" for the term then ending, held not to be an answer to the teacher's claim for the amount remaining due under her contract with the district, the document not being a release & there being nothing in the evidence to indicate that the payment was expressly accepted in satisfaction of the whole amount or that any new agreement was entered into at the time.—SOMERS *v.* LIBERTY SCHOOL DISTRICT, [1928] 2 D. L. R. 334; [1928] 1 W. W. R. 884.—**CAN.**

sz. *Decrease of salary—Revision of scale—From what date operative.*]—A revised scheme does not become operative until it has received the Education Department's approval.

The Department has no power to sanction a revised scheme retrospectively so as to affect a teacher's contractual right to his salary.—COULL *v.* FIFE EDUCATION AUTHORITY, [1925] S. C. 240.—**SCOT.**

290 i. *Differentiation of salaries—Graduate & non-graduate teachers—Effect of admitting non-graduate to graduate scale.*]—The admission of a non-graduate master to the graduate scale of salary does not preclude an education authority from treating him as a non-graduate teacher on a revision of the scales of salaries.—COULL *v.* FIFE EDUCATION AUTHORITY, [1925] S. C. 240.—**SCOT.**

PART XVII. SECT. 6.

sa. *Right of members of teaching staff of Education Department of Western Australia to superannuation allowances.*]—WALSH *v.* R., [1927] A. C. 337; 96 L. J. P. C. 50; 136 L. T. 641.—**AUS.**

PART XVII. SECT. 7.

k i. —— —— ——.]—TREFFIAC *v.* WILLOW RANGE SCHOOL DISTRICT, [1931] 2 W. W. R. 769.—**CAN.**

t i. —— *Non-compliance with provisions as to termination—Teacher entitled to damages.*]—HUNT *v.* BRANT SCHOOL DISTRICT TRUSTEES (Alta.), [1926] 3 D. L. R. 288; [1926] 2 W. W. R. 431.—**CAN.**

t ii. —— *Form of contract prescribed by Minister of Education under School Act, R. S. A.*, 1922 (c. 51)—*How far provisions for determining contract binding.*]—THORESON *v.* BLAIRMORE SCHOOL DISTRICT TRUSTEES, [1927] 1 D. L. R. 1178; [1927] 1 W. W. R. 449; 22 Alta. L. R. 415.—**CAN.**

t iii. —— *School Act,* 1931, *s.* 157—*Application to existing contracts.*]—Sect. 157 of School Act, 1931, governing the termination of a contract of employment made between a board of school trustees & a teacher, applies to contracts made before as well as to those made after the coming into force of the Act.—STEELE-SMITH *v.* ACME VILLAGE SCHOOL DISTRICT, [1932] 1 W. W. R. 849; 3 D. L. R. 262.—**CAN.**

b i. —— *Right to damages—Condition precedent—Appeal to Minister.*]—MURRAY *v.* BOARD OF TRUSTEES OF PONOKA SCHOOL DISTRICT, [1929] 4 D. L. R. 425; 2 W. W. R. 439; 24 Alta. L. R. 205.—**CAN.**

b ii. —— —— —— —— board of school trustees employed pltf. as teacher. Under the agreement of employment, either party might terminate it by giving 30 days' written notice, "provided that no such notice shall be given by the board until the teacher has been given the privilege of attending a meeting of the board, of which five clear days' notice in writing shall be given to the teacher, to hear & to discuss its reasons for proposing to terminate the agreement." In terminating pltf.'s employment, said proviso was not observed, nor, as found by this ct. on the evidence, was there any effective waiver by pltf. of his privilege thereunder. Pltf. sued for damages for wrongful termination:—*Held:* sect. 196 of School Act, R. S. A., 1922, as amended 1923, c. 35, s. 8, which provided for an appeal to the Minister by "any teacher who has been suspended or dismissed by the board," had no application to deprive pltf. of his right of action. Sect. 196 should be read as relating to a suspension or dismissal under sect. 137 (1) (*o*), & not to a decision to terminate an agreement under sect. 199 (2).—RICHARDS *v.* ATHABASCA SCHOOL DISTRICT TRUSTEES, [1931] S. C. R. 161; [1931] 1 D. L. R. 443.—**CAN.**

One month—Or one month's —— —— —— teacher engaged by the month is, in the absence of a special agreement, only entitled to one month's notice for the termination of his contract. In lieu of notice, he is only entitled to one month's wages, & not to six months' salary.—MAUNG THEIN PE *v.* DESOUZA (1929), I. L. R. 7 Ran. 303.—**IND.**

293b. —— **Liability to estate duty.**]—The death gratuity which under Teachers (Superannuation) Act, 1925 (c. 59), s. 5, is payable to the legal personal representatives of a teacher in the circumstances there specified is property passing on the death of the teacher within Finance Act, 1894 (c. 30), & is therefore aggregable with the remainder of the teacher's estate & chargeable with estate duty.—A.-G. *v.* QUIXLEY (1929), 98 L. J. K. B. 652; 141 L. T. 288; 93 J. P. 227; 45 T. L. R. 455; 27 L. G. R. 693, C. A.

297. *Add. Annotations :—As to* (1) **Reld.** Short *v.* Poole Corpn. (1925), 42 T. L. R. 107; Fennell *v.* East Ham Corpn., [1926] Ch. 641.

299. *Add. Citations :*—131 L. T. 55; 68 Sol. Jo. 403; 22 L. G. R. 138.

Add. Annotations :—As to (2) **Reld.** Short *v.* Poole Corpn. (1925), 42 T. L. R. 107; Fennell *v.* East Ham Corpn., [1926] Ch. 641.

302. *Add. Annotation :—As to* (4) **Consd.** Short *v.* Poole Corpn., [1926] Ch. 66.

302a. —— —— **Bonâ fide exercise of discretion.**]—A local education authority has power to dismiss a married woman teacher in a public elementary school on the ground that, in the *bonâ fide* exercise of their discretion, they have come to the conclusion that it is impossible for her to look after her domestic concerns & effectively & satisfactorily to act as a teacher at the same time.—SHORT *v.* POOLE CORPN., [1926] Ch. 66; 95 L. J. Ch. 110; 134 L. T. 110; 90 J. P. 25; 42 T. L. R. 107; 70 Sol. Jo. 245; 24 L. G. R. 14, C. A.

Annotations :—**Apld.** Fennell *v.* East Ham County Borough Corpn. (1925), 89 J. P. Jo. 721. **Consd.** Richardson *v.* Abertillery U. D. C., Thomas *v.* Same (1928), 138 L. T. 688. **Reld.** Brown *v.* Dagenham U. D. C., [1929] 1 K. B. 737.

302b. —— —— —— **Onus of proof.**]—The council of deft. borough, as the local education authority, in pursuance of a recommendation of their education committee, made after exhaustive inquiries & discussion, resolved that the engagements of all married women teachers falling under certain specified categories should be terminated; &, accordingly, notice was given to each of pltfs. to terminate her engagement. Pltfs., three married women, had for several years been engaged under contracts terminable by a month's notice on either side, as assistant certificated teachers in some of defts.' schools, & were admittedly efficient teachers. It was proved that the object of the council in reducing the number of the married women teachers was to create vacancies for unemployed single women teachers whom the council trained for the teaching profession & for whom it was important in the interest of educational efficiency that teaching posts should be provided. In carrying out that policy, the council, with the view of minimising cases of hardship in the selection of married women teachers for dismissal, took into consideration the domestic circumstances & duties of the married women teachers & the earning capacity of their husbands. Pltfs. sought declarations that the notices of dismissal were invalid on the ground that the council in giving them did not act *bonâ fide* with the intention of discharging their statutory duties of maintaining educational efficiency, but acted with the illegitimate object of providing employment for unmarried women without reference to educational efficiency, of obliging married women teachers to confine themselves to home duties & of preventing those whose husbands were in regular employment from increasing the income of the joint home :—*Held :* (1) pltfs. failed to discharge the *onus* which lay upon them of showing that the policy adopted by the council of reducing the number of the married women teachers for the purpose of creating vacancies for unemployed single women teachers, & the steps taken to carry it out, were in excess of their statutory powers or were adopted or taken in pursuance of some illegitimate object; (2) the matters taken into consideration by the council were not irrelevant from an educational standpoint, but were material factors in determining, not only whether the policy ought to be adopted, but the best method of applying it; (3) as defts. had acted *bonâ fide* & within their statutory powers, the action ought to be dismissed.—FENNELL *v.* EAST HAM CORPN., [1926] Ch. 641; 95 L. J. Ch. 119; 134 L. T. 276; 90 J. P. 36; 70 Sol. Jo. 324; 24 L. G. R. 76.

302c. —— —— ——.]—RICHARDSON *v.* ABERTILLERY URBAN DISTRICT COUNCIL, THOMAS SAME, *v.* No. 14a, *ante*.

315. *Add. Annotation :*—**Consd.** Langham *v.* Wellingborough School Governors & Fryer (1932), 96 J. P. 236.

315a. **Struck by golf ball in playground.**]—Pltf., a schoolboy, whilst passing along a corridor in the school buildings from which an open doorway led to an asphalt playground, was hit in the eye by a golf ball flying through this doorway, which had been struck with a stick by a fellow pupil in the playground. In an action against the headmaster claiming damages for negligence, on the ground of lack of supervision, pltf., in his evidence, said that he had never known a golf ball to be struck in the playground before. There was no express evidence given as to the amount & character of supervision in the playground, if any :—*Held :* this was not a case of *res ipsa loquitur*. There was no evidence of lack of supervision on the part of the headmaster & there was no evidence that, assuming there was such supervision, it would have prevented the accident.—LANGHAM *v.* WELLINGBOROUGH SCHOOL GOVERNORS & FRYER (1932), 101 L. J. K. B. 513; 147 L. T. 91; 96 J. P. 236; 30 L. G. R. 276, C. A.

335a. —— **Improper appointment by trustees—Liability of trustees for costs.**]—(1) Where a

PART XVII. SECT. 8.

315 l. *Injury to pupil—Allowed access to dangerous substance.*]—A national school contained two class-rooms, one for the junior & one for the senior class. During the luncheon hour the junior class were sent out-of-doors to the playground, & deft., who was the teacher of the senior class, used to allow the junior class to come into his class-room & warm themselves at the fire. He was under no obligation to allow the junior class into his room; he merely did it out of kindness to the children, & so that they would not have to remain outside in the severe weather. On one occasion he temporarily removed the fire screen which usually guarded the fire in his room, &, the junior class coming into his room as usual, & going to the fire, the clothes of one of them, a child of six years of age, caught fire, & she was severely burned :—*Held :* deft. was liable.—BOHANE *v.* DRISCOLL, [1929] I. R. 428.—IR.

school on a charitable foundation had been the subject of an information, & a scheme had been settled for its government, the ct., at the instance of the vicar of the parish, who according to the foundation & scheme was to be preferred for the office of schoolmaster, displaced a schoolmaster appointed by the trustees not in conformity with the scheme or foundation, &, after a contest as to the fitness of the petitioner, at once declared the latter entitled to the office.

(2) Where a scheme directed an appointment to be made by a general meeting of trustees:—*Held:* an appointment, which could not have been made on the day on which a general meeting was held, could not be legally made on a day to which that meeting was adjourned.

(3) The trustees, having acted with precipitancy in making the undue appointment so as to exclude the petitioner, & having in the proceedings unsuccessfully impugned his character, were ordered to pay the costs.—A.-G. *v.* CARRINGTON (LORD) (1850), 4 De G. & Sm. 140; 64 E. R. 770.

336. *Add. Annotation:—As to* (3) **Consd.** Short *v.* Poole Corpn., (1925) 42 T. L. R. 107.

342a. —— **Jurisdiction of court on petition—To make declaration as to dismissal.**]—Where a petition is presented under Charities Procedure Act, 1812 (c. 101), & in the matter of Grammar Schools Act, 1840 (c. 77), the ct. has jurisdiction to make a declaration as to the dismissal of a master of a Grammar School, although the A.-G.'s certificate is not obtained, the ct. having previously made orders for the management of the school under Charities Procedure Act, 1812 (c. 101).—*Re* GODMANCHESTER FREE GRAMMAR SCHOOL (1850), 17 L. T. O. S. 36; 15 Jur. 833.

PART XVIII.

n i. —— —— ——.]—Where the secretary of a school board, acting under its instructions, notifies in writing each of two or more appcts. for a teacher's position that her application has been accepted, but the board enters into the formal contract prescribed by statute with only one of them & notifies the others that their services will not be required, each of the latter has a right of action against the board as a corpn. for damages, but not against the members thereof individually or against the secretary.—MORRISON *v.* CASSELL HILL SCHOOL DISTRICT TRUSTEES, [1925] 1 W. W. R. 526.—**CAN.**

n ii. —— —— *Signature of county superintendent—Whether party to the contract.*]—A county superintendent of common schools, signing together with trustees, a contract with a teacher, will be considered to have signed the same only as approving of the appointment, & in pursuance of the direction of the statute, & not as a party contracting with the teacher.—CAMPBELL *v.* ELLIOTT, BLACK, MOORE & SOUTHWICK (1847), 3 U. C. R. 241.—**CAN.**

s*l. Conviction for using words tending to impair discipline—Form of conviction.*]—R. *v.* THORNE, [1926] 2 D. L. R. 587; 45 Can. Crim. Cas. 360; 58 N. S. R. 449.—**CAN.**

s*k. Under Schools Act,* 1922 (*c.* 5) (*N. B.*).]—KELLY *v.* GRIMMER S. D. 25 (N. B.), [1927] 3 D. L. R. 704.—**CAN.**

ELECTIONS.

Part II.—Male Franchise.

SECT. 1.—**PARLIAMENTARY**
(Vol. XX., p. 8).

See, now, Representation of the People (Equal Franchise) Act, 1928 (c. 12), s. 1.

24. *Add. Annotation :*—**Refd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

SUB-SECT. 2.—RESIDENCE QUALIFICATION
(Vol. XX., p. 11).

See, now, Representation of the People (Equal Franchise) Act, 1928 (c. 12), s. 1.

SUB-SECT. 3.—BUSINESS PREMISES QUALIFICATION
(Vol. XX., p. 16).

See, now, Representation of the People (Equal Franchise) Act, 1928 (c. 12), s. 1.

92. *Add. Citation :*—13 L. T. 762.

96a. —— **Exclusive occupation of room by director—At yearly rent.**]—By an agreement in writing a limited co. gave one of its directors the exclusive possession of a room in its premises at a yearly rent of £20. The director occupied the room solely for the purpose of carrying out his duties as director :—*Held :* (1) the room constituted " premises " within Representation of the People (Equal Franchise) Act, 1928 (c. 12), s. 1 (3) ; (2) it was occupied by the director for the purpose of his business within the meaning of the same subsection, & he thereby had the requisite business premises qualification within Representation of the People (Equal Franchise) Act, 1928 (c. 12), s. 1 (1) (2), which entitled him to be on the register of voters.—FROST *v.* CASLON, FROST *v.* WILKINS, [1929] 2 K. B. 138 ; 98 L. J. K. B. 523 ; 141 L. T. 281 ; 45 T. L. R. 417 ; 93 J. P. 192 ; 73 Sol. Jo. 333 ; 27 L. G. R. 480, C. A.

Annotation :—Generally **Refd.** Union Cold Storage Co. *v.* Adamson (1931), 16 Tax Cas. 293.

SUB-SECT. 4.—UNIVERSITY QUALIFICATION
(Vol. XX., p. 18).

See, now, Representation of the People (Equal Franchise) Act, 1928 (c. 12), s. 1.

SECT. 2.—**LOCAL GOVERNMENT FRANCHISE**
(Vol. XX., p. 18).

See, now, Representation of the People (Equal Franchise) Act, 1928 (c. 12), s. 2.

Part III.—Female Franchise.

See, now, Representation of the People (Equal Franchise) Act, 1928 (c. 12).

Part IV.—Naval or Military Voters.

See, now, Representation of the People (Equal Franchise) Act, 1928 (c. 12), s. 2.

PART I.

a i. —— *Voters in township added to city.*]—R. *v.* WILSON (1888), 12 P. R. 546.—**CAN.**

a ii. —— *Persons omitted from verified copy of collector's roll—Persons omitted from collector's roll*]—R. *v.* STEPHENSON (1851), 1 C. L. Ch. 270.—**CAN.**

PART II. SECT. 1, SUB-SECT. 1.—B. (n).

sx. *Local agent of corporation—No office maintained—Not permanently employed — Whether " chief resident officer."*]—A local agent for a corpn. in a town where it does not maintain an office of its own & who is not permanently employed thereby or in receipt of a salary therefrom is not a " chief resident officer " of the corpn. who under Town Act, 1927 (Sask.), c. 24, s. 284, is entitled to vote on its behalf where a vote is taken on a bye-law.—R. *v.* HOLZ, [1928] 3 W. W. R. 80 ; 50 Can.Crim. Cas. 298.—**CAN.**

PART II. SECT. 2, SUB-SECT. 2.—A.

No right to vote—Municipal Act, 1926.]—Under Municipal District Act, 1926 (c. 41), neither tenants nor their wives are eligible as voters at an election for councillors ; except in the case where a tenant votes for a non-resident landlord as provided by sect. 195 (3). A tenant is not a " purchaser " within the meaning of said Act.—R. *v.* CAWTHORNE, [1930] 3 W. W. R. 273 ; [1931] 1 D. L. R. 317 ; 25 Alta. L. R. 19 ; *affg.*, [1930] 1 W. W. R. 991; 4 D. L. R. 154.—**CAN.**

sz. —— *Village Act,* 1927.]—(1) Under Village Act, 1927 (c. 54), tenants as such are not qualified to vote at an election of councillors held prior to the completion of the first voters' list. At such an election unless a voter votes for the number of candidates to be elected his ballot should not be counted.

(2) The words " liable to a business tax therein " in sect. 171 of said Act mean " subject to be assessed " or " assessable " for the business tax within the municipal district, provided they are persons so assessed or assessable with respect to a business carried on in that part of the district which is within the area of the village.—R. *v.* FOWLER, [1930] 3 W. W. R. 327.—**CAN.**

PART II. SECT. 2, SUB-SECT. 2.—B.

sb. *Ownership—Proof of—Registration.*]—In order to qualify as a voter at municipal elections under Municipal Elections Act, s. 6, as enacted by Municipal Elections Act Amendment Act, 1902, s. 2, with respect to real estate, it is necessary that appct. should be the registered owner of such real estate under Land Registry Act, 1906, c. 23, s. 74.—*Re* KASLO MUNICIPAL VOTERS' LIST (1907), 12 B. C. R. 362.—**CAN.**

sc. —— *Of corporation as trustee.*]—*Semble :* a corpn. acting as a trustee, exor. or administrator of an estate has not the right under Town Act, 1927 (Sask.), c. 24, to have its name placed on the voters' list with respect to the property of an estate which it represents.—R. *v.* HOLZ, [1928] 3 W. W. R. 80 ; 50 Can. Crim. Cas. 298.—**CAN.**

PART II. SECT. 2, SUB-SECT. 3.—B.

sd. *Gaoler—Living in county gaol rent free—Not a householder within* 14 *&* 15 *Vict. c.* 109, *Sched. A., No.* 12.] —*Re* CHARLES *v.* LEWIS & MCMAHON (1851), 2 C. L. Ch. 171.—**CAN.**

Part V.—Registration.

146a. —— Sufficiency of—Christian name in full not necessary.]—R. *v.* HARTLEPOOL CORPN. (1851), 2 L. M. & P. 666; 21 L. J. Q. B. 71; 15 J. P. 835; 15 Jur. 1158; *sub nom.* R. *v.* HARTLEPOOL CORPN., *Ex p.* DOBING, 18 L. T. O. S. 111.

Annotations:—**Apld.** R. *v.* Avery (1852), 18 Q. B. 576. **Refd.** R. *v.* Bradley (1861), 30 L. J. Q. B. 180; R. *v.* Plenty (1869), 38 L. J. Q. B. 205.

Part VI.—Parliamentary Election.

361a. Act involving persuasion of voters.]—The expression "to get votes" must be taken with some limitation, because in one sense all work whatsoever which is done for a candidate at an election is done to get votes, & I think in this connection the words mean something in the nature of canvassing, soliciting & persuading individual voters, though, of course, not necessarily one by one separately, to vote for a candidate (TALBOT, J.).—PLYMOUTH ELECTION CASE (1929), 7 O'M. & H. 101.

390. *Add. Annotation:*—*As to* (3) **Consd.** Plymouth Borough Case (1929), 7 O'M. & H. 101.

624a. —— ——.]—PLYMOUTH ELECTION CASE (1929), 7 O'M. & H. 101.

697. *Add. Annotation:*—**Refd.** Plymouth Election Case (1929), 7 O'M. & H. 101.

F. Incurring of Expenses by Person Other than Election Agent (Vol. XX., p. 98).

Add the following case:—

774a. What amounts to.]—During an election at which there were three candidates, Conservative, Liberal & Labour respectively, applt., who was a Conservative in politics but disapproved of the existing Conservative Govt. on special grounds, incurred expenses on account of issuing posters, circulars & publications which were antagonistic to the Conservative candidate & advised the constituents not to vote for him, but did not in express terms advise them to vote for the other candidates or either of them:—*Held:* applt. had acted in contravention of Representation Act, 1918, s. 34 (1).—R. *v.* HAILWOOD, R. *v.* HAILWOOD & ACKROYD, LTD., [1928] 2 K. B. 277; 97 L. J. K. B. 394; 138 L. T. 495; 44 T. L. R. 343; 28 Cox, C. C. 489; 20 Cr. App. Rep. 177, C. C. A.

851. *Add. Annotation:*—**Distd.** Everett *v.* Ryder (1926), 135 L. T. 302.

859. *Add. Citation:*—*sub nom.* JONES *v.* PICKERING, 29 L. T. 210.

967. *Add. Annotation:*—**Refd.** Plymouth Election Case (1929), 7 O'M. & H. 101.

PART V. SECT. 3, SUB-SECT. 5.

249 vii. For "1 D. L. R. 84" read "1 D. L. R. 265," & for "22 Man. L. R. 597" read "22 Man. L. R. 16."

f i. —— *Non-compliance with statutory qualifications—Election Laws Amendment Act*, 1920, *s.* 6 (1), (2).]—Votes cast by persons whose names were on the lists, but who had not been residents of the electoral district for three months next preceding the day of polling:—*Held:* illegal.—MERCER *v.* HOMUTH (1924), 55 O. L. R. 245.—**CAN.**

f ii. —— *Register wrongfully prepared—Right of court to investigate.*]—There is in every ct. having jurisdiction in such matters an inherent power to hold a scrutiny for the purpose of investigating the legality of the votes cast at an election.

On a motion under Controverted Municipal Elections Act, R. S. S. 1920, c. 91, s. 19, to set aside an election, the ct. is not limited to ascertaining whether any violation of the Act has taken place in the actual conduct of an election, &, therefore, if there has been an extraneous illegality which is shown to have a direct bearing on the result of the election, that is a fit subject for inquiry. The provisions of Village Act, R. S. S. 1920, c. 88, do not prevent such an inquiry being made.—R. *v.* JOHANSICK, [1928] 2 D. L. R. 913; [1928] 2 W. W. R. 315.—**CAN.**

sf. *Only when so declared by statute.*]—A voters' list is final & conclusive only if made so by statute either expressly or by implication.—R. *v.* JOHANSICK, [1928] 2 D. L. R. 913; [1928] 2 W. W. R. 315.—**CAN.**

PART VI. SECT. 5.

323 i. *Who is a candidate.*]—Where pltf. was selected as a candidate, & statements were published concerning him, & a writ in an action for libel was issued before the issue of the writ for the election, but after the vacancy had occurred:—*Held:* pltf. was a candidate for a Parliamentary constituency when the libel was published.—CULLEN *v.* STANLEY, [1926] I. R. 73.—**IR.**

sg. *Deposit payable—Return of—Successful candidate entitled to return notwithstanding refusal to take prescribed oath.*]—O'DONOGHUE *v.* REDMOND ROCHE (1), [1927] I. R. 152.—**IR.**

PART VI. SECT. 7.

480 i. *Refusal of nomination by returning officer—Jurisdiction of court—To compel returning officer to accept nomination & grant poll.*]—*Re* ADDINGTON ELECTION, [1927] 1 D. L. R. 188; 59 O. L. R. 570.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 1.—A. (a) i.

sh. *To candidate—To induce withdrawal of candidature—What amounts to.*]—*Re* SOUTH BRUCE PROVINCIAL ELECTION, JOHNSTON *v.* MCCALLUM (1927), 61 O. L. R. 392; 33 O. W. N. 135; *varied* [1928] 1 D. L. R. 104; 61 O. L. R. 392.—**CAN.**

sj. —— —— ——.]—*Re* NORTH BRUCE PROVINCIAL ELECTION, FENTON *v.* MEWBINNEY, [1927] 4 D. L. R. 397; 61 O. L. R. 99.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 1.—B. (a).

631 iv. —— —— —— *Speech at picnic instead of hiring hall.*]—MERCER *v.* HOMUTH (1924), 55 O. L. R. 245.—**CAN.**

r (p. 91) i. —— ——.]—The act of an agent in treating an elector to a drink, without the knowledge or consent of the candidate, & at the emphatic request of the elector:—*Held:* not to have been a corrupt practice.—ADAMS *v.* HUCK (No. 2), [1926] 1 W. W. R. 313; 20 Sask. L. R. 433.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 1.—B. (b).

695 xix. For "23 D. L. R. 573" read "26 D. L. R. 573."

695 xxv. —— *Entertainment & picnic—At meeting of supporters for speech by candidate—Expense of hiring hall saved.*]—Payments were made by resp., through his official agent, for the services of a band & an entertainer at a picnic, a gathering of members of the party organisation supporting resp.'s candidature, & at which he made a speech:—*Held:* these payments, though they might be considered corrupt practices, were not made with corrupt intent, but with a belief in their propriety, as resp. by addressing the electors at the picnic was saved the expense of hiring halls, which would have been a legitimate expense.—MERCER *v.* HOMUTH (1924), 55 O. L. R. 245.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 3.

b i. *Band & entertainment at picnic.*]—MERCER *v.* HOMUTH (1924), 55 O. L. R. 245.—**CAN.**

PART VI. SECT. 10, SUB-SECT. 7.

n i. —— *Presumption that duties properly carried out.*]—*Re* PROVINCIAL ELECTIONS ACT, SMITH *v.* CATHERWOOD, [1925] 3 D. L. R. 770; [1925] 3 W. W. R. 54.—**CAN.**

n ii. —— *Breach of duties—Effect of.*]—Breaches by a presiding officer of the rules of procedure prescribed for the performance of his duties do not necessarily render an election void.—*Re* PROVINCIAL ELECTIONS ACT, SMITH

Part VII.—Municipal and Other Elections.

1012. *Add. Annotation :*—**Distd.** Baldwin *v.* Ellis, [1929] 1 K. B. 273.

1021. *Add. Annotation :*—**Apld.** Baldwin *v.* Ellis, [1929] 1 K. B. 273.

v. CATHERWOOD, [1925] 3 D. L. R. 770; [1925] 3 W. W. R. 54.—**CAN.**

PART VI. SECT. 11, SUB-SECT. 2.

881 i. *Name wrongly inserted on register—Voter under age—Voter exercising right innocently.*]—A.-G. *v.* CUNNINGHAM, [1929] I. R. 187.—**IR.**

PART VI. SECT. 11, SUB-SECT. 3.—A.

d (p. 109) i. *Counterfoil not wholly detached.*]—Ballots, from which the counterfoil has not been detached by the officer taking the ballot, should be counted on an election under Provincial Elections Act, 1920. Ballots to which only a small portion of the counterfoil remained attached, such portion furnishing no means of identifying the voter, should be counted.—*Re* DEWDNEY ELECTION APPEAL, SMITH *v.* CATHERWOOD, [1924] 3 W. W. R. 947.—**CAN.**

f i. —— —— *On counterfoil.*]—Where the deputy returning officer did not initial the ballots in the manner prescribed by the statute, but initialled the counterfoils, which he afterwards destroyed :—*Held :* this irregularity did not affect the election.—MERCER *v.* HOMUTH (1924), 55 O. L. R. 245.—**CAN.**

a (p. 110) i. —— *Signed voting paper.*]—MAPLE VALLEY CASE (Ont.), [1926] 1 D. L. R. 803.—**CAN.**

c (p. 110) i. —— ——.]—At a general provincial election a plebiscite was also taken. Of twenty election ballots of absentee voters only nine were enclosed in envelopes bearing the affidavit required of such voters with respect to the election, while the other eleven were found in plebiscite envelopes bearing plebiscite affidavits. The affidavits required of such eleven absentee voters in the election were not sent to the returning officer nor accounted for in any way, & there was no evidence to show from which envelopes the votes for the respective candidates had been taken :—*Held :* in the absence of any evidence of fraud or collusion, the above facts were not grounds for declaring the election void.—*Re* PROVINCIAL ELECTIONS ACT, SMITH *v.* CATHERWOOD, [1925] 3 D. L. R. 770; [1925] 3 W. W. R. 54.—**CAN.**

c (p. 110) ii. —— —— *Non-compliance by presiding officer.*]—Absent voters' ballots, which have been enclosed in envelopes on which the presiding officer has failed to affix, as required by Provincial Elections Act, s. 106 (3), his official mark across the line where the envelope is closed, should be counted.—*Re* DEWDNEY ELECTION APPEAL, SMITH *v.* CATHERWOOD, [1924] 3 W. W. R. 947.—**CAN.**

PART VI. SECT. 11, SUB-SECT. 3.—B.

890 v. —— *Alberta Election Act, 1924 (c. 34), s. 82.*]—The above sect. is mandatory & must be substantially complied with, & the use of the words, one, two, three, etc., instead of the figures, 1, 2, 3, etc., renders a ballot void; but if it is clear that a figure can reasonably be said to have been honestly intended for the figure 1, it is sufficient, even though it is not precisely the same form of the figure as that printed in the Act.—*Re* ALBERTA ELECTION ACT, *Re* BOW VALLEY ELECTION (Alta.), [1926] 4 D. L. R. 117; [1926] 3 W. W. R. 1.—**CAN.**

sk. *Preferential voting—Method of marking ballot papers.*]—Six candidates nominated for election for the State of Victoria to the Senate of the Federal Parliament. Three of the candidates had to be elected; but one of them died before the polling day, & his name was as far as possible withdrawn from the ballot-papers. A number of ballot papers were rejected as informal where the electors had marked their ballot papers with the numbers 1, 2, 3, 4, 6, opposite the names of the candidates standing for election at the date of the poll :—*Held :* by the terms of Commonwealth Electoral Act, 1918-1928, it was imperative that voters should indicate their preferences by numbers in numerical succession, & that the ballot-papers marked as above stated were rightly rejected as informal. —BLAKEY *v.* ELLIOTT, FINDLEY *v.* ELLIOTT (1929), 41 C. L. R. 502; 2 A. L. J. 406; [1929] Argus L. R. 86.—**AUS.**

PART VI. SECT. 12.

915 x. —— *Unqualified persons allowed to vote—Illegal votes exceeding majority.*]—Resp. was returned as elected by a majority of only 15 votes. The evidence showed that 21 votes were cast by persons who had no right to vote :—*Held :* the election should be declared void, although it could not be shown in whose favour the illegal votes were cast.—MERCER *v.* HOMUTH (1924), 55 O. L. R. 245.—**CAN.**

915 xi. —— *Ballot papers issued & accepted in excess of voters on register.*]—Where in a polling sub-division 137 ballots were found in the box & only 134 names appeared in the poll-book : —*Held :* an irregularity, which did not affect the result of the election.—MERCER *v.* HOMUTH (1924), 55 O. L. R. 245.—**CAN.**

PART VI. SECT. 13.

m. For "—— *Power of Supreme Court to compel*" substitute "*Recount —Power of Supreme Court to compel.*"

m i. —— *Under Manitoba Election Act—Not applicable to election under proportional representation system.*]—*Re* MANITOBA ELECTION ACT, *Re* WINNIPEG ELECTORAL DISTRICT, [1927] 3 W. W. R. 92; 37 Man. L. R. 87.—**CAN.**

PART VI. SECT. 15, SUB-SECT. 2.—B.

964 i. *Error in return—Liability of candidate to penalties—Not for accidental omission of one small item.*]—MCINNES *v.* BIRD, [1926] N. Z. L. R. 638.—**N.Z.**

PART VII. SECT. 1.

sl. *Place of election—Outside ward—Election void.*]—R. *v.* PRESTON (1851), 2 C. L. Ch. 178.—**CAN.**

sm. *When election completed—Effect of declaration of returning officer.*]—The election of candidates takes place, not as a result of the declaration of the returning officer, but by virtue of the methods prescribed by Village Act, 1927; the declaration is merely a formal indication that the persons named have been elected under that Act.—R. *v.* LOUNT, [1928] 3 D. L. R. 61; [1928] 2 W. W. R. 15.—**CAN.**

sx. *Edmonton Charter—Construction of.*]—R. *ex rel.* SHEPPARD *v.* COLLISSON (Alta.), [1929] 1 D. L. R. 555.—**CAN.**

sy. *Disclaimer.*]—The term "complained of" in sect. 37 of Controverted Municipal Elections Act providing for a disclaimer by the person elected before his election is complained of refers to the launching of the legal proceedings under sect. 19 of said Act.

(2) Although a candidate duly nominated was ineligible for nomination, yet, if he receives the highest number of votes as the result of a poll, he shall be declared elected & treated as a person elected until such time as the ct. in the manner provided by the Act otherwise determines, unless he disclaims meanwhile in accordance with Controverted Municipal Elections Act, or unless he has exercised his right to resign under sect. 51 of Rural Municipality Act or his seat has been forfeited under sects. 52 or 81 thereof.

(3) Where a vacancy has been created by disclaimer under said Controverted Municipal Elections Act a new election must be held.

(4) It is only when the person elected has not disclaimed, in the manner provided by the Act, & the seat has been declared vacant by the ct., that the ct. has discretion to fill such a vacancy by declaring the minority candidate elected. Even in such cases, with few exceptions, the cts. have refused to fill the vacancy in this way, & have considered it to be in the public interest to order a new election. This is more particularly true where the electors were not aware of any objection to the nomination of the candidate on the ground of qualifications, until after the time for receiving nominations had expired.—R. (GALLOWAY) *v.* ECKEL, [1931] 1 W. W. R. 242; 2 D. L. R. 589.—**CAN.**

PART VII. SECT. 3.

f (p. 121) i. —.]—R. *v.* JACKSON, [1927] 2 D. L. R. 977; 60 O. L. R. 264.—**CAN.**

h i. —— ——.]—A candidate for the office of deputy reeve of a township, who was declared duly elected, was found to be disqualified by reason of the fact that he had not before or on the day of his nomination paid the taxes chargeable against him.—R. *v.* BODDY, [1931] 2 D. L. R. 661; O. R. 20.—**CAN.**

a (p. 122) i. *S. P.* SMILEY *v.* EVANS, [1927] 4 D. L. R. 629; 38 B. C. R. 468.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 1.—C.

n i. —— —— *Casting vote given by lot.*]—On an election for a councillor of a municipality, the votes cast showed a tie between the two candidates. The returning officer then prepared a number of slips which were put in a hat & mixed up. The returning officer asked a voter to draw, stating he would give the casting vote to the candidate whose name first appeared. On the petition of the unsuccessful candidate :—*Held :* the election was void & a new election ordered.—*Re* MUNICIPAL ELECTIONS ACT & TOMSETT, [1924] 1 D. L. R. 921; 33 B. C. R. 377.—**CAN.**

n ii. —— —— *Striking out vote wrongly entered.*]—New election ordered.—R. *v.* RANKIN (1861), 2 C. L. Ch. 161.—**CAN.**

n iii. —— —— *Improperly closing poll.*]—New election ordered.—R. *v.* MARCHANT (1851), 2 C. L. Ch. 189.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 1.—D.

t i. —— —— *Onus of proving irregularity not material.*]—The onus of showing that in an election under Rural Municipality Act, R. S. S. 1920, c. 89, the failure to comply with the requirements of the Act as to posting notices of the poll "did not affect the

1025a. —— —— —— **Description as commonly understood.**]—A nomination paper at an election of town councillors was subscribed with the full & correct name of "Charles Arthur Burman" as an assenting burgess; but his name was erroneously entered upon the burgess roll as "Charles Burman" only: —*Held:* the defect was not such as was remedied by Municipal Corporations Act, 1882 (c. 50), s. 241, the words "commonly understood" in that sect. meaning "commonly understood by any person comparing the nomination paper & the burgess roll."—MOORHOUSE *v.* LINNEY, THORPE *v.* LINNEY (1885), 15 Q. B. D. 273; 53 L. T. 343; 49 J. P. 471; 33 W. R. 704; 1 T. L. R. 500, D. C.

Annotations:—**Distd.** Bowden *v.* Besley (1888), 21 Q. B. D. 309; Gledhill *v.* Crowther (1889), 23 Q. B. D. 136.

1038a. **From election address.**]—An election address not exhibited for general display, but only circularised in envelopes by post or by hand:—*Held:* not a "bill, poster or placard" within Municipal Corrupt Practices Act, 1884 (c. 70).—*Re* ELECTION OF COMMON COUNCILMEN FOR THE WARD OF FARRINGDON WITHOUT IN THE CITY OF LONDON (1925), 161 L. T. Jo. 26, D. C.

1038b. **False statements—Allegation that candidate is communist.**]—Pltfs., six labour candidates for the office of borough councillor at a municipal election then about to be held, moved to restrain defts. from publishing statements to the effect that pltfs. were communists:—*Held:* the statements complained of were not false statements as to personal character within Municipal Elections (Corrupt & Illegal Practices) Act, 1884 (c. 70).—BURNS *v.* ASSOCIATED NEWSPAPERS, LTD. (1925), 89 J. P. 205; 42 T. L. R. 37.

1042. *Add. Annotation*:—*As to* (2) **Apld.** Baldwin *v.* Ellis, [1929] 1 K. B. 273.

1057. *Add. Annotation*:—*As to* (1) **Refd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

1075. *Add. Citation*:—*sub nom. Re* SAFFRON WALDEN ELECTION, *Ex p.* ROBSON, 51 J. P. 199.

1089. *Add. Citation*:—*sub nom.* R. *v.* EXETER (MAYOR), 3 J. P. 49.

1090. For the existing paragraph substitute the following paragraph:—
S.P.—R. *v.* GLOUCESTER (MAYOR) (1838), 2 J. P. 777.

1103. After this case add "*See, now*, Municipal Corporations Act, 1882 (c. 50), s. 34 (1)."

1106a. —— **Voting papers not "openly produced & read."**]—*Re* BARNES CORPN., *Ex p.* HUTTER (1932), 174 L. T. Jo. 507.

1140. Before this case add "*See, now*, Urban District Councillors Election Rules, 1931."

1145. Before this case add "*See, now*, Rural District Councillors Election Rules, 1931."

1145a. —— —— **Omission of parish for which nominee qualified.**]—The nomination papers of four persons nominated for election as rural district councillors merely stated in column 5, under the heading "how qualified," that the persons nominated were "local

result of the election" is on the person upholding the election.

Under said Act the notice of poll is required to be posted in at least two widely separated conspicuous places in each division of the municipality. In the present case no notice at all was posted in one of the divisions, a number of voters in that division did not vote, & resp. was declared elected by one vote:—*Held:* it could not be said that the omission to post the notice did not affect the result, & the election was declared invalid & resp. unseated.—R. *v.* REID, [1928] 3 D. L. R. 747; [1928] 2 W. W. R. 436; 22 Sask. L. R. 595.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 1.—E. (a).

sn. *Withdrawal of nomination—Declaration of intention—Not made formally.*]—A candidate cannot withdraw under the Ontario Election Act by making a declaration of his intention to do so to a few persons.—*Re* SOUTH BRUCE PROVINCIAL ELECTION, JOHNSTON *v.* MCCALLUM, [1928] 1 D. L. R. 104; 61 O. L. R. 392.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 1.—E. (b).

1013 i. *Delivery of—Time for—Paper returned for amendment—Power of returning officer to extend time.*]—Where a nomination paper when delivered to the returning officer is so incomplete as not to constitute a valid nomination & it is subsequently amended, it is "received" by the returning officer when it is handed back to him in its amended state, & if then the time limited by statute for the receipt of nominations has expired the nomination is bad. It is not within the discretion of a returning officer at an election under Village Act, 1927, c. 54, to receive a nomination paper after the time fixed by the statute nor has he power to say that a nomination paper delivered to him after that time constitutes a good nomination.—R. *v.* LOUNT, [1928] 3 D. L. R. 61; [1928] 2 W. W. R. 15.—**CAN.**

so. *Rejection of—Declaration of election by acclamation—Time for nomination expired.*]—The rejection of nomination papers & a declaration of election by acclamation may properly be made by the returning officer after the time limited for the nomination of candidates.—R. *v.* LOUNT, [1928] 3 D. L. R. 61; [1928] 2 W. W. R. 15.—**CAN.**

sp. *Conclusiveness.*]—If a nomination paper filed with the deputy returning officer under Rural Municipality Act, 1929, is legal on its face, it is not his duty to go behind it & inquire into the qualifications of the candidate.—R. (GALLOWAY) *v.* ECKEL, [1931] 1 W. W. R. 242; 2 D. L. R. 589.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 1.—F. (a).

sq. *Must be strictly proved.*]—R. (GLOVER) *v.* LITTLE & ARMSTRONG, [1926] 2 D. L. R. 1056; 59 O. L. R. 28.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 1.—G. (a).

sr. *Copy of collector's roll not furnished to returning officer.*]—*Held:* an irregularity, for which the election might be avoided.—*Re* CHARLES *v.* LEWIS & MCMAHON (1851), 2 C. L. Ch. 171.—**CAN.**

q i. —— *Ballot papers not initialled—Result of election affected.*]—Under Rural Municipality Act, R. S. S. 1920, c. 89, as amended, a ballot cast at an election thereunder, which has not been marked on the back thereof with the initials of the deputy returning officer, must be rejected by him, & by the returning officer & by a judge conducting a recount. Where, however, the result of the rejection of ballots on the above ground was that a candidate was elected who would not have been elected had it been possible to count the ballots not properly initialled, the ct. should declare the election invalid & the seat vacated.—R. *v.* SLUGGETT, [1928] 3 D. L. R. 702; [1928] 2 W. W. R. 431; 22 Sask. L. R. 551.—**CAN.**

o i. —— *No right to vote—Except to give casting vote.*]—*Ex p.* TUTTLE (1860), 4 All. 615.—**CAN.**

st. *Recount—Ballot not initialled by deputy returning officer must be counted—Although required to be rejected on count by returning officer.*]—*Re* RURAL MUNICIPALITY ACT, *Re* CARROT RIVER, RURAL MUNICIPALITY, MINAKER *v.* SANDERSON (Sask.), [1927] 1 W. W. R. 439.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 2.—A.

k i. —— *Failure to comply with—Nomination.*]—*Held:* Town Act, 1927, c. 55, s. 224, requires a candidate to do what had not been required of him before, it must be read strictly; & where two candidates' acceptances of their nominations omitted all but one of the statements included in said form the acceptances & nominations were invalid & their election must be set aside.—R. *v.* PHILLIPS, [1928] 2 W. W. R. 51.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 2.—C.

sw. *Secrecy of ballot — Necessity for.*]—Where at an election of a mayor & aldermen the provisions of Consolidated Municipal Act, 1922, enjoining secrecy of the ballot were generally ignored:—*Held:* the non-compliance with the provisions of the Act had effected the result of the election, & a new election ordered.—R. (JACQUES) *v.* MITCHELL (1924), 55 O. L. R. 286.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 3.—C.

sx. *Secrecy of ballot — Necessity for.*]—Where at an election of aldermen of a city the provisions of Consolidated Municipal Act, 1922, requiring secrecy of the ballot were generally ignored:—*Held:* the election was invalid.—R. (JACQUES) *v.* MITCHELL (1924), 55 O. L. R. 286.—**CAN.**

government electors," & did not state the name of the parish for which they were qualified as local government electors, as required by Rural District Councillors Election Order, 1898, r. 4. The deputy returning officer rejected the nomination papers as being invalid, because the parish within the poor law union for which qualification was claimed was not stated. Upon an election petition:—*Held:* (1) the omission to state in the nomination paper the name of the parish for which the person nominated was qualified as a local government elector was a non-compliance with Rural District Councillors Election Order, 1898, r. 4; (2) that defect was not cured by Ballot Act, 1872 (c. 33), s. 13, because that sect. only applied to a case where there had been a wrongful admission of a nomination paper, & did not apply to a case where a nomination paper had been rejected; (3) neither was the omission an "inaccurate description" of the person nominated within r. 33 of the 1898 Order, but was a non-compliance with the requirements of r. 4 of that Order, & therefore was not cured by r. 33.—BALDWIN *v.* ELLIS, [1929] 1 K. B. 273; 98 L. J. K. B. 71; 140 L. T. 278; 93 J. P. 86; 27 L. G. R. 72, D. C.

1146a. —— **Rejection—Whether Ballot Act, 1872 (c. 33), s. 13, applies.**]—BALDWIN *v.* ELLIS, No. 1145a, *ante*.

1146b. —— **Inaccurate description of nominee—What amounts to.**]—BALDWIN *v.* ELLIS, No. 1145a, *ante*.

1148. Before this case add "*See, now,* Parish Councillors Election Rules, 1931."

1154a. ——.]—R. *v.* ST. MARY NEWINGTON (GOVERNORS) (1848), 6 Dow. & L. 162; Cripps Church Cas. 117; 2 Saund. & C. 303; 17 L. J. Q. B. 220; 11 L. T. O. S. 205; 12 Jur. 918.

1163. After this case add:—

Abolition of guardians.]—*See* Local Government Act, 1929 (c. 17), Part I.

Part VIII.—Authorised Excuses and Exceptions.

1191a. — **Illness.**]—*Re* LLOYD GEORGE (RIGHT HON. DAVID), APPLICATION OF (1932), 76 Sol. Jo. 166.

Part IX.—Petitions.

1593. *Add. Annotation:—As to* (2) **Consd.** Cambridge County Council Petn., Fordham *v.* Webber, [1925] 2 K. B. 740.

1593a. —— **"Candidate"—Necessity for declaration or nomination.**]—An election for the office of county aldermen took place at a meeting of a county council, & voting papers were signed & personally delivered to resp., who was chairman of the county council & of the meeting, & were openly produced & read by him. Amongst the voting papers was one containing a vote for petitioner, by

PART IX. SECT. 1, SUB-SECT. 1.

h i. ——.]—*Held:* it was not the duty of the ct. to pronounce upon the constitutional right of the executive to direct the issue of a new writ.—*Re* NIPISSING DOMINION ELECTION, KLOCK *v.* VARIN, 21 C. L. T. 258.—**CAN.**

h ii. —— *To make preliminary order.*]—*Re* NORTH HURON ELECTION, [1926] 1 D. L. R. 590; 58 O. L. R. 197.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 2.—E.

p i. —— ——.]—*Held:* Controverted Elections Act, R. S. S. 1920 (c. 5), s. 4 (*c*), had been complied with by a petition which alleged that resp. "was guilty of, by himself & his agents, corrupt practices within Saskatchewan Election Act, R. S. S., 1920 (c. 3), ss. 247, 249, 251 & 252, & amendments thereto."—ADAMS *v.* HUCK, [1925] 3 W. W. R. 546,—**CAN.**

s y. *Proof of identity of petitioners & execution of petition.*]—The identity of petitioners & their execution of the petition should be proved by calling each petitioner to prove his own identity & status.—*Re* MUNICIPAL ACT, HEATHER *v.* MADDOCK, [1925] 2 W. W. R. 464.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 4.—B.

m i. —— *From dismissal before trial of petition for irregularity.*]—*Held:* the Supreme Ct. of Canada had no jurisdiction to entertain such an appeal.—VALIANTES *v.* BELL, [1927] 3 D. L. R. 796; [1927] S. C. R. 341.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 4.—D. (a).

s z. *Time for application.*]—LAMB *v.* MCLEOD (No. 2), [1931] 2 W. W. R. 847; 25 S. L. R. 321.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 5.—B.

s m. *Who may appoint—Judge of Court of Appeal.*]—LAMB *v.* MCLEOD (No. 4), [1932] 1 W. W. R. 686.—**CAN.**

s n. *During session—Jurisdiction to order.*]—LAMB *v.* MCLEOD (No. 3), [1932] 1 W. W. R. 412.—**CAN.**

s p. *Jurisdiction of Court.*]—When acting in cases of provincial election petitions, the ct. is not exercising its ordinary civil or criminal jurisdiction. The Legislative Assembly is the guardian of its own prerogatives & privileges; & the ct. has nothing to do with questions affecting membership in the Assembly except in so far as it has been specially designated by law to act in such matters. Therefore, the ct., being unwilling to interfere without undoubted authority, will always approach questions concerning its jurisdiction over election contests with great caution. In the present case:—*Held:* whatever doubt there may be as to the ct.'s jurisdiction had been set at rest by the Legislative Assembly itself when in directing the amendment of the returning officer's return it ordered that the amendment was to be made "without prejudice to the rights of any person with respect to the said election under Controverted Elections Act."—LAMB *v.* MCLEOD (No. 1), [1932] 1 W. W. R. 206.—**CAN.**

s q. ——.]—LAMB *v.* MCLEOD (No. 5), [1932] 3 W. W. R. 106.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 5.—E.

k i. —— *Failure to establish—Effect.*]—BUCKMASTER *v.* KNICKLE, [1926] 2 D. L. R. 798; 58 N. S. R. 492.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 1.

p i. —— *United Provinces Municipalities Act,* 1916.]—There is no right of appeal against the order of a comr. on an election petition presented to him under United Provinces Municipalities Act, 1916.—ABDUR RAHMAN, SON OF ISMAIL *v.* ABDUR RAHMAN, SON OF ZAHURI (1925), I. L. R. 47 All. 513.—**IND**

s a. *Jurisdiction of judge to fix time & place of trial — Notwithstanding absence of rules.*]—*Re* SLOCAN MUNICIPAL ELECTION (1902), 9 B. C. R. 113.—**CAN.**

s b. *Whether civil action lies.*]—A suit will not lie in a civil ct. for a declaration that the result of a municipal election has been wrongly declared & that pltf. is the person entitled to be declared elected.—ABDUR RAHMAN, SON OF ISMAIL *v.* ABDUR RAHMAN, SON OF ZAHURI (1925), I. L. R. 47 All. 513.—**IND.**

PART IX. SECT. 2, SUB-SECT. 2.

s d. *Joinder of parties.*]—Consolidated Municipal Act, 1922, s. 172 (1) (*a*), does not give power to join a

writing his name & address on the voting paper, as a county alderman. Forty-four voting papers contained votes for resp. as a county alderman. Neither petitioner nor resp had before the election declared himself to be a candidate at the election of county aldermen. Resp. declared himself to be elected amongst others a county alderman, & petitioner was not elected. Petitioner, alleging himself to have been a candidate at the election, presented a petition against the election of resp.:—*Held:* petitioner was not right in alleging himself to have been a candidate at the election for county aldermen, as he had not been elected & had not declared himself before the election as a candidate for election, & the writing by the voter of petitioner's name & address on the voting paper did not amount to a nomination of him as candidate within Municipal Corporations Act, 1882 (c. 50), s. 77, & he was not, under s. 88 of the Act, entitled to present a petition for the purpose of questioning the election of resp.—CAMBRIDGE COUNTY COUNCIL CASE, FORDHAM *v.* WEBBER, [1925] 2 K. B. 740; 94 L. J. K. B. 891; 89 J. P. 181; 41 T. L. R. 634; 69 Sol. Jo. 779, D. C.

1626. *Add. Citation:—sub. nom. Re* HEREFORD MUNICIPAL ELECTION PETITION, *Ex p.* GARROLD, 5 T. L. R. 411.

1627a. —— ——.]—PLYMOUTH ELECTION CASE (1929), 7 O'M. & H. 101.

Part X.—Criminal Law, Penal Actions, and Injunctions.

1693. *Add. Annotation:*—**Consd.** Thomas *v.* Bolton (1928), 139 L. T. 397.

city corpn. as an "other person," as a party to proceedings to avoid a municipal election.—It. (JACQUES) *v.* MITCHELL (1924), 55 O. L. R. 286.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 3.

sf. *Absence of—Effect.*]—DAVIES *v.* MILLS, [1930] 1 W. W. R. 672; 42 B. C. R. 506.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 8.

s i. —— "*As nearly as may be*" *county court scale.*]—*Re* MCBRIDE & STEWART, [1932] 1 D. L. R. 624; O. R. 176.—**CAN.**

PART X. SECT. 2, SUB-SECT. 1.

sg. *Against candidate—For corrupt practice—Proof required.*]—*Re* SOUTH BRUCE PROVINCIAL ELECTION, JOHNSTON *v.* MCCALLUM, [1928] 1 D. L. R. 104; 61 O. L. R. 392.—**CAN.**

sh. *Against voter—Casting more votes than lawful—Mens rea.*]—The doctrine of *mens rea* applies to the case where a person is charged under Town Act, 1927 (Sask.), c. 24, s. 136, with having voted oftener than he was entitled to do at a municipal election.—R. *v.* HOLZ, [1928] 3 W. W. R. 80; 50 Can. Crim. Cas. 298.—**CAN.**

ELECTRIC LIGHTING AND POWER.

Part I.—Powers of Board of Trade and Electricity Commissioners.

1. *Add. Annotations :*—**Apld.** A.-G. *v.* London & Home Counties Joint Electricity Authority, [1929] 1 Ch. 513. **Consd.** R. *v.* Electricity Comrs., *Ex p.* Yorkshire Electric Power Co. (1927), 91 J. P. 191 ; R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98. **Refd.** R. *v.* Church Assembly Legislative Committee & Church Assembly, *Ex p.* Haynes Smith (1927), 44 T. L. R. 68 ; R. *v.* Health Minister, *Ex p.* Davis, [1929] 1 K. B. 619 ; R. *v.* North Worcestershire Assessment Committee, *Ex p.* Hadley, [1929] 2 K. B. 397 ; Shell Co. of Australia, Ltd. *v.* Federal Commissioner of Taxation (1930), 47 T. L. R. 115 ; Minister of Health *v.* R., [1931] A. C. 494 ; R. *v.* Webster, *Ex p.* Marshall (1931), 95 J. P. 226.

3a. —— **Amendment or revocation of special order.**]—The power conferred by Electricity (Supply) Act, 1919 (c. 100), s. 26, to amend or revoke by special order any provisional order made under Electric Lighting Acts & confirmed by Parliament, does not include a power to amend or revoke a special order by another special order.—R. *v.* TRANSPORT MINISTER, *Ex p.* LEICESTERSHIRE & WARWICKSHIRE ELECTRIC POWER CO. (1928), 139 L. T. 660 ; 92 J. P. 171 ; 44 T. L. R. 823 ; 26 L. G. R. 572, D. C.

Part II.—Powers, Duties, and Liabilities of Undertakers.

5. *Add. Annotations :*—*As to* (1) **Folld.** A.-G. *v.* County of London Electric Supply Co., [1926] Ch. 542. *As to* (2) **Refd.** A.-G. *v.* County of London Electric Supply Co., [1926] Ch. 542. *As to* (3) **Refd.** A.-G. *v.* County of London Electric Supply Co., [1926] Ch. 542. *Generally*, **Consd.** Damps Selsk Svendborg *v.* London, Midland & Scottish Ry. Co. (1929), 20 Ry. & Can. Tr. Cas. 67.

6a. **Abstraction of water—"Other source."**]—The King George Reservoir, belonging to the Metropolitan Water Board, is a "river, stream, canal, inland navigation or other source," within Electricity (Supply) Act, 1919 (c. 100), s. 15 (1).—METROPOLITAN WATER BOARD *v.* TRANSPORT MINISTER (1925), 90 J. P. 52 ; 42 T. L. R. 165 ; 24 L. G. R. 289.

6b. **Statutory authority incorporated by Electricity Commissioners—Power to promote bill for purposes of scheme—Extent of power.**]—Defts. were a statutory body incorporated on July 29, 1925, by the Electricity Commrs. under Electricity (Supply) Act, 1919 (c. 100), & a scheme made thereunder. This scheme strictly defined their district & gave them only some of the powers available under the Electricity (Supply) Acts ; but clause 10 authorised them to promote "any" bill "for the purposes of this scheme" :—*Held :* defts., as a purely statutory body, were strictly bound by their scheme, & were neither expressly nor impliedly authorised by their scheme or the Acts to expend their funds in promoting a Bill for the improvement of their scheme by enlarging their district, or by obtaining additional powers omitted from their scheme, though adumbrated in the Acts.—A.-G. *v.* LONDON & HOME COUNTIES JOINT ELECTRICITY AUTHORITY, [1929] 1 Ch. 513 ; 98 L. J. Ch. 162 ; 140 L. T. 578 ; 93 J. P. 115 ; 45 T. L. R. 235 ; 27 L. G. R. 337.

10. *Add. Annotation :*—**Refd.** A.-G. *v.* County of London Electric Supply Co., [1926] Ch. 542.

11. *Add. Annotation :*—**Refd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

After this case add :—

——.]—*See, now*, Electricity (Supply) Act, 1926 (s. 51), c. 48.

12. *Add. Annotation :*—*As to* (1) **Consd.** Caerphilly U. D. C. *v.* Griffin (1927), 44 T. L. R. 132.

13. *Add. Annotation :*—**Refd.** A.-G. *v.* Sunderland Corpn. (1929), 46 T. L. R. 10.

SECT. 9.—EXECUTION OF WORKS.

SUB-SECT. 1.—IN GENERAL.

17a. **Right of undertakers to support—Pylons.**]—WEST MIDLANDS JOINT ELECTRICITY AUTHORITY *v.* PITT, MINISTER OF TRANSPORT *v.* PITT, No. 30a, *post.*

PART I. SECT. 2.

sa. *Whether under jurisdiction of Public Utilities Board of Commissioners —Not St. John Power Commissioners.*]—*Ex p.* NEW BRUNSWICK POWER CO. (N. B.), [1926] 1 D. L. R. 483.—**CAN.**

sb. —— *Andover & Perth Electric Light Commissioners.*]—*Ex p.* ANDOVER & PERTH ELECTRIC LIGHT COMRS. (N. B.), [1926] 1 D. L. R. 569.—**CAN.**

PART II. SECT. 1.

sc. *Indian Electricity Act—Scope of Act.*]—The Indian Electricity Act is not a complete code making the holders of licences issued thereunder free from the control of any other law or authority in respect of their operations, building, machinery & apparatus.—MADRAS CORPN. *v.* MADRAS ELECTRIC TRAMWAYS, LTD. (1930), I. L. R. 54 Mad. 364.—**IND.**

PART II. SECT. 9, SUB-SECT. 2.

g i. —— —— *Erection of poles.*]—The Hydro-Electric Power Commission of Ontario has no right, either under Power Commission Act, 1915, s. 5, or otherwise, without the consent of the municipal corpn. controlling a highway, to place poles & wires upon the highway.—HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO *v.* GREY COUNTY (1924), 55 O. L. R. 339. —**CAN.**

25. *Add. Annotations:—As to* (1) **Consd.** St. Nicholas Acons, London *v.* L. C. C., [1928] P. 102. **Refd. St. Nicholas Acons *v.* L. C. C.,** [1928] A. C. 469.

30. *Add. Annotation:*—**Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

30a. Wires carried over land—Sanction of Minister of Transport—"Terms, conditions & stipulations."]—(1) In the absence of consent by the landowner, it is for the Minister of Transport to consider whether a proposal to place electric lines across any land, under Electricity (Supply) Act, 1919 (c. 100), s. 22, should be sanctioned, &, if he decides to sanction the proposal, what "terms, conditions & stipulations" should be attached to his sanction. Such "terms, conditions & stipulations" do not mean or include pecuniary terms, conditions or stipulations. (2) The Minister has no power to assess compensation payable to the landowner for a wayleave taken under Electricity (Supply) Act, 1919 (c. 100), s. 22 (1). The claim of the landowner for compensation is to be determined by an arbitrator under the provisions of the Electric Lighting Act, 1882 (c. 56). & Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), but not under Lands Clauses Consolidation Act, 1845 (c. 18). The enactments with respect to the purchase & taking of lands otherwise than by agreement in Lands Clauses Consolidation Act, 1845 (c. 18), are expressly excepted from incorporation in Electric Lighting Act, 1882 (c. 56), which is to be read with Electricity (Supply) Act, 1919 (c. 100), as one Act, & therefore cannot be incorporated in these Acts by implication.

(3) A contiguous owner may have to give support to the land in which the pylon is erected (LORD HANWORTH, M.R.).—WEST MIDLANDS JOINT ELECTRICITY AUTHORITY *v.* PITT, MINISTER OF TRANSPORT *v.* PITT, [1932] 2 K. B. 1; 101 L. J. K. B. 401; 147 L. T. 122: 96 J. P. 159; 48 T. L. R. 332; 30 L. G. R. 219, C. A.

33a. —— To "person" requiring supply—Who is —Receiver.]—A colliery co., at the time of the appointment of a receiver in a debenture holders' action, owed a sum of money to an electrical distribution co. for electricity supplied to them. The distribution co. threatened to cut off the supply of electricity from the colliery co. unless payment of the arrears was guaranteed by the receiver. The receiver commenced an action to restrain the distribution co. from cutting off the supply. By South Wales Electrical Power Distribution Company Act, 1900, s. 40, it is provided that: "the co. shall give a supply of energy to any person who requires a supply which may be given by this Act other than a supply in bulk upon that person entering into a binding agreement to take the energy upon such terms as failing agreement shall be fixed by a single arbitrator appointed by the Board of Trade":—*Held:* the receiver was a "person" within the sect. & was therefore entitled to require a supply of electricity upon the terms set out in the sect.; & the distribution co. must be restrained from withholding or threatening to withhold from him a supply of electricity.—GRANGER *v.* SOUTH WALES ELECTRICAL POWER DISTRIBUTION CO., [1931] 1 Ch. 551; 100 L. J. Ch. 191; 145 L. T. 93; 29 L. G. R. 209.

38a. —— —— General strike—Refusal to employ naval ratings—Agreement with union workers to abandon supply of power.]—Pltfs., who carried on business in S., were entitled, by statute & by contract, to receive from the S. borough council a supply of electrical power, but were deprived of this supply on certain days in May, 1926, when the general strike was in operation. In respect of this deprivation of supply pltfs. sued defts., who were the members of the Electricity Supply Committee of the S. borough council, to whom the council had lawfully delegated the management of the electricity supply, alleging that defts. had wrongfully & maliciously conspired & combined among themselves & with the London District Committee of the Electrical Trades Union to procure & induce the borough council, its servants & agents, to discontinue the supply of electrical power to pltfs. The writ in the action was issued on Jan. 13, 1927. Defts. denied pltfs.' allegations, & pleaded Public Authorities Protection Act, 1893 (c. 61). At the trial it was proved that at the end of Apr. 1926, when the general strike was threatened, the Govt. made preparations for the maintenance of essential services & offered to provide naval ratings to take the place of workers who might go on strike. The Govt. also issued an Emergency Order relieving the S. borough council from its obligation to supply the whole of the previous requirements of consumers of power by 50 per cent. Defts. did not accept the Govt.'s offer of naval ratings to work the electricity plant, considering it unwise to do so in view of the likelihood of disorder in the borough; but they discussed the position with the Trades Union Council & eventually resolved that if the union workers would con-

PART II. SECT. 9, SUB-SECT. 5.

8d. *Removal of poles by county council —Liability for cost.*]—Where an electric-power Board in pursuance of the provisions of the Electric-power Boards Act, 1925, has erected electric-light poles on a road which is subject to the control & management of a county council, & subsequently the county council effects improvements on such road, thereby necessitating the removal of the poles to new positions on the road, the county council is liable for the cost of such removal.—WAITEMATA COUNTY COUNCIL *v.* WAITEMATA ELECTRIC-POWER BOARD, [1932] N. Z. L. R. 94.—**N.Z.**

See, also, case in Sect. 13, sub-sect. 2, *post.*

PART II. SECT. 11, SUB-SECT. 2.

11. —— —— *Failure by default of undertaker.*]—In an action for damages for failure to supply electric power under a contract made in Nov. 1912 between the parties, it was admitted that defts. had developed enough power in Jan. 1921, when the shortage occurred, to have supplied all requirements of pltfs., & that they did not give them the power owing to the requirements of other customers:—*Held:* defts. could not set up the requirements of other customers as modifying what on the face of the contract with pltfs. made compliance with pltfs.' demands an absolute undertaking.—HOLLINGER CONSOLIDATED GOLD MINES, LTD. *v.* NORTHERN CANADA POWER CO., LTD., [1923] 4 D. L. R. 1205; 54 O. L. R. 508.—**CAN.**

l ii. —— *Whether agreement terminable on notice.*]—CONIAGAS REDUCTION CO., LTD. *v.* ONTARIO HYDRO ELECTRIC POWER COMMISSION, [1931] 4 D. L. R. 391; *affd.*, [1932] 2 D. L. R. 811.—**CAN.**

l iii. —— *Under agreement with municipality—Construction of agreement.*]—MAPLE RIDGE CORPN. *v.* WESTERN POWER CO. OF CANADA, [1926] 2 D. L. R. 525; 37 B. C. R. 252.—**CAN.**

m i. —— *While arrears of charges unpaid—Liability for injury in darkness.*]—HUMPHRIES *v.* PICTOU COUNTY POWER BOARD, [1931] 2 D. L. R. 571; 3 M. P. R. 25.—**CAN.**

tinue the supply of light they would abandon the supply of power. The result of this was that the supply of power to pltfs., as to all other occupiers of premises in the borough, was discontinued, whereby pltfs. suffered damage. The jury found that defts. in making the agreement whereby power was not supplied to pltfs. were not acting in good faith & in the honest belief that they were carrying out their statutory duties, & that they were actuated by an indirect motive to injure pltfs. & to further the interests of those taking part in the strike. Upon these findings judgment was entered for pltfs. Defts. appealed :—*Held :* there was no evidence to support the jury's findings.—SCAMMELL G. & NEPHEW, LTD. *v.* HURLEY, [1929] 1 K. B. 419 ; 98 L. J. K. B. 98 ; 140 L. T. 236 ; 93 J. P. 99 ; 27 L. G. R. 53, C. A.

Annotation :—**Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

39a. —— **Injunction to restrain supply by another person.**]—Pltfs., a local authority empowered to supply electricity within a certain area, sought an injunction under Electric Lighting Act, 1909 (c. 34), s. 23, to restrain deft. from supplying electricity to certain consumers in the area :—*Held :* as the supply of electrical energy was not deft.'s primary business, the action failed.—CAERPHILLY URBAN DISTRICT COUNCIL *v.* GRIFFIN, [1928] Ch. 171 ; 97 L. J. Ch. 139 ; 138 L. T. 516 ; 92 J. P. 5 ; 44 T. L. R. 132 ; 26 L. G. R. 38.

39b. Negligence in supply—Whether action lies.]—Electricity undertakers who altered the pressure on their mains & supplied a transformer to their consumer, a hairdresser, are not liable for damage to the consumer's appliances or for loss of earnings. The consumer's remedy is to proceed for the statutory penalty in case of default.—STEVENS *v.* ALDERSHOT GAS, WATER & DISTRICT LIGHTING CO. (NOW MID-SOUTHERN DISTRICT UTILITY CO.) (1932), 74 L. Jo. 95.

42a. —— **Supply to premises partly outside area—Point of supply within area.**]—Defts. were authorised by the County of London (Northern Extensions) Electric Lighting Order, 1897, made under Electric Lighting Acts, 1882 (c. 56) & 1888 (c. 12), to supply electricity within an area adjoining the relators' area of supply. Sect. 6 of the Order prohibited the supply of energy by defts. beyond their area of supply, & Electric Lighting Act, 1909 (c. 34), s. 23, contains a general prohibition against supplying energy outside an authorised area. Defts. entered into a contract to supply a firm having a small part of its premises within defts.' area of supply & the remainder of the premises in the relators' area of supply. For the purpose of this contract defts. erected their apparatus on the part of the premises of the firm within their area, & the consumers' terminals, that is, the point where the electricity was passed from defts.' service lines to the lines on the firm's premises owned & controlled by them, were also on that part of the premises. The use of electricity on this part of the premises was trivial. In the circumstances the A.-G. brought an action on the relation of the relators to restrain defts. from supplying energy to the firm outside their area :—*Held :* the point of supply was the consumers' terminals, & as the firm's terminals were within defts.' area, defts. had not committed any breach of the prohibitions in their Order & the Act of 1909.—A.-G. *v.* COUNTY OF LONDON ELECTRIC SUPPLY CO., [1926] Ch. 542 ; 95 L. J. Ch. 357 ; 135 L. T. 601 ; 42 T. L. R. 328 ; 70 Sol. Jo. 486.

47. *Add. Annotation :—As to* (1) **Refd.** Crediton Gas Co. *v.* Crediton U. C., [1928] Ch. 447.

52. For the paragraph in the original volume substitute the following paragraph :—

—— **Not incompatible with performance of statutory duties.**]—By a Provisional Order of 1898 the B. Council were constituted electricity undertakers in B. with power to charge up to a certain maximum price, but with authority to make special agreements with particular consumers as to price. By a transfer deed of Dec. 31, 1901, approved by the Board of Trade, the B. Council transferred the undertaking to defts. with a provision for retransfer if defts. made default in their obligations as undertakers. By a supplemental deed of same date, made without the approval of the Board of Trade, defts. agreed with the B. Council not to charge higher prices than those charged in the adjoining borough of S. In 1911 the B. district & the contractual rights of the B. Council were transferred to pltfs., the S. Corpn., but defts. still remained electricity undertakers in B. Defts. having recently begun to charge higher prices than pltfs., pltfs. brought an action to restrain their breach of agreement. Defts. contended that their agreement was *ultra vires* both under Electric Lighting Act, 1882 (c. 56), s. 11, which prevented them from divesting themselves of their statutory powers without the consent of the Board of Trade, & also under the general law applicable to statutory undertakings :—*Held :* the agreement was a business transaction into which defts. might reasonably enter ; it did not fetter the powers of defts. & was not incompatible with the performance by them of their statutory duties, & was not therefore *ultra vires.*—SOUTHPORT CORPN. *v.* BIRKDALE DISTRICT ELECTRIC SUPPLY CO., [1925] Ch. 794 ; 94 L. J. Ch. 371 ; 133 L. T. 354 ; 89 J. P. 149 ; 69 Sol. Jo. 523 ; 23 L. G. R. 490, C. A. ; *affd. sub nom.* Birkdale District Electric Supply Co. *v.* Southport Corpn., [1926] A. C. 355 ; 95 L. J. Ch. 587 ; 134 L. T. 673 ; 90 J. P. 77 ; 42 T. L. R. 303 ; 24 L. G. R, 157, H. L.

Annotation :—**Refd.** Brown *v.* Dagenham Urban District Council, [1929] 1 K. B. 737.

PART II, SECT. 11, SUB-SECT. 5.—A.

p i. —— *At fixed rate for definite period—Whether valid.*]—In the absence of an express or necessarily implied grant of power to pltf. town to contract to supply electric energy from its municipal plant for a definite period at a fixed rate, held that such a contract was *ultra vires,* since it wiped out during its currency the statutory power of the town to fix from time to time such rates as it may deem necessary in the proper management of the utility, of which the council are in a sense trustees for the public.—BROADVIEW TOWN *v.* SASKATCHEWAN CO-OPERATIVE CREAMERIES, LTD., [1928] 1 D. L. R. 1119 ; [1928] 1 W. W. R. 324 ; 22 Sask. L. R. 356.—**CAN.**

sc. *Powers of municipality as taker—No power to surcharge for delay in payment.*]—A municipal corpn., though it may allow discounts for prompt payment for supplies of gas or electricity, cannot surcharge for delay in payment unless it is given statutory authority so to do, & no such authority at present exists.—NELSON CITY CORPN. *v.* BUSBRIDGE, [1930] N. Z. L. R. 269.—**N.Z.**

63a. **Overhead wires—What statutes applicable.**]—WEST MIDLANDS JOINT ELECTRICITY AUTHORITY *v.* PITT, MINISTER OF TRANSPORT *v.* PITT, No. 30a, *ante*.

64. *Add. Annotation* :—**Refd.** Graigola Merthyr Co. *v.* Swansea Corpn. (1927), 138 L. T. 465.

65a. **Liability for—Under Electric Lighting (Clauses) Act, 1899 (c. 19).**]—Pltf., who was a farmer, was the occupier of property in the neighbourhood of an electricity power station which had been erected by deft. corpn. under Parliamentary powers & which emitted fumes heavily charged with sulphur & sulphur compounds so as to damage the property occupied by the pltf. In an action for a nuisance :—*Held :* (1) above Act did not expressly make defts. liable for a nuisance, but (2) as defts. had not proved the nuisance to be the inevitable result of the exercise of their statutory powers pltf. was entitled to an injunction & damages.—MANCHESTER CORPN. *v.* FARNWORTH, [1930] A. C. 171 ; 99 L. J. K. B. 83 ; 46 T. L. R. 85 ; 73 Sol. Jo. 818 ; 94 J. P. 62 ; *sub nom.* FARNWORTH *v.* MANCHESTER CORPN., 142 L. T. 145 ; 27 L. G. R. 709, H. L.

67. *Add. Annotations* :—**Refd.** Farnworth *v.* Manchester City Corpn., [1929] 1 K. B. 533 ; Price *v.* Hilditch, [1930] 1 Ch. 500 ; West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

70a. **Fumes—Injunction.**]—MANCHESTER CORPN. *v.* FARNWORTH, No. 65a, *ante*.

72. *Add Annotations* :—**Consd.** Noble *v.* Harrison [1926] 2 K. B. 332. **Distd.** St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1 ; Bartlett *v.* Tottenham, [1932] 1 Ch. 114 ; Fardon *v.* Harcourt-Rivington (1932), 48 T. L. R. 215 ; Wilkins *v.* Leighton (1932), 76 Sol. Jo. 232. **Apld.** A.-G. *v.* Corke (1932), 48 T. L. R. 650. **Refd.** Ilford U. C. *v.* Beal, [1925] 1 K. B. 671 ; Booth *v.* Thomas (1926), 95 L. J. Ch. 160 ; Smith *v.* G. W. Ry. (1926), 135 L. T. 112 ; Glanville *v.* Sutton (1927), 44 T. L. R. 98 ; G. W. Ry. *v.* S.S. Mostyn, [1928] A. C. 57 ; Pontardawe, R. D. C. *v.* Moore-Gwyn, [1929] 1 Ch. 656.

73. *Add. Annotation* :—**Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

76. *Add. Annotation* :—**Apld.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

88a. **Basis of assessment—Deduction of sinking fund payments.**]—Where an electricity undertaking is required by the statutes under which it carries on its undertaking to set aside out of its revenue certain sinking fund payments, to provide for the ultimate transfer of the undertaking to a Joint Electricity Authority, those sinking fund payments are proper deductions from the profits of the undertaking in arriving at the rateable value, since no hypothetical tenant would pay a higher rent to collect money from which he could derive no benefit.—ST. JAMES & PALL MALL ELECTRIC LIGHT CO., LTD. *v.* WESTMINSTER (CITY) ASSESSMENT COMMITTEE (1932), 101 L. J. K. B. 594 ; 147 L. T. 396 ; 96 J. P. 296 ; 48 T. L. R. 533 ; 30 L. G. R. 342.

PART II. SECT. 11, SUB-SECT. 5.—B.

sk. *Whether entitled to lien—Under Public Utilities Act, R. S. O.*, 1914 (*c.* 204), *s.* 27.]—WELLAND CITY *v.* ELECTRIC STEEL & METALS CO., LTD., [1927] 2 D. L. R. 168 ; 60 O. L. R. 127.—**CAN.**

sl. —— —— *Supply to tenants—Tenants evicted.*]—*Held :* the only right of the undertakers was to recover damages for the refusal of the consumers to carry out their contract.—*Re* MCKITTRICK PROPERTIES, LTD., [1927] 2 D. L. R. 93 ; 60 O. L. R. 132.—**CAN.**

PART II. SECT. 13, SUB-SECT. 2.

st. *Falling wires—Compensation.*]—Damage to land or stock from falling wires, arising apart from unauthorised or negligent acts on the part of a power board for which claimants would have a remedy by action at law :—*Held :* improbable & too speculative to form a subject of compensation.—WOOD *v.* TARANAKI ELECTRIC-POWER BOARD, [1927] N. Z. L. R. 392.—**N.Z.**

PART II. SECT. 13, SUB-SECT. 3.

o i. —— —— *Injury to licensee with notice of danger.*]—An action for damages for personal injuries sustained by pltf. as the result of his fishing-rod coming into contact with an electrical transmission wire which deft. co. maintained under an easement therefor granted by the owner of the land over which the wire was carried. The land was in the possession of a tenant & the pltf. had, apparently, the implied assent of the tenant to go on the land. The jury found deft. negligent in maintaining the wire too near the ground, but also found that pltf. had been contributorily negligent, & apportioned the damages. The judge dismissed the action, on the ground that the cause of action as set up in the pleadings was confined to alleged breaches of the regulations for such wires under Electrical Energy Inspection Act, R. S. B. C., 1924 (c. 77) :—*Held :* the appeal should be dismissed, on the ground that pltf. was aware of the danger but took no care to avoid it, & deft. owed no duty to him to have its wire strung higher.—SALE *v.* EAST KOOTENAY POWER CO., LTD. (NO. 2), [1931] 3 W. W. R. 117 ; 4 D. L. R. 221 ; 44 B. C. R. 141 ; *affd.*, [1931] 4 D. L. R. 593 ; S. C. R. 712.—**CAN.**

o ii. —— —— *On standard.*]—Pltf., a boy of ten years, claimed damages for personal injuries occasioned by the negligence of defts. His injuries were sustained by coming in contact with wires carrying an electric current at the top of a standard & of falling from the standard :—*Held :* defts. not liable.—KENNY *v.* ELECTRICITY SUPPLY BOARD, [1932] I. R. 73.—**IR.**

o iii. —— *Power line in tree—Short circuit during storm.*]—CREPIN *v.* OTTAWA ELECTRIC CO., [1931] 1 D. L. R. 792 ; *affd.*, [1931] S. C. R. 407 ; 3 D. L. R. 113.—**CAN.**

78 i. —— *Limitation of—Statutory authority.*]—The principle of *Rylands v. Fletcher*, No. 72, does not apply to persons properly exercising their statutory powers.—HANCOCK *v.* MIDLAND JUNCTION MUNICIPALITY CORPN. (1926), 28 W. A. L. R. 91.—**AUS.**

PART II. SECT. 16.

so. *Assessment of franchise — Validity.*]—Applt. had a special franchise for supply of electric light & power to resp. town. It had only a distribution system within the town, its generating plant being elsewhere. The town assessed the pole line & distribution system at $3,000 & the franchise at $7,000. Applt. contended that, as it had no property in the town except that assessed at $3,000 as aforesaid, the $7,000 assessment on the franchise was illegal :—*Held :* the assessment did not violate sect. 413 (6) of Town Act, Sask, 1927. Assessment must be made of the land &, " in addition," of the special franchise according to the method of determination laid down. Any argument that might otherwise be based on " double assessment " was met by the express statutory provision.—CANADIAN UTILITIES, LTD. *v.* STRASBOURG TOWN, [1931] S. C. R. 72 ; 2 D. L. R. 43.—**CAN.**

PART II. SECT. 25.

sa. *Property in apparatus on premises—Transformers, switches & bulbs.*]—*Held :* the words " dynamos, poles & wires " in 3 Edw. 7, 1903, c. 45, s. 20, refer to the equipment necessary to render electricity available for the ratepayers generally, as contrasted with equipment necessary to supply any individual ratepayer. The expression " all other machinery " construed *ejusdem generis* with the words " dynamos, poles & wires " does not include transformers, switches or electric bulbs in private houses or factories, & which would only benefit the individual ratepayers & not the general body of the ratepayers.—*Ex p.* LEWIS, [1923] 1 D. L. R. 146 ; 50 N. B. R. 446.—**CAN.**

PART II. SECT. 27.

sb. *Whether compulsory—Agreement with provision for arbitration confirmed by statute.*]—An agreement between a municipality & a co. for the supply of electric light & other services to the citizens of the municipality contained a clause for the adjustment of rates in future between the parties with provision for arbn., & an Act was passed in 1906 confirming it & declaring it binding upon the parties :—*Held :* the effect of the Act was not to turn the clause in the agreement into a statutory obligation to go to arbn. but the Act only made valid & binding what without it might have been an invalid agreement.—RED DEER (CITY) *v.* WESTERN GENERAL ELECTRIC CO., [1924] 2 D. L. R. 317 ; 1 W. W. R. 1092 ; 20 Alta. L. R. 372.—**CAN**

sd. *Authority of counsel to refer dispute to arbitration—Validity of consequent award—Power Commission Act, R. S. O.*, 1914 (*c.* 39), *s.* 16.]—BEACH *v.* HYDRO ELECTRIC POWER COMMISSION OF ONTARIO, [1927] 1 D. L. R. 277 ; [1927] S. C. R. 251.—**CAN.**

103a. —— What amounts to employment by "authorised undertaking" — Employment when claim arises.]—The claimant N. had been employed as an electrical engineer by a co. supplying electricity at P. The co. entered into an agreement with an authorised undertaking at N. to take electricity in bulk from that undertaking, & ceased itself to supply electricity from the date of the agreement. The co. then dismissed the claimant, having no further need for his services. He claimed to be entitled to compensation under Electricity (Supply) Act, 1919 (c. 100), s. 16, on the ground that he had suffered loss of employment in consequence of an agreement between authorised undertakers within that sect.; & he based the amount of his claim on the fact that he had been in receipt of an annual salary. The referee held, subject to the opinion of the ct. on a special case, that the claim of the claimant was correct, & that the amount of compensation to which he was entitled was £1,160:—*Held:* on argument of the special case, (1) although at the time when the agreement was made between the P. co. & the N. undertaking the co. was not an authorised undertaker, it had since become an authorised undertaker & was one at the time when this claim arose, & it was therefore covered by the reference in sect. 16 to authorised undertakers; & (2) on the facts, the claimant was employed at a weekly & not an annual salary, & the compensation due to him must be calculated accordingly.—NAYLOR *v* PEACEHAVEN ELECTRIC LIGHT & POWER CO., LTD. (1931), 47 T. L. R. 535.

103b. —— Employment at "annual salary"—What amounts to.]—NAYLOR *v.* PEACEHAVEN ELECTRIC LIGHT & POWER CO., LTD., No. 103a, *ante*.

103c. —— Meaning of "scheme."]—Electricity (Supply) Act, 1919 (c. 100), s. 16, provided that "if . . . within five years from the date when under this Act . . . a scheme for the improvement of the supply of electricity in any district has come into operation," any servant who has been regularly employed in any authorised undertaking proves that in consequence of the scheme he has suffered loss of employment or diminution of wages he shall be entitled to compensation. The Electricity Comrs., in order to provide for the improvement of the existing organisation for the supply of electricity in a district, made an Order under sect. 7 of the Act of 1919, constituting an electricity district & establishing an Electricity Advisory Board for that district. The Order, which provided that the Scheme set out in the Sched. to the Order should operate & have effect, came into operation on June 4, 1924, having been previously confirmed by the Board of Trade & approved by resolutions passed by both Houses of Parliament. Under the Scheme set out in the Sched. the Advisory Board could only make recommendations to the constituent bodies composing it & to the Electricity Comrs. Para. 11 of the Scheme provided as follows: "(1) The main outlines of the Technical Scheme for the improvement of the supply of electricity in the district, to which the general approval of the Comrs. is hereby given, are set forth in the Second Annex hereto, which Annex shall be deemed to form part of this Scheme & shall have effect accordingly. (2) The Board shall take all steps within their power to secure the carrying into effect of the Technical Scheme, which may be modified or varied with the approval of the Comrs." The main outlines of the Technical Scheme in the Second Annex provided that certain generating stations, including a new one belonging to the Leicester Corpn., should be utilised under the Scheme & extended as might hereafter be determined, & that certain generating stations, including two belonging to the Leicester Corpn., should be utilised until the load could be transferred to the new stations. Those two stations were closed down in Aug. & Sept. 1930, & a number of workmen employed therein in consequence lost their employment or suffered a diminution of wages, & on Nov. 5, 1930, they claimed compensation from the Leicester Corpn. under Electricity (Supply) Act, 1919 (c. 100), s. 16. It was contended on their behalf that the word "scheme" in that section referred not to the Scheme in the Sched. to the Order, under which the Advisory Board was established, but to the Technical Scheme set out in the Annex, which provided for the closing of the two generating stations & under which they were closed:—*Held:* the word "scheme" in sect. 16 meant the Scheme for the improvement of the existing organisation for the supply of electricity in any district which the Electricity Comrs. had to approve or formulate under sect. 5 of the Act of 1919, & the Order giving effect to which in the present case came into operation under sect. 7 of that Act, as soon as it was confirmed by the Board of Trade & approved by resolutions of both Houses of Parliament, the last of which in the present case was June 4, 1924, & consequently the claims for compensation were out of time. Further, even if the word "scheme" in sect. 16 meant Technical Scheme, inasmuch as para. 11 of the Sched. provided that the Second Annex, in which the main outlines of the Technical Scheme were set out, should be deemed to form part of the Scheme & should have effect accordingly, therefore it came into operation on the same date as the Scheme.—BETTS *v.* LEICESTER CORPN., [1932] 1 K. B. 579; 101 L. J. K. B. 263; 146 L. T. 466; 96 J. P. 114; 48 T. L. R. 223; 76 Sol. Jo. 129; 30 L. G. R. 163.

106a. Time for ascertaining value of property.]—Under an Electric Lighting Confirmation Order Act, it was directed that a co. should sell, & a local authority might, & should purchase that part of the undertaking & business of the co., which was situate in the area of the local authority. After a notice to treat had been given the co. incurred a considerable amount of further capital expenditure in respect of the undertaking. The purchase-price having been left to arbitration & the arbitrators referring it to an umpire, the umpire in fixing the purchase price considered that the adjustment of the rights of the parties in respect of such capital expenditure, did not come within the award, & fixed the price without considering it. On an action brought by the co. for specific performance, it was submitted by the local authority that the co. could not show a good title to certain property comprised in the purchase. At the time of the hearing of the

action the local authority were endeavouring to obtain leave to borrow the purchase money on the security of their rates:—*Held:* the High Ct. in this action was the proper party to adjust the rights of the parties as to the additional capital expenditure, that an inquiry must be directed on the matter of the additional expenditure, the local authority being entitled to the undertaking of the co., as it was at the date of purchase subject to necessary fluctuations before completion, & that it could not have thrust on it an unduly enlarged undertaking. —METROPOLITAN ELECTRIC SUPPLY CO., LTD. *v.* MARYLEBONE CORPN. (1903), 67 J. P. 382; 1 L. G. R. 673.

Annotation:—**Apld.** Oxford Corpn. *v.* Oxford Electric Co. Ltd. (1930), 143 L. T. 577.

106b. ——.]—By the Oxford Electric Lighting Order, 1890, which was a provisional order granted by the Board of Trade under the Electric Lighting Acts, 1882 (c. 56), & 1888 (c. 12), power was given to the predecessors of applt. electric co. to supply electricity in O. In 1892 applt. co. became the successors of the undertakers named in the order of 1890. Under sect. 63 of the order the local authority, resp. corpn., could within forty-two years give notice requiring the undertakers to sell, subject to all subsisting rights & contracts, at a price to be ascertained by either of two methods, the one selected in this case being by capitalising the net profits of the undertaking at 5 per cent. *per annum* upon the capital of the co. shown by the books of the co. to have been properly expended on the undertaking at the date of the notice requiring the undertakers to sell. Sect. 4 provided that if the undertaking was purchased in accordance with the provisions of the order the local authority should from the date of such purchase be the undertakers. By sect. 8, the undertakers were required to keep accounts of the capital employed for the purpose of the business distinct from any other accounts. In accordance with sect. 63 notice was given by the corporation on Dec. 3, 1928, to the co. to sell. An action was brought by the corpn. to determine what was the proper method for ascertaining the purchase price to be paid by the corpn., & what was the date as from which the sale was effected & the corpn. became entitled to take the profits of the going concern. The corpn. claimed that the price should be arrived at by capitalising upon a basis which the order did not fix, a sum of 5 per cent. upon the capital of the co. shown by their books to have been properly expended upon the undertaking, upon the footing that that sum represented the annual net profits of the co.'s undertaking, & that they were entitled to the profits as from the date notice was given, namely, Dec. 3, 1928. The co. asserted that the price ought to be fixed by capitalising the annual net profits of their undertaking upon a 5 per cent. basis, in other words, to first ascertain what the annual net profits were & then the capital sum which, if invested at 5 per cent., would produce those profits, & that they were entitled to retain the profits down to the date when the purchase money had been ascertained, & the obligation of the corpn. to pay it had arisen. The judge accepted the view of the corpn. on both points, holding that the date from which the purchase was to take effect was not dependent on the fixing thereof by the Electricity Commissioners under Electric Lighting Act, 1888 (c. 12), s. 2, but was to be ascertained by reference to the provisional Order of 1890 alone:—*Held:* there would be difficult calculations necessitated by the co.'s method of arriving at the purchase price, & sect. 8 might be used as indicating that the method suggested by the corpn. was right & would simplify the calculation. Where there was no special indication of the date when property was to change hands the date of the transfer would be that of taking possession after a good title was shown, but here there were certain indications. The co. relied on sect. 4 of the order as showing that the date must be when the local authority acquired their rights & responsibilities upon payment of the purchase-money, but sect. 4 dealt with a different matter to sect. 63, & did not elucidate the interpretation of sect. 63, subclause 1, the clause elected as the basis for arriving at the price. The words "at the date of such notice" in that sect. showed that to be the crucial date.—OXFORD CORPN. *v.* OXFORD ELECTRIC CO., LTD. (1930), 143 L. T. 577; 94 J. P. 229; 29 L. G. R. 1, C. A.

Part IV.—Special Legislation—Power Acts.

111. *Add. Annotation:*—**Consd.** Southport Corpn. *v.* Birkdale District Electric Supply Co., [1925] Ch. 794.

111a. Act authorising application by another party for power to supply energy within area of supply—Consent of undertakers unnecessary.]—R. *v.* ELECTRICITY COMRS., *Exp.* YORKSHIRE ELECTRIC POWER CO. (1927), 138 L. T. 230; 91 J. P. 191; 44 T. L. R. 26; 25 L. G. R. 524, D. C.

PART IV.

sf. Power Commission Act, R. S. O., 1927—*Submission of question to electors —Who are "electors of the municipality."*]—ELDRIDGE *v.* SOUTHAMPTON, [1929] 3 D. L. R. 629; 63 O. L. R. 645.—**CAN.**

EQUITY.

Part II.—Equitable Maxims.

30. *Add. Annotation :*—**Refd.** Tallack *v.* Tallack & Broekema, [1927] P. 211.

44. *Add. Annotations :*—**Refd.** Wright *v.* Morgan, [1926] A. C. 788 ; A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743 ; Harrods, Ltd. *v.* Lemon, [1931] 2 K. B. 157.

59. *Add. Annotation :*—**Refd.** Charles *v.* Cardiff Collieries (1928), 44 T. L. R. 448.

76. *Add. Citation :*—132 L. T. 21.

86. *Add. Annotation :*—*As to* (1) **Apld.** Berry *v.* Berry, [1929] 2 K. B. 316.

101. *Add. Annotation :*—**Refd.** Liggett (Liverpool) *v.* Barclays Bank, [1928] 1 K. B. 48.

108. *Add. Annotation :*—**Refd.** Soviet Republics Union *v.* Belaiew (1925), 42 T. L. R. 21.

133. *Add. Annotations :*—*Generally*, **Refd.** Maine & New Brunswick Electrical Power Co., Ltd. *v.* Hart, [1929] A. C. 631 ; Simpson *v.* Maurice's Exors. (1929), 45 T. L. R. 581.

140a. *S. P.* Rich *v.* Sydenham (1671), 1 Cas. in Ch. 202 ; 3 Rep. Ch. 74 ; 21 E. R. 733.

159. *Add. Annotations :*—*As to* (1) **Consd.** *Re* Wait, [1927] 1 Ch. 606. **Refd.** Cotton *v.* Heyl, [1930] 1 Ch. 510. *As to* (2) **Consd.** *Re* Wait, [1927] 1 Ch. 606.

173. *Add. Annotations :*—**Refd.** *Re* Wait, [1927] 1 Ch. 606 ; Ditcham *v.* Miller (1931), 100 L. J. P. C. 177.

177. *Add. Annotation :*—**Consd.** *Re* Blackwell, Blackwell *v.* Blackwell, [1929] A. C. 318.

186. *Add. Annotation :*—**Refd.** *Re* Blackwell, Blackwell *v.* Blackwell, [1929] A. C. 318.

193a. —— **Purchase pendente lite.**]—A purchase *pendente lite*, though without actual notice, & for a valuable consideration, shall be set aside.—Sorrell *v.* Carpenter (1728), 2 P. Wms. 482 ; 24 E. R. 825, L. C.

Annotations :—**Consd.** Bellamy *v.* Sabine (1857), 1 De G. & J. 566 ; Wigram *v.* Buckley, [1894] 3 Ch. 483. **Refd.** Metcalfe *v.* Pulvertoft (1813), 2 Ves. & B. 200.

219. *Add. Annotation :*—**Refd.** Clayton *v.* Clayton, [1930] 2 Ch. 12.

233a. —— ——.]—Pltf. filed a bill to have a conveyance set aside. Deft. had conveyed the estate to mtgees. :—*Held :* they, as purchasers for valuable consideration without notice, could not be interfered with.—Bulley *v.* Bulley (1874), 9 Ch. App. 739 ; 44 L. J. Ch. 79 ; 30 L. T. 848 ; 22 W. R. 779, L. JJ.

239a. —— ——.]—Harrison *v.* Forth (1695), Prec. Ch. 51 ; 1 Eq. Cas. Abr. 331 ; 24 E. R. 26.

252. *Annotations :*—For "**Refd.** Stickney *v.* Keeble [1915] A. C. 386" read "**Consd.** Stickney *v.* Keeble, [1915] A. C. 386."

Add Annotations :—**Apld.** Bernard *v.* Williams (1928), 139 L. T. 22. **Refd.** Lock *v.* Bell [1931] 1 Ch. 35.

253. *Add. Annotations :*—**Consd.** *Re* Sandwell Park Colliery Co., Field *v.* The Co., [1929] 1 Ch. 277 ; Lock *v.* Bell, [1931] 1 Ch. 35. **Refd.** Bernard *v.* Williams (1928), 139 L. T. 22.

PART I.

1 vi. ——.]—Even if an English equitable doctrine should be applied in any case so as to modify the effect of an Indian Act, which may well be doubted, the English doctrine of part performance affecting the provisions of an English statute as to the right to sue upon a contract, cannot be applied so as to create without writing an interest which Transfer of Property Act, s. 107, enacts can be created only by a registered instrument.—Ariff *v.* Jadunath Majumdar (1931), 58 L. R. Ind. App. 91, P. C.—**IND.**

1 vii. ——.]—The law in India recognises no distinction between legal & equitable estates.—Chhatra Kumari Devi *v.* Mohan Bikram Shah (1931), 58 L. R. Ind. App. 279, P. C.—**IND.**

PART II. SECT. 5, SUB-SECT. 1.

97 i. *Imposition of equitable terms—As condition of relief.*]—A person who seeks equity must do equity, & therefore one who demands performance of an agreement to hold property in trust for him must be content to have the agreement equitably construed.—*Re* Regal Phonograph Co., *Ex p.* Trustee, [1924] 1 D. L. R. 947 ; 4 C. B. R. 418.—**CAN.**

PART II. SECT. 5, SUB-SECT. 2.

sa. *Applicable to school corporation.*]—Niagara Public School Board *v.* Queenston Women's Institute, [1926] 4 D. L. R. 13 ; 59 O. L. R. 213.—**CAN.**

PART II. SECT. 6.

130 vi. —— ——.]—McGuire *v.* Prosser, [1925] 3 D. L. R. 866.—**CAN.**

PART II. SECT. 7.

c i. —— *Executory agreement for lease—Acts of ownership—Ejectment.*]—Ariff *v.* Jadu Nath Majumdar (1928), I. L. R. 55 Calc. 1090.—**IND.**

c ii. —— *Assignment of future property.*]—In the absence of any statutory enactment, the principle of *Collyer* v. *Isaacs*, No. 173, *supra*, should be adopted in British India.—Co-operative Hindusthan Bank, Ltd. *v.* Surendranath De (1931), I. L. R. 59 Calc. 667.—**IND.**

PART II. SECT. 11, SUB-SECT. 1.

192 iv. —— ——.]—In April, 1923, pltf. co. entered into an agreement in writing with B. for a lease to the co. for five years of certain land. B. died in Feb. 1924. This action was brought on May 20, 1924, against the exors. of B. & against G., to whom the exors. had, in May, 1924, agreed to sell the same land ; & the M. co., to which the land was (by direction of G.) conveyed by the exors. of B. on July 13, 1924, was added as a deft. Pltf. co. claimed specific performance of its agreement with B., a declaration that its rights were paramount to the rights of defts., in the land, & in the alternative damages for delay in carrying out the agreement & for breach thereof. A certificate of *lis pendens* was registered on May 21, 1924. On May 20, 1924, which was after the making of the second agreement, but before its registration on that day, defts. received notice of the claim made by pltf. co. Defts. G. & the M. co. contended that they were purchasers in good faith without notice of pltf. co.'s claim & were entitled to the benefit of the Registry Act, R. S. O. 1914, c. 124, ss. 71, 72, 73 & 75 :—*Held :* sect. 71 was applicable to the facts of the case ; at the time of the purchase these defts. had no actual notice of pltf. co.'s claim or agreement, & their agreement was registered before pltf. co.'s—in fact the latter was never registered at all—& the provisions of the Act afforded them a complete defence, but, leaving aside the provisions of the Registry Act, defts. had the better equity.—Paramount Theatres, Ltd. *v.* Brandenberger, [1928] 4 D. L. R. 573 ; 62 O. L. R. 579.—**CAN.**

sb. *Defence of purchase for value without notice—Not pleaded—Right to raise on appeal.*]—The plea of *bonâ fide* purchase for value is one which ought to be specifically alleged & proved by those who rely on it. Where, therefore, defts. did not plead that they were *bonâ fide* purchasers for value without notice & no issue was raised on this point, which was for the first time taken in argument in the appellate ct. :—*Held :* the defence was not available to defts. at the appellate stage.—Murat Singh *v.* Pheko Singh (1928), I. L. R. 7 Pat. 584.—**IND.**

Part III.—Equitable Jurisdiction or Equitable Relief.

258a. *S. P.* DREWRY *v.* BARNES (1826), 3 Russ. 94; 5 L. J. O. S. Ch. 47; 38 E. R. 511.

290a. ——.]—An agent cannot file a bill against a principal, or a principal against an agent, for an account, except in the case of complicated accounts, where there is an insufficient remedy at law.

Pltf. filed a bill against persons who claimed various interests in a fund then in his hands, praying for an account, & that the rights of such persons might be ascertained, & for an injunction to restrain an action which had been brought against him by one of such persons for the recovery of the fund, to which action the pltf. had pleaded equitable pleas. Pltf. admitted by his bill that he held the fund as agent or trustee, & himself claimed an interest. Upon demurrer by the different defts. to the bill for want of equity: —*Held:* pltf. was entitled to maintain his bill, being in the nature of a bill of interpleader, to ascertain his rights as well as those of third parties. The demurrers were, therefore, overruled.—BLYTH *v.* WHIFFIN (1872), 27 L. T. 330.

292a. —— —— **Pleading.**]—STURTON *v.* RICHARDSON (1844), 13 M. & W. 17; 2 Dow. & L. 182; 13 L. J. Ex. 281; 8 Jur. 476; 153 E. R. 7; *sub nom.* RICHARDSON *v.* STURTON, 3 L. T. O. S. 164.

Annotations:—**Refd.** Eason *v.* Henderson (1848), 12 Q. B. 986; Henderson *v.* Eason (1851), 17 Q. B. 701.

293a. —— **One tenant in common locking gate & taking away grass.**]—*Held:* the circumstances did not amount to an ouster, nor to a destruction of the common property, & the only remedy was a proceeding for an account.—JACOBS *v.* SEWARD (1872), L. R. 5 H. L. 464; 41 L. J. C. P. 221; 27 L. T. 185; 36 J. P. 771, H. L.

Annotation:—**Refd.** Birkin *v.* Smith, [1909] 2 K. B. 112.

303. *Add. Annotation:*—**Refd.** Soviet Republics Union *v.* Belaiew (1925), 42 T. L. R. 21.

347. *Add. Annotation:*—**Refd.** Anderson *v.* Equitable Assce. Soc. of the United States (1926), 134 L. T. 557.

358. *Add. Annotation:*—**Refd.** *Re* Barratt, National Provincial Bank *v.* Barratt, [1925] Ch. 550.

Part IV.—Exercise of Equitable Jurisdiction by the High Court.

494. *Add. Annotations:*—**N.F.** Legh *v.* Legh (1930), 143 L. T. 151; Lynn *v.* Bamber, [1930] 2 K. B. 72.

495. *Add. Annotations:*—**N.F.** Legh *v.* Legh (1930), 143 L. T. 151; Lynn *v.* Bamber, [1930] 2 K. B. 72.

495a. —.]—In an action for an account where the plea of limitation is raised, a reply that there has been a fraudulent concealment of the true facts is a good answer to the plea, & the doctrine of equity will apply & time only begin to run from the time the truth became known.—LEGH *v.* LEGH (1930), 143 L. T. 151.

Annotation:—**Foll.** Lynn *v.* Bamber, [1930] 2 K. B. 72.

495b. —— ——.]—Since the Jud. Acts the equitable principle that active & fraudulent concealment on the part of deft. constitutes a good reply to the Stat. Limitations is applicable even to pure common law causes of action; & even without the element of active concealment the Statute is no answer to a claim based on fraud.

In 1921 deft. sold pltf. plum trees warranted as "Purple Pershore." Pltf. some years afterwards, finding that the trees were not "Purple Pershore," brought an action in 1928 claiming damages for breach of warranty. Deft. denied the breach & pleaded the Stat. Limitations. In his reply pltf. alleged fraudulent representation by

PART III. SECT. 3, SUB-SECT. 1.

sc. *Right to maintain action—Disputed allegations raised by pleadings—Whether preliminary points raised.*]—Pltf. having brought an action against deft. for an account of moneys received by deft., an order was made in chambers for an account under the Rules of the Supreme Ct., 1909, Ord. 15, r. 1. Prior to the order being made pleadings had been delivered, & in his defence deft. made certain allegations which were disputed by pltf.:—*Held:* these allegations did not raise preliminary points to be decided before the taking of the accounts, but points which would arise upon the taking of the accounts. —LE MESURIER *v.* CONNOR, [1927] W. A. L. R. 66.—**AUS.**

PART III. SECT. 3, SUB-SECT. 8.—B. (a).

sd. *Materiality of error — Parties in fiduciary relationship.*]—The cts. will grant permission to reopen an account that has been settled for errors less considerable than usual where the parties stand in a fiduciary relationship.—RAHIM *v.* LOW (1924), I. L. R. 3 Ran. 1.—**IND.**

PART III. SECT. 3, SUB-SECT. 8.—B. (b).

318 iv. ——.]—Where a single fraudulent error is discovered in settled accounts, the proper order for the ct. to make is for the reopening of the whole account.—RAHIM *v.* LOW (1924), I. L. R. 3 Ran. 1.—**IND.**

PART III. SECT. 3, SUB-SECT. 8.—C.

362 ii. —— *For what mistakes.*]—Where an error of importance has been proved in an account stated, though such error may not be important enough to justify the opening of the settled accounts, the ct. should permit the accounts to be surcharged & falsified generally.—RAHIM *v.* LOW (1924), I. L. R. 3 Ran. 1.—**IND.**

362 iii. —— —— *Parties in fiduciary relationship.*]—The cts. will grant permission to surcharge & falsify an account that has been settled for errors less considerable than usual where the parties stand in a fiduciary relationship.—RAHIM *v.* LOW (1924), I. L. R. 3 Ran. 1.—**IND.**

366 i. *Overcharge—Acquiesced in.*]—Where an overcharge has been paid by a principal with knowledge of the overcharge & without protest, he cannot be permitted to question such payment after the accounts have been settled.—RAHIM *v.* LOW (1924), I. L. R. 3 Ran. 1.—**IND.**

PART III. SECT. 7.

439 i. *General rule.*]—FORT FRANCES PULP & PAPER CO. *v.* SPANISH RIVER PULP & PAPER MILLS, LTD., [1931] 2 D. L. R. 97.—**CAN.**

deft. & also fraudulent concealment of the breach:—*Held:* either of these pleas was relevant in answer to the Stat. Limitations. However, pltf. upon the evidence had failed to establish the charge of fraud.—LYNN *v.* BAMBER, [1930] 2 K. B. 72; 99 L. J. K. B. 504; 143 L. T. 231; 46 T. L. R. 367; 74 Sol. Jo. 298.

497a. —— **Variation of specialty by parol agreement.**]—Since by Jud. Act, 1873 (c. 66), s. 25 (11), as re-enacted by Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49), s. 44, in the case of a conflict between the rules of law & the rules of equity the rules of equity are to prevail, a contract under seal may be varied by a subsequent parol agreement.—BERRY *v.* BERRY, [1929] 2 K. B. 316; 98 L. J. K. B. 748; 141 L. T. 461; 45 T. L. R. 524, D. C.

501. *Add. Annotation:*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

504. *Add. Annotation:*—*As to* (2) **Refd.** *Re* Wait, [1927] 1 Ch. 606.

506. *Add. Annotation:*—**Refd.** *Re* Mason (1928), 97 L. J. Ch. 321.

Part VI.—Priority.

509a. ——.]—ANON. (1675), 2 Cas. in Ch. 208; 22 E. R. 913.

511. *Add. Annotations:*—**Apld.** Commonwealth Trust *v.* Akotey, [1926] A. C. 72. **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

Part VII.—Notice.

643. *Add. Annotations:*—*As to* (1) **Refd.** Parker *v.* Judkin, [1931] 1 Ch. 475. *Generally,* **Refd.** *Re* Murphy's Estate, Morton *v.* Marchanton (1930), 74 Sol. Jo. 321.

SECT. 3.—**CONSTRUCTIVE NOTICE**

(Vol. XX., p. 316.)

Conveyancing Act, 1882 (c. 39), s. 3, is now replaced by Law of Property Act, 1925 (c. 20), s. 199.

649a. ——.]—The doctrine of constructive notice operates adversely to a person who neglects to inquire; it does not entitle such a person to claim for his own advantage to be treated as having knowledge of the facts which inquiry would have disclosed.—HOUGHTON & Co. *v.* NOTHARD, LOWE & WILLS, [1927] 1 K. B. 246; 96 L. J. K. B. 25; 136 L. T. 140, C. A.; *affd.*, [1928] A. C. 1, H. L.

Annotation:—**Refd.** Newsholme Bros. *v.* Road Transport & General Insce. Co., Ltd., [1929] 2 K. B. 356.

659. *Add. Annotations:*—**Apld.** Greer *v.* Downs Supply Co., [1927] 2 K. B. 28. **Refd.** Newsholme Bros. *v.* Road Transport & General Insce. Co., [1929] 2 K. B. 356.

661a. —— ——.]—As a general rule the equitable doctrines of constructive notice are not to be extended to purely commercial transactions.—GREER *v.* DOWNS SUPPLY CO., [1927] 2 K. B. 28; 96 L. J. K. B. 534; 137 L. T. 174, C. A.

685. After this case add:—

Statutory restriction on inquiry—Exclusion of constructive notice.]—*See* Law of Property Act, 1925 (c. 20), s. 41 (2)—(5).

686. *Add. Annotation:*—*Generally,* **Refd.** Manchester & County Bank *v.* Monk (1929), 73 Sol. Jo. 465.

687. *Add. Annotation:*—*As to* (1) **Refd.** Kreditbank Cassel G.m.b. H. *v.* Schenkers, [1926] 2 K. B. 450.

688a. —— **Purchase of property from company—Property charged with annuity—Sale to company by executors as "beneficial owners."**]—Testator, who died in 1914, bequeathed his business & other assets & devised freehold

PART IV. SECT. 2.

sl. *In Ontario—Deprivation of right to present claim to Department of Crown Lands.*]—JOHNSTON *v.* STEACY, [1926] 4 D. L. R. 902; 59 O. L. R. 475.—**CAN.**

PART IV. SECT 4.

so. *Judgment in Supreme Court of Province.*]—A judgment recovered in the Supreme Ct. may be attacked in the Ct. of Ch.—DAN SMALLMAN *v.* WOODSIDE & BRYAN, [1932] 4 M. P. R. 1.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 1.—A.

513 ii. —— ——.]—Where two claimants to a fund have equal rights in equity to that fund, and one of the claimants has the legal title to it, the latter's claim will prevail over that of the other.

H., a dealer in motor cars, agreed to buy a car from the owner thereof for cash provided pltf. co. would finance the purchase. Accordingly, under an arrangement made with pltf. co. he had a lien contract executed by the owner as vendor & himself as purchaser. This contract, which was assigned by the owner to the co., was discounted by it. H. then sold & delivered the car to one K. under a lien contract which deft. co., having no notice of pltf. co.'s rights, discounted on H.'s assignment & delivery of the contract to it. H. absconded & the present action between the two cos. was brought to determine which of them was entitled to the unpaid portion of the purchase-price due from K.:—*Held:* K. was entitled to enforce his contract of purchase even as against pltf. co., & as between the two cos. deft., having the possession & the right to retain the possession of H.'s contract with K., had the superior right to receive the payments thereunder.—IMPERIAL FINANCE CORPN., LTD. *v.* FIDELITY TRUST CO., [1930] 2 W. W. R. 769; 4 D. L. R. 827; *affd.*, [1931] 2 W. W. R. 720; 3 D. L. R. 801; 39 Man. L. R. 573.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 2.—A.

614 i. *Time alone insufficient to give priority.*]—A widow & administratrix had carried on the business of deceased, & appointed her son to act as manager, giving him cheques blank as to the amount, & signed on behalf of the trading co. With this money the son purchased various securities which he lodged with the bank to secure overdrafts for himself & for the co. The next of kin sought a declaration that the securities were assets of deceased, & were held by the bank in trust for them:—*Held:* the equitable estate of the bank took precedence over the equity of the next of kin in spite of the latter's priority of time.—SCOTT *v.* SCOTT (1924), 58 I. L. T. 137.—**IR.**

PART VII. SECT. 3, SUB-SECT. 1.

648 i. *Nature of doctrine.*]—HENDERSON *v.* GRAVES (1856), 2 E. & A. 9.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 2.

659 i. *Commercial transactions—Doctrine not applicable.*]—Attention drawn to *Greer* v. *Downs Supply Co.*, No. 661a, *supra.*—R. *v.* MCPHERSON & QUIGLEY & UNION BANK OF CANADA (Alta.), [1927] 4 D. L. R. 937; 3 W. W. R. 416.—**CAN.**

property to his two sons, charged with an annuity in favour of his widow of £300 *per annum*. In 1923, the sons, who were also the exors. of the will, formed a co., & " as beneficial owners " conveyed the property to the co. In 1925 the co. sold the property to J. The conveyance recited that the co. were seised in fee simple in possession, free from incumbrances, & it purported to convey a like estate to J. The co. afterwards became insolvent. The annuitant claimed that the co. were liable to pay the annuity, & also that J. held the property subject to the charge, by reason of the fact that the circumstances attending the conveyance to him should have put him upon inquiry as to its existence :—*Held :* (1) the co. had notice of the charge & were liable, & debenture holders of the co. could not take the co.'s assets free from the liability, but (2) J. had not been put upon inquiry either (*a*) because the sons had purported to convey not as executors but as " beneficial owners " ; or (*b*) by the fact that the assignment to the co. was one not only of testator's freeholds & leaseholds, but also of leaseholds acquired since his death ; or (*c*) because in the deed assigning to the co. there was a recital which showed that a leasehold had been deposited with a bank to secure an overdraft ; or (*d*) because in the deed of 1923, the seal of the co. as purchasers, was fixed in the presence of two directors, one of whom was one of the sons. These facts did not amount to constructive notice to J. that the sons were not selling as exors., & he was therefore entitled to hold the property freed from the annuity.—PARKER *v.* JUDKIN, [1931] 1 Ch. 475 ; 100 L. J. Ch. 159 ; 144 L. T. 662, C. A.

688b. —— —— —— **Assignment to company of leaseholds acquired since testator's death.**]—PARKER *v.* JUDKIN, No. 688a, *ante*.

688c. **Recital in assignment to company**]. PARKER *v.* JUDKIN, No. 688a, *ante*.

688d. —— —— —— **Assignment to company in presence of two directors—One director executor.**]—PARKER *v.* JUDKIN, No. 688a, *ante*.

699. *Add. Annotation :*—**Refd.** Torbay Hotel *v.* Jenkins, [1927] 2 Ch. 225.

719a. —— ——.]—HALL *v.* SMITH (1808), 14 Ves. 426 ; 33 E. R. 584.

Annotations :—**Consd.** Pope *v.* Garland (1841), 4 Y. & C. Ex. 394 ; Drysdale *v.* Mace (1854), 2 Sm. & G. 225 ; Grosvenor *v.* Green (1858), 28 L. J. Ch. 173 ; Phillips *v.* Miller (1875), L. R. 10 C. P. 420. **Refd.** Adams *v.* Lambert (1838), 2 Jur. 1078 ; Carroll *v.* Keays, Keays *v.* Carroll (1873), 22 W. R. 243.

727. *Add. Annotations :*—**Apld.** Melzak *v.* Lilienfeld, [1926] Ch. 480 ; Flexman *v.* Corbett, [1930] 1 Ch. 672.

729. *Add. Annotation :*—**Apld.** Flexman *v.* Corbett, [1930] 1 Ch. 672.

746. *Add. Annotation :*—**Refd.** *Re* Des Reaux & Setchfield's Contract, [1926] Ch. 178.

755a. Stock standing in joint names—Whether notice of trust.]—The fact that stock or shares are standing in the names of joint owners is not notice to persons buying, or lending money on the stock or shares that the owners are trustees, nor does it put on such persons the duty of inquiring whether the property is held in trust.—KAEMENA *v.* CENTRAL BANK OF LONDON, LTD. (1888), 4 T. L. R. 657.

759. For " (1836) " read " (1830)."

760a. Notice of mortgage—After payment of purchase-money countermanded—Countermand withdrawn.]—An owner of a house mortgaged to first, second & third mtgees. He then sold it, subject to the first two incumbrances only, to a purchaser who paid for it & took the assignment, but owing to misgivings he countermanded payment of the cheque, & then for the first time received notice of the existence of the third mtge. Being, however, threatened with a summons in bkpcy., he withdrew his countermand, & the cheque was paid :—*Held :* he was not a purchaser for value without notice.—TILDESLEY *v.* LODGE (1857), 3 Sm. & G. 543 ; 30 L. T. O. S. 29 ; 3 Jur. N. S. 1000 ; 65 E. R. 772.

760b. Notice of second mortgage—After first mortgage discharged & purchase-money paid but before assignment of term.]—MEYNELL *v.* GARRAWAY (1662), Nels. 63 ; 21 E. R. 790.

Part VIII.—Equitable Assignments.

770. *Add. Annotations :*—**Distd.** Kursell *v.* Timber Operators & Contractors, [1927] 1 K. B. 298. **Consd.** *Re* Wait, [1927] 1 Ch. 606 ; Cotton *v.* Heyl, [1930] 1 Ch. 510. **Refd.** *Re* Smith, Franklin *v.* Smith, [1928] Ch. 10 ; *Re* Williams, Richards *v.* Williams, [1930] 2 Ch. 378 ; Blakey *v.* Pendlebury's Trustees (1931), 47 T. L. R. 503.

Part IX.—Conversion and Reconversion.

775a. —.]—Money was to be laid out in land, to be settled to the husband for life ; remainder to raise portions for young children ; the money was afterwards invested, by direction of the husband, in S.S. annuities ; afterwards by will he devised generally all his manors, etc. to certain uses ; the money in the funds must be laid out in land.—HICKMAN *v.* BACON (1793), 4 Bro. C. C. 333 ; 29 E. R. 920, L. C.

803. *Add. Annotation :*—**Refd.** *Re* Carnarvon's Chesterfield S. E., *Re* Carnarvon's Highclere S. E. (1926), 70 Sol. Jo. 977.

807. *Add. Annotations :*—**Follid.** *Re* Carrington, Ralphs *v.* Swithenback, [1932] 1 Ch. 1. **Refd.** *Re* Calow, Calow *v.* Calow, [1928] Ch. 710.

815a. **Fines & Recoveries Act, 1833 (c. 74), s. 71.**]—Testator, who died in 1875, specifically devised an undivided share in freeholds to his son P. for life with remainders which never took effect & devised the residue of his real estate upon limitations which in 1878 were held by the ct. to give testator's son W. an estate tail therein. In 1877 the freeholds, the undivided share in which was devised to P. for life, were sold under Leases & Sales of Settled Estates Act, 1856 (c. 120), & the proceeds of sale representing such share were paid into ct. After the sale W., who had previously executed a disentailing deed dealing in general terms with the lands devised to him by testator's will, executed another disentailing deed dealing in terms with the undivided share & the money in ct. resulting from the sale thereof. Neither of these deeds was executed with the consent of P. as the protector of the settlement. W. died in the lifetime of P. having by his will devised his residuary real estate to applt. & bequeathed his personal estate to resps. At the death of P. in 1920 applt. petitioned for payment out of ct. of the money, claiming that it had passed to him as residuary devisee of W. :—*Held :* the money retained the character of real estate inasmuch as Fines & Recoveries Act, 1833, s. 71, did not convert disentailed money into personal estate for all purposes, but merely directed that it should be treated as personal estate for the purpose of the form of a disentailing deed.—*Re* DICKSON'S SETTLED ESTATES, [1921] 2 Ch. 108 ; 90 L. J. Ch. 453 ; 125 L. T. 528 ; 65 Sol. Jo. 532, C. A.

817a. **Law of Property Act, 1925 (c. 20), Sched. I., Part IV.—General devise.**]—A testator, who died in 1928, devised to applt. all his freehold & copyhold property & gave all his leasehold property & personalty to trustees on certain trusts. Testator was absolutely entitled to two equal ninth parts of the residuary real estate of his father & to one-fourth part of certain mines & minerals :—*Held :* as a result of Law of Property Act, 1925 (c. 20), Sched. I., Part IV., & sect. 35, the real property became subject to a trust for sale, with the result that testator's interest became, on the passing of the Act, personal property by reason of the conversion so effected, &, therefore, passed under the gift of personal estate & not to the devisee.—*Re* KEMPTHORNE, CHARLES *v.* KEMPTHORNE, [1930] 1 Ch. 268 ; 99 L. J. Ch. 177 ; 142 L. T. 111 ; 46 T. L. R. 15, C. A.

Annotations :—**Apld.** *Re* Newman, Slater *v.* Newman, [1930] 2 Ch. 409. **Consd.** *Re* Warren, Warren *v.* Warren, [1932] 1 Ch. 42. **Refd.** *Re* Littlewood, Clark *v.* Littlewood (1930), 47 T. L. R. 79 ; *Re* Cruse, Gass *v.* Ingham, [1930] W. N. 206 ; *Re* Tong, Hilton *v.* Bradbury, [1931] 1 Ch. 202.

817b. **Specific devise.**]—In 1922 testator & his brother J. were seised of B. as tenants in common in fee simple in equal undivided moieties. By his will dated May 15, 1922, testator specifically devised " all my moiety or equal half part or share & all other my share in " B. to J.

On Jan. 1, 1926, the Law of Property Act, 1925 (c. 20), s. 35, & Sched. I., Part IV., para. 1 (2), came into operation, & B. thenceforth vested in testator & J. as joint tenants on the statutory trusts for sale. On Jan. 29, 1929, testator died without altering or confirming his will :—*Held :* the specific devise was adeemed by the imposition of the statutory trusts, & J. took nothing thereunder.—*Re* NEWMAN, SLATER *v.* NEWMAN, [1930] 2 Ch. 409 ; 99 L. J. Ch. 427 ; 143 L. T. 676.

Annotation :—**Distd.** *Re* Warren, Warren *v.* Warren, [1932] 1 Ch. 42.

817c. —— —— —— **Codicil made after 1926.**]—Where a will made before 1926 & devising an undivided share in land is confirmed by a codicil made after 1926 not mentioning the land, the devise is effective, as the devisee takes the proceeds of sale of the land.

Testatrix by her will made in 1923 devised her undivided share in certain lands to her son absolutely. By a codicil made in 1927 she made certain alterations in the will, subject to which she confirmed it. The codicil did not affect the devise. Testatrix died in 1930. By the operation of Law of Property Act, 1925 (c. 20), Sched. I., Part IV., para. 1, the land had been since Jan. 1, 1926, held upon the statutory trusts declared by sect. 35 of Law of Property Act, 1925 (c. 20). On a summons to determine whether the devise was adeemed by the joint operation of that paragraph & that section :—*Held :* it was not adeemed, & the interest of testatrix in the proceeds of sale went absolutely to the devisee.—*Re* WARREN, WARREN *v.* WARREN, [1932] 1 Ch. 42 ; 101 L. J. Ch. 85 ; 146 L. T. 224.

820a. ——.]—Conversion out & out of real into personal estate, in a will, only arises where a testator, by a will duly executed to pass real estate, directs that the produce of the real estate shall be treated at his death as if it had in all respects the quality of personal estate.—WHYTALL *v.* KAY (1833), 2 My. & K. 765 ; 3 L. J. Ch. 94 ; 39 E. R. 1136.

859 *Add. Annotations :*—**Refd.** *Re* Conquest, Royal Exchange Assce. *v.* Conquest, [1929] 2 Ch. 353 ; *Re* Whitaker, Rooke *v.* Whitaker, [1929] 1 Ch. 662.

871. *Add. Annotation :*—**Consd.** *Re* White, Pitman *v.* White (1929), 46 T. L. R. 30

914a. —— ——.]—COLLINGWOOD *v.* WALLIS (1727), 1 Eq. Cas. Abr. 395 ; 21 E. R. 1128, L. C.

915. *Add. Annotation :*—**Refd.** Ormond Investment Co. *v.* Betts, [1927] 2 K. B. 326.

937a. —— **Specific devise of land subject to contract for sale.**]—Testator in 1925 devised all

PART IX. SECT. 2, SUB-SECT. 3.—A.

925 iii. —— ——.]—M. having specifically devised certain land, entered into an agreement with the tenant of portion of the land that, in the event of the Irish Land Commission advancing £500 Guaranteed Land Stock to the tenant, the tenant would purchase, & he would sell, for that sum, & the agreement provided that the parties would execute the formal Land Commission agreement for sale on the terms of the agreement. M. died, & his exors. entered into a formal agreement with the tenant for sale at £500, & the sale was carried out :—*Held :* the land stock passed under the residuary clause in the will as personalty as & from the date on which the Land Commission agreed to advance the purchase money. —MILEY *v.* CARTY & MILEY, [1927] I. R. 541.—IR.

his freehold property situate at D. to trustees upon trust to hold same or the proceeds of sale thereof for his two sons named as joint tenants, & gave & bequeathed his residuary real & personal estate to other persons. Testator possessed at the date of his will an undivided moiety in some thirty-seven acres of freehold land at D., ten & a half acres of which he had, in 1921, contracted to sell. He died in 1925, before the purchase had been completed, & owing to difficulties of title completion did not take place until Dec. 1925 :—*Held :* the will having been made after the date of the contract for sale, & with full knowledge of that contract, indicated an intention, as shown by the reference to proceeds of sale, to pass whatever estate testator had in the property, though it was only part of his freehold land at D., to the specific devisees.—*Re* CALOW, CALOW *v.* CALOW, [1928] Ch. 710 ; 97 L. J. Ch. 253 ; 139 L. T. 235 ; 72 Sol. Jo. 437.

942. *Add. Annotation :*—**Consd.** *Re* Carrington, Ralphs *v.* Swithenbank, [1932] 1 Ch. 1.

953. *Add. Annotation :*—**Refd.** *Re* Carrington, Ralphs *v.* Swithenbank, [1932] 1 Ch. 1.

956. *Add. Annotations :*—**Apld.** *Re* Calow, Calow *v.* Calow, [1928] Ch. 710. **Folld.** *Re* Carrington, Ralphs *v.* Swithenback, [1932] 1 Ch. 1.

956a. —— —— ——.]—By will made in 1911 testator specifically bequeathed his C. shares to certain relatives. In 1927, by agreement in writing, he granted to H. an option to purchase all his C. shares within one month of his death. He died in 1930, & H. exercised the option :—*Held :* the case was governed by the decisions in *Lawes* v. *Bennett*, No. 807, & *Weeding* v. *Weeding*, No. 956 ; the specifically bequeathed shares had therefore been adeemed, & the proceeds of their sale formed part of the residuary estate.—*Re* CARRINGTON, RALPHS *v.* SWITHENBANK, [1932] 1 Ch. 1 ; 100 L. J. Ch. 299 ; 145 L. T. 284, C. A.

957. *Add. Citation :*—**Consd.** *Re* CARRINGTON, RALPHS *v.* SWITHENBANK, [1932] 1 Ch. 1.

962. *Add. Annotation :*—**Apld.** *Re* Calow, Calow *v.* Calow, [1928] Ch. 710.

963. *Add. Annotation :*—**Refd.** *Re* Carrington, Ralphs *v.* Swithenbank, [1932] 1 Ch. 1.

964. *Add. Annotation :*—**Apld.** *Re* Calow, Calow *v.* Calow, [1928] Ch. 710.

970. *Add. Citation :*—1 Coll. 80, n.

992. *Add. Annotation :*—**Refd.** *Re* Silva, Silva *v.* Silva, [1929] 2 Ch. 198.

1006. *Add. Annotation :*—**Consd.** *Re* Silva, Silva *v.* Silva, [1929] 2 Ch. 198.

1007a. —— —— —— ——.]—In 1924, by an order of the Ch. Div. funds in ct. belonging to S., a person of unsound mind not so found, were invested in a freehold house as a residence for S. The order did not say whether the house was to be regarded as real or personal estate. The house was sold, pursuant to an order of the master in lunacy, in 1927, & the proceeds of sale were invested in 3½ per cent. Conversion Stock. S. died in 1928 a widower & without issue :—*Held :* the freehold house became the real estate of S., & that the proceeds of sale retained the character of real estate, & passed to the heir at law.—*Re* SILVA, SILVA *v.* SILVA, [1929] 2 Ch. 198 ; 98 L. J. Ch. 459 ; 141 L. T. 452.

1008. *Add. Annotation :*—**Folld.** *Re* Silva, Silva *v.* Silva, [1929] 2 Ch. 198.

1034. *Add. Annotation :*—**Apld.** *Re* Price, [1928] Ch. 579.

1037. *Add. Annotation :*—**Consd.** *Re* Bund, Cruikshank *v.* Willis, [1929] 2 Ch. 455.

1040a. —— ——.]—A husband by his will, directed the remainder of the produce of his real & personal estate to be placed out at interest, & the dividends & produce thereof to be paid to his wife during her life :—*Held :* she was entitled to have all the property of testator, including the reversionary interest in the annuity, treated as converted at the time of testator's death.—JOHNSON *v.* ROUTH (1857), 27 L. J. Ch. 305 ; 6 W. R. 6.

Annotation :—**Refd.** Harrington (Countess) *v.* Atherton (1864), 4 New Rep. 206.

1049a. —— ——.]—Testator devised his real & personal estate to trustees, charging them not to sell, if they could avoid it, the real property till the end of nineteen years ; but if they should sell part, to apply the proceeds to pay off his mortgage debts, & to hold the residue till the end of the nineteen years, when the proceeds were to be paid to his children, A., B. & C. in certain shares. The trustees declined to accept the trust. All the *cestuis que trust* then executed a deed of trust, by which they agreed to divide the property into two classes. Class 1 was to be sold immediately, to pay testator's debts. Class 2 was to be held by the trustees named, in trust for the purposes of the will, so far as not inconsistent with the trust deed, to pay the rents accruing to the parties as entitled under the will, & with power to a majority of the trustees to sell even within the nineteen years, at the end of which period, however, the property was to be sold absolutely, & the proceeds divided as the will directed. B. died before the end of the nineteen years : —*Held :* (1) under the trust deed there was a conversion out & out of class 1 from the date of that deed ; but that there was a conversion of class 2 only at the end of the nineteen years, or, if sold before that period, then at the time of such sale ; & the intermediate rents of the part remaining unsold went to those entitled to the real estate ; (2) *semble :* under the will taken by itself, there was no conversion till the end of the nineteen years of that part of the real property which was then unsold, any conversion possible before that period being only for a certain limited purpose, that is, to pay debts of testator.—FERRIE *v.* ATHERTON (1852), 20 L. T. O. S. 170, H. L.

1061a. —— **Discretion to sell immediately for limited purpose.**]—FERRIE *v.* ATHERTON, No. 1049a, *ante*.

1065. *Add. Annotation :*—**Refd.** *Re* McKee, Public Trustee *v.* McKee, [1931] 2 Ch. 145.

1068a. ——.]—When property is given by will on trusts for conversion & investment, & to hold the investments on trust for a tenant for life & remaindermen, with a discretionary power to the trustees to postpone the conversion, & a provision that the income until conversion is to go to the tenant for life, that provision extends to property, such as a reversionary interest, which is not producing income as well as to property of a wasting character.

In adjusting the rights as between tenant for life & remaindermen in respect of a reversionary interest which ought to have been but has not been converted by trustees, interest should be calculated at the rate of 3 per cent.—ROWLLS *v.* BEBB, *Re* ROWLLS, WALTERS *v.* TREASURY SOLICITOR, [1900] 2 Ch. 107; 69 L. J. Ch. 562; 82 L. T. 633; 48 W. R. 562; 44 Sol. Jo. 448, C. A.

Annotations :—**Consd.** *Re* Woods, Gabellini *v.* Woods, [1904] 2 Ch. 4; *Re* Baker, Baker *v.* Public Trustee, [1924] 2 Ch. 271. **Reld.** *Re* Hargreaves, Hargreaves *v.* Hargreaves (1902), 86 L. T. 43; *Re* Whiteford, Inglis *v.* Whiteford, [1903] 1 Ch. 889; *Re* Beech, Saint *v.* Beech, [1920] 1 Ch. 40.

1079. *Add. Annotation :*—**Reld.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617.

1268. *Add. Annotation :*—**Reld.** A.-G. for Alberta *v.* A.-G. for Canada, [1928] A. C. 475.

1283a. Reconversion by foreclosure—Effect of Conveyancing Act, 1911 (c 37), s. 9—Intention to accept reconversion.]—Testator, who died in 1861, devised his real estate in strict settlement & empowered the trustees, with the consent of the tenant for life, to sell the same or any part thereof, & directed them with such consent to invest the proceeds of sale in the purchase of freehold land or in the public funds or on real securities to be respectively settled & held to & upon such uses & trusts corresponding as nearly as might be with the uses & trusts therein declared concerning the land sold, with power for the trustees from time to time with the like consent to vary such investments. In the events which happened the material limitations of the will resulted as follows: To the use of E., T. & J. successively for life in the order named, with remainder to the use of E., T. & J. as tenants in common in tail general, with cross-remainders between them in tail general, with remainders over. In 1867 part of the land was sold & the proceeds invested in mtge. of freehold land. In 1871 E. died leaving an only daughter. In 1881 T. died a bachelor. In 1898 the surviving trustee foreclosed, & in 1899, by a deed appointing a new trustee to which J. was party, the foreclosed land was conveyed to the uses & upon the trusts of the will as if the same had been thereby specifically devised. On the death of J. in 1916 without issue, his executrix, who was also executrix of T., claimed that the foreclosed land in fact represented personalty & was subject to a trust for sale by Conveyancing Act, 1911 (c. 37), s. 9, & that she was entitled to two-thirds of the proceeds. The only daughter of E. claimed the foreclosed land as tenant in tail under the limitations of the will, E., T. & J. never having disentailed :—*Held :* (1) owing to the power to vary investments, the crucial time for determining the character of each investment was the death of J., the surviving tenant for life, & that the mtges. having been then foreclosed the mere foreclosure operated as a reconversion of the property into realty, & that there was no equity on the part of any *cestui que trust* under the will to have the personal character of the investment restored to it; (2) by the deed of 1899, to which all the parties able to control the character of the investment of the trust fund were parties, the foreclosed land was duly adopted as real estate & settled to the uses of the will; (3) although Conveyancing Act, 1911 (c. 37), s. 9 (5), may apply to land foreclosed before the commencement of the Act & remaining at the passing of the Act in the condition determined by the foreclosure, it would be unreasonable to extend the retrospective operation of the section to a case like the present where previously to the commencement of the Act the foreclosed land had been definitely accepted & settled as land & rights acquired thereby; (4) even if, by virtue of sub-sect. 5, Conveyancing Act, 1911 (c. 37), s. 9, was to be deemed to apply to foreclosed lands as from the date of foreclosure, the terms of both sub-sects. 3 & 4 had in the present case been complied with sufficiently to prevent the reconversion of the land into money under sub-sects 1 & 2; (5) the foreclosed land had become legally vested in the daughter of E. in tail as the heir in tail of E.—*Re* BOGG, ALLISON *v.* PAICE, [1917], 2 Ch. 239; 86 L. J. Ch. 536; 116 L. T. 714.

Annotation :—*Generally*, **Reld.** *Re* Twopeny, Monro *v.* Twopeny (1924), 130 L. T. 816.

1316a. Contingent reversionary interest—In personalty.]—Testator, who was entitled in reversion expectant upon the determination of his wife's interest &, contingently upon no issue of the marriage living to attain a vested interest, to the proceeds of sale of certain real estate conveyed by him, upon his marriage in 1880, to trustees upon trust for sale, died in 1886 in his wife's lifetime, having devised the real estate, which had remained unsold, to the use of his wife for life with remainders over by way of legal limitations in strict settlement. There was no issue of the marriage. The real estate was not sold in the lifetime of the wife, who accepted the benefits under her husband's will & died in 1921 :—*Held :* inasmuch as at his death testator's interest was a contingent reversionary interest in personalty, contingent upon the event of no posthumous child being born who might attain a vested interest, & reversionary because it was expectant upon his wife's life interest, testator was not competent to effect a reconversion by his will, because he never became entitled to an absolute interest in the property before his death, & the property passed under his will as personalty.—*Re* STURT, DE BUNSEN *v.* HARDINGE, [1922] 1 Ch. 416; 91 L. J. Ch. 289; 126 L. T. 460; 66 Sol. Jo. 236.

1410. *Add. Annotation :*—**Consd.** *Re* Silva, Silva *v.* Silva, [1929] 2 Ch. 198.

PART IX. SECT. 4, SUB-SECT. 3.—E.

sa. *Settled Land Act*, 1882 (c. 38), s. 22 (5)—*Construction.*]—*Held :* this sub-sect. by its terms applies in favour of persons for, & to whom, the land, if not disposed of, would have been held & gone under the settlement. Once the beneficial interest has become absolutely vested in possession in a remainderman, the settlement has come to an end, & any subsequent devolution from such remainderman cannot be said to be under the settlement.—BENNETT *v.* LUCAS, [1929] I. R. 606.—IR.

PART IX. SECT. 9, SUB-SECT. 2.—A.

1284 i. *Election by person absolutely entitled.*]—Although there may be a trust for conversion, the beneficiaries may, if absolutely entitled, elect to take the property in its actual state.—CRAWFORD *v.* LUNDY (1876), 23 Gr. 244.—CAN.

PART IX. SECT. 9, SUB-SECT. 2.—E. (c).

1349 i. *Election on behalf of infant—By court.*]—Where circumstances make it highly advantageous for an infant

Part X.—Election.

1419. *Add. Annotation :—As to* (2) **Refd.** *Re* McKee, Public Trustee *v.* McKee, [1931] 2 Ch. 145.

1424a. —— **Legacy to heir-at-law—Will inoperative to pass real estate.**]—C., by his will, gave all he should leave in the world to trustees to pay his debts & legacies, among which was £1,000 to A., his brother & heir, & as to the residue in trust for natural children. Testator had real estate in Nova Scotia, but, as there were no witnesses to his will, it descended to the heir-at-law :—*Held :* supposing the words of the will would have passed real estate, if attested in due form, which was doubted, A. was entitled to his legacy, & also to the real estate.—FARQUHARSON *v.* COLVILLE (LORD) (1772), Rom. 129, L. C.

1428a. —— ——.]—GAINER *v.* CUNYNGHAM (1750), 1 Bli. 27, n. ; 4 E. R. 10, L. C.

Annotation :—**Consd.** Ker *v.* Wauchope (1819), 1 Bli. 1.

1438a. —— ——.]—Where by her will a wife expressly refrained from exercising a power of appointment, which she had, but abstained from extinguishing it & confined the operation of her will to her own property, & there was nothing in the husband's will which either put the wife to her election or put her in the position of seeking at the same time to approbate & to reprobate its provisions :—*Held :* she was in no way precluded from exercising her power of appointment by a subsequent will.—GRAY *v.* PERPETUAL TRUSTEE CO., [1928] A. C. 391 ; 97 L. J. P. C. 85 ; 139 L. T. 469 ; 44 T. L. R. 654, P. C.

1552a. Provision for forfeiture in case of dispute—Election.]—*Re* WHITWELL, SENIOR *v.* WILSON, [1890] W. N. 171.

Annotation :—**Refd.** Haynes *v.* Foster, [1901] 1 Ch. 361.

1578a. ——.]—Where successive irrevocable appointments are made in favour of the same person, the latter appointment will be held to be in substitution for the former, if such appears to be the intention of the donee of the power, & the person in whose favour the appointments are made will be compelled to elect between them.—ENGLAND *v.* LAVERS (1866), L. R. 3 Eq. 63 ; 15 W. R. 51.

Annotations :—**Expld.** *Re* Tancred's Settlmt., Somerville *v.* Tancred, *Re* Selby, Church *v.* Tancred, [1903] 1 Ch. 715. **Refd.** *Re* Eardley's Will, Simeon *v.* Freemantle, [1920] 1 Ch. 397.

1580a. Appointment to object within extent of power—No object in fact in existence—No election.]—BULWER *v.* HOARE (1825), 3 L. J. O. S. Ch. 227.

1581a. Invalid delegation of power—Gifts conferred on persons entitled under appointment exercised under delegated power—No election.]—*Re* STEVENS (1912), 134 L. T. Jo. 83.

1619a. —— **Marriage settlement—Husband not entitled to elect against interests of other parties to marriage settlement.**]—CROKER *v.* MARTIN (1827), 1 Bli. N. S. 573 ; 1 Dow. & Cl. 15 ; 4 E. R. 987, H. L.

Annotation :—**Consd.** Anstey *v.* Newman (1870), 39 L. J. Ch. 769.

1637a. —— —— ——.]—Testator having directed his exors. to sell whatever real estates he might die possessed of, & having given benefits to his heir-at-law, afterwards acquired other lands :—*Held :* the heir was not bound to elect.—BACK *v.* KETT (1822), Jac. 534 ; 37 E. R. 952.

Annotations :—**Consd.** Churchman *v.* Ireland (1831), 1 Russ. & M. 250. **Refd.** Schroder *v.* Schroder (1854), 3 Eq. Rep. 97 ; Hance *v.* Truwhitt (1862), 2 John. & H. 216.

1643a. Bequest of debt to mortgagor—Devise of reversion in property mortgaged.]—Testator having a debt secured on lands, gives the mtge. money to the mtgor., & desires that he will give a reversionary interest therein to a third person. The mtgor. selling the estate shall bring the mtge. money into ct., for the use of the devisee, subject to the life estate.—LEWIS *v.* KING (1789), 2 Bro. C. C. 600 ; 29 E. R. 330, L. C.

Annotation :—**Consd.** Whittaker *v.* Whittaker (1792), 4 Bro. C. C. 31.

devisee, an order will be made on his behalf granting election, to take property in its actual state before its conversion *de facto* where the will directs conversion.—*Re* CANN (1916), 34 W. L. R. 296 ; 10 W. W. R. 447 ; 26 Man. L. R. 285.—**CAN.**

PART X. SECT. 2, SUB-SECT. 1.—B. (c).

so. *Income of estate left to widow by will for life—Widow's property left after her death to son by codicil—Income received by widow till will & codicil proved—Liability of widow on election against will.*]—Testator by his will left the income of his estate to his wife for life, & directed that after her death it should be disposed of as set out in a codicil, not to be opened until after her death. By the codicil he disposed of all his estate among his children, giving to two of them, after the death of his wife, a certain property, which in reality belonged to her. His widow, without proving the will, received all the income of the estate for five years, after the lapse of which the will & codicil were proved. She then elected against the will :—*Held :* her election related back to, & she was liable to account from, the date of testator's death ; but, as she was not called upon to elect until this action was brought, she should not be charged with interest in the meantime.—DAVIS *v.* DAVIS (1896), 27 O. R. 532.—**CAN.**

PART X. SECT. 3, SUB-SECT. 9.

sp. *Widow taking different interests under will.*]—Under S.'s will his widow took absolutely thirty-four acres devised to her worth $1,000 ; she also took for life his house & lot garden worth about $1,500, but subject to a son's & a daughter's right "to have a home" there "as long as they are single." The son took absolutely the rest of testator's land worth about $3,500, & at the widow's death took "the house & lot & garden" also :—*Held :* the widow was not put to her election.—*Re* SEXSMITH (1925), 57 O. L. R. 283.—**CAN.**

sq. *Gift of legacy & maintenance to son—Gift of mortgage debt to mortgagor—Mortgage debt previously assigned to son.*] —ROSBOROUGH *v.* ST. ANDREW'S CHURCH, THE TRUSTEES OF (1917), 55 S. C. R. 360 ; 38 D. L. R. 119.—**CAN.**

PART X. SECT. 7, SUB-SECT. 2.

1691 ll. —— ——.]—P. in Feb. 1921, conveyed certain lands to a trust co., & by a declaration of trust of even date, accepted by the trust co., declared certain trusts upon which the lands were to be held. P.'s wife was to have a life interest in three of the parcels conveyed, & certain other benefits, & at her death the property was to be distributed among P.'s children ; this life interest was to be in lieu of dower in all P.'s lands. On Feb. 21, 1921, P., by letter, requested the trust co. to sign a declaration of trust to the effect that it hold one of the parcels of land conveyed to it, in which the wife was given a life interest, in trust, for payment to an investment society of $7,500 "which pays off the loan on stock for that amount held by my wife," & this the trust co. did. By P.'s will, made on the date of the execution of the conveyance & declaration, he appointed the trust co. his exor. & trustee. The wife took nothing under the will. P. died in July, 1921. In Jan. 1923, the trust co. made a mtge. in favour of an assurance co. upon three of the properties in which the widow claimed a life estate, to secure repayment of a large sum of money which was advanced to the trust co. & which the trust co. applied in paying off loans made to P. In an action by the widow against the assurance co. for a declaration as to her rights under the trust deed & declaration & for other relief :—*Held :* pltf. having taken & continued in possession of the properties in which

Part XI.—Satisfaction and Ademption.

1753. *Add. Annotation :*—**Folld.** *Re* Ware, *Re* Rouse, Ware *v.* Rouse (1926), 70 Sol. Jo. 691.

1769. *Add. Annotation :*—*As to* (1) **Apld.** *Re* Binns, Public Trustee *v.* Ingle, [1929] 1 Ch. 677.

1772a. ——.]—WALPOLE *v.* CONWAY (LORD) (1740), Barn. Ch. 153 ; 27 E. R. 593, L. C.

Annotations :—**Distd.** Tolson *v.* Collins (1799), 4 Ves. 483. **Apld.** Douglas *v.* Willes (1849), 7 Hare, 318. **Refd.** Kirkham *v.* Smith (1749), 1 Ves. Sen. 258.

1840. *Add. Annotation :*—**Distd.** *Re* Binns, Public Trustee *v.* Ingle, [1929] 1 Ch. 677.

1873. *Add. Annotation :*—**Apld.** *Re* Ware, *Re* Rouse, Ware *v.* Rouse (1926), 70 Sol. Jo. 691.

1873a. —— ——.]—There is no such obligation, according to the rules of equity, on a mother to advance or make a provision for her child, as in the case of a father ; &, therefore, when a mother makes a purchase or investment in the name of her child, or in the joint names of herself & her child, that does not of itself afford the presumption of advancement ; in such a case the intention to advance is a question of evidence.—BENNET *v.* BENNET (1879), 10 Ch. D. 474 ; 40 L. T. 378 ; 27 W. R. 573.

Annotation :—**Refd.** *Re* Orme, Evans *v.* Maxwell (1883), 50 L. T. 51.

1873b. —— ——.]—(1) No presumption arises in cases of dispositions in favour of children by a mother unless she has placed herself *in loco parentis* towards them, & evidence that such is the case must be forthcoming.

(2) Where testatrix exercised a general power of appointment by will in favour of her daughter, & subsequently on the daughter's marriage covenanted in her daughter's marriage settlement to pay a similar amount to the trustees thereof, & later by codicil recited the appointment of a certain sum by the will :—*Held :* the provision in the marriage settlement was by way of satisfaction or ademption of the powers made by the will, & the codicil was not inconsistent with such a view.—*Re* WARE, *Re* ROUSE, WARE *v.* ROUSE (1926), 70 Sol. Jo. 691.

1878. *Add. Annotation :*—*As to* (3) **Refd.** *Re* Binns, Public Trustee *v.* Ingle, [1929] 1 Ch. 677.

1912. After this case add :—

——.]—*See, now,* Administration of Estates Act, 1925 (c. 23), s. 49 (a).

1918a. ——.]—If a father devises to a daughter a portion equal or greater than what she is entitled to out of his land by settlement, that is a satisfaction, but the daughter may have her election.—BRIDGES *v.* HALES (1729), Mos. 108 ; 25 E. R. 298, L. C.

1920a. ——.]—BRIDGES *v.* HALES, No. 1918a, *ante.*

2006a. ——.]—The principle deducible from the dictum of the Ct. of Appeal expressed in *Re Scott, Langton* v. *Scott,* No. 1840, namely that, in the distribution of a testator's estate amongst his children & the children of deceased children, children claiming to take by substitution the share of their deceased parent must bring into account an advancement made by testator, in his lifetime to their parent, is not applicable to the case of a parent's indebtedness to testator ; so that, where a testator gave his residuary estate in trust for his children living at the period of distribution & the children of any child then dead, grandchildren are not liable, upon claiming their deceased parents' share, to bring into account a debt owing by the parent to testator's estate.—*Re* BINNS, PUBLIC TRUSTEE *v.* INGLE, [1929] 1 Ch. 677 ; 98 L. J. Ch. 307 ; 141 L. T. 91.

2012. *Add. Annotation :*—**Mentd.** Chaney *v.* Maclow (1928), 97 L. J. Ch. 345.

2046a. —— **Although interest unpaid at date of death.**]—A person, who borrowed £100 carrying interest at 5 per cent. *per annum,* by his will left a legacy of £100 free of duty to his creditor. The will did not contain any direction to pay debts. At the date of the debtor's death there was interest due & unpaid in respect of the debt. The exors. of the deceased paid the creditor the amount of the legacy & interest on the debt, up to the date of payment. The creditor then sued for the amount of the debt :—*Held :* the rule, that a legacy to a creditor of an amount equal to or greater than the debt owed by the testator to the creditor operated as a satisfaction of the debt, applied notwithstanding that there was interest due & unpaid in respect of the debt at the date of testator's death.—FITZGERALD *v.* NATIONAL BANK, LTD., [1929] 1 K. B. 394 ; 98 L. J. K. B. 382 ; 140 L. T. 406.

she claimed to have a life interest, had elected to take the benefits given to her by the trust deed & declaration, & was, therefore, tenant for life of the three properties referred to.—PURDOM *v.* NORTHERN LIFE ASS'CE CO. OF CANADA, [1928] 4 D. L. R. 679 ; 63 O. L. R. 12 ; *affd. sub nom.* FIDELITY TRUST CO. OF ONTARIO *v.* PURDOM & NORTHERN LIFE ASSCE. CO. OF CANADA, [1930] S. C. R. 119 ; 1 D. L. R. 1003.—**CAN.**

PART XI. SECT. 1.

1743 i. *Satisfaction defined.*]—Satisfaction is the donation of a thing, with the intention, either expressed or implied, that it is to be taken, either wholly or in part, in extinguishment of some prior claim of the donee. The doctrine has no application to cases where the prior portion has actually been transferred or paid.

One whose life was insured assigned to his son a portion of the insurance moneys $1,000, in consideration of an undertaking by the son to advance from time to time moneys necessary to pay parts of the premiums. Subsequently the insured made his will by which he gave to his son $1,000 " out of the money payable at my death out of my life insurance policy " :—*Held :* the $1,000 given by the will could not be regarded as a satisfaction of the $1,000 assigned to the son.—*Re* MARKS (1921), 64 D. L. R. 516 ; 50 O. L. R. 473.—**CAN.**

PART XI. SECT. 3, SUB-SECT. 2.—A. (a).

sr. *By payments to legatee—In testator's lifetime.*]—*Held :* a sum of money paid by testator to persons to whom he had bequeathed one-half of his effects, was an anticipated payment of their provision, & not a donation.—BUCHANAN *v.* CRAWFORD (MOLLISON) (1824), 2 Sh. Sc. App. 445. —**SCOT.**

PART XI. SECT. 3, SUB-SECT. 3.—C.

1902 i. *In respect o realty.*]—Doe d. SHORE *v.* SAUNDERS (1842), 2 Kerr, 18. —**CAN.**

PART XI. SECT. 4, SUB-SECT. 2.—A.

2037 ii. —— ——.]—A testator by his will, after directing the payment of all his just debts, appointed F. to be one of his three exors. & trustees, & went on to declare that F. should " be paid out of my estate the debt or sum of money owing by me to him the amount of which the said F. will disclose to my other trustees." F. renounced probate & lodged with the exors. a statement of the amount of his claim :—*Held :* the words of the will did not create a legacy, but the testator's purpose was to acknowledge that he was indebted to F. in an uncertain amount & that F. was entitled to payment of the sum which he named as owing, without further investigation or inquiry on the part of the exors.—FITZPATRICK *v.* GILBERT, GILBERT *v.* FITZPATRICK, 22 Tas. L. R. 29.—**AUS.**

2047a. - **Bequest antecedent to debt.**]—ROBERTS *v.* BENNET (1690), 2 Vern. 136; 23 E. R. 695.

Annotation:—**Reld.** Northcote *v.* Northcote (1702), Colles 287, H. L.

2057a. —— **Although interest unpaid at date of death.**]—FITZGERALD *v.* NATIONAL BANK, LTD., No. 2046a, *ante*.

2075a. ——.]—*Re* SHAFTO, FAWCETT *v.* SHAFTO (1903), 48 Sol. Jo. 68, C. A.

2102a. ——.]—HOBBS *v.* TAITE (1738), West *temp.* Hard. 582; 25 E. R. 1096, L. C.

Annotation:—**Consd.** Wallace *v.* Pomfret (1805), 11 Ves. 542.

2138. *Add. Citation:*—3 Bro. C. C. 242.

2188a. —— ——.]—KEMP (LADY) *v.* KEMP (1671), 2 Rep. Ch. 63; 21 E. R. 617.

2224. *Add. Annotation:*—*Generally*, **Consd.** *Re* Warren, Warren *v.* Warren, [1932] 1 Ch. 42.

Part XIV.—Merger of Estates and Charges.

2367a. -.]—NORFOLK *v.* GIFFORD (1690), 2 Vern. 208; 23 E. R. 735

2373a. —— ——.]—Where under a marriage settlement the trusts of the wife's property were for the wife for her life & after her death for the husband for his life, with a common form protected life interest proviso in respect of the husband's interest, & the usual trusts for the issue of the marriage, with a gift over in default of issue, which event happened, as the wife should by deed or will appoint with an ultimate trust for next of kin, & the wife died & her will operated as an exercise of the power of appointment in the husband's favour, on an application by the husband to have the trust transferred to him on the ground of merger of his interests:—*Held:* there had been no merger of the husband's life estate in the reversion, because the two estates were not coterminous, & an estate might come into existence on an alienation of his life estate in favour of possible children on a re-marriage.—*Re* CHANCE'S SETTLEMENT TRUSTS, CHANCE *v.* BILLING (1918), 62 Sol. Jo. 349.

2395. *Add. Annotation:*—*As to* (2) **Distd.** *Re* Silva, Silva *v.* Silva, [1929] 2 Ch. 198.

Part XV.—Subrogation.

2424. *Add. Annotation:*—**Reld.** Page *v.* Scottish Insce. Corpn. (1929), 98 L. J. K. B. 308.

PART XI. SECT. 4, SUB-SECT. 3.—B.

2069 i. *Addition to annuity.*]—COLE *v.* COLE (1838), 5 O. S. 744.—**CAN.**

PART XI. SECT. 4, SUB-SECT. 3.—G.

2102 i. *Presumption of satisfaction rebutted.*]—A legacy to a creditor equal to or greater than the debt owing him by the testator is presumed to be a satisfaction of the debt, but this presumption will be rebutted by slight circumstances, either appearing in the will or incident to the nature of the debt & of the legacy. A simple direction to pay debts is sufficient to rebut the presumption, *a fortiori* a direction, as in this instance, to pay debts & "thereafter" legacies.—SPARROW *v.* ROYAL TRUST CO., [1932] 1 W. W. R. 379; 40 Man. L. R. 211.—**CAN.**

PART XI. SECT. 5.

sj. *Separation agreement providing for support of infant son—Provision in will for support.*]—By a separation agreement the husband agreed to pay the wife a certain sum *per annum* for "support & otherwise" of their child until it should become self-supporting or attain majority or leave the custody of the wife; & she agreed to accept said sum in full settlement of all claims which she then had or might thereafter have for the support & otherwise of the child. By his will executed four years later, which disposed of all his property, the husband directed his trustees to pay the income of the residue of his estate "towards the maintenance & education of" said child "during his minority":—*Held:* said provision in the will was in substitution for, & not in addition to, that in the agreement; & the wife had an election between them, but was not entitled to both.—ROSS *v.* ROSS, [1930] 1 W. W. R. 375; 2 D. L. R. 42; *sub nom.* ROSS *v.* FOSSUM & TORONTO GENERAL TRUSTS CO., 42 B. C. R. 272.—**CAN.**

PART XII. SECT. 3, SUB-SECT. 2.

sk. *Failure to pay contributions—Joint venture—Whether abandonment.*]—DADSON *v.* GREST & GREST, [1928] 1 D. L. R. 479; [1928] 1 W. W. R. 286 22 Sask. L. R. 253.—**CAN.**

PART XIII. SECT. 3.

sv. *General rule.*]—In order to marshal, not only must there be two creditors of the same person, but one of them must have two funds belonging to the same person to which he can resort.—ROYAL BANK OF CANADA *v.* IZEN, [1921] 2 W. W. R. 929.—**CAN.**

PART XV.

2424 i. *Definition.*]—As a general rule the doctrine of subrogation does not apply in favour of a party who has not paid money or given something in satisfaction or extinguishment of a security, claim, or demand, or partly so, or who has not paid something by way of getting in a security, or the like.—COURSOLLES *v.* FOOKES (1889), 16 O. R. 691.—**CAN.**

PART XVI. SECT. 1, SUB-SECT. 2.—A.

2428 i. *What is a penalty—Goods delivered under hire-purchase agreement—Right to seize goods on failure to pay instalment.*]—A hire-purchase agreement relating to a motor truck provided for payment in nine monthly instalments. The hirer could become the owner of the truck on payment in full of the instalments & a rupee extra. On failure on part of the hirer to pay any instalment as it became due, the owner was entitled to seize the truck & credit its value as against the amount due, but subject to a condition that the owner in no case would credit the hirer with more than the amount still due on the contract:—*Held:* the clause of the agreement which enabled the owner to seize the truck, & keep it without making any payment to the hirer even though the value of the truck may be very greatly in excess of the amount due under the agreement, was a stipulation by way of penalty which the ct. can relieve against under Contract Act, s. 74.—MAUNG BA OH *v.* MOTOR HOUSE CO. (1929), I. L. R. 7 Ran. 431.—**IND.**

PART XVI. SECT. 1, SUB-SECT. 2.—C.

sw. *Discount for prompt payment.*]—*Held:* a penalty, & relief granted.—COLGROVE *v.* GUNDY (1914), 28 W. L. R. 731; 17 D. L. R. 45.—**CAN.**

PART XVI. SECT. 1, SUB-SECT. 2.—D.

1 i. —— ——.]—In the case of a sale when the conditions are that the purchaser shall forfeit the money which he has paid if he makes default in any future payment, the ct. will relieve the purchaser from forfeiture where the non-payment has been the result of the deliberate misrepresentations of the vendor, in order to expose the purchaser to forfeiture.—*Re* STANLEY & BUNTING, [1924] 3 D. L. R. 599; 5 C. B. R. 18.—**CAN.**

PART XVI. SECT. 3, SUB-SECT. 1.

sz. *Penalty being reservation only of existing legal right—Relief not granted.*]—BOLAND *v.* MCCARROLL (1876), 38 U. C. R. 487.—**CAN.**

Part XVIII.—Equitable Defences.

2483. *Add. Annotation :*—**Apld.** R. *v.* Essex JJ., *Ex p.* Perkins, [1927] 2 K. B. 475.

2489a. ——.]—WHALLEY *v.* WHALLEY (1860), 2 De G. F. & J. 310 ; 45 E. R. 641, L. JJ.

2490. *Citations :*—For " 3 Bro. C. C. 646 " read " 3 Bro. C. C. 639, n."
Add. Annotation :—As to (2) **Consd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

2497. *Add. Annotation :—As to* (1) **Refd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

2512. *Add. Annotations :—As to* (4) **Consd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399. **Refd.** Anchor Trust Co. *v.* Bell, [1926] Ch. 805.

2513. *Citations :*—For " L. R. 5 C. P. 221 " read " L. R. 5 P. C. 221."
Add. Annotations :—As to (2) **Apld.** Weld *v.* Petre (1928), 97 L. J. Ch. 399. **Refd.** Anchor Trust Co. *v.* Bell, [1926] Ch. 805.

2520. *Add. Annotation :*—**Consd.** Lynn *v.* Bamber, [1930] 2 K. B. 72.

2521. *Add. Annotations :*—**Consd.** Legh *v.* Legh (1930), 143 L. T. 151 ; Lynn *v.* Bamber, [1930] 2 K. B. 72.

2525. *Add. Annotations :*—**Consd.** Legh *v.* Legh (1930), 143 L. T. 151 ; Lynn *v.* Bamber, [1930] 2 K. B. 72.

2527. *Add. Annotation :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

2552. *Add. Annotation :*—**Refd.** Douglass *v.* Lloyds Bank, Ltd. (1929), 34 Com. Cas. 263.

2554. *Add. Annotation :*—**Refd.** Douglass *v.* Lloyds Bank, Ltd. (1929), 34 Com. Cas. 263.

Part XIX.—Ne exeat regno.

2637a. -.]—A.-G. *v.* MUCKLOW (1815), 1 Price, 289 ; 145 E. R. 1405.

2667a. Not residuary legatee.]—A residuary legatee cannot have a writ of *ne exeat regno* against a debtor of testator, on the ground that he colludes with the exor.—GRAVES *v.* GRIFFITH (1820), 1 Jac. & W. 646 ; 37 E. R. 514, L. C.

Part XX.—Quia Timet Actions.

2702a. Nature of action.]—A *quia timet* action is a proceeding by which the ct. is enabled to prevent its jurisdiction from being stultified.—*Re* ANDERSON-BERRY, HARRIS *v.* GRIFFITH, [1928] Ch. 290 ; 97 L. J. Ch. 111 , 138 L. T. 354, C. A.

2703. *Add. Annotation :*—**Refd.** *Re* Anderson-Berry, Harris *v.* Griffith, [1928] Ch. 290.

2705. *Add. Annotation :*—**Consd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1928] Ch. 235.

2705a. Threatened injury to property by waterworks.]—It is open to the owners of property threatened with injury by authorised waterworks to bring a *quia timet* action to restrain the undertakers from doing an act which threatens to injure such property.—GRAIGOLA MERTHYR CO., LTD. *v.* SWANSEA CORPN., [1928] Ch. 31; 97 L. J. Ch. 129; 43 T. L. R. 600 ; 71 Sol. Jo. 681 ; *affd.* on another point, [1928] Ch. 235, C. A. ; [1929] A. C. 344, H. L.

2710. *Add. Annotation :*—**Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

2712. *Add. Annotations :*—**Consd.** *Re* Anderson-Berry, Harris *v.* Griffith, [1928] Ch. 290. **Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

2713. *Add. Annotations :*—**Refd.** *Re* Harrington Motor Co., *Ex p.* Chaplin, [1928] Ch. 105; Hood's Trustees *v.* Southern Union General Insce. Co. of Australasia, [1928] Ch. 793.

PART XVIII. SECT. 4, SUB-SECT. 4.—B.

2579 i. *Rescission on ground of fraud.*]—Where deft. raises a defence of fraud & misrepresentation, the ct. will not grant him relief if he has been guilty of *laches*. On discovering the fraud or misrepresentation it is the duty of deft. to repudiate the transaction immediately.—MEIKLEJOHN *v.* HUGO, [1924] 1 D. L. R. 272.—**CAN.**

ESTATE AND OTHER DEATH DUTIES.

Part I.—In General.

1. *Add. Annotation :—As to* (2) **Refd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

Part II.—Estate Duty.

19. *Add. Annotation :—Generally,* **Refd.** *Re* Previté, Sturges *v.* Previté, [1931] 1 Ch. 447.

22a. —— ——.] — Testator bequeathed "B. House & contents" & the stables held therewith, the leases of which would expire in 1995, to trustees upon trust to allow C. to have the use & enjoyment thereof for life, & after her death upon the like trust for the benefit of L. for life. Testator directed "the rent, outgoings, rates & taxes for the time being payable in respect of the messuage & premises, & keeping same & the contents thereof insured against fire & burglary & in a proper state of preservation, shall always be paid by my trustees out of the income of my residuary personal estate." C. having died, was succeeded as tenant for life by L. :— *Held :* (1) on the death of C., the property which passed was the right to enjoy the benefit of the annual sum, & the case fell within 1894 Act, s. 1 ; (2) the principal value of the property should be ascertained under sect. 7 (5) (8), the special facts of the case being taken into consideration by the comrs. ; (3) the duty must be borne by L., but on equitable terms, namely, it should in the first instance be borne by residue, which should be recouped by a policy on the life of L. to be vested in the trustees which at her death would produce a sum equal to the duty, & the interest on the duty & the policy premiums should be retained & paid by the trustees in each year out of the sum which would otherwise be expended by them on B. House. —*Re* CASSEL, PUBLIC TRUSTEE *v.* MOUNTBATTEN, [1927] 2 Ch. 275 ; 96 L. J. Ch. 483 ; 137 L. T. 785 ; 43 T. L. R. 743 ; 71 Sol. Jo. 804.

Annotation :—**Consd.** *Re* Northcliffe, Arnholz *v.* Hudson, [1929] 1 Ch. 327.

27. *Add. Annotations :—As to* (1) **Apld.** *Re* Cassel, Public Trustee *v.* Mountbatten, [1927] 2 Ch. 275. **Refd.** Parr *v.* A.-G., [1926] A. C. 239. *As to* (5) **Consd.** Parr *v.* A.-G., [1926] A. C. 239 ; A.-G. *v.* Adamson (1932), 101 L. J. K. B. 299. *Generally,* **Refd.** *Re* Northcliffe, Arnholz *v.* Hudson, [1929] 1 Ch. 327.

33a. **Death gratuity payable to representatives of teacher.**]—Estate duty is payable on a death gratuity granted under Teachers (Superannuation) Act, 1925 (c. 59), s. 5 (1), by the Board of Education to the personal representatives of a deceased intestate teacher as property passing on the death of the teacher, such gratuity being property of which the deceased was at the time of her death competent to dispose within Finance Act, 1894 (c. 30), ss. 2 (1) (*a*), 22 (2) (*a*) as deceased had an authority enabling her to appoint or dispose of the gratuity as she thought fit, whether exercised by instrument, *inter vivos*, or by will, or by both.—A.-G. *v.* QUIXLEY (1929), 98 L. J. K. B. 652 ; 141 L. T. 288 ; 93 J. P. 227 ; 45 T. L. R. 455 ; 27 L. G. R. 693, C. A.

36. *Add. Annotation :*—**Consd.** A.-G. *v.* Adamson (1932), 146 L. T. 358.

39. *Add. Citation :*—132 L. T. 704.

After this case add :—

—— ——.]—*See, now,* Finance Act, 1930 (c. 28), s. 39.

42. *Add. Annotation :*—**Consd.** A.-G. *v.* Farrell (1930), 99 L. J. K. B. 605.

59. *Add. Annotation :—As to* (2) **Consd.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

61. *Add. Annotation :*—**Refd.** Bird *v.* I. R. Comrs. (1924), 12 Tax Cas. 785.

PART II. SECT. 3, SUB-SECT. 1.—A.

sa. *Licence—& interest in licensed premises.*]—The interest of a deceased person in the business carried on in licensed premises leased from him & in the license thereof is "property" within Death Duties Act, 1909, s. 5, on the value of which his estate is liable for payment of estate duty over & above the amount of the valuation made under Valuation of Land Act, 1908.—*Re* GILMER, PUBLIC TRUSTEE *v.* STAMP DUTIES COMR., [1929] N. Z. L. R. 61.—**N.Z.**

sb. *Provincial bonds exempt from succession duty.*]—Alberta provincial bonds, exempt from succession duty, must be included in the net value of an estate in order to arrive at the percentage of duty payable by any beneficiary, but such inclusion does not make the amount of the bonds subject to succession duty.—*Re* MILLS ESTATE, [1928] 3 D. L. R. 106 ; [1928] 2 W. W. R. 65 ; 23 Alta. L. R. 521.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—D. (b).

45 ii. —— *By deed incompletely executed.*]—FEDERAL COMR. OF TAXATION *v.* TAYLOR (1929), 42 C. L. R. 80 ; 3 A. L. J. 65 ; [1929] Argus L. R. 169. —**AUS.**

sc. *Gift made within three years before death—Money spent on improving house —Whether gift to wife.*]—A husband & wife, with their children, lived together in a house which belonged to the wife ; each enjoyed a separate income. The husband paid to a builder with whom he had made contracts about £2,000 for improvements & repairs to the house. A few months later he died at the age of fifty-three. It was found that the transaction was not entered into with intent to diminish the value of the husband's estate, but that the object was simply to improve the family home in accordance with their means & station in life ; & that there was no reason to believe that the husband would not enjoy the normal span of life, or that he would necessarily predecease his wife :—*Held :* the payments did not constitute a gift to the wife of the deceased within Death Duties Act, 1921, of New Zealand, ss. 38, 39, so as to be deemed to be part of the husband's estate for the purposes of that Act.—FINCH *v.* STAMP DUTIES COMR., [1929] A. C. 427.—**N.Z.**

sd. —— *Shares in company issued to children of deceased—Payment by company's cheque debited to deceased's personal account—Subsequent transfer of debits to children's accounts—Re-transfer of debits to deceased's account within three years of death.*]—PERPETUAL TRUSTEE CO. *v.* COMR. OF STAMP DUTIES (1929), 29 S. R. 153 ; 46 W. N. 58 ; *revsd.*, 43 C. L. R. 247 ; 30 S. R. N. S. W. 215 ; 47 N. S. W. W. N. 108 ; (1930), Argus L. R. 33.—**AUS.**

63. *Add. Annotation:*—**Folld.** A.-G. *v.* Farrell (1930), 99 L. J. K. B. 605.

68a. —— —— —— **Disentailing deed & resettlement.**]—By a disentailing deed & a deed of resettlement, A. & his mother appointed property to trustees upon trust for the mother for life, & then upon certain trusts for management. There followed a discretionary trust in favour of A., his wife or children, with remainder in trust for A.'s sons, & with ultimate remainder to E. The mother died in 1925, & estate duty was paid on the value of the settled property. The trustees, under their discretion, then paid £50 a month to A. & the balance of income to E. In 1926 A. died, unmarried, & estate duty was claimed:—*Held:* A., in executing the disentailing deed & resettlement, had acted as a person "competent to dispose of property" within 1894 Act, s. 22 (2) (*a*), & the discretionary trust in his favour was a reservation by him of an "interest" in the property within Customs & Inland Revenue Act, 1881 (c. 12), s. 38 (2) (*c*). Therefore, by that sub-sect. read with 1894 Act, s. 2 (1) (*c*), the property was deemed to have passed on A.'s death & estate duty was payable.—A.-G. *v.* FARRELL, [1931] 1 K. B. 81; 99 L. J. K. B. 605; 143 L. T. 639; 46 T. L. R. 587, C. A.

67a. —— **Contingent succession—Accumulations.**]—By a settlement dated Mar. 24, 1924, the settlor directed the trustees thereof to hold the capital of the trust funds upon trust for all or such of his children then living or thereafter to be born as he should appoint, & that during his life the income pending any such appointments should be accumulated & added to the capital. On his death the capital went as to two-fifths to his son & as to three-fifths equally between his three daughters if they survived him. The trust on the settlor's death in favour of the son was not expressed to be contingent, but there was a proviso that if the son died before the settlor his two-fifths should go over to the daughters, again only in the event of their surviving the settlor. The son & daughters survived the settlor, who had no more children after the date of the settlement. On the question whether, under the trusts of that settlement, on the death of the settlor on Mar. 11, 1928, without having exercised the power of appointment, the trust property passed on his death to the four children within Finance Act, 1894 (c. 30), s. 1, & thus became liable to estate duty, & also devolved on the death so as to create a succession under Succession Duty Act, 1853 (c. 51), s. 2, & was liable to succession duty:—*Held:* (1) before the death of the settlor, the beneficial interest of the children in the trust property was indefinable, since in certain events they might never have become entitled, & the settlor had reserved full control both of capital & income until his death; but, on his death, the son became indefeasibly entitled to two-fifths & each of the three daughters became beneficially & indefeasibly entitled to one-fifth; & accordingly the capital of the trust funds passed on the death as also the accumulations of income; (2) the capital of the trust funds was also liable to succession duty on the death of the settlor, & no distinction could be made between capital & accumulations of income which were the fruit borne by the corpus of the settled funds.—A.-G. *v.* ADAMSON, [1932] 2 K. B. 159; 101 L. J. K. B. 299; 146 L. T. 358; 76 Sol. Jo. 95, C. A.; *revsd.* 174 L. T. Jo. 489, H. L.

72. *Add. Annotation:*—*As to* (2) **Refd.** *Re* Wilkinson, Page *v.* Public Trustee, [1926] Ch. 842.

75. *Add. Citations:*—94 L. J. K. B. 139; 132 L. T. 717.

90a. —— —— **Trust established in England.**]—By his will, made in English form, testator, who declared that the instrument was to take effect according to the law of Hong Kong where he was domiciled, devised & bequeathed his property, which was situate out of the United Kingdom, to trustees on trust to invest a sum to produce an annuity for his wife, to pay certain legacies & to stand possessed of the residue to pay the annual income thereof to his sons or son during their or his lives or life, & on the death of the last survivor of his sons in trust for his son's children. The tenant for life, who was the only son of testator living at his death, wished to borrow money &, at the request of the lenders, he appointed, in England, four new trustees of the will, three of whom were resident in England. Between 1913 & 1922, owing to the tenant for life's dealings with the trust funds, proceedings in the Ch. Div. were instituted & orders were made in connection with the administration of the trusts of the will. In 1922 the tenant for life died, leaving him surviving his widow & two infant sons, who were domiciled in Hong Kong but had been made wards of ct.

PART II. SECT. 3, SUB-SECT. 2.—E.

p i. —— —.]—By an indenture T., who was entitled in fee simple to certain lands subject to certain leases then current, conveyed the lands to A., his daughter, for life, or until the happening of certain events, with remainder to her children, in consideration of covenants by her to make annual payments to him & his wife during their lives, & to indemnify him in respect of covenants contained in the unexpired leases. T. & his wife predeceased the daughter, & she died leaving children. Her life estate had not determined in her lifetime:—*Held:* the lands comprised in the indenture did not form part of the dutiable estate of A. by virtue of sect. 102 (2) (*k*) of "Stamp Duties Act, 1920–24." The dominant words of that provision are "under or by virtue of any agreement made by the deceased," & they mean that the passing of the property shall proceed from the volition of deceased.—ANGUS *v.* COMR. OF STAMP DUTIES (1930), Argus L. R. 337; 4 A. L. J. 163.—**AUS.**

se. *Reservation of life interest to settlor—On surviving wife.*]—By a marriage settlement made in 1876, £30,000 was settled upon trust to pay the income to the settlor's wife for life, after her death to the settlor for life, & after the death of the survivor upon trust for the children or remoter issue as they should by deed jointly appoint, or in the absence of a joint appointment as the survivor should by will or deed appoint, & in default of appointment for the children as therein provided. The settlor died in 1925, without having exercised the joint power of appointment, leaving his wife & children him surviving. For the purpose of death duty under the Stamp Duties Act, 1920–1924, of N. S. W.:—*Held:* as the settlement contained a trust to take effect "after the death" of the deceased settlor & in reference thereto, his property was to be "deemed to include" the property subject to the trust, without deducting the value of his widow's life interest therein.—RABETT *v.* STAMP DUTIES COMR., [1929] A. C. 444.—**AUS.**

sf. —— *Jointly with wife.*]—In 1896 a husband settled property in N. S. W., directing that the income therefrom should be paid to his wife during their joint lives, & upon the death of either of them to their daughters equally for their respective lives. The settlor died in 1914, & was survived by his wife:—*Held:* the settlement contained a trust "to take effect after his" (the settlor's) "death" within Stamp Duties Act, 1898, of New South Wales, s. 58, & accordingly upon the death of the settlor duty under that sect. became payable.—THOMSON *v.* STAMP DUTIES COMR., [1929] A. C. 450.—**AUS.**

by virtue of the proceedings in the Ch. Div. & the orders made therein. The trust property was situate abroad:—*Held:* the succession of the infants to testator's residuary estate was at his death a succession by virtue of Hong Kong law & to Hong Kong property, & it had never lost that character or fallen within 1853 Act, s. 2, & the property was not liable to estate duty under 1894 Act, s. 2 (2). —A.-G. *v.* BELILIOS, [1928] 1 K. B. 798; 97 L. J. K. B. 139; 138 L. T. 294; 44 T. L. R. 214; 72 Sol. Jo. 49, C. A.

94. *Add. Annotation:*—**Apld.** A.-G. *v.* Howe (1925), 94 L. J. K. B. 540.

96a. —— —— **Shares.**]—Testator, a German subject, was, at the outbreak of the European War, entitled to stocks, shares, & securities in English, South African, & American cos. The certificates were in all cases situate in London, & the securities themselves were transferable in London at the outbreak of war, & at the date of testator's death. Testator died in 1915, in Berlin, being domiciled in Germany. By his will three-fifths of his property were bequeathed to German & Austrian beneficiaries, & two-fifths to British & Polish beneficiaries. In 1915 the will was proved in Germany by the exors. named therein. In 1922, grant of administration in England was made to pltf. By virtue of Treaty of Peace Orders, the whole of the interests of the German & Austrian beneficiaries became charged with & subject to the claims of the Custodian of Enemy Property. In 1922 all the South African securities were transferred to the South African Custodian, an exor. dative was appointed in South Africa to administer testator's South African estate, & estate duty in South Africa was paid by him in respect thereof. Some of the American securities were transferred to the American Alien Property Custodian, administration of testator's American estate was granted in America, & the securities were transferred to the American Custodian to be distributed by the American administrator among the beneficiaries. All the remaining American securities, with the exception of a small balance, were released to pltf. by the English Custodian. In May, 1924, pltf. filed a corrective affidavit, including therein those of the American securities which had been released to him at that date, & he paid estate duty & interest in respect thereof:—*Held:* (1) all the shares were locally situate in England & the administrator was bound to include them as property of which testator was competent to dispose, & was accountable to the extent of the assets he had received for the estate duty in respect thereof; (2) the basis of valuation of such shares was the price similar shares would fetch in the open market at the date of testator's death.—*Re* ASCHROTT, CLIFTON *v.* STRAUSS, [1927] 1 Ch. 313; 96 L. J. Ch. 205.

99. *Add. Annotation:*—*As to* (4) **Reld.** *Re* Bateman, [1925] 2 K. B. 429.

107a. —— —— ——.]—By settlements made in 1906 & 1911, a lady, in consideration of £5,100 which was paid over to her by her son, conveyed certain furniture upon trust for herself for life with remainder to her son absolutely. At her death in 1918 the furniture was sold for £45,000, & the Crown claimed succession duty & estate duty upon the difference between the two sums from the trustee of the settlements:—*Held:* (1) the transaction was a *bonâ fide* sale between mother & son, & no succession duty was payable; (2) as to the claim for estate duty, there had been a "purchase for partial consideration" within 1894 Act, s. 3 (2), the consideration paid represented four-fifths of the value of the property at the date of such purchase, & estate duty was payable only upon one-fifth of the value as at the date of the death of the tenant for life; (3) "partial consideration," in sect. 3 (2), meant something less than the full & fair value as between buyer & seller.—*Re* BATEMAN (BARONESS), [1925] 2 K. B. 429; 95 L. J. K. B. 199; *sub nom. Re* BATEMAN (BARONESS), A.-G. *v.* WREFORD-BROWN, 134 L. T. 153.

121. *Add. Annotation:*—*As to* (2) **Reld.** *Re* Sarson, Public Trustee *v.* Sarson, [1925] Ch. 31.

PART II. SECT. 4, SUB-SECT. 1.

s i. *S. P.* HOLMES *v.* STAMP DUTIES COMR., [1927] N. Z. L. R. 753.—**N.Z.**

s ii. —— *Discharge by son of legitim.*]—A father granted a bond for £30,000 in implement of an undertaking by him in his second son's marriage contract, in contemplation of the son's marriage, & in consideration of a conveyance executed by the son's intended wife for behoof of the spouses. In the marriage contract the son accepted the obligations therein contracted by his father as in full satisfaction in any event of all legal claims for legitim or otherwise he might have upon his father's estate. At the date of the marriage contract & of the bond the only claim to legitim possible to the son was in the event of his elder brother predeceasing his father. That event happened, & at the father's death the amount of legitim to which the second son would have had a claim, had he not discharged it, was £25,000:—*Held:* the bond could not be regarded as a debt incurred by the father for full consideration in money or money's worth wholly for deceased's own use & benefit in the sense of 1894 Act, s. 7 (1), & did not form a proper deduction in determining the value of his estate for the purposes of estate duty.—LORD ADVOCATE *v.* WARRENDER'S TRUSTEES (1906), 8 F. (Ct. of Sess.) 371.—**SCOT.**

PART II. SECT. 4, SUB-SECT. 2.

ss. "*Interest in business*"—*What is* —1914 *Act, s.* 15.]—A father & two of his sons carried on business in partnership. By a re-arrangement of the partnership relations the father accepted £124,646 in full of his whole rights in the old firm & its assets, & agreed to allow this sum to remain as a loan to the new firm at 4 per cent. interest, on condition that, if called up by him, or in any event on his death, it was to be repaid by ten yearly instalments. The father contributed no capital to the new firm apart from the loan, but had an interest in the profits to the extent of a one-tenth share. He died in 1922, leaving a will by which he bequeathed the residue of his estate, including the loan, to his family, & estate duty was duly paid thereon. The two sons came to an arrangement with their father's exors., under which the sons agreed to repay the loan at once in return for a certain discount; & in settling with the exors., they retained in the business the respective shares of the loan falling to them, by crediting themselves with the amounts in the books of the firm. Within two years of the father's death one of the sons died, & estate duty became payable on his estate. His exor. having claimed a reduction, under the above sect., of the estate duty payable on the sum credited to the son in the firm's books in respect of his share of his father's loan:—*Held:* the father's right to repayment of the loan was not an "interest in the business" within the sect., & the sum standing in the son's name in the books of the firm was an interest in the assets of the firm, & was not identical with his father's interest in the *jus credit* of the loan.—GLEN *v.* INLAND REVENUE, [1926] S. C. 44.—**SCOT.**

ss. —— —— ——.]—The proprietor of a wine & spirit business, by his trust-disposition & settlement, directed his trustees to convey the residue of his estate to his only daughter on her attaining twenty-five years of age, with a destination over in the event of her predeceasing the period of conveyance, & to pay her the income of the residue until that date. He directed his trustees to sell the business. The daughter died eight days after testator, under the age of twenty-five, & before the direction to sell had been implemented. The trustees having claimed a reduction, under Finance Act, 1914, s. 15, of the estate-duty payable on the daughter's death, in so far as assessable on the value of the business, the Comrs. of Inland Revenue

121a. ——————— **Enures for benefit of residuary legatees—Where annuities free of duty given out of residue.**]—*Re* GRINLINTON, PUBLIC TRUSTEE *v.* GRINLINTON, [1932] W. N. 240; 174 L. T. Jo. 403.

128. *Add. Annotations:*—**Refd.** *Re* Exmouth's Annuity, [1925] Ch. 280; *Re* Drake, Drake *v.* Wilson, [1926] Ch. 559.

128a. —— **"Land & chattels"—What are "chattels."**]—By an Act of 54 Geo. 3 an annuity of £2,000 was inalienably settled on Lord E. & his successors in title. In 1892 the redemption of the annuity for a sum of £55,890 was agreed upon, & that amount was paid into ct. & invested in the purchase of Consols. The fifth Viscount E. died in Aug. 1922, & the sixth Viscount in Feb. 1923. Questions having arisen as to the payment of estate duty, the ct. was asked whether estate duty became payable (*a*) upon the capital of the sum of Consols, or (*b*) upon the value of the interest of the successor to the title in such sum of Consols, & if estate duty became so payable, then whether, for the purpose of determining the rate of estate duty, such sum of Consols ought (*a*) to be aggregated with the other property, or (*b*) to be treated as an estate by itself:—*Held:* "chattels" in collocation with settled lands in 1894 Act, s. 5 (5), did not suggest personalty generally, but those particular items of it which were usually settled upon trusts that followed the devolution of the settled land, & the sum of Consols was not "chattels" within the sub-sect., & must be aggregated with the other property for the purpose of paying estate duty.—*Re* EXMOUTH'S ANNUITY, [1925] Ch. 280; 94 L. J. Ch. 208; 133 L. T. 39; 69 Sol. Jo. 411.

129a. —— **Where duty commuted—Not aggregated with unsettled property.**]—Where estate duty has been commuted under 1894 Act, s. 12, the property in respect of which the commutation has been made is not property on which "estate duty is leviable" within s. 4 of that Act & is not to be aggregated with other property of the same person on which estate duty is leviable.—A.-G. *v.* HOWE (EARL) (1925), 94 L. J. K. B. 540; 133 L. T. 801; 41 T. L. R. 610; 69 Sol. Jo. 791, C. A.

131. *Add. Citations:*—*affd. sub nom.* PARR *v.* A.-G., [1926] A. C. 239; 95 L. J. K. B. 417; 134 L. T. 321; 42 T. L. R. 217, H. L.

After cross-reference following this case add:—

—— —— —— **Death after July 29, 1927.**]—*See, now,* Finance Act, 1927 (c. 10), s. 51.

refused the claim:—*Held:* sect. 15 applied, in respect that the beneficial possession & enjoyment of the residue, including the business, had passed to the daughter on testator's death, & had again passed on her death; & the trustees were, accordingly, entitled to the relief claimed.—WARREN'S TRUSTEES *v.* INLAND REVENUE, [1928] S. C. 806.—**SCOT.**

PART II. SECT. 4, SUB-SECT. 4.

d. For "*Charitable purposes—In Australia & abroad,*" read "*Charitable purposes—In Australia—& abroad.*"

d i. —— ——.]—By Estate Duty Assessment Act, 1914, s. 8 (5), estate duty is not to be assessed upon so much of the estate as is bequeathed "for religious, scientific, charitable or public educational purposes":—*Held:* as no contrary intention appeared, the word "charitable" was to be construed in its legal & not its popular sense.—CHESTERMAN *v.* FEDERAL COMR. OF TAXATION, [1926] A. C. 128; 95 L. J. P. C. 39; 134 L. T. 360; 42 T. L. R. 121.—**AUS.**

d ii. —— "*Public benevolent institution*"—*What is.*]—*Held:* the expression "public benevolent institution" in sect. 8 (5) of Estate Duty Assessment Act, 1914–1928, does not include organisations which do not promote the relief of poverty, suffering, distress or misfortune. The "Royal Naval House" is, therefore, not a "public benevolent institution" within the sect.—PERPETUAL TRUSTEE CO., LTD. *v.* TAXATION COMR., [1931] Argus L. R. 240; 5 A. L. J. 109.—**AUS.**

PART II. SECT. 6.

132 i. *Aggregated property—Whether property aggregated more than once on same death.*]—Testator, who had two sons, H. & J., by his will devised certain real property to his son, H., in trust for H. for his life, with remainder to H.'s children as H. should appoint, &, if there should be no son of H. who should attain the age of 21 years, then in trust for his, testator's, other son, J. Testator died in 1893, & H. entered into possession of the lands under the trusts of the will. J. died intestate & unmarried in 1897, leaving his brother, the said H., his heir-at-law. By an order of the ct. made in 1908 it was declared that on the death of J., H. took an estate for life, with a vested absolute interest in remainder, subject to being divested if he left issue, in the freehold lands devised by his father's will, &, accordingly, that H. could make a valid testamentary disposition or otherwise dispose of his estate or interest in the lands. On the death of J., H. took out a grant of administration, & paid duty in respect of the personal property which passed on the death of J., but he did not pay any estate duty in respect of the contingent interest in the lands which had been devised to J. by his father's will, & which passed to him, H., as his brother's heir-at-law. H. died without issue in 1920, & estate duty was paid by his exor. on the value of the property which passed on his death, including the lands in question:—*Held:* the Revenue Comrs. were entitled to claim estate duty on the death of J. in respect of his contingent estate in the lands which passed on his death to H., & the rate of estate duty was to be calculated according to the value of that interest when it fell into possession on the death of H., together with the value of the rest of the estate of J.—*Re* O'CONNOR'S ESTATE, HENDRICK *v.* REVENUE COMRS., [1931] I. R. 98.—**IR.**

sd. *Degree of relationship—Calculation of—Beyond third degree.*]—The words "not beyond the third degree" occurring in Deceased Persons' Estates Duties Act, 1921, Sched. (2), Part II., para. 2, refer to the method of calculation according to the civil law, in which the degrees were calculated up to the common ancestor, & then down to the beneficiary in question:—*Held:* a son of a first cousin of testatrix was beyond the third degree of relationship to testatrix, & the Comr. of Taxes had rightly assessed the duty payable in respect of the benefit he took under her will, in accordance with Sched. (2), Part II., para. 3, of the said Act.—*Re* COOK (1925), 21 Tas. L. R. 11.—**AUS.**

se. —— *Selected class of relatives.*]—The benefit of Estate Duty Assessment Act, 1914–1922, s. 8 (6), extends to all property which by force of the will, or by the law as to the distribution of the estates of intestates, passes directly from testator or intestate to a member of the selected class, provided in the case of a will that on the death of testator it can be shown, from the terms of the will & by reference to the state of his family, that the property must go directly from him to persons within the class & that in no conceivable event can it pass from the testator to any person who is outside the class.—SMITH *v.* THE FEDERAL COMR. OF TAXATION (1928), 40 C. L. R. 467; [1928] Argus L. R. 189.—**AUS.**

PART II. SECT. 7, SUB-SECT. 1.

m i. —— ——.]—Testator was, at the time of his death, chairman & managing director of a co. carrying on business as tea & wine merchants. The business had been established by testator's grandfather many years ago, & had been carried on by his family ever since. The business had been turned into a limited co. in 1898, with a share capital of £30,000, divided into 30,000 shares of £1 each, of which 23,007 had been issued, & it was turned into a private co. in 1908. At the date of his death the testator held 18,501 shares, & his son, the assistant managing director, held 4,251. The shares were transferable, subject to the right of the directors to refuse to register any transfer of shares upon which the co. had a lien, or a transfer to a transferee of whom the directors did not approve. The co. was a solvent one; the last balance sheet, prior to the date of the death of the testator, showed a surplus of assets over liabilities of £36,399, the principal asset consisting of the stock-in-trade, valued in the last balance sheet at £23,329. The shares, which were all held by members of testator's family, had never been dealt with on the Stock Exchange, & therefore they had no market quotation. As the co. was a private co., in which practically no one was interested except the directors, the profits could be divided up either as salaries or dividends as the directors chose, & they decided to give the profits as salaries. At the time of his death the salary of testator was £2,000 & that of his son £1,000 *per annum*. For the six years previous to testator's death the actual dividend paid averaged 5–3 per cent. on the issued capital of £23,007. Both testator & his son had special knowledge of the business, to which they gave constant daily attention. Testator's exors. when making their return for the purpose of estate duty, valued testator's shares at 15*s.* each,

136a. **Shares.**]—*Re* ASCHROTT, CLIFTON STRAUSS, No. 96a, *ante.*

136b. **How ascertained—Special facts to be considered.**]—*Re* CASSEL, PUBLIC TRUSTEE *v.* MOUNTBATTEN, No. 22a, *ante.*

137a. **Bequests of shares of residue—Accruer clause—Calculation of value of interest of deceased beneficiary.**]—Viscount N. by his will & three codicils thereto disposed by clause 6 of his will of 74¼ hundredths of the income of his residuary estate. By sub-clause 28 he provided that on the death of any of the legatees, his or her share should accrue to the survivors. By sub-clause 29 he provided for the application of the remaining income in payment of other legacies, & these being paid the remainder was to be applied in the same manner as the 74¼ hundredths. By clause 10 it was directed that the capital should go in moieties to charities. By an order made on July 28, 1924, the income was divided into one hundred & thirds. Two of the income beneficiaries had now died. On a summons taken out in these circumstances asking whether the estate duty payable by reason of the death of any person entitled to any share of the income was to be paid upon the value of the share in the capital equal to that of the income previously enjoyed by such person or upon the like proportion of the actuarial capital value of the income during the respective lives of the several persons entitled thereto or other the period during which the trusts in respect of such income should be subsisting or how otherwise the same ought to be calculated & out of what fund the same was payable :—*Held :* (1) the property which passed on the death of any such person must be taken to be a share of capital in the residuary trust fund, & that estate duty must be paid on the value of such share ; (2) the duty payable on any such death was a first charge on that portion of the residue out of which the income was payable, & must be borne by the corpus of such estate.—*Re* NORTHCLIFFE, ARNHOLZ *v.* HUDSON, [1929] 1 Ch. 327 ; 98 L. J. Ch. 65 ; 140 L. T. 300.

146. To cross-references before this case add " *See, also,* Law of Property Act, 1925 (c. 20), s. 17 (3)."

147a. **Payment by instalments—Real property—Land held in undivided shares—Effect of Law of Property Act, 1925 (c. 20), Sched. I., Part IV.**]—*Re* WHEELER, JAMESON *v.* COTTER, No. 209d, *post.*

147b. —— —— —— ——.]—A.-G. *v.* PUBLIC TRUSTEE & TUCK, No. 209e, *post.*

155. *Add. Annotations :—As to* (1) **Expld.** *Re* Portman (No. 2), [1925] Ch. 294. **Distd.** *Re* Drake, Drake *v.* Wilson, [1926] Ch. 559 ; *Re* Lomer, Public Trustee *v.* Victoria Hospital for Children, [1929] 1 Ch. 731. **Refd.** *Re* Northcliffe, Arnholz *v.* Hudson, [1929] 1 Ch. 327.

161. *Add. Annotations :*—**Folld.** *Re* Portman (No. 2), [1925] Ch. 294. **Distd.** *Re* Drake, Drake *v.* Wilson, [1926] Ch. 559.

161a. —— ——.]—A rentcharge of £50,000 *per annum* charged on L. settled estates was limited to the use of deft., the fourth Viscount P., for life with remainder to the use of his eldest son during his life, to commence from their respective successions to the title & to be paid without any deduction except for death duties, & a similar rentcharge was limited in remainder, in the event of any other issue of the fourth Viscount succeeding to the title, to the use of the sons of such eldest son & other sons of the fourth Viscount in tail male. Subject to such rentcharge, the L. settled estates were limited to the use of pltf. for life with remainder to the use of his eldest son for life with remainders over. By a deed poll dated Oct. 15, 1913, provision was made for the abatement of the £50,000 rentcharge in certain events. The third Viscount, who was tenant for life of the estates in question, had died in 1923, while nine of the sixteen half-yearly instalments of estate duty payable in respect of the death of the second Viscount, who had died in 1919, remained unpaid. One of the questions for the decision of the ct. at the original hearing of the summons (*Re Portman (Viscount)*, No. 249, *post*) was as to what proportion of the balance remaining unpaid at the death of the third Viscount of the estate duty, which became assessable on the death of the second Viscount in respect of the L. estates, should be borne by the yearly rentcharge of £50,000, & it was admitted in argument that there was no difference in principle in respect of that unpaid balance between that duty & that which was assessable upon the death of the third Viscount. After judgment had been delivered & before the minutes had been finally drawn up, leave was given to withdraw the admission made in argument as aforesaid, & it was directed that the question with regard to the liability of the rentcharge in respect of the unpaid instalments of estate duty assessable on the death of the second Viscount should be argued :—*Held :* the effect of 1894 Act, s. 14 (1), was to throw the incidence of the duty ratably & in proper proportions upon all persons

basing their estimate of value on the average dividend for the preceding period of six years & the market price of similar shares, a valuation which they subsequently offered to increase to 17*s.* 6*d.*, but the Revenue Comrs. declined to accept these values :—*Held :* the co. could be fairly regarded as capable of earning on a commercial basis 10 per cent. on its capital, but, taking this as the principal test of value, it must be subject to the consideration, on the one hand, of the restriction upon the transfer of the shares, &, on the other, to the added value by reason of the security of the co.'s position. Also, the Comrs.' contention that testator's shares would be most likely sold *en bloc* to a single purchaser, & that their value should be fixed accordingly, was unsustainable as the possibility of the shares being divided up among several purchasers, either members of testator's family or of the public, must be considered, for Finance Act, 1894 (c. 30), s. 7 (5), does not contemplate in the term " open market " not only a market which is hypothetical, but also only hypothetical purchasers wanting a block of shares.—SMYTH *v.* REVENUE COMRS., [1931] I. R. 643.—**IR.**

m ii. —— *At date of death—Property transferred by gift within three years of death.*]—A mother transferred certain securities in gift to each of her children, the total value of the securities at the date of transfer being £406,662. She died within three years of the date of the gifts. The value of the securities at the date of her death was £453,212 : —*Held :* the value of the securities for the purpose of estate duty was the value at the date of the donor's death, & not that at the date of the gifts.—STRATHCONA, LORD *v.* INLAND REVENUE COMRS., [1929] S. C. 800.—**SCOT.**

PART II. SECT. 7, SUB-SECT. 2.

b i. —— *Secured on home & foreign assets—Foreign assets alone sufficient security.*]—The estate of a deceased person consisted of property in N. S. W. & of property outside the State. Amongst other debts there was one of £32,279 which was secured by mtge. or charge over a part of his home assets &, also, over certain of his foreign assets which were valued at £33,427 :—*Held :* the case fell within Stamp Duties Act, 1920, s. 109 (3), & in assessing death duty on the estate no allowance should be made for the debt or any part thereof.—SOLLAS *v.* STAMP DUTIES COMR. (1928), 28 S. R. N. S. W. 207 ; 45 N. S. W. W. N. 52.—**AUS.**

becoming beneficially interested in the property upon which the duty was constituted a first charge by force of sect. 9 (1) of the Act; the rentcharge, or the abated rentcharge, must be dealt with, as regards these unpaid instalments, in the manner indicated in the original judgment; & the order would be in the terms of the minutes prepared in accordance with that judgment.—*Re* PORTMAN (VISCOUNT) (No. 2), [1925] Ch. 294; 94 L. J. Ch. 329; 133 L. T. 389.

166a. Effect of hotchpot clause—Whether advances made over three years before death brought into charge.]—*Re* TOLLEMACHE, FORBES *v.* PUBLIC TRUSTEE (1930), 69 L. Jo. 423; 169 L. T. Jo. 519; [1930] W. N. 138.

170a. ——.]—*Re* NORTHCLIFFE, ARNHOLZ *v.* HUDSON, No. 137a, *ante*.

176. *Add. Annotation:—As to* (1) **Consd.** *Re* Carrington, Ralphs *v.* Swithenbank, [1932] 1 Ch. 1.

186. *Add. Annotation:—As to* (1) **Refd.** *Re* Phillips, Lawrence *v.* Huxtable, [1931] 1 Ch. 347.

203. *Add. Annotation:*—**Refd.** *Re* Previté, Sturges *v.* Previté, [1931] 1 Ch. 447.

209a. Effect of Law of Property Act, 1925 (c. 20), s. 16 (5).]—*Re* MELLISH, CLARK *v.* BUCHANAN (1927), cited in [1929] 2 K. B. at p. 82, n.

Annotations:—**Folld.** A.-G. *v.* Public Trustee & Tuck, [1929] 2 K. B. 77; *Re* Wheeler, Jameson *v.* Cotter, [1929] 2 K. B. 81, n. **Distd.** *Re* Kempthorne, Charles *v.* Kempthorne (1929), 46 T. L. R. 15; *Re* Newman, Slater *v.* Newman, [1930] 2 Ch. 409. **Consd.** *Re* Warren, Warren *v.* Warren, [1932] 1 Ch. 42.

209b. ——.]—The above sub-sect. preserves the liability of real estate to pay its own duties.—*Re* MORRIS, SKINNER *v.* SANDERS (1927), 71 Sol. Jo. 472.

209c. —— **Incorporation of Form 8 of Statutory Will Forms, 1925.**]—Testator by his will, after making specific & pecuniary bequests, gave to his wife absolutely any freehold or leasehold house belonging to him & in which he should be residing at his death. He declared that all legacies thereby given should be free of all death duties & devised & bequeathed all his residuary real & personal estate to his trustees, & declared that (*inter alia*) Form 8 of the Statutory Will Forms, 1925, should be incorporated in his will so far as it was applicable to his residuary estate. The only real estate testator possessed at the time of his death was a freehold house in which he was then residing. Questions arose: (*a*) whether having regard to Form 8, clause 4 (*c*), of the Statutory Will Forms, 1925, the estate duty payable in respect of testator's freehold house on his death should be borne by the testator's widow or by the residuary estate, & (*b*) whether upon the true construction of the will, the estate & succession duties payable by reason of the testator's death in respect of the freehold house were payable out of the residuary estate:—*Held:* (1) although the exor. was by reason of the provisions of Law of Property Act, 1925 (c. 20), s. 16, now accountable for estate duty on realty, the incidence of the duty remained unchanged & was still charged by virtue of the Finance Act, 1894 (c. 30), s. 9 (1), on the realty in respect of which it was paid. Form 8, clause 4 (*c*), therefore, had no application, & apart from the question of construction the estate duty on the freehold house must be borne by the widow; (2) on the true construction of the will testator had used the word "legacies" not in its strict sense, but as including the gift of the house in which he was residing at his death, although that house was of freehold tenure. The estate & succession duties payable by reason of testator's death in respect of the freehold house in question were therefore properly payable out of the residuary estate. *Re* PREVITÉ, STURGES *v.* PREVITÉ, [1931] 1 Ch. 447; 100 L. J. Ch. 286; 145 L. T. 40.

209d. Land held in undivided shares—Effect of Law of Property Act, 1925 (c. 20), Sched. I., Part IV.]—Where an undivided share in land disposed of by will has become subject to a statutory trust, the incidence of estate duty remains unchanged & where the exors. in such a case have, as exors., paid the estate duty on the share as a testamentary expense, the amount so paid is repayable to them by the devisee of the share, & the repayment may, at his option, be by instalments.—*Re* WHEELER, JAMESON *v.* COTTER, [1929] 2 K. B. 81, n.; 141 L. T. 322.

Annotations:—**Folld.** A.-G. *v.* Public Trustee & Tuck, [1929] 2 K. B. 77. **Distd.** *Re* Kempthorne, Charles *v.* Kempthorne (1929), 46 T. L. R. 15; *Re* Newman, Slater *v.* Newman, [1930] 2 Ch. 409. **Consd.** *Re* Warren, Warren *v.* Warren, [1932] 1 Ch. 42.

209e. —— ——.]—Notwithstanding the provisions of Law of Property Act, 1925 (c. 20), which abolish tenancies in common of land & direct such land to be held by certain persons as trustees for sale upon statutory trusts, the death duty to be paid on freehold land which just before the commencement of Law of Property Act, 1925 (c. 20), was held in undivided shares, & in respect of which there have been no dealings since the commencement of that Act, is, even where the duty only became payable after the commencement of that Act, deemed to be "duty due upon an account of real property" within Finance Act, 1894 (c. 30), s. 6 (8), & under that sub-sect. as amended by Finance Act, 1896 (c. 28), s. 18, & Finance Act, 1919 (c. 32), s. 30, the duty may be paid by instalments extending over a period of eight years with interest at 4 per cent. *per annum* as therein provided.—A.-G. *v.* PUBLIC TRUSTEE & TUCK, [1929] 2 K. B. 77; 98 L. J. K. B. 462; 141 L. T. 398; 73 Sol. Jo. 299.

PART II. SECT. 9, SUB-SECT. 1.—B. a i. ——.]—By his will testator directed that all his debts & funeral & testamentary expenses should be paid as conveniently as might be after his decease, & thereafter proceeded by his will to devise & bequeath all his real & personal property not otherwise disposed of:—*Held:* (1) estate duty was under the direction payable actually out of the residuary estate; (2) in the event of the residuary estate being insufficient to pay the estate duty, the life interests were not liable for a portion of the deficiency, but the annuitants & specific devisees of real estate should jointly contribute to the deficiency.—CALDWELL, ETC. *v.* FLEMING, [1927] N. Z. L. R. 145.—N.Z.

PART II. SECT. 9, SUB-SECT. 3.

sf. *Aggregation of settled funds—Whole estate subject to duty at higher rate.*]—Deceased made a settlement of property on her marriage, & on her death left a will. The rate at which duty was assessed was 6¼ per cent., & if the value of the settled property had not been included in the final balance, the rate would have been 4½ per cent. The exors. claimed that the trustees of the settlement were liable to bear the difference:—*Held:* the incidence of the duty was governed by Death Duties Act, 1909, s. 31 (4), & the exors.' claim could not be sustained.—BROWN *v.* BROWN, [1924] N. Z. L. R. 427.—N.Z.

220. *Add. Annotation :—Generally,* **Consd.** *Re* Cassel, Public Trustee *v.* Mountbatten, [1927] 2 Ch. 275.

226. *Add. Annotations :—As to* (1) **Apld.** *Re* Laidlaw, Wilkinson *v.* Lyde, [1930] 2 Ch. 392 ; *Re* Trimble, Wilson *v.* Turton, [1931] 1 Ch. 369. **Reld.** *Re* Sarson, Public Trustee *v.* Sarson, [1925] Ch. 31.

227a. —— ——.]—By his will a testator who died on Nov. 3, 1915, directed that all legacies & annuities thereby given should be paid & enjoyed free of death duties, & the question arose whether the exemption from duties was limited to duties payable on the death of testator or extended to those payable in future in respect of settled legacies :—*Held :* the duties, other than the legacy duties from which the legatees were relieved, were those payable on the death of testator & not those accruing in the future.—*Re* Laidlaw, Wilkinson *v.* Lyde, [1930] 2 Ch. 392 ; 99 L. J. Ch. 463 ; 143 L. T. 761.

229. *Add. Annotation :—As to* (1) **Reld.** *Re* Sarson, Public Trustee *v.* Sarson, [1925] Ch. 31.

232. *Add. Annotation :—***Distd.** *Re* Laidlaw, Wilkinson *v.* Lyde, [1930] 2 Ch. 392.

233. *Add. Annotation :—As to* (1) **Reld.** *Re* Sarson, Public Trustee *v.* Sarson, [1925] Ch. 31.

234. *Add. Annotation :—***Reld.** *Re* Sarson, Public Trustee *v.* Sarson, [1925] Ch. 31.

234a. **Bequest to pay duties—Duties payable at death of testator.**]—Testator who died in 1912 gave, by clause 7 of his will, certain shares to his exor. " upon trust to sell so many of such shares as shall be sufficient to pay all my debts & funeral & testamentary expenses . . . & all duties of every description, including settlement estate duty where payable, to which my estates, both real & personal, or any part thereof, shall be liable, &, subject to such payments, in trust for my son G. absolutely " : & he devised & bequeathed his residuary real & personal estate to his trustee free of all duties upon trust to pay the income thereof to his wife during her life, & after her death in trust for his two daughters for their lives, with remainders over. The question having been raised whether the duties payable on the deaths of testator's daughters under Finance Act, 1914 (c. 10), s. 14, were charged under or by virtue of clause 7 of the will on the shares bequeathed by that clause :—*Held :* what testator contemplated by clause 7 was an immediate process under which the shares were to be sold & applied in paying duties which were presently payable, & under which, after those duties had been paid, the residue of the shares or the proceeds were to be handed over to G.—*Re* Fenwick, Lloyd's Bank, Ltd. *v.* Fenwick, [1922] 2 Ch. 775 ; 92 L. J. Ch. 97 ; 128 L. T. 191 ; 66 Sol. Jo. 631.

*Annotations :—***Apld.** *Re* Trimble, Wilson *v.* Turton [1931] 1 Ch. 369. **Reld.** *Re* Sutherland (Duke), Chaplin *v.* Leveson Gower, [1922] 2 Ch. 782.

238. *Add. Annotations :—***Apld.** *Re* Forder, Forder *v.* Forder (1927), 137 L. T. 538. **Reld.** *Re* Sarson, Public Trustee *v.* Sarson, [1925] Ch. 31.

238a. —— ——.]—*Re* Jones, Lambert *v.* Colbourn, [1928] W. N. 227.

239. *Add. Citations :*—94 L. J. Ch. 155 ; 132 L. T. 339.

243a. **Gift of all legacies " free from all death duties "—Legacy construed to include devise of realty.**]—*Re* Previté, Sturges *v.* Previté, No. 209c, *ante.*

244a. —— ——.]—An assignee for value of a sum of £10,000 to be paid " absolutely & free from incumbrances," being part of a portions fund of £15,000 charged on settled land :—*Held :* in the absence of a special contract in that behalf, not to be liable to pay a ratable proportion of the estate duty borne & payable by the portions fund upon the death of the tenant for life of the settled land.

Sect. 14 (1) of the above Act provides for a ratable recoupment between the person who has paid estate duty in respect of property passing on death, & the person entitled to a sum charged on that property. It does not go on to provide for further recoupment by persons entitled derivatively to various parts of the sum so charged, but leaves their rights to be determined by their contractual arrangements.—*Re* Drake, Drake *v.* Wilson, [1926] Ch. 559 ; 95 L. J. Ch. 386 ; 134 L. T. 362, C. A.

246. *Add. Annotation :—***Reld.** *Re* Portman (No. 2) [1925] Ch. 294.

249. *Add. Citation :*—132 L. T. 440.

254a. **Beneficiary & residue—Equitable terms.**]—*Re* Cassel, Public Trustee *v.* Mountbatten, No. 22a, *ante.*

261. *Add. Annotation :—As to* (2) **Reld.** *Re* Abergavenny S. E., Abergavenny *v.* Nevill, [1926] Ch. 405.

262. *Add. Annotation :—***Consd.** *Re* Drake, Drake *v.* Wilson, [1926] Ch. 559.

264. *Add. Annotations :—As to* (1) **Reld.** *Re* Drake, Drake *v.* Wilson, [1926] Ch. 559 ; *Re* Reeves, Reeves *v.* Pawson, [1928] Ch. 351.

265a. **Bequests to several charities successively—Intention to exonerate earlier charities.**]—By his will dated 1911 a testator devised & bequeathed his residuary real & personal estate to his exors., the Public Trustee & another, upon trust for sale & conversion &, after payment of his debts & funeral & testamentary expenses, he desired the balance (called his residuary trust fund) to be placed with the Public Trustee & the income paid to his wife for life. Testator then directed that after his wife's death four capital sums amounting to £10,000, free of estate duty & settlement estate duty but not free of legacy duty, should be set apart & the respective income paid to certain life tenants respectively. By clause 9 testator directed that on the cesser of the respective life tenancies the respective capital sums should be paid to

PART II. SECT. 9, SUB-SECT. 4.

216 i. *Gift inter vivos—Gift within three years of settlor's death.*]—Testator, after devising & bequeathing all his real & personal estate upon certain trusts, declared that " all probate & estate duties shall be paid by each beneficiary in proportion to the value of the share or interest taken by him or her under this my will." Within three years prior to his death testator disposed of a certain sum by way of gift to his wife, & after his death that sum had been assessed for State death duty :—*Held :* the death duty payable in respect of the gift *inter vivos* fell within the words " all probate & estate duties " in the declaration in the will.—Ashby *v.* Hayden (1931), 31 S. R. N. S. W. 324 ; 48 N. S. W. W. N. 61.—**AUS.**

thirteen charities thereinafter named "in the order of priority in which the names appear in this my will as far as the money will go, no. 1 being first paid; no. 2 next & so on, that is to say:" Testator then enumerated thirteen consecutive charities, giving nos. 1 to 10 £500 apiece; no. 11, £1,000; & nos. 12 & 13 £2,000 apiece, thereby exhausting the £10,000. The residue, after providing for the settled £10,000 was given to a daughter. Testator died on June 11, 1914, before Finance Act, 1914 (c. 10), s. 14, abolishing settlement estate duty & the relief thereby conferred, was passed. The estate was cleared & the residuary trust fund paid to the Public Trustee, who paid the income to the wife till her death on July 1, 1928, & then set apart the £10,000 settled legacies. One of these was immediately distributable, without further payment of estate duty, owing to the life tenant having predeceased the wife; but on the cesser of subsequent life tenancies estate duty would be payable, & the Public Trustee therefore issued a summons to determine how it was to be borne, as between the successive charities:—*Held:* clause 9 conferred an absolute priority as between the successive charities, & was sufficient as between the earlier & the later charities to exempt the former from their *primâ facie* statutory liability to contribute to the estate duty under Finance Act, 1894 (c. 30), s. 8 (4).—*Re* LOMER, PUBLIC TRUSTEE *v.* VICTORIA HOSPITAL FOR CHILDREN, [1929] 1 Ch. 731; 98 L. J. Ch. 201; 140 L. T. 687.

265b. **Devise with option to sell to specified person—Purchaser to pay annuities & road charges—No reference to death duties.**]—Testator, by his will, devised land to P. subject to the payment of certain annuities, of road-making charges for which testator was liable, & of estate & other death duties, & subject also to the proviso that if within twenty-years of testator's death P. should desire to sell the land, he was to give the Governors of the N. Grammar School the option of purchasing the land at the price of £300 an acre, such offer to be subject to the payment by the Governors of the said annuities & road charges, & acceptance to be notified within three months. The land, of about 22 acres in area, was in fact worth £670 an acre at the date of the testator's death. In accordance with the condition P. offered it to the School Governors at £300 an acre, & the offer was duly accepted & the land sold & conveyed to the Governors for £6,688. The value of the land for the purposes of death duties was assessed at £14,720. On a summons being taken out to determine whether the Governors were liable to pay a rateable proportion of the estate & succession duties levied upon the value of the property:—*Held:* that the Governors having acquired the land, not under any disposition by testator, but by the voluntary act of P. in selling instead of retaining the property, took no benefit under testator's will, & they acquired the land expressly subject to annuities & road-making charges, but impliedly free from any charge for death duties.—*Re* COCKERILL, MACKANESS *v.* PERCIVAL, [1929] 2 Ch. 131; 98 L. J. Ch. 281; 141 L. T. 198.

271a. —— **By devisee—Estate duty on undivided moiety of land paid out of residuary estate.**]—*Re* MELLISH, CLARK *v.* BUCHANNAN (1927), cited in [1929] 2 K. B. at p. 82, n.

Annotations:—**Follid.** *Re* Wheeler, Jameson *v.* Cotter, [1929] 2 K. B. 81, n. **Refd.** A.-G. *v.* Tuck, Public Trustee, [1929] 2 K. B. 77; *Re* Kempthorne, Charles *v.* Kempthorne (1929), 46 T. L. R. 15; *Re* Nowman, Slater *v.* Newman, [1930] 2 Ch. 409. **Consd.** *Re* Warren, Warren *v.* Warren, [1932] 1 Ch. 42.

271b. —— —— ——.]—*Re* WHEELER, JAMESON *v.* COTTER, No. 209d, *ante*.

272a. **Surrender of Victory Bonds—Amount repayable—Whether assessed duty or market value.**]—*Re* TICEHURST'S SETTLEMENT, WYATT *v.* TICEHURST (1930), 170 L. T. Jo. 9; [1930] W. N. 166.

274a. **Out of corpus—Estate settled by Act of Parliament—Whether duty unpaid.**]—Where the formal assessment of estate duty on an inalienable estate settled by Act of Parliament is not made until after the passing of Finance Act, 1922 (c. 17), although sufficient money has before the passing of the Act been paid over to the Inland Revenue, the duty is still unpaid within sect. 44 of the Act &, at the option of the tenant in tail in possession, may be raised & paid out of the corpus of the settled estate. A person entitled to a rentcharge on such an estate under a private Act of Parliament which gives the owner for the time being of the estate the right to create a rentcharge is not entitled to exercise a similar option. The estate duty is payable out of the rentcharge itself.—*Re* ABERGAVENNY SETTLED ESTATES, ABERGAVENNY (MARQUIS) *v.* NEVILL, [1926] Ch. 465; 95 L. J. Ch. 289; 134 L. T. 662; 70 Sol. Jo. 634.

277a. —— **Deduction of income tax.**] — In accordance with 1896 Act, s. 18 (1), trustees paid to the Crown certain sums of interest on unpaid estate duty without deduction of income tax:—*Held:* for the purposes of assessment to income tax under Income Tax Act, 1918 (c. 40), sched. D, Case III., in respect of untaxed interest received by the trustees, they were not entitled to any deduction therefrom in respect of the interest on estate duty paid by them.—INVERCLYDE'S (LORD) TRUSTEES *v.* MILLAR, [1924] A. C. 580; 9 Tax Cas. 14; *sub nom.* INVERCLYDE'S (LORD) TRUSTEES *v.* INLAND REVENUE COMRS., 93 L. J. P. C. 266; 131 L. T. 739, H. L.

Part III.—Settlement Estate Duty.

287. *Add. Annotation:*—**Refd.** Ormond Investment Co. *v.* Betts, [1928] A. C. 143.

288. *Add. Annotations:*—**Refd.** *Re* Ryder & Steadman's Contract, [1927] 2 Ch. 62; Ormond Investment Co. *v.* Betts, [1928] A. C. 143.

292. *Add. Annotation:*—*As to* (1) **Consd.** *Re* Alington & L. C. C.'s Contract, [1927] 2 Ch. 253.

296. *Add. Annotation:*—**Refd.** A.-G. *v.* Adamson (1932), 76 Sol. Jo. 95.

Part IV.—Legacy Duty.

337. *Add. Annotation :—As to* (1) **Refd.** *Re* Park, Public Trustee *v.* Armstrong, [1932] 1 Ch. 580.

345. *Add. Annotation :*—**Refd.** Jones *v.* Wright (1927), 44 T. L. R. 128.

349. *Add. Annotation :*—**Refd.** Jones *v.* Wright [1928] A. C. 143.

359. *Add. Annotation :—As to* (1) **Refd.** Ormond Investment Co. *v.* Betts, [1928] A. C. 143.

384a. Gift of equitable life interest in personalty—Absolute interest on payment of debts in lifetime of life tenant—Beneficiary legatee.]—Testator by his will conveyed to trustees all his personalty in Scotland, & after providing for the payment of his debts, directed the trustees to make an inventory of the collection of "marbles, bronzes, objects of vertu, buhl, pictures, ornamental china, & the library," in his house, which were to remain vested in the trustees as part of the trust estate, the life-rent use thereof being given to his son D., whom failing to the heir of entail entitled to succeed to the estate. He further provided that, if all his debts were paid in the lifetime of D., the trustees should convey the whole of the personalty by deed to D. The debts were paid in the lifetime of D., but the art collection was never conveyed by the trustees to him, but was held by them during his life :—*Held :* the collection had vested in D. as beneficial owner, & that his estate was liable to pay duty thereon.—HAMILTON (DUKE) *v.* LORD ADVOCATE (1892), 68 L. T. 94 ; 1 R. 70. H. L.

405. *Add. Annotations :*—**Refd.** Fleming *v.* Horniman (1928), 138 L. T. 669 ; A.-G. *v.* Yule & Mercantile Bank of India (1931), 145 L. T. 9.

413. *Add. Annotation :*—**Apld.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

414. *Add. Annotation :—As to* (2) **Consd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

430. *Add. Annotations :*—**Refd.** Ramsay *v.* Liverpool Royal Infirmary, [1930] A. C. 588 ; Ross *v.* Ross, [1930] A. C. 1 ; Peal *v.* Peal (1930), 143 L. T. 768 ; A.-G. *v.* Yule & Mercantile Bank of India (1931), 145 L. T. 9 ; Boldrini *v.* Boldrini & Martini, [1932] P. 9.

448. *Add. Annotation :*—**Apld.** A.-G. *v.* Rudge, [1928] 2 K. B. 515.

462a. Settled articles not yielding income.]—For the purposes of legacy duty the value of such articles is to be taken as at the time when they vest absolutely, & not as at the death of testator.—A.-G. *v.* RUDGE, [1928] 2 K. B. 515 ; 97 L. J. K. B. 710 ; 140 L. T. 536 ; 44 T. L. R. 708 ; 72 Sol. Jo. 487.

576a. —— Direction to pay legacies free of duty.]—*Re* TANQUERAY, SEWELL *v.* WOODFIELD, [1924] W. N. 142 ; 59 L. Jo. 252 ; 157 L. T. Jo. 324.

577. *Add. Annotation :*—**Distd.** *Re* Tanqueray, Sewell *v.* Woodfield, [1924] W. N. 142.

Part V.—Succession Duty.

591. *Add. Annotation :—As to* (3) **Refd.** Jackson's Trustees *v.* Lord Advocate (1926), 10 Tax Cas. 460.

602. *Add. Annotation :—As to* (1) **Consd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

622. *Add. Annotation :—Generally,* **Refd.** Parr *v.* A.-G., [1926] A. C. 239.

PART IV. SECT. 2, SUB-SECT. 2.

334 ii. —— *Subject to condition.*]—A will contained the following provision : "I desire that J. S. shall assist my wife in the working & management of my property during her life, or as long as she retains any interest therein, & in recognition of such services I direct that my said wife shall pay to J. S. an annuity of fifty pounds, the first payment to be made at the expiration of twelve months from my decease, but such annuity shall only be payable so long as the said J. S. shall act as aforesaid " : —*Held :* this constituted a legacy to J. S., in respect of which he was bound to furnish an account to the Revenue Comrs., & to pay such duty as might be assessed thereon.—REVENUE COMRS. *v.* SHIRLEY & BROWN, [1930] I. R. 45.—**IR.**

PART IV. SECT. 3.

c i. —— *Not restricted to purposes in Province.*]—Application by exors. for determination of certain questions arising under a will whereby testatrix bequeathed "unto the society called the British Union for the abolition of vivisection $75,000 free of legacy duty " :—*Held :* 9 Edw. 7, c. 12, s. 6 (2), absolving from succession duties "property devised or bequeathed for religious, charitable or educational purposes to be carried out in Ontario," only applied to objects which must of necessity be carried out in Ontario, not to those which might be carried out in Ontario without occasioning a breach of trust.—*Re* GWYNNE (1912), 22 O. W. R. 405 ; 3 O. W. N. 1428 ; 5 D. L. R. 713.—**CAN.**

PART V. SECT. 1.

sg. *Distinct from estate & probate duty—Application of doctrine of mobilia sequuntur personam.*]—Ontario Succession Duty Act is a succession duty Act, & not an estate & probate duty Act ; the duty is imposed on the succession, & the doctrine of *mobilia sequuntur personam* applies.—ERIE BEACH CO. *v.* A.-G. FOR ONTARIO, [1928] 1 D. L. R. 739 ; 61 O. L. R. 507 ; *revsd.*, 40 T. L. R. 33. P. C. ; *affd.*, [1929] 2 D. L. R. 754 ; 63 O. L. R. 469. —**CAN.**

PART V. SECT. 2, SUB-SECT. 1.

599 i. "*Property*"—*Transfer of stock, etc., to wife—Dividends paid to husband.*]—*Held :* deceased retained an interest in the gift to his wife to the extent of the dividends to be derived therefrom, & the stock, etc., were subject to succession duty.—FOWKES *v.* MINISTER OF FINANCE, [1927] 2 D. L. R. 717 ; 38 B. C. R. 395.—**CAN.**

PART V. SECT. 2, SUB-SECT. 2.—A.

e i. —— *Property appointed.*]—*Re* NORMAN'S TRUSTS, [1926] 3 M. P. R. 571.—**CAN.**

g i. ——.]—*Re* LITTRIDGE (B. C.), [1927] 3 D. L. R. 250.—**CAN.**

sh. *Insurance policy.*]—A policy of life-insurance on the life of the manager of a co. was taken out at the instance of the co. Assured, the manager, signed the application. The co. was named as sole beneficiary. Two years later the co. transferred for a cash consideration its beneficial interest in the policy to the assured ; & on his application his wife was substituted as beneficiary. Thereafter the premiums were paid by or on behalf of assured. Later the assured created a trust fund comprising (*inter alia*) said policy, & at the request of himself & wife the trustee was substituted as beneficiary, &, at the time of assured's death, the trustee held the policy pursuant to the terms of said trust :—*Held :* the policy was dutiable under sect. 7 (2) (c) of Succession Duty Act, 1930, as an "interest purchased or provided by the deceased . . . to the extent of the beneficial interest accruing . . . on the death of the deceased."—*Re* THACKER ESTATE, [1931] 1 W. W. R. 97 ; 1 D. L. R. 1015 ; 39 Man. L. R. 375.—**CAN.**

sl. ——.]—*Re* BYRNE ESTATE, [1931] 1 W. W. R. 228 ; 43 B. C. R. 396.—**CAN.**

PART V. SECT. 2, SUB-SECT. 2.—B.

624 i. *When succession accrues.*]—STAMP DUTIES COMR. (QUEENSLAND) *v.* DONALDSON (1927), 39 C. L. R. 539. —**AUS.**

627. *Add. Annotation :*—**Refd.** A.-G. *v.* Farrell (1930), 99 L. J. K. B. 605.

632. *Add. Annotations :—As to* (1) **Distd.** A.-G. *v.* Adamson, [1932] 2 K. B. 159. *As to* (2) **Refd.** Tilling-Stevens Motors *v.* Kent County Council & Transport Minister (1928), 97 L. J. Ch. 371; Inland Revenue Comrs. *v.* Dalgety & Co. (1929), 98 L. J. K. B. 542.

640. *Add. Annotation :*—**Apld.** A.-G. *v.* Adamson, [1932] 2 K. B. 159.

641a. ——— ———.]—A.-G. *v.* ADAMSON, No. 67a, *ante*.

660. *Add. Annotation :—As to* (5) **Refd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

662. *Add. Annotation :*—**Refd.** Parr *v.* A.-G., [1926] A. C. 239.

666. *Add. Citation :*—**132 L. T. 699.**

694. *Add. Annotation :—As to* (8) **Refd.** Parr *v.* A.-G., [1926] A. C. 239.

699. *Add. Annotation :—As to* (1) **Apld.** A.-G. *v.* Farrell (1930), 99 L. J. K. B. 605.

714. *Add. Annotation :*—**Distd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

718. *Add. Annotation :*—**Distd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

719. *Add. Annotation :*—**Distd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

724. *Add. Annotation :*—**Consd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

642 i. *Death as cause or occasion of succession.*]—EASTERN TRUST CO. *v.* PLUMMER, [1932] 3 D. L. R. 158.—**CAN.**

PART V. SECT. 2, SUB-SECT. 4.

h i. —— *Person entitled after death of successor before property paid over.*]—Where a share in a residuary estate was not paid to the residuary devisee during her lifetime but passed under her will, her death occurring eighteen months after that of testator :—*Held :* the Crown was entitled to succession duty thereon, although succession duty had been paid by the exors. under the first will on the residuary estate.—*Re* LUNN ESTATE (B. C.), [1925] 2 W. W. R. 608.—**CAN.**

h ii. —— *Residuary gift in trust for Presbyterian Church of New Zealand—For purpose of assisting foreign missionary work.*]—*Held :* the Presbyterian church was a "successor" under Death Duties Act, 1921, s. 16.—PERPETUAL TRUSTEES, ESTATE & AGENCY CO., LTD., OF NEW ZEALAND *v.* STAMP DUTIES COMR., [1927] N. Z. L. R. 714.—**N. Z.**

PART V. SECT. 2, SUB-SECT. 5.—A

670 iv. —— *Donor of trust fund—Succession Duties Act, R. S. A.*, 1922 (*c.* 28), *s.* 6.]—A.-G. OF ALBERTA *v.* COWAN, [1926] 1 D. L. R. 29; [1926] S. C. R. 142.—**CAN.**

PART V. SECT. 2, SUB-SECT. 5.—B. (b).

sf. *Succession Duty Act*, 1915 (*c.* 27) (*N. B.*)—*Absolute power of appointment.*]—PROVINCIAL SECRETARY-TREASURER *v.* SCHOFIELD (N. B.), [1923] 2 D. L. R. 1144.—**CAN.**

PART V. SECT. 2, SUB-SECT. 7.—A.

p i. —— *Bonds issued by Dominion Government to testator resident in province.*]—Certain bonds were issued to a testator resident in Alberta by the Govt. of Canada under statutory authority, & on his death his exors. raised the question whether succession duties with respect to the bonds were assessable by the Province of Alberta under Succession Duties Act of Alberta, s. 27, which provided that "all property of the owner thereof situate within the Province & passing on the death shall be subject to succession duties." The bonds passed on the death of testator. The register of bondholders was at Ottawa in Ontario : —*Held :* as the bonds constituted a statutory obligation they were debts by specialty & therefore in point of liability to taxation had their local situation at the testator's place of residence in Alberta & were subject to the duties in question.—ROYAL TRUST CO. *v.* A.-G. FOR ALBERTA [1930] A. C. 144; 16 T. L. R. 25.—**CAN.**

PART V. SECT. 2, SUB-SECT. 7.—B.

718 i. *Realty outside province—Devised under trust for sale—Testator domiciled in province.*]—Where by the will of testator, who died domiciled in British Columbia, land outside the province is devised to a trustee under direction to convert it into money, it is not, while at least it is yet unsold, subject to duty under Succession Duty Act, R. S. B. C., 1924 (c. 244).—ALEXANDER *v.* A.-G., [1927] 1 D. L. R. 602; [1927] 1 W. W. R. 143; 38 B. C. R. 28.—**CAN.**

q i. —— —— *Agreement for sale.*]—V., resident & domiciled in U.S.A., agreed by writing under seal to sell land owned by him in the province of Alberta, the purchaser going into possession. The purchase-money was to be paid, with interest, in U.S.A. At V.'s death in U.S.A., there was a balance owing him under the agreement :—*Held :* V., at his death, was the owner of property situated in Alberta or of an interest in the land, liable to duty in Alberta under Succession Duties Act, 1914 (c. 5), the question not being determined by the locality of the debt, but by the nature of the interest held by deceased in the Alberta land.—VAUGHN *v.* A.-G. FOR ALBERTA, [1924] 3 D. L. R. 467; 2 W. W. R. 821; 20 Alta. L. R. 424.—**CAN.**

sk. *Mortgages on land outside province—Owner domiciled within province.*]—*Held :* subject to duty under Succession Duty Act, R. S. B. C., 1924 (c. 244).—*Re* PARKER, [1926] 1 D. L. R. 783; [1926] 1 W. W. R. 1105; 60 B. C. R.—**CAN.**

PART V. SECT. 2, SUB-SECT. 7.—C.

b i. —— *Shares held in company incorporated in province.*]—Shares in a co. incorporated in Ontario, which were recorded in the name of a foreigner domiciled in the State of Michigan, who died there, were held liable to succession duty in Ontario.—ERIE BEACH CO. *v.* A.-G. FOR ONTARIO, [1930] A. C. 161, P. C.—**CAN.**

k i. —— ———.]—*Held :* subject to duty under Succession Duty Act, R. S. B. C., 1924 (c. 244).—*Re* SUCCESSION DUTY ACT, A.-G. FOR BRITISH COLUMBIA *v.* WILSON (B. C.), [1926] 4 D. L. R. 139; [1927] 1 W. W. R. 265.—**CAN.**

k ii. —— ———.]—Testator, whose domicil was in Ontario, possessed securities, which were in a safety deposit box in a bank in Michigan :—*Held :* the securities were subject to duty under Succession Duty Act, R. S. O., 1914 (c. 24).—A.-G. FOR ONTARIO *v.* BABY, [1927] 1 D. L. R. 1105; 60 O. L. R. 1.—**CAN.**

k iii. —— ———.]—Debenture stock of a city in Nova Scotia, transferable & redeemable at the office of the city treasurer, & money in a bank at the same city, belonging to testator domiciled in New Brunswick :—*Held :* not liable to duty under Succession Duty Act, C. S., 1903 (c. 17).—RECEIVER GENERAL OF NEW BRUNSWICK *v.* ROSBOROUGH (1915), 43 N. B. R. 258.—**CAN.**

n i. —— *Specialty debt.*]—A mtge. debt due in New Brunswick at the time of the foreign creditor's death is property of the creditor's estate which may be liable to duty under Succession Duty Act, 1915.—ROYAL TRUST CO. *v.* PROVINCIAL SECRETARY, TREASURER OF NEW BRUNSWICK, [1925] 2 D. L. R. 49; [1925] S. C. R. 94; *revsg.*, 52 N. B. R. 21.—**CAN.**

n ii. —— ———.]—Specialty debts secured by bond & mtge. of real estate situate in Nova Scotia, the bonds & mtges. being in the possession of testator in New Brunswick at the time of his death :—*Held :* liable to duty under Succession Duty Act, C. S., 1903 (c. 17).—RECEIVER GENERAL OF NEW BRUNSWICK *v.* ROSBOROUGH (1915), 43 N. B. R. 258.—**CAN.**

o i. —— —— *Registered outside province.*]—A banking co., with a head office at Montreal in the Province of Quebec, had power by statute to maintain in any province a registry office at which alone shares held by residents in that province were to be registered & could validly be transferred. A. resided at Halifax in the Province of Nova Scotia, & died there, owning shares registered at an office of the co. at Halifax under the above statutory power. Under Succession Duty Act (Que.), 1909, art. 1376, duty was imposed upon "property actually situate within the province, whether the transmission takes place within or without the province" :—*Held :* as the ownership of the shares could be effectively dealt with only in Nova Scotia, they were not property situate in Quebec, & the claim could not be maintained. —BRASSARD *v.* SMITH, [1925] A. C. 371; 94 L. J. P. C. 81; 132 L. T. 647; 41 T. L. R. 203.—**CAN.**

"or elsewhere" in sect. 42 (5) of Bank Act, both under their ordinary meaning & in the light of prior legislation, are adequate to provide for the establishment of places for registration & transfer of shares outside the Canadian territory, in respect of shares owned by persons not resident in Canada.—R. *v.* CUTTING, [1932] S. C. R. 410; 3 D. L. R. 273.—**CAN.**

p. For the paragraph in the original volume substitute the following paragraph :—

—— *Owner not domiciled within province—Recognition of status of "wives."*]—If a person domiciled in a country whose laws permit polygamous marriages is married there to two wives, & dies while still domiciled there though temporarily residing in British Columbia, the status of the wives will be recognised by the cts. of British Columbia for the purpose of fixing the succession duty payable on property in British Columbia going under deceased's will to each of the wives.—YEW *v.* A.-G. FOR BRITISH COLUMBIA, [1924] 1 D. L. R. 1166; 1 W. W. R. 753; 33 B. C. R. 109; *revsg.* S. C. *sub nom. Re* LEE CHEONG, [1923] 1 W. W. R. 867.—**CAN.**

725. *Add. Annotation :*—**Refd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

726. *Add. Annotation :*—**Consd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

732. *Add. Annotation :*—**Distd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

755a. ——.]—*Re* BATEMAN (BARONESS), No. 107a, *ante*.

765. *Add. Annotation :* — **Consd.** *Re* Bateman, [1925] 2 K. B. 429.

777a. —— **Devise for life "free of all duties"—Liability for succession duty on death of tenant for life.**]—Testator devised "free of all duties" certain premises to his trustees upon trust to permit S. to have the use & occupation of the same during her life, & after her death he directed his trustees to stand possessed thereof in trust for M. absolutely in fee simple. He also devised & bequeathed the residue of his real & personal estate to his trustees upon trust, after payment of his debts, funeral & testamentary & trust expenses & legacy, succession & other duties, to divide the same into thirty-four equal parts, & to stand possessed of one of such equal parts in trust for each of thirty-four residuary legatees named therein. A question arose whether the succession duty payable on the death of S. would be payable out of the residuary estate or out of the property so devised & by the person or persons entitled thereto upon her death :—*Held :* upon the true construction of the will the words "free of all duties" applied only to the succession duty presently payable on the death of testator, & did not extend to the succession duty payable on the death of S.—*Re* TRIMBLE, WILSON *v.* TURTON, [1931] 1 Ch. 369 ; 100 L. J. Ch. 73 ; 144 L. T. 612.

780. *Add. Annotation :—Generally*, **Refd.** *Re* Duncombe's Will Trusts, Wrixon-Becher *v.* Faversham (Earl) (1932), 146 L. T. 412.

796. *Add. Annotations :*—**Consd.** A.-G. *v.* Bedford, [1926] 2 K. B. 184. **Refd.** A.-G. *v.* Belilios, [1928] 1 K. B. 798.

796a. —— —— **Finance Act, 1925 (c. 36), s. 24.**]—Circumstances (*see* No. 90a, *ante*) in which :—*Held :* succession duty was not payable, since the above sect. was not retrospective.—A.-G. *v.* BELILIOS [1927] 2 K. B. 439 ; 43 T. L. R. 669 ; *revsd.* without affecting this point, [1928] 1 K. B. 798, C. A.

PART V. SECT. 3, SUB-SECT. 1.

a1. *Declaration of trust several years before death.*]—Ten years before his death an owner of debentures executed a declaration of trust whereby he declared that he held them in trust for his children & deposited the debentures & the declaration in a bank where they remained until his death. He never received any benefit from the debentures, & there was no evidence of any scheme or reservation whereby he retained any beneficial interest. No part of the income was paid to the beneficiaries, but the trustee invested it in trust or placed it to the credit of a trust account in the same bank where it accumulated until he died :—*Held :* the fund was not liable to succession duties under Succession Duties Act, R. S. A. 1922 (c. 28).—COWAN *v.* A.-G., [1925] 2 D. L. R. 647 ; [1925] 1 W. W. R. 993 ; 21 Alta. L. R. 241 ; *revsd.*, [1926] 1 D. L. R. 29.—**CAN.**

PART V. SECT. 3, SUB-SECT. 7.

c i. —— *Validity.*]—There is nothing in Succession Duty Act, 1923 (c. 13), or other statutes of Saskatchewan to prevent a testator from directing that legacies be paid free from succession duty.—*Re* ANDERSON ESTATE, CANADA PERMANENT TRUST CO. *v.* MCADAM, [1928] 4 D. L. R. 51 ; [1928] 2 W. W. R. 365 ; 22 Sask. L. R. 610.—**CAN.**

c ii. —— *Request of residue not exonerated.*]—Testator made bequests out of residue, *inter alia*, to two educational institutions in Ontario & to two Minnesota charities. By the will, all legacies, funds & stocks transferred to trustees were declared to be "free of succession duty" & certain other legacies were to be "free of all succession duty"]:—*Held :* the gifts of residue to the four charities not being in any sense free of succession duties, each must bear its share of the duties imposed in respect of its share of the residue.—*Re* WHITNEY (1930), 66 O. L. R. 339.—**CAN.**

sm. *Legacy subject to payment of all succession duty payable on estate—Whole legacy included in estate in determining rate of duty—Portion of legacy applied in payment of duty exempt from duty.*]—STAMP DUTIES COMR. *v.* LANSDOWNE (1927), 40 C. L. R. 115.—**AUS**

PART V. SECT. 4.

s0. *Provincial duty — Assets in province forming part of larger estate—Deceased domiciled outside province.*]—Deceased, domiciled outside British Columbia, left personal property of $1,000,000 of which $10,000 was in British Columbia :—*Held :* under R. S. B. C., Acts 1911 (c. 217) & 1921 (c. 58), the duty payable on the net amount should be 1½ per cent. on the first $100,000, 2½ per cent. on the second $100,000 & 5 per cent. on the balance ; of the sum thus ascertained the $10,000 within the province was charged with its proportion which was taken by the province.—*Re* SUCCESSION DUTY ACT, *Re* HECHT, [1924] 1 W. W. R. 1153 33 B. C. R. 154.—**CAN.**

PART V. SECT. 5, SUB-SECT. 1.

d i. —— —— *Shares.*]—*Held :* with respect to a very large block of shares in a mining co., the "fair market value" could not be said to be the price which probably would have been obtained had the whole block of shares been put on the market at once, in view of the number of shares & the limited market, that course would undoubtedly have depressed the market price, & the exors. were not bound to offer the shares for sale at one time or at all ; nor should said value be fixed at the price which would probably have been obtained from underwriters had a sale *en bloc* been made to them at the time of the death.—UNTERMEYER ESTATE *v.* A.-G. FOR BRITISH COLUMBIA, [1928] 3 D. L. R. 311 ; [1928] 2 W. W. R. 209 ; 39 B. C. R. 533 ; *affd.*, [1929] 1 D. L. R. 315 ; S. C. R. 84.—**CAN.**

i. —— ——.]—Although when applying for ancillary letters patent in British Columbia, had placed a value on the estate in the province for the purpose of succession duty &, being accepted by the Crown, had given a bond to secure payment of the duty, they are not bound by such valuation & its acceptance by the Crown ; but they have still the right to present a petition under Succession Duty Act, s. 43, to a judge of the Supreme Ct. of the province who has jurisdiction to determine what property of the estate is liable to duty & the amount due.—BLACKMAN *v.* R., [1924] 4 D. L. R. 123 ; [1924] S. C. R. 406.—**CAN.**

h ii. —— ——.]—In an action on a bond to secure payment of duties under Succession Duties Act, R. S. A., 1922 (c. 28), wherein the defence was that the true value of the estate did not exceed $5,000 & no duty was payable :—*Held :* the question of value was concluded by the values sworn to in the affidavits filed for the purpose of obtaining the letters probate, which values had been accepted as satisfactory by the Crown.—R. *v.* LONDON & LANCASHIRE GUARANTEE & ACCIDENT CO. (Alta.), [1926] 4 D. L. R. 874 ; [1926] 3 W. W. R. 461.—**CAN.**

h iii. —— ——.]—The essential precedent to the jurisdiction of the ct. under Succession Duties Act, 1922, c. 28, s. 38, is that there is property the liability of which to duty is in question & has to be determined by the judge. Therefore, when an exor. on applying for probate placed a valuation on the estate for the purpose of succession duty & this valuation was accepted by the Crown, the ct. cannot grant relief under said section.—*Re* SPENCE ESTATE, [1928] 1 D. L. R. 644 ; [1928] 1 W. W. R. 71 ; 23 Alta. L. R. 199.—**CAN.**

sp. *Aggregate value—Succession Duty Act, C. S.*, 1903 (*c.* 17).]—RECEIVER GENERAL OF NEW BRUNSWICK *v.* ROSBOROUGH (1915), 43 N. B. R. 258.—**CAN.**

sq. *Legacy to beneficiary — Share of residue to same beneficiary.*]—Testator gave a pecuniary legacy to A., & the residue of his estate upon trust to pay the income to the mother of A. for life, & after her death to divide the capital among her children, of whom A. was one. Succession duty was assessed as if A. were the sole survivor entitled to the residue, & to this amount was added the legacy. Duty was then assessed at the rate appropriate to this total :—*Held :* duty was not to be assessed on the legacy as though the whole of residue had been given to A. subject only to the life interest.—*Re* SHORT, SHORT *v.* REGISTRAR OF PROBATES, [1928] S. A. S. R. 220.—**AUS.**

sr. *Gift inter vivos—Value at time of death.*]—Succession Duty Act of Ontario by sect. 8 charges to duty all property situate in Ontario passing on the death of any person, & provides that property so passing is to be deemed to include (*inter alia*) any property taken under a disposition operating as an immediate gift *inter vivos* made since July 1, 1892. It is provided by sect. 4 that the dutiable value of property is to be its fair market value at the date of the death of the deceased.

799a. ——.]—Where a person, who has succeeded to the life interest in leasehold property, subsequently receives the rack rents from the property when the leases fall in, the increased value of the succession for the purpose of succession duty is to be calculated by reference to the age of the successor at the expiration of the leases & to the value of the property as at that date, less the ground rents, & not to the value of the property when the succession first arose, less the ground rents.—A.-G. *v.* BEDFORD (DUKE), [1926] 2 K. B. 184; 95 L. J. K. B. 517; 135 L. T. 541; 42 T. L. R. 346; 70 Sol. Jo. 465.

824. *Add. Annotation:*—**Refd.** Ormond Investment Co. *v.* Betts, [1928] A. C. 143.

853. *Add. Annotation:*—**Refd.** *Re* Drake, Drake *v.* Wilson, [1926] Ch. 559.

861. For citation read "No. 268, *ante*."

Part VI.—Probate Duty.

894. *Add. Annotation:*—**Refd.** *Re* Silva, Silva *v.* Silva, [1929] 2 Ch. 198.

902. *Add. Annotation:*—*As to* (1) **Refd.** Royal Trust Co. *v.* A.-G. for Alberta (1929), 46 T. L. R. 25.

914. *Add. Annotations:*—**Apprvd.** Brassard *v.* Smith, [1925] A. C. 371. **Apld.** Baelz *v.* Public Trustee, [1926] Ch. 863; Pass *v.* British Tobacco Co. (Australia) (1926), 42 T. L. R. 771. **Consd.** Erie Beach Co., Ltd. *v.* A.-G. for Ontario, [1929] 46 T. L. R. 33. **Refd.** A.-G. *v.* Sudeley, [1896] 1 Q. B. 354; A.-G. *v.* New York Breweries Co., [1898] 1 Q. B. 205; *Re* Aschrott, Clifton *v.* Strauss, [1927] 1 Ch. 313; London & South American Investment Trust *v.* British Tobacco Co. (Australia), [1927] 1 Ch. 107.

917. *Add. Annotations:*—*As to* (1) **Consd.** Baker *v.* Archer-Shee, [1927] A. C. 844. **Refd.** Herbert *v.* I. R. Comrs., I. R. Comrs. *v.* Herbert (1925), 9 Tax Cas. 593; A.-G. *v.* Belilios, [1928] 1 K. B. 798; Daw *v.* Inland Revenue Comrs., Duff-Dunbar *v.* Inland Revenue Comrs. (1928), 14 Tax Cas. 58. *Generally*, **Refd.** Inland Revenue Comrs. *v.* Smith, [1930] 1 K. B. 713.

919. *Add. Citation:*—*Subsequent proceedings* (1833), 5 B. & Ad. 78.

A resident of Ontario died in 1929, having in 1925 transferred to his wife as a gift shares in a co. registered & having its office in Ontario. The value of the shares at the date of the gift was $50,240, & at the date of the death of the deceased $264,183.50. It was not disputed that the shares were dutiable under the Act:—*Held:* the duty was payable upon the value at the date of the death of deceased.—A.-G. FOR ONTARIO *v.* NATIONAL TRUST CO., LTD., [1931] A. C. 818; 100 L. J. P. C. 215; 145 L. T. 673; 47 T. L. R. 625, P. C.—**CAN.**

st. —— ——.]—Under Succession Duty Act, R. S. A., 1922, the value of property which was the subject of a gift *inter vivos* is to be taken for the purpose of calculating the duty as of the date of the death of the donor.—A.-G. FOR ALBERTA *v.* PEARCE, [1931] 3 W. W. R. 400; [1932] 1 D. L. R. 587; 25 Alta. L. R. 553.—**CAN.**

PART V. SECT. 5, SUB-SECT. 2.

sv. *"Net value"—Mode of calculation—Aggregate value including life insurance money.*]—R. *v.* MEIBACH, [1927] 2 D. L. R. 1020; [1927] 1 W. W. R. 981; 22 Alta. L. R. 482.—**CAN.**

PART V. SECT. 6, SUB-SECT. 1.

sw. *Valuation of estate & acceptance by Crown of surety bond—Right of executor to distribute estate—Succession Duty Act, R. S. B. C.*, 1911 (c. 217).]—MINISTER OF FINANCE *v.* CALEDONIAN INSURANCE CO., *Re* LAND REGISTRY ACT & HIGGINSON, [1923] 4 D. L. R. 439; [1923] 3 W. W. R. 925.—**CAN.**

PART V. SECT. 6, SUB-SECT. 2.

sa. *Postponement—Disputed claim against estate.*]—Where deceased's estate is subject to a claim, not admitted, on notes made as surety for another, while it is right to postpone the final settlement of the exor.'s liability for succession duty as to the sum represented by such alleged indebtedness, an order dealing with the matter should postpone the date of payment to a time certain, & should contain a term directing payment of duty upon the sum should it be determined that the estate is not liable for the claim, & a further term that, if the estate is liable, the exor. should pay duty upon his claim against the principal debtor.—*Re* SUCCESSION DUTY ACT & SPROULE, [1924] 2 W. W. R. 1087; 34 B. C. R. 110.—**CAN.**

PART V. SECT. 6, SUB-SECT. 3.—A.

sb. *"Sister" of deceased—Succession Duty Act Amendment Act*, 1899, *s.* 2 (4)—*Includes half-sister.*]—*Re* OLIVIER (1901), 8 B. C. R. 91.—**CAN.**

PART V. SECT. 8, SUB-SECT. 1.

sd. *From what date payable—Succession Duty Act, R. S. B. C.*, 1924 (c. 244).]—*Re* OLDFIELD ESTATE, *Re* SUCCESSION DUTY ACT (B. C.), [1927] 4 D. L. R. 711; [1927] 3 W. W. R. 361.—**CAN.**

sf. —— ——.]—Where under Succession Duty Act, R. S. B. C. 1924, c. 244, the exors. elect to pay the duty on a contingent estate within two years from the death of the deceased, & a time is fixed by the Lieutenant-Governor in Council for the payment thereof, no interest on said duty is chargeable except from the date so fixed.—WILSON *v.* MINISTER OF FINANCE, [1928] 3 D. L. R. 253; [1928] 2 W. W. R. 585.—**CAN.**

sg. *Extension of date from which interest runs—Application for—Time for making.*]—*Held:* such an application might be made after the expiration of the six months during which, if payment were then made, no interest was chargeable.—*Re* FARMER, [1926] 1 D. L. R. 894; [1926] 1 W. W. R. 366; 36 B. C. R. 334.—**CAN.**

PART V. SECT. 8, SUB-SECT. 3.

sj. *Hearing of summons under Succession Duty Act, R. S. B. C.* 1924 (*c.* 244), *s.* 34—*Must be before judge who issued summons.*]—*Re* CLAPHAM, MINISTER OF FINANCE *v.* BURKE-ROCHE (B. C.), [1925] 4 D. L. R. 325; *on appeal sub nom.* R. *v.* BURKE-ROCHE (1926), 37 B. C. R. 313.—**CAN.**

PART V. SECT. 9.

sl. *When repayment carries interest.*]—Succession Duties Act, 1893, s. 34 (2), relating to the payment of interest on succession duty repaid applies only to the repayments of succession duty assessed under sect. 34 (1).—*Re* KNOX (1927), S. A. S. R. 264.—**AUS.**

PART VI. SECT. 2, SUB-SECT. 1.—B.

886 i. *Not liable to duty—Under Probate Duty Act, R. S. B. C.*, 1924 (c. 202).]—BOWMAN *v.* A.-G. (B. C.), [1926] 4 D. L. R. 834.—**CAN.**

PART VI. SECT. 3.

a i. —— —— *Deed of gift.*]—STAMPS COMR. *v.* SKINNER (1926), 29 W. A. L. R. 58.—**AUS.**

ESTOPPEL.

Part I.—Nature and Classification.

5. *Add. Annotation :—As to* (3) **Refd.** H. *v.* H., [1928] P. 206.

7. *Add. Annotation :*—**Refd.** H. *v.* H., [1928] P. 206.

8. *Add. Annotation :* — **Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

9. *Add. Annotation :*—**Refd.** H. *v.* H., [1928] P. 206.

10. *Add. Annotation :*—**Refd.** Page *v.* Scottish Insce. Corpn. (1929), 98 L. J. K. B. 308.

10a. ——.]—Estoppel is a rule of evidence, & not a bar to the jurisdiction.—H. *v.* H., [1928] P. 206; 97 L. J. P. 116; 139 L. T. 412; 44 T. L. R. 711; 72 Sol. Jo. 598.

11. *Add. Annotation :*—**Refd.** H. *v.* H., [1928] P. 206.

28. *Add. Annotation :*—**Refd.** Anderson *v.* Equitable Assce. Soc. of the United States (1926), 134 L. T. 557.

Part II.—Estoppel by Matter of Record.

52. *Add. Annotation :*—**Apld.** Morriss *v.* Winter (1929), 45 T. L. R. 643.

63. *Add. Annotation :*—**Consd.** Selby *v.* Atkins (1926), 135 L. T. 45.

96. *Add. Annotation :*—**Distd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155.

103a. ——.]—Money-lenders Act, 1900 (c. 51), s. 1 (1), does not empower a judge to re-open a money-lending transaction where the money-lender has brought an action in respect of that transaction, & deft. borrower has consented to judgment, although the judgment may never have been drawn up & entered. The agreement to pay has become merged in the judgment, which is *res judicata* & not an agreement within the sect.—COHEN *v.* JONESCO, [1926] 1 K. B. 119; 95 L. J. K. B. 100; 90 J. P. 18; 42 T. L. R. 41; 70 Sol. Jo. 138; *revsd.* on other grounds, [1926] 2 K. B. 1; 95 L. J. K. B. 467; 134 L. T. 690; 90 J. P. 74; 70 Sol. Jo. 386; 42 T. L. R. 294, C. A.

104a. —— ——.]—An order by consent is binding unless & until it has been set aside in proceedings constituted for that purpose. Pltf. in an action based upon charges which he has withdrawn by a consent order in a previous action between the parties is estopped by the order, & cannot effectively plead in reply that his consent was induced by fraudulent concealment.—KINCH *v.* WALCOTT, [1929] A. C. 482; 98 L. J. P. C. 129; 141 L. T. 102, P. C.

114. *Add. Annotation :*—**Consd.** Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44.

122. *Add. Annotation :*—**Refd.** King *v.* Sunday Pictorial Newspapers (1920), Ltd. (1924), 133 L. T. 397.

PART II. SECT. 1.

sa. *Prior action must be identical.*]—Upon appeal from the order of a judge summarily dismissing an action upon the ground that the issues therein had been determined by a ct. of concurrent jurisdiction in an earlier action between the same parties :—*Held :* the identity of the issues in the two actions was not clear upon the material before the ct., & therefore the order should be set aside & the action allowed to proceed to trial, the question of *res judicata* being left open.—ANDERSON *v.* AMELIASBURG, [1931] 2 D. L. R. 359; 66 O. L. R. 583.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.—B. (a) ii.

sb. *Irregularities in procedure.*]—The dismissal of prior motions for irregularities in procedure does not prevent an adjudication on a subsequent proper & regular motion.—*Re* DOTY & MARKS, [1925] 4 D. L. R. 740.—**CAN.**

sc. *Action on immoral contract.*]—On the trial of an action the judge came to the conclusion that the evidence disclosed an illegal contract under which defts. were to receive part of the money obtained by pltf. while engaged in prostitution, & that the action was of an indecent character & unfit to be dealt with, & he dismissed it, the formal judgment stating that "this ct. does of its own motion & without adjudicating as between pltf. & defts. on the matters in dispute between them, order that this action be dismissed out of this ct., with costs" :—*Held :* the order precluded pltf. from again suing in respect of any of the causes of action included in the statement of claim.—GUILBAULT *v.* BROTHIER (1904), 24 C. L. T. 342; 10 B. C. R. 449.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.—B. (a) iii.

p i. —— ——.]—While a judgment dismissing an action on default of appearance by pltf. at the trial has the same effect as a judgment for deft. upon the merits it does not follow necessarily that from such a judgment an estoppel by *res judicata* arises. On that question being raised in a subsequent action it is the duty of the ct. to look into the proceedings in the previous action & ascertain definitely what matters were in fact decided by the judgment therein. & if that judgment was founded on proceedings which do not disclose a vital defect which existed in a contract set up therein, such as the defect of illegality or invalidity, it cannot be said to have made that contract valid & enforceable notwithstanding the defect.—ELIAS *v.* DUERKSEN & DUERKSEN, [1930] 2 W. W. R. 481; 4 D. L. R. 677; 24 S. L. R. 562.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.—B. (a) iv.

104 i. —— *Consent order.*]—Where an order was made at chambers by consent of the parties, & an appeal was subsequently taken by the solr. for one of the parties that at the time of the making of the order he was under a misapprehension as to the effect of two judgments of the Supreme Ct. :—*Held :* the consent order operated as an estoppel.—*Re* KLINE, [1924] 1 D. L. R. 295; 56 N. S. R. 389.—**CAN.**

104 ii. —— ——.]—*Re* DRUMMOND, BENN *v.* HAWTHORNE, [1931] 4 D. L. R. 188; [1932] S. C. R. 73.—**CAN.**

t i. ——.]—Action for foreclosure of a mtge. Pltf. & deft. P. had been parties to a prior action in which the main issue was the ownership of the land covered by the mtge. & in which a consent judgment was given dismissing the action as against the present pltf. & declaring that the title to the land was subject to the mtge. now sought to be foreclosed & vesting the land in P. subject to said mtge. P. now raised the defence of adverse possession, a point which had not been brought forward by her in the former action :—*Held :* on the principle of *res judicata* or, at least, on the principle that a judgment is conclusive proof between the parties of the matters actually decided, said defence was not open to P.—CANADA PERMANENT CORPN. *v.* CHRISTENSEN (B. C.), [1929] 3 D. L. R. 864; 2 W. W. R. 198.—**CAN.**

148. *Add. Annotation :*—**Consd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

151. After this case add "**Decree for restitution of conjugal rights.**]—*See* HUSBAND & WIFE, No. 4767a."

153a. Re-registration of birth of illegitimate child.] —The re-registration, as provided for in the schedule to Legitimacy Act, 1926 (c. 60), of the birth of a child originally illegitimate, the child having become legitimate by virtue of the provisions of that Act, is not a record of a binding decision. In authorising the re-registration the Registrar-General does not act in a judicial capacity & the re-registration of the birth does not create a *res judicata*. —JONES *v.* JONES (1929), 98 L. J. P. 74 ; 140 L. T. 647 ; 45 T. L. R. 292 ; 73 Sol. Jo. 192.

163. *Add. Annotation :*—**Consd.** I. R. Comrs. *v.* Sneath (1932), 48 T. L. R. 241.

190. After this case add " —— ——.]—*See, also,* INSURANCE, Vol. XXIX., pp. 122, 182–184, Nos. 752, 1404–6, 1408, 1409, 1420, 1422."

204a. —— For deduction of costs—Not res judicata.] —Pltf., who had been negotiating for the purchase of a house, handed to deft., as his agent, the amount of the deposit & the balance of £490 payable to the vendor on completion & instructed deft. to pay the balance to the vendor when completion took place. Completion did not take place, & pltf. demanded the above balance from deft. & brought an action against him to recover it. The vendor claimed that pltf. was liable to him for £100 damages & directed deft. not to pay over that sum to pltf. Deft. thereupon issued an interpleader summons in respect of the £100, & the master directed an issue, & ordered that deft. should pay into ct. the £100 less his costs. On the trial of the issue the vendor's claim was dismissed. Pltf. then obtained leave to sign judgment for £390, for which deft. admitted liability. Pltf. now claimed the additional £100 in full without any deduction of deft.'s costs. Deft. contended that the master's order allowing deft. to deduct his costs was final :—*Held :* the master's order allowing the deduction of costs was not *res judicata*, but merely relieved deft. from paying the full £100 until the decision of the interpleader issue & the result of the action, & pltf. was entitled to recover the full £100.—ALLNUTT *v.* MILLS (1925), 42 T. L. R. 68.

209. To the cross-reference following this case add "**In proceedings before Railway & Canal Commission—Under Mines (Working Facilities & Support) Act, 1923 (c. 20).**]—*See* MINES, Vol. XXXIV., pp. 635, 636, No. 325."

213. *Add. Annotations :*—*As to* (1) **Refd.** I. R. Comrs. *v.* Sneath (1932), 48 T. L. R. 241. *As to* (4) **Refd.** Jacobson *v.* Frachon (1927), 138 L. T. 386.

214a. ——.]—A previous decision on a matter in dispute between parties does not create an estoppel unless (1) the decision was given by a competent tribunal, & (2) the matter was raised & controverted before that tribunal & was clearly & finally decided by it.—EASTWOOD & HOLT *v.* STUDER (1926), 31 Com. Cas. 251.

215. *Add. Annotation :*—*As to* (2) **Refd.** Eastwood & Holt *v.* Studer (1926), 31 Com. Cas. 251.

222a. ——.]—In July & Aug. 1920, the shareholders of a co. carrying on the business of whiskey distilling passed resolutions for its

PART II. SECT. 2, SUB-SECT. 1.—B. (a) v.

h i. ——.]—AIKINS *v.* BLAIN (1865), 11 Gr. 212.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.—B. (a) viii.

r i. —— *Code of Civil Procedure*, s. 207.] —Applt., who had brought an action in his unregistered business name against resp. to recover the balance of moneys alleged to be due on a running account, obtained a decree of the District Ct. in his favour subject to his complying with the terms of the Ceylon Business Names Registration Ordinance within a limited period. Against that decree resp. appealed to the Supreme Ct. of Ceylon, & the present applt., faced with the possibility that if resp.'s appeal succeeded any further proceedings might be barred by limitation, instituted a second suit against resp. in respect of the same subject-matter. This second action was dismissed in the District Ct. on the ground of *res judicata*, & against that decision the present applt. appealed. The Supreme Ct. of Ceylon allowed resp.'s appeal in the first action, & dismissed the present applt.'s appeal in the second action. On an appeal to the Privy Council in the second action : —*Held :* under sect. 207 of the Civil Procedure Code no decree from which an appeal lies & has in fact been taken, but not yet determined, is final between the parties so as to form *res judicata*, & therefore the second action would be remitted to the District Ct. to proceed as accords.—ANNAMALAY CHETTY *v.* THORNHILL, [1931] A. C. 697 ; 145 L. T. 415 ; 47 T. L. R. 459 ; 75 Sol. Jo. 393, P. C. ; *sub nom.* CHETTY *v.* THORNHILL, 100 L. J. P. C. 174.—**IND.**

PART II. SECT. 2, SUB-SECT. 1.—B. (c).

201 i. *In administration suit—Originating summons against administrator—Subsequent probate action by administrator.*]—D.'s father was believed to have died intestate, & D. took out a grant of letters of administration *de bonis non*. Subsequently a sister of D. issued an originating summons, an order for administration was made, & also an order that four payments should be made to four sisters of D. out of the funds in ct. to the credit of the matter. D. was represented by counsel at the hearing of the summons upon which this last order was made. Subsequently D. was advised by his solr. that a will which he knew his father had made, & which had been burned by his father's directions, was not legally revoked, & D. instituted an action to revoke the grant of letters of administration *de bonis non* to himself, & to prove the will in solemn form :—*Held :* being an originating summons by a next-of-kin for administration against D. as administrator, it was not open to D. to challenge in those proceedings the fact that he was an administrator, & D. was not estopped by the above orders.—DOOLEY *v.* DOOLEY, [1927] I. R. 190.—**IR.**

204 i. ——.]—An interlocutory judgment, which definitely decides a question of law, & from which no appeal is taken, may be *res judicata* when the question is raised between the same parties, even in the same action.—DIAMOND *v.* WESTERN REALTY CO., [1924] 2 D. L. R. 922 ; [1924] S. C. R. 308.—**CAN.**

sl. *Order striking out guardian ad litem's name from record.*]—*Held :* not to operate as *res judicata*.—KUMAR GANGANAND SINGH *v.* MAHARAJAH SIR RAMESHWAR SINGH BAHADUR (1927), I. L. R. 6 Pat. 388.—**IND.**

PART II. SECT. 3, SUB-SECT. 1.—A.

213 x. ——.]—VILLAGE OF HAGERSVILLE *v.* HAMBLETON, [1927] 4 D. L. R. 1044 ; 61 O. L. R. 327.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—B. (b).

sk. *Agency.*]—Where a judgment for indemnity has been pronounced between two parties, on the ground that one was the principal & the other the agent, the judgment is conclusive as to that fact.—PLUMB *v.* MACDONALD (W. C.) REGISTERED, LATIMER *v.* FOSTER TOBACCO CO., LTD., [1926] 1 D. L. R. 899 ; 58 O. L. R. 322.—**CAN.**

sl. *Decided by jury in ejectment action.*]—The judgment in an action of ejectment is only an estoppel between the parties as to the statutory issue whether the claimant was entitled to possession on the day named in the writ, & not as to any facts decided by the jury in such action.—BURNHAM *v.* CARROLL MUSGROVE THEATRES, LTD. & VICTORIA ARCADE, LTD. (1927), 28 S. R. N. S. W. 169 ; 45 N. S. W. W. N. 23 ; *affd.*, 41 C. L. R. 540.—**AUS.**

sm. *In action of ejectment.*]—The judgment in an action of ejectment is only an estoppel between the parties on the statutory issue as to whether or not the claimant was entitled to possession on the day named in the writ, & not as to any facts decided by the jury in such action.—BURNHAM *v.* CARROLL MUSGROVE THEATRES, LTD. & VICTORIA ARCADE, LTD. (1928), 29 S. R. N. S. W. 51 ; 46 N. S. W. W. N. 22.—**AUS.**

voluntary winding up. With a view to selling the distillery as a going concern the liquidator continued distilling up to Mar. 31, 1921, but not after, & pending the sale of the business he sold the co.'s stocks of whiskey as opportunity offered. Such sales of whiskey extended over a period of more than two years. An assessment to income tax was made upon the co. for the year 1921–22 in respect of the profits of its business on the footing that the liquidator was carrying on the trade in that year. This assessment was discharged by the Special Comrs. on appeal on the ground that an assessment on the co. for the preceding year had been discharged by the recorder on appeal to him from the determination of the Special Comrs., & that they were bound to follow his decision:—*Held:* the Special Comrs. were not bound by the decision of the recorder regarding the 1920–21 appeal to discharge the 1921–22 assessment.—EDWARDS *v.* "OLD BUSHMILLS" DISTILLERY CO., LTD. (IN LIQUIDATION) (1926), 10 Tax Cas. 285, H. L.

Annotation:—**Refd.** I. R. Comrs. *v.* "Old Bushmills" Distillery Co., Ltd. (1927), 12 Tax Cas. 1148.

224a. Finding of adultery.]—A finding of adultery as a fact on which a decree *nisi* has proceeded is not *res judicata*, so that it cannot subsequently be questioned in the Divorce Div. in any event, nor is resort to the Ct. of Appeal the only means of reviewing it.—CHALMERS *v.* CHALMERS, [1930] P. 154; 99 L. J. P. 60; 142 L. T. 654; 46 T. L. R. 269; 74 Sol. Jo. 216.

232. *Add. Annotations:*—**Apld.** Jaeger Co., Ltd. *v.* Jaeger (1929), 46 R. P. C. 336. **Refd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155.

253. *Add. Annotation:*—**Refd.** Green *v.* Weatherill, [1929] 2 Ch. 213.

253a. Judgment relating to right of set-off—Claim to set off contingent liability under guarantee—Subsequent application as to disposition of dividend—After payment under guarantee.]—F., having guaranteed advances by certain banks to the T. Assocn., in which he was interested, subsequently executed two deeds of arrangement in favour of his creditors. The Assocn. having gone into liquidation, the liquidator lodged a proof against F.'s estate in respect of sums due by F. to the Assocn. The trustee of F.'s estate rejected the proof & claimed to set off the various sums which had been advanced by the banks to the Assocn. for which F. had given his personal guarantee. At that time, although one or more of the banks had proved against F.'s estate under the guarantees, nothing had been paid to any of them. The Assocn. was admitted to prove against F.'s estate for a very large sum, & the trustee declared an interim dividend of 1*s.* in the pound. The banks were paid the dividend in respect of their admitted proofs, which also amounted in the aggregate to a considerable sum. The sums constituting the amount of the banks' proofs represented the amount of the Assocn.'s debt which had been guaranteed by F. The question arose whether the trustee of F.'s estate was under the circumstances entitled to pay to the liquidation of the Assocn. the sum representing the interim dividend declared in respect of the admitted proof. The matter came before the ct. by way of motion on behalf of the trustee, the question being whether this declared dividend was properly payable to the liquidator of the Assocn. or the trustee was entitled to withhold payment of all or any part thereof. On behalf of the Assocn. it was urged that the previous proceedings reported *Re Fenton*, [1931] 1 Ch. 85, had concluded the matter, that the question was now *res judicata*, & that, notwithstanding the payment to the banks of the amount of the dividend since that decision, the liquidator of the Assocn. was entitled to the full dividend in respect of the Assocn.'s admitted proof:—*Held:* the question raised by the motion had not been determined by the Ct. of Appeal in the previous proceedings.—*Re* FENTON (NO. 2), *Ex p.* FENTON TEXTILE ASSOCN., LTD., [1932] 1 Ch. 178; 146 L. T. 229; [1931] B. & C. R. 59; *sub nom. Re* FENTON (NO. 2), *Ex p.* TRUSTEE UNDER DEED OF ARRANGEMENT *v.* FENTON TEXTILE ASSOCN., LTD., 101 L. J. Ch. 1.

256a. ——.]—Applts.' mine was worked during the years 1919, 1920, & 1921 during two hundred & five days only owing to strikes & the low price obtainable for ore, though maintenance was continued during the whole period:—*Held:* the question of average annual value was not *res judicata* by a de-

PART II. SECT. 3, SUB-SECT. 1.—B. (c).

225 i. *General rule.*]—Where the cause of action is different from what it was in the first action, the matter is not *res judicata*.—BRANIGAN *v.* SABA, [1924] N. Z. L. R. 481.—**N.Z.**

PART II. SECT. 3, SUB-SECT. 1.—B. (d).

230 xvii. ——.]—Resp. claimed to deduct £1,000 in computing the profits for the year ending Mar. 31, 1921, & the recorder allowed the deduction claimed. The question came again before the Special Comrs. by way of an appeal from an assessment for 1922–23:—*Held:* the recorder's decision on the assessment for 1921–22 was binding, & the question was *res judicata*.—ALYMER *v.* MAHAFFEY, [1925] N. 167; 10 Tax. Cas. 594.—**IR.**

230 xviii. ——.]—WILSON *v.* CAMERON (1842), 1 Kerr, 542.—**CAN.**

230 xix. ——.]—CHAMBERS *v.* DOLLAR & STEVENSON (1870), 29 U. C. R. 599.—**CAN.**

230 xx. ——.]—JONES *v.* CITY OF ST. JOHN (1901), 31 S. C. R. 320.—**CAN.**

230 xxi. ——.]—FOSTER *v.* REAUME, [1926] 1 D. L. R. 1024; 60 O. L. R. 63.—**CAN.**

r i. —— ——.]—A vendor of land sued for cancellation of the agreement for sale, & for possession, alleging the purchaser's default in payment of interest & taxes: & recovered judgment for possession & a declaration that the agreement had become null & void. The purchaser counterclaimed for repayment of all amounts paid by him &, by the judgment, recovered all amounts in excess of the first payment. The vendor subsequently brought the present action, claiming damages for loss on a re-sale of the land, & sums expended by him in repairs & for taxes:—*Held:* while, in the first action, the claims now made were not all claimed directly as specific relief to which the vendor would be entitled upon cancellation of the agreement, yet they were all urged as separate reasons why the amount recovered by the purchaser should not be returned to him. The claims now made were thus all before the ct. in the first action; & therefore could not be made the subject of another action.—KRAUSE *v.* YORK, [1932] S. C. R. 548; 2 D. L. R. 701; *affg.*, [1932] 1 D. L. R. 270; O. R. 29.—**CAN.**

sh. *Action to set aside fraudulent conveyance — Finding that plaintiff secured creditor.*]—In an action by a judgment creditor against a husband & wife to set aside as in fraud of the husband's creditors a transfer made by him to his wife:—*Held:* a finding, in a prior action by the same creditor against the husband, that pltf. was an amply secured creditor at the time of the transaction, estopped pltf. as against the husband, who had pleaded *res judicata*, from again raising the issue as to the sufficiency of the pltf.'s security.—BAXTER *v.* DERKASZ & DERKASZ, [1929] 2 D. L. R. 443; 1 W. W. R. 673; 10 C. B. R. 473; 23 S. L. R. 444.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—B. (e).

254 xi. ——.]—CHAMBERS *v.* UNGER (1875), 25 C. P. 180.—**CAN.**

cision of the High Ct. of Australia between the parties as to the valuation for a previous year.—BROKEN HILL PROPRIETARY CO. *v.* BROKEN HILL MUNICIPAL COUNCIL, [1926] A. C. 94 ; 95 L. J. P. C. 33 ; 134 L. T. 335, P. C.

Annotation :— **Apld.** I. R. Comrs. *v.* Sneath (1932), 48 T. L. R. 211.

257. *Add. Annotation :*—**Distd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155.

265a. Decision that patent valid—Subsequent action for infringement—Whether defendant estopped from disputing validity of patent.]—In an action for infringement of a patent deft. denied infringement & pleaded that the patent was invalid by reason of lack of novelty & lack of subject-matter owing to common general knowledge & prior publication, want of utility, insufficiency & false suggestion in the specification, & he counterclaimed for revocation of the patent. In a previous action the patent had been attacked only on the ground of prior publication of two specifications, G. & V., & the issue of infringement had not been contested. In that action the patent had been held to be valid. It was contended by deft. that the ct. was bound by the prior decision only as to construction of the specification & not as to subject-matter, that the additional documents relied on showed features claimed in the specification not disclosed by G. or V., & that, owing to the issue of infringement not having been contested it had been unnecessary for the ct. to define the ambit of the claims :—*Held :* the ct. was not strictly bound by a prior decision as to anticipation, & it was open to deft. to prove anticipation by documents not before the ct. in the previous action.—HIGGINSON & ARUNDEL *v.* PYMAN, SAME *v.* SAME (1926), 43 R. P. C. 291, C. A.

276. *Add. Annotations :—As to* (3) **Apprvd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155. **Apld.** Green *v.* Weatherill, [1929] 2 Ch. 213. **Refd.** Pickford *v.* Quirke, Pickford *v.* I. R. Comrs. (1927), 44 T. L. R. 15.

285. *Add. Annotation :*—**Refd.** Sagar *v.* Ridehalgh (H.) & Son, Ltd., [1930] 2 Ch. 117.

291. *Add. Annotation :—Generally,* **Refd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

294. *Add. Annotation :*—**Refd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155.

296a. Admission.]—Under a will the annual income from an estate in Australia was divisible by the trustees between testator's daughters. The trustees objected to an assessment for the financial year 1918–1919 under Land Tax Assessment Act, 1910–1916, of Australia ; they claimed under sect. 38 (7) of the Act a deduction of £5,000 in respect of the share of each daughter, & a case was stated for the opinion of the Full Ct. of the High Ct. upon the questions : (1) whether the shares of the joint owners, or of any & which of them, in the land were original shares within sect. 38 ; (2) how many deductions of £5,000 resp. should make. The Full Ct. answered these questions as follows : (1) the shares of the six children surviving at the date of the assessment ; (2) six. Upon the assessment for 1919–1920 the comr. allowed only one deduction of £5,000, contending that the beneficiaries were not joint owners within the Act. Upon a case stated the Full Ct. upheld that view, & held that the comr. was not estopped by the previous decision :—*Held :* the comr. was estopped, since although in the previous litigation no express decision had been given whether the beneficiaries were joint owners, it being assumed & admitted that they were, the matter so admitted was fundamental to the decision then given.—HOYSTEAD *v.* TAXATION COMR., [1926] A. C. 155 ; 94 L. J. P. C. 79 ; 134 L. T. 354 ; 42 T. L. R. 207, P. C.

Annotations :—**Consd.** Pickford *v.* Quirke, Pickford *v.* I. R. Comrs. (1927), 44 T. L. R. 15 ; I. R. Comrs. *v.* Sneath (1932), 48 T. L. R. 211. **Refd.** Green *v.* Weatherill, [1929] 2 Ch. 213.

334. *Add. Annotation :*—**Refd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155.

339a. Between co-defendants.]—A decision operates as *res judicata* between co-defts. provided that (*a*) there was a conflict of interest between them ; (*b*) it was necessary to decide that conflict in order to give pltf. the relief which he claimed ; (*c*) the question between co-defts. was finally decided.—MUNNI BIBI *v.* TIRLOKI NATH (1931), 58 L. R. Ind. App. 158, P. C.

PART II. SECT. 3, SUB-SECT. 1.—B. (*t*).

274 ix. ——.]—*Re* GLOBE WINE CO. (Sask.), [1926] 1 D. L. R. 213.—**CAN.**

274 x. ——.]—CASSIDY *v.* INGOLDSBY (1875), 36 U. C. R. 339.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—B. (g).

276 ii. ——.]—An action was brought by a co. to remove two of its trustees for refusing to obey an order of the ct. made in a previous action directing them to join with the other trustee in assessing certain shares :—*Held :* deft. trustees were estopped by the judgment in the previous action from objecting to the status of directors who had ordered the assessment of the stock, as that was a question which should have been raised in that action. —FRASER RIVER MINING CO. *v.* GALLAGHER (1896), 5 D. C. R. 82.—**CAN.**

276 iii. ——.]—FORSYTH *v.* BURY (1887-8), 15 S. C. R. 543.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—B. (i).

303 i. *General rule.*]—CARPENTER *v.* COMMERCIAL BANK OF CANADA (1862), 2 E. & A. 111.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—C. (a) i.

329 xxvii. ——.]—the relief given to pltf. does not require or involve a decision of any case between co-defts., they will not be bound as between each other by any proceeding which may be necessary only to the decree pltf. obtains.—MA PAN NYUN *v.* MAUNG SIT PHAUNG (1928), I. L. R. 6 Ran. 575.—**IND.**

329 xxviii. ——.]—The Judicial Committee have approved of the *dictum* acted upon by the cts. in India that to apply the doctrine of *res judicata* as between co-defts. three conditions are requisite, *viz.* (1) there must be a conflict of interest between the defts. concerned ; (2) it must be necessary to decide this conflict in order to give pltf. the relief he claims ; (3) the question between defts. must have been finally decided.—LALMOHAN DHUPI *v.* RAMLAKSHMI DASEE (1931), I. L. R. 59 Calc. 636.—**IND.**

329 xxix. ——.]—A judgment was obtained against A. & two others without service of process on A. or his having any knowledge of the suit ; an attorney retained by the other defts. having appeared for A. also. He was afterwards arrested on a *ca. sa.* issued on the judgment, & was discharged by a judge's order on an affidavit denying knowledge of the suit & of any authority to the attorney to appear for him. In an action for false imprisonment against pltf. in that suit :—*Held :* A. was not estopped by the judgment from denying his liability.—SULIS *v.* FERGUSON (1861), 10 N. B. R. (5 All.) 110.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—C. (b).

346 ii. —— *Exception to—Action on covenant of indemnity.*]—An action on a covenant of indemnity is an exception to the general rule that an estoppel is binding only on privies.—LONDON GUARANTEE & ACCIDENT CO. *v.* DAVIDSON, [1926] 1 D. L. R. 66 ; [1926] 1 W. W. R. 148 ; 36 B. C. R. 301.—**CAN.**

g i. —— *One plaintiff president of company defendant in other proceedings.*] —LONDON LOAN & SAVINGS CO. *v.* OSBORN, [1928] 3 D. L. R. 258 ; [1928] S. C. R. 451.—**CAN.**

366. *Add. Annotation :*—**Refd.** Mackenzie-Kennedy *v.* Air Council, [1927] 2 K. B. 517.

382a. ——.]—KNIGHT *v.* LEGH (1828), 4 Bing. 589 ; 1 Moo. & P. 528 ; 6 L. J. O. S. C. P. 128 ; 130 E. R. 895.

385a. ——.]—Pltfs.' steamer stranded in the Black Sea, & deft. L. agreed to try to salve her on the terms (*inter alia*) that security for payment of his remuneration should be arranged in London & that he would not arrest the ship unless there was an attempt to remove her before the security had been given. Security was given in London in accordance with the salvage contract, & the ship was refloated & taken to Constantinople for temporary repairs. Before she was ready to leave, the deft. L. brought an action against the master in the Turkish ct. on the ground that the ship was about to be removed without security having been given. By order of the Turkish ct. the ship was arrested, &, as the master had no evidence of what had been done in London & L. took an oath that security had not been given, the Turkish ct., awarded L. £23,890. L. then disposed of the ship, & pltfs. brought this action, (*a*) for damages for breach of contract, (*b*) for a declaration that the Turkish judgment was invalid, & (*c*) for an injunction to prevent the Turkish judgment from being enforced :—*Held :* as pltfs. were not parties to the Turkish proceedings the doctrine of *res judicata* could not apply to the question of breach of contract.—ELLERMAN LINES, LTD. *v.* READ (1927), 44 T. L. R. 7 ; *on appeal*, [1928] 2 K. B. 144, C. A.

405. *Add. Annotation :*—**Refd.** Wilson *v.* Maple Mill (1925), 95 L. J. K. B. 666.

422. *Add. Annotations :*—**Refd.** Ingenohl *v.* Wing On (Shanghai) (1927), 44 R. P. C. 343; Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641.

432. *Add. Annotation :*—**Refd.** A.-G. *v.* Denby, [1925] Ch. 596.

447a. ——.]—To sustain a second action on the same contract or the same facts there must be a distinct cause of action, not merely different damages.—CONQUER *v.* BOOT, [1928] 2 K. B. 336 ; 97 L. J. K. B. 452 ; 139 L. T. 18 ; 44 T. L. R. 486, D. C.

457. *Add. Annotation :*—**Consd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

464. *Add. Annotation :*—**Refd.** Berry *v.* Berry, [1929] 2 K. B. 316.

473. *Add. Annotation :*—**Refd.** Mackenzie-Kennedy *v.* Air Council, [1927] 2 K. B. 517.

480. *Add. Annotations :*—**Consd.** Conquer *v.* Boot, [1928] 2 K. B. 336. **Refd.** Debenham *v.* Perkins (1925), 133 L. T. 252.

482. *Add. Annotation :*—**Refd.** Palmer *v.* Crone, [1927] 1 K. B. 804.

483. *Add. Annotation :*—**Refd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

492. *Add. Annotation :—As to* (1) **Refd.** Eastwood & Holt *v.* Studer (1926), 31 Com. Cas. 251.

498a. ——.]—*Held :* a statement of claim should be struck out, & the action dismissed, on the ground that the matter was *res judicata* by a previous decision.

The ct. has inherent jurisdiction to strike out as frivolous or vexatious a claim or defence, which has either been already decided in previous proceedings, against the party raising it, or might have been raised in a previous proceeding in which the facts necessary to raise it have been decided against the person who desires to raise them (SCRUTTON, L.J.).—MACKENZIE-KENNEDY *v.* AIR COUNCIL, [1927] 2 K. B. 517 ; 96 L. J. K. B. 1145 ; 43 T. L. R. 733 ; 71 Sol. Jo. 633, C. A.

PART II. SECT. 3, SUB-SECT. 1.—C. (c).

sm. *Action by reversioner—How far binding on other reversioners.*]—*Held :* it is well settled that a suit for a declaration by a reversioner to contest an alienation made by a widow in possession, is a representative suit on behalf of all the reversioners, & a decree fairly & properly obtained against the reversioner in such a suit binds not only him but the whole body of reversioners on the one hand, & the alienee or his representatives on the other.—THAKARSINGH *v.* UTTAMKAUR (1929), I. L. R. 10 Lah. 613.—**IND.**

PART II. SECT. 3, SUB-SECT. 1.—C. (d).

374 ii. ——.]—SONACHALAM PILLAI *v.* KUMARAVELU CHETTIAR (1927), I. L. R. 51 Mad. 128.—**IND.**

PART II. SECT. 3, SUB-SECT. 1.—C. (g).

so. *Ejectment—Fictitious lessee party to first action—Second action against lessor.*]—At the trial of an ejectment, under 14 & 15 Vict. c. 114, recovery was proved in favour of John Doe, on the demise of the now deft. against the now pltf. ; & it appeared that the question there decided, being one of boundary, was precisely the same as that again brought up in this case :—*Held :* clearly no estoppel, for that judgment was between different parties, & under the old practice.—CLUBINE *v.* MCMULLEN (1854), 11 U. C. R. 250.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—A.

a i. —— ——.]—Where an application for a writ of possession was dismissed because no notice of determination of the lease had been given :—*Held :* the landlord was not thereby barred from making another application after giving such notice.—*Re* ERNEWEIN & WELCH, [1928] 4 D. L. R. 498 ; [1928] 2 W. W. R. 628.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—B. (a) i.

g i. —— ——.]—JONES *v.* RYDER, [1928] 3 D. L. R. 301 ; [1928] 2 W. W. R. 302 ; 39 B. C. R. 547.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—B. (a) ii.

465 i. *Lease—Unsuccessful action for breach of covenant against subletting—Action for ejectment on conviction under licensing laws.*]—Applt., lessee from resp. & licensee of an hotel, was convicted of an offence under Liquor Act, 1912 (N. S. W.). After the conviction, by a writ issued on the same day, resp. brought an action for ejectment against applt. claiming to be entitled to possession on the ground of a breach by applt. of his covenant not to assign or sublet without resp.'s leave, & judgment was entered for applt. By a writ issued about a year after the issue of the writ in the first action, resp. brought another action for ejectment against applt., claiming to be entitled to possession on the ground of the conviction :—*Held :* resp. was not debarred from relying on the conviction by reason of the fact that in the first action he might have asserted the right of re-entry which it gave him.—COHEN *v.* LAPIN (1924), 35 C. L. R. 247 ; 25 S. R. N. S. W. 291 ; 42 N. S. W. W. N. 7.—**AUS.**

PART II. SECT. 3, SUB-SECT. 2.—B. (a) iii.

474 i. *Fraud — Action for fraudulent conversion of partnership assets.*]—EASTERN TRUST CO. *v.* BUSCH, [1930] 1 D. L. R. 723 ; 1 M. P. R. 140.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—B. (b).

496 iii. ——.]—WILLIAMS & SEARS *v.* RICHARDS (1918), 25 B. C. R. 19.—**CAN.**

496 iv. ——.]—The chief test of *res judicata* is identity of issue. The issue raised in the present motion for an extension of time for serving the statement of claim held not to be identical with any issue that had been adjudicated in the earlier proceedings in this matter.—GOODBUN *v.* MITCHELL, [1928] 2 W. W. R. 12.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—B. (d).

507 vi. ——.]—Where a cause of action is shown & the claim is defended, tried & decided, or where the real issue between the parties, although not set out in the statement of claim, is tried & decided, it is not open to pltf., by a subsequent action relating to the same matters involved in the earlier proceedings, to put forward a claim or plea which he had an opportunity of putting forward in the earlier pro-

508a. ——.] — MACKENZIE-KENNEDY *v.* AIR COUNCIL, No. 498a, *ante*.

510. *Add. Annotation :*—**Refd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

511. *Add. Annotation :—As to* (2) **Consd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

520. *Add. Annotation :*—**Refd.** Green *v.* Weatherill, [1929] 2 Ch. 213.

521a. Proceedings in respect of registered trade mark—Former proceedings before registration.]—Pltfs. commenced an action for infringement of their registered trade marks & passing off, & delivered their statement of claim alleging acts of infringement & passing off by defts. Defts. moved to strike out the statement of claim, on the ground that the alleged acts of infringement & passing off had been already adjudicated upon or were subsequent to the issue of the writ in the present action. The judge held that there was a total absence of any evidence that the alleged acts had ever been adjudicated upon. Defts. appealed :—*Held :* the reasons for the decision of the judge were right.—JAEGER CO., LTD. *v.* JAEGER (1929), 46 R. P. C. 336, C. A.

529a. Judgment against separate estate of married woman—Action to obtain payment into court.] —Where the ct. in giving judgment against a married woman who is a defaulting trustee orders that the judgment be satisfied out of her separate estate & execution proves useless it is not open to pltf. in a new action to obtain against her judgment in a different form for payment of the moneys into ct. As against her the matter is *res judicata*. But if it appear that she has transferred the moneys to a person with knowledge of the proceedings against her action will lie against the transferee as constructive trustee. Pltf. obtained against the first deft. a married woman judgment for payment out of her separate estate of the sum in dispute & costs. Evidence disclosed that the first deft. had parted with the whole of the sum, having transferred most of it to her sister, the second deft., who was not a party to the proceedings but knew of them at the time. Execution in respect of the judgment thus proving useless pltf. now brought this action alleging that the first deft. had paid the money to the second deft. in order to defeat any judgment for pltf., & that the second deft. received the money as constructive trustee :—*Held :* in regard to the first deft. the matter was *res judicata*, as pltf. had already obtained judgment against her separate estate & therefore could not now on the same facts obtain against her another form of judgment for payment of the moneys into ct.—GREEN *v.* WEATHERILL, [1929] 2 Ch. 213 ; 98 L. J. Ch. 369 ; 142 L. T. 216 ; 45 T. L. R. 494.

538. *Add. Annotations :—As to* (1) **Refd.** Firm of R. M. K. R. M. *v.* Firm of M. R. M. V. L., R. M. K. R. M. Somasundaram Chetty *v.* M. R. M. V. L. Supramanian Chetty (1926), 95 L. J. P. C. 197 ; Pirie *v.* Richardson (1926), 70 Sol. Jo. 1023; Cumberland *v.* Lanarkshire Tram Co. (1927), 20 B. W. C. C. 780. *Generally*, **Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

540. *Add. Annotations :*—**Apld.** Pirie *v* Richardson, [1927] 1 K. B. 448. **Refd.** *Re* Pennington & Owen, [1925] Ch. 825 ; Bennett *v.* Whitehead (1926), 96 L. J. K. B. 268 ; Hardie & Lane *v.* Chiltern (1927), 96 L. J. K. B. 773.

546. *Add. Annotation :*—**Refd.** Pirie *v.* Richardson, [1927] 1 K. B. 448.

550. In the last line for " case of the law " read " case out of the law."

Add. Annotations :—**Refd.** Pirie *v.* Richardson, [1927] 1 K. B. 448; Cumberland *v.* Lanarkshire Tram. Co. (1927), 20 B. W. C. C. 780.

After this case add " *Compare* Contract, No. 163a."

555a. ——.]—BARKER *v.* MARTIN (1647), Sty. 20 ; 82 E. R. 498.

556. *Add. Annotations :—As to* (1) **Consd.** Ellis *v.* Stenning & Son, Ltd. (1932), 76 Sol. Jo. 232. *Generally*, **Refd.** Cumberland *v.* Lanarkshire Tram. Co. (1927), 20 B. W. C. C. 780.

557. *Add. Annotation :—As to* (1) **Refd.** Clark *v.* Urquhart, Stracey *v.* Urquhart (1929), 141 L. T. 641.

559. *Add. Annotations :—As to* (1) **Apld.** Brooke *v.* Bool, [1928] 2 K. B. 578. **Refd.** Debenham *v.* Perkins (1925), 133 L. T. 252.

567. *Add. Annotation :*—**Consd.** Ellis *v.* Stenning (John) & Son, Ltd. (1932), 76 Sol. Jo. 232.

568. *Add. Annotation :—As to* (1) & (2) **Refd.** Lynn *v.* Bamber, [1930] 2 K. B. 72.

569a. ——.]—Where two are bound, jointly & severally, & the obligee has judgment against one, he may sue the other.—HIGGENS' CASE (1605), 6 Co. Rep. 46a ; 77 E. R. 322.

ceedings but which he either omitted or chose not to put forward at that time. Such claim or plea is *res judicata*.—WAHL *v.* NUGENT, [1924] 3 D. L. R. 679 ; [1924] 2 W. W. R. 1138 ; 18 Sask. L. R. 592 ; *revsg.*, [1924] 2 D. L. R. 97 ; [1924] 1 W. W. R. 939.—**CAN.**

507 vii. ——.]—A suit is not barred by *res judicata* where, though the matter which forms the ground of attack might have been made a ground of attack in the former suit, pltfs. were not bound to do so.—ABID-UD-DIN *v.* BISHARAT, ALI, ETC., RAOOF-UN-DIN, ETC. (1927), I. L. R. 8 Lah. 308.—**IND.**

507 viii. ——.]—SOKOLOSKI *v.* WINISKI, [1927] 2 D. L. R. 1029 ; [1927] 1 W. W. R. 972 ; 21 Sask. L. R. 455.—**CAN.**

507 ix. ——.]—WINTER *v.* DEWAR & CO., [1929] 4 D. L. R. 389 ; 2 W. W. R. 518.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—B. (e).

e i. —— *Action for judicial separation—Subsequent action for separation & restitution of conjugal rights.*]—HOPKINSON *v.* HOPKINSON, [1931] 3 W. W. R. 62 ; *affd.*, [1932] 1 W. W. R. 623.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—B. (f).

d i. *Award of damages for delay—Subsequent proceedings for compensation for further delay.*]—Where there was only one cause of action, & it was pltf.'s right to have his damages assessed once for all :—*Held :* the finding that pltf. could recover no damages after commencement of a subsequent action was binding upon both parties & was not, though erroneous, open to dispute. The judgment had not been appealed from & the question was *res judicata* between the parties.—MCINTOSH *v.* PARENT, [1924] 4 D. L. R. 420 ; 55 O. L. R. 552.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—B. (g).

ss. *Action for rent—Eviction pleaded by tenant—Reduction of rent granted—Right to bring action for trespass.*]—If a tenant defends an action for rent, & a reduction is made on the amount claimed on the ground that he has been evicted by the landlord from part of the premises, he cannot afterwards maintain trespass against the landlord for the same action which he relied on as an eviction in the former action. —ROURKE *v.* MCCULLOUGH (1859), 9 N. B. R. (4 All.) 361.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2. C. (b) i.

546 i. —— —— *Application to set aside judgment & add new party.*]—HUDSON'S BAY CO. *v.* SCOTT (B. C.), [1929] 4 D. L. R. 978 ; 3 W. W. R. 232. —**CAN.**

573. *Add. Annotation :—As to* (2) **Refd.** Firm of R. M. K. R. M. *v.* Firm of M. R. M. V. L., [1926] A. C. 761.

575a. —— —— —— **Power to set aside judgment.**]—A judgment in Penang against deft., described in the writ by the group of letters under which a money-lending firm there carries on business followed by the name of the firm's local representative, is a judgment against the local representative personally, whether he is a partner in, or merely an agent for, the firm. A subsequent suit for the same debt against the firm itself is barred. The ct., including the appellate ct., has no jurisdiction on motion to set aside the earlier judgment on the ground that pltf. was ignorant of its effect in law.—FIRM OF R. M. K. R. M. *v.* FIRM OF M. R. M. V. L., [1926] A. C. 761 ; 135 L. T. 645 ; *sub nom.* FIRM OF R. M. K. R. M. *v.* FIRM OF M. R. M. V. L., R. M. K. R. M. SOMASUNDARAM CHETTY *v.* M. R. M. V. L. SUPRAMANIAN CHETTY, 95 L. J. P. C. 197 ; 42 T. L. R. 686, P. C.

Annotation :—**Folld.** Kinch *v.* Walcott, [1929] A. C. 482.

577. *Add. Annotations :*—**Consd.** Bennett *v.* Whitehead, [1926] 2 K. B. 380. **Refd.** Anderson *v.* Equitable Assce. Soc. of United States (1926), 134 L. T. 557.

577a. —— **Action against partner—Subsequent action against firm.**]—FIRM OF R. M. K. R. M. *v.* FIRM OF M. R. M. V. L., No. 575a, *ante*.

579. *Add. Annotations :—As to* (2) **Refd.** Debenham *v.* Perkins (1925), 133 L. T. 252 ; Bennett *v.* Whitehead, [1926] 2 K. B. 380 ; Firm of R. M. K. R. M. *v.* Firm of M. R. M. V. L., R. M. K. R. M. Somasundaram Chetty *v.* M. R. M. V. L. Supramanian Chetty (1926), 95 L. J. P. C. 197.

580. *Add. Annotation :* —— **Distd.** Debenham *v.* Perkins (1925), 133 L. T. 252.

581a. **Judgment for debt incurred after separation.**]—Where an action for goods sold is brought against a wife on a bill containing a number of items, & judgment is recovered against her on all items purchased after a certain date, on the ground that since that date she has been acting as principal by reason of her having separated from her husband on that date, proceedings may subsequently be taken against the husband as agent for the items purchased prior to that date, since there are two distinct causes of action, & there has been no election by suing of the wife to judgment on the whole or part of one undivided debt.—DEBENHAM'S, LTD. *v.* PERKINS (1925), 133 L. T. 252, D. C.

584a. —— —— —— ——.]—FRESHWATER *v.* BULMER RAYON CO., LTD., [1932] W. N. 211 ; 174 L. T. Jo. 305, C. A.

585. *Add. Annotation :—As to* (2) **Refd.** *Re* Simms, [1930] 2 Ch. 22.

589. *Add. Annotation :*—**Consd.** Ellis *v.* Stenning & Son, Ltd. (1932), 76 Sol. Jo. 232.

590. *Add. Annotation :*—**Apld.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

593. *Add. Annotations :*—**Apld.** Dexters *v.* Hill Crest Oil Co. (Bradford), [1926] 1 K. B. 348. **Refd.** Anderson *v.* Equitable Assce. Soc. of the United States (1926), 134 L. T. 557.

597a. —— **Meaning of "forthwith".**]—Forthwith" means, forthwith upon demand by the person entitled to the certificate, & not forthwith upon the dismissal of the complaint. A certificate was applied for by the person entitled, five days after the complaint had been dismissed, & granted two days after the application, but dated as of the day upon which the complaint was made :—*Held :* to have been made out "forthwith" within Offences Against the Person Act, 1828 (c. 31), s. 27, & to be a good defence, under sect. 28,

PART II. SECT. 3, SUB-SECT. 2.—C. (c)

572 i. *Unsatisfied judgment.*]—The fact that a decree has been obtained against one of a number of joint & several obligants does not preclude a fresh action being brought against the others, if satisfaction has not been got under the decree already obtained.—STEVEN *v.* BROADY NORMAN & CO., [1928] S. C. 351.—**SCOT.**

PART II. SECT. 3, SUB-SECT. 2.—C. (d) i.

n i. ——.]—Where it had not been established that in contracting to pay a commission, deft. had been acting as the agent of H. & that pltf. had elected to look to H. for payment :—*Held :* a judgment by default recovered by pltf. against H. did not render pltf.'s claim against deft. *res judicata*, since the cause of action against deft., which it was admitted pltf. had before he sued H., did not exist against the latter & was not affected by the judgment.—WILLIAMS *v.* RODGERS, [1921] 2 W. W. R. 185 ; 56 D. L. R. 691 ; 60 S. C. R. 664.—**CAN.**

o i. —— *Judgment by default against husband.*]—Where two persons are sued jointly & judgment by default is entered against one of them pltf. then cannot turn round & say that that deft. was an agent of the other & recover judgment against the latter as the principal.—CARROLL *v.* KENNERLEY (Sask.), [1929] 4 D. L. R. 1062 ; 2 W. W. R. 437.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—C. (e).

586 iv. ——.]—ABDUR RAHIM *v.* MAHOMED BARKAT ALI (1927), 55 L. R. Ind. App. 96.—**IND.**

PART II. SECT. 3, SUB-SECT. 2.—E.

594 i. *Summons for assault—Dismissal—Subsequent action for same assault.*]—In an action for assault & battery, deft. pleaded that an information had been made against him by pltf. before a magistrate in respect to the trespass declared on, under Dominion Act, 32 & 33 Vict. c. 20, s. 43, & that the magistrate, after hearing, dismissed the information & gave deft. a certificate of dismissal, whereby & by force of the statute he was released from the action :—*Held :* the plea was insufficient in not stating that the complainant had prayed the magistrate to proceed summarily.—WILSON *v.* CODYRE (1866), 26 N. B. R. 516.—**CAN.**

sc. *Acquittal on charge of murder—Subsequent charge of assault occasioning actual bodily harm.*]—After being acquitted on a trial for murder the accused were charged with assault & battery occasioning actual bodily harm to the man whom they had been acquitted of murdering. They pleaded *res judicata :—Held :* since the fact of the assault in question was involved in the alleged murder, *i.e.* if there was a murder it could only be because there was the assault, &, therefore, it must have been considered & directly adjudicated on by the jury, the acquittal on the charge of murder rendered the matter of the assault *res judicata* as between the Crown & the accused, & was a bar to the second charge.—R. *v.* GOSSELIN, [1928] 1 W. W. R. 131 ; 50 Can. Crim. Cas. 287. —**CAN.**

598 iii. —— —— —— *Necessity for certificate of conviction.*]—JUDE *v.* ARCHER & GOODMAN, [1924] 1 D. L. R. 448 ; [1924] 1 W. W. R. 279 ; 41 Can. Crim. Cas. 289 ; 18 Sask. L. R. 32.—**CAN.**

g i. —— *Subsequent conviction for same offence—Whether appeal in action constituted "further proceedings."*]—Pltf. sued deft. by civil bill for £20 damages for assault. The Recorder held in pltf.'s favour, & gave a decree for £14 5*s*. Deft. appealed from the decree, & entered into a recognisance as provided by 45 & 46 Vict. c. 29, s. 6. After the case had been at hearing before the judge of Assize for a short time, deft. admitted the assault & the reasonableness of the damages awarded, & raised a new defence which had not been available to him in the county ct. Deft. relied upon Offences Against the Person Act, 1861, c. 100, s. 43, & it was contended on his behalf that deft.'s conviction coupled with the payment of the penalty operated as a release from "all further or other proceedings," including the re-hearing of the civil bill on appeal :—*Held :* the appeal did not constitute "further or other proceedings" within Offences Against the Person Act, 1861, s. 45.—MAGEE *v.* STOREY, [1929] N. I. 134.—**IR.**

sf. *Order for maintenance of infant—Subsequent criminal proceedings—No bar.*]—*Re* BROOKS (1930), 54 Can. C. C. 334.—**CAN.**

to a subsequent action for the same assault.—COSTAR *v.* HETHERINGTON (1859), 1 E. & E. 802; 8 Cox, C. C. 175; 28 L. J. M. C. 198; 33 L. T. O. S. 105; 23 J. P. 663; 5 Jur. N. S. 985; 7 W. R. 413; 120 E. R. 1111.

599a. ——— ——— **What amounts to conviction.**]—To an action for an assault deft. pleaded that, before action brought, pltf. caused deft. to be summoned before a magistrate to answer a complaint in respect of the assault, & that the magistrate "adjudged & determined the said complaint & charge, & then ordered deft. then to pay, & then convicted him, deft., in the costs as well of the said complaint & charge as of the hearing thereof, but did not further order or convict deft." The magistrate had decided only that deft. should enter into recognisances to keep the peace & pay the costs thereof, & such costs only had been paid. No record of a conviction was produced, but the magistrate's clerk stated that it was not the practice to draw up a formal conviction in such cases:—*Held:* the plea was no bar to the action within Offences Against the Person Act, 1861 (c. 100), s. 45, & taking it as it stood it was not proved.—HARTLEY *v.* HINDMARSH (1866), L. R. 1 C. P. 553; Har. & Ruth. 607; 35 L. J. M. C. 255; 14 L. T. 795; 12 Jur. N. S. 502; 14 W. R. 862.

Annotations:—**Expld.** R. *v.* Miles (1890), 24 Q. B. D. 423. **Refd.** Police Comr. for the Metropolis *v.* Donovan (1903), 52 W. R. 14.

623. *Add. Annotation:*—**Consd.** I. R. Comrs. *v.* Sneath (1932), 48 T. L. R. 241.

631. *Add. Annotation:*—*As to* (1) **Consd.** I. R. Comrs. *v.* Sneath (1932), 48 T. L. R. 241.

647. *Add. Annotation:*—*As to* (1) **Consd.** Pirie *v.* Richardson, [1927] 1 K. B. 448.

659. *Add. Annotation:*—*As to* (2) **Apld.** The Point Breeze, [1928] P. 135.

After this case add "*See, also,* ADMIRALTY, No. 706b."

Part III.—Estoppel Quasi of Record.

672. *Add. Annotation:*—**Refd.** Hyman *v.* Hyman, [1929] A. C. 601.

686. *Add. Annotations:*—**Distd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284. **Refd.** *Re* Pitts, Cox *v.* Kilsby (1931), 47 T. L. R. 293.

687. *Add. Annotation:*—**Refd.** York Glass Co. *v.* Jubb (1925), 134 L. T. 36.

Part V.—Estoppel by Deed.

734. *Add. Annotation:*—**Refd.** Torbay Hotel *v.* Jenkins, [1927] 2 Ch. 225.

776. *Add. Annotation:*—*As to* (1) **Refd.** Parr *v.* A.-G., [1926] A. C. 239.

786a. ———.]—The recital, in a deed, of a former deed between the same parties, proves, as between the parties, so much of the former deed as is recited, but no more.—GILLETT *v.* ABBOTT (1838), 7 Ad. & El. 783; 3 Nev. & P. K. B. 24; 1 Will. Woll. & H. 91; 7 L. J. Q. B. 61; 2 Jur. 300; 112 E. R. 665.

Annotation:—**Refd.** Fishmongers Mystery Wardens & Commonalty *v.* Robertson & Staines (1848), 18 L. J. C. P. 55.

PART II. SECT. 4, SUB-SECT. 3.

623 i. *General rule.*]—Lack of jurisdiction in the ct. deprives a judgment of any effect whether by estoppel or otherwise, even though the party alleged to be estopped sought the assistance of the ct. whose jurisdiction is impugned.—MCINTOSH *v.* PARENT, [1924] 4 D. L. R. 420; 55 C. L. R. 552.—**CAN.**

PART II. SECT. 5, SUB-SECT. 1.

638 x. ———.]—JOURNEAY *v.* RAILWAY PASSENGERS ASSURANCE CO., [1924] 1 D. L. R. 308; 50 N. B. R. 501.—**CAN.**

PART II. SECT. 5, SUB-SECT. 2.

st. *Should not be pleaded in statement of claim.*]—VICTORIA LUMBER & MANUFACTURING CO., LTD. *v.* THOMSEN & CLARK (B. C.), [1926] 4 D. L. R. 971; [1926] 3 W. W. R. 459.—**CAN.**

ss. *Should not be pleaded in counterclaim.*]—VICTORIA LUMBER & MANUFACTURING CO., LTD. *v.* THOMSEN & CLARK (B. C.), [1926] 4 D. L. R. 971; [1926] 3 W. W. R. 459.—**CAN.**

PART V. SECT. 1.

sc. *Inapplicable in India.*]—The doctrine of "estoppel by deed" in its technical sense cannot be said to exist in India.—JOHNSTON *v.* GOPAL SINGH (1931), I. L. R. 12 Lah. 516.—**IND.**

PART V. SECT. 2, SUB-SECT. 1.

sf. *Lease null & void—Lessor under disability.*]—Where the Nawab of M. executed a lease of certain immovable property for a term of 21 years in consideration of the sum of rupees 5 lacs as advance of the total rent payable for & during the said term of 21 years, on a suit being brought by the Nawab for recovery of possession:—*Held:* as the lease contravened condition (1) of the Murshidabad Act it was null & void & the Nawab was entitled to recover possession of the demised property. The Nawab was not estopped from denying the validity of the lease by reason of the Act as he was a person under disability.—MURSHIDABAD NAWAB *v.* BILAS ROY CHOUDHURI (1928), I. L. R. 56 Calc. 252.—**IND.**

PART V. SECT. 2, SUB-SECT. 2.

709 i. *General rule.*]—T., to whom a patent of land issued, by deed poll made prior thereto, sold the land to L.:—*Held:* in obtaining the patent T. was estopped by the deed from setting up title in himself under the patent.—ROBERTSON *v.* DALEY (1886), 11 O. R. 352.—**CAN.**

PART V. SECT. 2, SUB-SECT. 3.

so. *By nominee of Crown to convey land—Subsequent grant to stranger.*]—Where the nominee of the Crown gave a bond for a deed of the land to be made when the patent should issue, & in the same bond conveyed & covenanted to guarantee the title:—*Held:* on ejectment by a grantee of the nominee under a deed executed after the patent issued, this bond gave to the obligee no title by estoppel.—DOE d. MCGILL *v.* SHEA (1846), 2 U. C. R. 483.—**CAN.**

PART V. SECT. 4, SUB-SECT. 3.—C.

sx. *Release of mortgage.*]—Deft., a mtgor., wishing to pay off the mtge. & substitute another, arranged with one M. that money in the hands of M.'s solr. should be appropriated for that purpose. A mtge. was executed by deft. in favour of M. & a release of the existing mtge. duly executed by pltfs. was received by the solr. & exhibited to both deft. & M. It was not registered, however, & the solr. absconded without paying over the money to the mtgees. or being requested by the mtgees. to do so, although over a year had elapsed before the solr. left. Pltf., who had particular charge of the transaction, said that he had forgotten the matter. Deft. twice paid interest to M. on his mtge., they both thinking that it was in effect & that pltfs.' mtge. had been satisfied:—*Held:* pltfs. were not entitled to enforce their mtge., since they had put in the power of the wrongdoer to commit the wrong, & because they were estopped by the release & by their conduct from asserting that their mortgage had not been paid.—THOM & LAMONT *v.* WALKER, [1930] 3 W. W. R. 33; 3 D. L. R. 915; 43 B. C. R. 142.—**CAN.**

828. *Add. Annotation :*—**Distd.** *Re* King's Settlement, King *v.* King, [1931] 2 Ch. 294.

828a. ——.]—In order to keep the trusts of a settlement off the title, the settlor conveyed the property to certain grantees by deed of gift in consideration of his love & affection for them. The grantees at the same time executed a deed poll declaring trusts in favour of the settlor & other beneficiaries. The conveyance & the title deeds were handed to the grantees, the deed poll being retained by the settlor's solr. The grantees purporting to be absolute owners created equitable incumbrances on the property in favour of certain incumbrancers for value without notice of the trusts :—*Held :* as the settlor's conveyance contained a direct misrepresentation necessarily implying that the grantees were absolute owners, the settlor & the other beneficiaries claiming under him were estopped from denying this statement against the equitable incumbrancers, & their prior equity was therefore postponed.—*Re* KING'S SETTLEMENT, KING *v.* KING, [1931] 2 Ch. 294 ; 100 L. J. Ch. 359 ; 145 L. T. 517.

851. *Add. Annotation :*—**Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

916. *Add. Citation :*—94 L. J. Ch. 159.

965. *Add. Annotation :*—**Refd.** A.-G. *v.* Glen Line & Liverpool & London War Risks Insce. Assocn. (1929), 34 Com. Cas. 309.

993a. *S. P.* SEABOURNE *v.* POWEL (1686), 2 Vern. 11 ; 23 E. R. 619.

Annotation :—**Refd.** Smith *v.* Osborne (1857), 6 H. L. Cas. 375.

993b. ——.]—CLAYTON *v.* NEWCASTLE (DUKE) (1682), 2 Cas. in Ch. 112 ; 22 E. R. 871, L. C.

Annotation :—**Refd.** Morse *v.* Faulkner (1792), 3 Swan. 429, n.

Part VI.—Estoppel in Pais.

1019. *Add. Annotations :*—*As to* (1) **Refd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607. *As to* (2) **Apld.** Sullivan *v.* Constable (1932), 48 T. L. R. 267.

1020. *Add. Annotation :*—*Generally,* **Refd.** De Tchihatchef *v.* Salerni Coupling, Ltd., [1932] 1 Ch. 330.

1021. *Add. Annotations :*—*As to* (1) **Refd.** Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114. *As to* (2) **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670. *Generally,* **Refd.** Commonwealth Trust *v.* Akotey (1925), 94 L. J. P. C. 167.

1022. *Add. Annotations :*—*As to* (1) **Refd.** *Re* Bruce, Brudenell *v.* Brudenell, [1932] 1 Ch. 316 ; Wirral Estates, Ltd. *v.* Shaw (1932), 96 J. P. 143.

1032. *Add. Annotation :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371.

1036. *Add. Annotations :*—**Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609 ; Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607.

1036a. ——.]—If a man misrepresents a fact, to that fact he is bound, if any other person misled by such misrepresentation acts upon it, & thereby suffers damage.—BEATTIE *v.* EBURY (LORD) (1874), L. R. 7 H. L. 102 ; 44 L. J. Ch. 20 ; 30 L. T. 581 ; 38 J. P. 564 ; 22 W. R. 897, H. L. ; *affg.* (1872), 7 Ch. App. 777, L. JJ.

1038. *Add. Citation :*—132 L. T. 22.

1040. *Add. Annotation :*—**Apld.** Huddersfield Fine Worsteds *v.* Todd (1925), 134 L. T. 82.

PART V. SECT. 4, SUB-SECT. 6.

848 vii. ——.]—Applt. & resp. entered into a contract for the sale & purchase of certain leasehold land & property of applt. at a price payable by instalments. The agreement contemplated a transfer of the lease before payment of the whole purchase, & after transfer applt. had the right either to require resp. to give a mtge. or himself to enter a caveat against dealings. Applt. lodged a caveat. The transfer contained statements acknowledging receipt of the purchase price & that the price was the same as that referred to in the agreement :—*Held :* the statements in the transfer did not work an estoppel by deed, & there was no need to obtain rectification of the transfer.—GOWER *v.* WAPLES, [1930] S. A. S. R. 120.—**AUS.**

853 i. *Operation of rule—Money paid to solicitor producing executed deed—No intention that money should be paid over to party to deed.*]—A solr. obtained from pltf., his client, a cheque for $1,100, representing that he would invest it upon the security of a mtge. upon land which had been mortgaged to his sister, whose mtge. would be paid off by the $1,100. In the receipt given to pltf. by the solr. it was stated that the cheque was given to him "*re* mtge. 10 R. St.", which was a brief description of land upon which defts. had made a mtge. to the solr.'s father's exors. The solr. notified defts. that the exors. desired payment of this mtge., & that he had a client who would advance the money necessary to pay it off. A mtge. by defts. to pltf. upon this land was thereupon prepared by the solr. & executed by defts. in Mar. 1923. They made payments from time to time upon the mtge. by cheque to the solr., who paid off the mtge. held by the exors., & consequently did not obtain a discharge of it. The $1,100 was misappropriated by the solr., who absconded in 1926. It was intended that the mtge. moneys should be paid to the exors. & not to the mtgors., & this pltf. understood. This action was brought to enforce the mtge., & pltf. in her evidence at the trial stated that the solr. showed her the mtge. in Mar. 1923 :—*Held :* the facts that the mtgor. delivered the mtge. to the solr. & that he showed it to pltf. did not amount to a representation that the moneys advanced by pltf. had been paid to the holders of the first mtge., & that it had been discharged, & it could not be said that the mtgors. were estopped from disputing the fact that the moneys had been advanced to them.—MURRAY *v.* CROSSLAND, [1929] 4 D. L. R. 721 ; 64 O. L. R. 403.—**CAN.**

PART V. SECT. 5.

8d. *Transfer under Real Property Act—Without special covenants—Equitable interest subsequently acquired by transferor.*]—A transfer of land, in the form provided in the Real Property Act, made by the registered owner & without any special covenants or recitals, does not operate as an estoppel & does not vest in the transferee an equitable interest subsequenty acquired by the transferor in the absence of any fraud or misrepresentation by the latter.—BENNETT *v.* GILMOUR (1906), 16 Man. L. R. 304.—**CAN.**

8e. *Deed of adoption—Accompanied by all necessary ceremonies.*]—Where an adoption had taken place with great publicity & with due performance of all the necessary ceremonies, & a formal deed of adoption had been executed & registered & the adopted son had been received into the family of his adoptive father, & where, further, the adoption was not challenged for several years :—*Held :* an estoppel was created whereby the adoptive mother was precluded from afterwards disputing the adoption.—DHARAM PRAKASH *v.* KALAWATI DERI (1928), I. L. R. 50 All. 885.—**IND.**

PART V. SECT. 8, SUB-SECT. 3.—C.

993 vii. ——.]—DOE d. TIFFANY *v.* MCEWAN (1837), 5 O. S. 598.—**CAN.**

PART V. SECT. 9.

See cases in Part II., Sect. 5, sub-sect. 2, *ante.*

PART VI. SECT. 3, SUB-SECT. 1.—A·

1032 i. *How estoppel arises.*]—Estoppel arises where a man is precluded from denying the truth of anything which he has represented to be a fact, though it is not a fact.—*Re* MONTGOMERY *v.* DIAMOND, DIAMOND *v.* MONTGOMERY, [1925] 4 D. L. R. 736.—**CAN.**

1041. *Add. Annotation :—As to* (1) **Refd.** De Tchihatchef *v.* Salerni Coupling, Ltd., [1932] 1 Ch. 330.

1043. *Add. Annotation :*—**Refd.** Houghton *v.* Nothard, Lowe & Wills (1927), 44 T. L. R. 76.

1054a. Construction of agreement.]—If a person authorises or permits another to make a representation intended to be acted upon & it is acted upon, that person cannot afterwards be heard to say that the representation is not true. This applies when the representation is as to the legal effect of a document if there is no qualification in the representation suggesting that the document & not its effect as represented is to govern the relations of the parties. In a prospectus issued by deft. co. there was a clause referring to an agreement with that co. & purporting to set out its effect. The statements in this clause were made with the knowledge & acquiescence of the other party to the agreement, & were also known to & acquiesced in by the duly authorised agent of that party :—*Held :* the contracting party & his agent were thereby estopped from setting up any other construction of the agreement than that stated in the clause in the prospectus.—DE TCHIHATCHEF *v.* SALERNI COUPLING, LTD., [1932] 1 Ch. 330 ; 101 L. J. Ch. 209 ; 146 L. T. 505.

1065. In the twelfth line on p. 297, after the word "agreement," insert "defts. pleaded that the agreement."

1066. *Add. Annotations :*—**Consd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1926] 2 K. B. 450. **Distd.** Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443. **Consd.** British Thomson-Houston Co. *v.* Federated European Bank, Ltd., [1932] 2 K. B. 176. **Refd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246.

1068. *Add. Annotations :*—**Refd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246 ; Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443.

1108. *Add. Annotations :*—**Apld.** Silver *v.* Ocean S.S. Co. (1929), 46 T. L. R. 78. **Refd.** Evans *v.* Webster (1928), 45 T. L. R. 136.

1111. *Add. Annotations :*—**Distd.** Reckitt *v.* Barnett, Pembroke & Slater (1927), 44 T. L. R. 63. **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670; British & North European Bank *v.* Zalzstein, [1927] 2 K. B. 92; Home & Colonial Insce. *v.* London Guarantee & Accident Co. (1928), 45 T. L. R. 134 ; Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292; Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557.

1040 i. *Where all parties know the truth—No representation.*]—A tenant after the expiry of his original lease received from his landlord notice to quit at the end of the following month. In reply, he wrote a letter which contained *(inter alia)* an admission that he was a monthly tenant. At the hearing of a suit in ejectment the tenant contended that his original lease being for manufacturing purposes he had a tenancy from year to year, & was entitled to six months' notice :—*Held :* he was not estopped from so contending as the facts affecting the tenancy were within the knowledge of both parties.—JACKS & Co. *v.* JOOSAB MAHOMED (1923), I. L. R. 48 Bom. 38.—**IND.**

PART VI. SECT. 3, SUB-SECT. 1.—B. (a).

1041 xiv. ——.]—In 1894 applt. granted a lease of land "from year to year" to resps. In 1903 resps. wished to build a house on the land & applt. wrote that the lease was a permanent one, though the rent was liable to enhancement. Resps. built a house & applt. received a bonus in respect of it. In 1916 applt. sought to eject resps. :—*Held :* whether the lease was a permanent one under the agreement, applt.'s statement in the letter that it was so was a representation of fact & not an expression of opinion, & he was estopped from denying it.—FORBES *v.* RALLI (1925), L. R. 52 Ind. App. 178.—**IND.**

1041 xv. ——.]—The principal question in this case being whether the purchasers of some of the plots abutting on the land in question, which was described in their conveyance as "land kept for the proposed 100 feet drainage road of the Calcutta Improvement Trust," or as "the proposed drainage road of the Trust," had a right of way over the land by reason of any rule of estoppel :—*Held :* in order that a representation may operate as an estoppel, it must be a representation of an existing fact & not of a mere intention or future promises. It was a statement of what the Improvement Trust was going to do with regard to the land, which was described to be on the boundary of the plots sold, & did not confer any title on the purchasers of the plots sold, either by express grant or by implication. Hence no right of easement was created.—HINDUSTHAN CO-OPERATIVE INSURANCE SOCIETY, LTD. *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL (1929), I. L. R. 56 Calc. 989.—**IND.**

1044 i. —— ——.]—In order to found an estoppel a representation must be of an existing fact, not of a mere intention, & a promise which is a mere statement of an intention to do something in the future is not sufficient.—RAZANSOFF *v.* BROUNSTEIN, [1924] 2 D. L. R. 1170 ; 2 W. W. R. 500.—**CAN.**

1044 ii. *S. P.* ONTARIO EQUITABLE LAW & ACCIDENT INSURANCE CO. *v.* BAKER, [1926] 2 D. L. R. 289 ; [1926] S. C. R. 297.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.—B. (b).

sg. *Construction of contract.*] — A party who represents to another that he places a particular construction upon a clause in a written contract thereby inducing the other to enter into the contract is not entitled in an attempt to enforce the contract to set up a different construction though the latter construction may be correct in law.—SAMPSON *v.* UNION & RHODESIA WHOLESALE, LTD., [1929] A. D. 468.—**S. AF.**

PART VI. SECT. 3, SUB-SECT. 1.—B. (g) ii.

1096 xviii. ——.]—If a person sets up estoppel he must show that he has altered his position to his prejudice owing to the conduct of the other party whom he claims is estopped.—ST. JOHN COUNTY HOSPITAL *v.* PECK, [1924] 2 D. L. R. 163 ; 51 N. B. R. 324.—**CAN.**

1096 xix. ——.]—A tenant in reply to a month's notice to quit wrote a letter containing *(inter alia)* an admission that he was a monthly tenant. At the hearing of a suit in ejectment, he contended that he was entitled to six months' notice :—*Held :* he was not estopped from so contending, as the landlord having already given notice to quit had not shown that he had altered his position by reason of the admission.—JACKS & Co. *v.* JOOSAB MAHOMED (1923), I. L. R. 48 Bom. 38.—**IND.**

1096 xx. ——.]—In order to create an estoppel *in pais* it must be shown that he who desires to take advantage of it has acted upon the untrue representation, as true not knowing it to be untrue, thereby altering his position to his prejudice.—HUFFMAN *v.* ROSS (1925), 57 O. L. R. 329.—**CAN.**

1096 xxi. ——.]—Where a person, in reliance on the statement of a third person, pays over money which he has a legal right to get back, it is not true, as a general proposition, that in order to establish prejudice sufficient to support an estoppel against such third person he must show that the payee is insolvent.—BOYES *v.* BORLEY, [1928] 4 D. L. R. 302; [1928] 3 W. W. R. 69. —**CAN.**

PART VI. SECT. 3, SUB-SECT. 2.—A.

1144 xi. ——.]—Pltf. was induced to buy certain lots of land at R. by the representations of the vendor's agent that a near-by block of land was a public park to the free user of which, as a bathing beach & recreation ground, pltf. & his family would be entitled. The vendor, who owned said block, afterwards fenced it off & demanded a fee from pltf. & others for admission to it :—*Held :* on the ground of estoppel, pltf. was entitled to a declaration that he & all persons claiming through or under him were entitled to free passage to & free use of said block at all times as though it were a public park, & to an injunction restraining vendor from doing anything to prevent such passage & use.—HUGG *v.* LOW, [1928] 4 D. L. R. 315 ; [1928] 2 W. W. R. 710 ; *on appeal*, [1929] 3 D. L. R. 725 ; 2 W. W. R. 55 ; 23 S. L. R. 592.—**CAN.**

1144 xii. ——.]—Pltf. municipality having become the tax-sale purchaser of a quarter section of land leased it, before obtaining title thereto, to the deft. on the crop-payment plan. After deft. had put in his crop the registered owner interfered with deft.'s possession & he invoked the assistance of pltf.'s

1147. *Add. Annotation :*—**Refd.** Laurie & Morewood *v.* Dudin, [1926] 1 K. B. 223.

1148a. ——.]—Defts., warehousemen & wharfingers, held 600 quarters of maize belonging to A., who sold 200 quarters thereof to W. & Co., who sold them to pltfs., giving to the latter a delivery note, which they lodged with defts. Defts. did not acknowledge it or object to it, but some days later, no weighing out or appropriation of the 200 quarters having taken place, A. stopped delivery. It was contended that on the sale to W. & Co. the latter became tenants in common with A. of the 600 quarters, with the right in W. & Co. to assign their interest therein to pltfs., although no appropriation of the 200 quarters had taken place :—*Held :* (1) pltfs. had no claim to the maize ; (2) defts. & A. were not estopped from denying that pltfs. were the owners of the 200 quarters of maize.

No doubt property can be acquired by estoppel. In one aspect estoppel does not create a title but merely enables pltf. to rely upon the doctrine & to treat the property as if it had been transferred (SANKEY, J.).—LAURIE & MOREWOOD *v.* DUDIN (JOHN) & SONS, [1925] 2 K. B. 383 ; 94 L. J. K. B. 928 ; 30 Com. Cas. 280 ; *affd.*, [1926] 1 K. B. 223 ; 95 L. J. K. B. 191 ; 134 L. T. 309 ; 42 T. L. R. 149 ; 31 Com. Cas. 96, C. A.

Annotation :—*As to* (1) **Apld.** *Re* Wait, [1927] 1 Ch. 606.

1213. *Add. Annotation :*—*As to* (2) **Refd.** Anderson *v.* Equitable Assce. Soc. of the United States (1926), 134 L. T. 557.

1219. *Add. Citation :*—1 B. R. A. 210.

Add. Annotation :—*As to* (1) **Expld. & Distd.** Gateshead Union Assmt. Com. *v.* Redheugh Colliery, [1925] A. C. 309.

1223. *Add. Annotations :*—**Consd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258. **Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628 ; Sullivan *v.* Constable (1932), 48 T. L. R. 369.

1224a. ——.]—If, whatever a man's real intention may be, he so conducts himself in making a contract that a reasonable man would believe that he was assenting to the terms proposed by the other party, & if that other party upon that belief enters into the contract with him, the man so conducting himself is equally bound as if he had intended to agree to the other party's terms.—SULLIVAN *v.* CONSTABLE (1932), 48 T. L. R. 369, C. A.

1227. *Add. Annotation :*—**Consd.** Houghton *v.* Nothard, Lowe & Wills (1927), 44 T. L. R. 76.

1228a. As to performance of statutory duty or exercise of statutory discretion.] — Performance of a statutory duty, or exercise of a statutory discretion, by a corporate local authority is not prejudiced by any prior action which that authority may have taken without aid from the statutes. No estoppel can arise in such a case.—SUNDERLAND CORPN. *v.* PRIESTMAN, [1927] 2 Ch. 107 ; 96 L. J. Ch. 441 ; 137 L. T. 688 ; 26 L. G. R. 64.

1238. *Add. Annotations :*—**Consd.** Hyman *v.* Hyman, [1929] A. C. 601. **Refd.** May *v.* May (1929), 98 L. J. K. B. 770.

officials to protect the crop from the registered owner. They decided that pltf. would seize the crop for arrears of taxes due by the registered owner. Pltf.'s secretary made out the seizure papers & handed a notice of seizure to deft., & deft. accepted it & treated it as a seizure of a quarter of the crop for the arrears of taxes. Later deft. removed & disposed of all the crop, & pltf. sued for the value thereof :—*Held :* even if the arrangement did not amount to a valid seizure deft. could not, under the circumstances, be heard to say that it did not.—HEART'S HILL, RURAL MUNICIPALITY *v.* HELMER, [1930] 2 W. W. R. 535 ; 3 D. L. R. 1001 ; 24 S. L. R. 513.—**CAN.**

sd. *As to fault for accident.*]—The fact that pltf., the driver of a vehicle which came into collision with a motor car, stated immediately after the accident that he misjudged the distance of the motor car :—*Held :* not to raise any estoppel.—HUNT *v.* MORGAN (Alta.), [1926] 3 W. W. R. 804 ; [1927] 1 D. L. R. 267.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 2.—B. (a).

q i. —— —— —— —— ——.]—*Held :* the sellers were not estopped from proving their ownership of the safe.—WALKER *v.* HYMAN (1877), 1 A. R. 345.—**CAN.**

q ii. —— —— —— —— ——.]—*Held :* there was evidence of an estoppel.—WEST *v.* O'LEARY (1894), 32 N. B. R. 286.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 2.—B. (c).

1173 iv. —— —— *Allegation of previous judgment—Made by attorney ad litem.*]—Acquiescence in a judgment cannot be presumed & must be unequivocal ; it must be made by the party himself or by his attorney specially authorised & it is not binding upon the principal if made by an attorney *ad litem* acting under his general mandate.—DUBUC *v.* CORPN. DE MARSTON, [1928] 1 D. L. R. 225 ; [1927] S. C. R. 526.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 2.—B. (e).

sf. *Document evidencing loan.*]—Where deft. executed a document evidencing a loan received by him from applt. & constituting an order, for the amount of the advance upon a co. about to be formed for the purpose of acquiring & conducting resp.'s business :—*Held :* the document constituted an estoppel which precluded resp. from giving evidence to contradict or vary the terms thereof, & the money advanced, not having been paid by the co. to applt., resp. was personally liable on the contract.—HEMPENSTALL BROS., LTD. *v.* POULSON (1928), 22 Q. J. P. R. 156.—**AUS.**

PART VI. SECT. 3, SUB-SECT. 3.—A.

1221 i. *General rule.*]—DEMINGS *v.* BEDELL, [1925] 3 D. L. R. 1063.—**CAN.**

1221 ii. ——.]—PATTERSON *v.* SMITH (1877), 42 U. C. R. 1.—**CAN.**

1221 iii. ——.]—Where pltf. induced the ct. to grant him a judgment recognising deft.'s right to timber :—*Held :* he was estopped from afterwards contending that deft. had no right to dispose of timber.—MANLEY *v.* O'BRIEN. *Re* MACKINTOSH (1901), 22 C. L. T. 74 ; 8 B. C. R. 280.—**CAN.**

1221 iv. —.]—BAKER *v.* BAKER (1904), 40 N. S. R. 470.—**CAN.**

1225 i. *As to position of party estopped.*]—A party is not disabled by law from explaining a matter of evidence, only because his explanation consists of circumstances which include wrongdoing on his part.—PRESS *v.* MATHERS, [1927] V. L. R. 326 ; 48 A. L. T. 183 ; [1927] Argus L. R. 197.—**AUS.**

sk. *Transfer of business.*]—Pltf. sued deft. for the price of goods sold & delivered. For several years pltf. had sold to deft. tailoring materials. Deft. carried on a tailoring business, trading as T. S. & Son. Deft. by deed in 1925 assigned the premises in which he was carrying on his business to E. S. & G. S., who continued to trade as tailors under the name of T. S. & Son. No assignment in writing was made of the business or of the debts due to deft., & no notice of the assignment of the premises or of any change in the ownership of the business was given to pltf. Deft. came to the place of business after the transfer & appeared to act in relation to the business in the same way as before the transfer :—*Held :* deft. was estopped from denying that at the time the goods whose price was sued for were sold & delivered, he was the owner of the business, & pltf. was entitled to judgment.—DUNN *v.* SHANKS, [1932] I. R. 66.—**IR.**

PART VI. SECT. 3, SUB-SECT. 3.—B.

1233 ii. ——.]—The fact that a person, who has recovered a judgment, takes part in a reference directed thereby, does not bring him within the rule that a person, who after recovering a judgment puts it into effect & accepts benefits under it, is estopped from appealing therefrom.—MAINFROID *v.* MAINFROID (Alta.), [1926] 4 D. L. R. 1060 ; [1926] 3 W. W. R. 617.—**CAN.**

1241 i. —— *Property afterwards claimed under another title.*]—CONNORS *v.* MYATT (1915), 49 N. S. R. 139.—**CAN.**

1243 i. —— *Title subsequently acquired by possession.*]—SMITH *v.* SMITH (1884), 5 O. R. 690.—**CAN.**

q i. —— *Sale of reversionary interest.*] (2 FLEMING *v.* WEST (1884), 14 N. S. R. —R. & G.) 294 ; 1 C. L. T. 709.—**CAN.**

a i. *Acceptance of credit from unauthorised agent.*]—A co., knowing a vendor of goods was giving it credit in a case where the person buying on its behalf has no proper authority so to do, is estopped afterwards from disputing liability on the ground of want of authority.—GREAT WEST SADDLERY CO. *v.* CANADIAN INGOT IRON CO., [1924] 4 D. L. R. 881.—**CAN.**

1247. *Add. Citations :*—94 L. J. P. C. 93; 132 L. T. 511.

1257. *Add. Annotation :*—**Consd.** Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52.

1259. *Add. Citation :*—132 L. T. 99.

Add. Annotation :—**Refd.** Page *v.* Scottish Insce. Corpn. (1929), 98 L. J. K. B. 308.

1265. *Add. Annotation :*—**Refd.** A.-G. *v.* Denby, [1925] Ch. 596.

1285a. Acquiescence by trustees—In proceedings for administration of trust.]—DOYLE *v.* DOYLE (1850), 12 Beav. 471; 19 L. J. Ch. 246; 15 L. T. O. S. 498; 50 E. R. 1141.

1294. *Add. Annotations :*—**Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670; British & North European Bank *v.* Zalzstein, [1927] 2 K. B. 92.

1297a. Preparation of deed by solicitor.]—A conveyance was made by L. to his son for the purpose of giving the latter a colorable qualification to kill game :—*Held :* the solr. who prepared & attested the deed, knowing the purpose for which it was to be used & himself actively furthering the object of the parties, could not afterwards, in trover by the son for the deed, contend that nothing passed to him under it.—LORD *v.* WARDLE (1837), 3 Bing. N. C. 680; 4 Scott, 402; 1 Jur. 382; 132 E. R. 572.

1311. *Add. Annotation :*—**Refd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

1318a. —— **Payment of rent not due.**]—The predecessors in title of defts. were owners in fee simple of land including both the surface & the strata below the surface. They conveyed the land to pltfs.' predecessors by a deed which contained an exception & reservation of all mines & veins of coal in or under the land. Defts. & their predecessors worked the coal mines under the land & made an underground road which was not confined to the seams of coal, but was cut also through the adjacent strata. Along this road they carried coal obtained from mines beyond the limits of the land conveyed to pltfs.' predecessors. Defts. & their predecessors had for some years paid rent to pltfs. in the belief that they were bound to do so under a licence from pltfs. :—*Held :* (1) by virtue of the exception, the property in the strata below the surface remained in defts. sufficiently to entitle them to construct roads therein & use them in any way they pleased; (2) the payment being voluntary & made under a supposed legal liability created in law no obligation at all, & defts. were not thereby estopped from setting up their title under the conveyance.—BATTEN POOLL *v.* KENNEDY, [1907] 1 Ch. 256; 76 L. J. Ch. 162.

1319a. Objections to account stated not pressed.]—BURROUGH'S ADDING MACHINE, LTD. *v.* ASPINALL (1925), 41 T. L. R. 276, C. A.

1326. *Add. Annotations :*—**Consd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399. **Refd.** Anchor Trust Co. *v.* Bell, [1926] Ch. 805.

1328. *Add. Annotation :*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

1330. *Add. Annotation :*—**Refd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607.

1331. *Add. Annotation :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371.

1345. *Add. Annotation :*—**Apld.** Coplovitch *v.* Williams (1929), 73 Sol. Jo. 484.

1380. *Add. Annotation :*—**Refd.** Bennett *v.* Whitehead, [1926] 2 K. B. 380.

PART VI. SECT. 3, SUB-SECT. 3.—C. (a).

1260 iv. ——.]—Estoppel by acquiescence connotes that the person estopped has represented to the person who is infringing his right that he is not entitled to complain, & that the other party relying upon this representation has altered his position to his detriment.—GOBINDA RAMANUJ DAS MOHANTA *v.* RAM CHARAN DAS (1925), I. L. R. 52 Calc. 748.—**IND.**

1260 v. ——.]—In order that the protection of the equitable doctrine of acquiescence may be successfully claimed, the following circumstances must subsist. The party claiming the benefit of the doctrine must have made a mistake as to his legal rights & must have expended some money or done some act on the faith of his mistaken belief; & the possessor of the legal right must have known of the existence of his own right which is inconsistent with the right claimed by the other party, he must have known of the other party's mistaken belief in his own rights, & he must have encouraged the other party in his expenditure of money, or in the other acts which he has done, either directly or by abstaining from asserting his legal right.—JAI NARAIN *v.* JAFAR BEG (1926), I. L. R. 48 All. 353.—**IND.**

1260 vi. ——.]—CROCKER *v.* HUTCHINSON (1861), 10 N. B. R. (5 All.) 139.—**CAN.**

1260 vii. ——.]—NAUGLER *v.* JENKINS (1899), 32 N. S. R. 333.—**CAN.**

1262 i. *Who bound—Crown—Entry on Crown lands.*]—R. *v.* CANADIAN PACIFIC RAILWAY (Can. Ex.), [1929] 2 D. L. R. 641; 35 Can. Ry. Cas. 248.—**CAN.**

1268 ii. —— *Or ultra vires.*]—Acquiescence cannot rehabilitate or render valid a transaction which is *ultra vires* or illegal.—GOBINDA RAMANUJ DAS MOHANTA *v.* RAM CHARAN DAS (1925), I. L. R. 53 Calc. 748.—**IND.**

PART VI. SECT. 3, SUB-SECT. 3.—C. (b) i.

1270 vi. ——.]—Where under a contract between pltfs., U.S. citizens, & defts., a Canadian co., payments had been made in different currencies at different times :—*Held :* as under the contract payments should be in Canadian currency, payments made in U.S. currency could not operate as an estoppel, as they were made under misapprehension of rights.—MYERS *v.* UNION NATURAL GAS CO. (1922), 53 O. L. R. 88.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—C. (c).

sg. *Assent to sale of goods—Acquiescence in condition of goods.*]—In an action to recover for work & labour in pressing a quantity of straw, evidence showed that deft. was of opinion that the straw was not in a fit condition to be pressed, & that he only consented to have the work done on pltf. offering to buy the straw, & that pltf. subsequently made a sale of the straw which was delivered at his request :—*Held :* pltf. was precluded from setting up the unmerchantable condition of the straw in answer to deft.'s counterclaim for the price agreed to be paid.—PEPPARD *v.* WOOD, PEPPARD *v.* CAMERON (1924), 57 N. S. R. 222.—**CAN.**

sh. *In registration of motor car in name of another.*]—CAIRNS *v.* WORTHY (P. E. I.), [1929] 3 D. L. R. 123.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—E. (a).

m i. ——.]—MILLER *v.* R., [1927] Exch. C. R. 52; *affd.*, [1928] S. C. R. 318.—**CAN.**

sn. *Application of doctrine—Guarantee induced by fraud—Delay in repudiation.*]—A. was induced to guarantee a debt by fraud of debtor. On learning of the fraud from the creditor he did not repudiate the guarantee :—*Held :* it was afterwards too late to set a defence based on the fraud.—MANTLE LAMP CO. OF AMERICA *v.* NIXON, [1924] 3 D. L. R. 1073.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—E. (b) ii.

so. *Delay in taking security—Creditor estopped from relying on agreement by debtor to give security.*]—*Re* MCINTYRE, TRUSTEE *v.* CANADA METAL CO., [1925] 2 D. L. R. 889; 5 C. B. R. 629.—**CAN.**

sp. *Delay by vendor in giving notice that goods not paid for by agent—Agent's drafts on principal duly met.*]—In an action by pltf. co. against deft. co. for the price of goods :—*Held :* the latter had accepted the London agency's drafts for the goods in the belief that the amounts due in respect thereof had been paid to pltf. co. & pltf. co. had by its conduct induced deft. co. to believe that such was the case, & was not entitled to recover.—SOPWITH AVIATION & ENGINEERING CO., LTD. *v.* MAGNUS MOTORS, LTD., [1928] N. Z. L. R. 433.—**N.Z.**

PART VI. SECT. 3, SUB-SECT. 3.—F. (a).

s i. —— *Adoption of one of two alternative remedies.*]—HUTCHISON *v.* PAXTON, [1928] 4 D. L. R. 704; 63 O. L. R. 74.—**CAN.**

1395. *Add. Annotation :—As to* (2) **Refd.** Australian Bank of Commerce *v.* Perel, [1926] A. C. 737.

1402. *Add. Annotations :*—**Distd.** Reckitt *v.* Barnett, Pembroke & Slater [1929] A. C. 176. **Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609.

1418. *Add. Annotation :*—**Refd.** *Re* King's Settlement, King *v.* King, [1931] 2 Ch. 294.

1419. *Add. Annotation :*—**Distd.** *Re* King's Settlement, King *v.* King, [1931] 2 Ch. 294.

1435a. ——.]—LAURIE & MOREWOOD *v.* DUDIN (JOHN) & SONS, No. 1148a, *ante.*

1439. *Add. Annotation :*—**Refd.** *Re* Wait, [1927] 1 Ch. 606.

1449. *Add. Annotations :*—**Distd.** Canadian Pacific Ry. Co. *v.* R., [1931] A. C. 414. **Refd.** Ariff *v.* Rai Jadunath Majumdar Bahadur (1931), 47 T. L. R. 238.

1450. *Add. Annotation :*—**Apld.** Canadian Pacific Ry. Co. *v.* R., [1931] A. C. 414.

1472. *Add. Annotation :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd., [1932] 1 K. B. 371.

1472a. ——.]—In 1925, a certain piece of land, known as B. Lodge, was sold to J. & M. In the conveyance a quantity of timber trees, saplings, etc., was excepted out of the sale by the vendors, who reserved to themselves the right to cut & remove them before Oct. 11, 1927. In 1926 pltf. purchased the timber trees, etc., & proceeded to cut & remove them. A large amount of the cut timber was, however, left on the land after Oct. 11, 1927, & in these circumstances J. & M. stated that pltf. had lost his title thereto & forfeited his right to remove it, & they claimed it as their property. As the result of an action in 1930 against J. & M. it was held that the property in the timber remained in pltf. after Oct. 11, 1927, & a certain sum by way of damages for conversion against J. & M. was at the instance of the judge agreed between all parties to the proceedings & awarded pltf. In the meanwhile J. & M. purported to sell the cut timber to the present defts.

Pltf., who had taken no steps to enforce the order which he had obtained against J. & M., gave notice on June 10, 1930, to defts. that the sale by J. & M. to them was ineffective, as J. & M. had no title to the timber, & requesting the return of the timber to him. Defts. having refused & repudiated liability, pltf. commenced an action, & by his statement of claim asked for a sum by way of damages for conversion; the conversion relied on being the refusal by deft. co. to return the timber in compliance with the notice of June 10, 1930 :—*Held :* no special circumstances existed sufficient to constitute any confirmation by pltf. of any title to the timber in J. & M., nor did pltf. by accepting judgment in the form he did against J. & M. confer any title on them or deft. co. by estoppel.—ELLIS *v.* STENNING (JOHN) & SON, [1932] 2 Ch. 81; 101 L. J. Ch. 401; 147 L. T. 449; 76 Sol. Jo. 232.

1477a. Money paid on forged cheque—Failure to inform bank of forgery.]—Pltf. had an account with deft. bank, & his wife forged his signature on cheques & thereby drew out all the money left in the account, & she lent it to her sister. Pltf., on discovering the facts, did not at once inform the bank, but about nine months later, when his wife told him that she wanted more money for her sister, he stated his intention of going to the bank, & that night his wife committed suicide. Pltf. then went to the bank & told the manager about the forged cheques. In an action by pltf., claiming to be credited by deft. bank with the amount of the forged

PART VI. SECT. 3, SUB-SECT. 3.—F. (b).

sq. *Special contract denied—Not available to defeat claims.*]—STOCK *v.* GREAT WESTERN RY. CO. (1858), 7 C. P. 526.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—F. (c).

h i. ——.]—*Re* KEARNEY'S ESTATE, WHITEHURST, APPELLANT (1927), 27 S. R. N. S. W. 386; 44 N. S. W. W. N. 117.—**AUS.**

h ii. ——.]—Where a vendor, on default of payment of an instalment of the purchase price of land, takes out an order *nisi* for foreclosure, he cannot afterwards proceed by way of execution against the purchaser.—STANDARD TRUST CO. *v.* LITTLE (1915), 31 W. L. R. 769.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—G. (b).

sr. *Nationality of party.*]—Where pltf. was ignorant when he made a contract that deft. was a person of enemy origin & that under War Legislation & Statute Law Amendment Act, 1918, s. 6, the contract was illegal :—*Held :* in an action for breach of contract, deft. would be estopped from alleging that the contract was void on account of his enemy origin since the deft. well knew that fact.—BRANIGAN *v.* SABA, [1924] N. Z. L. R. 481.—**N.Z.**

PART VI. SECT. 3, SUB-SECT. 3.—G. (c).

h i. ——.]—WELLBAND *v.* WALKER (Man.) (1911), 16 W. L. R. 408.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—H. (a.)

1438 i. *A form of acquiescence.*]—GOBINDA RAMANUJ DAS MOHANTA *v.* RAM CHARAN DAS (1925), I. L. R. 52 Calc. 748.—**IND.**

t i. —.]—HUTCHINSON BROTHERS & CO., LTD. *v.* PERKINS (B. C.) (1908), 8 W. L. R. 16.—**CAN.**

st. *Claim to distinctive colour design—Objection not raised in previous proceedings.*]—Pltf. co., which had adopted a certain design of contrasting black & white colours for the painting of its cabs, dissimilar to any previously in use in the city in which it conducted its operations, sought by injunction to restrain defts. from using cabs painted a similar design of contrasting blue & white, on the ground that, although the respective cabs might readily be distinguished in daylight, those of defts. were so got up as to be calculated, at night, to deceive people into believing them pltfs.' cabs. No instance of actual deception on defts.' part was proved, nor was any fraudulent intention of their part to mislead the public established :—*Held :* pltf. having, in previous proceedings, concurred in the painting of defts.' cabs in a particular design & colour now had no ground for complaint.—BLACK & WHITE CABS, LTD. *v.* NICHOLSON, NICHOLSON *v.* BLACK & WHITE CABS, LTD., [1928] N. Z. L. R. 273.—**N.Z.**

PART VI. SECT. 3, SUB-SECT. 3.—H. (b).

b i. ——.]—The equitable principle prohibiting a party from lying by & reaping the benefit of the expenditure of another's money on his property, applied.—PUBLIC PROPERTY TRUSTEES *v.* GILLIS (1881), 14 N. S. R. (2 R. & G.) 262.—**CAN.**

1465 i. *Works executed by local authority.*]—SANDRINGHAM CITY CORPN. *v.* RAYMENT (1928), 40 C. L. R. 510; [1928] V. L. R. 312; [1928] Argus L. R. 173.—**AUS.**

1465 ii. ——.]—A municipal council prepared plans, specifications & estimates for the construction of a street formed or set out on private property. Before the notice to property owners provided for by the Local Govt. Act, 1915, had been sent out, a contract for the work had been entered into by the council & the work commenced. In an action by one of the property owners for a declaration that the municipality was not entitled to a charge on his land for the proportion of the cost of making the said street alleged to be due by him :—*Held :* pltf. had not by conduct waived compliance with the statutory provisions nor was he by conduct estopped from asserting his rights.—DUNN *v.* SHIRE OF BRAYBROOK, [1928] V. L. R. 454; [1928] Agus L. R. 286.—**AUS.**

PART VI. SECT. 3, SUB-SECT. 3.—H. (c).

sk. *Registration of car in name of another.*]—BAZAR *v.* GRANT & GRANT (Man.), [1929] 4 D. L. R. 1075; 1 W. W. R. 281.—**CAN.**

cheques, the bank pleaded (*a*) adoption & ratification, & (*b*) that pltf. was estopped by his silence from alleging that the signatures were forgeries. The tribunal of first instance found that the forged cheques were honoured through the carelessness of the bank officials. There was no evidence that pltf. had ever adopted the forged cheques as his own :—*Held :* ratification had no applicability to a forged signature, but pltf. was estopped from alleging the forgeries because his silence until after his wife's death had caused the bank to lose their right of action against the forger, & therefore the action failed.—GREENWOOD *v.* MARTINS BANK, LTD. (1932), 147 L. T. 441 ; 48 T. L. R. 601 ; 76 Sol. Jo. 544 ; 38 Com. Cas. 54, H. L.

Annotation :—**Apld.** *Re* National Benefit Assurance Co. (1932), 48 T. L. R. 612.

1537. *Add. Annotation :*—**Refd.** R. *v.* Essex JJ., *Ex p.* Perkins, [1927] 2 K. B. 475.

1549. *Add. Annotation :*—**Refd.** Bernard *v.* Williams (1928), 139 L. T. 22.

1550. *Add. Annotation :*—**Refd.** Huddersfield Fine Worsteds *v.* Todd (1925), 42 T. L. R. 52.

1556. *Add. Annotation :*—**Refd.** Sowerby *v.* Lindsay (1928), 44 T. L. R. 501.

1557. *Add. Annotation :*—**Refd.** Macaura *v.* Northern Assce., [1925] A. C. 619.

1561. *Add. Annotation :*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307.

1584. *Add. Annotation :*—**Refd.** *Re* Nicholson & Sons, Ltd., Application, *Re* Bass, Ratcliff & Gretton's Trade Mark, [1931] 2 Ch. 1.

1602. *Add. Annotation :*—**Refd.** Guildford Trust *v.* Goss (1927), 136 L. T. 725.

1603. *Add. Annotation :*—**Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

1604. *Add. Annotations :*—**Refd.** Australian Bank of Commerce *v.* Perel, [1926] A. C. 737 ; Jones *v.* Waring & Gillow, [1926] A. C. 670 ; Fenton Textile Assocn. *v.* Thomas (1929), 45 T. L. R. 264 ; Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465 ; Midland Bank, Ltd. *v.* Reckitt (1932), 48 T. L. R. 271 ; Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344 ; Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114.

1605. *Add. Annotations :*—**Consd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607. **Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1928] 97 L. J. K. B. 609 ; Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

1610a. ——.]—Defts. received a consignment of wheat & issued a delivery order for it, which came into the hands of B. Upon this delivery order B. obtained advances from pltfs. Shortly afterwards defts. issued a second delivery order in respect of the same consignment of wheat. The two delivery orders were different, & such as might reasonably be supposed to relate to distinct consignments of wheat. Upon this second delivery order B. obtained further advances from pltfs., who were under the belief that the delivery orders related to distinct consignments of wheat. B. having afterwards become insolvent :—*Held :* defts. having been guilty of culpable negligence, & such negligence having been the proximate cause of pltfs. loss, were estopped from alleging that the two delivery orders related to the same consignment of wheat, & were liable to compensate pltfs. for the loss sustained by them through the advances to B.—COVENTRY *v.* GREAT EASTERN RY. Co. (1883), 11 Q. B. D. 776 ; 52 L. J. Q. B. 694 ; 49 L. T. 641, C. A.

Annotation :—**Apld.** Seton *v.* Lafone (1887), 19 Q. B. D. 68.

PART VI. SECT. 3, SUB-SECT. 3.—H. (e).

e i. —— *Failure of surety to inform creditor of matter leading to discharge of guarantee.*]—A surety is under no legal duty to the guaranteed party to warn him that something he is doing or some misapprehension he is under may have the legal effect of discharging the suretyship. In an action by an employer on an employee's fidelity bond the fact that deft. co. which had received a letter from pltf.'s solr. allowed him to rest under a misapprehension, disclosed by his letter, as to when the theft was discovered was held not to estop the co. from relying on a term in the contract that an action thereunder must be brought within a specified period after the discovery of the theft.—BIRCH LAKE, MUNICIPAL DISTRICT *v.* LONDON GUARANTEE & ACCIDENT CO., LTD., [1931] 1 D. L. R. 600 ; [1930] 3 W. W. R. 634.—**CAN.**

sw. *Acquiescence of agent—Holding goods as agent for sale—Goods seized in execution.*]—Deft., having obtained an order in a ct. of petty sessions against pltf.'s son, informed the police in charge of a distress warrant that the judgment debtor had a motor lorry at L.'s premises ; that he did not know its registered number, but that L. would point out the lorry to the constable executing the warrant. The lorry was seized on L.'s premises. It was the property of pltf., & was in the possession of L. as his agent for sale. L. did not inform the police of pltf.'s claim, & refrained from giving any information of the seizure to pltf. until after the lorry had been sold. In an action by pltf. for conversion of the lorry :—*Held :* pltf. was not estopped by his agent's silence or conduct from asserting that he was the owner of the lorry.—MOIR *v.* BARNES, [1928] V. L. R. 56.—**AUS.**

PART VI. SECT. 3, SUB-SECT. 3.—I. (b) ii.

m (p. 387) *Citation :*—For "AGRICULTURAL INSURANCE CO. OF WATERTOWN *v.* ANSLEY" read "ANSLEY *v.* WATERTOWN INSURANCE CO."

PART VI. SECT. 3, SUB-SECT. 3.—I. (b) iii.

l i. —— *To nature of goods delivered.*] —*Held :* the purchasers were estopped from alleging that the goods were not as contracted for.—J. I. CASE THRESHING MACHINE CO. *v.* MITTEN (Sask.), [1919] 3 W. W. R. 601 ; 49 D. L. R. 30.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—J.

sl. *Negotiations with committee of municipal council—Party not estopped from setting up lack of jurisdiction.*]—SIMON *v.* GASTONGUAY, [1931] 2 D. L. R. 75 ; 2 M. P. R. 470.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 4.—A.

1596 x. ——.]—Deft. wished to purchase a piece of land & approached S. for a loan of the amount which he required to make up the price. S., without the knowledge of deft., obtained from pltf. the money which deft. needed, & presented a mtge. in pltf.'s favour to deft. to sign. Deft. never read the mtge., but understood from the representations of S. that the writing which he signed was merely an acknowledgment of the receipt of the money from S. who, he thought, was advancing it :—*Held :* the mtge. was not the deed of deft. & he was not estopped from alleging that it was not.—COOIL *v.* CLARKSON, [1925] 2 D. L. R. 493 ; [1925] 1 W. W. R. 1094 ; 35 B. C. R. 308.—**CAN.**

1596 xi. ——.]—As a general rule the owner of property is not estopped from asserting his title thereto merely because his carelessness in the custody of it, or of his documents of title, has enabled some one to fraudulently sell the property to another.—ANACONDA OIL CO., LTD. *v.* ALADDIN OILS, LTD., [1930] 1 W. W. R. 943 ; 3 D. L. R. 776.—**CAN.**

1605 vi. ——.]—Where taxes were paid to a municipal employee who had no authority to receive them :—*Held :* the fact that the municipality kept its tax-receipt books, cashier's stamp & tax roll in such a manner that the employee was enabled to get possession of the books, etc., & give a receipt for the taxes, did not estop the municipality from showing his lack of authority, even if it amounted to negligence, since such negligence did not occur in the transaction itself & was not the proximate cause of the taxpayer's payment of his taxes to the employee.—RICHES *v.* CITY OF MOOSE JAW, [1925] 3 D. L. R. 1176 ; [1925] 3 W. W. R. 127.—**CAN.**

PART VI. SECT. 5.

1619 xii. ——.]—The facts relied upon to establish an estoppel of any kind should be pleaded in any case in which it is intended to rely upon it.—HUGHES *v.* J. H. WATKINS & CO., [1927] 3 D. L. R. 302 ; 60 O. L. R. 448 ; *affd.*, [1928] 2 D. L. R. 176 ; 61 O. L. R. 587—**CAN.**

EXECUTION.

Part II.—Matters Common to all Modes of Execution.

22. *Add. Annotation :*—**Reld.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

SUB-SECT. 11.—FOREIGN SOVEREIGNS AND AMBASSADORS.

Ambassadors & other diplomatic persons.]—*See* CONSTITUTIONAL LAW, Vol. XI., pp. 536–542, Nos. 390–467.

60. *Add. Annotations :*—**Reld.** Capron *v.* Capron, [1927] P. 243 ; Burrowes *v.* Burrowes (1929), 141 L. T. 201.

61. *Add. Annotation :*—**Reld.** Kayley *v.* Hothersall, [1925] 1 K. B. 607.

63. *Add. Citation :*—[1925] 1 K. B. 607.

80a. Procedure by judgment summons.]—In an action by pltf. against an unincorporated body & seventeen named persons, described as its committee, in which pltf. claimed damages for libel, judgment was given in the High Ct. for deft. with costs. On a bkpcy. notice founded on that judgment not being complied with, defts. presented a petition in bkpcy. ; but this petition was dismissed by the registrar as being wrong in form, on the ground (*inter alia*) that the petition was by an agent on behalf of an unincorporated assocn. & others, whereas such an assocn. cannot sue or be sued, either in its own name or by a purported agent. Subsequently, defts. took out a judgment summons in the county ct., & the county ct. judge ordered pltf. to pay by instalments the sum due under the judgment of the High Ct., together with the costs of the summons :—*Held :* (1) as procedure by judgment summons is a mode of enforcing a judgment & directly in connection with the action, as distinguished from a bkpcy. petition, which is not, the county ct. judge had jurisdiction to make the order :—*Held :* (2) the death of one of the successful defts. since the judgment did not render it necessary for the survivors to obtain the leave of the ct. before they could enforce the judgment.—BUNDY *v.* MOTOR CAB OWNER DRIVERS' ASSOCIATION (1930), 143 L. T. 334 ; 46 T. L. R. 422.

88a. Against co-surety—Judgment debt paid by surety.]—Where a surety has paid a judgment debt & has obtained an assignment of the judgment under Mercantile Law Amendment Act, 1856 (c. 97), s. 5, he must obtain the leave of the ct. under R. S. C., Ord. 42, r. 23, before he can issue execution against his co-surety to enforce contribution to the judgment debt.—KAYLEY *v.* HOTHERSALL, [1925] 1 K. B. 607 ; 94 L. J. K. B. 348 ; 132 L. T. 468 ; 69 Sol. Jo. 310, C. A.

146a. —— —— Omission to claim costs.]—Where, at the trial, the judge grants a certificate for speedy execution under 1 Will. 4, c. 7, s. 2, pltf. should issue one writ of execution for the amount of the damages & costs. Where deft. had been arrested under a *ca. sa.* for the damages only, & had paid them, & been discharged out of custody, the ct. refused to allow pltf. to issue another *ca. sa.* for the costs.—SMITH *v.* DICKINSON (1844), 5 Q. B. 602 ; Dav. & Mer. 468 ; 13 L. J. Q. B. 151 ; 2 L. T. O. S. 368 ; 8 Jur. 123 ; 114 E. R. 1376.

260. *Add. Annotation :*—**Reld.** *Re* A Debtor, No. 549 of 1928, [1929] 1 Ch. 170.

313. *Add. Annotation :*—**Reld.** Martin *v.* Benson, [1927] 1 K. B. 771.

PART II. SECT. 3.

17 iii. —— ——.]—CULLEN *v.* CULLEN (1866), 2 Ch. Ch. 94.—**CAN.**

17 iv. —— ——.]—*Re* MCLELAN (B. C.), [1926] 1 W. W. R. 198.—**CAN.**

sa. *Judgment on promissory note taken for "cash" payment on agreement for sale of land—Issue of execution on note before sale of land—Valid.*]—COTTON *v.* DEMPSTER (Alta.), [1925] 1 W. W. R. 954.—**CAN.**

PART II. SECT. 4.

sb. *Extension of time for filing renewal—Right of master in chambers to grant.*]—*Re* RENEWAL OF A CERTAIN EXECUTION, [1917] 1 W. W. R. 113.—**CAN.**

PART II. SECT. 6, SUB-SECT. 1.

sc. *Solicitor purporting to act for one defendant—Authority to act for second only—Validity of execution against first defendant.*]—OVERN *v.* STRAND, [1931] S. C. R. 720 ; [1932] 1 D. L. R. 490.—**CAN.**

PART II. SECT. 8, SUB-SECT. 1.—B.

sd. *Amount recoverable — Judgment debt & six years' interest.*]—KAULBACH *v.* LAVENDER (N. S.), [1929] 1 D. L. R. 238.—**CAN.**

PART II. SECT. 8, SUB-SECT. 1.—C. (o).

o i. ——.]—The assignee of a judgment debt can enforce execution only after obtaining leave under K. B. Rule 451, even though the assignment expressly purports to assign the execution issued by the judgment creditor.—CONDON *v.* GASSALL & DRINKLE, [1928] 3 W. W. R. 719.—**CAN.**

PART II. SECT. 8, SUB-SECT. 1.—H.

sm. *Debt Adjustment Act, 1932—Application to pending actions.*]—In a foreclosure action begun before Debt Adjustment Act, 1932, came into force, an application for a final order of foreclosure can be entertained although the provisions of sect. 6 of said Act have not been complied with. Sect. 5 of said Act applies to the bringing or continuing of the actions therein referred to & the effect of the words "or continued" is that the sect. applies to the continuing of actions or proceedings begun when the Act came into force ; sect. 6, however, which does not contain the words "or continued" applies only to the bringing of the actions or proceedings therein referred to.—EDDY *v.* STEWART, [1932] 3 W. W. R. 71 ; *revsg.*, [1932] 2 W. W. R. 699.—**CAN.**

PART II. SECT. 8, SUB-SECT. 2.

se. *Affidavit in support—Attachment of property of absconding debtor—Contents.*]—*Re* LONG, *Ex p.* MOORE (1883), 23 N. B. R. 229.—**CAN.**

PART II. SECT. 11.

sf. *Prior proceedings under Absconding Debtors Act.*]—*Held :* a subsequent execution was defeated.—KERR *v.* SCOVIL (1870), 13 N. B. R. (2 Han.) 16.—**CAN.**

PART II. SECT. 15, SUB-SECT. 1.

254 i. *Appeal from judgment.*]—The broad principle in India as regards execution matters is that time is not computed from the date when the right to apply accrues, but is postponed in cases where there is an appeal.—NAGENDRANATH BANERJI *v.* AMBIKACHARAN CHAKRAVARTI (1929), I. L. R. 57 Calc. 549.—**IND.**

PART II. SECT. 15, SUB-SECT. 4.—B. (a) i.

315 iii. —— ——.]—In the absence of special circumstances, & where it was unlikely that leave to appeal would be granted by the Privy Council, the Appellate Div. refused to stay execution of a judgment for £2,801 damages & £1,414 costs pending an application to the Privy Council for special leave to appeal & refused also to order that security *de restituendo* should be given by the party levying execution.—FISMER *v.* THORNTON, [1929] App. D. 17.—**S. AF.**

318. *Add. Annotation :*—**Refd.** Macaulay *v.* Guaranty Trust Co. of New York (1927), 44 T. L. R. 99.

380. *Add. Citation :—sub nom.* WALTER *v.* DAVIES, *Ex p.* GLAMORGAN (FORMER SHERIFF), 31 L. T. O. S. 169.

392a. ——.]—If a pltf. or his attorney has received the debt & costs, in a case where the debtor had been taken in execution, it is the duty of pltf. or his attorney to discharge him ; & so, if he tenders the amount, it is the duty of pltf. or his attorney to discharge him, & the omission to do so is *primâ facie* evidence of malice (PARKE, B.).—TEBBUTT *v.* HOLT (1844), 1 Car. & Kir. 280 ; 174 E. R. 811.

Annotation :—**Refd.** Clissold *v.* Cratchley, [1910] 2 K. B. 244.

417a. Service of writ—On clerk in court.]—*Held :* not good.—ELLISON *v.* PICKERING (1803), 8 Ves. 319 ; 32 E. R. 377.

Annotation :—**Refd.** Ward *v.* Arch (1839), 8 L. J. Ch. 255.

417b. Sheriff's officer remaining in house—Until money paid.]—MOORE *v.* BEAMONT (1795), 6 Term Rep. 137 ; 101 E. R. 476.

Part III.—Particular Forms of Execution.

512. *Add. Annotation :—Generally,* **Refd.** The Point Breeze, [1928] P. 135.

556a. ——.]—HODGES *v.* MARKS (1618), Cro. Jac. 485 ; 79 E. R. 414.

574a. —— ——.]—ANON. (1704), 6 Mod. Rep. 105 ; 87 E. R. 864.

574b. —— ——.]—BURDETT *v.* ABBOT (1811), 14 East, 1 ; 104 E. R. 501 ; *affd. sub nom.* BURDETT *v.* ABBOT, BURDETT *v.* COLMAN (1817), 5 Dow. 165, H. L.

Annotation :—**Consd.** Harvey *v.* Harvey (1884), 26 Ch. D. 644.

582a. —— **Original entry unjustifiable.**]—PARKE & PERCIVAL *v.* EVANS (1615), Hob. 62 ; 80 E. R. 211.

Annotations :—**Refd.** Lee *v.* Gansel (1774), 1 Cowp. 1 ; Sandon *v.* Jervis (1859), E. B. & E. 942.

614. *Add. Annotation :*—**Refd.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174.

615. *Add. Annotation :*—**Refd.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174.

645. *Add. Annotation :*—**Refd.** Spyer *v.* Phillipson, [1931] 2 Ch. 183.

PART II. SECT. 15, SUB-SECT. 4.—B. (a) ii.

k i. —— —— *Stay permitted only as to amount involved in suit pending.*]—SCUILLI *v.* PLANTA (1928), 39 B. C. R. 450.—**CAN.**

PART II. SECT. 15, SUB-SECT. 5.

sj. *Protection of successful party's interests.*]—Upon motion by defts. for stay pending appeal :—*Held :* the ct. had inherent jurisdiction to stay proceedings, but a stay should not be granted unless defts. could devise a scheme by which pltfs. would be adequately protected.—BATTLE CREEK TOASTED CORN FLAKE CO. *v.* KELLOGG TOASTED CORN FLAKE CO. (1924), 55 O. L. R. 127.—**CAN.**

PART II. SECT. 20, SUB-SECT. 1.—A. (a).

386 ii. ——.] — MCDONALD *v.* MITCHELL (1878), 12 N. S. R. (3 R. & C.) 274.—**CAN.**

PART II. SECT. 20, SUB-SECT. 4.—A. (a).

459 i. —— *In action by third party.*]—Where a third party brings an action against the sheriff for seizure of goods under an execution & establishes a *primâ facie* case of title as against the execution debtor, the sheriff must prove a judgment as well as an execution.—KIRCHHOFFER *v.* CLEMENT (1897), 11 Man. L. R. 460.—**CAN.**

PART II. SECT. 20, SUB-SECT. 4.—A. (b).

ss. *Judgment irregular.*]—A seizure of chattels under an execution issued on a judgment which is afterwards set aside as irregular gives rise to a cause of action for damages for the trespass in taking the chattels out of their owner's possession.—DEMERS *v.* DESROSIER (No. 2) (Alta.), [1929] 3 D. L. R. 401 ; 2 W. W. R. 241.—**CAN.**

PART II. SECT. 20, SUB-SECT. 4.—B. (a).

q i. —— —— *Onus of proof on sheriff—To justify seizure.*]—JOHNSON *v.* BUCHANAN (1896), 29 N. S. R. (17 R. & G.) 27.—**CAN.**

PART II. SECT. 21.

494 i. *When ordered.*]—HART *v.* RUTTAN (1874), 23 C. P. 613.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.

506 i. *In respect of what judgment or order—Judgment for instalments of purchase money.*]—WORTH *v.* DAVIE, [1917] 1 W. W. R. 615 ; 11 Alta. L. R. 461.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—B. (b).

532 iii a. *S. P.* HOWARD *v.* HIGH RIVER TRADING CO. (1899), 4 TERR. L. R. 109.—**CAN.**

532 v. ——.]—SNARR *v.* WADDELL (1864), 24 U. C. R. 165.—**CAN.**

532 vi. —— —— *Earlier writ not renewed within year.*]—BANK OF MONTREAL *v.* TAYLOR (1864), 15 C. P. 107.—**CAN.**

g i. —— ——.]—HAMILTON PROVIDENT & LOAN SOCIETY *v.* CAMPBELL (1884), 12 A. R. 250.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (b).

f i. *S. P.* HINCKS *v.* SOWERBY (1879), 4 A. R. 113.—**CAN.**

l i. —— *Goods listed.*]—NOSEWORTHY *v.* CAMPBELL, [1929] 1 D. L. R. 964 ; 60 N. S. R. 377.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (e) ii.

sl. *Not last cow.*]—MCLEAN *v.* WATSON (1858), 2 Thom. 406.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (e) iii.

sn. *Seisin in fee.*]—*Held :* not saleable under an execution against goods.—DOE d. KEOGH *v.* CALHOUN (1843), 1 U. C. R. 157.—**CAN.**

sp. *Interest of assignee of leasehold property in lease.*]—*Held :* not saleable under an execution against goods.—DOE d. SIMPSON *v.* PRIVAT (1848), 5 U. C. R. 215.—**CAN.**

st. *Interest in land charged for maintenance.*]—*Held :* saleable under execution.—RATHBUN *v.* CULBERTSON (1875), 22 Gr. 465.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (e) iv.

607 i. *General rule.*]—DOE d. AUSMAN *v.* MINTHORNE (1846), 3 U. C. R. 423.—**CAN.**

608 iii. ——.]—GILBERT *v.* JARVIS (1869), 16 Gr. 265.—**CAN.**

sv. *Purchaser's interest in land under agreement to buy.*]—A purchaser's interest in land which he has agreed to buy is not bound by an execution against him, unless he has become the registered owner.—HUDSON'S BAY CO. *v.* BULLOCK FARMS, LTD., [1925] 2 W. W. R. 559.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (e) v.

o i. —— —— *On homestead transferred to wife.*]—Where a husband transfers his homestead to his wife, who becomes the real manager of the farming operations with him as her assistant, the crops grown by her are not exigible under an execution, even though she admits that the farm has been managed in such way because of the existence of the execution.—STANDARD TRUSTS CO. *v.* BRIGGS, [1926] 2 D. L. R. 379 ; [1926] 1 W. W. R. 832 ; 22 Alta. L. R. 113.—**CAN.**

o ii. —— —— *On wife's farm worked by debtor.*]—*Held :* in the circumstances the crop belonged to the husband & could be seized in execution.—PARENTEAU *v.* HARRIS (1884), 3 Man. L. R. 329.—**CAN.**

o iii. *S. P.* SLINGERLAND *v.* MASSEY MANUFACTURING CO. (1894), 10 Man. L. R. 21.—**CAN.**

p i. —— *Undivided crop—Debtor servant of owner of land.*]—Crop Payments Act, R. S. S., 1920, c. 126, as amended by 1924, c. 28, which allows a sheriff to seize & sell the interest of an execution debtor in an undivided crop, does not apply to a case where the debtor's interest does not arise under a lease, agreement for sale or mtge., but only under an arrangement under which he was to act as manager or servant of the owner of the land on which the crop was grown.—DONOVAN *v.* BELIVEAU (Sask.), [1929] 4 D. L. R. 900 ; 3 W. W. R. 107.—**CAN.**

What amounts to .....DONOVAN *v.* BELIVEAU, [1931] 1 W. W. R. 158 ; 1 D. L. R. 992.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (e) vii.

e i. —— *Interest in shares.*]—SAYRE *v.* GILFOY, [1925] 1 W. W. R. 992.—**CAN.**

680. *Add. Citation :—sub nom.* DICKINSON *v.* KITCHEN, 8 E. & B. 789 ; 120 E. R. 293. *Add. Annotations :*—**Refd.** The Feronia (1868), L. R. 2 A. & E. 65 ; Keith *v.* Burrows (1876), 1 C. P. D. 722.

e ii. —— ——.]—The ct. has no jurisdiction to appoint a receiver by way of equitable execution for the sale of the equity in shares of a co.—GOODBUN *v.* MITCHELL (No. 5) (Man.), [1929] 3 W. W. R. 622 ; [1930] 1 D. L. R. 580 ; 38 Man. L. R. 395 ; *revsg.*, 38 Man. L. R. 298 ; [1929] 2 W. W. R. 90.—**CAN.**

e iii. —— *Interest of vendor of land.*]—A vendor who has retained the legal title as security for payment of his purchase money, has, until full payment has been made, a beneficial interest in the land which, coupled with the legal title, may be seized & sold under execution.—WEIDMAN *v.* MCCLARY, [1917] 2 W. W. R. 210 ; 33 D. L. R. 672.—**CAN.**

e iv. ——.]—The provisions of Land Titles Act (Alta.) are such, that a legal execution against land cannot bind an equitable interest in lands registered in the name of a person other than an execution debtor, some form of equitable execution is necessary for the purpose.—SEAY *v.* THE SOMMERVILLE HARDWARE CO., LTD., [1917] 1 W. W. R. 1497 ; 33 D. L. R. 508.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (e) viii.

sa. *Article claimed as fixture by third party—Interpleader issue directed—Effect of.*]—Where an article seized under a writ of execution against goods is claimed by a third person as a fixture the directing of an interpleader issue with respect to it in no way decides that it is a chattel.—FINDLAY *v.* MENZIES, [1928] 1 W. W. R. 457.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (e) x.

n i. —— *Paid to debtor's solicitor—For payment of costs of action.*]—*Held :* not liable to attachment.—*Re* FORT FRANCES PULP & PAPER CO *v.* TELEGRAM PRINTING CO., PHILLIPPS & SCARTH *v.* LONDON GUARANTEE & ACCIDENT CO., LTD., [1925] 4 D. L. R. 204.—**CAN.**

f i. —— —— *In name of wife & son.*] —ROBERT DOLLAR CO. *v.* WALKER (1926), 36 B. C. R. 405.—**CAN.**

l (p. 488) i. —— *Shares—Company outside province.*]—Shares in a co. which has no place within Manitoba where service of process may be legally made upon it are not subject under sect. 14 of Executions Act, R. S. M., 1913, c. 66, to legal execution.—GOODBUN *v.* MITCHELL (No. 5) (Man.), [1930] 1 D. L. R. 580 ; 38 Man. L. R. 395 ; [1929] 3 W. W. R. 622 ; *revg.*, 38 Man. L. R. 298 ; [1929] 2 W. W. R. 90.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (e) xiii.

f i. ——.]—KASSOF *v.* EVANS (1900), 8 Nfld. L. R. 396.—**NFLD.**

f ii. —— *Not ship sold under Admiralty judgment.*]—VANEVERY *v.* GRANT (1862), 21 U. C. R. 542.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (e) xv.

q i. ——.]—In order to be entitled to an exemption from execution with respect to the tools or implements of his trade, debtor must have been actually following the trade at the time of the seizure.—MCLEOD *v.* GIRVIN CENTRAL TELEPHONE ASSOCN. (Sask.), [1926] 1 D. L. R. 216 ; [1926] 1 W. W. R. 38. —**CAN.**

s i. *Automobile used exclusively for master's business.*]—The judgment debtor, the salaried manager of a building co., claimed exemption for an automobile which he used exclusively & continuously in superintending the erection of houses by his co. in different parts of the city. The contract between him & the co. did not require him to supply an automobile, & did not define his duties or the method to be followed in performing them :—*Held :* the automobile was not exempt under Exemptions Act, R. S. M. 1913, c. 66, s. 29 (*f*), as amended by 1925 Act, c. 20.—GOLDSMITH *v.* HARRIS, [1928] 3 D. L. R. 478 ; [1928] 2 W. W. R. 401 ; 37 Man. L. R. 389.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (e) xvi.

e (p. 493) i. —— —— *Part of proceeds consisting of mortgage.*]—*Held :* not exempt. — MASSEY-HARRIS CO. *v.* SCHRAM (1902), 5 Terr. L. R. 338.—**CAN.**

e (p. 493) ii. —— —— *Whether proceeds exempt.*]—PURDY *v.* COLTON (1908), 1 Sask. L. R. 288 ; 7 W. L. R. 820.—**CAN.**

e. (p. 493) iii. —— —— *Effect of Exemptions Act, R. S. M.*, 1913, *s.* 40.] —Property exempt from seizure under a writ of execution, disposed of by the judgment debtor to a third person, cannot be reached by the judgment creditor, whether on grounds of fraud or otherwise. The contention that the claim for exemption must be made by the debtor is met by the prohibition in Exemptions Act, R. S. M., 1913 (c. 66), s. 40.—SPRUHS *v.* GREGORYK & BOYCUM, [1930] 1 W. W. R. 378 ; 1 D. L. R. 896 ; 38 Man. L. R. 477.—**CAN.**

d (p. 493) i. ——.]—MASSEY *v.* MCCLELLAND, BAKER *v.* MCCLELLAND (1895), 2 Terr. L. R. 179.—**CAN.**

d (p. 493) ii. *S. P.* BOCZ *v.* SPILLER (1905), 6 Terr. L. R. 225 ; 1 W. L. R. 366 ; 2 W. L. R. 280.—**CAN.**

h (p. 493) i. —— ——.]—A motion for final judgment for the sale of land under a registered certificate of judgment will not be granted unless pltf. has pleaded in his statement of claim or shown by affidavit that the land is not exempt as the homestead of the debtor. Where a transfer of a homestead is colourable only & the title is held upon a secret trust for the transferor, it does not deprive him of his right of exemption.—DAYHOLOS *v.* KUNIEC, [1928] 1 W. W. R. 691.—**CAN.**

k (p. 493) i. ——.]—Pltf. brought this action for a declaration that executions registered by deft. in the execution register in a land titles office, against the lands of pltf., were not a charge or lien on certain land described, which pltf. claimed as his homestead, & for the removal of the executions from the register :—*Held :* if pltf. had established that the land described was his "homestead," within Exemptions Ordinance, it was so only for the time that it was occupied by the debtor & his family ; there might be a change ; & any declaration would apply only at the particular moment when made.—GILMORE *v.* CALLIES (1911), 10 W. L. R. 545.—**CAN.**

k (p. 493) ii. ——.]—Pltf. applied to have taken off the register of the title of land transferred to her by her husband, a certain execution obtained against her husband, on the ground that at the time of such transfer the land was her husband's homestead & as such exempt under Exemptions Ordinance. On the facts :—*Held :* the land was, at the time of the transfer to pltf., her husband's homestead, &, therefore, exempt from seizure.—HART *v.* RYE (1914), 27 W. L. R. 9.—**CAN.**

k (p. 493) iii. ——.]—A homestead under Homesteads Act (Sask.) means the home of the debtor, the actual residence of himself & his family, & includes the lot upon which the dwelling-house is situate, according to the registered plan of the same :—*Held :* Exemptions Act, s. 2 (10), applied.—OVERTON *v.* GERRITY (1916), 34 W. L. R. 875.—**CAN.**

k (p. 493) iv. —— *Whether exemption extends to members of family.*]—MEUNIER *v.* DORAY (1905), 6 Terr. L. R. 194.—**CAN.**

k (p. 493) v. —— *Whether exemption extends to proceeds of voluntary sale.*]—There is nothing in Exemptions Act, R. S. A., 1922 (c. 95), which carries the exemptions accorded a homestead into the proceeds resulting from a voluntary sale of it by the execution debtor.—JOHN DEERE PLOW CO., LTD. *v.* MCEACHRAN, [1930] 1 W. W. R. 622 ; 2 D. L. R. 796 ; *affg.*, [1930] 1 W. W. R. 561.—**CAN.**

k (p. 493) vi. —— *Building used for business.*]—Under Exemptions Act, R. S. A. 1922 (c. 95), a debtor's right to the homestead exemption is not affected by the fact that the building occupied in part by him as his home is used in the main for business or other purposes ; nor is it affected by the nature of his title to the land, *e.g.* by the fact that he is a tenant in common. —*Re* CHERNIAK ESTATE, [1930] 1 W. W. R. 676 ; 11 C. B. R. 323 ; *affd.*, [1930] 2 W. W. R. 336 ; 3 D. L. R. 994 ; 11 C. B. R. 444.—**CAN.**

k (p. 493) vii. —— ——.]—Under Exemptions Act, R. S. A., 1922, a debtor's right to exemption with respect to his home is not affected by the fact that the building occupied in part by him as his home is used in the main for business or other purposes.—CANADIAN CREDIT MEN'S TRUST ASSOCN. *v.* UMBEL & GILLESPIE GRAIN CO., LTD., [1931] 3 W. W. R. 145.—**CAN.**

k (p. 493) viii. —— *Crop grown on homestead.*]—Exemptions Act, R. S. S., 1920 (c. 51), does not exempt the crop grown on a homestead.—LUCIUK *v.* KRAUS, [1930] 1 W. W. R. 17 ; 1 D. L. R. 927 ; 24 S. L. R. 350.—**CAN.**

k (p. 493) ix. —— *Debtor tenant in common.*]—The fact that the interest of a debtor in the property occupied by him as a home is that of a tenant in common does not disentitle him to the benefits of sect. 2 (*j*) of Exemptions Act, R. S. A., 1922 (c. 95).—NEVE, RANAGHAN & COPE, LTD. *v.* MOTLEY & MOTLEY, [1930] 3 W. W. R. 109 ; 4 D. L. R. 69.—**CAN.**

l i. ——.]—When debtor is in actual residence on certain property belonging to him, such property is *primâ facie* exempt under Exemptions Act, R. S. S., 1920, & the fact that the wife of debtor happens to own a house that had been previously used as the family home cannot deprive debtor of the right to claim the exemption.—SALTER & ARNOLD, LTD. *v.* DILLMAN [1924] 2 W. W. R. 1225.—**CAN.**

l ii. ——.]—Under Exemptions Act, R. S. S., 1920, the home of a debtor is free from seizure under execution so long as he uses it as his home, even though its value is in excess of $3,000. There is no power given to the sheriff to sell the home & earmark $3,000 of the proceeds for the benefit of the debtor. The intention of sect. 23 of Bkpcy. Act is that the exemptions Act of each province should stand unimpaired & be effective notwithstanding the federal legislation.—*Re* HAYES, [1931] 1 W. W. R. 301 ; 25 S. L. R. 257 ; 12 C. B. R. 225. —**CAN.**

m (p. 493) i. —— —— ——.]—BAKER *v.* GILLUM (1908), 1 Sask. L. R. 498 ; 9 W. L. R. 486.—**CAN.**

718a. Debtor's goods sold by public auction—Debtor remaining in possession—Execution creditor present at sale.]—*Held:* the goods could not be taken in execution by such execution creditor.—WOODERMAN *v.* BALDOCK (1819), 8 Taunt. 676; 3 Moore, C. P. 11; 129 E. R. 547.

Annotations:—**Refd.** Aldred *v.* Constable (1844), 3 L. T. O. S. 299; Hickman *v.* Cox (1857), 30 L. T. O. S. 279; Barker *v.* Furlong, [1891] 2 Ch. 172.

730. *Add. Annotation:*—**Consd.** Leitch (William) & Co. *v.* Leydon, Barr (A. G.) & Co. *v.* Macgeoghegan (1930), 47 T. L. R. 81.

750. *Add. Citation:*—*previous proceedings*, 3 C. & P. 524, N. P.

783a. ——.]—FURBER *v.* STURMEY (1859), 32 L. T. O. S. 259; 23 J. P. 88; 5 Jur. N. S. 45; 7 W. R. 162.

804. *Add. Annotation:*—**Refd.** Bosworthick *v.* Bosworthick (1926), 136 L. T. 211.

817a. ——.]—TOCOCK *v.* HONYMAN (1602), Yelv. 6; 80 E. R. 5.

Annotations:—**Refd.** Meriton *v.* Stevens (1741), Willes 271; Gilles *v.* Grover (1832), 9 Bing. 128.

835. For "—— —— & finally" read "—— —— Not finally."

q i. ——.]—MCLATCHIE *v.* MCLEOD (1890), 6 Man. L. R. 452.—**CAN.**

q ii. —— *Exemptions Act, Alta.—Not applicable against Crown.*]—R. *v.* O'BRIEN, [1924] 1 D. L. R. 222; [1924] 1 W. W. R. 104.—**CAN.**

q iii. —— *Rents & profits of.*]—The exemption of a homestead from seizure under execution does not extend to the rents & profits thereof, beyond the personal property specified.—WILKINS *v.* MINER (Alta.), [1927] 1 D. L. R. 286; [1926] 3 W. W. R. 778.—**CAN.**

q iv. —— *Proceeds of sale of.*]—There is nothing in Exemptions Act, R. S. A., 1922, which carries the exemption accorded a homestead into the proceeds resulting from a voluntary sale of it by the execution debtor, even though he is still in the actual occupation of it.—REGAL DISTRIBUTORS, LTD. *v.* FREELE, [1931] 1 W. W. R. 299; 1 D. L. R. 913; 25 Alta. L. R. 279.—**CAN.**

s (p. 493) i. *Goods of business—Carried on in name of wife—Managed entirely by husband.*]—MEAKIN *v.* SAMSON (1878), 28 C. P. 355.—**CAN.**

a (p. 494) i. *Income of trust fund.*]—Deft.'s father devised his estate to trustees upon the trust, among others, "to pay my son A. [deft.] the interest of the sum of $800 annually during the term of his natural life." An order was made by the master in chambers, directing the trustees to pay over the interest, from time to time accruing, to pltf., who was a judgment creditor of the son.—LLOYD *v.* WALLACE (1882), 9 P. R. 335.—**CAN.**

a (p. 494) ii. *Goods of third party subject to landlord's lien.*]—Where goods belonging to a third party are subject to a landlord's lien such goods are liable to execution in respect of a magistrate's ct. judgment for arrear rent, without a separate action against the owner of such goods.—COLUMBIA FURNISHING CO. *v.* GOLDBLATT, [1929] App. D. 27.—**S. AF.**

k (p. 494) i. ——.]—RYERS *v.* MURPHY (1893), 3 Terr. L. R. 169.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) i.

710 iii. ——.]—*Re* BANK OF MONTREAL *v.* TANNAS, TANNAS *v.* BANK OF MONTREAL, [1925] 3 D. L. R. 1079.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) ii.

p i. —— *Sale—No change of possession.*]—Judgment in favour of the execution creditor affirmed.—PETTIGREW *v.* THOMAS (1885), 12 A. R. 577.—**CAN.**

p ii. —— —— *Of land.*]—Where an agreement for the sale of land provides that in case the vendor becomes entitled to cancel the contract, he shall have the right to enter into & possess any improvements on the land, & to apply the net receipts therefrom upon the contract, the taking possession by the vendor will prevent the goods so possessed from being exigible under writs of execution against the purchaser.—*Re* CANADIAN PACIFIC RY. CO., CROWN LUMBER CO. *v.* MCKENZIE (1916), 10 W. W. R. 1370.—**CAN.**

a i. ——.]—JEANETTE DRESS CO. *v.* HENISH, [1932] 2 D. L. R. 811.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) iii.

b i. ——.]—The fact that goods exempt from seizure under execution are included in a chattel mtge. made by the debtor does not deprive the debtor of his right of exemption.—FINDLAY *v.* MENZIES, [1928] 1 W. W. R. 457.—**CAN.**

c i. —— *Not in possession of debtor—Onus of proof.*]—On an interpleader issue between an execution creditor & a claimant of goods which, at the time of their seizure under the execution, were not in the possession of the execution debtor, the onus is on the execution creditor of showing that the execution debtor was the owner of the goods or had an interest therein capable of being seized under the execution; & he must make out a *primâ facie* case before the claimant can be put to proof of his case.—STEWART *v.* CURRIE, CANADIAN PACIFIC RY. CO. *v.* STEWART, [1928] 1 D. L. R. 842; [1928] 1 W. W. R. 206; 22 Sask. L. R. 351.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) x.

g i. *S. P.* KILBRIDE *v.* CAMERON (1867), 17 C. P. 373.—**CAN.**

g ii. *S. P.* MASSEY-HARRIS *v.* MOORE (1905), 6 Terr. L. R. 75.—**CAN.**

k i. *Transfer of property to trustee—In fraud of creditors—Attachment sustained.*]—THOMPSON *v.* ELLIS (1883), 16 N. S. R. (4 R. & G.) 307.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) xi.

d (p. 500) i. ——.] SEALE *v.* GRAY, [1932] 3 D. L. R. 567.—**CAN.**

sd. *Property of husband—Standing in name of wife.*]—In an action against a man & his wife, brought by an execution creditor of the man, for a declaration that certain property standing in the name of the wife was exigible under the execution against the husband:—*Held:* the facts & circumstances adduced in evidence did not warrant the inference that the husband intended to defraud creditors. Fraudulent intent should not be found except upon substantial grounds & upon clear evidence.—ROBERTSON *v.* ROBINSON, [1928] 2 D. L. R. 343; 62 O. L. R. 12; *affd.*, [1929] 4 D. L. R. 1072; S. C. R. 175.—**CAN.**

sf. *Business carried on by husband & wife—Determination of ownership of goods.*]—MAYLAND *v.* DICKS, [1930] 3 D. L. R. 393.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) xii.

sx. *Execution against hirer—Equitable interest of third party in goods.*]—Circumstances in which such interest was preferred to the execution creditor's claim to the proceeds of the goods.—BLACK *v.* DROUILLARD (1877), 28 C. P. 107.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) xiv.

m i. *Fixtures affixed to mortgaged freehold.*]—CARSON *v.* SIMPSON (1894), 25 O. R. 385.—**CAN.**

n i. ——.]—FERRIE *v.* CLEGHORN (1860), 19 U. C. R. 241.—**CAN.**

n ii. —— *C. S. U. C. c. 45, s. 3—Effect of.*]—ROSS *v.* SIMPSON (1876), 23 Gr. 552.—**CAN.**

n iii. ——.]—SMITH, LTD. *v.* VANCOUVER CREMATION SOCIETY (1914), 29 W. L. R. 150; 20 D. L. R. 214.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) xv.

p i. ——.]—GURNEY *v.* JAMES (1860), 10 U. C. R. 156.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (f) xvi.

s i. —— *Assets in futuro.*]—An execution on a judgment of assets *in futuro* is invalid if issued without leave after application made under r. 451.—*Re* SMITH'S ESTATE, CANADIAN GUARANTEE TRUST CO. *v.* DELISLE, [1924] 4 D. L. R. 1288; [1924] 3 W. W. R. 815.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—E. (g) ii.

817 i. *Property still remains in debtor.*]—RUSSELL *v.* REID, [1928] 1 D. L. R. 628.—**CAN.**

sy. *Attachment under Absconding Debtors Act.*]—STARR *v.* MUNCEY (1845), 3 N. S. R. (2 Thom.) 244.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—F. (a).

t i. —— —— ——.]—RAPELJE (SHERIFF) *v.* FINCH (1856), 14 U. C. R. 249.—**CAN.**

y i. *Right to place husband or wife of debtor in possession.*]—Though Act 32 of 1917, Ord. 25, r. 5, does not expressly forbid the appointment of the husband or wife of a debtor as a person in whose charge property attached may be left by the messenger, a husband who is a man of no standing & worth nothing is not a suitable person to place in charge of property attached in respect of a debt of his wife.—KOTZE *v.* JOHNSON, [1928] App. D. 313.—**S. AF.**

PART III. SECT. 1, SUB-SECT. 4.—F. (c).

e i. —— ——.]—Where execution has been levied upon goods, the sheriff is not bound to leave an officer continuously in possession, & the absence of such officer, if satisfactorily explained, does not amount to such an abandonment of possession as will entitle other persons claiming the goods to take possession of them.—*Re* MURPHY (1927), 27 S. R. N. S. W. 503; 44 N. S. W. W. N. 189.—**AUS.**

880. *Add. Annotation :*—**Refd.** Leitch (William) & Co. *v.* Leydon, Barr (A. G.) & Co. *v.* Macgeoghegan (1930), 47 T. L. R. 81.

881a. May be compelled to sell.]—ANON. (1702), 7 Mod. Rep. 118 ; 87 E. R. 1135.

883a. ——.]—BOTTOMLEY *v.* HEYWARD (1862), 7 H. & N. 562 ; 31 L. J. Ex. 500 ; 7 L. T. 44 ; 158 E. R. 595 ; *sub nom.* BOTHAMLEY *v.* HEYWARD, 8 Jur. N. S. 1156.

954. *Add. Annotation :—As to* (3) **Refd.** British American Continental Bank *v.* British Bank for Foreign Trade, [1926] 1 K. B. 328.

1002a. —— —— **Who is purchaser for valuable consideration—Creditor-trustee under deed of assignment.**]—Sect. 26 (1) of the Sale of Goods Act, 1893, provides that a writ of *fi. fa.* shall bind the debtor's goods from the time when the writ is delivered to the sheriff, provided that no such writ shall prejudice the title to goods acquired by any person in good faith & for valuable consideration without notice of the writ.

A judgment creditor issued a writ of *fi. fa.* on June 23 & posted it on the same day to the sheriff's officer, who received it at 9 a.m. on June 24. At 5 p.m. on June 24 the debtors executed a deed of assignment to the claimant as trustee for their creditors. On June 25 the sheriff took possession of the debtors' goods. The trustee was himself one of the creditors, but no other creditor had assented to the deed before the seizure : —*Held :* as the trustee was a creditor he had given consideration by executing the deed of assignment & thereby releasing the debtors from their debt to him & he was therefore within the proviso to Sale of Goods Act, 1893 (c. 71), s. 26 (1).—BEEBEE & Co. *v.* TURNER'S SUCCESSORS (1931), 48 T. L. R. 61.

1043. *Add. Annotation :*—**Distd.** *Re* Fredericke & Whitworth, *Ex p.* Hibbard, [1927] 1 Ch. 253.

1069. *Add. Annotation :*—**Refd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

PART III. SECT. 1, SUB-SECT. 4.—H. (a).

sz. *Place of sale.*]—A sheriff cannot lawfully sell goods on deft.'s premises without his permission, & any person going on the premises to purchase may be treated as a trespasser.—MCMASTER *v.* MCPHERSON (1839), 6 O. S. 16.—**CAN.**

sa. *Payment—What amounts to.*]—CARRALL *v.* MONTREAL BANK (1861), 21 U. C. R. 18.—**CAN.**

sb. *Setting aside sale—After confirmation.*]—In the absence of fraud or collusion, a sale in execution, which has once been confirmed, cannot be set aside because the decree under which it was held was at first incorrectly drawn up, & has since been amended.—AGHA HUSAIN *v.* QASIM ALI (1925), I. L. R. 48 All. 94.—**IND.**

PART III. SECT. 1, SUB-SECT. 4.—H. (b).

sd. *Notwithstanding notice of alleged defect in execution.*]—MCPHAIL *v.* MCKINNON (1868), 7 N. S. R. 168.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—H. (i) ii.

915 vii. —— ——.]—An execution creditor can take only the precise interest, & no more, which the debtor possesses in the property seized.—OVERBY *v.* MCLEAN, [1928] 4 D. L. R. 917 ; [1928] 3 W. W. R. 328 ; 37 Man. L. R. 525.—**CAN.**

sf. *Purchaser estopped from claiming goods as his own.*]—RUTTAN *v.* WELLER (1855), 14 U. C. R. 44.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.—H. (j).

940 iv. —— ——.]—MACFIE *v.* HUNTER (1882), 9 P. R. 149.—**CAN.**

sg. *Proceeds not exceeding amount of landlord's claim.*]—Where the sheriff sells goods for a sum not exceeding the landlord's claim, & the execution creditor claims the money, it is a sufficient answer to show that the landlord has a good claim to the money, although it has not been paid over to him.—LAMBERT *v.* CLEMENT (1897), 11 Man. L. R. 519.—**CAN.**

sj. *Payment of preference claim for wages—When wage-earner entitled to preference.*]—CAMPBELL *v.* CLEUGH (1920), 28 B. C. R. 352.—**CAN.**

PART III. SECT. 1, SUB-SECT. 5.—A.

o i. —— ——.]—STREET *v.* GLASS (1840), 3 N. B. R. (1 Kerr) 165.—**CAN.**

965 ii. —— ——.]—HART *v.* REYNOLDS (1863), 13 C. P. 501.—**CAN.**

967 i. *In respect of what goods—Not property seized under Absconding Debtors Act.*]—STANTON *v.* JOHNSTON (1858), 9 N. B. R. (4 All.) 54.—**CAN.**

967 ii. —— *Not goods of third party.*]—ROBINSON *v.* MCINTOSH (1899), 4 Terr. L. R. 102.—**CAN.**

s i. —— *Right of sheriff to inquire into claim.*]—Where a landlord makes a claim for rent to be deducted out of the proceeds of an execution, the sheriff is entitled to a reasonable time to inquire into the demand ; & where the tenant had denied that any rent was due, & the landlord refused to allow the sheriff time to make the inquiry, the ct. refused the cost of an application to compel the sheriff to pay the rent.—NOWLIN *v.* ANDERSON (1849), 6 N. B. R. (1 All.) 497.—**CAN.**

sk. *In respect of what goods—Goods held under conditional sale agreement.*]—Where goods in the possession of a tenant under a conditional sale agreement are seized under an execution against the tenant the landlord is entitled to the protection of 8 Anne, c. 14, only to the extent to which his claim for rent exceeds the conditional vendor's lien, even though the agreement was not registered as required by Conditional Sales Act, & was, therefore, invalid as against the execution creditor.—OGILVIE FLOUR MILLS CO., LTD. *v.* BECKER & WOOD & SNIHUR, [1931] 1 W. W. R. 273 ; 2 D. L. R. 415 ; 25 Alta. L. R. 257.—**CAN.**

PART III. SECT. 1, SUB-SECT. 7.

q i. —— ——.]—MAHON *v.* CROWE (1896), 28 N. S. R. (16 R. & G.) 250.—**CAN.**

q ii. —— *Sale bonâ fide.*]—On an interpleader issue between a buyer of goods from an execution debtor & an execution creditor whose execution was in the hands of the sheriff prior to the sale :—*Held :* the sale was *bonâ fide*, it was followed by "an actual & continued change of possession" sufficient to satisfy Executions Act, R. S. S. 1920, c. 52, s. 2, &, the buyer's absence of knowledge of the execution having been established, the buyer was entitled to the goods under the proviso in said sect.—WILSON *v.* MATTHEWSON BROS. & MAGERNIN, [1928] 3 D. L. R. 276 ; [1928] 2 W. W. R. 136 ; 22 Sask. L. R. 543.—**CAN.**

sl. *Assignee—Assignment not filed.*]—*Held :* the execution prevailed.—CARSCALLEN *v.* MOODIE (1856), 15 U. C. R. 92.—**CAN.**

sm. —— *Want of notice of writ—Onus of proof.*]—ROSS *v.* CREIGHTON (1890), 40 N. S. R. 131.—**CAN.**

PART III. SECT. 1, SUB-SECT. 9.

sp. *On application of Creditors' Relief Act,* 1922.]—TERMINAL GRAIN CO. *v.* SODERBERG, [1925] 1 D. L. R. 313 ; [1925] 1 W. W. R. 9.—**CAN.**

sq. ——.]—A seizure of goods having been made under execution an order was obtained for their removal & sale. Before the day set for the sale, the debtor paid the whole amount of the execution to the sheriff :—*Held :* the money so paid was money "levied" within Creditors' Relief Act, 1922, it having been paid by the compulsion of the seizure & the means taken to realise.—BADIUK *v.* MOORE (Alta.), [1930] 1 D. L. R. 47 ; [1929] 3 W. W. R. 115.—**CAN.**

PART III. SECT. 1, SUB-SECT. 10.—A.

1020 i. *Return as evidence—Conclusive against sureties.*]—SHUTER *v.* GRAHAM (1848), 2 U. C. R. 164.—**CAN.**

l i. —— *Prisoner not deprived of supersedeas.*]—The issuing of a *fi. fa.*, which is not returned, will not deprive a prisoner of a supersedeas.—JACKSON *v.* BLACK, BAINBRIDGE *v.* BLACK, CARVILL *v.* BLACK (1858), 9 N. B. R. (4 All.) 79.—**CAN.**

sr. *Indorsement of writ.*]—It is a condition precedent to an action under Cos. Act, s. 55, that an execution against a co. is returned unsatisfied in whole or in part ; & to enable the action to be brought, even where the co. has become bkpt., a return is not sufficient unless it is indorsed on the writ as required by r. 629, & a certificate is filed as required by r. 632.—CROWDER *v.* COLEMAN, [1924] 1 D. L. R. 849 ; 1 W. W. R. 374 ; 20 Alta. L. R. 1.—**CAN.**

PART III. SECT. 1, SUB-SECT. 11.

d i. —— *Conflicting claims.*]—The ct. will not grant a rule *nisi* to compel a sheriff to pay over money collected under execution where there are conflicting claims to the fund, but will leave the parties to their remedy by action.—SCOTT *v.* ANGUS (1854), 2 N. S. R. (James) 183.—**CAN.**

e i —— *For money realised by bailiff—Onus of proof.*]—A sheriff is responsible for all money realised by a bailiff in executing a *fi. fa.*, where the bailiff was appointed by & paid by the sheriff, & in an action against a sheriff for money realised on a *fi. fa.* by his bailiff & not accounted for, the burden is on the sheriff to prove that the bailiff was appointed by the Lieutenant-Governor in Council.—ROSS *v.* FISET, [1926] 3 D. L. R. 289 ; [1926] 2 W. W. R. 422 ; 20 Sask. L. R. 553.—**CAN.**

1231a. —— —— What amounts to.]—Where, under process of execution from a county ct., some goods of a stranger had been taken, the mere fact that the execution creditor told the bailiff that goods would be claimed by a third party, but that such claim was not to be regarded:—*Held:* not to amount to a direction to take all the goods, or any which were not liable to be seized, so as to make the execution creditor personally liable.—CRONSHAW *v.* CHAPMAN (1862), 7 H. & N. 911; 31 L. J. Ex. 277; 6 L. T. 54; 10 W. R. 323; 158 E. R. 738.

1243. *Add. Annotation:*—**Refd.** Robinson *v.* Midland Bank (1925), 41 T. L. R. 402.

1250. *Add. Citations:*—1 New Pract. Cas. 476; *sub nom.* ROLLS *v.* SENIOR, 7 L. T. O. S. 60.

1281a. Sale without order of court—Sale not confirmed.]—R. *v.* BLUNT (1828), 2 Y. & J. 120; 148 E. R. 857.

1334a. Appeal from—Lies to Court of Appeal.]—SMITH *v.* TSAKYRIS, [1929] W. N. 39; 167 L. T. Jo. 92, C. A.

1370a. —— Subject to mortgage by sub-demise.]—SMITH *v.* TSAKYRIS, [1929] W. N. 39; 167 L. T. Jo. 92, C. A.

1380a. .]—SMITH *v.* TSAKYRIS, [1929] W. N. 39; 167 L. T. Jo. 92, C. A.

e ii. —— *Time for bringing—Public Officers Protection Act*, 1923 (c. 19).]—HOLDEN *v.* MILBURN (Sask.), [1927] 1 D. L. R. 271; [1926] 3 W. W. R. 701.—**CAN.**

PART III. SECT. 1, SUB-SECT. 12.—C.

r i. ——.]—MAY *v.* HOWLAND, FITCH & WEBB (1859), 19 U. C. R. 66.—**CAN.**

1230 v. —— ——.]—A., after delivering an execution to a constable, took him down upon land owned by B., showed him hay owned by B., & said it was the property of C. The constable having seized the hay under an execution in a suit to which B. was not a party:—*Held:* A. was answerable for the consequence of what the constable did in obeying his instructions.—GRAVES *v.* SPRAGUE (N. B.) (1920), 53 D. L. R. 337.—**CAN.**

1230 vi. —— ——.]—Deft., having obtained an order in a ct. of petty sessions against pltf.'s son, informed the police in charge of a distress warrant that the judgment debtor had a motor lorry at L.'s premises; that he did not know its registered number, but that L. would point out the lorry to the constable executing the warrant. The lorry was seized on L.'s premises. It was the property of pltf., & was in the possession of L. as his agent for sale. L. did not inform the police of pltf.'s claim, & refrained from giving any information of the seizure to pltf. until after the lorry had been sold. In an action by pltf. for conversion of the lorry:—*Held:* deft. had so intermeddled in the distress as to be liable for conversion.—MORT *v.* BARNES, [1928] V. L. R. 56.—**AUS.**

1243 i. *Ratification by creditor—Whether giving rise to liability—Wrongful seizure.*]—Where a sheriff acting under a valid writ, by the command, & as the servant, of the ct., seizes the wrong person's goods, a subsequent declaration by the execution creditor ratifying & approving the taking cannot alter its character & make it a wrongful taking by the creditor.—BALLANTYNE *v.* MCCULLOCH & CO. & SIMS (B. C.), [1927] 4 D. L. R. 525; [1927] 3 W. W. R. 148.—**CAN.**

PART III. SECT. 1, SUB-SECT. 13.—A.

o i. —— *After receipt of attachment.*]—*Held:* the sale could not be upheld, & the attachment must prevail.—RILEY *v.* NIAGARA DISTRICT BANK (1866), 26 U. C. R. 21.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.

st. *Not after debt treated by creditor as satisfied.*]—BANK OF UPPER CANADA *v.* MURPHY (1850), 7 U. C. R. 328.—**CAN.**

PART III. SECT. 2, SUB-SECT. 3.

sv. *Delivery of writ—Land bound from time of delivery.*]—DOE d. NESMITH *v.* WILLISTON (1844), 4 N. B. R. (2 Kerr) 459.—**CAN.**

sw. —— *Proof of.*]—The sheriff's deed is *primâ facie* evidence that the writ was delivered to the sheriff & the land seized & sold under it.—MITCHELL *v.* GREENWOOD (1854), 3 C. P. 465.—**CAN.**

PART III. SECT. 2, SUB-SECT. 4.—C.

1340 i. *False return.*]—YOUNG *v.* BABY (SHERIFF) (1855), 4 C. P. 537.—**CAN.**

PART III. SECT. 2, SUB-SECT. 5.—A.

ff i. —— *Land of patentee of free grant.*]—An execution against the lands of a patentee under the Free Grants & Homesteads Act, R. S. O. 1887, c. 25, on a judgment obtained for a debt incurred before location of the lands, does not operate as a charge against the lands when sold by his devisee, even after the expiry of twenty years from the date of the location.—*Re* BEATTY & FINLAYSON (1896), 27 O. R. 612.—**CAN.**

1356 i. *Land held under joint tenancy.*]—Lands were conveyed to a man & his wife as joint tenants & not as tenants in common:—*Held:* estates by entireties having been abolished, the joint estate was severable, & the interest of one joint tenant could be sold under execution.—*Re* CRAIG, [1929] 1 D. L. R. 142; 63 O. L. R. 192.—**CAN.**

sx. *Land held by tenant in common—Claim by other tenants in common for rent received in excess.*]—MCPHERSON *v.* MCPHERSON (1883), 10 P. R. 140.—**CAN.**

sy. ——.]—Under a judgment obtained against a person in a district ct. the registrar of the ct., in executing such judgment, may seize & take under a writ of execution the interests of such person in lands as a tenant in common & upon the writ being forwarded to the Registrar-General, it is his duty to note it on the *folium* of the register which certifies the title of the registered proprietor as a tenant in common.—*In re* GUSS (1927), 28 S. R. N. S. W. 226; 45 N. S. W. W. N. 32.—**AUS.**

sz. *Land held by debtor at time of death—On judgment against representative.*]—Lands & tenements held in fee simple by a debtor at the time of his decease, may be legally taken in execution on a judgment against his exor. or administrator.—FORSYTH & RICHARDSON *v.* HALL (1830), Dra. 304.—**CAN.**

sb. *Estate in hands of executor—Judgment against debtor.*]—*In the Estate of* CARTER, ASCOT TIMBER CO. PTY., LTD. *v.* CARTER, [1928] V. L. R. 290; [1928] Argus L. R. 199.—**AUS.**

g i. ——.]—RUSSELL *v.* RUSSELL (1881), 28 Gr. 419.—**CAN.**

g ii. —— ——.]—PARKE *v.* RILEY, 3 E. & A. 215.—**CAN.**

g iii. —— *By heir or devisee—Before execution issued.*]—*Held:* a *bonâ fide* purchaser for value would have a good title as against creditors.—REID *v.* MILLER (1865), 24 U. C. R. 610.—**CAN.**

sc. *Land registered in name of debtor vested in third party.*]—*Held:* not executable.—UNION GOVERNMENT (MINISTER OF JUSTICE) *v.* BOLAM, [1927] App. D. 467.—**S. AF.**

PART III. SECT. 2, SUB-SECT. 5.—C.

g i. —— —— ——.]—After a mtge. in fee has become forfeited by non-payment of the mtge. money, the mtgee.'s interest in the premises cannot be sold under an execution against land.—DOE d. CAMPBELL *v.* THOMPSON (1843), 2 Ont. Dig. 2640.—**CAN.**

g ii. —— *Right of dower in equity of redemption.*]—CANADIAN BANK OF COMMERCE *v.* ROLSTON (1902), 22 C. L. T. 232; 4 O. L. R. 106; 1 O. W. R. 351.—**CAN.**

k i. *Interest of unpaid vendor.*]—The interest of an unpaid vendor of land made exigible under an execution against him by Land Titles Act, R. S. A., 1922, s. 112, includes the legal estate as affected by the contract together with the rights of the vendor under the contract; & it is that estate & those rights which are bound by the writ & may be sold by the sheriff.—MORTON & COWELL *v.* HOFFERT, [1924] 3 D. L. R. 16; [1924] 2 W. W. R. 529.—**CAN.**

k ii. *Assignee of purchaser under contract of sale.*]—The equitable interest of an assignee from the purchaser of a contract for the sale of land is exigible under a writ of *fi. fa.* against the land of such assignee.—WARD *v.* ARCHER (1894), 24 O. R. 650.—**CAN.**

k iii. - —.]—Pltf. sold certain land to deft. S. under agreement for sale, whereby he became entitled to a transfer upon payment of the agreed purchase price & compliance with stated conditions. Subsequently the A. Co. recovered a judgment against S., & registered execution in usual form against his land. S., after such registration, assigned his whole equitable interest in such land to deft. T. The legal title during this time remained in pltf. In an action by pltf. under the contract, the A. Co. claimed a right to intervene as having an interest in the land under their writ of execution:—*Held:* having regard to the provisions of the Land Titles Act, it was evidently the intention of the Legislature that writs of execution should bind only the interests of registered owners of land, & the execution did not bind the equitable interest of deft. S.; (2) no lien is created by an execution against land, only such rights being acquired as are given by the Land Titles Act, & which are not available as against equitable interests.—CANADIAN PACIFIC RAILWAY *v.* SILZER, 3 S. L. R. 162.—**CAN.**

sd. *Debtor interested in land held by wife—Interest sufficient to discharge debt.*]—MACDONALD & CO. *v.* TEASDALE (1913), 24 O. W. R. 534.—**CAN.**

se. *What interests may be seized—Under amendment to Land Titles Act, s.* 125.]—FOSS *v.* STERLING LOAN (1915), 8 W. W. R. 569; 23 D. L. R. 540; 8 Sask. L. R. 289.—**CAN.**

1423. To cross-references before this case add "*See, now,* Land Charges Act, 1925 (c. 22)."

1500. *Add. Annotation :—As to* (3) **Reld.** Smith *v.* Tsakyris (1929), 167 L. T. Jo. 92.

1506. *Add. Annotation :*—**Reld.** Campbell *v.* Pollak (1927), 43 T. L. R. 495.

sf. *Equitable interest held as trustee.*]—C., who had an interest in certain land, as purchaser from W., the full price not having been paid, assigned his interest to pltf. upon trust that the latter should support C. & his wife for the remainder of their lives, & on their death pay all their debts & funeral expenses, whereupon the trust should cease, & pltf. should be entitled to all the interest of C. in the property free from any trust; & pltf. agreed to pay to W. the balance of the purchase price :—*Held :* C.'s equitable interest as a purchaser, if transferred to pltf., gave the latter no estate in the land, save to the extent to which a ct. of equity would give C. specific performance of his agreement with W., & that interest would be taken by pltf. as a trust estate, & would not be saleable under a writ of *fi. fa.* against pltf.'s lands.—KIMNIAK *v.* ANDERSON [1929] 2 D. L. R. 904; 63 O. L. R. 428.—**CAN.**

PART III. SECT. 2, SUB-SECT.

sg. *Timber.*]—Where the owner of land sells the timber after a writ against his land is placed in the sheriff's hands, & the purchaser cuts down & removes the timber before an injunction is obtained, he is accountable to the execution creditor for such timber.—BROWN *v.* SAGE (1865), 11 Gr. 239.—**CAN.**

PART III. SECT. 2, SUB-SECT. 7.

u i. —— —— *Where prior assignment for benefit of creditors.*]—B. made an assignment to C. for benefit of his creditors. Various executions were issued against B.'s lands & notice thereof filed with the Registrar of Titles. C. applied for a certificate of title to B.'s lands :—*Held :* registrar must issue the certificate without endorsing thereon the executions of which he has received notice.—*Re* BROOKS (1900), 12 W. L. R. 303.—**CAN.**

a i. —— *Effect as against assignment for benefit of creditors.*]—MCINTYRE *v.* SHAW (1866), 12 Gr. 295.—**CAN.**

a ii. —— *Effect as against unrecorded deed.*]—GRINDLEY *v.* BLAKIE (1886), 19 N. S. R. (7 R. & G.) 27; 7 C. L. T. 50.—**CAN.**

c i. —— *Effect on judgment mortgage.*]—*Held :* a judgment mtge. did not obtain priority over a judgment registered under 3 & 4 Vict. c. 105, but not re-registered within five years next before the registration of the judgment mtge.—REID *v.* MILLER, [1928] N. I. 151.—**IR.**

c i. —— *Judgment for alimony.*]—Where, at the time a judgment for alimony is registered against the husband's interest in certain land held by him under an uncompleted agreement for sale, he is in a position to compel specific performance of the agreement, the judgment is a charge on the husband's interest; & if, subsequently to the registration of the judgment, & with knowledge of it, the vendor accepts from the husband a quit-claim deed of all of the latter's estate & interest in the land, the vendor holds that interest subject to the charge until the charge is extinguished.—BRIGGS *v.* CARSON, [1924] 4 D. L. R. 774; [1924] 3 W. W. R. 465; 19 Sask. L. R. 59.—**CAN**

c ii. —— *How far binding—Defendant mere conduit pipe to convey title from vendor to third party.*]—OWEN *v.* LYNCH (1877), 11 N. S. R. (2 R. & C.) 406.—**CAN.**

c iii. —— —— *5 R. S. c. 84, s. 21—Effect of.*]—LOISBURG LAND CO. *v.* TUTTY (1884), 16 N. S. R. (4 R. & G.) 401.—**CAN.**

sh. *Duty of registrar—With notice of writ of execution—Patent not issued for lands entered as homestead.*]—*Re* CLAXTON (1890), 1 Terr. L. R. 282.—**CAN.**

sj. *Judgment not registered—Priority of mortgage.*]—MINERAL PRODUCTS CO. *v.* CONTINENTAL TRUST CO. (1906), 37 S. C. R. 517.—**CAN.**

s (p. 571) **i.** ——.]—As between the execution creditors of a vendor, & the assignee of his interest under an agreement of sale, whose assignment was acquired subsequently to registration of the executions :—*Held :* the instalment of purchase-money paid into ct. should belong to the execution creditors, but as the money had been obtained under execution, it should be treated as money realised from the sale of the vendor's interest, & being in the sheriff's hands should be subject to distribution under Creditors' Relief Act.—MORTON & COWELL *v.* HOFFERT, [1924] 3 D. L. R. 16; 2 W. W. R. 529.—**CAN.**

PART III. SECT. 2, SUB-SECT. 8.—A.

1459 i. *Right to possession—As against third parties in possession—Not asserting title through debtor.*]—EDWARDS *v.* BENNETT (1869), 5 P. R. 161.—**CAN.**

1459 ii. —— —— *Possession taken forcibly.*]—DOE d. PECK *v.* ROE (1845), 2 U. C. R. 27.—**CAN.**

sm. *Duty of sheriff to retain.*]—DOE d. CREW *v.* CLARKE (1841), 1 Ont. Dig. 233.—**CAN.**

PART III. SECT. 2, SUB-SECT. 10.—A.

a (p. 576) **i.** —— —— *Mortgage not registered.*]—MOFFAT *v.* GROVER (1855), 4 C. P. 402.—**CAN.**

a (p. 576) **ii.** —— —— *In hands of receiver.*]—A judgment creditor can sell properties in the hands of a receiver of the ct. in execution of a mtge. decree, although the receiver, who was appointed subsequently to the institution of the mtge. suit, was not made a party to the suit.—TOOMEY *v.* BHUPENDRA NATH BOSE (1928), I. L. R. 7 Pat. 520.—**IND.**

h (p. 576) **i.** ——.]—JONES *v.* JONES (1868), 15 Gr. 40.—**CAN.**

bb (p. 576) **i.** —— *Proof of—In ejectment on sheriff's deed.*]—MORAN *v.* PATTON (1853), 10 U. C. R. 640.—**CAN.**

bb (p. 576) **ii.** —— —— ——.]—DELISLE *v.* DEWITT (1859), 18 U. C. R. 155.—**CAN.**

bb (p. 576) **iii.** —— —— —— ——.]—LOW *v.* HICKS (1870), 21 C. P. 113.—**CAN.**

bb (p. 576) **iv.** —— *Relation back.*]—The title conveyed by a sheriff's deed to land, sold under an execution issued upon a judgment recovered in an action brought on a former judgment in the same ct., does not relate back to the time of signing the first judgment, so as to defeat a conveyance made between the times of signing the first & second judgments.—DOE d. PEABODY *v.* MCKNIGHT (1838), 2 N. B. R. (Ber.) 567.—**CAN.**

bb (p. 576) **v.** —— —— *To day of sale.*]—Although a sheriff's deed relates back to the day of sale, for the purpose of defeating intermediate conveyances, the vendee cannot bring ejectment until the execution thereof.—GAVILLER *v.* BEATON (1862), 12 C. P. 519.—**CAN.**

cc (p. 576) **i.** —— —— *Into debtor's title.*]—A purchaser of lands on an execution, is entitled to recover in ejectment against the debtor or his representative, without proof of the debtor's title, or that he was in possession of the premises.—MORAN *v.* PATTON (1853), 10 U. C. R. 640.—**CAN.**

cc (p. 576) **ii.** —— *To growing crops on land sold.*]—Crops growing at the time of the confirmation of a sheriff's sale of the land under an execution pass with the land to the purchaser.—ANDERSON *v.* STASIUK [1926] 1 D. L. R. 347; [1926] 1 W. W. R. 107; 20 Sask. L. R. 269.—**CAN.**

cc (p. 576) **iii.** —— *Right to claim partition.*]—An order made on the appln. of purchaser at a sheriff's sale of the interest of a husband, holding as joint tenant, for partition or sale was affirmed.—*Re* CRAIG, [1929] 1 D. L. R. 142; 63 O. L. R. 192.—**CAN.**

t (p. 577) **i.** —— —— *No issue for two weeks.*]—JOHN ABELL ENGINE & MACHINE WORKS CO. *v.* SCOTT (1907), 6 Terr. L. R. 302; 6 W. L. R. 272.—**CAN.**

g (p. 577) **i.** —— *Land held adversely by third party.*]—A sheriff selling under execution is not within the class of cases which apply to a person selling land held adversely by another.—DOULL *v.* KEEFE (1901), 34 N. S. R. 15.—**CAN.**

h (p. 577) **i.** —— —— *Error in judgment.*]—*Held :* the sheriff's deed could give no title.—VAREY *v.* MUIRHEAD (1831), Dra. 486.—**CAN.**

h (p. 577) **ii.** —— —— *Too much sold.*]—*Held :* no ground for invalidating the sale.—DOE d. HAGERMAN *v.* STRONG (1848), 4 U. C. R. 510.—**CAN.**

h (p. 577) **iii.** —— —— *Sale in separate lots.*]—*Held :* permissible.—DOE d. ROBERTS *v.* WATSON (1850), 6 N. B. R. (1 All.) 675.—**CAN.**

h (p. 577) **iv.** —— —— *Part only sold—Duty of sheriff to designate portion offered for sale.*]—KNAGGS *v* LEDYARD (1866), 12 Gr. 320.—**CAN.**

h (p. 577) **v.** —— —— *Sale of undivided interest in township lots.*]—RATHBUN *v.* CULBERTSON (1875), 22 Gr. 465.—**CAN.**

h (p. 577) **vi.** —— —— *Time of sale.*]—*Held :* the sheriff might sell at any time between the hours named in 27 Geo. 3, c. 12.—DOE d. ROBERTS *v.* WATSON (1850), 6 N. B. R. (1 All.) 675.—**CAN.**

h (p. 577) **vii.** —— —— *Sheriff disregarding judgment creditor's instructions—Bidding at once full amount instead of bidding gradually.*]—*Held :* the judgment creditor had no ground of action against the sheriff.—MARKLE *v.* THOMAS (SHERIFF) (1856), 13 U. C. R. 321.—**CAN.**

h (p. 577) **viii.** —— —— *Proof of.*]—ROE *v.* MCNEIL (1863), 13 C. P. 189.—**CAN.**

h (p. 577) **ix.** —— —— ——.]—FIELDS *v.* LIVINGSTON & WIGHTMAN (1866), 17 C. P. 15.—**CAN.**

h (p. 577) **x.** —— —— *Purchaser estopped from disputing validity.*]—FERGUSON *v.* FERGUSON (1869), 16 Gr. 309.—**CAN.**

h. (p. 577) **xi.** —— *Effect of—Sale of equity of redemption—Purchase by assignee from execution creditor—Subsequent conveyance to debtor.*]—CHITTICK *v.* LOWERY (1903), 24 C. L. T. 15; 6 O. L. R. 547; 2 O. W. R. 957.—**CAN.**

h (p. 577) **xii.** —— —— *Covenants.*]—The implied covenants between vendor & purchaser, including those implied by Land Titles Act, R. S. S., 1920 (c. 67), s. 64 (2), do not come into existence where land is sold by the sheriff under execution.—ANDERSON *v.* STASIUK (No. 3), [1927] 1 D. L. R. 529; [1927] 1 W. W. R. 49; 21 Sask. L. R. 276.—**CAN.**

h (p. 577) **xiii.** —— *Right to proceeds —Two writs lodged with registrar.*]—*Re* THE MASSEY MANUFACTURING CO.

1552a. Equitable interest—Amendment—Costs.]—KIDD *v.* TALLENTIRE, [1877] W. N. 21.

1564a. Issue into county palatine—Indorsement for less than £50.]—BROWN *v.* M'MILLAN (1840), 7 M. & W. 196; 10 L. J. Ex. 147; 151 E. R. 736; *sub nom.* BROWN *v.* MACMILLAN, SAME *v.* MACPHERSON, 8 Dowl. 852; H. & W. 46; 4 Jur. 1090.

1569. *Add*—ANON. (1774), Lofft, 390.

1576a. When completed.]—OWEN *v.* OWEN (1831), 2 B. & Ad. 805; 109 E. R. 1341.

1577a. —— Whether defendant discharged.]—HODGSON *v.* TOWNING (1837), Will. Woll. & Dav. 53; *sub nom.* ANON., 1 Jur. 84.

Annotation:—**Consd.** Aga Kurboolie Mahomed *v.* R. (1843), 4 Moo. P. C. C. 239.

1578a. Right to break outer doors.]—MALEVERER *v.* SPINKE (1537), 1 Dyer, 35 b; 73 E. R. 79.

1578b. —— After escape of prisoner.]—ANON. (1774), Lofft, 390; 98 E. R. 709.

1578c. -.]—HOPKINS *v.* NIGHTINGALE (1794), 1 Esp. 99; 170 E. R. 292, N. P.

1579a. —— Opening of door obtained by trick.]—*Held:* an unlawful entry.—PARKE & PERCIVAL *v.* EVANS (1615), Hob. 62; 80 E. R. 211.

Annotations:—**Refd.** Lee *v.* Gansel (1774), 1 Cowp. 1; Sandon *v.* Jervis (1859), E. B. & E. 942.

1579b. ——.]—ANON. (1695), 12 Mod. Rep. 73; 88 E. R. 1172.

1580a. What is outer door—Whether hole in wall.]—Where it was proved that a hole in the outer wall of a house was not intended to have either a door or window put into it, but was to remain open, so that the place should be used as a conservatory:—*Held:* if the hole in the wall had been intended to have had a door or window put into it, it must be considered that the outer fence of the house was left open, but if the hole was always intended to be left open, the staircase window must be considered as the outer fence of the house.—WHALLEY *v.* WILLIAMSON (1836), 7 C. & P. 294; 173 E. R. 130.

1581a. ——.]—RING *v.* HYDE (1850), 14 L. T. O. S. 377.

1584a. —— ——.]—*Held:* valid.—ANON. (1702), 7 Mod. Rep. 8; 87 E. R. 1060.

Annotation:—**Apld.** Sandon *v.* Jervis (1858), E. B. & E. 935.

1584b. —— Window broken to take into custody.]—*Held:* valid.—LLOYD *v.* SANDILANDS (1818), 8 Taunt. 250; 2 Moore, C. P. 207; 129 F. R. 379.

1615. *Add. Annotation:*—**Refd.** Ellis *v.* Stenning & Son, Ltd. (1932), 76 Sol. Jo. 232.

1618. *Add. Annotation:*—**Refd.** Ellis *v.* Stenning & Son, Ltd. (1932), 76 Sol. Jo. 232.

1658a. —— More than amount of rent due—Redelivery of surplus]—Several crops having been taken under an *habere facias possessionem* issued on an ejectment brought against a tenant for holding over, the ct. refused a rule for the lessors of pltf. to pay over the value of them to deft. after deducting the amount of rent due.—DOE d. UPTON *v.* WITHERWICK (1825), 3 Bing. 11; 10 Moore, C. P. 267; 3 L. J. O. S. C. P. 126; 130 E. R. 417.

Annotation:—**Refd.** Kelly *v.* Webber (1860), 3 L. T. 124.

1704. *Add. Annotations:*—**Folld.** Employers' Liability Assce. Corpn. *v.* Sedgwick, Collins, [1927] A. C. 95; Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65.

1706a. —— —— Payment of rent—How rent calculated.]—Upon a motion to set aside an ejectment & restore possession upon payment of the rent due & costs, the rent must be calculated only to the last rent day, not to the day of computing.—DOE d. HARCOURT *v.* ROE (1813), 4 Taunt. 883; 128 E. R. 579.

1720. *Add. Annotations:*—**Apld.** Burrowes. *v.* Burrowes (1929), 141 L. T. 201. **Refd.** Capron *v.* Capron, [1927] P. 243.

1745. *Add. Annotation:*—**Refd.** Iberian Trust, Ltd. *v.* Founders Trust & Investment Co. (1932), 48 T. L. R. 292.

1753. *Add. Annotations:*—**Refd.** Capron *v.* Capron, [1927] P. 243; Burrowes *v.* Burrowes (1929), 141 L. T. 201.

1754. *Add. Annotations:*—**Refd.** Capron *v.* Capron, [1927] P. 243; Burrowes *v.* Burrowes (1929), 141 L. T. 201.

v. HUNT, THE MCCORMICK HARVESTING MACHINE CO. *v.* HUNT (1895), 2 Terr. L. R. 84.—**CAN.**

h (p. 577) **xiv.** *Under writ of execution lodged prior to agreement for sale to third party—Priorities—Affidavits in support of confirmation of sale irregular.*]—*Re* PRICE (1912), 21 W. L. R. 299.—**CAN.**

dd (p. 577) **i.** *Lands sold subject to "incumbrances"—Whether subject to subsequent executions.*] — GRIESE *v.* WALKER (1913), 23 W. L. R. 709; 4 W. W. R. 77.—**CAN.**

ss. *Confirmation of sale—Right of appeal.*]—A local master, in confirming a sale of land sold under execution, is not acting in a matter or an action in ct. but as *persona designata* under Land Titles Act, R. S. S., 1920, c. 67, & the only appeal is to the Ct. of Appeal.—ETHIER *v.* NOLLE, [1924] 1 W. W. R. 493.—**CAN.**

sb. *Distribution of proceeds of sale.*]—The proceeds of a sale of land under execution when paid over to the registrar of the ct. are distributable by him as if they were money in the hands of the sheriff distributable under Creditors' Relief Act. An appeal lies to a judge from the registrar's scheme of distribution.—CAUDWELL *v.* GEORGE, [1925] 2 D. L. R. 229; [1925] 1 W. W. R. 579; 35 B. C. R. 134.—**CAN.**

sc. *Right to sell—To realise judgment of county court.*]—Queen's Bench Act, 1895, rr. 804 to 806, do not authorise proceedings to be taken in a summary way under them for the purpose of realising a registered judgment of a county ct. by sale of land, such rules being applicable only to judgments in the Q. B.—PROCTOR *v.* PARKER (1897), 11 Man. L. R. 485.—**CAN.**

sd. *Affidavit of execution of transfer—Sworn before unauthorised person.*]—JOHN ABELL ENGINE & MACHINE WORKS CO. *v.* SCOTT (1907), 6 W. L. R. 272; 6 Terr. L. R. 302.—**CAN.**

sf. *Proceedings to confirm sale—How intituled.*]—JOHN ABELL ENGINE & MACHINE WORKS CO. *v.* SCOTT (1907), 6 W. L. R. 272; 6 Terr. L. R. 302.—**CAN.**

PART III. SECT 2, SUB-SECT. 11.

1557i. *Order of court—When court will set aside sale—On equitable grounds.*]—WOOD *v.* LEEMING (1827), Tay. 463.—**CAN.**

1557 ii. —— —— ——.]—CAMPBELL *v.* SMITH (1863), 10 Gr. 206.—**CAN.**

1557 iii. —— —— *Notice of motion not given to purchaser.*]—*Held:* the ct. would not interfere.—MCGILLIS *v.* MCDONALD (1839), 2 Ont. Dig. 2662.—**CAN.**

PART III. SECT. 3, SUB-SECT. 3.—A.

sg. *Proceedings after surrender—Set aside.*]—WARD *v.* STOCKING (1825), Tay. 216.—**CAN.**

PART III. SECT 3, SUB-SECT. 5.—A.

a i. —— *By mistake—Second writ refused.*]—BRADBURY *v.* LONEY (1842), 6 O. S. 291.—**CAN.**

a ii. —— *Where proof of no intention to leave province—Ownership of property sufficient to satisfy debt.*]—TOOLE *v.* HENNEBERRY, [1928] 3 D. L. R. 38.—**CAN.**

sk. *Not granted—Debtor having interest in land not subject to execution.*]—*Re* GELDERT *v.* HOAR, *Ex p.* GELDERT (1899), 34 N. B. R. 612.—**CAN.**

PART III. SECT. 5, SUB-SECT. 3.

r i. —— *By whom signed & issued—By clerk of court & not by judge.*]—ALLENACH *v.* DESBRISAY (1866), N. B. Dig. 493.—**CAN.**

1754a. -.]—*Semble:* arrears of alimony accrued due come within the scope of R. S. C., Ord. 43, as constituting disobedience to an order not merely to pay money, but to do so within a limited time.—CAPRON *v.* CAPRON, [1927] P. 243; 96 L. J. P. 151; 137 L. T. 568; 43 T. L. R. 667; 71 Sol. Jo. 711.

1758. *Add. Annotation:*—**Refd.** *Re* Nelson, Norris *v.* Nelson, [1928] Ch. 920, n.

1769. *Add. Annotation:*—**Refd.** Engelke *v.* Musmann, [1928] A. C. 433.

1847. *Add. Annotation:*—**Refd.** Capron *v.* Capron, [1927] P. 243.

1855. *Add. Annotation:*—**Refd.** Capron *v.* Capron, [1927] P. 243.

1882a. *S. P. Re* RUSH (1870), L. R. 10 Eq. 442; 39 L. J. Ch. 759.

1912. *Add. Annotation:*—**Refd.** Capron *v.* Capron, [1927] P. 243.

1944. *Add. Citations:—sub nom.* KIRLEW *v.* BUTTS, 2 B. & Ad. 736, n.; 109 E. R. 1318.
Add. Annotations:—**Apld.** Britten *v.* Wait (1832), 3 B. & Ad. 915. **Refd.** Newland *v.* Watkin (1832), 2 Moo. & S. 174; Colebrooke *v.* Layton (1833), 1 Nev. & M. K. B. 374.

1955. *Add. Annotation:* — **Refd.** *Re* Woods (Bristol), Ltd. (1931), 47 T. L. R. 464.

Part V.—Analogous Proceedings.

2046. In the cross-reference before this case, for "METROPOLIS" read "MAYOR'S & CITY OF LONDON COURT."

2059a. Judgment by default—Against dissolved foreign corporation.]—An English firm commenced an action in 1930 against the Moscow Industrial Bank claiming payment of a large sum of money, &, on the strength of an affidavit stating that the Moscow Industrial Bank was domiciled in Russia & that there was no way of effecting personal service on it, obtained leave under R. S. C., Ord. 9, r. 2, to serve notice of the writ by posting it by registered letter to the bank at Moscow where its head office had been. No appearance having been entered, judgment by default was signed against the Moscow Industrial Bank on Nov. 21, 1930. Some days later a letter was received from the London Embassy of the Soviet Republic, stating that notice of the writ could not be delivered, as the Moscow Industrial Bank went out of existence in 1917. After having obtained judgment by default, pltfs. obtained a garnishee order *nisi* against the Midland Bank attaching money alleged to be due from that bank to the Moscow Industrial Bank, & that order was subsequently made absolute. On appeal by the Midland Bank:—*Held:* (1) on the evidence of the Russian decrees as to Russian corpns., & of Russian lawyers as to the effect of those decrees, that the Moscow Industrial Bank had ceased to exist as a juristic person in 1930, & therefore that the judgment by default obtained against it by pltfs. was a nullity, & consequently that no garnishee proceedings could be founded upon it; & (2) in any view the garnishee order *nisi* ought not to have been made absolute, inasmuch as service of notice of the writ on the Moscow Industrial Bank was irregular in that the procedure applicable to service in a foreign country, as prescribed by R. S. C., Ord. 11, r. 8, had not been followed.—LAZARD BROS. & CO. *v.* BANQUE INDUSTRIELLE DE MOSCOU; LAZARD BROS. & CO. *v.* MIDLAND BANK, LTD., [1932] 1 K. B. 617; 101 L. J. K. B. 65; 146 L. T. 240, C. A.; *affd.* 19 T. L. R. 94; 76 Sol. Jo. 888, H. L.

2084a. Person out of jurisdiction.]—R. S. C., Ord. 45, r. 1, contemplates both a garnishee & a debt recoverable within the jurisdiction.

PART V. SECT. 1, SUB-SECT. 2.—A.

sl. *Magistrate's order for maintenance of deserted wife—Affirmed by county court.*]—*Held:* a judgment enforceable by the attachment of a debt due to the husband.—BROWN *v.* BROWN, [1927] 4 D. L. R. 314; [1927] 3 W. W. R. 172; 38 B. C. R. 473.—**CAN.**

sm. *Judgment by consent—Not to be entered till subsequent date.*]—Where a consent judgment provides that it shall not be entered until a subsequent date the party for whom the judgment is given cannot in the meantime truthfully make the affidavit required by King's Bench Act, s. 759, for the obtaining of a garnishee order.—HODGKINS *v.* HARRIS INVESTORS, LTD., [1929] 1 D. L. R. 189; [1928] 3 W. W. R. 540.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.—B.

n i. —— *Making assignment in bankruptcy.*]—Where after recovering a judgment the judgment creditor makes an assignment in bkpcy., & there has been no re-assignment of the judgment to him, a garnishee summons issued by him, on an affidavit which states that the judgment debtor is indebted to him in respect of such judgment, is a nullity & cannot be cured by acquiescence, particularly in the absence of knowledge on the part of the garnishee.—LANIN *v.* ZAWISLAK & DEMOSKY (Sask.), [1927] 2 W. W. R. 71.— **CAN.**

PART V. SECT. 1, SUB-SECT. 2.—C.

2077 ii. —— ——.]—An application to set aside a garnishee summons, on the ground that the money attached is trust money & does not belong to appct., will not be entertained.—THOMPSON *v.* FRASER (Sask.), [1926] 3 W. W. R. 251.—**CAN.**

k. Read now "**2084a i.** *Person out of jurisdiction.*"

l. Read now "**2084a ii.**"

m. Read now "**2084a iii.**"

n. Read now "**2084a iv.**"

o. Read now "**2084a v.**"

2084a vi. —— *Debt payable within province.*]—While ordinarily Attachment of Debts Act, R. S. S., 1930, does not apply to persons resident outside Saskatchewan, yet it does apply when such persons submit themselves to the jurisdiction of the Saskatchewan cts. & are temporarily within the province & the debt garnished is payable within the province.—MCILRATH LUMBER CO., LTD. *v.* SHORE & SHORE & DENNISSON, [1931] 2 W. W. R. 785; 4 D. L. R. 894. —**CAN.**

2084a vii. —— *Licensed to do business in Canada.*]—Applt., in May, 1928, issued in the United States an insurance policy to F., an American subject, by which it agreed to indemnify F. against loss by reason of her legal liability to pay damages to others arising out of the ownership, operation or use of her automobile within the United States or Canada. Resp. adduced evidence that on Mar. 23, 1929, applt. was licensed to carry on the business of automobile & other insurance in Ontario, & showing its head office for the province, & its assets in Ontario (moneys in bank) & its assets deposited with the Receiver-General of Canada for the protection of Canadian policy holders, as shown by its annual statement filed as required by law:—*Held:* applt. was a "person within Ontario" & was "indebted to the judgment debtor," within r. 590 of the Ontario Rules of Ct.—CENTURY INDEMNITY CO. *v.* ROGERS & FITZGERALD, [1932] S. C. R. 529; 2 D. L. R. 582; *affg.*, [1931] 3 D. L. R. 225; O. R. 312.—**CAN.**

so. *Debtor out of jurisdiction—Writ obtained ex parte—Leave to execute.*]—JONES *v.* JONES, [1928] V. L. R. 24.—**AUS.**

sq. *Company in liquidation.*]—When a co. is in liquidation its funds are not subject to garnishment.—RUDDELL GRAIN GROWERS ASS'N., LTD. *v.* CLEATOR & SASKATCHEWAN CO-OPERATIVE ELEVATOR CO., LTD., [1928] 1 W. W. R. 222.—**CAN.**

A judgment debtor had a balance in an English bank with foreign branches where foreign currency was in use. It was claimed that a garnishee order obtained in England against the bank should extend to possible balances to the credit of the judgment debtor at its foreign branches:—*Held:* the foreign balances, not constituting a debt recoverable within the jurisdiction, could not be attached by a garnishee order.—RICHARDSON *v.* RICHARDSON, [1927] P. 228; 96 L. J. P. 125; 137 L. T. 492; 43 T. L. R. 631; 71 Sol. Jo. 695.

2086a. —.]—FASSNIDGE *v.* FLINT & SON (1892), 8 T. L. R. 213.

2107. *Add. Annotation:*—**Refd.** *Re* Pinto Leite & Nephews, *Ex p.* Visconde Des Olivaes, [1929] 1 Ch. 221.

2108. *Add. Annotation:*—**Expld.** *Re* Clark, Clark *v.* Clark, [1926] Ch. 833.

2121. *Add. Annotations:*—**Consd.** Rekstin *v.* Komseverputj Bureau (Bank for Russian Trade, Ltd.) (1932), 48 T. L. R. 578. **Refd.** Richardson *v.* Richardson, [1927] P. 228.

2124a. Must be recoverable within jurisdiction.]—RICHARDSON *v.* RICHARDSON, No. 2084a, *ante*.

PART V. SECT. 1, SUB-SECT. 3.—A.

r (p. 621) i. ——— ———.]—Money paid into ct. cannot be attached by garnishing the clerk of the ct.—ROYAL BANK OF CANADA *v.* VAN BUREN & MCKAY (Alta.), [1927] 1 W. W. R. 268.—**CAN.**

r (p. 621) ii. ——— ———.]—Money paid into ct. as compensation due to the dependants of a deceased workman under Workmen's Compensation Act, 1925 (c. 84), is not subject to arrestment.—WILLIAM BAIRD & Co. *v.* CAMPBELL, [1928] S. C. 314.—**SCOT.**

r (p. 621) iii. —— *Money deposited with returning officer.*]—*Held:* not attachable.—CREAGH *v.* SUTHERLAND & READE (1895), 3 Terr. L. R. 303.—**CAN.**

k (p. 622) i. —— ——.]—HIME *v.* COULTHARD (1910), 15 W. L. R. 288; 20 Man. L. R. 164.—**CAN.**

k (p. 622) ii. ——— ——— *For destruction of exempt property.*]—Where a claim for damages for the destruction of exempt property has been converted into a debt, the amount thereof is not exempt from garnishment.—ROSS *v.* ROGERS & CANADIAN NATIONAL RYS. (Sask.), [1927] 3 W. W. R. 169.—**CAN.**

k (p. 622) iii. ——— ——— *Interest as.*] —A claim for interest as damages is not one for a debt or liquidated demand within Attachment of Debts Act, R. S. S., 1930.—BUCKOLZ *v.* P. W. GRAHAM & SONS, LTD., [1931] 2 W. W. R. 90; *on appeal*, [1931] 2 W. W. R. 737; 4 D. L. R. 854.—**CAN.**

k (p. 622) iv. ——— ——— *Against stockbroker.*]—MACKEE *v.* SOLLOWAY MILLS & Co., LTD., [1930] 1 W. W. R. 563; 3 D. L. R. 145; 42 B. C. R. 438. —**CAN.**

l (p. 622) i. —— *Conditional annuity.*] —Testator bequeathed his estate to trustees upon trust *(inter alia)* to pay out of the income to his widow an annuity of £200 "subject to the obligation of maintaining & educating thereout such of my children as shall for the time being be minors & shall not be married. On a motion to make absolute a charging-order *nisi* affecting to attach the widow's interest in the annuity:—*Held:* the annuity, being a debt subject to a condition, could not be attached, & the motion should be dismissed.—PUBLIC TRUSTEE *v.* POLSON, [1931] N. Z. L. R. 321.—**N.Z.**

l (p. 624) i. —— *Deposit paid under agreement to purchase.*]—Judgment debtor by memorandum in writing agreed to purchase from applts. (garnishees) land on which a house was to be erected. He agreed to pay & paid to applts. £100 deposit & "balance" purchase-money when house is completed. No price was specified. It was not clear on the evidence whether the price had been subsequently agreed or not, but, on an account being rendered to debtor for £1,150, he said he would consider the matter, & continued to negotiate either as to the price or arrangements for payment until he was served with the garnishee order *nisi*, when he agreed to take the land for £1,150:—*Held:* the amount of the deposit was neither a debt owing or accruing from the garnishees to judgment debtor, the deposit was intended to remain with applts. until it was certain that negotiations for the contract had failed, & was not subject to attachment.—MAYWALD *v.* RIEDEL, [1927] S. A. S. R. 345.—**AUS.**

m (p. 624). *Revsd.*, [1924] 1 D. L. R. 1154; [1924] 1 W. W. R. 707; 18 Sask. L. R. 158.

m (p. 624) i. —— ——.]—The balance of purchase-money owing under an agreement of sale of land, though all overdue, & assuming that the vendor is able & willing to convey & that the contract contains the usual provisions as to transfer, free from encumbrances on payment of the purchase-money, but where no transfer has been given or tendered, is not attachable by garnishment, as the debt is not a perfected & unconditional one.—REED *v.* RENTON & PETTINGER, [1924] 2 W. W. R. 223.—**CAN.**

m (p. 624) ii. —— ——.]—MOORE *v.* NYLAND, MCPHERSON, [1930] 1 W. W. R. 627; 3 D. L. R. 203; 42 B. C. R. 444.—**CAN.**

m (p. 624) iii. ——— *Balance of payment to mortgagee under policy taken out by mortgagor.*]—A hail-insurance policy taken out by a mtgor. on a crop growing on the mortgaged land provided that all loss thereunder should be payable to the mtgees., "as their interests may appear" & that the policy was held as collateral security to the mtge. On a loss occurring, the amount thereof was paid by the insurance co. to the mtgees., who applied part of it in payment of arrears then due on the mtge. & entered the surplus in their books "to the credit of the mtge. account." On being served with a garnishee order the mtgees. paid the amount claimed into ct.:—*Held:* the money in ct. should be paid to the garnishing creditor.—ROYAL BANK OF CANADA *v.* KENWARD, [1925] 4 D. L. R. 905; [1925] 3 W. W. R. 549.—**CAN.**

m (p. 624) iv. —— *Purchase-money deposited in escrow.*]—The purchase price of land deposited in escrow pending the showing of proper title & delivery of the conveyance:—*Held:* garnishable, where there was no suggestion that there was any defect of title, or that there would be any obstacle to the execution & delivery of the conveyance.—HANKEY & Co., LTD. *v.* VERNON, [1926] 1 D. L. R. 684; [1926] 1 W. W. R. 375; 36 B. C. R. 401.—**CAN.**

r (p. 624) i. —— *Money due on mortgage.*]—Moneys due on a mtge. of land are subject to garnishment, even though, as in Alberta, Judicature Act requires that, unless the ct. otherwise order, the land be sold before the mtgee. issues execution.—ROYAL BANK OF CANADA *v.* LEE & W. B. MOFFATT & Co. (Alta.), [1929] 4 D. L. R. 975; 3 W. W. R. 260.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—B.

2113 i. —— *At date of service of order—Necessity for—Salary payable at end of month in which order served.*]—STUMP *v.* BATZOLD & ZION UNITED CHURCH, [1931] 2 W. W. R. 784; 44 B. C. R. 282.—**CAN.**

2115 iii. ——— ———.]—Where at the time of the issuance of the garnishee order the obligation to pay the money is dependent upon conditions which may or may not be fulfilled there is no debt due or accruing due. An accruing debt is one which, although not yet payable, is yet an existing obligation.—VATER *v.* STYLES & METROPOLITAN LIFE INSURANCE Co., [1930] 2 W. W. R. 241; 3 D. L. R. 509; 42 B. C. R. 463. —**CAN.**

d (p. 626) i. —— *Payment of purchase-money conditional on clearing off encumbrances.*]—Where payment of purchase-money on a sale of land is conditional on the clearing off of encumbrances, it is not garnishable at a time when a transfer showing a clear title in the purchaser has not yet been registered.—FAAS *v.* MCMANUS (Alta.), [1930] 1 D. L. R. 302; 24 Alta. L. R. 317; [1929] 3 W. W. R. 598.—**CAN.**

sj. *Must be at time of issue of summons.*]—THORESON *v.* BLAIRMORE SCHOOL DISTRICT TRUSTEES (Alta.), [1927] 3 D. L. R. 641; [1927] 2 W. W. R. 439.—**CAN.**

sk. *Claim by dismissed servant.*]—Where the debt alleged to be due from the garnishee to deft. was based on an oral agreement of service for one year, & deft. had been dismissed by the garnishee & had retained a solr., who wrote stating that deft. intended to hold the garnishee to his contract & threatening legal proceedings, but no writ had been issued at the time of the service of the garnishee summons:—*Held:* there was no debt due or accruing due from the garnishee to deft.—MASON *v.* MCLEOD & FOSTER, [1925] 1 D. L. R. 752; [1925] 1 W. W. R. 165; 19 Sask. L. R. 221.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—E.

2124 ii. ——.]—PARKER *v.* MCILWAIN (1896), 17 P. R. 84.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—F.

2131 ii. —— ——.]—Garnishee orders take effect only as against that which debtor can properly, & without violation of any other rights of any one else, grant.—CAMPBELL *v.* GEMMELL (1890), 6 Man. L. R. 355.—**CAN.**

t i. *Debt due to judgment debtor in hands of co-defendant.*]—*Held:* not attachable.—GILCHRIST *v.* WILEY (1881), 28 Gr. 425.—**CAN.**

si. *Debt due from one partnership to debtor of another partnership—One partner common to both firms.*]—MCCORMICK *v.* PARK (1859), 9 C. P. 330.—**CAN.**

so. *Money lodged by candidate for election—Before election held.*]—Moneys lodged by a candidate for election under Local Government Act, 1915, s. 127, are not, before the election has taken place, attachable as a debt due by the returning officer to the candidate.—HUNT *v.* BALFOUR, [1928] V. L. R. 488; [1928] A. L. R. 313.—**AUS.**

2135. *Add. Annotation :*—**Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

2140. *Add. Annotation :—As to* (1) **Consd.** Rekstin *v.* Severo Sibirsko Gosudarstvernnoe Akcionernoe Olschestro Komseverputj & Bank for Russian Trade, Ltd. (1932), 48 T. L. R. 422.

2140a. —— ——.]—Judgment debtors instructed their bank to transfer their account to the account of another body which had diplomatic privilege & to close their account, & that transaction was then entered in the books of the bank, but before any notice of or acquiescence in the transfer by the proposed transferees the judgment creditor served a garnishee order *nisi* on the bank attaching the judgment debtors' account :—*Held :* (1) after the bank received notice to close & transfer the account, & the appropriate book entries had been made, but no notice of the transfer had been given to the proposed transferees, the relation of banker & customer still existed ; (2) the judgment debtors had power to revoke the direction to close & transfer their account at the time when the garnishee order was served ; (3) at the time the garnishee order was served it operated in law as a revocation of the direction to transfer the account so long as no notice of or acquiescence in the transfer had been received by the proposed transferee.—REKSTIN *v.* KOMSEVERPUTJ BUREAU (BANK OF RUSSIAN TRADE, LTD.) (1932), 147 L. T. 231 ; 48 T. L. R. 578 ; 76 Sol. Jo. 494, C. A.

2156. *Add. Annotation :—As to* (1) **Refd.** *Re* Pinto Leite & Nephews, *Ex p.* Visconde Des Olivaes, [1929] 1 Ch. 221.

PART V. SECT. 1, SUB-SECT. 3.—H.

o i. —— *Effect of defect.*]—Pursuant to a garnishee order issued by a judgment creditor in a county ct. action the garnishee, having been notified by a bank that the bank held an assignment from deft. co. of all book debts due to said co., paid the amount into ct. The assignment had been executed by deft. co. under seal by its president & its secretary-treasurer. The president was the garnishor. The assignment stated that it was made "for valuable consideration," & the accompanying affidavit by an agent of the bank stated that the assignment was "for good or valuable consideration, as set forth in said conveyance or assignment" :—*Held :* although the assignment was defective because it did not comply with sect. 3 of Bills of Sale & Chattel Mtge. Act, C.A., 1924, which governed the assignment in question, in that the assignment did not set out the full & true consideration for which it was given, nevertheless said defect was of no avail to the garnishor since the right to garnish depends upon the debt belonging to deft. when the order is taken out, & if the debtor has already parted with the debt under an assignment good as between him & his assignee the defect is immaterial.—MCKAY *v.* BANK OF MONTREAL, [1932] 1 W. W. R. 897 ; 3 D. L. R. 226.—**CAN.**

p i. *Assignment of earnings of farm implement.*]—An assignment of 25 per cent. of the earnings of a farm implement in favour of the vendor takes priority over a garnishee order attaching such earnings, even though the notice required to be given by the vendor was not served until after the service of the garnishee order.—TURNER *v.* WATERLOO MANUFACTURING CO., [1926] 2 D. L. R. 706 ; [1926] 1 W. W. R. 949 ; 35 Man. L. R. 472.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—I.

2142 iv. ——.]—The word "debts," as used in Code of Civil Procedure, s. 60, applies only to debts actually due ; it cannot include debts, *e.g.* rent, which may become due in the future. Rent which has not yet become due cannot be attached either as a debt or as an actionable claim.—LACHMAN *v.* JARBANDHAN (1927), 1. L. R. 50 All. 507.—**IND.**

PART V. SECT. 1, SUB-SECT. 3.—J.

c (p. 633) i. —— *Amount of exemption —Not affected by payments made on account.*]—CONTINENTAL GUARANTY CORPN. OF CANADA, LTD. *v.* HORODYSKE & CANMORE COAL CO., LTD. (Alta.), [1927] 1 W. W. R. 401.—**CAN.**

d (p. 633) i. —— *Deputy sheriff & gaoler.*]—*Ex p.* BOWES (1896), 34 N. B. R. 76.—**CAN.**

d (p. 633) ii. —— *Workman—Duration of employment.*]—DOMINION LUMBER & FUEL CO. *v.* KNAPP, [1928] 2 W. W. R. 257 ; 37 Man. L. R. 353.—**CAN.**

d (p. 633) iii. —— *Wages Act, s.* 1.]—Pltfs., having an unsatisfied judgment against deft. attached a sum of money said to be due to him, in the hands of the W. Co., which paid it into ct. Deft. was in the employment of the co. ; he was obliged by his contract with it to give his whole time & attention to its service ; the sum attached was remuneration for the services he rendered to the co. as its manager, being a share of the profits agreed to be paid in addition to salary ; in his employment he agreed to act under the policies prescribed by the directors of the co. ; & the sum attached was not payable to him in any capacity other than that of an employee of the co. :—*Held :* the sum attached was "wages" within Wages Act, s. 1, & should be dealt with in accordance with s. 7.—CRAVEN *v.* LALONDE, [1929] 4 D. L. R. 674 ; 64 O. L. R. 135.—**CAN.**

2146 i. *Superannuation allowance—Civil servant.*]—Money lying to the credit of a retired Govt. servant in the General Provident Fund is not liable to attachment in execution of a decree against him.—SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* HAR CHARAN DAS (1929), I. L. R. 51 All. 845.—**IND.**

e (p. 633) i. —— ——.]—On the proper construction of Dried Fruits Act, 1924, in acquiring under that Act dried fruits on behalf of His Majesty the Minister of Agriculture acts merely as the instrument of the Crown. The obligation to pay for the fruits is upon the Crown & not upon the Minister as such, & therefore is not subject to attachment by garnishee proceedings. —MILDURA CO-OPERATIVE FRUIT CO., LTD. *v.* NOYCE, *Re* NOYCE, *Ex p.* MINISTER OF AGRICULTURE, [1928] V. L. R. 390 ; [1928] Argus L. R. 234. —**AUS.**

r (p. 634) i. —— ——.]—The rule, whereby the remuneration of the holders of public offices is exempt from arrestment, applies to the wages of an ordinary workman in the employment of a Govt. Department.—MULVENNA *v.* THE ADMIRALTY, [1926] S. C. 842.—**SCOT.**

t (p. 634) i. —— ——.]—Under School Act, R. S. A., 1922 (c. 51), a teacher's salary is not a debt accruing due from day to day.—THORESON *v.* BLAIRMORE SCHOOL DISTRICT TRUSTEES (Alta.), [1927] 3 D. L. R. 641 ; [1927] 2 W. W. R. 439.—**CAN.**

f (p. 634) i. —— *Army surgeon.*]—The pay of an assistant-surgeon, attached to a British regiment serving in India, is not liable to attachment in execution of a decree of a civil ct.—BROWNE *v.* PEARCE (1925), I. L. R. 48 All. 73.—**IND.**

PART V. SECT. 1, SUB-SECT. 4.

sr. *To what court—Court of division where garnishee resides.*]—*Re* SAVORD *v.* DESJARDINS, [1927] 1 D. L. R. 541 ; 59 O. L. R. 645.—**CAN.**

s. *Revsd.*, 17 Alta. L. R. 109.

cc. For "the affidavit was not sufficient" read "not insufficient."

d (p. 637) i. —— ——.]—In an affidavit in support of a garnishee summons, deponent must swear positively to the indebtedness & the amount thereof, & if his affirmation as to the amount is upon information & belief only his previous positiveness as to the indebtedness is thereby qualified ; & as to a judgment debt the affidavit must show not only the existing indebtedness, but also the amount for which judgment was recovered.—FROST *v.* ROCHON & VERHELST, [1924] 3 W. W. R. 422.—**CAN.**

d (p. 637) ii. —— ——.]—An affidavit in support of a garnishee summons with respect to a judgment debt. need not state the original amount of the judgment, but only the amount still due thereon.—PONTIUS *v.* SMITH & CONNAUGHTY, [1925] 3 D. L. R. 513 ; [1925] 2 W. W. R. 293 ; 19 Sask. L. R. 497.—**CAN.**

d (p. 637) iii. —— ——.]—An affidavit for a garnishee order is not sufficient, unless it states that it is founded upon information & belief, or that deponent has knowledge of the facts.—TILLICUM ATHLETIC CLUB *v.* BURICK, [1925] 3 W. W. R. 368.—**CAN.**

d (p. 637) iv. —— ——.]—Where the affidavit in support of a garnishing order states that the garnishee is a certain named bank, it describes the garnishee sufficiently.—VAN WASSENAER *v.* ADAMS, [1927] 3 D. L. R. 180 ; [1927] 2 W. W. R. 287 ; 38 B C. R. 275.—**CAN.**

d (p. 637) v. —— ——.]—An affidavit for garnishing order before judgment must state shortly & concisely the cause of action in common & plain language, & a garnishing order issued where the affidavit filed is defective in this respect will be set aside.—HUHN *v.* BOGACH, [1928] 3 W. W. R. 422.—**CAN.**

d (p. 637) vi. —— ——.]—Although in an affidavit in support of a garnishee summons the fact of deft.'s indebtedness to pltf. must be sworn to positively & not on mere information & belief, this does not mean that pltf.'s knowledge thereof must necessarily be absolute & complete.—POMFRET *v.* MORIE & IMPERIAL BANK OF CANADA, [1931] 2 W. W. R. 477 ; 3 D. L. R. 557 ; 25 Alta. L. R. 481.—**CAN.**

d (p. 637) vii. —— ——.]—WILSON *v.* DOUGLAS, [1931] 2 D. L. R. 413 ; 3 M. P. R. 84.—**CAN.**

d (p. 637) viii. —— ——.]—CURLEY *v.* SINSER, [1931] 3 W. W. R. 763.—**CAN.**

2169. *Add. Annotations :—* **Refd.** Employers' Liability Assce. Corpn. *v.* Sedgwick, Collins, [1927] A. C. 95; Richardson *v.* Richardson, [1927] P. 228.

2170. *Add. Annotations :—***Folld.** Employers' Liability Assce. Corpn. *v.* Sedgwick, Collins, [1927] A. C. 95. **Refd.** Richardson *v.* Richardson, [1927] P. 228.

2170a. —— —— ——.]—Pltfs. had brought an action & had signed a judgment against a Russian co. in default of appearance. Service of the writ had been effected by leaving a true copy of the writ of summons with one C., who was the person authorised by registration in England to accept service on behalf of deft. co. under Companies (Consolidation) Act, 1908 (c. 69), s. 274. The co. had been liquidated in Russia but this liquidation took no account of debts due to the co. by English debtors or by the co. to English creditors, & an order had since been made to wind up the co. in England. The English liquidator decided not to attack the judgment. C. had endeavoured without success to have his name removed from the register :—*Held :* the judgment creditors were entitled to a garnishee order attaching money due to the Russian co. from a debtor of that co. in this country.—SEDGWICK COLLINS & Co. *v.* ROSSIA INSURANCE CO. OF PETROGRAD, [1926] 1 K. B. 1; 95 L. J. K. B. 7; 133 L. T. 808; 41 T. L. R. 663, C. A.; *affd. sub nom.* EMPLOYERS' LIABILITY ASSURANCE CORPN. *v.* SEDGWICK, COLLINS & CO., [1927] A. C. 95; *sub nom.* SEDGWICK, COLLINS & CO., LTD. *v.* ROSSIA INSURANCE CO. OF PETROGRAD, 136 L. T. 72, H. L.

Annotations :—**Consd.** Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65. **Refd.** The Jupiter (No. 3) (1927), 137 L. T. 333; Sabatier *v.* Trading Co., [1927] 1 Ch. 495; First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922; *Re* Vocalion (Foreign), Ltd. (1932), 48 T. L. R. 525.

2188. *Add. Annotations :*—**Consd.** Rekstin *v.* Komseverputj Bureau (Bank for Russian Trade, Ltd.) (1932), 48 T. L. R. 578. **Refd.** Richardson *v.* Richardson, [1927] P. 228; Douglass *v.* Lloyds Bank (1929), 34 Com. Cas. 263; Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65.

2210a. —— Not necessary to make judgment debtor a party.]—LEVENE *v.* MATON (1907), 51 Sol. Jo. 532.

2220a. Irregular service of notice of writ.]—LAZARD BROS. & CO. *v.* BANQUE INDUSTRIELLE DE MOSCOU, LAZARD BROS. & CO. *v.* MIDLAND BANK, LTD., No. 2059a, *ante*.

d (p. 637) **ix.** ——— ———.]—BANQUE CANADIENNE NATIONALE *v.* LABINE & COURTEMANCHE, [1932] 3 W. W. R. 219.—**CAN.**

h (p. 637) **i.** —— *Time for swearing.*]—The fact that the affidavit in support of a garnishee summons was sworn before the action was begun, although on the same day on which the statement of claim was issued, is ground for setting the garnishee summons aside.—MCPARLAND *v.* SEYMOUR, [1925] 4 D. L. R. 944; [1925] 3 W. W. R. 666; *revsg.*, [1925] 4 D. L. R. 325; [1925] 3 W. W. R. 256.—**CAN.**

PART V. SECT. 1, SUB-SECT. 5.—B.

q i. ——.]—Service of a garnishee summons set aside, the copy served not having been a true copy.—LIVERGANT *v.* CAPITAL JOBBERS, LTD., [1925] 3 W. W. R. 719.—**CAN.**

PART V. SECT. 1, SUB-SECT. 6.—B. (a).

2206 i. *Claim by third party—Duty of court—Rights of third party.*]—*Held :* when it is suggested by the garnishee on the return of an order *nisi* for the attachment of a debt that there is a claim by a third person in respect of that debt the justices should, in accordance with Justices Act, 1915, s. 131, direct such third person to appear & state the nature & particulars of his claim; & where such third person appears, & his claim is disregarded by the justices, he has a right to be heard & is entitled to review an order of the justices as a "person who feels aggrieved" within sect. 150 of the same Act.—HUNT *v.* BALFOUR, [1928] V. L. R. 488; [1928] Argus L. R. 313.—**AUS.**

h i. —— *Affidavit of denial—Cross-examination on—What questions must be answered.*]—WILSON *v.* FLEMING (1900), 19 P. R. 203.—**CAN.**

h ii. —— *Attachment of Debts Act.*]—There is strong authority for holding that a garnishee has not the right to have a garnishee summons set aside on an application based merely on the ground that there is no debt due from the garnishee to deft., since Attachment of Debts Act, s. 8, makes provision for determining such an issue.—SIMONSON *v.* SIMONSON, [1928] 3 D. L. R. 31; [1928] 1 W. W. R. 863; 22 Sask. L. R. 481.—**CAN.**

PART V. SECT. 1, SUB-SECT. 6.—B. (b).

sp. *Onus of proof.*]—ADOLPH *v.* HILTON & STEPHENS (1907), 7 Terr. L. R. 407; 6 W. L. R. 119.—**CAN.**

PART V. SECT. 1, SUB-SECT. 6.—C. (b).

t i. —— *Jurisdiction of district court judge to set aside.*]—RABINOVITCH *v.* FEIST, [1927] 3 D. L. R. 892; [1927] 2 W. W. R. 673; 21 Sask. L. R. 582.—**CAN.**

st. *Debt not liable to be garnisheed—Indian Act, R. S. C.*, 1906, *ss.* 99, 102.]—ARMSTRONG GROWERS' ASSOCN. *v.* HARRIS, [1924] 1 D. L. R. 1043; 1 W. W. R. 729; 33 B. C. R. 285.—**CAN.**

sv. *Error in form.*]—ARMSTRONG GROWERS' ASSOCN. *v.* HARRIS, [1924] 1 D. L. R. 1043; 1 W. W. R. 729; 33 B. C. R. 285.—**CAN.**

sw. *Who may apply.*]—A "person claiming to be interested in the money attached," within Attachment of Debts Act, R. S. S. 1920 (c. 59), s. 7, is some person, other than pltf., deft. or garnishee, who claims some interest in the money attached by the garnishee summons.—PONTIUS *v.* SMITH & CONNAUGHTY, [1925] 3 D. L. R. 513; [1925] 2 W. W. R. 293; 19 Sask. L. R. 497.—**CAN.**

sy. ——.]—BOYD & ELGIE *v.* KERSEY (B. C.), [1927] 2 D. L. R. 679; [1927] 1 W. W. R. 665; 38 B. C. R. 342.—**CAN.**

PART V. SECT. 1, SUB-SECT. 7.

t i. *Against prior assignment—Validity of assignment—Trial of issue to determine—Power to order.*]—PAQUET CO., LTD. *v.* WIESE & KRANT (Alta.), [1927] 1 W. W. R. 685.—**CAN.**

t ii. —— *Creditors Relief Act, R. S. B. C.*, 1924 (*c.* 59).]—VERNON HARDWARE CO. *v.* REID & REINHARD (B. C.), [1927] 2 W. W. R. 117.—**CAN.**

sz. *Joint & several debt—Rights of creditor of individual debtor.*]—Where money is levied under an execution with respect to a joint & several debt a creditor to whom one of said debtors is individually indebted is not entitled to share in its distribution under Creditors' Relief Act, R. S. A., 1922, except as to the surplus, if any, which remains after the money has been applied in satisfaction of said debt.—DONAGHUE *v.* CANADIAN BANK OF COMMERCE (Alta.), [1929] 4 D. L. R. 540; 3 W. W. R. 109.—**CAN.**

sa. *Of garnishing creditors—Amendment of summons—Power of court.*]—K., an administrator, had in his hands moneys of the estate, a distributive share of which M. as one of the next of kin was entitled to receive. J., a creditor of M., served on K. a garnishee summons, in which K. was described simply as "K." T., another creditor, then served a similar summons on K., in which K. was described as "administrator of the estate." The judge amended J.'s summons by adding "administrator of the estate" :—*Held :* the judge had no power to give retroactive effect to the amendment, & thus give J. priority of T. on the basis of his earlier service.—TURVILLE *v.* MALLOY, [1929] 3 D. L. R. 25; 63 O. L. R. 612.—**CAN.**

sb. *Against wage-earners—Effect of Creditors' Relief Act, R. S. A.*, 1922.]—Creditors' Relief Act, R. S. A., 1922, s. 5 (14), which gives priority to persons who "at the time of the seizure by the sheriff," or within one month prior thereto, were employed by the execution debtor, does not entitle them to priority with respect to moneys which the sheriff received by virtue of garnishee proceedings.—LINTON *v.* FLANNIGAN, [1929] 3 D. L. R. 911; 1 W. W. R. 921; 24 Alta. L. R. 27; *revg.*, [1929] 1 W. W. R. 495.—**CAN.**

sc. *Priority of equitable assignee—Over subsequent garnishor.*]—M. made an arrangement with an auctioneer to sell her chattels on Nov. 27, 1929. Before that date she gave to a creditor a letter addressed to the auctioneer asking him to pay to the creditor a specified sum of money out of the proceeds of the sale to be held on Nov. 27. By the same document M. purported to assign to the creditor the specified sum out of the proceeds of the sale. She gave similar documents to other creditors & all were delivered to the auctioneer before the day of the sale :—*Held :* these documents were valid equitable assignments; the subject-matter of the assignments was assignable in that way; & the claims of the assignees were paramount to the claims of pltfs. in four Division Ct. actions,

2278. After this case add :—

See, generally, INFANTS, Vol. XXVIII., pp. 234-236.

2279. *Add. Annotation :*—**Refd.** C. L. *v.* C. F. W., [1928] P. 223.

2280. *Add. Annotation :*—**Refd.** C. L. *v.* C. F. W., [1928] P. 223.

2295a. Private company.]—FENTON *v.* EAST (1910), Y. S. C. P.

2311a. Stock held in trust for debtor—Debtor having discretionary trust as to part of fund.]—A testator by his will directed that certain stock should stand in the names of his exors., & the dividends should be paid to G., during his life, & on his death to E., his widow, "she to lay it out for the good of his children," & that when the youngest child should come of age, the fund should be sold out & divided amongst the children. In an action in which E., after the death of G., was a deft. :—*Held :* an order might be made under Judgments Act, 1838 (c. 110), ss. 14, 15, for charging "so much of the dividends as were payable to E. for her own use & benefit."—FOWLER *v.* CHURCHILL (1843), 11 M. & W. 57 ; 2 Dowl. N. S. 562 ; 12 L. J. Ex. 230 ; 7 Jur. 156 ; 152 E. R. 714.

Annotation : **Consd.** South Western Loan & Discount Co. *v.* Robertson (1881), 8 Q. B. D. 17.

2350. After the word "*Held*" add "(ERLE, J., *diss.*)"

Annotations :—For the annotations in the original volume substitute as follows :—

Annotations :—**Dbtd.** Beavan *v.* Oxford (1856), 6 De G. M. & G. 507. I prefer the opinion of ERLE, J., to that of the other three judges (TURNER, L.J.). **N.F.** Kinderley *v.* Jervis (1856), 22 Beav. 1 ; Scott *v.* Hastings (1858), 4 K. & J. 633. **Consd.** Nicholls *v.* Rosewarne (1859), 6 C. B. N. S. 480. **N.F.** Benham *v.* Keane (1861), 1 John. & H. 685. **Dbtd.** Pickering *v.* Ilfracombe Ry. (1868), L. R. 3 C. P. 235 ; Robinson *v.* Nesbitt (1868), L. R. 3 C. P. 264. The opinion of the majority of the ct. in that case is no longer law (BOVILL, C.J.). **N.F.** Gill *v.* Continental Union Gas Co. (1872), L. R. 7 Exch. 332. **Dbtd.** Punchard *v.* Tomkins (1882), 31 W. R. 286. The case of *Watts* v. *Porter* is itself unsound law, but ERLE, J.'s construction of Judgments Act, 1838 (c. 110), is now held to be the law (CHITTY, J.). **N.F.** *Re* General Horticultural Co., *Ex p.* Whitehouse (1886), 32 Ch. D. 512 ; *Re* Leavesley, [1891] 2 Ch. 1 ; Vacuum Oil Co. *v.* Ellis, [1914] 1 K. B. 693. **Refd.** Hirsch *v.* Coates (1856), 18 C. B. 757 ; Croft *v.* Lumley (1858), 6 H. L. Cas. 672 ; Baker *v.* Tynte (1860), 2 E. & E. 897. **Mentd.** Whistler *v.* Forster (1863), 14 C. B. N. S. 248.

2438a. —— Beneficial owner.]—A *cestui que trust* or equitable mtgee. of shares who is entitled to restrain a transfer can apply to the High Ct. under Ct. of Chancery Act, 1841 (c. 5), s. 4, & R. S. C., Ord. 46, for an order restraining the co. from allowing a transfer to be made, & this appears to me to be his only remedy where he is not himself a transferee, & as such entitled to be registered as a shareholder (LINDLEY, L.J.).—SOCIÉTÉ GÉNÉRALE DE PARIS *v.* TRAMWAYS UNION CO., LTD. (1884), 14 Q. B. D. 424 ; 54 L. J. Q. B. 177 ; 52 L. T. 912 C. A. ; *affd. on other grounds, sub nom.* SOCIÉTÉ GÉNÉRALE DE PARIS *v.* WALKER (1885), 11 App. Cas. 20, H. L.

who sought to garnish the proceeds of the sale in the hands of the auctioneer garnishee.—UXBRIDGE HARDWARE CO. *v.* MUSSELMAN, [1931] 1 D. L. R. 857 ; 66 O. L. R. 135. **CAN.**

PART V. SECT. 1, SUB-SECT. 8.

2242 ii. —— ——.]—BRETHOUR *v.* TAYLOR & BANK OF MONTREAL (B. C.), [1927] 3 W. W. R. 166.—**CAN.**

2242 iii. —— —— *After notice of assignment of reversion.*]—FOULDS *v.* CHAMBERS (1896), 11 Man. L. R. 300.—**CAN.**

sd. —— *By judgment debtor—To sheriff.*]—*Held :* payment by the judgment debtor to the sheriff of the amount of the execution did not entitle him to have the garnishees discharged.—KOLEGA *v.* GENSER (Man.) (1912), 22 W. L. R. 197 ; 6 D. L. R. 188.—**CAN.**

f i. —— *Distribution—Under Creditors Relief Act.*]—WARD (ROBERT) & Co., LTD. *v.* WILSON (1907), 7 W. L. R. 37 ; 13 B. C. R. 273.—**CAN.**

PART V. SECT. 2, SUB-SECT. 5.—A.

2289 i. *Fund in court—Paid under garnishee proceedings.*]—PRAT *v.* HITCHCOCK, JONAH *v.* HITCHCOCK, [1925] 3 D. L. R. 1142.—**CAN.**

PART V. SECT. 2, SUB-SECT. 6.—A.

se. *Costs of obtaining orders—On winding-up of company—By whom payable.*]—*Re* SASKATCHEWAN CO-OPERATIVE ELEVATOR CO., LTD., DAVIDSON *v.* SWANSON (S.), [1928] 2 W. W. R. 256.—**CAN.**

PART V. SECT. 3, SUB-SECT. 2.—D.

2393 i. *Right of assignor to fund.*]—*Re* DAVIDSON & SMITH, *Ex p.* LONDON GUARANTEE & ACCIDENT CO., [1925] 2 D. L. R. 433.—**CAN.**

PART V. SECT. 3, SUB-SECT. 4.

e i. —— *Compensation for dependants of deceased workman.*]—Money paid into ct. as compensation due to the dependants of a deceased workman under the Workmen's Compensation Act, 1925, is not subject to arrestment.—WILLIAM BAIRD & Co., LTD. *v.* CAMPBELL, [1928] S. C. 314.—**SCOT.**

PART V. SECT. 3, SUB-SECT. 6.

sf. *Order obtained without notice of prior assignment—Notice of assignment entered in accountant's office.*]—COTTINGHAM *v.* COTTINGHAM (1886), 11 O. R. 294.—**CAN.**

PART V. SECT. 5. SUB-SECT. 1.

2448 i. *Not execution but equitable relief.*]—Equitable execution is a means of freeing exigible assets from impediments in the way of execution & reaching them when such impediments prevent them from being taken in the ordinary course ; it will not be awarded unless it is reasonably clear that benefit will be derived from the appointment of a receiver.—STRANG *v.* BEAL, [1923] 3 D. L. R. 1141 ; 52 O. L. R. 208.—**CAN.**

PART V. SECT. 5, SUB-SECT. 2.

sg. *Of master.*]—The master of the High Ct. has no jurisdiction to make an order appointing a receiver by way of equitable execution.—BAIRD *v.* MURPHY, [1928] I. R. 125.—**IR.**

sh. *Effect of County Courts Act, R. S. M.*, 1913, *s.* 57.]—Under the above sect. county ct. judges in Manitoba have no jurisdiction to make an order for the appointment of a receiver if the order is, in effect, an injunction against deft. restraining him from receiving the moneys therein referred to.—MCFARLANE. *v.* FRANKLIN, [1924] 3 D. L. R. 605 ; 2 W. W. R. 1036 ; 34 Man. L. R. 293.—**CAN.**

sj. *Action commenced in one judicial district—Appointment of receiver—Land in another district.*]—INTERNATIONAL HARVESTER CO., LTD. *v.* KIRK, [1928] 1 W. W. R. 303 ; 22 Sask. L. R. 485.—**CAN.**

sk. *Property outside jurisdiction.*]—The Calcutta High Ct. on its original side can, in a proper case, appoint a receiver of property outside its territorial jurisdiction in execution of a money decree.—PRAMATHANATH MALIA *v.* LOW & Co. (1929), I. L. R. 57 Calc. 964.—**IND.**

PART V. SECT. 5, SUB-SECT. 3.—A. (a).

2453 v. ——.]—A pltf. who holds a judgment on which he is entitled to issue a writ of execution against goods only, & who seeks the appointment of a receiver to take possession of the goods, must show (*inter alia*) that he is entitled to have the goods seized, but that it is impossible owing to some impediment in law of deft.'s interest.—LANGSTAFF *v.* SQUIRRELL, [1924] 2 D. L. R. 930 ; [1924] 1 W. W. R. 1265 ; 18 Sask. L. R. 250.—**CAN.**

2453 vi. ——.]—The appointment of a receiver by way of equitable execution will not as a general rule be made, unless there exists some special difficulty or legal impediment to obtaining execution in the ordinary course by garnishment of the debt due to the execution debtor.—ROYAL TRUST CO. *v.* KRITZWISER, [1924] 3 D. L. R. 596 ; [1924] 2 W. W. R. 760.—**CAN.**

2453 vii. ——.]—Before a receiver by way of equitable execution can be appointed, there must be a legal right in the creditor to be paid out of the particular asset, which he cannot reach unless aided by the ct. ; but the creditor cannot by this process reach a kind of asset not exigible under legal execution.—EATON *v.* BRANT (1924), 55 O. L. R. 346.—**CAN.**

2453 viii. ——.]—THOMSON *v.* CUSHING (1889), 30 O. R. 123.—**CAN.**

2453 ix. ——.]—NOVA SCOTIA MINING CO. *v.* GREENER (1898), 31 N. S. R. (19 R. & G.) 189.—**CAN.**

2453 x. ——.]—A receiver will not be appointed by way of equitable

2454. *Add. Annotation:*—**Reld.** Ideal Films *v.* Richards, [1927] 1 K. B. 374.

2463. *Add. Annotation:*—**Reld.** *Re* Bueb, [1927] W. N. 299.

2465. *Add. Annotation:*—**Reld.** *Re* Bueb, [1927] W. N. 299.

2502. *Add. Annotation:*—**Reld.** Ideal Films *v.* Richards, [1927] 1 K. B. 374.

2526. *Add. Annotation:*—**Reld.** Guatemala (Republica de) *v.* Nunez (1926), 95 L. J. K. B. 955.

Part VI.—Discovery in Aid of Execution.

2547a. —— On foreign debtor—Temporarily within jurisdiction—Form of order.]—PRACTICE NOTE, [1928] W. N. 209.

execution with respect to property which is capable of being reached by way of ordinary legal process, unless the ct. is satisfied that there are special circumstances which would justly entitle applt. to such relief.—MENNONITE MUTUAL FIRE INSURANCE CO. *v.* HEINRICHS & HEINRICHS, [1932] 1 W. W. R. 218.—**CAN.**

sl. *Whether granted as of right.*]—It is erroneous to assume that because property of a judgment debtor is not liable to the ordinary processes of execution, the judgment creditor must be able successfully to invoke the equitable jurisdiction of the ct. to obtain realisation of the property.—MATTHEWSON *v.* STREDICKE, [1924] 3 D. L. R. 1085; 2 W. W. R. 1099.—**CAN.**

PART V. SECT. 5, SUB-SECT. 3.—A. (b).

sm. *Property exempt from seizure—Homestead.*]—A judgment creditor cannot have equitable execution with respect to property which could not be taken under execution at law if the debtor had the legal, instead of only an equitable interest therein. Therefore equitable execution cannot be obtained against a judgment debtor's equitable interest in land which is his homestead, where homesteads are made exempt from seizure under a writ of execution.—STOEHR & MCPHERSON *v.* MORGAN (Sask.), [1929] 4 D. L. R. 301; 2 W. W. R. 577.—**CAN.**

PART V. SECT. 5, SUB-SECT. 3.—C.

n i. *Legal estate in remainder.*]—A vested interest in land subject to another person's life estate does not constitute a sufficient present interest in land to justify the appointment of a receiver with a view to realisation.—MATTHEWSON *v.* STREDICKE, [1924] 3 D. L. R. 1085; 2 W. W. R. 1099.—**CAN.**

q i. ——.]—BARNES *v.* SHARPE, [1924] 2 D. L. R. 1119; 2 W. W R. 462.—**CAN.**

PART VI.

h i. —— ——.]—Where an order under Rule 478 (1) for the examination of a judgment debtor orders his attendance for examination, it is not necessary to serve him with a *subpœna* under Rule 480; the service of the order & appointment on him with payment of conduct money is sufficient. But if such order provides only that he be orally examined & does not order him to attend for examination or to produce his books or documents, it is then necessary to serve a *subpœna* to compel his attendance or to produce such books & documents as may be required.—GREAT WEST LIFE ASSCE. CO. *v.* WRIGHT, [1928] 4 D. L. R. 144; [1928] 2 W. W. R. 94; 22 Sask. L. R. 409.—**CAN.**

s i. —— —— *Mortgagor—Although execution stayed.*]—FRANCO-BELGIUM INVESTMENT CO. *v.* MCNAMARA (Alta.), [1918] 2 W. W. R. 929.—**CAN.**

a i. —— ——.]—Order made for examination, where it was disclosed that judgment debtor had purchased & put in his wife's name certain land & had paid out money on account of the purchase price & for interest & taxes.—BEAU MONDE LADIES' TAILORING CO. *v.* GARRETT, [1925] 3 D. L. R. 957; 57 O. L. R. 256.—**CAN.**

a ii. —— *Mother-in-law of judgment debtor.*]—Order made for examination, where it was disclosed that judgment debtor had made payments to his mother-in-law of sums which it was alleged she had lent him.—BEAU MONDE LADIES' TAILORING CO. *v.* GARRETT, [1925] 3 D. L. R. 957; 57 O. L. R. 256.—**CAN.**

b i. —— *Transferee of land in another Province.*]—CRUCIBLE STEEL CO. *v.* FFOLKES (1912), 21 O. W. R. 302; 3 O. W. N. 750; 1 D. L. R. 381.—**CAN.**

2552 i. *Nature of examination.*]—The questions should be limited to the scope of the order for examination.—FLANAGAN *v.* ENGLAND, [1926] 3 D. L. R. 360; [1926] 2 W. W. R. 428; 20 Sask. L. R. 579.—**CAN.**

2552 ii. —— *Judgment on contract readjusting earlier contracts.*]—On examination for discovery in aid of execution on a judgment recovered on a contract, debtor may be required to answer questions relating to his property & his dealings with it prior to the date of the contract sued on, where it is shown, even by evidence adduced on an application to a judge to compel debtor to answer the questions, that the contract had replaced earlier contracts between the same parties & was merely a readjustment of a liability incurred prior to its date.—STANDARD TRUST CO. *v.* WALTER, [1926] 1 D. L. R. 86; [1926] 1 W. W. R. 16; 22 Alta. L. R. 176.—**CAN.**

st. *Refusal to attend.*]—K. B. Rules (Sask.), Ord. 33, contains no provision for compelling the attendance of a person ordered to attend for examination other than that contained in r. 480.—SASKATOON HARDWARE CO. *v.* MCMANUS, [1924] 3 D. L. R. 344; 2 W. W. R. 809.—**CAN.**

sz. —— *Non-attendance on previous day waived.*]—Where non-attendance on the day fixed by an order for deft.'s attendance for examination as a judgment debtor is waived by pltf., deft. cannot be committed for failure to attend upon a subsequent day, the effect of the order being spent.—HYATT *v.* OWENS, [1927] 3 D. L. R. 563; 60 O. L. R. 489.—**CAN.**

sa. *Scope of examination—Evidence admissible as proof of ability to pay.*]—On an application under King's Bench Act, s. 51 (*a*), the ct. has no jurisdiction to adjudicate upon the question of a fraudulent conveyance, yet the circumstances under which the debtor has transferred his property may be considered for the purpose of assisting the ct. in concluding whether the debtor's failure to pay his debts was due to inability or unwillingness to pay.—BELL *v.* LONG, [1928] 3 W. W. R. 208.—**CAN.**

sb. *What must be shown.*]—Under Alberta, rule 634, it is not necessary for a judgment creditor applying to the clerk of the ct. for an appointment for the examination of the judgment debtor to show that the judgment is still unsatisfied or that an execution has been returned by the sheriff *nulla bona*; nor is he required to obtain a judge's order for the appointment.—CONWAY'S, LTD. *v.* RYAN, [1929] 3 D. L. R. 292; 2 W. W. R. 80; 24 Alta. L. R. 124.—**CAN.**

sd. *Disobedience to order—Contempt of court.*]—STANDARD BANK OF CANADA & CANADIAN BANK OF COMMERCE *v.* RABY (Alta.), [1929] 3 W. W. R. 746.—**CAN.**

EVIDENCE.

Part I.—General Principles.

31a. Interview—Dictaphone record.]—The dictaphone record of an interview may be accepted in evidence.—BUXTON *v.* CUMMING (1927), 71 Sol. Jo. 232.

37. *Add. Annotation :*—**Refd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39.

55. *Add. Annotations :*—**Consd.** Winnipeg Electric Co. *v.* Geel (1932), 48 T. L. R. 657. **Refd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39 ; Place *v.* Searle (1932), 48 T. L. R. 320.

55a. ——.]—At the close of pltf.'s case, deft. applied for a nonsuit, on the ground that there was no evidence given of such negligence as to render deft. liable. The judge refused to stop the case, but reserved leave to move for a nonsuit. The jury having found for pltf. :—*Held :* (1) when at the close of pltf.'s case there was no evidence upon which the jury could reasonably & properly find a verdict, the judge ought to have directed a nonsuit ; (2) in every case before evidence is left to the jury there is a preliminary question for the judge, not whether there is literally any evidence, but whether there is any evidence upon which a jury can properly proceed to find a verdict for the party producing it, upon whom the *onus* of proof is imposed.—GIBLIN *v.* MCMULLEN (1869), L. R. 2 P. C. 317 ; 5 Moo. P. C. C. N. S. 434 ; 38 L. J. P. C. 25 ; 21 L. T. 214 ; 17 W. R. 445 ; 16 E. R. 578, P. C.

55b. ——.]—Where pltf. has closed his evidence, & the judge who tries the case is of opinion that there is no case to go to the jury, he ought to direct accordingly.—DANIEL *v.* METROPOLITAN RY. CO. (1871), L. R. 5 H. L. 45 ; 40 L. J. C. P. 121 ; 24 L. T. 815 ; 35 J. P. 708 ; 20 W. R. 37, H. L.

Annotation :—**Refd.** Williams *v.* G. W. Ry. (1874), L. R. 9 Exch. 157.

55c. Power of judge to change ruling.]—In an action for personal injuries the judge refused to nonsuit on the ground of there being no evidence of negligence, & the jury, having heard the whole case, disagreed :—*Held :* the judge was entitled to enter judgment for deft.—PETERS *v.* PERRY & CO. (1894), 10 T. L. R. 366.

Annotation :—**Consd.** Skeate *v.* Slaters, [1914] 2 K. B. 429.

55d. ——.]—SHEARS *v.* MENDELOFF (1914), 30 T. L. R. 342.

55e. —— ——.]—In an action tried with a jury the judge was asked at the conclusion of pltf.'s case to withdraw the case from the jury on the ground that pltf. had failed to make any case against defts. The judge refused to do so. Witnesses were then called for the defence. The jury disagreed. Subsequently an application was made to the judge to enter judgment for defts. upon the above ground & also upon the ground that upon all the evidence in the case the jury could not reasonably have found a verdict for pltf. The judge having refused to enter judgment for defts. :—*Held :* (1) a judge at the trial had power to enter judgment for deft. if upon the case as a whole the evidence of pltf. was so weak that a verdict in his favour would have been set aside as unreasonable.

(2) A judge who at the conclusion of pltf.'s case has ruled that there is some evidence for the jury, is entitled at the conclusion of the whole case to reconsider his ruling & to enter judgment for deft., if he is then of opinion that pltf.'s evidence fails to disclose any cause of action against deft.—SKEATE *v.* SLATERS, LTD., [1914] 2 K. B. 429 ; 83 L. J. K. B. 676 ; 110 L. T. 604 ; 30 T. L. R. 290, C. A.

Annotations :—*As to* (1) **Consd.** Winterbotham, Gurney *v.* Sibthorp & Cox, [1918] 1 K. B. 625. **Refd.** Everett *v.* Griffiths, [1921] 1 A. C. 631. *As to* (2) **Refd.** Cooke *v.* Wilson (1915), 85 L. J. K. B. 888. *Generally,* **Refd.** Gascoigne *v.* Gascoigne (1917), 87 L. J. K. B. 333 ; Croker *v.* Croker (1932), 48 T. L. R. 597.

57. *Add. Annotation :*—**Refd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39.

58. *Add. Annotation :*—**Refd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39.

59a. —— ——.]—GIBLIN *v.* MCMULLEN, No. 55a, *ante.*

101. *Add. Annotation :*—**Folld.** Isaacs *v.* Cook, [1925] 2 K. B. 391.

116. *Add. Annotation :*—**Refd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

117. *Add. Annotation :*—**Refd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

PART I. SECT. 1.

1 i. ***Civil & criminal trials distinguished.***]—Where the question to be determined in a civil action is whether or not a criminal offence has been committed, but this question does not arise directly upon the pleadings, the ct., in deciding whether or not an offence has been committed, should apply the ordinary civil rule as to the sufficiency of proof, & not the rule which prevails in a ct. of criminal jurisdiction that the ct. must be satisfied beyond reasonable doubt that the crime alleged has been committed.—MOTCHALL *v.* MASSOUD, [1926] V. L. R. 273 ; [1926] Argus L. R. 271.—**AUS.**

PART I. SECT. 3, SUB-SECT. 1.

5 iv. ——.]—CONSOLIDATED WAFER CO., LTD. *v.* INTERNATIONAL CONE CO., LTD., [1926] 4 D. L. R. 74 ; 59 O. L. R. 205.—**CAN.**

PART I. SECT. 4, SUB-SECT. 2.

55 ix. ——.]—ROBINSON *v.* ASSINIBOIA TOWN, [1927] 3 D. L. R. 514 ; [1927] 2 W. W. R. 499 ; 21 Sask. L. R. 658.—**CAN.**

n i. ——.]—DOE d. PETIT *v.* RENARD (1850), 6 U. C. R. 501.—**CAN.**

n ii. ——.]—MONTREAL TRUST CO. *v.* CANADIAN PACIFIC RY. CO., [1927] 4 D. L. R. 373 ; 61 O. L. R. 137.—**CAN.**

PART I. SECT. 6, SUB-SECT. 1.—A.

119 xxv. —— *Payment.*]—BRONDSON *v.* NORTHGRAVES (Sask.), [1925] 3 W. W. R. 456.—**CAN.**

119 xxvi. —— *Loan not repaid.*]—To establish a claim for money lent pltf. must allege & prove non-payment. On the hearing of a complaint in a ct. of petty sessions for money lent, evidence was given by deft. that he had repaid the money, & by the complainant denying the repayment. The justices, being unable to decide whether or not repayment of the loan had been made, dismissed the complaint :—*Held :* as the complainant had not established his case, the justices were right in dismissing the complaint.—NELSON *v.* CAMPBELL, [1928] V. L. R. 364 ; [1928] Argus L. R. 221.—**AUS.**

155. *Add. Annotations:*—**Distd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39. **Refd.** Cosmopolitan Shipping Co. (Inc.) *v.* Hatton & Cookson, Ltd. (Liverpool) (1929), 143 L. T. 296; McGowan *v.* Stott (1923), 99 L. J. K. B. 357, n.

220a. One counsel on each side to be heard.]—Only one counsel on each side is to be heard on the claim of right to begin, & the counsel for deft. has the right to reply.—RAWLINS *v.* DESBOROUGH (1837), 2 Mood. & R. 70.

Part II.—Admissibility of Evidence.

301a. Effect of letter written by plaintiff's solicitor.]—A letter written by pltf.'s attorney, demanding payment of an inclosed bill, does not confine pltf. from going into evidence of other matters not included in the bill so inclosed.—SHORT *v.* EDWARDS (1795), 1 Esp. 373; 170 E. R. 390, N. P.

306. The names of the parties should be reversed in each ct.

311a. —— Murder of employer—Books with false entries on which commission payable to employee found by body.]—Applt. was indicted for the murder of his employer, whose dead body was found in the latter's locked garage. Evidence was given (*inter alia*) that on the seat of a car in the garage at the time of the discovery of the body there were found books which had contained entries or impressions of fictitious orders showing that applt. had been paid commission thereon. These entries or impressions had apparently been made by applt.'s employer, & the leaves had been torn out. Evidence was also given that in the garage there was found a letter written to applt. by his employer & making an appointment. This letter was found open & crumpled, but it was not proved that it had reached applt. The theory of the prosecution was that, the fictitious character of the orders having been discovered by the employer, an altercation had arisen & the applt. had murdered him. Applt. was convicted:—*Held:* evidence above described was admissible as part of the circumstances of the case, & the conviction must be affirmed.—R. *v.* PODMORE (1930), 46 T. L. R. 365; 22 Cr. App. Rep. 36, C. C. A.

311b. Charge by deposit of title-deeds—Memorandum relating to charge.]—In an action in which pltfs., exors. of M., claimed that they were entitled as part of their share in the estate of T., the father of M., to a charge for £300 on a farm called "W.," they sought to prove in support of their claim a certain memorandum which was signed by H. the exor. & trustee of the will of T. & with whom the title deeds of "W." had been deposited to secure the sum of £300 with interest, & was also signed by M. & her sister E., which memorandum related the facts upon which pltfs. relied to prove their claim & in which memorandum M. accepted the £300 charge as partial satisfaction of her share in the estate of T.:—*Held:* the memorandum was admissible in evidence because (1) it ought to be treated as part of the *res gestæ*, as it was sufficiently contemporaneous with the allocation of the charge; it might be described as an incident of the event under consideration; & (2) the statement in the memorandum whereby M. accepted the £300 in partial satisfaction of her share was a declaration against her proprietary interest & therefore was excepted from the rule against hearsay evidence.—HOMES *v.* NEWMAN, [1931] 2 Ch. 112; 100 L. J. Ch. 281; 145 L. T. 140.

312. For **"Letters from agent—Forming part of contract"** substitute **"—— Letters from agent—Forming part of contract."**

PART I. SECT. 7, SUB-SECT. 1.

q i. —— ——.]—Where practically all the correspondence between the parties save one letter, had been placed in evidence:—*Held:* the way had been opened, & the entire correspondence was properly admissible.—EAGLES *v.* CANADIAN BANK OF COMMERCE (1920), 47 N. B. R. 480.—**CAN.**

266 ii. ——.]—Where there was no unfairness to accused in admitting as evidence only a portion of a statement:—*Held:* the judge was not bound to admit the whole statement.—R. *v.* SCHWARZ, [1923] S. A. S. R. 347.—**AUS.**

PART I. SECT 8.

sf. *Evidence tendered after hearing & before entry of formal judgment.*]—While after a trial has been closed & oral judgment rendered the trial judge has jurisdiction to grant either party leave to adduce further evidence before the entry of formal judgment, yet this leave should never be given unless it seems imperative in the interests of justice that the case should be reopened.—SALES *v.* CALGARY STOCK EXCHANGE, [1931] 3 W. W. R. 392.—**CAN.**

PART II. SECT. 1.

h (p. 54) i. —— *Evidence of absence of previous accident.*]—In an action for damages for injuries resulting from a fall sustained by the female pltf. when entering deft.'s hotel on a visit to one of the sample rooms, evidence of the hotel manager that during the ten years he had been manager he had never heard of any accident at or complaint of the entrance in question was held admissible.—WAY *v.* LELAND HOTEL CO., LTD., [1928] 2 D. L. R. 235; [1927] 3 W. W. R. 224.—**CAN.**

sg. *In action for breach of contract—Correspondence irrelevant to issue—Affecting conduct of parties before & at trial.*]—BURKARD & CO., LTD. *v.* WAHLEN (1928), 28 S. R. N. S. W. 607; 45 N. S. W. W. N. 201.—**AUS.**

sj. *By consent—Evidence otherwise inadmissible.*]—Evidence not otherwise admissible, or which would have been liable to rejection if any objection were taken to it, may be perfectly good evidence if admitted by the consent of the parties.—RADHA KISHAN *v.* KEDAR NATH (1924), I. L. R. 46 All. 845.—**IND.**

PART II. SECT. 3, SUB-SECT. 2.—A.

306 i. —— *Circumstances of case.*]—A promissory note was discounted with private funds advanced by a bank manager as agent for the lender. In an action against the original maker & another party, who signed the note as a maker, at the request of the manager, before its maturity, but several months after it was discounted, & while it was in the bank for collection:—*Held:* evidence of the conversation between the manager & such party at the time the latter signed was admissible on his defence of want of consideration as part of the *res gestæ*.—ROGERS *v.* WEIR (Alta.), [1927] 4 D. L. R. 445; [1927] 3 W. W. R. 177.—**CAN.**

o i. —— *Telephone conversation—Proof of authority of agent.*]—*Held:* a telephone conversation was admissible, where evidence existed from which it could be inferred that the telephone conversation took place with a person authorised to engage in such a conversation.—*Re* DREYFUS (LOUIS) & SOUTH AUSTRALIAN MILLING & TRADING CO., [1923] S. A. S. R. 75.—**AUS.**

PART II. SECT. 3, SUB-SECT. 2.—D. (a).

l i. —— *Statement made by driver.*]—An explanation made by the driver of a vehicle as to the circumstances in which injury has been caused by that vehicle to another party is admissible in evidence in an action arising out

In the cross-reference following this case, for "—— **After contract complete**" substitute "—— —— **After contract complete.**"

343. *Add. Annotation :*—**Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

370. *Add. Annotation :*—**Refd.** Short *v.* Poole Corpn. (1925), 42 T. L. R. 107.

395. *Add. Annotation :*—**Apld.** Thompson *v.* London, Midland & Scottish Ry. (1929), 98 L. J. K. B. 615.

397. *Add. Annotation :*—*As to* (1) **Refd.** Koskas *v.* Standard Marine Insce. (1926), 42 T. L. R. 692.

417. *Add. Citation :*—132 L. T. 229.

421a. ——.]—SMITH *v.* WILKINS (1833), 6 C. & P. 180 ; 172 E. R. 1198, N. P.

425. *Add. Annotation :*—**Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

535a. Admissions "without prejudice."]—At the trial of an action, pltfs. proposed to put in evidence the examination, taken on commission, of a representative of pltfs. as to admissions alleged to have been made by a representative of defts. Defts. contended that the alleged admissions had been made at interviews which, although they had not been expressed to be "without prejudice," were such that they would be regarded as having been made "without prejudice." & that the examination was inadmissible :—*Held :* the examination was inadmissible.—SCOTT PAPER CO. *v.* DRAYTON PAPER WORKS, LTD. (1927), 44 R. P. C. 151 ; *on appeal*, 44 R. P. C. 529, C. A.

537. *Add. Annotation :*—**Consd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

544. *Add. Annotation :*—**Consd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

580a. Admission by author—As to copyright.]—FALCON *v.* FAMOUS PLAYERS FILM CO., LTD., No. 624a, *post.*

595. *Add. Annotation :*—**Refd.** Warren *v.* Warren, [1925] P. 107.

624a. Agent of predecessor in title—Licensee of copyright.]—(1) By an agreement in writing dated June 30, 1898, one G., the author & sole proprietor of the right to perform a certain play, granted to pltf. the sole & exclusive right to perform, or have performed, the play in Great Britain & Ireland. On Sept. 22, 1898, G.'s agent wrote to pltf. stating that the play had been first performed in Great Britain on a certain date & at a certain place :—*Held :* a copy of the letter of Sept. 22, 1898, the original having been lost, was admissible as evidence in a copyright action between pltf. & third parties, who claimed a right to produce cinematograph films of the play under an agreement for value with G., dated Sept. 6, 1919, to prove that the first performance of the play took place in this country as stated in the letter since (*a*) being written by G.'s agent, it constituted an admission by G., a person who, although not named on the record, had a substantial interest in the result ; & (*b*) it constituted an admission by defts.' predecessors in title.

(2) An entry in the register of first performances of dramatic productions at Stationers' Hall is admissible in evidence as a public register. If such an entry is incorrect, the party producing a certified copy of it may be precluded from relying on it as *primâ facie* proof of a right to produce or reproduce the play to which it relates, but it can be regarded by the ct. as corroboration of other evidence of title.—FALCON *v.* FAMOUS PLAYERS FILM CO., LTD., [1926] 1 K. B. 393 ; 95 L. J. K. B. 148 ; 134 L. T. 246 ; 42 T. L. R. 91 ; *affd.*, [1926] 2 K. B. 474 ; 96 L. J. K. B. 88 ; 135 L. T. 650 ; 42 T. L. R. 666 ; 70 Sol. Jo. 756, C. A.

653. *Add. Annotation :*—**Refd.** Bonham *v.* Maycock (1928), 138 L. T. 736.

of the injury if made at, or very near, the time of the injury.—HITCHINS *v.* UMFOLOSI CO-OPERATIVE SUGAR PLANTERS ASSOCN. (1929), 50 N. L. R. 117.— **S. AF.**

PART II. SECT. 3, SUB-SECT. 2.—D. (b).

sn. *Report by agent to principal.*]—*Held :* a telegram & a letter dispatched shortly after a sale of goods by the seller's agent to his employers recording his version of the transaction may competently be referred to for the purpose of testing his credibility.—GIBSON *v.* NATIONAL CASH REGISTER CO., [1925] S. C. 500.—**SCOT.**

PART II. SECT. 3, SUB-SECT. 5.—C.

r i. —— *Of defendant.*]—In an action under Customs Act to recover unpaid customs duties & penalties :—*Held :* evidence of a conversation between deft. & a customs official subsequent to the transactions in issue was admissible, since it tended to show that deft. was again proposing to defraud the customs in practically the same manner in which he was alleged to have done so in the case at bar.—R. *v.* ZIZU NATANSON (NO. 1), [1927] 3 D. L. R. 591 ; [1927] 2 W. W. R. 139 ; 48 Can. Crim. Cas. 194 ; 21 Sask. L. R. 518.—**CAN.**

PART II. SECT. 3, SUB-SECT. 8.—A.

h i. —— *Indecent assault.*]—In an action for damages for indecent assault evidence of the general reputation for unchastity of pltf. is admissible, but evidence of specific acts of impropriety is not.—GROSS *v.* BRODRECHT (1897), 24 A. R. 687.—**CAN.**

n i. ——.]—EDWARDS *v.* OTTAWA RIVER NAVIGATION CO. (1876), 39 U. C. R. 264.—**CAN.**

so. *Sparks from engine causing fire—Previous fires caused by engine.*]—*Held :* admissible.—CANADA CENTRAL RY. CO. *v.* MCLAREN (1883), 8 A. R. 564.—**CAN.**

PART II. SECT. 4, SUB-SECT. 1.—A.

456 lx. ——.]—IVEY *v.* SMITH (1929), 40 B. C. R. 475.—**CAN.**

PART II. SECT. 4, SUB-SECT. 1.—C.

n i. ——.]—DEVEBER *v.* ROOP (1876), 16 N. B. R. (3 Pug.) 295.—**CAN.**

PART II. SECT. 4, SUB-SECT. 2.—A.

485 ii. ——.]—Admissions in civil cases should be considered, made use of, & interpreted in the same way as confessions in criminal cases.—ROGERS *v.* WEIR (Alta.), [1927] 4 D. L. R. 445 ; [1927] 3 W. W. R. 177.—**CAN.**

496 ii. ——.]—LARGE *v.* PERKINS (1823), Tay. 62.—**CAN.**

PART II. SECT. 4, SUB-SECT. 2.—G. (c) ii.

578 i. *Admission by cestui que trust—As against trustee.*]—On a suit by the exor. of A. against the exor. of A.'s wife for a declaration that at the time of her death the wife held certain land in trust for herself & A. as tenants in common, evidence of a statement by the wife that she had executed a declaration of trust to that effect, but had done so under duress, was rejected.—ROBINSON *v.* TRUSTEES EXECUTORS & AGENCY CO., LTD., [1931] V. L. R. 369. —**AUS.**

PART II. SECT. 4, SUB-SECT. 2.—G. (m) i.

a i. —— —— —— *Admission at inquest at which employer not represented.*]—MUIR *v.* SARNIA BRIDGE CO., [1931] 1 D. L. R. 742 ; 66 O. L. R. 365.—**CAN.**

PART II. SECT. 5, SUB-SECT. 1.

684 i. *As corroborative evidence.*]—Statements made by deceased after the execution of her will are admissible to corroborate a witness who has deposed to the execution with all the prescribed formalities.—HOWITH *v.* MCFARLANE, [1925] 2 D. L. R. 395 ; 56 O. L. R. 375.—**CAN.**

sp. *Must be statement of fact.*]—Evidence of a statement made by deceased who died as the result of a blow, struck by accused, that he hoped accused would not get into any trouble with the police over it as it was not his fault :—*Held :* inadmissible, as the words only amounted to an expression of hope & opinion.—R. *v.* SCHWARZ, [1923] S. A. S. R. 347.—**AUS.**

sq. *Declaration as to religion.*]—

725. *Add. Annotation :—Generally,* **Refd.** R. *v.* Moscovitch (1927), 138 L. T. 183.

745. *Add. Annotations :—***Folld.** Republica de Guatemala *v.* Nunez (1926), 135 L. T. 436. **Consd.** Homes *v.* Newman, [1931] 2 Ch. 112.

775. *Add. Annotation :—***Refd.** Republica de Guatemala *v.* Nunez (1926), 135 L. T. 436.

811a. Memorandum accepting charge in partial satisfaction of share in estate.]—HOMES *v.* NEWMAN, No. 311b.

816. *Add. Annotation :—***Refd.** Jones *v.* Cory (1926), 20 B. W. C. C. 251.

871. *Add. Annotation :—***Refd.** Jones *v.* Cory (1926), 20 B. W. C. C. 251.

968. *Add. Annotation :—Generally,* **Refd.** R. *v.* Copestake, *Ex p.* Wilkinson (1926), 90 J. P. 191.

969. *Add. Annotation :—***Refd.** R. *v.* Copestake, *Ex p.* Wilkinson (1926), 90 J. P. 191.

1004. *Add. Annotation :—***Refd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312.

1024. *Add. Annotations :—***Consd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312; Hue *v.* Whiteley, [1929] 1 Ch. 440. **Refd.** Trafford *v.* Trafford (1929), 45 T. L. R. 502; A.-G. *v.* Mallock (1931), 48 T. L. R. 107.

1026. *Add. Annotation :—***Refd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. K. B. 312.

1040. *Add. Annotation :—***Consd.** Tolley *v.* Fry J. S. & Sons (1929), 46 T. L. R. 108.

1057. *Add. Annotation :—***Folld.** Palin *v.* Ponting, [1930] P. 185.

1060. *Add. Annotation :—***Folld.** Palin *v.* Ponting, [1930] P. 185.

1060a. ——.]—PALIN *v.* PONTING, No. 5571a, *post.*

Part III.—Modes of Proof and Weight of Evidence.

1088. *Add. Annotation :—As to* (1) **Refd.** Muscroft *v.* Stewarts & Lloyds (1928), 140 L. T. 64.

1200a. —— ——.]—All statutes which concern the King are general laws, of which the judges will take notice without pleading.—CROMWELL'S (LORD) CASE (1578), 4 Co. Rep. 12, b; 76 E. R. 877.

1260. *Add. Annotation :—***Refd.** Hain S.S. Co. *v.* Board of Trade, [1928] 2 K. B. 534.

1264a. —— ——.]—It is the settled practice of the ct. to take judicial notice of the status of any foreign Govt., & for that purpose, in any case of uncertainty, to seek information from a Secretary of State, & the information so received is conclusive.—DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, [1924] A. C. 797; 93 L. J. Ch. 343; 131 L. T. 676; 40 T. L. R. 566; 68 Sol. Jo. 559, H. L.

*Annotations :—***Apld.** Engelke *v.* Musmann, [1928] A. C. 433. **Refd.** North Charterland Exploration Co. (1910), Ltd. *v.* R., [1931] 1 Ch. 169.

1267. *Add. Annotations :—As to* (1) **Consd.** The Jupiter (No. 3) (1927), 137 L. T. 333. *As to* (2) **Consd.** Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65.

Where the religion of a deceased person is a fact in issue, his own solemn declaration about his religion, made in a formal document, *e.g.*, in his will, is admissible in evidence & is entitled to great weight. Such declaration would be admissible under Evidence Act, ss. 11 (2), 14, & 21 (2).—LEONG HONE WAING *v.* LEON AH FOON (1929), I. L. R. 7 Ran. 720.—**IND.**

st. *Declaration of testator—To prove invalidity of will.*]—Declarations of a testator are not admissible in evidence to show that a will executed by him was invalid.—*Re* ROSENBLAT ESTATE, [1932] 2 W. W. R. 433; 4 D. L. R. 518.—**CAN.**

sv. *Statement constituting motive for crime—How proved.*]—Where a statement by a deceased person is said to constitute a motive for another to commit a crime, it cannot be proved by one who heard the deceased make the statement.—*Re* VENKATASUBBA REDDI (1931), I. L. R. 54 Mad. 931.—**IND.**

PART II. SECT. 5, SUB-SECT. 2.—E. (b).

752 ii. ——.]—In so far as words used by deceased were statements of facts:—*Held:* they were inadmissible, as there was nothing to show that deceased knew them to be contrary to his pecuniary or proprietary interests when he made them; & in so far as they related to opinion on what was in accused's mind they were not admissible, as they were not statements of fact.—R. *v.* SCHWARZ, [1923] S. A. S. R. 347.—**AUS.**

PART II. SECT. 5, SUB-SECT. 5.—A.

908 iii. ——.]—SEWELL *v.* URQUHART, [1930] 2 D. L. R. 547.—**CAN.**

PART II. SECT. 5, SUB-SECT. 5.—B.

936 vi. —— ——.]—CROFT *v.* WAMBOLT, [1930] 2 D. L. R. 996; 1 M. P. R. 415.—**CAN.**

PART II. SECT. 5, SUB-SECT. 5.—E.

965 v. ——.]—Under sect. 32 (6) of the Indian Evidence Act, 1872, as by the long established rule in England, in questions of pedigree the statements of deceased members of the family, made before the question in dispute was raised, are evidence to prove pedigree.—ABDUL GHAFUR *v.* HUSSAIN BIBI (1931), I. L. R. 12 Lah. 336.—**IND.**

PART II. SECT. 10, SUB-SECT. 1.

m i. ——.]—COURT *v.* HOLLAND, *Ex p.* HOLLAND & WALSH (1879), 8 P. R. 219.—**CAN.**

PART III. SECT. 4, SUB-SECT. 3.

g i. —— *Contract based on terms of another contract.*]—The fact that the parties to a contract have expressly based the contract on the terms of a contract between other parties does not give the former parties the right to have evidence given of the latter contract in order that their contractual rights may be ascertained.—*Re* MACKLIN, TRIBUNE NEWSPAPER CO. *v.* FORT FRANCES PULP & PAPER CO., LTD., [1932] 2 W. W. R. 443; 4 D. L. R. 179.—**CAN.**

PART III. SECT. 5, SUB-SECT. 2.—C.

s i. ——.]—The means by which a judicial officer may become acquainted officially with the law are not limited to those provided by sect. 10 of Manitoba Evidence Act, R. S. M., 1913, for the proof of proclamations, orders, etc.; judges & magistrates are entitled to act on their own knowledge that a certain Act is in force without having before them the proclamation bringing it into force.—R. *v.* WAGNER, [1931] 2 W. W. R. 650; 4 D. L. R. 761; 56 Can. C. C. 213; 39 Man. L. R. 532.—**CAN.**

PART III. SECT. 5, SUB-SECT. 2.—D.

1217 i. *Duty of court to take notice of—Contract contrary to Lord's Day Act.*]—Although the Lord's Day Act is not pleaded, it is the duty of the ct. to take cognisance of the statute & to raise the point *ex mero motu* even if not pleaded or raised by counsel.—LISTER *v.* BURNS & CO., [1931] 3 D. L. R. 105; 55 Can. C. C. 197; 43 B. C. R. 468.—**CAN.**

PART III. SECT. 5, SUB-SECT. 2.—E.

st. *Native law, customs & usages.*]—NGCOBO *v.* NGCOBO, [1929] App. D. 233.—**S. AF.**

PART III. SECT. 5, SUB-SECT. 4.

s v. *Time of darkness.*]—A ct. in Manitoba can take judicial notice of the fact that on a fine evening in Aug. in that province it is not dark a few minutes after eight o'clock.—BELL *v.* HUTCHINGS & HUTCHINGS, [1932] 1 W. W. R. 49; 1 D. L. R. 468.—**CAN.**

PART III. SECT. 5, SUB-SECT. 5.—C.

sb. *What is foreign State within Civil Procedure Code, s. 84—Gadwal State.*]—*Held:* Gadwal State is neither a sovereign State nor a foreign State within sect. 84 of the Civil Procedure Code.—VENKATARAMI *v.* RAJA OF GADWAL (1930), I. L. R. 53 Mad. 968.—**IND.**

1269. *Add. Annotation :*—**Refd.** The Fagernes, [1927] P. 311.

1270. *Add. Annotation :*—**Consd.** Musmann *v.* Engelke (1927), 96 L. J. K. B. 824.

1301. *Add. Annotation :*—**Refd.** Brown *v.* Leech (1924), 94 L. J. K. B. 48.

1306. *Add. Annotation :—As to* (1) **Refd.** Addie (R.) & Sons (Collieries) *v.* Dumbreck, [1929] A. C. 358.

1319. *Add. Annotations :*—**Consd.** Simpson *v.* London, Midland & Scottish Ry. Co., [1931] A. C. 351 ; Sparey *v.* Bath Rural District Council (1930), 23 B. W. C. C. 263. **Refd.** Lawrence *v.* Matthews (1924), Ltd. (1928), 97 L. J. K. B. 758 ; Holden *v.* Premier Waterproof & Rubber Co. (1930), 144 L. T. 519 ; Smith *v.* Stepney Corpn. (1929), 22 B. W. C. C. 451 ; Hutchings *v.* Devon County Council (1931), 24 B. W. C. C. 320.

1338. *Add. Citations :*—[1925] 1 K. B. 399 ; 94 L. J. K. B. 497 ; 132 L. T. 267 ; 17 B. W. C. C. 221.

Add. Annotations :—**Refd.** Welsh Navigation Steam Coal Co. *v.* Evans, [1927] A. C. 834 ; Nugent *v.* Londonderry Collieries (1929), 141 L. T. 619.

1338a. Production of plan from photograph.]—UNITED STATES SHIPPING BOARD *v.* THE ST. ALBANS, No. 3935a, *post.*

1377. *Add. Annotations :*—**Refd.** Robert A. Munro & Co. *v.* Meyer, [1930] 2 K. B. 312 ; Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

1382a. ——.]—HALIFAX'S (LORD) CASE (undated), cited in Bull. N. P. at p. 298a.

Annotation :—**Consd.** Williams *v.* East India Co. (1802), 3 East, 192.

1402. *Add. Annotation :*—**Expld.** Lal Chand Marwari *v.* Mahant Ramrup Gir (1925), 42 T. L. R. 159.

1418a. ——.]—*In the Goods of* SERGEANT (1872), 26 L. T. 669 ; 36 J. P. 696 ; *sub nom. In the Goods of* SERJEANT, 20 W. R. 872.

1421a. —— ——.]—(1) If a person has not been heard of for a term of not less than seven years, there is a presumption of law that he is dead. (2) The *onus* of proving the death of the person at any particular date must rest

PART III. SECT. 5, SUB-SECT. 6.—A.

sd. *"Unorganised territory."*]—On an appeal by the Crown from the dismissal of a charge under Govt. Liquor Act, it was objected that the notice of intention to appeal was not filed until the 20th day after the conviction, & that there was no proof before the ct. that the place where the cause of the information or complaint arose was situate in unorganised territory :—*Held :* in view of sect. 103 of Summary Convictions Act, & of the definition of "unorganised territory" in the Interpretation Act, the ct. must take judicial notice of the fact that said place was in unorganised territory.—R. *ex rel.* NELSON *v.* CASSANDRA (B. C.), [1929] 1 W. W. R. 866 ; 52 Can. Crim. Cas. 326.—**CAN.**

PART III. SECT. 5, SUB-SECT. 6.—B.

e i. ——.]—Judicial notice cannot be taken of the fact that a particular place is within a certain judicial district or of the distance of one place from another or of the identity of a place referred to in one document with that of a place referred to in another document, even though the names be the same.—HYNES *v.* ALTON, [1928] 3 W. W. R. 261.—**CAN.**

PART III. SECT. 5, SUB-SECT. 7.—A.

sf. *Vicious habits of bees.*]—The ct. will not take judicial notice of the vicious habits of bees.—ROBINS *v.* KENNEDY & COLUMB, [1931] N. Z. L. R. 1134.—**N.Z.**

PART III. SECT. 5, SUB-SECT. 7.—D.

h i. *Bar-room—Place where liquor kept.*]—On the description of a room as a bar-room of licensed premises, judicial notice is to be taken that this is a room where alcoholic liquor is kept.—FRANCE *v.* HUMPHREYS, [1926 S. A. S. R. 214.—**AUS.**

sg. *Financial depression.*]—EDDY *v.* STEWART, [1932] 2 W. W. R. 699.—**CAN.**

PART III. SECT. 5, SUB-SECT. 7.—G.

q i. *S.P.*—R. *v.* MCPHERSON (1915), 33 W. L. R. 21 ; 9 W. W. R. 613 ; 8 Sask. L. R. 412.—**CAN.**

q ii. *Home-brew—Intoxicating liquor.*]—The ct. will not take judicial notice of the fact that home-brew is an intoxicating liquor.—R. *v.* MARSHALL, [1925] 1 D. L. R. 1132 ; 43 Can. Crim. Cas. 253 ; [1924] 3 W. W. R. 865.—**CAN.**

s i. *Mode of conducting traffic—Stopping-places for trams.*]—*Held :* the ct. could take judicial notice of the mode of conducting traffic on an established system of tramways in a city & its suburbs, including the fact that there were recognised stopping-places for trams.—*Re* BYE-LAW MADE BY PROSPECT DISTRICT COUNCIL, *Ex p.* HILL, [1926] S. A. S. R. 326.—**AUS.**

PART III. SECT. 6, SUB-SECT. 6.—A.

st. *Evidence of—Whether Public Administrator requires same as court of law.*]—*Re* TJERSTROM (1905), 1 W. L. R. 385.—**CAN.**

sv. *Question of fact.*]—Death is a question of fact which must be established by the preponderance of evidence ; either by direct evidence of death or by the proof of such circumstances as may reasonably lead the ct. to conclude, that there can be no other satisfactory accounting for the disappearance or absence of the person whose death is sought to be established. The evidence submitted in the present case was held insufficient to warrant that conclusion.—*Re* BAILLIE ESTATE, MONTREAL TRUST CO. *v.* BAILLIE, [1930] 3 W. W. R. 92 ; 4 D. L. R. 1011.—**CAN.**

PART III. SECT. 6, SUB-SECT. 6.—B.

sw. *General rules.*]—There are two grounds upon which the ct. will make an order presuming death : (*a*) when the time elapsing between disappearance & the application is so long as to raise the inference that the person is dead ; (*b*) when the person disappeared in circumstances which lead to the inference that he died at a particular time.—*Re* WIDDICOMBE (1929), 50 N. L. R. 311.—**S. AF.**

1410 xviii. —— ——.]—*Re* JELFS, [1925] 1 W. W. R. 735.—**CAN.**

1410 xix. —— ——.]—*Re* DE MILLE (Alta.), [1926] 3 D. L. R. 140 ; [1926] 2 W. W. R. 148.—**CAN.**

1410 xx. —— ——.]—*Re* HICKEY, DWYER *v.* HICKEY, [1925] V. L. R. 270 ; 31 Argus L. R. 261.—**AUS.**

1410 xxi. —— ——.]—H. married M. in 1899, who deserted her in 1900. Casual inquiries as to his whereabouts were made, but he was not afterwards heard of. B. made his will on May 14, 1915, & went through a form of marriage with H. on June 24, 1915 :—*Held :* the death of M. should be presumed so as to qualify H. to remarry B. in 1915, & therefore B.'s will was revoked by his marriage.—*In the Estate of* BARNETT, 22 Tas. L. R. 83.—**AUS.**

1410 xxii. —— ——.]—The ct. has jurisdiction to declare that a person who has not been heard of for more than seven years shall be presumed to be dead, even though the sole object of appct. in obtaining the declaration is to clear the way for his or her remarriage.—*Re* DELOLI, [1929] 3 D. L. R. 763 ; 2 W. W. R. 327 ; 38 Man. L. R. 279.—**CAN.**

1413 v. —— —— ——.]—*Re* TOMES (Man.), [1927] 2 D. L. R. 864 ; [1927] 1 W. W. R. 429.—**CAN.**

1413 vi. —— —— —— *Strong incentive to disappear—Death not presumed.*]—O'DONNELL *v.* NORTH AMERICAN LIFE ASSURANCE CO., [1927] 3 D. L. R. 412 ; 60 O. L. R. 502.—**CAN.**

o i. —— *Disappearance at sea.*]—*Re* HONEYMAN, [1930] 1 W. W. R. 999.—**CAN.**

o ii. —— *Disappearance of aged & infirm person.*]—Testator, who was aged seventy-seven, & failing in health & mental vigour, disappeared in 1925 from his home, which was situated in very rough country, & twelve miles from the nearest railway station. A careful search in the surrounding country was made by two constables, assisted by black trackers & about 150 other persons, for a week after his disappearance, but he was not seen or heard of again :—*Held :* was sufficient evidence on which the ct. might presume that he was dead, & he had died on or about the date of his disappearance.—*Re* HORN (1930), Argus L. R. 280.—**AUS.**

sx. *Death of writer of old letters.*]—Where papers about 45 years old are produced before a ct. it may presume, in the absence of evidence to the contrary, that the writer was dead at the time they were produced.—JABBAR ALI SARDAR *v.* MONMOHAM PANDEY (1928), I. L. R. 55 Calc. 1216.—**IND.**

PART III. SECT. 6, SUB-SECT. 6.—C. (a).

1423 ii. ——.]—Under Indian Evidence Act, 1872, s. 108, when the ct. has to determine the date of the death of a person who has not been heard of for a period of more than seven years, there is no presumption that he died at the end of the first seven years, or at any particular date.—LAL CHAND MARWARI *v.* RAMRUP GIR (1925), 53 L. R. Ind. App. 24.—**IND.**

with the person to whose title that fact is essential.—LAL CHAND MARWARI *v.* MAHANT RAMRUP GIR (1925), 42 T. L. R. 159, P. C.

1437a. ——.]—A husband appealed from a maintenance order of 2*s.* 6*d.* a week made by justices on the ground that the wife was previously married in 1919, that she had admitted her previous husband was alive in 1922, & she had not proved his death so as to validate her marriage to applt. on Feb. 28, 1930:—*Held:* the justices were wrong in ruling that the onus was upon applt. to prove that the previous husband was alive. The justices ought to have concluded from the wife's evidence that the marriage in Feb. 1930, was void. Fresh evidence, now admitted, showed that the wife & the previous husband were still living together as a married couple in 1925. The appeal was allowed & the order discharged.—IVETT *v.* IVETT (1930), 143 L. T. 680; 94 J. P. 237; 28 L. G. R. 479; 29 Cox, C. C. 172.

1445a. On party to whose title fact essential.]—LAL CHAND MARWARI *v.* MAHANT RAMRUP GIR, No. 1421a, *ante*.

1454. *Add. Annotation:*—**Consd.** Monckton *v.* Tarr (1930), 23 B. W. C. C. 504.

1459a. —— ——.]—DOE d. FRANCE *v.* ANDREWS (1850), 15 Q. B. 756; 117 E. R. 644.

Annotations:—**Consd.** Prudential Assce. *v.* Edmonds (1877), 2 App. Cas. 487; Lyell *v.* Kennedy (1887), 56 L. T. 617; *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

1472. For cross-reference before this case "*See, now,* Law of Property Act, 1925 (c. 20), s. 184."

1489a. ——.]—There is no presumption of law as to survivorship among persons whose death is occasioned by one & the same cause. The question is one of fact, & if the evidence does not establish the survivorship, the law will treat it as a matter incapable of being determined.—*Re* NIGHTINGALE, HARGREAVES *v.* SHUTTLEWORTH (1927), 71 Sol. Jo. 542.

1499a. ——.]—DOE, LESSEE OF BANNING *v.* GRIFFIN, No. 164, *ante*.

1505. *Add. Annotations:*—**Refd.** *Re* Deloitte, Griffiths *v.* Deloitte. [1926] Ch. 56; I. R. Comrs. *v.* Bone (1927), 13 Tax Cas. 20.

1526a. ——.]—HALIFAX'S (LORD) CASE (undated), cited in Bull. N. P. at p. 298a.

Annotation:—**Consd.** Williams *v.* East India Co. (1802), 3 East, 192.

1531. *Add. Annotation:*—**Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

1550. *Add. Annotation:*—**Consd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 47 T. L. R. 359.

1567. *Add. Annotation:*—**Refd.** Monckton *v.* Tarr (1930), 23 B. W. C. C. 504.

1586. *Add. Annotation:*—**Apld.** *Re* Davis's Trade Marks, Davis *v.* Sussex Rubber Co., [1927] 2 Ch. 345.

PART III. SECT. 6, SUB-SECT. 6.—D.

t i. ——.]—*Re* FORSYTH (N. S.), [1927] 2 D. L. R. 72.—**CAN.**

PART III. SECT. 6, SUB-SECT. 6.—E.

1493 i. *Onus of proof—Rests on party asserting affirmative.*]—CAMPBELL *v.* COX & MITCHELL, [1930] 1 D. L. R. 649; 42 B. C. R. 120.—**CAN.**

PART III. SECT. 6, SUB-SECT. 6.—F.

1497 i. *Whether presumption exists.*]—Although death will, in a proper case, be presumed, there is no presumption that the person died without issue.—*Re* SAUNDERS, PARK *v.* AUSTIN, [1928] N. Z. L. R. 391.—**N.Z.**

PART III. SECT. 6, SUB-SECT. 7.

f i. ——.]—MACRAE *v.* WALSH (1927), 27 S. R. N. S. W. 290; 44 N. S. W. W. N. 71.—**AUS.**

PART III. SECT. 6, SUB-SECT. 8.

1526 ii. ——.]—R. *v.* O'HARA (N. B.) (1927), 48 Can. Crim. Cas. 231.—**CAN.**

f (p. 178) **i.** *As to delivery of package by common carrier to consignee.*]—Where a package is delivered to a railway or express co., or other similar common carrier, for transportation to a named consignee, & the consignee receives a package answering the description of that sent by the consignor, it will be held, in the absence of proof to the contrary, that the package sent was identical with that received; & where a package has been so delivered to such a common carrier for transportation, it will be held that it was received by the consignee in due course, unless there is proof to the contrary.—R. *v.* PINNO, [1925] 1 W. W. R. 737.—**CAN.**

r (p. 179) **i.** *As to party being administrator.*]—SMITH *v.* MCLEAN (1868), 7 N. S. R. (1 G. & O.) 310.—**CAN.**

PART III. SECT. 6, SUB-SECT. 10.

1556 i. *Receipt of letter—Whether presumed from posting.*]—The presumption that a letter shown to have been mailed in the usual course of business to a proper address was received is rebuttable by the addressee's denial of its receipt, where there is nothing to throw doubt on his credibility.—SHUCKETT *v.* LOCKHART & KYLE, [1932] 2 W. W. R. 330; 3 D. L. R. 466.—**CAN.**

sa. *Identity of persons — From identity of names.*]—SEWELL *v.* URQUHART, [1930] 2 D. L. R. 547.—**CAN.**

sb. *Accuracy of scientific instrument.*]—The working accuracy of a scientific instrument will not be presumed unless it appears to the ct., either by judicial notice, assisted, if necessary, by consulting standard works of reference, or by appropriate evidence, that the instrument in question is a scientific instrument.—CRAWLEY *v.* LAIDLAW (1930), Argus L. R. 311; V. L. R. 370.—**AUS.**

PART III. SECT. 7, SUB-SECT. 1.

t i. —— ——.]—REILY *v.* LONDON CORPN. 1891), 14 P. R. 171.—**CAN.**

t ii. —— ——.]—CLOUSE *v.* COLEMAN (1895), 16 P. R. 541.—**CAN.**

PART III. SECT. 7, SUB-SECT. 2.

b i. —— —— *Accretion.*]—A view by the ct. of the place of the alleged accretion is not merely for the purpose of appreciating the other evidence but also for the purpose of assisting the ct. in reaching a proper conclusion.—CLARKE *v.* EDMONTON (Can.), [1929] 4 D. L. R. 1010; *revg.*, [1928] 2 D. L. R. 154; 1 W. W. R. 553; 23 Alta. L. R. 233.—**CAN.**

PART III. SECT. 8.

1593 x. —— *Nature & application of rule.*]—The principle that the evidence of a witness who testifies affirmatively that a conversation took place is more valuable than the evidence of one equally trustworthy who denies the conversation, is not a rule of law, & should only be used with a due regard to the circumstances of each case & should not be resorted to until other means of testing credibility have failed; & it should not be applied in a case wherein the conversation in question constitutes the particular matter at issue between the parties.—MONARCH LUMBER CO., LTD. *v.* PERRY (Sask.), [1927] 3 D. L. R. 861; [1927] 3 W. W. R. 71.—**CAN.**

1596 i. —— *Telephone conversation overheard by bystander.*]—*Held:* the nature of the testimony, the possibility of dishonesty & the connection of the witness with the matter, were circumstances to determine the weight of testimony, but were not valid grounds for rejecting the evidence so long as it was not hearsay.—WARREN GZOWSKI & CO. *v.* FORST & CO. (1912), 23 O. W. R. 311; 46 S. C. R. 642.—**CAN.**

Part IV.—Documentary Evidence.

1633a. Entry in marriage register.]—WYATT *v.* ROCHFORT (1837), 1 Jur. 592, N. P.

1664a. ——.]—R. *v.* MCCARTNEY & HANSEN (1928), 20 Cr. App. Rep. 179, C. C. A.

1766. *Add. Annotation :*—**Refd.** United States Shipping Board *v.* St. Albans Ship, A. C. 632.

1829a. -.]—Where an order is given verbally for goods, & the person to whom it is given puts down the terms of it in writing, as a memorandum, but it is not signed by the person ordering the goods, the terms of the order may be given in evidence, without producing the written memorandum.—DALISON *v.* STARK (1802), 4 Esp. 163 ; 170 E. R. 677, N. P.

Annotation :—**Refd.** R. *v.* Wrangle (1835), 1 Har. & W. 41.

1867. *Add. Annotation :*—**Refd.** R. *v.* Anderson (1929), 142 L. T. 580.

1933a. ——.]—Where pltfs. called defts.' solr. :—*Held :* he could state whether he had a lease in his possession, but as he knew nothing about it except as attorney for defts., he could not be called upon to give any evidence about it.—ROUPELL *v.* HAWS (1863), 3 F. & F. 784, N. P.

2129a. —— ——.]—Copies cannot be put in of letters of which notice to produce ought to be given.—R. *v.* MORGAN, [1925] 1 K. B. 752 ; 94 L. J. K. B. 672 ; 133 L. T. 94 ; 89 J. P. 135 ; 28 Cox, C. C. 1 ; 18 Cr. App. Rep. 180, C. C. A.

2345a. —— ——.]—DORRETT *v.* MEUX (1854), 15 C. B. 142 ; 2 C. L. R. 807 ; 23 L. J. C. P. 221 ; 23 L. T. O. S. 144 ; 2 W. R. 480 ; 139 E. R. 374.

2475a. —— ——.]—DOE d. ST. JOHN *v.* HORE (1799), 2 Esp. 724 ; 170 E. R. 510, N. P.

2476a. —— ——.]—WALLISS *v.* BROADBENT (1836), 4 Ad. & El. 877 ; 2 Har. & W. 40 ; 6 L. J. K. B. 269 ; 111 E. R. 1014.

2477a. —— ——.]—CHEVELEY *v.* FULLER (1853), 13 C. B. 122 ; 1 W. R. 152 ; 138 E. R. 1143 ; *sub nom.* FULLER *v.* CHEVELEY, Saund. & M. 101 ; 20 L. T. O. S. 278 ; 17 J. P. 105 ; 17 Jur. 736

2480a. —— ——.]—HARRIS *v.* CHAPMAN (1868), 17 L. T. 517, N. P.

PART IV. SECT. 2, SUB-SECT. 10.

1762 ii. ——.]—FOULDS *v.* BOWLER (1908), 8 W. L. R. 189.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 2.—B.

a i. —— *Will filed in office of Surrogate-General of another province.*]—Secondary evidence of a will devising real estate in this province, the original will being filed in the office of the Surrogate-General of Nova Scotia, is not admissible, there being no evidence of any law of Nova Scotia prohibiting the removal of the will.—DOE d. GILMOUR *v.* WHITNEY (1838), 2 N. S. R. (Ber.) 514.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 3.—A.

b i. ——.]—SMITH *v.* NEVILLES (1859), 18 U. C. R. 473.—**CAN.**

b ii. ——.]—GLEN BAIN RURAL MUNICIPALITY *v.* HALEY (Sask.), [1927] 3 D. L. R. 474.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 4.—C.

1941 i. *Duplicate originals.*]—Defts. let land to pltf., & a lease having been written, A. affixed seals & signed their names to it. It was then agreed that A. should make a copy of the lease & execute it for them in the same manner; he did so, & afterwards, in the presence of both parties, delivered one copy to pltf. & the other to deft. :—*Held :* they were duplicate originals, & either of them was primary evidence.—LEONARD *v.* YOUNG (1858), 4 All. 111.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 5.—A.

c i. —— ——.]—GOUGH *v.* MCBRIDE (1860), 10 C. P. 106.—**CAN.**

q i. —— —— *Reconstructed cash book.*]—A fire in the office of the secretary-treasurer of the pltf. municipality having destroyed most of the pltf.'s records therein, including the record of payment of taxes made since the last audit, the secretary-treasurer, under the authority of the council, employed an office assistant & canvassers, who compiled from the surviving records & from receipts, cheques & other evidence in the hands of taxpayers a statement called "the reconstructed cash book," showing the amounts paid by them during two months of 1921. In an action against the secretary-treasurer to recover an amount alleged to have been misappropriated by him during 1921, pltf. sought to charge him with the receipt of the sum which was shown by said "reconstructed cash book" as received & said book was submitted in evidence :—*Held :* said book was not admissible against deft. ; its contents were not obtained in the manner contemplated by Rural Municipality Act &, therefore, it did not, even if it had been wholly compiled by deft., constitute an acknowledgment by him, as the entries in the original cash book would have done ; he had not so recognised or acted upon it as to make its contents evidence against him ; it was not secondary evidence of the destroyed cash book ; &, the necessary foundation not having been laid for the purpose, it was not admissible as secondary evidence of the taxpayers' receipts & cheques.—GLEN BAIN RURAL MUNICIPALITY *v.* HALEY, [1928] 3 D. L. R. 306 ; [1928] 2 W. W. R. 184, 288 ; 22 Sask. L. R. 559.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 5.—D. (c).

sr. *Affidavit of petitioner—Absence of particulars of search made.*]—*Re* BELL (1871), 3 Ch. Ch. 239.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 5.—E. (a).

2058 iv. —— ——.]—MARVIN *v.* CURTIS (1857), 6 C. P. 212.—**CAN.**

2058 v. —— —— *Evidence of subscribing witness.*]—In ejectment by trustees of a Wesleyan Methodist congregation for the parsonage property, a search for & the loss of the deed from the patentee to the trustees at the parsonage home having been proved : —*Held :* the evidence of the subscribing witness as to the execution of the deed & memorial, with a copy of the memorial certified by the registrar, was clearly sufficient secondary evidence.—AINLEYVILLE TRUSTEE WESLEYAN METHODIST CHURCH *v.* GREWER (1874), 23 C. P. 533.—**CAN.**

2063 i. *Written declaration by testator —Lost will.*]—A lost will may be proved by secondary evidence. The evidence of a single witness, though interested, whose veracity & competency is unimpeachable, is sufficient, & probate will be granted to such an extent as he is able to prove it. Declarations relative to the will became secondary evidence if it is lost.—*Re* PIKE'S WILL (1882), 6 Nfld. L. R. 445.—**NFLD.**

st. *Lost deed—Memorandum made by predecessor in title.*]—In seeking to prove the existence & contents of a lost deed, a memorandum made in a book, by a person through whom petitioner claimed, was held not to be evidence in favour of petitioner.—*Re* BELL (1871), 3 Ch. Ch. 239.—**CAN.**

sv. —— *Copy produced from custody of successors of grantee—With indorsement signed by three predecessors in title.*]—SEETHAYYA *v.* SUBRAMANYA SOMAYAJULU (1929), L. R. 56 Ind. App. 146.—**IND.**

PART IV. SECT. 9, SUB-SECT. 3.—A.

sw. *Of power of attorney—Proof of contents of original only.*]—Where an office copy of a power of attorney, purporting to have been executed, was put in evidence :—*Held :* Conveyancing & Law of Property Act, 1881, s. 48 (4), merely obviates the necessity for production of an original instrument by enacting that an office copy of an instrument deposited as therein provided shall, without further proof, be sufficient evidence of its contents, but the sect. does not make such copy evidence either of the truth of the contents or of the identity of the person by whom the original was made. —O'KANE *v.* MULLAN, [1925] N. I. 1. —**IR.**

PART IV. SECT. 9, SUB-SECT. 4.—B.

g i. —— —— *Books of Government Liquor Control Commission.*]—Government Liquor Control Commission is a "Department of the Government of Manitoba" within sect. 17 of Manitoba Evidence Act, R. S. M., 1913, &, therefore, copies of entries in its books are receivable in evidence by virtue of said section.—R. *v.* PAUWELS, [1932] 1 W. W. R. 68 ; 2 D. L. R. 339 ; 40 Man. L. R. 117.—**CAN.**

PART IV. SECT. 9, SUB-SECT. 5.—A.

f. *Revsd.* on other grounds, 18 A. R. 135.

PART IV. SECT. 10, SUB-SECT. 4.—B.

sx. *To what documents rule applicable —Notice of appeal.*]—As a notice of appeal is not an instrument tendered in evidence, but merely a step in the procedure of appeal, the failure to

2486a. **Though receipt for penalty erased.**]—APOTHECARIES' CO. *v.* FERNYHOUGH (1826), 2 C. & P. 438; 172 E. R. 199, N. P.

Annotation:—**Refd.** R. *v.* Preston (1834), 3 Nev. & M. K. B. 31.

2513a. **To prove amount originally claimed.**]—WICKES *v.* TANNER (1848), 10 L. T. O. S. 504, N. P.

2544a. —— —— ——.]—One paper containing two different contracts for the purchase of different lots by different persons, one stamp affixed on that part of the paper which contained the contract of sale with deft., & to which the stamp officer's receipt for one penalty referred:—*Held:* sufficient to legalise the evidence of such contract.—POWELL *v.* EDMUNDS (1810), 12 East, 6; 104 E. R. 3.

Annotations:—**Refd.** Ogilvie *v.* Foljambe (1817), 3 Mer. 53; Bradshaw *v.* Bennett (1831), 5 C. & P. 48; Shelton *v.* Livius (1832), 2 Cr. & J. 411; Bartlett *v.* Pernell (1836), 2 Har. & W. 16; Evans *v.* Pratt (1842), 3 Man. & G. 759; Eden *v.* Blake (1845), 13 M. & W. 614; Brett *v.* Clowser (1880), 5 C. P. D. 376.

2570. *Add. Annotations:*—**Refd.** Nagoremull *v.* Triton Insce. (1924), 41 T. L. R. 168; *Re* National Benefit Assce. (1927), 71 Sol. Jo. 880.

2583a. —— **Objection doubtful.**]—An objection that a document requires a stamp will not be given effect to if the point is doubtful.—WESTLAKE *v.* ADAMS (1858), 1 F. & F. 183, N. P.

2587. *Add. Annotation:*—**Refd.** Nagoremull *v.* Triton Insce. (1924), 41 T. L. R. 168.

2603. *Add. Annotation:*—**Refd.** Koechlin *v.* Kestenbaum, [1927] 1 K. B. 889.

2639. *Add. Annotation:*—**Refd.** R. *v.* Lincolnshire JJ., *Ex p.* Brett, [1926] 2 K. B. 192.

2707a. ——.]—DAVIES *v.* LOWNDES (1835), 1 Bing. N. C. 597; 1 Hodg. 125; 2 Scott, 71; 4 L. J. C. P. 214; 131 E. R. 1247; *on appeal* (1838), 4 Bing. N. C. 478, Ex. Ch.

2709. *Add. Annotation:*—**Folld.** Littlev. Little, [1927] P. 224.

After this case add, "*See, also,* HUSBAND & WIFE, No. 2763a:"

2722. *Add. Annotation:*—**Consd.** Partington *v.* Partington & Atkinson, [1925] P. 34.

2723. *Add. Annotation:*—**Consd.** Partington *v.* Partington & Atkinson, [1925] P. 34.

2757a. —— ——.]—**In a suit for restitution of conjugal rights, the validity of the marriage in Jamaica having been proved in a previous suit of a similar nature between same parties, further proof of its validity was not required.**—VERNEY *v.* VERNEY (1920), 36 T. L. R. 203.

2880. *Add. Annotation:*—**Refd.** Brown *v.* Dagenham Urban Council, [1929] 1 K. B. 737.

3036. *Add. Annotation:*—**Refd.** Selby *v.* Atkins (1926), 135 L. T. 45.

3122a. —— ——.]—**In proceedings in the cts. of this country by or against the ruler of a colonial State whose status is disputed a written statement by the Secretary of State for the Colonies that the ruler is an independent foreign sovereign is equivalent to a communication from the Crown &, therefore, conclusive, & the ct. will accept it without considering whether it is borne out by documents which are appended to it.**—DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, [1923] 1 Ch. 385; 92 L. J. Ch. 273; 129 L. T. 290; 39 T. L. R. 187; 67 Sol. Jo. 260, C. A.

Annotation:—**Apld.** Engelke *v.* Musmann, [1928] A. C. 433.

3122b. —— ——.]—DUFF DEVELOPMENT CO. *v.* KELANTAN GOVERNMENT, No. 1264a, *ante*.

3122c. —— ——.]—During the course of the argument a question arose as to the nature of the relationship of the Crown to the territory of which the North Charterland Concession formed part, & in order to settle this question I submitted to His Majesty's Secretary of State for the Colonies for his decision under the Foreign Jurisdiction Act, 1890 (c. 37), s. 4, two questions: "Was the territory now known as Northern Rhodesia on Mar. 22, 1928, under the protection of His Majesty?" or "Was it at that date part of His Majesty's Dominions?" The decision of His Majesty's Secretary of State for the Colonies, which by the provisions of the Act is conclusive, is that on Mar. 22, 1928, Northern Rhodesia was a territory under His Majesty's protection. It did not then & does not now form part of His Majesty's Dominions (LUXMOORE, J.).—NORTH CHARTERLAND EXPLORATION CO. (1910), LTD. *v.* R., [1931] 1 Ch. 169; 99 L. J. Ch. 483; 143 L. T. 623; 46 T. L. R. 566.

3125. *Add. Annotation:*—**Consd.** Musmann *v.* Engelke (1927), 96 L. J. K. B. 824.

stamp it cannot be rectified under the proviso to sect. 22 (1) of Act 30, 1911.—ANNAMA *v.* EXPRESS COLLECTION AGENCY (1929), 50 N. L. R. 77.—**S. AF.**

PART IV. SECT. 10, SUB-SECT. 8.

2608 i. *Finality of judge's ruling.*]—Once the trial judge, with the question of the want of proper stamp present in his mind, has actually admitted a document in evidence, Stamp Act, s. 36, prevents such admission being called in question, except as provided in s. 61, at any stage of the same suit or proceeding, & hence in appeal, on the ground that the instrument has not been properly stamped.—GURDAS MAHAM CHAND *v.* GURANDITTA MAL (1929), I. L. R. 11 Lah. 77.—**IND.**

PART IV. SECT. 11, SUB-SECT. 2.

2634 ii. —— —— ——.]—Where, in an action for wages & overtime, based on the award of the Commonwealth Ct. of Conciliation & Arbn., the only evidence of the award was a printed document purporting to be a copy of the award bearing the imprint "By authority: H. J. Green, Govt. Printer, Melbourne":—*Held:* the award was not proved.—MID-NORTH ELECTRICITY CO., LTD. *v.* RUTHERFORD, [1927] S. A. S. R. 273.—**AUS.**

PART IV. SECT. 11, SUB-SECT. 4.—A.

2667 i. —— *Res inter alios acta—Conviction for murder.*]—On an application by a husband, who has killed his wife, or his attorney for a grant of administration a certified copy of the conviction is admissible, not merely as proof of the conviction, but also as presumptive proof of the commission of the crime.—*Re* NOBLE (Sask.), [1927] 1 W. W. R. 938.—**CAN.**

PART IV. SECT. 11, SUB-SECT. 4.—C.

2690 i. *Evidence of commission of crime—Presumptive evidence.*]—*Re* NOBLE, No. 2667 i, *ante*.—**CAN.**

PART IV. SECT. 11, SUB-SECT. 6.—A. (a).

2739 i. *No opportunity to cross-examine.*]—*Held:* the evidence was inadmissible.—JOHNSON *v.* R. (Ont.) (1911), 13 Exch. C. R. 389.—**CAN.**

PART IV. SECT. 11, SUB-SECT. 12.

3004 i. *How proved—Production of copy printed in Stationery Office.*]—The District Ct. Rules are rules made by a minister within Documentary Evidence Act, 1925, s. 4, & the production of a copy of the rules, printed in the Stationery Office, is *primâ facie* evidence that the rules have been validly made.—TANGNEY *v.* DISTRICT JUSTICE FOR COUNTY OF KERRY, [1928] I. R. 358.—**IR.**

PART IV. SECT. 11, SUB-SECT. 15.—A.

sx. *Proof—Writ of execution.*]—STUART *v.* ANDREWS (1827), N. B. Dig. 332.—**CAN.**

sy. —— ——.]—DOE d. STOCKING *v.* WATTS (1842), 2 Ont. Dig. 2665.—**CAN.**

PART IV. SECT. 12, SUB-SECT. 10.—A. (b).

sa. *British consul abroad—Certificate on point of law.*]—A British consul may prove by his certificate a point of foreign law which he is competent to prove by affidavit.—*Re* BERGMAN ESTATE, [1928] 1 W. W. R. 601.—**CAN.**

3157. *Add. Annotation :*—**Consd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3158. *Add. Annotation :*—**Overd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3159. *Add. Annotation :*—**Folld.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3163. *Add. Annotation :*—**Folld.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3164. *Add. Annotation :*—**Folld.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3165a. —— **Marriage of parents.**]—In an action brought by pltfs., who claimed to be two of the next of kin of an intestate, for administration of her estate, the usual order for inquiries as to the next of kin & heir-at-law of the intestate was made. In taking those inquiries before the master it became necessary to prove the lawful marriage of the parents of the intestate before her birth &, as no record of the marriage could be found, a summons was taken out by pltfs. for the determination of the question whether three certificates of birth of three of the children, including the intestate, of those parents & a certificate of death of one of those children were *primâ facie* or any evidence of the lawful marriage of the parents :—*Held :* the certificates were admissible, but not alone sufficient, because taken by themselves they did not identify the persons therein mentioned. It would be for the master at the inquiry to determine whether the certificates, taken in conjunction with the other evidence adduced before him, were sufficient to establish the fact of marriage between the parents in question. *Re Wintle*, No. 3158, overd.—*Re* STOLLERY, WEIR *v.* TREASURY SOLICITOR, [1926] Ch. 284 ; 95 L. J. Ch. 259 ; 134 L. T. 430 ; 90 J. P. 90 ; 42 T. L. R. 253 ; 70 Sol. Jo. 385 ; 24 L. G. R. 173, C. A.

3177a. —— **Marriage of parents of deceased.**]—*Re* STOLLERY, WEIR *v.* TREASURY SOLICITOR, No. 3165a, *ante*.

3179. *Add. Annotation :*—**Distd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3287. *Add. Annotations :*—**Apprvd.** Hendon Paper Works Co. *v.* Sunderland Assmt. Com., [1915] 1 K. B. 763. **Folld.** Fowler (Leeds) *v.* Hunslet Assmt. Com., [1917] 1 K. B. 720. **Expld. & Distd.** Gateshead Union Assmt. Com. *v.* Redheugh Colliery, [1925] A. C. 309.

3288. *Add. Citation :*—1 B. R. A. 210.
Add. Annotations :—**Folld.** Fowler (Leeds) *v.* Hunslet Assmt. Com., [1917] 1 K. B. 720. **Expld. & Distd.** Gateshead Union Assmt. Com. *v.* Redheugh Colliery, [1925] A. C. 309. **Refd.** Davis *v.* Pontypridd Union Assmt. Com., Rhondda Overseers & Rhondda U. C. (1916), 85 L. J. K. B. 1545.

3289. *Add. Citation :*—2 B. R. A. 592.
Add. Annotation :—**Expld. & Distd.** Gateshead Union Assmt. Com. *v.* Redheugh Colliery, [1925] A. C. 309.

3309. *Add. Annotation :*—*As to* (2) **Refd.** Hearts of Oak Assurance Co. *v.* A.-G. (1932), 48 T. L. R. 296.

3349. *Add. Annotation :*—**Consd.** Busby *v.* Avgherino, [1927] 2 Ch. 33.

3371. *Add. Annotation :*—**Refd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3377. *Add. Annotation :*—**Consd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3388. *Add. Annotation :*—**Consd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3389. *Add. Annotation :*—**Consd.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3419a. *S. P.* MONEY *v.* MONEY & TURNER (1927), 71 Sol. Jo. 666.

3422a. —— —— ——.]—As Jersey is in the diocese of Winchester, it is unnecessary to call a Jersey lawyer to prove a marriage celebrated in a church in Jersey.—PRITCHARD *v.* PRITCHARD (1920), 37 T. L. R. 104.

3428a. —— —— ——.]—A marriage performed by a Church of England clergyman in an Anglican Church in British India may be proved either (1) by production of the India Office certificate, or (2) under Evidence (Colonial Statutes) Act, 1907 (c. 16), by production of the marriage certificate issued from the Church & signed by the clergyman, together with the relevant Indian Act.—PAWSON *v.* PAWSON (1930), 99 L. J. P. 142 ; 143 L. T. 440 ; 46 T. L. R. 543.

3428b. **Of entry in ecclesiastical register —With relevant Indian Act.**]—PAWSON *v.* PAWSON, No. 3428a, *ante*.

3435a. —— —— ——.]—A marriage in the Anglican Cathedral at Shanghai, China, may be proved by the production of the marriage certificate, duly signed by the clergyman, as a common law marriage.—MATTHEWS *v.* MATTHEWS (1930), 99 L. J. P. 142 ; 143 L. T. 440 ; 46 T. L. R. 543.

3436a. —— —— —— **South Africa.**]—WATERFIELD *v.* WATERFIELD & PRETORIUS (1929), 73 Sol. Jo. 300.

3437a. (OTHERWISE B.) *v.* L. (1919), 36 T. L. R. 148 ; 64 Sol. Jo. 225.

3466. *Add. Annotation :*—**Refd.** R. *v.* Moscovitch (1927), 138 L. T. 183.

3483a. —— ——.]—*Held :* the production of the register from the custom house was conclusive evidence of ownership.—MARSH *v.* ROBINSON (1802), 4 Esp. 98 ; 170 E. R. 655, N. P.

PART IV. SECT. 12, SUB-SECT. 10 — A. (d).

sb. *Certificate of professor of anatomy.*]—A certificate from the professor of anatomy at the Grant Medical College, Bombay, as to certain bones submitted to him for examination, is not *per se* admissible in evidence, but must be proved by calling the professor as a witness.—R. *v.* AHILYA (1922), I. L. R. 47 Bom. 74.—**IND.**

PART IV. SECT. 12, SUB-SECT. 14.

sc. *Regulation of Minister of Crown—In possession of prosecuting counsel—Whether amounts to production.*]—The fact that counsel for the prosecution has a copy of a regulation made by a Minister of the Crown in his possession at the trial & available for the perusal of the justice hearing the case, does not amount to its "production" within Canada Evidence Act, s. 21, at least when no opportunity is given the accused's counsel to peruse it or object to it.—R. *v.* YEE CLUN & YEE LOW (Sask.), [1929] 1 D. L. R. 194 ; 50 Can. Crim. Cas. 440 ; [1928] 3 W. W. R. 558.—**CAN.**

PART IV. SECT. 12, SUB-SECT 15.— A. (a).

1 i. —— *Value as evidence.*]—HEATH *v.* PORTAGE LA PRAIRIE CORPN. (1909), 18 Man. L. R. 693.—**CAN.**

PART IV. SECT. 12, SUB-SECT. 19.— C. (d) iii.

se. *Certificate of baptism—Admissible.*]—SUTHERLAND *v.* YOUNG (1884), 1 Man. L. R. 38.—**CAN.**

PART IV. SECT. 12, SUB-SECT. 19.—G.

sf. *Register of titles to land kept under Local Registration of Title (Ireland) Act*, 1891 (c. 66).]—The above register is a public register & the documents kept in the office for registration of titles are public documents.—*Re* FITZGERALD, [1925] 1 I. R. 42.—**IR.**

3513a. Stationers' Hall register—Of first performances of dramatic productions.]—FALCON *v.* FAMOUS PLAYERS FILM CO., LTD., No. 624a, *ante.*

3526. *Add. Annotation :*—**Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

3543. *Add. Annotations :—As to* (2) **Consd.** Falcon *v.* Famous Players Film Co. (1926), 135 L. T. 650. **Apld.** *Re* Stollery, Weir *v.* Treasury Solicitor, [1926] Ch. 284.

3547. *Add. Annotation :*—**Refd.** Stoney *v.* East bourne R. D. C., [1927] 1 Ch. 367.

3572. *Add. Annotation :*—**Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

3580. *Add. Annotation :*—**Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

3584. *Add. Annotation :*—**Refd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 135 L. T. 281.

3589. *Add. Annotation :*—**Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

3686. *Add. Annotation :—As to* (2) **Consd.** Busby *v.* Avgherino, [1927] 2 Ch. 33.

3784. *Add. Citation :*—2 B. R. A. 582.

3802a. ——.]—HAYNES *v.* HAYTON (1828), 6 L. J. O. S. K. B. 231.

Annotations :—**Consd.** Bessey *v.* Windham (1844), 6 Q. B. 166; White *v.* Morris (1852), 11 C. B. 1015.

3850a. —— **Following letters.**]—Letters following a letter written "without prejudice" should be treated as being also inadmissible, unless there is a clear break in the chain of correspondence to indicate that the ensuing letters are open.—INDIA RUBBER, GUTTA PERCHA & TELEGRAPH WORKS CO., LTD. *v.* CHAPMAN (1926), 20 B. W. C. C. 184, C. A.

3860. *Add. Annotation :*—**Refd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

3902. *Add. Annotation :*—**Refd.** Layzell *v.* Thompson (1927), 137 L. T. 106.

3907. *Add. Annotation :—As to* (3) **Refd.** Moser *v.* Ambleside U. D. C. (1925), 89 J. P. 118.

3911. *Add. Annotations :*—**Consd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312; Trafford *v.* Thrower (1929), 45 T. L. R. 502. **Refd.** Hue *v.* Whiteley, [1929] 1 Ch. 440.

3914. After this case add "*See, also,* HIGHWAYS, Nos. 355a, 355b."

3919a. —— **To prove state of premises.**]—DOE d. FENTON *v.* BUTCHER (1847), 9 L. T. O. S. 82.

3932. *Add. Annotation :*—**Consd.** United States Shipping Board *v.* St. Albans Ship, [1931] A. C. 632.

sg. *Proprietor's Registry Book.*]—FULTON *v.* CREELMAN, [1930] 4 D. L. R. 43; *on appeal,* [1931] S. C. R. 221; 1 D. L. R. 733.—**CAN.**

PART IV. SECT. 12, SUB-SECT. 20.

sh. *Weight of evidence.*]—The importance as evidence of revenue records, admissible under Indian Evidence Act, s. 35, varies with the circumstances.—GANGABAI *v.* FAKIRGOWDA (1929), I. L. R. 54 Bom. 336.—**IND.**

PART IV. SECT. 12, SUB-SECT. 21.

s i. —— *How proved.*]—The contents of a statute of any province within the King's dominions may be proved by the production of a copy purporting to be printed under the authority of the Legislature of that province.—NORTHERN TRUSTS CO. *v.* MCLEAN, [1926] 3 D. L. R. 93; 58 O. L. R. 683.—**CAN.**

PART IV. SECT. 12, SUB-SECT. 22.

sj. *Records of secretary of province—Entry as to delivery of patent—In secretary's handwriting—Whether proof of possession of patent.*]—*Qu.:* whether the evidence of the secretary of the province, that it appears by an entry in his own handwriting, in a book kept for such entries, that a patent was delivered to A., & that he therefore felt sure that it was delivered to A. or his servant, but has no recollection of it, is sufficient to charge A. in trover with the possession of such patent.—HAMPSON *v.* BOULTON (1836), 5 O. S. 23.—**CAN.**

PART IV. SECT. 13, SUB-SECT. 2.—A.

3679 v. ——.]—Account books are admissible in evidence, under Evidence Act, 1872, s. 34, without any formal proof that they were regularly kept in the course of business. The Legislature, in sect. 34, has dispensed with the necessity of such formal proof, which was required by the former Act II. of 1855. In order that account books may be deemed regularly kept in the course of business, it is not necessary to show that they had been entered up as & when the transactions took place.—EMPEROR *v.* NARBADA PRASAD (1929), I. L. R. 51 All. 864.—**IND.**

sl. *Corporation or partnership books.*]—Defts., stockbrokers, were indicted & tried (*a*) for conspiracy by fraudulent means to defraud customers; (*b*) for conspiracy by fraudulent means to affect the public market price of stocks publicly sold; (*c*) for that with intent to make gain or profit by the rise or fall of stocks they made agreements for the sale or purchase of stocks in respect of which no delivery was ever made or intended to be made :—*Held :* books of account, records, & other documents of defts. were properly admitted at the trial.—R. *v.* SMART & YOUNG; R. *v.* PATERSON & CAMPBELL; R. *v.* STOBIE & FORLONG, [1931] 2 D. L. R. 207; O. R. 176; 55 Can. C. C. 310.—**CAN.**

PART IV. SECT. 13, SUB-SECT. 2.—B.

sb. *To prove to whom credit given.*]—WHITE *v.* MILLER (1888), 27 N. B. R. 143.—**CAN.**

PART IV. SECT. 13, SUB-SECT. 4.

sc. *Books of railway companies—Repair book.*]—CANADA CENTRAL RY. CO. *v.* MCLAREN (1883), 8 A. R. 564.—**CAN.**

PART IV. SECT. 13, SUB-SECT. 5.

d i. —— ——.]—A book maintained by members of a family of hereditary bards, containing entries of domestic events occurring in the family to which they rendered service, the events recorded being such as are usually known to a family bard in connection with his calling :—*Held :* admissible as evidence concerning the relationship of the members of the family, whose history was entered therein.—ANANDI *v.* NAND LAL (1924), I. L. R. 46 All. 665.—**IND.**

PART IV. SECT. 13, SUB-SECT. 6.—A.

1 i. —— *In pursuance of common object.*]—*Held :* letters, written by the mother of a petitioner in a suit for restitution of conjugal rights, which, if written by petitioner would have been evidence of her lack of sincerity, were admissible against her on it being proved that they were written in pursuance of an object common to petitioner & her mother.—THOMAS *v.* THOMAS (1931), 31 S. R. N. S. W. 159; 48 N. S. W. W. N. 21.—**AUS.**

PART IV. SECT. 13, SUB-SECT. 7.—B.

3843 ii. *S P.* MERRY *v.* MACHIN (1926), 47 N. L. R. 236.—**S. AF.**

1 i. —— *Subsequent correspondence on same subject.*]—In order to render letters written "without prejudice" inadmissible as evidence it must appear that there was a dispute or negotiations pending between the parties & that the letters were written *bonâ fide* with a view to its settlement. Letters written "without prejudice" protect subsequent correspondence on the same subject-matter.—MCLEOD *v.* PEARSON, [1931] 3 W. W. R. 4; 4 D. L. R. 673.—**CAN.**

PART IV. SECT. 13, SUB-SECT. 11.

3870 i. *Admissibility.*]—*Held :* a telegram received by pltf. from deceased was not admissible in evidence without proof that deceased had sent a telegram in those terms, & that the original telegram, signed by deceased, had been destroyed or lost.—ADAMSON *v.* VACHON (Sask.) (1912), 22 W. L. R. 494.—**CAN.**

PART IV. SECT. 13, SUB-SECT. 12.

q i. —— ——.]—Will proved before a notary public, & recorded during the lifetime of testator, properly admitted in evidence.—MURRAY *v.* DUFF (1895), 33 N. B. R. 351.—**CAN.**

sd. *Necessity for production of.*]—Where pltf.'s counsel in opening his case stated it as a question of legitimacy, & that deft. claimed under a will, & the defence was conducted without the production of the will, as if the statement of the counsel had rendered that unnecessary :—*Held :* it ought to have been produced.—DOE d. BREAKEY *v.* BREAKEY (1846), 2 U. C. R. 349.—**CAN.**

PART IV. SECT. 17.

sb. *Reconstruction of crime.*]—In the course of a culpable homicide trial arising out of the shooting by the accused, a warder, of one of a gang of convicts in his charge, the Crown tendered in evidence, through the photographer, photographs of the

3933. *Add. Annotation :*—**Consd.** United States Shipping Board *v.* St. Albans Ship, [1931] A. C. 632.

3934. *Add. Annotation :*—**Consd.** United States, Shipping Board *v.* St. Albans Ship, [1931] A. C. 632.

3935a. —— Dimensions & relative proportions of subject-matter.]—(1) Clearly a photographic picture cannot be relied upon as proof in itself of the dimensions of the depicted object or objects, & cannot be made properly available to establish the relative proportions of such objects except by evidence of personal knowledge or scientific experience to demonstrate accurately the facts sought to be established.

(2) The extent to which & the processes by which an accurate topographic plan can be produced from a pictorial delineation of a scene are matters of common knowledge could hardly be said, though such questions have long occupied the attention of men of science (LORD MERRIVALE, P.).—UNITED STATES SHIPPING BOARD *v.* THE ST. ALBANS, [1931] A. C. 632 ; 100 L. J. P. C. 73 ; 144 L. T. 601 ; 47 T. L. R. 245 ; 18 Asp. M. L. C. 196, P. C.

3959. *Add. Citation :*—130 L. T. 445.

Part V.—Witnesses.

3975a. -.]—A judge cannot exclude a child-witness from the box on the ground that the case is unfit for him or her to be concerned in ; his power is limited to the usual inquiry about the child's understanding of an oath or of the duty of telling the truth.—R. *v.* MOSCOVITCH (1924), 18 Cr. App. Rep. 37, C. C. A.

3980a. —— —— Examination by judge in private —Illegal.]—The examination of a child witness by the judge in private in order to ascertain whether the witness was capable of understanding the nature of an oath is illegal & is sufficient to invalidate a conviction.—R. *v.* DUNNE (1929), 99 L. J. K. B. 117 ; 143 L. T. 120 ; 21 Cr. App. Rep. 176 ; 29 Cox, C. C. 149, C. C. A.

4013. *Add. Annotation :*—*As to* (1) **Refd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704.

4027. *Add. Annotation :*—**Refd.** Isaacs *v.* Cook, [1925] 2 K. B. 391.

4028. *Add. Annotation :*—**Refd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579.

scene of the shooting taken two days afterwards & showing a partial reconstruction of the incident. The evidence was objected to :—*Held :* the photographs were not admissible.—R. *v.* PRETORIUS (1930), 51 N. L. R. 352. —**S. AF.**

PART IV. SECT. 18, SUB-SECT. 2.

3958 i. *Surveyor's report.*]—*Held :* not admissible to prove the extent of the lands he was employed to survey.—R. *v.* PRICE BROTHERS & CO., [1925] 3 D. L. R. 595 ; *revsg.*, [1924] 3 D. L. R. 817.—**CAN.**

PART IV. SECT. 20.

3962 i. *Accounts—Carbon copies—Whether books within County Courts Act*, 1913, *s.* 138.]—*Qu. :* whether carbon copies of slips showing an account for goods alleged to have been sold & delivered are " books " within sect. 138 of County Courts Act, R. S. M., 1913, c. 44.—FARGEY *v.* HOLYK, [1929] 3 D. L. R. 682 ; 2 W. W. R. 204 ; 38 Man. L. R. 220.—**CAN.**

q i. —— ——.]—*Held :* a certificate of guardianship was not a public or other official book, register or record within sect. 35 of Evidence Act, & an entry therein relating to the age of a minor was not in itself admissible in evidence to prove the age.—SAID-UN-NISSA BIBI *v.* RUQAIYA BIBI (1930), I. L. R. 53 All. 428.—**IND.**

ss. *Certificate of weighmaster.*]—*Held : prima facie* evidence only of weight at the time of weighing.—TENOLD & TANNAS *v.* CANADIAN PACIFIC RY. CO., [1927] 3 D. L. R. 695 ; [1927] 2 W. W. R. 491 ; 33 Can. Ry. Cas. 86; 21 Sask. L. R. 665.—**CAN.**

sg. *Resolution of Bar Association.*]—In order to enable a ct. to admit in evidence a resolution of a Bar Association it is necessary to establish that it was passed at a meeting specially & properly convened for the purpose, which implies that the meeting should have been convened after reasonable notice in the manner prescribed by the regulations of the Association, &, in the absence of any regulations on the subject, personal notice to all the available members of the Association, so that they may have proper opportunity to attend the meeting & to express their views thereat.—CHATUR BHUJ *v.* CROWN (1930), I. L. R. 12 Lah. 385.—**IND.**

PART V. SECT. 1, SUB-SECT. 1.—A. (a).

3974 iii. ——.]—New trial ordered in an action for negligence, on the ground that the trial judge had not expressly directed the jury that the law required that the case should not be decided on the testimony of the infant pltf., seven years old, who was not sworn, unless it was corroborated by some other material evidence ; although he had warned the jury to consider her testimony very carefully. —ROBINSON *v.* BURNS & CO. LTD. & CHURCH, [1928] 1 D. L. R. 610 ; [1928] 1 W. W. R. 76 ; 23 Alta. L. R. 170.—**CAN.**

3974 iv. ——.]—" Other material evidence " within the requirement of Alberta Evidence Act, s. 19, that the unsworn testimony of a child of tender years must be corroborated, means evidence material to the issue which must be sustained by the party on whose behalf the child's evidence is adduced ; therefore, where that issue is negligence, it means evidence relating to the alleged negligence. The evidence relied on as corroborative in the present case did not go so far as to touch the question of negligence.—CUTHBERTSON *v.* LETHBRIDGE, [1928] 2 D. L. R. 562 ; [1928] 1 W. W. R. 815 ; *revsd.*, [1929] 4 D. L. R. 1052 ; S. C. R. 176.—**CAN.**

3976 ii. ——.]—A child of ten said, " I know I have got to tell the truth, I know where you go when you don't tell the truth, to gaol " :—*Held :* this answer was not inconsistent with an understanding of the nature & quality of an oath, although showing no appreciation of reward & punishment in a future state.—SPOONER *v.* TAYLOR, [1926] S. A. S. R. 396.—**AUS.**

3979 iv. —— —— *Canada Evidence Act*, *s.* 16.]—SANKEY *v.* R., [1927] 4 D. L. R. 245 ; [1927] S. C. R. 436 ; 48 Can. Crim. Cas. 97.—**CAN.**

3979 v. —— ——.]—R. *v.* FITZPATRICK, [1929] 1 D. L. R. 806 ; 1 W. W. R. 393 ; 51 Can. Crim. Cas. 146 ; 40 B. C. R. 478.—**CAN.**

PART V. SECT. 1, SUB-SECT. 1.—B.

g (p. 390) **i.** —— *Agent conducting case.*]—An agent conducting a case in the Burgh police ct. is a competent witness in the cause.—CAMPBELL *v.* COCHRANE, [1928] S. C. (J.) 25.—**SCOT.**

p (p. 391) **i.** ——.]—A prosecutor who has conducted a preparatory examination in a magistrate's ct. is a competent witness for the Crown at the trial.—R. *v.* BECKER, [1929] App. D. 167.—**S. AF.**

sg. *Juryman in first action—On hearing of new trial.*]—At the hearing of a new trial, a juryman in the first action was called to give evidence as to what he saw whilst on a view with his fellow jurymen. His evidence was rejected on the ground that having been a juryman in the first action he was not competent to give evidence at the new trial :—*Held :* the witness was competent to give evidence of what he actually saw & observed provided the evidence was otherwise admissible.—MACKAY *v.* ELIAS (1928), 28 S. R. N. S. W. 340 ; 45 N. S. W. W. N. 86.—**AUS.**

4001 i. —— *Solicitor.*]—A solr. is a competent witness for his client, &, when he is not also acting as an advocate, there is nothing reprehensible in his being a witness. While an advocate can testify for a party whose cause he is conducting, the practice is highly objectionable.—PARRY *v.* PARRY, [1926] 3 D. L. R. 95 ; [1926] 2 W. W. R. 185 ; 20 Sask. L. R. 474.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.

1i. —— ——.]—ANDREWS *v.* HOPKINS, [1932] 3 D. L. R. 459.—**CAN.**

4029. *Add. Annotation :*—**Apld.** Isaacs *v.* Cook, [1925] 2 K. B. 391.

4077. *Add. Annotations :*—**Apprvd. & Apld.** *Re* Paget, *Ex p.* Official Receiver, [1927] 2 Ch. 85. **Refd.** *Re* Jawett, [1929] 1 Ch. 108.

4130. *Add. Annotation :*—**Refd.** R. *v.* Bath Compensation Authority, [1925] 1 K. B. 685.

4148. *Add. Annotation :*—**Refd.** Minter *v.* Priest, [1929] 1 K. B. 655.

4161a. —— **Acting for partner.**]—A., a solr., being engaged in negotiations for the sale of an estate of his own, devolved the conduct of the business with regard to it on his partner, & made certain statements to him :—*Held :* the relation of solr. & client existed between them, & the communications were privileged. —BEAMISH *v.* OWENS (1846), 7 L. T. O. S. 66.

4190. *Add. Annotation :*—**Consd.** Minter *v.* Priest, [1929] 1 K. B. 655.

4192. *Add. Annotation :*—**Apprvd.** Minter *v.* Priest, [1929] 1 K. B. 655.

4199. *Add. Annotation :*—**Apld.** Minter *v.* Priest, [1929] 1 K. B. 655.

4201. *Add. Annotation :*—**Apprvd.** Minter *v.* Priest, [1929] 1 K. B. 655.

4213a. —— —— ——.]—(1) Communications passing between a solr. & a prospective client with a view to the client retaining the solr. on professional business are privileged from disclosure, even if the solr. does not accept the retainer.

(2) Conversations between a solr. & client relating to the business of obtaining a loan for the deposit on the purchase of real estate are privileged from disclosure, as the business is professional business within the ordinary scope of a solr.'s employment.

(3) Where the relation of solr. & client is established, any conversation passing between them, to be protected from disclosure, must be fairly referable to that relation ; it must be for the purpose of giving or receiving professional advice. — MINTER *v.* PRIEST, [1930] A. C. 558 ; 99 L. J. K. B. 391 ; 143 L. T. 57 ; 46 T. L. R. 301 ; 74 Sol. Jo. 200, H. L.

Annotation :—*Generally*, **Consd.** Harris *v.* Harris (1930), 47 T. L. R. 15.

4217. *Add. Annotation :*—**Refd.** Minter *v.* Priest, [1929] 1 K. B. 655.

4218a. —— ——.]—MINTER *v.* PRIEST, No. 4213a, *ante*.

4228a. —— —— ——.]—Pltf., who had been employed by deft. to take care of his house, but who had subsequently left it, brought an action against him for breach of promise of marriage. Deft. had threatened to proceed criminally against her on a charge of taking away some of his property from the house. The ct. refused to compel pltf.'s attorney to disclose her place of residence, as deft. knew who she was, & had avowed that he sought the information with the view of effecting her arrest on the criminal charge.—HARRIS *v.* HOLLER (1849), 19 L. J. Q. B. 62.

Annotation :—**Refd.** Cox *v.* Bockett (1865), 18 C. B. N. S. 239.

4237a. —— ——.]—Communications made by one of the spouses pending the possible institution of proceedings for divorce to a solr. who has hitherto acted as their common adviser are within the scope of professional privilege. In subsequent matrimonial proceedings in a ct. of summary jurisdiction between the spouses, the solr. is not an admissible witness to prove a statement made by one of them involving an admission of adultery.—HARRIS *v.* HARRIS, [1931] P. 10 ; 99 L. J. P. 149 ; 144 L. T. 159 ; 95 J. P. 1 ; 47 T. L. R. 15 ; 74 Sol. Jo. 755 ; 28 L. G. R. 641 ; 29 Cox, C. C. 189.

4259. *Add. Annotation :*—**Consd.** Minter *v.* Priest, [1929] 1 K. B. 655.

4269a. Admission of adultery.]—HARRIS *v.* HARRIS, No. 4237a, *ante*.

4275. *Add. Annotation :*—**Refd.** Minter *v.* Priest, [1929] 1 K. B. 655.

4286. The first line of the text of the paragraph should read " Where at law the party calls."

4305. *Add. Annotation :*—**Consd.** Watt *v.* Longsdon, [1930] 1 K. B. 130.

4428a. —— **Application to set aside—Whether " in " action.**]—*Held :* an application by a a person, who had been served by one of the parties to an action with a *subpœna duces tecum*, to set the subpœna aside was an application " in " the action within R. S. C., Ord. 52, r. 2, although appct. was not a party to the action, & the application could not be heard.—R. *v.* INVESTORS' REVIEW, LTD., *Ex p.* WHEELER, [1928] 2 K. B. 644 ; 97 L. J. K. B. 802 ; 140 L. T. 43 ; 44 T. L. R. 724 ; 72 Sol. Jo. 570, D. C.

4461a. ——.]—The possession of a solr. is, for the purpose of a *subpœna duces tecum*, the possession of the client.—JORDAN *v.* ROBERTS (1862), 7 L. T. 68.

4472a. —— **Court not entitled to impound.**]—*Re* TILL, *Ex p.* PARSONS (1871), 19 W. R. 325.

4477. *Add. Annotations :*—**Refd.** *Re* Cameron's Coalbrook, etc. Ry. (1859), 25 Beav. 1 ; Lockett *v.* Cary (1864), 3 New Rep. 405 ;

PART V. SECT. 2, SUB-SECT. 4.—B. (a).

4060 xxi. ——.]—Under Canada Temperance Act, 1878, s. 123, accused is not bound to criminate himself.—R. *v.* HALPIN (1886), 12 O. R. 330.—**CAN.**

4060 xxii. ——.]—The refusal " to answer any question touching the case " in Liquor License Act, s. 115, means any question which may be lawfully put, which the witness is otherwise bound to answer.—*Re* ASKWITH (1899), 31 O. R. 150.—**CAN.**

PART V. SECT. 2, SUB-SECT. 4.—C.

4105 i. *Who may take objection—Not counsel.*]—The claim for protection against incriminating questions is a personal one & must be made by the party himself & under oath. The objection of his counsel will not do.—R. *v.* MCINTYRE (1909), 7 E. L. R. 50. —**CAN.**

PART V. SECT. 2, SUB-SECT. 4.—F.

sh. *Privilege taken away by provincial statute—Right to claim special privilege under Canada Evidence Act, s. 5—Witness must have objected to giving evidence.*]—R. *v.* HARCOURT, [1930] 3 D. L. R. 59 ; 53 Can. C. C. 156.—**CAN.**

PART V. SECT. 2, SUB-SECT. 10.

sk. *Whether Act of* 1696, *c.* 25, *applies in questions between.*]—GALLOWAY *v.* GALLOWAY, [1929] S. C. 160.—**SCOT.**

PART V. SECT. 3, SUB-SECT. 3.—B. (d).

sa. *Notes made by police officer.*]—Notes made by a police officer for the purpose of making a report to his superior officer are confidential, & their production cannot be insisted on by accused.—HINSHELWOOD *v.* AULD, [1926] S. C. (J.) 4.—**SCOT.**

sb. *When amounting to contempt of court.*]—B., the Acting Secretary of the Dried Fruits Board of South Australia, was served with a *subpœna duces tecum* to produce certain minute books of the Board at the hearing of an action against the Minister for Agriculture for the State of South Australia & others. Acting on the direction of the Minister, B. refused to bring the books into ct., but produced a certificate by the Minister that the disclosure of the books would be contrary to public policy & prejudicial to the public interest :—*Held :* the order to bring

Fowler *v.* Fowler (1881), 29 W. R. 800; *Re* Hawkes, Ackerman *v.* Lockhart, [1898] 2 Ch. 1.

4521a. —— **Put in witness-box but not examined.**]—*Held:* his costs of travelling & attending the trial ought to be allowed.—FLOWER *v.* GARDNER (1857), 3 C. B. N. S. 185; 27 L. J. C. P. 56; 30 L. T. O. S. 135; 140 E. R. 710.

4586. *Add. Annotation:*—**Reld.** The Massilia, [1926] P. 180.

4594a. —— **Witness not called.**]—Where a charge for the attendance of such witness was allowed, because counsel in advising on evidence thought that the witness was necessary:—*Held:* that was a dangerous ground on which to proceed, & one upon which an allowance or disallowance ought not to be founded.—THE LORD STRATHCONA (No. 3), [1926] W. N. 270, C. A.

4649. For "(*circa* 1660)" read "(*circa* 1670)."

4722. *Add. Annotation:*—**Reld.** R. *v.* Huntingdon Confirming Authority, [1929] 1 K. B. 698.

4729. *Add. Annotation:*—*As to* (2) **Reld.** R. *v.* Anderson (1929), 142 L. T. 580.

4729a. Whether obligations of oath understood—When witness may be asked.]—A judge is entitled to question a witness at any stage of his evidence with a view to ascertaining whether he recognises the obligations of an oath.—R. *v.* WILSON (1924), 18 Cr. App. Rep. 108, C. C. A.

4784. *Add. Annotation:*—**Consd.** Lala Indar Prasad *v.* Lala Jagmohan Das (1927), 43 T. L. R. 536.

4815a. -.]—In an action for revocation of probate the party propounding the will, being obliged to call as a witness one of the attesting witnesses whose evidence was adverse to the plea of due execution, was held to be entitled to cross-examine the witness as a witness of the ct.—OAKES *v.* UZZELL, [1932] P. 19; 100 L. J. P. 99; 146 L. T. 95; 47 T. L. R. 573; 75 Sol. Jo. 543.

4816. *Add. Annotations:*—*As to* (2) **Consd.** More *v.* Weaver, [1928] 2 K. B. 520. **Expld.** Minter *v.* Priest, [1929] 1 K. B. 655. **Consd.** Minter *v.* Priest, [1930] A. C. 558.

4816a. —— **Intention to discredit witness.**]—R. *v.* HART (1932), 23 Cr. App. Rep. 202, C. C. A.

4831a. -.]—There being two claimants as the eldest surviving son of testator's cousin J. referred to in testator's will, one being pltf. in the action & the other a co-deft. with X., on the trial of the issue which of them

the books into ct. as directed by the *subpœna* being made by a competent ct., the refusal to obey that order was a contempt of ct.—JAMES *v.* COWAN, *Re* BOTTEN (1929), 42 C. L. R. 305.—**AUS.**

PART V. SECT. 3, SUB-SECT. 5.—A.

4493 iii. —— *Expert witness.*]—*Held:* a medical witness could not refuse to give evidence because his fees had not been paid.—R. *v.* HUBLEY (N. S.), [1925] 1 D. L. R. 494; 43 Can. Crim. Cas. 208.—**CAN.**

PART V. SECT. 3, SUB-SECT. 5.—D. (a).

4548 v. —— ——.]—Where there was sufficient evidence before the trial judge to warrant him in finding that deft. came from Cuba to St. John, not merely because he was a necessary witness & wished to testify at a trial on his own behalf, but that he would have come as he did had there been no trial of the cause expected:—*Held:* deft. was not entitled to be paid travelling expenses under such conditions.—PURITY ICE CREAM CO. *v.* O'CONNELL (1924), 52 N. B. R. 422.—**CAN.**

4548 vi. —— ——.]—A witness, who resides abroad, is entitled to the expenses of being brought before the ct. to give evidence & also to the subsistence money due during the period of detention. The same principle applies to the case of a party whose evidence is reasonably necessary & material for the purpose of his case & on his behalf.—LANGLEY *v.* D'ARCY (1929), I. L. R. 54 Bom. 62.—**IND.**

i i. —— *Whether applicable to Royal Commission.*]—The right of a witness in a civil proceeding to prepayment of conduct money & expenses to & from where he is ordered to be in attendance is well settled, & the same principle which applies to a civil proceeding in one of H.M. Superior cts. of record must *a fortiori* apply to a Royal Commission in the absence of express statutory power.—R. *v* MCADAM (1927), 50 Can. Crim. Cas. 31; 39 B. C. R. 101.—**CAN.**

PART V. SECT. 3, SUB-SECT. 5.—F.

b i. —— *Award silent as to fees of witnesses—Power to grant fees vested in arbitrator.*]—Under Public Works Act, R. S. B. C. 1924, c. 211, s. 24, the arbitrators only are vested with authority to grant or withhold witness fees in the case of any particular witness, at any rate to the extent of deciding whether such fees should be included in the bill of costs for taxation or not, & what amount of preparation was reasonably necessary.—*Re* GALT BROS. & BURNABY (1928), 39 B. C. R. 470; [1928] 1 W. W. R. 798.—**CAN.**

PART V. SECT. 3, SUB-SECT. 6.—A. (d).

sz. *Defendant without notice of privilege.*]—An action for false arrest does not lie for the arrest, under a *capias*, of a person who was a witness in another suit.—THOMPSON *v.* SCHNEIDER, [1929] 1 D. L. R. 989; 60 N. S. R. 329.—**CAN.**

PART V. SECT. 3, SUB-SECT. 7.—A. (c) i.

4645 i. *General rule—Clear case must be made out.*]—DESROCHERS *v.* QUEBEC LIQUOR COMMISSION & SIMARD (1922), 37 Can. Crim. Cas. 17; 23 Q. P. R. 427.—**CAN.**

4649 iv. ——.]—A witness, summoned by the High Ct. to give evidence, left the jurisdiction without being discharged as a witness & without the permission of the ct., in order to avoid giving evidence:—*Held:* such conduct amounted to contempt, & the High Ct. had inherent jurisdiction to punish for that contempt.—EBRAHIM MAMOOJEE PAREKH *v.* R. (1926), I. L. R. 4 Ran. 257.—**IND.**

PART V. SECT. 4, SUB-SECT. 1.—B. (a).

e i. ——.]—The fact that a deponent, who on being sworn raised his right hand, did not kiss or touch the Bible held not a ground for holding that the affidavit was not validly sworn.—BOURGOUIN *v.* ROCAN (Man.), [1929] 4 D. L. R. 1006; 3 W. W. R. 399.—**CAN.**

sm. *Oath in English—Subsequent use of interpreter.*]—The fact that during the examination of a Crown witness whose native tongue was a foreign language it was found advisable to make use of an interpreter:—*Held:* not to lead necessarily to the conclusion that he had not understood the nature of the oath which had been administered to him in the English language.—R. *v.* DEFILLIPI, [1932] 1 W. W. R. 545; 26 Alta. L. R. 134.—**CAN.**

PART V. SECT. 5, SUB-SECT. 2.

4759 ii. —— —— *Two plaintiffs witnesses.*]—*Semble:* when there are two pltfs. & both are witnesses, deft. has not the right to insist that while one of them is giving his testimony the other shall be excluded.—MCINTYRE *v.* MCINTYRE, [1925] 2 W. W. R. 581.—**CAN.**

PART V. SECT. 6, SUB-SECT. 1.—A.

sb. *Evidence of foreign witness—When interpreter allowed.*]—While it is desirable that a foreigner should not be allowed to give his testimony through an interpreter if he really understands English, yet where a witness persists in stating his ignorance of English & that he does not understand the questions put to him, & there is no evidence that he is not speaking the truth, he should not be forced to testify in English, especially where the result is a mass of unintelligible evidence.—PONOMOROFF *v.* PONOMOROFF, [1925] 3 W. W. R. 673.—**CAN.**

—— —— *In criminal trials.*]—*See* CRIMINAL LAW, Vol. XIV., p. 264.

PART V. SECT. 6, SUB-SECT. 2.—B.

4830 i. —— *Other defendant & his witnesses.*]—On the trial of a civil action, other than for divorce, against more than one deft., when defts. have pleaded separately, but there is no substantial difference in their interests, the judge may refuse to allow separate cross-examination of co-deft.'s witnesses; in other circumstances separate counsel may be allowed to be heard, with the consequential right to cross-examine co-deft. or his witnesses.—MILLAR *v.* B. C. RAPID TRANSIT CO., LTD., [1926] 1 D. L. R. 1171; [1926] 1 W. W. R. 543; 36 B. C. R. 345.—**CAN.**

occupied that position:—*Held:* cross-examination on behalf of X. of witnesses called by her co-deft. could not be allowed.—*Re* WAGSTAFF, WAGSTAFF *v.* JALLAND, [1907] 2 Ch. 35; 76 L. J. Ch. 369; 96 L. T. 605; 23 T. L. R. 426; *on appeal*, [1908] 1 Ch. 162, C. A.

4834a. —— ——.]—OAKES *v.* UZZELL, No. 4815a, *ante*.

4849a. -.]—Where a deft. in a running-down action is charged with negligence in a particular case it is not competent to ask him a question to obtain an answer which would show that he has been negligent on some other occasion or occasions. Much less is it competent to ask him a question which merely shows that he has been involved in some other accident for which it is not suggested that he was to blame. On the other hand, a question properly directed so as to test his credibility as a witness, or his skill or competence as a driver, if these matters are in issue, is not to be excluded merely because it shows that he has previously been involved in one or more other accidents.—JAMES *v.* AUDIGIER (1932), 48 T. L. R. 600; 76 Sol. Jo. 528, D. C.; *affd.* 49 T. L. R. 36.

4859. *Add. Annotation:*—**Apld.** Grinham *v.* Davies, [1929] 2 K. B. 249.

4875. *Add. Annotation:*—**Distd.** R. *v.* Harris, [1927] 2 K. B. 587.

4886a. —— ——.]—During a trial, counsel for the prosecution cross-examined the accused on the contents of an alleged document. The document was not produced, but counsel for the prosecution, believing that the original would be in his hands before the end of the trial, suggested to the jury that the original was in existence:—*Held:* such cross-examination, where the original document was in fact incapable of being produced, was irregular & invalidated the conviction.—R. *v.* ANDERSON (1929), 142 L. T. 580; 21 Cr. App. Rep. 178; 29 Cox, C. C. 102, C. C. A.

4902. *Add. Annotation:*—**Refd.** R. *v.* Anderson (1929), 142 L. T. 580.

4997. *Add. Annotation:*—**Refd.** Jacobson *v.* Frachon (1927), 138 L. T. 386.

5022. *Add. Annotation:*—**Refd.** R. *v.* Copestake, *Ex p.* Wilkinson (1926), 90 J. P. 191.

5027. *Add. Annotation:*—**Consd.** R. *v.* Copestake, *Ex p.* Wilkinson (1926), 90 J. P. 191.

5099. *Add. Annotation:*—**Refd.** R. *v.* Liddle (1928), 21 Cr. App. Rep. 3.

5107. The second line of this paragraph should read "out to be unfavourable to the party calling him is not."

5112. *Add. Annotation:*—**Refd.** R. *v.* Harris (1927), 20 Cr. App. Rep. 144.

5140. *Add. Annotation:*—**Consd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

PART V. SECT. 6, SUB-SECT. 2.—D.

4839 vi. ——.]—The testimony of a witness may not be contradicted in respect of a matter relevant only as affecting his credibility. Evidence Act, ss. 45, 46, requires that the statement to be contradicted shall be relative to the subject-matter of the cause, &, therefore, in an action where a wife claims ownership of certain property, evidence of statements made by the husband to a third party indicating that he owned the property are not admissible to contradict the husband's testimony, & should not be acted upon in determining the question of ownership.—ZWICKER *v.* YOUNG, [1929] 1 D. L. R. 602; 60 N. S. R. 233.—**CAN.**

4839 vii. ——.]—In an action for libel a pltf. may not be cross-examined, in mitigation of damages, about violent & abusive language used by him on occasions & about people, having no connection with the libel sued on.—JUDD *v.* SUN NEWSPAPER, LTD. (1929), 30 S. R. N. S. W. 294; 47 N. S. W. W. N. 96.—**AUS.**

PART V. SECT. 6, SUB-SECT. 4.

4874 iii. ——.]—*Re* HAYES WILLIAMS (1926), 26 S. R. N. S. W. 383; 43 N. S. W. W. N. 101.—**AUS.**

PART V. SECT. 6, SUB-SECT. 6.—C.

4899 i. *Production of document—Necessity for—Document written by witness.*]—Counsel for defts., in cross-examining pltf., asked him if certain things happened as set out in a letter of his & the reply thereto. At the close of pltf.'s case, counsel for deft. stated that he did not intend to call evidence, & thereupon counsel for pltf. asked that deft. be compelled to put the letters in evidence. The request was refused:—*Held:* the judge was right in not compelling deft. to put the letters in evidence.—WALTON *v.* DEATON (1931), 31 S. R. N. S. W. 393; 48 N. S. W. W. N. 152.—**AUS.**

PART V. SECT. 6, SUB-SECT. 7.—D.

4955 iii. —— *Although inadmissible—Because produced too late.*]—JEWAN LAL DAGA *v.* NILMANI CHAUDHURI (1927), L. R. 55 Ind. App. 107.—**IND.**

sk. *Statement by deceased—Not read over or signed.*]—A statement by a deceased person of the circumstances leading to his death recorded by a witness but not read over to or signed by such deceased person is admissible in evidence as a record of what deceased said at the time from which the witness could refresh his memory.—*In re* KRISHNAMA NAICKEN (1930), I. L. R. 54 Mad. 678.—**IND.**

PART V. SECT. 6, SUB-SECT. 7.—E.

s i. ——.]—Before a witness is allowed to refresh his memory of a statement made by another by reference to a memorandum of it made at the time, he must be able to state that such statement was truly & correctly entered in the memorandum, & where a copy of the memorandum is sought to be used the witness must be able to show that while the entry was fresh in his mind he compared the copy with the original entry, & that he found the copy correct.—R. *v.* ELDER, [1925] 3 D. L. R. 447; [1925] 2 W. W. R. 545; 44 Can. Crim. Cas. 75; 35 Man. L. R. 161.—**CAN.**

PART V. SECT. 6, SUB-SECT. 7.—G.

5012 i. —— *By jury.*]—O'BRIEN *v.* O'BRIEN (1888), Cout. Dig. 554, 992; Cam. Cas. 282.—**CAN.**

sc. *Whether document admissible as evidence.*]—The fact that a witness is allowed to refresh his memory, by referring to a memorandum made by him, does not make such memorandum admissible as evidence in corroboration of his testimony.—YOUNG *v.* DENTON, [1927] 1 D. L. R. 426; [1927] 1 W. W. R. 75; 21 Sask. L. R. 319.—**CAN.**

PART V. SECT. 6, SUB-SECT. 8.

5020 i. *Refusal to answer questions—Penalties—Punishment for contempt—Power of magistrate.*]—*Re* AYOTTE (1905), 15 Man. L. R. 156.—**CAN.**

5020 ii. —— ——.]—Deft. was committed for contempt of ct., for not answering a question asked by the magistrate:—*Held:* the magistrate had power to commit deft.—R. *v.* ENDLER (1909), 7 E. L. R. 150, 151, 152.—**CAN.**

PART V. SECT. 7, SUB-SECT. 1.

5027 i. *Grounds for refusing.*]—In an arbn. under Workmen's Compensation Acts where evidence is known to be available & is not called on the arbn., leave will not be granted by an appeal to ct. to take further evidence.—GATES *v.* WILLIAMS, [1928] S. A. S. R. 252.—**AUS.**

PART V. SECT. 7, SUB-SECT. 3.—A.

5054 ii. —— ——.]—STERLING TRUSTS CORPN. *v.* MELNECHUK (Sask.), [1927] 4 D. L. R. 521; [1927] 3 W. W. R. 131.—**CAN.**

5059 i. *Whether party entitled to split evidence into two parts—As part of his case—& partly as evidence in reply.*]—Pltf. is not allowed in presenting evidence to divide his case, either by omitting to give evidence originally upon a material point & offering such evidence in reply, or by giving some evidence upon a particular point in his original case & offering other evidence upon the same point in reply.—HARVEY *v.* CANADIAN PACIFIC RY. CO. (1885), 3 Man. L. R. 266.—**CAN.**

PART V. SECT. 8, SUB-SECT. 1.—A.

5082 ii. —— ——.]—The duty of determining whether a witness may be treated as adverse or hostile is one peculiarly within the discretion of the trial judge.—MAYFIELD RURAL MUNICIPALITY, No. 406 *v.* LONDON & LANCASHIRE GUARANTY & ACCIDENT CO. OF CANADA, [1927] 1 D. L. R. 403; [1927] 1 W. W. R. 67; 21 Sask. L. R. 283.—**CAN.**

PART V. SECT. 8, SUB-SECT. 1.—C. (b)

sd. *Statement made on examination for discovery.*]—*Held:* a "previous" or "former" statement within Saskatchewan Evidence Act, R. S. S., 1920 (c. 44), ss. 32-34.—MAYFIELD RURAL

5182. *Add. Annotation :*—**Consd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

5197. *Add. Annotation :*—**Consd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

5199. *Add. Annotation :*—**Refd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

5309a. — —.]—PALIN *v.* PONTING, No. 5571a, *post.*

5318. *Add. Annotation :*—**Apld.** Palin *v.* Ponting, [1930] P. 185.

5320. *Add. Annotation :*—**Apld.** Palin *v.* Ponting, [1930] P. 185.

5388a. —.]—OAKES *v.* UZZELL, No. 4815a, *ante.*

Part VI.—Expert Evidence.

5403a. Limitation of volume of evidence.]—In cases involving expert evidence the expert advisers of the parties, whether legal or scientific, are under a special duty to the ct. to limit in every possible way the contentious matters of fact to be dealt with at the hearing (TOMLIN, J.).—GRAIGOLA MERTHYR CO., LTD. *v.* SWANSEA CORPN., [1928] Ch. 31; 97 L. J. Ch. 129; 43 T. L. R. 600; *on appeal,* [1928] Ch. 235, C. A.; [1929] A. C. 344, H. L.

5403b. *S. P.* A.-G. *v.* RINGWOOD RURAL DISTRICT COUNCIL (1928), 92 J. P. 65; 26 L. G. R. 174.

5403c. Limitation of number of expert witnesses.]—In cases involving expert evidence only two experts are to be heard on each side, unless

MUNICIPALITY, NO. 406 *v.* LONDON & LANCASHIRE GUARANTY & ACCIDENT CO. OF CANADA, [1927] 1 D. L. R. 403; [1927] 1 W. W. R. 67; 21 Sask. L. R. 283.—**CAN.**

PART V. SECT. 8, SUB-SECT. 2.—B.

k i. —— *Questions tending to show bad character—Directed to prove issue in case.*]—Evidence Amendment Act, 1925, s. 12 (*e*), provides that a person charged & called as a witness in pursuance of this Act shall not be asked, & if asked, shall not be required to answer, any question tending to show that he is of bad character :—*Held :* questions not directed to show an accused's bad character, but to prove his guilty knowledge, which was one of issues, are not inadmissible, because they may also tend to show his bad character.—R. *v.* BAXTER, [1927] S. A. S. R. 321.—**AUS.**

PART V. SECT. 8, SUB-SECT. 2.—C. (a).

n i. —— *To shake evidence given by witness.*]—Evidence of a previous statement inconsistent with the testimony of a witness is not admissible as evidence on the issues to be decided in the action, but can only be looked to to neutralise or cut down the evidence given by the witness.—HAMMER *v.* S. HOFFNUNG & CO., LTD. (1928), 28 S. R. N. S. W. 280; 45 N. S. W. W. N. 71.—**AUS.**

PART V. SECT. 8, SUB-SECT. 2.—C. (b).

5168 i. *Letter written by witness.*]—Where a telegram & a letter were dispatched shortly after a sale of goods by the sellers' agent to his employers recording his version of the transaction :—*Held :* not corroboration of the agent's oral testimony, although they might competently be referred to for the purpose of testing his credibility.—GIBSON *v.* NATIONAL CASH REGISTER CO., [1925] S. C. 500. —**SCOT.**

PART V. SECT. 9, SUB-SECT. 1.

5209 i. *Whether necessary.*]—MCNAB *v.* COWARD, [1925] 4 D. L. R. 712; *affg.*, [1925] 1 D. L. R. 741.—**CAN.**

5211 i. *What constitutes corroboration —Whether letter written by witness—About time of event in question.*]—*Held :* a telegram & a letter despatched shortly after a sale of goods by the sellers' agent to his employers recording his version of the transaction were not corroboration of the agent's oral testimony.—GIBSON *v.* NATIONAL CASH REGISTER CO., [1925] S. C. 500.—**SCOT.**

5211 ii. —— *Evidence of fact essential to success of party.*]—The corroboration required by Evidence Act, R. S. O. 1914, c. 76, s. 12, must be of something essential to be shown before pltf. can, upon his own evidence, obtain a decision in his favour upon the cause of action he is setting up. Evidence which is consistent with two views corroborates neither. The corroborating evidence must be of some fact essential to the success of pltf., though it is not required that all such facts be corroborated.—ELGIN *v.* STUBBS, [1928] 2 D. L. R. 838; 62 O. L. R. 128.—**CAN.**

sf. *Of telephone conversation.*]—A person who hears a telephone conversation may give evidence to corroborate the person whom he was with & who was the actual speaker.—HANSON *v.* GLEANER, LTD., [1925] 3 D. L. R. 189.—**CAN.**

PART V. SECT. 9, SUB-SECT. 4.

c (p. 494) i. —.]—The rule, that claims against the estate of a deceased person require to be corroborated by other evidence than that of pltf., is a rule of practice rather than of law, & is only applied where the *onus* of proof rests upon pltf., & has no application where the *onus* of proof of the facts which determine the issue or issues involved rests upon the representative of the deceased person.—TAMARA TE ANGIANGI *v.* TREADWELL, [1926] N. Z. L. R. 693.—**N.Z.**

c (p. 494) ii. ——.]—PIEPER *v.* ZINKANN (1927), 60 O. L. R. 443.—**CAN.**

c (p. 494) iii. ——.]—B. made a claim against the estate of C., deceased, for services rendered, which was allowed by the surrogate judge of probate :—*Held :* setting aside the decision with costs, under R. S. c. 107, the evidence of B. was inadmissible in support of his claim.—*Re* CONDON ESTATE (1896), 28 N. S. R. (16 R. & G.) 208.—**CAN.**

c (p. 494) iv. ——.]—*In re* MALLOWS, FLETCHER *v.* INTESTATE ESTATES CURATOR (1926), 29 W. A. L. R. 62.—**AUS.**

c (p. 494) v. ——.]—Although a trial judge ought not to disallow a claim against the estate of a deceased merely because the claimant's evidence is not corroborated, nevertheless he should examine such evidence with care, & even suspicion, & should not allow the claim unless completely satisfied of its truth.—JOHNSON *v.* BERRY, [1928] 4 D. L. R. 286; [1928] 2 W. W. R. 410; 22 Sask. L. R. 402.—**CAN.**

c (p. 494) vi. —.]—*Re* LUTZ, [1928] 1 D. L. R. 72.—**CAN.**

c (p. 494) vii. ——.]—Where an agent accepted commission from both parties, & in consideration thereof his principal since deceased signed an agreement to pay the agent a reduced commission :—*Held :* the making of the agreement being proved & corroborated by its production, Evidence Act, R. S. O., 1927, does not require corroboration of the disclosure.—BAYLEY *v.* TRUSTS & GUARANTEE CO., [1931] 1 D. L. R. 500; 66 O. L. R. 254; *affg.*, [1930] 3 D. L. R. 625; 65 O. L. R. 315.—**CAN.**

c (p. 494) viii. ——.]—*Re* COOK, *Ex p.* COOK, [1932] 2 D. L. R. 805.—**CAN.**

c (p. 449) ix. ——.]—PAUL *v.* MYLES (1930), 2 M. P. R. 20.—**CAN.**

f (p. 495) i. —— *Claim made up of separate items.*]—GERARD *v.* HUDSON, [1928] 1 D. L. R. 839.—**CAN.**

PART V. SECT. 10, SUB-SECT. 2.—C. (a) iv.

f i. ——.]—CUVILLIER *v.* THIBODO (1849), 5 U. C. R. 328.—**CAN.**

PART VI. SECT. 1.

m. Read now "**5403c i.**"

n. Read now "**5403c ii.**"

o. Read now "**5403c iii.**"

5403c iv. —— *Construction of Ontario Evidence Act, s. 10.*]—BUTTRUM *v.* UDELL, [1925] 3 D. L. R. 45; 57 O. L. R. 97.—**CAN.**

5403c v. —— *Waiver.*] Sect. 10 of Alberta Evidence Act, R. S. A., 1922, which limits the number of witnesses entitled to give opinion evidence who may be called, deals with practice & procedure in a civil matter & so may be waived by the fact that a party takes no objection to the violation of its provisions at trial.—MARCHYSHYN *v.* FANE AUTO WORKS, LTD., [1932] 3 W. W. R. 232.—**CAN.**

s. For "*Conflict of opinion as to value*" read "*Conflict of opinion—Duty of court—Conflict of opinion as to value.*"

s i. —— ——.]—HAY *v.* BAIN, [1925] 2 D. L. R. 948.—**CAN.**

s ii. —— ——.]—Where a case is complicated by the introduction of opinion evidence, particularly in cases where the testimony is that of medical men, it is the duty of the judge to arrive at his own conclusion after carefully considering the evidence of the experts, & it is not enough for him to say, "I doubt & cannot resolve

the judge is satisfied that by reason of special circumstances justice cannot be done without hearing further expert evidence. This rule does not exclude either side from calling any one to speak to matters he has seen, even though an expert, but in such a case the examination must be confined to matters of fact, & such person must not be treated as an expert witness.—GRAIGOLA MERTHYR CO., LTD. *v.* SWANSEA CORPN. (1926), 71 Sol. Jo. 142 ; *subsequent proceedings*, [1928] Ch. 31.

5407a. —— **Only medical witnesses—Not research student in toxicology.**]— NIGHTINGALE *v.* BIFFEN, HEWITT *v.* BIFFEN (1925), 18 B. W. C. C. 358, C. A.

5433. *Add. Annotation :*—**Refd.** Australia (Owners) *v.* Nautilus (Owners), The Australia (1926), 95 L. J. P. 145.

5452. *Add. Annotation :*—**Refd.** Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

5468. *Add. Annotation :*—**Consd.** United States Shipping Board *v.* St. Albans Ship, [1931] A. C. 632.

5479. *Add. Annotations :* — **Consd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930. **Refd.** R. *v.* Moscovitch (1927), 138 L. T. 183.

Part VII.—Evidence by Affidavit.

5493. *Add. Citations :*—94 L. J. Ch. 73 ; 132 L. T. 540.

5523a. —— **Proceedings on which affidavit made no longer pending.**]—CATHOLIC PUBLISHING & BOOKSELLING CO., LTD. *v.* WYMAN (1863), 1 New Rep. 468 ; 7 L. T. 849 ; 11 W. R. 399.

5547a. —— ——.]—WARNER *v.* MOSSES, No. 6254, *post*.

5568. After this case add " *See, also*, PRACTICE, p. 306, Nos. 338, 339."

5570. *Add. Annotation :*—**Folld.** Palin *v.* Ponting, [1930] P. 185.

5571. *Add. Annotation :*—**Folld.** Palin *v.* Ponting, [1930] P. 185.

5571a. ——.]—On the trial of a probate action in which a will was propounded in solemn form neither of the attesting witnesses could be called. An affidavit by one of them sworn for the purpose of obtaining probate in common form before the commencement of litigation was admitted as evidence of execution & the state of the will when executed.—PALIN *v.* PONTING, [1930] P. 185 ; 99 L. J. P. 121 ; 143 L. T. 23 ; 46 T. L. R. 310 ; 74 Sol. Jo. 234.

5676a. ——.]—*Ex p.* STEPHENS (1848), 11 L. T. O. S. 152.

5873a. —— ——.]—The *jurat* of an affidavit of the due taking of an acknowledgment had an interlineation in the body of it, & an erasure in the *jurat*. The ct. refused to allow it to be filed, & refused to enlarge the time for returning the commission, in order to get the defects remedied, the time for the return having expired.—*Re* TIERNEY (1855), 15 C. B. 761 ; 24 L. T. O. S. 260 ; 139 E. R. 625.

5880a. —— ——.]—*Re* TIERNEY, No. 5873a, *ante*.

5951a. —— **In material part of affidavit—Proof of time of erasure.**]—The ct. allowed a cer-

the doubt because an expert also doubts."—BENNETT *v.* PEATTIE (1925), 57 O. L. R. 233.—**CAN.**

sg. *Weight of evidence.*]—WILLIAM HAMILTON MANUFACTURING CO. *v.* VICTORIA LUMBERING & MANUFACTURING CO. (1896), 26 S. C. R. 96.—**CAN.**

sh. ——.]—GUELPH WORSTED SPINNING CO. *v.* GUELPH CORPN., GUELPH CARPET MILLS CO. *v.* GUELPH CORPN. (1914), 30 O. L. R. 466 ; 18 D. L. R. 73 ; 5 O. W. N. 761.—**CAN.**

sj. ——.]—The law makes no distinction between the evidence given by experts & that given by ordinary witnesses : the testimony of experts must be appreciated & weighed by the cts. in the same manner as that of any other witness. A judgment would therefore be wrong, if based upon the sole fact that the successful part had a greater number of experts testifying on his behalf.—SHAWINIGAN ENGINEERING CO. *v.* NAUD, [1929] 4 D. L. R. 57 ; S. C. R. 341.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 1.

5406 i. *What witnesses may be heard —Nurse.*]—A nurse's evidence, as to the physical condition of a child, & her opinion as to its sufferings :—*Held :* admissible as an expert up to a certain point.—HEPENSTAL *v.* MERRITT (1895), 33 N. B. R. 91.—**CAN.**

a i. —— *Distance at which gun held.*] —R. *v.* PREEPER (1890), 22 N. S. R. 174.—**CAN.**

PART VII. SECT. 1.

sk. *As proof of settlement of action.*]—The question whether or not an action has been settled should not be disposed of on affidavits, where the evidence is conflicting.—PULKRABEK *v.* PULKRABEK (Alta.), [1927] 4 D. L. R. 635 ; [1927] 3 W. W. R. 239.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 1.

r i. —— *County Courts Act, R. S. M.*, 1913 (*c.* 44), *s.* 138—*Effect of.*]—R. *v.* GUYOT, [1927] 1 D. L. R. 191 ; 36 Man. L. R. 178 ; [1926] 3 W. W. R. 584.—**CAN.**

PART VII. SECT. 6.

sl. *Affidavit on application for security for costs—Right to require production of documents—Relating to defence.*]—On a cross-examination on an affidavit in support of an application for security for costs, the deponent can be required, without an order by a judge to do so, to produce documents relating to the defence alleged in the affidavit, even though such cross-examination is held before the statement of defence is filed.—COLLEGE BRAND CLOTHES CO., LTD. *v.* BROWN & FITZPATRICK, [1928] 2 D. L. R. 502 ; [1928] 1 W. W. R. 778 ; 23 Alta. L. R. 363.—**CAN.**

sm. *Discretion of judge to order.*]—EISTON *v.* PURDY (1930), 2 M. P. R. 14. —**CAN.**

PART VII. SECT. 11, SUB-SECT. 2.—A.

sp. *Affidavit filed on rule nisi — Intituled differently from rule — Right to amend.*]—Where the heading of an affidavit, on which a rule *nisi* was obtained, differed from the heading of the rule *nisi*, the ct. gave leave for the affidavit to be amended so as to agree with the rule *nisi*.—*Ex p.* HIGGS, *Re* SMITH'S NEWSPAPERS, LTD. (1927), 28 S. R. N. S. W. 85.—**AUS.**

PART VII. SECT. 11, SUB-SECT. 7.—B.

5904 i. *What is an interlocutory proceeding—Not an application for prohibition.*]—An application for prohibition is not an interlocutory motion ; hence, under K. B. Rule 392, statements made on information & belief in the affidavits filed thereon are not admissible.—BEAUCHENE & PELTIER *v.* GUNSON, [1928] 3 D. L. R. 692 ; [1928] 2 W. W. R. 497 ; *sub nom. Ex p.* BEAUCHENE, 50 Can. Crim. Cas. 57.—**CAN.**

f i. —— —— *Where source a corporation.*]—An affidavit which states that deponent has been informed by a certain incorporated co. is objectionable, because a corpn. being a purely legal entity is incapable of itself apprehending facts or giving information, & it can do so only by one or more of its officers, & such officer or officers should be mentioned.—*Re* MINTZ, MALOUF *v.* MINTZ, [1930] 2 D. L. R. 777 ; 1 W. W. R. 198 ; 24 S. L. R. 290 ; 11 C. B. R. 227.—**CAN.**

PART VII. SECT. 12, SUB-SECT. 1.—B.

6022 iii. —— ——.]—Affidavits sworn before an attorney, who is a partner of counsel engaged in the cause, but not otherwise connected therewith, may be read.—WILDE *v.* CROW (1861), 10 C. P. 406.—**CAN.**

PART VII. SECT. 12, SUB-SECT. 2.—A.

p i. —— *Proof of appointment of notary.*]—The proper method of proving the appointment of a notary public is that provided for by Saskatchewan Evidence Act, s. 7, but where no objection is raised at the trial to the method of proof used thereon leave

tificate of acknowledgment & affidavit of verification, taken in New South Wales, to be received & filed, notwithstanding an erasure in a material part of the affidavit, there being satisfactory evidence, by affidavit, that the erasure was made before the acknowledgment & affidavit were taken & sworn.—*Re* BINGLE (1854), 15 C. B. 449; 2 C. L. R. 1793; 23 L. T. O. S. 177; 139 E. R. 500.

6052a. -.]—ANON. (1839), No. 6108a, *post*.

6053a. No commissioner available.]—*Re* GROOM, No. 6066a, *post*.

6056. *Add. Annotation :*—**Folld.** *Re* Eastern United Assce. Corpn. (1928), 72 Sol. Jo. 353.

6056a. —— ——.]—*Re* EASTERN UNITED ASSURANCE CORPN. (1928), 72 Sol. Jo. 353.

6066a. Notary public—No commissioner available.]—The ct. allowed a certificate of acknowledgment under Fines & Recoveries Act, 1833 (c. 74), s. 84, to be filed under s. 85 where the affidavit verifying the certificate was sworn before a notary public in the Hebrides, as the affidavit on which the application was made deposed that there was no comr. of the ct. in the Hebrides or nearer than the mainland.—*Re* GROOM (1869), 17 W. R. 589.

6081a. ——.]—*Re* STREET (1845), 2 C. B. 304; 135 E. R. 987.

6081b. ——.]—*Ex p.* STEPHENS (1848), 11 L. T. O. S. 152.

6083. *Add. Annotation :*—**Folld.** *Re* Eastern United Assce. Corpn. (1928), 72 Sol. Jo. 353.

6083a. *S. P. Re* EASTERN UNITED ASSURANCE CORPN. (1928), 72 Sol. Jo. 353.

6092a. —— ——.]—*Re* CRAWFORD (1847), 4 C. B. 626; 136 E. R. 653.

6096a. Italy—British minister.]—The ct. refused to direct the proper officer under Fines & Recoveries Act, 1833 (c. 74), to receive & file an acknowledgment, where the affidavit of verification was sworn before the British minister at Florence, it not appearing that there was any difficulty in getting it sworn before some properly constituted authority at that place.—*Re* DUNSANY (1849), 7 C. B. 119; 137 E. R. 49.

6108a. —— —— ——.]—The ct. refused to file the certificate of the acknowledgment of a deed by a married woman resident in America, verified by an affidavit made before a notary public, without an affidavit that notaries public are the proper officers for taking affidavits in America, & also as to the identity of the comrs.—ANON. (1839), 3 Jur. 125.

Part VIII.—Evidence out of Court.

6201. *Add. Annotation :*—**Consd.** Woodrow *v.* Trawlers (White Sea) & Grimsby (1929), 141 L. T. 676.

6269a. —— **To issue pleaded.**]—Pltfs. in an action for passing off, in which they complained of the get-up of defts.' goods as calculated to deceive, asked for a commission to take certain evidence in Australia showing actual deception. It was alleged that defts.' goods were sold in Great Britain, & also were exported to Australia for sale by retail. There was no allegation of actual deception in the statement of claim. Two affidavits were filed by pltfs. in support of the application :—*Held :* upon the pleadings it would not be open to pltfs. to give evidence of actual deception, &, on the present state of the pleadings, & on the materials before the ct., pltfs. had not given any sufficient reason for issuing a commission.—WHITE, TOMKINS & COURAGE, LTD. *v.* UNITED CONFECTIONERY CO., LTD. (1914), 31 R. P. C. 286.

6362a. ——.]—MACAULAY *v.* GLASS (1902), 47 Sol. Jo. 71.

to file the necessary proof was given.—ADVANCE-RUMELY THRESHER CO. *v.* (Sask.), [1929] 4 D. L. R. 65; 2 W. W. R. 544.—**CAN.**

PART VII. SECT. 12, SUB-SECT. 2.—B. (c).

6075 i. *Justice of the peace—New South Wales.*]—An affidavit taken before a justice of the peace in New South Wales, but without any certificate annexed that the person before whom it was sworn was duly authorised to administer oaths in New South Wales, may be used in evidence in the cts. of the Irish Free State.—APPLEBE *v.* APPLEBE, [1931] I. R. 286.—**IR.**

6080 i. *Commissioner—New Guinea.*]—Upon the hearing of a suit for dissolution of marriage the ct. accepted an affidavit purporting to have been sworn in the mandated territory of New Guinea before a comr. of the central ct. of the territory for taking affidavits & bearing a certificate under the seal of that ct. that there was no comr. of the supreme ct. of Victoria or notary public resident in the territory.—CUNNINGHAM *v.* CUNNINGHAM, [1929] V. L. R. 232; [1929] Argus L. R. 211.—**AUS.**

PART VIII. SECT. 1, SUB-SECT. 1.

6170 vi. ——.]—NATIONAL TRUST CO. *v.* PORTERFIELD, [1931] 2 W. W. R. 456.—**CAN.**

6176 x. ——.]—KOURI *v.* NEMEROVSKY, [1927] 4 D. L. R. 928; [1927] 3 W. W. R. 357; 37 Man. L. R. 9.—**CAN.**

xn. *Application on motion to add defendant—No grounds shown for addition.*]—RENE *v.* CARLING EXPORT BREW. & MALT CO., [1928] 1 D. L. R. 634; 61 O. L. R. 495.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 5—E.

6296 iii. ——.]—Where there is nothing to show that deft. administrator is not lawfully & properly, according to his ordinary course of life, entitled to be away from Saskatchewan, he may obtain an order for his own examination *de bene esse* in the foreign jurisdiction wherein he resides.—JACQUES *v.* JACQUES, [1928] 1 W. W. R. 447.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 5.—F.

m i. ——.]—WILLIAMS & WILLIAMS *v.* FRASER (1925), 35 B. C. R. 481.—**CAN.**

a i. ——.]—*Re* WEINGARDEN, [1925] 2 D. L. R. 1036; 5 C. B. R. 606.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 5.—G.

e i. ——.]—BURROUGHS *v.* INTERCOLONIAL GOLD MIN. CORPN. (N. S.), [1927] 3 D. L. R. 371.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 5.—H.

6338 iv. —— —— *Party.*]—PHANINDA KRISHNA DOTT *v.* PRAMATHA NATH MALIA (1927), I. L. R. 55 Calc. 748.—**IND.**

l i. —— *Illness of plaintiff.*]—Under Supreme Ct. Ord. 37, r. 5 (B. C.), pltf. may, on the grounds of serious illness, obtain leave to issue a writ of commission to have his evidence taken for use on the trial before the time for appearance has elapsed.—KELLY *v.* KELLY, [1925] 1 W. W. R. 332.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 5.—I.

6361 vi. ——.]—SHORT *v.* GUELPH & ONTARIO INVESTMENT & SAVINGS SOCIETY, [1930] 2 W. W. R. 21; 2 D. L. R. 986; 24 S. L. R. 422.—**CAN.**

6362 iii. —— ——.]—Where the inconvenience & expense of compelling a pltf. & his witnesses to appear at the trial would have been equivalent to a denial of justice to him, & deft. would not suffer an injustice through not seeing the witnesses face to face, a foreign commission for the examination of pltf. & his witnesses was granted, on terms as to costs.—CHASE *v.* NORTHERN TRUSTS CO. (No. 2), [1932] 2 W. W. R. 476; 4 D. L. R. 143.—**CAN.**

6561a. ——.]—*Re* TIERNEY, No. 5873a, *ante*

6633a. —— —— **Witness out of the jurisdiction.**]—Appointment of an examiner to take orally the evidence of a witness residing out of the jurisdiction of the ct.—CROFTS *v.* MIDDLETON (1852), 9 Hare (App. 1) XVIII.; 22 L. J. Ch. 706; 20 L. T. O. S. 189; 1 W. R. 74; 68 E. R. 765.

6743a. **Application after judgment entered.**]—COBBOLD *v.* GARRETT, [1929] W. N. 16.

Part IX.—Action for Perpetuation of Testimony.

6831a. Depositions in action to perpetuate testimony.]—ANSON *v.* TOOTH & A.-G., [1917] W. N. 234; 143 L. T. Jo. 177.

Part XI.—Colonial and Foreign Law.

6861. To cross-reference following this case add "now replaced, as to High Ct., by S. C. J. (Consolidation) Act, 1925 (c. 49), s. 102."

6864. *Add. Annotation:*—**Apld.** R. *v.* Moscovitch (1927), 44 T. L. R. 4.

6865. *Add. Annotations:*—**Apld.** R. *v.* Moscovitch (1927), 44 T. L. R. 4. **Expld. & Distd.** Spivack *v.* Spivack (1930), 99 L. J. P. 52.

6866. *Add. Annotation:*—**Refd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930.

6867. *Add. Annotation:*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

6869. *Add. Annotation:*—**Refd.** Inverclyde *v.* Inverclyde, [1931] P. 29.

6872. *Add. Annotations:* — **Refd.** *Re* Annesley, Davidson *v.* Annesley, [1926] Ch. 692; Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930.

6874. *Add. Annotation:*—**Consd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930.

PART VIII. SECT. 1, SUB-SECT. 6.—B. (a).

r i. ——.]—The *onus* of establishing that an examination on commission of a party outside the jurisdiction is "necessary for the purposes of justice" is on the party applying for the order.—STAPLES *v.* MILOFF (Man.) [1927] 2 D. L. R. 847; [1927] 1 W. W. R. 435.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 6.—B. (c).

6408 i. *Of necessity of examination—Belief of deponent.*]—Evidence based on information & belief, if the grounds thereof are sufficiently stated, is admissible on an application for a commission to examine witnesses out of the jurisdiction of the ct.—SYDNEY FERRIES, LTD. *v.* S.S. TAHITI (1928), 28 S. R. N. S. W. 307; 45 N. S. W. W. N. 74.—**AUS.**

PART VIII. SECT. 2, SUB-SECT. 1.—C.

6523 i. *What must be included—Names of witnesses.*]—There is no rigid rule that such names must be given in the order for the commission.—WATKINS (J. R.) CO. *v.* CAFFERKY, [1925] 3 D. L. R. 805; [1925] 2 W. W. R. 588.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 1.—D.

6540 i. *What must be inserted—Names of witnesses.*]—There is no rigid rule that such names must be given in the commission.—WATKINS (J. R.) CO. *v.* CAFFERKY, [1925] 3 D. L. R. 805; [1925] 2 W. W. R. 588.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.

a i. —— ——.]—A clerk of the peace should not open a package of documents taken on commission without a judge's order.—SPEYER r. R., 55 Can. C. C. 399.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 2.—A.

6681 vi. ——.]—*Held:* whereas in the present case evidence had been taken on commission & no objection had been raised, & the matter to be proved was purely formal, the ct. was entitled to accept the evidence as *prima facie* sufficient.—SOPWITH AVIATION & ENGINEERING CO., LTD. *v.* MAGNUS MOTORS, LTD., [1928] N. Z. L. R. 433.—**N.Z.**

so. *May be put in by other side.*]—GAINERS *v.* CANADIAN NORTHERN RY. CO., [1925] 3 D. L. R. 369.—**CAN.**

PART VIII. SECT. 4.

m i. *For use of foreign court.*]—Under Foreign Tribunals Evidence Act, 1856, the ct. is empowered to order the examination of witnesses within its jurisdiction, whose examination is applied for by a ct. of competent jurisdiction in a foreign country.—LORD ADVOCATE, THE PETITIONER, [1925] S. C. 568.—**SCOT.**

PART VIII. SECT. 5.

6739 i. *Whether allowed to successful party—When order obtained by consent.*]—A commission to examine a witness was granted of consent of parties in a case in which proof had been allowed by the sheriff-substitute. The allowance of proof was subsequently recalled by the sheriff, whose decision was affirmed on appeal. While the appeal against the sheriff's interlocutor was pending, the commission was executed:—*Held:* in this particular case, the expenses of obtaining & executing the commission fell to be allowed, in respect that it had been granted of consent.—GILCHRIST *v.* NATIONAL CASH REGISTER CO., [1929] S. C. 272.—**SCOT.**

PART IX. SECT. 2.

sp. *To prove testamentary capacity—Will made before testator found insane.*]—A suit will lie at the instance of an insane testator in his lifetime, to perpetuate testimony as to his testamentary capacity at the time of his will, made before he was found insane.—RANKEN *v.* PEARCE (1927), 27 S. R. N. S. W. 410; 44 N. S. W. W. N. 123.—**AUS.**

PART XI. SECT. 1.

sq. *Jurisdiction to order.*]—*Held:* even if it was within the power of the ct. to examine foreign written law so as to ascertain what that law was, it was always competent, if the ct. considered it necessary, to order a proof of foreign law, whether written or unwritten.—HIGGINS *v.* EWING'S TRUSTEES, [1925] S. C. 440.—**SCOT.**

sr. *Decree passed by foreign Government before recognition.*]—Observations upon the powers & duties of the ct. to examine & construe for itself foreign written law: (1) where the expert evidence adduced to prove the law was conflicting, & (2) where the law under consideration was a decree abolishing inheritance, which had been passed by the Soviet Govt. of Russia before its recognition by the British Govt.—KOLBIN & SONS *v.* KINNEAR & CO., [1930] S. C. 721; *affd.*, [1931] S. C. 128.—**SCOT.**

PART XI. SECT. 2.

n i. —— ——.]—The Supreme Ct. of Canada is bound to take judicial notice of the laws of all the provinces of the Dominion.—CANADIAN PACIFIC RY. CO. *v.* PARENT (1917), 86 L. J. P. C. 123.—**CAN.**

q i. ——.]—The cts. of one country do not take judicial notice of the laws of another country; they must be proved like any other fact.—WALKERVILLE BREW. CO. *v.* MAYRAND, [1929] 2 D. L. R. 945; 63 O. L. R. 573; *revsg.*, [1928] 4 D. L. R. 500; 63 O. L. R. 5.—**CAN.**

PART XI. SECT. 3.

6869 vi. —— ——.]—The canon law of the Roman Catholic Church is foreign law, which must be proved as a fact & by the testimony of expert witnesses according to the well-settled rules as to proof of foreign law. The foreign law applicable to a case must be taken from the statement of the expert witness as to what the law is, & not from text-books or codes referred to by him.—O'CALLAGHAN *v.* O'SULLIVAN, [1925] 1 I. R. 90.—**IR.**

6876a. -.]—Plt*f.* divorced her husband in France & made a verbal agreement with him pending the divorce proceedings that she would not ask for alimony if he would promise to assist her when he should be in a position to do so, unless in the meantime she had married a wealthy man or had ceased to live a chaste life:—*Held:* (1) the validity in French law of such an agreement could not be presumed by the judge when the expert witnesses as to French law had given no evidence on the point; (2) the French witnesses having returned to France after having given their testimony, it would not be just to allow the pleadings to be amended so as to allow further proof of the French law.—DENNISTOUN *v.* DENNISTOUN (1925), 69 Sol. Jo. 476.

6894a. —— —— ——.]—In the absence of evidence to the contrary one must assume that the foreign law is the same as the English (SLESSER, L.J.).—THE TORNI, [1932] P. 78, 90; 101 L. J. P. 44; 147 L. T. 208; 48 T. L. R. 471, C. A.

6896. *Add. Annotation:*—**Refd.** *B*uerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930.

6900. *Add. Annotation:*—**Apld.** R. *v.* Moscovitch (1927), 44 T. L. R. 4.

6901. *Add. Annotation:*—**Refd.** R. *v.* Moscovitch (1927), 138 L. T. 183.

6906. *Add. Annotation:*—**Apld.** Perry *v.* Equitable Life Assce. Society of U.S.A. (1929), 45 T. L. R. 468.

6907. *Add. Annotation:*—**Refd.** *Re* Visser, Holland *v.* Drukker, [1928] Ch. 877.

6916. *Add. Annotation:*—**Consd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930.

6917. *Add. Annotation:*—**Apld.** Perry *v.* Equitable Life Assce. Society of U.S.A. (1929), 45 T. L. R. 468.

6917a. —— —— **As to law of Russia.**]—PERRY *v.* EQUITABLE LIFE ASSCE. SOCIETY OF UNITED STATES OF AMERICA (1929), 45 T. L. R. 468.

6918. *Add. Annotations:*—*As to* (1) **Refd.** R. *v.* Moscovitch (1927), 138 L. T. 183. *As to* (2) **Consd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930.

6923. *Add. Annotation:*—**Refd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930.

6928. *Add. Annotation:*—**Refd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930.

PART XI. SECT. 4, SUB-SECT. 2.

6890 xv. —— ——.]—The general foreign law is presumed to be the ie as our own; & the *onus* of ving that it is different is on those) contend that it is.—KEY *v.* KEY, 30] 3 D. L. R. 327; 65 O. L. R. 232.—**CAN.**

PART XI. SECT. 5, SUB-SECT. 2.

s i. —— ——.]—The opinion of a lawyer alone does not prove the law—he must be in a position to testify that such is in fact the law.—WESTGATE *v.* HARRIS, [1929] 4 D. L. R. 643; 64 O. L. R. 358.—**CAN.**

b i. —— *Holder of position requiring knowledge of law.*]—In order to prove the law of a foreign country it is not necessary that the witness should be a lawyer actually practising his profession in that country; but, inasmuch as foreign law is a question of fact which must be proved as any other fact by a competent & qualified witness, any person whose occupation makes it necessary for him to have knowledge of the law of such foreign country may be a competent & qualified witness, the competency & qualification of such witness being a matter for the appreciation of the ct.—GOLD *v.* REINBLATT, [1929] 1 D. L. R. 959; S. C. R. 74; *affg.*, 45 Que. K. B. 136; *revsg.*, Que. S. C. 17.—**CAN.**

PART XI. SECT. 8, SUB-SECT. 1.

6939 xi. ——.]—TILTON *v.* MCKAY (1874), 24 C. P. 94.—**CAN.**

PART XI. SECT. 10.

s v. *Who may refer—Lord Ordinary.*] —*Held:* while it was to a "superior" ct. of another part of the Dominions that a remit in terms of British Law Ascertainment Act, 1859, s. 1, fell to be made, nevertheless the interlocutor making the remit, in view of the expression "any ct." in sect. 1, might competently be pronounced by a Lord Ordinary without the intervention of the Inner House.—MACOMISH'S EXORS. *v.* JONES, [1932] S. C. 108. **SCOT.**

EXECUTORS AND ADMINISTRATORS.

Part I.—The Office of Executor or Administrator.

16. *Add. Annotation :*—**Refd.** Palin *v.* Ponting, [1930] P. 185.

17a. ——.]—*In the Goods of* EVANS (1923), 128 L. T. 669.

17b. **Appointment written in margin.**]—An appointment of exors., written vertically in the margin of a will, excluded from the probate, there being no signature at the bottom of the clause in the margin.—*In the Goods of* TOOKEY (1847), 5 Notes of Cases, 386.

54a. *S. P. In the Goods of* COLES (1871), L. R. 2 P. & D. 362 ; 41 L. J. P. & M. 21 ; 25 L. T. 852 ; 36 J. P. 120 ; 20 W. R. 214.

Annotation :—**Refd.** Foundling Hospital *v.* Crane (1911), 105 L. T. 187.

63a. —— —— ——.]—*In the Goods of* WAY, [1901] P. 345 ; 71 L. J. P. 13 ; 85 L. T. 643 ; 17 T. L. R. 758.

133. *Add. Annotation :*—**Folld.** *Re* Hack (A.) (1930), 169 L. T. Jo. 284.

133a. —— **Effect of death of husband in wife's lifetime.**]—*Re* HACK (A.) (1930), 169 L. T. Jo. 284.

134a. **Grant to trustees of settlement as special executors—Incapacity of one—Fresh grant to continuing special executor—Jointly with ordinary executor.**]—Probate of the will of deceased was granted to A. B. his exor. save & except settled land vested in deceased settled previously to his death & not by his will. Deceased appointed no special exor. At his death the trustees of the settlement of the land were C. D. & E. F., & a grant of probate was made to them as special exors. limited to the settled land. Before the administration of the estate was complete, C. D. became incapable of acting in the trusts & A. B. was appointed in his place for the purposes of the Settled Land Act, 1925. On motion to revoke the grant of probate to the special exors. & for a fresh grant limited to the settled land to E. F. along with A. B. :—*Ordered* that the grant of probate limited to the settled land be revoked & fresh probate granted to E. F., power being reserved to C. D. to apply for probate on his recovering capacity, & it was further *ordered* under Administration of Estates Act, 1925 (c. 23), s. 23 (2), that A. B. be appointed as a special personal representative in respect of the settled land jointly with E. F. & that the grant to E. F. after it had passed the seal be noted accordingly, the security, if any, to be given by A. B. to be settled by the registrar.—*In the Estate of* CLIFTON, [1931] P. 222 ; 100 L. J. P. 121 ; 146 L. T. 14 ; 47 T. L. R. 618.

134b. —— —— —— **Reservation of power to apply on recovery of capacity.**]—*In the Estate of* CLIFTON, No. 134a, *ante*.

134c. —— —— —— **Application to Chancery Division for leave to apply to Probate Division.**]—*Re* CLIFTON, DUCKWORTH *v.* FAIR, [1931] W. N. 202.

150. *Add. Annotation :*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

151. *Add. Annotation :*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

152. *Add. Annotations :*—**Apld.** *Re* Comberbach, Saunderson *v.* Jackson (1929), 73 Sol. Jo. 403. **Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

153. *Add. Annotation :*—*Generally*, **Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

154a. —— **Appointment of one of several makers of promissory note.**]—During the lifetime of testator the exor. named in his will & three other persons made a joint & several promissory note payable to him. After the death of testator & probate of the will the exor. brought an action on the promissory note against one of the other makers thereof : —*Held :* the action was not maintainable, inasmuch as the effect of plff.'s appointment as exor. was (1) at common law that the debt was discharged by release at the date of the death of testator, & (2) in equity that it was discharged by payment at the date of probate, so that in either case the debt had ceased to exist before the action was brought.—JENKINS *v.* JENKINS, [1928] 2 K. B. 501 ; 97 L. J. K. B. 400 ; 139 L. T. 119 ; 44 T. L. R. 483 ; 72 Sol. Jo. 319, D. C.

165a. —— **Appointment of wife of debtor.**]—*Re* PRICE, PRICE *v.* PRICE (1879), 11 Ch. D. 163 ;

PART I. SECT. 1.

1x. *Nature of office.*]—The office of exor. is an administrative appointment, not a benefit, & a widow who has been appointed extrix. under her husband's will is not bound to elect between accepting the office & claiming her legal rights.—SMART *v.* SMART, [1926] S. C. 392.—**SCOT.**

PART I. SECT. 2, SUB-SECT. 1.

3y. *Public Trustee.*]—Testator, domiciled in the Irish Free State, appointed the Public Trustee to be his exor. & trustee :—*Held :* neither the Irish Public Trustee nor the English Public Trustee could accept the appointment. —*In the Goods of* LEESON, [1928] I. R. 168.—**IR.**

PART I. SECT. 3, SUB-SECT. 1.—C.

3z. *Right of testator to delegate.*]—The power of appointing exors. may lawfully be delegated, & the time during which they are to act may be limited either as to beginning or end.—*Re* CLEGHORN, [1931] 2 D. L. R. 865 ; O. R. 31.—**CAN.**

PART I. SECT. 3, SUB-SECT. 2.—A. (a).

42 v. —— ——.]—Testator bequeathed two farms of land to F. & T. in trust for his wife & family ; he directed that the farms should be sold & that the proceeds should be divided by his exors. The will contained no appointment of exors. :—*Held :* that F. & T. were entitled to probate as exors. according to the tenor.—*In the Goods of* DRUMM, [1931] N. I.—**IR.**

47 l. *S. P. Re* MAURAT ESTATE (Sask.), [1927] 3 W. W. R. 18.—**CAN.**

PART I. SECT. 3, SUB-SECT. 2.—A. (b).

4s. *Universal legatee—Trust to divide between legatee & others.*]—A will reading, "I bequeath all my estate to Mrs. S. to be divided equally among Mrs. S. & her brothers & sister" :—*Held :* not to constitute Mrs. S. an extrix. according to the tenor of the will.—*Re* MCMILLAN, [1925] 3 W. W. R. 584.—**CAN.**

PART I. SECT. 4, SUB-SECT. 1.—A.

4d. *Appointment of executors for New Zealand property & executors for English property—Probate granted to New Zealand executors.*]—Where testator dies domiciled in England, leaving property in New Zealand & in England, & having by his will appointed separate exors. to deal with his New Zealand & his English property, a ct. in New Zealand may grant probate to the New Zealand exors. in respect of the property within the jurisdiction, reserving leave to the English exors. to apply in England for probate in respect of the remainder of the property. For the purpose of facilitating the latter appln. the New Zealand ct. may permit the removal from its file of the original will upon condition that an exact copy of such will, certified by the Registrar, be left upon the file of the local ct.—*Re* WRIGHTON, [1929] N. Z. L. R. 96.—**N.Z.**

48 L. J. Ch. 478; 40 L. T. 668; 27 W. R. 698, C. A.

165b. ——.]—JENKINS *v.* JENKINS, No. 154a, *ante*.

181a. —— —— **After intermeddling.**]—An individual & a bank having been appointed exors. & trustees under a will, the individual exor. intermeddled technically with the estate, & both of them subsequently refused to act as exor. or prove the will. By a codicil testator directed that in the event of a "vacancy" occurring "in the office of the individual exor. & trustee whether from death, resignation, refusal to serve, inability to act, or otherwise," one of two named persons, in the order named, should fill the vacancy. The first named person renounced:—*Held:* the ct. was entitled to appoint one of the substituted exors. & probate was granted to the second named person on his application.—*In the Goods of* FREEMAN (1931), 146 L. T. 143; 48 T. L. R. 1; 75 Sol. Jo. 764.

209a. *S. P.* ANON. (1800), 12 Ves. 4; 33 E. R. 2. *Annotation:*—**Refd.** Browell *v.* Reid (1842), 11 L. J. Ch. 272.

238. *Add. Annotation:*—**Consd.** *In the Estate of* Dinshaw, [1930] P. 180.

258. *Add. Annotation:*—*As to* (1) **Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

296. *Add. Annotation:*—**Refd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

427. *Add. Citations:*—Moore, K. B. 146; *sub nom.* RUSSEL *v.* PRAT, 1 And. 177; *on appeal* (1589), 1 Leon. 193, Ex. Ch.

PART I. SECT. 9.

202 i. *Jurisdiction to release—Surrogate court.*]—A surrogate ct. judge has no power to make an order releasing exors. "from their exorship."—*Re* DENTON ESTATE (Sask.), [1926] 3 W. W. R. 186.—**CAN.**

o i. ——.]—Under the discretionary power given him by Trustee Act, R. S. S., 1920 (c. 75), s. 71, the judge appointed a judicial trustee in place of an extrix.—SMALL *v.* PACKARD, [1925] 1 W. W. R. 897.—**CAN.**

l (p. 46) **i.** —— *Executor—Desiring to be released—Co-executor necessary party.*]—When some of several co-exors. apply to be released from the trust, the ct. will require the other co-exors. to be brought before the ct. before they will refer it to a master to report on suitableness of persons to be substituted.—*Re* TOBIN'S ESTATE (1858), 3 N. S. R. (2 Thom.) 338.—**CAN.**

l (p. 46) **ii.** —— —— *Conduct of co-executor prejudicial to trust property.*]—On the appln. of an exor. held that an order should go for the removal of his co-exor. on the ground that the latter's conduct had been such as to endanger the trust property, although nothing in the nature of fraud or dishonesty was imputed against him.—*Re* SOMERSET ESTATE, [1928] 2 W. W. R. 697.—**CAN.**

ss. *Contested motion—Costs of.*]—The costs of a contested motion, for the removal of an administrator & the appointment of another in his place, should not be taxed as between solr. & client.—*Re* GAMMON ESTATE, PAYNE *v.* GAMMON, [1927] 2 D. L. R. 605; [1927] 1 W. W. R. 506; 38 B. C. R. 153.—**CAN.**

sf. *Order for made upon originating notice—Direction to pass accounts—& replace trust fund.*]—An order under Trustee Act, R. S. O. 1927, c. 150, s. 36, for the removal of an exor., may now be made summarily upon originating notice. An order removing an exor. & trustee directed him to pass his accounts. It was not denied that he was liable for the loss or jeopardy of a considerable sum of money. He made a claim for the statutory compensation for his services which was not admitted; & he was required, pending the taking of the accounts, to replace the trust fund for which he was not able to show any security in hand.—*Re* PATTERSON, [1928] 3 D. L. R. 197; 62 O. L. R. 955.—**CAN.**

PART I. SECT. 10, SUB-SECT. 1.—C.

274 ia. *S. P.* PUBLIC TRUSTEE *v.* [illegible]

PART I. SECT. 12, SUB-SECT. 1.

sg. *What amounts to renunciation—Right reserved to infant to come in & prove.*]—Probate was granted to adult exors., reserving to infant exor. a right to be admitted to executorship upon attaining majority:—*Held:* as the infant exor. had not declined to prove the will, & his right to prove was reserved to him by the letters probate, his minority did not prevent his taking.—*Re* GRACEY (1928), 63 O. L. R. 218.—**CAN.**

PART I. SECT. 12, SUB-SECT. 5.—A.

d i. ——.]—The ct. in a proper case will allow an exor. who has renounced probate to retract his renunciation.—*Re* FOSTER, [1930] N. Z. L. R. 60.—**N.Z.**

PART I. SECT. 13, SUB-SECT. 2.

n i. —— —— ——.]—The exor. named in a will represents the estate of deceased for all purposes, even before probate of the will is taken out. The taking out of probate establishes the will from the date of the death of testator, & thereby all intermediate acts of the exor. in connection with the estate are validated.—MEGHRAJ *v.* KRISHNA CHANDRA BHATTACHARJI (1923), I. L. R. 46 All. 286.—**IND.**

PART I. SECT. 13, SUB-SECT. 8.—B.

471 i. *General rule.*]—Although an exor., who elects to act, may be sued before probate, the ct. has no jurisdiction over a person as exor., who has obtained a grant of probate in a foreign country, unless there were assets of testator within the jurisdiction at the time of his death, in respect of which the ct. may reasonably assume that the exor. will clothe himself in due course with the necessary representative character by an application for probate or the resealing of the foreign probate.—NAGEL *v.* HOUGH (1927), 27 S. R. N. S. W. 418; 44 N. S. W. W. N. 121.—**AUS.**

PART I. SECT. 14, SUB-SECT. 3.—A.

b i. —— .]—Letters of administration relate back to the death of the intestate so as to enable the administrator to bring action in respect of matters done between the death & his appointment.—DOE d. MCKINLAY *v.* ELLIOTT (1851), 3 Nfld. L. R. 180.—**NFLD.**

PART I. SECT. 14, SUB-SECT. 3.—B. (b).

sh. *Liability on agreement—Entered into before grant.*]—LARRY *v.* BAKER (1902), 7 Terr. L. R. 145.—**CAN.**

sk. *Action on life assurance policy.*]—Pltf., the only child of J., who on Sept. 30, 1926, as the result of an accident, died, intestate & a widower, commenced this action on Nov. 26, 1926, upon an accident insurance policy issued by defts. upon the life of J. Pltf. was not named as beneficiary in the policy. On May 9, 1927, while the action was pending, pltf. obtained from a Surrogate Ct. letters of administration to the estate of J., &, when the action came on for trial, in 1928, applied for leave to amend the proceedings by describing himself as the administrator of the estate of J.:—*Held:* the amendment should be allowed & pltf. awarded judgment for the amount of the policy. The letters of administration related back so as to validate the action already commenced by pltf.—JOHNSON *v.* GENERAL ACC. ASS'CE CO., [1929] 1 D. L. R. 597; 63 O. L. R. 296.—**CAN.**

PART I. SECT. 15, SUB-SECT. 2.

g i. ——.]—*Held:* the sale of the reversion in a term of years, under a *fi. fa.* on a judgment against an exor. *de son tort*, was a valid sale as against the rightful administrator.—BAIN *v.* MCINTYRE (1867), 17 C. P. 500.—**CAN.**

613 i. *Rights of buyer from executor de son tort.*]—TRUSTS & GUARANTEE CO. *v.* NELSON, [1930] 3 W. W. R. 211; 4 D. L. R. 1032; *revsg.*, [1930] 3 D. L. R. 985.—**CAN.**

sl. *On whom binding—Third party—Estoppel.*]—Where a buyer of goods under a conditional sale agreement induces a buyer of the same goods from him under a similar agreement to deliver up the goods to the exor. *de son tort* of the original seller in settlement of his, the first buyer's claim, he will not be allowed, in an action against such second buyer, to deny the authority of the exor. *de son tort* to take over the goods.—LARSON *v.* COATES (Sask.), [1926] 4 D. L. R. 561; [1926] 3 W. W. R. 397.—**CAN.**

sm. —— *Administrator of estate—Onus on administrator.*]—Deft. had bought three horses & other animals under a conditional sale agreement. The present action was brought by the administrator of the seller for the balance due under the agreement. Deft. pleaded that the exor. *de son tort* of the seller had taken the horses in satisfaction of the indebtedness out of the possession of a man to whom deft. had sold them. The authority of the exor. *de son tort* to take the chattels & so bind the administrator was established by a prior decision in an action by the deft. herein against the buyer from him. There was no evidence herein as to what the exor. *de son tort* did with the chattels:—*Held:* the burden of proving that the exor. *de son tort* had complied with the terms of the agreement & of Conditional Sales Act as to retention of the chattels & notice of their sale was on pltf. herein, the administrator.—NATIONAL TRUST CO., LTD. *v.* LARSON, [1928] 3 W. W. R. 723.—**CAN.**

PART I. SECT. 15, SUB-SECT. 4.—B. (a).

m i. ——.]—In an action by a creditor of a deceased against an exor. *de son tort* it is proper to sue deft. as executor as well as personally, & if pltf. establishes his claim the judgment should be that the amount thereof be paid out of the assets of deceased, if deft. have so much, &, if not, then out of deft.'s personal assets.—BURNS P. & CO. *v.* CZERNIJ, [1928] 4 D. L. R. 854; [1928] 3 W. W. R. 294.—**CAN.**

Part II.—Probate and Letters of Administration.

718a. —— —— ——.]—CHAMBERLAIN *v.* AGAR (1813), 2 Ves. & B. 259; 35 E. R. 317.

Annotation :—**Refd.** Briggs *v.* Penny (1849), 3 De G. & Sm. 525.

734a. —— ——.]—*In the Goods of* SERGEANT (1872), 26 L. T. 669; 36 J. P. 696; *sub nom. In the Goods of* SERJEANT, 20 W. R. 872.

774a. *S. P. In the Goods of* BARBER (1886), 11 P. D. 78; 56 L. T. 894; 35 W. R. 80.

784. *Add. Annotation :*—**Refd.** Lal Chand Marwari *v.* Mahant Ramrup Gir (1925), 42 T. L. R. 159.

858. *Citation :*—For "34 Ch. D. 177" read "24 Ch. D. 177."

884. For "—— —— **Will proved in France.**]" read "—— —— —— **Will proved in France.**]"

885. For "—— —— ——.]" read "—— ——

902. *Add. Annotation :*—**Refd.** Smith *v.* Thompson (1931), 146 L. T. 14.

911a. —— **Who is—Holder of office appointed executor.**]—Where the holder of an office has been appointed exor., the person entitled to probate is the holder of that office, not at the time when the will was executed, but at the date of testator's death.—*In the Estate of* JONES (1927), 43 T. L. R. 324.

912. *Add. Annotation :*—**Consd.** *In the Estate of* Dinshaw, [1930] P. 180.

924a. ——.]—Ct. of Probate Act, 1857 (c. 77), s. 73, confers wide powers on the ct. Under it an exor., not willing or competent to take probate, may be replaced by an administrator to be appointed by the ct., if it shall appear to be necessary or convenient by reason of special circumstances. Misfeasance on the part of an exor. with regard to the estate of his testator is a ground for proceeding under the sect., even after the exor. has intermeddled.

Exors. had intermeddled & neglected to prove the will, & had made an agreement with the universal legatee that the will should not be proved. In passing them over the ct. ordered that a grant of administration should be made to a third person to be agreed upon by the exors. & the legatee, or in default to be appointed by the ct.—*In the Estate of* POTTICARY, [1927] P. 202; 96 L. J. P. 94; 137 L. T. 256.

931. *Add. Citation :*—*sub nom. In the Goods of* HETT, 6 Jur. 350.

931a. —— —— **Failure to prove will.**]—*In the Estate of* POTTICARY, No. 924a, *ante*.

931b. —— ——.]—Where property was left to an exor. in trust for a minor the ct. passed over the exor. without citation, on proof that his interest was adverse, that he had delayed obtaining probate & that he was unfit, although he resided in England & apparently was competent & not unwilling to act.—*In the Goods of* RAY (1926), 96 L. J. P. 37; 136 L. T. 640.

Annotation :—**Refd.** *In the Estate of* Potticary, [1927] P. 202.

938a. ——.]—(1) No rule of the common law as to evidence is contravened by the admission of secondary evidence as to the contents of a lost document, & when the due execution of a no longer existing testamentary paper is established, & its contents are shown to have included a clause revoking previous papers, those papers are no longer testamentary from the moment of such execution.

(2) Declarations of testator made after execution of the will are not admissible as to the fact of execution itself, as tending to contravene the statutory requirements as to execution; but they are admissible to prove the contents of a paper otherwise shown to have been properly executed, & no longer in existence.—BARKWELL *v.* BARKWELL, [1928] P. 91; 44 T. L. R. 207; 72 Sol. Jo. 69; *sub nom. In the Estate of* BARKWELL, BARKWELL *v.* BARKWELL, 97 L. J. P. 53; 138 L. T. 526.

PART II. SECT. 1, SUB-SECT. 1.—A. (a).

697 i. *Construction of documents—Only for purposes of admission to probate.*]—NANDKISHORE LAL *v.* PASUPATI NATH SAHU (1928), I. L. R. 7 Pat. 396.—**IND.**

PART II. SECT. 1, SUB-SECT. 1.—A. (b).

703 i. *For letters of administration—Grant required to assist prosecution of claims abroad.*]—It is not the duty of the ct., by determining the abstract question who is the deceased's proper representative, to assist such representative to prosecute claims to titles & property abroad.—*In the Goods of* CAMPBELL WILSON, [1929] S. R. (Q.) 59.—**AUS.**

PART II. SECT. 5, SUB-SECT. 5.

r i. —— —— *Photostat copy.*]—Proceedings were instituted to prove a will in solemn form. The will had already been admitted to probate in England, & was deposited in the Principal Probate Registry of the High Ct., London. The ct. admitted a photostat copy of the will to probate, it having been sealed & certified. Such a document, if consisting of several pages, should be sealed on every page & certified on the last.—*In the Goods of* TRACEY, LENNON *v.* GRAY, [1931] I. R. 374.—**IR.**

r ii. —— *Will proved in Sweden.*]—When a will has been probated, or recognised as a valid will, in a jurisdiction other than a British country or a State of the United States of America, probate may be granted by a Surrogate Ct. in Saskatchewan upon production of a copy of the will & of the decree of probate or other act of recognition thereof, & without requiring further evidence of its validity. The extract in question herein, from the records of a District Ct. in Sweden, & the sworn translation thereof, quoted in the judgment, held admissible in evidence on an applu. for letters of administration with the will annexed of the estate of a husband who with his wife had executed a joint will in Sweden.—*Re* BERGMAN, [1928] 1 W. W. R. 601.—**CAN.**

r iii. —— —— *Will proved in Scotland.*]—*Re* CLAZY, [1928] 2 D. L. R. 971; [1928] 1 W. W. R. 974.—**CAN.**

PART II. SECT. 5, SUB-SECT. 11.

sn. *Where suspicion arises only as to particular provisions.*]—In all cases in which a will is prepared under circumstances which raise the suspicion of the ct. that it does not express the mind of testator, it is for those who propound the will to remove that suspicion, & it is only when that has been done that the onus is thrown on those who oppose the will to prove fraud or undue influence. Where the provision arises only as to one particular provision which is severable, & that suspicion is not removed the ct. can admit the rest of the document to probate.—SARAT KUMARI DEBI *v.* SAKHI CHAND (1928), I. L. R. 8 Pat. 382.—**IND.**

PART II. SECT. 6, SUB-SECT. 1.—A.

n i. —— ——.]—Probate may be granted to an extrix., even though at the date of testator's death & of the application she was resident out of the jurisdiction of the ct.—*Re* WALLEN, [1926] N. Z. L. R. 729.—**N.Z.**

PART II. SECT. 6, SUB-SECT. 1.—C.

r i. —— *Allegation of undue influence.*]—An allegation that the appointment of a person as exor. under a will is invalid & of no effect because such person caused or procured the will to be written, is insufficient to sustain a claim to set aside the appointment.—SMITH *v.* BIRD (1924), 45 N. L. R. 381.—**S. AF.**

PART II. SECT. 6, SUB-SECT. 3.—B.

949 iii. —— *Attestation clause not read by witnesses.*]—A will was prepared for a testator by his brother, who was sole beneficiary. The will was witnessed in an hotel lounge by two waiters, who gave evidence at the trial to the effect that the execution was informal. The brother & his wife, who were present at the time of the

956a. ——.]—OAKES *v.* UZZELL, No. 968a, *post.*

962. *Add. Annotation :*—**Refd.** Ahamath *v.* Sariffa Umma, [1931] A. C. 799.

968a. —— ——.]—One of the attesting witnesses of the execution of a will must always be called by the party propounding the document. The attesting witness is then the witness of the ct., & the party by whom he is called may cross-examine to disprove a statement made, or evidence given by him, which appears to be hostile to due execution. —OAKES *v.* UZZELL, [1932] P. 19 ; 100 L. J. P. 99 ; 146 L. T. 95 ; 47 T. L. R. 573 ; 75 Sol. Jo. 543.

970. *Add. Annotation :*—**Consd.** *In the Estate of* Musgrove, Davis *v.* Mayhew, [1927] P. 264.

979. *Add. Annotation :*—**Refd.** Ahamath *v.* Sariffa Umma, [1931] A. C. 799.

986. *Add. Annotation :*—**Refd.** Palin *v.* Ponting, [1930] P. 185.

991. *Add. Annotations :*—**Consd.** Neal *v.* Denston (1932), 48 T. L. R. 637. **Refd.** *In the Estate of* Musgrove, Davis *v.* Mayhew, [1927] P. 264.

992. *Add. Annotation :*—**Refd.** *In the Estate of* Musgrove, Davis *v.* Mayhew, [1927] P. 264.

993a. —— ——.]—Where there is a defect in the attestation clause, the evidence of one witness is required. But where an affidavit is necessary to account for alterations, & where two witnesses are required to make an affidavit, & these join in one affidavit, both shall depose to the execution (SIR H. JENNER FUST).—*In the Goods of* BATTEN (1849), 2 Rob. Eccl. 124 ; 7 Notes of Cases, 288 ; 163 E. R. 1264.

1011a. —— ——.]—*In the Goods of* BRINING (1870), 22 L. T. 630 ; 34 J. P. 694.

1016. *Add. Annotation :*—**Refd.** Barkwell *v.* Barkwell, [1928] P. 91.

1017. *Add. Annotations :*—**Consd.** Neal *v.* Denston (1932), 48 T. L. R. 637. **Refd.** *In the Estate of* Musgrove, Davis *v.* Mayhew, [1927] P. 264.

1018. *Add. Annotation :*—*As to* (1) **Refd.** Barkwell *v.* Barkwell, [1928] P. 91.

1019. *Add. Annotations :*—*As to* (1) **Refd.** Barkwell *v.* Barkwell, [1928] P. 91. *Generally,* **Refd.** *In the Estate of* Jessop (1924), 132 L. T. 31.

1022a. —— ——.]—BARKWELL *v.* BARKWELL, No. 938a, *ante.*

1031a. —— **Will gnawed by rats.**]—A will torn in pieces with rats, if a stranger by laying the pieces together could make the devise appear, good ; if gnawed before the death, against the will.—ETHERINGHAM *v.* ETHERINGHAM (1646), Aleyn. 2 ; 82 E. R. 883.

1031b. —— **Belief that will useless.**]—*In the Goods of* LEGG (1848), 6 Notes of Cases, 528.

Annotation :—**Distd.** Wharram *v.* Wharram (1864), 3 Sw. & Tr. 301.

1031c. —— **Accidental destruction.**]—The ct. will not admit the draft of a will, which has been inadvertently destroyed, to probate on motion.—*In the Goods of* BODY (1865), 4 Sw. & Tr. 9 ; 34 L. J. P. M. & A. 55 ; 164 E. R. 1418.

Annotation :—**Apld.** *Re* Salisbury (1896), 12 T. L. R. 428.

1031d. —— **Destruction by third party—After testator's death.**]—A. devises lands to several persons, & after his death, one who was a friend to the heir at law, snatches the will out of the exor.'s hands & tears it in pieces. The pieces being gathered up, & stitched together, a bill was brought to establish the will, & decreed the devisees to hold & enjoy, & the heir to convey to them.—HAINES *v.* HAINES (1702), 2 Vern. 441 ; 23 E. R. 883 ; *sub nom.* HAYNE *v.* HAYNE, Dick. 18.

Annotations :—**Consd.** Davies *v.* Evans (1851), 4 De G. & Sm. 440. **Refd.** Cowgill *v.* Rhodes (1863), 33 Beav. 310.

1031e. —— —— ——.]—A will destroyed after death of testator, who had consented to its destruction before his death. A copy admitted to probate.—*In the Goods of* CARTER (1843), 2 Notes of Cases, 105.

Annotations :—**Distd.** Wharram *v.* Wharram (1864), 3 Sw. & Tr. 301. **Refd.** *In the Goods of* Legg (1848), 6 Notes of Cases, 528.

1031f. —— —— **Without testator's knowledge.**]—A will destroyed in the lifetime of testator, but without his knowledge ; substantiated & admitted to proof.—TREVELYAN *v.* TREVELYAN (1810), 1 Phillim. 149 ; 161 E. R. 944.

Annotations :—**Distd.** Wharram *v.* Wharram (1864), 3 Sw. & Tr. 301. **Refd.** Lister *v.* Smith (1863), 3 Sw. & Tr. 282.

D. Other Cases.

See case, *infra.*

1042. *Add. Annotation :*—*As to* (1) **Consd.** *In the Estate of* Birkby (1929), 73 Sol. Jo. 556.

1044. *Add. Annotations :*—*As to* (1) **Apld.** *In the Estate of* Musgrove, Davis *v.* Mayhew, [1927] P. 264. *As to* (2) **Apld.** *In the Estate of* Musgrove, Davis *v.* Mayhew, [1927] P. 264. *Generally,* **Refd.** Smith *v.* Thompson (1931), 146 L. T. 14.

execution, gave evidence to the effect that the will had been duly executed. The evidence of the attesting witnesses was found to be unreliable :—*Held :* notwithstanding the attestation clause was not read by the attesting witnesses, the presumption in favour of due execution applied. Also, no ground of suspicion being suggested, except that the will was prepared by & executed in the presence of the sole beneficiary, & there being no evidence to show that this beneficiary exerted any influence, the presumption was not displaced.—*Re* SPICER, EXECUTOR TRUSTEE & AGENCY CO. OF SOUTH AUSTRALIA, LTD. *v.* MORRIS, [1929] S. A. S. R. 28.—**AUS.**

PART II. SECT. 6, SUB-SECT. 3.—G.

1002 i. *Testator deaf & dumb.*]—Circumstances in which probate of an alleged will of a deaf & dumb person was refused.—*Re* EWEN (DECEASED), [1927] N. Z. L. R. 881.—**N.Z.**

PART II. SECT. 6, SUB-SECT. 5.—B.

1035 i. *Proof of contents—Need of stringent proof.*]—*Re* PERRY, [1925] 1 D. L. R. 930 ; 56 O. L. R. 278.—**CAN.**

PART II. SECT. 6, SUB-SECT. 5.—D.

sn. *Will in custody of English Probate Court—Sealed & certified photographic copy.*]—Proceedings were instituted to prove a will in solemn form. The will had already been admitted to probate in England & was deposited in the Principal Probate Registry of the High Court, London. The English Probate ct., having been requested to allow the will to be produced at the trial of the action in the Irish Free State, refused, on the ground of absence of jurisdiction : — *Held :* secondary evidence of the will could be given, & a sealed & certified photographic copy was admitted.—LYONS & BLENNERHASSETT *v.* CHALMERS, [1919] I. R. 674.—**IR.**

PART II. SECT. 6, SUB-SECT. 8.—A.

so. *Nature of proof required.*]—The proof necessary to establish a will is not an absolute or conclusive one, but such proof as would satisfy a prudent man.—SURENDRA NATH CHATTERJI *v.* JAHNAVI CHARAN MUKHERJI (1928), I. L. R. 56 Calc. 390.—**IND.**

PART II. SECT. 6, SUB-SECT. 8.—B

1053 i. —— *Wherever ground for suspicion.*]—HOWIE *v.* CHATTERTON, [1926] N. Z. L. R. 595.—**N.Z.**

1053 ii. —— ——.]—The burden of proof as to the execution & the testamentary capacity of testator at the time of the execution of a will lies upon its propounder who has to explain away the suspicious circumstances appearing in the case.—SURENDRA NATH CHATTERJI *v.* JAHNAVI CHARAN MUKHERJI (1928), I. L. R. 56 Calc. 390.—**CAN.**

sp. *Verbal will.*]—The onus of establishing a verbal will is always a very heavy one ; it must be proved with the utmost precision & with every circumstance of time & place.—VENKAT RAO *v.* NAMDEO (1931), 58 L. R. Ind. App. 362.—**IND.**

1164. *Add. Annotation :*—**Consd.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

1191. *Add. Annotation :—Generally,* **Refd.** Robins *v.* National Trust Co., [1927] A. C. 515.

1247a. —— ——.]—LAMKIN *v.* BABB (1752), 1 Lee, 1 ; 161 E. R. 1.

1271. *Add. Annotation :*—**Refd.** Robins *v.* Nationa Trust Co., [1927] A. C. 515.

1294. *Add. Annotations :*—**Refd.** *In the Estate of* Musgrove, Davis *v.* Mayhew, [1927] P. 264 ; Robins *v.* National Trust Co., [1927] A. C. 515.

1301a. —— ——.]—Testatrix having directed the person whom she made her residuary legatee to prepare her will, he did so, but by mistake the name of one of the legatees was omitted. Subsequently she directed that three additional bequests should be inserted in the will, which the residuary legatee promised but neglected to do. The will was afterwards read over to testatrix by the residuary legatee, & having declared herself satisfied, she executed it :—*Held :* although the residuary legatee was aware at the time of the execution of the will by testatrix, that her further instructions were not complied with, & that testatrix was ignorant of that fact, still in the absence of fraud on his part the will was entitled to probate.—MITCHELL *v.* GARD (1863), 3 Sw. & Tr. 75 ; 32 L. J. P. M. & A. 129 ; 8 L. T. 438 ; 27 J. P. 487 ; 9 Jur. N. S. 673 ; 11 W. R. 773 ; 164 E. R. 1280.

Annotation :—**Refd.** Guardhouse *v.* Blackburn (1866), 35 L. J. (P. & M.) 116.

1304. *Add. Annotations :*—**Consd.** *In the Estate of* Musgrove, Davis *v.* Mayhew, [1927] P. 264. **Refd.** Robins *v.* National Trust Co., [1927] A. C. 515.

1310. *Add. Annotation :*—**Refd.** *Re* Belliss, Polson *v.* Parratt (1929), 141 L. T. 245.

1313a. —— —— ——.]—*In the Estate of* AUSTIN (1929), 73 Sol. Jo. 545.

1317. *Add. Annotation :—As to* (3) **Refd.** *In the Estate of* Musgrove, Davis *v.* Mayhew, [1927] P. 264.

1318. *Add. Annotation :*—**Refd.** *In the Estate of* Musgrove, Davis *v.* Mayhew, [1927] P. 264.

1320a. —— ——.]—Where a will is propounded by the chief beneficiary under it, who has taken a leading part in giving instructions for its preparation & in procuring its execution, probate should not be granted unless the evidence removes suspicion & clearly proves that testator approved the will.—VELLASAWMY SERVAI *v* SIVARAMAN SERVAI (1929), 57 L. R. Ind. App. 96, P. C.

1344. *Add. Annotation :*—**Refd.** Smith *v.* Thompson (1931), 146 L. T. 14.

1348a. —— **Misdescription of relationship.**]—Where in a will the residue had been left to the grandchildren of a person named & described as " my uncle," whereas he was in fact the cousin of testatrix, the ct. ordered that the words " my uncle " be excluded from probate, which had been granted but not published.—*Re* CLARK (1932), 101 L. J. P. 27 ; 147 L. T. 240 ; 48 T. L. R. 544 ; 76 Sol. Jo. 461.

1351. *Add. Annotation :*—**Folld.** Kitcat *v.* King, [1930] P. 266.

1351a. —.]—A testamentary paper headed Codicil to be attached to my will," & proceeding " This is the last will & testament of A. B." did not expressly or by implication revoke an earlier will although it effected a substantial difference in the destination of a large portion of the property passing. The same paper bore, in addition to the signature of the testator, the signatures of four persons, two of whom were beneficiaries under it ; all four signatures had been placed on the paper at the time of attestation, & there was evidence that the two beneficiaries signed otherwise than as attesting :—*Held :* the words " last will & testament " did not preclude the admission to probate of both papers, & probate of the codicil might go without including the names of the two beneficiaries as attesting witnesses.—KITCAT *v.* KING, [1930] P. 266 ; 99 L. J. P. 126 ; 143 L. T. 408 ; 46 T. L. R. 617 ; 74 Sol. Jo. 488.

1367. *Add. Annotation :*—**Distd.** *In the Estate of* Caie, *In the Estate of* Davis (1927), 71 Sol. Jo. 898.

1369a. —— —— ——.]—The ct. directed that certain non-testamentary words of an offensive nature should be omitted from the probate of a will, but declined to order their expungement from the will itself.—*Re* MAXWELL (1929), 140 L. T. 471 ; 45 T. L. R. 215 ; *sub nom. In the Estate of* MAXWELL, 73 Sol. Jo. 159.

1369b. —— —— **Repugnant to testator's family.**]—The ct. will permit words of a will which are not dispositive to be omitted from the probate, though they make no personal allusion to any individual, if they are otherwise offensive & objectionable & repugnant to the members of the family of the testator.

PART II. SECT. 6, SUB-SECT. 9.—A.

1st. *Non-compliance with Wills Act, R. S.*, 1923 (*c.* 146), *s.* 15.]—Application refused.—*Re* COX, [1927] 1 D. L. R. 441 ; 59 N. S. R. 103.—**CAN.**

PART II. SECT. 8.

1238 i. *Double grants—Discouraged.*—When a will appoints one exor. for general purposes & another one for limited purposes, only one grant should be made, & the respective powers of the two exors. should be distinguished therein. The ct. should discourage double grants, & upon the application for probate made by either exor., the other one should be cited.—*Re* MAURAT ESTATE (Sask.), [1927] 3 W. W. R. 18. —**CAN.**

PART II. SECT. 9, SUB-SECT. 4.

1241 i. *When knowledge & approval presumed.*]—LIDSTONE *v.* MCWILLIAMS, [1931] 3 D. L. R. 455 ; S. C. R. 695 ; *affg.*, 1 M. P. R. 350.—**CAN.**

PART II. SECT. 9, SUB-SECT. 5.—A.

1244 i. *Exercise of influence must be proved.*]—MURRAY *v.* HAYLOW, [1927] 3 D. L. R. 1036 ; 60 O. L. R. 629.—**CAN.**

PART II. SECT. 9, SUB-SECT. 5.—C.

1271 i. *Onus of proof—On party alleging undue influence.*]—*Re* MCWILLIAMS (1930), 1 M. P. R. 350.—**CAN.**

PART II. SECT. 10, SUB-SECT. 3.

b i. ——.]—Where the draftsman of a will empowered by testator to use his own judgment makes a mistake of law or error in drafting, testator is bound by the mistake, but where the draftsman in doing the merely ministerial act of copying what he thinks the testator has written in his instructions inserts a word in error & the mistake is not brought to the notice of testator the word so inserted must be omitted from probate.—PERPETUAL TRUSTEE CO. *v.* WILLIAMSON (1929), 29 S. R. N. S. W. 487 ; 46 N. S. W. W. N. 151.—**AUS.**

PART II. SECT. 10, SUB-SECT. 4.—B.

1369 i. *Objectionable matter—Unconnected with testamentary dispositions—Scandalous or defamatory matter.*]—The Supreme Ct. has jurisdiction, to be exercised with great care, to order that words in a will, which are scandalous or defamatory & in no way germane to the dispositions of the will, be omitted from the probate.

Testator stated : " I make no provision for my wife on account of her intemperate habits & other misconduct." The ct. refused to order those words be omitted from the probate.—*Re* O'REILLY'S WILL, [1927] V. L. R. 533 ; [1927] Argus L. R. 396. —**AUS.**

—*In the Goods of* BOWKER, [1932] P. 93; 101 L. J. P. 30; 146 L. T. 572; 48 T. L. R. 332; 76 Sol. Jo. 344.

1371a. —— ——.]—*In the Estate of* CAIE (1927), 43 T. L. R. 697; *sub nom. In the Estate of* CAIE, *In the Estate of* DAVIS, 71 Sol. Jo. 898.

1375a. Settlement—Identical bequests.]—Where a will contained bequests identical with the trusts of a marriage settlement the ct. did not require the whole of the marriage settlement to be set out in the probate, but only such extracts as were necessary to explain the bequests.—*In the Goods of* GARBET (1869), 33 J. P. 792; 21 L. T. 366.

1383. *Add. Annotation:*—**Consd.** *In the Estate of* Todd, [1926] P. 173.

1388a. —— ——.]—*In the Estate of* TODD, No. 1398a, *post.*

1398a. —— **Wills not independent.**]—If testamentary papers are independent, one dealing exclusively with property within the jurisdiction & the other with property outside it, there is no obligation on a party propounding the first to obtain probate of the second. The question is whether the papers are independent or interdependent.

Testator left two wills, one English, the other American; the latter dealt exclusively with property outside the English jurisdiction, but the two documents were interdependent with regard to the residue, which was liable for English estate duty. The exors. of the two wills were different persons. Testator had expressly directed that the American will should be "probated" in America:—*Held:* (1) the two wills & a codicil to the English will should all be proved in England; (2) the document to be retained in the English Probate Registry as evidence of the testamentary act of making the American will should be an examined & sealed copy of that will, & after probate the original American will should be handed out to the exors. named therein for probate in America. —*In the Estate of* TODD, [1926] P. 173; 95 L. J. P. 105; 135 L. T. 381; 42 T. L. R. 545; 70 Sol. Jo. 671.

1410a. ——.]—*In the Estate of* TODD, No. 1398a, *ante.*

1431a. Where minority interest.]—*Re* HERBERT, No. 1883a, *post.*

1431b. ——.]—Under Jud. (Consolidation Act), 1925 (c. 49), ss. 160 (1) & 162 (1), the ct. cannot make a grant of administration to less than two individuals, when it is aware that there is a minority interest.—*Re* WHITE, [1928] P. 75; 96 L. J. P. 157; 138 L. T. 68; 43 T. L. R. 729; 71 Sol. Jo. 603, C. A.

1431c. —— **Administrator pendente lite.**]—*Re* PRICE (1931), 75 Sol. Jo. 295.

1463a. —— **"Special circumstances."**]—This was an application by two nominees for a grant of letters of administration of the estate of an intestate, whose next of kin were unable to agree on any one or more of them administering the estate. Being all *sui juris*, they signed an act of renunciation in which they consented to the appcts. taking the grant subject to the approval of the ct. It was submitted that though normally the ct. would make a grant only to kindred of an intestate, in "special circumstances" it would make a grant to a stranger. The ct. exercised that power under sect. 162 of the Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49), s. 162, as amended by Administration of Justice Act, 1928 (c. 26), s. 9:—*Held:* in the "special circumstances" the order would be made as prayed.—*Re* MORGAN (W. A.) (1931), 145 L. T. 392; 47 T. L. R. 452.

1474. *Add. Annotation:*—**Refd.** *Re* Bower Williams, *Ex p.* Trustee, [1927] 1 Ch. 441.

1485. *Add. Annotation:*—**Refd.** Ormond Investment Co. *v.* Betts, [1928] A. C. 143.

1508. *Add. Annotation:*—**Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

1509. *Add. Annotation:*—**Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

1510. For "—— **Protection order under Summary Jurisdiction (Married Women) Act, 1895 (c. 39)—Whether citation of husband necessary**" read "—— **Separation order under Summary Jurisdiction (Married Women) Act, 1895 (c. 39)—Whether citation of husband necessary.**"

1566. *Add. Annotation:*—**Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

1650a. ——.]—Testatrix commenced a will with the words: "This is my last will, the former one being cancelled," having substituted for the German word "*ungültig*" its English equivalent "cancelled." This will made dispositions quite different from those in an

PART II. SECT. 11, SUB-SECT. 1.

an. *Appeal from refusal to grant.*]—*Re* MACDONALD, R. *v.* SURROGATE COURT JUDGE (No. 2), [1930] 2 D. L. R. 995; 1 W. W. R. 261; 38 Man. L. R. 471.—**CAN.**

PART II. SECT. 11, SUB-SECT. 4.—A.

1423 iii. ——.]—The rule that in granting letters of administration the grant will follow the majority of interests is a stronger rule than that under which the preference is usually given to a man over a woman. The fact that one of appcts. has a large claim against the estate is a circumstance to be considered.—BELL *v.* SPELLISCY, [1932] 1 W. W. R. 171. **CAN.**

PART II. SECT. 11, SUB-SECT. 4.—B.

sp. *To attorney of executors.*]—*Re* BULLEN (DECEASED) (1926), 37 B. C. R. 240.—**CAN.**

PART II. SECT. 11, SUB-SECT. 4.—C.

1447 ii. —— ——.]—In the absence of special circumstances, a sole administrator should be appointed to the estate of deceased, rather than joint administrators, even when the claimants are equal in degree of kindred to deceased.—STONEY *v.* STONEY (1923), I. L. R. 2 Pat. 508.—**IND.**

PART II. SECT. 11, SUB-SECT. 4. F. (c).

sr. *Widow separated from husband for eighteen years.*]—A widow having had good reason for discontinuing to live with her husband:—*Held:* the fact that she had not lived with him for 18 years prior to his death & they had had nothing to do with one another during that long period was not a sufficient reason, there having been no misconduct on her part, for refusing her a grant of administration directly or through her attorney.—*Re* HOLMES ESTATE, [1931] 3 W. W. R. 665. **CAN.**

PART II. SECT. 11, SUB-SECT. 4.—G. (a).

1596 ii. —— *Application by former nominee for widow—English Noncontentious Business Rules, r.* 28.]—After the refusal of a grant to the nominee of the widow the widow renounced her right to administer, & the nominee made another application based on the fact that he was one of the next of kin:—*Held:* appct. being *prior petens* & there being nothing in the circumstances requiring a strict application of English Noncontentious Business Rules, r. 28, the letters of administration should be granted to him. The English Noncontentious Business Rules 28, 33, 34, are in force in Saskatchewan.—*Re* KRAUSE ESTATE (Sask.), [1929] 4 D. L. R. 1082; 1 W. W. R. 896.—**CAN.**

PART II. SECT. 11, SUB-SECT. 4.—H.

st. *Preferred to official administrator—Though resident out of jurisdiction—Agent managing estate.*]—*Re* I (1903), 9 B. C. R. 429.—**CAN.**

earlier will, without however disposing of the residue :—*Held :* the later will revoked the earlier, &, testatrix being illegitimate, the ct. granted letters of administration to the Treasury Solicitor with the will annexed.—JONES *v.* TREASURY SOLICITOR (1932), 147 L. T. 340 ; 48 T. L. R. 615 ; 76 Sol. Jo. 690 ; *affd.* 49 T. L. R. 75.

1651. *Add. Annotation :*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617.

1653. *Add. Annotation :—As to* (2) **Consd.** *Re* Mason (1928), 97 L. J. Ch. 321.

1656. *Add. Annotation :*—**Refd.** A.-G. for Ontario *v.* McLean Gold Mines, [1927] A. C. 185.

1701. After this case add :—
Compare No. 1773a, *post.*

1772a. Remainderman—Settlement determined on death of life tenant.]—Where a woman died intestate without known next of kin & was, at the time of her death, the life tenant of an estate previously settled upon her by will, the settlement was determined on her death, & the legal estate vested in the personal representative of the life tenant. The ct. made a general grant of administration to the remainderman under the settlement, following the non-appearance of persons interested in the life tenant's estate who had been cited. —*In the Estate of* BORDASS, [1929] P. 107 ; 98 L. J. P. 65 ; 140 L. T. 120 ; 45 T. L. R. 52 ; 72 Sol. Jo. 826.

Annotation :—**Distd.** *In the Estate of* Taylor, [1929] P. 260.

1772b. —— ——.]—*In the Estate of* BIRCH, [1929] P. 164 ; 98 L. J. P. 66 ; 141 L. T. 32 ; 73 Sol. Jo. 221.

Annotation :—**Distd.** *In the Estate of* Taylor, [1929] P. 260.

1773a. Poor law guardians—Administration of estate of orphan's deceased parent.]—By Poor Law Act, 1927 (c. 14), a board of guardians may act in certain circumstances as *in loco parentis* in respect of an orphan child, & in that capacity is entitled to take out letters of administration of the estate of the child's deceased parent for the benefit of the child.—*Re* PETERS (1929), 142 L. T. 328 ; 46 T. L. R. 119 ; 74 Sol. Jo. 13.

1774. *Add. Annotation :*—**Refd.** *Re* White, [1928] P. 75.

1785. *Add. Annotation :*—**Refd.** *In the Estate of* Potticary, [1927] P. 202.

E. To whom Grant may be made.
(Vol. XXIX., p. 170.)

See, also, Administration of Justice Act, 1928 (c. 26), s. 9.

1883a. —— **During minority.**]—Jud. (Consolidation) Act, 1925 (c. 49), s. 160 (1), directs that either a trust corpn., with or without an individual, or not less than two individuals, shall take a grant of administration in the case of an interest in the estate during minority of the party interested ; but this provision must be read subject to the modification of sect. 162 (1), namely, that the ct. in the case of insolvency is to have a discretion to grant administration to some person other than those interested in the residue. Under the latter sect. it is competent for the ct., even during a minority, to appoint a creditor to be a single administrator, as it could formerly have done under Ct. of Probate Act, 1857 (c. 77), s. 73.—*Re* HERBERT, [1926] P. 109 ; *sub nom. In the Goods of* HERBERT, 95 L. J. P. 53 ; 135 L. T. 123 ; 42 T. L. R. 469.

Annotations :—**Consd.** *Re* White (1927), 43 T. L. R. 729. **Dbtd.** *Re* White, [1928] P. 75. **Consd.** *Re* Price (1931), 75 Sol. Jo. 295.

2056a. ——.]—Testator made his will leaving all his money to A. There was no appointment of an exor. A. moved for administration with the will annexed. The parties interested in intestacy resisted the application :—*Held :* in the circumstances the application failed, the persons entitled in intestacy taking the grant in priority to a legatee or devisee under Non-contentious Rules, r. 119, operating since Jan. 1, 1926, in the case of an estate not wholly disposed of.—*In the Goods of* GATES, [1928] P. 128 ; 97 L. J. P. 76 ; 138 L. T. 714 ; 44 T. L. R. 353 ; 72 Sol. Jo. 172 ; *varied,* [1928] P. 178, C. A.

2327a. —— —— **Fresh attorney appointed by surviving executor—Whether entitled to grant.**]—Several exors. out of the jurisdiction gave a power to an attorney to take administration with a will & codicils annexed without reference to survivorship amongst the exors. The attorney took a grant of administration & partly administered the estate. The surviving exor. appointed fresh attorneys. The ct. revoked the grant to the original attorney & made a fresh grant to the fresh attorneys.—*In the Estate of* DINSHAW. [1930] P. 180 ; 99 L. J. P. 118 ; 142 L. T. 652 ; 46 T. L. R. 308 ; 74 Sol. Jo. 264.

2398a. Where minority interest.]—*Re* PRICE (1931), 75 Sol. Jo. 295.

2436. *Add. Annotation :*—**Refd.** *Re* Achillopoulos, Johnson *v.* Mavromichali, [1928] Ch. 433.

2440. *Add. Annotation :*—**Refd.** *Re* Achillopoulos, Johnson *v.* Mavromichali, [1928] Ch. 433.

2441a. -.]—Where administration is taken out in this country by the attorney of a foreign principal in respect of English assets belonging to a foreign testator, & the foreign principal is not by the law of the domicil an exor.,

PART II. SECT. 11, SUB-SECT. 4.—K. (a).

sv. *Creditor with judgment against debtor—Right to file bill against real representative—Before suing out execution.*]—DUFFY *v.* GRAHAM (1869), 15 Gr. 547.—**CAN.**

PART II. SECT. 11, SUB-SECT. 4.—M.

sm. *Ex-convict.*]—A person who has been convicted of felony, & has served his sentence, is in the same position as if pardoned, & can be appointed administrator.—*In the Goods of* COLEMAN, [1926] I. R. 327.—**IR.**

PART II. SECT. 11, SUB-SECT. 5.—D. (c).

1834 i. *Conviction for killing intestate.*]—A husband, who has been convicted of killing his wife, who died intestate, has no claim to her estate, & neither he nor his attorney is entitled to administer it.—*Re* NOBLE (Sask.), [1927] 1 W. W. R. 938.—**CAN.**

PART II. SECT. 11, SUB-SECT. 5.—E. (c).

sw. *Right of next of kin to be appointed guardian.*]—*Re* BELL ESTATE (Sask.), [1929] 3 W. W. R. 68.—**CAN.**

PART II. SECT. 12, SUB-SECT. 1.—B. (h).

2155 i. *Where estate insolvent—Assets assigned before death to executrix—Executrix neither proving nor renouncing.*]—*Held :* letters of administration with a copy of the will annexed should be granted to a duly appointed syndic of the creditor, who might be one of its officers.—*Re* RANDALL, [1927] V. L. R. 535 ; 49 A. L. T. 89 ; [1927] Argus L. R. 395.—**AUS.**

PART II. SECT. 12, SUB-SECT. 1.—B. (j).

sg. *Nominee of renouncing executor.*]—Where a sole executrix who was also the sole beneficiary, an Assyrian by birth & illiterate, renounced probate, the ct. allowed a grant of administration with the will annexed to her nominee who was the son of herself & testator.—*Re* MOSES (1931), 48 N. S. W. W. N. 101.—**AUS.**

but by virtue of his interest under the foreign will is charged by the law of the domicil with the duties which under English law are imposed on an exor., the ct. will authorise such administrator, after satisfying all English liabilities & all foreign liabilities of which he has notice, to hand over the surplus in his hands to the foreign principal, whose receipt will be a good & sufficient discharge. In such a case the administrator need not issue any foreign advertisements or take any active steps abroad to ascertain the position with regard to debts, as the foreign principal, who by the law of the domicil is in the position of an exor., is in such a case directly responsible for the payment of foreign debts. —*Re* ACHILLOPOULOS, JOHNSON *v.* MAVROMICHALI, [1928] Ch. 433; 97 L. J. Ch. 246; 139 L. T. 62.

2511a. —— ——.]—COLLISS *v.* HECTOR (1875), L. R. 19 Eq. 338; 44 L. J. Ch. 267; 23 W. R. 485.

2518a. —— **Solicitor of deceased defendant.**]—On the death of a deft., the Ct. of Appeal directed his legal personal representative to be added as deft. & discharged an order which had been made appointing deceased's solr. to represent his estate.—HARDY *v.* HOLMES & SPRINZ (1913), H. No. 1314 (unreported), Y. S. C. P.

2555a. **Notice of appointment—Change of title of proceedings.**]—Where an order has been made under R. S. C., Ord. 16, r. 46, appointing a person to represent an estate, the order should be left at the Central Office for entry, & the person appointed should file a notice of his appointment & the name & address of his solr., & thenceforward the title of the proceedings should contain the name of the person appointed, described as "A. B., appointed by order dated, etc., to represent the estate of C. D. deceased." The person appointed will then be entitled to be represented in ct. at the hearing as a party (CLAUSON, J.).—*Re* PROSSER, PROSSER *v.* GRIFFITH, [1929] W. N. 85.

2585a. **Trust estate vested in tenant for life—Settled Land Act, 1925 (c. 18).**]—Where testator, dying in 1897, appointed his wife A. sole extrix. & devised to her for life all his real estate with remainder to B. in fee simple absolutely, & A. died in Feb. 1926, intestate & a widow, leaving no statutory next of kin & no trustees for the purposes of the above Act were ever appointed:—*Held:* B. was entitled under Jud. (Consolidation) Act. 1925 (c. 49), s. 155 (1), to a grant of limited administration in respect of such real estate. —*Re* DALLEY (1926), 136 L. T. 223; 70 Sol. Jo. 839.

2585b. **Property subject to life tenancy—Settled Land Act, 1925 (c. 18), s. 20 (1)—Law of Property Act, 1925 (c. 20), Sched. I., Part II., para. 6 (c).**]—*In the Estate of* JAMES (1926), 162 L. T. Jo. 498.

2585c. **Settled land.**]—Grants of probate to special exors. are not to be confined to those persons whose qualifications fall within Settled Land Act, 1925 (c. 18), s. 30 (1), & the effect of that Act is not to limit the operation of Administration of Estates Act, 1925 (c. 23), ss. 1, 13 & 22.—*In the Estate of* GIBBINGS, [1928] P. 28; 97 L. J. P. 4; 138 L. T. 272; 44 T. L. R. 230; 71 Sol. Jo. 911.

2603a. —— ——.]—A will duly executed was on the death of testator in the custody of the sole exor., & universal legatee named in it. It was never proved, there not being at that time any property which could pass under it, & was subsequently lost or mislaid. No draft or copy of it was forthcoming. The ct. granted administration of the effects of deceased, limited until the will, or an authentic copy of it, shall be brought into the probate registry.—*In the Goods of* JOHNSON (1865), 11 Jur. N. S. 184.

2618. *Add. Annotation:*—**Consd.** *Re* Cockell, Jackson *v.* A.-G., [1931] 1 Ch. 389.

2619. *Add. Annotation:*—**Consd.** *Re* Cockell, Jackson *v.* A.-G., [1931] 1 Ch. 389.

2744a. **Threatened breach—Surety entitled to apply to court—For relief by way of indemnity against liability under bond.**]—*Re* ANDERSON-BERRY, HARRIS *v.* GRIFFITH, [1928] Ch. 290; 97 L. J. Ch. 111; 138 L. T. 354, C. A.

2777a. —— ——.]—THOMPSON *v.* JUDGE (1854), 2 Drew. 414; 61 E. R. 786; *sub nom.* TOMSON *v.* JUDGE, 2 Eq. Rep. 1141; 23 L. J. Ch. 929; 23 L. T. O. S. 217; 2 W. R. 574.

2877. *Add. Annotation:*—**Refd.** Ormond Investment Co. *v.* Betts, [1927] 2 K. B. 326.

2911. *Add. Annotations:*—**Refd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155; Jaeger Co., Ltd. *v.* Jaeger (1929), 46 R. P. C. 336.

PART II. SECT. 13, SUB-SECT. 7.—B. (b).

o i. —— *Insolvency of administrator.*]—*Re* ELLIOTT SMITH'S ESTATE, [1931] 3 M. P. R. 485.—**CAN.**

sx. *Right of sureties—Anticipated waste by administrator—Injunction & receiver.*]—*In the Estate of* HUNTER (1928), 45 N. S. W. W. N. 170.—**AUS.**

PART II. SECT. 15, SUB-SECT. 2.—A.

sy. *Foreign will—Incorrect translation annexed.*]—Where letters of administration, *cum testamento annexo*, have been granted with an incorrect translation of a foreign will annexed thereto, the ct. will, upon evidence to its satisfaction, order the substitution of a correct translation in lieu of the incorrect one.—*Re* KLEINSANG (No. 2) (1928), 28 S. R. N. S. W. 559; 45 N. S. W. W. N. 150.—**AUS.**

PART II. SECT. 15, SUB-SECT. 2.—B. (o).

n i. ——.]—Probate is conclusive proof of the due execution of the will by testator.—CHANDRESHWAR PRASAD NARAIN SINGH *v.* BISHESHWAR PRATAP NARAIN SINGH (1926), I. L. R. 5 Pat. 777.—**IND.**

PART II. SECT. 15, SUB-SECT. 2.—B. (e).

p. *Revsd.* on other grounds, 37 O. L. R. 498.

PART II. SECT. 15, SUB-SECT. 4.—C.

st. *As to title to land.*]—*Held:* probate was not sufficient.—SUTHERLAND *v.* YOUNG (1884), 1 Man. L. R. 38.—**CAN.**

PART II. SECT. 15, SUB-SECT. 6.

h i. —— ——.]—Pltfs., who were the exors. of the will of one McA., had obtained from a competent ct. in British Columbia a grant of probate of his will. McA. & deft. had made an agreement under seal by which McA. agreed to sell & deft. agreed to purchase certain land in Alberta, & under which part of the purchase-price was to be met by the assumption of a mtge. The mtge. was foreclosed & title to the land obtained by the mtgee. The agreement for sale was in the possession of McA. in British Columbia at the time of his death & came into the possession of pltfs. there. Pltfs., who were unable to give title to the land to deft.; brought an action in Alberta on the personal covenant in the agreement, without having obtained any grant of letters probate, ancillary or otherwise, or any grant of letters of administration with will annexed from any ct. in Alberta:—*Held:* the action was maintainable.—MCALLISTER & MCALLISTER *v.* BEDARD, [1932] 2 W. W. R. 577.—**CAN.**

h ii. —— ——.]—SUTTON *v.* SOUDAK & SOUDAK (GEORGE) FUR CO., [1932] 2 W. W. R. 82.—**CAN.**

PART II. SECT. 16, SUB-SECT. 2.—C.

sb. *As to person entitled—Advocate consenting without instructions.*]—Where an advocate for one of the parties under a misapprehension consented to the other party being granted the letters:

2979a. **Twenty years after death of testator.**]—Administration revoked.—*In the Estate of* MUSGROVE, DAVIS *v.* MAYHEW, [1927] P. 264; 96 L. J. P. 140; 137 L. T. 612; 43 T. L. R. 648; 71 Sol. Jo. 542, C. A.

3011. *Add. Annotation:*—**Refd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61.

3074. *Add. Annotation:*—**Refd.** Akt. Ocean *v.* Harding, [1928] 2 K. B. 371.

3111. *Add. Annotation:*—**Apld.** *Re* Howden & Hyslop's Contract, [1928] Ch. 479.

3111a. —— —— **Sale of English real estate.**]—Scottish exors. with a confirmation resealed under Jud. (Consolidation) Act, 1925 (c. 49), s. 168, can make a good title to English real estate without the necessity of any separate grant in respect thereof.—*Re* HOWDEN & HYSLOP'S CONTRACT, [1928] Ch. 479; 97 L. J. Ch. 313; 139 L. T. 309; 72 Sol. Jo. 400.

3125. *Add. Annotation:*—**Consd.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

3126. *Add. Annotation:*—**Apld.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

3127. *Add. Annotations:*—**Consd.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139. **Refd.** Thomas *v.* Jones, [1928] P. 162.

3127a. ——.]—The proviso to R. S. C., Ord. 65, r. 1, that nothing in that rule contained shall deprive an exor. who has not unreasonably instituted or carried on or resisted any proceedings, of any right to costs out of a particular estate or fund to which he would be entitled according to the rules theretofore acted upon in the Chancery Div., governs the case of bare exors. who reasonably propound a will & codicil, even if, though the will is pronounced for, the codicil is pronounced against. The position of such exors. differs from that of persons named as exors. in a testamentary paper which they unsuccessfully propound. Having established the validity of the will, & made good their position as testator's exors., they are entitled to their costs of the litigation out of the estate as between solr. & client, & can be deprived of that right, which rests substantially upon contract, only if they have acted culpably or unreasonably. Until that has been established, their costs are not in the discretion of the ct., & notwithstanding Jud. Act, 1873 (c. 66), s. 49, repealed & re-enacted by Jud. (Consolidation) Act, 1925 (c. 49), s. 31 (1) (h), an appeal lies without leave from an order condemning them in costs or depriving them of costs out of the estate.—*In the Estate of* PLANT, WILD *v.* PLANT, [1926] P. 139; *sub nom. Re* PLANT, WILD *v.* PLANT, 95 L. J. P. 87; 135 L. T. 238; 42 T. L. R. 443; 70 Sol. Jo. 605, C. A.

Annotation:—**Refd.** Thomas *v.* Jones, [1928] P. 162.

3127b. -.]—The principle of the decision in *In the Estate of Plant, Wild* v. *Plant*, No. 3127a, *ante*, that exors. who have established the validity of their will are entitled to their whole costs of the litigation, although they fail in establishing a codicil, does not extend in all cases to costs incurred by them by reason of their insisting upon probate not only of clauses in a will expressing the testamentary mind of their testator, but also of a clause which is found not to be his testamentary act. If a residuary gift is excluded from probate on the ground of want of capacity the question still arises whether the costs so incurred by the exors. are due to their "violation or culpable neglect of duty." If the ct. finds on this issue that an exor. is a wrongdoer, his *primâ facie* right to receive out of the estate costs not otherwise provided for is displaced.—THOMAS *v.* JONES, [1928] P. 162; 139 L. T. 214; 44 T. L. R. 467; 72 Sol. Jo. 255; *sub nom. In the Estate of* JONES, THOMAS *v.* JONES, 97 L. J. P. 81.

3163. *Add. Annotation:*—**Apld.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

3164. *Add. Annotation:*—**Apld.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

3171a. ——.]—There is no authority for allowing costs out of the estate in a probate action to an unsuccessful party who merely seeks to prove, in the case of a will executed by testator of sound disposing mind, that testator had a domicil under the law of which that party would take a large part of testator's estate in opposition to his wishes. The costs should follow the event in such a case.—FLEMING *v.* HORNIMAN (1928), 138 L. T. 669; 44 T. L. R. 315.

3175. *Add. Annotation:*—**Apld.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

3181. *Add. Annotation:*—**Refd.** *In the Estate of* Southerden, Adams *v.* Southerden, [1925] P. 177.

—*Held:* if such consent was given by the advocate without instructions, the client might withdraw the consent at any time prior to the actual issue of letters.—KYONE HOE TSEE *v.* KYON SOON SUN (1925), I. L. R. 3 Ran. 261. —**IND.**

PART II. SECT. 16, SUB-SECT. 2.—J.

sc. *Validity of will not proved.*]—ODYNAK *v.* FESCHUK (Alta.), [1927] 3 D. L. R. 842; [1927] 3 W. W. R. 64; *revsd.* [1928] 1 D. L. R. 423; [1928] 1 W. W. R. 113; 23 Alta. L. R. 263. —**CAN.**

PART II. SECT. 16, SUB-SECT. 3.—H.

3055 iii. —— ——.]—On an application to revoke a grant of probate on the grounds that persons who ought to have been cited were not cited, & that the will was a forgery, if the first ground is established the *onus* is upon the opposite party to prove that the will is genuine.—RAMAUANDI KUER *v.* KALAWATI KUER (1927), 55 L. R. Ind. App. 18.—**IND.**

PART II. SECT. 18, SUB-SECT. 3.

sd. *Grounds for granting or refusing application for resealing.*]—The ct. has the right, on an application under Alberta Rules, r. 945 (24), for resealing, to inquire as to the original appointment of the administrator, & should refuse the application, where the exors. have the right & duty to apply in Alberta for probate.—*Re* BLAGBURN ESTATE, [1927] 1 W. W. R. 716; *affd.*, [1927] 2 W. W. R. 206.—**CAN.**

PART II. SECT. 19.

c i. ——.]—An extrix., to whom probate of a will had been granted in England, appointed appt. as attorney under power in Victoria to procure the resealing of the probate in Victoria:—*Held:* appt. was authorised to produce the probate & obtain the sealing thereof under Administration & Probate Act, 1915, s. 51, that being the proper procedure for him to adopt in order to procure himself to be constituted the legal representative of testator in Victoria.—*Re* FAIRER'S WILL, [1927] V. L. R. 580; [1927] Argus L. R. 462.—**AUS.**

se. *Revocation.*]—When a foreign probate which has been sealed in Victoria is subsequently revoked by the foreign ct., the Supreme Ct. has power to revoke the sealing.—*Re* HALL (1930), V. L. R. 309; Argus L. R. 264. —**AUS.**

sf. *Duty of registrar—Supreme Court of New Zealand.*]—Where letters of administration have been duly granted in England & are produced to the registrar of the Supreme Ct. of New Zealand, & a copy thereof left with him, the registrar is bound under Administration Act, 1908, s. 43, to reseal letters of administration, & there is no need of an application to the ct., for the ct. has no discretion in the matter. In the absence of fraud in the will or by the administrator the ct. has no power to set aside such resealing.—*Re* WILLCOX, [1925] N. Z. L. R. 525.—**N.Z.**

3184. *Add. Annotation :*—**Refd.** Smith *v.* Thompson (1931), 146 L. T. 14.

3186. *Add. Annotation :—As to* (1) **Consd.** Neal *v.* Denston (1932), 48 T. L. R. 637.

3303. *Add. Annotation :*—**Refd.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

3312. *Add. Annotation :*—**Consd.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

3315. *Add. Annotation :*— **Distd.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

3478a. —— **For purpose of lawsuit out of the jurisdiction.**]—There is no power in the Probate Ct. to allow a will admitted to probate in England to go out of the jurisdiction, even in the custody of an official, for the purposes of a lawsuit in a British Dominion or elsewhere abroad.—*Re* GREER (1929), 45 T. L. R. 362 ; 73 Sol. Jo. 349.

Annotation :—**Folld.** *In the Estate of* Guinee (1929), 73 Sol. Jo. 569.

3478b. —— ——.]—*In the Estate of* GUINEE (1929), 73 Sol. Jo. 569.

3487. *Add. Annotation :*—**Refd.** Capron *v.* Capron, [1927] P. 243.

Part III.—Interest of Representative in Deceased's Property.

3509. *Add. Annotation :*—**Refd.** Toates *v.* Toates, [1926] 2 K. B. 30.

3517a. Right of selection under will.]—Testator bequeathed to his wife such articles as she should within two months select from the articles in certain rooms in a house. Five days after his death his wife died without having made any selection :—*Held :* the right of selection did not pass to the wife's exors.—*Re* MADGE, PRIDIE *v.* BELLAMY (1928), 44 T. L. R. 372 ; *sub nom. Re* MADGE, PUDEE *v.* BELLAMY, 72 Sol. Jo. 284.

3518a. Loan posted to but not received by deceased.]—On the receipt of a signed promissory note a money-lender forwarded an agreed sum to the borrower through the post. The borrower, the secretary to a co., died between the times of the posting & delivery of the letter. The joint acting secretary of the co. having notice of the secretary's death, opened the money-lender's letter & retained possession of the enclosed money until such time as he could hand it over to the personal representatives of the borrower. In an action by the money-lender to recover the sum lent from the joint acting secretary :—*Held :* deft. received the money on behalf of deceased's estate, & the proper course for the money-lender was to litigate with the borrower's representatives.—MICHAELSON *v.* CRISP (1927), 71 Sol. Jo. 982.

3524. *Add. Annotation :—As to* (1) **Refd.** *Re* Mills, Mills *v.* Lawrence, [1930] 1 Ch. 654.

3543. *Add. Annotation :—As to* (2) **Refd.** *Re* Mathieson, [1927] 1 Ch. 283.

3553. *Add. Annotation :*—**Consd.** Riley *v.* Brown (1929), 98 L. J. K. B. 739.

3554. *Add. Annotation :*—**Refd.** Graves *v.* Cohen, (1929), 46 T. L. R. 121. [Reference has been made to the headnote, not justified by anything in the judgment, in *Stubbs* v. *Holywell Ry. Co.*, (*per* WRIGHT, J.)]

3572a. —— ——.]—NOBLE *v.* CASS (1828), 2 Sim. 343 ; 57 E. R. 817.

Annotations :—**Refd.** Richards *v.* A.-G. of Jamaica (1848), 6 Moo. P. C. C. 381 ; *Re* Francis, Barrett *v.* Fisher (1905), 74 L. J. Ch. 198 ; *Re* Lacon's Settlmt., Lacon *v.* Lacon, [1911] 2 Ch. 17.

3605. *Add. Annotation :*—**Refd.** Riley *v.* Brown (1929), 98 L. J. K. B. 739.

3611a. —— ——.]—ANON. (1457), Y. B. 36 Hen. 6, fo. 7, pl. 4 ; 7 Jur. 494, n.

Annotations :—**Apld.** Tharpe *v.* Stallwood (1843), 5 Man. & G. 760. **Refd.** Wangford *v.* Wangford (1704), 11 Mod. Rep. 38.

3611b. -.]—EAST *v.* NEWMAN (1601), Gouldsb. 152 ; 75 E. R. 1059 ; *sub nom.* EASON *v.* NEWMAN, Cro. Eliz. 495.

3611c. —— ——.]—BEAR *v.* SOPER (1759), 2 Keny. 441 ; 96 E. R. 1238.

3617. *Add. Citations :—sub nom.* MASON & DAVY *v.* DIXON, Latch 167 ; Noy 87.

Add. Annotations :—**Refd.** Saunders *v.* Plummer (1662), O. Bridg. 223 ; Finlay *v.* Chirney (1888), 57 L. J. Q. B. 247.

PART II. SECT. 20, SUB-SECT. 3.—A. (b)

3187 iv. ——.]—Testator 87 years old, executed a will, & probate was opposed on the grounds of want of testamentary capacity & undue influence. The ct. pronounced in favour of the will, but only after much consideration. Much of the evidence was not available to the caveators, & the ct. considered they were amply justified in opposing the will :—*Held :* the caveators should be relieved of the Public Trustee's costs, but should not be granted costs out of the estate.—*Re* PATERSON (DECEASED), [1924] N. Z. L. R. 441.—**N.Z.**

PART II. SECT. 20, SUB-SECT. 4.—B.

sg. *Taxation.*]—*Re* MOREN, [1927] 1 D. L. R. 648 ; 59 N. S. R. 58.—**CAN.**

PART II. SECT. 21, SUB-SECT. 2.

q i. —— *Duty to make inquiries.*]—Although no hard & fast rules can be laid down, a caveat should not be filed against the granting of probate of a will without substantial grounds, &, before filing, the intending caveator should make full inquiry. Where a caveat was filed without substantial grounds & without proper inquiry, a caveatrix, who was unable to carry the matter further was ordered to pay costs.—*In the Will of* ELIZABETH O'DRISCOLL (1929), 29 S. R. N. S. W. 558 ; 46 N. S. W. W. N. 176.—**AUS.**

sh. *Caveator setting up different will.*]—If on a petition for probate, the caveator sets up another will of testator, it is obligatory on him to file a separate petition to propound the will set up by him. The result in such a case is, that there are two separate suits which may either be heard together or be consolidated.—VENIDAS NEMCHAND *v.* BAI CHAMPATAVI (1928), I. L. R. 53 Bom. 829.—**IND.**

PART II. SECT. 21, SUB-SECT. 10.

sk. *Jurisdiction of court—To alter previous order.*]—In addition to its powers under Succession Act, s. 234, & Probate & Administration Act, s. 50, the ct. has power in review to alter its previous order in contested proceedings for the grant of probate or letters of administration.—KYONE HOE TSEE *v.* KYON SOON SUN (1925), I. L. R. 3 Ran. 261.—**IND.**

sl. *Duty to sell—& pay beneficiary share of proceeds.*]—*Re* MONTGOMERY, LUMBERS *v.* MONTGOMERY (1912), 22 W. L. R. 634 ; 22 Man. L. R. 735.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.—I. (a) v.

p i. —— ——.]—An option to purchase contained in a will is *prima facie* not purely personal, but is assignable by the optionee & transmissible by him to his personal representatives.—PERPETUAL TRUSTEE CO. *v.* UNION TRUSTEE CO. (1927), 28 S. R. N. S. W. 222 ; 45 N. S. W. W. N. 30 ; *revsd. sub nom.* ABBOTT *v.* UNION TRUSTEE CO. (1928), 41 C. L. R. 375.—**AUS.**

PART III. SECT. 1, SUB-SECT. 2.—I. (b) i.

3617 i. *Application of rule—Detinue.*]—The administrator of the estate of a deceased person cannot recover damages, in respect of a chattel belonging to the deceased, for its detention or seizure during his lifetime, or prior to

3655. *Add. Annotation :*—**Refd.** *Re* Portman (No. 2), [1925] Ch 294.

3658. *Add. Annotation :*—**Refd.** Price *v.* Corpn. d'Energie de Montmagny, [1927] A. C. 363.

3671. *Add. Annotation :—As to* (1) **Refd.** *Re* Blake, *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251.

3687a. ——.]—Appleton *v.* Doily (1609), Yelv. 135 ; 80 E. R. 91.

Annotations :—**Refd.** Shuttleworth *v.* Garnett (1688), Carth. 90 ; Hudson *v.* Jones (1706), 1 Salk. 90.

3691. *Add. Annotations :*—**Distd.** Skinner *v.* Geary (1931), 47 T. L. R. 597. **Refd.** Roe *v.* Russell, [1928] 2 K. B. 117.

3692. *Add. Annotations :—As to* (1) **Apprvd.** Skinner *v.* Geary (1931), 47 T. L. R. 597. **Refd.** Roe *v.* Russell, [1928] 2 K. B. 117 ; Lovibond (J.) & Sons *v.* Vincent, [1929] 1 K. B. 687.

3692a. -.]—In my view *Collis* v. *Flower*, No. 3691, was wrong, for the reasons that I have been stating. The common law tenancy was terminated. The exor. had a common law tenancy, & it was terminated by notice to quit. He did not remain in occupation of the house, &, in my view, the original tenant having no right, as we have now decided, to dispose of the property by will, had no right to give any statutory right to the exor., & the exor., who had not lived in the house, could not claim to be a statutory tenant. In my view, therefore, *Collis* v. *Flower*, No. 3691, is no longer an authority.

The administrator case stands on a different footing, because one has to look in all these cases to see what the facts were. The administrator case is the case of *Mellows* v. *Low*, No. 3692. There the facts were different. The original tenant was a weekly tenant. It was a common law tenancy, & during her tenancy she died intestate. Consequently, whatever rights she had in her common law tenancy remained to her representatives in an intestacy. No notice to quit was ever given. Consequently the common law tenancy remained. Then the landlord claimed that on the death of the tenant intestate, with no member of her family residing in the house, the tenancy lapsed. It was held that the administratrix was a person who derived title under the original tenant, &, consequently, that the residence could not be interfered with. The point of that case which renders it a right decision is that no notice to quit the common law tenancy had ever been given. The common law tenancy, therefore, remained, & it remained in the person who at common law was entitled to it, & her tenancy had never been terminated. Consequently, *Mellows* v. *Low*, No. 3692, on the facts, is right, but if notice to terminate the common law tenancy had been given the ct. could not, in my opinion, have said, unless the matter could be brought within the very curious clause about intestacy to which I have referred, that such an administratrix not being in possession is entitled to be protected by the Act (Scrutton, L.J.).—Skinner *v.* Geary, [1931] 2 K. B. 546 ; 100 L. J. K. B. 718 ; 145 L. T. 675 ; 95 J. P. 194 ; 47 T. L. R. 597 ; 29 L. G. R. 599, C. A.

3699. *Add. Annotation :*—**Refd.** *Re* Bower Williams, *Ex p.* Trustee, [1927] 1 Ch. 441.

3702. *Add. Annotation :*—**Folld.** *Re* Bower Williams, *Ex p.* Trustee, [1927] 1 Ch. 441.

3710. *Add. Annotation :*—**Refd.** Beaumont *v.* Beaumont (1932), 48 T. L. R. 431.

3732a. ——.]—Batho *v.* Fulton (1824), 2 L. J. O. S. Ch. 196.

3766a. -.]—Curling *v.* Austin (1862), 2 Drew. & Sm. 129 ; 10 W. R. 682 ; 62 E. R. 570.

Annotation :—**Refd.** Lawrie *v.* Lees (1881), 7 App. Cas. 19.

3795. *Add. Annotations :*—**Refd.** *Re* Murphy's Estate, Morton *v.* Marchanton (1930), 74 Sol. Jo. 321 ; Parker *v.* Judkin, [1931] 1 Ch. 475.

3796. *Add. Annotation :*—**Refd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

3800. *Add. Annotation :*—**Refd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

3818a. ——.]—The effect of Land Transfer Act, 1897 (c. 65), ss. 1 & 2, is to impose an " express trust " within Jud. Act, 1873 (c. 66), s. 25 (2), on the personal representatives of deceased in respect of real estate, & so to prevent Real Property Limitation Act, 1874 (c. 57), from running in their favour.—Toates *v.* Toates, [1926] 2 K. B. 30 ; 95 L. J. K. B. 526 ; 135 L. T. 25 ; 90 J. P. 103, D. C.

Sub-sect. 4.—In case of Persons dying since 1925 (Vol. XXIII., p. 317).

3819a. Settled land—Termination of settlement on death of tenant for life.]—Administration of Estates Act, 1925 (c. 23), s. 22 (1), does not apply where the settlement comes to an end on the death of the tenant for life, & his exor. when constituted can sell, & he is not deemed to have appointed the sole surviving trustee of the settlement as his special exor. pursuant to such sect.—*Re* Bridgett & Hayes' Contract, [1928] Ch. 163 ; 97 L. J. Ch. 33 ; 138 L. T. 106 ; 44 T. L. R. 222 ; 71 Sol. Jo. 910.

Annotation :—**Distd.** *In the Estate of* Taylor, [1929] P. 260.

the issue of the letters of administration, unless there is evidence to show that the chattel was damaged, or that the estate of the deceased was depreciated by the seizure or detention in that period. The administrator, however, is entitled to recover for the estate damages for being deprived of the use & possession of the chattel after the issue of the letters of administration.—Day *v.* Horton (1913), 26 W. L. R. 72 ; 5 W. W. R. 751 ; 14 D. L. R. 763 ; 23 Man. L. R. 623.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.—I. (b) iii.

sn. *Whether right continues in personal representative.*]—Under the provisions of R. S. c. 113, s. 1, the right to maintain or to institute an action for an injury to land, committed within six months of the death of the owner, survives to his personal representative. The clear & reasonable meaning of the statute is that the exor. or administrator may commence an action or carry on an action instituted by testator or intestate.—Miller *v.* Corkum (1899), 32 N. S. R. 358.—**CAN.**

so. ——.]—In an action for trespass to land brought in 1895, the statement of claim included a claim for erecting & maintaining fences & depasturing cattle. Pltf. died in 1897, & his extrix. was made a party in 1898 :—*Held :* R. S. c. 113, s. 21, in relation to a continuing cause of action, applied.—Grant *v.* Wolfe (1899), 32 N. S. R. 444.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.—I. (b) iv.

sp. *Whether right continues in representative.*]—In case of tort, for alleged negligence resulting in the death of the person injured, the right to maintain an action dies with the person.—Hawley *v.* Wright (1904), 37 N. S. R. 77.—**CAN.**

sq. -.]—An action for injury to the person now survives to the exor. of pltf., who can, in case of his death, *pendente lite* on entering a suggestion of the death & obtaining an order of revivor, continue the action.—Mason *v.* Peterborough Town (1893), 20 A. R. 683.—**CAN.**

3819b. —.]—*In the Estate of* BORDASS, No. 1772a, *ante.*

3819c. —— ——.]—*In the Estate of* BIRCH, [1929] P. 164; 98 L. J. P. 66; 141 L. T. 32; 73 Sol. Jo. 221.

Annotation :—**Distd.** *In the Estate of* Taylor, [1929] P. 260.

3819d. —— **Grant of probate to tenant for life as special executor.**]—Land was devised by H. on trusts providing for limited ownerships & in default of issue for the right heirs of H. C. who was the right heir of H., by his will appointed the applicant T. exor. & trustee & devised his lands to the use of the applicant for life with remainders over. On Jan. 1, 1926, the commencement of Settled Land Act, 1925 (c. 18), the lands passing under the wills of H. & C. remained subject to the settlement created by the will of H., &, in the event of the termination of the limited ownership under the will, also subject to the settlement created by the will of C. On the same date J. was tenant for life under the will of H. By a vesting deed dated Apr. 16, 1926, the lands were declared to be vested in J. in fee upon the trusts operating from time to time under the will of H. or otherwise. J. died Apr. 27, 1928. General probate of his will including the settled land was granted to his exors. in the first place. Later the grant was amended limiting it "save & except the settled land vested in testator settled previously to his death & remaining settled notwithstanding his death." J. having died without issue appct. T. then became tenant for life in possession under the settlement created by the will of C. as well as the trustee of that settlement. On appeal from the registrar a grant of probate of the will of J. limited to the settled land was directed to issue to the appct. as special exor. of J.—*In the Estate of* TAYLOR, [1929] P. 260; 98 L. J. P. 145; 141 L. T. 200; 45 T. L. R. 481; 73 Sol. Jo. 385.

Part IV.—Duties of Representative.

3899. *Add. Annotation :*—*As to* (2) **Consd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

3934. *Add. Annotation :*—**Consd.** *Re* Mansel, Smith *v.* Mansel, [1930] 1 Ch. 352.

3959a. —— —— ——.]—Exor. charged with interest on dividends of stock received by him, & kept at his banker's with his own money for a number of years, instead of being invested to accumulate.—GOODCHILD *v.* FENTON (1829), 3 Y. & J. 481; 148 E. R. 1269.

3999a. —— ——.]—HUDSON *v.* MARTIN (1726), 2 Eq. Cas. Abr. 461; 22 E. R. 393.

4013. *Add. Annotation :*—**Refd.** *Re* Phillips, Lawrence *v.* Huxtable, [1931] 1 Ch. 347.

4021. *Add. Annotation :*—*As to* (2) **Refd.** *Re* Mathieson, [1927] 1 Ch. 283.

4040a. Income accruing after death—Administration of Estates Act, 1925 (c. 23), s. 32 (1).]—*Re* TONG, HILTON *v.* BRADBURY, No. 5917b, *post.*

4086a. Devise in trust to pay debts—Until son attain twenty-one—Death under twenty-one—Debts unpaid.]—Devise of the rents & profits of lands till his son attain twenty-one, towards payment of debts; & if my son die before twenty-one, my debts being paid, then to A., & the son dies before twenty-one; yet the rents & profits not only till he would have attained twenty-one, but also beyond, till the debts be paid, shall be applied for that purpose.—MARTIN *v.* WOODGATE (1691), Prec. Ch. 34; 24 E. R. 18.

PART IV. SECT. 1, SUB-SECT. 3.—A.

3891 i. *Duty to get in debts—Liability for neglect.*]—*Re* JOHNSTON, JOHNSTON *v.* HOGG (1877), 25 Gr. 261.—**CAN.**

sr. *Executor debtor to testator.*]—Where an exor. was indebted to his testator at the latter's death the debt is considered in equity to have been paid by the debtor to himself as executor, & he is chargeable in the accounts with the amount thereof at the time of probate with legal interest thereafter during default in payment.—*Re* GIBSON ESTATE, [1930] 2 W. W. R. 400; [1931] D. L. R. 159; 39 Man. L. R. 564.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 3.—B. (a) iii.

3927 i. *Power to retain—What are investments—Not right to receive payment on quantum meruit.*]—*Re* JONES, JONES *v.* BAXTER (1929), 46 N. S. W. W. N. 190.—**AUS.**

3927 ii. —— —— *Not right to appointment as architect.*]—*Re* JONES, JONES *v.* BAXTER (1929), 46 N. S. W. W. N. 190.—**AUS.**

PART IV. SECT. 1, SUB-SECT. 3.—B. (e).

n i. —.]—Where a will directs that the proceeds of sales of property of the estate shall be deposited in a chartered bank, such proceeds cannot be otherwise invested except by consent of all persons interested.—*Re* WALTERS, [1925] 2 W. W. R. 557.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.

st. *Claim disputed—Effect of service of notice of appointment for passing accounts on claimant.*]—The act of an administrator in serving claimants against the estate with orders & appointments for passing accounts both with, & subsequent to, the service upon them of notice of dispute, held to have estopped him from setting up said notice as a bar to such claims.—*Re* KURYLO ESTATE, [1922] 2 W. W. R. 815; 68 D. L. R. 784; 15 Sask. L. R. 463.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.—A.

sv. *Undisposed of realty & personalty—Before personal estate charged with payment.*]—In the administration of the estate of testator, who has died testate as to some assets & intestate as to others, the primary fund for payment of his debts, funeral & testamentary expenses, in the absence of a contrary intention expressed in the will, is that constituted by both the real & personal estate of which testator has died intestate & is in priority to personal estate, charged with their payment.—PUBLIC TRUSTEE *v.* LEITCH (1928), 28 S. R. N. S. W. 313; 45 N. S. W. W. N. 85.—**AUS.**

sw. *Properly exempt under Executions Act.*]—In construing Devolution of Estates Act, R. S. M., 1913, s. 3, which provides that an intestate's real or personal estate or both, "except in so far as either or both may be excepted by any law or enactment," shall be chargeable with his debts, property exempt under Executions Act, R. S. M., 1913, is to be considered one of the "exceptions."

A farmer died intestate leaving four dependent infant children. The administrator of his estate sold certain chattels which were during the lifetime of the deceased "exemptions" under Executions Act, s. 29. On an application by the administrator for directions as to the disposition of the moneys realised from the sale, the creditors of the deceased, none of whom had recovered judgment, contended that the right of exemption terminated on the deceased's death; that all the assets of the deceased, including the exemptions, were liable for his debts; & that even if the chattels continued to be exempt, the proceeds of their sale was not exempt:—*Held :* the administrator, who had also been appointed guardian, held the money received from the sale of the exemptions for the benefit of the children.—*Re* MCKENZIE ESTATE (Man.), [1930] 1 D. L. R. 49; [1929] 3 W. W. R. 358; 39 Man. L. R. 155.—**CAN.**

4089a. Foreign estate—Produce in transit at time of death.]—CLIFFE *v.* GIBBONS (1714), 2 Ld. Raym. 1324; 92 E. R. 364, L. C.

Annotation :—**Refd.** Goodtitle d. Hart *v.* Knot (1774), 1 Cowp. 43.

4101a. Liability to contribute rateably—Under Administration of Estates Act, 1925 (c. 23), ss. 32, 33, 34—Notwithstanding devolution of beneficial interest to heir-at-law of lunatic.]—For six years before her death a lady was a certified patient at a mental home, & without any testamentary capacity. She was not, however, a lunatic so found by inquisition, & never had a committee or receiver. She died at the home on Feb. 1, 1929, a spinster & intestate, aged seventy-six :—*Held :* her real estate went to her heir at law under Administration of Estates Act, 1925 (c. 23), s. 51 (2), which exemption sect. read with the definition sect., sect. 55 (1) (viii.), was not confined to cases where a lunatic or defective had a committee or receiver. However, the exemption in sect. 51 (2) only extends to the devolution of the beneficial interest, & the real estate must bear its rateable share of the funeral, testamentary & administration expenses, debts, & liabilities, under sects. 32, 33, 34, & Sched. I.—*Re* GATES, GATES *v.* GATES, [1930] 1 Ch. 199; 99 L. J. Ch. 161; 142 L. T. 327.

4154a. Solicitor entitled to payment of testamentary charges not paid by deceased executor.]—TANNER *v.* CARTER (1856), 25 L. J. Ch. 664; 27 L. T. O. S. 195; 2 Jur. N. S. 413; 4 W. R. 533.

4158. *Add. Annotation :*—**Consd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

4163a. Income tax—For any year ending before testator's death.]—*Re* COCKELL, JACKSON *v.* A.-G. (No. 2) (1932), 76 Sol. Jo. 495; 16 Tax Cas. 681, 721.

4210a. —— —— ——.]—A judgment was signed in 1854, but was not registered till after the death of the judgment debtor in 1862 :—*Held :* the judgment had no preference over simple contract debts against the estate of the judgment debtor.—KEMP *v.* WADDINGHAM (1866), L. R. 1 Q. B. 355; 7 B. & S. 301; 35 L. J. Q. B. 114; 13 L. T. 709; 14 W. R. 390.

4221. *Add. Annotation :*—**Refd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

4225. Delete the cross-reference immediately preceding this case.

4351. *Add. Annotation :*—**Refd.** *Re* Cockell, Jackson *v.* A.-G., [1931] 1 Ch. 389.

4353a. How exerciseable—Equitable assignment of future assets.]—A personal representative's right to prefer creditors, preserved by Administration of Estates Act, 1925 (c. 23), s. 34 (2), can be exercised not only by payment in cash, or by a legal charge equivalent thereto, but also by an equitable assignment of future assets that materialise before an administration decree. — *Re* WILLIAMS, RICHARDS *v.* WILLIAMS, [1930] 2 Ch. 378; 99 L. J. Ch. 476; 143 L. T. 630.

4392. *Add. Annotation :*—*As to* (2) **Consd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

4418. *Add. Annotation :*—*As to* (3) **Consd.** *Re* Cockell, Jackson *v.* A.-G., [1931] 1 Ch. 389.

4423. *Add. Annotation :*—**Consd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

4428a. Against Crown—Administration of Estates Act, 1925 (c. 23), s. 34 (2).]—A.-G. *v.* JACKSON, No. 4538a, *post.*

4429. *Add. Annotation :*—**Refd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

4433. *Add. Annotation :*—**Refd.** *Re* Cockell, Jackson *v.* A.-G., [1931] 1 Ch. 389.

4484. *Add. Annotation :*—**Consd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

PART IV. SECT. 2, SUB-SECT. 2.—C. (b) i.

sn. *Under 5 Geo. 2, c. 7.*]—*Held :* land was assets in the hands of exors. for the payment of unliquidated damages in an action of covenant.—SICKLES *v.* ASSELSTINE (1853), 10 U. C. R. 203.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 3.—A.

p i. —— *Preferred to mortgagee of property devised beneficially to executor.*]—*Re* SCULTHORPE (Ont.), [1926] 2 D. L. R. 739; 7 C. B. R. 505.—**CAN.**

so. *Widow's right to money payable under marriage contract.*]—O'REILLY *v.* O'REILLY (1910), 16 O. W. R. 75; 21 O. L. R. 201.—**CAN.**

sp. *Claim for breach of trust.*]—The fact that a claim against the estate of a deceased person arose in consequence or by means of a breach of duty as a trustee, affords no ground for giving such claim a preference over other creditors of the estate; as, under Property & Trusts Act, R. S. O. 1877, c. 107, s. 30, the claimant can only rank *pari passu* with other creditors.—BROCK *v.* CAMERON (1878), 25 Gr. 369.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 3.—B.

4162 i. *Simple contract debt due to the Crown—Priority over specialty & simple contract debts due to subject.*]—A debt incurred by the purchase of wheat from the Minister of Agriculture, under Wheat Marketing Acts, is a Crown debt, & should be paid in priority to all other debts of intestate.—*Re* MCMAHON, LAWSON *v.* INTESTATE ESTATES CURATOR, [1921] V. L. R. 549.—**AUS.**

PART IV. SECT. 2, SUB-SECT. 3.—C. (a).

4167 i. *Priority over specialty & simple contract debts.*]—In the administration of assets, a judgment obtained against deceased is entitled to priority over simple contract & specialty creditors, but it is essential to the judgment that it should have been docketed.—FRONTENAC LOAN CO. *v.* MORICE (1886), 3 Man. L. R. 462.—**CAN.**

4178 i. *Degrees of priority—Between judgment creditors — Judgment for balance of legacy charged on realty—Judgment by creditor secured by mortgage.*]—CAMERON *v.* HARPER (1892), 21 S. C. R. 273.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 3.—C. (c).

4206 i. *Against deceased.*]—FRONTENAC LOAN CO. *v.* MORICE, No. 4167 i., *ante.*—**CAN.**

PART IV. SECT. 2, SUB-SECT. 4.—A. (a).

4245 iii. ——.]—*Re* GREEN, [1932] 3 D. L. R. 48.—**CAN.**

sq. *Right of widow to pay husband's debt.*]—The payment of a husband's debt, though barred, has been held to be a pious duty on the part of the widow, & it is not necessary that there should be any danger to the estate, in order to entitle the widow to incur debts, or to alienate the property of her husband in order to pay off barred debts. The Hindu law does not take cognisance of any bar of limitation.—ASHUTOSH SIKDAR *v.* CHIDAM MANDAL (1929), I. L. R. 57 Calc. 904.—**IND.**

PART IV. SECT. 2, SUB-SECT. 4.—A. (c) i.

d i. *S. P.* WATKINS *v.* WASHBURN (1846), 2 U. C. R 291.—**CAN.**

sr. *By executor de son tort.*]—An exor. *de son tort* cannot give a new starting point to Stat. Limitations as against the rightful administrator, or the parties beneficially interested in the estate.—GRANT *v.* MCDONALD (1860), 8 Gr. 468.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 5.—A.

st. *Claim for wages by manager of intestate's farm—Claim by execution creditor.*]—GILMOUR *v.* GILMOUR (1894), 3 B. C. R. 397.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 1.

sv. *Future liability contingent — Rights of executor to distribute residue.*]—The father of a pauper lunatic daughter, who had become chargeable to the parish council, admitted his liability to aliment her, & died intestate. The son, as exor., divided the estate, which was movable, equally between himself & his sister. At the date of division the daughter's share had not been exhausted by the cost of her maintenance since his death :—*Held :* as any claim there might be against the rest of the estate for aliment was merely contingent, the exor. was not bound to retain the remaining share of the estate to meet that claim. — EDINBURGH PARISH COUNCIL *v.* COUPER, [1924] S. C. 139.—**SCOT.**

4485. *Add. Annotation :*—**Overd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

4511. *Add. Annotation :—As to* (2) **Consd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

4527. *Add. Annotation :*—**Consd.** A.-G. *v.* Jackson, [1932] A. C. 365.

4533. *Add. Annotation :*—**Consd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

4535. *Add. Annotation :*—**Consd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

4538a. —— **Administration of Estates Act, 1925 (c. 23), s. 34 (1).**]—Under sect. 34 (1), & the rules set out in Part I. of Sched. I., to Administration of Estates Act, 1925 (c. 23), in the administration of insolvent estates an exor. has no right of retainer of a simple contract debt against the Crown so far as the Crown has priority under the bkpcy. rules affecting debt priorities ; consequently the Crown has priority for a claim for taxes, not exceeding in the whole one year's assessment.

In my opinion there are now only two, or possibly three, degrees of priority of debts, being, first, those which are by the Bkpcy. Act expressly given priority ; secondly, those which are expressly directed to be paid *pari passu ;* & possibly, thirdly, those mentioned in Bkpcy. Act, 1914 (c. 59), s. 36, & in sect. 3 of the Partnership Act, 1890 (c. 39), the effect of the latter section being expressly retained in the Bkpcy. Act, 1914 (c. 59), s. 33. It follows that the balance of any Crown debt in excess of that portion which is given priority is now of the same degree as the debt of the executrix in the present case, & that she can retain against such balance (LORD ATKIN).

The right still remains as before, the right to retain against debts of equal degree. Some debts have been put in a higher degree than they were before ; but the exor.'s right always has been subject to changes of that description. What has been affected is not the right, but the classes in respect of which the right is exercised (LORD ATKIN).—A.-G. *v.* JACKSON, [1932] A. C. 365 ; 48 T. L. R. 261 ; 76 Sol. Jo. 146 ; *sub nom. Re* COCKELL, A.-G. *v.* JACKSON, 101 L. J. Ch. 186 ; [1931] B. & C. R. 167 ; *sub nom. Re* COCKELL, JACKSON *v.* A.-G., 146 L. T. 450 ; 16 Tax Cas. 681, H. L.

Annotation :—**Refd.** *Re* Bailey, Duchess Mill, Ltd. *v.* Bailey (1932), 76 Sol. Jo. 560.

4584. In line 6 of the paragraph, before the words " secured by bond," add the word " not."

4591. *Add. Annotation :*—**Consd.** *Re* Quintin Dick, Cloncurry *v.* Fenton, [1926] Ch. 992.

4607. *Add. Annotations :*—**Apld.** I. R. Comrs. *v.* Smith, [1930] 1 K. B. 713. **Consd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

4613a. —— —— **Devisee requiring conveyance—Liability of estate for costs.**]—*Re* STRINGER, HILL *v.* STRINGER (1899), Y. S. C. P.

4630. *Add. Annotation :*—**Consd.** *Re* City Equitable Fire Insce., [1925] Ch. 407.

4651. *Add. Annotation :*—**Refd.** *Re* Carrington' Ralphs *v.* Swithenbank, [1932] 1 Ch. 1.

4653. *Add. Annotations :*—**Consd.** I. R. Comrs. *v.* Smith, [1930] 1 K. B. 713. **Refd.** Herbert *v.* I. R. Comrs., I. R. Comrs. *v.* Herbert (1925), 9 Tax Cas. 593 ; Daw *v.* Inland Revenue Comrs., Duff-Dumbar *v.* Inland Revenue Comrs. (1928), 14 Tax. Cas. 58.

4661. For " (1844) " read " (1842)."

4664a. Incomplete gift inter vivos—Completion by appointment as executor—No necessity for assent.]—*Re* COMBERBACH, SAUNDERSON *v.* JACKSON (1929), 73 Sol. Jo. 403.

4685. *Add. Annotation :*—**Refd.** *Re* Vander Byl, Fladgate *v.* Gore, [1931] 1 Ch. 216.

4687a. Advances by co-legatees barred by Statute of Limitations—Not interest on advances.]—POOLE *v.* POOLE (1871), 7 Ch. App. 17 ; 25 L. T. 771 ; 20 W. R. 133, L. JJ.

Annotations :—**Consd.** *Re* Rees, Rees *v.* George (1881), 17 Ch. D. 701. **Refd.** *Re* Milnes, Milnes *v.* Sherwin (1885), 53 L. T. 534.

4712a. —— ——.]—FRYER *v.* BUTTAR (1837), 8 Sim. 442 ; 59 E. R. 175.

Annotations :—**Consd.** *Re* Parry, Scott. *v.* Leak (1889), 42 Ch. D. 570. **Refd.** Harbin *v.* Masterman [1896] 1 Ch. 351.

4738a. —— ——.]—HORNER *v.* SAYNER (1838), Coop. Pr. Cas. 168 ; 47 E. R. 450, L. C.

PART IV. SECT. 5, SUB-SECT. 1.—B.

4548 i. *What are—Bequest of stock—Testator possessing no such stock at death.*]—*Re* MILLAR, [1927] 3 D. L. R. 270 ; 60 O. L. R. 434.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 4.—C.

n i. —— *No power to impose terms as condition precedent to immediate payment.*]—BEDDY *v.* SMITH (1845), 1 L. T. O. S. 390.—**IR.**

sw. *Discretion given by will.*]—A will contained a bequest (para. 5) to pltf. of $300 per annum during his lifetime, " to be paid as soon as the finances of my estate will permit my exors. to do so." By para. 7 testatrix directed that " it shall not be incumbent to pay any bequest until three years after my decease, & my husband, & any other exors. after his death, shall decide when the amounts shall be paid & in what amounts from time to time." By para. 12 testatrix authorised her exors. " at any time to withhold any payment of legacy or bequest until such time as they may consider it advisable to make same " :—*Held :* nothing in paras. 5 & 7 authorised deft. to withhold payment of pltf.'s legacy ; & the discretion given by para. 12 did not put deft. in a position to violate deliberately the terms of the will. The discretion was one to be reasonably exercised.—SEYMOUR *v.* PRATT (1925), 57 O. L. R. 278.—**CAN.**

sx. *Before letters of administration—Legacy very small.*]—ROSS *v.* ROSS (1872), 4 Ch. Ch. 27.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 4.—D.

4683 i. *Out of what funds payable.*]—Testator by his will directed his exors. " to pay to the legatees mentioned in the will of my late wife amounting in all to $20,000 which sum is represented by bonds in a " certain bank " in a parcel separate from my own securities " :—*Held :* the legacies were to be treated as legacies from testator, payable out of that portion of his estate earmarked in the way indicated.—*Re* LASHAM (1924), 56 O. L. R. 137.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 4.—E. (a).

4703 i. *Direction for postponement or accumulation—When legatee may require payment.*]—Where testator gives a legatee an absolute vested interest in a defined fund, the ct. will order payment on his attaining twenty-one, notwithstanding that by the terms of the will payment is postponed to a subsequent period.—GOFF *v.* STROHM (1897), 28 O. R. 553.—**CAN.**

4703 ii. —— ——.]—Where a testator gives a legatee an absolute vested interest in a certain defined fund, so that, according to the ordinary rule, he would be entitled to receive it on attaining the age of 21 years, but by the terms of the will payment is postponed until a subsequent period, *e.g.* till the legatee attains the age of 25 years, the ct. will nevertheless order payment on his attaining 21 years.—*Re* TANNER ESTATE, GOULD *v.* TANNER & TANNER, [1931] 2 W. W. R. 794.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 4.—E. (b).

ri. —— —— ——.]—*Re* MCSWEENEY, EASTERN TRUST CO. *v.* MCSWEENEY (1931), 2 M. P. R. 583.—**CAN.**

sy. *Annuity charged on land—Duty of representative on transferring land to devisees—Land Titles Act.*]—*Re* CREST ESTATE (1914), 7 W. W. R. 614 ; 19 D. L. R. 190.—**CAN.**

4753. After this case add "**Sale of legacy to executor—In return for annuity—Validity of transaction.**]—*See* FRAUDULENT & VOIDABLE CONVEYANCES, No. 895a, *post.*"

4763a. —— ——.]—*Re* LYMAN'S TRUST & TRUSTEE RELIEF AMENDMENT ACT, 1860 (1860), 2 L. T. 662.

4812. *Add. Annotation:*—**Consd.** *Re* Buxton, Buxton *v.* Buxton, [1930] 1 Ch. 648.

4849. *Add. Annotation:*—*As to* (3) **Refd.** *Re* Jones, Meacock *v.* Jones, [1932] 1 Ch. 642.

4869a. —— ——.]—The ct. has power where realisation has been postponed for the benefit of the residuary legatees to direct that a legatee should be paid, not £4 per cent. under R. S. C., Ord. 65, r. 64, but £5 per cent. as from one year from the death of testator upon the legacy moneys.—*Re* BRINTON, BRINTON *v.* PREEN (1923), 67 Sol. Jo. 704.

4877a. Capitalisation of reserve fund.]—A testator bequeathed to his son & grandson on the death of his wife the shares belonging to him at his death in a certain co. Between the death of testator & the subsequent death of his wife each of the 460 shares of the value of £35 each which belonged to him at the date of his death became, as the result of the capitalisation of a portion of the reserve fund of the co., consolidated with a new share of the value of £15 into a share of the value of £50. Testator's estate, as the result of the capitalisation, also became entitled, in consequence of his holding of 460 ordinary shares, to 920 preferred ordinary shares of £10 each:—*Held:* (1) following *Smell* v. *Dee* (1707), 2 Salk. 415, the gifts were contingent, & (2) the original 460 shares together with the accretions became, on the death of testator's wife, the property of the specific legatees.—*Re* BUXTON, BUXTON *v.* BUXTON, [1930] 1 Ch. 648; 99 L. J. Ch. 334; 143 L. T. 37.

4895a. —.]—Testatrix gave legacies of £100 to each of her exors. & trustees & then bequeathed all her plate, jewellery, ornaments, china, & other household effects to two specific legatees absolutely. The whole of her residuary property of every kind she devised, bequeathed & appointed to her trustees upon trust to sell & out of the proceeds, first, to pay her funeral & testamentary expenses, debts, & the legacy duty; secondly, to appropriate & set apart two sums of £4,000 & £2,000 to be held upon certain trusts for life & then over; & thirdly, to pay a number of pecuniary legacies, including one of £600. Testatrix declared that should her residuary personal estate be insufficient to pay all the legacies then the legacy of £600 should be reduced to £500; & every legacy & annuity was bequeathed free of legacy duty. There was a deficiency in the estate; —*Held:* (1) there were sufficient indications in the will that the testatrix intended the distribution of her estate to be in accordance with the priorities mentioned, & the settled legacies must be paid in full before all the other pecuniary legacies; (2) the legacy of £600 must be reduced to £500 & this reduced legacy, plus the duty, must abate *pro rata* with the other postponed legacies, including those to the exors.; (3) the costs of packing & delivering specific legacies must be borne by the specific legatees.—*Re* LEACH, MILNE *v.* DAUBENY, [1923] 1 Ch. 161; 92 L. J. Ch. 225; 128 L. T. 525; 67 Sol. Jo. 198.

4910. *Add. Annotation:*—**Refd.** Jones *v.* Wright (1927), 139 L. T. 43.

4953. *Add. Annotation:*—**Refd.** *Re* Whitrod, Burrows *v.* Base, [1926] Ch. 118.

5065. *Add. Annotation:*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

5072. *Add. Annotation:*—*As to* (1) **Refd.** *Re* Pennington & Owen, [1925] Ch. 825.

PART IV. SECT. 5, SUB-SECT. 5.—A.

sz. *Question for court.*]—*Re* ARMOUR (1926), 23 S. L. R. 525.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 5.—B. (a).

4765 vii. —— ——.]—*Re* DALY. [1926] 1 D. L. R. 822; 58 O. L. R. 301.—**CAN.**

4765 viii. —— ——.]—Testator died in 1888, & legacies became payable in 1890. His estate was heavily insolvent, & the last of the debts was not finally discharged until 1919. From that date the trustees accumulated funds until 1924, when they brought an action of multiplepoinding & exoneration for distribution of the estate:—*Held:* (1) while as a general rule interest was allowed upon legacies from the death of testator or from the prescribed date of payment, there was no absolute rule compelling the ct. in all cases to allow such interest, the general rule being displaced if circumstances showed it to be inapplicable; (2) the general legatees were not entitled to interest on their legacies from 1890 to 1919, in respect that, owing to the insolvency of the estate during that period, there was no asset realisable to meet the legacies nor any interest-bearing subject; (3) there was no absolute rule to the effect that the rate of legal interest should be 5 per cent., the rate of interest being in every case for the discretion of the ct. in the particular circumstances.—WADDELL'S TRUSTEES *v.* CRAWFORD, [1926] S. C. 654.—**SCOT.**

PART IV. SECT. 5, SUB-SECT. 5.—B. (d).

4827 iii. —.]—In determining the right of legatees to interest upon legacies the payment of which is postponed for a definite period by the will, the mere direction of such postponement will not of itself alter the date from which interest is to run, & testator's reasons for such postponement may be taken into consideration. If payment was delayed in order thereby to benefit a residuary legatee, then, in the absence of a direction to the contrary, no interest upon such postponed legacies would be payable before the expiration of the prescribed period. But where the postponement was intended primarily to enable the exors. to collect & realise the assets, the postponed legacies would carry interest from such a time after the end of the "exors.' year" as the exors. had in hand realised assets which could rightfully be applied to the payment of such legacies.—MORPETH *v.* WILLIAMSON, [1926] N. Z. L. R. 39.—**N.Z.**

sd. *Legacy payable "when & how he likes."*]—A will provided that: "the exor. has the power given him to pay these three bequests when & how he likes—the estate is not to be sacrificed in any way to pay them." The exor., acting prudently, disposed of the estate many years after the death of testator:—*Held:* the legacies did not carry interest from the end of the year of testator's death.—PLANTA *v.* GREENSHIELDS (No. 2), [1932] 2 W. W. R. 60; 3 D. L. R. 423.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 5.—C.

4868 i. *When more than 4 per cent. allowed — Special circumstances.*]—WADDELL'S TRUSTEES *v.* CRAWFORD, No. 4765 viii, *ante.*—**SCOT.**

PART IV. SECT. 5, SUB-SECT. 6.—A.

4883 iv. —— —— ——.]—A. by his will directed that certain pecuniary legacies, amounting in all to the sum of £710, should be paid "with & out of the proceeds" of the sale of his investments comprising stocks & shares. The investments realised the sum of £487 0*s.* 4*d.* At the date when the will was made they were worth approximately the sum of £481 12*s.* 6*d.* There was a further direction that the legacies were to be paid free of all Crown duties. Testator further dealt with the residue of his property item by item. On a summons raising the question whether the balance of the legacies was payable out of the general residue of the estate:—*Held:* the balance was not payable & as the fund specified by testator for their payment was insufficient to pay them in full, they must abate ratably *inter se.*—*Re* BOYD ESTATE, BOYD *v.* BOYD, [1928] N. I. 14.—**IR.**

PART IV. SECT. 5, SUB-SECT. 6.—D.

4961 ii. —— ——.]—*Re* BOYD ESTATE, BOYD *v.* BOYD, [1928] N. I. 14.—**IR.**

PART IV. SECT. 5, SUB-SECT. 8.

sa *Judgment for balance of legacy—Priority over creditors.*]—HARPER *v.* HARPER (1890), 2 B. C. R. 15.—**CAN.**

5079. *Add. Annotation :*—**Distd.** *Re* Pennington & Owen, [1925] Ch. 825.

5085. *Add. Annotation :—As to* (1) **Refd.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

5110a. ——.]—LLOYD *v.* STODDART (1752), Amb. 152 ; 27 E. R. 100, L. C.

5160a. —— ——.]—WILSON *v.* LESLIE (1857), 5 W. R. 815.

Annotation :—**Dbtd.** *Re* Dacre, Whitaker *v.* Dacre (1916), 85 L. J. Ch. 274.

5202. *Add. Annotation :*—**Refd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

5206. After this case add "*See, also,* CONFLICT OF LAWS, No. 548a, *ante.*"

5240a. —— ——.]—Testator bequeathed sums of stock to his grandchildren, to be paid to them on attaining twenty-one, with benefit of survivorship to those attaining that age, but in case they should all die under twenty-one, then he willed the interest arising from such sums to their father for life, with remainder over :—*Held :* the grandchildren were entitled during their minority to have the interest arising from their legacies applied towards their maintenance.—BODDY *v.* DAWES (1836), 1 Keen, 362 ; 6 L. J. Ch. 145 ; 48 E. R. 346.

Annotations :—**Refd.** Festing *v.* Allen (1844), 5 Hare, 573 ; Dundas *v.* Wolfe Murray (1863), 1 Hem. & M. 425 ; *Re* Judkin's Trusts (1884), 50 L. T. 200.

5245. *Add. Annotation :*—**Distd.** *Re* Reade-Revell, Crellin *v.* Melling, [1930] 1 Ch. 52.

5246. *Add. Annotations :*—**Apld.** *Re* Raine, Tyerman *v.* Stansfield, [1929] 1 Ch. 716. **Distd.** *Re* Reade-Revell, Crellin *v.* Melling, [1930] 1 Ch. 52.

5249. *Add. Annotations :—As to* (1) **Apld.** *Re* Fulford, Fulford *v.* Hyslop, [1930] 1 Ch. 71. *As to* (2) **Distd.** *Re* Reade-Revell, Crellin *v.* Melling, [1930] 1 Ch. 52. **Consd.** *Re* Jones, Meacock *v.* Jones, [1932] 1 Ch. 642. **Refd.** Stern *v.* I. R. Comrs. (1930), 15 Tax Cas. 148. *As to* (4) **Refd.** *Re* Raine, Tyerman *v.* Stansfield, [1929] 1 Ch. 716.

5250. *Add. Annotation :*—**Apld.** *Re* Raine, Tyerman *v.* Stansfield, [1929] 1 Ch. 716.

5251a. —— —— ——.]—A contingent or future pecuniary legacy payable to an infant upon attaining twenty-one does not carry intermediate income under Law of Property Act, 1925 (c. 20), s. 175, & there is no power under Trustee Act, 1925 (c. 19), s. 31, to apply the interest, or intermediate income thereof, when invested, for the infant's maintenance, unless testator is the parent of or *in loco parentis* to the infant, or has indicated an intention by his will that the infant should be maintained out of the income, or has directed the legacy to be appropriated & invested for the benefit of the infant.—*Re* RAINE, TYERMAN *v.* STANSFIELD, [1929] 1 Ch. 716 ; 98 L. J. Ch. 244 ; 141 L. T. 25.

Annotation :—**Refd.** *Re* Reade-Revell, Crellin *v.* Melling, [1930] 1 Ch. 52.

5251b. —— —— ——.]—Testatrix, who died after the commencement of Trustee Act, 1925 (c. 19), by her will directed the trustees thereof to set apart a specific sum, to accumulate & capitalise the income thereof, until A. should attain the age of twenty-one years ; &, if A. should attain that age, then to pay to her the income of that sum during her life, & after her death to hold the capital sum in trust for her children :—*Held :* as the trust for A., for a contingent interest for her life, did not carry the intermediate income, the trustees had, upon the proper construction, Trustee Act, 1925 (c. 19), s. 31, no power to apply that income towards A.'s maintenance. — *Re* READE-REVELL, CRELLIN *v.* MELLING, [1930] 1 Ch. 52 ; 99 L. J. Ch. 136 ; 142 L. T. 177.

5251c. —— ——.]—Where a testator, being the parent, or *in loco parentis*, of an infant, gives a legacy to that infant, contingently on his attaining an age other than full age, & makes no provision for maintenance, it is within the discretion of the ct. to order the interest on the legacy to be applied in maintaining the legatee until the legacy vests.—*Re* JONES, MEACOCK *v.* JONES, [1932] 1 Ch. 642 ; 101 L. J. Ch. 307 ; 147 L. T. 137.

5256. *Add. Annotation :*—**Expld. & Distd.** *Re* Jones, Meacock *v.* Jones, [1932] 1 Ch. 642.

5273. *Add. Annotations :*—**Folld.** *Re* Stokes, Bowen *v.* Davidson, [1928] Ch. 716. **Expld.** *Re* Raine, Tyerman *v.* Stansfield, [1929] 1 Ch. 716.

5273a. ——.]—Where a legacy given to an infant is clearly indicated by the will to be intended for the support of the infant, interest on such legacy will run from the death of testator, as the support of the infant must begin immediately upon such death ; & where such

PART IV. SECT. 5, SUB-SECT. 13.—A. (a).

5111 v. —— *Appointment by codicil of new executors—Provision in codicil for remuneration of executors.*]—*Held :* the exors. were entitled only to the commission mentioned in the codicil, notwithstanding a provision in the codicil that the will should be construed as if the names of the exors. were inserted throughout in place of those of the original exors.—*Re* BOSSI (1897), 5 B. C. R. 446.—**CAN.**

5111 vi. —.]—Where testator gives a legacy to an executor or trustee, stating that it is given for his services in that capacity, & particularly where testator declares it to be in lieu of commission or remuneration, such exor. or trustee, if he accepts the trust, is not entitled to anything more than he is given by the will, unless under exceptional circumstances, such as the gift being so small as to be illusory ; & the mere inadequacy of the remuneration given by the will is not of itself a sufficient reason for departing from that practice.—*Re* MURPHY (1928), S. R. Q. 1.—**AUS.**

PART IV. SECT. 5, SUB-SECT. 14.—C.

5189 i. —— *Parent.*]—An exor. cannot discharge himself by paying a legacy given to an infant to the father or mother, as guardian, unless the ct. allows it in special circumstances.—*Re* NAKAUCHI ESTATE, [1927] 3 D. L. R. 1087 ; [1927] 2 W. W. R. 607 ; 21 Sask. L. R. 673—**CAN.**

sb. *Payment into court—Estate in Australia—Infant legatee & guardian domiciled in England.*]—By his will testator, domiciled in California, bequeathed money on deposit in banks in Australia, amounting to about £12,000, to the infant daughters of E., & appointed E. as guardian of the estate of his daughters, & appointed two residents of Brisbane as exors. of the testator's estate in Australia. E. & his two daughters were domiciled in England :—*Held :* in the circumstances the exors. should pay the legacies into ct., leaving E. to make appropriate application for payment out to him.—*Re* TUDOR, [1928] S. R. Q. 299.—**AUS.**

PART IV. SECT. 5, SUB-SECT. 14.—D. (b) i.

u i. —.]—The ct. may allow maintenance to an infant (1) out of property to which the infant is contingently entitled under a disposition made by its father or a person standing *in loco parentis* to it if the infant is unprovided for, or (2) out of the income earned by a contingent legacy bequeathed to an infant which is directed to be set apart for the infant so that if & when the contingency happens, the income on the legacy will become payable to the infant, or (3) out of the infant's share in the income of property subject of a gift to a class, all or some of whose members must take where the chance of taking is equal as to all of them, or a gift to such a class or an individual & the doneos over in default of the class consent. But the ct. will apply money for an infant's main-

legacy is one of two or more legacies all in the same category & all given in the same group to the trustees of the will, no distinction being made between any of the legacies, the other legacy or legacies will likewise carry interest from the date of testator's death.—*Re* STOKES, BOWEN *v.* DAVIDSON, [1928] Ch. 716; 97 L. J. Ch. 273; 139 L. T. 331; 72 Sol. Jo. 384.

Annotation:—**Distd.** *Re* Raine, Tyerman *v.* Stansfield, [1929] 1 Ch. 716.

5273b. Whether infant entitled to whole of income.]—Testator, standing *in loco parentis*, gave to trustees a legacy of £4,000, on trust to pay it to A., on his attaining twenty-one. He authorised them to raise it by mtge. of his real estates, & out of the money thereby bequeathed, to raise such sum, not exceeding the interest at 4 per cent. of the expectant portion, as to them should seem sufficient for maintenance:—*Held:* the legatee, during minority, was entitled to maintenance only, & not to the whole amount of interest on the legacy.—RUDGE *v.* WINNALL (1849), 12 Beav. 357; 18 L. J. Ch. 469; 14 L. T. O. S. 325; 13 Jur. 737; 50 E. R. 1098.

Annotations:—**Refd.** *Re* Rouse's Estate (1852), 9 Hare, 649. **Mentd.** *Re* Roose, Evans *v.* Williamson (1880), 17 Ch. D. 696.

5276. *Add. Annotation:*—**Refd.** *Re* Jones, Meacock *v.* Jones, [1932] 1 Ch. 642.

5287. *Add. Annotation:*—**Distd.** *Re* Raine, Tyerman *v.* Stansfield, [1929] 1 Ch. 716.

5293. *Add. Annotation:*—**Distd.** *Re* Reade-Revell, Crellin *v.* Melling, [1930] 1 Ch. 52.

5301. *Add. Annotation:*—**Consd.** *Re* Jones, Meacock *v.* Jones, [1932] 1 Ch. 642.

5320. *Add. Annotation:*—**Refd.** *Re* King, Public Trustee *v.* Aldridge, [1928] Ch. 330.

5322. *Add. Annotation:*—**Apld.** *Re* Maber, Ward *v.* Maber, [1928] Ch. 88.

5331. *Add. Annotation:*—**Refd.** *Re* Whitrod, Burrows *v.* Base, [1926] Ch. 118.

5334. *Add. Annotation:*—**Refd.** *Re* Whitrod, Burrows *v.* Base, [1926] Ch. 118.

5335. *Add. Annotation:*—**Apld.** *Re* Whitrod, Burrows *v.* Bax (1925), 70 Sol. Jo. 209.

5337. *Add. Annotation:*—**Refd.** *Re* Whitrod, Burrows *v.* Base, [1926] Ch. 118.

5340a. ——.]—Testator left his property on trust for sale & realisation, & thereafter gave & bequeathed one-tenth part to A., two-tenth parts to C.'s children, & the rest in tenth & twentieth parts to specific objects in a similar manner, & "to K. £30, to L. £40, to Nonconformist Ministers of D. the residue in equal shares":—*Held:* the will must be read as though after disposing of nine-tenths of his residuary estate he directed the remaining tenth, charged with the two sums as therein provided, to be divided among the ministers, & there was an intestacy as to the undivided aliquot shares of persons who predeceased testator.—*Re* WHITROD, BURROWS *v.* BASE, [1926] Ch. 118; 95 L. J. Ch. 205; 134 L. T. 627; 70 Sol. Jo. 209.

5341. *Add. Annotation:*—**Refd.** *Re* Whitrod, Burrows *v.* Base, [1926] Ch. 118.

5353a. —— ——.]—*Re* COPE'S TRUSTS (1877), 36 L. T. 437.

5354. *Add. Annotations:*—**Consd.** Baker *v.* Archer-Shee, [1927] A. C. 844. **Apld.** I. R. Comrs. *v.* Smith, [1930] 1 K. B. 713. **Refd.** Herbert *v.* I. R. Comrs., 1. R. Comrs. *v.* Herbert (1925), 9 Tax Cas. 593; A.-G. *v.* Belilios, [1928] 1 K. B. 798; Daw *v.* Inland Revenue Comrs., Duff-Dunbar *v.* Inland Revenue Comrs. (1928), 14 Tax. Cas. 58.

5358. *Add. Annotation:*—**Refd.** *Re* Oldham, Oldham *v.* Myles (1927), 71 Sol. Jo. 491.

5360a. —— —— ——.]—The interim interest from a fund set apart to meet future vested legacies, which do not carry interest in the meantime, is capital & not income of residue, & must, therefore, be invested, & the income only of such investment paid to the tenant for life of the residuary estate. The rule adopted in *Allhusen* v. *Whittell*, No. 5358, *ante*, in reference to contingent legacies, has no application to vested legacies.—*Re* WHITEHEAD, PEACOCK *v.* LUCAS, [1894] 1 Ch. 678; 63 L. J. Ch. 229; 70 L. T. 122; 42 W. R. 491; 38 Sol. Jo. 183; 8 R. 142.

Annotation:—**Distd.** *Re* Hawkins, White *v.* White, [1916] 2 Ch. 570.

5363a. **Gross or net amount.**]—In applying the rule in *Allhusen* v. *Whittell*, No. 5358, *ante*, the income of the estate should be calculated, not on the basis of the gross amount received, but at the net amount after deduction of tax.—*Re* OLDHAM, OLDHAM *v.* MYLES (1927), 71 Sol. Jo. 491.

5373. *Add. Annotations:*—**Consd.** *Re* Barratt National Provincial Bank *v.* Barratt, [1925] Ch. 550; *Re* Corelli (1925), 69 Sol. Jo. 525; *Re* Sullivan, Dunkley *v.* Sullivan (1929), 45 T. L. R. 590. **Apld.** *Re* Trollope's Will Trusts, Public Trustee *v.* Trollope, [1927] 1 Ch. 596. **N.F.** *Re* Brooker, Brooker *v.* Brooker (1926), 70 Sol. Jo. 526. **Consd.** *Re* McKee, Public Trustee *v.* McKee, [1931] 2 Ch. 145.

For the cross-reference following this case substitute "——.]—*See, further*, SETTLEMENTS, Vol. XL., pp. 672–674; WILLS."

5375. *Add. Annotation:*—**Refd.** *Re* McKee, Public Trustee *v.* McKee, [1931] 2 Ch. 145.

tenance in disregard of the trust only when the result of not doing so will leave the infant in such adverse circumstances that it must be assumed that if they had been foreseen by testator he would have provided for the case.—*Re* FRENEY (1931), 24 Tas. L. R. 35.—**AUS.**

PART IV. SECT. 6, SUB-SECT. 1.—A.

sk. *Law-agent's business books.*]—A law-agent directed his exors. to convey the residue of his estate to a residuary legatee. The exors. conveyed the residue, with the exception of deceased's business books, which they retained on the ground that it would be a breach of confidentiality towards deceased's clients if they were to hand them over. In an action by the residuary legatee for delivery of the books:—*Held:* pursuer was entitled to delivery.—ROBERTSON *v.* ROBERTSON'S EXECUTORS, [1925] S. C. 606.—**SCOT.**

PART IV. SECT. 6, SUB-SECT. 1.—B.

sm. *Mistake as to value of assets—New distribution ordered.*]—CLARKE *v.* HAWKE (1865), 11 Gr. 527.—**CAN.**

PART IV. SECT. 6, SUB-SECT. 3.

sn. *Duty of administrator—To distribute under Devolution of Estates Act.*]—*Re* BOWER (1905), 5 O. W. R. 383; 9 O. L. R. 199.—**CAN.**

PART IV. SECT. 6, SUB-SECT. 4.—A. (b).

5378 i. *General rule.*]—Testator by his will gave certain legacies & devised certain land to his widow for life or widowhood; upon her death or marriage this land to go to the children of his sister. The residue of his estate he devised & bequeathed to "my exors." In the next clause he appointed three of his nephews his exors.:—*Held:* the change made in the law by the Imperial Act of 1830, adopted in this province & now found in Trustee Act, R. S. O., 1927, s. 53, does not apply in cases in which testator himself has given the property to his exors.; the Act applies only

5407. *Add. Annotations :*—**Apld.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 136 L. T. 60. **Refd.** *Re* Blake, *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251.

5411. *Add. Annotation :*—**Refd.** *Re* Jones, Johnson *v.* A.-G. (1925), 133 L. T. 601.

5412. *Add. Annotation :*—**Consd.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617.

5416. *Add. Annotation :*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617.

5417. *Add. Annotation :*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617.

5423a. -.]—By his will dated Jan. 27, 1913, testator appointed his wife M. & pltf. J. to be his exors., & after directing them to pay his debts & funeral & testamentary expenses, bequeathed all his estate & effects, real & personal, which he might die possessed of, to his wife M. absolutely. M. predeceased testator & died on Aug. 14, 1919. Testator died on Dec. 30, 1920, leaving real & personal property, but no heir-at-law or next of kin :—*Held :* there was in the will an obvious indication of an intention by testator that the exor. was not to take beneficially. He was in the position of a trustee, & on failure of a *cestui que trust* the beneficial interest in the personal estate vested in the Crown as *bona vacantia*.—*Re* JONES, JOHNSON *v.* A.-G., [1925] Ch. 340 ; 94 L. J. Ch. 341 ; 133 L. T. 601 ; 69 Sol. Jo. 460.

5442a. ——.]—*Re* SIVEWRIGHT, LAW *v.* FENWICK (1922), 128 L. T. 416 ; 67 Sol. Jo. 168.

Annotation :—**Folld.** *Re* Leach, Milne *v.* Daubeny, [1923] 1 Ch. 161.

5442b. —— ——.]—*Re* LEACH, MILNE *v.* DAUBENY, No. 4895a, *ante*.

5448a. ——.]—*Held :* the direction for payment of the "testamentary expenses" of testator's widow extended to the costs & expenses in obtaining letters of administration, & in connection with the administration of the estate of the widow ; & the costs of an action in the probate division.—*Re* CLEMOW, YEO *v.* CLEMOW, [1900] 2 Ch. 182 ; 69 L. J. Ch. 522 ; 82 L. T. 550 ; 48 W. R. 541 ; 44 Sol. Jo. 428.

Annotations :—**Refd.** *Re* Treasure, Wild *v.* Stanham, [1900] 2 Ch. 648 ; *Re* Sharman, Wright *v.* Sharman, [1901] 2 Ch. 280 ; *Re* Fearnsides, Baines *v.* Chadwick, [1903] 1 Ch. 250 ; *Re* King, Travers *v.* Kelly, [1904] 1 Ch. 363 ; *Re* Spencer Cooper, Poë *v.* Spencer Cooper, [1908] 1 Ch. 130 ; Porte *v.* Williams, [1911] 1 Ch. 188 ; O'Grady *v.* Wilmot, [1916] 2 A. C. 231 ; *Re* Massey, Ram *v.* Massey (1920), 90 L. J. Ch. 40.

5449a. Costs of probate action.]—*Re* CLEMOW, YEO *v.* CLEMOW, No. 5448a, *ante*.

5452. *Add. Citation :*—*previous proceedings*, [1892] 1 Ch. 450.

5466. *Add. Annotation :*—**Consd.** *Re* Forder, Forder *v.* Forder (1927), 137 L. T. 538.

5483a. —— ——.]—DIXON *v.* DUTFIELD, No. 6014b, *post*.

where there is a bare appointment of exors. so that the implication of law has to be resorted to in order to see whether the estate of testator not otherwise disposed of vests in them beneficially *virtute officii*. In this case, as nothing in the will indicated a contrary intention, the exors. took beneficially.—*Re* GRACEY, [1929] 1 D. L. R. 260 ; 63 O. L. R. 218.—**CAN.**

5382 i. *Whether intention for executor to take beneficially apparent by will—Construction of will.*]—Testator by his will gave certain legacies & devised certain land to his widow for life, or widowhood, & upon her death, or marriage, this land to go to the children of his sister. The residue of his estate he devised & bequeathed to "my exors." In the next clause he appointed three of his nephews his exors. One of these was at the date of the will an infant of tender years, & was only 13 years old at the time of testator's death. Probate was granted to the adult exors. reserving to the infant a right to be admitted to exorship upon attaining majority :—*Held :* the change made in the law of the Imperial Act of 1830, known as Sugden's Act, adopted in this Province, & now found in Trustee Act, R. S. O. 1927, c. 150, s. 53, does not apply to cases in which testator himself has given the property to his exors., the Act applies only to cases where there is a bare appointment of exors., so that the implication of law has to be resorted to in order to see whether the estate of testator not otherwise disposed of vests in them beneficially *virtute officii* ; &, as nothing in the will indicated a contrary intention, the exors. took beneficially.—*Re* GRACEY, [1929] 1 D. L. R. 260 ; 63 O. L. R. 218.—**CAN.**

PART IV. SECT. 7, SUB-SECT. 1.—A. (a).

5425 v. —— ——.]—P. by his will directed that his real property, not specifically devised, should be sold & all the remainder of his property realised. He also directed that his debts, funeral & testamentary expenses should be paid, an annuity provided for his sister, & that certain legacies, all charitable save one, should be paid :—*Held :* testator not having directed that the proceeds of sale of his realty & personalty should form a mixed fund, the primary fund out of which the debts, funeral & testamentary expenses, the annuity, & the legacies should be paid was the pure personalty, & the realty was only charged in aid of the pure personalty in so far as it proved insufficient for the payment of all charges, except the charitable legacies which lapsed as far as the pure personalty proved insufficient.—*Re* PATTON, CAUGHEY *v.* COPELAND, [1925] N. 206.—**IR.**

sc. *Payment of death duties—Exemption by statute—Full effect to be given.*]—*Re* AIKINS, [1928] 2 D. L. R. 415 ; 62 O. L. R. 33.—**CAN.**

PART IV. SECT. 7, SUB-SECT. 1.—A. (b).

5462 i. *Specific legacy—Of incumbered chattel.*]—As between a specific legatee of an incumbered chattel & other specific legatees & devisees, the former must bear the burden of the incumbrance, & a general direction that debts shall be paid will not alter this.—*Re* SIMPSON, [1927] 2 D. L. R. 1043 ; 60 O. L. R. 310.—**CAN.**

PART IV. SECT. 7, SUB-SECT. 1.—A. (c) ii.

5511 i. *Whether mixed fund primarily liable.*]—Where testator has devised his real & personal estates to his exors., to sell or convert same into money & out of the proceeds to pay his debts & legacies, he has created a mixed fund for the purpose.—GRAYSON *v.* WALSH, [1926] 1 D. L. R. 206 ; [1926] 1 W. W. R. 125 ; 20 Sask. L. R. 288.—**CAN.**

5511 ii. ——.]—Testatrix devised & bequeathed one-half of her estate to G., & after all her debts had been paid certain legacies to others, & the balance to G. The assets consisted mainly of realty, & were sufficient to discharge the debts & the funeral & testamentary expenses without recourse to the share given to G. :—*Held :* the second half of the estate was charged with the payment of debts in exoneration of G.'s share, &, the ordinary rules as to the abatement of different parts of the estate for the payment of debts being applicable to the payment of funeral & testamentary expenses, G.'s shares was exempt also from the payment of those expenses.—*Re* ROWE, GRASS *v.* MCCLELLAND, [1929] V. L. R. 290 ; [1929] Argus L. R. 211.—**AUS.**

5513 i. *Whether mixed fund primarily liable—Necessity for direction in will for payment out of mixed fund.*]—Since the Wills Act a residuary devise must for the purposes of administration be regarded as a specific devise, & in the order of assets for the payment of debts ranks with specific devises & specific bequests. A residuary devise does not lose its right to contribution from specifically bequeathed personalty for the payment of debts so far as the general personal estate is insufficient, merely by reason of the facts that it is given together with the general personal estate on trust for conversion & the proceeds of conversion are made a mixed fund for the purposes of disposition, & that the whole estate is subject to a general constructive charge for the payment of debts. To entitle specifically bequeathed personalty to be exonerated from such liability by the residuary realty further evidence of testator's intention to that effect is necessary ; such as a direction that the debts are to be paid out of the mixed fund, or that the proceeds of conversion are to be regarded as personal estate.—*Re* FORSYTH, WYATT *v.* FORSYTH (1929), 29 S. R. N. S. W. 411 ; 46 N. S. W. W. N. 127.—**AUS.**

5540. Add MELLERSH *v.* BRIDGER, SMITH *v.* BRIDGER (1853), 17 Jur. 908.

5556. *Add. Annotation :*—**Apld.** *Re* Reeves, Reeves *v.* Pawson, [1928] Ch. 351.

5594. *Add. Annotation :*—**Apld.** *Re* Fegan, Fegan *v.* Fegan, [1928] Ch. 45.

5594a. Direction in will for payment of "money secured on mortgage" out of residue—Balance of unpaid purchase-money.]—Testator, who at the date of his will in 1912 was the owner of several freehold properties, one of which was subject to a mtge. & of leasehold & other personal estate, gave & bequeathed all the freehold & leasehold properties of which he might die possessed upon trusts in favour of certain of his grandchildren & great-grandchildren, & the residue of his estate upon trust for sale & conversion ; he then directed that his trustees should out of the money thereby produced pay (*inter alia*) his debts & legacies, & should out of the residue of such money pay & discharge "any sum of money secured on mtge. of any of my freehold properties," & should stand possessed of the residue of such money in trust to divide same as therein mentioned. After the date of his will testator paid off the mtge. & took a reconveyance of the mortgaged property. Shortly before his death, in June & Oct. 1917, testator contracted to purchase certain freehold properties in respect of which he paid deposits, leaving balances of the purchase-money owing to the respective vendors. On Dec. 23, 1917, testator made a final codicil, by which, after revoking the appointment of one of his exors. & bequeathing a legacy, he confirmed his will in all other respects. Testator died on Dec. 26, 1917, without having completed the purchases or paid the balances of the purchase-money, & shortly after his death his exors. completed the purchases & paid the balances of the purchase-money ; whereupon the question arose whether, as between the persons claiming under testator's will, those balances ought to be borne by the freehold properties of testator in respect of which same were payable, or ought to be satisfied out of his residuary estate :—*Held :* (1) inasmuch as a vendor's lien for unpaid purchase-money differs essentially from a mtge., even in the modern & wider sense of that term, upon the true construction of the will in the absence of any context enlarging the meaning of the term "mtge.," the balances of the unpaid purchase-money owing at testator's death were not "sums of money secured on mtge.," & no contrary intention was signified by the direction in the will to pay & discharge such sums out of testator's residuary estate, so as to exclude the operation of 1854 Act, which by virtue of 1867 Act, s. 2, extends to a vendor's lien for unpaid purchase-money ; with the result that the balances in question ought to be borne by & satisfied out of the freehold properties in respect of which same were payable, & the devisees thereof were not entitled to have those balances discharged out of testator's residuary estate ; (2) the confirmation of the will by the last codicil thereto, although executed after the mtge. on testator's freehold property had been paid off & after the vendor's lien had arisen, had not the effect of extending the meaning of the words "any sums of money secured on mtge. of any of my freehold & leasehold properties," so as to include the balances of unpaid purchase-money in question.—*Re* BEIRNSTEIN, BARNETT *v.* BEIRNSTEIN, [1925] Ch. 12 ; 94 L. J. Ch. 62 ; 132 L. T. 251 ; *sub nom. Re* BERNSTEIN, BARNETT *v.* BERNSTEIN, 69 Sol. Jo. 88.

(*c*) *After* 1925 (Vol. XXIII., p. 495).

5620a. Special fund for payment of debts—"Contrary or other intention"—Administration of Estates Act, 1925 (c. 23), s. 35.]—The provision by testator in his will of a special fund, not being any of the funds mentioned in sect. 35 (2) of the above Act, for payment of his debts operates as the expression of a "contrary or other intention" within the sect., so as to exonerate, as between the different persons claiming through testator, a personalty fund which at testator's death was subject to a mtge. from the primary liability to discharge it ; but the fund is only exonerated to the extent that the special fund is available for discharging the mtge. debt, &, in so far as it is inadequate, the mortgaged property remains primarily liable.—*Re* FEGAN, FEGAN *v.* FEGAN, [1928] 1 Ch. 45 ; 97 L. J. Ch. 36 ; 138 L. T. 265 ; 71 Sol. Jo. 866.

5640. *Add. Annotation :*—*As to* (4) **Consd.** *Re* Littlewood, Clark *v.* Littlewood (1930), 47 T. L. R. 79.

5641a. ——.]—MARCH (LADY) *v.* FOWKE (1679), Cas. *temp.* Finch, 414 ; 23 E. R. 226, L. C.

5654a. —— —— To revert to residue on death of legatee.]—By his will, testator bequeathed a legacy of £16,000 to trustees for his daughter A. during her life & after her death directed that the legacy should revert to & be added to his general residuary personal estate & go as the same was bequeathed by his will. Testator then gave his general residuary personal estate to B. Testator devised his estates in certain places to other trustees as a fund for the discharge of his debts, funeral & testamentary expenses & his pecuniary legacies in aid of his personal estate, with power to his trustees, if they thought it expedient or necessary either before or after his residuary personal estate should be exhausted to raise money for those purposes by sale or mortgage & subject thereto upon trust for B., in fee. The personal estate of testator was insufficient for the payment of his debts & legacies, & B. supplied such deficiency, including the annual payments to A. in respect of her legacy. A. survived both testator & B. On the death of B., the question

PART IV. SECT. 7, SUB-SECT. 1.—C. (a).

5540 vi. ——.]—RICKER *v.* RICKER (1868), 14 Gr. 264.—**CAN.**

5540 vii. ——.]—SCOTT *v.* SUPPLE (1893), 23 O. R. 393.—**CAN.**

5546 i. *Personal estate insu*.....
LAPP *v.* LAPP (1869), 16 Gr. 159.—**CAN.**

PART IV. SECT. 7, SUB-SECT. 1.—C. (b) iii.

5561 ii. ——.]—Where land is devised which testator held as a purchaser subject to a vendor's lien, unless a contrary intention appears, it is primarily liable for the unpaid purchase-money.—*Re* MACDOUGALL, [1927] 3 D. L. R. 464 ; [1927] 1 W. W. R. 612 ; 21 Sask. L. R. 397.—**CAN.**

5561 iii. ——.]—*Re* NAGEL, [1928] 3 D. L. R. 36.—**CAN.**

PART IV. SECT. 7, SUB-SECT. 2.—A.

k i. —— ——.]—Lands are assets for the satisfaction of debts in the hands of an exor., under 5 Geo. 2, c. 7 ; & to a plea of *plene administravit*, pltf. may reply lands.—GARDINER *v.* GARDINER (1832), 2 O. S. 554.—**CAN.**

arose whether, as testator's personalty was insufficient for the payments before mentioned, testator intended that the corpus of the legacy should be raised out of the real estate devised to B. for the benefit of B., who was testator's residuary legatee :—*Held :* the words " revert to & be added to my general residuary estate " in the will, showed that the testator meant the legacy to be restored to the funds from which it was taken ; & it was not to be taken from the real estate merely for the purpose of augmenting the personal estate.—*Re* SOMERSET (DUKE), THYNNE *v.* ST. MAUR (1886), 55 L. T. 753.

5697a. ——.]—EYLES *v.* CARY (1687), 1 Vern. 457 ; 23 E. R. 583.

Annotation :—**Dbtd.** Mallison *v.* Middleton (1739), 1 Eq. Cas. Abr. 198, n.

5697b. -.]—BOWDLER *v.* SMITH (1706), Prec. Ch. 264 ; 2 Eq. Ca. Abr. 371 ; 24 E. R. 128.

5697c. ——.]—PARKER *v.* WILCOX (1723), 2 Eq. Cas. Abr. 371 ; 22 E. R. 316.

5697d. ——.]—WILLAN *v.* LANCASTER (1826), 3 Russ. 108 ; 38 E. R. 516.

5723a. —— ——.]—Testatrix, who had power, under her brother's will, to appoint real & personal estate, gave the real estate to trustees to raise £1,000, & pay the amount as legacies to various persons & subject thereto for P. & his heirs. She then gave several legacies, payable out of her own personal estate, & other legacies payable out of an unappointed moiety of her brother's personal estate, after the decease of his widow, & she directed the duty on all the foregoing legacies to be paid out of her personal estate, & if deficient for full payment either of duty or legacies, such deficiency was to be made good out of the real estate, on which she charged same. By two codicils, testatrix left other legacies, & directed that the sums bequeathed out of her brother's estate should be paid, with the other legacies, immediately after her decease :—*Held :* the legacies given by the codicils were charged on the real estate.—WILLIAMS *v.* HUGHES (1857), 24 Beav. 474 ; 27 L. J. Ch. 218 ; 30 L. T. O. S. 215 ; 4 Jur. N. S. 42 ; 6 W. R. 94 ; 53 E. R. 441.

5734. *Add. Citations :—sub nom.* NYSSEN *v.* GRETTON, 2 Y. & C. Ex. 222 ; 160 E. R. 378.

5737a. ——.]—Testator directed his debts & funeral & testamentary expenses to be paid out of his personal estate. He then devised his freeholds to trustees to be sold, & the proceeds, after deducting costs, to be deemed part of the residue of his personal estate, & to be subject to the dispositions thereinafter made of the same. Testator then gave a legacy of £1,000 upon certain trusts, & finally directed all the rest & residue of his personal estate to go to his wife for life, remainder over. The pure personal estate being insufficient to pay all the debts & legacies :—*Held :* the legacy of £1,000 ought to be paid out of the moneys arising from the sale of the real estate.—*Re* WOOLLARD'S TRUST (1854), 18 Jur. 1012.

5839a. ——.]—A general charge of debts & legacies upon all the real estates of testator not annulled by a subsequent power to sell a particular estate only & apply the produce to the same purpose : but that estate was first applied.—COXE *v.* BASSET (1796), 3 Ves. 155 ; 30 E. R. 945.

Annotation :—**Consd.** Wrigley *v.* Sykes (1856), 21 Beav. 337.

5864. *Add. Annotation :*—**Refd.** *Re* Carrington, Ralphs *v.* Swithenbank, [1932] 1 Ch. 1.

5864a. ——.]—WATERHOUSE *v.* CLOUT, *Ex p.* BOOKER (1871), 41 L. J. Ch. 223 ; 20 W. R. 277.

5908a. Charge of debts, legacies & expenses on specific bequest—Variation of statutory order of administration.]—By a will, testatrix gave & bequeathed " All my farm stock, implements & tenant-right but charged with payment of all my just debts, & funeral & testamentary expenses, & also with the payment thereout of the legacies mentioned in the will of my late husband W., & an additional legacy of £50 which I bequeath to my step-daughter E. unto & equally between my step-son G. & my son F." :—*Held :* Administration of Estates Act, 1925 (c. 23), Sched. I., Part II., in the case of wills, *a fortiori* in the case of those executed before 1926, indicating with reasonable clarity the intention of deceased, is to take effect subject to variations necessary to give effect to the intention, & therefore the farm stock, implements, & tenant-right were primarily applicable for payment of the funeral & testamentary expenses & debts.—*Re* LITTLEWOOD, CLARK *v.* LITTLEWOOD, [1931] 1 Ch. 443 ; 100 L. J. Ch. 243 ; 144 L. T. 718 ; 47 T. L. R. 79.

5917a. —— —— —— —— **Administration of Estates Act, 1925 (c. 23), Sched. I., Part II.**]—A share of residuary estate which lapses owing to the person who would have been entitled to it under the will of a testator predeceasing testator is " property undisposed of by will " within clause 1 of above Part, & therefore under sect. 34 (3) of the Act primarily liable, subject to any direction to the contrary in the will, to the discharge thereout of funeral & testamentary expenses, debts & legacies.—*Re* LAMB, VIPOND *v.* LAMB, [1929] 1 Ch. 722 ; 98 L. J. Ch. 305 ; 141 L. T. 60 ; 45 T. L. R. 190 ; 73 Sol. Jo. 77.

Annotations :—**Distd.** *Re* Petty, Holliday *v.* Petty, [1929] 1 Ch. 726. **Folld.** *Re* Atkinson, Webster *v.* Walter, [1930] 1 Ch. 47. **Dbtd. & Distd.** *Re* Kempthorne, Charles *v.* Kempthorne, [1930] 1 Ch. 268, C. A. **N.F.** *Re* Cruse, Gass *v.* Ingham, [1930] W. N. 206. **Apprvd.** *Re* Tong, Hilton *v.* Bradbury, [1931] 1 Ch. 202.

5917b. -.]—A testator by his will, after directing his executors to pay all legacies free of estate duty & to pay out of his estate any duty which might become payable on any gift made before his decease

PART IV. SECT. 7, SUB-SECT. 2.—C. (c) i.

D i. ——.]—WRIGHT *v.* WRIGHT, [1928] N. Z. L. R. 331.—**N.Z.**

F i. *Balance of proceeds of sale of land sold by mortgagee treated as land.*] —ARMSON *v.* THOMPSON (1877), 25 Gr. 138.—**CAN.**

F ii. -Testator devised to his daughter a lot of land charged with a legacy. The daughter predeceased testator, leaving two children, to whom the lot descended. On an appln. by the exors. at the instance of the official guardian :—*Held :* it was the duty of the exors. to sell the land & pay the legacy.—*Re* EDDIE (1892), 22 O. R. 556.—**CAN.**

F iii. ——.]—*Re* SISKIN ESTATE, SISKIN *v.* BOGOCH & HOCHMAN, [1929] 4 D. L. R. 1086 ; 1 W. W. R. 820 ; 23 S. L. R. 626.—**CAN.**

PART IV. SECT. 7, SUB-SECT. 2.—C. (c) ii.

C i. ——.]—If under a will there are general gifts of legacies & then of the rest & the residue, real & personal, blending the whole in one mass, the legacies are a charge on the realty.—*Re* CONNER, [1930] 1 W. W. R. 442 ; 2 D. L. R. 348.—**CAN.**

PART IV. SECT. 7, SUB-SECT. 4.

5874 i. *Before specific legacies.*]—*Re* HUNT, [1924] 3 W. W. R. 241.—**CAN.**

& after bequeathing certain legacies & annuities & the use & benefit of two freehold cottages, directed them to collect the income from the remainder of his estate & to pay 75 per cent. thereof to E. H. during her life & on her death the income of the whole of the estate to be invested for the benefit of the children of M. & A. on their attaining the age of twenty-one years, & if there should be no children then the whole of the accumulated funds was to be divided between two named charities. Testator died on Mar. 12, 1929. It having been held upon the originating summons that, in consequence of the will having been attested by the husband of E. H., the 75 per cent. share of the income of the residuary estate was undisposed of by the will, until the death of E. H. or the birth of a child to either M. or A., the question then arose whether testator's funeral, testamentary & administration expenses, debts & liabilities other than the estate duty in the will mentioned ought to be paid primarily out of such undisposed of income or out of the corpus of his estate :—*Held :* (1) the " real & personal " estate of a deceased person made assets for the payment of his debts by Administration of Estates Act, 1925 (c. 23), s. 32 (1), include the share of income of testator's residuary estate accruing after his death as to which he died intestate; (2) that property " undisposed of by will," made by sect. 34 (3), Sched. I., Part II., para. 1, of that Act the primary fund for payment of the expenses, debts, & liabilities mentioned in that subsect. includes a share of future income of residuary estate which lapses by reason of the statutory inability of the legatee to take under the will; (3) upon the proper construction of the will & the sub-sect. there was no provision for payment of the funeral, testamentary, & administration expenses, debts, & liabilities, with the result that those expenses & the debts & liabilities, except the estate duty in the will mentioned, must be paid primarily out of the share of income which lapsed & any other property undisposed of by the will.—*Re* TONG, HILTON *v.* BRADBURY, [1931] 1 Ch. 202; 100 L. J. Ch. 132; 144 L. T. 260, C. A.

5917c. —— —— —— —— —.]—*Re* CRUSE, GASS *v.* INGHAM, [1930] W. N. 206.

5917d. —— —— —— —— —— **Contrary intention of testator.**]—Testator devised & bequeathed his residuary real & personal estate upon trust for sale & conversion, & after directing payment of his debts, etc., out of that mixed fund gave the residue thereof thereinafter referred to as the residuary trust fund, as to one-half to his wife & as to the other half to two daughters in settled shares. Testator died in 1928. His wife having predeceased him, her moiety lapsed & passed as on an intestacy :—*Held :* the order of application of assets prescribed by Administration of Estates Act, 1925 (c. 23), Sched. I., Part II., being under sects. 33 (7), 34 (3), & Sched. I., Part II., para. 8 (*a*), expressly subject to variation by the provisions of the will, which in this case clearly threw the debts, etc., rateably on the mixed fund, those debts, etc., were payable out of that mixed fund rateably, & not primarily out of the lapsed moiety.—*Re* PETTY, HOLLIDAY *v.* PETTY, [1929] 1 Ch. 726; 98 L. J. Ch. 207; 141 L. T. 31.

Annotations :—**Distd.** *Re* Atkinson, Webster *v.* Walter, [1930] 1 Ch. 47. **Apprvd.** *Re* Kempthorne, Charles *v.* Kempthorne, [1930] 1 Ch. 268.

5917e. —.]—By his will dated Dec. 2, 1911, a testator devised to his brother C. " all my freehold & copyhold property," & gave all his leasehold property & personal estate & effects, subject to payment of his funeral & testamentary expenses, debts, & legacies upon trust for division amongst his brothers & sisters as therein mentioned. Testator died on Aug. 15, 1928, & was at his death entitled, subject to the effect of the provisions of the Law of Property Act, 1925 (c. 20), to two equal ninth shares of certain freehold property comprised in his father's residuary estate, & to one equal fourth part of certain freehold minerals purchased by him. He also owned the entirety of certain other freehold property. The residuary gift of personalty lapsed as regards three equal seventh parts owing to the death of two legatees in the testator's lifetime :—*Held :* testator by directing that his debts should first be paid out of the residue before division amongst the residuary legatees had shown an intention that in regard to the lapsed shares of residue the order of administration prescribed by Administration of Estates Act, 1925 (c. 23), Sched. I., Part II., should not apply, inasmuch as the net amount of the residue available for distribution could not be ascertained until after the debts had been paid. The debts were therefore not payable out of the lapsed shares in exoneration of the other shares. — *Re* KEMPTHORNE, CHARLES *v.* KEMPTHORNE, [1930] 1 Ch. 268; 99 L. J. Ch. 107; 142 L. T. 111; 46 T. L. R. 15, C. A.

Annotations :—**Apld.** *Re* Littlewood Clark *v.* Littlewood (1930), 47 T. L. R. 79. **Consd.** *Re* Cruse, Gass *v.* Ingham, [1930] W. N. 206. **Distd.** *Re* Tong, Hilton *v.* Bradbury, [1931] 1 Ch. 202. **Consd.** *Re* Warren, Warren *v.* Warren, [1932] 1 Ch. 42. **Reid.** *Re* Newman, Slater *v.* Newman, [1930] 2 Ch. 409.

5919a. **As property undisposed of by will—Contrary intention of testator.**] — In the administration of the solvent estate of a testator who died after the commencement of Administration of Estates Act, 1925 (c. 23), a direction in his will to the trustees to pay his funeral & testamentary expenses & debts out of the proceeds of the sale & conversion of his personal estate is a provision within the meaning of sect. 34 (3) of that Act. Its effect is to make the personal estate applicable towards the discharge of testator's funeral, testamentary, & administration expenses, debts, & liabilities payable out of his estate, except death duties imposed on real estate, in priority to testator's real estate which, owing to the death of the devisee thereof in testator's lifetime, was property undisposed of by his will & which,

PART IV. SECT. 7, SUB-SECT. 9.—A. t i. —— ——.]—Testator, whose estate was subsequently sequestrated on the petition of his exors., & who had effected several whole life policies of assurance upon his own life with the Australian Mutual Provident Society, in respect of which the total amount payable at his death was £4,628 18*s.* 3*d.*, & which were protected under Australian Mutual Provident Society's Act, 1857, s. 14, to the extent of either £1,500 or £1,780 1*s.* 9*d.*, had during his lifetime assigned the policies in question to the Society by way of mtge. as collateral security for the repayment of certain advances totalling £3,500, in respect of which advances the amount

but for the provision in his will, would be primarily liable according to the order of application of assets specified in Administration of Estates Act, 1925 (c. 23), Sched. I., Part II., cl. 1.—*Re* ATKINSON, WEBSTER *v.* WALTER, [1930] 1 Ch. 47; 99 L. J. Ch. 35; 142 L. T. 129.

Annotations:—**Consd.** *Re* Kempthorne, Charles *v.* Kempthorne, [1930] 1 Ch. 268. **Apld.** *Re* Littlewood, Clark *v.* Littlewood (1930), 47 T. L. R. 79. **Consd.** *Re* Tong, Hilton *v.* Bradbury, [1930] 2 Ch. 400.

Part V.—Powers and Rights of Representative.

5977a. One executor carrying on business in competition with testator's business—Breach of trust.]—By his will testator who, at the date thereof, was carrying on the business of a yacht broker, appointed pltfs., namely, his daughter B. & one W. & deft. exors. & trustees thereof, & directed them to carry on his business after his death; & in the event of a sale thereof by the exors. the whole of the proceeds were bequeathed to B. Testator died on Aug. 1, 1928, & his exors., in pursuance of the directions contained in the will, carried on his business, until Feb. 1, 1929, when, testator's tenancy of the business premises being about to expire, they removed the business to other premises, a lease of which was shortly afterwards granted to deft. alone, of which lease to deft. pltfs. did not become aware until a few weeks after the grant thereof, when deft. claimed the right to hold the lease of the new premises for his own benefit, to exclude pltfs. from the new premises & to set up & carry on his own account a business similar to & in competition with testator's business. Deft. having, since the issue of the writ in the action, assigned the lease of the new premises to B. & the goodwill of the business also having been assigned to her, it became no longer necessary to grant any of the relief claimed & necessary to determine only whether deft. was entitled at the date of the issue of the writ to the right which he then claimed, for the purpose of deciding how the costs of the action ought to be borne:—*Held:* (1) in face of the claim made by deft. to the benefit of the lease, pltfs. were justified in bringing the action; (2) having regard to the special nature of the business of a yacht broker which necessarily involved competition between every individual broker with all the others, it would have been a breach by deft. of his fiduciary duty towards the beneficiaries under the will, if he had at the date of the issue of the writ set up on his own account an independent business of a yacht broker in competition with pltfs., carrying on their testator's business; with the result that deft. must pay all the costs of the action.—*Re* THOMSON, THOMSON *v.* ALLEN, [1930] 1 Ch. 203; 99 L. J. Ch. 156; 142 L. T. 253.

6014a. —.]—Testator devised & bequeathed to trustees estate A. & also all & singular his freehold & leasehold estates & effects in H. & W. together with the steam engines & machinery, money in hand, etc., together with all & singular other his real & personal estates & effects, upon trust, that his trustees, etc., should carry on his cotton manufactory in the best & most proper manner they possibly could & he empowered them to retain as much ready money, as a capital in the business, as by them might be considered necessary, with full power to carry on the same, & to keep the whole in good repair, & to renew the machinery: & directed that at the end of every twelve months next after his decease, provided his daughters L. & E. were living, the profits, if any, & the surplus income from his H. & W. estates, after paying certain annuities, after retaining a sufficient capital to carry on the manufactory, should be equally divided between his two daughters, share & share alike; but if his trustees were not inclined to carry on the cotton manufactory, he empowered them to let the same, when he directed the reserved capital to be immediately divided between his two daughters L. & E. share & share alike: & he further directed that the surplus rents of his H. & W. estates, after paying the annuities, were to be equally divided every twelve months after his decease between such two daughters, share & share alike. He directed his trustees to allow his daughter E. to receive all the rents, etc., of his estate A. for her life & declared that at her death her issue were to be entitled to such estates, but if she left no issue then such estates were to go to his daughter L. & if she should then be dead, having left issue, such issue were to take; he then gave to L. an annuity of £600 during her life, & charged the same on all his real & personal estates in H. & W. & bequeathed the same at her death to her issue equally: &, if she should die without leaving lawful issue, his daughter E. if she should be living, was to take the annuity of £600 & the whole of the surplus rents, etc., of his H. & W. estates, both real & personal: & if neither of his daughters left issue, the whole of his estates, both real & personal, were to go to R. H. for life, with remainder to his issue, remainder to his heir at law. L. & E. survived testator: E. & L. both died without issue:—*Held:* (1) the representatives of L. & E. were absolutely entitled, in equal shares, to all such personal estate as was situate in H. & W. & which was not retained by the trustees as capital for carrying on the manufactory; (2) on the death of the survivor of E. & L. without leaving issue, the whole of testator's personal estate described in his will as situate in H. &

of £3,560 12s. 3d. was due at the date of his death:—*Held:* the equitable doctrine of marshalling applied, & the mtgee. must resort primarily to the protected fund to satisfy the mtge. debt, so as to leave the unprotected portion of the policy moneys available for the unsecured creditors, with the result that the protection afforded by the Act was entirely destroyed.—*Re* HOLLAND, *Ex p.* HOLLAND (1928), 28 S. R. N. S. W. 369; 45 N. S. W. W. N. 88.—**AUS.**

PART V. SECT. 1, SUB-SECT. 1.—A.

5972 iii. —— ——.]—MCCALLUM *v.* TORONTO GENERAL TRUSTS CORPN., [1931] 1 D. L. R. 271; 43 B. C. R. 31; *revsd.*, [1931] 4 D. L. R. 926; 43 B. C. R. 342.—**CAN.**

W. consisting of his leasehold estate & the manufactory, & the capital retained by the trustees for carrying on the business, were subject to the trusts declared in favour of R. H.; (3) R. H. was entitled for his life to the whole of the income of the freehold estates at A., H. & W. & to the income of the capital retained & employed by the trustees in carrying on the business.—HORSEFIELD *v.* ASHTON (1856), 26 L. T. O. S. 300; 2 Jur. N. S. 193, L. C. & L. JJ.; *affirmed, sub nom.* ASHTON *v.* HORSFIELD, HORSFIELD *v.* SIDEBOTHAM (1860), 2 L. T. 1; 6 Jur. N. S. 355, H. L.

Annotations :—Generally, **Refd.** Tyrone Earl *v.* Waterford Marquis (1860), 1 De G. F. & J. 613; Guthrie *v.* Walrond (1883), 22 Ch. D. 573.

6014b. —— ——.]—Testator directed that his business should be carried on for the benefit of his widow or until her second marriage, with very full powers to the trustees to carry on the same, & " to increase or abridge his said business, & his capital, stock & implements therein," & generally to act " as most advantageous & mostly for the benefit of the persons claiming under his will." He also directed that all his debts, funeral & testamentary expenses, & the " costs, charges & expenses of carrying into effect the trusts of his said will," should be paid out of the capital of said business :—*Held :* (1) the widow was entitled for life or until her second marriage, to the whole of the profits made by such business after testator's death; the cash at the banker's & the trade debts being assets or part of the capital of such business; (2) the debts, funeral & testamentary expenses, & the costs of suit, etc., should be borne out of the capital of such business; testator having exonerated his residuary estate from any such or similar charges.—DIXON *v.* DUTFIELD (1862), 5 L. T. 741.

6016. *Add. Annotation :*—**Refd.** *Re* Murphy's Estate, Morton *v.* Marchanton (1930), 74 Sol. Jo. 321.

6016a. —— **No right to priority—Assent to carrying on business.**]—*Re* MURPHY (ELIJAH) ESTATE, MORTON *v.* MARCHANTON (1930), 74 Sol. Jo. 321.

6053a. Effect of Administration of Estates Act, 1925 (c. 23), s. 39.]—The expression " personal representatives " in the Administration of Estates Act, 1925 (c. 23), s. 39, does not include trustees in the ordinary sense, even when the personal representatives themselves become trustees upon an assent. The introductory words of sect. 39, conferring powers on personal representatives " during a minority of any beneficiary or the subsistence of any life interest, or until the period of distribution arrives," are explained by the fact that under the new law of intestate succession the existence of an infant beneficiary or of a beneficiary, such as a widow, entitled to a life interest only may postpone distribution, & that in these cases sect. 33 places the personal representatives substantially in the position of trustees. The provision in sect. 39 (1) (ii), conferring on personal representatives " all the powers, discretions & duties conferred or imposed by law on trustees holding land upon an effectual trust for sale " does not operate referentially to make Law of Property Act, 1925 (c. 20), s. 28 (2), applicable to pure personalty. Accordingly, where under the will of a testator unauthorised investments are retained under a power to postpone conversion, the rule laid down in *Howe* v. *Lord Dartmouth* (1802), 7 Ves. 137a, still remains applicable in regard to the income payable to a tenant for life.—*Re* TROLLOPE'S WILL TRUSTS, PUBLIC TRUSTEE *v.* TROLLOPE, [1927] 1 Ch. 596; 96 L. J. Ch. 340; 137 L. T. 375; 71 Sol. Jo. 310.

6062. *Add. Annotation :*—**Apld.** Johnson *v.* Clarke, [1928] Ch. 847.

6074a. —— **To pay specialty debt—Mortgage valid as against bond—Executor without notice of bond.**]—WATERLOO INSURANCE CO. *v.* HIND (1862), 1 New Rep. 64.

6082. *Add. Annotation :*—**Apld.** I. R. Comrs. *v.* Smith, [1930] 1 K. B. 713.

6085. *Add. Annotation :*—**Refd.** *Re* Williams, Richards *v.* Williams, [1930] 2 Ch. 378.

6117. *Add. Annotation :—As to* (1) **Refd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

PART V. SECT. 2, SUB-SECT. 1.

so. *Before death duties paid—Where security for payment given.*]—R. *v.* CALEDONIAN INSURANCE CO., [1924] 2 D. L. R. 649; [1924] S. C. R. 207.—**CAN.**

PART V. SECT. 2, SUB-SECT. 3.—B. (a) i.

r (p. 577) i. —— ——.]—Where testator charged his debts on his land : —*Held :* the mere failure of testator to enumerate all his land did not detract from the conclusion that all the land was so charged, & the direction that his debts should be paid by his exors. conferred an implied power of sale upon them for the purpose of paying the debts out of the proceeds.—YOST *v.* ADAMS (1886), 13 A. R. 129.—**CAN.**

t (p. 577) i. —— —— *Where executor's power coupled with interest.*]—WESSELS *v.* CARSCALLEN (1860), 10 C. P. 215.—**CAN.**

bb (p. 577) i. *Legal estate in executors.*]—A devise of land to exors., in trust for the purpose of selling the lands, passes the legal estate & the beneficiaries take an equitable interest. —TOOMEY *v.* BHUPENDRA NATH BOSE (1928), I. L. R. 7 Pat. 520.—**IND.**

t (p. 578) i. —— ——.]—Where testator directed his trustees to hold property for twenty-one years, & then sell it :—*Held :* there was no power to sell contrary to the express provisions of the will, except perhaps in a case of emergency.—DOBBEL *v.* LOUDOUN, [1920] N. Z. L. R. 131.—**N.Z.**

b (p. 578) i. —— —— *Under Devolution of Estates Act.*]—*Re* LOGAN, [1927] 4 D. L. R. 1074; 61 O. L. R. 323.—**CAN.**

h (p. 578) i. —— *Interference by court—Whether court will restrain executor from selling.*]—SAMUELSON *v.* SCHWANDT, [1927] 3 D. L. R. 565; [1927] 1 W. W. R. 620; 21 Sask. L. R. 341.—**CAN.**

h (p. 578) ii. —— *Sale not necessary for administration purposes—Title of bonâ fide purchaser.*]—An exor. or administrator has no absolute power to dispose of the property of deceased if it is not necessary for the purpose of administration of the estate, but a *bonâ fide* purchaser may be protected in certain cases where a transfer is not for that purpose.—TARAKESWAR DAS GUPTA *v.* AMBICA CHARAN BHATTACHARJEE (1927), I. L. R. 55 Calc. 892.—**CAN.**

h (p. 578) iii. —— *Option to purchase given—Whether valid.*—Testator devised all her property to her exors. upon certain trusts, to carry out which they were empowered (*inter alia*) " to sell & dispose of my real estate . . . in such manner & at such times as they may deem advisable." Being unable to effect a sale of a certain dwelling-house property which upon its conversion into money would form part of the residuary estate, the exors. leased it for 16 months, reserving to themselves the right to determine the lease if they should wish to sell. A few weeks later they & the tenant entered into an agreement, called an " option to purchase," under which he made a cash payment & agreed to make monthly payments thereafter in addition to rent, & which also provided that on $1,000 being thus paid, or at any sooner time, he would be entitled to a conveyance, the amounts so paid as well as the rent to be credited on the purchase price, & the balance to be secured by mtge. payable in monthly payments. The " option " was stated to be irrevocable within the time for " acceptance " thereof, but was to remain in force only so long as the purchaser remained tenant of the property, & payment of $1,000 at any time during the continuance of the agreement, was to constitute the " acceptance " of the option :—*Held :* a sale within the power given by the will.—CLOSE *v.* MCMEANS, [1931] 3 W. W. R. 550; [1932] 1 D. L. R. 210; 40 Man. L. R. 31.—**CAN.**

6138a. Effect of Administration of Estates Act, 1926 (c. 23), s. 39.]—*Re* TROLLOPE'S WILL TRUSTS, PUBLIC TRUSTEE *v.* TROLLOPE, No. 6053a, *ante*.

6147. *Add. Annotation :*—As to (1) **Refd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

6161. *Add. Annotation :*—**Refd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

6177. *Add. Annotation :*—**Refd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

6178. *Add. Annotations :*—**Refd.** *Re* Murphy's Estate, Morton *v.* Marchanton (1930), 74 Sol. Jo. 321 ; Parker *v.* Judkin, [1931] 1 Ch. 475.

6271. *Add. Annotation :*—**Consd.** *Re* Mansel, Smith *v.* Mansel, [1930] 1 Ch. 352.

6281a. ——.]—Testator, who died on May 17, 1916, by his will appointed appcts. exors. & trustees, & bequeathed a number of absolute & settled pecuniary legacies. Testator gave all his estate whatsoever unto appcts. upon trust for sale & conversion at such time & manner as they should think fit, with power & discretion to postpone sale & conversion & charged the moneys to arise with the legacies bequeathed by his will. Testator's will contained a residuary bequest, investment clause in wide terms, & a power to appcts. to appropriate any part of the estate in its actual condition in satisfaction of any legacy. The principal asset of testator's estate was a sum of nearly a quarter of a million pounds Irish Three per cent. Guaranteed Stock, & the estate was insufficient for payment in full of all the legacies. The Irish stock could not be sold even at a reduced market value of £151,411 & in the interests of the estate it was inexpedient to realise it at once. Appcts. having caused to be prepared a scheme of apportionment, appropriation & abatement among & between the legacies, applied by an originating summons issued on June 27, 1917, to the ct. for its sanction :—*Held :* appcts. could exercise the discretionary power of appropriation notwithstanding the fact that some of the legacies were settled by testator's will.—*Re* DANIELS, LONDON CITY & MIDLAND EXECUTOR TRUSTEE CO., LTD. *v.* DANIELS (1918), 87 L. J. Ch. 661 ; 118 L. T. 435.

6341. *Add. Annotation :*—**Consd.** Jones *v.* Wright (1927), 139 L. T. 43.

6341a. —— —— Charges for work in execution of statutory trusts.]—By his will testator directed that his trustees should stand possessed of certain hereditaments upon certain trusts, & declared that any exor. or trustee of his will, who was a solr. or a person engaged in any profession or business, might individually, or through his firm, act in the course of his profession or business on behalf of the exors. & trustees, & charge for so doing :—*Held :* as the land was vested in the trustees upon the statutory trusts, any exor. or trustee of the will, who was a solr. or a person engaged in a profession or business, was entitled, under the will, to charge for work or business done in the execution of the statutory trusts, because such work or business would be done on behalf of the exors. & trustees.—*Re* PEDLEY, WALLACE *v.* WALLACE, [1927] 2 Ch. 168 ; 96 L. J. Ch. 438 ; 137 L. T. 636 ; 71 Sol. Jo. 583.

6370. *Add. Annotation :*—**Refd.** *Re* Anderson-Berry, Harris *v.* Griffith, [1928] Ch. 290.

PART V. SECT. 2, SUB-SECT. 3.—B. (a) ii.

l i. *S. P.* MCCURDY *v.* MCDANIEL (1868), 7 N. S. R. (1 G. & O.) 267.—**CAN.**

PART V. SECT. 2, SUB-SECT. 3.—B. (b).

6145 ii. ——.]—*Held :* although there was no express devise of realty to the exors., a devise was implied by the terms of the will, &, there being a general charge of debts, the exors. had full power to give a mtge.—BANQUE PROVINCIALE DU CANADA *v.* CAPITAL TRUST CORPN., [1927] 3 D. L. R. 199 ; 60 O. L. R. 452.—**CAN.**

PART V. SECT. 2, SUB-SECT. 3.—B. (c).

sp. *Power to reserve benefit to one beneficiary—Out of lands devised to another beneficiary.*]—MCKENZIE *v* GRANT (1856), 13 U. C. R. 180.—**CAN.**

PART V. SECT. 2, SUB-SECT. 3.—C. (a).

h i. *Sale under licence of Probate Court—Whether licence conclusive—Licence obtained improperly.*]—DOE *v.* THOMPSON (1860), 9 N. B. R. (4 All.) 483.—**CAN.**

h ii. —— —— *Sufficient personal property for payment of debts.*]—DOE d. SULLIVAN *v.* CURREY (1872), 14 N. B. R. (1 Pug.) 175.—**CAN.**

st. *Conveyance inoperative.*]—TEAHON *v.* LEAMEY (1861), 21 U. C. R. 216.—**CAN.**

sw. *Effect of sale after three years—Devolution of Estates Act*, 1927, *s.* 12.]—C., the owner of land, died on Dec. 20, 1925, intestate. Letters of administration were granted to his daughter A., who was his sole heiress-at-law & next of kin. On Feb. 17, 1926, she, as administratrix, conveyed in fee to R., who, on the same day, conveyed in fee to A. & her husband, as joint tenants. No caution having been registered by A. as administratrix & no certificate of *lis pendens* having been registered by any creditor :—*Held :* after Dec. 20, 1928, the three-year period during which the estate was vested in A. as administratrix having elapsed, she & her husband were entitled, by Devolution of Estates Act, s. 12, to convey, to a purchaser in good faith & for valuable consideration, who has no notice of the existence of any claims of creditors, a title free from any liability for the debts of C.—*Re* DOWN & STINBERG, [1929] 3 D. L. R. 70 ; 63 O. L. R. 541.—**CAN.**

PART V. SECT. 3, SUB-SECT. 1.

sa. *Power to reduce debt—& execute quit-claim deed.*]—Where testator had agreed to sell land to K., & the exors. reduced the purchase price in order to keep K. on the land, & later gave T., from whom testator had bought the land, a quit-claim deed of all their interest in the land :—*Held :* (1) the action of the exors. in reducing the price payable by K. was reasonable & proper ; (2) they should not have executed the quit-claim deed without applying, under Trustee Act, R. S. S., 1920 (c. 75), s. 64, to a judge of the King's Bench for advice, but, since they had acted honestly & in what they considered to be the best interests of the estate, their failure to do so should be excused under sect. 44.—LEMCKE *v.* NEWLOVE (Sask.), [1926] 4 D. L. R. 293 ; [1926] 2 W. W. R. 830 ; *varied* [1927] 2 D. L. R. 1049 ; S. C. R. 389.—**CAN.**

PART V. SECT. 6, SUB-SECT. 1.

l (p. 601) i. —— *Under Trustee Act, R. S. B. C.*, 1924 (*c.* 262), *s.* 80—*Amount limited to* 5 *per cent. of value of estate.*]—*Re* BECKMAN'S ESTATE (1925), 37 B. C. R. 41.—**CAN.**

t (p. 601) i. ——.]—*Re* BUSCH, [1927] 2 D. L. R. 344 ; 59 N. S. R. 254.—**CAN.**

g (p. 602) i. —— *Not after estate properly administered & accounts passed.*]—*Re* OXENHAM, [1925] 2 D. L. R. 662.—**CAN.**

sb. *Liability for—Beneficiary entitled to specific bequest benefited by work of executor.*]—There is no jurisdiction in the ct. to order that the remuneration of an exor. be paid out of a specific bequest on account of its benefiting by the work of the exor.—*In the Estate of* RATHBONE, [1929] N. Z. L. R. 123.—**N.Z.**

PART V. SECT. 7, SUB-SECT. 1.

n i. ——.]—STORY *v.* DUNLOP (1867), 13 Gr. 375.—**CAN.**

n ii. ——.]—*Re* WILLIAMS (1895), 22 A. R. 196.—**CAN.**

PART V. SECT. 7, SUB-SECT. 2.—A.

r i. —— —— *In respect of guarantee—Distribution of estate in ignorance of guarantee.*]—SAUDRY *v.* HAMPTON, [1927] N. Z. L. R. 673.—**N.Z.**

r ii. *In respect of debt contracted for estate—Right of creditor to benefit of representative's right to indemnification.*]—Where an exor. contracts a debt on behalf of the estate the creditor is in equity entitled to the benefit of the exor.'s right to be indemnified out of the assets of the estate in the hands of the beneficiaries.—NETHERLANDS INVESTMENT CO. *v.* DESBRISAY, [1928] 1 D. L. R. 581 ; [1928] 1 W. W. R. 461 ; 23 Alta. L. R. 291.—**CAN.**

6388a. —— ——.]—Leasehold property belonging to testator, who was original lessee, having been directed to be sold & the proceeds divided:—*Held:* the exors. were entitled to be indemnified out of the proceeds.—SMITH *v.* SMITH (1854), 2 Eq. Rep. 727.

6405. *Add. Annotation:*—**Refd.** *Re* Murphy's Estate, Morton *v.* Marchanton (1930), 74 Sol. Jo. 321.

6409. *Add. Annotation:*—*As to* (2) **Distd.** *Re* Murphy's Estate, Morton *v.* Marchanton (1930), 74 Sol. Jo. 321.

Part VI.—Liability of Representative.

6446a. —— —— **Sale of goodwill of business—Solicitation of customers.**]—The rule in *Trego* v. *Hunt*, [1896] A. C. 7, extends to a vendor's exor. completing a contract for the sale of the goodwill of a business, & the exor. will be restrained at the suit of the purchaser from soliciting customers of the business.—BOORNE *v.* WICKER, [1927] 1 Ch. 667; 96 L. J. Ch. 361; 137 L. T. 409; *sub nom.* BORNE *v.* WICKER, 71 Sol. Jo. 310.

Annotations:—**Distd.** *Re* Thomson, Thomson *v.* Allen, [1930] 1 Ch. 203. **Refd.** Farey *v.* Cooper, [1927] 2 K. B. 384.

6467. *Add. Annotation:*—**Refd.** London & North-Eastern Ry. Co. *v.* Blundy, Clark & Co. (1931), 145 L. T. 269.

6526. *Add. Annotation:*—**Refd.** Ariff *v.* Rai Jadunath Majumdar Bahadur (1931), 47 T. L. R. 238.

6596. *Add. Annotation:*—**Refd.** Beaumont *v.* Beaumont (1932), 48 T. L. R. 431.

6597. *Add. Annotation:*—**Refd.** Beaumont *v.* Beaumont (1932), 48 T. L. R. 431.

6598. *Add. Annotation:*—**Refd.** Beaumont *v.* Beaumont (1932), 48 T. L. R. 431.

6600. *Add. Annotation:*—**Folld.** Firman *v.* Royal, [1925] 1 K. B. 681.

6610. *Add. Annotation:*—*Generally*, **Refd.** *Re* Field, Sanderson *v.* Young, [1925] Ch. 636.

6611. *Add. Annotation:*—**Refd.** *Re* Weld-Blundell Estate, Mowbray (Lord) *v.* Weld-Blundell (1929), 73 Sol. Jo. 585.

6667a. —— **Non-repair by representative.**]—In debt for rent against an administrator, as assignee of the intestate, deft. pleaded, in discharge of his liability otherwise than as administrator, that the intestate underlet, for an unexpired term, to a tenant who had become insolvent & unable to pay rent; that the premises were of less value than the rent, viz. of the value of a certain sum, part of which deft. had paid to pltf., & part towards the expense of a party-wall; that, before the rent became due, deft. offered to surrender all his interest in the premises to pltf., who refused to accept them; & that he had fully administered, etc. Replication; that the premises were of more value than the sum mentioned in the plea, viz. of the value of

PART V. SECT. 7, SUB-SECT. 3.

sc. *Representative not authorised by will—Beneficiaries claiming profits of business—Right of representative to be indemnified.*]—M'GINLEY *v.* GALLAGHER, [1929] I. R. 307.—**IR.**

PART V. SECT. 8.

si. *To receive payment of lump sum for which pension commuted by deceased.*]—R. *v.* MCCORRISTON, [1926] 4 D. L. R. 1086.—**CAN.**

sj. *To bring action—To set aside tax sale of land belonging to estate.*]—RODGER *v.* MORAN (1896), 28 O. R. 275.—**CAN.**

PART V. SECT. 9.

6426 i. ——*Power of executor to bind—Co-executor.*]—*Held:* a settlement made by an exor. precluded the co. exor. & *cestuis que trust* from opening up the estate so settled.—*Re* BATH'S ESTATE (1879), 12 N. S. R. (3 R. & C.), 604.—**CAN.**

PART V. SECT. 10.

6438 iii. —— ——.]—*Re* HEWETT *v.* JERMYN (1898), 29 O. R. 383.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 3.

6501 i. *Covenant to pay debt—Under mortgage.*]—In a will, the only provision for the payment of debts, was the usual one, that all testator's first debts should be paid by his exors. At the time of his death, a parcel of land was held in joint tenancy by testator & his wife, subject to a mtge.:—*Held:* the wife on death of testator, became owner subject to the mtge., & as between her & testator's estate, she was not entitled to call upon the estate to pay the mtge.; but if mtgee. could recover from testator's estate upon a covenant by testator for payment, dissolution of testator's interest could not deprive mtgee. of that right.—*Re* GRACEY (1925), 63 O. L. R. 218.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 5.

6521 ii. ——.]—WHYATT *v.* MARSH (1848), 4 U. C. R. 485.—**CAN.**

g. *Add. Citation:*—*revsd. sub nom.* M'GUGAN *v.* SMITH (1892), 21 S. C. R. 263.—**CAN.**

g i. —— ——.]—MURDOCH *v.* WEST (1895), 24 S. C. R. 305.—**CAN.**

g ii. —— ——.]—GRAY *v.* JOHNSTON, [1928] S. C. 659.—**SCOT.**

g iii. —— ——.]—JEFFERSON *v.* MUISE, [1930] 4 D. L. R. 208.—**CAN.**

k i. ——.]—*Re* STRETTON ESTATE, CAY & HILL *v.* MARCOTTE, [1930] 1 W. W. R. 824; 2 D. L. R. 700; 24 S. L. R. 481.—**CAN.**

sk. *Necessity for consideration.*]—The mother of pltf. made a will by which she devised certain land with a house on it to pltf., who was at that time living in it with her husband. Before the will was made, according to pltf.'s story, her husband wished to live elsewhere, & her mother said: "Do not leave; stay on here & fix this house up & I will leave it to my daughter (pltf.) at my death." The husband & wife stayed on & made improvements, relying on the promise, & the mother made the will leaving the property to pltf. Subsequently the mother made a new will leaving the property to another daughter. In an action for specific performance of the alleged agreement:—*Held:* there was no corroboration of pltf.'s evidence & no consideration passing to deceased for the binding contract alleged.—HOLLIDAY *v.* TURNER, [1930] 3 D. L. R. 205; 65 O. L. R. 206.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 10.—D.

6595 i. —— *Matrimonial causes—Order for costs against husband.*]—A wife, whose husband had died after a decree *nisi* for divorce & before the date when it could have been made absolute:—*Held:* not entitled, there being no funds in ct., to costs against his estate.—JARVIS *v.* JARVIS, [1925] 8 D. L. R. 415; [1925] 1 W. W. R. 247.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 12.—B. (b) i.

6678 i. *Personal liability — As assignee.*]—In Mar. 1921, pltf. executed a lease of land & buildings to H., & M. covenanting to allow the lessees to erect a partition on the ground floor of the chief building, & himself to contribute $1,000 towards the cost. The partition was built, pltf. contributed the $1,000 & the lessees went into possession. H. died in Jan. 1923, & his wife, deft. A. & deft. co., the executors named in the will, obtained probate thereof. In Oct. 1923, M. made an assignment in bkpcy. & deft. co. was appointed custodian of the bkpt. estate. Pltf.'s claim in this action was to recover a large sum made up of rent, taxes, cost of repairs & interest. He alleged that defts. entered into, & from Jan. 1923 continued in possession & receipt of the rents & profits & claimed payment from them personally:—*Held:* deft. co. entered upon the premises not merely in its representative capacity as exor., but personally as assignee of the term, & as such was personally chargeable with the amount of rents & profits which it received, & with such further sums as it might have received if it had used due diligence, but not exceeding in the aggregate the full amount of the actual rental value of the premises.—RYCKMAN *v.* TRUSTS & GUAR. CO., [1929] 1 D. L. R. 545; 63 O. L. R. 285; 10 C. B. R. 414.—**CAN.**

the rent; & that deft. did not offer to surrender, etc. Issue thereon :—*Held :* (1) the real value of the premises, as against deft., must be taken to be that which it would have been if he had not himself committed a breach of a covenant to repair in the original lease; (2) the value, as between pltf. & deft., was not affected by the insolvency of the under-tenant, whose lease also contained a covenant to repair with a proviso of re-entry for breach & for non-payment of rent.—HORNIDGE *v.* WILSON (1840), 11 Ad. & El. 645; 3 Per. & Dav. 641; 9 L. J. Q. B. 72; 113 E. R. 559.

Annotations :—As to (1) **Consd.** *Re* Bowes, Strathmore *v.* Vane, Noroliffe's Claim (1887), 37 Ch. D. 128. **Refd.** Rendall *v.* Andreæ (1892), 61 L. J. Q. B. 630.

6711. *Add. Annotation :*—**Apld.** Graves *v.* Cohen (1929), 46 T. L. R. 121.

6712. *Add. Annotation :*—**Consd.** Riley *v.* Brown (1929), 98 L. J. K. B. 739.

6713. *Add. Annotation :—As to* (1) **Consd.** Riley *v.* Brown (1929), 98 L. J. K. B. 739.

6713a. —— —— ——.]—An action for damages for breach of promise of marriage abates on the death of the alleged promisor & cannot be continued against the exors. of the deceased unless special damage can be proved. Such special damage must arise directly or naturally out of the transaction between the parties to the breach & must relate to matters within the contemplation of the parties at the time the alleged promise was made.—RILEY *v.* BROWN (1929), 98 L. J. K. B. 739; 142 L. T. 42; 45 T. L. R. 613; 73 Sol. Jo. 499.

6723. *Add. Annotation :*—**Consd.** Firman *v.* Royal, [1925] 1 K. B. 681.

6762. *Add. Annotation :*—**Refd.** *Re* Field, Sanderson *v.* Young, [1925] Ch. 636.

6770a. Negligence.]—A co. was formed for the purpose of buying the business of a firm of bill brokers, & by the memorandum of assocn. the directors were empowered to buy it upon such terms & under such stipulation as to guarantee or otherwise as might be agreed upon. The prospectus referred to the memorandum of assocn. & to a certain deed of covenant. By that deed the business was assigned to the co., & all accounts, except such as the directors should require to be reserved & excepted, were to be carried on by the co., & the partners in the business guaranteed that all debts due to the firm & taken over by the co. were good. By a second deed of the same date, not mentioned or disclosed to the shareholders, assets of the firm to the nominal value of £4,213,896 were reserved & excepted, & provisions were made for guaranteeing payment by the partners of the balance which, after a certain period & under certain arrangements, should not be got in on this account. The co. carried on business for some time, & then stopped payment. A bill was filed by the co. against the living directors & the exors. of a deceased director stating these facts, & that the co. had lost £1,500,000 by taking the liabilities of the business, & by the insufficiency of the guarantee, & charged that the directors had been guilty of a breach of duty in buying the business without obtaining the sanction of a general meeting, & in not taking mtges. on the property of the partners in order to secure the guarantee, but no fraud was charged against the directors :—*Held :* on demurrer by the exors. of the deceased director, that as regarded any loss beyond the money placed in the directors' hands, the remedy, if any, was at law, by an action of negligence, which would not survive against exors.—OVEREND, GURNEY & Co. *v.* GURNEY (1869), 4 Ch. App. 701; 21 L. T. 73; 39 L. J. Ch. 45, L. C.; *affd. on other grounds, sub nom.* OVEREND, GURNEY & Co. *v.* GIBB (1872), L. R. 5 H. L. 480, H. L.

6835. *Add. Annotation :*—**Refd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306.

6840. *Add. Annotation :*—**Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179.

6861a. —— ——.]—BEAUMONT *v.* GROVER (1701), 1 Eq. Cas. Abr. 8; 21 E. R. 833.

6861b. —— ——.]—KEMISH *v.* BETSON (1732), Kel. W. 74; 25 E. R. 497.

6911. *Add. Annotation :*—**Apld.** *Re* Munton, Munton *v.* West, [1927] 1 Ch. 262.

6915a. —— —— **Liability of executor for "wilful default"—What amounts to.**]—Pltfs. were the two sons of testatrix, entitled in equal shares to her estate undisposed of by her will, including £214 14*s.* 5*d.* in the Post Office Savings Bank & £62 4*s.* in Savings Certificates. Deft., as sole exor. of testatrix, employed to wind up her estate a solr. who, unknown to him, had at one time been

PART VI. SECT. 3, SUB-SECT. 1.

6726 i. *General rule—Representatives not liable.*]—CONNOLLY *v.* SHIVES (1879), 18 N. B. R. 606.—**CAN.**

6726 ii. —— ——.]—LESLIE *v.* CALVIN (1885), 9 O. R. 207.—**CAN.**

r i. —— *To negligence in management of ship.*]—CAMERON *v.* MILLOY (1872), 22 C. P. 331.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 2.—A.

c i. ——.]—A contract made by an exor. or administrator on behalf of the estate, but not relating to an obligation incurred by testator or intestate, renders him personally liable, even though it is expressed to be made "as exor," or "as administrator."—WALCH *v.* NORDQUIST, [1926] 4 D. L. R. 126; [1926] 2 W. W. R. 854; 36 Man. L. R. 46.—**CAN.**

d i. —— *Administrator guilty of fraud.*]— DOE d. DOBIE *v.* VANDERLIP (1836), 5 O. S. 85.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 5.—A. (a).

6851 i. *Sale of testator's estate—Below proper value.*]—Defts., as exors. of a will, were directed by the will to sell lands of testatrix, & distribute the proceeds among her children & a grandchild. In this action, pltfs., two of the children, alleged that defts., exors., had committed a breach of trust by selling the lands at a gross undervalue. Pltfs. gave a notice for trial by jury, & the action was tried with a jury, & judgment entered upon its findings in favour of pltfs. for the recovery of damages :—*Held :* the evidence established no negligence on the part of defts., & no breach of trust.—DAVIES *v.* NELSON, [1928] 1 D. L. R. 254; 61 O. L. R. 457.—**CAN.**

6863 ii. ——.]—Where exors. are held liable to the estate for what it has lost by their disposition of an agreement for the sale of land entered into by testator under the crop-payment plan, the main consideration in determining the value of the asset lost to the estate is the value of the purchaser's covenant to pay.—LEMCKE & CRAIK *v.* NEWLOVE & NEWLOVE (Sask.), [1929] 2 D. L. R. 516; 1 W. W. R. 761.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 5.—A. (c).

6906 i. *Insurance of property.*]—In Ontario exors. are bound to insure, against fire, buildings forming part of the estate in their hands, & are liable on a *devastavit* if they fail to insure.—*Re* GAMBLE, [1925] 4 D. L. R. 768; 57 O. L. R. 504.—**CAN**

PART VI. SECT. 4, SUB-SECT. 5.—A. (d).

6913 i. *Misappropriation—By agent—Agent previously employed by deceased.*]—Exors., relying in good faith on the statement of their testator's solr. that he had in his hands securities sufficient to answer a fund they were directed by the will to invest for an annuitant, distributed the estate. Subsequently it was found that before testator's death the solr. had misappropriated the money given to him by testator to invest, & had, in fact, at the time of the representation, no securities or money in his hands :—*Held :* the exors. were protected by Trustee Limitation Act, R. S. O. 1897, c. 129, s. 32.—CLARKE *v.* BELLAMY (1900), 27 A. R. 435.—**CAN.**

suspended from practice, & who obtained from the first pltf. the Post Office Savings Bank deposit book & the Savings Certificates. Deft. heard for the first time of the solr.'s suspension three months later, when the first pltf. told him of it. Under deft.'s written authority, a warrant valued at £62 4*s.* had been issued in favour of the solr.'s firm, & the first pltf. wrote to deft. objecting to his having taken that course. Later, the first pltf. asked deft. to employ another solr., but deft. did not do so, as the solr. was then promising to settle the matter. Ultimately the solr. absconded, & the sums of £14 14*s.* 5*d.* & £62 4*s.* were not recovered. In an action by pltfs. for a declaration that deft. was guilty of a breach of trust in permitting the sums to be retained by the solr., & for payment of them, deft. in his defence relying upon Trustee Act, 1925 (c. 19), s. 23 :—*Held :* Trustee Act, 1925 (c. 19), s. 23 (1), authorised deft. in signing the authorities to the solr.'s firm to collect the sums ; (2) by virtue of sect. 30 (1) of the Act, trustees are not liable for losses due to the default of " any banker, broker, or other person with whom any trust money or other securities may be deposited " unless the losses are caused by the trustees' own wilful default ; (3) an exor. employing an agent to receive moneys belonging to the estate & relying on sect. 23 (1), will not be liable if the money is lost through the agent's misconduct, unless the exor. has himself been guilty of wilful default ; (4) deft. was guilty only of an error of judgment which, where losses are due to a solr.'s dishonesty, does not amount to " wilful default " on the part of an exor.—*Re* VICKERY, VICKERY *v.* STEPHENS, [1931] 1 Ch. 572 ; 100 L. J. Ch. 138 ; 144 L. T. 562 ; 47 T. L. R. 242.

6922. *Add. Annotations :*—**Consd.** *Re* City Equitable Fire Insce., [1925] Ch. 407 ; *Re* Vickery, Vickery *v.* Stephens, [1931] 1 Ch. 572.

7059. *Add. Annotation :* — **Refd.** *Re* Munton, Munton *v.* West, [1927] 1 Ch. 262.

7163. *Add. Annotation :* — **Consd.** Manley *v.* Sartori, [1927] 1 Ch. 157.

7169a. ——.]—FLOCKTON *v.* BUNNING (1868), 8 Ch. App. 323, n.

7190a. ——.]—Exors. must be allowed a reasonable time for breaking up testator's domestic establishment & discharging his servants. Two months :—*Held :* not to be an unreasonable delay, having regard to the circumstances.—FIELD *v.* PECKETT (No. 3) (1861), 29 Beav. 576 ; 9 W. R. 525 ; 54 E. R. 751.

7190b. ——.]—BROWNE *v.* COLLINS, No. 6308, *ante.*

7219. *Add Annotation :*—**Consd.** *Re* Mason (1928), 97 L. J. Ch. 321.

7225a. **Assets improperly obtained.**]—Where two exors. obtained part of the assets improperly, by signing joint receipts in favour of each other, while they had large balances in their hands respectively, the ct. gave interest on those sums at five per cent. against both exors.—BICK *v.* MOTLEY (1835), 2 My. & K. 312 ; 39 E. R. 962 ; *sub nom.* BECK *v.* MOTLEY 4 L. J. Ch. 63.

7250a. —.]—Where there is a direction in the will to accumulate a residue, with which the exor. does not comply, he must pay interest from the expiration of one year after testator's decease up to the date of filing the answer.—AMISS *v.* HALL (1857), 3 Jur. N. S. 584.

Annotation :—**Dbtd.** *Re* Emmet's Estate, Emmet *v.* Emmet (1881), 17 Ch. D. 142.

7256a. —— ——.]—Exor. charged with interest on divdends of stock received by him, & kept at his banker's with his own money for a number of years, instead of being invested to accumulate.—GOODCHILD *v.* FENTON (1829), 3 Y. & J. 481 ; 148 E. R. 1269, Ex. Ch.

7273a. —— ——.]—GILROY *v.* STEPHENS, No. 7268, *ante.*

7276a. —— **To authorise maintenance.**]—CHARLTON *v.* SADEN (1836), Donnelly, 36 ; 47 E. R. 210.

PART VI. SECT. 4, SUB-SECT. 5.—C. (a).

6979 i. *Bar to enforcement of remedy—Conduct of party injured—Delay.*]—MEACHAM *v.* DRAPER (1851), 2 Gr. 316. —**CAN.**

PART VI. SECT. 6, SUB-SECT. 1.

sd. *Jurisdiction of court—To call upon executors to account.*]—The Surrogate Ct. has jurisdiction to call upon an exor. to account even before the expiration of the two years provided for in his letters probate.—*Re* NORDTOMME ESTATE, [1928] 3 W. W. R. 290.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 2.—B. (b).

sm. *Not where administration granted on application of party interested adversely to executor.*]—HARRISON *v.* MCGLASHAN (1859), 7 Gr. 531.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 5.—B.

sn. *Counsel's fee—For general work & advice—Not allowed.*]—*Re* DODGE ESTATE, [1925] 1 D. L. R. 1140 ; [1925] 1 W. W. R. 776.—**CAN.**

so. —— —— —— *Unless estate difficult to manage or solicitor required to render services by way of business management.*]—*Re* ROEMER (Sask.), [1927] 3 W. W. R. 603 ; *varied sub nom. Re* ROEMER ESTATE, *Re* MOTT *v.* ROEMER, [1928] 3 D. L. R. 860 ; [1928] 2 W. W. R. 566.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 5.—C. (a).

7200 i. *Under special circumstances.*]—Where the circumstances of the case render it reasonable that they should do so exors. are entitled to employ the services of such agents as may be necessary.—*Re* LEVEL ESTATE, [1927] 1 D. L. R. 900 ; [1927] 1 W. W. R. 1000 ; 38 B. C. R. 211.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 5.—D. (a).

sp. *Increased fee to counsel—Necessity of notice to parties interested.*]—In a proper case, an increased counsel fee should be allowed the solr. of the exor. as between solr. & client. It is impossible to lay down any fixed rule governing such amounts. The increased fee should not be applied for or granted without notice to the parties interested ; but in the present case, since the parties were all before the ct. & had argued the point, an increased counsel fee on the passing of accounts was allowed to save further expense, although notice that it would be applied for had not been given.—*Re* MACDONALD, ESTATE, [1928] 2 D. L. R. 338 ; [1928] 1 W. W. R. 652 ; 22 Sask. L. R. 288.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 6.—C. (a).

sx. *Payment to wrong beneficiary—Delay in application to court for interpretation of will.*]—Acting upon what they considered sufficient evidence that the conditions entitling X. to an annuity had not been satisfied, & upon their own interpretation of the will, the exors. for several years ignored the possibility of X. ever establishing a claim to the annuity, & paid over to C., who herself was one of the exors. & under the will was entitled to the residuary income, the moneys which, if X. were entitled, ought to have been paid to him. The Privy Council decided in his favour as to the annuity & on a claim to be paid interest by the exors. :—*Held :* C.'s right was so doubtful that the exors. had been guilty of negligence & were liable to pay interest upon the annuity at 5 per cent. *per annum* without rests.—*Re* PATTON, [1931] 3 D. L. R. 544 ; O. R. 348.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 7.—A.

sq. *Jurisdiction of registrar—Should not pass upon his own accounts.*]—*Re* BENT, [1927] 1 D. L. R. 592 ; 59 N. S. R. 107.—**CAN.**

sr. *Jurisdiction of Surrogate Court.*]—*Re* MACINTYRE (1906), 11 O. L. R. 136.—**CAN.**

st. ——.]—Upon an audit of the accounts of the exors. of B. deceased, the judge of a Surrogate ct. took evidence with a view to determining a question as to ownership of certain mtges., each of which had been taken

7311a. Who may re-open.]—A., entitled to a share of a residue, made a settlement of the balance appearing upon a settlement of accounts with the exors. upon himself & afterwards on C., a volunteer:—*Held:* C. could not, against the will of A., open the settlement of accounts with the exors.—PARKER *v.* BLOXAM (1855), 20 Beav. 295; 52 E. R. 616.

Part VII.—Actions by and against Representative.

7439a. In whose name—Deceased's property assigned to assignees before death.]—The property of an intestate was assigned to assignees previous to his death; pltf. administered, & applied to deft. for payment for goods sold him by the intestate, in the name of the assignees, & afterwards brought an action in his character of administrator:—*Held:* such action was well brought.—BRANDT *v.* HEATIG (1818), 2 Moore, C. P. 184.

7492a. Suit for account of testator's estate.]—Lapse of time will not of itself bar an exor. of an exor. of his right to have an account of his exor.'s testator's estate taken, with a view to ascertain such exor.'s liabilities as an accounting party.—SMITH *v.* O'GRADY (1870), L. R. 3 P. C. 311; 7 Moo. P. C. C. N. S. 106; 39 L. J. P. C. 63; 23 L. T. 476; 19 W. R. 22; 17 E. R. 41, P. C.

7584. *Add. Annotation:*—**Refd.** *Re* Forder, Forder *v.* Forder, [1927] 2 Ch. 291.

jointly in the names of deceased & another person. These mtges., according to the contention of resps., should be regarded as assets of the estate & accountable for by the exors. While the surviving mtgee. in each case contended that he was entitled as survivor to the security & the fund represented by it:—*Held:* the judge had jurisdiction to make the proposed inquiry. *Re* BAECHLER, [1931] 2 D. L. R. 997; 66 O. L. R. 483.—**CAN.**

7296 i. *Passing accounts—Costs—Form of order.*]—*Re* HASLETT, MCKENNA *v.* HASLETT, [1927] V. L. R. 21; 48 A. L. T. 125; [1927] Argus L. R. 12.—**AUS.**

7296 ii. —— *Application of King's Bench rules to Surrogate court.*]—The Surrogate ct. in Saskatchewan is governed with respect to the passing of accounts by K. B. rules 301–319 so as they are applicable.—*Re* KRAUSS ESTATE (Sask.), [1929] 3 W. W. R. 205.—**CAN.**

PART VII. SECT. 1, SUB-SECT. 7.

1 i. —— —— *Evidence of opposite or interested party.*]—TAYLOR *v.* REGIS (1895), 26 O. R. 483.—**CAN.**

PART VII. SECT. 1, SUB-SECT. 9.—A.

sv. *General rule.*]—In litigating with third persons, exors. are, with respect to costs, in the same position as parties who litigate in their own right.—GREAT WESTERN RY. CO. *v.* JONES (1867), 13 Gr. 355.—**CAN.**

sw. *Liability on failure of appeal—Appeal without merit or substance.*]—The costs of an appeal without merit or substance taken by a personal representative:—*Held:* to be payable by such representative in his individual capacity.—STRELIOFF *v.* FIRST NATIONAL BANK OF JOLIET, [1925] 2 W. W. R. 501.—**CAN.**

PART VII. SECT. 1, SUB-SECT. 9.—B.

7545 iv. ——.]—BILLETT *v.* BILLETT, [1929] 2 D. L. R. 944; 1 W. W. R. 778; 23 S. L. R. 630.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 3.

sx. *Application by originating notice to presume death of executor.*]—Pltf. in an action against exors. alleged to be surviving exors. may, under rule 928 (h), apply by originating notice for an order declaring that the other exor. named in the will is deemed or presumed to be dead, even though the allegation in the statement of claim of his death is formally denied in the statement of defence.—*Re* BRICKER ESTATE (Man.), [1929] 3 W. W. R. 697; [1930] 2 D. L. R. 146.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 5.—B. (a).

sm. *Appointment by foreign court.*]—An exor. or administrator cannot, as a general rule, be sued as such in the cts. of any State or country other than that in which he received his appointment.—GOODBUN *v.* MITCHELL, [1926] 2 D. L. R. 540; [1926] 2 W. W. R. 67; 35 Man. L. R. 569.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 5.—B. (c) ii.

so. *To action by widow—Under Widow's Relief Act—Six months after death of husband.*]—KROGMAN *v.* DICKSON, [1928] 2 D. L. R. 948.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 5.—B. (g) i.

s. *Action commenced within one year from death—Necessity for leave of court—Probate Act (N. S.), s. 43 (7).*]—WALSH *v.* EASTERN TRUST CO., [1932] 3 D. L. R. 525.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 6.—A.

p i. —— *Claim for deceased's board during lifetime.*]—*Re* THOMPSON (1926), 58 N. S. R. 489.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 8.—A.

a i. —— —— ——.]—The proper form of judgment against exors. or administrators in respect of a liability of deceased is for payment in due course of administration, unless there is on their part a distinct affirmative admission of assets sufficient to pay all creditors; upon a judgment for the amount recovered to be paid in due course of administration it is improper to issue execution.—*Re* HEXTALL ESTATE, [1921] 1 W. W. R. 118; 56 D. L. R. 710.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 8.—C.

d i. —— *Judgment against defendant administrator of estate.*]—A certificate of a county ct. judgment against "A. B., administrator of the estate of X.," charges A. B. personally & not the estate.—*Re* JOYCE & SCARRY (1889), 6 Man. L. R. 281.—**CAN.**

f i. —— *Contribution from devisees.*]—EMERSON *v.* CANNIFF (1878), 26 Gr. 149.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 9.—A.

s i. —— *Widow's costs of application for relief under Devolution of Estates Act, R. S. S., 1920 (c. 73), s. 24.*]—*Re* MOWCHENKO, [1926] 1 D. L. R. 265; [1926] 1 W. W. R. 139; 20 Sask. L. R. 279.—**CAN.**

s ii. —— *Litigation caused by legatee.*]—O'SULLIVAN *v.* HARTY (1885), 11 S. C. R. 322.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 10.—A.

7763 i. *Garnishee proceedings—Decree in administration suit—Damages recovered by administratrix under Fatal Accidents Act—Garnishee summons set aside.*]—MCEWAN *v.* SPECKT (N. W. T.) (1906), 4 W. L. R. 325.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 10.—B. (a).

sz. *Priority of execution—Over purchaser from executor.*]—HENRY *v.* SHARP (1871), 18 Gr. 16.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 10.—B. (b).

1 i. ——.]—*Held:* land & tenements, held in fee simple by debtor at the time of his decease, might be taken in execution on a judgment against his exor. or administrator.—FORSYTH & RICHARDSON *v.* HALL (1830), Dra. 304.—**CAN.**

sb. *Judgment by default—Notwithstanding insufficient personal assets.*]—*Held:* the exor. was not entitled to an injunction against proceedings on the judgment.—DONER *v.* ROSS (1872), 19 Gr. 229.—**CAN.**

Part VIII.—Administration by Court.

7812a. Public trustee—Appearing as plaintiff & defendant—Improper.]—PHILLIPS, *Re*, PUBLIC TRUSTEE *v.* MEYER (1931), 101 L. J. Ch. 338; 76 Sol. Jo. 101.

Compare No. 8757a, *post.*

7867. *Add. Annotation :*—**Refd.** Horwood *v.* Statesman Publishing Co. (1929), 98 L. J. K. B. 450.

7990. *Add. Annotation :*—**Refd.** *Re* Robertson's Application (1929), 46 T. L. R. 17.

7993. *Add. Annotation :*—**Refd.** Haskell *v.* Marlow, [1928] 2 K. B. 45.

8014. *Add. Annotations :—As to* (1) **Refd.** *Re* Ross, Ross *v.* Waterfield (1929), 46 T. L. R. 61; Robinson *v.* Speakman or Robinson (1929), 69 L. Jo. 61.

8018. *Add. Annotations :*—**Refd.** Hunter *v.* Stadtische Hochseefischerei Gesselschaft, [1925] 2 K. B. 493; Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65.

8270a. —— Separate sets of trustees of settled shares.]—*Re* SCOTT, SCOTT *v.* SCOTT (1926), 71 Sol. Jo. 430.

8280a. Power of court to order—Ancillary to order relating to management of property—R. S. C. Ord. 55, r. 2 (13).]—When, in an administration action upon a summons connected with the management of the property, under above sub-rule, a judge of the Ch. Div. sitting in chambers makes an order sanctioning the expenditure of a certain sum out of capital for the purposes authorised, he has ancillary jurisdiction under that sub-rule, by the same order, to give full practical effect thereto by further directing payment of the sum so authorised out of a fund of whatever amount standing in ct. to the general credit of the action.—*Re* TERRY, TERRY *v.* TERRY, [1929] 2 Ch. 412; 98 L. J. Ch. 436; 141 L. T. 536; 45 T. L. R. 539.

8310. For " Ord. 45 " read " Ord. 15."

8337. *Add. Annotation :* — **Consd.** Green *v.* Weatherill, [1929] 2 Ch. 213.

8342a. Action against representative—Payment into court—Subsequent action by creditors—Whether creditors entitled to fund in court.]—A bill was filed by a *cestui que trust* against a surviving trustee & the representative of B., a defaulting trustee, to obtain a proper investment of the trust fund. B.'s representative did not admit assets, but admitted that he had in his hands part of B.'s estate, which he paid into court under the order of the ct. A decree was obtained, by which B.'s estate was declared liable to make good the trust fund, & accounts were ordered to be taken of B.'s estate. A creditors' suit was instituted for the administration of B.'s estate, & the common decree obtained :—*Held :* the decree in the first suit did not entitle pltfs. therein to the whole fund paid into ct. in that suit, but only to a proportional part of it with the other creditors of B.—SMITH *v.* BIRCH (1840), 3 Beav. 10; 9 L. J. Ch. 349; 4 Jur. 670; 49 E. R. 5.

Annotation :—**Refd.** Tomlin *v.* Tomlin (1841), 1 Hare, 236.

8349. *Add. Annotation :*—**Refd.** Douglass *v.* Lloyds Bank (1929), 34 Com. Cas. 263.

8371. *Add. Annotation :*—**Refd.** *Re* Anderson-Berry, Harris *v.* Griffith, [1928] Ch. 290.

8484. *Add. Annotation :—As to* (1) **Refd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

PART VIII. SECT. 1, SUB-SECT. 4.

b i. —— *Cannot entertain claim for balance on mortgage by executors to pay debts & legacies.*]—*Re* RICHARDSON'S ESTATE (1890), 22 N. S. R. 416.—**CAN.**

g i. —— *Application for directions—Previous decree to deliver property in sub-court.*]—Where a decree was obtained by a legatee against the exor. for delivery of the property in a suit in a sub-court, & subsequently the exor. filed a petition in the High Ct. under Indian Succession Act, XXXIX of 1925, s. 302, for directions as to the fund relating to a charity mentioned in the will but not dealt with by the decree of the lower ct., the High Ct. had jurisdiction to give directions, as the matter was not adjudicated in the suit, but would not give directions where the matter had been definitely settled in a properly constituted suit.—AKKAYYA *v.* VANAMA LAKSHAMMA (1927), I. L. R. 51 Mad. 849.—**IND.**

g ii. —— *To determine who are beneficiaries.*]—The ct. has jurisdiction to make an order determining who are the beneficiaries entitled under a given will, & in such a case it may direct the registrar to conduct an inquiry for the purpose of obtaining the information upon which such jurisdiction could properly be exercised.—*Re* FLANAGHAN, [1929] N. Z. L. R. 746.—**N.Z.**

sm. *Surrogate Court — Accounts.*]—An order directing an inquiry upon the footing of wilful default into the accounts of an exor. or administrator is beyond the jurisdiction of a Surrogate Ct. in Saskatchewan; it being one which can be made only by the Ct. of King's Bench. The jurisdiction conferred on the Surrogate Cts. in Saskatchewan is confined to " matters & causes testamentary," *i.e.*, matters & causes relating to the grant & revocation of the probate of wills & of administration & incidental matters.—*Re* MCELHINNEY ESTATE, STANDARD TRUSTS CO. *v.* MCELHINNEY (Sask.), [1929] 3 W. W. R. 664; [1930] 2 D. L. R. 290; 24 S. L. R. 160; *revsg.*, [1929] 4 D. L. R. 783; 3 W. W. R. 105.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 1.

sa. *Share of next of kin—Mortgagee of.*]—*Held :* entitled to bring proceedings.—SWEENEY *v.* GALLAGHER (1888), 22 I. L. T. 82.—**IR.**

sb. —— *Assignee of.*]—*Held :* entitled to bring proceedings.—TEVLIN *v.* GILSENAN (1901), 36 I. L. T. 35.—**IR.**

PART VIII. SECT. 3, SUB-SECT. 2.—B.

7987 ii. ——.]—SORBY *v.* PARKER (1920), 52 D. L. R. 692.—**CAN.**

sd. *Not question whether property part of estate.*]—*Re* COLLINS, [1927] 4 D. L. R. 770; 61 O. L. R 225.—**CAN.**

se. *Question whether executors might act without consent of named person.*]—*Re* ROGERS, [1929] 1 D. L. R. 116; 63 O. L. R. 180.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 1.

n i. ——.]—GILBERT *v.* JARVIS (1869), 16 Gr. 265.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 3.—G.

8199 ii. —— —— *Where personal estate sufficient if properly administered —Limit of time for application for sale.*]—PEOPLE'S BANK *v.* MARROW (1825-1897), N. B. Dig. 312.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 3.—H. (b).

h i. —— *Balance on bond—After foreclosure & sale by mortgagee.*]—*Re* CHANDLER'S ESTATE (1884), 5 R. & G. 78.—**CAN.**

h ii. —— *Not debt arising out of illegal transaction.*]—*Re* GHEE, *Ex p.* LOWE KING, PUBLIC TRUSTEE *v.* LOWE KING, [1928] N. Z. L. R. 266.—**N.Z.**

8228 i. —— *Mortgage debt—Purchase of land by deceased—Payment of mortgage as part of purchase price.*]—*Held :* the mtgee. was entitled to prove for the balance of the mtge. debt against the general estate of the purchaser.—*Re* COZIER, PARKER *v.* GLOVER (1877), 24 Gr. 537.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 3.—H. (d).

sf. *Parol evidence.*]—*Held :* the master had properly received parol evidence to establish the widow's claim in question.—ROSS *v.* MASON (1862), 9 Gr. 568.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 4.—C.

n i. —— *Disposal of assets.*]—Where a creditor or one of the next of kin institutes an administration suit against an exor. the institution of the action or the obtaining of a decree will not bring the doctrine of *lis pendens* into operation, & does not deprive the exor. of the power to dispose of assets, unless pltf. has obtained an order appointing a receiver or an injunction restraining the exor. from exercising the powers vested in him.—LEE LIM MA HOCK *v.* SAW MA HONE 1923), I. L. R. 2 Ran. 4.—**IND.**

8484a. —— **Valuation of annuity payable under payment included.**]—In order to qualify an annuitant, to whom a person who died in 1922 was liable under a judgment by consent to pay the annuity, to prove for the value thereof in the administration by the ct. of the deceased person's estate, it is sufficient for the annuitant to prove, as a fact, that if the annuity continues for the period normally to be expected, the estate will not suffice to meet the debts & the annuity in full.—*Re* PINK, ELVIN *v.* NIGHTINGALE, [1927] 1 Ch. 237; 96 L. J. Ch. 202; 136 L. T. 399; 70 Sol. Jo. 1090.

8487. *Add. Annotation:*—**Refd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

8505. *Add. Annotation:*—**Refd.** *Re* Bush, Lipton (B.), Ltd. *v.* Mackintosh, [1930] 2 Ch. 202.

8507. *Add. Annotation:*—**Refd.** *Re* Bush, Lipton (B.), Ltd. *v.* Mackintosh, [1930] 2 Ch. 202.

8509. *Add. Annotations:*—**Apld.** *Re* Bush, Lipton (B.), Ltd. *v.* Mackintosh, [1930], 2 Ch. 202. **Refd.** *Re* Cockell, Jackson *v.* A.-G., [1931] 1 Ch. 389.

8512. *Add. Annotation:*—**Refd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

8516a. —— —— **In creditor's action—Beneficiary's action followed by creditor's action.**] — *Re* SAGAR, RUSSIAN COMMERCIAL & INDUSTRIAL TRADE *v.* KOGAN, KOGAN *v.* KOGAN (1930), 70 L. Jo. 10; 169 L. T. Jo. 557; [1930] W. N. 149.

8520a. Rate of interest.]—Where an intestate dies insolvent proof can be made in respect of interest claimed by a creditor at the rate of 7 per cent. *per annum* calculated down to the date of payment, & Bkpcy. Act, 1914 (c. 59), s. 66, does not apply to such a case.—*Re* WELLS, [1929] 2 Ch. 269; 98 L. J. Ch. 407; 141 L. T. 323; [1929] B. & C. R. 119.

Annotations:—**N.F.** *Re* Bush, Lipton (B.), Ltd. *v.* Mackintosh, [1930] 2 Ch. 202. **Follid.** *Re* Bailey, Duchess Mill, Ltd. *v.* Bailey (1932), 76 Sol. Jo. 560.

8520b. ——.]—In the administration of the estates of deceased insolvents by the Chancery Div., Bkpcy. Act, 1914 (c. 59), s. 66 (1), applies, & creditors are entitled to be paid interest only at a rate not exceeding 5 per cent. until all the debts proved in the estate have been paid in full.—*Re* BUSH, LIPTON (B.), LTD. *v.* MACKINTOSH, [1930] 2 Ch. 202; 99 L. J. Ch. 503; 143 L. T. 700; [1929] B. & C. R. 216.

Annotation:—**N.F.** *Re* Bailey, Duchess Mill, Ltd. *v.* Bailey (1932), 76 Sol. Jo. 560.

8520c. ——.]—*Re* BAILEY, DUCHESS MILL, LTD. *v.* BAILEY (1932), 76 Sol. Jo. 560 (V.-C. of Lancaster).

8558. After cross-reference following this case add:—

(*n*) *Set-Off.*

8558a. Effect of agreement to exclude.] — *Re* BAILEY, DUCHESS MILL, LTD. *v.* BAILEY (1932), 76 Sol. Jo. 560 (V.-C. of Lancaster).

8757a. Costs of Public Trustee—As plaintiff in one capacity—Defendant in another capacity.]—*Re* ABERCROMBIE'S WILL TRUSTS, PUBLIC TRUSTEE *v.* ABERCROMBIE, [1931] W. N. 109; 171 L. T. Jo. 416.

Annotation:—**Expld.** *Re* Phillips, Public Trustee *v.* Mayer (1932), 76 Sol. Jo. 10.

Compare No. 7812a, *ante.*

8758a. Claims against legatee exceeding legacy.]—By the decree sums due from a legatee were ordered to be set-off against her share of testator's estate, & her costs were ordered to be paid to her solr. It being found that the claims against her exceeded her portion of the estate, & the legatee being insolvent, an application was made by motion, that the costs ordered to be paid to her solr. might be carried to the credit of her account. The ct. stayed the payment of the costs for a month, in order that the matter might be set right.—NICHOLSON *v.* NORTON (1844), 7 Beav. 67; 13 L. J. Ch. 140; 2 L. T. O. S. 345; 49 E. R. 988.

8768a. Costs of proving debt before master.]—Costs of proving a debt before the master under the usual decree upon a creditor's bill not allowed.—ABELL *v.* SCREECH (1804), 10 Ves. 355; 32 E. R. 882.

Annotation:—**Consd.** Watkins *v.* Maule (1821), Jac. 105.

8790a. ——.]—A bill was filed for the administration of the real & personal estate. A part of the real estate was specifically devised, & gave rise to questions of construction; other part was devised to charities, which devise was void under the Statute of Mortmain. The residuary real estate descended on the heir, & the residuary personal estate was undisposed of, & went to the next of kin:—*Held:* the costs of suit attributable to the administration of the trusts of the real estate were payable out of the descended estates, & that those relating to the execution of the trusts of the personal estate out of the residuary personal estate.—SANDERS *v.* MILLER (1858), 25 Beav. 154; 53 E. R. 595; *sub nom.* SAUNDERS *v.* MILLER, 6 W. R. 454.

Annotations:—**Consd.** *Re* Middleton, Thompson *v.* Harris (1882), 19 Ch. D. 552. **Refd.** Randfield *v.* Randfield (1863), 32 L. J. Ch. 668; Patching *v.* Barnett (1881), 51 L. J. Ch. 74.

8802. *Add. Annotation:*—*As to* (2) **Refd.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

PART VIII. SECT. 7, SUB-SECT. 2.—B. (b).

sy. *Insurance policy—Protected for payment of debts—Under Life Insurance Act, 1908, s. 65.*]—Where an insolvent estate includes the proceeds of an insurance policy protected for deceased's debts by the above Act, the policy moneys are liable for all testamentary expenses arising in the administration & realisation thereof; funeral & the other testamentary expenses are borne by the protected policy moneys & the remainder of the estate in proportion to their value.—MAITLAND *v.* PUBLIC TRUSTEE, [1924] N. Z. L. R. 840—**N.Z.**

PART VIII. SECT. 7, SUB-SECT. 2.—B. (c).

sz. *Overpayment—Liability of executor.*]—TAYLOR *v.* BRODIE (1874), 21 Gr. 607.—**CAN.**

PART VIII. SECT. 7, SUB-SECT. 3.—B. (c).

sb. *Insolvency of deceased administrator—Priority of original estate—Over claim by surety company on administrator's bond.*]—NOVA SCOTIA TRUST CO. *v.* UNITED STATES FIDELITY & GUARANTEE CO., [1931] 3 D. L. R. 279.—**CAN.**

PART VIII. SECT. 8, SUB-SECT. 1.—A.

8559 ii. —— —— *Costs of mortgagee's action to realise security & for administration.*]—LEONARD *v.* KELLETT (1891), 27 L. R. Ir. 418.—**IR.**

PART VIII. SECT. 8, SUB-SECT. 2.—A.

ii. —— *Establishing claim as such.*]—Next of kin who are successful in establishing their claims as such before the chief clerk are entitled to be paid their costs incurred in so doing out of the estate of the intestate.—*Re* GRAZEBROOK, CHASE *v.* LAYTON (No. 2), [1928] V. L. R. 212.—**AUS.**

PART VIII. SECT. 8, SUB-SECT. 2.—C.

8771 i. *Legatee & assignee—Whether legatee's costs only allowed.*]—Orders for costs, in administration suits, should be made in such a form that a person who has not encumbered his share will be relieved as far as possible in the matter of costs created by the fact that another co-sharer has assigned or encumbered his share.—NATIONAL INSURANCE CO., LTD. *v.* NISSIM ABRAHAM GUBBAY (1928), I. L. R. 56 Calc. 447.—**IND.**

8815. *Add. Annotation :*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617.

8819a. —— —— ——.]—" Testamentary expenses " directed to be paid out of a particular part of testatrix's property include the costs of unsuccessful claimants to a legacy made defts. to a summons by trustees for obtaining the direction of the ct. as to whom the legacy should be paid. The costs of unsuccessful claimants to a legacy who are made defts. to a summons by the trustees of the will for obtaining the direction of the ct. as to who is entitled to the legacy will be ordered to be paid out of the estate, notwithstanding the objection of the residuary legatee or other person entitled to that part of the estate out of which such costs will become payable ; & such costs will be ordered to be paid as between solr. & client, notwithstanding the objection of the same person.—*Re* CLARKE, CLARKE *v.* ST. MARY'S CONVALESCENT HOME (1907), 97 L. T. 707.

Annotation :—**Consd.** *Re* Hall-Dare, Le Marchant *v.* Lee Warner, [1916] 1 Ch. 272.

8841a. —— —— ——.]—*Re* POTTS, HOOLEY *v.* FOUNTAIN, [1884] W. N. 106.

8866. *Add. Annotation :*—**Refd.** *Re* Porter, Porter *v.* Porter, [1925] Ch. 746.

8891. *Add. Annotation :*—**Consd.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

9014. *Add. Annotation :*—*As to* (4) **Refd.** *In the Estate of* Plant, Wild *v.* Plant, [1926] P. 139.

EXTRADITION AND FUGITIVE OFFENDERS.

Part I.—Extradition to Foreign Countries.

32. *Add. Annotation :—Generally,* **Refd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

37. *Add. Annotation :—As to* **(1) Refd.** R. *v.* Beebe (1925), 133 L. T. 736.

66. *Add. Annotation :*—**Distd.** Kossekechatko *v.* A.-G. of Trinidad, [1932] A. C. 78.

74a. —— ——.]—Applts. were brought before a magistrate in Trinidad under sect. 5 of the French Guiana Extradition Ordinance of Trinidad charged with being fugitive criminals from French Guiana, where there is a penal settlement. At the hearing it was proved that they had each been convicted in France of a specified crime, & had each received a sentence of imprisonment which was unexpired. The magistrate made an entry in his magistrate's book against their names "extradition ordered." He did not, however, make, as he should have done, an order under Extradition Act, 1870 (c. 52), s. 10 (made applicable by sect. 5 of the Ordinance), for committal to await the Governor's warrant for surrender. Instead another magistrate, who had not heard the case, made a detention order under sect. 3 of the Ordinance, which section applies to suspected fugitives. Upon *habeas corpus* proceedings :—*Held :* the appellants should be released : (1) because under the terms of the extradition treaty with France they could be extradited only if the crimes of which they had been convicted were committed in French territory, & there was no evidence that that was so, nor was it necessarily involved in the convictions ; (2) because sects. 11 & 12 of the local Summary Conviction Offences (Procedure) Ordinance did not make the entry in the magistrate's book equivalent to an order under Extradition Act, 1870 (c. 52), s. 10, & the irregularities with regard to the order signed prevented the detention of applts. from being warranted.—KOSSEKECHATKO *v.* A.-G. FOR TRINIDAD, [1932] A. C. 78 ; 101 L. J. P. C. 17 ; 146 L. T. 101 ; 29 Cox, C. C. 394 ; 48 T. L. R. 27 ; 75 Sol. Jo. 741, P. C.

PART I. SECT. 1, SUB-SECT. 1.

e i. —— ——.]—The East Indian Dependencies of France, having been expressly excluded from the Extradition Treaty of 1876, & not being States or parts of a State to which the Extradition Acts of 1870 & 1873 apply, are not "Foreign States" within Indian Extradition Act of 1903. Extradition in the East Indian possessions of Great Britain & France is governed by Art. IX. of the Treaty of Mar. 7, 1815 ; & that article contemplating summary delivery at the request of any authority of either High Contracting Party & not providing any special procedure for the purpose of extradition, the British Indian Govt. may, on the statement of the Govt. of Pondicherry that a British Indian subject has committed the offence of theft within its territory & on its demand, deliver him up to the Govt. of Pondicherry, without holding an inquiry to satisfy itself that there is a *primâ facie* case against the person whose extradition is sought.—*Re* MUTHU REDDI (1930), I. L. R. 53 Mad. 1023.—**IND.**

PART I. SECT. 2, SUB-SECT. 2.—B.

sa. *Obtaining by false pretences—Extraditable offence.*]—*Re* MARTIN (No. 2) (1897), 2 Terr. L. R. 304.—**CAN.**

sb. —— *Not extraditable.*]—Goods are not "other property" within the meaning of the words, "obtaining money, valuable security or other property by false pretences," which is clause 7 of the sched. to the Extradition Treaty with the United States of America. Therefore, the offence of obtaining goods by false pretences is not extraditable under said treaty.—*Re* ROSEN, [1931] 2 W. W. R. 799 ; 56 Can. C. C. 162 ; 44 B. C. R. 203. **CAN.**

sc. *Procuring abortion.*]—The procuring abortion held extraditable on the demand of the State of Alabama.—*Re* O'CONNOR, [1928] 1 D. L. R. 558 ; [1928] 1 W. W. R. 65 ; 39 B. C. R. 271 ; *sub nom. Ex p.* O'CONNOR, 49 CAN. Crim. Cas. 151.—**CAN.**

sd. *Revenue offences — Breach of Harrison Anti-narcotic Law.*]—The government of the United States of America is entitled to apply for extradition for alleged breaches of the "Harrison Anti-Narcotic Law" with respect to the "having in possession" or "buying" or "selling," etc., drugs. Although the Supreme Ct. of the United States has declared said Act to be within the powers of Congress because the incorporation therein of provisions for a tax or licence fee rendered it a revenue measure, yet on an application for extradition for such offences, the Act having been declared constitutional, both the judgment, which recognises the dual aspect of the legislation, & the Act itself must be taken as a whole ; &, therefore, the contention that said offences are breaches of a revenue law & therefore not extraditable was not sustained.—*Re* GIFFORD (No. 2) (Man.), [1929] 3 W. W. R. 496 ; [1930] 1 D. L. R. 752 ; 52 Can. Crim. Cas. 293.—**CAN.**

se. —— ——.]—In view of the decisions of the Supreme Ct. of the United States holding that the "Harrison Anti-Narcotic Law" is a revenue measure & that the provisions thereof for the suppression of narcotics are constitutional only because they are regarded as in aid of the collection of the taxes imposed by the Act, offences against said provisions are breaches of a revenue law & therefore not extraditable.—*Re* SIEMAN, [1930] 1 W. W. R. 970.—**CAN.**

sf. —.]—*Re* SIEMAN (No. 2), [1930] 2 W. W. R. 111.—**CAN.**

PART I. SECT. 3, SUB-SECT. 1.

39 iv. —— *Application by French Republic—Extradition to Saar Basin of Germany.*]—*Re* INCAMPE, [1928] 3 D. L. R. 240 ; 49 Can. Crim. Cas. 386.—**CAN.**

t i. ——.]—Extradition proceedings need not originate in the foreign country.—*Re* O'CONNOR, [1928] 1 D. L. R. 558 ; [1928] 1 W. W. R. 65 ; 39 B. C. R. 271 ; *sub nom. Ex p.* O'CONNOR, 49 Can. Crim. Cas. 151.—**CAN.**

PART I. SECT. 3, SUB-SECT. 3.—C. (a) i.

68 i. *Identity of accused.*]—Evidence which under Canadian law may be inadmissible on a trial because the prisoner had not been properly warned of the possible consequences of the making of a statement or giving answers to a policeman's question is at least admissible on extradition proceedings to prove the identity of the person arrested with the person charged.—*Re* O'CONNOR, [1928] 1 D. L. R. 558 ; [1928] 1 W. W. R. 65 ; 39 B. C. R. 271 ; *sub nom. Ex p.* O'CONNOR, 49 Can. Crim. Cas. 151.—**CAN.**

PART I. SECT. 3, SUB-SECT. 3.—C. (a) ii.

83 iv. ——.]—While the imputed offence must be shown to be a crime under the law of the demanding State, yet, in determining whether there is such evidence of criminality as according to Canadian law would justify a commitment if the crime had been committed in Canada, regard is to be had to the essence of the act charged, & extradition is permitted if there exists the elements of the imputed offence according to Canadian law.—WASHINGTON STATE *v.* FLETCHER, [1926] 3 D. L. R. 426 ; [1926] 2 W. W. R. 508 ; 46 Can. Crim. Cas. 226 ; 20 Sask. L. R. 575.—**CAN.**

c i. —— *Whether admissible as proof of law of demanding State.*] *Re* WAGNER, [1928] 4 D. L. R. 615 ; 50 Can. Crim. Cas. 254.—**CAN.**

f i. ——.]—*Re* CLARK (P. E. I.), [1929] 3 D. L. R. 737 ; 51 Can. Crim. Cas. 302.—**CAN.**

f ii. ——.]—Where on an application before an extradition comr. for an order for the surrender of the accused the evidence adduced shows a *primâ facie* case of a crime known to the common law, the burden rests on the accused to show that the alleged facts do not constitute a crime under the law of the demanding state.—*Re* SULLIVAN & STATE OF CALIFORNIA, [1932] 3 W. W. R. 167.—**CAN.**

sl. *Foreign law—Mode of proof.*]—

121a. Necessity for signature by magistrate hearing case.]—KOSSEKECHATKO *v.* A.-G. FOR TRINIDAD, No. 74a, *ante*.

126. *Add. Annotation:—As to* (1) **Refd.** R. *v.* Brixton Prison, *Ex p.* Shure, [1926] 1 K. B. 127.

127. *Add. Annotation:*—**Consd.** R. *v.* Brixton Prison, *Ex p.* Shure, [1926] 1 K. B. 127.

136. *Add. Annotation:*—**Refd.** Eshugbayi Eleko *v.* Nigeria Government (Officer Administering), [1931] A. C. 662.

Part II.—Extradition from Foreign States.

146a. Onus of proof of surrender under treaty.]—Applt. was brought before a tribunal in France on a claim for his extradition on a charge of false pretences. He waived all the formalities of extradition & was handed over to the English police. He was convicted in England on a charge of fraudulent conversion based upon the facts contained in the information upon which the claim for extradition was made:—*Held:* (1) the onus of showing that he had been surrendered in accordance with the extradition treaty between this country & France lay on applt., & he had failed to discharge that onus; (2) Extradition Act, 1870 (c. 52), s. 19, which, in effect, enacts that a person extradited may be tried for any offence which can be proved by the facts upon which the surrender was grounded, was not abrogated by the provisions of Art. IV. of a treaty of extradition made between this country & France, applied to the Act of 1870 by & embodied in an Order in Council, which prohibited the trial of such person for any offence other than that upon which he had been surrendered, &, consequently, the ct. had jurisdiction to try applt. for fraudulent conversion.—R. *v.* CORRIGAN, [1931] 1 K. B. 527; 100 L. J. K. B. 55; 144 L. T. 187; 47 T. L. R. 27; 29 Cox, C. C. 198; 22 Cr. App. Rep. 106, C. C. A.

146b. For what offences triable—Extradition Act, 1870 (c. 52), s. 19—Effect of Treaty with France, 1878.]—R. *v.* CORRIGAN, No. 146a, *ante*.

Part III.—Surrender between British Dominions inter se and the United Kingdom.

148. *Add. Annotation:—As to* (1) **Apprvd.** Sobhuza II. *v.* Miller, [1926] A. C. 518.

159. *Add. Annotations:*—**Apld.** *Re* Paget, *Ex p.* Official Receiver, [1927] 2 Ch. 85. **Refd.** *Re* Jawett, [1929] 1 Ch. 108.

160. *Add. Annotation:*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

UTAH STATE *v.* JONES (1925), 44 Can. Crim. Cas. 355; [1925] 3 W. W. R. 750.—**CAN.**

PART I. SECT. 3, SUB-SECT. 3.—C. (b) i.

sm. *Only evidence admissible under lex fori—Not hearsay.*]—*Re* GRABOWSKY (1930), 53 Can. C. C. 75.—**CAN.**

PART I. SECT. 3, SUB-SECT. 3.—D.

so. *Power of judge or commissioner to grant.*]—An extradition judge or comr. has the power in his direction to grant bail, but before it will be granted especially strong grounds should be shown in support of the application therefor.—UNITED STATES GOVERNMENT *v.* GIFFORD (Man.), [1929] 1 W. W. R. 879; [1930] 1 D. L. R. 800; 52 Can. C. C. 355.—**CAN.**

PART I. SECT. 3, SUB-SECT. 3.—E.

b i. ——.]—*Re* MARTIN (No. 2) (1897), 2 Terr. L. R. 304.—**CAN.**

PART II.

l i. —— ——.]—Where a person who has been accused of an extraditable offence & arrested in the United States under instructions from the Canadian authorities waives extradition proceedings, he may be tried here for any other offence committed before he was brought back, even though such other offence is not an extraditable one, & it was not until he was taken before an extradition comr. & charged before him that he agreed to return without extradition.—R. *v.* DIEDERICH & LIBERTY (Alta.), [1929] 3 W. W. R. 748; [1930] 1 D. L. R. 892; 24 Alta. L. R. 325; 52 Can. Crim. Cas. 370.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3.

sk. *Not absconding from jail.*]—JAIPAL BHAGAT *v.* R. (1921), I. L. R. 1 Pat. 57.—**IND.**

PART III. SECT. 2, SUB-SECT. 1.

f (p. 891) i. ——.]—Objection was taken to the form of a warrant, as failing to show jurisdiction, since it did not show that M. was a fugitive offender & that he was charged with an offence to which the Act applied:—*Held:* this objection was unsustainable in view of the facts alleged in the warrant, & also because the Act did not require the warrant to state that the offence charged was an offence within the Act; moreover, the warrant was merely one to apprehend, & had been endorsed in the manner provided by the Act.—THE STATE (KENNEDY) *v.* LITTLE, [1931] I. R. 39.—**IR.**

st. *Cancellation of warrant—Jurisdiction of High Court.*]—Although Extradition Act, 1903, s. 15, empowers the Govt. of India & the local Govt. to stay proceedings taken under chap. III of the Act & to direct any warrant to be cancelled & accused released, this does not oust the jurisdiction of the High Ct. to interfere where action has not been taken under a valid warrant.—JAIPAL BHAGAT *v.* R. (1921), I. L. R. 1 Pat. 57.—**IND.**

sb. *Authentication of warrant & depositions.*]—In proceedings before a magistrate under Fugitive Offenders' Act, 1881, the endorsed warrant for the apprehension of the fugitive bore the signature of a person who signed as a magistrate; the signature was certified by the Acting British Resident of the locality. A witness before the magistrate gave evidence identifying the signature of the magistrate & of the Resident, & stated that the magistrate was *de facto* exercising jurisdiction. Depositions put before the magistrate bearing the endorsement "True Copy" were similarly signed, certified, & identified:—*Held:* both the warrant & the copy of the depositions were duly authenticated as required by Fugitive Offenders Act, 1881, ss. 5, 29.—*Re* POUNDALL, *Ex p.* WILLIAMS (1931), 48 N. S. W. W. N. 228.—**AUS.**

sd. *Application of Order in Council—How proved.*]—Promulgation of an Order in Council may be proved by the production of a copy of the Government Gazette containing the notice of proclamation of the Order in Council. The application of Fugitive Offenders' Acts, 1881 & 1915, to a Protected State by Order in Council, which is proclaimed in the London Gazette, may be proved as an Act of State by tendering a copy of such Gazette. An Order in Council of the State of Perak made the penal code of the Straits Settlements applicable in Perak "upon the publication thereof in the Gazette." A book containing such Order was in evidence before a magistrate & contained a note that the Order was published in the Perak Government Gazette of a certain date:—*Held:* this notification afforded *primâ facie* evidence of the due publication of the penal code in the State of Perak since it fell within the terms of N.S.W. Evidence Act, 1898, No. 11, s. 19 (1).—*Re* SEERY, *Ex p.* WILLIAMS (1931), 48 N. S. W. W. N. 221.—**AUS.**

PART III. SECT. 2, SUB-SECT. 2.

k i. —— ——.]—*Held:* the President of the High Ct. is "a Judge of a Superior Ct." within sect. 3 of Fugitive Offenders Act, 1881, & a District Justice of Dublin Metropolis is "a magistrate" who may exercise the powers conferred by sect. 5 of the Act.—THE STATE (KENNEDY) *v.* LITTLE, [1931] I. R. 39.—**IR.**

FACTORIES AND SHOPS.

Part I.—Classification and Definitions.

8. *Add. Annotation :—As to* (1) **Consd.** Mumby *v.* Volp (1929), 141 L. T. 663.

13. After cross-reference following this case add :—
Factory & Workshops Acts, 1901–1920, in relation to Rating & Valuation (Apportionment) Act, 1928 (c. 44).]—*See* RATES & RATING, *post.*

17. *Add. Annotation :*—**Consd.** Stoke-on-Trent Revenue Officer *v.* Stoke-on-Trent Assessment Committee & Potteries Electric Traction Co., etc., etc. (19 0), 143 L. T. 653.

18. *Add. Annotation :*—**Consd.** Stoke-on-Trent Revenue Officer *v.* Stoke-on-Trent Assessment Committee & Potteries Electric Traction Co., etc., etc. (1930), 143 L. T. 653.

22. *Add. Annotation :*—**Consd.** Stoke-on-Trent Revenue Officer *v.* Stoke-on-Trent Assessment Committee & Potteries Electric Traction Co., etc., etc. (1930), 143 L. T. 650.

28. *Citation :*—For "2 B. & S. 153" read "3 B. & S. 153."

29. *Add. Annotations :*—**Consd.** Stoke-on-Trent Revenue Officer *v.* Stoke-on-Trent Assessment Committee & Potteries Electric Traction Co., etc., etc. (1930), 99 L. J. K. B. 428. **Refd.** Skinner *v.* Breach, [1927] 2 K. B. 220.

36a. —— **Need not be by owner of building.**]—MUMBY *v.* VOLP, No. 98a, *post.*

38. *Add. Annotation :*—**Consd.** Stoke-on-Trent Revenue Officer *v.* Stoke-on-Trent Assessment Committee & Potteries Electric Traction Co., etc., etc. (1930), 143 L. T. 650.

39. *Add. Annotation :*—**Consd.** Stoke-on-Trent Revenue Officer *v.* Stoke-on-Trent Assessment Committee & Potteries Electric Traction Co., etc., etc. (1930), 143 L. T. 650.

40. *Add. Annotations :*—**Dbtd.** Stoke-on-Trent Revenue Officer *v.* Stoke-on-Trent Assessment Committee & Potteries Electric Traction Co., etc., etc. (1930), 99 L. J. K. B. 428. **Refd.** Skinner *v.* Breach, [1927] 2 K. B. 220.

41. After this case add :—
Factory & Workshops Acts, 1901–1920, in relation to Rating & Valuation (Apportionment) Act, 1928 (c. 44).]—*See* RATES & RATING, *post.*

Part III.—Accidents.

62. *Add. Annotation :*— **Refd.** Dew *v.* United British S.S. Co. (1928), 139 L. T. 628.

68. *Add. Annotation :—Generally,* **Refd.** Atkinson *v.* L. & N. E. Ry. (1925), 42 T. L. R. 79.

68a. —— ——.]—Resps., the occupiers of a factory, provided adequate guards for securely fencing the mill-gearing, & exhibited a notice prohibiting workmen from removing any guard without special instructions. The workmen removed nine guards for the purpose of setting the rollers, &, having replaced only eight of the guards, started the rollers. Owing to their neglect, one workman, who slipped & fell, was dragged into the coupling gear & was killed. An information against resps. under 1901 Act, s. 136, for neglecting to observe the provision of sect. 10 (1) (*c*) that the mill-gearing must be securely fenced, was dismissed, on the grounds that resps. had taken all adequate precautions by providing the necessary guards, & that it was the fault of the workmen that caused the accident :—*Held :* under sect. 10 it was the duty of resps. not merely to provide guards, but to fence the machinery securely, & as they had not performed this duty, the justices ought to have convicted them.—THOMAS *v.* BOLTON (THOMAS) & SON, LTD. (1928), 139 L. T. 397 ; 92 J. P. 147 ; 44 T. L. R. 640 ; 26 L. G. R. 459 ; 28 Cox, C. C. 529, D. C.

71. *Add. Annotations :*—**Consd.** Higgins *v.* Harrison (1932), 25 B. W. C. C. 113. **Refd.** Atkinson *v.* L. & N. E. Ry. (1925), 42 T. L. R. 79.

2a. —— ——.]—An infant workgirl lost the ring finger of her right hand by accident arising out of & in the course of her employment. She received compensation under the Workmen's Compensation Act for a time, & then accepted £20 in purported settlement on the promise by the employer to re-employ her. No memorandum of this agreement was recorded. She worked at this employment for five years, when, by reason of trade conditions, she was discharged. She then commenced an action against the employer for damages for personal injuries resultant from the employer's alleged breach of statutory duty to fence the machine. The action was tried by a judge alone, who found that the injury had been caused by the employer's breach of statutory duty to fence, & that there

PART I. SECT. 1, SUB-SECT. 1.

8a. *Flour mill.*]—*Held :* a "factory" within Factories Act, 1894.—SELBY *v.* BANNIGAN (1901), 3 S. A. L. R. 21.—**AUS.**

k i. —— ——.]—R. *v.* WONG SAM (B. C.), (1929) 52 Can. Crim. Cas. 357.—**CAN.**

m i. ——.]—*Held :* a drying yard situate about five or six yards from a factory, was part of the factory.—RAMANATHAM *v.* R. (1926), I. L. R. 50 Mad. 834.—**IND.**

PART III. SECT. 1, SUB-SECT. 1.—A.

70 iii. —— —— ——.]—A co. was charged under 1901 Act, s. 10 (1) (*c*), with failing to keep its factory in conformity with that Act, in respect that a dangerous part of the machinery, the cutter of a horizontal milling machine, was not either securely fenced, or in such a position or of such construction as to be equally safe to every person employed or working in the factory as it would have been if it had been securely fenced :—*Held :* (1) the question whether a part of the machinery was "dangerous" within the Act was one of degree, & the risk involved in the use of the cutter did not reach a degree sufficient to justify that part being classified as "dangerous"; (2) in any event, to secure a conviction, facts must be established to support the second branch of the complaint, &, on the facts, the charge was not proven.—LAUDER *v.* BARR & STROUD, [1927] S. C. (J.) 21.—**SCOT.**

was no contributory negligence on the part of pltf. He, however, also found, having regard to the fact that the infant had received employment for five years after her accident under the agreement, that the agreement to accept compensation, though not registered, was for her benefit & therefore binding, with the result that the action was barred by Workmen's Compensation Act, 1925 (c. 84), s. 29, of the Act. The infant appealed :—*Held :* (1) without deciding whether the agreement was for the infant's benefit or whether further proceedings might be taken under the Workmen's Compensation Act, the action for breach of statutory duty failed because, on the evidence, the machine was not a dangerous machine within Factory & Workshop Act, 1901 (c. 22), s. 10, & therefore there was no duty on the employer to fence it ; (2) on the evidence, the accident was caused by the negligence of pltf., which was a complete defence to the action even if such negligence had only been of a contributory character.—HIGGINS *v.* HARRISON (1932), 25 B. W. C. C. 113, C. A.

76a. —— **Machinery equally safe fenced or unfenced—Overhead shaft.**]—Resps. were the occupiers of a factory in which was a machine driven by a pulley fixed on a horizontal shaft, which formed part of the mill gearing. The driving belt slipped off the pulley & an employee of resps. attempted to put it back while the shaft was running & sustained injuries. The shaft & pulley were about thirteen feet from the floor & they were not fenced or guarded. In attempting to put on the belt the workman stood on a beam about seven feet from the floor, & was acting contrary to resps.' instructions. Resps. were summoned for not having the shaft fenced, but the justices, being of opinion that any fence would have been useless owing to the shaft being thirteen feet above the ground, dismissed the case :—*Held :* the finding of the justices was not equivalent to a finding that the shaft was " in such position or of such construction as to be equally safe to every person employed or working in the factory as it would be if it were securely fenced," which was the requirement of 1901 Act, s. 10 (1) (c), & there would have been no evidence to support the latter finding.—ATKINSON *v.* LONDON & NORTH EASTERN RY. Co., [1926] 1 K. B. 313 ; 95 L. J. K. B. 266 ; 134 L. T. 217 ; 90 J. P. 17 ; 42 T. L. R. 79 ; 23 L. G. R. 702 ; 28 Cox, C. C. 112, D. C.

80. *Add. Annotations :—As to* (1) **Consd.** Dew *v.* United British S.S. Co. (1928), 139 L. T. 628. **Apld.** Higgins *v.* Harrison (1932), 25 B. W. C. C. 113.

81a. —— —— ——.]—HIGGINS *v.* HARRISON, No. 72a, *ante*.

91. *Add. Annotation :—As to* (2) **Consd. & Expld.** Mumby *v.* Volp (1929), 141 L. T. 663.

92. For " 69 L. T. 622 " read " 79 L. T. 622."

98a. Duty to keep in repair & free from obstruction —Part of factory in occupation of lessee.]—The supply of mechanical power referred to in Factory & Workshop Act, 1901 (c. 22), s. 149 (1), is not limited to the case of supply by the owner of the building, & there is no reason to read into the sub-sect. after the word " supplied " the words " by the owner."

X. owned a building which was a factory where more than forty persons were employed, & carried on business as a shirt manufacturer in the basement & on the ground & first floors. The second floor was unoccupied. The third & fourth floors were let to Y., who carried on business there as a blouse manufacturer, employing more than forty persons. The factory of X. & that of Y. were respectively worked by separate & distinct electric motors, driven by electricity generated & supplied by the electricity undertaking of a municipal corpn. & each factory had a separate meter. Without this supply of electricity the electric motors could not be driven :—*Held :* mechanical power, namely, electrical current, was supplied to different parts of the same building within sect. 149 (1). Accordingly, as the building was a tenement factory, etc., the owner, was responsible under sect. 14 (6), (7) of the Act that the means of escape in case of fire provided throughout the factory, including the two floors occupied by Y., should be maintained in good condition & free from obstruction.—MUMBY *v.* VOLP, [1930] 1 K. B. 460 ; 99 L. J. K. B. 213 ; 141 L. T. 663 ; 93 J. P. 197 ; 27 L. G. R. 594, D. C.

76a . . . Defts. were the occupiers of a factory. A workman in their employment, following his daily duties, climbed up a ladder to the shafting in the dye-house to fix a belt on a pulley, & was caught in the shafting, whirled round & killed. No one actually saw the occurrence, but, as portions of deceased's clothing were on the shaft, they probably got caught in it. An information against defts. charged that, contrary to Factory & Workshop Act, 1901, s. 10 (1) (c), a part of the mill gearing, namely, a line of shafting, was neither securely fenced nor in such a position nor of such construction as to be equally as safe to every person employed or working in the factory as if it had been securely fenced. The justices dismissed the information, but stated a case for the opinion of the K. B. D. :—*Held :* defts., in failing to fence the line of shafting, had contravened Factory & Workshop Act, 1901, s. 10 (1) (c), & should be convicted.—MINISTRY OF LABOUR FOR NORTHERN IRELAND *v.* COWDY & SONS, [1929] N. I. 110.—**IR.**

81 iii. —— —— ——.]—In an action by the widow of a deceased employee against his employer pltf. alleged that deft. in contravention of Factories & Shops Act, 1912 (N.S.W.), neglected & omitted securely or at all to fence the dangerous parts of a machine whereby deceased was injured & died. The jury returned a general verdict for deft. :—*Held :* in the particular circumstances there should be a new trial, there having been a misdirection on the question of contributory negligence upon which the jury might have acted.—COFIELD *v.* WATERLOO CASE CO., LTD. (1924), 34 C. L. R. 363.—**AUS.**

81 iv. —.]—Contributory negligence is not a defence to an action to recover damages for personal injury, caused by a breach of an absolute statutory duty imposed for the benefit of a class of persons, of which pltf. is a member.—BOURKE *v.* BUTTERFIELD & LEWIS, LTD. (1927), 38 C. L. R. 354 ; 27 S. R. N. S. W. 339 ; [1927] Argus L. R. 3.—**AUS.**

Part IV.—Dangerous and Unhealthy Industries.

118. *Add. Annotations :*—**Folld.** Manchester Ship Canal Co. *v.* Director of Public Prosecutions, [1930] 1 K. B. 547. **Refd.** Hamilton *v.* Shelton Iron, Steel & Coal Co., Leigh *v.* Same, Timmins *v.* Same (1926), 96 L. J. K. B. 295 ; Lewis *v.* Guest, Keen & Nettlefolds, Watkins *v.* Same, Tucker *v.* Same, Ingram *v.* Crawshay (1927), 96 L. J. K. B. 664; Bevan *v.* Nixon's Navigation Co., [1929] A. C. 44.

137. *Add. Annotation :*—**Folld.** Manchester Ship Canal Co. *v.* Director of Public Prosecutions, [1930] 1 K. B. 547.

138. *Add. Annotation :*—**Refd.** Manchester Ship Canal Co. *v.* Director of Public Prosecutions, [1930] 1 K. B. 547.

138a. —— **Docks Regulations, 1925, reg. 34.**]—Reg. 34, provided : "(*a*) Where there is more than one hatchway, if any hatch of a hold exceeding five feet in depth measured from the level of the deck in which the hatch is situated to the bottom of the hold, is not in use for the passage of goods, coal, or other material, or for trimming, & the coamings are less than two feet six inches in height, such hatch shall either be fenced to a height of three feet or be securely covered . . ." :—*Held :* (1) the duty of fencing or covering a hatch, in compliance with reg. 34, which was not in use but which had been used during the process of unloading a ship lay upon the person who by himself, his agents, or workmen carried on the process of unloading, & not upon the owner, master, or officer in charge of the ship ; (2) for the purposes of the 1901 Act, the covering of a hatch which had been used for the purpose of unloading the ship was ancillary to the main work of unloading, & the work of unloading was not completed till the hatch was covered.—MANCHESTER SHIP CANAL CO. *v.* DIRECTOR OF PUBLIC PROSECUTIONS, [1930] 1 K. B. 547 ; 99 L. J. K. B. 230 ; 143 L. T. 113 ; 46 T. L. R. 163 ; 18 Asp. M. L. C. 140, D. C.

153. *Add. Annotation :*—**Refd.** Stroud *v.* Bath Gas Light & Coke Co. (1927), 137 L. T. 623.

153a. —— **"Temporarily used"—Machinery not in actual use.**]—By Factory & Workshop Act, 1901 (c. 22), s. 79, the Secretary of State may make regulations in respect of dangerous machinery. By sect. 105 the provisions of the Acts with respect (*inter alia*) to fines in respect of death or injury are applicable as if any premises on which machinery worked by steam, water, or other mechanical power is temporarily used for the purpose of the construction of a building or any structural work in connection with a building were included in the word "factory," & as if the person who by himself, his agents or workmen, temporarily uses any such machinery for the before-mentioned purpose were the occupier of a factory. The Secretary of State, in pursuance of s. 79, made certain regulations casting upon employers of workmen the duty of fencing floor-openings with a suitable guard rail & toe board or other efficient means :—*Held :* (1) the words "temporarily used" are not confined to the actual moment when the machinery is in use, but extend to the whole period during which the machinery is available for use in the constructional work, & therefore that persons who had brought such machinery upon the premises were liable to conviction as the occupiers of a factory in respect of the death of a workman who fell through an unfenced shaft at a time when the mechanical hoist for which the shaft was made was not in use ; (2) the words "employers of workmen" imposed upon sub-contractors, engaged in laying floors in a building in course of erection, liability in respect of the death of one of their workmen who fell through an unguarded well hole which the sub-contractors had left for a staircase in the construction of which the sub-contractors were not concerned.—BARNETT *v.* CAXTON FLOORS, LTD., BUTLER *v.* KLEINE PATENT FIRE RESISTING FLOORING SYNDICATE, LTD. (1928), 140 L. T. 138 ; 93 J. P. 59 ; 45 T. L. R. 141 ; 27 L. G. R. 27 ; 28 Cox, C. C. 558, D. C.

180a. —— **Regulations binding on "employer of workman"—Liability of sub-contractor.**]—BARNETT *v.* CAXTON FLOORS, LTD., BUTLER *v.* KLEINE PATENT FIRE RESISTING FLOORING SYNDICATE, LTD., No. 153a, *ante*.

180b. —— **Extensive building site—House on site completed.**] -Injuries were sustained by two workmen in the employ of resps., who were contractors engaged in the erection of a number of houses on a large area of unenclosed land. At one point on the building site was a mortar mill driven by a petrol engine, & there was also on the site a concrete mixer on wheels, which was moved about the site as occasion required. In the first case the workman injured himself while working on the roof of a house which had almost been completed. The mortar mill was 100 yds. distant from the house, & was not within its curtilage or precincts. In the second case the accident occurred in a completed house from which the mortar mill was 25 yds. & the concrete mixer about 400 yds. distant ; neither of these machines had any connection with the accident. In both cases the workmen were disabled for more than three days, but resps. did not send written notice to the inspector of the district. Informations for failing to give notice were preferred against resps. under the Notice of Accidents Act, 1906 (c. 53), as amended by Workmen's Compensation Act, 1923 (c. 42). The justices dismissed both informations :—*Held :* (without deciding whether an extensive building site may be a "factory" within Factory & Workshop Act, 1901 (c. 22), s. 105 (1)), the question of the extent of "premises on which machinery . . . is temporarily used for the purpose of the construction of a building" was one of degree & therefore of fact ; & the justices had not misdirected themselves in holding that a house on such a site, when completed, or nearly completed, became a separate set of premises, which could not be deemed to be a "factory" within the Act.—PEASE *v.* SIMMS (W. J.), SONS & COOKE, LTD., [1932] 1 K. B. 723 ; 101 L. J. K. B. 805 ; 146 L. T. 366 ; 96 J. P. 66 ; 48 T. L. R. 176 ; 30 L. G. R. 87, D. C.

PART IV. SECT. 2, SUB-SECT. 1.—D.

135 ii. —— *Interpretation of regulations—Question for court.*]—BISSETT *v.* HEITON & CO., LTD., [1930] I. R. 17.—IR.

Part V.—Conditions as to Employment and Wages.

186. *Add. Annotation :*—**Refd.** Stoke-on-Trent Revenue Officer *v.* Stoke-on-Trent Assessment Committee & Potteries Electric Traction Co., etc., etc. (1930), 99 L. J. K. B. 428.

190. After this case add :—

——.]—*See* Hairdressers' & Barbers' Shops (Sunday Closing) Act, 1930 (c. 35), s. 3.

192. *Add. Annotation :—As to* (1) **Consd.** Rutherford *v.* Trust Houses, [1926] 1 K. B. 321.

193. *Add. Annotation :—As to* (2) **Distd.** Rutherford *v.* Trust Houses (1925), 89 J. P. Jo. 682.

206a. **Shops Act, 1913 (c. 24), s. 1.**—Where the occupier of premises for the sale of refreshments, whether licensed for the sale of intoxicating liquor or not, elects under sect. 1 (1) of the above Act that instead of the provisions of Shops Act, 1912 (c. 3), s. 1, with regard to holidays, the provisions of sect. 1 (1) (a), (b), (c) & (d) of the above Act shall apply to shop assistants employed on the premises wholly or mainly in connection with the sale of intoxicating liquors or refreshments for consumption on the premises, he must be taken to elect to adopt the extended definition of shop assistant in sect. 1 (5) of the above Act, namely, that "shop assistant" includes "all persons wholly or mainly employed in any capacity at the premises in connection with the business there carried on," & he cannot afterwards be heard to say that any person so employed is not a shop assistant.—RUTHERFORD *v.* TRUST HOUSES, LTD., [1926] 1 K. B. 321 ; 95 L. J. K. B. 371 ; 134 L. T. 630 ; 90 J. P. 62 ; 42 T. L. R. 148 ; 24 L. G. R. 245 ; 28 Cox, C. C. 161, D. C.

208. Before this case add "*See, now,* Shops (Hours of Closing) Act, 1928 (c. 33)."

211a. Right of local authority to make closing order "not being earlier than 8 o'clock"—Order requiring closing at 7 o'clock—Effect of Shop (Hours of Closing) Act, 1928 (c. 33), s. 4.]—*Held :* a closing order under Shops Act, 1912 (c. 3), requiring sweet shops to close at 7 p.m. was not saved by Shops (Hours of Closing) Act, 1928 (c. 33), s. 4, since the provision fixing the closing hour at 7 p.m. was inconsistent with the special provision of the 1928 Act that a closing order in respect of such shops might fix an hour "not being earlier than 8 o'clock in the evening."—KENYON v. STREET, [1931] 1 K. B. 305 ; 100 L. J. K. B. 214 ; 144 L. T. 403 ; 95 J. P. 36 ; 47 T. L. R. 107 ; 29 L. G. R. 100 ; 29 Cox, C. C. 227, D. C.

233. *Add. Citation :—previous proceedings, sub nom.* SHARMAN *v.* UNION IRON WORKS CO. (1852), 3 Car. & Kir. 298, N. P.

236. *Add. Annotation :*—**Refd.** Pritchard *v.* James Clay (Wellington) (1925), 42 T. L. R. 139.

261. *Add. Annotation :*—**Refd.** Riversdale Mill Co. *v.* Hart (1926), 43 T. L. R. 73.

263. *Add. Annotations :*—**Apld.** Jones *v.* Harris (1926), 43 T. L. R. 1. **Consd.** Hart *v.* Riversdale Mill Co., [1928] 1 K. B. 176. **Expld. & Distd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

264a. ——.]—Applt. was employed by resps. as a moulder of iron pipes upon piece work under an agreement by which applt. was to be paid 5½*d.* for a complete pipe free from defects, & other & smaller agreed prices for pipes defective in specified ways, *e.g.*, 5½*d.* for a pipe that was bent. These agreed prices were fixed at the time of applt.'s employment. No notices containing the terms of the agreement were kept by resps. as required by Truck Act, 1896 (c. 44), & no particulars in writing were supplied to applt. as required by that Act :—*Held :* the agreement was a clear attempt to evade the above Act. The workman was employed to make pipes of full length & free from defects, & in paying the smaller prices for defective pipes resps. were making deductions "for or in respect of bad or negligent work or injury to the materials or other property of the employer."—PRITCHARD *v.* JAMES CLAY (WELLINGTON), LTD., [1926] 1 K. B. 238 ; 95 L. J. K. B. 107 ; 134 L. T. 244 ; 90 J. P. 15 ; 42 T. L. R. 139 ; 70 Sol. Jo. 266 ; 28 Cox, C. C. 122, D. C.

Annotation :—**Distd.** Riversdale Mill Co. *v.* Hart, [1927] 1 K. B. 624.

PART V. SECT. 3, SUB-SECT. 1.

q i. —— *Automatic vending machine.*]—An automatic vending machine attached to a telegraph pole in a public street is not a "shop" within Shops & Offices Act, 1921-22. *Qu. :* the case of an automatic machine which is part of a shop but which can be operated from outside the shop.—LIGHTFOOT *v.* HUGH & G. K. NEILL, LTD., [1929] N. Z. L. R. 848.—**N.Z.**

sk. *Meal-times—Interval for meals—Whether part of hours of employment—Shops Act*, 1912 (c. 3), *s.* 1 (3) *& Sched. I.*]—Two employees in a shop began work at 7 a.m. & stopped work at 6.45 p.m. One of them was allowed away for dinner from 10.45 a.m. until 11.45 a.m., the other from 2 p.m. to 3 p.m., approximately :—*Held :* although each of the employees was away during part of the period 11.30 to 2.30, their hours of employment included those hours, & their employer had contravened the above Act by not allowing them an interval of three-quarters of an hour between those hours.—HUTCHISON *v.* CUMMING, [1926] S. C. (J.) 110.—**SCOT.**

PART V. SECT. 3, SUB-SECT. 2.—A.

e i. —— ——.]—It is unlawful for the keeper of a shop in which goods of different classes, including fruit & vegetables, are kept for sale, to keep his shop open for the purpose of selling groceries during hours in which the sale of groceries is prohibited, although the same shop is used for the conduct of a "furtive tea-room," & for the sale of fruit & vegetables.—HUNN *v.* REYNOLDS, 22 Tas. L. R. 64.—**AUS.**

e ii. —— ——.]—It is lawful for the keeper of a shop, in which goods of different classes are kept for sale, to keep such shop open for the *bonâ fide* conduct of a tea room during hours in which the sale of goods which are not exempted by Shops Act, 1925, is prohibited.—WEYMOUTH *v.* SHACKCLOTH, 22 Tas. L. R. 7.—**AUS.**

f i. —— *Meaning of "open."*]—A shop is open for trading when it is made accessible to customers for that purpose.—DEVONISH *v.* PORTER, [1928 S. A. S. R. 296.—**AUS.**

211 i. *Customer in shop before closing hour—Failure to complete purchase in time—Shops (Early Closing) Act*, 1920 (*c.* 58), *Sched. I, Art.* 2 (1).]—An auctioneer, who had closed his premises to the public at the appointed hour, but continued after that hour to conduct retail sales by auction to persons who were already collected within the premises, was held rightly convicted, in respect that, while an auctioneer might complete any transaction which was in progress at the time of closing for the benefit of those then present, he was not entitled thereafter to put up further articles to auction.—GORDON *v.* SOMERVILLE, [1928] S. C. (J.) 45.—**SCOT**

PART V. SECT. 5, SUB-SECT. 2.—B. (b).

n i. —— *Debt owed to third party.*]—Pltf., who was employed by deft., was indebted to the W. co. Deft., with the consent of pltf., paid the amount owing to the W. co. out of pltf.'s wages. Pltf. subsequently sued to recover this amount on the ground that the payment to the W. co. was a contravention of the Truck Act :—*Held :* payment in such circumstances was not a contravention of Truck Act.—PILBARRA COPPER FIELDS, LTD. *v.* NEILSEN (1930), W. A. L. R. 34.—**AUS.**

264b. -.]—By order dated Mar. 3, 1897, the Secretary of State exempted from the provisions of Truck Act, 1896 (c. 44), persons engaged in the weaving of cotton in the county of Lancashire. Resp., a weaver of cotton in Lancashire employed by applts., was negligent in performing certain work &, in accordance with a custom which had long existed in the Lancashire trade, the employers deducted a reasonable sum from the "standard list" rates of wages which had been agreed between the employers' & workers' organisations, as the remuneration for good, merchantable cloth, & paid her the balance as her wages :—*Held :* this deduction was not illegal as being in contravention of the Truck Acts.—HART *v.* RIVERSDALE MILL Co., [1928] 1 K. B. 176; 96 L. J. K. B. 691; 137 L. T. 364; 91 J. P. 135; 43 T. L. R. 396; 71 Sol. Jo. 407, C. A.; *affg.* S. C. *sub nom.* RIVERSDALE MILL CO. *v.* HART, [1927] 1 K. B. 624, D. C.

Annotation :—**Apld.** Sagar *v.* Ridehalgh, H. & Son, Ltd., [1931] 1 Ch. 310.

264c. ——.]—Pltf. was a weaver in defts.' employment & his wages were calculated on the amount & kind of cloth woven in each week in accordance with a uniform list of prices agreed between the employer's & workmen's unions. According to the list of prices, pltf. became entitled for the week ending Aug. 1, 1928, after agreed deduction to a sum of £2 5*s.* 0½*d.*, but defts. only paid him £2 4*s.* 0½*d.*, claiming the right to deduct 1*s.* in respect of three yards of cloth woven with a fault rendering them unmerchantable. The evidence showed that it had been the practice of the mill for many years to make deductions for work not done with reasonable care & skill, the deductions not exceeding in amount the loss sustained by the employers & often not being exacted. A similar usage existed in the bulk of the mills carrying on the Lancashire weaving trade, though some of the mill owners were trying to do without deductions :—*Held :* this practice was not rendered illegal by the Truck Act, 1831 (c. 37), s. 3, as it did not involve a deduction for bad work from ascertained wages, but a deduction for bad work made in calculating the wages.—SAGAR *v.* RIDEHALGH (H.) & SON, LTD., [1931] 1 Ch. 310; 100 L. J. Ch. 220; 144 L. T. 480; 95 J. P. 42; 47 T. L. R. 189; 29 L. G. R. 421, C. A.

276. *Add. Annotations :*—**Apld.** Hart *v.* Riversdale Mill Co., [1928], 1 K. B. 176; Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

277. *Add. Annotations :*—**Consd.** Hart *v.* Riversdale Mill Co., [1928] 1 K. B. 176. **Refd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

279. *Add. Annotation :*—**Refd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

Part VI.—Administration and Penalties.

299. *Add. Annotation :*—**Refd.** Atkinson *v.* L. & N. E. Ry. (1925), 42 T. L. R. 79.

PART VI. SECT. 3.

296 ii. ——.]—Resp. was charged with selling certain non-exempted goods after prohibited hours. A complaint purporting to be for a similar offence was laid against an employee; this complaint was bad in law; both complaints inferentially referred to the same transaction. The employee pleaded guilty; & thereupon the special magistrate dismissed the complaint against the employer, the two complaints, by consent, being heard together. There was no evidence of a statutory defence provided by sect. 83 of Early Closing Act that the employer had used due diligence to enforce the provisions of the Act or that the offence had been committed without the employer's knowledge, consent or connivance. There was, however, in the complaint against the employee an allegation that he had committed the act charged without the employer's knowledge, consent or connivance :—*Held :* the dismissal of the complaint against the employer was wrong.—ELLIS *v.* NORTHCOTE, LTD., [1929] S. A. S. R. 40.—**AUS.**

sl. *Prosecution by Chief Inspector of Factories—Liability as to costs.*]—The Chief Inspector of Factories for Tasmania may quite properly prosecute offences under Shops Act, 1925, in his official capacity, & so long as he acts *bonâ fide*, he will not be ordered to pay deft.'s costs of an unsuccessful prosecution.—REYNOLDS *v.* GEMMELL, 22 Tas. L. R. 57.—**AUS.**

FAMILY ARRANGEMENTS.

Part I.—Meaning and Formation.

38. *Add. Annotation :*—**Follld.** *Re* Morton, Morton *v.* Morton, [1932] 1 Ch. 505.

39. *Add. Annotation :*—**Follld.** *Re* Morton, Morton *v.* Morton, [1932] 1 Ch. 505.

39a. ——.]—A family arrangement for the division of an estate entered into in the absence or without the knowledge of one of the parties or persons interested in & affected thereby is not binding on any of the parties unless his concurrence is subsequently obtained.

On the death of W. without having made an effective will, & leaving his five brothers his next of kin, four of them joined with a niece in executing a deed of family arrangement, whereby the niece, who had been living with W. & his wife, who predeceased him, & for whom W. desired to make provision, was to be given an equal one-fifth share with the four brothers. The fifth brother T. was not a party to the deed, as at the date thereof he had not been heard of for over twelve years, & it was uncertain whether he was living or dead. Since the date of the deed the whereabouts of T. had been discovered, & he refused to concur in it :—*Held :* the arrangement was not binding on any of the parties thereto.—*Re* MORTON, MORTON *v.* MORTON, [1932] 1 Ch. 505 ; 101 L. J. Ch. 269 ; 146 L. T. 527.

Part II.—Validity and Effect.

164. *Add. Annotation.* **Refd.** Parr [1926] A. C. 239.

165. *Add. Annotation :*—**Consd.** *Re* Carnarvon's Chesterfield S. E., *Re* Carnarvon's Highclere S. E., [1927] 1 Ch. 138.

PART I. SECT. 3.

32 ii. —.]—In the usual type of family arrangement, unless any item of property which is admitted by all the parties to belong to one of them is allotted to another there is no "exchange" or other transfer of ownership.

A binding family arrangement of this type can be made orally, & if made orally, no question of registration arises. If such arrangement is followed by a writing containing reference to it, then the question is whether thereby the terms of the arrangement have been "reduced to the form of a document," *i.e.* formally recorded in a document with the purpose that they should be evidenced by that document, & that is a question of fact in each case to be determined upon a consideration of the nature & phrascology of the writing & the circumstances in which & the purpose with which it is written. —RAM GOPAL *v.* TULSHI RAM (1928), I. L. R. 51 All. 79.—**IND.**

PART II. SECT. 1.

n i. —SIDH GOPAL *v.* BIHARI LAL (1927), I. L. R. 50 All. 284.—**IND.**

t i. ——.]—Where it is proposed to substitute the trusts of a deed of family arrangement for those contained in a will of which probate has been granted to certain named exors. it is proper to provide in such deed for the release of the said exors. from their obligations under the will & for the vesting of the property in the exors., or in such person or persons as are to hold it, upon the trusts comprised in the deed ; & when the approval of the ct. is sought for such a deed, & when there are infant beneficiaries, there should be evidence before the ct. from which it could properly be inferred that the deed is beneficial to such infants.—*Re* SNELLING, SNELLING *v.* HANNA, [1930] N. Z. L. R. 426.—**N.Z.**

PART II. SECT. 7.

136 ii. —— ——.]—HAWKINS AGLASSINGER, [1928] 4 D. L. R. 188.—**CAN.**

PART II. SECT. 8, SUB-SECT. 1.

8a. *Compromise between husband & wife—Respecting wife's property—Concealment of fact by husband.*]—Specific performance decreed of an agreement in the English form made between husband & wife, Armenian Christians, in the nature of a family compromise respecting the wife's separate property In the answer of the wife it was alleged that property purchased by the husband had been concealed by him from her when she executed the agreement :—*Held :* under the circumstances, that fact even if proved, was not sufficient to entitle the wife to treat the agreement as a nullity.—GREGORY *v.* COCHRANE (1860), 8 Moo. Ind. App. 275.—**IND.**

FERRIES.

Part I.—Definition and Nature of Ferries.

6. *Add. Annotation :—Generally,* **Consd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1930] A. C. 549.

8. For the paragraph in the original volume substitute the following paragraph :—

-.]—Defts., under a statute of 1791, built a toll-bridge in place of an ancient ferry on a public highway, & also approaches which by the Act were to be considered as part & parcel of the bridge. Pltfs., the county council, owned land adjoining one of the approaches & built a school on it. Defts. denied pltfs.' right to free access to the school over the approach :—*Held:* as the old highway consisted of the approaches to the ferry plus the passage across the river, & the substituted highway consisted of the approaches to the bridge plus the bridge, & as the old approaches were highways to which owners would be entitled to access, the substituted approaches were highways by which adjoining owners had similar rights of access, & defts.' claim was ill founded.—YORKSHIRE, EAST RIDING, COUNTY COUNCIL *v.* SELBY BRIDGE CO. OF PROPRIETORS, [1925] Ch. 841 ; 95 L J. Ch. 86; 133 L. T. 628 ; 41 T. L. R. 602 ; 69 Sol. Jo. 775 ; 23 L. G. R. 547.

13a. —— —— —— **Persons able to cross on foot at low water.**]—(1) *Held:* a franchise ferry between South Benfleet & Canvey Island had been granted to pltfs.' predecessors in title.

(2) The case is unique in one respect because at low water the tidal creek can be traversed on foot (ROMER, J.).—LAYZELL *v.* THOMPSON (1926), 91 J. P. 89; 43 T. L. R. 58; *affd.* (1927), 96 L. J. Ch. 332, C. A.

31a. —— ——.]—The landing stage constructed in Poole Harbour at South Haven Point by the Bournemouth-Swanage Motor Road & Ferry Co. under their private Act of 1923 is the private property of the co., & they are entitled to prevent any one from using it except in connection with their ferry & on payment of the appropriate tolls.—BOURNEMOUTH-SWANAGE MOTOR ROAD & FERRY CO. *v.* HARVEY & SONS (1930), 144 L. T. 132 ; 95 J. P. 9 ; 47 T. L. R. 16 ; 29 L. G. R. 22, C. A.

Part II.—Creation and Transfer of Ferries.

34. *Add. Annotations :—As to* (3) **Refd.** Layzell *v.* Thompson (1926), 43 T. L. R. 58. *As to* (5) **Consd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1930] A. C. 549.

35. *Add. Annotations :*—**Consd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1930] A. C. 549. **Refd.** Layzell *v.* Thompson (1926), 43 T. L. R. 58.

35a. ——.]—LAYZELL *v.* THOMPSON, No. 13a, *ante.*

51. *Add. Annotation :—As to* (2) **Refd.** Layzell *v.* Thompson (1926), 43 T. L. R. 58.

55a. **Extent of right—Whether exclusive right of ferry—Construction of Act.**]—By a private Act pltfs. were empowered to make & maintain a motor road from South Haven Point in the parish of Studland in the county of Dorset to a public road leading from Studland to Swanage. By sect. 56 of the Act they were empowered to establish, maintain, work & use a ferry service for passengers, animals vehicles & goods between the Sandbanks & South Haven Point within Poole Harbour. By sect. 62, passed for the protection of the Poole Harbour Comrs., pltfs. were required to establish or acquire & thereafter continuously work the ferry by means of a vessel propelled by steam on a chain cable system, & by sects. 62, 97, passed for the benefit of certain landowners, they were required to provide from seven o'clock in the forenoon when summer time should be in force & from eight o'clock in the forenoon at all other times of the year until one hour after sunset on every day a minimum hourly service of vessels from each shore. The two sects. contained provisions enabling Poole Harbour Comrs. & the landowners respectively to exercise certain powers & rights in case pltfs. should cease working the ferry or fail to work it continuously & efficiently. They established a ferry service in accordance with these provisions :—*Held:* the Act did not confer on pltfs. an exclusive right of ferry, & that they were not entitled to an injunction restraining defts., who for many years before the Act had in fact carried passengers between the Sandbanks & South Haven Point without claiming any franchise entitling them to do so, from carrying passengers bicycles & goods across the mouth of Poole Harbour within or near the limits of pltfs.' said ferry.—BOURNEMOUTH-SWANAGE MOTOR ROAD & FERRY CO. *v.* HARVEY & SONS, [1930] A. C. 549 ; 99 L. J. Ch. 337 ; 143 L. T. 313 ; 46 T. L. R. 439 ; 28 L. G. R. 351, H. L.

PART I. SECT. 1.

9 i. *A franchise—Under licence from Crown.*]—A ferry is a franchise, that no one can erect without a licence from the Crown. It is *publici juris,* & when a ferry is erected, another cannot be erected without a licence ; the Crown has a remedy *a quo warranto,* & the former grantee has a remedy by action.—SIRAJGANJ LOCAL BOARD (CHAIRMAN) *v.* BUDHISWAR PATNI (1930), I. L. R. 57 Calc. 1261.—**IND.**

PART II. SECT. 1, SUB-SECT. 1.—A.

sc. *Extinguishment of right of owner of terminii.*]—The general right of the owner of land on either bank of a river to establish a ferry for profit must give way if it comes in competition with the grantee of the Government who has previously enjoyed a monopoly under his grant.—DHANPAT PANDEY *v.* PARPUT PRATAP SINGH (1931), I. L. R. 53 All. 764.—**IND.**

Part III.—Rights, Duties and Liabilities of Ferry Owner.

65. *Add. Annotations:*—**Refd.** Layzell *v.* Thompson (1926), 43 T. L. R. 58; Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1930] A. C. 549.

66. *Add. Annotations:—As to* (1) **Consd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1930] A. C. 549. *Generally*, **Refd.** Winsford Entertainments *v.* Winsford U. D. C. (1924), 23 L. G. R. 254; Yorkshire East Riding County Council *v.* Selby Bridge Co., [1925] Ch. 841; Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons (No. 2) (1930), 144 L. T. 132.

87. *Add. Annotation:—As to* (2) **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1929] 1 Ch. 686.

Part IV.—Disturbance of Ferries and Remedies Therefor.

109. *Add. Annotation:—Generally*, **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1929] 1 Ch. 686.

150. *Add. Annotations:—As to* (1) **Refd.** Metcalfe *v.* Boyce, [1927] 1 K. B. 758. *As to* (3) **Consd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1929] 1 Ch. 686. *Generally*, **Refd.** Layzell *v.* Thompson (1926), 43 T. L. R. 58.

151a. —— ——.]—Layzell *v.* Thompson, No. 13a, *ante*.

PART IV. SECT. 2, SUB-SECT. 3.—B.

sb. *Proof of acquisition of termini sufficient—Proof of origin unnecessary.*]—In an action by a railway co. to interdict defender from conveying passengers for hire across a ferry:—*Held:* conveyances from the owners of the lands on either side of the ferry of their whole rights gave pursuers, in the absence of any rival title in favour of defender, a *primâ facie* title to sue, without the necessity of averring on what their author's titles were founded.—London, Midland & Scottish Ry. Co. *v.* M'Donald, [1924] S. C. 835.—**SCOT.**

PART IV. SECT. 2, SUB-SECT. 4.

sd. *Right of ferry exercised by others.*]—In an action by a railway co. to interdict defender from conveying passengers for hire across a ferry:—*Held:* a defence that pursuers had not exercised an exclusive right of ferry, in respect that other persons had, without protest, ferried passengers for hire, was irrelevant.—London, Midland & Scottish Ry. Co. *v.* M'Donald, [1924] S. C. 835.—**SCOT.**

FISHERIES.

Part I.—In General.

2. *Add. Annotations :—As to* (2) **Refd.** Peech *v.* Best (1930), 99 L. J. K. B. 537. *As to* (3) **Refd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

3. *Add. Annotation :*—**Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

Add. Annotations :—**Expld. & Folld.** Nicholls *v.* Ely Beet Sugar Factory, [1931] 2 Ch. 84. **Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

Part II.—Public Fisheries.

29. *Add. Annotation :—As to* (2) **Refd.** The Fagernes, [1926] P. 185.

48. *Add. Annotation :*—**Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons (No. 2) (1929), 94 J. P. 10.

50. *Add. Annotation :*—**Refd.** The Harkaway, [1928] P. 199.

57. *Add. Annotation :*—**Refd.** South Staffordshire Mines Drainage Comrs. *v.* Elwell (1927), 91 J. P. 153.

Part III.—Private Fisheries.

173. *Add. Annotation :*—**Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

176. *Add. Annotations :*—**Refd.** Abrahams *v.* Mac-Fisheries, [1925] 2 K. B. 18; Roe *v.* Russell, [1928] 2 K. B. 117.

176a. Fishing rights—Whether part of "premises" within Landlord & Tenant Act, 1927 (c. 36), s. 5.]—Where an incorporeal right, such as a right of fishing, is demised along with corporeal hereditaments by the same lease, & the lessee uses both for the purpose of his

PART II. SECT. 1, SUB-SECT. 1.—A.

9 iii. —— —— *Whether right to interfere with obstruction.*]—Though every subject has a common right of fishery in the sea, a person in possession of a weir built below low water mark may maintain trespass against a wrong-doer who interferes with his possession, though, as against the Crown, the weir was wrongfully there.—WILSON *v.* CODYRE & ALLINGHAM (1888), 27 N. B. R. 320.—**CAN.**

20 i. —— *Between high & low water mark—Effect of grant of soil.*]—The fact that the soil between high & low water marks has been granted does not interfere with the public right of fishery.—WILSON *v.* CODYRE & ALLINGHAM (1888), 27 N. B. R. 320.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.—B.

109 ii. —— —— *Whether prescriptive right of fishing from old banks exercisable from new banks.*]—Where the right of salmon-fishing had been exercised from banks on the bed of a river for more than forty years, but, from changes in the river, new banks had been formed, one of which had existed for less than that period :—*Held :* the possession of the fishings from this new bank was only an exercise of the right of fishing previously exercised from the former banks, the substantial right of fishing being the matter to be regarded & not the particular stations from which the right was exercised.—EARL OF ZETLAND *v.* TENNENT'S TRUSTEES (1873), 11 Macph. (Ct. of Sess.) 469; 45 Sc. Jur. 311.—**SCOT.**

PART III. SECT. 1, SUB-SECT. 5.

130 i. *Inland non-tidal lake—Land vested in Crown—Rights of owner or lessee of land extending to lake.*]—MCDONALD *v.* LINTON (N. B.), [1926] 3 D. L. R. 779.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.—A.

k i. ——.]—By the charter of the City of St. John, all the lands & waters within certain defined limits, bounded by low water mark, were granted by the Crown to the city, with all the rights & privileges appurtenant thereto, including fishing; & to the freemen & inhabitants of the city was granted the sole & exclusive privilege of fishing, & erecting weirs between high & low water marks :—*Held :* the exclusive right of fishing granted by the charter did not extend to any part of the sea shore beyond the bounds of the city, though it was within the harbour of St. John.—WILSON *v.* CODYRE & ALLINGHAM (1888), 27 N. B. R. 320.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.—B.

154 xi. —— ——.]—LITTLE *v.* MOYLETT, [1929] I. R. 439.—**IR.**

158 ii. —— ——.]—Defts. denied the validity of the documentary title relied on, & further contended that, by the provisions of Magna Carta, the Crown was prohibited from granting a several or sole & exclusive fishery in the *locus in quo* in case such was not existing in or before the year 1189, & any grant by the Crown contrary to the provisions aforesaid was null & void; that a several or sole & exclusive fishery in the *locus in quo* in or before the year 1189 did not in fact exist, & was not historically possible; & that the said documents of title & the historical evidence given showed that the claim to a several or sole & exclusive fishery in the *locus in quo* was modern in origin, & dated at the earliest from the times of Queen Elizabeth & King James I. :—*Held :* there was nothing in the terms of Magna Carta, c. 16, or the writings of ancient lawyers, or the judgments in modern cases to support the proposition that, whether the several fishery was actually in the hands of the Crown at the time of the death of Henry II., or in the hands of an assignee or feudatory of the Crown, or even of an intruder, the original act of appropriation must have been effected by the Crown itself.—MOORE *v.* A.-G., [1929] I. R. 191.—**IR.**

PART III. SECT. 3, SUB-SECT. 2.

sb. *Right of lessee to cut bushes along bank necessary for fishing.*]—Pltf. by indenture under seal, leased to deft. for a term of years, with the right to renew, pltf.'s land on the E. River, G. County, for fishing purposes, with the right to enter & use the same in such a way as might be necessary for fishing in said river. Damages claimed by pltf. were for cutting bushes along the bank of the river :—*Held :* the burden of proof was upon pltf., & the right to fish from the bank of the river involved the right to do such cutting as was necessary for that purpose.—MCKEEN *v.* PATTILLO (1927), 59 N. S. R. 452.—**CAN.**

PART III. SECT. 3, SUB-SECT. 4.

d i. —— *Extent of rights acquired.*]—*Held :* the right which may be acquired by possession of forty years on a grant of salmon-fishings pertaining to lands situated on one side of a river (*a*) is not limited to the fishings in that part of the river which is *ex adverso* of the lands; & (*b*) may extend to fishings beyond the *medium filum* of the river.—EARL OF ZETLAND *v.* TENNENT'S TRUSTEES (1873), 11 Macph. (Ct. of Sess.) 469; 45 Sc. Jur. 311.—**SCOT.**

PART III. SECT. 4, SUB-SECT. 2.

sd. *Ownership of land abutting on river—Tenant at will.*]—A person in possession of land bordering on a non-tidal river, as a tenant at will of the owner, is entitled to be treated as a riparian owner, so far as regards the right of fishing.—PHAIR *v.* VENNING (1882), 22 N. B. R. 362.—**CAN.**

PART III. SECT. 5, SUB-SECT. 1.—A

m i. —— —— ——.]—LITTLE *v.* MOYLETT, [1929] I. R. 439.—**IR.**

PART III. SECT. 5, SUB-SECT. 2.—C.

c i. —— *Centuries.*]—MOORE *v.* A.-G., [1929] I. R. 191.—**IR.**

trade or business, the incorporeal right is part of the " premises " within above sect. Therefore, on the expiration of such a lease, the lessee, if he can show that the compensation for goodwill to which under the Act he would be entitled would not compensate him for the loss of goodwill if he removed to & carried on his trade or business in other premises, may require a new lease of the premises which shall include the incorporeal right demised by the original lease.—WHITLEY *v.* STUMBLES, [1930] A. C. 544 ; 99 L. J. K. B. 518 ; 143 L. T. 441 ; 46 T. L. R. 555 ; 74 Sol. Jo. 488, H. L. ; *affg.* S. C. *sub nom.* STUMBLES *v.* WHITLEY, [1930] 1 K. B. 393, C. A.

343a. —— —— **No right to set up jus tertii.**]—In an action of trespass a deft. cannot set up a *jus tertii* against a possessory title. The same rule applies to an action for polluting a several fishery & damaging the fish.—NICHOLLS *v.* ELY BEET SUGAR FACTORY, [1931] 2 Ch. 84 ; 100 L. J. Ch. 259 ; 145 L. T. 113.

353a. —— ——.]—In May & Oct. 1922, some dead fish were observed in a river, at a spot below that from which a drain-pipe leading from certain gasworks entered the river. Samples of the effluent from this pipe were taken on each occasion, which, on analysis, were found to contain matter highly poisonous to fish. The owner of the fishing rights over that part of the river affected commenced an action for an injunction & damages against the owners of the gasworks :—*Held :* it was satisfactorily proved that the effluent from the gasworks was, on each occasion, the cause of the death of the fish, & pltf. was entitled to an injunction & damages.—GRANBY (MARQUIS) *v.* BAKEWELL URBAN DISTRICT COUNCIL (1923) 87 J. P. 105 ; 21 L. G. R. 329.

Part IV.—Fisheries in relation to Navigation.

356. *Add. Annotation :—As to* (2) **Refd.** The Carlgarth, The Otarama, [1927] P. 93.

366. *Add. Annotation :*—**Refd.** The Carlgarth, The Otarama, [1927] P. 93.

368. *Add. Annotation :—As to* (2) **Refd.** The Carlgarth, The Otarama, [1927] P. 93.

Part V.—Statutory Enactments relating to Salmon and Freshwater Fisheries.

387. *Add. Annotation :*—**Refd.** Forth Conservancy Board *v.* I. R. Comrs., [1931] A. C. 540.

PART III. SECT. 7.

286 i. *Right of way—& right to repair embankments.*]—Where right of fishery had been granted in respect of two pieces of land, surrounded on all sides by embankment, & described in the lease as " *bheri jami jalkar* " :—*Held :* the expression " rights over fisheries " to be found in Bengal Tenancy Act, s. 193, includes, also, the user of land for the purpose of fishing or for the purpose of repairing embankments in the interest of fishing.—NANI LAL MANDAL *v.* PRIYA NATH RAY (1929), I. L. R. 56 Calc. 1170.—**IND.**

PART V. SECT. 1, SUB-SECT. 2.

c i. —— *Power to restrict fishing for salmon—Riparian owners on non-tidal river.*]—PHAIR *v.* VENNING (1882), 22 N. B. R. 362.—**CAN.**

c ii. —— —— *Riparian owners on estuary—Titles acquired prior to July, 1867.*]—DELANEY *v.* MCDONALD (1883), 23 N. B. R. 139.—**CAN**

PART V. SECT. 3.

g i. —— *To seize nets.*]—Ontario Game & Fisheries Act, s. 6 (5), makes it the duty of every overseer to seize all nets used contrary to the regulations, & sect. 80 of the Dominion Act makes a similar provision ; by s. 5 of the Dominion Act the Governor in council is empowered to appoint fishery officers, & by order in council the Provincial officers are in substance made Dominion officers. SERO *v.* GAULT (1921), 50 O. L. R. 27 ; 64 D. L. R. 327.—**CAN.**

PART V. SECT. 5, SUB-SECT. 1.—D. (a).

sk. *Within two hundred yards of weir—Weir used for supplying water to mills, factories, or for navigation—Fisheries (Ir.) Act,* 1850 (*c.* 88), *s.* 37.]—IRELAND *v.* QUIRKE, [1928] I. R. 231.—**IR.**

sl. *Keeping purse-seine open.*]—R. *v.* MCPHERSON (B. C.), [1929] 2 W. W. R. 141 ; 51 Can. Crim. Cas. 419.—**CAN.**

PART V. SECT. 5, SUB-SECT. 3.

n i. —— ——.]—The owners of a bag-net fishery duly removed the leaders of their bag-nets during the weekly close time. In spite of this, they caught 165 salmon during eleven successive weekly close times :—*Held :* the owners were guilty of a contravention of Salmon Fisheries (Scotland) Act, 1868 (c. 123), s. 15 (2), in respect that compliance with bye-laws did not avoid the duty of observing the statutory prohibition against fishing for or taking salmon during the weekly close time.—ABERDEEN HARBOUR COMRS. *v.* STOTT, [1927] S. C. (J.) 35.—**SCOT.**

PART V. SECT. 1, SUB-SECT. 1.

sp. *Election of conservators—Validity of proxy.*]—A proxy to vote " at the next election " does not sufficiently " specify " the day of the meeting at which such proxy is to be available within Stamp Act, 1870 (c. 97), s. 102 (1).—R. *v.* M'IN (1891), 30 L. R. Ir. 49.—**IR.**

PART V. SECT. 6, SUB-SECT. 1.

sr. *Duty to erect grating in tail race of mill—Although banks of adjoining owner affected.*]—Deft. was fined at petty sessions for failing to erect a grating or lattice across the tail race of his mill at a point where the tail race re-enters the river " F." The river " F." is a river in which there are salmon. For a certain distance before & at the point where the tail race re-enters this river it is bounded on both sides by lands that belong to an adjoining owner, & not to the deft., the owner of the mill. There was no grating or lattice on the tail race where it diverged from or re-entered the river ; to construct the grating or lattice, it would be necessary to erect piers that would project into the banks, on the side of the tail race, the property of the adjoining owner. Deft. had started the necessary work of erecting the grating, but had abandoned it in consequence of the objection of the adjoining owner to any trespass on his lands. Deft. had the use of the tail race from the moment it left his own lands until it reached the river :—*Held :* deft. was under a statutory obligation by 5 & 6 Vict. c. 106, s. 76, to erect the grating even though it entailed an interference with the banks of the adjoining owner.—R. (STEWART) *v.* RECORDER & JJ. FOR LONDONDERRY, [1930] N. I. 104.—**IR.**

Part VI.—Statutory Enactments relating to Salt Water Fisheries and Sea Fishing.

485. *Add. Annotation :*—**Refd.** Everton *v.* Walker (1927), 137 L. T. 594.

497a. —— **Jurisdiction of superintendent—When arising.**]—Pltfs., who were the owners of a steam fishing boat, brought an action in the county ct. against deft., who was a member of the crew of the boat, claiming a sum as money lent by them to deft. Deft. alleged in defence that the sum claimed had been paid to him as wages ; &, further, that the county ct. had no jurisdiction, the question between the parties being a dispute concerning wages within Merchant Shipping Act, 1894 (c. 60), s. 387, which could only be dealt with by a superintendent thereunder. At the trial it was found as a fact that the sum claimed had been lent to deft., & that there was no real dispute concerning wages : —*Held :* (1) the county ct. had jurisdiction to entertain the action notwithstanding the section, inasmuch as that ct. had all along had jurisdiction to entertain an action for money lent & the section did not either expressly or by implication exclude that jurisdiction ; (2) the jurisdiction of the superintendent under the sect. did not arise until a party to the dispute called him to decide it, & here no party had called upon him to do so.—STURLEY *v.* POWELL, [1930] 1 K. B. 677 ; 99 L. J. K. B. 197 ; 142 L. T. 484 ; 46 T. L. R. 236 ; 18 Asp. M. L. C. 97.

497b. —— **Jurisdiction of county court.**]—STURLEY *v.* POWELL, No. 497a, *ante*.

PART VI. SECT. 2, SUB-SECT. 1.—A.

r i. —— *Grant of licence—Validity of regulations.*]—Sect. 69A of the Fisheries Act provided, among other things : that, under licence from the Minister a vessel registered as a British ship in Canada & owned by "a Canadian or a Canadian co. with its principal place of business in Canada," is allowed to use an "otter" or other similar trawl. Moreover under this Statute, rules & regulations might be made by Order in Council, & the same were made providing that such licence could be granted only to "Canadian built" vessels, & that after Apr. 1932, none but such would be eligible for licence, & further providing that after Apr. 1, 1930, a licence fee of one cent a pound on the fish caught should be payable. This fee in the case of deft. would amount to between $130,000 to $150,000 a year :—*Held :* as the regulations ignore the statutory limitation to British ships registered in Canada or owned by a Canadian, etc., & fix as the condition upon which the licence would issue that such ships be Canadian built, & such condition being obviously beyond the scope of the Act, & the delegated powers, such regulations are *ultra vires*, unenforceable, null & void.—R. *v.* NATIONAL FISH CO., LTD., [1931] Ex. C. R. 75.—**CAN.**

sm. *Prohibition against use of nets—Accused charged as "master or person in charge"—No evidence that accused on board.*]—*Held :* as there was no statutory provision making the master of a vessel liable, as such, for a contravention of the bye-law, &, as the bye-law might be contravened by "any person," the prosecutor was bound to prove that the accused was on board the vessel at the time.—SHIACH *v.* FARQUHAR, [1929] S. C. (J.) 88.—**SCOT**

PART VI. SECT. 2, SUB-SECT. 1.—C.

so *Prohibition against use of crayfish pots—Condemnation of boat & appurtenances—Failure to summon joint owners.*]—FISHERIES COMRS. *v.* BUTTON (1925), 21 Tas. L. R. 8.—**AUS.**

PART VI. SECT. 4, SUB-SECT. 4.

sp. *Bounty—Time of service on ship—Regulations of December* 10, 1897.]—SNOW *v.* R. (1907), 11 Exch. C. R. 164. —**CAN**

PART VI. SECT. 5, SUB-SECT. 1.

h i. —.]—(1) To justify an entry by a foreign fishing vessel into Canadian territorial waters on the ground of "stress of weather," the weather must be such as to produce in the mind of a reasonably competent & skilful master, possessing courage & firmness, a well grounded *bonâ fide* apprehension that if he remains outside such waters he will put in jeopardy his vessel & cargo. In each case the questions whether the master fairly & honestly on reasonable ground believed it necessary to take shelter, & whether he exercised reasonable skill, competence & courage in the circumstances, are questions of fact for the tribunal whose duty it is to find the facts.

(2) The Convention of Oct. 20, 1818, between Great Britain & the United States, respecting fisheries & boundary lines, did not apply to the Pacific waters so far as fisheries were concerned, & therefore could not be available as justification for the entry in question.—THE MAY *v.* R., [1931] S. C. R. 374 ; 3 D. L. R. 15.—**CAN.**

h ii. —— ——.]—(1) To justify, as against incurrence of penalty under the Customs & Fisheries Protection Act, R. S. C., 1927, s. 10, a foreign fishing vessel entering Canadian territorial waters on the ground of "stress of weather," there must be such a condition of atmosphere & sea as would produce in the mind of a reasonably competent & skilful master, possessing courage & firmness, a well grounded *bonâ fide* apprehension that if he remains outside such waters he will put in jeopardy his vessel & cargo. A want of *bona fides* would abrogate any right or privilege to shelter given by the statute. Further, weaknesses in a vessel may be such, as instanced in certain respects in the present case, as, *e.g.*, glass of inadequate thickness in pilot house windows a small height from the sea, constituting a special danger from waves, that any distress arising from them should be deemed a distress created by the owner or master himself.

(2) The Convention of Oct. 20, 1818, between Great Britain & the United States, respecting fisheries & boundary lines, has no application to Canadian territorial waters on the Pacific Coast, so far as fisheries are concerned. Even if it had, deft. vessels could claim no privilege under it, as the only permission to take shelter in Canadian waters given by the proviso to art. 1 thereof is permission to enter "bays or harbours," & the place where they were seized was not shown to be a bay or harbour.—THE QUEEN CITY *v.* R., THE TILLIE M. *v.* R. ; THE SUNRISE *v.* R., [1931] S. C. R. 387 ; [1931] 3 D. L. R. 147 ; *affg.*, 43 B. C. R. 491.—**CAN.**

h iii. —— ——.]—R. *v.* AUXILIARY FISHING SCHOONER NATALIE S., [1932] Ex. C. R. 155. —**CAN.**

PART VII. SECT. 2.

b i. —— *Division of proceeds—Shipwrecked sailors on board sealer.*]—CONNELL *v.* ROBKE (1859), 4 Nfld. L. R. 394.—**NFLD.**

PART VIII. SECT. 1.

a i. —— ——.]—Deft. was convicted by a district justice of an offence under Fisheries Act, 1924, but the district justice omitted to order a forfeiture of the fish as required by the Act :—*Held :* the omission invalidated the conviction.—TANGNEY *v.* KERRY COUNTY DISTRICT JUSTICE, [1928] I. R. 358.—**IR.**

a ii. —— ——.]—O'S. was also convicted at the same time on another summons for unlawfully using a net for the purpose of taking salmon or trout in the said tidal waters without being duly licensed, contrary to 13 & 14 Vict. c. 88, s. 12. That section provides for such offence a pecuniary penalty, & also the forfeiture of the net used. The district justice's conviction on this summons did not order the forfeiture of the net. It was the same net the forfeiture of which was ordered by the justice in the other conviction :—*Held :* the conviction was bad for not ordering the forfeiture of the net, notwithstanding the fact that its forfeiture was ordered by the other conviction. — THE STATE (O'SULLIVAN) *v.* CIRCUIT COURT JUDGE OF CORK, [1931] I. R. 733. —**IR.**

PART VIII. SECT. 5.

526 i. *General rule — Jurisdiction ousted.*]—R. (MOORE) *v.* O'HANRAHAN, [1927] I. R. 406.—**IR.**

m i. ——.]—R. *v.* HARRAN (1912), 21 O. W. R. 951 ; 3 O. W. N. 1107 ; 3 D. L. R. 753.—**CAN.**

FOOD AND DRUGS.

Part II.—Adulteration and Impoverishment.

NOTE.—*Sale of Food & Drugs Acts*, 1875–1927, *are consolidated by Food Drugs (Adulteration) Act*, 1928 (c. 31).

76. *Add. Annotation :*—**Follld.** Bowker *v.* Woodroffe, Bowker *v.* Premier Drug Co. (1927), 96 L. J. K. B. 750.

78. *Add. Annotation :—As to* (2) **Apld.** Bowker *v.* Woodroffe, Bowker *v.* Premier Drug Co. (1927), 96 L. J. K. B. 750.

78a. —— ——.]—(1) Where a person is charged with selling to the prejudice of a purchaser an article of food which is not of the nature, substance & quality demanded, & the article is one for which there is no recognised standard of quality, it is the duty of the ct. to fix a standard, in the sense of having regard to a minimum below which the article must be regarded as deficient.

(2) Where an analyst expresses in a certificate an opinion as to the quality or genuineness of an article, the ct. must accept it, if uncontradicted.

(3) A wholesale merchant cannot be convicted of aiding & abetting a retailer, if the wholesaler was not present when the retail sale complained of took place, nor if there is no evidence that he knew the composition of the article.—BOWKER *v.* WOODROFFE, BOWKER *v.* PREMIER DRUG CO., [1928] 1 K. B. 217; 96 L. J. K. B. 750; 137 L. T. 347; 91 J. P. 118, 43 T. L. R. 516; 25 L. G. R. 306; 28 Cox, C. C. 397, D. C.

Annotation :—As to (3) **Refd.** Gough *v.* Rees (1929), 46 T. L. R. 103.

98a. Liability of wholesaler—Sale by retailer.]—BOWKER *v.* WOODROFFE, BOWKER *v.* PREMIER DRUG CO., No. 78a, *ante*.

101. *Add. Annotation :—As to* (1) **Refd.** Orpen *v.* Haymarket Capitol, Ltd. (1931), 145 L. T. 614.

135. *Add. Citations :*—23 L. G. R. 15; 27 Cox, C. C. 672.

140. *Add. Citations :*—23 L. G. R. 22; 27 Cox, C. C. 678, D. C.

Add. Annotation :—As to (2) **Refd.** Preston *v.* Grant (1924), 94 L. J. K. B. 125.

147. *Add. Annotation :—As to* (1) **Refd.** Bowker *v.* Woodroffe, Bowker *v.* Premier Drug Co. (1927), 96 L. J. K. B. 750.

148. *Add. Annotation :*—**Refd.** Bowker *v.* Woodroffe, Bowker *v.* Premier Drug Co. (1927), 96 L. J. K. B. 750.

150. *Add. Annotation :—As to* (1) **Consd.** Bowker *v.* Woodroffe, Bowker *v.* Premier Drug Co. (1927), 96 L. J. K. B. 750.

150a. —— **Absence of recognised standard.**]—BOWKER *v.* WOODROFFE, BOWKER *v.* PREMIER DRUG CO., No. 78a, *ante*.

169a. Vinegar.]—PRESTON *v.* JACKSON (1928), 73 Sol. Jo. 712.

174. *Add. Annotation :*—**Follld.** Bridges *v.* Griffin, [1925] 2 K. B. 233.

187. After this case insert "**Addition of colouring matter to milk.**]—*See* No. 218a, *post*."

218a. —— **Milk adulterated with colouring matter.**]—The defence that he purchased the milk with a written warranty is not available to a vendor of milk adulterated by the addition of colouring matter contrary to Milk & Dairies (Amendment) Act, 1922 (c. 54), s. 4, which neither includes such a defence nor contains any provision that it is to be read with any Act containing such a defence.—REEMAN *v.* KNAPP (1925), 134 L. T. 224; 90 J. P. 7; 42 T. L. R. 131; 24 L. G. R. 42; 28 Cox, C. C. 117, D. C.

243a. What amounts to.]—Applts., who manufactured an article called "R.'s rum & butter toffee," supplied it to a confectioner with a warranty, & on analysis it was found to contain rum & butter, & coconut fat. On a summons against applts. for giving a false warranty there was evidence that toffee made partly with coconut fat had been sold for years as "rum & butter toffee." The justices convicted applts. :—*Held :* the description "butter toffee" implied that no fat, except butter, was used in the manufacture, & the conviction must be affirmed.—RILEY BROTHERS HALIFAX, LTD. *v.* HALLIMOND (1927), 44 T. L. R. 238, D. C.

261a. —— **Proceedings against previous seller—Previous analysis before proceedings against retailer.**]—An inspector appointed under the Sale of Food & Drugs Acts bought a sample of ground ginger from a retail shop. He complied with the provisions of Food & Drugs (Adulteration) Act, 1928 (c. 31), s. 18, with regard to the division of the sample into three parts, delivering one part to the seller & having an analysis made. Upon analysis the ground ginger was found to contain an

PART II. SECT. 3, SUB-SECT. 3.—B. (b).

101 ii. —— —— *Sale by servant or agent.*]—To prove a limited co. guilty of the offence of selling an article which does not conform with the regulations made under Food & Drugs Act, 1908, it must be shown that the sale was made on its behalf by a servant or agent who had authority to sell. Where a sale was made by a servant who had no authority to sell anything, it was held that the sale did not constitute an offence by the co.—MITTON *v.* H. G. LOCK & CO., LTD., [1928] S. A. S. R. 444.—**AUS.**

PART II. SECT. 3, SUB-SECT. 3.—C. (a).

110 iii. —— *Whether property passed —Food & Drugs Act*, 1908, *ss.* 5, 22.]—WALTERS *v.* MITTON, [1926] S. A. S. R. 261.—**AUS.**

PART II. SECT. 3, SUB-SECT. 3.—C. (b) iv.

142 i. —— *Notice not seen by purchaser—Onus of proof.*]—Where an article of food exposed for sale bears a label indicating that it does not conform to the statutory standard of genuineness :—*Held :* the seller must prove that the contents of the label were brought to the notice of the purchaser.—PATTERSON *v.* FINDLAY, [1925] S. C. (J.) 53.—**SCOT.**

PART II. SECT. 3, SUB-SECT. 3.—D. (b).

sd. *Coffee.*]—K. having asked accused for coffee, received a mixture containing at least 67 per cent. of chicory. When he asked for coffee K. expected to get an addition of chicory according to commercial usage :—*Held :* what K. got was substantially chicory containing an addition of some coffee, & the commodity was not of the nature, substance & quality demanded.—MOODLEY *v.* R. (1927), 48 N. L. R. 395.—**S. AF.**

added preservative, contrary to the provisions of the Public Health (Preservatives, etc., in Food) Regulations, 1925. The retailer was convicted upon an information charging him with the sale of the ground ginger to the prejudice of the purchaser under Food & Drugs (Adulteration) Act, 1928 (c. 31), s. 2. Subsequently, proceedings were commenced against the previous seller of the ground ginger for wilfully neglecting to obey the Public Health (Preservatives, etc., in Food) Regulations, 1925, by selling the ground ginger to the retailer. No further sample was taken of the ground ginger & no further analysis made. No part of the sample that was taken in the first instance was sent to the previous seller of the ground ginger. The magistrate refused to convict on the ground that the provisions of sect. 18 of 1928 Act had not been complied with :—*Held :* the magistrate was wrong in holding that compliance with the formalities prescribed by sect. 18 of 1928 Act was a condition precedent to the institution of proceedings against the previous seller for a sale to which art. 7 of the Regulations of 1925 applied. When the formalities prescribed by sect. 18 of 1928 Act with regard to taking of sample, division & analysis had been complied with in proceedings as between the purchaser & the retailer, there was no necessity for those formalities to be repeated when proceedings were subsequently taken against the previous seller under art. 7 of the Regulations of 1925.—TWYNHAM *v.* BADCOCK, [1932] 2 K. B. 549 ; 101 L. J. K. B. 755 ; 147 L. T. 35 ; 96 J. P. 219 ; 48 T. L. R. 389 ; 30 L. G. R. 239 ; 29 Cox, C. C. 448.

283. *Add. Annotation :—As to* (3) **Refd.** Conn *v.* Turnbull (1925), 89 J. P. Jo. 300.

Part III.—Sale of Unwholesome Food.

358. *Add. Annotation :*—**Refd.** Frome United Breweries Co. *v.* Bath JJ., [1926] A. C. 586.

Part V.—Particular Articles of Food.

414a. **Exposure for sale—What amounts to.**]—A baker was delivering bread from an open car ; after completing his round, while he was on his way back to the bakehouse, he was stopped by an inspector, who weighed the remaining loaves & found a deficiency :—*Held :* there was both an offering & an exposure for sale of the bread left in the car, since, when the journey started, it was uncertain which, if any, loaves would remain unsold, & they were taken for the purpose of being sold if customers required them.—KEATING *v.* HORWOOD (1926), 135 L. T. 29 ; 90 J. P. 141 ; 42 T. L. R. 472 ; 24 L. G. R. 362 ; 28 Cox, C. C. 198, D. C.

439a. Protection of employer under Sale of Food (Weights & Measures) Act, 1926 (c. 63)—When applicable.]—(1) *Held :* the language of Sale of Food (Weights & Measures) Act, 1926 (c. 63), s. 12 (2), has no relation & does not apply to a case where a defect of deft.'s machinery or a default of an employee under deft.'s control is the cause of the deficiency. This sub-sect. deals with the case where the deficiency is due to a *bonâ fide* mistake or accident or other causes beyond deft.'s control, that is to say, not with negligence or other conduct of deft.'s servants or other persons under his control. In such a case deft. may avail himself of the provisions of sect. 12 (5) if he satisfies the provisions of that sub-sect., by having any other person, including an employee, whom he charges as the actual offender, brought before the ct.

(2) On the question whether proceedings against defts. for contravening this sub-sect. were " proceedings under this Act in respect of an alleged deficiency of weight " within sect. 12 (2), whilst LORD HEWART, C.J., did not express a decided opinion, one way or the other, AVORY, J., expressed the view that proceedings under sect. 6 (2) of the Act were in respect of an alleged deficiency of weight, & TALBOT, J., expressed an opinion to the contrary.

(3) On proceedings against bakers under sect. 6 (2) of the Act defts. duly laid an information against one of their employees under sect. 12 (5) ; having him brought before the ct. as the actual offender & tendering evidence in order to prove that they had used due diligence to enforce the execution of the Act, & that their employee had committed the offence without their consent, connivance, or wilful default. At petty sessions, the information against the employee was dismissed, but defts. were convicted. Defts. appealed to Quarter Sessions :—*Held :* the Ct. of Quarter Sessions had no power to exempt defts. from any penalty under sect. 12 (5) on the ground (*per* LORD HEWART, C.J., & TALBOT, J.) that having regard to the fact that the employee

PART II. SECT. 5, SUB-SECT. 4.—A.

sf. *When returnable—Under Health Act,* 1919, *s.* 262 (*d*).]—The provision in above section, that where any prosecution or proceeding under Part XII. of the Act relates to any food, drug or substance, the summons " shall not be made returnable in less than fourteen days from the day on which it is served," means that such summons is to be " returnable in not less than fourteen clear days " from such date.—DOWNES *v.* FRESHNEY, [1928] V. L. R. 64 ; [1928] Argus L. R. 6.—**AUS.**

PART III. SECT. 2, SUB-SECT. 1.—D.

ii. —— *Supply of milk to boarders by boarding-house keeper.*]—The supplying of milk by a boarding-house keeper to boarders for use with meals does not constitute a sale within the meaning of the Pure Food Act, 1908.—PATTON *v.* MOULD (1931), 48 N. S. W. W. N. 158.—**AUS.**

sg. *Article sold—Mens rea—Whether knowledge of disease necessary.*]—*Held :* there was no evidence on which the magistrate could find that deft. sold meat affected by tuberculosis, knowing at the time that it was so affected, & the conviction should be quashed.—DIXON *v.* SEILER, *Ex p.* SEILER, [1928] S. R. Q. 93.—**AUS.**

had been acquitted at petty sessions, it was not open to defts. to contend at Quarter Sessions that the employee was wrongly acquitted, & on the ground (*per* AVORY, J.) that in any case on the facts the employee charged was not the actual offender within the sub-sect.—WALKLING, LTD. *v.* ROBINSON (1930), 99 L. J. K. B. 171; 143 L. T. 105, 106; 94 J. P. 73; 46 T. L. R. 151; 28 L. G. R. 88; (1929), 29 Cox, C. C. 131.

Annotations:—*As to* (2) **Distd.** Wolfinden *v.* Oliver (1932), 96 J. P. 202. *As to* (3) **Consd.** Hammett (R. C.), Ltd. *v.* Crabb, Hammett (R. C.), Ltd. *v.* Beldam (1931), 47 T. L. R. 623.

439b. —— —— **Exercise of due diligence by employer—Question of fact.**]—(1) Where an employer who is charged with an offence against the Sale of Food (Weights & Measures) Act, 1926 (c. 63), brings another person before the ct. under sect. 12 (5), as being the actual offender, the question whether the employer has used due diligence to enforce the execution of the Act is one of fact & not of law. (2) The result of compliance with sect. 12 (5) is that both the employer & the other person are convicted, but that the latter alone is liable to any penalty. (3) *Qu.:* whether in a case where the justices have convicted the employer & have refused to convict the actual offender, the employer may not appeal to quarter sessions. *Walkling, Ltd.* v. *Robinson*, No. 439a, is no authority to the contrary, since in that case the employee was found as a fact not to be the actual offender, & an appeal would have involved the allegation that he was wrongly acquitted. —HAMMETT (R. C.), LTD. *v.* CRABB, HAMMETT (R. C.), LTD. *v.* BELDAM (1931), 145 L. T. 638; 95 J. P. 180; 47 T. L. R. 623; 29 L. G. R. 515; 29 Cox, C. C. 364, D. C.

439c. —— **Effect of compliance with sect. 12.**]—HAMMETT (R. C.), LTD. *v.* CRABB, HAMMETT (R. C.), LTD. *v.* BELDAM, No. 439b, *ante*.

439d. —— **What are "proceedings in respect of an alleged deficiency of weight"—Proceedings under Sale of Food (Weights & Measures) Act, 1926 (c. 63), s. 6 (2).**]—WALKLING, LTD. *v.* ROBINSON, No. 439a, *ante*.

439e. —— —— ——.]—Proceedings under Sale of Food (Weights & Measures) Act, 1926 (c. 63), s. 6 (2), against a person for having in his possession for sale loaves of bread the net weight of which is not one pound or an integral number of pounds may be proceedings "in respect of an alleged deficiency of weight" within sect. 12 (2), of the Act, so as to entitle deft. to rely on the defences provided by that sub-section.—WOLFINDEN *v.* OLIVER (1932), 147 L. T. 80; 96 J. P. 202; 48 T. L. R. 394; 30 L. G. R. 263, D. C.

439f. **Acquittal of employee—Power of Quarter Sessions to exempt employer from penalty.**]—WALKLING, LTD. *v.* ROBINSON, No. 439a, *ante*.

439g. —— —— **Conviction of employer—Right of appeal to quarter sessions.**]—HAMMETT (R. C.), LTD. *v.* CRABB, HAMMETT (R. C.), LTD. *v.* BELDAM, No. 439b, *ante*.

447. *Add. Annotation:*—**Refd.** Preston *v.* Grant, [1925] 1 K. B. 177.

465. *Add. Citation:*—27 Cox, C. C. 637.

475. *Add. Annotation:*—**Distd.** Burrows *v.* Rapson (1927), 25 L. G. R. 397.

475a. —— —— **Grocer occasionally selling bottled milk.**] — Applt. carried on business as a general grocer. He purchased for resale sterilised milk in sealed bottles, & resold about three dozen bottles a week in the condition in which the milk was received from the factory. He was not registered as a dairyman or purveyor of milk:—*Held:* there was evidence to support a conviction of applt. for carrying on the trade of a dairyman or purveyor of milk without being registered.—BURROWS *v.* RAPSON (1927), 25 L. G. R. 397, D. C.

476. *Add. Annotation:*—**Refd.** Easington Rural District Council *v.* Gilson (1929), 46 T. L. R. 107.

476a. —— **Necessity for registration in every district where business carried on.**]—A person carrying on business as purveyor of milk must be registered under art. 6 of the Milk & Dairies Order, 1926, with the sanitary authority of each district in which he carries on business. It is not sufficient that he is registered with the sanitary authority of the district where his cowsheds & dairy are situated if he also carries on business in other districts where he has a regular milk round.—EASINGTON RURAL DISTRICT COUNCIL *v.* GILSON (1929), 142 L. T. 429; 94 J. P. 56; 46 T. L. R. 107; 28 L. G. R. 49; 29 Cox, C. C. 86.

476b. **Change of tenancy—Removal of predecessor from register—Whether new tenant "person aggrieved."**]—On May 1, 1930, applt. succeeded a predecessor as annual tenant of premises used as a dairy. On May 12, 1930, resps., who were the local authority, having in the meantime given a similar notice to his predecessor, gave to applt. a notice purporting to be given under Milk & Dairies (Amendment) Act, 1922 (c. 54), s. 2 (1), calling upon him to show cause why they should not remove his predecessor from the register of purveyors of milk in respect of the premises on the ground that they were satisfied that by default of the latter the premises were not in a fit condition for the purposes of a dairy. On May 13, 1930, resps., after hearing applt., decided to remove his predecessor from the register on that ground, & thereupon gave applt. notice that they had so decided. An appeal by applt. under the above sub-sect. against the decision of resps. was dismissed by the magistrate on the ground that applt. was not a "person aggrieved" by the decision within the sub-sect. On an appeal from the magistrate by case stated:—*Held:* applt. was a "person aggrieved" within the sub-sect., & the case should be remitted to the magistrate to be heard by him on the merits.—PROSSER *v.* MOUNTAIN

PART V. SECT. 3, SUB-SECT. 4.—B.

s i. —— —— *Words descriptive of article sold.*]—Where margarine was sold in a wrapper which bore, in large type, the words "Charmo Margarine," below which, in smaller type, were the words "containing a small quantity of butter," & the name "Charmo" was a duly approved addition to the word "margarine," & the seller, convicted under Butter & Margarine Act, 1907, s. 8, appealed:—*Held:* the words "containing a small quantity of butter," were merely descriptive of the article sold, & did not form part of a fancy or descriptive name which had not been approved; & conviction quashed.—SOMERVILLE & BARR, LTD. *v.* CHALMERS, [1925] S. C. (J.) 70.—SCOT.

ASH URBAN DISTRICT COUNCIL, [1932] 1 K. B. 132; 100 L. J. K. B. 266; 144 L. T. 549; 95 J. P. 84; 29 L. G. R. 218; 29 Cox, C. C. 265, D. C.

476c. Artificial Cream Act, 1929 (c. 32)—Application.]—Applts. were convicted on informations preferred against them under Artificial Cream Act, 1929 (c. 32), in respect of the sale by them of certain confectionery, described as "cream filled Swiss rolls" & "vanilla cream sandwich," containing a cream-like paste or substance, which was not cream as defined in Artificial Cream Act, 1929 (c. 32): —*Held:* the Act applies only to the sale of cream or artificial cream as a separate article of food, & has no application to confectionery or to a composite substance in connection with confectionery. It applies only to a substance purporting to be cream & not to a substance purporting to contain cream.—LYONS (J.) & CO., LTD. *v.* KEATING, [1931] 2 K. B. 535; 100 L. J. K. B. 513; 145 L. T. 263; 95 J. P. 150; 47 T. L. R. 442; 75 Sol. Jo. 489; 29 L. G. R. 407; 29 Cox, C. C. 323, D. C.

476d. Breach of Milk & Dairies (Amendment) Act, 1922 (c. 54), s. 3 (1) (b)—Not limited to licence holders.]—PYATT *v.* LLOYD (1932), 96 J. P. 479; 49 T. L. R. 14; 30 L. G. R. 505, D. C.

495. *Add. Annotation:*—**Refd.** Bridges *v.* Griffin, [1925] 2 K. B. 233.

508. *Add. Citation:*—28 Cox, C. C. 7.

Part VI.—Control in Wartime.

519. *Add. Annotations:*—**Folld.** Brocklebank *v.* R., [1925] 1 K. B. 52. **Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375. **Refd.** R. *v.* London County Council, *Ex p.* Entertainments Protection Assocn., Ltd., [1931] 2 K. B. 215.

555. *Add. Annotation:*—*As to* (2) **Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

558a. ——————.]—The Food Controller, acting under powers conferred by Defence of the Realm Regulations, reg. 2B, requisitioned all the bacon landed on or before a certain specified date, & at the same time, acting under powers conferred by reg. 2F. requisitioned all bacon landed after such date: —*Held:* in assessing the compensation to be paid for the bacon requisitioned under reg. 2F. the arbitrator was entitled to take into consideration the fact that the Food Controller was already in possession of large stocks of bacon requisitioned under reg. 2B. —SWIFT & CO. *v.* BOARD OF TRADE, [1926] 2 K. B. 131; 95 L. J. K. B. 834; 135 L. T. 391; 42 T. L. R. 461, C. A.; *previous proceedings*, [1925] A. C. 520, H. L.

572. *Add. Annotation:*—**Refd.** R. *v.* Maidstone Prison, *Ex p.* Maguire (1925), 133 L. T. 710.

PART V. SECT. 4, SUB-SECT. 3.

508 iii. —————————.]—A dairyman was convicted of selling sweet milk which was not genuine, in respect that it contained less than 3 per cent. of milk fat. The alleged deficiency in fat was established, but it was also proved that the milk had not been tampered with in any way, the deficiency being due to the milk having stood for some time in the can, & to the sample having been drawn from a tap at the bottom after the cream had risen. No evidence was led as to the possibility or impossibility of redistributing the constituents of the milk in the can by stirring or otherwise: —*Held:* accused had failed to rebut the statutory presumption that the milk was not genuine, & the conviction was right.—M'CALLUM *v.* BROOKS, [1926] S. C. (J.) 39.—**SCOT.**

k i. —— *Price of milk varying with quality supplied—Genuine milk to be supplied.*]—Deft. was a shareholder in a certain co-operative dairy society, & she & the other suppliers of milk to the creamery of the said society delivered daily to the creamery quantities of milk. The quantity of milk delivered by each supplier was recorded by weight in pounds, dependent on the number of gallons, & the manager or other official of the creamery took a sample of each delivery, tested it, & ascertained its contents of butter-fats. In return for the said milk delivered by her, deft. received from the creamery: (*a*) at the end of every month a cash payment per pound of milk delivered, calculated on the average percentage of butter-fats contained in the milk delivered during the month—the greater the content of the butter-fats, the higher the price paid; & (*b*) each day a quantity of separated milk, which was determined in accordance with the rules of the society & was proportionate to the quantity of milk delivered by deft. to the creamery, or, instead, a cash payment. A sample of deft.'s milk taken by an Inspector of Food & Drugs when the milk was in the course of delivery to the creamery was found on analysis to be inferior to the standard prescribed by regs. 1 & 2 of Sale of Milk (Ir.) Regulations, 1901, & deft. was charged for selling to the creamery, to the prejudice of the purchaser, *i.e.* the said creamery, within Sale of Food & Drugs Act, 1875 (c. 63), as amended by Sale of Food & Drugs Act Amendment Act, 1879 (c. 30), s. 3, an article of food, to wit, milk, which was not of the nature, substance, & quality demanded by the purchaser. No evidence was given by deft. to rebut the presumption of abstraction or adulteration which applied to the said sample by reason of the said regulations. The district justice dismissed the summons:—*Held:* the district justice was wrong in law in dismissing the summons, as although the price paid by the creamery varied with the quality of the milk supplied, the contract contemplated the supply of genuine milk, & the milk of which the sample was taken was not genuine milk as defined by Sale of Milk (Ir.) Regulations, 1901. MURPHY *v.* NICHOLSON, [1931] I. R. 582.—**IR.**

PART V. SECT. 4, SUB-SECT. 4.

sp. *Sale by driver of cart—Name of defendant on cart—Whether evidence of sale by defendant.*]—On the hearing of an information against resp. co. for selling adulterated milk the evidence showed that an inspector saw in the street a milk-cart bearing the same name & address as those of the co., & purchased from the driver of the cart milk which was adulterated:—*Held:* the evidence was insufficient to establish, even *primâ facie*, that the milk-cart was the cart of the co. or used in its business, or that there was any relationship between the driver of the cart & the co.—HOUSTON *v.* WITTNER'S PTY., LTD., [1928] V. L. R. 539; [1928] Argus L. R. 356. —**AUS.**

PART V. SECT. 6.

st. *Flour—Sale in unmarked barrels—Seller not liable—Manufacturer or packer liable.*]—R. *v.* BEEKMAN (1844), 2 U. C. R. 57.—**CAN.**

FRAUDULENT AND VOIDABLE CONVEYANCES.

Part I.—Conveyances Impeachable by Creditors under Statute.

45. *Add. Annotation :*—**Consd.** *Re* Simms, [1930] 2 Ch. 22.

123. *Add. Annotation :—As to* (1) **Apld.** Beebee & Co. *v.* Turner's Successors (1931), 48 T. L. R. 61.

126. *Add. Annotation :*—**Apld.** *Re* Wethered, *Ex p.* Salaman, [1926] Ch. 167.

133. *Add. Annotation :—As to* (4) **Consd.** *Re* Lloyd's Furniture Palace, Evans *v.* The Co., [1925] Ch. 853.

227. *Add. Annotation :*—**Refd.** *Re* Phillips, Lawrence *v.* Huxtable, [1931] 1 Ch. 347.

PART I. SECT. 1.

sa. *Homestead.*]—MEUNIER *v.* DORAY (1905), 6 Terr. L. R. 194.—**CAN.**

sb. —— *Transfer prior to Land Titles Act*, 1917.]—13 Eliz. c. 5, which is practically re-enacted by R. S. S. 1920, c. 204, s. 1, does not apply to property which at the time of the alleged fraudulent conveyance was not subject to the payment of the grantor's debts or liable to be taken in execution. So where a transfer of a homestead was completed before Land Titles Act, 1917, which altered the law with regard to executions against land, came into force, & was, because of the above rule, unimpeachable at the time of the transaction, it cannot be affected retrospectively by said change in the law.—PACHAL *v.* MARKHAM, [1922] 1 W. W. R. 818; 63 D. L. R. 97; 15 Sask. L. R. 308.—**CAN.**

PART I. SECT. 2, SUB-SECT. 1.

a i. ——.]—Deft. provided a house for her father in which to live rent free for the rest of his life, in consideration of which he transferred a business block to her with the object of securing her for the rental value of the house & the cost of upkeep. Execution creditors of the father attacked the transfer under 13 Eliz. c. 5, & Fraudulent Preferences Act, R. S. S., 1920 (c. 204): —*Held :* deft. held the title to the business block as trustee for her father, subject to a charge in her favour for the rent & upkeep of the house, & subject to deft.'s lien for such amount on her father's equity the property should be available for his creditors.—COLONIAL INVESTMENT & LOAN CO. *v.* HUSH, [1925] 4 D. L. R. 108; [1925] 3 W. W. R. 157.—**CAN.**

d i. —— ——.]—KEENLEYSIDE *v.* PARTRIDGE, [1925] 3 D. L. R. 961.—**CAN.**

d ii. —— ——.]—Where a voluntary conveyance has the effect of rendering the grantor insolvent it is void as against his creditors no matter what his intent in making it was.—BAXTER *v.* DERASZ & DERASZ, [1929] 2 D. L. R. 443; 1 W. W. R. 673; 10 C. B. R. 473; 23 S. L. R. 444.—**CAN.**

n i. —— *Saskatchewan.*]—13 Eliz. c. 5, is in force in Saskatchewan.—BANK OF MONTREAL *v.* REIS, [1925] 3 D. L. R. 125; [1925] 2 W. W. R. 169; 19 Sask. L. R. 423.—**CAN.**

sc. *Transfer by administrator to estate.*]—In an action to have a transfer of land from deft. E. as registered owner to herself as administratrix of her husband's estate declared void as against her creditors & alternatively, void as a preference in favour of the estate :—*Held :* on the evidence, E.'s position up to, at, & subsequent to, her husband's death was that of a trustee of the land for her husband, &, alternatively, if he was not the equitable owner of the land, but it belonged in whole or part to her absolutely, then she must be held to have elected by her conduct to take under & not in opposition to his will under which his whole estate real & personal was divided between her & the testator's children, &, therefore, in transferring the land to the estate she did only what she could have been compelled to do.—SKOGMAN *v.* ELLERGODT & WISEMAN (Alta.), [1929] 4 D. L. R. 710; 3 W. W. R. 235.—**CAN.**

sd. *Mortgage—Summary procedure to set aside conveyance.*]—The word "conveyance" in rule 462, which provides a summary procedure under which a judgment creditor may have a fraudulent "conveyance" of land set aside, does not include a mtge.—NERLAND *v.* CROSSFIELD SCHOOL DISTRICT, [1929] 4 D. L. R. 216; 2 W. W. R. 330; 24 Alta. L. R. 214.—**CAN.**

PART I. SECT. 3, SUB-SECT. 1.

se. *Assignment to cover money taken from trust account.*]—*Held :* it could not be attacked by a creditor of the assignor.—BANK OF HAMILTON *v.* BLACK (1918), 37 D. L. R. 801; 24 B. C. R. 394.—**CAN.**

PART I. SECT. 3, SUB-SECT. 2.—B. (b).

sf. *Bonâ fide sale in course of trade—In consideration of debt due to buyer & other creditors.*]—The sale of wheat in question herein, the consideration for which was an indebtedness of the seller to the buyer & the payment by the buyer of certain other creditors of the seller, held to be protected as against attack under Fraudulent Preferences Act, s. 4, by sect. 7 thereof, which provides that the prior provisions of the Act shall not apply to a *bonâ fide* sale made in the ordinary course of trade or calling to innocent purchasers or parties. The proceeds of the wheat amounted to more than the amount of the consideration expressed in the bill of sale, but this could not be foreseen at the time of the transaction, & it was held that the excess was not large enough to be regarded as an element of fraud.—DESJARDINE *v.* CALLISON, [1928] 3 D. L. R. 147; [1928] 2 W. W. R. 250. —**CAN.**

PART I. SECT. 3, SUB-SECT. 2.—C.

135 ii. —— ——.]—Circumstances in which the purchaser was estopped from setting up consideration.—MCCARTY *v.* MCMURRAY (1871), 18 Gr. 604.—**CAN.**

PART I. SECT. 3, SUB-SECT. 3.—B.

157 ii. —— —— ——.]—MULHOLLAND *v.* WILLIAMSON (1868), 14 Gr. 291.—**CAN.**

PART I. SECT. 3, SUB-SECT. 3.—C. (b) i.

177 i. *Exceptions to general rule—Settlement supported by other consideration—Agreement to separate—Followed by immediate separation.*]—HILL *v.* HILL (Man.), [1926] 4 D. L. R. 588.—**CAN.**

PART I. SECT. 3, SUB-SECT. 3.—E.

204 ii. —— *Partition by father on remarriage—Allegation by settlor that conveyance in fraud of creditors—Onus of proof.*]—In 1904 a Burman executed on his remarriage a deed of partition by which he purported to convey to his daughter, the only child of his first marriage & then eight years of age, immovable property as her one-quarter share of the joint property of that marriage, & he appointed his own mother to take care of it. He remained in possession, but contributed to the support of his daughter, who resided with her maternal grandmother. At the time of the conveyance the father was considerably indebted, & his creditors, finding that they could not attach the property, settled with him upon easy terms. In 1915 the father promised his daughter & her maternal uncle that the property would be restored to her. In 1925 the daughter sued for possession. The father pleaded that the conveyance was in fraud of his creditors, & that the suit was barred by limitation :—*Held :* upon the whole facts the father had failed to discharge the burden, which was heavily upon him of proving that the conveyance was in fraud of his creditors, & not a genuine conveyance of his daughter's share, possibly liberally calculated; & consequently his possession was not adverse to his daughter, but on her behalf.—MA NGWE NAING *v.* MAUNG THA MAUNG (1928), I. L. R. 7 Ran. 4.—**IND.**

PART I. SECT. 4, SUB-SECT. 1.

209 xix. ——.]—HALIFAX BANKING CO. *v.* MATTHEW (1888), 16 S. C. R. 721.—**CAN.**

k i. —— *Suspicious circumstances insufficient.*]—Mere suspicious circumstances are not sufficient to support a finding of fraud even in a case wherein a husband & wife are alleged to have been mixed up in it.—KOSTZSHYN *v.* SZCZURKO & KOSTZSHYN (Sask.), [1929] 3 D. L. R. 474; 2 W. W. R. 289.—**CAN.**

sg. *Plan to bring property into existence—Valid.*]—KEARL *v.* WONNACOTT (Alta.), [1927] 4 D. L. R. 1051; [1927] 3 W. W. R. 693.—**CAN.**

PART I. SECT. 4, SUB-SECT. 2.—A.

224 ii. —— ——.]—DOE d. STEEL *v.* MCGILL (1842), 2 Ont. Dig. 2918.—**CAN.**

PART I. SECT. 4, SUB-SECT. 2.—C.

q i. —— ——.]—SCHUBERT *v.* KOCH, [1928] 3 W. W. R. 623.—**CAN.**

t i. ——.]—The transfer of his homestead from a husband to his wife, when he was insolvent & in order to prevent his creditors from satisfying their claims therefrom :—*Held :* fraudulent.—BARRETT *v.* BARON, [1925] 1 D. L. R. 474; [1925] 1 W. W. R. 87; 19 Sask. L. R. 207; 5 C. B. R. 448.—**CAN.**

t ii. —— ——.]—The transfer by a husband to his wife of his homestead, which is exempt from seizure under execution, cannot be set aside for the benefit of the husband's creditors.—

250. *Add. Annotation :*—**Consd.** *Re* Simms, [1930] 2 Ch. 22.

252. *Add. Annotation :*—**Refd.** *Re* Lloyd's Furniture Palace, Evans *v.* The Co., [1925] Ch. 853.

339a. —— —— **Subsequent sale to third party—Purchaser from sheriff entitled to recover.**]—KIDD *v.* RAWLINSON (1800), 2 Bos. & P. 59 ; 126 E. R. 1155.

Annotations :—**Consd.** Arundell *v.* Phipps & Taunton (1804), 10 Ves. 139. **Apld.** Watkins *v.* Birch (1813), 4 Taunt. 823 ; Latimer *v.* Batson (1825), 7 Dow. & Ry. K. B. 106. **Consd.** Cook *v.* Walker (1855), 25 L. T. O. S. 51. **Refd.** Jezeph *v.* Ingram (1817), 1 Moore, C. P. 189 ; Cromack *v.* Heathcote (1820), 4 Moore, C. P. 357 ; Steward *v.* Lombe (1820), 1 Brod. & Bing. 506.

377. *Add. Annotation :*—**Refd.** *Re* Lloyd's Furniture Palace, Evans *v.* The Co., [1925] Ch. 853.

395. *Add. Annotation :*—**Consd.** Jagger *v.* Jagger, [1926] P. 93.

396. *Add. Annotation :*—**Consd.** Jagger *v.* Jagger, [1926] P. 93.

422a. ——.]—*Re* LLOYD'S FURNITURE PALACE, LTD., EVANS *v.* THE CO., No. 428a, *post.*

428. *Add. Annotation :*—**Consd.** *Re* Simms, [1930] 2 Ch. 22.

428a. —— **Issue of debentures to one creditor—Issue postponed for benefit of company.**]—Where a co. agrees to issue debentures to a creditor as security for past & future loans, but delays issuing them for a considerable time in order to retain its credit with its other creditors, the debentures are not

RUSSIAN MERCANTILE CO., LTD. *v.* SLOBODA & SLOBODA (Alta.), [1927] 4 D. L. R. 931 ; [1927] 3 W. W. R. 451.—**CAN.**

a i. —— *Husband trustee for wife of property conveyed.*]—GRAY *v.* FORD, [1925] 1 W. W. R. 943 ; 34 B. C. R. 517.—**CAN.**

a ii. —— *Goods purchased with wife's money—& goods of husband exempt from seizure for debt.*]—REVELSTOKE SAWMILL CO., LTD. *v.* STRATFORD, [1928] 4 D. L. R. 772 ; [1928] 3 W. W. R. 260.—**CAN.**

PART I. SECT. 4, SUB-SECT. 2.—D.

sh. *Conveyance by husband to wife—Proof of validity against creditors—Affidavits necessary.*]—Where property is claimed by or on behalf of a wife under a conveyance to her during coverture, an explanation of the transaction should be given on oath to show that it was *bonâ fide*, & good as against the husband's creditors ; the affidavits for this purpose should be by the petitioners, & should be satisfactorily corroborated by disinterested persons of known credibility.—*Ex p.* LYONS (1869), 2 Ch. Ch. 357.—**CAN.**

sk. *Reconveyance by wife to husband—Land held by wife on trust for husband.*]—WINDSOR AUTO SALES AGENCY *v.* MARTIN (1915), 7 O. W. N. 471 ; 8 O. W. N. 130, 252 ; 25 D. L. R. 549 ; 33 O. L. R. 354.—**CAN.**

sl. *Voluntary conveyance—To person of same name as owner—Necessity for explanation.*]—*Ex p.* WRIGHT (1869), 2 Ch. Ch. 355.—**CAN.**

sm. *Family arrangement—Without consideration.*]—HAWKINS *v.* AGLASSINGER, [1928] 4 D. L. R. 188.—**CAN.**

PART I. SECT. 4, SUB-SECT. 3.

n i. —— *Payment of charges & incumbrances.*]—The promise of a transferee to pay the charges & incumbrances against the property transferred is not a sufficient consideration to support the transaction as against the creditors of the transferor. The question whether a transfer was a voluntary one or not for good consideration is only important as against creditors where it was made *bonâ fide*.—BLUDOFF *v.* OSACHOFF, [1928] 3 D. L. R. 170 ; [1928] 2 W. W. R. 150 ; 22 Sask. L. R. 533.—**CAN.**

PART I. SECT. 4, SUB-SECT. 5.—A.

264 iii. —— ——.]—GALIBERT *v.* SOCIETE D'ADMINISTRATION GENERALE & BANQUE NATIONALE & CIE. GENERAL D'ENTREPRISES PUBLIQUES, [1925] 3 D. L. R. 1206 ; [1925] S. C. R. 683.—**CAN.**

264 iv. —— ——.]—CUMMINGS & ELLIS *v.* O'FLYNN (1924), 34 B. C. R. 275.—**CAN.**

264 v. —— ——.]—A sale by a son to his father, made when the son was in insolvent circumstances & with the common intent & effect of giving a preference :—*Held :* void.—HUNTER *v.* LAWRIE, [1925] 1 D. L. R. 658 ; [1925] 1 W. W. R. 411 ; 35 Man. L. R. 126.—**CAN.**

264 vi. —— ——.]—ENFIELD REALTY CO. *v.* PETERSON (Sask.), [1926] 2 D. L. R. 1005.—**CAN.**

264 vii. —— ——.]—CANADIAN OIL CO., LTD. *v.* JAMIESON (Sask.), [1926] 2 D. L. R. 1046.—**CAN.**

PART I. SECT. 4, SUB-SECT. 5.—C.

sd. *Under guarantee—Voluntary conveyance set aside.*]—ONTARIO WIND ENGINE & PUMP CO. *v.* BOBO (Alta.), [1926] 1 D. L. R. 57 ; [1926] 1 W. W. R. 45.—**CAN.**

PART I. SECT. 4, SUB-SECT. 6.—A

se. *Under sale by parol.*]—*Held :* the sale was void as against subsequent creditors.—WILLIAMS *v.* RAPELJE (1880), 8 C. P. 186.—**CAN.**

PART I. SECT. 4, SUB-SECT. 7.

sf. *Conveyance to wife—Onus of proof—Discharge of onus.*]—If land is transferred by a husband to his wife, who *bonâ fide* works the land on her own account, a person alleging that the whole transaction, including the working of the land, is colourable only must satisfy the ct. by showing facts & circumstances which go beyond raising a mere suspicion.—JOHNSTONE LUMBER CO. *v.* HAGER, [1924] 1 D. L. R. 693 ; 1 W. W. R. 389 ; 20 Alta. L. R. 286.—**CAN.**

PART I. SECT. 4, SUB-SECT. 11.

418 i a. ——.]—The assignment of a lease by the lessee to a trustee, for a *bonâ fide* creditor of the assignor, with the intention of thereby evading the creditors of the lessee, is not a fraudulent assignment.—DOE d. BIGGARD *v.* MILLARD (1839), 1 Ont. Dig. 480.—**CAN.**

418 xiii. ——.]—SHAVER *v.* GOLDHAR, [1925] 2 D. L. R. 1216.—**CAN.**

418 xiv. —.]—*Re* RICE, [1928] 2 D. L. R. 96.—**CAN.**

a i. —— ——.]—Security given by an insolvent debtor to a creditor with intent to give him a preference over other creditors is void : but the existence of the intent may be negatived by showing that the debtor yielded to the importunity of the preferred creditor, & may also be negatived by proof of the existence of some other motive which may not have had its origin in the creditor, *e.g.* when property is conveyed as the result of fear of a criminal prosecution or where the transaction has its origin in the recognition of a moral obligation to restore property improperly converted. —GOLDMAN *v.* HARRISON, [1928] 3 D. L. R. 73 ; 62 O. L. R. 291.—**CAN.**

sj. *Mortgage to obtain loan to pay creditor—Presumption that mortgage void.*]—MILLER *v.* OSIER, [1925] 4 D. L. R. 692.—**CAN.**

sk. *What constitutes preference—Security given to creditor—Debtor insolvent.*]—W., secretary-treasurer of pltf. municipality, misappropriated funds. At his request deft. sent him a cheque to pay off a mtge., & in repayment sent deft. his own cheque, which was refused by the bank. He also received from deft. a cheque to purchase an interest in land, which he deposited to the credit of the municipality. He notified deft. & assigned him securities to cover the two cheques. Within sixty days of the assignments pltf. began action to set them aside as preferential :—*Held :* under Assignments Act, R. S. S. 1909, then in force, the assignments to deft. were void as against pltf. & should be set aside.—MOUNT HOPE RURAL MUNICIPALITY *v.* FINDLAY (1922), 66 D. L. R. 660 ; 15 Sask. L. R. 40 ; [1921] 3 W. W. R. 658.—**CAN.**

sl. *Who is a "creditor"—Agent making advance out of funds of principal—No pressure by principal for security.*]—MOUNT HOPE RURAL MUNICIPALITY *v.* FINDLAY (1922), 66 D. L. R. 660 ; 15 Sask. L. R. 40 ; [1921] 3 W. W. R. 658.—**CAN.**

PART I. SECT. 5, SUB-SECT. 1.

o. Delete this case.

t i. —— *On crops raised by vendee.*]—If land is transferred by a husband to his wife, who *bonâ fide* works the land on her own account, even if the transfer is one that as against creditors can be set aside, the wife is entitled to the crops raised under her operations. —JOHNSTONE LUMBER CO. *v.* HAGER, [1924] 1 D. L. R. 693 ; 1 W. W. R. 389 ; 20 Alta. L. R. 286.—**CAN.**

t ii. —— ——.]—The fact that a sale of land is found to be fraudulent & voidable as against execution creditors of the vendor, does not entitle them to seize crops grown thereon by the vendee, although the rule is otherwise if the transaction is shown to be a mere sham.—BANQUE CANADIENNE NATIONALE *v.* TENCHA, [1927] 4 D. L. R. 665.—**CAN.**

PART I. SECT. 5, SUB-SECT. 2.—A.

sn. *Not receiver of company—Alleged fraudulent preference made before receiver appointed.*]—FOX *v.* NIPISSING RY. CO., GOODERHAM *v.* NIPISSING RY. CO. (1881), 29 Gr. 11.—**CAN.**

PART I. SECT. 5, SUB-SECT. 2.—C

e i. —— *Personal representative.*]—Pltf., a daughter of R., deceased, purchased judgments which had been obtained against R. in his lifetime. She later became administratrix of his estate. She then, as administratrix & in her personal capacity, sued her brother, deft., attacking transfers made by R. to deft. as having been made to defraud creditors :—*Held :* pltf.'s position as administratrix did not entitle her to attack the fraudulent

voidable under 13 Eliz. c. 5, when the co. goes into liquidation.

If, as appears to be established by the authorities, a present fraudulent intention to prefer one creditor over the others is not sufficient under the statute to avoid a conveyance to that creditor, unless the debtor is himself in some way benefited by the conveyance, I am unable to see how the conveyance is avoided merely because the debtor always had the intention to prefer the creditor at some time or another (ROMER, J.).—*Re* LLOYD'S FURNITURE PALACE, LTD., EVANS *v.* THE CO., [1925] Ch. 853; 95 L. J. Ch. 140; 134 L. T. 241; [1926] B. & C. R. 29.

525a. —— —— **Refusal of fair offer.**]—After bill filed on behalf of creditors to set aside as fraudulent & void a voluntary settlement by A., their debtor, & a composition signed by the creditors in ignorance of such prior voluntary settlement, the debtor was adjudicated bankrupt, & an order was made by the Ct. of Bkpcy. setting aside the voluntary settlement. Pltfs., whose claim to prove under the bkpcy. had been admitted notwithstanding the opposition of the trustees of the settlement, wrote to them proposing to dismiss the bill without costs as against them, & that pltfs.' costs should come out of the estate. The trustees declined this proposal, but offered to consent to an order staying all proceedings in the suit without costs, or dismissing the bill without costs :—*Held :* the trustees of the settlement, who, by their refusal of pltfs.' offer, had compelled them to bring the suit to a hearing, must pay all pltfs.' costs incurred since the date of that offer.—TANQUERAY *v.* BOWLES (1872), L. R. 14 Eq. 151.

525b. —— —— **Negligent solicitor-trustee.**]—A decree being made for setting aside a voluntary settlement, on the ground of the omission of a power of revocation :—*Held :* the solr. who prepared the deed, & who was one of the trustees named in it, must pay his own costs as a penalty for not having called the settlor's attention to the absence of the power.—HENSHALL *v.* FEREDAY (1873), 27 L. T. 743; 21 W. R. 240; *on appeal*, 29 L. T. 46, L.JJ.

Part II.—Conveyances Impeachable by Subsequent Purchasers under Statute.

594. *Add. Annotation :—As to* (1) **Refd.** Bird *v.* I. R. Comrs. (1924), 12 Tax Cas. 785.

604a. Settlement with uses in remainder.] —*Held :* fraudulent against a purchaser.—ANON. (1606), Lane, 22; 145 E. R. 267.

619a. ——.]—HEISIER *v.* CLARKE (1709), 2 Cas. Abr. 46; 22 E. R. 41, L. C.

transfers. A debtor who fraudulently transfers his property cannot himself attack his fraudulent transaction, & his administrator has no greater right.—RYAN *v.* CHARLESWORTH, [1930] S. C. R. 427; 3 D. L. R. 431.—**CAN.**

PART I. SECT. 5, SUB-SECT. 2.—D. (a).

sp. *Secured creditor.*]—If the security of a secured creditor is sufficient to satisfy his claim in full he cannot bring action under Fraudulent Preferences Act, R. S. S., 1920 (c. 204).—BARRETT *v.* BARON, [1925] 1 D. L. R. 474; [1925] 1 W. W. R. 87; 19 Sask. L. R. 207; 5 C. B. R. 448.—**CAN.**

sq. *S. P.* MCLEAN *v.* RATEKIN (Sask.), [1926] 4 D. L. R. 174; [1926] 2 W. W. R. 671.—**CAN.**

sr. *Not creditor advising conveyance.*]—BLACKLEY *v.* KENNY (1889), 16 A. R. 522.—**CAN.**

PART I. SECT. 5, SUB-SECT. 2.—D. (c).

m i. ——.]—Pltf. suing for a tort, such as slander or malicious prosecution, is not a creditor of deft. until he has recovered judgment in the action, & has no status to impeach a conveyance as fraudulent against him, even though it was made because of the threatened action.—FISHER *v.* KOWSLOWSKI (1913), 25 W. L. R. 417; 5 W. W. R. 91; 13 D. L. R. 785; 23 Man. L. R. 769.—**CAN.**

m ii. ——.]—A judgment creditor may in his own name maintain an action to set aside a conveyance as fraudulent & void, without having a lien by virtue of an execution in the hands of the sheriff.—BROWN *v.* WEIL, [1927] 4 D. L. R. 218; 61 O. L. R. 55.—**CAN.**

sw. *Judgment for alimony.*]—Where a wife, having obtained a judgment for permanent alimony, brought an action to have a release executed by the husband set aside & the transaction declared preferential, fraudulent, & void, under Fraudulent Conveyances Act, R. S. O., 1914 (c. 105) :—*Held :* even if pltf. was not her husband's creditor she could nevertheless bring an action, for under sect. 3 " creditors & others " were protected.—SHEPHARD *v.* SHEPHARD, [1925] 2 D. L. R. 897; 56 O. L. R. 555; *affg.*, [1924] 3 D. L. R. 566.—**CAN.**

PART I. SECT. 6, SUB-SECT. 1.

sx. *Whether proceeds may be followed.*]—The fact that a conveyance is set aside as fraudulent against the transferor's creditors does not render available to them the proceeds of a policy of insurance which, after said transfer, was effected by the transferee in his own favour & paid for by him.—CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* CHOW LUN, [1931] 1 W. W. R. 211; 1 D. L. R. 1000.—**CAN.**

PART I. SECT. 6, SUB-SECT. 2.—B.

k (p. 219) **i.** —— ——.]—The rule that in an action by a judgment creditor to set aside a transfer by his debtor as fraudulent against creditors the debtor is not a necessary or proper party when he has no interest in the land transferred & no relief is asked against him does not apply where it is alleged that he still has an interest in said land & a sale of the land is stayed for to satisfy the judgment.—RUSSELL (DUKE OF BEDFORD) *v.* MURPHY & CARON (Sask.), [1929] 3 D. L. R. 787; 2 W. W. R. 324.—**CAN.**

d (p. 220) **i.** —— *Unless execution creditor.*]—An execution creditor, who sues to set aside a transfer by his debtor on the ground that it is fraudulent against creditors, is not obliged to sue on behalf of all other creditors of debtor as well as himself. Origin of the distinction in this respect between execution creditors & simple contract creditors reviewed.—ST. GREGOR MERCANTILE CO. *v.* HALBACH & BANK OF MONTREAL, [1927] 1 D. L. R. 761; [1927] 1 W. W. R. 247; 21 Sask. L. R. 315.—**CAN.**

PART I. SECT. 6, SUB-SECT. 2.—D.

h i. —— ——.]—*Semble :* in an action under Fraudulent Preferences Act, R. S. S., 1920 (c. 204), the *onus* is always on pltf. of proving debtor's insolvency.—MCLEAN *v.* RATEKIN (Sask.), [1927] 4 D. L. R. 739; [1927] 3 W. W. R. 444; *affd.*, [1928] 4 D. L. R. 18; [1928] 2 W. W. R. 421; 22 S. L. R. 633; 10 C. B. R. 156.—**CAN.**

o (p. 223) **i.** —— ——.]—In an action to set aside as fraudulent against creditors a transfer between sisters :—*Held :* the corroborative evidence necessary to meet the *primâ facie* case which pltf. established by showing a transfer between near relatives in circumstances of suspicion, had been supplied.—LUNDQUIST *v.* PULS, [1925] 3 D. L. R. 84; [1925] 1 W. W. R. 834.—**CAN.**

o (p. 223) **ii.** —— ——.]—KUSHNER *v.* YASINKA (Sask.), [1927] 4 D. L. R. 697; [1927] 3 W. W. R. 328.—**CAN.**

s (p. 223) **i.** —— ——.]—KNOX *v.* SHAW, [1927] 3 D. L. R. 1185; [1927] 2 W. W. R. 494; 31 Sask. L. R. 593.—**CAN.**

s (p. 223) **ii.** —— ——.]—BROWN *v.* WEIL, [1927] 4 D. L. R. 218; 61 O. L. R. 55.—**CAN.**

s (p. 223) **iii.** —.]—KUSHNER *v.* YASINKA (Sask.), [1927] 4 D. L. R. 697; [1927] 3 W. W. R. 328.—**CAN.**

o (p. 223) **i.** —— *Of bona fides.*]—MCNEILL *v.* CAIRNS (1931), 3 M. P. R. 195.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—B. (a).

572 i. *Necessity for valuable consideration.*]—DOE PROUDFOOT *v.* MCCRAE (1842), 6 O. S. 502.—**CAN.**

Part III.—Conveyances Impeachable from Position of Parties.

807a. ——.]—A conveyance by a weak man for a small consideration set aside.—CLARKSON *v.* HANWAY (1723), 2 P. Wms. 203; 24 E. R. 700, L. C.

Annotations :—**Consd.** Cray *v.* Mansfield (1750), 1 Ves. Sen. 379. **Refd.** Hawes *v.* Wyatt (1790), 2 Cox, Eq. Cas. 263; Blachford *v.* Christian (1829), 1 Knapp, 73.

831a. Deed not fully explained to donor.]—PHILLIPSON *v.* KERRY (1863), 32 Beav. 628; 9 L. T. 40; 11 W. R. 1034; 55 E. R. 247.

Annotation :—**Apld.** Ellis *v.* Ellis (1909), 26 T. L. R. 166.

834a. ——.]—A voluntary gift will be set aside when the relations between the donor & the donee have at, or shortly before, the execution of the gift been such as to raise a presumption that the donee had influence over the donor, unless the donee discharges the *onus* of proving that the gift was the spontaneous act of the donor, acting under circumstances which enabled the exercise of an independent will. Independent legal advice is not the only way in which the presumption can be rebutted; & the presumption may be rebutted even if the advice, when given, was not taken.—INCHE NORIAH *v.* SHAIK ALLIE BIN OMAR, [1929] A. C. 127; 98 L. J. P. C. 1; 140 L. T. 121; 45 T. L. R. 1, P. C.

844. *Add. Annotation :*—**Consd.** Inche Noriah *v.* Shaik Allie Bin Omar, [1929] A. C. 127.

844a. ——.]—GREENLAW *v.* KING (1841), 10 L. J. Ch. 129; 5 Jur. 18, L. C.

Annotations :—**Refd.** Llewellyn *v.* Badeley (1842), 1 Hare, 527; Walsingham *v.* Goodricke (1843), 3 Hare, 122; Beaden *v.* King (1852), 9 Hare, 499; Boyd *v.* Barker (1859), 28 L. J. Ch. 445; Guest *v.* Smythe (1870), 5 Ch. App. 553, n.; Fenner *v.* L. & S. E. Ry. (1872), L. R. 7 Q. B. 767.

845. *Add. Annotation :*—**Consd.** Inche Noriah *v.* Shaik Allie Bin Omar, [1929] A. C. 127.

895a. ——.]—If a legatee agrees to sell to the exor. of the will his legacy for an annuity, the burden will lie on the exor. to show that there was no unfairness in the transaction.—*Re* BIEL'S ESTATE, GRAY *v.* WARNER (1873), L. R. 16 Eq. 577; 42 L. J. Ch. 556; 28 L. T. 835; 21 W. R. 808.

Annotation :—**Refd.** Harloe *v.* Harloe (1875), 44 L. J. Ch. 512

PART III. SECT. 1.

k i. ——.]—B., a person of full age & understanding, who at the time was suffering under emotional distress & loss of interest in life, executed a voluntary transfer of her property in favour of A. with whom she was then living. In a suit by B. to set aside the transfer :—*Held :* the facts did not show want of capacity, nor did the circumstances constitute a fiduciary relationship, & in the absence of fraud or overreaching the ct. could not entertain the suit.—BOYD *v.* ALEXANDER (1931), 31 S. R. N. S. W. 615; 48 N. S. W. W. N. 202.—**AUS.**

l i. —— *Grantor without business experience.*]—*Held :* the instruments were void in equity.—EDINBURGH LIFE ASSURANCE CO. *v.* ALLEN (1871), 18 Gr. 125.—**CAN.**

p i. ——.]—The social relationship between donor & donee, the former a man of 83 years whose mental powers were greatly weakened, added to the facts that he had made the donee his financial agent with respect to a certain transaction, & reposed much confidence in him, was held to raise the presumption of undue influence.—*Re* MCPHERSON, TRUSTS & GUARANTEE CO., LTD. *v.* BRADFORD, [1930] 3 W. W. R. 368; 4 D. L. R. 915; *affd.*, [1930] 3 D. L. R. 378.—**CAN.**

p ii. ——.]—Pltf., an aged, ignorant, & worn man, transferred his land to his son, deft., the only consideration to pltf. being a lease for 30 years, in consideration of one dollar, of a small house & garden, part of the land conveyed, and an agreement to supply pltf. periodically with certain provisions :—*Held :* the transaction should be set aside on the ground that it was an improvident transaction made practically without consideration & without advice, in favour of a person who had a duty at least to see that the transaction went no further than was actually necessary.—HRYNYK *v.* HRYNYK, [1932] 1 W. W. R. 82; 1 D. L. R. 672; 40 Man. L. R. 173.—**CAN.**

p iii. —— *Grant in consideration of maintenance for life.*]—A woman, 69 years old, transferred land to defts. in consideration of her maintenance for life, which transfer the Supreme Ct. of Tasmania on her death set aside as procured by undue influence :—*Held :* the transaction was properly set aside.—WATKINS *v.* COOMBES (1922), 30 C. L. R. 180.—**AUS.**

p iv. —— *& illiterate.*]—Conveyances set aside on grounds of improvidence, & want of proper professional advice.—SHANAGAN *v.* SHANAGAN (1884), 7 O. R. 209.—**CAN.**

r i. —— *Deaf & illiterate—Onus of proof.*]—Action to set aside a conveyance obtained from an old woman who was deaf & unable to write, & who had no relatives or friends, by the reeve of the township in which she lived, & who was well known as a justice of the peace, & an active, shrewd business man, engaged in many enterprises :—*Held :* the onus was not on deft., & pltf. must prove her case.—MCEWAN *v.* MILNE (1884), 5 O. R. 100.—**CAN.**

t i. —— *Onus of proof.*]—The fact that deft., who had set up the defence of fraud to an action on a guarantee, proved that he could not read or write the English language, that in which the guarantee was written, was held not to be sufficient of itself in the present case to raise such a *primâ facie* presumption of fraud as to justify the trial judge in placing on pltf. the burden of proving affirmatively that that portion of the document, which deft. attacked, was in fact read over to him & that he understood the same.—LASBY *v.* JOHNSON, [1928] 4 D. L. R. 956; [1928] 3 W. W. R. 447.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.

832 ii. ——.]—KRYS *v.* KRYS, [1929] 1 D. L. R. 289; S. C. R. 153.—**CAN.**

e (p. 259) i. ——.]—PLAETZER *v.* RAYMOND (Ont.), [1927] 2 D. L. R. 389; 8 C. B. R. 181.—**CAN.**

s (p. 259) i. ——.] BARRY *v.* MCGUIRE (1931), 3 M. P. R. 172.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—A.

sw. *Fiduciary relationship—Where no independent advice.*]—GOULET *v.* TARDIF (Man.), [1929] 4 D. L. R. 128.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—B.

sx. *Onus of proof—On party alleging fairness of transaction—Sale by parent to son.*]—In an action by a father against his son to set aside a transfer on the ground of fraud, where admittedly no pecuniary consideration passed at the time, the father could not speak English, the solr. who drew the transfer spoke only English, & the document was in English, & the father was entirely dependent on the son for information as to what was said & done, the burden of proof was held to be upon the son that his father knew well the nature & effect of the instrument.—IWANCHUK *v.* IWANCHUK (Alta.), [1919] 3 W. W. R. 363; 48 D. L. R. 381.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—F.

sy. *When presumed—Husband in impaired physical & mental condition—Wife with business ability.*]—MCCAFFREY *v.* MCCAFFREY (1891), 18 A. R. 599.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—M.

sz. *Fiancée & fiancé's father.*]—Where shortly after the death of assured the beneficiary, his fiancée, assigned to his father, without consideration, all her interest in the policy & the benefits thereof :—*Held :* in the circumstances she should be declared entitled to the insurance money.—REDMOND *v.* BOUEY (Man.), [1927] 1 D. L. R. 1057; [1927] 1 W. W. R. 386; *affd.*, [1928] 4 D. L. R. 806; [1928] 3 W. W. R. 345; 37 Man. L. R. 458.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.

r i. ——.]—Pltf. purchased land from deft. Subsequently pltf.'s husband having been convicted of a crime & sentenced to imprisonment, deft. induced pltf. to retransfer the land to him :—*Held :* pltf. having been imposed on, & having conveyed the land for less than the real value thereof & without independent advice, the transfer should be set aside.—COLP *v.* HUNTER (1911), 1 W. W. R. 314.—**CAN.**

909a. ——.]—DEANE *v.* RASTRON (1792), 1 Anst. 64; 145 E. R. 801.

964a. Purchase by devisee—Representation that defective will duly executed.]—BRODERICK *v.* BRODERICK (1713), 1 P. Wms. 239; 24 E. R. 369, L. C.

Annotation:—**Refd.** Baugh *v.* Price (1752), 1 Wils. 320.

928 iii. —— ——.]—MCEACHERN *v.* SOMERVILLE, MCEACHERN *v.* WHITE (1876), 37 U. C. R. 609.—**CAN.**

PART III. SECT. 3, SUB-SECT. 2.—A.

935 i. *Principles of relief—Presumption of incapacity.*]—Expectant heirs & reversioners need to be protected against the consequences of their own improvidence in dealing with designing men.—MOREY *v.* TOTTEN (1857), 6 Gr. 176.—**CAN.**

PART III. SECT. 4, SUB-SECT. 3.

c i. —— ——.]—Pltf. a person of little or no business ability, who was possessed of a life interest in a capital sum of considerable amount, had been adjudicated bkpt., & under threat of his creditors to realise the life interest, had approached deft., a money-lender, for assistance. Notwithstanding the business ignorance of pltf. & the financial straits in which he was placed, of which deft., by reason of previous transactions with him, must have been well aware, & without pltf., being independently advised, a sale of the life interest to deft. was arranged at a figure considerably under its real value. In an action brought some eleven years later to have the transaction set aside:—*Held:* although inadequacy of consideration for a transaction is not of itself sufficient to give rise to a presumption of undue influence, the surrounding circumstances in the present case were sufficient to show that pltf. was in the hands of deft. & the subsequent delay in bringing action, & the conduct by pltf., in effecting further insurance in pursuance of the transaction having taken place, while pltf. yet remained in ignorance of its impeachable nature, did not amount to a confirmation & same should be set aside.—HARRIS *v.* RICHARDSON, [1929] N. Z. L. R. 668.—**N.Z.**

FRIENDLY SOCIETIES.

Part III.—Unregistered Societies.

17. *Add. Annotation :—As to* (3) **Refd.** Greenberg *v.* Cooperstein, [1926] Ch. 057.

Part IV.—Collecting Societies.

35. *Add. Annotation :*—**Apld.** Bell *v.* Harker (1927), 91 J. P. 189.

35a. —.]—Industrial Assurance Act, 1923 (c. 8), s. 26 (1), applies whether the transaction involves transfer of the whole membership or interest of the assured, or of only one policy out of several, & whether the transferee is or is not already a member of, or a person assured with, the new society.—BELL *v.* HARKER, [1928] 1 K. B. 368; 97 L. J. K. B. 155; 138 L. T. 226; 91 J. P. 189; 44 T. L. R. 33; 25 L. G. R. 505; 28 Cox, C. C. 451, D. C.

Part XI.—Rules.

73a. **What majority required—Levy on prosperous branches—In aid of non-prosperous.**]—The ct. held that the Ancient Order of Foresters were entitled to alter the general laws of the Order without a nine-tenths' majority so as to compel branches or cts. of the society which were in a good financial position to contribute 7½ per cent. of any surplus on valuation for the support of branches which were not prospering.—BUNDEY *v.* SEABROOK (1932), 48 T. L. R. 361; 76 Sol. Jo. 289.

Part XII.—Officers.

109a. **Agent—Termination of employment—Under amended rules.**]—Pltf. was appointed an agent of defts., a friendly society, whose rules, though subject to alteration, provided at that time for the retention of agents in office so long as their conduct was satisfactory. After pltf. reached the age of sixty-five defts. altered their rules, by providing that agents should be compulsorily retired at the age of sixty-five, & defts. terminated pltf.'s employment :—*Held :* as the rules, on the face of them, were alterable, pltf. was not entitled to a declaration that defts. were not entitled to terminate his employment.—PAGE *v.* LIVERPOOL VICTORIA FRIENDLY SOCIETY (1927), 43 T. L. R. 712, C. A.

Part XIII.—Membership.

133. *Add. Annotation :*—**Apld.** R. *v.* Lancashire JJ., *Ex p.* Tyrer, [1925] 1 K. B. 200.

155a. —— **What must be disclosed to directors.**]—On the construction of Geo. 3, c. lxxiii., by which the Customs' Annuity & Benevolent Fund was established, & of the rules made under the authority of that Act :—*Held :* (1) in appointing a "nominee" of a subscriber's interest in the fund the directors ought to be informed for what purpose the nominee is appointed & to whom money is to be paid. This may be done by the instrument appointing the nominee or by some other instrument signed by the subscriber, or by his will; (2) *Semble :* a "nominee" may be a person who is intended to take as a trustee for others.—URQUHART *v.* BUTTERFIELD (1887), 37 Ch. D. 357; 57 L. J. Ch. 521; 57 L. T. 780; 36 W. R. 376; 4 T. L. R. 161, C. A.

155b. —— **Who may be nominee—Trustee.**]—URQUHART *v.* BUTTERFIELD, No. 155a, *ante.*

175a. **Insurance of child for more than statutory amount.**]—Resps., an industrial assurance

PART XIII. SECT. 3, SUB-SECT. 2.—A. sx. *Conditions precedent—Delivery of policy & payment of premium.*]—In an action wherein pltfs. sought to recover benefits from a fraternal society as the beneficiaries of a deceased who was alleged to have become a member thereof :—*Held :* applying sects. 81 (3) & 86 (1) of Insurance Act, 1925, deceased's application for membership & the acceptance thereof did not affect a contract binding on the society because no policy, or certificate of membership, was delivered & payment of the first premium or at least all of it had not been made, which, under said sects., were conditions precedent to a binding contract.—PEDERSON *v.* EMPIRE HOME BENEFIT ASSOCN., [1931] 2 W. W. R. 858.—CAN.

PART XIII. SECT. 4, SUB-SECT. 2.—C. ss. *Benevolent association incorporated under Charitable Associations Act, R. S. M.*, 1913 (c. 27)—*Validity of bye-law as to nomination.*]—THEOBALD *v.* WINNIPEG MUSICIANS ASSOCN., [1927] 1 D. L. R. 57; 36 Man. L. R. 163; [1926] 3 W. W. R. 337.—CAN.

PART XIII. SECT. 4, SUB-SECT. 3.—B. ii. —— *Sum payable by rules to "widow or heirs or representatives"—"Or" not read as "and."*]—APPLEBY *v.* SEARLE (1930), 2 M. P. R. 319.—CAN.

co., issued three policies of insurance in respect of the life of a child, for sums which aggregated more than the statutory maximum, though each was for a sum less than that maximum. Each policy contained a provision that no payment would be made which either alone or in conjunction with other such payments exceeded the statutory maximum. On a charge of having committed an offence within Industrial Assurance Act, 1923 (c. 8), s. 39 (2):—*Held:* (1) the words in sect. 4 (1) "relating to payments on the death of children" were merely descriptive of the group of sects. in the 1896 Act headed "Payments on death of children," & did not limit those sects. in their application to industrial assurance cos. to payment only, but included the provisions as to insurance; (2) the above provision in each policy had no legal effect at all, & it could not be contended that in fact the co. did not insure for more than the statutory amount; (3) the proceedings were in time because, for this purpose, the insurance co. did not insure from the time only when the policies were taken out, but (LORD HEWART, C.J.) either insured on every occasion when a premium was paid, or (AVORY, J.) continued to insure during the time that the assured was not in default & the policies were in force.—HARKER *v.* BRITANNIC ASSURANCE CO., LTD., [1928] 1 K. B. 766; 97 L. J. K. B. 359; 138 L. T. 395; 91 J. P. 51; 44 T. L. R. 243; 72 Sol. Jo. 121; 26 L. G. R. 136; 28 Cox, C. C. 475, D. C.

Annotation:—As to (2) **Distd.** Hirst *v.* Liverpool Victoria Friendly Society, Clark *v.* London & Manchester Assce. Co., [1930] 2 K. B. 209.

175b. —— Proviso in policy limiting sum assured.] —In 1920 H. took out a policy of industrial insurance on the life of his daughter, then aged three months, at a premium of twopence per week, & in 1925 he effected a similar policy on the life of his son, then aged one month, in each case assuring the amounts respectively set out in a Table contained in the policy. The Table in the policy of 1920 was made out on the basis of a premium of one penny per week & insured sums payable on the death of the life assured varying in amount according to age & the time the policy had been in force; it also contained the following statement: "Twopence per week will assure double the above sums provided that in any case where the amount secured by the larger premium would exceed the limits of assurance prescribed by Friendly Societies Act, 1896 (c. 25), viz., £6 for children under five years of age, & £10 for children under ten years of age, the sum assured shall be limited to £6 or £10 as the case may require." In the policy of 1925 was a statement that the amount payable under it was subject to the limitations of Friendly Societies Act, 1924 (c. 11):—*Held:* in view of the statements in the two policies limiting the amount insured in each case to the statutory maximum, neither policy contravened the provisions of the Friendly Societies Acts, 1896 & 1924, & was valid.

In 1925 C. signed a proposal for a whole life assurance on the life of her son, then aged one year next birthday, at a weekly premium of one penny for a sum to be assured increasing as per scale up to £15. On the same day she signed a proposal for an endowment assurance on the same life at a weekly premium of threepence for a "sum to be assured £7 14*s.* payable on attainment of age fifteen or in the event of previous death as per scale." Two policies were issued on the basis of these proposals. On the whole-life policy there was this memorandum: "This life is also assured under [the endowment] policy. Accordingly, the full sum assured printed in the schedule will not come into operation until the attainment of the age of ten. The combined amount payable in the event of earlier death shall not exceed £6 on death under age three, £10 under age six, & £15 under age ten":—*Held:* as the above quoted memorandum cut down the sums payable under the combined policies to the statutory limit, the policies did not contravene the Friendly Societies Act, 1924 (c. 11), & were valid.—*Re* HIRST & LIVERPOOL VICTORIA FRIENDLY SOCIETY, *Re* CLARK & LONDON & MANCHESTER ASSURANCE CO., [1930] 2 K. B. 209; 99 L. J. K. B. 138; 142 L. T. 291; 94 J. P. 81; 73 Sol. Jo. 832; 28 L. G. R. 53, C. A.

Annotation:—**Apld.** Smith *v.* Britannic Assurance Co. (1932), 174 L. T. Jo. 41.

175c. — — — — .]—Applt. insured her child, who was born on May 2, 1927, a month after its birth, the premium to be 2*d.* a week. Friendly Societies Act, 1924 (c. 11), s. 2 (1), stated that Friendly Societies Act, 1896 (c. 25), s. 62, should have effect "as if for that section the following section were substituted," & provided that a society should not insure or pay on the death of a child under three years of age any sum of money which exceeded or which, when added to any amount payable on the death of that child by any other society or branch or by any trade union, exceeded £6. By Industrial Assurance Act, 1923 (c. 8), s. 21, it was required that any such policy of insurance should set out in distinctive type a statement of the effect of sect. 62. Applt. claimed from resp. co. the return of her premiums on the grounds that (*a*) under sect. 62 as amended by sect. 2 (1) of the Act of 1924 the sum insured exceeded the amount allowed, & (*b*) under sect. 21 of the Act of 1923 the policy did not set out a statement of the effect of sect. 62 as amended. Sect. 62 of the Act of 1896 was left unamended & unrepealed by the Act of 1924, but under the latter Act was to be read as provided by the Act of 1924. The policy was issued for a penny premium, & that was altered to twopence premium, & it was then stated that the amount payable on death was ascertainable from Sched. B., but that, the premium in this case being twopence, the amounts stated in Sched. B were increased in proportion. That would bring the amounts over what was allowed by sect. 62 as amended, but to the above statement was added "subject to the conditions of the Friendly Societies Act." In a second proviso on the face of the policy it was stated that the policy was issued "subject to the provisions of sect. 62 of Friendly Societies Act, 1896 (c. 25), as amended by the Industrial Assurance Act, 1923 (c. 8)—the provisions of which would, it was argued, make it illegal." Then followed the effect of sect. 62 without the express language introduced by the Act

of 1924 :—*Held :* the child had not been insured for sums in excess of the amounts permitted by sect. 62 of the Act of 1896 as amended by sect. 2 (1) of the Act of 1924, having regard to the effect of the statements in the policy, & particularly the proviso, & to the fact that sect. 62 of the Act of 1896 still existed, not having been repealed, though the amendment of it in the Act of 1923 had been repealed, & though sect. 62 had now to be read as if it had the effect set out in sect. 2 (1) of the Act of 1924. The co. had not committed an offence against sect. 21 of the Act of 1923, as it used the very language in its policy which had been used by the Legislature from 1896 to 1924, & did introduce the effect of sect. 62, & it was immaterial that the Act of 1924 was not specifically mentioned.—SMITH *v.* BRITANNIC ASSURANCE CO., LTD. (1932), 147 L. T. 367, C. A.

175d. Who is " child " within Industrial Assurance Act, 1923 (c. 8), s. 3—Illegitimate child.]—Above sect. provides that : " Amongst the purposes for which industrial assurance cos. may issue policies of assurance, there shall be included insuring money to be paid for the funeral expenses of a parent, child, grandparent, grandchild, brother or sister, & the issuing of such policies shall be treated as part of the industrial assurance business of the society or co." :—*Held :* the word " child " in the above sect. includes an illegitimate child, & policies taken out by a mother for the purpose of insuring money to be paid for the funeral expenses on the death of her illegitimate children were valid. —MORRIS *v.* BRITANNIC ASSURANCE CO., LTD., [1931] 2 K. B. 125 ; 100 L. J. K. B. 263 ; 145 L. T. 45 ; 47 T. L. R. 318 ; 75 Sol. Jo. 206.

Part XVII.—Accounts and Inspection of Affairs.

223a. Power of commissioner or inspector to hold public inquiry—Industrial Assurance Act, 1923 (c. 8), s. 17.]—An inspector appointed by the Industrial Assurance Comr. under Industrial Assurance Act, 1923 (c. 8), s. 17 (1), for the purpose of examining into & reporting on the affairs of an industrial assurance co., is not entitled to conduct the inspection in public, but this shall not prevent him from admitting from time to time any persons the presence of whom is reasonably necessary to enable him to carry out his duty under the statute ; & he is not entitled to make public the information gained by him in the course of such examination or of the exercise of the powers conferred upon him by the said subsection & by Friendly Societies Act, 1896 (c. 25), s. 76 (5), or otherwise to make use of such information save for the purposes of carrying out his examination & of preparing his report on the affairs of the co. & for purposes ancillary thereto. The same principle applies where the Comr. himself makes the examination.—HEARTS OF OAK ASSURANCE CO., LTD. *v.* A.-G., [1932] A. C. 392 ; 101 L. J. Ch. 177 ; 147 L. T. 41 ; 48 T. L. R. 296 ; 76 Sol. Jo. 217, H. L.

Part XVIII.—Disputes.

224a. ——.]—TIMMS *v.* WILLIAMS (1842), 3 Q. B. 413 ; 2 Gal. & Dav. 621 ; 11 L. J. Q. B. 210 ; 6 J. P. 685 ; 6 Jur. 1012 ; 114 E. R. 565.

Part XIX.—Offences, Penalties and Proceedings.

322. *Add. Annotation :*—**Consd.** Fishwick *v.* Gyani, [1925] 1 K. B. 617.

329a. —— — — — False return.]—An information for making a false return under the Friendly Societies Act, 1896 (c. 25), s. 84 (*c*), is good if laid within six months from the date when the return is sent to the registrar.—WINDRIDGE *v.* ANCIENT ORDER OF FORESTERS' FRIENDLY SOCIETY (1932), 96 J. P. 483 ; 49 T. L. R. 16 ; 30 L. G. R. 510.

PART XV. SECT. 1.

sd. *Subscriptions—Whether capital or income.*]—Subscriptions paid by the members of a benefit society or association to the society or association to enable it to carry on its business are its " income " & not " capital."—VIZAGAPATAM MUNICIPAL COUNCIL *v.* TEA DISTRICTS LABOUR ASSOCN. (1932), I. L. R. 55 Mad. 282.—**IND.**

PART XIX. SECT. 3, SUB-SECT. 1.—A. (a).

sb. *Action for libel—Whether proof of special damage necessary.*]—*Held :* pltfs. were entitled to maintain an action to recover damages for defamation of the society as such ; it was unnecessary, in the case of a trading corpn., society or partnership, to allege & prove special damages where defamatory words were spoken or written of the corpn., society or partnership, in relation to its trade or business ; & damages limited to the injury done to the joint adventure might be awarded without proof of special damage.—IRISH PEOPLES ASSCN. CO. *v.* DUBLIN CITY ASSCN. CO., [1929] I. R. 25.—**IR.**

Part XXII.—Dissolution.

430. *Add. Annotations :—As to* (1) **Refd.** I. R. Comrs. *v.* Soc. for Relief of Widows & Orphans of Medical Men, I. R. Comrs. *v.* Medical Charitable Soc. for West Riding of Yorkshire (1926), 42 T. L. R. 612; I. R. Comrs. *v.* Yorkshire Agricultural Soc., [1928] 1 K. B. 611.

430. *Add. Annotation :—As to* (2) **Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617.

PART XX. SECT. 3.

sc. *Right to secede.*]—In the absence of statutory provisions there is no power in a branch lodge of a friendly society to secede from the order to which it belongs, unless the power is expressly conferred by the rules of the society. *Semble :* even if the rules give a right to secede, there is no practical method of doing so, unless machinery is provided for the purpose. —INDEPENDENT ORDER OF ODDFELLOWS *v.* INDEPENDENT ORDER OF ODDFELLOWS BON ACCORD LODGE No. 11, [1901-3] S. A. L. R. 62.—**AUS.**

sd. *Effect of secession—On property & funds.*]—A mere right to secede does not confer a power in the seceding lodge to take away the funds constituted under the rules of the order. A rule of a friendly society providing that a lodge which is expelled shall forfeit its property to the ruling authority of the society is not *ultra vires.*— INDEPENDENT ORDER OF ODDFELLOWS *v.* INDEPENDENT ORDER OF ODDFELLOWS BON ACCORD LODGE No. 11, [1901-3] S. A. L. R. 62.—**AUS.**

sf. *Secession by Scottish branch of English society—Refusal to grant certificate of secession—Jurisdiction of Scottish courts.*]—The Scottish branch of a friendly society, whose registered office was in England but whose rules had been recorded in Scotland, resolved to secede from the parent body, & applied to the secretary of the society for a certificate of secession in order that the branch might be registered as a separate society in Scotland. The certificate having been refused, the branch brought a petition, under Ct. of Session (Scotland) Act, 1868 (c. 100), s. 91, for an order on the society to grant a certificate :—*Held :* the ct. had jurisdiction to entertain the petition, & procedure by way of a summary petition under sect. 91 was a convenient & practical method of invoking the aid of the ct.—SONS OF TEMPERANCE FRIENDLY SOCIETY, [1926] S. C. 418.—**SCOT.**

GAME.

Part IV.—Persons having Rights over Game.

53. *Add. Annotation :—As to* (2) **Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

55. *Add. Annotation :—As to* (2) **Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

69. *Add. Annotation :—***Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

71. After this case add :—

——————.]—Stat. Frauds, s. 4, is now replaced by Law of Property Act, 1925 (c. 20), s. 40.

76. *Add. Annotation :—***Refd.** Swayne *v.* Howells (1926), 43 T. L. R. 14.

87. *Add. Annotation :—***Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

90. *Add. Annotation :—***Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

91. *Add. Annotation :—***Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

92. *Add. Annotation :—***Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

92a. Sale of part of land for erection of racing stables—Breach of covenant for quiet enjoyment.]—A landowner who has granted a lease of sporting rights over land to a tenant together with a covenant for quiet enjoyment & afterwards during the currency of the tenancy sells part of that land to a third party so that it is or may be used for the erection of racing stables, is thereby derogating from his grant so as to become liable in damages to his tenant.—PEECH *v.* BEST, [1931] 1 K. B. 1 ; 99 L. J. K. B. 537 ; 143 L. T. 266 ; 46 T. L. R. 467 ; 74 Sol. Jo. 520, C. A.

98. *Add. Annotation :—As to* (2) **Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

Part VI.—Remedies for Infringement of Rights.

142. *Add. Annotation :—***Refd.** Andrews *v.* Carlton (1928), 93 J. P. 65.

247a. Summing up—Necessary contents.]—There must be a careful direction to the jury on the nature of common enterprise in the case of poachers charged with violence.—R. *v.* PEARCE (1929), 21 Cr. App. Rep. 79, C. C. A.

299. *Add. Annotation :—***Consd.** Farey *v.* Welch, [1929] 1 K. B. 388.

Part VII.—Gamekeepers.

354. *Add. Annotation :—***Refd.** Barnard *v.* Evans, [1925] 2 K. B. 794.

Part VIII.—Licences.

387. *Add. Annotation :—***Refd.** Clark *v.* Westaway, [1927] 2 K. B. 597.

PART II. SECT. 1.

sx. *"Taking or killing" game under one year of age—What amounts to.*]—Sect. 4 of Game Act, R. S. S., 1930, provides that "no person shall hunt, trap, take, shoot at, wound or kill . . . the young under one year of age of any of the animals mentioned in the sect." :—*Held :* (1) the application of the word "take" therein is limited to the act of capturing an animal &, in order to constitute an offence, the capture would have to be of a living animal, notwithstanding that sect. 2 (5) provides that "game" means such animals dead or alive ; (2) although the killing of such an animal is done when the animal is found lying wounded by some other person, & in order to end its suffering, the killing nevertheless comes within the terms of the section & is, therefore, an offence.—R. *v.* ZIMMER & ZIMMER, [1931] 2 W. W. R. 562.—**CAN.**

PART II. SECT. 3, SUB-SECT. 4.—A. (b) iii.

sy. *Provincial game Act—Killing of game by white man on Indian reserve.*]—The fact that the Dominion Parliament has exclusive legislative authority over "Indians & lands reserved for Indians" does not prevent a provincial game protection Act which prohibits the killing of game out of season from being applied to the killing of game on an Indian reserve where the offender is a white man.—R. *v.* MCLEOD, [1930] 2 W. W. R. 37 ; 54 Can. C. C. 107.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 1.

sa. *Right to shoot game—Under Game Act Amendment Act,* 1925.]—Game Act Amendment Act, 1925, does not give a farmer an absolute right to shoot game birds found doing damage to his crop, provided he does not shoot across a public highway ; it means merely that so far as the penalties imposed by said Act are concerned they shall not be enforceable against a farmer shooting under the circumstances therein described. The right of a municipality to protect its citizens by prohibiting the discharge of firearms within its limits is not interfered with.—R. *ex rel.* RANKIN *v.* PENDRAY, [1929] 1 W. W. R. 30 ; 51 Can. Crim. Cas. 27 ; 40 B. C. R. 410.—**CAN.**

PART IV. SECT. 4.

f i. ——.]—R. *v.* SYLIBOY, [1929] 1 D. L. R. 307 ; 50 Can. Crim. Cas. 389.—**CAN.**

f ii. ——.]—Indians in Alberta entitled to the benefits of the articles of treaty made between the Queen & the Blackfeet, Stony, & other Indians on Sept. 12, 1877, may, regardless of the provisions of a provincial Game Act, when hunting for food kill all kinds of wild animals regardless of age or size wherever they may be found on unoccupied Crown lands or other lands to which such Indians have a right of access, at all seasons of the year, & may hunt such animals with dogs or otherwise as they see fit, & they need no licence beyond the language of Alberta Natural Resources Act, 1930, s. 12, to entitle them to do so.—R. *v.* WESLEY, [1932] 2 W. W. R. 337.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 4.

393 i. *Defences—Coursing hare.*]—Deft. was prosecuted for pursuing a hare with a greyhound without having a game certificate, contrary to Game Certificates (Ireland) Act, 1842, ss. 2, 5. Deft. had coursed a hare with a single greyhound on certain lands, but produced a written permission from the owner of the lands to do so. The resident magistrate held that failure to take out a licence under Game Licences Act, 1860, formed the basis of the charge, & deft. was exempted on sect. 5, exception 3, of that Act, in respect of coursing a hare with his greyhound, & dismissed the summons. On a case stated :—*Held :* the resident magistrate was wrong in deciding that deft. came within Game Licences Act, 1860, s. 5, exception 3.—R. (NEVIN) *v.* CLARKE, [1930] N. I. 174.—**IR.**

PART IX. SECT. 2.

sz. *Possessing the "green hide of a moose" during close season—Possession of small piece—No offence.*]—R. *v.* MASON, [1931] 2 D. L. R. 288 ; 55 Can. C. C. 25 ; 2 M. P. R. 457.—**CAN.**

GAMING AND WAGERING.

Part I.—Gaming and Wagering Contracts Generally.

1. *Add. Citation :*—69 Sol. Jo. 824.

2. *Add. Annotations :*—**Apld.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1; Weddle, Beck *v.* Hackett, [1929] 1 K. B. 321. **Refd.** Kennedy *v.* Thomassen, [1929] 1 Ch. 426.

5. *Add. Annotation :*—**Consd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

7. *Add. Annotation :*—**Consd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

13. *Add. Annotations :*—**Folld.** Barnett *v.* Sanker (1925), 41 T. L. R. 660. **Consd.** Ironmonger *v.* Dyne (1928), 44 T. L. R. 497 ; Ellesmere *v.* Wallace, [1929] 2 Ch. 1. **Refd.** Cooper *v.* Stubbs, [1925] 2 K. B. 753 ; Weddle, Beck *v.* Hackett, [1929] 1 K. B. 321.

15. *Add. Annotation :*—**Consd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

15a. **Limited to two parties.**]—ELLESMERE (EARL) *v.* WALLACE, No. 15c, *post.*

15b. **Agreement to refer betting disputes to arbitration.**]—Where an agreement to refer betting disputes to a particular arbitrator is an integral part of the bargain by which the bets are made, the agreement to refer is itself a contract by way of gaming or wagering & is unenforceable.—JOE LEE, LTD. *v.* DALMENY (LORD), SAME *v.* TATTERSALL'S COMMITTEE, [1927] 1 Ch. 300 ; 96 L. J. Ch. 174 ; 136 L. T. 375 ; 43 T. L. R. 119 ; 71 Sol. Jo. 20.

15c. **Contract between Jockey Club & racehorse owner.**]—(1) At the invitation of the Jockey Club, which was issued subject to the Club's Rules of Racing, deft. nominated a horse for two races, namely, (*a*) the Peel Handicap, & (2) a long course Selling Plate of 200 sovereigns. The horse did not run in either race. In an action by E. on behalf of himself & the other members of the Club, the trustees of the Club & W. & Sons as stakeholders, to enforce payment by the deft. of the entrance fees or the part of them agreed to be forfeited :—*Held :* the contracts for the two races, which were between the Club & deft. & not between the various entrants *inter se*, were in neither case by way of gaming or wagering within Gaming Act, 1845 (c. 109), s. 18, & the Club were entitled to recover from deft. the amount of the fees agreed to be forfeited in the two races.

(2) There cannot be more than two parties or two sides to a bet (RUSSELL, L.J.).—ELLESMERE (EARL) *v.* WALLACE, [1929] 2 Ch. 1 ; 98 L. J. Ch. 177 ; 140 L. T. 628 ; 45 T. L. R. 238 ; 73 Sol. Jo. 143. C. A.

15d. **Transactions in foreign currencies.** — IRONMONGER & Co. *v.* DYNE (1928), 44 T. L. R. 497, C. A.

Annotation :—**Consd.** Woddle, Beck *v.* Hackett (1928), 45 T. L. R. 67.

47. *Add. Annotation :*—**Distd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

51. *Add. Annotation :*—**Distd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

52. *Add. Annotation :*—**Distd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

53. *Add. Annotation :*—**Distd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

55. *Add. Annotation :*—**Distd.** Burrell *v.* Leven (1926), 42 T. L. R. 407.

58. *Add. Annotations :*—**Distd.** Burrell *v.* Leven (1926), 42 T. L. R. 407 ; Eldridge & Morris *v.* Taylor, [1931] 1 K. B. 416. **Refd.** Richardson *v.* Moncrieffe (1926), 43 T. L. R. 32.

62a. —— ——.]—An agreement by debtor to pay a debt resulting from a betting transaction :—*Held :* to be enforceable, although obtained

PART I. SECT. 1.

1 i. *Distinguished from speculative transactions.*]—The mere fact that a transaction is speculative does not make it a wagering one.—KANWAR BHAN-SUKHA NAND *v.* GANPAT RAI-RAM JIWAN (1926), I. L. R. 7 Lah. 442.—**IND.**

1 ii. ——.]—Every forward contract is to some extent speculative, but is not necessarily a wagering contract. The recognised test to be applied is whether at the time of entering into the contract there was a definite agreement or understanding between the parties that the performance of the contract by delivery of goods was not to be demanded, but that differences in price only should become payable.—RAMDIN HAZARI LAL *v.* MANSARAM MURLIDHAR (1929), I. L. R. 51 All. 027.—**IND.**

10 i. *Severable contract.*]—Pltf. & deft. entered into an agreement whereby pltf. was to train deft.'s horses for trotting, & deft. was to pay £2 per week for each horse, give pltf. one-fourth of stakes won, & further, when a horse was in a race & had a reasonable chance of winning, deft. was to put £5 on the totalisator & pay to pltf. any dividend received :—*Held :* (1) an agreement by an owner to pay to his trainer one-fourth of the stakes won was valid & enforceable ; (2) the term of the contract whereby investment was to be made on the totalisator by deft. in pltf.'s interest was unlawful ; (3) the whole contract was not rendered unlawful thereby, the promises being independent, & the lawful promises being capable of enforcement.—WILSON *v.* HOGARTH, [1927] N. Z. L. R. 332.—**N.Z.**

d i. ——.]—WILSON *v.* HOGARTH, No. 10 i, *ante*.—**N.Z.**

ss. *Agreement for payment of differences—Arising out of wagering contract.*]—Where a forward contract for the purchase & sale of goods is void on the ground of wagering under Contract Act, s. 30, a subsequent cross contract, as a result of which the differences payable under the original wagering contract are settled, is void under Bombay Act III. 1865, s. 1.—JIVANCHAND GAMBHIRMAL, ETC. *v.* LAXMINARAYAN GANESHRAM (1925), I. L. R. 49 Bom. 689.—**IND.**

sb. *Agreement by racehorse owner to pay trainer share of stakes won.*]—WILSON *v.* HOGARTH, No. 10 i, *ante*.—**N.Z.**

sc. *Contract to buy & sell on margin—Onus on defendant to prove illegal.*]—Defts., Toronto merchants, engaged pltfs., Chicago brokers, to buy & sell grain in Chicago on margin, which the latter did, advancing them money for which they sued. Defts. having refused to settle for losses sustained :—*Held :* assuming the State law to be that if the contract was to deal in such a way that only the differences in prices should be settled according to the rise & fall of the market, & no grain be either delivered or accepted, the contract would be a gambling contract & illegal, it lay upon defts. to establish clearly that such was the character of the dealing.—RICE *v.* GUNN (1881), 4 O. R. 579.—**CAN.**

PART I. SECT. 3, SUB-SECT. 1.—C.

55 i. —— *Forbearance to post as defaulter.*]—A wagering contract under Indian Contract Act is void to the extent that no ct. will enforce such a contract, but it is not illegal. A collateral agreement, therefore, based upon a transaction which was originally a wagering transaction, is not on that account illegal.

A cheque arising out of a betting transaction, but given in consideration of a person's promise to refrain from posting the drawer of the cheque before the Turf Club, & having him declared a defaulter, is valid, & for good consideration. — BANVARD *v.* MOOLLA (1928), I. L. R. 7 Ran. 263.—**IND.**

under the threat that, notwithstanding ct. proceedings were pending, he would be reported to Tattersall's.—BUXTON *v.* CUMMING (1927), 71 Sol. Jo. 232.

64. *Add. Annotation :*— **Distd.** Hyde *v.* Tyler (1926), 42 T. L. R. 442.

64a. —— ——.]—Pltf. backed a horse with deft. for £10 & the horse won the race. There was subsequently a dispute as to whether the result of the betting was payable at 100 to 1 or at 33 to 1. The parties agreed to refer the question to Tattersall's Committee. The Committee decided that the amount payable was £1,000, & that it was to be paid within seven days. In an action to recover the £1,000 pltf. alleged that deft. had agreed to abide by the decision of the Committee :— *Held :* as the parties only referred to Tattersall's Committee the question whether the bet was at 100 to 1 or at 33 to 1, & as there was no further agreement by deft. for good consideration to pay such sum as the Committee might find to be payable, the action failed.—HYDE *v.* TYLER (1926), 42 T. L. R. 652 ; 70 Sol. Jo. 856, C. A.

70. *Add. Annotation :*—**Apld.** Hyde *v.* Tyler (1926), 42 T. L. R. 442.

70a. —— **Agreement to compromise action.**]—A mere agreement to compromise an action brought for a gaming debt is not sufficient consideration on which to found an action on the agreement.—BURRELL & SON *v.* LEVEN (1926), 42 T. L. R. 407.

76. *Add. Annotation :—As to* (1) **Consd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

83. *Add. Annotation :*—**Distd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

94. *Add. Annotation :*—**Refd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

98. *Add. Annotation :*—**Refd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

107. *Add. Annotation :*—**Distd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

152. *Add. Annotation :*—**Refd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

164. *Add. Annotation :—As to* (1) **Consd.** Humphery *v.* Wilson (1929), 141 L. T. 469.

171. *Add. Annotation :*—**Refd.** Ramdutt Ramkissen Dass *v.* Sassoon E. D. & Co. (1929), 98 L. J. P. C. 58.

181. *Add. Annotation :*—**Consd.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153.

182. *Add. Annotation :*—**Consd.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153.

185. For "Gaming Act, 1838" read "Gaming Act, 1738."
Add. Annotation :—As to (1) **Refd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

188a. —— **Loan to bookmaker for general purposes of business.**]—A loan to a firm of bookmakers for the general purposes of the business & charged by deed on the assets of the partnership in the absence of proof that the money was required for the purpose of making bets, is not illegal as being "for the reimbursing or repaying any money knowingly lent or advanced for betting" within Gaming Acts, 1710 & 1835.—HUMPHERY *v.* WILSON (1929), 141 L. T. 469 ; 45 T. L. R. 535, C. A.

188b. ——.]—Money lent in England on a security with a view to its being used by the borrower in playing here a game of cards for money cannot be recovered in an English Ct.—CARLTON HALL CLUB *v.* LAURENCE, [1929] 2 K. B. 153 ; 98 L. J. K. B. 305 ; 140 L. T. 534 ; 45 T. L. R. 195 ; 73 Sol. Jo. 127, D. C.

189. *Add. Annotations :*—**Refd.** Hill *v.* Fox (1858), 31 L. T. O. S. 118 ; Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

191. *Add. Annotation :*—**Apld.** Humphery *v.* Wilson (1929), 141 L. T. 469.

192. *Add. Annotation :—As to* (2) **Apld.** Humphery *v.* Wilson (1929), 141 L. T. 469.

203. *Add. Annotations :—As to* (1) **Consd.** Ellesmere, Earl *v.* Wallace, [1929] 2 Ch. 1. *As to* (2) **Apld.** Carlton Hall Club, Ltd. *v.* Laurence, [1929] 2 K. B. 153. **Consd.** Humphery *v.* Wilson (1929), 141 L. T. 469.

205a. —— ——.]—Pltf. & other players of chemin de fer took it in turn to be croupier or banker. Deft., one of the players, bought counters to stake, & at the end of the game, having lost £500, he gave a cheque for that amount to pltf. in payment of what he had lost to pltf. &/or other persons. In an action on the cheque :—*Held :* a payment to a winner at gaming, or to a person who accepted payment for winners, in the form of a cheque was void & unenforceable, & the action failed.—RICHARDSON *v.* MONCRIEFFE (1926), 43 T. L. R. 32.

213. *Add. Annotation :*—**Consd.** Humphery *v.* Wilson (1929), 141 L. T. 469.

224. *Add. Annotation :—As to* (1) **Refd.** *Re* Wilson, *Ex p.* Salaman *v.* Keith, Prowse (1925), 133 L. T. 814.

226. *Add. Annotation :*—**Refd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

227. *Add. Annotation :*—**Consd.** Ward *v.* British Oak Insurance Co., [1932] 1 K. B. 392.

229. *Add. Annotation :*—**Refd.** Falcon *v.* Famous Players Film Co. (1925), 42 T. L. R. 91.

PART I. SECT. 4, SUB-SECT. 2.

h i. ——.]—Where deft. sold for pltf. horses won by pltf. at a raffle, & received the purchase money :—*Held :* he could not refuse to pay it over, on the ground that pltf. had obtained the horses by gambling.—JAMIESON *v.* SHERWOOD (1856), 14 U. C. R. 282.—**CAN.**

PART I. SECT. 5.

165 i. *Action between partners—Defences.*]—GIBBS *v.* CANN, [1932] 1 D. L. R. 282 ; 56 Can. C. C. 346.—**CAN.**

PART I. SECT. 6, SUB-SECT. 1.

181 iii. ——.]—Where during a game of dice cheques are given by one player to another player for money advanced to enable the former to continue the game, such cheques will be deemed to have been given for an illegal consideration.

If in an action brought on such cheques the evidence discloses the illegal consideration the trial judge should dismiss the action, even though the illegality has not been pleaded.—GOGGINS *v.* MORRISON, [1925] 2 D. L. R. 1203 ; [1925] 2 W. W. R. 75.—**CAN.**

m i. —— *Gambling on grain exchange.*]—Money advanced or lent to enable the borrower to carry out an illegal purpose as, *e.g.*, gambling transaction on a grain exchange, cannot be recovered where, at least, the purpose has been carried out wholly or to a substantial extent.—THOMAS *v.* PARLEY (Sask.), [1929] 3 D. L. R. 755 ; 2 W. W. R. 317.—**CAN.**

PART I. SECT. 7, SUB-SECT. 2.

o i. —— —— *Containing words "value received."*]—Deft. gave D., a fellow player in a game of dice to whom he had lost $400, a promissory note for $1,200 to cover said $400 & $800 in cash which D. then lent to deft. On maturity of the note, deft. paid $700 & gave D. a new note for $500, which note D. endorsed before maturity & for value to pltf. who had no notice of the consideration for which that note or the original note had been given,

239. *Add. Annotations :*—**Folld.** Soc. Anon. des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789. **Consd.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153.

240. *Add. Annotations :*—**Apld.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153. **Refd.** Soc. Anon. des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789.

243. *Add. Annotations :*—**Folld.** Soc. Anon. des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789. **Consd.** Carlton Hall Club, Ltd. *v.* Laurence, [1929] 2 K. B. 153.

245. *Add. Annotations :*—**Folld.** Soc. Anon. des Grands Etablissements de Touquet Paris-Plage *v.* Baumgart (1927), 96 L. J. K. B. 789. **Consd.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153.

245a. —— —— ——.]—Where money is lent in a foreign country for the purposes of gaming & gaming in that country is not illegal, & cheques payable in England are given for the money lent, pltf. can ignore the security & sue as for money lent to deft.—SOCIÉTÉ ANONYME DES GRANDS ETABLISSEMENTS DE TOUQUET PARIS-PLAGE *v.* BAUMGART (1927), 96 L. J. K. B. 789; 136 L. T. 799; 43 T. L. R. 278.

Annotation :—**Consd.** Carlton Hall Club *v.* Laurence, [1929] 2 K. B. 153.

Part II.—Games, Gaming and Gaming Houses.

247. *Add. Annotation :* — **Consd.** Ellesmere Wallace, [1929] 2 Ch. 1.

251. *Add. Annotation :*—**Refd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

252. *Add. Annotation :*—**Consd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

253. *Add. Annotation :*—**Consd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

254. *Add. Annotations :—As to* (2) **Consd.** R. *v.* Kirby, Parker & Patrick (1927), 20 Cr. App. Rep. 12; R. *v.* O. K. Social & Whist Club, Ltd. (1929), 45 T. L. R. 570. **Refd.** R. *v.* Brennand (1930), 47 T. L. R. 22.

255. *Add. Annotation :*—**Refd.** Davis *v.* Parker, [1931] 2 K. B. 210.

255a. —— —— ——.]—The questions whether a house is used for unlawful gaming within sect. 4 of the above Act, & whether a game is unlawful within Betting Act, 1853 (c. 119), s. 3, are for the judge, & not the jury.—R. *v.* KIRBY, PARKER & PATRICK (1927), 20 Cr. App. Rep. 12, C. C. A.

260. *Add. Annotations :—As to* (4) **Refd.** Richardson *v.* Moncrieffe (1926), 43 T. L. R. 32. *As to* (6) **Consd.** Davis *v.* Parker, [1931] 2 K. B. 210. *Generally*, **Refd.** R. *v.* Berg, Britt, Carré & Lummies (1927), 20 Cr. App. Rep. 38; R. *v.* O. K. Social & Whist Club, Ltd. (1929), 45 T. L. R. 570; Daniels *v.* Pinks, [1931] 1 K. B. 374.

261. *Add. Annotation :*—**Refd.** Richardson *v.* Moncrieffe (1926), 43 T. L. R. 32.

267a. ——.]—Progressive whist, where the partners are shuffled as well as the cards, is not a game of skill, &, if played for money prizes, is an unlawful game.—R. *v.* O. K. SOCIAL & WHIST CLUB, LTD. (1929), 45 T. L. R. 570; 73 Sol. Jo. 451; 21 Cr. App. Rep. 119, C. C. A.

275. *Add. Annotation :*—**Folld.** Bennett *v.* Ewens, [1928] 2 K. B. 510.

The $500 note bore the words "value received." In an action in the county ct. on the $500 note the defence was set up that it had been given in whole or in part for a gambling debt; &, therefore, because of sect. 56 (*a*) & (*c*) of County Cts. Act, R. S. M., 1913, the county ct. had no jurisdiction. Judgment for pltf.—HAMMER *v.* FINKELSTEIN, [1931] 1 W. W. R. 769; 2 D. L. R. 738; 39 Man. L. R. 447.—**CAN.**

PART I. SECT. 7, SUB-SECT. 3.

a i. —— *Contract to buy & sell on margin.*]—PEARSON *v.* CARPENTER & SON (1904), 35 S. C. R. 380.—**CAN.**

a ii. —— *Contract not speculative transaction on part of plaintiff.*]—WOODWARD & CO., LTD. *v.* KOEFOED (1921), 62 D. L. R. 431; 37 Can. Crim. Cas. 329; 31 Man. L. R. 286; [1921] 3 W. W. R. 232.—**CAN.**

PART II. SECT. 1, SUB-SECT. 1.

252 i. —— *Prizes provided out of admission money.*]—A person hired a hall for one night, & another hall for two nights, & advertised that whist drives, open to the public on payment of one shilling for admission, would be held in the halls on those nights. A large number of people attended, & prizes were awarded to the successful players. The purchase of the prizes was defrayed out of the admission money, any balance over being retained by the promoter :—*Held :* (1) the playing of progressive whist was gaming, in view of the facts that the element of chance predominated in the game, & that the prizes were derived from the admission money, & it was immaterial whether the proceedings were or were not detrimental to the morals of the community; (2) accused had managed, conducted, or carried on gaming in the premises, although his operations had been restricted to three isolated occasions.—BUNTON *v.* MILLER, [1926] S. C. (J.) 120.—**SCOT.**

PART II. SECT. 1, SUB-SECT. 2.—D.

270 ii. —— *Game played by problem checker boards.*]—D'ORIO *v.* LEIGH & CUTHBERTSON, LTD., [1929] 2 W. W. R. 171; 41 B. C. R. 153; *affg.*, [1929] 1 W. W. R. 122.—**CAN.**

PART II. SECT. 1, SUB-SECT. 2.—E.

b i. ——.]—R. *v.* ARNOLD, [1927] 4 D. L. R. 206; 48 Can. Crim. Cas. 101; 60 O. L. R. 582.—**CAN.**

b ii. —.]—An automatic vending machine which answers the description in sect. 986 (4) of the Criminal Code, as amended by 1930 (c. 11), s. 27, is a "means of contrivance for playing a game of chance," within subsect. (2) of sect. 986, regardless of whether there is any real or material value in what the operator, *i.e.* the player, of the machine receives at times, as the result of operating it.—R. *v.* FREEDMAN, [1931] 1 W. W. R. 775; 55 Can. C. C. 288; 39 Man. L. R. 407.—**CAN.**

b iii. ——.]—R. *v.* WILKES, R. *v.* HISCOCK, R. *v.* ROBERTSON [1931], 1 D. L. R. 995; 66 O. L. R. 319; 56 Can. C. C. 1.—**CAN.**

b iv. ——.]—Accused had on his premises an automatic vending machine in which customers placed a five cent coin, pulled a lever, & received from the machine a package of candy, with or without "slugs," varying in number, which had no commercial or exchangeable value but might be used to operate the machine to show printed legends for amusement only, no candy being emitted. The candy package emitted for the coin deposited was such as that sold over the counter for five cents, & on the sale of the candy emitted the accused made a profit :—*Held :* accused was not guilty, under the Criminal Code, of keeping a common gaming house.—ROBERTS *v.* R., [1931] S. C. R. 417; 3 D. L. R. 225; 56 Can. C. C. 144.—**CAN.**

b v. ——.]—R. *v.* ATHONAS (1931), 56 Can. C. C. 146.—**CAN.**

b vi. ——.]—In view of the manner in which the automatic vending machine in question herein was operated by accused, its lessee, in exchanging for merchandise the slugs which the players received in varying numbers from the machine :—*Held :* it was a "means or contrivance for playing a game of chance," within sect. 986 (2), (4) of the Criminal Code.—

276. *Add. Annotation :*—**Consd.** Davis *v.* Parker, [1931] 2 K. B. 210.

278. *Add. Annotations :—As to* (1) **Folld.** Bennett *v.* Ewens, [1928] 2 K. B. 510. *As to* (2) **Consd.** R. *v.* Kirby, Parker & Patrick (1927), 20 Or. App. Rep. 12.

278a. Certainty of winning something.]—(1) A machine may be used for the purposes of "gaming" & "betting" even though, if the directions affixed to it are obeyed, it is certain that the user will win something.

(2) In a conflict of evidence it is for the jury to decide for what purposes persons "resort" to the premises in question.—R. *v.* BRENNAND (1930), 47 T. L. R. 22; 74 Sol. Jo. 788; 22 Cr. App. Rep. 95, C. C. A.

284a. House used for game where chances not alike favourable to all players.]—The committee of management of a members' club installed in the club certain machines for the use of members only & for the purpose of giving additional pleasure to the members. The machines were operated by means of pennies inserted in a slot. The player, having first inserted a penny, depressed a handle, causing three cylinders to revolve on which were depicted bells, bars & fruits. On the cylinders ceasing to revolve the player either lost his penny or received winnings up to twenty pennies, according to the combination of fruits &/or bells &/or bars opposite a pointer. The machine automatically filled a jack pot from its winnings, & the pennies in the jack pot were returned to the player who obtained the combination of three bars. The machines were similar in type to other machines for the user of which persons had been convicted under the Gaming Houses Act, 1854 (c. 38), where the persons had used the machines in shops or places of public entertainment or in proprietary clubs. Four members of the committee of management of the club in question were charged under Gaming Houses Act, 1854 (c. 38), s. 4, for being persons having the care & management of certain premises, to wit, the club, which were then being used for the purpose of unlawful gaming being carried on therein. The contention of the members of the committee of management was that the position of a members' club was analogous to that of a private house, & that gaming upon the machines in a members' club was therefore not unlawful gaming :—*Held :* in order that a house should be a common gaming house within s. 2 of the Gaming Act, 1845 (c. 109), s. 2, it was not necessary that some person should be keeping the house for his gain, lucre or living; it was sufficient that it was a house kept or used for playing at any game where the chances of the game being played therein are not alike favourable to all the players; the chances of the game played on the machines in this club were not alike favourable to all the players, & that the club was a members' club did not prevent the club premises being kept or used for the purpose of unlawful gaming being carried on therein, & therefore the members of the committee of management of the club could be convicted of the offence charged under Gaming Houses Act, 1854 (c. 38), s. 4.—DANIELS *v.* PINKS, [1931] 1 K. B. 374; 100 L. J. K. B. 337; 144 L. T. 372; 95 J. P. 23; 47 T. L. R. 166; 75 Sol. Jo. 59; 29 L. G. R. 120; 29 Cox, C. C. 221, D. C.

R. *v.* RICHARDS, [1932] 1 W. W. R. 118; 2 D. L. R. 361; 44 B. C. R. 430. **CAN.**

b vii. ——.]—R. *v.* RICHARDS (No. 2), [1932] 1 W. W. R. 177.—**CAN.**

f i. —— ——.]—*Held :* a machine known as the "Caille Victory Vendor" was one to which the prohibition in Gaming Machines (Scotland) Act, 1917 (c. 23), s. 1 (1), applied.—ULIVI *v.* MILLER, [1927] S. C. (J.) 87.—**SCOT.**

276 i. *Whether dominant element of skill.*]—Deft. kept for use by the public on his premises a number of machines, known by the name of "Diddler." Any one wishing to use one of these machines purchased from deft. discs at the price of seven for 6*d*. He inserted one disc in a slot & pulled a handle, which caused three rollers to revolve. On each roller was printed a number of devices, such as cherries, roses, etc. If certain combinations of these devices stopped opposite a pointer on the face of the machine, the player won a certain number of discs. With these he could purchase on the premises certain goods. The winning combinations & the odds for each were printed on the front of the machine in view of the player. If none of these combinations stopped opposite the pointer, the player lost his disc. The machine was fitted with a control, by which the player could stop the rollers, one at a time, & so endeavour to obtain a winning combination. There were 15 machines on the premises. Deft. was prosecuted under Gaming Houses Act, 1854, s. 4, that he, being the occupier of the premises, did use them for the purpose of unlawful gaming. The justice was satisfied on the evidence that the majority of the persons who used the machine would be players of less than average skill, &, therefore, held that the game was one in which the chances were not favourable alike to all players, including the owner of the machine, & accordingly convicted the deft. :—*Held :* the conviction was right.—GORDON *v.* DUNLEVY, [1928] I. R. 595.—**IR.**

276 ii. ——.]—R. *v.* LIPTROT, [1928] 3 W. W. R. 60; 50 Can. Crim. Cas. 244.—**CAN.**

276 iii. ——.]—The operation of the slot machine in question herein, when, at least, it is exposed for use with the object of gain to the proprietor, & operated by his customers, held to be a "mixed game of chance & skill" within Criminal Code, s. 226 (*a*).—R. *v.* CANADA MINT CO., [1928] 4 D. L. R. 539; [1928] 3 W. W. R. 195; 50 Can. Crim. Cas. 384.—**CAN.**

276 iv. ——.]—R. *v.* WOLFE, [1928] 4 D. L. R. 941; [1928] 2 W. W. R. 689; 50 Can. Crim. Cas. 189.—**CAN.**

sa. *Confiscation—Necessity for search warrant.*]—R. *v.* ROCCO, [1931] 2 W. W. R. 55; 55 Can. C. C. 323; 39 Man. L. R. 453.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.

sd. *General rule.*]—Where a game as played on premises encourages an indulgence in all classes of the community of the propensity to gamble, & is injurious to public morals & a common law nuisance, the premises are a common gaming house.—DAWSON *v.* SINCLAIR, [1926] N. Z. L. R. 721.—**N.Z.**

284 i. *Proprietary club—Need not be open to public.*]—A common gaming house is one in which a large number of persons are invited habitually to congregate for the purpose of gaming, & it makes no difference that its use is restricted to subscribers & members of a club, & it is not open to all persons desirous of using it.—*Re* CHINNIAH (1923), I. L. R. 47 Mad. 426.—**IND.**

284 ii. —— *In which poker played.*]—An incorporated co., the proprietor of a "club" in which membership was secured by payment of a periodical fee, & where stud poker was played, the players being required to buy cards from the "club" & gum, fruit, candy or soft drinks being supplied on each sale of cards :—*Held :* to have been properly convicted for keeping a common gaming house.—R. *v.* TRAINMEN'S CLUB (1926), 45 Can. Crim. Cas. 231; 20 Sask. L. R. 461; [1926] 1 W. W. R. 830.—**CAN.**

c i. *Place or office kept for making contracts for sale of stocks & goods on differences.*]—R. *v.* HARKNESS (1905), 6 O. W. R. 219; 10 O. L. R. 555.—**CAN.**

e i. —— ——.]—On a prosecution for keeping a common gaming house :—*Held :* premises on which were found cards, poker chips, dice, a round cloth-covered table & a "punch board," were "provided with any means or contrivance for unlawful betting or gaming" within Criminal Code, s. 986.—R. *v.* COY, [1925] 3 W. W. R. 538; 44 Can. Crim. Cas. 119.—**CAN.**

e ii. —— ——.]—The keeping of a "multiseller" for gain :—*Held :* to render the place in which it was kept & where it was "played" by persons resorting thereto, a common gaming house.—R. *v.* ELASZ (1926), 45 Can. Crim. Cas. 257; 20 Sask. L. R. 605; [1926] 2 W. W. R. 308.—**CAN.**

e iii. —— ——.]—R. *v.* DONALD, [1931] 44 B. C. R. 514.—**CAN.**

sf. *Under Gaming Act*, 1908, *s.* 4.]—WEATHERED *v.* FITZGIBBON, [1925] N. Z. L. R. 331.—**N.Z.**

284b. Game must be unlawful.]—Applts., proprietors of a place known as "Fun Fair," invited the public to resort thereto, & the public did so resort, for the purpose of playing for money at a game with an automatic machine called the "Circle of Skill," which the justices found was a game of skill:—*Held:* applts. could not be convicted of permitting the above place to be opened for the purpose of unlawful gaming.—DAVIS *v.* PARKER, [1931] 2 K. B. 210; 100 L. J. K. B. 590; 95 J. P. 146; 47 T. L. R. 418; 29 L. G. R. 387; *sub nom.* PARKER *v.* DAVIS, 145 L. T. 188; 75 Sol. Jo. 312; 29 Cox, C. C. 297, D. C.

286. *Add. Annotation:*—**Apld.** R. *v.* Berg, Britt, Carré & Lummies (1927), 20 Cr. App. Rep. 38.

288a. - Members of committee of members' club.]—DANIELS *v.* PINKS, No. 284a, *ante*.

304. *Add. Annotation:*—**Refd.** Allen *v.* Whitehead (1929), 45 T. L. R. 655.

305. *Add. Annotation:*—**Refd.** Allen *v.* Whitehead (1929), 45 T. L. R. 655.

Part III.—Betting and Betting Houses.

310. After this case add "**Agreement to collect betting debts—Contrary to public policy.**]—*See* ACTION, No. 599a, *ante*."

Racecourse betting.]—*See* Racecourse Betting Act, 1928 (c. 41).

318. *Add. Annotation:*—**Apld.** Richards *v.* Price, [1931] 2 K. B. 204.

319a. "Loitering for purpose of bookmaking"—Distribution in street of entry forms of football

PART II. SECT. 2, SUB-SECT. 2.

h i. —— —— *Acting as "banker" but not residing in common gaming house.*]—*Held:* not to justify a conviction as keeper of the house.—R. *v.* MARK (1924), 43 Can. Crim. Cas. 368.—**CAN.**

h ii. —— —— *Under Gaming Act*, 1908, *s.* 4.]—WEATHERED *v.* FITZGIBBON, [1925] N. Z. L. R. 331.—**N.Z.**

h iii. —— —— *Trading in sale & purchase of cotton—On payment of differences.*]—EMPEROR *v.* THAVARMAL RUPCHAND (1928), I. L. R. 53 Bom 367.—**IND.**

h iv. —— —— *Acting as dealer.*]—A person who acts as "dealer" in a game of chance but is not a player & not interested in any way in the profits made from the carrying on of the game is not "assisting in the care, government, or management" of the place in which the game is played, within sect. 229 (2) of Criminal Code, &, therefore, cannot be deemed a "keeper" thereof.—R. *v.* PANG DAT & GIN BO (Man.), [1929] 3 W. W. R. 513; [1930] 1 D. L. R. 625; 38 Man. L. R. 365; 52 Can. Crim. Cas. 305.—**CAN.**

h v. —— —— *Assisting caterer other than club controlling premises.*]—A person who has nothing whatever to do with the care, management, or government of a common gaming house can be liable as the keeper thereof only if his acts were in aid of the keeper. In the present case what the accused did was held to have been, not in aid of the club which controlled & managed the premises, but in aid of a caterer other than the club, although both the co. & the club were managed by one & the same person.—R. *v.* NELSON, [1929] 2 D. L. R. 317; 1 W. W. R. 665; 51 Can. Crim. Cas. 213; 24 Alta. L. R. 59.—**CAN.**

h vi. —— —— —— *Persons in minor positions.*]—Parliament did not intend that clerks & others in minor positions not charged or appearing to be charged with the care, government or management of a disorderly house should be deemed to be keepers.—R. *v.* SELOCK, [1931] 2 W. W. R. 745; 56 Can. C. C. 243; 25 Alta. L. R. 504.—**CAN.**

n i. —— ——.]—The mere fact that the room in which a game of chance is played is in the same premises as & communicating with a shop under the same management as the room does not justify the finding that there was in the game an element of "gain" within the meaning of sect. 226 (*a*) of Criminal Code, if there is no evidence that any purchase was made from the shop by any of the players at any time.—R. *v.* PANG DAT & GIN BO (Man.), [1929] 3 W. W. R. 513; 52 Can. Crim. Cas. 305.—**CAN.**

n ii. —— ——.]—The fact that the accused, who was charged with keeping a common gaming house, sold beer, on the occasion in question, to the players on his premises held not sufficient in itself to justify the inference that "gain," within the meaning of sect. 226 of the Code, resulted to him, where there was no evidence that he was carrying on the business of selling beer.—R. *v.* LEMAIRE, [1929] 2 D. L. R. 795; 1 W. W. R. 321; 51 Can. Crim. Cas. 137; 38 Man. L. R. 42.—**CAN.**

n iii. —— ——.]—R. *v.* RADINSKY (B. C.), [1929] 3 W. W. R. 212; 52 Can. Crim. Cas. 131.—**CAN.**

n iv. —— ——.]—R. *v.* FORDER (1930), 54 Can. C. C. 388.—**CAN.**

r i. —— ——.]—R. *v.* CHARLIE SAM, [1929] 1 D. L. R. 166; 50 Can. Crim. Cas. 364; [1928] 3 W. W. R. 424.—**CAN.**

r ii. —— —— ——.]—Before the presumption arising under sect. 985 of Criminal Code from the finding of cards, dice, etc., can be held to have been established all the conditions of its existence which are provided for in the section must be strictly proved; therefore where the search warrant under which the place in which they were found is alleged to have been entered is not properly proved the presumption does not exist.—R. *v.* LEMAIRE, [1929] 2 D. L. R. 795; 1 W. W. R. 321; 51 Can. Crim. Cas. 137; 38 Man. L. R. 42.—**CAN.**

r iii. ——————.]—On an appeal from a conviction for unlawfully keeping a common betting house:—*Held:* certain perforated pasteboard cards marked in duplicate, & similar to those used for checking hats at a hotel, constituted, under all the circumstances & in the absence of any explanation of their presence, a "means or contrivance for betting" within sect. 986 (2) of the Criminal Code, &, therefore, the finding of them on the accused premises raised a *primâ facie* case against him under said sub-sect. In order to raise a *primâ facie* case under sect. 986 (2) it is not necessary that the search on which the means or contrivances for betting were found should have been made under a valid search warrant.—R. *v.* MILLER, [1931] 1 W. W. R. 537; 3 D. L. R. 213; *affd.*, [1931] S. C. R. 483; 3 D. L. R. 795; 56 Can. C. C. 272.—**CAN.**

PART II. SECT. 2, SUB-SECT. 3.

301 i. *What amounts to suffering gaming—Actual knowledge not necessary—But some proof necessary.*]—Where betting lasting for an hour & a half with a considerable number of men went on in a room in a hotel near the bar where the licensee was serving:—*Held:* on the evidence, notwithstanding the denial of the licensee that he did not know betting was taking place, he was properly convicted of an offence under Licensing Act, 1917, s. 139.—NORVAL *v.* NOBLETT, [1928] S. A. A. R. 38.—**AUS.**

g i. ——.]—Conviction for allowing gambling on premises for which there was a retail liquor licence quashed, the holder of the licence not having knowledge of the gambling.—R. *v.* WHELAN (1908), 9 W. L. R. 424.—**CAN.**

PART II. SECT. 2, SUB-SECT. 4.

s i. —— —— *Effect of inaccuracy.*]—*Held:* as the inaccuracy was not so material or substantial as to mislead a stranger if one were to go to the locality & attempt to find the place intended to be raided with the help of the warrant, it did not amount to more than a misdescription & was not of a nature to vitiate the warrant.—EMPEROR *v.* THAVARMAL RUPCHAND (1928), I. L. R. 53 Bom. 367.—**IND.**

a i. —— *Invalid—Effect.*]—A conviction for keeping a common gaming house may be sustained, even though the search warrant, under which entry was made, was defective.—R. *v.* PIDGEON (1926), 45 Can. Crim. Cas. 233; 37 B. C. R. 309; [1926] 3 W. W. R. 765.—**CAN.**

sg. *Witness—Required to be examined—Right to certificate of freedom.*]—R. *v.* SCOTT, *Ex p.* SCOTT, [1927] S. A. S. R. 492.—**AUS.**

PART III. SECT. 1.

t i. *Cards on premises—No facilities for innocent use.*]—MILLER *v.* R., [1931] 3 D. L. R. 795; S. C. R. 483; 56 Can. C. C. 272.—**CAN.**

310 i. *Betting or betting business—Not illegal ipso facto.*]—Neither in India nor in England has the legislature gone so far as to enact in express terms that betting transactions are illegal, but it is clear that in both countries the legislature regards it as undesirable in the public interest that any assistance should be afforded by cts. of law to enforce obligations which have been created in connection with betting or wagering transactions.—MITCHELL *v.* TENNENT (1925), I. L. R. 52 Calc. 677.—**IND.**

PART III. SECT. 2, SUB-SECT 1.

314 i. *Enclosed grounds — Cricket ground.*]—A grass field occupied by a cricket club, was bounded on all four

pool.]—Resps., on behalf of N., distributed forms in the street containing an invitation to participate in football pools, together with an entry form & particulars of the terms of participation therein. The recipients who accepted the invitation sent to N. forecasts of the results of football matches specified in the forms, together with a statement of the amount they were prepared to stake thereon. This was not payable until after the matches had been played. The aggregate of these amounts was divided among those sending correct forecasts, less a commission retained by N.:—*Held:* resps. were guilty of loitering on behalf of N. for the purpose of bookmaking—*i.e.* the negotiating by N. of bets made between the participants in the pool *inter se.*—RICHARDS *v.* PRICE, [1931] 2 K. B. 204; 100 L. J. K. B. 526; 145 L. T. 189; 95 J. P. 151; 47 T. L. R. 411; 75 Sol. Jo. 345; 29 L. G. R. 396; 29 Cox, C. C. 301, D. C.

322. *Add. Annotation:*—**N.F.** Everett *v.* Shand (1931), 145 L. T. 216.

322a. Totalisator—Not included.]—*Held:* persons betting by means of the contrivance known as a totalisator on a dog-race do not act in contravention of Vagrant Act (Amendment) Act, 1873 (c. 38), s. 3, inasmuch as a dog-race is not in itself a "game or pretended game of chance" within the sect.; &, consequently, where a dog-racing track & a totalisator thereat belonged to a co., the contrivance being worked by its clerks, that charges against the secretary & managing director of the co. & some of the clerks, of aiding & assisting persons betting at the track by means of the contrivance on dog-races in contravention of the section, were not maintainable & should be dismissed.—EVERETT *v.* SHAND, [1931] 2 K. B. 522; 100 L. J. K. B. 612; 145 L. T. 216; 95 J. P. 147; 47 T. L. R. 415; 75 Sol. Jo. 393; 29 L. G. R. 390; 29 Cox, C. C. 309.

323. *Add. Annotation:*—**Consd.** Everett *v.* Shand (1931), 145 L. T. 216.

325a. —— ——.]—EVERETT *v.* SHAND, No. 322a, *ante.*

326. *Add. Annotation:*—**Refd.** Everton *v.* Walker (1927), 137 L. T. 594.

330. *Add. Annotation:*—**Consd.** Everton *v.* Walker (1927), 137 L. T. 591.

358. *Add. Annotations:*—*As to* (4) **Refd.** Clark *v.* Westaway, [1927] 2 K. B. 597. *As to* (5) **Refd.** Clark *v.* Westaway, [1927] 2 K. B. 597. *Generally,* **Refd.** Schneiders *v.* Abrahams, [1925] 1 K. B. 301.

358a. Totalisator—Greyhound racing track.]—SHUTTLEWORTH *v.* LEEDS GREYHOUND ASSOCIATION (1932), 96 J. P. Jo. 846; 174 L. T. Jo. 490, D. C.

sides by a wire fence in good condition. The fence along its western side ran at the foot of a railway embankment, which was admittedly not a public place within Street Betting Act, 1906, s. 1 (4). Between the northern end of this fence & the fence bounding the northern side of the ground was a gateway, 3 feet wide, giving access to the ground. The gateposts were in position, but the gate had been missing for some time. The portion of the field adjoining the gateway was not used for cricket, & the public had unrestricted access to that portion & gathered there in numbers every day. In a prosecution for loitering for the purpose of betting:—*Held:* the cricket ground was not a "public place" within sect. 1 (4) in respect that it could not be described as "unenclosed."—FOGGO *v.* HILL, [1932] S. C. (J.) 6.—**SCOT.**

sk. *Pathway—Sole access to three houses.*]—A pathway leading from public land to three separate dwelling-houses, to which it provided the only means of access, was entered from the lane through a gate which was never locked:—*Held:* the pathway was a "public passage," & a "street" within Street Betting Act, 1906 (c. 43), s. 1.—MACKIE *v.* CROMBIE, [1926] S. C. (J.) 29.—**SCOT.**

PART III. SECT. 2, SUB-SECT. 3.

f i. —— *Investment received elsewhere than at totalisator itself.*]—During the progress of a trotting club's meeting, totalisator tickets having been sold at the members' & stewards' stands from boxes not situated in the totalisator building, applt., a servant of the club, was convicted of the offence of permitting an investment on the totalisator to be received elsewhere than at the totalisator itself:—*Held:* an investment received in an entirely separate building with no connection & no attempt at synchronising with the main totalisator is a payment made elsewhere than at the totalisator itself, & applt. was rightly convicted under Gaming Act, 1908, s. 30 (3).—GOGGIN *v.* YOUNG, [1928] N. Z. L. R. 753.—**N.Z.**

p i. ——.]—A pak-a-pu ticket is an instrument of gaming within Gaming & Betting Act, 1912, s. 37.—JENNINGS *v.* YET CHING (1931), 48 N. S. W. W. N. 248.—**AUS.**

r i. *Paraphernalia for conducting betting house.*]—R. *v.* BRENNAN & NEWLANDS (1928), 49 Can. Crim. Cas. 354.—**CAN.**

PART III. SECT. 4, SUB-SECT. 1.—A.

m (p. 438) **i.** —— ——.]—A person standing stationary in a public street for a considerable period is not thereby guilty of the offence of loitering under Lottery & Gaming Act, 1917, s. 40, although he has been requested by a police constable to cease from loitering.—MATTIN *v.* CURRIE, [1927] S. A. S. R. 459.—**AUS.**

k (p. 439) **i.** *S. P.* MUHAMMAD KHAN *v.* R. (1927), I. L. R. 9 Lah. 255.—**IND.**

t (p. 440) **i.** —— —— ——.]—Where certain persons rented an enclosure, part of a larger enclosure abutting on a public road, & invited others to come there & make bets:—*Held:* any person found betting there was rightly convicted of gambling in a public place.—R. *v.* TULSHI DAS (1924), I. L. R. 46 All. 787.—**IND.**

sl. *Shed—Used by workmen for meals.*]—At the trial of a workman, who was charged with using a place for the purpose of betting it was proved that on five dates libelled, between the hours of 12 noon & 1 p.m., he had engaged in ready-money betting with fellow-workmen in a shed in the employers' premises. The workmen were allowed to use the shed for the purpose of taking their meals, but the accused's betting transactions were carried on without the permission or knowledge of his employers:—*Held:* the shed was a "place" used by the accused for the purpose of betting.—YOUNG *v.* DARRAH, [1929] S. C. (J.) 17.—**SCOT.**

PART III. SECT. 4, SUB-SECT. 1.—B.

g i. ——.]—Deft. assocn. was incorporated as a co. by letters patent, which were amended by adding certain objects & purposes, viz., to encourage horse-racing, to construct, maintain, & operate race-courses, & other like objects & purposes. The co. established a race-course & held race-meetings, at which betting on the races was permitted, & was convicted under Criminal Code, ss. 228, 235, of the offences of keeping a common betting house, & recording & registering bets, etc.:—*Held:* the co. was not protected by sect. 235 (2).—R. *v.* LONG BRANCH RACING ASSOCN., [1925] 2 D. L. R. 46; 43 Can. Crim. Cas. 283; 56 O. L. R. 303.—**CAN.**

PART III. SECT. 4, SUB-SECT. 2.—A.

o i. *Sale of totalisator vouchers.*]—A co. occupying a greyhound race-course on which a totalisator was erected, & the manager of the totalisator, were charged with contravening Betting Act, 1853, s. 1. It was proved that persons betting through the totalisator purchased vouchers costing 2*s.* each, which were marked with the name of the dog on which the purchaser desired to bet. These vouchers represented the stakes, & after the race the whole money staked was divided among the backers of the winning dog, under deduction of 10 per cent. to cover expenses:—*Held:* the purchasers of vouchers entered into the betting transactions with each other, & not with the co. or the manager; & the fact that a charge was made for the use of the totalisator & for the service of operating it did not involve the co. or the manager in a contravention of the sects. libelled.—STRATHERN *v.* SCOTTISH GREYHOUND RACING CO., [1930] S. C. (J.) 24.—**SCOT.**

363 i. *What persons liable to penalties—Persons "keeping"—Servant in sole charge.*]—Any person, whether servant or agent, or on his own account, who has for the time being the exclusive charge of premises, & who uses those premises for the purpose of betting, is guilty of keeping or using the premises as a common gaming house under Gaming Act, 1908, s. 4, even though he is not the owner, & the owner is ignorant of the use to which the premises were put, & though the premises so used are only part of the

399a. Question for jury.]—R. *v.* BRENNAND, No. 278a, *ante*.

401a. Holding whist drive.]—Whist drives, where an entrance fee is charged & prizes offered, are illegal under Betting Act, 1853 (c. 119), s. 1.—BENNETT *v.* EWENS, [1928] 2 K. B. 510; 97 L. J. K. B. 801; 139 L. T. 335; 92 J. P. 120; 44 T. L. R. 545; 72 Sol. Jo. 354; 28 Cox, C. C. 522; 26 L. G. R. 396, D. C.

415a. -.]—Applts. were the responsible proprietors of a four-page weekly newspaper, which was sold at 6*d.* a copy, & which had in winter a weekly circulation of over 32,000 copies. The newspaper contained what was called a "Free Football Competition" with a coupon giving particulars of future football matches & a column for the competitors to fill in their forecast of the results, a prize of £150 being offered for a correct forecast of all the results & a prize of £100 for a correct forecast of nine results, but no money was to be sent with the coupons. Applts. were summoned for unlawfully publishing a coupon of a ready-money football betting business contrary to sect. 1 of the above Act. The justices found that the majority of the persons who bought the newspaper did so for the sake of the coupon, & that applts. had circulated coupons of a ready-money football betting business, & they convicted applts.:—*Held:* the case was typical of the mischief aimed at by the Act, & the justices' decision must be affirmed.—SUTTLE *v.* CRESSWELL, [1926] 1 K. B. 264; 95 L. J. K. B. 367; 134 L. T. 144; 90 J. P. 3; 42 T. L. R. 75; 23 L. G. R. 695; 28 Cox, C. C. 94, D. C.

Annotations:—**Apld.** Turf Publishers *v.* Davies, [1927] W. N. 190. **Expld.** Leng (Sheffield Telegraph) *v.* Sillitoe, [1929] 1 K. B. 366. **Consd.** Baker *v.* Sillitoe (1931), 47 T. L. R.

415b. -TURF PUBLISHERS, LTD. *v.* DAVIES, [1927] W. N. 190, D.

Annotation:—**Apld.** Leng (Sheffield Telegraph) *v.* Sillitoe, [1929] 1 K. B. 366.

415c. —— ——.]—Where a daily newspaper contained as one among its various features coupons in which the names of football teams were set out, & the public were invited to forecast the winners of matches in which the teams were shortly to be engaged, the person who most nearly got the correct results receiving a prize:—*Held:* the proprietors & publishers of the newspaper were guilty of an offence under sect. 1 of the above Act, although the evidence only showed that some, & not the majority, of the purchasers of the newspaper bought it, wholly or partly, for the sake of the coupon, & although no competitor was allowed to send in more than one coupon from one & the same issue of the newspaper.—SIR W. C. LENG & CO. (SHEFFIELD TELEGRAPH), LTD. *v.* SILLITOE, [1929] 1 K. B. 366; 98 L. J. K. B. 262; 140 L. T. 500; 93 J. P. 26; 45 T. L. R. 94; 72 Sol. Jo. 810; 28 Cox, C. C. 593, D. C.

415d. —— **Prizes of indeterminate amount.**]—Applts. were the promoters of a scheme by which working men were invited to forecast the results of football matches & pay an entrance fee of one penny with each forecast. Prizes of an amount at the discretion of the promoters were awarded to the senders of the most correct forecasts:—*Held:* the fact that the amount of the prizes was indeterminate was immaterial, & applts. were rightly convicted of circulating coupons of a ready money football betting business, contrary to the Ready Money Football Betting Act, 1920 (c. 52).—BAKER *v.* SILLITOE (1931), 145 L. T. 635; 95 J. P. 182; 47 T. L. R. 632; 29 L. G. R. 521; 29 Cox, C. C. 356, D. C.

premises of the owner.—DAVIS *v.* NUTTALL, [1924] N. Z. L. R. 65.—**N.Z.**

363 ii. —— *Licensee of hotel—Permitting others to use premises for betting purposes.*]—DEELEY *v.* DICK, [1928] V. L. R. 121; [1928] A. L. R. 62.—**AUS.**

PART III. SECT. 4, SUB-SECT. 4.

sd. *Receipt from agent.*]—No bets were made at accused's office, but he engaged & paid bookmakers to make bets on the streets & elsewhere. He supplied these bookmakers with betting slips & football coupons, from which, when returned to his office, he made up an account of the gains & losses of each bookmaker. He received at his office daily from each bookmaker any balance of gains on the bets made on the preceding day, & he transmitted to the bookmakers any sum required to make good a deficiency on the day's transactions:—Held: accused had contravened the section libelled, in respect that he used the office for the receipt of money accruing from ready-money bets, although the money was paid over elsewhere by the persons betting.—REID *v.* HILL, [1931] S. C. (J.) 19.—**SCOT.**

PART III. SECT. 6.

415 i. "*Printing or knowingly circulating coupons*"—*Construction of Football Betting Act*, 1920 (c. 52), *ss.* 1, 2.]—Commission agents issued a printed publication containing coupons for use in predicting results of football matches & offering money prizes. Apart from the coupons & matters connected therewith the paper contained very little reading matter, & the majority of purchasers bought it for the sake of the coupons. The commission agents were convicted of knowingly printing & circulating circulars or coupons of a ready-money football betting business:—*Held:* the paper was a circular or coupon of the business of applts., & conviction sustained.—JAMESON *v.* SINCLAIR, [1925] S. C. (J.) 1.—**SCOT.**

sn. "*Ready-money football betting business*"—*Newsagents settling with publishers monthly.*]—Commission agents issued a printed publication containing coupons for use in predicting results of football matches & offering money prizes. It was issued to wholesale newsagents, & distributed by them to retail newsagents, who sold it to the public. The wholesale & retail newsagents settled their accounts weekly; the wholesale newsagent ran monthly accounts with the commission agents, who paid the prizewinners. The prize money was paid, although the monthly accounts had not been settled:—*Held:* there was evidence on which the magistrates might hold that applts.' business was a ready-money football betting business.—JAMESON *v.* SINCLAIR, [1926] S. C. (J.) 1.—**SCOT.**

PART III. SECT. 7.

b i. —— *Lottery & Gaming Act Amendment Act*, 1921, *s.* 14.]—HOLMES *v.* ALLCHURCH, [1926] S. A. S. R. 255.—**AUS.**

b ii. —— ——.]—LAMPARD *v.* WEST, [1926] S. A. S. R. 293.—**AUS.**

b iii. —— *Similar transactions on other days—Admissible.*]—PINCHBECK *v.* GLEESON, [1926] S. A. S. R. 379.—**AUS.**

c i. —— —— ——.]—PATERSON *v.* MACPHERSON, [1924] S. C. (J.) 38.—**SCOT.**

c ii. —— —— —— *Right to open closed envelopes.*]—*Held:* the special warrant under Betting Act, 1853, s. 11, entitled the police to open postal or other communications found on the premises, although contained in closed envelopes, for the purpose of ascertaining whether they contained documents relating to betting.—STRATHERN *v.* BENSON, [1925] S. C. (J.) 40.—**SCOT.**

421 i. *Power of arrest.*]—Police, having obtained a warrant to enter a stable (number 4), watched the stable for a period of twenty minutes, during which it was visited by about twenty men, six of whom carried what appeared to be betting slips in their hands. On the police approaching the stable, accused, who had been in the stable all the time, ran into a neighbouring stable (number 3), one of them carrying a bundle of betting lines. The police took them back into stable number 4, where they were searched & taken into custody, & the money found on them was seized. The accused were convicted & sentenced:—*Held:* the escape of the accused with their papers from the premises to which the warrant applied & the fact that they were thereafter taken back by the police to these premises did not render the subsequent arrest & seizure illegal under the warrant.—MORRIS *v.* LANGMUIR, [1929] S. C. (J.) 103.—**SCOT.**

h i. —— *Joint complaint—One defendant calling no evidence, but wishing to give evidence for co-defendant—Mode of trial.*]—HOLMES *v.* ALLCHURCH, [1926] S. A. S. R. 255.—**AUS.**

sp. *Appeal—Principles on which court acts.*]—R. *v.* SMITH (1926), 37 B. C. R. 248.—**CAN.**

422. *Add. Annotation:—As to* (1) **Apld.** R. *v.* Dixon, Southampton Justices, *Ex p.* Porteous (1929), 142 L. T. 597.

423. *Add. Annotation:—As to* (1) **Reld.** Pointon *v.* Cox (1926), 136 L. T. 506.

424a. —— **Information under Licensing Consolidation Act, 1910 (c. 24)—Form of conviction.**]—An information was preferred against applt. under sect. 79 (1) (*b*) of the above Act for that he, being the holder of a justices' licence, suffered his premises to be used in contravention of Betting Act, 1853 (c. 119). Applt. was convicted, & appealed to quarter sessions, who allowed the appeal, on the ground that the conviction was bad on the face of it because it did not specify what contravention of Betting Act, 1853 (c. 119), was alleged:—*Held:* applt. was entitled to the precise information to which he would have been entitled if he had been prosecuted under Betting Act, 1853 (c. 119), & the decision of quarter sessions was right.—Pointon *v.* Cox (1926), 136 L. T. 506; 91 J. P. 33; 43 T. L. R. 175; 25 L. G. R. 101; 28 Cox, C. C. 308, D. C.

Part IV.—Lotteries.

434. *Add. Annotation:*—**Reld.** Kerslake *v.* Knight (1925), 133 L. T. 606.

443. *Add. Annotations:*—**Apld.** Howgate *v.* Ralph (1929), 141 L. T. 512. **Reld.** Kerslake *v.* Knight (1925), 133 L. T. 606.

449. *Add. Citations:*—94 L. J. K. B. 919; 133 L. T. 606; 89 J. P. 142; 23 L. G. R. 574; 28 Cox, C. C. 27.

451a. Lotteries authorised by Act of Parliament—Must be Parliament of United Kingdom.]—The exception in Lotteries Act, 1823 (c. 60), s. 41, which prohibits the sale of tickets in any lottery, "except such as are or shall be authorised by this or some other Act of Parliament," does not include a lottery authorised by any body other than the Parliament of the United Kingdom.—R. *v.* Registrar of Joint Stock Companies, *Ex p.* More, [1931] 2 K. B. 197; 100 L. J. K. B. 638; 145 L. T. 522; 95 J. P. 137; 47 T. L. R. 383; 29 L. G. R. 452, C. A.

PART IV. SECT. 1.

—.]—Power *v.* Canniff (1859), 18 U. C. R. 403.—**CAN.**

—.]—Lloyd Clark (1862), 12 C. P. 320.—**CAN.**

h i. —— ——.]—The accused, who was the agent of a cigarette co. at Belfast, published a pamphlet advertising a prize of Rs.5 which could be automatically obtained by purchasers of Park Drive cigarettes. Accused sent ten currency notes of Rs.5 each to the manufacturers of Park Drive cigarettes at Belfast, who put each note in a packet of cigarettes, mixed those packets with other packets which contained no notes, & sent them out to accused in India. On a prosecution of accused under second part of Indian Penal Code, s. 294A:—*Held:* the scheme published by accused for distribution of prizes by lot or chance amounted to a lottery.—Emperor *v.* Vazirally (1928), I. L. R. 53 Bom. 57. **IND.**

430 ii. —— ——.]—Accused invited the public to subscribe a large sum for an assocn. whose object was said to be the relief of people in debt or distress. There was no provision for the return of the capital sum, but one-sixth of the interest derived therefrom was to be used for the objects of the assocn., whilst the remainder became divisible every three months among the subscribers as cash bonuses. These bonuses were distributed by lot:—*Held:* a lottery.—A. D. Raj *v.* King-Emperor (1932), I. L. R. 10 Ran. 232. **IND.**

n i. —— *Bonds in series—Payment not dependent on knowledge or skill.*]—In a prosecution for a contravention of Lotteries Act, 1823, it was established that the promoters had formed & put into execution a scheme for the sale of bonds, each of which entitled the holder on certain conditions to £150. To qualify for this sum a participant had first to obtain a bond at the cost of 1*s.* either from the promoters or from a friend. This was the parent of a family of bonds which was brought into existence by a process of sub-sales. The holder of the parent bond had to buy from the promoters four bonds for 3*s.* & to sell them to four friends for 1*s.* each. These four bonds were the first generation, & each of the four holders of them had to repeat the same process, thus bringing the second generation of sixteen bonds into existence. The process had to be repeated until the sixth generation of 4096 bonds had come into existence, making, for the complete series, 5461 bonds. On the occurrence of this event the holder of the parent bond became entitled to £150. Not only was each individual bond a member of a family of bonds, but it could itself become the parent of a new family, & the holder of it was entitled to £150 as soon as its sixth generation was completed:—*Held:* the scheme was a lottery, in respect that the occurrence of the event upon which payment fell to be made could neither be approximately predicted nor materially influenced by the exercise of any knowledge, experience, art, or skill on the part of the holder of the parent bond.—Barnes *v.* Strathern, [1929] S. C. (J.) 41.—**SCOT.**

p i. —— —— *Not dependent on skill alone.*]—The chance, which the prohibition in Criminal Code against lotteries & other species of gambling, has in contemplation is the chance or risk which the competitor is taking. Therefore, in a case where he is required to estimate a number, the prohibition applies unless the correct number can be ascertained by skill alone without any element of chance, even though the number to be estimated is an actually existing number at the time the estimate is made.—R. *v.* Irwin, R. *v.* Long, [1928] 4 D. L. R. 625; [1928] 2 W. W. R. 597; 50 Can. Crim. Cas. 159; 23 Alta. L. R. 506.—**CAN.**

b (p. 454) i. —— *Conducting "suit clubs."*]—*Held:* a violation of Criminal Code, s. 236 (c) (d).—R. *v.* A. D. Murray Tailoring, Ltd., [1925] 3 W. W. R. 483; 44 Can. Crim. Cas. 346. —**CAN.**

b (p. 454) ii. —— *Club distributing "chances" for prizes with membership cards.*]—*Held:* a violation of Criminal Code, s. 236.—R. *v.* Gratton (Ont.) (1926), 46 Can. Crim. Cas. 41.—**CAN.**

b (p. 454) iii. —— *Giving purchasers of goods tickets for club—Club distributing prizes.*]—*Held:* a violation of Criminal Code, s. 236.—R. *v.* Roderick (Ont.) (1926), 45 Can. Crim. Cas. 110.—**CAN.**

b (p. 454) iv. —— —— ——.]—A firm of tailors gave each of its customers on the weekly payment plan the privilege of being a member of a "club," each member of which had the chance week by week while the payments under his contract were uncompleted of having his name arbitrarily chosen by the management as the member to receive a receipt for the unpaid balance which entitled him to a suit at once, without further payment:—*Held:* the scheme was a lottery & the conducting of it a violation of sect. 236 (1) (*c*) of the Criminal Code.—R. *v.* Harrison, [1931] 1 W. W. R. 621; 55 Can. C. C. 238.—**CAN.**

b (p. 454) v. ——.]—R. *v.* United Profit Sharing System, Ltd. (Ont.), [1927] 4 D. L. R. 619; 48 Can. Crim. Cas. 154.—**CAN.**

sq. *Conducting lottery—Sufficiency of evidence—Finding of tickets & paraphernalia.*]—Where a charge is laid under Criminal Code, s. 236, evidence that tickets & other paraphernalia suitable for lottery purposes were found on the premises of the accused does not amount to a *primâ facie* case. —R. *v.* Wong Sim, [1929] 1 D. L. R. 240; 50 Can. Crim. Cas. 231; [1928] 3. W. W. R. 492.—**CAN.**

PART IV. SECT. 3.

st. *Art unions—Whether exempt under Criminal Code, s.* 236.]—R. *v.* LeBlanc (Ont.) (1926), 46 Can. Crim. Cas. 38.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 1.

q i. ——.]—Defts. conducted in public a series of games known as "diggers' bagatelle." Bystanders were invited to take part in each game on payment of threepence to defts. The winner of a game received from defts. the sum of ninepence, & became entitled to join in the next game without charge:—*Held:* defts. did not thereby "dispose" of any "property" within Police Offences Act, 1915,

462. *Add. Annotations :*—**Consd.** A.-G. *v.* Walkergate Press, Ltd.; A.-G. *v.* Bloomfield; A.-G. *v.* Carlton (1930), 142 L. T. 408.

462a. ——— ——— ——— **Liability of individual directors.**]—(1) Liability under above sect. attaches, if there has been publication of a proposal or scheme for a lottery, although the matter has not actually proceeded to a lottery.

(2) A limited co. is not liable to the penalties prescribed by above sect., but directors, who have issued a proposal jointly with a limited co., are liable. They are, however, liable only for one penalty between them in respect of each offence committed.—A.-G. *v.* WALKERGATE PRESS, LTD.; A.-G. *v.* BLOOMFIELD; A.-G. *v.* CARLTON (1930), 142 L. T. 408; 94 J. P. 90; 46 T. L. R. 177; 74 Sol. Jo. 106; 28 L. G. R. 235; 29 Cox C. C. 68.

464. *Add. Annotation :*—**Apld.** Ranson *v.* Burgess (1927), 137 L. T. 530.

464a. —— ——.]—A printer printed and sold to a purchaser a set of tickets adapted for use in a lottery, but no lottery was then in existence. The purpose was that the purchaser should institute & carry on a lottery by means of the tickets, by reselling them singly & providing out of the proceeds a prize for the holder of the winning ticket. The printer took no further interest, financial or otherwise, in the matter, beyond the original purchase price for the sale of the tickets as a set:—*Held :* the printer was properly convicted of publishing a proposal or scheme for the sale of tickets or chances in a lottery contrary to the above sect.—RANSON *v.* BURGESS (1927), 137 L. T. 530; 91 J. P. 133; 43 T. L. R. 561; 25 L. G. R. 378; 28 Cox, C. C. 425, D. C.

Annotation :—**Folld.** A.-G. *v.* Walkergate Press, Ltd.; A.-G. *v.* Bloomfield; A.-G. *v.* Carlton (1930), 142 L. T. 408.

464b. ——— ——— **Distribution of circulars advertising lottery.**]—Resp. employed canvassers to call from house to house, inviting persons to undertake to buy tea from her regularly. Each week the canvassers carried with them handbills which declared that: "To advertise our famous tea we will distribute among our customers cash gifts of £3 and £6," as the purchaser bought one or two packets of tea per week. The circular continued: "Each customer's name is entered in rotation in our ledger and cash gifts are paid out accordingly." The names & addresses of new customers were entered in the ledger in the exact order in which they had been obtained, the list of one canvasser's customers on his return to the office being completely entered before that of the next was begun. Resp. awarded her bonus each week to the next customer whose name was on the list after that of the customer last to receive a bonus, provided that the customer was still regularly buying the tea. The names of customers who ceased to buy the tea weekly were struck out of the list, thus advancing the names of customers below them. It was stated in one of the circulars that during the twenty-four weeks ending in June, 1928, resp. had paid out £1,920 by way of bonus gifts. Applt., a superintendent of police, preferred an information against resp., charging her with publishing a proposal or scheme for the sale of chances in a lottery not authorised by Act of Parliament, contrary to above Act. The stipendiary magistrate dismissed the information holding that resp. had not published a proposal or scheme for the sale of chances in a lottery:—*Held :* there were no materials to justify the magistrate in so holding. The case must be remitted to him with the direction to convict.—HOWGATE *v.* RALPH (1929), 141 L. T. 512; 93 J. P. 127; 45 T. L. R. 426; 73 Sol. Jo. 253; 27 L. G. R. 432; 28 Cox, C. C. 633, D. C.

466a. **"Shall be deemed to be a rogue & vagabond"—What must be proved—Lotteries Act, 1823 (c. 60), s. 41.**]—When a person is charged under Lotteries Act, 1823 (c. 60), s. 41, with selling tickets in a lottery it is not necessary to show that he has the "status" or "mode of life" of a rogue & vagabond. The effect of the section is that any person selling such tickets is to be punished as if he were a rogue & vagabond.—PROTHERO *v.* WATSON (1931), 145 L. T. 643; 95 J. P. 184; 47 T. L. R. 627; 75 Sol. Jo. 629; 29 L. G. R. 528; 29 Cox, C. C. 370, D. C.

466b. **Selling "tickets in any lottery"—Lotteries Act, 1823 (c. 60), s. 41—Proposed lottery.**]—The expression "tickets in any lottery" in Lotteries Act, 1823 (c. 60), s. 41, means tickets in a proposed lottery.—BARKER *v.* WOOD (1932), 48 T. L. R. 402; 76 Sol. Jo. 307, D. C.

Part V.—Races and Racecourses.

472. *Add. Annotation :*—**Refd.** Weddle, Beck *v.* Hackett, [1929] 1 K. B. 321.

479. *Add. Annotation :*—**Distd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

s. 88 (*b*).—DEELEY *v.* MCEVOY, [1928] V. L. R. 117; [1928] Argus L. R. 47.—**AUS.**

sw. *Sale of gambling device.*]—A violation of Criminal Code, s. 236 (b), may be proved, although there is no evidence that at the time of the sale of the devise in question, *e.g.*, a punch board, there was a conscious arrangement between the buyer & seller that some property would be disposed of by chance by means of the device. The essential inquiry is, what is the purpose or known intended use of the device.—R. *v.* HEISE, [1926] 1 D. L. R. 60; [1925] 3 W. W. R. 724.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 2.

sz. *Action by wife against husband.*]—In an action by a common informer under sect. 236 (3) of the Criminal Code, pltf. being wife of deft.:—*Held :* judgment should not be granted since there was a suspicion of collusion & also that there was no proof that by the law of Canada a wife can sue her husband.—DINNING *v.* DINNING, [1932] O. R. 208; 2 D. L. R. 205.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.

sy. *Coursing—Use of mechanical hare—Whether within Gaming & Betting Act, 1912, s. 7.*]—Resp. attended a licensed racecourse on which a sport consisting of the pursuit of a mechanical hare by dogs was held, & made bets on several of the dogs. He was charged before a magistrate with an offence under above sect., & the magistrate held, as a matter of law, on the evidence before him, that the pursuit of a mechanical hare by dogs was "coursing" within above sect., & dismissed the information:—*Held :* the pursuit of a mechanical hare by dogs was not "coursing" within above sect., & the determination of the magistrate was erroneous in point of law.—KELSO *v.* MCLACHLAN (1928), 28

SECT. 2.—**RACECOURSES.**
(Vol. XXV., p. 460.)

Racecourse betting.]—*See* Racecourse Betting Act, 1928 (c. 41).

483. *Add. Annotation :*—**Refd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

484. *Add. Annotation :*—**Refd.** Ellesmere *v.* Wallace, [1929] 2 Ch. 1.

Part VI.—Competitions.

496. *Add. Annotation :*—**Distd.** Suttle *v.* Cresswell (1925), 42 T. L. R. 75.

497. *Add. Annotation :*—**Refd.** Suttle *v.* Cresswell (1925), 42 T. L. R. 75.

498. *Add. Annotation :*—**Apld.** Suttle *v.* Cresswell (1925), 42 T. L. R. 75.

501. *Add. Annotation :*—**Refd.** Suttle *v.* Cresswell (1925), 42 T. L. R. 75.

502. *Add. Annotation :—As to* (3) **Refd.** Greenberg *v.* Cooperstein, [1926] Ch. 657.

504a. —— **Determination of order of popularity of specified articles.**]—The proprietors of a number of commodities organised, for advertisement purposes, a competition in which customers were asked to place thirteen named articles in the order of their popularity as shown by the actual voting of the entrants themselves. A number of money & other prizes were offered to those whose lists most nearly agreed with that shown by the voting as a whole. No entrance fee was charged, but each entrance form had to be accompanied by part of a bag or wrapper from one of the named articles :—*Held :* since the competitors were not asked to judge the real merits of the articles but to guess how other people would guess at their popularity, there was material on which a magistrate was justified in finding that the result depended entirely on chance & in convicting the advertising manager of the promoters of an offence under Lotteries Act, 1823 (c. 60), s. 41. —HOBBS *v.* WARD (1929), 93 J. P. 163 ; 45 T. L. R. 373 ; 27 L. G. R. 410, D. C.

Annotation :—**Folld.** Challis *v.* Warrender (1930), 144 L. T. 437.

504b. —— **Determination of order of popularity of theatrical rôles.**]—Resps. sent to members of the theatrical profession & to persons whose names appeared in " Who's Who " books of 10*s.* tickets in a " Grand National Mutual Subscription Fund in aid of the Ellen Terry Memorial Museum " with a request to sell the tickets among their friends & return the counterfoils & money by a certain date. An accompanying circular explained that 25 per cent. of the money subscribed would be devoted to the museum & that the remaining 75 per cent. would be distributed " in such manner as the organisers in their absolute discretion shall think fit," but that £20,000 would be distributed in prizes. It was apparently originally contemplated that the money should be used for a sweepstake on the Grand National horse race, but owing to a communication from the police there was substituted a scheme whereby subscribers were invited to place in order of popularity, as shown by the general votes of the competitors, ten rôles played by the late Dame Ellen Terry :—*Held :* the scheme was a lottery. The fact that the original books of tickets were sent only to members of the theatrical profession & persons in " Who's Who " did not so limit the class of competitors as to render it possible by any element of skill to arrive at a reasonable forecast of how they would vote ; especially as they might be expected to sell many tickets to persons outside those two categories, so that the competition was in effect open to the public.—CHALLIS *v.* WARRENDER (1930), 144 L. T. 437 ; 95 J. P. 39 ; 47 T. L. R. 123 ; 29 L. G. R. 109 ; 29 Cox, C. C. 251.

505. *Add. Annotation :*—**Apld.** Hobbs *v.* Ward (1929), 93 J. P. 163.

506. *Add. Annotation :*—**Distd.** Hobbs *v.* Ward (1929), 93 J. P. 163.

S. R. N. S. W. 510 ; 45 N. S. W. W. N. 143.—**AUS.**

PART V. SECT. 3.

484 i. *Finality of decision—Absence of final decision.*]—Where a challenge cup, to be won in a bicycle race between competing clubs, was held by trustees under an instrument of trust, by which all arrangements pertaining to the course, race, protests & matters " connected with the welfare of the cup " were to be decided by the trustees according to certain rules, the ct., upon the mere allegation of fraud, & before any decision of the trustees, refused to exercise jurisdiction restraining the trustees from parting with the cup to an alleged winner under protest, upon the ground that one of the winning riders did not go round the course, that being a matter of fact for the decision of the trustees.—ROSS *v.* ORR (1894), 25 O. R. 595.—**CAN.**

484 ii. —— *Appeal to committee of Turf Club—Powers of committee.*]—MONTGOMERY *v.* LEE STEERE (1926), 29 W. A. L. R. 70.—**AUS.**

PART VI. SECT. 1.

d i. —— —— *Receipt of money with coupons—Whether offence under Street Betting Act.*]—In a complaint under Street Betting Act, 1906, it was proved that accused received in the street from various persons a large number of slips accompanied by sums of money. The slips were odd pieces of paper, upon each of which were written the names of at least one group of eight football teams, to which was added a name, number or other symbol, for identifying the sender of the slip. Accused did not submit lists of football teams for the purpose of selection, the names of such teams being selected by the senders of the slips from lists of teams advertised or reported in the public press to play on the Saturday following the date on which the slips were received by accused. The teams selected were those which the senders of the slips predicted would be winning teams on that Saturday. Along with each slip was sent 1*s.*, the understanding being that, after the results of the matches were published, accused would examine the forecasts made, & thereafter would deduct from the money received a sum in name of commission, & hand over the balance to the person sending in the correct forecast if only one forecast was correct, or, if more than one forecast was correct, an equal share of such balance to each of the senders of correct forecasts. If no correct selection was sent in, there was no distribution, & the whole contributions were carried forward to the next week ; which procedure was repeated until a correct forecast was made, or until the end of the football season arrived, when if there had been no correct selection received, the money in hand, less a commission to the accused, was distributed among those who had sent it :—*Held :* accused was engaged in betting transactions & was guilty of an offence under Street Betting Act, 1906.—YEUDALL *v.* MCQUILKIE, [1928] S. C. (J.) 54.—**SCOT.**

PART VI. SECT. 2.

n i. —— *Estimate of future temperatures.*]—The publication of the scheme in question herein by which deft. offered prizes for the nearest estimates of the average temperatures of seven named cities on a future date & the attendance at the Regina Fair on certain future days, & under which those invited to compete were supplied with statistical information to assist them in making their estimates, was held not to be a violation of s. 326 (*a*) of the Criminal Code.—R. *v.* REGINA AGRICULTURAL & INDUSTRIAL EXHIBITION ASSOCN., LTD., [1932] 2 W. W. R. 131.—**CAN.**

GAS.

Part II.—Lands and Works.

10. *Add. Citations :*—94 L. J. Ch. 382 ; 133 L. T. 565 ; 89 J. P. 177 ; 23 L. G. R. 525.

15a. —— —— **Country road.**]—The word "street," as used in Gasworks Clauses Act, 1847 (c. 15), s. 6, is not necessarily confined to what is ordinarily known as a street, & over which there is a public right of way. A country lane with certain residences abutting upon it may be a street, although it has not been dedicated to the public & no public right of way exists.—DAVIES *v.* RIPON CORPN., [1928] Ch. 884 ; 97 L. J. Ch. 479 ; 139 L. T. 636 ; 92 J. P. 153 ; 26 L. G. R. 530.

27. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

Part III.—Supply of Gas.

31. *Add. Annotations :*—**Apld.** Stevens *v.* Aldershot Gas, Water & District Lighting Co. (now Mid-Southern District Utility Co.) (1932), 74 L. Jo. 95. **Refd.** Scammell *v.* Hurley, [1929] 1 K. B. 419.

37. *Add. Annotation :*—**Refd.** R. *v.* Electricity Comrs., *Ex p.* Yorkshire Electric Power Co. (1927), 91 J. P. 191.

40. *Add. Annotation :*—**Distd.** Granger *v.* South Wales Electric Power Distribution Co., [1931] 1 Ch. 551.

51a. **Duration of agreement to supply—Power to terminate.**]—In 1906 a co. was incorporated by statute to supply gas in a certain area in the place of a limited co., & by sect. 7 the statutory co. took the benefit of all contracts & engagements of the limited co. which had been supplying gas to the defts., an urban council, for public lighting. In 1909 the co. entered into an agreement under seal with the council in which it was recited that before the passing of the Act "it was agreed by & between the predecessors of the gas co. & the council that the agreement then in force for public lighting should continue to remain in force & be binding on both parties until the council should determine the same," & that "it has been deemed desirable by the said parties hereto that the terms of the said agreement for the public lighting shall be set out as hereinafter mentioned." By the operative part of the agreement the co. agreed to light all the public lamps within the district "from & after the first day in Sept. in every year up to the following first day of May inclusive" on certain terms ; & provisions were made for increasing the number of lamps. There was no provision as to the period for which the agreement was to run or giving either party a right to determine it. By a supplemental agreement dated June 30, 1921, the times of lighting & the charges were varied, & clause 1 (*c*) provided that new lanterns supplied by the co. should become the property of the council without payment after fifteen years if the agreements continued for so long, "& if the said agreements be determined before the expiration of such period" the council were to pay for them. On Apr. 30, 1927, the council gave notice to determine the agreement on Aug. 31, 1927 :—*Held :* having regard to the recitals in the original agreement & clause 1 (*c*) of the supplementary agreement & to the nature of the contracts they were determinable by notice.—CREDITON GAS CO. *v.* CREDITON URBAN DISTRICT COUNCIL, [1928] Ch. 447 ; 97 L. J. Ch. 184 ; 138 L. T. 723 ; 92 J. P. 76 ; 44 T. L. R. 369 ; 72 Sol. Jo. 225 ; 26 L. G. R. 325, C. A.

Part IV.—Protection of Property of Undertakers.

62. *Add. Annotation :*—*As to* (2) **Refd.** Brooke *v.* Bool, [1928] 2 K. B. 578.

PART III. SECT. 1.

sx. *Power to run pipes under highway through municipality—No power to supply municipality—Right of municipality to sue for illegal supply.*]—NELSON *v.* DOMINION NATURAL GAS CO., LTD., [1931] 2 D. L. R. 229 ; 66 O. L. R. 271.—**CAN.**

PART III. SECT. 2, SUB-SECT. 5.

sa. *Powers of municipality as undertaker—No power to surcharge for delay in payment.*]—A municipal corpn., though it may allow discounts for prompt payment for supplies of gas or electricity, cannot surcharge for delay in payment unless it is given statutory authority so to do, & no such authority at present exists.—NELSON CITY CORPN. *v.* BUSBRIDGE, [1930] N. Z. L. R. 269.—**N.Z.**

PART III. SECT. 2, SUB-SECT. 6.

sb. *Refusal to pay increased rates—Right to cut off gas.*]—*Held :* Natural Gas Conservation Acts, 1921 (c. 17), & 1922 (c. 23), were valid.—SANDWICH *v.* UNION NATURAL GAS CO. (Ont.), [1925] 4 D. L. R. 795 ; *affg.*, [1925] 2 D. L. R. 707 ; 56 O. L. R. 399.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.

62 i. *Gas main—Damage by* —A gas co. opened a street in a city & laid down a gas main. The city corpn. constructed an underground drain, &, by reason of a subsidence of the drain, the gas main was broken. The co. opened the street & repaired the gas main & the corpn. reinstated the drain & roadway. In an action by which the corpn. sought to recover from the co. the cost of such reinstatement, the co. by counterclaim sought to recover from the corpn. the cost of repairing the gas main :—*Held :* the liability of the corpn. for the damage to the gas main depended upon negligence in the exercise of its statutory powers causing unnecessary damage to the co., & the *onus* of proving such negligence had not been discharged by the co.—METROPOLITAN GAS CO. *v.* MELBOURNE CORPN., [1925] V. L. R. 132 ; 35 C. L. R. 186 ; 31 Argus L. R. 25.—**AUS.**

Part V.—Negligence and Nuisance.—Liability of Undertakers.

84. *Add. Annotations :*—**Consd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46. **Refd.** McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494.

99. *Add. Annotation :*—**Refd.** Sheffield Corpn. *v.* Kitson, [1929] 2 K. B. 322.

Part VIII.—Gas Supply in the Metropolis.

114. *Add. Annotation :*—**Consd.** A.-G. *v.* County of London Electric Supply Co., [1926] Ch. 542.

125. *Add. Annotation :*—*As to* (1) **Consd.** Salisbury & Fordingbridge District Drainage Board *v.* Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566.

PART V. SECT. 1, SUB-SECT. 1.—B. q. For "*Escape of gas from gas main*" read "*Escape of gas—From gas main.*"

q i. —— *During installation of gas connections—Destruction of buildings by fire following explosion.*]—*Held :* the gas co. were liable.—CONSUMERS' GAS Co. *v.* R., [1927] 1 D. L. R. 564 ; [1926] S. C. R. 709.—**CAN.**

GIFTS.

Part I.—In General.

10. *Add. Annotation :*—**Refd.** Wimbledon & Putney Commons Conservators *v.* Tuely, [1931] 1 Ch. 190.

Part II.—Capacity to Give and to Receive Gifts.

17. *Add. Annotation :*—**Refd.** Wimbledon & Putney Commons Conservators *v.* Tucly (1930), 47 T. L. R. 17.

19. *Add. Annotation :*—**Apld.** Wimbledon & Putney Commons Conservators *v.* Tucly (1930), 47 T. L. R. 17.

19a. —— ——.]—It is within the powers conferred upon the Wimbledon & Putney Commons conservators (a corpn. constituted under the provisions of the Wimbledon & Putney Commons Act, 1871) to pay pensions, annuities, or superannuation allowances to persons in their service who shall retire from such service by reason of age, infirmity, or otherwise.—WIMBLEDON & PUTNEY COMMONS CONSERVATORS *v.* TUELY, [1931] 1 Ch. 190; 100 L. J. Ch. 77; 144 L. T. 310; 47 T. L. R. 17; 74 Sol. Jo. 819; 29 L. G. R. 78.

20. *Add. Annotations :*—**Refd.** Deuchar *v.* Gas Light & Coke Co., [1925] A. C. 691; A.-G. *v.* Smethwick Corpn. (1932), 96 J. P. 105.

Part III.—Gifts inter vivos.

26a. **Gift for public purposes—Whether formalities for compulsory acquisition apply.**]—The formalities required for the exercise of the compulsory powers given by statute for taking land for public improvements have no application to the case of a voluntary gift of land.—MICHAUD *v.* MONTREAL (CITY) (1923), 92 L. J. P. C. 161; 129 L. T. 417, P. C.

54a. ——.]—Declarations by an intestate, that he meant that a person with whom he resided should have his furniture & effects for what he owed her :—*Held :* sufficient to entitle such person to take, & retain possession of the property.—ROYSTON *v.* HANKEY (1833), 3 Moo. & S. 381.

69. *Add. Citations :—sub nom.* BINION *v.* STONE, Freem. Ch. 169; Nels. 68.

73a. —— ——.]—ANON. (1667), Freem. Ch. 128; 22 E. R. 1104.

73b. —— ——.]—SHALES *v.* SHALES (1701), Freem. Ch. 252; 1 Eq. Cas. Abr. 382; 22 E. R. 1191.

77. *Add. Annotation :*—**Refd.** *Re* Carroll (J. M.), [1931] 1 K. B. 317.

83a. —— ——.]—When a father purchases property with his own money, & takes a conveyance in the name of his son, the law presumes it to be an advancement for the son, & not a trust for the father. Those who allege that it is a trust are bound to prove

PART I.

2 i. *Essentials of gift—Transfer of property—Intention alone insufficient.*] JARVIS *v.* JARVIS, [1926] 3 D. L. R. 897.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.

b i. ——.]—MCMURCHY *v.* STEWART (Alta.), [1926] 3 D. L. R. 448; [1926] 2 W. W. R. 463.—**CAN.**

sb. *Purchase by father for pupil daughters—Disposition & registration in daughters' names.*]—*Held :* the father had made a complete & effective donation.—LINTON *v.* INLAND REVENUE COMRS., [1928] S. C. 209; 13 Tax Cas. 448.—**SCOT.**

PART III. SECT. 1, SUB-SECT. 2.—B. (a).

f i. ——.]—DICKSON *v.* CHAMBERLAND, [1927] 2 D. L. R. 429; [1927] 1 W. W. R. 794; 22 Alta. L. R. 393.—**CAN.**

sd. *What amounts to — Conduct recognising right of donee.*]—GRIFFITHS *v.* CARLETON (1927), 30 W. A. L. R. 1.—**AUS.**

PART III. SECT. 1, SUB-SECT. 2.—B. (b).

36 vi. ——.]—In an action of trover brought to recover the value of eight hundred seals alleged to have been wrongfully taken at the seal-fishery, it appeared that pltf. had found a quantity of seals penned & flagged by one W., who had abandoned them himself, but had sent a message to deft. that he might take the seals so left on the ice. Deft. proceeded to the locality where the seals were & found that pltf. had taken some of them on board his vessel, had counted others of the patch, & was in the act of taking on board his vessel the remainder, his crew being then in charge. Deft. then took charge of the remainder of the seals & had them conveyed on board his own vessel, & refused to permit pltf. to participate in the same. In an action by pltf. for the seals so taken the jury found for pltf.; on a rule *nisi* to set aside the verdict :—*Held :* there was a valid gift from W. to deft. such as would cause a legal transfer of property; &, further, it was in the power of W. to transfer property floating on the sea which he had himself the power to secure.—DOYLE *v.* BARTLETT (1872), 5 Nfld. L. R. 445.—**NFLD.**

36 vii. ——.]—LANGER *v.* MCTAVISH BROS., LTD., [1932] 4 D. L. R. 90.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.—B. (c).

51 i. *Whether immediate gift intended.*]—GARLAND *v.* O'REILLY (1911), 44 S. C. R. 197.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.—B. (e).

n i. —— *To bank manager.*]—The payee of a promissory note payable on demand left it with his bank for the purpose of having the interest on it collected. Subsequently he indorsed the note to his nephew & left it with the bank manager, telling him that he wished to collect the interest on it while he lived & to have the note delivered to his nephew on his death, & the manager put the note into a large envelope in the bank which held documents belonging to the nephew :—*Held :* there had been a complete gift *inter vivos* of the note.—DICKSON *v.* CHAMBERLAND, [1926] 3 D. L. R. 765; [1926] 2 W. W. R. 570; 22 Alta. L. R. 270.—**CAN.**

PART III. SECT. 2.

sx. ——.]—Before it can be said that influence which a donee is found to have had with his donor was such as to justify the ct. in setting aside the gift, under the doctrine of presumed undue influence, it must appear that the relations between the donor & donee were such that the latter was under some duty to advise or manage for, or look after the interest of, the donor.—BRADLEY, LANG & SCRAGG *v.* CRITTENDEN, [1932] S. C. R. 552; 3 D. L. R. 193; *affg.*, [1931] 2 W. W. R. 669; 4 D. L. R. 384; 25 Alta. L. R. 562; *revsg.*, [1931] 2 D. L. R. 961.—**CAN.**

it, & the evidence for that purpose consists mainly, if not exclusively, of contemporaneous circumstances. Testator has transferred property into the names of his sons:—*Held:* they were advancements, but there being doubts as to his solvency at the time, inquiries were directed on the point.—CHRISTY *v.* COURTENAY (1849), 13 Beav. 96; 51 E. R. 38.

Annotation:—**Consd.** Batstone *v.* Salter (1874), L. R. 19 Eq. 250.

88a. Business in son's name—Receipt of profits by father—Presumption of advancement.]—LEWIS & BARDER *v.* PICZENICK (1930), 74 Sol. Jo. 107.

103a. —.]—*Re* COLLINSON, COLLINSON *v.* COLLINSON (1853), 3 De G. M. & G. 409; 21 L. T. O. S. 234; 43 E. R. 160, L. C.

Annotation:—**Consd.** Bennet *v.* Bennet (1879), 10 Ch. D. 474.

108. *Add. Annotation:*—**Refd.** Gopeekrist Gosain *v.* Gungapersaud Gosain (1854), 6 Moo. Ind. App. 53.

119. *Add. Annotation:*—**Refd.** Lewis & Barder *v.* Piczenick (1930), 74 Sol. Jo. 107.

135. *Add. Annotation:*—**Refd.** Beebee & Co. *v.* Turner's Successors (1931), 48 T. L. R. 61.

169a. —— —— ——.]—BERKLEY *v.* RYDER (1752), 2 Ves. Sen. 533; 28 E. R. 340, L. C.

171. *Add. Annotation:*—**Consd.** *Re* Wilkinson' Page *v.* Public Trustee, [1926] Ch. 842.

172. *Add. Annotation:*—**Consd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

173. *Add. Annotation:*—**Consd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

174. *Add. Annotation:*—**Consd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

175. *Add. Annotation:*—**Consd.** Cohen *v.* Sellar, [1926] 1 K. B. 536.

175a. —— —— ——.]—(1) If a man who has promised to marry a woman, & has given to her an engagement ring in contemplation of marriage, refuses without legal justification to carry out his promise, he cannot demand the return of the engagement ring.

(2) *Semble:* if a woman who has received an engagement ring in contemplation of marriage refuses to fulfil the conditions of the gift & to carry out her promise, she must return the ring.

(3) *Semble:* if an engagement to marry be dissolved by mutual consent, then in the absence of an agreement to the contrary the engagement ring & like gifts must be returned by each party to the other.—COHEN *v.* SELLAR, [1926] 1 K. B. 536; 95 L. J. K. B. 629; 135 L. T. 21; 42 T. L. R. 409; 70 Sol. Jo. 505.

191. *Add. Annotation:*—**Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

192. *Add. Annotation:*—**Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

Part IV.—Incomplete Gifts.

206. *Add. Annotation:*—**Distd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179.

227. *Add. Annotation:*—**Overd.** *Re* Swinburne, Sutton *v.* Featherley (1925), 70 Sol. Jo. 64.

228. For the paragraph in original volume substitute the following paragraph:—

—— **Non-payment due to suspicious signature —Subsequent death of donor.**]—A lady, in her last illness, gave a cheque for £700 to a person with whom she had lived for some time. & the cheque was duly presented but not honoured, owing to the signature being of a very shaky & doubtful character. The donor died before the cheque could be again presented:—*Held:* the cheque not having been paid, there was no valid & effectual gift of the money to the donee.—*Re* SWINBURNE, SUTTON *v.* FEATHERLEY, [1926] 1 Ch. 38; 95 L. J. Ch. 104; 134 L. T. 121; 70 Sol. Jo. 64, C. A.

Compare original volume, p. 542, No. 292.

259. *Add. Annotation:*—**Distd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179.

268. *Add. Annotations:*—**Apld.** *Re* Comberbach, Saunderson *v.* Jackson (1929), 73 Sol. Jo. 403. **Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

PART III. SECT. 3, SUB-SECT. 3.

113 i. *Contrary intention of donor—Investments as trustee for daughters.*]—*Held:* the circumstances did not rebut the presumption that the money was intended as an advancement to the children.—JONES *v.* KINNEAR (1882), 1 N. S. R. (4 R. & G.) 1.—**CAN.**

PART III. SECT. 7, SUB-SECT. 1.

sg. *Gift subject to condition—Whether absolute gift & condition void—Or gift of life estate.*]—AMJAD KHAN *v.* ASHRAF KHAN (1929), 56 L. R. Ind. App. 213.—**IND.**

PART III. SECT. 7, SUB-SECT. 2.

172 v. —— —— ——.]—A present made by an engaged man to his fiancée, in view of marriage, & intended for the use of both of them during their courtship & after their marriage, is recoverable by his personal representative where he dies before the marriage & during the continuance of the engagement.—SHEPPARD *v.* ROBINSON, [1928] 3 D. L. R. 347; [1928] 2 W. W. R. 235; 23 Alta. L. R. 461.—**CAN.**

PART III. SECT. 8.

187 i. *Onus of proof on donee—Grant purporting to be for consideration.*]—Where a conveyance or mtge. is expressed to be for valuable consideration, but the fact is that none was paid, nothing but the clearest evidence can avail to show that a gift was intended. Where there is nothing but the instrument itself before the ct. from which to draw conclusions, it must be held to be the exclusive & conclusive evidence of the contract between the parties.—JOHN DEERE PLOW CO., LTD. *v.* PETERS & SPOHN, [1929] 2 D. L. R. 103; 23 S. L. R. 218; [1928] 3 W. W. R. 686.—**CAN.**

PART III. SECT. 10, SUB-SECT. 2.

sm. *Gift of land subject to mortgage.*]—Where a father makes a gift of land to his son, the presumption is that it is made subject to mtges. which then actually exist against the land, including a mtge. which had not been registered at the date of the gift.—ORENCZUK *v.* DOLINSKY (Alta.), [1927] 3 W. W. R. 596.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 1.

h i. ——.]—MORTON *v.* BRIGHOUSE, [1927] 1 D. L. R. 1009; [1927] S. C. R. 118.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.—A.

245 ii. ——.]—Equity will not perfect an incomplete gift.—JACQUES *v.* HOPKINS & HOPKINS, [1931] 2 W. W. R. 277; 3 D. L. R. 410; 25 Alta. L. R. 372.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.—B.

r i. —— *Document not completed—Nor proved to be document made by donor.*]—REILLY *v.* WOODWORTH (1924), 51 N. B. R. 153.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.

s i. —— ——.]—CAMPBELL *v.* CAMPBELL, [1932] 3 D. L. R. 501.—**CAN.**

t i. —— —— ——.]—HOVEY *v.* FERGUSON (1871), 18 Gr. 498.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 3.

c i. ——.]—*Re* JENKINS & BRASH *v.* VULCAN IRON WORKS, BRAY *v.* VULCAN IRON WORKS (B.C.), [1927] 1 D. L. R. 1099.—**CAN.**

269. *Add. Annotation :*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

276a. —— **Incomplete gift of real estate.**]—*Re* COMBERBACH, SAUNDERSON *v.* JACKSON (1929), 73 Sol. Jo. 403.

Part V.—Gifts mortis causâ.

286. *Add. Annotation :—As to* (2) **Refd.** Wilkes *v.* Allington, [1931] 2 Ch. 104.

292. *Add. Annotation :—As to* (1) **Consd.** *Re* Swinburne, Sutton *v.* Featherley (1925), 70 Sol. Jo. 64.

294a. —— —— ——.]—*Semble :* when testator, in his lifetime, hands over to a person a sum of money, & directs him, out of it, to pay the expenses consequent on his sickness, & in case of death, his funeral expenses, such money does not pass under the will.—*In the Goods of* TOOMY (1864), 3 Sw. & Tr. 562 ; 34 L. J. P. M. & A. 3 ; 28 J. P. 824 ; 13 W. R. 106 ; 164 E. R. 1393.

303 *Add. Annotation :—As to* (1) **Refd.** Wilkes *v.* Allington, [1931] 2 Ch. 104.

307. *Add. Annotation :*—**Refd.** Wilkes *v.* Allington, [1931] 2 Ch. 104.

327. *Add. Annotation :*—**Refd.** *Re* Swinburne, Sutton *v.* Featherley (1925), 70 Sol. Jo. 64.

330a. —— ——.]—*Re* WHILE, WILFORD *v.* WHILE, [1928] W. N. 182.

331. *Add. Annotation :*—**Refd.** *Re* Swinburne, Sutton *v.* Featherley (1925), 70 Sol. Jo. 64.

337a. ——.]—Where testator, in his last illness, said he wanted to leave something to C., & then directed her father to get mtge. deeds out of a box in his room, & said he should give the deeds for C., & handed them over to her father :—*Held :* the gift was a good *donatio mortis causâ*, & the donee was entitled to the money secured by the deeds.—*Re* PATTERSON, MITCHELL *v.* SMITH (1864), 10 L. T. 520 ; 10 Jur. N. S. 578 ; *on appeal*, 4 De G. J. & Sm. 422.

347. *Add. Citations :*—95 L. J. Ch. 204 ; 133 L. T. 465.

351. *Add. Annotation :*—**Refd.** Wilkes *v.* Allington, [1931] 2 Ch. 104.

356a. Gift made in contemplation of death from incurable disease—Death from different illness—Gift valid.]—A *donatio mortis causâ* is not generally conditioned upon the donor dying from the same disorder as that from which he is suffering, & contemplates the probability of death, at the time it is made.

By a mtge. made in 1922 the widow of J., who was tenant for life under his will, mortgaged a farm to W., a brother of J., to secure £1,000 & interest at 5 per cent. The widow died in 1923, having appointed her two daughters, E. & X., exors. of her will. The mtge. contained no personal covenant for payment of the principal, & the mtgee. accepted interest at 3½ per cent., reduced in 1924 to 3 per cent. In 1924 W., who was on very friendly terms with his brother's family, gave the deeds relating to the farm, other than the mtge. deed, to E. & X., to retain in their custody. On Dec. 11, 1927, W., who had since 1922 been suffering from an incurable disease & knew that he could not possibly live long, called upon his nieces, who were aware of his state of health, & gave them an envelope indorsed in his own handwriting : "Deeds relating to X. farm to be given up at death. W.," saying : "I have brought this down for you ; put it away." After he had left the house the envelope was opened, & was found to contain the mtge., which the nieces placed in their safe. On Jan. 23, 1928, W. died of pneumonia following a chill. In an action by his exors. for a declaration that the mtge. was a subsisting security & to enforce it :—*Held :* there was a valid *donatio mortis causâ* by W., & a release of the mtge. to the two daughters of J. for the benefit of his estate.—WILKES *v.* ALLINGTON, [1931] 2 Ch. 104 ; 100 L. J. Ch. 262 ; 144 L. T. 745 ; 47 T. L. R. 307 ; 75 Sol. Jo. 221.

372. *Add. Annotation :*—**Refd.** *Re* Swinburne, Sutton *v.* Featherley, [1926] Ch. 38.

399a. Donee with access to keys—Presumption of fraud.]—SIMMS *v.* COX (1824), 3 L. J. O. S. K. B. 44.

PART IV. SECT. 3.

sp. *Donor repossessing himself of transfer & certificate of title—Before transfer registered.*]—Registered owner of land, with intention of making a gift of it to S., delivered to the father of S. a transfer of the land to S. & the duplicate certificate of title. He subsequently repossessed himself of the transfer & certificate before S. had an opportunity to register the transfer which he destroyed :—*Held :* the inchoate gift to S. was effectually revoked & S. was not entitled to be recorded as owner of the land.—SMITH *v.* SMITH (1915), 19 D. L. R. 192 ; 31 W. L. R. 607 ; 8 W. W. R. 1077.—**CAN.**

PART V. SECT. 1.

sr. *Grounds for setting aside—Undue influence—Gift by parishioner to parish priest.*]—BOHAN *v.* WALKER, [1928] 4 D. L. R. 630.—**CAN.**

PART V. SECT. 2, SUB-SECT. 2.—A.

st. *Receipts issued to transferee of stock by Banks of England & Ireland.*]—Neither the receipt issued by the Bank of England to a transferee of India 5½ per cent. stock, 1932, which contained particulars of the consideration paid for the "interest or share in the stock transferred," nor the receipt issued by the Bank of Ireland to a transferee of 3 per cent. local loans stock, can be the subject of a *donatio mortis causâ*.—*Re* M'WEY, RYAN *v.* CASHIN & COSTELLO, [1928] I. R. 486.—**IR.**

PART V. SECT. 2, SUB-SECT. 2.—B. (b).

311 xxiii. —— ——.]—A *donatio mortis causâ* may be made by the donor placing money upon deposit receipt in the joint names of himself & the donee. The handing of the deposit receipt to the donee is sufficient delivery, & a direction by the donor to the donee to make certain payments out of the money does not invalidate the gift.—FAYNE *v.* MARTIN (1924), 59 I. L. T. 14.—**IR.**

PART V. SECT. 2, SUB-SECT. 2.—B. (f).

341 i. *Life insurance policy—Document delivered to third party for donee.*]—*Held :* all the essential conditions of a valid & effectual *donatio mortis causâ* had been established.—NELSON *v.* PRUDENTIAL ASSURANCE CO., [1929] N. I. 113.—**IR.**

PART V. SECT. 3, SUB-SECT. 3.—B.

374 v. —— ——.]—The delivery by a person *in extremis* of the keys of his safe, accompanied by the words, "They lead to everything I have got, everything I have got is yours" :—*Held :* to operate as a *donatio mortis causâ* of the things in the safe other than the money in a bank represented by a pass book found in the safe.—CUSACK *v.* DAY, [1925] 3 D. L. R. 1028 [1925] 2 W. W. R. 715.—**CAN.**

GUARANTEE AND INDEMNITY.

Part II.—Requisites of Guarantee.

41. *Add. Annotation :*—**Distd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306.

45. *Add. Annotation :—As to* (2) **Refd.** *Re* Lloyds Bank, Ltd., Bomze *v.* Bomze (1930), 47 T. L. R. 38.

54. *Add. Annotation :*—**Consd.** *Re* George Inglefield, Ltd. (1932), 48 T. L. R. 536.

83. *Add. Annotation :*—**Refd.** Hawkesworth *v.* Turner (1930), 46 T. L. R. 389.

121. *Add. Annotation :*—**Refd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306.

134. *Add. Annotations :*—**Refd.** Hall *v.* I. R. Comrs. (1926), 135 L. T. 759; Lewis *v.* Cammell, Laird & Co. (1929), 22 B. W. C. C. 410; Smith *v.* Union Castle S.S. Co., Ltd. (1931), 24 B. W. C. C. 71.

Part III.—Proof of Guarantee.

257. *Add. Annotation :*—**Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179.

285. *Add. Annotation :*—**Refd.** Stanley (Montagu) & Co. *v.* Solomon, Ltd., [1932] 2 K. B. 287.

295. *Add. Annotation :*—**Apld.** Farr, Smith *v.* Messers (1927), 44 T. L. R. 48.

307. *Add. Annotation :*—**N.F.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

308. *Add. Annotations :*—**Consd.** National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188. **Expld.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

309. *Add. Annotations :*—**Consd.** National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188. **Expld.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

310. *Add. Annotations :*—**Apld.** National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188. **Consd.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

PART I.

b i. —— —— *Original distinguished from collateral contract.*]—*Re* THOMSON, [1927] 2 D. L. R. 254; 60 O. L. R. 165.—**CAN.**

13 i. ——.]—The mere fact that a particular agreement may terminate in a liability for the debt of another does not make it a guarantee instead of an indemnity where the former is not its immediate or main object.—MCPHERSON *v.* FORLONG, [1928] 3 W. W. R. 45; 37 Man. L. R. 508.—**CAN.**

sa. *Distinguished from direction to furnish goods on credit of principal.*]—GRASETT *v.* HUTCHINSON (1860), 10 C. P. 265.—**CAN.**

sb. *Distinguished from novation of contract.*]—NATIONAL POLE & TREATING CO. *v.* BLUE RIVER POLE & TIE CO. (B. C.), [1929] 3 D. L. R. 638; *revsd. on facts,* [1930] 3 D. L. R. 996; 43 B. C. R. 98.—**CAN.**

PART II. SECT. 1.

sc. *Fidelity guarantee — Primary obligation of principal.*]—R. *v.* BLACK (Ont.) (1899), 8 Exch. C. R. 236.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.

23 i. *What constitutes offer.*]—Goods were supplied by a manufacturer to a buyer upon the faith of a document addressed to the manufacturer, & signed by a third person, containing these words—"I am prepared to back him, the buyer, for 1 month credit to £30":—*Held :* the document amounted to a guarantee.—DAVISON (A. A.) PTY., LTD. *v.* SEABROOK, [1931] L. R. 156.—**AUS.**

PART II. SECT. 3, SUB-SECT. 2.

44 ii. —— —— *For benefit of third party.*]—Where a married woman signs an instrument at the request of her husband, not for his benefit, but for the accommodation of a friend or relative of his, the evidence necessary to prove that undue influence was exercised by the husband must be much stronger than would be necessary had the signature been obtained for the husband's benefit.—WATKINS (J. R.) CO. *v.* NOBERT (Alta.), [1926] 1 D. L. R. 526; [1926] 1 W. W. R. 156.—**CAN.**

—— —— *For benefit of husband.*]—*See* HUSBAND & WIFE, Nos. 1370 i, 1370 ii, *post.*

PART II. SECT. 3, SUB-SECT. 5.

l i. —.]—Pltf. entered into a contract with an incorporated building co. for the installation of heating equipment. Deft., as president of the co., wrote a letter to pltf. in which he said, "I shall personally see to it that you get your payments regularly as per contract" & signed it:—*Held :* the document was not a guarantee by the co. of its own account & the signature was sufficient to charge deft. personally.—MILES *v.* ZUCKERMAN, [1931] 1 D. L. R. 448; *affd.,* [1931] 4 D. L. R. 370; O. R. 368.—**CAN.**

PART II. SECT. 4, SUB-SECT. 1.

55 vi. ——.]—CAMPBELL *v.* MCISAAC (1873), 9 N. S. R. (3 G. & O.) 287.—**CAN.**

55 vii. ——.]—R. had a contract with deft., the owner of a building, to do some work thereon. Pltfs. supplied R. on credit, with material for the work; &, alleging a promise by deft. to pay for the material if R. did not, sued deft. as upon a guarantee. R. having failed to pay:—*Held :* there being nothing in the evidence to suggest that there was any bargain with deft. that pltfs. would not register a mechanic's lien on deft.'s property, there was no consideration for the alleged promise of deft.—ERSKINE-SMITH CO. *v.* BORDELEAU, [1929] 2 D. L. R. 877; 63 O. L. R. 621.—**CAN.**

PART II. SECT. 4, SUB-SECT. 3.—A.

sd. *Agreement by bailee to deliver goods to purchaser—Promise by vendor to indemnify bailee against loss if goods not according to contract.*]—*Held :* the agreement to deliver, & not the delivery itself, formed the consideration for the promise to indemnify.—CUNNARD *v.* PLUMMER (1844), 4 N. B. R. (2 Kerr) 418.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.—A.

se. *Verbal agreement of guarantee or suretyship.*]—*Held :* unenforceable because of Stat. Frauds.—DOYLE *v.* MCKINNON, [1925] 3 D. L. R. 334; 57 O. L. R. 104.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.—B.

sf. *Promise to guarantee dividend & stock.*]—*Held :* not a guarantee to which Stat. Frauds, R. S. O., 1914 (c. 102), s. 6, applied.—QUANCE *v.* BROWN, [1926] 2 D. L. R. 824; 58 O. L. R. 578.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.—A.

196 iii. ——.]—TUPPER *v.* CROWE (1862), 15 N. S. R. (3 R. & G.) 261.—**CAN.**

196 iv. ——.]—CARR *v.* BANK OF MONTREAL, [1929] 3 D. L. R. 54; 63 O. L. R. 544.—**CAN.**

sg. *Representations within C. S. U. C., c. 46, s. 10—As to solvency of trader—Necessity for writing.*]—MCLEAN *v.* DUN (1877), 1 A. R. 153.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.

263 i. *Promise to stranger—Surety, guarantor or bail.*]—A promise to indemnify one who is a surety, guarantor or bail for a third person is not within Stat. Frauds.—MCPHERSON *v.* FORLONG, [1928] 3 W. W. R. 45; 37 Man. L. R. 508.—**CAN.**

310a. —— ——.]—Pltfs., who were creditors of the W. co., agreed with the W. co. & with deft. that they would take bills in respect of the past & future indebtedness of the W. co. if deft. would indorse the bills. Bills payable to pltfs.' order were then drawn by pltfs. & accepted by the W. co., &, before pltfs. had indorsed them, deft. wrote his name on the back. Subsequently pltfs. indorsed the bills by writing their name beneath, instead of above, that of deft. In an action on the bills deft. contended that as they had never been negotiated he did not incur the liabilities of an indorser & that his agreement, if any, was a guarantee & was not in writing, & he pleaded the Statute of Frauds:—*Held:* in the above circumstances pltfs. had authority under Bills of Exchange Act, 1882 (c. 61), s. 20, to complete the bills by adding their indorsement, & that even if deft.'s agreement was a contract of guarantee the Statute of Frauds was no answer to a claim on the bills, & therefore the action succeeded.—MCCALL BROS., LTD. *v.* HARGREAVES, [1932] 2 K. B. 423; 101 L. J. K. B. 733; 147 L. T. 257; 48 T. L. R. 450; 76 Sol. Jo. 433.

312. *Add. Annotations:*—**Folld.** National Sales Corpn., Ltd. *v.* Bernardi, Bernardi *v.* National Sales Corpn., Ltd., [1931] 2 K. B. 188. **Refd.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

312a. Signature of drawer below that of third party—Intention of parties considered.]—Bills of exchange drawn to the order of the drawer & accepted were indorsed by a third party with the intention of rendering himself liable if the acceptor did not pay. They were afterwards indorsed by the drawer with the intention of completng them & making them enforceable against the third party if necessary, the signature of the drawer being placed below that of the third party on the backs of the bills. The acceptor not having paid the bills at maturity, the drawer brought an action upon them against the third party as indorser:—*Held:* he was entitled to recover, inasmuch as the fact that his signature instead of being above was below that of the third party on the backs of the bills was a mere inadvertence which did not nullify the intentions of the parties or alter the rights which they would otherwise have had.—NATIONAL SALES CORPN., LTD. *v.* BERNARDI, BERNARDI *v.* NATIONAL SALES CORPN., LTD., [1931] 2 K. B. 188; 100 L. J. K. B. 386; 145 L. T. 48; 47 T. L. R. 380; 36 Com. Cas. 270.

Annotation:—**Apld.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

323. *Add. Annotation:*—**Refd.** Franco-British Ship Store Co. *v.* Compagnie des Chargeurs Française (1926), 42 T. L. R. 735.

345. *Add. Annotations:*—**Distd.** Reckitt *v.* Barnett, Pembroke & Slater, [1929] A. C. 176. **Refd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.

Part IV.—Interpretation.

377. *Add. Annotation:*—*As to* (2) **Refd.** Eshelby *v.* Federated European Bank, Ltd. (1931), 101 L. J. K. B. 245.

421. *Add. Annotation:*—**Refd.** Allen *v.* Royal Bank of Canada (1925), 95 L. J. P. C. 17.

Part V.—Liability of the Surety.

479. *Add. Annotation:*—**Refd.** Smith *v.* Wood (1928), 139 L. T. 250.

546. *Add. Annotation:* — **Refd.** Eshelby *v.* Federated European Bank, Ltd. (1932), 146 L. T. 336.

559a. Guarantee of payments to contractor—Subject to due execution of work.]—A limited co. employed a building contractor to execute certain repairs & decorations to a building by an agreement under seal made between the co., one T. therein called the guarantor, & a bank, & the contractor. The agreement provided that the contractor should do the work for the sum of £1,500, to be paid in four equal instalments on named dates "subject to the said works being duly executed in accordance with this agreement." By clause 11 of the agreement the guarantor agreed with the contractor & with the bank, & undertook, that the co. should, subject to the said works being duly executed in accordance with the agreement, duly & punctually make to the contractor the payments mentioned above, & that upon any default for three days on the part of the co. (written notice of which should be given by the contractor to the guarantor

PART IV. SECT. 2, SUB-SECT. 1.

sh. *To supply name of principal debtor — Not admissible.*]—IMPERIAL BANK OF CANADA *v.* NIXON, [1926] 4 D. L. R. 1052; 59 O. L. R. 538.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 1.

pi. —— *For definite engagement.*] Where a guarantee has been given for the performance of a definite engagement, which has already come into existence & is not contingent, & the consideration for which is not variable as the result of future dealings between the parties, the guarantee is not a continuing guarantee.—HASAN ALI *v.* WALI ULLAH (1930), I. L. R. 52 All. 997.—**IND.**

PART V. SECT. 1.

449 i. *Disposition by surety of property—To evade liability—Void.*]—A guarantor is not more justified in placing the whole of his property out of the reach of liability to pay the debt than is the principal debtor.—BLUDOFF *v.* OSACHOFF, [1928] 3 D. L. R. 170; [1928] 2 W. W. R. 150; 22 Sask. L. R. 533.—**CAN.**

PART V. SECT. 2, SUB-SECT. 1.—B.

k i. —— *Given for due performance of duties by inspector—Inspector liable for default of his deputy—Deputy also covered by guarantee.*]—VERRATT *v.* MCAULAY (1884), 5 O. R. 313.—**CAN.**

PART V. SECT. 2, SUB-SECT. 2.—F.

sj. *Failure of consideration—Surety discharged.*]—The rule of law is firmly established that the total failure of the consideration for a surety's promise of guarantee has the effect of discharging him.—GURDAS MALRAM CHAND *v.* GURANDITTA MAL (1929), I. L. R. 11 Lah. 77.—**IND.**

within six days of the default) in making any payment on the prescribed date, the guarantor would himself immediately make the payment so in default to the contractor. By clause 12 the bank agreed with the contractor & undertook, that upon any default for three days or more (written notice of which should be given to the bank by the contractor within three days of the default) on the part of the guarantor in making any payment under clause 11 the bank would immediately make the payment so in default to the contractor. The co. did not pay the first instalment. The contractor gave no notice either to the guarantor or to the bank. The contractor then issued a specially indorsed writ against the bank claiming the first instalment. The case was heard by an Official Referee, who found that at the date of the writ it was necessary to spend £80 in order to complete the work in accordance with the agreement. He deducted this sum from the amount claimed, & gave judgment for pltf. for the balance :—*Held :* the defts. were not liable.

By SCRUTTON & SLESSER, L.JJ., because it was a condition precedent to their liability that the works should be duly executed in accordance with the agreement, & the works were not so executed. By GREER & SLESSER, L.JJ., because the liability of defts. depended upon that of T., & he was never liable, because it was a condition precedent to his liability that pltf. should have given him notice of the co.'s default, & this notice had never been given.—ESHELBY *v.* FEDERATED EUROPEAN BANK, LTD., [1932] 1 K. B. 423 ; 101 L. J. K. B. 245 ; 146 L. T. 336, C. A.

571. *Add. Annotation :—As to* (3) **Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179.

574. *Add. Citation :*—11 Exch. 623.

587. After this case add **Sufficiency of consideration.**]—*See* LANDLORD & TENANT, No. 4142a."

608. *Add. Annotations :*—**Expld.** Elder *v.* Northcott, [1930] 2 Ch. 422. **Consd.** I. R. Comrs. *v.* Holder, [1931] 2 K. B. 81.

608a. —— **Claim for repayment of income tax—Whether maintainable.**]—Where the payment of a sum advanced by a bank to a customer together with interest due or to become due thereon is guaranteed, & subsequently the whole sum due is paid by the guarantor, that is not a payment of interest by the guarantor but is a payment by him of a debt under the guarantee, not of a debt in respect of an advance made to him. He cannot, therefore, claim repayment of tax on "interest" on an advance from a bank under the provision of Income Tax Act, 1918 (c. 40), s. 36 (1). The question whether, where the interest on such an advance is added to capital each half-year in accordance with the custom of bankers & that is acquiesced in by the customer, the payment of the whole sum by the guarantor was only a payment of capital, was not necessary to be decided.—HOLDER *v.* INLAND REVENUE COMRS., [1932] A. C. 624 ; 101 L. J. K. B. 306 ; 48 T. L. R. 365 ; 76 Sol. Jo. 307 ; *sub nom.* INLAND REVENUE COMRS. *v.* HOLDER, 147 L. T. 68 ; 16 Tax Cas. 540, H. L.

628. *Add. Annotations :*—**Apld.** *Re* Houlder, [1929] 1 Ch. 205. **Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

631. *Add. Annotation :*—**Distd.** *Re* Houlder, [1929] 1 Ch. 205.

679. *Add. Annotation :*—**Refd.** Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

705. *Add. Annotation :*—**Consd.** McCall Bros., Ltd. *v.* Hargreaves (1932), 48 T. L. R. 450.

Part VI.—Surety's Rights against Creditor.

759. *Add. Annotation :*— **Consd.** Eshelby *v.* Federated European Bank, Ltd. (1931), 101 L. J. K. B. 245.

782a. —— ——.]—BECKETT *v.* BOOTH (1708), 2 Eq. Cas. Abr. 595 ; 22 E. R. 500, L. C.

PART V. SECT. 3, SUB-SECT. 1.

566 iv. ——.]—S. lent G. a large sum of money on a mtge. by G., & a guarantee by applts. for the "debt that shall ultimately be due to S. from G." with a maximum liability of Rs. 18 lakhs :—*Held :* the guarantee was to the effect that the debt that shall remain due after realising the securities was to be borne by the guarantors limited to the maximum mentioned ; & the suit was consequently premature.—PHILLIPS *v.* MITCHELL (1929), I. L. R. 57 Calc. 764. **IND.**

sk. *Under guarantee for payment of compensation for land compulsorily acquired.*]—MURRAY *v.* THOMPSON, 3 Ont. Dig. 5953–4.—**CAN.**

sl. *Under guarantee for price of goods.*]—OGILVIE *v.* MCLEOD (1862), 11 C. P. 348.—**CAN.**

——.]—HENEY CO., LTD. *v.* ——— ———M (1909), 7 E. L. R. 163.—**CAN.**

sn. *Under guarantee for delivery of goods.*]—GEORGE *v.* BRAYLEY (1873), N. B. Dig. 397–8.—**CAN.**

so. ——.]—HIGBY *v.* CUMMINGS (1853), 10 U. C. R. 222.—**CAN.**

sp. *Under guarantee for payment of demurrage.*]—WARREN *v.* NAT'L SURETY CO., [1927] 1 D. L. R. 554.—**CAN.**

sq. *Notice by surety to creditor—Asking for limitation of liability to fixed sum—Not acted upon by creditor—Effect of.*]—WATKINS J. R. CO. *v.* ROBERTSON, [1928] 1 D. L. R. 979.—**CAN.**

PART V. SECT. 3, SUB-SECT. 2.—A.

sr. *Money received by sheriff.*]—SUMMERS *v.* HAMILTON (1840), 6 O. S. 113.—**CAN.**

st. —— *Money received by de facto sheriff colore officii.*]—KENT *v.* MERCER (1862), 12 C. P. 30.—**CAN.**

PART V. SECT. 4, SUB-SECT. 1.—B.

sv. *Admissibility of parol evidence—To show liability limited to specific transactions.*]— The guarantee bonds in question herein which were given to pltf. bank held to be on the face of them continuing guarantees, &, therefore, parol evidence was not admissible to show that the liability thereunder was intended to be limited to certain specific transactions.—CANADIAN BANK OF COMMERCE *v.* KOFFMAN & CHERRY, [1928] 4 D. L. R. 87 ; [1928] 2 W. W. R. 662.—**CAN.**

PART V. SECT. 4, SUB-SECT. 2.

sw. *Inspector—Default of deputy inspector.*]—*Held :* the surety was liable, & the fact of there being a remedy also on the deputy inspector's bond was no answer.—VERRATT *v.* MCAULAY (1884), 5 O. R. 313.—**CAN.**

PART V. SECT. 7, SUB-SECT. 1.

sx. *After judgment by default—Whether amendment allowed.*]—SCOTT *v.* M'DONALD (1841), 6 O. S. 238.—**CAN.**

PART V. SECT. 7, SUB-SECT. 6.

728 ii. —— —— ——.]—*Re* THOMSON, [1926] 4 D. L. R. 755 ; 59 O. L. R. 449.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.

775 ii. —— ——.]—REVILLON WHOLESALE, LTD. *v.* NEMIRSKY, [1926] 2 D. L. R. 374 ; [1926] 2 W. W. R. 166 ; 7 C. B. R. 583.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 2.—A.

782 iv. —— —— *Against assignee of interest in security.*]—GARRETT *v.* JOHNSTONE (1867), 13 Gr. 36.—**CAN.**

782 v. —— —— *Rights of mortgagee of surety.*]—QUAY *v.* SCULTHORPE (1869), 16 Gr. 449.—**CAN.**

788. *Add. Annotations :*—**Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358. **Refd.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

809. *Add. Annotation :*—**Refd.** Smith *v.* Wood (1928), 139 L. T. 250.

815. *Add. Annotation :*—*As to* (2) **Apld.** Smith *v.* Wood (1928), 139 L. T. 250.

824. *Add. Annotation :*—*As to* (2) **Refd.** Smith *v.* Wood (1928), 139 L. T. 250.

849. *Add. Annotation :*—**Apld.** *Re* Houlder, [1929] 1 Ch. 205

851. *Add. Annotation :*—**Apld.** *Re* Houlder, [1929] 1 Ch. 205.

Part VII.—Surety's Rights against Principal Debtor.

898. *Add. Annotation :*—**Refd.** *Re* Anderson-Berry, Harris *v.* Griffith, [1928] Ch. 290.

902. *Add. Annotations :*—*As to* (1) **Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358. *Generally*, **Refd.** *Re* Anderson-Berry, Harris *v.* Griffith, [1928] Ch. 290.

907. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Anderson-Berry, Harris *v.* Griffith, [1928] Ch. 290.

908. *Add. Annotation :*—**Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

913. *Add. Annotation :*—**Refd.** *Re* Anderson-Berry, Harris *v.* Griffith, [1928] Ch. 290.

915. *Add. Annotation :*—**Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

947. *Add. Annotation :*—**Refd.** Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443.

Part VIII.—Rights and Liabilities of Co-Sureties inter se.

1099. *Add. Annotation :*—*As to* (1) **Consd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

1115a. Form of order.]—KENT *v.* ABRAHAMS, [1928] W. N. 266; 66 L. Jo. 323.

782 vi. —— —— *Further advance by creditor to debtor.*]—*Re* HAMILTON TRUSTS (1895), 10 Man. L. R. 573.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 2.—B. (c) ii.

822 i. *Assignment of judgment.*]—SMITH *v.* BURN (1880), 30 C. P. 630.—**CAN.**

PART VII. SECT. 1.

82. *Where land transferred as security.*]—SCHULTZ *v.* CAN. SURETY CO. (Alta.), [1927] 2 D. L. R. 580.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 2.—A.

872 ii. ——.]—A surety who enters into an agreement to procure the discontinuance of an action against his principal, & pays the amount of his guarantee, is entitled to be reimbursed.—GOUGH *v.* GOODWIN, [1931] 1 D. L. R. 701; 3 M. P. R. 435.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 2.—A.

g i. ——.]—SUTTON *v.* HINCH (1910), 19 Man. L. R. 705.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 3.

937 iv. —— ——.]—READ *v.* MCLEAN, [1925] 3 D. L. R. 716.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 4.

964 i. *Rights after debtor discharged—Debt due before discharge—Payment by surety after.*]—K. was surety for payment of a debt due by G. to D. G. applied to be declared insolvent & in due course G. was discharged. D. then sued K. & got a decree against him. Thereafter K. sued G. for recovery of the amount which he had been compelled to pay :—*Held :* the order of discharge was a ban to the suit.—GANGADHAR *v.* KANHAI (1928), I. L. R. 50 All. 606.—**IND.**

PART VII. SECT. 4, SUB-SECT. 6.

sa. *On debtor's property—Agreed to be deposited in bank to meet surety's promissory notes—Property garnished by creditor.*]—A surety having been called upon to pay the principal's debt, paid the creditor part of it in cash & gave him his promissory notes for the balance. The principal, who was selling his house, repaid the surety out of the proceeds the cash previously paid by him & promised to deposit the balance of the proceeds in a bank to the joint credit of the surety & himself. Instead of doing so, he deposited it in his own name & it was garnished by pltf. when the notes given by the surety were not yet due & were still unpaid. On an interpleader issue between the garnishor & the surety who contended that there had been an equitable assignment of the money so deposited :—*Held :* said promise was nothing more than a voluntary one, never carried to completion, &, therefore, unenforceable as against the claims of the principal's other creditors.—HENSCHEL *v.* HOFFMAN & BANK OF MONTREAL & HENSCHEL, [1928] 2 D. L. R. 543; [1928] 1 W. W. R. 763.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 1.—D.

1054 i. *Sureties for different portions of debt.*]—Two persons independently guaranteed the current account of a customer of a bank, each guarantee being for a limited sum only. The indebtedness of the customer exceeded that limited sum :—*Held :* the guarantors were not sureties for independent debts, but for the whole for the floating balance of the customer. Each of the guarantors agreed with the bank that his guarantee was independent of any other guarantee or security held by the bank, & that he would not claim the benefit of any such guarantee or security :—*Held :* this agreement had not the effect of destroying the right to contribution of the sureties *inter se*, & therefore one of the guarantors who had paid more than his due proportion in liquidation of the amount due by the customer to the bank, was entitled to recover the excess from his co-surety.—CORNFOOT *v.* HOLDENSON, [1931] Argus L. R. 376.—**AUS.**

PART VIII. SECT. 2, SUB-SECT. 2.—B. (a).

1058 iv. ——.]—The fact that a settlement made by some of a number of co-sureties with their creditor has not been agreed to by all the co-sureties or fixed by judgment does not prevent those who have made the settlement & paid thereunder from enforcing contribution from the others, if the latter, although notified of & invited to take part in the negotiations for settlement, did nothing & made no protest with respect thereto.—STEWART *v.* BRAUN, [1925] 2 D. L. R. 423; [1925] 1 W. W. R. 871.—**CAN.**

1058 v. —— ——.]—MCNEILL *v.* SHORT (Alta.), [1926] 4 D. L. R. 951.—**CAN.**

1058 vi. —— ——.]—CADWELL *v.* CAMPEAU (1912), 21 O. W. R. 263; 3 O. W. N. 616; 3 D. L. R. 555.—**CAN.**

1058 vii. —— ——.]—TUCKER *v.* BENNETT, [1927] 2 D. L. R. 42; 60 O. L. R. 118.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 2.—B. (b).

1068 i. *Revsd.*, 35 C. L. R. 48.

PART VIII. SECT. 2, SUB-SECT. 4.—B.

1116 i. *Application of Mercantile Laws Amendment Act*, 1856 (c. 97), *s. 5—Assignment of judgment—Necessity for leave to issue execution.*]—Where a creditor takes judgment against two or more sureties & issues execution against each, & one of them pays the judgment, the surety so paying is entitled to stand in the place of the creditor & carry on, in his own name, any proceedings already taken to enforce the judgment against the other surety until he receives the amount of the other's contributive share, & he is not required to obtain leave to issue execution in his own name.—FAST *v.* ZARCHEKOFF, [1926] 4 D. L. R. 355; [1926] 2 W. W. R. 577; 20 Sask. L. R. 596.—**CAN.**

Part IX.—Determination of the Guarantee.

1149. *Add. Annotation :*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307.

1177. *Add. Annotation :*—**Distd.** *Re* Houlder, [1929] 1 Ch. 205.

1186. *Add. Annotation :—As to* (3) **Consd.** Smith *v.* Wood (1928), 139 L. T. 250.

1200. *Add. Annotation :*—**Distd.** Midland Motor Showrooms *v.* Newman, [1929] 2 K. B. 256.

1200a. —— —— —— Hire-purchase agreement.]—Pltfs. were the assignees of the rights of the R. Co. under a hire-purchase agreement dated July 6, 1927, whereby the co., "the owners," agreed to let to one T., "the principal," a motor car on the terms that he should be at liberty to purchase the car at a fixed price, paying as a first payment £22 6*s.* 8*d.*, & thereafter monthly payments of £14 3*s.* 4*d.*, until the whole was paid. The payments by the principal under this agreement were guaranteed by deft. as surety under a document signed by her on July 6, 1927. The principal afterwards fell in arrears in payment of the monthly instalments, & on Feb. 3, 1928, he wrote to the owners offering a cheque for £20 drawn by a friend in part payment. On Feb. 4 the owners wrote accepting this cheque & stipulating that the rest of the arrears should be paid within one month. The cheque was sent to the owners, but the arrears, which amounted to £79, were not paid within one month, & the owners then took back the car, acting upon their powers under the hire-purchase agreement. On Sept. 18, 1928, the owners assigned their rights under that agreement to pltfs., who claimed £122 in all from deft. as surety :—*Held :* (1) there was a binding contract by the owners to give time to the principal debtor; (2) the liability for payments under the hire-purchase agreement was one & indivisible, & deft. was entirely discharged from her suretyship.—MIDLAND MOTOR SHOWROOMS *v.* NEWMAN, [1929] 2 K. B. 256; 98 L. J. K. B. 490; 141 L. T. 230; 45 T. L. R. 499, C. A.

1216. *Add. Annotations :—As to* (1) **Apld.** Smith *v.* Wood (1928), 139 L. T. 250. *As to* (2) **Consd.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487.

1217. *Citations :*—Delete 9 Bing. 746; 3 Moo. & S. 191; 131 E. R. 794.

1222. *Add. Annotations :*—**Apld.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487; Smith *v.* Wood (1928), 139 L. T. 250. **Refd.** Sassoon *v.* International Banking Corpn, [1927] A. C. 711; Midland Motor Showrooms, Ltd. *v.* Newman, [1929] 2 K. B. 256.

1223. *Add. Annotation :—As to* (1) **Apld.** Smith *v.* Wood (1928), 139 L. T. 250.

1223a. Charge by several persons of properties—Release of deeds deposited by one.]—By a joint & several memorandum of charge twelve persons, in luding six resps., deposited deeds with applt. as security to relieve applt. from the entire burden of a guarantee given by him to a bank for the overdraft of S. & Co., & they thereby respectively charged the hereditaments to which the deeds related with repayment of all money to become due from S. & Co. Applt., at the request of C., one of the twelve persons, allowed her to take the deeds deposited by her away for the purpose of raising a loan. S. & Co. having gone into liquidation, the bank called upon applt. to make good his guarantee. Thereupon resps. brought an action claiming that they were entitled to have all the deeds deposited by them under the terms of the charge discharged from the debt to which they were made liable to contribute under the charge, on the ground that, by applt. allowing C. to withdraw the deeds deposited by her, their risk had been increased :—*Held :* (1) there had been an alteration made in the position of those whose properties remained deposited as securities under the charge by reason of applt. allowing the withdrawal by C. of the deeds deposited by her, & they not having consented to the alteration, their properties, the deeds of which they had deposited, were discharged from all claims under the charge; their right of marshalling had been affected by the withdrawal of the deeds of one of the parties, & the materiality of the alteration was a question to be decided by them; (2) the same reasoning was applicable, whether what was contributed were securities or personal liability.—SMITH *v.* WOOD [1929], 1 Ch. 14; 98 L. J. Ch. 59; 139 L. T. 250; 72 Sol. Jo. 517, C. A.

1224a. Guarantee of call on shares—Forfeiture of shares—Discharge of surety.]—On Dec. 29, 1920, D. & P., who afterwards became bkpt., joined with others in entering into an agreement with a co., whereby they guaranteed

PART IX. SECT. 2, SUB-SECT. 1.—A.

1179 vii. —— ——.]—NASH-SIMINGTON CO., LTD. *v.* THOMAS (Sask.), [1926] 2 D. L. R. 462.—**CAN.**

a i. —— ——.]—*Held :* the surety was not released from his guarantee.—DUNN *v.* THICKETT (Man.), [1925] 3 W. W. R. 736.—**CAN.**

a ii. —— ——.]—WINSLOW *v.* VERNER (1890), 30 N. B. R. 150.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 1.—C. (g).

sd. *Change of system of audit.*]—The fact that a municipality, which had taken out a fidelity bond based on an application in which it stated that the bonded employee's books would be audited quarterly, thereafter changed said auditing system to a system of "continuous audit," held not to be a breach of the contract of such a nature as to avoid the contract.—PENTICTON DISTRICT *v.* LONDON GUARANTEE & ACCIDENT CO., LTD., [1932] 1 W. W. R. 812.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 1.—C. (h).

sf. *Surrender of some chattels bought under lien note—No detriment to value of chattels.*]—*Held :* the surety who signed the note was not released.—TOOVEY *v.* BROCK & BROCK (1916), 34 W. L. R. 973.—**CAN.**

sk. *Sale of goods exceeding stipulated amount.*]—*Held :* the sureties were not liable.—TEXAS CO. (S. A.), LTD. *v.* WEBB & TOMLINSON (1927), 48 N. L. R. 24.—**S. AF.**

PART IX. SECT. 2, SUB-SECT. 1.—C. (i).

sm. *Making principal debtor bankrupt.*]—Where a surety contended that, by making debtor bkpt., the creditor had so prejudiced the surety as to discharge him from liability :—*Held :* no duty was owed by a creditor to a surety either to put debtor into bkpcy. or to refrain from doing so.—IMPERIAL BANK OF CANADA *v.* ALLEY, [1926] 3 D. L. R. 86; 59 O. L. R. 1.—**CAN.**

sn. *Relating possession of chattels under conditional sale agreement.*]—*Held :* the contract constituted a relationship of mtgor. & mtgee. between vendor & purchaser, & the surety continued to be liable under the guarantee.—STEPHEN *v.* BLACK (1902), Cout. 217.—**CAN.**

to them the payment of all the instalments then owing upon the shares in the co. specified in the schedule to the agreement, the amount of D. & P.'s liability being limited to the sum therein mentioned. The shareholders having been served with notice calling upon them to pay the instalments due on their respective shares on pain of forfeiture, & D. & P. also having been required to pay the same on or before Feb. 17, 1925, in case of non-compliance by the shareholders with the notice, & default in payment having been made by both the shareholders & by D. & P., the co. forfeited the bulk of the shares in pursuance of the power conferred upon them by their arts. of assocn. Art. 31 was as follows: "Any member whose shares have been forfeited shall, notwithstanding such forfeiture, be liable to pay to the co. all calls or other moneys, interest & expenses, whether presently payable or not, owing in respect of such shares at the time of forfeiture, together with interest thereon from the time of forfeiture until payment at the rate of 10 per cent. *per annum* or such less rate as may be fixed by the Board." On Sept. 9, 1925, a receiving order in bkpcy. was made against D. & P., & on Apr. 10 the co. lodged their proof for the amount claimed to be due on the guarantee. Upon a motion by the co. for the reversal of the decision of the trustee in rejecting their proof:—*Held:* (1) the right created by art. 31 was a new right which arose upon the forfeiture of the shares & one which placed a more onerous obligation upon the shareholders than if the shares had not been forfeited. The forfeiture, therefore, was an interference with the rights of the sureties as against the principal debtor; (2) the co. had by exercising their option to forfeit the shares deprived the sureties of their lien on the shares which they would have been entitled to, had the co., in lieu of forfeiture, compelled them to pay the calls; with the result that, upon the principles stated in *Polak* v. *Everett*, No. 1222, *ante*, D. & P. were discharged from their liability as sureties under the guarantee & the decision of the trustee in their bkpcy. in rejecting the proof of the co. was right.—*Re* DARWEN & PEARCE, [1927] 1 Ch. 176; 95 L. J. Ch. 487; 136 L. T. 124; 70 Sol. Jo. 965; [1926] B. & C. R. 65.

1329. *Add. Annotation:*—*As to* (1) **Consd.** Smith *v.* Wood (1928), 139 L. T. 250.

1342. *Add. Annotations:*—**Refd.** *Re* Darwen & Pearce, [1927] 1 Ch. 176; Smith *v.* Wood (1928), 139 L. T. 250.

1343. *Add. Annotation:*—**Consd.** Midland Motor Showrooms *v.* Newman, [1929] 2 K. B. 256.

1345a. ——.]—MIDLAND MOTOR SHOWROOMS *v.* NEWMAN, No. 1200a, *ante*.

1357. *Add. Annotation:*—**Apld.** Midland Motor Showrooms *v.* Newman, [1929] 2 K. B. 256.

1372. *Add. Annotation:*—**Apld.** Midland Motor Showrooms *v.* Newman, [1929] 2 K. B. 256.

1379a. ——.]—MIDLAND MOTOR SHOWROOMS *v.* NEWMAN, No. 1200a, *ante*.

1397. *Add. Annotation:*—*Generally*, **Refd.** Berry *v.* Berry, [1929] 2 K. B. 316.

1478. *Add. Annotation:*—**Distd.** Smith *v.* Wood, [1929] 1 Ch. 14.

1522. *Add. Annotation:*—**Refd.** *Re* Katherine et cie, Ltd., [1932] 1 Ch. 70.

PART IX. SECT. 2, SUB-SECT. 2.—A.

so. *Surety not prejudiced—Onus of proving prejudice on surety.*]—CLOSE *v.* STEWART, [1928] 2 D. L. R. 445.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 4.—A. (a).

e i. ——.]—*Held:* it was not necessary to show that the surety was prejudiced by the giving time.—DARLING *v.* MCLEON (1861), 20 U. C. R. 372.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 4.—A. (c).

1322 iii. ——.]—CORRIGAL *v.* BOULTON (1898), 17 U. C. R. 131.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 4.—B. (a).

1340 i. *Consent to judgment—Debt & costs payable by instalments.*]—When on an application for attachment before judgment, a surety executes a bond in form 6 in App. F to Civil Procedure Code, 1908, he is discharged from his obligations if a compromise decree is passed between pltf. & deft. allowing deft. to pay the decretal amount by instalments, unless it is proved that the compromise which was subsequently embodied in the decree was in the contemplation of pltf. & the surety when the latter executed the bond.—MAHOMEDALLI IBRAHIMJI *v.* LAXMIBAI (1929), I. L. R. 54 Bom. 118.—**IND.**

PART IX. SECT. 2, SUB-SECT. 4.—B. (d).

sp. *Alteration in number of instalments.*]—*Held:* not made on a basis of extension of time, so as to release the surety from liability.—MALKIN (W. H.) CO., LTD. *v.* SHERMAN (1925), 35 B. C. R. 445.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 4.—C. (a).

1364 xv. ——.]—BURNARD *v.* LYSNOR, [1927] N. Z. L. R. 757.—**N.Z.**

PART IX. SECT. 2, SUB-SECT. 7.—C.

1448 iii. ——.]—There must be some positive act done by the employer to the surety's prejudice, or such degree of negligence as to imply connivance & amount to fraud.—LONDON GUARANTEE & ACCIDENT CO., LTD. *v.* CITY OF HALIFAX, [1927] 1 D. L. R. 1129; [1927] S. C. R. 165.—**CAN.**

1451 i. *Fraud of employee—Neglect of employer to supervise conduct—Neglect must be gross.*]—Circumstances in which:—*Held:* gross negligence in checking accounts discharged the surety.—FRAHER *v.* WATERFORD COUNTY COUNCIL, [1926] I. R. 505.—**IR.**

1455 i. ——— *Checking accounts.*]—FRAHER *v.* WATERFORD COUNTY COUNCIL, [1926] I. R. 505.—**IR.**

PART IX. SECT. 2, SUB-SECT. 8.—A.

sr. *General rule.*]—If it is an express or implied condition of, or collateral to, the arrangement for a guarantee, that an existing security, whether inchoate or complete, should be made or kept effective by the creditor for the benefit of the parties as a counter-security, failure to observe that condition discharges the surety absolutely, inasmuch as he has not got the contract he bargained for.

If there is, in fact, in the possession of the creditor such a counter-security, it is the duty of the creditor, whether its existence is known to the surety or not, to exercise reasonable care in maintaining it for the benefit of the surety, so as to be available, unimpaired by reason of any negligence, on the discharge of the debt. If he fails in this duty, the surety is entitled to credit against his liability for the damages sufferod by such breach of duty by the creditor.—NORTHERN BANKING CO., LTD. *v.* NEWMAN & CALTON, [1927] I. R. 520.—**IR.**

PART IX. SECT. 2, SUB-SECT. 8.—B.

1477 i. *Sale of security—Failure to get best price.*]—MACDONALD *v.* HIRSCH, [1932] 4 D. L. R. 121.—**CAN.**

1480 i. *Release of mortgage debt.*]—*Held:* the surety was not liable under the guarantee.—ORCHISTON *v.* SCHLAEPFER, [1924] N. Z. L. R. 1170.—**N.Z.**

st. *Failure to renew chattel mortgage.*]—LEACROFT *v.* MCCANNELL, [1930] 2 W. W. R. 105; 3 D. L. R. 988.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 9.—A.

1496 i. *When surety discharged—Release obtained by fraud—Of debtor.*]—When the release of the principal debtor by the creditor is accomplished by means of fraud, on the part of the former, the surety is not discharged, even if he is not a party to the fraud by which the release was secured.—R. *v.* THE CANADIAN SURETY CO., [1929] Ex. C. R. 216; *affd. with variations*, [1930] S. C. R. 434; 3 D. L. R. 321.—**CAN.**

1499 i. *When surety discharged—Release of debtor.*]—MILNE *v.* YORKSHIRE GUARANTEE & SECURITIES CORPN. (1906), 37 S. C. R. 331.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 9.—B. (a).

sv. *Sale of debtor's equity of redemption.*]—*Held:* not a release of debtor, nor of his surety.—STEWART *v.* CLARK (1863), 13 C. P. 203.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 9.—B. (c).

sw. *Release of co-lessee—Surety discharged.*]—ISMAN *v.* WIDEN (Sask.), [1926] 1 D. L. R. 247.—**CAN.**

1522a. —— —— —— ——.]—MORRIS (D.) & SONS, LTD. *v.* JEFFREYS (1932), 49 T. L. R. 76.

1523. *Add. Annotations :*—**Refd.** Morris *v.* Harris, [1927] A. C. 252. **Refd.** *Re* Katherine et cie, Ltd., [1932] 1 Ch. 70.

1561. *Add. Annotation :*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

1570. *Add. Annotations :*—**Refd.** Firm of R. M. K. R. J. *v.* Firm of M. R. M. V. L. (1926), 95 L. J. P. C. 197; Pirie *v.* Richardson (1926), 70 Sol. Jo. 1023; Cumberland *v.* Lanarkshire Tram Co. (1927), 20 B. W. C. C. 780; Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

1576. *Add. Annotation :*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

1577. *Add. Annotation :*—**Refd.** Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

1582. *Add. Annotation :*—*As to* (2) **Consd.** Smith *v.* Wood (1928), 139 L. T. 250.

1608. *Add. Annotation :*—**Refd.** *Re* Darwen & Pearce, Associated Paper Mills *v.* Barnes (1926), 95 L. J. Ch. 487.

Part X.—Avoidance of the Guarantee.

1658. *Add. Annotation :*—**Refd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

1725. *Add. Annotation :*—**Refd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

1726. *Add. Annotation :*—**Refd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

1741. *Add. Annotations :*—**Refd.** Slingsby *v.* District Bank, Ltd. (1931), 47 T. L. R. 587; Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

Part XII.—Indemnity.

1745. *Add. Annotation :*—**Refd.** Wiggins *v.* Lavy (1928), 44 T. L. R. 721.

1745a. Distinguished from del credere agency.]—Defts. agreed in writing with pltfs., stockbrokers on the Stock Exchange, that in consideration of 50 per cent. of the commissions received by pltfs. in respect of business introduced to them by defts. the latter would be liable for 50 per cent. of "any loss sustained" by pltfs. on such business. X., who had been introduced by defts., became indebted to pltfs. in respect of such business.

PART IX. SECT. 2, SUB-SECT. 9.—C. (b).

1561 iv. —— ——.]—HOLLIDAY *v.* HOGAN (1893), 20 A. R. 298.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 11.—B.

sy. *Whether revocable by notice—Fidelity guarantee.*]—Resp. executed a bond guaranteeing the fidelity of a servant of applt.'s. Subsequently he purported to withdraw the guarantee by a written notice :—*Held :* (1) the guarantee, in the nature of a security for the servant's fidelity, is not a continuing guarantee which may be revoked by the guarantor at will; (2) a guarantor for the fidelity of a servant is allowed as a measure of equitable relief, to recall his guarantee from such time as the servant is proved guilty of misconduct or from such time as the position of the parties has completely changed.—MYINGYAN MUNICIPALITY *v.* MAUNG PO NYUN (1930), I. L. R. 8 Ran. 320.—**IND.**

PART X. SECT. 4, SUB-SECT. 2.—C.

1685 i. *Character.*]—An offer, by an employer, who has knowledge of dishonesty on the party of his employee, amounts to a representation to one from whom he seeks or obtains, without disclosure, a fidelity guaranty, that so far as he is aware, the employee whose fidelity is to be guaranteed is not dishonest. If that representation is untrue, it matters not that the employer's failure to disclose the true situation was not wilful, intentional, or with a view to advantage himself.—EBY-BLAIN, LTD. *v.* MATTHEWS, [1925] 2 D. L. R. 382; 56 O. L. R. 383.—**CAN.**

1685 ii. ——.]—Where an employee is required to furnish a fidelity bond, & his employer knows that he has been dishonest in the office or service to which the bond is to apply, but fails to disclose such knowledge to the surety who gives the bond in ignorance of the former dishonesty of appct., such non-disclosure releases the surety.—RURAL MUNICIPALITY OF CHURCHBRIDGE No. 211 *v.* LONDON GUARANTEE & ACCIDENT CO., LTD., [1925] 3 D. L. R. 341; [1925] 2 W. W. R. 334; 19 Sask. L. R. 450.—**CAN.**

1685 iii. *S. P.* MAYFIELD RURAL MUNICIPALITY, No. 406 *v.* LONDON & LANCASHIRE GUARANTEE & ACCIDENT CO. OF CANADA, [1927] 1 D. L. R. 403; [1927] 1 W. W. R. 67; 21 Sask. L. R. 283.—**CAN.**

gi. —— *Statement made in ignorance & without fraud.*]—For the purpose of a renewal of a fidelity policy, pltfs. certified to defts. that the employee "is not at present in arrears or default." The employee was in fact in arrears & default at the time, but the certificate was made without knowledge of this & without fraud :—*Held :* pltfs. could not recover under the policy.—DOMINION OF CANADA GUARANTEE & ACCIDENT CO., LTD. *v.* HOUSING COMMISSION OF CITY OF HALIFAX, [1927] 4 D. L. R. 161; [1927] S. C. R. 492.—**CAN.**

PART X. SECT. 4, SUB-SECT. 3.

1702 x. —— —— ——.]—JOHN DEERE PLOW CO. *v.* MAGUSS, [1929] 2 D. L. R. 262; 1 W. W. R. 669; 24 Alta. L. R. 65.—**CAN.**

h i. —— *Separate obligations—Only one explained—Sureties illiterate.*]—WATKINS J. R. CO. *v.* MINKE, [1928] 3 D. L. R. 557; [1928] S. C. R. 414.—**CAN.**

1713 i. *As to nature of transaction.*]—It is a good defence to an action on a guarantee that it was executed by the surety in the belief, induced by the fraudulent misrepresentations of debtor, that it is a document of another nature.—WATKINS (J. R.) CO. *v.* HANNAH (Sask.), [1926] 4 D. L. R. 93; [1926] 2 W. W. R. 800.—**CAN.**

PART X. SECT. 5, SUB-SECT. 2.

1730 ii. —— ——.]—*Held :* the influence exerted by the husband was not undue influence, & the wife executed the guarantee as the result of her own considered judgment of the consequences thereof.—CANADIAN BANK OF COMMERCE *v.* FOREMAN, [1927] 2 D. L. R. 530; [1927] 1 W. W. R. 783; 22 Alta. L. R. 443.—**CAN.**

1730 iii. ——.]—When a married woman disputes her liability to a creditor of her husband upon a guaranty signed by her at her husband's request, the *onus* is on her to prove that the husband had executed an overpowering influence upon her to induce her to sign it, & that the giving of the guaranty was an immoderate & irrational act on her part.—ROYAL BANK OF CANADA *v.* DIAMOND, [1929] 3 D. L. R. 390; 2 W. W. R. 267; 38 Man. L. R. 301.—**CAN.**

PART XII. SECT. 1.

1744 iii. —— *Person indemnified insolvent.*]—Where a person entitled to be indemnified is insolvent :—*Semble :* the contract to indemnify him has the same effect as if it were a guarantee to the principal creditor of payment of the debt.—*Re* WINDING-UP ACT & FRANCO-CANADIAN MORTGAGE CO., LTD., *Re* BANK OF MONTREAL (Alta.), [1927] 1 W. W. R. 403; 8 C. B. R. 176.—**CAN.**

sz. *Does not extend to doing unlawful acts.*]—*Held :* the fact of a municipal council having undertaken to indemnify an officer for lawful acts done in his official capacity, does not entitle him to look to them for indemnity against the consequences of unlawful acts.—IRWIN *v.* MARIPOSA CORPN. (1872), 22 C. P. 367.—**CAN.**

When X. executed an assignment for the benefit of creditors, pltfs. thereupon claimed that a " loss " had been sustained within the meaning of the above letter at the time when the assignment was executed :—*Held :* (1) the agreement was one of indemnity & not in the nature of a *del credere* agency ; (2) in the absence of evidence of actual loss sustained after taking into consideration the value of pltfs.' rights under the assignment, there must be judgment for defts.—STANLEY (MONTAGU) & CO. *v.* SOLOMON (J. S.), LTD., [1932] 1 K. B. 611 ; 76 Sol. Jo. 272 ; *affd.*, [1932] 2 K. B. 287.

1747. *Add. Annotation :*—**Consd.** Dawson Line, Ltd. *v.* Aktiengesellschaft Adler für Chemische Industrie of Berlin, [1932] 1 K. B. 433.

1756. *Add. Annotation :*—**Apld.** Dawson Line, Ltd. *v.* Aktiengesellschaft Adler für Chemische Industrie of Berlin, [1932] 1 K. B. 433.

1762. *Add. Annotation :*—**Distd.** Bradstreets British, Ltd. *v.* Mitchell (1932), 48 T. L. R. 670.

1762a. —— —— ——.]—A contract between a mercantile inquiry agency, which furnishes reports on the financial stability of cos., firms, & persons engaged in trade, & a trading co., providing that all information furnished by the agency to its subscriber, the trading co., is supplied in strict confidence for the exclusive use of the subscriber in the subscriber's business, & that the subscriber shall indemnify the agency in respect of any loss or damage which it may suffer or incur from the breach by the subscriber of any of the conditions of the contract, is not void as being against public policy on the ground that the fundamental element of the contract is the desire on the part of the agency to protect itself against the risk of actions for libel resulting from reports issued by it to subscribers.—BRADSTREETS BRITISH, LTD. *v.* MITCHELL (1932). 48 T. L. R. 670.

1782. *Add. Annotation :*—**Consd.** Dawson Line, Ltd. *v.* Aktiengesellschaft Adler für Chemische Industrie of Berlin, [1932] 1 K. B. 433.

1787. *Add. Annotation :*—**Refd.** Pontypridd Grdns. *v.* Drew, [1926] 1 K. B. 567.

1789. *Add. Annotation :*—**Refd.** Pontypridd Grdns. *v.* Drew (1926), 95 L. J. K. B. 1030.

1790. *Add. Annotation :*—**Overd.** Pontypridd Grdns. *v.* Drew (1926), 95 L. J. K. B. 1030.

1790a. —— —— ——.]—Guardians who supply goods to a pauper by way of ordinary poor relief have no right to recover from the pauper the reasonable value of the goods so supplied. *Birkenhead Union Guardians* v. *Brookes*, No. 1790, overd.—PONTYPRIDD UNION *v.* DREW, [1927] 1 K. B. 214; 95 L. J. K. B. 1030; 136 L. T. 83; 90 J. P. 169; 42 T. L. R. 677; 70 Sol. Jo. 795 ; 24 L. G. R. 405, C. A.

See, further, POOR LAW.

1800. *Add. Annotation :*—**Consd.** *Re* Harrington Motor Co., *Ex p.* Chaplin, [1928] Ch. 105.

1826a. Limited to claims by third parties.]—Pltfs. took a lease of premises from deft. railway co., &, by an agreement supplemental to the lease, defts. gave pltfs. permission to use a portable gangway, which could be moved over certain of defts.' railway lines. One of the terms was that pltfs. " agree & undertake to indemnify the co. against all claims & demands or liability whatsoever, whether in respect of damage to person or property, arising out of or in connection with the existence or user of the gangway." When pltfs. were using the gangway some trucks were shunted down the line, & the gangway was destroyed. In an action for damages for negligence &/or breach of duty defts. denied liability & pleaded the above term of the supplemental agreement :—*Held :* the undertaking was only one to hold defts. harmless against claims by third parties. — GREAT WESTERN RY. CO. *v.* DURNFORD (JAMES) & SONS, LTD. (1928), 139 L. T. 145 ; 44 T. L. R. 415 ; 33 Com. Cas. 251, H. L. ; *affg.*, S. C. *sub nom.* DURNFORD (JAMES) & SONS, LTD. *v.* GREAT WESTERN RY. CO. (1927), 138 L. T. 137, C. A.

Annotations :—**Distd.** London & North Eastern Ry. Co. *v.* Furness Shipbuilding Co. (1932), 48 T. L. R. 479. **Refd.** The Carlton (1931), 47 T. L. R. 517.

1826b. Claims arising " in connection with the works."]—Pltfs., a railway co., made with the defts. a contract by which the latter were to reconstruct an overline bridge & by which defts. were to indemnify pltfs. against all claims for injuries caused " in connection with the works." During the progress of the work two men engaged on the job were injured by an open door on a passing train, the cause of the accident being the negligence of some servant of pltfs. in not seeing that the door was properly secured before the train left its starting point. Actions were brought against pltfs. in respect of both men, & pltfs. settled the claims for reasonable amounts. In an action for an indemnity :—*Held :* the indemnity provided for was not limited to an indemnity against the acts or defaults of defts., &, as the accident took place where the work was being done & as the injured men were employed on the work, there was a sufficient " connection with the works " to enable pltfs. to recover.—LONDON & NORTH EASTERN RY. CO. *v.* FURNESS SHIPBUILDING CO., LTD. (1932), 49 T. L. R. 21, C. A.

PART XII. SECT. 6, SUB-SECT. 1.—A.

1825 ii. ——.]—RUTHERFORD *v.* STOVEL (1861), 12 C. P. 9.—**CAN.**

1825 iii. ——.]—GRAND TRUNK PACIFIC COAST S.S. CO. *v.* VICTORIA-VANCOUVER STEVEDORING CO. (1919), 43 D. L. R. 231.—**CAN.**

sg. *Supply of information - Indemnity against loss.*] Resp. carried on a business of financing motor car dealers. Applt. carried on a business of obtaining & giving information as to credit, character, etc., & including the checking of cars in dealers' hands & reporting thereon. Applt. made an agreement to supply its service to resp. Resp. signed an " indemnity agreement," agreeing to treat in confidence the information furnished, to hold applt. harmless on account of any damages arising from publication or dissemination of information or careless handling of reports, & agreeing, " in consideration of receiving this service, & as a condition of its rendition," that neither applt. nor its employees should be responsible " for any loss that may occur to resp. through the use of the information furnished." Through careless car-checking reports, made without personally checking over the cars, in respect of a dealer, made by a local inspection agent of applt. & passed on to resp., resp. was misled, to its loss, & sued applt. for damages. Applt. claimed that it had not bound itself for more than reasonable care in the selection of its inspection agents, &, further, that, in any case, it was relieved from liability by the concluding clause of the indemnity agreement :—*Held :* resp. should recover. The concluding clause of the indemnity agreement did not, on proper construction of that agreement, relate to car-checking reports.—RETAIL CREDIT CO., INCORPORATED *v.* COMMERCIAL FINANCE CORPN., LTD. & MERCHANT'S CASUALTY INSURANCE CO., RETAIL CREDIT CO., INCORPORATED *v.* COMMERCIAL FINANCE CORPN., LTD. & WESTERN CO., [1932] S. C. R. 33.—**CAN.**

1830. *Add. Annotation :—As to* (2) **Refd.** Stoney *v.* Eastbourne R. D. C., [1927] 1 Ch. 367.

1867. *Add. Annotations :*—**Refd.** *Re* Harrington Motor Co. (1927), 44 T. L. R. 58; Hoods' Trustees *v.* Southern Union General Insce. of Australasia, [1928] Ch. 793.

1877. *Add. Annotation :*—**Refd.** Admiralty Comrs. *v.* S.S. Susquehanna, [1926] A. C. 655.

1882. *Add. Annotation :*—**Refd.** *Re* Pinto Leite & Nephews, *Ex p.* Des Olivaes (Visconde), [1929] 1 Ch. 221.

1889. *Add. Annotations :—As to* (2) **Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] A. C. 601. *Generally,* **Refd.** May *v.* May, [1929] 98 L. J. K. B. 770.

1895a. —— **Against "loss sustained"—Actual loss necessary—Effect of deed of assignment by debtor.**]—STANLEY (MONTAGU) & Co. *v.* SOLOMON (J. C.), LTD., No. 1745a, *ante.*

1908a. —— —— **Indemnity against loss on debentures—Sale of debentures by party indemnified.**]—Deft. was the chairman of the S. Co., which at the end of 1921 was seeking to issue £15,000 First Lien Debentures to rank *pari passu* with a previous issue of first lien debentures of the same amount; & deft., having interested pltf. in the matter, sent him a letter of indemnity, dated Feb. 17, 1922, in these terms: "Regarding the issue of £15,000 First Lien Debentures of the S. Co. at the price of £80 per £100 . . . I understand you are subscribing for £3,000 of the same at a cost to you of £2,400. In consideration of your giving me one-fourth of any profit you may receive on such investment, I hereby indemnify you against any loss thereon. The expression 'any profit' only refers to the redemption price of £100 per £80, which, when received, will show a profit of £20 per bond & the bonus out of the proceeds of any royalties on oil sales from the co.'s properties during the currency of the debentures. . . . The interest you will be entitled to receive from the co. is excluded from the consideration of profits." The debentures were redeemable on July 1, 1925, but they were secured by two debenture trust deeds which gave power to extend the due date, & in Apr. 1925, steps were taken which resulted in its extension to July 1, 1930. In May & June, 1925, a correspondence took place between pltf. & deft. in which pltf. announced his intention of selling the debentures, & deft. protested against this, claiming that they must be kept till their due date. On July 16, 1925, pltf. put the debentures up for sale, & in the absence of other bidders sold them to his son for £25. He then commenced proceedings to recover the amount of his loss, but the House of Lords decided that nothing was payable under the indemnity until the due date arrived. On July 18, 1928, the co. went into liquidation & pltf., having repurchased the debentures from his son, brought these proceedings to recover his loss:—*Held:* in selling the debentures pltf. had committed a breach of an implied term of the contract, & having failed to maintain the position essential to enable deft. to receive the consideration for the indemnity, he had committed a breach of a term going to the root of the contract. Deft. had elected by his pleadings in the previous action to treat the contract as at an end & pltf. could not therefore maintain the present action.—GUY-PELL *v.* FOSTER, [1930] 2 Ch. 169; 99 L. J. Ch. 520; 143 L. T. 247, C. A.

PART XII. SECT. 7, SUB-SECT. 1.

b i. *Claim by liquidator of indemnified party—Before payment of liability.*]—Where commission agents had incurred liability on behalf of their principals, who had agreed to indemnify them, & the agents having subsequently gone into liquidation, official liquidator sued the principals for the amount of liability:—*Held:* he could recover the amount even though the agents having gone into liquidation had not actually paid their vendor.—OSMAN JAMAL & SONS *v.* GOPAL PURSHATTAM (1928), I. L. R. 56 Calc. 262.—IND.

HIGHWAYS, STREETS AND BRIDGES.

Part I.—Definitions and Characteristics.

4. *Add. Annotation :*—**Refd.** Linton *v.* Newcastle-upon-Tyne Corpn. (1929), 142 L. T. 49.

5. *Add. Annotation :—As to* (4) **Refd.** A.-G. & Public Trustee *v.* Woolwich Metropolitan Borough Council (1930), 144 L. T. 132.

18. *Add. Annotation :*—**Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons (No. 2) (1929), 94 J. P. 10.

20. *Add. Annotation :*—**Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons (No. 2) (1930), 144 L. T. 132.

29a. ——.]—A.-G. *v.* TASKER, No. 263a, *post.*

65. To the existing paragraph add as follows :—(3) The words "annual payment towards the cost of the maintenance & repair" in Local Government Act, 1888 (c. 41), s. 11 (2), mean a payment to be made annually in respect of the expenditure of the particular year, not a fixed sum to be arrived at by taking the average expenditure over a series of years.

Annotations :—As to (1) **Consd.** Manchester Corpn. *v.* Audenshaw U. C. & Denton U. C., [1928] Ch. 763. **Apld.** Reigate Corpn. *v.* Surrey County Council, [1928] Ch. 359.

66. *Add. Annotation :—As to* (1) **Consd.** Reigate Corpn. *v.* Surrey County Council, [1928] Ch. 359.

79. *Add. Annotation :*—**Refd.** Howard-Flanders *v.* Maldon Corpn. (1926), 135 L. T. 6.

91a. Not confined to public highway.]—*Held :* the word "street" even in London does not necessarily mean a public highway.—BARNES *v.* CADOGAN DEVELOPMENTS, LTD., [1930] 1 Ch. 479 ; 99 L. J. Ch. 274 ; 142 L. T. 626.

137. *Add. Annotation :*—**Apld.** A.-G. & Public Trustee *v.* Woolwich Metropolitan Borough Council (1929), 93 J. P. 173.

137a. —— ——.]—A.-G. & PUBLIC TRUSTEE *v.* WOOLWICH METROPOLITAN BOROUGH COUNCIL, No. 951a, *post.*

146. *Add. Annotation :*—**Apld.** A.-G. & Public Trustee *v.* Woolwich Metropolitan Borough Council (1929), 93 J. P. 173.

164a. Whether public highway—Claim of dedication.]—Pltfs. claimed a declaration that a way over deft.'s land was a public highway for vehicular traffic up to a certain point & for foot traffic from that point to Cockington Church on the ground that dedication should be presumed from evidence of uninterrupted use by the public throughout living memory & from evidence of reputation. The church was surrounded by deft.'s grounds, &, apart from a private path from his grounds, there was no access to the church except by the way in question. Deft. admitted that there was a church way for parishioners along the way, but he denied that there was any public right of way. Since 1774 the title to the property had been such that the owners could, if so minded, have dedicated the way to the public. The freehold of the church was in the incumbent & it had fulfilled all the functions of a parish church, but no person had a right to enter it without the permission of the vicar & churchwardens when it was not open for Divine service. The ct. found that apart from parishioners comparatively few persons had visited the church until about 1890, but since the War large numbers of persons had done so by the way in question & no one had ever been turned back. Owing to the increased use of the way notices were put up that visitors must keep to the path & not pick the flowers & that there would be no admission through the gate after 6 p.m. There was also a notice "No thoroughfare except to the church." In 1923 annoyance from visitors began & the gate was ordered to be locked after dusk, but no complaint was ever made, though some persons were actually prevented from going along the way to the church :—*Held :* on the evidence, the use of the way could properly be explained as having taken place by permission, & there was no reason why the ct. should presume from that use dedication to the public, & therefore the action failed.—A.-G. *v.* MALLOCK (1931), 146 L. T. 344 ; 48 T. L. R. 107 ; 30 L. G. R. 141.

Part II.—Highway Statutes, Areas and Authorities.

SECT. 2.—**HIGHWAY AREAS AND AUTHORITIES** (p. 279).

See, now, Local Government Act, 1929 (c. 17), ss. 29–45.

PART I. SECT. 1, SUB-SECT. 3.

45 i. *Cul-de-sac.*]—Scavenging may not be sufficient evidence that a *cul-de-sac* is a public highway.—JATINDRANATH BARAT *v.* CALCUTTA CORPN. (1930), I. L. R. Calc. 1124. **IND.**

PART I. SECT. 1, SUB-SECT. 4.

sk. [illegible] in every community to a religious procession, with its appropriate observances, along a highway. This is an inherent right & does not depend on the proof of any custom or long-established practice.—MUHAMMAD JALIL KHAN *v.* RAM NATH KHAN (1930), I. L. R. 43 All. **IND.**

PART I. SECT. 6, SUB-SECT. 2.

sa. *By Government survey—Prevails against previous possession.*]—MOUNTJOY *v.* R. (1861), 1 E. & A. 429.—**CAN.**

PART III. SECT. 1.

r i. —— ——.]—POINT ABINO ASS'N. *v.* BERTIE TOWNSHIP, [1927] 4 D. L. R. 503 ; 61 O. L. R. 120 ; *affd.,* [1928] 2 D. L. R. 31 ; 61 O. L. R. 610. —**CAN.**

Part III.—Origin and Proof of Highways.

178. *Add. Annotation :—As to* (2) **Refd.** Stoney *v.* Eastbourne R. D. C. & Devonshire (1925), 90 J. P. 133.

187. *Add. Annotation :*—**Refd.** Stoney *v.* Eastbourne R. D. C. & Devonshire (1925), 90 J. P. 57.

189. *Add. Annotations :—As to* (1) **Consd.** A.-G. *v.* Tasker (1928), 92 J. P. 157; A.-G. *v.* Manchester Corpn. (1930), 46 T. L. R. 629.

194. *Add. Annotations :—As to* (1) **Consd.** A.-G. *v.* Manchester Corpn., [1931] 1 Ch. 254. *As to* (2) **Refd.** A.-G. *v.* Mallock (1931), 48 T. L. R. 107.

196. *Add. Annotation :—As to* (2) **Refd.** Layzell *v.* Thompson (1926), 43 T. L. R. 58.

216. *Add. Annotation :*—**Consd.** Stoney *v.* Eastbourne R. D. C. & Devonshire (1925), 90 J. P. 133.

219. *Add. Annotation :—As to* (1) **Refd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312.

251. *Citations :*—For "L. R. 3 Exch. 316" read "L. R. 2 Exch. 316."

Add. Annotations :—As to (1) **Consd.** Stoney *v.* Eastbourne R. D. C. & Devonshire (1925), 90 J. P. 133. *As to* (2) **Refd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159; Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401. *Generally*, **Refd.** Stoney *v.* Eastbourne R. D. C. & Devonshire (1925), 90 J. P. 57.

263a. ——.]—Where nothing is known about a way except that it is used, the origin of the way is to be found in the user; & in such a case the user raises a legal presumption of dedication.

Upon proof that a path had been used by the public on foot & on horseback as of right during the period of living memory & that such right was reputed to exist theretofore back to the early part of last century: —*Held :* the path was dedicated to the public as a bridleway at or about the commencement of, or prior to the commencement of, last century.—A.-G. *v.* TASKER (1928), 92 J. P. 157.

270a. Motive of user immaterial.]—HUE *v.* WHITELEY, No. 298a, *post*.

274a. —— **Reputed to exist for over one hundred years.**]—A.-G. *v.* TASKER, No. 263a, *ante*.

285. *Add. Annotations :—As to* (1) **Distd.** Hue *v.* Whiteley, [1929] 1 Ch. 440. **Refd.** Stoney *v.* Eastbourne R. C. & Devonshire (1926), 95 L. J. Ch. 312; A.-G. *v.* Mallock (1931), 48 T. L. R. 107. *As to* (2) **Consd.** Trafford *v.* Thrower (1929), 45 T. L. R. 502.

298. *Add. Annotation :—Generally.* **Refd.** Boultwood *v.* Paignton U. D. C. (1928), 92 J. P. 98.

298a. Paths joining existing highways.]—Evidence of long public user, as of right, of a pathway or roadway for the purpose of passing from one public place to another, is not the less ground for inferring dedication because recreation may have been the sole motive of such user.

H. & W. were neighbouring freeholders, & the sites of their properties originally formed part of the D. estate. The property of H. was originally let on a long lease in 1878 to one G., together with a right of way over a rough road, of the nature of a timber road, leading up from the London Road towards the property & past the property to Box Hill. In 1916 H. acquired the freehold of the property, & took a conveyance of the roadway in 1924. W., without the consent of H., opened a small gate for pedestrians in the boundary fence. In the action H. claimed a declaration that he was the freeholder of the said roadway & an injunction to restrain W. from trespassing thereon. Evidence was given of public user between Box Hill & the London Road for purposes of pleasure :—*Held :* the evidence of public user led to a presumption that the land had been dedicated, & that the motive of such user was irrelevant.—HUE *v.* WHITELEY, [1929] 1 Ch. 440; 98 L. J. Ch. 227; 140 L. T. 531.

310a. ——.]—A local authority acquired, in 1875, an area of land under its Act, in accordance with which it laid out streets & made improvements in the area. But a plot of land included in the area was practically neglected for sixteen years, & was then handed over to the local authority's Parks Committee for use as an open space & was drained & gravelled. Later, a fountain & certain structures were erected on the plot, & the public used the plot freely & continuously. In or about 1928 the local authority wished to build a tuberculosis dispensary & offices on the plot, & the Minister of Health approved its appropriation for that purpose. In an action by the Attorney-General on relation for an injunction to restrain the local authority from building so as to interfere with the right of user & enjoyment of the plot by the public :—*Held :* the public had not acquired by user a public right of way over the plot; the public rights over the plot were general & to some extent precarious, & could be destroyed under Public Health Acts (Amendment) Act, 1907 (c. 53), s. 95.—A.-G. *v.* MANCHESTER CORPN., [1931] 1 Ch. 254; 100 L. J. Ch. 33; 144 L. T. 112; 46 T. L. R. 629; 28 L. G. R. 634.

311a. Footpath along sea cliff.]—Where there was evidence of the user by the public of a

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PART III. SECT. 2, SUB-SECT. 2.

206 vi. —— *Crown patents issued in accordance with plan showing highway.*]—EDMONTON TOWN *v.* BROWN & CURRY (1893), 1 Terr. L. R. 454.—**CAN.**

206 vii. ——.]—*Re* PETERS, [1931] 3 D. L. R. 89.—**CAN.**

PART III. SECT. 2, SUB-SECT. 3.—C.

218 ii. —— ——.]—*Held :* no presumption of dedication from user by the public could be made against an owner who was in fact out of possession or control; to justify such presumption it must be shown that there was some period during which the owner could have taken action to exclude the public. —A.-G. *v.* DUNEDIN, [1929] N. Z. L. R. 261.—**N.Z.**

PART III. SECT. 2, SUB-SECT. 4. B. (a).

257 xi. ——.]—In an action of trespass, deft. alleged a public right of way across plffs.' land: *Held :* the evidence as to uninterrupted public user of the alleged road for a period coextensive with the memory of witnesses, along with other circumstances in evidence, justified a finding of dedication.—FULTON *v.* CREELMAN, [1931] S. C. R. 221; 1 D. L. R. 733; *affg.*, [1930] 4 D. L. R. 43.—**CAN.**

PART III. SECT. 2, SUB-SECT. 4.—B. (c).

sd. *Lane less than prescribed minimum width of private streets—No dedication inferred.*]—CARPET IMPORT CO., LTD. *v.* BEATH & CO., LTD., [1927] N. Z. L. R. 37.—**N.Z.**

footpath along a sea cliff for some distance when its direction continued on a line slanting inland, & during the course of some twenty years, owing to erosion by the sea, the footpath so used had receded about twenty or thirty feet inland, though the ct. was always slow to infer the dedication of a public right of way along a sea cliff, such a dedication could be here inferred, having regard to the fact that part of the footpath did not run along the sea cliff, & no objection to its user had been made by the owner of the land over which the footpath continued after leaving the sea cliff. Pltfs. having claimed that there was no public right of way over a strip of land under a portion of a fence removed by defts.:—*Held:* the public had wandered from the original right of way over the land of pltfs. when it was in the hands of their predecessor in title & was derelict, but the user of the new way by the public had never been acquiesced in, & there had never been a dedication of it to the public use, & pltfs. were entitled to a declaration that there was no such public right of way.—BOULTWOOD *v.* PAIGNTON URBAN DISTRICT COUNCIL (1928), 92 J. P. 98.

322a. —— **User by sufferance.**]—Deft. council claimed that there was a public footpath over pltf.'s park. On a plan attached to an inclosure award of 1816 no such public footpath was set out, & since that time down to 1901 the park had been in settlement with no one capable of dedicating a right of way to the public. The alleged footpath led from the public road over part of the carriage drive to the hall, & then turned off through the park, leading to only three farms & three or four cottages, & by its use a distance of about sixty-four yards was saved. There was no evidence of dedication, & the evidence of user was by the occupants of the farms & cottages & their friends:—*Held:* the proof of uninterrupted user was no more than evidence from which the ct. could infer that at some time the owner of the soil had dedicated the path to the public of which there was no evidence, & the evidence of user was user by sufferance only since 1816, before which no such public footpath was shown to exist.—FENWICK *v.* HUNTINGDON RURAL DISTRICT COUNCIL (1928), 92 J. P. 41.

329a. —.]—BOULTWOOD *v.* PAIGNTON URBAN DISTRICT COUNCIL, No. 311a, *ante*.

355a. —— ——.]—The purchaser of land sold "subject to rights of way," after an unsuspected right of way had been established on behalf of the public, brought an action against the vendor for breach of the implied covenants expressed by his having conveyed as "beneficial owner." The vendor's covenant being qualified, the question turned upon whether there had been dedication of the right subsequently to 1782, the date of the last purchase for value by those through whom the vendor claimed. Pltf. produced two tithe maps, made respectively in 1802 & 1840, in neither of which was the right of way marked:—*Held:* the tithe maps were made for a special purpose, & not for the purpose of showing public or private rights other than as regards tithe; they were not, therefore, *primâ facie* evidence enabling pltf. to contend that the dedication was at a subsequent date, so as to shift upon deft. the *onus* of proving that the dedication was prior to 1782.—STONEY *v.* EASTBOURNE RURAL COUNCIL, [1927] 1 Ch. 367; 95 L. J. Ch. 312; 135 L. T. 281; 90 J. P. 173; 70 Sol. Jo. 690; 24 L. G. R. 333, C. A.

355b. —— ——.]—A tithe map & award produced from the proper custody may, in cases in which the question is whether a highway was dedicated to the public before or after Mar. 20, 1836, be used in conjunction with evidence of uninterrupted public user throughout living memory as evidence, (1) that there was at the date of the award a carriage-way along the line shown on the map, & (2) of reputation that the way so shown had by the date of the award been dedicated to the public.—A.-G. (FEVERSHAM'S (EARL) TRUSTEES) *v.* STOKESLEY RURAL DISTRICT COUNCIL (1928), 26 L. G. R. 440.

356. *Add. Annotation:*—**Refd.** Layzell *v.* Thompson (1927), 137 L. T. 106.

361. *Add. Annotation:—As to* (1) **Distd.** Great Western Ry. *v.* Monmouthshire County Council (1929), 94 J. P. 6.

390a. —— **Persons going to church.**]—A.-G. *v.* MALLOCK, No. 164a, *ante*.

Part IV.—Width of Highways.

443a. —STILLWELL *v.* NEW WINDSOR CORPN., No. 616a, *post*.

PART III. SECT. 2, SUB-SECT. 4.—B. (d).

317 ii. ——.]—Where a person has possessory rights over a piece of land, the title to the land being vested in Govt., another person may establish a right of access to a tomb erected on such land & to worship there. Such a right must have been openly enjoyed without leave, stealth, or force for a length of time which suggests originally an agreement or usage that has become a customary law of the place in respect of the persons or things in which it is concerned. But the establishment of such right only does not include the right to erect substantial structures over & round the tomb which would be an infringement of the possessory rights of its owner.—DAWSON *v.* ROUHAE ZAMANI BEGUM (PRINCESS) (1928), I. L. R. 6 Ran. 456.—**IND.**

PART III. SECT. 2, SUB-SECT. 4.—B. (e).

se. *Right to obstruct—Locus in quo conveyed with adjoining property.*]—LEARY *v.* ARMSTRONG (1850), 12 N. B. R. (1 Han.) 22.—**CAN.**

PART III. SECT. 2, SUB-SECT. 7.

404 i. *Non-user by public.*]—BRITISH COLUMBIA HOP CO., LTD. *v.* DISTRICT OF KENT, [1925] 3 D. L. R. 171; [1925] 2 W. W. R. 31.—**CAN.**

PART III. SECT. 3.

434 i. *Compliance with statutory requirements—Failure of commissioners to file return of laying out—Laying out not invalidated.*]—BROWN *v.* MCKEEL (1841), 1 Kerr, 311.—**CAN.**

434 ii. —— —— ——.]—R. *v.* ROY, *Ex p.* DUGUENNE, [1931] 4 D. L. R. 748; 3 M. P. R. 104.—**CAN.**

Part V.—Rights in Connection with Highways.

546. *Add. Annotation :*—**Expld.** Spillers, Ltd. *v.* Cardiff Assessment Committee & Cardiff Revenue Officer, [1931] 2 K. B. 21.

587. *Add. Annotation :*—**Distd.** Curtis *v.* Geeves (1930), 143 L. T. 48.

588. *Add. Annotation :*—*As to* (2) **Consd.** Grant *v.* Derwent, [1929] 1 Ch. 390.

597. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt, [1932] 2 K. B. 1.

601. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

605a. —— ——.]—STILLWELL *v.* NEW WINDSOR CORPN., No. 616a, *post.*

607. *Add. Annotations :*—**Consd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63. **Refd.** Noble *v.* Harrison, [1926] 2 K. B. 332.

608. *Add. Annotation :*—**Consd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

616. *Add. Annotations :*—**Consd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63. **Apld.** Stillwell *v.* Windsor Corpn. (1932), 76 Sol. Jo. 433.

616a. —— **Trees.**]—As owner of a house at C., which was bounded on the west & north by public highways known as Mill Lane & St. Andrew's Road respectively, pltf. claimed the property in certain polled lime trees, proved to be about 110 years old, standing along the edge of the footpaths on the eastern & southern sides of those two highways. Pltf. having refused to comply with defts.' notice to remove the trees on the ground that they were dangerous & obstructions to traffic & defts. having, in consequence of her refusal, themselves removed three of the trees in St. Andrew's Road, pltf. brought this action, by which she claimed an injunction to restrain defts. from removing the remaining trees & for certain other relief. She claimed that the trees had been planted before the dedication of the roads as public highways, & that there had been excepted from such dedication the portions of the roads in which the trees were planted. There was no evidence of such restricted dedication as pltf. asserted, but, on the contrary, evidence that the trees in both roads were planted in areas over which, as ancient highways, the public had rights of passage. It was proved that some of the trees were, through disease & decay, so unstable as to be an immediate danger to the public & a nuisance to the highway, that others threatened to become a similar danger at short notice, & that the rest, including the three trees which defts. had removed, were a danger to traffic & a nuisance. On Aug. 16, 1920, the boundary of the borough of New Windsor was altered so as to include the parish of C. (Without), & it was admitted that the two roads were highways repairable by the inhabitants at large :—*Held :* (1) the roads were ancient highways upon which, after dedication to the public use, the trees were planted ; (2) even assuming pltf. had property in the trees, defts. as to those trees which had been proved to be a nuisance to the highway, had not merely a right but a duty to remove them, & as to the remaining trees, they were entitled to remove them as being obstructions to the rights of the public over the entire width of the roads, which were not limited to the use of the carriageways ; (3) the trees, as being parts of the " streets " or as produce of the soil thereof, vested under Public Health Act, 1875, in & came under the control of defts. as the highway authority, with the result that pltf. was not in a position to complain, & her action failed.—STILLWELL *v.* NEW WINDSOR CORPN., [1932] 2 Ch. 155 ; 101 L. J. Ch. 342 ; 147 L. T. 306 ; 76 Sol. Jo. 433 ; 30 L. G. R. 477.

618. *Add. Annotations :*—**Apld.** A.-G. *v.* Hornsey B. C. (1926), 43 T. L. R. 92. **Consd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63. **Refd.** Grant *v.* Derwent, [1929] 1 Ch. 390.

627. *Add. Annotation :*—**Consd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

637. *Add. Annotation :*—**Mentd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons (No. 2) (1929), 94 J. P. 10.

641a. —— ——.]—Applt. was convicted of driving a motor car across the pavement in Threadneedle Street, contrary to City Police Act, 1839 (c. xciv.), s. 35 (7), which provides that, " Every person who shall . . . draw or drive any cart or carriage . . . so that it can stand across or upon any footway," shall be guilty of an offence. He drove across the pavement into a courtyard forming part of the premises of the National Provincial Bank, there being no evidence of any other means of access to the courtyard from the highway. The footway was not constructed to allow of vehicular traffic crossing it, & there was a kerb six inches high. There were no pedestrians on the footway at the time, & the right of passage by the public was not interfered with. Applt. was an employee of the bank authorised to drive the car into the courtyard. There was no evidence either as to the ownership of the footway or of any prior user of the courtyard for vehicular traffic :—*Held :* since access to the courtyard by vehicles was not shown to be essential to any user of the premises, the magistrate was entitled to convict.—CURTIS *v.* GEEVES (1930), 143 L. T. 48 ; 94 J. P.

PART V. SECT. 1, SUB-SECT. 2.

si. —— —— ——.]—HASAN *v.* ZAMAN (1924), 41 T. L. R. 88.—**IND.**

PART V. SECT. 2, SUB-SECT. 3.

ai. *Under Town Planning & Development Act,* 1920.]—A piece of land, comprising about 14,000 acres, situated in a farming district, & within the boundaries of a district council area, was subdivided by the owner into twelve lots. A plan was deposited in the Lands Titles Registration Office, & showed certain private roads which were marked " private roads to be vested in " the owner :—*Held :* the fee-simple of these roads did not vest by virtue of Town Planning & Development Act, 1920, in the district council.—LOXTON DISTRICT COUNCIL *v.* BRUCE, [1927] S. A. S. R. 463.—**AUS.**

PART V. SECT. 3, SUB-SECT. 1.

sd. *Interference with right — Passengers waiting for cars—Nuisance.*]—BUTLER *v.* NOVA SCOTIA L. & P. CO., [1930] 2 D. L. R. 680 ; 1 M. P. R. 407.—**CAN.**

71 ; 46 T. L. R. 187 ; 28 L. G. R. 103 ; 29 Cox, C. C. 126, D. C.

642a. —— **Construction of communication for vehicles—Effect of local Act.**]—MARSHALL *v.* BLACKPOOL CORPN. (1932), 174 L. T. Jo. 506.

651. *Add. Annotation :—As to* (1) **Refd.** Howard-Flanders *v.* Maldon Corpn. (1926), 135 L. T. 6.

657. *Add. Annotation :—As to* (2) **Consd.** Howard-Flanders *v.* Maldon Corpn. (1926), 135 L. T. 6.

661. *Add. Annotation :*—**Dbtd.** Witham Outfall Board *v.* Boston Corpn. (1926), 136 L. T. 756.

665. *Add. Annotation :*—**Apld.** Holt Bros. & Whitford *v.* Axbridge Rural District Council (1931), 95 J. P. 87.

676. After this case add "—— **Grant void for uncertainty.**]—*See* CONSTITUTIONAL LAW, Vol. XI., p. 564, No. 637."

756. *Add. Annotation :*—**Apld.** Powell Lane Manufacturing Co. *v.* Putnam (1928), [1931] 2 K. B. 305, n.

757. *Add. Annotation :*—**Consd.** Race *v.* Postmaster-General (1932), 146 L. T. 489.

Part VI.—Repair of Highways.

786a. —— —— **Increased burden of traffic.**]—A road was constructed by pltf. corpn. under powers conferred by a private Act of 1875, which enacted that the road should be constructed according to a certain specification & that it should thereafter be maintained at pltfs.' expense. The road was completed in 1878 as a waterbound macadamised road in accordance with the statutory requirements & was fully maintained by them for many years, but ultimately it deteriorated owing to the increase of traffic of a kind unknown in 1878, & unless resort was had to tar-spraying, or to some similar modern expedient, the existing traffic would rapidly destroy the road :—*Held :* (1) pltfs. were liable to maintain the road in the condition in which it was completed in 1878, & that liability still continued, notwithstanding the change of circumstances brought about by the increase of traffic ; (2) the obligation to maintain the road rested on pltfs. alone.—MANCHESTER CORPN. *v.* AUDENSHAW URBAN COUNCIL & DENTON URBAN COUNCIL, [1928] Ch. 763 ; 97 L. J. Ch. 276 ; 139 L. T. 509 ; 92 J. P. 163 ; 44 T. L. R. 628 ; 72 Sol. Jo. 452 ; 26 L. G. R. 343, C. A.

797. *Add. Annotation :—As to* (1) **Consd.** Reigate Corpn. *v.* Surrey County Council, [1928] Ch. 359.

819. *Add. Annotation :—As to* (1) **Refd.** Palmer *v.* Crone, [1927] 1 K. B. 804.

892. *Add. Annotations :—As to* (1) **Apld.** A.-G. *v.* Hornsey B. C. (1926), 43 T. L. R. 92. **Refd.** Reigate Corpn. *v.* Surrey County Council, [1928] Ch. 359.

945. *Add. Annotation :*—**Consd.** Garnett *v.* Pratt, [1926] Ch. 897.

951. *Add. Annotation :*—**Apld.** A.-G. & Public Trustee *v.* Woolwich Metropolitan Borough Council (1929), 93 J. P. 173.

951a. —— ——.]—Relators were trustees of two wills, & as such owned lands abutting upon a certain road in the Metropolitan Borough of W. By notices dated Feb. 14, 1928, the trustees were required to pay to defts. two sums amounting to £1,473 11*s.* 2*d.*, being the estimated expenses of making up as a new street certain portions of the road upon which their lands respectively abutted. The A.-G. claimed a declaration that those portions of the road were highways repairable by the inhabitants at large, & relators as co-pltfs. claimed a declaration that those portions of the road were not "new streets" within Metropolis Management Acts, 1855 & 1862. Defts. contended that the road in question had not been dedicated to the public before Mar. 20, 1836, & was therefore not repairable by them. Further, they said that each of the portions of the road was in fact & in law a "new street" within Metropolis Management Acts, & that neither they nor their predecessors had at any time taken into charge or assumed the maintenance of the paving or roadway of the street of which the said portions of the road formed part :—*Held :* (1) on the evidence there was nothing

PART V. SECT. 4.

Grade of street ing

WESTMINSTER CITY CORPN. *v.* BRIGHOUSE (1892), 20 S. C. R. 520.—**CAN.**

PART V. SECT. 5, SUB-SECT. 1.

sf. *Power of International Bridge Company—To regulate charges.*]—CANADA SOUTHERN RY. CO. *v.* INTERNATIONAL BRIDGE CO. (1883), 8 App. Cas. 723.—**CAN.**

PART VI. SECT. 1.

789 i. *Revsd.*, 26 A. R. 43.

789 —— —— *Every portion of road.*]—municipality is liable in damages for an accident resulting from the breach of its duty to keep every portion of a road in repair, that is, in a fit condition to be travelled upon.—REA *v.* MUNICIPALITY OF MINTO, [1925] 3 D. L. R. 523 ; [1925] 2 W. W. R. 657 ; 35 Man. L. R. 190.—**CAN.**

789 iii. —— —— ——.]—Although every portion of a public road must be kept in repair by the municipality in which the road lies, the driver of a very heavy vehicle is not entitled to drive it to the extreme edge of a raised road built of earth in absolute reliance that it will not crumble.—BLACKIE *v.* MUNICIPALITY OF MINIOTA, [1925] 4 D. L. R. 1054 ; [1925] 3 W. W. R. 561.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 1.

sg. *Liability of village—Village Act, R. S. A.* 1922 (c. 109), *s.* 88.]—Before a village can be held liable for damage resulting from a defect in a road, it must be shown that the road is within one of the classes of roads specified in the above sect.—GREENAWAY *v.* CANADIAN PACIFIC RY. CO., [1925] 1 D. L. R. 992 ; [1925] 1 W. W. R. 667 ; 21 Alta. L. R. 331 ; *varying*, [1924] 4 D. L. R. 977 ; [1924] 3 W. W. R. 498.—**CAN.**

se. *Improved road—Under control of Minister—Liability of adjoining owners.*]—When a municipal corpn. has passed a resolution placing under the control of the Minister of Roads the maintenance & repairs of an improved road, the costs incurred by the corpn. are levied only on the properties whose owners are bound to maintain the road, if there is a byelaw then in force to that effect, notwithstanding the facts that the resolution of the corpn. was adopted years after the enactment of the byelaw & that the cost of improvements made under the authority of the Minister was higher than anticipated by the ratepayers, when they petitioned for an improved road, & by the byelaw describing the work & imposing the expense on certain interested landowners.—LANCTOT *v.* ST. CONSTANT CORPN., [1931] S. C. R. 614.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 2.

sf. *Covenant to "repair"—Reconstruction not included.*]—*Held :* as a covenant to repair is not a covenant to make a new thing, & inasmuch as to do what the suppliant now required of resp. would practically amount to reconstruction of the whole of said wall, such work did not come within the meaning of "repairs" called for by the covenant in the contract.—ST. JOHN CITY *v.* R., [1932] S. C. R. 537 ; 2 D. L. R. 803 ; *affg.*, [1931] Ex. C. R. 188.—**CAN.**

to show that the road in question was anything else than a public highway repairable by the inhabitants at large. The fact that repairs had been done by private owners for their own benefit was no evidence of any liability on their part to repair *ratione tenuræ*; (2) neither of the portions of road in respect of which the claim arose constituted a "new street" within Metropolis Management Acts.—A.-G. & PUBLIC TRUSTEE *v.* WOOLWICH METROPOLITAN BOROUGH COUNCIL (1929), 93 J. P. 173; 27 L. G. R. 700.

997. *Add. Annotation:*—**Refd.** A.-G. *v.* Hornsey B. C. (1926), 43 T. L. R. 92.

1002a. **Walls & roof of tunnel.**]—In 1823 a road was constructed as a private road by S., on, through, & under his own land. In order to make the road S. tunnelled under an existing footpath. In 1923 the road became a main road, pltfs., S.'s successors in title to the soil through which the tunnel was driven, being the road authority. In 1924 it became necessary to repair the walls & roof of the tunnel:—*Held:* (1) the walls & roof of the tunnel either formed part of the highway or were necessary for its maintenance, & the costs of their repair were costs within Local Govt. Act, 1888 (c. 41), s. 11 (2), towards which defts. were bound to make an annual payment; (2) even if S., having in 1823 tunnelled under an existing highway, became liable *ratione nocumenti* to repair the part of the tunnelled road under the highway, that liability did not descend to pltfs. under Local Govt. Act, 1888, s. 97, because pltfs. were not only S.'s successors in title but also a highway authority.—REIGATE CORPN. *v.* SURREY COUNTY COUNCIL, [1928] Ch. 359; 97 L. J. Ch. 168; 138 L. T. 691; 92 J. P. 46; 44 T. L. R. 308; 72 Sol. Jo. 154; 26 L. G. R. 278.

Part VII.—Enforcement of Duty to Repair.

1053. *Add. Annotation:*—**Refd.** A.-G. *v.* Hornsey B. C. (1926), 43 T. L. R. 92.

Part VIII.—Powers, Duties and Liabilities of Highway Authorities.

1146a. —— **Removal of footway.**]—A municipal corpn., in exercise of its powers as highway authority under Public Health Act, 1875 (c. 55), s. 149, widened a narrow street in the town by entirely removing a raised & kerbed footway on one side, & throwing its site into the carriage-way without any notice to or consent of the owner of the adjoining house & premises, who was also owner of one-half of the soil of the road. The owner brought an action in the county ct. for a mandatory order to restore the footway, & for damages for injury to his property. It was proved that the access to & egress from the property through doors in a garden wall was rendered inconvenient & dangerous by the removal of the footway, & the county ct. judge granted a mandatory injunction to defts. to restore the footway to a width of 1 ft. less than before:—*Held:* the county ct. judge had rightly directed himself in law, & there was evidence upon which he was entitled to find that the action of defts. in removing the footway was unreasonable & arbitrary, & it was not sufficient for the action to be *bonâ fide*; & the order was properly made.—HOWARD-FLANDERS *v.* MALDON CORPN. (1926), 135 L. T. 6; 90 J. P. 97; 70 Sol. Jo. 544; 24 L. G. R. 224, C. A.

1164a. **Duty to inspect trees—On private ground adjoining highway—Patent danger.**]—MACKIE *v.* DUMBARTONSHIRE COUNTY COUNCIL, WESTERN DISTRICT COMMITTEE (1927), 71 Sol. Jo. 710; 91 J. P. Jo. 634, H. L.

PART VII. SECT. 1.

1006 ii. ——.]—*Re* R. *v.* LAMBTON (Ont.) (1926), 46 Can. Crim. Cas. 13.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 1.

sk. *Not suspended by provision of statutory remedy.*]—R. *v.* TOWN OF PARIS (1862), 12 C. P. 445.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 8.—B.

1107 i. *Neglect to repair after conviction—Writ de nocumento amovendo.*]—R. *v.* PORTAGE LA PRAIRIE RURAL MUNICIPALITY (1905), 2 W. L. R. 141; 10 Can. Crim. Cas. 125.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 1.

b i. —— ——.]—STRONG *v.* ARRAN (1913), 28 O. L. R. 106: 4 O. W. N. 765; 12 D. L. R. 44.—**CAN.**

sm. *No power to alienate part of old road.*]—CHAPPUS *v.* LA SALLE, [1927] 3 D. L. R. 764; 60 O. L. R. 564; *affd.*, [1928] 2 D. L. R. 386; 62 O. L. R. 139.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 2.

f i. —— —— 18 *Vict. c.* 100.]—QUEBEC NORTH SHORE TURNPIKE ROAD TRUSTEES *v.* VEZINA (1884), Cass. Dig. (2nd ed.) 758.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 4.

1164a i. *Duty to inspect trees.*]—A tree planted in a city highway fell upon a motor car. The tree had long been in a decaying condition:—*Held:* the city corpn., having by bye-law assumed the duty of caring for the trees planted upon the highway, were liable for discharging that duty negligently.—HUESTIS *v.* CITY OF TORONTO, [1926] 3 D. L. R. 142; 58 O. L. R. 648.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 5.

c i. *S. P.* PHEASEY *v.* EDMONTON (Alta.), [1927] 2 W. W. R. 445.—**CAN.**

r (p. 389) i. ——.]—Pltf. slipped & fell when walking upon a granolithic sidewalk & was injured. For five or six days before this occurrence, the sidewalk at the point where she fell was covered with glare ice & was consequently in a slippery & dangerous condition. Pltf.'s injury was not attributable to any lack of care on her part. The city authorities had knowledge of the dangerous condition for five or six days before the accident & made no attempt to remove the danger:—*Held:* the city corpn. were guilty of gross negligence within Consolidated Municipal Act, 1922, s. 460 (3), & were liable.—COKERS *v.* BELLEVILLE, [1925] 2 D. L. R. 250; 56 O. L. R. 451; *revsg.*, [1924] 2 D. L. R 333.—**CAN.**

r (p. 389) ii. —— *Dangerous condition known to pedestrian.*]—Where a person, who knows that a sidewalk is in a dangerous condition because of a pile of slippery snow thereon, deliberately makes use of it, instead of walking on the road as he has previously done, & thereby sustains injuries, the maxim *volenti non fit injuria* is applicable.—ROBINSON *v.* ASSINIBOIA TOWN, [1927] 3 D. L. R. 514; [1927] 2 W. W. R. 499; 21 Sask. L. R. 658.—**CAN.**

—— **Obstruction during construction of new road.**]—A corpn., in making a new road connecting two existing roads in the same straight line with a bridge across a ravine dividing them, pulled down an old wall which closed a *cul de sac* in which one of the roads terminated, partly constructed the new road & erected a wooden fence at the end, beyond which was the ravine. Pltf. drove his car after dark down a public road leading straight into the new road under construction, & not seeing the fence in time, which had no red lamp or other warning of danger upon it, & was not watched, drove through it & fell with his car into the ravine, sustaining serious personal injury & damage to the car:—*Held:* the corpn. being in occupation of the land under construction as a new road, pltf. was not a trespasser upon private property, but an invitee, to whom they owed a duty to warn of any hidden danger; the unlighted fence was in the circumstances a concealed trap, &, pltf. not being guilty of contributory negligence, defts. were liable to him in damages for negligence.—OLDHAM *v.* SHEFFIELD CORPN. (1927), 136 L. T. 681; 91 J. P. 69; 43 T. L. R. 222; 25 L. G. R. 94, C. A.

Annotation:—**Consd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

—— **Trench dug in unfinished road.**]—Defts. in execution of a housing scheme were laying out a new road running eastwards from a certain highway & closed at its eastern end by a quickset hedge. Footpaths had already been laid out & edged with kerbstones; houses were being built on the northern side & heaps of earth & building materials made the footpath on this side impassable; the footpath on the south side was still unfinished, but was traversable; it was bounded by a fence of wooden posts & bars; the middle of the road was levelled but not metalled; across it, for laying an electric cable, defts. had cut a trench which they left unfenced & by night unlighted. They did not prevent persons, whether intending occupiers of houses or others, from walking down the new road. Pltf. on a Sept. evening, while there was still daylight, walked with a companion down the highway & into the new road along the southern footpath. Through a gap in the fence they went across other land occupied by defts. to a golf course. They returned somewhat hurriedly when it was growing dark, & pltf. fell into the trench & was injured:—*Held:* the trench being apparent to all, there was nothing in the nature of a concealed danger or trap, & defts were not liable to pltf., who was a mere licensee.—COLESHILL *v.* MANCHESTER CORPN., [1928] 1 K. B. 776; 97 L. J. K. B. 229; 138 L. T. 537; 92 J. P. 37; 44 T. L. R. 258; 26 L. G. R. 124, C. A.

1197. *Add. Annotation:*—**Refd.** Oldham *v.* Sheffield Corpn. (1927), 136 L. T. 681.

r (p. 389) iii. *Depression caused by permitting children to use sidewalk as slide—Gross negligence.*]—MAITLAND *v.* PEMBROKE, [1929] 1 D. L. R. 191.—**CAN.**

r (p. 389) iv. —— *Exemption from liability except for gross negligence.*]—MCKEE *v.* WINNIPEG CITY, [1929] 1 D. L. R. 65; [1928] 3 W. W. R. 561.—**CAN.**

r (p. 389) v. —— *Used by children as ide.*]—MAITLAND *v.* PEMBROKE (Ont.), [1929] 1 D. L. R. 191.—**CAN.**

so. *Method adopted temporarily dangerous—Whether gross negligence.*]—Where ice or icy snow covered the surface of a sidewalk in a city & the method of removing it used by men employed by the city corpn. was such as to make the sidewalk temporarily dangerous to pedestrians who chose to walk on it while the work of removal was in progress, & an accident happened to a passer-by:—*Held:* the adoption of this method was not in itself evidence of "gross negligence."—LYONS *v.* OTTAWA CITY, [1928] 1 D. L. R. 171; 61 O. L. R. 405.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 7.

o i. —— ——.]—A public road crossed a stream by a bridge. There was a fence between the road & the land adjoining it, erected by the proprietors of the latter. At a point immediately adjoining the bridge there was a gap, 15 feet wide, in the fence. A pedestrian, on a dark night, mistaking this gap for the road, walked through it & fell into the stream & was drowned. In an action of damages against the proprietors of the land adjoining the road:—*Held:* there was no duty on such proprietors to fence a natural, as opposed to an artificially created, danger on their lands, any such duty, where it existed, falling on the road authorities.—MORRISON *v.* LONDON MIDLAND & SCOTTISH RY. CO., [1929] S. C. 1.—**SCOT.**

o ii. —— ——.]—Defts. constructed a bridge across a navigable stream, having in it a draw or swing to enable vessels to ply on the river. There was not any gate or other protection to guard the approaches to the bridge when swung. A horse belonging to pltf. broke away from the person in charge of him, escaped out upon the public road, & ran a distance of about two miles to the bridge, reaching it while the draw was open to allow a vessel to pass, & rushing into the gap was drowned:—*Held:* deft. municipality could not be made answerable for the loss of the horse.—STEINHOFF *v.* KENT CORPN. (1887), 14 A. R. 12.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 8.

sq. *Restriction during repairs—What is sufficient warning of danger.*]—The duty of those making repairs upon a travelled road, is to take such reasonable care, by notice, lighting, guarding or otherwise, as may be reasonably necessary to prevent damages as the result of the temporary condition of the road. When this is done, & the condition of non-repair & of temporary danger is brought home to a person using the highway, he is called upon to use reasonable care on his part for his own safety.—WISE *v.* TORONTO TRANSPORTATION COMMISSION, [1928] 2 D. L. R. 557; 62 O. L. R. 120.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 9.

sd. *Street railway track adjacent to highway.*]—Pltfs. in a motor car attempted to cross the tracks of a street railway, which were at that point not laid upon the travelled highway but upon land owned by the city corpn. adjacent to the travelled highway. The place of crossing was in a dangerous condition, by reason of the tracks not being ballasted but simply resting upon exposed sleepers. The car was imprisoned there & run into by a street car, & pltfs. were injured & the car damaged:—*Held:* the city corpn. were liable since, although no obligation to repair existed, there was a trap or concealed danger.—JAMES *v.* TORONTO (1925), 57 O. L. R. 322; *affg.* 27 O. W. N. 233.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 11.—A.

1190 i. *Liability for failure to light—Statutory duty to light.*]—A motor car driven at night came into collision with a tramway island, & was damaged. In an action against defenders, as the local authority charged, under Edinburgh Municipal & Police Act, 1879, with the lighting of the streets, it was proved that a red lamp situated on the island was not lit at the time of the accident. It was also established that defenders had not failed in their duty with respect either to the construction & condition of the lamp, or to the precautions taken to ensure that it should remain alight during the hours of darkness:—*Held:* the standard of performance could not be absolute, but must be relative to the best available means of achieving exact performance. &, in the absence of evidence of any failure on the part of defenders to take every reasonable means of carrying out their statutory obligations, they fell to be assoilzied.—KEOGH *v.* EDINBURGH MAGISTRATES, [1926] S. C. 814.—**SCOT.**

r i. ——.]—A corpn. planted trees along one of its streets, & resp. sustained injuries through his motor car colliding with one of the trees on a dark night. There was a street-lamp in the vicinity, but it had gone out:—*Held:* the corpn. having caused a dangerous obstruction on the street, it was its duty to light & keep lighted the obstruction, so as to make it visible to persons using the street.—OAMARU (MAYOR) *v.* CLARKE, [1927] N. Z. L. R. 464.—**N.Z.**

PART VIII. SECT. 1, SUB-SECT. 11.—D.

1210 i. *Liability of driver—Accidental injury.*]—*Held:* the driver of a horse van, which was capsized against a lamp-post by a gust of wind, was not liable in damages under General Police & Improvement (Scotland) Act, 1862 (c. 101), s. 128, in respect that the breaking of the lamp was not his act.—HOGG *v.* MACPHERSON, [1928] S. C. (J.) 15.—**SCOT.**

1216. *Add. Annotation :*—**Apld.** Manchester Corpn. *v.* Audenshaw U. C. & Denton U. C., [1928] Ch. 127.

1219. *Add. Annotation :*—**Consd.** Bryant *v.* Marx (1932), 48 T. L. R. 624.

1228a. Amount of payment—How calculated—Local Government Act, 1888 (c. 41), s. 11 (2).] —SANDGATE URBAN DISTRICT COUNCIL *v.* KENT COUNTY COUNCIL, No. 65, *ante*.

1236. *Add. Annotation :*—**Apld.** A.-G. *v.* London & Home Counties Joint Electricity Authority, [1929] 1 Ch. 513.

1237. *Add. Annotation :*—**Apld.** A.-G. *v.* London & Home Counties Joint Electricity Authority, [1929] 1 Ch. 513.

1242. *Add. Annotation :*—**Refd.** Guilfoyle *v.* Port of London Authority, [1932] 1 K. B. 336.

1251. *Add. Annotations :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Ry. Co., [1931] 2 K. B. 334; Guilfoyle *v.* Port of London Authority, [1932] 1 K. B. 336.

1252. *Add. Annotation :*—**Consd.** Guilfoyle *v.* Port of London Authority, [1932] 1 K. B. 336.

1253. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Ry. Co., [1931] 2 K. B. 334.

1255. *Add. Annotation :*—**Consd.** Guilfoyle *v.* Port of London Authority, [1932] 1 K. B. 336.

PART VIII. SECT. 2, SUB-SECT. 2.

sa. *Right to rebate—Basis of calculation.*]—Resp. village, an urban municipality within applt. county, was subject by statute to an annual general levy by the council of the county for county road purposes. Under a provision of an Ontario statute of 1926, repealed & re-enacted as sect. 28 (5) of Highway Improvement Act, R. S. Ont., 1927, the village first became entitled to a rebate in each year of 75 per cent. of the general annual rate raised in the village in the previous year. The annual general rate imposed in the years 1926, 1927 & 1928 included sums required by the council of the county to meet the interest & sinking fund charges upon debentures issued by it before 1926 in order to raise money for constructing & improving roads forming part of the county road system :—*Held :* in fixing the sum upon which resp. village was entitled to the 75 per cent. rebate the applt. county was bound to include the amount raised by it in the village towards the interest & sinking fund charges upon the debentures.—LINCOLN COUNTY CORPN. *v.* PORT DALHOUSIE VILLAGE CORPN., [1931] A. C. 808; 100 L. J. P. C. 219; 145 L. T. 653; 47 T. L. R. 613, P. C.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 1.—A.

1240 xiv. —— ——.]—Sect. 730 of the Winnipeg Charter, which gives the city a right of indemnity " of & from all costs, claims, & damages " caused by any obstruction, encroaching or nuisance placed on any public road by any person, firm, or corpn. whether pursuant to permit or agreement with the city or not, does not apply to claims for damages arising out of encroachment or nuisances created by the joint act of the city & the third party.—SCHALER *v.* WINNIPEG (Man.), [1929] 4 D. L. R. 683; 2 W. W. R. 358.—**CAN.**

1252 vii. —— —— ——.]—In the absence of a statute imposing the duty to keep a sidewalk in repair :—*Held :* deft. municipality was not liable for injuries sustained by a pedestrian as the result of its decay, where its construction was authorised by statute & there was no evidence of original faulty construction; the fact that no bye-law authorising its construction could be found, was held immaterial since no statutory provision made a bye-law necessary for the laying of sidewalks in streets the possession of which was already vested in the municipality.—GILROY *v.* BURNABY CORPN., [1931] 3 W. W. R. 1; 4 D. L. R. 411; 44 B. C. R. 171.—**CAN.**

1260 xxii. —— ——.]—GREER *v.* MULMUR TOWNSHIP, [1926] 4 D. L. R. 132; 59 O. L. R. 259.—**CAN.**

1260 xxiii. —— ——.]—LINGRELL *v.* STOCKS No. 363 MUNICIPAL DISTRICT (Alta.), [1927] 3 D. L. R. 478; [1927] 2 W. W. R. 313.—**CAN.**

1260 xxiv. —— ——.]—JESSON *v.* RURAL MUNICIPALITY OF LIVINGSTONE (Sask.), [1929] 2 D. L. R. 474; 1 W. W. R. 474.—**CAN.**

t (p. 402) **i.** —— —— ——.]—THORESON *v.* COULEE, [1930] 1 D. L. R. 916.—**CAN.**

g (p. 403) **i.** —— —— ——.]—The law does not impose an unvarying obligation on a traveller using a city or country road of remembering all the pitfalls & dangers therein which he may have seen on previous journeys. The most that can be expected of a traveller who has knowledge of dangerous conditions is that the degree of care which he exercises should be reasonably commensurate with his knowledge. Where a municipality digs, for its own purposes, a pit extending into the road allowance it is bound to make the adjoining road safe for travellers.

Although country roads cannot be expected to be perfectly safe the public have a right to be protected against excavations or obstructions on or near the travelled way which render the road unsafe for travellers using it.—KELSO *v.* ROBLIN RURAL MUNICIPALITY, [1930] 3 W. W. R. 291; 4 D. L. R. 471.—**CAN.**

g (p. 403) **ii.** —— —— ——.]—Pltf. sued for damages to his separator caused by its overturning when a rear wheel dropped into a hole in a road. The road was a graded main market highway. The hole was near the centre of the grade & had been there during the whole of the summer, to the knowledge of the councillor of the division, &, at the time of the accident, Nov. 10, was frozen over & in the nature of a trap :—*Held :* the municipality was liable.—SHUPE *v.* PLEASANTDALE RURAL MUNICIPALITY, [1932] 1 W. W. R. 627.—**CAN.**

g (p. 403) **iii.** —— —— —— *Ditch without guards or railings.*]—WALTON *v.* YORK COUNTY CORPN. (1881), 6 A. R. 181.—**CAN.**

g (p. 403) **iv.** —— —— *Defective street in railway subway.*]—Where a city which is under a statutory duty to keep its streets in repair is charged in an action for damages with non-repair, the fact that the particular piece of pavement from the non-repair of which pltf.'s injury is alleged to have resulted happens to be under a subway constructed at the instance of, or for the benefit of, the city under a contract, approved by the Board of Railway Comrs. for Canada, between the city & a railway co. & under which the city agreed to maintain & repair said pavement, does not change the character or origin of the liability, if any, of the city to pltf.—SCHALER *v.* CITY OF WINNIPEG (No. 2) (Man.), [1930] 1 D. L. R. 499; [1929] 3 W. W. R. 433; 36 C. R. C. 224; *affd.*, [1931] 2 W. W. R. 709; 4 D. L. R. 198.—**CAN.**

g (p. 403) **v.** —— *Failure to make proper provision at level crossing.*]—Where a city, under a statutory duty to keep its streets & sidewalks in repair, builds sidewalks up to the rails at a railway crossing, thus inviting pedestrians to use them & so cross the railway, it should see to it that suitable provision for such crossing is made & it is liable to a person who is injured because of its failure to do so.—MACGREGOR *v.* CANADIAN NATIONAL RYS. & EDMONTON CITY, [1930] 3 W. W. R. 392; [1931] 1 D. L. R. 87; 25 Alta. L. R. 104; *varg.*, [1930] 3 W. W. R. 237.—**CAN.**

h (p. 404) **i.** —— *Rocks near highway.*]—Owing to the failure of the driver of pltf.'s car to follow a diversion of the highway the car, after travelling over a grass plot, hit rocks imbedded in the earth by nature :—*Held :* the fact that the municipality had not erected a sign or signal indicating the diversion or placed a guard rail at said point was not negligence & the presence of the rocks in question near the highway did not render it liable.—PARKINS *v.* COULEE, [1930] 3 W. W. R. 609.—**CAN.**

k (p. 404) **i.** —— *Failure of traveller to see.*]—Where a traveller fails to see an obstruction which a person using ordinary care would have avoided, the statutory liability does not arise.—KING *v.* RILEY, [1925] 2 D. L. R. 218.—**CAN.**

k (p. 404) **ii.** —— *Imbedded wire.*]—Pltf. was injured by tripping over a wire imbedded in a street :—*Held :* defts. had not discharged the *onus* of removing the presumption that they had failed in their duty.—WOODCOCK *v.* VANCOUVER (B. C.), [1927] 3 W. W. R. 759.—**CAN.**

k (p. 404) **iii.** —— *Projecting iron covering of excavation.*]—Pltf., while walking on a sidewalk, stumbled & fell as a result of the projection over the cement part of the sidewalk of the iron covering of an excavation which the city had allowed the abutting owner to make :—*Held :* the accident happened because of want of proper repair of the sidewalk, & the city had not shown that it had done all that could reasonably be done to prevent the want of repair.—MORAN *v.* VANCOUVER CITY, [1929] 1 D. L. R. 461; 40 B. C. R. 450; [1928] 3 W. W. R. 660.—**CAN.**

k (p. 404) **iv.** —— *Projecting slab of concrete.*]—*Held :* the defect was one which, in such a location, should have been remedied : it would have been negligence to have there constructed the sidewalk with such a rise, & deliberately to allow it to remain was not less a fault.—HENNESSY *v.* TORONTO CITY, [1928] 4 D. L. R. 378; 62 O. L. R. 541.—**CAN.**

k (p. 404) **v.** —— *Causing obstruction of view.*]—The failure of a municipality to cut down scrub & bush so growing at the side of a road-allowance near an intersection that it prevents persons travelling on the road from having a clear view of vehicles approaching on the intersecting road does not constitute a breach of the municipality's duty to repair under Rural Municipality Act, s. 196.—PARTRIDGE *v.* RURAL MUNICIPALITY OF LANGENBURG (Sask.), [1929] 3

1268. *Add. Annotation :-* . Oldham *v.* Sheffield Corpn. (1927), 136 L. T. 681.

1278. *Add. Annotation :*—**Refd.** Oldham *v.* Sheffield Corpn. (1927), 136 L. T. 681.

1280. *Add. Annotation :*—**Refd.** Oldham *v.* Sheffield Corpn. (1927), 136 L. T. 681.

1316. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Ry. Co., [1931] 2 K. B. 334.

Part IX.—Nuisances and Remedies.

1330a. —— —— Enclosing highway.]—R. *v.* OGDEN (1702), Fortes. Rep. 251; 7 Mod. Rep. 45; 92 E. R. 839.

1369a. Fireplug — Projection above pavement—Liability of water company.]—A fireplug had been lawfully fixed in a footpath by defts.

W. W. R. 555; [1930] 1 D. L. R. 939; 24 S. L. R. 153.—**CAN.**

k (p. 404) **vi.** —— *Failure to erect substantial barricade during repairs.*]—When work of excavation on a highway was begun, the contractor put up two signs on the right-hand side of the road: "Drive slowly, men at work," & "closed to traffic." These signs were at some distance from the excavation. The road-superintendent put up a barricade with a red lantern & a detour sign at a place where the roads fork. This consisted of a board extending about half-way across the travelled portion of the highway, supported at one end by a telegraph pole & at the other by an iron rod set into the road :—*Held :* not a "substantial barricade" within Highway Improvement Act.—RUTTAN *v.* R., [1931] 1 D. L. R. 301; 66 O. L. R. 133.—**CAN.**

k (p. 404) **vii.** —— *Safety platform.*]—Pltf. while driving a motor car at night was injured by colliding with a safety island or platform which, under authority given defts. city by its charter, had been placed by it on the street for the use of persons using tram cars. The judge held that the platform was a "trap," because of the fact that it differed very little in colour, if at all, from the rest of the highway; & he awarded pltf. damages. Defts. appealed :—*Held :* the appeal should be allowed, since the platform was properly placed, & there was no evidence that defts.'s failure to furnish more light at or near the platform than it did supply or to paint the platform amounted to misfeasance which left the highway in disrepair.—KNIGHT *v.* WINNIPEG, [1930] 1 W. W. R. 234; 1 D. L. R. 874; 38 Man. L. R. 430.—**CAN.**

cc i. ——.]—Where an accident results from lack of repair of a road, a presumption arises, without evidence that the municipality responsible for the road had notice of its condition, that the statutory duty to repair has been neglected.—REA *v.* MUNICIPALITY OF MINTO, [1925] 3 D. L. R. 523; [1925] W. W. R. 657; 35 Man. L. R. 190.—**CAN.**

cc ii. ——.]—In an action against a town for damages for injuries resulting from falling on a slippery sidewalk :—*Held :* the town which had received oral notice of the accident within 24 hours thereof had not been prejudiced by the failure to give written notice of the accident within the time stipulated by sect. 627 (3) of Municipal Act, & there was reasonable excuse within the meaning of sect. 628 of said Act for the delay in giving the written notice.—O'BRIEN *v.* DAUPHIN TOWN, [1930] 1 W. W. R. 907; 3 D. L. R. 330.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 1.—B. (a).

1274 ii. —— ——.]—JACOBSON *v.* MUNICIPAL DISTRICT CROWN, [1930] 1 D. L. R. 847.—**CAN.**

1282 ii. —— —— —— *Injury to unlicensed driver.*]—The fact that a taxi driver has not obtained the chauffeur's permit from the chief of police, & has not procured the driver's licence required by deft. city's byelaw, does not affect the liability of the city for injuries caused him by its negligence in allowing an obstruction, *e.g.*, a barrier around repairs, to remain on a highway without guarding it sufficiently with warning signs or lights.—BURCHILL *v.* VANCOUVER CITY, [1932] 1 W. W. R. 641; 3 D. L. R. 287; *affd.*, [1922] S. C. R. 620; 4 D. L. R. 200.—**CAN.**

1289 i. —— *Damage to adjoining owners—Construction of road causing flood.*]—Municipality :—*Held :* liable. —MEIER *v.* FRANKLIN, LIMPRECHT *v.* FRANKLIN, STREICH *v.* FRANKLIN (Man.), [1926] 3 D. L. R. 433; [1926] 2 W. W. R. 330.—**CAN.**

1289 ii. —— —— *Negligent construction of ditches causing flood.*]—STADNICK *v.* BIFROST MUNICIPALITY, [1927] 4 D. L. R. 61; [1927] 3 W. W. R. 49; 37 Man. L. R. 26.—**CAN.**

1289 iii. —— —— *Road materials carried into raceway by violent storm.*] —*Held :* defts. were not liable.—SNOOK *v.* BRANTFORD TOWN COUNCIL, (1856), 14 U. C. R. 255.—**CAN.**

q (p. 408) **i.** —— ——.]—Deft. municipality when in pursuance of its statutory powers it was constructing a sewer along the side of a highway erected a barricade of planks against which the earth taken from the excavation was piled up. The barricade & the pile of earth occupied so much of the sidewalk that a path only 18 inches wide was left behind the barricade for the use of pedestrians. Owing to ordinary rainfall & the moist character of the earth so piled up, there was a seepage of water carrying slimy particles of clay through the spaces between the planks resulting in the surface of the pathway becoming dangerously muddy & slippery. Pltf. while walking along the pathway slipped on said surface & was seriously injured :—*Held :* deft. had created & continued a nuisance which was the proximate & sole cause of pltf.'s injuries. — WATTS *v.* DISTRICT OF BURNABY (B. C.), [1929] 4 D. L. R. 142; 2 W. W. R. 612.—**CAN.**

r (p. 408) **i.** —— *Highway repaired with inflammable material.*]—While pltf. was driving a motor car along a side road, which although a legal highway was not often used, the rear wheels of the car suddenly sank down & the car became immovable. It then caught fire & was totally destroyed. The loam underneath the surface of the road was found to be on fire, although the surface appeared to be intact & there was nothing to indicate that the sub-surface was in the condition in which it actually was :—*Held :* taking into consideration all of the circumstances, including the locality, general nature of the soil & materials at hand, & the extent of the use of the road, the fact that deft. municipality used loam or swamp earth of an inflammable nature in constructing the road did not constitute negligence on its part.—CONROY *v.* SPRUCE GROVE, MUNICIPAL DISTRICT OF, [1931] 1 D. L. R. 555; [1930] 3 W. W. R. 605; 25 Alta. L. R. 193.—**CAN.**

sk. *Road under repair by Minister of Highways.*]—*Held :* as long as the work of construction or repair is being carried on, the highway is removed from the direction, control & management of the municipality, which is not liable to travellers for damages resulting from its state of repair until the highway is again under its control & management.—HORSFIELD *v.* CANA RURAL MUNICIPALITY NO. 214, [1925] 2 D. L. R. 874; [1925] 1 W. W. R. 1067; 19 Sask. L. R. 378.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 1.—B. (c).

1300 ix. ——.]—A municipal corpn. is not liable for injury caused by failure to make minor repairs to a street, but is liable if the damage occurs through negligence or fault in the original construction, & if it can be shown that the construction in the first place by those who were responsible for it was of a negligent, improper, or faulty description, they will be liable if damages result.—STEWART *v.* MONCTON (1925), 53 N. B. R. 427.—**CAN.**

sl. *Acts of inhabitants.*]—A municipality cannot be held liable on the ground of misfeasance because of the acts of its inhabitants where there is no evidence that in doing the acts complained of they were acting on behalf of the municipality & not merely for their own convenience.—DANBERG & DANBERG *v.* CANWOOD VILLAGE, [1932] 2 W. W. R. 320.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 1.—A.

k i. —— *Obstruction on part not used by public.*]—R. *v.* BENNETT (1825), N. B. Dig. 400.—**CAN.**

sm. *Obstruction permitted—Duty of person causing obstruction to provide lights at night.*]—HERVEY *v.* FRENCH (1839), 4 Ont. Dig. 7433.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 1.—D.

sn. *Areas forming part of sidewalk—Left uncovered.*]—On a dark night one of pltfs., wife of her co-pltf., stepped into an area, one of several, in the sidewalk of a street in a town & was injured. The areas were constructed as part of a building adjacent to the sidewalk & were for the benefit of the owners or tenants of the building. No authorisation by the town corpn. for the construction of the areas was shown, but it appeared that, since the year 1900, the corpn. had looked after the coverings of the areas, treating them as part of the sidewalk. Before the accident, the area into which pltf. stepped had been covered with a plank, but on the night of the accident it was uncovered :—*Held :* the town corpn., having knowledge of the condition, & having taken no steps to close the areas, or to see

Originally the top of the fireplug had been level with the pavement, but in consequence of the ordinary wearing away of the footpath the fireplug projected half an inch above the level of the pavement. The fireplug itself was in perfect repair. Pltf., whilst passing along the footpath, fell over the fireplug & was hurt:—*Held:* as the fireplug was in good repair, & had been lawfully fixed in the footpath, no action by pltf. would lie against defts.—MOORE *v.* LAMBETH WATERWORKS Co. (1886), 17 Q. B. D. 462; 55 L. J. Q. B. 304; 55 L. T. 309; 50 J. P. 756; 34 W. R. 559; 2 T. L. R. 587, C. A.

Annotations:—**Apld.** Thompson *v.* Brighton Corpn., Oliver *v.* Horsham L. B., [1894] 1 Q. B. 332. **Consd.** Hartley *v.* Rochdale Corpn., [1908] 2 K. B. 594. **Apld.** G. C. Ry. *v.* Hewlett, [1916] 2 A. C. 511. **Refd.** R. *v.* Poole Corpn. (1887), 19 Q. B. D. 602; Steel *v.* Dartford L. B. (1891), 60 L. J. Q. B. 256; Dawson *v.* Bingley U. D. C. (1910), 75 J. P. 17; Papworth *v.* Battersea B. C. (1914), 79 J. P. 105.

1372a. —— —— **Liability of water company.**]—A water co., at the request & expense of the owner of a house, laid down a service pipe leading from their main under the street into the house, in which they placed a stop-cock for the purpose of regulating the supply of water. This stop-cock was protected by a cover or guard-box let into the pavement, which was provided with a lid or flap. Owing to the hinge of the lid or flap being out of repair, it projected above the pavement, & pltf. while passing along the street tripped over it & sustained injury. The apparatus could not be repaired without being removed, or removed without breaking up the pavement. The jury found that there was negligence on the part of those who were liable for the repair of the hinge:—*Held:* the co., who alone had power to break up the street for the purpose of repairing the guard-box, were responsible for its repair, & liable in respect of the injuries sustained by pltf.—CHAPMAN *v.* FYLDE WATERWORKS Co., [1894] 2 Q. B. 599; 64 L. J. Q. B. 15; 71 L. T. 539; 59 J. P. 5; 43 W. R. 1; 10 T. L. R. 580; 38 Sol. Jo. 629; 9 R. 582, C. A.

Annotations:—**Consd.** Colne Valley Water Co. *v.* Hall (1907), 96 L. T. 395. **Distd.** Stacey *v.* Gas Light & Coke Co., Metropolitan Water Board & West End Tailoring Co. (1910), 9 L. G. R. 174. **Consd.** Batt *v.* Metropolitan Water Board, [1911] 2 K. B. 965. **Refd.** Grand Junction Waterworks Co. *v.* Rodocanachi, [1904] 2 K. B. 230.

1378a. —— **In contravention of City Police Act, 1839, c. xciv, s. 35 (7)—Claim of right.**]—CURTIS *v.* GEEVES, No. 641a, *ante*.

1380a. Overcrowded inn yard—Vehicles left in highway.]—An innkeeper had for some years, when his yard was full, placed the vehicles of his guests on a triangular piece of ground at the corner of two streets. This piece of ground having been ascertained to be part of the highway:—*Held:* deft. was rightly convicted of an obstruction under Highway Act, 1835 (c. 50), s. 72.—GORING *v.* BARFIELD (1864), 4 New Rep. 284.

1381a. ——.]—A person placing a dangerous obstruction in a highway, or in a private road over which persons have a right of way, is bound to take all necessary precautions to protect persons exercising their right of way; & if he neglects to do so, is liable for the consequences.—CLARK *v.* CHAMBERS (1878), 3 Q. B. D. 327; 47 L. J. Q. B. 427; 38 L. T. 454; 42 J. P. 438; 26 W. R. 613.

Annotations:—**Consd.** Bull *v.* Shoreditch Corpn. (1902), 67 J. P. 37; Ruoff *v.* Long, [1916] 1 K. B. 148. **Apld.** Glasgow City Corpn. *v.* Taylor, [1922] 1 A. C. 44. **Refd.** A.-G. *v.* Tod-Heatly & Brownrigg (1879), 76 L. T. 174; Tolhausen *v.* Davies (1888), 59 L. T. 436; McDowall *v.* G. W. Ry., [1902] 1 K. B. 618; Latham *v.* Johnson & Nephew, [1913] 1 K. B. 398.

1391. *Add. Annotations:*—**Refd.** Williams *v.* Larsen (1928), 21 B. W. C. C. 339; Templeton *v.* Parkin & Co. (1929), 140 L. T. 519.

1399. *Add. Annotation:*—**Distd.** Oldham *v.* Sheffield Corpn. (1927), 136 L. T. 681.

1435a. Street traders—Licence—Application to renew—Duties of borough council.]—(1) The remedy by appeal to petty sessions given by London County Council (General Powers) Act, 1927 (c. xxii.), s. 35 (2), to a street trader who is aggrieved by the refusal of the renewal of his licence as a street trader is equally beneficial, convenient & effectual as *mandamus* would be. *Mandamus* will therefore not lie to a Metropolitan borough council to compel them to hear & determine a street trader's application for renewal of a licence.

(2) In deciding such applications, the council is an administrative body, not a judicial one; it may therefore properly take into account a report of a committee, & its decision will not be invalidated merely by the fact that some members taking part in it were not present at an earlier meeting when the applicant was heard.

(3) *Semble:* the Act does not contemplate the calling of evidence before the council on such applications; but the justices at petty sessions who hear an appeal can conveniently hear such evidence as may be necessary.—R. *v.* LEWISHAM CORPN., *Ex p.* JACKSON (1929), 93 J. P. 171; 73 Sol. Jo. 318; 27 L. G. R. 416, D. C.

1435b. —— —— **Refusal to renew—Appeal to petty sessions—Evidence.**]—R. *v.* LEWISHAM CORPN., *Ex p.* JACKSON, No. 1435a, *ante*.

1435c. —— —— —— **Mandamus.**]—R. *v.* LEWISHAM CORPN., *Ex p.* JACKSON, No. 1435a, *ante*.

1435d. —— —— **Liability for trading without—Notwithstanding legal impossibility of grant.**]—(1) The fact that a borough council is precluded by the existence of Sunday Observance Act, 1677 (c. 7), from granting a licence for street trading on Sunday does not render impossible the conviction for trading without a licence of a trader who in fact trades on Sunday without a licence.

(2) An information for so trading may be laid by a person duly authorised on behalf of the council, such as a solr.'s managing clerk, instructed by the Town Clerk, though not himself an officer of the council.—BAARS *v.* KEEP, BROOKS *v.* KENSINGTON BOROUGH

that they were adequately protected, were liable to pltfs.—MCMICHAEL *v.* GODERICH TOWN, [1928] 4 D. L. R. 536; 62 O. L. R. 547.—**CAN**

so. *Lift forming part of pavement—Well of lift inadequately fenced.*]—HAYMAN *v.* CITY PROPERTY INVESTMENT TRUST CORPN., LTD., [1929] S. C. (H. L.) 65.—**SCOT.**

sp. *Petrol pump.*]—BRITISH AMERICAN OIL CO. *v.* SHURR (Ont.), [1929] 3 D. L. R. 119.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 1.—K. (c) i.

sv. *Street traders—Licence—"Article or thing"—What included.*]—*Held:* a live pig was an "article or thing" within Street Trading (Regulation) Act (Northern Ireland), 1929, s. 1 (1).—R. (U. D. C. OF PORTADOWN) *v.* ARMAGH CHAIRMAN & JUSTICES, [1931] N. I. 211.—**IR.**

COUNCIL (1931), 145 L. T. 260; 95 J. P. 153; 47 T. L. R. 436; 75 Sol. Jo. 511; 29 L. G. R. 400; 29 Cox, C. C. 315.

1435e. —— —— —— **Information—By whom laid.**]—BAARS *v.* KEEP, BROOKS *v.* KENSINGTON BOROUGH COUNCIL, No. 1435d, *ante.*

1435f. —— **Removal of refuse—Liability for charges.**]—The " other services " mentioned in London County Council (General Powers) Act, 1927 (c. xxii.), s. 37, are services *ejusdem generis* as the removal of refuse.

Applts., a borough council, claimed payment of their charges in respect of " other services " rendered by them to resp., a licensed street trader, being charges in respect of the general administration of Part VI. of the Act dealing with the regulation of street trading:—*Held:* in the absence of evidence of the removal of refuse or of services *ejusdem generis* as the removal of refuse, applts. were not entitled to recover.—WESTMINSTER CORPN. *v.* ARMSTRONG, [1929] 2 K. B. 451; 142 L. T. 263; 98 L. J. K. B. 707; 45 T. L. R. 634; 94 J. P. 18; 27 L. G. R. 671; 29 Cox, C. C. 49, D. C.

1441. *Add. Annotation:*—**Apld.** Vanderpant *v.* Mayfair Hotel Co. (1929), 27 L. G. R. 752.

1442. *Add. Annotation:*—**Consd.** Vanderpant *v.* Mayfair Hotel Co. (1929), 27 L. G. R. 752.

1443. *Add. Annotation:*—**Consd.** Vanderpant *v.* Mayfair Hotel Co. (1929), 27 L. G. R. 752.

1447. *Add. Annotation:*—**Consd.** Vanderpant *v.* Mayfair Hotel Co. (1929), 27 L. G. R. 752.

1456. *Add. Annotation:*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

1457a. —— **Causing horse to shy.**]—In an action for a nuisance it appeared that pltf. was driving at night in a cart drawn by a horse along a public highway, when the horse shied at a heap of earth & refuse placed by defts. on their land adjoining the highway, & the cart was upset & pltf. injured. Evidence was tendered by pltf. to prove that other horses had shied at the heap on the same day:—*Held:* if the heap was of such a nature as to be dangerous by causing horses passing on the highway to shy, it was a public nuisance.—BROWN *v.* EASTERN & MIDLANDS RY. CO. (1889), 22 Q. B. D. 391; 58 L. J. Q. B. 212; 60 L. T. 266; 53 J. P. 342; 5 T. L. R. 242, D. C.; *on appeal*, 22 Q. B. D., at p. 393, C. A.

Annotation:—**Refd.** Heath's Garage *v.* Hodges (1915), 14 L. G. R. 195.

1464a. —— **Dangerous condition—Duty of local authority to remove.**]—STILLWELL *v.* NEW WINDSOR CORPN., No. 616a, *ante.*

1465. After this case add " *See, also,* AGRICULTURE, Nos. 970a, 970b."

1473. *Add. Annotation:*—**Consd.** Vanderpant *v.* Mayfair Hotel Co. (1929), 27 L. G. R. 752.

1475. *Add. Annotation:*—**Apld.** Vanderpant *v.* Mayfair Hotel Co. (1929), 27 L. G. R. 752.

1500. *Add. Annotation:*—**Consd.** Eastbourne County Borough *v.* Fuller & Sons (1928), 93 J. P. 29.

1509. *Add. Citation:*—95 L. J. K. B. 81.

1511. *Add. Annotation:*—**Consd.** Eastbourne County Borough *v.* Fuller & Sons (1928), 93 J. P. 29.

1512. *Add. Annotation:*—**Distd.** McGowan *v.* Stott (1923), 99 L. J. K. B. 357 n.

1513a. —— ——.]—When any one places a motor omnibus or other vehicle which is likely to skid upon the highway, such person may be liable for placing a nuisance upon the road, & for negligent use of the highway.—WALTON (ISAAC) & CO., LTD. *v.* VANGUARD MOTOR BUS CO., GIBBONS *v.* VANGUARD MOTOR BUS CO. (1908), 72 J. P. 505; 25 T. L. R. 13; 53 Sol. Jo. 82; 7 L. G. R. 349, D. C.

Annotations:—**Overd.** Parker *v.* L. G. O. Co. (1909), 101 L. T. 623. **Refd.** Barnes U. D. C. *v.* L. G. O. Co. (1908), 7 L. G. R. 359; Wing *v.* L. G. O. Co., [1909] 2 K. B. 652.

1514. *Add. Annotation:*—*Generally*, **Refd.** Britannia Hygienic Laundry Co. *v.* Thornycroft (1926), 135 L. T. 83.

1519. *Add. Annotations:*—**Distd.** Noble *v.* Harrison, [1926] 2 K. B. 332. **Consd.** Reigate Corpn. *v.* Surrey County Council, [1928] Ch. 359.

1540. *Add. Annotation:*—**Refd.** Manchester Corpn. *v.* Farnworth, [1930] A. C. 171.

1546a. Heap of refuse—Horse frightened.]—Pltf.'s horse shied at a heap of road-scrapings placed by defts. by the side of a public highway on land belonging to them, & personal injuries were, in consequence sustained by pltf.'s wife. Upon the trial of an action brought in respect of such injuries, evidence that other horses had shied at the same heap, on the same day, was rejected:—*Held:* such evidence was admissible, for if the heap was of such a nature as to be likely to cause horses to shy, it was a public nuisance, & whatever showed it to be likely to cause horses to shy was evidence for pltfs.—BROWN *v.* EASTERN & MIDLANDS RY. CO. (1889), 22 Q. B. D. 391; 58 L. J. Q. B. 212; 5 T. L. R. 284, C. A.

Annotation:—**Refd.** Heath's Garage *v.* Hodges (1915), 14 L. G. R. 195.

PART IX. SECT. 1, SUB-SECT. 1.—N.

sq. *Prickly bush protruding through fence.*]—Where deft. permitted a gorse bush growing on his land to project over a street, & pltf. was injured by a thorn of the bush penetrating one of his eyes:—*Held:* deft. was liable.—CULL *v.* GREEN (1924), 27 W. A. L. R. 62.—**AUS.**

sr. *Suffering trees to grow—Causing obstruction—Madras Local Boards Act.*]—The allowing of prickly-pear to spread on to a road used by the public is a public nuisance within Indian Penal Code, s. 268.—*Re* MOLAIPPA GOUNDAN (1928), I. L. R. 52 Mad. 79.—**IND.**

PART IX. SECT. 1, SUB-SECT. 4.

1501 iii. —— *Obstruction of access.*]—Whether it is or is not unlawful to use a locomotive engine in a public street depends on the manner & extent of the user. In an action for nuisance by obstructing access to pltf.'s garage by the unreasonable user of a locomotive engine & trucks for the purpose of delivering to & loading goods from the deft.'s factory:—*Held:* a nuisance had been proved, & an injunction against unreasonable user & damages should be awarded.—MCCARRON *v.* NOSKE BROS. PROPRIETARY, LTD. (1929), S. A. S. R. 433.—**AUS.**

PART IX. SECT. 1, SUB-SECT. 11.

st. *Encroachment on private street—Authorised by Dean of Guild.*]—The proprietors of a building adjoining a private street in G., who were, also, the owners of the *solum* of the street, applied to the Dean of Guild for authority to extend their building over part of the foot pavement of the street. The master of works lodged objections in the public interest, on the ground that, under Glasgow Police Acts, 1866 to 1924, the Dean of Guild had no jurisdiction to sanction an encroachment on a private street:—*Held:* nothing in these Acts deprived the Dean of Guild of jurisdiction to grant a lining for the erection of a building on a private street within the burgh.—SAXONE SHOE CO., LTD. *v.* SOMERS, [1929] S. C. 232.—**SCOT.**

PART IX. SECT. 1, SUB-SECT. 14.

k 1. *Broken-down motor car—Not left on highway for unreasonable time—Owner not liable.*]—PEDERSON *v.* PATERSON (1916), 31 D. L. R. 368.—**CAN.**

sv. *House left in street at night—Street blocked—Person moving house liable.*]—SCOTT *v.* CALGARY & RIDDOCK, [1927] 2 D. L. R. 263; [1927] 1 W. W. R. 524; 22 Alta L. R. 467.—**CAN.**

1590. *Add. Annotation :—As to* (2) **Refd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

1592. *Add. Annotation :*—**Refd.** Layzell *v.* Thompson (1926), 91 J. P. 89.

1616. *Add. Annotation :*—**Refd.** Reigate Corpn. *v.* Surrey County Council, [1928] Ch. 359.

1623. *Add. Annotation :* — **Refd.** Oldham *v.* Sheffield Corpn. (1927), 136 L. T. 681.

1632a. —— —— **Temporary obstruction only.**]—HARPER *v.* HADEN (G. N.) & SONS, LTD. (1932), 96 J. P. 525 ; 76 Sol. Jo. 849, C. A.

1634. *Add. Annotations :* — **Consd.** Swadling *v.* Cooper (1930), 46 T. L. R. 597. **Refd.** Hargrove *v.* Burn (1929), 46 T. L. R. 59.

1637. *Add. Annotations :* — **Consd.** Hargrove *v.* Burn (1929), 46 T. L. R. 59; Swadling *v.* Cooper (1930), 46 T. L. R. 597. **Refd.** The Vectis, [1929] P. 204 ; The Chatwood, [1930] P. 272 ; M'Lean *v.* Bell (1932), 48 T. L. R. 467.

1652. *Add. Annotation :—Generally,* **Refd.** Salisbury & Fordingbridge District Drainage Board *v.* Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566.

1657a. —— **Trees.**]—STILLWELL *v.* NEW WINDSOR CORPN., No. 616a, *ante*.

1668. *Add. Annotation :*—**Refd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441.

1672. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

1674. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

1675. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

1677. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

1680a. ——————.]—Deft. co. built a large hotel, including a kitchen, close to pltf.'s private residence & with windows overlooking pltf.'s premises ; & a hitherto quiet highway, with very little traffic passing over it, became a busy street with vehicles constantly coming & going in connection with deft.'s hotel business. These vehicles made use of a very small yard adjoining pltf.'s house, opening into the street, & the roadway there became congested at times. In consequence, pltf. complained of nuisance : (*a*) by obstruction of access to his residence ; (*b*) by depriving him of reasonable use of the public highway :—*Held :* on the result of the authorities, a private individual who seeks to restrain the obstruction of a public highway must, in order to maintain his suit, prove that he has sustained particular & substantial & direct damage beyond the general inconvenience & injury to the public.—VANDERPANT *v.* MAYFAIR HOTEL CO., LTD., [1930] 1 Ch. 138 ; 99 L. J. Ch. 84 ; 142 L. T. 198 ; 94 J. P. 23.

1684. *Add. Annotation :—As to* (1) **Apprvd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

1686. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

1687. *Add. Annotation :—As to* (1) **Refd.** Vanderpant *v.* Mayfair Hotel Co., [1930] 1 Ch. 138.

1688. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

1689. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

1691. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

1694. *Add. Annotation :* —**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Ry. Co., [1931] 2 K. B. 331.

1700. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

1709. *Add. Annotation :—As to* (2) **Refd.** Howard-Flanders *v.* Maldon Corpn. (1926), 135 L. T. 6.

1710. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

PART IX. SECT. 1, SUB-SECT. 16.

q i. —— *Contributory negligence—Failure to wear adequate footwear.*]—In an action for damages for injuries sustained by slipping on an icy sidewalk, held that deft. city had not negligently permitted snow or ice to remain on the sidewalk ; &, moreover, pltf. was guilty of negligence which occasioned or contributed to the accident in that the kind of footwear which she was wearing was not ordinarily adequate to the circumstances.—KNIGHT *v.* SASKATOON, CITY OF, [1930] 3 W. W. R. 101 ; 4 D. L. R. 1010.—**CAN.**

q ii. —— *Municipality liable only for gross negligence.*]—The effect of the term "gross negligence" in a statute which imposes on a municipality the duty of keeping its streets in repair, but provides that it shall not be liable for injuries resulting from snow or ice upon a sidewalk "except in cases of gross negligence," is that its duty in cases within the proviso is substantially lower than its duty to keep its streets free from other defects & dangers not so specified.—JOHNSON *v.* ST. JAMES RURAL MUNICIPALITY, [1930] 3 W. W. R. 85 ; 4 D. L. R. 120.—**CAN.**

q iii. ——————.]—In an action for damages for personal injuries sustained by falling on a patch of ice which had formed on a sidewalk the night before the accident : —*Held :* the fact that deft. city, which under its charter is not liable for injuries so caused except in cases of gross negligence had not placed sand or cinders on the particular patch of ice before the time of the accident, nine in the morning, did not under all the circumstances constitute gross negligence.—STINSON *v.* EDMONTON CITY, [1932] 1 W. W. R. 839.—**CAN.**

q iv. ——————.]—In an action for injuries sustained by a pedestrian through a fall due to a slippery street : —*Held :* deft. city had been grossly negligent in not taking more care to prevent such injuries.—WOLFE & WOLFE *v.* EDMONTON CITY, [1932] 1 W. W. R. 129 ; *affd.*, [1932] 1 W. W. R. 855 ; 3 D. L. R. 370.—**CAN.**

sa. *Flow of water—Meaning of.*]—Water which soaks or seeps through a bank on land on to a road does not flow on to such road.—JARRAD *v.* LOADER, [1928] S. A. S. R. 35.—**AUS.**

PART IX. SECT. 3, SUB-SECT. 3. A.

1670 v. ——————.]—In an action for a mandatory injunction requiring deft. to remove a verandah & steps attached to her house, which encroached upon a street in a village, & caused inconvenience to pltf. & other persons using the street :—*Held :* the inconvenience was such only as was common to all persons using the street, & pltf., whose house was so situated that persons coming from it, in order to gain access to the principal street of the village, had to make a detour by reason of the verandah & steps, suffered no special damage or injury by reason of the nuisance, & was not entitled to the relief claimed.—WHALEY *v.* KELSEY, [1928] 2 D. L. R. 268 ; 61 O. L. R. 679.—**CAN.**

1670 vi. —— ——.]—ARDESAR JIVANJI *v.* AIMAI KUVARJI (1928), I. L. R. 53 Bom. 187.—**IND.**

q i. ——.]—The owner of an automobile is not entitled to maintain an action against a municipality for damages for non-repair of a highway, if he has not taken out a licence to permit him to operate his car.—SAMPSON *v.* ROBERTSON, [1925] 1 D. L. R. 624 ; 57 N. S. R. 498.—**CAN.**

q ii. —— *Notice of claim.*]—The absence of the notice required by City Act, R. S. S. 1920 (c. 86), s. 542, to be given the municipality is a bar to an action for damages for injuries caused by snow or ice on a sidewalk.—HICKMAN *v.* MOOSE JAW CITY, [1925] 1 D. L. R. 115 ; [1924] 3 W. W. R. 839.—**CAN.**

iii. ——————— *Sufficiency of.*] McGREGOR *v.* R. (Ont.), [1929] 1 D. L. R. 181.—**CAN.**

1711. *Add. Annotation :*—**Distd.** Howard-Flanders *v.* Maldon Corpn. (1926), 135 L. T. 6.

1717a. Remedy trespass not ejectment.]—DOE d. ST. JULIAN SHREWSBURY (PARISH) *v.* COWLEY (1823), 1 C. & P. 123 ; 171 E. R. 1129, N. P.

1747. After this case add " *Compare* MAGISTRATES Nos. 503a, 503b."

1760. *Add. Annotation :*—**Refd.** R. *v.* Newport Salop Justices, *Ex p.* Wright, [1929] 2 K. B. [illegible]

Part X.—Interference with Highways under Statutory Powers.

1761a. Duty of local authority—On request to exercise statutory powers.] — A local authority, requested to carry out in a " street laid out but not dedicated " constructive works under its statutory powers, need not necessarily inquire into the title of those making the request. But it must, in considering whether compliance with the request will be a lawful exercise of the powers, have regard primarily to the physical conditions obtaining in the area of the proposed operations ; & those physical conditions will be one of the principal factors in determining whether relevant statutory definitions are complied with. This applies to powers conferred by either public general or private local statutes.—DAVIES *v.* RIPON CORPN., [1928] Ch. 884 ; 97 L. J. Ch. 479 ; 139 L. T. 636 ; 92 J. P. 153 ; 26 L. G. R. 530.

Part XI.—Excessive Weight and Extraordinary Traffic.

1765. *Add. Annotation :*—**Consd.** Eastbourne County Borough *v.* Fuller & Sons (1928), 93 J. P. 29

1771. *Add. Annotation :*—**Distd.** Eastbourne County Borough *v.* Fuller & Sons (1928), 93 J. P. 29.

1772. *Add. Annotation :—As to* (1) **Refd.** Eastbourne County Borough *v.* Fuller & Sons (1928), 93 J. P. 29.

1775a. ——.]—Defts., who owned & used traction engines for the purposes of their business, drove two of these engines on a very hot day in July over a highway belonging to pltfs., who were the highway authority for the district. The highway, which had been constructed as a first class main road for the purpose of bearing traffic of all sorts, had a mexphalte surface. In passing along the most exposed part of the highway, the driving wheels of these engines sank into the road at a point where the surface was very soft, with the result that the road was damaged. Pltfs. thereupon brought an action against defts. to recover extraordinary expenses, pursuant to Highways & Locomotives (Amendment) Act, 1878 (c. 77), s. 23, as amended by Locomotives Act, 1898 (c. 29), s. 12. They also claimed damages for wrongful abuse of the highway by defts. & for nuisance & negligence :—*Held :* as agricultural traffic, including heavy traction engines, was admittedly part of the ordinary traffic, & the weights in the present case were normal, no claim for excessive weight or for extraordinary traffic could arise under the Act of 1878 ; there was no excess whatever by defts. of the lawful use of the highway & no wrongful abuse of their rights of passing & repassing ; the injury to the highway was due to a peculiar & unique conjunction of heat & of atmospheric & other conditions ; defts.' vehicles did not constitute a nuisance, & there was no negligence on the part of defts.—EASTBOURNE COUNTY BOROUGH *v.* FULLER & SONS (1928), 93 J. P. 29 ; 72 Sol. Jo. 762.

1810. *Add. Annotation :*— **Distd.** Eastbourne County Borough *v.* Fuller & Sons (1928) 93 J. P. 29.

1841. After this case add " *See, also,* No. 1852, *post.*"

1844. To the existing paragraph add as follows :—

The surveyor of a highway gave a certificate under the above sect. to the effect that extraordinary expenses had been incurred by reason of extraordinary traffic caused by resp. in repairing roads in four separate townships. Six months later he gave another certificate which referred to extraordinary expenses incurred partly before & partly after the date of the first certificate on a single road in one of the townships :—*Held :* the first certificate was good, &, with regard to expenses incurred before it was made, the period of six months limited by Summary Jurisdiction Act, 1848 (c. 43), s. 11, for recovering the amount began to run from the date of the first certificate.

1852. After this case add " *See, also,* No. 1841, *ante.*"

1852a. —— Where more than one certificate given.]—WIRRAL HIGHWAY BOARD *v.* NEWELL, No. 1844, *ante.*

1858a. —— Where several contracts.]—EPSOM URBAN COUNCIL *v.* LONDON COUNTY COUNCIL, No. 1818, *ante.*

PART IX. SECT. 3, SUB-SECT. 5.

sw. *Cost of fencing bank—Whether within Burgh Police (Scotland) Act,* 1892, *s.* 190.]—The magistrates of a burgh, founding upon the section, brought an action against the owners of a steep natural bank, which sloped down from the side of a street to the sea shore, in order to recover the cost of fencing the bank :—*Held :* the sect. was inapplicable, in respect that, in view of their ambiguity, the words " any other place " fell to be construed in the light of the context & of the heading of the group of sects. in which they occurred, &, so construed, the places to which the section referred were limited to places rendered dangerous by some artificial construction connected with buildings or streets.—BUCKIE MAGISTRATES *v.* SEAFIELD'S (DOWAGER COUNTESS) TRUSTEES, [1928] S. C. 525.—**SCOT.**

PART IX. SECT. 3, SUB-SECT.

d i. —— ——.]—R. *v.* FITZGERALD (1876), 39 U. C. R. 297.—**CAN.**

1872. *Add. Annotation:*—**Refd.** Eastbourne County Borough *v.* Fuller & Sons (1928), 93 J. P. 29.

1876. *Add. Annotation:*—**Refd.** Eastbourne County Borough *v.* Fuller & Sons (1928), 93 J. P. 29.

Part XII.—Stopping-up or Diversion of Highways.

1887. *Add. Annotation:*—**Refd.** Linton *v.* Newcastle-upon-Tyne Corpn. (1929), 142 L. T. 49.

1894a. —— **Consent of owners of land abutting on highway—Condition precedent.**]—By sect. 59 of a local Act "the corpn. may from time to time by order stop up wholly or partially any highway which in their opinion is unnecessary on such terms as to the vesting of the soil & other matters as may be agreed on between the corpn. & the owners & lessees of buildings & lands abutting on the highway & on any highway being so stopped up all public & other rights of way & other rights in, over or upon the same shall be absolutely extinguished." By sect. 117: "Any person deeming himself aggrieved by any order or determination of the corpn. or by any conviction or order made by a ct. of summary jurisdiction under any provision of this Act may appeal . . . to the next practicable ct. of quarter sessions under & according to Public Health Act, 1875 (c. 55), s. 269":—*Held:* (1) it was a condition of the making of an order under sect. 59 that there should be an agreement between the corpn. & the owners & lessees of buildings & lands abutting on the highway; (2) the "highway" must mean the whole highway & not any part thereof; & the applt. was therefore a person aggrieved although his land did not abut on the part of the highway stopped up.—Linton *v.* Newcastle-upon-Tyne Corpn. (1929), 142 L. T. 49; 94 J. P. 20; 27 L. G. R. 607, H. L.

1894b. —— —— —— **Meaning of highway—Not confined to part of highway stopped up.**]—Linton *v.* Newcastle-upon-Tyne Corpn., No. 1894a, *ante.*

1897. *Add. Annotation:*—**Refd.** Oldham *v.* Sheffield Corpn. (1927), 136 L. T. 681.

1922. *Add. Annotation:*—**Apld.** R. *v.* Postmaster-General, *Ex p.* Carmichael (1927), 96 L. J. K. B. 347.

1958. *Add. Annotation:*—**Refd.** Brown *v.* Harrison, Hourani *v.* Same (1927), 137 L. T. 549.

1979a. —— **Not costs of preparing for appeal—Order abandoned.**]—R. *v.* Wing (1825), 4 B. & C. 184; 6 Dow. & Ry. K. B. 323; 3 Dow. & Ry. M. C. 184; 3 L. J. O. S. K. B. 201; 107 E. R. 1028.

1984. *Add. Annotation:*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

1986. *Add. Annotation:*—**Consd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

Sect. 1.—METROPOLITAN.

For references to London Building Act, 1894 (c. ccxiii.), *see, now,* London Building Act, 1930 (c. clviii.), which replaces the 1894 Act.

Part XIII.—Streets.

1997. *Add. Annotation:*—**Consd.** Howard-Flanders *v.* Maldon Corpn. (1926), 135 L. T. 6.

2032. *Add. Annotation:*—*As to* (2) **Consd.** A.-G. *v.* Hornsey B. C. (1926), 43 T. L. R. 92.

2039. *Add. Annotation:*—*As to* (2) **Consd.** A.-G. & Public Trustee *v.* Woolwich Metropolitan Borough Council (1929), 93 J. P. 173.

2044. *Add. Annotation:*—**Apld.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

2075. *Add. Annotation:*—**Apld.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

2076. *Add. Annotation:*—**Apprvd.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

2087a. —— **Boundary wall.**]—In defining a general line of buildings under London Building Act, 1930 (c. clviii.), s. 22, a boundary wall cannot be taken into consideration either by the superintending architect or by the Tribunal of Appeal on an appeal from his certificate.—Molins Machine Co., Ltd. *v.* London County Council, [1932] 1 K. B. 764; 101 L. J. K. B. 259; 117 L. T. 457; 95 J. P. 202; 29 L. G. R. 627.

2093. *Add. Annotation:*—**Consd.** Black *v.* George Parker & Sons, Ltd. (1929), 142 L. T. 130.

2100. *Add. Annotations:*—**Consd.** Sittingbourne U. D. C. *v.* Lipton, Ltd. (1930), 47 T. L. R. 120. **Refd.** Molino Machine Co. *v.* L. C. C. (1931), 95 J. P. 202.

PART XI. SECT. 4, SUB-SECT. 5.

1872 i. *General rule.*]—It is not the total sum actually spent on repair that is recoverable by the road authority, whether that repair involves reconstruction or not. Regard must be had to all the circumstances of the case; the state of the roads when the extraordinary traffic commenced, its general character & suitability for the traffic reasonably to be expected thereon, the amount of ordinary traffic whether of deft. or other persons, & the extent & nature of the repairs reasonably required. Deductions should also be made if roads when repaired are in a better condition than before extraordinary traffic commenced.—Down County Council *v.* Stewart, [1927] N. 49.—**IR.**

1881 i. *Deductions & allowances—Improvement of road due to repair.*]—Down County Council *v.* Stewart, No. 1872 i, *ante.*—**IR.**

PART XII. SECT. 2, SUB-SECT. 1.

sx. *Necessity for compliance with statutory formalities.*]—*Held:* a public highway cannot be closed without complying with the statutory formalities.—Larcher *v.* Sudbury Town (1913), 24 O. W. R. 659; 4 O. W. N. 1289; 11 D. L. R. 111.—**CAN.**

PART XII. SECT. 2, SUB-SECT. 2.—A.

h i. —— *Under Highway Act, R. S. N. B.,* 1927—*Duty of jury under sect. 30 to consider whether highway necessary.*]—R. *v.* Belliveau, *Ex p.* Le Blanc (1930), 1 M. P. R. 28.—**CAN.**

h ii. —— —— —— *Duty of supervisor to view lands—Amounts to judicial act.*]—R. *v.* Belliveau, *Ex p.* Le Blanc (1930), 1 M. P. R. 28.—**CAN.**

2102. *Add. Annotation :*—**Consd.** Sittingbourne U. D. C. *v.* Lipton, Ltd. (1930), 47 T. L. R. 120.

2203. *Add. Annotation :*—**Apld.** Ashby-de-la-Zouch Grdns. *v.* Summers, [1928] 2 K. B. 397.

2204a. —— **Recovery of expenses of repairing dangerous structure—London Building Act, 1894, s. 116—Summary Jurisdiction Act, 1848 (c. 43), s. 11.**]—A building in the metropolis having been certified to be dangerous, the county council did the work necessary to make it safe, & on Sept. 15, 1924, demanded from the owner the amount of the expenses. The amount not having been paid, the council on Jan. 1, 1926, applied to a magistrate under sect. 116 (1) of the above Act of 1894 to fix the amount of the expenses & to make an order that no part of the structure should be let for occupation until after payment thereof. The magistrate dismissed the complaint on the ground that more than the period of six months limited by sect. 11 of the above Act of 1848 had elapsed between the time when the matter of the complaint arose & the date when the complaint was made :—*Held :* the six months' limitation of time applied to proceedings under sect. 116 (1) of the Act of 1894, & the time ran from the date of the demand, & the magistrate's decision must be affirmed.—LONDON COUNTY COUNCIL *v.* OWNER OF 14, LEE-STREET STEPNEY (1926), 135 L. T. 182 ; 90 J. P. 145 ; 42 T. L. R. 543 ; 24 L. G. R. 386, D. C.

2229a. Part of premises fronting another street.]—Deft. in 1903 purchased a house which fronted on G. road. In 1907 she bought a strip of land which she used to form a carriage drive to the house. In 1904 her husband became the tenant of a field to the south of & adjoining the house & land. The field fronted on E. road. In 1907 deft. purchased the field, but entered into a tenancy agreement letting it to her husband, & from that time the field & the house & land had been separately assessed by the local authority though in fact the tenancy agreement between deft. & her husband ceased to exist about 1918. In 1920 E. road was made up, the usual course being followed under Public Health Act, 1875 (c. 55), ss. 150 & 257, with the result that pltfs. claimed a charge, for the admitted proportion due from deft. of the expenses incurred in making up E. road, on the whole of deft.'s property, including her house & grounds as well as the field, as fronting, adjoining or abutting on E. road :—*Held :* the house & grounds & the field must be considered as being one close, & as such the whole was liable to a charge for making up E. road as fronting, adjoining or abutting thereon.—ALTRINCHAM URBAN DISTRICT COUNCIL *v.* O'BRIEN (1927), 91 J. P. 149 ; 25 L. G. R. 369.

2244a. —— ——.]—(1) A notice given to a frontager to make up the portion of the street opposite to his premises under Public Health Act, 1875 (c. 55), s. 150, is not rendered inoperative because all the frontagers on the street are not served, but he will be liable only for his proportion of the sum expended in making up those portions of the street which abut on the premises of such of the frontagers as are served with the notice, no change of ownership occurring during the course of the proceedings.

(2) The words " the same " contained in the form of notice given in the above Act refer to that portion only of the street abutting on the premises of the owner on whom such notice is served, & not to the whole street.

(3) Two winter months given as the time within which to execute works under a notice given under the above sect. is sufficient.—SUNDERLAND CORPN. *v.* GRAY, [1928] Ch. 756 ; 97 L. J. Ch. 411 ; 139 L. T. 405 ; 91 J. P. 52 ; 25 L. G. R. 139.

2252a. —— **" The same."**]—SUNDERLAND CORPN. *v.* GRAY, No. 2244a, *ante*.

2253. *Add. Annotation :*—**Consd.** Cardiff Corpn. *v.* Cardiff Pure Ice & Cold Storage Co. (1930), 95 J. P. 11.

2254. *Add. Annotation :—As to* (3) **Consd.** Cardiff Corpn. *v.* Cardiff Pure Ice & Cold Storage Co. (1930), 95 J. P. 11.

2254a. —— ——.] — SUNDERLAND CORPN. *v.* GRAY, No. 2244a, *ante*.

2268. *Add. Annotation :—As to* (2) **N.F.** Sunderland Corpn. *v.* Gray (1926), 136 L. T. 405.

2280. *Add. Annotation :*—**Refd.** Cardiff Corpn. *v.* Cardiff Pure Ice & Cold Storage Co. (1930), 95 J. P. 11.

2282a. —— **Two streets repaired at same time.**]—A local authority which has executed repairs to streets under Public Health Acts Amendment Act, 1907 (c. 53), s. 19, is not entitled to include two streets in the same account & apportion the combined expenses among the frontagers of both streets. Nor have the justices, before whom the local authority seek to recover such expenses, any jurisdiction to investigate the accounts & separate the expenses of the two streets for the purpose of making a proper apportionment.—NASH *v.* GILES (1926), 96 L. J. K. B. 216 ; 136 L. T. 352 ; 91 J. P. 19 ; 43 T. L. R. 121 ; 25 L. G. R. 66, D. C.

2285a. Effect of agreement between frontagers—Frontager not to be liable for maintenance of road until taken to by local authority—Frontager not entitled to repayment of apportioned share of cost of making up road.]—MOORE *v.* TODD (1903), 68 J. P. 43 ; 19 T. L. R. 642 ; 2 L. G. R. 376, C. A.

PART XIII. SECT. 2, SUB-SECT. 2.

sa. *Purchase for widening & improvement—What is due compensation.*]—*In re* MACDONALD & TORONTO CORPN. (1912), 27 O. L. R. 179 ; 4 O. W. N. 54 ; 8 D. L. R. 303.—**CAN.**

sb. —— *Power to acquire land beyond quantity actually required.*]—*Held :* under Municipal Corpns. Act, 1920, s. 192 a municipal corpn. is empowered when widening a street, to acquire not only what land is required for that purpose, but also to acquire, if the corpn. deems it expedient, land additional thereto on either or both sides of the street in question, provided land is required for the purpose of widening the street & that the land proposed to be taken, is on either or both sides of the street & whether or not the land is owned in part by one owner & in part by another.—WELLINGTON CORPN. *v.* DEALY, [1929] N. Z. L. R. 352.—**N.Z.**

PART XIII. SECT. 2, SUB-SECT. 3.

o i. ——.]—SOUTH GRIMSBY TOWNSHIP *v.* COUNTY OF LINCOLN & NORTH TOWNSHIP, COUNTY OF LINCOLN *v.* SOUTH GRIMSBY TOWNSHIP (1921), 19 O. W. N. 576 ; 58 D. L. R. 599.—**CAN.**

sd. *Meaning of " forming " & " making " street.*]—To " form " a street is to alter its natural surface so as to provide the desired shape or contour. To " make " a street involves adding where necessary an artificial surface to the natural or formed surface of the street.—ROWE *v.* DISTRICT COUNCIL OF PROSPECT (1929), S. A. S. R. 462.—**AUS.**

2316. *Add. Annotation :*—**Refd.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

2318. *Add. Annotations :*—**Refd.** R. *v.* North Worcestershire Assessment Committee, *Ex p.* Hadley, [1929] 2 K. B. 397. **Consd.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

2326. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* Sneath (1932), 48 T. L. R. 241.

2340. *Add. Annotation :*—**Refd.** Crediton Gas Co. *v.* Crediton U. C., [1928] Ch. 447.

2351. After this case add the following new sub-section :—

vi. *Other Cases.*

2351a. Action to recover expenses—Form of writ—Names & addresses of owners not known.]—Pltfs., being entitled under Public Health Acts to recover the expenses of making up a road from the owners of the lands abutting on the roadway & being unable to discover who some of those owners were, issued a writ against A., a known owner of some of the land, " & the owners of certain lands adjoining " the road " more particularly described in the indorsement " on the writ, " whose names & addresses are not known to pltfs." Upon the summons for directions pltfs. desired to amend the writ by adding after the word " owners " the words " at the time of the completion of the works referred to in the indorsement hereon," & they also asked for leave to effect substituted service on defts. so described by affixing copies of the writ on the respective premises : —*Held :* the writ, in not giving the names & addresses of defts. other than A., did not comply with the form of writ which had the basis of statutory authority & was prescribed by R. S. C., Ord. 2, r. 3, & Appendix A, Part 1 ; the writ, whether as originally issued or as proposed to be amended, was bad as against the persons so sought to be made defts., & the words following A.'s name must be struck out.—FRIERN BARNET URBAN COUNCIL *v.* ADAMS, [1927] 2 Ch. 25 ; 96 L. J. Ch. 145 ; 136 L. T. 649 ; 91 J. P. 60 ; 25 L. G. R. 75, C. A.

2353. *Add. Annotations :*—*As to* (1) **Refd.** Sunderland Corpn. *v.* Priestman, [1927] 2 Ch. 107. *As to* (2) **Consd.** Payne *v.* Cardiff R. D. C. (1931), 47 T. L. R. 532.

2357. *Add. Annotations :*—**Apld.** Bristol Corpn. *v.* Virgin, [1928] 2 K. B. 622. **Refd.** Paddington B. C. *v.* Finucane, [1928] Ch. 567.

2360. *Add. Annotation :*—**Distd.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

2364. *Add. Annotations :*—**Apld.** Paddington B. C. *v.* Finucane, [1928] Ch. 567. **Refd.** Bristol Corpn. *v.* Virgin, [1928] 2 K. B. 622.

2366. *Add. Annotation :*—**Refd.** Friern Barnet U. C. *v.* Adams, [1927] 2 Ch. 25.

2367a. —— —— Form of writ.]—FRIERN BARNET URBAN COUNCIL *v.* ADAMS, No. 2351a, *ante*.

2367b. —— Before expiry of time for summary proceedings.]—The two remedies conferred by Public Health Act, 1875 (c. 55), s. 257, are concurrent, & a local authority need not wait till the six months, during which the summary remedy is available, have expired before commencing proceedings to enforce the charge created by the sect.—SUNDERLAND CORPN. *v.* PRIESTMAN, [1927] 2 Ch. 107 ; 96 L. J. Ch. 441 ; 137 L. T. 688 ; 26 L. G. R. 64.

2405a. Burial ground " attached " to place of worship.]—The exemption from liability for the expenses of private street works given by Private Street Works Act, 1892 (c. 57), s. 16, to a burial ground " attached " to a " place appropriated to public religious worship, which is for the time being by law exempt from rates for the relief of the poor," extends only to a burial ground in physical attachment or contiguity to the building, & does not include a burial ground at a distance, " attached " to the place of worship in the functional sense that it is owned & maintained by the congregation of the place of worship for their members.—HOLY LAW SOUTH BROUGHTON BURIAL BOARD *v.* FAILSWORTH URBAN DISTRICT COUNCIL, [1928] 1 K. B. 231 ; 96 L. J. K. B. 713 ; 137 L. T. 483 ; 91 J. P. 104 ; 43 T. L. R. 519 ; 25 L. G. R. 324, D. C.

2405b. Vacant land adjoining chapel.]—An objection was made by the trustees of a chapel to the inclusion in a provisional apportionment under Private Street Works Act, 1892 (c. 57), of certain vacant land adjoining the chapel, on the ground that the land was exempt from expenses under sect. 16 of that Act & Poor Rate Exemption Act, 1833 (c. 30), s. 1. The trustees were owners of the land, & at the time of the provisional apportionment it was their intention to erect a Sunday school thereon communicating by a corridor with the chapel :—*Held :* the land was not exempt from expenses as a " place " or " premises " exclusively appropriated to religious worship within the above Acts, as the words " place " & " premises " refer to buildings only, & cannot include a piece of vacant land ; & there was no evidence on which it could be held that the land was within the curtilage of or formed part of the site of the chapel.—ILFORD CORPN. *v.* MALLINSON (1932), 147 L. T. 37 ; 96 J. P. 185 ; 48 T. L. R. 358 ; 30 L. G. R. 201.

2409. *Add. Annotation :*—**Refd.** Faulkner *v.* Hythe Corpn. (1926), 43 T. L. R. 55.

2419. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* Sneath (1932), 48 T. L. R. 241.

2423a. ——.]—CHATHAM CORPN. *v.* WRIGHT, No. 2447a, *post*.

2430a. —— ——.]—CHATHAM CORPN. *v.* WRIGHT, No. 2447a, *post*.

2430b. —— After completion of works.]—When an objection is lodged to proposed works under Private Street Works Act, 1892 (c. 57), s. 7, the local authority must apply under sect. 8 to the justices to determine the objection before the works are executed. After the works are completed, the justices

PART XIII. SECT. 2, SUB-SECT. 4.—A. (m) ii.

sc. *Owner at time of commencement of action.*]—A municipal council did certain pacing, kerbing, & guttering work in a public road. At that time defts. were the joint owners of land on the same side of the road & adjacent to the work done. Before any steps were taken to recover any part of the cost defts. parted with the ownership of the land. Thereafter the council brought an action against them to recover half the cost of the work :—*Held :* the words " the owner for the time being " in Local Government Act, 1919, s. 243, meant the owner at the time of the commencement of the action, & therefore that defts. were not liable.—ULMARRA MUNICIPAL COUNCIL *v.* NOTARAS (1929), 29 S. R. N. S. W. 501 ; 46 N. S. W. W. N. 179 ; 9 L. G. R. 80.—**AUS.**

have no jurisdiction to determine an objection under sect. 7.—FAULKNER *v.* HYTHE CORPN., [1927] 1 K. B. 532; 96 L. J. K. B. 167; 136 L. T. 329; 91 J. P. 22; 43 T. L. R. 55; 71 Sol. Jo. 20; 25 L. G. R. 60, D. C.

2432. *Add. Annotation :*—**Refd.** Faulkner *v.* Hythe Corpn. (1926), 43 T. L. R. 55.

2436. *Add. Annotation :*—**Refd.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

2439a. **Sale by owner—Necessity for demand on purchaser—Limitation of action.**]—Defts. being a local authority having duly made a final apportionment under Private Street Works Act, 1892 (c. 57), s. 12, of the expenses of certain private street works, demanded in 1910 the amount thus apportioned from an owner of land abutting on the street thus made up. In 1927 the latter sold the land in question to pltf. without having satisfied defts.' demand, & pltf. then proceeded to erect houses on the land in respect of which he became entitled to a subsidy. Defts. thereupon claimed to set off against the subsidy the amount of their claim against the owners for the time being of the land in respect of the apportioned expenses, together with interest thereon :—*Held :* (1) although defts. might have lost their right to sue the original owner for the expenses they were not prevented from suing pltf. as a subsequent owner for the time being. A demand on such owner was necessary to complete the cause of action for such expenses & Stat. Limitations did not begin to run until such demand had been made; (2) on the footing that Real Property Limitation Act, 1874 (c. 57), s. 8, was applicable, that sect. did not apply to defeat a claim against pltf., the owner for the time being, because defts. had no present right to receive the sum set off from pltf. until he became owner & twelve years from that date had not elapsed.—DENNERLEY *v.* PRESTWICH URBAN DISTRICT COUNCIL, [1930] 1 K. B. 334; 99 L. J. K. B. 25; 141 L. T. 602; 94 J. P. 34; 45 T. L. R. 659; 73 Sol. Jo. 530; 27 L. G. R. 618, C. A.

2440a. — — **On default of instalment.**]—A local authority had carried out certain street improvements, & premises had, under Private Street Works Act, 1892 (c. 57), s. 13 (1), become charged with the sum apportioned to them in respect of the improvements, that sum being ordered to be paid by instalments:—*Held :* the local authority, under the powers conferred by Private Street Works Act, 1892 (c. 57), s. 13 (1), & Law of Property Act, 1925 (c. 20), s. 101, had power to sell the premises, not merely when the whole of the apportioned sum was due, but also when an instalment was in default.—PAYNE *v.* CARDIFF RURAL DISTRICT COUNCIL, [1932] 1 K. B. 241; 100 L. J. K. B. 626; 145 L. T. 575; 95 J. P. 173; 47 T. L. R. 532; 29 L. G. R. 507.

2443. *Add. Annotation :*—**Refd.** Faulkner *v.* Hythe Corpn. (1926), 43 T. L. R. 55.

2447. *Add. Annotation :*—**Folld.** Chatham Corpn. *v.* Wright (1929), 142 L. T. 431.

2447a. —— ——.]—An urban sanitary authority, acting under the Private Street Works Act, 1892 (c. 57), resolved to execute certain private street works in a street in their district, & to contribute a certain portion of the expenses thereof, & that in settling the apportionment of the balance of the expenses thereof, regard should be had to the greater or less degree of benefit to be derived from the works, by the premises of the frontagers, & they approved provisional apportionments on the frontagers which were duly served & deposited in accordance with the provisions of the Act. Two of the frontagers objected to the provisional apportionments on their premises, before justices, who expressed the opinion that the proposed works were not unnecessary; that the estimated expenses were not excessive; that the premises of the objectors should not be excluded from the apportionment; but they stated that they considered the proposed works were unreasonable in that it was not reasonable that the objectors should bear the whole of the amounts shown in their provisional apportionments. Accordingly they approved the plans, sections, specifications, & estimates of the urban sanitary authority, but quashed in part the apportionments on the objectors' premises, by reducing each of these two apportionments by £100. They confirmed the apportionments on the other frontagers: —*Held :* the justices had sought to compel the urban sanitary authority to increase their contribution at the risk alternatively of sacrificing the scheme as a whole. It was not within the province of the justices, directly or indirectly, to compel the urban sanitary authority to make a larger contribution than that which they had already agreed to grant.

Upon the further consideration of the case, the justices must adopt one of three courses: increase the apportionments on the other frontagers to satisfy the balance of £200; quash the whole of the apportionment; or adjourn the matter, giving the urban sanitary authority the opportunity of considering whether they would pass a new resolution increasing their contribution by the £200 (*per* CUR.).—CHATHAM CORPN. *v.* WRIGHT (1929), 142 L. T. 431; 94 J. P. 43; 28 L. G. R. 4, D. C.

2449a. **Time fixed by order—Reasonable time—What must be considered.**]—Under sects. 33, 34 of Cardiff Corpn. Act, 1884, the corpn. made an order that a street, not being a highway repairable by the inhabitants at large, should be paved, kerbed, etc., within two months. The estimate & plan deposited in accordance with sect. 33 of the Act showed that under part of the street a sewer was to be laid by the corpn. while the work was being done, & the order showed that some of the frontagers were required to connect the works which they were required to do with the new sewer. Certain frontagers did not comply with the order, & the work was done by the corpn., &, after service of notice of apportionment of the expense of the work & demand for payment, the corpn. applied to the ct. by originating summons, for a declaration that the proper proportion of the costs of the work, with interest to date of payment, was a charge upon the premises of those frontagers, in accordance with sect. 54 of the Act :—*Held :* the time fixed by the order was not, in the circumstances, unreasonable; nor was there any evidence to establish that if the frontagers had done the work themselves the corpn. would have hampered them by laying the sewer simul-

taneously with their work. The frontagers were entitled to comply with the order & to restrain any interference with them in doing so, but not having so complied, they were liable for the expense of the work being done for them & the corpn. were entitled to the relief claimed.—CARDIFF CORPN. *v.* CARDIFF PURE ICE & COLD STORAGE CO., LTD. (1930), 95 J. P. 11; 29 L. G. R. 29, C. A.

2466a. —— **Powers of magistrate.**]—B. Corpn. proposed to execute certain private street works under Birmingham Corpn. (Consolidation) Act, 1883, ss. 46–50, which were substantially identical with Private Street Works Act, 1892 (c. 57). The corpn. duly complied with the formalities required & made a provisional apportionment on resps., the frontagers on the street, according to their respective frontages. Resps. objected that the works were unnecessary. On the hearing of this objection resps. called no evidence. The stipendiary magistrate held that some works were necessary, but was of opinion that the estimated expenses were too heavy. He reduced the estimate & ordered that one resp. should pay one-half & each other resp. two-thirds of the respective sums named in the provisional apportionment:—*Held:* inasmuch as the corpn. had not resolved that the apportionment should be on any basis other than frontage, the stipendiary magistrate could not direct an apportionment on any other basis. Subject to that limitation, he must consider & determine, upon evidence, whether the proposed works were in any, & what, respect unnecessary, & must have regard to any alternative proposals, if resps. made any & supported them by evidence, & to the cost thereof.—BIRMINGHAM CORPN. *v.* MOTHER-GENERAL OF CONVENT OF SISTERS OF CHARITY OF ST. PAUL (1927), 91 J. P. 186; 44 T. L. R. 31; 25 L. G. R. 517, D. C.

2470a. —— **Not mortgagee of pews & vaults in & under church.**]—CHORLTON UPON MEDLOCK (CONSTABLES & BURGESSES) *v.* WALKER (1842), 10 M. & W. 742; 12 L. J. Ex. 88; 7 J. P. 162; 152 E. R. 671.

2523. *Add. Annotations:*—*As to* (1) **Consd.** Salisbury & Fordingbridge District Drainage Board *v.* Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566. *As to* (2) **Consd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441. **Refd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485. *Generally*, **Refd.** A.-G. *v.* Premier Line, Ltd., [1932] 1 Ch. 303.

2534. *Add. Annotations:*—**Consd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441. **Refd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485.

2572. *Add. Annotation:*—**Refd.** A.-G. *v.* Sharp (1930), 143 L. T. 367.

2575. *Add. Annotation:*—**Consd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441.

2580. *Add. Annotation:*—**Consd.** A.-G. *v.* Prices' Tailors (1928), Ltd., [1930] 2 Ch. 316.

2580a. —— **Conversion of two shops into one.**]—Defts., who had purchased two houses with the shops on the ground floors projecting towards the street on which the premises fronted a few feet beyond the exterior walls of the two upper floors, submitted to the local authority plans of some proposed alterations. These consisted in the main in the conversion of the two shops into one continuous shop with a single entrance from the street in a new position. The local authority took the view that the proposed alterations amounted to taking down the front of the premises for the purpose of rebuilding, so as to entitle them to prescribe a new building line under the Public Health Act, 1875 (c. 55), s. 155. They therefore refused to approve the plans & called on defts. to set the ground floor front back to

PART XIII. SECT. 2, SUB-SECT. 6.—A.

sd. *Single scheme for several streets communicating with one another—Right of authority to recover cost from owners.*]—A municipal council in proceeding under Local Govt. Act, 1925, ss. 526, 527, may properly adopt a specification, estimate & scheme of distribution of the cost of forming, levelling, etc., several streets communicating with one another & enforce payment of a proportionate part of the cost of the whole scheme against the owner of premises adjoining or abutting on one or more only of such streets.—MACGOWAN *v.* ST. KILDA CITY, [1928] V. L. R. 462; [1928] Argus L. R. 254. **AUS.**

se. "*Opening or establishing new street*" — *What amounts to.*] — *Re* TORONTO & SAUNDERS, [1931] 2 D. L. R. 810; O. R. 116.—**CAN.**

sf. *Notice to property owners—Defective notice—For less than prescribed period.*]—SANDRINGHAM CITY CORPN. *v.* RAYMENT (1928), 40 C. L. R. 510; [1928] V. L. R. 312; [1928] Argus L. R. 173.—**AUS.**

sg. —— *Necessity for—Before works entered upon.*]—DUNN *v.* BRAYBROOK SHIRE, [1928] V. L. R. 454; [1928] Argus L. R. 286.—**AUS.**

sx. *Statutory liability of City—Non-fulfilment—Validity of subsequent statute imposing liability on frontagers.*]—By a Quebec statute of 1910 the City of Montreal within six months was to macadamise certain streets, including S. Street, in a township thereby annexed to the City, but later statutes postponed until May, 1925, the date for completing the work. In 1910 the City had no power to charge the cost of paving streets against the frontagers, but statutes of 1911 & 1914 gave the City that power in the case of permanent paving. In July, 1925, the City passed a resolution that S. Street, which had not been macadamised, should be permanently paved & that the frontagers thereon should be taxed in respect of the cost. Accordingly, S. Street was permanently paved with asphalt. In 1928 resps., as frontagers, were assessed to tax under a statute of that year, which provided that the cost of all pavings laid since Jan. 1, 1919, should be charged to the frontagers at a specified rate. All the statutes above mentioned were enacted as amendments of the City's statutory charter of 1899:—*Held:* having regard to the specific terms of the statute of 1928 it applied to S. Street, notwithstanding the unfulfilled obligations of the City under the statute of 1910, & accordingly the assessment was valid.—MONTREAL (CITY) *v.* MONTREAL INDUSTRIAL LAND CO., LTD., [1932] A. C. 700; 101 L. J. P. C. 172; 147 L. T. 517, P. C.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 6.—B.

sh. *Bye-law authorising opening of street—Before land acquired.*]—A bye-law passed by the council of a town authorising the opening & improving of a street shown upon a registered plan, as a local improvement under Local Improvement Act, R. S. O. 1927, c. 235, was held not to be invalid or illegal because the land for the street had not been acquired by the corpn. before the bye-law was passed.—*Re* CHAPPUS & LA SALLE TOWN, [1928] 2 D. L. R. 950; 62 O. L. R. 140.—**CAN.**

sk. *Bye-law providing for construction of sidewalks—Street not opened—Ultra vires.*]—*Re* CHAPPUS & LA SALLE TOWN, [1928] 2 D. L. R. 950; 62 O. L. R. 140.—**CAN.**

sl. *Width of entrance to new street—Existing entrance a narrow road—Over land of third party.*]—ROSE *v.* SYDENHAM LOCAL ADMINISTRATION & HEALTH BOARD (1928), 49 N. L. R. 203.—**S. AF.**

sm. *Bye-law closing part of road allowance—No alternative way of access to private land—Invalid.*]—GILMORE *v.* WESTMINSTER, [1929] 4 D. L. R. 1; 64 O. L. R. 344.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 6.—D.

b i. —— *Lots bordering on navigable river.*]—Land Registry Act, c. 23 of 1906, s. 68, dealing with the subdivision of land into town or other lots, provides, *inter alia*, that, in case a lot borders on the shores of any navigable water, streets leading to & continuing to such water must be shown at a not greater distance apart than 600 feet:—*Held:* the object of the section was to require land abutting on navigable waters to be subdivided so as to provide straight & continuous access to the water at intervals of not less than 600 feet.—*Re* LONSDALE ESTATE (1907), 12 B. C. R. 366. **CAN.**

the existing exterior walls of the floors above. Defts. having refused to comply, this action was brought on the relation of the local authority & pltf. moved for a declaration that defts. were not entitled to build beyond the prescribed line & for an order on them to remove so much of the new front of the shop as projected beyond that line:—*Held:* the local authority had no power to prescribe a new building line under sect. 155, because (1) on the true construction of the sect. "the front" included the exterior walls of the two upper floors as well as the exterior wall of the ground floor, & (2) in any case the alterations made to the premises did not amount to taking down the front of the ground floor.—A.-G. *v.* PRICES' TAILORS (1928), LTD., [1930] 2 Ch. 316; 99 L. J. Ch. 511; 143 L. T. 416; 94 J. P. 226; 29 L. G. R. 15, C. A.

2580b. —— "Front" of the premises—What included.]—A.-G. *v.* PRICES' TAILORS (1928), LTD., No. 2580a, *ante*.

2591a. Meaning of "new building"—Reconstructed building not included.]—BALLARD *v.* HORTON'S ESTATE, LTD. (1926), 24 L. G. R. 499, D. C.

2592a. Meaning of "erections" & "obstructions" — Includes petrol pumps.] — Clause 36 (*a*) of a town planning scheme, provided that "where a building line is shown upon the map (prepared for the scheme) in respect of any existing street or proposed new street no building or erection other than boundary walls & fences shall be erected or set up nearer to the street than such building line." Clause 40 (*b*) of the scheme provided that "no post, rail, fence, or other obstruction shall be erected in front of any shop or business premises in advance of the building lines fixed by clause 36, clause 37, clause 39 or this clause." Clause 70 of the scheme provides penalties for breach of these clauses. Applt., who was the proprietor of a motor garage, which was situated in an existing street for which a building line was shown on the map referred to in the scheme, erected two petrol pumps in a forecourt in front of his premises, which was nearer to the highway & abutted thereon & was in advance of the building line shown upon the map & between that building line & the front boundary of the premises:—*Held:* the pumps were "erections" within clause 36 (*a*) of the scheme & also "obstructions" within clause 40 (*b*), & applt. had been rightly convicted of offences under those clauses.—MACKENZIE *v.* ABBOTT (1926), 24 L. G. R. 444, D. C.

2592b. Building already erected when building line prescribed—Right to compensation—In respect of restriction on future extensions.]—SURREY COUNTY COUNCIL *v.* CATERHAM ENTERTAINMENTS, LTD. (1930), 94 J. P. Jo. 189, D. C.

SUB-SECT. 8.—IMPROVEMENT LINE IN STREETS.

For "Public Health Act, 1875," read "Public Health Act, 1925."

2592c. "New erection"—What amounts to.]—*Held:* the object of Public Health Act, 1925 (c. 71), s. 33, is to facilitate the widening of streets by enabling local authorities to prescribe an improvement line to which buildings will eventually be set back, & it is contemplated that the authorities will for that purpose then exercise the power conferred on them by Public Health Act, 1875 (c. 55), s. 154, of purchasing premises. In order not to increase the burden of compensation which the exercise of that power involves, Public Health Act, 1925 (c. 71), s. 33 (5), enacts that no new erection can be placed on the street side of the improvement line. Resps.' shop had in 1908 been moved back, leaving a paved forecourt in front of the shop so moved back upon which they used to expose their goods. After an improvement line had been prescribed in 1927, resps. again enclosed the forecourt into the shop, bringing the shop front back to its old level, which was beyond and on the street side of the improvement line:—*Held:* this was a "new . . . erection" within sect. 33 (5).—SITTINGBOURNE URBAN DISTRICT COUNCIL *v.* LIPTON, LTD., [1931] 1 K. B. 539; 100 L. J. K. B. 109; 144 L. T. 241; 95 J. P. 18; 47 T. L. R. 120; 29 L. G. R. 83, D. C.

2592d. —— Increase of burden on local authority.]—SITTINGBOURNE URBAN DISTRICT COUNCIL *v.* LIPTON, LTD., No. 2592c, *ante*.

2596. *Add. Annotation:—Generally*, **Refd.** Salisbury & Fordingbridge District Drainage Board *v.* Southern Tanning Co. (1920), Ltd. [1927] 2 K. B. 566.

Part XIV.—Footpaths.

2609. *Add. Annotation:—As to* (2) **Consd.** Bryant *v.* Marx (1932), 48 T. L. R. 624.

2619. *Add. Annotation:*—**Apld.** A.-G. & Public Trustee *v.* Woolwich Metropolitan Borough Council (1929), 93 J. P. 173.

Part XV.—Bridges and Approaches thereto.

2630. *Add. Citation:*—95 L. J. Ch. 86.

2644a. Agreement to maintain bridge over canal—Extent of duty—Tow-path raised to avoid flooding—Whether council bound to raise bridge.]—The construction of a canal involved the interception of a certain public road; & the canal co., in accordance with its statutory obligations, carried the road over the canal by means of a bridge. The canal subsequently became vested in a railway co., who were required under sect. 17 of the Regulation of Railways Act, 1873 (c. 48), to keep

the canal open & navigable. At a later date the railway co. entered into an agreement with the county council having jurisdiction in the locality under which the council agreed to remove the bridge & to construct a new bridge in substitution therefor; & the council covenanted that they would "from time to time & at all times thereafter well & sufficiently maintain & repair the new bridge & the roadway & footpaths upon the same & the approaches thereto." The agreement provided for a headway of six feet between the arch of the new bridge & the towing-path passing under it. The bridge & the neighbouring part of the canal for considerable distances on both sides of the bridge were in a mining area which had been subsiding for a long time prior to the agreement; & within sixteen years thereafter, owing to further subsidences, there was a general sinking of the bridge & the towing path. As, however, the water level remained the same, the railway co. found it necessary, in order to avoid flooding, to raise the towing path, the resulting effect being that the headway between the bridge & the towing path was reduced to four feet six inches, which was insufficient for the convenient working of the canal:—*Held:* the covenant on the part of defts. to "maintain" the bridge did not impose upon them an obligation to raise the bridge so as to obtain the six feet of clearance for the use of the water way, even although pltfs. had found it necessary to raise the towing path.—GREAT WESTERN RY. *v.* MONMOUTHSHIRE COUNTY COUNCIL (1929), 94 J. P. 6; 27 L. G. R. 569, C. A.

2650. *Add. Annotation:*—**Refd.** A.-G. *v.* Hornsey B. C. (1926), 43 T. L. R. 92.

2661. *Add. Annotation:*—*As to* (2) **Distd.** Great Western Railway *v.* Monmouthshire County Council (1929), 94 J. P. 6.

2705. *Add. Annotation:*—**Refd.** Manchester Corpn. *v.* Audenshaw & Denton U. D. Councils (1928), 139 L. T. 509.

2708a. **Dock swing bridge—Liability for maintenance.**]—Pltf. was injured by tripping over a nail projecting from the footway of a swing bridge which defts., the Port of London Authority, were under a statutory duty to maintain in repair, & which the public had a right to use only when it was not required to be swung open for dock traffic. The cause of the accident was the failure of defts. to maintain the footway in good condition. In an action for damages:—*Held:* the swing bridge was not a highway & defts. were not in the position of a surveyor of highways, & therefore defts. could not avoid liability on the ground of nonfeasance or on the ground that a surveyor of highways is not liable to pay damages to persons injured by his neglect of duty, & pltf. was entitled to recover.—GUILFOYLE *v.* PORT OF LONDON AUTHORITY, [1932] 1 K. B. 336; 101 L. J. K. B. 91; 146 L. T. 91; 95 J. P. 217; 48 T. L. R. 55; 75 Sol. Jo. 763; 29 L. G. R. 659.

2712. *Add. Annotation:*—**Refd.** Manchester Corpn. *v.* Audenshaw & Denton U. D. Councils (1928), 139 L. T. 509.

2716. *Add. Annotation:*—**Apld.** Manchester Corpn. *v.* Audenshaw U. C. & Denton U. C., [1928] Ch. 763.

2717. *Add. Annotation:*—**Apld.** Manchester Corpn. *v.* Audenshaw U. C. & Denton U. C., [1928] Ch. 763.

2719a. —— **Damage by locomotive passing over bridge—Locomotive Act, 1861 (c. 70), s. 7.**]—In respect of actual damage to a bridge, as distinguished from consequential loss, the liability to repair is imposed upon the owner of the locomotive if he has the charge of it at the material time, but if some person other than the owner has the charge of it, the liability is upon that person. The above sect. does not make the owner & such other person jointly & severally liable for that damage.—SOUTHERN RY. CO. *v.* GOSPORT CORPN., [1926] 2 K. B. 89; 95 L. J. K. B. 545; 90 J. P. 161; 70 Sol. Jo. 651; *varied*, [1927] 1 K. B. 331, C. A.

2766a. **Liability of borough council—Bridge built since 1835—Public Health Act, 1875 (c. 55), s. 4.**]—In 1882 seven streets were, in the course of the development of an estate, carried across a river on iron girder bridges. These streets subsequently became highways repairable by the inhabitants at large. An action was commenced by the A.-G. against the local authority for a declaration that they were liable to repair & keep in repair these seven bridges:—*Held:* having regard to the fact that the word "street," as defined by the above sect., includes, if this is not inconsistent with the context, any bridge, not being a county bridge, pltf. was entitled to the declaration.—A.-G. *v.* HORNSEY BOROUGH COUNCIL, [1927] 1 Ch. 331; 96 L. J. Ch. 164; 136 L. T. 502; 91 J. P. 61; 43 T. L. R. 92; 70 Sol. Jo. 1197; 25 L. G. R. 260.

PART XV. SECT. 2, SUB-SECT. 1.—A. (a).

d i. —— ——.]—Upon an application to a county ct. judge for an order declaring a bridge about to be built across a stream to replace a bridge that had been carried away by a storm, to be a county bridge, the sole question was whether the bridge was or would be "of a greater length than 300 feet" within sect. 458 of the Municipal Act. Before the approaches on the west side of the bridge were constructed, the waters sometimes crossed the highway considerably west of a point 300 feet west of the eastern bank, & an embankment that far west was rendered necessary on account of the waters overflowing the highway & being then constructed, became part of the highway:—*Held:* the embankment was rendered necessary within the meaning of the Act & the bridge was therefore of greater length than 300 feet.—*Re* PICKERING & ONTARIO, [1930] 1 D. L. R. 820; 64 O. L. R. 611.—**CAN.**

d ii. ——.]—*Re* SANDUSK CREEK BRIDGE (Ont.), [1926] 3 D. L. R. 353.—**CAN.**

PART XV. SECT. 2, SUB-SECT. 1.—A. (b).

p i. —— —— ——.]—*Re* CALEDONIA & HALDIMAND (1912), 22 O. W. R. 961; 3 O. W. N. 1654; 6 D. L. R. 267.—**CAN.**

PART XV. SECT. 2, SUB-SECT. 1.—C.

t i. —— *Too dilapidated to repair.*]—BRYANT *v.* TORONTO, [1932] 3 D. L. R. 590.—**CAN.**

PART XV. SECT. 2, SUB-SECT. 2.—B. (c).

o i. —— *Transfer of area to municipality.*]—A railway co. constructed & maintained a bridge & approaches by which a road was carried across their railway. The area in which the bridge was situated was subsequently annexed to a burgh, & the burgh authorities called upon the co., as frontagers to a private street, to construct a paved footway along one side of the road:—*Held:* assuming that the co. were frontagers to a private street, Burgh Police (Scotland) Act, 1903 (c. 33), s. 16, had not, either expressly or by implication, altered or extended these obligations.—MAGISTRATES OF LEVEN *v.* LONDON & NORTH EASTERN RY. CO., [1926] S. C. 528.—**SCOT.**

219. After this case add :—
——.]—*See, now,* Marriage Act, 1835 (c. 54), s. 2.

SUB-SECT. 4.—REMARRIAGE OF DIVORCED PERSONS.

(Vol. XXVII., p. 43.)

To cross-reference add " *See, also,* Marriage (Prohibited Degrees of Relationship) Act, 1931 (c. 31), s. 2."

235. After this case add :—
Usual place of worship of either party.]—*See* Marriage Measure, 1930 (No. 3).

335. *Add. Annotation :*—**Refd.** Nachimson *v.* Nachimson, [1930] P. 217.

446. *Add. Annotation :*—**Refd.** Nachimson *v.* Nachimson, [1930] P. 217.

453a. —— ——.]—The detail & strictness of proof of a marriage required in a criminal prosecution for bigamy is of a totally different standard from that required before a magistrate who is dealing with the question of the maintenance of a wife alleged to have been deserted. In civil cases, where there is evidence of the fact of a ceremony of marriage, followed by cohabitation of the parties, everything necessary for the validity of the marriage will be presumed in the absence of decisive evidence to the contrary, even though it may be necessary to presume the grant of a special licence. The burden of impeaching the factum of a marriage & the presumption of law *semper præsumitur pro matrimonio,* lies upon the impeaching party.

Statement in Halsbury's "The Laws of England," Vol. 16, Husband & Wife, Part II., Marriage, para. 604, *approved.*—SPIVACK *v.* SPIVACK (1930), 99 L. J. P. 52 ; 142 L. T. 402 ; 94 J. P. 91 ; 46 T. L. R. 243 ; 74 Sol. Jo. 155 ; 28 L. G. R. 188 ; 29 Cox, C. C. 91.

PART II. SECT. 6, SUB-SECT. 1.

sb. *Failure to comply with requirements—Effect of.*]—Although a marriage licence, the publication of banns, or the consent of parents is made by statute a prerequisite to the solemnisation of marriage, the non-fulfilment of said requirement does not render a marriage void or voidable, unless the statute expressly or by clear necessary intendment so provides ; & even the fact that the statute prohibits under a penalty other than nullity solemnisation without observance of the requirement does not imply nullity. The fact that a marriage was solemnised without the licence or publication of banns required by sect. 3 of Marriage Act, 1924, does not make the marriage void or voidable.—WYLIE (OTHERWISE PATTON) *v.* PATTON, [1930] 1 W. W. R. 216 ; 1 D. L. R. 747 ; 24 S. L. R. 285. —**CAN.**

PART II. SECT. 6, SUB-SECT. 2.

t i. —— ——.]—In Dec. 1928, a woman brought an action of declarator of marriage against the representatives of a man who had died in Sept. of that year, averring that a marriage had been entered into between them by declaration *de præsenti* in Dec. 1922. It was proved that the parties had for many years prior to that date been on terms of intimate friendship, & that deceased had more than once proposed marriage to the pursuer. On Dec. 28, 1922, at an hotel at which the parties were staying, they stated in the presence of three witnesses that they accepted one another as husband & wife. A document attesting the marriage was signed by the parties & by the witnesses. The pursuer & the three witnesses to the document deponed that the interchange of consent was serious, & was intended to constitute marriage, & that no other person was present at the ceremony. On the other hand, a witness B. deponed that she was present during part of the ceremony, & that the proceedings were of the nature of a joke. At the date of this ceremony the deceased was seventy-six & the pursuer was about forty. The pursuer & one witness deponed that the parties occupied the same bedroom after the ceremony. The witness B. gave evidence to the contrary effect.

The parties did not take up residence together. The pursuer continued to carry on her profession as a teacher under her maiden name. Several witnesses deponed that deceased had subsequently introduced the pursuer to them as his wife. Other witnesses gave evidence that deceased had denied that he was married to the pursuer. Deceased died on Sept. 2, 1928, leaving about £20,000. In his will, made two days before his death, he left the pursuer a legacy of £200 under her maiden name :—*Held :* the exchange of serious matrimonial consent had been clearly established by the document & the evidence of the pursuer & the three witnesses thereto, & the subsequent conduct of the parties did not displace this conclusion.—DUNN *v.* DUNN'S TRUSTEES, [1930] S. C. 131.—**SCOT.**

t ii. —— *Subsequent belief by one party that marriage invalid.*]—Mere consent makes marriage, & the validity of the contract is not affected by the fact that one of the parties subsequently forms an erroneous view that it was invalid for lack of some formality. —COURTIN *v.* ELDER, [1930] S. C. 68.—**SCOT.**

PART II. SECT. 7, SUB-SECT. 3.—C. (b).

c i. —— *Parties within prohibited degrees.*]—Where it is disclosed to an issuer of marriage licences that there is a legal impediment to the proposed marriage by reason of the relationship of the appcts. by consanguinity he acts properly in refusing to issue the licence.—*Re* SEIDLER & MACKIE (Alta.), [1929] 4 D. L. R. 478 ; 2 W. W. R. 645. —**CAN.**

PART II. SECT. 7, SUB-SECT. 5.—G. (a).

g i. —— *Formal consent filed after marriage—Verbal consent given before.*]—LE ARROWSMITH *v.* LE ARROWSMITH, [1931] 2 D. L. R. 608 ; 1 W. W. R. 616.—**CAN.**

PART II. SECT. 8, SUB-SECT. 2.—A.

sa. *Marriage of Doukhobortsi.*]—CHERNENKOFF *v.* CHERNENKOFF, [1930] 2 W. W. R. 165 ; 3 D. L. R. 1001.—**CAN.**

PART II. SECT. 8, SUB-SECT. 4.

sb. *Under Indian Christian Marriage Act, 1872—Between Roman Catholics.*]—A civil marriage contracted before a registrar in accordance with the provisions of Indian Christian Marriage Act, 1872, by persons professing the Roman Catholic faith is valid & legal. That Act deals with the forms of solemnisation of marriages of all Christians in India, including Roman Catholics.—SALDANHA *v.* SALDANHA (1929), I. L. R. 54 Bom. 288.—**IND.**

PART II. SECT. 9.

sc. *Marriage in foreign State—Celebration by person with power to do so.*]—MELLEN *v.* DOBENKO, [1927] 4 D. L. R. 1128 ; 61 O. L. R. 340.—**CAN.**

PART II. SECT. 10.

b i. —— —— *Marriage Act, R. S. A. 1922 (c. 213), s. 20.*]—The above sect. cannot apply to an alleged marriage of which there was no solemnisation whatever, other than the purchase of two wedding rings from an issuer of marriage licences & the placing of one of them on a finger of each of the parties, who did not belong to any sect or nationality which recognises this proceeding as a valid marriage ceremony.—PETSCHL *v.* BUCHI (Alta.), [1926] 4 D. L. R. 1185 ; [1926] 3 W. W. R. 598.—**CAN.**

PART II. SECT. 11, SUB-SECT. 1.

e i. —— ——.]—The doctrine, that a person who goes through a form of marriage must be presumed to have acted innocently & legally & that, until this presumption is rebutted, it must prevail over the presumption that a first husband or wife whose death was not proved, but who had not been heard of for over seven years before the second marriage, was alive at the time thereof, can have no application where it is found that the person relying on such doctrine did not act in innocent good faith in going through the form of a second marriage.—IRWIN *v.* IRWIN (Man.), [1926] 2 D. L. R. 794 ; [1926] 1 W. W. R. 849.—**CAN.**

e ii. *Compliance with Marriage Act, s. 21 (b).*]—MCGINN *v.* ELLERTON, ELLERTON *v.* ELLERTON, [1925] 2 D. L. R. 1136 ; [1925] 1 W. W. R. 962.—**CAN.**

PART II. SECT. 11, SUB-SECT. 2.—B. (a).

478 i. *Many years.*]—P., a Natal native, from about 1897 until just before her death in 1916 cohabited continuously with A., a half-caste woman. When the cohabitation began A. had a husband, who was still living. There was evidence to show that P. & A. had both said before 1902 that they were not married, & there was no evidence of any registration of a marriage between P. & A. There was some evidence that P. & A. were reputed to be man & wife since the birth of their five children, all of whom had been brought up & educated by P.'s brother C., who had treated them as his nephews & nieces :—*Held :*

510. *Add. Annotation:*—**Refd.** Skipp *v.* Kelly (1926), 42 T. L. R. 258.

536. *Add. Annotation:*—**Apld.** Spivack *v.* Spivack (1930), 99 L. J. P. 52.

568a. —.]—SPIVACK *v.* SPIVACK, No. 453a, *ante.*

580a. —.]—RALSTON *v.* RALSTON, No. 2293a, *post.*

583. *Add. Annotation:*—**Consd.** Nachimson *v.* Nachimson, [1930] P. 217.

Part III.—Personal Rights and Obligations arising from Marriage.

595a. —— **Bankruptcy of husband.**]—The bkpcy. of a husband who has entered into a separation deed is an answer to any claim for the payment of agreed sums under the deed, but does not convert his wife's agreement to live apart with an allowance into an agreement to live apart without maintenance. Her right to that maintenance is not in contract but is an incident of matrimonial status at common law. An agreement under a separation deed to receive an allowance merely suspends, but does not annul, that right, which revives as soon as the agreement is terminated by bkpcy., notwithstanding the receipt of a dividend. The dividend is not a transaction between husband & wife, but an incident in the bkpcy., & its receipt does not operate as a new bargain with the husband compounding the common law right of the wife. The separation agreement thus put an end to does not debar the wife from alleging the wilful neglect of the husband to provide reasonable maintenance for her within Summary Jurisdiction (Separation & Maintenance) Acts, 1895 to 1925.—DEWE *v.* DEWE, SNOWDON *v.* SNOWDON, [1928] P. 113; 97 L. J. P. 65; 138 L. T. 552; 92 J. P. 32; 44 T. L. R. 274; 72 Sol. Jo. 69; 26 L. G. R. 191.

611. *Add. Annotations:*—**Consd.** Place *v.* Searle (1932), 48 T. L. R. 428. **Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

640. *Add. Annotation:*—**Consd.** Place *v.* Searle (1932), 48 T. L. R. 320.

641. *Add. Annotation:*—**Consd.** Place *v.* Searle (1932), 48 T. L. R. 320.

642. *Add. Annotation:*—**Consd.** Place *v.* Searle (1932), 48 T. L. R. 320.

643. *Add. Annotation:*—**Consd.** Place *v.* Searle (1932), 48 T. L. R. 428.

643a. —— **Whether necessary to prove wife's will overborne by defendant.**]—For pltf. to succeed he must show that his wife did not elect to leave him, but was overborne by a stronger will (DARLING, J.).—SANDERSON *v.* HUDSON (1923), *Times*, Jan. 29, 1923.

Annotation:—**Overd.** Place *v.* Searle (1932), 101 L. J. K. B. 465.

643b. —— ——.]—A wife owes the duty to her husband to reside & consort with him, & any one who, without justification, procures, entices or persuades her to violate this duty commits a wrong towards the husband for which he is entitled to recover damages. In

the evidence adduced was not strong enough to rebut the presumption of marriage arising from the lengthy cohabitation of P. & A.—NYOKANA *v.* NYOKANA (1925), 46 N. L. R. 227.—**S. AF.**

PART II. SECT. 11, SUB-SECT. 2.—B. (c).

521 iv. —— —— ——.]—R. *v.* PROUD, [1926] 3 D. L. R. 664; [1926] S. C. R. 599.—**CAN.**

PART II. SECT. 11, SUB-SECT. 2.—E.

553 ii. ——.]—DAHLBERG *v.* SWANSON, [1927] 3 D. L. R. 669; [1927] 1 W. W. R. 617; 21 Sask. L. R. 388.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.

k (p. 76) i. —— —— —— *Effect of repeal of Judicature Act, 1922, pendente lite.*]—An alimony action begun before the coming into force of Domestic Relations Act, 1927, c. 5, s. 75, is governed as to pltf.'s rights & deft.'s liability by Jud. Act, R. S. A. 1922, c. 72, s. 21, notwithstanding its repeal by said sect. 75.—CLARKE *v.* CLARKE, [1928] 1 D. L. R. 249; [1927] 3 W. W. R. 728.—**CAN.**

s (p. 76) i. —— —— —— —— *Provoked by wife's misconduct.*]—WEITZEL *v.* WEITZEL, [1928] 3 D. L. R. 261.—**CAN.**

m (p. 77) i. — — *Invalidity of marriage.*]—*Held:* pltf. was not entitled to succeed on an alternative claim for a *quantum meruit* for her services as deft.'s housekeeper.—HOLMES *v.* HOLMES (Alta.), [1927] 2 D. L. R. 979; [1927] 2 W. W. R. 253.—**CAN.**

ff i. —— —— *Liability for interim disbursements.*]—The Supreme Ct. of Alberta has the power in an alimony action to grant the wife an order for payment of interim disbursements.—DREWRY *v.* DREWRY, [1928] 3 W. W. R. 460.—**CAN.**

hh i. *Husband purposely denuding himself of his property.*]—LIGHTHEART *v.* LIGHTHEART, [1927] 1 D. L. R. 386; [1927] 1 W. W. R. 393.—**CAN.**

hh ii. —— —— —— *Alimony provided for in prior separation agreement—Power of court to increase.*]—KAWIN *v.* KAWIN, [1927] 3 D. L. R. 383; [1927] 1 W. W. R. 690; 21 Sask. L. R. 415.—**CAN.**

rr i. —— —— *Necessity for written demand for cohabitation & restitution of conjugal rights.*]—*Held:* pltf. not entitled to decree for alimony, because she had not before action made a written demand for cohabitation & restitution of conjugal rights.—SCOTT *v.* SCOTT, [1930] 1 D. L. R. 53; 64 O. L. R. 422.—**CAN.**

rr ii. — —— *Variation—Jurisdiction of Supreme Court of Nova Scotia.*]—MCLEOD *v.* MCLEOD, [1931] 2 D. L. R. 364; 2 M. P. R. 559; *revsg.*, [1930] 3 D. L. R. 157.—**CAN.**

rr iii. —— —— *Effect of decree as res judicata—Subsequent action for annulment.*]—THOMPSON *v.* CRAWFORD, [1932] 2 D. L. R. 466; O. R. 281; *affd.*, [1932] 4 D. L. R. 206.—**CAN.**

s (p. 78) i. —— ——.]—*Semble:* there is no common law rule that a husband is bound to maintain his wife while she is incarcerated in a lunatic asylum without his consent.—A.-G. *v.* RAND (1931), S. R. N. S. W. 568; 48 N. S. W. W. N. 154.—**AUS.**

PART III. SECT. 2, SUB-SECT. 1.—A.

sm. *Court cannot order wife to live apart from husband.*]—A judge awarded a wife alimony & also expressed the opinion that it would be better for the parties to live apart for a time. The formal judgment contained a clause adjudging that pltf. vacate the premises:—*Held:* the ct. had no power to order the wife to leave her husband's roof; &, even if the jurisdiction existed, it would not be exercised at the instance of the wife against the protest of the husband.—SCOTT *v.* SCOTT, [1930] 1 D. L. R. 53; 64 O. L. R. 422.—**CAN.**

PART III. SECT. 2, SUB-SECT. 3.—B.

645 ii. —— ——.]—The statement of claim in an action by a wife alleged that deft. had induced pltf.'s husband to depart & remain absent from the home, whereby pltf. had been deprived of the society comfort & protection of her husband & partially of his support:—*Held:* the statement of claim was bad in law & disclosed no cause of action.—WRIGHT *v.* CEDZICH, [1929] V. L. R. 117; [1929] Argus L. R. 102; *affd.*, 43 C. L. R. 493; (1930), V. L. R.

order to succeed in such an action the husband need not prove that the will of the wife was overborne by the stronger will of the deft.—PLACE *v.* SEARLE, [1932] 2 K. B. 497; 101 L. J. K. B. 465; 147 L. T. 188; 48 T. L. R. 428, C. A.

647. *Add. Annotation :*—**Refd.** *Re* Wilkinson, Page *v.* Public Trustee, [1926] Ch. 842.

Part IV.—Effect of Marriage with Regard to Wife's Property.

656. *Add. Annotation :*—*As to* (1) **Consd.** *Re* Bower Williams, *Ex p.* Trustee, [1927] 1 Ch. 441.

Part V.—Effect of Divorce or Separation with Regard to Wife's Property.

753. *Add. Annotation :*—**Consd.** *Re* Monro's Settlement, Monro *v.* Hill, [1932] W. N. 167.

755a. Effect of remarriage.]—In 1916 a post-nuptial settlement by P. was executed with his trustees whereby it was agreed among other things that they should hold two-thirds of the settled fund upon trust to pay the income to the wife for her life. If she survived P. & married again she was to have the income of one-fifth for her life of the two-thirds during the subsequent coverture. Power to appoint the two-thirds was given to her by deed or will for the benefit of her children by the settlor, such power to cease on remarriage except as to the one-fifth, to the income of which she would still be entitled & without prejudice to any appointment she might previously have made otherwise than by precluding her from exercising on remarriage any power of revocation reserved to her so far as regarded that part of the two-thirds in which her interest then ceased. If she survived & remarried, the power to appoint new trustees conferred on her by the deed was to cease. There were four children of the marriage, all born before the execution of the deed. In 1919 the marriage was dissolved, & by a deed poll in 1922 the wife appointed the two-thirds to the four children of the marriage, reserving a power of revocation & new appointment. Shortly after she remarried. On a summons taken out by the trustees asking whether as from the remarriage they should pay her the income of the two-thirds or of one-fifth thereof, whether she was entitled to exercise the power of revocation & new appointment reserved by the deed poll, & whether she still retained the power to appoint new trustees: —*Held :* except in so far as the wife's power of appointment in future was concerned, her position under the deed was wholly unaffected by the remarriage she had contracted. —*Re* PILKINGTON'S SETTLEMENT, PILKINGTON *v.* WRIGHT (1923), 129 L. T. 629; 67 Sol. Jo. 679.

Annotation :—**Consd.** *Re* Monro's Settlement, Monro *v.* Hill, [1932] W. N. 167.

755b. —— Trust for wife after husband's death "until she shall marry again"—Not applic-

141; 3 A. L. J. 437; (1930), Argus L. R. 105.—**AUS.**

f i. ——,]—In an action by a wife against her husband's father for alienating the affections of her husband, she alleged that she was prevented from the companionship of her husband & infant daughter by deft.'s conduct in keeping her husband away from her, so that she was compelled to support herself as best she could. There was no allegation of making defamatory statements by deft., & there was no allegation of malice: —*Held :* no reasonable cause of action was shown. —TALMAGE *v.* TALMAGE, [1928] 3 D. L. R. 15; 62 O. L. R. 209.—**CAN.**

PART IV. SECT. 1.

n i. —— *Acquired & disposed of through husband—Belong to husband.*]—A number of hogs, either the progeny of two hogs acquired by a wife as compensation for services performed by her for a neighbour or bought with the proceeds of sale of such progeny, were raised, acquired & disposed of through the efforts & the expense of her husband :—*Held :* they did not belong to the wife as against the husband's creditors.—JOHN DEERE PLOW CO. *v.* BOWEN, [1925] 1 D. L. R. 769; [1925] 1 W. W. R. 357.—**CAN.**

sd. *Legacy to wife—Death before reduction into possession—Right of husband as representative of wife.*]—If a legacy is bequeathed to a married woman, who dies before any act done by husband to reduce it into possession, he can only maintain an action for it as the representative of his wife, though he may be beneficially entitled to it.—COLLINS *v.* CAHIR (1850), 7 N. B. R. (2 All.) 103.—**CAN.**

se. *Husband not constituted agent of wife by marriage.*]—A husband is not *primâ facie* an agent for his wife by reason of their relationship. The *onus* is on the person alleging such agency to prove that he is her agent.—MILLARD *v.* BEVAN LUMBER & SHINGLE CO., LTD., [1928] 2 D. L. R. 367; 39 B. C. R. 430.—**CAN.**

PART IV. SECT. 2.

sf. *Reversionary interest.*]—STANDARD BANK *v.* BOULTON (1878), 3 A. R. 93.—**CAN.**

PART IV. SECT. 6, SUB-SECT. 2.

sg. *Not business carried on in partnership with husband.*]—COHN *v.* CANARY (B. C.), [1925] 4 D. L. R. 431; [1925] 3 W. W. R. 357; *revsg.*, [1925] 3 D. L. R. 223; [1925] 2 W. W. R. 563.—**CAN.**

sh. *Crops grown by wife—On husband's land—Strict proof necessary.*]—ANDERSON *v.* JOHN DEERE PLOW CO., LTD. (Sask.), [1926] 4 D. L. R. 255; [1926] 2 W. W. R. 667.—**CAN.**

sj. —— *On wife's land—Burden of* —BANQUE CANADIENNE NATION- *v.* TENCHA (Can.), [1927] 4 D. L. R. 665.—**CAN.**

sk. —— ——.]—In determining as between an execution creditor & the wife of the debtor whether the crops grown on certain land were the property of the debtor or his wife, held that the effect of the judgment in *Banque Canadienne Nationale* v. *Tencha*, is that the issue must be decided on the answer to the question, whose land was it that produced the crops, & not on the answer to the question, whose business was the farming operations which produced them.—MAYER (F.) BOOT & SHOE CO. *v.* MOELLENDORF, [1930] 3 W. W. R. 58; 4 D. L. R. 506; [1931] 1 D. L. R. 360; [1930] 3 W. W. R. 311; *revsd.*, 25 Alta. L. R. 76.—**CAN.**

PART IV. SECT. 7, SUB-SECT. 1.

sl. *Conveyance to husband & wife—Creates tenancy in common.*]—At common law, under a conveyance of land to husband & wife, they took an estate by entireties; but the effect of Married Women's Property Act is to enable the wife to take as though she were a *feme sole* & so the effect of the marital relationship is ended so far as real property is concerned. Under Conveyancing & Law of Property Act, R. S. O., 1927, c. 137, s. 12, they now take as tenants in common.—SPRING *v.* KINNEE, [1928] 4 D. L. R. 723; 62 O. L. R. 562.—**CAN.**

able to remarriage during first husband's lifetime.]—*Re* MONRO'S SETTLEMENT, MONRO *v.* HILL, [1932] W. N. 167; 174 L. T. Jo. 28.

757a. Husband entitled to income of trust fund during separation.]—DUNCAN *v.* CAMPBELL (1842), 12 Sim. 616; 6 Jur. 677; 59 E. R. 1269.

Annotation:—**Apld.** *Re* Barnard, Barnard *v.* White (1887), 56 L. T. 9.

786. *Add. Annotation:*—**Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

787. *Add. Annotation:*—**Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444.

Part VI.—Disposition of Property.

807a. Accrued arrears of annuity—Payment of dividend in bankruptcy.]—*Re* HORNE'S SETTLEMENT, COUTTS & Co. *v.* DUCHESSA DUSMET DE SMOURS, [1932] 2 Ch. 180; 101 L. J. Ch. 359; 147 L. T. 492.

906. *Add. Citations:*—*revsd. sub nom.* PUBLIC TRUSTEE *v.* WOLF, [1923] A. C. 544; 92 L. J. Ch. 520; 129 L. T. 738; 39 T. L. R. 553; 67 Sol. Jo. 637, H. L.

965. *Add. Annotation:*—**Apld.** Townshend *v.* Child (1932), 48 T. L. R. 575.

986. *Add. Annotation:*—*Generally*, **Refd.** Capron *v.* Capron, [1927] P. 243.

1007. *Add. Annotation:*—**Refd.** Bosworthick *v.* Bosworthick, [1926] P. 159.

1036. *Add. Annotation:*—**Refd.** *Re* Alington & L. C. C.'s Contract, [1927] 2 Ch. 253.

1053a. —— Cause of action arising before marriage —Liability for costs arising after marriage.]—A widow commenced an action against a professional man, from whom she claimed damages for alleged negligence. Before the trial of the action she remarried. At the trial judgment was given for deft. with costs:—*Held:* (1) the liability to pay costs was one wholly arising at a date when pltf. was a married woman, & was therefore payable out of her separate estate & not otherwise; (2) there was jurisdiction under Married Women's Property Act, 1893 (c. 63), s. 2, to order & enforce the payment of costs out of that separate estate whether subject to a restraint on anticipation or not; (3) such an order ought to be made having regard to the circumstances in which the action had been commenced & prosecuted.—TOWNSHEND *v.* CHILD (1932), 147 L. T. 278; 48 T. L. R. 575.

1054. *Add. Annotation:*—*As to* (1) **Consd.** Townshend *v.* Child (1932), 48 T. L. R. 575.

1057. *Add. Annotation:*—**Refd.** Townshend *v.* Child (1932), 48 T. L. R. 575.

1063. *Add. Annotation:*—**Consd.** Townshend *v.* Child (1932), 48 T. L. R. 575.

1066. *Add. Annotation:*—**Consd.** Townshend *v.* Child (1932), 48 T. L. R. 575.

1067. *Add. Annotation:*—**Consd.** Townshend *v.* Child (1932), 48 T. L. R. 575.

1079. *Add. Annotation:*—**Refd.** Townshend *v.* Child (1932), 48 T. L. R. 575.

1106. *Add. Annotation:*—**Apld.** *Re* Mathieson, [1927] 1 Ch. 283.

1162. *Add. Annotation:*—**Refd.** *Re* Lloyds Bank,

PART VI. SECT. 1, SUB-SECT. 5.—B. (a) i.

911 i. *Assignment inoperative—Transfer to pay husband's debts.*]—RODRIGUE *v.* DOSTIE & VACHON, [1927] 4 D. L. R. 1139; [1927] S. C. R. 563.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 5.—C. (a).

951 v. —— ——.]—UNION BANK *v.* BENEDICT, [1925] 4 D. L. R. 1057.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.

d i. —— —— *Not on conveyance of equitable estate.*]—ADAMS *v.* LOOMIS (1875), 22 Gr. 99.—**CAN.**

e i. —— ——.]—HARTLEY *v.* MAYCOCK (1897), 28 O. R. 508.—**CAN.**

k i. ——.]—ELLIOTT *v.* BROWN (1884), 11 A. R. 228.—**CAN.**

k ii. —— *Sale as spinster—Conveyance not impeachable on ground of non-compliance with statutory formalities.*]—GRAHAM *v.* MENCILLY (1869), 16 Gr. 661.—**CAN.**

so. *Pledge of wife's shares as security for husband—Absence of independent advice—Onus of proof of duress.*]—MACKENZIE *v.* ROYAL BANK OF CANADA, [1932] 3 D. L. R. 474.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 1.

1190 i. *Purchase out of wife's income. Land conveyed in own name—Resulting trust.*]—A resulting trust held to have arisen in favour of a wife whose money, it was found, had been used in the purchase of land the title to which was taken in the name of her husband.—MORRIS *v.* MORRIS & FRENCH, [1931] 3 W. W. R. 427.—**CAN.**

c i. *Conveyance by husband alone—Effect.*]—WALLIS *v.* BURTON (1855), 5 Gr. 352.—**CAN.**

c ii. —— ——.]—*Held:* an effectual transfer of his marital rights in the land conveyed.—ALLAN *v.* LEVESCONTE (1857), 15 U. C. R. 9.—**CAN.**

c iii. —— ——.]—*Held:* a deed of gift executed by a Burmese Buddhist husband without his wife's consent of part of the joint property of the marriage is wholly void & conveys no title to the donee in respect of the property which it purports to convey.—U. Po. U. *v.* MATOK GYI (1929), I. L. R. 7 Ran. 374.—**IND.**

sl. *Property used & maintained by husband—No presumption of gift by wife.*]—CALHOUN *v.* REID (Sask.), [1927] 4 D. L. R. 808; [1927] 3 W. W. R. 429.—**CAN.**

l i. —— ——.]—SEMPLE *v.* SHARP, [1927] 1 W. W. R. 965; 21 Sask. L. R. 435.—**CAN.**

l ii. —— —— *Wife not examined—Certificate of examination fraudulently signed.*]—Title set aside, subject to the rights of an innocent purchaser from the transferee to obtain the land on the terms of his agreement with the transferee.—FROSTAD *v.* LIBER, [1927] 3 D. L. R. 916; [1927] 2 W. W. R. 550; 21 Sask. L. R. 603.—**CAN.**

l iii. —— ——.]—The fact that the husband makes his home on certain land, in which he & another have each a one-half interest, brings it within Homesteads Act, 1915 (c. 29).—MCDOUGALL *v.* MCDOUGALL, [1919] 2 W. W. R. 637; 12 Sask. L. R. 289.—**CAN.**

l iv. —— ——.]—After a homestead under Homesteads Act has ceased to be such owing to its permanent abandonment as a place of residence the wife has no status under said Act to oppose the validity of an assignment of the land executed by her husband prior to said date, although the assignment was not executed, as the Act requires it to be, by her; & her husband is in no better position in this respect than she is.—DOUGLAS *v.* ADDIE, [1928] 4 D. L. R. 167; [1928] 3 W. W. R. 37; *affd.*, [1929] 2 D. L. R. 401; 1 W. W. R. 610; 23 S. L. R. 463.—**CAN.**

l v. —— *Order dispensing with consent of wife to disposition—When granted under Dower Act.*]—Where a husband had refused, without lawful reason therefor, to live with his wife or support her & his treatment of her was found to have conduced to her adultery, it was held that it would not be "fair & reasonable under the circumstances," to grant an order under Dower Act, R. S. A. 1922, c. 135, s. 8, dispensing with her consent to his disposition of his homestead within said Act. Under Dower Act, s. 3, as it now stands a disposition of the homestead by the husband without the wife's consent, when there is no order dispensing with it, is absolutely null & void, & not so merely as it affects the wife's interest therein.—*Re* MILLER, [1929] 1 D. L. R. 147; [1928] 3 W. W. R. 643.—**CAN.**

l vi. —— *Action by wife to set aside agreement for sale by husband.*]—BAKER *v.* BAKER, [1932] 3 W. W. R. 375.—**CAN.**

n i. —— —— *Residence condition precedent.*]—PENDLETON *v.* PENDLETON, [1927] 2 W. W. R. 720; 21 Sask. L. R. 579.—**CAN.**

o i. —— *Signature of wife—When dispensed with.*]—ASKIN *v.* ASKIN, [1929] 4 D. L. R. 1068; 1 W. W. R. 663; 23 S. L. R. 631.—**CAN.**

Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

1203. *Add. Citation :*—8 W. R. 333.

1220. *Add. Annotation :*—**Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179.

1223a. —— **Necessity for survivorship of wife.**]—In the year 1876 a husband during the lifetime of his wife took out a policy on his life with an assurance co., whereby, after a recital that the assured " for the benefit of his wife " in pursuance of Married Women's Property Act, 1870 (c. 93), had proposed to the co. to effect an assurance on his own life for £500, in consideration of the payment of the premiums during the life of the assured, the co. covenanted that the property of the co. should be liable to pay to the exors., administrators & assigns of the assured the sum of £500. In 1918 the wife died, & in 1929 the husband died without having married again. In 1891 the husband was adjudicated bkpt. & obtained his discharge as from Apr. 14, 1899 :—*Held :* upon the true construction of the policy & Married Women's Property Act, 1870 (c. 93), s. 10, the interest in the policy moneys vested in the husband & upon his adjudication in the trustee in his bankruptcy subject to the trust in favour of his wife which enured for her benefit only if she survived her husband ; with the result that as she died before her husband & before the fund fell into possession, the policy moneys belonged & were payable to the trustee in bkpcy.

Semble : Married Women's Property Act, 1870 (c. 93), s. 10, does not enable a husband to confer the benefit of the policy upon any wife who does not by surviving him become his widow.—*Re* COLLIER, [1930] 2 Ch. 37 ; 143 L. T. 329 ; *sub nom. Re* COLLIER, *Ex p.* COLLIER'S EXORS., 99 L. J. Ch. 241 ; [1929] B. & C. R. 173.

Annotation :—**Refd.** Cousins *v.* Sun Life Assurance Society (1932), 48 T. L. R. 614.

1225. *Add. Annotation :*—**Apld.** *Re* Fleetwood's Policy, [1926] Ch. 48.

1226. *Add. Annotations :*—**Consd.** *Re* Pitts, Cox *v.* Kilsby, [1931] 1 Ch. 546. **Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179 ; *Re* Collier, [1930] 2 Ch. 37 ; Cousins *v.* Sun Life Assurance Society (1932), 48 T. L. R. 614.

1226a. —— —— **If living at his death—Cash value of policy sought to be taken by insured during life.**]—A husband took out an insurance policy for £500 on his life, & by the terms of the policy the co. agreed to pay that sum to insured's wife, if she were living at his death, or in the event of her prior death to pay it to insured's exors., administrators & assigns. The policy contained a proviso that, if at the end of twenty years insured was still living, he should have the right to exercise any of six specified options. Insured being then still living, he exercised an option to receive the entire cash value of the policy with its share of accumulated profits & to discontinue the policy. A sum of £286 thus became payable. The co. were unwilling to pay over this sum except on the joint receipt of the husband & wife, & ultimately paid it into ct. : —*Held :* (1) the policy came within sect. 11 of the above Act, & created a trust in favour of the wife in certain events ; (2) insured must be taken to have exercised the option for the benefit of the trust ; (3) unless the husband & wife came to an agreement, the fund must be accumulated in ct. until it could be ascertained by the death of either party who was entitled to it.—*Re* FLEETWOOD'S POLICY, [1926] Ch. 48 ; 95 L. J. Ch. 195 ; 135 L. T. 374.

1226b. —— —— **Death of wife in husband's lifetime.**]—Where a husband has insured his life under the provisions of the Married Women's Property Act, 1882 (c. 75), for the benefit of his wife, & she dies in his lifetime, the policy & the surrender value become the property of the wife's legal personal representatives, & the husband has no claim to them.—COUSINS *v.* SUN LIFE ASSURANCE SOCIETY (1932), 49 T. L. R. 12, C. A.

1227. *Add. Annotation :*—**Apld.** *Re* Collier, [1930] 2 Ch. 37.

1228. *Add. Citation :*—95 L. J. Ch. 24.

o ii. —— —.]—Where a wife is living apart from her husband, pursuant to the terms of a separation agreement, which does not provide that she shall be disentitled to alimony, & in which there is nothing in the nature of a release or an agreement for the release of dower, it cannot be said that she is so living " under such circumstances as disentitle her to alimony " ; & an order dispensing with her signature, for the purpose of barring her dower, to a deed of conveyance of land of the husband will not be made under sect. 13 of Dower Act, R. S. O., 1927.—*Re* DAVIDSON, [1930] 2 D. L. R. 84 ; 65 O. L. R. 19. — **CAN.**

PART VI. SECT. 8, SUB-SECT. 2.—A.

o i. —— *Separate estate.*]—The interest of a wife in a policy effected by her husband on his own life, & which has been declared by him to be for her benefit, is her separate estate, & may, in her husband's lifetime, be assigned by her.—GRAHAM *v.* CANADA LIFE ASSURANCE CO., PROCTOR *v.* GRAHAM (1894), 24 O. R. 607.—**CAN.**

PART VI. SECT. 8, SUB-SECT. 2.—B.

n i. —— —— *Bankruptcy of husband.*]—S. effected an insurance on his own life in favour of his wife under Married Women's Policies of Assurance (Scotland) Act, 1880. S.'s estates were afterwards sequestrated : —*Held :* the policy vested in bkpt. as trustee for his wife, & it formed no part of his estate & was not liable to the diligence of his creditors.—STEWART *v.* HODGE (1901), 8 S. L. T. 436.—**SCOT.**

n ii. —— ——.]—Money due under a policy of insurance payable to the wife of the insured after his death forms part of the estate of the insured. No trust is created in favour of the wife by a life policy expressed to be for the benefit of the wife of the assured.—KRISHNA LAL SADHU *v.* PRAMILA BALA DASI (1928), I. L. R. 55 Calc. 1315.—**IND.**

n iii. —— ——.]—A husband insured his life for £2,000 payable on his death. The policy stated : " This policy is for the benefit of M.T.R., the wife of the assured " :—*Held :* the trust so created in favour of the wife in virtue of Married Women's Property Act, 1915, s. 14 (2), was one which immediately & unconditionally conferred on her the entire beneficial interest in the policy. Therefore, on the death of the husband the policy moneys were not dutiable under Administration & Probate Act, 1915, s. 147, as property comprised in a settlement by him containing trusts & dispositions to take effect after his death.—*Re* REYNOLDS, REYNOLDS *v.* VICTORIA COMR. OF TAXES, [1931] V. L. R. 254 ; Argus L. R. 231.—**AUS.**

n iv. —— *Whether assignable.*]—A policy of assurance was effected by a husband for the benefit of his wife under Married Women's Policies of Assurance (Scotland) Act, 1880. There was competition between the widow & an assignee claiming under an assignation which bore to have been executed with the consent & concurrence of the wife :—*Held :* the wife had no power to discharge the trust in her favour created by the policy, & the insurance co. ought to have known that the deed was one which the spouses were disabled from granting.—SCOTTISH LIFE CO. *v.* DONALD (1901), 9 S. L. T. 200.—**SCOT.**

o i. —— *What amounts to.*]—A life insurance policy, in the column headed " to whom payable " contained the following words, viz. " the assured or his wife if he predeceases her " :—*Held :* the said words express on the face of the policy that the same is for the benefit of his wife, & as such it enures & is deemed to be a trust for the benefit of the wife within sect. 6 of Married Women's Property (Act III of 1874).—ABHIRAMAVALLI *v.* MADRAS OFFICAL TRUSTEES (1932), 1. L. R. 55 Mad. 171.—**IND.**

1233a. Number of trustees—Fund to be retained for infants—Single trustee not appointed.]—*Re* HOWSON'S POLICY TRUSTS, [1885] W. N. 213.

1234. *Add. Annotations :*—**Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179; Smith *v.* Wood (1928), 139 L. T. 250.

1302. In second paragraph for "on which" read "or child."

1363. *Add. Annotation :—As to* (3) **Consd.** *Re* Lloyds Bank, Ltd., Bomze *v.* Bomze (1930), 47 T. L. R. 38.

1365. *Add. Annotation :*—**Refd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

1369. *Add. Annotation :*—**Refd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

1373. *Add. Annotation :*—**Refd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

1378. *Add. Annotation :*—**Refd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

PART VI. SECT. 9, SUB-SECT. 1.—A.

t i. —— ——.]—WHITEHEAD *v.* WHITEHEAD (1887), 14 O. R. 621.—**CAN.**

t ii. —— ——.]—BELL *v.* BELL, [1928] 2 D. L. R. 311.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 2.—A. (a).

1302 v. —— ——.]—Pltf., deft.'s husband, became entitled to a conveyance of certain land vested in a solr. By pltf.'s direction the solr. conveyed the land to deft. The conveyance was dated Apr. 9, 1920, & was not registered until the following Dec. Until registration the deed had not been delivered, & deft had been told nothing about it :—*Held :* though the presumption of advancement may be rebutted by evidence of actual intention, there was cogent evidence of pltf. having ultimately made up his mind that his wife should have the property.—HARRINGTON *v.* HARRINGTON, [1925] 2 D. L. R. 849; 56 O. L. R. 568.—**CAN.**

1302 vi. —— ——.]—DE BURY *v.* DE BURY (1903), 36 N. B. R. 37; 22 C. L. T. 184.—**CAN.**

1302 vii. —— ——.]—CHALLONER *v.* CHALLONER, [1930] 4 D. L. R. 18.—**CAN.**

c i. —— *Subsequent deed of gift by wife.*]—Pltf., who was the former wife of deft. & the registered owner of a property known as the G. Hotel, sued to have a *caveat* registered by him discharged, on the ground that he had no interest in the property. The *caveat* was based upon the following document : "I hereby agree to give D. half of the property known as the G. Hotel, & to give him half the rent of the same from the present date, & he agrees to pay half of all debts against the above property up to date for the said half interest." The land had been purchased in 1902 by deft. in the name of pltf., his then wife. Upon that purchase & the erection & equipment of the hotel building he applied the proceeds of the sale of two quarter sections, one of which was in his name & the other in hers. They ran the hotel business together, until 1905, he acting as manager, she as cook & housekeeper. Having agreed to separate, they sold the furniture, & leased the hotel, & borrowed money on mtge. to help pay off the floating liabilities. The husband signed the mtge. as a joint covenantor, & the lease as a consenting party. Before leaving her he asked her to sign the memorandum above set out which she did without demur :—*Held :* an express trust existed in favour of deft. for one half of the estate in question.—REYNOLDS *v.* BETSON, [1931] 1 W. W. R. 793; 2 D. L. R. 760; 39 Man. L. R. 411.—**CAN.**

sm. *Grain & stock on land conveyed to wife.*]—A husband conveyed to his wife half of a quarter section of land. Husband & wife lived together on, & farmed, the quarter section, & the husband worked on the farm after the transfer in the same way as before : —*Held :* the husband was the owner of grain grown on, & animals situate on, the quarter section.—NATIONAL TRUST CO. *v.* HOLOWAYCHUK, [1925] 3 W. W. R. 382.—**CAN.**

sn. *Purchase in husband's name—Subsequent transf'r to wife—Failure of consideration.*]—Husband & wife purchased a house in Oct. 1920. The house was in pltf.'s name until Jan. 1922, when it was transferred to the wife. In Jan. 1924, the husband was ejected from the house, & he brought action against the wife for a declaration that his wife held the house as trustee for him. On the trial the husband stated that when he made the conveyance to his wife he did so on her undertaking that the members of her family would vacate the house, & this was never carried out :—*Held :* pltf. could not succeed, as the only claim he could set up would be that he had made a conveyance for a consideration that had failed, & his action would be either for specific performance or damages.—BODY *v.* BODY (1924), 34 B. C. R. 315.—**CAN.**

so. *Conveyance by husband without consideration—Husband solvent—Certificate of title issued to wife.*]—Where land was transferred, as a gift, to a married woman by her husband, during the time that Married Woman's Act, R. S. M. 1892, c. 95, was in force, the husband being then solvent, & a certificate of title therefor issued in her name under Manitoba Real Property Act :—*Held :* the beneficial, as well as the legal, interest in the land vested in her for her separate use, & neither the land nor its proceeds could be taken in execution for debts of the husband subsequently incurred, notwithstanding Married Woman's Act, s. 2, respecting property received by a married woman from her husband during coverture.—FRASER *v.* DOUGLAS (1908), 40 S. C. R. 384.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 2.—A. (b).

1337 iii. —— ——.]—The deposit by a Hindu of his own money in a bank in the joint names of himself & wife, & on the terms that it is to be payable to either or the survivor, does not on his death constitute a gift by him to his wife, there being in India no presumption of an intended advancement in favour of a wife.—GURAN DITTA *v.* RAM DITTA (1928), 55 L. R. Ind. App. 235.—**IND.**

m i. ——.]—*Held :* to raise a presumption of joint tenancy.—MATHEWS *v.* NATIONAL TRUST CO. (Ont.), [1925] 4 D. L. R. 774.—**CAN.**

m ii. ——.]—D. deposited a sum of money in a bank to the joint credit of himself & his wife, & they both signed a document authorising the bank to pay all moneys at the credit of the account to either of them, & in the case of the death of either to pay the same to the survivor. After D.'s death, his widow became insane & was confined in a public hospital. Money was paid by the bank to the Public Trustee. Having been restored to sanity the widow redeposited in the bank what was left of the money to the joint credit of herself & two relatives :—*Held :* the money originally deposited belonged to D. & was placed to the credit of himself & wife as a means of conveniently managing the affairs of himself & his family; &, therefore, the presumption in favour of the right of his wife to what remained of the fund on his death was rebutted. —STADDER *v.* CANADIAN BANK COMMERCE, [1929] 3 D. L. R. 651; 64 O. L. R. 69.—**CAN.**

m iii. ——.]—The rule of English law that where a deposit is made in the joint names of husband & wife, a gift is to be presumed in favour of the wife, the gift being defeasible on the death of the wife in the lifetime of the husband, does not apply to India. In India the case is governed by sect. 123 of Transfer of Property Act, under which a gift of movable property must be effected either by a registered instrument or by delivery.—PAUL *v.* NATHANIEL GOPAL NATH (1931), I. L. R. 53 All. 633.—**IND.**

sp. *Banking account in joint names.*]—A wife & husband opened a joint account in a bank, & both signed a direction to the bank : "All money which may be deposited by us or either of us to the account is our joint property, but such money may be withdrawn by either one of us, or the survivor of us." The money was all the husband's, & was deposited to pay the expenses of the wife & her child, during the husband's absence, & to make payments in connection with his property :—*Held :* the wife was not entitled to half the money to the credit of the account.—SOUTHBY *v.* SOUTHBY (1917), 40 O. L. R. 429; 38 D. L. R. 700.—**CAN.**

—— *Right of wife as survivor.*]—*See* Nos. 1335–1338.

PART VI. SECT. 9, SUB-SECT. 3.—A. (a).

1370 i. *Wife not independently advised—Guarantee for husband.*]—Want of independent advice standing alone is insufficient to justify relief, but where there has been undue influence by the husband & knowledge of its exercise or facts from which such knowledge should be inferred, & the transaction is contrary to the wife's interests, a sufficient case has been made out for the granting of relief.—CANADIAN BANK OF COMMERCE *v.* FOREMAN (Alta.), [1926] 4 D. L. R. 844; [1926] 3 W. W. R. 486; *revsd.* on the facts, [1927] 2 D. L. R. 530; [1927] 1 W. W. R. 783; 22 Alta. L. R. 443.——**CAN.**

1370 ii. —— ——.]—BRADLEY *v.* IMPERIAL BANK OF CANADA, [1926] 3 D. L. R. 38; 58 O. L. R. 650.—**CAN.**

1370 iii. —— *Promissory note.*]—FRYERS & CO., LTD. *v.* STEEVES (N. B.), [1927] 4 D. L. R. 1077.—**CAN.**

1394. *Add. Annotation :*—**Consd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

1462. *Add. Annotation :*—**Consd.** Child (1932), 48 T. L. R. 575.

Part VIII.—Contracts of Wife during Coverture.

1469. *Add. Annotations :*—**Consd.** Green *v.* Weatherill, [1929] 2 Ch. 213. **Apld.** Townshend *v.* Child (1932), 48 T. L. R. 575.

1489a. —— **Settlement of insurance policies on life of husband.**]—By a post-nuptial settlement made in pursuance of ante-nuptial articles, certain policies of insurance on the life of the husband were assigned to trustees upon trust to receive the money & pay the income to the wife during her life for her separate use, independently of any future husband whom she might marry. There was no restraint on anticipation. During the life of her first husband the wife made promissory notes in favour of pltf., & pltf., the first husband being still alive, brought an action claiming a charge on the policies :—*Held :* the trust for separate use did not arise till after the death of the husband, & as the contracts of a married woman can only be enforced against property which formed part of her separate estate at the date of the contract, the action could not be maintained. —KING *v.* LUCAS (1883), 23 Ch. D. 712, 713; 53 L. J. Ch. 64; 49 L. T. 216; 31 W. R. 904, C. A.

1491a. ——.]—A woman, married since the passing of Married Women's Property Act, 1870 (c. 93), joined her husband in signing a joint & several promissory note for money lent to him. The husband became bkpt. :—*Held :* her separate estate was liable for the amount due on the note, & it was not necessary to make any trustees for the wife parties to the action.—DAVIES *v.* JENKINS (1877), 6 Ch. D. 728; 26 W. R. 260.

Annotations :—**Refd.** Flower *v.* Buller (1880), 15 Ch. D. 665; Pike *v.* Fitzgibbon (1880), 14 Ch. D. 837.

1498. *Add. Annotation :*—**Refd.** Selby *v.* Atkins (1926), 135 L. T. 45.

1382 iv. —— ——.]—On an interpleader issue between an execution creditor & the wife of the debtor as to the ownership of a motor car, the wife & her husband testified that the car had been bought with her money, which had come to her from the keeping of boarders & from the sale of her property. These moneys were all collected by the husband & left by the wife in his hands to use as he saw fit, & he placed them in his own account & used them indifferently with his own. He had never rendered her an account of them, nor had she ever called on him to do so. They had lived together in amity since their marriage & he had maintained her. The wife testified that she had an arrangement with the husband under which said moneys were to remain her property, but the circumstances under which it was entered into were not disclosed, & its terms were indefinite :—*Held :* the moneys in question had become the husband's by way of gift from his wife. —PEAREN *v.* BLACK & ARMSTRONG, [1928] 3 D. L. R. 471; [1928] 2 W. W. R. 98; 22 Sask. L. R. 502.—**CAN.**

sq. *Presumption of undue influence—Guarantee for husband—Promissory note—Transaction not explained.*]—CANADIAN BANK OF COMMERCE *v.* DAVISON, [1930] 1 D. L. R. 1003.—**CAN.**

sr. —— —— —— ——.]—CANADIAN BANK OF COMMERCE *v.* DAVISON, [1930] 4 D. L. R. 605.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 3.—A. (b).

st. *Funds of wife managed by husband.*]—Where a husband is entrusted by his wife with the management of her funds out of which he is to pay their expenses & make such investments as they from time to time agree upon, the decision of the question whether the law implies a gift to the husband depends on the particular facts of the case.—WALKER & ROBERTS *v.* SILK, [1930] 2 W. W. R. 407; 4 D. L. R. 201; 43 B. C. R. 43.—**CAN.**

PART VI. SECT. 9, SUB-SECT. 4.

d i. —— *Property purchased with man's money—Woman realising property & appropriating proceeds ordered to account.*]—ST. ELOI *v.* ENO (1925), 36 B. C. R. 153.—**CAN.**

PART VII. SECT. 1, SUB-SECT. 1.

sv. *Married Women's Property Act, R. S. O., 1927—Effect.*]—The repeal, by Married Women's Property Act, R. S. O., 1927, of sect. 18 of the Act as found in R. S. O., 1914, had not the effect of reviving the husband's common law liability for the debts of his wife contracted before the marriage. —PENNY *v.* HUNT, [1929] 2 D. L. R. 473; 63 O. L. R. 510.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 6.

f i. —— ——.]—*Held :* a married woman, having separate real property, was not entitled to contract debts for its improvement so as to make herself liable individually, or jointly with her husband.—WRIGHT *v.* GARDEN (1869), 28 U. C. R. 609.—**CAN.**

l i. —— ——.]—Deft., a married woman, married to her present husband in 1877 or 1878, & carrying on business separate from him by farming one of her former husband's farms, in 1883 & 1884 contracted the debt sued on. She was entitled to dower in the lands of her first husband, who died in 1875, which were sold, realising a large sum, & also to her share in his personal estate, neither of which she had received :—*Held :* the Act of 1884, 47 Vict. c. 19 (O.), had not the effect of repealing the prior Acts, & it was not necessary to show that deft. had married or had acquired separate estate since the Act of 1884 came into force; it was sufficiently shown that she was possessed of separate estate, & that she intended it should be bound.—ROBERTSON *v.* LAROCQUE (1889), 18 O. R. 469.—**CAN.**

sa. *Wife carrying on separate business—Signatures by wife at request of husband—Liability of wife.*]—Where a married woman, in carrying on a business with the assistance of her husband, signs everything that he asks her to sign & asks no questions, she should be held responsible for her signature, in the absence of clear proof of undue influence, whether it turns out to be in her interest or otherwise.—WATKINS (J. R.) Co. *v.* NOBERT (Alta.), [1926] 1 D. L. R. 526; [1926] 1 W. W. R. 156.—**CAN.**

sb. *Lease taken by wife—Liability of wife—For breach of lease.*]—*Held :* the husband was not liable, although he lived in the premises for about two months prior to the time he & his family vacated it & twice paid the rent during that period.]—NATIONAL SECURITIES, LTD. *v.* DARLING (Alta.), [1927] 1 W. W. R. 413.—**CAN.**

sc. *Entered into in married name—No reference to husband.*]—The effect of Married Women's Act, R. S. A., 1922, c. 214, is that a married woman has as full & complete freedom to bind herself by her own contracts as a man has. A married woman who contracted for the purchase of goods in her own name, *i.e.* as Mrs. McDonald, without informing the seller or without his knowing that she was in fact acting as agent for her husband or that she had a husband, held personally liable. —REID-WELCH FURNITURE CO. *v.* MACDONALD, [1928] 2 D. L. R. 608; [1928] 1 W. W. R. 789; 23 Alta. L. R. 317.—**CAN.**

sd. *Contract to work by husband & wife—Liability to employer for children's keep—Joint.*]—Deft. engaged pltf. & her husband to work for him for wages & their board, & it was a term of the bargain that deft. would be entitled to charge a certain rate per day for the board of the couple's three children, although no specific promise to pay said amounts was made by either pltf. or her husband :—*Held :* considering the circumstances under which the bargain was made & the dealings between the parties as disclosed by the evidence, the liability to pay deft. for the board of the children was a joint one on the part of pltf. & her husband, &, therefore, each of them was liable for the whole cost of the keep of the children.—FORSBERG *v.* UGLUM, [1931] 3 W. W. R. 612.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 1.

1500 i. —— *Supply of goods not necessaries.*]—Authority may be given by implication that the husband intends the wife to take means to supply herself with necessaries, the implication being for the benefit of the wife & not of those who supply her. It is only for what is reasonably necessary that the implied agency is, not for what the wife may see fit to order. —ROBERT SIMPSON CO., LTD. *v.* RUGGLES, [1930] 3 D. L. R. 174; 65 O. L. R. 186.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 4.

1514 i. *Wife acting under*

v. WALTER (1649), O. Bridg. 618; 124 E. R. 778.

1656. *Add. Annotation:*—**Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

1665. *Add. Annotation:*—**Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

1669. *Add. Annotation:*—**Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

1680. *Add. Annotation:*—**Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

1717. *Add. Annotations:*—**Refd.** Selby *v.* Atkins (1926), 135 L. T. 45; Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

1732. *Add. Annotations:*—**Refd.** Selby *v.* Atkins (1926), 135 L. T. 45; Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

1739. *Add. Annotation:*—**Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

1741. *Add. Citation:*—2 C. & P. 25, n.

1748. *Add. Annotation:*—**Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

1750. *Add. Annotation:*—**Refd.** Welton *v.* Welton, [1927] P. 162.

1753. *Add. Annotation:*—**Refd.** Welton *v.* Welton, [1927] P. 162.

1753a. —— **Inadmissible.**]—Statements by an alleged adulterous wife that she had committed adultery cannot be evidence against persons who are without knowledge & without means of knowledge of the truth of those statements & to whom they have not been communicated.—WRIGHT (H. S.) & WEBB *v.* ANNANDALE (1930), 46 T. L. R. 239; *affd. on other grounds*, [1930] 2 K. B. 8, C. A.

1755. *Add. Annotation:*—**Consd.** Selby *v.* Atkins (1926), 135 L. T. 45.

1800. *Add. Annotations:*—**Folld. & Extd.** Wright (H. S.) & Webb *v.* Annandale, [1930] 2 K. B. 8. **Refd.** Welton *v.* Welton, [1927] P. 162; Arnold & Weaver *v.* Amari, [1928] 1 K. B. 584.

1800a. —— —— —— **Proceedings instituted against wife.**]—A husband took divorce proceedings against his wife on the ground of her adultery. She consulted a solr., who upon her instructions put in a defence denying the charge & briefed counsel to appear for her. At the hearing the wife failed to appear, & a decree was made against her dissolving the marriage on the grounds alleged in the petition. The wife's counsel applied for costs, but as no security for her costs had been obtained, no costs were granted. The wife's solr. brought an action in the K. B. Div. to recover the costs from the husband, on the ground of his wife's agency of necessity at common law. The judge found as a fact that the solr. had acted without negligence, honestly believing that the wife was innocent & that she would be successful in her defence: —*Held:* in those circumstances the wife had no authority to bind her husband, so as to make him liable for the costs of her defence to his petition for divorce.—ARNOLD & WEAVER *v.* AMARI, [1928] 1 K. B. 584; 97 L. J. K. B. 238; 138 L. T. 591; 44 T. L. R. 221; 72 Sol. Jo. 138.

Annotation:—**Consd.** Wright (H. S.) & Webb *v.* Annandale, [1930] 2 K. B. 8.

1800b. —— —— —— ——.]—The rule that a solr. acting for a wife, who is living apart from her husband, cannot, in a common law action, recover his costs from the husband, if when those costs were incurred the wife, although the fact was unknown to the solr., had been guilty of a matrimonial offence, applies not only where the wife has been living in adultery but also where she has committed an isolated act of adultery. The rule applies alike whether in the particular matter the wife was proceeding against the husband, or was defending a suit brought against her by the husband.—WRIGHT (H. S.) & WEBB *v.* ANNANDALE, [1930] 2 K. B. 8; 99 L. J. K. B. 444; 143 L. T. 452; 46 T. L. R. 402; 74 Sol. Jo. 319, C. A.

1800c. —— —— —— **Single act of adultery.**]—WRIGHT (H. S.) & WEBB *v.* ANNANDALE, No. 1800b, *ante*.

1803a. ——.] — WITHERS, BENSONS, CURRIE, WILLIAMS & Co. *v.* CAWSTON (1928), 72 Sol. Jo. 191.

authority not disclosed—Liability of husband.] — FOULDS *v.* CURTELETT (1871), 21 C. P. 368.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 5.

1515 i. *Credit given to wife—Husband not liable.*]—Where an article was sold by pltfs. to a married woman & not to her husband, & credit was given to her alone:—*Held:* the husband was not liable for the price.—BEATTY BROS., LTD. *v.* MURPHY, [1930] 3 D. L. R. 448; 65 O. L. R. 293.—**CAN.**

sx. *Credit given to wife—Goods purchased for wife's business—Managed by husband—Whether husband's creditors can take in execution.*]—DOMINION SAVINGS & INVESTMENT SOCIETY *v.* KILROY (1888), 15 A. R. 487.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 6.

q i. —— —— *Several liability.*]—TOBIN & Co. *v.* SMITH, [1930] 3 D. L. R. 350.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—A. (a).

1576 iv. —— ——.] — ARSENAULT *v.* BISHOP, [1931] 2 D. L. R. 325; 3 M. P. R. 334; [1932] 2 D. L. R. 814.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—B. (b).

1642 i. *Jewellery.*]—A ring supplied to a working miner's wife:—*Held:* not a necessary.—PIANTA *v.* MACROW & SONS PTY., LTD. (1925), 27 W. A. L. R. 99.—**AUS.**

sy. *Fur coat.*]—The question whether a fur coat is a necessary is one of fact depending on the circumstances of each case.—GEBBIE & FORREST *v.* KERSHAW, [1927] 3 D. L. R. 156; [1927] 2 W. W. R. 166; 21 Sask. L. R. 489.—**CAN.**

sz. *Surgical operation.*]—Even if a wife has money of her own, she is presumed to have authority to pledge her husband's credit for necessaries, including surgical operations.—SELDON *v.* ZAMBOWSKI, [1928] 1 D. L. R. 638; [1928] 1 W. W. R. 630; 39 B. C. R. 205.—**CAN.**

sa. *Employment of detective—To obtain evidence for divorce proceedings.*] —BARNETT *v.* MILNER (1927), 49 N. L. R. 1.—**S. AF.**

PART VIII. SECT. 3, SUB-SECT. 2.—D. (a).

1691 ii. *Revsd.*, 9 O. R. 198.

PART VIII. SECT. 3, SUB-SECT. 2.—G.

1774 i. For "A husband is liable" read "A husband is not liable."

sb. *Purchase of husband's property by wife—Improvements made by husband after sale.*]—A purchase by a wife from her husband, the consideration being paid out of her separate estate, was held to be maintainable against creditors of whose debts she had no notice. The husband, after the purchase, expended money in improving the property. In a suit by a judgment creditor of the husband to obtain the benefit of such expenditure:—*Held:* the wife was entitled to show that the debt for which the judgment was recovered had been satisfied before action brought.—HILL *v.* THOMPSON (1870), 17 Gr. 445.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 2.

f i. —— *Summary application for delivery up of title deeds.*]—*Re* MELLOR (B. C.) (1905), 2 W. L. R. 17.—**CAN.**

sb. *Work done by husband for wife before marriage—Effect of marriage on mechanic's lien.*]—HAUGEN *v.* HAUGEN (Alta.), [1929] 3 D. L. R. 16.—**CAN.**

sc. *Marriage invalid—Annulment—Action by "wife" for rent & wages—No implied contract.*]—Pltf. & deft. had lived together for a number of years as man & wife under the belief that they were legally married. Deft. then secured an annulment of the alleged marriage. Pltf. then brought the present action claiming general damages for fraud, on the ground that deft. had falsely represented to pltf. that pltf. was free to marry him. Under an alternative claim, not based on fraud, pltf. alleged that she had

1826. *Add. Annotation :*—**Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

1833. *Add. Annotations :*—*As to* (1) **Refd.** *Re* Mason (1928), 97 L. J. Ch. 321 ; *Re* Blake, *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251.

Part X.—Wrongs of Wife during Coverture.

1851. *Add. Annotations :*—**Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378 ; Greenwood *v.* Martins Bank, Ltd. (1932), 48 T. L. R. 601.

1860a. Liability of husband—Goods delivered to husband & wife.]—ANON. (1364), Y. B. 38 Edw. 3, fol. 1A.

Annotation :—**Consd.** Isaack *v.* Clark (1615), 2 Bulst. 306.

1875. *Add. Annotation :*—**Refd.** Greenwood *v.* Martins Bank, Ltd. (1931), 47 T. L. R. 607.

1880. *Add. Annotation :*—*As to* (1) **Refd.** Greenwood *v.* Martin's Bank, Ltd. (1932), 48 T. L. R. 601.

1883. *Add. Annotation :*—**Refd.** Greenwood *v.* Martin's Bank, Ltd. (1932), 48 T. L. R. 601.

1897a. —— ——.]—LANHAM *v.* PIRIE (1857), 29 L. T. O. S. 171 ; 3 Jur. N. S. 704 ; 5 W. R. 540, L. C. & L. JJ.

Part XI.—Contracts for Separation.

1920. *Add. Annotation :*—*Generally*, **Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

1930. *Add. Annotation :*—**Refd.** Hyman *v.* Hyman, [1929] A. C. 601.

1934. *Add. Annotation :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

1935. *Add. Annotation :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

1937. *Add. Annotation :*—**Refd.** Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44.

1939. *Add. Annotation :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T 416.

1941. *Add. Annotation :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

1943. *Add. Annotation :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

1948. *Add. Annotation :*—**Refd.** Lever Bros., Ltd. *v.* Bell (1930), 47 T. L. R. 47.

1954. *Add. Annotation :*—*As to* (1) **Refd.** Papadopoulos *v.* Papadopoulos, [1930] P. 55.

1965. *Add. Annotations :*—**Consd.** Hyman *v.* Hyman, [1929] A. C. 601. **Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

1969. *Add. Annotation :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

married deft. in reliance on his assurance that she was at liberty to marry. She claimed also rent for the time deft. lived in her house, wages as housekeeper on a *quantum meruit* basis, a sum alleged to have been paid by her for household expenses, & an amount due on a promissory note :—*Held :* the claims based on fraud & on said assurance had not been substantiated ; there had been no express or implied agreement by deft. to pay rent or wages ; there was proof of deft.'s promise to repay the amounts advanced by her for household expenses prior to 1919, but Stat. Limitations barred recovery thereof, & there had been no express or implied authority from deft. to incur said expenses thereafter ; & the claim on the note had been released for good consideration.—MARSHALL *v.* MARSHALL, [1931] 3 W. W. R. 369.—**CAN.**

PART X. SECT. 2, SUB-SECT. 1.

r i. —— ——.]—A husband may be made jointly liable with his wife for her torts, notwithstanding Married Women's Property Act, R. S. M., 1913 (c. 123).—DENOVICH *v.* HUCAL (Man.), [1927] 1 D. L. R. 879 ; [1927] 1 W. W. R. 179.—**CAN.**

sd. *False representation by wife—As to authority of husband to order goods—Whether coverture good defence.*]—Deft. pleaded coverture :—*Held :* plea good : Administration of Justice Act could not assist pltf., & Married Woman's Act, R. S. O., 1877, c. 125, ss. 6, 20, did not create any new liability against a married woman for her torts or *quasi* torts, but merely allowed her to be sued alone, where formerly she could have been sued with her husband, & the authorities showed that if so sued the action would have failed.—STONE *v.* KNAPP (1879), 29 C. P. 605.—**CAN.**

se. *Negligence — Joint liability of husband—Confined to actual personal negligence of wife.*]—An innocent husband is liable to be sued at common law jointly with his wife for the actual personal negligence of his wife while driving a vehicle, her own or another's ; but he is not liable to be so sued for the actual personal negligence of a third party when the wife's liability for the negligence of that party arises out of her sole ownership of a chattel & the power of control resulting therefrom.—BLACK *v.* MACFARLANE, [1931] N. Z. L. R. 112.—**N.Z.**

PART X. SECT. 2, SUB-SECT. 2.

sf. *Joint conversion by husband & wife—Liability of wife's separate estate.*]—Where pltf. proved a joint wrongful occupation & conversion of the rents & profits of his land by a husband & wife :—*Held :* the husband & wife were jointly liable to pltf., & pltf. was entitled to recover against the separate property of the wife, for it could not be inferred that the latter was acting under the direction or coercion of her husband so as to exempt her from liability.—BARKER *v.* WESTOVER (1882), 5 O. R. 116.—**CAN.**

PART X. SECT. 2, SUB-SECT. 3.

1861 iv. —— ——.]—Married Women's Property Act, R. S. O., 1927, s. 3, does not take away the right of a person injured to sue a husband & wife jointly for the wife's naked tort committed during coverture. In an action for slander uttered by the wife, without the husband's suggestion or approval, judgment was directed to be entered against both jointly for the damages assessed, the wife being still alive when judgment was reached.—HERCZEG *v.* BARSEY, [1930] 1 D. L. R. 758 ; 64 O. L. R. 529.—**CAN.**

d i. —— *Saskatchewan.*]—In Saskatchewan a husband is not liable for damages awarded against his wife in an action on the statutory cause of action given to a woman for slander of her chastity.—PALIUK *v.* MASORUK & MASORUK, [1931] 3 W. W. R. 380.—**CAN.**

PART X. SECT. 2, SUB-SECT. 4.

sg. *Joint trespass by husband & wife—Damage to adjoining property—Due to acts of husband—Liability of wife.*]—In an action of trespass against husband & wife for placing logs against pltf.'s building & causing damage, & for placing a spout, by which the water from the roof of deft.'s house ran against & injured pltf.'s building, the evidence showed that the property was owned by the wife, but that she did not interfere with the management of it, or participate in the acts complained of :—*Held :* the wife was not liable.—MCDONALD *v.* LESTER (1890), 30 N. B. R. 137.—**CAN.**

PART XI. SECT. 1, SUB-SECT. 3.—A.

1928 ii. *S. P.* WOODS *v.* WOODS, [1927] 3 D. L. R. 321 ; 60 O. L. R. 438.—**CAN.**

1941 i. *What amounts to—Agreement contemplating reconciliation.*]—Although the separation agreement between husband & wife in question herein "prospectively looked" to the parties living together again, it was held not to provide for a future separation thereafter, &, therefore, was not void as against public policy.—MORGAN *v.* MORGAN, [1931] 3 W. W. R. 292 ; 44 B. C. R. 482.—**CAN.**

1989. *Add. Annotations:*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416; May *v.* May (1929), 98 L. J. K. B. 770.

1995. *Add. Annotation:*—**Refd.** Matthews *v.* Matthews (1932), 48 T. L. R. 511.

1996. *Add. Annotation:*—**Refd.** Matthews *v.* Matthews, [1932] P. 103.

2019. *Add. Annotations:*—*As to* (1) **Refd** Hyman, *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416. *As to* (7) **Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

2038. *Add. Annotations:*—**Consd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416. **Apld.** May *v.* May, [1929] 2 K. B. 386.

2039. *Add. Annotations:*—**Consd.** Hyman *v.* Hyman, [1929] A. C. 601. **Apld.** May *v.* May, [1929] 2 K. B. 386.

2039a. —— —— ——.]—By a deed of separation reciting that differences had arisen between a husband & a wife, it was agreed that the wife should during the life of the husband live separate & apart from him & free from his marital control & authority as if she were unmarried, & that the wife should retain as her separate property certain articles which, if she should die in the lifetime of the husband without having disposed of them, should devolve as if she had died possessed thereof intestate & a widow. The husband covenanted that he would during the life of the wife pay to her an annual sum of £600. The wife was also to be entitled to certain furniture & effects for the use of herself during her life. Throughout the deed the parties were referred to as "the husband" & "the wife" respectively. It was provided that if the husband & the wife should be reconciled to each other & return to cohabitation the deed should become void. The husband subsequently committed adultery & the wife obtained a decree dissolving the marriage. He then made default in paying the full annual sum provided for by the deed, & she brought an action to recover the arrears:—*Held:* the deed was not subject to any implied term that it should only operate so long as the marriage relation continued to exist between the parties, & pltf. was entitled to recover.—MAY *v.* MAY, [1929] 2 K. B. 386; 98 L. J. K. B. 770; 141 L. T. 629, C. A.

2040a. —— **Bankruptcy of husband.**]—DEWE *v.* DEWE, SNOWDON *v.* SNOWDON, No. 595a, *ante*.

2049. *Add. Annotation:*—**Refd.** Willis *v.* Willis (1927), 96 L. J. P. 177.

2061a. —— **Refusal of nominee to undertake custody—Effect on deed.**]—Where the parties to a matrimonial suit had agreed to settle it, & a deed of separation had been approved to give effect to such settlement:—*Held:* the refusal of the husband's brother to undertake the custody of one of the children, as nominee of the husband, which custody had been agreed on between the husband & wife as one of the terms of the deed, was not a failure of such a vital term as to prevent the settlement from being carried into effect.—WILLIS *v.* WILLIS, [1928] P. 10; 96 L. J. P. 177; 137 L. T. 621; 43 T. L. R. 657, C. A.

2083. *Add. Annotation:*—**Apprvd.** Hyman *v.* Hyman, [1929] A. C. 601.

2084. *Add. Annotation:*—**Apprvd.** Hyman *v.* Hyman, [1929] A. C. 601.

2085. *Add. Annotation:*—**Overd.** Hyman *v.* Hyman, [1929] A C. 601.

2085a. —— ——.]—A woman who, in a deed of separation, covenants in consideration of certain benefits not to claim from her husband in the future maintenance or alimony, & is afterwards granted a decree absolute of divorce, is not debarred from petitioning for maintenance after the dissolution of marriage, notwithstanding that the deed contained no provision for its termination on the marriage being dissolved.—HYMAN *v.* HYMAN, [1929] A. C. 601; 98 L. J. P. 81; 141 L. T. 329; 93 J. P. 209; 45 T. L. R. 444; 73 Sol. Jo. 317; 27 L. G. R. 379, H. L.

Annotations:—**Expld.** May *v.* May, [1929] 2 K. B. 386. **Consd.** L. *v.* L., [1931] P. 63. **Refd.** Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44.

2090. *Add. Annotation:*—*Generally*, **Refd.** Hyman *v.* Hyman, [1929] A. C. 601.

PART XI. SECT. 3, SUB-SECT. 2.

n i. ——.]—Where a wife understood the agreement, had independent advice, & was not misled or influenced by her husband in regard to her legal rights or the meaning & effect of the document:—*Held:* it could not be set aside for fraudulent misrepresentation & duress.—THOMSON *v.* THOMSON, [1927] 1 D. L. R. 653; 59 O. L. R. 661.—**CAN.**

PART XI. SECT. 6, SUB-SECT. 7.

t i. —— ——.]—Where a separation agreement was not invalid on the ground that the father had therein waived his rights to the control & guardianship of the children:—*Held:* before the wife could ask for maintenance for them, she must show that she had failed to perform those duties to them amounting to guardianship which she had assumed under the agreement.—HOLOWACHUK *v.* HOLOWACHUK (Man.), [1927] 2 W. W. R. 470.—**CAN.**

PART XI. SECT. 6, SUB-SECT. 11.

2073 ii. —— —— ——.]—A separation agreement, which provided for the payment of a specific sum by instalments to be secured by a mtge., & which did not contain a *dum casta* clause:—*Held:* enforceable by the wife, although there had been subsequent adultery by her & she had been divorced & had married again.—RUST *v.* RUST, [1927] 2 D. L. R. 248; [1927] 1 W. W. R. 491; 22 Alta. L. R. 430.—**CAN.**

PART XI. SECT. 6, SUB-SECT. 12.

2086 i. *Covenant by wife not to claim further maintenance—Subsequent judicial separation.*]—Where a petition for a decree of judicial separation on the ground of the husband's adultery was brought so that a petition for alimony might be founded:—*Held:* the petition must be dismissed.—K. *v.* K., [1925] 3 D. L. R. 872; [1925] 2 W. W. R. 641.—**CAN.**

s1. *Covenant by wife not to claim alimony—Subsequent adultery of husband—Whether covenant still binding—Right of court to award maintenance for children.*]—HOLTEN *v.* HOLTEN, [1928] 1 D. L. R. 546.—**CAN.**

PART XI. SECT. 7, SUB-SECT. 2.—B.

sx. *Jurisdiction of court—King's Bench Act, s.* 22.]—DAVIS *v.* DAVIS, [1926] 1 W. W. R. 942; 20 Sask. L. R. 543.—**CAN.**

2102 ii. —— *Breach of condition—As to access to child—Reply alleging husband's bad character.*]—A separation agreement provided that the wife should be given the custody of the son, but that his father should be allowed to see him with reasonable frequency & should be consulted as to, & satisfied with, his up-bringing. To an action by the wife under the agreement for overdue instalments breach of the condition as to the son was pleaded:—*Held:* a reply alleging the husband's bad character was no excuse for a breach of the condition.—MCLENNAN *v.* MCLENNAN, [1925] 3 D. L. R. 281; [1925] S. C. R. 279; *affg.*, [1925] 1 D. L. R. 277; 57 N. S. R. 480.—**CAN.**

2103 i. *For arrears of annuity.*]—BARLOW *v.* BARLOW (1927), 30 W. A. L. R. 8.—**AUS.**

sy. *For agreed sum for maintenance—Covenant not to sue.*]—By a separation agreement it was provided, *inter alia*, that the husband would pay the wife £150 for her maintenance & support; that the wife would keep the husband indemnified against her debts; that the wife would not commence proceedings for maintenance against the husband, & that she would not molest him. Custody of, & the duty of maintaining, two children of the marriage were conferred on the wife. The husband did not pay the £150 mentioned; the wife sued for this sum:—*Held:* the wife was entitled to recover.—MEZZINE *v.* MEZZINE, [1927] S. A. S. R. 167.—**AUS.**

2106. *Add. Annotation :*—*As to* (1) **Refd.** Hyman *v.* Hyman, [1929] A. C. 601.

2111. *Add. Annotation :*—**Refd.** H. *v.* H., [1928] P. 206.

2144. *Add. Annotation :*—**Refd.** Hyman *v.* Hyman, [1929] A. C. 601.

2151. *Add. Annotation :*—**Refd.** Hyman *v.* Hyman, [1929] A. C. 601.

2174. *Add. Annotations :*—**Consd.** Melvill *v.* Melvill & Woodward, [1930] P. 159. **Refd.** Bosworthick *v.* Bosworthick, [1927] P. 64; Hyman *v.* Hyman, [1929] A. C. 601.

2176. *Add. Annotations :*—**Refd.** Bosworthick *v.* Bosworthick, [1927] P. 64; Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

2177. *Add. Annotations :*—**Consd.** Bosworthick *v.* Bosworthick (1926), 136 L. T. 211. **Apld.** May *v.* May, [1929] 2 K. B. 386. **Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416; Cooper *v.* Cooper & Ford (1932), 48 T. L. R. 275.

2178a. —— —— —— ——.]—On a husband's petition for the cancellation of a post-nuptial settlement, after decree absolute of divorce granted on the ground of her adultery subsequent to the date of the settlement, the registrar's order extinguishing resp.'s interest in the settlement was varied by the amount payable thereunder being reduced & by a limitation *dum sola et casta*.—COOPER *v.* COOPER & FORD, [1932] P. 75; 101 L. J. P. 28; 147 L. T. 16; 48 T. L. R. 275; 76 Sol. Jo. 249.

2179. *Add. Annotation :*—**Consd.** Hyman *v.* Hyman, [1929] A. C. 601.

Part XII.—Legal Proceedings.

2184. *Add. Annotation :*—**Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

2189a. —— ——.] — PRACTICE NOTE, [1926] W. N. 8.

2210. *Add. Annotation :*—**Consd.** Smith *v.* Schilling, [1928] 1 K. B. 429.

2212. *Add. Annotation :*—**Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

2213. *Add. Annotation :*—**Consd.** Smith *v.* Schilling, [1928] 1 K. B. 429.

2225. *Add. Annotation :*—**Refd.** Townshend *v.* Child (1932), 48 T. L. R. 575.

2238. *Add. Annotation :*—**Refd.** Townshend *v.* Child (1932), 48 T. L. R. 575.

2245. *Add. Annotation :*—**Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

2249. *Add. Annotation :*—*As to* (2) **Consd.** Green *v.* Weatherill, [1929] 2 Ch. 213.

2282. *Add. Annotation :*—**Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

2286. *Add. Annotation :*—**Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

2287a. Action for libel by wife against husband—Wife in business.]—RALSTON *v.* RALSTON, No. 2293a, *post*.

2290. *Add. Annotation :*—**Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

2292. *Add. Annotation :*—**Consd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

sz. —— ——.]—BAKEWELL *v.* BAKEWELL (1927), 38 S. R. N. S. W. 94; 45 N. S. W. W. N. 45.—**AUS.**

PART XI. SECT. 7, SUB-SECT. 2.—C.

sa. *Claim for—Whether claim for alimony can be joined.*]—A claim for specific performance of a separation agreement is inconsistent with a claim for alimony & so long as the former claim stands it is a bar to the obtaining alimony *pendente lite* or interim costs.—HENKE *v.* HENKE, [1928] 1 D. L. R. 1090; [1928] 1 W. W. R. 337; 22 Sask. L. R. 267.—**CAN.**

PART XI. SECT. 8.

2165 iii. —— —— ——.]—A separation agreement may have as a secondary object the effecting of a permanent settlement of property, but unless a separation agreement clearly indicates such purpose the general rule, that the agreement is no longer enforceable after resumption of cohabitation, should be applied.—NATIONAL TRUST CO., LTD. *v.* BELL, [1925] 4 D. L. R. 1029; [1925] 3 W. W. R. 712.—**CAN.**

sb. *Agreement for—Failure of consideration.*]—WAKARUK *v.* WAKARUK (Alta.), [1926] 1 D. L. R. 493.—**CAN.**

PART XI. SECT. 9.

p i. —— *Good reason for variation—Onus of proof.*]—A husband & wife having entered into a separation agreement under which the custody of their two eldest children were given to the father & that of the youngest child to the mother, & provision was made for access of both parents to all the children, the mother subsequently launched a petition to obtain the custody & control of the eldest boy, the second child had been accidentally drowned in the meantime :—*Held :* the mother had failed to show any good reason why the ct. should interfere with the arrangement made by the separation agreement.—BRUIN *v.* BRUIN (B. C.), [1929] 4 D. L. R. 802; 2 W. W. R. 218.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 1.—A.

e (p. 249) **i.** ——.]—In an action by a purchaser for specific performance of an agreement for the sale of land, a motion by deft.'s wife to be added as deft. on the ground that, under Dower Act, R. S. A. 1922 (c. 135), she had an interest in the property, was refused.—SAMPSON *v.* THOMAS, [1925] 1 W. W. R. 1018.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 1.—F. (a).

2221 ii. ——.]—Under K. B. Rule 755 an order for payment may be obtained by a judgment creditor against a married woman.—BISHOP *v.* BLACK, [1925] 3 W. W. R. 679.—**CAN.**

c i. ——.]—Defts. who were husband & wife, signed a promissory note payable to pltf. on demand. Upon default being made in payment, pltf. obtained judgment against defts. in the county court of Victoria. The judgment against Mrs. R. was against her personally :—*Held :* a nullity.—MAYER FINANCE CO. *v.* ROSS, [1929] N. Z. L. R. 748.—**N.Z.**

c ii. ——.]—SILLIKER *v.* FRASER, [1931] 4 D. L. R. 326.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 1.—I.

sc. *Liability of husband—Participating in litigation.*]—In an action by a married woman against a third party :—*Held :* notwithstanding Married Women's Property (Scotland) Act, 1920 (c. 64), s. 3 (1), pursuer's husband, in respect that he had actively participated in the litigation, fell to be made jointly & severally liable in expenses along with his wife.—M'MILLAN *v.* MACKINLAY, [1926] S. C. 673.—**SCOT.**

PART XII. SECT. 1, SUB-SECT. 2.—A.

e i. —— *Interference with business carried on by wife.*]—Pltf., a married woman, carried on business as an hotelkeeper, & owned the chattels in the hotel. Deft., her husband, interfered with pltf. in her business by taking the receipts, giving orders to servants, & maltreating pltf. An injunction was granted restraining deft. from interfering in the business or with the servants or agents, or removing any of pltf.'s chattels.—DONNELLY *v.* DONNELLY (1885), 9 O. R. 673.—**CAN.**

sd. *Action for breach of trust.*]—*Held :* under the Married Women's Property Act, 1890, a husband can maintain an action against his wife for breach of trust, & in cases where another person is sued with the wife, & that person sets up a claim to portion of the property, the right of action given by sect. 21 of that Act is not an exclusive remedy.—ANHAEUSSER *v.* ANHAEUSSER & ROTH (1930), S. R. (Q.) 55.—**AUS.**

PART XII. SECT. 1, SUB-SECT. !

2292 i. *Action by wife against husband—For negligence.*]—Pltf., a married woman, brought this action against her husband & another for negligence in the operation of a motor vehicle driven by her husband, in which she was a passenger, whereby she was injured, & she claimed damages for her injury. The statement of claim

2293a. .]—(1) Pltf. married deft. in 1893. In 1899 the parties separated under a deed of separation & thenceforward lived apart. By the deed of separation deft. covenanted to pay an annuity to pltf., & the deed also contained a covenant for further assurance. After the separation pltf. set up in business as a garage proprietor, & she subsequently converted this business into a private limited co. in which she held the majority of the shares & also was the chairman & managing director. In 1929 she saw in a churchyard near her husband's residence a tombstone on which was the following inscription: "In loving memory of Jennie the dearly beloved wife of W. R. Crawshay Ralston of the Bungalow, Valley. Died 20th May, 1916." Deft. was the W. R. Crawshay Ralston mentioned in the inscription & he had caused the inscription to be made. Pltf. brought an action against her husband for libel & also for a declaration that she was the lawful wife of deft.:—*Held:* though the inscription was capable of a defamatory meaning, pltf., by reason of Married Women's Property Act, 1882 (c. 75), s. 12, could not sue her husband on it, the action being for a tort & not for the protection & security of her separate property.

(2) If there were any doubt as to the validity of the marriage, in my opinion, an action at law in the K. B. Div. of the High Ct. is not the proper proceeding in which to have that matter determined. I think it would be necessary, if there were any doubt as to the validity of the marriage, to take proceedings under the Legitimacy Declaration Act, 1858 (c. 93) (MACNAUGHTEN, J.).—RALSTON *v.* RALSTON, [1930] 2 K. B. 238; 99 L. J. K. B. 266; 142 L. T. 487.

2294. *Add. Annotation:*—**Consd.** RALSTON *v.* RALSTON, [1930] 2 K. B. 238.

2294a. **For negligence—Injury sustained before marriage.**]—Although by Married Women's Property Act, 1882 (c. 75), s. 12, a married woman has the same civil remedies for the protection & security of her own separate property as if it belonged to her as a feme sole, & by sect. 24 "property" includes a thing in action, nevertheless a right of action for a pure tort which accrued before the marriage of the parties is not a thing in action within sect. 24, & consequently such right is not part of the wife's separate property.

An unmarried woman sustained injuries through a man's negligent driving, & issued a writ against him claiming damages in respect thereof. Before the trial of the action she married him:—*Held:* her right of action was not such a thing in action as would become her separate property within the meaning of the Act, but was barred by the general disability of husband & wife to sue each other for a tort.—GOTTLIFFE *v.* EDELSTON, [1930] 2 K. B. 378; 99 L. J. K. B. 547; 143 L. T. 595; 46 T. L. R. 544; 74 Sol. Jo. 567.

2310. *Add. Annotations:*—**Consd.** Ralston *v.* Ralston, [1930] 2 K. B. 238. **Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

Part XIII.—Matrimonial Causes.

2317. *Add. Annotation:*—*As to* (2) **Apld.** Cavendish *v.* Cavendish, [1926] P. 10.

2318. *Add. Annotation:*—**Refd.** Rugg-Gunn *v.* Rugg-Gunn & Archer, [1931] P. 147.

2321. *Add. Annotations:*—**Consd.** H. *v.* H., [1928] P. 206. **Refd.** A.-G. for Alberta *v.* Cook, [1926] A. C. 444; Raeburn *v.* Raeburn (1928), 138 L. T. 672.

contained no allegation of any express or implied contract:—*Held:* the action was for a tort within Married Women's Property Act, 1926, s. 8, & was not maintainable against pltf.'s husband.—GOLDMAN *v.* GOLDMAN, [1928] 2 D. L. R. 152; 61 O. L. R. 657.—**CAN.**

2292 ii. —— ——.]—A wife, who was being driven by her husband in his motor car, was injured in a collision between the motor car & a motor lorry. She brought an action of damages against the owner of the lorry & against her husband:—*Held:* the action against the husband was incompetent, in respect that (*a*) at common law the relationship existing between husband & wife is of so intimate a character that it is against public policy that the one should have a right of action against the other in consequence of a wrong done, & (*b*) Married Women's Property (Scotland) Act, 1920, has not altered the law in this respect.—HARPER *v.* HARPER, [1929] S. C. (Ct. of Sess.) 220.—**SCOT.**

2292 iii. —— ——
MARR, [1931] O. R. 707.—**CAN.**

2292 iv. —— *Married Women's Act, R.S.A.* 1922, *s.* 2.]—A provincial statute which purports to give a married woman the right to sue her husband in tort is *ultra vires*, on the ground that it alters the common law status of husband & wife, a subject which under the term "marriage" is assigned exclusively to the Dominion Parliament. Therefore, Married Women's Act, R. S. A. 1922, c. 214, s. 2, which provides, *inter alia*, that a married woman shall be capable of suing & being sued in any form of action as if she were an unmarried woman cannot be relied on to support an action in tort by a wife against her husband.—HILL *v.* HILL, [1928] 4 D. L. R. 161; [1928] 3 W. W. R. 1, 673; *affd.*, [1929] 2 D. L. R. 735; 2 W. W. R. 41; 24 Alta. L. R. 105.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 2.—D.

sd. *Jurisdiction to decide on originating notice—Right to direct an issue.*]—FOSTER *v.* FOSTER, [1928] 3 W. W. R. 573.—**CAN.**

PART XIII. SECT. 1, SUB-SECT. 1.

m i. —— —— ——.]—A judge of the Supreme Ct., sitting in his ordinary capacity, has no jurisdiction to interfere with decrees pronounced by the ct. as a ct. for divorce & matrimonial causes under Matrimonial Causes Act, 1857 (c. 85).—CLAMAN *v.* CLAMAN (1925), 35 B. C. R. 137.—**CAN.**

q i. —— —— ——.]—The parties went through a form of marriage in Nova Scotia. In an action for declaration of nullity based on absence of consent & fraud:—*Held:* the Supreme Ct. of Ontario had no jurisdiction to entertain the action, & would have had none even if the marriage had been an Ontario marriage. The jurisdiction of the Ecclesiastical Cts. in England has not been conferred upon the Supreme Ct. of Ontario.—VAMVAKIDIS *v.* KIRKOFF, [1930] 2 D. L. R. 877; 64 O. L. R. 585.—**CAN.**

ai. —— *High Court—Bombay—To hear matrimonial suits between Jews.*]—The High Ct. of Bombay has jurisdiction to entertain a suit arising out of matrimonial disputes between Jews, & in deciding such disputes, the Jewish law must be applied "with such adaptations to the circumstances of the case as justice may require."—BENJAMIN *v.* BENJAMIN (1925), I. L. R. 50 Bom. 369.—**IND.**

PART XIII. SECT. 1, SUB-SECT. 3.

2320 i. *Practice of Ecclesiastical Courts followed—Proceedings in formâ pauperis in Manitoba.*]—COLERIDGE *v.* COLERIDGE (Man.), [1926] 2 D. L. R. 896; [1926] 1 W. W. R. 857.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 1.

p i. ——.]—The fact that, at the time of her marriage, a wife has living a child born as a consequence of illicit intercourse with another man, of which intercourse her husband had no knowledge, does not entitle the latter to have the marriage set aside.—STANDER *v.* STANDER, [1929] App. D. 349.—**S. AF.**

2328a. — —.]—NEWBOULD *v.* A.-G., No. 6069a, *post.*

2328b. Distinguished from other grounds for annulling marriage.]—A decree annulling a marriage on the ground of impotence is a judgment *in rem* altering the status of the parties, & can be pronounced only by the ct. of their domicil. A decree annulling a marriage on this ground deals with a marriage which till the date of the decree was voidable only & not void. In substance it is a decree for the dissolution of that marriage, & is thus distinguished from decrees annulling marriages for illegality or informality.—INVERCLYDE (OTHERWISE TRIPP) *v.* INVERCLYDE, [1931] P. 29; 100 L. J. P. 16; 144 L. T. 212; 95 J. P. 73; 47 T. L. R. 140; 29 L. G. R. 353.

2331. *Add. Annotation:*—**Refd.** Inverclyde *v.* Inverclyde, [1931] P. 29.

2334. *Add. Annotations:*—**Refd.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641; Inverclyde *v.* Inverclyde, [1931] P. 29; Newbould *v.* A.-G., [1931] P. 75.

2345. *Add. Annotation:*—**Followed.** H. *v.* H. (otherwise N.) (1929), 45 T. L. R. 618.

2345a. —— ——.]—Where the ct. finds in a suit for nullity of marriage that both the parties to the ceremony of marriage are impotent, each being incapable as regards the other, a decree *nisi* may be granted to each of the parties & either may apply in due course for a decree absolute.—H. *v.* H. (OTHERWISE N.) (1929), 98 L. J. P. 155; 45 T. L. R. 618.

2370. *Add. Annotation:*—**Refd.** Newbould *v.* A.-G., [1931] P. 75.

2381. *Add. Annotation:*—**Refd.** Inverclyde *v.* Inverclyde, [1931] P. 29.

2452a. ——.]—MANN *v.* MANN, No. 2496, *post.*

2453a. ——.]—In this suit two questions arose: (*a*) whether a memorandum of agreement permitting the wife to live separate & apart was a deed of separation; (*b*) whether her proposal, after having herself separated from her husband & signed the agreement, that they should set up house together in the interests of the children, constituted a sincere desire for resumption of cohabitation. For petitioner it was submitted that the memorandum of agreement relied upon was not a deed of separation, but merely an agreement for maintenance for a limited period. Even if it were a deed of separation, the wife was entitled to change her mind, & she had in fact shown a sincere desire to live together again with her husband, though her motive might have been the welfare of the children: —*Held:* the memorandum of agreement was a valid & binding & subsisting agreement to live separate & apart. The wife's proposal, not being made to restore the connubial relationship *simpliciter*, but merely so that she & her husband & the children should set up house together, was not a sincere desire that they should live together. Petition dismissed.—LACEY *v.* LACEY (1931), 146 L. T. 48; 95 J. P. 179; 47 T. L. R. 577; 75 Sol. Jo. 572; 29 L. G. R. 566.

2479a. Extravagance of wife.]—(1) Extravagance of living on the part of a wife affecting the financial position & prospects of her husband may be a matter "so grave & weighty" within *Yeatman* v. *Yeatman*, No. 3001, as to render it contrary to the real truth of the case to treat the husband as guilty of desertion without reasonable cause, & therefore may afford a defence to a petition for restitution of conjugal rights.

(2) A husband is not to be taken as having deserted his wife without reasonable cause because his work in life compels him to live away from her.—G. *v.* G., [1930] P. 72; 142 L. T. 311; 94 J. P. 79; 46 T. L. R. 69; *sub nom.* G.-M. *v.* G.-A. D., 99 L. J. P. 14; 74 Sol. Jo. 59; *subsequent proceedings, sub nom.* GORDON *v.* GORDON (1931), 75 Sol. Jo. 139.

2479b. Husband's work requiring him to live apart from wife.]—G. *v.* G., No. 2479a, *ante.*

2487a. —— ——.]—LACEY *v.* LACEY, No. 2453a, *ante.*

2490. *Add. Annotations:*—*As to* (2) **Consd.** Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1. *Generally*, **Refd.** Hyman *v.* Hyman, [1929] A. C. 601.

2492. *Add. Annotation:*—**Consd.** Hyman *v.* Hyman, [1929] A. C. 601.

2494. *Add. Annotation:*—*As to* (1) **Refd.** Lacey *v.* Lacey (1931), 47 T. L. R. 577.

PART XIII. SECT. 3, SUB-SECT. 2.—A.

2329 v. ——.]—The law of Ontario as to annulment of marriage is the law of England as of July 15, 1870, unless modified by provincial law. Relief for persistent refusal of intercourse can only be given where an inference of impotence can be drawn.—BETHELL *v.* BETHELL, [1932] O. R. 300; 2 D. L. R. 663.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 2.—C.

2346 iii. —— ——.]—Where the husband was potent & there was no structural incapacity on the part of the wife, but the marriage had never been consummated owing to the opposition of the wife without any legitimate reason, the ct. granted a decree of nullity of the marriage on the ground that there was an invincible repugnance on the part of the wife to the act of consummation resulting in paralysis of the will, which was consistent only with incapacity.—S. *v.* S. (1926), 29 W. A. L. R. 52.—**AUS.**

PART XIII. SECT. 3, SUB-SECT. 2.—E.

2397 i. *Sufficiency of.*]—HATE *v.* HATE, [1927] 3 D. L. R. 481; [1927] 2 W. W. R. 366; 22 Alta. L. R. 565.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 1.—D.

2435 ii. ——.]—A prior request in writing for restitution of conjugal rights is not a prerequisite to the bringing of an action in Saskatchewan for restitution of conjugal rights.—POLOVNIKOFF *v.* POLOVNIKOFF, [1930] 2 W. R. R. 177.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 1.—E.

2452 ii. ——.]—On a petition for restitution of conjugal rights petitioner must satisfy the ct. that he or she has a sincere desire for a real restitution of those rights & a corresponding willingness to render them to the other spouse.—WOODLANDS *v.* WOODLANDS (1924), 35 C. L. R. 446.—**AUS.**

PART XIII. SECT. 5, SUB-SECT. 1.—F. (a).

sd. *Petitioner guilty of adultery.*]—A suit for restitution of conjugal rights lies under Burmese Buddhist law; but a husband will not obtain such restitution on account of his misconduct.—MATHEIN NWE *v.* MAUNG KHA (1929), I. L. R. 7 Ran. 451.—**IND.**

se. *Defendant in prison.*]—The ct. has no power to dispense with the preliminary order of restitution in an action for restitution of conjugal rights failing which a divorce on the ground of malicious desertion. In such an action the mere fact that deft. is in prison is no bar to the granting of a restitution order.—ALDRED *v.* ALDRED, [1929] App. D. 356.—**S. AF.**

PART XIII. SECT. 5, SUB-SECT. 1.—F. (b).

sf. *Petitioner suffering from venereal disease.*]—The fact that a husband is suffering from venereal disease is no bar to an action by him against his wife for restitution of conjugal rights failing which a divorce.—AINSBURY *v.* AINSBURY, [1929] App. D. 109.—**S. AF.**

2498. *Add. Annotation :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

2501. *Add. Annotation :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

2511. *Add. Annotation :*—**Refd.** Dewe *v.* Dewe, Snowdon *v.* Snowdon, [1928] P. 113.

2518a. ——.]—A husband & wife intermarried in Feb. 1922, & continued to cohabit until July, 1927, when the wife left the husband. On Nov. 2, 1927, the wife petitioned for a divorce founded upon an act of sodomy alleged to have been committed on her by the husband in Mar. 1922, & alleged acts of cruelty consisting of (*a*) acts of shameless uncleanness & invitations to repeat them, & (*b*) ordinary acts of cruelty, such as acts of ill-temper & abuse.

At the trial the judge in summing up to the jury did not warn the jury against finding that the sodomy alleged had been committed on the uncorroborated evidence of the wife, who was an accomplice; nor did he clearly point out that before it could be held that there was cruelty as regards the sexual malpractices it must be shown that they caused danger to life, limb or health, bodily or mental, or a reasonable expectation of it. The jury's verdict was that sodomy had been committed as alleged; that the husband had been guilty of cruelty of the class (*a*), & that he had not been guilty of cruelty of class (*b*). The judge then made a decree *nisi* for dissolution of the marriage. On appeal:—*Held:* (1) the judge ought to have warned the jury that cogent evidence was required to overcome the presumption of innocence of sodomy, & that they should not convict on the wife's uncorroborated evidence; (2) the ct. must take notice of the fact that there had been condonation of the offence, even though the husband did not plead it; (3) the judge had misdirected the jury by saying that the sexual malpractices were cruelty in themselves, as there could not be legal cruelty without danger to life, limb, or health, physical or mental, or reasonable apprehension of it; & (4) instead of directing a new trial the ct. should dismiss the wife's petition.

(5) The wife having on the evidence been a consenting party to the act of sodomy alleged to have been committed it would be impossible for her to obtain a decree of divorce based solely on that act.

(6) The rules with regard to condonation & connivance as a bar to a decree for divorce were well established in the practice of the Ecclesiastical Cts. before the Act of 1857. In my judgment these rules apply to cases in which the ground alleged for divorce is sodomy (GREER, L.J.).—STATHAM *v.* STATHAM, [1929] P. 131; 98 L. J. P. 113; 140 L. T. 292; 45 T. L. R. 127; 72 Sol. Jo. 847, C. A.

2554. *Add. Annotation : — Generally,* **Refd.** Raeburn *v.* Raeburn (1928), 138 L. T. 672.

2648a. Unnatural offences.]—STATHAM *v.* STATHAM, No. 2518a, *ante.*

2661. *Add. Annotations : —* **Apld.** Statham *v.* Statham, [1929] P. 131. **Refd.** Rugg-Gunn *v.* Rugg-Gunn & Archer, [1931] P. 147.

2704a. —— ——.]—Where the ct. was satisfied that a wife had been raped by a man unknown, with the result that she gave birth to a child, it held that there was no adultery & dismissed the husband's petition for divorce. —CLARKSON *v.* CLARKSON (1930), 143 L. T. 775; 46 T. L. R. 623.

2718a. ——.]—An infection of resp. with "crabs" is, in the absence of prior misconduct or infection of petitioner, *primâ facie* evidence that resp. has committed adultery.—STEAD *v.* STEAD (1927), 71 Sol. Jo. 391.

2722a. —— **Staying with unknown woman in same bedroom—Presumption of adultery.**]—WOOLF *v.* WOOLF, No. 2770b, *post.*

2723a. ——.]—HALLAM *v.* HALLAM (1930), 47 T. L. R. 207; 75 Sol. Jo. 157.

PART XIII. SECT. 5, SUB-SECT. 2.—B. (a).

2521 i. *Question of fact & degree.*]—Cruelty is a matter of degree.—A. *v.* A., [1925] 2 D. L. R. 1195; [1925] 2 W. W. R. 154; 19 Sask. L. R. 346.—**CAN.**

2521 ii. ——.]—The question whether pltf. herein was actually afraid of her husband or not held not to affect the question whether his conduct amounted to legal cruelty as defined in *Russell v. Russell*, No. 2661.—DESABRAIS *v.* DESABRAIS, [1928] 3 D. L. R. 549; [1928] 2 W. W. R. 394; 22 Sask. L. R. 417.—**CAN.**

2534 i. *Cumulative effect of acts not cruelty per se.*]—The acts constituting cruelty may be treated as cumulative. —A. *v.* A., [1925] 2 D. L. R. 1195; [1925] 2 W. W. R. 154; 19 Sask. L. R. 346.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 2.—B. (c).

2560 ix. ——.]—A course of conduct calculated to break the spirit of the sufferer & continued until health breaks down, or is likely to break down, under the strain, is cruelty.—KAUFIELD *v.* KAUFIELD (Sask.), [1926] 1 W. W. R. 159.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 2.—B. (h).

xg. *Spending earnings on mistress—Telling wife of preference for mistress.*]—Where the conduct of a husband, in obliging his wife to earn her own living while he spends his earnings on a mistress for whom he openly indicates his preference, so preys on the wife's mind that, to his knowledge, it undermines her health, it constitutes cruelty. —JONES *v.* JONES, [1925] 2 D. L. R. 1144; [1925] 1 W. W. R. 449; 19 Sask. L. R. 262.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 2.—B. (i).

xh. *Husband describing himself on enlistment as widower—Deserting wife during pregnancy.*]—A husband deserted his wife on two occasions, on one of which she had a baby three months old, & on the other when she was about to be confined. On joining the army in 1916 the husband stated that he was a widower, & thereby the wife was caused considerable pain & anxiety, & with difficulty obtained an allowance out of his pay as his wife:—*Held:* the husband's conduct amounted to cruelty.—STUART *v.* STUART (1926), I. L. R. 53 Calc. 436.—**IND.**

PART XIII. SECT. 5, SUB-SECT. 2.—E.

2683 iii. ——.]—Action by a wife for judicial separation on the ground of cruelty dismissed, where the violence complained of did not injure her health or give her cause to fear injury thereto, & was the result of her conduct with another man which she continued knowing that it provoked deft.—CONNOLLEY *v.* CONNOLLEY, [1925] 2 W. W. R. 426.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 3.—B. (a).

2712 i. *Single act — For purpose of supplying evidence.*]—An act of adultery committed solely for the purpose of supplying evidence on which the spouse of the party so committing it may base an action for divorce will not entitle pltf. to a decree. Although under ordinary circumstances the evidence herein would support the inference that adultery had in fact been committed, yet, since it appeared plain that said evidence was "staged" by deft. for the purpose of enabling pltf. to bring the action, it was held that the inference was at most a highly improbable one.—DE ARMOND *v.* DE ARMOND (Sask.), [1929] 2 D. L. R. 121; 1 W. W. R. 554.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 3.—B. (b).

2725 vii. —— ——.]—STEPHEN *v.* STEPHEN, [1931] 2 D. L. R. 892.—**CAN.**

2725 viii. —— ——.]—BOURGOIN *v.* BOURGOIN, [1930] 2 D. L. R. 797.—**CAN.**

2725 ix. —— ——.]—S. *v.* S. & M., [1931] 1 W. W. R. 116; *affd.*, [1931] 2 W. W. R. 126.—**CAN.**

2730. *Add. Annotation :*—**Refd.** Woolf *v.* Woolf, [1931] P. 134.

2733a. —— —— **Hotel evidence.**]—On the trial of an undefended petition for divorce, on the ground of adultery with a woman unknown, the ct. declared its intention of refusing to sanction the practice of resorting to hotels to establish a *primâ facie* case for dissolution of marriage, & dismissed the petition.—AYLWARD *v.* AYLWARD (1928), 44 T. L. R. 456.

2737a. —— ——.]—Applt. in 1915 ceased to live with resp. as his wife, though she joined him sometimes in America, London & Scotland, & letters passed between them of an affectionate nature. In 1919 applt. met D. in New York, who was living with her husband & two daughters on terms of affection &, up to the date of these proceedings, continued to be on these terms with them. In Dec. 1920, with her husband's consent, she went on a big game shooting expedition to Africa with applt.; applt.'s wife consented, though against her desire. Applt. & D. were drawn together through their mutual enthusiasm for sport. An expert photographer was with them on the expedition but fell ill. Applt. & D. were away on trips with no one but natives for several days & nights together. D. was, in 1920, forty-five years of age, & there was no direct evidence of familiarity between them :—*Held :* there was not sufficient ground for the inference that adultery might reasonably be assumed as the result of an opportunity for its occurrence.—ROSS *v.* ELLISON (OR ROSS), [1930] A. C. 1; 96 L. J. P. C. 163; 141 L. T. 666, H. L.

2743. *Add. Annotations :*—**Distd.** Mart *v.* Mart, [1926] P. 24. **Refd.** Selby *v.* Atkins (1926), 135 L. T. 45; S. *v.* S. & P. (1927), 44 T. L. R. 52; *Re* A. B.'s Petn., [1928] P. 25; Inverclyde *v.* Inverclyde, [1931] P. 29.

2746. *Add. Annotation :*—**Refd.** Mart *v.* Mart, [1926] P. 24.

2747. *Add. Citations :*—[1926] P. 24; 95 L. J. P. 29; 134 L. T. 446.

2749. *Add. Annotation :*—**Consd.** Rimmer *v.* Rimmer (1930), 46 T. L. R. 624, n.

2753. *Add. Annotation :*—**Refd.** Sloggett *v.* Sloggett, [1928] P. 148.

2753a. Evidence of petitioner's father—That petitioner living apart from wife at material period.]—In this undefended petition for a divorce by a labourer the evidence of adultery depended upon the proof of the birth of a child to the wife some eighteen months after they had ceased to live together. Both parties continued to live at different addresses in South London, & the ct. accepted as evidence of non-access the evidence of the petitioner's father that the petitioner had been living with him during the material period & had not slept away one night.—HADLOW *v.* HADLOW (1930), 143 L. T. 774; 46 T. L. R. 624; 74 Sol. Jo. 582.

2762. *Add. Annotation :*—**Folld.** Little *v.* Little, [1927] P. 224.

2763a. —— —— ——.]—The adultery of a husband in his wife's suit for dissolution of marriage is sufficiently established, subject to identification, by the production of the decree in a former suit, upon which it appears that damages have been assessed against him as co-resp. in respect of the same adultery, & that he has been ordered to pay such damages, without the decree in question containing any express & separate finding that he committed the adultery in question.—LITTLE *v.* LITTLE, [1927] P. 224; 96 L. J. P. 131; 137 L. T. 495; 71 Sol. Jo. 493.

2765a. Conviction for perjury—In action in which immorality alleged.]—A conviction for perjury committed during a slander action, for falsely swearing that sexual intercourse with a certain woman had not occurred, is equivalent to a finding that there had been such intercourse, & the certificate of conviction is admissible as *primâ facie* evidence of the intercourse in a subsequent suit for dissolution of marriage in which the man convicted is resp.—O'TOOLE *v.* O'TOOLE (1926), 134 L. T. 542; 42 T. L. R. 245.

2770a. Admission of adultery by husband—Sufficiency of.]—BOOTH *v.* BOOTH (1929), 73 Sol. Jo. 159.

2770b. —— **Refusal to disclose name of woman.**]—On an undefended petition by a wife for dissolution of marriage by reason of the adultery of her husband, the evidence was that the husband passed two nights in a bedroom at an hotel with a woman. He then informed his wife of the fact, but disclosed no name or

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2736 i. *Whether necessary to prove direct fact—When opportunity shown to exist—Letter from defender admitting incident.*]—SMITH *v.* SMITH, [1929] S. C. (Ct. of Sess.) 75.—**SCOT.**

aj. *Failure to deny evidence given by other side.*]—*Held :* a strong circumstance to be taken into account.—STACEY *v.* STACEY (Alta.), [1927] 2 D. L. R. 854; [1927] 1 W. W. R. 821.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 3.—B. (c).

2743 i. *Proof of non-access—Evidence of either spouse.*]—The rule of *Russell* v. *Russell*, No. 2743, does not apply so as to exclude evidence of non-access, where there is no possibility of bastardising a child.—ROBERTS *v.* ROBERTS (Alta.), [1928] 1 D. L. R. 227; [1927] 3 W. W. R. 625.—**CAN.**

2743 ii. —— ——.] — *Held :* the evidence of spouses was admissible to bastardise a child born during wedlock; the rule to the contrary, applied in *Russell* v. *Russell*, No. 2743, not being part of the law of Scotland.—BURMAN *v.* BURMAN, [1930] S. C. 262.—**SCOT.**

2755 i. *Statement by wife—As to illegitimacy of child—Admissible to establish fact of wife's adultery.*]—BLEEKER *v.* BLEEKER (1927), 48 N. L. R. 133.—**S. AF.**

2755 ii. —— —— ——.]—On the hearing of a petition by a husband for divorce on the ground of his wife's adultery, evidence of a statement by the wife that a man other than her husband is the father of a child born to her is admissible, not as evidence of the paternity of the child, but as constituting an admission of misconduct.—GINN *v.* GINN, [1931] V. L. R. 298; Argus L. R. 263.—**AUS.**

PART XIII. SECT. 5, SUB-SECT. 3.—B. (d).

h i. —— *In regular course of business.*]—Where a person, *e.g.* a tradesman, physician, mechanic or taxi-driver, is called to the house of a prostitute in the regular course of his business, the inference that he committed adultery there should not be drawn against him in a divorce action in the absence of evidence in addition to that of the fact of such visits.—WRIGHT *v.* WRIGHT, [1928] 1 D. L. R. 934; [1928] 1 W. W. R. 383.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 3.—B. (f) 1.

2770 i. *Admission of adultery by wife—Sufficiency of.*]—In July, 1923, petitioner & resp. entered into a separation agreement, & thereafter lived separate & apart. During the separation resp., in May, 1924, gave birth to a child. The husband petitioned for divorce. The evidence of adultery consisted of admissions by resp. :—*Held :* this evidence was admissible.—HENLEY *v.* HENLEY, [1927] S. A. S. R. 364.—**AUS.**

sk. *Admissions by respondent.*]—Admissions, whether written or verbal, made by resp. in a suit for dissolution of marriage are not in themselves sufficient proof of adultery; but when other facts, tending to establish such adultery, have been adduced, the admissions are corroborated evidence of such facts so adduced.—WILKIE *v.* WILKIE, [1928] N. Z. L. R. 406.—**N.Z.**

address of the woman in question either to his wife or to her solrs. or to the King's Proctor to whom the papers in the case had been sent by the ct., although both the solrs. & the King's Proctor applied to him for these particulars. As the result of inquiries by the King's Proctor there was no evidence of any association of the husband with a woman other than his wife, still less of illicit association :—*Held :* the appeal must be allowed & a decree *nisi* granted on the ground that if evidence were tendered in good faith which under all usual circumstances clearly pointed to adultery, it was the duty of the ct. to act upon it, unless the King's Proctor could adduce cogent evidence to rebut the obvious conclusion, & in the present case there were circumstances on which the ct. ought to be satisfied in accordance with what had hitherto been the practice that adultery had been established.—WOOLF *v.* WOOLF, [1931] P. 134 ; 100 L. J. P. 73 ; 145 L. T. 36 ; 47 T. L. R. 277, C. A.

2792a. ——.]—In this petition by a husband for dissolution of marriage, the only evidence of adultery was the wife's own oral admission to petitioner, coupled with statements in her own letters as to associations with men & a letter after petition in which she admitted her unfaithfulness :—*Held :* it was strong corroboration that the wife made the admission & stood by it though she had everything to lose thereby. Decree *nisi* pronounced.—SIMPSON *v.* SIMPSON (1931), 146 L. T. 47 ; 75 Sol. Jo. 542.

F. Remedies (Vol. XXVII., p. 304).

Add the following case :—

2813a. Petition for judicial separation—Whether petition brought only for collateral purpose.]—A wife petitioned for judicial separation from her husband, on the ground of his adultery. She needed no protection against interference from her husband, but she required orders for permanent maintenance & for custody. The judge, following his usual custom, asked petitioner why she prayed for judicial separation & not dissolution of the marriage. Petitioner stated that she did not wish her husband to marry the woman who had ruined her home :—*Held :* permanent maintenance & custody being, at any rate, a part of the purpose for which the suit was brought, petitioner had a right to a decree of judicial separation. The ct. had a discretion to refuse such a decree, but not an unlimited discretion, & that discretion must be exercised upon some legal ground, such as the absolute & discretionary bars & the ground that the suit was not brought *bonâ fide*, but only for some collateral purpose. It was not such a legal ground that the ct. thought it would be better that the relief to be granted should be dissolution, & not judicial separation.—BLANCHARD *v.* BLANCHARD (1928), 138 L. T. 176 ; 44 T. L. R. 313 ; 72 Sol. Jo. 138.

2829a. With her consent.]—STATHAM *v.* STATHAM, No. 2518a, *ante*.

2830. *Add. Annotation :* —**Apld.** Statham *v.* Statham, [1929] P. 131.

2830a. —— ——.]—STATHAM *v.* STATHAM, No. 2518a, *ante*.

2833a. Whether amounting to cruelty.] — STATHAM *v.* STATHAM, No. 2518a, *ante*.

2833b. Condonation—Whether special plea necessary.]—STATHAM *v.* STATHAM, No. 2518a, *ante*.

2833c. Bestiality.]—R. *v.* R. (1932), 173 L. T. Jo. 264.

2850. *Add. Annotation :—As to* (3) **Refd.** Courage *v.* Courage (1931), 47 T. L. R. 395.

PART XIII. SECT. 5, SUB-SECT. 3.—B. (f) ii.

2773 i. —— *To petitioner's solicitor.*] —*Semble :* a decree for divorce should not be granted on evidence merely of deft.'s admissions of adultery, especially when made to pltf.'s solr. or other officer of the ct. or on deft.'s testimony admitting adultery.—SANBORN *v.* SANBORN, [1928] 1 D. L. R. 881 ; [1928] 1 W. W. R. 78 ; 22 Sask. L. R. 168.—**CAN.**

2773 ii. *By respondent—Whether evidence against co-respondent.*]—HARRIS *v.* HARRIS, [1931] 4 D. L. R. 933.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 3. B. (f) iii.

sx. *Diary — Inadmissible against co-respondent.*]—In an action of divorce on the ground of adultery :—*Held :* entries made by the defender in a private diary kept by her, the import of which was that she had committed adultery with the co-defender, although evidence against her, could not be founded on as evidence against the co-defender.—CREASEY *v.* CREASEY, [1931] S. C. 9.—**SCOT.**

PART XIII. SECT. 5, SUB-SECT. 3.—E. (a).

2802 i. *Acts other than those charged in petition—Subsequent acts of adultery.*] —Evidence of acts of adultery subsequent to the date of the petition can only be admitted where preceded by some evidence upon which the jury, without more, might find a charge of adultery, as alleged in the petition, to have been proved.—ELLIOTT *v.* ELLIOTT, [1927] N. Z. L. R. 338.—**N.Z.**

PART XIII. SECT. 5, SUB-SECT. 3.—F. (a).

sl. *Divorce—Mere adultery on part of husband.*]—Mere adultery on the part of the husband does not by itself entitle a wife to a divorce according to Burmese Buddhist law.—MATHEIN NWE *v.* MAUNG KHA (1929), I. L. R. 7 Ran. 451.—**IND.**

PART XIII. SECT. 5, SUB-SECT. 3.—F. (b).

f i. —— *Unsatisfactory evidence.*]—DOWLINSKI *v.* RAWLUK (Man.), [1929] 4 D. L. R. 20.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 8.—B. (a).

2844 ii. ——.]—In order to establish desertion, proof of a refusal to acknowledge the obligations of the married state may suffice.

Semble : the bringing of a prior suit, which was abandoned, for divorce can be relied on as constituting desertion.—BRUCE *v.* BRUCE (Alta.), [1926] 4 D. L. R. 1117 ; [1926] 3 W. W. R. 605.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 8.—B. (b).

2860 i. *What amounts to cohabitation—Parties living under same roof—Husband not recognising or treating wife as such.*]—*Held :* the husband was living apart from his wife without sufficient excuse in circumstances entitling her to restitution of conjugal rights.—LINKHART *v.* LINKHART, [1925] 2 D. L. R. 1180.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 8.—B. (c).

2868 ii. ——.]—Petition by wife for dissolution of marriage on the ground of the husband's desertion :—*Held :* desertion begins when the intention to desert is complete, & that in this case there never was any intention on the part of the husband to desert his wife.—LITTLE *v.* LITTLE, [1928] W. A. L. R. 60.—**AUS.**

PART XIII. SECT. 5, SUB-SECT. 8.—B. (e) i.

sm. *Non-compliance with decree for restitution—What amounts to.*]—After a decree for restitution of conjugal rights had been made against a wife she returned to her husband & lived with him for three months. She returned sincerely willing to stay with him if her affection for him was felt by her to be sufficient, but she had in her mind a condition unexpressed that she would not stay with him if she found her affection insufficient. At the end of three months she left & refused thereafter to resume cohabitation :—*Held :* the wife's conduct did not amount to a compliance with the decree, &, therefore, that her husband was entitled to a dissolution of marriage.—HARRIS *v.* HARRIS (1929), 30 S. R. N. S. W. 59 ; 47 N. S. W. W. N. 9.—**AUS.**

PART XIII. SECT. 5, SUB-SECT. 8.—B. (e) ii.

n i. ——.]—Malicious denial of carnal intercourse persisted in for four years may constitute desertion, but the standard of proof, both of the denial itself & of the absence of consent by the offended spouse, must be exacting.—GOOLD *v.* GOOLD, [1927] S. C. 177.—**SCOT.**

Add. Annotation :—**Refd.** Clark *v.* Clark (1931), 145 L. T. 487.

2940. *Add. Annotation :*—**Refd.** Diggins *v.* Diggins (1926), 43 T. L. R. 37.

2954. *Add. Annotation :*—**Refd.** Matthews *v.* Matthews (1932), 48 T. L. R. 511.

2956. *Add. Annotation :*—**Refd.** Matthews *v.* Matthews, [1932] P. 103.

2960. *Add. Annotations :*—**Consd.** Statham *v.* Statham, [1929] P. 131. **Refd.** Welton *v.* Welton, [1927] P. 162.

2995. *Add. Annotations :—As to* (1) **Consd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416. **Refd.** Statham *v.* Statham, [1929] P. 131.

2999a. —.]—Under Summary Jurisdiction (Married Women) Act, 1895 (c. 39), justices are empowered on the application of a wife to make an order containing a provision that the applicant be no longer bound to cohabit with her husband, & this provision while in force has the effect in all respects of a decree of judicial separation on the ground of cruelty. But where the wife's application is based upon a charge of desertion only, such a clause should not be inserted in the order, inasmuch as it prevents the continuance of desertion in strict law after the date of the order. In the present case the wife was granted a separation order on the ground of desertion, & the non-cohabitation clause was inserted in the order :—*Held :* the justices were entitled to find as they did, but were wrong in allowing the non-cohabitation clause to be included in the order. In cases of cruelty it might be necessary for the protection of the wife, but that was not so in cases of desertion ; & the non-cohabitation clause was struck out.—SAYERS *v.* SAYERS (1929), 93 J. P. 72 ; 27 L. G. R. 366, D. C.

3010a. —— —— **False assertion of pregnancy.**]—On an application by a wife against her husband for an order for maintenance on the ground of desertion, the justices have no discretion to refuse an order on the ground that the wife had deceived the husband into marrying her by an untrue statement that she was pregnant.—DAWSON *v.* DAWSON (1929), 93 J. P. 187 ; 45 T. L. R. 397 ; 73 Sol. Jo. 367 ; 27 L. G. R. 368, D. C.

3019a. Respondent second husband of petitioner—First husband having disappeared—Whether bar to relief.]—SPURGEON *v.* SPURGEON (1930), 46 T. L. R. 396.

3024. *Add. Citations :*—"*affg.*, [1892] P. 222 ; 61 L. J. P. 115."

PART XIII. SECT. 5, SUB-SECT. 8.—B. (f).

2933 ii. —— —— ——.]—LEE *v.* LEE, [1927] 1 D. L. R. 94 ; 59 O. L. R. 561.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 8.—B. (g).

2940 ii. ——.]—A divorce refused, on the ground that a separation agreement prevented a finding of desertion.

In an action for divorce the existence of a separation agreement is not to be disregarded by the ct. merely because deft. does not set it up as a bar.—WALSH *v.* WALSH & KIRKLAND, [1925] 2 D. L. R. 794 ; [1925] 1 W. W. R. 951 ; 19 Sask. L. R. 509.—**CAN.**

2941 ii. —— *Deed not acted upon.*]—Proposition, that, when a deed of separation is treated as a nullity or set at nought, & the spouse who repudiates it persists in leaving the other as if deserted, the former is from that time guilty of desertion, doubted.—HOGGETT *v.* HOGGETT, [1926] V. L. R. 505 ; 48 A. L. T. 62 ; [1926] Argus L. R. 330.—**AUS.**

PART XIII. SECT. 5, SUB-SECT. 8.—D. (a).

2964 i. *From time of intention to desert.*]—Petition by wife for dissolution of marriage on the ground of the husband's desertion :—*Held :* desertion begins when the intention to desert is complete, & in this case there never was any intention on the part of the husband to desert his wife.—LITTLE *v.* LITTLE (1927), 30 W. A. L. R. 60.—**AUS.**

PART XIII. SECT. 5, SUB-SECT. 8.—E.

2975 i. *During imprisonment—Manifest intention to desert.*]—A husband, who was married in July, 1916, lived with his wife for six weeks, & thereafter did not live with her again for over three years. In Nov. 1919, he met her accidentally & lived with her for a few days, & then he went abroad to take up an appointment. On the voyage out he wrote informing her that the appointment had been cancelled. Thereafter he never lived with his wife or communicated with her again. From Apr. 1920 till June 1923 he was in prison, & in Oct. 1923 he was again imprisoned. In Oct. 1925, after his release, he wrote to his wife's father stating that he was about to go abroad, & offering to supply material for divorce :—*Held :* pursuer had relevantly averred desertion commencing in Nov. 1919 & including the periods of defender's incarceration, in respect that, when liberated from prison, defender had shown no disposition to alter his intention to persist in his desertion.—PARKER *v.* PARKER, [1926] S. C. 574.—**SCOT.**

PART XIII. SECT. 5, SUB-SECT. 8.—F. (b).

2981 i. *Whether desertion terminated—Filing of petition.*]—ADEY *v.* ADEY, [1928] S. R. Q. 303.—**AUS.**

PART XIII. SECT. 5, SUB-SECT. 8.—G. (c).

3003 i. *What is "reasonable cause"—Conduct falling short of matrimonial offence—Not mere frailty of temper & habits.*]—Mere infirmity of temper accompanied by the free use of a vulgar & abusive tongue, an occasional resort to physical violence not directed against the person of her husband & futile threats of bodily harm to him, are not sufficient to justify a husband's desertion of his wife.—CLARKE *v.* CLARKE (Alta.), [1927] 3 W. W. R. 728.—**CAN.**

s i. —— *Petitioner's cruelty.*]—Soon after the marriage of the parties in 1923 the husband was guilty of acts of cruelty to the wife, which resulted in permanent injuries to her. Following on this conduct the wife left her husband in Feb. 1923, & although he repeatedly requested her to return to him, she did not do so. The husband petitioned for divorce on the ground of desertion :—*Held :* the husband must be presumed to have intended the consequence of his acts ; by his conduct he had compelled his wife to leave him, & his petition must be dismissed.—LAWRENCE *v.* LAWRENCE (1929), W. A. L. R. 86.—**AUS.**

PART XIII. SECT. 7, SUB-SECT. 1.

t i. —— *Knowledge of impotence.*]—A woman married a man who was at the date of the marriage, & remained thereafter, impotent in consequence of paralysis. The parties had cohabited, & had occupied the same bed, for two months prior to the marriage, & the woman was aware of the man's condition. Her reason for entering into the marriage was to obtain support for herself & for an illegitimate child, which she had previously had by another man. After the marriage the parties lived together for over four years. In an action of declarator of nullity of marriage brought by the woman :—*Held :* she was barred from founding on defender's impotency, in respect that she entered into the marriage in knowledge of it, &, in the circumstances of the case, it would be inequitable to allow her to found upon it.—L. *v.* L., [1931] S. C. 477.—**SCOT.**

PART XIII. SECT. 7, SUB-SECT. 3.—A. (a).

3026 i. *Dissolution suit—Previous suit.*]—A former suit for divorce brought by pltf. was dismissed on the ground that by his wilful neglect of his wife he had conduced to her adultery. In a subsequent suit for divorce he proved that his wife & co-resp. had, since the former suit, left the province & were living as man & wife in California :—*Held :* the dismissal of the former suit was not a bar to the subsequent suit.—KESLERING *v.* KESLERING (OTHERWISE NEVERKA) & NEVERKA (Sask.), [1927] 4 D. L. R. 767 ; [1927] 3 W. W. R. 273.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 3.—A. (b).

3027 i. *Suit for dissolution—Same evidence as in former suit—For judicial separation.*]—A petitioner in the absence of any fresh matrimonial offence, is not entitled to a decree for dissolution of marriage upon precisely the same grounds as those on which she obtained previously judicial separation.—COLLINS *v.* COLLINS (1928), I. L. R. 56 Calc. 166.—**IND.**

ak. *Counterclaim for judicial separation & alimony—Same evidence as in former suit for same relief.*]—In an action by a husband for judicial separation the wife counterclaimed for judicial separation & alimony, setting up, in substance, the same facts as were alleged & adduced in evidence in a

3039. *Add. Annotation :*—**Folld.** L. *v.* L., [1931] P. 63.

3040a. Agreement not to sue for matrimonial offences prior to separation deed—Validity.]—By a separation deed executed by spouses who were then parties to a suit for judicial separation on the ground of the cruelty of the husband, it was agreed that neither of them should sue the other for any misconduct which had theretofore taken place, & the deed further stipulated that any offence that either of them had committed should be forgiven or condoned, & that in case either of them should take proceedings against the other in respect of any complaint thereafter arising no offence antecedent to the deed should be pleaded or alleged by either or be admissible in evidence. The wife subsequently sued the husband for dissolution of marriage on the ground of his adultery alleged to have been committed since the date of the deed. The husband traversed the allegation, & by his answer counter-charged the wife with adultery antecedent to the deed. The wife disputed the right of the husband to make the counter-charge, having regard to the deed. The husband contended that the provisions of the deed were against public policy, in that they provided for the withholding from the ct. matters material & necessary for its consideration by virtue of Judicature (Consolidation) Act, 1925 (c. 49), s. 178 (3) :—*Held :* on a motion by the wife to strike out the allegation in the answer of the husband of her adultery, the deed was not against public policy, & it did not constitute any bargain between the parties to pervert the course of justice by withholding from the ct. any matter material for its consideration, & the agreement made by the deed being one honestly entered into was good, & it was no answer to it to say that if the intention of the parties had been to obtain a collusive divorce or to cloak the past, the deed could have had a dishonest & illegal operation.—L. *v.* L., [1931] P. 63 ; 100 L. J. P. 76 ; 144 L. T. 723 ; 47 T. L. R. 260 ; 75 Sol. Jo. 192.

3042. *Add. Annotation :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

3044. *Add. Annotation :*—**Consd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

3047. *Add. Annotation :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

3051. *Add. Annotation :*—**Refd.** Matthews *v.* Matthews, [1932] P. 103.

3064. *Add. Annotation :*—*As to* (1) **Distd.** Preger *v.* Preger (1926), 134 L. T. 670.

3066. *Add. Annotations :*—**Distd.** Preger *v.* Preger (1926), 134 L. T. 670. **Consd.** Clayton *v.* Clayton & Sharman, [1932] P. 45.

3067a. Payment to commit adultery.]—MIRANDA *v.* MIRANDA (1931), 171 L. T. Jo. 309.

3068. *Add. Annotation :*—**Distd.** Preger *v.* Preger (1926), 134 L. T. 670.

3069. *Add. Annotations :*—**Distd.** Preger *v.* Preger (1926), 134 L. T. 670 ; Clayton *v.* Clayton & Sharman, [1932] P. 45.

3069a. —— ——.]—A decree of a foreign ct. in a country where the parties were not domiciled, purporting to annul an English marriage at the instance of the wife on the sole ground of want of cohabitation, was consented to by the husband, & the wife subsequently went through a form of marriage with another man with whom she cohabited. The husband filed in this ct. a petition claiming dissolution of his marriage on the ground of the adultery constituted by cohabitation under the form of marriage last mentioned. It appeared that both the husband & the wife honestly believed at the time of the proceedings in the foreign ct. that those proceedings were competent & that their marriage was effectually dissolved :—*Held :* there was no guilty intention amounting to connivance on the part of the husband at the subsequent adultery of the wife, &, further, although the facts might technically raise the discretionary bar of conduct conducing on his part, the latter offence was in the circumstances present of a degree which justified the exercise of the discretion of the ct. in his favour.—CLAYTON *v.* CLAYTON & SHARMAN, [1932] P. 45 ; 101 L. J. P. 23 ; 146 L. T. 327 ; 48 T. L. R. 191 ; 76 Sol. Jo. 96.

3077a. —— —— **Petitioner in fear of co-respondent.**]—In an undefended divorce petition by a husband it was admitted that he had spent many week-ends at his home under the same roof with his wife & co-resp. when the two latter were, to his knowledge, committing adultery ; & that before the husband filed his petition citing his wife's paramour as co-resp., he entered into a deed of separation which in terms permitted his wife to "reside at such places, & with such persons as she may from time to time think fit." The case was remitted from assizes to the Divorce Ct. on the question of connivance :—*Held :* there was a strong case for the husband being an accessory to his wife's adultery, but, though almost terrified to be under the same roof as co-resp., he resented & resisted as far as he dared the continuance of the adulterous relations. He did not encourage it. They defied him. He was not an accessory, & did not enter into the deed with the idea of consenting to his wife's living in adultery with co-resp. Decree *nisi* granted & papers sent to the King's

former action, in which she, as pltf., claimed the same relief against the present pltf., but which was decided against her. There was no subsequent resumption of marital relations or other change in circumstances :—*Held :* the husband was entitled to have the counterclaim struck out on the dismissal of the first action, had a retrospective effect.—DAVIS *v.* DAVIS, [1928] 3 D. L. R. 69 ; [1928] 2 W. W. R. 130 ; 23 Alta. L. R. 355.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 3.—B. (b) iii.

3078 i. *General rule.*]—A husband who has allowed his wife to carry on a dangerous intimacy & has shown a reckless disregard of her chastity, may be refused a divorce notwithstanding her adultery.—STEELE *v.* STEELE, [1932] 1 D. L. R. 76 ; O. R. 50.—**CAN.**

3081 i. *Invitation to commit adultery.*]—McEWEN *v.* McEWEN (Man.), [1926] 3 D. L. R. 430.—**CAN.**

3085 i. *Consent to residence in paramour's house.*]—Where a husband who has no reason to believe that his wife & co-resp. have already committed adultery acquiesces in & is accessory to his wife's leaving him & going to live with co-resp., he will be held to have connived at his wife's ultimate misconduct &, therefore, to be without the right to a divorce.—LACERF *v.* LACERF & EVANS (Sask.), [1929] 4 D. L. R. 134 ; 2 W. W. R. 524 ; *affg.*, [1929] 2 D. L. R. 136 ; 1 W. W. R. 569.—**CAN.**

Proctor.—KING *v.* KING & EVANS (1929), 142 L. T. 162; 73 Sol. Jo. 833.

3082. *Add. Annotation:—As to* (1) **Consd.** Clayton *v.* Clayton & Sharman, [1932] P. 45.

3092a. —— **Agreement between husband & co-respondent as to damages.**]—Petitioner filed a petition for divorce on the ground of his wife's adultery with co-resp., & it was disclosed to the ct. that petitioner & co-resp. had agreed that co-resp. should pay petitioner £2,500 damages, of which £1,750 was to be paid down, & the rest later, & that petitioner should claim no further damages from co-resp. & should put no obstacles in the way of a decree *nisi* being made absolute. The petition was dismissed on the ground that the suit was collusive. After the dismissal resp. & co-resp. continued to live in adultery, & petitioner, who had received the £1,750, presented a second petition against them, complaining of the adultery since the date of the former petition:—*Held:* petitioner had by the agreement prevented himself from complaining of any adultery whether past or future, & he had connived at the adultery of which in his second petition he complained, & the second petition must be dismissed.—GIFFORD *v.* GIFFORD & FREEMAN (1926), 43 T. L. R. 141.

3093. *Add. Annotation:*—**Distd.** Preger *v.* Preger (1926), 134 L. T. 670.

3094. *Add. Annotation:*—**Distd.** Preger *v.* Preger (1926), 134 L. T. 670.

3122. *Add. Citation:*—134 L. T. 670.

3124a. —— ——.]—TOWNEND *v.* TOWNEND (1928), 72 Sol. Jo. 518.

3143. *Add. Annotation:*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

3163a. —— **Application of rules to condonation of sodomy.**]—STATHAM *v.* STATHAM, No. 2518a, *ante.*

3166. *Add. Annotation:—As to* (1) **Refd.** Sneyd *v.* Sneyd & Burgess, [1926] P. 27.

3171. *Add. Annotation:—As to* (1) **Refd.** Statham *v.* Statham, [1929] P. 131.

3179a. ——.]— (1) Condonation has been defined as "the complete forgiveness & blotting out of a conjugal offence followed by cohabitation, the whole being done with knowledge of all the circumstances of the particular offence forgiven."

(2) Petitioner alleged, but in the opinion of the ct. failed to prove, that he was induced to resume cohabitation by his belief, brought about by the fraudulent representation of his wife, that she was innocent:—*Semble:* such a belief would not be material if proved.—SNEYD *v.* SNEYD & BURGESS, [1926] P. 27; 95 L. J. P. 22; 135 L. T. 124; 42 T. L. R. 247.

3182a. —.]—SNEYD *v.* SNEYD & BURGESS, No. 3179a, *ante.*

3188a. Agreement for temporary separation after confession of adultery—Parties continuing to live apart for several years.]—After a wife's confession of adultery she & her husband agreed to live apart for six months, she to receive an allowance, & it was agreed that at the end of that time their mutual position was to be reconsidered. After the six months they continued to live apart, & ten years after the admitted adultery the husband sued for divorce on that ground:—*Held:* the agreement was made by a man who was distraught by the domestic calamity. There was no condonation in the legal sense of

PART XIII. SECT. 7, SUB-SECT. 3.—C. (b) i.

3135 ii. ——.]—"Collusion" is a species of statutory fraud on the ct., &, like "fraud," is incapable of exhaustive definition, & will ever be widened to prevent the mischief which the statute was intended to prevent. Collusion is possible in a good case, *i.e.* although the ct. is convinced that matrimonial misconduct was proved, yet if evidence of collusion, too gross & palpable to admit of being overlooked or explained, appeared, no decree should be made.

In the present case the ct., having concluded that there was an arrangement between the parties to obtain a divorce & as to the testimony which should be offered to support the claim therefor, & that the testimony given by the resp. was in accordance with this arrangement, & largely untrue, refused the decree, holding that, aside from the admission as to the arrangement, the appearances of collusion were too gross & palpable to admit of being overlooked or explained, & that the arrangement itself was clearly collusive.—SANBORN *v.* SANBORN, [1928] 1 D. L. R. 881; [1928] 1 W. W. R. 78; 22 Sask. L. R. 168.—**CAN.**

3135 iii. ——.]—Collusion is established (*a*) if there be an agreement or understanding or concerted action between the parties which has the effect of deceiving the ct. either by causing untrue facts to be placed before the ct. or by suppressing facts which are material or pertinent; & (*b*) if there be an agreement or understanding or concerted action between the parties which, from the nature of such agreement or understanding or action may be calculated to have that effect; but where the facts to be placed before the ct. are such as to support a prayer for either of two forms of relief, it is not collusion for a petitioner, for valuable consideration, to agree with a resp. to change merely the form of relief prayed for in the petition.—DOUTREBANDE *v.* DOUTREBANDE (1929), 29 S. R. N. S. W. 456; 46 N. S. W. W. N. 160.—**AUS.**

3135 iv. ——.]—To establish collusion in an action for divorce it is necessary to show some understanding or agreement which involves some imposition on the ct. An agreement between the parties which does not involve such an imposition or a suppression of facts, but merely facilitates proof & smoothes the asperities of litigation is not collusion, although it is liable to be looked into by the ct. Nor does the fact that an agreement involves monetary consideration necessarily render it collusive.—BEALE *v.* BEALE & LINDON, [1929] 3 D. L. R. 1; 2 W. W. R. 1; 23 S. L. R. 548.—**CAN.**

sl. *Acts regarded as unobjectionable by solicitor.*]—Collusion cannot be imputed from ordinary acts of parties which a solr. would naturally regard as inoffensive & unobjectionable.—LINTON *v.* GUDERIAN (1928), I. L. R. 56 Calc. 530.—**IND.**

PART XIII. SECT. 7, SUB-SECT. 3.—C. (b) ii.

3138 iii. —— ——.]—The fact that a husband's suit for divorce has been brought at the request of a man, with whom deft. has been living for a number of years, & who has promised pltf. to pay all the costs in order that deft. may be made free to marry him, does not constitute collusion.—CHRISTMANSON *v.* CHRISTMANSON (Alta.), [1927] 1 D. L. R. 651; [1927] 1 W. W. R. 149.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 3.—C. (b) v.

3159 i. *Respondent assisting in identification.*]—The fact that deft. to a divorce action admitted to pltf.'s solr. before the trial that she had been guilty of adultery with co-resp., & supplied the solr. with her photograph to be used for the purpose of identification, is not proof of collusion, where there is no evidence that pltf. ever had any arrangement with deft. that she should provide him with grounds for divorce.—PARRY *v.* PARRY, [1926] 3 D. L. R. 95; [1926] 2 W. W. R. 185; 20 Sask. L. R. 474.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 3.—D. (a).

sm. *Is defence to suit for divorce on ground of bestiality.*]—A. *v.* A., [1925] 2 D. L. R. 1195; [1925] 2 W. W. R. 154; 19 Sask. L. R. 346.—**CAN.**

st. *Proof of renewal of intercourse unnecessary.*]—DEANE *v.* DEANE & FAY, [1929] S. R. (Q.) 124.—**AUS.**

PART XIII. SECT. 7, SUB-SECT. 3.—D. (b) i.

3169 iii. ——.]—PREMCHAND HIRA *v.* BAI GALAL (1927), I. L. R. 51 Bom. 1026.—**IND.**

3169 iv. —.]—*Held:* condonation of adultery may be made subject to the express condition that the guilty spouse shall not see or correspond with the other guilty person, so that when the condition is broken the condonation is cancelled & the right to found an action on the adultery revived.—BAUER *v.* BAUER & HASS, [1930] 2 W. W. R. 16; 4 D. L. R. 36; 24 S. L. R. 409.—**CAN.**

complete reinstatement of the wife in the rights of a wife. The delay was excusable by the effect which the wrongdoing had upon the petitioner's mind.—LETBE *v.* LETBE & WHITEHEAD (1928), 140 L. T. 199; 45 T. L. R. 6; 72 Sol. Jo. 745.

3196. *Add. Annotation :*—**Refd.** M. *v.* M., [1928] P. 123.

3213. *Add. Annotation :*—*As to* (1) **Refd.** Sneyd *v.* Sneyd & Burgess, [1926] P. 27.

3223. *Add. Citations :*—[1926] P. 27; 95 L. J. P. 22; 135 L. T. 124; 42 T. L. R. 247.

3224a. ——.]—HOWARD *v.* BURTONWOOD (1742), Selwyn's N. P. 13th edn., p. 9, n.

Annotation :—**Consd.** Bernstein *v.* Bernstein, [1893] P. 292.

3234. *Add. Annotation :*—**Consd.** Statham *v.* Statham, [1929] P. 131.

3288. *Add. Annotation :*—*As to* (1) **Expld.** Apted *v.* Apted & Bliss, [1930] P. 246.

3289. *Add. Annotation :*—**Consd.** Apted *v.* Apted & Bliss, [1930] P. 246.

3292. *Add. Annotation :*—**Consd.** Apted *v.* Apted & Bliss, [1930] P. 246.

3293. *Add. Annotation :*—**Refd.** Apted *v.* Apted & Bliss, [1930] P. 246.

3296. *Add. Annotation :*—**Consd.** Apted *v.* Apted & Bliss, [1930] P. 246.

3339. *Add. Annotations :*—*As to* (2) **Consd.** T. *v.* T. (1931), 47 T. L. R. 629. **Refd.** Inverclyde *v.* Inverclyde, [1931] P. 29. *Generally*, **Refd.** Newbould *v.* A.-G., [1931] P. 75.

3345. *Add. Annotation :*—**Consd.** T. *v.* T. (1931), 47 T. L. R. 629.

3358a. —— **Fourteen years.**]—On a husband's petition for nullity of marriage on the ground of his wife's incapacity through alleged invincible repugnance, it was held that as the petition was not presented until over 14 years after the marriage a very special burden of proof rested on the petitioner. After hearing the evidence of the parties & their witnesses & expert medical witnesses, the ct. dismissed the petition.—T. *v.* T. (OTHERWISE J.) (1931), 146 L. T. 18; 47 T. L. R. 629.

3360a. —— ——.]—T. *v.* T. (OTHERWISE J.), No. 3358a, *ante*.

3397. *Add. Annotation :*—**Consd.** Apted *v.* Apted & Bliss, [1930] P. 246.

3433. *Add. Annotation :*—**Refd.** Welton *v.* Welton, [1927] P. 162.

3436a. ——.]—PLOWS *v.* PLOWS (1928), 44 T. L. R. 263.

3445a. Duty of solicitor to inquire as to adultery by petitioner.]—MOYSE *v.* MOYSE & CRICK (1929), 73 Sol. Jo. 192.

3446. *Add. Annotation :*—**Refd.** Apted *v.* Apted & Bliss, [1930] P. 246.

PART XIII. SECT. 7, SUB-SECT. 3.—D. (c).

3204 iii. ——.]—In 1919 petitioner entertained some suspicion of his wife's adultery, & this suspicion, although partially allayed by what a medical practitioner had told him, was not entirely removed from his mind. Having this suspicion, he continued & resumed sexual intercourse with his wife for some years, until he obtained evidence of the adultery charged in the petition, which adultery had taken place in 1918 :—*Held :* sexual intercourse in these circumstances did not amount to condonation.—DONNITHORNE *v.* DONNITHORNE, [1930] S. A. S. R. 182.—**AUS.**

PART XIII. SECT. 7, SUB-SECT. 3.—D. (g).

sh. *Duty of wife's advisers to investigate the facts before pleading condonation.*]—LOUIS *v.* LOUIS & STEAD, [1929] S. R. (Q.) 184.—**AUS.**

PART XIII. SECT. 7, SUB-SECT. 3.—D. (h) iii.

3255 iii. ——.]—Any matrimonial offence which in itself is ground for divorce but which has been condoned may be revived by the subsequent commission of any other legally recognised matrimonial offence, *e.g.*, cruelty.—A. *v.* A., [1925] 2 D. L. R. 1195; [1925] 2 W. W. R. 154; 19 Sask. L. R. 346.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 3.—D. (h) iv.

3274 i. *By desertion—For two years without reasonable excuse.*]—Condoned adultery revived.—SPRING *v.* SPRING (Alta.), [1926] 2 D. L. R. 893; [1926] 2 W. W. R. 78.—**CAN.**

l. For "**l.** *By desertion*" read "**3274 ii.** ——."

m i. ——.]—L. *v.* L. (Man.), [1930] 1 D. L. R. 72; 38 Man. L. R. 333; [1929] 3 W. W. R. 396; *revsg.*, [1929] 4 D. L. R. 801.—**CAN.**

m ii. ——.]—Subsequent desertion will revive adultery which has been condoned.—LALEUNE *v.* LALEUNE, [1930] 1 D. L. R. 72; 38 Man. L. R. 333; [1929] 3 W. W. R. 396; *revsg.*, [1929] 4 D. L. R. 801.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 4.—B. (a).

3312 ii. ——.]—Unreasonable & unexplained delay between a petitioner's knowledge of the adultery committed by resp. & the filing of his petition for dissolution of the marriage may induce the ct. to dismiss the petition, as indicating acquiescence in the injury complained of.—KING *v.* KING (1929), I. L. R. 57 Calc. 215.—**IND.**

PART XIII. SECT. 7, SUB-SECT. 4.—B. (b).

sk. *What delay unreasonable—Twenty-four years.*]—In an undefended action of divorce on the ground of desertion brought by a wife against her husband twenty-four years after the alleged desertion :—*Held :* the fact that the pursuer had delayed to bring her action was not *per se* sufficient to deprive her of her remedy.—MONAHAN *v.* MONAHAN, [1930] S. C. 221.—**SCOT.**

PART XIII. SECT. 7, SUB-SECT. 4.—B. (d) i.

3338 i. *General rule.*]—LACHANCE *v.* ROCHON (Que.), [1927] 1 D. L. R. 1190.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 4.—C. (a) i.

3397 iii. —— ——.]—MCNALLY *v.* MCNALLY, [1927] 2 D. L. R. 604; 59 N. S. R. 268.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 4.—C. (a) iii.

sn. *Letter instigating adultery.*]—GALLAGHER *v.* GALLAGHER, [1928] S. C. (Ct. of Sess.) 586.—**SCOT.**

PART XIII. SECT. 7, SUB-SECT. 4.—D. (a) i.

3445 i. *Disclosure of petitioner's adultery—Duty to disclose.*]—It is the duty of a petitioner who has been guilty of a matrimonial offence to admit the fact in his petition, for the information both of the ct. & of the A.-G., & specifically to ask for the discretion of the ct.—DEANE *v.* DEANE & FAY, [1929] S. R. (Q.) 124.—**AUS.**

PART XIII. SECT. 7, SUB-SECT. 4.—D. (a) ii.

3446 i. *Principle on which court acts.*]—There is nothing in Marriage Act, 1915, s. 131 (1), to indicate that the general rule is that the discretion of the ct. should be exercised against a petitioner who has himself been guilty of adultery, or that it should only be exercised in his favour in exceptional circumstances. The discretion of the ct., on the wording of the section, is quite open. If anything, the words would appear to indicate that ordinarily the decree *nisi* would be granted notwithstanding the adultery of the petitioner, but that in such a case the ct. is not bound to grant it. Under the section the ct. has an unfettered discretion, & it is neither desirable nor possible to lay down definite & rigid rules by which the ct. should be guided in all cases. The mere non-disclosure in his affidavit by a petitioner of the fact that he has during the marriage committed adultery is not a sufficient ground for refusing a decree *nisi* to which he would otherwise be entitled.—ADAMS *v.* ADAMS, [1928] V. L. R. 90; [1928] A. L. R. 89.—**AUS.**

3446 ii. ——.]—A ct. administering divorce jurisdiction in India has a discretion, where petitioner has been guilty of adultery during the marriage, to grant or refuse a decree for dissolution. This discretion is unfettered, but must not be exercised capriciously. The dicta of English judges laying down tests in this matter do not constitute rules or principles which in any way fetter cts. in India.—LILLY SWAINE *v.* DENNIS SWAINE (1932), I. L. R. 10 Man. 299.—**IND.**

3448. *Add. Annotation:*—**Expld.** Apted *v.* Apted & Bliss, [1930] P. 246.

3449a. ——.]—GRAYSON *v.* GRAYSON (1927), 43 T. L. R. 225.

Annotation:—**Reld.** Apted *v.* Apted & Bliss, [1930] P. 246.

3449b. ——.]—The discretionary power of the ct. to grant a decree of divorce to a petitioner guilty of adultery is a regulated discretion which it is the duty of the ct. to reduce to method. The primary essential for the exercise of its power by the ct. is that there should be secured to it the means of knowledge of the material facts with reasonable certainty. With this end in view the fact that the exercise of the discretion is sought should appear on the face of the petition. There should be lodged along with the application for the certificate of a registrar that the proceedings are in order, preliminary to setting down, a statement of the matters in respect of which the exercise of the discretion is prayed & the grounds on which the petition in this behalf is based. The intervention of the King's Proctor following suppression of fact or presentment of falsehood by a petitioner in these matters is not the only safeguard for the observance of due procedure. A party to a divorce proceeding who is asking to have the discretion of the ct. favourably exercised & who in doing so acts in such a manner as to obstruct or divert the course of justice is guilty of a contempt of ct. & liable to its consequences. The multiplication of the tribunals in whom is vested the jurisdiction to decree divorce has rendered necessary a more precise procedure to secure the presentment to them of the facts in each case material to the exercise of the discretion &, if necessary, cases can then be adjourned for further consideration & the services of the King's Proctor made available. To formulate & limit with precision the grounds for the exercise of the discretion when the facts are once before the ct. is a practical impossibility; they cannot be rigidly defined but certain broad principles can be gathered from authority. The more strict & early view that two or at most three classes of cases only called for the exercise of the discretion savoured more of estoppel than of the powers of the ct. as defined by statute. Those two classes arose either when resp. had induced petitioner to believe in the death of resp. or when a petitioning wife had been forced by a resp. husband to lead an immoral life, & the question was treated as open whether condonation of petitioner's adultery constituted a third class. To-day these may be stated as guiding principles; a governing consideration is now the interest of the community at large in maintaining the sanctions of honest matrimony; a strong affirmative case is still necessary to justify the ct. in departing from the discretionary prohibition of relief to a guilty petitioner; it is manifestly contrary to law that a judicial discretion in favour of a litigant who has been guilty of adultery should be exercised when that course will probably encourage immorality: if the exercise is not unlikely to have that effect there is an argument against leniency. On the one hand condonation by a resp. of a petitioner's adultery is, though not so in the earlier time, admittedly now a ground for exercising the discretion; on the other hand, it is now a ground for refusing to exercise the discretion that the adultery of petitioner has in some serious degree conduced to that of resp. & conversely that a resp. should not escape the consequences of his or her proved adultery by putting forward similar acts of petitioner for which resp. was in any serious degree responsible. Further matters now considered are the interests of children, the position of a mother in whose care children are, & possible conditions as regards the future of the guilty parties. All these considerations are held to affect the interest of the community at large.—APTED *v.* APTED & BLISS, [1930] P. 246; 99 L. J. P. 73; 143 L. T. 353; 46 T. L. R. 456; 74 Sol. Jo. 338.

3455. *Add. Annotation:*—**Reld.** Apted *v.* Apted & Bliss, [1930] P. 246.

3456. *Add. Annotation:*—**Reld.** Apted *v.* Apted & Bliss, [1930] P. 246.

3459. *Add. Annotation:*—**Reld.** Apted *v.* Apted & Bliss, [1930] P. 246.

3459a. Regulated discretion to be exercised with method.]—APTED *v.* APTED & BLISS, No. 3449b, *ante*.

3462. *Add. Annotation:*—**Reld.** Apted *v.* Apted & Bliss, [1930] P. 246.

3463. *Add. Annotation:*—**Reld.** Apted *v.* Apted & Bliss, [1930] P. 246.

3469. *Add. Annotation:*—**Reld.** Apted *v.* Apted & Bliss, [1930] P. 246.

3470. *Add. Annotations:—As to* (1) **Folld.** L. *v.* L. [1931] P. 63. **Reld.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

3475a. ——.]—APTED *v.* APTED & BLISS, No. 3449b, *ante*.

3477. *Add. Annotation:*—**Reld.** Apted *v.* Apted & Bliss, [1930] P. 246.

3448 i. *Factors governing exercise of.*]—When it is admitted by petitioner that he has been guilty of adultery, the ct. will exercise its discretion in his favour in a case that comes clearly within the principles laid down in *Wilson* v. *Wilson*, No. 3448.—LAIRD *v.* LAIRD (1927), 38 B. C. R. 297.—**CAN.**

3448 ii. ——.]—A wife who was deserted by her husband, having reason to believe he was dead, married a second time. The first husband, turning up, petitioned for divorce. It appeared from the evidence that petitioner had been guilty of an infraction of substantially all the matters set out in Divorce & Matrimonial Causes Act, s. 16, & that the wife was a very deeply injured woman without a stain on her character:—*Held:* although there is power to refuse petitioner a decree, the judge's discretion is left unfettered & absolute by the legislature, & it is in the best interests of the wife, in the circumstances, to be set free; the marriage will, therefore, be dissolved on condition that petitioner gives security for the maintenance of resp. in the terms of sect. 17 of the statute.—HARNEY *v.* HARNEY (1926), 39 B. C. R. 275.—**CAN.**

3448 iii. ——.]—*Held:* even if the evidence against the pltf. justified the inference that he had committed adultery, the circumstances of the case, including the interests of pltf.'s child, warranted the ct. in exercising its judicial discretion in his favour.—WRIGHT *v.* WRIGHT, [1928] 1 D. L. R. 934; [1928] 1 W. W. R. 383.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 4.—D. (a) v.

3448 i. *Whether conclusive in favour of petitioner.*]—On a petition for dissolution of marriage under Divorce & Matrimonial Causes Amendment Act, 1920, s. 4, as amended by 1921–22 Act, s. 2 (1), where resp. proves to the ct.'s satisfaction that the separation was due to petitioner's adultery, resp. is entitled to rely on that adultery as a bar to petitioner's claim for relief, notwithstanding such adultery was condoned.—CHAPMAN *v.* CHAPMAN, [1926] N. Z. L. R. 291.—**N.Z.**

3484. *Add. Annotation :*—**Refd.** Apted *v.* Apted & Bliss, [1930] P. 246.

3486. For "**Coupled with discretion**" read "**Coupled with desertion.**"

3490. *Add. Annotation :*—**Refd.** Apted *v.* Apted & Bliss, [1930] P. 246.

3491. *Add. Annotation :*—**Consd.** Apted *v.* Apted & Bliss, [1930] P. 246.

3499a. ——.]—APTED *v.* APTED & BLISS, No. 3449b, *ante.*

3513a. Petitioner induced to believe in respondent's death.]—APTED *v.* APTED & BLISS, No. 3449b, *ante.*

3533. *Add. Annotation :*—**Refd.** Sloggett *v.* Sloggett, [1928] P. 148.

3537. *Add. Annotation :*—*As to* (1) **Apld.** O'Toole *v.* O'Toole (1926), 134 L. T. 542.

3539. *Add. Annotations :*—*As to* (2) **Refd.** Arnold & Weaver *v.* Amari, [1928] 1 K. B. 584. *Generally*, **Refd.** Welton *v.* Welton, [1927] P. 162.

3540. *Add. Annotation :*—**Refd.** Welton *v.* Welton, [1927] P. 162.

3545. *Add. Annotation :*—**Expld.** Apted *v.* Apted & Bliss, [1930] P. 246.

3559. *Add. Annotation :*—**Refd.** Welton *v.* Welton, [1927] P. 162.

3560. *Add. Annotation :*—**Refd.** Welton *v.* Welton, [1927] P. 162.

3569. *Add. Annotation :*—*As to* (1) **Refd.** Porter *v.* Porter (1928), 72 Sol. Jo. 826.

B. Indorsement of Notice to Appear
(Vol. XXVII., p. 375).

Add the following case :—

3635a. Form—Woman charged with adultery named in petition.]—(1) On a wife's petition for dissolution of marriage, which was undefended, a woman named in the petition as having committed adultery with the husband was ordered to pay costs.

(2) As the prayer in the petition contained a claim for costs against the woman named, in accordance with an instruction of the senior registrar, dated June 4, 1927, the notice indorsed on the copy of the petition served on the woman was in the form set out in Matrimonial Causes Rules, 1924, Appendix 1, in accordance with r. 2 of those rules, & the woman's name formed part of the title of the suit as resp.—DAVIS *v.* DAVIS & HELBING (1928), 138 L. T. 623.

3667. *Add. Annotation :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

3741. *Add. Annotation :* — **Folld.** Hinton *v.* Hinton & Spillett (1930), 46 T. L. R. 585.

3751a. —— —— —— ——.]—In a divorce case, where co-resp. has not appeared, & where the jury award damages in excess of the amount claimed, the claim should not be amended until a summons for leave to amend has been served on co-resp.—HINTON *v.* HINTON & SPILLETT (1930), 46 T. L. R. 585, C. A.

3770. *Add. Annotation :*—*As to* (2) **Consd.** Apted *v.* Apted & Bliss, [1930] P. 246.

PART XIII. SECT. 7, SUB-SECT. 4.—D. (a) vi.

3505 i. *Desertion by respondent—No excuse for petitioner's adultery—Bigamous marriage.*]—Bigamous adultery by a husband, in wholly inexcusable circumstances :—*Held :* a bar to a decree *nisi*, even though the adultery did not occur until three years after the wife's desertion, & could not be regarded as conducing to or excusing that desertion.—THOMAS *v.* THOMAS (No. 2), [1926] V. L. R. 206 ; 47 A. L. T. 158 ; [1926] Argus L. R. 186.—**AUS.**

3508 i. —— *Petitioner destitute.*]—A wife was deserted by her husband for four years & was forced by necessity & circumstances to become unchaste : —*Held :* her petition for divorce should be granted.—REBERIO *v.* REBERIO (1926), I. L. R. 54 Calc. 80.—**IND.**

3508 ii. —— ——.]—Where the husband treated the wife with great brutality & subsequently deserted her without making any provision for her maintenance or that of the surviving child of the marriage, & thereafter frequently visited brothels ; & the wife, driven desperate by want, & to maintain herself & her children, adopted the life of a prostitute, &, having saved some money, gave up the said mode of livelihood, & then filed a petition for the dissolution of her marriage, & in the pleading as well as at the trial did not conceal anything from the ct. :—*Held :* this was a fit case in which the ct. should exercise its discretion in favour of petitioner.—WILSON-DE-ROZE *v.* WILSON-DE-ROZE (1929), I. L. R. 57 Calc. 891.—**IND.**

3508 sa. *Respondent's conduct rendering home life unhappy.*]—Where a petitioner had made full disclosure of adultery committed by him with two women after conduct on the part of his wife which rendered his home life exceedingly unhappy, &, having two young children, was desirous of marrying again :—*Held :* in the particular circumstances disclosed, the discretion to grant a decree *nisi* for dissolution might be exercised in favour of the petitioner.—MURRAY *v.* MURRAY SMITH & HODGENS, [1928] S. A. S. R. 136.—**AUS.**

PART XIII. SECT. 8, SUB-SECT. 1.—D.

3508 sb. *How suit commenced—Necessity for writ of summons.*]—CALLANDER *v.* CALLANDER (Sask.), [1927] 3 W. W. R. 449.—**CAN.**

PART XIII. SECT. 8, SUB-SECT. 1.—F. (a).

3511 i. —— *Alternative claim for judicial separation.*]—In a suit by a wife for divorce it is not necessary, or indeed proper, to ask to have a separation agreement between the parties set aside, or to include an alternative claim for judicial separation.—CAMRUD *v.* CAMRUD (Sask.), [1927] 4 D. L. R. 365 ; [1927] 2 W. W. R. 759.—**CAN.**

3511 ii. —— *Allegation denying collusion — Unnecessary.*]—BABCOCK *v.* BABCOCK & KING (Sask.), [1929] 4 D. L. R. 372 ; 2 W. W. R. 533.—**CAN.**

3511 sc. *Any grounds may be adduced—Notwithstanding existence of other grounds.*]—It is open to petitioner to claim a dissolution of marriage on any authorised grounds which he can establish, & the fact that he may be entitled to the same relief upon other grounds is no reason for refusing relief on the ground set up.—CHAPLIN *v.* CHAPLIN (1929), S. A. S. R. 460.—**AUS.**

3511 sd. *By counterclaim—In action for alimony.*]—A claim for divorce may be set up by a counterclaim to an action for alimony.—SCHEERER *v.* SCHEERER, [1928] 1 W. W. R. 305 ; 22 Sask. L. R. 302.—**CAN.**

PART XIII. SECT. 8, SUB-SECT. 1.—F. (b).

3511 se. *Form of pleadings.*]—In Saskatchewan a claim for damages for criminal conversation may, under the exception provided for in K. B. Rule 600, be joined in an action for divorce, or in an action for judicial separation on the ground of adultery. For that purpose the necessary allegation of adultery in an action for divorce & a similar allegation in an action for judicial separation, followed by a claim for damages, is sufficient.—BABCOCK *v.* BABCOCK & KING (Sask.), [1929] 4 D. L. R. 372 ; 2 W. W. R. 533.—**CAN.**

PART XIII. SECT. 8, SUB-SECT. 2.

3511 sq. *Non-disclosure of acts of adultery—Nor of circumstances in which respondent left petitioner—Effect of.*]—A husband, who petitioned for divorce, on the ground of his wife's adultery, failed, in the affidavit in support of his petition, to disclose certain acts of adultery alleged by resp. against him, &, also, failed to disclose the circumstances in which resp. left him :—*Held :* the non-disclosure in the affidavit of these facts was, of itself, not a sufficient ground for dismissing the petition, but the petitioner should have been given an opportunity of explaining, if he were able, how the affidavit came to be drawn as it was.—MCKAY *v.* MCKAY, [1928] V. L. R. 6.—**AUS.**

3511 sr. — *Right to cross-examine petitioner as to—Evidence in disproof not already given.*]—Petitioner having failed to disclose, in his affidavit in support of his petition, acts of adultery alleged by his wife to have been committed by him, was cross-examined to show that he had committed such adultery : —*Held :* the witness, not having already given evidence in disproof of such alleged adultery, should not, by reason of Marriage Act, 1923, s. 8, have been asked such questions at that stage, unless previously warned that he was not bound to answer them. —MCKAY *v.* MCKAY, [1928] V. L. R. 6.—**AUS.**

3778a. Discontinuance by solicitor—Grounds for—Petitioner suing as poor person—Adultery induced by petitioner.]—This was a summons, adjourned into ct., by which the solrs. to whom the conduct of a poor person's divorce suit had been allocated by the Poor Persons' Committee of the Law Society sought to be relieved of their duty, with the approval of that committee. It was submitted on behalf of petitioner's solrs. that since the petition was filed in June 1929 there had been brought to their notice letters written by petitioner to his wife several years ago, which entitled them to discontinue to act. The registrar referred the summons to the judge, there being no precedent:—*Held:* the letters revealed had incited resp. to set up an adulterous intercourse & had not been disclaimed by petitioner. The order admitting the petitioner to sue as a poor person was discharged.—PINK *v.* PINK (1930), 142 L. T. 579; 46 T. L. R. 214; 74 Sol. Jo. 123.

3783a. Wife's petition—Woman charged with adultery added as respondent with husband.]—PEPPER *v.* PEPPER & BAKER, No. 4848a, *post*.

3825a. —— **When granted.**]—GLEED *v.* GLEED (1927), 43 T. L. R. 678; 71 Sol. Jo. 729.

3836. *Add. Annotation:*—*As to* (3) **Consd.** Townshend *v.* Child (1932), 48 T. L. R. 575.

3845. *Add. Citation:*—11 P. D. 150.

Add. Annotation:—**Consd.** Chalmers *v.* Chalmers, [1930] P. 154.

3859. *Add. Annotation:*—**Refd.** McCausland *v.* McCausland (1927), 43 T. L. R. 592.

3859a. —— ——.]—Where resp. is a minor, personal service of the petition on resp. is good service, & the appointment of a guardian *ad litem* is not necessary.—MCCAUSLAND *v.* MCCAUSLAND (1927), 96 L. J. P. 149; 137 L. T. 653; 43 T. L. R. 592; 71 Sol. Jo. 472.

3867. *Add. Annotations:*—**Apld.** Raeburn *v.* Raeburn (1928), 138 L. T. 672. **Consd.** Johnstone *v.* Johnstone, [1929] P. 165.

3955. *Add. Annotations:*—**Apprvd.** Johnstone *v.* Johnstone, [1929] P. 165. **Refd.** Shearn *v.* Shearn (1930), 143 L. T. 772.

3955a. Petition for judicial separation.]—A wife, who was domiciled in England before her marriage, petitioned for a judicial separation on the ground of the alleged adultery in Germany of her husband, a Spaniard. The husband entered an appearance under protest, & subsequently filed an Act on Petition. On the wife applying by summons asking that the Act on Petition should be struck out:—*Held:* the petition & Act on Petition should be tried together on oral evidence, &, further, an answer must be filed by the husband to the petition.—RIERA *v.* RIERA (1914), 112 L. T. 223; 31 T. L. R. 50; *sub nom.* RIEVA *v.* RIEVA, 59 Sol. Jo. 206.

4028a. —.]—PORTER *v.* PORTER (1928), 72 Sol. Jo. 826.

PART XIII. SECT. 8, SUB-SECT. 4.—D.

st. *Leave to sue in formâ pauperis—When granted.*]—COLERIDGE *v.* COLERIDGE (Man.), [1926] 2 D. L. R. 896; [1926] 1 W. W. R. 857.—**CAN.**

PART XIII. SECT. 8, SUB-SECT. 4.—E. (b) i.

sv. *Where uncorroborated affidavit of petitioner only evidence.*]—The ct. will not dispense with the co-respondent in a suit for dissolution of marriage on the uncorroborated affidavit of petitioner only.—SPARKES *v.* SPARKES, [1928] N. Z. L. R. 750.—**N.Z.**

PART XIII. SECT. 8, SUB-SECT. 4.—E. (c).

3826 i. *Where leave granted—Petition amended—Substituted service of notice of amendment—Advertisement.*]—When, on a petition for divorce, an order dispensing with the naming of a co-resp. has been made & for substituted service, & subsequently an appln. to amend the petition by adding a further charge of adultery was allowed, the ct. ordered that substituted service of the notice of amendment be served by registered post on an uncle of the petitioner, & that a notice that the petition had been amended be advertised, & enlarged the time for appearance, but were of opinion that no further order was necessary for leave to proceed without naming a co-resp.—MARTIN *v.* MARTIN, [1927] S. A. S. R. 363.—**AUS.**

PART XIII. SECT. 8, SUB-SECT. 4.—F. (a).

3836 i. *Position of intervener.*]—*Held:* a "party" within K. B. Rule 951.—BUSSELL *v.* BUSSELL & MCKENNA (No. 3), [1927] 3 W. W. R. 600.—**CAN.**

PART XIII. SECT. 8, SUB-SECT. 5.—B.

3853 ii. ——.]—Substitutional service in a divorce action effected in accordance with an order therefor regularly made is equivalent to personal service, & it is not necessary that actual notice of the proceedings should reach deft.—PARTINGTON *v.* PARTINGTON, [1925] 3 D. L. R. 1085; [1925] 2 W. W. R. 723; *revsg.*, 19 Sask. L. R. 402; [1925] 1 W. W. R. 1039.—**CAN.**

sw. *Personal service impossible.*]—DALE *v.* DALE, [1931] 4 D. L. R. 934.—**CAN.**

PART XIII. SECT. 8, SUB-SECT. 5.—D. (a).

sa. *Party must be ordinarily resident within province.*]—MCLEOD *v.* M[illegible] [1931] 1 W. W. R. 811.—**CAN.**

PART XIII. SECT. 8, SUB-SECT. 5.—E. (c) ii.

3909 i. *Service complete on proof of receipt by respondent.*]—SHERIFF *v.* SHERIFF, [1928] V. L. R. 585.—**AUS.**

PART XIII. SECT. 8, SUB-SECT. 5.—F.

3917 ii. —— *Sworn in England before commissioner for oaths—Admissibility.*]—An affidavit, purporting to be sworn in England before a person describing himself as a comr. for oaths, may be received in evidence of the facts deposed to therein in proof of service of the petition & citation in a divorce suit.—THOMAS *v.* THOMAS, [1926] V. L. R. 188; 47 A. L. T. 157; [1926] Argus L. R. 137.—**AUS.**

PART XIII. SECT. 8, SUB-SECT. 8.—A.

sw. *Right of intervener to.*]—B. *v.* B. & S. (B. C.), [1929] 4 D. L. R. 1069; 1 W. W. R. 916.—**CAN.**

PART XIII. SECT. 8, SUB-SECT. 8.—B.

sx. *Further & better particulars—When ordered.*]—Petitioner for divorce ordered, on motion of co-resp., to deliver further & better particulars of the dates & places when & where the acts of adultery mentioned in the petition were committed.—GUSHOWATY *v.* GUSHOWATY & JONES, [1925] 3 D. L. R. 436; [1925] 2 W. W. R. 238; 35 Man. L. R. 134.—**CAN.**

PART XIII. SECT. 8, SUB-SECT. 9.

sb. *Order for payment into court—Non-compliance by respondent—No ground for striking out pleadings.*]—MARSH *v.* MARSH, [1932] 1 W. W. R. 688.—**CAN.**

PART XIII. SECT. 8, SUB-SECT. 11.—A.

r i. —— *Adultery by both parties.*]—On the hearing of a petition & cross-petition for divorce it appeared that both the husband & wife had committed adultery:—*Held:* the wife's petition should be dismissed, but that the marriage should be dissolved on the husband's cross-petition.—S. *v.* S. (1927), 30 W. A. L. R. 40.—**AUS.**

PART XIII. SECT. 9, SUB-SECT. 1.—A.

sy. *Not local master.*]—In an action for judicial separation & alimony applications for *interim* alimony must be made to a judge in chambers; a local master has no jurisdiction to entertain them

Where an order for *interim* alimony has been made by a local master, such order is a nullity, but a judge in chambers has no jurisdiction to set it aside where the application to him is not by way of appeal.—VOLHOFFER *v.* VOLHOFFER, [1925] 3 D. L. R. 552; [1925] 2 W. W. R. 304; 19 Sask. L. R. 442.—**CAN.**

4063a. Under Judicature (Consolidation) Act, 1925 (c. 49), s. 190 (3).]—*Held:* (1) the effect of the above sub-sect. was not to confine the power of the ct. to make interim orders to cases in which the facts were such as would warrant the ct. in making an order in proceedings for judicial separation, but to confer on the ct. a general power to make interim orders of the same nature & class as could be made in properly instituted proceedings for judicial separation; (2) a wife found guilty of adultery in a suit for divorce brought by her husband, whose petition had been dismissed because by his conduct he conduced to her adultery, was a competent suitor for dissolution of marriage on the ground of her husband's adultery, &, if she presented a petition for divorce, the ct. had jurisdiction under the above sub-sect., in its discretion, to award her alimony *pendente lite;* (3) as the means of the wife were insufficient to support herself & her two children, she was entitled to alimony *pendente lite*, although the husband had contributed nothing towards her maintenance for seven years before the institution of the suit, & she had been able in some precarious fashion to maintain herself.—WELTON *v.* WELTON, [1927] P. 162; 96 L. J. P. 75; 136 L. T. 675; 43 T. L. R. 174; 71 Sol. Jo. 121, C. A.

4097. *Add. Annotation:*—**Distd.** Welton *v.* Welton, [1927] P. 162.

4098. *Add. Annotation:*—**Distd.** Welton *v.* Welton, [1927] P. 162.

4098a. -.]—WELTON *v.* WELTON, No. 4063a, *ante*.

4111. *Add. Annotation:—Generally,* **Refd.** Gilbey *v.* Gilbey, [1927] P. 197.

4131. *Add. Annotations:*—**Refd.** Capron *v.* Capron, [1927] P. 243; Burrowes *v.* Burrowes (1929), 141 L. T. 201.

4156. *Add. Annotation:*—**Consd.** M. *v.* M., [1928] P. 123.

4158. *Add. Annotation:*—**Refd.** Welton *v.* Welton (1926), 43 T. L. R. 161.

4171a. No jurisdiction to vary amount under Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49), s. 196.]—ABBOTT *v.* ABBOTT, No. 5405a, *post*.

4189a. In suit for judicial separation—Before decree nisi.]—The provision of alimony *pendente lite* is a privilege of the wife for her subsistence during the litigation; & a wife who has obtained a decree of judicial separation is not entitled to an allotment of alimony *pendente lite*, unless she has obtained an order for it before the decree, although she may have commenced proceedings earlier in the suit to obtain it.—M. *v.* M., [1928] P. 123; 97 L. J. P. 101; 138 L. T. 648; 44 T. L. R. 299; 72 Sol. Jo. 155.

4242. *Add. Annotation:*—**Refd.** *Re* Carroll (J. M.), [1931] 1 K. B. 317.

4244. *Add. Annotation:*—**Refd.** *Re* Carroll (J. M.), [1931] 1 K. B. 317.

4278. *Add. Annotation:—As to* (2) **Apld.** Williams *v.* Williams, [1929] P. 114.

4278a. —— —— When appeal lies.]—The principle that the ct. will provide for the wife's costs of a matrimonial suit originally arose from the fact that on her marriage her property passed to her husband, but it still obtains, though at the present day the question is whether as a litigant she has sufficient separate estate wherewith to pay the costs of a solr. The power of a registrar under Matrimonial Causes Rules, 1924, r. 91, to provide for the wife's costs is discretionary & not subject to review unless he has clearly proceeded on a basis which is wrong. He is entitled to take into consideration the capital & income of both parties & the nature & availability of it in arriving at a conclusion as to the "sufficient separate estate" of the wife within the rule. Among other matters the amount of an allowance under an existing deed of separation is a factor, although partly & primarily intended as an alimentary provision & not as a fund for defraying costs.—WILLIAMS *v.* WILLIAMS, [1929] P. 114; 98 L. J. P. 40; 140 L. T. 383; 45 T. L. R. 157; 73 Sol. Jo. 77.

4280a. —— ——.]—On a husband's petitioning for divorce on the ground of his wife's alleged adultery with a named co-resp., the paternity of a child being in dispute, the wife by her answer admitted the birth of the child, & she did not allege that petitioner was the father, but she denied adultery with co-resp. It was urged on behalf of petitioner that the pleadings showed that the wife had not a good ground for her defence so as to justify an order against her husband to secure her costs. In accordance with an offer made by petitioner an order was made for security to be given without payment into ct.—*Re* A. B.'s PETITION, [1928] P. 25; *sub nom.* S. *v.* S. & P., 97 L. J. P. 37; 138 L. T. 302; 44 T. L. R. 52; 72 Sol. Jo. 31.

sz. *Pending appeal.*]—The Ct. of Appeal of Saskatchewan has jurisdiction to make an order for the payment to a wife of interim alimony pending the disposition of her appeal from a decree *nisi* for divorce. Such an order should not be made where the wife has been found guilty of adultery, unless special circumstances are shown to exist in her favour. The better practice is for the wife to apply to the trial judge for the continuance of alimony pending the appeal; but if her application is made to the Ct. of Appeal it has the same power as the trial judge & the same right to exercise its discretion.—MILTON *v.* MILTON & COOK, [1930] 3 W. W. R. 324; [1931] 1 D. L. R. 387; 25 S. L. R. 192.—**CAN.**

PART XIII. SECT. 9, SUB-SECT. 1.—B. (c).

4086 iv. ——.]—An order for payment by deft. to pltf. in an action for alimony of *interim* alimony & disbursements was set aside, pltf. having means of her own ample for the purpose of maintaining herself & bringing the action to trial.—GIBBS *v.* GIBBS, [1925] 2 D. L. R. 880; 56 O. L. R. 614.—**CAN.**

PART XIII. SECT. 9, SUB-SECT. 1.—I. (d) i.

4214 i. *Evidence by affidavit — Limited to evidence filed with notice of motion.*]—MACKENZIE *v.* MACKENZIE, [1930] 3 W. W. R. 597.—**CAN.**

PART XIII. SECT. 9, SUB-SECT. 1.—K.

sa. *Modes of enforcement—Garnishee summons.*]—REDDICK *v.* REDDICK, [1930] 3 W. W. R. 502.—**CAN.**

PART XIII. SECT. 9, SUB-SECT. 5.—A.

sx. *Whether court can grant interim costs to wife.*]—There is no rule or practice in Alberta which permits the granting of interim costs to a wife in a divorce action.—ROUSSEAU *v.* ROUSSEAU, [1928] 3 D. L. R. 195; [1928] 2 W. W. R. 104; 23 Alta. L. R. 371.—**CAN.**

sy. ——.]—There is no rule or practice in Alberta authorising the granting of interim costs or an order for security for costs to a wife defending a divorce action, even though she has counterclaimed for alimony.—GUNDERSON *v.* GUNDERSON, [1930] 1 W. W. R. 715; 3 D. L. R. 152; 24 Alta. L. R. 435.—**CAN.**

PART XIII. SECT. 10, SUB-SECT. 1.—A

4308i. *Against whom order made—Not infant intervenor or his next friend.*]—RUSSELL *v.* RUSSELL & MCKENNA (Man.), [1927] 4 D. L. R. 403; [1927] 3 W. W. R. 144.—**CAN.**

.]—A husband cannot refuse to pay & give security for his wife's costs of divorce suit or issue as to domicil merely on the ground that he disputes the jurisdiction. A husband who appears under protest to a wife's petition & disputes the jurisdiction on the ground of his having a foreign domicil may be ordered to pay his wife's costs of suit up to the setting down of the issue & to give security for her costs attendant on the issue & down to the close of pleadings, on the ground *per* LORD HANWORTH, M.R., & LAWRENCE, L.J., that the ct. had jurisdiction to make the order under Matrimonial Causes Rules, 1924, r. 91; *per* GREER, L.J., that the ct. had inherent jurisdiction derived from the practice of the old Ecclesiastical Cts.—JOHNSTONE *v.* JOHNSTONE, [1929] P. 165; 98 L. J. P. 76; 140 L. T. 451, C. A.

4281b. —— Origin of principle.]—WILLIAMS *v.* WILLIAMS, No. 4278a, *ante*.

4293a. —— —— What must be considered.]—WILLIAMS *v.* WILLIAMS, No. 4278a, *ante*.

4296. *Add. Annotations:*—**Refd.** Welton *v.* Welton, [1927] P. 162; Arnold & Weaver *v.* Amari, [1928] 1 K. B. 584.

4305. *Add. Annotation:*—*As to* (3) **Refd.** Arnold & Weaver *v.* Amari, [1928] 1 K. B. 584.

4306. *Add. Annotation:*—**Refd.** Fanshawe *v.* Fanshawe, [1927] P. 238.

4307. *Add. Annotation:*—*As to* (1) **Refd.** Baldwin Raper *v.* Baldwin Raper & Metz (1926), 42 T. L. R. 619.

4313. *Add. Citations:*- -95 L. J. P. 18; 134 L. T. 414.

4342a. —— —— District registrar—Poor persons' suit commenced in district registry.]—In a poor persons' undefended nullity suit commenced in a district registry & determined on assize in accordance with the Matrimonial Causes at Assizes Order, 1922, the district registrar has authority to appoint medical inspectors in accordance with the practice of the Divorce Registry.—STROUD *v.* STROUD (OTHERWISE GRANTHAM) (1929), 45 T. L. R. 248; 73 Sol. Jo. 221.

4354a. "Discretion cases"—Adultery by petitioner—Insertion in defended list necessary.]—HOWELL *v.* HOWELL & DAVIDSON (1926), 42 T. L. R. 497.

4354b. —— Application to expedite trial—Grounds for refusing.]—The ct., on the ground of public policy, refused an application by a wife, petitioning for a divorce on the ground of her husband's adultery, that the trial of the suit in the undefended list might be expedited so that the decree might be made absolute, & resp. might marry the woman named in the petition, before the birth of a child expected to be born as the result of resp.'s relations with that woman.—P. *v.* P. (1927), 44 T. L. R. 114; 71 Sol. Jo. 964.

4355a. Condition precedent to setting down—Statement of grounds for exercise of discretion—Adultery of petitioner.]—APTED *v.* APTED & BLISS, No. 3449b, *ante*.

4378a. Degree of proof—Less than that required in prosecution for bigamy.]—SPIVACK *v.* SPIVACK, No. 453a, *ante*.

4406a. —— —— Substituted service of petition on

PART XIII. SECT. 10, SUB-SECT. 1.—C.

4325 i. *What interrogatories allowed—Relating to charge of adultery.*]—On an examination for discovery, in an action for judicial separation & alimony, deft. should not be required to answer questions intended to fasten responsibility on him for certain letters, where such letters tend to show that he has committed adultery.—LIGHTHEART *v.* LIGHTHEART (Sask.), [1926] 4 D. L. R. 885; [1926] 3 W. W. R. 494.—**CAN.**

4325 ii. —— ——.]—The interrogatories in question herein held to fall within the rule that the ct. should not order interrogatories in a petition for divorce where they can be material only in so far as they may tend to establish adultery.—BRAMMALL *v.* BRAMMALL (B. C.), [1929] 1 W. W. R. 800.—**CAN.**

PART XIII. SECT. 11, SUB-SECT. 1.

n i. ——.]—In an action for divorce if there is evidence, not open to exception, of admissions of adultery by the principal respondent it is the duty of the ct. to act on the admissions, even though there is no other evidence to support them. The ct. will act upon such uncorroborated evidence only if convinced that the admissions were in fact made and were genuine.—MONAGHAN *v.* MONAGHAN, [1930] 2 W. W. R. 748; 4 D. L. R. 1025; *revsd. on facts*, [1931] 2 W. W. R. 1; 2 D. L. R. 934.—**CAN.**

s i. ——.]—Pltf. in a divorce action in Alberta is not a compellable witness; &, if the evidence adduced establishes his or her case & does not also prove anything which is an absolute defence or which gives the ct. a discretion to refuse the decree, the decree must be granted although pltf. has not attended in person at the trial & the action is an undefended one.—EMENY *v.* EMENY (Alta.), [1930] 1 D. L. R. 253; [1929] 3 W. W. R. 577; 24 Alta. L. R. 303.—**CAN.**

s ii. ——.]—It is incumbent on a petitioner for divorce, even in an undefended proceeding, to fully establish the case & reveal all material facts; & he may be required to attend personally at the hearing.—BAILEY *v.* BAILEY (Man.), [1929] 4 D. L. R. 1068; 1 W. W. R. 708.—**CAN.**

sy. *Necessity for preponderance of evidence—Effect of declaration of no intention to remarry.*]—In a divorce action the rule as to the preponderance of evidence in civil actions should not be weakened, but the evidence required to establish pltf.'s case should be, if anything, stronger & more preponderating than in other actions. Pltf. in a divorce action who proves a case entitling him to a divorce is not prejudiced or deprived of his right to the divorce because he declares that if he gets it he does not intend to remarry.—LEBOEUF *v.* LEBOEUF & GERMAIN, [1928] 2 D. L. R. 23; [1928] 1 W. W. R. 423; 23 Alta. L. R. 328.—**CAN.**

PART XIII. SECT. 11, SUB-SECT. 2.

4376 i. *Whether formal proof essential—Suit for dissolution—Damages claimed against co-respondent.*]—Where on a petition for divorce damages are claimed against co-resp. *primâ facie* proof of marriage, if not rebutted, is sufficient to meet the strictness of proof required in the criminal conversation phase of the proceedings.—KNIGHT *v.* KNIGHT & OWENS, [1925] 2 D. L. R. 467; [1925] 1 W. W. R. 824.—**CAN.**

PART XIII. SECT. 11, SUB-SECT. 3.—A.

4381 iii. ——.]—Sects. 51 & 52 of the Indian Divorce Act contain the law upon the question whether a resp. or co-resp. can give evidence against themselves of adultery.—BONHIEM *v.* KA TROLIMON (1929), I. L. R. 57 Calc. 1159.—**IND.**

sz. *Whether respondent can be examined for discovery.*]—MYRLOWYSZ *v.* MYRLOWYSZ, [1930] 3 W. W. R. 83; [1931] 1 D. L. R. 154.—**CAN.**

PART XIII. SECT. 11, SUB-SECT. 3.—B. (b).

4384 i. *"Proceeding instituted in consequence of adultery"—Suit for nullity.*]—In a suit for nullity petitioner may be compelled to answer questions tending to show that he has committed adultery.—W. *v.* W., [1926] S. A. S. R. 425.—**AUS.**

PART XIII. SECT. 11, SUB-SECT. 5.

h i. —— ——.]—In a suit by a husband for divorce, letters written by the wife to co-resp., but not delivered to him, are not made evidence of adultery admissible against co-resp. by Ceylon Evidence Ordinance, 1895, s. 9. The fact that co-resp.'s counsel has based questions in cross-examination upon the contents of the letters, which had properly been admitted as evidence against the wife, does not make the letters evidence against co-resp.—GABRIEL *v.* ELIATAMBY, [1926] A. C. 133; 95 L. J. P. C. 9; 134 L. T. 200.—**CEYLON.**

h ii. —— *Letters to husband from alleged adulterers Taken from husband's desk by wife.*]—*Held:* admissible.—LIGHTHEART *v.* LIGHTHEART, [1927] 1 D. L. R. 386; [1927] 1 W. W. R. 393; 21 Sask. L. R. 300.—**CAN.**

m i. —— ——.]—The pursuer in an action of divorce for adultery, instituted in 1923, reclaimed against an interlocutor, pronounced in 1927, which assoilzied defender & co-defender.

respondent & co-respondent.]—TUTT *v.* TUTT & WOOD (1928), 165 L. T. Jo. 55.

4422. *Add. Annotation :*—**Distd.** Preger *v.* Preger (1926), 134 L. T. 670.

4427. *Add. Citation :*—11 W. R. 85.

4434. *Add. Annotation :*—**Refd.** Capron *v.* Capron, [1927] P. 243.

4439. *Add. Annotation :*—**Consd.** Cavendish *v.* Cavendish, [1926] P. 10.

4442. *Add. Annotation :*—**Refd.** Bosworthick *v.* Bosworthick, [1927] P. 64.

4447a. ——.]—In undefended petitions for divorce the ct. should not be asked to act on evidence identifying resp. by photograph when personal identification by witnesses could easily have been effected.—PRACTICE NOTE (1925), 159 L. T. Jo. 95.

4481a. ——.]—WILSON *v.* WILSON & BERRY (1929), 73 Sol. Jo. 284.

4543. *Add. Annotation :*—**Consd.** Grist *v.* Grist, [1932] P. 1.

4544. *Add. Annotation :*—**Consd.** Grist *v.* Grist, [1932] P. 1.

4554. *Add. Annotation :*—**Consd.** Grist *v.* Grist, [1932] P. 1.

4556. *Add. Annotation :*—**Consd.** Grist *v.* Grist, [1932] P. 1.

4577. *Add. Annotation :*—**Expld.** Beaumont *v.* Beaumont (1932), 48 T. L. R. 431.

4577a. —— —— ——.]—After abatement of a divorce suit by reason of the death of the husband before trial, the fund lodged in ct. by the husband as security for his wife's costs of the hearing is not available to the wife for her costs on taxation, nor can it be paid out to the solrs. for the wife even on their undertaking to pay to the personal representative of the husband any balance of the fund in ct. over & above the amount found due to the solrs. of the wife on taxation.—BEAUMONT *v.* BEAUMONT, [1932] P. 158; 101 L. J. P. 31; 147 L. T. 119; 48 T. L. R. 431; 76 Sol. Jo. 593; *revsd.* 49 T. L. R. 35, C. A.

4577b. —— —— —— **Motion for directions.**]—BEAUMONT *v.* BEAUMONT (No. 2), [1932] P. 163, n.; 147 L. T. 260; 48 T. L. R. 535; *revsd.* 49 T. L. R. 35, C. A.

4578. *Add. Annotation :*—**Consd.** Beaumont *v.* Beaumont (1932), 48 T. L. R. 431.

4579. *Add. Annotation :*—**Consd.** Beaumont *v.* Beaumont (1932), 48 T. L. R. 431.

4609. *Add. Annotation :*—*As to* (1) **Consd.** Wright (H. S.) & Webb *v.* Annandale, [1930] 2 K. B. 8.

4636. *Add. Annotation :*—**Refd.** Sloggett *v.* Sloggett, [1928] P. 148.

Before the case was put out for hearing in the Inner House, pursuer presented a note, in which she asked leave to amend her record, & to lead evidence regarding certain incidents which occurred in 1925, for the purpose of throwing light upon the relations of defender & co-defender prior to the date of the action. The ct. in the exercise of its discretion, granted the leave craved.—ROSS *v.* ROSS, [1928] S. C. (Ct. of Sess.) 600.—**SCOT.**

sz. *Admissions — Of adultery — By wife — Bastardising offspring.*]—Admissions by a wife, that the father of a child born to her during the marriage was not her husband :—*Held :* receivable in evidence, so far as they did not relate to non-access.—JUSTICE *v.* JUSTICE, [1925] S. A. S. R. 278.—**AUS.**

PART XIII. SECT. 11, SUB-SECT. 12.

4456 ii. —— ——.]—DAHLBERG *v.* SWANSON, [1927] 3 D. L. R. 669; [1927] 1 W. W. R. 617; 21 Sask. L. R. 388.—**CAN.**

PART XIII. SECT. 12, SUB-SECT. 1.

sa. *Discretion of Court of Appeal.*]—In an undefended divorce action leave to adduce affidavit evidence of adultery may properly be granted when special circumstances are shown to exist, as when the essential witnesses reside outside the province & it is shown that pltf. is unable because of lack of means to pay the expenses of a commission or of obtaining their attendance at the trial. On an application for such leave each judge in Chambers has to exercise his own discretion, having regard to the relevant facts of the case before him. Where he declines to exercise that discretion, or acts on a wrong principle or on wrong grounds when exercising it, the Ct. of Appeal must bring its own discretion to bear on the question whether the leave should be granted or refused.—WOOD *v.* WOOD, [1931] 2 W. W. R. 190; *revsg.*, [1931] 1 W. W. R. 112; 25 S. L. R. 172.—**CAN.**

PART XIII. SECT. 12, SUB-SECT. 2. —A.

4480 i. *When parties abroad—Petitioner unable to afford commission.*]—In view of the special circumstances of the present undefended action for divorce & the nature of the evidence sought to be adduced by the affidavits in question, held that the case was a proper one in which to allow pltf. to give affidavits evidence of adultery. The witnesses were all living in England & pltf. had not the means to enable her to secure their attendance or to meet the expense of obtaining their evidence by commission.—RICE *v.* RICE & PRESCOTT, [1929] 2 D. L. R. 345; 1 W. W. R. 713; 23 S. L. R. 484.—**CAN.**

PART XIII. SECT. 12, SUB-SECT. 3.

sc. *Delay making impossible legitimation of child.*]—In support of an application for leave to use as evidence an affidavit of a medical practitioner residing in Capetown testifying to deft.'s condition of pregnancy, it was urged that the delay which would be consequent upon having the evidence taken on commission might make impossible the legitimation of a child expected to be born to deft. in about three months' time :—*Held :* the affidavit be accepted as evidence.—HUSBAND *v.* WIFE, [1931] N. L. R. 300.—**S. AF.**

PART XIII. SECT. 13, SUB-SECT. 1.

sc. *Appeal from order.*]—Leave to appeal from order of judge in chambers, sitting in appeal from a master, should be granted, commission evidence being a matter of grave doubt & importance.—D. *v.* D., [1931] O. R. 804.—**CAN.**

PART XIII. SECT. 13, SUB-SECT. 3.

4508 i. *Witness out of the jurisdiction.*]—*Held :* in an action of divorce under the provisions of Conjugal Rights (Scotland) Amendment Act, 1861, s. 13, & Evidence (Scotland) Act, 1866, s. 2, it was within the competence of the Lord Ordinary to grant a commission to examine witnesses in England, even though the evidence of these witnesses might, apart from the pursuer's own evidence, be substantially the whole evidence adduced in the case; &, in accordance with established practice, the poverty of the pursuer was *per se* a special cause within Evidence Act, 1866, s. 2, for granting such a commission.—LAWSON *v.* LAWSON, [1930] S. C. 18.—**SCOT.**

PART XIII. SECT. 15, SUB-SECT. 2.—A.

g i. —— *Withdrawal at trial—Order directing husband to pay interim costs not affected.*]—CAMRUD *v.* CAMRUD (Sask.), [1927] 4 D. L. R. 365; [1927] 2 W. W. R. 759.—**CAN.**

PART XIII. SECT. 16, SUB-SECT. 1. —B.

sr. *Charge of adultery—General rule.*]—Under Divorce & Matrimonial Causes Act, 1908, r. 52, where the relief sought in a defended cause is grounded upon adultery, there is no absolute right to either party to have the case tried before a jury, but there is a primary right to have the case set down for trial before a judge & jury. On an application "for trial otherwise" under the rule, if either party desires that the issue be tried before a jury, the ct. should, as a general rule, refuse to make an order for trial otherwise than before a jury.—ELLIOTT *v.* ELLIOTT, [1932] N. Z. L. R. 484.—**N.Z.**

st. —— *Conduct conducing to.*]—In a suit for divorce on the ground of adultery, the ct. has a discretion, under sect. 161 of Marriage Act, 1915, as to whether the issue raised by an allegation in resp.'s answer that petitioner was guilty of wilful neglect or misconduct conducing to the adultery should be tried by a jury.—LACK *v.* LACK, [1931] V. L. R. 72; Argus L. R. 21.—**AUS.**

sv. —— ——.]—In a suit for divorce on the ground of adultery, questions whether the petitioner connived at, or condoned, or was guilty of conduct which conduced to, the adultery alleged, are not "matters of fact in relation to" the charge of adultery within sect. 79 (3) of Marriage Act, 1928, & the parties are, therefore, not entitled as of right to have such questions submitted to a jury.—CLARKE *v.* CLARKE, [1931] V. L. R. 69; Argus L. R. 20.—**AUS.**

4640a. **Cruelty.**]—There is now no statutory right of a party to a matrimonial suit to insist on the trial of any issue of fact by a jury. On a petition by a husband seeking dissolution of marriage on the ground of the alleged adultery of resp. wife with the co-resp., resp. counter-charged petitioner with cruelty & prayed a judicial separation. An order having been made for the trial by a jury of the issue of adultery, the Ct. of Appeal refused to extend the order to include the issue of cruelty.—RUGG-GUNN *v.* RUGG-GUNN & ARCHER, [1931] P. 147; 100 L. J. P. 61; 145 L. T. 200; 47 T. L. R. 398; 75 Sol. Jo. 424, C. A.; *affg.*, S. C. *sub nom.* R. G. *v.* R. G. & A., 47 T. L. R. 370.

Annotation :—**Consd.** Croker *v.* Croker (1932), 48 T. L. R. 597.

4650. *Add. Annotation :—As to* (1) **Refd.** Statham *v.* Statham, [1929] P. 131.

4676. *Add. Annotation :—Generally,* **Refd.** Place *v.* Searle (1932), 48 T. L. R. 428.

B. By Whom Assessed (Vol. XXVII., p. 452).

After the cross-reference add as follows :—

4677a. By court.]—The ct. has power to direct that damages shall be assessed by a judge alone, unless one of the parties applies for trial by jury. The practice is now regulated by R. S. C., Ord. 36, rr. 2–6, & Matrimonial Causes Rules, 1924, r. 30 (*b*).—BEDFORD *v.* BEDFORD & POWDRILL (1926), 96 L. J. P. 22; 136 L. T. 383.

4746. *Add. Annotation :—Generally,* **Refd.** Bosworthick *v.* Bosworthick, [1927] P. 64.

4750a. Disagreement of jury—Refusal to enter verdict.]—WAUDBY *v.* WAUDBY & BOWLAND, No. 4836a, *post.*

4752a. —— **Void second marriage—Reference in decree nisi dissolving first marriage refused.**]—HEWETT *v.* HEWETT & DUPIN (1929), 73 Sol. Jo. 402.

4763a. —— —— **As res judicata.**]—(1) A finding of adultery as a fact on which a decree *nisi* has proceeded is not *res judicata,* so that it cannot subsequently be questioned in the Divorce Div. in any event, nor is resort to the Ct. of Appeal the only means of reviewing it. The decree *nisi* resembles any other order *nisi* in that it proceeds merely upon the materials before the ct. at the time of its pronouncement & cause can be shown against it being made absolute. (2) The King's Proctor, not being a party to the suit as originally constituted, cannot resort to the Ct. of Appeal, but if he comes to the conclusion that the decree has been obtained contrary to the justice of the case he must intervene & show cause against making the decree absolute. For that purpose he may call fresh evidence to show that there has been no adultery notwithstanding the previous finding in the affirmative.—CHALMERS *v.* CHALMERS, [1930] P. 154; 99 L. J. P. 60; 142 L. T. 654; 46 T. L. R. 269; 74 Sol. Jo. 216.

4767a. —— **Effect of—On status of parties.**]—A decree for restitution of conjugal rights with the usual finding that the parties to the suit are husband & wife, though it may not directly affect their status, nevertheless proceeds upon the basis of their status being thus conclusively established *inter partes.* Resp. in a suit for restitution of conjugal rights, who does not resist such a finding, cannot afterwards dispute the validity of the marriage of the parties. A subsequent suit for nullity of the marriage, in which bigamy is alleged to have been in fact committed by one of the parties to it, does not, after this finding of its validity as between them, afford any exception to the general rule of estoppel.—WOODLAND *v.* WOODLAND (OTHERWISE BELIN OR BARTON), [1928] P. 169; 97 L. J. P. 92; 139 L. T. 262; 44 T. L. R. 495; 72 Sol. Jo. 303.

Annotation :—**Refd.** Papadopoulos *v.* Papadopoulos, [1930] P. 55.

4773a. ——.]—Where there has been, in fact, a ceremony of marriage & there is issue, although the marriage be afterwards declared null & void, the ct. has jurisdiction, on pronouncing the decree of nullity, to make an order for the custody of the child or children of the union under the terms of Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49), s. 193, & not merely an order for its, or their, care & control.—LE MESURIER (OTHERWISE GORDON) *v.* LE MESURIER (1930), 99 L. J. P. 33; 142 L. T. 496; 46 T. L. R. 203; 74 Sol. Jo. 77.

4776a. Exclusive jurisdiction of Divorce Division.]—After a decree absolute an application was made to justices under the Guardianship of Infants Acts, 1886 & 1925, for the custody of

PART XIII. SECT. 16, SUB-SECT. 5.—A.

4676 i. *General rule.*]—The factors to be considered in granting damages against co-resp. are (1) the actual value of the wife to the husband; (2) the injury to his feelings, the blow to his marital honour & the hurt to his matrimonial & family life.—HAYNES *v.* HAYNES (Sask.), [1926] 4 D. L. R. 473; [1926] 2 W. W. R. 726.—**CAN.**

PART XIII. SECT. 16, SUB-SECT. 5.—B.

sb. *By jury.*]—It is not the law in Saskatchewan that damages against co-resp. must be assessed by a jury.—RIDER *v.* RIDER, [1925] 3 D. L. R. 370; [1925] 1 W. W. R. 1051; 19 Sask. L. R. 384.—**CAN.**

PART XIII. SECT. 16, SUB-SECT. 5.—D. (b).

4685 i. *Not punitive.*]—RIDER *v.* RIDER, [1925] 3 D. L. R. 370; [1925] 1 W. W. R. 1051; 19 Sask. L. R. 384.—**CAN.**

4685 ii. ——.]—TRANTER *v.* TRANTER & LAMB, [1925] N. Z. L. R. 593.—**N.Z.**

PART XIII. SECT. 16, SUB-SECT. 5.—D. (c).

4690 i. *Whether bar to claim for damages—Illicit relationship continued after knowledge.*]—Co-resp.'s conduct in continuing adulterous relations with resp. after he became aware that she was married :—*Held :* to deprive him of any protection with respect to immunity from damages to which his prior ignorance of her married state might have entitled him.—HAYNES *v.* HAYNES (Sask.), [1926] 4 D. L. R. 473; [1926] 2 W. W. R. 726.—**CAN.**

PART XIII. SECT. 17, SUB-SECT. 2.

4758 i. *Decree nisi—Effect of—On status of parties—Marriage undissolved.*]—A decree *nisi* in a suit for divorce does not sever the marriage tie.—WRIGHT (OTHERWISE HARRISON) *v.* HARRISON, [1932] 1 W. W. R. 592.—**CAN.**

a i. —— *Granted when divorce decree refused.*]—Although a claim for divorce is withdrawn at the trial, pltf. is entitled to judicial separation where the evidence warrants the granting of it & justifies the ct. in disregarding a separation agreement between the parties.—CAMRUD *v.* CAMRUD (Sask.), [1927] 4 D. L. R. 365; [1927] 2 W. W. R. 759.—**CAN.**

b i. —— —— *Action for nullity.*]—The requirement as to delivery of a judgment *nisi* in an action for annulment of marriage was not introduced into Ontario by Divorce Act (Ont.), 1930 (Can.), nor as a matter of practice by the Divorce Rules.—WALKER *v.* WALKER, [1932] 1 D. L. R. 380; O. R. 69.—**CAN.**

c i. —— *Necessity for service.*]—A decree *nisi* in a divorce action should be promptly issued & served, whether it contains any special terms or not.—OLIVER *v.* OLIVER, [1928] 4 D. L. R. 566; [1928] 3 W. W. R. 33.—**CAN.**

a child which was refused as being a matter which would more conveniently be dealt with by the High Ct. A further application was made to a differently constituted Bench when an Order was made:—*Held:* (1) the second application was *res judicata;* (2) the jurisdiction of the Divorce Ct. was exclusive. —R. *v.* MIDDLESEX JUSTICES, *Ex p.* BOND (1932), 49 T. L. R. 18; 30 L. G. R. 498, D. C.

4790. *Add. Annotations:*—**Reld.** Bosworthick *v.* Bosworthick, [1927] P. 64; Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

4813a. Refusal of application—Further application —Res judicata.]—R. *v.* MIDDLESEX JUSTICES, *Ex p.* BOND, No. 4776a, *ante.*

4836a. —— Abortive trial—Discretion to make no order "at present."]—A husband filed a petition for divorce, alleging adultery by his wife with a co-resp. The wife filed a cross-petition for judicial separation, alleging adultery & cruelty on the part of the husband, to which he pleaded condonation. At the trial the jury disagreed as to the wife's adultery, & as to condonation by her, but signified, without returning a formal verdict, that they were prepared to find both adultery & cruelty on the part of the husband. The judge at the trial declined to enter any verdict. The Ct. of Appeal refused to do otherwise. On an application by the wife for her costs of the abortive trial, the judge refused to make any order at that stage in the proceedings:—*Held:* the refusal at that stage was a matter for the discretion of the judge, with which the Ct. of Appeal would not interfere.—WAUDBY *v.* WAUDBY & BOWLAND (1901), 84 L. T. 829; 17 T. L. R. 620; 45 Sol. Jo. 615, C. A.

Annotation:—**Apprvd.** Grist *v.* Grist, [1932] P. 1.

4836b. -.]—Notwithstanding the general rule that in proceedings between husband & wife the latter is entitled to her costs of an abortive trial before further proceedings are brought, the ct. in its discretion is entitled in such a case to reserve its decision & to say that it will make no order as to costs "at present."—GRIST *v.* GRIST, [1932] P. 1; 101 L. J. P. 1; 146 L. T. 82; 48 T. L. R. 2; 75 Sol. Jo. 725, C. A.

4837. *Add. Annotation:*—*As to* (2) **Reld.** Darnborough *v.* Darnborough & Smith, Clare Intervening (1926), 96 L. J. P. 24.

4845. *Add. Annotation:*—**Reld.** Capron *v.* Capron, [1927] P. 243.

4848a. —— Wife's petition—Woman charged with adultery added as respondent.]—If, in a wife's suit for divorce, the married woman with whom the husband is alleged to have committed adultery is made a resp. in the suit by an order made on summons under Jud. (Consolidation) Act, 1925 (c. 49), s. 177 (2), the ct. has power to award costs against both resps., but, as regards the married woman, limited to her separate estate.—PEPPER *v.* PEPPER & BAKER (1926), 96 L. J. P. 17; 136 L. T. 224; 43 T. L. R. 1.

4848b. —— —— ——.]—DAVIS *v.* DAVIS & HELBING, No. 3635a, *ante.*

4864a. —— Abortive trial.]—GRIST *v.* GRIST, No. 4836a, *ante.*

4866. For first catchword "——," read "**Petition successful.**"

4873a. —— —— ——.]—P. *v.* P. (1929), 73 Sol. Jo. 144.

4879a. —— ——.]—Although, if costs have been reasonably incurred on a wife's behalf in presenting a case of a reasonable character on a divorce petition, she is allowed her costs even if she fails, yet, if she presents a petition which ought never to have been brought, the judge has a discretion, in dismissing the petition, to refuse to grant her any costs except such as, under the procedure of the ct., she has already received before the hearing.—COURAGE *v.* COURAGE (1931), 47 T. L. R. 395, C. A.

Annotation:—**Consd.** Grist *v.* Grist, [1932] P. 1.

4882a. -.]—Where a wife's petition is dismissed, the facts that security for the wife's costs has been ordered, & that the conduct of the wife's solr. is not open to censure, do not deprive the ct. of its discretion to give costs or to refuse them to the wife or to give costs against the wife.—BALDWIN RAPER *v.* BALDWIN RAPER & METZ, BALDWIN RAPER *v.* BALDWIN RAPER (1926), 42 T. L. R. 619.

4884. *Add. Annotation:*—*As to* (1) **Reld.** Welton *v.* Welton, [1927] P. 162.

4906. *Add. Annotation:*—**Consd.** Grist *v.* Grist, [1932] P. 1.

4909a. —— To secure wife's costs—Undefended petition by wife—Subsequent defence on admission of adultery by wife.]—On the abandonment by a wife of her prayer in a petition for the dissolution of her marriage,

PART XIII. SECT. 18, SUB-SECT. 3.—B.

r i. —— —— ——.]—Although the question of costs is within the discretion of the ct., it seems to be a rule of practice that a wife found guilty of adultery who unsuccessfully appeals against the judgment should not get her costs of such appeal unless she shows special circumstances.—WHARTON *v.* WHARTON & YOUNG, [1928] S. R. Q. 251.—**AUS.**

r ii. —— *Dismissal of suit on ground of absence of jurisdiction.*]—*Held:* it was not competent to award expenses to a wife, where the suit had been dismissed on the ground that the ct. had no jurisdiction, & the husband had not appeared to defend.—KELLY *v.* KELLY, [1928] S. C. 43.—**SCOT.**

s i. —— —— *Frivolous charges.*]—A petition by a wife for judicial separation on the ground of cruelty having been dismissed as frivolous & vexatious:—*Held:* in the exercise of the ct.'s discretion, petitioner should not be awarded any costs.—CHRUSZCZ *v.* CHRUSZCZ, [1931] 1 W. W. R. 94; 39 Man. L. R. 372.—**CAN.**

s ii. *Discretion of judge.*]—The general rule governing the exercise of the trial judge's discretion under K. B. rule 623 to award costs to a wife who has unsuccessfully prosecuted a matrimonial action is that she is entitled to costs unless in his opinion her solr. had not reasonable grounds for believing that he was prosecuting a just cause. *Semble:* there should be an exception where the wife is possessed of a separate estate. The discretion given the trial judge by rule 623 to award costs to an unsuccessful wife is not dependent upon costs having been paid or secured to her under the provisions of K. B. rule 622.—HORNBY *v.* HORNBY (Sask.), [1929] 4 D. L. R. 406; 2 W. W. R. 625.—**CAN.**

PART XIII. SECT. 18, SUB-SECT. 3.—C. (b).

t i. -.]—Although a divorce petition by a husband is decided in his favour, the wife is entitled to her costs, if she has had them secured & her defence has been *bonâ fide.*—KNIGHT *v.* KNIGHT & OWENS, [1925] 2 D. L. R. 467; [1925] 1 W. W. R. 824.—**CAN.**

b i. —— *Costs not secured.*]—A wife who is unsuccessful in defending a divorce action is not entitled to costs where she has not had them secured.—JOHNSON *v.* JOHNSON & ERICKSEN, [1928] 3 W. W. R. 574.—**CAN.**

b ii. ——.]—It is not a fixed principle in divorce actions that a wife guilty of adultery cannot recover any costs against her husband.—DICKIE *v.* DICKIE, [1931] 2 W. W. R. 463; 3 D. L. R. 110.—**CAN**

which petition was originally undefended, her husband, by leave, filed an answer alleging adultery admitted by his wife as her reason for having her prayer struck out. The registrar refused to make an order for securing the wife's costs on the fact of the wife's admission being brought to his notice. At the trial of the suit on the husband's prayer the ct. granted the husband a decree *nisi* & made an order for the wife's costs " in the ordinary way." A difficulty arose in the interpretation of the order, inasmuch as the usual order for security had not been made :— *Held :* though solrs. acting for a wife must avail themselves of the rules in the divorce jurisdiction for securing payment of the wife's costs from the husband, in this case the husband, until his wife's admission of adultery, had desired the success of his wife's suit, & therefore the ct. directed, in the exercise of its discretion, that the husband must pay his wife's costs properly incurred up to service of the summons for leave to file an answer.—GODDARD *v.* GODDARD (1929), 140 L. T. 472 ; 45 T. L. R. 229 ; 73 Sol. Jo. 174.

4910. *Add. Annotation :*—**Consd.** Courage *v.* Courage (1931), 47 T. L. R. 395.

4918. *Add. Annotation :*—**Consd.** Johnstone *v.* Johnstone, [1929] P. 165.

4926a. —— —— ——.]—DAVIS *v.* DAVIS (1930), 74 Sol. Jo. 123.

4960. *Add. Annotations :*—**Expld.** P. *v.* P. (1929), 73 Sol. Jo. 144. **Consd.** Courage *v.* Courage (1931), 47 T. L. R. 395 ; Grist *v.* Grist, [1932] P. 1.

4985. *Add. Annotations :—As to* (2) **Folld.** Earl *v.* Earl & Kyle (1926), 96 L. J. P. 23. **Refd.** Horwood *v.* Statesman Publishing Co. (1929), 98 L. J. K. B. 450.

4985a. —— —— ——.]—Where an order has been made " consolidating " a husband's petition for dissolution on the ground of his wife's adultery with the wife's cross petition for dissolution on the ground of the husband's cruelty & adultery, & the two suits have been tried together, the ct. has no power under Jud. (Consolidation) Act, 1925 (c. 49), s. 50, to order co-resp. to pay the costs of the wife's suit to which he was not a " party." —EARL *v.* EARL & KYLE, EARL *v.* EARL (1926), 96 L. J. P. 23 ; 136 L. T. 383.

4985b. Cross charges by wife.]—If a wife makes cross charges of cruelty & of adultery with a named woman against a husband in her answer to his petition for dissolution of marriage & the cross charges fail, the woman intervening being dismissed from the suit with costs & the husband being granted a decree *nisi*, there is one proceeding only, & co-resp. can be condemned in the whole of the costs, including those of the intervener. —DARNBOROUGH *v.* DARNBOROUGH & SMITH (1926), 96 L. J. P. 24 ; 136 L. T. 384.

5049a. —— **Not cited—Same name as person cited.**]—In this petition by a wife for divorce a woman intervened who had not been served with the petition & against whom there was no charge, though her name was the same as that attributed in the petition to the woman actually cited. The ct. refused to allow the intervener her costs.—DARNBOROUGH *v.* DARNBOROUGH (1929), 141 L. T. 610 ; 45 T. L. R. 603 ; 73 Sol. Jo. 514.

5050a. —— —— **Profit costs—When ordered.**]—GRIBBLE *v.* GRIBBLE (1929), 45 T. L. R. 192 ; 73 Sol. Jo. 61.

5067. *Add. Annotation :*—**Refd.** Sloggett *v.* Sloggett, [1928] P. 148.

5068. *Add. Annotations :*—**Consd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416. **Refd.** Statham *v.* Statham, [1929] P. 131.

5068a. —— **Time for investigations not limited.**]—MACKENZIE *v.* MACKENZIE (1928), 72 Sol. Jo. 400.

5070. *Add. Annotation :*—**Consd.** Sloggett *v.* Sloggett, [1928] P. 148.

5074. *Add. Annotation :*—**Refd.** Sloggett *v.* Sloggett, [1928] P. 148.

PART XIII. SECT. 18, SUB-SECT. 3.—D.

4910 i. *Disallowance of wife's costs—Misconduct of solicitor.*]—It is not a sufficient ground for refusing to make an order against a husband for the payment of his wife's costs of a suit for divorce, whether she be petitioner or resp., that she had been unsuccessful. The true tests is whether her solr. has been guilty of improper conduct in initiating or defending the suit on her behalf.—STRATTON *v.* STRATTON & PARKYN, [1928] S. A. S. R. 245.—**AUS.**

PART XIII. SECT. 18, SUB-SECT. 3.—E. (b).

4918 i. *Possession of separate property entails liability.*]—ELMAN *v.* ELMAN, [1930] 2 W. W. R. 295 ; 3 D. L. R. 1002.—**CAN.**

4918 ii. ——.]—As between the husband & the wife, in a matrimonial suit, there is no real reason why the wife should not be made to pay to her husband the costs, which her conduct has occasioned to her husband, if she has the money to do so.—FORRESTER *v.* FORRESTER (1930), I. L. R. 57 Calc. 1350.—**IND.**

PART XIII. SECT. 18, SUB-SECT. 3.—F. (c).

4953 i. *Petition by husband—Wife proved innocent.*]—*Held :* K. B. Rule 951 was not applicable, & full costs should be paid to the solr. of the successful wife.—PRESTON *v.* PRESTON & MOXLEY, [1925] 4 D. L. R. 1013.—**CAN.**

4960 i. *Petition by husband—Wife proved guilty.*]—BOURGOIN *v.* BOURGOIN, [1930] 3 D. L. R. 155 ; 1 W. W. R. 576 ; 42 B. C. R. 349.—**CAN.**

PART XIII. SECT. 18, SUB-SECT. 4.—B.

l. Read now " **4964 i.**"

4964 ii. *S. P.* CROSSE *v.* CROSSE & HEATH (1926), 28 W. A. L. R. 10.—**AUS.**

PART XIII. SECT. 18, SUB-SECT. 4.—C. (a).

sx. *Limitation to interim costs of respondent wife.*]—MILTON *v.* MILTON & COOK (No. 2), [1931] 1 W. W. R. 162 ; 1 D. L. R. 1007.—**CAN.**

sz. *Co-respondent defending in forma pauperis.*]—On making a decree *nisi* for dissolution of marriage the ct. may order a co-resp. who has defended *in forma pauperis* to pay petitioner's costs.—SMALL *v.* SMALL, [1931] V. L. R. 141 ; ARGUS L. R. 192.—**AUS.**

PART XIII. SECT. 18, SUB-SECT. 4.—C. (c) 1.

5016 i. *Necessity for knowledge—Before liable for costs—No absolute rule.*]—The liability of a co-resp. for costs depends upon the facts of the particular case. Petitioner herein was given costs against co-resp. where the judge concluded that, even if he did not know that resp. was married, he had the means of knowledge or was careless whether she was or not.—BOURGOIN *v.* BOURGOIN, [1930] 1 W. W. R. 576 ; 3 D. L. R. 155 ; 42 B. C. R. 349.—**CAN.**

5020 i. *Effect of knowledge—Liability of co-respondent for whole costs.*]—If co-resp. knew that the woman was married & a divorce is granted, he is liable for all the costs of the proceedings, including those which the husband has been compelled to pay the wife.—KNIGHT *v.* KNIGHT & OWENS, [1925] 2 D. L. R. 467 ; [1925] 1 W. W. R. 824.—**CAN.**

PART XIII. SECT. 18, SUB-SECT. 7.

5056 i. —— —— —— ——.]—ELLIOTT *v.* ELLIOTT (Man.), [1929] 4 D. L. R. 700 ; 3 W. W. R. 169.—**CAN.**

5065 i. *No previous application for security.*]—PRUSS *v.* PRUSS, [1932] 3 W. W. R. 429.—**CAN.**

PART XIII. SECT. 19, SUB-SECT. 1.

5067 i. *Power of court to direct.*]—The ct. has power to obtain the assistance of the Crown Solr. ; & accordingly can allow the Crown Solr., acting under the directions of the A.-G., to take part in the hearing of a suit for the dissolution of marriage in order to place the true facts before the ct.—COOPER *v.* COOPER-GILL (1931), 48 N. S. W. W. N. 60.—**AUS.**

5076. *Add. Annotation :*—**Refd.** Sloggett *v.* Sloggett, [1928] P. 148.

5076a. ——.]—**The intervention of &, if necessary, the calling of evidence by the King's Proctor, subject to the direction of the A.-G., in a suit for the dissolution of marriage, before decree *nisi*, is not limited to cases of suspected collusion.**—SLOGGETT *v.* SLOGGETT, [1928] P. 148; 97 L. J. P. 71; 139 L. T. 238; 44 T. L. R. 394; 72 Sol. Jo. 192.

Annotation :—**Refd.** Clarkson *v.* Clarkson (1930), 143 L. T. 775

5076b. Suppression of fact or falsehood by petitioner—Where exercise of discretion of court desired.]—APTED *v.* APTED & BLISS, No. 3449b, *ante*.

5103. *Add. Annotation :*—**Refd.** Apted *v.* Apted & Bliss, [1930] P. 246.

5112. *Add. Annotation :*—**Refd.** Sloggett *v.* Sloggett, [1928] P. 148.

5115. *Add. Annotation :*—**Refd.** Apted *v.* Apted & Bliss, [1930] P. 246.

5117a. —— ——.]—APTED *v.* APTED & BLISS, No. 3449b, *ante*.

5121a. Concealment as ground for refusing to exercise discretion.]—If a petitioner seeking a decree on the ground of the adultery of the resp. has himself been guilty of adultery, complete frankness in the disclosure of it is a paramount condition of the exercise of the discretion of the ct. in his favour. Although the facts are such as might warrant the exercise of the discretion, if disclosed as material facts at the hearing of the suit, their suppression then & the denial of them when set up in subsequent proceedings as cause for not making the decree absolute render the exercise of the discretion in such a case mischievous as an encouragement to perjury.—STUART *v.* STUART & HOLDEN, [1930] P. 77; 99 L. J. P. 17; 142 L. T. 359; 46 T. L. R. 132; 74 Sol. Jo. 58.

5124. *Add. Annotation :*—**Refd.** Apted *v.* Apted & Bliss, [1930] P. 246.

5133. *Add. Annotation :*—**Consd.** Apted *v.* Apted & Bliss, [1930] P. 246.

5159a. Fresh evidence disproving adultery—Notwithstanding finding of adultery.]—CHALMERS *v.* CHALMERS, No. 4763a, *ante*.

5162a. —— —— **Co-respondent not a party to intervention.**]—Where a decree *nisi* of divorce was rescinded on the King's Proctor's plea, to which co-resp. was not a party, & co-resp. applied to have the damages which he had lodged in ct. paid out to him, the ct. held that it had jurisdiction to deduct therefrom the costs of the King's Proctor's intervention, but on the facts refused to allow any such deduction from the money lodged in ct., & ordered that the money be paid out to co-resp.'s solrs.—GRAYSON *v.* GRAYSON & SEBRIGHT (1930), 144 L. T. 157; 47 T. L. R. 36; 74 Sol. Jo. 803.

5163a. —— —— ——.]—HEDDERWICK *v.* HEDDERWICK (1930), 74 Sol. Jo. 863.

5194a. Not King's Proctor.]—CHALMERS *v.* CHALMERS, No. 4763a, *ante*.

5196. *Add. Annotation :*—**Consd.** Croker *v.* Croker (1932), 48 T. L. R. 597.

5197. *Add. Annotation :*—**Refd.** Fletcher *v.* Fletcher, [1928] P. 20.

5199a. —— **Power of Court of Appeal to grant—Verdict of jury set aside.**]—On an appeal from an order of the Divorce Ct. dismissing a petition for divorce, the Ct. of Appeal has power under R. S. C., Ord. 58, r. 4, & R. S. C., Ord. 39, if it has before it all the necessary materials, & comes to the conclusion that the the verdict of the jury finding there has been no misconduct was wrong, itself to grant a decree *nisi* instead of sending the case back for a new trial.—CROKER *v.* CROKER, [1932] P. 173; 101 L. J. P. 69; 147 L. T. 464; 48 T. L. R. 597; 76 Sol. Jo. 527, C. A.

5236. *Add. Annotations :*—**Consd.** Croker *v.* Croker (1932), 48 T. L. R. 597. **Refd.** Woodland *v.* Woodland (otherwise Berlin), [1928] P. 169.

5257. *Add. Annotation :*—*Generally*, **Refd.** Woolf *v.* Woolf, [1931] P. 134.

5271a. —— ——.]—MILLER *v.* MILLER (1928), 72 Sol. Jo. 205.

PART XIII. SECT. 20, SUB-SECT. 1.

5093 i. *King's Proctor.*]—The King's Proctor can intervene in an action for divorce in the Supreme Ct. of Alberta, & can so intervene on the ground of collusion or on the ground of material facts not brought before the ct.—ELKOWECH *v.* ELKOWECH, [1925] 4 D. L. R. 1037; [1925] 3 W. W. R. 705; *affg.*, [1925] 3 D. L. R. 676; [1925] 2 W. W. R. 485.—**CAN.**

PART XIII. SECT. 20, SUB-SECT. 3.—A.

sd. *Decree obtained by evidence "framed up" between defendant & detective employed by petitioner.*]—*Held :* the decree should be rescinded, even though neither petitioner nor her solr. were implicated in the "frame-up."—BUSSELL *v.* BUSSELL & MCKENNA (No. 2) (Man.), [1927] 3 W. W. R. 297.—**CAN.**

PART XIII. SECT. 20, SUB-SECT. 4.—A. (g) ii.

sf. *Unsuccessful allegation of collusion.*]—If, on an intervention by the King's Proctor, the allegation of collusion fails, the practice in England, that the King's Proctor is not entitled to costs, is not necessarily applicable in the Supreme Ct. of Alberta.—ELKOWECH *v.* ELKOWECH, [1925] 4 D. L. R. 1037; [1925] 3 W. W. R. 705.—**CAN.**

PART XIII. SECT. 21, SUB-SECT. 1.—C.

sg. *Appeal from judgment for alimony —Application for stay pending payment of arrears & security for costs.*]—*Held :* in view of r. 8 of the Ct. of Appeal Rules, & following the English cases on appeals to the Ct. of Appeal in matrimonial causes, the application must be refused. The refusal was without costs.—CHERNENKOFF *v.* CHERNENKOFF, [1930] 1 W. W. R. 365; 2 D. L. R. 792; 24 S. L. R. 317.—**CAN.**

PART XIII. SECT. 21, SUB-SECT. 3.—B. (a).

sj. *Refusal of trial judge to infer adultery.*]—Appeal dismissed.—HENDERSON *v.* HENDERSON & MCKAY, [1927] 3 D. L. R. 845; [1927] 2 W. W. R. 473; 21 Sask. L. R. 675.—**CAN.**

sk. *Divorce obtained by fraud—Action to set aside after husband's death.*]—In an action by a divorced wife to set aside the decree absolute in the divorce action on the ground that it was obtained by the perjured testimony of her husband :—*Held :* such an action lies & this right of action is not affected by the fact that the husband had died before the action was brought, if, at least, he left an estate & the object of the action is to enable her to have vested in her as the lawful widow those rights in regard to, & that interest in, the estate which but for his alleged fraud in obtaining the divorce would have so vested in her.—BLATCHFORD *v.* A.-G. FOR ALBERTA & VAN RUYVEN, VAN RUYVEN *v.* BLATCHFORD, [1931] 1 W. W. R. 445; *on appeal*, [1931] 1 W. W. R. 640; 2 D. L. R. 636; 25 Alta. L. R. 401.—**CAN.**

PART XIII. SECT. 21, SUB-SECT. 4.

sl. *Action for declaration that decree void for want of jurisdiction.*]—Action for a declaration that two decrees ordering judicial separation & awarding permanent alimony were null & void for lack of jurisdiction, dismissed.—CLAMAN *v.* CLAMAN (No. 2) (1925), 35 B. C. R. 141.—**CAN.**

PART XIII. SECT. 22, SUB-SECT. 1.—A.

sn. *In decree of judicial separation.*]—An award of permanent alimony may be made in a decree of judicial separation itself.—WEDLEY *v.* WEDLEY, [1925] 3 W. W. R. 46.—**CAN.**

sp. *Effect of—Wife not debarred from filing caveat under Homesteads Act, R. S. S.*, 1920 (c. 69).]—*Re* LONNEM CAVEAT, [1926] 1 D. L. R. 279; [1926] 1 W. W. R. 134; 20 Sask. L. R. 275.—**CAN.**

sq. —— *Not defence to application for relief under Devolution of Estates Act, R. S. S.*, 1920 (c. 73).]—*Re* LONNEM CAVEAT, [1926] 1 D. L. R. 279; [1926] 1 W. W. R. 134; 20 Sask. L. R. 275.—**CAN.**

sr. *Suit for alimony—No jurisdiction to order wife to leave husband.*]—A judge awarded a wife alimony, & also expressed the opinion that it would be better for the parties to live

5271b. Who may apply—Respondent.]—MILLER *v.* MILLER (1928), 72 Sol. Jo. 205.

5275a. —— Dependent on subsisting marriage.]—PASTRE *v.* PASTRE, No. 5320b, *post.*

5320a. —— Decree of competent court terminating marriage—Foreign court.]—WEISS *v.* WEISS (1908), cited [1930] P. 82.

Annotation :—**Consd.** Pastre *v.* Pastre, [1930] P. 80.

5320b. —— —— Necessity for application for discharge.]—The basis of a wife's right to receive permanent alimony from her husband is that the marriage is subsisting & that she is still a wife. If after a decree for judicial separation & an order for the payment of alimony the marriage is put an end to by the decree of a ct. of competent jurisdiction the status of the woman as wife & her consequential right to alimony have ceased to exist. The order for alimony, however, which in its common form is limited till further order, remains effective till an application is made for its discharge.—PASTRE *v.* PASTRE, [1930] P. 80; 99 L. J. P. 20; 142 L. T. 490; 46 T. L. R. 175; 74 Sol. Jo. 76.

5327. *Add. Annotation :—Generally,* **Refd.** Hyman *v.* Hyman, [1929] A. C. 601.

5332. *Add. Annotations :*—**Consd.** Gandy *v.* Gandy (1885), 30 Ch. D. 57. **Dbtd.** Hyman *v.* Hyman, [1929] A. C. 601. **Refd.** May *v.* May (1929), 98 L. J. K. B. 770.

5335a. Security for payment—No jurisdiction to order.]—B. *v.* B. (1929), 73 Sol. Jo. 334.

K. Enforcement of Order (Vol. XXVII., p. 500).

After "**Injunction—Restraining husband from receiving legacy]**" add "**—— Restraining husband from receiving dividends.]** — *See* No. 5995a, *post.*"

Judgment summons & committal order.]—*See* BANKRUPTCY, No. 8494a, *ante.*

5360. *Add. Annotation :*—**Refd.** Fergusson *v.* Fergusson (1931), 146 L. T. 212.

5360a. On lunacy of husband.]—The jurisdiction in lunacy to appoint a receiver of the estate of a person of unsound mind does not exclude other cts. from enforcing lawful claims against his estate, including claims arising in the Divorce Div. Although the primary duty of those concerned with the care of a person of unsound mind is to apply his estate for his maintenance, & there is power under Law of Property Act, 1925 (c. 20), s. 171, to direct a settlement of the property of a lunatic or defective, the Divorce Div. is not thereby discharged from the duty of providing for the permanent maintenance of a petitioning wife out of the estate of a husband of unsound mind. When by an order in lunacy a provision has been directed for the wife during the lifetime of the husband & pending his incapacity, & the Divorce Div. approve the quantum of the order, the proper course, on application in that Div. by the wife for permanent maintenance, is to order it to be secured to her at the rate ordered in lunacy so far as the husband's means permit & without prejudice to any further order in lunacy, the security not to be enforceable pending subsistence of the order in lunacy, & should it subsist during the life of the husband not to be enforceable till his death.—C. L. *v.* C. F. W., [1928] P. 223; 97 L. J. P. 138.

5362. *Add. Annotation :*—**Refd.** Turk *v.* Turk, Dufty *v.* Dufty, [1931] P. 116.

5364a. —— —— —— Delay.]—In allotting maintenance one of the statutory duties of the ct. is to have regard "to the conduct of the parties." If a wife obtains a decree in an undefended case it does not necessarily follow that her conduct, for example, in the matter of delay, was approved by the trial judge. Even if the judge disapproved of the delay, he still had a discretion to pro-

apart for a time at least. The formal judgment contained a clause adjudging that pltf. vacate the premises:—*Held :* the ct. has no power to order a wife to leave her husband's roof; & even if jurisdiction existed, it would not be exercised at the instance of the wife against the protest of the husband.—SCOTT *v.* SCOTT, [1930] 1 D. L. R. 53; 64 O. L. R. 422.—**CAN.**

PART XIII. SECT. 22, SUB-SECT. 1.—C.

5282 i. *After decree of judicial separation—By application in chambers.*]—CAMRUD *v.* CAMRUD (Sask.), [1927] 4 D. L. R. 365; [1927] 2 W. W. R. 759.—**CAN.**

PART XIII. SECT. 22, SUB-SECT. 1.—D. (a).

a i. ——.]—On an application for permanent alimony the ct. should not recognise any right in the husband to reduce his income by retaining unsaleable & unproductive real estate & paying taxes & interest thereon; but it should be astute to frustrate an intention to make such payments the means of escaping payment of alimony.—NEWTON *v.* NEWTON (Man.), [1927] 1 D. L. R. 756; [1927] 1 W. W. R. 106.—**CAN.**

PART XIII. SECT. 22, SUB-SECT. 1.—D. (c).

c i. —— ——.]—MACINTOSH *v.* MACINTOSH (N. B.), [1927] 3 D. L. R. 1190.—**CAN.**

c ii. —— ——.]—Where the wife was a school teacher, the ct. awarded her one-half of the joint income less the amount of her salary.—NEWTON *v.* NEWTON (Man.), [1927] 1 D. L. R. 756; [1927] 1 W. W. R. 106.—**CAN.**

c i. *No fixed proportion of joint income.*]—There is no fixed rule as to what proportion of the joint incomes of the husband & wife should be allowed as permanent alimony to an innocent wife. Moreover, since under Domestic Relations Act, 1927, c. 5, the amount of alimony is in the discretion of the judge, any rule based on the practice of the Ecclesiastical Courts is not applicable in Alberta.—HARRY *v.* HARRY (Alta.), [1929] 4 D. L. R. 997; 3 W. W. R. 342.—**CAN.**

PART XIII. SECT. 22, SUB-SECT. 1.—F.

5325 ii. —— *Facts discovered after trial.*]—Amount of permanent alimony increased on consideration of facts discovered after the trial.—WEDLEY *v.* WEDLEY, [1925] 3 W. W. R. 46.—**CAN.**

5328 i. *Reduction—Husband's means reduced.*]—MACKINNON *v.* MACKINNON (1924), 58 N. S. R. 220.—**CAN.**

PART XIII. SECT. 22, SUB-SECT. 1.—G.

5333 i. *Payment of arrears—Whether enforced.*]—PATTERSON *v.* PATTERSON, [1928] 4 D. L. R. 793; 63 O. L. R. 97.—**CAN.**

PART XIII. SECT. 22, SUB-SECT. 1.—K.

sv. *Order for sale of husband's land—Amount recoverable.*]—Pltf., in Feb. 1924, recovered a judgment against deft. for alimony. Payments under the judgment being in arrear, pltf., in 1928, applied for an order for leave to sell deft.'s interest in certain land in order to satisfy the arrears. It appeared that deft. & pltf. had lived together as man & wife for about a month at the end of 1927. Pltf. swore that deft. lived with her during this month at her parent's home, & left her early in Jan. 1928, & she had not lived with him since. Deft. swore that his home had been & still was open for her to return to at any time, & that it was at his home that they lived together for a month:—*Held :* pltf. was entitled to an order for sale, but the amount recoverable must be limited to the arrears that accrued up to Dec. 1, 1927.—PATTERSON *v.* PATTERSON, [1928] 4 D. L. R. 793; 63 O. L. R. 97.—**CAN.**

PART XIII. SECT. 22, SUB-SECT. 2.—B.

5360 i. *On dissolution of marriage—For guilt of wife.*]—Divorce & Matrimonial Causes Act, 1908, s. 42, does not authorise the ct., where a decree for dissolution of marriage has been obtained by a husband against a wife, to make an order on the husband for the permanent maintenance of the wife.—HARRIS *v.* HARRIS, [1926] N. Z. L. R. 274.—**N.Z.**

p i. —.]—The ct. has power under Divorce & Matrimonial Causes Act, 1928, s. 33 (1), to make an order providing for permanent maintenance & approving a deed securing an annuity from resp. for the life of petitioner.—BOND *v.* BOND, [1929] N. Z. L. R. 909.—**N.Z.**

nounce the decree. In an undefended case, therefore, on allegations of unreasonable delay being made in the maintenance proceedings, sufficient evidence must be received to enable the ct. properly to determine whether the allegations are established &, if so, how if at all the conduct in question should affect the sum of money which the husband should be ordered to secure &/or to pay.—CHAPPLE *v.* CHAPPLE (1929), 98 L. J. P. 95; 140 L. T. 699; 45 T. L. R. 273; 73 Sol. Jo. 207.

5365a. ——— ——— ——— **Before & after marriage.**]—*Held:* the words "conduct of the parties" in Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49), s. 190 (1), referred to the conduct both before & after the marriage.

A petitioner having obtained a decree absolute for nullity of marriage presented a petition under sect. 190 of the 1925 Act for permanent maintenance. Resp. in his reply made serious allegations of misconduct both before & after the marriage against petitioner. Petitioner filed an affidavit in which she dealt with the allegations of misconduct. The registrar refused leave to resp. to file a rejoinder & directed the allegations in the answer as to misconduct to be struck out. On appeal the judge confirmed the registrar's order & directed petitioner's affidavit in reply to be struck out. On appeal:—*Held:* the words "conduct of the parties" in sect. 190 (1) referred to the conduct of the parties both before & after the marriage, & in exercising its discretion under the sect. it was essential that the ct. should have before it all the relevant evidence of the conduct of the parties both before & after the marriage. Therefore, the order directing that the paragraphs in resp.'s answer containing the allegations of misconduct & the affidavit of petitioner in reply should be struck out must be set aside & leave would be given to resp. to file a rejoinder.—RESTALL *v.* RESTALL, [1930] P. 189; 99 L. J. P. 123; 143 L. T. 225; 46 T. L. R. 398; 74 Sol. Jo. 319, C. A.

5373. *Add. Annotation:*—**Apprvd.** Hyman *v.* Hyman, [1929] A. C. 601.

5374. *Add. Annotation:*—*As to* (1) **Apprvd.** Hyman *v.* Hyman, [1929] A. C. 601.

5375. *Add. Annotation:*—**Reld.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

5380a. ———.]—Consideration of the amount of permanent maintenance which a divorced husband should be ordered to pay to his former wife.

The wife must be put in the same position as she would have been in had she remained his lawful wife (SHEARMAN, J.).—HULTON *v.* HULTON (1917), 33 T. L. R. 137.

5382. *Add. Annotations:*—**Reld.** Gilbey *v.* Gilbey, [1927] P. 197; Shearn *v.* Shearn (1930), 143 L. T. 772.

5382a. ———.]—Although the considerations which applied in the Ecclesiastical Cts. to awards of alimony must have due weight in determining the proper award of maintenance to a wife after a decree of divorce, the assumption of a fixed arithmetical rule & an indispensable process of applying that rule is erroneous, & disregards the duty imposed on the ct. by Jud. (Consolidation) Act, 1925 (c. 49), s. 190 (1) & (2). Where the husband's whole income has been expended on the requirements of the matrimonial home, a third of his means may well be required for the wife's maintenance; but where, beyond everything called for by such requirements, the husband possesses an ample fortune, the amount of his income affords no definite guidance as to the sum required to supply his sometime wife with the necessaries, comforts, & advantages incidental to her station in life.

Where the husband's gross income was £25,337 a year, derived mainly from his interest in a business concern, the registrar by his report submitted that the husband should be ordered to secure to his wife, who had divorced him, by way of permanent maintenance for her life, the annual sum of £3,500 less tax, & to pay to his wife during their joint lives the further annual sum of £500 less tax. The ct. confirmed the report.—GILBEY *v.* GILBEY, [1927] P. 197; 96 L. J. P. 55; 137 L. T. 31; 43 T. L. R. 283.

Annotation:—**Apprvd.** Stibbe *v.* Stibbe, [1931] P. 105.

5382b. ——— ———.]—Resp., a husband, who had been divorced, re-married, & by an antenuptial settlement settled property, which included the matrimonial home & the chattels therein & the major part of his capital, on his wife *in futuro*. Petitioner, his former wife, had obtained an order for permanent maintenance of £400 a year & of £100 for her son, when resp.'s annual income was about £1,500. Subsequently, when resp.'s income, not taking into account the settlement, was about £4,500, petitioner applied for an increase in the amount of the order, on the ground that resp.'s means had increased. The registrar increased the order for permanent maintenance from £400 to £1,200 a year, less income tax, & from £100 to £150 a year, free of income tax, for the son:—*Held:* (1) resp.'s means had increased, as by sharing the advantages of the matrimonial home as of right settled upon his wife, a larger portion of the £1,500 unsettled income was left free to be dealt with by him & by the ct.; (2) the order could not be made disregarding the settlement, which subsisted; (3) an order for permanent maintenance, or an increase of it, should not be based on the income of the husband during a year of exceptional prosperity; (4) an order for permanent maintenance in such a case should not be based on the old practice of the Ecclesiastical Cts. in the case of a decree *a mensâ et thoro*, of granting to the wife one-third of the husband's available means, as the conditions arising from the two decrees were not the same, petitioner & resp. being divorced, & free to marry again; (5) in view of the increased means of the husband, having regard to the wife's fortune, the ability of the husband & the conduct of the parties, the order for permanent maintenance for the former wife should be increased from £400 a year to £750 a year, less income tax.—N. *v.* N. (1928), 138 L. T. 693; 44 T. L. R. 324; 72 Sol. Jo. 156.

5384. *Add. Citations:*—[1926] P. 1; 95 L. J. P. 30; 134 L. T. 24.

Add. Annotations:—**Apld.** May *v.* May (1929), 98 L. J. K. B. 770. **Reld.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

5391. *Add. Annotation:*—**Consd.** Turk *v.* Turk, Dufty *v.* Dufty, [1931] P. 116.

5393. *Add. Annotations:*—**Apld.** Restall *v.* Restall, [1930] P. 189. **Refd.** Gilbey *v.* Gilbey [1927] P. 197.

5393a. —— —— —— **Wife owner of valuable jewellery.**]—In fixing the amount of permanent maintenance for a wife who has obtained a decree of divorce, the registrar is entitled to take into consideration the fact that she is the owner of valuable jewellery, which could be sold so as to produce an income.—LYSAGHT *v.* LYSAGHT (1928), 44 T. L. R. 723; 72 Sol. Jo. 546.

5396a. In discretion of court—No fixed principles.]—SHERWOOD *v.* SHERWOOD, No. 5498a, *post*.

5399a. -.]—SHERWOOD *v.* SHERWOOD, No. 5498a, *post*.

5403. *Add. Annotations:*—**Distd.** Jenkins *v.* Jenkins (1930), 99 L. J. P. 63. **Refd.** Fanshawe *v.* Fanshawe, [1927] P. 238.

5405a. —— **Under Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49), s. 196—Limited to cases of restitution of conjugal rights.**]—The powers conferred on the ct. by Judicature (Consolidation) Act, 1925 (c. 49), s. 196, to vary periodical payments is restricted in operation to cases of restitution of conjugal rights & does not apply to orders for alimony *pendente lite*.—ABBOTT *v.* ABBOTT, [1931] P. 26; 100 L. J. P. 36; 144 L. T. 598; 47 T. L. R. 207; 75 Sol. Jo. 138; *affd.*, 47 T. L. R. 222, C. A.

5405b. -.]—Maintenance for a wife which the ct. may order on the dissolution of a marriage & the jurisdiction to review an order for it are matters of discretion conferred on the ct. by statute & not standardised by the rules applying in cases of judicial separation. The jurisdiction is now embodied in the Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49), s. 190 (1), (2), & if an order for maintenance is limited "until further order," the ct. in reviewing it should regard all the present circumstances of the case as if they had existed at the date of the original order. It may consider not only the descending income of the husband but the ascending scale of that of the wife. Even in the absence of the limitation relevant facts as to the fortune of the wife may have weight in relation to the discretionary power to review, if occasion arises under sect. 190 (2), by reason of the inability of the husband to pay. The ct. does not derive its power to review an order for maintenance from sect. 196. The Act is a consolidating, not an amending one, & the latter sect., having regard to its terminology, is limited in its operation to cases of restitution of conjugal rights.—TURK *v.* TURK, DUFTY *v.* DUFTY, [1931] P. 116; 100 L. J. P. 90; 145 L. T. 331; 47 T. L. R. 445; 75 Sol. Jo. 394; *subsequent proceedings* (1932), 147 L. T. 18.

5406a. —— —— **Statutory discretion under Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49), s. 190.**]—TURK *v.* TURK, DUFTY *v.* DUFTY, No. 5405b, *ante*.

5406b. **Order limited "until further order"—Circumstances to be considered as at date of order.**]—TURK *v.* TURK, DUFTY *v.* DUFTY, No. 5405b, *ante*.

5408. *Add. Annotation:*—**Consd.** Abbott *v.* Abbott (1930), 100 L. J. P. 36.

5410. *Add. Annotations:*—**Apld.** Turk *v.* Turk, Dufty *v.* Dufty, [1931] P. 116. **Consd.** Abbott *v.* Abbott (1930), 100 L. J. P. 36; Smith *v.* Smith (1931), 145 L. T. 23.

5410a. —— —— **No provision for variation in original order.**]—There is no practice whereby a consent order for maintenance, not containing words of release such as "liberty to apply," or "until further order," cannot be varied by petition for increase or decrease, provided that the order could have been made under the statutory powers of the ct. otherwise than by consent of the parties. Where after a lapse of eight years a husband resp. petitioned for a reduction in a consent order for maintenance, expressed to be made "unconditionally," the registrar refused to make an inquiry on the ground that he had no power to vary such an order, as it contained no such words of release. On appeal the judge referred back the petition for investigation.—SMITH *v.* SMITH (1931), 145 L. T. 23; 47 T. L. R. 368; 75 Sol. Jo. 331.

5410b. —— **To increase maintenance.**]—The power to increase the amount provided by an order for permanent maintenance upon an increase in the means of a husband conferred by Matrimonial Causes Act, 1907 (c. 12), & Jud. (Consolidation) Act, 1925 (c. 49), which repeals & re-enacts the power given by the former Act, is retrospective in its operation & extends to dealing with orders made under the previous Act, namely, Matrimonial Causes Act, 1866 (c. 32).—EDMUNDS *v.* EDMUNDS, [1926] P. 202; 95 L. J. P. 151; 136 L. T. 186.

5410c. **Order of registrar.**]—The direction given by the registrar under r. 69 of Matrimonial Causes Rules, 1924, that an order on an application for maintenance or periodical payments should issue is a decision of the registrar within the meaning of r. 45 of the same rules & is therefore appealable. If the judge on the hearing of the appeal comes to the conclusion that the direction of the registrar was wrong & ought not to have been made, he can recall the order issued in pursuance of such direction & make such order as in his judgment he deems just. The judge on the hearing of the appeal should, of course, give due weight to the

PART XIII. SECT. 22, SUB-SECT. 2.—F.

5404 i. *Jurisdiction of court.*]—Where an order for maintenance has been made by the Supreme Ct. in divorce proceedings, & where such order is subsequently registered in the magistrate's ct. pursuant to Destitute Persons Amendment Act, 1926, s. 8, the Supreme Ct. has, notwithstanding such registration, sole jurisdiction to vary, modify, & suspend such order.—WILSON *v.* MORRIS, [1929] N. Z. L. R. 901.—N.Z.

5410a i. *Jurisdiction of court—To increase maintenance.*]—The ct. has no jurisdiction to increase the permanent maintenance ordered to be paid by a husband, on the ground of either the increased means of the husband or the increased necessities of the wife.—HARRIS *v.* HARRIS, [1926] N. Z. L. R. 274.—N.Z.

5410a ii. —— ——.]—When application is made to the ct. under Divorce & Matrimonial Causes Act, 1908, s. 46, for the revision of a decree for permanent maintenance in favour of a wife or children of the marriage, the ct. may, in the case of children, either increase or reduce the order; but the ct. has no power to increase an order for permanent maintenance made in favour of the wife under sect. 42, though it may reduce it.—BURTON *v.* BURTON, [1928] N. Z. L. R. 496.—N.Z.

decision of the registrar, & should be slow to disturb that decision on a mere question of *quantum*, unless it clearly appears from the proved facts that it would be wrong to allow the amount ordered by the registrar to be secured or paid to stand.—STIBBE *v.* STIBBE, [1931] P. 105; 100 L. J. P. 82; 144 L. T. 742, C. A.

5411a. —— ——.]—TURK *v.* TURK, DUFTY *v.* DUFTY, No. 5405b, *ante*.

5411b. —— ——.]—On a petition for decrease of maintenance the President had laid down, in a preliminary judgment, the principle that if a woman divorce her husband, & is granted an award of maintenance, & thereafter increases her fortune by marriage with another man or otherwise, her former husband is entitled to have her improved position taken into account when he petitions for a decrease. The petition was adjourned for reconsideration of the parties' circumstances after six months:—*Held:* in view of a considerable loss of income by the former husband owing to business depression, & the present means of his former wife, the amount of maintenance payable by him to her would be reduced from £6 to £4 a week for a year, after which period the matter would be open for review.—DUFTY *v.* DUFTY (1932), 147 L. T. 18; 48 T. L. R. 323; 76 Sol. Jo. 397.

5414a. —— —— **Increase in income caused by own acts.**]—N. *v.* N., No. 5382b, *ante*.

5416a. —— ——.]—TURK *v.* TURK, DUFTY *v.* DUFTY, No. 5405b, *ante*.

5424. *Add. Annotation:*—**Apld.** Restall *v.* Restall, [1930] P. 189.

5446. *Add. Annotation:*—**Refd.** Fanshawe *v.* Fanshawe, [1927] P. 238.

5447. *Add. Annotation:*—**Refd.** Fanshawe *v.* Fanshawe (1927), 43 T. L. R. 666.

5449. *Add. Annotation:*—**Consd.** Fanshawe *v.* Fanshawe, [1927] P. 238.

5450. Add the following para. & citations:—On May 8, 1924, a wife obtained a decree *nisi* on the ground of her husband's adultery, which was made absolute on Nov. 24, 1924. On Dec. 22 the wife filed her petition for permanent maintenance, & on July 1, 1925, an interim order was made at the rate of £650 *per annum* for maintenance of the wife & her child. It appeared on the inquiry as to the husband's property that he had no capital other than chattels, but he was a sculptor who had been fortunate in obtaining work in connection with certain important war memorials, the payments for which had made his income up to £2,000 a year. There was no prospect of his continuing to earn nearly so large an income in the future. In July, 1925, before any final order for maintenance had been made, the husband assigned most of the moneys so owing to him to trustees of a settlement upon his second marriage, which he entered into on July 23, 1925. This settlement did not attempt wholly to defeat petitioner, for it set aside £1,500 to satisfy any order that might be made against him for maintenance during the following three years. On Nov. 18, 1925, the registrar made a final order for the payment of maintenance to the petitioner at the rate of £550 a year for petitioner & £100 for the child, & for security to be given by the husband for a further £150 a year for life. On cross-applications by petitioner that the security should be given for £250 a year, & to admit of this being done that the settlement by the husband on his second marriage should be set aside, & by the husband that no order should be made for security:—*Held:* by HILL, J., although the Divorce Ct. had power to restrain a resp. husband by injunction from parting with his own property in order to defeat the claims of the petitioning wife to alimony or permanent maintenance which the ct. had already ordered, it had no power to set aside an assignment of his property made by him in consideration of a second marriage, even if the result might be to defeat the claim of the petitioner to maintenance not yet actually ordered. Therefore, the marriage settlement could not be set aside, but that the order of the registrar must be varied by increasing the annual payment to £700 for the petitioner & by omitting the order on the husband to give security for £150. On appeal by petitioner:—*Held:* by the Ct. of Appeal, the order of HILL, J., must be affirmed, & it was a fatal objection to petitioner's application to set aside the settlement that neither the trustees nor the second wife were before the ct.—[1926] P. 93; 95 L. J. P. 83; 135 L. T. 1; 42 T. L. R. 413; 70 Sol. Jo. 503, C. A.

Add. Annotations:—**Refd.** Fanshawe *v.* Fanshawe, [1927] P. 238; Gilbert *v.* Gilbert & Boucher, [1928] P. 1.

5452a. **By consent.**]—The ct. has no statutory power to order the payment of a lump sum by a resp. husband after a decree absolute for dissolution of the marriage by way of permanent maintenance for the wife petitioner. Where, however, both parties consent to such a course the ct. may make a consent order for the payment of the lump sum agreed upon.—JENKINS *v.* JENKINS (1930), 99 L. J. P. 63; 142 L. T. 656; 46 T. L. R. 309; 74 Sol. Jo. 170.

5452b. —.]—Although the ct. has no power under Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49), s. 190, to order a lump sum to be paid to a wife by way of permanent maintenance, if the parties consent to such a course the ct. will make a consent order carrying out an agreement for the payment of a lump sum, or lump sums, & will include in the order a

5411 ii. —— *Offer of home by husband.*]—Where an order has been made for the maintenance by a money payment of a destitute wife by her husband, the fact that the husband is subsequently ready & willing to maintain the wife with himself in a suitable home does not afford sufficient ground under Destitute Persons Act, 1881, s. 11, for remitting the order when the husband is able to comply with the order for payment.—MOLLOY *v.* MOLLOY, [1927] S. A. S. R. 403.—**AUS.**

5416 i. —— *Increase in wife's means—Dissolution suit.*]—STANTON *v.* NEWTON, [1928] S. R. Q. 192.—**AUS.**

PART XIII. SECT. 22, SUB-SECT. 2.—G.

a i. —— *Whether included.*]—(1) Where in a divorce action alimony is awarded a wife guilty of adultery the order should contain a *dum sola et casta vixerit* provision. (2) Although the law enables the ct. to order the husband to secure to a divorced wife the amount ordered to be paid to her for alimony, there is no authority, without his consent, to deprive him of his property & to order its transfer to the wife.—OLYNYK *v.* OLYNYK, [1932] 1 W. W. R. 825; 2 D. L. R. 785.—**CAN.**

condition that no further proceedings be taken without the leave of a judge.—OLDING *v.* OLDING (1930), 99 L. J. P. 128; 143 L. T. 310; 46 T. L. R. 539; 74 Sol. Jo. 467.

5459a. —— **No present order for maintenance justified—Future justification probable.**]—(1) Where the ct. cannot in the circumstances prevailing at the time of the application make an order for the maintenance of the wife under Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49), s. 190, but is of opinion that in the event of a change in the circumstances such an order might properly be made at some time thereafter, the proper course is to make an order on the husband to pay a nominal monthly or weekly sum so as to keep alive the jurisdiction conferred upon the ct. by proviso (*b*) to sect. 190 (2), & thus enable it under that proviso to increase the periodical payments should the occasion for such an increase arise.

(2) The insertion of the words " liberty to apply " in an order for maintenance does not enable the wife at a subsequent date to make an effective application for increased maintenance should her husband's income increase, and those words, therefore, should not form part of the order.—STEPHEN *v.* STEPHEN, [1931] P. 197; 100 L. J. P. 86; 145 L. T. 541; 47 T. L. R. 478; 75 Sol. Jo. 442, C. A.

5463a. —— ——.]—STEPHEN *v.* STEPHEN, No. 5459, *ante*.

5468. *Add. Annotation :—As to* (1) **Refd.** Shearn *v.* Shearn (1930), 143 L. T. 772.

5469a. —— **What court should consider.**]—(1) The ct. has no power to reserve liberty to apply for security in making an order for maintenance under Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49), s. 190 (1), (2), on a decree for divorce. The insertion of such a provision would permit the conversion at a subsequent date of an order to pay maintenance into an order to secure it, & this is *ultra vires* of the statute.

(2) In considering th e question of security which must thus be ordered in the first instance, if at all, the interests of both spouses are to be considered. The maintenance ordered will be secured as far as circumstances permit, but in cases where the nature of the means of the husband renders it impossible to secure the whole maintenance proper to be ordered, the question arises whether it is in the interest of the wife to order security of a part, as compulsion of the husband to realise or transfer assets in order to give security under sub-sect. (1) may hamper him in earning the income out of which he may be ordered to make payments under sub-sect. (2). The wife has no greater inherent right to security than to an order for payment simply. Her right is to present maintenance, & if the property of the husband produces no present income or if an order for security would for any reason, such as the husband's absence from the jurisdiction, be unenforceable, it is more in the wife's interest that an order for payments should be made than an order to secure.

(3) *Qu.:* whether an order to secure a lump sum can be enforced under the Administration of Justice Act, 1920 (c. 81), ss. 10, 12.—SHEARN *v.* SHEARN, [1931] P. 1; 100 L. J. P. 41; 143 L. T. 772; 46 T. L. R. 652; 74 Sol. Jo. 536.

Annotation :—As to (1) **Consd.** Stephen *v.* Stephen, [1931] P. 197.

5471. *Add. Annotation :*—**Consd.** Shearn *v.* Shearn, [1931] P. 1.

5477. *Add. Annotation :*—**Refd.** *Re* Nelson, Norris *v.* Nelson (1918), [1928] Ch. 920, n.

5481a. —— **Application by guilty wife in undefended suit.**]—Where in an undefended divorce suit the guilty wife resp. enters no appearance, but thereafter decides to apply for a compassionate allowance, she must first ask the leave of the registrar to appear in the suit, &, if such leave be given, the procedure is to be by a judge's summons for leave to file a petition for maintenance.—FERGUSSON *v.* FERGUSSON (1931), 146 L. T. 212; 48 T. L. R. 86; 75 Sol. Jo. 814.

5486. *Add. Annotations :—As to* (1) **Refd.** Fergusson *v.* Fergusson (1931), 146 L. T. 212. *As to* (3) **Consd.** Legge *v.* Legge (1928), 45 T. L. R. 157. **Refd.** Shearn *v.* Shearn (1930), 143 L. T. 772; Stephen *v.* Stephen, [1931] P. 197. *As to* (4) **Expld.** Legge *v.* Legge (1928), 45 T. L. R. 157.

5487a. —— ——.]—LEGGE *v.* LEGGE (1928), 45 T. L. R. 157; 73 Sol. Jo. 59, C. A.

Annotation :—**Refd.** Shearn *v.* Shearn (1930), 143 L. T. 772

5493a. **Time for—After decree absolute.**]—WARWICK *v.* WARWICK (1928), 73 Sol. Jo. 12, C. A.

5494. *Add. Annotation :—As to* (1) **Consd.** Shearn *v.* Shearn, [1931] P. 1.

5497a. —— **Past & probable future earnings.**]—SHERWOOD *v.* SHERWOOD, No. 5498a, *post*.

5498. *Add. Annotations :*—**Expld.** Sherwood *v.* Sherwood, [1929] P. 120. **Consd.** Stibbe *v.* Stibbe, [1931] P. 105.

5498a. —— —— **Amount of deduction.**]—(1) In estimating the disposable income of a divorced husband after meeting his liability for taxes for the purpose of allotting permanent maintenance to his wife in future within the principle of *Dayrell-Steyning* v. *Dayrell-Steyning*, No. 5498, the amount of deduction from his gross income in respect of income tax & super tax is the amount of those taxes chargeable on income received during the current year.

(2) There is no fixed rule that the ct. will allow to the wife one-third of the husband's disposable income as permanent maintenance. It is no more than a rough working rule & does not impose an absolute limit. Further, in estimating the amount of the allowance the ct. must not focus its attention only on the disposable income of the husband in the year preceding the making of the order, but must have regard to his earnings in

PART XIII. SECT. 22, SUB-SECT. 2.—J.

SW. *Effect of resumption of cohabitation.*]—An order for maintenance having been made against a husband under Marriage Act, 1915, s. 84, the husband & the wife subsequently agreed to make good their differences & live together. They accordingly cohabited for ten months, when they again separated :—*Held :* the agreement to live together & resumption of cohabitation implied an agreement by both parties that the husband should be released from his obligations under the maintenance order, & an information by the wife against the husband for failure to comply with the order was rightly dismissed.—STOKES *v.* STOKES, [1928] V. L. R. 479; [1928] Argus L. R. 351.—**AUS.**

previous years & to his probable earnings in the future.

(3) In making an order for permanent maintenance the ct. is given a wide discretion by Supreme Ct. of Judicature (Consolidation) Act, 1925 (c. 49), s. 190 (1), with which the Ct. of Appeal will not readily interfere unless it is satisfied that the ct. below has proceeded on some wrong principle.—SHERWOOD *v.* SHERWOOD, [1929] P. 120; 98 L. J. P. 66; 140 L. T. 230; 45 T. L. R. 53; 72 Sol. Jo. 874, C. A.

Annotation :—As to (2) **Refd.** Stibbe *v.* Stibbe, [1931] P. 105.

5499. *Add. Annotations :*—**Apld.** Warwick *v.* Warwick (1928), 73 Sol. Jo. 12. **Refd.** Gilbert *v.* Gilbert & Bougher (1927), 96 L. J. P. 137; Skipwith *v.* Skipwith (1928), 139 L. T. 317; Stephen *v.* Stephen, [1931] P. 197.

5513a. Order securing to wife provision made by order in lunacy.]—C. L. *v.* C. F. W., No. 5360a, *ante.*

5513b. Order giving liberty to apply—For maintenance at future date.]—STEPHEN *v.* STEPHEN, No. 5450a, *ante.*

5513c. —— With regard to security.]—SHEARN *v.* SHEARN, No. 5469a, *ante.*

L. Enforcement of Order (Vol. XXVII., p. 513).

5513d. Whether enforceable out of jurisdiction—Under Administration of Justice Act, 1920 (c. 81), ss. 10, 12.]—SHEARN *v.* SHEARN, No. 5469a, *ante.*

5515. *Add. Annotations :—As to* (6) **Consd.** Allison *v.* Allison, [1927] P. 308. *Generally*, **Refd.** Shearn *v.* Shearn (1930), 143 L. T. 772.

5523a. —— ——.]—Under Jud. (Consolidation) Act, 1925 (c. 49), s. 187 (2), a reversionary interest of a husband is not an asset which can form part of the security to be ordered for his periodical payments to his wife, on his non-compliance with a decree of restitution of conjugal rights.—ALLISON *v.* ALLISON, [1927] P. 308; 96 L. J. P. 181; 137 L. T. 823; 43 T. L. R. 823; 71 Sol. Jo. 682.

5529. *Add. Annotation :*—**Refd.** Shearn *v.* Shearn (1930), 143 L. T. 772.

5529a. —— ——.]—TURK *v.* TURK, DUFTY *v.* DUFTY, No. 5405b, *ante.*

5531a. Application—After decree for divorce—Mode of application.]—Upon the occasion of a wife's petition for restitution of conjugal rights the ct. ordered the husband to make certain periodical payments to her for herself & the children of the marriage. Later, the wife obtained a decree *nisi* for divorce, but as she, at the expiration of six months, made no move to have the decree made absolute, her husband applied by motion, under Jud. (Consolidation) Act, 1925 (c 49), s. 196, to have the periodical payments suspended or discharged :—*Held :* the husband could make the application by motion, & was not constrained to apply by petition under Matrimonial Causes Rules, 1924, rr. 63 & 70.—SKIPWITH *v.* SKIPWITH, [1929] P. 93; 97 L. J. P. 109; 139 L. T. 317, C. A.

5537a. —— Application—After decree for divorce—Mode of application.]—SKIPWITH *v.* SKIPWITH, No. 5531a, *ante.*

5542a. To order settlement where wife not domiciled in England.]—(1) The property of a guilty wife, amenable, under Jud. (Consolidation) Act, 1925 (c. 49), s. 191, to the jurisdiction to order a settlement of it, is *primâ facie* the property of a woman in England & subject to English jurisdiction. That jurisdiction can be invoked against a person not domiciled in England, & in respect of property beyond the jurisdiction, only subject to the principle that English cts. will not infringe the authority of foreign tribunals in their domestic affairs, or adjudicate with regard to property when their judgment will be ineffective. Apart from jurisdiction over property, the exercise of jurisdiction *in personam* in such a case depends upon the question whether the party to be affected by it is within the reach of the compulsory process of the ct.

(2) The provisions of Matrimonial Causes Act, 1857 (c. 85), s. 42, for service out of the jurisdiction, apply to the service of the petition in a suit, & not to proceedings for a settlement.

(3) The practice with reference to appearance to a petition for a settlement is governed by Divorce Rules, rr. 71 & 72, & (4) an appearance under these rules, qualified during the proceedings upon it, by denial of the existence of jurisdiction, is not to be regarded as a submission to that jurisdiction.—TALLACK *v.* TALLACK & BROEKEMA, [1927] P. 211; 96 L. J. K. B. 117; 137 L. T. 487; 43 T. L. R. 467; 71 Sol. Jo. 521.

Annotation :—As to (1) **Refd.** Shearn *v.* Shearn (1930), 143 L. T. 772.

5543. *Add. Annotation :—Generally*, **Refd.** Tallack *v.* Tallack & Broekema, [1927] P. 211.

5543a. Petition for settlement—Service—Out of jurisdiction.]—TALLACK *v.* TALLACK & BROEKEMA, No. 5542a, *ante.*

5543b. —— Appearance to—Practice.]—TALLACK *v.* TALLACK & BROEKEMA, No. 5542a, *ante.*

5543c. —— —— Effect of—Whether submission to jurisdiction.]—TALLACK *v.* TALLACK & BROEKEMA, No. 5542a, *ante.*

5549. *Add. Annotations :—As to* (1) **Consd.** Janion *v.* Janion (1926), [1929] P. 237, n. **Refd.** Hargreaves *v.* Hargreaves, [1926] P. 42; Melvill *v.* Melvill & Woodward, [1930] P. 159. *As to* (2) **Refd.** Jagger *v.* Jagger, [1926] P. 93.

PART XIII. SECT. 22, SUB-SECT. 2.—K. (e).

5508 i. *Time for making—Whether after decree absolute.*]—BEXON *v.* BEXON, [1932] 3 W. W. R. 334.—**CAN.**

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sx. *Information for disobedience of order—After order quashed.*]—An order for maintenance made against deft. in 1923 was quashed in Feb. 1928. In May, 1928, an information for disobedience of the maintenance order prior to the date of quashing was heard, & an order was then made that deft. be imprisoned until the maintenance order should be complied with :—*Held :* the maintenance order having been quashed, the justices had no jurisdiction to inquire into any disobedience of the order alleged to have been committed before it was quashed, & consequently the information ought to have been dismissed.—GALLOWAY *v.* WATSON, [1928] V. L. R. 308; [1928] Argus L. R. 201.—**AUS.**

PART XIII. SECT. 22, SUB-SECT. 5.—C.

sy. *Only circumstances at or immediately after dissolution of marriage.*]—The ct. should not consider extraneous events subsequent to the dissolution as good ground for varying a settlement.—JACKSON *v.* JACKSON, [1928] N. Z. L. R. 88.—**N.Z.**

5551. *Add. Annotation :*—**Consd.** Bosworthick *v.* Bosworthick (1926), 95 L. J. P. 171.

5576. *Add. Annotation :*—**Reld.** Tallack *v.* Tallack & Broekema, [1927] P. 211.

5579. *Add. Annotation :*—**Reld.** Tallack *v.* Tallack & Broekema, [1927] P. 211.

5582. *Add. Annotation :*—**Reld.** Fanshawe *v.* Fanshawe, [1927] P. 238.

5583a. ——.]—After a decree *nisi* for dissolution of marriage the ct. has no jurisdiction under Jud. (Consolidation) Act, 1925 (c. 49), s. 192, to entertain any application for an inquiry into, & variation of, settlements intil after the decree has been made absolute.—GILBERT *v.* GILBERT & BOUCHER, [1928] P. 1; 96 L. J. P. 137; 137 L. T. 619; 43 T. L. R. 589; 71 Sol. Jo. 582, C. A.

5588. *Add. Annotation :*—**N.F.** Webster *v.* Webster & Williamson, [1926] P. 198.

5588a. —— ——.]—Although there is the fullest power to vary settlements, the ct. will regard the interests of the children as the important element for consideration in varying a settlement. Where an ante-nuptial settlement did not provide for the contingency of one of the spouses dying & the survivor marrying again, the ct., when varying the settlement after dissolution of the marriage, declined to insert in the settlement a provision enabling the husband to appoint a portion of the trust funds to a future wife & future children.—WEBSTER *v.* WEBSTER & WILLIAMSON, [1926] P. 198; 95 L. J. P. 97; 135 L. T. 670.

Annotation :—**Distd.** Scollick *v.* Scollick, [1927] P. 205.

5588b. ——.]—In varying a settlement the ct. will exercise the wide powers conferred upon it by Jud. (Consolidation) Act, 1925 (c. 49), s. 192, with regard to the facts of the case & the interests of children. If on the facts before the ct. a child of a first marriage may gain advantages concurrently with the creation of a fresh power of appointment enabling children of a second marriage to share a settled fund with it, the ct. will create that power, although it is not originally existent in the settlement, & although its creation may eventually involve some pecuniary sacrifice on the part of the child of the first marriage.—SCOLLICK *v.* SCOLLICK, [1927] P. 205; 96 L. J. P. 96; 137 L. T. 485; 71 Sol. Jo. 584.

5596. *Add. Annotation :*—**Reld.** Bosworthick *v.* Bosworthick, [1926] P. 159.

5596a. ——.]—*Held :* the settlements ought not to be varied beyond what was necessary for the benefit of the injured wife & her child.—PRINSEP *v.* PRINSEP, [1930] P. 35; 99 L. J. P. 35; 142 L. T. 172; 46 T. L. R. 29, C. A.

Annotation :—**Reld.** Alston *v.* Alston, [1929] P. 311.

5599. *Add. Annotation :*—*As to* (2) **Reld.** Webster *v.* Webster & Williamson, [1926] P. 198.

5600. *Add. Annotation :*—**Reld.** Webster *v.* Webster & Williamson, [1926] P. 198.

5603. *Add. Annotation :*—**Distd.** Webb *v.* Webb, [1929] P. 159.

5614. *Add. Annotation :*—*As to* (1) **Consd.** *Re* Monro's Settlement, Monro *v.* Hill, [1932] W. N. 167.

5619. *Add. Annotation :*—**Reld.** Melvill *v.* Melvill & Woodward, [1930] P. 159.

5622. *Add. Annotation :*—**Reld.** Bosworthick *v.* Bosworthick, [1926] P. 159.

5623. *Add. Annotation :*—**Reld.** Bosworthick *v.* Bosworthick, [1927] P. 64.

5623a. —— **Bond to secure annuity—Appointment of annuity.**]—A post-nuptial provision for his life made by a wife for her husband by a bond, or by the exercise of her power of appointment, giving him an annuity for his life expectant upon her death, are post-nuptial settlements within Matrimonial Causes Act, 1859 (c. 61), s. 5, & Jud. (Consolidation) Act, 1925 (c. 49), s. 192, & give rise on the dissolution of the marriage to the power of the ct. to vary the settlements.—BOSWORTHICK *v.* BOSWORTHICK, [1927] P. 64; 95 L. J. P. 171; 136 L. T. 211; 42 T. L. R. 719; 70 Sol. Jo. 857, C. A.

Annotation :—**Apprvd.** Melvill *v.* Melvill & Woodward, [1930] P. 159.

5623b. —— **Life policy—Contingent interest in policy money.**]—A life policy effected after marriage by one of the spouses on the life of the spouse effecting it, with a contingent interest of the other spouse in the policy money, is a post-nuptial settlement, & after divorce the ct. has power, under Jud. (Consolidation) Act, 1925 (c. 49), s. 192, to make orders with reference to the application of the policy money.—GULBENKIAN *v.* GULBENKIAN, [1927] P. 237; 96 L. J. P. 53; 136 L. T. 800; 43 T. L. R. 267; 71 Sol. Jo. 311.

5624a. **Settlement not made in contemplation of marriage.**]—The expression "ante-nuptial or post-nuptial settlements," in Jud. (Consolidation) Act, 1925 (c. 49), s. 192, does not, as regards the parties whose marriage is the subject of the decree, include a settlement of the property of either spouse not made in contemplation of any particular marriage, but giving the spouse power to appoint an interest to any future wife or husband.—HARGREAVES *v.* HARGREAVES, [1926] P. 42; 95 L. J. P. 31; 134 L. T. 543; 42 T. L. R. 252.

Annotation :—**Consd.** Melvill *v.* Melvill & Woodward, [1930] P. 159.

5624b. **Settlement made by wife after commencement of divorce proceedings by husband—Subsequent marriage with co-respondent.**]—A resp. wife after her husband had filed a petition seeking dissolution of his marriage with her on the ground of her adultery, executed a settlement of interests to which she was entitled under a will & under the marriage settlement of her parents, & settled them on herself for life with remainder to all or any of her children or child, of whom she had two by her then husband, who being males should attain the age of twenty-one years or being females should attain that age or marry, reserving a general power of appointment by will in default of any surviving children & further reserving a power of appointment both of capital & income in favour of any surviving husband. After decree absolute she executed a deed poll, declaring that her income under the settlement should be for her separate use without power of anticipation. Shortly after the execution of the deed poll she intermarried with co-resp. in the suit :—*Held :* the settlement was a "post-nuptial

settlement" made on the parties whose marriage was "the subject of the decree," & was therefore within the definition in Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49), s. 192, of the class of instrument with which the ct. had power to deal under the sect.—MELVILL *v.* MELVILL & WOODWARD, [1930] P. 159; 99 L. J. P. 65; 143 L. T. 206; 46 T. L. R. 327; 74 Sol. Jo. 233, C. A.

5625a. —— **Questions for consideration.**]—JANION *v.* JANION (1926), [1929] P. 237, n.; 98 L. J. P. 111, n.; 141 L. T. 226, n.; 45 T. L. R. 381, n.

Annotations:—**Folld.** Prinsep *v.* Prinsep, [1929] P. 225. **Consd.** Alston *v.* Alston, [1929] P. 311.

5625b. —— ——.]—(1) In deciding whether a settlement comes within the meaning of "post-nuptial settlement" on the parties within the purview of Jud. Act, 1925 (c. 49), s. 192, the material question is whether the settlement in question is upon the husband in the character of husband or on the wife in the character of wife or upon both in the character of husband & wife. Mere form is immaterial. The settlement may be one in the strictest sense or it may be, for instance, a covenant to pay by one spouse to the other or by a third party to a spouse. What is material is that the settlement should provide financial benefit for one or other or both of the spouses as spouses & with reference to their married state. (2) In dealing with a settlement under the powers conferred by sect. 192 the ct. will not be fettered in its application of the settled funds by remote & contingent interests therein of volunteers.—PRINSEP *v.* PRINSEP, [1929] P. 225; 98 L. J. P. 105; 141 L. T. 220; 45 T. L. R. 376; 73 Sol. Jo. 429; *subsequent proceedings*, [1929] P. 265; *varied*, 46 T. L. R. 29, C. A.

Annotation:—*As to* (1) **Consd.** Melvill *v.* Melvill & Woodward, [1930] P. 159.

5629. *Add. Annotation:*—*As to* (1) **Folld.** Bosworthick *v.* Bosworthick (1926), 95 L. J. P. 171.

5630. *Add. Annotations:*—**Reld.** Webster *v.* Webster (1926), 135 L. T. 670; Scollick *v.* Scollick (1927), 96 L. J. P. 96; Melvill *v.* Melvill & Woodward, [1930] P. 159.

5643. *Add. Annotation:*—*As to* (1) **Consd.** Hyman *v.* Hyman, [1929] A. C. 601.

5650. *Add. Annotations:*—**Reld.** Webster *v.* Webster & Williamson, [1926] P. 198; Scollick *v.* Scollick, [1927] P. 205.

5653. *Add. Annotation:*—**Reld.** Webster *v.* Webster & Williamson, [1926] P. 198.

5674. *Add. Annotation:*—*Generally*, **Reld.** Tallack *v.* Tallack & Broekema, [1927] P. 211.

5680a. —— —— —— ——.]—ALEXANDER *v.* ALEXANDER (1929), 45 T. L. R. 193; 73 Sol. Jo. 127.

5680b. —— **Power in favour of after-taken spouse & issue of second marriage—Acceleration—Notwithstanding benefit to guilty party.**]—The operation of a power in a marriage settlement for the resettlement of the trust funds of a surviving party to the marriage upon his or her after-taken spouse & the children or issue of his or her subsequent marriage may be accelerated in the event of the dissolution of the marriage so far as to become effective without actual survivorship & during the lifetime of the other party. By varying the settlement accordingly the ct. may effect this acceleration for the benefit not merely of an innocent party but also for that of a guilty spouse on the basis (*inter alia*) of the interest of the children of the dissolved marriage, in the opinion of the ct. being adequately protected by the terms & conditions of the acceleration.—ALSTON *v.* ALSTON, [1929] P. 311; 98 L. J. P. 155; 141 L. T. 542; 45 T. L. R. 642; 73 Sol. Jo. 544.

5686. *Add. Annotation:*—**Distd.** Webb *v.* Webb, [1929] P. 159.

5688. *Add. Annotation:*—**Consd.** Webb *v.* Webb, [1929] P. 159.

5688a. —— —— ——.]—By a marriage settlement the settled fund of a wife who had obtained a dissolution of the marriage was held in the absence of issue in trust, if the husband survived her, to yield him a specified income for a term with an absolute interest in a part of the corpus & subject thereto for her next of kin absolutely & if the wife survived, for her absolutely. The ct. extinguished the interest of the husband in his wife's fund, but refused to order the fund to be reconveyed to her freed from the trust for her next of kin so as to extinguish their interest.—WEBB *v.* WEBB, [1929] P. 159; 98 L. J. P. 72; 140 L. T. 592; 45 T. L. R. 223; 73 Sol. Jo. 174.

5691. *Add. Annotation:*—**Distd.** Webb *v.* Webb, [1929] P. 159.

5700. *Add. Annotation:*—**Reld.** Bosworthick *v.* Bosworthick, [1927] P. 64.

5718a. Interests of volunteers.]—PRINSEP *v.* PRINSEP, No. 5625b, *ante*.

5730a. —— ——.]—TAYLOR *v.* TAYLOR (1926), 161 L. T. Jo. 236.

5752. *Add. Annotation:*—**Reld.** Jagger *v.* Jagger, [1926] P. 93.

5760a. Hearing in camera—Whether ordered—Question involving legitimacy.]—ROBERTSON *v.* ROBERTSON & BUTT, *Re* ISSUE, ROBERTSON *v.* ROBERTSON (1928), 72 Sol. Jo. 585.

5760b. Jurisdiction of registrar—To inquire into matters antecedent to decree absolute.]—Where a wife had obtained a decree absolute of divorce & on her petition for variation of settlements the resp. raised the plea that it had been a collusive divorce, the registrar held that he could not inquire into such matters nor accept evidence thereon:—*Held:* on submission of the registrar's report to the president, the registrar had no jurisdiction to investigate those matters antecedent to the decree absolute.—MORRISS *v.* MORRISS (1930), 143 L. T. 776.

5766. *Add. Annotation:*—**Folld.** Gilbert *v.* Gilbert & Boucher (1927), 43 T. L. R. 589.

5770. *Add. Annotation:*—**Reld.** Bosworthick *v.* Bosworthick (1926), 136 L. T. 211.

5773a. —— —— —— ——.]—DAVIES *v.* DAVIES (1929), 73 Sol. Jo. 569.

PART XIII. SECT. 22, SUB-SECT. 6.—A. (a).

aa. *Children removed from jurisdiction—Order valid according to law of place of residence.*]—Where the husband is domiciled in Alberta at the time an action for divorce is begun, the Supreme Ct. of Alberta has jurisdiction in such action to make an order awarding the custody of the children to the mother, even though they have been removed by the father to a foreign State & are residing therein at the time of the appln. for the order; & will where the merits warrant it make such an order provided it appears that under the laws of said State the order will be recognised as valid by the cts. thereof.—GOFORTH *v.* GOFORTH, [1929] 1 D. L. R. 58; [1928] 3 W. W. R. 483. —CAN.

5781a. Child born before marriage.]—In a divorce suit, to which only the husband & wife were parties:—*Held:* an order giving to the husband custody of the child of the parties born before the marriage must be refused, as the ct. was not competent to find the facts necessary to make the child a legitimated child by virtue of Legitimacy Act, 1926 (c. 60).—BEDNALL *v.* BEDNALL & SHIVUSSAWA, [1927] P. 225; 96 L. J. P. 150; 137 L. T. 632; 43 T. L. R. 599; 71 Sol. Jo. 453.

Annotations:—**Folld.** Green *v.* Green, [1929] P. 101. **Reld.** Jones v. Jones (1929), 98 L. J. P. 74.

5781b. ——.]—The ct. has no jurisdiction to make an order for custody in divorce proceedings, in the case of a child of the parties who was born before their marriage & had not been declared legitimate, in accordance with Legitimacy Act, 1926 (c. 60). The word "children" in Jud. (Consolidation) Act, 1925 (c. 49), s. 193, means legitimate children.

Petitioner was given the "care & control" of the child by a direction of the ct., made under the general jurisdiction of the High Ct. in respect of infants.—GREEN *v.* GREEN, [1929] P. 101; 98 L. J. P. 58; 140 L. T. 93; *sub nom.* G. *v.* G., 45 T. L. R. 7; 73 Sol. Jo. 111.

Annotations:—**Folld.** Jones *v.* Jones (1929), 98 L. J. P. 74. **Reld.** *Re* Carroll (J. M.), [1931] 1 K. B. 317.

5781c. ——.]—The re-registration, as provided for in the schedule to the Legitimacy Act, 1926 (c. 60), of the birth of a child originally illegitimate, the child having become legitimate by virtue of the provisions of that Act, is not a record of a binding decision. In a divorce suit between the parents of such a child, the child is not a party, & the ct. has therefore no jurisdiction to make an order for the child's "custody," but may make an order, as thought fit, providing for its "care & control," as in the case of *Green* v. *Green*, No. 5781b, *ante*.—JONES *v.* JONES (1929), 98 L. J. P. 74; 140 L. T. 647; 45 T. L. R. 292; 73 Sol. Jo. 192.

5781d. Adopted child.]—The decision in *Jones* v. *Jones*, No. 5781c, & *Green* v. *Green*, No. 5781b, whereby the ct. is debarred from pronouncing, in a matrimonial cause, an order for custody of a child of the parties born before wedlock, does not apply to an adopted child, & in this undefended nullity suit the wife petitioner was granted an order for the custody of a child adopted by the parties after the ceremony of marriage.—MARTIN (OTHERWISE CRAWLEY) *v.* MARTIN (1930), 142 L. T. 560; 46 T. L. R. 257; 74 Sol. Jo. 216.

5781e. To vary order of magistrate made under Guardianship of Infants Acts.]—VIGON *v.* VIGON & KUTTNER, [1929] P. 245; 99 L. J. P. 9; 141 L. T. 293; 93 J. P. 112, n., C. A.; *subsequent proceedings*, 99 L. J. P. 9.

5781f. ——.]—VIGON *v.* VIGON & KUTTNER (1929), 99 L. J. P. 9; 141 L. T. 610; 45 T. L. R. 641; 93 J. P. Jo. 524; 27 L. G. R. 766; *previous proceedings*, [1929] P. 245, C. A.

5792a. —— Father's disobedience to decree for restitution of conjugal rights.]—There is no settled practice that after a husband's disobedience to a decree for restitution of conjugal rights, the custody of children should be refused to the husband or given to the complaining wife. The paramount consideration must be the welfare of the children.—W. *v.* W., [1926] P. 111; 95 L. J. P. 56; 135 L. T. 383; 42 T. L. R. 470.

5802a. —— Discharge of inchoate order.]—VIGON *v.* VIGON & KUTTNER, [1929] P. 245; 99 L. J. P. 9; 141 L. T. 293; 93 J. P. 112, n., C. A.; *subsequent proceedings*, 99 L. J. P. 9.

5821a. Applications for special payments—Procedure.]—After a final decree of dissolution of marriage, although orders for the custody & maintenance of the children of the dissolved marriage have been made & remain in existence, the ct. has jurisdiction, under Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49), s. 193 (1), to entertain applications for special payments, additional to those already ordered, in respect of the children. The proper procedure is for the person having the custody of the children to proceed by way of judge's summons under Matrimonial Causes Rules, 1924, r. 74A.—EYRE *v.* EYRE (1930), 99 L. J. P. 64; 142 L. T. 560; 46 T. L. R. 268; 74 Sol. Jo. 466.

5904. *Add. Annotation:*—**Consd.** Beaumont *v.* Beaumont (1932), 48 T. L. R. 431.

5913. *Add. Annotation:*—**Consd.** *Re* Blanchard, *Ex p.* Blanchard (1932), 101 L. J. Ch. 313.

5927. *Add. Annotation:*—**Consd.** Cotton *v.* Heyl, [1930] 1 Ch. 510.

5957a. —— ——.]—Process of sequestration in the Divorce Ct. is governed by Matrimonial

PART XIII. SECT. 22, SUB-SECT. 6.—A. (b).

sb. *Guilty wife.*]—Although in a husband's action for divorce he was found entitled to a decree on the ground of adultery, the wife was, in view of all the circumstances, given the custody of the children & maintenance for them & herself *dum sola et casta vixerit*.—LILLIE *v.* LILLIE, [1926] 1 D. L. R. 866; [1926] 1 W. W. R. 298; 20 Sask. L. R. 442.—**CAN.**

PART XIII. SECT. 22, SUB-SECT. 6.—A. (c).

5791 i. *Interests of children — & parents.*]—A wife obtained a decree of divorce for adultery in an action which also contained a conclusion for the custody of the two pupil children of the marriage. The Lord Ordinary, regarding the question solely from the point of view of the children's welfare, awarded the custody to the father:—*Held:* (1) Guardianship of Infants Act, 1925 (c. 45), s. 1, recognised & proceeded upon the existence of rights & preferences in the spouses to the custody of their children, & its effect was not to abolish those rights & preferences, but to provide that they should not be enforced if the result would be adverse to the children's welfare; (2) the wife, as innocent spouse, had a primary claim to the custody of the children; (3) on the facts she was, from the point of view of the children's welfare, as suitable a guardian as the father.—HUME *v.* HUME, [1926] S. C. 1005.—**SCOT.**

PART XIII. SECT. 22, SUB-SECT. 6.—B.

p i. —— ——.]—Adultery by a wife ought not to be regarded for all time & under all circumstances as sufficient to disentitle her to access to or even to the custody of the children. The ct. will have regard to the particular circumstances of each case, always bearing in mind that the benefit & the interest of the infant is the paramount consideration.—BOLTON *v.* BOLTON, [1928] N. Z. L. R. 473.—**N.Z.**

PART XIII. SECT. 23, SUB-SECT. 3.—A.

c i. ——.]—An order for *interim* alimony may be enforced by execution.—MCCLUSKY *v.* MCCLUSKY, [1925] 2 W. W. R. 649.—**CAN.**

PART XIII. SECT. 23, SUB-SECT. 3.—B. (a).

5913 i. —— —— *Debtors (Ireland) Act*, 1872 (c. 57).]—Resp. was ordered to pay to petitioner, alimony *pendente lite*, payments to be made weekly. Petitioner brought a summons for an order that deft. should be committed to prison for failing to pay such weekly instalments:—*Held:* payment of alimony *pendente lite* can be enforced by imprisonment under Debtors (Ireland) Act, 1872, s. 6, & such imprisonment can be awarded, in one order, in respect of default in payment of more than one instalment.—TE— *v.* TEES, [1930] N. I. 156.—**IR.**

Causes Rules, 1924, r. 79 (*a*), & not by R. S. C., Ord. 43, r. 6. According to the former a writ of sequestration is a remedy for non-payment of a sum of money at the time appointed, & is appropriate to the case of non-payment of an instalment of alimony. If it is contended that the issue of the writ would be futile or unreasonable by reason of the absence of available assets, the *onus* lies upon the party against whom relief is sought to establish that fact.—CAPRON *v.* CAPRON, [1927] P. 243; 96 L. J. P. 151; 137 L. T. 568; 43 T. L. R. 667; 71 Sol. Jo. 711.

5959. After this case add "——.]—*See, also,* EXECUTION, Vol. XXI., p. 594, Nos. 1751–1758."

5968. *Add. Annotations:—As to* (1) **Refd.** Allison *v.* Allison, [1927] P. 308; Burrowes *v.* Burrowes (1929), 141 L. T. 201.

5980. *Add. Annotation:*—**Consd.** Burrowes *v.* Burrowes (1929), 141 L. T. 201.

5993. *Add. Annotation:*—**Refd.** Fanshawe *v.* Fanshawe, [1927] P. 238.

5995a. —— **Restraint from receipt of dividends—Until payment of costs.**]—A wife was granted a decree of judicial separation on the ground of her husband's cruelty in an undefended petition, & an order for permanent alimony for herself & her four children was made at the rate of £950 a year. The husband had capital of at least £40,000. When each instalment of alimony became due he adopted an attitude of passive resistance, & on three successive occasions she secured payment only by execution on her husband's household effects, & on one occasion she secured a charging order on certain of his securities for the payment of a monthly instalment accrued due. Therefore she applied for an order to secure, under the control of the ct. or of a receiver, sufficient of the husband's capital from which payments of the monthly instalments could be made to her as they became due. The judge held that owing to a defect in the matrimonial law the ct. had no power to grant the relief asked for. The summons must be dismissed, but the husband would pay the wife's costs:—*Held:* under the law as it now stood, the husband could not be treated as in contempt with regard to future payments, but as he was in contempt as regards past payments & had expressed an intention to disobey the order for alimony as regards future payments, the ct., while not overstepping the proper limitations with regard to future payments, would make an order restraining him from receiving any dividends in respect of investments to the extent of £395 16*s.* 8*d.*, being the amount of the arrears of alimony & costs, directing that the solr. of resp. should receive the dividends & pay the same to the petitioner, & would give liberty to apply in chambers in regard to future arrears.—BURROWES *v.* BURROWES (1929), 141 L. T. 201; 45 T. L. R. 401, C. A.; *reversing* S. C. *sub nom.* B. *v.* B., 73 Sol. Jo. 334.

5995b. —— —— **Until payment of alimony.**]—BURROWES *v.* BURROWES, No. 5995a, *ante.*

6005. *Add. Annotation:*—**Refd.** Fanshawe *v.* Fanshawe, [1927] P. 238.

6006. *Add. Annotation:*—**Refd.** Fanshawe *v.* Fanshawe, [1927] P. 238.

6006a. —— ——.]—The ct. will interfere by way of injunction to restrain a husband from dealing with his property so as to defeat an order for costs or alimony *pendente lite*, when the amount of the latter has been fixed & an instalment of it is already due & in arrear, but will not so restrain him in respect of instalments of alimony to become due at a future date.—FANSHAWE *v.* FANSHAWE, [1927] P. 238; 96 L. J. P. 133; 137 L. T. 496; 43 T. L. R. 666; 71 Sol. Jo. 762.

6011. *Add. Annotation:*—**Refd.** Fanshawe *v.* Fanshawe, [1927] P. 238.

6012a. —— ——.]—FANSHAWE *v.* FANSHAWE, No. 6006a, *ante.*

6026a. -.]—Petitioner, in 1919, went through a ceremony of marriage with resp. In 1923 resp. was convicted of bigamy, she having been lawfully married to A. on Dec. 26, 1903, which marriage was still subsisting. The ct. pronounced a decree *nisi* of nullity, & under the powers conferred by Jud. (Consolidation) Act, 1925 (c. 49), s. 183 (1), allowed petitioner to apply for the decree to be made absolute after the expiration of one month.—OSBORN *v.* OSBORN (OTHERWISE IVIL) (1926), 70 Sol. Jo. 388.

6042a. —— **Application for substitution of alternative decree—Judicial separation.**]—Circumstances in which such application was granted.—ROCH *v.* ROCH (1926), 161 L. T. Jo. 395.

6069a. —— **Marriage annulled for incapacity.**]—A final decree annulling a marriage on the ground of the incapacity of one of the parties to it to consummate it has retrospective operation, so that the effect of the decree amounts to a declaration that there is no marriage. The contract of marriage may be impeached & declared null & void if there was incapacity to implement it, notwithstanding that in certain cases the right to complain to the ct. may be lost by reason of the conduct of the party complaining.—NEWBOULD *v.* A.-G., [1931] P. 75; 100 L. J. P. 54; 144 L. T. 728; 47 T. L. R. 297; 75 Sol. Jo. 174.

PART XIII. SECT. 24, SUB-SECT. 1.

5996 i. *As to what matters granted—Restraint from molestation.*]—The ct. has jurisdiction, in an undefended suit brought by a wife for judicial separation or alternatively for divorce, to grant an injunction restraining resp., until the hearing of the suit, from molesting petitioner by going to & remaining in petitioner's house.—MULLENS *v.* MULLENS, [1928] V. L. R. 55; [1928] Argus L. R. 6.—**AUS.**

PART XIII. SECT. 25, SUB-SECT. 1. —A.

5b. *Meaning of "pronouncing" decree nisi.*]—The "pronouncing" of the decree *nisi* within Divorce Rule 67 should be interpreted as referring to the date when the decree is entered. Since, however, the practice has been otherwise, & there was no suggestion of intervention in the present case, the decree absolute was granted although the decree *nisi*, granted over four months previously, was not entered until a few days before the motion for the decree absolute.—HELUSKA *v.* HELUSKA, [1932] 3 W. W. R. 47.—**CAN.**

PART XIII. SECT. 25, SUB-SECT. 3.

6053 i. *Non-payment of costs—By petitioner—Not valid ground.*]—*Held:* the non-payment of the taxed costs of suit was not a sufficient ground on which to stay the granting of the decree absolute.—MOLLOY *v.* MOLLOY & BURG, [1929] S. A. S. R. 80.—**AUS.**

PART XIII. SECT. 25, SUB-SECT. 4.

8d. *Decree in undefended divorce action—Decree in absence liable to suspension.*]—*Held:* a decree in an undefended action of divorce, was a decree in absence to which Ct. of Session (No. 1) Act, 1838, s. 5, applied, & it was, therefore, competent to bring a suspension of such decree.—CUNNINGHAM *v.* CUNNINGHAM, [1928] S. C. (Ct. of Sess.) 790.—**SCOT.**

6081a. —— ——.]—R. *v.* LERESCHE (1887), 56 L. J. M. C. 135; 35 W. R. 805, D. C.

6085a. Only one justice present throughout hearing—Validity of proceedings.]—On the hearing by justices of an application by a wife under Summary Jurisdiction (Separation & Maintenance) Acts, 1895 to 1925, for a maintenance order, on the ground of her husband's wilful neglect to provide her with reasonable maintenance, there was an adjournment, after four justices had heard evidence. At the resumed hearing there were two justices present, only one of whom had been present at the first hearing, & they made an order against the husband:—*Held:* the proceedings were rendered null & void by there being present throughout only one justice, & the matter must go back to the justices.—LEWIS *v.* LEWIS (1928), 92 J. P. 88; 72 Sol. Jo. 369; 26 L. G. R. 323.

6085b. Power to make applicant elect—Summons containing several grounds of complaint.]—Where a summons under Summary Jurisdiction (Separation & Maintenance) Acts, 1895 to 1925, claiming an order for maintenance, non-cohabitation, & custody, contained two of the statutory grounds of complaint, namely, wilful neglect to provide reasonable maintenance & persistent cruelty, either of which, if established, would justify such an order being made, the justices have no right to put appct. to her election upon which ground only she will proceed. Both must be disposed of.—TYRRELL *v.* TYRRELL (1928), 138 L. T. 624; 92 J. P. 45; 26 L. G. R. 188; 28 Cox, C. C. 485, D. C.

6088. *Add. Annotation:*—**Refd.** Diggins *v.* Diggins (1926), 43 T. L. R. 37.

6094a. Traveller—Wife living with mother by consent.]—A wife, whose husband was a traveller, by the tacit consent of both of them, lived with her mother. At the hearing of her summons on which she was granted a maintenance order on the ground of her husband's desertion, evidence was given to the effect that he had sent her money from time to time, & that for the six weeks preceding the issue of the summons such money had in fact exceeded the 15*s.* a week ordered by the justices. Marital relationship had also taken place shortly before the issue of the summons. On an appeal by the husband against the order:—*Held:* there was no evidence of desertion, particularly in view of the tacit consent of both parties that the wife should live with her mother, & the justices were wrong in making the order they did make.—GRAEFF *v.* GRAEFF (1928), 93 J. P. 48; 27 L. G. R. 6, D. C.

6098. *Add. Annotations:*—**Consd.** *Re* Wheat (1932), 48 T. L. R. 675. **Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416.

6099a. Occupation of separate rooms.]—A wife who continued to live in the same house as her husband & to take meals with him, applied for a summons for alleged desertion on the grounds that he treated her as nothing more than a servant, & insisted on their having separate rooms, & had refused to cohabit with her. The summons was dismissed:—*Held:* the justices had rightly dismissed the summons.—STEVENS *v.* STEVENS (1929), 93 J. P. 120; 27 L. G. R. 362, D. C.

6099b. —TOBIN *v.* TOBIN (1930), 94 J. P. Jo. 303.

6108a. —.]—On a wife's summons for wilful neglect to provide reasonable maintenance under Summary Jurisdiction (Separation & Maintenance) Acts, 1895 to 1925, it was shown that the wife left her husband of her own accord ten years ago & there had been no communication between them since. The justices made a maintenance order against the husband for £1 a week. The husband appealed:—*Held:* the wife having left the husband of her own volition, the husband's liability to maintain her was latent or in a state of suspense & not immediately operative.—BURROW *v.* BURROW (1930), 143 L. T. 679; 94 J. P. 225; 28 L. G. R. 483; 29 Cox, C. C. 170, D. C.

6109a. —.]—MEEK *v.* MEEK (1930), 94 J. P. Jo. 56; 29 Cox, C. C. 170, D. C.

6119a. Continuing offence.]—*Re* WHEAT, No. 6233*c*, *post*.

PART XIII. SECT. 27, SUB-SECT. 2.—B.

6098 i. —— *Refusal to cohabit—After temporary separation.*]—A husband & wife agreed to separate immediately after their marriage until the husband, a constable in the Royal Ulster Constabulary, had sufficient length of service to permit him to support his wife. When the agreement expired the husband refused to cohabit with his wife & refused & neglected to maintain her:—*Held:* the husband had deserted the wife.—TIMONEY *v.* TIMONEY, [1926] N. 75.—**IR.**

k i. —— ——.]—In order to give a magistrate jurisdiction to issue a summons & make an order under sect. 26 (2) of Domestic Relations Act, 1927, against a husband who has deserted his wife, the magistrate must be applied to by the wife & must be "satisfied that her husband, being able wholly or in part to maintain his wife & family, has wilfully neglected so to do"; & he cannot be held to be so satisfied unless he has given a judicial consideration to evidence in support of that fact. A mere plea of guilty by the husband cannot be considered an admission of the different facts required to be found. *Qu.*: whether Part IV. of said Act is constitutionally valid.—ROSKIWICH *v.* ROSKIWICH, [1931] 1 W. W. R. 838; 3 D. L. R. 796; 55 Can. C. C. 375; 25 Alta. L. R. 300.—**CAN.**

l i. ——.]—Deserted Wives' Maintenance Act, R. S. S., 1920, s. 2 (2), is not exclusive on the question as to whether a wife has been deserted within the meaning of the Act; but it is possible for a wife living apart from her husband to be "a married woman deserted by her husband," although the living apart is not due to the husband's legal cruelty or to his neglect or refusal to supply her with necessaries. If the husband without being legally cruel has left her & gone to live elsewhere she is a deserted wife; she also is a deserted wife if he, without being guilty of such cruelty, has ordered her out of the house where he continued to reside.—SCHWAB *v.* SCHWAB (Sask.), [1929] 3 W. W. R. 188.—**CAN.**

PART XIII. SECT. 27, SUB-SECT. 2.—C.

6121 i. *Persistent cruelty — What amounts to.*]—A husband who reflected on his wife's chastity & questioned the paternity of their child, displayed indifference to her physical welfare, threatened to put her out of the house & to do her bodily harm & actually assaulted her, although not severely, on two isolated occasions:—*Held:* guilty of persistent cruelty.—MCKIERNAN *v.* MCKIERNAN, [1926] 1 D. L. R. 558; [1926] 1 W. W. R. 199; 35 Man. L. R. 412.—**CAN.**

6121 ii. —— ——.]—R. *v.* GARDNER (Ont.) (1927), 47 Can. Crim. Cas. 180.—**CAN.**

6121 iii. —— ——.]—An order under Wives' & Children's Maintenance & Protection Act, R. S. M. 1913, c. 206, ss. 8, 9, based on a finding of "persistent cruelty," upheld.—NEILSON *v.* NEILSON, [1928] 2 D. L. R. 776; [1928] 1 W. W. R. 833; 37 Man. L. R. 337.—**CAN.**

se. *What amounts to cruelty.*]—On a complaint by a married woman charging cruelty & neglect to maintain, evidence of violence towards the wife to enforce sexual intercourse during her periods, & of actual sexual intercourse then enforced on her is admissible.—GOHRA *v.* GOHRA, [1928] S. A. S. R. 166.—**AUS.**

6123a. Assault after cessation of cohabitation.]—Although the operation of Summary Jurisdiction (Separation & Maintenance) Acts deals with & is limited to the relations of husband & wife, an act of violence committed by a husband against his wife after he has ceased to cohabit with her may amount to conduct on his part which can be taken into consideration together with his previous conduct as constituting the offence of persistent cruelty within the Acts.—SIMCOCK *v.* SIMCOCK, [1932] P. 94; 101 L. J. P. 38; 147 L. T. 17; 96 J. P. 226; 48 T. L. R. 374; 76 Sol. Jo. 345; 30 L. G. R. 216; 29 Cox, C. C. 445, D. C.

6124a. —— Termination of separation agreement—On bankruptcy of husband.]—DEWE *v.* DEWE, SNOWDON *v.* SNOWDON, No. 595a, *ante*.

6124b. —— Failure to continue payments under separation agreement.]—By an agreement of separation a husband undertook to pay his wife 17*s.* 6*d.* a week by way of maintenance, & the wife undertook that she would not by any means whatsoever endeavour to compel the husband to allow her any alimony or maintenance other than the above sum of 17*s.* 6*d.* a week. On the husband failing to continue payments under the agreement, the wife took out a summons under Summary Jurisdiction (Separation & Maintenance) Acts, 1895 to 1925 for an order against her husband, on the ground that he had wilfully neglected to provide reasonable maintenance for her & her infant child. The justices dismissed the summons, holding their jurisdiction was ousted by the undertaking of the wife, & the proper forum for her claim was the county ct.:—*Held:* as the payments under the agreement had not been maintained by the husband, the justices had jurisdiction, &, if a case of wilful neglect were proved, to make an order, at any rate for an amount not exceeding 17*s.* 6*d.* a week.—MCCREANNEY *v.* MCCREANNEY (1928), 138 L. T. 671; 92 J. P. 44; 26 L. G. R. 185, D. C.

Annotation:—**Refd.** Iles *v.* Iles (1931), 145 L. T. 71.

6124c. ——.]—FLETCHER *v.* FLETCHER (1928), 92 J. P. 94; 26 L. G. R. 398, D. C.

6124d. —— Must be neglect amounting to misconduct.]—Before an order for maintenance can be made by justices on the ground of wilful neglect to maintain, the husband must be proved to have been guilty of such wilful neglect as amounted to misconduct.—JONES *v.* JONES (1929), 142 L. T. 168; 46 T. L. R. 33; 94 J. P. 31; 27 L. G. R. 771; 29 Cox, C. C. 33, D. C.

6124e. —— No jurisdiction to make separation order where no cruelty.]—In a case in which a married woman was granted a maintenance order on the ground of wilful neglect to provide reasonable maintenance, the justices, although there was no charge of cruelty, also made a non-cohabitation order. The Div. Ct., in dismissing an appeal against the order to pay, characterised the separation order as a very serious mistake, which was constantly being made, & struck it out.—SNOW *v.* SNOW (1932), 96 J. P. 477; 30 L. G. R. 517, D. C.

6124f. Duty to make order for maintenance.]—On a summons by a wife for a maintenance order under the Summary Jurisdiction (Married Women) Act, 1895 (c. 39), on the ground of persistent cruelty, the justices made a separation order but made no order as to maintenance. The wife appealed:—*Held:* the case must be remitted to the justices to consider & decide what should be the proper provision for the wife.—CLEWS *v.* CLEWS (1932), 96 J. P. 91; 30 L. G. R. 102, D. C.

6124g. Wife required to live with mother-in-law.]—An engaged couple agreed that after marriage they should live with the husband's mother at her house. After the marriage differences arose between the wife & her mother-in-law which resulted in the wife's leaving the husband. The wife summoned the husband for wilful neglect to provide her with reasonable maintenance. The husband offered to take her back to the mother's house, & said that it was the only home which he could afford to provide. The justices made a maintenance order for £1 a week for wife & child. The husband appealed:—*Held:* the justices were right. The husband's first duty was to provide his wife with a home according to his circumstances. The justices were right in holding that, by reason of the difficulty about the husband's mother, he had failed in that duty by putting his mother first. In view of his small earnings the wife's allowance was reduced from 15*s.* to 12*s.* a week. Otherwise the appeal failed.—MILLICHAMP *v.* MILLICHAMP (1931), 146 L. T. 96; 95 J. P. 207; 75 Sol. Jo. 814; 29 L. G. R. 671; 29 Cox, C. C. 391.

Annotation:—**Distd.** Jackson *v.* Jackson (1932), 96 J. P. 97.

6124h. —— Wife required to live next door to mother-in-law.]—On a summons by a wife on the ground of wilful neglect to provide reasonable maintenance, it was found by the magistrates that the action of the husband in requiring his wife to live in a house next door to his mother, & in keeping control of the purse, & of the housekeeping with the assistance of his mother, constituted unbearable conditions for her. She had left the house with the infant child of the marriage after an altercation. The magistrates made an order against the husband for the payment of 30*s.* a week. The husband appealed:—*Held:* the wife had not made out her complaint, & the order must be discharged.—JACKSON *v.* JACKSON (1932), 146 L. T. 406; 96 J. P. 97; 48 T. L. R. 206; 76 Sol. Jo. 129; 30 L. G. R. 106; 29 Cox, C. C. 433, D. C.

6128. After this case add:—

. . . . . *now*, Summary Jurisdiction (Separation & Maintenance) Act, 1925 (c. 51), s. 1 (1) (4).

PART XIII. SECT. 27, SUB-SECT. 2.—D.

6126 i. *Causing to leave & live apart—Husband's failure to pay allowance during separation—Or provide home.*]—Applt., the husband, had, while intoxicated, threatened his wife, & she left home, being in fear of him. Subsequently she wrote suggesting reconciliation, but the letters were unanswered. The husband contributed nothing to her support except a sum of 10*s.* & her tram fare to Adelaide, &, almost eight months after she had left him definitely refused to take her back or support her. On these facts the magistrate granted relief for neglect to maintain, but refused to grant relief for desertion on the ground mentioned above:—*Held:* desertion should have been found by the special magistrate.—MORGAN *v.* MORGAN, [1927] S. A. S. R. 140.—**AUS.**

6128a. —— Effect of Summary Jurisdiction (Separation & Maintenance) Act, 1925 (c. 51), s. 1 (1)—Neglect of marital duties by wife.]—On this appeal from justices the ct. explained the true effect of the change made by Summary Jurisdiction (Separation and Maintenance) Act, 1925 (c. 51), s. 1 (1), in sect. 4 of the principal Act of 1895, as not providing that a married woman was entitled to maintenance even though she did not carry out her marital obligations.

The marriage took place twenty-two years ago, & there were a number of children. In Jan. 1929 the parties separated. Soon afterwards the wife summoned the husband for desertion, & her summons was dismissed. Later, solrs. for the wife wrote to the husband that she was willing to live with him again & make a fresh start. On Mar. 27, 1931, she summoned him for alleged desertion & wilful neglect to maintain her. At the hearing on Apr. 2, the justices heard the complaint on the basis that it was one for wilful neglect, & dismissed the summons. The wife appealed. The husband was not represented:—*Held:* the legislature had not provided that a married woman, who had not committed adultery, might in any circumstances whatever be entitled to an order for maintenance. The law still took account of the mutual character of marital obligations. The justices had thought that the wife had renounced her wifely duties, but the summons would be sent back to them so that they might state their precise reasons for their conclusion.—CLARK *v.* CLARK (1931), 145 L. T. 487; 95 J. P. 170; 75 Sol. Jo. 616; 29 L. G, R. 559; 29 Cox, C. C. 339, D. C.

6128b. Effect of separation deed.]—This was an appeal from the decision of a metropolitan police magistrate dismissing a summons by a wife on the ground of wilful neglect to provide reasonable maintenance. She had entered into a common form separation deed which provided for the payment to her by the husband of £2 a week. The payments fell into arrears, & a judgment against the husband went unsatisfied. In the following year the wife entered into a deed by which in return for the payment of a lump sum to start her in a new life in Canada, both spouses covenanted (*inter alia*) not to petition for judicial separation, restitution of conjugal rights, or divorce, & the wife covenanted in all respects to support & maintain herself & indemnify her husband against all liabilities into which she might enter.

The wife was paid the money & went to Canada. She had a breakdown & returned to England. She summoned her husband for wilful neglect, & said that he had become substantially better off. The summons was dismissed. She appealed:—*Held:* there was no evidence to show whether or not the magistrate had considered himself bound by the effect of the separation deeds to dismiss the summons. Whether the later deed operated as a final release of the husband was still an open question. It had never been decided what was the effect on the magistrate's matrimonial jurisdiction under the Summary Jurisdiction Acts of a wife's agreement to waive maintenance. Order rescinded, so that the matter might be reconsidered by the magistrate.—BURTON *v.* BURTON (1929), 142 L. T. 165; 94 J. P. 32; 29 Cox, C. C. 26, D. C.

6133a. Jurisdiction to make—On summons for maintenance.]—Where a wife under Summary Jurisdiction (Separation & Maintenance) Acts, 1895 to 1925, merely asks in her summons for an order for maintenance on the ground of wilful neglect it is improper for justices to decree a separation or make an order for the custody of children.—SMITH *v.* SMITH (1930), 144 L. T. 156; 95 J. P. 17; 47 T. L. R. 9; 74 Sol. Jo. 755; 28 L. G. R. 644; 29 Cox, C. C. 187.

6137a. Rule not applicable to wage-earners.]—This was an appeal from a maintenance order granted to a wife by the justices on the ground that her husband had wilfully neglected to provide reasonable maintenance. The husband was earning £3 a week, & the wife, in addition to living rent free as a caretaker of flats, was earning from 10*s.* to 15*s.* a week as a waitress. The magistrates made an order that the husband should pay his wife £1 a week, & the order included a non-cohabitation clause. The husband appealed:—*Held:* the non-cohabitation clause was unwarrantable & must be struck out. The magistrates were well warranted in their conclusion that there was wilful neglect to maintain. The conventional standard of maintenance in the Divorce Ct., one-third of the joint income, was not applicable to wage-earners. The allowance was reduced to 10*s.* a week.—JONES (A.) *v.* JONES (D. L.) (1929). 142 L. T. 167; 94 J. P. 30; 27 L. G. R. 768; 29 Cox, C. C. 30, D. C.

6144a. ——.]—ANSELL *v.* ANSELL (1930), 94 J. P. Jo. 410, D. C.

6147a. Refusal of wife to live with husband—Without good reason—Effect of.]—Under Summary Jurisdiction (Married Women) Acts, 1895 (c. 39), & 1925 (c. 51), the ct. will find great difficulty in granting a wife's application for maintenance where she has disclaimed her proper obligations to her husband & has without good cause refused to live with him.—WEATHERLEY *v.* WEATHERLEY (1929), 142 L. T. 163; 94 J. P. 38; 46 T. L. R. 28; 73 Sol. Jo. 730; 28 L. G. R. 1; 29 Cox, C. C. 22, D. C.

PART XIII. SECT. 27, SUB-SECT. 3.—C. (a).

sr. *Variation of order of Children's Court.*]—After service of a petition for divorce, a magistrate has jurisdiction to vary an order of a Children's Ct. directing the husband to pay maintenance for the support of his wife, either by reducing the amount, by suspending the order, or by directing payments under it to cease altogether. —*Exp.* HOLDEN (1929), 29 S. R. N. S. W. 575; 46 N. S. W. W. N. 194.—**AUS.**

sg. *Under Wives & Children's Maintenance & Protection Act—Enforcement—Sufficiency of proof of order.*]—ROSS *v.* ROSS, [1931] 1 W. W. R. 134; 55 Can. C. C. 394; 39 Man. L. R. 364. —**CAN.**

PART XIII. SECT. 27, SUB-SECT. 3.—C. (b).

p 1. —— *After divorce.*]—Where the parents of two legitimate children have been divorced a ct. of summary jurisdiction has no jurisdiction to make an order under Maintenance Act, 1926, for their maintenance against the father, although the complaint is not laid by the mother, but by an officer of the Children's Relief & Public Welfare Board.—ALDERMAN *v.* KEMP, [1928] S. A. S. R. 4.—**AUS.**

6151a. On summons for maintenance.] SMITH *v.* SMITH, No. 6133a, *ante.*

6161. *Add. Annotation:*—**Consd.** Price *v.* Price (1927), 43 T. L. R. 609.

6164a. —— —— ——.]—A complaint by a wife against her husband for wilful neglect to maintain her or her infant child need not, under Summary Jurisdiction Act, 1848 (c. 43), s. 11, be brought within six months from the time when by such neglect he caused her to live separately & apart from him, inasmuch as by Summary Jurisdiction (Separation & Maintenance) Act, 1925 (c. 51), s. 1 (1), the complaint may now be made notwithstanding that the neglect has not caused her to leave & live separately & apart from him.—PRICE *v.* PRICE (1927), 43 T. L. R. 609; 71 Sol. Jo. 432, D. C.

6165a. —— —— ——.]—Although a charge of persistent cruelty made by a wife under Separation & Maintenance Acts, 1895 to 1925, must be brought, in view of the provisions of Summary Jurisdiction Act, 1848 (c. 43), s. 11, within six months from the time when the matter of such complaint arises, justices are entitled to take into account acts of cruelty committed before the six months begins to run, to determine whether there has been a course of conduct which, coupled with one act of cruelty committed within the six months limit, amounts to persistent cruelty within the Acts.—DONKIN *v.* DONKIN (1932), 96 J. P. 472; 49 T. L. R. 10; 76 Sol. Jo. 799; 30 L. G. R. 513, D. C.

6167. *Add. Annotation:*—**Apld.** *Re* Wheat (1932), 48 T. L. R. 675.

6173. *Add. Annotation:*—**Consd.** Clark *v.* Clark (1931), 145 L. T. 487.

6177a. —— **Four summonses dismissed—Fifth summons on same cause of complaint.**]—On an appeal by a husband from an order directing him to pay his wife £1 a week for maintenance on the ground of his desertion, it was shown that four previous summonses taken out by the wife in the same ct. for desertion had been dismissed, & that the fresh proceedings disclosed no new facts. The order was discharged on the ground of *res judicata.*—WALL *v.* WALL (1930), 94 J. P. 200; 94 J. P. Jo. 303; 28 L. G. R. 477, D. C.

6179a. ——.]—A wife's right to claim & obtain an order for maintenance from a bench of justices under Summary Jurisdiction (Separation & Maintenance) Act, 1925 (c. 51), is not necessarily barred by a deed of separation which makes an allowance for her maintenance, but it must depend on the terms of the deed whether she is or is not deprived of that right.—DIGGINS *v.* DIGGINS, [1927] P. 88; 96 L. J. P. 14; 136 L. T. 224; 90 J. P. 208; 43 T. L. R. 37, D. C.

Annotations:—**Refd.** McCreanney *v.* McCreanney (1928), 138 L. T. 671; Matthews *v.* Matthews (1932), 48 T. L. R. 511.

6179b. ——.]—A wife entered into a separation deed under which the husband covenanted to pay her *dum casta* during joint lives one-third of the joint incomes, his income to be ascertained in a prescribed manner & any dispute relating thereto to be settled by arbitration. After a small sum had been paid a dispute arose, & the wife was granted a maintenance order for £2 a week, on the ground of wilful neglect to maintain. The husband appealed on the ground that the jurisdiction of the magistrates was barred by the deed, but it was held that there was nothing in the deed to exclude the wife's statutory remedy, & the appeal was dismissed.—ILES *v.* ILES (1931), 145 L. T. 71; 95 J. P. 136; 47 T. L. R. 396; 75 Sol. Jo. 359; 29 L. G. R. 537, D. C.

6179c. ——.]—An agreement for separation between husband & wife providing payments by the husband for the benefit of the wife, coupled with an agreement by her not to make any claim for maintenance or to institute proceedings for that purpose, does not oust the jurisdiction of the ct. under Summary Jurisdiction (Married Women) Act, 1895 (c. 39), & Summary Jurisdiction (Separation & Maintenance) Act, 1925 (c. 51), to inquire whether the husband has been guilty within the Acts of "wilful neglect to provide reasonable maintenance." The deed is of merely evidential value in proceedings for maintenance under the Acts & does not act as an estoppel, although it might have had that effect in proceedings at common law.—MATTHEWS *v.* MATTHEWS, [1932] P. 103; 101 L. J. P. 41; 147 L. T. 240; 96 J. P. 290; 48 T. L. R. 511; 76 Sol. Jo. 495; 30 L. G. R. 365, D. C.

6180a. —— ——.]—On a wife's summons for maintenance on the ground of persistent cruelty, the only independent corroboration of the wife's charges related to an incident following a quarrel, after which wife & husband cohabited & within a few days, on going away for a holiday, she wrote him an affectionate letter. The justices made an order for fifteen shillings a week, with a non-cohabitation clause. The husband appealed: appealed:—*Held:* the cheerful return of the wife to cohabitation & her affectionate letter were strong evidence that she did not look upon the quarrel incident as cruelty, & there was no evidence of persistent cruelty. Order discharged.—GOODMAN *v.* GOODMAN (1931), 95 J. P. 95; 29 L. G. R. 273, D. C.

6183. *Add. Annotation:*—**Refd.** Williams *v.* Williams (1932), 96 J. P. 267.

6188a. Power of magistrates—To make applicant elect—Summons containing several grounds of complaint.]—TYRRELL *v.* TYRRELL, No. 6085b, *ante.*

6188b. Husband without legal representative—Whether ground for appeal.]—LESLIE *v.* LESLIE (1930), 94 J. P. Jo. 303.

6191a. —— —— —— **What amounts to—Cross-examination of husband.**]—Where a wife seeks a separation & maintenance order on the ground of her husband's desertion, & the only evidence given is that of the husband & the wife, then the husband's evidence in cross-examination may be corroboration of her evidence so as to justify the justices in making an order.—WILLIAMS *v.* WILLIAMS (1928), 93 J. P. 32; 27 L. G. R. 4, D. C.

6191b. —— —— —— **Degree necessary.**]—On an appeal from a maintenance order made by the magistrate on Mar. 18, 1932, finding that the husband had deserted his wife in 1915, & directing him to pay her £2 a week, it was submitted that there was no corroboration of the wife's evidence as to desertion:—*Held:* the strict law of corroboration by

independent evidence required under the ecclesiastical procedure in proceedings for desertion in the Divorce Ct. was not necessarily applicable to the matrimonial jurisdiction in the police cts. Nevertheless it was obvious that in matters of the greatest consequence between man & wife to act on evidence unsupported by a body of facts would be dangerous. When one found that during seventeen years the husband had not lived with his wife, & had not provided her with maintenance, there was a body of facts which, unless satisfactorily explained by applt., established the wife's case. The magistrate took the right view. The appeal was dismissed with costs.—WILLIAMS *v.* WILLIAMS (1932), 147 L. T. 219; 96 J. P. 267; 76 Sol. Jo. 461; 30 L. G. R. 362, D. C.

6192a. **Statement by probation officer—Otherwise than as witness.**]—In a case in which a wife summoned her husband for desertion the justices adjourned the hearing with a view to the probation officer using his good offices to effect a reconciliation. At the resumed hearing he informed the ct., not as a witness, that his efforts had been fruitless, & in the course of his statement expressed a favourable view as to the character of the husband. The justices refused to make an order, & on the wife's appeal it was urged that the justices' minds were biased in favour of the husband by the probation officer's improper & unsolicited testimonial:—*Held:* the justices were entitled to come to their decision on the evidence. The note of the proceedings contained no reference to any observations by the probation officer & no extraneous evidence should be allowed in the Div. Ct.—PEARCE *v.* PEARCE (1929), 93 J. P. 64; 27 L. G. R. 364, D. C.

6217a. **Adjourned hearing before different justices—Only one justice present throughout whole hearing—Validity of proceedings.**]—LEWIS *v.* LEWIS, No. 6085a, *ante*.

6230a. —— **Attachment of husband's income—Discharge of maintenance order.**]—Where a maintenance order under Summary Jurisdiction (Married Women) Act, 1895 (c. 39), has been discharged on the ground of the wife's adultery, she may nevertheless enforce payment of arrears accrued due down to the date of discharge & obtain an order for the attachment of her husband's income. Such an order is not an order "under this Act" within Summary Jurisdiction (Married Women) Act, 1895, s. 6.—OUTERBRIDGE *v.* OUTERBRIDGE, [1927] 1 K. B. 368; 96 L. J. K B. 74; 136 L. T. 303; 90 J. P. 204; 43 T. L. R. 33; 70 Sol. Jo. 1113; 28 Cox, C. C. 281, D. C.

6231. *Add. Annotation:*—**Expld.** Horsfield *v.* Brown, [1932] 1 K. B. 355.

6233a. **Form of warrant.**]—A warrant issued by a magistrate for the enforcement of a maintenance order under the Summary Jurisdiction (Married Women) Act, 1895 (c. 39), must contain the words "unless the said sum & all costs & charges be sooner paid": by sect. 9 of that Act, Bastardy Laws Amendment Act, 1872 (c. 65), s. 4; Affiliation Orders Act, 1914 (c. 6), s. 6 (1); Bastardy (Forms) Order, 1915; & Bastardy (Forms) Amendment Order, 1921. The omission of these words in the warrant renders it invalid, & a constable making an arrest under such an invalid warrant is not protected by Criminal Justice Act, 1925 (c. 86), s. 44.—HORSFIELD *v.* BROWN, [1932] 1 K. B. 355; 101 L. J. K. B. 177; 146 L. T. 280; 96 J. P. 123; 30 L. G. R. 153; 29 Cox, C. C. 422.

6233b. —— **Made in Dominion—Maintenance Orders (Facilities for Enforcement) Act, 1920 (c. 33).**]—A married woman obtained in a police ct. in Australia a maintenance order against her husband ordering him to pay £5 10*s.* per week for her & her child's maintenance. An application was subsequently made by her to a ct. of summary jurisdiction in England under the above Act to confirm that order as against her husband who was resident in England. Upon that application no evidence was submitted to the justices on behalf of the husband. The justices confirmed the order with the modification or variation of substituting £2 10*s.* per week, *i.e.*, £2 for the married woman & 10*s.* for the child, in lieu of £5 10*s.* per week, they being of opinion that they were bound to reduce the amount payable under the order to the limit prescribed for such orders made by a ct. of summary jurisdiction under Summary Jurisdiction (Married Women) Act, 1895 (c. 39):—*Held:* (1) the justices had power to state a case for the opinion of the K. B. Div. on the question whether they were right in so deciding; (2) they were wrong in holding that in dealing with an order under the above Act of 1920 they were bound to limit the amount payable to the sum prescribed for orders made under the above Act of 1895.

(3) The expression "Summary Jurisdiction Acts" in sect. 7 of the above Act of 1920 does not include Summary Jurisdiction (Married Women) Act, 1895 (c. 39) (AVORY, J.).—PEAGRAM *v.* PEAGRAM, [1926] 2 K. B. 165; 95 L. J. K. B. 819; 135 L. T. 48; 90 J. P. 136; 42 T. L. R. 530; 70 Sol. Jo. 670; 28 Cox, C. C. 213, D. C.

6233c. —— —— ——.]—A provisional order for maintenance of a wife resident in South Africa was made in a magistrate's ct. in South Africa against her husband then domiciled & resident in England. The order came before a Metropolitan magistrate for

PART XIII. SECT. 27, SUB-SECT. 6.—D. (b).

c i. —— *Under Maintenance Orders (Facilities for Enforcement) Act, 1923.*]—A maintenance order was made against one C. in England in 1908. A copy of the order, which was certified as a true copy by a person described as "clerk to the justices," was registered in N.S.W. in 1929. Proceedings were taken in this State against C. in Aug. 1930, to enforce payment of arrears of maintenance, the greater portion of which was referable to the period prior to registration. A sworn complaint by the original English complainant contained the only evidence of non-compliance prior to the date of registration. Proof of the identity of C. with the person against whom the original order was made consisted in a similarity of names, evidence that C. had been concerned in maintenance proceedings in England, & evidence as to the nature of his occupation & his request as to service of the process. An order was made that C. be imprisoned until the arrears of maintenance had been paid, & against that order a rule *nisi* for prohibition had been granted:—*Held:* the sworn complaint was not a deposition within Maintenance Orders (Facilities for Enforcement) Act, 1923, s. 11, & could not be accepted as evidence of non-compliance with the order prior to the date of its registration in N.S.W.—*Re* MCMASTER, *Ex p.* CORMACK (1929), 47 N. S. W. W. N. 148.—AUS.

confirmation, & he made an order confirming it:—*Held:* (1) as desertion is a continuing offence, there was evidence upon which the South African ct. could find that the wife was deserted in South Africa, although the commencement of the desertion had been elsewhere; (2) it was open to the husband, on the application to confirm, to raise the question of the jurisdiction of the magistrate's ct. in South Africa to make the provisional order, although that ground was not one of those enumerated in the statutory "statement" sent over by the South African ct. of the grounds upon which the application for maintenance might have been opposed by the husband if a party to the proceedings. Therefore, the ct. being satisfied, on consideration of the South African statutes, that the magistrate's ct. had jurisdiction, held that the Metropolitan magistrate's order confirming the provisional order was right.—*Re* WHEAT, [1932] 2 K. B. 716; 101 L. J. K. B. 720; 147 L. T. 437; 96 J. P. 399; 48 T. L. R. 675; 30 L. G. R. 396, D. C.

6236. After this case add "*See, now,* Criminal Justice Administration Act, 1914 (c. 58),

6241a. After this case add "- —— ——.]—*See, now,* Summary Jurisdiction (Separation & Maintenance) Act, 1925 (c. 51), s. 2 (2)."

6242. *Add. Annotations:*—**Distd.** Pastre *v.* Pastre, [1930] P. 80. **Refd.** Natborny *v.* Natborny (1932), 96 J. P. 351.

6242a. —— —— **By consent of parties.**]—EBERT *v.* EBERT (1930), 94 J. P. Jo. 56.

6242b. —— **Effect of—On right to recover arrears of maintenance.**]—OUTERBRIDGE *v.* OUTERBRIDGE, No. 6230a, *ante.*

6250. *Add. Annotations:*—*As to* (1) **Apld.** Outerbridge *v.* Outerbridge (1926), 90 J. P. 204. **Refd.** Peagram *v.* Peagram, [1926] 2 K. B. 165.

6250a. —— —— —— —— **Necessity for strict proof.**]—In this case justices refused to discharge a maintenance order which they had made on the ground of the husband's cruelty. The husband had applied for discharge of the order on the ground that since the order the wife had committed adultery. The justices found that the husband conduced to his wife's adultery by his failure to keep up payments under the order, & refused to discharge it. The husband appealed:—*Held:* the justices were not warranted on the facts in finding conduct conducing, which must be strictly proved & must be the direct cause of the adultery. Appeal allowed & original order discharged.—NORRIS *v.* NORRIS (1930), 94 J. P. 79; 28 L. G. R. 137.

6250b. —— —— ——.]—Observations upon the administration of the jurisdiction conferred on justices by Summary Jurisdiction (Married Women) Act, 1895 (c. 39), s. 7, as amended by Summary Jurisdiction (Separation & Maintenance) Act, 1925 (c. 51), s. 2, to discharge a maintenance order on proof of the wife's adultery.—BROADBENT *v.* BROADBENT (1927), 43 T. L. R. 186, D. C.

6250c. —— —— —— **Time for application.**]—A complaint under Summary Jurisdiction (Married Women) Act, 1895 (c. 39), s. 7, that a married woman has committed adultery, is subject to the six months' limitation imposed by Summary Jurisdiction Act, 1848 (c. 43), s. 11.

A wife obtained an order for separation & an allowance in 1922. In 1926 justices purported to discharge the order by reason of adultery of the wife found by them to have been committed in 1915:—*Held:* the justices had exceeded their jurisdiction.—WALLER *v.* WALLER, [1927] P. 154; 96 L. J. P. 58; 136 L. T. 542; 43 T. L. R. 285; 71 Sol. Jo. 232; 28 Cox, C. C. 329, D. C.

Annotations:—**Folld.** Mellars *v.* Mellars (1931), 145 L. T. 550. **Expld. & Distd.** Natborny *v.* Natborny (1932), 96 J. P. 351. **Refd.** Dutch *v.* Dutch (1928), 45 T. L. R. 33.

6250d. —— —— —— ——.]—A husband, in seeking the rescission of a maintenance order on the ground of the wife's subsequent adultery, must make his complaint within six months of the alleged act of adultery, or within six months of his knowledge, or his means of acquiring the knowledge, of the alleged act.—DUTCH *v.* DUTCH (1928), 98 L. J. P. 44; 140 L. T. 96; 92 J. P. 197; 45 T. L. R. 33; 72 Sol. Jo. 796.

Annotation:—**Refd.** Natborny *v.* Natborny (1932), 48 T. L. R. 399.

6250e. —— —— —— ——.]—In this appeal from an order by magistrates the ct. took the point that, apart from the merits, the husband was out of time in applying for the revocation of a maintenance order made in Sept. 1904. The order was for 6*s.* The husband complained by summons towards the end of 1930 that his wife, now aged 60 years, had committed adultery with a man up to Mar. 1930, & claimed that the order be discharged. The wife's defence was a denial of adultery with the man for whom she had acted as housekeeper till his death in 1929. The justices found that adultery had been committed, & revoked the order on Jan. 5, 1931. The wife appealed on the ground that it was contrary to the weight of evidence:—*Held:* on the evidence before the justices the wife ought not to have been found guilty of adultery, but apart from that the husband was out of time in applying for the discharge of the order of 1904. The ground of the husband's complaint occurred more than six months before he took proceedings, & therefore the justices had no jurisdiction to hear the summons.—MELLARS *v.* MELLARS (1931), 145 L. T. 550; 95 J. P. 169; 29 L. G. R. 563; 29 Cox, C. C. 344, D. C.

Annotation:—**Consd.** Natborny *v.* Natborny (1932), 96 J. P. 351.

6250f. .]—In Oct. 1924, a husband was ordered to pay his wife 30*s.* a week maintenance, subsequently reduced to 20*s.*, on the ground of desertion. In Apr. 1931, he petitioned for divorce on the ground of his wife's adultery in Aug. 1928. On Dec. 5, 1931, he was granted a decree *nisi*, the suit being undefended. The decree was made absolute in May, 1932. On Dec. 16, 1931, the husband applied, under Summary Jurisdiction (Married Women) Act, 1895 (c. 39), s. 7, for the discharge of the maintenance order of 1924 on the ground of fresh evidence, namely, the wife's adultery in 1928. The magistrate dismissed the summons on the ground that the proceedings were out of time & that decision was affirmed by the Div. Ct.:—*Held:* the husband's application for the discharge of the order might be made "at any time"; it was not limited to the "six calendar months" referred to in Summary Jurisdiction Act, 1848

(c. 43), s. 11, from the time when the matter of the complaint arose. The matter must therefore be sent back to the magistrate to deal with under the discretion left open to him under Summary Jurisdiction (Separation & Maintenance) Act, 1925 (c. 51), s. 2.—NATBORNY *v.* NATBORNY (1932), 101 L. J. P. 58; 147 L. T. 252; 96 J. P. 351; 48 T. L. R. 590; 30 L. G. R. 447, C. A.

6250g. —— —— —— **Particulars of adultery.**]—A wife had obtained an order under Summary Jurisdiction (Separation & Maintenance) Acts, 1895 to 1925, that her husband should pay her 30*s.* a week by way of maintenance. The order did not contain a non-cohabitation clause. Subsequently the husband took out a summons asking that the order for maintenance should be discharged, on the ground that the wife had committed adultery. The husband gave evidence that, since the date of the maintenance order, his wife had given birth to a child, & of non-access on his part. This was the only evidence of adultery. The justices found that the wife had committed adultery, & discharged the weekly order for maintenance:—*Held:* (1) the evidence of the husband of non-access to bastardise his child was not admissible, & the justices' order discharging the maintenance order must be set aside; (2) in proceedings under Summary Jurisdiction (Separation & Maintenance) Acts, 1895 to 1925, if there is a charge of adultery, the act or acts of adultery should be specified with particulars, if possible, of the place where, the time when, & the name of the person with whom it is alleged the adultery has been committed.—BOSTON *v.* BOSTON (1928), 138 L. T. 647; 92 J. P. 44; 26 L. G. R. 183.

Annotation:—As to (1) **Distd.** Stewart *v.* Stewart (1932), 96 J. P. 94.

6251a. **Revival of order.**]—(1) A separation order granted to a wife, & made under Summary Jurisdiction (Married Women) Act, 1895 (c. 39), s. 5, upon cause being shown upon fresh evidence to the satisfaction of the ct., if the order has been discharged by the justices, may be revived by them under Criminal Justice Administration Act, 1914 (c. 58), s. 30 (3). (2) A finding of adultery against a wife by justices is not conclusive, whereas a subsequent finding by a judge of the High Ct., that the adultery alleged was not committed, is conclusive. Such a finding by a judge of the High Ct. is a new fact, & the nature of his finding is also a new fact, & both these facts are "fresh evidence" within the statutes.—PRATT *v.* PRATT (1927), 96 L. J. P. 123; 137 L. T. 491; 43 T. L. R. 523; 71 Sol. Jo. 433; 28 Cox, C. C. 413.

6252. *Add. Annotations:*—**Refd.** Colchester *v.* Peck (1926), 135 L. T. 32; R. *v.* Copestake, *Ex p.* Wilkinson (1926), 90 J. P. 191.

6255. *Add. Annotations:*—**Refd.** Colchester *v.* Peck, [1926] 2 K. B. 366; R. *v.* Copestake, *Ex p.* Wilkinson, [1927] 1 K. B. 468.

6255a. —— ——.]—PRATT *v.* PRATT, No. 6251a, *ante.*

6255b. —— ——.]—Where the justices had made a maintenance order on a wife's complaint that her husband had wilfully neglected to maintain her, & thereafter revoked the order on the husband's application, in view of his claim that he had undertaken to provide a home for her but she had refused to return; the wife appealed. It was submitted on her behalf that there was no cause shown on fresh evidence for the revocation of the maintenance order:—*Held:* it appearing from the correspondence which had passed since the maintenance order that the husband had offered to maintain her if she returned, & there being no evidence that the offer was not made *bonâ fide*, there was fresh evidence upon which the justices could act & the order was rightly revoked.—KAY *v.* KAY (1931), 95 J. P. 86; 29 L. G. R. 215, D. C.

6255c. —— ——.]—At the hearing of a wife's summons for desertion the husband charged his wife with adultery & gave evidence in support thereof. The justices made a maintenance order. Two months later the justices revoked the order on the application of the husband raising the same case of adultery & adducing additional evidence in support of the charge:—*Held:* it was open to the husband to call the evidence at the hearing of his wife's summons which was afterwards given on his application to revoke. It was not fresh evidence & the appeal must be allowed. There would be no limit in the Divorce Ct. to the number of fresh trials if the evidence in this case was held to be fresh evidence.—CROSS *v.* CROSS (1931), 95 J. P. 86; 29 L. G. R. 276, D. C.

6271. *Add. Annotation:*—**Refd.** Mart *v.* Mart, [1926] P. 24.

6272. *Add. Annotation:*—**Distd.** Peagram *v.* Peagram, [1926] 2 K. B. 165.

6275a. —— **Order made in Dominion.**]—PEAGRAM *v.* PEAGRAM, No. 6233b, *ante.*

6282a. —— **Error by justices.**]—Where a bench of justices reduced a maintenance order of 25*s.* a week to 2*s.* 6*d.* a week, the wife appealed, & it was held that this had been an error, & effect should be given to the justices' intention to make an order for 10*s.* a week.—PHEASEY *v.* PHEASEY (1932), 96 J. P. 93; 30 L. G. R. 100, D. C.

6283a. ——.]—PEARCE *v.* PEARCE, No. 6192a, *ante.*

6286a. —— -.]—JONES (A.) *v.* JONES (D. L.), No. 6137a, *ante.*

6286b. **To rescind order—Dismissing summons.**]—BURTON *v.* BURTON, No. 6128b, *ante.*

6286c. —— **Discharging order for maintenance.**]—Where an application was made by a husband for the discharge of a maintenance order made by the magistrates on the ground of the wife's alleged adultery since the order, & the magistrates found that adultery had been committed & discharged the order, the Div. Ct. held on appeal that there was no evidence on which adultery could have been found. Order for discharge rescinded.—GIBBONS *v.* GIBBONS (1932), 147 L. T. 200; 96 J. P. 247, D. C.

6300. *Add. Annotation:*—**Distd.** Fletcher *v.* Fletcher, [1928] P. 20.

6300a. —— —— **Wife's appeal.**]—A wife who has failed in her application before justices for a maintenance order on the ground of her husband's desertion, is not entitled to an order against her husband for security of the costs of her appeal against the justices' decision.—FLETCHER *v.* FLETCHER, [1928] P. 20; 97 L. J. P. 1; 138 L. T. 135; 91 J. P. 208; 44 T. L. R. 13; 71 Sol. Jo. 846.

INCOME TAX.

Part I.—Administration.

SUB-SECT. 1.—IN GENERAL (Vol. XXVIII., p. 5).

Add the following case :—

9a. Delivery of lists by person in receipt of income belonging to others—Duty of bank.] —A.-G. *v.* NATIONAL PROVINCIAL BANK, LTD. (1928), 44 T. L. R. 701.

10. *Add. Annotation :*—**Reld.** Pickford *v.* Quirke, Pickford *v.* I. R. Comrs. (1927), 138 L. T. 500.

Part II.—Schedule A.

NOTE.—The property in Sched. A., No. II., was transferred to Sched. D., Case III., and the property in Sched. A., No. III. was transferred to Sched. D., Case I., by Finance Act, 1926 (c. 22), s. 28, Sched. III.

SECT. 1.—**APPLICATION OF SCHEDULE** (Vol. XXVIII., p. 6).

11a. General rule.]—(1) Income tax under Schedule A., as under every other Schedule, is assessed on profits & gains, & the test in regard to liability to tax under Schedule A. is not whether the person taxed had an independent ownership of the property, but whether he had profits & gains in respect of his occupation.

(2) A person who by a will is given a right of residence in a house rent free so long as he wishes, & who is in residence during the year of assessment, is assessable to income tax for that year under Schedule A. in respect of his beneficial occupation ; & the amount at which he is assessed must be included in a return of the total income for super tax purposes in the following year.

(3) When the right of residence is given to two persons jointly, it is for the Special Comrs. to fix the proportion of the total assessment applicable to each person, &, when such a finding has been made, it should be accepted in any higher ct.—SHANKS *v.* INLAND REVENUE COMRS., [1929] 1 K. B. 342 ; 98 L. J. K. B. 341 ; 140 L. T. 157 ; 73 Sol. Jo. 76 ; 45 T. L. R. 28 ; 14 Tax Cas. 249, C. A.

Annotations :—As to (2) **Consd.** Sutton *v.* Inland Revenue Comrs. (1929), 45 T. L. R. 565. **Apprvd.** I. R. Comrs. *v.* Miller, [1930] A. C. 222.

13. *Add. Annotations :—Generally,* **Reld.** Glenboig Union Fireclay Co. *v.* I. R. Comrs. (1922), 12 Tax Cas. 427 ; Naval Colliery Co. (1897), Ltd. *v.* I. R. Comrs. (1928), 138 L. T. 593 ; Ormond Investment Co. *v.* Betts, [1928] A. C. 143.

15. *Add. Annotations :—As to* (1) **Consd.** Shanks *v.* I. R. Comrs., [1929] 1 K. B. 342. *As to* (2) **Reld.** Miller (Lady) *v.* I. R. Comrs. (1930), 15 Tax Cas. 25.

24a. Right of residence given to more than one person.] —SHANKS *v.* INLAND REVENUE COMRS., No. 11a, *ante.*

25a. Annual value—House let in apartments.]—Where a house or tenement is let in different apartments or tenements & occupied by two or more persons severally, the annual value, under 1918 Act, Schedule A., No. VII., r. 8 (*c*), is the aggregate of the hypothetical rack rents of the separate tenements, & not a hypothetical rack rent for the whole payable by one who would then sublet its separate tenements for the sake of profit.—WILLIAMS *v.* SANDERS, [1927] 2 K. B. 498 ; 96 L. J. K. B. 912 ; 137 L. T. 820 ; 43 T. L. R. 663 ; 11 Tax Cas. 673.

Annotation :—**Reld.** Embleton *v.* Norwich Union Life Insce. Soc., Norwich Union Life Insce. Soc. *v.* Embleton (1927), 11 Tax Cas. 681.

25b. —— Blocks of flats.]—Certain premises consisted of a number of blocks or buildings, each containing a number of self-contained flats which had separate entrance doors from the public staircase. The rents payable by the tenants included the payment of rates & taxes & the maintenance, lighting & cleaning of staircases & the performance of various other services by the landlord : *Held :* (1) in accordance with 1918 Act, Schedule A., No. VII., r. 8 (*c*), one assessment must be made in respect of each block or building, & not a separate assessment in respect of each flat ; (2) the allowance for repairs must also be made in respect of each building in accordance with Schedule A., No. V., r. 7 ; (3) the premises not being let at rack rent, in estimating the annual value the payments made by the owner for rates, etc., in the preceding year were to be excluded, as provided by Schedule A., No. IV., r. 1.—NORWICH UNION LIFE INSURANCE SOCIETY *v.* EMBLETON, EMBLETON *v.* NORWICH UNION LIFE INSURANCE SOCIETY (1927), 137 L. T. 415 ; 11 Tax Cas. 681.

Annotations :—As to (2) **Folld.** Towle *v.* Improved Industrial Dwellings Co. (1930), 46 T. L. R. 409. *Generally,* **Reld.** Williams *v.* Sanders, [1927] 2 K. B. 498.

25c. —— ——.]—TOWLE *v.* IMPROVED INDUSTRIAL DWELLINGS CO., LTD., [1931] 1 K. B. 263 ; 17 Tax. Cas. 231, C. A.

25d. —— ——.]—The owners of a building comprising eight residential flats & rooms for a porter appealed against eight assessments made under Sched. A., in respect of the flats, on the ground that they were entitled to

PART II. SECT. 2, SUB-SECT. 1.

25 ii. —— —— ——.]—The Finance Acts contain in each year, except in years of revaluation, a provision that the annual value of property which has been adopted for the purpose of income tax under Sched. A. for one year shall be taken as the annual value of that property for the same purpose for the next year :—*Held :* this provision does not preclude an increase in the assessment or an additional first assessment under Income Tax Act, 1918, s. 125, where the original assessment is found not to have included the whole annual value.—INLAND REVENUE COMRS. *v.* DICKSON, [1928] S. C. (Ct. of Sess.) 752.—SCOT.

allowances under Sched. A., No. V., r. 7 (1) (*b*), as amended by Finance Act, 1923 (c. 14), s. 28. The property was within the area to which Valuation (Metropolis) Act, 1869 (c. 67), applied, & in the valuation list in force during the tax year in question the gross value of each flat was shown separately, & the assessments complained of were in amounts corresponding to such gross values. All the flats were self-contained & had separate front doors abutting on to a common staircase inside the building, & there was one entrance to the street giving access to the whole building. Each flat was let to a separate tenant at a rent which included the rates & the cost of lighting & cleaning the common staircase & entrance & of providing a porter, with the result that the rents paid by the tenants largely exceeded the gross values contained in the valuation list. During the year of assessment the amount of the total rents payable under the leases was admitted, but the owners refused to give the particulars necessary to arrive at any outgoings, which should by law be deducted in making the assessment. The owners contended (*a*) that the gross assessments in the valuation list were conclusive for the purpose of income tax under Valuation (Metropolis) Act, 1869 (c. 67), during the quinquennial period in question & that the actual outgoings during any specific year forming part of that period were irrelevant; (*b*) that under r. 7 of Sched. A., No. V., as amended by Finance Act, 1923 (c. 14), s. 28, they were entitled to the appropriate allowances from the gross Sched. A. assessments set out in para. 3 of that rule for the purpose of collection. The Crown contended (*a*) that under Sched. A., No. VII., r. 8 (*c*), the whole house was the unit of assessment & assessable in one sum, namely, the total amount of the gross values of the eight flats & the porter's rooms; (*b*) that, on the figures before the Comrs., the claim to reduction failed, since under Sched. A., No. V., r. 7 (2), as amended by Finance Act, 1923 (c. 14), s. 28, there was no title to the reduction claimed where the amount of the assessment was less than the rent by a sum greater than the authorised reduction which would be allowable if the assessment were on the amount of the rent after deducting from such rent any outgoing which should by law be deducted in making the assessment. The Comrs. were of opinion that the income tax assessments should follow the assessments as fixed under Valuation (Metropolis) Act, 1869 (c. 67), & therefrom the appropriate deductions allowed for repairs in the case of each flat, & they reduced the assessments in accordance with para. 3 of r. 7:—*Held:* (1) it was incompetent to the Crown to raise their first contention, as 1918 Act gave the Crown no right of appeal against an assessment; (2) if the tax-payer was to make good his claim to reduction, inquiry must be made as to outgoings, & the case should be remitted to the comrs. to determine what reduction, if any, should be allowed on the basis that the outgoings referred to in para. 2 of r. 7 were to be ascertained separately as to each flat & as to each year of assessment.—CONSOLIDATED LONDON PROPERTIES, LTD. *v.* JOHNSTONE, [1927] A. C. 351; 101 L. J. K. B. 224; 146 L. T. 429; 96 J. P. 134; 48 T. L. R. 229; 30 L. G. R. 133; 17 Tax Cas. 231, H. L.

25d. —— **Premium paid for lease.**]—*Held:* the comrs. were entitled, in determining the annual value of premises, the lease of which had been assigned to applt., to take into account the premium originally paid by the assignor for the lease, plus interest thereon.—DAVIES *v.* ABBOTT (1927), 11 Tax Cas. 575, C. A.

25e. **Gross value—Whether property included in valuation list—Property in occupation of Crown—Computed annual value entered as ratable value in valuation list.**]—LEWIS *v.* ELGY (1927), 11 Tax Cas. 723.

25f. —— **Whether conclusive against Crown.**]—CONSOLIDATED LONDON PROPERTIES, LTD. *v.* JOHNSTONE, No. 25d, *ante*.

28. *Add. Annotation:*—**Refd.** Fry *v.* Salisbury House Estate, Ltd., Jones *v.* City of London Real Property Co., [1930] A. C. 432.

29. *Add. Annotation:*—**Refd.** Glenboig Union Fireclay Co. *v.* I. R. Comrs. (1922), 12 Tax Cas. 427.

36a. —— ——.]—Resp. board, which was constituted for the regulation & improvement of the navigation of the upper portion of a firth, was authorised to levy shipping dues, & these dues were its sole revenue:—*Held:* as the dues did not arise from "property in lands, tenements, hereditaments, & heritages," the board was not liable to be assessed in respect of them to income tax under 1918 Act, Schedule A., No. III., r. 3.—INLAND REVENUE COMRS. *v.* FORTH CONSERVANCY BOARD, [1929] A. C. 213; 98 L. J. P. C. 34; 140 L. T. 251; 93 J. P. 97; 45 T. L. R. 83; 27 L. G. R. 167; 14 Tax Cas. 709, H. L.

Annotation:—**Refd.** Forth Conservancy Board *v.* I. R. Comrs., [1931] A. C. 540.

37. *Add. Annotations:*—**Distd.** I. R. Comrs. *v.* Forth Conservancy Board, [1929] A. C. 213. **Apld.** Curtis Brown, Ltd. *v.* Jarvis; Jarvis *v.* Curtis Brown, Ltd. (1929), 14 Tax Cas. 744.

50a. —— **Blocks of flats.**]—NORWICH UNION LIFE INSURANCE SOCIETY *v.* EMBLETON, EMBLETON *v.* NORWICH UNION LIFE INSURANCE SOCIETY, No. 25b, *ante*.

50b. —— **Whether gross value in Valuation List conclusive as to rent.**]—Applts. were the owners of premises within the Metropolitan area with regard to which it was admitted that for the years to which the appeal related, 1924–25 & 1925–26, the actual rentals received exceeded the gross Sched. A assessments by more than the authorised reduction mentioned in 1918 Act, rule 7 (2), No. V, Sched. A. They contended, however, that they were entitled

PART II. SECT. 2, SUB-SECT. 6.

8a. *Conservancy board.*]—A conservancy board was established by statute to keep a river in a navigable condition & to control the navigation therein. Wide powers were vested in it to enable it to carry out its duties, but it did not own any property from which profits were derived. Under sect. 54 of its Act it levied dues upon all shipping entering the river within its jurisdiction. Having been assessed to income tax under Sched. A. No. III., Rule 3, upon the balance of these dues, it appealed:—*Held:* the balance was not a profit arising out of lands or heritages within the meaning of Sched. A., & the board was not assessable under that Sched.—INLAND REVENUE COMRS. *v.* FORTH CONSERVANCY BOARD, [1929] S. C. (H. L.) 1.—SCOT.

to a repairs allowance under rule 7 (1), because (*a*) in view of the Valuation (Metropolis) Act, 1869 (c. 67), no alterations merely in value of the hereditaments during the quinquennial period could during that period be taken into consideration for the purposes of rule 7 (2) (the repairs allowance had been granted for earlier years within the same quinquennial period—1921–22 to 1923–24); & (*b*) the gross value in the Valuation List was for all Income Tax purposes conclusive of the annual value & must be treated as the rent of the premises within rule 7 (2). The General Comrs. dismissed an appeal on these grounds against the assessments for the years 1924–25 & 1925–26. The co. appealed:—*Held:* applts. were not entitled to the allowance.—METROPOLITAN PROPERTIES CO., LTD. *v.* DUNHAM (1929), 14 Tax Cas. 740.

Annotation:—**Refd.** Towle *v.* Improved Industrial Dwellings Co., [1931] 1 K. B. 263.

51. *Add. Annotations:—As to* (2) **Apld.** I. R. Comrs. *v.* Glasgow Musical Festival Assocn. (1926), 11 Tax Cas. 154; Scottish Woollen Technical College, Galashiels *v.* I. R. Comrs. (1926), 11 Tax Cas. 139. **Consd.** Geologists' Assocn. *v.* I. R. Comrs. (1928), 14 Tax Cas. 271; Sir G. B. Hunter (1922) "C" Trust, Trustees *v.* I. R. Comrs. (1929), 14 Tax Cas. 427. **Refd.** Chesterman *v.* Taxation Federal Comr., [1926] A. C. 128; Girls' Public Day School Trust *v.* Ereaut (1930), 99 L. J. K. B. 643; *Re* Hood, Public Trustee *v.* Hood (1930), 143 L. T. 691; Luipaard's Vlei Estate & Gold Mining Co. *v.* I. R. Comrs., [1930] 1 K. B. 593; Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465; *Re* Smith, Public Trustee *v.* Smith, [1932] 1 Ch. 153. *Generally*, **Refd.** I. R. Comrs. *v.* Falkirk Temperance Café Trust (1926), 11 Tax Cas. 353: I. R. Comrs. *v.* Peeblesshire Nursing Assocn. (1926), 11 Tax Cas. 335; I. R. Comrs. *v.* Yorkshire Agricultural Soc. (1927), 44 T. L. R. 59; General Medical Council *v.* I. R. Comrs., English Branch Council of General Medical Council *v.* Same (1928), 97 L. J. K. B. 578.

54. *Add. Annotation:—As to* (1) **Apld.** Salisbury House Estate *v.* Fry (1929), 98 L. J. K. B. 722.

58a. —— **Convalescent home for members of friendly society.**]—An unregistered friendly society, of which there were over two million members, had for its principal objects the relief of distressed members & the widows & orphans of members, & the promotion of social intercourse & recreation in its lodges. Members of the society paid a small subscription, which was divided & allocated to various benevolent funds. A house & grounds were bought by the society for use as a convalescent home by its members. The purchase price was paid partly by the society & partly by contributions by its members. The home was maintained by the society & was furnished to accommodate twenty or thirty members. No expense was incurred by a member during his residence at the home, & medical men gave their services to it gratuitously:—*Held:* the home was a hospital within 1918 Act, Schedule A., No VI., r. 1 (*c*), & the society was entitled to be allowed the amount of tax charged in respect of the premises of which the home was composed.—ROYAL ANTEDILUVIAN ORDER OF BUFFALOES *v.* OWENS, [1928] 1 K. B. 446; 97 L. J. K. B. 210; 138 L. T. 644; 44 T. L. R. 122; 71 Sol. Jo. 928; 13 Tax Cas. 176.

59a. —— ——.]—Applts., a limited co., owned & carried on a high-class secondary school managed by governors who were partly elected by the shareholders & partly nominated by the Crown. By the co.'s arts. no profit was to be divided amongst members. Practically the whole of the receipts of the co. arose from fees paid for pupils:—*Held:* the elements of permanence connoted by the word "foundation" were part of the essence of a public school, & as these elements were absent applts. were not entitled to an allowance on the ground that the school was a public school.—BIRKENHEAD SCHOOL, LTD. *v.* DRING (1926), 43 T. L. R. 48; 11 Tax Cas. 273.

Annotation:—**Overd.** Girls' Public Day School Trust *v.* Ereaut (1930), 99 L. J. K. B. 643.

60. *Add. Annotation:*—**Expld.** Ereaut *v.* Girls' Public Day School Trust (1930), 99 L. J. K. B. 643.

62. *Add. Annotation:*—**Distd.** Ereaut *v.* Girls' Public Day School Trust (1930), 99 L. J. K. B. 643.

62a. —— **School carried on by company paying dividends.**]—The Girls' Public Day School Trust was incorporated as a co., but its memorandum & articles were framed with the object of establishing schools that would give a good education at the lowest possible cost. The Trust School was open to the general public, a large proportion of its pupils were scholars from the public elementary schools, & a great proportion of its governing body were nominated by the local education authority,

PART II. SECT. 4, SUB-SECT. 1.

s b. *Company for advancement of woollen industry.*]—A limited co., membership of which was restricted to persons engaged in the woollen industry in Scotland, was formed "with a view to the advancement of the woollen industry in Scotland, to promote by means of a college systematic education, instruction & study in all branches of the industry." Its income & property were dedicated to these objects, & no profits could be distributed among its members. It owned & occupied a college at which classes were held for instruction in the principles & practice of woollen & worsted cloth manufacture. The students were fifteen years of age & upwards, & paid fees for the courses of instruction:—*Held:* (1) the college was not a "public school"; (2) the college buildings were "heritages owned & occupied by a charity," & the co. was entitled to exemption under 1921 Act, s. 30 (1).—SCOTTISH WOOLLEN TECHNICAL COLLEGE *v.* INLAND REVENUE COMRS., [1926] S. C. 934; 11 Tax Cas. 139.—**SCOT.**

PART II. SECT. 4, SUB-SECT. 2.

k i. —— *Woollen technical college.*]—SCOTTISH WOOLLEN TECHNICAL COLLEGE *v.* INLAND REVENUE COMRS., *ante*.—**SCOT.**

o i. —— ——.]—A society was composed almost exclusively of medical men residing in the city of Aberdeen. Its objects were to facilitate the interchange of ideas on medical subjects & for social intercourse between its members; to bring them into touch with their colleagues elsewhere; to maintain their interest in the work of the university; to maintain a code of ethics for the guidance of members in their professional relations; & "to support & advance the interests of the medical profession." Its premises comprised a medical library for the use of members, & a hall where monthly meetings were held at which papers on medical subjects were read & discussed. These papers were published in the medical press:—*Held:* the Society's premises were not exempt from income tax in respect that it was not a literary or scientific institution, but was substantially a professional assocn.—INLAND REVENUE COMRS. *v.* ABERDEEN MEDICO-CHIRURGICAL SOCIETY, [1931] S. C. 625; 16 Tax Cas. 237.—**SCOT.**

&, further, the school was largely maintained by public moneys, & in the view of the Board of Education the school satisfied the regulation which prohibited any Parliamentary grant to a school conducted for private profit. In accordance with the Board's wishes it was provided that the co. should be converted into an educational trust at the end of a period & exceeding fifty years from 1905, & that in the event of a winding up before the end of that period the surplus assets of the co. should be subject to an educational trust & should not be distributed among the shareholders; that during the period above-mentioned the dividend paid on share capital should not exceed a sum equal to 4 per cent. a year. The Comrs. found on the facts the Trust School was a public school, & as such entitled to the benefit of the exemption from income tax provided for by 1918 Act, Sched. A, No. VI., r. 1 (c):—*Held:* there was ample evidence on which the Comrs. could find that this school was a public school, & the possibility of profit arising to an individual in the course of carrying on a school did not of necessity prevent the school having the character of a public school.

The existence of a perpetual foundation is not by itself conclusive, but only one of the factors to be considered. There is no distinction between money used for a public school raised by debentures at interest, & money raised by preference shares with limited interest. The judgments in *Blake* v. *London Corpn.*, No. 60, were not intended to lay down a rule that no school from the conduct of which any person could derive pecuniary benefit could in any circumstances be a public school.—GIRLS' PUBLIC DAY SCHOOL TRUST *v.* EREAUT, [1931] A. C. 12; 99 L. J. K. B. 643; 95 J. P. 3; 46 T. L. R. 638; 74 Sol. Jo. 612; *sub nom.* EREAUT *v.* GIRLS' PUBLIC DAY SCHOOL TRUST, LTD., 143 L. T. 715; 28 L. G. R. 603; 15 Tax Cas. 529, H. L.

69. *Add. Annotation:*—**Refd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

71. *Add. Annotation:*—**Refd.** Miller (Lady) *v.* I. R. Comrs. (1930), 15 Tax Cas. 25.

74. *Add. Annotations:*—*As to* (3) **Consd.** Fry *v.* Salisbury House Estate, Ltd., Jones *v.* City of London Real Property Co., [1930] A. C. 432; Glanely *v.* Wightman (1932), 48 T. L. R. 644. *Generally*, **Refd.** Huxham *v.* Johnson (1926), 136 L. T. 410.

Part III.—Schedule B.

77. *Add. Citations:*—70 Sol. Jo. 586; 10 Tax Cas. 346.

Add. Annotation:—**Refd.** Huxham *v.* Johnson (1926), 136 L. T. 410.

79a. **"Dealer in milk"—Land insufficient for keep of cattle—Liability to be assessed under Schedule D.**]—Resp. occupied a farm which was charged to tax under Schedule B. on which he kept a number of cows for milking. The soil was of such a poor quality that resp. had to expend considerable sums yearly on feeding stuffs. The produce grown on the land represented only about thirty per cent. of the food required for the cows. Resp. sold his milk to regular customers in the district, & only purchased milk for resale when his own supply was insufficient for his customers' ordinary requirements. He sold his cows when they became dry. The general comrs. held that resp. was not a dealer in milk, & they discharged an assessment made upon him in accordance with 1918 Act, Schedule D., Case III., r. 4:—*Held:* resp. was a dealer in milk whose land was insufficient for the keep of the cows within the rule, & the further question whether the assessable value afforded no just estimate of the profits was for the comrs. to find, & the case must be remitted to them for that purpose.—HUXHAM *v.* JOHNSON (1926), 136 L. T. 410; 11 Tax Cas. 266.

Annotation:—**Refd.** Stephenson *v.* Waller (1927), 13 Tax Cas. 318.

79b. **"Seller of milk"—Land insufficient for keep of cattle—Liability to be assessed under Schedule D.**]—A farmer may be a "seller of milk" within 1918 Act, Schedule D., Case III., r. 4, even though he merely sells, by wholesale, the milk produced on his farm; & it is not necessary that, to come within the rule, he should own some outside trading organisation for the disposal of the milk.—STEPHENSON *v.* WALLER (1927), 44 T. L. R. 155; 72 Sol. Jo. 102; 13 Tax Cas. 318.

83a. **Method of computation—"Gardens for the sale of produce"—What are—Bulb farm.**]—MONRO (G.) & COBLEY (R. S.) *v.* BAILEY (1932), 76 Sol. Jo. 761.

PART II. SECT. 5.

sc. *Under Taxation Act, R. S. B. C., 1911 (c. 222), s. 155—Not income of non-residents derived from mines.*]—KENT *v.* R., [1924] 4 D. L. R. 77; [1927] S. C. R. 388.—**CAN.**

sd. *Arrears—Where land under control of court—Liability of occupier.*]—A receiver was appointed over certain lands in 1908. The owner of the lands, which were being sold under the Land Acts, was in occupation of them under a ct. lease up to the time of his death in 1917. After his death the lands were let for grazing under Court Grazing Agreements, & were subsequently let under a Court Letting Agreement for a year. Arrears of income tax having been claimed by the Revenue Comrs., the receiver applied to the land judge for directions:—*Held:* the owner of the lands who had been in occupation was liable for the arrears of tax under both Scheds. A. & B., up to the time of his death.—*Re* FOLEY'S ESTATE, [1928] I. R. 576.—**IR.**

PART III.

e i.—— —— *Poultry farm.*]—A poultry farm consisted of thirty-three acres of land, all of which was in grass except half an acre upon which green crops were grown for consumption by the poultry in winter along with other feeding stuffs. A permanent stock of about one thousand head of poultry was kept, & in addition forty-six sheep were grazed on the land, & some of the grass was cut for hay:—*Held:* the land was occupied for the purpose of husbandry, in respect that the fruits of the soil were used to a material extent for the sustenance of the poultry, & the poultry farmer was entitled to be assessed on the profits of the business under Schedule B., & not under Schedule D.—LEAN *v.* INLAND REVENUE, [1926] S. C. 15; *sub nom.* LEEN & DICKSON *v.* BALL, 10 Tax Cas. 341.—**SCOT.**

83 i. *Claim to relief—As joint tenants—What amounts to partnership.*]—Resp. & his sons for several years leased & worked a farm jointly, but without any deed of partnership. Resp. had supplied the capital, he conducted all buying & selling & he controlled the bank account, which was in his name. He made no regular payments to his sons, but supplied

Part V.—Schedule D.

87. *Add. Annotations :* — **Consd.** Machon *v.* McLoughlin (1926), 11 Tax Cas. 83. **Expld.** Shanks *v.* I. R. Comrs., [1929] 1 K. B. 342. **Distd.** I. R. Comrs. *v.* Miller, [1930] A. C. 222. **Refd.** Grainger *v.* Maxwell, [1926] 1 K. B. 430; Tollemache *v.* I. R. Comrs. (1926), 136 L. T. 444; Ormond Investment Co. *v.* Betts, [1928] A. C. 143; Tilling-Stevens Motors *v.* Kent County Council & Transport Minister (1928), 97 L. J. Ch. 371; I. R. Comrs. *v.* Dalgety & Co. (1929), 98 L. J. K. B. 542; Diggines *v.* Forestal Land, Timber & Railways Co. (1930), 142 L. T. 509; Sutton *v.* I. R. Comrs. (1929), 14 Tax Cas. 662.

90. *Add. Annotations :—As to* (1) **Consd.** Leeming *v.* Jones (1929), 141 L. T. 472; Glanely *v.* Wightman (1932), 48 T. L. R. 644. **Refd.** Fry *v.* Salisbury House Estate, Ltd.; Jones *v.* City of London Real Property Co., [1930] A. C. 432. *Generally*, **Refd.** Liverpool Corn Trade Assocn. *v.* Monks, [1926] 2 K. B. 110.

91. *Add. Citations :*—[1926] 2 K. B. 110; 95 L. J. K. B. 519; 134 L. T. 756; 10 Tax Cas. 442.

93. *Add. Annotation :*—**Consd.** Ducker *v.* Rees Roturbo Development Syndicate, I. R. Comrs. *v.* Rees Roturbo Development Syndicate, [1928] A. C. 132.

93a. —— **Exchange transaction.**]— Under an agreement made on Mar. 8, 1921, for the supply of marble by a co. to building contractors, the contractors agreed to advance £20,000 of the price, percentage deductions being made from the amount due on each consignment of marble until the advance had been repaid. On Mar. 17, 1921, the £20,000 was paid to the co., & in anticipation of the marble being purchased in Italy, though not till the autumn of 1921, the co. at once arranged for the conversion of the greater part of the £20,000 into lire at one hundred & three to the £, & a lira account was opened. In May, 1921, the lira had appreciated in value, &, as the money was not yet required by the co., their nominee, without the co.'s knowledge or authority, directed the sale of the balance of the lira account, & at seventy-two to the £ the lire realised a profit of £6,707, which was received by the co. The lire were subsequently repurchased for the purposes of the contract for £19,386, which was allowed as a deduction from the co.'s profits for income tax purposes :—*Held :* in computing the co.'s profits for the purposes of assessment to income tax for the year 1922–23 the £6,707 was not a profit arising out of the contract for the supply of marble, but was merely an appreciation of a temporary investment, & was not assessable to income tax as part of the profits of the co.'s trade.—McKinlay *v.* Jenkins (H. T.) & Son, Ltd. (1926), 10 Tax Cas. 372.

Annotation :—**Distd.** Thompson *v.* I. R. Comrs., I. R. Comrs. *v.* Thompson (1927), 12 Tax Cas. 1091.

95. *Add. Annotations :*—**Apld.** Wilkinson *v.* I. R. Comrs. (1931), 16 Tax Cas. 52. **Refd.** I. R. Comrs. *v.* Fisher's Exors., [1926] A. C. 395.

96. *Add. Citation :—affd.* (1924), 12 Tax Cas. 586, C. A.

them, on request, with such moneys as were necessary for their requirements. No record of these disbursements or of the financial results of the working of the farm was kept :—*Held :* the facts did not justify the inference that a partnership had existed.—Inland Revenue Comrs. *v.* Williamson (1928), 14 Tax Cas. 335.—**SCOT.**

se. *Arrears—Liability of occupier.*]— An occupier of lands, even though he be the owner, is not liable for arrears of income tax under Sched. B. of Income Tax Act, 1918, which should have been levied upon, & ultimately borne by, the former occupier.—Dolan *v.* Joyce & Kirwan, [1928] I. R. 559.—**IR.**

PART V. SECT. 1, SUB-SECT. 1.

91 i. *Trade association—Co-operative company.*]—*Held :* the applt., incorporated under Agricultural Assocns. Act, R. S. B. C. 1911, c. 6, & through which was marketed the milk & cream produced by its shareholders, was liable to pay income tax under the Dominion Income War Tax Act, 1917, upon the balance, less certain allowances, shown by its financial report for the year 1923 in respect of that year's operations & distributed among its shareholders as dividends or interest on paid-up capital.—Fraser Valley Milk Producer's Assocn. *v.* Minister of National Revenue, [1929] 3 D. L. R. 19; S. C. R. 435; *affg.*, [1928] Ex. C. R. 215.—**CAN.**

92 i. *Add. Citation :* [1914] A. C. 1001.

sd. *Distribution of bonus—No option to shareholders to take cash—Distribution by company as capital.*]—A co. resolved that its accumulated profits should be distributed as a bonus amongst the shareholders, & that the directors should be authorised to distribute such number of unissued shares of £1 each paid up to 10*s.* as should be equivalent to the amount to be capitalised in satisfaction of such bonus; & it was agreed that the co. should allot & issue to each shareholder his respective proportion of the unissued £1 shares each credited as paid up to 10*s.*, that the shares should be credited as paid up to 10*s.*, & that the shares so credited should be accepted in satisfaction of the bonus. In the books of the co. each shareholder was credited with his proportion of the bonus in payment of 10*s.* in respect of each of the shares so allotted & issued to him :—*Held :* the proportion of the bonus so credited to each shareholder was "profits or bonus credited" to him within Income Tax Assessment Act, 1915-1921, s. 14 (*b*), & was properly included in his income.—James *v.* Federal Comr. of Taxation (1924), 34 C. L. R. 404.—**AUS.**

sf. *Distribution of property on discontinuance of business by company—What is "income."*]—A reserve made up of accretions to the value of real estate & goodwill is not "income" within Income War Tax Act, 1917, s. 3 (9), but a reserve made up to trading profits or that portion of a co.'s income which has not been paid out is undistributed income of the co., unless before the distribution it has become capital.—*Re* Anderson Estate, [1925] 4 D. L. R. 116; [1925] 3 W. W. R. 312; 35 Man. L. R. 279.—**CAN.**

m i. —— —— ——.]—A money-lender, visiting Berlin on business, purchased a large consignment of toilet paper. Before delivery had been made, he found a purchaser in London, to whom he re-sold the whole consignment at a profit. The transaction was outside the scope of his ordinary business : —*Held :* the transaction, although isolated, was an adventure in the nature of trade, the profits of which were assessable to income tax under Sched. D., Case I.—Rutledge *v.* Inland Revenue Comrs., [1929] S. C. (Ct. of Sess.) 379.—**SCOT.**

t i. ——.]—Morrison *v.* Minister of Customs & Excise, [1928] 2 D. L. R. 759; [1928] Exch. C. R. 75.—**CAN.**

a i. ——.]—From the date of incorporation to 1920 a co.'s profits were allowed to accumulate until G., the manager & owner of all the shares, declared a dividend of 92 per cent. amounting to $40,000 paid out of such accumulated profits :—*Held :* such dividend was not a return of capital, but income & subject to taxation.—Gagne *v.* Finance Minister, [1925] Exch. C. R. 19.—**CAN.**

a ii. ——.]—Hope *v.* Minister of National Revenue, [1929] Ex. C. R. 158.—**CAN.**

d i. *S. P.* Macpherson *v.* Taxation Comr. (1927), 27 S. R. N. S. W. 105; 44 N. S. W. W. N. 33.—**AUS.**

sk. *Income of accumulated fund—Under will for benefit of testator's children after twenty-one years.*]—*Held :* such income was taxable under Income War Tax Act, 1917, as amended by 10 & 11 Geo. 5, c. 49, s. 41.—McLeod *v.* Customs & Excise Minister, [1925] Exch. C. R. 105; *affd.*, [1926] 3 D. L. R. 531; [1926] S. C. R. 457.—**CAN.**

sl. ——.]—Minister of National Revenue *v.* Royal Trust Co., [1931] S. C. R. 485; 3 D. L. R. 474.—**CAN.**

96a. Sale of patent rights.]—A syndicate formed to work & develop a group of English & foreign patents carried on business mainly by granting licences to manufacturers at royalties. Certain foreign manufacturers refused to take licences, unless they were also given an option of purchase exercisable within a given period, & the syndicate entered into a contract with an American co. to grant them a licence to use & work the syndicate's American patents, with an option of purchase thereof. The co. having exercised its option of purchase, & paid to the syndicate a sum for the purchase of the American patents out & out, the Special Comrs. decided that profits on the sale of the patents arose in the course of the co.'s business & were chargeable to income tax:—*Held:* the Special Comrs. had not wrongly directed themselves, & there was ample evidence to support their conclusion of fact.—DUCKER *v.* REES ROTURBO DEVELOPMENT SYNDICATE, INLAND REVENUE COMRS. *v.* REES ROTURBO DEVELOPMENT SYNDICATE, [1928] A. C. 132, 97 L. J. K. B. 317; 138 L. T. 598; 44 T. L. R. 307; 72 Sol. Jo. 171; *sub nom.* REES ROTURBO DEVELOPMENT SYNDICATE, LTD. *v.* DUCKER, REES ROTURBO DEVELOPMENT SYNDICATE, LTD. *v.* INLAND REVENUE COMRS., 13 Tax Cas. 366, H. L.

97. *Add. Citation:—affd.* (1927), 43 T. L. R. 727, H. L.

Add. Annotation:—**Follld.** Mills *v.* Jones (1929), 46 T. L. R. 118.

97a. *S. P.* MILLS *v.* JONES (1929), 142 L. T. 337; 46 T. L. R. 118; 14 Tax Cas. 769, H. L.

97b. Payments for grant of shop rights of patented invention.]—Applt. was managing director of a co. engaged in the dyeing industry, & also carried on the business of selling yarn & machinery on his own account. He had invented new apparatus for dyeing which was patented in the United Kingdom & America. He exploited this invention by providing & selling the necessary machinery to firms in America, & he did not dispute that he was assessable to income tax, under Case I. of Sched. D., on the profits made on the machinery. Under the agreements made with these firms, however, in addition to the price paid for the machinery, he was entitled to further payments for grant of "shop rights," *i.e.* the right of the purchasers to use the machinery & processes in their own mills or within a limited area. Applt. contended that these payments were for the acquisition of an exclusive licence to use the patented processes in a limited area, that they were payment for portions of the patent rights & therefore capital payments in respect of which he was not assessable. The Special Comrs. found that the agreements were primarily for the sale of machinery & that the grant to the purchasers of "shop rights" was consequential on the sale; & therefore that the payments for the "shop rights" must be included with the payments for the machinery in the receipts of applt.'s business:—*Held:* the Comrs. had decided rightly on the evidence before them.—BRANDWOOD *v.* BANKER, BRANDWOOD *v.* INLAND REVENUE COMRS. (1928), 14 Tax Cas. 44.

98. *Add. Annotations:*—**Distd.** Dewhurst *v.* Hunter (1932), 146 L. T. 510. **Refd.** Davis *v.* Harrison (1927), 11 Tax Cas. 707.

99. *Add. Citations:—sub nom.* JERSEY'S (LORD) EXECUTORS *v.* BASSOM, DERBY (LORD) *v.* BASSOM, 135 L. T. 274; 10 Tax Cas. 357.

99a. —— ——.]—Applt. owned a stud farm & was assessed to income tax under Sched. B. in respect of the occupation of the land. He was also assessed under Sched. D. in respect of fees paid for the services of his stallions. On an appeal against the assessment under Sched. D.:—*Held:* the enterprise in connection with the stallions, being separate from the ordinary enterprise attaching to the occupation of the land, was separately assessable under Sched. D.—GLANELY (LORD) *v.* WIGHTMAN (1932), 147 L. T. 466; 48 T. L. R. 644, C. A.

98 i. *Compensation for loss of office.*]—Where a co. of managing agents obtained a certain sum of money as compensation for the liquidation of the principal co., the amount is a receipt arising from business & is, therefore, liable to be assessed to income tax.—*Re* TURNER, MORRISON & CO., LTD. (1928), I. L. R. 56 Calc. 211.—**IND.**

98 ii. *Compensation for war injuries paid by American authorities.*]—*Held:* on the facts found by the Comrs., their conclusion that the sums received were income & liable to taxation was not justified.—LAIRD *v.* INLAND REVENUE COMRS. (1929), 14 Tax Cas. 395.—**SCOT.**

99 i. *Stud fees.*]—Applt. was a farmer & breeder of horses, & occupied three farms, in respect of which he was assessed to income tax under Schedule B. He was also the owner of a number of stallions which he used for the service of his own mares, & in addition he sold for fees their services to the mares of other owners, the stallions travelling "rounds" for this purpose in the care of his own servants. He appealed against assessments to income tax made upon him under Schedule D. in respect of stallion fees, & the comrs. decided that in regard to stallion fees the expenses required to make the profits from service to mares, plus any expenses of keeping up the stud to the number of stallions earning fees should be allowed, but the number of horses to be used for replacement should not exceed one-third of those earning fees:—*Held:* applt. was assessable to income tax under Schedule D. in respect of profits from stallion fees, in accordance with the principle laid down by the comrs.—MARSHAL *v.* TWEEDY (1926), 11 Tax Cas. 524.—**SCOT.**

k. Read now "**99a i.**"

sm. *Money remitted from branch office.*]—Money remitted to the headquarters of a firm in British India, from a branch situated in a foreign country, is presumed to be profits & not capital, & is assessable to income tax.—*Re* MURUGAPPA CHETTIAR (1925), I. L. R. 49 Mad. 465.—**IND.**

sn. *Gift of money to jockey from race-horse owner after winning race.*]—*Held:* an emolument which arose or accrued to the jockey by reason of his vocation as such, & liable to assessment for income tax.—WING *v.* O'CONNELL, [1927] I. R. 84.—**IR.**

sp. *Compensation for detention of ships requisitioned by Government.*]—*Held:* a trading receipt, & chargeable.—ALLIANCE & DUBLIN CONSUMERS' GAS CO. *v.* M'WILLIAMS, [1928] I. R. 1.—**IR.**

st. *Profit from sale of land at enhanced price—Whether taxable.*]—STOTT *v.* INLAND REVENUE COMR. (1927), 48 N. L. R. 471.—**S. AF.**

sw. *Profits of company—Maintaining & conducting club for benefit of members—Whether taxable.*]—*Re* DIBRUGARH DISTRICT CLUB, LTD. (1927), I. L. R. 55 Calc. 971.—**IND.**

sy. —— *Letting houses—Taxable.*]—*Re* COMMERCIAL PROPERTIES, LTD. (1928), I. L. R. 55 Calc. 1057.—**IND.**

sz. *Profits from unlawful enterprise—Sweepstakes.*]—Profits derived from carrying out a sweepstake, being profits derived from a criminal enterprise, are not assessable to income tax.—HAYES *v.* DUGGAN, [1929] I. R. 406.—**IR.**

sa. *Profits from sale of rights of co.—In pursuance of original scheme—Whether capital or income.*]—Resp. co. acquired in pursuance of its objects certain platinum bearing properties from a vendor syndicate. The co. began development work on one of the properties, opening up some of the claims & sinking a shaft, but on encountering a strong flow of water stopped the work on the ground that it did not want to expend money on a pumping plant, in view of the more important work of purchasing all properties upon which the reef discovered by the co.'s technical advisor was found by him to exist. The co. thereupon purchased certain further properties, thereby exhausting its cash resources. Thereafter one of the co.'s directors stated that the occurrence of platinum in the properties required a large working capital, & suggested that a new powerful co. should be formed to take over the rights held by resp. co. The board of resp. co.

99b. Repaid excess profits duty.]—Where a trader was assessed to income tax on the amount of excess profits duty repaid to him :—*Held :* he had been rightly assessed.—HILL *v.* MATHEWS (1925), 10 Tax Cas. 25.

99c. ——.]—NESBITT (A. & W.), LTD. *v.* MITCHELL (1926), 11 Tax Cas. 211, C. A.

Annotation :—**Apld.** Olive & Partington *v.* Rose (1929), 73 Sol. Jo. 766.

99d. Repayment after trading ceased.]—*Held :* liable to be assessed to income tax.—KIRKE'S TRUSTEES *v.* INLAND REVENUE COMRS. (1926), 136 L. T. 582 ; 11 Tax Cas. 323, H. L.

Annotation :—**Apld.** Olive & Partington *v.* Rose (1929), 73 Sol. Jo. 766.

99e. —— Appropriate case.]—*Held :* the whole amount assessed under Case VI. was correctly so assessed.—OLIVE & PARTINGTON, LTD. *v.* ROSE (1929), 73 Sol. Jo. 766 ; 14 Tax Cas. 701.

99f. —— Sum set off against unpaid duty.]—Applt. became liable for the payment of excess profits duty in respect of the profits of his business in 1918 & 1919. By agreement with the Revenue authorities the greater part of that duty was not paid when due, but was allowed to stand over as an amount due to the Revenue. In 1920, however, applt.'s business suffered a big loss & there was a large deficiency in duty. By agreement in Jan. 1923, after setting off the sums due to the Revenue from applt. for excess profits duty for 1918 & 1919 & those due to be repaid by the Revenue to applt. in respect of his losses in 1920, a small balance was due to applt. & was repaid to him in Jan. 1923. Applt. was assessed to income tax for 1923 on the amount of the excess profits duty so set off, the contention of the Revenue being that in effect the excess profits duty for 1918 & 1919 had been repaid to applt. :—*Held :* the mutual agreement to set off one claim against the other amounted to a payment by applt. within Finance Act, 1921 (c. 32), s. 36, & a repayment by the Revenue, & the amount of such repayment was a subject-matter of income tax for 1923.—TARRANT *v.* ROBERTS (1930), 47 T. L. R. 199 ; 75 Sol. Jo. 27 ; 15 Tax Cas. 754.

99g. Profits made in illegal business.]—Income Tax Acts are not necessarily restricted in their application to lawful businesses only. The question is one of construction of the particular words used.—CANADIAN MINISTER OF FINANCE *v.* SMITH (1926), 42 T. L. R. 734 ; 70 Sol. Jo. 941 ; *sub nom.* MINISTER OF FINANCE *v.* SMITH, 95 L. J. P. C. 193, P. C.

Annotation :—**Consd.** Mann *v.* Nash (1932), 48 T. L. R. 287.

99h. ——.]—In the course of his business as an amusement caterer, to the conduct of part of which no objection could be taken on the grounds of illegality, applt. provided licensed victuallers & others with automatic machines for use for unlawful gaming :—*Held :* (1) although the profits derived from these transactions were the profits of an illegal trade, they were chargeable to income tax ; (2) profits made from the re-sale of certain of the machines were chargeable on the ground that only the use of the machines, & not their possession, was illegal.—MANN *v.* NASH, [1932] 1 K. B. 752 ; 101 L. J. K. B. 270 ; 147 L. T. 154 ; 48 T. L. R. 287 ; 76 Sol. Jo. 201 ; 16 Tax Cas. 523.

99j. Repayment of sum illegally demanded by Food Controller for licence to purchase milk.]—*Held :* in the computation of liability to income tax the amount repaid must be treated as a receipt of the year in which it was originally paid to the Food Controller.—ENGLISH DAIRIES, LTD. *v.* PHILLIPS, ENGLISH DAIRIES, LTD. *v.* INLAND REVENUE COMRS. (1927), 11 Tax Cas. 597.

approved of this & an agreement was arrived at whereby in effect resp. co. sold its properties to the new co., resp. co. having been assessed to pay income tax on the profits arising out of the sale :—*Held :* the profits resulting from the sale to the new co. were obtained in an operation of business in a scheme for profit making & were therefore income & not accruals of a capital nature.—INLAND REVENUE COMRS. *v.* LEYDENBERG PLATINUM, LTD., [1929] App. D. 137.—**S. AF.**

sb. *Deductions for elevator reserve & commercial reserve made from payments to farmer by co-operative wheat producers' association.*]—*Held :* the deductions in question are but loans or advances under contract made by the farmers out of the price of their grain to the applt. for carrying on the business & acquiring elevators, which are all repayable to the grower, & are not gains or profits of the assocn. within Income War Tax Act, 1917, & are not taxable under the said Act.—SASKATCHEWAN CO-OPERATIVE WHEAT PRODUCERS, LTD. *v.* MINISTER OF NATIONAL REVENUE, [1929] Ex. C. R. 180 ; *affd.*, [1930] S. C. R. 402 ; 3 D. L. R. 162.—**CAN.**

sc. *Profits of storage of whisky by distillery company.*]—A distillery co. owned bonded warehouses, in which, on certain conditions, it undertook to store its customers' whisky, after purchase, for three years, or for a longer period, as required. The conditions were (*inter alia*) that, in return for storage, customers should pay to the co. a sum calculated by taking a fixed rentcharge per cask of whisky for each week of storage, less a deduction for any deficiency due to leakage. The deduction for deficiencies could not be ascertained until the casks were removed at the conclusion of storage, &, until then, no sum was demandable from customers. The Revenue maintained that, in estimating the co.'s profits & gains for purposes of income tax, the weekly rent charges fell to be treated as profits accruing week by week, &, subject to an allowance being made for the deficiencies as ultimately ascertained, should be brought into account as profits of the year in which they accrued :—*Held :* the profits from storage contracts were neither earned nor ascertainable until those contracts had been completed, & ought not, therefore, to enter into the computation of the co.'s profits & gains for the purpose of income tax in any year before that in which the contracts were completed.—DAILUAINE-TALISKER DISTILLERIES *v.* INLAND REVENUE COMRS., [1930] S. C. 878 ; 15 Tax Cas. 613.—**SCOT.**

sd. *Damages for failure to repair ship within specified period—Based on loss of profits.*]—Shipowners purchased a ship secondhand, which required extensive repairs. The vessel was immediately put into the hands of shipbuilders to carry out the repairs, but they failed to complete the repairs until five months after the expiry of the period specified in their tender. The owners having claimed as damages a sum based on the estimated profits which the ship would have earned during the five months, the claim was ultimately compromised by a payment of £3,000 :—*Held :* this sum constituted profits on which the owners were liable to income tax, in respect that it was compensation for the loss of trading profits, not for injury to a capital asset.—BURMAH STEAM SHIP CO. *v.* INLAND REVENUE COMRS., [1931] S. C. 156 ; 16 Tax Cas. 67.—**SCOT.**

se. *Royalty.*]—Applt. sold to a co. land, including minerals, for a cash sum, shares in the co., & a royalty, so called, reserved of 10 per cent. of all oil, etc., produced & saved from the land free of cost to applt. on the premises. The co. covenanted to commence & continue drilling operations, &, on discovery of oil, to instal machinery for pumping it, etc. It struck oil, sold all the oil produced in 1927, & paid to applt., as being the royalty under the agreement, one-tenth of the gross proceeds thereof. The question now in issue was whether or not applt., in respect of the amount so received by her as royalty, was assessable by the Crown for income tax under Income War Tax Act, 1917 (Dom.), as amended. Applt. was not a dealer in or in the business of buying & selling oil lands or leases :—*Held :* applt. was not so assessable.—SPOONER *v.* MINISTER OF NATIONAL REVENUE, [1931] S. C. R. 399 ; 3 D. L. R. 136 ; *revsg.*, [1931] 1 D. L. R. 723 ; (1930), Ex. C. R. 229.—**CAN.**

sf. *Payments by insurance company for loss of profits & fixed charges.*]—BRITISH COLUMBIA FIR & CEDAR LUMBER CO., LTD. *v.* MINISTER OF NATIONAL REVENUE, [1930] Ex. C. R. 59.—**CAN.**

99k. Royalties.]—Applt. co. carried on business in the United Kingdom as literary agents, acting on behalf of authors in making arrangements with publishers & others for the publication or disposal of authors' literary productions. The co. remitted to the authors the royalties less the co.'s commission & expenses. The co. was assessed for the year 1925–26 in respect of sums paid under such arrangements to certain authors who were not resident in the United Kingdom. The books concerned were written out of the United Kingdom. The co. appealed to the Special Comrs. The Comrs., in an interim decision, determined that the copyright royalties in question were not profits or gains arising from any trade, profession, or vocation exercised in the United Kingdom; that they were profits or gains arising from property in the United Kingdom; & that the non-resident authors were assessable in the name of the co. under rule 5 of the General Rules. At a further hearing the Comrs. held that the assessments should be under Case VI. of Sched. D, & they should be in the amount of the royalties less the agents' commission & incidental expenses, so far as they related to the royalties brought into charge, & not, as contended on behalf of the revenue, without any such deduction. Both parties appealed:—*Held:* that the royalties were annual profits or gains arising from property in the United Kingdom & so were assessable under Sched. D; & that allowance should be made in the assessments for the expenses indicated.—CURTIS BROWN, LTD. *v.* JARVIS; JARVIS *v.* CURTIS BROWN, LTD. (1929), 14 Tax Cas. 744; 73 Sol. Jo. 819.

99l. Purchase of bonds cum coupon & simultaneous sale ex coupon—Tax deducted from interest—Whether balance assessable.]—A co. carrying on business as a loan & finance co. had dealings in the course of this business in stocks, shares & other securities. They bought Treasury Bonds *cum* coupon & at the same time sold bonds of the same nominal value *ex* coupon. By cashing the coupons detached they received interest on the bonds less income tax deducted under Sched. C.:—*Held:* the net interest received by the co. having been taxed under Sched. C. could not again be brought into account for the purpose of the assessment of income tax under Sched. D. in respect of the profits or gains of the co.'s business.—THOMPSON *v.* TRUST & LOAN CO. OF CANADA, [1932] 1 K. B. 517; 101 L. J. K. B. 342; 146 L. T. 369; 48 T. L. R. 209; 16 Tax Cas. 394, C. A.

99m. Remission of debt.]—In 1919 applt. co. entered into a contract with an oil-producing co. for the purchase of petroleum for a minimum period of twenty years. Applt. co. was adversely affected by the slump in the petroleum business in 1921 & was unable to meet its liability under the contract for oil supplied, etc. Accounts of applt. co.'s business were made up for the year ended June 30, 1921, & for the eighteen months ended Dec. 31, 1922. At June 30, 1921, the agreed amount owing to the oil-producing co. under the contract was £1,073,281; at Sept. 30, 1921, the amount was £1,270,232. Under the terms of an agreement dated Nov. 25, 1921, applt. co. paid to the producing co. the sum of £325,000 & was released by the producing co. from its liability to pay the balance remaining due, viz., £945,232. The amount so released was carried direct to applt. co.'s balance sheet & was shown as a separate item under the head "Reserve" at Dec. 31, 1922. The Crown contended that the amount released should be brought into account in computing applt. co.'s profits for purposes of income tax & Corporation Profits Tax, either in the account for the eighteen months to Dec. 31, 1922, or, alternatively, in the account for the year to June 30, 1921, that account being re-opened for the purpose. The Special Comrs. held that the amount released should be brought into the profit & loss account of the co. for the eighteen months to Dec. 31, 1922:—*Held:* the amount remitted should not be included as a receipt in the account for the eighteen months to Dec. 31, 1922, & the account for the year to June 30, 1921, should not be re-opened & adjusted by reference to the remission.—BRITISH MEXICAN PETROLEUM CO., LTD. *v.* JACKSON, BRITISH MEXICAN PETROLEUM CO., LTD. *v.* INLAND REVENUE COMRS. (1932), 16 Tax Cas. 570, H. L.

100. *Add. Annotations:*—**Consd.** I. R. Comrs. *v.* Forth Conservancy Board, [1929] A. C. 213; Leeming *v.* Jones (1929), 141 L. T. 472. **Refd.** Forth Conservancy Board *v.* I. R. Comrs., [1931] A. C. 540.

104. *Add. Annotations:*—**Consd.** I. R. Comrs. *v.* Forth Conservancy Board, [1929] A. C. 213. **Apld.** Forth Conservancy Board *v.* I. R. Comrs., [1931] A. C. 540. **Refd.** Brighton College *v.* Marriott, [1926] A. C. 192; Salisbury House Estate *v.* Fry (1929), 98 L. J. K. B. 722; I. R. Comrs. *v.* Sneath (1932), 48 T. L. R. 241.

104a. Government grant to dock company.]—Moneys received by a dock-owning co. from a grant made by the Unemployment Grants Committee under authority of a vote of Parliament to assist them in carrying through the work of extending their docks are not profits or gains of the trade carried on by the co. within Case 1 of Sched. D. of 1918 Act.—CROOK *v.* SEAHAM HARBOUR DOCK CO. (1931), 96 J. P. 13; 48 T. L. R. 91; 75 Sol. Jo. 830; 30 L. G. R. 37; *sub nom.* SEAHAM HARBOUR DOCK CO. *v.* CROOK (1931), 16 Tax Cas. 333, H. L.

Annotation:—**Distd.** Westcombe *v.* Hadnock Quarries, Ltd. (1931), 16 Tax Cas. 137.

104b. River dues—Surplus income applicable in

PART V. SECT. 1, SUB-SECT. 2.

q i. —— *Increase in price to meet deficit in electricity undertaking.*]—A town council incurred a deficit on the working of its electricity undertaking. The council was also the local authority carrying on the manufacture & distribution of gas within the area, &, in order to meet the deficit on its electricity undertaking, it increased the price of gas by an amount estimated to yield an additional revenue of £5,000 a year surplus to the estimated requirements of the gas undertaking. Sums of £5,000 were thereafter annually debited in the accounts of the gas undertaking & credited in those of the electricity undertaking:—*Held:* these sums of £5,000 were properly included in the profits of the gas undertaking for income tax purposes, irrespective of the purpose to which they were applied.—ALLOA MAGISTRATES *v.* INLAND REVENUE COMRS., [1931] S. C. 656; 16 Tax Cas. 451.—SCOT.

s c. *Transmission of electricity & supply of air through pipes.*]—*Held:* the co. did not carry on the business of "manufacturer" within Assessment Act, s. 10 (1) (*d*):—*Re* COLEMAN & NOR. ONT. LIGHT & POWER CO. (1927), 60 O. L. R. 405.—CAN.

discretion of Conservancy Board.]—A conservancy board was established by statute to preserve & improve a river & firth & to control the navigation therein. Its members were appointed or elected by local authorities, Govt. departments, railway cos. & shipowners. It possessed wide powers to dredge, light, buoy & otherwise improve the navigation of the river, & it was empowered to levy dues on vessels entering the river or firth. These dues constituted its sole revenue, & were directed by statute to be applied to the purposes of the undertaking as the Board might determine:—*Held:* the board was assessable to income tax on the surplus revenue arising from these dues under Case VI. of Sched. D of 1918 Act.—FORTH CONSERVANCY BOARD *v.* INLAND REVENUE COMRS., [1931] A. C. 540; 100 L. J. P. C. 193; 145 L. T. 121; 95 J. P. 160; 47 T. L. R. 429; 75 Sol. Jo. 359; 29 L. G. R. 541; *sub nom.* INLAND REVENUE COMRS. *v.* FORTH CONSERVANCY BOARD, 16 Tax Cas. 103, H. L.

112. *Add. Annotations:*—**Distd.** Forth Conservancy Board *v.* I. R. Comrs., [1931] A. C. 540. **Refd.** I. R. Comrs. *v.* Forth Conservancy Board (1928), 14 Tax Cas. 709.

112a. **Company—Carrying on several businesses.**]—A co. may carry on more than one trade within 1918 Act, Schedule D., Case I. Whether the activities of a co. constitute one business or two separate businesses is a question of fact.—SCALES *v.* THOMPSON (GEORGE) & CO., LTD. (1927), 138 L. T. 331; 13 Tax Cas. 83.

113. *Add. Citation:*—10 Tax Cas. 29.
Add. Annotations:—**Expld.** Leeming *v.* Jones (1929), 141 L. T. 472. **Distd.** Jones *v.* Leeming, [1930] A. C. 415. **Refd.** *Re* Bankruptcy Notice (No. 292 of 1928) (1928), 44 T. L. R. 533; I. R. Comrs. *v.* Lysaght, [1928] A. C. 234; Rees Roturbo Development Syndicate *v.* I. R. Comrs., Rees Roturbo Development Syndicate *v.* Ducker (1928), 13 Tax Cas. 366; Forth Conservancy Board *v.* I. R. Comrs., [1931] A. C. 540.

114. *Add. Citations:* — [1927] A. C. 312; 96 L. J. K. B. 379; 136 L. T. 580; 43 T. L. R. 116; 71 Sol. Jo. 18; 11 Tax Cas. 297, H. L.; *affg.*, [1926] 1 K. B. 550.
Add. Annotations:—**Refd.** Kirke's Trustees *v.* I. R. Comrs. (1926), 136 L. T. 582; Nesbitt *v.* Mitchel (1926), 11 Tax Cas. 211; Constantinesco *v.* R. (1927), 11 Tax Cas. 730; Devon Mutual Steamship Insce. Assocn. *v.* Ogg (1927), 13 Tax Cas. 184; I. R. Comrs. *v.* Newcastle Breweries (1927), 12 Tax Cas. 927; Rees Roturbo Development Syndicate *v.* I. R. Comrs., Rees Roturbo Development Syndicate *v.* Ducker (1928), 13 Tax Cas. 366; Jones *v.* Leeming, [1930] A. C. 415; Taxes Comrs. *v.* British Australian Wool Realization Assocn., Ltd. (1930), 47 T. L. R. 57.

114a. —— **"Turning over" cotton mills.**]—During the boom in the Lancashire cotton trade in 1919, applt., with other persons, engaged in the operation known locally as "turning over" a cotton mill, *i.e.* acquiring a controlling interest in the mill, organising its administration & finances, & reselling it to a new co. The operation was successful & applt. joined other syndicates, composed partly of the same persons engaged in "turning over" three other mills. In each case a profit resulted to applt. On Mar. 24, 1923, the additional comrs. for the division in which applt. resided signed the book containing an estimated assessment upon applt. to income tax under Schedule D. for the year 1919–20. The book was not delivered to the general comrs. until Apr. 18, 1923; notice was given to applt. on May 5, 1923, & the assessment was signed by the general comrs. on Sept. 5, 1923:—*Held:* (1) though each adventure of "turning over" a mill, taken singly, was not a trade, but a capital transaction, yet the succession of such adventures, in each of which applt. took part, might constitute the carrying on of a trade, & the Special Comrs., on an appeal against the assessment, were not estopped by their previous decisions from reconsidering the whole of the facts, & finding that applt. was carrying on a trade, on the profits of which he was liable to income tax; (2) the assessment was made in time, having been made when it was signed by the additional comrs. within the three years allowed by 1918 Act, s. 125 (2), & the subsequent steps need not be within that time.—PICKFORD *v.* QUIRKE, PICKFORD *v.* INLAND REVENUE COMRS. (1927), 138 L. T. 500; 44 T. L. R. 15; 13 Tax Cas. 251, C. A.

114b. —— **Isolated transaction—Assignment of option.**]—Resp. joined with three other persons in obtaining an option to purchase a rubber estate in the Malay Peninsula. As the estate was too small for resale to a co. for public flotation, they acquired a further option to purchase an adjoining estate. Ultimately the two estates were sold to a co. at a profit. Resp. having been assessed to income tax on a sum representing his net share of the profit appealed. The Comrs. found that resp. acquired the property or interest in the property with the sole object of turning it over again at a profit, & that he at no time had any intention of holding the property or interest as an investment, & confirmed the assessment. They subsequently found, on the case being referred back to them, that the transaction was not a concern in the nature of trade:—*Held:* having regard to the finding of the Comrs. that the transaction was not a concern in the nature of trade, & to its being an isolated transaction of purchase & resale of property, the profits arising therefrom were not in the nature of income but were an accretion to capital, & were therefore not subject to tax under 1918 Act, Sched. D, Case VI.—JONES *v.* LEEMING, [1930] A. C. 415; 99 L. J. K. B. 318; 143 L. T. 50; 46 T. L. R. 296; 74 Sol. Jo. 247; *sub nom.* LEEMING *v.* JONES, 15 Tax Cas. 333, H. L.

116a. **Profits from ownership of land—Whether Schedule A. assessment conclusive—Company letting out offices—Rents & profits from contracts for services.**]—A co. formed to acquire, manage, & deal with a block

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PART V. SECT. 2, SUB-SECT. 1.—A.

110 1. *Golf club—Charging visitors for use of links.*]—*Held:* the management of the municipal golf courses was a trade or business the profits of which were assessable to income tax under Sched. D., Case I.—CARNOUSTIE GOLF COURSE COMMITTEE *v.* INLAND REVENUE COMRS., [1929] S. C. (Ct. of Sess.) 419.—SCOT.

of buildings let out the rooms as unfurnished offices to tenants. The co. provided a staff to operate the lifts & to act as porters & watch & protect the building. The co. also provided certain services, such as heating & cleaning, for the tenants if required, at an additional charge. For each of the four years ending April 5, 1925, 1926, 1927, & 1928 the co. was assessed under Sched. A to income tax on the gross value of the building as appearing in the valuation list under the Valuation (Metropolis) Act, 1869 (c. 67). The co. admitted its liability to be assessed in respect of its profits from the services supplied to the tenants under Sched. D, but the Crown claimed in making the assessments under Sched. D to include the rents of the offices as part of the receipts of the trade, making allowance for tax assessed under Sched. A:—*Held:* the rents were profits arising from the ownership of land in respect of which the assessment under Sched. A was exhaustive, & they therefore could not be included in the assessment under Sched. D as trade receipts of the co.—FRY *v.* SALISBURY HOUSE ESTATE, LTD.; JONES *v.* CITY OF LONDON REAL PROPERTY CO., LTD., [1930] A. C. 432; 99 L. J. K. B. 403; 143 L. T. 77; 46 T. L. R. 336, 358; 74 Sol. Jo. 232; 15 Tax Cas. 266, H. L.; *affg.*, S. C. SALISBURY HOUSE ESTATE, LTD. *v.* FRY, [1930] 1 K. B. 304, C. A.; & CITY OF LONDON REAL PROPERTY CO. *v.* JONES, 45 T. L. R. 573, C. A.

Annotations:—**Expld.** Hoare & Co. *v.* Collyer (1932), 48 T. L. R. 256. **Consd.** Thompson *v.* Trust & Loan Co. of Canada (1932), 48 T. L. R. 209. **Refd.** I. R. Comrs. *v.* Scottish Central Electric Power Co. (1931), 145 L. T. 169.

116b. —— —— Licensed houses owned by brewery company.]—HOARE & CO., LTD. *v.* COLLYER, No. 292b, *post.*

118. *Add. Annotations:*—**Consd.** Leeming *v.* Jones (1929), 141 L. T. 472. **Folld.** Glanely *v.* Wightman (1932), 48 T. L. R. 644. **Refd.** Jersey's Exors. *v.* Bassom, Derby *v.* Bassom (1926), 135 L. T. 274; I. R. Comrs. *v.* Lysaght, [1928] A. C. 234.

118a. —— —— ——.]—GLANELY (LORD) *v.* WIGHTMAN, No. 99a, *ante.*

119a. "Trading" — What amounts to — Operations of partnership during winding up.]—Resp. firm carried on a large business of corn & seed merchants between Mar. 1923 & Mar. 31, 1926, when the partnership which was for a limited time came to an end. Under Partnership Act, 1890 (c. 39), s. 38, the partners, after dissolution, had authority to bind the firm, & their rights & obligations continued so far as necessary to wind-up the affairs of the partnership. At the time of dissolution, on Mar. 31, there were large contracts outstanding, & in the course of completing those contracts after dissolution a profit of £6,190 was made in the year ending Apr. 1927, which was assessed to income tax. In the course of the winding-up, large quantities of grain were delivered, payments for which were recovered & freight was paid; other items dealt with were discharging, lighterage, & storage of grain, arbitration fees, & gratuities to the late employees, bank charges, & interest. During the winding-up the partners & staff were thus employed, & the gratuities to the staff were given for their work. The comrs., on those facts, decided that the partners were trading during the winding-up, & the profits of such trading were consequently liable to income tax:—*Held:* what was done after dissolution constituted trading, the profits of which were rightly assessed to income tax.—HILLERNS & FOWLER *v.* MURRAY (1932), 146 L. T. 474; 48 T. L. R. 213; 17 Tax Cas. 77, C. A.

120. *Add. Annotations:*—*As to* (2) **Consd.** Alabama Coal, Iron, Land & Colonization Co. *v.* Mylam (1926), 11 Tax Cas. 232; Leeming *v.* Jones (1929), 141 L. T. 472. **Refd.** Rees Roturbo

119 i. —— *Poultry farm.*]—LEAN *v.* INLAND REVENUE, No. 77 i, *ante.*—**SCOT.**

si. *Difference in value of stock-in-trade on sale of business.*]—Resp. & his partner sold their business to a co. They treated their stock-in-trade as being of the value of £43,357, but the co. treated it as being worth £58,383:—*Held:* the difference between the two sums was not a profit derived from the business of the partnership, & resp. was not assessable for income tax in respect of his share of such difference.—DOUGHTY *v.* COMR. OF TAXES, [1927] A. C. 327; 96 L. J. P. C. 45; 136 L. T. 706; 43 T. L. R. 207.—**N.Z.**

si. *Sale by lumber company of timber at profit.*]—*Held:* not a sale in the ordinary course of trading by the co., but a sale of part of its capital assets, & the amount received was an appreciation of capital.—A.-G. FOR BRITISH COLUMBIA *v.* STANDARD LUMBER CO., LTD., [1926] 2 W. W. R. 167; 36 B. C. R. 481.—**CAN.**

sm. *Purchase, conversion, & re-sale of ship—Isolated transaction.*]—A ship repairer, a blacksmith, & a fish salesman's employee, who had not previously been connected with each other in business, bought a cargo steamer, converted it, partly by their own labour, into a steam drifter, & sold it within four months of the date of purchase at a profit:—*Held:* the transaction, though isolated, was the carrying on of a trade, the profits of which were assessable to income tax.—INLAND REVENUE COMRS. *v.* LIVINGSTON, [1927] S. C. 251; 11 Tax Cas. —**SCOT.**

sn. *Carrying on a trade—What amounts to—Question of law.*]—The question whether a taxpayer in buying & selling land was carrying on the trade or business of a land jobber so as to make the proceeds of such sales part of his gross income is a question of law, & an inference drawn by the Special Income Tax Ct. from the facts found by it does not bind the ct. to which a case has been stated under s. 60 of Act 40 of 1925.—INLAND REVENUE COMR. *v.* STOTT, [1928] App. D. 252.—**S. AF.**

so. *Statutory trustees managing recreation ground.*]—A body of trustees were appointed under a provisional order to hold & manage certain land in a burgh as a recreation ground. The trustees were in part elected by the holders of season tickets of admission to the ground, & in part appointed by the town council of the burgh from among its members. The ground was laid out in gardens, tennis courts, & bowling & putting greens & was open to the public on payment, admission being by season, monthly, fornightly, or daily tickets. The great majority of those admitted were daily ticket holders. The revenue of the trustees from the sale of tickets exceeded the expenses of management:—*Held:* the trustees carried on a trade or business, & not a mutual assocn. for the benefit of a body of subscribers.—INLAND REVENUE COMRS. *v.* STONEHAVEN RECREATION GROUND TRUSTEES, [1930] S. C. 206; 15 Tax Cas. 419.—**SCOT.**

sv. *Profits from change of investments.*]—An insurance co. was empowered, in terms of its articles of assocn., to sell, . . . deal with & turn to account any of the assets of the co." The co. invested its reserve funds in British Govt. securities. From the date of the co.'s incorporation in 1919 till 1928 it occasionally changed its investments in these securities. In several years there were no sales of investments. In 1928 the co. made a profit of £4,800 on the realisation of certain investments. The General Comrs. found that this profit was not made by trading & was not assessable:—*Held:* the question whether a profit was made by trading was one of fact & there was evidence justifying the finding of the Comrs.—I. R. COMRS. *v.* SCOTTISH AUTOMOBILE & GENERAL INSURANCE CO., [1932] S. C. 87; 16 Tax Cas. 381.—**SCOT.**

PART V. SECT. 2, SUB-SECT. 1.—B.

d i. —— *Formed to acquire ... Profit on resale.*]—A limited co. was formed in 1911 to acquire a heritable estate belonging to a trust, the shareholders being the beneficiaries of the trust. The objects of the co., as set forth in its memorandum of assocn., included the purchase, development, & sale of heritable property. The co. held the estate till 1921, after which it gradually sold portions of it. It also bought in 1911, & re-sold in 1925, another heritable property:—*Held:* the co. was assessable to income tax

Development Syndicate *v.* I. R. Comrs., Rees Roturbo Development Syndicate *v.* Ducker (1928), 13 Tax Cas. 366. *Generally*, **Refd.** Hall *v.* I. R. Comrs. (1926), 135 L. T. 759.

121. *Add. Annotations:*—**Distd.** Alabama Coal, Iron, Land & Colonization Co. *v.* Mylam (1926), 11 Tax Cas. 232. **Refd.** Taxes Comrs. *v.* British Australian Wool Realization Assocn., Ltd. (1930), 47 T. L. R. 57.

122. *Add. Annotation:*—**Refd.** Rees Roturbo Development Syndicate *v.* I. R. Comrs., Rees Roturbo Development Syndicate *v.* Ducker (1928), 13 Tax Cas. 366.

122a. —— **Managing trust lands for benefit of holders of Alabama bonds.**]—*Held:* a trading co., & assessable on profits made in the realisation of such lands.—ALABAMA COAL, IRON, LAND & COLONIZATION CO., LTD. *v.* MYLAM (1926), 11 Tax Cas. 232.

Annotation:—**Consd.** Taxes Comrs. *v.* British Australian Wool Realization Assocn., Ltd. (1930), 47 T. L. R. 57.

122b. Sale of property by builder & contractor.]—SPIERS & SON, LTD. *v.* OGDEN (1932), 17 Tax Cas. 117.

123. To cross-references before this case add: "*See, also*, Finance Act, 1927 (c. 10), s. 24."

125. *Add. Annotation:*—**Refd.** I. R. Comrs. *v.* Yorkshire Agricultural Soc. (1927), 44 T. L. R. 59.

After this case add: "*see, now*, Finance Act, 1924 (c. 21), s. 23."

127. *Add. Citations:*—95 L. J. K. B. 356; 10 Tax Cas. 213.

Add. Annotations:—*Generally*, **Consd.** Girls' Public Day School Trust *v.* Ereaut (1930), 99 L. J. K. B. 643. **Refd.** General Medical Council *v.* I. R. Comrs., English Branch Council of General Medical Council *v.* Same (1928), 97 L. J. K. B. 578; Stoke-on-Trent Revenue Officer *v.* Stoke-on-Trent Assessment Committee & Potteries Electric Traction Co., etc., etc. (1930), 143 L. T. 650.

128. *Add. Annotation:*—**Refd.** Levene *v.* I. R. Comrs., [1927] 2 K. B. 38.

129. *Add. Citation:*—10 Tax Cas. 424.

Add. Annotation:—**Refd.** Levene *v.* I. R. Comrs., [1928] A. C. 217.

130. *Add. Annotation:*—**Consd.** I. R. Comrs. *v.* Lysaght, [1928] A. C. 234.

131. *Add. Annotations:*—*As to* (1) **Consd.** I. R. Comrs. *v.* Lysaght, [1928] A. C. 234; Proctor *v.* Ryall, Ryall *v.* Proctor (1928), 14 Tax Cas. 204. *As to* (2) **Refd.** Fleming *v.* Wilkinson (1925), 10 Tax Cas. 416. *Generally*, **Refd.** Levene *v.* I. R. Comrs., [1927] 2 K. B. 38.

131a. —— —— —— ——.]—Applt. was employed by a British co. as general manager of their sugar estates in Demerara where he lived & where his salary was wholly earned & paid. He was in England on leave from June to Sept. 1918, & during that time the co., at his request, placed to the credit of his banking account in England £525, being an advance on account of salary falling due before Apr. 5, 1919, & an assessment to income tax was made upon him for the year 1918–19 in respect of this sum under Schedule D., Case V. His wife had been for several years, & was throughout the year 1918–19, the owner of a house in Kent, towards the upkeep of which he contributed out of other income arising in England, but since Sept. 1917, she had been mainly living with him in Demerara, the house being left unoccupied. During his stay in England in 1918, applt. lived for the most part in hotels & in fact spent only one night at the house. The Special Comrs. having decided that applt. was resident in the United Kingdom during the year ending Apr. 5, 1919, & that he had been rightly assessed to income tax in respect of the above sum as having been received in the United Kingdom during that year from an employment abroad:—*Held:* inasmuch as applt.'s salary was payable in Demerara, the sum credited to him in the United Kingdom must be regarded as remitted to him from abroad & as constituting income from a foreign possession chargeable under Schedule D., Case V.—FLEMING *v.* WILKINSON (1925), 10 Tax Cas. 416, C. A.

131b. ——.]—Consideration of the meaning of the expressions "resident" & "ordinarily resident" in Income Tax Act, 1918 (c. 40).—LEVENE *v.* INLAND REVENUE COMRS., [1928] A. C. 217; 97 L. J. K. B. 377; 139 L. T. 1; 44 T. L. R. 374; 72 Sol. Jo. 270; 13 Tax Cas. 486 H. L.

Annotations:—**Distd.** I. R. Comrs. *v.* Lysaght, [1928] A. C. 234. **Consd.** R. *v.* St. Marylebone Income Tax Comrs., *Ex p.* Schlesinger (1928), 13 Tax Cas. 746; Fry *v.* Burma Corpn. (1929), 98 L. J. K. B. 693.

131c. ——.]—No special or technical meaning is attached to the terms "resident" & "ordinarily resident" as used in 1918 Act; accordingly the question whether a person is "resident" & "ordinarily resident" in the United Kingdom for the purposes of the Act is essentially a question of fact for the comrs.

A person is ordinarily resident in a country for income tax purposes, if his residence there is not casual or uncertain, but is in the ordinary course of his life.—INLAND REVENUE COMRS. *v.* LYSAGHT, [1928] A. C. 234; 97 L. J. K. B. 385; 139 L. T. 6; 44 T. L. R. 374; 72 Sol. Jo. 270; *sub nom.* LYSAGHT *v.* INLAND REVENUE COMRS., 13 Tax Cas. 511, H. L.

Annotations:—**Consd.** Morley *v.* Lawford & Co. (1928), 140 L. T. 125; Egyptian Delta Land & Investment Co. *v.* Todd, [1929] A. C. 1. **Apld.** R. *v.* St. Marylebone Income Tax Comrs., *Ex p.* Schlesinger (1928), 13 Tax Cas. 746.

131d. –.]—INLAND REVENUE COMRS. *v.* ZORAB (1926), 11 Tax Cas. 289.

Annotation:—**Refd.** I. R. Comrs. *v.* Brown (1926), 11 Tax Cas. 292.

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under Sched. D, Case I., on the profits earned on these transactions, in respect that they were profits accruing from carrying on a trade of buying & selling heritable property.—BALGOWNIE LAND TRUST, LTD. *v.* INLAND REVENUE COMRS., [1929] S. C. 790; 14 Tax Cas. 684.—**SCOT.**

d ll. —— *Company letting flats—Sale of flats—Realisation of capital.*]—INLAND REVENUE COMRS. *v.* HYNDLAND INVESTMENT CO., LTD. (1929), 14 Tax Cas. 694.—**SCOT.**

sp. *Agricultural land.*]—*Held:* as the land had been bought as an investment of capital, the profit was an accretion to capital, & not taxable.—WRIGHT *v.* DEPUTY COMR. OF TAXES, [1927] S. A. S. R. 212.—**AUS.**

sq. *Profits on re-sale of land.*]—*Held:* the premises were bought with the intention of being used in the business of a tailor which applt. was then carrying on, & not with a view to profit on re-sale. The proper test is whether the gain made was an enlargement of capital arising from the mere realisation of property, or was a gain made in business operations in the course of carrying on a scheme for profit making.—BROWN *v.* STATE TAXATION COMR. (1927), 30 W. A. L. R. 30.—**AUS.**

sr. *Licensed premises—Sale of interest in—Sum recovered for goodwill.*]—The amount of the consideration received for the sale of the goodwill of a hotel property held by the vendor as lessee is income assessable to income tax under Income Tax Act, 1924, s. 11 (2).—*Re* INCOME TAX ACT OF 1924 (NO. 2), [1928] S. R. Q. 333.—**AUS.**

131e. ——.]—INLAND REVENUE COMRS. *v.* BROWN (1926), 11 Tax Cas. 292.

131f. **Trade carried on by sales agent for foreign countries of manufacturers in United Kingdom.**]—Applt. entered into separate agreements with each of a number of manufacturers in the United Kingdom, under which he was appointed as their sales agent in specified "agency districts" in countries out of the United Kingdom, undertaking generally (*inter alia*) to promote in the district the sale of the manufacturer's goods. The manufacturers supplied advertising material but all other expenses were met by applt. out of his remuneration, which consisted of commission only, based on the net cash received by the manufacturer in respect of all goods shipped to the relative agency district, with a small guaranteed minimum. The whole of the commission was paid into an account in a bank in England. Between Nov. 16, 1916, & June 16, 1923, applt. was in the United Kingdom for the following periods only: Apr. 14, 1919, to Aug. 10, 1919; July 26, 1920, to Nov. 22, 1920; Dec. 20, 1921, to Apr. 12, 1922. He returned to England again on June 16, 1923. When in England applt. visited the manufacturers with whom he was under agreement, to discuss business matters & to receive instructions. He lived, when in England, at a house, the property of his wife, in which his wife & children lived continuously:—*Held:* the trade was at least in part carried on in the United Kingdom & that the assessments should be confirmed.—SPIERS *v.* MACKINNON (1929), 14 Tax Cas. 386.

132. *Add. Annotation:*—**Reld.** Muller (London) *v.* Lethem, Muller (London) *v.* I. R. Comrs., [1927] 1 K. B. 780.

136. *Add. Annotations:*—**Apprvd.** Egyptian Delta Land & Investment Co. *v.* Todd, [1929] A. C. 1. **Reld.** Baelz *v.* Public Trustee, [1926] Ch. 863.

139. *Add. Annotations:*—*As to* (1) **Distd.** Noble *v.* Mitchell (1926), 43 T. L. R. 102. **Consd.** Fry *v.* Burma Corpn. (1929), 98 L. J. K. B. 693. *Generally,* **Consd.** Egyptian Delta Land & Investment Co. *v.* Todd, [1929] A. C. 1.

140. *Add. Annotation:*—*As to* (1) **Reld.** Cockerline (W. H.) & Co. *v.* I. R. Comrs. (1930), 47 T. L. R. 13.

141. *Add. Annotation:*—**Reld.** Egyptian Delta Land & Investment Co. *v.* Todd, [1929] A. C. 1.

142. *Add. Annotations:*—**Consd.** Fry *v.* Burma Corpn. (1929), 98 L. J. K. B. 693. **Reld.** Proctor *v.* Ryall, Ryall *v.* Proctor (1928), 14 Tax Cas. 204; Egyptian Delta Land & Investment Co. *v.* Todd, [1929] A. C. 1.

142a. **By resident director under power of attorney—Profits retained abroad.**]—Applts., insurance & reinsurance brokers & agents in London, had an office in Paris for the purpose of direct insurance on behalf of cos. for which they acted as agents, & applts. in some cases represented the same cos. in London & in Paris. A resident director of applts. had the sole conduct of the Paris business under a power of attorney. The results of the Paris business were incorporated in applts.' balance-sheets, but no part of the French profits was remitted to London:—*Held:* as the power of attorney did not, except as against third parties, divest the directors in London of their power of control over the French business, applts. were assessable to income tax on the whole of their profits, including those of the Paris office.—NOBLE (B. W.), LTD. *v.* MITCHELL (1926), 43 T. L. R. 102.

144. *Add. Annotations:*—**Expld.** Egyptian Delta Land & Investment Co. *v.* Todd, [1929] A. C. 1. **Reld.** Baelz *v.* Public Trustee, [1926] Ch. 863.

144a. —— ——.]—A co., which is registered in England but carries on its real business abroad, does not necessarily reside in England, so as to be liable to income tax, because it is obliged by law to perform in England certain duties which cannot be performed abroad, such as having a registered office & keeping a register of shareholders. For income tax purposes a co. resides where its real business is carried on.—EGYPTIAN DELTA LAND & INVESTMENT CO., LTD. *v.* TODD, [1929] A. C. 1; 98 L. J. K. B. 1; 140 L. T. 50; 44 T. L. R. 747; 72 Sol. Jo. 545; *sub nom.* TODD *v.* EGYPTIAN DELTA LAND & INVESTMENT CO., LTD., 14 Tax Cas. 119, H. L.

145. *Add. Annotation:*—*As to* (1) **Consd.** Egyptian Delta Land & Investment Co. *v.* Todd, [1929] A. C. 1.

153. *Add. Annotation:*—**Reld.** I. R. Comrs. *v.* Cavan Central Co-op. Agricultural & Dairy Soc. (1917), 12 Tax Cas. 1.

155. *Add. Annotations:*—**Apld.** Egyptian Delta Land & Investment Co. *v.* Todd, [1929] A. C. 1. **Mentd.** Baelz *v.* Public Trustee, [1926] Ch. 863.

156. *Add. Annotation:*—**Consd.** Michael Faraday, Rodgers & Eller *v.* Carter (1927), 11 Tax Cas. 565.

157. *Add. Annotations:*—*As to* (1) **Reld.** Rees Roturbo Development Syndicate *v.* I. R. Comrs., Rees Roturbo Development Syndicate *v.* Ducker (1928), 13 Tax Cas. 366. *As to* (2) **Consd.** Egyptian Delta Land & Invest-

PART V. SECT. 2, SUB-SECT. 2.—B.

st. *General rule.*]—A partnership resides, for purposes of income tax, at the place where its real business is carried on; & the real business is carried on where the central management & control of the whole of its business actually abides. There may be two such places of residence, but the suggested second residence must not merely have a delegation of the management of some portion of the partnership business, however extensive, but a delegation of some portion of the management of the business as a whole. The question as to where the individual partners actually have their places of residence is a wholly irrelevant consideration in determining the place of residence of the firm.—MADRAS INCOME TAX COMR. *v.* T. S. FIRM, TANJORE AT NEGAPATAM (1927), I. L. R. 50 Mad. 847.—IND.

PART V. SECT. 2, SUB-SECT. 2.—C.

144 i. *Registered office in England—Business & management abroad—General control by English office—Dual residence.*]—A co. can carry on business in more places than one, & in places where it does not reside.

Three railway cos. were incorporated in England. A. co. owned a line of railway situate wholly in Portuguese East Africa. B. co. owned a line situate wholly in Portuguese East Africa with the exception of six miles situate in Southern Rhodesia, & C. co. owned a line situate wholly in Southern Rhodesia. C. co. had its head office & general control in England, but also had offices in Buluwayo, where a general manager & staff conducted & managed the line. C. co. worked the lines of A. co. & B. co. as one with its own, & the three cos. shared the profits & losses of the joint venture upon a specified basis:—*Held:* A. co. & B. co. were in partnership with C. co., & the partnership business was carried on within Southern Rhodesian territory by the latter co. within Southern Rhodesia Income Tax Ordinance 20 of 1915.—RHODESIA RYS. *v.* COMR. OF [1925] App. D. 438.—S. AF.

ment Co. *v.* Todd, [1929] A. C. 1. *Generally*, **Refd.** I. R. Comrs. *v.* Cavan Central Co-op. Agricultural & Dairy Soc. (1917), 12 Tax Cas. 1; Lysaght *v.* I. R. Comrs., [1927] 2 K. B. 55.

159. *Add. Annotation :*—**Consd.** Egyptian Delta Land & Investment Co. *v.* Todd, [1929] A. C. 1.

160. *Add. Annotation :*—**Consd.** Egyptian Delta Land & Investment Co. *v.* Todd, [1929] A. C. 1.

164. *Add. Annotation :*—**Refd.** Egyptian Delta Land & Investment Co. *v.* Todd, [1929] A. C. 1.

166. *Add. Annotations :*—**Refd.** Maclaine *v.* Eccott, [1926] A. C. 424; Nielsen, Andersen *v.* Collins, Tarn *v.* Scanlan (1926), 135 L. T. 744; Whitney *v.* I. R. Comrs., [1926] A. C. 37; Belfour *v.* Mace (1928), 138 L. T. 338; I. R. Comrs. *v.* Pakenham, I. R. Comrs. *v.* Longford, [1928] A. C. 252.

168. *Add. Annotations :*—**Consd.** Maclaine *v.* Eccott, [1926] A. C. 424. **Apld.** Tarn *v.* Scanlan, Neilsen, Andersen *v.* Collins, Muller (London) *v.* Lethem, Muller (London) *v.* I. R. Comrs. (1927), 44 T. L. R. 53. **Refd.** Lysaght *v.* I. R. Comrs., [1927] 2 K. B. 55.

168a. —— **Foreign shipping company.**]—(1) With a view of avoiding delay in bringing before the ct. revenue appeals on cases stated by the General or Special Comrs., henceforward points of argument need not be delivered & the case may be set down by either party.

(2) A Danish co. & an English co. established a line of steamers between Copenhagen & Hull, & the English co. were appointed exclusive agents for the Danish co. at Hull. The English co. controlled the freights at this end, quoted rates, accepted consignments of goods & put them on board the steamers of the Danish co. The bills of lading were signed "for the master" by one of the English co.'s clerks. The English co. collected the freights for outward bound goods & any other moneys due from the consignors, & remitted what was due to the Danish co. On an appeal against assessments to income tax for the four years ended Apr. 5, 1913–1916 of the English co. as agents for the Danish co. :—*Held :* on the principle of *Erichsen* v. *Last*, No. 168, the Danish co. exercised a trade in the United Kingdom to the extent to which goods were taken on board their ships at Hull for carriage elsewhere, & this trade was carried on by the British co. as their regular agents. Therefore, the Danish co. were assessable to income tax in the name of the British co. for the three years ended Apr. 5, 1915, under 1842 Act, s. 41, in respect of the profits arising from such trade, so far as regards freights collected by the British co. in respect of such goods, & for the year ended Apr. 5, 1916, under 1842 Act, s. 41, as amended by Finance (No. 2) Act, 1915 (c. 89), s. 31, in respect of all the profits arising from such trade, whether the freights were collected by the British co. or not.

(3) Two Dutch shipping companies owned four steamships known as the Batavier Line which traded regularly between Rotterdam & London. A Dutch firm, W. & Co., were the directors & had the management & control of both companies, & were also the shipping agents of both companies. By an agreement in 1899 made between the Dutch firm & one of the companies the firm were authorised to appoint sub-agents, where they deemed it necessary. In 1904, & again in 1916, the Dutch firm appointed applts. sole agents in London of the Batavier Line & thereafter applts. did all that was required to be done in connection with the ships of the Batavier Line in London. Assessments to income tax having been made on applts. as agents of the Dutch companies in respect of the profits of their business of shipowners :—*Held :* the Dutch companies were exercising a trade in the United Kingdom, even assuming that the Dutch

PART V. SECT. 2, SUB-SECT. 3.—A.

sx. *Salary earned & received in Canada by person residing in foreign country.*]—*Held :* such person was not assessable by the corpn. of the city where he earned his salary.—*Re* Fox & Windsor Corpn. (1925), 57 O. L. R. 243.—**CAN.**

sy. *Royalties received in Canada by patentee residing in foreign country.*]—*Held :* the patentee was chargeable.—*Re* Pope Alliance Corp., Ltd., [1926] 4 D. L. R. 1152.—**CAN.**

sz. *Realisation of wool by Imperial Government—Whether profits earned in Victoria.*]—Pursuant to an agreement between the Imperial & Commonwealth Governments, resp. co. was incorporated in 1920 in Victoria, with a head office at Melbourne, for the purpose of selling the undisposed of surplus of wool acquired for the war, & distributing the proceeds. The Commonwealth Govt. transferred to the co. its undivided half of the Australian wool & in cash its share of profits already realised, in consideration of the issue of priority wool certificates & fully-paid shares to its nominees, the wool suppliers. The co. also agreed with the Imperial Govt. to sell on its behalf for a commission all the rest of the wool, whether Australian or not. The wool was all sold during the years 1921 to 1924; the co. had no other dealings in wool. The contracts of sale were made, & deliveries & payments thereunder took place, outside Australia. The proceeds of the half share of the Australian wool largely exceeded the sum at which it had been taken into the books of the co. The priority wool certificates were redeemed, & the whole of the capital credited as paid on the shares was paid off under successive schemes sanctioned by the ct.; there remained a large surplus in the hands of the liquidator of the co. Assessments were made upon the co. under the Income Tax Act, 1915, of Victoria, in respect of proportions of the surplus proceeds of sale & of the commission earned. The co. raised objections thereto, & a special case was stated: —*Held :* (1) the surplus resulted merely from the realisation of capital assets, & therefore no part of it was income chargeable to tax under sect. 35 of the Act; (2) no part of the surplus, or of the commission, was a profit "earned in or derived in or from Victoria" so as to be chargeable to tax under that sect.—Taxes Comr. *v.* British Australian Wool Realization Assocn., Ltd., [1931] A. C. 224; 100 L. J. P. C. 28; 144 L. T. 314, P. C.—**AUS.**

sb. —— *Whether profits earned in Queensland.*]—As the general scheme of the Queensland Income Tax Act of 1924 bases liability to tax thereunder upon the source of the income, not the residence of the taxpayer, being in Queensland, & as the power of a legislature to tax property, whether real or personal, is limited territorially, sect. 10 (2) of the Act, which purports to tax profits arising from the sale of "any personal property whatsoever," applies only to personal property in Queensland; so, too, para. (ii) (*b*), which was added to sect. 10 (2) by an amending Act of 1926, & purports to tax money received from a co. in respect of shares issued in circumstances stated in para. (ii) (*a*), cannot be construed as referring to a co. which does not carry on business, or possess assets, or derive its profits from a source in Queensland. Consequently, a wool grower resident in Queensland is not liable to income tax under sect. 10 (2) of the above Act in respect of sums received by him as a shareholder in the British Australian Wool Realization Association, Ltd. Further, the excess of the sums so received over the market value of the shares when issued cannot be treated as an addition to the profits of the shareholder's business, because income tax having been paid by him upon the shares when issued they became property with its own incidence, if any, to tax.—Taxes Comr. *v.* Union Trustee Co. of Australia, Ltd., [1931] A. C. 258; 100 L. J. P. C. 21; 144 L. T. 326; 47 T. L. R. 203, P. C. —**AUS.**

firm, in appointing applts. as agents, acted as shipping agents & not as directors, they nevertheless constituted applts. direct agents of the two Dutch companies in London.—TARN *v.* SCANLAN, NIELSEN, ANDERSEN & CO. *v.* COLLINS, MULLER (W. H.) & CO. (LONDON) *v.* LETHEM, SAME *v.* INLAND REVENUE COMRS., [1928] A. C. 34; 97 L. J. K. B. 267; 138 L. T. 241; 44 T. L. R. 53; 71 Sol. Jo. 1002; 13 Tax Cas. 91, 126, H. L.

Annotations:—**Refd.** Belfour *v.* Mace (1928), 138 L. T. 338; Calico Printers' Association, Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

169. *Add. Annotations*:—*As to* (2) **Refd.** Whitney *v.* I. R. Comrs., [1926] A. C. 37; Belfour *v.* Mace (1928), 138 L. T. 338; I. R. Comrs. *v.* Pakenham, I. R. Comrs. *v.* Longford, [1928] A. C. 252.

170. *Add. Annotation*:—**Refd.** Belfour *v.* Mace (1928), 138 L. T. 338.

172. *Add. Citations*:—[1926] A. C. 424; 95 L. J. K. B. 616; 135 L. T. 66; 10 Tax Cas. 481.
Add. Annotations:—*As to* (2) **Apld.** Tarn *v.* Scanlan, Neilsen, Andersen *v.* Collins, Muller (London) *v.* Lethem, Muller (London) *v.* I. R. Comrs. (1927), 44 T. L. R. 53. *Generally*, **Refd.** I. R. Comrs. *v.* Pakenham, I. R. Comrs. *v.* Longford (1927), 96 L. J. K. B. 882.

173. *Add. Annotations*:—*As to* (1) **Refd.** Nielsen, Andersen *v.* Collins, Tarn *v.* Scanlan (1926), 135 L. T. 744; Muller (London) *v.* Lethem, Muller (London) *v.* I. R. Comrs., [1927] 1 K. B. 780. *As to* (2) **Apld.** Gavazzi *v.* Mace, Gavazzi *v.* I. R. Comrs., Boyd *v.* Stephen (1926), 135 L. T. 634. **Folld.** Belfour *v.* Mace (1928), 138 L. T. 338.

173a. —— —— **C.i.f. & consignment business.**]—Applt. acted as representative of an American co. in connection with the sale of the co.'s products in L. & in the North of England generally. There was no written agreement defining his position. The business was carried on in two ways: (*a*) "C.i.f. business." An offer to buy bacon or hams at prices stated by the bidder was received by applt. & cabled to the co. If the co. accepted it they cabled to applt. accordingly who notified the bidder, usually first by telephone & later in writing. The written acceptance sent to the bidder represented the transaction as a purchase by applt. for the bidder from the co. Applt. received neither the goods nor documents relating to them nor did he collect any moneys. He was paid a commission on all orders originating in his "territory." (*b*) "Consignment business." Consignments were sent by the co. to applt. to be sold on its behalf. They were sold by auction. The bills of lading were made out to applt. He collected the proceeds of the sales & was responsible for bad debts. He was paid the usual agency commission for such business:—*Held*: the co. exercised a trade within the United Kingdom.—ROWSON *v.* STEPHEN, ROWSON *v.* INLAND REVENUE COMRS. (1929), 14 Tax Cas. 543.

178. *Add. Citations*:—*affd.* (1928), 138 L. T. 338; 13 Tax Cas. 539, C. A.

179. *Add. Citations*:—*sub nom.* GAVAZZI *v.* MACE, GAVAZZI *v.* INLAND REVENUE COMRS., BOYD (T. L.) & SONS, LTD. *v.* STEPHEN, 135 L. T. 634; 10 Tax Cas. 698.
Add. Annotation:—**Consd.** Belfour *v.* Mace (1928), 138 L. T. 338.

180. *Add. Annotation*:—**Refd.** Muller (London) *v.* Lethem, Muller (London) *v.* I. R. Comrs., [1927] 1 K. B. 780.

181. *Add. Citations*:—[1926] A. C. 424; 95 L. J. K. B. 616; 135 L. T. 66; 10 Tax Cas. 481.
Add. Annotations:—*As to* (2) **Consd.** I. R. Comrs. *v.* Pakenham, I. R. Comrs. *v.* Longford (1927), 96 L. J. K. B. 882. **Apld.** Tarn *v.* Scanlan, Neilsen, Andersen *v.* Collins, Muller (London) *v.* Lethem, Muller (London) *v.* I. R. Comrs. (1927), 44 T. L. R. 53.

185. *Add. Annotations*:—*As to* (1) **Consd.** Belfour *v.* Mace (1928), 138 L. T. 338; Tarn *v.* Scanlan, Nielsen, Andersen *v.* Collins, Muller (London) *v.* Lethem, Same *v.* I. R. Comrs., [1928] A. C. 34; Taxes Comrs. *v.* British Australian Wool Realization Assocn., Ltd., (1930), 47 T. L. R. 57. **Refd.** Maclaine *v.* Eccott, [1926] A. C. 424; Rowson *v.* Stephen, Rowson *v.* I. R. Comrs. (1929), 14 Tax Cas. 543. *As to* (2) **Consd.** Scales *v.* Atalanta S.S. Co. of Copenhagen (1925), 134 L. T. 411.

186. *Add. Annotations*:—**Consd.** Maclaine *v.* Eccott, [1926] A. C. 424. **Refd.** Nielsen, Andersen *v.* Collins, Tarn *v.* Scanlan (1926), 135 L. T. 744; I. R. Comrs. *v.* Pakenham, I. R. Comrs. *v.* Longford (1927), 96 L. J. K. B. 882; Muller (London) *v.* Lethem, Muller (London) *v.* I. R. Comrs., [1927] 1 K. B. 780.

186a. —— **Agent appointed by agent of principal.**]—TARN *v.* SCANLAN, NIELSEN, ANDERSEN & CO. *v.* COLLINS, MULLER (W. H.) & CO. (LONDON) *v.* LETHEM, SAME *v.* INLAND REVENUE COMRS., No. 168a, *ante*.

188. *Add. Annotation*:—**Consd.** Egyptian Delta Land & Investment Co. *v.* Todd, [1929] A. C. 1.

193a. —— ——.]—TARN *v.* SCANLAN, NIELSEN, ANDERSEN & CO. *v.* COLLINS, MULLER (W. H.) & CO. (LONDON) *v.* LETHEM, SAME *v.* INLAND REVENUE COMRS., No. 168a, *ante*.

200a. —— **Purchase of business within three years—No evidence of vendor's profits.**]—*Held*: it was the comrs.' duty to determine to the best of their judgment the average profits of the business for the three years respectively preceding the years of assessment.—OGILVIE *v.* BARRON (1925), 11 Tax Cas. 503.

200b. —— **Foreign corporation—Registered office transferred to England.**]—A mining co. incorporated, having a registered office & carrying on business in Burma, decided to transfer its registered office & the control of its business to London, which it did as from July 1, 1925, thereby becoming liable

PART V. SECT. 2, SUB-SECT. 3.—B.

193 i. *Assessment on agent—Foreign shipping company—What deductions allowed.*]—In the assessment of the income of a shipping co., of which the principal place of business is out of Australia & which carries passengers, etc., shipped in Australia, from the sum which represents 10 per cent. of the amount payable to it in respect of the carriage of passengers, etc., & upon which the agent of the co. is liable to pay income tax, no deduction can be made of so much of the assessable income as is available for distribution & is distributed to the members or shareholders of the co.—UNION S.S. CO. OF NEW ZEALAND, LTD. *v.* FEDERAL COMR. OF TAXATION (1924), 35 C. L. R. 209; 31 Argus L. R. 337.—AUS.

PART V. SECT. 2, SUB-SECT. 4.

sz. *Under Assessment Act.*]—*Re* DONALD MASON & CO. (Ont.), [1927] 4 D. L. R. 1061.—CAN.

to be assessed to British income tax. An assessment was therefore made upon it for the year ending Apr. 5, 1926 :—*Held :* the assessment should be under the rule applicable to Case I. of Sched. D. in respect of its profits " upon a fair & just average of three years ending on that day of the year immediately preceding the year of assessment." The fact that the seat of the co.'s continuing business was transferred to England did not mean that at the date of transfer its trade was " set up & commenced " within the meaning of rule 1 (2) applicable to Cases I. & II., so as to make it liable to assessment upon the profits of its first year's trading as a co. registered in England.—FRY *v.* BURMA CORPN., [1930] 1 K. B. 249; 98 L. J. K. B. 693; 141 L. T. 361, C. A.; *affd.*, [1930] A. C. 321; 99 L. J. K. B. 305; 142 L. T. 609; 15 Tax Cas. 113, H. L.

Annotation :—**Apld.** Back *v.* Whitlock (1932), 48 T. L. R. 289.

204a. —— Date when accounts " usually " made up—Effect of change of date.]—BORTHWICK (THOMAS) & SONS, LTD. *v.* NOLDER (1926), 11 Tax Cas. 261.

204b. Money recovered under insurance policy—Stock destroyed by fire—Whether trade receipt.]—*Held :* the trader must bring the whole of such money received from the insurance co. in respect of the goods destroyed by fire into his profit & loss account as a trading receipt, in order to arrive at his profits for income tax purposes.—GLIKSTEN J. & SON, LTD. *v.* GREEN, [1929] A. C. 381; 98 L. J. K. B. 303; 140 L. T. 625; 45 T. L. R. 274; 14 Tax Cas. 364, H. L.; *affg.* S. C. *sub nom.* GREEN *v.* GLIKSTEN (J.) & SON, LTD., [1928] 2 K. B. 193, C. A.

Annotations :—**Apld.** R. *v.* B. C. Fir & Cedar Lumber Co. (1932), 48 T. L. R. 284. **Refd.** Thomas Merthyr Colliery Co. *v.* Davis (1932), 48 T. L. R. 633.

204c. Ascertainment of profits where stocks undervalued.]—When the opening & closing stocks of a business are both undervalued, the real profits of the year cannot be ascertained by merely raising the valuation of the closing stock & not taking into consideration the similar undervaluation of the opening stock. —BOMBAY COMR. OF INCOME TAX *v.* AHMEDABAD NEW COTTON MILLS CO., LTD. (1929), 46 T. L. R. 68, P. C.

204d. Finance Act, 1926 (c. 22), ss. 29, 34—Accounts customarily made up — What amounts to.]—DUNHAM *v.* HOSCOTE (MALAYA) RUBBER ESTATES, LTD.; DUNHAM *v.* ALLIED SUMATRA PLANTATIONS, LTD. (1929), 14 Tax Cas. 726.

—— ——.]—*See, now,* Finance Act, 1930 (c. 28), s. 14.

204e. —— Not applicable to additional assessment on discontinuance of business—Apportionment under Finance Act, 1926 (c. 22), s. 35.]—*Held :* (1) the computation of " the profits or gains of the year ending on the fifth day of April in the year preceding the year of assessment in which the discontinuance occurs " for the purposes of an additional assessment under Finance Act, 1926 (c. 22), s. 31 (1) (*b*), could not be made by resort to Finance Act, 1926 (c. 22), s. 34 (1), as the profits or gains to be ascertained were not the profits or gains in the year preceding the year of assessment, but the profits or gains in the year to which the additional assessment related; (2) in a case where the annual accounts of the business were made up to a date other than Apr. 5 the profits could be ascertained by an apportionment under Finance Act, 1926 (c. 22), s. 35 of the Act.—WESLEY *v.* MANSON, [1932] A. C. 635; 101 L. J. K. B. 312; 147 L. T. 82; 48 T. L. R. 370; *sub nom.* MANSON *v.* WESLEY, YOUNG *v.* BERNSTEIN, 16 Tax Cas. 654, H. L.

204f. Option to be assessed otherwise than on basis of preceding year—Finance Act, 1926 (c. 22), s. 29 (3)—Necessity for receipt of profits in period preceding three years anterior to year of assessment.]—A co. took over a business as a going concern as from Apr. 3, 1925, & was assessed for the years 1925–26 & 1926–27 by reference to the average profits of preceding years as having succeeded to the trade. The profits of the business for each of the years ending Mar. 31, 1925, & Mar. 31, 1926, were less than the average annual profits for the six years ending Mar. 31, 1924. The co. having given due notice, claimed that it was entitled under Finance Act, 1926 (c. 22), s. 29 (3), to be assessed for the year 1927–28 on the basis of the average profits of the business for the three years ending Mar. 31, 1927 :—*Held :* the co. not having been in possession of the source of the profits for any part of the period preceding the three years mentioned in the sub-sect., the sub-sect. was not applicable, notwithstanding that the co. fell to be treated for income tax purposes as successors in the business.—BROWN (E. G.) & CO., LTD. *v.* STEWART (1929), 14 Tax Cas. 423.

Annotation :—**Consd.** Betts *v.* Laycock, Sons & Co. (1930), 142 L. T. 506.

204g. —— —— ——.]—Applt. co. was formed in Oct. 1924, to take over a partnership business of wool merchants, the partners themselves becoming the holders of practically all the shares. In the year ending Mar. 31, 1926, the co. sustained a loss of £64,016. Under Finance Act, 1926 (c. 22), Part IV., dealing with income tax, the assessment on a three years' average was abolished, & it was provided that the profits for income tax purposes should be computed on the amount for the year preceding the year of assessment. It being obvious that in the readjustment of the system in that way hardship would arise, to mitigate certain cases of hardship sect. 29 (3), was framed. The question in dispute was whether in the circumstances above set out the co. had shown that it was within the mischief which sub-sect. 3 aimed at alleviating. The co. contended that sects. 28 & 29 of Finance Act, 1926 (c. 22), were intended to cover all cases where the abolition of the three years' average would cause exceptional hardship, & also that in a case where there had been a change of ownership of the business during the three years on which the 1927–28 average would have been computed the new owners, in this case the co., should be treated as having been in notional possession of the source during the six years mentioned in sub-sect. 3 of sect. 29 preceding the three average years. On an appeal against an assessment to income tax Sched. D for the year ending Apr. 5, 1928, in £68,032 less £539 wear & tear allowance, the comrs. held that the co. came within the provisions of sect. 29 (3), & were entitled to the relief granted by that sub-

sect., & they reduced the assessment to £5,480 less the £539:—*Held:* though the co. could bring their case within the first part of sect. 29 (3), it became impossible to apply that part of the sect. unless the co. could show that it was in possession of the profits during the six years, preceding the three years before 1926–27, but in fact the co. was not in possession of the profits for any portion of those six years. To work the sub-sect. the co. must have been in possession for some part of the six years, either all of it or part of it. The co. must have been in possession or the sub-sect. did not arise at all.—BETTS *v.* LAYCOCK, SONS & CO., LTD. (1930), 142 L. T. 506; 15 Tax Cas. 431, C. A.

204h. —— —— ——.]—The taxpayer's wife succeeded on Feb. 1, 1924, to a business previously carried on by her father. Accounts of the business were made up for the eleven months to Dec. 31, 1924, & thereafter annually to Dec. 31, until Dec. 31, 1927. The taxpayer was assessed to income tax in respect of the profits of this business for the years 1927–28 & 1928–29 by reference to the profits of the preceding years ended Dec. 31, 1926, & Dec. 31, 1927, respectively. He appealed to the General Comrs. against the 1927–28 assessment & to the Special Comrs. against the 1928–29 assessment, claiming in respect of each year that he was entitled to be assessed on the average of the three preceding years by reference to Finance Act, 1926 (c. 22), s. 29 (3). The General Comrs. allowed the appeal for 1927–28. The Special Comrs. refused the appeal for 1928–29. Appeals were entered against each decision:—*Held:* as the taxpayer was not in possession of the business during any part of the six years preceding the three years upon the average of which he would have been assessed for 1927–28, *i.e.*, the three years ended Dec. 31, 1926, the case did not fall within the application of sect. 29 (3).—ALLEN *v.* MARGOLINSKY, MARGOLINSKY *v.* ALLEN (1931), 16 Tax Cas. 77.

204j. —— —— **Validity of notice—Notice by accountants.**]—A firm of chartered accountants had been employed by applt. co. as their accountants & auditors for many years. They had each year interviewed & corresponded with the appropriate inspector of taxes with regard to the co.'s income tax liabilities with a view to agreement as to the figures upon which liability was to be based. All returns were signed by the co.'s duly authorised officer. The co. was admittedly entitled to exercise the option with regard to the basis of assessment afforded by Finance Act, 1926 (c. 22), s. 29 (3), if it so desired.

The accountants informed the inspector in two letters dated Oct. 3 & 4, 1927, that the co. claimed "to be charged for the year 1927–28" as if sect. 29 had not been passed. No reference was made to the year 1928–29.

In a letter dated Oct. 25, 1927, the accountants purported to withdraw the claim. The amount of the liability for the year 1927–28 computed on the average basis was greater than the amount on the preceding year basis. The co. appealed against an additional assessment for the year 1927–28 on the difference between these amounts, contending, *inter alia*, that the accountants had no authority to give the notice required by the sect. & that valid & effective notice was not given. It was not suggested that the accountants had specific authority to lodge the notice or that the co. had confirmed the accountants' action:—*Held:* the accountants had not a general authority to bind the taxpayer in the matter; they had not been held out as having such authority; & further the notices were invalid as purporting to be made by reference to one year only. DRAYSON (A. W.) & SONS, LTD. *v.* YALLOP HOARE *v.* BRUCE (1929), 14 Tax Cas. 449.

204k. Trade set up within two years of year of assessment—Effect of Finance Act, 1926 (c. 22), s. 29 & Finance Act, 1927 (c. 10), s. 23.]—The K. Rubber Estates, Ltd., commenced to trade on July 16, 1925. The co. claimed that the assessment made upon it under sched. D for the year 1927–28 should be reduced to the amount of the profits of the year of assessment, on the ground that sect. 23 of Finance Act, 1927, extended the application of proviso (*a*) of sect. 29 (1) of Finance Act, 1926, so as to cover any case where a trade had been set up or commenced within the period of two years referred to in sect. 23. The special comrs. on appeal refused the co.'s claim:—*Held:* sect. 23 of Finance Act, 1927, did not so extend the application of proviso (*a*) of sect. 29 (1) of Finance Act, 1926.—KUALA MUDA RUBBER ESTATES, LTD. *v.* TODD (1930), 15 Tax Cas. 440.

204l. Discontinuance of business.]—WESLEY *v.* MANSON, No. 204e, *ante*.

204m. Assessment based on invoice price—Subsequent additional payments.]—A co. which was under contract to supply ironstone at fluctuating prices, subject to a specified maximum, entered into negotiations with its customers with regard to the supply of larger quantities of ironstone at increased prices. An understanding, conditional upon the success of certain general negotiations in progress, was reached in Mar. 1919, as to a new schedule of prices to take effect as from May 1, 1919. A definitive agreement was signed in Dec. 1925, & was deemed to have come into operation on Dec. 31, 1920. For some time after May 1, 1919, ironstone was invoiced by the co. to its customers at the

PART V. SECT. 2, SUB-SECT. 5.—A.

aa. *Whether partnership retrospective for income tax purposes.*]—*Held:* a contract of co-partnership is not effectual for income tax purposes prior to the dates on which it is executed.—AYRSHIRE PULLMAN MOTOR SERVICES & RITCHIE (D. M.) *v.* INLAND REVENUE COMRS. (1929), 14 Tax Cas. 754.—**SCOT.**

ab. *Informal arrangement during coal strike.*]—A Glasgow coal merchant & a London firm of coal exporters & importers made, during a coal strike, an informal business arrangement, the main feature of which was that coal was invoiced by the firm to the merchant at cost, the merchant to pay also to the firm one-half of whatever net excess over this cost price he might obtain from his customers. The arrangement continued for a few months only & was brought to an end by an accounting & division of profits between the parties. The special comrs. on appeal proceedings decided that, having regard to all the facts of the conduct of the business between the parties, the trade in question was carried on jointly within r. 10, Rules applicable to Cases I. & II., Sched. D, & they found as a fact that the transactions involved were partnership transactions. An assessment was accordingly confirmed charging the total profits in one sum separately from any other liabilities of the parties:—*Held:* the evidence justified the comrs.' decision.—GARDNER (JOHN) & BOWRING, HARDY & CO., LTD. *v.* INLAND REVENUE COMRS. (1930), 15 Tax Cas. 602.—**SCOT.**

old prices; but during subsequent accounting periods the co. was paid, by instalments, a sum representing the difference between the invoiced prices & the prices calculated according to the schedule agreed in Mar. 1919. On appeal against certain estimated assessments to income tax, the co. contended that this sum was received as a capital payment & not as the price of ironstone; or, alternatively, that the instalments could only be brought into account in the years in which they were paid. The Special Comrs. held that the amount in question was a revenue payment & must be related to the period during which the ironstone, by reference to which the sum was calculated, was delivered:—*Held:* the Special Comrs.' decision was correct.—FRODINGHAM IRONSTONE MINES, LTD. *v.* STEWART (1932), 16 Tax Cas. 728.

206a. French "Société en nom collectif."]—Applts. in these two cases were, for the years material in the present connection, the only persons interested in the profits of a *Société en nom collectif*, a business organisation under French law in many respects similar to a partnership. The *Société* was directed & controlled in France but carried on business in various countries including the United Kingdom. It was assessed in respect of the profits of the trade carried on in the United Kingdom:—*Held:* the *Société* was a legal person distinct from the individuals composing it & the profits in question were not the profits of a partnership within sect. 20 of 1918 Act.—DREYFUS (C. L.) *v.* INLAND REVENUE COMRS., DREYFUS (L. L.) *v.* INLAND REVENUE COMRS. (1929), 14 Tax Cas. 560, C. A.

207. *Add. Annotation:*—**Refd.** Seaham Harbour Dock Co. *v.* Crook (1930), 47 T. L. R. 23.

207a. Commencement of partnership.]—Applt., who had for many years carried on, solely, a practice as solr., informed his son on Dec. 31, 1928, that it was his intention to take him into partnership as from that date & on Jan. 1, 1929, instructed another firm of solrs., by letter, to draft a partnership deed. The deed, which was expressed to have effect as from Jan. 1, 1929, was executed on May 11, 1929. No formal notice of the partnership was at any time given by advertisement, circular or otherwise. No alteration of the name under which the practice was carried on, or in the business bank account, was made until after the date of the partnership deed. From Dec. 31, 1928, the son was credited with the share of profits to which he was entitled under the partnership deed. Applt. appealed to the General Comrs. against an assessment to income tax, Sched. D., made upon him for the year 1929–30, contending that a partnership existed between himself & his son as from Jan. 1, 1929. The Comrs. held that for income tax purposes the partnership commenced on May 11, 1929, the date of the partnership deed:—*Held:* the partnership constituted by the deed commenced on the date of the deed & there was no evidence before the comrs. of the existence of a partnership before that date.—WADDINGTON *v.* O'CALLAGHAN (1931), 16 Tax Cas. 187.

208. *Add. Annotations:*—*As to* (3) **Consd.** Fry *v.* Burma Corpn. (1929), 98 L. J. K. B. 693. *As to* (4) **Folld.** Elliott *v.* Duchess Mill (1926), 95 L. J. K. B. 963. **Consd.** Stewart & Young *v.* Walker (1926), 11 Tax Cas. 123. **Refd.** I. R. Comrs. *v.* Anderson, Frew & Co. *v.* I. R. Comrs. (1931), 16 Tax Cas. 355. As to (5) **Consd.** Leitch *v.* Emmott (1929), 98 L. J. K. B. 459. **Refd.** Martin *v.* Lowry, Martin *v.* I. R. Comrs., [1926] 1 K. B. 550. *Generally*, **Refd.** Betts *v.* Clare & Heyworth, [1926] 2 K. B. 289.

209. *Add. Annotation:*—**Expld.** James Shipstone & Sons, Ltd. *v.* Morris (1929), 14 Tax Cas. 413.

210. For existing catchwords, paragraph, & citations substitute:—

—— **Whether profits in year of assessment may be considered.**]—On Mar. 1, 1919, a firm set up a new trade. On Dec. 31, 1919, they made up the first account of the trade for the ten months from Mar. 1, 1919, to Dec. 31, 1919, that account showing a profit for that period of £1,000. The firm sold the trade as from Jan. 1, 1920, to a co. consisting of the same persons. The co. made up an account of the profits of their trade for three months from Jan. 1, 1920, to Mar. 31, 1920, showing a profit for those three months of over £12,000. For the year ending Apr. 5, 1919, the assessment to income tax under 1918 Act, Sched. D., was made on the firm in a sum equal to a proportionate part, from Mar. 1 to Apr. 5, of the profits shown by the account to Dec. 1919, & it was agreed that that was correct. For year ending Apr. 5, 1920, assessments were made on the firm & the co. on a sum representing twelve-thirteenths of the profits shown by combining the two accounts for the respective periods of ten months & three months, that sum being apportioned between the firm & the co. according to their respective liabilities. The firm & co. appealed against the assessments on the ground that they ought to have been made on a sum representing twelve-tenths of the sum shown in the account for the ten months from Mar. 1 to Dec. 31, 1919, & the comrs. acceded to this argument:—*Held:* upon the true construction of r. 1 (2) of the rules applicable to Cases I. & II., except in the case of a trade set up within the year of assessment, the profits should be computed without bringing in any profits of the year of assessment.—CLARE & HEYWORTH *v.* BETTS, [1927] A. C. 443; 96 L. J. K. B. 645; 137 L. T. 306; *sub nom.* BETTS *v.* CLARE & HEYWORTH, LTD., 11 Tax Cas. 469, H. L.

Annotation:—**Distd.** Manson *v.* Perrys (Ealing) (1931), 16 Tax Cas. 60.

-.]—*See, now,* Finance Act, 1926 (c. 22), s. 36 (1), Sched. IV.

210a. - ——.]—Resp. co. was incorporated & commenced trading on Aug. 16, 1926. Its first account, for the period from Aug. 16, 1926, to Mar. 31, 1927, showed a loss & its second account, for the year ended Mar. 31, 1928, showed a profit. The co., on an appeal against an assessment for 1927–28 in respect of its trading profit contended that, having regard to the decision in the case of *Betts* v. *Clare & Heyworth*, No. 210, its liability for that year should be computed solely by reference to the account for the period ended Mar. 31, 1927. The Crown contended that the liability should be based on the results for the year ended Aug. 15, 1927, ascertained, in accordance with Finance Act, 1926 (c. 22),

s. 35, by the inclusion in respect of the period Apr. 1 to Aug. 15, 1927, of the appropriate proportion of the profit shown by the account for the year ended Mar. 31, 1928 :— *Held :* as a result of the amendments to r. 1 (2) of the rules applicable to Cases I. & II. of Sched. D. effected by Finance Act, 1926 (c. 22), s. 36, & Sched. IV., the decision in the case of *Betts* v. *Clare & Heyworth*, No. 210, had no application, & the 1927–28 assessment should be computed in accordance with the Crown's contentions.—MANSON *v.* PERRYS (EALING), LTD. (1931), 16 Tax Cas. 60.

210b. —— —— **Power to make additional assessment.**]—Changes in the constitution of a firm took place on Mar. 21, 1929, & Mar. 20, 1930. On the occasion of the first change, no notice under the proviso to r. 11 (1) of the rules applicable to Cases I. & II. of Sched. D. was given ; on the occasion of the second change, such notice was given. The assessment for the year 1929–30 was accordingly made under Finance Act, 1926 (c. 22), s. 31 (1) (*a*), on the actual profits of the year of assessment, & an additional assessment for the year 1928–29 was made, under sect. 31 (1) (*b*) in an amount which represented the excess of the actual profits of the year 1928–29 over the amount of the original assessment for that year. This additional assessment was made upon the firm which carried on the business between the first & second changes, *i.e.*, from Mar. 21, 1929, to Mar. 20, 1930. The original assessment for the year 1928–29 was made upon the firm which carried on the business up to Mar. 21, 1929, & was not apportioned under r. 9. The firm appealed against the additional assessment, contending that they were never charged for the year 1928–29 & could not, therefore, be subjected to an additional assessment under sect. 31 (1) (*b*). The Special Comrs. upheld this contention & discharged the additional assessment : — *Held :* that the Special Comrs.' decision was correct.—OSLER *v.* HALL & CO. (1932), 17 Tax. Cas. 68.

210c. —— **Partnership.**]—By a deed dated Nov. 22, 1922, A. & B., partners in a firm, dissolved partnership as from Apr. 1, 1922. Upon the dissolution of the partnership A. continued to carry on business at the firm's address, but from Nov. 22, 1922, until his death in June, 1923, B. carried on, in his own name at his private address, a small amount of business previously done by the firm. By a deed dated Dec. 15, 1922, A. took C. into partnership as from Apr. 1, 1922. An assessment having been made on the firm for 1922–23 upon the average of the profits for the three years ended Mar. 31, 1922, the comrs. found that the partnership between A. & B. was not dissolved until Nov. 22, 1922, & that there had been no discontinuance of the business, but that A. had succeeded to the business of A. & B., & that A. & C. had succeeded to the business carried on by A. after the dissolution of his partnership with B. :—*Held :* there was evidence upon which the comrs. could come to their conclusions, & they had not misdirected themselves in law.—FARADAY, RODGERS & ELLER *v.* CARTER (1927), 11 Tax Cas. 565, C. A.

210d. —— **Absence of formal contract.**]—During Mar. 1928, there were negotiations & detailed correspondence between the resp. co. & another co. who were proposing to purchase the business of resp. co., culminating in a letter dated Mar. 21, 1928, in which the prospective purchasers indicated that the terms contained in the correspondence, & as arranged at interviews between the parties, were generally accepted " subject to such terms being fully set out in a formal contract or agreement, to be submitted to us & finally approved of." On Mar. 29, 1928, two of the directors of resp. co. resigned & entered the service of the purchasers. On Mar. 30 resps. gave notice to their foreign agents terminating their engagements. The formal contract was dated Apr. 16, 1928. Resp. co. were assessed for the year 1927–28 in accordance with the provisions of rule 11 (2) on the footing that the succession took place after Apr. 5, 1928. The General Comrs. allowed their appeal against this assessment, finding that a contract for the sale & purchase of the business existed before Apr. 6, 1928. The Crown appealed :—*Held :* the correspondence did not constitute a contract & that there was no evidence of a *de facto* succession before Apr. 6.—TODD *v.* JONES BROS., LTD. (1930), 15 Tax Cas. 396.

210e. —— **Purchase from liquidator.**] — A co. carried on business as (*a*) motor engineers, (*b*) cinema theatre proprietors, &, until a short time before going into liquidation, (*c*) haulage contractors & char-a-banc proprietors. On the liquidation of the co. applts. purchased the co.'s lands & property & stock-in-trade, the purchase-price being £16,000, of which £15,850 was stated, in the agreement of sale, to be in respect of lands & property, & £150 in respect of stock. Applts. retained the co.'s employees & continued without any interruption the work in the co.'s hands. They carried on business as motor engineers & as cinema theatre proprietors but not at any time as haulage contractors & char-a-banc proprietors. The General Comrs. held that applts. had not succeeded to the business previously carried on by the co. :—*Held :* there were no grounds for disturbing the Comrs.' decision as being erroneous in point of law.—WILSON & BARLOW *v.* CHIBBETT (1929), 14 Tax Cas. 407.

210f. **Transfer of tied houses to different brewery.**]—Applt. co., a brewery co., acquired the control of another co., the B. Brewery Co. by an arrangement whereby the shareholders in the latter exchanged their shares for shares in applt. co. The B. Co. then leased its brewery & its tied houses, comprising the whole of its property, licensed & unlicensed, to applt. co. at an annual rent. Applt. co. supplied its own products to the tied houses, which became " tied " to them, & brewing at the B. Co.'s brewery immediately ceased. Shortly after the date of the lease applt. co. purchased all the stock & loose effects of the B. co., & about a year later they purchased the brewery at a valuation, the lease, as regards the brewery, thus only remaining in effect for about eighteen months. Applt. co. appealed against assessments made on the footing that it had succeeded to the business of the B. Co. & that accordingly in arriving at applt. co.'s liability the profits of the B. Co. should be brought into the computation. The General Comrs. held that the assess-

ments had been correctly so made :—*Held :* the matter was primarily a question of fact & there were no grounds for disturbing the Comrs.' decision.—SHIPSTONE (JAMES) & SONS, LTD. *v.* MORRIS (1929), 4 Tax Cas. 413.

Annotation :—**Refd.** Reynolds, Sons & Co. *v.* Ogston (1930), 15 Tax Cas. 501.

210g. —— **Destruction of exhibition by fire—Restoration by new company.**]—WILD *v.* MADAME TUSSAUD'S (1926), LTD. (1932), 17 Tax Cas. 127.

211. *Add. Annotations :*—**Consd.** Reynolds, Sons & Co. *v.* Ogston (1930), 15 Tax Cas. 501. **Refd.** Shipstone (James) & Sons, Ltd. *v.* Morris (1929), 114 Tax Cas. 413.

212. For existing para. & citation, read :—

A co. was incorporated in Jan. 1920, to take over the assets & business of a former cotton spinning co. The old co. had been very prosperous, its profits for the years 1912 to 1917 inclusive having averaged nearly £7,000 a year. For the three years 1918 to 1920 inclusive the average was about £22,000. The undertaking of the new co. proved unsuccessful, & for the year ending Feb. 26. 1921, it made a loss of £11,268. The co. having been assessed to income tax in respect of that year in the sum of £16,459, being £22,000 the average of the preceding three years less £6,000 depreciation, appealed, & contended that it was entitled to relief under the r. 11 of the rules applicable to Cases I. and II. of Sched. D. It appeared that in the latter half of 1919 & the first half of 1920 there was an extraordinary boom in the cotton trade & in trade generally in the United Kingdom, but this was followed, as the comrs. found, by a depression in the cotton trade since Jan. 1920, which was extraordinary & abnormal, & did not arise merely from the ordinary fluctuations in business the comrs. further found that the profits & gains of the co.'s business had fallen short since that date from some specific cause (the depression) within the meaning of r. 11 :—*Held :* (1) the findings of the comrs. justified them in giving special relief provided by r. 11, inasmuch as the co. had fulfilled requirements of both limbs of the rule, namely, it had shown that it had succeeded to a business previously carried on, & had established by evidence, which was accepted by the comrs., that the depression was abnormal ; (2) an ordinary fluctuation in trade is not a " specific cause " within the meaning of r. 11, but an abnormal & extraordinary depression if accepted & so found by the comrs. may be so.

Per SCRUTTON, L.J. : " Specific cause " in r. 11 in itself means a precisely stated definite cause as distinguished from a mere statement " I have lost profits, because I have made less money," or words to that effect.—ELLIOTT *v.* DUCHESS MILL, LTD., [1927] 1 K. B. 182 ; 95 L. J. K. B. 963 ; 136 L. T. 51 ; 42 T. L. R. 707 ; 70 Sol. Jo. 891 ; 11 Tax Cas. 56, C. A.

Add. Annotations :—**Overd.** As to (2) Kneeshaw *v.* Clay & Horsfall, [1929] 1 K. B. 285. *Generally*, **Refd.** Borthwick *v.* Nolder (1927), 11 Tax Cas. 261.

212a. -.]—*Held :* in order to establish that there has been a falling short of the profits or gains of a trade within the exception to r. 11 of the Rules applicable to Cases I. & II. of Sched. D., it has only to be shown that the profits or gains in the year of assessment have fallen short from some specific cause, & not that the aggregate profits or gains since the change have so fallen short ; & if the profits or gains in the year of assessment are found to have fallen short from some specific cause, income tax is computed on the actual profits or gains of that year instead of on the average of the three preceding years.—KNEESHAW *v.* CLAY & HORSFALL, [1929] 1 K. B. 285 ; 98 L. J. K. B. 325 ; 140 L. T. 188 ; 72 Sol. Jo. 809 ; 14 Tax Cas. 295, C. A.

Annotation :—**Refd.** I. R. Comrs. *v.* Anderson, Frew & Co. *v.* I. R. Comrs. (1931), 16 Tax Cas. 355.

214a. —— **Cessation of abnormally favourable conditions of preceding year.**]—The taxpayers in these cases succeeded to businesses early in 1927 & were assessed to income tax, Sched. D., for 1927–28 on the profits of the respective businesses for the year ended Dec. 31, 1926. In each case the coal strike of 1926 has enabled large profits to be made during that year & the cessation of the conditions which had obtained during the strike was alleged as a " specific cause " in support of a claim under r. 11 for 1927–28 :—*Held :* the cause alleged was a " specific cause " within r. 11.—INLAND REVENUE COMRS. *v.* ANDERSON (A. & G.), FREW (ALEXANDER) & CO., LTD. *v.* INLAND REVENUE COMRS. (1931), 48 T. L. R. 126 ; 16 Tax Cas. 355, H. L.

214b. —— **Competition.**]—FIAT (ENGLAND), LTD. *v.* WILLIAMS (1932), 17 Tax Cas. 105.

PART V. SECT. 2, SUB-SECT. 5.—B.

213 ii. ——.]—A firm of manufacturing confectioners, in which changes of partnership had taken place, claimed that a falling short of profits was due to two specific causes, (1) an increase in the price of sugar due to interference with the Cuban supplies by the American Govt., the formation of a speculative ring in New York, & curtailment of European supplies owing to the French occupation of the Ruhr, & (2) an increase in bad debts caused by the failure of inexperienced venturers in the confectionery trade :—*Held :* (1) the expression " specific cause " denoted an exceptional circumstance, which could be clearly identified, & to which the shortage of profits could substantially be attributed ; (2) the causes of the falling off of profits alleged were not " specific causes."—STEWART & YOUNG *v.* INLAND REVENUE COMRS., [1926] S. C. 883 ; 11 Tax Cas. 123.—SOOT.

PART V. SECT. 2, SUB-SECT. 7.—A.

o i. —— *Farm land—Expenses of fencing.*]—A farmer is entitled to deduct under Land & Income Tax Amendment Act, 1924, s. 31, expenditure for the purchase & erection of vermin proof fencing.—LINDSAY *v.* TAXATION COMR. (1927), 30 W. A. L. R. 24.—AUS.

o ii. —— *Annuity.*]—The payment of an annuity payable by a taxpayer & charged upon his land on which he carries on his business as a pastoralist is not money " wholly & exclusively laid out or expended for the purposes of his trade," within Income Tax Act, 1915, s. 19 (2) (*g*) (Vict.), &, therefore, may not be deducted from his gross income.—CALVERT *v.* VICTORIA TAXES COMR. (1927), 40 C. L. R. 142.—AUS.

o iii. —— *Donations to public, social, charitable & ecclesiastical institutions.*]—*Held :* donations made to public, social, charitable & ecclesiastical institutions, at the request of friends of such institutions, as well as amounts paid in the office to casual visitors for tickets to performances, lotteries, etc., under an alleged commercial practice, with the object of benefiting applt.'s business, & not for charitable purposes, are not disbursements or expenses " wholly, exclusively & necessarily laid out or expended for the purposes of earning the income," & cannot be deducted from the profits & gains of the co. in arriving at its taxable income.—O'REILLY & BELANGER, LTD. *v.* MINISTER OF NATIONAL REVENUE, [1928] Exch. C. R. 61.—CAN.

o iv. —— *Loan to experimental company.*]—A firm of law agents from time to time made advances to one of their clients, an experimental limited co. which had been formed to manufacture a new metal alloy. It was intended, after the business had been established, to promote a large public co., & the firm anticipated considerable legal

217a. —— Advances made to company by company's solicitors.]—A firm of writers to the signet advanced money from time to time without security & without any written acknowledgment to a limited co. for which they had acted as law agents since its inception. The co. failed, & the advances were irrecoverable. On an appeal to the General Comrs. from an assessment to income tax under Sched. D. the firm claimed that the amount of the advances was a permissible deduction in ascertaining their profits & gains as writers to the signet:—*Held:* the loss was not a permissible deduction, as it did not represent moneys wholly & exclusively laid out or expended for the purposes of the firm's profession within r. 3 of the rules applicable to Cases I. & II.—HAGART & BURN-MURDOCH *v.* INLAND REVENUE COMRS., [1929] A. C. 386; 98 L. J. P. C. 113; 141 L. T. 97; 45 T. L. R. 338; *sub nom.* INLAND REVENUE COMRS. *v.* HAGART & BURN-MURDOCH, 14 Tax Cas. 433, H. L.

217b. Rent—Proviso for abatement if profits insufficient.]—Resp. co. was assessed to income tax for the years 1923–24 & 1924–25 under Sched. D. of 1918 Act, in respect of its profits in the respective sums of £800,000, less £450,000 wear & tear of plant & machinery & £800,000, less £350,000 for wear & tear. The co. claimed that as it had paid in 1922 & 1923 two sums of £630,000 & £960,000 respectively under a lease dated Dec. 29, 1921, those sums ought to be allowed as deductions from the profits in the years of assessment. The co., under the terms of that lease, was in possession of a very large number of properties in different parts of the world used by it for the purposes of its trade & for which under the lease it had to pay £960,000 a year. The document of Dec. 29, 1921, was in the form of a strict lease, but contained a proviso that if the profits of the business of the co. after providing for the rent therein reserved, should be insufficient to enable the co. to pay interest on debenture stock & specific mtges., the dividend on preference shares, & a dividend of 10 per cent. on ordinary shares, then the rent should be abated to the extent of the deficiency ascertained. The comrs. held that the payments of £630,000 & £960,000 were not payments antecedent to or necessary to earn profits, but contingent payments dependent on & payable only out of profits earned & were not allowable deductions from profits assessable to income tax:—*Held:* the real substance of the transaction was that in the events specified there should be a rebate of the rent, & whatever was the rent after the application of that rebate was still to be paid and it still remained an expense necessarily incurred in earning the trading profits of the co.—ADAMSON *v.* UNION COLD STORAGE CO., LTD. (1931), 146 L. T. 172; *sub nom.* UNION COLD STORAGE CO., LTD. *v.* ADAMSON, 16 Tax Cas. 293, H. L.

217c. Excess profits duty—Holding company & subsidiary company.]—The whole of the share capital of resp. co. was held by another co., which accordingly was assessed to & paid excess profits duty on the profits of the two cos. as though the subsidiary co. were a branch of the main co. In the computation of the main co.'s income tax liabilities on the three years' average basis, allowance for excess profits duty paid was made in the same manner as a deduction would be allowed for an ordinary outgoing in the course of trade. The main co. went into voluntary liquidation in 1918, liability to income tax ceasing before Apr. 6, 1918. In consequence of the operation of the average basis for income tax, the main co. had received effective benefit in respect of a part only of the excess profits duty paid. Resp. co. claimed deductions in the computation of its income tax liabilities for subsequent years in respect of the excess profits duty paid, for which allowance had not effectively been given to the main co., in so far as such duty was attributable to its own profits. The General Comrs. on appeal allowed the claim & the Crown appealed:—*Held:* the co. was not entitled to any deduction.—OGSTON *v.* REYNOLDS, SONS & CO., LTD., REYNOLDS, SONS & CO., LTD. *v.* OGSTON (1930), 15 Tax Cas. 501, C. A.

220a. Quarry — Railway freights — Rebates — Whether capital repayments or discounts.]—Resp. co. purchased in Oct. 1924, certain quarries formerly owned & worked by a private firm, &, by arrangement with the parties concerned, took over their predecessors' rights & obligations under certain agreements made in 1921 & 1924 between the predecessors & a railway co. The agreements in question provided for the construction of siding accommodation at the quarries. The cost of construction was borne by the firm, & the railway co. agreed to allow to the firm at half-yearly intervals, as from Sept. 30, 1924, sums equal to 10 per cent. of the railway co.'s share of the receipts in respect of traffic conveyed to or from the siding, until the expiration of ten years from Sept. 30, 1924, or until the total amounts allowed to the firm should be equal to specified amounts expended by the firm in connection with the siding construction. Resp. co. received from the railway co. in the years 1927 & 1928 allowances calculated by reference to the terms of the

work in this connection. The advances were not made by the firm as factors for the co. The co. having failed, the loans became irrecoverable, & the firm claimed to deduct the loss thus incurred in arriving at the profits of their profession for income tax purposes:—*Held:* the advances were not money "wholly & exclusively laid out for purposes" of business & the deduction of them was inadmissible.—INLAND [illegible] B., [1929]

o v. —— *Cost of reconstruction of shop.*]—HYAM *v.* INLAND REVENUE COMRS., [1929] S. C. (Ct. of Sess.) 384.—

SCOT.

—— *Expenses of winter grazing of sheep.*]—INLAND REVENUE COMRS. *v.* MARSHALL & MITCHELL, [1929] S. C. Ct. of Sess.) 136.—SCOT.

[illegible]o vii. —— *Directors' fees.*]—Although the amount of remuneration paid by a co. incorporated in New Zealand is that fixed by a resolution at a general meeting, in accordance with the arts. of assocn., the Comr. of Taxes in assessing the co. to income tax under Land & Income Tax Act, 1923, can inquire whether the amount was an expenditure "exclusively incurred in the production of the assessable income," so as to be a permissible deduction under sect. 80 (2) of the Act; the grounds upon which a deduction of the amount so fixed can be challenged are not confined to the payment being wholly or in part not remuneration for the directors' services. Where a deduction of an amount so fixed has been disallowed in part, & the evidence is not confined to proof of the resolution & payment thereunder, the question is whether the co. fully satisfied the *onus* under sects. 14 & 25 of showing that the assessment is excessive; in the present case that *onus* was not discharged.—ASPRO, LTD. *v.* TAXES COMR., [1932] A. C. 683; 101 L. J. P. C. 177, P. C.—N.Z.

agreement. The co. claimed that these allowances were repayments of capital sums expended & that the railway charges, before deduction of these allowances, were business expenses & admissible deductions in computing its profits for income tax purposes :—*Held :* in computing its profits for income tax purposes the co. was entitled to deduct only the difference between the railway traffic charges & the allowances granted in respect of those charges.—WESTCOMBE *v.* HADNOCK QUARRIES, LTD. (1931), 16 Tax Cas. 137.

222a. Company—Payment to director as inducement to retire.]—*Held :* a payment by a co. to a director in order to induce him to retire, in circumstances in which the other directors had come to the conclusion that it was essential in the interests of the co. that he should retire, was a business expense deductible from the co.'s profits for purposes of income tax.—MITCHELL *v.* NOBLE (B. W.), LTD., [1927] 1 K. B. 719; 96 L. J. K. B. 484; 137 L. T. 33; 43 T. L. R. 245; 71 Sol. Jo. 175; *sub nom.* NOBLE (B. W.), LTD. *v.* MITCHELL, MITCHELL *v.* NOBLE (B. W.), LTD., 11 Tax Cas. 372, C. A.

Annotations :—**Refd.** Morley *v.* Lawford (1928), 44 T. L. R. 716; Anglo-Persian Oil Co. *v.* Dale (1931), 47 T. L. R. 487.

223. *Add. Annotation :*—**Follid.** Thomas Merthyr Colliery Co. *v.* Davis (1932), 48 T. L. R. 633.

223a. —— ——.]—Applts., a colliery co., were subscribing members of a coal-owners' assocn. which had been formed (*inter alia*) to indemnify its members against deficiency & stoppage of output by reason of strikes. Part of these contributions was applied by the association as a contribution to the Conciliation Board, & part was contributed to the funds of the Mining Association of Great Britain, which in some matters looked after the interests of coal-owners. Applts. claimed that their subscriptions to the assocn. were proper deductions in arriving at their profits :—*Held :* applts. were not entitled to deduct that part of their subscriptions which was applied towards an indemnity against loss of output by reason of strikes & to the funds of the Mining Assocn., but they were entitled to deduct the part which was applied as a contribution to the Conciliation Board.—THOMAS MERTHYR COLLIERY CO., LTD. *v.* DAVIS (1932), 48 T. L. R. 633, C. A.

224. *Add. Annotation :*—**Refd.** Thomas Merthyr Colliery Co. *v.* Davis (1932), 48 T. L. R. 476.

224a. —— —— ——.]—Applt. co. was a member of the Cold Rolled Brass & Copper Assocn., an unincorporated body having as its objects the fixing of prices for goods manufactured by its members, & the provision of a common fund to be applied in the interests of its members. The common fund consisted of members' entrance fees & monthly payments proportional to output tonnage, & in the event of the Association being wound up was distributable between the members in proportion to their contributions. In 1918 the Ministry of Munitions had large surplus stocks of brass & copper & the Assocn. was specially authorised by its members to negotiate with the Ministry in regard to its disposal. As a result the Assocn. contracted to purchase the metal from the Ministry at fixed prices per ton, & this contract, & also the draft arrangement for the disposal of the metal to the Assocn.'s members, were subsequently approved by the Assocn. in general meeting. By these arrangements members were given, firstly, an option of purchasing a quantity of the metal proportional to their monthly output, at prices scheduled by the Association varying according to quality & size, & secondly, an option to apply for any residue. The whole of the metal was thus disposed of by the Association at prices higher than those paid to the Ministry, & the "profit" was carried to the common fund. Applts. debited in their accounts the full cost of the metal purchased by them from the Assocn., & did not bring into the accounts their share in the "profit." They were assessed to income tax under Case I. of Sched. D. on the basis that they were entitled to deduct only the net cost of the metal, *i.e.* the full cost less their share in the "profit" :—*Held :* applts. were able to share in the distribution of the metal only on payment of the prices scheduled by the Assocn.; their share in the "profit" was in proportion, not to the price paid, but to the quantity taken; the profit carried to the common fund could not be regarded as the individual members' profit; & in the circumstances applts. were entitled to deduct as a business expense the price paid by them to the Assocn.—CLIFFORD & SON, LTD. *v.* PUTTICK, CLIFFORD & SON, LTD. *v.* INLAND REVENUE COMRS. (1928), 14 Tax Cas. 189.

224b. Subscription to guarantee fund of British Empire Exhibition.]—Applts., asphalters, subscribed to the guarantee fund of the British Empire Exhibition at Wembley, solely, as the General Comrs. found, in the hope of obtaining preferential treatment in the allocation of contracts for asphalting work within the exhibition grounds. They did not in fact obtain any contract at all from the exhibition authorities. Having been called upon to pay a considerable part of the amount guaranteed they sought to deduct the sum so paid from their profits assessable to income tax as a trade expense. The General Comrs. held it was an allowable deduction :—*Held :* the question was one of fact, &, as there was evidence to support the finding of the General Comrs., their decision must be affirmed.—MORLEY *v.* LAWFORD & CO. (1928), 140 L. T. 125; 45 T. L. R. 30; 72 Sol. Jo. 825; 14 Tax Cas. 229, C. A.

Annotations :—**Distd.** Hagart & Burn-Murdoch *v.* I. R. Comrs., [1929] A. C. 386. **Refd.** Bourne & Hollingsworth *v.* Ogden (1929), 45 T. L. R. 222.

224c. Subscription to hospital—Where employee treated.]—Applts., who gave considerable subscriptions to a hospital at which their employees were frequently treated, claimed to deduct the amount of the subscriptions as a trade expense under r. 3 (*a*) of the rules applicable to Cases I. & II. of Sched. D. :—*Held :* the question whether the subscriptions were given with the view of obtaining a staff that would earn profits, or whether they were given merely because the staff had in fact been treated at the hospital, was a question of fact for the Special Comrs., & their decision must be affirmed.—BOURNE & HOLLINGSWORTH, LTD. *v.* OGDEN (1929), 45 T. L. R. 222; 73 Sol. Jo. 127; 14 Tax Cas. 349.

226a. Liability to bank on loans to meet acceptances —Subsequent compromise of bank's claim.]—Applt., who carried on business as an

exporter of cloth, habitually financed his shipments by drawing bills on the buyer in Shanghai & borrowing from a bank in London on the security of the bills & shipping documents. In 1920 a buyer became unable to meet his acceptances, & applt. found himself responsible to the bank for a large sum. In computing his assessable profits for the year ended Mar. 31, 1921, he was allowed to deduct a sum of £22,410, being the estimated amount of the bank's claim against him, but subsequently he advanced certain contentions against the bank & eventually, at the end of 1922, the bank accepted £8,000 in settlement of its claim. Applt. objected to additional assessments made in order to bring into charge the difference between the £8,000 & the £22,410 previously allowed, contending that the sums advanced by the bank were a liability for the year ended Mar. 31, 1921, & that the subsequent reduction of the debt was immaterial in determining his liability for that or any later year:—*Held:* applt.'s transactions with the bank constituted part of his business & that the loss incurred was a trading loss; & the computations for the purposes of income tax must be reopened & adjusted by reference to the actual amount of this loss.—BERNHARD *v.* GAHAN, BERNHARD *v.* INLAND REVENUE COMRS. (1928), 13 Tax Cas. 723, C. A.

226b. Royalties—Deduction of commission & expenses of literary agents.]—CURTIS BROWN, LTD. *v.* JARVIS; JARVIS *v.* CURTIS BROWN, LTD., No. 99k, *ante*.

226c. Legal costs—Income tax appeal.]—The resps. claimed as a deduction in computing their profits for income tax purposes the cost of employing solrs. & counsel in connection with an appeal to the Special Comrs. against assessments to income tax under Sched. D. in respect of their trading profits:—*Held:* the legal costs were not an admissible deduction.—ALLEN *v.* FARQUHARSON BROS. & Co. (1932), 17 Tax Cas. 59.

227. *Add. Annotations:*—**Consd.** I. R. Comrs. *v.* Scottish Central Electric Power Co. (1931), 145 L. T. 169. **Consd.** Hoare & Co., Ltd. *v.* Collyer (1932), 48 T. L. R. 256. **Refd.** Naval Colliery Co. (1897), Ltd. *v.* I. R. Comrs. (1928), 138 L. T. 593; Miller (Lady) *v.* I. R. Comrs. (1930), 15 Tax Cas. 25.

228a. —— Deduction of owner's rates.]—A co. owned & occupied for the purposes of their business certain lands & heritages which were "mills, factories or other similar premises" within 1918 Act. The annual value of those mills & factories was £5,976, & the co. paid owner's rates in respect of these premises to the amount of £1,752 annually. Both in 1927 & 1928 the co. were, for the purposes of Sched. A, allowed to deduct the sum of £1,752 paid by them in respect of owner's rates from their assessment of £5,976, & in making their return for Sched. D they claimed to be allowed to deduct the £5,976 as the annual value of the premises & also the £1,752 as disbursement of money wholly & exclusively laid out or expended for the purposes of the trade:—*Held:* the owner's rates payable by a trader who owns the premises in which he conducts his trade are not a permissible deduction in the computation of his profits & gains for the purpose of assessment under Sched. D, whether or not the premises are of the nature of "mills, factories or other similar premises."—INLAND REVENUE COMRS. *v.* SCOTTISH CENTRAL ELECTRIC POWER CO. (1931), 145 L. T. 169; 15 Tax Cas. 761, H. L.

229. *Add. Annotations:*—**Consd.** Fry *v.* Burma Corpn. (1929), 98 L. J. K. B. 693. **Refd.** I. R. Comrs. *v.* Scottish Central Electric Power Co. (1931), 145 L. T. 169.

229a. Rates already deducted under Sched. A—No deduction under Sched. D.]—In assessing a co. for income tax under Sched. A. in respect of the lands & heritages owned & occupied by it for the purposes of its trade, the comrs. allowed it, under r. 4 of No. V. of Sched. A., to deduct the public rates payable by it as owner of the subjects:—*Held:* the co. was not entitled again to deduct these rates in making its return of trading profits under Sched. D.—INLAND REVENUE COMRS. *v.* SCOTTISH CENTRAL ELECTRIC POWER CO., [1931] S. C. 36.

231. *Add. Annotation:*—**Consd.** Collyer *v.* Hoare & Co., [1931] 1 K. B. 123.

235. *Add. Citation:*—12 Tax Cas. 227.
Add. Annotation:—**Consd.** Morley *v.* Lawford & Co. (1928), 140 L. T. 125.

236. *Add. Citation:*—12 Tax Cas. 232.
Add. Annotations:—**Consd.** Morley *v.* Lawford & Co. (1928), 140 L. T. 125; Mann *v.* Nash (1932), 48 T. L. R. 287. **Refd.** Finance Minister *v.* Smith (1926), 95 L. J. P. C. 193.

236a. Calls on shares in company formed to take over trading company's buying agency.]—*Held:* not a trading loss, but a loss of capital & not a sum that could be properly deducted.—M. JACOBS YOUNG & Co., LTD. *v.* HARRIS (1926), 11 Tax Cas. 221.

238. *Add. Annotations:*—**Refd.** Naval Colliery Co. (1897), Ltd. *v.* I. R. Comrs. (1928), 138 L. T. 593; Collyer *v.* Hoare & Co., [1931] 1 K .B. 123.

PART V. SECT. 2, SUB-SECT. 7.—B.

p i. ——.]—A co. owned, & occupied for the purpose of its trade, land & heritages, which were "mills, factories or other similar premises," within Rules applicable to Cases I. & II., r. 5 (2):—*Held:* in estimating the profits or gains of the co. for the purpose of assessment to income tax under Schedule D, the whole annual value of its trading premises fell to be deducted, & not merely the amount at which the premises were actually assessed for the purpose of collection of tax under Schedule A.—INLAND REVENUE COMRS. *v.* SCOTTISH CENTRAL ELECTRIC POWER CO., [1928] S. C. 260. —**SCOT.**

PART V. SECT. 2, SUB-SECT. 7.—D.

sa. *Statutory company—Creation of reserve fund—Loss in realisation of investments forming part of fund.*]—*Held:* since the words of the Act authorising the creation of the reserve fund were permissive & enabling only, the exercise of the power was discretionary, & the loss was not an allowable deduction. *Semble:* it would have been otherwise, if the Act had imposed a duty on the co. to create a reserve fund.—ALLIANCE & DUBLIN CONSUMERS' GAS CO. *v.* DAVIES, [1926] I. R. 372.—**IR.**

sb. *Bank—Losses written off during year—Method of computation.*]—*Re* BANK OF MONTREAL ASSESSMENT (1909), 14 B. C. R. 282.—**CAN.**

sc. —— *Losses on sales of temporary investments in Government securities.*]—*Held:* such temporary investments could not be regarded as an investment of capital; the investment & realisation of such funds from time to time was merely part of the bank's ordinary business, & the loss incurred was a loss incurred in the production of income.—TAXATION COMR. *v.* COMMERCIAL BANKING CO. OF SYDNEY (1927), 27 S. R. N. S. W. 231; 44 N. S. W. W. N. 65.—**AUS.**

PART V. SECT. 2, SUB-SECT. 7.—E. (a).

e i. —— *Loss on trade branch.*]—A trader having two branches in his trade (viz. a cloth business & a banking business) carried on both, each with borrowed capital; & as the cloth business ended in a loss, he had to close it in 1924; & all that portion of the borrowed capital which was sunk in the cloth business was lost before 1924.

239. *Add. Annotations :—As to* (1) **Consd.** Mallett *v.* Staveley Coal & Iron Co., [1928] 2 K. B. 405. **Refd.** I. R. Comrs. *v.* Northfleet Coal & Ballast Co. (1927), 12 Tax Cas. 1102; Thompson *v.* I. R. Comrs., I. R. Comrs. *v.* Thompson (1927), 12 Tax Cas. 1091.

240. *Add. Annotation :—***Refd.** Eastman *v.* Shaw (1927), 43 T. L. R. 549.

241a. Payment of liabilities of subsidiary company.]—*Held :* a loss of capital, & no deduction could be allowed.—BAKER *v.* MABIE TODD & Co., LTD. (1927), 13 Tax Cas. 235.

244. *Add. Annotations :—***Refd.** Mallet *v.* Staveley Coal & Iron Co. (1927), 138 L. T. 201; Collyer *v.* Hoare & Co., [1931] 1 K. B. 123.

244a. ——.]—A co. leased a cinematograph theatre with its fixtures, furniture, machinery, etc., for twenty-one years under a lease which provided for an annual rent & a premium payable by quarterly instalments over the whole period of the lease. The lessors reserved the right in certain circumstances to terminate the lease at six months' notice. If this right were exercised all future instalments of the premium were to be cancelled. In negotiations before the terms of the lease were settled there had been a provisional agreement under which a rent was to have been paid equal to the total annual payments of rent & premium secured by the lease. The General Comrs. on appeal proceedings allowed the co.'s claim to deduct from its profits for income tax purposes the instalments of the premium. The Crown appealed :—*Held :* the payments were capital expenditure.—GREEN *v.* FAVOURITE CINEMAS, LTD. (1930), 15 Tax Cas. 390.

248a. Payment in consideration of surrender of lease — Mining lease.] — Sums paid by a colliery co. to the lessor in consideration of the surrender of a portion of the area demised by a mining lease, & for the release of the co. from the obligations undertaken by the lease, are capital payments, & are not allowable deductions.—MALLETT *v.* STAVELEY COAL & IRON CO., LTD., [1928] 2 K. B. 405; 97 L. J. K. B. 475; 139 L. T. 241; 13 Tax Cas. 772, C. A.

*Annotations :—***Folld.** Cowcher *v.* Mills (1927), 13 Tax Cas. 216. **Distd.** Anglo-Persian Oil Co. *v.* Dale (1931), 47 T. L. R. 487. **Refd.** I. R. Comrs. *v.* Northfleet Coal & Ballast Co. (1927), 12 Tax Cas. 1102.

248b. ——.]—Resps. carried on business at premises held on a lease expiring in 1923. In 1916 the business was closed down, & the lessor agreed to accept a surrender of the lease in consideration of a sum to be paid by instalments of £250 a year, & resps. issued a debenture to the lessor securing the instalments by a floating charge on all their assets. In 1921 the lessor accepted £600 from resps. in satisfaction of all further liability under the debenture :—*Held :* the payment of £600 was not an admissible deduction.—COWCHER *v.* MILLS & CO., LTD. (1927), 13 Tax Cas. 216.

248c. Payment in respect of indemnity against liability for surface damage.]—O'GRADY *v.* BULLCROFT MAIN COLLIERIES, LTD., O'GRADY *v.* MARKHAM MAIN COLLIERY, LTD. (1932), 17 Tax Cas. 93.

248d. Purchase of oil wells.]—HUGHES *v.* BRITISH BURMAH PETROLEUM CO., LTD. (1932), 17 Tax Cas. 286.

249. *Add. Annotations :—***Consd.** British Insulated & Helsby Cables *v.* Atherton, [1926] A. 205. **Refd.** Mitchell *v.* Noble (1926), 43 T. L. R. 100.

249a. Payment to agent to terminate agency.]—The Anglo-Persian Oil Co. paid to its agents in Persia the sum of £300,000, in compensation for the latter relinquishing a contract of agency. The co. treated that sum in its books as a payment out of revenue, & charged instalments of £60,000 to revenue account during each of the following five years. The Crown claimed that these were not permissible deductions, but should be placed to capital account :—*Held :* the question was not entirely one of fact, on which the decision of the comrs. was binding, for questions as to what are, or are not, permissible deductions turn upon certain defined principles of law, as laid down by LORD CAVE in *British Insulated & Helsby Cables, Ltd.* v. *Atherton*, No. 264; (2) is making the payment the co. was not enlarging its operations, nor improving its goodwill. It was not, within the meaning of LORD CAVE in *Atherton's Case*, "bringing into existence an asset or an advantage for the enduring benefit of its trade." The payments were such as the co. might have made for cancellation of an onerous contract to supply its products; they were payments attributable not to fixed but to circulating capital & might properly be debited to revenue account.—ANGLO-PERSIAN OIL CO., LTD. *v.* DALE, [1932] 1 K. B. 124; 100 L. J. K. B. 504; 145 L. T. 529; 47 T. L. R. 487; 75 Sol. Jo. 408; 16 Tax Cas. 253, C. A.

250. *Add. Annotations :—***Apld.** Marsden *v.* I. R. Comrs. (1919), 12 Tax Cas. 217. **Refd.** I. R. Comrs. *v.* Huntley & Palmers, Ltd. (1928), 12 Tax Cas. 1209.

251. *Add. Annotations :—***Refd.** Small *v.* Easson (1920), 12 Tax Cas. 351; British Insulated & Helsby Cables *v.* Atherton, [1926] A. C. 205;

The trader having had to pay interest on that lost capital in 1924–25, the year of assessment, claimed deduction therefor from the assessable profits of his remaining banking business for the year 1924–25 :—*Held :* though the branches were distinct, the trade was one, & though the lost capital was not available for use in the trade, viz. the banking business, in the year of assessment, the interest paid on it should be deducted under Indian Income Tax Act, s. 10 (2) (iii).—ARUNACHALAM CHETTY *v.* INCOME TAX COMRS. (1928), I. L. R. 52 Mad. 296.—**IND.**

PART V. SECT. 2, SUB-SECT. 7.—E. (b).

246 ii. —— *Instalment of purchase price—& costs of plant additions.*]—*Held :* capital expenditure.—ROSEBERRY-SURPRISE MINING CO. *v.* R., [1924] S. C. R. 445; [1924] 4 D. L. R. 197; [1924] 1 W. W. R. 1017.—**CAN.**

se. *Railway company—Expense of making deviations.*]—*Held :* sums expended by a railway co. in making deviations in its line from time to time were expenditure of a capital nature.—RHODESIA RYS. *v.* COMR. OF TAXES, [1925] App. D. 438.—**S. AF.**

sf. *Company owning one ship—Ship seized & used by enemy—Expenditure on reconditioning ship.*]—*Held :* not a proper deduction, in respect that the expenses were not a recurring maintenance expenditure, but were of the nature of capital outlay.—INLAND REVENUE *v.* GRANITE CITY S. S. Co., [1927] S. C. 705.—**SCOT.**

sh. *Loss on conversion of plant & works — Under arrangement with Minister of Munitions.*]—*Held :* a loss of capital, & not admissible as a deduction for income tax purposes.—LOTHIAN CHEMICAL CO., LTD. *v.* ROGERS, LOTHIAN CHEMICAL CO., LTD. *v.* INLAND REVENUE COMRS. (1926), 11 Tax Cas. 508.—**SCOT.**

si. *Value of wool on backs of sheep purchased with station.*]—WEBSTER *v.* WESTERN AUSTRALIA TAXATION DEPUTY COMR. (1927), 39 C. L. R. 130; [1927] Argus L. R. 113.—**AUS.**

sk. *Cost of reconstruction of shop.*]—HYAM *v.* INLAND REVENUE COMRS., [1929] S. C. (Ct. of Sess.) 384.—**SCOT.**

sl. *Consideration for right to deposit material by carting contractor.*]—INLAND REVENUE COMRS. *v.* ADAM (1928), 14 Tax Cas. 34.—**SCOT.**

Mitchell *v.* Noble, [1927] 1 K. B. 719; Anglo-Persian Oil Co. *v.* Dale (1931), 47 T. L. R. 487.

252. *Add. Annotations:*—**Refd.** Mallet *v.* Staveley Coal & Iron Co. (1927), 138 L. T. 201; Anglo-Persian Oil Co. *v.* Dale (1931), 47 T. L. R. 487.

252a. **Difference between cost & proceeds of sale of fixtures of branch shops.**]—A trading co., with a number of branch shops controlled by a head office, followed a policy of opening & closing their branches in accordance with the local demands & the probabilities of profit or loss:—*Held:* the difference between the cost of new fixtures, fittings, & utensils for the new shops, & the receipts from the sales of equivalent second hand fixtures, etc., from the shops that were closed, was a capital expenditure, & was not a revenue expenditure which could be debited to the trading account of the co. in ascertaining the profits which were assessable to income tax.—EASTMANS, LTD. *v.* SHAW, EASTMANS, LTD. *v.* INLAND REVENUE COMRS. (1928), 45 T. L. R. 12; 72 Sol. Jo. 744; 14 Tax Cas. 218, H. L.

254. *Add. Annotation:*—**Refd.** Roebank Printing Co., Ltd. *v.* I. R. Comrs. (1928), 13 Tax Cas. 864.

254a. **Nature of estimate to be made.**]—Applts. were assessed under Sched. D. for the years 1921–22 & 1922–23 on the basis of a writing down in two years successively of a doubtful debt. That was done by agreement with the inspector of taxes, who had all the facts before him. Subsequently, by additional first assessments, the writing down of the doubtful debt was disallowed, on the ground that since the writing down of the debt was allowed, it has come to the surveyor's knowledge that applts. had permitted the debtors to increase their indebtedness to them. On an appeal against the additional first assessments, the General Comrs. were not satisfied that the debt or any part of its had been proved to be a bad debt within the meaning of r. 3 (i) of Cases I. & II. of Sched. D., & they confirmed the additional first assessments:—*Held:* (1) the General Comrs. had not considered the right question. The question which they ought to have considered & decided was whether there had been a "discovery" by the surveyor within sect. 125 of 1918 Act. If they had considered that question there was no evidence which would have supported a decision in favour of the inspector of taxes. The word "discovers" does not mean a mere change of opinion on the same facts & figures. To justify an additional assessment the surveyor must ascertain some new fact which, if it had been known when the original assessment was made, would have resulted in an increased assessment; (2) an estimate of the value of a debt made in 1923 & 1924 on the then facts & probabilities was not overthrown by a finding of the General Comrs. that in 1930 it had not been proved that the debt or any part of it was a bad debt within the meaning of the rule. What the statute requires is an estimate of the extent to which a debt is bad for a profit & loss account. Such an estimate is not a prophecy to be judged by after events, but a valuation of the debt as an asset, to be judged as an estimate on the existing facts & probabilities.—ANDERTON & HALSTEAD, LTD. *v.* BIRRELL, [1932] 1 K. B. 271; 101 L. J. K. B. 219; 146 L. T. 139; 16 Tax Cas. 200.

257. *Add. Annotations:*—**Refd.** Seaham Harbour Dock Co. *v.* Crook (1930), 47 T. L. R. 23; Westcombe *v.* Hadnock Quarries, Ltd. (1931), 16 Tax Cas. 137.

260. *Add. Annotations:*—*As to* (1) **Refd.** Small *v.* Easson (1920), 12 Tax Cas. 351; Mitchell *v.* Noble, [1927] 1 K. B. 719. *As to* (2) **Distd.** British Insulated & Helsby Cables *v.* Atherton, [1926] A. C. 205; Mallett *v.* Staveley Coal & Iron Co., [1928] 2 K. B. 405. **Expld. & Distd.** Morgan Crucible Co. *v.* I. R. Comrs., [1932] 2 K. B. 185. **Refd.** Anglo-Persian Oil Co. *v.* Dale (1931), 47 T. L. R. 487.

261. *Add. Annotation:*—**Refd.** Curtis Brown, Ltd. *v.* Jarvis; Jarvis *v.* Curtis Brown, Ltd. (1929), 14 Tax Cas. 744.

262. *Add. Annotations:*—**Distd.** Mallett *v.* Staveley Coal & Iron Co., [1928] 2 K. B. 405. **Refd.** British Insulated & Helsby Cables *v.* Atherton, [1926] A. C. 205; Mitchell *v.* Noble, [1927] 1 K. B. 719; Morley *v.* Lawford (1928), 44 T. L. R. 716; Rees Roturbo Development Syndicate *v.* I. R. Comrs., Rees Roturbo Development Syndicate *v.* Ducker (1928), 13 Tax Cas. 366; I. R. Comrs. *v.* Hagart & Burn-Murdoch (1929), 14 Tax Cas. 433.

263a. -.]—A co. in 1883 inaugurated a scheme under which pensions were paid to its employees who had retired or become incapacitated, but reserving an uncontrolled discretion to vary or cease payment of such pensions. The payment of such pensions had ever since 1883 been a recurring business expense, & the pensions paid had been debited to the profit & loss accounts under the heading of wages, & were admitted to have been proper deductions in computing the profits of the co. for income tax purposes. In 1918 the co. entered into an arrangement with an insurance co. whereby the insurance co. undertook, in consideration of the sum of £23,100 paid to it by the co., to pay to the co. during the remainder of the lives of the persons who were receiving pensions, & who were named in the sched. to the policy, annuities which were equal in amount to

PART V. SECT. 2, SUB-SECT. 7.—F.

253 i. *Loss on advances to saw-miller to secure supplies of timber—Advances written off as bad debts on liquidation of saw-miller.*]—*Held:* the loss was properly deducted.—HOGG & CO., LTD. *v.* COMR. OF TAXES, [1925] N. Z. L. R. 206.—N.Z.

254 i. *Limited to trading debts—Whether debt of managing director to company included.*]—A calico printing co. paid its managing director in part by a commission on profits. During the first year of the arrangement the directors authorised him to draw two sums on account of his commission, & in subsequent years he drew sums on this account without special authority but with the knowledge of the directors. These sums were debited to a commission account. During the year ending Dec. 31, 1923, he drew out £5,141 in sums varying between £150 & £400. It was subsequently ascertained that no commission was due for that year, & the commission account showed a balance due by him to the co. of £3,391. In arriving at its profits for income tax purposes the co. claimed to be entitled to deduct this loss:—*Held:* the loss was a "loss not connected with or arising out of the trade."—ROEBANK PRINTING CO., LTD. *v.* INLAND REVENUE COMRS., [1928] S. C. (Ct. of Sess.) 701.—**SCOT.**

PART V. SECT. 2, SUB-SECT. 7.—G.

o i. —— *Payment for qualification shares.*]—SHAPIRO *v.* INLAND REVENUE COMRS. (1928), 49 N. L. R. 436.—**S. AF.**

the pensions which were being paid by the co. in pursuance of its pension scheme. The amounts received from the insurance co. under the policy were paid direct to the co., & payments equivalent to the annuities received from the insurance co. were made by the co. to the pensioners. The co. had full power to stop the payment of any pension in case of misconduct, but in fact no pension had been withdrawn. The pensioners did not at any time know of the existence of the policy. The co. had power in certain events to cancel the policy & claim repayment of part of the purchase money. The co. claimed that the sum of £23,100 should be allowed as a deduction in computing the amount of its deficiency for the purposes of excess profits duty for the accounting period ending in 1919:—*Held:* the co. had not by the payment of £23,100 got rid of their liability to pay the pensions to their retired or incapacitated employees, but had thereby acquired an asset, & therefore the £23,100 constituted a capital expenditure & could not be allowed as a deduction by reason of r. 3 (*f*) of the Rules applicable to Cases I. & II. of Sched. D. to 1918 Act.—MORGAN CRUCIBLE CO., LTD. *v.* INLAND REVENUE COMRS., [1932] 2 K. B. 185; 101 L. J. K. B. 764; 147 L. T. 174.

264. *Add. Citation:—sub nom.* ATHERTON *v.* BRITISH INSULATED & HELSBY CABLES, LTD., 10 Tax Cas. 155.
Add. Annotations:—**Apld.** Mallett *v.* Staveley Coal & Iron Co., [1928] 2 K. B. 405; Anglo-Persian Oil Co. *v.* Dale (1931), 47 T. L. R. 487. **Consd.** Morley *v.* Lawford (1928), 140 L. T. 125. **Refd.** Mitchell *v.* Noble, [1927] 1 K. B. 719.

265. *Add. Annotations:*—**Refd.** British Insulated & Helsby Cables *v.* Atherton, [1926] A. C. 205; Mallet *v.* Staveley Coal & Iron Co. (1927), 138 L. T. 201; Anglo-Persian Oil Co. *v.* Dale (1931), 47 T. L. R. 487.

268a. —— Books used for professional purposes—Solicitor.]—The word "plant" in Finance Act, 1925 (c. 36), s. 16, does not include a solr.'s books which he consults for professional purposes.—DAPHNE *v.* SHAW (1926), 43 T. L. R. 45; 71 Sol. Jo. 21; 11 Tax Cas. 256.

276a. Replacement of obsolete plant or machinery—Meaning of obsolete—Question of fact for commissioners.]—SOUTH METROPOLITAN GAS CO. *v.* DADD (1927), 13 Tax Cas. 205.

278. *Add. Annotations:*—**Consd.** Salisbury House Estate *v.* Fry, [1930] 1 K. B. 304. **Refd.** Brighton College *v.* Marriott, [1926] A. C. 192.

284. *Add. Annotation:*—**Refd.** Collyer *v.* Hoare & Co., [1931] 1 K. B. 123.

285. *Add. Annotations:*—**Apld.** Waldie *v.* I. R. Comrs. (1919), 12 Tax Cas. 113. **Distd.** Hagart & Burn-Murdoch *v.* I. R. Comrs., [1929] A. C. 386. **Refd.** Bourne & Hollingsworth *v.* I. R. Comrs. (1921), 12 Tax Cas. 483; Baker *v.* Mabie Todd (1927), 13 Tax Cas. 235.

287. *Add. Annotations:*—**Apld.** Mallett *v.* Staveley Coal & Iron Co., [1928] 2 K. B. 405. **Consd.** Morley *v.* Lawford (1928), 140 L. T. 125. **Expld.** Hagart & Burn-Murdoch *v.* I. R. Comrs., [1929] A. C. 386. **Distd.** Fry *v.* Salisbury House Estate, Ltd., Jones *v.* City of London Real Property Co., [1930] A. C. 432; Collyer *v.* Hoare & Co. (1930), 47 T. L. R. 7. **Folld.** I. R. Comrs. *v.* Scottish Central Electric Power Co. (1931), 145 L. T. 169. **Expld. & Distd.** Hoare & Co. *v.* Collyer (1932), 48 T. L. R. 256. **Refd.** Small *v.* Easson (1920), 12 Tax Cas. 351; Bourne & Hollingsworth *v.* I. R. Comrs. (1921), 12 Tax Cas. 483; British Insulated & Helsby Cables *v.* Atherton, [1926] A. C. 205; Mitchell *v.* Noble, [1927] 1 K. B. 719; Green *v.* Gliksten (1928), 139 L. T. 12; Rees Roturbo Development Syndicate *v.* I. R. Comrs., Rees Roturbo Development Syndicate *v.* Ducker (1928), 13 Tax Cas. 366; Anglo-Persian Oil Co. *v.* Dale (1931), 47 T. L. R. 487; Mersey Docks & Harbour Board *v.* West Derby Assessment Committee, Bottomley *v.* West Derby Assessment Committee & Mersey Docks & Harbour Board, etc., [1932] 1 K. B. 40; Union Cold Storage Co. *v.* Adamson (1931), 16 Tax Cas. 293.

288. *Add. Annotations:*—**Consd.** Morley *v.* Lawford & Co. (1928), 140 L. T. 125. **Refd.** British Insulated & Helsby Cables *v.* Atherton, [1926] A. C. 205; Anglo-Persian Oil Co. *v.* Dale (1931), 47 T. L. R. 487.

290. *Add. Annotations:*—*As to* (1) **Consd.** Morley *v.* Lawford & Co. (1928), 140 L. T. 125. *As to* (2) **Refd.** Mitchell *v.* Noble, [1927] 1 K. B. 719. *Generally*, **Refd.** Small *v.* Easson (1920), 12 Tax Cas. 351; I. R. Comrs. *v.* Scottish Central Electric Power Co. (1931), 145 L. T. 169; Union Cold Storage Co. *v.* Adamson (1931), 16 Tax Cas. 293.

291. *Add. Annotations:*—**Consd.** Hart *v.* Riversdale Mill Co. (1927), 96 L. J. K. B. 691; Morley *v.* Lawford & Co. (1928), 140 L. T. 125. **Apld.** Collyer *v.* Hoare & Co. (1930), 47 T. L. R. 7. **Distd.** Fry *v.* Salisbury House Estate, Ltd., Jones *v.* City of London Real Property Co., [1930] A. C. 432. **Consd.** Collyer *v.* Hoare &

PART V. SECT. 2, SUB-SECT. 7.—J.

b i. —— *Diminished value of rails & sleepers.*]—*Held:* a railway co. was not entitled to any deduction for such diminished value.—RHODESIA RYS. *v.* COMR. OF TAXES, [1925] App. D. 438.—**S. AF.**

b ii. ——.]—*Held:* an article is "useless" when it is unfit through wear & tear for the purposes for which it was used, & is incapable of being repaired, or is in such a condition that a reasonable business man would prefer to substitute a new implement rather than incur the cost of repairing the old.—ROBERTSON *v.* COMR. OF TAXES, [1928] S. A. S. R. 313.—**AUS**

PART V. SECT. 2, SUB-SECT. 7.—L.

p i. —— *Separate assessments under Schedules B. & D.*]—A farmer bred horses & cattle on a considerable scale. He used his stallions for his own horse-breeding purposes, & also earned fees by sending them on journeys for the service of other owners' mares. In this connection he kept a reserve of stallions to replace any which might become incapacitated. All his stallions, of which only a small proportion earned fees, formed part of one undivided stud. He was assessed to income tax, on the profits of his general farming business under Schedule B., & on the profits of his fee-earning stallions under Schedule D. As a method of fixing the amount of profits assessable under the latter Schedule, the comrs. determined to regard a certain number of stallions as exclusively used in earning fees, & to allow the deduction of the cost of their full upkeep & attendance, & to provide for replacements by allowing a similar deduction in respect of other stallions in the stud to the extent of one-third of the number of travelling stallions. The farmer contended that his stallion-owning business should be treated as entirely separate from his farming business, & that the whole of the expenses & losses connected with his stallions should be set against the revenue derived from them:—*Held:* it was primarily a question for the comrs. to determine, & no cause had been shown for disturbing their determination.—MARSHALL *v.* INLAND REVENUE COMRS., [1927] S. C. 243.—**SCOT.**

Co., [1931] 1 K. B. 123; I. R. Comrs. *v.* Scottish Central Electric Power Co. (1931), 145 L. T. 169. **Refd.** I. R. Comrs. *v.* Lysaght, [1928] A. C. 234.

292a. ——.]—YOUNGS, CRAWSHAY & YOUNGS, LTD. *v.* BROOKE (1912), 6 Tax Cas. 393.

292b. —— **Loss on individual rents of tied houses—No loss on aggregate rents.**]—A brewery co. owned freehold & leasehold licensed houses, which they let to tenants who were tied to the co. for all the beer, wines, & spirits sold on the premises let to them. Under the decision in *Usher's Wiltshire Brewery, Ltd.* v. *Bruce*, No. 287, the co., where rent was forgone by reason of the tie, was entitled, in the computation of the profits of the trade for assessment under Sched. D. to income tax, to a deduction of the difference between the Sched. A. assessment of its freehold houses or the rents paid by the co. for its leasehold houses, on the one hand, & the rents received by it from the tied tenants, on the other hand, as an expense wholly incurred for the purposes of its trade. Some of the tied tenants paid premiums, & it was admitted, in the course of the hearing, that they must be taken into account in determining whether rent had been forgone by the co. by reason of the tie. In some cases the co. suffered a loss in respect of rent forgone, but in other cases the rents received by the co. exceeded the annual value or the rent paid by the co., as the case might be. In assessing the co. to income tax under Case I. of Sched. D. the Crown claimed that the amount of such excess should be brought into account under Sched. D., but so far only as was required to wipe out the debit above mentioned, & that for this purpose the whole of the houses must be aggregated:—*Held:* the claim of the Crown failed, on the ground that the profits & gains arising from the ownership of land, whether used for the purposes of trade or not, were determined exclusively by reference to annual value under Sched. A., & accordingly the rents received could not be included in an account under Sched. D. of the profits & gains of the trade for the purposes of which the land was used.—HOARE & Co., LTD. *v.* COLLYER, [1932] A. C. 407; 101 L. J. K. B. 274; 146 L. T. 469; 48 T. L. R. 256; 76 Sol. Jo. 165; 17 Tax Cas. 169, H. L.

293. *Add. Annotation:*—**Refd.** Thomas *v.* Evans, Jones *v.* South-West Lancashire Coal-Owners' Assocn. (1927), 11 Tax Cas. 790.

294. *Add. Annotation:*—**Refd.** Collins *v.* I. R. Comrs. (1924), 12 Tax Cas. 773.

295. *Add. Annotation:*—**Refd.** Collins *v.* I. R Comrs. (1924), 12 Tax Cas. 773.

295a. —— **Mutual insurance—Surplus from other business done with fire policy holders—Whether liable to tax.**]—The main object of applt. co. which was incorporated as a co. limited by guarantee & not having a capital divided into shares, was to enable local authorities & other public bodies by co-operation to insure against fire & other risks on the most favourable terms. Since 1913 the co. had, in addition to the fire insurance business conducted on the mutual system, carried on an extensive business of a miscellaneous character & particularly employers' liability business. Considerable profits were derived from this miscellaneous business, & it was admitted that in general applts. were liable to be assessed to income tax in respect of these profits, but they claimed to be exempt in respect of any surplus arising from employers' liability or other miscellaneous business done with fire policy holders:—*Held:* as the principle of mutual insurance did not apply either to the employers' liability business or to the miscellaneous business, inasmuch as the fire policy holders in a body had not contributed, the surplus arising from any part of that business must be treated as profit & gains under Sched. D. & chargeable to income tax accordingly.—MUNICIPAL MUTUAL INSURANCE, LTD. *v.* HILLS (1932), 147 L. T. 62; 48 T. L. R. 301; 16 Tax Cas. 430, H. L.

296. *Add Citation:*—2 Tax Cas. 100.
Add. Annotations:—*As to* (2) **Consd.** Thomas *v.* Evans, Jones *v.* South-West Lancashire Coal-Owners' Assocn. (1927), 11 Tax Cas. 790. *Generally*, **Refd.** Pegg & Jones *v.* I. R. Comrs. (1919), 12 Tax Cas. 82; I. R. Comrs. *v.* Westleigh Estates Co., I. R. Comrs. *v.* South Behar Ry., I. R. Comrs. *v.* Eccentric Club (1925), 12 Tax Cas. 657.

297. *Add. Annotations:*—**Apld.** Pegg & Jones *v.* I. R. Comrs. (1919), 12 Tax Cas. 82. **Consd.** Thomas *v.* Evans, Jones *v.* South-West Lancashire Coal-Owners' Assocn. (1927), 11 Tax Cas. 790. **Distd.** Adamson *v.* Union Cold Storage Co. (1931), 146 L. T. 172. **Consd.** Municipal Mutual Insurance, Ltd. *v.* Hills (1932), 48 T. L. R. 301. **Refd.** I. R. Comrs. *v.* Westleigh Estates Co., I. R. Comrs. *v.* South Behar Ry., I. R. Comrs. *v.* Eccentric Club (1925), 12 Tax Cas. 657.

300. *Add. Annotations:*—**Consd.** I. R. Comrs. *v.* Westleigh Estates Co., I. R. Comrs. *v.* South Behar Ry., I. R. Comrs. *v.* Eccentric Club (1925), 12 Tax Cas. 657; Cornish Mutual Assce. *v.* I. R. Comrs., [1926] A. C. 281. **Distd.** Liverpool Corn Trade Assocn. *v.* Monks, [1926] 2 K. B. 110. **Consd.** Municipal Mutual Insurance, Ltd. *v.* Hills (1932), 48 T. L. R. 301. **Apld.** Jones *v.* South-West Lancashire Coal-Owners' Assocn., [1927] A. C. 827.

301. *Add. Annotation:*—**Refd.** Butler *v.* Mortgage Co. of Egypt (1927), 138 L. T. 328.

302. *Add. Annotations:*—**Refd.** British Insulated & Helsby Cables *v.* Atherton, [1926] A. C. 205; A.-G. *v.* Metropolitan Water Board, [1928] 1 K.B. 833.

304. *Add. Annotations:*—**Distd.** Scales *v.* Thompson (1927), 138 L. T. 331. **Consd.** Butler *v.* Mortgage Co. of Egypt (1928), 139 L. T. 29.

305. *Add. Annotations:*—**Distd.** Scales *v.* Thompson (1927), 138 L. T. 331. **Consd.** Butler *v.* Mortgage Co. of Egypt (1928), 139 L. T. 29. **Refd.** Fry *v.* Salisbury House Estate, Ltd., Jones *v.* City of London Real Property Co., [1930] A. C. 432.

307a. **Accident Insurance—Mutual society.**]—A mutual insurance assocn. was formed, its sole activity being the indemnity of its members, who were coal-owners, against liability for compensation in respect of fatal accidents to workmen. The members of the assocn. were the persons protected by it, every member being liable to contribute a sum not exceeding £25 in the event of a winding up. The assocn. formed a general fund by making calls upon members propor-

tionate to the wages paid in their works for the time being, & the balance of the ordinary call fund was transferred to a reserve fund, into which any extraordinary calls were also paid. A member, on retirement, was entitled to get back in cash a proportion of his share in the above reserve fund, but, apart from this, members had no right at all to the cash in the reserve fund, though the interest accruing on the reserve fund could be used in diminution of members' calls:—*Held:* (1) the sums paid by the members to the assocn. were admissible deductions in computing the profits made by a member for the purpose of assessment to income tax, as the money was laid out by the respective members on a true insurance principle; (2) the surplus funds of the assocn. were not assessable to income tax, as the assocn. was mere machinery for the purpose of enabling subscribing members to insure themselves.—THOMAS *v.* EVANS (RICHARD) & CO., JONES *v.* SOUTH-WEST LANCASHIRE COAL OWNERS' ASSOCN., [1927] 1 K. B. 33; 95 L. J. K. B. 990; 135 L. T. 673; 42 T. L. R. 703; 11 Tax Cas. 790, C. A.; *affd. sub nom.* JONES *v.* SOUTH-WEST LANCASHIRE COAL OWNERS' ASSOCN., [1927] A. C. 827; 96 L. J. K. B. 894; 137 L. T. 737; 43 T. L. R. 725; 71 Sol. Jo. 680, H. L.

Annotations:—*As to* (1) **Consd.** Municipal Mutual Insurance, Ltd. *v.* Hills (1932), 48 T. L. R. 301; Thomas Merthyr Colliery Co. *v.* Davis (1932), 48 T. L. R. 633.

307b. Marine insurance company—Building ships—Cancellation of shipbuilding contracts.]—A marine insurance co., having entered into contracts for the building of four ships, accepted delivery of two of the ships & then, owing to a slump in the shipping trade, cancelled the contracts for the other two ships on payment of £70,000. It was contended that a new business of dealing in ships had been begun by the co., & that the £70,000 was a proper deduction in arriving at its profits:—*Held:* the co. was not carrying on any trade, from the profits of which the £70,000 was an admissible deduction.—DEVON MUTUAL STEAMSHIP INSURANCE ASSOCN. *v.* OGG (1927), 13 Tax Cas. 184.

309a. Loss on investments—What amounts to.]—Applts., an insurance co., had investments in British railway stocks, & it was admitted by the Crown that any loss suffered by applts. on such investments was deductible from their profits for purposes of income tax. The result of Railways Act, 1921 (c. 55), was that applts. received in exchange for their various railway holdings stocks in the four amalgamated railway cos. created by that Act. The market value of these new stocks was less than the original cost to applts. of the old stocks, & they claimed that the loss so occasioned to them should be allowed as a deduction from their profits for 1922 & 1923 in computing their income tax liability:—*Held:* as the effect of what had happened was that the old investments had been closed & realised, & new investments had been begun, applts. were entitled to the deduction claimed.—ROYAL INSURANCE CO., LTD. *v.* STEPHEN (1928), 44 T. L. R. 630; 14 Tax Cas. 22.

Annotation:—**Apld.** Westminster Bank *v.* Osler, National Bank *v.* Baker (1932), 48 T. L. R. 211.

310. *Add. Annotation:*—**Refd.** Mann *v.* Nash (1932), 48 T. L. R. 287.

312a. Employment—Actress.]—The expression "employment" in Sched. E of 1918 Act means something analogous to an office or a post.

An actress earned her living by accepting & fulfilling engagements for which her professional qualifications fitted her. During the periods of assessment in question, she exercised her activities by (*a*) acting in various stage plays in England & one in the United States of America, under various contracts with theatrical producers; (*b*) performing for the films; (*c*) performing on the wireless for the British Broadcasting Corpn., & (*d*) performing for gramophone companies for reproduction on their records:—*Held:* the actress was assessable under Sched. D of 1918 Act in respect of the profits which she derived from her profession or vocation as an actress & not under Sched. E in respect of the profits of her employment.—DAVIES *v.* BRAITHWAITE, [1931] 2 K. B. 628; 100 L. J. K. B. 619; 145 L. T. 693; 47 T. L. R. 479; 75 Sol. Jo. 526.

313. *Add. Annotation:*—**Refd.** Stedeford *v.* Beloe (1932), 146 L. T. 456.

313a. —— Remuneration of solicitor-trustee under trust.]—A solr.-trustee was empowered by clauses in the instruments creating the trusts to charge for work done by him in connection with the trusts. By agreement between himself, his co-trustees & the beneficiaries, his remuneration was calculated as a percentage of the annual income of the trust funds, which income had already been brought into charge to tax:—*Held:* this remuneration was chargeable to income tax against the solr. under 1918 Act, Schedule D, Case II., as his profits or earnings arising from an employment, & was not constituted of annual payments payable wholly out of profits or gains brought into charge to tax within Rules applicable to all Schedules, r. 19.—JONES *v.* WRIGHT (1927), 139 L. T. 43; 44 T. L. R. 128; 72 Sol. Jo. 86; 13 Tax Cas. 221.

315a. —— Setting up new profession—Barrister becoming King's Counsel.]—A junior barrister on becoming a King's Counsel does not "set up" a new profession within r. 1 (2) of the Rules applicable to Cases I. & II. in Sched. D. to 1918 Act, &, consequently, his earnings are not to be computed in accordance with that sub-rule.—SELDON (F. E.) *v.* CROOM-JOHNSON; SELDON (F. E.) *v.* BRUCE THOMAS, [1932] 1 K. B. 759; 101 L. J. K. B. 358; 147 L. T. 72; 48 T. L. R. 301; 76 Sol. Jo. 273; 16 Tax Cas. 740.

316. *Add. Annotations:*—*As to* (2) **Apld.** Westminster Bank *v.* Osler, National Bank *v.* Baker (1932), 48 T. L. R. 211. *As to* (3) **Apld.** Whelan *v.* Henning, [1926] A. C. 293. **Distd.** Ormond Investment Co. *v.* Betts, [1927]

PART V. SECT. 4, SUB-SECT. 1.

sk. *Dividends received by broker—Deduction of interest on unpaid balance due to broker.*]—*Held:* the client was not assessable for income in respect of the whole amount of the dividends received by the broker & credited to his account, but only in respect of the difference between the sum of the dividends & the sum charged for interest.—*Re* STOUT & TORONTO CITY, [1927] 2 D. L. R. 1100; 60 O. L. R. 313.—**CAN.**

sl. *Dividends paid in Victory Bonds exempt from taxation.*]—W., Ltd., having accumulated profits, declared a dividend, & by consent of the shareholders, paid the same in Victory Bonds. W., a shareholder, in his income return for that year, claimed he should not pay income tax on this dividend because it was paid in Victory Bonds which were exempt from income

2 K. B. 326. *As to* (3) **Expld.** Diggines *v.* Forestal Land, Timber & Railways Co. (1930), 142 L. T. 509. (*See* [1931] A. C. 380, H. L.). **Refd.** Kirke's Trustees *v.* I. R. Comrs. (1926), 136 L. T. 582; Turton *v.* Mitchell (1927), 138 L. T. 365; Leeming *v.* Jones (1929), 141 L. T 472. *Generally*, **Refd.** Leitch *v.* Emmott, [1929] 2 K. B. 236; Miller (Lady) *v.* I. R. Comrs. (1930), 15 Tax Cas. 25.

317. *Add. Citations:*—[1926] 1 K. B. 430; 10 Tax Cas. 139.

Add. Annotations:—**Apld.** Turton *v.* Mitchell (1927), 138 L. T. 365. **Consd.** Leeming *v.* Jones (1929), 141 L. T. 472. **Apld.** Diggines *v.* Forestal Land, Timber, & Railways Co. (1930), 142 L. T. 509. **Refd.** Ormond Investment Co. *v.* Betts, [1927] 2 K. B. 326 (*see* [1913] A. C. 380, H. L.); Merrfield *v.* Wallpaper Manufacturers, Ltd., [1931] 2 K. B. 143. For cross-references following this case read "*see, now*, Finance Act, 1926 (c. 22), s. 22 (1)."

317a. —— —— —— **Different holdings of War Loan.**]—Applt., who owned £2,350 5 per cent. War Loan inscribed in the books of the Bank of England, in June, 1924, converted this holding into 4½ per cent. Conversion Loan, the interest on which was payable under deduction of income tax. Applt., however, continued throughout the year 1925-26 to hold a small amount of 5 per cent. War Loan Post Office issue, to which he had succeeded on the death of his daughter, & which he was not aware he could convert:—*Held:* applt. continued throughout the year 1925-26 to hold the same source of income, *i.e.*, 5 per cent. War Loan, & under Schedule D, Case III., r. 2, he was assessable to income tax for that year in the full amount of the interest received from such War Loan in the preceding year.—TURTON *v.* MITCHELL (1927), 138 L. T. 365; 13 Tax Cas. 245.

317b. —— —— —— ——.]—The words "interest . . . on any securities issued under the War Loan Acts, 1914 to 1917," in 1918 Act, Sched D, Case III., r. 1 (*f*), designated one taxable subject-matter & not several sources of income.

A taxpayer was the holder of a number of 5 per cent. National War Bonds, 1928 (Third Series). These bonds were on Dec. 1, 1924, converted into 5 per cent. War Loan Stock, 1929-47. The taxpayer in the following year purchased additional 5 per cent. War Loan Stock, 1929-47. Both the 5 per cent. National War Bonds, 1928, & the 5 per cent. War Loan Stock, 1929-47, were securities issued under the War Loan Acts. A question arose whether they were of the same class or source for the purposes of rr. 1 & 2 applicable to Case III. of Sched. D of the Income Tax Act. The taxpayer contended that they were the same source, & therefore the assessment for the year in question should be computed on the basis of the income arising within the year preceding the year of assessment. The Crown, on the other hand, contended that the income arising from 5 per cent. National War Bonds & 5 per cent. War Loan Stock was income arising from different sources, & therefore the assessment for the year in question ought to be computed on the income of the year of assessment:—*Held:* as both the 5 per cent. National War Bonds, 1928, & the 5 per cent. War Loan Stock, 1929-47, were securities issued under the War Loan Acts, 1914 to 1917, the interest arising from those securities arose from the same source & ought not to be split up for the purpose of charging income tax.—MERRIFIELD *v.* WALLPAPER MANUFACTURERS, LTD., [1931] 2 K. B. 143; 100 L. J. K. B. 616; 145 L. T. 451; 16 Tax Cas. 40.

317c. —— —— —— —— **Holdings of husband & wife.**]—Where applt.'s wife, who was living with him, was in receipt of £9 16*s.* 10*d.* interest of War Loan in the year preceding the year of assessment, in which year applt. held no War Loan, & applt. in the year of assessment bought War Loan from which he received interest amounting to £3,662 10*s.*:—*Held:* applt. had been in possession of the source of such interest in the previous year, & was assessable only in the sum of £9 16*s.* 10*d.* in respect of interest of War Loan.—WALKER *v.* HOWARD (1927), 138 L. T. 367; 13 Tax Cas. 313.

Annotation:—**Overd.** Leitch *v.* Emmott, [1929] 2 K. B. 236. *Compare* No. 570a, *post.*

321. *Add. Annotation:*—**Refd.** Thompson *v.* Trust & Loan Co. of Canada (1932), 48 T. L. R. 209.

321a. **Surrender of Victory Bonds in payment of death duties—Unpaid interest taken into account in valuation.**]—Where Victory Bonds are surrendered in payment of estate duty, & the accrued but still unpaid interest is taken into account in the valuation of the bonds, the interest is not subject to income tax.—MONKS *v.* FOX'S EXECUTORS, [1928] 1 K. B. 351; 97 L. J. K. B. 241; 138 L. T. 203; 44 T. L. R. 115; 72 Sol. Jo. 31; 13 Tax Cas. 171.

321b. **Profits on "realisation"—Exchange of securities.**]—ROYAL INSURANCE CO., LTD. *v.* STEPHEN, No. 309a, *ante.*

321c. —.]—In the first case the W. Bank during the war acquired as part of its assets certain National War Bonds of various issues. In pursuance of the right given by certain of these bonds, or of a similar right offered by the Govt., to convert the bonds into longer term securities, the Bank surrendered them & acquired in exchange certain Conversion Loan & War Loan. The latter securities were greater in value than the bonds surrendered. In assessing the Bank to income tax the profit made on these transactions was included in the assessment. On appeal by the Bank the Crown contended that on the occasion of each conversion the Bank had realised the bonds, & by receiving in exchange investments of greater value had thereby made a profit, & accordingly that such profit should be taken into account in arriving at the Bank's assessments to income tax. The Special Comrs. adopted the Crown's contention. In the second case the N. Bank appealed against similar findings with reference to similar transactions:—*Held:* the transactions in

tax:—*Held:* the payment of the distributed dividend in question in this case, in bonds, does not bring the transaction within the "obligation" of the bond in question which introduces the exemption in taxes. Such payment is not the payment of the capital of the bond at maturity nor is it the payment of interest upon presentation & surrender of coupons which is what is exempt from taxation. The amount so received as dividend represented by said bonds was liable to income tax as profits & gains.—WATEROUS *v.* MINISTER OF NATIONAL REVENUE, [1931] Ex. C. R. 108.—CAN.

the case of each of the two banks were equivalent to realisations of the old stocks & reinvestments in new securities which had resulted in profits, & the banks were accountable for those profits.—WESTMINSTER BANK, LTD. *v.* OSLER; NATIONAL BANK, LTD. *v.* BAKER, [1932] 1 K. B. 668; 101 L. J. K. B. 292; 146 L. T. 441; 48 T. L. R. 211; 76 Sol. Jo. 67, C. A.; *affd.* 49 T. L. R. 43; 76 Sol. Jo. 831, H. L.

326. *Add. Annotation:*—**Refd.** Seaham Harbour Dock Co. *v.* Crook (1930), 47 T. L. R. 23.

334. *Add. Annotation:*—**Refd.** I. R. Comrs. *v.* Holder, [1931] 2 K. B. 81.

336. *Add. Annotations:*—**Consd.** Perrin *v.* Dickson (1929), 98 L. J. K. B. 683. **Refd.** Leeming *v.* Jones (1929), 141 L. T. 472.

337. *Add. Annotations:*—**Consd.** *Re* Fitch's Will Trusts, Public Trustee *v.* Nives (1928), 139 L. T. 556; Perrin *v.* Dickson (1929), 98 L. J. K. B. 683. **Refd.** Glenboig Union Fireclay Co. *v.* I. R. Comrs. (1922), 12 Tax Cas. 427; I. R. Comrs. *v.* City of Buenos Ayres Tramways Co. (1904), (1926), 12 Tax Cas. 1125; Westcombe *v.* Hadnock Quarries, Ltd. (1931), 16 Tax Cas. 137.

345a. —— **By insurance company—In consideration for annual payments.**]—A contract with an insurance co., by which the assured, in consideration of annual payments, is to receive other annual payments at a later date, does not create an annuity chargeable with income tax, except to the extent that the payments made by the co. consist of interest on those made to them by the assured.—PERRIN *v.* DICKSON, [1930] 1 K. B. 107; 98 L. J. K. B. 683; 142 L. T. 29; 45 T. L. R. 621; 14 Tax Cas. 608, C. A.

347. *Add. Annotation:*—**Consd.** Perrin *v.* Dickson, (1929), 98 L. J. K. B. 683.

354. *Add. Annotations:*—**Refd.** Sherwood *v.* Sherwood, [1929] P. 120; Stibbe *v.* Stibbe, [1931] P. 105.

354a. —— —— **Right of wife to refund of personal allowance.**]—On an order being made against a resp. living abroad, whose income was not subject to British tax, for payment of maintenance free of tax to his former wife living in England, he must remit a sum which, after the payment of income tax at the standard rate, gave petitioner the sum named in the order, & she was also entitled to the benefit of any personal allowance by way of refund from the income tax authorities.—SHEARN *v.* SHEARN, [1931] P. 1; 100 L. J. P. 41; 143 L. T. 772; 46 T. L. R. 652; 74 Sol. Jo. 536.

356. *Add. Annotation:*—**Apld.** South American Stores (Gath & Chaves) *v.* I. R. Comrs. (1926), 12 Tax Cas. 905.

361. *Add. Annotation:*—*Generally*, **Refd.** Shearn *v.* Shearn, [1931] P. 1.

367a. —— **Agreement to pay super-tax on wife's income in excess of specified sum—Whether husband entitled to marshal wife's income.**]—A husband & wife lived apart upon the terms of a separation deed by which the husband covenanted during the joint lives of himself & his wife to pay to trustees for the benefit of the wife such a sum in each year as, after deducting income tax at the current rate, should amount to the sum of £3,000. Clause 11 of the deed was in these terms: "In addition to all other payments by this indenture agreed to be made by the husband or his representatives after his decease he or they shall pay & discharge all super-tax which shall be payable in respect of the income of either the husband or the wife except any super-tax in respect of any income of the wife not coming to her under or by virtue of this indenture in excess of £1,400 for any year." Apart from the deed the wife had an income exceeding £1,400 a year:—*Held:* in computing the super-tax payable by the husband in respect of the income of the wife, the husband was not entitled to marshal the component parts of the wife's income so that one part, namely, the annual amount payable under the deed plus £1,400, should be exempt from super-tax as to £2,000 thereof, & as to the balance should bear the lower rates of tax, & that the higher rate of tax should fall upon another part, namely, the excess of the wife's total income over the first-mentioned part; but clause 11 of the deed required that the whole super-tax payable in respect of the total income of the wife should be divided in the proportion which the amount of one of the above-mentioned parts of the wife's income bore to the amount of the other, & that the husband should pay super-tax in the proportion which the first-mentioned part bore to that secondly mentioned.—FLEETWOOD-HESKETH *v.* FLEETWOOD-HESKETH, [1929] 2 K. B. 55; 98 L. J. K. B. 417; 141 L. T. 317, C. A.

369c. Payment of interest to debenture holders—Out of accumulated profits.]—The words "profits or gains brought into charge to tax" in rr. 19 & 20 of the All Schedules Rules to 1918 Act, mean profits or gains brought into charge to tax in the same year of assessment as the payment is made of the interest from which income tax is deducted.

A trading co. wrote off against capital depreciation a balance of £68,929 standing to the credit of its profit & loss account & representing accumulated past profits on which the co. had paid income tax in previous years. During years of charge the co. made no profits, but it paid debenture interest, deducting from the payments tax at the standard rate which is claimed to retain on the ground that the £68,929 was to be regarded as available for the payment of the interest, & that the interest was, therefore, "payable wholly out of profits or gains brought into charge to tax" within r. 19 of the All Schedules Rules under 1918 Act:—*Held:* as during each of the years of charge the co. had no profits or gains brought into charge to income tax, the interest had not been paid out of money already brought into tax within r. 19. The case, therefore, did not fall within r. 19, but within r. 21, by which the co. must account to the Crown for the amount of the tax which it had deducted.—LUIPAARD'S VLEI ESTATE & GOLD MINING CO., LTD. *v.* INLAND REVENUE COMRS., [1930] 1 K. B. 593; 99 L. J. K. B. 330; 142 L. T. 589; 46 T. L. R. 204; 15 Tax Cas. 573, C. A.

sm. *Mortgage interest.*]—RAJA RAGHUNANDAN PRASHAD SINGH *v.* COMR. OF INCOME TAX, BIHAR & ORISSA (1929), I. L. R. 9 Pat. 48.—IND.

375. *Add. Annotation :*—**Consd.** Martin *v.* Lowry, Martin *v.* I. R. Comrs., [1926] 1 K. B. 550.

377. *Add. Annotation :—Generally,* **Refd.** I. R. Comrs. *v.* Holder, [1931] 2 K. B. 81.

378. *Add. Annotations :*—**Refd.** *Re* Jauncey, Bird *v.* Arnold, [1926] Ch. 471; I. R. Comrs. *v.* Holder, [1931] 2 K. B. 81.

380a. Instalments paid after death of moneylender —Instalments not representing capital.]—A moneylender made loans on promissory notes which provided for payment to him of monthly or more frequent instalments. Up to the date of his death he was assessed under Case I, Sched. D, in respect of the profits of this business, all instalments due & paid prior to his death being brought into the relative computations. Instalments falling due after his death were collected by the administrator of his estate but it was not suggested that the administrator was at any time carrying on any trade. Assessments were made on the administrator on the basis that so much of the instalments collected by him as did not represent repayment of capital was "interest of money" within rule 1, Case III., Sched. D. The administrator contended that the sums in question were not assessable as "interest of money" within Income Tax Acts :—*Held :* the sums in question were "interest" assessable under Case III.—BENNETT *v.* OGSTON (1930), 15 Tax Cas. 374.

391. After this case add :—

G. Royalties.

391a. Payments in respect of user of patents.]—A French firm, which had acquired from an American owner of patent rights the sole right of manufacture & sale, in the "eastern hemisphere," of certain machinery, entered into an arrangement with applt. co. under which the co. was appointed as the agent of the firm for the manufacture & sale of the machinery in the parts of the British Empire within this area, which included the United Kingdom. The terms of this arrangement were agreed verbally in Paris, were subsequently embodied in a letter, written in Paris, from the firm to the co. & were accepted by the co. by a letter written in England. Under the arrangement, the selling price of the machinery was to be fixed by applt. co. whose manufacturing costs, plus overhead charges plus profit, were not to exceed certain specified percentages of the sales. Payments due by applt. co. to the French firm under the arrangement were in fact made direct to the American owner of the patent rights, the amounts due by the co. to the firm being the same as the amounts due by the firm to the American owner. The machines which formed the subject of the patent rights were manufactured in England & sold by the co. The co. appealed to the Special Comrs. against assessments made upon it under r. 21 of the General Rules, as amended by Finance Act, 1927 (c. 10), s. 26, to cover the payments under the arrangement, contending that the agreement between the French firm & the co. was made in France & that the payments under that agreement were not income arising from property in the United Kingdom :—*Held :* the payments under the agreement constituted income arising from property within the United Kingdom & were chargeable to income tax.—INTERNATIONAL COMBUSTION, LTD. *v.* INLAND REVENUE COMRS. (1932), 16 Tax Cas. 532.

391b. Lump sum payment.]—INLAND REVENUE COMRS. *v.* LONGMANS GREEN & CO., LTD. (1932), 17 Tax Cas. 272.

392. *Add. Annotations :*—**Consd.** Sterling Trust *v.* I. R. Comrs., I. R. Comrs. *v.* Sterling Trust (1925), 12 Tax Cas. 868. **Distd.** Dickson *v.* Hampstead B. C. (1927), 91 J. P. 146. **Apld.** A.-G. *v.* Metropolitan Water Board, [1928] 1 K. B. 833. **Consd.** I. R. Comrs. *v.* Dalgety & Co. (1929), 98 L. J. K. B. 542; Shanks *v.* I. R. Comrs., [1929] 1 K. B. 342; I. R. Comrs. *v.* Scottish Central Electric Power Co. (1931), 145 L. T. 169. **Refd.** Birt, Potter & Hughes *v.* I. R. Comrs. (1927), 12 Tax Cas. 976; I. R. Comrs. *v.* Pakenham, I. R. Comrs. *v.* Longford, Gascoigne *v.* I. R. Comrs., [1927] 1 K. B. 594; Birmingham Corpn. *v.* I. R. Comrs., [1930] A. C. 307; Fry *v.* Salisbury House Estate, Ltd., Jones *v.* City of London Real Property Co., [1930] A. C. 432; Sutton *v.* I. R. Comrs. (1929), 14 Tax Cas. 662; I. R. Comrs. *v.* Miller, [1930] A. C. 222; Jones *v.* Leeming, [1930] A. C. 415; Luipaard's Vlei Estate & Gold Mining Co. *v.* I. R. Comrs., [1930] 1 K. B. 593; Miller (Lady) *v.* I. R. Comrs. (1930), 15 Tax Cas. 25; Hamilton *v.* I. R. Comrs., [1931] 2 K. B. 495.

393. *Add. Annotations :*—**Apld.** Dickson *v.* Hampstead B. C. (1927), 91 J. P. 146. **Refd.** I. R. Comrs. *v.* Pakenham, I. R. Comrs. *v.* Longford, Gascoigne *v.* I. R. Comrs. (1927), 136 L. T. 699; A.-G. *v.* Metropolitan Water Board, [1928] 1 K. B. 833; Birmingham Corpn. *v.* I. R. Comrs., [1930] A. C. 307; Luipaard's Vlei Estate & Gold Mining Co. *v.* I. R. Comrs., [1930] 1 K. B. 593.

393a.——.]—Under Housing of the Working Classes Acts & Metropolis Management Act, 1855 (c. 120), resps., a metropolitan borough council, assigned to the London County Council all rates authorised to be raised by resps. under Metropolis Management Act, 1855, or London Govt. Act, 1899 (c. 14), to secure money advanced by the London County Council. The money so raised was used by resps. in connection with the construction of flats for the working classes in pursuance of a scheme prepared by them under Housing, Town Planning, etc., Act, 1919 (c. 35), s. 1. In making payments of interest on the sums advanced resps. deducted income tax under Rules applicable to all Schedules, r. 21. The interest was paid out of the general fund in the hands of resps.,

PART V. SECT. 4, SUB-SECT. 3.

392 i. *Annual payments partly paid out of taxed income.*]—Applt. corpn. had raised the funds required for a housing scheme by borrowing a small portion from the Board of Public Works & as to the remainder by borrowing on mortgages secured on the revenue of the corpn. The revenue account of the scheme for the year in question showed a deficit which was eventually made good from public funds. The loan interest was due & was paid out of the borough fund before the subsidy was received. The total taxed income of the corpn. was sufficient to cover the whole of the loan interest payable. The corpn. was assessed under Finance Act, 1927 (c. 10), s. 26, on the same footing as in *Birmingham Corpn.* v. *I. R. Comrs.*, No. 393b, & the assessment was upheld by the special comrs. on appeal. The corpn. demanded a case :—*Held :* the corpn. was rightly so assessed.—BELFAST CORPN. *v.* TURNBULL (1930), 15 Tax Cas. 474.—**IR.**

into which fund were paid all profits or gains, whether derived from a housing scheme or from elsewhere. Resps. had only one banking account, out of which all payments, including the interest, were made & into which all receipts, including the profits & gains derived from resps.' electricity undertaking, or otherwise, were paid. No special fund in respect of any housing scheme was maintained. Resps. possessed profits or gains brought into charge to income tax sufficient for the payment of interest on the sums advanced, apart from any revenue derived under any housing scheme:—*Held:* as none of resps.' profits & gains other than the receipts of the housing scheme contributed to the payment of the interest, & as resps. had an indemnity against loss on the scheme, resps. were liable to account for the amount of the deductions.—DICKSON *v.* HAMPSTEAD BOROUGH COUNCIL (1927), 91 J. P. 146; 43 T. L. R. 595; 25 L. G. R. 402; 11 Tax Cas. 691.

Annotation:—**Apprvd.** Birmingham Corpn. *v.* I. R. Comrs., [1929] 2 K. B. 187.

393b. -.]—The Birmingham Corpn. undertook a Housing Scheme, under the provisions of the Town Planning Act, 1919 (c. 35), &, under the provisions of sect. 7. the Local Govt. Board undertook to, & did, refund to them, by means of an Exchequer subsidy, the loss thereby incurred. In order to finance the scheme, the corpn. issued housing bonds, & when paying interest upon them they deducted income tax. They alleged that that interest was paid out of their general borough fund, which was used in financing their markets, gas, electricity, tramways & other undertakings, & that as the income in respect of that fund & those undertakings had already been brought into charge for income tax purposes, they were entitled to retain the amounts deducted:—*Held:* as the corpn. had an indemnity against loss on the housing scheme the interest so paid could not be regarded as a general payment out of profits brought into charge, & the corpn. must account to the Revenue for the tax so deducted under rule 21 of the rules applicable to all Scheds.—BIRMINGHAM CORPN. *v.* INLAND REVENUE COMRS., [1929] 2 K. B. 187; 98 L. J. K. B. 498; 141 L. T. 339; 93 J. P. 216; 45 T. L. R. 463; 27 L. G. R. 551, C. A.; *affd.*, [1930] A. C. 307; 99 L. J. K. B. 299; 142 L. T. 633; 94 J. P. 123; 46 T. L. R. 262; 28 L. G. R. 201; 15 Tax Cas. 172, H. L.

394. *Add. Annotations:* — **Apld.** Birmingham Corpn. *v.* I. R. Comrs., [1929] 2 K. B. 187. **Refd.** Sterling Trust *v.* I. R. Comrs., I. R. Comrs. *v.* Sterling Trust (1925), 12 Tax Cas. 868; Luipaard's Vlei Estate & Gold Mining Co. *v.* I. R. Comrs. (1930 99 L. J. K. B. 330.

394a. —— ——.]—The profits of the Metropolitan Water Board were assessable under 1918 Act, Schedule A., No. III., r. 3, by reference to the profits of the year preceding the year of assessment. The accounts of the Board for the year ending Mar. 31, 1922, showed a loss, & no assessment was made for the year ending Apr. 5, 1923. The accounts for the year ending Mar. 31, 1923, showed a profit of over two millions, out of which the Board paid over one million interest on water stock, & debentures, deducting & retaining the income tax thereon. On an information claiming that the Board was liable to account for the amount of the tax so deducted, the Board contended that the interest paid for the year 1922–23 was payable out of profits brought into charge for 1922–23 within Rules applicable to all Schedules, r. 19, & was in fact paid out of the profits for 1922–23, & that, although the income tax for 1922–23 was to be measured by the profits of the preceding year, the profits for 1922–23 had been brought into charge, & rule 21 did not apply:—*Held:* as the Board had been assessed at zero under Schedule A for 1922–23, the interest had not been paid out of profits brought into charge, & the Crown was entitled to succeed.—A.-G. *v.* METROPOLITAN WATER BOARD, [1928] 1 K. B. 833; 97 L. J. K. B. 214; 138 L. T. 346; 44 T. L. R. 135; 72 Sol. Jo. 30; 13 Tax Cas. 294, C. A.

Annotations:—**Distd.** Salisbury House Estate *v.* Fry (1929), 98 L. J. K. B. 722. **Apld.** Luipaard's Vlei Estate & Gold Mining Co. *v.* I. R. Comrs., [1930] 1 K. B. 593. **Consd.** Hamilton *v.* I. R. Comrs. (1931), 145 L. T. 303.

397. *Add. Annotations:*—**Consd.** Sterling Trust *v.* I. R. Comrs., I. R. Comrs. *v.* Sterling Trust (1925), 12 Tax Cas. 868. **Apld.** Dickson *v.* Hampstead B. C. (1927), 91 J. P. 146. **Consd.** A.-G. *v.* Metropolitan Water Board, [1928] 1 K. B. 833. **Refd.** Birmingham Corpn. *v.* I. R. Comrs., [1930] A. C. 307; I. R. Comrs. *v.* Dalgety & Co., [1930] 1 K. B. 1; Luipaard's Vlei Estate & Gold Mining Co. *v.* I. R. Comrs., [1930] 1 K. B. 593.

416a. —— **Debentures.**]—A co. issued debentures, stating in the prospectus that the interest thereon would be payable "free of English income tax." The debentures themselves, & the trust deeds by which they were secured, provided for payment of interest at 5½ per cent. *per annum* "free of English income tax," & the co. undertook, in addition to the interest, to pay or idemnify the owner of each coupon against the English income tax on the interest to which the coupon related:—*Held:* the contract was void, as regards the stipulation for payment of interest free of income tax.—SOUTH AMERICAN STORES (GATH & CHAVES), LTD. *v.* INLAND REVENUE COMRS. (1926), 12 Tax Cas. 905.

425. *Add. Annotations:*—**Consd.** I. R. Comrs. *v.* Pakenham, I. R. Comrs. *v.* Longford (1927), 96 L. J. K. B. 882; Archer-Shee *v.* Garland, [1931] A. C. 212. **Refd.** Baker *v.* Archer-Shee, [1927] A. C. 844.

427. *Add. Annotation:*—**N.F.** Manton's Trustees *v.* Steele, Steele *v.* Manton's Trustees (1927), 11 Tax Cas 549.

428a. —— **Securities in control of foreign custodian of enemy property—Payment of dividends by Anglo-German Mixed Arbitral Tribunal—When interest accrues.**]—Before the war one K., who was a naturalised British subject ordinarily resident in the United Kingdom, deposited certain securities, stocks, & shares with a bank in Germany for safe custody, & the bank collected the interest & dividends & put them to the credit of K.'s account. From the outbreak of war in 1914 K. ceased to operate the account & he died in 1916. The bank, however, continued to credit the account with the interest & dividends until 1917, when the German Govt. appointed a custodian to take over & administer enemies' property in Germany, & the bank then paid the interest & dividends to the custodian.

K.'s last surviving exor. died in 1921, & resps., the exors. of such survivor, recovered the interest & dividends, together with interest thereon, through the Anglo-German Mixed Arbitral Tribunal. Resps. were assessed to income tax in respect of these sums for the years 1922–23 to 1926–27 under Cases IV. & V. of Sched. D. on the ground that they were income arising to resps. in those years as they accrued only when received under the decree of the Tribunal:—*Held:* the dividends & interest accrued in the years when they were paid into the bank, & it was now too late to make assessments in respect of the years before K.'s death, & as to the years after his death assessments could be made only so far as the assessments were in time. & the further sum paid as interest thereon under the decree of the Tribunal was not income but was compensation comparable to damages for detention of a chattel & therefore was not assessable to income tax.—SIMPSON *v.* MAURICE'S EXORS. (1929), 45 T. L. R. 581; 14 Tax Cas. 580, C. A.

428b. —— —— —— **& interest thereon—Whether interest income.**]—SIMPSON *v.* MAURICE'S EXORS., No. 428a, *ante*.

430. *Add. Annotations:*—**Apld.** Manton's Trustees *v.* Steele, Steele *v.* Manton's Trustees (1927), 11 Tax Cas. 549. **Consd.** Fry *v.* Burma Corpn., [1930] A. C. 321. **Refd.** I. R. Comrs. *v.* Blackwell (1925), 134 L. T. 372; Baker *v.* Archer-Shee, [1927] A. C. 844; I. R. Comrs. *v.* Pakenham, I. R. Comrs. *v.* Longford (1927), 96 L. J. K. B. 882; Hamilton *v.* I. R. Comrs., [1931] 2 K. B. 495.

430a. —— **Foreign agreement for repayment by foreign company of loan with interest—Not a security.**]—MANTON'S (LORD) TRUSTEES *v.* STEELE, STEELE *v.* MANTON'S (LORD) TRUSTEES (1927), 11 Tax Cas. 549, C. A.

430b. —— **Company making investments on real estate abroad.**]—A co. incorporated in the United Kingdom, & carrying on business there at its head office in the making of loans of money upon the security of land in Egypt, was assessed to income tax until Apr. 1, 1922, under Schedule D., Case I., upon the profits of the co.'s business. As from Apr. 1, 1922, the entire control of the business was removed to Egypt. The trade of the co. wholly consisted of the lending of money to approved borrowers in Egypt in accordance with Egyptian law, at rates of interest varying from 6 to 8½ per cent. No loans were entertained without good real security being given, &, in the event of the borrower's default, proceedings were invariably taken in the local cts. to realise the security, & if it could not be sold immediately, the co. would go into possession:—*Held:* as from Apr. 1, 1922, the co., though it carried on a trade or business, was properly assessed to income tax under Schedule D., Case IV., in respect of income arising from securities in a place out of the United Kingdom, & was to be taxed in the full amount of such income, whether it was remitted to the United Kingdom or not. There was no evidence upon which the comrs. could find, as they had, that the taking of securities for the loans advanced was only "an incident" in such business; on the contrary it was an indispensable condition of the business. The case being one coming both under Case IV. & Case V. the Crown had an option to tax the co. under either case.—BUTLER *v.* MORTGAGE CO. OF EGYPT, LTD. (1928), 139 L. T. 29; 13 Tax Cas. 803, C. A.

431. *Add. Annotation:*—**Refd.** Ormond Investment Co. *v.* Betts, [1928] A. C. 143.

433. *Add. Annotations:*—*As to* (1) **Consd.** Fry *v.* Burma Corpn., [1930] A. C. 321. **Refd.** Whitney *v.* I. R. Comrs., [1926] A. C. 37; Archer-Shee *v.* Baker (1927), 11 Tax Cas. 749; I. R. Comrs. *v.* Pakenham, I. R. Comrs. *v.* Longford (1927), 96 L. J. K. B. 882; Proctor *v.* Ryall, Ryall *v.* Proctor (1928), 14 Tax Cas. 204. *As to* (2) **Expld.** Fry *v.* Burma Corpn. (1929), 98 L. J. K. B. 693. *Generally*, **Refd.** Leeming *v.* Jones (1929), 141 L. T. 472; Diggines *v.* Forestal Land, Timber & Railways Co., Ltd. (1930), 142 L. T. 509; I. R. Comrs. *v.* Dalgety & Co., [1930] A. C. 527; Spiers *v.* Mackinnon (1929), 14 Tax Cas. 386.

437. *Add. Annotation:*—*As to* (1) **Refd.** Ormond Investment Co. *v.* Betts, [1927] 2 K. B. 326.

441. *Add. Annotations:*—**Apld.** Sutton *v.* I. R. Comrs. (1929), 45 T. L. R. 326. **Consd.** A.-G. *v.* Farrell (1930), 99 L. J. K. B. 605. **Distd.** Stedeford *v.* Beloe (1931), 47 T. L. R. 408. **Refd.** Tollemache *v.* I. R. Comrs. (1926), 96 L. J. K. B. 766; I. R. Comrs. *v.* Pakenham, I. R. Comrs. *v.* Longford (1927), 96 L. J. K. B. 882; Garland *v.* Archer-Shee (1930), 142 L. T. 443.

441a. —— —— —— —— **Application of American law.**]—Testator, a subject of the United States, directed that his residuary estate should be held upon trust to dispose of the income thereof to the use of his daughter, now the wife of applt., during her life. Testator's residuary estate consisted wholly of foreign securities & foreign stocks & shares, & the existing trustees were an American trust co. Applt. appealed against assessments to income tax made upon him in respect of his wife's income arising from the will under Case IV. & Case V., r. 1, as being income arising from foreign securities, stocks & shares, & chargeable to tax, whether received in the United Kingdom or not, & claimed that, by reason of the interposition of the title of the trustees, it should be assessed under Case V., r. 2, as being a foreign possession other than stocks & shares & chargeable only to the extent to which it was remitted to the United Kingdom. The assessments were ultimately upheld by the House of Lords upon the assumption that the American law was the same as the law of England. Upon an appeal by applt. against further assessments to income tax made upon him in respect of the same income for the three succeeding years, expert evidence was adduced as to the law of the United States to the effect that under that law the wife had no estate or interest in the securities, stocks or shares, but that her sole right was to compel the trustees to discharge their duties

PART V. SECT. 6.

q. 1. *Foreign annuities.*—*Remittance under decree of divorce.*]—*Held:* annual remittances received by a woman in Scotland from her divorced husband in Sweden, under a Swedish decree of divorce, fell to be taxed under Case V. in respect that "possessions" included not only corporeal possessions but also incorporeal possessions.—INLAND REVENUE COMRS. *v.* ANDERSTROM, [1928] S. C. 224; 13 Tax Cas. 482.—SCOT.

under the will:—*Held:* as the result of this evidence, the income in question was assessable under Case V., r. 2.—ARCHER-SHEE *v.* GARLAND, [1931] A. C. 212; 100 L. J. K. B. 170; 144 L. T. 508; 47 T. L. R. 171; *sub nom.* GARLAND *v.* ARCHER-SHEE, 15 Tax Cas. 693, H. L.

442. For the existing paragraph substitute the following paragraph:—

——— ——— ———.]—Testator, a citizen of the United States left the residue of his property in trust for his daughter during her life. The trustees, who had full power over the investment of the trust fund, were a co. constituted under the law of the State of New York & resident therein. The trust fund consisted of foreign govt. securities, foreign stocks & shares, & other foreign property. The trustees paid over such of the sums they received as they considered to be income, after deducting expenses, to the order of the daughter at a bank in New York. No part of the income was remitted to the United Kingdom. Resp., the husband of testator's daughter & resident in the United Kingdom, was assessed under Schedule D., Case IV., in the full amount of the income of the trust:—*Held:* (1) the daughter was specifically entitled under the will in equity during her life to the interest & dividends of the securities, stocks, & shares comprised in the trust fund, & her husband was assessable under Case IV., r. 1, & Case V., r. 1, to income tax in respect thereof, except such, if any, as were shown to be "foreign possessions other than stocks, shares & rents," whether such interest & dividends were remitted to the United Kingdom or not; (2) the matter should be remitted to the comrs. to state which of the items of the trust fund were (*a*) "securities" within Case IV., r. 1, (*b*) "stocks, shares or rents" within Case V., r. 1, & (*c*) "possessions out of the United Kingdom other than stocks, shares or rents" within Case V., r. 2.—BAKER *v.* ARCHER-SHEE, [1927] A. C. 844; 96 L. J. K. B. 803; 137 L. T. 762; 43 T. L. R. 758; 71 Sol Jo. 727, H. L.; *revsg.* S. C. *sub nom.* SHEE *v.* BAKER, [1927] 1 K. B. 109; *sub nom.* ARCHER-SHEE *v.* BAKER, 11 Tax Cas. 749; *subsequent proceedings* (1928), 15 Tax Cas. 1, C. A.

Annotations:—**Expld.** Garland *v.* Archer-Shee (1930), 142 L. T. 443. **Apld.** Archer-Shee *v.* Garland, [1931] A. C. 212. **Refd.** Walker *v.* Howard (1927), 138 L. T. 367.

444a. ——— ——— **Includes interest paid under foreign agreement for repayment by foreign company of loan with interest.**]—MANTON'S (LORD) TRUSTEES *v.* STEELE, STEELE *v.* MANTON'S (LORD) TRUSTEES (1927), 11 Tax Cas. 549, C. A.

445. *Add. Annotations:* — **Distd.** Fry *v.* Burma Corpn., [1930] A. C. 321. **Consd.** Leitch *v.* Emmott, [1929] 2 K. B. 236. **Refd.** Egyptian Delta Land & Investment Co. *v.* Todd, [1929] A. C. 1; [1931] 2 K. B. 495. **Mentd.** Baelz *v.* Public Trustee, [1926] Ch. 863.

446a. ——— ——— ——— **Advance on account of salary paid into banking account in United Kingdom.**]— FLEMING *v.* WILKINSON, No. 131a, *ante*.

446b. ——— ——— **Sales agent for foreign countries of manufacturers in United Kingdom.**]—SPIERS *v.* MACKINNON, No. 131f, *ante*.

449a. ——— **When income arises—New resident—Former foreign possessions continued.**]—Resp. who had resided in the Straits Settlements for many years, during which time he was in receipt of an income arising from stocks, shares & rents in the Straits Settlements, took up his permanent residence in England on Apr. 7, 1927. Thereafter he continued to receive such income, his holdings in Malayan investments being substantially the same as in previous years:—*Held:* resp.'s income did not first arise on Apr. 7, 1927, so as to entitle him, under Finance Act, 1926 (c. 22), s. 29 (1) (*b*), (ii), to have his income tax for the financial year 1928–29 computed on the income of that year.—BACK *v.* WHITLOCK, [1932] 1 K. B. 747; 101 L. J. K. B. 698; 147 L. T. 172; 48 T. L. R. 289; 76 Sol. Jo. 272; 16 Tax Cas. 723.

450. *Add. Citations:*—95 L. J. K. B. 394; 10 Tax Cas. 263, H. L.

Add. Annotations:—**Apld.** Grainger *v.* Maxwell, [1926] 1 K. B. 430. **Consd.** Diggines *v.* Forestal Land, Timber & Railways Co., [1931] A. C. 380. **Refd.** I. R. Comrs. *v.* Drysdale Trustees (1928), 13 Tax Cas. 565; Garland *v.* Archer-Shee (1930), 142 L. T. 443; Hamilton *v.* I. R. Comrs. (1931), 145 L. T. 303.

After this case add

-.]—*See, now,* Finance Act, 1926 (c. 22), s. 22.

450a. - **Foreign holdings aggregated.**]—By r. 1 of the Rules applicable to Case V. of Sched. D of 1918 Act: "The tax in respect of income arising from stocks, shares or rents in any place out of the United Kingdom shall be computed on the full amount thereof on an average of the three preceding years, as directed in Case I., whether the income has been or will be received in the United Kingdom or not":—*Held:* the income on the full amount whereof the tax was to be computed meant the income arising from the class of foreign possessions consisting of stocks, shares or rents, & not the income arising from the separate items making up that class.

An English co. holding shares in several foreign cos. claimed that for the purposes of assessment to income tax each holding should be treated as a separate source of income:—*Held:* the assessment for each year should be arrived at by including the

450 i. *Assessment—No income received during year of assessment—From one foreign possession—Each foreign possession to be treated separately.*]—Resps. were interested as sleeping partners in a firm, & as shareholders in a limited co., both of which carried on business & were controlled in Australia. The company regularly paid dividends, & resps. were assessed for the year 1923–24 under rule 1 of Case V. on the average of the amounts so arising in the three preceding years. Remittances were received from the firm in each of the three years 1920–21, 1921–22 & 1922–23, & the average amount of these remittances formed the basis of an additional assessment on resps. for the following year, 1923–24, under rule 2 of Case V. In 1923–24, however, no remittance was received from the firm, & resps. contended that there was therefore no income from that source to be assessed:—*Held:* each foreign possession must be treated separately in determining whether or not liability existed for any year, & if in any year no income arose from a particular possession, no liability could exist for that year in respect of that possession.—INLAND REVENUE COMRS. *v.* DRYSDALE'S TRUSTEES (1928), 13 Tax Cas. 565.—SCOT.

average amounts of the whole of the dividends arising to the co. from foreign cos. in the three years of average.—DIGGINES *v.* FORESTAL LAND, TIMBER & RAILWAYS CO., [1931] A. C. 380; 100 L. J. K. B. 145; 144 L. T. 514; 15 Tax Cas. 630, H. L.

Annotation :—**Apld.** Merrifield *v.* Wallpaper Manufacturers, Ltd., [1931] 2 K. B. 143.

450b. —— **Income received during less period than three years.**]—An investment co. received during the first year of its existence a dividend from foreign shares & had no other income from foreign possessions. In assessing the co. to income tax under Case V. :—*Held :* (1) Rules applicable to Cases I. & II., r. 1 (2), had no application to the receipt of dividends on foreign securities, & the only relevant rule was the rule applicable to Case I.; (2) Finance Act, 1924 (c. 21), s. 26, which was founded upon an erroneous assumption as to the effect of Case V., r. 1, could not be referred to for the purpose of interpreting that provision; (3) the assessment for the first year should be nil, & for the second year one-third of the amount of the dividend.—ORMOND INVESTMENT CO. *v.* BETTS, [1928] A. C. 143; 97 L. J. K. B. 342; 138 L. T. 600; 13 Tax Cas. 400, H. L.

Annotations :—*As to* (2) **Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63. *Generally*, **Consd.** Fry *v.* Burma Corpn. (1929), 98 L. J. K. B. 693. **Refd.** Curtis Brown, Ltd. *v.* Jarvis, Jarvis *v.* Curtis Brown, Ltd. (1929), 14 Tax Cas. 744.

452a. —— ——.]—LEEMING *v.* JONES, No. 114b, *ante*.

453. *Add. Annotations* :—**Folld.** Lyons *v.* Cowcher (1926), 10 Tax Cas. 438. **Apprvd.** Martin *v.* Lowry, Martin *v.* I. R. Comrs. (1926), 43 T. L. R. 116; Leeming *v.* Jones (1929), 141 L. T. 472. **Consd.** Jones *v.* Leeming, [1930] A. C. 415. **Folld.** Sherwin *v.* Barnes (1931), 16 Tax Cas. 278.

457a. —— —— —— **Director's commission on underwriting shares.**]—Applt., a co. director, received commission from a syndicate for underwriting shares in a new co., & he was assessed to income tax under Schedule D. for the year 1919–20 in respect of the commission. He was not concerned in any other underwriting transaction in 1919, 1920 & 1921 :—*Held :* the commission was an annual profit or gain within Schedule D., Case VI., & applt. had been properly assessed to income tax in respect of such commission.—LYONS *v.* COWCHER (1926), 10 Tax Cas. 438.

457b. —— —— —— **Commission on guaranteeing overdraft.**]—Applt., who was a solr., entered into an agreement under which he & another person undertook to guarantee the bank overdraft of a third party, upon the terms (*inter alia*) that the guarantors should receive a bonus of £1,000 &, if the overdraft was not paid off within a year, a further bonus calculated on specified terms. The overdraft was, in fact, paid off within a year & the bonus of £1,000 was paid to the guarantors in equal shares. Applt. was assessed to income tax under Case VI. of Sched. D. in respect of his share & the Special Comrs., on appeal, confirmed the assessment :—*Held :* the assessment appealed against was correctly made.—SHERWIN *v.* BARNES (1931), 16 Tax Cas. 278.

459a. —— **Assignment of option.**]—LEEMING *v.* JONES, No. 114b, *ante*.

460a. —— —— **Purchase & sale of properties by builder.**]—Applt. was a builders' foreman until Feb. 1923, & subsequently a director of a co. carrying on the business of a builder & contractor. During the years 1920 to 1924 he bought on his own account some seven properties, of which he sold four during the period, & still owned the remainder in 1926 :—*Held :* the profits, if any, were not assessable under Case VI. of Schedule D., & the case should be remitted to the Special Comrs. to consider whether the transactions in question constituted a trade assessable under Case I.—PEARN *v.* MILLER (1927), 11 Tax Cas. 610.

Annotations :—**Apprvd.** Leeming *v.* Jones (1929), 141 L. T. 472. **Refd.** Jones *v.* Leeming, [1930] A. C. 415.

462. *Add. Annotations* :—**Consd.** Leeming *v.* Jones (1929), 141 L. T. 472. **Distd.** Fry *v.* Salisbury House Estate, Ltd., Jones *v.* City of London Real Property Co., [1930] A. C. 432. **Refd.** Brighton College *v.* Marriott, [1926] A. C. 192; Huxham *v.* Johnson (1926), 136 L. T. 410; Martin *v.* Lowry, Martin *v.* I. R. Comrs., [1926] 1 K. B. 550.

462a. Commission for negotiating sale of shares — When income arises.]—In the year 1920–21 applt. negotiated the sale of certain shares & became entitled to commission. He received part of the commission in 1920–21 & part in later years :—*Held :* for the purpose of assessment to income tax under Case VI. of Sched. D., the income arose when the payments on account of the commission were received.—GREY *v.* TILEY (1932), 16 Tax Cas. 414, C. A.

467a. —— **Tax on gross amount of dividend.**]—R. 20 of All Schedules Rules to Income Tax Act, 1918, provides that the profits or gains to be charged on a co. shall be computed in accordance with the provisions of the Act on

PART V. SECT. 9.

470 i. *Exemption of charities—Charitable purposes.*]—By the law of Scotland a trust for "charitable or benevolent" purposes is a trust for "charitable" purposes alone, & is a trust for "charitable purposes only" within 1918 Act.—JACKSON'S TRUSTEES *v.* INLAND REVENUE, [1926] S. C. 579; 10 Tax Cas. 460.—**SCOT.**

470 ii. —— —— *Stimulating interest in music.*]—INLAND REVENUE COMRS. *v.* GLASGOW MUSICAL FESTIVAL ASSOCN., [1926] S. C. 920; 11 Tax Cas. 154.—**SCOT.**

470 iii. —— —— *Supplying nurses.*]—An assocn. was formed for the purpose of improving & extending nursing facilities in a county. The members were divided into three classes according to income, the largest class consisting of persons in comparatively poor circumstances. An annual membership fee was charged, varying, according to the class, from 2*s.* 6*d.* to 10*s.* 6*d. per annum*. The fees charged for the services of a nurse, or for admission to the assocn.'s hospital, varied from sums which, in the case of the poorest class, were considerably below the cost of the services rendered, to sums which, in the case of the wealthiest class, were reasonably equivalent to such cost. Nursing facilities, when not required for members, were granted to non-members at increased rates. Funds were held by the assocn. which had been raised by public subscription, & the hospital had been acquired with funds similarly raised. In respect of special charitable donations, necessitous cases from certain parishes received the services of a nurse gratuitously :—*Held :* the assocn. was established for "charitable purposes only."—INLAND REVENUE COMRS. *v.* PEEBLESSHIRE NURSING ASSOCN., [1927] S. C. 215; 11 Tax Cas. 335.—**SCOT.**

470 iv. —— —— *Promotion of temperance.*]—Testator expressed his desire that the leading of a sober life might be made more easy for the inhabitants of F., & with that object conveyed half of the residue of his estate to trustees for the purpose of providing F. with a temperance public-house. His trustees spent part of the funds in establishing a temperance hotel, containing a middle-class cafe & a cheap working-class cafe, free reading & recreation-rooms, & bedrooms, & a lecture-hall,

"the full amount of the same before any dividend thereof is made" & that the co. "paying such dividend shall be entitled to deduct the tax appropriate thereto":—*Held:* by "the tax appropriate thereto" was meant the tax at the standard rate on the gross amount of the dividend paid by the co. & not a proportionate part of the tax paid by the co. in the year in which the dividend was paid in respect of its profits or gains; &, therefore, in making the return of his total income for the purpose of surtax the shareholder must include the gross amount of the dividend, & not the proportionate part of the total income on which the co. had borne tax for the year of assessment in which the profits distributed were made.—HAMILTON *v.* INLAND REVENUE COMRS., [1931] 2 K. B. 495; 100 L. J. K. B. 693; 145 L. T. 303; 16 Tax Cas. 213, C. A.

471. *Add. Citation:*—10 Tax Cas. 73.
Add. Annotations:—**Refd.** I. R. Comrs. *v.* Yorkshire Agricultural Soc. (1927), 44 T. L. R. 59; Institution of Civil Engineers *v.* I. R. Comrs. (1931), 47 T. L. R. 466.

472a. —— —— **Relief of members of medical association & dependants in necessitous circumstances.**]—Two societies whose funds were applied entirely to making grants for the relief of subscribing members or their dependants in necessitous circumstances:—*Held:* charities, & entitled to exemption from income tax.—INLAND REVENUE COMRS. *v.* SOCIETY FOR RELIEF OF WIDOWS & ORPHANS OF MEDICAL MEN, INLAND REVENUE COMRS. *v.* MEDICAL CHARITABLE SOCIETY FOR WEST RIDING OF YORKSHIRE (1926), 136 L. T. 60; 42 T. L. R. 612; 70 Sol. Jo. 837; 11 Tax Cas. 1.

472b. —— —— **Temperance reform.**]—A society whose main object was "united action to secure legislative & other temperance reform":—*Held:* not a body of persons established for charitable purposes only, & its income, inasmuch as it was not applied to charitable purposes only, was not entitled to exemption from income tax.—INLAND REVENUE COMRS. *v.* TEMPERANCE COUNCIL OF CHRISTIAN CHURCHES OF ENGLAND & WALES (1926), 136 L. T. 27; 42 T. L. R. 618; 10 Tax Cas. 748.

Annotation:—**Distd.** *Re* Hood, Public Trustee *v.* Hood (1930), 143 L. T. 691.

Compare CHARITIES, No. 68a.

472c. —— —— **Seaside boarding-house with reduced charges.**]—By a declaration of trust "a home or place of residence" was founded & endowed, "where persons requiring temporary rest & change of air for the benefit of their health may obtain same." About half the income of the home came from payments by visitors, who included convalescents, persons needing rest & change, & holiday applicants:—*Held:* since on the construction of the trust deed there was throughout an overriding charity which fulfilled the character of a charitable convalescent home, the trustees were entitled to exemption from income tax on the ground that the trust was established for charitable purposes only.—INLAND REVENUE COMRS. *v.* ROBERTS MARINE MANSIONS TRUSTEES (1926), 43 T. L. R. 270; 11 Tax Cas. 425, C. A.

—— —— **Agricultural society.**]—An agricultural society, founded mainly for the purpose of holding an annual agricultural show, had also among their objects the improvement of live stock & poultry & of machinery & appliances used in agriculture, & agricultural education & scientific research, & they claimed exemption from income tax upon the dividends from their investments, on the ground that they were a society established for charitable purposes only:—*Held:* there was evidence on which the Special Comrs. could find that the society was established for charitable purposes only.—INLAND REVENUE COMRS. *v.* YORKSHIRE AGRICULTURAL SOCIETY, [1928] 1 K. B. 611; 97 L. J. K. B. 100; 138 L. T. 192; 44 T. L. R. 59; 72 Sol. Jo. 68; 13 Tax Cas. 58, C. A.

Annotations:—**Apld.** Geologists' Assoon. *v.* I. R. Comrs. (1928), 14 Tax Cas. 271. **Refd.** Midland Counties Institution of Engineers *v.* I. R. Comrs. (1928), 14 Tax Cas. 285; Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs., [1931] 2 K. B. 465.

472e. **General Medical Council.**]—*Held:* not a body established for charitable purposes only, & not entitled to exemption from income tax on the income from its funds.—GENERAL MEDICAL COUNCIL *v.* INLAND REVENUE COMRS., ENGLISH BRANCH COUNCIL OF GENERAL MEDICAL COUNCIL *v.* INLAND REVENUE COMRS. (1928), 97 L. J. K. B. 578; 139 L. T. 225; 44 T. L. R. 439; 13 Tax Cas. 819, C. A.

Annotation:—**Refd.** Institution of Civil Engineers *v.* I. R. Comrs. (1931), 47 T. L. R. 466.

472f. —— —— **Simplified Spelling Society.**]—The Simplified Spelling Society is not a body established for "charitable" purposes, & is therefore not entitled to exemption from income tax under 1918 Act, s. 37 (1) (*b*).—SIR G. B. HUNTER (1922) "C" TRUST, TRUSTEES *v.* INLAND REVENUE COMRS. (1929), 45 T. L. R. 344; 73 Sol. Jo. 284; 14 Tax Cas. 427.

473. *Add. Annotations:*—**Consd.** Salisbury House

which could be hired at moderate figures. Their policy was to make the hotel pay its way without earning profits, & the balance of the trust funds was invested & the interest was used to make good an annual deficit on the working of the hotel:—*Held:* the interest formed part of the income of a trust established for "charitable purposes only," & was "applied to charitable purposes only."—INLAND REVENUE COMRS. *v.* FALKIRK TEMPERANCE CAFE TRUST, [1927] S. C. 261; 11 Tax Cas. 353.—**SCOT.**

470 v. —— —— *Improvement of spiritual, intellectual, social & physical condition of young men.*]—YOUNG MEN'S CHRISTIAN ASSOCN. OF MELBOURNE *v.* FEDERAL COMR. OF TAXATION (1926), 37 C. L. R. 351; [1926] Argus L. R. 97.—**AUS.**

473 i. —— "*Applied to charitable purposes only*"—*Promotion of temperance.*]—INLAND REVENUE COMRS. *v.* FALKIRK TEMPERANCE CAFE TRUST, No. 470 iv, *ante.*—**SCOT.**

473 ii. —— —— *Stimulating interest in music.*]—INLAND REVENUE COMRS. *v.* GLASGOW MUSICAL FESTIVAL ASSOCN., [1926] S. C. 920; 11 Tax Cas. 154.—**SCOT.**

473 iii. —— —— *General Nursing Council.*]—*Held:* the duties performed by the Council were, at least in part, carried out in the professional interests of the registered nurses; &, accordingly, the Council was not entitled to exemption from income tax under Income Tax Act, 1918, s. 37 (1) (*b*), as a body established for charitable purposes "only."—GENERAL NURSING COUNCIL FOR SCOTLAND *v.* INLAND REVENUE COMRS., [1929] S. C. 664; 14 Tax Cas. 645.—**SCOT.**

st. *Exemption of person not ordinarily resident in United Kingdom—Holder of securities issued free of tax.*]—*Held:* the whole circumstances must be considered, & the Special Comrs. were entitled to find that appct. was ordinarily resident in the United Kingdom.—REID *v.* INLAND REVENUE, [1926] S. C. 589.—**SCOT.**

sv. —— ——.]—*Held:* the Special Comrs. were entitled, on the facts stated, to find that appt. was ordinarily resident in the United Kingdom.—

Estate *v.* Fry (1929), 98 L. J. K. B. 722. **Refd.** Brighton College *v.* Marriott, [1926] A. C. 192.

476a. —— —— **Temperance reform.**]—INLAND REVENUE COMRS. *v.* TEMPERANCE COUNCIL OF CHRISTIAN CHURCHES OF ENGLAND & WALES, No. 472b, *ante*.

476b. —— —— **Geologists' Association.**]—The Special Comrs. found that the main function of the Geologists' Assocn. was the combination of members for scientific purposes & mutual improvement, that all the benefits of the Assocn. were enjoyed primarily by the members, & that although their studies tended indirectly to the promotion of education generally, the Assocn. was not a body of persons established for charitable purposes only, & was therefore not entitled to exemption :—*Held :* the question was one of fact, & that there were no grounds on which the Comrs.' decision could be disturbed.—GEOLOGISTS' ASSOCIATION *v.* INLAND REVENUE COMRS. (1928), 14 Tax Cas. 271, C. A.

Annotations :—**Apld.** Midland Counties Institution of Engineers *v.* I. R. Comrs. (1928), 14 Tax Cas. 285. **Refd.** Institution of Civil Engineers *v.* I. R. Comrs. (1931), 47 T. L. R. 466.

476c. **Institution of Mining Engineers.**]—The Special Comrs. found that the Institution of Mining Engineers was an association of persons for their mutual improvement in technical & professional knowledge, the acquisition of which, although beneficial to the public at large, through the better management of coal mines, was of direct advantage to the members in the practice of their profession. They decided therefore that the Institution was not a body of persons established for charitable purposes only & was not entitled to exemption from income tax :—*Held :* the question was one of fact, & the Comrs. had evidence before them to support their conclusion.—MIDLAND COUNTIES INSTITUTION OF ENGINEERS *v.* INLAND REVENUE COMRS. (1928), 14 Tax Cas. 285, C. A.

476d. —— —— **Institution of Civil Engineers.**]—The Institution of Civil Engineers is in law a charity & therefore is exempt from income tax.—INSTITUTION OF CIVIL ENGINEERS *v.* INLAND REVENUE COMRS., [1932] 1 K. B. 149 ; 100 L. J. K. B. 705 ; 145 L. T. 553 ; 47 T. L. R. 466 ; 16 Tax Cas. 158, C. A.

476e. —— —— **Zionist Association.**]—An assocn. incorporated as a co. limited by guarantee had as its main object, as stated in its memorandum of assocn., " to purchase, take on lease or to exchange or otherwise acquire any land, forests, rights of possession & other rights, easements & other immovable property in . . . Palestine, Syria, or other parts of Turkey in Asia & the Peninsula of Sinai for the purpose of settling Jews on such lands." Then follow in the memorandum twenty-one specified objects & powers which included power to cultivate & improve any lands & erect buildings thereon, to let any land of the co. to any Jews, to acquire, construct & manage tramways, railways, harbours, docks, hydraulic works, telegraphs, telephones, factories & workshops, & to purchase & sell, work & develop mines & mining rights, & to carry on the business of mining & metallurgy. All the twenty-one objects or powers were stated to be subject to a proviso that they were to be " exercised only in such a way as shall in the opinion of the assocn. be conducive to the attainment of the said primary object." No part of the income of the assocn. was distributable by way of dividend, bonus or otherwise by way of profit to the members of the assocn., nor, in the event of a winding up, were the surplus assets distributable among them :—*Held :* the assocn. was not " a body of persons . . . established for charitable purposes only " within 1918 Act, s. 37 (1) (*b*), so as to be entitled to exemption from income tax in respect of consolidated stock owned by it & representing donations. The assocn. had widely philanthropic objects, but it fell within none of the four principal divisions into which charity was divided.—KEREN KAYEMETH LE JISROEL, LTD. *v.* INLAND REVENUE COMRS., [1932] A. C. 650 ; 101 L. J. K. B. 459 ; 147 L. T. 161 ; 48 T. L. R. 459 ; 76 Sol. Jo. 377 ; 17 Tax Cas. 27, H. L. *Compare* CHARITIES, No. 215a, *ante*.

476f. —— —— **Swedish Travel Association.**]—*Held :* not a charity.—ANGLO-SWEDISH SOCIETY *v.* INLAND REVENUE COMRS. (1931), 47 T. L. R. 295 ; 75 Sol. Jo. 232 ; 16 Tax Cas. 34.

476g. —— —— **Master Mariners' Company.**]—HONOURABLE COMPANY OF MASTER MARINERS *v.* INLAND REVENUE COMMISSIONERS (1932), 17 Tax Cas. 298.

477. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* Yorkshire Agricultural Soc., [1928] 1 K. B. 611.

480. *Add. Annotation :*—**Refd.** A.-G. *v.* Metropolitan Water Board, [1928] 1 K. B. 833.

483. *Add. Annotations :*—**Apld.** Marie Celeste Samaritan Soc. of London Hospital *v.* I. R. Comrs. (1926), 43 T. L. R. 23. **Consd.** Daw *v.* I. R. Comrs., Duff-Dunbar *v.* I. R. Comrs. (1928), 14 Tax Cas. 58. **Apld.** I. R. Comrs. *v.* Smith, [1930] 1 K. B. 713.

483a. —— —— ——.]—Testator devised his residuary estate on trust for applts., who were a society established for charitable purposes only & were entitled to exemption from income tax on their income from investments. Pending completion of the administration the exors. paid to the trustees for applt. society certain sums on account of income. Applts. claimed repayment of income tax, but the Inland Revenue Comrs. refused repayment so far as related to income received by the exors. before the date when the residue was ascertained :—*Held :* as the income when it

v. INLAND REVENUE COMRS., [1928] S. C. 205 ; 13 Tax Cas. 443.—**SCOT.**

sw. *Whether preferred shares " borrowed capital " within Income War Tax Act*, 1917, s. 3 (*H.*).]—DUPUIS FRERES, LTD. *v.* CUSTOMS & EXCISE MINISTER, [1927] Exch. C. R. 207.—**CAN.**

sx. *Under statutory agreement with Government—Construction of agreement.*]—NOVA SCOTIA STEEL & COAL CO., LTD. *v.* FINANCE & CUSTOMS MINISTER, [1922] 2 A. C. 176, P. C.—**CAN.**

sa. *Onus of proof.*]—The *onus* of proving that an income is exempt from taxation under the Taxing Act, is upon the one claiming such exemption.—KENNEDY *v.* MINISTER OF NATIONAL REVENUE, [1929] Ex. C. R. 36.—**CAN.**

sb. *Whether endowment necessary.*]—I do not think it is necessary that there should be an endowment in the technical sense of the word, but that it will be sufficient to bring an institution within the exemption of the Act if it be maintained in whole or in part by voluntary contributions (*per* CUR.). —MUSGRAVE *v.* DUNDEE ROYAL LUNATIC ASYLUM (1895), 32 Sc. L. R. 579.—**SCOT.**

was received was the income only of the exors. & the money paid to the charity was only a sum equal to the income payable to the charity as a matter of equitable book-keeping in due course of administration, applts. were not entitled to the repayment claimed.—MARIE CELESTE SAMARITAN SOCIETY OF LONDON HOSPITAL *v.* INLAND REVENUE COMRS. (1926), 43 T. L. R. 23; 11 Tax Cas. 226.

483b. —— Sums received under revocable disposition—Effect of Finance Act, 1922 (c. 17), s. 20 (1).]—INLAND REVENUE COMMISSIONERS *v.* ST. LUKE HOSTEL TRUSTEES, REGISTERED, No. 576a, *post*.

483c. Exemption of industrial societies—1918 Act, s. 39—Number of shares unlimited.]—Resp. Society, which was registered under Industrial & Provident Societies Act, 1893 (c. 39), claimed exemption under Sched. D. on the ground that the number of its shares was not limited by its rules or practice. The Society was formed to carry on the business of (*inter alia*) manufacturers & dealers in butter, cheese, milk & other dairy products. Admission to membership was at the discretion of the committee & subject to taking up a qualifying number of shares; further every member was bound by the Society's rules to sell to the Society any milk produced on any lands farmed by him if required to do so. The number of shares held by any individual member was limited to 200. The majority of the members were dairy farmers, & milk dealers & consumers were not in practice admitted to membership. Approximately 98 per cent. of the Society's sales were made to non-members. The Crown contended that practically the whole of the Society's sales were to non-members, & that the restriction of membership in general to persons willing to supply milk to the Society & the exclusion of milk dealers constituted an effective limitation of shares. The General Comrs. found in favour of the Society:—*Held:* the number of the Society's shares was not limited within 1918 Act, s. 39 (4), either by its rules or practice, & it was entitled to the exemption.—BENSTED *v.* MIDLAND DAIRY FARMERS, LTD. SOC. (1928), 14 Tax Cas. 87.

Part VI.—Schedule E.

484. *Add. Citations:—revsd.*, [1927] A. C. 417; 96 L. J. K. B. 523; 136 L. T. 770; 91 J. P. 75; 43 T. L. R. 279; 71 Sol. Jo. 191; 25 L. G. R. 123; 11 Tax Cas. 446, H. L.

486. *Add. Annotations:*—**Consd.** Watson *v.* Rowles (1926), 95 L. J. K. B. 959. **Refd.** Ingle *v.* Farrand, [1927] A. C. 417; Seymour *v.* Reed, [1927] A. C. 554; Lysaght *v.* I. R. Comrs., [1928] A. C. 234; Rees Roturbo Development Syndicate *v.* I. R. Comrs., Rees Roturbo Development Syndicate *v.* Ducker (1928), 13 Tax Cas. 366; Morley *v.* Lawford & Co. (1928), 140 L. T. 125; Davies *v.* Braithwaite, [1931] 2 K. B. 628.

489a. —— Foreign director of British company.]—Applt. in the first case was appointed foreign director of a British co. for fourteen years from 1918. The co. had subsidiary cos. on the Continent, the principal one being a French co. of which applt. was managing director. He was also a director of a German co., & had control over selling organisations in other European countries. He was thus responsible for the whole of the British co.'s Continental business, & his only remuneration was a fixed salary payable by the British co. plus commission on the co.'s profits from trading on the Continent. Since 1918 applt. had lived in Paris with his family. He came to London once a month to attend the co.'s directors' meetings, his function being to report & advise the directors on questions affecting the Continental business. It was no part of his duty to attend to the general business of the co. Applt. was assessed in respect of salary & commission for each year from 1920–21 to 1926–27 by the General Comrs. for the division in which the co.'s registered office was situated:—*Held:* (1) his office was an office within the United Kingdom; (2) the General Comrs. had jurisdiction to assess for 1920–21 & 1921–22 as well as for later years.—PROCTOR *v.* RYALL, RYALL *v.* PROCTOR (1928), 14 Tax Cas. 204.

490. *Add. Annotations:—As to* (1) **Distd.** Henry *v.* Foster (A.), Henry *v.* Foster (J.) (1931), 145 L. T. 225. **Refd.** Seymour *v.* Reed, [1927] A. C. 554; Benyon *v.* Thorpe (1928), 97 L. J. K. B. 705; Dewhurst *v.* Hunter (1932), 146 L. T. 510. *As to* (2) **Refd.** Stedeford *v.* Beloe, [1931] 2 K. B. 610.

492. *Add. Annotations:*—**Apld.** Seymour *v.* Reed, [1927] A. C. 554. **Refd.** Slaney *v.* Starkey, [1931] 2 K. B. 148; Stedeford *v.* Beloe (1931), 47 T. L. R. 408; Henry *v.* Foster (Arthur), Henry *v.* Foster (Joseph), Hunter *v.* Dewhurst (1931), 145 L. T. 225.

493. *Add. Annotations:*—**Distd.** Reed *v.* Seymour (1927), 11 Tax Cas. 625. **Refd.** Slaney *v.* Starkey, [1931] 2 K. B. 148.

494. *Add. Annotation:*—**Consd.** Reed *v.* Seymour (1927), 11 Tax Cas. 625.

495. *Add. Annotations:*—**Consd.** Seymour *v.* Reed, [1927] A. C. 554. **Refd.** Hartland *v.* Diggines, [1926] A. C. 289; Slaney *v.* Starkey, [1931] 2 K. B. 148; Henry *v.* Foster (Arthur), Henry *v.* Foster (Joseph), Hunter *v.* Dewhurst (1931), 145 L. T. 225.

495a. —— —— Whitsuntide offerings to curate.]—A voluntary collection was taken in church at Whitsuntide for the benefit of the assistant stipendiary curate licensed by the Bishop to

PART VI. SECT. 1, SUB-SECT. 1.

§ i. —— ——.]—Notwithstanding the provisions of sect. 100 of South Africa Act, which provides that the remuneration of judges of the Supreme Ct. appointed after Union shall not be diminished during their continuance in office, a judge of the Supreme Ct. appointed after Union is not exempted from paying income tax under Act 40 of 1925 on the amount of his salary.—KRAUSE *v.* INLAND REVENUE COMRS., [1929] App. D. 286.—S. AF.

PART VI. SECT. 1, SUB-SECT. 2.

§ ii. —— *Agent of company sharing in profits.*]—*Held:* liable to income tax.—SEELEY & CO. *v.* BROWN, [1927] 1 W. W. R. 185; 37 B. C. R. 514.—CAN.

§ ii. —— *Pay of locomotive engineer according to miles run by locomotive.*]—*Held:* not liable to taxation.—*Re* ASSESSMENT ACT (1902), 9 B. C. R. 209.—CAN.

that church. Contributions were solicited by the Vicar in the parish magazine on the ground of the curate's "devoted & earnest ministry amongst us" :—*Held :* the assistant stipendiary curate was the holder of an office or employment of profit within Sched. E of 1918 Act, & the Whitsuntide offerings were chargeable to income tax as emoluments of his office under Sched. E, r. 1, of 1918 Act.—SLANEY *v.* STARKEY (REV. E. S.), [1931] 2 K. B. 148 ; 100 L. J. K. B. 341 ; 145 L. T. 453 ; 47 T. L. R. 323 ; 75 Sol. Jo. 247 ; 16 Tax Cas. 45.

496a. —— —— **Gift to directors of company.**]—*Held :* the payment, although called a gift, was extra remuneration paid to the directors, & was assessable to income tax.—RADCLIFFE *v.* HOLT (1927), 11 Tax Cas. 621.

496b. **After retirement.**]—It was the custom of a co. to grant an annual allowance to members of its staff by way of pension on retirement. Resp. had been managing director of the co., & after his retirement the directors made him a voluntary allowance annually. They subsequently stopped this annual allowance & paid resp. a lump sum as a gift in lieu thereof :—*Held :* the allowances could not be regarded as supplementary salary. They were not "a profit or gain arising from an employment," nor could they be considered as receipts in respect of an office, but were merely gifts, & resp. was not liable to income tax on the sums so received by him.—BENYON *v.* THORPE (1928) 97 L. J. K. B. 705 ; 44 T. L. R. 610 ; 72 Sol. Jo. 453 ; 14 Tax Cas. 1.

Annotation :—**Refd.** Stedeford *v.* Beloe (1931), 47 T. L. R. 408.

496c. **Headmaster's pension.**] — The Governing Body of a school, which was a corpn. founded by Royal Charter, in exercise of their powers under the charter, granted an annual pension out of the school funds to a headmaster on his retirement. There was no scheme in existence under which the headmaster could have qualified for a pension, & the Governing Body had the right at any time to rescind the minute under which the pension was granted & to cease making payments to him :—*Held :* the pension was not chargeable to income tax under Sched. E. as amended by Finance Act, 1922 (c. 17), s. 18.—STEDEFORD *v.* BELOE, [1932] A. C. 388 ; 101 L. J. K. B. 268 ; 146 L. T. 456 ; 48 T. L. R. 291 ; 76 Sol. Jo. 217 ; 16 Tax Cas. 505, H. L.

—— ——.]—*See, now,* Finance Act, 1932 (c. 25), s. 17.

497. *Add. Annotation :*—**Distd.** Jones *v.* Wright. (1927), 44 T. L. R. 128.

498a. —— **Sum paid to salaried officer—For negotiating sale of business.**]—Resp., who was secretary of a limited co., was authorised by the directors of the co., to negotiate for the sale of the co.'s works, & it was agreed verbally that anything realised in excess of a specified amount should be paid to resp. Resp. arranged the sale of the works to a new co. & the directors of the old co. by minute, authorised the payment to resp. of the agreed excess amount "for services rendered by him in connection with the "negotiations & completion of the sale." The amount was subsequently paid to resp. by the liquidator of the old co & was described in the liquidator's accounts as a payment "for services rendered prior to liquidation." At the time when the payment was authorised resp. had ceased to perform the duties of secretary of the old co. or to receive any salary, though he remained secretary in name. Resp. was assessed to income tax under Sched. E. in respect of this sum, as representing profits of his office of secretary, & the General Comrs., on appeal, held that the sum was a gift & not taxable :—*Held :* there was no evidence upon which the Comrs. could come to their conclusion.—SHIPWAY *v.* SKIDMORE (1932), 16 Tax Cas. 748.

499. *Add. Citations :—affd.* (1926), 95 L. J. K. B. 959 ; 135 L. T. 614 ; 42 T. L. R. 691 ; 70 Sol. Jo. 796 ; 11 Tax Cas. 171, C. A.

500. *Add. Citation :*—10 Tax Cas. 609.

501. For "(1926), 161 L. T. Jo. 235" read "No. 510, *post.*"

501a. —— —— **Applied in payment for shares.**]—Applt., the chairman & managing director of a co. in which he held shares, agreed that he would take up additional shares in the co., in payment for which sums due by the co. to him by way of remuneration were to be applied :—*Held :* applt. was assessable to income tax under Schedule E. in respect of the remuneration, notwithstanding that it had been applied in payment for shares.—PARKER *v.* CHAPMAN (1928), 138 L. T. 729 ; 13 Tax Cas. 677, C. A.

501b. —— —— **Compensation for loss of office.**]—Resps. in these cases were directors of a limited co. They had no written contracts of service with the co. Art. 109 of the co.'s arts. provided that in the event of any director, who had held office for not less than five years, dying or resigning or ceasing to hold office for any cause other than misconduct, bkpcy., lunacy or incompetence, the co. should pay to him or his representatives by way of compensation for loss of office a sum equal to the total remuneration received by him in the preceding five years. All three directors had held office for not less than five years. In cases (a) & (b) resp. resigned office as director & received from the co. as "compensation" a payment calculated in accordance with Art. 109. In case (c) resp. desired to retire from active management of the co., but his co-directors wished to be able still to consult him, & it was agreed that he should resign the office of Chairman, receive as "compensation" a lump sum in lieu of the provision under Art. 109, waiving any future claim under that article, & remain on the board of the co. at a reduced rate of remuneration :—*Held :* (1) in the Court of Appeal, in cases (a) & (b) the payment constituted a profit of the office of director & was properly assessable to income tax under Sched. E. for the last year of office. In these cases there was no appeal to the House of Lords ; (2) in the House of Lords, in case (c) in the circumstances of that case the sum received was not income assessable to income tax.—HENRY *v.* FOSTER (A.), HENRY *v.* FOSTER (J.), HUNTER *v.* DEWHURST (1932), 16 Tax Cas. 605 ; *sub nom.* DEWHURST *v.* HUNTER, 146 L. T. 510, H. L.

502. For existing para. & citations read the following para. & citations :—

A professional cricketer in the service of

the Kent County Cricket Club might, by the rules of the club, be granted a benefit but this was on the express understanding that he allowed the proceeds to be invested in the name of trustees of the club during the pleasure of the committee. The invested sum was always, however, eventually handed over to him when his career as a cricketer was over, or when he found an investment of which the trustees approved. Applt., a professional cricketer in the employment of the club, was granted a benefit, the proceeds from which, together with subscription, after being held by trustees on certain securities, were eventually handed to applt. & applied by him in the purchase of a farm. Applt. having been assessed under Sched. E., r. 1, of 1918 Act, on so much of the fund as represented the gate money at the match :—*Held :* applt. was not assessable in respect of this sum, inasmuch as it was a personal gift, & not a profit or perquisite arising from his employment within Sched. E., r. 1.—SEYMOUR *v.* REED, [1927] A. C. 554 ; 96 L. J. K. B. 839 ; 137 L. T. 312 ; 43 T. L. R. 584 ; 71 Sol. Jo. 488, H. L. ; *revsg.* S. C. *sub nom.* REED *v.* SEYMOUR, [1927] 1 K. B. 90, C. A.

Add. Annotations :—**Consd.** Davis *v.* Harrison (1927), 11 Tax Cas. 707. **Refd.** Slaney *v.* Starkey, [1931] 2 K. B. 148 ; Dewhurst *v.* Hunter (1932), 146 L. T. 510.

502a. —— **Accrued benefit—Professional footballer.**]—Resp. was employed to play football for a club in return for payment, &, on his being transferred in accordance with the rules of the Football Assocn. to another club, he was given by the first-named club a sum as accrued benefit :—*Held :* the payment was neither a gift nor compensation for loss of employment, but was really remuneration for services, & was assessable to income tax.—DAVIS *v.* HARRISON (1927), 96 L. J. K. B. 848 ; 137 L. T. 324 ; 43 T. L. R. 623 ; 11 Tax Cas. 707.

Annotation :—**Refd.** Dewhurst *v.* Hunter (1932), 146 L. T. 510.

502b. —— **Actress.**]—DAVIES *v.* BRAITHWAITE, No. 312a, *ante.*

504. *Add. Annotations :*—**Distd.** Dauncey *v.* Howlett (1926), 135 L. T. 279. **Consd.** Davies *v.* Harrison (1927), 96 L. J. K. B. 848. **Refd.** Borthwick *v.* Nolder (1927), 11 Tax Cas. 261.

504a. —— **Additional remuneration of company director.**]—DAUNCEY *v.* HOWLETT, No. 510, *post.*

505. *Add. Annotations :*—**Refd.** Machon *v.* McLoughlin (1926), 11 Tax Cas. 83 ; Dewhurst *v.* Hunter (1932), 146 L. T. 510.

506. *Add. Citations :*—95 L. J. K. B. 392 ; 10 Tax Cas. 247.

Add. Annotation :—**Refd.** Michelham's Trustees *v.* I. R. Comrs., Michelham (Lady), Exors. *v.* I. R. Comrs. (1930), 144 L. T. 163.

507. *Add. Annotations :*—**Consd.** Sutton *v.* I. R. Comrs. (1929), 14 Tax Cas. 662. **Refd.** Machon *v.* McLoughlin (1926), 11 Tax Cas. 83.

507a. *S. P.* MACHON *v.* MCLOUGHLIN (1926), 11 Tax Cas. 83, C. A.

510. For the existing paragraph substitute the following paragraph :—

—— —— **Additional remuneration of company director.**]—Resp. as director of a co. was entitled as remuneration for his services to £3,000 *per annum* free of income tax. Towards the close of the year of assessment the co. in general meeting resolved that the directors be paid by way of additional remuneration for their services such a sum as after the provision of income tax would entitle them to receive the further sum of £25,000 free of tax :—*Held :* resp.'s share of such additional remuneration was not a perquisite, but was assessable by additional assessments under Income Tax Act, 1918 (c. 40), Schedule E., rr. 1 & 5.—DAUNCEY *v.* HOWLETT (1926), 135 L. T. 279 ; 10 Tax Cas. 454.

512a. —— **New office—Director becoming member of executive committee.**]—MAY *v.* FALK (1932), 17 Tax Cas. 218.

514. *Add. Annotation :*—**Refd.** Hartland *v.* Diggines, [1926] A. C. 289.

516. *Add. Annotation :*—**Expld.** Proctor *v.* Ryall, Ryall *v.* Proctor (1928), 14 Tax Cas. 204.

516a. —— **Company director—Registered office.**]—PROCTOR *v.* RYALL, RYALL *v.* PROCTOR, No. 489a, *ante.*

519. *Add. Citation :*—10 Tax Cas. 118.

Add. Annotation :—**Apld.** Nolder *v.* Walters (1930), 15 Tax Cas. 380.

526a. —— —— ——.]—MACHON *v.* MCLOUGHLIN, 11 Tax Cas. 83, C. A.

527a. —— **Cost of motor-car & telephone—Air pilot.**]—*Held :* an air pilot could not deduct for the purposes of income tax any part of the cost of a motor-car & a telephone, which were not used in the performance of his office, but only in preparing to perform it.—NOLDER *v.* WALTERS (1930), 46 T. L. R. 397 ; 47 Sol. Jo. 337 ; 15 Tax Cas. 380.

530. *Add. Annotations :*—**Refd.** Machon *v.* McLoughlin (1926), 11 Tax Cas. 83 ; Reed *v.* Seymour (1927), 11 Tax Cas. 625.

PART VI. SECT. 2.

508 i. *Basis of assessment.*]—*Where* resp. was employed as solr. to a board :—*Held :* he was chargeable to income tax for the year of assessment in respect of a sum for fees, notwithstanding that the bills of costs which included such sum were not taxed or paid within the year of assessment.—M'KEOWN *v.* ROE, [1928] I. R. 195.—IR.

PART VI. SECT. 3.

ri. *Entertaining by Lieutenant-Governor.*]—Applt. declared his income as Lieutenant-Governor to be $, & claimed a deduction therefrom of $ expended for social entertainments, claiming that the latter amount was properly deductable as having been necessarily laid out for the purpose of earning the income :—*Held :* the expenses claimed as a deduction herein were not " wholly, exclusively & necessarily laid out or expended for the purpose of earning the income " within sect. 8 (*a*) of Income War Tax Act, 1917, as amended by 13 & 14 Geo. 5, c. 52.—*Re* LIEUTENANT-GOVERNORS SALARY, [1931] Ex. C. R. 232.—CAN.

Part VII.—General Allowances, Exemptions and Abatements.

539a. Personal allowance—In respect of wife—Whether earned income of wife included in husband's total income.] — THOMPSON *v.* BRUCE (1927), 11 Tax Cas. 607.

540a. —— **Child receiving instruction at "educational establishment."**]—A teacher's house, where he gives to individual pupils private lessons & directions for home study & practice, is not an "educational establishment" where a pupil receives full-time instruction, so as to entitle the father to a deduction from income tax under 1920 Act, s. 21 (1).—HEASLIP *v.* HASEMER (1927), 138 L. T. 207; 44 T. L. R. 112; 72 Sol. Jo. 31; 13 Tax Cas. 212.

540b. Earned income relief—How calculated.]—Applt. was employed as assistant secretary to a limited co. whose superannuation fund had been approved by the Comrs. of Inland Revenue under 1921 Act, s. 32, & his annual contribution to the fund was therefore deducted as an expense in arriving at the net amount of his salary assessable to income tax. In the assessment one-sixth of the net amount was allowed as earned income relief, but applt. contended that one-sixth of his gross salary, before deducting the superannuation contribution, should be so allowed: —*Held:* earned income relief must be calculated on the net amount of remuneration assessable after deducting allowable expenses. —FRAME *v.* FARRAND (1928), 13 Tax Cas. 861.

540c. —— ——.]—Applt. made, under deduction of income tax, certain annual payments which were charged upon his total income. His income consisted of a salary & unearned income taxed at the source. The charges exceeded the taxed income. He claimed that in the assessment of his salary for the year 1927-28 he was entitled to an earned income allowance of one-sixth of the whole amount of his salary. He was given an allowance of one-sixth of the amount of his salary remaining after deducting from it the amount by which the charges exceeded the taxed income. The General Comrs. rejected his appeal on the point & he appealed to the High Ct.:—*Held:* the earned income allowance was rightly computed on the amount of salary remaining after deduction of the charges treated as paid out of it.—ADAMS *v.* MUSKER (1930), 15 Tax Cas. 413.

545a. —— **Whether vested or contingent interest.**]—Resp., who came of age in July, 1922, claimed relief under Income Tax Act, 1918 (c. 40), s. 25, in respect of the accumulated income of a fund given to his parents by a relation in 1902 with a letter, which, after referring to a gift for the benefit of resp.'s brother, continued: "I also hand you a stock receipt representing the investment of £500 in Consols which, with the accruing dividends thereon, will fall due to your youngest boy (resp.) as he attains the age of twenty-one years. You will observe that you & W. are practically trustees for carrying this out":—*Held:* resp. took a vested & not a contingent interest in the gift, & was not entitled to the relief conferred by the sect. in respect of the income of the fund which had been accumulated for his benefit.—ROBERTS *v.* HANKS (1926), 134 L. T. 754; 10 Tax Cas. 351.

545b. ——.]—The words "for the benefit of" in 1918 Act, s. 25, include a case where the accumulations of income are added to the capital of a trust fund in which the beneficiary has only a life interest, & where the accumulations never pass to the beneficiary.—

PART VII. SECT. 1.

536 ii. —— *Whether gross or net income under will.*]—*Held:* applt.'s income under her father's will, for the purposes of a claim to repayment of income tax in respect of personal allowance, etc., was one-half only of the net income of the estate after the deduction of all prior charges, including the expenses of management of the trust.—MURRAY *v.* INLAND REVENUE COMRS. (1926), 11 Tax Cas. 133.—**SCOT.**

536 iii. —— ——.]—A beneficiary was entitled to income from (*inter alia*) two trusts, under one of which, after the expenses of the trust were paid, he was entitled to a liferent alienarly of the whole residue of the estate; & under the other, after the expenses of the trust were paid, to (1) an annual sum, & (2) subject to a trust for accumulation for a particular purpose, the annual income of the estate during his life. The beneficiary, being a British subject resident abroad, was entitled to certain relief from British income tax under Finance Act, 1920, s. 24 (1): —*Held:* in computing the "amount of his total income from all sources" for the purpose of this relief, the beneficiary was not entitled to include, along with the actual sums received by him from the trusts, the management expenses of the trusts.—MACFARLANE *v.* INLAND REVENUE COMRS., [1929] S. C. (Ct. of Sess.) 453.—**SCOT.**

539a i. *Personal allowance—Whether bankrupt entitled—Property in hands of trustee.*]—*Held:* during sequestration the income from the sequestrated estate, which was vested in the trustee, was the trustee's income & not the bkpt.'s, & that neither the trustee nor the bkpt. was entitled to claim the relief sought.—INLAND REVENUE COMRS. *v.* FLEMING (1928), 14 Tax Cas. 78.—**SCOT.**

545 i. *Relief in respect of income accumulated under trust—For benefit of person "contingently on his attaining some specified age"—Double contingency.*]—Claims for repayment of tax refused, where the contingency upon which the fund was held for the benefit of claimants was not that prescribed by 1918 Act, s. 25, but was a double contingency, namely, survivance of their mother & attainment of a specified age.—INLAND REVENUE COMRS. *v.* BONE, [1927] S. C. 698.—**SCOT.**

e i. —— —— ——.]—TILLARD *v.* COMR. OF TAXES, [1928] N. Z. L. R. 345.—**N.Z.**

sm. *Right to discount—Taxation Act, R. S. B. C.*, 1911 (*c.* 222), *s.* 10.] —GRANBY CONSOLIDATED MINING, SMELTING & POWER CO., LTD. *v.* A.-G. FOR BRITISH COLUMBIA, [1923] A. C. 247; 92 L. J. P. C. 74; 128 L. T. 677. —**CAN.**

sd. *Mining company—Reconstruction—Right of shareholders to deduction in respect of calls paid—Income Tax Assessment Act*, 1915-1918, *ss.* 18 (1), 53.]—JAQUES *v.* FEDERAL COMR. OF TAXATION (1924), 34 C. L. R. 522; 31 Argus L. R. 61.—**AUS.**

sf. *Taxable income—"Accruing & arising"—Meaning of.*]—*Held:* the words "accrue & arise" when applied to income are to be governed by the sources from which the income accrues & arises, not by the place where it is received or earned.—INCOME TAX COMRS. *v.* PIURA PHRAISON SALARAK (1928), I. L. R. 6 Ran. 598.—**IND.**

sg. *Company—Sale of assets on winding up—Interest on deferred payments—Whether income.*]—NORTH PACIFIC LUMBER CO., LTD. *v.* MINISTER OF NATIONAL REVENUE, [1928] Exch. C. R. 68.—**CAN.**

sl. *Rights of shareholders of personal corporations.*]—*Held:* sect. 21 of Income War Tax Act, dealing with personal corpns., is to be construed as meaning that shareholders are to be assessed upon the co.'s income according to their several interests therein, & that shareholders of personal corpns., thus assessed are entitled to any statutory exemptions or deductions to which ordinarily the corpn. or the shareholder, would be entitled.—BLACK *v.* MINISTER OF NATIONAL REVENUE, [1932] Ex. C. R. 8.—**CAN.**

DALE *v.* MITCALFE, [1928] 1 K. B. 383; 97 L. J. K. B. 161; 138 L. T. 167; 44 T. L. R. 21; 71 Sol. Jo. 981; 13 Tax Cas. 41, C. A.

Annotation :—**Refd.** *Re* Fulford, Fulford *v.* Hyslop, [1930] 1 Ch. 71.

545c. ——.]—The words " specified age " in 1918 Act, s. 25, mean an age expressed by a definite number of years, & not an age which can be ascertained only by reference to some other occurrence as, for instance, the death of testatrix, who has directed that an accumulated fund shall be paid to a beneficiary twenty years after her death.—WHITE *v.* WHITCHER, [1928] 1 K. B. 453; 97 L. J. K. B. 321; 138 L. T. 205; 44 T. L. R. 113; 13 Tax Cas. 202.

545d. Lunacy percentage.]—Under Lunacy Act, 1890 (c. 5), & the Rules in Lunacy, 1892, the Crown is in certain circumstances entitled to receive 4 per cent., but not exceeding £400, of the clear annual income of a lunatic. A., a lunatic, had a considerable income & the whole of the funds were in ct. The income as it came in was credited to the lunatic's account by the Paymaster-General, & the appropriate lunacy percentage was debited annually in that account. Applt., the committee of A., was assessed under Case III. of Sched. D. for the year 1926–27 in the sum of £452, the amount of War Loan interest arising in 1925–26; the remainder of the lunatic's income was received under deduction of income tax. Applt. claimed that a deduction of £161, the lunacy percentage for 1925–26 on the whole of the lunatic's income, should be made from the assessment, on the grounds that the lunacy percentage did not form part of the lunatic's income & that there was no authority for charging it to income tax. The Crown contended that there was no provision in the income tax Acts for allowing such a deduction, that the payment was merely an application of the lunatic's income, or alternatively that the deduction from the assessment should be restricted to the percentage appropriate to that source of income:—*Held :* lunacy percentage is a payment out of the lunatic's income, & that no deduction is admissible for income tax purposes.—A. B.'s COMMITTEE *v.* SIMPSON (1928), 14 Tax Cas. 29.

Annotation :—**Apld.** I. R. Comrs. *v.* Sneath (1932), 48 T. L. R. 241.

——.]—*Compare*, No. 689a, *post*.

545e. Repayment of tax on interest on advance from bank—To what sums applicable.]—Resps. guaranteed the indebtedness to its bankers of a co. in which they were interested. For a number of years the co. was indebted to the bank continuously. Interest on the amounts owing to the bank was debited half-yearly in the co.'s account with the bank &, except in one instance, the amount due to the bank increased each half-year. Resps. finally satisfied the whole indebtedness of the co. to the bank by a single payment, & they claimed repayment under sect. 36 of 1918 Act, in respect of so much of the amount paid by them to the bank as represented the interest which had been debited to the co.'s account:—*Held :* resps. were not entitled to the repayment claimed.—HOLDER *v.* INLAND REVENUE COMRS., [1932] A. C. 624; 101 L. J. K. B. 306; 48 T. L. R. 365; 76 Sol. Jo. 307; *sub nom.* INLAND REVENUE COMRS. *v.* HOLDER (H. C.) & HOLDER (J. A.) (1932), 147 L. T. 68; 16 Tax Cas. 540, H. L.

546. *Add. Annotation :*—**Refd.** Whitney *v.* I. R. Comrs., [1926] A. C. 37.

548a. —— ——.]—Where under the provisions of a life insurance policy the assured has obtained from the insurance co. loans to assist him in payment of the premiums, & where, on the maturity of the policy, the co. has deducted the amount of the loans from the sum payable under the policy, the assured is not entitled to claim, for the fiscal year in which the policy matured, a reduction of income tax in respect of the premiums for previous years, since in suffering the deduction the assured was not paying a premium but repaying a debt.—R. *v.* INCOME TAX SPECIAL COMRS., *Ex p.* HORNER (1932), 49 T. L. R. 3; 76 Sol. Jo. 779, D. C.

548b. —— **Premium paid by insurer under reduction of premium system.**]—Resp.'s life was insured under a policy of whole-life insurance expressed to be at a yearly premium of £48 5*s.*, which entitled him to participate in the insurance co.'s surplus funds by means of the " reduction of premium system." The insured had in each year the option of taking the reduction of premium for that year in cash or of converting it into the equivalent reversionary bonus. The co.'s premium notice showed £48 5*s.* as the premium payable on the policy & £33 15*s.* 6*d.* as bonus, leaving £14 9*s.* 6*d.* as the " amount to be paid." Resp. remitted £14 9*s.* 6*d.* to the co. but claimed that the amount of the premium paid by him in the year was £48 5*s.* :—*Held :* the reduction of premium had been provided by the policy, that the amount of the premium paid by resp. was £14 9*s.* 6*d.*, & that he was entitled to relief from income tax on that amount only.—WATKINS *v.* JONES (1928), 14 Tax Cas. 94.

549. *Add. Annotation :*—**Consd.** Perrin *v.* Dickson (1929), 98 L. J. K. B. 683.

549a. —— **Policy on joint lives of two persons—Payment of premium shared equally.**]—A person who has entered into an insurance on the joint lives of himself & another person at a single premium which is shared equally between them, has not " made an insurance on his life " within Income Tax Act, 1918 (c. 40), s. 32 (1), & is not entitled under that sect. to a deduction of the amount of the annual premium from his taxable profits.—WILSON *v.* SIMPSON, [1926] 2 K. B. 500; 95 L. J. K. B. 885; 135 L. T. 766; 42 T. L. R. 690; 10 Tax Cas. 753.

552. *Add. Annotations :*—*As to* (1) **Consd.** Gold Fields American Development Co. *v.* Consolidated Gold Fields of South Africa, [1926] Ch. 338. *As to* (3) **Consd.** Hamilton *v.* I. R. Comrs., [1931] 2 K. B. 495. **Refd.** I. R. Comrs. *v.* Dalgety & Co. (1929), 98 L. J. K. B. 542.

PART VII. SECT. 3.

3h. *Provincial income tax—Whether permissible deduction from income taxable under Dominion statute.*]—*Held :* not a disbursement or expense " wholly, exclusively & necessarily laid out or expended for the purpose of earning the income," & such amount cannot be legally deducted from the total income of the taxpayer in arriving at the income which is taxable by the Dominion Govt. under Income War Tax Act, 1917.—ROENISCH (C. W.) *v.* MINISTER OF NATIONAL REVENUE, [1931] Ex. C. R. 1; 2 D. L. R. 90.—**CAN.**

553. *Add. Annotations:*—**Consd.** Gold Fields American Development Co. *v.* Consolidated Gold Fields of South Africa, [1926] Ch. 338. **Apld.** I. R. Comrs. *v.* Dalgety & Co. (1929), 98 L. J. K. B. 542. **Consd.** Hamilton *v.* I. R. Comrs., [1931] 2 K. B. 495.

555. *Add. Annotations:*—**Consd.** Gold Fields American Development Co. *v.* Consolidated Gold Fields of South Africa, [1926] Ch. 338. **Apld.** I. R. Comrs. *v.* Dalgety & Co. (1929), 98 L. J. K. B. 542.

556. *Add. Citations:*—[1926] Ch. 338; 95 L. J. Ch. 329; 135 L. T. 14.

557. *Add. Citation:*—10 Tax Cas. 59.

557a. Right to relief on whole income paying Dominion tax—Without deduction of sums paid in debenture interest.]—A co. incorporated in England under Cos. Acts, carried on business in the United Kingdom & in New Zealand & Australia, & its income chiefly arose from trading operations in the latter countries. In respect of that income it was liable to income tax in the United Kingdom & in those Dominions. The co. having paid the full United Kingdom income tax on all its profits & gains & also Dominion income tax on so much as was earned by it in New Zealand & Australia, claimed relief from the double tax over a period of eight years ending on Apr. 5, 1924. The co. had issued debentures, the principal & interest of which were secured on its whole undertaking & assets, & in paying the interest on the debentures the co., as it was entitled to do, had deducted the full amount of United Kingdom income tax in respect of that interest. The sole question in dispute was whether the amount of relief was to be calculated on the whole of the profits earned by the co. in the Dominions or only on the balance of such profits remaining after deducting therefrom the excess of the interest paid by it on its debentures over the amount of income arising in the United Kingdom:—*Held:* (1) the word "income" in Finance Act, 1920 (c. 18), s. 27 (1), & the repealed sects. 43 of Finance Act, 1916 (c. 24), & 55 of Income Tax Act, 1918 (c. 40), meant "taxable income" & not "income less charges," & the word "paid" in relevant sections must be construed in its natural sense & not as meaning "paid & ultimately borne," & therefore the co. was entitled to relief under Finance Act, 1920 (c. 18), s. 27, & corresponding sections of earlier Acts in respect of all income (including that part applied in paying debenture interest) which had already borne Dominion income tax; (2) Income Tax Act, 1918 (c. 40), s. 17, had no application to the relief given by any of above-mentioned Acts.—INLAND REVENUE COMRS. *v.* DALGETY & CO., [1930] A. C. 527; 99 L. J. K. B. 342; 143 L. T. 191; 46 T. L. R. 349; 15 Tax Cas. 216, H. L.

Annotation:—Generally, **Reld.** Hamilton *v.* I. R. Comrs., [1931] 2 K. B. 495.

557b. —— Without regard to 1918 Act, s. 17.]—INLAND REVENUE COMRS. *v.* DALGETY & CO., LTD., No. 557a, *ante.*

Part VIII.—Miscellaneous Provisions Applicable to the Duties Generally.

567. For existing paragraph & citation read -.]—TARN *v.* SCANLAN, NIELSEN, ANDERSON & CO. *v.* COLLINS, MILLER (W. H.) & CO. (LONDON) *v.* LETHEM, SAME *v.* INLAND REVENUE COMRS., No. 168a, *ante.*

567a. —— Literary agents—Royalties paid to non-

PART VIII. SECT. 1, SUB-SECT. 1.

k i. ——.]—In Oct. 1923, a trustee was assessed in respect of the income of an estate, which he was directed to receive & accumulate until 1933, & then to distribute among persons not ascertainable until the date fixed for distribution:—*Held:* the assessment being made in 1923 for taxes payable in 1924, the validity of the assessment should be determined by reference to the Act in force at the date of the assessment.—*Re* MCLEOD & WINDSOR CORPN., [1925] 3 D. L. R. 89; 57 O. L. R. 15.—**CAN.**

k ii. —— *Payments to foreign company for user of films—Company making payments as trustee.*]—UNIVERSAL FILM MANUFACTURING CO. (AUSTRALASIA), LTD. *v.* THE STATE OF NEW SOUTH WALES (1927), 40 C. L. R. 333.—**AUS.**

k iii. —— *Entire control of business by foreign firm.*]—FERGUSON *v.* DONOVAN, [1929] I. R. 489.—**IR.**

k iv. ——.]—Testator left a liferent of £20,000 & of one-third of the residue of his estate to each of his wife & daughter, & £20,000 & one-third of the residue to his son absolutely. The beneficiaries were all *capaces* & resident in this country. Testator held £40,000 5 per cent. War Stock, the interest on which was payable without deduction of tax. The interest due on June 1, & paid to the trustees on that date, amounting to £1,000, was treated by them as capital, & estate duty was paid thereon. The trustees, having been assessed to income tax on the £1,000 of interest, contended that trustees acting for behoof of a British resident who was *capax* were not assessable to income tax. The Comrs. decided that the trustees were assessable as regarded the two-thirds of the interest effering to the portions destined to the testator's wife & daughter in life rent, but not as regarded the one-third payable by them to the son:—*Held:* the trustees were assessable to tax on the whole interest, under Rule 1 of the Miscellaneous Rules applicable to Sched. D.—REID'S TRUSTEES *v.* INLAND REVENUE COMRS., [1929] S. C. (Ct. of Sess. 439.—**SCOT.**

k v. —— *"Income accumulating."*]—*Held:* the word "accumulating," used with the word "income" in sect. 11 (2) of Income War Tax Act, 1917, & Amendments, is there used gerundially, that is as a verbal noun rather than as a verb; it is used just to earmark it as the fund for unascertained persons or persons with contingent interest & which is taxable in the hands of the trustee.—MCLEOD *v.* MINISTER OF NATIONAL REVENUE, [1932] Ex. C. R. 1.—**CAN.**

—— ——.]—J., resident in the United States, by deed executed in the province of Quebec, gave to resp., a co. incorporated under the laws of Quebec & carrying on business in Canada, in trust, as a donation *inter vivos* & irrevocable, certain Canadian securities, to be held, together with all accumulations & additions thereto, upon trust for the benefit of J.'s surviving children until five years after J.'s death, "when the entire trust estate is to be equally divided amongst his surviving children, & in the event of any or all of his said children predeceasing J. or being unable to take, the division shall be made to the survivor or survivors, and the issue of such predeceased child or children, as representing their parent, *per stirpes*":—*Held:* the income was "accumulating in trust for the benefit of unascertained persons, or of persons with contingent interests," & taxable in resp.'s hands. Such income accumulating in trust is distinctly a subject of taxation under s. 3 (6), regardless of the residence, if ascertainable, of probable beneficiaries, whose interest is contingent during the taxation period.—MINISTER OF NATIONAL REVENUE *v.* ROYAL TRUST CO., [1931] S. C. R. 485.—**CAN.**

k vii. *Wife—Gift of income to—Direction to maintain children—Whether liable as trustee.*]—Testator devised & bequeathed the whole of his property to his wife in trust for his children—the wife during her life to receive the income thereof for the support & maintenance of herself & the children,

resident authors.]—CURTIS BROWN, LTD. *v.* JARVIS; JARVIS *v.* CURTIS BROWN, LTD., No. 99k, *ante*.

570a. —— After death of husband.]—*Held:* the first year after her husband's death a widow in receipt of income from War Stock not taxed at source was liable to income tax under Case III. of Sched. D. computed on her income from the same source in the preceding year, notwithstanding that by proviso 1 to r. 16 of the Rules applicable to all Schedules that income was to be "deemed the profits of her husband." This proviso operated only to convert the wife's income into the husband's income for the purpose of collecting tax.—LEITCH *v.* EMMOTT, [1929] 2 K. B. 236; 98 L. J. K. B. 673; 141 L. T. 311; 14 Tax Cas. 633, C. A.

Annotation:—**Consd.** Cowdray (Viscountess) *v.* I. R. Comrs. (1930), 15 Tax Cas. 255.

575. *Add. Annotation*:—Refd. I. R. Comrs. *v.* Pakenham, I. R. Comrs. *v.* Longford (1927), 96 L. J. K. B. 882.

575a. Income payable to or for benefit of infant—Income applicable in paying premiums on educational endowment policy.]—The father of a young girl conveyed a sum of stock to applts. as trustees, & directed them to take out an educational endowment policy for such sum as could be insured for an annual payment of £30 for his daughter, the endowment to begin on her attaining the age of fifteen, & to continue for four years. The income of the trust fund was dedicated to the payment of the annual premiums. The truster further directed applts. to utilise the educational endowment payable under the policy & any other income available from the trust fund for the education & advancement of his daughter from the time when she became fifteen until her majority. If the daughter attained the age of twenty-one the capital of the trust fund was to be made over to her absolutely, but if she died before, the fund to revert to the truster or his representatives. The trust deed contained no gift of income to the daughter. While the daughter was still under fifteen applts., on her behalf, claimed repayment of income tax deducted at the source from a sum of £33, the annual income of the stock, on the ground that that income was the income of the daughter for income tax purposes, & that, as she had no other income of her own, she was within the limit of total exemption:—*Held:* the daughter had no present beneficial right to receive the income & the claim failed.—DEWAR *v.* INLAND REVENUE COMRS., [1931] A. C. 566; 100 L. J. P. C. 169; 145 L. T. 395; 47 T. L. R. 427; *sub nom.* INLAND REVENUE COMRS. *v.* DEWAR, 16 Tax Cas. 84, H. L.

575b. —— Under revocable disposition—Annuity payable "for some period less than the life of the child"—What amounts to.]—A father executed a settlement whereby he covenanted to pay to the trustees during the joint lives of himself & his son, then a minor, an annuity to be held by the trustees upon trust for the son with power during the minority to apply the annuity for the maintenance, education, & benefit of the son & to accumulate any surplus income. The settlement contained a power for the settlor with the consent of any one of several persons, including the trustees, to revoke the trusts thereby declared. The settlor duly paid the annuity & deducted income tax therefrom at the appropriate rate. He had not revoked the settlement:—*Held:* as there had been no revocation the annuity was income of the son for purposes of relief from tax, & the power of revocation did not make it payable "for some period less than the life of the child" within Finance Act, 1922 (c. 17), s. 20 (1).—WATSON'S TRUSTEES *v.* WIGGINS (1932), 101 L. J. K. B. 727; 147 L. T. 443; 48 T. L. R. 655; 76 Sol. Jo. 690, C. A.

576a. Person receiving income under revocable disposition—For period which cannot exceed six years—Meaning of "years."]—Resps.

& after her death the proceeds of the sale of such property to be equally divided between the children:—*Held:* the wife was entitled to receive the income of testator's estate subject to no liability to account for its application, provided she discharged the duty of supporting & maintaining the children; &, therefore, she was not a "trustee" within Income Tax Assessment Acts, 1922–1925, s. 4.—MANNING *v.* FEDERAL COMR. OF TAXATION (1928), 40 C. L. R. 506; [1928] Argus L. R. 165.—**AUS.**

se. *Liability confined to residents.*]—One McM. died in 1914, & by a clause of his will, after certain charges have been paid, it was provided that the balance should be divided in three parts to pay the support, maintenance & education of three children, &, moreover, that the amount necessary for such maintenance, etc., was left to the discretion of the Trustee & the balance thereof to be invested in the name of each of the respective children to whom such residue is by the will given & bequeathed. Such balance so re-invested, so given & bequeathed is what is now sought to be taxed. The beneficiaries under the will, at all times material, resided out of Canada, except one who took up residence in Montreal in 1926. The surviving trustee resided in Canada:—*Held:* the fund sought to be taxed herein is absolutely vested in well-known beneficiaries without any contingent interest & such beneficiaries being admitted not to be residents in Canada, they were not liable to be taxed, excepting as to the one beneficiary who took up residence in Canada & then only from the date at which he took up such residence.—HOLDEN *v.* MINISTER OF NATIONAL REVENUE, [1931] Ex. C. R. 215; *revsd.*, [1932] 4 D. L. R. 60; S. C. R. 655.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 2.

570 i. *Liability of married woman to be charged—Married woman living in United Kingdom separate from husband—Income from property out of United Kingdom.*]—The wife of a professor at Cairo University received annually a share of income from Canadian property, which was held by a body of Scottish trustees. Until 1922 she lived with her husband in Cairo, & accompanied him to England on furlough for three months every summer. During the furlough in 1922 the state of her health necessitated her removal to a nursing home, where she remained throughout the financial year 1923–24. The professor returned to Cairo at the end of his leave in 1922, visiting this country again the following summer. For the year 1923–24 the trustees were assessed to income tax upon the wife's share of Canadian income:—*Held:* the income was liable to be charged to income tax upon the wife, & was not to be deemed to be the husband's profits.—DERRY *v.* INLAND REVENUE, [1927] S. C. 714.—**SCOT.**

571 i. *Liability of husband to be charged—Whether married woman "living with her husband."*]—Circumstances in which:—*Held:* a wife was not "living with her husband" so as to make her profits assessable & chargeable in the husband's name.—DONOVAN *v.* CROFTS, [1926] I. R. 477.—**IR.**

571 ii. —— *Royalties paid to wife for right to publish novels.*]—Where a novelist wrote books in the Union but granted to her publishers in England the right of printing & publishing her novels in book form in Gt. Britain & elsewhere, they undertaking to pay her a percentage of the published price of the novels as royalties:—*Held:* since her facilities were employed within the Union both in writing the novels & in dealing with her publishers, the source of the income was in the Union & the royalties had rightly been included in the taxable income of her husband.—MILLIN *v.* INLAND REVENUE COMR., [1928] App. D. 207.—**S. AF.**

PART VIII. SECT. 1, SUB-SECT. 4.

sf. *Agreement to operate telegraph system—Undertaking by operating company to pay owning company's income tax on annual payments under agreement.*]—*Held:* such undertaking could not be pleaded by the owning co. in answer to the Crown's claim for income tax.—R. *v.* MONTREAL TELEGRAPH CO. & GREAT NORTH WESTERN TELEGRAPH CO. OF CANADA, [1925] Exch. C. R. 79.—**CAN.**

were a body established for charitable purposes only, & a subscriber covenanted by a deed made in 1927 to pay to them annually for seven years a sum which would leave to them the sum of £8 after deduction of income tax. The period between the date when the obligation to make the first payment arose & the date when the last payment would fall due was less than six years. Resps. claimed repayment of income tax :—*Held :* as the duration of the payments did not exceed six years the income was to be deemed the income of the subscriber, & the resps. were not entitled under 1918 Act, s. 37 (1), to repayment of the tax.—INLAND REVENUE COMRS. *v.* ST. LUKE HOSTEL TRUSTEES, REGISTERED (1930), 144 L. T. 50; 46 T. L. R. 580 ; 15 Tax Cas. 682, C. A.

577. *Add. Annotations :*—**Refd.** Whitney *v.* I. R. Comrs., [1926] A. C. 37; *Re* Hulton, Hulton *v.* Midland Bank Exor. & Trustee, Ltd. (1930), 99 L. J. Ch. 316 ; Luipaard's Vlei Estate & Gold Mining Co. *v.* I. R. Comrs., [1930] 1 K. B. 593.

580. *Add. Annotations :*—*As to* (3) **Apld.** R. *v.* St. Marylebone Income Tax Comrs., *Ex p.* Schlesinger (1928), 13 Tax Cas. 746. **Refd.** L. & N. E. Ry. *v.* Easington Union Assmt. Com. & Easington-with-Thorpe Parish Council (1925), 95 L. J. K. B. 255.

585a. Sum claimed already allowed as deduction.]—Applt. co. habitually financed its purchases by loans from its bankers repayable on demand ; the loans were for no specified period, but were paid off with interest when the co. received payment for the goods, usually within three months. The interest was paid without deduction of income tax, & was debited in the co.'s profit & loss account as a business expense. It had been allowed as such in computing the profits on which the co. was assessed under Case I. of Sched. D. for the four years ended Apr. 5, 1925. The co. claimed repayment of tax under 1918 Act, s. 36, for these four years on the interest paid to the bank, contending that it should not have been allowed as a deduction in computing profits, that this error could be corrected by additional assessments, & that the interest must be treated as having been paid out of profits or gains brought into charge to tax. The Comrs. of Inland Revenue refused the claim, & on appeal the Special Comrs. upheld this decision :—*Held :* as in fact the interest had been deducted in arriving at the assessable profits, it had not been paid out of profits brought into charge to tax, & that it was not open to the co. to claim revision of the assessments.—MULLER & CO. LONDON, LTD. *v.* INLAND REVENUE COMRS. (1928), 14 Tax Cas. 116.

Part IX.—Procedure after Assessment.

588. *Add. Annotation :*—*As to* (2) **Refd.** Ingle *v.* Farrand, [1927] A. C. 417.

589. *Add. Annotation :*—**Distd.** R. *v.* St. Marylebone Income Tax Comrs., *Ex p.* Schlesinger (1928), 13 Tax Cas. 746.

591a. Whether assessment made in time.]—PICKFORD *v.* QUIRKE, PICKFORD *v.* INLAND REVENUE COMRS., No. 114a, *ante.*

592a. Discontinuance of business—Mode of computation—Finance Act, 1926 (c. 22), s. 31.]—WESLEY *v.* MANSON, No. 204e, *ante.*

592b. When justified—What amounts to "discovery" by surveyor.]—ANDERTON & HALSTEAD, LTD. *v.* BIRRELL, No. 254a, *ante.*

595a. —— —— Absence of accountant's certificate.]—Applts. delivered to the inspector of taxes balance sheets & trading & profit & loss accounts of their business covering

PART VIII. SECT. 3.

sh. *Death before dividends & interest payable—Apportionment Act inapplicable to claim for repayment.*]—A taxpayer, whose total income was such as to entitle her to repayment of all income tax deducted from it, died before certain of the dividends & interest upon her investments fell due. Her exors. afterwards received payment of these dividends & interest under deduction of tax, &, founding on the terms of the Apportionment Act, 1870 (c. 35), s. 2, claimed repayment of tax proportionate to the period of her survivance :—*Held :* the Apportionment Act had no application to the question in dispute, &, as the dividends & interest payable after the taxpayer's death never formed part of her income, her exors. were not entitled to repayment of any portion of the income tax deducted therefrom.—INLAND REVENUE COMRS. *v.* HENDERSON'S EXORS., [1931] S. C. 681 ; 16 Tax Cas. 282.—**SCOT.**

sj. *Claim in respect of tax on rents paid to heir-at-law in heritage.*]—Testator, by his will, directed that his wife should receive the free annual income of his residuary estate for her life & that on her death his trustees should convert the residue into cash & distribute it among six named beneficiaries. Testator died, domiciled in Scotland, in 1903. The widow claimed her legal rights under Scottish law. She was accordingly paid a capital sum out of testator's movable estate & continued, up to the time of this case, to receive from the trustees one-third of the rents derived from the heritage. The remaining two-thirds of the rents were accumulated by the trustees for a period of twenty-one years when further accumulation became unlawful. Thereafter, in accordance with settled Scottish law, the two-thirds rents were paid by the trustees to the heir-at-law in heritage for the time being of testator. The *curator bonis* to the heir-at-law in heritage, a minor, claimed repayment of the income tax charged in respect of the amounts paid to him as curator, contending that those amounts represented income of the minor in his hands :—*Held :* the payments made to or for behoof of the minor were payments of income.—DUNCAN *v.* INLAND REVENUE COMRS. (1932), 17 Tax Cas. 1.—**SCOT.**

PART IX. SECT. 1.

586 i. *Jurisdiction of commissioner—Avoidance of tax owing to fraud.*]—MOREAU *v.* FEDERAL TAXATION COMR. (1926), 39 C. L. R. 65.—**AUS.**

586 ii. —— *Alteration of assessment.*]—Applts. owned certain land the value of which for taxation purposes was, in 1923, £24,626. In 1924 a new assessment was made by the Comr. & the value fixed at £32,197. In 1925 the Comr. made a new assessment & fixed the value at £46,835 :—*Held :* the only sect. under which the Comr. can alter an assessment which has been made is sect. 37 of Land & Income Tax Assessment Act, 1907, & having once made an assessment the Comr. may let it stand or may alter it from time to time subject to the restriction imposed by the legislature for the benefit of the taxpayer to prevent his being harassed by frequent re-assessments.—O'CONNOR *v.* STATE TAXATION COMR. (1927), 30 W. A. L. R. 50.—**AUS.**

586 iii. —— ——.]—*Held :* the second proviso to sect. 2 of Income Tax Assessment Act, 1922-1925, namely, that no alteration or addition shall be made in or to any assessment made under the Acts repealed by that Act after three years from the date when the tax is payable unless the Comr. of Taxation has reason to believe that there has been an avoidance of tax owing to fraud or attempted evasion, does not apply to the making of alterations & additions before Sept. 26, 1925, the date when Income Tax Assessment Act, 1925, by which the proviso was enacted, received the royal assent. —FEDERAL COMR. OF TAXATION *v.* REID (1927), 40 C. L. R. 196.—**AUS.**

the period of three years, on the average profits of which their Sched. D. liability was to be computed; they also delivered to the assessor of taxes a statement showing the average profits to be £1,447 after making the adjustments required for income tax purposes. The inspector asked that the accounts should be certified by a qualified accountant in view of their magnitude, & applts. refused on the ground that there was no statutory authority for such a requirement. In due course the statement & accounts were laid before the Additional Comrs., who, not being satisfied, made an assessment of £2,000, against which applts. appealed. On the hearing of the appeal the General Comrs. were of opinion that examination of the books as proposed by applts. would occupy them for several weeks, & even then would not enable them to establish the correctness of the accounts because they were not professional accountants. The Comrs. accordingly, not being satisfied on the evidence tendered that the assessment was excessive, decided to confirm it unless within two months applts. should produce accounts audited by a qualified auditor. Applts. expressed dissatisfaction with the Comrs.' decision as being erroneous in point of law & required them to state a case:—*Held:* the Comrs.' decision was not *ultra vires*.—HUNT & CO. *v.* JOLY (1928), 14 Tax Cas. 165.

596. *Add. Citation:*—12 Tax Cas. 147.

611a. —.]—ANGLO-PERSIAN OIL CO., LTD. *v.* DALE, No. 249a, *ante*.

613a. —— —— ——.]—With the object of reducing the amount of income tax payable in respect of the occupation of land & the profits from dealing in cattle, a farmer & his sons, who lived with him, entered into an agreement of partnership. The terms of the agreement were not carried out, & the General Comrs. were of opinion that there had been no partnership in fact, & refused the relief claimed in respect of each alleged partner:—*Held:* there was evidence to support the finding of the comrs., which could not be set aside.—DICKENSON *v.* GROSS (1927), 137 L. T. 351; 11 Tax Cas. 614.

614a. —— —— **Accuracy of accounts.**]—Applt. appealed to the Special Comrs. against certain Sched. D assessments made upon him in respect of business profits & untaxed interest. The Comrs. refused to accept the accounts submitted by applt. as satisfactory evidence that the assessments were excessive & adjourned the proceedings for some months on his undertaking to furnish accounts certified, so far as might be possible, by an accountant. Such accounts were not produced & the assessments were confirmed:—*Held:* the question was one of fact which it was for the Comrs. to determine.—WALL *v.* COOPER (1929), 14 Tax Cas. 552, C. A.

614b. —— —— **Ordinary residence.**]—Applt. lived in the United Kingdom until 1909 when she went to India to be married. Her husband died in 1916. Except for one period of five months she was not in the United Kingdom between 1909 & July, 1919, when she returned to the United Kingdom & remained for fifteen months. She spent part of each of the income tax years 1921–22 to 1927–28 in the United Kingdom, the periods spent in the United Kingdom within each year ranging from forty days to one hundred & seventy-seven days in aggregate. She lived in hotels & had no house of her own either in this country or elsewhere. She had no property in this country except investments in War Loan. From 1921 her son was at school in this country. The Special Comrs. had found, in appeal proceedings for the year 1924–25, that she was not resident & not ordinarily resident in the United Kingdom. Her claim to exemption from income tax on income within the provisions of the sects. mentioned above for the year 1927–28 was refused by the I. R. Comrs. On her applying, under Finance Act, 1924 (c. 21), s. 27, for the claim to be determined by the Special Comrs., the Comrs. considered that having regard to the continuance of regular & lengthy visits to the United Kingdom the circumstances were different from those previously under consideration in relation to the year 1924–25, & they held she was resident & ordinarily

PART IX. SECT. 2, SUB-SECT. 2.

600 i. *The hearing—Whether taxpayer entitled to be heard.*]—In order to constitute a valid determination of the comr. under Income Tax Assessment Act, 1922, s. 21 (1), it is not necessary that the taxpayer shall have been heard.—FEDERAL COMR. OF TAXATION *v.* AUSTRALIAN TESSELATED TILE CO. PROPRIETARY, LTD. (1925), 36 C. L. R. 119; 31 Argus L. R. 218.—AUS.

600 ii. —— *Failure of appellant to submit evidence—Power of commissioners to confirm assessment.*]—An assessment to income tax, Sched. D, was made upon applt. for the year 1922–23 in respect of remuneration for special services. The appeal proceedings before the General Comrs. were twice adjourned for the production by applt. of further information & on the occasion of the second adjournment applt. was warned that when the case was next put down for hearing he must be prepared to attend in person with a statement of the facts & arguments which he wished to submit to the Comrs. On the third hearing of the case applt. did not attend & his representative asked for a further adjournment. This the Comrs. refused. Applt.'s representative then gave a general statement of facts, under the reservation that he was not to be bound by any particular statement of fact, & contended that no liability to income tax arose in respect of the sum in question. In consideration that applt. had failed to submit facts or evidence to them, the General Comrs. dismissed the appeal & confirmed the assessment:—*Held:* the Comrs. had acted within their powers.—HAMILTON (J.) *v.* INLAND REVENUE COMRS. (1930), 16 Tax Cas. 28.—SCOT.

sl. "*Determination.*"]—The word "determination" in Income Tax Assessment Act, 1922, s. 21 (1), implies a communication of the determination to the taxpayer.—FEDERAL COMR. OF TAXATION *v.* AUSTRALIAN TESSELATED TILE CO. PROPRIETARY, LTD. (1925), 36 C. L. R. 119; 31 Argus L. R. 218.—AUS.

PART IX. SECT. 2, SUB-SECT. 3.—A.

sn. *Jurisdiction of High Court—To hear appeal by commissioner from Board of Appeal.*]—FEDERAL TAXATION COMR. *v.* MUNRO, BRITISH IMPERIAL OIL CO., LTD. *v.* FEDERAL TAXATION COMR. (1926), 38 C. L. R. 153.—AUS.

so. —— *To review questions of fact.*]—FEDERAL COMR. OF TAXATION *v.* CLARKE (1927), 40 C. L. R. 246.—AUS.

sg. *Conclusiveness of assessment.*]—*Held:* assessments for Income Tax under Sched. D. of Income Tax Act, 1918, made upon a person who becomes bkpt., & from which no appeal had been taken, cannot be questioned by the official assignee upon proof of debts, & the Revenue Comrs. cannot be called upon to prove that the amounts assessed were just & proper, having regard to bkpt.'s income at the material times, the assessments being in default of appeal, "final & conclusive," under Income Tax Act, 1918, s. 195.—*Re* N, [1928] I. R. 548.—IR.

PART IX. SECT. 2, SUB-SECT. 3.—B.

608 i. *No appeal on question of fact—What is question of fact—Question of domicil.*]—IVEAGH *v.* REVENUE COMRS. & REVENUE COMRS. *v.* IVEAGH, [1930] I. R. 386.—IR.

617 i. *When case may be stated—Rehearing by Board of Referees not condition precedent.*]—CARLAND (DAVID) & SONS, LTD. *v.* INLAND REVENUE COMRS., [1926] S. C. 870; 11 Tax Cas. 96.—SCOT.

resident in the United Kingdom. She appealed:—*Held*: the matter was a question of fact & the Comrs.' decision could not be disturbed as being erroneous in point of law. —KINLOCH *v.* INLAND REVENUE COMRS. (1929), 14 Tax Cas. 736.

618. *Add. Annotation*:—**Refd.** Owl Mill Co. (1920), Ltd. *v.* Croft, Elliott *v.* Duchess Mill (1926), 95 L. J. K. B. 635.

620. *Add. Annotation*:—**Refd.** Anderton & Halstead, Ltd. *v.* Birrell, [1932] 1 K. B. 271.

620a. -.]—A co. which had succeeded to the business of a previous co. in 1920 was assessed to income tax, Sched. D., for the year 1923–24 in an estimated amount to represent the average profits of the three preceding years. It gave notice of appeal against this assessment, & subsequently claimed relief under r. 11 of the Rules applicable to Cases I. & II. of Sched. D. The Inspector of Taxes opposed the claim. The co. gave notice of appeal to the Special Comrs. against the refusal to admit the claim, & eventually the case was set down for hearing by the Special Comrs. both on the r. 11 claim & on a question of obsolescence. Before the date fixed for the hearing the co. withdrew the appeal & the withdrawal was accepted by the Special Comrs. Subsequently, the co. applied to the General Comrs. to hear & determine its claim contending that the claim made by it fell under r. 3 (3) of the Miscellaneous Rules applicable to Sched. D., & that only the General Comrs. had power to determine it. The General Comrs. were of opinion that the claim was made by way of appeal under r. 11 & that the Special Comrs. had jurisdiction to deal with it. They refused to hear the claim. The co. obtained a rule *nisi* calling upon the General Comrs. to show cause why a writ of *mandamus* should not issue commanding them to hear & determine the claim:—*Held*: the rule should be discharged.—R. *v.* WEST GORTON GENERAL COMRS., *Ex p.* BROOKS & DOXEY (1920), LTD. (1931), 16 Tax Cas. 210.

622. *Add. Annotations*:—**Apld** Pickford *v.* Quirke, Pickford *v.* I. R. Comrs. (1927), 43 T. L. R. 659. **Refd.** R. *v.* St. Marylebone Income Tax Comrs., *Ex p.* Schlesinger (1928), 13 Tax Cas. 746; Anderton & Halstead, Ltd. *v.* Birrell (1931), 47 T. L. R. 528; Towle *v.* Improved Industrial Dwellings Co., [1931] 1 K. B. 263.

625a. -.]—R. *v.* ST. MARYLEBONE INCOME TAX COMRS., *Ex p.* SCHLESINGER (1928), 13 Tax Cas. 746, C. A.

628a. —— ——.]—Certain premises were leased to tenants for a term of seven years from Nov. 17, 1925, at a rent of £125 *per annum* by a lease dated Nov. 10, 1925. By a deed dated Nov. 11, 1925, the tenants agreed, in consideration of the owner undertaking to execute certain alterations & repairs, to pay, from the date of completion of the alterations, & for the remaining period of the lease, an additional £125 *per annum*. The additional £125 *per annum* was described as "rent." The owner, resp. in the present case, contended that it represented repayment by instalments of the tenants' obligation to him. The premises were assessed for the purposes of Sched. A for the year 1926–27 in the amount of £250. The General Comrs. on appeal reduced the assessment to £125. The Crown appealed. The case was remitted to the General Comrs. for further findings & was subsequently settled by agreement.—THORNLEY *v.* BROWN (1929), 15 Tax Cas. 459, C. A.

629a. —— **Discretion of court.**]—Under 1918 Act, s. 149, it is within the discretion of the High Ct. to remit a case to the Comrs. for re-hearing & decision without requiring that it be amended & returned for the decision of the ct. itself.—EDWARDS *v.* "OLD BUSHMILLS" DISTILLERY CO., LTD. (IN LIQUIDATION) (1926), 10 Tax Cas. 285, H. L.

Annotations:—**Refd.** Aylmer *v.* Mahaffy (1925), 10 Tax Cas. 594; I. R. Comrs. *v.* "Old Bushmills" Distillery Co. (1927), 12 Tax Cas. 1148.

629b. **Incomplete finding as to residence—Failure of commissioners to comply with directions of court—Consent of Crown to dismissal of appeal.**]—Estimated assessments were made upon resp. for the years 1923–24 & 1924–25 in respect of literary profits, & she appealed against them on the ground, *inter alia*, that she was not resident in the United Kingdom. She was not present at the hearing of the appeal nor was any evidence called on her behalf, & an adjournment was therefore applied for on behalf of the Crown. The General Comrs. refused the application & found, on statements made by her representative, that she was "resident abroad," not that she was not resident in the United Kingdom, "& that the income was earned abroad." When the case first came before the K. B. Div. it was remitted to the Comrs. to hear evidence for the purpose of ascertaining "facts as to the residence of the resp. in the United Kingdom & whether the income accrued in the United Kingdom or not." The Comrs., however, after the rehearing of the appeal at which resp. was present, found only that she was "resident abroad," & that her profession was "exercised abroad," except as regards the three articles written in this country. On the case again coming before the K. B. Div., the A.-G. pointed out that the Comrs. had not complied with the directions of the ct. as to the form of their finding as regards residence, but said that, while he could not admit that on the facts proved the Crown were wrong in taking the view that resp. was resident in the United Kingdom, he would not, in all the circumstances, ask for the case to be again

PART IX. SECT. 2, SUB-SECT. 3.—C.

c i. —— —— *Where jurisdiction discretionary.*]—MOHAMMAD FARID-MOHAMMAD SHAFI *v.* LAHORE INCOME TAX COMR. (1927), I. L. R. 9 Lah. 317. —IND.

c ii. —— *To compel alteration of assessment.*]—The High Ct. will not, by *mandamus* or process of a like nature, compel the Federal Comr. of Taxation to exercise the power given him to make alteration in, or additions to, any assessment, where he does not think that such alterations or additions are necessary in order to insure the completeness & accuracy of the assessment.—*Ex p.* CARPATHIA TIN MINING CO., LTD. (1924), 35 C. L. R. 552; 31 Argus L. R. 22.—AUS.

c iii. —— *To compel commissioner to state a case—Not on new points of law.*]—*Held*: where an assessee seeks for a *mandamus* from the High Ct. against the Comr. of Income Tax requiring him to state a case on points of law different from those he had argued before the Comr. to state a case, his application cannot be entertained.—A. K. A. C. T. V. CHETTYAR FIRM *v.* INCOME TAX COMR. (1928), I. L. R. 6 Ran. 492.—IND.

remitted & would consent to the appeal being dismissed.—FARRAND *v.* SATTERTHWAITE (1929), 14 Tax Cas. 470.

630. *Add. Citation :*—12 Tax Cas. 166.

631a. Notice requiring commissioners to state & sign case—Must be in writing—Oral application to commissioners insufficient.]—R. *v.* INCOME TAX COMRS. FOR EDMONTON, *Ex p.* THOMPSON, [1929] 1 K. B. 220; 98 L. J. K. B. 201; 140 L. T. 380; 45 T. L. R. 91; *sub nom.* R. *v.* EDMONTON INCOME TAX COMRS., *Ex p.* THOMSON, 14 Tax Cas. 313, D. C.

632a. Transmission of case after "receiving" same.]—After stating a case the comrs. sent it to the office of the person requiring it, the surveyor of taxes, at the office occupied by the latter at the time the appeal was before them, the address of which was on all the official documents in the appeal. The surveyor had left the office in the interval & gone to another one :—*Held :* the case had been "received" by the surveyor within 1918 Act, s. 149 (1) (*d*).—GRAINGER *v.* SINGER, [1927] 2 K. B. 505; 96 L. J. K. B. 917; 137 L. T. 692; 43 T. L. R. 591; 11 Tax Cas. 704.

632b. Exchanging points of argument.]—(1) It is not necessary to exchange points of argument, but either party may, not later than ten days before the argument, give to the other party notice in writing of any point intended to be made which would be likely to take the other party by surprise, in default of which the ct. may adjourn the argument on such terms as may be just.

(2) A case may be set down by either party subject to the same conditions in all respects as cases have heretofore been set down by the party at whose instance they have been stated.—PRACTICE NOTE, [1926] W. N. 250.

632c. ——.]—TARN *v.* SCANLAN, NIELSEN, ANDERSEN & CO. *v.* COLLINS, MULLER (W. H.) & CO. (LONDON) *v.* LETHEM, SAME *v.* INLAND REVENUE COMRS., No. 168a, *ante.*

632d. Setting down case.]—PRACTICE NOTE, No. 632b, *ante.*

632e. ——.]—TARN *v.* SCANLAN, NIELSEN, ANDERSEN & CO. *v.* COLLINS, MULLER (W. H.) & CO. (LONDON) *v.* LETHEM, SAME *v.* INLAND REVENUE COMRS., No. 168a, *ante.*

632f. Remitting case to commissioners — For amendment—Grounds for granting or refusing application to remit.]—HAYTHORNTHWAITE & SONS, LTD. *v.* KELLY (1927), 11 Tax Cas. 657, C. A.

633a. On appeal against assessment on person carrying on non-resident's regular agency—Order for costs made against agent.]—WILCOCK *v.* PINTO & CO. (IN THE NAME OF KUMMER) (1925), 10 Tax Cas. 415, C. A.

638a. Summary proceedings—Limitation of action—When time begins to run.]—On Dec. 19 a collector of taxes commenced summary proceedings to enforce payment of an instalment of income tax payable "on or before" the preceding July 1. The first demand note in respect of the instalment in question had been issued on June 12. The magistrate dismissed the case on the ground that the period of six months within which the proceedings should have been commenced ran from June 12 :—*Held :* proceedings could be commenced within six months from July 1.—MANN *v.* CLEAVER (1930), 15 Tax Cas. 367, D. C.

Part X.—Penal Provisions.

642a. Penalties—Power to compound.]—Under 1918 Act, s. 222 (1), the comrs. may compound any penalties, which in their opinion have been incurred, without any proceedings to enforce such penalties having been taken—A.-G. *v.* JOHNSTONE (1926), 136 L. T. 31; 10 Tax Cas 758.

PART IX. SECT. 2, SUB-SECT. 3.—D.

sp. *Evidence—Not limited to material before Board of Appeal.*]—FEDERAL TAXATION COMR. *v.* LEWIS BERGER & SONS (AUSTRALIA), LTD. (1927), 39 C. L. R. 468.—**AUS.**

st. *Burden of proof—On appellant—To establish right to benefit claimed.*]—MOREAU *v.* FEDERAL TAXATION COMR. (1926), 39 C. L. R. 65.—**AUS.**

PART IX. SECT. 3.

634 i. *Whether available—Not action for return of money—Assessment levied in default of return.*]—DR. R. N. SINGHA *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL (1927), I. L. R. 5 Ran. 825.—**IND.**

PART X.

j i. —— *Laying information—Within what time.*]—Criminal Code, s. 1142, applies to prosecutions under Income War Tax Act, 1917 (c. 28).—R. *v.* DONEN, [1925] 1 D. L. R. 1141; [1925] 1 W. W. R. 567; 43 Can. Crim. Cas. 271; 34 Man. L. R. 597.—**CAN.**

j ii. —— —— ——.]—An information under Income War Tax Act, 1917 (c. 28), s. 8, for failing to make a return of income within thirty days after demand made therefor, must be laid within six months from the day or days as to which accused is charged with being in default, Criminal Code, s. 1142, being applicable thereto.—R. *v.* MEEHAN, [1925] 2 D. L. R. 411; [1925] 1 W. W. R. 819; 43 Can. Crim. Cas. 325.—**CAN.**

j iii. —— *By "person who has not made return"—Who is.*]—Where on being charged for failing to make a return after demand made therefor, accused satisfies the magistrate that he had made a return when it was first due, he is not a "person who has not made a return" within Income War Tax Act, 1917 (c. 28), s. 8, & is under no liability for failing to make another return upon the demand.—R. *v.* BATTERS, [1925] 1 D. L. R. 726; [1925] 1 W. W. R. 275; 35 Man. L. R. 146.—**CAN.**

j iv. —— *Appeal—"Criminal cause."*]—Resp. having pleaded guilty on an information laid for a breach of Income War Tax Act, 1917 (c. 28), s. 8, the magistrate decided that he could impose a lesser penalty than that imposed by sect. 9 (1), & his decision was affirmed on appeal :—*Held :* special leave to appeal to the Supreme Ct. could not be granted, the proceeding being a "criminal cause" within Supreme Ct. Act, s. 36.—R. *v.* BELL, [1925] 2 D. L. R. 57; [1925] S. C. R. 59; 43 Can. Crim. Cas. 286.—**CAN.**

sw. *Proceedings under Income War Tax Act—By whom instituted.*]—R. *v.* ED (N. B.) (1926), 47 Can. Crim. Cas. 196.—**CAN.**

sx. —— *Appeals—Costs.*]—R. *v.* ED (N. B.), [1927] 3 D. L. R. 826; 48 Can. Crim. Cas. 246.—**CAN.**

Part XI.—The Super Tax.

NOTE.—*By the Finance Act*, 1927 (*c.* 10), *s.* 38 (1) (*b*), *Super Tax is replaced by Sur-Tax for the year 1929–30 & subsequent years.*

644. *Add. Annotations:—As to* (1) **Refd.** *Re* Reckitt, Reckitt *v.* Reckitt (1932), 173 L. T. Jo. 452. *As to* (2) **Refd.** *Re* Armaghdale, Craig *v.* Armaghdale (1928), 44 T. L. R. 239.

645. *Add. Annotations:*—**Refd.** *Re* Hulton, Hulton *v.* Midland Bank Executor & Trustee, Ltd. (1930), 99 L. J. Ch. 316; *Re* Reckitt, Reckitt *v.* Reckitt (1932), 173 L. T. Jo. 452.

646a. Nature of sur-tax.]—In every essential feature super-tax & sur-tax are the same tax. *Re* HULTON, HULTON *v.* MIDLAND BANK EXECUTOR & TRUSTEE, LTD., [1931] 1 Ch. 77; 99 L. J. Ch. 316; 144 L. T. 343; 46 T. L. R. 348; 74 Sol. Jo. 233.

646b. Party chargeable dying insolvent—Super tax due in respect of several years—To what years appropriation of payments made.]—*Re* CAMPBELL, COMMERCIAL BANK OF SCOTLAND *v.* CAMPBELL (1923), 10 Tax Cas. 585.

648. *Add. Annotations:*—**Apprvd.** Whitney *v.* I. R. Comrs., [1926] A. C. 37. **Refd.** I. R. Comrs. *v.* Pakenham, I. R. Comrs. *v.* Longford (1927), 96 L. J. K. B. 882.

649. *Add Citation:*—10 Tax Cas. 88.

Add. Annotations:—**Refd.** Birt, Potter & Hughes *v.* I. R. Comrs. (1927), 12 Tax Cas. 976; I. R. Comrs. *v.* Pakenham, I. R. Comrs. *v.* Longford (1927), 96 L. J. K. B. 882; Cockerline (W. H.) & Co. *v.* I. R. Comrs. (1930), 47 T. L. R. 13; United Kingdom Advertising Co. *v.* Whiting (1931), 47 T. L. R. 420.

654. *Add. Annotations:—As to* (1) **Refd.** Whitney *v.* I. R. Comrs., [1926] A. C. 37. *Generally*, **Refd.** I. R. Comrs. *v.* Pakenham, I. R. Comrs. *v.* Longford, Gascoigne *v.* I. R. Comrs., [1927] 1 K. B. 594.

661. *Add. Citations:*—[1926] 2 K. B. 246; 95 L. J. K. B. 694; 134 L. T. 699; 11 Tax Cas. 181.

Add. Annotation:—**Refd.** I. R. Comrs. *v.* Wright, [1927] 1 K. B. 333.

662. *Add. Citations:*—134 L. T. 754; 10 Tax Cas. 351.

662a. —— ——.]—A co. having a sum consisting of accumulated profits standing to the credit of its reserve fund & being empowered so to do by its arts. of assocn., passed resolutions that its capital should be increased by the creation of new shares, & that it was desirable to capitalise the sum & make it available for distribution among the shareholders as capital free from income tax, & further resolutions pursuant to which the sum was applied in payment up of the new shares, which were to be offered to the shareholders in proportion to their existing shares with an option to them either to accept the new shares so fully paid up, or to take their nominal value in cash. A shareholder having accepted the whole of the new shares offered to him as fully paid, was assessed to super tax in respect thereof. The Special Comrs. having discharged the assessment:—*Held:* so far as the question raised was a matter of fact, it was concluded against the revenue by the finding of the Comrs., & so far as it was a matter of law, it was concluded against the revenue by *Bouch* v. *Sproule* (1887), 12 App. Cas. 385, *Inland Revenue Comrs.* v. *Blott, Inland Revenue Comrs.* v. *Greenwood*, No. 663, & *Inland Revenue Comrs.* v. *Fisher's Executors*, No. 664, the co. being dominant for all purposes, & the shares not bearing the character of income.—INLAND REVENUE COMRS. *v.* WRIGHT, [1927] 1 K. B. 333; 95 L. J. K. B. 982; 135 L. T. 718; 11 Tax Cas. 181, C. A.; *revsg.* S. C. *sub nom.* INLAND REVENUE COMRS. *v.* COKE, SAME *v.* WRIGHT, [1926] 2 K. B. 246.

Annotation:—**Distd.** Parker *v.* Chapman (1928), 138 L. T. 729.

662b. —— **On amalgamation of company.**]—*Held:* part of resp.'s income.—INLAND REVENUE COMRS. *v.* ROBERTS (1927), 13 Tax Cas. 277, C. A.

Annotation:—**Consd.** Thompson *v.* Trust & Loan Co. of Canada, [1932] 1 K. B. 517.

663. *Add. Annotations:*—**Apld.** I. R. Comrs. *v.* Fisher's Exors., [1926] A. C. 395; I. R. Comrs. *v.* Wright (1926), 95 L. J. K. B. 982. **Distd.** Parker *v.* Chapman (1928), 138 L. T. 729. **Refd.** Whitmore *v.* I. R. Comrs. (1925), 10 Tax Cas. 645; Martin *v.* Lowry, Martin *v.* I. R. Comrs., [1926] 1 K. B. 550; Baker *v.* Archer-Shee, [1927] A. C. 844; I. R. Comrs. *v.* Dalgety & Co. (1929), 98 L. J. K. B. 542; Gimson *v.* I. R. Comrs., [1930] 2 K. B. 246; Hamilton *v.* I. R. Comrs., [1931] 2 K. B. 495; Wilkinson *v.* I. R. Comrs. (1931), 16 Tax Cas. 52.

664. *Add. Citations:*—[1926] A. C. 395; 95 L. J. K. B. 487; 134 L. T. 681; 10 Tax Cas. 302, H. L.

Add. Annotations:—**Followed.** Whitmore *v.* I. R. Comrs. (1925), 10 Tax Cas. 645. **Apld.** I. R. Comrs. *v.* Wright (1926), 95 L. J. K. B. 982.

664a. —— —— —— ——.]—A limited co. appropriated for distribution among its ordinary shareholders as a capital bonus £200,000 undivided profits which had been carried to the credit of its reserve account, the amount to be applied (1) in subscribing for one hundred & fifty £1,000 4 per cent. debentures of the co., & (2) in paying up in full fifty thousand £1 unissued ordinary shares of the co. All the ordinary shares were held by one of the directors. The debentures, all of which were issued to this shareholder, were redeemable at one month's notice by the co. at any time, & at one month's notice by the holder after May 25, 1920. On Apr. 16, 1920, the whole of the £150,000 due on the debentures was paid by the co. to the holder, interest being waived by him, & the co. thereupon borrowed £72,500 from him at 6 per cent. interest, a liability reduced to

£33,117 by June 30, 1920:—*Held:* the debentures constituted a capital receipt in the hands of the shareholder, & he was not assessable to super tax for the year 1920-21 in respect of the amount of the debentures.—WHITMORE *v.* INLAND REVENUE COMRS. (1925), 10 Tax Cas. 645.

665. *Add. Annotations:*—**Reld.** I. R. Comrs. *v.* Fisher's Exors., [1926] A. C. 395; I. R. Comrs. *v.* Wright (1926), 95 L. J. K. B. 982.

666. For the existing paragraph substitute the following paragraph:—

Distribution of profits—Assets of company written up—Loans to directors written off.]—A partnership business was converted into a limited co. in 1916, practically the whole of the shares therein being held by two resps., the original partners, who were brothers, & were also the governing directors. The accounts showed profits of £117,000 for the three years ending Dec. 1919, but no dividends were declared or paid. The co., having power to lend money, granted loans amounting to £283,000 to resps. at 5 per cent. interest, against which the capital assets were increased in value by £226,000 & profits drawn upon to the extent of £57,000. The actual cash lent was mainly provided by a bank overdraft. At a later date resps. duly passed resolutions purporting to cancel the debt of £283,000 by writing it off against the general reserve fund. Resps. having been assessed to super tax upon £283,000:—*Held:* (1) the loans were genuine loans, which gave rise to no liability to super tax, even if cancelled, except as to the £57,000 taken from profit & loss account; (2) the purported release of the debt was wholly invalid & ineffectual, & resps. remained liable to the co. to repay the whole amount of the £283,000 but were not liable for any super tax thereon.—HALL *v.* INLAND REVENUE COMRS. (1926), 135 L. T. 759; 11 Tax Cas. 24, C. A.

666a. **Transfer of assets to subsidiary company—In consideration of shares—Distribution to shareholders in parent company.**]—A colliery co. which had accumulated large reserves transferred certain of its assets, comprising land & houses, freehold minerals, railway wagons & outside investments, to a subsidiary co. formed in order to take over the assets. The consideration for the transfer was to be satisfied by the allotment to the parent co. of shares in the subsidiary co. The parent co. declared bonuses on its own shares to be satisfied by the issue to its shareholders of the shares to which it was entitled in the subsidiary co. & those shares were, in fact, allotted direct by the subsidiary co. to the shareholders in the parent co. The transaction was shown in the books of the parent co. by the transfer to the balance of profit & loss account of the balances standing to the credit of reserve & other accounts, & the distribution of bonus shares was recorded as having been made out of the balance of profit & loss account. The original shareholders in the subsidiary co. were identical with those in the parent co. The first directors of the subsidiary co. were the directors of the parent co. &, with one exception, the directors of the two cos. were the same throughout. It was the intention of the directors of the parent co. to retain under their control the assets transferred to the subsidiary co. & the two cos. were to a large extent inter-dependent, the parent co. being partially dependent on the subsidiary co. for finance. Applt. & his wife, as holders of shares in the parent co., received a distribution of shares in the subsidiary co. & an amount representing the value of the shares plus an appropriate addition for income tax was included in an assessment to super-tax made upon applt. The Special Comrs. on appeal held that the distribution was a release by the parent co. of assets to its shareholders & that to the extent to which the distribution represented a distribution of current or accumulated profits it was income assessable to super-tax:—*Held:* that the Special Comrs.' decision was correct.—BRIGGS *v.* INLAND REVENUE COMRS. (1932), 17 Tax Cas. 11.

666b. **Distribution of shares in another company—Acquired out of accumulated profits.**]—A public limited co. promoted & registered a subsidiary co., subscribing in cash for the whole of its issued share capital, which was held by nominees of the parent co. The whole of the shares in the parent co. were subsequently purchased by a third co. under an agreement which provided that part of the consideration should be the assignment to the existing shareholders in the parent co. of the shares in the subsidiary co. & of a debt due by the subsidiary to the parent, in satisfaction of which a further issue of shares was made by the subsidiary. Under the authority of an extraordinary resolution of the parent co. the shares in the subsidiary, which were declared to be capital assets of the parent in excess of liabilities & paid up share capital, were distributed, in specie, among the shareholders of the parent co. in proportion to their respective holdings. Applt. was assessed to super tax in an estimated figure to cover the value of shares so distributed to him to the extent that they had been acquired by the parent co. out of accumulated profits. He appealed to the Special Comrs., contending that the distribution was a distribution of capital. The Special Comrs. held that to the extent that the shares distributed to applt. were acquired by the parent co. out of its accumulated profits they represented income liable to super tax in applt.'s hands:—*Held:* the Special Comrs.' decision on the point argued before them was correct, without prejudice, however, to the position which would arise in a case where shares acquired out of accumulated profits were required in the balance sheet to answer share capital.—WILKINSON *v.* INLAND REVENUE COMRS. (1931), 16 Tax Cas. 52.

667. *Add. Annotations:*—*As to* (1) **Consd.** Perrin *v.* Dickson (1929), 98 L. J. K. B. 683. *As to* (3) **Apld.** Westcombe *v.* Hadnock Quarries, Ltd. (1931), 16 Tax Cas. 137.

668. *Add. Citations:*—95 L. J. K. B. 465; 42 T. L. R. 239; 70 Sol. Jo. 366; 10 Tax Cas. 235.

Add. Annotation:—**Dbtd.** I. R. Comrs. *v.* Pakenham, I. R. Comrs. *v.* Longford, Gascoigne *v.* I. R. Comrs., [1927] 1 K. B. 594.

668a. —— **Part retained by trustees—For payment of death duties.**]—Applt.'s first husband, by

his trust disposition & settlement, gave the whole of his property, real & personal, to trustees for payment of his debts, except those heritably secured on his real estate, his funeral expenses, & the management expenses of the trust, any legacies he might leave, & an annuity to a niece, & subject thereto, in the events which happened, the trustees were to hold the whole of his property on trust to pay out of the free income thereof an annuity to his sister, & subject to the implement of all prior purposes of the trust, the trustees were, as soon as convenient after his death, to convey all his lands & estates to applt. in life-rent during her life, with remainders over to a series of heirs, & to hold the whole of the residue of his property in trust for her in life-rent during her life & on her death to the person then entitled to the landed estates in fee. In addition to all powers competent to them by statute or common law, testator conferred on his trustees all powers of administration competent to a fee simple proprietor, &, in particular, power to sell any part of his property & to grant leases of any part of the heritable property. On the death of testator in 1919, heavy death duties became payable on the heritable estates, which were already heavily mortgaged. The trustees elected to pay the duties by sixteen half-yearly instalments, of which the earliest were met out of the proceeds of sale of testator's stocks & shares. Pending the realisation of such part of the heritable estates as, after necessary reductions of the charges thereon, would be sufficient to meet the remaining instalments, the trustees retained the estates & the management thereof in their own hands, & paid applt. only the free annual income. On the footing that she was entitled to the life-rent of the estates from the date of her husband's death, applt. was assessed to super tax for the year 1923–24 on the whole annual value of the estates as assessed to income tax, Sched. A., for the previous year, & this assessment was upheld by the Special Comrs. on appeal:—*Held:* applt. was assessable to super tax for the year 1923–24 only on the amount of the free income actually receivable by her from the trustees for the preceding year, the trustees & not applt. being owners of the estates for the purposes of Sched. A. for that year.—DE ROBECK (LADY) *v.* INLAND REVENUE COMRS. (1928), 13 Tax Cas. 345, H. L.

Annotation:—**Distd.** Shanks *v.* Inland Revenue Comrs., [1929] 1 K. B. 342.

668b. —— —— **During minority.**]—Applt.'s grandfather left a share of his estate in trust for his son, applt.'s father, for life & after the father's death in trust for the issue of the father in such shares & on such conditions as the father should appoint: in default of appointment, in trust for those children equally who should attain the age of twenty-one. The father died in 1919. His will exercised the power of appointment mentioned above & provided, *inter alia*, that the property settled by the will of the grandfather should on the father's death be divided into as many shares as he should have children surviving him, & that each child's share should be held by trustees on trust to pay the income to the child for twenty years from the father's death & after that period, if the child survived, to transfer the corpus to him absolutely. As the result of Chancery proceedings with reference to the father's will the ct. ordered, *inter alia*, that a certain sum *per annum* should be paid to the guardian of applt. out of the income of his share in the grandfather's estate, for his maintenance during minority. It was contended that this amount only should be brought into the computation of applt.'s liability to super-tax:—*Held:* the income of the share of the estate appropriated to applt. was all income of applt. for super-tax purposes.—STERN *v.* INLAND REVENUE COMRS. (1929), 15 Tax Cas. 148, C. A.

670a. Partnership—Payments to widow of deceased partner—For use of firm name.]—A partnership deed provided that in the event of death of a partner the remaining partners might continue to use the firm's name, marks, & goodwill, paying to the exors. of the deceased partner for this privilege the sum of £500 quarterly for a period of five years, "after which it may be enjoyed without further payment." One of the partners died, leaving one-half of his residuary estate in trust for his widow, applt. The value of deceased's share in the capital & income of the partnership was agreed & paid to the exors. in full discharge of all claims except the quarterly payments. These payments were duly made, at first in full, but later under deduction of income tax. Applt. was assessed to super tax for the year 1926–27 in respect of her half share of the four quarterly payments received in 1925–26:—*Held:* the payments were income assessable to super tax.—MACKINTOSH *v.* INLAND REVENUE COMRS. (1928), 14 Tax Cas. 15.

671a. Loans to controlling shareholder of private company—No dividends declared.]—Applt. was the controlling shareholder of five private limited cos. From time to time he withdrew from the business of each of the cos. sums which he used to finance the purchase in his own name of premises to be occupied by himself trading as a firm. The sums so withdrawn were described in the cos.' accounts as "loans" to applt. trading as such firm. Each of the cos. had power to advance money on loan, with or without security, but, while in some cases the loans shown in the accounts to have been made to applt. were subsequently approved formally in general meeting, no previous formal authorisation was given for any of the loans. The loans were not secured by any document, & no provision was made as to repayment or interest thereon. None of the cos. ever

PART XI. SECT. 3, SUB-SECT. 2.—C.

sa. *Income received by settlor under voluntary settlement—Deductions—Outgoings by trustees.*]—*Held:* only the free income paid over to the settlor after payment of the outgoings by the trustees, with the appropriate addition for income tax, was his income for super tax purposes.—INLAND REVENUE COMRS. *v.* HAMILTON (LORD) OF DALZELL (1926), 10 Tax Cas. 406.—SCOT.

sb. *Free life rent use & enjoyment of house—All outgoings except tenant's taxes paid by trustees.*]—*Held:* the assessments made to include the outgoings paid by the trustees, as increased by the appropriate addition for income tax, were properly made.—DONALDSON'S EXECUTORS *v.* INLAND REVENUE COMRS. (1927), 13 Tax Cas. 461.—SCOT.

declared a dividend for any of the years material to the case. The Special Comrs. decided that the loans in question had not been made in the course of the businesses carried on by the cos., & that they were not genuine loans but constituted income of applt. for the purposes of super tax :—*Held :* there was ample evidence before the Comrs. to support their conclusion of fact.—JACOBS *v.* INLAND REVENUE COMRS. (1925), 10 Tax Cas. 1.

672. *Add. Citation :*—134 L. T. 408,

Add. Annotation :—**Refd.** Thompson *v.* Trust & Loan Co. of Canada (1932), 48 T. L. R. 209.

672a. Arrears of interest received by purchaser of bonds.]—Where a taxpayer purchases bearer bonds, on which the interest for several years is in arrear, & his purchase confers upon him the right to the arrears, & several years' arrears are subsequently paid to him in one sum, the whole of that sum forms for the purpose of super tax, under 1918 Act, s. 5 (3) (*c*), part of his income for the year in which payment was received.—LEIGH *v.* INLAND REVENUE COMRS., [1928] 1 K. B. 73; 96 L. J. K. B. 853; 137 L. T. 303; 43 T. L. R. 528; 11 Tax Cas. 590.

Annotations :—**Apld.** Grey *v.* Tilley (1932), 16 Tax Cas. 414. **Refd.** Simpson *v.* Maurice's Exors. (1929), 14 Tax Cas. 580.

673. *Add. Citations :*—135 L. T. 272; *affd.* (1928), 139 L. T. 26; 44 T. L. R. 420; 72 Sol. Jo. 239; 13 Tax Cas. 677, C. A.

673a. Income received by executor before assent to legacy.]—Under the will of his father, who died in Aug. 1921, resp. was entitled to a specific legacy of certain shares in two cos. Owing to difficulties in administration the exors. did not assent to the legacy until June, 1924, & in the meantime dividends had been declared upon the shares in Feb. & Aug. 1923, & in Mar. 1924, which dividends were retained by the exors. until their assent in June, 1924. Resp. was assessed to super tax upon these dividends for the years ending Apr. 5, 1924, & Apr. 5, 1925, respectively, on the basis that they were his income for the years when such dividends were payable by the cos. Resp. contended that as he was not in a position to require payment of the dividends from the exors. until June, 1924, they were not his income or receivable by him until then, & that he was wrongly assessed :—*Held :* the doctrine of relation of the exor.'s assent to the date of the death applied, & resp. was rightly assessed.—INLAND REVENUE COMRS. *v.* HAWLEY, [1928] 1 K. B. 578; 97 L. J. K. B. 191; 138 L. T. 710; 13 Tax Cas. 327.

Annotation :—**Refd.** Grey *v.* Tilley (1932), 16 Tax Cas. 414.

673b. Income from share of residue—When residue ascertained.]—Applt. on attaining the age of twenty-five became entitled to a quarter share in the capital & income of the residue of his father's estate, which consisted mainly of real property heavily mtged. The will provided that the property was to be divided when the youngest child attained twenty-five, which happened in 1916, & not before, & that until then the exors. & trustees should apply the surplus income, after payment of legacies, annuities, etc., in reduction of the mtge. debts. In fact the exors. did not divide the property & continued, from 1916 to 1925, to apply the surplus income to reducing the mtges. All testator's debts other than the mtge. debts had been paid off before Mar. 1919, & payment of certain legacies & annuities was begun in Dec. 1919, but no payment was made to the residuary legatees until 1921, after which small annual payments were made. The delivery of a residuary account was not necessary in this case as no legacy duty was payable on the residue. Assessments to super tax for the years 1920–21 to 1925–26 were made upon the applt. to include one-fourth of the income from the property, less annual charges, but without deduction for repayment of mtges. : —*Held :* so long as the mtge. or other debts remained unpaid the exors. were entitled to retain any assets coming to their hands, the applt. did not enforce conveyance to himself of his share of the residue, & therefore the income arising from his share was not his income for super tax purposes.—DAW *v.* INLAND REVENUE COMRS., DUFF-DUNBAR *v.* INLAND REVENUE COMRS. (1928), 14 Tax Cas. 58.

Annotation :—**Expld. & Distd.** I. R. Comrs. *v.* Smith, [1930] 1 K. B. 713.

673c. Question of fact.]—A testator by his will devised & bequeathed all his real & personal estate to exors., whom he also appointed trustees upon trust to sell & convert, with power to postpone, &, after payment of his funeral & testamentary expenses, debts & legacies, to divide the residue amongst his children in equal shares. At the time of testator's death the estate was subject to mtges. of considerable amount. The exors. had from time to time made advances to the children, & were in the habit of crediting a beneficiary's share of the income of the residuary estate in reduction of the interest on &, if sufficient, the capital of the advances to him. One of testator's sons having been assessed to super tax for the year ending Apr. 5, 1926, on income which included the sum so credited to him in the preceding year, appealed against the assessment on the ground that the residue had not as yet been ascertained, inasmuch as there was a mtge. on the estate for a large sum, which was still outstanding, & therefore that he had no income from testator's residuary estate to which super tax could attach. The Comrs. held that in those circumstances they were precluded by *Daw* v. *Inland Revenue Comrs.*, No. 673b, from holding that the residue had been ascertained, & they discharged the assessment :—*Held :* the question whether the residue had been ascertained & the bequest assented to by the exors. was a question of fact to be determined by the Comrs. & not by the ct.; there was no rule of law that the mere existence of an outstanding mtge. prevented the residue from being ascertained; the Comrs. had misdirected themselves in law in holding that *Daw's* case, No. 673b, prevented them from coming to a decision on the facts, & the case must be remitted to them for a finding whether on the facts the residue had been ascertained so as to constitute a trust fund; also, *Daw's* case, No. 673b, decided no principle of law, but was merely a decision on the particular facts of that case.—INLAND REVENUE COMRS. *v.* SMITH, [1930] 1 K. B. 713; 99 L. J. K. B. 361; 142 L. T. 517; 15 Tax Cas. 661, C. A.

674a. Annual value of family mansion occupied under will.]—*Held:* the occupant of a family mansion, under the terms of a will by which trustees were given general powers of management of the real estate & a discretion to admit to the mansion the present occupant or certain members of his family during his lifetime, must be regarded as being in occupation under the will, & the profits & gains representing the annual value of the house formed part of his income for purposes of super tax.—TOLLEMACHE *v.* INLAND REVENUE COMRS. (1926), 96 L. J. K. B. 766; 136 L. T. 444; 43 T. L. R. 58; 11 Tax Cas. 277.

Annotations:—**Consd.** Shanks *v.* I. R. Comrs., [1929] 1 K. B. 342. **Apprvd.** Sutton *v.* I. R. Comrs. (1929), 45 T. L. R. 565. **Consd.** Stedeford *v.* Beloe (1931), 47 T. L. R. 408. **Reld.** Miller (Lady) *v.* L. R. Comrs. (1930), 15 Tax Cas. 25.

674b. Difference between net Schedule A. assessment & reduced rental paid under lease.]—Resp. negotiated for a lease of a house at a rent of £135 *per annum*, but it was eventually agreed that if resp. would pay £683, which was necessary to put the premises in a fit state for habitation, a lease would be granted at a rent of £35 *per annum*. The sum of £683 was paid before the execution of the lease. The circumstances in which the rent was fixed at £35 *per annum* were not set out in the lease, which was for a term of seven years, shortly afterwards extended for another year in consideration of resp. contributing £141 towards further repairs, but it was agreed therein that the rent under any new lease should be £140 *per annum*:—*Held:* the sums paid by resp. for repairs at the beginning of his tenancy were capital expenditure, & the difference between the net Schedule A. assessment on the house & the rent of £35 actually paid under the lease formed part of his total income for super tax purposes.—INLAND REVENUE COMRS. *v.* FARGUS (1926), 10 Tax Cas. 665.

Annotations:—**Consd.** Shanks *v.* I. R. Comrs., [1929] 1 K. B. 342. **Reld.** I. R. Comrs. *v.* Miller, [1930] A. C. 222.

674c. Beneficial occupation—Right of residence in house rent free.] — SHANKS *v.* INLAND REVENUE COMRS., No. 11a, *ante*.

674d. —.]—Testator by his trust disposition & settlement directed his trustees to hold & retain his lands & estates at M. & to pay all duties & burdens & the cost of repair & maintenance &, in the event of his death without issue, to allow his wife "to occupy & possess during her lifetime free of rent or taxes both landlord's & tenant's" the mansion-house of M. with the offices & furniture & other effects therein & the game on his estates. Testator having died without issue, his widow, under the terms of the trust, occupied the mansion-house & lands at M. during the year ending Apr. 5, 1920.

On an appeal by her to the Special Comrs. against an additional assessment to super tax for the year ending Apr. 5, 1921, on a sum representing (*a*) the annual value of the mansion-house & lands, & (*b*) certain payments by the trustees for rates & wages, the Comrs. upheld the additional assessment, but their determination was reversed by the First Division of the Ct. of Session as the Ct. of Exchequer in Scotland:—*Held:* (1) as occupier in her own right of the mansion-house & lands the widow was rightly assessed on the annual value of her free enjoyment as being income liable to super tax. The liability of the occupier to super tax is not determined by the question whether he has power to let or otherwise to convert the annual value into money; (2) the money paid by the trustees for rates was paid for the benefit of the widow & ought to be included in her total income for super tax purposes.—INLAND REVENUE COMRS. *v.* MILLER, [1930] A. C. 222; 99 L. J. P. C. 87; 142 L. T. 497; 46 T. L. R. 207; 74 Sol. Jo. 138; *sub nom.* MILLER (LADY) *v.* INLAND REVENUE COMRS., 15 Tax Cas. 25, H. L.

Annotations:—*Generally*, **Consd.** Fry *v.* Salisbury House Estate, Ltd., Jones *v.* City of London Real Property Co., [1930] A. C. 432. **Reld.** Sutton *v.* I. R. Comrs. (1929), 14 Tax Cas. 662; I. R. Comrs. *v.* Scottish Central Electric Power Co. (1931), 145 L. T. 169; Michelham's Trustees *v.* I. R. Comrs., Michelham (Lady) Exors. *v.* I. R. Comrs. (1930), 144 L. T. 163.

674e. Profits of partnership—Executor of deceased partner becoming partner.]—Applt. was the sole extrix. & residuary legatee of her late husband, who, until his death in 1916, was a partner in a firm. At the time of his death large sums were owing to the firm from residents in enemy countries, & by arrangement with the Inland Revenue these were allowed as bad debts. on the understanding that any sums received in respect of them should be brought into account for income tax as profits of the firm of the year in which they were received. On her husband's death applt. became a partner in the firm. In 1921 a sum was received in respect of the enemy debts, in respect of which the firm was assessed to income tax in the year ended Apr. 5, 1923. By arrangement between the partners applt. bore a proportion of the assessment in respect of the sum so received proportionate to her late husband's share of the profits:—*Held:* no part of the sum received in respect of the enemy debts formed any part of applt.'s total income for super tax purposes.—LASSEN *v.* INLAND REVENUE COMRS. (1927), 138 L. T. 463; 13 Tax Cas. 229.

674f. —— Distributed by agreement after accumulation.]—In 1918 one of the partners in a firm died. Availing himself of certain provisions in the deed of partnership he had by his will nominated his son to be a partner & to succeed to his interests in the firm as from the date of his death. The partnership deed made such a nomination subject to the consent of the other partners, provided that such consent should not be unreasonably withheld. This consent was not given & was eventually, in 1926, formally refused. Throughout this period what would have been the deceased father's share of the profits was carried to a suspense account & remained undistributed. Under the provisions of the partnership deed if the son were admitted as a partner this share of the profits from the date of the father's death to the date of the son's admission would belong wholly to applt. in the first case; but if the son were not admitted these profits would be divisible equally between the first applt. & the three other partners. Two of the latter three retired & relinquished any claim they might have in the matter. It was agreed in 1926 that the accumulated profits should be distributed as to 25 per cent. to the one other then remaining original partner (whose exors. were applts. in the second case) & as

to 75 per cent. to the first applt. This distribution was not actually made until 1928. The son in 1926 & again in 1928 attempted unsuccessfully to contest by litigation the validity of these proceedings. The Crown contended that the parties were entitled, on the basis of the 1926 agreement, to shares of 75 per cent. & 25 per cent. respectively in the profits in question year by year from 1918 onwards & were assessable to super tax accordingly. The special comrs. on appeal upheld this view. Applts. demanded cases:—*Held:* the first applt. was assessable in respect only of the 25 per cent. to which he was entitled in any event & in the second case there was no liability.—FRANKLIN *v.* INLAND REVENUE COMRS., SWAYTHLING'S EXORS. *v.* INLAND REVENUE COMRS. (1930), 15 Tax Cas. 464.

674g. Undistributed profits of company—Finance Act, 1922 (c. 17), s. 21—"Reasonable time"—Termination by liquidation.]—The share capital of a limited co. registered in 1922 was held by four persons, & the co. was a co. to which above sect. applied. In Feb. 1924, the directors came to the conclusion that the prosperity of the business, which was speculative, might not continue. Accounts for the year to Mar. 31, 1924, were prepared, showing a profit of approximately £34,000, & were presented at the general meeting on May 14, 1924. No dividend was declared & at the same meeting a resolution for the voluntary winding-up of the co. was passed, & a liquidator appointed. The Special Comrs. issued a direction to the co. that for super tax purposes the co.'s income for the year ended Mar. 31, 1924, should be deemed to be the income of the four shareholders. This direction was discharged by the Special Comrs. on appeal, but was restored by the Board of Referees on a re-hearing. The contention of the co. was that above sect. had no application in the circumstances of the case, & that on the passing of the resolution for winding-up it had no power to declare a dividend:—*Held:* the co., by going into liquidation while the "reasonable time" contemplated by the Act was still running, terminated that reasonable time, & that in view of the intended liquidation it would have been reasonable for them to have distributed the whole of the available income.—SUTCLIFFE (LIONEL), LTD. *v.* INLAND REVENUE COMRS. (1928), 14 Tax Cas. 171.

674h. —— —— What amounts to income—Profits appropriated to endowment policies.]—Applt. co. was formed in 1918 as a private limited co. by a husband & wife, who at all times held all its issued capital except five one-shilling shares. The objects for which it was established did not include the carrying on of any business to which the Assurance Co. Act, 1909 (c. 49), applies. The only business that the co. carried on was the issuing of endowment policies & the management of the funds received by way of premiums for such policies. The only policies issued were a small number of policies issued to the husband & wife in 1918 & 1919, payable in 1928 & 1929. After the surrender of certain policies in force only for a few months in 1918 & 1919 the only policies remaining were four policies, the consideration for each of which had been the transfer in one amount to the co. as a lump sum premium, of National War Bonds of a face value equal to the amount assured by the policy. Under these policies the co. undertook to repay the sum assured "together with any bonus which at the time of payment will be attached to the policy." There was no provision in the policies or in the co.'s articles giving the policy-holders a title to any share in the co.'s profits. The co. each year "appropriated" to the account kept for each of the policies an amount approximately corresponding to the interest on the bonds transferred as the premium for such policy & made corresponding investments, which were treated as held against the policy:—*Held:* the interest in question was income of the co. for the purposes of sect. 21.—ENDOWMENT CO., LTD. *v.* INLAND REVENUE COMRS. (1929), 14 Tax Cas. 353.

674j. — —— —— Sums applied in repayment of share or loan capital or debt.]—A private limited co. was incorporated in Mar. 1915, to purchase from H. certain freehold & leasehold properties known as the C. Estate, subject to mtges. owing thereon amounting to £238,000, which were vested in H., who also held all the shares in the co. with the exception of two which were held by two directors of the co., who together with H. were the directors of the co. The Arts. of Assocn. of the co. contained an article, No. 95, which provided that "so long as any mtge. or charge affecting any property of the co. shall remain outstanding & unsatisfied the net profits of the co. shall be applied in the discharge & satisfaction, so far as the same shall be available, of the principal moneys & the moneys secured by any mtge. or charge for the time being outstanding & unsatisfied, unless the co. shall by special resolution direct to the contrary." There was also a deed poll executed by H. in Nov. 1915, by which it was provided that the net profits of the co. should be applied, without any deduction for interest on mtge. debts to which he was entitled, in the discharge & satisfaction of the principal moneys & interest payable in respect of the mtge. debts mentioned in the sched. to the deed poll, to which H. was not beneficially entitled. These outstanding mtges. were afterwards taken over by H. No dividends had ever been paid by the co., but the mtges. had been reduced from £238,000 to £186,000, & the co. had also accumulated a reserve fund of £80,000. The Special Comrs. made a direction under Finance Act, 1922 (c. 17), s. 21, which was confirmed by the Board of Referees, that for the purposes of assessment to super tax the actual income from all sources of the co. should for the periods ended June 24, 1924, 1925, & 1926, respectively, be deemed to be the income of the members of the co.:—*Held:* (1) neither art. 95 of the Arts. of Assocn. of the co. nor the fact that no special resolution had been passed by the co. altering the requirements of that article precluded the Special Comrs. from making a direction under Finance Act, 1922 (c. 17), s. 21 (1), that the co. had not distributed a reasonable part of its income to its members, & therefore the income of the co. should for the purposes of assessment to super tax be deemed to be the income of its members;

(2) the fact that Finance Act, 1927 (c. 10), s. 31 (1), expressly provided that sums expended or applied in redemption or repayment of any share or loan capital or debt should be regarded as income available for distribution among the members of the co.; & therefore in terms applied to the present case, did not prevent such sums being regarded as available for distribution among the members of the co. under the general provisions contained in Finance Act, 1922 (c. 17), s. 21 (1); (3) where there has been no distribution by a co. among its members of a reasonable part of its actual income, & in consequence a direction has been made by the Special Comrs. under Finance Act, 1922 (c. 17), s. 21 (1), that the actual income from all sources of the co. shall for the purposes of assessment to super tax be deemed to be the income of the members, the whole of the income of the co. & not merely that part of its income that might reasonably have been distributed by the co. among its members, is to be treated as being covered by the direction of the Comrs.—COLVILLE ESTATE, LTD. *v.* INLAND REVENUE COMRS., [1930] 2 K. B. 393; 100 L. J. K. B. 101; 144 L. T. 28; 15 Tax Cas. 485.

674k. —— —— —— ——.]—G., Ltd., was a private co. incorporated in 1918. At all times material in the present case the whole capital was held by two persons, who were also the co.'s sole directors. G., Ltd., in pursuance of one of the objects for which it was formed, acquired in 1918 the whole issued share capital of another co. The funds necessary for this transaction were obtained partly by loans from the two directors, & partly by a loan from a bank obtained on the conditions (*a*) that all the shares so acquired were deposited with the bank as security, & (*b*) that all dividends on the shares were paid to the bank, as & when received, in reduction of the amount due to the bank. From 1919 to 1923 dividends were received & paid over under this arrangement. During these years G., Ltd., had no other income. Its expenses were met by loans from the directors who also from time to time lent to the co. further sums which were paid to the bank to reduce the balance due from the co. At May 21, 1922, the co.'s financial year ended on May 21, the amount owing to the bank was £4,965. In Nov. 1922, the bank advanced further sums with which the co. made other investments. The amount owing to the bank at May 21, 1923, was £7,933. The Special Comrs. issued "directions" under Finance Act, 1922 (c. 17), s. 21, that the dividends received by G., Ltd., during the year to May 21, 1922, £19,500, & during the year to May 21, 1923, £6,500, should be deemed to be income of the two shareholders for super tax purposes. On appeal the Special Comrs. discharged these "directions." The I. R. Comrs. required the case to be reheard by the Board of Referees, who restored the "directions." The co. appealed to the High Ct.:—*Held:* (*a*) as regards the first year, the co. could not make any distribution & the decision of the Board of Referees could not stand; (*b*) as regards the second year, the Board of Referees were entitled to come to the decision which they had given, as there was a balance available for distribution, the amount of the dividends received having been in excess of the amount owing to the bank in respect of the 1918 loan.—GLAZED KID, LTD. *v.* INLAND REVENUE COMRS. (1930), 15 Tax Cas. 445.

Annotation:—**Consd.** Colville Estate, Ltd. *v.* I. R. Comrs. (1930), 100 L. J. K. B. 101.

674l. —— —— —— **Income for period ending on date of winding-up resolution.**]—COLLIER (H.) & SONS, LTD. *v.* INLAND REVENUE COMRS. (1932), 49 T. L. R. 46, C. A.

674m. —— —— **Direction by Special Commissioners — Construction of articles.**] — COLVILLE ESTATE, LTD. *v.* INLAND REVENUE COMRS., No. 674j, *ante*.

674n. —— —— —— **Amount of income affected.**] COLVILLE ESTATE, LTD. *v.* INLAND REVENUE COMRS., No. 674j, *ante*.

674o. —— —— **"Reasonable part of income"— Sums carried to reserve.**]—Applt. co.'s business was concerned with the dealing in & the ownership & management of property. The co.'s net profits for the year ended Mar. 25, 1928, were £38,868 & its income, computed as for income tax purposes, was approximately £26,000. Dividends were declared in respect of the year ended Mar. 25, 1928, amounting to £18,750 & £20,000 was transferred to reserve. A direction by the Special Comrs. under Finance Act, 1922 (c. 17), s. 22 (1), in respect of the year ended Mar. 25, 1928, was discharged on appeal & the appeal was re-heard by the Board of Referees. The co. contended that the allocation to reserve out of the profits of the year in question was reasonable & proper having regard, in general, to the co.'s need for a reserve for the maintenance & development of its business &, in particular, to the co.'s commitments in the way of redemption of mtgs. secured on its property & to a possible additional liability to income tax of some £20,000 dependent upon the final decision in the case of *Salisbury House Estate, Ltd.* v. *Fry*, which at the time of the allocation was under appeal to the cts.). The Board of Referees held that the co. had not within a reasonable time after Mar. 25, 1928, distributed a reasonable part of its actual income for the year ended on that date & restored the Special Comrs.' direction:—*Held:* there was evidence upon which the Board of Referees could come to their decision, which was not wrong in law.—LONDON & NORTHERN ESTATES CO., LTD. *v.* INLAND REVENUE COMRS. (1931), 16 Tax Cas. 128.

674p. **"Under the control of not more than five persons"—Meaning of "control."**] —All the issued shares in a private co. carried equal voting rights & were held equally by fifteen different persons, none of whom was under any agreement as to how he should use the voting power attached to the shares. Substantially only one person was interested in the co., & it was a matter of inference that he might have been able to rely on the willing co-operation of the other shareholders:—*Held:* in these circumstances the co. was not "under the control of not more than five persons" within Finance Act, 1922 (c. 17), s. 21 (6), as amended by Finance Act, 1927 (c. 10), s. 31, so as to entitle the income of the co., for the purposes of assessment to super tax, to be deemed to be

the income of the members of the co. as provided by sect. 21 of 1922 Act. "Control," apart from the artificial instances specifically mentioned in sect. 21 (6) of 1922 Act means "actual control."—HIMLEY ESTATES, LTD. *v.* INLAND REVENUE COMRS. (1932), 48 T. L. R. 341; 76 Sol. Jo. 327; *affd.* 174 L. T. Jo. 443, C. A.

674q. **Who are "members"—Whether trustees or beneficiaries.**]—DREW (ALEXANDER) & SONS, LTD. *v.* INLAND REVENUE COMMISSIONERS (1932), 17 Tax Cas. 140.

674r. Sums expended by trustees—Upkeep of trust property.]—Applt. was the tenant for life of a mansion & land under a will which provided that the trustees should pay all outgoings & expenses of keeping up the property. Applt. was assessed to super tax in respect of the sums so expended by the trustees:—*Held:* as applt. had had the benefit of the sums expended by the trustees, he was properly assessed to super tax in respect thereof.—SUTTON *v.* INLAND REVENUE COMRS. (1929), 45 T. L. R. 565; 14 Tax Cas. 662, C. A.

674s. **Payment of rates.**]—INLAND REVENUE COMRS. *v.* MILLER, No. 674d, *ante*.

674t. Dividends paid out of fund not assessed to income tax.]—Where a shareholder receives a dividend from a limited liability co. paid out of a fund consisting of income received by the co. in earlier years, which owing to the principles of measurement of income tax has not in fact been assessed to income tax, such dividend is not liable to assessment to the shareholder's super tax.—GIMSON *v.* INLAND REVENUE COMRS., [1930] 2 K. B. 246; 99 L. J. K. B. 532; 143 L. T. 704; 15 Tax Cas. 595.

Annotation:—**Distd.** Hamilton *v.* I. R. Comrs., [1931] 2 K. B. 495.

674u. ——.]—Where a sum is distributed to the shareholders in a co. out of the untaxed income of the co., the shareholders are not assessable to sur-tax upon it.—NEUMANN *v.* INLAND REVENUE COMRS. (1932), 49 T. L. R. 1.

674v. Dividends exceeding income of company for income tax purposes.]—Applt. was the holder of shares in a limited co. which, during the year 1928–29, paid dividends exceeding in amount the income of the co., as computed for income tax purposes, for the periods in respect of which the dividends were declared. The dividends were paid under deduction of income tax at the standard rate. On an appeal against an assessment to sur tax, which included the full amount of the dividends, he contended that his income from to co., for sur tax purposes, could not exceed the proportion received by him of the co.'s statutory income" for the relative periods, *i.e.* the total amounts on which the co. had borne or been liable to income tax by deduction or direct assessment, less the amount of interest or other annual payments on which it had recovered tax by deduction:—*Held:* the full amount of the dividends was properly included in the assessment of sur-tax.—HAMILTON (F. H.) *v.* INLAND REVENUE COMRS. (1931), 16 Tax Cas. 213, C. A.

677. *Add. Annotation*:—**Apld.** I. R. Comrs. *v.* Sneath (1932), 48 T. L. R. 241.

677a. Super tax assessment for former year—Whether conclusive against taxpayer.]—INLAND REVENUE COMRS. *v.* SNEATH, No. 689a, *post*.

680. *Add. Annotations*:—**Refd.** Hartland *v.* Diggines, [1926] C. A. 289; Sutton *v.* I. R. Comrs. (1929), 45 T. L. R. 565; Hamilton *v.* I. R. Comrs., [1931] 2 K. B. 495.

681. *Add. Annotations*:—**Consd.** Sutton *v.* I. R. Comrs. (1929), 14 Tax Cas. 662. **Expld.** Michelham's Trustees *v.* I. R. Comrs., Michelham (Lady), Exors. *v.* I. R. Comrs. (1930), 144 L. T. 163.

681a. —— ——.]—Lord M., who died on Jan. 7, 1917, by his will bequeathed an annuity of £25,000 free of income tax to his wife. The Ct. of Chancery decided that the annuity was bequeathed free of both income & super tax. The trustees of the will appealed against assessments to income tax for the five years ended Apr. 5, 1926, made upon them in respect of so much of the annuity as was not paid out of profits & gains brought into charge to tax. The will provided for the payment of the annuity primarily out of the income of the residuary estate, but, if insufficient, resort might be had to the capital of the residuary estate from time to time to make good the deficiency. The trustees alleged that for the purpose of arriving at the assessment under r. 21 of the rules applicable to all scheds. & Finance Act, 1927 (c. 10), s. 26, the amount of the annuity ought to be taken to be £25,000 with the appropriate addition to make the grossed amount which would produce £25,000 net after deduction of income tax only, which for example in 1925–26 would have been £31,250; & no addition should be made in respect of any super tax. The Crown claimed that there ought to be added that portion of the super tax assessed on the recipient of the annuity which bore the same proportion to the total super tax assessed on the recipient as the sum of £25,000, together with additions calculated on a similar basis for the previous year bore to the total income from all sources of the recipient during that year, & that a further addition should then be made to the sum so arrived at sufficient to make the total sum, after deduction of income tax at the rate current during the year, produce the sum so arrived at. The comrs. held that the payment of the super tax by the trustees was an additional annuity to Lady M., & that in computing the amount of the annuity for the purpose of assessment under r. 21 & sect. 26 the super tax with the income tax

PART XI. SECT. 3, SUB-SECT. 3.—A.

st. *Lump sum paid to retiring partner.*]—One of the partners of a firm having retired, the partnership business was continued by the remaining partners, & the retiring partner received £1,500 "in full satisfaction of his whole share & interest in the profits of the year current at the date of dissolution of the original partnership," & it was further provided that there should be paid to him quarterly "out of the future profits of the business" sums amounting to £500 for the first year, & diminishing gradually to £100 for the fifth year:—*Held:* (1) the £1,500 was not a share of the profits of the firm, but the price or consideration paid for a discharge by the retiring partner of his claim to participate in the profits of the firm prior to his retirement, & the agreement did not affect the ascertainment of their share of the profits up to that date; (2) the quarterly payments "out of the future profits" did fall to be taken into account in estimating their profits after that date.—RUTHERFORD *v.* INLAND REVENUE COMRS., [1924] S. C. 689; 10 Tax Cas. 683.—SCOT.

appropriate thereto must be included:—*Held:* there had been given to Lady M. an additional annuity of such a sum as, after the deduction of the income tax thereon, would leave the amount of super tax for which she was chargeable in respect of the annuity given by the will, & income tax was payable on that additional annuity. — MICHELHAM'S TRUSTEES *v.* INLAND REVENUE COMRS., MICHELHAM (EXECUTORS OF DOWAGER LADY) *v.* INLAND REVENUE COMRS. (1930), 144 L. T. 163; 15 Tax Cas. 737, C. A.

Add. Annotation:—**Refd.** *Re* Reckitt, Reckitt *v.* Reckitt (1932), 173 L. T. Jo. 452.

682. *Add. Annotation:*—**Consd.** Grey *v.* Tiley (1932), 16 Tax Cas. 414.

683. *Add. Annotations:*—**Refd.** I. R. Comrs. *v.* Pakenham, I. R. Comrs. *v.* Longford, Gascoigne *v.* I. R. Comrs., [1927] 1 K. B. 594; Jones *v.* Wright (1927), 139 L. T. 43; Perrin *v.* Dickson (1929), 98 L. J. K. B. 683.

684. *Add. Annotations:*—**Apld.** Perkins' Exor. *v.* I. R. Comrs. (1928), 13 Tax Cas. 851. **Refd.** I. R. Comrs. *v.* City of Buenos Ayres Tramways Co. (1904), Ltd. (1926), 12 Tax Cas. 1125; Glazed Kid, Ltd. *v.* I. R. Comrs. (1930), 15 Tax Cas. 445.

684a. —— **Payable out of estate created by mortgage.**]—Applt. was entitled to the income for life of settled property after certain sums had been provided for other persons by accumulations out of the income. Before the sums in question had been wholly accumulated, applt., acting under powers conferred by a private Act, mtged. the income arising from the settled property during his life to raise the necessary balances. The mtges. were protected by policies upon the life of applt. The Act provided that every mtge. effected under its powers should pass an estate or interest for applt.'s life in priority to all existing interests. The mtges. were subsequently consolidated & later the consolidating mtge. was, under powers provided by another private Act, taken over by the trustees of the settled property. This second Act (*inter alia*) provided that the premiums on the life assurance policies should be a first charge on the income of the settled property & specifically directed the trustees to retain the necessary amounts out of the income & to pay the premiums as & when due. The comrs. of Inland Revenue contended that the amounts applied in payment of the premiums formed part of applt.'s income for super tax purposes:—*Held:* the income out of which the premiums were paid was not income of applt., & the amounts applied in payment of premiums did not form part of his income for super tax purposes.—WOLVERTON (LORD) *v.* INLAND REVENUE COMRS. (1931), 16 Tax Cas. 467, H. L.

685. *Add. Annotation:—Generally,* **Refd.** I. R. Comrs. *v.* Pakenham, I. R. Comrs. *v.* Longford (1927), 96 L. J. K. B. 882.

687a. ——.]—The exor. of a deceased taxpayer appealed against super tax assessments which had been made on deceased in respect of his wife's income from settled funds & from certain shares. Deceased had obtained an advance of £11,000 from the trustees of his marriage settlement on the security of shares not forming part of the settled funds. Subsequently he had charged his life interest in the settled funds, thereby forfeiting it in favour of his wife. Later he was adjudicated bankrupt, & the mortgaged shares which had become practically valueless were sold by the Official Receiver for a nominal consideration to the wife, who thus became entitled to the equity of redemption. In 1920 the shares again became very valuable, & the trustees, to whom the £11,000 was still owing, issued an originating summons to the parties interested, & as a result the ct. sanctioned a compromise by which the trustees were to retain each year any amount by which the wife's aggregate income from the settled funds & the mortgaged shares, after deducting income tax & super tax on that aggregate income, should exceed £4,000.

PART XI. SECT. 3, SUB-SECT. 3.—B.

f i. *Annuity & income tax thereon.*]—By an antenuptial marriage settlement a husband conveyed funds to trustees for payment of an annuity of £600 free of income tax to his wife, & for payment of the balance of the free income to himself. By a subsequent agreement, following upon divorce, the wife discharged her claims under the settlement, & the husband granted a mandate to the settlement trustees to pay an annuity of £600 free of tax to the wife, & the balance of the free income to himself. The intention of the agreement was declared to be that the wife should receive an absolutely free annuity of £600, & the husband bound himself to relieve her of income tax thereon in the event of her being found liable to pay it:—*Held:* in computing the husband's income for super tax he was entitled to deduct, in respect of the annuity, such a sum as would, after deduction of income tax, amount to £600; & that rule 23 (2) did not invalidate the payment of £600 in full to the wife, in respect (*a*) that the annuity was payable under the agreement out of net income belonging to the husband, which had already borne tax, & (*b*) that the husband had undertaken that the wife could receive such a sum as, after deduction of tax, should amount to £600.—HUTCHISON *v.* INLAND REVENUE COMRS., [1930] S. C. 293; 15 Tax Cas. 89.—**SCOT.**

sy. *Allowance by father to son—Finance Act,* 1922, *s.* 20 (1).]—A father, who had paid a sum of money to his son, a married man, of full age, under a gratuitous bond by which he had bound himself to pay to the son an annuity for a period of three years, claimed to deduct the sum in question in calculating the amount of his total income for super tax purposes, on the ground that above sect. (*c*) applied to the case:—*Held:* the deduction was inadmissible, in respect that the income disponed fell exactly within the description contained in above sect. (*b*), being for a period of less than six years, & it must accordingly be deemed to be the father's income for super tax purposes.—GILLIES *v.* INLAND REVENUE COMRS., [1929] S. C. (Ct. of Sess.) 131.—**SCOT.**

sz. *Loss on purchase of shares in other companies.*]—In 1920 applt. co. was incorporated in India & entered into agreements with two English cos. what had promoted it & were at all times practically the only shareholders, to purchase from them a large block of shares in B. C., Ltd., the consideration being the allotment to them of an equal number of fully paid shares of Rs. 200 each in applt. co. Half the shares were to be, & were, allotted immediately; the English cos. could retain the B. C., Ltd., shares for 3 years, & pledge them to secure their own liabilities. In 1923, no further shares having been allotted & no B. C., Ltd., shares delivered, a supplemental agreement was made under which the English cos. in 1924 sold all the B. C., Ltd., shares, the price realised & dividends being credited to applt. co.; it was part of this agreement that the shares already allotted should satisfy the original purchase consideration. In respect of super tax for 1924-25 under Indian Income Tax Act, 1922, applt. co. alleged that the transaction had resulted in a loss to them which they were entitled to deduct from profits otherwise accruing. They contended that in ascertaining the result of the transaction the allotted shares must be taken at their normal value of Rs. 200 each. It was found by the commissioner that in 1920 each share in applt. co. was worth Rs. 98:—*Held:* no loss was proved as the English cos. were liable to applt. co. for the amount by which the sum realised was less than the nominal value of the allotted shares.—TRUSTEES CORPN. (INDIA), LTD. *v.* COMMISSIONER OF INCOME TAX (1930), 57 L. R. Ind. App. 152, P. C.—**IND.**

The whole balance of the debt to the trustee was thus paid off within fifteen months & deceased's exor. contended that the surplus income so applied should be deducted from the wife's total income in computing the deceased's liability to super tax :—*Held :* the surplus income of the wife appropriated by the trustees formed part of deceased's income for purposes of super tax.—PERKINS' EXECUTOR *v.* INLAND REVENUE COMRS. (1928), 13 Tax Cas. 851.

Annotation :—**Refd.** I. R. Comrs. *v.* Sneath (1932), 48 T. L. R. 241.

689a. Lunacy percentage.]—(1) Payments out of the income of a lunatic of his committee's remuneration & of the lunacy percentage on his clear annual income payable to the ct. under Lunacy Act, 1890 (c. 5), s. 148, & the Lunacy Rules, 1892, r. 133, cannot be deducted from a lunatic's gross income for the purpose of an assessment to super tax.

(2) A decision of the Comrs. for the Special Purposes of the Income Tax Acts in assessing super tax for a previous year that the above deductions can be made does not operate as a *res judicata* to prevent a contrary decision in assessing super tax for a later year.

Per LORD HANWORTH, M.R. & GREER, L.J. : The determination by Special Comrs. of the amount of an assessment to super tax is not a decision of a *lis inter partes* so as to create an estoppel by way of *res judicata.* The assessment is final & conclusive between the parties only in regard to the assessment for the particular year for which it is made.

Per ROMER, L.J. : The decision of the Special Comrs. upon any incidental question of fact or law, however necessary it may be for the purpose of ascertaining the income for the year of assessment, cannot be conclusive in reference to the ascertainment of the taxpayer's income for any subsequent year of assessment.—INLAND REVENUE COMRS. *v.* SNEATH, [1932] 2 K. B. 362 ; 101 L. J. K. B. 330 ; 146 L. T. 434 ; 48 T. L. R. 241 ; 17 Tax. Cas. 149, C. A.

——.]—*Compare* No. 545d, *ante.*

689b. Remuneration of committee of lunatic.]—INLAND REVENUE COMRS. *v.* SNEATH, No. 689a, *ante.*

691. *Add. Annotations :*—**Distd.** *Re* Veale's Will & Codicils, Malone *v.* James (1931), 75 Sol. Jo. 780. **Refd.** *Re* Reckitt, Reckitt *v.* Reckitt (1932), 173 L. T. Jo. 452.

691a. —— —— —— **Or settlement.**]—Where trustees of a settlement set apart certain sums annually for the maintenance of an infant beneficiary & allow the balance of the income to accumulate, the income that is being accumulated is "receivable" by the infant within 1918 Act, s. 5 (3) (*c*), & he is liable to be assessed to super tax in respect of it. But representative assessments to super tax cannot be made upon the trustees or the guardian of the infant beneficiary, either in respect of the actual total income of the infant, or in respect of a total income limited, as regards the particular trustee or guardian, to that income with which the trust or guardianship is concerned.—INLAND REVENUE COMRS. *v.* LONGFORD (COUNTESS), SAME *v.* PAKENHAM, [1928] A. C. 252 ; 97 L. J. K. B. 438 ; 139 L. T. 121 ; 44 T. L. R. 410 ; 13 Tax Cas. 573, H. L.

691b. —— **Chargeability of guardian of minor.**]—INLAND REVENUE COMRS. *v.* LONGFORD (COUNTESS), SAME *v.* PAKENHAM, No. 691a, *ante.*

696a. —— ——.]—By his will testator bequeathed to his wife an annuity of such a sum as, after allowing for income tax at the highest rate for the time being & for super tax, would yield her, free of all such tax, a cumulative net yearly sum of £3,500, & directed that there should be no apportionment of super tax between the annuity & the rest of his wife's income, but that the whole of the super tax payable by his wife up to but not exceeding super tax on £3,500 a year, with the income tax thereon added to it, should be attributed to the annuity & paid by his trustees :—*Held :* the trustees were not liable to repay to the annuitant out of residue a sum arrived at on the footing that the annuity was to bear the highest rates of super tax payable on the annuitant's total income, but were liable for no more than what would be payable on a super taxable sum of £3,500 with the income tax added thereto, namely, at the present rate of income tax, £4,200. With the present exemption, from super tax, of the first £2,000 of the income, the trustees would thus have to pay the super tax payable on a total income of £6,200.—*Re* ARMAGHDALE (LORD), CRAIG *v.* ARMAGHDALE (LADY) (1928), 44 T. L. R. 239.

Annotation : — **Refd.** Fleetwood-Hesketh *v.* Fleetwood-Hesketh, [1929] 2 K. B. 55.

697. *Add. Annotations :*—**Refd.** Whitney *v.* I. R. Comrs., [1926] A. C. 37 ; I. R. Comrs. *v.* Pakenham, I. R. Comrs. *v.* Longford (1927), 96 L. J. K. B. 882.

700. *Add. Annotation :*—**Refd.** Cowdray (Viscountess) *v.* I. R. Comrs. (1930), 15 Tax Cas. 255.

700a. —— —— —— ——.]—COWDRAY (ANNIE, VISCOUNTESS) *v.* INLAND REVENUE COMRS. (1930), 15 Tax Cas. 255, C. A.

INDUSTRIAL, PROVIDENT AND SIMILAR SOCIETIES.

Part I.—Nature and Objects.

4. After this case add :—
Exemption from income tax.]—*See* Income Tax Act, 1918 (c. 40), s. 39 (4), & INCOME TAX, No. 483c, *ante*.

Part III.—Rules.

13. After this case add :—
——.]—*See, now*, Industrial & Provident Societies (Amendment) Act, 1928 (c. 4), s. 1.

Part V.—Membership.

27a. **Withdrawal — Notice — Notice of insolvency before expiry of withdrawal notice—Effect on right to repayment.**]—By the rules of an industrial & provident society incorporated under the Industrial & Provident Societies Act, 1893 (c. 39), with a capital consisting partly of withdrawable & partly of transferable shares, holders of withdrawable shares could at any time give six months' notice in writing to receive back the money paid up on their shares. An assocn. which was a member of the society gave notice dated Oct. 18, 1929, to withdraw some of its shares, & another notice dated Nov. 5, 1929, to withdraw more of them. On Mar. 18, 1930, the society's board of directors resolved to send out a notice calling an extraordinary general meeting of the society, & the notice was sent out on Apr. 8, 1930. The notice was accompanied by a circular showing that the continuance of the society was practically impossible. The meeting was held on Apr. 30, 1930, & a resolution to wind up was passed. On a summons by the liquidator asking (*inter alia*) (*a*) whether notices of withdrawal unexpired before the date of the notice calling the extraordinary general meeting but expired before the date of the winding-up resolution were effectual; & (*b*) whether the personal representatives of deceased holders of withdrawable shares who had died before the commencement of the liquidation were entitled by reason of the deaths of those shareholders to any priority in respect of repayment :—*Held :* (1) by the Court of Appeal, the assocn. having had notice during the currency of its withdrawal notices of circumstances which showed that the society could no longer carry on its business as a going concern, was not entitled to repayment on the maturing of its notices; (2) *Held :* by MAUGHAM, J., personal representatives of deceased shareholders were not entitled to any priority.—*Re* UNITED CITIZENS' INVESTMENT TRUST, LTD., [1932] 1 Ch. 395; 101 L. J. Ch. 17; 146 L. T. 213; 48 T. L. R. 124; 75 Sol. Jo. 869, C. A.

27b. —— —— —— **Effect on priority of representatives of deceased shareholders.**]—*Re* UNITED CITIZENS' INVESTMENT TRUST, No. 27a, *ante*.

35. *Add. Annotation :*—**Refd.** *Re* Burradon & Coxlodge Coal Co., Martin's Bank, Ltd. *v.* The Co. (1930), 23 B. W. C. C. 7.

44. *Add. Annotations :—As to* (1) **Overd.** Biddulph & District Agricultural Soc. *v.* Agricultural Wholesale Soc., [1927] A. C. 76. **Consd.** Hole *v.* Garnsey, [1930] A. C. 472.

45. *Add. Citations :—affd. sub nom.* BIDDULPH & DISTRICT AGRICULTURAL SOCIETY *v.* AGRICULTURAL WHOLESALE SOCIETY, [1927] A. C. 76; 95 L. J. Ch. 576; 136 L. T. 163; 42 T. L. R. 761, H. L.
Add. Annotation :—**Expld. & Distd.** Hole *v.* Garnsey, [1930] A. C. 472.

45a. —— **Necessity for assent.**]—An alteration in the rules of a Society registered under 1893 Act, requiring members of the Society to subscribe for additional shares is not binding on members who have neither voted for the alteration nor otherwise assented to it; consequently, such members cannot be placed on the list of contributories in the voluntary liquidation of the Society in respect of such additional shares.—HOLE *v.* GARNSEY, [1930] A. C. 472; 99 L. J. Ch. 243; 143 L. T. 153; 46 T. L. R. 312; 74 Sol. Jo. 214, H. L.; *revsg.* S. C. *sub nom. Re* WILTS & SOMERSET FARMERS, LTD., [1929] 1 Ch. 321, C. A.
——.]—*See, now*, Industrial & Provident Societies (Amendment) Act, 1928 (c. 4), s. 1.

PART III.

12 i. *Alteration of rules—Profits applicable to non-members—Validity.*]—An industrial & provident society can alter its rules from time to time so as to apply its profits to any lawful purpose, & is not bound to apply them only amongst its members. So long as the purpose is lawful the rule is not contrary to the provisions of the Act, & the Registrar has a duty under sect. 7 (*d*) thereof to register the new rule.—NEW ZEALAND FRUITGROWERS FEDERATION, LTD. *v.* REGISTRAR OF BUILDING SOCIETIES, [1931] N. Z. L. R. 273.—**N.Z.**

Part VII.—Disputes.

57. *Add. Annotation. -As to* (2) **Refd.** Biddulph & District Agricultural Soc. *v.* Agricultural Wholesale Soc., [1927] A. C. 76.

Part X.—Dissolution.

92. *Add. Annotation :—Generally,* **Consd.** *Re* United Citizens' Investment Trust (1931), 146 L. T.

PART VI. SECT. 2.

sl. *Power to borrow—Restricted by rules.*]—Where the rules of a society registered under Industrial & Provident Societies Act, 1908, which has no implied power to borrow money, authorise only borrowing by taking deposits or on bonds, borrowing by means of debentures is unauthorised & *ultra vires.*—SADLER *v.* AUCKLAND CO-OPERATIVE SOCIETY, LTD., [1926] N. Z. L. R. 84.—**N.Z.**

sk. —— *Duty of lender.*]—A person proposing to lend money to a society registered under Industrial & Provident Societies Act, 1908, must satisfy himself as to its power to borrow, & must see that the loan which he is about to make is within the limits of that power. —SADLER *v.* AUCKLAND CO-OPERATIVE SOCIETY, LTD., [1926] N. Z. L. R. 84.—**N.Z.**

sm. *Power to lend—Rural credits society.*]—A rural credits society incorporated under Rural Credits Act, C. A., 1924 (c. 173), has no power to lend money directly, but merely power to guarantee loans, & a loan made by the society cannot give it a lien or charge under the Act.—ROBLIN RURAL CREDITS SOCIETY *v.* NEWTON, [1927] 1 D. L. R. 105; 36 Man. L. R. 117; [1926] 3 W. W. R. 569.—**CAN.**

so. *Loan ultra vires—Guarantee by committee & shareholders—Liability.*]—An industrial society, registered under Industrial & Provident Societies Act, 1893 (c. 39), obtained a loan from a bank exceeding the limit of amount allowed for borrowing under their rules. The loan was by way of an overdraft, & was arranged by the Chairman & committee of the society. A guarantee for repayment of the loan was given to the bank, signed by a number of the shareholders who were the members of the managing committee of the society. Subsequently the society got into difficulties, & eventually went into liquidation, & the bank sued on the guarantee. The guarantors admitted liability up to the limit of the borrowing powers allowed under the rules of the society, but they contended that they were not liable for any further sum, such borrowing being *ultra vires :—Held :* having regard to the position of the guarantors in relation to the society both as shareholders & managing committee, & their knowledge of the limitation on their borrowing powers, their contention was unsustainable, & they were liable for the full amount guaranteed. —MUNSTER & LEINSTER BANK, LTD. *v.* BARRY, [1931] I. R. 671.—**IR.**

PART X. SECT. 1, SUB-SECT. 1.

sp. *Cancellation of registry.*]—The ct. will make an order to wind up a society registered under 1893 Act, notwithstanding the cancellation of the registry under sect. 9 of that Act. —*Re* CASTLECOMER CO-OPERATIVE SOCIETY, [1926] I. R. 238.—**IR.**

PART X. SECT. 1, SUB-SECT. 3.

91 i. *Who are contributories — Liability on loan guarantee shares—Compulsory allotment.*]—The F. Co-operative Agricultural Society, Ltd., was incorporated & registered under Industrial & Provident Societies Act, 1893. The committee were empowered by the rules of the society to obtain loans "to an extent not exceeding such amount as may be authorised by a general meeting." The rules further provided that, for the purpose of securing advances, the society might issue to every member such number of loan guarantee shares of the nominal value of £1 each as would be equal to the number of ordinary shares held by each such member, & that each member should be bound to apply for, & accept, allotment of such loan guarantee shares when making application for ordinary shares. When the allotment of the ordinary shares of the Society took place, no loan guarantee shares were then issued or applied for. In consequence of losses which the society incurred, the committee found it necessary to obtain a bank overdraft amounting to £1,700. Subsequent trading proved unsuccessful, & in the year 1925 seven members of the committee gave their personal guarantees to the N. Banking Co., Ltd., in respect of the society's indebtedness. Notices were sent out convening a special meeting of the society & intimating that members would be asked to apply for loan guarantee shares, & that, failing applications, such shares would be issued to members to the extent to which they were obliged to accept the same. This meeting was held, &, no applications for loan guarantee shares being received, such shares were forthwith allotted to members in accordance with the terms of the notice convening the meeting. An order for the winding up of the society was made, & the chief clerk included in the list of contributories the names of the persons to whom loan guarantee shares had been allotted. The members affected moved to vary the chief clerk's certificate on the ground that they had been wrongly included in the list of contributories :—*Held :* the liability of each member to accept loan guarantee shares was an original liability from the time of his joining the society, & applts. were liable, as contributories, in respect of the loan guarantee shares allotted to them.—*Re* FOREGLEN CO-OPERATIVE AGRICULTURAL SOCIETY, LTD., [1930] N. I. 114.—**IR.**

INFANTS AND CHILDREN.

Part II.—The Crown as parens patriæ.

25. *Add. Annotation :*—**Consd.** *Re* Carroll, [1931] 1 K. B. 317.

Part III.—Civil and Legal Capacity and Disabilities.

42a. —— ——.]—*Re* KEANE, LUMLEY *v.* DESBOROUGH (1871), L. R. 12 Eq. 115 ; 24 L T. 780 ; 19 W. R. 1025 ; *sub nom. Re* KEANE, *Re* LUMLEY *v.* DESBOROUGH, 40 L. J. Ch. 617.

62. *Add. Annotation :*—**Refd.** *Re* L. A. & B. F. M., Official Receiver *v.* The Debtors (1926), 95 L. J. Ch. 258.

63a. —— —— **Bill drawn during minority.**]—A person is liable as acceptor of a bill of exchange, which was drawn while he was an infant, but was accepted by him after he came of age.—STEVENS *v.* JACKSON (1815), 4 Camp. 164 ; 171 E. R. 53, N. P. ; *subsequent proceedings*, 6 Taunt. 106.

101. *Add. Annotation :*—**Refd.** *Re* Mills, Mills *v.* Lawrence, [1930] 1 Ch. 654.

Part V.—Contracts.

145. *Add. Annotation :*—**Refd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

149. *Add. Annotation :*—*As to* (2) **Consd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

160a. **Contract for exchange of chattels.**]—A contract for the exchange of chattels entered into by an infant is a contract for goods supplied, &, if not for necessaries, is absolutely void under Infants Relief Act, 1874 (c. 62), s. 1. But an action by an infant pltf. for the recovery of a specific chattel transferred to deft. under such a contract will not succeed, unless pltf. can show a total failure of consideration. The same principles apply in such an action as in an action for the recovery of money paid under a void agreement.—PEARCE *v.* BRAIN, [1929] 2 K. B. 310 ; 98 L. J. K. B. 559 ; 141 L. T. 264 ; 45 T. L. R. 501 ; 73 Sol. Jo. 402 ; 93 J. P. Jo. 380, D. C.

181. *Add. Annotation :*—**Apld.** Davies *v.* Beynon-Harris (1931), 47 T. L. R. 424.

194. *Add. Annotation :*—**Refd.** Skipp *v.* Kelly (1926), 42 T. L. R. 258.

207. *Add. Annotation :*—**Apld.** Pearce *v.* Brain, [1929] 2 K. B. 310.

207a. —— **Chattel transferred under void contract of exchange.**]—PEARCE *v.* BRAIN, No. 160a, *ante*.

209. *Add. Annotation :*—**Refd.** Pontypridd Union Grdns. *v.* Drew (1926), 90 J. P. 169.

210. *Add. Annotation :*—**Consd.** Pontypridd Grdns. *v.* Drew (1926), 95 L. J. K. B. 1030.

213. *Add. Annotation :*—**Refd.** Pearce *v.* Brain, [1929] 2 K. B. 310.

216. *Add. Annotations :*—**Refd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39 ; Place *v.* Searle (1932), 48 T. L. R. 320 ; Winnipeg Electric Co. *v.* Geel (1932), 48 T. L. R. 657.

279a. **Flying instruction—Infant law student.**]—HAMILTON *v.* BENNETT (1930), 94 J. P. Jo. 136 ; 74 Sol. Jo. 122, D. C.

347. *Add. Citations :*- -95 L. J. Ch. 258 ; [1926] B. & C. R. 19.

PART IV. SECT. 2. SUB-SECT. 3.

80. *Duty of municipality to maintain neglected children—Who are children "belonging to" municipality.*]—*Re* JOHNSON & JOHNSON, [1932] 2 W. W. R. 593.—**CAN.**

PART V. SECT. 2.

88. *Life insurance.*]—Under Saskatchewan Insurance Act, 1925, c. 20, of 1924-25, s. 175, a contract for life insurance entered into by an infant over 15 years old is fully binding on him, even though his promissory note is accepted as conditional payment of the first premium. He is not, however, liable on the note.—WESTERN LIFE ASSURANCE CO. *v.* ARMSTRONG, [1928] 2 W. W. R. 49.—**CAN.**

PART V. SECT. 3.

142 ii. —— ——.]—IMPERIAL BANK OF CANADA *v.* REID, [1928] 3 D. L. R. 198.—**CAN.**

k. *On appeal*, 28 Man. L. R. 229.

PART V. SECT. 4, SUB-SECT. 2.

183 vii. —— ——.]—SHEPARD *v.* BRUNER (1915), 19 D. L. R. 869 ; 31 W. L. R. 721.—**CAN.**

sb. *Whole contract must be repudiated.*]—A party to an entire contract who seeks to repudiate it on the ground of his infancy must repudiate it *in toto*, *i.e.* he cannot affirm provisions thereof which are beneficial to him & repudiate other provisions which he alleges to be prejudicial.—HENDERSON *v.* MINNEAPOLIS STEEL & MACHINERY CO. OF CANADA, LTD., [1931] 1 D. L. R. 570 ; [1930] 3 W. W. R. 613.—**CAN.**

PART V. SECT. 4, SUB-SECT. 3.

b. *On appeal*, 15 O. L. R. 53.

Part VI.—Misrepresentation as to Age.

363a. *S. P.* BARTLETT *v.* WELLS (1862), 1 B. & S. 836; 31 L. J. Q. B. 57; 5 L. T. 607; 26 J. P. 228; 8 Jur. N. S. 762; 10 W. R. 229; 121 E. R. 924.

Annotations:—**Folld.** De Roo *v.* Foster (1862), 12 C. B. N. S. 272. **Consd.** Miller *v.* Blankley (1878), 38 L. T. 527. **Reld.** Brine *v.* G. W. Ry. (1862), 2 B. & S. 402; Saundrey *v.* Mitchell (1863), 9 Jur. N. S. 968; Leslie *v.* Sheill, [1914] 3 K. B. 607.

373. *Add. Annotation:*—**Reld.** *Re* L. A. & B. F. M., Official Receiver *v.* The Debtors (1926), 95 L. J. Ch. 258.

Part VII.—Torts.

395a. .]—HAWLEY *v.* ALEXANDER (1930), 74 Sol. Jo. 247.

Part VIII.—Property.

454a. .]—SALSBURY *v.* BAGOTT (1677), as reported in 2 Swan. 603; 36 E. R. 745.

Annotation:—**Consd.** Field *v.* Moore, Field *v.* Brown (1855), 7 De G. M. & G. 691.

538a. —— Right to sell timber.]—MASON *v.* MASON (1724), cited in Amb. at p. 371; Mos. at p. 224; 27 E. R. 246.

Annotation:—**Consd.** Tullit *v.* Tullit (1759), Amb. 370.

PART VI. SECT. 1.

360 viii. ——.]—*Held:* a minor, who, by falsely representing himself to be a major, has induced a person to enter into a contract, is not estopped from pleading his minority to avoid the contract.—KHAN GUL *v.* LAKHA SINGH (1928), I. L. R. 9 Lah. 701.—**IND.**

sf. *Contract entered into through misrepresentation—Contract void—Whether infant estopped.*]—Where an infant represents fraudulently or otherwise that he is of age & thereby induces another to enter into a contract with him, then in an action founded on the contract the infant is not estopped from setting up infancy as a bar to the action. — GADIGEPPA BHIMAPPA *v.* BALANGANDA BHIMANGANDA (1931), 55 I. L. R. Bom. 741.—**IND.**

PART VI. SECT. 2, SUB-SECT. 2.

376 iii. ——.]—Where an infant has obtained an advantage by falsely stating himself to be of full age, equity will restore his illgotten gains & release the party deceived from obligations or acts in law induced by the fraud.—KUMAR GANGANAND SINGH *v.* MAHARAJAH SIR RAMESHWAR SINGH BAHADUR (1927), I. L. R. 6 Pat. 388.—**IND**

376 iv. ——.]—*Held:* a minor, who has entered into a contract by means of a false representation as to his age, though not liable under the contract, may, in equity, be required to return the benefit he has received by making a false representation as to his age, whether he be a deft. or pltf.—KHAN GUL *v.* LAKHA SINGH (1928), I. L. R. 9 Lah. 701.—**IND.**

PART VII. SECT. 1.

sf. *General rule.*]—An infant is liable for his torts of all kinds, & the tenderness of his age is immaterial, except when the action is founded on malice or want of care. — CONTINENTAL GUARANTY CORPN. OF CANADA, LTD. *v.* MARK (B. C.), [1926] 4 D. L. R. 707; [1926] 3 W. W. R. 428.—**CAN.**

381 i. *Tort independent of contract—Infant liable.*]—An infant who sells goods, of which he is in possession under a lien agreement, is liable in damages for the conversion, since it is not a wrong connected with the contract.—MCCALLUM *v.* URCHAK (Alta.), [1926] 1 W. W. R. 137.—**CAN.**

q i. ——.]—A father, who negligently left a shot gun & shells where they were accessible to his eleven-year-old son: *—Held:* liable in damages to infant pltf., who was injured by the discharge of the gun in the hands of the son. The fact that the mother of pltf. might have prevented the accident did not prevent recovery against the father & son by pltf.—BLACK *v.* HUNTER, [1925] 4 D. L. R. 285; [1925] 3 W. W. R. 393.—**CAN.**

q ii. ——.]—A father is not responsible at common law for the torts of his infant child, committed without his knowledge, consent or sanction, & not in the course of his employment of the child.—BOBBY *v.* CHODIKER, [1928] 3 W. W. R. 392.—**CAN.**

q iii. ——.]—Where although a minor is in a motor car which is in his sole or joint possession, another person is physically running it, the former is not "driving or operating" the car within sect. 12 of Motor-Vehicle Act Amendment Act (1927), 1926-27, which provides that while a minor is living with his parent the parent is civilly liable for loss or damage sustained by any person through the negligence of the minor "in driving or operating a motor vehicle on any highway." Deft., 16 years of age, hired a motor car from pltf. co. to go for a drive, taking two other boys with him. The three boys agreed to share equally in paying for the hire of the car, although the contract was signed by W. only. The car, through reckless driving, was wrecked & W.'s two companions killed. All three took turns in driving, but at the time of the accident one of the boys killed was at the wheel. The co. sued the infant W., & also his father, for damages to the car, contending that the father was liable under said sect. 12. Action dismissed:—*Held:* the appeal should be dismissed as against the father & allowed as against the son.—VICTORIA U DRIVE YOURSELF AUTO LIVERY *v.* WOOD & WOOD, [1930] 1 W. W. R. 522, 633; 2 D. L. R. 811; 42 B. C. R. 291.—**CAN.**

sg. *Liability of stranger.*]—Pltf. was injured by a bullet from an air-rifle fired from a window in deft.'s house by a boy of fifteen years, a friend of deft.'s fourteen years old son:—*Held:* on the facts negligence on the part of deft. was not shown, & he could not be made liable for the wrongful act of the boy.—MONTESANTO *v.* DI UBALDO, [1927] 3 D. L. R. 1045; 60 O. L. R. 610.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 1.—C. (a).

c i. ——.]—*Held:* the estate of an infant, being an estate tail in possession, could be sold under R. S. O. 1877, c. 137.—*Re* GRAY (1895), 26 O. R. 355.—**CAN.**

sh. *Execution of conveyance by infant—Application — By petition.*]—*Re* MILLS, OWEN *v.* CAMPBELL (1854), 4 Gr. 630.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 1.—C. (b).

sj. *Power to order sale—On application of official guardian—In foreclosure action.*]—The rights of infants are protected & represented by the official guardian, who, in foreclosure actions, has the right to ask for a sale by the ct. in case he deems it in the interest of the infant, while in England no official is vested with the like powers.—KEMP *v.* BEATTIE, [1929] 1 D. L. R. 55; 63 O. L. R. 176.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.

r i. ——.]—A conveyance of land or mtge. made by an infant is not absolutely void, but voidable.—MILLS *v.* DAVIS (1860), 9 C. P. 510.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 2.

460 ii. ——.]—L'HIRONDELLE *v.* THE KING (1917), 16 Exch. C. R. 196.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 1.

472 i. *Person entering liable to account to infant—Whether applicable to tenant in common.*]—The general rule in equity, that an infant is entitled to treat a person, who takes possession of his estate, as his bailiff or agent, applies to a case where the party in possession is a tenant in common with the infant, although there has not been any ouster or exclusion of the infant, or any denial of his title.—COURCIER *v.* COURCIER (1879), 26 Gr. 307.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 3.

sk. *Right to receive insurance moneys—Whether bond or security required.*]—A guardian, appointed or constituted by Domestic Relations Act, 1927, c. 5 (Alta.), is authorised to receive & manage insurance moneys payable to the infant & to give a valid discharge therefor; &, when such money or property is received without action, the

557. *Add. Annotation:*—**Refd.** The Fagernes, [1926] P. 185.

557a. ——.]—A lease granted to an infant is binding on him unless he repudiates it within a reasonable time after attaining his majority. —DAVIES *v.* BEYNON-HARRIS (1931), 47 T. L. R. 424; 75 Sol. Jo. 442.

657a. ——.]—HASTINGS *v.* ORDE (1840), 11 Sim. 205; 59 E. R. 853.

666. *Add. Annotation:—Generally*, **Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

669a. Covenant to disentail & resettle—Ineffective as resettlement.]—NIGHTINGALE *v.* FERRERS (EARL) (1733), 3 P. Wms. 206; 24 E. R. 1031.
Annotation:—**Refd.** Tarleton *v.* Liddell (1851), 17 Q. B. 390.

685a. Not acceptance of jointure.]—LUCY *v.* MOORE (1730), 4 Bro. Parl. Cas. 343; 2 E. R. 232, H. L.

731a. Settlement with sanction of court—Effect of.]—A settlement made with the sanction of the ct. on the marriage of an infant, of certain funds alleged to represent the infant's share under a will:—*Held:* not to operate as a confirmation of prior dealings by the trustees of the will.—ZAMBACO *v.* CASSAVETTI (1871), L. R. 11 Eq. 439; 24 L. T. 770.

Part X.—Maintenance and Advancement.

810. *Add. Annotations:*—**Consd.** Hyman *v.* Hyman, [1929] A. C. 601. **Refd.** H. *v.* H. (1928), 97 L. J. P. 84.

831a. Ascertainment of period of twenty-one years.]—Testator, who died in Nov. 1893, gave his net residue, subject to certain life annuities which did not exhaust the income, in trust for a bachelor's children who should attain twenty-one, with a gift over in default. In Mar. 1896, the judge ordered the surplus income to be accumulated for twenty-one years from testator's death, *i.e.*, until Nov. 6, 1914, or until the bachelor's previous death without leaving issue. During this twenty-one years' period the bachelor married & died leaving three children, two of whom were still living. Temporary orders for maintenance were made. In Nov. 1914, the judge declared that as from Nov. 6, 1914, the two children then living were entitled to maintenance under Conveyancing Act, 1881 (c. 41), s. 43 (1), but that notwithstanding sub-sect. 2 any income not so applied passed as on an intestacy. In July, 1927, the elder child attained twenty-one, & her contingent moiety vested in possession. The question having arisen whether, having regard to Law of Property Act, 1925 (c. 20), s. 165, the order of Nov. 1914 ought still to be acted on with regard to the younger child's contingent moiety:—*Held:* (1) the effect of sect. 165 was that the years of minority accumulation, which commenced during the twenty-one years' period, were not to be reckoned in ascertaining that period, & the income of the younger child's contingent moiety must in the first place be applied for her maintenance under Conveyancing Act, 1881, s. 43 (1), & the balance could be validly accumulated under sub-sect. 2; (2) quite apart from sect. 165, the moment the elder child attained a vested interest as a member of the contingent class, there could be no

guardian is not required to furnish a bond or other security, there being nothing in said Act authorising the ct. to require said guardian to give security. If, however, the guardian is forced to bring an action in order to obtain the money, the practice of the ct. would require the money to be paid into ct. subject to its order, & security would probably be required before the payment over to the guardian.—*Re* DOMESTIC RELATIONS ACT, 1927, *Re* PULKABREK, [1928] 4 D. L. R. 821; [1928] 3 W. W. R. 323.—**CAN.**

PART VII'. SECT. 8, SUB-SECT. 2.—B. (a).

sl. *By mother purporting to act as guardian—Rent accepted after infant attained majority.*]—Where a Hindu married woman with her two major sons & she purporting to act as guardian for her third son, an infant, granted a lease of a certain property of which she was in possession, for 21 years with a covenant for renewal for another term of 10 years, & the infant, after attaining majority, ratified the lease by accepting rent:—*Held:* the mother, who was not the guardian, could not enter into any contract on behalf of the infant which would be binding on him; & as the contract was void as regards the infant, it could not be made good by ratification.—MARENDRA NATH SRIMANI *v.* KAILASH NATH DAS (1927), I. L. R. 55 Calc. 841.—**IND.**

PART X. SECT. 1, SUB-SECT. 1.—A.

757 ii. —— ——.]—It is the father's duty to maintain & educate his children, who are incapable of supporting themselves, &, although the law has always recognised this duty, civil cts. have no direct means of enforcing this obligation so as to compel him to maintain them out of property in which they have no interests.—WALTER *v.* WALTER (1927), I. L. R. 55 Calc. 731.—**IND.**

sx. *No civil liability to maintain.*]—Under the criminal code, s. 242 (3) (*a*), the existence of a legal duty to provide necessaries is a condition precedent to criminal liability; & there is no such legal duty under the civil law of Ontario, & no such legal duty has been imposed by the criminal law.—*R. v.* WRIGHT, [1931] 3 D. L. R. 200; 66 O. L. R. 456.—**CAN.**

PART X. SECT. 1, SUB-SECT. 1.—C. (a).

783 v. —— —— *Medical services rendered to stepson.*]—WILLIAMS *v.* CLARK (1927), 30 W. A. L. R. 11.—**AUS.**

sy. *Statutory liability—Priority of contractual as against.*]—Even if Wives' & Children's Maintenance & Protection Act, R. S. M., 1913, enables one who has maintained the infant children of another to hold their father liable to him for their maintenance apart from contract, nevertheless, where there is an express or implied contract between them on the subject the question of the liability of the father to the other party is governed thereby.—DE CLERCQ *v.* BELLENS (Man.), [1929] 4 D. L. R. 1060; 2 W. W. R. 206.—**CAN**

sz. —— *Action to enforce—Procedure.*]—In the absence of an express or implied contract between a parent liable under Maintenance Order Act, R. S. A., 1922, for the maintenance of a child & the person or institution which has maintained the child, the procedure provided for by sect. 5 of the Act must be resorted to where payment for said maintenance is sought from the parent.—SISTERS OF CHARITY OF THE PROVIDENCE GENERAL HOSPITAL OF DAYSLAND *v.* MARTY, EDMONTON, CITY *v.* MARTY (Alta.), [1929] 4 D. L. R. 797; 3 W. W. R. 265.—**CAN**

sa. —— —— *Jurisdiction of county court.*]—Infants Act, R. S. B. C., 1924, s. 80 (8), provides that "any order made under this sect. may be enforced in the same manner as an order made by a judge of the Supreme Ct.":—*Held:* the remedy so provided is the only one which can be resorted to, &, therefore, the county ct. is without jurisdiction over an action brought under sect. 80 (4) of said Act by a municipality to recover expenses incurred for the maintenance of a "neglected" child.—DISTRICT MUNICIPALITY, COLDSTREAM OF *v.* BELLEVUE (B. C.), [1929] 4 D. L. R. 52; 2 W. W. R. 597.—**CAN.**

PART X. SECT. 1, SUB-SECT. 2.—A.

sp. *Agreement by third party to maintain infant.*]—Where any person has expressly or impliedly undertaken to pay for the maintenance of a child, neither the child himself, nor, if he is dead, his estate is liable for such maintenance.—MCGUINESS *v.* MCGUINESS, [1925] N. Z. L. R. 456.—**N.Z.**

question of intestacy as to any part of the capital or income.—*Re* MABER, WARD *v.* MABER, [1928] Ch. 88; 97 L. J. Ch. 101; 138 L. T. 318.

838. *Add. Annotations :*—**Distd.** *Re* Reade-Revell, Crellin *v.* Melling, [1930] 1 Ch. 52. **Refd.** *Re* Raine, Tyerman *v.* Stansfield, [1929] 1 Ch. 716; *Re* Fulford, Fulford *v.* Hyslop, [1930] 1 Ch. 71; Stern *v.* I. R. Comrs. (1930), 15 Tax Cas. 148; *Re* Jones, Meacock *v.* Jones, [1932] 1 Ch. 642.

840. *Add. Annotation :*—**Refd.** *Re* Jones, Meacock *v.* Jones, [1932] 1 Ch. 642.

1006a. —— **Whether limited to children living at date of will.**]—FREEMANTLE *v.* TAYLOR (1808), 15 Ves. 363; 33 E. R. 791.

1057. *Add. Annotation :*—**Distd.** *Re* Reade-Revell, Crellin *v.* Melling, [1930] 1 Ch. 52.

1058a. —— —— ——.]—Testatrix, who died after the commencement of Trustee Act, 1925 (c. 19), by her will directed the trustees thereof to set apart a specific sum, to accumulate & capitalise the income thereof, until A. should attain the age of twenty-one years; &, if A. should attain that age, then to pay to her the income of that sum during her life & after her death to hold the capital sum in trust for her children :—*Held :* as the trust for A., for a contingent interest for her life, did not carry the intermediate income, the trustees had, upon the proper construction of Trustee Act, 1925 (c. 19), s. 31, no power to apply that income towards A.'s maintenance.—*Re* READE-REVELL, CRELLIN *v.* MELLING, [1930] 1 Ch. 52; 99 L. J. Ch. 136; 142 L. T. 177.

1059. *Add. Annotations :*—**Consd.** *Re* Raine, Tyerman *v.* Stansfield, [1929] 1 Ch. 716. **Distd.** *Re* Reade-Revell, Crellin *v.* Melling, [1930] 1 Ch. 52.

1060. *Add. Annotation :*—**Distd.** *Re* Reade-Revell, Crellin *v.* Melling, [1930] 1 Ch. 52.

1066. *Add. Annotations :*—*As to* (2) **Follid.** *Re* Stokes, Bowen *v.* Davidson, [1928] Ch. 176. **Expld.** *Re* Raine, Tyerman *v.* Stansfield, [1929] 1 Ch. 716.

1074a. To enable business to be carried on—Giving guarantee for firm of which son was partner.]—*Held :* an advance to the son, within the description in a settlement of money advanced "to enable him to carry on his business."—BERRY *v.* MORSE (1847), 1 H. L. Cas. 71; 9 E. R. 678, H. L.

By petition.]—*Re* COORE, [1883] W. N. 169.

PART X. SECT. 1, SUB-SECT. 2.—H. (c).

934 i. *One fund supplementary to other—Resort had to primary fund first.*]—Testator directed that sums of £3,000 should be invested & held for each of his children, & should be paid over to each of them at the age of twenty-five, & empowered his trustees, for marriage or equipment in business, to pay to a child, although not yet of that age, any portion of that sum. The residue of his estate he left in liferent to his wife & in fee to his children equally. In a question as to whether the wife's liferent or the income of the children's legacies was liable *primo loco* for the cost of maintaining & educating the children :—*Held :* as the children were vested in separate estate, the cost of their maintenance & education fell to be met in the first place out of the income of that estate.—KER'S TRUSTEES *v.* KER, [1927] S. C. 52.—**SCOT.**

PART X. SECT. 1, SUB-SECT. 2.—N.

1056 i. *Expression of contrary intention—What constitutes—Direction for accumulation of income until contingency.*]—Testator bequeathed to each of his four daughters the sum of £1,000 if & when she should attain the age of 21, & in the meantime he directed that the money should be lodged on deposit receipt in a bank in the joint names of his trustees & each of his daughters, & should so remain during the minority of each daughter, & on each daughter attaining the age of 21 the amount, with the accrued interest, was to be paid to her. & testator directed that his trustees should not otherwise invest the said moneys. Should any daughter die before attaining the age of 21, her legacy, with the accumulation of income, was to be divided equally among the surviving daughters. Testator devised & bequeathed all the remainder of his property to his son if & when his son should attain the age of 21, provided that during the minority of his son the income of testator's lands was to be paid to testator's wife for the support of herself & the children, & they were to have a right of residence in the testator's dwelling-house. The residue of testator's property, other than his lands, house property, & the furniture in his dwelling-house, was to be sold, & the sum realised placed on deposit receipt in a bank in the joint names of his trustees, & not otherwise invested, the interest thereon to accumulate, & the accumulation thereof with the principal to be paid to the testator's son on his attaining the age of 21. Provision was then made in the event of the son dying before attaining age. The income derived from the lands was found to be inadequate for the support of testator's wife & children :—*Held :* (1) the ct. had jurisdiction to apply the income derived from the money representing the legacies bequeathed to each of the children towards the maintenance, support, & education of each such child during his or her minority if the ct. was of opinion that the moneys otherwise available for such maintenance, support, & education were insufficient, the direction in the will for the accumulation of income until each child should attain the age of 21 not being the expression of a "contrary intention" within Conveyancing Act, 1881 (c. 41), s. 43 (3), which would prevent the application of sub-sect. 1 of that section; (2) the ct. had jurisdiction to disregard the direction as to the lodgments of the amounts of the legacies on deposit receipt & to direct them to be invested in suitable securities, as the predominating object of testator, as expressed in his will, was to provide for the distribution of his property between his widow & children when the children came of age, &, pending that period, for their suitable support, maintenance, & education; &, as the direction in the will that the amounts should remain on deposit receipt was subsidiary thereto & was in conflict therewith, it must give way & be disregarded.—*Re* LYNCH'S TRUSTS, LYNCH *v.* LYNCH, [1931] I. R. 517.—**IR.**

PART X. SECT. 2. SUB-SECT. 2.

sv. *Rule in India.*]—**There is no presumption in India that property acquired by a father in the name of a child is intended for his advancement.**—JOHNSTON *v.* GOPAL SINGH (1931), I. L. R. 12 Lah. 546.—**IND.**

Part XI.—Care and Custody.

1143. *Add. Annotation :-* **Refd.** *Re* Carroll, [1931] 1 K. B. 317.

1156a. ——.]—The welfare of a child is the paramount consideration guiding the ct. in making an order as to its custody. But it is not the only consideration, & the next consideration is the right of a parent, particularly of a parent whose conduct has not been impeached, & effect will be given to a parent's right & desire for the custody of his child where the welfare of that child does not require a contrary decision.—*Re* THAIN, THAIN *v.* TAYLOR, [1926] Ch. 676; 95 L. J. Ch. 292; 135 L. T. 99; 70 Sol. Jo. 634, C. A.

Annotation :—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

1158. *Add. Annotation* :—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

1160. *Add. Annotation :-* **Refd.** *Re* Carroll, [1931] 1 K. B. 317.

1163. *Add. Annotation* :—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

PART XI. SECT. 1.

o i. *Under Children's Protection Act, 1927—Effect of proceedings in magistrate's court.*]—Under Children's Protection Act, R. S. O. 1927, c. 279, s. 25, the fact that the proceedings in the magistrate's ct. do not prevent the judge of the Supreme Ct. from directing that the custody of the child be given to the parent, is recognised; but if the judge is of opinion that the parent has neglected & deserted the child, or has so conducted himself that in the opinion of the judge he ought not to be allowed to set up his *primâ facie* right to the custody of the child, he may in his discretion decline to make the order.—*Re* CHIEMELEWSKI, [1928] 2 D. L. R. 49; 61 O. L. R. 651.—**CAN.**

sq. *Jurisdiction of Supreme Court—Of Ontario—Child adopted by defendant under Adoption Act, 1921—Effect of order of county court judge.*]—CULLEN *v.* KEMP, [1925] 4 D. L. R. 579.—**CAN.**

sr. *Infant out of jurisdiction.*]—The ct. has jurisdiction to make an order as to the custody of an infant although the infant is beyond the territorial jurisdiction of the ct.—*Re* HARDING, [1929] 2 D. L. R. 623; 63 O. L. R. 518.—**CAN.**

st. *Infants Act, R. S. S. 1920—Parents living apart—Right of mother.*]—SUTCLIFFE *v.* SUTCLIFFE, [1930] 1 W. W. R. 625; 2 D. L. R. 645.—**CAN.**

sv. *Under Child Welfare Act, C. A., 1921 — Successive applications.*]—MARTIN *v.* MARTIN, [1932] 3 W. W. R. 273.—**CAN.**

PART XI. SECT. 2, SUB-SECT. 1.

p i. —— *In case of male child.*]—Where the question of the custody of an infant is involved between parents, it is preferable in all ordinary circumstances in the case of a male child that it should be brought up by & have the care & guidance of its father.—PARSONS *v.* PARSONS, [1928] N. Z. L. R. 477.—**N. Z.**

p ii. ——.]—Although the welfare of an infant is the paramount consideration it is the settled practice that the claim of the father to custody must prevail unless the ct. is judicially satisfied that the welfare of the child requires that the parental right should be superseded.—*Re* JOHNSON, JOHNSON *v.* HALL (1930), 43 B. C. R. 328.—**CAN.**

PART XI. SECT. 2, SUB-SECT. 4.—A.

1126 iv. —— —— ——.]—A child is further protected by Children's Protection Act, R. S. O. 1927, c. 279, s. 25 (3), which provides that when it has been abandoned or deserted, or has been allowed by the parent to be brought up by a Children's Aid Society, or by another person, in circumstances which show that the parent was unmindful of his parental duties, the judge shall not give the child to the parent, unless satisfied that, having regard to the welfare of the child, he is a fit person to have the custody of it. When once a child has been taken from its parents & made a ward of a Children's Aid Society & then placed out with foster parents, the parents have forfeited their natural rights, & others have acquired rights. The words "having regard to the welfare of the child" indicate that the intention of the statute is that the judge, in determining whether the parent is a fit person to have the child restored to him, should contrast the situation of the child in the care of its foster parents with that which it would occupy if restored to its natural parents.—*Re* CHIEMELEWSKI, [1928] 2 D. L. R. 49; 61 O. L. R. 651.—**CAN.**

1126 v. —— —— ——.]—In exercising its jurisdiction, derived from the Ct. of Chancery, as to the custody of a child whom its parent has allowed to be brought up by another person at that person's expense, the duty & power of the K. B. of Saskatchewan to decide the question of custody in accordance with the principle of equity that the paramount consideration in such cases is the child's welfare in its widest sense is not limited or impaired by Infants' Act, R. S. S. 1920, c. 155, s. 7 (*b*). Therefore, although the ct. concludes that the parent has not been "unmindful of his parental duties" within said section, it should not, nevertheless, order the child to be restored to him if in its opinion the child's welfare in the widest sense, *i.e.* its material, moral, religious & physical well-being, requires that the order should be refused.—*Re* ROSS, ROSS *v.* MCNEILL & MCNEILL, [1928] 3 D. L. R. 351; [1928] 2 W. W. R. 161; 22 Sask. L. R. 565.—**CAN.**

1131 iii. —— ——.]—Where a child, shortly after its birth & after the death of its mother, had been placed in charge of a relative by its father on account of his inability, under the circumstances, to retain personal custody of so young a child, & where, seven years later, the father having remarried, & being able to provide a comfortable home not inferior to that in which the child had been cared for:—*Held:* the father was not lacking in affection, neither had he been unmindful of his parental duties, nor had he surrendered his parental rights, & the presumption that it was in the child's best interests to be with its parent had not been rebutted, & the father's claim must accordingly be preferred to that of the foster-parent.—*Re* BUTLER, [1931] N. Z. L. R. 121.—**N.Z.**

r i. —— *Validity of agreement.*]—CHISHOLM *v.* CHISHOLM (1908), 40 S. C. R. 115.—**CAN.**

PART XI. SECT. 2, SUB-SECT. 4.—B.

1141 ii. —— —— ——.]—Where a daughter, then being past fourteen years & eight months of age & not without adequate intelligence to make a reasonable choice, expressed her desire to remain with resp. with whom she had been living happily for seven years, the ct. refused a writ of *habeas corpus* to the mother.—MARSHALL *v.* FOURNELLE, [1927] 2 D. L. R. 173; [1927] S. C. R. 48.—**CAN.**

PART XI. SECT. 4, SUB-SECT. 1.

1151 xx. ——.]—CODY *v.* CODY, [1927] 3 D. L. R. 349; [1927] 1 W. W. R. 603; 21 Sask. L. R. 391.—**CAN.**

1151 xxi. ——.]—*Re* STANGER (Man.), [1929] 1 D. L. R. 944.—**CAN.**

1154 iv. ——.]—*Re* YOUNG, [1926] 1 D. L. R. 511; 58 N. S. R. 372.—**CAN.**

1154 v. ——.]—*Re* GEHM, GEHM *v.* GATJENS (B. C.), [1927] 4 D. L. R. 382.—**CAN.**

1154 vi. ——.]—The first & paramount matter for the consideration of the ct. is the welfare of the child, which is not to be measured by money only or by physical comfort only, but is to be taken in its widest sense. The moral & religious welfare of the child must be considered, as well as its physical well-being, nor are ties of affection to be disregarded though they are not conclusive.—WALTER *v.* WALTER (1927), I. L. R. 55 Calc. 731.—**IND.**

PART XI. SECT. 4, SUB-SECT. 2.—A.

aa i. ——.]—A father will not be deprived of the custody of his children, merely because his wife prefers to live away from him.—*Re* GRAY, [1925] 4 D. L. R. 381.—**CAN.**

aa ii. *S. P.* M. *v.* M., [1926] S. C. 778.—**SCOT.**

aa iii. ——.]—Where a wife has deserted her husband & taken their children with her, but is unable to prove such conduct against him as would justify her in doing so, there is no just cause to deprive him of his legal right to the custody of the children.—*Re* DZYDZ, *Re* ROZECKI (Man.), [1927] 1 D. L. R. 1110; [1927] 1 W. W. R. 380.—**CAN.**

aa iv. ——.]—A father has an inalienable right to the custody of his minor son, unless there are overwhelming circumstances to the contrary.—ABDUL AZIZ KHAN *v.* NANHE KHAN (1926), I. L. R. 49 All. 332.—**IND.**

aa v. ——.]—*Re* SIMONSON, SIMONSON *v.* SLAATEN (Sask.), [1927] D. L. R. 543.—**CAN.**

aa vi. ——.]—On an application by a father to obtain from the mother custody of an infant son from six to seven years old, where there were no allegations of moral impropriety on either person's part:—*Held:* although from the point of view of the present happiness of the child, the ct. might hesitate to remove him from the custody of the mother, the paramount consideration of the future as well of the present welfare of the child, who was just approaching a time of life when a father's care & guidance would be all important, required that he should be in the custody of the father.—*Re* HYLTON, [1928] N. Z. L. R. 145.—**N.Z.**

1170. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

1174. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

1179. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

1236. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

1242. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

1246. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

Part XIa.—Adoption.

See Adoption of Children Act, 1926 (c. 29), & cases *infra.*

PART XI. SECT. 4, SUB-SECT. 2.—G.

o. *Revsd.*, [1925] 1 D. L. R. 761; [1925] 1 W. W. R. 378; 19 Sask. L. R. 247.

o i. —.]—Where a child, upon the death of its mother, had been placed temporarily by the father in the care of a near relative under an arrangement whereby he was to pay for its maintenance, but he had failed to keep up the payments, & upon his remarriage the relative refused the custody of the child to its father :—*Held :* in the circumstance, the father had not surrendered his parental right over the child, nor had the *primâ facie* presumption that it was for the child's benefit that it should be in the custody of its natural parent been displaced.—*Re* Mills, [1928] N. Z. L. R. 158.—**N.Z.**

PART XI. SECT. 4, SUB-SECT. 3.—A.

st. *Child handed to father—& in custody of father's relations.*]—A wife, living apart from her husband, met him in the street, placed the younger child of the marriage, a girl aged five months & at that time in a delicate state of health, in his arms, & left the child with him. The mother made no inquiries as to the provision which the father was able to make for its care, nor did she afterwards make any inquiries as to its welfare. The father having died, the mother brought an action for delivery of the child against relatives of the father, in whose care the child had been placed by him. Circumstances in which the ct. ordered delivery of the child to the mother. *Semble :* the mother had not abandoned the child within Custody of Children Act, 1891 (c. 3).—M'Lean *v.* Hardie, [1927] S. C. 344.—**SCOT.**

PART XI. SECT. 4, SUB-SECT. 3.—B.

b i. —— *Adultery—Interest of child first consideration.*]—Adultery by a wife ought not to be regarded for all time & under all circumstances as sufficient to disentitle her to access to or even to the custody of the children. The ct. will have regard to the particular circumstances of each case, always bearing in mind that the benefit & the interest of the infant is the paramount consideration.—Bolton *v.* Bolton, [1928] N. Z. L. R. 473.—**N.Z.**

PART XI. SECT. 7, SUB-SECT. 2.—A.

1216 ii. *Right of court of appeal to interfere.*]—*Re* Paisley, [1928] 1 D. L. R. 403.—**CAN.**

o i. —— ——.]—*Re* Harding, [1929] 2 D. L. R. 623; 63 O. L. R. 518.—**CAN.**

1221 i. *Infant to be freed from improper restraint.*]—The writ of *habeas corpus* is the proper remedy of a mother who wishes to regain possession of her child illegally kept or detained from her.—Stevenson *v.* Flobant, [1925] 4 D. L. R. 530; [1925] S. C. R. 532; [1927] A. C. 211; 96 L. J. P. C. 1; 136 T. 265; 43 T. L. R. 6.—**CAN.**

PART XI. SECT. 7, SUB-SECT. 2.—B. (c).

1239 i. *Nurse.*]—The parents of a child placed it in the care of a nurse employed at an hospital shortly after its birth. The parents then had no home of their own, & were in poor circumstances, the mother was blind, & the father's sight seriously impaired. When the child was about three years old, the parents had a home of their own, & though the child was well treated at the hospital the parents did not have free access to him, & were losing touch with him :—*Held :* the child should be handed over to the father.—*Re* Rogers (1923), 19 Tas. L. R. 11.—**AUS.**

sv. *Relative—Entrusted with custody by father & mother.*]—Kivenko *v.* Yagod, [1928] 4 D. L. R. 955; [1928] S. C. R. 421.—**CAN.**

PART XI. SECT. 7, SUB-SECT. 4.

1252 i. —— *Husband against wife—Child out of the jurisdiction.*]—Upon an appln. under Infants' Act, R. S. O., c. 186, by the father of an infant, for an order for the custody of the infant, it was held as the infant was not at the time resident in Ontario, the Supreme Ct. of Ontario had no jurisdiction. As the procedure under Infants' Act is an alternative procedure to the procedure by writ of *habeas corpus*, the jurisdiction must be limited to cases where a writ would be granted; & a writ will not be granted where the person directed to be produced in ct. is without the jurisdiction. It is only in extraordinary circumstances that the ct. will appoint a guardian to an infant who resides abroad, & has no property in the jurisdiction; & in this case the circumstances were not so extraordinary as to call for the exercise of this jurisdiction.—*Re* Shand, [1928] 2 D. L. R. 981; 62 O. L. R. 145.—**CAN.**

PART XI. SECT. 8, SUB-SECT. 3.

e i. —— *Grounds for setting order aside—Order signed by two justices—Only one present at hearing.*]—*Re* Mailman, [1927] 2 D. L. R. 529; 47 Can. Crim. Cas. 106; 59 N. S. R. 61; *subsequent proceedings*, [1927] 3 D. L. R. 1111; 59 N. S. R. 384.—**CAN.**

e ii. —— —— *Mistrial.*]—On appeals by a father from orders made on petitions under the Act respecting the Adoption of Children, R. S. B. C. 1924, c. 6, whereby his infant children were taken from his custody & control & given for adoption into the care & custody of the respective petitioners :—*Held :* there had been a mistrial & a new hearing was ordered.—Painter *v.* McCabe, Sheppard *v.* McCabe, [1928] 2 D. L. R. 13; [1928] 1 W. W. R. 149; 39 B. C. R. 249.—**CAN.**

sw. *Implied right of further application—Necessity for change of circumstances.*]—The principle that orders as to the custody of children are subject to further application & are to be treated as if expressed to be made "until further order" does not enable applications for custody to be made from time to time under the same circumstances as those which existed at the time the existing order for custody was made. An order awarding the custody of a child is subject to the doctrine of *res judicata* with respect to all questions affecting the matter up to the time it was rendered. If, however, a change is shown to have arisen in the circumstances of the parties since the order was made which warrants a reconsideration of the question, the ct. will not be bound by the order, but will use its discretion in view of the altered conditions, always keeping in mind the fact that the welfare of the child is the paramount consideration.—Wallis *v.* Wallis & Grant, [1929] 2 D. L. R. 253; 1 W. W. R. 631; 23 S. L. R. 489.—**CAN.**

sx. *Order not final.*]—An order for custody of an infant is never final in the sense that it cannot be changed &, while it is better for an infant generally that its custody should not be changed back & forth, yet it is much more desirable that it should be changed than that it should remain where it is not in the best interest of the child that it should be.—Cairns *v.* Cairns (No. 2), [1932] 1 W. W. R. 364; 1 D. L. R. 774; 26 Alta. L. R. 145.—**CAN.**

PART XIa.

sc. *Effect of—Under Adoption Act.*]—*Re* Warren (1926), 37 B. C. R. 322.—**CAN.**

sf. *By agreement.*]—Under Child Welfare Act, C. A., 1924, c. 30, as amended in 1926, c. 4, s. 15, a person who, when a child within the said Act, was adopted under an agreement entered into prior to Sept. 1, 1921t between a person having his or her legal guardianship, & the adopting parent has the same status, including the right of inheriting from his or her foster parents dying after said amendment, except as to property expressly limited to heirs of the body, as if he or she were their child by natural birth, whether or not said adopted person was a "child" when the amendment came into force, & is, therefore, to be deemed the child of the foster parents for the purposes of Life Insurance Act, C. A., 1924, c. 99. The Act does not, however, create a new canon for the construction of wills. Therefore, where the adopted daughter was the niece of the foster father's wife, & his will, after making provision for said adopted daughter by name, gave part of the residue of his estate to his & his wife's next-of-kin, the daughter took under the residuary bequest as his wife's niece & not as testator's child.—*Re* Scott Estate, [1928] 1 W. W. R. 168.—**CAN.**

sz. *Registration of adoption.*]—An authority to adopt was presented for registration by the adoptive son's natural father, who was then his nearest male agnate, treating the son as having passed into the adoptive family. Registration was effected, the registering officer having satisfied himself, as required by sect. 41, that the person

Part XII.—Religion and Education.

1257. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

1258. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

1262. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

1266. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

1269. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

1272a. —] — RADCLIFFE READETT (1852), 18 L. T. O. S. 316.

1274. *Add. Annotation :—As to* (3) **Refd.** *Re* Carroll, [1931] 1 K. B. 317.

1302. *Add. Annotation :—As to* (1) **Refd.** *Re* Carroll, [1931] 1 K. B. 317.

1306. *Add. Annotation :—As to* (2) **Refd.** *Re* Carroll, [1931] 1 K. B. 317.

Part XIII.—Guardianship.

1432. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

1441a. —— **Necessity for citation of next-of-kin of minor.**]—The ct. refused to appoint the paternal uncle guardian to a minor, for the purpose of instituting a suit on his behalf against the mother in reference to the validity of the will of the minor's father, without first citing the mother to show cause why such an appointment should not be made.—*In the Goods of* JENKINS (1869), L. R. 1 P. & D. 690 ; 38 L. J. P. & M. 72 ; 21 L. T. 300 ; 33 J. P. 712.

1448. *Add. Annotation :—Generally,* **Refd.** *Re* Carroll, [1931] 1 K. B. 317.

1491. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

presenting was entitled to do so according to sect. 40, & it not having been objected that he was not so entitled :—*Held :* the document was duly registered, since the natural father, as the adoptive son's nearest male agnate, was the proper person to act as his natural guardian in the absence of any guardian judicially appointed ; further, that any doubt upon the facts was removed by the certificate of the registering officer. —VENKATAPPAYYA *v.* VENKATA RANGA RAO (1928), I. L. R. 52 Mad. 175.—**IND.**

sa. *Adoption order—Form of—Need not show facts giving jurisdiction.*]—*Re* MOMBRIQUETTE (N. S.), [1929] 1 D. L. R. 794 ; 51 Can. Crim. Cas. 218. —**CAN.**

sb. *Power of court to change name.*]—*Re* X., [1930] 3 W. W. R. 640.—**CAN.**

sd. *Exemption from succession duty.*] —The child in question herein :—*Held :* to be one to whom testator in question stood for not less than ten years immediately prior to his death " in the acknowledged relationship of a parent," within sect. 2 of Succession Duty Act, R. S. B. C. 1924, &, therefore, the amount going to her under his will was entitled to exemption under sect. 4 of said Act.—REDMOND *v.* A.-G. FOR BRITISH COLUMBIA, [1931] 3 W. W. R. 18 ; 44 B. C. R. 390.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 2.

1265 vi. —— —— *Unless prejudicial to child.*]—*Re* LAURIN (1927), 60 O. L. R. 409.—**CAN.**

k i. —— *Not interfered with—Effect of Child Welfare Act, C. A.*, 1924 (c. 30), *ss.* 2, 186.]—*Re* SKALESKI, POPHAM *v.* BERTRAND, [1927] 1 D. L. R. 781 ; [1927] 1 W. W. R. 355 ; 47 Can. Crim. Cas. 81 ; 36 Man. L. R. 221.—**CAN.**

PART XIII. SECT. 1.

sx. *Infants Act, R. S. S.*, 1920 (c. 155), *s.* 20—*Effect of.*]—*Re* NAKAUCHI ESTATE, [1927] 3 D. L. R. 1087 ; [1927] 2 W. W. R. 607 ; 21 Sask. L. R. 673.—**CAN.**

sy. —— ——.]—*Re* SHERWIN ESTATE, *Re* LANGLEY ESTATE, [1927] 3 D. L. R. 1098 ; [1927] 2 W. W. R. 609 ; 21 Sask. L. R. 644.—**CAN.**

PART XIII. SECT. 2.

sz. *Surviving parent.*]—Although Domestic Relations Act, 1927, c. 5 (Alta.), does not expressly provide that where only one parent is living that parent shall be the guardian, the obvious inference from its provisions is that so long as the surviving parent is a fit & proper person to have the guardianship, that parent is the " guardian appointed or constituted by the Act," & the power given by sect. 64 to the ct. to appoint a guardian does not arise.—*Re* DOMESTIC RELATIONS ACT, 1927, *Re* PULKABREK, [1928] 4 D. L. R. 821 ; [1928] 3 W. W. R. 323.—**CAN.**

sa. *Surviving parent.*]—Sect. 24 of Infants Act, R. S. S. 1920 (c. 155), as amended by 1925–26 (c. 42), provides : " On the death of either parent, the surviving parent shall be the guardian of their infant children " :—*Held :* this sect. appoints & constitutes the surviving parent the guardian without an order from the ct. being necessary, & being so appointed & constituted the guardian has the charge & management of the estate under sect. 28 of said Act ; & management of the estate includes authority to receive it.—*Re* SHERRER, [1930] 3 W. W. R. 229 ; 4 D. L. R. 1011.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 4.

1377 i. *Necessity for probate.*] — *Held :* not necessary.—*Re* PRITCHARD, [1930] 2 W. W. R. 112 ; 4 D. L. R. 1030 ; 24 S. L. R. 480.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 1.—A.

1 i. —— *Jurisdiction to appoint when parents unfit.*]—*Re* STEELE, [1930] 2 D. L. R. 212.—**CAN.**

sb. *Calcutta Supreme Court.*]—On an application, made by the father to the High Ct. in its original jurisdiction, for being appointed a guardian of the person & property of the infant, there being no opposition on the part of any other relation of the infant :—*Held :* the Charter of the Supreme Ct. gave that ct. all the powers of the Ct. of Chancery in England & provided by clause 25 thereof that the Supreme Ct. should be authorised to appoint guardians & keepers for infants & their estates according to the order observed in England. Since Guardian & Wards Act, 1890, *s.* 3, saved this jurisdiction of the Chartered High Cts., this ct. had power to make the order asked for.—*Re* TARUNCHANDRA GHOSH (1929), I. L. R. 57 Calc. 533.—**IND.**

PART XIII. SECT. 5, SUB-SECT. 1.—B.

1413 iii. ——.]—Guardians & Wards Act, VIII. of 1890, clearly shows that the ct. can exercise its jurisdiction to appoint a guardian of the person of the minor even if he be possessed of no property.—WALTER *v.* WALTER (1927), I. L. R. 55 Calc. 731.—**IND.**

m i. ——.]—Where the husband is domiciled in Alberta at the time an action for divorce is begun the Supreme Ct. of Alberta has jurisdiction in such action to make an order awarding the custody of the children to the mother even though they have been removed by the father to a foreign state & are residing therein at the time of the appln. for the order ; & will where the merits warrant it make such an order provided it appears that under the laws of said state the order will be recognised as valid by the cts. thereof. —GOFORTH *v.* GOFORTH, [1929] 1 D. L. R. 58 ; [1928] 3 W. W. R. 483. —**CAN.**

sc. *Not infant having interest in property of undivided Mitacshara family.*]—GHARIB-UL-LAH *v.* KHALAK SINGH (1903), 19 T. L. R. 447, P. C.— **IND.**

PART XIII. SECT. 5, SUB-SECT. 2.

sd. *Consent of official guardian—Withdrawal of.*]—*Re* ADMINISTRATION ACT, *Re* HADDON, [1927] 2 D. L. R. 747 ; [1927] 1 W. W. R. 737 ; 38 B. C. R. 328.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 3.—A.

1456 i. *Discretion of judge—Not interfered with unless erroneously exercised.*] —*Re* STONE & BALMAIN (1929), 1 M. P. R. 192.—**CAN.**

1468 iii. —— ——.]—It is not the practice of the ct. to appoint a married woman sole guardian of orphan children.—*Re* HANCOCK, [1932] N. Z. L. R. 318.—**N.Z.**

se. *Surviving parent—Notwithstanding statutory right.*]—Notwithstanding the provisions of sects. 24 & 28 of Infants Act, R. S. S. 1920, with respect to constituting the surviving parent of infant children their guardian & conferring authority on him or her

Part XIV.—Legal Proceedings.

1532. *Add. Annotation :*—**Refd.** Cooper *v.* Dummett (1930), 70 L. Jo. 394.

1563a. —— ——.]—PRACTICE NOTE, [1926] W. N. 8.

1751. *Add. Annotation :*—**Refd.** *Re* Clayton's Petn. (1927), 43 T. L. R. 659.

1771. *Add. Annotation :*—**Consd.** *Re* Picton, Picton *v.* Picton, [1931] W. N. 254.

1772. *Add. Annotation :*—**Consd.** *Re* Picton, Picton *v.* Picton, [1931] W. N. 254.

1772a. —— ——.]—HULBERT *v.* THURSTON, [1931] W. N. 171, C. A.

1772b. ——.]—*Re* PICTON, PICTON *v.* PICTON, [1931] W. N. 254.

1841. For "Pltf.'s solr. ought to be appointed" read "Pltf.'s solr. ought not to be appointed."

1952. *Add. Annotation :*—**Apld.** Mansfield *v.* Robinson, [1928] 2 K. B. 353.

1961a. Liability to solicitor employed by him—General rule.]—MARNELL *v.* PICKMORE (1796), 2 Esp. 472; 170 E. R. 424, N. P.

as such to take charge of & manage their estate, the ct. still has jurisdiction to make an order, on the application of such parent, appointing him or her to act as guardian, under bond, for the purpose of receiving certain moneys payable to the children. —*Re* CLASON ESTATE, [1931] 1 W. W. R. 504; 2 D. L. R. 530.—**CAN.**

sf. *Individual, not corporation.*]—In appointing a guardian of the property of a minor the capacity & fitness of the individual have to be taken into consideration. It is for this reason that an individual only is appointed, by the ct., as guardian.—ASHALATA RAY *v.* SOCIETY FOR THE PROTECTION OF CHILDREN IN INDIA (1930), I. L. R. 58 Calc. 15.—**IND.**

PART XIV. SECT. 1, SUB-SECT. 1.

sh. *Consent or authority of next friend of infant plaintiff—Necessity for.*]—RYAN *v.* TRASK (Alta.), [1926] 1 W. W. R. 772.—**CAN.**

sr. *Supervening insanity of infant.*]—A pursuer in minority, to whom a curator *ad litem* had been appointed, became insane *pendente lite :—Held :* as the pursuer on becoming insane ceased to have any *persona standi in judicio*, procedure taken by the curator after incapacity had supervened was incompetent.—MOODIE *v.* DEMPSTER, [1931] S. C. 553.—**SCOT.**

PART XIV. SECT. 1, SUB-SECT. 2.—B.

k i. ——.]—STOCKTON *v.* WEBB, [1932] 3 W. W. R. 471.—**CAN.**

sj. *Action without next friend—Appearance by defendant—Waiver.*]—The bringing of an action by an infant without a next friend is only an irregularity, which will be waived by an unconditional appearance by deft.—HUBER *v.* SZELES & SZELES, [1929] 3 D. L. R. 193; 2 W. W. R. 11; 23 S. L. R. 499.—**CAN.**

PART XIV. SECT. 1, SUB-SECT. 2.—G. (b).

1605 i. *Power to compromise—If for benefit of infant.*]—Pltf., an infant, suing by his next friend, was given judgment in the county ct. for $520 damages & costs. Deft. told the next friend that he, deft., was sure to win on the appeal, & proposed a settlement. The next friend being alarmed by deft.'s statement signed a settlement on the following day in the presence of deft. & the latter's solr., whereby, in consideration of the abandonment of the appeal, the judgment was reduced by $150 & deft. was given time for its payment. On deft.'s appln. an order was made confirming the settlement & setting aside the execution. On appeal therefrom :—*Held :* the order should be set aside.—TRUEN *v.* BOZYNSKI, [1928] 3 D. L. R. 484; [1928] 2 W. W. R. 340; 37 Man. L. R. 363.—**CAN.**

PART XIV. SECT. 1, SUB-SECT. 6.

sk. *General rule.*]—Where a suit is brought by a minor pltf. to the knowledge of, & without objection from, deft., & pltf. becomes a major before the suit is heard & decided, it is not a nullity, & is maintainable.—FULI BIBI *v.* KHOKAI MONDAL (1927), I. L. R. 55 Calc. 712.—**IND.**

PART XIV. SECT. 1, SUB-SECT. 10.—B. (d).

h. *Revsd.*, 4 A. R. 449.

sl. *Applications as to property.*]—On applications respecting the property of infants costs must be kept down & the cheapest & most expeditious procedure adopted. Where there is a choice as to the manner of procedure & the more expensive procedure is taken, the solr. can recover only those costs which would have been allowed him had the cheaper procedure been followed.—ROYAL TRUST CO. *v.* BONSALL, [1925] 3 D. L. R. 141; [1925] 2 W. W. R. 103; 19 Sask. L. R. 513.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 2.—A.

1818 i. *Necessity for separate representation.*]—SHAIK ABDUL KARIM *v.* THAKURDAS THAKUR (1928), I. L. T. 55 Calc. 1241.—**IND.**

p i. —— ——.]—JONES *v.* GIBBONS, [1929] 4 D. L. R. 1067; 40 B. C. R. 65.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 2.—B. (a) i.

sm. *Infant for whom appearance not entered.*]—*Held :* it is competent to appoint a curator *ad litem*, to a pupil, called as defender in an action, for whom appearance has not been entered. —DRUMMOND'S TRUSTEES *v.* PEEL'S TRUSTEES, [1929] S. C. Ct. of Sess.) 484.—**SCOT.**

PART XIV. SECT. 2, SUB-SECT. 2.—B. (a) ii.

sn. *Guardian responsible for document or transaction on which action founded.*]—VENKATASOMESWARA RAO *v.* LAKSHMANASWAMI (1928), I. L. R. 52 Mad. 275.—**IND.**

PART XIV. SECT. 2, SUB-SECT. 2.—B. (b).

1856 i. *Power to consent—To decree.*]—KUMAR GANGANAND SINGH *v.* MAHARAJAH SIR RAMESHWAR SINGH BAHADUR, No. 1916 i, *post.*

sx. *Duration of appointment.*]—A guardian *ad litem* appointed for a minor deft. by the trial ct. continues to represent him in all stages of the *lis*, until such guardian has been permitted to retire, or been removed, by the ct.; & it is he alone who can file an appeal on behalf of the minor.—LATAFAT ALI KHAN *v.* MUHAMMAD GAR KHAN (1929), I. L. R. 52 All. 494.—**IND.**

PART XIV. SECT. 2, SUB-SECT. 5.

1898 ii. ——.]—HEWETT *v.* SMITH, [1927] S. A. S. R. 338.—**AUS.**

PART XIV. SECT. 2, SUB-SECT. 7.—A.

1916 i. —— *Where fraud or collusion can be alleged.*]—A suit by a minor to set aside a consent decree, on the allegation that a fraud was practised not on the ct. but on himself, is maintainable.

It is the duty of a guardian *ad litem* to be as vigilant in guarding the interests of the minor as he would be expected to be if his own interests were involved, & the ct. will ordinarily relieve the minor from the effect of a consent decree & give him an opportunity to defend the suit, if the guardian did no more than put his signature to a petition of compromise without considering for himself the question of benefit to the minor. But the ct. will not allow a minor to avoid a consent decree, if, in the circumstances, it considers that the settlement was for the benefit of the minor.—KUMAR GANGANAND SINGH *v.* MAHARAJAH SIR RAMESHWAR SINGH BAHADUR (1927), I. L. R. 6 Pat. 388.—**IND.**

g i. —— *Negligence of guardian ad litem.*]—"Gross negligence," which may be interpreted as culpable neglect of the interests of a minor deft., on the part of his guardian *ad litem* will entitle the minor to the avoidance of proceedings taken against him. The negligence must be such negligence as leads to the loss of a right which, if the suit had been defended with due care, must have been successfully asserted.—BRIJ RAJ *v.* RAM SARUP (1925), I. L. R. 48 All. 44.—**IND.**

PART XIV. SECT. 2, SUB-SECT. 7.—B.

1922 ii. ——.]—CLIBBORN *v.* FORSTALL (1843), 5 I. Eq. R. 531.—**IR.**

1922 iii. ——.]—A decree for a sale in a mtge. cause ought not to give the infant a day to show cause.—CLINTON *v.* BERNARD (1844), Drury *temp.* Sug. 287.—**IR.**

1922 iv. ——.]—A day to show cause ought not to be given to the minor.—HUTTON *v.* MAYNE (1846), 3 Jo. & Lat. 586.—**IR.**

1922 v. ——.]—A final order of foreclosure should reserve a day for infant deft. to show cause.—LONDON & CANADIAN LOAN & AGENCY CO. *v.* EVERETT (1881), 8 P. R. 489.—**CAN.**

1922 vi. *Infant need not show cause—Ontario practice.*]—It is not now necessary in a judgment for foreclosure that a day should be reserved for an infant deft. to show cause. The rights of infants are protected by the Official Guardian, who in foreclosure actions has the right to ask for a sale by the ct. —KEMP *v.* BEATTIE, [1929] 1 D. L. R. 55; 63 O. L. R. 176.—**CAN.**

Part XV.—Wards of Court.

2027. *Add. Annotations:*—**Apld.** Greenway *v.* A.-G. (1927), 44 T. L. R. 124. **Refd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579.

2030. *Add. Annotations:*—*As to* (1) **Refd.** *Re* Lanyon, Lanyon *v.* Lanyon (1927), 43 T. L. R. 714. *As to* (2) **Consd.** *Re* **May**, Eggar *v.* May (1931), 47 T. L. R. 515.

2069. *Add. Annotation:*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

2087. *Add. Annotation:*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

2088. *Add. Annotation:*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

2167a. —— ——.]—*Re* OLIVE (1863), 8 L. T. 567; 11 W. R. 819.
See, also, No. 735, *ante*.

Part XVII.—Protection of Infants.

2196. *Add. Citation:*—28 Cox, C. C. 43.

PART XIV. SECT. 2, SUB-SECT. 10.—B.

so. *Official guardian—Defending as guardian ad litem—Where legal guardian capable of safeguarding infant's rights.*]—Although under Official Guardian Act, R. S. A. 1922, c. 22, the Official Guardian becomes a guardian *ad litem* on being served with the statement of claim in an action against an infant, yet, since by applying to the ct. he may be relieved of his position as guardian *ad litem* where there is a natural & legal guardian capable of safeguarding the infant's interests, he incurs the personal liability for costs of an ordinary guardian *ad litem* where, instead of applying to be so relieved, he sees fit to defend the action.—SHEPPARD *v.* ROBINSON, [1928] 3 D. L. R. 347; [1928] 2 W. W. R. 235; 23 Alta. L. R. 461.—**CAN.**

PART XVII. SECT. 2, SUB-SECT. 3.

sy. *Causing child to be in danger of becoming immoral—Sufficiency of evidence — Parents unmarried.*]—R. *v.* OKRAINETZ, [1930] 1 W. W. R. 826; 53 Can. C. C. 340.—**CAN.**

that the father & mother of an illegitimate child are living together in adultery in the home where the child is, is not sufficient to support a conviction where there is no evidence that the child's morals are endangered by the adultery.—R. *v.* VAREY, [1932] O. R. 211; 3 D. L. R. 95.—**CAN.**

sb. —— —— ——.]—A conviction under sect. 215 (2) of the Criminal Code is not justified without proof of indulgence in sexual immorality & indulgence, which must be shown to be such that it would be apparent to a child capable of understanding.—R. *v.* EASTMAN, [1932] O. R. 407.—**CAN.**

sd. *Contributing to child becoming juvenile delinquent—What must be proved.*]—Before a person can be held guilty under sect. 33 (*b*) of Juvenile Delinquents Act, 1929 (c. 46), of an act contributing to a child becoming a juvenile delinquent or likely to make such child a juvenile delinquent, the child in question must have become a juvenile delinquent.—*Re* STROM, [1930] 1 W. W. R. 878; 53 Can. C. C. 224.—**CAN.**

sf. *Child growing up without parental control.*]—It appearing that a girl of 15 years was allowed to run the streets at night, & there being abundant evidence of her misconduct with men: —*Held:* a magistrate was justified in finding that she was "growing up without salutary parental control & education" within Children's Protection Act, R. S. O., 1927, sect. 1 (*g*) (viii), & was a neglected child within the Act.—*Re* I. M. (1930), 66 O. L. R. 385.—**CAN.**

PART XVII. SECT. 5. SUB-SECT. 1.

ni. —— *Liability of town—Statement of claim.*]—CHILDREN'S AID SOCIETY *v.* NORTH SYDNEY, [1932] 2 D. L. R. 64.—**CAN.**

INJUNCTION.

Part I.—Nature of Injunction.

5. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

Part II.—Jurisdiction.

14. *Add. Annotations :—As to* (1) **Apld.** Stevens *v.* Willing & Co., [1929] W. N. 53. **Refd.** Price *v.* Corpn. D'Energie De Montmagny, [1927] A. C. 363.

20. *Add. Annotation :*—**Apld.** Rex Co. & Rex Research Corpn. *v.* Muirhead & Comptroller-General of Patents (1926), 44 R. P. C. 38.

22a. ——.]—BEDDOW *v.* BEDDOW (1878), 9 Ch. D. 89 ; 47 L. J. Ch. 588 ; 26 W. R. 570.

Annotations :—**Consd.** North London Ry. *v.* G. N. Ry. (1883), 11 Q. B. D. 30. **Refd.** Thomas *v.* Williams (1880), 14 Ch. D. 864 ; Quartz Hill Consolidated Gold Mining Co. *v.* Beall (1882), 20 Ch. D. 501 ; Bonnard *v.* Perryman, [1891] 2 Ch. 269 ; Jackson *v.* Barry Ry., [1893] 1 Ch. 238.

36. *Add. Annotations :*—**Apld.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441. **Refd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485.

36a. —.]—In an action by the A.-G. to restrain the breach of a statute, the ct. has jurisdiction to grant an injunction although the statute imposes a penalty, for example, a fine, for the breach. The grant of an injunction is an additional or alternative remedy.—A.-G. *v.* SHARP, [1931] 1 Ch. 121 ; 99 L. J. Ch. 441 ; 143 L. T. 367 ; 94 J. P. 234 ; 46 T. L. R. 554 ; 74 Sol. Jo. 504 ; 28 L. G. R. 513, C. A.

Annotation :—**Consd.** A.-G. *v.* Premier Line, Ltd. (1931), 48 T. L. R. 104.

36b. —— ——.]—The relators in this action had since 1928 operated a motor coach service between London & Aylesbury, & later under road service licences obtained under Road Traffic Act, 1930 (c. 43), s. 72 (1), & they alleged that defts. had operated a similar service on the same route without having first obtained a licence. In an action to restrain defts. from so operating the service, defts. contended that the action for an injunction did not lie, the only remedy being the statutory penalty :—*Held :* the claim for an injunction was maintainable although the statute created a new offence & provided a penalty.—A.-G. *v.* PREMIER LINE, LTD., [1932] 1 Ch. 303 ; 101 L. J. Ch. 132 ; 146 L. T. 297 ; 48 T. L. R. 104 ; 75 Sol. Jo. 852 ; 30 L. G. R. 126.

39. *Add. Annotations :—As to* (2) **Consd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441. **Refd.** Hughes *v.* Satchell (1925), 134 L. T. 93. *Generally*, **Refd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485.

40. *Add. Annotations :*—**Refd.** Preston *v.* Raphael Tuck, [1926] Ch. 667 ; Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485.

42. *Add. Annotation :*—**Apld.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441.

45. *Add. Annotations :*—**Consd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441. **Refd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485.

47. *Add. Annotations :*—**Apld.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441. **Refd.** Salisbury & Fordingbridge District Drainage Board *v.* Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566 ; Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485 ; A.-G. *v.* Premier Line, Ltd., [1932] 1 Ch. 303.

Part III.—Interlocutory Injunctions.

105a. *S. P.* GREAT WESTERN RY. CO. *v.* BIRMINGHAM & GLOUCESTER RY. CO. (1844), 3 L. T. O. S. 317, L. C.

113a. —— ——.]—NEW NIMROD CO., LTD. *v.* PERUVIAN PACIFIC RY., LTD., INTERNATIONAL CONSTRUCTION & FINANCE SYNDICATE, LTD. & CRANKSHAW (1907), 51 Sol. Jo. 737.

PART I. SECT. 1.

9 i. *Where court cannot enforce performance.*]—LAW *v.* OTTAWA CITY PUBLIC SCHOOL BOARD, [1928] 4 D. L. R. 483 ; 63 O. L. R. 1.—**CAN.**

PART II. SECT. 1.

sa. *General rule.*]—The discretionary power to grant an injunction must be exercised reasonably & in harmony with well-established principles.—PRATT *v.* SCHEVECK (Sask.), [1926] 4 D. L. R. 1169 ; [1926] 3 W. W. R. 657.—**CAN.**

13 iii. ——.]—KAULBACH *v.* BOYLAN (1906), 1 E. L. R. 136.—**CAN.**

PART II. SECT. 4, SUB-SECT. 1.

36 iii. —— ——.]—A.-G. FOR ALBERTA *v.* LEES & COURTNEY, [1932] 3 W. W. R. 533.—**CAN.**

PART III. SECT. 1, SUB-SECT. 1.

56 v. —— *Alternative method of operation possible.*]—Defts. in the carrying out of certain building operations made use of mechanical drills, which caused a noise, continuously during ordinary business hours, of so deafening a nature as to make it practically impossible for business to be carried on in a building owned by pltf. co. Despite the protests of the co., no effort had been made by defts. to conduct their operations during hours when business would not be affected, or during ordinary business hours in some less noisy method. Such an alternative method could be used, though only at an increase in the cost & duration of the operations :—*Held :* defts. were bound to take, & had not taken, all reasonable precautions to minimise the nuisance created by them, & the injunction should be continued until the hearing of the suit to restrain the use of the drills during certain specified hours.—DAILY TELEGRAPH CO., LTD. *v.* STUART (1928), 28 S. R. N. S. W. 291 ; 45 N. S. W. W. N. 48.—**AUS.**

173. *Add. Annotation :*—**Refd.** Page *v.* Scottish Insce. Corpn. (1929), 98 L. J. K. B. 308.

177. *Add. Annotation :*—**Folld.** Wall *v.* Exchange Investment Corpn., [1926] Ch. 143.

Part IV.—Perpetual Injunctions.

199. *Add. Annotation :*—**Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

Part V.—Mandatory Injunctions.

270. *Add. Annotation :*—*As to* (1) **Consd.** Howard, Flanders *v.* Maldon Corpn. (1926), 135 L. T. 6.

298. *Add. Annotation :*—**Refd.** Grant *v.* Derwent, [1929] 1 Ch. 390.

Part VI.—Injunction quia timet.

315. *Add. Annotation :*—**Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

325. *Add. Annotation :*—**Refd.** Farnworth *v.* Manchester City Corpn., [1929] 1 K. B. 533.

332. *Add. Annotation :*—**Refd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1928] Ch. 235.

336. *Add. Annotation :*—**Refd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1928] Ch. 235.

59 ii. ——— ———.]—CUMBERLAND COAL & RY. CO. *v.* MCDOUGALL (1911), 9 E. L. R. 204.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.—B.

k i. ———.]—PRATT *v.* SCHEVECK (Sask.), [1926] 4 D. L. R. 1169; [1926] 3 W. W. R. 657.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.—C.

77 xxiv. ———.]—The Apatco, Ltd., gave a debenture to M. to secure a certain sum, constituting a floating charge over all the assets of the co. present or future, & prohibiting the creation of any mtge. or charge in priority to it. Afterwards the co. gave a debenture to W. to secure portion of the purchase-money of certain goods sold to it by W., & constituting a floating charge over the assets so sold. Subsequently, W. recovered a judgment against the co. for portion of the money secured by his debenture, & issued execution, under which the sheriff seized goods of the co. M. claimed the goods & the sheriff interpleaded. M. then instituted a suit to restrain the sale of the goods by the sheriff :—*Held :* an injunction should be granted to restrain the sale for seven days, with leave to either party to apply for the appointment of a receiver or receivers of the goods, to which they were respectively entitled till the hearing of the case.—MATHIESON *v.* WAHLEN (1928), 28 S. R. N. S. W. 189; 45 N. S. W. W. N. 47.—**AUS.**

PART III. SECT. 1, SUB-SECT. 2.—D.

f i. ——— *Injury to fishery.*]—MOORE, ETC. *v.* A.-G., [1927] I. R. 569.—**IR.**

PART III. SECT. 1, SUB-SECT. 2.—E.

117 xvi. ———.]—MOORE, ETC. *v.* A.-G., [1927] I. R. 569.—**IR.**

117 xvii. ———.]—DEFOREST PHONOFILM OF CANADA, LTD. *v.* FAMOUS PLAYERS CANADIAN CORP., [1929] 1 D. L. R. 301; 31 Que. P. R. 278.—**CAN.**

117 xviii. ———.]—MCCALLUM, SMITH CO., LTD. *v.* BETCHERMAN, [1932] 4 D. L. R. 397.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3.—B. (a).

sb. *Injunction involving continuation of illegal course of conduct.*]—Water Clauses Consolidation Act, 1897, & subsequent legislation in lieu thereof, requires that grants of use of water thereunder shall be circumscribed in the manner in which the licences held by deft. co. are circumscribed; said licences provide that the territory within which the power to be generated by the use of the water thereby granted may be sold, bartered or exchanged is an area within 50 miles of Rossland. Therefore the continuance of an interim injunction restraining deft. co. from cutting off said power, which it had been supplying to a co. beyond such area, was refused, since it would require it to continue an illegal course of conduct.—GRANBY CONSOLIDATED MINING, SMELTING & POWER CO. *v.* WEST KOOTENAY POWER & LIGHT CO., [1928] 4 D. L. R. 724; [1928] 3 W. W. R. 301; *affd.*, [1929] 2 D. L. R. 651; 2 W. W. R. 470.—**CAN.**

PART III. SECT. 2.

194 i. *Whether granted after decision—To preserve property pending appeal.*]—Injunction to preserve rights pending an appeal, granted.—PREVEDOROS *v.* PREVEDOROS (B. C.), [1927] 3 W. W. R. 755.—**CAN.**

194 ii. ——— ———.]—Any judge of the Appellate Div. has the power to grant an injunction to preserve property pending an appeal to that Div. so that the appeal will not be nugatory if successful.—SPOONER OILS, LTD., & SPOONER *v.* TURNER VALLEY GAS CONSERVATION BOARD & A.-G. FOR ALBERTA (No. 2), [1932] 2 W. W. R. 641.—**CAN.**

194 iii. ——— ———.]—Defts. applied for an injunction to stay implementing of judgment, pending an appeal therefrom to the Supreme Ct. of Canada. The judgment, which was drawn up & entered before this application, ordered that the lands in question in this action be vested in pltfs. There was no reservation of any kind in the judgment :—*Held :* under the circumstances the ct. had no jurisdiction to grant the injunction.—ANDLER *v.* DUKE (No. 2), [1932] 1 W. W. R. 672; 3 D. L. R. 210; 44 B. C. R. 201.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 2.

201 x. ———.]—COCKBURN *v.* EAGER (1876), 24 Gr. 409.—**CAN.**

PART IV. SECT. 1, SUB-SECT 4.

217 vi. ——— ———.]—The ct. will not grant an injunction to restrain the breach of a contract for the sale & delivery of future chattels, expressed in an affirmative form, even though the contract so expressed involves a negative in substance, in a case where damages would be a complete remedy, where the contract is of such a nature that it cannot be specifically enforced, & where payment for the goods in question has not been made.—WOOD *v.* CORRIGAN (1928), 28 S. R. N. S. W. 492; 45 N. S. W. W. N. 134.—**AUS.**

PART V. SECT. 2.

240 ii. ——— ——— ———.]—To entitle pltf. to a mandatory injunction on an interlocutory application he must make out a strong *primâ facie* case to the right which he asserts & for active interference by the ct. If his right is reasonably clear, & particularly if there exists an urgent & paramount necessity for the injunction in order to prevent serious damage to pltf., the injunction will issue before trial.—PRATT *v.* SCHEVECK (Sask.), [1926] 4 D. L. R. 1169; [1926] 3 W. W. R. 657. —**CAN.**

PART V. SECT. 3.

sd. *Injunction to remove building.*]—GILPINVILLE, LTD. *v.* DUMARESQ (N. S.), [1927] 1 D. L. R. 730.—**CAN.**

PART V. SECT. 4.

267 ii. ———.]—Mandatory injunction refused, where the injury complained of was capable of being compensated by a small money payment, & it would be oppressive to grant a mandatory injunction.—CARPET IMPORT CO., LTD. *v.* BEATH & CO., LTD., [1927] N. Z. L. R. 37.—**N.Z.**

267 iii. ———.]—A person cannot ask the ct. to sanction his wrongful act & allow him to pay monetary compensation only. He may be compelled to undo his wrongful act. But cts. in India have a wide discretion in granting mandatory injunctions, & as a rule such injunction will not be granted if the injury to pltf.'s legal rights is small, monetary compensation can be estimated, & is small, the granting of injunction is oppressive on deft. & specially if there is delay on pltf.'s part in protesting against the injury or in filing the suit.—DAWSON *v.* ROUHAE ZAMANI BEGUM (PRINCESS) (1928), I. L. R. 6 Ran. 456.—**IND.**

339. *Add. Annotation :*—**Refd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1928] Ch. 235.

362. *Add. Annotation :*—*As to* (1) **Refd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1929] A. C. 344.

369. *Add. Annotation :*—**Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

Part VII.—Damages in lieu of or in addition to Injunction.

371. *Add. Annotation :*—*As to* (1) **Apld.** Coplovitch *v.* Williams (1929), 73 Sol. Jo. 484.

388. *Add. Annotation :*—**Refd.** Bhagchand Dagdusa Gujrathi *v.* Secretary of State for India in Council (1927), 43 T. L. R. 617.

401. *Add. Annotation :* —**Consd.** Rely-A-Bell Burglar & Fire Alarm Co. *v.* Eisler, [1926] Ch. 609.

408. *Add. Annotations :*—*As to* (1) **Apld.** Price *v.* Hilditch, [1930] 1 Ch. 500. **Refd.** Horton's Estate *v.* Beattie (1926), 42 T. L. R. 701. *Generally*, **Refd.** Farnworth *v.* Manchester City Corpn., [1929] 1 K. B. 533.

Part VIII.—Effect of Conduct of Parties.

464. *Add. Annotation :*—**Refd.** Lynde *v.* Nash, [1928] 2 K. B. 93.

469. *Add. Annotation :*—**Refd.** A.-G. *v.* London & Home Counties Joint Electricity Authority, [1929] 1 Ch. 513.

507. *Add. Annotation :*—**Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117.

511a. **Encouragement by plaintiff.**]—Coplovitch *v.* Williams (1929), 73 Sol. Jo. 484.

528. *Add. Annotations :*—**Consd.** Ariff *v.* Rai Jadunath Majumdar Bahadur (1931), 47 T. L. R. 238. **Refd.** Canadian Pacific Ry. Co. *v.* R., [1931] A. C. 414.

551. *Add. Annotations :*—**Refd.** Grant *v.* Derwent, [1928] Ch. 902; Chatsworth Estates Co. *v.* Fewell, [1931] 1 Ch. 224.

568. *Add. Annotations :*—**Consd.** Marbé *v.* George Edwardes (Daly's Theatre) (1927), 96 L. J. K. B. 980. **Apprvd.** Herbert Clayton & Jack Waller, Ltd. *v.* Oliver, [1930] A. C. 209.

572. *Add. Annotation :*—**Consd.** Marbé *v.* George Edwardes (Daly's Theatre) (1927), 96 L. J. K. B. 980.

574. *Add. Annotation :*—**Consd.** Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

575. *Add. Annotation :*—**Refd.** United Indigo Chemical Co. *v.* Robinson (1931), 49 R. P. C. 178.

579. *Add. Annotation :*—**Consd.** Hyman *v.* Hyman, [1929] A. C. 601.

Part IX.—Against whom Injunction may be Granted.

585a. **Public official.**]—Rex Co. & Rex Research Corpn. *v.* Muirhead & Comptroller-General of Patents, No. 842a, *post*.

608. *Add. Annotation :*—**Refd.** The Jupiter (1927), 137 L. T. 333.

Part X.—Matters in respect of which Injunction may be Granted.

618. *Add. Annotation :*—*As to* (1) **Refd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

629. *Add. Annotation :*—**Refd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

PART VII. SECT. 1, SUB-SECT. 1.

se. *Damages & account of profits—Although defendant liable to penalty—Penalty not recoverable by party aggrieved.*]—The right to grant damages in addition to an injunction, is not limited by a statute which imposes a penalty not recoverable at the action of the person aggrieved. Where the ct. found that pltfs. were entitled to damages because deft. co. operated motor vehicles over routes to which pltfs. had been given a certificate under Motor Carrier Act, it ordered that an account be taken of the amount of money received by the co. while so operating, for compensation, & that this amount be paid as damages. —Lounsbury *v.* Sutherland Motor Bus Co. (1928), 54 N. B. R. 7.—**CAN.**

PART VII. SECT. 1, SUB-SECT. 2.—B. (a).

411 i. *Quantum of damage sustained —Injury small.*]—The rule laid down in *Shelfer* v. *London Lighting Co.* that damages in lieu of an injunction may be granted if the injury to pltf.'s legal right is small, & capable of being estimated in money, & can be adequately compensated by a small money payment, & the case is one in which it would be oppressive to deft. to grant an injunction, was applied herein, where pltf. sought a mandatory injunction because of the encroachment of deft.'s building on a few inches of pltf.'s lot.—Clark [1930] 1 W. W. R. 67; 1 D. L. R. 226; 42 B. C. R. 71.—**CAN.**

PART IX. SECT. 1.

sd. *Harbour Commissioners—Blasting operations.*]—Silliphant *v.* St. John Harbour Comrs. (1931), 3 M. P. R. 145.—**CAN.**

PART IX. SECT. 3.

af. *General rule.*]—An injunction, which is in the nature of an execution, will only be granted in *personam*, & will not be granted against any person not a party to the action.—Moore *v.* A.-G., [1930] I. R. 471.—**IR.**

PART X. SECT. 2, SUB-SECT. 2.

621 v. ——.]—Christie *v.* Fraser (1904), 10 B. C. R. 291.—**CAN.**

PART X. SECT. 2, SUB-SECT. 3.—A.

ak. *Enforcement of agreement to deliver produce to company.*]—By the arts. of assocn. of a co., whose business was to market the fruit grown by its members, it was provided that each member should deliver to the co. ninety-five per cent. of his fruit immediately after each variety thereof should be ready, suitable & fit for harvesting or picking but not

638a. Enforcement of contract contrary to terms thereof.] — Injunction refused. — SAVAGE SOUTH AFRICA, LTD. *v.* LONDON EXHIBITIONS, LTD. (1899), 43 Sol. Jo. 751.

649. *Add. Annotation :*—**Consd.** *Re* Wait, [1927] 1 Ch. 606.

675. *Add. Annotations :*—**Consd.** Chatsworth Estates Co. *v.* Fewell, [1931] 1 Ch. 224. **Refd.** Torbay Hotel *v.* Jenkins, [1927] 2 Ch. 225.

677a. ——.]—Where a breach of a restrictive covenant causes substantial damage the ct. has no discretion to award damages in lieu of a mandatory injunction. This rule applies whether the covenant is broken by the original covenantor, or by an assignee with notice.—ACHILLI *v.* TOVELL, [1927] 2 Ch. 243; 96 L. J. Ch. 493; 137 L. T. 805; 71 Sol. Jo. 745.

706. *Add. Annotations :*—**Refd.** Lord Strathcona S.S. Co. *v.* Dominion Coal Co., [1926] A. C. 108; Rely-A-Bell Burglar & Fire Alarm Co. *v.* Eisler, [1926] Ch. 609; *Re* Wait, [1927] 1 Ch. 606.

713. *Add. Annotation :*—**Refd.** Lord Strathcona S.S. Co. *v.* Dominion Coal Co., [1926] A. C. 108.

716. *Add. Annotation :*—**Folld.** Rely-A-Bell Burglar & Fire Alarm Co. *v.* Eisler, [1926] Ch. 609.

717. *Add. Annotation :*—**Refd.** Crediton Gas Co. *v.* Crediton U. C., [1928] Ch. 447.

720. *Add. Annotation :*—**Apprvd.** Lord Strathcona S.S. Co. *v.* Dominion Coal Co., [1926] A. C. 108.

724. *Add. Citations :*—95 L. J. P. C. 71; 134 L. T. 227; 31 Com. Cas. 80; 10 Asp. M. L. C. 585.

Add. Annotations :—**Distd.** Ontario Jockey Club *v.* McBride, [1927] A. C. 916. **Mentd.** Torbay Hotels *v.* Jenkins, [1927] 2 Ch. 225.

730a. ——.] — WILLIAMS *v.* WILLIAMS (1817), 3 Mer. 157; 36 E. R. 61, L. C.

Annotation :—**Consd.** Morison *v.* Moat (1851), 9 Hare, 241.

735. *Add. Annotation :*—**Refd.** Behnke *v.* Bede Shipping Co., [1927] 1 K. B. 649.

750. *Add. Annotation :*—**Consd.** A.-G. *v.* County of London Electric Supply Co., [1926] Ch. 542.

755. *Add. Annotation :*—**Consd.** Salisbury & Fordingbridge District Drainage Board *v.* Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566.

785. *Add. Annotations :*—**Apld.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441. **Refd.** R. *v.* Grain, *Ex p.* Wandsworth Grdns., [1927] 2 K. B. 205.

800. *Add. Annotation :*—**Refd.** Notley *v.* Birmingham (Bishop) (1930), 99 L. J. Ch. 305.

807. *Add. Annotation :*—**Apld.** Wing *v.* Burn (1928), 44 T. L. R. 258.

808a. —— **Cancellation of affiliation.**] — Injunction refused.—WING *v.* BURN (1928), 44 T. L. R. 258.

811. *Add. Annotation :*—*As to* (3) **Refd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485.

813. *Add. Annotation :*—**Refd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485.

829. *Add. Annotation :*—**Refd.** Putsman *v.* Taylor, [1927] 1 K. B. 637.

829a. —— ——.]—The first deft. entered the service of pltfs. as a traveller under an agreement by which he agreed that he would not at any time thereafter " divulge or make known any of the trusts, secrets, accounts, or dealings of or relating to " pltfs.' business. Upon leaving pltfs.' service, he entered the service of the second defts., who knew of the terms of the above agreement, & he kept a list of pltfs.' customers in the district in which he travelled & divulged to a considerable extent to the second defts. the terms upon which pltfs. did business :—*Held :* pltfs. were entitled to an injunction against both defts., an order for delivery up of papers & books & damages.—SUMMERS (WILLIAM) & CO., LTD. *v.* BOYCE & KINMOND & CO. (1907), 97 L. T. 505; 23 T. L. R. 724.

later than a certain date in each year : —*Held :* the obligation imposed on each member of the co. was not one in respect of which the ct. should at the instance of the co. grant an injunction. —PAKENHAM UPPER FRUIT CO., LTD. *v.* CROSBY, [1925] V. L. R. 27; 35 C. L. R. 386; 31 Argus L. R. 13.—**AUS.**

PART X. SECT. 2, SUB-SECT. 3.—C. (b).

655 iv. —— *Contract of agency.*]—The contract in question which was between a fruit grower & certain assocns. for the marketing of the grower's crops was held by the ct. to be nothing more than a contract of agency not to be specifically enforced by way of injunction or receivership. — KELOWNA GROWERS' EXCHANGE & OKANAGAN UNITED GROWERS *v.* DE CAQUERAY (1922), 70 D. L. R. 865; [1922] 3 W. W. R. 1115.—**CAN.**

655 v. ——.]—ROSS *v.* CANADIAN NATIONAL RYS., [1928] 2 D. L. R. 880; [1928] 1 W. W. R. 940; 37 Man. L. R. 279.—**CAN.**

PART X. SECT. 4, SUB-SECT. 1.—A. (a).

sl. *To restrain illegal act — Unauthorised acts of servant.*]—The ct. will not grant an interdict restraining the co. from doing certain illegal acts on the mere ground that a servant of the co. has committed such acts when the co. not only has not authorised such acts, but has expressly prohibited its servants from doing the acts complained of.—GOLDSMID *v.* SOUTH AFRICAN AMALGAMATED JEWISH PRESS, LTD., [1929] A. D. 441.—**S. AF.**

PART X. SECT. 4, SUB-SECT. 1.—A. (b).

n. Add " (1914), 20 B. C. R. 215."

PART X. SECT. 5.

810 v. —— ——.]—A grocer kept on his premises a soda water fountain, from which he filled empty aerated water bottles tendered to him by members of the public. Among the bottles so tendered were some embossed with the name of a firm of aerated water manufacturers. The manufacturers intimated to the grocer that, when selling their waters, they always retained the property in their bottles, & that, in using their bottles without their consent, the grocer was participating in the illegal use of their property. The grocer having ignored their intimation, the manufacturers sought interdict against his use of their bottles. After a proof as to the circumstances in which the manufacturers allowed to their customers & to the public possession of their bottles :—*Held :* members of the public were not precluded from acquiring a right to use the manufacturers' bottles, & the tendering by members of the public to the grocer of bottles embossed with the manufacturers' name did not certiorate the grocer that such bottles were in fact the property of the manufacturers, & the grocer was under no duty to the manufacturers to inquire into the history of each bottle tendered to him; interdict refused.—LEITCH & CO., LTD. *v.* LEYDON; BARR & CO., LTD. *v.* MACGEOGHEGAN, [1930] S. C. 41; *affd.*, 47 T. L. R.; 81 H. L.—**SCOT.**

PART X. SECT. 6.

sm. *To restrain director & employee from setting up rival business—& canvassing former customers.*]—The fact that deft. had been a director & employee of pltf. co. held not to entitle it to an injunction restraining him, after he had resigned his employment, from carrying on a rival business for himself or from canvassing customers of the co. with whom he became acquainted during such employment, where he had not taken away any written lists or other materials pertaining to the co.'s business & obtained by him in the course of his employment, although he continued to hold in the mere legal sense his position as director.— WAITE'S AUTO TRANSFER, LTD. *v.* WAITE, [1928] 3 W. W. R. 649.—**CAN.**

830a. -.]—In 1909, V. & Co., defts. in an action, were endeavouring to perfect a system known as the " C. A. V." system, for lighting motor cars by electricity, & the A. I., Ltd. who were pltfs., were licencees of patents for a dynamo suitable for the electrical lighting of motor vehicles. The parties, with a view to utilising pltfs.' dynamo in connection with the " C. A. V." system, agreed for one year that pltfs. should give defts. the " sole selling agency " for the dynamo, which was to be supplied at cost price; defts. were to use their best endeavours to introduce & sell the dynamo, & were not to become directly or indirectly interested in the sale of any other dynamo, & the parties were to mutually communicate improvements in such dynamo. Defts. were to be allowed a commission of 10 per cent. on cost price, & the ultimate profits were to be equally divided, but the agreement was not to create a partnership. Defts. during the pendency of the agreement received certain testimonials. After the termination of the agreement, pltfs. brought an action to restrain defts. from using or publishing these testimonials, & moved for an interlocutory injunction:—*Held:* defts. were sole purchasers or sole consignees of pltfs.' goods upon special terms, that there could not be implied from the agreement a contract between the parties, that all information of which defts. became possessed during the pendency of the agreement should not afterwards be used by defts. for other purposes, & that a fiduciary relationship had not been established between the parties as would have existed had defts. been in fact pltfs.' agents.—ACCUMULATOR INDUSTRIES, LTD. *v.* VANDERVELL (C. A.) & Co. (1912), 29 R. P. C. 391.

835a. —— —— **Mining report.**]—NEW NIMROD CO., LTD. *v.* PERUVIAN PACIFIC RY., LTD., INTERNATIONAL CONSTRUCTION & FINANCE SYNDICATE, LTD. & CRANKSHAW (1907), 51 Sol. Jo. 737.

839a. —— —— —— —— **Particulars.**]—Pltf. in this action claimed an injunction to restrain deft., who had been in pltf.'s employment as works manager & chemist, & who during his employment had acquired knowledge of secret processes for the manufacture of various articles made of rubber sponge by pltf., from disclosing such processes. Deft. on this procedure summons asked for further & better particulars of the secret processes:—*Held:* deft. was entitled to such particulars, but that they must be disclosed only to three experts not trade rivals of pltf., deft. himself & his legal advisers, & the order must be in such a form as to prevent the persons to whom the secret processes were communicated from disclosing them, & copies of the particulars must be returned to pltf. when the proceedings were closed.—SORBO RUBBER SPONGE PRODUCTS, LTD. *v.* DEFRIES (1930), 47 R. P. C. 454.

839b. —— —— —— ——.]—Pltf. co., who were manufacturers of a variety of chemical products, including a boiler disincrustant named " Algaloid " claimed that the latter was produced by a secret process. They sought to restrain deft., who had been in their service for some years & ultimately as works manager, from using or disclosing information obtained in their service. In particular pltfs. alleged that deft. was only enabled to make & sell a product " Descalit " by the wrongful use of information. Pltfs. also alleged that deft. had made & taken away copies or had wrongfully carried in his memory extracts from a secret formulæ book. Deft. denied that there was any secret process & that he had wrongfully taken & used any information:—*Held:* deft. had not made or taken away copies of formulæ from the book, which in fact was a costings book, & deft. was not warned as to secrecy when he entered employment in which he learned the processes without difficulty; an injunction would not be granted to prevent using knowledge that had thus become his own; dishonest or surreptitious obtaining of knowledge would have been upon a different footing, but no obligation could be implied not to use knowledged honestly acquired.—UNITED INDIGO CHEMICAL CO., LTD. *v.* ROBINSON (1931), 49 R. P. C. 178.

842a. —— **Against public official.**]—Where a public officer, *e.g.*, the Comptroller-General of Patents, claims the right to disclose information to the public which pltf. in an action is *primâ facie* entitled to withhold from publicity, it is proper to restrain that public official from taking a step which would result in that information being disclosed.—REX CO. & REX RESEARCH CORPN. *v.* MUIRHEAD & COMPTROLLER-GENERAL OF PATENTS (1926), 96 L. J. Ch. 121; 136 L. T. 568; 44 R. P. C. 38.

853a. Conversion of goods—Perishable goods.]—Pltfs., who were an American co., carried on business as exporters of fruit. They had been exporting fruit from Colombia for many years, & they had a large number of contracts with the growers of bananas & dealt with about 97 per cent. of the exportable bananas in that country. Under those contracts the bananas which were to be sold to pltfs. became the property of pltfs. as soon as they were severed from the trees. Defts. imported into England a cargo of bananas, under contracts which they had made with a co-operative society formed by some of the banana growers in Colombia, who desired to break down pltfs.' monopoly & find another outlet for their produce. Pltfs. claimed that 2,041 stems of bananas, an unidentified part of the cargo imported by defts., were from growers with whom pltfs. had contracts, or were from estates covered by those contracts, & they obtained an interim injunction restraining defts. from converting to their own use or otherwise dealing with or in any way disposing of bananas, the property of pltfs., save by delivery of the same to pltfs. or their agents:—*Held:* the order for an interim injunction was unsatisfactory & embarrassing, because (1) the bananas were perishable; (2) the order did not identify the bananas, dealings in which it was sought to restrain; (3) it did not order delivery to pltfs. The order must be varied by ordering the sale of a specified number of bananas to be selected.—UNITED FRUIT CO. *v.* FREDERICK LEYLAND & Co., LTD. (1930), 144 L. T. 97; 47 T. L. R. 33; 74 Sol. Jo. 735, C. A.

888. *Add. Annotation :—As to* (2) **Refd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485.

904. *Add. Annotation :—***Refd.** Tolley *v.* Fry (J. S.) & Sons (1929), 46 T. L. R. 108.

906a. —— ——.]—A society, composed mainly of architects, was formed into a co. limited by guarantee under Cos. Acts. By its arts. of assocn. membership of the society was open to persons qualified in certain ways approved by the council of the society, & paying a certain entrance fee & yearly subscriptions; & members were authorised to use the letters "M. S. A." as a professional designation. Deft., who was an architect, but had never been & was not a member of the society, used the letters "M. S. A." as a professional designation. The society brought an action against him for an injunction, which he did not defend, & by its statement of claim alleged, among other things, that the continuous & exclusive use of the letters by its members had given the letters a definite meaning & value in the minds of the public, & the use of them by unauthorised persons would damage the society. On motion for judgment in default of appearance :—*Held :* pltfs. were not entitled to an injunction.—SOCIETY OF ARCHITECTS *v.* KENDRICK (1910), 102 L. T. 526; 26 T. L. R. 433.

906b. Use of professional designation implying membership—Of professional institution.]—Pltf. society was incorporated in 1885, under Cos. Act, 1867, as a co. not for gain without the use of the word "limited" under licence of the Board of Trade. In 1886 pltf. society recommended its members to adopt as their professional designation the use after their names of the term "Incorporated Accountant." By 1905 that designation had come to mean to that section of the public who had dealings with accountants a member of the society, which, by its system of tests & examinations, had conferred upon its members the valuable privilege of a recognised status for ability & integrity. In that year deft. association was incorporated under the Cos. Acts as a co. limited by guarantee. Shortly after its incorporation its council recommended its members to adopt the designation "Incorporated Accountant" with the addition of the abbreviation "Lon. Assocn." In an action by pltf. society against deft. assocn. & G., one of its members, claiming (*a*) an injunction to restrain G. from using in connection with his business of accountant the designation "incorporated accountant," & (*b*) an injunction to restrain deft. society from holding out, by advertisements or otherwise, that its members were entitled to use such designation : — *Held :* the designation "incorporated accountant" was a fancy & not a descriptive term, & had come to denote membership of the society, &, therefore, that the unauthorised use of it inflicted an injury on pltf. society, in respect of which it was entitled to maintain an action. Pltf. society had a pecuniary interest in preventing deft. assocn. from attempting, by representations & inducements held out to members of the professions, to reduce the status of pltf. society by conferring improperly an indication of that status. Pltf. society was entitled to the injunctions which it claimed. —SOCIETY OF ACCOUNTANTS & AUDITORS *v.* GOODWAY & LONDON ASSOCN. OF ACCOUNTANTS, LTD., [1907] 1 Ch. 489; 76 L. J. Ch. 384; 96 L. T. 326; 23 T. L. R. 286; 51 Sol. Jo. 248.

*Annotation :—***Distd.** Society of Architects *v.* Kendrick (1910), 102 L. T. 526.

906c. —— —— **After expulsion.**]—Deft. took honours at the final examination for membership of the Institute of Chartered Accountants in England & Wales, but he was afterwards adjudicated a bkpt. & was excluded from membership under the provisions of the charter of the institute. After his exclusion deft. continued to use letter-paper headed "Honours Final. Institute of Chartered Accountants." In an action by the institute for an injunction the evidence was that this heading conveyed the impression that deft. was still connected with the institute :—*Held :* though deft. was entitled to state that he had obtained honours in the examination, the institute was entitled to an injunction against his making the statement in such a way as to lead to the belief that he was a member of the institute or was connected with it.—INSTITUTE OF CHARTERED ACCOUNTANTS OF ENGLAND & WALES *v.* HARDWICK (1919), 35 T. L. R. 342, C. A.

923a. —— **Misrepresentations—As to what took place in court.**]—GILLETTE SAFETY RAZOR, LTD. *v.* PELLETT, LTD. (1909), 26 R. P. C. 588.

928. *Add. Annotation :—***Dbtd.** R. *v.* Payne, [1896] 1 Q. B. 577. In my opinion, in some instances, the cts. have gone rather too far (LORD RUSSELL, C.J).

929a. Publication by newspaper—Commenting on matters in dispute.]—GUILDING *v.* MOREL BROTHERS, COBBETT & SONS, LTD. (1888), 4 T. L. R. 198.

SECT. 30.—OTHER PURPOSES.

959a. Bottles of manufacturer marked with name—Whether refilling by another person restrained.]—Applts., who were manufacturers of aerated water, marked their name on the bottles & claimed an exclusive right of property in them. Resp. was a grocer who

PART X. SECT. 8, SUB-SECT. 4.

b i. *Land bought with notice of prior equity.*]—HOOPER *v.* SMITH & HAMILTON (1905), 7 Terr. L. R. 27; 2 W. L. R. 194.—**CAN.**

i i. *S. P.* CANADIAN PACIFIC RY. CO. *v.* CALGARY (1887), 5 Man. L. R. 37.—**CAN.**

PART X. SECT. 14, SUB-SECT. 2.

906 i. *Use of letters implying membership—Of professional institution—"U. A."*]—INSTITUTE OF CHARTERED ACCOUNTANTS OF MANITOBA *v.* BELLAMY, [1927] 3 D. L. R. 1071; [1927] 2 W. W. R. 106; 36 Man. L. R. 453.—**CAN.**

PART X. SECT. 27.

937 vii. ——.]—In 1883 W. being seized of certain lands, conveyed half thereof to G. in fee, describing the same by metes & bounds, &, afterwards, died, having devised the other half to M. There was a house on the lands in question so situate that half of it was on the portion granted to G., & half on the portion devised to M. No specific mention of the house was made either in the deed to G. or in the will. M. now commenced, in defiance of G.'s protests, to pull down the half of the house situate on the land devised to her, & G. applied in the present action for an injunction to restrain the same :—*Held :* he was entitled to the relief claimed.—WRAY *v.* MORRISON (1885), 9 O. R. 180.—**CAN.**

had no contractual relationship with applts., & he had in his shop a soda fountain by means of which he supplied customers with aerated beverages for consumption off the premises. The customers had to bring a bottle or other receptacle, & in practice resp. filled it without examination & without inquiring into the customer's right to use it. Occasionally applts.' bottles were used in this way. In an action by applts. against resp. to restrain him from receiving from customers bottles marked with applts.' name for the purpose of filling them with beverages: —*Held:* there was no duty on resp. to ascertain which bottles were applts.' property, & the action failed.—LEITCH (WILLIAM) & Co., LTD. *v.* LEYDON; BARR (A. G.) & Co., LTD. *v.* MACGEOGHEGAN, [1931] A. C. 90; 100 L. J. P. C. 10; 144 L. T. 218; 47 T. L. R. 81; 74 Sol. Jo. 836, H. L.

Part XI.—Procedure.

990. *Add. Annotation:—As to* (1) **Reld.** Vanderpant *v.* Mayfair Hotel Co., [1930] 1 Ch. 138.

992. *Add. Annotation:*—**Reld.** Vanderpant *v.* Mayfair Hotels Co. (1929), 27 L. G. R. 752.

1000. *Add. Annotation:*—**Reld.** Salisbury & Fordingbridge District Drainage Board *v.* Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566.

1028. *Add. Annotation:—As to* (1) **Reld.** Catton *v.* Ashwell & Nesbit (1927), 44 T. L. R. 130.

1134. *Add. Citation:*—2 R. P. C. 73.

1163a. Order must identify goods—Injunction to restrain dealing with part of cargo.]—UNITED FRUIT CO. *v.* FREDERICK LEYLAND & CO., LTD., No. 853a, *ante*.

1208. *Add. Annotation:*—**Reld.** Manchester Corpn. *v.* Farnworth, [1930] A. C. 171.

1216. *Add. Annotation:*—**Reld.** Horton's Estate *v.* Beattie (1926), 42 T. L. R. 701.

Part XII.—Breach of Injunction and Remedies Therefor.

1346. *Add. Annotation:*—**Reld.** Boyce *v.* Morris Motors (1927), 44 R. P. C. 105.

PART XI. SECT. 1, SUB-SECT. 1.—A.

b. *Revsd.*, 2 A. R. 226.

PART XI. SECT. 1, SUB-SECT. 1.—B. (a).

968 vi. —— ——.]—In an action brought by a ratepayer as pltf. on behalf of himself & other citizens in the municipality, except the mayor, aldermen, & councillors thereof, for declarations & an injunction restraining the erection of a town hall, the A.-G. & the corpn. of the town were joined as deft., the only relief claimed against the A.-G. being a declaration:—*Held:* as pltf. was interested only as one of the public, the A.-G. was a necessary pltf., & in the absence of special circumstances the A.-G. was wrongly joined as a deft.—QURBAN *v.* A.-G. & BRIGHTON CORPN., [1928] S. A. S. R. 457.—**AUS.**

PART XI. SECT. 2, SUB-SECT. 2.

sp. *Plaintiff—Having only equitable interest.*]—Injunction granted.—BESINNETT *v.* WHITE, [1926] 1 D. L. R. 95; *affg.*, [1925] 3 D. L. R. 560; 57 O. L. R. 171.—**CAN.**

st. —— *Having mere interesse termini.*]—Pltf. having a mere *interesse termini* is not necessarily debarred from maintaining an action for injunction.—MIDNAPUR ZAMINDARI & Co., LTD. *v.* RAM KANAI SINGH DEO DARPA SAHA (1925), I. L. R. 5 Pat. 80. —**IND.**

PART XI. SECT. 2, SUB-SECT. 3.—B. (b).

1035 i. *Fact of appearance—Must be disclosed.*]—MACKEY *v.* MACKEY (B. C.), [1929] 4 D. L. R. 658.—**CAN.**

PART XI. SECT. 2, SUB-SECT. 3.—C.

1046 i. *Urgency—Preservation of property in dispute.*]—WILMOT *v.* MAITLAND (1851), 2 Gr. 556.—**CAN.**

PART XI. SECT. 2, SUB-SECT. 7.

1083 i. *The application—Necessity for full disclosure of facts.*]—YARMIE *v.* YARMIE, [1925] 2 D. L. R. 1215.—**CAN.**

PART XI. SECT. 3, SUB-SECT. 1.

d i. *S. P.* DAVIDSON & VANCOUVER TERMINAL GRAIN CO. *v.* NORTH WESTERN DREDGING CO. & VANCOUVER HARBOUR COMRS. (1925), 35 B. C. R. 534.—**CAN.**

PART XI. SECT. 5, SUB-SECT. 1.

sv. *Duration of injunction omitted from order—Right to amend.*]—Deft., who was employed by pltf., covenanted that he would not, in the event of the termination of that employment, directly or indirectly solicit or influence customers in a certain district for a period of three years. He committed a breach of the covenant, & pltf. brought an action claiming an injunction restraining deft. for three years. An interim order was made restraining deft. until a specified date, &, subsequently, an order was made by consent whereby deft. was restrained from committing, or attempting to commit, any breach of the covenant, simpliciter, & without stating the period for which the order operated:—*Held:* the intention of the parties was to restrain deft. during the currency of the period of prohibition stated in the covenant; & the ct. had jurisdiction to correct the judgment.—WARREN TEA CO., LTD. *v.* REINGLASS, [1928] S. R. Q. 29. —**AUS.**

PART XI. SECT. 5, SUB-SECT. 2.

sw. *Judgment in default of defence.*] —Where in an action for an injunction deft. fails to deliver a defence & pltf. is given judgment by default he should be granted such an injunction as the facts alleged in the statement of claim, which because of the absence of a defence must be deemed to be admitted, show him to be entitled to.—BRENNAN *v.* ARCADIA COAL CO., LTD. (Alta.), [1929] 4 D. L. R. 1025; 3 W. W. R. 446.—**CAN.**

PART XI. SECT. 5, SUB-SECT. 10.—A.

f i. —— *Grounds for granting appeal.*] —WINNIPEG LAUNDRY *v.* CAVERLEY (Man.), [1927] 4 D. L. R. 528.—**CAN.**

PART XII. SECT. 2, SUB-SECT. 1.—A. (a).

1349 ii. —— ——.]—The order of the ct. restraining a nuisance must be scrupulously obeyed; but where the director of deft. co. had stopped the noise during certain hours only in the honest belief that the injunction did not forbid the carrying-on of the co.'s business in ordinary working hours with the same machinery & plant, the ct. did not make an order of committal but ordered the managing director to pay the costs of the motion.—THOMSON *v.* J. TAIT, LTD., [1930] N. Z. L. R. 36. —**N.Z.**

e i. —— *Breach doubtful.*]—HOLDEN *v.* RYAN (1913), 23 O. W. R. 961; 4 O. W. N. 668; 10 D. L. R. 90.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 2.

1413 xx. —— ——.]—PRILUTSKY *v.* ANDERSON (1931), 2 M. P. R. 324.—**CAN.**

Part XIV.—Costs.

1477. *Add. Annotation :*—**Reld.** Vanderpant *v.* Mayfair Hotel Co. (1929), 27 L. G. R. 752.

1540. *Add. Annotation :*—**Reld.** Donald Campbell *v.* Pollak, [1927] A. C. 732.

PART XIV. SECT. 5.

sx. *Taxation on Supreme Court scale.*] —In an action in the Supreme Ct. of Ontario for an injunction restraining deft. from carrying on or being concerned in any business similar to that of pltfs. in whose business he had been employed, & for damages unspecified as to amount, the judge granted the injunction sought, but awarded no damages. He directed that pltfs.' costs should be paid by deft., but did not give any special direction as to the scale of costs :—*Held :* pltfs. were entitled to costs on the Supreme Ct. scale.—DOMINION LOOSE LEAF CO. *v.* MANUEL, [1925] 3 D. L. R. 426 ; 57 O. L. R. 84.—CAN.

INNS AND INNKEEPERS.

Part I.—In General.

1. *Add. Annotation :—Generally,* **Refd.** Aria *v.* Bridge House Hotel (Staines) (1927), 137 L. T. 299.

3. *Add. Annotation :*—**Refd.** Lorden *v.* Brooke-Hitching, [1927] 2 K. B. 237 ; Winkworth *v.* Raven, [1931] 1 K. B. 652.

40. In the "*Held*" paragraph for "(2) defts. were not entitled because," read "(2) defts. were not entitled to rely on Innkeepers Liability Act, 1863 (c. 4), s. 1, because."

Part II.—Duties and Liabilities of Innkeepers.

60. *Add. Annotation :*—**Refd.** Winkworth *v.* Raven, [1931] 1 K. B. 652.

75. *Add. Annotation :*—**Refd.** Winkworth *v.* Raven, [1931] 1 K. B. 652.

116a. —— **Hole in floor.**]—Pltf. went to a public-house by appointment to meet a friend, &, as his friend had not arrived, walked into the parlour, & there fell through a hole in the floor, which was being repaired. As far as appeared his only object in going to the house was to meet his friend. In an action against the landlord for negligence in not fencing the hole, & in which pltf. alleged that he was in the house as a guest, the jury found for pltf. The ct. refused a rule to enter a nonsuit, which was asked for on the ground that there was no evidence, either of negligence on the part of deft., or of pltf. being in the house as a guest.—AXFORD *v.* PRIOR (1866), 14 W. R. 611.

120. *Add. Annotations :*—**Refd.** Winkworth *v.* Raven, [1931] 1 K. B. 652 ; Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

125. *Add. Annotations :*—**Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776 ; McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119.

138a. —— **Extent of duty.**]—An innkeeper is bound to supply only such accommodation for his guests & their goods as he in fact possesses, & undertakes only that the accommodation which he offers is reasonably fit for that purpose. He is not an insurer of his guest's goods against injury, though, subject to Innkeepers' Liability Act, 1863 (c. 41), he may be considered an insurer of them against loss. In the case of injury to the goods, he is responsible only if negligence on his part is proved. A guest at an hotel that was an inn placed his motor car in the hotel garage, a building suitable for protecting a car in ordinary weather, but not suitable for protecting a car with water in the radiator or water jacket in time of severe frost. During his stay at the hotel there was a frost of great severity, & the water in the water jacket became frozen & the engine of the car was damaged :—*Held :* in relation to the car the innkeeper's duties were those of an innkeeper only, he was not negligent in not emptying the water from the water jacket, &, in the absence of negligence, he was not liable for the damage to the car.—WINKWORTH *v.* RAVEN, [1931] 1 K. B. 652 ; 100 L. J. K. B. 206 ; 144 L. T. 594 ; 47 T. L. R. 254 ; 75 Sol. Jo. 120, D. C.

151. *Add. Annotation :*—**Refd.** Aria *v.* Bridge House Hotel (Staines) (1927), 137 L. T. 299.

151a. —— **Motor car stolen from parking place.**]—A guest at an hotel parked his motor car in the space adjoining the hotel as directed by the hall-porter of the hotel, & which space was commonly used for the purpose. While the guest was at dinner at the hotel the car was stolen :—*Held :* there had been no alteration in the law regarding the liability of an innkeeper for the loss of goods brought on his premises by a guest, & where the relationship of innkeeper & guest existed as regards eating & drinking, that relationship extended also to the vehicle of the guest brought by him to the inn, & the common law rule still applied & was not affected by Innkeepers' Liability Act, 1863 (c. 41).—ARIA *v.* BRIDGE HOUSE HOTEL (STAINES), LTD. (1927), 137 L. T. 299.

154a. —— ——.]—CALDECUTT *v.* PIESSE (1932), 49 T. L. R. 26 ; 76 Sol. Jo. 799.

PART II. SECT. 1, SUB-SECT. 3.—B. (a).

sx. *For breach of contract—Special contract to receive.*]—*Held :* the fact that pltf. was received under a special contract did not deprive him of his ordinary rights as a guest, but his claim in that capacity to damages was denied ; he could not sue in contract & in tort. It was the contract duty of defts. to furnish him with a room at no more than $1.50 a day ; if they had no room at that price, another just as good should have been furnished at that price. The contract was broken by debarring pltf. from his room without giving him another room & by ordering him out of the house.—LIPPERT *v.* FORD HOTEL OF TORONTO, LTD., [1930] 3 D. L. R. 722 ; 65 O. L. R. 340.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.

118 i. *Reasonable care—Limited to rooms where guest likely to go.*]—While a person in attendance at a banquet given by an assocn. in a hotel is an invitee of the hotel proprietor, & not a mere licensee, the extent of the invitation is of the utmost importance, & if an accident happens & the invitation did not extend to the time & place is circumstances of the accident, then the question whether the proprietor & liable is to be determined in view of the duty which he owes to a mere licensee.

Where a guest at such a banquet in deft.'s hotel, after the conclusion thereof, met his death by falling into a private-service elevator shaft :—*Held :* deft. was not liable.—KNIGHT *v.* GRAND TRUNK PACIFIC DEVELOPMENT CO., [1927] 1 D. L. R. 498 ; [1926] S. C. R. 674.—**CAN.**

123 i. *Invited visitor.*]—In an action for damages for injuries resulting from a fall sustained when entering deft.'s hotel on a visit to one of the sample rooms :—*Held :* the action must be dismissed, since the slope on which pltf. fell was not a "trap," & she had previous knowledge of it.—WAY *v.* LELAND HOTEL CO. (B. C.), [1927] 3 W. W. R. 224.—**CAN.**

166. *Add. Annotation:*—**Consd.** Winkworth *v.* Raven, [1931] 1 K. B. 652.

169a. Failure to empty radiator of car.]—WINKWORTH *v.* RAVEN, No. 138a, *ante.*

177a. ——.]—CHAMIER *v.* DE VERE HOTELS, LTD. (1928), 72 Sol. Jo. 155.

185. *Add. Annotation:*—**Expld. & Distd.** Carpenter *v.* Haymarket Hotel, Ltd. (1930), 47 T. L. R. 11.

186a. ——.]—On Oct. 30, 1929, about 5.30 p.m., pltf. & her husband arrived at defts.' hotel with their suit cases & engaged a room for the night with a view to attending a dance in the neighbourhood. After having tea in their room they dressed for the dance. Pltf., having replaced a diamond ring which she was wearing by a pearl ring, put the diamond ring into a jewel-case & placed that in her suit case, which she latched but did not lock. When they went down to dinner pltf.'s husband locked the door of their room & took the key with him. After dinner they returned to their room, & on leaving it to go to the dance pltf.'s husband again locked the door & then handed the key in at the hotel office. About 2.30 a.m. the following morning they returned to their room in the hotel, having got the key from the hall porter. On getting up between 8 & 9 a.m. pltf. opened her suit case & jewel case & found that the diamond ring was missing. Defts. were immediately informed of the loss & search was made for the ring, but without result. Defts. had exhibited in the hotel a copy of Innkeepers' Liability Act, 1863 (c. 41), s. 1, & in the room occupied by pltf. a notice that all articles of value should be deposited at the office. Pltf. brought an action in the county ct. against defts. as insurers for damages for having failed to keep the ring safely. At the trial the above facts were proved or admitted, & it was found as a fact that the pltf. had taken reasonable care of the ring; but the judge, thinking that he was bound to do so by a previous case, gave judgment for defts. On appeal to the Div. Ct.:—*Held:* there was evidence to support the finding that pltf. had taken reasonable care of the ring & accordingly that the loss of it was not due to negligence on her part; the fact that she had not deposited the ring at the office in compliance with the notice did not imply that she had retained the protection of it in her own hands to the relief of defts.; & therefore that she was entitled to judgment against defts. in the action.—CARPENTER *v.* HAYMARKET HOTEL, LTD., [1931] 1 K. B. 364; 100 L. J. K. B. 33; 144 L. T. 119; 47 T. L. R. 11; 74 Sol. Jo. 703, D. C.

221. *Add. Annotation:*—*As to* (2) **Consd.** Winkworth *v.* Raven, [1931] 1 K. B. 652.

PART II. SECT. 3, SUB-SECT. 1.—C.

8a. *Valuables exhibited publicly.*]—*Held:* pltf.'s conduct in showing his collection of precious stones to persons on the hotel, more or less publicly, was not such negligence as to deprive him if his rights against the innkeeper.—SHERRILL *v.* KING EDWARD HOTEL CO., [1929] 2 D. L. R. 612; 63 O. L. R. 528.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—A. (a).

245 i. *Goods brought to inn by guest—Although value of goods greatly in excess of amount owing.*]—NEWMAN *v.* WHITEHEAD (1909), 9 W. L. R. 688; 2 Sask. L. R. 11.—**CAN.**

INSURANCE.

Part I.—General Principles.

3. *Add. Annotation:*—*As to* (2) **Refd.** Greenhill *v.* Federal Insce. (1926), 95 L. J. K. B. 717.

11a. **Inconsistency between policy & proposal form—Policy prevails.**]—KAUFMANN *v.* BRITISH SURETY INSURANCE CO., LTD., No. 218a, *post.*

13. *Add. Annotation:*—**Refd.** Greenhill *v.* Federal Insce. (1926), 95 L. J. K. B. 717.

18a. **Type calculated to elude observation—Insurers refused benefit of clause.**]—Deft. co. insured a quantity of leather, consigned c.i.f., for a voyage from New York to Tunis, by a certificate of insurance which provided: "This certificate represents & takes the place of the policy & conveys all the rights of the original policy-holder as fully as if the property were covered by a special policy direct to the holder of this certificate." One of the conditions of the policy was in much smaller print than other parts of the policy & was as follows: "In case of loss or damage to the property hereby insured the loss shall be reported to the representatives of the co., or, if there be no representative of the co., to Lloyd's agent, as soon as the goods are landed or the loss is known or expected." On the day after the arrival of the goods at Tunis the consignee sold them to pltf., who found them to have been damaged by salt water. In an action by pltf. on the certificate of insurance deft. co. contended, (1) that pltf. was not the right person to sue, & (2) that the clause in the policy as to giving notice within a limited time had not been complied with:—*Held:* the certificate, having been issued by deft. co. itself, enured to the benefit of pltf., & since pltf. did not know of the condition as to notice, & since the clause as to notice was in such small print that it was not such as a reasonable man, reading with reasonable care, would regard as forming part of the contractual terms, pltf. was entitled to recover.—KOSKAS *v.* STANDARD MARINE INSURANCE CO., LTD. (1926), 42 T. L. R. 692; *affd.* (1927), 137 L. T. 165; 43 T. L. R. 169; 17 Asp. M. L. C. 240; 32 Com. Cas. 160, C. A.

Annotation:—**Consd.** De Monchy *v.* Phœnix Insce. Co. of Hartford (1928), 139 L. T. 703.

20. *Add. Annotation:*—**Consd.** Holt's Motors, Ltd. *v.* South East Lancashire Insurance Co. (1930), 35 Com. Cas. 281.

26. *Add. Annotation:*—**Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

29. *Add. Annotation:*—**Refd.** Stumbles *v.* Whitley (1929), 46 T. L. R. 37.

36a. ——.]—KAUFMANN *v.* BRITISH SURETY INSURANCE CO., LTD., No. 218a, *post.*

63. *Add. Citation:*—31 Com. Cas. 10.

143a. **Valuation of property—Speculative prospect of appreciation.**]—If in a proposal to effect an insurance upon property the value put upon the property by the assured is based upon what he believes to be a reasonable prospect of appreciation, he must make it plain to the insurer that the value stated is not immediate but speculative. If the assured does not make this disclosure to the insurer, the insurance will be void even though the statement of value by the assured does not amount to a conscious & deliberate over-

PART I. SECT. 2.

sl. *Application of statutory conditions—Although no policy.*]—The statutory conditions of Alberta Insurance Act, 1926, including the condition limiting the time within which an action for the recovery of a claim "under or by virtue of this policy" may be brought against the insurer, apply to an oral contract for insurance as well as to one evidenced by a policy.—GLOVER *v.* EQUITABLE FIRE & MARINE INSURANCE CO. (Alta.), [1929] 4 D. L. R. 946; 3 W. W. R. 352.—**CAN.**

PART I. SECT. 3, SUB-SECT. 1.

m i. —— *Duty of insurer.*]—It is the duty of insurance cos. to make the policies issued by them accord with & not depart from the terms of their proposal form, & to express both documents in clear & unambiguous terms.—BRAUND *v.* MUTUAL, LIFE & CITIZENS ASSURANCE CO., LTD., [1926] N. Z. L. R. 529.—**N.Z.**

PART I. SECT. 3, SUB-SECT. 2.—B.

g. Read now "18a i."

PART I. SECT. 4, SUB-SECT. 2.

sg. *Purchaser under conditional sales agreement.*]—WATERLOO MOTORS, LTD. *v.* FLOOD, [1931] 1 D. L. R. ; 3 M. P. R. 318.—**CAN.**

PART I. SECT. 8.

q i. ——.]—CLARKE *v.* UNION FIRE INSURANCE CO., CLAIM OF AGRICULTURAL FIRE INSURANCE CO. OF WATERTOWN, NEW YORK (1884), 6 O. R. 640.—**CAN.**

q ii. ——.]—QUEEN INSURANCE CO. OF AMERICA *v.* BRITISH TRADERS INSURANCE CO. (1926), 37 B. C. R. 202; *affd., sub nom* BRITISH TRADERS INSURANCE CO. *v.* QUEEN INSURANCE CO. OF AMERICA, [1928] 2 D. L. R. 399; [1928] S. C. R. 9.—**CAN.**

q iii. —— *To disclosure of all material facts.*]—A re-insurer is entitled to the fullest disclosure of all facts known to the original insurer which are material to the risk; & the failure of the original insurer to disclose such a fact invalidates the contract of re-insurance. The fact that the crops of an applicant for hail insurance had been visited by hail storms during the same season held a fact material to the risk.—FEDERAL INSURANCE CO. OF NEW JERSEY *v.* WESTCHESTER FIRE INSURANCE CO. (Alta.), [1929] 3 W. W. R. 646; [1930] 1 D. L. R. 525; 24 Alta. L. R. 330.—**CAN.**

PART I. SECT. 9, SUB-SECT. 2.

sa. *Allegation of fraud—By insurers against agent—Onus on insurers.*]—Pltfs. produced at the trial an original policy & a renewal certificate covering the date in question. The insurers contended, nevertheless, that the renewal premium had not in fact been paid before the date of the accident, & attempted to establish their position by showing that their own agent had been guilty of a fraud, for the benefit of himself or the insured or both, in concocting evidence to show that the premium had been paid in time:—*Held:* the evidence was insufficient to support the finding of fraud & the insurers had, therefore, failed to meet the onus on them of meeting the *primâ facie* case made out by the production of the policy & renewal receipt.—WESTERN FINANCE CORPORATION, LTD. *v.* LONDON & LANCASHIRE GUARANTEE & ACCIDENT CO. OF CANADA, [1928] 3 D. L. R. 592; [1928] 2 W. W. R. 454.—**CAN.**

PART I. SECT. 9, SUB-SECT. 3.—A.

sb. *Second policy.*]—CRAWFORD *v.* WESTERN ASSURANCE CO. (1873), 23 C. P. 365.—**CAN.**

PART I. SECT. 9, SUB-SECT. 4.

144 ix. ——.]—MUMA *v.* NIAGARA DISTRICT MUTUAL INSURANCE CO. (1862), 22 U. C. R. 214.—**CAN.**

147 vii. —— ——.]—JOHNSTON *v.* BRITISH AMERICAN INSURANCE CO., [1931] 3 D. L. R. 200.—**CAN.**

a i. —— *Verdict unsupported by evidence—Power of Court of Appeal.*]—BRODY *v.* DOM. LIFE ASS'CE. CO., [1928] 4 D. L. R. 529; *affg.*, [1928] 2 D. L. R. 241; 60 N. S. R. 116.—**CAN.**

sc. *Policy repudiated—All provisions avoided.*]—Where a policy of insurance is repudiated in its entirety by the insurer no provision thereof can be invoked as a bar to an action on the policy.—WOOD *v.* ARMSTRONG, [1931] 2 W. W. R. 359; 3 D. L. R. 321.—**CAN.**

valuation.—HOFF TRADING CO. *v.* UNION INSURANCE SOCIETY OF CANTON, LTD. (1929), 45 T. L. R. 466, C. A.

156. *Add. Annotations :—As to* (1) **Apld.** Page *v.* Scottish Insce. Corpn. (1929), 98 L. J. K. B. 308. *As to* (3) **Consd.** Williams *v.* Atlantic Assurance Co., Ltd. (1932), 37 Com. Cas. 304.

158. *Add. Annotation :—***Consd.** Page *v.* Scottish Insce. Corpn. (1929), 98 L. J. K. B. 308.

160a. —— —— **Lost article subsequently found.**]—HOLMES *v.* PAYNE, No. 3281a, *post.*

170. *Add. Annotation :—As to* (2) **Apprvd.** Newsholme *v.* Road Transport & General Insce., [1929] 2 K. B. 356.

171a. —— —— ——.]—A proposal form for the insurance of a motor-bus was signed by the person wishing to effect the insurance, but the answers to the questions therein, which were warranted to be true & to form the basis of the contract, were filled in by the insurance co.'s agent, who, although told the true facts, wrote, for some unexplained reason, answers which were untrue in a material respect. The agent was not authorised by the insurance co. to fill in proposal forms, & it did not appear that the co. knew that he had in fact done so. His duties were to procure persons to effect insurances & to see, as far as he could, that proposal forms were correctly filled up ; he was not authorised to give a cover note or to enter into a policy of insurance. A policy was issued to the person who had signed the proposal form, & during its currency he made a claim under it, but the insurance co. repudiated liability on the ground of the untrue statements in the proposal form :—*Held :* the agent of the insurance co. in filling in the proposal form was merely the amanuensis of the proposer, that the knowledge of the true facts by the agent could not be imputed to the insurance co., & therefore that the insurance co. was entitled to repudiate liability on the ground of the untrue statements in the proposal form.—NEWSHOLME BROS. *v.* ROAD TRANSPORT & GENERAL INSURANCE CO., LTD., [1929] 2 K. B. 356 ; 98 L. J. K. B. 751 ; 141 L. T. 570 ; 45 T. L. R. 573 ; 73 Sol. Jo. 465 ; 34 Com. Cas. 330, C. A.

177. *Add. Annotations :—As to* (1) **Expld.** Newsholme Bros. *v.* Road Transport & General Insce. Co., [1929] 2 K. B. 356. *As to* (2) **Distd.** Newsholme Bros. *v.* Road Transport & General Insce. Co., [1929] 2 K. B. 356.

184. *Add. Annotation :—As to* (1) **Apprvd.** Newsholme Bros. *v.* Road Transport & General Insce. Co., [1929] 2 K. B. 356.

192. *Add. Annotation :—***Distd.** Newsholme *v.* Road Transport & General Insce. (1928), 45 T. L. R. 123.

193a. —— ——.]—NEWSHOLME BROS. *v.* ROAD TRANSPORT & GENERAL INSURANCE CO., LTD., No. 171a, *ante.*

200. *Add. Annotation :—As to* (2) **Expld.** & **Distd.** Newsholme Bros. *v.* Road Transport & General Insce. Co., [1929] 2 K. B. 356.

PART I. SECT. 11.

157 iv. —— —— ——.]—Where in a contract of insurance a provision for subrogation contains no limitations or restrictions the insurer's right of subrogation should not be restricted within narrower limits than equity would have given him in the absence of the provision. A motion by the insurer under such a contract for an order compelling the insured to permit the former to use the latter's name in suing third parties was therefore allowed, where the insured pressed for the order because of its belief that the cause of the loss might eventually be found to have been the result of a tort rather than a breach of contract.—NORTHERN ASSCE. CO. *v.* MANITOBA POOL ELEVATORS, [1928] 3 W. W. R. 154.—**CAN.**

d i. —— *Under Saskatchewan Insurance Act, s.* 213 (12).]—Under sect. 213 (12) of Saskatchewan Insurance Act, 1925 (c. 20), the rights of an insurer as assignee of an insured's claim to recover damages from a third party for tort are the same as those of an assignee of a legal chose in action under the English Jud. Act, &, therefore, in view of the weight of opinion on the interpretation of the latter Act, the said provision of the Insurance Act does not entitled the insurer to become the assignee of part only of the insured's claim. Therefore where only part of his claim is assigned to the insurer, the action against the third party must be brought in the insured's name.—MITCHELL *v.* WORMWORTH, [1930] 1 W. W. R. 961.—**CAN.**

PART I. SECT. 14, SUB-SECT. 1.

m i. ——.]—BINKLEY *v.* STEWART (1912), 22 O. W. R. 330 ; 3 O. W. N. 1427 ; 4 D. L. R. 150.—**CAN.**

sd. *Liability for unauthorised use of company's funds—On liquidation.*]—Two telegrams sent to the agent of a fire casualty insurance co. which were signed by the co. & its liquidator respectively read as follows : "Notice being prepared by liquidator to cancel all fire policies stop suggest to make arrangements for placing fire business only elsewhere." There was some question as to which of the telegrams the agent received :—*Held :* regardless of which one reached him, it did not authorise him to use the co.'s funds then in his hands for the purpose of placing insurance of its customers in another co., & that he was liable to the liquidator for the amount so used.—NEWTON *v.* BRANDON, [1928] 1 W. W. R. 28 ; 22 Sask. L. R. 221.—**CAN.**

sf. *Insurance adjuster—Who is.*]—R. *v.* ADKIN (1931), 44 B. C. R. 295 ; 56 Can. C. C. 347.—**CAN**

PART I. SECT. 14, SUB-SECT. 2.

170 iii. —— —— ——.]—BANKERS' & TRADERS' INSURANCE CO., LTD. *v.* JUMNA KHAN (1925), 27 S. R. N. S. W. 13.—**AUS.**

b i. —— ——.]—ST. REGIS PASTRY SHOP *v.* CONTINENTAL CASUALTY CO., [1929] 1 D. L. R. 900 ; 63 O. L. R. 337.—**CAN.**

e i. ——.]—Where appct. for an insurance policy was not to incur any liability until he should have accepted the policy, but the agent paid the premium before appct. had agreed to accept the policy :—*Held :* an action by the agent against appct., to recover the amount of the premium as money paid for deft. at his request, could not succeed.—BILBROUGH *v.* DEMARR, [1927] 1 D. L. R. 542 ; [1927] 1 W. W. R. 133 ; 21 Sask. L. R. 239.—**CAN.**

e ii. *S. P.* HICKEY *v.* MCGUINNES (Alta.), [1927] 3 W. W. R. 565.—**CAN.**

PART I. SECT. 14, SUB-SECT. 3.

179 i. *Contract to grant policy—Fire insurance.*]—There is no principle of law requiring it to be held that every agent of a fire insurance co. must be taken, regardless of the class of his agency or his instructions from his co., to have the actual, in the sense of implied, authority to bind his co., by an oral acceptance of a proposal for insurance, for a definite or indefinite interim period.—POTVIN *v.* GLEN FALLS INSURANCE CO., [1931] 1 W. W. R. 380.—**CAN.**

sg. *Agent for two companies.*]—An insurance agent holding agencies for different cos. cannot, without express authority, act as agent to bind one of those cos. to another when it is incumbent upon him to exercise a discretion in the interests of both parties.—ELITE CAFÉ, LTD. *v.* BALOISE FIRE INSURANCE CO. & FIRST NATIONAL INSURANCE CO. OF AMERICA, [1932] 3 W. W. R. 188.—**CAN**

PART I. SECT. 14, SUB-SECT. 4.

k i.——.]—Applt., who was illiterate, went to the local office of resps. to insure his house & furniture against fire, & at the request of the agent of resps., signed a proposal form, the agent saying that he would fix everything up. The agent, without asking applt. any questions, filled in the form, & inserted in it an untrue answer to one of the questions :—*Held :* resps. were not prevented from relying upon the untruth of the answer in the proposal.—JUMNA KHAN *v.* BANKERS & TRADERS INSURANCE CO., LTD. (1925), 37 C. L. R. 451 ; 43 N. S. W. W. N. 98.—**AUS.**

PART I. SECT. 14, SUB-SECT. 5.

200 xix. —— ——.]—To a claim by pltfs., carrying on business in partnership, for the value of tobacco insured with defts. & destroyed by fire, defts. pleaded that it was a condition of the proposal for insurance that the tobacco should be the property of the firm only, whereas a portion was in fact the property of three of the members jointly. In their replication pltfs. alleged that defts.' agents had knowledge of the above fact at the time the proposal was made & issued the policy notwithstanding such knowledge, & that defts. were estopped from denying liability under the policy :—*Held :* an exception to the replication, as bad in

203. *Add. Annotation :*—**Expld.** Newsholme Bros. *v.* Road Transport & General Insce. Co., [1929] 2 K. B. 356.

203a. —— —— **Refusal of company to insure.**]—Applts. were in possession of a motor car under a hire-purchase agreement, it being a term of the agreement that they would insure the car with the B. insurance co. The B. co. refused to accept the insurance " owing to information received " & told applts.' brokers that this was their reason for refusal ; but the brokers did not communicate the fact to applts., but told them that the B. co. had refused the insurance because they did not cover that class of car. Applts.' brokers then succeeded in obtaining an insurance of the car with the L. co., but when the original period of that insurance was coming to an end the L. co. wrote that they could not invite renewal. Applts. had not in fact wished for a renewal & had not made any application to the L. co., & they then effected an insurance with the present resps. The proposal form of resps. contained a number of questions & a stipulation that the truth of the answers to those questions should be the basis of the contract. To a question " Has any co. or underwriter declined to insure ? " applts. answered, No ; the fact being that without applts.' knowledge the B. co. had declined to accept their insurance, & the L. co., as applts. were aware, had intimated that they would not renew. Applts. claimed on their policy with resps., & resps. refused to pay, on the ground that the question in the proposal form had been answered untruly & that there had been concealment of a material fact. Applts. brought an action on the policy & the judge, by whom the action was tried, gave judgment for resps. Applts. appealed :—*Held :* as regards the B. co. the answer of applts. was untrue, & the fact that they were unaware of its untruth was immaterial ; & as regards the L. co., although there had been no refusal to renew because there had not been any actual request for renewal the intimation that the co. would not invite renewal was a material fact which ought to have been disclosed to resps., & was in fact if not in words a refusal to insure within the meaning of the question.—HOLT'S MOTORS, LTD. *v.* SOUTH EAST LANCASHIRE INSURANCE CO., LTD. (1930), 35 Com. Cas. 281, C. A.

209. *Add. Annotation :*—**Apld.** *Re* National Benefit Assurance Co., [1931] 1 Ch. 46.

218a. Representation of underwriter—Estoppel of insurer.]—The claimant owned a motor car which he sometimes let out on hire & sometimes used himself for his own pleasure. He wished to insure the car, & instructed brokers to effect an insurance. The brokers interviewed the underwriter of resps., & he showed them a form of policy & said that it would cover both private pleasure & private hire by the insured. The claimant on being informed of this signed a proposal form for a policy & his broker stated in the form that the purpose for which the car would be used was " private hire " ; the broker meant thereby that private hire would be the principal risk. Resps. then issued to the claimant a policy which in words covered " private pleasure or private hire," but which provided that the signed proposal form was incorporated with it & formed the basis of the contract. An accident occurred while the claimant was using the car for his own pleasure, & he made a claim under the policy. Resps. refused to pay, on the ground that as the proposal form was the basis of the policy & only related to the car while on hire an accident occurring while the car was not on hire was not covered. The dispute was referred to arbitration, & the arbitrator awarded in favour of the claimant, subject to the decision of a special case. On argument of the case :—*Held :* the arbitrator had acted rightly in admitting evidence of the interview between the brokers & the underwriter, & even apart from such evidence, as there was an inconsistency between the proposal form & the policy, the later document must prevail. On the facts, resps. were estopped from disputing the claim because their underwriter knew that the claimant had taken out the policy in reliance on his representation that it would cover private pleasure.—KAUFMANN *v.* BRITISH SURETY INSURANCE CO., LTD. (1929), 45 T. L. R. 399.

Part II.—Marine Insurance.

231. *Add. Annotation :*—**Apld.** *Re* National Benefit Assce., *Ex p.* English Insce., [1928] Ch. 74.

232a. —— ——.]—The H. Co. entered into an agreement for reinsuring marine risks with the L. Co. Later, it was voluntarily wound up, & B., the liquidator, agreed the L. Co.'s claim for a large sum, & paid dividends in respect of the claim. Following the practice of the Co., B., notwithstanding the provisions of Stamp Act, 1891 (c. 39), & Marine Insurance Act, 1906 (c. 41), treated the agreement & the claim under it as valid. After the dissolution of the H. Co. he was advised that he should have disallowed the

law & disclosing no cause of action, should be dismissed.—PETREAS & Co. *v.* LONDON GUARANTEE & ACCIDENT CO., LTD., [1925] App. D. 371.—**S. AF.**

200 xx. —— ——.]—L. & Co., agents of defts., who had no express power to do so, appointed M. as their local agent in a district, but did not inform defts., who neither approved of, nor ratified, the appointment. M. sent to L. & Co. particulars of a proposed insurance against fire for pltf. on his dwelling-house, & a policy was issued by defts. to pltf. The policy provided that if there was any misrepresentation as to any fact material to be known for estimating the risk, or any omission to state such fact, defts. should not be liable. Pltf. did not disclose the fact that his house had previously been burnt down & that an insurance co. had paid him in respect of that loss :—*Held :* (1) M. was not defts.' agent, & M.'s knowledge of the earlier fire, whenever acquired, could not be imputed to defts., & pltf. had concealed a material fact & thereby relieved defts. from all liability under the policy ; (2) even if M. was defts'. agent, his knowledge acquired prior to his appointment as agent could not be imputed to defts.—O'KEEFE *v.* LONDON & EDINBURGH INSURANCE CO., LTD., [1928] N. I. 85.—**IR.**

200 xxi. —— ——.] — ROCCO *v.* NORTHWESTERN NATIONAL INSURANCE CO., [1930] 1 D. L. R. 472 ; 64 O. L. R. 559.—**CAN.**

PART I. SECT. 14, SUB-SECT. 6.

a i. ——.]—PARSONS *v.* QUEEN INSURANCE CO. (1882), 2 O. R. 45.—**CAN.**

claim, & the dissolution was annulled, but an action to recover the money was dismissed, as no mistake of fact by B. was proved. On a misfeasance summons by a creditor of the co. :—*Held :* the combined effect of Stamp Act, 1891 (c. 39), ss. 93, 97, is that a contract of sea insurance not expressed in a sea insurance policy is null & void.—*Re* HOME & COLONIAL INSURANCE CO., LTD., [1930] 1 Ch. 102 ; *sub nom. Re* HOME & COLONIAL INSURANCE CO., MAY *v.* BARHAM, 99 L. J. Ch. 113 ; 142 L. T. 207 ; [1929] B. & C. R. 85.

233. *Add. Annotation :*—**Distd.** Koskas *v.* Standard Marine Insce. (1926), 42 T. L. R. 692.

234a. —— ——.]—Applt. insurance co. made an agreement with resp. insurance co. whereby resps. were to issue marine insurance policies on behalf of applts. but the policies were to be issued in the name of resps. & the business should ostensibly be that of resps. alone. The agreement also provided that resps., when issuing a policy, should themselves be liable for half the sum insured. Resps. having issued policies in accordance with the agreement & having incurred and paid losses, sought to recover from applts. under the agreement on the ground that it was an agency agreement & that there was an implied undertaking by the applts., as principals, to indemnify resps., as agents, for moneys expended on applts.' behalf :—*Held :* resps.' claim was in effect a claim for reinsurance, & owing to the absence of any policy in the name of applts. & to the provisions of the Stamp Act, 1891 (c. 39), & Marine Insurance Act, 1906 (c. 41), resps. could not recover.—MOTOR UNION INSURANCE CO., LTD. *v.* MANNHEIMER VERSICHERUNGS-GESELLSCHAFT (1932), 48 T. L. R. 522 ; 76 Sol. Jo. 495 ; 37 Com. Cas. 407.

236. *Add. Annotations :*—**Reld.** Koskas *v.* Standard Marine Insce. (1926), 42 T. L. R. 692; De Monchy *v.* Phœnix Insce. Co. of Hartford (1928), 138 L. T. 703; Tredegar *v.* Harwood, [1928] Ch. 59.

237a. Policy containing fire policy clause—Validity.]—SYMINGTON & CO. *v.* UNION INSURANCE SOCIETY OF CANTON, No. 855a, *post.*

247. *Add. Annotation :*—**Reld.** English Insce. *v.* National Benefit Assce., [1929] A. C. 114.

248. *Add. Annotation :*—**Reld.** Cornish Mutual Assce. *v.* I. R. Comrs., [1926] A. C. 281.

252a. ——.]—By an agreement between two insurance cos., the E. Co. & the N. Co., therein described as a participation agreement, it was (*inter alia*) provided that the N. Co. should be entitled to & accept a quota of a one-eighth of all risks accepted by the E. Co. through its marine department. The participation was fixed at 50 per cent. of the share retained by the E. Co. at its own risk of all marine assurances accepted on or after a specified date, with a maximum limit on any one ship. The liability of the two cos. was to commence automatically at the same time, the expressed intention being that the two cos. should participate *pari passu* in all marine insurances accepted by the E. Co. The N. Co. was to be entitled to a proportionate part of the net premiums & other benefits received by the E. Co., & was to bear its proportionate share of losses. The E. Co. was alone to settle all claims which might arise under its policies & the N. Co. was to be bound by the settlement. The E. Co. was to receive from the N. Co. commissions on the net premiums & on the profits derived by the N. Co. from the whole of the business under the agreement. By another clause in the agreement the N. Co. was absolutely bound in every case to follow the fortunes of the E. Co. No stamped policy of assurance was ever issued to the E. Co. by the N. Co. in respect of any risk coming within the agreement. The N. Co. having been ordered to be wound up by the ct., the E. Co. claimed to prove in respect of certain claims arising under the agreement. The liquidator disallowed the claim :—*Held :* the agreement was a contract for "sea insurance," & not being expressed in a duly stamped policy was invalid as not complying with the requirements of Stamp Act, 1891 (c. 39), & Marine Insurance Act, 1906 (c. 41).—ENGLISH INSURANCE CO. *v.* NATIONAL BENEFIT ASSURANCE CO. (OFFICIAL RECEIVER), [1929] A. C. 114 ; 98 L. J. Ch. 1 ; 44 T. L. R. 801 ; *sub nom. Re* NATIONAL BENEFIT ASSCE. CO., LTD., *Ex p.* ENGLISH INSCE. CO., LTD., 140 L. T. 76 ; [1928] B. & C. R. 67, H. L.

Annotations :—**Reld.** *Re* Norske Lloyd Insce. Co., Ltd., [1928] W. N. 99 ; *Re* Home & Colonial Insce. Co., Ltd. (1929), 45 T. L. R. 658 ; *Re* National Benefit Assurance Co., [1931] 1 Ch. 46 ; Motor Union Insurance Co. *v.* Mannheimer Versicherungs-Gesellschaft (1932), 48 T. L. R. 522.

252b. —— Effect on recovery of premium.]—*Re* NATIONAL BENEFIT ASSURANCE CO., No. 2527a, *post.*

252c. ——.]—MOTOR UNION INSURANCE CO., LTD. *v.* MANNHEIMER VERSICHERUNGS-GESELLSCHAFT, No. 234a, *ante.*

253. *Add. Annotation :*—**Consd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179.

254. *Add. Annotation :*—**Reld.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179.

291. *Add. Annotation :*—*Generally*, **Reld.** Lazard Bros. & Co. *v.* Brooks (1932), 37 Com. Cas. 224.

374. *Add. Annotation :*—**Reld.** Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

432a. —— —— —— **Unless notice of agency acquired before repossession.**]—By Marine Insurance Act, 1906 (c. 41), s. 53 (2), a broker who effects a policy of marine insurance on behalf of a person who employs him for that purpose has a lien on the policy in respect of any balance on any insurance account which may be due to him from that person, unless, when the debt was incurred, he had reason to believe that such person was only an agent : —*Semble :* the same knowledge which, under this sect., would defeat the establishment of a lien when the policy is effected is equally effective to defeat it if acquired between that time & that at which possession of the policy is resumed after it has been parted with. The lien, therefore, of a broker in respect of a balance on an account under this sect. which is due to him from his employer, who, at the time when the policy was effected, he had no

reason to believe was only an agent, does not revive if the broker, having parted with possession of the policy to his employer, knows or has reason to believe, when it comes again into his hands, that his employer was only an agent.—NEAR EAST RELIEF *v.* KING, CHASSEUR & Co., LTD., [1930] 2 K. B. 40; 99 L. J. K. B. 522; 35 Com. Cas. 104.

433. *Add. Annotation:*—**Consd.** Near East Relief *v.* King, Chasseur & Co., [1930] 2 K. B. 40.

435. *Add. Annotation:*—**Refd.** Near East Relief *v.* King, Chasseur & Co., [1930] 2 K. B. 40.

440. *Add. Annotation:*—*Generally.* **Refd.** Near East Relief *v.* King, Chasseur & Co., [1930] 2 K. B. 40.

444. *Add. Annotation:*—**Refd.** Near East Relief *v.* King, Chasseur & Co., [1930] 2 K. B. 40.

459. *Add. Annotation:*—**Consd.** Reckitt *v.* Barnett, Pembroke & Slater, [1929] A. C. 176.

463. *Add. Annotation:*—**Consd.** Aron *v.* Miall (1928), 139 L. T. 562.

480a. —— —— **Before or after loss.**]—A firm of sellers in Africa sold goods, which were resold by the purchasers to pltfs. under a contract which required the second sellers to pass on to the second buyers the usual policy in the trade insuring against the usual risks. The goods were found to be damaged on delivery. A substantial part of the damage was caused at a time when pltfs. were not interested in the goods covered by the insurance, but by an indorsement on the policy all claims under it were assigned to the holder of the policy:—*Held:* under Marine Insurance Act, 1906 (c. 41), s. 50, a marine policy was assignable, unless it contained terms expressly prohibiting the assignment, & it could be assigned either before or after loss. The effect of assigning the policy in the manner in which the policy was assigned, which was the ordinary manner in which policies were assigned in England, was to assign to the person holding the policy the right to sue on any claim which the assignor had on the policy, irrespective of the fact that at the time of the loss or damage the assignee was not interested in the subject-matter lost or damaged. Pltfs. were the assignees of the policy; the assignor of the policy had a right to make a claim in respect of the damage; that claim was assignable, & it was in fact assigned to pltfs., & they were entitled to sue the underwriters in respect of the damage.—ARON (J.) & Co. *v.* MIALL (1928), 98 L. J. K. B. 204; 139 L. T. 562; 34 Com. Cas. 18; 17 Asp. M. L. C. 529, C. A.

482. *Add. Annotation:*—**Refd.** Williams *v.* Atlantic Assurance Co. (1932), 37 Com. Cas. 304.

488. *Add. Annotation:*—**Consd.** Aron *v.* Miall (1928), 139 L. T. 562.

488a. —— ——.]—ARON (J.) & Co. *v.* MIALL, No. 480a, *ante*.

491a. ——.]—A firm of merchants in Egypt, C. & V., took out with applts., the Atlantic Assurance Co., an unvalued policy of marine insurance to the extent of £8,000, to cover certain textile goods, which they held as security for a debt, on a voyage from Egypt to England. The insured goods were lost on the voyage. Resp. W. had been in litigation with C. & V. & had obtained a judgment against them in the Egyptian Cts., & in part satisfaction of his judgment, & in consideration of other matters, he took from the liquidator of C. & V. an assignment of their rights under the policy, subject to a stipulation that he should pay to the liquidator the first £1,000 recovered by him under the policy. W. then sued applts. on the policy, & judgment was given in his favour for £4,000. Applts. now appealed against this judgment, & resp. W. cross-appealed on the ground that the amount of the judgment should not have been limited to £4,000. The ct., after consideration, allowed the appeal & dismissed the cross-appeal:—*Held:* (1) *per* SCRUTTON, L.J., as the policy was an unvalued policy, it was essential that the value of the lost goods should be proved, and as the evidence was not sufficient to enable the ct. to fix any definite value the action failed; (2) *per* GREER & SLESSER, L.JJ., as the assignment to resp. W. did not pass to him the whole of the beneficial interest in the policy under Marine Insurance Act, 1906 (c. 41), s. 50, W. could not sue on the policy without joining his assignors, & as the action was brought in his name alone it must fail; (3) *per cur.*, the expression "prime cost" in Marine Insurance Act, 1906 (c. 41), s. 16 (3), means the value to the owner at or about the date of shipment.—WILLIAMS *v.* ATLANTIC ASSURANCE CO., LTD. (1932), 37 Com. Cas. 304, C. A.

491b. Assignment of unvalued policy.]—WILLIAMS *v.* ATLANTIC ASSURANCE CO., LTD., No. 491a, *ante*.

497. *Add. Annotation:*—**Refd.** Aron *v.* Miall (1928), 139 L. T. 562.

505a. Pontoon with crane fixed thereon.]—*Held:* not a "ship or vessel" within the rules of an indemnity assocn., on the ground that the quality of adaptability for navigation was not sufficiently present to bring it within the meaning of those words in the rules.—MERCHANTS' MARINE INSURANCE CO., LTD. *v.* NORTH OF ENGLAND PROTECTING & INDEMNITY ASSOCN. (1926), 43 T. L. R. 107; 71 Sol. Jo. 82; 32 Com. Cas. 165, C. A.

519a. What included in "tackle & furniture of the barge"—Moorings.]—Pltf.'s barge was insured by defts. The insurance was expressed to be on the "body, tackle, apparel, ordnance, munition, artillery, boat, & other furniture" of the vessel, "while lying moored at Eastham Ferry stage or elsewhere, with liberty to be towed to any dock or place not beyond the Rock Light to load coal, for repairs & (or) overhaul, while there & until back again at her moorings or held covered; with liberty to moor in the Manchester Ship Canal while the operations for deepening the Eastham Canal are in progress. During the currency of the policy the moorings to which the insured barge was attached were damaged & pltfs. claimed under the policy:—*Held:* the underwriters were liable.—NEW LIVERPOOL EASTHAM FERRY & HOTEL CO., LTD. *v.* OCEAN ACCIDENT & GUARANTEE CORPN., LTD. (1929), 142 L. T. 349; 35 Com. Cas. 37; 18 Asp. M. L. C. 68, C. A.

527. *Add. Annotations:—As to* (2) **Refd.** Wadsworth Lighterage & Coaling Co. *v.* Sea Insurance Co. (1929), 35 Com. Cas. 1. *Generally*, **Refd.** Lind *v.* Mitchell (1928), 98 L. J. K. B. 120.

551a. Insurance of charges upon cargo—Whether freight included.]—By a policy of insurance the deft. insurance co. insured pltfs., who were shipowners, in respect of one of their steamships " on cargo as per form attached." The form attached provided that the insurance was (*inter alia*) " upon any charges of said assured upon said cargo or any portion thereof." The policy further provided that the term " cargo " as used in the policy included (*inter alia*) " charges of said assured upon said cargo or any portion thereof." During the currency of the policy pltfs.' steamship became a total loss with all her cargo, & pltfs. lost their right to recover from the different consignees the freight which was in process of being earned by them at the time of the casualty. Pltfs. claimed to recover under the policy from deft. insurance co. in respect of that loss :— *Held:* the words " any charges of said assured upon said cargo " included, & were intended to cover, the freight that was in process of being earned by the ship, & therefore pltfs. were entitled to recover under the policy in respect of that loss.—GULF & SOUTHERN S.S. CO. (INCORPORATED) *v.* BRITISH TRADERS INSURANCE CO., LTD., [1930] 1 K. B. 451 ; 99 L. J. K. B. 208 ; 142 L. T. 406 ; 35 Com. Cas. 198 ; 18 Asp. M. L. C. 94.

585. *Add. Annotation :*—**Refd.** Hoff Trading Co. *v.* De Rougemont (1929), 34 Com. Cas. 291.

666. *Add. Annotations :—As to* (5) **Distd.** Lind *v.* Mitchell (1928), 98 L. J. K. B. 120. **Refd.** Wadsworth Lighterage & Coaling Co., Ltd. *v.* Sea Insurance Co. (1929), 35 Com. Cas. 1. *Generally*, **Refd.** Banco de Barcelona *v.* Union Marine Insce. (1925), 134 L. T. 350.

711a. Statement as to guarantee of policy—Estoppel.]—A series of marine reinsurance policies were issued by the National Marine Insurance Co. to appcts., upon each of which a claim for loss or damages arose. At the top of each policy was printed in red ink the following indorsement : " The due fulfilment of the liabilities arising under this policy is guaranteed by the National Benefit Assurance Co., Ltd., established in 1890 & with assets exceeding £1,500,000."

The two cos., which were in liquidation, were closely associated, & shared the same chairman, managing director & underwriter, & the same offices & clerical staff. There was no evidence of any formal contract of guarantee of the policies between the two companies, & on this ground the liquidator of the National Benefit Co. rejected appcts.' proof :—*Held:* the co., on the evidence, was estopped from denying that the policies issued by the National Marine Co. bearing the above indorsement were so guaranteed, & the appcts. were therefore entitled to prove in the winding-up of the co.—*Re* NATIONAL BENEFIT ASSURANCE CO., LTD., [1932] 2 Ch. 184 ; 101 L. J. Ch. 339 ; 147 L. T. 524 ; 48 T. L. R. 612.

712a. Effect of decrees of foreign State—On liability of foreign reinsurance company to discharge obligations.]—By virtue of decrees of the Soviet Govt., insurance business in Russia was declared to be the monopoly of the State, & financial transactions in Russia were regulated. In an action to determine the effect of the above decrees on treaties of reinsurance entered into between a Russian reinsurance co., having a branch office in London, & an English reinsurance co. :— *Held:* the decrees did not prevent the Russian co. from discharging their liabilities to the English co. under one of the treaties by a payment in London out of their assets outside Russia, or by means of a set-off against the liabilities of the English co. to them under the treaties.—FIRST RUSSIAN INSURANCE CO. *v.* LONDON & LANCASHIRE INSURANCE CO., [1928] Ch. 922 ; 97 L. J. Ch. 445 ; 140 L. T. 337 , 44 T. L. R. 583.

Annotation :—**Refd.** Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65.

718. *Add. Annotations :*—**Consd.** Sowerby *v.* Lindsay (1928), 139 L. T. 545. **Refd.** Excess Insce. *v.* Mathews (1925), 31 Com. Cas. 43.

719. *Add. Annotations :*—**Consd.** Firemen's Fund Insce. *v.* Western Australian Insce. & Atlantic Insce. (1927), 138 L. T. 108 ; Merchants' Marine Insce. *v.* Liverpool Marine & General Insce. (1928), 97 L. J. K. B. 589. **Refd.** Excess Insce. *v.* Mathews (1925), 31 Com. Cas. 43.

720. *Add. Annotation :*—**Consd.** Firemen's Fund Insce. *v.* Western Australian Insce. & Atlantic Insce. (1927), 138 L. T. 108.

720a. —— —— ——.]—Pltfs. insured a consignment of gunpowder on a voyage & reinsured with defts. Both the original policy & the reinsurance policies covered perils of the sea & jettison, & were expressed to be " warranted free from loss arising from . . . destruction . . . in a port of distress or otherwise." The original policy contained no admission of seaworthiness, but the reinsurance policies did contain such an admission, & they provided that defts. would " pay as paid thereon," & that the payment should be subject to the same terms as in the original policy. The vessel carried, in addition to the gunpowder, drums of sulphuric acid, & owing to heavy weather some of the drums burst & the acid disabled the machinery, with the result that the ship had to put in to a port of distress. There the required repairs could not be carried out with the gunpowder on board, & it was thrown overboard & became a total loss. Pltfs. paid the owners as for a total loss, & claimed to be reimbursed by defts. :—*Held:* as the way in which the sulphuric acid was stowed & loaded affected the safety of the ship & rendered her unseaworthy, pltfs. were under no liability on the original policy, & they could not recover from defts. on the reinsurance policies.—FIREMAN'S FUND INSURANCE CO. *v.* WESTERN AUSTRALIAN INSURANCE CO., LTD. (1927), 138 L. T. 108 ; 43 T. L. R. 680 ; 17 Asp. M. L. C. 332 ; 33 Com. Cas. 36.

720b. " On a voyage."]—Pltfs. insured a consignment of oranges from any port in Spain to Antwerp, &, after the ship had left Valencia & had been in wireless communication with Gibraltar, they reinsured with deft. by a slip, which referred to the fact that the ship had been in such communication with Gibraltar & which contained the words " on a voyage," meaning, according to the evidence, that the risk should attach only

from a named port in the course of the voyage. The ship stranded before she reached Gibraltar, the oranges were damaged, & pltfs. had to pay on the policy. In an action on the contract of reinsurance :—*Held :* on the true reading of the slip, the intention was to limit the risk to the voyage from Gibraltar, & the action failed.—EAGLE, STAR & BRITISH DOMINIONS INSURANCE CO., LTD. *v.* REINER (1927), 43 T. L. R. 259 ; 71 Sol. Jo. 176.

720c. Insured object in damaged condition at expiration of insurance—Continuation of risk for "immediate consequences" of such damage.]—Pltfs., reinsurers of a risk under a marine policy, reinsured that risk with defts. The policies were subject to the following conditions : "In the event of the vessel not being at the place of destination on the date of the expiration of the policy, the insurance shall continue in force till the end of the day when the vessel arrives at her first place of destination ; " & " If the insured object is in a damaged condition at the time when the insurance expires, the risk shall continue for the immediate consequences of such damage until the object without unnecessary delay has been repaired or sold." On the date of the expiration of the policy, the vessel had not arrived at L. Bay, her first place of destination, but before reaching it she grounded on a reef & was taken into L. Bay badly damaged. Temporary repairs having been effected, she continued her voyage, but as she began to leak again she had to be run ashore in order to prevent sinking, & was subsequently sold as a wreck. Pltfs. having paid the original insurers as for a total loss, claimed against defts. on their reinsurance policy :—*Held :* the loss was an immediate consequence of the damage done by the original stranding, & the risk covered by the policy continued, until the vessel was repaired with no unnecessary delay, for the immediate consequences of the original damage.—MERCHANTS' MARINE INSURANCE CO. *v.* LIVERPOOL MARINE & GENERAL INSURANCE CO. (1928), 97 L. J. K. B. 589 ; 139 L. T. 184 ; 44 T. L. R. 512 ; 17 Asp. M. L. C. 475 ; 33 Com. Cas. 294, C. A.

729. *Add. Annotation :*—**Reld.** Bergens Dampskibs Assurance Forening *v.* Sun Insurance Office, Ltd. (1930), 143 L. T. 435.

729a. Insurance against total or constructive or arranged total loss—Meaning of "arranged" —Artificial total loss not included.]—The owners of a Norwegian steamship were insured with pltfs. & other underwriters. Pltfs. re-insured their risk with defts. The insured steamship stranded in the Black Sea but was floated off & eventually reached Constantinople. Owing to the absence of adequate repairing facilities at this port, it was extremely doubtful that the vessel's condition would permit her to reach a port where repairs could be carried out without the risk of her becoming a total loss. In these circumstances the owners & underwriters agreed to settle the matter : the vessel was to be regarded as a total loss & the underwriters were to pay an agreed sum which in fact was more than her full repaired value at the time. Pltfs. claimed a proportionate part of the sum so paid from defts. The material portion of the policy of re-insurance was as follows : "Insurance . . . upon hull & machinery, etc., valued as in original policy. Being against total & (or) constructive & (or) arranged total loss of vessel only as per Bergens Damp Club policies & to follow their settlements" :—*Held :* the action failed. On the true construction of the contract there must be either a constructive total loss or a genuine claim for one which claim is settled by arrangement. The word "arranged" really meant compromised & did not cover an artificial total loss created by the will of the parties.—BERGENS DAMPSKIBS ASSURANCE FORENING *v.* SUN INSURANCE OFFICE, LTD. (1930), 143 L. T. 435 ; 46 T. L. R. 543 ; 74 Sol. Jo. 568 ; 18 Asp. M. L. C. 172.

729b. —— —— ——.]—GURNEY *v.* GRIMMER (1932), 38 Com. Cas. 7, C. A.

730. *Add. Annotation :*—**Reld.** LEON *v.* CASEY (1932), 48 T. L. R. 452.

731. *Add. Annotation :—Generally,* **Reld.** Excess Insce. *v.* Mathews (1925), 31 Com. Cas. 43.

734. *Add. Annotation :—As to* (1) **Consd.** Firemen's Fund Insce. *v.* Western Australian Insce. & Atlantic Insce. (1927), 138 L. T. 108.

735a. Unsuccessful action against insurer—Failure to pay costs—Liability of reinsurer to insurer.]—By a policy of marine insurance a vessel was insured by her owner with the present pltf., who by another policy reinsured the vessel against the risks, & for the period, covered by the original policy, for total loss only. A claim by the owner against the present pltfs. on the original policy failed on the ground that the vessel had been scuttled ; & the present pltfs. obtained a judgment against the owner for costs, but it was impossible to recover the costs. The present pltfs. then claimed these costs from the present deft., one of the underwriters of the reinsurance policy. There was in the reinsurance policy a sue & labour clause, but no express contract by the reinsurers to pay the costs in question :—*Held :* that the sue & labour clause was inapplicable to such a claim, & as there was neither an express nor an implied contract to pay the costs in question the action failed.—SCOTTISH METROPOLITAN ASSURANCE CO., LTD. *v.* GROOM (1924), 41 T. L. R. 35, C. A.

748. *Add. Annotation :*—**Reld.** Goole & Hull Steam Towing Co. *v.* Ocean Marine Insce. (1927), 44 T. L. R. 133.

760. *Add. Annotation :—As to* (2) **Reld.** Williams *v.* Atlantic Assurance Co. (1932), 37 Com. Cas. 304.

763. *Add. Annotation :*—**Consd.** Hoff Trading Co. *v.* De Rougemont (1929), 34 Com. Cas. 291.

765. *Add. Annotation :—As to* (2) **Apld.** Hoff Trading Co. *v.* De Rougemont (1929), 34 Com. Cas. 291.

766. *Add. Annotation :*—**Consd.** Hoff Trading Co. *v.* De Rougemont (1928), 34 Com. Cas. 180.

782. *Add. Annotation :*—**Reld.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

786. *Add. Annotation :—As to* (2) **Apld.** Kaufmann *v.* British Surety Insce. Co. (1929), 45 T. L. R. 399.

800. *Add. Annotation :*—**Reld.** *Re* Morgan & Provincial Insurance Co., [1932] 2 K. B. 70.

845. *Add. Annotation :*—**Reld.** Lindsay Blee Depots, Ltd. *v.* Motor Union Insce. Co. (1930), 46 T. L. R. 572.

852a. **Landing dispensed with by owner.**] Pltfs., a firm of merchants at O., imported a cargo of bunker coal from the Tyne, having insured the risk of the ocean transit with the P. co. until the goods were " discharged & safely landed," including " all risks of craft to & from vessel & whilst in craft awaiting landing." The storage risk, while at moorings at O., was covered by defts. Pltfs.' practice was to have bunker coal discharged into barges & to leave it in the barges until a vessel required bunkers & then to supply that vessel from a barge alongside. When the coal in question had arrived at O. & 1,000 tons of it had been discharged into a barge, the barge sank during the following night & part of the coal was lost & part was damaged. Pltfs. having claimed from defts., the latter compromised the claim & took third-party proceedings to recover a contribution from the P. co. on the ground of double insurance :—*Held :* as pltfs. dispensed with landing the P. co.'s risk terminated when the discharge was completed, &, as the discharge of the 1,000 tons had been completed, the proceedings against the third party failed.—LINDSAY BLEE DEPOTS, LTD. *v.* MOTOR UNION INSURANCE CO., LTD. (1930), 46 T. L. R. 572.

855a. **Effect of clause.**]—Claimants insured with defts. a quantity of cork from a port or place between Bordeaux & Nice to the United Kingdom. Claimants were cork growers & had a factory & warehouse near Algeciras, & they had sent from the factory to Algeciras quantities of cork for shipment, & had allowed it to accumulate on the jetty there until there should be enough for a cargo. While a quantity of cork was on the jetty awaiting shipment & before the policy was issued, a fire broke out on the jetty, & to prevent the fire spreading, the authorities jettisoned part of the cork & threw sea-water on the remainder, with the result that a large portion of the cork was lost or damaged. The policy, when issued, contained (*inter alia*) a marginal clause that the policy was not to enure to the benefit of any fire insurance co., but loss reasonably attributable to fire was covered. It also contained a warehouse to warehouse clause. A claim under the policy was referred to arbn., & the arbitrator treated the marginal clause as non-existent, on the ground that it was not included, or stipulated for, in the slip which represented the true contract between the parties, & he also found that the loss was one reasonably attributable to fire :—*Held :* (1) the goods on the pier at Algeciras, having come in the ordinary course of transit from the shippers' manufactory at San Roque, were covered by the policy ; (2) there being an existing fire & an imminent peril, the damage caused by water, used either to extinguish the fire or to prevent it from spreading, was a proximate consequence of fire, which could be recovered under the general words of the policy, as being *ejusdem generis* with fire ; (3) the underwriters were not relieved from liability by the restraint of princes clause : (4) the case must be remitted to the arbitrator upon the question whether the policy issued, so far as it contained the fire policy clause, was or was not contrary to the usual form of marine insurance on goods.—SYMINGTON & CO. *v.* UNION INSURANCE SOCIETY OF CANTON (1928), 97 L. J. K. B. 646 ; 139 L. T. 386 ; 44 T. L. R. 635 ; 18 Asp, M. L. C. 19 ; 34 Com. Cas. 23, C. A.

906. *Add. Annotation :—As to* (2) **Reld.** Eagle, Star & British Dominions Insce. *v.* Reiner (1927), 43 T. L. R. 259.

912a. **Vessel laid up—Continuation of voyage.**]—Deft. corpn. insured pltfs.' steamship *P.* for twelve calendar months from midnight July 30, 1930, to midnight, July 30, 1931, subject to " Institute Time Clauses as attached." Clause 13 of the Institute Time Clauses provided " warranted free from particular average under 3 per cent." Clause 16 provided : " The warranty & conditions as to average under 3 per cent. to be applicable to each voyage as if separately insured, & a voyage shall be deemed to commence at one of the following periods to be selected by the assured when making up the claim, namely, at any time at which the vessel (1) begins to load cargo, or (2) sails in ballast to a loading port. Such voyage shall be deemed to continue during the ensuring period until either she has made one outward & one homeward passage (including an intermediate ballast passage if made) or has carried & discharged two cargoes, whichever may first happen, &, further, in either case, until she begins to load a subsequent cargo or sails in ballast for a loading port." The *P.* was chartered to load in the River Plate for Antwerp, & between Jan. 10, 1931, & the discharge of her cargo at Antwerp on Apr. 9, 1931, she sustained damage on three occasions. She then lay up at Antwerp till Aug. 27, 1931, owing to absence of freight. During the period of lying up she sustained damage on two occasions. The question for decision was whether the cost of repairs arising from these two later casualties could be added to the expenses incurred on the three earlier casualties so as to ascertain whether the 3 per cent. particular average was exceeded :—*Held :* on the clear wording of clause 16, which defined a " voyage," the voyage which had commenced on Jan. 10 was still continuing during the period of lying up. On any other construction there would be great difficulty in knowing what limit to put on the period of delay. The contention of pltfs. was right, & there must be judgment for them.—PORTVALE STEAMSHIP CO., LTD. *v.* ROYAL EXCHANGE ASSURANCE CORPN. (1932), 147 L. T. 217 ; 48 T. L. R. 441 ; 76 Sol. Jo. 415.

1087. *Add. Annotation :*—**Reld.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

1099. *Add. Annotation :*—**Reld.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

1203a. -.]—LITTLEDALE *v.* DIXON (1805), 1 Bos. & P. N. R. 151 ; 127 E. R. 417.

Annotation :—**Reld.** Morrison *v.* Muspratt (1827), 12 Moore, C. P. 231.

1206. *Add. Annotations :—As to* (3) **Consd.** Greenhill *v.* Federal Insce. (1926), 95 L. J. K. B. 717 ; Hoff Trading Co. *v.* De Rougemont (1928), 34 Com. Cas. 180.

1220. *Add. Annotation :*—**Reld.** Glicksman *v.* Lancashire & General Assce., [1927] A. C. 139.

1252. *Add. Annotation :*—**Consd.** Greenhill *v.* Federal Insce. (1926), 95 L. J. K. B. 717.

1265a. ——.]—In an action on a policy of marine insurance on a cargo of celluloid shipped from America to France, defts. pleaded that assured had wrongfully concealed certain facts material to be disclosed to them. The cargo had in fact been previously carried, partly on deck, in a protracted voyage from New York to Halifax, where, the vessel being unable to proceed further, it was unloaded & part put in a warehouse, & the rest left on the open quay, exposed to severe weather, for over two months :—*Held :* these facts were material to be disclosed to the underwriters, & as they were not disclosed, & there was no waiver of non-disclosure, the policy was vitiated.—GREENHILL *v.* FEDERAL INSURANCE Co., [1927] 1 K. B. 65 ; 95 L. J. K. B. 717 ; 135 L. T. 244 ; 70 Sol. Jo. 565 ; 31 Com. Cas. 289 ; 17 Asp. M. L. C. 62, C. A.

Annotations :—**Consd.** Hoff Trading Co. *v.* De Rougemont (1929), 34 Com. Cas. 291. **Refd.** Williams *v.* Atlantic Assurance Co. (1932), 37 Com. Cas. 304.

1308. *Add. Annotations :—As to* (1) **Consd.** Newsholme Bros. *v.* Road Transport & General Insce. Co., [1929] 2 K. B. 356. *As to* (1) **Consd.** Holt's Motors, Ltd. *v.* South East Lancashire Insurance Co. (1930), 35 Com. Cas. 281. **Refd.** Collins *v.* Associated Greyhounds Racecourses (1929), 141 L. T. 529. *Generally*, **Refd.** *Re* Drabble Bros., [1930] 2 Ch. 211.

1309. *Add. Annotation :*—**Consd.** Holt's Motors, Ltd. *v.* South East Lancashire Insce. Co. (1930), 35 Com. Cas. 281.

1442. *Add. Annotation :—As to* (2) **Refd.** Wadsworth Lighterage & Coaling Co. *v.* Sea Insce. Co. (1929), 35 Com. Cas. 1.

1465. *Add. Annotation :—As to* (1) **Consd.** Fiumana Società Di Navigazione *v.* Bunge & Co., [1930] 2 K. B. 47.

1474a. Absence of panting beams.]—*Held :* the vessel was unseaworthy.—LUND *v.* THAMES & MERSEY MARINE INSURANCE Co., LTD. (1901), 17 T. L. R. 566.

1545. *Add. Annotations :* — **Refd.** Cosmopolitan Shipping Co. (Inc.) *v.* Hatton & Cookson, Ltd. (Liverpool) (1929), 143 L. T. 296 ; Fiumana Società Di Navigazione *v.* Bunge & Co., [1930] 2 K. B. 47.

1547. *Add. Annotation :*—**Consd.** Cosmopolitan Shipping Co. (Inc.) *v.* Hatton & Cookson, Ltd. (Liverpool) (1929), 143 L. T. 296.

1557. *Add. Annotation :*—**Consd.** Greenhill *v.* Federal Insce. (1926), 95 L. J. K. B. 717.

1575. *Add. Annotations :* — **Refd.** Wadsworth Lighterage & Coaling Co., Ltd. *v.* Sea Insce. Co. (1929), 35 Com. Cas. 1 ; Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48 ; Lazard Bros. & Co. *v.* Brooks (1932), 37 Com. Cas. 224.

1589. *Add. Annotation :—As to* (2) **Dbtd.** Greenhill *v.* Federal Insce. (1926), 95 L. J. K. B. 717.

1608a. What amounts to insurance against.]—A policy on a barge provided : " the insurance is against the risks of total &/or constructive &/or arranged loss including general average & salvage & damage to such vessel by collision with any other vessel or with any fixed floating or other object or by fire lightning stranding or sinking." The barge sank through general debility :—*Held :* the policy did not make the insurers liable for ordinary wear & tear, & therefore they were not liable although the word " sinking " was used in the policy.—WADSWORTH LIGHTERAGE & COALING Co., LTD. *v.* SEA INSCE. Co., LTD. (1929), 45 T. L. R. 597 ; 35 Com. Cas. 1, C. A.

1611a. -.]—PHŒNIX INSURANCE Co. OF HARTFORD *v.* DE MONCHY, No. 2404a, *post.*

1616. *Add. Annotation :*—**Refd.** Wetherall & Co. *v.* London Assurance (1931), 144 L. T. 645.

1641. *Add. Annotation :*—**Refd.** Banco de Barcelona *v.* Union Marine Insce. (1925), 134 L. T. 350.

1648. *Add. Annotation :* — **Refd.** Clan Line Steamers *v.* Board of Trade, The Clan Matheson, [1929] A. C. 514.

1650. *Add. Annotations :*—**Consd.** Board of Trade *v.* Hain S.S. Co., [1929] A. C. 534 ; Merchants' Marine Insce. *v.* Liverpool Marine & General Insce. (1928), 97 L. J. K. B. 589. **Refd.** Mancomunidad del Vapor Frumiz *v.* Royal Exchange Assce. (1926), 43 T. L. R. 103 ; Clan Line Steamers *v.* Board of Trade, The Clan Matheson, [1929] A. C. 514.

1660a. —— .]—A sailing ship, of which pltf. was mtgee., was insured by a policy, underwritten by deft., against perils of the sea & fire, &, as per Institute Time Clauses, clause 8, against loss of the vessel " caused through the negligence of master, mariners, engineers or pilots." The vessel was damaged by ice & she leaked badly, & the captain, expecting a gale in which he thought she would be lost, decided to abandon her, & he set fire to her to prevent her from being a danger to navigation, & he & the crew then abandoned her. In an action by the mtgee. on the policy deft. did not allege any misconduct by the assured, by the mtgee., or by the managing owner, & there was no evidence that the abandonment was a wilful casting away of the ship by the master :—*Held :* on the facts the abandonment was unreasonable on the part of the master & constituted negligence, & this negligence, resulting in the continuing action of a previously existing peril of the sea, was

PART II. SECT. 16, SUB-SECT. 3.—B. (g).

a i. ——.]—BOAK *v.* MERCHANTS' MARINE INSURANCE Co. (1876), 10 N. S. R. (1 R. & C.) 288 ; *affd.* (1877), 1 S. C. R. 110.—**CAN.**

PART II. SECT. 18, SUB-SECT. 3.—B. (b).

1349 i. *Loss before departure from terminus a quo—" From Quebec to Greenock vessel to go out in tow."*]—*Held :* towing from the loading berth to another part of the harbour was not a compliance with the warranty.—PROVINCIAL INSURANCE Co. OF CANADA *v.* CONNOLLY (1879), 5 S. C. R. 258.—**CAN.**

PART II. SECT. 19, SUB-SECT. 1.—B.

1555 i. *Ship unseaworthy — Ship rendered unseaworthy by charterer without privity of assured—Assured entitled to recover.*]—PACIFIC COAST COAL FREIGHTERS, LTD. *v.* WESTCHESTER FIRE INSURANCE Co. OF NEW YORK, PACIFIC COAST COAL FREIGHTERS, LTD. *v.* WESTERN ASSURANCE Co. (B. C.), [1926] 4 D. L. R. 963 ; [1926] 3 W. W. R. 356 ; *affd.*, [1927] 2 D. L. R. 590 ; [1927] 1 W. W. R. 878 ; 38 B. C. R. 315.

PART II. SECT. 20, SUB-SECT. 1.—A.

1576 ii. ——.]—MURRAY *v.* NOVA SCOTIA MARINE INSURANCE Co. (1875), 10 N. S. R. (1 R. & C.) 24.—**CAN.**

PART II. SECT. 20, SUB-SECT. 1.—E.

1607 i. *What amounts to—Not sail torn as result of accident.*]—HILL *v.* UNION INSURANCE SOCIETY, CANTON, LTD., [1927] 4 D. L. R. 718 ; 61 O. L. R. 201.—**CAN.**

covered by clause 8, & even apart from that clause, as the peril of the sea had endangered the ship & the negligence of the master resulted in proper measures not being taken to save her, pltf. was entitled to recover under Marine Insurance Act, 1906 (c. 41), s. 55 (2) (*a*).—LIND *v.* MITCHELL (1928), 98 L. J. K. B. 120; 140 L. T. 261; 17 Asp. M. L. C. 562; 34 Com. Cas. 81; 45 T. L. R. 54, C. A.

1675. *Add. Annotations:*—**Refd.** Firemen's Fund Insce. *v.* Western Australian Insce. (1927), 43 T. L. R. 680; Clan Line Steamers *v.* Board of Trade (1928), 97 L. J. K. B. 735.

1684. *Add. Annotation:*—**Refd.** Adelaide S.S. Co. *v.* A.-G., [1926] A. C. 172.

1687. *Add. Annotation:*—*Generally*, **Refd.** Gulf & Southern S.S. Co. (Incorporated) *v.* British Traders Insce. Co., [1930] 1 K. B. 451.

1695. *Add. Annotation:*—*As to* (1) **Refd.** Young *v.* Merchants' Marine Insurance Co. (1932), 48 T. L. R. 579.

1696. *Add. Annotation:*—**Refd.** Wetherall & Co. *v.* London Assurance (1931), 144 L. T. 645.

1700. *Add. Annotation:*—**Consd.** Young *v.* Merchants' Marine Insurance Co. (1932), 48 T. L. R. 579.

1701. *Add. Citations:*—31 Com. Cas. 145; 16 Asp. M. L. C. 579.

1703. *Add. Annotation:*—**Refd.** Mancomunidad Del Vapor Frumiz *v.* Royal Exchange Assce., [1927] 1 K. B. 567.

1705. *Add. Annotation:*—**Consd.** Mancomunidad Del Vapor Frumiz *v.* Royal Exchange Assce., [1927] 1 K. B. 567.

1706. *Add. Annotation:*—**Refd.** Mancomunidad Del Vapor Frumiz *v.* Royal Exchange Assce., [1927] 1 K. B. 567.

1708a. "Collision with any object"—Bumping on rocks.]—A policy of marine insurance on the hull & machinery of a steamer covered the ordinary perils of the sea & contained the following clause: "Subject to the Institute 'Free of Particular Average absolutely' time clauses as annexed, but this insurance to include damage received by collision with any object (ice included) other than water." The ship, having stranded, bumped on the rocks & damaged her bottom plates:—*Held:* the contact with the rocks was a "collision with an object" within the policy.—MANCOMUNIDAD DEL VAPOR FRUMIZ *v.* ROYAL EXCHANGE ASSURANCE, [1927] 1 K. B. 567; 96 L. J. K. B. 229; 136 L. T. 537; 43 T. L. R. 103; 17 Asp. M. L. C. 205.

1709. *Add. Annotation:*—**Refd.** Adelaide S.S. Co. *v.* A.-G., [1926] A. C. 172.

1710. *Add. Annotation:*—**Refd.** Adelaide S.S. Co. *v.* A.-G., [1926] A. C. 172.

1718. *Add. Annotations:*—**Apld.** Symington *v.* Union Insce. Soc. of Canton (1928), 97 L. J. K. B. 646. **Refd.** Tempus Shipping Co. *v.* Louis Dreyfus & Co., 144 L. T. 13.

1719a. Damage caused by water—To extinguish or check fire.]—SYMINGTON & Co. *v.* UNION INSURANCE SOCIETY OF CANTON, No. 855a, *ante.*

1727. *Add. Annotation:*—**Apld.** Symington *v.* Union Insce. Soc. of Canton (1928), 97 L. J. K. B. 646.

1732. *Add. Annotation:*—**Refd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll (1928), 98 L. J. K. B. 282.

1736. *Add. Annotation:*—**Refd.** Adelaide S.S. Co. *v.* A.-G., [1926] A. C. 172.

1750a. —— Action of port authority—Extinction of fire—Damage by water.]—SYMINGTON & Co. *v.* UNION INSURANCE SOCIETY OF CANTON, No. 855a, *ante.*

1766. *Add. Annotation:*—**Refd.** Clan Line Steamers *v.* Board of Trade, The Clan Matheson, [1929] A. C. 514.

1807. *Add. Annotation:*—**Refd.** Williams *v.* Atlantic Assurance Co. (1932), 37 Com. Cas. 304.

1809. *Add. Citations:*—134 L. T. 350; 16 Asp. M. L. C. 604.

1817. *Add. Annotation:*—**Refd.** Symington *v.* Union Insce. Soc. of Canton (1928), 139 L. T. 386.

1827. *Add. Annotation:*—*Generally*, **Refd.** MacColl & Pollock, Ltd. *v.* Indemnity Mutual Marine Assurance Co. (1930), 47 T. L. R. 26.

1828. *Add. Annotation:*—**Refd.** Wadsworth Lighterage & Coaling Co. *v.* Sea Insce. Co. (1929), 35 Com. Cas. 1.

1838. *Add. Annotations:*—**Consd.** Clan Line Steamers *v.* Board of Trade, [1929] A. C. 514; Hain S.S. Co. *v.* Board of Trade, [1928] 2 K. B. 534. **Refd.** Cayzer, Irvine *v.* Board of Trade, [1927] 1 K. B. 269.

1849. *Add. Annotation:*—**Consd.** Clan Line Steamers *v.* Board of Trade, [1928] 2 K. B. 557.

1850. *Add. Annotations:*—*As to* (1) **Apld.** Board of Trade *v.* Hain S.S. Co., [1929] A. C. 534. **Consd.** Clan Line Steamers *v.* Board of Trade, [1929] A. C. 514. *Generally*, **Refd.** Adelaide S.S. Co. *v.* R. (1925), 95 L. J. K. B. 213; Cayzer, Irvine *v.* Board of Trade (1926), 42 T. L. R. 731.

1851. *Add. Annotations:*—**Consd.** Clan Line Steamers *v.* Board of Trade, [1929] A. C. 514. **Refd.** Hain S.S. Co. *v.* Board of Trade, [1928] 2 K. B. 534.

1854. *Add. Annotations:*—**Consd.** Clan Line Steamers *v.* Board of Trade, [1929] A. C. 514. **Refd.** Adelaide S.S. Co. *v.* A.-G., [1926] A. C. 172.

1858. *Add. Annotations:*—**Consd.** Clan Line Steamers *v.* Board of Trade (1928), 97 L. J. K. B. 735; Merchants' Marine Insce. *v.* Liverpool Marine & General Insce. (1928), 97 L. J. K. B. 589; Board of Trade *v.* Hain S.S. Co., [1929] A. C. 534. **Refd.** Adelaide S.S. Co. *v.* A.-G., [1926] A. C. 172; Lazard Bros. & Co. *v.* Brooks (1932), 37 Com. Cas. 224.

1860. *Add. Annotations:*—**Consd.** Hain S.S. Co. *v.* Board of Trade, [1928] 2 K. B. 534; Clan Line Steamers *v.* Board of Trade, [1929] A. C. 514. **Refd.** Board of Trade *v.* Cayzer, Irvine (1927), 43 T. L. R. 625.

1870a. —— ——.]—Pltfs. were the owners of the steamship *A.* While loading a general cargo at New York a fire broke out & general average expenditure was incurred. The share of the cargo-owners amounted to 18,000 dollars, & this was paid to pltfs. After repairs & reloading the *A.* proceeded on her voyage, but was struck & sunk by another steamer. The cargo was discharged & the *A.* raised & taken into Chester, near Philadelphia, where the voyage was abandoned. Further general average disbursements were made. By the law & practice of

Philadelphia cargo-owners were not liable to pay more than the salved value of the cargo. This they paid. The first defts., the London Assurance, were the insurers in part of the hull & machinery against perils of the sea & fire. The second defts., the British Traders Insurance Co., Ltd., were the insurers of part of the cargo's proportion of general average disbursements, & the fourth deft., A. H. Henderson, was an underwriter of a similar policy at Lloyds for the other part. The third defts., the United Kingdom Mutual Assurance Assocn., Ltd., were a club of which pltfs. were members, & as such entitled to be indemnified against liabilities for cargo's proportion of general average not otherwise recoverable. Pltfs. claimed under the policies. The London Assurance denied liability. The third defts. admitted liability if & when any balance was ascertained. The other insurers disputed the amount claimed & the method of computation. The bills of lading provided that general average should be adjusted under York-Antwerp Rules, 1890, & under the policies the same rules were to apply:—*Held:* the 18,000 dollars recovered in New York must be taken into account when computing the liability of the disbursements underwriters. In the case of the hull underwriters the values to be considered were those at the termination of the adventure & the loss incurred by reason of the diminution or extinction of the value of the cargo was a loss which fell upon the assured, the shipowner, & came within Marine Insurance Act, 1906 (c. 41), s. 66 (4). —GREEN STAR SHIPPING CO., LTD. *v.* LONDON ASSURANCE (1931), 145 L. T. 160; 36 Com. Cas. 258; 18 Asp. M. L. C. 225.

1874. *Add. Annotations:—As to* (1) **Reld.** Green Star Shipping Co. *v.* London Assurance (1931), 145 L. T. 160; Tempus Shipping Co. *v.* Dreyfus (Louis) & Co., [1931] 1 K. B. 195.

1876. *Add. Annotation:*—**Reld.** Goole & Hull Steam Towing Co. *v.* Ocean Marine Insce., [1928] 1 K. B. 589.

1886. *Add. Annotation:*—**Reld.** Green Star Shipping Co. *v.* London Assurance (1931), 145 L. T. 160.

1887. *Add. Annotation:*—**Reld.** Green Star Shipping Co. *v.* London Assurance (1931), 145 L. T. 160.

1888. *Add. Annotations:*—**Consd.** Green Star Shipping Co. *v.* London Assurance (1931), 145 L. T. 160. **Reld.** Tempus Shipping Co. *v.* Louis Dreyfus & Co., [1931] 1 K. B. 195.

1891a. —— **"Prime cost"—Meaning of.**]—WILLIAMS *v.* ATLANTIC ASSURANCE CO., LTD., No. 491a, *ante*.

1948. *Add. Annotation:*—**Reld.** Mancomunidad Del Vapor Frumiz *v.* Royal Exchange Assce., [1927] 1 K. B. 567.

1965. *Add. Citation:*—[1904] P. 198, n.

Add. Annotations:—**Reld.** The Normandy, [1904] P. 187; Mancomunidad Del Vapor Frumiz *v.* Royal Exchange Assce., [1927] 1 K. B. 567.

1981. *Add. Annotation:*—**Apld.** Admiralty Comrs. *v.* S.S. Chekiang, [1926] A. C. 637.

1982. *Add. Annotation:*—**Reld.** Admiralty Comrs. *v.* S.S. Chekiang, [1926] A. C. 637.

2010a. —— **Recovery of damages in collision action.**]—Defts. insured pltfs.' steamer against the usual marine risks, the steamer being valued in the policy at £4,000. During the currency of the policy the steamer collided with another steamer. The ship was repaired at pltfs.' cost, & a collision action by pltfs. against the owners of the other steamer was settled, & the owners of the other steamer paid over to pltfs. £2,500, as being half the damages. In an action against defts. pltfs. contended that, as the balance of their loss was £2,500 they were entitled to recover that amount, it being less than the value of £4,000 put on the steamer in the policy:—*Held:* defts. were liable only for £1,500, being the difference between £4,000 & £2,500, the amount recovered by pltfs. from the owners of the other ship.—GOOLE & HULL STEAM TOWING CO., LTD. *v.* OCEAN MARINE INSURANCE CO., LTD., [1928] 1 K. B. 589; 97 L. J. K. B. 175; 138 L. T. 548; 44 T. L. R. 133; 72 Sol. Jo. 17; 17 Asp. M. L. C. 409; 33 Com. Cas. 110.

2014a. **Loss less than amount paid into court.**]—Resps. insured applts.' tug boat by a policy of marine insurance, which provided that, on a claim for a constructive total loss, the insured value was to be taken as the repaired value, & that nothing was to be taken into account for the damaged value, & also that all claims were to be subject to English law & usage. The tug was sunk by collision, & applts. at once gave notice of abandonment. Salvors employed by resps. raised the tug in a few days, & the abandonment was not accepted. The salvors, without the knowledge of applts., made an offer to resps. for the tug, & resps. requested them to put it into writing, which they did. The appellate ct., considering the evidence as to the probable cost of repair, held that there had been only a partial loss to an amount less than that paid into ct.:—*Held:* (1) the sinking was not an actual total loss; (2) resps. were not precluded from denying that they had accepted the abandonment; (3) there had been no constructive total loss within Marine Insurance Act, 1906 (c. 41), s. 60 (2) (i), since even at the date of the abandonment it was not unlikely that the tug could be recovered, & it was unnecessary to consider whether the old rule, that the crucial moment was the commencement of the action, had been modified by sects. 61 & 62; (4) the appellate ct. was not bound to accept the highest estimate of the cost of repairs given by resps.' witnesses, & the ct.'s finding as to the sum necessary, being justified by the evidence & not being based upon any error of principle, could not be questioned.—CAPTAIN J. A. CATES TUG & WHARFAGE CO. *v.* FRANKLIN INSURANCE CO., [1927] A. C. 698; 96 L. J. P. C. 132; 137 L. T. 709; 17 Asp. M. L. C. 319, P. C.

2055a. —— ——.]—CAPTAIN J. A. CATES TUG & WHARFAGE CO. *v.* FRANKLIN INSURANCE CO., No. 2014a, *ante*.

PART II. SECT. 22, SUB-SECT. 5.—C. (a).

1 i. —— *By insurers—Subsequent sale of ship at profit—Rights of assured.*]—MEAGHER *v.* ÆTNA INSURANCE CO. & HOME INSURANCE CO. (1873), 20 Gr. 354.—CAN.

2074. *Add. Annotation :*—**Refd.** Lambert *v.* I. R. Comrs. (1927), 12 Tax Cas. 1053.

2082. *Add. Annotation :—As to* (1) **Refd.** Canada Atlantic Grain Export Co. (Inc.) *v.* Eilers (1929), 35 Com. Cas. 90.

2110a. ——.]—MAEBURN *v.* LECKIE (1822), cited in Abbott's Merchant Shipping, 14th ed., p. 15.

Annotation :—**Consd.** Alcock *v.* Royal Exchange Assce. (1849), 13 Q. B. 292.

2145. *Add. Annotation :*—**Expld.** Captain J. A. Cates Tug & Wharfage Co. *v.* Franklin Insce., [1927] A. C. 698.

2152a. Sunken ship—Recovery probable at date of abandonment.]—CAPTAIN J. A. CATES TUG & WHARFAGE CO. *v.* FRANKLIN INSURANCE CO., No. 2014a, *ante*.

2189. *Add. Annotation :*—**Refd.** Australia (Owners) *v.* Nautilus (Owners) (1926), 95 L. J. P. 145.

2191. *Add. Annotation :*—**Refd.** Tempus Shipping Co. *v.* Louis Dreyfus & Co., [1931] 1 K. B. 195.

2214. *Add. Annotation :—As to* (4) **Apld.** Holmes *v.* Payne, [1930] 2 K. B. 301.

2286a. —— ——.]—VACUUM OIL CO. *v.* UNION INSURANCE SOCIETY OF CANTON, LTD. (1926), 32 Com. Cas. 53, C. A.

2333a. —— **Negotiations for ship between underwriters & third party.**]—CAPTAIN J. A. CATES TUG & WHARFAGE CO. *v.* FRANKLIN INSURANCE CO., No. 2014a, *ante*.

2339. *Add. Annotations :*—**Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159. **Refd.** Sheppy Glue & Chemical Works *v.* Medway River Conservators (1926), 24 L. G. R. 457 ; Allgemeine Versicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672.

2340. *Add. Annotations :*—**Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159. **Refd.** Whitney *v.* I. R. Comrs., [1926] A. C. 37.

2341a. —— —— **Damages for negligence in watching wreck.**]—Defts. & other underwriters insured pltfs.' steamship *A.* against total loss, & to the extent of three-quarters against damages which pltfs. might have to pay for collisions with other vessels. The *A.* was sunk in a river & in fact was a constructive total loss. Notice of abandonment was given & acceptance thereof refused. Pltfs. & defts. agreed without prejudice to their rights to take joint action to salve the property. The master of the *A.* employed a tug to watch the wreck & warn other vessels. Owing to the negligence of the crew of the tug the steamship *S.* came into collision with the *A.*, & both vessels sustained damage. In an action brought, in the names of pltfs., by & for the benefit of defts., against the *S.*, the owners of the *S.* counterclaimed & recovered judgment for the whole of their damages & costs, & the underwriters paid three-quarters of the damages & costs to the owners of the *S.* :—*Held :* the underwriters were jointly liable to indemnify pltfs. against the remaining one-quarter of the damages & costs of the *S.*, the liability not arising under the policy but upon the contract of indemnity.—STUART & STEAMSHIP ALLEGHANY OF LONDON, LTD. *v.* MERCHANTS' MARINE INSURANCE CO., LTD. (1898), 14 T. L. R. 564 ; 3 Com. Cas. 312.

2346. *Add. Annotation :*—**Refd.** Glen Line, Ltd. *v.* A.-G. (1930), 46 T. L. R. 451.

2351. *Add. Annotation :*—**Consd.** A.-G. *v.* Glen Line & Liverpool & London War Risks Insce. Assocn. (1929), 34 Com. Cas. 309.

2352. *Add. Annotation :*—**Consd.** A.-G. *v.* Glen Line & Liverpool & London War Risks Insce. Assocn. (1929), 34 Com. Cas. 309.

2355. *Add. Annotations :—As to* (2) **Consd.** A.-G. *v.* Glen Line & Liverpool & London War Risks Insce. Assocn. (1929), 34 Com. Cas. 309 ; Page *v.* Scottish Insce. Corpn. (1929), 98 L. J. K. B. 308. **Refd.** Allgemeine Versicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672.

2356. *Add. Annotation :*—**Refd.** Glen Line, Ltd. *v.* A.-G. (1930), 46 T. L. R. 451.

2369a. Reinsurance of liability for total loss—No reinsurance of running down clause—Application of principle of cross liabilities.]—Defts. underwrote a policy of marine insurance on the *W.* against total loss, & also by a running down clause, against three-fourths of collision liability on the principle of cross liabilities. Defts. reinsured their liability for total loss only with pltf. During the currency of the policy the *W.* was sunk as the result of a collision with the *M.* & became a total loss. In proceedings in the Admiralty Ct. both vessels were held equally to blame, &, as the *M.'s* half damages exceeded the *W.'s* half damages, the *W.* had to pay the balance under the Admiralty rule of single liability. Defts. paid the owners of the *W.* for a total loss, & also a further sum under the running down clause, that sum being ascertained by bringing into account a payment treated as having been received in respect of the *M.'s* liability for the damage done by her to the *W.*, & the payment of a larger sum in respect of the damage done by the *W.* to the *M.* Pltf. claimed that he was entitled to the benefit of the credit in respect of the *M.'s* liability :—*Held :* pltf., not being a reinsurer of the liability under the running down clause, was not entitled to the benefit of the credit mentioned.—YOUNG *v.* MERCHANTS' MARINE INSURANCE CO., LTD., [1932] 2 K. B. 705 ; 101 L. J. K. B. 567 ; 147 L. T. 236 ; 48 T. L. R. 579 ; 37 Com. Cas. 415, C. A.

2375. *Add. Annotations :*—**Refd.** A.-G. *v.* Glen Line & Liverpool & London War Risks Insce. Assocn. (1929), 34 Com. Cas. 309 ; Allgemeine Versicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672.

2379. *Add. Annotation :*—**Refd.** Goole & Hull Steam Towing Co. *v.* Ocean Marine Insce. (1927), 44 T. L. R. 133.

PART II. SECT. 23, SUB-SECT. 4.—A. (e).

sd. *Provision as to survey—Application to total loss.*]—HAMILTON *v.* MONTREAL ASSURANCE CO. (1864), 23 U. C. R. 437.—CAN.

PART II. SECT. 23, SUB-SECT. 4.—C. (b).

2256 i. *Constructive total loss of ship.*]—*Held :* there having been a constructive loss of the ship, the action of the underwriters in making repairs & earning the freight would not prevent the assured from recovering as for a total loss of freight.—TROOP & LEWIS *v.* MERCHANTS' MARINE INSURANCE CO. (1886), 13 S. C. R. 506 ; 6 C. L. T. 386.—CAN.

PART II. SECT. 26, SUB-SECT. 1.—A.

n. Read now "**2404a i.**"

o. Read now "**2404a ii.**"

2404a. Prosecution of claim—Condition limiting time for.]—Pltfs. were interested in a certificate of insurance which was issued under two policies of marine insurance subscribed by defts. in respect of 100 barrels of pure gum turpentine shipped from Florida to Rotterdam. The policies provided for payment for "leakages from any cause in excess of 1 per cent. on each invoice." It was the practice of the trade, at the port of shipment, to gauge the barrels of turpentine & to express the result in gallons, & at the port of discharge to weigh it & to express the result in kilograms with an allowance for reduction on account of the varying temperature conditions of 3·25 kilograms to the gallon. The policies also contained a stipulation providing that no suit or action for the recovery of any claim should be maintainable in any ct. unless such suit or action be commenced within one year from the happening of the loss out of which the claim arose, but that limitation clause did not occur in the certificate. When the vessel was discharged a shortage in respect of the gallons of turpentine shipped was ascertained to have taken place. Defts. having refused to pay upon the ground that there was no sufficient evidence of the loss & that the claim was not instituted within the year, the present claim was brought by the pltfs. on the certificate:—*Held:* the limitation clause was not one which bound the certificate holder. The rights of the original policy holder, which were conveyed to the certificate holder, comprised the rights given by the policy qualified by all the conditions & warranties which affected the nature & extent of the insurance granted, but did not impose an obligation affecting only a limitation of time within which the rights so given were to be enforced; (2) an actual physical loss had been proved based upon the calculations, & there was no ground for imputing that loss to any cause other than leakages.—PHŒNIX INSURANCE CO. OF HARTFORD *v.* DE MONCHY (1929), 141 L. T. 439; 45 T. L. R. 543; 18 Asp. M. L. C. 7; 35 Com. Cas. 67, H. L.; *affg.* S. C. *sub nom.* DE MONCHY *v.* PHŒNIX INSCE. CO. OF HARTFORD (1928), 138 L. T. 703, C. A.

2445. *Add. Annotation:*—**Refd.** Lothian *v.* Epworth Press (1926), 137 L. T. 582, n.

2461. *Add. Annotation:*—**Consd.** Holmes *v.* Payne, [1930] 2 K. B. 301.

2463a. —— ——.]—A ship belonging to the Glen Line was insured, hull, machinery, etc., with the Liverpool & London War Risks Insurance Assocn., against the usual war risks. On the declaration of war on Aug. 4, 1914, the ship was seized by the German Government & was interned until after the Armistice. The Glen Line gave notice of abandonment, which was accepted by the Assocn. as for a constructive total loss on Aug. 4, 1914. After the peace the Glen Line presented a claim to the Mixed Arbitral Tribunal, under article 297 (e) of the Treaty of Versailles, in effect, for compensation for loss of prospective profits arising from the seizure of the ship by the Germans immediately on the outbreak of the war, & this claim was compromised for about £140,000. Thereafter the British Government, as reinsurers to the extent of 80 per cent. of the war risks undertaken by the Assocn., who made no claim to the compensation, claimed that the compensation was received by the Glen Line as trustees for the Assocn., & that the British Government were entitled to 80 per cent. of the trust moneys:—*Held:* the compensation recovered under the treaty was analogous to damages recovered for loss of freight in prospect secured by an existing charter & must therefore be treated as belonging to the owner & not to the abandonee.—GLEN LINE, LTD. *v.* A.-G. (1930), 46 T. L. R. 451; 36 Com. Cas. 1, H. L.; *revsg.*, S. C. *sub nom.* A.-G. *v.* GLEN LINE, LTD. & LIVERPOOL & LONDON WAR RISKS INSCE. ASSOCN., LTD. (1929), 34 Com. Cas. 309, C. A.

2527a. Unstamped insurance.]—In 1920 the E. co. & the Y. co. entered into a participation agreement effective as from Jan. 1, 1920, which was a reinsurance treaty binding the E. co. to cede & the Y. co. to accept a participation of all risks mentioned of the share retained by the E. co. accepted after Jan. 1, 1920. In Sept. 1921, the E. co. arranged that the N. co. should take over the Y. co.'s position as from Jan. 1, 1920; & in Jan. 1922, an agreement, hereinafter called "the Outwards Treaty," on the same lines & with the same provisions as those of the agreement with the Y. co. was entered into between the E. co. & the N. co. In 1921 the N. co. & the E. co. entered into another participation agreement, hereinafter called "the Inwards Treaty," the N. co. ceding & the E. co. accepting a share of all marine risks. The Inwards Treaty had no provisions for the issuing of policies, or for particulars sufficient to make possible the issuing of policies, to satisfy the provisions of Stamp Act, 1891 (c. 39), & Marine Insurance Act, 1906 (c. 41). No stamped policies were in fact issued under any of the three agreements, & no premiums were ever actually paid to the N. co., which was credited with the proper proportion of the net premiums received by the E. co. On the compulsory winding-up of the N. co. the E. co. claimed to be entitled to prove for sums paid by it for premiums under the Outwards Treaty, after allowing for sums paid or credited to it by the N. co. under the Inwards Treaty. The Official Receiver rejected the claim on the ground that both treaties were invalid & inadmissible in evidence, because they were contracts of marine insurance which did not comply with the requirements of Stamp Act, 1891 (c. 39), & Marine Insurance Act, 1906 (c. 41), & were unlawful; & upon a summons asking for an order that the proof should be allowed:—*Held:* (1) as the Outwards Treaty was invalid & void, the entries of premiums to the credit of the E. co. were not evidence of payment, & therefore no claim under Marine Insurance Act, 1906 (c. 41), s. 84, could be made; (2) even if premiums had been paid such a claim could not have been made, as Stamp Act, 1891 (c. 39), ss. 92, 93, 97, amounted to an implied prohibition of

PART II. SECT. 26, SUB-SECT. 2.—A. (b).

28. *Recovery of interest—Although action tried without jury.*]—PACIFIC COAST COAL FREIGHTERS, LTD. *v.* WESTCHESTER FIRE INSURANCE CO. OF NEW YORK, PACIFIC COAST COAL FREIGHTERS, LTD. *v.* WESTERN ASSURANCE CO. (B. C.), [1926] 4 D. L. R. 963; [1926] 3 W. W. R. 356.; *affd.*, [1927] 2 D. L. R. 590; [1927] 1 W. W. R. 878; 38 B. C. R. 315.—CAN.

offences by incurring liability for premiums in respect of unstamped sea insurances, & there had therefore been " illegality " on the part of the E. co. with the result that a claim for return of premiums under Marine Insurance Act, 1906 (c. 41), s. 84, must fail.—*Re* NATIONAL BENEFIT ASSURANCE CO., LTD., [1931] 1 Ch. 46; 100 L. J. Ch. 38; 144 L. T. 171; [1929–30] B. & C. R. 256.

Part III.—Fire Insurance.

2544. *Add. Annotation :*—**Refd.** Halifax Building Society *v.* Keighley, [1931] 2 K. B. 248.

2546. *Add. Annotation :*—**Refd.** Halifax Building Society *v.* Keighley, [1931] 2 K. B. 248.

2548. *Add. Annotation :—As to* (1) **Refd.** Shell-Mex *v.* Elton Cop Dyeing Co. (1928), 34 Com. Cas. 39.

2553. *Add. Annotation :*—**Consd.** Morgan *v.* Provincial Insurance Co. (1932), 48 T. L. R. 217.

2560. *Add. Annotation :—As to* (1) **Consd.** Page *v.* Scottish Insce. Corpn. (1929), 98 L. J. K. B. 308.

2562. *Add. Annotations :*—**Consd.** Page *v.* Scottish Insce. Corpn. (1929), 98 L. J. K. B. 308. **Refd.** Williams *v.* Atlantic Assurance Co. (1932), 37 Com. Cas. 304.

2568. *Add. Annotation :—As to* (2) **Consd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

2572. *Add. Citation :*—31 Com. Cas. 10.

PART III. SECT. 1, SUB-SECT. 3.

2541 xlix. ——.]—BUDGE *v.* MARBIN LUMBER CO., LTD., & MARTYN LUMBER CO., LTD., [1932] 2 W. W. R. 64.—**CAN.**

2541 l. —— *Policy payable to assured or " assigns."*]—NOACK *v.* LANARK COUNTY MUTUAL FIRE INSCE. CO., [1932] 4 D. L. R. 64.—**CAN.**

sl. *Insurance by liquidator—Liquidator becoming trustee for purchaser—No duty to inform insurers.*]—Where property was insured against fire by a liquidator in possession, & at the time of the loss he was still in possession, but then as trustee for persons who had meanwhile purchased the property, but had not yet received title :—*Held :* he had been under no legal duty to notify the insurers of said change.—MONTREAL TRUST CO. *v.* CALEDONIAN INSURANCE CO. & ALLIANCE ASSURANCE CO., [1931] 2 W. W. R. 571; 3 D. L. R. 809; *affd.*, [1931] 3 W. W. R. 432; [1932] 1 D. L. R. 116; 26 Alta. L. R. 21; *affd.*, [1932] S. C. R. 581.—**CAN.**

PART III. SECT. 1, SUB-SECT. 4.

o i. —— *Meaning of " husband."*]—In the proposals for insurance against fire in respect of a building & of furniture, etc., therein of the proponent, one of the printed questions was " Have you . . . or husband ever . . . had a fire " ?—*Held :* the word " husband " there meant husband then living.—BRADBURY *v.* THE LONDON GUARANTEE & ACCIDENT CO., LTD. (1927), 40 C. L. R. 127.—**AUS.**

o ii. —— *Alleged misstatement as to property in goods.*]—NORTH BRITISH & MERCANTILE INSURANCE CO. *v.* MCLELLAN (1892), 21 S. C. R. 288.—**CAN.**

o iii. —— *Question relating to cancellation of previous policy—Meaning of cancellation.*]—A proposal for a policy contained the question, " Has the proponent . . . ever had . . . any policy cancelled by any insurance co. ? " The assured had in fact had a policy in another office, &, the premium thereon not having been paid, the insurance co.'s officer intimated that his co. did not desire to continue the policy, & if the assured was not prepared to pay the premium the co. would have no alternative but to cancel the policy. The premium not being paid the officer produced a cancellation voucher which he had taken with him when he went to call on assured, & assured then signed the voucher & the policy was cancelled :—*Held :* the termination of the insurance of the unilateral act of the co., & the policy was cancelled within the meaning of the question in the proposal.—BRYCE *v.* MERCANTILE & GENERAL INSCE. CO., LTD., [1930] N. Z. L. R. 231.—**N.Z.**

PART III. SECT. 2, SUB-SECT. 2.

t i. —— —— *Whether action by insurer Chancery or common law action.*]—ROYAL EXCHANGE ASSCE. CO. *v.* GRIMSHAW BROS., LTD., [1928] 2 D. L. R. 412; 62 O. L. R. 25.—**CAN.**

t ii. —— *Liability of insured—Refusal to subrogate.*]—GLOBE & RUTGERS FIRE INSURANCE CO. *v.* TRUEDELL, [1927] 2 D. L. R. 659; 60 O. L. R. 227.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.

sg. *Party in whose name property placed.*]—Pltf. was held to have an insurable interest in property which had been placed in his name by his brother for the purpose of preventing his brother's creditors getting it.—LAMBERT *v.* ANGLO-SCOTTISH GENERAL COMMERCIAL INSURANCE CO. (1929), 64 O. L. R. 439.—**CAN.**

PART III. SECT. 3, SUB-SECT. 2.—B.

h (p. 311) i. ——.]—CLARKE *v.* FIDELITY-PHOENIX FIRE INSURANCE CO. OF NEW YORK, [1926] 1 D. L. R. 303 58 O. L. R. 148.—**CAN.**

l (p. 311) i. ——.]—A person who has made an agreement for the purchase of immovable property, although he does not thereby obtain a legal interest in or charge upon the property within sect. 54 of Transfer of Property Act, nevertheless has an insurable interest in the property, & can recover under a policy of insurance of the property the loss suffered by him on account of the property being destroyed or damaged by fire.—GNANA SUNDARAM *v.* VULCAN INSURANCE CO. (1931), I. L. R. 9 Ran. 452.—**IND.**

h (p. 312) i. ——.]—Where a mtgor. against whom foreclosure proceedings had been brought & continued until sale was still the registered owner of the property & in possession of it he was held to have an insurable interest at that time.—FORDORCHUK *v.* CAR & GENERAL INSURANCE CORPN., LTD., [1931] 2 W. W. R. 586; 3 D. L. R. 387.—**CAN.**

PART III. SECT. 5.

h i. —— *Covering note issued by broker—Loss before issue of policy—Broker not liable as insurer.*]—BROIT *v.* BENNIE S. COHEN & SON (N. S. W.), LTD. (1926), 27 S. R. N. S. W. 29; 44 N. S. W. W. N. 44.—**AUS.**

k i. ——.]—SUN INSURANCE OFFICE *v.* ROY (Can.), [1927] 1 D. L. R. 17; S. C. R. 8.—**CAN.**

PART III. SECT. 7, SUB-SECT. 2.

2599 i. *Explosion—Grain-dust explosion.*]—A policy of insurance against fire, which includes the condition that the co. shall make good loss or damage caused by the explosion of coal or natural gas in a building not forming part of gas works, & loss or damage by fire caused by any other explosion, covers loss caused by a grain-dust explosion, where, although the origin of the explosion cannot be positively proved, its most probable cause is found to have been the ignition of the particles of grain-dust suspended in the air.—RIEDLE BREWERY, LTD. *v.* MERCHANTS FIRE ASSURANCE CORPN. OF NEW YORK (Man.), [1926] 1 W. W. R. 497.—**CAN.**

l i. ——.]—A policy of fire insurance upon a building contained the words " only while the premises are occupied as a private dwelling." The premises were vacant when a fire occurred. In an action upon the policy :—*Held :* the words quoted were part of the description of the property insured.—COOPER *v.* TORONTO CASUALTY INSCE. CO., [1928] 2 D. L. R. 1007; 62 O. L. R. 311.—**CAN.**

l ii. —— *Use as " bunk house."*]—An action upon a policy of fire insurance was resisted by deft. co. on the ground that at the time of the fire the house was not occupied as a private dwelling, contrary to a condition in the policy. One pltf. G. let the house to H., who said he was going to live in it, & G. understood that H. would occupy it with his wife & family. At the time of the fire H. had three men living with him. Once a week H.'s wife came in to keep things in order, & twice a week the wife of one of the other men did the same. Each of them contributed to the rent, that is, the other men paid their shares to H. who paid G. G. was never in the house while it was so occupied :—*Held :* the house was occupied as a private dwelling.—GENDRON *v.* PROVIDENT ASSURANCE CO., [1931] 1 D. L. R. 418; 66 O. L. R. 147.—**CAN.**

l iii. ——.]—Pltf. was insured against loss by fire of furniture in a house " only while occupied as a dwelling " :—*Held :* the words were used in the policy as part of the description of the property & not as a condition modifying the statutory conditions; a mere temporary vacancy or absence of the occupant reasonable in the circumstances will not be ground for a finding that the house was not " occupied as a dwelling."—METCALFE *v.* GENERAL ACCIDENT ASSURANCE CO., [1930] 2 D. L. R. 265; 64 O. L. R. 643.—**CAN.**

l iv. " *Occupied.*"]—By the terms of a policy, it covered the building insured " only while occupied, constructed &

2610. *Add. Annotation :*—**Reld.** Stumbles *v.* Whitley (1929), 46 T. L. R. 37.

2635. *Add. Annotation :—As to* (2) **Apld.** Symington *v.* Union Insce. Soc. of Canton (1928), 97 L. J. K. B. 646.

2657. *Add. Annotation :*—**Consd.** Looker *v.* Law Union & Rock Insce., [1928] 1 K. B. 554.

situated as described." A fire occurred while pltf. was not living in the building, though he had left some furniture & clothing there & no one else lived there :—*Held :* the property was not "occupied" within the meaning of the policy.—LAMBERT *v.* ANGLO-SCOTTISH GENERAL COMMERCIAL INSURANCE CO., [1930] 1 D. L. R. 284 ; 64 O. L. R. 439. —**CAN.**

sh. "*Burning of prairie.*"]—WEST RAND ESTATES, LTD. *v.* NEW ZEALAND INSURANCE CO., LTD., [1925] App. D. 245.—**S. AF.**

PART III. SECT. 7, SUB-SECT. 3.

2629 v. —— —— ——.]—A condition, that the insurer is not liable for loss "if any subsequent insurance is effected with any other insurer, unless & until the insurer assents thereto," is not applicable so as to defeat the insured's claim for loss, merely because, without the insurer's assent, he subsequently obtains from another co. a policy which never attaches by reason of the application of the condition therein, that "the insurer is not liable for loss if there is any prior insurance with any other insurer."—HOME INSURANCE CO. OF NEW YORK *v.* GAVEL, [1927] 3 D. L. R. 929 ; [1927] S. C. R. 481.—**CAN.**

r (p. 320) **i.** —— *Loss between issue of cover note & policy—Whether conditions of policy applicable.*]—NICHOLSON *v.* THE SOUTHERN STAR FIRE INSURANCE CO., LTD. (1927), 28 S. R. N. S. W. 124 ; 45 N. S. W. W. N. 35.—**AUS.**

d (p. 320) **i.** —— *On change of nature of occupation on insured premises.*]—WEST RAND ESTATES, LTD. *v.* NEW ZEALAND INSURANCE CO., LTD., [1925] App. D. 245.—**S. AF.**

ee (p. 320) **i.** —— —— ——.]—MISSIQUOI & ROUVILLE MUTUAL FIRE INSCE. CO. *v.* EASTERN TOWNSHIPS TELEPHONE CO., [1928] 1 D. L. R. 526 ; 43 Que. K. B. 122.—**CAN.**

ee (p. 320) **ii.** —— —— ——.]—The words "stored or kept" in statutory condition 5 (*b*) in Sched. B to Alberta Insurance Act, 1926, do not apply to gasoline which is in actual use & course of consumption for domestic purposes, where, at least, the amount so in use is less than one quart.—HALL *v.* CONNECTICUT FIRE INSURANCE CO., [1931] 2 W. W. R. 200 ; 3 D. L. R. 329.—**CAN.**

ff (p. 320) **i.** —— ——.]—LONSBERRY *v.* TRANS-CANADA INSURANCE CO., [1932] 1 D. L. R. 351.—**CAN.**

d (p. 321) **i.** —— *What amounts to—Not clause reducing amount of insurance by amount paid on previous claim.*]—PAULS *v.* NATIONAL UNION FIRE INSURANCE CO., [1932] 2 W. W. R. 558.—**CAN.**

sd. *Statutory condition as to proof of loss—Compliance with.*]—In an action on a fire insurance policy pltf. relied on as proof of loss what purported to be a statutory declaration solemnly declared before a comr. for oaths ; &, in order to support his motion to be allowed to amend the proof of loss so as to set up a value consistent with his representation of value in his application for the policy, pltf. swore that he had not appeared before said comr., that he had never declared to the truth of the claim & the statements in the declaration & that he had signed the form of proof of loss provided by deft. co. & had left it with his agents to fill in, & that a slip attached to the form & stating the reasons for claiming the amount which was claimed was not on the form when he signed it :—*Held :* there had been no compliance with statutory condition No. 15 as to proofs of loss.—FULTON *v.* WAWANESA MUTUAL INSURANCE CO., [1932] 2 W. W. R. 412 ; *affd.*, [1932] 3 W. W. R. 404.—**CAN.**

sf. —— *Overestimate — Whether evidence of fraud.*]—In an action on policies of fire insurance *held* that the fact that the amount awarded the insured was only about half the amount claimed in the proofs of loss did not necessarily compel the ct. to infer fraud.—FEFFERMAN *v.* NEW BRUNSWICK FIRE INSURANCE CO., [1932] 2 W. W. R. 507 ; 4 D. L. R. 342.—**CAN.**

PART III. SECT. 7, SUB-SECT. 4.

f i. —— *Exception from liability for loss by theft—Truck stolen & burnt—Onus of proof on company.*]—LUCIANI *v.* BRITISH AMERICA ASSURANCE CO., [1931] 1 D. L. R. 166 ; 65 O. L. R. 687.—**CAN.**

f ii. —— *Exemption from liability for loss or damage resulting from earthquake or abnormal conditions arising therefrom—Consideration of results of earthquake.*]—WAIROA FARMERS CO-OPERATIVE MEAT CO., LTD., & BANK OF NEW ZEALAND *v.* NEW ZEALAND INSURANCE CO., LTD. (1931), 7 N. Z. L. J. 267.—**N.Z.**

PART III. SECT. 9, SUB-SECT. 1.

2650 ii. —— ——.]—In 1925 pltf. made two proposals for fire insurance with deft. co., each containing the question, "Have you or your husband ever been a claimant on a fire insurance office or had a fire ?" In one proposal the answer supplied was "Fire in 1914 from adjoining shops, Throssell Street, Collie," & in the other "known to company." Pltf. had lived apart from her husband for many years, & he had died in 1923. The husband had had one fire in 1898 & another in 1917. In the case of the first fire he had been convicted of arson, & the insurance co. concerned had refused to pay insurance in respect of the second fire :—*Held :* the answer was untrue.—BRADBURY *v.* LONDON GUARANTEE & ACCIDENT CO., LTD., [1928] W. A. L. R. 38.—**AUS.**

(p. 324) **i.** *Concealment of increased risk.*]—SMITH *v.* AMERICAN EQUITABLE ASSURANCE CO., [1931] 2 D. L. R. 830.—**CAN.**

m (p. 324) **i.** —— *Insurance by partnership—Concealment of previous loss by partners individually.*]—A policy of insurance against fire over the merchandise stock of pltfs. who were carrying on business in partnership was effected with deft. co. The proposal form contained a question: "Has proponent, either individually or as a member of a partnership or co., or his or her wife or husband, ever had property damaged or destroyed by fire ?" :—*Held :* the question referred not only to loss in respect of the partnership property, but also to loss suffered by the partners individually before the formation of the partnership.—NICHOLAS & BARNETT *v.* NEW ZEALAND INSCE. CO., [1930] N. Z. L. R. 699.—**N.Z.**

nn (p. 325) **i.** —— —— *Statement that applicant "owner" & property free from incumbrance—Applicant purchaser under agreement & property subject to vendor's lien—Policy vitiating by second representation.*]—BURRIDGE *v.* HALIFAX FIRE INSURANCE CO., [1931] 1 D. L. R. 818 ; 2 M. P. R. 479 ; *affg.*, [1930] 4 D. L. R. 763.—**CAN.**

pp (p. 325) **i.** —— ——.]—SPERLING *v.* GERMANIC FIRE INSURANCE CO., [1932] 2 D. L. R. 634.—**CAN.**

sk. *Application of statutory condition—Necessity for fraud.*]—In an action upon a fire insurance policy the defences were that when applying for the insurance pltf. failed to disclose certain material facts & that no valid contract of insurance ever became binding on deft. co. The non-disclosure alleged was admittedly not fraudulent :—*Held :* deft. co. was not entitled to rescind the contract.—KADISHEWITZ *v.* LAURENTIAN INSCE. CO., [1931] 4 D. L. R. 401 ; O. R. 529.—**CAN.**

PART III. SECT. 9, SUB-SECT. 2.—C.

t (p. 331) **i.** —— ——.]—During the term of a fire insurance policy on farm buildings, the insured, with his family, moved from the farm & took up residence in a new home, intending to reside there permanently & to rent or sell the farm, which remained vacant. He gave no notice to the insurer of the vacancy. Within 30 days from the time the insured property became vacant, it was destroyed by fire :—*Held :* the insurer was liable on the policy. In view of statutory condition 5 (*d*) of Ontario Insurance Act, R. S. O., 1927, in the policy, vacancy for a period of 30 days was a risk contemplated by the policy & assumed by the insurer, & it was not open to the insurer to show that the mere fact of vacancy or non-occupancy for less than 30 days was a "change material to the risk" within statutory condition 7.—LAURENTIAN INSURANCE CO. *v.* DAVIDSON, [1932] S. C. R. 491 ; 2 D. L. R. 750 ; *affg.*, [1931] 4 D. L. R. 720 ; O. R. 813.—**CAN.**

cc i. —— *Removal of adjoining premises.*]—Insurance on a barn. Defence, change in risk without notice to defts. :—*Held :* the removal of a farm dwelling-house from the neighbourhood of the barn, leaving the barn near a side road not much travelled & the removal of pltf. & his family from the farm leaving no one actually living in the house at the time of the fire were changes material to the risk within the condition in the policy.—WYDRICK *v.* SALTFLEET & BINBROOK MUTUAL FIRE INSURANCE CO., [1930] 1 D. L. R. 241 ; 64 O. L. R. 521.—**CAN.**

PART III. SECT. 10, SUB-SECT. 1.

l (p. 333) **i.** —— —— *Agreement to pay claim of mortgagee.*]—TAMSON *v.* PALATINE INSCE. CO., [1928] 2 D. L. R. 867.—**CAN.**

p (p. 333) **i.** —— —— *Insured arrested for arson.*]—An insured under a policy of fire insurance was arrested for arson immediately after the fire & kept in custody, or under bail, for six months, when he was acquitted, & then endeavoured to comply with the insurer's requests for proof of loss. When the adjuster, who had been instructed to adjust the loss, learned of the criminal proceedings he had stayed his hand :—*Held :* the insured was relieved by reason of necessity & mistake from strict compliance with the conditions in the policy as to furnishing proofs of loss.—QUON *v.* BRITISH & EUROPEAN INSCE. CO., LTD., [1928] 3 W. W. R. 545.—**CAN.**

t (p. 333) **i.** —— ——.]—The document in question herein held to be not such a proof of loss as is required by clause 15 of the sched. to Fire Insurance Policy Act, 1925 ; since it did not declare that the account furnished by the insured was "just & true," but merely that it was "to the best of my knowledge & belief true," & it was not a solemn declaration.—GLAGOVSKY *v.* NATIONAL FIRE INSURANCE CO. OF HARTFORD, [1931] 1 W. W. R. 573.—**CAN.**

2718. *Add. Annotation :*—**Consd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

2738. *Add. Annotations :*—**Consd.** Bell *v.* Lever Bros., Ltd., [1932] A. C. 161. **Refd.** Moolla (M. E.) Sons, Ltd. *v.* Burjorjee (P. R.) (1932), 48 T. L. R. 279.

2740. *Add. Annotation :*—*Generally*, **Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

2754. *Add. Annotation :*—*As to* (2) **Apld.** Halifax Building Society *v.* Keighley, [1931] 2 K. B. 248.

2767. *Add. Annotation :*—**Refd.** Page *v.* Scottish Insce. Corpn. (1929), 98 L. J. K. B. 308.

Part IV.—Life Insurance.

2789. *Add. Annotation :*—**Apld.** *Re* National Benefit Assurance Co., [1931] 1 Ch. 46.

2855a. Innocent misstatement—Whether ground for avoidance.]—The claimant took out with

PART III. SECT. 10, SUB-SECT. 2.

m i. ——.]—MATERGIO *v.* CANADA ACCIDENT & FIRE ASSURANCE CO., [1926] 1 D. L. R. 1002; 58 N. S. R. 415.—**CAN.**

sn. *After recovery of judgment against railway company responsible for fire—9 Edw. 7, c. 32, s. 9.*]—BANTING *v.* WESTERN ASSURANCE CO., BANTING *v.* LAW UNION & CROWN MORTGAGE CO. (1911), 21 Man. L. R. 142.—**CAN.**

so. *Expenses of adjuster—Right of insurer to deduct.*]—MORIE & CAMPBELL, WILSON & HORNE, LTD. *v.* WORLD FIRE & MARINE INSCE. CO., [1928] 1 D. L. R. 1040; [1928] 1 W. W. R. 748.—**CAN.**

sp. *Amount of insurable interest at time of loss—Agreement for sale of property—Part payment received.*]—WEEKS *v.* CUMBERLAND FARMERS' MUTUAL FIRE INSURANCE CO., [1930] 4 D. L. R. 588.—**CAN.**

PART III. SECT. 13, SUB-SECT. 2.—A.

2749 ii. ——.]—SWIFT *v.* NEW ZEALAND INSURANCE CO., LTD., [1927] V. L. R. 249; 48 A. L. T. 182; [1927] Argus L. R. 194.—**AUS.**

PART III. SECT. 13, SUB-SECT. 2.—B.

l i. —— —— *Purchaser of property subject to mortgage—Although fire before registration of transfer.*]—ROYAL INSURANCE CO., LTD. *v.* MYLIUS (1926), 38 C. L. R. 477; [1927] V. L. R. 1.—**AUS.**

l ii. —— *Delay in reinstatement—Right to claim loss of rent & profits.*]—Pursuant to Imperial Acts Application Act, 1922, s. 49, pltf., as a person interested in or entitled to buildings which had been destroyed by fire, requested deft. insurance co. to cause the money for which such buildings had been insured to be laid out or expended as far as the same would go towards rebuilding or reinstating the buildings. Deft. failed to comply with the request within a reasonable time. Pltf., having established his right to compliance claimed to be entitled to damages for loss of rent & profits occasioned by deft.'s default :—*Held :* the sect. conferred on pltf. no right beyond that to have the money laid out or expended as far as it would go towards rebuilding or reinstating the buildings.—MYLIUS *v.* ROYAL INSURANCE CO., LTD., [1928] V. L. R. 126; [1928] Argus L. R. 98.—**AUS.**

sq. *Effect of avoidance of policy.*]—*Held :* the insurance moneys referred to in Fire Prevention (Metropolis) Act, 1744 (c. 78), s. 83, were those which were properly payable by the insurance co. upon adjustment pursuant to the policy, & if no moneys were payable by reason of the avoidance of the policy, then there was nothing upon which the lessor's claim to reinstatement could operate.—AUCKLAND CITY CORPN. *v.* MERCANTILE & GENERAL INSCE. CO., LTD., [1930] N. Z. L. R. 809.—**N.Z.**

PART III. SECT. 14.

n i. —— —— *Assignment.*]—The right of a person insured against fire to recover damages against a tort-feasor can be assigned to the insurer to the extent to which it has indemnified the insured. If the insurer has indemnified the insured to the extent of his whole claim against the tort-feasor & obtains an assignment of all of the insured's rights & causes of action against him, the insurer may sue him in its own name without joining the insured as a pltf. But where no such complete assignment has been made & the insured has been indemnified only in part, the insurer cannot maintain an action for damages for the tort without joining the insured.—LONDON GUARANTEE & ACCIDENT CO., LTD. *v.* NORTHWESTERN UTILITIES, LTD., [1932] 2 W. W. R. 430.—**CAN.**

PART III. SECT. 15.

2769 i. *Right to—Moneys made payable to third party in policy.*]—*Re* WILNER, [1928] 2 D. L. R. 396.—**CAN.**

2769 ii. —— *Insurance by administrator beneficiary as owner—Whether estate entitled to proportionate part.*]—FULLERTON *v.* PHILADELPHIA FIRE ASSOCN., [1929] 1 D. L. R. 543; 60 N. S. R. 294.—**CAN.**

2769 iii. —— *Insurance effected by mortgagee—Loss payable to third party—Order of distribution.*]—Under an agreement for the sale of land mortgaged to a co. the purchaser assumed payment of the mtge. & covenanted to insure the buildings on the land with loss payable to the vendor. Part of the purchase-money was advanced by the mtgee. which took from the purchaser as security an assignment of his interest in the land & in the agreement for purchase. The mtgee. then insured the buildings under a policy in which said purchaser was made the assured, & the loss was made payable to itself & the vendor as their interests might appear :—*Held :* although the mtgee. was not legally obliged to insure for the vendor's protection, yet as it had done so by the wording of the policy, he had the right to take advantage of its provisions in his favour, & in the distribution of the insurance moneys the mtge. co. as mtgee. ranked first, the vendor's lien for unpaid purchase-money came next, & the mtge. co. as assignee of the purchaser's interest was third.—*Re* MCMILLAN ESTATE & CALGARY BREWING & MALTING CO., LTD. [1929] 4 D. L. R. 640; 3 R. 202.—**CAN.**

PART IV. SECT. 4, SUB-SECT. 1.

2781 i. *Application of statute—Insurance on own life—For benefit of another.*]—*Re* MORRIS, HATTER *v.* BOWMAN'S BLDRS. SUPPLIES (Ont.), [1927] 1 D. L. R. 805.—**CAN.**

PART IV. SECT. 5.

k i. ——.]—Under the Act to secure to wives & children the benefit of life insurance, R. S. O. 1887, c. 136, s. 6 (1), as amended by 51 Vict. c. 22, s. 3, & 53 Vict. c. 39, s. 6, the insured has no power to declare by his will that others than those for whose benefit he has effected the policy or declared it to be, shall be entitled to the insurance money, nor to apportion it among others than those for whose benefit he has effected the policy or declared it to be.—*Re* GRANT (1895), 26 O. R. 120.—**CAN.**

k ii. ——.]—*Re* MURPHY, [1932] 2 D. L. R. 588.—**CAN.**

k iii. *Insurance for benefit of named wife & daughter—Death of wife—Second wife not designated.*]—L. was insured by the society for $2,000, payable to "my wife," naming her, "one-half," & the other half to his daughter. His named wife predeceased him, & he married again. His second wife & daughter both survived him. He made no change in the designation of beneficiaries :—*Held :* his second wife was entitled to the $1,000 made payable to "my wife."—*Re* LLOYD & ANCIENT ORDER OF UNITED WORKMEN (1913), 29 O. L. R. 312; 5 O. W. N. 5.—**CAN.**

r i. *Insurance for benefit of intended wife—Followed by marriage—Valid.*]—*Re* WYTHE, [1927] 2 D. L. R. 1161; 60 O. L. R. 323.—**CAN.**

sq. *Insurance for benefit of six named children—Death of three—Alteration of will.*]—A person insured his life for the benefit equally of six of his children, three of whom died without issue in his lifetime. By his will he altered the shares of the three survivors, giving a portion to another child & portions to four grandchildren, & caused the policies to be cancelled & re-issued payable to "his exors. in trust," & died in 1894, while R. S. O. 1887, c. 136, was in force :—*Held :* the apportionments to the four children were valid, but those to the grandchildren, while valid as legacies, were invalid as against creditors.—MCINTYRE *v.* SILCOX (1898), 29 O. R. 593; *affd.* (1899), 30 O. R. 488.—**CAN.**

sr. *Insurance for benefit of children—Names struck out—Re-marriage—Right of children to take.*]—*Held :* insured's attempt to cancel or alter the declaration designating his children as beneficiaries was ineffective.—*Re* JAMIESON & INDEPENDENT ORDER OF FORESTERS, [1931] 2 D. L. R. 404; 66 O. L. R. 487.—**CAN.**

ss. *Invalid change of beneficiary—Collection of moneys by first on behalf of second—Duty to pay over.*]—ZWICKER *v.* PETTINGILL, [1931] 2 D. L. R. 95; 2 M. P. R. 465.—**CAN.**

sx. —— *Declaration for purpose of defeating creditors.*]—ROYAL BANK *v.* DUMART, [1932] 3 D. L. R. 430.—**CAN.**

sy. *Whether declaration applicable to new policy.*]—Deft., the widow, contended that the insurance proceeds were subject to a trust in favour of herself & children because of a declaration made by the insured in purported

resps., who were an insurance society, a policy on the life of his father, the proposal form being made the basis of the contract & containing a provision that the policy should be avoided if any statement in the proposal was untrue. The policy provided that it should be avoided by any "fraudulent or untrue" statement on the subject of the insurance, & that it should be subject to the rules of the society. These rules stated that the policy would be avoided if there were any fraudulent statement as to the health of the person whose life was insured. The claimant's father had heart disease, but the claimant, being unaware of this, stated in good faith on the proposal form that his father's health was sound. On the father's death resps. refused to pay the sum due on the policy. The claimant contended that, as the rules avoided the policy for fraud & did not avoid it for an innocent untruth, the latter had no effect:—*Held:* the claimant's misstatement was a warranty, that the word "untrue" in the policy included innocent misstatements, & the rules were not inconsistent with the other provisions of the contract, & therefore resps. were not liable on the policy.—HOLMES *v.* SCOTTISH LEGAL LIFE ASSURANCE SOCIETY (1932), 48 T. L. R. 306.

2862. *Add. Annotation:*—**Refd.** Holt's Motors, Ltd. *v.* South East Lancashire Insurance Co. (1930), 35 Com. Cas. 281.

2902. *Add. Annotation:*—**Refd.** Holt's Motors, Ltd. *v.* South East Lancashire Insurance Co. (1930), 35 Com. Cas. 281.

2906. *Add. Annotation:*—**Apld.** Looker *v.* Law Union & Rock Insce., [1928] 1 K. B. 554.

2907. *Add. Annotation:*—**Apld.** Looker *v.* Law Union & Rock Insce., [1928] 1 K. B. 554.

2907a. ——.]—On July 10 L. sent to defts. a proposal for an insurance on his life, in which he stated that he was "now free from serious disease or ailment." The proposal contained this declaration: "It is hereby declared that the above particulars are true, & it is agreed that this proposal & declaration shall be the basis of the contract of assurance." On July 15 defts. replied stating "The proposal made by you . . . has this day been accepted & if the health of the life proposed remains meanwhile unaffected, the policy will be issued on payment of the first premium. . . . The risk of the co. will not commence until receipt of the first premium, & the directors meanwhile reserve the power to alter or withdraw this acceptance." On July 21 L. began to feel ill, & on the next day a friend filled in a cheque for the first premium, which L. signed in bed. The cheque was not sent off till the evening of July 24, by which time L. was seriously ill with pneumonia. On July 26 defts. received the cheque, & thereupon they sent to L. a certificate of that date stating that the proposal had been accepted, & that upon the payment of the first quarterly premium a policy would be issued in due course. On July 27 L. died. His administrators sued defts. for the sum insured:—*Held:* (1) the acceptance of the proposal by defts. was made in reliance upon the continued truth of the representations therein, & as the risk had been materially increased between proposal & acceptance, a condition which defts. had made a condition going to the root of the contract had not been fulfilled; (2) since contracts of insurance were contracts *uberrimæ fidei*, there was a duty of disclosure on the part of the assured to inform defts. of his change of health, which was a material change in the risk insured, & the position was here even stronger because defts. had inserted express terms in their documents to protect themselves.—LOOKER *v.* LAW UNION & ROCK INSURANCE CO., LTD., [1928] 1 K. B. 554; 97 L. J. K. B. 323; 137 L. T. 648; 43 T. L. R. 691.

compliance with Life Insurance Act. The policy in question was one which the insured had taken out in exchange for two policies then held by him. It was made payable to his exors., administrators & assigns. The declaration relied on was made in a testamentary document dated about a year previously, & it, the declaration, enumerated (*inter alia*) one of said two then existent policies. This will was found to be invalid because the witnesses had not signed in the presence of each other and probate was granted of an earlier will. The widow contended that the declaration applied to the new policy. When applying for the new policy the insured had signed documents relating to the then existing policies, in which he certified that they were "not now assigned." The application for the new policy was made subsequently to the letter of Jan. 14, in which the insured confirmed on behalf of himself & his wife the understanding that a life insurance policy was to be deposited as security for the performance of the lease. The policy was not, however, then deposited. The policy so deposited was the new policy. The widow's claim was not upheld.—PORTAGE AVENUE DEVELOPMENT CO., LTD. *v.* DIAMOND, [1932] 3 W. W. R. 81; 4 D. L. R. 376.—**CAN.**

PART IV. SECT. 9, SUB-SECT. 1.—A.

sv. *Effect of Ontario Insurance Act, 1927—Doctrine limited to misrepresentations within knowledge of assured.*]—The words "within his knowledge" in Insurance Act, R. S. O., 1927, sect. 125 (1) & the word "conscious" in sect. 125 (2) introduced in the revision of 1924, have the effect of modifying the doctrine stated in *Jordan* v. *Provincial Provident Institution* (1898), 28 Can. S. C. R. 554, to the extent of limiting misrepresentation & failure to disclose to such things as are within the knowledge of the insured & are material to the risk.—ZIMMERMAN *v.* NORTHERN LIFE ASSURANCE CO. OF CANADA, [1931] 2 D. L. R. 489; 66 O. L. R. 560.—**CAN.**

PART IV. SECT. 9, SUB-SECT. 1.—B.

r i. ——.]—TURNER *v.* BRITISH COLUMBIA MUTUAL BENEFIT ASSOCN. (B. C.), [1927] 4 D. L. R. 541; [1927] 3 W. W. R. 341.—**CAN.**

s i. —— *Returned Soldiers' Insurance Act.*]—R. applied for insurance under Returned Soldiers' Insurance Act, & printed on the form provided for the application for insurance were certain instructions, one reading: "Give full statement of illness or injury of a serious nature, etc." In his written application, in answer to the question "Are you in good health" he answered "Yes," & the question "If not, what is the nature of your illness or injury" he left unanswered. The policy issued on this application. R. at the time of applying was & had been for some time, to his knowledge, afflicted with a chronic valvular disease of the heart, from which he later died. His widow now sues to recover the amount of the policy:—*Held:* (1) as the very basis of the contract of insurance was the information conveyed in the application therefor, R.'s concealment of the truth regarding his condition constituted in law a fraudulent misrepresentation which voided the policy; (2) the fact that R.'s heart condition was revealed in an application for pension, or in the report of a vocational officer, did not constitute a communication as to his condition of health to the officers of the same Dept. of Govt. charged with the administration of the Act here in question, & could not here be introduced as constituting an answer to the questions above mentioned.—ROACH *v.* R., [1931] Ex. C. R. 238.—**CAN.**

PART IV. SECT. 9, SUB-SECT. 2.—D.

2906 i. *Material alteration in health.*]—A., after making a proposal for a policy of life insurance & undergoing, on Mar. 8, a medical examination, consulted a doctor the next day, & on his advice was, on Mar. 16, operated upon for hydrocele. On Mar. 15 the premium had been paid & a provisional receipt given, & on Mar. 20 the co.'s acceptance of the risk was posted. A. died from heart failure on Mar. 24:—*Held:* (1) non-disclosure of any material circumstances arising at any moment between the proposal & the completion of the contract avoided the contract; (2) the consultation on Mar. 9 & the operation were material facts, which A. ought to have communicated to the co.—WALL *v.* SOUTHERN CROSS ASSURANCE CO., LTD., [1927] N. Z. L. R. 106.—**N.Z.**

2918. *Add. Annotation :*—**Expld.** Schlesinger & Joseph *v.* Mostyn, [1932] 1 K. B. 349.

2937a. —— **Application of bonus to revive policy.**]—ROWAN *v.* ATLAS ASSURANCE CO., LTD. (1928), 72 Sol. Jo. 285.

2939. *Add. Annotation :*—**Distd.** Newsholme Bros. *v.* Road Transport & General Insce. Co., [1929] 2 K. B. 350.

2950. *Add. Citations :—Affd.* [1927] 1 Ch. 55; 95 L. J. Ch. 434; 135 L. T. 558; 42 T. L. R. 504, C. A.

Add Annotation :—**Refd.** Royal London Mutual Insce. Soc. *v.* Barrett, [1928] Ch. 411.

2954. *Add. Annotation :—As to* (1) **Distd.** Royal London Mutual Insce. Soc. *v.* Barrett, [1928] Ch. 411.

2962a. —— ——.]—An assurance co. issued a policy containing the following condition: "5. Suicides, etc. The policy shall be void if the life assured dies by suicide or by the hands of justice. In any such case the directors may allow to the policy-holder such part of the sum assured as they shall think fit, & the policy shall remain in force to the extent of the pecuniary interest of third parties *bonâ fide* acquired for valuable conisderation, satisfactory proof of which will be required, provided notice thereof in writing shall have been received & admitted by the directors at least one month prior to the date of death." The co. advanced money to the assured on a mtge. of leasehold property & on assignment to them of the policy by way of security. It was provided by a clause in the mtge. that the co. should satisfy themselves primarily out of the policy money. The assured committed suicide, & the co. commenced an action against his extrix. for the purpose of enforcing their security :—*Held :* upon the true construction of clause 5, the expression "third parties" did not include the assurer, & the co. was entitled to proceed to enforce the security against the leasehold property, & the policy was void.—ROYAL LONDON MUTUAL INSURANCE SOCIETY *v.* BARRETT, [1928] Ch. 411; 97 L. J. Ch. 177; 139 L. T. 208; 44 T. L. R. 363; 72 Sol. Jo. 240.

2966. *Add. Annotation :*—**Consd.** Royal London Mutual Insce. Soc. *v.* Barrett, [1928] Ch. 411.

2969. *Add. Annotations :*—**Consd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179; *Re* Pitts, Cox *v.* Kilsby, [1931] 1 Ch. 546. **Refd.** James *v.* British General Insce., [1927] 2 K. B. 311; Perrin *v.* Dickson (1929), 98 L. J. K. B. 683; *Re* Collier, [1930] 2 Ch. 37; Cousins *v.* Sun Life Assurance Society (1932), 48 T. L. R. 614.

2993a. Extension of period of policy by insured—Effect of.]—By an insurance policy dated Aug. 13, 1925, an assurance co. agreed to pay the assured, his exors., administrators or assigns £1,000 in the event of his death on or before July 31, 1926. The assured assigned the benefit of the policy to deft. In July, 1926, the assured arranged for an extension of the period of insurance to Oct. 31, 1926, & this extension was given effect to by indorsing on the policy a declaration "that the sum assured shall be payable in the event of the death of the life assured on or before Oct. 31, 1926." No assignment was ever made of the benefit of this extension. The assured died on Oct. 1, 1926 :—*Held :* (1) the extension of the period of the policy by indorsement was not a new contract of insurance, but a variation of the original contract of which the benefit was vested in deft., & she was entitled to recover the policy money by virtue of the assignment to her of the policy; (2) the effect of the transaction was that the assured entered into the contract for the extension of the policy for the benefit of deft. & as trustee for her, & deft. was, on that ground, entitled to the policy money.—ROYAL EXCHANGE ASSURANCE *v.* HOPE, [1928] Ch. 179; 97 L. J. Ch. 153; 138 L. T. 446; 44 T. L. R. 160; 72 Sol. Jo. 68, C. A.

PART IV. SECT. 10.

e i. —— *Provided doctor not seen since medical examination—Effect of consultation—Policy never effective.*]—RITCHIE *v.* NEW YORK LIFE INSURANCE CO., [1930] 4 D. L. R. 790.—**CAN.**

sw. *Lapse—Whether policy resuscitated.*]—BIRKETT *v.* NORTHERN L. ASS'CE CO., [1927] 4 D. L. R. 91; 60 O. L. R. 666.—**CAN.**

PART IV. SECT. 11, SUB-SECT. 1.

2920 vii. —— —— —— *Cheque accepted subject to completion of application for restoration—Alleged waiver of condition.*]—ROSS *v.* IMPERIAL LIFE ASSCE. CO., LTD. (Alta.), [1928] 3 W. W. R. 593.—**CAN.**

2920 viii. —— —— —— *Policy not complying with application.*]—Where appct. for a policy of life insurance paid an interim premium thereon covering the period expiring with the date fixed for payment of the annual premium, & the policy was delivered to him & he subsequently gave a promissory note for the full amount of the annual premium, which note was dishonoured, he was held liable on the note, even though the policy was not in the terms of the proposal therefor.—GREAT WEST LIFE ASSURANCE CO. *v.* BELFREY, [1930] 3 W. W. R. 280; [1931] 1 D. L. R. 53; 25 Alta. L. R. 122.—**CAN.**

b i. —— *Indebtedness exceeding reserve value—Termination of policy.*]—TEASDALL *v.* SUN LIFE ASSURANCE CO. OF CANADA, [1927] 2 D. L. R. 502; 60 O. L. R. 201.—**CAN.**

PART IV. SECT. 11, SUB-SECT. 2.

sx. *Cancellation of re-instatement—What amounts to—Direction to insurer to apply funds to premiums of another policy.*]—MCEWEN *v.* NORTH AMERICAN LIFE ASSCE. CO., [1930] 3 D. L. R. 526.—**CAN.**

PART IV. SECT. 11, SUB-SECT. 5.—A.

a i. —— *Death in garage—Deceased working on motor vehicle while engine running—Deceased aware of danger from so doing.*]—*Held :* on the evidence it was not a case of suicide.—LONDON LIFE INS. CO. *v.* LANG SHIRT CO.'S TRUSTEE, [1929] 1 D. L. R. 328; S. C. R. 117; 51 Can. Crim. Cas. 31; *revsg.* S. C. *sub nom.* LANG SHIRT CO.'S TRUSTEE *v.* LONDON LIFE INS. CO., [1927] 3 D. L. R. 89; 60 O. L. R. 476.—**CAN.**

PART IV. SECT. 11, SUB-SECT. 7.

sy. *Limitation of liability where death due to flying—Unless in active service of Militia.*]—A life insurance policy issued in 1924 provided that if the insured should die within five years from the date thereof as a direct or indirect result of making or attempting to make any aeronautic flight, only 25 per cent. of the amount of the policy would be payable thereunder, but that this exception should not apply if the aeronautic ascension were made "while the insured is engaged in the active service of the Militia of Canada." In June, 1927, insured was killed as a result of making an aeronautic flight while engaged in the performance of his duty as an officer in the Permanent Active Air Force of Canada :—*Held :* after reviewing the statutes in force at the time the policy was issued, which statutes remained unaltered throughout the life of the contract, & also the King's Regulations & Orders for the Royal Canadian Air Force, effective Apr. 1, 1924, the insured was not in the service of the Militia; & even if it could be said that he was in the service of the Militia, he was not "in the active service" of it.—TORONTO GENERAL TRUST CORPN. *v.* GREAT WEST LIFE ASSURANCE CO., [1930] 1 W. W. R. 881; 2 D. L. R. 770.—**CAN.**

sz. *Condition against fighting—Death while lawfully defending person—Right to recover sum assured.*]—HORWITZ *v.* LOYAL PROTECTIVE INSURANCE CO., [1932] 3 D. L. R. 378.—**CAN.**

PART IV. SECT. 13, SUB-SECT. 1.—A.

c i. —— —— *For mortgage—Subrogation.*]—SIMPSON *v.* CHAMBERLAIN, [1923] 2 D. L. R. 1033; 33 Man. L. R. 81; [1923] 2 W. W. R. 99.—**CAN.**

c ii. —— —— *To non-preferred beneficiary — Validity.*]—*Re* MURPHY (P. E. I.), [1926] 4 D. L. R. 1136.—**CAN.**

PART IV. SECT. 13, SUB-SECT. 1.—E.

m i. —— ——.]—*Re* BENJAMIN (1926), 59 O. L. R. 392.—**CAN.**

3050. *Citations:*—For "*Ex p.* LANCASTER" read "*Re* JACOB'S ESTATE, LANCASTER *v.* GASELEE, *Ex p.* LANCASTER."

3052a. —— —— ——.]—The grantee of an annuity effected a policy on the life of the grantor, at his own expense. The grantor had a power of redemption on payment of £2,500, & it was provided that in case the grantor should, "at the time of making such repurchase," by notice in writing elect to take the policy, the grantee would assign to him any policy "then vested" in him, which might be effected in respect of the annuity; but it was declared that it should not be incumbent on the grantor to keep on foot any policy. The policy became valuable, & the grantor gave the month's notice of repurchase, & declared his election to take the policy:—*Held:* (1) the grantee had no right afterwards to surrender the policy for his own profit. *Semble:* (2) although he might have let the policy drop, he was not, at any time, entitled to surrender it for his own.—HAWKINS *v.* WOODGATE (1844), 7 Beav. 565; 8 Jur. 743; 49 E. R. 1185.

3052b. —— **Contract to redeem annuity—Whether insurance policy included.**]—MILWARD *v.* LYSONS (1836), Donnelly, 51; 47 E. R. 220, L. C.

3052c. —— **Annuity not redeemed by grantor.**]—Upon the execution of a mtge. from A. to B. to secure an annuity, B. insured A.'s life, & wrote to A. a letter, stating that the policy was to be assigned to A. as soon as the annuity was redeemed & all arrears & expenses paid. A. died without having redeemed the annuity. B. paid all the premiums on the policy till A.'s death:—*Held:* B. was entitled to receive the policy money from the assurance co. & the bonuses payable in respect thereof.—BASHFORD *v.* CANN (1863), 33 Beav. 109; 9 L. T. 43; 11 W. R. 1037; 55 E. R. 308.

Annotation:—**Refd.** Preston *v.* Neele (1879), 12 Ch. D. 760.

3066. *Add. Annotations:*—**Consd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179. **Refd.** Smith *v.* Wood (1928), 139 L. T. 250.

3091. *Add. Citations:*—95 L. J. Ch. 195; 135 L. T. 374.

3097. *Add. Annotation:*—*Generally*, **Refd.** Tredegar *v.* Harwood (1927), 44 T. L. R. 17.

3104. *Add. Citation:*—134 L. T. 557.
Add. Annotation:—**Refd.** Buerger *v.* New York Life Assce. (1927), 43 T. L. R. 601.

3104a. —— **To unauthorised agent—Receipt forged—No discharge.**]—EDMISTON *v.* SCOTTISH TEMPERANCE & GENERAL ASSURANCE CO., LTD. (1929), 168 L. T. Jo. 70.

3128. *Add. Annotations:*—**Consd.** Home & Colonial Insce. *v.* London Guarantee & Accident Co. (1928), 45 T. L. R. 134. **Refd.** Jones *v.* Waring & Gillow, [1926] A. C. 670.

Part V.—Accident Insurance

Insurance against Liability for Accidents to Third Persons.

3134a. Liability of broker for negligence—Failure to inform insurer of alteration in business of assured.]—COOLEE, LTD. *v.* WING, HEATH & CO. (1930), 47 T. L. R. 78.

3139. *Add. Annotation:*—*As to* (2) **Apld.** Newsholme *v.* Road Transport & General Insce. [1929] 2 K. B. 356.

3141. *Add. Annotations:*—**Apld.** Roberts *v.* Anglo-Saxon Insce. Assocn. (1927), 96 L. J. K. B. 590. **Folld.** Morgan *v.* Provincial Insurance Co. (1932), 48 T. L. R. 217.

3141a. —— ——.]—Coal merchants, owners of a motor lorry, applied to an insurance co. & signed a form of proposal for an insurance against damage to the lorry & against liability for injury to persons & damage to other vehicles caused by the use of the lorry. The proposal form contained questions to be answered by the proposers as to the purpose for which the lorry was to be used & the nature of the goods to be carried. The proposers answered that the purpose was the delivery of coal & that the substance to be carried was coal. The co. issued a policy which, after reciting that the assured had made the proposal & signed a declaration which it was agreed should be deemed to be of a promissory nature & effect & should be the basis of the contract for the insurance as if it had been incorporated in the policy, went on to witness that it was a condition precedent to any liability on the part of the co. that the statements made & the answers given in the proposal form should be true, correct & complete. The premium paid by the assured was less than that which would have been payable if they had stated that the lorry was to be used for the purpose of general haulage. On a day during the period covered by the policy the assured were using the lorry for carrying a load of timber together with 5 cwt. of coal. After they had delivered all the timber & 3 cwt. of coal, & while they were on their way to deliver the remaining 2 cwt. of coal to a customer, a collision occurred between the lorry & a motor car. In an action by the assured upon the policy:—*Held:* the ques-

PART IV. SECT. 14, SUB-SECT. 2. -B.

sa. *Deposit with insurers as collateral security for advances—Protected policies—Marshalling—Protected fund primarily liable.*]—*Re* HOLLAND; *Ex p.* HOLLAND (1928), 28 S. R. N. S. W. 369; 45 N. S. W. W. N. 88.—**AUS.**

PART IV. SECT. 14, SUB-SECT. 3.

sd. *Insurance of two lives payable to survivor—Agreement for purchase of shares by survivor to value of insurance—From deceased's widow.*]—*Re* NORTHERN LIFE ASSURANCE CO. & FAWCETT, [1932] 1 W. W. R. 44.—**CAN.**

PART IV. SECT. 15, SUB-SECT. 2.

n i. —— *Application for declaration as to—Who may apply—Ontario Insurance Act*, 1924, *s.* 154 (2).]—*Re* TURNER & CANADIAN ORDER OF FORESTERS, [1926] 4 D. L. R. 793; 59 O. L. R. 348.—**CAN.**

sq. *Production of grant of probate—Necessity for.*]—NATIONAL LIFE INSURANCE CO. *v.* MCCOUBRAY, [1926] 2 D. L. R. 550; [1926] S. C. R. 277.—**CAN.**

PART V. SECT. 1, SUB-SECT. 1.

sp. *Issue of policy—No proof of proposal.*]—In an accident insurance policy issued upon the life of an aircraft pilot, a copy of application was attached to the policy, but it was not shown in evidence that any application was in fact made:—*Held:* assuming the application to be binding upon pltfs., the answers therein could only avoid the policy if false, & they were not.—NORTHERN AERIAL MINERAL EXPLORATION, LTD. *v.* BANKERS INDEMNITY INSURANCE CO., [1932] O. R. 238; 2 D. L. R. 367.—**CAN.**

tions in the proposal form were for the purpose of defining the risk, so that pltfs. should be covered while the lorry was carrying coal, but not covered while it was carrying goods other than coal; the answers were not intended to import conditions precedent to the liability of defts. in the sense that if the lorry carried a load of timber the policy should be avoided; &, as at the time of the collision the lorry was carrying coal & nothing else, pltfs. were entitled to recover.—*Re* MORGAN & PROVINCIAL INSURANCE CO., LTD., [1932] 2 K. B. 70; 101 L. J. K. B. 538; 147 L. T. 52; 48 T. L. R. 217; 37 Com. Cas. 167, C. A.; *affd.* 174 L. T. Jo. 467, H. L.

3144. *Add. Annotation:—As to* (1) **Apprvd.** Newsholme Bros. *v.* Road Transport & General Insce. Co., [1929] 2 K. B. 356.

3148. *Add. Annotation:—Generally,* **Reid.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

3155. *Add. Annotation:*—**Reid.** Rowett, Leaky *v.* Scottish Provident Institution (1926), 95 L. J. Ch. 434.

3157a. —— **"In charge of any vehicle."**]—By a policy of insurance against death by accident the insurers undertook to pay £250 in case of death, "if the reader while a pedestrian in a public thoroughfare be killed by accidental impact with a moving vehicle," provided that "the reader be not at the time of the accident in charge of any vehicle." An insured person, who was riding a bicycle, got off at the foot of a hill, &, having pushed it some way, stopped to speak to another man & stood holding his bicycle, & an unattended motor-car came running down the hill & struck the insured person & caused his death: —*Held:* the word "vehicle" included a bicycle, &, as the deceased man was "in charge of" the bicycle within those words in the policy, the insurers were not liable.—HARPER *v.* ASSOCIATED NEWSPAPERS, LTD. (1927), 43 T. L. R. 331.

3157b. *S. P.* HANSFORD *v.* LONDON EXPRESS NEWSPAPER, LTD. (1928), 44 T. L. R. 349; 72 Sol. Jo. 240.

PART V. SECT. 1, SUB-SECT. 4.—A.

3149 v. —— *"Engaging" in hazardous occupation—Isolated act form the part of hazardous occupation.*]—DOMINION OF CANADA GUARANTEE & ACCIDENT INSCE. CO. *v.* MAHONEY Can.), [1929] 4 D. L. R. 823; *affd.*, [1930] S. C. R. 123.—**CAN.**

3158 iv. ——.]—MACGINN *v.* FI- & CASUALTY CO. OF NEW YORK, [1928] 3 D. L. R. 814.—**CAN.**

m i. —— *Injury self-inflicted.*]—BULLAS *v.* EMPIRE LIFE INSUR/ Co., [1931] 4 D. L. R. 443.—**CAN.**

st. *Newspaper insurance—Finality of adjudication as to next of kin.*]—*Held:* it was a condition precedent to payment, that the person claiming should produce the decision of the proprietors of the paper that he was the next of kin of deceased.—LAW *v.* NEWNES, LTD. (1894), 21 R. (Ct. of Sess.) 1027.—**SCOT.**

sv. —— ——.]—Where deceased left three brothers & a sister, & the editor adjudged the sister next of kin & paid the money to her:—*Held:* the brothers had no right to share in the sum so paid.—HUNTER *v.* HUNTER (1904), 7 F. (Ct. of Sess.) 136.—**SCOT.**

sw. *Condition against second insurance—Life insurance policy providing for partial prepayment for disability.*]—SOUTH BRITISH INSURANCE CO., LTD. *v.* WILLIAM BARCLAY NICOL, [1928] S. R. Q. 53; 22 Q. J. P. 1.—**AUS.**

sx. *Husband & wife covered—Both killed in same accident—Whether liability limited.*]—A policy of assurance, whereby the assurer indemnified the assured against certain risks with respect to his motor car & accidents arising out of use of the motor car, contained a clause reading: "Accidents to owner. This policy covers the assured & the assured's wife against personal accidents occurring to themselves while riding in, mounting, or dismounting from, any motor car to the following extent, & subject to the limits as set forth:—(*a*) Death.—The underwriters will pay to the assured's exors., administrators or assigns the sum of £1,000 in the event of death." The deceased & his wife were both killed in a collision between the assured's motor car & a train:—*Held:* the risks assured against were the death of the assured & his wife, but that the policy was limited in amount to one sum of £1,000.—*Re* CAIRE, PUBLIC TRUSTEE *v.* HOOD, [1927] S. A. S. R. 220.—**AUS.**

sy. *Defence to claim by insured—Breach of law.*]—An insured under an accident insurance policy accidentally discharged a shot-gun into his foot with the result that the foot had to be amputated. To an action on the policy the insurers set up the defence that the accident occurred while the insured was breaking the law by hunting & shooting ducks out of season in violation of Migratory Birds Convention Act (Dom.) & Game Act, 1924 (Sask.), & by carrying a loaded shotgun in an automobile contrary to the latter Act:—*Held:* while the insured may have hunted ducks during the day of the accident, he was not in the act of doing so when he shot himself, the hunting being then over & abandoned; the evidence was insufficient to justify a finding that the gun was being carried loaded in the automobile.—WESTERN FINANCE CORPN., LTD. *v.* LONDON & LANCASHIRE GUARANTEE & ACCIDENT CO. OF CANADA, [1928] 3 D. L. R. 592; [1928] 2 W. W. R. 454.—**CAN.**

sz. *Death due to "disablement" of car—Death by drowning.*]—A policy of accident insurance covered death "sustained by the wrecking or disablement of any privately owned automobile . . . in which the insured is riding or driving, or is accidentally thrown from within such wrecked or disabled automobile." A clause of the general conditions provided that the insurance did not cover "injuries fatal or unfatal of which there shall be no visible marks or contusion on the exterior of the body at the place of injury." A motor car which the insured was driving had been brought across a river on a ferry, & when the insured, who had taken his seat in it, started it in order to drive off the ferry it backed off the ferry into the water. The assured & the other occupants were able to climb on to the roof of the car, but the car, after drifting some distance, went to the bottom & the insured was drowned. There was no evidence of the cause of the backing of the car. The judge dismissed the action, holding that the insured's death was not due to the wrecking or disablement of the car but to drowning. On appeal:—*Held:* the appeal should be allowed.—NEWCOM *v.* HOME ASSURANCE CO. OF CANADA (Alta.), [1930] 1 D. L. R. 121; [1929] 3 W. W. R. 590.—**CAN.**

sd. *Wholly disabled "at one & continuously."*]—MATTHEWS *v.* CONTINENTAL CASUALTY CO., [1932] 3 W. W. R. 289.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.—B.

3161 v. —— ——.]—Pltf. was insured with deft. co. under a policy which provided, *inter alia*, that if he sustained the loss of a foot, caused directly & solely by violent, accidental, external & visible injury, he should be entitled to receive £250, subject, however, to the condition that the policy did not cover injuries arising from provoked assault, fighting or breach of the peace. During a family dispute pltf. was threatening his brother with an iron bar, when he was designedly shot in the leg by his father, & as the result of the injury his foot had to be amputated. The father was convicted of unlawfully wounding:—*Held:* the injury was accidental within the policy, but that it was the result of a provoked assault, & pltf.'s claim therefore failed.—GRANT *v.* SOUTHERN CROSS ASSURANCE CO., LTD. (1927), 30 W. A. L. R. 65.—**AUS.**

3170 iii. —— ——.]—BARNABY *v.* UNION ASSURANCE SOCIETY, [1931] 1 D. L. R. 1002; 2 M. P. R. 492.—**CAN.**

3170 iv. —— *Existing before accident.*]—CASEY *v* CONTINENTAL CASUALTY CO., [1932] 3 W. W. R. 551.—**CAN.**

sz. *Injury caused by unlawful wounding.*]—Pltf. was insured with deft. co. under a policy which provided (*inter alia*) that if he sustained the loss of a foot, caused directly & solely by violent, accidental, external, & visible injury he should be entitled to receive £250 subject, however, to the condition that the policy did not cover injuries arising from provoked assault, fighting or breach of the peace. During a family dispute pltf. was threatening his brother with an iron bar, when he was designedly shot in the leg by his father, & as the result of the injury his foot had to be amputated. The father was convicted of unlawfully wounding:—*Held:* the injury was accidental within the meaning of the policy, but it was the result of a provoked assault, & pltf.'s claim therefore failed.—GRANT *v.* SOUTHERN CROSS ASSURANCE CO., LTD., [1928] W. A. L. R. 65.—**AUS.**

sd. *Throwing ball.*]—Resp., who was used to playing games & was in perfect & normal health, severely sprained his shoulder by the voluntary act of throwing a tennis-ball. He made a claim against applt. under a policy of insurance which covered losses sustained by "bodily injury caused solely & directly by accidental violent external & visible means." On appeal from a judgment of the Supreme Ct. allowing resp.'s claim:—*Held:* resp.

3175a. —— **Death following treatment of pimple —No evidence of accident.**]—WEYERHAEUSER *v.* EVANS (1932), 76 Sol. Jo. 307.

3176. *Add. Annotation :*—**Reld.** Rowett, Leaky *v.* Scottish Provident Institution (1926), 95 L. J. Ch. 434.

3194a. —— ——.]—JAMES *v.* BRITISH GENERAL INSURANCE CO., NO. 3214a, *post.*

3200. *Add. Annotation :*—**Reld.** Koskas *v.* Standard Marine Insce. (1926), 42 T. L. R. 692.

3202a. Condition against acting to detriment of insurer—Failure to raise defence of diplomatic privilege—By order of diplomatic superior.]—Deft., who was First Secretary of the Peruvian Legation, took out a policy of insurance against legal liability to members of the public in connexion with the driving of his motor-car, the policy providing that "the assured . . . shall not in any way act to the detriment or prejudice of the (insurance) co.'s interests," & that "the co. is entitled to take absolute control of all negotiations & proceedings." Pltf. brought an action for personal injuries against deft., & the latter served on the insurance co. a third-party notice claiming an indemnity. An appearance without protest was entered in the action on behalf of deft., &, as the Peruvian Minister forbade deft. to raise the plea of diplomatic immunity, no such plea was inserted in the defence. The jury found a verdict for pltf. for damages, & the insurance co. repudiated liability on the ground that deft. had broken the conditions of the policy by insisting that the plea of diplomatic immunity should not be raised :—*Held :* the privilege of diplomatic immunity was waived by the entry of appearance without protest, & as deft. was bound to obey the direction of his Minister there was no breach of the conditions of the policy, & deft. was entitled to the indemnity claimed.—DICKINSON *v.* not having given evidence pointing to any involuntary, unforeseen, or unexpected movement, the evidence did not warrant a conclusion that the injury was other than the natural result of his purely voluntary act.—LONG *v.* COLONIAL MUTUAL LIFE ASSURANCE SOCIETY, LTD., COLONIAL MUTUAL LIFE ASSURANCE SOCIETY, LTD. *v.* LONG, [1931] N. Z. L. R. 528.—**N.Z.**

PART V. SECT. 1, SUB-SECT. 8.

e. For "*Held :* defts. were liable to pay indemnity for subsequent illness notwithstanding receipt" read, "*Held :* deft.'s liability upon the policy was limited to one claim for one accident."

PART V. SECT. 2, SUB-SECT. 2.

n i. —— —— "*Business of farmer*"—*What is.*]—CARR *v.* GUARDIAN ASSURANCE CO., LTD. & CRACKNELL & CRIMP, [1928] N. Z. L. R. 108.—**N.Z.**

n ii. —— *Notice to agent—Whether compliance with condition in policy.*]—In an action against deft. co., pltf. claimed indemnity against a judgment recovered against him by one B. on account of bodily injuries sustained by B. as the result of the operation of pltf.'s motor car. The action was based upon a provision in the policy insuring pltf. against legal liability for bodily injuries sustained by any one in respect of the operation of his car. The defence relied upon pltf.'s failure to give written notice to the co. in the manner required by the policy. Pltf. had notified deft. co.'s agent on the day following the accident by exhibiting to him the letter from the injured party's solr. threatening action unless the compensation claimed was paid. Evidence was given to show that on previous occasions verbal notice was given to the agent, & notices so given were recognised & acted upon by payment of claims :—*Held :* the agent was authorised to act for the co. notwithstanding the provision in the policy requiring the insured promptly to give written notice to the co.; verbal notice given was sufficient within the meaning of the contract & the defence of absence of written notice failed.—DUNPHY *v.* SCOTTISH METROPOLITAN ASS'CE CO., [1928] 1 D. L. R. 420; 59 N. S. R. 476.—**CAN.**

sw. *Insurer interfering in litigation—Counterclaim asserted by insurer's solicitors.*]—MALLETT *v.* LUMBERMEN'S MUTUAL CASUALTY CO., [1928] 3 D. L. R. 150.—**CAN.**

sx. *Liability to third party—Effect of release from insured.*]—Pltf. in an action brought under Insurance Act, 1925, s. 24, had been injured by a motor car owned by M., who was insured by deft. co. against liability for such injuries. Following the accident the adjuster for the co. paid M. a sum of money, & she gave him a receipt, which the trial judge found to be a release of the co. from any further liability to her arising out of the accident. Pltf. sued M. & recovered, in default of defence a judgment for damages, but, being unable to obtain satisfaction thereof, brought this action against the co. :—*Held :* the release given by M. barred pltf.'s action, since his right of action under the sect. was "subject to the same equities as the insurer would have if the judgment had been satisfied."—BARLOW *v.* MERCHANTS CASUALTY INSURANCE CO. (B. C.), [1929] 4 D. L. R. 701; 3 W. W. R. 724.—**CAN.**

sy. —— *Car driven by person other than insured.*]—B., the owner of an automobile, was insured against loss in applt. co. Resp. was injured while riding in a car driven by her husband which collided with B.'s car driven by his daughter with B.'s permission & recovered judgment against her for damages, applt. co. taking charge of the defence on the trial. Resp. then brought an action against the applt. insurance co. under sect. 24 of Insurance Act (B.C.), 1925, to recover the amount of the judgment rendered against B.'s daughter. Under the policy, the indemnity to the owner was also "available in the same manner & under the same conditions as it is available to the insured to any person or persons while riding in or legally operating the automobile . . . with the permission of the insured . . . " :—*Held :* resp. was not entitled to recover judgment against applt. co. for the amount recovered in the judgment against B.'s daughter as the latter was not "insured" within s. 24 of the Insurance Act.—PREFERRED ACCIDENT INSURANCE CO. OF NEW YORK *v.* VANDEPITTE & BERRY, [1932] S. C. R. 22; 1 D. L. R. 107; *affd.*, 49 T. L. R. 90, P. C.—**CAN.**

sz. —— ——.]—Where under a policy of automobile insurance the insurer covenants to indemnify insured against legal liability for damages caused third persons by the car, & also covenants to indemnify "in the same manner & under the same conditions as the insured is hereby entitled to indemnity," any person riding in or operating the automobile with the permission of the insured, the insured is entitled to bring an action on behalf of such latter person to compel the insurer to indemnify such person against liability on a judgment recovered against him by an injured person. Such an action is to be distinguished from one based on sect. 24 of Insurance Act, 1925.—HORNBROOK *v.* TORONTO CASUALTY FIRE & MARINE INSURANCE CO., [1932] 1 W. W. R. 706.—**CAN.**

sz. *Failure to pay supplementary premium.*]—Applt. co. insured D. under an indemnity policy against liabilities resulting from Workmen's Compensation Act for a period of one year from Jan. 26, 1924. The premium was based upon the whole remuneration of the insured's employees during the period of the policy as follows : a "minimum" premium & an "estimated premium" were stipulated to be paid, & were in fact paid, in advance by the employer, &, at the expiry of the policy, an adjustment was to be made so that a supplementary premium may then be due by the insured or a reimbursement may be made by the co., according to the amount of wages paid by the insured during the life of the policy; but, in any case, the "minimum" premium was to be retained by the co. On Aug. 2, 1924, an employee of D., L., was injured, but a petition to sue the employer under the Act was served only on Jan. 28, 1925, &, on the same day, D. made an assignment in bkpcy. L. having been granted permission to sue the trustee, one G., obtained judgment for $5,300 & costs against the present resp. who had succeeded G. as trustee. On Jan. 27, 1925, one day after the expiry of the policy & one day prior to the service of the petition on D., an adjustment had been made as provided for in the policy & a supplementary premium of $1,020.58 was thereby shown to be due by D. On Jan. 22, 1927, resp. sued applt. co. for the payment of $6,490, being L.'s claim of $5,300 & the costs, under the judgment secured against resp. which he had not yet paid. Applt. co. repudiated its liability on the ground that the supplementary premium of $1,020.58 had not been paid by the insured :—*Held :* applt. co. was liable for the amount claimed by the resp. Under the terms of the policy, the obligations of each party were not simultaneous & that of the insurer to indemnify was not made subject to the obligation of the insured to pay the supplementary premium. Applt.'s liability was complete & absolute on the date of the accident, *i.e.* Aug. 2, 1924; on that day, applt., having received all the premiums then due, became bound to pay to the employer the amount of the indemnity to be awarded to the injured employee under the Workmen's Compensation Act.—EMPLOYERS' LIABILITY ASSURANCE CO. *v.* LEFAIVRE, [1930] S. C. R. 1; 1 D. L. R. 689; 11 C. B. R. 290; *affg.*, 45 Que. K. B. 224; 10 C. B. R. 559; *affg.*, 30 Que. P. R. 214.—**CAN.**

DEL SOLAR, [1930] 1 K. B. 376; 99 L. J. K. B. 162; 142 L. T. 66; 45 T. L. R. 637.

3203a. Insurer defending claim — Claim not covered by policy—Repudiation—Estoppel.]—ETCHELLS, CONGDON & MUIR, LTD. *v.* EAGLE STAR & BRITISH DOMINIONS INSCE. CO., LTD. (1928), 72 Sol. Jo. 242.

3205. *Add. Annotation :*—**Apld.** Wales *v.* Iron Trades Employers' Assocn. (1928), 21 B. W. C. C. 316.

3205a. *S. P.* WALES *v.* IRON TRADES EMPLOYERS' ASSOCN., LTD. (1928), 21 B. W. C. C. 316, C. A.

3205b. —— —— ——.]—A workman was employed by a co., which went into liquidation, & ceased to carry on business. The co. were insured at the time of an accident to the workman with an assocn., whose arts. formed the contract of insurance. By the arts. the assocn. undertook liability if compensation became payable for more than six months, so long as the insured co. remained a member of the assocn. Membership was to cease if the co. went into liquidation, or ceased to carry on business. The workman having applied for an award of weekly compensation as against both his employers & the assocn., on the ground that the rights of his employers against the assocn. had been transferred to him :—*Held :* on the contract, the undertaking of liability by the assocn. after compensation had been paid for more than six months did not vest that liability once & for all, but merely indemnified the co. during its continuance of membership, & membership having ceased, the contract of insurance lapsed, & the assocn. was under no liability to the workman.—HINDMARCH *v.* CARTERTHORNE COLLIERY, LTD. & DURHAM COLLIERY OWNERS' MUTUAL PROTECTION ASSOCN. (1928), 21 B. W. C. C. 44, C. A.

Annotation :—**Consd.** *Re* Bebside Coal Co. (1929), 45 T. L. R. 327.

3206. *Add. Annotations :*—**Distd.** Hindmarch *v.* Carterthorne Colliery Co. & Durham Colliery Owners' Mutual Protection Assocn. (1928), 21 B. W. C. C. 44. **Consd.** Wales *v.* Iron Trades Employers' Assocn. (1928), 21 B. W. C. C. 316.

3210. *Add. Citation :*—95 L. J. K. B. 25.

Add. Annotations :—As to (1) **Distd.** Hindmarch *v.* Carterthorne Colliery Co & Durham Colliery Owners' Mutual Protection Assocn. (1928), 21 B. W. C. C. 44. *Generally,* **Consd.** Wales *v.* Iron Trades Employers' Assocn. (1928), 21 B. W. C. C. 316.

3212a. —— Liability of insurer must exist—At date of winding-up.]—*Held :* Workmen's Compensation Act, 1925 (c. 84), s. 7, applied only where at the date of the winding-up there was some liability of insurers, the benefit from which was capable of being transferred to the workmen, & it could not apply to a case where the liability had come to an end before that date.—*Re* BEBSIDE COAL CO., LTD. (1929), 45 T. L. R. 327; 22 B. W. C. C. 239.

Annotation :—**Apld.** *Re* Burradon & Coxlodge Coal Co., Martin's Bank, Ltd. *v.* The Co. (1930), 23 B. W. C. C. 7.

3212 b. —— —— At time of appointment of receiver for debenture-holders.]—A colliery co. entered into a contract with insurers in respect of liability under Workmen's Compensation Acts by becoming a member of an owners' mutual protection association. Under the arts. of assocn. power was given to make calls on members in order to meet claims & current expenses; if a call were not paid before the date fixed the contract of insurance was to expire fifteen days after such date. On June 12, 1928, calls were made, & the co. having failed to pay on June 27, being the date fixed, its contract of insurance expired, in accordance with the arts. of assocn., fifteen days after the failure to pay. The co. had issued a debenture to a bank secured by a fixed & floating charge, & under the powers in the debenture the bank, on Oct. 13, 1928, appointed a receiver. In a debenture-holders' action brought by the bank the ct. appointed the same person receiver & manager. The bank took out a summons to decide whether in view of the contract made with insurers workmen claiming under the Act were preferential creditors or not :—*Held :* the material date was that of the appointment of the receiver (viz.), Oct. 13, 1928, & as the contract with insurers had expired before that date, it could not operate to deprive the workmen of their preferential rights.—*Re* BURRADON & COXLODGE COAL CO., LTD., MARTIN'S BANK, LTD. *v.* THE COMPANY (1930), 23 B. W. C. C. 7, C. A.

3213a. *S. P.* WALES *v.* IRON TRADES EMPLOYERS' ASSOCN., LTD. (1928), 21 B. W. C. C. 316, C. A.

3214. *Add. Annotations :—As to* (1) **Folld.** James *v.* British General Insce., [1927] 2 K. B. 311. *As to* (3) **Folld.** James *v.* British General Insce., [1927] 2 K. B. 311.

3214a. —— ——.]—A policy of insurance provided that the insurance co. would indemnify the assured against all sums which he might be legally liable to pay for damages or compensation to any person for accidental bodily injury or accidental damage to property where such injury or damage was caused by the driving of the insured's motor car, including law costs when incurred with the consent of the co. While the insured

PART V. SECT. 2, SUB-SECT. 3.

q i. —— ——.]—Pltf., a workman employed by the M. Co., was injured, & obtained an award for compensation under Workmen's Compensation Act, 1902. At the date of the award the M. Co. were being wound up. Pltf. alleged that the C. Co., were liable to indemnify the M. Co. against losses or liability under the award, & brought an action for a declaration that he had a first charge upon the money which the M. Co. were entitled to receive from the C. Co., & for an order for payment. The C. Co. admitted that they had issued a policy which was valid & subsisting at the date of pltf.'s injuries, by which they agreed to indemnify the M. Co. against loss for damages on account of bodily injuries suffered within the period of the policy by any employee :—*Held :* pltf. had no status to maintain the action.—DISOURDI *v.* SULLIVAN GROUP MINING CO. & MARYLAND CASUALTY CO. (1910), 15 B. C. R. 305.—**CAN.**

q ii. —— ——.]—The words "Every such policy shall provide that the insurer shall, as well as the employer, be directly liable to any worker insured under such policy &, in the event of his death, to his dependants, to pay the compensation for which an employer is liable, & that the insurer shall be bound by, & subject to, any order, decision or award made against the employer of such worker under the provisions of this Act," appearing in Workers Compensation Act, 1926, s. 18 (3), mean that when compensation has been assessed & awarded against the employer, the insurer as well as the employer is liable to pay its & that the original proceedings for the establishment of the liability must be between the worker & his dependant, on the one side, & the employer on the other.—DEVINE *v.* DEVINE & QUEENSLAND INSURANCE CO., LTD. (1928), 28 S. R. N. S. W. 503; 46 N. S. W. W. N. 140.—**AUS.**

was driving his motor car a collision took place between it & a motor cycle, the result being that the driver of the latter vehicle was injured, a passenger thereon was killed, & both vehicles were damaged. At the time of the collision the insured was drunk through his own unpremeditated folly. The insured was convicted of the manslaughter of the deceased passenger. The injured driver brought an action for personal injuries against the insured, in which he was awarded damages & costs, & the insured incurred costs. The insured also incurred costs in repairing the vehicles, in attending an inquest on deceased, & in defending himself in the police ct. proceedings before his trial. In an action by the insured against the co. for indemnity against these damages & costs:—*Held:* (1) the policy covered liabilities of the insured for accidental bodily injury to any person or accidental damage to property caused by his negligence, even though gross & attended by criminal consequences; (2) the policy, by covering these liabilities, was not void as against public policy, & the insured was entitled to the indemnity which he claimed.—JAMES *v.* BRITISH GENERAL INSURANCE CO., [1927] 2 K. B. 311; 96 L. J. K. B. 729; 137 L. T. 156; 43 T. L. R. 354; 71 Sol. Jo. 273.

3216a. —— ——.]—JAMES *v.* BRITISH GENERAL INSURANCE CO., No. 3214a, *ante*.

3216b. Protection against criminal consequences.]—JAMES *v.* BRITISH GENERAL INSURANCE CO., No. 3214a, *ante*.

3217a. —— —— **Actual driver also insured—Ratable contribution.**]—G. took out with the M. co. a motor car insurance policy covering himself & any friend driving with G.'s

PART V. SECT. 2, SUB-SECT. 4.

3217 i. *Motor driven by relation of assured—With assured's authority.*]—An accident occurred while a motor car was being driven by C., a duly licensed driver. The car belonged to C.'s wife & was being operated with her permission. Judgment was recovered by the injured party against C., but was unsatisfied:—*Held:* C. was "a person insured against liability for injury or damage to persons or property of others within Ontario Insurance Act, 1927, s. 85 (1), & pltfs. were entitled to recover from the insurance co. the amount of the unsatisfied judgment obtained against C.—SCHOENFELD *v.* PILOT AUTOMOBILE & ACCIDENT INSURANCE CO., [1930] 2 D. L. R. 1; 65 O. L. R. 29.—**CAN.**

r i. —— *Notice — Sufficiency of.*]—Where notice by an insured under a policy of automobile insurance that a claim for damages had been made upon it was given, through its solrs., to the insurer's agents five days after the insured received the claim:—*Held:* the notice had been given "promptly" within the meaning of statutory condition 8, sched. D, & the notice in question was one of the accident as well as of the claim, &, if not perfect, was imperfect so that sect. 258, empowering the ct. to relieve from the forfeiture or avoidance of, a policy where there has been "imperfect compliance" as to anything to be done by the insured, was applicable.—NORTH LETHBRIDGE GARAGE, LTD. *v.* CONTINENTAL CASUALTY CO., [1930] 1 W. W. R. 491: 2 D. L. R. 835: 24 Alta. L. R. 390: *revsg.*, [1930] 1 W. W. R. 37.—**CAN.**

r ii. —— —— *Receipt by insurance adjusters.*]—Insurance adjusters employed by agents of an insurance co. to adjust only a particular case of loss resulting from damage to an automobile *held* not to be agents of the co. who could bind it by the receipt of the notice, called for by statutory condition 8 (1), sect. 154 of Insurance Act, 1925 (c. 20), of a claim made against the insured on account of the accident; but an oral notice subsequently given to the agents was held sufficient to justify the ct. under sect. 12 of Automobile Insurance Policy Act, R. S. B. C., 1924, from relieving against the forfeiture of the policy on that ground; moreover the co. was held to be estopped by the acts of its agents from raising the lack of notice as a defence.—MARSH *v.* QUEENS INSURANCE CO. OF AMERICA, [1932] 1 W. W. R. 721.—**CAN.**

c i. ——.]—A clause in an insurance policy was as follows: "No liability shall attach to the co. under this policy in respect of any loss, damage, or liability occurring while any motor-vehicle in connection with which indemnity is granted under this policy is, with the knowledge and/or consent of the insured or of any person to whom indemnity is granted by this policy, being driven by or is in charge of any person under the influence of liquor":—*Held:* the clause exempted the co. from liability when the motor vehicle was being driven by insured himself whilst under the influence of liquor.—JURY *v.* NORTH ISLAND MOTOR UNION MUTUAL INSCE. CO., [1930] N. Z. L. R. 562.—**N.Z.**

c ii. —— *"Collision with another object"—Shoulder of bridge.*]—An insurance co. agreed to indemnify deft. against direct loss or damage to his motor vehicle "if caused solely by accidental collision with another object either moving or stationary":—*Held:* the shoulder of a bridge against which the vehicle struck owing to a defective highway was an "object" within the policy.—AUSTIN *v.* JORDAN, [1931] 4 D. L. R. 292; O. R. 526.—**CAN.**

c iii. —— —— *Objects hurled at car by explosion.*]—SANFORD *v.* CANADIAN FIRE INSURANCE CO., [1931] 3 W. W. R. 316.—**CAN.**

sy. *Conditions of policy—Breach by insured — Waiver.*]—Where conditions of a policy of insurance against liability imposed by law on the insured for injuries suffered by another person are that the insured "shall not voluntarily assume any liability" & "shall co-operate with the insurer, except in a pecuniary way, in all matters which the insurer deems necessary in the defence of any action," & the solr. for the insurance co., after undertaking the defence of an action brought by an injured person against the insured, learns that the latter has broken said conditions, but, nevertheless, elects to continue to defend the action, the insurance co. is precluded from raising the defence to an action against it on the policy that the policy was avoided by said breach.—CADEDDU *v.* MOUNT ROYAL ASSURANCE CO., [1929] 2 D. L. R. 867; 2 W. W. R. 161; 41 B. C. R. 110.—**CAN.**

sf. —— —— ——.]—ENGLAND *v.* DOMINION OF CANADA GENERAL INSURANCE CO., [1931] 3 D. L. R. 489; O. R. 264.—**CAN.**

sz. —— —— *Effect—Assured cannot recover amount of judgment recovered against him.*]—OBERG *v.* MERCHANTS CASUALTY INSURANCE CO., [1930] 2 D. L. R. 156; 42 B. C. R. 317.—**CAN.**

sp. —— *"Immediate" notice of accident—Meaning of "immediate."*]—A policy of insurance on a motor vehicle required *immediate* notice of an accident to be given:—*Held:* "immediate" meant reasonably immediate having regard to the circumstances of the case; & a delay of nine days was therefore a breach of the condition.—HEAN *v.* GENERAL ACCIDENT, FIRE & LIFE ASSURANCE CORPN., LTD., [1931] N. L. R. 215.—**S. AF.**

sa. *Omission of statutory conditions—Effect of.*]—When a contract of insurance is one to which Part IV. of Alberta Insurance Act, 1926, applies, *i.e.* a contract made in Alberta for other than life, accident or sickness insurance, & the insurer has neglected to incorporate in or with the policy the statutory conditions, with such variations or additions, if any, as he desires to make, properly designated, such conditions cannot be taken advantage of by him to the prejudice of the insured or any beneficiary, but the statutory conditions would apply when for the benefit of the latter.—NORTH LETHBRIDGE GARAGE, LTD. *v.* CONTINENTAL CASUALTY CO., [1930] 1 W. W. R. 491; 2 D. L. R. 835; 24 Alta. L. R. 390; *revsg.*, [1930] 1 W. W. R. 37.—**CAN.**

sb. *Construction of Insurance Act, R. S. O.* 1927, *s.* 85.]—Pltf. had been injured by S.'s automobile & had recovered judgment for damages & costs against S. & issued execution which was returned unsatisfied. Pltf., under Insurance Act, R. S. O. 1927 (c. 222), s. 85, sued deft., which had insured S. against liability for injury to another, for the amount of her judgment:—*Held:* the right of action given by s. 85 is simply a right to sue on the policy in the place & stead of the insured; pltf. must establish liability on the policy against the insurer in the same manner & to the same extent as if the action had been brought by the insured; & the facts, required to be established as part of pltf.'s case, that the bodily injury to another, insured against, had been inflicted by the insured's automobile, & that the insured was legally liable in damages to pltf. for the injury, are not established as against the insurer by the production of the judgment obtained by pltf. against the insured. But in the present case deft., by reason of an admission at the trial, was precluded from contending that the liability of S. to pltf. had not been established by production of the judgment against S.—CONTINENTAL CASUALTY CO. *v.* YORKE, [1930] S. C. R. 180; 1 D. L. R. 609; *affa.*, [1929] 3 D. L. R. 662; 64 O. L. R. 109.—**CAN.**

sm. *Notice of cancellation—Meaning of "registered mail"—Not Canadian registered mail.*]—CLAPP *v.* TRAVELLERS' INDEMNITY CO., [1932] 1 D. L. R. 551; O. R. 116.—**CAN.**

so. *Company liable for accident by car used with designated trailer—Accident while used with designated trailer & another—No liability.*]—BOYCE *v.* NORWICH UNION FIRE INSURANCE SOCIETY, [1931] 4 D. L. R. 117; O. R. 545.—**CAN.**

consent, & providing as following: "Condition 6. The extension of the indemnity to friends or relatives of the insured is conditional upon such friend or relative being a licensed & competent driver & not being insured under any other policy. Condition 10. If at the happening of any accident, injury, damage, or loss covered by this policy there shall be subsisting any other insurance or indemnity of any nature whatever covering same, whether effected by insured or by any other person, then the co. shall not be liable to pay or contribute towards any such damage or loss more than a ratable proportion of any sum payable in respect thereof for compensation." L., G.'s brother-in-law, took out with the G. co. a similar policy, providing that "insured will also be indemnified hereunder while personally driving a car not belonging to him provided that there is no other insurance in respect of such other car whereby insured may be indemnified," & that "if at the time of the occurrence of any accident, loss or damage there shall be any other indemnity or insurance subsisting whether effected by insured or by any other person the corpn. shall not be liable to pay or contribute more than a ratable proportion of any sums payable in respect of such accident loss or damage." While L. was driving G.'s car with G.'s consent it had a collision, & L. had to pay damages. G., as trustee for L., claimed against the M. co., & L. on his own behalf claimed against the G. co.:—*Held:* in each policy the provision as to ratable contribution qualified the preceding clause, & each co. was liable to pay claimants half the amount claimed.—GALE *v.* MOTOR UNION INSURANCE CO., LTD., LOYST *v.* GENERAL ACCIDENT FIRE & LIFE ASSURANCE CORPN., LTD., [1928] 1 K. B. 359; 96 L. J. K. B. 199; 138 L. T. 712; 43 T. L. R. 15; 70 Sol. Jo. 1140.

Annotation:—**Consd.** Weddell *v.* Road Transport & General Insurance Co. (1931), 146 L. T. 162.

3217b. —.]—A motor-car accident policy issued by resp. co. to J. extended the insurance to a relative driving the car, provided that the latter was not entitled to indemnity for the same risk under another policy. L., a relative of J., while driving the car, injured a third party, who claimed damages. L. was himself insured with the C. insurance co. against claims for injuries caused by him while driving a car not belonging to him, provided that he was not entitled to an indemnity in respect thereof from another co. Resps. denied liability on the ground of the proviso in their policy exempting them where the claimant was entitled to indemnity under another policy: —*Held:* on the proper construction of the policies, the insurance clause in each policy expressed to be cancelled by the co-existence of a similar clause in the other policy should be excluded from the category of co-existing cover, & that therefore resps., not being protected by their proviso, were liable.—WEDDELL *v.* ROAD TRANSPORT & GENERAL INSURANCE CO., LTD., [1932] 2 K. B. 563; 101 L. J. K. B. 620; 146 L. T. 162; 48 T. L. R. 59; 75 Sol. Jo. 852.

3217c. Action by repairer against insurers for repairs—Right of insurers to be subrogated to owner's rights against repairer.]—In an action by the repairer of a motor car against an insurance co. for repairs executed at their request, the co. contended that they were entitled to set-off, on the principle of subrogation, the claims of the assured, the owner of the car, against the repairer, who had been driving the car on the occasion of a collision. The insurance co. had commenced an action, in the name of the owner, against the repairer for the damage done to the car by his negligent driving, but, at the date of the commencement of the action by the repairer, certain claims of the assured under the policy in regard to third party risks, etc., were still unsettled:—*Held:* the fact that these claims were then unsettled prevented the insurance co. from being subrogated to the owner's rights against the repairer, & the co. were not entitled to rely on these as a set-off to the repairer's claim.—PAGE *v.* SCOTTISH INSURANCE CORPN., FORSTER *v.* PAGE (1929), 98 L. J. K. B. 308; 140 L. T. 571; 45 T. L. R. 250; 73 Sol. Jo. 157; 34 Com. Cas. 236, C. A.

3217d. Condition as to efficient condition of vehicle.]—The claimants were the holders of a policy by which resp. co. had undertaken liability for damage caused by or to a motor car. The policy contained a condition that "the insured shall take all reasonable steps to maintain such vehicle in efficient condition." & it provided that the observation of the conditions should be a condition precedent to the liability of the co. The claimants removed the foot-brake from the vehicle, leaving only a hand-brake, & in this state of affairs the vehicle caused damage, & was itself damaged, in an accident, but the exact cause of the accident could not be ascertained:—*Held:* the condition was a condition precedent, & as it had been broken the co. was not liable on the policy.—JONES & JAMES *v.* PROVINCIAL INSURANCE CO., LTD. (1929), 46 T. L. R. 71.

3217e. Policy covering any car used "instead of the insured car"—Insured car sold—Whether new car covered.]—Defts. contracted by a policy of insurance to indemnify pltf. against "all sums which the assured shall become legally liable to pay as compensation for . . . bodily injury . . . caused to any person or persons by a motor car described in the schedule hereto." The car was thereinafter referred to as the "insured car." The policy further provided that "this insurance shall cover the legal liability as aforesaid of the assured in respect of the use by the assured of any motor car (other than a hired car) provided that such car is at the time of the accident being used instead of the insured car." Pltf. exchanged the insured car for a new car of a similar type. While pltf. was using the new car an accident occurred, causing injury to a third person, & pltf. referred the claim to defts., who repudiated liability on the grounds that pltf. was not using the new car "instead of" the old one & that when the insured car was sold the insurance ceased. In an action for a declaration that defts. were liable to indemnify pltf. against the claim:—*Held:* the policy necessarily implied that the insured car should be the subject-matter of the insurance at the time of the accident, & therefore the action failed.—ROGERSON *v.* SCOTTISH AUTO-

& General Insurance Co., Ltd. (1931), 146 L. T. 26; 48 T. L. R. 17; 75 Sol. Jo. 724; 37 Com. Cas. 23, H. L.

3217f. Effect of non-disclosure—Previous theft of car.]—Pltf. insured a motor car against loss, the policy providing that the proposal should be incorporated in the contract. The proposal, which was signed by pltf., concluded with the declaration: "I hereby declare that the above motor car is my own sole property & that all the particulars stated above are true, & that no facts have been omitted or any information withheld with which the underwriters should be acquainted. I further agree that this declaration shall be the basis of the contract between us." Among the questions contained in the proposal form was the following: "How many accidents or losses have arisen during the past three years in connection with this or any other motor vehicle owned or driven by you or your driver?" Pltf. in his answers did not disclose the fact that within three years he had had another car which on three occasions was abstracted or stolen, but on each occasion was recovered a few hours later. The insured car was stolen & pltf. sued the underwriters:—*Held:* the undisclosed information was material & therefore the action failed.—Farra *v.* Hetherington (1931), 47 T. L. R. 465; 75 Sol. Jo. 542.

Duty not to inform jury of insurance.]—*See* Negligence, Vol. XXXVI., p. 127, No. 842, & Supp.

Compulsory third party insurance.]—*See* Road Traffic Act, 1930 (c. 43), ss. 35–44.

3217g. —— Invalidity of condition subsequent avoiding liability—What amounts to.]—Road Traffic Act, 1930 (c. 43), s. 38, provides that "Any condition in a policy . . . issued or given for the purposes of this Part of this Act providing that no liability shall arise under the policy . . . in the event of some specified thing being done or omitted to be done after the happening of the event giving rise to a claim under the policy . . . shall be of no effect. . . ."

A policy of insurance insuring resp. against third-party risks contained a condition that "the corpn. shall not be liable for any accident loss or damage caused or sustained while any motor cycle in respect of which indemnity is granted under this policy is carrying a passenger unless a sidecar is attached." Resp., who on a certain date drove a motor cycle on a road with another person sitting behind him as a passenger on the pillion without a side-car being attached to the motor cycle, was charged with the offence of using a motor vehicle on a road without there being in force in relation to the user of the vehicle such a policy of insurance in respect of third-party risks as complied with the requirements of Part II. of Road Traffic Act, 1930 (c. 43). The justices dismissed the information on the ground that the condition in the policy was of no effect by reason of Road Traffic Act, 1930 (c. 43), s. 38, & that therefore the policy of insurance was in force on that occasion. On appeal to the Div. Ct.:—*Held:* Road Traffic Act, 1930 (c. 43), s. 38, applied only to a condition in a policy "providing that no liability shall arise under the policy . . . in the event of some specified thing being done or omitted to be done after the happening of the event giving rise to a claim under the policy," whereas in the present case the condition circumscribed the operation of the policy from the beginning. Therefore, there was no policy in force where a passenger was being carried otherwise than in a side-car.—Bright *v.* Ashfold, [1932] 2 K. B. 153; 101 L. J. K. B. 318; 147 L. T. 74; 96 J. P. 182; 48 T. L. R. 357; 76 Sol. Jo. 344; 30 L. G. R. 212, D. C.

3217h. —— Issue of false certificate of insurance—Statement as to date of commencement—Premium unpaid.]—An insurance co. issued a public liability motor car policy of insurance covering third-party risks, valid for a year & any further period for which they might accept payment for renewal. The policy was subject to a condition that no liability should arise until payment of the premium. At the expiration of the year, on June 3, no premium was paid, but it was paid on June 11, when a receipt was given acknowledging a renewal of the policy as from June 3. On the former date the co. also issued a certificate of insurance containing the statement alleged to be false, that the date of commencement of the insurance was June 4:—*Held:* even assuming the statement to be false in fact, that alone was not sufficient to justify a conviction for issuing a certificate which was false to the knowledge of the co. within Road Traffic Act, 1930 (c. 43), s. 112 (3), & the conviction must be quashed.—Ocean Accident & Guarantee Corpn., Ltd. *v.* Cole, [1932] 2 K. B. 100; 101 L. J. K. B. 362; 147 L. T. 78; 96 J. P. 191; 48 T. L. R. 392; 76 Sol. Jo. 378; 30 L. G. R. 206, D. C.

Sub-sect. 5.—Insolvency of Insurers.

Rights of third parties.]—*See* Third Party (Rights Against Insurers) Act, 1930 (c. 25); Bankruptcy, Nos. 5958a, 5958b; & Companies, Nos. 6056a, 6056b.

PART VI. SECT. 1.

3220 iii. *S. P.* Victory *v.* Saskatchewan Guarantee & Fidelity Co., Ltd., [1927] 3 D. L. R. 647; [1927] 2 W. W. R. 577; 21 Sask. L. R. 551; *varied*, [1928] 2 D. L. R. 829; [1928] S. C. R. 264.—**CAN.**

3220 iv. —— ——.]—*Semble:* guarantee bonds or policies are contracts *uberrimæ fidei*.—Clarkson *v.* Canada Accident & Fire Assurance Co., [1931] O. R. 787; 4 D. L. R. 769 *affd.*, [1932] O. R. 405; 3 D. L. R. 188.—**CAN.**

PART VI. SECT. 3.

3233 iii. —— —— —— ——.]—Rural Municipality of Enfield *v.* London Guarantee & Accident Co., Ltd. (Sask.), [1926] 4 D. L. R. 37; [1926] 2 W. W. R. 737.—**CAN.**

3233 iv. —— —— —— ——.]—Grain Claims Bureau, Ltd. *v.* Canadian Surety Co. (No. 2), [1927] 3 W. W. R. 1; 37 Man. L. R. 76; *revsd.*, [1928] 1 D. L. R. 677; [1928] 1 W. W. R. 263; 37 Man. L. R. 235.—**CAN.**

3243 i. *within twelve months prior to notice of discovery—What amounts to.*]—London Guarantee & Accident Co., Ltd. *v.* City of Halifax, [1927] 1 D. L. R. 1129; [1927] S. C. R. 165.—**CAN.**

so. *Misrepresentation.*]—On appeal from a judgment in favour of pltf. in an action on a fidelity bond:—*Held:* the answers by pltf. in his application for the insurance, as to the salary of the bonded employee & as to the system of check or supervision of pltf.'s accounts were untrue in fact & material mispresentations which induced deft. to enter into the contract; &, moreover, that, since the truth of said answers, & the maintenance of the system of accounting & of compensation of the employee were, under the conditions of the bond, conditions precedent to pltf.'s right of recovery, pltf.'s failure to comply therewith rendered the bond void *ab initio*.—McCammon *v.* Alliance Assurance Co., Ltd., [1931] 2 W. W. R. 621; 4 D. L. R. 811.—**CAN.**

Part VII.—Insurance against Burglary and Theft.

3252. *Add. Citations:—affd.*, [1927] A. C. 140; 136 L. T. 263; 43 T. L. R. 46; 70 Sol. Jo. 1111; 32 Com. Cas. 62, H. L.

Add. Annotation:—**Refd.** Farra *v.* Hetherington (1931), 47 T. L. R. 465.

3256. *Add. Annotation:*—**Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

3257. *Add. Annotation:—Generally*, **Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

3258. *Add Citations:—revsd.*, [1926] 2 K. B. 51; 95 L. J. K. B. 586; 135 L. T. 129; 42 T. L. R. 425; 70 Sol. Jo. 584; 31 Com. Cas. 271, C. A.; *revsd.*, [1927] A. C. 487; 96 L. J. K. B. 621; 137 L. T. 233; 43 T. L. R. 417; 71 Sol. Jo. 369; 33 Com. Cas. 16, H. L.

3259. *Add. Annotation:*—**Refd.** Lazard Bros. & Co. *v.* Brooks (1932), 37 Com. Cas. 224.

3259a. Insurance of documents against "any other loss whatever"—Limited to physical loss of documents.]—Resps., pltfs. in the action, were insured by a group of underwriters, of whom applt. was one, against a number of risks, including the loss or deprivation of bills of exchange by robbery or other causes or through the documents being mislaid or accidentally destroyed. The insurance covered loss by the negligent or fraudulent conduct of clerks, servants, or "any other person or persons," & was expressed to cover "any other loss whatsoever" through the dishonesty of any such clerk, servant, or other person or persons. Resps. were induced by fraud to accept certain bills of exchange & thereby suffered loss, & in this action they sought to recover their loss from their underwriters:—*Held:* notwithstanding the reference in the policy to the fraudulent conduct of "other person or persons" & to "any other loss whatsoever," upon a true construction of the policy as a whole the insurance was only one covering the actual physical loss of documents & did not cover the case of the insured being fraudulently induced to accept bills of exchange.—LAZARD BROS. & CO., LTD. *v.* BROOKS (1932), 37 Com. Cas. 224, C. A.; *revsd.* 38 Com. Cas. 46, H. L.

3260a. "Dishonesty"—Discounting bills of exchange subsequently dishonoured.]—Pltf. was insured by two policies, subscribed by deft., against loss or deprivation of bills of exchange through theft & any other loss whatsoever through theft or other dishonesty. During the currency of the policies pltf. was induced by false representations to discount certain bills of exchange. The bills were dishonoured, & pltf. brought an action on the policies on the ground that he had suffered a loss through having dealt in the bills. Deft. contended that the above provision in the policies only covered accidental loss of documents or physical deprivation of the possession of documents:—*Held:* pltf.'s loss was caused by dishonesty within the policy.—WASSERMAN *v.* BLACKBURN (1926), 43 T. L. R. 95.

Annotation:—**Consd.** Lazard Bros. & Co. *v.* Brooks (1932), 37 Com. Cas. 224.

3269. *Add. Annotation:*—**Refd.** Lake *v.* Simmons (1926), 95 L. J. K. B. 586.

Part VIII.—Other Kinds of Insurance.

3279a. —— To be used only for commercial travelling—Damaged whilst carrying passengers.]—*Held:* a statement in a proposal form that a motor car was to be used only for commercial travelling was a statement descriptive of the risk covered by the insurance, & the insurers were not liable for an accident which happened while the motor

PART VI. SECT. 4.

3245 i. *Non-disclosure of material fact.*]—CLARKSON *v.* CANADA ACCIDENT & FIRE ASSURANCE CO., [1931] 4 D. L. R. 769; *affd.* [1932] O. R. 405; 3 D. L. R. 188.—**CAN.**

PART VII. SECT. 1.

3248 i. *Commencement of risk—Covering note issued by broker—Loss before issue of policy—Broker not liable as insurer.*]—BROIT *v.* BENNIE S. COHEN & SON (N. S. W.), LTD. (1926), 27 S. R. N. S. W. 29; 44 N. S. W. W. N. 44.—**AUS.**

so. *Condition that books to be kept by assured.*]—A policy of insurance against robbery of a shop was expressed to be subject to the following condition: "The co. shall not be liable for loss or damage . . . unless books & accounts are kept by the assured & are kept in such manner that the co. can accurately determine therefrom the amount of loss." There were no statutory conditions applicable to such a policy:—*Held:* it was a condition precedent to the co.'s liability that reasonably sufficient books of account should be available in support of the proofs of loss.—FREEDMAN *v.* UNITED STATES FIDELITY & GUARANTY CO., [1932] 1 W. W. R. 118; 1 D. L. R. 557; 40 Man. L. R. 160.—**CAN.**

PART VII. SECT. 2.

ss. *Burglary from "safe or vault described in schedule."*]—Where money stolen by burglars was, at the time of the burglary, in a vault so described, but was not in the safe in the vault:—*Held:* the assurance was not confined to money in the safe.—WOODWARD'S, LTD. *v.* UNITED STATES FIDELITY & GUARANTEE CO., [1927] 2 D. L. R. 126; [1927] 1 W. W. R. 529; 38 B. C. R. 171.—**CAN.**

sb. *"Visible marks of force & violence made by a tool."*]—A policy of burglary insurance provided for indemnity against loss occasioned by felonious entry by "actual force & violence" of which force & violence "there shall be visible marks made upon the premises at the place of such entry by tools, etc." The visible mark upon the premises in question was a hole in the wire netting of a window screen which was rusty, but intact before the entry, & through which it was admitted the burglar had entered. A small piece of wood with rust marks on it was found outside the window:—*Held:* the trial judge was justified in inferring, as he did, that force & violence had been used to effect the entry, & that the visible mark thereof had been made by a tool of some sort. A stick used to break the wire netting of a screen is a "tool" within the meaning of the policy.—MULLETT *v* UNITED STATES FIDELITY & GUARANTY CO., [1929] 3 D. L. R. 140; 2 W. W. R. 146; 41 B. C. R. 81.—**CAN.**

sc. *"Excluding infidelity"—Effect of theft by director or servant of company.*]—The expression "excluding infidelity" in an insurance policy indemnifying a co., against the loss of moneys while locked up in a safe in specified premises excludes a theft of the money by any director of the co., as also theft by a servant of the co. who owes a duty of faithfulness to the co. in respect of its moneys.—FRENCH HAIRDRESSING SALOONS, LTD. *v.* NATIONAL EMPLOYERS MUTUAL GENERAL INSCE. ASSOCN., LTD., [1931] App. D. 60.—**S. AF.**

PART VIII.

d i. —— —— *Racehorse.*]—RAMSAY *v.* HARTFORD LIVE STOCK INSURANCE CO., [1930] 2 D. L. R. 805.—**CAN.**

g i. —— *Misstatements in proposal—What amount to.*]—A motor vehicle in the possession of the purchaser under a hire-purchase agreement was destroyed by fire. An action was brought by the two parties to the hire-purchase agreement under a policy issued in the names of both parties. Defts. pleaded that all benefit under the policy had been forfeited through misstatements in the proposal. The

car was being used to carry passengers, carrying passengers not being within the description.—ROBERTS *v.* ANGLO-SAXON INSURANCE ASSOCN. (1927), 96 L. J. K. B. 590; 137 L. T. 243; 43 T. L. R. 359, C. A.

Annotation:—**Folld.** Morgan *v.* Provincial Insurance Co. (1932), 48 T. L. R. 217.

3279b. Concealment—Refusal of company to insure.]—HOLT'S MOTORS, LTD. *v.* SOUTH EAST LANCASHIRE INSURANCE CO., LTD., No. 203a, *ante*.

3279c. Business car driven by son & others—Failure to disclose convictions against son.]—Applt. took out with resps. a motor car policy of insurance in respect of a car of which he was the owner. Applt. employed more than one driver in the course of his business, & at the time when the insurance was effected the agent of resps. told him that if he paid an extra premium the policy would protect him whoever might be driving the car, & applt. paid the extra premium accordingly. During the currency of the policy the car, while being driven by a son of applt., came into collision with a cyclist. The cyclist brought an action against applt. for damages, & applt. referred the claim to resps., who repudiated liability on the ground that at the time when the policy was taken out applt. had failed to disclose a material fact. It appeared that before the insurance was effected applt.'s son had been convicted several times of motoring offences, chiefly in relation to a motor-cycle, & resps. contended that this was a material fact which ought to have been disclosed by applt. Before the policy was issued applt. had received a proposal form from resps. & had answered all the questions in that form fully & truthfully, & he did not know that any further information was required. At that time he had not his son in mind. Applt.'s claim against resps. was referred to arbn. as required by the policy, & the arbitrator awarded in favour of resps. on the ground that a material fact had not been disclosed. Applt. now appealed to the Div. Ct. to have the award set aside:—*Held:* the arbitrator had decided rightly & the award must be confirmed.—BOND *v.* COMMERCIAL ASSURANCE CO. (1930), 35 Com. Cas. 171, D. C.

proposal began "I/we, the undersigned desire to insure my/our motor vehicle." After the words "owner's full name," was written the names of both pltfs. "for their respective rights & interests." The question "Have you ever made a claim against any insurance co." was answered "No." The proposal was signed by only one pltf. Although pltf. who signed the proposal had never made a claim, the other had done so:—*Held:* a nonsuit, on the ground that the evidence proved the plea, should be set aside.—MEYERS & PADDINGTON MOTOR SERVICE, LTD. *v.* DALGETY & CO., LTD. (1926), 26 S. R. N. S. W. 195; 43 N. S. W. W. N. 39.—**AUS.**

g ii. —— —— ——.]—A proposal for the insurance of a motor car contained the question, "Has any proposal for insurance, or any policy ever been withdrawn, declined or cancelled?" Pltf.'s answer was "No." Pltf. had held a policy over the car with another co., but by arrangement, & to oblige pltf., this policy had been terminated:—*Held:* the word "cancelled" meant the determination of the policy by the unilateral act of the co., & the termination of the policy by mutual arrangement did not amount to a cancellation, & the answer to the question in the proposal was true.—WILLCOCKS *v.* NEW ZEALAND INSURANCE CO., [1926] N. Z. L. R. 805.—**N.Z.**

g iii. —— —— ——.]—*Held:* a statement that the motor car insured was a new one, whereas in fact it was a second-hand one, was a material representation which avoided the policy.—ABASS *v.* GLOBE & RUTGERS F. INS. CO., [1927] 1 D. L. R. 435; 59 N. S. R. 81.—**CAN.**

g iv. —— *Driver under influence of drink—Whether assured entitled to recover—Construction of policy.*]—BAIJNATH *v.* ATLAS ASSURANCE CO., LTD. (1927), 48 N. L. R. 467.—**S. AF.**

g v. —— *Insurance not to be effective until payment of premium—Failure to pay premium.*]—*Held:* the insurance co. was not entitled to sue the assured for a short period premium, as the contract was not complete until the premium was paid & accepted, & the handing over to the assured of the policy containing the proviso did not amount to a waiver of the condition.—SOUTH BRITISH INSURANCE CO., LTD. *v.* STENSON (1928), I. L. R. 52 Bom. 532.—**IND.**

g vi. —— *Amount recoverable.*]—On an appraisal of the value of an automobile which has been stolen & destroyed by fire, the fact that the sound value & the replacement value are found to be the same is not error on the face of the award, but is only another way of saying there was a total loss.—SEARLE *v.* ALLIANCE INSURANCE CO. (No. 3), [1926] 4 D. L. R. 1173; [1926] 3 W. W. R. 563; 36 Man. L. R. 110.—**CAN.**

g vii. —— *Condition that car not operated by assured's son—Car driven at son's request—Son present.*]—A policy of insurance upon a motor car contained a term that it was not covered if the car was "operated" by assured's son (naming him). The car was taken out by the son without assured's consent, & against his express prohibition, & was destroyed by fire upon a highway. The fire occurred when the car was being driven by a friend of the son, at the son's request, the latter being in the car with the driver:—*Held:* the son was still "operating" the car within the prohibitive term, & an action by the assured upon the policy was dismissed.—O'REILLY *v.* CANADA ACCIDENT & FIRE ASS'CE CO., [1928] 4 D. L. R. 415; 62 O. L. R. 654; *revsd.*, 63 O. L. R. 413.—**CAN.**

g viii. —— *After returning from hire—Insured for "private personal use."*]—The owner of a motor car insured it against loss or damage by fire. Condition 3 of the policy was that it should apply "only to a car for private personal use," & that no liability should be incurred if & when it was being used otherwise; & condition 4 expressly excluded liability for loss or damage arising while the car was "let out for hire." The car was normally used in a private hiring business conducted by the owner, & was only rarely employed by him for private personal purposes. After returning from a hire late one night it was put in its garage, & was shortly afterwards destroyed by fire. The owner made a claim under the policy, but the co. denied liability:—*Held:* the co. was not liable, in respect that the risk to which the car was exposed while in the garage was incidental to its ordinary employment, *i.e.* in the hiring business, &, accordingly, the loss was one which was excluded by the policy.—MURRAY *v.* SCOTTISH AUTOMOBILE & GENERAL INSURANCE CO., LTD., [1929] S. C. 49.—**SCOT.**

g ix. —— *Condition rendering policy void if interest passed from insured to third party—Except by will or operation of law—Sub-hiring from hirer.*]—REILLY BROS. *v.* MERCANTILE MUTUAL INSURANCE CO., LTD. (1928), 30 W. A. L. R. 72.—**AUS.**

g x. —— *Insurance of interest of hirer—Condition against transfer of interest—Effect of sub-hiring.*]—REILLY BROS. *v.* MERCANTILE MUTUAL INSURANCE CO., LTD., [1928] W. A. L. R. 72.—**AUS.**

g xi. —— *Statutory condition against mortgage—What amounts to mortgage—Chattel mortgage as collateral security.*]—GATEHOUSE *v.* MERCHANTS CASUALTY CO., [1930] 1 W. W. R. 927; 2 D. L. R. 895.—**CAN.**

g xii. —— *Statutory condition against permitting car to be driven by intoxicated person—Onus of proof.*]—Where a statutory condition provides that an insurer shall not be liable under a policy of automobile insurance while the automobile is being driven "with the knowledge, consent or connivance of the insured by an intoxicated person," a finding that the insured was intoxicated when he was driving the automobile at the time of the accident in question deprives him of the benefit of the policy; the insurer is not under the burden of proving that the accident was due to intoxication. The meaning of "intoxication" discussed.—GENERAL CASUALTY INSURANCE CO. OF PARIS *v.* LAMBERT & VANCE, [1930] 2 W. W. R. 548; 3 D. L. R. 1007; 43 B. C. R. 133.—**CAN.**

g xiii. *Meaning of "intoxicated."*]—"An intoxicated person," within sect. 154 (5) of the statutory conditions of Insurance Act, 1925 (c. 20), is one who has taken alcohol in such quantity as to render himself an unsafe person to be in charge of an automobile.—MCKNIGHT *v.* GENERAL CASUALTY INSURANCE CO. OF PARIS, [1930] 3 W. W. R. 73; 4 D. L. R. 816; *affd.*, [1931] 2 W. W. R. 315; 3 D. L. R. 476; 44 B. C. R. 1.—**CAN.**

g xiv. —— *Use of car for "business or pleasure"—Efficiency test.*]—Deft. co. issued to pltf. a policy of insurance by which the co. agreed to pay for or make good any loss of or damage to his motor car. The policy provided that the co. should not be liable for loss or damage by mechanical breakdown, & under its conditions the co. was not to be liable in respect of anything which might occur whilst the car

3279d. **Effect of removal of motive power.**] The claimant made to resps. a written proposal that they should insure a motor lorry, & in reply to a question on the proposal form he stated that the vehicle would be garaged on his own premises. Resps. accepted the proposal & issued a policy which covered damage to the vehicle & to its necessary accessories by accidental fire. During the currency of the policy the claimant, finding it necessary to repair the lorry, removed the engine from the lorry in the garage to a workshop of his at some distance. The night after the repair of the engine was completed the engine was destroyed by fire. On a claim under the policy the resps. repudiated liability on the ground (*inter alia*) that a lorry was not a motor lorry when it had been deprived of its motive power:—*Held:* the engine & body together constituted the insured lorry, & the mere fact of the removal of the engine from the body for the time being did not deprive the claimant of his right to an indemnity under the policy.—SEATON *v.* LONDON GENERAL INSURANCE CO., LTD. (1932), 48 T. L. R. 574; 76 Sol. Jo. 527.

3282. *Add. Annotations:*—**Refd.** Lake *v.* Simmons, [1927] A. C. 487; Holmes *v.* Payne, [1930] 2 K. B. 301.

3282a. —— **Goods supplied in replacement of goods lost—Right to retain although lost goods subsequently found.**]—(1) By a Lloyd's policy pltf. & other underwriters insured deft. against "all loss wheresoever which the assured may sustain by the loss of or damage to" certain specified articles, one of which was a pearl necklace. During the currency of the policy deft. missed the necklace & informed the representative of the underwriters that she had lost it. She made a thorough search of her house for it, & afterwards at the suggestion of the underwriters a further search & inquiries were made, but without result. An agreement was then entered into between the underwriters & deft. that they should give her by way of replacement of the necklace other articles of jewellery up to its insured value. After she had received under the agreement articles of somewhat less than a third of that value the necklace was found at her house, where it fell out of an evening cloak in which it had become concealed. In an action by pltf. against deft. claiming a declaration that the necklace had not been lost, rescission of the replacement agreement, & the return of the articles which she had received under that agreement:—*Held:* the replacement agreement was in the circumstances a valid & binding agreement unaffected by mistake or misrepresentation on its true construction it did not contain an implied term that if the necklace should be found the agreement should be void; & under it deft. was entitled to retain the articles which she had received & to receive other articles up to the agreed value, the underwriters taking the necklace as salvage.

(2) Uncertainty as to recovery of the thing insured is, in my opinion, in non-marine matters the main consideration on the question of loss. In this connection it is, of course, true that a thing may be mislaid & yet not lost, but, in my opinion, if a thing has been mislaid & is missing or has disappeared, & a reasonable time has elapsed to allow of diligent search & of recovery, & such diligent search has been made & has been fruitless, then the thing may properly be said to be lost (ROCHE, J.).—HOLMES *v.* PAYNE, [1930] 2 K. B. 301; 99 L. J. K. B. 441; 143 L. T. 349; 46 T. L. R. 413; 74 Sol. Jo. 464; 35 Com. Cas. 289.

3282b. —— **Meaning of "lost."**] — HOLMES *v.* PAYNE, No. 3282a, *ante*.

3282c. —— **Baggage policy—Condition for declaration of "specially valuable articles"—Furs & fur coats not included.**]—(1) A policy of insurance against accidental loss of baggage contained a condition that "the whole of the baggage must be insured, & not merely a portion of same either in respect of value or package":—*Held:* this condition did not

was engaged in racing or reliability, speed, or other trial, or if it were used for any purpose other than business & pleasure. Preparatory to its use in a race in which he intended to compete, pltf. entrusted the car to an engineer to be overhauled. Whilst the engineer was driving the car along a road for the purpose of testing its efficiency, the car caught fire & was destroyed:—*Held:* (1) even if the insured had at the time of the proposal for insurance the intention of using the car for the purposes of competing in races or in reliability, speed or other trials, that intention was not a fact material to the risk, & its non-disclosure did not avoid the policy; (2) at the time when the loss occurred, the car was not engaged in a reliability, speed or other trial within the condition of the policy; (3) the purpose for which the car was then being used was one within the meaning of the terms "business & pleasure."—ORTNER *v.* AUTOMOBILE INSURANCE CO. OF AUSTRALIA, LTD. (1930), V. L. R. 194; Argus L. R. 194.—**AUS.**

g xv. —— *Option of insurer to repair —Exercise of option amounts to new contract.*]—MAHER *v.* LUMBERMEN'S MUTUAL CASUALTY CO., [1932] 2 D. L. R. 593.—**CAN.**

o i. —— ——.]—JOHNSON *v.* BRITISH CANADIAN INSURANCE CO., [1932] 4 D. L. R. 281; S. C. R. 681.—**CAN.**

q i. —— ——.]—MACDONALD *v.* GUARDIAN ASSCE. CO., [1929] 1 D. L. R. 518; 60 N. S. R. 262.—**CAN.**

r i. —— *Joint insurance of hirer & party hiring—Breach of condition by one party.*]—Where two persons are jointly insured, the breach of a condition by the one in whose sole power it is to observe such condition will contaminate the whole insurance if the innocent person contracted with full knowledge of & subject to such condition, notwithstanding that the interests of the two insured are distinct & notwithstanding that the contract might be construed as a separate insurance for each.—MCLAREN & CO. *v.* NEW ZEALAND INSCE. CO., [1930] N. Z. L. R. 437.—**N.Z.**

o (p. 422) i. —— —— *Necessity for insurable interest—Meaning of "the insured."*]—*Held:* "the insured" within Alberta Insurance Act, 1926, s. 284 (*a*), is the person who is really intended to be insured. Therefore where with the authorisation of the owner of a crop it is insured in his name, but for the benefit of another who pays the premiums but has no interest in the crop, the policy is a wagering policy & void; even though at the time the true facts are known to the insurer's local & general agents through whom it is issued.—MOHRING *v.* GLEN FALLS INSURANCE CO. (Alta.), [1929] 3 W. W. R. 737; [1930] 3 D. L. R. 456.—**CAN.**

sa. *Aircraft insurance—Flight contrary to Government regulations.*]—OBALSKI CHIBOUGAMAU MINING CO. *v.* AERO INSURANCE CO., [1932] S. C. R. 540; 3 D. L. R. 25.—**CAN.**

sc. *Insurance of electric sign against "fire, wind, storm or external causes." —Loss from wind pressure.*]—NEON TUBE LIGHTS, LTD. *v.* ALLIANCE INSURANCE CO., [1932] 2 D. L. R. 741.—**CAN.**

se. *Sickness—"Necessarily & continuously confined within the house."*]—A covenant in a sickness insurance policy to pay the stated indemnity for the period during which the insured by reason of a disabling sickness is "necessarily & continuously confined within the house & throughout which he is therein regularly visited by a legally qualified physician" should not be so literally interpreted as to exclude the case where the insured is so sick that he is treated in a hospital instead of a house or the case where the insured's condition is so hopeless that no physician can do anything for him &, therefore, he is not visited regularly by a physician within a house.—KEMPFERT *v.* CONTINENTAL CASUALTY CO., [1932] 3 W. W. R. 154.—**CAN.**

mean that if the baggage were underestimated, that would be an answer to the policy. The condition merely meant that the insurance was to apply to the whole of the baggage in bulk & value.

(2) By condition 5 of the policy: "Jewelry, watches, field-glasses, cameras, & other fragile or specially valuable articles must be separately declared & valued":—*Held:* the condition enumerated things by description, classes, & not individual things. Where the question was whether a fur coat said to have been worth £240 & found to be worth £175 should have been separately declared & valued, the question of construction was not whether that fur coat was a specially valuable article but whether furs or fur coats, as a class, were specially valuable articles within the meaning of the condition. Applying the *ejusdem generis* rule, the question was whether furs or fur coats were specially valuable articles in the same sort of sense that jewelry, watches, field-glasses, & cameras were fragile or specially valuable articles; (3) also, furs or fur coats, being worn as a common-place article of dress by any woman of any sort of comfortable means, were not such specially valuable articles within the meaning of condition 5.—KING *v.* TRAVELLERS' INSURANCE ASSOCN., LTD. (1931), 48 T. L. R. 53; 75 Sol. Jo. 797.

3282d. —— —— Condition that whole of the baggage to be insured—Effect of underestimate.]—KING *v.* TRAVELLERS' INSURANCE ASSOCN., LTD., No. 3282c, *ante*.

3284a. —— Becoming enemy property on outbreak of war.]—Pltfs. were registered as a joint stock co. in Natal, their only property being a gold mine owned & worked by them in the Transvaal. Before Oct. 1899, when war was declared between the Transvaal Republic & this country, pltfs. had effected with deft., a British subject, a policy of insurance of certain gold products of their mine, the perils insured against including "enemies," & "arrests, restraints, & detainments of kings, princes, & people." A few days after war was declared the agents of the Transvaal Government seized & carried away some of the gold products insured. Pltfs. had shut down their mine when war was declared, & there was nothing to show that they intended to continue their business or mining operations in the Transvaal afterwards. In an action on the policy to recover in respect of the gold products so seized:—*Held:* there was no ground of public policy which prevented the policy of insurance from continuing in force after war was declared, & therefore pltfs. were entitled to recover.—NIGEL GOLD MINING CO., LTD. *v.* HOADE, [1901] 2 K. B. 849; 70 L. J. K. B. 1006; 85 L. T. 482; 50 W. R. 108; 17 T. L. R. 711; 6 Com. Cas. 268.

Annotation:—**Refd.** British & Foreign Marine Insce. Co. *v.* Gaunt, [1921] 2 A. C. 41.

3288. *Add. Annotations:*—**Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179; Perrin *v.* Dickson (1929), 98 L. J. K. B. 683.

3289. *Add. Citation:*—95 L. J. Ch. 24.

3289a. Machinery — Latent defect — Whether a casualty.]—Pltfs., who were marine engineers, took out a policy on "machinery & the like (sundry small contracts & repair jobs . . .) from & during construction." The insurance covered "all risks incidental to testing the machinery" & was "also specially to cover cost of repairs &/or loss of &/or damage to the interest . . . through any latent defect in the thing insured." Pltfs. contracted to fit a steamer with a new intermediate pressure cylinder, but the cylinder, when tried under steam, was found to be defective, &, a second one having also been found to be defective, pltfs. had to fit a third. In an action on the policy:—*Held:* as the existence of a latent defect was not a casualty & the cost of replacing a thing which had a latent defect was not recoverable as loss or damage due to latent defect, & as the words "cost of repairs" did not cover expenditure on the replacement of material which was inherently defective, & as the testing merely revealed, & did not cause, the latent defect, the action failed.—MACCOLL & POLLOCK, LTD. *v.* INDEMNITY MUTUAL MARINE ASSURANCE CO., LTD. (1930), 47 T. L. R. 26.

Part IX.—Wagering Policies.

3318. *Add. Annotation:*—**Refd.** Hoff Trading Co. *v.* De Rougemont (1929), 34 Com. Cas. 291.

3330. *Add. Annotation:*—**Refd.** Weddle, Beck *v.* Hackett, [1929] 1 K. B. 321.

PART X, SECT. 1.

p i. —— ——.]—R. *v.* 1500 CLUB OF CALGARY (Alta.), [1926] 3 W. W. R. 468; 46 Can. Crim. Cas. 276.—**CAN.**

sd. *Discrimination in rates charged—Investigation by Superintendent of Insurance under Ontario Insurance Act, 1924, s. 262—Position & duties of Superintendent.*]—*Re* GENERAL ACCIDENT ASSURANCE CO., [1926] 2 D. L. R. 390; 58 O. L. R. 479.—**CAN.**

se. *Capital — Statutory limitation.*]—In 1865, applt. co. was incorporated by an Act of the late province of Canada, with power to carry on the business of insurance generally, & its capital was stated to be two million dollars, with power to increase the same to four million dollars. By an Act of Parliament of 1870, the capital was reduced to one million dollars with power to increase the same to four million dollars in sums of not less than one million dollars. The business of the co. was to be carried on in two distinct branches, Life & Accident Insurance business, & to be known as the Life Branch, & other forms of insurance to be known as the General Branch business. The capital stock of one million dollars was to apply to the Life Branch only, with power to increase the same to two million dollars; authority was given to raise one million dollars for the purposes of the General Branch business with power to increase the same to two million dollars. In 1871, the powers of the co. were by statute restricted to Life & Accident Insurance, & it was further provided that "All provisions of the Act of Incorpn. of the said co., & the Act amending the same, which are inconsistent with the provisions of this Act, are hereby repealed." In its report to the Department of Insurance the co. stated its capital to be four million dollars, & the Superintendent of Insurance ruled that it could only be two million dollars & amended the report accordingly. Hence the present appeal:—*Held:* the capital of the co. for Life & Accident Insurance business was fixed at two million dollars by the Act of 1870 & was not altered by subsequent legislation. The ruling of the Superintendent of Insurance was upheld, & the appeal dismissed.—SUN LIFE ASSURANCE CO. OF CANADA *v.* SUPERINTENDENT OF INSURANCE, [1930] Ex. C. R. 21; *affd.*, [1930] S. C. R. 612; [1931] 1 D. L. R. 113; *revsd.*, [1931] 4 D. L. R. 43; 3 W. W. R. 295, P. C.—**CAN.**

Part XI.—Mutual Insurance Associations.

3366. *Add. Annotation :*—**Refd.** Dominion Iron & Steel Co. *v.* Invernairn, [1927] W. N. 277.

3367. *Add. Annotation :*—**Refd.** Cornish Mutual Assce. *v.* I. R. Comrs., [1926] A. C. 281.

3368. *Add. Annotations :*—**Refd.** Cornish Mutual Assce. *v.* I. R. Comrs., [1926] A. C. 281; Greenberg *v.* Cooperstein, [1926] Ch. 657; *Re* United General Commercial Insce. Corpn., [1927] 2 Ch. 51.

3396. *Add. Annotation :*—**Refd.** Brown *v.* Harrison (1927), 96 L. J. K. B. 1025.

3397. *Add. Annotation :*—**Consd.** Brown *v.* Harrison (1927), 96 L. J. K. B. 1025.

3398. *Add. Annotation :*—**Refd.** Brown *v.* Harrison (1927), 96 L. J. K. B. 1025.

3406. *Add. Annotation :*—**Refd.** *Re* National Benefit Assurance Co., [1931] 1 Ch. 46.

PART XI. SECT. 4, SUB-SECT. 1.

sf. Provision for lien on ships insured for proportion of losses incurred—Validity.]—*Re* TUCKER, *Ex p.* MARINE INSURANCE CLUB (1886), 7 Nfld. L. R. 123.—**NFLD.**

INTERPLEADER.

Part II.—Interpleader in the High Court.

10. *Add. Annotation :*—**Apld.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

42. *Add. Annotation :*—**Refd.** The Jupiter (No. 3) (1927), 137 L. T. 333.

88. *Add. Annotation :*—**Refd.** Earle *v.* Hemsworth R. D. C. (1928), 44 T. L. R. 605.

173a. —— ——.]—The sheriff in possession of goods under a writ of *fi. fa.* being served with notice of an adjudication in bkpcy. against debtor, & notice by the assignee to quit possession, the execution creditor obtained an order requiring the sheriff to make a return to the writ. The sheriff sold the goods :—*Held :* he was entitled to file a bill of interpleader against the assignee & the execution creditor, & the assignee was, on interpleader, entitled to the proceeds of the sale.—CHILD *v.* MANN (1867), L. R. 3 Eq. 806 ; 16 L. T. 49.

178a. Claim of equitable nature.] — The sheriff having taken in execution goods which deft., who was one of the administrators of an intestate, had become possessed of under a sale from his co-administrator, was served with a notice from another party, that he & others were also entitled to shares in the goods, as next of kin to the intestate, & that, upon a bill filed by them in the Ct. of Ch. deft. had been restrained by injunction from selling, mortgaging, or disposing of the goods, & that they should hold the sheriff answerable for all loss & damage occasioned by the seizure :—*Held :* this was not such a claim as entitled the sheriff to apply for relief under Interpleader Act, 1831 (c. 58).—ROACH *v.* WRIGHT (1841), 8 M. & W. 155 ; 1 Dowl. N. S. 56 ; 10 L. J. Ex. 267 ; *sub nom.* ROUCH *v.* WRIGHT, 5 Jur. 755.

Annotations :—**Refd.** Bird *v.* Crabb (1861), 30 L. J. Ex. 318 ; Richards *v.* Jenkins (1886), 17 Q. B. D. 544.

324. *Add. Annotation :*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

433. Sheriff not bound by estoppel affecting debtor.]—A sheriff who comes to seize the goods of a debtor under a writ of execution is not bound by an estoppel, which might have prevented the debtor himself from claiming the goods.—RICHARDS *v.* JOHNSTON (1859), 4 H. & N. 660 ; 28 L. J. Ex. 322 ; 33 L. T. O. S. 206 ; 5 Jur. N. S. 520 ; 157 E. R. 1000.

Annotation :—**Apld.** Richards *v.* Jenkins (1887), 18 Q. B. D. 451.

443a. —— ——.]—On Aug. 20 the sheriff, under a *fi. fa.* against A., took possession of B.'s furniture in A.'s house. Both before & after seizure B. gave formal notice to the sheriff that the furniture was his, & on the 23rd issued a writ in an action against the sheriff for an injunction & damages. On the 25th the sheriff issued an interpleader summons, under which an issue was directed & an order made for the sheriff withdrawing from possession on payment of £100 into ct. & the sheriff withdrew from possession on Sept. 1. B.'s title was afterwards admitted by the judgment creditor, & the £100 paid out to B. B. having brought the action to trial against the sheriff for damages & costs :—*Held :* the

PART II. SECT. 1.

10 i. *Source of jurisdiction—R. S. C., Ord. 57.*]—All interpleader matters since the passing of Jud. Act are authorised & regulated by Ord. 57 & its rules. Sect. 71 of County Ct. Act, R. S. N. B., 1927, does not include interpleader proceedings.—ROBINSON & MCBRIDE *v.* JOHNSON, [1931] 3 M. P. R. 548.—**CAN.**

ss. *Ability of applicant to pay claim without incurring liability to other claimants.*]—An interpleader order should not be made when appct. can pay the subject-matter of the claim to one of the claimants without incurring any liability to any other claimant.—IRWIN *v.* BOYD BROS. & COTTON, [1930] 1 W. W. R. 693 ; 3 D. L. R. 314 ; 24 S. L. R. 570.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—C.

70 v. —— ——.]—WESTERN CANADA LOAN & SAVINGS CO. *v.* COURT (1877), 25 Gr. 151.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—L.

99 ii. —— *Adverse claimants under settlement.*]—Two parties claiming adversely an estate under limitations of a settlement which contained a power of leasing, brought actions at law against a tenant for rent reserved by a lease made under the power :—*Held :* the case was a proper one for interpleader. —BIRMINGHAM *v.* TUITE (1872), 7 I. R. Eq. 221.—**IR.**

PART II. SECT. 3, SUB-SECT. 3.—C. (a).

140 i. *Necessity for notice of claim to execution creditor.*]—FRASER *v.* EKSTRON & MASSEY (1900), 7 Terr. L. R. 1.—**CAN.**

PART II. SECT. 5, SUB-SECT. 1.—C.

sc. *Purchaser from agent—Whether vendor general agent within C. S. C., c. 59.*]—HAYS *v.* O'CONNOR (1861), 21 U. C. R. 251.—**CAN.**

sd. *Assignee of judgment—& execution creditor of assignor—Rights of assignee.*]—On an interpleader issue wherein the claimant contended that a certain judgment, on which moneys had been realised under execution, had been assigned to him in consideration of a debt owed him by the assignor, & deft. in the issue, an execution creditor of the assignor, contended that the assignment did not cover said judgment :—*Held :* for the purposes of the issue, the parties were in the same position as if the dispute as to the right to the money was being litigated between the claimant & the assignor, that is, the claimant could only assert, against the execution creditor, whatever claim he might have against his assignor, & the execution creditor stood, as against the claimant, exactly in the shoes of the assignor.—RYGUS *v.* ZAWITKOWSKI & ROSS, [1928] 1 D. L. R. 521 ; [1928] 1 W. W. R. 332 ; 22 Sask. L. R. 305.—**CAN.**

PART II. SECT. 5, SUB-SECT. 4.—C.

248 i. *Necessity for—By claimant—Unless impracticable from circumstances.*]—NICHOL *v.* SUGARMAN, [1928] 3 D. L. R. 292.—**CAN.**

PART II. SECT. 6, SUB-SECT. 4.—A.

273 i. *Necessity for affidavit.*]—On a sheriff's application for an interpleader order claimant must file an affidavit substantiating his claim & disclosing his title to the goods.—*Re* SHERIFF OF EDMONTON, KOSTYNUK *v.* PARAYKO, [1930] 1 W. W. R. 53.—**CAN.**

PART II. SECT. 7, SUB-SECT. 4.—A.

1 i. ——.]—SCOTT & PEDEN *v.* MARSHMAN, [1932] 3 W. W. R. 161.—**CAN.**

PART II. SECT. 8, SUB-SECT. 4.

e. *On appeal*, 11 P. R. 296

m i. —— *As between legal & equitable assignees of chose in action.*]—On an interpleader issue between an equitable assignee & a legal assignee of a chose in action the former should be made pltf.—SHATILLA *v.* NASH-SIMINGTON CO., LTD., [1920] 2 D. L. R. 454 ; 1 W. W. R. 719 ; 23 S. L. R. 433. —**CAN.**

PART II. SECT. 8, SUB-SECT. 7.

d (p. 491) i. *On appeal*, 11 P. R. 296.

g (p. 491) i. —— ——.]—FURLONG *v.* REID (1886), 12 O. R. 607.—**CAN.**

1 i. —— —— —— ——.]—BOYD BROS. *v.* CUNNINGHAM, [1931] 2 W. W. R. 62 ; 2 D. L. R. 943.—**CAN.**

sheriff had not exceeded the scope of his duty in retaining possession till ordered to withdraw under the interpleader order, & the action must be dismissed, but without costs, on the ground that the sheriff might have applied to the judge, under the interpleader order, to dispose of the matters in question between him & pltf.—AYLWIN *v.* EVANS (1882), 52 L. J. Ch. 105; 47 L. T. 568.

447. *Add. Annotation :*—**Reld.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

B. Appeal by Claimant (Vol. XXIX., p. 494).

NOTE.—*Right to appeal with leave is given by a new* r. 11 *substituted by* R. S. C. (No. 1). 1929.

454. *Add. Annotation :*—**Reld.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

455. *Add. Annotation :*—**Reld.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

456. *Add. Annotation :*—**Reld.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

SUB-SECT. 3.—SUMMARY DECISION OF DIVISIONAL COURT (Vol. XXIX., p. 495).

NOTE.—*See note to* Sub-sect. 2, B., *ante*.

462a. **With leave.**]—Under R. S. C., Ord. 57, r. 11, an appeal lies by special leave from the decision of a judge sitting without a jury on the trial of an interpleader issue.—REPUBLICA DE GUATEMALA *v.* NUNEZ, [1927] 1 K. B. 669; 96 L. J. K. B. 441; 136 L. T. 743; 43 T. L. R. 187; 71 Sol. Jo. 35, C. A.

464. *Add. Annotation :*—**Apld.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

471. *Add. Annotation :*—**Reld.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

497a. —— ——.]—BOUCICAULT *v.* PONSFORD (1886), 2 T. L. R. 646, D. C.

503a. **Whether entitled to costs.**]—MORLAND *v.* CHITTY (1833), 1 Dowl. 520.

503b. ——.]—DABBS *v.* HUMPHRIES (1835), 1 Bing. N. C. 412; 3 Dowl. 377; 1 Hodg. 4; 1 Scott, 325; 4 L. J. C. P. 101; 131 E. R. 1176.

503c. ——.]—WEST *v.* ROTHERHAM (1836), 2 Bing. N. C. 527; 1 Hodg. 461; 2 Scott, 802; 132 E. R. 206.

541. *Add. Annotation :*—**Consd.** Townshend *v.* Child (1932), 48 T. L. R. 575.

Part III.—Interpleader in County Courts.

595. *Add. Annotation :*—**Reld.** Conquer *v.* Boot, [1928] 2 K. B. 336.

617. *Add. Annotation :*—**Folld.** Koffman *v.* Sunshine, [1932] 1 K. B. 606.

621. *Add. Annotation :*—**Folld.** Koffman *v.* Sunshine, [1932] 1 K. B. 606.

622. *Add. Annotation :*—**N.F.** Koffman *v.* Sunshine, [1932] 1 K. B. 606.

PART II. SECT. 11, SUB-SECT. 3.—B.

556 iv. —— —— *Except where accurate division impossible.*]—While, where each party to an interpleader issue succeeds in part, the rule is that, where possible, each should receive that portion of the costs which is applicable to that part of the issue on which he has succeeded, yet, in the present case, the order of the trial judge that no costs should be allowed was held to have been the proper one since the nature of the case would not allow of an accurate division of the costs & the order did substantial justice.—RYGUS *v.* ZAWITKOWSKI & ROSS, [1928] 1 D. L. R. 521; [1928] 1 W. W. R. 332; 22 Sask. L. R. 305.—**CAN.**

PART III. SECT. 1.

c i. ——.]—KELLINGTON *v.* ROSA (Sask.), [1927] 2 W. W. R. 309.—**CAN.**

d i. *Issues involving under* $800.]—The district ct. has jurisdiction in interpleader matters where the value of the goods does not exceed $800.—KNOX *v.* SHAW, [1927] 3 D. L. R. 1185; [1927] 2 W. W. R. 494; 21 Sask. L. R. 593; 8 C. B. R. 331.—**CAN.**

e i. ——.]—A district ct. judge has no jurisdiction to deal with an interpleader issue which brings the title to land in question, although the issue is sought as a result of a seizure of land by the sheriff under an execution under a district ct. judgment.—FARMERS' MUTUAL HAIL INSURANCE CO. *v.* FOSTER, [1925] 3 D. L. R. 746; [1925] 2 W. W. R. 515; 19 Sask. L. R. 587.—**CAN.**

e l. *To set aside bill of sale as fraud on creditors.*]—In an interpleader issue the district ct. has jurisdiction to set aside a bill of sale, on the ground that it is a fraud on creditors, as being relief ancillary to a matter falling within the jurisdiction of the ct. under District Courts Act, R. S. S., 1920 (c. 40), s. 27.—KNOX *v.* SHAW, [1927] 3 D. L. R. 1185; [1927] 2 W. W. R. 494; 21 Sask. L. R. 593; 8 C. B. R. 331.—**CAN.**

INTOXICATING LIQUORS.

Part I.—Definitions.

9a. —— **Addition of quinine.**]—Whether the addition of quinine to wine makes the mixture cease to be a wine within Licensing (Consolidation) Act, 1910 (c. 24), so as to exempt the seller from holding a justice's licence, depends on the proportion of the mixture.—SHARP *v.* SPARKES (1926), 70 Sol. Jo. 1069, D. C.

12. *Add. Annotation :*—**Refd.** Lorden *v.* Brooke-Hitching, [1927] 2 K. B. 237.

Part III.—Application for Licenses.

49. *Add. Annotation :—As to* (2) **Consd.** R. *v.* Southampton County Confirming Committee, *Ex p.* Slade, [1929] 1 K. B. 263.

55a. —— **Whether co-extensive with parish.**]—R. *v.* SMETHWICK CONFIRMING AUTHORITY, *Ex p.* HOLT BREWERY CO., LTD., No. 366a, *post.*

63a. Application in notice for full on-license—Application to justices for off-license only.]—R. *v.* KINGSTON-UPON-THAMES CONFIRMING AUTHORITY, *Ex p.* SCALES (1932), 96 J. P. Jo. 846 ; 174 L. T. Jo. 507, D. C.

92. *Add. Annotation :*—**Refd.** Thomas *v.* Newington Licensing JJ. (1926), 136 L. T. 638.

Part IV.—Grant of Licenses.

140. *Add. Annotation :*—**Refd.** Thomas *v.* Newington Licensing JJ. (1926), 136 L. T. 638.

141. *Add. Annotation :*—**Refd.** Thomas *v.* Newington Licensing JJ. (1926), 136 L. T. 638.

141a. —— —— **Pending hearing of summons against applicant.**]—Applts., the licensee & the owners of a public-house, applied to the licensing justices on Mar. 1 for a renewal of the licence, which was due to expire on Apr. 4. The justices, on the ground that summonses were pending against the licensee for supplying during non-permitted hours intoxicating liquor for consumption on the premises, adjourned the consideration of the application to the next transfer sessions to

PART I.

1 i. " *Spirits*"—*Include rum—Inland Revenue Act, R. S. C.*, 1906 (*c.* 51), *s.* 185.]—*Re* R. *v.* MCKENZIE (1926), 45 Can. Crim. Cas. 144; 58 N. S. R. 313.—**CAN.**

e i. " *Liquor.*"]—The word " liquor " in Liquor Act, 1925, 1924-25, c. 53, includes " beer " unless the context otherwise requires.—R. *v.* CRUIT, [1924] 4 D. L. R. 581; [1924] 2 W. W. R. 377; 50 Can. Crim. Cas. 143; 22 Sask. L. R. 525.—**CAN.**

e ii. " *Beer*"—*Coupled with* " *fluid capable of producing intoxication.*"]—Liquor Act, 1912 (N. S. W.), s. 3, defines " liquor " as meaning & including " wine, spirits, beer, porter, stout, ale, cider, perry or any spirituous or fermented fluid whatever, capable of producing intoxication " :—*Held :* the words " wine, spirits, beer, porter, stout, ale, cider, perry " must be construed according to their ordinary popular meaning, & the words " capable of producing intoxication " in the definition qualify only the words " any spirituous or fermented fluid whatever."—RUSSELL *v.* GALE (1928), 40 C. L. R. 587 ; 45 N. S. W. W. N. 120.—**AUS.**

e iii. —— *Percentage of alcohol not sufficient—Excise Act.*]—BRADLEY *v.* DE COSTE (1931), 3 M. P. R. 193.—**CAN.**

ss. " *Residence*"—*Temperance Act (Man.)*, 1924 (*c.* 118)—*Liquor Control Act (Man.)*, 1924 (*c.* 117).]—R. *v.* HUBIN, [1926] 4 D. L. R. 863; [1926] 2 W. W. R. 768; 46 Can. Crim. Cas. 202; 36 Man. L. R. 11.—**CAN.**

sb. —— —— —— *Amendment of latter Act by* 1926 (*c.* 28), *s.* 1.]—R. *v.* LEVINE, [1926] 3 W. W. R. 550; 46 Can. Crim. Cas. 342; 36 Man. L. R. 95.—**CAN.**

.]—R. *v.* RYALL (Man.), [1927] 1 . 635; 48 Can. Crim. Cas. 360.—**CAN.**

sd. .]—R. *v.* DRASHCOVICH (Man.), [1927] 3 W. W. R. 40; 48 Can. Crim. Cas. 401.—**CAN.**

se. ——.]—R. *v.* WHITE (1928), 49 Can. Crim. Cas. 254.—**CAN.**

k i. ——.]—HABERLACK *v.* BURR, [1926] 1 D. L. R. 252; [1926] 1 W. W. R. 120; 45 Can. Crim. Cas. 58; 20 Sask. L. R. 293.—**CAN.**

k ii. ——.]—R. (JOHNSTON) *v.* BUSIKIEWICZ (Sask.), [1926] 4 D. L. R. 715; [1926] 2 W. W. R. 759; 46 Can. Crim. Cas. 145.—**CAN.**

k iii. ——.]—R. *v.* CLARK (Sask.) (1926), 45 Can. Crim. Cas. 265; [1926] 2 W. W. R. 373.—**CAN.**

k iv. ——.]—R. *v.* ROTTERMAN (Ont.) (1926), 47 Can. Crim. Cas. 44.—**CAN.**

k v. —— *Manitoba Temperance Act, C. A.*, 1924 (*c.* 118).]—R. (EDDIE) *v.* GROSNEY, [1927] 1 D. L. R. 1001; [1927] 1 W. W. R. 295; 47 Can. Crim. Cas. 257; 36 Man. L. R. 249.—**CAN.**

k vi. ——.]—R. *v.* (Sask.), [1927] 3 W. W. R. 689; 49 Can. Crim. Cas. 185.—**CAN.**

sf. —— *Effect of keeping lodgers.*]—The accused, who was charged with having liquor in a place other than the residence in which she resided, lived in a house in which she had five lodgers, one of whom was her daughter, & another the latter's husband, who came there only twice a month. The daughter & son-in-law usually had their meals with the accused in the kitchen. The other three were not boarders. The liquor in question was a case of beer which was found on the stairway leading from the kitchen to the basement. The magistrate dismissed the charge & the Crown appealed, contending that the keeping of said lodgers & boarders had destroyed the character of the premises as a " private dwelling-house " :—*Held :* the appeal should be dismissed.—R. *v.* MACKLIN, [1928] 4 D. L. R. 717; [1928] 2 W. W. R. 468; 50 Can. Crim. Cas. 171; 37 Man. L. R. 405.—**CAN.**

sg. " *Occupant.*"]—R. *v.* DIETSCH (1928), 49 Can. Crim. Cas. 220.—**CAN.**

sh. " *Guest.*"]—A non-paying guest of a hotelkeeper may be a *bonâ fide* guest within Liquor Act, 1925.—R. *v.* HENDERSON (Sask.), [1926] 2 W. W. R. 430; 45 Can. Crim. Cas. 373.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.

sj. *Application not complying with statutory requirements—Adjournment of licensing court.*]—A licensing ct., constituted under Liquor Acts, 1912 to 1926, has no jurisdiction to adjourn an appln. for a provisional certificate for a licensed victualler's license which does not comply with sect. 27 (*a*) & (*b*) of the Acts, or otherwise to deal with such an appln. than by dismissing it. The ct. may, however, by adjourning itself, enable such an appln. to be made, after compliance with the statutory conditions as to notices, at an adjourned sitting.—R. *v.* KNYVETT, *Ex p.* WEBER (1928), 22 Q. J. P. R. 138.—**AUS.**

be held on Apr. 12. On Mar. 4 the licensee was convicted on the summonses, & on Apr. 12 the licensing justices refused the renewal:—*Held:* the adjournment did not amount to a refusal of the renewal.—THOMAS *v.* NEWINGTON LICENSING JJ. (1926), 136 L. T. 638; 43 T. L. R. 181; *sub nom.* THOMAS *v.* NEWINGTON LICENSING JJ., MEUX'S BREWERY CO., LTD. *v.* NEWINGTON LICENSING JJ., 91 J. P. 37; 25 L. G. R. 109.

149. *Add. Annotation:*—**Apld.** Fromo United Breweries Co. *v.* Bath JJ., [1926] A. C. 586.

158. *Add. Annotations:*—**Refd.** Maclean *v.* Workers' Union, [1929] 1 Ch. 602; R. *v.* Huntingdon Confirming Authority, [1929] 1 K. B. 698.

202a. **Applicant's willingness to contribute to compensation fund.**]—A question arose which of two adjacent licensed houses should be granted a renewal of its licence, & which should be suppressed. The owners of each house submitted to the licensing justices plans of proposed alterations, & the owners of one of the houses offered to pay £1,250 to the compensation fund if the alterations were sanctioned. The same licensing justices sat as compensation authority to consider the question of redundancy, & decided to renew the licence of the house whose owners had offered the contribution, it appearing from the evidence that that house, when altered, could be made the better of the two. They then, as licensing justices, approved the alterations to that house:—*Held:* (1) in considering the question of the contribution offered to the compensation fund the licensing justices had taken extraneous matter into account, & as this must necessarily have affected their minds as compensation authority, their decision must be quashed; (2) it was contrary to the spirit of the Licensing Acts, though it might be within the letter of them, that the powers of the compensation authority should be delegated to the licensing committee so that the two bodies were identical, it being clearly intended that they should be separate & independent bodies.—R. *v.* SHEFFIELD JJ., *Ex p.* RAWSON (T.) & CO., LTD. (1927), 138 L. T. 234; 91 J. P. 193; 44 T. L. R. 43; 25 L. G. R. 536, D. C.

204. *Add. Annotation:*—**Consd.** R. *v.* London County Council, *Ex p.* Entertainments Protection Assocn., Ltd., [1931] 2 K. B. 215.

206. *Add. Annotation:*—**Refd.** Short *v.* Poole Corpn., [1926] Ch. 66.

233. *Add. Annotation:*—**Refd.** Stoke-on-Trent Revenue Officer *v.* Stoke-on-Trent Assessment Committee & Potteries Electric Traction Co., etc., etc. (1930), 143 L. T. 650.

234. *Add. Annotation:*—**Refd.** R. *v.* Holborn Licensing JJ., *Ex p.* Stratford Catering Co. (1926), 90 J. P. 159.

267. *Add. Annotations:*—*As to* (1) **Consd.** R. *v.* Southampton County Confirming Committee, *Ex p.* Slade, [1929] 1 K. B. 263. **Refd.** R. *v.* Sheffield JJ., *Ex p.* Rawson (1927), 91 J. P. 193.

268. *Add. Annotation:*—**Expld.** R. *v.* Southampton County Confirming Committee, *Ex p.* Slade, [1929] 1 K. B. 263.

292a. ——.]—Though licensing justices have no jurisdiction to make the grant of an ordinary removal of a licence subject to any condition as to payment of monopoly value, they are entitled to refuse the removal upon the sole ground that it would confer a great pecuniary gain upon appct., & that he ought to apply for a new licence & pay monopoly value.—R. *v.* SOUTHAMPTON COUNTY CONFIRMING COMMITTEE, *Ex p.* SLADE, [1929] 1 K. B. 263; 98 L. J. K. B. 62; 140 L. T. 167; 93 J. P. 37; 45 T. L. R. 72; 72 Sol. Jo. 873, C. A.

293a. **Grounds for refusal of removal—Great pecuniary gain conferred on applicant.**]—R. *v.* SOUTHAMPTON COUNTY CONFIRMING COMMITTEE, *Ex p.* SLADE, No. 292a, *ante.*

299. *Add. Annotation:*—**Apld.** R. *v.* Holborn Licensing JJ., *Ex p.* Stratford Catering Co. (1926), 90 J. P. 159.

299a. —— **Security of tenure.**]—On an application for the transfer of a license the licensing justices may consider the security of tenure given to the proposed licensee as a matter affecting his "fitness or propriety." They may also adopt a certain standard length of notice as generally desirable, & if they do so, it is convenient that they should make it publicly known, provided that it is not made a hard & fast rule to be applied indiscriminately.—R. *v.* HOLBORN LICENSING JJ., *Ex p.* STRATFORD CATERING CO., LTD. (1926), 136 L. T. 278; 90 J. P. 159; 42 T. L. R. 778; 24 L. G. R. 509, D. C.

328. *Add. Annotations:*—**Refd.** R. *v.* Sheffield JJ., *Ex p.* Rawson (1927), 91 J. P. 193; R. *v.* London County Council, *Ex p.* Entertainments Protection Assocn., Ltd., [1931] 2 K. B. 215.

339. *Add. Annotation:*—*As to* (2) **Folld.** R. *v.* Sheffield JJ., *Ex p.* Rawson (1927), 91 J. P. 193.

340a. —— **All relevant matters—Means of access to premises.**] — Appcts. desired to alter licensed premises in a manner requiring the consent of the licensing justices. The justices refused to sanction the proposed alterations, unless appcts. bricked up a door which was in the yard behind the premises, & which gave access to a site on which a public market place was being erected:—*Held:* the words of Licensing (Consolidation) Act, 1910 (c. 24), s. 71, which were descriptive of the alterations requiring the justices' consent, did not limit the justices to consideration of those named matters; & it was

PART IV. SECT. 2, SUB-SECT. 6.—A. (b) ii.

s. *Where old licence has been forfeited or "otherwise ceased to exist"—Cessation due to no-licence vote.*]—Sect. 30 (1) of New Zealand Licensing Act, 1910, as amended in 1920, provided that no new publican's licence should be granted in any licensing district except when a licence had been forfeited or had "otherwise ceased to exist":—*Held*, the words "otherwise ceased to exist" did not apply to a ceasing to exist owing to a no-licence vote, & therefore an application by a publican for a licence in an area which, since 1903 had been a no-licence area by vote could not be heard.—SCALES *v.* YOUNG, [1931] A. C. 685; 100 L. J. P. C. 164; 145 L. T. 316, P. C.—N.Z.

PART IV. SECT. 2, SUB-SECT. 7.—D. (a).

sk. *After destruction of premises—Removal to other premises—Excise Licences Act*, 1825 (c. 81), s. 11.]—The above sect. does not contemplate the grant of a new licence, the existing licence being altered by the substitution therein of the new premises for the destroyed premises.—A.-G. (MACKEN) *v.* CAVAN, [1928] I. R. 98—IR

their duty to consider all relevant matters, of which the means of access to the premises might be one.—R. *v.* WATFORD LICENSING JJ., *Ex p.* TRUST HOUSES, LTD., [1929] 1 K. B. 313; 98 L. J. K. B. 198; 140 L. T. 350; 93 J. P. 41; 45 T. L. R. 89; 72 Sol. Jo. 825; 27 L. G. R. 8, D. C.

342. *Add. Annotation:*—**Reld.** R. *v.* Watford Licensing JJ., *Ex p.* Trust Houses, [1929] 1 K. B. 313.

355. *Add. Annotation:*—**Folld.** R. *v.* Leicester JJ., *Ex p.* Allbrighton, [1927] 1 K. B. 557.

358. *Add. Annotation:*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

Part V.—Confirmation of Justices' Licenses.

366. *Add. Annotation:*—*As to* (2) **Dbtd.** R. *v.* Smethwick Confirming Authority, *Ex p.* Holt Brewery Co., Ltd. (1929), 98 L. J. K. B. 678.

366a. —— ——.]—(1) A confirming authority has jurisdiction to consider the adequacy of notices of an application for the provisional ordinary removal of a justices' license for the sale of intoxicating liquors, required by Licensing (Consolidation) Act, 1910 (c. 24), ss. 15, 26, 33, although no objection was taken to the adequacy of such notices at the hearing before the licensing justices.

(2) *Held:* the word "place" in Licensing (Consolidation) Act, 1910 (c. 24), s. 15 (1) (*b*), did not of necessity denote a lesser area or unit than the word "parish."—R. *v.* SMETHWICK CONFIRMING AUTHORITY, *Ex p.* HOLT BREWERY CO. (1929), 98 L. J. K. B. 678; 141 L. T. 586; 93 J. P. 233; 45 T. L. R. 530; 27 L. G. R. 544, D. C.

368a. —— —— **Objection to condition by licensing justices—Duty to consider objection—In presence of parties.**]—An application was made to licensing justices for a new license to premises at S. The application was opposed, but the license was granted unconditionally. The confirming authority, after hearing the case for & against the application, confirmed the license subject to two conditions. Notice of this decision was given to the licensing justices, who told the confirming authority that they did not agree to the second condition. At a further meeting of the confirming authority it was decided to confirm the grant subject only to the first condition. No notice was given to the parties, & they had no opportunity of appearing at this meeting & arguing as to the variation of the conditions. A rule *nisi* for *certiorari* to quash the order of the confirming authority was obtained on the ground that the authority acted without jurisdiction in confirming the license:—*Held:* (1) as soon as the confirming authority had ascertained the views of the licensing justices it was their duty to sit judicially in the presence of the parties interested to determine whether or not the alterations made by the licensing justices should be accepted. As this had not been done, the order made by the confirming authority was a nullity & the matter must go back to them to hear & determine it in the presence of the parties interested; (2) the meeting of the confirming authority ought to be constituted of the same members as were present at the original meeting.—R. *v.* HUNTINGDON CONFIRMING AUTHORITY, [1929] 1 K. B. 698; *sub nom.* GEORGE & STAMFORD HOTELS, LTD. *v.* HUNTINGDON CONFIRMING AUTHORITY, 98 L. J. K. B. 331; 141 L. T. 75; 45 T. L. R. 260; 73 Sol. Jo. 173; 27 L. G. R. 319; *sub nom.* R. *v.* HUNTINGDON CONFIRMING AUTHORITY, *Ex p.* GEORGE & STAMFORD HOTELS, LTD., 93 J. P. 81, C. A.

368b. —— —— —— —— **Constitution of meeting.**]—R. *v.* HUNTINGDON CONFIRMING AUTHORITY, No. 368a, *ante*.

369. *Add. Annotation:*—**Apld.** R. *v.* Huntingdon Confirming Authority, [1929] 1 K. B. 698.

Part VII.—Compensation.

381. For the existing paragraph substitute the following paragraph:—

—— —— —— **Instructing solicitor to oppose.**]—On an application to the licensing justices of a county borough for the renewal of an old on-licence the justices referred the matter to the compensation authority of the borough under Licensing (Consolidation) Act, 1910 (c. 24), s. 19, & at a further meeting they resolved that a solr. should be instructed to appear before the compensation authority & oppose the renewal on their behalf. The solr. duly appeared & opposed, & the compensation authority refused the renewal, subject to payment of compensation. Three of the justices who sat & voted as members of the compensation authority had been parties to the resolution of the licensing justices authorising a solicitor to appear on their behalf:—*Held:* the three justices were disqualified from sitting on the compensation tribunal on the ground of bias, & the decision of the tribunal must be set aside.—FROME UNITED BREWERIES CO. *v.* BATH JJ., [1926] A. C. 586; 95 L. J. K. B. 730; 135 L. T. 482; 90 J. P. 121; 42 T. L. R. 571; 24 L. G. R. 261, H. L.; *revsg.* S. C. *sub nom.* R. *v.* BATH COMPENSATION AUTHORITY, [1925] 1 K. B. 685, C. A.

Annotation:—**Distd.** R. *v.* Leicester JJ., *Ex p.* Allbrighton, [1927] 1 K. B. 557.

381a. —— —— ——.]—The mere fact that a licensing justice has originated an objection to the renewal of a licence, which, conse-

PART IV. SECT. 2, SUB-SECT. 10.

s1. *Power to deal with costs—On reference of petition for inquiry.*]—A licensing ct. has no jurisdiction to deal with costs on a reference to it of a petition for inquiry under Liquor (Amendment) Act, 1919, s. 6.—*Ex p.* SOUTHON, *Re* SOMERVILLE (1927), 28 S. R. N. S. W. 185.—AUS.

quently, is referred by him & other justices to the compensation authority, does not disqualify him by reason of interest from sitting & adjudicating, as a member of that authority, upon the matter of that licence.—R. *v.* LEICESTER JJ., *Ex p.* ALLBRIGHTON, [1927] 1 K. B. 557; 96 L. J. K. B. 310; 136 L. T. 635; 91 J. P. 31; 43 T. L. R. 183; 25 L. G. R. 149, D. C.

381b. Delegation of powers to licensing justices—Improper.]—R. *v.* SHEFFIELD JJ., *Ex p.* RAWSON (T.) & CO., LTD., No. 202a, *ante*.

394. *Add. Annotation:*—**Folld.** R. *v.* Sheffield JJ., *Ex p.* Rawson (1927), 91 J. P. 193.

416. *Add. Annotation:*—**Apld.** R. *v.* Customs & Excise Comrs., [1928] A. C. 402.

Part VIII.—Decisions of Licensing Justices.

455. After this case add:—

C. Other Cases.

455a. Withdrawal of certificate for extension.]—There is no appeal to quarter sessions from a decision of licensing justices withdrawing their certificate granted in respect of licensed premises under Licensing Act, 1921 (c. 42), s. 3 (2), without which the holder of the licence is not entitled to elect under Licensing Act, 1921 (c. 42), s. 3 (1), to keep the licensed premises open for one hour after the permitted hours for the sale or supply of intoxicating liquor for consumption at a meal supplied at the same time in the part of the premises set apart for meals.—*Re* COLETTA, [1932] 1 K. B. 501; 101 L. J. K. B. 208; 146 L. T. 180; 48 T. L. R. 113; 30 L. G. R. 109; *sub nom.* R. *v.* LONDON COUNTY JUSTICES, *Ex p.* METROPOLIS POLICE COMRS., 96 J. P. 16, C. A.

463. *Add. Annotation:—Generally*, **Reld.** R. *v.* Leicester JJ., *Ex p.* Allbrighton, [1927] 1 K. B. 557.

543. *Add. Annotation:*—**Reld.** Lorden *v.* Brooke-Hitching, [1927] 2 K. B. 237.

548. *Add. Annotations:*—**Reld.** R. *v.* Leicester JJ., *Ex p.* Allbrighton, [1927] 1 K. B. 557; I. R. Comrs. *v.* Sneath (1932), 48 T. L. R. 241.

553a. —— On appeal from licensing justices.]—Where, under Licensing (Consolidation) Act, 1910 (c. 24), s. 29 (1), there is an appeal to quarter sessions against the refusal of licensing justices to grant a renewal, transfer or special removal of a justices' licence, the judgment of quarter sessions, by sect. 29 (5), is final, & no appeal from it lies to the High Ct. by way of case stated.—PIPER *v.* ST. MARYLEBONE LICENSING JJ., [1928] 2 K. B. 221; 97 L. J. K. B. 602; 139 L. T. 144; 92 J. P. 87; 44 T. L. R. 510; 26 L. G. R. 308, D. C.

Part IX.—Hours of Sale.

575a. *Add. Citations:*—[1926] 2 K. B. 519; 96 L. J. K. B. 1; 90 J. P. 155; 24 L. G. R. 471.

Part X.—Occasional Excise Licences.

588a. —— Application by nominee of Secretary of State in State management district—Whether Secretary of State successor of Liquor Control Board within Licensing Act, 1921 (c. 42), Sched. III., clause 9.]—F., a nominee of the Secretary of State, applied to justices for an occasional licence under Licensing (Consolidation) Act, 1910 (c. 24), s. 64, to sell alcoholic liquor on the racecourse at Carlisle races. The justices declined jurisdiction on the ground that the structures owned by the racecourse proprietors, & marquees, provided by the State management, on the racecourse where the liquor would be sold, would be in the occupation of the State within the meaning of clause 9 of Sched. III. to Licensing Act, 1921 (c. 42), & that therefore no licence was required:—*Held:* that these structures & marquees were not so occupied & the justices must hear & determine the application.—R. *v.* CUMBERLAND JUSTICES, *Ex p.* FEARNLEY (1930), 144 L. T. 246, D. C.

PART VIII. SECT. 1, SUB-SECT. 1.

• i. —— *Previous information withdrawn.*]—*Ex p.* HENDERSON, *Ex p.* BRODER, *Ex p.* STEWART, *Ex p.* JOE GO GET, [1930] 1 D. L. R. 420; 25 Can. Crim. Cas. 95.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.—B.

sm. *Person aggrieved—Licensing inspector—Formal objection lodged by inspector to application for licence.*]—A licensing inspector lodged notice of intention to object to an appln., for the grant of a licensed victualler's licence, &, on the hearing of the appln., stated that the objection was lodged as a mere formal objection, & that he did not desire to give or offer evidence or to address the ct., &, after the licence had been granted by the ct., treated the licence as being valid in subsequent proceedings before the licensing ct. He, subsequently, moved for a writ of *certiorari* to quash the grant of the licence:—*Held:* he was a person aggrieved, & competent to make the appln., but by his conduct he had disqualified himself from relief by way of *certiorari* & *certiorari* was withheld.—R. *v.* THE LICENSING AUTHORITY AT DALBY, *Ex p.* KELLY, [1928] S. R. Q. 151.—**AUS.**

PART VIII. SECT. 3, SUB-SECT. 1.—C.

sn. *To quash conviction—Time for making application for.*]—*Ex p.* CROWLEY, *Ex p.* KENNETH STAPLES DRUG CO., [1928] 4 D. L. R. 561; 50 Can. Crim. Cas. 378.—**CAN.**

so. —— ——.]—R. *v.* BEGIN, *Ex p.* CARON (1928), 50 Can. Crim. Cas. 69.—**CAN.**

Part XII.—Offences.

607a. Sale of wine to which quinine added.]—SHARP *v.* SPARKES, No. 9a, *ante*.

626. *Add. Annotation :*—**Consd.** Jones *v.* Mighall, Nelson *v.* Mighall (1932), 48 T. L. R. 636.

626a. Unlicensed room in licensed premises—Buying from licensed premises for customer.]—Applt. J. was acting as "city waiter" at a meeting of a Buffalo Lodge of which he was a member. The meeting was held in an unlicensed room within the curtilage of licensed premises of which applt. N. was the licensee. It was J.'s duty to obtain the refreshments ordered by the members. He was observed on several occasions to go to the bar of the licensed premises & purchase, & pay for a number of glasses of beer, which he carried on a tray to the room where the meeting was held, & distributed to the members who had ordered them, receiving the price (but no more) which he had paid at the bar. The justices convicted J. of selling intoxicating liquor without a licence & N. of being privy to the sale :—*Held :* on these facts there was no evidence of a sale by J. The beer was not at any time his property.—JONES *v.* MIGHALL, NELSON *v.* MIGHALL (1932), 96 J. P. 395; 48 T. L. R. 636; 30 L. G. R. 412, D. C.

708. *Add. Annotation :*—**Refd.** Allen *v.* Whitehead (1929), 45 T. L. R. 655.

716. *Add. Annotation :*—**Expld.** Allen *v.* Whitehead (1929), 45 T. L. R. 655.

716a. —— —— ——.]—The proprietor of a refreshment-house, resp., was charged with harbouring prostitutes, contrary to Metropolitan Police Act, 1839 (c. 47), s. 44. It was proved that, though resp. received the profits of the business, he did not manage it, but left it in charge of a manager, to whom he had given express instructions not to allow prostitutes to assemble on the premises. Resp. only visited the premises once or twice a week, & there was no evidence that any offence had been committed in his presence or with his knowledge :—*Held :* having delegated all his authority to the manager & become a mere absentee, he was responsible for the acts of the manager, & was liable to conviction.—ALLEN *v.* WHITEHEAD, [1930] 1 K. B. 211; 99 L. J. K. B. 146; 142 L. T. 141; 45 T. L. R. 655; 94 J. P. 17; 27 L. G. R. 652; 29 Cox, C. C. 8, D. C.

PART XII. SECT. 1, SUB-SECT. 1.—A. (a).

sp. *Evidence of—Empty bottles found without Government labels.*]—R. *v.* MCMILLAN (1927), 49 Can. Crim. Cas. 350.—**CAN.**

Purchase of more beer than justified—Persons found on premises with empty glasses & bottles.]—R. *v.* DZIWRA, [1928] 1 D. L. R. 828; 49 Can. Crim. Cas. 229.—**CAN.**

sr. —— *Purchase of large quantities of liquor—No bottles found on premises.*]—R. *v.* PATENAUDE (1928), 49 Can. Crim. Cas. 384.—**CAN.**

st. —— *One bottle of gin found in shed—No evidence of ownership.*]—R. *v.* LEE (1928), 49 Can. Crim. Cas. 346.—**CAN.**

sv. *Conviction for sale to persons unknown—Amendment of.*]—YOUNG *v.* ALLCHURCH, [1927] S. A. S. R. 185.—**AUS.**

sw. *More liquor on premises than reasonably required for use of residents—Evidence of unlawful sale.*]—Proof of the fact of there being on the premises of an unlicensed person more liquor than is reasonably required for the use of the persons residing therein is, by Licensing Act, 1915, s. 237, to be deemed *primâ facie* evidence both of an unlawful sale of liquor & that that sale was made by the person whose premises they are, whether independent evidence of a sale given or not.—SCALES *v.* CHARLESTON, [1929] V. L. R. 184; [1929] Argus L. R. 167.—**AUS.**

PART XII. SECT. 1, SUB-SECT. 1.—A. (e) ii.

635 ii. —— *Two offences not exactly of same kind.*]—Under Liquor Act, 1925, 1924-25, c. 53, a person convicted for any one of the acts which sect. 78 declares to be offences & who is subsequently convicted for another of such acts is guilty of a second offence even though the two offences were not exactly of the same kind.—R. *v.* POLLARD, [1928] 4 D. L. R. 623; [1928] 3 W. W. R. 78; 50 Can. Crim. Cas. 157.—**CAN.**

e (p. 82) i. —— ——.]—*Ex p.* O'HEARN (N. S.) (1928), 51 Can. Crim. Cas. 23.—**CAN.**

e (p. 82) ii. —.]—R. *v.* HOSHEM (N. S.) (1928), 51 Can. Crim. Cas. 26.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 3.—A.

656 ii. —— —— ——.]—Where a few minutes to closing-time on a busy evening a drunken man entered a bar, where there were from fifty to seventy people, & the barman told him to get out, &, the man having turned towards the door, the barman, thinking he had left the premises, took no further effective steps to see that he had done so, & a few minutes later the police found the man standing at another part of the bar-counter :—*Held :* to constitute the offence of "permitting" drunkenness on licensed premises there must be evidence that the licensee, or his servants or agents, consented to, or consciously allowed, the drunken man to remain on the premises, & a "permission" in this sense had not been established.—MCPARLAND *v.* SPARKS, [1926] N. Z. L. R. 689.—**N.Z.**

PART XII. SECT. 1, SUB-SECT. 3.—B.

669 ii. —— —— —— *Complaint charging licensee personally.*]—In a prosecution under a complaint which charged an hotel-keeper that "you did supply" liquor to a person in a state of intoxication, it was proved that the liquor had not been supplied by accused, but by his son & assistant in the accused's absence. The accused was convicted of the offence charged :—*Held :* the complaint was not lacking in specification, in respect that, in a prosecution under Licensing Acts, it was unnecessary to state the name of the person through whom the offence had been committed, unless special circumstances required such a statement in fairness to accused dismissed.—HALL *v.* BEGG, [1928] S. C. (J.) 29.—**SCOT.**

PART XII. SECT. 1, SUB-SECT. 5.—B.

sx. *Onus on Crown—To prove importation.*]—Deft. was arrested, indicted & tried & convicted for harbouring a quantity of dutiable goods, to wit, spirituous liquors unlawfully imported into Canada, of the value of over $200, whereon the duties lawfully payable had not been paid, in violation of Customs Act, Dominion Acts, 1907, c. 11. On the trial the evidence showed that the liquor in question was found in an automobile owned & driven by deft., & some evidence was offered by the Crown indicating unlawful importation. The trial judge instructed the jury that the burden of proof of lawful importation & payment of duty was upon deft., & the Crown was only bound to establish harbouring without lawful excuse :—*Held :* under the instructions given to them the jury would be likely to place the whole burden upon accused, whereas, under the wording of the statute, the necessity of proof by the Crown of importation was implied, &, consequently, there should be a new trial.—R. *v.* SHELLMAN, [1928] 1 D. L. R 657; *sub nom.* R. *v.* SCHELLMAN, 59 N. S. R. 535.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 6.—A. (a).

sy. *Minor supplied with liquor—Evidence necessary to prove—Magistrate deciding from appearance of minor.*]—R. *v.* WHITTAL (1928), 50 Can. Crim. Cas. 343.—**CAN.**

PART XII. SECT. 3, SUB-SECT. 1.

sl. *Aiding persons to commit offence of being found unlawfully on premises after closing hours.*]—Where persons are found unlawfully on licensed premises after closing hours, even though the licensee was not a consenting party to their original entry, & after their entry pressed them to depart, but showed looseness & lack of control not desirable in a licensee, & did not turn such persons out of the premises, the licensee is guilty of aiding & assisting such persons to commit the offence of being found unlawfully on licensed premises after closing hours.—ARMSTRONG *v.* KELLEHER, [1925] N. Z. L. R. 422.—**N.Z.**

PART XII. SECT. 3, SUB-SECT. 2.—A.

727 vi. —— ——.]—Liquor supplied on licensed premises, by way of gift, by the wife of the licensee to her guests, at a time when such persons were not lawfully entitled to be supplied :—*Held :* an offence under Licensing Act, 1908, s. 205 (e).—WATERSON *v.* LOW, [1926] N. Z. L. R. 751.—**N.Z.**

733a. —— **Sale by unauthorised servant.**]—A boy of sixteen, employed by the holder of an off-licence solely as an errand boy, supplied bottles of whisky to a customer in his employer's absence, at a time when the premises were not open for business, & outside the permitted hours. He had never at any time been authorised to sell to or supply customers:—*Held:* he was not a servant or agent of the employer within Licensing Act, 1921 (c. 42), s. 4 (*a*), so as to make the employer liable under that sect. for supplying intoxicating liquor otherwise than during the permitted hours.—ADAMS *v.* CAMFONI, [1929] 1 K. B. 95; 98 L. J. K. B. 40; 139 L. T. 608; 92 J. P. 186; 44 T. L. R. 822; 28 Cox, C. C. 538; 26 L. G. R. 542, D. C.

750. *Add. Annotation:*—**Consd.** Evans *v.* Fletcher (1926), 135 L. T. 153.

751. *Add. Annotation:*—**Refd.** Evans *v.* Fletcher (1926), 135 L. T. 153.

752. *Add. Annotation:*—**Follid.** Evans *v.* Fletcher (1926), 135 L. T. 153.

755a. —— —— **During non-permitted hours.**]—Resp., the licensee of a public-house, was found drunk in the kitchen of the premises at 10.30 p.m. during non-permitted hours, the front door being wide open at the time, & he was summoned for being found drunk on licensed premises under Licensing Act, 1872 (c. 94), s. 12. The justices dismissed the summons on the ground that the time at which resp. was found drunk was after the hours when the sale of intoxicating liquor was permitted:—*Held:* since at the time in question the premises were open & there was nothing to prevent the sale of food & non-intoxicating liquor at that time, the justices ought to have convicted resp.—EVANS *v.* FLETCHER (1926), 135 L. T. 153; 90 J. P. 157; 42 T. L. R. 507; 24 L. G. R. 424; 28 Cox, C. C. 231, D. C.

757. *Add. Annotation:*—*Generally*, **Refd.** Evans *v.* Fletcher (1926), 135 L. T. 153.

764a. "**Drunk**"—**Question of fact.**]—Whether accused is "drunk" within Criminal Justice Act, 1925 (c. 86), s. 40 (1), is a question for the jury.—R. *v.* PRESDEE (1927), 20 Cr. App. Rep. 95, C. C. A.

764b. Severity of sentence—Wanton driving—By person "under influence of drink."]—R. *v.* BURDON (1927), 20 Cr. App. Rep. 80, C. C. A.

788. To the cross-references following this case add "—— **Sale or supply in prohibited hours.**]—*See* No. 733a, *ante*.

728 ix. —— —— ——.]—A resident in a licensed hotel was visited by three friends, who were non-residents. After the permitted hours for the sale or supply of liquor, he ordered & paid for three rounds of drinks, which were consumed by himself & his guests:—*Held:* the hotelkeeper had supplied the liquor to the resident's guests, & had been guilty of a contravention of Licensing Act, 1921 (c. 42), s. 4 (*a*).—M'BAIN *v.* MITCHELL, [1927] S. C. (J.) 57.—**SCOT.**

e i. ——.]—A licensee of a hotel, who was seated on a form outside the hotel, was asked to supply liquor to an unexcepted person. He went inside the hotel, came out & handed the liquor to the person, who paid him. There was a light in a room in the hotel described by witnesses as the saloon bar:—*Held:* an offence had been committed against Licensing Act, 1917, s. 185, & the ct. would take judicial notice of the fact that liquor was kept in a saloon bar.—ALLCHURCH *v.* HEALEY, [1927] S. A. S. R. 370.—**AUS.**

e ii. —— *Customer bringing empty bottle—Bottle filled & delivered at customer's house.*]—A customer entered a licensed grocer's shop outwith permitted hours & asked for a half-bottle of wine, handing the grocer an empty bottle & the sum of 10*d*. The grocer put the wine in the bottle & handed it to a message boy in his employment with directions to deliver it at the customer's house. In fact the customer took it from the boy a few yards from the shop:—*Held:* the transaction was a completed sale of intoxicating liquor in contravention of Licensing Act, 1921, s. 4 (*a*), & sect. 5 (*b*) was inapplicable in respect that it applied only to transactions which do not amount to a completed sale.—VALENTINE *v.* BELL, [1930] S. C. (J.) 51.—**SCOT.**

733a i. —— *Sale by servant.*]—Where a servant supplies his own guests with liquor after closing hours without the knowledge of the licensee, the latter cannot be convicted of unlawfully allowing liquor to be consumed on his premises.—O'CONNELL *v.* CLAUSEN, BURKE *v.* CLAUSEN, [1928] N. Z. L. R. 227.—**N.Z.**

sm. *Proof that person making illegal sales licensee's agent—Takings from legal & illegal sales placed in same cash register.*]—R. *v.* RICHARDSON (Sask.) (1925), 45 Can. Crim. Cas. 142.—**CAN.**

sn. *Proclamation prohibiting sale during specified hours of named day—Validity of.*]—*Held:* the power conferred upon the Governor in Council by Liquor Act, 1912 (N. S. W.), s. 57 (1) (*b*), was a power to name a day during the whole of which licensed premises shall not be open for the sale of liquor & no power was given to direct that, during specified hours of a named day, licensed premises should not be open for the sale of liquor.—DELANEY *v.* GANT (1927), 40 C. L. R. 174.—**AUS.**

so. *Bye-law prohibiting sale on New Year's day—Sale to bonâ fide traveller.*]—A county licensing ct. issued a bye-law that all licensed premises within the district, including inns & hotels, except as regarded travellers & lodgers therein, should be closed wholly on New Year's day, &, when New Year's day fell on a Sunday, then on Monday, Jan. 2:—*Held:* under this bye-law a Monday falling on Jan. 2 must be treated as a Sunday, &, accordingly, an hotel-keeper who had supplied a customer on such a Monday, outwith the permitted week-day hours, had not infringed his certificate where the customer was a *bonâ fide* traveller who could lawfully have been supplied on Sunday.—HENDERSON *v.* ROSS, [1928] S. C. (J.) 74.—**SCOT.**

PART XII. SECT. 3, SUB-SECT. 2.—B.

sp. *Light in bar.*]—FRANCE *v.* HUMPHREYS, [1926] S. A. S. R. 214.—**AUS.**

sq. *Customers leaving premises during prohibited hours—Carrying bottles.*]—A licensee was convicted upon an information alleging that a disposal of liquor unlawfully took place on his licensed premises during prohibited hours. The evidence for the prosecution was that during prohibited hours two men were seen coming out of deft.'s licensed premises, & that one of them was carrying six bottles of beer, & the other four bottles. No evidence was called by deft., who was convicted:—*Held:* no inference could be drawn from the evidence before the ct. that the beer in question was disposed of after closing time rather than before; the liquor was presumed to have been lawfully acquired until the contrary was shown, & the conviction should be quashed.—WALSH *v.* MACKERRAS, [1928] V. L. R. 186; [1928] Argus L. R. 67.—**AUS.**

PART XII. SECT. 3, SUB-SECT. 3.

sr. *What amounts to permitting.*]—A person "permits" the unlawful consumption of liquor on his licensed premises if this takes place with his knowledge or connivance or by his failure to use due diligence to prevent it.—JOLLY *v.* VIRGO, [1927] S. A. S. R. 188.—**AUS.**

PART XII. SECT. 4, SUB-SECT. 1.—A.

756 i. *To what persons applicable—Lodger or inmate.*]—Deft. had been residing with his wife & family for many years in licensed premises of which his wife's mother was the licensee. Deft. was charged under Licensing Act, 1872, s. 18, with being drunk & disorderly on the licensed premises & refusing to leave them at the request of a sergeant of the Civic Guard who had been sent for by the licensee. This took place at 8 p.m. while the premises were open for the sale of intoxicating liquor to the public. Summons dismissed as deft. was in his own home:—*Held:* deft. should be convicted, as sect. 18 does not exempt a lodger or a guest residing in the licensed premises.—A.-G. *v.* FEELY, [1932] I. R. 265.—**IR.**

PART XII. SECT. 4, SUB-SECT. 1.—B. (a).

st. *What constitutes offence.*]—The mere fact of being drunk in a public place is not an offence under Criminal Code, s. 238 (*f*). It is the creating of a disturbance which is aimed at by that provision.—R. *v.* OSJORM, [1927] 3 D. L. R. 1018; [1927] 2 W. W. R. 703; 49 Can. Crim. Cas. 1; 22 Alta. L. R. 582.—**CAN.**

PART XII. SECT. 4, SUB-SECT. 1.—B. (b).

764a i. "*Intoxicated*"—*What amounts to.*]—In order to be guilty of driving a motor car while intoxicated, the driver's intoxication must be of that decree which renders his driving of the car a danger to the public.—MCRAE *v.* MCLAUGHLIN MOTOR CAR CO., LTD. (Alta.), [1926] 1 D. L. R. 372; [1926] 1 W. W. R. 161.—**CAN.**

PART XII. SECT. 6.

b i. —— *What must be proved.*—On a prosecution for unlawful possession of a still it must be proved that informant was an officer of the Inland Revenue Department or was authorised to take the proceedings, that accused's arrest was under warrant, & the liquor referred to in the certificate of analysis was that which was seized.—R. *v.* McKENZIE (Man.), [1927] 1 W. W. R. 549; 45 Can. Crim. Cas. 137.—**CAN.**

b ii. —— *Prior charge of hiding still dismissed—Autrefois acquit.*]—R. *v.* McKENZIE (Man.) (1926), 45 Can. Crim. Cas. 380.—**CAN.**

b iii. —— *Penalty for—Jurisdiction of magistrates to mitigate fine.*]—D. was summarily convicted by justices & fined £1 in respect of an offence under Illicit Distillation (Ireland) Act, 1831, s. 16. The prosecutor objected to this fine, on the ground that under sect. 39 of the same Act the justices could not reduce the penalty to a sum less than £6:—*Held:* the justices had jurisdiction under Finance Act, 1923, s. 13, to impose any penalty not exceeding £500, notwithstanding the fact that Illicit Distillation (Ireland) Act, 1831, s. 39, limited the power of mitigation by prescribing a minimum penalty of £6.—R. *v.* ARMAGH JJ., [1929] N. I. 71.—**IR.**

b iv. —— *Prosecution before police magistrate—Intervention of justice of peace.*]—A justice of the peace, having intervened in a prosecution under Excise Act by assuming to adjourn the trial on the non-appearance of the police magistrate before whom the information was laid & who had issued a summons to deft. to appear before him, a conviction made on the adjourned date of trial by another police magistrate, before whom deft. refused to plead & to whose jurisdiction he objected, was quashed, since said intervention was in direct violation of sect. 134 of said Act.—R. *v.* PYKE, [1928] 1 W. W. R. 590; 49 Can. Crim. Cas. 186; 23 Alta. L. R. 341.—**CAN.**

b v. —— *Right of accused to list of goods seized—Sufficiency of list.*]—In order to comply with Excise Act, s. 82, the list of goods seized, a copy of which that section requires to be served on the party from whom they were taken, must include all the goods seized, & the preparation & service of a proper list is a condition precedent to the magistrate's jurisdiction.—*Re* TESOSKI, [1928] 1 W. W. R. 433; 49 Can. Crim. Cas. 343.—**CAN.**

c i. —— *Proof of.*]—R. (WILLIAMS) *v.* YARISH (Man.), [1926] 3 W. W. R. 586.—**CAN.**

PART XII. SECT. 8.

sx. *Making part of rectifying apparatus suitable for rectification of spirits—Effect of absence of still.*]—R. *v.* WOLCHUK, [1930] 3 W. W. R. 468; 54 Can. C. C. 389.—**CAN.**

PART XII. SECT. 11.

r (p. 105) i. —— —— *"Hall's wine."*]—R. *v.* AXLER (1917), 40 O. L. R. 304.—**CAN.**

d (p. 105) i. —— —— *Mens rea.*]—R. *v.* LAMBERT (Ont.), [1926] 2 D. L. R. 362; 45 Can. Crim. Cas. 300.—**CAN.**

k (p. 105) i. —— —— *Whether place must be specified.*]—R. *v.* IVAN (Ont.) (1926), 45 Can. Crim. Cas. 237.—**CAN.**

p (p. 105) i. —— ——.]—SAWCZUK *v.* PADGETT, [1927] 1 D. L. R. 849; 47 Can. Crim. Cas. 78; 59 O. L. R. 638.—**CAN.**

ppp (p. 105) i. —— —— *Transportation by rail.*]—R. *v.* O'KEEFE'S BEVERAGES, LTD., [1926] 1 D. L. R. 520; 45 Can. Crim. Cas. 153; 58 O. L. R. 221.—**CAN.**

r (p. 106) i. —— —— *Motor car in which liquor for sale found.*]—R. *v.* MARTCH (Ont.) (1926), 46 Can. Crim. Cas. 92.—**CAN.**

a (p. 106) i. —— *Discretion of magistrate to alter charge.*]—R. *v.* HEALEY (P. E. I.) (1926), 46 Can. Crim. Cas. 296.—**CAN.**

b (p. 106) i. —— —— *Grounds for allowing—Stenographer not sworn.*]—R. *v.* JACOBS (Ont.) (1925), 45 Can. Crim. Cas. 260.—**CAN.**

d (p. 106) i. *Liquor Control Act (Ont.), 1927—Right of Province to prohibit keeping of intoxicating liquor within its bounds.*]—Deft. was convicted by a police magistrate of an offence committed in Dec. 1927, against Liquor Control Act (Ont.), 17 Geo. 5, c. 70, s. 72 (2). The liquor which he was found to have had unlawfully in his possession was beer manufactured in the Province of Quebec, & was intoxicating liquor, within the Act, which deft. had imported into Ontario:—*Held:* the Province had the right to prohibit the keeping of intoxicating liquor within its bounds for purposes other than those authorised by Dominion Legislature; s. 72 (2) should be viewed as a measure of control of the liquor traffic in the Province & enacted for the purpose of making control by the Province effective, & not as a prohibition of import.—R. *v.* RUDDICK, [1928] 3 D. L. R. 208; 49 Can. Crim. Cas. 323; 62 O. L. R. 248.—**CAN.**

d (p. 106) ii. —— *Sale to person whose permit has been cancelled—Native wine.*]—*Held:* having regard to Liquor Control Act, R. S. O., 1927, s. 94, & other sects. of the Act, sect. 84 of that Act has no application to the case of a manufacturer of native wine, but relates solely to the sale of intoxicating liquor by a Govt. vendor to a person whose permit has been cancelled.—R. *v.* DOMINION WINEGROWERS, LTD., [1930] 1 D. L. R. 460; (1929), 52 Can. Crim. Cas. 155; 64 O. L. R. 427.—**CAN.**

d (p. 106) iii. —— *Residence ceasing to be residence by conviction—Effect on occupant of part.*]—R. *v.* COWAN (Ont.), (1929), 51 Can. Crim. Cas. 187.—**CAN.**

d (p. 106) iv. —— *What is illegal place.*]—If, while in course of transportation through Ontario, the liquor gets out of the custody of a common carrier, whether in a warehouse or elsewhere in the possession of one who is not a common carrier, it is in an illegal place within Liquor Control Act, s. 90.—*Re* WINDSOR TERMINAL WAREHOUSE & TRANSPORT CO., LTD., [1929] 3 D. L. R. 926; 52 Can. Crim. Cas. 38; 63 O. L. R. 630.—**CAN.**

d (p. 106) v. —— *Who is occupant—Whether husband—House owned by wife.*]—R. *v.* JOLLY (Ont.) (1929), 52 Can. Crim. Cas. 147.—**CAN.**

d (p. 106) vi. —— *Who is guest—Father of proprietor living in hotel.*]—R. *v.* HAHN (1929), 53 Can C. C. 327.—**CAN.**

d (p. 106) vii. —— *Sale by wife—Liability of absent husband.*]—R. *v.* WHITE, [1930] 3 D. L. R. 151; 53 Can. C. C. 240.—**CAN.**

d (p. 106) viii. —— *Liability of employer for act of employee—Onus of proof.*]—R. *v.* BUSH (1930), 54 Can. C. C. 242.—**CAN.**

d (p. 106) ix. —— *No formal conviction made—Powers of Appellate Court as to conviction.*]—R. *v.* BOSWORTH (1930), 54 Can. C. C. 231.—**CAN.**

sr. *Carriage of Liquor Act (Ont.)—Not applicable to carriage on person.*]—R. *v.* TURCOTTE (Ont.), [1926] 3 D. L. R. 138; 46 Can. Crim. Cas. 59.—**CAN.**

bb (p. 106) i. —— *Service of summons—Sufficiency.*]—*Re* BROWN, [1927] 2 D. L. R. 849; 47 Can. Crim. Cas. 314; 59 N. S. R. 303.—**CAN.**

cc (p. 106) i. *Temperance Act (N. S.), 1923—Charge of keeping liquor for sale—Previous conviction for harbouring same liquor—Under Customs Act, 1927.*]—*Re* WILNEFF, [1928] 4 D. L. R. 869; 50 Can. Crim. Cas. 196.—**CAN.**

cc (p. 106) ii. —— —— *Evidence of agent provocateur—Whether corroboration necessary.*]—R. *v.* RICE (N. S.) (1929), 52 Can. Crim. Cas. 380; *revsg.*, 52 Can. Crim. Cas. 137.—**CAN.**

cc (p. 106) iii. —— —— *Sufficiency of evidence.*]—R. *v.* DAUPHINEE (N. S.), [1930] 2 D. L. R. 133; 52 Can. Crim. Cas. 401; *affg.*, [1929] 3 D. L. R. 622; 51 Can. Crim. Cas. 428.—**CAN.**

cc (p. 106) iv. —— —— *Unsaleable quantity.*]—R. *v.* KERWIN (1930), 53 Can. C. C. 257; 1 M. P. R. 172.—**CAN.**

(p. 106) v. —— *Conviction for offence under—Previous conviction more than limitation period for prosecutions before.*]—*Ex p.* WOODS (N. S.), [1928] 2 D. L. R. 771; 49 Can. Crim. Cas. 141.—**CAN.**

cc (p. 106) vi. —— *Jurisdiction of additional stipendiary for City of Sydney.*]—R. *v.* MORRISON; R. *v.* HILLMAN (N. S.) (1929), 52 Can. Crim. Cas. 388.—**CAN.**

cc (p. 106) vii. *Right of appeal from county court judge—Sitting in appeal from magistrate.*]—R. *v.* VERGE (N. S.), [1930] 1 D. L. R. 924; 1 M. P. R. 45; (1929), 52 Can. Crim. Cas. 406.—**CAN.**

cc (p. 106) viii. —— —— ——.]—R. *v.* COFFEE, [1930] 2 D. L. R. 213; 53 Can. C. C. 42; 1 M. P. R. 325.—**CAN.**

cc (p. 106) ix. —— *Writ of assistance—Issued as of course.*]—*Re* WRITS OF ASSISTANCE, [1930] 2 D. L. R. 499; 53 Can. C. C. 208; *sub nom. Ex p.* A.-G. NOVA SCOTIA, 1 M. P. R. 286.—**CAN.**

cc (p. 106) x. —— *Amendment by 1929 Act—Effect on right of inspector to costs.*]—R. *v.* BONNER (1930), 53 Can. C. C. 46; 1 M. P. R. 331.—**CAN.**

cc (p. 106) xi. —— *Power of county court judge—To set aside conviction—New evidence.*]—R. *v.* ADORE, [1931] 3 M. P. R. 466.—**CAN.**

cc (p. 106) xii. —— —— ——.]—R. *v.* YORCZYSZYN, [1931] 3 M. P. R. 262; 55 Can. C. C. 28.—**CAN.**

cc (p. 106) xiii. *Nova Scotia Liquor Control Act, 1930—"Having" liquor—Prima facie case.*]—R. *v.* RITCHIE, [1931] 4 M. P. R. 77.—**CAN.**

cc (p. 106) xiv. —— *Power to cross-examine as to previous convictions.*]—R. *v.* SPEARS, [1931] 3 D. L. R. 790; 3 M. P. R. 226; 55 Can. C. C. 333.—**CAN.**

cc (p. 106) xv. —— *Appeal to county court judge—Warrant of commitment—To be issued by magistrate.*]—R. *v.* RANSOME (No. 1), [1931] 3 M. P. R. 410.—**CAN.**

cc (p. 106) xvi. —— *Right of hotel proprietor to liquor in own bedroom.*]—R. *v.* RANSOME (No. 2), [1931] 3 M. P. R. 445.—**CAN.**

cc (p. 106) xvii. —— *Proceedings civil not criminal.*]—R. *v.* OICKLE, [1931] 3 M. P. R. 447; 55 Can. C. C. 145.—**CAN.**

cc (p. 106) xviii. —— *Conviction for "selling" liquor — Subsequent conviction for "having" liquor—Amounts to second offence.*]—R. *v.* GILMET, [1932] 2 D. L. R. 454.—**CAN.**

cc (p. 106) xix. —— *Unlawful possession—Recital of previous conviction in information—Conviction invalid.*]—R. *v.* HENNICK (1931), 56 Can. C. C. 169.—**CAN.**

aaa (p. 106) i. *Temperance Act (Man.) 1924 (c. 118)—Second offence—First conviction more than six months previously—Conviction for second offence invalid.*]—R. *v.* ZAMPHIER (Man.), [1926] 2 W. W. R. 721; 46 Can. Crim. Cas. 76.—**CAN.**

aaa (p. 106) ii. —— —— —— *Conviction for second offence valid.*]—R. *v.* McILWAIN, [1927] 1 D. L. R. 1150; [1927] 1 W. W. R. 353; 47 Can. Crim. Cas. 264; 36 Man. L. R. 349.—**CAN.**

(p. 106) iii. *Whether under different section of Act.*]—R. *v.* SNARE (Man.), [1927] 1 W. W. R. 138; 47 Can. Crim. Cas. 115.—**CAN.**

aaa (p. 106) iv. —— —— *Act mandatory.*]—R. *v.* CHERRY, [1927] 3 D. L. R. 455; [1927] 2 W. W. R. 290; 48 Can. Crim. Cas. 180; 36 Man. L. R. 565.—**CAN.**

aaa (p. 106) v. —— —— —— *Notwithstanding* 1927 (*c.* 33), s. 5.]—R. *v.* GASPARD (Man.), [1927] 3 W. W. R. 301; 48 Can. Crim. Cas. 358.—**CAN.**

aaa (p. 106) vi. —— *Arrest—Without warrant—Failure to prove arrest by constable—Arrest invalid.*]—R. *v.* ZENICK (Man.), [1927] 3 W. W. R. 424; 48 Can. Crim. Cas. 398.—**CAN.**

aaa (p. 106) vii. —— —— *On Sunday —Arrest valid.*]—R. *v.* SMITH, [1927] 2 D. L. R. 982; [1927] 1 W. W. R. 734; 47 Can. Crim. Cas. 345; 36 Man. L. R. 386.—**CAN.**

aaa (p. 106) viii. —— *Keeping for sale.*]—R. *v.* NEPP, [1927] 3 W. W. R. 353; 48 Can. Crim. Cas. 275; 37 Man. L. R. 5.—**CAN.**

aaa (p. 106) ix. —— *Unlawful possession of liquor—Liquor on premises not private dwelling-house—Previous conviction in respect of same premises.*]—R. *v.* RICARD, [1927] 4 D. L. R. 777; [1927] 2 W. W. R. 594; 48 Can. Crim. Cas. 252; 37 Man. L. R. 1.—**CAN.**

aaa (p. 106) x. —— *Trial—Whether local venue.*]—R. *v.* DEE (Man.), [1927] 4 D. L. R. 1065; [1927] 3 W. W. R. 529; 49 Can. Crim. Cas. 57.—**CAN.**

aaa (p. 106) xi. —— *Stay of proceedings—Crown entitled to stay proceedings.*]—R. (THOMPSON) *v.* HAMMATT (Man.), [1926] 3 W. W. R. 350.—**CAN.**

aaa (p. 106) xii. —— *Sentence—Imprisonment with hard labour—Invalid.*]—R. *v.* STEELE (Man.), [1926] 2 W. W. R. 370; 45 Can. Crim. Cas. 259.—**CAN.**

aaa (p. 106) xiii. —— —— —— *Power of court to amend.*]—R. *v.* HALE (Man.), [1927] 2 W. W. R. 320; 49 Can. Crim. Cas. 253.—**CAN.**

aaa (p. 106) xiv. —— —— *Fine—Amount—Offence by company.*]—R. *v.* SHEA'S WINNIPEG BREWERY, LTD., [1927] 3 W. W. R. 258; 48 Can. Crim. Cas. 322; 37 Man. L. R. 13.—**CAN.**

aaa (p. 106) xv. —— *Appeal—Hearing by county court judge—Cannot be reviewed by certiorari.*]—R. *v.* CHAPMAN (Man.) (1926), 45 Can. Crim. Cas. 266. —**CAN.**

aaa (p. 106) xvi. —— —— *Compliance with Excise Act—Whether defence.*]—The giving of the notice provided for by sect. 195 of Excise Act, R. S. C., 1927, is not a defence to a charge of unlawfully having liquor not purchased from the commission under Government Liquor Control Act, 1928. —R. *v.* MCKATOR, [1932] 1 W. W. R. 46; 2 D. L. R. 159; 40 Man. L. R. 103.—**CAN.**

aaa (p. 106) xvii. —— —— *Costs—Of informant—Taxation.*]—R. *v.* SIMOVITCH (Man.), [1927] 3 W. W. R. 568; 48 Can. Crim. Cas. 399.—**CAN.**

aaa (p. 106) xviii. —— *Proprietor of hotel with bottle in hallway—Mens rea.*] —*Mens rea* is an essential element of the offence, under Manitoba Temperance Act, of having intoxicating liquor in a place other than the dwelling-house in which accused resides, without the licence therefore required by the Act. Therefore, where a hotel proprietor charged with said offence was convicted mainly on the fact that he was found in the hallway of the hotel with an open bottle in his hand containing intoxicating liquor, his explanation of its possession being that he had picked it up in the hall, thinking it to be empty, & intending to remove it, it was held, on appeal, that the explanation was a reasonable one, & since if true, as it appeared to be, it established an absence of *mens rea* the conviction should be quashed.—R. *v.* MCHALE, [1928] 2 D. L. R. 621; [1928] 1 W. W. R. 849; 49 Can. Crim. Cas. 320; 37 Man. L. R. 311.—**CAN.**

aaa (p. 106) xix. —— *Proof of conviction under.*]—A document headed "Certificate of Conviction" & purporting to be a copy of a conviction under Manitoba Temperance Act, 1924, is not proof under Govt. Liquor Control Act, 1928, s. 151 (4), of a conviction under the former Act.—R. *v.* RICEBERG, [1929] 1 D. L. R. 220; 50 Can. Crim. Cas. 387; [1928] 3 W. W. R. 534.—**CAN.**

aaa (p. 106) xx. *Liquor Control Act, 1927—Reasons for judgment given by judge—Judgment effective without notice to accused.*]—*Re* R. *v.* GALBRAITH (1925), 50 Can. Crim. Cas. 398.—**CAN.**

aaa (p. 106) xxi. *Government Liquor Control Act, 1928—Previous conviction —Meaning of.*]—"Previous conviction" in above Act, s. 178, means a conviction under that Act, & does not refer to convictions under prior Acts now repealed.—R. *v.* RICEBERG, [1929] 1 D. L. R. 220; 50 Can. Crim. Cas 387; [1928] 3 W. W. R. 534.—**CAN.**

aaa (p. 106) xxii. —— —— *Order of proceedings.*]—Sect. 178 (*a*) of Government Liquor Control Act, 1928, which prescribes the order of the proceedings where a previous conviction is charged, is directory only; & if the case is one in which evidence of a previous conviction is a necessary element of the subsequent offence, the spirit of the sect. is not violated by the production of this evidence before the accused is questioned as to the previous conviction, where the essential condition of the sect. that the accused be not questioned before there is an adjudication on the second offence is observed. —R. *v.* BILOWUS, [1930] 2 W. W. R. 251; 3 D. L. R. 743; 53 Can. C. C. 278; 39 Man. L. R. 15.—**CAN.**

aaa (p. 106) xxiii. —— *"Liquors which are intoxicating" — Whether "beer" & "wine" within words.*]—The fact that a beverage with respect to which a charge is laid under Govt. Liquor Control Act, 1928, is called "beer" or "wine" is not sufficient to enable a magistrate to determine judicially that it is intoxicating. The Act does not deal with everything which goes under the name of "beer" or "wine," whether it be intoxicating or not. The words "which are intoxicating" in sect. 2 (21), which defines "liquor," refer to all classes of "liquor" dealt with by the Act.—R. *v.* MOXLEY, [1929] 1 D. L. R. 202; 50 Can. Crim. Cas. 408; [1928] 3 W. W. R. 537, 576. —**CAN.**

aaa (p. 106) xxiv. —— *Unlawful possession of liquor—Home-made wine.*] —R. *v.* TILBURY, [1928] 3 W. W. R. 127.—**CAN.**

aaa (p. 106) xxv. —— —— *Necessity for mens rea.*]—R. *v.* NEDELEC (Man.), [1929] 4 D. L. R. 896; 52 Can. Crim. Cas. 34.—**CAN.**

aaa (p. 106) xxvi. —— —— *Burden of proof.*]—R. *v.* TOKARCHUK (Man.) (1929), 51 Can. Crim. Cas. 380.—**CAN.**

aaa (p. 106) xxvii. —— *Circumstances raising presumption that liquor kept for sale.*]—R *v.* BLOOM (Man.) (1929), 52 Can. Crim. Cas. 45.—**CAN.**

aaa (p. 106) xxviii. —— *Issue of permit—Effect.*]—Where a general permit for the purchase of liquor has been issued under Govt. Liquor Control Act, 1928, after proper approval given, with respect to a "residence" of the kind defined in sect. 2 (33) (*b*) of the Act, the permit holder has the right, after the expiration of the permit, to keep on said premises liquor which he lawfully purchased while the permit was in force.—R. *v.* HAMELIN, [1930] 1 D. L. R. 672; [1929] 3 W. W. R. 375; 52 Can. Crim. Cas. 200; 38 Man. L. R. 318.—**CAN.**

aaa (p. 106) xxix. —— *Object of Act—Suppression of transactions & not manufacture.*]—R. *v.* NEDELEC (Man.), [1929] 4 D. L. R. 896; 52 Can. Crim. Cas. 34. —**CAN.**

aaa (p. 106) xxx. —— *Having liquor in place other than residence.*]—R. *v.* TWARDOWSKI, [1930] 1 W. W. R. 651; 53 Can. C. C. 202; 38 Man. L. R. 627.—**CAN.**

aaa (p. 106) xxxi. —— *"Public place"—What amounts to.*]—*Held:* the rural shop in question herein was a "public place" during the hours it was open for business.—R. *v.* SEILKE, [1930] 1 W. W. R. 653; 3 D. L. R. 630; 53 Can. C. C. 237; 38 Man. L. R. 549.—**CAN.**

aaa (p. 106) xxxii. —— *Inference from frequency of purchase.*]—Sect. 171 of Government Liquor Control Act, 1928, which empowers a magistrate, on trying a charge of unlawfully selling or purchasing liquor or of unlawfully having or keeping it, to draw inferences of fact from the kind & quantity of liquor found in possession of the accused or on his premises, etc., & from the frequency with which liquor was received therein "or is removed therefrom," applies to liquor which the accused is shown to have purchased prior to the laying of the charge but which was not found on his premises or in his possession.—R. *v.* PAUWELS, [1932] 1 W. W. R. 68; 2 D. L. R. 339; 40 Man. L. R. 117.—**CAN.**

d (p. 107) i. —— *Offences under sect. 20 triable by single justice.*]—*Ex p.* LEVASSEUR (N. B.) (1926), 46 Can. Crim. Cas. 126.—**CAN.**

d (p. 107) ii. *Intoxicating Liquor Act (N. B.), 1927—Conviction under—Contents of affidavit on appeal from.*]—R. *v.* CHATEAU RESTIGOUCHE, [1928] 4 D. L. R. 292; 50 Can. Crim. Cas. 331.—**CAN.**

d (p. 107) iii. —— *Sale of liquor by employee—Contrary to orders of corporation—Liability of corporation.*]—R. *v.* CHATEAU RESTIGOUCHE, [1928] 4 D. L. R. 292; 50 Can. Crim. Cas. 331. —**CAN.**

d (p. 107) iv. —— *Appeal to county judge—Proof of service of notice of appeal.*]—R. *v.* CYR, [1928] 4 D. L. R. 239; 50 Can. Crim. Cas. 316.—**CAN.**

d (p. 107) v. —— —— *Sufficiency of notice.*]—R. *v.* HANSON (1931), 55 Can. C. C. 406.—**CAN.**

d (p. 107) vi. —— *Lawful possession of liquor—Onus of proof of crime on Crown.*]—R. *v.* GIBBS (N. B.) (1929), 52 Can. Crim. Cas. 179.—**CAN.**

d (p. 107) vii. —— *Restriction order of Control Board—Must prescribe period to remain in force.*]—R. *v.* NEW BRUNSWICK LIQUOR CONTROL BOARD, [1931] 3 M. P. R. 290.—**CAN.**

ll (p. 107) i. —— *Appeal—Costs—Taxation.*]—R. *v.* BROWN (Sask.) (1925), 45 Can. Crim. Cas. 268.—**CAN.**

ll (p. 107) ii. —— *Sale of beer—Judicial notice of nature of beer.*]—Beer, being a spirituous & also a malt liquor, comes within the first of the three classes of liquor referred to in the definition of "liquor" in above Act, the Act in force at the time of the transaction in question herein, & falls within the absolute prohibitions of sects. 10 & 41 of said Act without any proof that it is intoxicating. Judicial notice of the fact that beer is both a spirituous & malt liquor may be taken once the liquor in question is shown to be beer.—QUINN *v.* [1928] 3 W. W. R. 716.—**CAN.**

ll (p. 107) iii. *Liquor Act (Sask.), 1925 (c. 53)—Affidavit of merits—Condition precedent to appeal—By corporation or association.*]—R. (MCDOUGALL) *v.* ARMY & NAVY VETERANS ASSOCN. OF REGINA (Sask.), [1926] 3 W. W. R. 695; 46 Can. Crim. Cas. 389.—**CAN.**

ll (p. 107) iv. ——*Unlawful possession of liquor—What amounts to.*]—R. *v.* HAGERUP (Sask.) (1927), 48 Can. Crim. Cas. 95.—**CAN.**

ll (p. 107) v. —— *Second offence—First conviction more than six months previously—Increased penalty for second offence applicable.*]—R. *v.* MERRITT [1927] 1 D. L. R. 940; [1927] 1 W. W. R. 53; 47 Can. Crim. Cas. 74; 21 Sask. L. R. 237.—**CAN.**

ll (p. 107) vi. —— *Conviction for purchasing greater quantity than allowed—Uncorroborated evidence of accomplice.*]—The rule that it is dangerous to convict on the uncorroborated evidence of an accomplice applied in quashing, on appeal, a conviction for unlawfully purchasing from the Govt. Liquor Board a greater quantity of liquor than is allowed to be purchased on any one day. The witness held to have been an accomplice was a person whom the accused had asked to purchase the liquor for him as an agent & who knew that the accused had already purchased his lawful quantity. —R. *v.* BEALE, [1928] 2 D. L. R. 325; [1928] 1 W. W. R. 657; 49 Can. Crim. Cas. 292; 22 Sask. L. R. 293.—**CAN.**

ll (p. 107) vii. —— *Charge of selling liquor—Sale of beer proved—Onus of proof of right on accused.*]—The word "liquor" in Liquor Act, 1925, 1924-25, c. 53, includes "beer" unless the context otherwise requires. Therefore, where an accused is charged with selling liquor unlawfully, sect. 135, which places on a person so accused the burden of proving the right to sell it, covers the case where the evidence for the prosecution establishes a sale of "beer."—R. *v.* CRUIT, [1928] 4 D. L. R. 581; [1928] 2 W. W. R. 377; 50 Can. Crim. Cas. 143; 22 Sask. L. R. 525.—**CAN**

ll (p. 107) viii. *Keeping for sale—Whether proof of intoxicating character necessary.*]—Where on the hearing of a charge of keeping liquor for sale contrary to sect. 78 of Liquor Act, 1925, it is proved that the accused had beer for sale, evidence of its intoxicating character is not necessary to sustain a conviction.—R. *v.* CORBELL, [1930] 2 W. W. R. 334; 53 Can. C. C. 319; 24 S. L. R. 607.—**CAN.**

ll (p. 107) ix. *Liquor Act, R. S. S.*, 1930—*Appeal—Time for—Extension.*]—R. *v.* PELLETIER, [1931] 1 W. W. R. 720.—**CAN.**

ll (p. 107) x. —— *Possession in place other than dwelling-house—Whether detached buildings included.*]—R. (COREY) *v.* MOSER, [1932] 1 W. W. R. 35.—**CAN.**

ll (p. 107) xi. *Power of Liquor Board to sue & be sued.*]—Liquor Board of Saskatchewan was created by Liquor Act, 1925, & as a board distinct in entity from the members thereof & from the Crown; &, although not expressly declared to be a body corporate empowered to sue & be sued, the necessary intendment of the Act in view of the powers given the Board is that it may under its designated name avail itself of & be made amenable to the ordinary process of the cts.; it is not necessary in order to support a finding of that intendment to conclude that the Board is a body corporate.—BANK OF MONTREAL *v.* BOLE, [1931] 1 W. W. R. 203.—**CAN.**

rr (p. 107) i. *Government Liquor Act (B. C.), 1924 (c. 146)—Keeping liquor—In hotel—What is part of hotel—Question of fact.*]—R. (LITHGOE) *v.* RILEY (B. C.), [1926] 2 W. W. R. 534.—**CAN.**

rr p. (107) ii. —— —— *In restaurant—Liquor found in place accessible to public—Conviction quashed.*]—R. *v.* LEE KAM WAY (B. C.), [1927] 3 W. W. R. 143.—**CAN.**

rr (p. 107) iii. —— —— *For sale—Liquor inside chocolates.*]—R. *v.* PURDY [1927] 1 W. W. R. 880; 48 Can. Crim. Cas. 152; 38 B. C. R. 267.—**CAN.**

rr (p. 107) iv. —— —— —— —— *Purchase of immoderate amount.*]—Where a person is charged with unlawfully keeping intoxicating liquor for sale, the fact that the accused purchased an immoderate amount of liquor from the government vendor is in itself evidence of an overt act of wrongdoing which the accused is called upon to answer & from which the justice may, under sect. 90 of Government Liquor, Act R. S. B. C., 1924, infer the commission of such an act. The question of what constitutes an immoderate amount of liquor is one of fact depending on all the circumstances of the case.—R. *v.* OULLETTE, [1930] 3 W. W. R. 37; 53 Can. C. C. 405.—**CAN.**

rr (p. 107) v. —— *Supplying liquor to infant—Mens rea not necessary.*]—R. *v.* MCDONALD, [1927] 1 W. W. R. 867; 48 Can. Crim. Cas. 208; 38 B. C. R. 298.—**CAN.**

rr (p. 107) vi. —— *Interdiction order—Conditions precedent.*]—R. *v.* GRANT (B. C.), [1926] 4 D. L. R. 784; [1926] 3 W. W. R. 253; 46 Can. Crim. Cas. 182.—**CAN.**

rr (p. 107) vii. —— *Burden of proof—On accused.*]—R. *v.* NEW DOMINION CLUB (1925), 35 B. C. R. 502.—**CAN.**

rr (p. 107) viii. —— —— —— *Accused entitled to benefit of reasonable doubt.*]—R. (ANDERSON) *v.* PERRI, [1926] 1 W. W. R. 551; 46 Can. Crim. Cas. 86; 37 B. C. R. 289.—**CAN.**

rr (p. 107) ix. —— —— ——.]—Where liquor legally purchased is legally possessed or controlled, some overt act of an illegal nature must be proved by the Crown in order to raise the presumption created by sect. 91 of the Government Liquor Act, R. S. B. C., 1924; but where there is evidence of either illegal purchase or illegal possession, sect. 91 casts upon the accused the onus of proving his innocence of a charge of violating the Act in one of the ways referred to in sect. 91.—R. *v.* ZAWADA, [1930] 1 W. W. R. 92; 53 Can. C. C. 411.—**CAN.**

rr (p. 107) x. —— *Trial—Whether local venue.*]—R. *v.* LYNCH, [1927] 1 W. W. R. 502; 47 Can. Crim. Cas. 176; 38 B. C. R. 124.—**CAN.**

rr (p. 107) xi. —— *Previous conviction charged — Procedure.*]—Under sect. 93 (*a*) of Government Liquor Act, R. S. B. C., 1924, where a person accused under the Act is also charged with a previous conviction, the proper procedure for the magistrate trying the case to follow is that he should in the first instance read to the accused only that portion of the information dealing with the subsequent offence & should adjudicate thereon before asking the accused whether he was so previously convicted; moreover he should not before adjudicating on the subsequent offence read the whole information himself.—R. *v.* BRANDOLINI, [1930] 1 W. W. R. 890; 54 Can. C. C. 122; 42 B. C. R. 536.—**CAN.**

rr (p. 107) xii. —— —— ——.]—R. *v.* ROWAN, [1930] 2 W. W. R. 277; *sub nom. Ex p.* ROWAN, 54 Can. C. C. 197; 42 B. C. R. 559.—**CAN.**

rr (p. 107) xiii. —— *"Room in an inn"—What amounts to.*]—A room in the rear of the ground floor of a rooming house was used exclusively by the proprietor & his family as a kitchen & living-room, & the roomers were admitted therein only on special invitation:—*Held:* the room was not a "room in an inn" within sect. 48 (2) of Government Liquor Act, R. S. B. C., 1924.—R. *v.* STEWART, R. *v.* DEGRASSIO, R. *v.* KISSELL, [1930] 1 W. W. R. 941.—**CAN.**

rr (p. 107) xiv. —— *Previous conviction—Proof of.*]—Where an information under Government Liquor Act, R. S. B. C., 1924, alleges a previous conviction, it is not contrary to sect. 93 thereof for the magistrate to read the whole of the information to the accused before proceeding with the hearing of the charge of the subsequent offence. The certificate in question herein, purporting to be that of the registrar of a county ct.:—*Held:* not to comply with the requirements of sect. 93 (*b*) as to proof of a previous conviction.—R. *v.* DALBERGH, [1931] 1 W. W. R. 260; 55 Can. C. C. 177; 43 B. C. R. 474.—**CAN.**

s (p. 108) i. —— —— ——.]—R. *v.* WESTERN WINE & LIQUOR CO., R. *v.* WOOTTEN (Alta.), [1918] 1 W. W. R. 55; 39 D. L. R. 397; 29 Can. Crim. Cas. 307.—**CAN.**

ss (p. 108) i. —— *Supplying liquor to infant—Ignorance of age immaterial.*]—R. *v.* MAINFROID, [1926] 1 D. L. R. 1013; [1926] 1 W. W. R. 465; 45 Can. Crim. Cas. 204; 22 Alta. L. R. 17.—**CAN.**

hh (p. 108) i. —— *No appeal from statutory judgment on filing of copy of conviction of corporation.*]—R. *v.* ST. ELMO HOTEL CO., LTD. (Alta.), [1926] 4 D. L. R. 364; [1926] 3 W. W. R. 324; 46 Can. Crim. Cas. 301.—**CAN.**

hh (p. 108) ii. —— *Local option areas—Creation.*]—*Re* LOCAL OPTION PROVISION OF GOVERNMENT LIQUOR CONTROL ACT OF ALBERTA, *Re* HARDISTY & RIBSTONE, [1927] 4 D. L. R. 83; [1927] 2 W. W. R. 711; 22 Alta. L. R. 592.—**CAN.**

hh (p. 108) iii. —— —— ——.]—A "hamlet" & territory contiguous thereto were created a local option area, & a plebiscite was taken therein which was decided in the negative. After the creation of the area, but before the taking of the plebiscite, the hamlet was created a village, with an area wholly within that of said local option area. On a reference by the Lieutenant-Governor in Council for the opinion of the ct.:—*Held:* it was competent for the Lieutenant-Governor in Council to create such village a local option area for the purpose of taking a local option plebiscite therein before the expiration of two years from the taking of the plebiscite in said enlarged hamlet.—*Re* FAIRVIEW, [1930] 2 W. W. R. 542; 54 Can. C. C. 160; 24 Alta. L. R. 603.—**CAN.**

hh (p. 108) iv. —— *Seizure on Sunday—Legality.*]—A search & seizure made, without warrant, by a preventive officer of the Alberta Liquor Control Board under the authority conferred on him by sect. 113 (2) of the Government Liquor Control Act of Alberta is not illegal because made on a Sunday.—R. *ex rel.* BEAUMONT *v.* POSTERNAK, [1929] 2 W. W. R. 487; 51 Can. Crim. Cas. 426; 24 Alta. L. R. 202.—**CAN.**

hh (p. 108) v. —— —— ——.]—R. *v.* WRIGHT (Alta.), [1929] 1 W. W. R. 917; 52 Can. Crim. Cas. 285.—**CAN.**

hh (p. 108) vi. —— *Interdiction order—Jurisdiction to make ex parte.*]—A valid interdiction order under sect. 101 of Government Liquor Control Act of Alberta can be made *ex parte*.—R. *v.* JONES, [1931] 1 W. W. R. 808; 4 D. L. R. 199; 55 Can. C. C. 359; *revsg.*, [1931] 1 W. W. R. 742.—**CAN.**

hh (p. 108) vii. —— *Forfeiture of car—What must be proved.*]—A magistrate is not justified in ordering the forfeiture of a motor car under sect. 116 of Government Liquor Control Act of Alberta unless the fact that the car had been seized has been established by evidence properly receivable or unless, where the accused pleaded guilty, there was an allegation in the information & complaint that the car was under seizure.—*Re* KIRKHAM & R., [1930] 3 W. W. R. 10; *sub nom. Re* R. *v.* SNYDER, 54 Can. C. C. 149.—**CAN.**

hh (p. 108) viii. —— *Room ceasing to be private residence.*]—Accused was convicted under Government Liquor Control Act of Alberta of having liquor in his possession without a permit entitling him to do so. The facts found by the magistrate were

that the accused had an individual permit under which the liquor in question was bought, that the liquor was found in his possession in the room in which he resided, but that the room had ceased to be a private residence within the meaning of the Act because of the fact that a prior occupant had been convicted of a breach of the Act, & that there was no evidence that the accused had notice of that fact:—*Held:* the conviction should be affirmed.—R. *v.* PEARN, [1930] 2 W. W. R. 296; 54 Can. C. C. 194; 24 Alta. L. R. 530.—**CAN.**

hh (p. 108) **ix.** —— *Unlawful possession—Compliance with Excise Act—Whether defence.*]—The fact that a person has given the notice provided for by sect. 195 of Excise Act, R. S. C., 1927, that he intends to make home-brew, & has received an acknowledgment thereof from the Collector of National Revenue, is not a defence to a charge laid under sect. 80 (3) of Government Liquor Control Act of Alberta, 1924, of having in his possession liquor not purchased from an official vendor or a druggist authorised to sell same.—R. *v.* EDGERLY, [1932] 2 W. W. R. 109.—**CAN.**

sr. *Alcoholic Liquor Act (Que.), 1925—Necessity for notice of appeal—Right of justices to suspend sentence.*] —QUEBEC LIQUOR COMMISSION *v.* THIBAUDEAU (1927), 50 Can. Crim. Cas. 434; 44 Que. K. B. 417.—**CAN.**

ss. *Customs Act, R. S. C.*, 1906 (*c.* 48)—*Burden of proof—Of legal importation of goods—On accused.*]—*Re* R. *v.* MCKENZIE (1926), 45 Can. Crim. Cas. 144; 58 N. S. R. 313.—**CAN.**

sv. *S. P. Re* R. *v.* BLANK, [1926] 1 D. L. R. 323; 45 Can. Crim. Cas. 82; 58 N. S. R. 294.—**CAN.**

sw. —— —— —— *Not on bailee.*]—R. *v.* LE BLANC (N. B.), [1927] 2 D. L. R. 793; 47 Can. Crim. Cas. 302.—**CAN.**

sx. —— *Removal of liquor unlawfully imported into Canada.*]—R. *v.* BAIG, [1927] 1 D. L. R. 896; 47 Can. Crim. Cas. 58; 59 N. S. R. 86.—**CAN.**

sy. —— *Appeal—Right of.*]—R. *v.* BAIG, [1927] 1 D. L. R. 896; 47 Can. Crim. Cas. 58; 59 N. S. R. 86.—**CAN.**

sz. —— —— —— *Non-compliance with sect.* 82.]—R. *v.* ROCHE (1927), 48 Can. Crim. Cas. 210; 59 N. S. R. 218.—**CAN.**

sa. *Inland Revenue Act, R. S. C.*, 1906 (*c.* 51)—*Unlawful brewing—Evidence.*]—R. *v.* SMITH (Ont.), [1926] 3 D. L. R. 419; 46 Can. Crim. Cas. 218.—**CAN.**

sb. —— *Prosecution under—Condition precedent—Giving of list of seized articles.*]—R. (WILLIAMS) *v.* YARISH (Man.), [1926] 3 W. W. R. 586.—**CAN.**

sc. —— *Certificate of analysis—Contents.*]—R. (WILLIAMS) *v.* YARISH (Man.), [1926] 3 W. W. R. 586—**CAN.**

sd. —— *Conviction—Form of.*]—R. (METCALFE) *v.* BAT, [1926] 4 D. L. R. 829; [1926] 2 W. W. R. 582; 46 Can. Crim. Cas. 151; 20 Sask. L. R. 591.—**CAN.**

se. *Excise Act, R. S. C.*, 1906 (*c.* 51)—*Possessing wash—Conviction—Form of.*]—R. *v.* DRAGANI, [1927] 1 W. W. R. 914; 47 Can. Crim. Cas. 301; 38 B. C. R. 420.—**CAN.**

sf. —— *Brewing beer without licence.*]—R. (HANNA) *v.* ERNEST (B. C.), [1927] 1 W. W. R. 961; 48 Can. Crim. Cas. 190.—**CAN.**

sg. *Excise Act, R. S. C.* 1927, *c.* 60—*Unlawful possession under—Beer brewed for own use—After notice.*]—R. *v.* KOSTYNIUK (1928), 50 Can. Crim. Cas. 374.—**CAN.**

sj. —— —— —— ——.]—R. *v.* TUDDENHAM (N. B.), [1929] 1 D. L. R. 813; 51 Can. Crim. Cas. 24.—**CAN.**

Sufficiency of evidence.] — R. *v.* BADIUK, [1929] 2 W. W. R. 419; 51 Can. Crim. Cas. 417; 38 Man. L. R. 239.—**CAN.**

sm. —— —— *Necessity for mens rea.*]—R. *v.* BLAIR, [1931] 2 W. W. R. 893.—**CAN.**

sp. —— —— —— ——.]—In order to be guilty under sect. 176 of Excise Act, R. S. C., 1927, of unlawfully having a still, etc., "in his possession," an accused in whose actual possession such apparatus is found must have known what it was.—R. *v.* HOARE, [1932] 1 W. W. R. 470; 44 B. C. R. 557.—**CAN.**

sn. —— *Brewing beer for sole use of family—Possession of utensils.*]—R. *v.* KALYN, [1930] 2 W. W. R. 365; 54 Can. C. C. 98; 24 S. L. R. 594.—**CAN.**

so. —— *Writ of assistance—Whether authority to search house.*]—R. *v.* OLLASSOFF (Sask.), [1930] 1 D. L. R. 830; (1929), 52 Can. Crim. Cas. 249.—**CAN.**

sp. —— —— ——.]—The power of search under a writ of assistance issued under Excise Act is not restricted to any particular time of the day or night or to any particular building or other place, & therefore extends to the searching of a private dwelling in the night time.—R. *v.* KOSTACHUK, [1930] 2 W. W. R. 464; 54 Can. C. C. 189; 24 S. L. R. 485.—**CAN.**

sq. —— —— *Necessity for imprisonment.*]—R. *v.* L'HEUREUX, [1932] 3 W. W. R. 433.—**CAN.**

sr. —— *No power to suspend sentence.*]—R. (BRETHERTON) *v.* CAMPBELL & THOMPSON, [1932] 3 W. W. R. 272.—**CAN.**

d (p. 109) **i.** —— —— *Form of.*]—A conviction for an offence against the above Act omitted the provision in respect to the issuing of a warrant of distress, & the imposition of imprisonment in default:—*Held:* the conviction was bad.—R. *v.* MCFARLANE (1891), 24 N. S. R. (12 R. & G.) 54.—**CAN.**

dddd (p. 109) **i.** —— *Suspension of operation by Province — Right of Governor-General to revoke suspending order.*]—SHEEHAN *v.* SHAW, [1928] 2 D. L. R. 468; 49 Can. Crim. Cas. 357.—**CAN.**

sx. *Canada Temperance Act*, 1927, *s.* 149—*No appeal from magistrate having jurisdiction.*]—R. *v.* GRAHAM (1930), 54 Can. C. C. 328.—**CAN.**

c (p. 110) **i.** *Forfeiture of license—Right of municipal corporation—Where power to enforce bye-laws given by statute.*]—The power given to municipal corpns., under R. S. O. 1887, c. 184, s. 285, "to determine the time during which victualling licenses shall be in force," does not confer any power to forfeit such licenses, but merely to fix the duration of the license. The power to create a forfeiture of property is one which must be expressly given to a corpn. by the Legislature, & such an extraordinary power is least of all to be inferred where the Legislature has provided other means of enforcing bye-laws by means of fine & amerciament, as in this case.—BANNAN *v.* TORONTO CORPN. (1892), 22 O. R. 274.—**CAN.**

c (p. 110) **ii.** —— *Conditions of.*]—A publican's license is not subject to forfeiture under Licensing Act, 1917, s. 185, unless all three offences have been committed whilst deft. has been the holder of the same license.—R. *v.* MUIRHEAD, *Ex p.* LYONS, [1927] S. A. S. R. 116.—**AUS.**

p (p. 110) **i.** —— —— *Believed to be Japanese.*]—R. *v.* BENNETT (1930), 55 Can. C. C. 27.—**CAN.**

p (p. 110) **ii.** —— —— *Also minor.*]—R. *v.* BROWN (1930), 55 Can. C. C. 20.—**CAN.**

ll (p. 110) **i.** —— *Minor—Necessity for knowledge.*]—The selling of beer by a beer licensee on his licensed premises to a person under twenty-one years of age is not an offence against Government Liquor Control Act, 1928, if the licensee does not know that such person is under age.—R. *v.* KIDD, [1930] 1 D. L. R. 730; [1929] 3 W. W. R. 377; 52 Can. Crim. Cas. 191; 38 Man. L. R. 321.—**CAN.**

ooo (p. 110) **i.** —— —— *Sale by servant.*]—Where a sale of liquor in violation of Government Liquor Act, R. S. B. C., 1924, is made by a servant while acting within the general scope of his employment, the master can be convicted therefor, even though the sale was made by the servant in contravention of his master's express instructions.—R. *v.* VAN BROS., LTD., [1930] 1 W. W. R. 550; 53 Can. C. C. 29; 42 B. C. R. 340.—**CAN.**

ooo (p. 110) **ii.** —— —— ——.]—*Held:* under sect. 128 of Government Liquor Control Act, 1928, a licensed brewing co. was liable for a violation of the sect. by its servants although its manager had no knowledge thereof & had expressly instructed its employees not to break the law.—R. *v.* KIEWEL BREWING CO., [1930] 1 W. W. R. 238; 2 D. L. R. 227; 53 Can. C. C. 56; 38 Man. L. R. 441.—**CAN.**

aaaaa i. —— *When complete—Necessity for payment & delivery.*]—R. *v.* LARCENAIRE (1931), 3 M. P. R. 128.—**CAN.**

ddddd i. —— —— *Mens rea necessary.*]—R. *v.* NADON (1926), 46 Can. Crim. Cas.—**CAN.**

ddddd ii. —— ——.]—R. *v.* SIMON (Ont.) (1927), 47 Can. Crim. Cas. 167.—**CAN.**

ddddd iii. —— *By druggist—Evidence.*]—*Re* CARROLL (N. S.) (1926), 48 Can. Crim. Cas. 208; 59 N. S. R. 183.—**CAN.**

ddddd iv. —.]—R. *v.* YORCZYSZYN (1931), 55 Can. C. C. 28.—**CAN.**

ddddd v. —— ——.]—R. *v.* LANDRY, [1930] 3 M. P. R. 262; 55 Can. C. C. 48; 2 M. P. R. 462.—**CAN.**

eeeee i. —— ——.]—Deft. had no license to sell liquor, but kept a boarding-house, which was patronised exclusively by foreigners. The police made a search of his premises, & found 92 bottles of beer, 5 gallons of wine, & a five gallon keg containing wine. He was charged with unlawfully dealing in liquor. Deft. called evidence to show that the beer was the property of one of the boarders who proposed taking it away with him to the country. As to the wine, he stated that some of his boarders preferred wine with their meals rather than tea, & that he supplied it to such boarders without extra charge:—*Held:* in the circumstance the wine was kept for sale, & the magistrate should have convicted deft. on the evidence as to the wine even if he accepted deft.'s story about the beer.—VALE *v.* GNANI, [1931] W. A. L. R. 40.—**AUS.**

g (p. 111) **i.** —— —— *Liquor seized not identified with sample analysed—Conviction quashed.*]—R. *v.* HYDE (Ont.) [1926] 2 D. L. R. 998; 45 Can. Crim. Cas. 397.—**CAN.**

c (p. 111) **i.** *Conviction for second offence—Invalid—Where first conviction quashed.*]—R. *v.* WOODS (N. S.) (1926), 46 Can. Crim. Cas. 171.—**CAN.**

f (p. 111) **i.** *Licensing Act*, 1917—*Exposure for sale—Sale from motor car—Bottles not proved to be exposed to view.*]—The holding of a publican's license does not exempt the holder from Licensing Act, 1917, s. 163. Where the holder of a publican's license was on a public road having a motor car loaded with bottles of liquor, two of which were sold to a constable, but were not proved to be exposed to view:—*Held:* the liquor had not been "exposed for sale."—BADMAN *v.* ALLCHURCH, [1927] S. A. S. R. 174.—**AUS.**

Part XV.—War Legislation.

843 *Add. Annotation:*—**Refd.** Adams *v.* Camfoni (1928), 139 L. T. 608.

f (p. 111) ii. —— *Carrying liquor about—Onus of proving not exposed for sale.*]—The holder of a publican's license was on a public road having a motor car loaded with bottles of liquor. The licensee had carried the liquor in question, some of which was exposed to view, from his hotel to a road some hundreds of yards distant. Licensing Act, 1917, s. 280, provides that where liquor is carried about from one place to another the burden of proving that such liquor was not . . . exposed for sale shall be cast on the person exposing the same:—*Held:* the liquor had been carried about, & the onus under the statute had not been discharged by the licensee. — BADMAN *v.* ALLCHURCH, [1927] S. A. S. R. 174.—**AUS.**

o (p. 111) i. —— *Onus of proof.*]—Where an accused is charged with unlawfully keeping liquor for sale the mere possession of the liquor is not sufficient under Gov. Liquor Act, R. S. B. C., 1924, s. 91, to place the *onus* on him of proving his innocence if the liquor was legally purchased by him & found in a place where he was legally entitled to have liquor.—R. *v.* CEAL (B. C.), [1929] 1 W. W. R. 797.—**CAN.**

o (p. 111) ii. —— *Husband & wife.*]—Defts., husband & wife, were charged with the offence of unlawfully keeping intoxicating liquor for sale in their dwelling-house in contravention of Liquor Control Act (Ont.). The husband was convicted on evidence of a sale made by the wife in that house, & the wife was acquitted:—*Held:* although she might have been convicted of selling, she was properly acquitted upon the charge of keeping for sale.—R. *v.* HAND (1930), 55 Can C. C. 65; 66 O. L. R. 570.—**CAN.**

r (p. 111) i. —— *Delegation of authority.*]—A delegation by a superior officer of authority to execute a writ of assistance issued to him under Excise Act, R. S. C., 1927, c. 60, must be direct & specifically directed to each search & seizure authorised, & must be exercised with due & proper discretion.—R. *ex rel.* KELLY *v.* HOBINSKY (Man.), [1929] 1 W. W. R. 313; 52 Can. Crim. Cas. 253.—**CAN.**

r (p. 111) ii. —— *Outside Province—Intent to keep in Province.*]—R. *v.* ROY, [1931] 1 D. L. R. 1006; 2 M. P. R. 28. —**CAN.**

sk. *Unlawful possession of liquor—Evidence.*]—R. *v.* HALL (Sask.) (1925), 45 Can. Crim. Cas. 147.—**CAN.**

sl. —— ——.]—*Re* COADY (N. S.) (1926), 46 Can. Crim. Cas. 327.—**CAN.**

sm. —— ——.]—R. *v.* DRUZ (Ont.) (1927), 47 Can. Crim. Cas. 250.—**CAN.**

sn. —— —— *Mens rea necessary.*]—R. *v.* CRAWFORD (N. B.), [1927] 2 D. L. R. 565; 47 Can. Crim. Cas. 134. —**CAN.**

so. —— ——.]—R. *v.* ROSSIGNOL, R. *v.* MARQUIS, R. *v.* MICHAUD (N. B.), [1929] 1 D. L. R. 745; 51 Can. Crim. Cas. 86.—**CAN.**

sp. —— ——.]—R. *v.* GODBOUT (N. B.), [1929] 1 D. L. R. 606; 51 Can. Crim. Cas. 201.—**CAN.**

sq. —— *What amounts to—Possession of undrinkable mash—Conviction quashed.*]—R. *v.* BOONE (Ont.) (1925), 45 Can. Crim. Cas. 148.—**CAN.**

sr. —— —— *Gin given to patient by doctor.*]—R. *v.* VERGE (N. S.) (1929), 52 Can. Crim. Cas. 146.—**CAN.**

ss. —— *Appeal—Extension of time—After sentence partly served—Application refused.*]—R. *v.* HENNEBERRY (1926), 45 Can. Crim. Cas. 156; 58 N. S. R. 425.—**CAN.**

sv. —— *Possession in private guest room — What amounts to.*]—MACMILLAN *v.* BOHME (Ont.) (1929), 52 Can. Crim. Cas. 92.—**CAN.**

sw. —— *Conviction under Dominion & provincial statutes—Validity.*]—R. *v.* BOYKO (Alta.), [1929] 1 W. W. R. 929.—**CAN.**

sx. —— *Not purchased from Commission—Onus of proof.*]—On a charge of unlawfully having liquor not purchased from the Commission the fact that the liquor was found in the residence of the accused, a permit holder, is not now sufficient to shift back upon the Crown the onus of proving that the liquor was not purchased from the Commission.—R. *v.* SMITH, [1929] 3 W. W. R. 387; 52 Can. Crim. Cas. 174; 38 Man. L. R. 325.—**CAN.**

sy. —— *On Indian reserve—What amounts to.*]—The possession of an intoxicant by a white person in the temporary or permanent abode of an Indian is not an offence under sect. 126 (*c*) of the Indian Act, R. S. C., 1927, where such place of abode is not on an Indian reserve. The words "on any reserve" in sect. 126 (*c*), with the subsequent words of the sub-sect. govern the whole sub-sect.—R. *v.* THOMPSON (B. C.), [1929] 3 W. W. R. 333; 52 Can. Crim. Cas. 278.—**CAN.**

sz. *Improper use of label—Mens rea necessary.*]—R. *v.* SAVICH (Ont.) (1927), 47 Can. Crim. Cas. 262.—**CAN.**

sa. *Certificate of analyst—Presumption arising from.*]—R. *v.* JOHNSTON (Ont.) (1926), 46 Can. Crim. Cas. 360.—**CAN.**

ff (p. 111) i. —— *Right of—By Crown.*]—R. *v.* HODGSON (1927), 47 Can. Crim. Cas. 171; 59 N. S. R. 202.—**CAN.**

ff (p. 111) ii. —— *To what court.*]—R. *v.* CLARK (1879), 44 U C. R. 385.—**CAN.**

ff (p. 111) iii. —— *Power of appellate court—Cannot review order for destruction of liquor.*]—*Re* KHATTAR, *Re* THEBAULT, [1927] 2 D. L. R. 647; 47 Can. Crim. Cas. 184; 59 N. S. R. 191. —**CAN.**

hh (p. 111) i. —— *Effect of—Licence transferred—Intoxicating Liquor (General) Act, 1924 (No. 62 of 1924), ss. 16–18.*]—A.-G. (BUTLER) *v.* SHEEHAN, [1927] I. R. 546.—**IR.**

sb. *Information under Excise Act—Description of informant—Sufficiency.*]—*Ex p.* HENDERSON, *Ex p.* BRODER, *Ex p.* STEWART, *Ex p.* JOE GO GET, [1930] 1 D. L. R. 420; 52 Can. Crim. Cas. 95.—**CAN.**

sc. —— *Presumption that informant excise officer.*]—R. *v.* KUSI, [1930] 2 W. W. R. 607; 54 Can. C. C. 151; 39 Man. L. R. 199.—**CAN.**

sd. —— *Dismissal of—Right of town & mayor to appeal.*]—R. *v.* LEE, [1930] 2 W. W. R. 15; 53 Can. C. C. 255; 24 S. L. R. 384.—**CAN.**

se. *Confiscation of motor vehicle—Liquor not found therein—But seen to be thrown out.*]—R. *v.* LEWIS (N. S.) (1929), 52 Can. Crim. Cas. 43.—**CAN.**

sf. —— *Owner innocent.*]—Where the owner of a vehicle is an innocent person with respect to a breach of the Act by a person to whom he has entrusted the vehicle, *i.e.* has been in no way associated with such breach, an order for the forfeiture of the vehicle should not be made.—R. *v.* HOWLETT, *Re* WIGGINS & GLOBE MORTGAGE & LOAN CO., LTD., [1930] 3 W. W. R. 452; *sub nom. Re* R. *v.* HOWLETT, *Ex p.* WIGGINS & GLOBE MORTGAGE & LOAN CO., 54 Can. C. C. 386; 39 Man. L. R. 206.—**CAN.**

sg. *Seizure of truck in which liquor illegally stored—Truck property of innocent third party—Not liable to forfeiture.*]—When goods seized under the Excise Act are the property of an innocent third party who has duly claimed them in accordance with sect. 124 of the Act, they are not subject to forfeiture to the Crown.—*Re* THE EXCISE ACT (Man.), [1929] 4 D. L. R. 154; 2 W. W. R. 353.—**CAN.**

sp. —— —— *Liability to forfeiture.*]—A vehicle, otherwise undisputably liable to forfeiture under s. 181 of Excise Act, R. S. C., 1927, is, on construction of s. 181 & the Act as a whole, to be held so liable notwithstanding that its legal owner had, prior to seizure, no notice or knowledge of the illegal use which was being made of it. —R. *v.* KRAKOWEC, DAHLBERG & EKLUND & CONTINENTAL GUARANTY CORPN. OF CANADA, LTD., [1932] S. C. R. 134; 1 D. L. R. 316; 57 Can. C. C. 96.—**CAN.**

sr. ——.]—On July 26, 1928, an unidentified person rented a certain garage, & on the same day the truck in question herein was driven into the garage by R., a hired truckman, & the owner thereof, who locked it therein. The truck, to the knowledge of R., had on it a "still" used or to be used in violation of the Excise Act in the production of spirits, & which truck was used for removing the still from one place to another. On Aug. 1, 1928, the truck was seized by an excise officer, under sect. 95 (2) of the Act, as forfeited. R. pleaded guilty before the Criminal Cts. of illegally having a still in his possession. He was condemned & paid the fine. He contended that a discretion was vested in this ct. to direct the restoration to him of the truck, as being an innocent wrongdoer & already sufficiently penalised:—*Held:* the truck was legally seized & forfeited & the ct. had no discretion vested in it to remit the penalty.—R. *v.* ROUBLE, [1931] Ex. C. R. 226.—**CAN.**

PART XIII.

sh. *Interdiction order—Removal of—Applicant proved to have refrained from drunkenness for twelve months.*]—When on an appln. under Govt. Liquor Act, R. S. B. C. 1924, c. 146, s. 69, to a county ct judge to set aside an interdiction order it is proved that appct. has refrained from drunkenness for at least twelve months it is obligatory on the judge to set the order aside.—*Re* CORANO, [1928] 2 W. W. R. 695; 50 Can. Crim. Cas. 199.—**CAN.**

sj. —— *Conditions of issue.*]—Before a person can be interdicted under Govt. Liquor Act, R. S. B. C. 1924, c. 146, he must clearly be found to be within the class of persons who "by excessive drinking, etc." are subject to interdiction under sect. 66 of the Act. A magistrate or other interdiction official has no power to make the order without first giving the person against whom the order is sought an opportunity to show cause why it should not be made.—R. *v.* ST. ELOI, [1928] 2 W. W. R. 692.—**CAN.**

PART XIII. SECT. 7.

p (p. 433) i. —— *To what court—Sittings nearest to place where cause of complaint arose.*]—R. *v.* CONWAY (B. C.), 52 Can. Crim. Cas. 161; [1929] 3 W. W. R. 268.—**CAN.**

PART XIV. SECT. 1, SUB-SECT. 2.

f i. —— —— *Payment for customs dues.*]—PARKMAN *v.* BENOIT (P. E. I.), [1926] 2 D. L. R. 975.—**CAN.**

JUDGMENTS AND ORDERS.

Part I.—Definitions.

14a. **Order of Registrar-General—Under Legitimacy Act, 1926 (c. 60).**]—The re-registration, as provided for in the sched. to above Act, 1926, of the birth of a child originally illegitimate, the child having become legitimate by virtue of the provisions of that Act, is not a record of a binding decision.—JONES *v.* JONES (1929), 98 L. J. P. 74; 140 L. T. 647; 45 T. L. R. 292; 73 Sol. Jo. 192.

21. *Add. Annotation:*—**Apld.** Northwood *v.* L. C. C. (1927), 137 L. T. 49.

30a. —— **Order dismissing application to postpone hearing of action.**]—An order made by a judge dismissing an application to postpone the hearing of an action in his list, & ordering appct. to pay the costs, is a "judgment or order," from which an appeal lies by leave to the Ct. of Appeal.—MAXWELL *v.* KEUN, [1928] 1 K. B. 645; 97 L. J. K. B. 305; 138 L. T. 310; 44 T. L. R. 100; 72 Sol. Jo. 48, C. A.

44. *Add. Annotation:*—**Apld.** *Re* Debtor, [1929] 2 Ch. 146.

Part II.—Classification.

52. *Add. Annotations:*—**Refd.** The Goulandris, [1927] P. 182; Ingenohl *v.* Wing On (Shanghai) (1927), 44 R. P. C. 343; Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641.

54a. —— **Decree annulling marriage.**]—A decree annulling a marriage on the ground of impotence is a judgment *in rem* altering the status of the parties.—INVERCLYDE (OTHERWISE TRIPP) *v.* INVERCLYDE, [1931] P. 29; 100 L. J. P. 16; 144 L. T. 212; 95 J. P. 73; 47 T. L. R. 140; 29 L. G. R. 353.

101. *Add. Annotation:*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

127. *Add. Annotation:*—**Folld.** Earl *v.* Earl & Kyle, Earl *v.* Earl (1926), 96 L. J. P. 23.

PART I. SECT. 1.

d i. ——.]—A wife obtained on Nov. 7, 1928, a decree for judicial separation & costs. The costs were taxed, & execution issued on Feb. 22, 1929, & a return *nulla bona* made three days later. In the meantime, she had obtained on Jan. 23, 1929, in the same proceedings a decree for permanent alimony, none of which was paid. Her husband had conveyed property to the other deft. herein on Nov. 26, 1928, before the costs were taxed:—*Held:* the first mentioned decree was a judgment of the Supreme Ct. & the wife was a creditor entitled to invoke the provisions of Fraudulent Conveyances Act, R. S. B. C., 1924 (c. 96), with respect to said conveyance by her husband.—MACKEY *v.* MACKEY & MAGUR, [1930] 1 W. W. R. 604; 3 D. L. R. 497; 42 B. C. R. 440.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.

63 i. *Final for one purpose—Whether final for all purposes.*]—Where no defence is filed to a statement of claim which specifically claims damages & judgment by default is entered for damages to be assessed this judgment precludes deft. from questioning the right of pltf. to damages, & leaves the quantum of damages the only question to be determined. Such a judgment, though interlocutory as to the assessment of damages, is final as to pltf.'s right to damages.—HILL *v.* STEPHEN MOTOR & AERO CO., LTD., [1929] 3 D. L. R. 676; 2 W. W. R. 97; 23 S. L. R. 552; *revg.*, [1929] 2 D. L. R. 556.—**CAN.**

65 iii. —— —— ——.]—Applying the rule that when the ct. decides the substantial question of liability & merely refers the assessment of damages to a referee, reserving nothing to itself, the judgment ought to be regarded as a final judgment for the purposes of appeal:—*Held:* on an appeal from a judgment in an action for damages for the wrongful cutting of timber on pltf.'s lands, & for an injunction, the appeal in question was an interlocutory appeal; & the preliminary objection that it was out of time was sustained.—MAIR *v.* DUNCAN LUMBER CO. [1928] 1 W. W. R. 108; 39 B. C. R. 260.—**CAN.**

65 iv. —— —— ——.]—The word "judgment" in clause 13 of Letters Patent is intended to cover an order as well as a decree, but the effect of the adjudication must be such as to put an end to the suit or proceeding so far as the ct. before which the suit or proceeding is concerned, or if its effect, if it is not complied with, is to put an end to the suit or proceeding. If it has this effect, the adjudication is a judgment, otherwise not.—CHIDAMBARAM CHETTYAR *v* CHETTYAR FIRM (1928), I. L. R. 6 Ran. 703.—**IND.**

o (p. 128) **i.** —— *Order on application under Devolution of Estates Act.*]—An application on originating notice by an administrator for the advice of the ct. as to whether a certain person is entitled to share as a beneficiary in the estate of an intestate is not interlocutory but final.—*Re* JOHNSON ESTATE, JOHNSON *v.* JOHNSON & WOOD, [1929] 3 D. L. R. 80; 1 W. W. R. 275; 23 S. L. R. 486.—**CAN.**

a i. —— *Order allowing set-off of costs.*]—BABCOCK *v.* STANDISH (1900), 19 P. R. 195.—**CAN.**

74 iii. —— ——.]—BULGER *v.* HOME INSURANCE CO., [1927] 3 D. L. R. 1044; [1927] S. C. R. 451; *on appeal*, [1929] 1 D. L. R. 47; [1928] S. C. R. 436.—**CAN.**

1 (p. 130) **i.** —— *Subject to reference to assess damages.*]—Where the ct. decides the substantial question of liability in an action & merely refers the assessment of damages to a referee, reserving nothing to itself, the judgment should be regarded as a final judgment for the purposes of appeal.—BOSLUND *v.* ABBOTSFORD LBR., MIN. & DEV. CO., [1927] 1 D. L. R. 279; 36 B. C. R. 386.—**CAN.**

o (p. 130) **i.** ——.]—In an action brought by pltfs. as testamentary exors. or trustees, a judgment dismissing a preliminary exception to the form, alleging that their appointment by judges of the Superior Ct. was void for want of jurisdiction, is not a "final judgment" within sects. 2 (*e*) & 36 of the Supreme Court Act.—DAVIS *v.* ROYAL TRUST CO., [1932] S. C. R. 203; 2 D. L. R. 681.—**CAN.**

q i. —— *Order fixing remuneration of executor.*]—*Re* DAVIES, DAVIES *v.* DUGGAN (1927), 38 B. C. R. 249.—**CAN.**

q ii. —— *Order directing sheriff to proceed with execution.*]—*Held:* the order was an interlocutory order.—MAINLAND POTATO COMMITTEE OF DIRECTION *v.* TOM YEE, [1931] 1 W. W. R. 529; 1 D. L. R. 990; 43 B. C. R. 453.—**CAN.**

PART II. SECT. 2, SUB-SECT. 5.—A.

bb i. —— ——.]—Pltf. having begun an action by a specially indorsed writ, moved before a judge in chambers for speedy judgment under R. S. C. (B. C.), Ord. 14, r. 1, & it was ordered that judgment should be entered for pltf. for the principal sum & that the action should proceed as to interest:—*Held:* the order for judgment was a final judgment.—NATIONAL LIFE INSURANCE CO. *v.* MCCOUBRAY, [1926] 2 D. L. R. 550; [1926] S. C. R. 277.—**CAN.**

kk i. ——.]—An appeal from the judgment of Appellate Division, Ont., setting aside the awards of the official arbitrator fixing the rentals to be paid upon the renewal of certain leases, & referring the matter back to him for reconsideration, with liberty to supplement the evidence already given, was quashed for want of jurisdiction, on the ground that the judgment appealed from was not a "final judgment" within sects. 2 (*b*) & 36 of the Supreme Court Act.—TORONTO *v.* THOMPSON, [1930] S. C. R. 120; *sub nom. Re* THOMPSON & TORONTO, [1930] 1 D. L. R. 999.—**CAN.**

158. *Add. Annotation :*—**Refd.** The Lord Strathcona (No. 2), [1926] P. 18.

176a. —— ——.]—The ct. will not, in a special case, make a declaration of a future right.

G. made his will as follows :—"I give devise & bequeath all my real & personal estate whatsoever & wheresoever unto & to the absolute use of my dear wife H., her heirs, exors., administrators & assigns in full confidence that she will do what is right as to the disposal thereof between my children either in her lifetime or by her will after her decease. The construction of this will being submitted to the ct. on a special case, to which the widow H. was pltf. & the children defts. : —*Held :* the widow was unquestionably entitled to testator's estate for her life, but the ct. declined to make any declaration as to the future rights of the parties or to make any order as to costs.—SMITH *v.* GIBSON (1871), 25 L. T. 559 ; 20 W. R. 88.

184. *Add. Annotations :*—*As to* (1) **Refd.** A.-G. for Ontario *v.* McLean Gold Mines, [1927] A. C. 185 ; Wigg *v.* A.-G. of Irish Free State, [1927] A. C. 674. *As to* (2) **Apld.** Jaeger *v.* Jaeger Co. (1927), 44 R. P. C. 437. *Generally*, **Refd.** Ruislip-Northwood Urban District Council *v.* Lee (1931), 145 L. T. 208.

185. *Add. Annotations :*—**Refd.** Whitney *v.* I. R. Comrs., [1926] A. C. 37 ; Wigg *v.* A.-G. of Irish Free State, [1927] A. C. 674 ; Grant *v.* Knaresborough U. C., [1928] Ch. 310.

185a. —— —— ——.]—Upon the establishment of the Irish Free State, the two applts., who were established civil servants of the Crown, were transferred to the service of that State. They retired in consequence of the change of Government, & being dissatisfied with the retiring allowances granted to them by the Minister of Finance, they brought an action against the A.-G. for the Irish Free State claiming declarations as to their rights :—*Held :* applts. could assert their rights by an action against the Attorney-General, as in *Dyson* v. *A.-G.*, No. 185.—WIGG *v.* A.-G. FOR IRISH FREE STATE, [1927] A. C. 674 ; 96 L. J. P. C. 88 ; 137 L. T. 460 ; 43 T. L. R. 457, P. C.

187a. —— ——.]—*Held :* an action against the Air Council for a declaration that a patent was valid was not maintainable.—ROWLAND *v.* AIR COUNCIL (1923), 39 T. L. R. 228 ; 67 Sol. Jo. 365 ; 40 R. P. C. 87 ; *on appeal*, 39 T. L. R. 455, C. A.

187b. *S.P.* ROWLAND & MACKENZIE-KENNEDY *v.* AIR COUNCIL (1927), 96 L. J. Ch. 470 ; 137 L. T. 794 ; 43 T. L. R. 717 ; 44 R. P. C. 453, C. A.

Annotation :—**Refd.** Gilleghan *v.* Minister of Health (1931), 47 T. L. R. 439.

198. *Add. Citation :*—12 Tax Cas. 166.

198a. **Must enforce private right.**]—What weighs with me in the matter is that the right in question which pltf. seeks to have set up by a declaratory order is not a private right at all. Pltf. has no personal right to have sewers kept in proper condition. It is a matter, as LORD HALSBURY says, for the whole district ; it is a matter committed to the special jurisdiction of a department which is a Government department, who have to act, not with regard to the interests of any particular individual, but with regard to the interests of the district generally. I am not aware that any ct. has ever in such a case made a declaration at the suit of a member of the public, & still less in a case where, as I have said, I am not satisfied that any real principle of justice requires the ct. to determine the matter (MAUGHAM, J.).—CLARK *v.* EPSOM RURAL DISTRICT COUNCIL, [1929] 1 Ch. 287 ; 98 L. J. Ch. 88 ; 140 L. T. 246 ; 93 J. P. 67 ; 45 T. L. R. 106 ; 27 L. G. R. 328.

199. *Annotations :*—*Delete* Anderson *v.* Equitable Life Assce. Soc. of the United States (1925), 42 T. L. R. 123.

Add. Annotation :—**Consd.** Ruislip-Northwood Urban District Council *v.* Lee (1931), 145 L. T. 208.

201. *Add. Annotation :*—**Refd.** Ruislip-Northwood Urban District Council *v.* Lee (1931), 145 L. T. 208.

202a. **Right to proceed to trial—Notwithstanding default of defence.**]—Where pltf. could not have obtained a declaration of the nature sought (*see* RATES & RATING, No. 1158a, *post*), on a motion for judgment in default of defence without evidence, & he was clearly entitled to the declaration at the date of the writ, subject to his substantiating his case by proper evidence :—*Held :* he was entitled to proceed to trial for that purpose & obtain his declaration with costs.—GRANT *v.* KNARESBOROUGH URBAN COUNCIL, [1928] Ch. 310 ; 97 L. J. Ch. 106 ; 138 L. T. 488 ; 92 J. P. 30 ; 44 T. L. R. 224 ; 26 L. G. R. 165 ; (1926-31), 1 B. R. A. 238.

210. *Add. Annotation :*—**Refd.** British Trawlers Federation, Ltd. *v.* London & North Eastern Ry. Co. (1932), 48 T. L. R. 491.

213a. ——.]—A claim for a declaration not followed by any claim for consequential relief is as a rule useless & should be discouraged. For example, a landlord who claims that a tenancy was terminated by notice to quit ought to ask for possession. Similarly a tenant who relies on a lease void at law for want of a seal ought to ask for specific performance.—GRAY *v.* SPYER, [1921] 2 Ch. 549 ; 91 L. J. Ch. 98 ; 126 L. T. 238 ; *revsd. on other grounds*, [1922] 2 Ch. 22, C. A.

214. *Add. Citation :*—2 B. R. A. 779.

219. *Add. Annotations :*—**Consd.** Ruislip-Northwood Urban District Council *v.* Lee (1931), 145 L. T. 208. **Refd.** Jaeger *v.* Jaeger Co. (1927), 44 R. P. C. 437.

219a. ——.]—The male deft. owned two fields in which were a number of vehicles with structures on them or structures on wheels which had been vehicles, owned by his wife, the other deft., & let by the male deft. to persons who resided in them. Pltf. council brought an action in the King's Bench Div. against defts. claiming (only) a declaration

sb. *Judgment maintaining inscription in law.*]—*Held :* a final judgment.—DOMINION TEXTILE CO. *v.* SKAIFE, [1926] S. C. R. 310.—**CAN.**

sd. *Judgment granting decree nisi.*]—Applt. appealed from two judgments of the Ct. of Appeal for Ontario in each case, the at. trial, granting a decree *nisi* against her in her husband's action for divorce, & dismissing her action for alimony :—*Held :* there was jurisdiction in this ct. to entertain the appeal in the alimony action ; but not the appeal in the divorce action, as the decree *nisi* was not a "final judgment" within Supreme Ct. Act. s. 2 (*b*).—HARRIS *v.* HARRIS, [1932] S. C. R. 541 ; 3 D. L. R. 553.—**CAN.**

PART II. SECT. 2, SUB-SECT. 6.

157 ii. ——.]—LESLIE *v.* CANADIAN CREDIT CORPN., LTD., [1928] 3 D. L. R. 178 ; [1928] S. C. R. 238.—**CAN.**

that these structures were " temporary buildings " within Public Health Acts Amendment Act, 1907 (c. 53), s. 27. The trial judge made that declaration. On appeal it was contended for defts. (*a*) that there being a remedy provided by sects. 6 & 27 of the Act by which pltf. council could sue for penalties in a summary manner, there was no jurisdiction in the High Ct. to grant the declaration; & (*b*) that as the council had not claimed an injunction & could not have claimed an injunction, which is a remedy for the protection of personal and proprietary rights, & as there was no actual dispute between the parties, there was no jurisdiction in the High Ct. to grant the declaration :—*Held :* (1) this case was distinguishable from *Barraclough* v. *Brown*, No. 222. In that case it was decided that where a statute gave a right to recover expenses in a ct. of summary jurisdiction from a person who was not otherwise liable, pltf. had no right to sue for these expenses in the High Ct. In the present case by sect. 27 (4) of the Act of 1907 pltf. council had a right to pull down or remove these structures if they were " temporary buildings " within the sect. without reference to any ct., & there was jurisdiction in the High Ct. to grant the council the declaration for which they asked :—*Held :* (2) since *Guaranty Trust Company of New York* v. *Hannay & Co.*, No. 219, & *Russian Commercial & Industrial Bank* v. *British Bank for Foreign Trade, Ltd.*, No. 199, R. S. C., Ord. 25, r. 5, is shown to be *intra vires*, & the language of that rule must be read in its natural & ordinary meaning. On the assumption that pltf. council in this case could not have claimed an injunction, the High Ct. had jurisdiction to make this declaration.—RUISLIP-NORTHWOOD URBAN DISTRICT COUNCIL *v.* LEE (1931), 145 L. T. 208; 95 J. P. 164; 29 L. G. R. 335, C. A.

220. *Add. Annotations :*—**Refd.** The W. H. Randall, [1928] P. 41; Horwood *v.* Statesman Publishing Co. (1929), 98 L. J. K. B. 450.

222. *Add. Annotations :*—**Consd.** Clark *v.* Epsom R. D. C., [1929] 1 Ch. 287. **Apld.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485. **Distd.** Ruislip-Northwood Urban District Council *v.* Lee (1931), 145 L. T. 208. **Refd.** Wigg *v.* A.-G. of Irish Free State (1927), 96 L. J. P. C. 88.

224. *Add. Annotations :*—**Refd.** Salisbury & Fordingbridge District Drainage Board *v.* Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566; A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441; Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485; A.-G. *v.* Premier Line, Ltd., [1932] 1 Ch. 303.

226a. —— —— **Dramatic & Musical Performers' Protection Act, 1925 (c. 46).**]—MUSICAL PERFORMERS' PROTECTION ASSOCN., LTD. *v.* BRITISH INTERNATIONAL PICTURES, LTD. (1930), 46 T. L. R. 485.

230. *Add. Annotation :*—**Consd.** Everett *v.* Ryder (1926), 135 L. T. 302.

231. *Add. Annotations :*—**Apld.** Groedel *v.* Hungarian Property Administrator (1927), 44 T. L. R. 65. **Refd.** Groebel *v.* Hungarian Property Administrator (1925), 70 Sol. Jo. 345

231a. **Power of local authority to pull down building.**] — RUISLIP-NORTHWOOD URBAN DISTRICT COUNCIL *v.* LEE, No. 219a, *ante*.

239. *Add. Annotations :*—**Refd.** Layzell *v.* Thompson (1926), 43 T. L. R. 58; Jaeger *v.* Jaeger Co. (1927), 44 R. P. C. 437.

251. *Add. Annotation :*—**Consd.** R. *v.* Grain, *Ex p.* Wandsworth Grdns., [1927] 2 K. B. 205. **Refd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441.

260a. **As to validity of foreign judgment.**]—Circumstances (*see* CONFLICT OF LAWS, No. 1135a, *ante*) in which :—*Held :* the ct. had power to make the declaration asked for.—ELLERMAN LINES, LTD. *v.* READ (1927), 44 T. L. R. 7; *revsd.* on other points (1928), 44 T. L. R. 285, C. A.

262a. **As to whether structure " temporary building."**]—RUISLIP-NORTHWOOD URBAN DISTRICT COUNCIL *v.* LEE, No. 219a, *ante*.

PART II. SECT. 3, SUB-SECT. 5.

q i. ——.]—Although pltf. does not ask for a declaration of title, the ct. may make such an order.—MEISNER *v.* MASON, [1931] 2 D. L. R. 156; 3 M. P. R. 427.—**CAN.**

r i. ——.]—The rule that the cts. should not be called on to decide merely theoretical propositions applied to an appln. by the liquidator for the approval by the ct. of his action in not redeeming certain property of the co. from a tax sale.—*Re* GREAT WEST PERMANENT LOAN CO., [1928] 3 W. W. R. 628.—**CAN.**

sd. *Declaratory Judgments Act, 1908 —Discretion of court—Anticipatory construction.*]—The jurisdiction of the ct. to give or make a declaratory judgment or order under sect. 3 of the above Act is discretionary, & the ct. will not give or make such judgment or order by way of anticipatory interpretation or construction of statutory powers in the abstract, without knowledge of the facts & circumstances under which such powers might be exercised, or without any certitude that many of the powers will ever be exercised. Neither will the ct. exercise its discretion to give or make any judgment or order on a question of construction which, whichever way it is decided, does not necessarily put an end to the litigation. —DAIRY PROPRIETARY ASSOCN. (INC.) *v.* NEW ZEALAND DAIRY PRODUCE CONTROL BOARD, [1926] N. Z. L. R. 535.—**N.Z.**

se. —— *Whether binding on Crown.*]—The Crown is not bound by the above Act, in a case where the question raised involves a decision affecting a monetary claim against the Crown.—MCDOUGALL *v.* A.-G., [1925] N. Z. L. R. 104.—**N.Z.**

PART VIII.

274 iii. —— ——.]—Under Land Registry Act, R. S. B. C., 1924, the question of priority as between an applicant to register a mtge. & a registered judgment creditor is not settled by the mere fact of the prior registration of the judgment. A mtgee. can, if the facts warrant it, secure registration in priority to a judgment registered after the execution of the mtge. —GREGG *v.* PALMER, [1932] 2 W. W. R. 241.—**CAN.**

Part IX.—Effect of Judgments and Orders.

282. *Add. Citation :*—[1925] B. & C. R. 265.

320. *Add. Annotation :*—**Refd.** Knight *v.* Knight (1925), 95 L. J. Ch. 33.

337. *Add. Citation :—revsg.* S. C. *sub nom. Re* SNEYD, *Ex p.* OXFORD (BP.), 52 L. J. Ch. 724.

Part XIII.—Enforcement of Judgments and Orders.

366a. — ——.]—GRIFFITHS *v.* HUGHES (1847), 16 M. & W. 809 ; 4 Dow. & L. 719 ; 2 New Pract. Cas. 231 ; 16 L. J. Ex. 176 ; 9 L. T. O. S. 57 ; 11 Jur. 313 ; 153 E. R. 1418.

366b. —— —— ——.]—GIBBS *v.* FLIGHT (1853), 13 C. B. 803 ; 1 C. L. R. 329 ; 22 L. J. C. P. 256 ; 17 Jur. 1034 ; 138 E. R. 1417.

368a. —— ——.]—A rule for taxation of costs, & an *allocatur* thereon, do not amount to a "rule" or "order" within the above sect., so as to be capable of being registered as a judgment.—SHAW *v.* NEALE (1858), 6 H. L. Cas. 581 ; 27 L. J. Ch. 444 ; 31 L. T. O. S. 190 ; 4 Jur. N. S. 695 ; 6 W. R. 635 ; 10 E. R. 1422, H. L. ; *revsg.* on other points (1855), 20 Beav. 157.

371. After this case add "—— **Order of Probate Division.**]—*See* EXECUTORS, Vol. XXIII., p. 281, No 3486."

Part XVI.—Interest on Judgments and Orders.

407a. — — **Erroneous decree.**]—HAMILTON *v.* HOUGHTON (1820), 2 Bli. 169 ; 4 E. R. 290. H. L.

Annotation :—**Consd.** Bateman *v.* Margerison (1853), 16 Beav. 477.

419a. —— **Costs ordered to be charged on property.**] *Held :* as the costs were an equitable charge, they bore interest at four per cent.—LIPPARD *v.* RICKETTS (1872), L. R. 14 Eq. 291 ; 41 L. J. Ch. 595 ; 20 W. R. 898.

Annotations :—**Consd.** Eardley *v.* Knight (1889), 41 Ch. D. 537. **Apprvd.** *Re* Drax, Savile *v.* Drax, [1903] 1 Ch. 781.

422a. —— ——.]—The ct. will give interest on costs payable out of a fund which cannot

PART IX. SECT. 2.

c i. —— *Lands subject to mortgage.*]—Registered judgment binds only the interest of the debtors existing at the time of registration, & therefore cannot affect a mtge. already given by debtor before the judgment.—YORKSHIRE GUARANTEE & SECURITIES CORPN. *v.* EDMONDS (1900), 7 B. C. R. 348.—**CAN.**

c ii. —— *Lands acquired by debtor subsequently to unsatisfied execution—Whether bound by judgment.*]—BENT *v.* BANKS (1872), 9 N. S. R. (2 N. S. D.)

c iii. —— *Entered on warrant of attorney—Executed by husband & wife—Whether valid against wife's real estate.*]—When a woman, entitled to real estate, joined with her husband in executing a warrant of attorney on which a judgment was entered & recorded, in order to bind such real estate, the Ct. of Probate is not justified in treating the judgment as a nullity.—*Re* NELSON'S ESTATE (1856), 3 N. S. R. (2 Thom.) 1.—**CAN.**

c iv. —— *Subsequent death of debtor insolvent—Right to issue execution against representative.*]—Where a judgment has been duly recorded in the lifetime of a deceased party, & his estate has been declared insolvent by the Probate Ct., an execution may nevertheless be issued on such judgment, on a proper suggestion of the facts on the record, against his exor. or administrator, but can be extended only on the land bound by such judgment.—BURROWES *v.* ISNOR, Cong. Dig. 570.—**CAN.**

PART IX. SECT. 5.

sg. *Unsatisfied judgment—Collateral remedies unaffected.*]—A judgment until it is satisfied is but a security for the particular cause of action in which it is recovered, & until then does not operate to affect any collateral concurrent remedy which the creditor may have.—COMMERCIAL LIFE ASSURANCE CO. OF CANADA *v.* CADENHEAD, [1931] 3 W. W. R. 653.—**CAN.**

PART IX. SECT. 6.

336 i. *Effect of covenant to pay interest—Mortgage.*]—By a mtge. the mtgor. covenanted, by a separate covenant, to pay interest. The mtgee. obtained judgment against the mtgor. for the principal & interest due :—*Held :* the security of the mtge. was not merged in the judgment.—LOWRY *v.* WILLIAMS, [1895] 1 I. R. 274.—**IR.**

PART XIII. SECT. 1, SUB-SECT. 1.—A. (a).

sf. *General rule.*]—An action lies on a judgment for a sum certain even though the judgment recoverable therein will have no more binding effect than the former judgment ; & the ct. has no power to prevent the judgment creditor from bringing the action & recovering thereon & no power to impose terms on him for so doing.—MUIRHEAD *v.* NEWMAN, [1931] 1 W. W. R. 589 ; 2 D. L. R. 519 ; 26 Alta. L. R. 94.—**CAN.**

PART XIII. SECT. 1, SUB-SECT. 2.

sg. *Judgment in favour of legatee of one partner—Against other partner as executor—Previous judgments against same partner—By secured & simple contract creditors.*]—HARPER *v.* HARPER (1890), 2 B. C. R. 15.—**CAN.**

sh. *Judgment obtained by default in Quebec—Defendant resident & served with writ in Ontario.*]—Deft. who was resident & domiciled in the Province of Ontario, was served there with a writ of summons by which an action for the price of goods sold & delivered was commenced against him in the Superior Ct. of Quebec. The cause of action arose partly, at least, in Ontario. He did not appear, & judgment was entered against him by default. In an action upon that judgment brought in a Division Ct. in Ontario by same pltf. against same deft. the latter pleaded that the Quebec judgment was of no effect in Ontario, & that in truth he was not indebted to pltf. :—*Held :* the provisions now found in Jud. Act, R. S. O. 1927, c. 88, ss. 51, 52, which were enacted by an Act of the Province of Canada in 1860, 23 Vict. c. 24, must be confined to actions upon judgments obtained in the Province of Quebec, which, according to the principles of international law, applicable as between the different Provinces of the Dominion, are entitled to extra-territorial recognition, *i.e.* to those cases in which the writ was served within the Province of Quebec upon a person domiciled & resident therein & who owed allegiance to the laws of Quebec.—LUNG *v.* LEE, [1929] 1 D. L. R. 130 ; 63 O. L. R. 194.—**CAN.**

si. *Judgment against lands—Enforcement of—Necessity to sue out execution.*]—BANK OF UPPER CANADA *v.* BEATTY (1862) 9 Gr. 321.—**CAN.**

PART XIV.

sk. *Judgment not registered—Priority of mortgage.*]—MINERAL PRODUCTS CO. *v.* CONTINENTAL TRUST CO. (1906), 37 S. C. R. 517.—**CAN.**

be immediately realised.—*Re* CAMPBELL'S TRUSTS (1871), 19 W. R. 427.

430. *Add. Citation :*—16 Asp. M. L. C. 524.

436a. ——.]—BELGIAN GRAIN & PRODUCE CO., LTD. *v.* COX & CO. (FRANCE), LTD., [1919] W. N. 317, C. A.

448a. *S. P.* FOX *v.* CHARLTON, CHARLTON *v.* FOX (1865), 6 New Rep. 352.

Part XVII.—Judicial Decisions as Authorities.

498a. ——]—(1) When any tribunal is bound by the judgment of another ct., either superior or co-ordinate, it is bound by the judgment itself; & if from the opinions delivered it is clear what the *ratio decidendi* was which led to the judgment, then that *ratio decidendi* is also binding. But if it is not clear, then it is not part of the tribunal's duty to spell out with great difficulty a *ratio decidendi* in order to be bound by it.

(2) If a decision of the House of Lords rests upon the special & peculiar circumstances of the case, the case does not bind the House, or any ct., by a general principle; but if the decision rests upon a general doctrine, it binds all cts. & the House, & that doctrine is part of the law of the land until the legislature be moved to interfere.—GREAT WESTERN RY. CO. *v.* MOSTYN (OWNERS), THE MOSTYN, [1928] A. C. 57; 97 L. J. P. 8; 138 L. T. 403; 92 J. P. 18; 44 T. L. R. 179; 26 L.G. R. 91; 17 Asp. M. L. C. 367, H. L.

506. *Add. Annotation :*—**Refd.** Koskas *v.* Standard Marine Insce. (1926), 42 T. L. R. 692.

506a. ——.]—It is the duty of a judge to ascertain the construction of the instrument before him, & not to refer to the construction put by another judge upon an instrument, perhaps similar, but not the same. The only result of referring to authorities for that purpose is confusion & error, in this way, that if you look at a similar instrument, & say that a certain construction was put upon it, & that it differs only to such a slight degree from the document before you, that you do not think the difference sufficient to alter the construction, you miss the real point of the case, which is to ascertain the meaning of the instrument before you. It may be quite true that in your opinion the difference between the two instruments is not sufficient to alter the construction, but at the same time the judge who decided on that other instrument may have thought that that very difference would be sufficient to alter the interpretation of that instrument. You have, in fact, no guide whatever; & the result, especially in some cases of wills, has been remarkable. There is, first, document A., & a judge formed an opinion as to its construction. Then came document B., & some other judge has said that it differs very little from the document A., not sufficiently to alter the construction, therefore, he construes it in the same way. Then comes document C., & the judge there compares it with document B., & says it differs very little, &, therefore, he shall construe it in the same way; & so the construction has gone on until we find a document which is in totally different terms from the first, & which no human being would think of construing in the same manner, but which has by this process come to be construed in this manner (JESSEL, M.R.).—ASPDEN *v.* SEDDON (1874), 10 Ch. App. 396, n.; 44 L. J. Ch. 361, n.; 31 L. T. 626; *on appeal* (1875), 10 Ch. App. 394, L. JJ.

Annotation :—**Apld.** *Re* Whiting, Ormond *v.* De Launay (1913), 82 L. J. Ch. 309.

506b. Cases decided on demurrer.] — *Todd* v. *Flight*, 9 C. B. N. S. 377, was decided on demurrer; that is to say, if statements in the declaration were true, did they give a right of action against deft.? And cases decided on demurrer in that way are not authorities for what would be the case if there were other statements in the declaration. They are authorities on the question, statements in the declaration being taken as true: Do they give a cause of action? (SCRUTTON, L.J.).—ST. ANNE'S WELL BREWERY CO. *v.* ROBERTS (1928), 140 L. T. 1; 92 J. P. 180; 44 T. L. R. 703; 26 L. G. R. 638, C. A.

517a. ——.]—It is difficult to know the circumstances in which, in the course of the hearing of a case, a judge makes an interlocutory

PART XVI. SECT. 2.

8a. *From date of order.*]—Pltfs. brought an action to recover a liquidated sum. Deft. defended the action, & delivered a counterclaim. A consent was entered into between the parties, by which it was provided that all proceedings in the action should be stayed upon certain terms. By these terms deft. agreed to pay to pltfs. a certain sum by instalments, & if the instalments should be in arrear for more than seven days, the balance then due should immediately become payable by deft. Deft. was to withdraw his counterclaim, & the consent was to be made a rule of ct. An order was subsequently made staying the action on these terms. Default having been made by deft. in the payment of the instalments, a writ of *fi. fa.* was issued, directing the sheriff to levy execution on the goods of deft. for a certain sum, which included the balance then due & interest thereon at the rate of 4 per cent. *per annum* from the date of the said order of the ct. Deft. applied for an injunction to restrain the sheriff from acting under the *fi. fa* :—*Held :* since the order of the ct. was one for the payment of a sum of money, it followed that interest was leviable at 4 per cent. *per annum*, & that it ran from the date of the order. Accordingly the amount for which the *fi. fa.* was issued was correct, & the sheriff could not be restrained by injunction from levying execution.—FARBENHLOOM *v.* MOREL (GLASGOW), LTD., & SHERLOCK, [1930] 1. R. 361.—**IR.**

PART XVII. SECT. 1.

p i. ——.]—Cts. should be very careful about applying to this country English decisions in regard to constructive notice, & should do so only when they are quite sure that the circumstances are really similar.—KALYANI *v.* KRISHNAN NAMBIAR (1932), 1. L. R. 55 Mad. 519.—**IND.**

p ii. ——.]—The Indian income tax Act differs materially from the English income tax statutes, &, at any rate in the present case, decisions under the English statutes are of little assistance in applying the Indian Act.—INCOME TAX COMR. *v.* SHAW, WALLACE & CO. (1932), 59 L. R. Ind. App. 206.—**IND.**

r 1. ——.]—It is well settled by judgments of the Privy Council both that sect. 11 of Code of Civil Procedure, 1908, is not exhaustive of the subject of *res judicata*, & that for the general principles applicable thereto it is legitimate to refer to decisions in the English cts.—MUNNI BIBI *v.* TIRLOKI NATH (1931), 58 L. R. Ind. App. 158, P. C.—**IND.**

494 1. *What part of decision binding —Only ratio decidendi.*]—Only the principle upon which a case is decided is binding upon a court of co-ordinate jurisdiction & inferior cts.—*Re* MA MYA *v.* MA THEIN (1926), I. L. R. 4 Ran. 318.—**IND.**

observation, & I think it would be most unsatisfactory to rely upon such an interlocutory observation as an authority which binds me (BENNETT, J.).—*Re* BURRADON & COXLODGE COAL CO., LTD., MARTIN'S BANK, LTD. *v.* BURRADON & COXLODGE COAL CO., LTD. (1930), 23 B. W. C. C. 7, C. A.

525a. ——.]—In doubtful cases the cts. attach some importance to the fact that a decision has stood unchallenged for a considerable time, but neither the House of Lords nor the Ct. of Appeal has shown the slightest compunction in overruling cases of much higher authority than the decision in this case [*Birkenhead Guardians* v. *Brookes* (1906), 95 L. T. 359, decided by RIDLEY & DARLING, JJ.] if, when the matter is presented to them for consideration, they are of opinion that the decisions are wrong (SCRUTTON, L.J.).—PONTYPRIDD UNION *v.* DREW, [1927] 1 K. B. 214; 95 L. J. K. B. 1030; 136 L. T. 83; 90 J. P. 169; 42 T. L. R. 677; 70 Sol. Jo. 795; 24 L. G. R. 405, C. A.

526a. ——.]—Great importance is to be attached to old authorities, on the strength of which many transactions may have been adjusted & rights determined. But where they are plainly wrong, & especially where the subsequent course of judicial decisions has disclosed weakness in the reasoning on which they were based, & practical injustice in the consequences that must flow from them, I consider it is the duty of this House to overrule them, if it has not lost the right to do so by itself expressly affirming them (LORD LOREBURN, C.).—WEST HAM UNION *v.* EDMONTON UNION, [1908] A. C. 1; 77 L. J. K. B. 85; 98 L. T. 1; 72 J. P. 9; 24 T. L. R. 108; 6 L. G. R. 39, H. L.

Annotation:—**Consd.** Bourne *v.* Keane, [1929] A. C. 815.

529a. —— —— **Original construction erroneous.**]—Originally, the Act of Parliament in question did not receive that construction which the language put seems to warrant; but we are bound by the weight of authority, & however we may regret that the true construction of the Act seems to have been departed from, we cannot now put that construction upon it which, unfettered by authority, we might be inclined to do (HULLOCK, B.).—BOOTH *v.* IBBOTSON (1827), 1 Y. & J. 354; 148 E. R. 707.

542. *Add. Annotation*:—**Refd.** United States Shipping Board *v.* Strick, [1926] A. C. 545.

551. *Add. Citations*:—[1926] A. C. 545; 31 Com. Cas. 357; 17 Asp. M. L. C. 40.

559a. Affecting revenue.]—Tax cases ought not to be unsettled (LORD SUMNER).—SMITH (JOHN & SON *v.* MOORE, [1921] 2 A. C. 13; 90 L. J. P. C. 149; 125 L. T. 481; 37 T. L. R. 613; 65 Sol. Jo. 492; 12 Tax Cas. 266, H. L.

569a. —— ——.] — Where a broad principle has been decided by the House of Lords it is very undesirable that it should be frittered away by fine distinctions (LORD CAVE, C.).—NEWTON *v.* GUEST, KEEN & NETTLEFOLDS, LTD. (1926), 135 L. T. 386; 70 Sol. Jo. 689; 19 B. W. C. C. 119, H. L.

Annotations:—**Apld.** Robertson *v.* S.S. Appalachee, Rovira *v.* S.S. Appalachee (1926), 136 L. T. 488; Moule *v.* Marmite Food Extract Co. (1927), 20 B. W. C. C. 446.

569b. —— ——.]—When a question of law has been clearly decided by the House of Lords, it is undesirable that the decision should be weakened or frittered away by fine distinctions (LORD CAVE, C.).—JONES *v.* SOUTH-WEST LANCASHIRE COAL OWNERS' ASSOCN., [1927] A. C. 827; 96 L. J. K. B. 894; 137 L. T. 737; 43 T. L. R. 725; 71 Sol. Jo. 680; *sub nom.* THOMAS *v.* EVANS (RICHARD) & CO.; JONES *v.* SOUTH-WEST LANCASHIRE COAL OWNERS' ASSOCN., 11 Tax Cas. 790, H. L.

569c. —— ——.]—GREAT WESTERN RY. CO. *v.* MOSTYN (OWNERS), THE MOSTYN, No. 498a, *ante*.

573a. —Decisions of the House of Lords upon matters of fact are not binding upon the House or upon any other ct. Decisions of the House of Lords upon matters of law are binding upon the House itself, &, of course, upon any subordinate tribunal. (SCRUTTON, L.J.).—WILKINSON *v.* SIBLEY & DONOVAN, [1932] 1 K. B. 194; 101 L. J. K. B. 26; 146 L. T. 1; 95 J. P. 208; 29 L. G. R. 633; 2 B. R. A. 926, C. A.

573b. Decision on question of fact.]—WILKINSON *v.* SIBLEY & DONOVAN, No. 573a, *ante*.

577. *Add. Annotation*:—**Refd.** Hart *v.* Riversdale Mill Co. (1927), 96 L. J. K. B. 691.

588a. ——.]—A decision of the appellate ct. in a colony which is regulated by English law is not assumed to be wrong, because it conflicts with a decision of the Ct. of Appeal in England; it is otherwise if the conflict is with a decision of the House of Lords or of the Judicial Committee of the Privy Council.—ROBINS *v.* NATIONAL TRUST CO., [1927] A. C. 515; 96 L. J. P. C. 84; 137 L. T. 1; 43 T. L. R. 243; 71 Sol. Jo. 158, P. C.

Annotation:—**Refd.** Pope Appliance Corpn. *v.* Spanish River Pulp & Paper Mills, [1929] A. C. 269.

588b. —— ——.]—GREAT WESTERN RY. CO. *v.* MOSTYN (OWNERS), THE MOSTYN, No. 498a, *ante*.

588c. Decision on question of law.]—WILKINSON *v.* SIBLEY & DONOVAN, No. 573a, *ante*.

588d. Decision on question of fact.]—WILKINSON *v.* SIBLEY & DONOVAN, No. 573a, *ante*.

595a. Question of maritime law.]—A judgment of the House of Lords upon a proper maritime question, whether given in an English or in

PART XVII. SECT. 3.

548 ii. ——.]—The cts. must always hesitate to overrule decisions which are not manifestly erroneous & mischievous, which have stood for many years unchallenged, & which from their nature may reasonably be supposed to have affected the conduct of a large portion of the community in matters relating to rights of property.—MUKHDEO SINGH *v.* HARAKH NARAYAN SINGH (1932), I. L. R. 11 Pat. 112.—**IND.**

PART XVII. SECT. 4, SUB-SECT. 1.—B.

sm. *On colonial court—Contrary decision of Privy Council.*]—LOBB *v.* ROCKWOOD RURAL CREDITS SOCIETY, No. 603 ii, *post*.—**CAN.**

sn. *On Supreme Court of Canada.*]—The Supreme Ct. of Canada is not bound by or subject to the decisions of the House of Lords unless & until the Parliament of Canada shall so declare, that Parliament being now, as the result of the Imperial Conference of 1926, the only authority which has jurisdiction to make such a binding declaration upon the cts. of this nation; & where a decision of the Supreme Ct. is now found to be in conflict with a decision of the House of Lords the law as declared by the former should be followed by the other cts. in Canada.—GEORGIA CONSTRUCTION CO. *v.* PACIFIC GREAT EASTERN RY. CO., [1929] 1 D. L. R. 77; [1928] 3 W. W. R. 466; *on appeal*, [1929] 4 D. L. R. 161; S. C. R. 630.—**CAN.**

sp. *On Land Valuation Appeal Court—Questions of derating.*]—The Land Valuation Appeal Ct. in deciding questions of derating under Rating & Valuation (Apportionment) Act, 1928, will follow decisions of the House of Lords where applicable.—ABERDEEN ASSESSOR *v.* COLLIE, [1932] S. C. 304.—**SCOT.**

a Scottish appeal, is of equal authority in all the Admlty. Cts. of the kingdom.—CURRIE *v.* MCKNIGHT, [1897] A. C. 97; 66 L. J. P. C. 19; 75 L. T. 457; 13 T. L. R. 53; 8 Asp. M. L. C. 193, H. L.

Annotation :—**Refd.** Blairmore S.S. Co. *v.* Macredie, [1898] A. C. 593.

597. *Add. Annotations :*—**Consd.** Barton-upon-Irwell Union *v.* Wycombe Union, [1926] 2 K. B. 3. **Refd.** Wycombe Grdns. *v.* Barton-upon-Irwell Grdns. (1926), 43 T. L. R. 89.

600. *Add. Annotation :*—**Consd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 243.

601. *Add. Annotation :*—**Consd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 243.

602. *Add. Annotation :*—**Refd.** *Re* Article X of Articles of Agreement for Treaty between Great Britain & Ireland (1928), 45 T. L. R. 57.

603a. —— ——.]—The English cts. are not bound by the judgments of the Privy Council. They pay them the greatest respect, but there are numerous cases where the House of Lords has declined to follow judgments of the Privy Council (SCRUTTON, L.J.).—SERVICE *v.* SUNDELL (1929), 99 L. J. K. B. 55; 46 T. L. R. 12; 73 Sol. Jo. 729, C. A.

604. *Add. Annotation :*—**Refd.** Venn *v.* Tedesco, [1926] 2 K. B. 227.

605. *Add. Annotations :*—**Consd.** Venn *v.* Tedesco, [1926] 2 K. B. 227; Lynn *v.* Bamber, [1930] 2 K. B. 72.

608. *Add. Citations :*—95 L. J. K. B. 866; 90 J. P. 185; 42 T. L. R. 478; 24 L. G. R. 496.

Add. Annotation :—**Refd.** Lynn *v.* Bamber, [1930] 2 K. B. 72.

608a. —— ——.]—Now ought I to follow *Bulli's Case ?* It is not technically binding on me. . . . In my view, the decision of the Privy Council in *Bulli's Case* is one which should be followed. It accords with equity principle. It is supported by powerful opinion & decisions. It is agreeable to good sense & justice with respect to fraud. I therefore hold that it represents the existing law in these cts. (MCCARDIE, J.).—LYNN *v.* BAMBER, [1930] 2 K. B. 72; 99 L. J. K. B. 504; 143 L. T. 231; 46 T. L. R. 367; 74 Sol. Jo. 298.

609. *Add. Annotations :*—**Refd.** Venn *v.* Tedesco, [1926] 2 K. B. 227; Lynn *v.* Bamber, [1930] 2 K. B. 72.

614a. —— **Colonial appellate court.**]—ROBINS *v.* NATIONAL TRUST CO., No. 588a, *ante.*

615a. —— ——.]—As a rule, this ct. ought to treat the decisions of the Ct. of Appeal in Chancery as binding authorities, but we are at liberty not to do so where there is a sufficient reason for overruling them (COTTON, L.J.).—MILLS *v.* JENNINGS (1880), 13 Ch. D. 639; 49 L. J. Ch. 209; 42 L. T. 169; 28 W. R. 549, C. A.

616. *Add. Annotation :*—**Consd.** Morgan *v.* Provincial Insurance Co. (1932), 147 L. T. 52.

618a. —— **Exchequer Chamber.**]—A decision of the Exchequer Chamber . . . is an authority binding the English cts. up to & including the Ct. of Appeal (*per* CUR.).—MAINE & NEW BRUNSWICK ELECTRICAL POWER CO. *v.* HART, [1929] A. C. 631; 98 L. J. P. C. 146; 141 L. T. 370, P. C.

624a. —— **Question of fact.**]—A decision of the Court of Appeal on fact is not binding on any other court, except as between the same parties. When the decision is that from certain facts certain legal consequences follow, the decision is, I think, binding on the Court of Appeal in any case raising substantially similar facts (SCRUTTON, L.J.).—NEWSHOLME BROS. *v.* ROAD TRANSPORT & GENERAL INSURANCE CO., [1929] 2 K. B. 356; 98 L. J. K. B. 751; 141 L. T. 570; 45 T. L. R. 573; 34 Com. Cas. 330, C. A.

628a. —— ——.]—(1) Where a Ct. of Appeal has before it a series of judgments of the Ct. of Appeal which do not appear to be consistent with each other, & the later judgment was given when the Lords Justices were not aware of some of the previous decisions, in such circumstances, as a matter of judicial comity, it is open to the ct. to consider all the previous decisions of the Ct. of Appeal & to form its own views as to which are the more accurate & which it shall follow.

(2) A Ct. of Appeal consisting of three Lords Justices is not entitled to overrule a decision of a Ct. of Appeal expressed by two Lords Justices (ATKIN, L.J.).—GLASKIE *v.* WATKINS, [1927] 2 K. B. 181; 96 L. J. K. B. 469; 137 L. T. 132; 43 T. L. R. 314; 71 Sol. Jo. 192, C. A.

628b. —— **Conflicting decisions.**] — GLASKIE *v.* WATKINS, No. 628a, *ante.*

628c. —— ——.]—Observations by SCRUTTON & SARGANT, L.JJ., where there were conflicting decisions of the Ct. of Appeal as to the construction of a rule of ct., on the right of the ct. to consider & decide the matter for itself.—SMITH *v.* SCHILLING, [1928] 1 K. B. 429; 97 L. J. K. B. 276; 138 L. T. 475; 44 T. L. R. 109, C. A.

629a. —— **Court of Criminal Appeal.**]—PRACTICE NOTE (1928), 20 Cr. App. Rep. 185.

PART XVII. SECT. 4, SUB-SECT. 2.

603 ii. —— —— *Contrary decision by House of Lords.*]—While a decision of the Privy Council on a point actually decided by it is binding on a Canadian ct., even though there is a contrary decision on the same point by the House of Lords, yet where a statement of law cited from a judgment of the Privy Council is merely a dictum, the Canadian ct. is free to follow the House of Lords.—LOBB *v.* ROCKWOOD RURAL CREDITS SOCIETY, [1926] 2 D. L. R. 819; [1926] 2 W. W. R. 1; 35 Man. L. R. 499.—**CAN.**

603 iii. —— —— ——.]—Where Canadian law with respect to the subject in hand is English law, & a point thereof has been decided in one way by the Privy Council & subsequently in a contrary way by the House of Lords in a decision in which it expressly states in what respect the Privy Council erred, a Canadian ct. must apply the law as so settled by the House of Lords.—WILL *v.* BANK OF MONTREAL, [1931] 2 W. W. R. 364; 3 D. L. R. 526.—**CAN.**

603 iv. —— —— *Courts in India.*]—A decision of the Privy Council binds all the cts. in India, at any rate as soon as the decision is promulgated & comes to the knowledge of a ct. in India.—NINGAPPA MARBASAPPA ARLESHVAR *v.* GYANAJI POURAJI MARWADI (1926), I. L. R. 51 Bom. 231.—**IND.**

603 v. —— —— ——.]—The decisions of the Privy Council are absolutely binding on all cts. in India.—*Re* MA MYA *v.* MA THEIN (1926), I. L. R. 4 Ran. 313.—**IND.**

PART XVII. SECT. 4, SUB-SECT. 3.

624 iv. ——.]—A decision of the Appellate Div. is binding on it & on trial judges within the province, unless & until it is overruled by a higher ct. The belief that a higher ct. would take a different view from that expressed by the Appellate Div., though founded on general reasoning in other cases decided by the higher ct., is not a sufficient reasoning for not following the decision of the Appellate Div.—DOWSETT *v.* EDMUNDS (Alta.), [1926] 4 D. L. R. 796; [1926] 3 W. W. R. 447; 46 Can. Crim. Cas. 330.—**CAN.**

630a. **Exchequer Chamber.**]—MAINE & NEW BRUNSWICK ELECTRICAL POWER CO. *v.* HART, No. 618a, *ante*.

631a. —— —— **Colonial appellate court.**]—ROBINS *v.* NATIONAL TRUST CO., No. 588a, *ante*.

631b. —— **Question of fact.**]—NEWSHOLME BROS. *v.* ROAD TRANSPORT & GENERAL INSURANCE CO., No. 624a, *ante*.

642. *Add. Annotation :*—**Refd.** Lowther *v.* Clifford, [1927] 1 K. B. 130.

642a. —— **Conflicting decisions.**]—Where there are two previous decisions of the Div. Ct., one of which was decided by a ct. of two judges & the other by a ct. of three judges, the rule of the Div. Ct. is to respect the decision of the ct. of three judges.—DE VRIES *v.* SMALLRIDGE, [1928] 1 K. B. 482; 97 L. J. K. B. 244; 138 L. T. 497, C. A.

642b. —— ——.]—Observations, where there were two inconsistent lines of authorities as to the construction of Rent Restriction Acts, on the duty of the ct. to consider & decide the matter for itself.—RATKINSKY *v.* JACOBS, [1929] 1 K. B. 24; 97 L. J. K. B. 566; 138 L. T. 739; 92 J. P. 142; 44 T. L. R. 548; 72 Sol. Jo. 354; 26 L. G. R. 380, D. C.

661a. ——.]—When there is the decision of a ct. of co-ordinate jurisdiction upon the point, unreversed by a ct. of error, we ought to consider ourselves bound by it (WILDE, C.J.).—BARKER *v.* STEAD (1847), 3 C. B. 946; 5 Ry. & Can. Cas. 45; 16 L. J. C. P. 160; 8 L. T. O. S. 390; 11 Jur. 90; 136 E. R. 379.

669a. —— —— **Law of Property Acts.**]—Where a learned judge, after consideration, has come to a definite decision on a matter arising out of this exceedingly complicated & difficult legislation [the Law of Property Acts], it is very desirable that the ct. should follow that decision (MAUGHAM, J.).—*Re* SMITH, VINCENT *v.* SMITH, [1930] 1 Ch. 88; 99 L. J. Ch. 27; 142 L. T. 178.

679a. —.]—*Semble :* a decision of the Exchequer Chamber, where the judges were equally divided, will be regarded as binding on the Ct. of Appeal.—HART *v.* RIVERSDALE MILL CO., [1928] 1 K. B. 176; 96 L. J. K. B. 691; 137 L. T. 364; 91 J. P. 135; 43 T. L. R. 396; 71 Sol. Jo. 407, C. A.; *on appeal* from S. C. *sub nom.* RIVERSDALE MILL CO. *v.* HART, [1927] 1 K. B. 624, D. C.

680a. ——.]—If one authority were produced to me, & my own opinion were the other way, I would not follow that authority; but if the authorities are numerous, I admit that I must be bound (JESSEL, M.R.).—*Re* BETHLEM HOSPITAL (1875), L. R. 19 Eq. 457; 44 L. J. Ch. 406; 23 W. R. 644.

Annotation :—**Refd.** *Ex p.* St. Katherine Hospital (1881), 17 Ch. D. 378.

685a. —.]—Of course, if other judges have expressed different views as to the construction, & their decisions are binding on this ct., this ct. has simply to bow & submit, whatever its own opinion may be (JESSEL, M.R.).—*Re* WRIGHT, *Ex p.* WILLEY (1883), 23 Ch. D. 118; 52 L. J. Ch. 546; 48 L. T. 380; 31 W. R. 553, C. A.

Annotations :—**Consd.** Dashwood *v.* Magniac, [1891] 3 Ch. 306. **Refd.** Bourne *v.* Keane, [1919] A. C. 815.

705a. **Tax cases.**]—One ought, especially in tax cases, which apply equally in Scotland & in England, to pay the very greatest deference to decisions of the Scottish cts. (GREER, L.J.).—SHANKS *v.* INLAND REVENUE COMRS., [1929] 1 K. B. 342; 98 L. J. K. B. 341; 140 L. T. 157; 14 Tax Cas. 249, C. A.

Annotation :—**Refd.** I. R. Comrs. *v.* Miller, [1930] A. C. 222.

705b. —— ——.]—Although I think it is quite true that the general considerations on which this case falls to be determined are the same in Scottish & English law, it is quite a different thing to say that Scottish & English law are as much the same that you can quote cases & make them Scottish authorities (LORD DUNEDIN).—LEITCH (WILLIAM) & CO., LTD. *v.* LEYDON, BARR (A. G.) & CO., LTD. *v.* MACGEOGHEGAN [1931] A. C. 90; 100 L. J. P. C. 10; 144 L. T. 218, H. L.

707a. —— —— **Rating & Valuation (Apportionment) Act, 1928 (c. 44).**]—We have before us a volume containing nearly one hundred Scottish decisions, many of them relating to trades & hereditaments very similar to those coming before the English cts. The English cts. are not, of course, bound by those decisions, though they are naturally carefully considered by us; for it is eminently undesirable that exactly similar heredita-

631 iii. —— ——.]—A decision of the English Ct. of Appeal, which is not in conflict with a decision of the Supreme Ct. of Canada & has not been departed from by the Privy Council or overruled by the House of Lords, is binding on the K. B. of Manitoba with respect to the interpretation of an Act in the same terms as those of the Act interpreted in the Ct. of Appeal's decision, even though that decision is contrary to one given by a Ct. of Appeal of another province.—LOWERY *v.* LAMONT (Man.), [1927] 1 D. L. R. 669; [1927] 1 W. W. R. 95.—**CAN.**

f i. ——.]—DOWSETT *v.* EDMUNDS (Alta.), No. 624 iv, *ante*.—**CAN.**

f ii. ——.]—Decisions of the highest ct. of a province are absolutely binding on all subordinate cts. in that province.—*Re* MA MYA *v.* MA THEIN (1926), I. L. R. 4 Ran. 313.—**IND.**

PART XVII. SECT. 4, SUB-SECT. 5.

641 i. *On another Divisional Court—Court equally divided.*]—The decision of an equally divided Div. Ct. is binding on all Div. Cts.—DRISCOLL *v.* COLLETTI, [1926] 2 D. L. R. 428; 58 O. L. R. 444.—**CAN.**

645 i. *Court equally divided.*]—The decision of a Divisional Court, though the result of an equal division of opinion, is, by the Judicature Act, s. 31 (1), binding on another ct. of co-ordinate jurisdiction, & must be followed unless it may be departed from by the concurrence of the judges who gave the earlier decision.—DONALD *v.* LEWIS, [1929] 4 D. L. R. 351; 64 O. L. R. 301; *affd.*, [1929] 1 D. L. R. 649; 63 O. L. R. 310.—**CAN.**

PART XVII. SECT. 4, SUB-SECT. 6.

sn. *On court itself.*]—The ct. having reached the conclusion that its previous decision was erroneous, refused to follow it.—R. *v.* THOMPSON, [1931] 2 D. L. R. 282; 1 W. W. R. 26; 55 Can. C. C. 33; 39 Man. L. R. 277.—**CAN.**

PART XVII. SECT. 4, SUB-SECT. 7.—A.

653 i. *General rule.*]—Where cts. have co-ordinate jurisdiction the practice in India appears to be that the decisions of one such ct. are not regarded as binding another.—*Re* MA MYA *v.* MA THEIN (1926), I. L. R. 4 Ran. 313.—**IND.**

so. *Application to High Court—Application previously refused by Supreme Court.*]—An appln. pursuant to Service & Execution of Process Act, 1901-1924, s. 19, for leave to execute in Victoria a writ of attachment issued out of the Supreme Ct. of New South Wales having been refused by the Supreme Court of Victoria, an appln. under the same section was made for leave of a justice of the High Ct. to execute the writ in any state other than New South Wales :—*Held :* the High Ct. ought not to make an order which had been refused by a ct. of co-ordinate jurisdiction in the matter on facts identical with those brought before the High Ct.—JONES *v.* JONES (1928), 40 C. L. R. 315; [1928] V. L. R. 112; [1928] Argus L. R. 45.—**AUS.**

PART XVII. SECT. 4, SUB-SECT. 7.—D.

693 ii. *S. P.* ROSS *v.* FISET, [1926] 3 D. L. R. 289; [1926] 2 W. W. R. 422; 20 Sask. L. R. 553.—**CAN.**

ments should be derated in Scotland but not in England (SCRUTTON, L.J.).—STOKE-ON-TRENT REVENUE OFFICER *v.* STOKE-ON-TRENT ASSESSMENT COMMITTEE & POTTERIES ELECTRIC TRACTION CO., ETC., ETC., [1931] 1 K. B. 385; 100 L. J. K. B. 1; 143 L. T. 650; 94 J. P. 177; 28 L. G. R. 550, C. A.; *on appeal*, [1931] A. C. 151, H. L.

709a. —— ——.]—Decisions of the cts. in Ireland are not binding on an English ct., & if they conflict with decisions in England, or if they are not consistent with the ct.'s view of the English law, the ct. will decline to follow them.—*Re* INMAN, INMAN *v.* INMAN, [1903] 1 Ch. 241; 72 L. J. Ch. 120; 88 L. T. 173; 51 W. R. 188; 47 Sol. Jo. 92.

714. *Add. Citations:*—95 L. J. K. B. 936; 135 L. T. 618; 42 T. L. R. 609; 70 Sol. Jo. 734, C. A.; *affd. sub nom.* NEWCASTLE BREWERIES, LTD. *v.* INLAND REVENUE COMRS. (1927), 96 L. J. K. B. 735; 137 L. T. 426; 43 T. L. R. 476; 12 Tax Cas. 927, H. L.

718. *Add. Annotation:*—**Refd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930.

728a. —— —— **Shipping decisions.**]—American shipping decisions, while treated with great respect, do not necessarily control the shipping decisions of the English cts.—GOSSE MILLARD *v.* CANADIAN GOVERNMENT MERCHANT MARINE, [1928] 1 K. B. 717; 138 L. T. 421; 44 T. L. R. 143; 17 Asp. M. L. C. 385; 33 Com. Cas. 139, C. A.; *sub nom.* GOSSE MILLARD *v.* CANADIAN GOVERNMENT MERCHANT MARINE, AMERICAN CANNING CO. *v.* CANADIAN GOVERNMENT MERCHANT MARINE, 97 L. J. K. B. 193; *on appeal* [1929] A. C. 223, H. L.

739a. Discrepancy between reports.] — Where a case was reported in 1893 both in the *Law Reports* & in the *Law Times*, & the reports differed both in the narrative of facts & in the words of the judgments, LORD BUCKMASTER assumed that in the *Law Reports* there was a revision by the judges of the judgments that they delivered & accepted that as an authoritative statement.—FAIRMAN *v.* PERPETUAL INVESTMENT BUILDING SOCIETY, [1923] A. C. 74; 92 L. J. K. B. 50; 128 L. T. 386; 87 J. P. 21; 39 T. L. R. 54, H. L.

739b. Duty of counsel to cite authorised reports when existing.] — PRACTICE NOTE, [1931] W. N. 121, H. L.

752a. —— **Cooper's Reports.**]—I may observe, in passing, that *Sir George Cooper's* reports are not reports of the very highest authority, & though they are sufficiently accurate, it should be remembered that SIR W. GRANT did not correct his decisions in those reports, whilst he did his decisions reported in *Merivale* (STUART, V.C.).—BAKER *v.* PECK (1860), 3 L. T. 656; 9 W. R. 186; *on appeal* (1861), 4 L. T. 3, L. C. & L. JJ.

753a. —— ——.]—*Mr. Dickens* was not a very accurate reporter (LEACH, M.R.).—LIVESEY *v.* HARDING (1830), as reported in Taml. 460; 48 E. R. 183.

772. *Add. Annotation:*—**Refd.** Lynn *v.* Bamber, [1930] 2 K. B. 72.

787a. —— ——.]—Except on points of practice, the *Weekly Notes* should only be cited as interim reports of cases during the period required for their publication in the *Law Reports* (SWINFEN EADY, J.).—*Re* SMITH'S SETTLEMENT, WILKINS *v* SMITH (1902), as reported in [1903] 1 Ch. 373.

789a. —— ——.]—I do not think the *Weekly Notes* ought to be cited as authority on will cases (LORD COZENS-HARDY, M.R.).—*Re* HOWELL, *Re* BUCKINGHAM, LIGGINS *v.* BUCKINGHAM, as reported in [1915] 1 Ch. 241.

PART XVII. SECT. 4, SUB-SECT. 13.

st. *India.*]—The decisions of the Sudder Dewani Adawlat & the Sudder Nizamat Adawlat are not binding on the High Cts.—*Re* MA MYA *v.* MA THEIN (1926), I. L. R. 4 Ran. 313.—**IND.**

sv. ——.]—Decisions of the highest ct. of a province are absolutely binding on all subordinate cts. in that province, & ordinarily decisions of a full bench of a superior ct. are binding on benches other than full benches of that ct. & on all judges of that ct. sitting singly, & decisions of benches are binding on single judges.—*Re* MA MYA *v.* MA THEIN (1926), I. L. R. 4 Ran. 313.—**IND.**

sw. —— *Burma—Chief Court of Lower Burma—Whether binding—On High Court.*]—The High Ct. in the exercise of its ordinary original & appellate jurisdictions is not bound by decisions of the Chief Ct. of Lower Burma, although its decisions are conditional authorities of the highest value to which the greatest weight & respect must be attached.—*Re* MA MYA *v.* MA THEIN (1926), I. L. R. 4 Ran. 313.—**IND.**

subordinate courts.]—On points where there is no decision of the High Ct., subordinate cts. in Lower Burma are still bound by the rulings of the Chief Ct., & subordinate cts. in Upper Burma are still bound by the decisions reported in Upper Burma Rulings. Under Govt. of India Act, s. 107, the High Ct. has power, if it so desires, to direct the subordinate cts. in Upper Burma to regard themselves as bound by the decisions of a bench of the Chief Ct. or even of a single judge of that ct.—*Re* MA MYA *v.* MA THEIN (1926), I. L. R. 4 Ran. 313.—**IND.**

JURIES.

Part VII.—Juries of Issue and Assessment.

292a. Necessity for request or consent of defence.]—Counsel for the prosecution should not ask for the jury to be dismissed from ct., for the purpose of a discussion taking place, when the defence objects to the withdrawal of the jury. The jury should be dismissed only at the request of, or with the consent of, the defence.—R. *v.* ANDERSON (1929), 142 L. T. 580; 21 Cr. App. Rep. 178; 29 Cox, C. C. 102, C. C. A.

295a. Communications to judge—Right of counsel to inspect.]—HOBBS *v.* TINLING, HOBBS *v.* NOTTINGHAM JOURNAL, No. 304a, *post.*

301a. —— ——.]—Where a jury, before hearing all the evidence for the defence, finds a verdict for pltf., it is in the discretion of the judge to decide whether the jury should be discharged or whether the case should be continued before the same jury.—DE FREVILLE *v.* DILL (1927), 43 T. L. R. 431; 71 Sol. Jo. 430, C. A.

Annotation :—**Reld.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

304a. —— **Whether ground for new trial.**]—In an action for libel pltf. set out in his statement of claim the alleged libel, & in a separate paragraph alleged an innuendo which practically repeated, but somewhat extended, the statements in the alleged libel. Defts. did not plead justification or fair comment, but paid 20*s.* into ct. in respect of the alleged libel as sufficient damages; they made no payment into ct. in respect of the innuendo; & they gave notice under R. S. C., Ord. 36, r. 37, of their intention to give in evidence certain matters in mitigation of damages. At the trial pltf. gave evidence that save for one lapse he was a man of unblemished reputation. Thereupon he was cross-examined as to specific incidents not mentioned in the libel or in the particulars served under R. S. C., Ord. 36, r. 37, it being suggested that he was a man of bad reputation. This line of cross-examination was objected to, but was allowed. Before the conclusion of the cross-examination the jury intervened with an intimation that they desired to find for the defts., which they then did without any summing up. On appeal :—*Held :* (1) the cross-examination was admissible as cross-examination to credit, but if the incidents were denied by pltf. no further evidence could be called to rebut pltf.'s denials, & the jury should have been told that while they were not bound to accept pltf.'s denials, those denials, though unaccepted, afforded no evidence that the incidents had taken place; (2) the cross-examination was not admissible to mitigate damages, & the jury ought to have been directed to this effect; (3) the jury should have been told that their intervention was premature, & they must hear the pltf.'s case to the end & be directed as to the issues they had to try; & (4) the trial having been in those respects unsatisfactory, there must be a new trial.

(5) Communications from the jury to the judge should be shown to the parties' counsel (*per* SCRUTTON, L. J.).

While the better practice is for communications from the jury to be shown to parties' counsel, the question whether they should be shown or not is one for the discretion of the judge (*per* SANKEY, L. J.).—HOBBS *v.* TINLING, HOBBS *v.* NOTTINGHAM JOURNAL, [1929] 2 K. B. 1; 98 L. J. K. B. 421; 141 L. T. 121; 45 T. L. R. 328; 73 Sol. Jo. 220, C. A.

PART I.

sa. *Order granting—"Common" inadvertently inserted—Amendment of order.*]—*Held :* the order should be amended by striking out the word "common."—BRADSHAW *v.* B. C. RAPID TRANSIT, [1927] 1 D. L. R. 599; 38 B. C. R. 64.—CAN.

PART VII. SECT. 1.

a i. —— *North-West Territories Act, 1886, ss. 66, 67—Effect of Order in Council of June 15, 1929.*]—R. *v.* BROWNE, R. *v.* SPEIDEL, [1930] 1 W. W. R. 422; 1 D. L. R. 823; 4 D. L. R. 1021; 52 Can. C. C. 311; 24 Alta. L. R. 421.—CAN.

PART VII. SECT. 2.

72 iii. —— ——.]—Accused. except in cases of trial for high treason or misprision of treason, has no right to inspect the jury panel—R. *v.* BAUM (1927), 27 S. R. N. S. W. 401; 44 N. S. W. W. N. 136.—AUS.

sb. *Original panel inadequate—Power of judge to add to.*]—Deft. was arrested, indicted & tried & convicted for harbouring a quantity of dutiable goods, to wit, spirituous liquors unlawfully imported into Canada, of the value of over $200, whereon the duties lawfully payable had not been paid, in violation of Customs Act, Dominion Acts, 1907, c. 11. On the trial a number of jurors, previously summoned, were absent, & others were excused from serving & a new panel was summoned. The original panel was not discharged, but the names on both panels were thrown into one box, & the jury, impanelled for deft.'s trial, drawn from the names as so combined :—*Held :* the effect of the legislation Acts of 1919, c. 7, s. 41, was to give the trial judge authority to retain the panel summoned, & to increase the number by additions thereto, & the objection to the composition of the jury drawn for deft.'s trial failed.—R. *v.* SHELLMAN, [1928] 1 D. L. R. 657; *sub nom.* R. *v.* SCHELLMAN, 59 N. S. R. 535.—CAN.

sc. *Right to inspect.*]—While the Jury Act, R. S. S., 1920 (c. 43), makes no provision as to when interested parties should be permitted to inspect the jury panel in the hands of the local registrar (the panel is never in custody of the sheriff in Saskatchewan), the custom of allowing such inspection at any time within 10 days of the opening of the ct. is a wise practice, & any departure from it by the local registrar should be made only on the order of a judge.—R. *v.* BRONFMAN (No. 2), [1930] 3 W. W. R. 78; 4 D. L. R. 1036.—CAN.

PART VII. SECT. 5, SUB-SECT. 3.—C. (b) 1.

183 i. *Revsd.*, 34 S. C. R. 228.

PART VII. SECT. 5, SUB-SECT. 4.

sd. *Several actions tried together.*]—Five actions were brought by different pltfs. against two defts. & were by consent tried together before a judge & jury :—*Held :* the consent to try the actions together did not give a right to more than four peremptory challenges on each side.—GAY CO., LTD. *v.* TRICE, [1927] 1 D. L. R. 1091; 60 O. L. R. 8.—CAN.

PART VII. SECT. 6, SUB-SECT. 1.

e i. —— *Panel improperly summoned.*]—Pltf. in an action in a Division Ct. required a jury, pursuant to s. 124 of Division Cts. Act. The clerk of the ct. summoned a jury, but not in the manner prescribed by the Act. Deft. objected & the judge disposed of the difficulty by calling a jury from the body of the ct. The action was tried by the jury thus formed & judgment was entered for pltf. upon the jury's verdict :—*Held :* the judge had no power to deprive either party of the right to have a trial by a jury qualified & summoned according to the strict requirements of the Act.—FOLEY *v.* SANGSTER, [1929] 3 D. L. R. 279; 64 O. L. R. 23.—CAN.

327. *Add. Annotation :*—**Refd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

391. *Add. Annotation :—As to* (1) **Refd.** Croker *v.* Croker (1932), 48 T. L. R. 597.

421. *Add. Annotation :*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

423a. —— **Jury finding verdict before all evidence given.**]—DE FREVILLE *v.* DILL, No. 301a, *ante*.

423b. —— **Jury informed that defendant insured.**]—Where the established rule of practice, that in an accident case it should not be intimated to a jury that deft. is insured, has been violated, it is within the discretion of the judge to discharge the jury at the expense of the party whose advocate has violated the rule.—GRINHAM *v.* DAVIES, [1929] 2 K. B. 249 ; 98 L. J. K. B. 703; 139 L. T. 379; 44 T. L. R. 523; 72 Sol. Jo. 303, D. C.

475. *Add. Annotation :*—**Refd.** Dew *v.* United British S.S. Co. (1928), 139 L. T. 628.

476. *Add. Annotation :*—**Expld.** Dew *v.* United British S.S. Co. (1928), 139 L. T. 628.

571a. —— ——.]—Where an action for damages, based on a breach of a statutory regulation made under Merchant Shipping Act, 1894 (c. 60), was tried by a judge with a jury, & several questions were left to the jury, which they answered :—*Held :* as the answers of the jury to the questions left to them were sufficient to determine the case, the judge was not entitled to ask them to reconsider their findings on the question of the effective cause of the accident, & the judge had thereby misdirected the jury.—DEW *v.* UNITED BRITISH S.S. CO., LTD. (1928), 98 L. J. K. B. 88 ; 139 L. T. 628 ; 17 Asp. M. L. C. 513, C. A.

Annotation :—**Refd.** Service *v.* Sundell (1929), 99 L. J. K. B. 55.

PART VII. SECT. 10, SUB-SECT. 4.

sd. *Agreement after further consideration for few minutes—No ground for setting verdict aside.*]—BARRY *v.* RUBENSTEIN (N. B.), [1926] 1 D. L. R. 445.—**CAN.**

PART VII. SECT. 10, SUB-SECT. 6.

se. *Right to visit locus in quo privately—& communicate result to fellow-jurymen.*] — Although a juryman is entitled to apply to the subject before the jury the general knowledge which each man is supposed to have, he ought not to attempt to inform his mind as to the particular facts of a case from outside sources. If he is personally acquainted with any material fact, he should submit to be sworn as to it :—*Held :* where a matter in dispute depended upon the condition of things existing at a certain locality, it was an improper & irregular proceeding for some of the jurymen to visit the locality privately, & a direction to the jury that they were entitled to take into consideration what might be told to them by any of their fellows as to what they had seen & observed for themselves was a wrong direction.—WAY *v.* WAY (1928), 28 S. R. N. S. W. 345 ; 45 N. S. W. W. N. 101.—**AUS.**

PART VII. SECT. 10, SUB-SECT. 8.—B. (a).

sf. *Discharge for misconduct—How vacancy made good.*]—Where a juror misconducts himself, he should be discharged, & either a new juror added, or the whole jury discharged & a fresh jury impanelled. Such juror may be taken from the persons present in the ct. room if there be none of the summoned jurors present.—REBATI MOHAN CHAKAVARTY *v.* EMPEROR (1928), I. L. R. 56 Calc. 150.—**IND.**

sg. ——.]—Every judge has an inherent power to discharge the jury for misconduct.—ABDUR RASHID *v.* EMPEROR (1929), I. L. R. 56 Calc. 1032.—**IND.**

PART VII. SECT. 10, SUB-SECT. 8.—B. (b).

q i. ——.]—The power given a trial judge by King's Bench Act, R. S. S., 1920 (c. 39), s. 17 (1), to dispense with a jury, although a jury has been claimed by one of the parties, is one which should be exercised with judicial discretion, *i.e.*, the judge must give some good reason for depriving the party of his right to a jury.—BLOOMAERT *v.* DUNLOP (Sask.), [1926] 4 D. L. R. 273 ; [1926] 2 W. W. R. 817.—**CAN.**

q ii. —— *Issue left to jury immaterial.*]—In an action against a police officer for assault & battery, malicious prosecution & malicious arrest, the trial judge dispensed with the jury in the trial of the claim for assault & battery. He also ruled that in the trial of the claim for malicious prosecution it was his duty under Jud. Act, R. S. O. 1914, c. 56, s. 62, to decide all questions both of law & fact as to the existence of reasonable & probable cause ; & he said that the jury would be called upon to try only the issues as to malice & damages. A jury was then called & sworn & the trial proceeded. The evidence being closed, & the jury having retired, the trial judge gave judgment, dismissing the claim for assault, & finding that there was reasonable & probable cause for the prosecution. He also held, on the facts, as a matter of law, that there was no foundation for the claim for malicious arrest. He, therefore, dismissed the whole action & discharged the jury :—*Held :* having regard to Jud. Act, R. S. O. 1927, c. 88, ss. 54–57, 63, the trial judge had a discretion to dispense with the jury, & his discretion was properly exercised. —OWENS *v.* MARTINDALE, [1928] 4 D. L. R. 932; 63 O. L. R. 87.—**CAN.**

PART VII. SECT. 13, SUB-SECT. 1.

466 ii. ——.]—MAYES CASE *v.* PRESCOTT (1925), 52 N. B. R. 272.—**CAN.**

so. *By seven jurors—When permitted.*]—Sect. 54 of Juries Act, R. S. N. S., 1923, which permits a verdict by seven jurors after four hours' deliberation is mandatory as to the time. The time during which evidence is read over to them & the luncheon period should not be included in time of deliberation.—HELPARD *v.* FARMERS, LTD., [1932] 1 D. L. R. 403 ; 4 M. P. R. 175.—**CAN.**

PART VII. SECT. 13, SUB-SECT. 3.—C.

538 ii. ——.]—MCTAVISH BROS. *v.* LANGER (B. C.), [1929] 4 D. L. R. 465 ; *affd.*, [1931] 4 D. L. R. 209, P. C. —**CAN.**

PART VII. SECT. 13, SUB-SECT. 4.

551 i. *Special matter—Statement of reasons.*]—*Held :* the reasons could not be ignored.—SUTTON *v.* SMITH, [1927] 3 D. L. R. 1008 ; [1927] 2 W. W. R. 481 ; 38 B. C. R. 455.—**CAN.**

PART VII. SECT. 15.

571 ii. —.]—If an answer given by a jury to a question is not clear or sufficiently explanatory, it is a proper course for the trial judge to ask them to retire again & answer such supplementary questions as may be submitted to them for the purpose of further elucidation.—PATTERSON *v.* SASKATCHEWAN CREAMERY CO., LTD., [1921] 3 W. W. R. 554 ; 62 D. L. R. 387 ; 14 Sask. L. R. 544.—**CAN.**

571 iii. —— ——.]—Where a jury has given a general answer to a question & has been sent back to give a more definite answer & does answer more definitely, the last answer is its real answer & the one which must govern.—BARLOW *v.* CANADIAN PACIFIC RY., [1926] 2 D. L. R. 956 ; [1926] 2 W. W. R. 11 ; 31 Can. Ry. Cas. 414 ; 35 Man. L. R. 517.—**CAN.**

LAND IMPROVEMENT.

Part I.—Apart from Statute.

14. *Add. Annotations :—As to* (2) **Apld.** *Re* Jacques Settled Estates, [1930] 2 Ch. 418. *Generally*, **Refd.** *Re* Borough Court Estate, [1932] 2 Ch. 39.

Part III.—Under Settled Land Act, 1925.

72a. ..]—*I* SHERBORNE'S (LORD) ESTATE, No. 79a, *post.*

79a. Authorised improvements — Improvements executed before Settled Land Act, 1925 (c. 18).]—(1) A tenant for life of certain settled estates had expended on the settled property large sums of money for improvements, repairs & other works. Among the items of expenditure so incurred were certain electric light installations to the mansion house & the erection of batteries. These particular works had been carried out before the coming into force of above Act, & were therefore not "authorised improvements" under Settled Land Acts, 1882 to 1890, for which the ct. could have granted repayment to the tenant for life out of capital, although under the new Act of 1925 they would be "authorised improvements." On an application by the tenant for life to be recouped out of capital these sums so expended by him : —*Held :* notwithstanding the fact that these works were executed prior to above Act, there was, under the new Act, jurisdiction in the ct., if it thought fit, to order repayment of these sums to the tenant for life out of capital moneys ; & consequently as these particular items were "authorised improvements" under above Act, they could be repayable out of capital, notwithstanding the fact that they were incurred on works executed before Jan. 1. 1926. Having regard, however, to the fact that certain of the works had been carried out several years previously, there would have to be a rebate to allow for a diminished value.

(2) The tenant for life having further claimed that he should be repaid a proportion of the proceeds of sale of a part of the settled land, for tenant right valuation, on the ground that by his careful management before the sale he had enhanced its value :—*Held :* such a claim was really one to be repaid out of capital moneys, for an improvement not within Settled Land Acts, & the ct. had no jurisdiction to allow it.—*Re* SHERBORNE'S (LORD) SETTLED ESTATE, [1929] 1 Ch. 345 ; 98 L. J. Ch. 273 ; 141 L. T. 87.

Annotations :—As to (1) **Refd.** *Re* Jacques Settled Estates, [1930] 2 Ch. 418 ; *Re* Borough Court Estate, [1932] 2 Ch. 39.

79b. —— —— **Effect of sale of land.**]—A tenant for life of settled property comprising a mansion house & land carried out in 1920 improvements not all of which were authorised by Settled Land Acts, 1882 to 1890. He did not submit, as required by the Act of 1882, a scheme for approval by the Settled Land Act trustees or by the ct. ; & he paid for the improvements himself. In 1923 he sold most of the land, & in 1929 he sold the remainder of the land & the mansion house. On a summons by him asking (*inter alia*) that, pursuant to Settled Land Act, 1925 (c. 18), s. 87, the trustees might be directed or authorised to raise out of the capital moneys comprised in the settlement & to pay to him the costs of improvements authorised by the Settled Land Acts & executed at the cost of the tenant for life, notwithstanding that a scheme was not, before the execution of the improvements, submitted for approval, as required by the Settled Land Act, 1882, to the trustees of the settlement or the ct. :—*Held :* (1) the ct. could authorise recoupment of the expenditure by the tenant for life on the settled land incurred before 1926, in so far as it was expenditure on "improvements" within Settled Land Act, 1925 (c. 18) ; (2) having regard to Settled Land Act, 1925 (c. 18), ss. 84, 87, the sale of the property did not terminate the ct.'s jurisdiction to order repayment ; (3) as the appct. must at the time have expected himself to pay the sums spent on improvements which after 1925 came within Settled Land Act, 1925 (c. 18), Sched. III., Part 2, the jurisdiction ought not to be exercised.—*Re* BOROUGH COURT ESTATE, [1932] 2 Ch. 39 ; 101 L. J. Ch. 316 ; 147 L. T. 476 ; 75 Sol. Jo. 830.

79c. —— **Electric lighting.**]—*Re* SHERBORNE'S (LORD) SETTLED ESTATE, No. 79a, *ante.*

79d. —— ——.]—*Re* WELD-BLUNDELL ESTATE, MOWBRAY (LORD) *v.* WELD-BLUNDELL (1929), 73 Sol. Jo. 585.

79e. ..]—In 1919 the tenant for life of settled land effected the installation of electric light in the mansion house & adjoining cottages, which had previously been lit by oil lamps. The cost of the installation was paid by the tenant for life out of his own money. The tenant for life now asked the ct. to authorise the trustees of the settlement to apply out of capital moneys the cost of the installation, the amount of such cost to be repaid to them out of the income of the settled land in fifteen years from the date of the order in half-yearly instalments :—*Held :* the improvement being one that would have had to be made sooner or later, the order asked for should be made, repayment to be made by twenty half-yearly instalments, whereof the first must be regarded as having fallen due on June 30, 1926.—*Re* JACQUES SETTLED ESTATES, [1930] 2 Ch. 418 ; 99 L. J. Ch. 534 ; 144 L. T. 103.

Annotation :—**Apld.** *Re* Borough Court Estate, [1932] 2 Ch. 39.

88. *Add. Annotations :*—**Consd.** *Re* Smith, Vincent *v.* Smith, [1930] 1 Ch. 88. **Refd.** *Re* Whitaker, Rooke *v.* Whitaker, [1929] 1 Ch. 662.

208. *Add. Annotation :*—**Refd.** *Re* Borough Court Estate, [1932] 2 Ch. 39.

Part IV.—Under Private Improvement Acts.

210. *Add. Annotation :*—**Refd.** A.-G. *v.* Smethwick Corpn. (1932), 96 J. P. 105.

216a. When effective.]—An improvement rentcharge imposed on land within the improvement area under London County Council (Improvements) Act, 1899, s. 61 :—*Held :* not an effective charge on the land until after a resolution of the council approving the assessment, notwithstanding that the improvement itself had been completed at an earlier date ; & if the land was contracted to be sold free from incumbrances after the completion of the improvement but before the date of such resolution, the purchaser was not entitled to a conveyance of the land free from the improvement rentcharge.—*Re* FARRER & GILBERT'S CONTRACT, [1914] 1 Ch. 125 ; 83 L. J. Ch. 177 ; 110 L. T. 23 ; 58 Sol. Jo. 98, C. A.

PART VI.

sd. *By locatee of Crown land—Basis of assessment.*]—HIGHLAND *v.* SHERRY (1900), 32 O. R. 371.—**CAN.**

LAND TAX.

12. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* Forth Conservancy Board, [1929] A. C. 213.

116. *Add. Annotation :*—**Refd. Parr** *v.* **A.-G.,** [1926] A. C. 239.

122. *Add. Annotation :*—**Refd.** Elder *v.* Northcott, [1930] 2 Ch. 422.

SECT. 4, SUB-SECT. 4.

h i. —— *In ascertaining unimproved value—Land held under Crown leases.*] —JOWETT *v.* FEDERAL TAXATION COMR. (1926), 38 C. L. R. 325.—**AUS.**

h ii. —— —— *Licensed premises.*]— *Re* LAND TAX ACTS, WILSON'S CASE, [1927] V. L. R. 399; 49 A. L. T. 54; [1927] Argus L. R. 328.—**AUS.**

LANDLORD AND TENANT.

Part I.—Relation of Landlord and Tenant.

1. *Add. Annotation :*—**Refd.** Oakley *v.* Wilson, [1927] 2 K. B. 279.

100. *Add. Annotations :*—**Refd.** *Re* Bruce, Brudenell *v.* Brudenell, [1932] 1 Ch. 316; Wirral Estates, Ltd. *v.* Shaw (1932), 96 J. P. 143, C. A.

182. *Add. Annotation :*—**Refd.** Taylor *v.* Twinberrow, [1930] 2 K. B. 16.

230. *Add. Annotations :*—**Apld.** Weld *v.* Petre, [1929] 1 Ch. 33. **Refd.** Barratt *v.* Richardson & Cresswell, [1930] 1 K. B. 686.

267. *Add. Annotation :*—**Refd.** Canadian Pacific Ry. Co. *v.* R., [1931] A. C. 414.

Part II.—Agreements for Lease.

330a. ——.]—DOE d. HASTINGS *v.* WATERS (1850), 16 L. T. O. S. 213.

362. *Add. Annotation :—As to* (1) **Refd.** Franco-British Ship Store Co. *v.* Compagnie des Chargeurs Française (1926), 42 T. L. R. 735.

368. *Add. Annotations :*—**Consd.** Todd *v.* Jones Bros., Ltd. (1930), 15 Tax Cas. 396. **Refd.** Keppel *v.* Wheeler, [1927] 1 K. B. 577.

370a. —— **Agreement "subject to the terms of a lease."**]—Deft. employed house agents to let shop premises at 155, High Street, Bromley, Kent, & on Dec. 9, 1930, pltf., after inspecting the premises, offered to take a lease. In reply the house agents wrote to him on the same day : "Corner shop, 155, High Street, Bromley. Referring to our conversation this morning on the telephone, we confirm that, subject to the terms of a lease, our client is prepared to accept your offer to take the above premises on a 7, 14 or 21 years' lease at a rent of £350 per annum for the first 14 years, rising to £375 for the last 7 years . . . . We have instructed Mr. Bromley's solrs. to put the draft lease in hand immediately to forward to your solrs. . . ." The draft lease was forwarded on the same day, & after negotiations as to

PART I. SECT. 2, SUB-SECT. 1.

sx. *Contract of guarantee.*]—By an agreement defts. guaranteed fulfilment of the conditions of the transfer of a lease, including payment of rent to O., the lessor & his son, the transferor. This agreement contained a clause providing that, should B., the transferee, become insolvent, O. & his son might claim from defts. immediate payment of the balance of the sum of $10,250, being the amount due by B. under the assignment, & upon payment of that balance, defts. should be entitled to the benefit of the term allowed under the original lease & the transfer thereof. B. made an assignment under Bkpcy. Act, by virtue whereof the term created by the lease & transfer became vested in the trustee, who did not elect to retain the premises or to disclaim :—*Held :* the effect of the transfer, lease, & guarantee was to establish the relation of lessor & lessee between O. & B.—OLIVIER *v.* SOLLOWAY, MILLS & Co., [1930] 3 D. L. R. 851; 65 O. L. R. 356; 11 C. B. R. 356.—**CAN.**

PART I. SECT. 2, SUB-SECT. 2.—A.

29 i. *Definition—Substitution of landlord by tenant.*]—Attornment is not a mere agreement in favour of a third party to pay rent, but has been defined as the act of the tenant in putting one person in the place of another as his landlord.—JUGENDRA LAL SARKAR *v.* MOHESH CHANDRA SADHIR (1928), I. L. R. 55 Calc. 1013.—**IND.**

sp. *Necessity for intention to create relationship.*]—It is essential to the creation of the relationship of landlord & tenant under an attornment clause in an agreement for the sale of land that the tenancy be a real one at a real rental. The test is whether there was a *bonâ fide* intention in the parties to create such a tenancy at the time they made the agreement.—WEED *v.* SIMPSON, [1931] 3 W. W. R. 753.—**CAN.**

PART I. SECT. 2, SUB-SECT. 2.—B.

sa. *Under clause in agreement for sale.*]—In deciding whether an attornment clause in an agreement for the sale of land created the relationship of landlord & tenant between the vendor & the purchaser the ct. has to determine whether the parties introduced the clause *bonâ fide*, & this question must be determined on the circumstances of the particular case. Although the fact that the rental reserved is fluctuating is not usually of much point, yet it is a circumstance to be considered.—BLOOMAERT *v.* DUNLOP, [1927] 3 D. L. R. 57; [1927] 1 W. W. R. 1014; 21 Sask. L. R. 424.—**CAN.**

PART I. SECT. 3, SUB-SECT. 1.—A.

63 xxvi. ——.]—VERTANNES *v.* ROBINSON (1927), I. L. R. 5 Ran. 427.—**IND.**

63 xxvii. ——.]—MCDONALD *v.* ARBUCKLES (1889), 22 N. S. R. 67.—**CAN.**

63 xxviii. ——.]—BROCK *v.* BENNESS (1898), 29 O. R. 468.—**CAN.**

63 xxix. ——.]—In an action in ejectment by a landlord who put the tenant into possession, the tenant is estopped from denying the landlord's title at the point of time of the demise, & further cannot put forward in defence any adverse title to a portion of the demised premises acquired by him during the tenancy. The estoppel operates in the case of a tenant who remains in possession even after the termination of the tenancy by notice to quit.—MUJIBAR RAHMAN *v.* ISUB SURATI (1928), I. L. R. 56 Cal. 15.—**IND.**

sb. *Lessor unincorporated society.*]—*Held :* an unincorporated society such as the Chinese National League of China, although not within the prohibition of sect. 8 of the Companies Act, R. S. B. C., 1924, inasmuch as it has not "for its object the acquisition of gain," is incapable of making a lease; the appellate ct. erred in holding that applt. was estopped from setting up incapacity of the alleged landlords on the ground that to do so would be tantamount to impeaching the title to the premises of the persons by whom it was let into possession of them as tenant. To extend the estoppel, which exists where the relationship of landlord & tenant is admitted or established, & which prevents the tenant questioning the landlord's title, so as to make it apply to a case in which the real question is as to the existence of that relationship, seems to be wrong in principle & is quite unwarranted by the authorities.—CANADA MORNING NEWS CO. *v.* THOMPSON & BINNINGTON, LOW YEE QUAN & WAI HON, [1930] S. C. R. 338; 3 D. L. R. 833; *revsg.*, [1929] 2 D. L. R. 114; 1 W. W. R. 548; 41 B. C. R. 24; *revsg.*, [1928] 4 D. L. R. 628; 3 W. W. R. 35; 40 B. C. R. 230.—**CAN.**

PART I. SECT. 3, SUB-SECT. 1.—E.

154 i. *Whether tenant estopped—While possession retained—After expiration of tenancy.*]—In an action in ejectment by a landlord who put the tenant into possession, the tenant is estopped from denying the landlord's title at the point of time of the demise, & further cannot put forward in defence any adverse title to a portion of the demised premises acquired by him during the tenancy. The estoppel operates in the case of a tenant who remains in possession even after the termination of the tenancy by notice to quit.—MUJIBAR RAHMAN *v.* ISUB SURATI (1928), I. L. R. 56 Calc. 15.—**IND.**

PART I. SECT. 3, SUB-SECT. 3.

sd. *Lease by life tenant to reversioner—Until death of lessor.*]—A lease by a life tenant for a term certain to the reversioner, containing a covenant by the lessee to pay rent to the lessor, "her heirs & assigns," does not estop the lessee from showing that he has become owner on the lessor's death.—THATCHER *v.* BOWMAN (1889), 18 O. R. 265.—**CAN.**

its terms deft.'s solrs. wrote on Dec. 29, 1930, to pltf.'s solrs.: "We have now received our client's instructions on the draft lease, & he is prepared to accept your client's alterations. We are, therefore, having the lease engrossed, & will forward you a counterpart for execution by your client in due course." This was done, but deft. then refused to execute the lease, & on Jan. 24, 1931, granted a lease of the premises to some one else. On Feb. 3, 1931, pltf. commenced proceedings for specific performance, or, alternatively, damages:—*Held:* there was no binding contract to grant a lease, as the expression "subject to the terms of a lease" in the letter of Dec. 9, 1930, meant "subject to the terms to be contained in a lease executed by the lessor." It followed that even if deft.'s solrs. were the agents of deft. to communicate by their letter of Dec. 29, 1930, the fact that deft. had himself agreed to the terms of the lease, so that this letter was a sufficient memorandum of the agreement signed by the deft.'s duly authorised agents within Law of Property Act, 1925 (c. 20), s. 40, there was no binding contract, because the result of the letter of Dec. 9, 1930, was that there could be no concluded agreement until the lease had been executed.—RAINGOLD *v.* BROMLEY, [1931] 2 Ch. 307; 100 L. J. Ch. 337; 145 L. T. 611.

381. *Add. Annotation:*—*As to* (1) **Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

390. *Add. Annotation:*—**Refd.** Hawkesworth *v.* Turner (1930), 46 T. L. R. 389.

396a. —— **Letter purporting to enclose engrossment—& engrossment.**]—A prospective lessee having orally agreed to take a lease from a prospective lessor, a draft lease embodying the terms was approved by their respective solrs. By arrangement the engrossments of the lease & counterpart were then prepared by the lessee's solrs., who subsequently wrote to the lessor's solr. purporting to enclose the engrossment of the lease for his signature, & saying they had written to the lessee & expected to exchange parts shortly. By mistake the engrossment of the counterpart was enclosed to the lessor's solr., & the engrossment of the lease to the lessee, who subsequently delivered it to the lessor's solr.'s messenger in exchange for the engrossment of the counterpart. Shortly after this the lessee, relying (*inter alia*) on Stat. Frauds, repudiated the oral contract:—*Held:* the lessee's solrs.' letter purporting to enclose the engrossment of the lease coupled with that engrossment, subsequently handed over by the lessee in person, constituted a sufficient memorandum of the oral contract.—HORNER *v.* WALKER, [1923] 2 Ch. 218; 92 L. J. Ch. 573; 129 L. T. 782.

444. *Add. Annotation:*—**Refd.** Flexman *v.* Corbett, [1930] 1 Ch. 672.

463a. ——.]—BOWERS *v.* CATOR (1798), 4 Ves. 91; 31 E. R. 47.

470a. ——.]—Pltf. agreed to let certain premises to deft. for seven years, but no lease was ever granted. Deft. entered into possession, & subsequently, with pltf.'s consent, assigned his interest in the agreement & premises. Before the expiration of the term pltf. commenced an action against deft. for rent, the action being heard after the expiration of the seven years provided for by the agreement:—*Held:* specific performance of the agreement could have been granted & the action was therefore maintainable.—GILBEY *v.* COSSEY (1912), 106 L. T. 607; 56 Sol. Jo. 363, D. C.

472a. —— ——.]—ANON. (1718), 2 Eq. Cas. Abr. 48; 22 E. R. 42, L. C.

476. *Add. Annotation:*—**Consd.** Ariff *v.* Rai Jadunath Majumdar Bahadur (1931), 47 T. L. R. 238.

482. *Add. Annotations:*—**Consd.** Ariff *v.* Rai Jadunath Majumdar Bahadur (1931), 47 T. L. R. 238. **Refd.** Canadian Pacific Ry. Co. *v.* R., [1931] A. C. 414.

487a. —— —.]—Under an oral agreement, in 1913, applt. leased to resp. a small piece of land in India. It was intended in due course to execute a lease in writing for five years, renewable every five years, & in anticipation thereof resp. erected substantial structures on the leased land. No lease was, in fact, ever executed. In 1922 applt. served notice to quit upon resp., asserting that resp. was a monthly tenant; & in 1923 a suit for possession of the land was instituted by applt. It was established that in 1918 resp. had notice that applt. refused to perform the terms of the oral agreement of 1913:—*Held:* the acts of resp. were all referable to the oral contract of 1913 which was enforceable against applt. for a certain time, but resp. had allowed his right to enforce that contract to become statute-barred.—ARIFF *v.* RAI JADUNATH MAJUMDAR BAHADUR (1931), 47 T. L. R. 238.

499. *Add. Annotation:*—**Refd.** Rye *v.* Purcell, [1926] 1 K. B. 446.

501. *Add. Annotation:*—**Refd.** Rye *v.* Purcell, [1926] 1 K. B. 446.

503a. ——.]—ALLAN *v.* BOWER (1790), 3 Bro. C. C. 149; 29 E. R. 459, L. C.

Annotations:—**Distd.** Brodie *v.* St. Paul (1791), 1 Ves. 326. **Refd.** Clayton *v.* A.-G. (1834), 1 Coop. *temp.* Cott. 97.

PART II. SECT. 4, SUB-SECT. 2.—C. (a) ii.

472 i. *Whether part performance—Entry & expenditure with acquiescence of lessor.*]—Where there was a parol agreement between pltf. & deft. to the effect that pltf. would grant a permanent lease to deft. in respect of a piece of land, & where no lease was either executed or registered, but deft. was put into possession & erected structures thereon to pltf.'s knowledge, where it appeared that pltf. must have realised that deft. would not have constructed the same unless he was assured of the possession of a permanent right in the land, & that if the intention of pltf. was not to grant such a lease it might reasonably be expected that he would have objected to the construction of such a building:—*Held:* in a suit of ejectment by the lessor, deft., not having obtained a lease in conformity with Transfer of Property Act, s. 107, read with Registration Act, s. 49, could resist ejectment only if the case could be brought within the range of one or other of those principles of equity which have been held to apply to this country.—ARIFF *v.* JADU NATH MAJUMDAR (1928), I. L. R. 55 Calc. 1090.—**IND.**

PART II. SECT. 6, SUB-SECT. 1.

se. *Extent of obligation.*]—The Indian law does not make a distinction in principle between the obligation of a lessor & of a vendor, so far as regards the duty to give a good title, though the incidents of these different types of contract may be different as regards the obligation to give disclosure or to furnish proof thereof.—JYOTIPRASAD SINGH DEO *v.* H. V. LOW & Co. (1929), I. L. R. 57 Calc. 1189.—**IND.**

547. *Add. Annotation :*—**Consd.** Ladies' Hosiery & Underwear *v.* Parker (1929), 46 T. L. R. 43.

568. *Add. Annotations :—As to* (1) **Refd.** Ariff *v.* Rai Jadunath Majumdar Bahadur (1931), 47 T. L. R. 238. *As to* (2) **Distd.** Borman *v.* Griffith, [1930] 1 Ch. 493.

600. *Add. Annotation :*—**Refd.** Torbay Hotels *v.* Jenkins, [1927] 2 Ch. 225.

637. *Add. Annotation :*—**Apld.** Curtis Moffat, Ltd. *v.* Wheeler, [1929] 2 Ch. 224.

639. *Add. Annotation :—As to* (2) **Apld.** Curtis Moffat, Ltd. *v.* Wheeler, [1929] 2 Ch. 224.

750. *Add. Annotation :*—**Consd.** Jardine *v.* A.-G. for Newfoundland (1932), 48 T. L. R. 199.

834. *Add. Annotation :*—**Refd.** York Glass Co. *v.* Jubb (1925), 134 L. T. 36.

845a. —— **Failure to perform condition precedent.**]—FISCHER *v.* KAMALA NAICKER (1860), 8 Moo. Ind. App. 170; 2 L. T. 94; 8 W. R. 655; 19 E. R. 495, P. C.

864. *Add. Annotation :*—**Refd.** *Re* Gough (1927), 71 Sol. Jo. 470.

Part III.—Leases.

981. *Add. Annotation :*—**Refd.** Palmer *v.* Crone [1927] 1 K. B. 804.

1082a. —— ——.]—DUCK *v.* BRADDYLL (1824), M'Cle. 217; 13 Price, 455; 147 E. R. 1047.

Annotation :—**Foll.** Doe d. Kettle *v.* Lewis (1830), 10 B. & C. 673.

1195a. ——.]—SUSSEX (COUNTESS) *v.* WROTH (1582), Cro. Eliz. 5; 78 E. R. 272; *sub nom.* SUSSEX (COUNTESS) & WORTHS CASE, 4 Leon. 65.

1197a. —.]—SLOCOMB *v.* HAWKINS (1612), Yelv. 222; 80 E. R. 145; *sub nom.* SHECOMB *v.* HAWKINS, Cro. Jac. 318.

Annotations :—**Consd.** Berry *v.* White (1662), O. Bridg. 82. **Refd.** Mun *v.* Baylies (1673), Freem. K. B. 340; Winter *v.* Loveday (1697), 1 Com. 37.

1225a. —— ——.]—ANON. (1553), Bro. N. C. 95, pl. 437; 73 E. R. 895.

1258. *Add. Annotation :*—**Refd.** Manchester Corpn. *v.* Audenshaw U. C. & Denton U. C., [1928] Ch. 763.

1295. *Add. Citation :—sub nom.* R. *v.* HASTINGS POOR LAW UNION GUARDIANS, 13 L. T. 362.

1313. *Add. Annotation :*—**Refd.** Taylor *v.* Twinberrow, [1930] 2 K. B. 16.

1355. *Add. Annotation :*—**Refd.** Lowther *v.* Clifford, [1927] 1 K. B. 130.

1372a. —— **Destruction of premises—By fire.**]—Deft. demised to pltfs. for three years a piece of land with a factory on it, & pltfs. were to keep the inside of the factory in repair. The agreement said nothing as to the repair of the outside & as to insurance, but gave pltfs. an option of purchase during the term. Deft. insured the factory against fire, &, on the occurrence of a fire which almost completely destroyed it, he received compensation from the insurance co. Pltfs. then gave notice of the exercise of their option of purchase & paid a deposit, but deft. declined to reinstate the walls & roof, & alleged that in exercising the option pltfs. had to take the property as it was. In an action for a declaration that pltfs. were not bound to proceed with the purchase, deft. counterclaimed for specific performance :—*Held :* since at the date of the exercise of the option pltfs., to the knowledge of deft., thought that he was going to re-erect the factory, the parties were never *ad idem*, & pltfs. were entitled to a return of their deposit, & the counterclaim for specific performance failed.—LONDON HOLEPROOF HOSIERY CO., LTD. *v.* PADMORE (1928), 44 T. L. R. 499, C. A.

PART II. SECT. 8, SUB-SECT. 1.—C. (a).

sf. *Valuation of furniture.*]—WALKER *v.* KELLY (1871), 24 C. P. 174.—**CAN.**

PART II. SECT. 8, SUB-SECT. 1.—F. (p).

814 ii. —— *Right of party to waive condition in his favour.*]—PARAMOUNT THEATRES, LTD. *v.* BRANDENBERGER, [1928] 4 D. L. R. 573; 62 O. L. R. 579.—**CAN.**

PART II. SECT. 8, SUB-SECT. 2.—A. (b) i.

m i. —— *Breach due to former tenant holding over.*]—Defts. leased to pltfs. premises for a term of five years commencing Sept. 1, 1928. The T. co. refused to vacate the premises, contending that they were in possession under an oral lease, & an action was brought by the T. co. which failed & was dismissed; but it was not until Sept. 7, 1929, that the present pltfs. obtained possession under their lease; & this action was brought to recover damages suffered by reason of the delay. Defts. brought in T. co. as third parties :—*Held :* pltfs. were entitled to succeed & to recover more than nominal damages.—REGENT TAILORS, LTD. *v.* MCARTHUR, [1931] 1 D. L. R. 492; 66 O. L. R. 169.—**CAN.**

PART II. SECT. 8, SUB-SECT. 2.—A. (c).

p i. —— *To set off money paid under agreement against damages.*]—On the breach of a contract, forfeiture does not attach, in the absence of a stipulation therefor, to money handed over, not as a deposit to bind the bargain, but merely as a part payment under the contract; but the party to whom the money was paid is entitled to have set off, as against the claim for the return thereof, whatever sum he may be entitled to as damages for the breach.—ENG CHOW *v.* BALFOUR, [1928] 3 D. L. R. 608; [1928] 2 W. W. R. 158; 22 Sask. L. R. 556.—**CAN.**

PART III. SECT. 1, SUB-SECT. 6.

sg. *Unincorporated body—Effect of lease to.*]—A lease cannot be made to an unincorporated body by name, & any attempt to do so is nugatory. The utmost effect that can be given to such an attempted lease is to construe it as a lease to the members of the body as the membership existed at the date of the agreement.—HENDERSON *v.* TORONTO GENERAL TRUSTS CORPN., [1928] 3 D. L. R. 411; 62 O. L. R. 303.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.

972 v. ——.]—WILLIAMS MACHINE CO. OF WINNIPEG, LTD. *v.* WINNIPEG STORAGE, LTD. (Man.), [1926] 4 D. L. R. 1167; [1926] 3 W. W. R. 451; *revsd.*, [1928] 1 D. L. R. 12; [1927] 3 W. W. R. 665.

PART III. SECT. 6.

n i. —— *"Rights, liberties, privileges & appurtenances."*]—*Held :* to pass the right to advertise premises by means of a man standing with an advertisement board at the entrance to an arcade.—HENRY, LTD. *v.* M'GLADE, [1926] N. 144.—**IR.**

PART III. SECT. 12, SUB-SECT. 1.—B. (a).

1373 i. *Presumption of exercise.*]—CAHUAC *v.* SCOTT, CAHUAC *v.* ERLE (1872), 22 C. P. 551.—**CAN.**

PART III. SECT. 12, SUB-SECT. 1.—B. (b).

a i. ——.]—An agreement for lease made between deft. as lessor & pltf. as lessee contained an option to purchase, of which the following are material portions : " & it is hereby declared & agreed that if the lessee at any time prior to the expiration of the term hereby granted shall give to the lessor one month's notice in writing that he desires to purchase the freehold of the said land hereby demised the lessor on or before the expiration of such notice will . . . transfer the said demised

Part IV.—Underleases.

1469. *Add. Annotation:*—**Reld.** Melzak *v.* Lilienfeld, [1926] Ch. 480.

1470. *Add. Annotations:*—*As to* (2) **Apld.** Flexman *v.* Corbett, [1930] 1 Ch. 672. **Reld.** Melzak *v.* Lilienfeld, [1926] Ch. 480.

1514. *Add. Citations:*—95 L. J. Ch. 305; 135 L. T. 145.

1526a. Underlessee of sub-term in mortgaged premises—Covenant for further assurance in mortgage—Underlessee entitled to conveyance of legal estate—Law of Property Act, 1925 (c. 20), Sched. I., Part II., paras. 3, 6 (d).]—A. in 1926 had become entitled to a sub-term in certain mortgaged leasehold premises acquired by purchase by a predecessor in title from a mtgee. The original mtge. was made in 1848, & contained a covenant by the then mtgor. with the then mtgee. his exors. administrators & assigns (*inter alia*) for further assurance of the nominal reversion in the three outstanding days in the head lease, thereby mortgaged, if required. In the head lease were certain covenants by the lessee for repair of the premises. The freehold of the demised property ultimately became absolutely vested in pltf. for an estate in fee simple. A. had gone into possession of the mtged. premises, but relinquished such possession before the trial of the action. Pltf. alleged that there had been a breach of the covenant to repair contained in the head lease & claimed (*inter alia*) damages against A. It appeared that the nominal reversion in the head lease had never been got in by any one, & A. denied that, as there was no privity of estate between him & pltf., he could be held liable under the repairing covenant contained in the head lease. It was alleged, however, by pltf., that having regard to the fact that A., by reason of the covenant for further assurance contained in the mtge., was a person "entitled to require a legal estate to be conveyed to or otherwise vested in him" under Law of Property Act, 1925 (c. 20), Sched. I., Part II., para. 3, such legal estate, namely, the nominal reversion, vested in him by Sched. II., Part II., para. 6 (*d*), & rendered him liable on the repairing covenants contained in the head lease:—*Held:* on the facts of the case, A. was liable by reason of the operation of Sched. I., Part II., paras. 3 & 6 (*d*), as a person entitled to require a legal estate to be conveyed to or otherwise vested in him; &, further, that he had not availed himself of the provisions of the Sched. to the Law of Property (Amendment) Act, 1926 (c. 11), enabling persons to disclaim the vesting of any legal estate affected by onerous covenants.—PEACHY *v.* YOUNG, [1929] 1 Ch. 449; 98 L. J. Ch. 237; 140 L. T. 608.

Part V.—Agreements Collateral to Leases.

1569. *Add. Annotations:*—**Consd.** Jameson *v.* Kinmell Bay Land Co. (1931), 47 T. L. R. 410. **Apld.** Miller *v.* Cannon Hill Estates, Ltd., [1931] 2 K. B. 113.

1578. *Add. Annotation:*—**Reld.** *Re* Savile Settled Estates, Savile *v.* Savile, [1931] 2 Ch. 210.

premises to the lessee," etc. The notice of his desire to exercise the option was given by pltf. to deft. on Nov. 27, 1928. The term of the lease expired on Dec. 1, 1928:—*Held:* the option required for its exercise that one month's notice thereunder should be given at a time to expire within the term of the lease & this condition, which must be strictly construed, not having been complied with there was no binding contract of sale.—GARDINER *v.* FLUX, [1929] N. Z. L. R. 697.—**N.Z.**

PART III. SECT. 12, SUB-SECT. 1.—C.

g i. —— —— "*Balance to be arranged.*"]—An option given the lessee of a hotel to purchase it within a year for $45,000; $15,000 cash & "the balance to be arranged," held to be unenforceable because incomplete.—MCSORLEY *v.* MURPHY, [1928] 4 D. L. R. 790; [1928] 3 W. W. R. 589; 40 B. C. R. 403; *affd. sub nom.* MURPHY *v.* MCSORLEY & PRINCE EDWARD HOTELS, LTD., [1929] 4 D. L. R. 247; S. C. R. 542.—**CAN.**

PART III. SECT. 13, SUB-SECT. 1.—A.

ak. *Premises no longer available for purposes contemplated.*]—A fishery co. were the tenants of salmon fishings under a lease for nineteen fishing seasons. During the currency of the lease, the President of the Air Council, acting under statutory powers, made bye-laws converting the greater part of the area occupied by the fishings into a danger zone for the purposes of aerial gunnery & bombing practice. The bye-laws provided that practice would take place within the zone four days a week throughout the year, & that, during practice, no person might enter the zone, or bring thereon any vehicle, animal, vessel, aircraft or thing, & penalties were imposed for contraventions of the bye-laws. The effect of a due observance of these bye-laws would be to render the fishings incapable of possession for the purposes of the lease, & although bombing & firing practice had taken place only on a portion of the days reserved, the fishery co. had not attempted, since the bye-laws were promulgated, to exercise their right of fishing. In an action by the fishery co. against their landlord for declarator that they were entitled to abandon the lease:—*Held:* as the effect of the bye-laws was to cause total eviction from the fishings, the landlord could no longer maintain the pursuers in possession of the subjects of the lease, as he was bound to do, &, accordingly, pursuers were entitled to abandon the lease.—TAY SALMON CO. *v.* SPEEDIE, [1929] S. C. (Ct. of Sess.) 593.—**SCOT.**

PART III. SECT. 13, SUB-SECT. 2.

al. *Terms introduced differing from terms of agreement—Lease executed under order for specific performance.*]—Where a lease has been executed under an order of ct. for the specific performance of an agreement, the party obtaining such lease is not estopped from proving that conditions & covenants have been introduced into it different from those which were contained in the original agreement.—FREEMAN *v.* KENNY (1817), 1 Nfld. L. R. 3.—**NFLD.**

PART IV. SECT. 3, SUB-SECT. 1.

1435 iii. ——.]—BEJOY LAL SEAL *v.* BENARASIDAS KHANDELWAL (1927), I. L. R. 54 Calc. 948.—**IND.**

1435 iv. ——.]—Under Transfer of Property Act, 1882, having regard to s. 105 & s. 108 (*j*), an underlease for the entire residue of the under lessor's term operates, in the absence of a contract to the contrary, as an underlease, & does not, as ordinarily under English law, constitute an assignment of the lease.—HUNSRAJ *v.* BEJOY LAL SEAL (1929), 57 L. R. Ind. App. 110, P. C.—**IND.**

PART IV. SECT. 5, SUB-SECT. 2.

1471 i. *By what covenants underlessee bound—Usual covenants—Underlease of licensed premises.*]—MCGARRITY *v.* CONDY (1927), 27 S. R. N. S. W. 217; 44 N. S. W. W. N. 61.—**AUS.**

Part VI.—Licence.

1609. *Add. Annotation :*—**Refd.** Peech *v.* Best (1930) 99 L. J. K. B. 537.

1611. *Add. Annotation :*—**Refd.** New Liverpool Eastham Ferry & Hotel Co., Ltd. *v.* Ocean Accident & Guarantee Corpn., Ltd. (1929), 142 L. T. 349.

1643. *Add. Annotation :*—**Refd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

1650. *Add. Annotations :*—**Refd.** Chaplin *v.* Smith, [1926] 1 K. B. 198 ; Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

1651. *Add. Annotation :*—**Refd.** Gee *v.* Hazleton, [1932] 1 K. B. 179.

1653a. ——.]—GEE *v.* HAZLETON, No. 7041b, *post.*

1657. *Add. Annotation :*—**Refd.** Johnson *v.* Clarke, [1928] Ch. 847.

1664a. Acquiescence.]—Whether any & what restrictions exist on the power of a licensor to determine a revocable licence to occupy land depends upon the circumstances of each case. In 1926 the Crown proceeded against applts. alleging that poles, carrying telegraph wires, which they had erected on the roadway of a Canadian Govt. railway, were a trespass thereon, & claiming damages ; alternatively the Crown claimed a declaration of applts.' rights, if any. As to the main section of the telegraph line, the poles, as they stood in 1926, had been erected upon the roadway between 1905 & 1910 without leave or licence. As to two branch lines, the poles had been erected in 1893 & 1911 respectively, in each case while an agreement was in negotiation though no agreement was eventually concluded. The whole telegraph line, which was about 500 miles in length, was used by the public as well as by applts. :—*Held :* (1) on the facts, at the date of the proceedings all the poles were on the roadway with the licence of the Crown. Although applts. had originally been trespassers in respect of the main line poles, many years' acquiescence & a claim to the payment of rent, had long since prevented them from being so regarded ; in the case of the branch lines, it was to be inferred that the poles had been erected by licence ; (2) the licence was revocable in the absence of any facts from which a contract that it should be irrevocable could be implied ; (3) having regard to the circumstances, the licence could be revoked only by a notice determining it upon a specified future date such as would give applts. sufficient time, not only to remove the poles & wires, but also to arrange for erecting them elsewhere. —CANADIAN PACIFIC RY. CO. *v.* R., [1931] A. C. 414 ; 100 L. J. P. C. 129 ; 145 L. T. 129, P. C.

1677a. —— ——.]—CANADIAN PACIFIC RY. *v.* R., No. 1664a, *ante.*

1682. *Add. Annotation :*—**Refd.** Messager *v.* British Broadcasting Co. (1927), 97 L. J. K. B. 251.

1685. *Add. Annotation :*—**Refd.** Canadian Pacific Ry. Co. *v.* R., [1931] A. C. 414.

1686. *Add. Annotation :*—**Refd.** Candian Pacific Ry. Co. *v.* R., [1931] A. C. 414.

1693. *Add. Annotation :*—**Refd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

1694. *Add. Annotation :*—**Consd.** O'Cedar *v.* Slough Trading Co., [1927] 2 K. B. 123.

1694a. —— **Use of Government railway roadway for telegraph poles.**]—CANADIAN PACIFIC RY. Co. *v.* R., No. 1664a, *ante.*

1700. *Add. Annotation :*—**Refd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 145.

1705. *Add. Annotation :*—**Refd.** Johnson *v.* Clarke, [1928] Ch. 847.

1708. *Add. Annotation :*—**Refd.** Gee *v.* Hazleton, [1932] 1 K. B. 179.

1711. *Add. Annotation :*—**Refd.** Salisbury House Estate *v.* Fry (1929), 98 L. J. K. B. 722.

1728. *Add. Citation :*—2 C. L. R. 1449.

1758a. ——.]—HUNT *v.* COLSON (1833), 3 Moo. & S. 790.

PART VI. SECT. 2, SUB-SECT. 2.

r i. ——.]—NEW BRUNSWICK & NOVA SCOTIA LAND CO. *v.* KIRK (1849), 6 N. B. R. (1 All.) 443.—**CAN.**

r ii. ——.]—DUCONDU *v.* DUPUY (1883), 9 App. Cas. 150 ; 53 L. J. P. C. 12 ; 50 L. T. 129, P. C.—**CAN.**

a i. ——.]—RUTTER *v.* ORDE (B. C.) (1918), 59 S. C. R. 658 ; 49 D. L. R. 691.—**CAN.**

a ii. ——.]—ROYAL BANK OF CANADA *v.* R. (1921), 62 S. C. R. 313 ; 68 D. L. R. 23.—**CAN.**

a iii. ——.]—O'BRIEN *v.* R., [1927] 2 D. L. R. 1139.—**CAN.**

aj. *Agreement to display advertisements in movable frames on spaces in post offices.*]—*Held :* not a lease, but a licence to use the spaces.—U. K. ADVERTISING CO. *v.* GLASGOW BAGWASH LAUNDRY, [1926] S. C. 303.—**SCOT.**

ak. *Agreement for operation of theatres.*]—Defts., the lessees from pltfs. of two theatre buildings, entered into an agreement with the P. co. for the operation by it of the theatres. The agreement contained no words of demise or grant, no provision for exclusive occupation, & did not purport to confer upon the P. co. any estate or interest in the land upon which the buildings stood :—*Held :* notwithstanding the use of the word "rent" in the agreement, & notwithstanding that it provided for exclusive management by the P. co., the agreement was not to be regarded as a lease but merely as a licence ; & pltfs. were not entitled to forfeit the lease to defts. for breach of the covenant therein contained not to assign or sublet without leave. To be a lease, a document must confer a right of exclusive occupation.—BROCKVILLE *v.* DOBBIE & RITCHIE, BROCKVILLE *v.* PARAMOUNT THEATRES, LTD., BROCKVILLE *v.* DOBBIE, RITCHIE & PARAMOUNT THEATRES, LTD., [1929] 3 D. L. R. 583 ; 64 O. L. R. 75.—**CAN.**

al. *Agreement for supply of service station equipment.*]—By an agreement purporting to be a lease A. demised to B. the exclusive privilege of installing oil & gasoline dispensing equipment in the service station owned by A., for five years at a rent. Lessee lent lessor $3,500 secured on service station & also the equipment. Lessor agreed to purchase all oil, gasoline, etc., from lessee :—*Held :* a licence, not a lease.—CITIES SERVICES OIL CO. *v.* PAULEY, [1931] O. R. 685.—**CAN.**

PART VI. SECT. 4.

1665 ii. —— ——.]—MACLAREN CO. *v.* ELEC. REDUCTION CO. (Can.), [1926] 4 D. L. R. 593.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 1.

1669 iv. —— ——.]—FIELDER *v.* BANNISTER, (1860) 8 Gr. 257.—**CAN.**

Part VII.—Premises Included in the Demise.

1783a. —— Garden not included.]—ANON. (1561), Moore, K. B. 24, pl. 82; Dal. 29, pl. 5; 72 E. R. 415.

1788. *Add. Annotation :*—**Refd.** Callard *v.* Beeney, [1930] 1 K. B. 353.

1810a. —— Liberty of passage for pipes—Extent of right.]—Deft. co. were the lessees from a firm of architects for a determinable term of twenty-one years from June 24, 1923, & also occupiers of the first floor of a block of buildings known as I. Court under a lease which contained a reservation "excepting & reserving unto the lessors & the person or persons for the time being occupying the other parts of the building the passage of gas water & other pipes & electric wires through the demised premises & the free running of water & soil in & through the pipes connected with the demised premises." In May, 1924, pltf. took a lease of the second floor of I. Court from the firm, subject to a similar reservation. In exercise of the right reserved to the lessors & persons occupying other parts of the premises pltf. conducted pipes from her premises through deft. co.'s part of the premises. Deft. co., after the operations had proceeded for some time, alleged that great inconvenience would be caused to them, & cut the pipes :—*Held :* the reservation gave no right to the lessors or pltf. to introduce any new pipes or wires into the premises.—TAYLOR *v.* BRITISH LEGAL LIFE ASSURANCE CO. (1925), 94 L. J. Ch. 284; 133 L. T. 453; 23 L. G. R. 585, C. A.

Part VIII.—Nature, Creation, and Duration of Tenancies.

1825. *Add. Annotation :*—**Refd.** Ladies Hosiery & Underwear, Ltd. *v.* Parker, [1930] 1 Ch. 304.

1843. *Add. Annotation :—As to* (1) **Consd.** Taylor *v.* Twinberrow, [1930] 2 K. B. 16.

1848. *Add. Annotation :—As to* (2) **Refd.** Lowther *v.* Clifford, [1927] 1 K. B. 130.

1968. *Add. Annotation :*—**Refd.** Anchor Trust Co. *v.* Bell, [1926] Ch. 805.

1975a. Duty of tenant from year to year—To use premises in tenantlike manner.] — A tenant from year to year is under an implied obligation to use the demised premises in a tenantlike manner & to yield them up so used at the end of the tenancy. The obligation continues as long as he continues tenant. If he alters the character of the premises, he commits a breach of the obligation, & is liable in damages for the injury to the reversion.—MARSDEN *v.* EDWARD HEYES, LTD., [1927] 2 K. B. 1; 96 L. J. K. B. 410; 136 L. T. 593, C. A.

1978a. —— Option to take lease "for any term suitable to" occupier.]—Where premises had been for some years in the occupation of R., who produced a letter addressed to him in 1915 & signed by the landlord, purporting to give R. an indefinite option of purchase, & alternatively an option to take a lease of the property for any term suitable to R., & an undertaking that so long as R. remained sole tenant the rent agreed on should not be increased :—*Held :* on the true construction of the agreement R. was merely a tenant from year to year.—JOHNSON *v.* CLARKE, [1928] Ch. 847; 97 L. J. Ch. 337; 139 L. T. 552; 72 Sol. Jo. 556.

1982. *Add. Annotation :*—**Consd.** Ladies Hosiery & Underwear, Ltd. *v.* Parker, [1930] 1 Ch. 304.

2011a. ——.]—By a lease of 1838, land at the rear of four houses, numbered 16, 18, 20, & 22, was leased for a term ending Sept. 29, 1923, & by an underlease of 1906 was sub-let to J. till May 9, 1923. By an agreement of Oct. 10, 1914, J. let it to P. for three years from Oct. 12, 1914, at a rent of £2 a week, payable weekly. On the land, & extending along the rear of Nos. 16, 18, & 20, was a shed, in which P. carried on the business of a general dealer until 1923, when he assigned the business to his wife & thereafter managed it for her. In 1919 pltf. co. took an assignment of the land behind Nos. 16, 18, 20, & 22 for the rest of the term comprised in the lease of 1838, subject to the underlease of 1906. On July 8, 1920, the Midland Bank acquired the leasehold reversion immediately expectant on P.'s tenancy under the agreement of 1914: & on Oct. 6 in the same year pltf. co. acquired No. 18 & the land behind for fifty years from Sept. 29,

PART VII. SECT. 1, SUB-SECT. 2.—B.

1773 i. *What is appurtenant to house or messuage—Not space between shop-front & street.*]—REID *v.* MIMICO, [1927] 1 D. L. R. 235; 59 O. L. R. 579.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 1.—A.

sd. *Under Soldier's Settlement Act.*]—The Soldier's Settlement Board entered into an agreement with McC. for the sale of land to him as authorised by the Act. This agreement, & the Act itself, provided that such agreement could only be cancelled for default by the settler to comply with the terms thereof, & in the case of land the same could only be re-possessed upon & after the Board giving to the settler thirty days' notice of its intention to rescind said agreement :—*Held :* the tenancy at will, mentioned in sect. 22 (6) & sect. 31 of the Soldier's Settlement Act, is a special statutory tenancy at will, & is not the tenancy at will known to the common law; it is a modified or conditional tenancy at will. After the notice has been given, the settler, if he remains on the land, becomes merely a tenant at will.—McCLELLAN *v.* R., [1932] Ex. C. R. 18; *revsd.*, [1932] S. C. R. 617; 4 D. L. R. 79.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 1.—D.

1855 iii. ——.]—DOE d. PURDY *v.* PETERS (1838), 2 N. B. R. (Ber.) 530.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 2.—C. (a) 1.

1884 vii. —— ——.]—A. having to B. his bond in £2,500, conditioned, among other things, that C. & D. should reside on a certain lot of land so long as they conducted themselves in a manner agreeable to A. :—*Held :* no notice or demand was necessary before bringing ejectment.—TISDALE *v.* TISDALE (1860), 10 C. P. 106.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 1.

1946 i. —— *Purchaser under agreement for sale at price payable by instalments—After forfeiture for non-payment.*]—PRINCE *v.* MOORE (1864), 14 C. P. 349.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 2.

si. *Action for damages—Against landlord—Removal of roof by landlord.*]—*Held :* damages not recoverable.—HASTINGS *v.* LEONIDAS, [1927] S. R. Q. 389; 21 Q. J. P. 156.—**AUS.**

1920, subject to the lease of 1838. After the end of his tenancy in 1917, P. had continued in possession of the land & the shed, paying rent first to J., &, after Mar. 1923, at J.'s direction, to the Midland Bank, which, in 1925, acquired the freehold reversion of the land at the rear of Nos. 20 & 22. No rent was paid by P. to pltf. co. There were negotiations at a later date for apportioning the rent between the bank & pltf. co. which did not result in a concluded agreement. In Sept. 1928, defts. entered into an agreement to purchase from the Bank the land at the rear of Nos. 20 & 22, & at the same time their solrs. wrote to pltf. co.'s solrs., asking if the co. would grant them a lease of the land in the rear of No. 18. After some correspondence pltf. co. refused to grant a lease of the land, & in Apr. 1929, commenced this action, claiming a declaration that it was entitled to the land, & alleging that deft. P. was at most a weekly tenant:—*Held:* by MAUGHAM, J. (*a*) mere continuance in possession by one originally in possession as tenant under a legal title, with the consent of the person who has become the landlord, may lead to the inference of a consensus that the one so continuing shall be a yearly tenant, but on the facts a consensus that P. should become a yearly tenant of pltf. co. could not be inferred; (*b*) the inference of a tenancy from year to year, which is drawn from the payment of rent by a tenant after the expiration of his tenancy, ought to be drawn only when such payments are by reference to a yearly rent, & P.'s payments of £2 a week rent to J. or the Midland Bank, after the expiration of the term granted by the agreement of 1914, were not so paid; by the Court of Appeal, on the facts there was no consensus between pltf. co. & defts. giving rise to the relation of landlord & tenant, without deciding the question whether, if there had been such a consensus, it would in law have created a yearly or a weekly tenancy.—LADIES' HOSIERY & UNDERWEAR, LTD. *v.* PARKER, [1930] 1 Ch. 304; 99 L. J. Ch. 201; 142 L. T. 299; 46 T. L. R. 171, C. A.

Annotation:—**Consd.** Swift *v.* Ambrose (1931), 47 T. L. R. 594.

2042. *Add. Annotation:*—**Consd.** Swift *v.* Ambrose (1931), 47 T. L. R. 594.

2042a. ——— **Payment of rent after expiration of renewed tenancy.**]—Pltf., by an agreement dated Mar. 5, 1928, let a flat to deft. from that date until Mar. 3, 1929, with an option to renew the tenancy for a further period of one year. Deft. exercised the option, & on the expiration of the renewed tenancy on Mar. 3, 1930, remained in occupation of the flat & continued to pay the rent reserved by the agreement, but no definite arrangement was arrived at between the parties as to the terms on which deft. occupied:—*Held:* in these circumstances a tenancy from year to year was created by implication of law & deft. continued liable to pay rent until the determination of the tenancy by a proper notice to quit.—SWIFT *v.* AMBROSE (1931), 47 T. L. R. 594.

2053. *Add. Annotation:*—**Refd.** Taylor *v.* Twinberrow, [1930] 2 K. B. 16.

2078. *Add. Annotations:*—**Consd.** Swift *v.* Ambrose (1931), 47 T. L. R. 594. **Refd.** Lowther *v.* Clifford, [1927] 1 K. B. 130.

2079. *Add. Annotation:*—**Refd.** Rye *v.* Purcell, [1926] 1 K. B. 446.

2080. *Add. Annotation:*—**Refd.** Lowther *v.* Clifford, [1927] 1 K. B. 130.

2090. *Add. Annotation:*—**Refd.** Rye *v.* Purcell, [1926] 1 K. B. 446.

2097. *Citations:*—Delete [1926] 1 K. B. 185 & add [1927] 1 K. B. 130; 90 J. P. 113; 24 L. G. R. 231.
Add. Annotation:—**Refd.** Mansfield *v.* Robinson, [1928] 2 K. B. 353.

2101. *Add. Annotation:*—**Refd.** Lowther *v.* Clifford, [1927] 1 K. B. 130.

2150a. Demise to two & their children—Whether after-born children entitled.]—STEVENS *v.* LAWTON (1588), Cro. Eliz. 121; 78 E. R. 379.

PART VIII. SECT. 6, SUB-SECT. 2.—B. (b).

2034 x. ——.]—HAMBURG *v.* CAPE BRETON ELEC. CO., [1926] 4 D. L. R. 683; 58 N. S. R. 341.—**CAN.**

2034 xi. —— ——.]—STURDEE *v.* MERRITT (1848), 5 N. B. R. (3 Kerr) 641.—**CAN.**

PART VIII. SECT. 6, SUB-SECT. 4.—A. (a).

2101 i. —— *As to option to purchase.*]—A Crown lease provided that the lessee upon paying a certain stated sum would be entitled to a conveyance of the lands in fee simple. The lessees failed to renew their lease but held over. In 1927, the present occupants sent the Crown a cheque for the amount mentioned in the lease & requested a deed to the lands in question. The Crown returned the cheque & refused to convey the land for the sum offered, hence the present petition of right:—*Held:* the option to purchase contained in the lease in question herein, being unlimited as to time, was therefore inoperative & void because of the rule against perpetuities, & was not exercisable. The tenant who holds over with the consent of the landlord becomes a tenant from year to year & holds upon the terms created by the lease, so far as they are applicable to a tenancy from year to year. An option contained in a lease to purchase the reversion & so destroy the tenancy is not one of the terms of the tenancy; it is a provision outside of the terms which regulate the relations between the landlord as landlord, & the tenant as tenant, & is not one of the terms of the original tenancy which will be incorporated into the terms of the yearly tenancy created by the tenant holding over after the expiration of the lease.—TORMEY *v.* R., [1930] Ex. C. R. 178.—**CAN.**

PART VIII. SECT. 6, SUB-SECT. 5.—A.

sm. *Agreement to purchase—Agreement not carried out.*]—*Held:* the tenancy was not determined.—CROSKILL *v.* WORTMAN (1863), 10 N. B. R. (5 All.) 648.—**CAN.**

PART VIII. SECT. 9, SUB-SECT. 3.

sn. *Sub-lease for life & years.*]—*Held:* the term of years was reversionary & not concurrent, & began to run when the life died.—ADAMS *v.* M'GOLDRICK, [1927] N. I. 127.—**IR.**

Part IX.—Renewal of Tenancies.

2242. *Add. Annotation :*—**Consd.** Swift *v.* Ambrose (1931), 47 T. L. R. 594.

2243. Before this case, for "*See, now,* Law of Property Act, 1925 (c. 20), s. 145," read "*See, now,* Law of Property Act, 1922 (c. 16), s. 145."

2263. *Add. Annotation :*—**Refd.** Curtis Moffat *v.* Wheeler, [1929] 2 Ch. 224.

2282a. ——.]—STONE *v.* THEED (1787), 2 Bro. C. C. 243 ; 29 E. R. 135, L. C.

Annotations :—**Consd.** White *v.* White (1804), 9 Ves. 554. **Expld.** Allan *v.* Backhouse (1813), 2 Ves. & B. 65. **Consd.** Shaftesbury Earl *v.* Marlborough Duke (1833), 2 My. & K. 111. **Refd.** Bradford *v.* Brownjohn (1868), 37 L. J. Ch. 198.

2282b. —.]—KEMPTON *v.* PACKMAN (1790), cited in 7 Ves. at p. 176 ; 32 E. R. 72.

2286a. —— ——.]—KEIR *v.* ROBINS (1838), 2 Jur. 773.

2287a. .]—GREENWOOD *v.* EVANS (1841), 4 Beav. 44 ; 49 E. R. 254.

Annotations : — **Apld.** Jones *v.* Jones (1846), 5 Hare, 440. **Expld.** Hudleston *v.* Whelpdale (1852), 9 Hare, 775. **Refd.** Hayward *v.* Pile (1870), 22 L. T. 893 ; Bute (Marquis) *v.* Ryder (1884), 53 L. J. Ch. 1090.

SECT. 5.—TENANCIES OF BUSINESS PREMISES.

See Landlord & Tenant Act, 1927 (c. 36).

2306a. Application for new lease—Time for—Extension of time—Jurisdiction of county court.]—Under the rules of procedure made under Landlord & Tenant Act, 1927 (c. 36), a county court judge has no jurisdiction to grant an extension of time to a tenant who desires to make application to the court for a new lease at a time later than the time prescribed by sect. 5 (1) of the Act.—DONEGAL TWEED CO., LTD. *v.* STEPHENSON (1929), 98 L. J. K. B. 657 ; 141 L. T. 262 ; 45 T. L. R. 503 ; 73 Sol. Jo. 367 ; 93 J. P. Jo. 380, D. C.

2306b. — **Service of notice before Act in force—Effect of.**]—A tenant whose tenancy expired on Mar. 25, 1929, sent on Mar. 23, 1928, a notice in the prescribed manner by registered post to his landlords requiring them under sect. 5 of above Act, which Act came into force on Mar. 25, 1928, to grant him a new lease of his premises in lieu of claiming compensation under sect. 4 of the Act. In the county ct. the judge took the objection that the notice having been served before the Act was in force, he had no jurisdiction. That decision having been affirmed by the Div. Ct., pltf. appealed :—*Held :* the landlord having in his possession on the day when the Act came into force a notice containing all the requisites for a proper claim, & that day being a day more than a year before the termination of the tenancy, the county ct. judge had jurisdiction to hear the claim.—DOBBIN *v.* OGDEN (1929), 98 L. J. K. B. 321 ; 141 L. T. 51 ; 45 T. L. R. 349 ; 73 Sol. Jo. 190, C. A.

2306c. Who may apply—Receiver for debenture holders—Notwithstanding liquidation.]—A co. was the lessee of certain premises under a lease expiring on June 24, 1930. In 1925 the co. issued a debenture by which it charged all its undertaking & all its property, present & future, including its uncalled capital in favour of the debenture holders. On Apr. 22, 1929, the co. gave notice to the landlords under Landlord & Tenant Act, 1927 (c. 36), s. 5, requiring them to grant to it a new lease of the premises. In July, 1929, the debenture holders in exercise of the power on that behalf in the debenture appointed a receiver of the property & assets therein comprised. The landlords having failed to comply with the co.'s request for the grant of a new lease the receiver on Sept. 23, 1929, commenced an action in the county ct. in the name of the co. to obtain the grant of a new lease. On Oct. 15 a compulsory order was made to wind up the company & a liquidator was appointed. At the hearing in the county ct. preliminary objections were taken on behalf of the landlords : (*a*) that an order having been made to wind up the co. the receiver

PART IX. SECT. 2, SUB-SECT. 1.—B.

2159 v. ——.]—A covenant to renew runs with the land, & can be specifically enforced by the assignee of a portion of the holding.—SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* VOLKART BROTHERS (1926), I. L. R. 50 Mad. 595.—**IND.**

PART IX. SECT. 2, SUB-SECT. 3.

n i. ——.]—Where a renewal clause in a lease confers on the lessee the right to obtain from the lessor on the expiry of the old term, but not until then, the grant of a new lease *in præsenti* in continuation of the old, the lessor cannot, during the currency of the lease, though himself presently willing to grant a new lease, compel the lessee to accept it, even though the latter may have given notice of his intention to exercise his right of renewal.—KENNEDY *v.* BERRYMAN, [1925] N. Z. L. R. 178.—**N.Z.**

PART IX. SECT. 2, SUB-SECT. 5.

2181 v. ——.]—SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* VOLKART BROTHERS, No. 2159 v, *ante.*—**IND.**

2184 i. *Representative of lessee—Executor.*]—NUGENT *v.* MCLELLAN, [1927] 4. D. L. R. 845.—**CAN.**

... after transfer of leasehold interest to others.]—JOGESH CHANDRA ROY *v.* ANNADA CHARAN CHAUDHURY (1926), I. L. R. 53 Calc. 590.—**IND.**

PART IX. SECT. 2, SUB-SECT. 6.

sp. *Renewal by former partner.*]—*Held :* the lease was held in trust for the partnership.—PONG *v.* QUONG, [1927] 3 D. L. R. 128 ; [1927] S. C. R. 271.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 9.—A.

2200 v. —— —— *Agreement indefinite.*]—GEARY *v.* CLIFTON CO., [1928] 3 D. L. R. 64 ; 62 O. L. R. 257.—**CAN.**

r i. —— ——.]—A lease of a house & consulting-rooms contained a covenant for renewal & an option to purchase, under which the house was purchased :—*Held :* the covenant for renewal only applied to the entirety of the premises, & not to the consulting-rooms alone.—MORRIS *v.* DUNSTONE, [1925] S. A. S. R. 340.—**AUS.**

r ii. —— ——.]—SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* VOLKART BROTHERS (1928), L. R. 55 Ind. App. 423.—**IND.**

sq. *Notice of exercise of option—To whom given.*]—A clause in defts.' sub-lease, which was for two years, gave them an option for a further period of three years at a named rental, "three months' notice in writing to be given in the event of this option being exercised." In the head lease to R. & Co. it was provided that the lessors should appoint & keep some person residing in the city of T. where the building was, "as their agent, to whom the lessees may pay their rent & give all notices, & who will be authorised to receive applications for & grant all legal consents, waivers & other concessions to the lessees." On Nov. 30, 1927, defts. addressed to the owners who resided in the United States, & to B. of the city of T. "their agent," a notice of their election to continue as tenants for the further period of three years. The notice was not served upon the owners but upon B. :—*Held :* the notice was properly given to the original landlords, to whom R. & Co. had previously released their interest ; defts. were not bound to go to the United States & serve the landlords, wherever they were to be found.—GRAY *v.* CHAMANDY & SONS, [1929] 2 D. L. R. 706 ; 63 O. L. R. 495.—**CAN.**

could no longer continue the action, & (*b*) that the notice by the co. requiring the grant of a new lease was not in the "form prescribed" by County Court (Landlord & Tenant) Rules, 1928, Ord. 50B, r. 2. The county court judge upheld the preliminary objections. On appeal:—*Held:* (1) the right to apply for a renewal of the lease under sect. 5 was a right given by the co. to the debenture holders as part of their security, & the receiver was entitled to enforce that right notwithstanding the liquidation of the co.; (2) sect. 5 did not require that the notice of claim for a new lease should be in any prescribed form, & therefore Ord. 50B, r. 2, so far as it required that the notice should be in a prescribed form was *ultra vires*. —GOUGH'S GARAGES, LTD. *v.* PUGSLEY, [1930] 1 K. B. 615; 99 L. J. K. B. 225; 143 L. T. 38; 46 T. L. R. 283; 74 Sol. Jo. 215; 28 L. G. R. 239, D. C.

Annotation:—Generally, **Refd.** Smith *v.* Metropolitan Properties Co., [1932] 1 K. B. 314.

2306d. —— Whether prescribed form necessary—County Court (Landlord and Tenant) Rules, 1928, Ord. 50B, r. 2.]—GOUGH'S GARAGES, LTD. *v.* PUGSLEY, No. 2306c, *ante*.

2306e. Grant of new lease—What included—Incorporeal right—Fishing.]—Where an incorporeal right, such as a right of fishing, is demised along with corporeal hereditaments by the same lease, & the lessee uses both for the purpose of his trade or business, the incorporeal right is part of the "premises" within Landlord & Tenant Act, 1927 (c. 36), s. 5. Therefore, on the expiration of such a lease, the lessee, if he can show that the compensation for goodwill to which under the Act he would be entitled would not compensate him for the loss of goodwill if he removed to & carried on his trade or business in other premises, may require a new lease of the premises which shall include the incorporeal right demised by the original lease. —WHITLEY *v.* STUMBLES, [1930] A. C. 544; 99 L. J. K. B. 518; 143 L. T. 441; 46 T. L. R. 555; 74 Sol. Jo. 488, H. L.; *affg.*, S. C *sub nom.* STUMBLES *v.* WHITLEY, [1930] 1 K. B. 393, C. A.

2306f. Basis of compensation.]—(1) *Held:* the basis of compensation under the Act is not the loss suffered by the tenant, but the benefit accruing to the landlord.

(2) Under sect. 4 (1) it is irrelevant to inquire whether the "higher rent" is derived from a letting for the purpose for which the premises were previously let or for any other purpose; & if the landlord could let the premises for any other purpose at a higher rent than they would have realised for the same purpose, goodwill included, he will not be liable to pay compensation to the tenant. —HUDD *v.* MATTHEWS, [1930] 2 K. B. 197; 99 L. J. K. B. 621; 143 L. T. 383; 94 J. P. 204; 46 T. L. R. 495; 74 Sol. Jo. 465; 28 L. G. R. 486, D. C.

2306g. Action for compensation—Time for bringing.]—*Held:* a tenant is not entitled, before the tenancy has expired & before he has quitted the holding, to bring an action to recover compensation under Landlord & Tenant Act, 1927 (c. 36), s. 4 (1).—SMITH *v.* METROPOLITAN PROPERTIES CO., LTD., [1932] 1 K. B. 314; 101 L. J. K. B. 110; 146 L. T. 133; 48 T. L. R. 32; 75 Sol. Jo. 813, D. C.

2306h. Ability to let premises at higher rent—Purpose of letting—How far material.]—HUDD *v.* MATTHEWS, No. 2306f, *ante*.

2306j. Contracting out of Act—Adequacy of consideration.]—HOLT *v.* CADOGAN (1930), 46 T. L. R. 271, C. A.

Part X.—Particular Properties.

2330. *Add. Annotations:*—**Refd.** Ariff *v.* Rai Jadunath Majumdar Bahadur (1931), 47 T. L. R. 238; Canadian Pacific Ry. Co. *v.* R., [1931] A. C. 414.

2331. *Add. Annotation:*—**Refd.** Bernard *v.* Williams (1928), 139 L. T. 22.

2337. *Add. Annotation:*—**Refd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

2350. *Add. Annotation:—Generally,* **Refd.** Jardine *v.* A.-G. for Newfoundland (1932), 48 T. L. R. 199.

2361. *Add. Annotation:*—**Refd.** A.-G. *v.* Leeds Corpn., [1929] 2 Ch. 291.

PART X. SECT. 2, SUB-SECT. 3.—A.

st. *Land leased in lots by reference to plan—Lessor not entitled to depart from plan.*]—BURNS *v.* DILWORTH TRUST BOARD, [1925] N. Z. L. R. 488.—**N.Z.**

PART X. SECT. 5, SUB-SECT. 1.

sw. *Common court—Repair—Extent of obligation.*]—The wife of the tenant of a house in a tenement brought an action against the proprietors for damages in respect of injuries, which she alleged she had sustained in consequence of a fall caused by her foot catching in a depression in the pavement of a common court at the back of the tenement. Pursuer averred that the depression had been there, & the condition of the pavement had been defective & dangerous, for some years, & that the defective state of the pavement was open & obvious. She did not aver that she was unaware of the defect, or that she had ever complained of it to defenders, nor did she deny defenders' averment that she had lived in the tenement for years:—*Held:* pursuer's averments were not relevant to infer liability against defenders.—YOUNG *v.* CAMPBELL, [1924] S. C. 157.—**SCOT.**

sx. *Clause exempting landlord from liability in specified cases—Whether negligence included.*]—While the janitor of an apartment block was using high-test gasoline in ridding one of the rooms of vermin, about which the tenant of the room had complained, an explosion occurred & the tenant was burned & her effects destroyed. The janitor was authorised by the president of deft. co., which was the landlord, to so use the gasoline, & the work required the removal & replacing of fixed boards & rails which were part of the permanent structure of the building. The lease exempted the landlord from all liability for any accident, loss or damage arising in or about the building or premises from heating, steam, water, gas or electric lighting, or from any plant or appliances incident thereto, & whether arising from fire, frost, rain, weather or defects in construction or materials "or from any cause whatsoever"; it also exempted the landlord from liability for any acts of any agent, servant or workmen in any way occupied or engaged in or about the building or premises or in any capacity whatsoever; it also provided that "the lessors are not responsible for the cleaning or caretaking" of the demised premises:—*Held:* even if the janitor's acts constituted negligence, the work was not "cleaning" within the meaning of the lease; the *ejusdem generis* rule was not applicable to the acts referred to in the exemption clauses; the expression "agent, servant or workmen," included all persons acting for deft. for whose acts it would be held responsible & thus included deft.'s president; & the exemption clauses covered negligent acts.—FINNEMORE *v.* T. UNDERWOOD, LTD., [1930] 2 W. W. R. 348; 3 D. L. R. 939; 24 Alta. L. R. 616; *revsg.*, [1930] 2 D. L. R. 873; 1 W. W. R. 665.—**CAN.**

sy. *Railing on porch.*]—The male pltf. was tenant of one of two suites which comprised the upper floor of a

2371. *Add. Annotation :—As to* (1) **Refd.** O'Cedar *v.* Slough Trading Co., [1927] 2 K. B. 123.

2375. *Add. Annotations :*—**Apld.** Noble *v.* Harrison, [1926] 2 K. B. 332. **Refd.** Pontardawe Rural District Council *v.* Moore-Gwyn, [1929] 1 Ch. 656.

2381. *Add. Annotation :*—**Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

2387. *Add. Annotation :*—**Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

2390. *Add. Annotation :*—**Refd.** Booth *v.* Thomas (1926), 95 L. J. Ch. 160.

2400. *Add. Annotations :—As to* (1) **Consd.** Stillwell *v.* Windsor Corpn. (1932), 76 Sol. Jo. 433. **Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

2405. *Add. Annotation :*—**Refd.** Flexman *v.* Corbett, [1930] 1 Ch. 672.

2406. *Add. Annotation :*—**Refd.** Flexman *v.* Corbett, [1930] 1 Ch. 672.

2433. *Add. Citation :*—134 L. T. 319.

2455. *Add. Annotation :*—**Refd.** James Shipstone & Sons, Ltd. *v.* Morris (1929), 14 Tax Cas. 413.

2494. *Add. Annotation :*—**Refd.** Gee *v.* Hazleton, [1932] 1 K. B. 179.

Part XI.—Covenants.

2498. *Add. Annotation :*—**Consd.** Flexman *v.* Corbett, [1930] 1 Ch. 672.

2498a. —— **Question of fact.**]—By an agreement, in the form of a letter dated Dec. 12, 1928, & signed by deft., deft. agreed to purchase from pltf. for £800 a leasehold house for the residue of the term of 94 years comprised in a lease of 1849. The letter stated that deft. understood the ground floor & basement to be let to a tenant holding over as a yearly tenant at a rent of £60 a year, payable quarterly, & it fixed Mar. 25, 1929, as the date for completion. Pltf. signed an acknowledgment agreeing the terms as in the letter. In the lease of 1849 were lessee's covenants to do outside painting, deliver up, repair, insure, produce assignments, not to allow building without consent, & not to carry on offensive trades or do "any . . . thing which may be to the annoyance, damage, or inconvenience of the occupiers of the neighbouring premises"; & there was a proviso for re-entry on non-performance of any of the covenants. The abstract was sent to deft.'s solrs. on Jan. 15, 1929, deft. meanwhile, to pltf.'s knowledge, negotiating for the purchase of the freehold. On Mar. 4 deft.'s solrs. wrote to pltf.'s solrs. that deft. would not buy the house unless H., the tenant, who was in arrear with the rent & was not, as pltf. had represented her to be, a desirable tenant, was bought out. They added that there was no binding contract, which they later explained to mean that the lease of 1849 had

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building owned by deft. The female pltf., wife of her co-pltf., was shaking a rug on a porch at the rear of the suite when the railing thereon gave way & she was injured. In an action for damages pltfs. contended that the railing, in the condition it was, was a trap :—*Held :* after reviewing the facts as to the situation of the porch & its relation to the two suites, the railing was part of the demised premises, &, therefore, pltfs. had no right of recovery against deft.—AGNEW *v.* HAMILTON, [1932] 3 W. W. R. 57.—**CAN.**

sz. *Damage by fire—Inflammable refuse by elevator shaft.*]—Pltf.'s husband leased from deft. a suite in deft.'s apartment building. On each floor, beside the freight elevator, & separated from the hall by swinging wooden doors, was a platform on which were garbage receptacles. A fire occurred in the building, & in efforts to escape pltf. was injured & her husband was killed. For this & for property loss pltf. sued for damages. The jury found that deft. was negligent in that it caused or allowed inflammable refuse to be deposited beside the elevator shaft & failed to safeguard such refuse against the danger of fire; that such condition amounted to a trap or concealed danger created by deft. & caused the injuries, death & loss; & judgment was entered for damages. The judgment was set aside by the Ct. of Appeal. Pltf. appealed :—*Held :* pltf. could not recover.—HEARE *v.* CITY SECURITIES CO., LTD., [1932] S. C. R. 260.—**CAN.**

PART X. SECT. 5, SUB-SECT. 2.

2380 viii. —— —— ——

WATT *v.* ADAMS BROTHERS MANUFACTURING CO. (Alta.), [1928] 1 D. L. R. 59; [1927] 3 W. W. R. 580.—**CAN.**

PART X. SECT. 5, SUB-SECT. 4.

2395 iv. —— ——.]—CONNOR *v.* NELSON, MOATE & CO., [1925] N. Z. L. R. 123.—**N.Z.**

b i. —— ——.]—Where a landlord lets suites of rooms to separate tenants & provides a common means of access which they must, or are entitled to make use of, he is under an implied contractual obligation of inspecting the access from time to time, &, when necessary, repairing it so as to prevent the risk of accident, & is liable in damages for injuries sustained by the tenant because of his failure to carry out this duty. This rule was applied in the present case to the giving way of the railing on a rear balcony which served as a rear exit & entrance to the pltf.'s suite & those of the other tenants on the same floor. *Semble :* the balcony railing in the condition it was at the time of the accident constituted a trap.—MCPHERSON *v.* CREDIT FONCIER FRANCO CANADIEN (Alta.), [1930] 1 D. L. R. 179; 24 Alta. L. R. 240; [1929] 3 W. W. R. 348; *affg.*, [1929] 4 D. L. R. 395; 2 W. W. R. 623.—**CAN.**

PART X. SECT. 7, SUB-SECT. 3.—B. (a).

1 i. —— *Other trade carried on—Consequent refusal of justices to renew.*] —*Held :* as the tenant had brought about the refusal of the renewal of the licence by her own act, the lessor was entitled to recover possession of the premises & damages for breaches of covenants.—MAGUIRE *v.* DAY, [1926] N. 180.—**IR.**

1 ii. —— *Proposed transfer of license to other premises—Leaving demised premises unlicensed.*]—Pltfs. were the owners of certain premises to which a seven-day license was attached, & deft. was their lessee & the holder of the license. The lease contained a covenant by the lessee not to do, or suffer to be done, on the premises any act whereby the license might be forfeited or the renewal thereof withheld, & also a covenant that he would insure the license against forfeiture in the joint names of the lessors & the lessee in the sum of £500. The lessee further covenanted to deliver up the premises on the expiration of the lease in all respects in such condition as should be consistent with the due performance & observance of the said covenants. Deft., who was also the owner of other premises, situate in the same licensing area, & to which a six-day license was attached, served notice to have the seven-day license transferred to the premises to which the six-day license was attached :—*Held :* as the effect of the transfer would be that pltfs.' premises, to which the seven-day license was attached, would, for the purposes of Licensing (Ir.) Act, 1902, be statutorily deemed never to have been licensed, so that when the lease expired pltfs. would get back premises to which no license was attached, they were entitled, in view of the covenants in the lease, to an injunction to restrain deft. from exercising the right of transfer conferred on him by Intoxicating Liquor Act, 1927, s. 11 (1).—HEATHCOTE *v.* MAGUIRE, [1929] I. R. 170.—**IR.**

PART X. SECT. 14.

sy. *Lease of warehouse space.*]—A lessee of warehouse space sued his lessor for damages caused by the freezing & bursting of a standpipe in the warehouse. There was no provision in the lease as to heating :—*Held :* the landlord was under no duty to prevent the standpipe from freezing. —SCYTHES *v.* GIBSONS, LTD., [1927] 2 D. L. R. 834; S. C. R. 352.—**CAN.**

not been produced to deft. Deft. did not complete by the date fixed. In an action by pltf. for specific performance :—*Held :* (1) the question whether covenants in a lease are " usual covenants " is in each case a question of fact for the ct. to decide upon the evidence.

I think it right to express my opinion, after having heard & considered all the numerous authorities which have been cited to me, that the question whether particular covenants are usual covenants is a question of fact, & that the decision of the ct. on that point must depend upon the admissible evidence given before the ct. in relation to that question. I think that it is proper to take the evidence of conveyancers & others familiar with the practice in reference to leases & that it is also permissible to examine books of precedents. It is permissible to obtain evidence with regard to the practice in the particular district in which the premises in question are situated (MAUGHAM, J.).

(2) A covenant to do nothing to the " inconvenience of occupiers of neighbouring premises " is usual only in leases of properties on large estates, & in a lease of one house is unusual & onerous ; (3) the proviso for re-entry on breach of any of the covenants in the lease must be held on the authorities & on the evidence to be an unusual & onerous provision ; (4) in the circumstances deft.'s right to object to the lease as containing unusual & onerous covenants had not been waived.—FLEXMAN *v.* CORBETT, [1930] 1 Ch. 672 ; 99 L. J. Ch. 370 ; 143 L. T. 464.

2501a. —— **Reference to opinion of conveyancers.**]—FLEXMAN *v.* CORBETT, No. 2498a, *ante*.

2501b. —— **Reference to books of precedents.**]—FLEXMAN *v.* CORBETT, No. 2498a, *ante*.

2501c. —— **Reference to practice in district where premises situated.**]—FLEXMAN *v.* CORBETT, No. 2498a, *ante*.

2502. *Add. Annotation :*—**Consd.** Flexman *v.* Corbett, [1930] 1 Ch. 672.

2524. *Add. Annotation :*—**Consd.** Flexman *v.* Corbett, [1930] 1 Ch. 672.

2525. *Add. Annotation :*—**Consd.** Flexman *v.* Corbett, [1903] 1 Ch. 672.

2526a. —— —— —— ——.]—FLEXMAN *v.* CORBETT, No. 2498a, *ante*.

2529. *Add. Annotation :*—**Refd.** Flexman *v.* Corbett, [1930] 1 Ch. 672.

2537a. Covenant to nothing to the inconvenience of occupiers of neighbouring premises—Lease of single house.]—FLEXMAN *v.* CORBETT, No. 2498a, *ante*.

2570. *Add. Annotation :*—**Refd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

2573. *Add. Annotation :*—**Refd.** O'Cedar *v.* Slough Trading Co., [1927] 2 K. B. 123.

2613. *Add. Annotation :*—**Refd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

2641. *Add. Annotation :—As to* (2) **Folld.** Booth *v.* Thomas, [1926] Ch. 397.

2651. *Add. Annotation :—As to* (1) **Consd.** Booth *v.* Thomas, [1926] Ch. 397.

2663. *Add. Annotation :—Generally*, **Refd.** O'Cedar *v.* Slough Trading Co., [1927] 2 K. B. 123.

2664. *Add. Annotation :*—**Consd.** Peech *v.* Best (1930), 99 L. J. K. B. 537.

2696. *Add. Annotation :—Generally*, **Refd.** Metcalfe *v.* Boyce, [1927] 1 K. B. 758.

2697. *Add. Annotations :—As to* (2) **Apld.** Booth *v.* Thomas, [1926] 2 Ch. 397. *As to* (3) **Refd.** Booth *v.* Thomas, [1926] Ch. 397.

2703. *Add. Annotation :*—**Refd.** O'Cedar *v.* Slough Trading Co., [1927] 2 K. B. 123.

2707. *Add. Annotation :*—**Refd.** O'Cedar *v.* Slough Trading Co., [1927] 2 K. B. 123.

2719. *Add. Annotation :*—**Apld.** Booth *v.* Thomas, [1926] Ch. 397.

2727a. Suit in equity.]—HUNT *v.* DANVERS (1680), T. Raym. 370 ; 83 E. R. 193.

Annotations :—**Refd.** Dennett *v.* Atherton (1872), L. R. 7 Q. B. 316 ; Tebb *v.* Cave (1900), 82 L. T. 115.

2741. *Add. Annotations :*—**Refd.** O'Cedar *v.* Slough Trading Co., [1927] 2 K. B. 123 ; Aldridge *v.* Wright, [1929] 2 K. B. 117 ; Vanderpant *v.* Mayfair Hotel Co. (1929), 27 L. G. R. 752.

2760. *Add. Annotation :*—**Refd.** Stoney *v.* Eastbourne R. D. C. & Devonshire (1925), 90 J. P. 133.

2769. *Add. Annotation :*—**Refd.** Grant *v.* Edmondson, [1931] 1 Ch. 1.

2776. After this case add " *See, now,* Law of Property Act, 1925 (c. 20), s. 79."

2783. After this case add " *See, now,* Law of Property Act, 1925 (c. 20), s. 79."

2789. *Add. Annotation :*—**Refd.** Grant *v.* Edmondson, [1931] 1 Ch. 1.

2792a. —— ——.]—Certain premises were let for twenty-one years in consideration of (*a*) a premium of £1,000, of which £200 was paid on the execution of the lease, & (*b*) a yearly rent. The lease provided that the lessee would pay " that portion *viz.* £800 of the premium of £1,000 hereby reserved which is not paid on the execution hereof " by certain instalments, " provided that in the event of

PART XI. SECT. 5, SUB-SECT. 4.—A. (b) ii.

2695 iii. —— —— *Institution of action to enforce right of re-entry.*]—*Held :* the institution by a lessor of legal proceedings against a lessee to enforce the lessor's alleged right to re-enter under the lease was not a breach of the lessor's covenant for quiet enjoyment, & did not give the lessee a right to equitable relief.—DAVID JONES, LTD. *v.* LEVENTHAL (1927), 40 C. L. R. 357 ; [1928] Argus L. R. 49.—**AUS.**

PART XI. SECT. 5, SUB-SECT. 4.—A. (b) v.

st. *Closure of communicating door.*]—WHITE *v.* PIGGLY WIGGLY (CANADIAN), LTD., [1932] 2 W. W. R. 234.—**CAN.**

PART XI. SECT. 5, SUB-SECT. 4.—A. (b) vii.

2720 iii. —— *Failure to comply with order as to fire appliances—Necessitating the closing of portion of premises.*]—MCINTYRE *v.* THOMPSON, [1928] 1 W. W. R. 907.—**CAN.**

PART XI. SECT. 5, SUB-SECT. 4.—A. (b) viii.

ss. *Eviction for breach of covenant—After inadequate notice of breach.*]—GORDON *v.* WILHELM (Sask.), [1926] 4 D. L. R. 1042 ; [1926] 3 W. W. R. 641.—**CAN.**

PART XI. SECT. 5, SUB-SECT. 4.—D.

2756 i. *Varied*, [1926] 4 D. L. R. 527 ; [1926] 3 W. W. R. 11.

sb. *Right to damages—Breach of covenant to erect buildings—Forfeiture of lease.*]—CROSS *v.* KENNEDY, [1931] 2 D. L. R. 990.—**CAN.**

PART XI. SECT. 6, SUB-SECT. 8.—M.

sd. *To pay proportion of sale price to landlord on assignment.*]—A covenant in a lease by which the lessee bound himself to pay to the landlord *haq-i-chaharum*, *i.e.* one-fourth of the sale price whenever he sold his interest in the land, cannot be enforced against the transferee, although he purchased with notice of the covenant. This cannot be considered a restrictive covenant of the kind dealt with in English law as in the case of *Tulk* v. *Moxhay*.—ABDUL SHAKUR *v.* NAND LAL (1931), I. L. R. 53 All. 742.—**IND.**

the term hereby granted being determined by re-entry . . . all the premium unpaid at the date of such re-entry shall become immediately due & payable." A right of re-entry was given if the rent reserved or any instalment of the premium should be in arrear for a certain time. During the currency of the lease, & before the balance of the premium had been paid, the premises, which had been mortgaged by the lessor, were sold to the lessee by the mtgees. in exercise of their powers of sale. Thereupon the lessor sued the lessee to recover the unpaid balance of the premium. The lessee contended that on the determination of the lease all his obligations thereunder, including the obligation as to the premium, were extinguished:—*Held:* the premium was not a "demand . . . in, to, or on the property" within Law of Property Act, 1925 (c. 20), s. 63 (1), or a "covenant or provision . . . having reference to the subject-matter" of the lease within sect. 141 (1) of that Act, but was a sum which the lessee had agreed to pay in order to obtain the lease, &, therefore, that his obligation to pay the full amount of the premium was not extinguished by the determination of the lease.—HILL *v.* BOOTH, [1930] 1 K. B. 381; 99 L. J. K. B. 49; 142 L. T. 80; 46 T. L. R. 50; 73 Sol. Jo. 782, C. A.

2801. *Add. Annotation:*—**Refd.** Grant *v.* Edmondson, [1931] 1 Ch. 1.

2806. *Add. Annotation:*—**Refd.** Grant *v.* Edmondson, [1931] 1 Ch. 1.

2809. *Add. Annotation:*—**Refd.** Grant *v.* Edmondson, [1931] 1 Ch. 1.

Part XII.—Restrictions on Use of Premises.

2870. *Add. Annotation:*—**Consd.** Barton *v.* Reed, [1932] 1 Ch. 362.

2871. *Add. Annotation:*—*As to* (1) **Folld.** Barton *v.* Reed, [1932] 1 Ch. 362.

2872. *Add. Annotation:*—**Consd.** Melzak *v.* Lilienfeld, [1926] Ch. 480.

2909. *Add. Citations:*—95 L. J. Ch. 52; 135 L. T. 91.

2912. After this case add "Housing & Town Planning Act, 1919 (c. 35), s. 27, is now replaced by Housing Act, 1925 (c. 14), s. 102."

2913a. —— **Part of premises sublet.**]—In 1906 there was granted to K., as lessee a dwelling-house & premises for a term of ninety-nine years at a ground rent of £8 a year, & the lessee covenanted with the lessors that he would not, without the lessors' previous licence in writing, use the demised house, or any part thereof, "for any purpose whatsoever other than for the purpose of a private dwelling-house, wherein no business of any kind is carried on." There was a further covenant by the lessee that he would not do or suffer to be done in or on the demised premises anything which might, in the judgment of the lessors, be or grow to the injury or annoyance of the lessors or their tenants, or the occupiers of adjoining premises. In 1914 the lessee, without the knowledge of or licence from the lessors, sublet three rooms of the first floor of the demised house to a subtenant, whose tenancy expired in June, 1926. On July 19 the lessee, without any licence from the lessors, sublet the same three rooms to P. as a subtenant at a rent of £1 a week. In an action by the lessors against K. & P., & the mtgees. of K., claiming possession of the house as against all defts., on the ground that the lease had been forfeited by reason of the breaches of the two covenants:—*Held:* (1) there had been a forfeiture of the lease by breaches of both the restrictive covenants, & the words in the first covenant, "wherein no business of any kind is carried on," must be construed as adding to the stringency of the covenant that the house should be used as a private dwelling-house; (2) Rent Restriction Acts afforded no defence to the action, as K. was in actual possession of the whole of the dwelling-house in the interval between the two tenancies, & 1923 Act, s. 2 (1), came into operation, & the premises had become decontrolled.—BARTON *v.* KEEBLE, [1928] Ch. 517; 97 L. J. Ch. 215; 139 L. T. 136.

2922. *Add. Annotation:*—**Refd.** *Re* Debtor (No. 3 of 1926) (1926), 135 L. T. 689.

2928. Add the following paragraph & citation:—
A covenant not to use a house for "the exercise or carrying on of any art, trade or business, occupation or calling," is broken by using the house for the purposes of a hospital assocn., established, without a view to profit, to provide accommodation for patients able & willing to pay for it.—27 Ch. D. 81, n.

2929. *Add. Annotations:*—**Refd.** *Re* Debtor (No. 3 of 1926) (1926), 135 L. T. 689; Frost *v.* Caslon, Frost *v.* Wilkins, [1929] 2 K. B. 138.

2932a. **Conversion of dwelling-house into flats—Services supplied to tenants.**]—By a lease dated Apr. 11, 1865, the Governors of a College granted to D. the lease of a private dwelling-house on their estate, the amenities of which they were very desirous to safeguard, for a long term of years. There was a covenant in the lease by D. that he would not (*inter alia*) suffer the demised premises to be used for carrying on thereon any trade or business or for any purpose that might be

PART XII. SECT. 2.

sp. "*Alteration*" — *Construction of covenant.*]—Business premises in a shopping district were leased "together with the fixtures & fittings" specified in Sched. I. to the lease. A tailoring business had been carried on in the premises prior to the making of the lease, & the fixtures & fittings in question were suitable for & had been used in carrying on such a business. These fixtures were set out in the Sched. There was a covenant not to carry on noxious, noisy or offensive trades, & also a covenant to keep demised premises & all permitted additions & landlord's fixtures & fittings in good tenantable repair & condition, & not to make an alteration. There was a covenant to yield up premises, fixtures, fittings & additions in good & tenantable repair:—*Held:* "alterations" must be construed in accordance with the context, & an assignee of the lease who proposed to remove the fittings & fixtures & store them in a safe place on the premises & to erect other fixtures & fittings necessary for the purpose of using the premises as a retail creamery shop, had not committed a breach of the covenant as to alterations.—WHITE *v.* RYAN, [1932] I. R. 169.—IR.

deemed by the Governors or their successors an annoyance or inconvenience to the neighbourhood. There was the usual power of re-entry for breach of any covenant. In 1894 the lease was assigned to deft. R., subject, however, to an underlease to G. This underlease, which contained the same terms as the headlease, was in 1928 assigned to deft. P. P., the underlessee, having by certain internal structural alterations of the demised premises converted them into three separate flats, proceeded, without the knowledge or consent of pltfs., who were the successors in title to the Governors who had originally granted the lease & also the present reversioners in fee simple expectant on the determination thereof, to let them out to tenants at various rentals. P. also contracted to supply the tenants with certain services, hot water, heat, lighting, etc. It was proved in evidence that R. knew of the acts of P., but took no steps to prevent the letting or stop the acts in any way. Pltfs. thereupon sought to recover possession on the ground of alleged breaches of the covenants in the headlease as to user:—*Held:* (1) what P. had done constituted the carrying on of a business, inasmuch as she retained control of an important portion of the demised premises & was under liability to supply certain services, such as hot water, etc. She had therefore committed a breach of both the covenants as to user contained in the underlease & as to acts deemed by pltfs. to cause an annoyance or inconvenience to the neighbourhood; (2) R., by knowingly permitting the letting out of the demised premises in flats & taking no steps to prevent what she had been informed would constitute a breach of the covenants in the headlease, had committed a breach of the covenant " not to suffer the same to be used for the carrying on of any . . . business or for any purpose that might be deemed by the Governors or their successors to be an annoyance or inconvenience to the neighbourhood." Pltfs. were therefore entitled to an order for possession of the demised premises.

(3) The words " permit " & " suffer " have been the subject of judicial decision, & in one case I think it was said they were synonymous; but whether this is in accordance with other decisions is not material to this case. Speaking for myself, with all possible respect to the learned judge who said so, I think there may well be as a matter of construction a substantial difference between the word " permit " & the word " suffer," but, as I say, it is not material to consider it here. The word in the case before me is " suffer," and at any rate that must cover allowing something to be done which the covenantor has the complete power to prevent (LUXMOORE, J.).—BARTON *v.* REED, [1932] 1 Ch. 362, 375; 101 L. J. Ch. 219; 146 L. T. 501.

2932b. —— Covenant not to " suffer " premises to be used for business—Failure to sue for breach by under-tenant.]—BARTON *v.* REED, No. 2932a, *ante.*

2932c. —— —— Distinction between " suffer " & " permit."]—BARTON *v.* REED, No. 2932a, *ante.*

2943a. Covenant not to carry on trade of alehouse, beerhouse or tavern keeper or licensed victualler—Carrying on of restaurant.]—A covenant in a lease that the trades or businesses of alehouse keeper, beerhouse keeper, tavern keeper, or licensed victualler should not be carried on on the demised premises, is not broken by the carrying on of a restaurant with a wine & beer on-licence subject to the condition that alcoholic liquor should only be served with meals.—LORDEN *v.* BROOKE-HITCHING, [1927] 2 K. B. 237; 96 L. J. K. B. 400; 137 L. T. 60; 91 J. P. 81; 43 T. L. R. 268; 71 Sol. Jo. 332.

2945. *Add. Annotation:*—**Refd.** Lorden *v.* Brooke-Hitching, [1927] 2 K. B. 237.

2952. *Add. Annotation:*—**Refd.** Lorden *v.* Brooke-Hitching, [1927] 2 K. B. 237.

2953. *Add. Annotation:*—**Refd.** Lorden *v.* Brooke-Hitching, [1927] 2 K. B. 237.

2981a. —— Subletting part of premises.]—BARTON *v.* KEEBLE, No. 2913a, *ante.*

2981b. —— Conversion of dwelling-house into flats.]—BARTON *v.* REED, No. 2932a, *ante.*

2994. *Add. Citations:*— 95 L. J. Ch. 1; 134 L. T. 56.

2995. After this case add :—

—— ——.]—*See, now,* Landlord & Tenant Act, 1927 (c. 36), s. 19 (2).

2995a. —— —— Making openings in party-wall.]—LILLEY & SKINNER, LTD. *v.* CRUMP (1929), 73 Sol. Jo. 366.

Annotation:— **Follid.** Ball Bros., Ltd. *v.* Sinclair, [1931] 2 Ch. 325.

2995b. —— —— Alteration amounting to improvement.]—By a lease dated Apr. 2, 1930, certain premises were demised to deft. for a term of years. The lease contained covenants by the lessee (*inter alia*) (*a*) not to make any alteration or addition to the premises, except such as might from time to time have been authorised by the landlord in writing; (*b*) not to cut, maim or injure any of the walls or timbers thereof; & (*c*) not to assign or under-let the premises or any part thereof without the written consent of the landlord. The lessee having contracted to sub-let the premises to A., & for this purpose desiring to carry out certain structural alterations, which included the alteration of the position of a staircase, in pursuance of the covenant in the lease, asked the landlord for his permission. The landlord refused his sanction to the suggested alterations except on certain conditions, which were unacceptable to the lessee. The lessee thereupon threatened to carry out the alterations, & the landlord commenced an action for an injunction to restrain him from so doing. Questions arose

PART XII. SECT. 3, SUB-SECT. 4.—B. (a).

e i. —— *Tea & refreshment rooms—Letting premises for use as tea-rooms only.*]—*Held:* a breach of covenant, & the person injured by the breach of covenant was entitled to an interdict restraining such breach.—SAHEEBOLAY *v.* WOOLFSON, [1925] App. D. 38.—**S. AF.**

PART XII. SECT. 3, SUB-SECT. 5.—A.

b i. —— *Screaming baby.*]—The landlord sought to evict the tenant because of the screaming of the tenant's two-year-old child; & contended that he " believes " that the tenant was permitting the premises to be sued for the purpose of disturbing other tenants when the baby screamed therein, & that his, the landlord's, " belief " was the sole test of a breach of the covenant. There was no question but that the other tenants were seriously disturbed by the child's crying, but there was evidence that the tenant was doing all he could to quiet it:—*Held:* it was impossible to hold, on the evidence, that the landlord could have had any honest belief that the tenant was committing a breach of said covenant.—JOHANNSON *v.* BERMAN, [1930] 2 W. W. R. 569; [1931] 1 D. L. R. 255; 39 Man. L. R. 161.—**CAN.**

(*a*) whether Landlord & Tenant Act, 1927 (c. 36), s. 19 (2), applied, & (*b*) whether the landlord had under the circumstances unreasonably withheld his consent:—*Held:* (1) the sub-sect. applied & must be read into the appropriate covenant, & the landlord could not unreasonably withhold his consent if the alteration or addition sought to be made would in fact effect an improvement. The circumstances under which an alteration or addition constitutes an improvement considered; (2) in the circumstances of the case, the withholding of consent on the part of the landlord was unreasonable, & the alteration could have been made without any further application to him.—BALLS BROS., LTD. *v.* SINCLAIR, [1931] 2 Ch. 325; 100 L. J. Ch. 377; 146 L. T. 300.

2997. *Add. Annotation:*—**Refd.** Torbay Hotel *v.* Jenkins, [1927] 2 Ch. 225.

2998. *Add. Annotation:*—**Refd.** Ward *v.* Paterson, [1929] 2 Ch. 396.

3002. *Add. Annotation:*—**Refd.** Lorden *v.* Brooke-Hitching, [1927] 2 K. B. 237.

3007. *Add. Annotations:* — **Consd.** Southwark Revenue Officer *v.* Hoe (R.) & Co. (1930), 143 L. T. 544. **Refd.** Shaw *v.* Public Trustee (1929), 141 L. T. 465.

3026a. Not to allow placards, posters or advertisements other than plates or other similar announcements—Illuminated sign.]—*Held:* a breach of the covenant.—GIFFORD *v.* DENT (1926), 71 Sol. Jo. 83.

3027. In second catchword for "grantor" read "grantee."

3033. *Add. Annotation:*—**Refd.** Richardson *v.* Moncrieffe (1926), 43 T. L. R. 32.

3035a. ——. **Obligation of lessor as to adjacent premises.**]—O'CEDAR, LTD. *v.* SLOUGH TRADING CO., No. 5070a, *post*.

3067. *Add. Citations:*—[1926] Ch. 620; 95 L. J. Ch. 445; 135 L. T. 107.

Part XIII.—Fitness of Premises.

3081. *Add. Annotations:*—**Consd.** Jameson *v.* Kinmell Bay Land Co. (1931), 47 T. L. R. 410. **Apld.** Miller *v.* Cannon Hill Estates, Ltd., [1931] 2 K. B. 113.

3102. *Add. Annotation:*—**Refd.** Miller *v.* Cannon Hill Estates, Ltd., [1931] 2 K. B. 113.

3111. *Add. Annotation:*—**Consd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

3120. *Add. Annotation:*—**Consd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

3120a. ——.]—At common law in the absence of express contract a landlord of an unfurnished house is not liable to his tenant, nor is a vendor of real estate liable to his purchaser, for defects in the house or land rendering it dangerous or unfit for occupation, even if the defects are due to his construction or are within his knowledge.

A firm of builders, having built several houses on an estate of which they were the owners, sold to one C. a house which was nearly completed. They agreed to complete the house by the end of Oct. 1929, & to make it fit for habitation, & like in decoration & design to the other houses on the estate. The agreement contained a clause enabling C. to go into possession before completion as tenant at will. The house, like the others on the estate, was fitted with a particular make of boiler, which was placed in the kitchen & was heated by a Bunsen gas burner. Above the kitchen was a bathroom. From a cupboard in the bathroom a linen chute ran down to a cupboard in the kitchen connected with the boiler by a pipe. There was no flue to carry gas or fumes from the burner to the outward air. C. with his wife & child went into occupation on Sept. 28. The C. Gas Co.'s inspector examined the gas fittings & set the regulator fitted to the burner so that 45 cubic feet of gas & no more passed into the burner per hour. On Oct. 26, C. & his wife were found dead in the bathroom, poisoned by carbon monoxide gas. A few days afterwards the regulator was found so set that much more than 45 cubic feet could pass into the burner in an hour. The boiler with its burner & the linen chute were parts of the realty. The boiler with the burner properly regulated was not dangerous. It was the business of the Gas Co. & not that of the builders to regulate the flow of gas to the burner. In an action under Fatal Accidents Act, 1846 (c. 93), by the administrators of C. & his wife against the builders:—*Held:* there was no evidence

PART XII. SECT. 3, SUB-SECT. 7.—A.

2998 i. *Not to let for particular trade—What amounts to breach.*]—Where premises were let to a confectioner, & the landlord covenanted not to let any shop in the same block of buildings for a similar purpose, but subsequently let adjoining shops to a grocer & a greengrocer & fruiterer:—*Held:* there had been a breach of covenant by the landlord.—SUTHERLAND *v.* DEVEREUX, [1928] N. Z. L. R. 171.—**N.Z.**

2998 ii. —— ——.]—In a lease to pltf., by deft. co.'s manager, of premises part of a hotel building for use as a store, the lessee agreed to use the store for the display & sale of certain specified kinds of goods, & lessor agreed "not to enter into any leases herein during the term of this lease which shall be used for the purpose of selling any of the above-mentioned articles." After the making of the lease, deft. co. made a renewal lease to G. of store premises immediately adjoining those leased to pltf., the business to be carried on therein by G. being that of selling precisely the same kind of goods that pltf. was to sell:—*Held:* the renewal of G.'s lease was a breach of the agreement with pltf. not to enter into any such lease, & deft. co. was liable to pltf. in damages by reason of the breach.—GEARY *v.* CLIFTON CO., [1928] 3 D. L. R. 64; 62 O. L. R. 257.—**CAN.**

PART XII. SECT. 3, SUB-SECT. 8.

sv. *To keep open continuously—Lease of hotel.*]—Deft. leased to pltf. certain hotel properties consisting of an inn & an annex. Pltf. covenanted to continually conduct & carry on the business of a high-class inn:—*Held:* the agreement meant keeping open the hotel in the way that was usual. Therefore, it was no breach that the main building was, according to custom, closed during the winter months, the annex being kept open continuously.—Q. R. S. CANADIAN CORPN., LTD. *v.* COLEMAN, [1931] 1 D. L. R. 277; 65 O. L. R. 462; *affd.*, [1931] 3 D. L. R. 577; S. C. R. 708.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 1.—B. (a).

f i. ——.]—BOYD *v.* DICKESON, [1930] 2 D. L. R. 96.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 2.—D. (b) ii.

3151 ii. —— *Defect of repair.*]—KELPON *v.* STEWART, [1928] 3 W. W. R. 640.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 2.—E.

3156 i. *Breach—What amounts to—Hot ashes left in yard.*]—Defts. agreed for reward to provide board & lodging for infant pltf., who was injured while playing in the yard of the premises through coming in contact with some hot ashes placed there by one of defts.:—*Held:* defts. were liable.—IRWIN *v.* HAMAL, [1927] N. Z. L. R. 7.—**N.Z.**

of a breach of any duty which the law cast upon defts. as vendors or lessors of the house towards C. or his wife, & pltfs. could not recover.—BOTTOMLEY *v.* BANNISTER, [1932] 1 K. B. 458, 459; 101 L. J. K. B. 46; 146 L. T. 68; 48 T. L. R. 39, C. A.

Annotation :—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119.

3120b. ——.]—CRUSE *v.* MOUNT (1932), 49 T. L. R. 87; 76 Sol. Jo. 902.

3157. *Add. Annotation :*—**Consd.** Haskell *v.* Marlow, [1928] 2 K. B. 45.

3159. *Add. Annotation :*—**Refd.** Fisher *v.* Walters (1926), 90 J. P. 195.

3160. *Add. Citations :*—90 J. P. 195; 24 L. G. R. 327.

3160a. -.]—The tenant of an industrial dwelling-house, which, as regards rent, came within Housing Act, 1925 (c. 14), & Increase of Rent & Mtge. Interest (Restrictions) Act, 1920 (c. 17), & the rent of which had been increased under the latter Act, sought to recover from his landlords, deft. corpn., his medical expenses & damages for loss of work incurred by reason of an accident suffered by him when, in opening one of the windows of the house, as soon as he had unlatched the top sash it fell owing to the breaking of the sash cord & severely crushed his hands. He based his claim on the alleged failure of the landlords to perform their statutory obligations under Housing Act, 1925, to keep the house "in all respects reasonably fit for human habitation" &, alternatively, under Increase of Rent & Mtge. Interest (Restrictions) Act, 1920, to keep the house in "good & tenantable repair":—*Held :* (1) whatever was the effect of the above mentioned Acts upon a landlord's responsibility for the condition or state of repair of houses coming within the scope of those Acts, upon which, as applied to the facts, the ct. was not unanimous, it was a condition precedent to the liability of the landlord that notice of latent, as well as of patent, defects should be given to him by the tenant, whether or not the landlord had a right of access to inspect the state of repair of the house, & the absence of such notice was fatal to pltf.'s claim. (2) Observations upon the meaning of the words "in all respects reasonably fit for human habitation" in Housing Act, 1925, s. 1.—MORGAN *v.* LIVERPOOL CORPN., [1927] 2 K. B. 131; 96 L. J. K. B. 234; 136 L. T. 622; 91 J. P. 26; 43 T. L. R. 146; 71 Sol. Jo. 35; 25 L. G. R. 79, C. A.

Part XIV.—Fixtures.

3161. *Add. Annotation :*—**Refd.** Spyer *v.* Phillipson, [1931] 2 Ch. 183.

3163. *Add. Annotation :*—**Consd.** Spyer *v.* Phillipson, [1931] 2 Ch. 183.

3206. *Add. Annotation :*—**Refd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

3211. *Add. Annotation :*—*As to* (2) **Consd.** Spyer *v.* Phillipson, [1931] 2 Ch. 183.

3212. *Add. Annotation :*—**Refd.** Spyer *v.* Phillipson, [1931] 2 Ch. 183.

3219a. ——.]—The lessee of a flat, which he held for a term of twenty-one years, without the

PART XIII. SECT. 3, SUB-SECT. 2.—F.

sc. *Room in building leased to unincorporated association — Injury to member of association—Failure to provide fire-escapes.*]—A building in the city of L. was owned by deft. co. & occupied by the co. & various tenants. It was four storeys in height, & on the fourth storey were two rooms fitted up & used as lodge-rooms. Deft. co. had leased one of these rooms to an unincorporated fraternal association or lodge, & the premises were occupied by the lodge under that lease in Jan. 1927, when a fire broke out in the building. Pltf., a member of the lodge, was attending a meeting in the lodge-room at the time, & was severely injured in attempting to escape from the burning building. There were no fire-escapes, & the building was so constructed as to make it a fire-trap :—*Held :* pltf. was not an invitee, but a mere licensee, of defts., though an invitee of defts.' tenant; he did not come upon defts.' premises for any purpose in which he & defts. had a common interest, & there was no contractual relation between them.—TAYLOR *v.* PEOPLE'S LOAN & SAVINGS CORPN., [1929] 1 D. L. R. 160; 63 O. L. R. 202; *affd.*, [1930] S. C. R. 190; 2 D. L. R. 891.—**CAN.**

sd. *Theatre—Heating-plant inadequate.*]—DAVEY *v.* CHRISTOFF (1915), 9 O. W. N. 291, 481; 35 O. L. R. 162.—**CAN.**

PART XIV. SECT. 1.

sf. *General rules.*] — Whether an article has become in law affixed to land or not is to be determined in the same way as between vendor & purchaser, mtgor. & mtgee. or landlord & tenant, but a tenant has the right as against his landlord to detach & remove trade or ornamental fixtures installed by him, during or at the expiration of his term. If an article is embedded in the soil or is attached to any building or permanent erection thereon by a permanent fastening, it is *primâ facie* a fixture. Unless so attached, an article is not regarded as "embedded" in the soil merely because it is placed on a brick, concrete or wood foundation, or even in holes constructed in the foundation to receive it, or because it sinks accidentally into the foundation, or because earth or other matter accidentally accumulates round it so as to give it the appearance of being embedded. A belt carried from shafting to a machine for the purpose of working it is not in itself sufficient to make the machine a fixture. The connection of a hydraulic press with underground water-pipes, or the insertion of the nozzle of a bellows in a hole which it tightly fits in some part of a forge affixed to the premises, is sufficient to make the press, or the bellows, *primâ facie* a fixture. If an article is proved, *primâ facie*, to be a fixture, the onus of showing that it was intended to continue a chattel lies on those who contend that it is a chattel. The relevant evidence to prove the intention is the circumstances of the case, & mainly the degree of annexation & the object of annexation. Declarations of intention by the party who affixed the article are not relevant. An article which is no further attached to the premises than by its own weight is *primâ facie* not a fixture, but it will be held to be a fixture (*a*) if it is part of a machine or other article which is a fixture; (*b*) if it can be inferred from the circumstances that it was intended to become a part of the freehold. If an article which is fixed is taken out of its place by a mtgor., & an equally good or better article is substituted for it, the mtgee. is not entitled to claim both articles as fixtures; he must elect which he will have.—*Re* MAY BROS., LTD. (1929), S. A. S. R. 508.—**AUS.**

PART XIV. SECT. 2, SUB-SECT. 1.—A. (c).

3177 i. *General rule.*]—A building not attached to the land, except by its own weight, cannot be considered as part of the realty unless the circumstances show that it was intended to be part of the land; & the *onus* of showing such intention is upon the party who asserts that it is not a chattel.—CUNNINGHAM *v.* SIGFUSSON & SIGFUSSON, [1930] 2 W. W. R. 189; 3 D. L. R. 955; 24 S. L. R. 589.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 1.—A. (d).

sc. *Boilers.*]—COLEMAN *v.* MONAHAN (N. B.), [1927] 2 D. L. R. 209.—**CAN.**

sd. *Manure lying in heaps.*]—Manure lying in heaps in a barn-yard is a chattel which may be taken away by the outgoing tenant, even after his tenancy has expired, & trover will lie for it if held or taken away by the landlord.—FOSHAY *v.* BARNES (1869), 12 N. B. R. (1 Han.) 450.—**CAN.**

consent of the lessor installed in some of the rooms certain valuable antique panelling, ornamental chimney-pieces & so-called "period" fireplaces. No portion of the structure of these rooms was altered in order to fix the panelling, but it was placed in position by inserting into the walls wooden plugs to which it was attached by screws. Some slight structural alteration was effected in fixing the new chimney-pieces & fireplaces. The lessee having died during the currency of the term, his exors. claimed the right to remove the panelling, chimney-pieces & fireplaces, alleging that these installations were tenant's fixtures, & as such removable by them. The lessor, on the other hand, contended that the panelling & chimney-pieces had been fixed & installed in such a way as to become part of the structure of the demised premises; that their removal would cause damage to the structure; that the installations by the lessee constituted landlord's fixtures, & that his exors. were not entitled to remove them. In an action by the lessor to restrain the exors. from removing the fixtures:—*Held:* (1) in determining whether a particular chattel was a tenant's or a landlord's fixture the ct. had to consider what were the object & purpose of the annexation, & what would happen if the annexed chattel were removed. So long as the chattel could be removed without doing irreparable damage to the demised premises, neither the method of attachment nor the degree of annexation, nor the *quantum* of damage that would be done either to the chattel itself or to the demised premises by the removal, had any bearing on the right of the tenant to remove it, except in so far as it threw a light upon the question of the intention with which the tenant affixed the chattel to the demised premises; (2) the ct. could not infer an intention on the part of the tenant that the fixtures in question should become part of the demised premises, but the proper inference to be drawn was that the tenant intended himself to enjoy them & not to benefit the demised premises. Therefore the fixtures were tenant's fixtures, & the exors. were entitled to remove them.—SPYER *v.* PHILLIPSON, [1931] 2 Ch. 183; 100 L. J. Ch. 245; 144 L. T. 626; 74 Sol. Jo. 787, C. A.

3225. *Add. Annotation:*—**Consd.** Spyer *v.* Phillipson, [1931] 2 Ch. 183.

3251a. Oak panelling.]—SPYER *v.* PHILLIPSON No. 3219a, *ante*.

3251b. Ornamental chimney-piece.]—SPYER *v.* PHILLIPSON, No. 3219a, *ante*.

3251c. Period fireplaces.]—SPYER *v.* PHILLIPSON, No. 3219a, *ante*.

3327. *Add. Annotation:*—**Consd.** Spyer *v.* Phillipson, [1931] 2 Ch. 183.

3343. *Add. Annotation:*—**Apld.** Spyer *v.* Phillipson, [1931] 2 Ch. 183.

3390. *Add. Citation:*—[1926] Ch. 877.

3418. *Add. Annotation:*—**Refd.** Spyer *v.* Phillipson, [1931] 2 Ch. 183.

3483. *Add. Annotation:*—**Refd.** Berry *v.* Berry, [1929] 2 K. B. 316.

3494. *Add. Annotation:*—**Refd.** Spyer *v.* Phillipson, [1931] 2 Ch. 183.

PART XIV. SECT. 2, SUB-SECT. 2.—C. (b) ii.

3256 ii. ——— ———.]—*Re* ROY WOLF BREWING CO. (Ont.), [1926] 2 D. L. R. 1002; 7 C. B. R. 625.—**CAN.**

3256 iii. ——— ———.]—On an interpleader issue, between a judgment creditor of the manager of a newspaper & printing business & the latter's father, who owned the business & the premises in which it was carried on, held that the printing presses were the property of the father. The evidence favoured the view that he, & not the son, was their real purchaser; &, moreover, they were part of the realty, since they were attached to the building for the better enjoyment & use thereof as a printing establishment, & because their removal would disfigure & disturb the building itself.—RICHARDSON *v.* HARDIE, [1928] 2 W. W. R. 246.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 2.—E.

3279 i. *Boiler—& other machinery.*]—ROGERS *v.* ONTARIO BANK (1891), 21 O. R. 416.—**CAN.**

PART XIV. SECT. 6, SUB-SECT. 2.

sg. *Hot water system.*]—An electrically heated hot-water service pump & equipment were installed by deft. upon pltf.'s premises. A rotary pump was fixed by screws to a log platform which was not affixed to the soil, but the pump was connected by electric wires which penetrated the wall of the house, with a switch-board inside. A hot-water cylinder was placed on the balcony & encased with wooden slabs which were screwed to pieces of wood which were nailed to the walls. From this cylinder pipes led to various bath-rooms & tanks & penetrated the house walls in several places. The whole apparatus was affixed by defts. in such manner as to be readily removable & so as to do the least possible injury to the fabric of the house:—*Held:* the object of the installation was not for its more convenient use as a chattel, but for rendering more convenient the occupancy of the house, & the service & equipment were fixtures.—ADAMS *v.* MEDHURST & SONS PTY., LTD. (1931), 24 Tas. L. R. 48.—**AUS.**

PART XIV. SECT. 7, SUB-SECT. 2.—B. (b).

3434 vi. ——— ———.]—Fixtures which a tenant is entitled to remove must be removed during the tenancy or within such time beyond the original term as the tenant holds the premises under a right still to consider himself a tenant. This rule applies whether the lease expired by effluxion of time or was properly determined during its currency.—NATIONAL TRUST CO., LTD. *v.* PALACE THEATRE, LTD., [1928] 1 W. W. R. 502, 805; [1928] 2 D. L. R. 59, 739; 23 Alta. L. R. 427.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 4.

3461 iv. ———.]—GLOBE LAND CO. *v.* HEASLIP, [1927] 3 D. L. R. 604; 60 O. L. R. 499.—**CAN.**

PART XIV. SECT. 7, SUB-SECT. 8.—B. (d).

se. *Covenant to deliver up personal property specified in lease—& additions thereto.*]—A lease provided that: "The lessee will, at the expiration or other sooner determination of the said term, peaceably surrender & yield up unto the said lessor the said demised premises with the appurtenances thereon & together with all buildings, erections & fixtures thereon, & the personal property included in Schedule A. hereto attached & any personal property brought upon the demised premises in addition thereto or in lieu or in substitution therefor":—*Held:* the personal property covered by the covenant included all the personal property in question herein brought upon the premises for use in the theatre, whether brought thereon by the lessor or by the lessee; it being held that such of said property as did not displace any of the personal property theretofore in the theatre was "in addition thereto," within the meaning of that phrase in the covenant, & such of it as took the place of any property theretofore in it was "in lieu of or in substitution therefor."—NATIONAL TRUST CO., LTD. *v.* PALACE THEATRE, LTD., [1928] 1 W. W. R. 502; [1928] 2 D. L. R. 59, 739; 23 Alta. L. R. 427.—**CAN.**

PART XIV. SECT. 8, SUB-SECT. 1.

sf. *Conversion—During continuance of term—Liquidator of tenant company permitting removal.*]—GEELONG CITY BUILDING PTY., LTD. *v.* BENNETT, [1928] V. L. R. 214; [1928] Argus L. R. 138.—**AUS.**

Part XV.—Rent.

3565. *Add. Annotation :*—**Refd.** *Re* Savile Settled Estates, Savile *v.* Savile, [1931] 2 Ch. 210.

3574. *Add. Annotation :*—**Refd.** Berry *v.* Berry, [1929] 2 K. B. 316.

3586. *Add. Annotation :*—**Refd.** Grant *v.* Edmondson, [1931] 1 Ch. 1.

3590. *Add. Citations :—sub nom.* WINSTON *v.* PINKNEY, 3 Keb. 137 ; 2 Lev. 80 ; T. Raym. 222.

Add. Annotation :—**Refd.** Brownlow *v.* Hewley (1696), 1 Ld. Raym. 58.

3635. *Add. Annotation :*—**Apld.** Maine & New Brunswick Electrical Power Co. *v.* Hart, [1929] A. C. 631.

3751. *Add. Annotation :*—**Apld.** *Re* Wells, [1929] 2 Ch. 269.

3779. *Add. Annotation :*—**Refd.** Rye *v.* Purcell, [1926] 1 K. B. 446.

3808. *Add. Annotation :*—**Distd.** British & North European Bank *v.* Zalzstein, [1927] 2 K. B. 92.

3854. *Add. Annotation :*—**Refd.** *Re* Pinto Leite & Nephews, *Ex p.* Des Olivaes (Visconde), [1929] 1 Ch. 221.

3867. *Add. Annotation :*—**Refd.** Tredegar *v.* Harwood (1928), 97 L. J. Ch. 392.

3930. *Add. Annotations :*—**Consd.** Dalton *v.* Pickard (1911), [1926] 2 K. B. 545, n. ; Richmond *v.* Savill, [1926] 2 K. B. 530.

PART XV. SECT. 3, SUB-SECT. 1.

sg. *Payment of deposit—Interest as part payment of rent.*]—A lease provided that the lessee should deposit a certain amount with the lessor, that the interest on the amount deposited was to be taken in part payment of the rent, & that the principal amount was to be taken in discharge of the last year's rent. Upon default in payment of the first year's rent, & re-entry upon the land by the lessor, the lessee sued to recover the full amount deposited by him with the lessor :—*Held :* (1) the amount left by the lessee with the lessor was not a deposit, in the strict legal sense of the term, liable to be forfeited on default of payment of rent ; (2) the lessee was entitled to recover the return of his deposit, less the rent that became payable in the first year.—VARADARAJA PERUMAL KOIL *v.* MUNIAPPA PILLAI (1929), I. L. R. 53 Mad. 141.—**IND.**

sm. *Tenant paying rent to be fixed by arbitration — Sub-tenant paying amount so fixed — Construction.*]—MEIKLE CO., LTD. *v.* BIRKETT & SON, LTD., [1931] 3 D. L. R. 684.—**CAN.**

PART XV. SECT. 3, SUB-SECT. 8.

h i. ——.]—Pltf. co. leased to deft. the half of a shop in which deft. carried on the business of selling *lingerie*. The other half was occupied by deft. co. There was a term in the lease that should the premises be damaged by fire the rent should be reduced for the time occupied in repairing such part or parts "as may be rendered untenantable & incapable for use & occupancy by the lessee." A fire took place on pltf.'s premises from which smoke penetrated to deft.'s shop, disfiguring the walls & ceiling :—*Held :* the damage was caused by the fire, &, having regard to the nature of the goods dealt in by deft., the premises were so injured by fire as to render them "untenantable & incapable" for use & occupancy by the lessee.—UNITED CIGAR STORES, LTD. *v.* BULLER & HUGHES, [1931] 2 D. L. R. 144 ; 66 O. L. R. 593.—**CAN.**

PART XV. SECT. 3, SUB-SECT. 9.—B. (a).

sp. *On tenant's business being facilitated by legislation.*]—R. *v.* CAPITAL BREWING CO., LTD., [1932] Ex. C. R. 171.—**CAN.**

PART XV. SECT. 3, SUB-SECT. 9.—B. (b) i.

3680 iv. —— —— ——.]—A lease provided that, on breach of any of certain covenants, the lessees should forfeit & pay unto the lessor a further additional rent or sum of fifty pounds sterling. The trial judge decided that this additional yearly rent was not in reality rent, but was in the nature of a penalty ; & taking as the measure of the damages the injury to the reversion, he assessed damages at one shilling :—*Held :* the additional rent was in the nature of a penalty, & the damages had been assessed on a proper basis.—BRADSHAW *v.* LEMON, [1929] N. I. 159.—**IR.**

PART XV. SECT. 4, SUB-SECT. 1.—D.

3734 i. *What amount to days of grace —Whether postponement of forfeiture.*]—Appct. & first resp. were lessor & lessee respectively under an agreement of lease which provided *(inter alia)* *(a)* that the rent should be payable in advance on the first day of every month without demand or notice ; *(b)* that in the event of the non-payment of rent within 7 days from the due date thereof the lessor should be entitled to cancel ; *(c)* that nothing in *(b)* should be taken as giving the lessee the right to claim 7 days' grace within which to pay the instalment of rent :—*Held :* clauses *(b)* & *(c)* indicated that the parties contemplated that there should be 7 days of grace before forfeiture operated.—FEIGENBAUM *v.* MILLS (1929), 50 N. L. R. 235. —**S. AF.**

PART XV. SECT. 4, SUB-SECT. 2.—C. (a).

3765 i. *General rule.*]—PEPPER *v.* BUTLER (1875), 37 U. C. R. 253.—**CAN.**

PART XV. SECT. 4, SUB-SECT. 3.

sh. *Assignee—Assignment after expiry of term—Lease containing covenant for renewal.*]—BENGAL NATIONAL BANK, LTD. *v.* JANAKI LATH ROY (1927), I. L. R. 54 Calc. 813.—**IND.**

PART XV. SECT. 5, SUB-SECT. 1.—B.

sj. *Failure to keep premises in tenantable repair.*]—The landlord of a house brought an action against the tenant for decree for payment of the rent due. In defence the tenant averred that the landlord was in breach of his obligation to keep the premises in tenantable condition, in respect that he had failed to renew certain piping which he knew or ought to have known was defective, with the result that a pipe burst & defender's effects were damaged, & she was compelled to leave the house. Defender retained the rent, & also counterclaimed for the damage suffered by her :—*Held :* a landlord's claim for rent was liquid only if he had fulfilled his obligations under the mutual contract of lease, & defender was entitled to retain her rent, & also to counterclaim for the damage she alleged she had suffered.—FINGLAND & MITCHELL *v.* HOWIE, [1926] S. C. 319.—**SCOT.**

PART XV. SECT. 6, SUB-SECT. 1.—B. (a).

sk. *Whether forcible expulsion necessary—Attornment by tenant to person with title paramount.*]—To constitute eviction forcible expulsion is not necessary. It is not necessary that the tenant should go out of possession ; & if, upon a claim being made by a person with title paramount, the tenant consents to an attornment to such person to change the title under which he holds, or enters into a new arrangement for holding under him, this will be equivalent to an eviction & a fresh taking.—JOGENDRA LAL SARKAR *v* MOHESH CHANDRA SADHU (1928), I. L. R. 55 Calc. 1013.—**IND.**

PART XV. SECT. 6, SUB-SECT. 1.—B. (e).

sl. *Error in area leased—Claim for rectification.*]—The Crown leased from suppliant a certain space on two floors of a building owned by it, by a written lease duly executed by the Minister as provided for by sect. 18 of Public Works Act, & under authority of an Order in Council. The measurements stated in this lease were made by officers of the Department of Public Works & the contract & plans accompanying the same were prepared by them. It was claimed by suppliant, concurrently with the execution of the lease, that the superficial area mentioned in the lease was in error & should be greater & that the total rental based thereon should be accordingly increased. It was agreed between the parties that the area leased was improperly measured, & thereupon a second or amending Order in Council was passed recognising that an error had been made in stating the area in square feet leased & authorising the amending of the first Order in Council accordingly. No new contract, however, was executed in conformity with this amending Order in Council. The Crown took possession under the lease, & later, before its termination, rescinded the several Orders in Council, vacated the premises & returned the keys, & repudiated its obligation to be bound under the lease. Suppliant then notified the Crown that it would hold it responsible for the rent for the balance of the term, but that it would endeavour to rent the space vacated on the Crown's account, & would give the Crown credit for any sums so received :—*Held :* the acts of the suppliant did not constitute eviction of the Crown from the leased premises, & the Crown was liable for the rent for the entire term of the lease.—JOURNAL PUBLISHING CO., LTD. *v.* R., [1930] Ex C. R. 197 ; 4 D. L. R. 644.—**CAN.**

PART XV. SECT. 6, SUB-SECT. 2.

sm. *Application of rule to India.*]—SUSIL KUMAR BISWAS *v.* RASANI KANTA CHAKRAVARTI (1927), I. L. R. 55 Calc. 689.—**IND.**

3958. *Add. Annotation :—As to* (1) & (2) **Refd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

3990. *Add. Annotation :—As to* (4) **Consd.** Haskell *v.* Marlow, [1928] 2 K. B. 45.

4105. *Add. Annotations :*—**Refd.** Dalton *v.* Pickard (1911), [1926] 2 K. B. 545, n.; Richmond *v.* Savill, [1926] 2 K. B. 530.

4116a. —— ——.]—A grantee of a rent reserved on a lease for years may sue the lessee for the rent where the lessee has attorned.—GOODMAN *v.* PACKER (1670), T. Jo. 1; Freem. K. B. 1; 84 E. R. 1116.

Annotation :—**Refd.** Brownlow *v.* Hewley (1696), 1 Ld. Raym. 82.

4142a. —— —— —— **Sufficiency of consideration.**]—A declaration set out an agreement in writing, whereby pltf. agreed to let, & T. to take, a house, at a yearly rent, & deft. thereby also agreed to see the rent paid by T., or to pay it for him. Averment, that pltf. let the house. & T. became tenant on the terms of the agreement. Breach, that neither T. nor deft. paid the rent:—*Held :* the consideration for deft.'s promise was the letting of the house.—CABALLERO *v.* SLATER (1854), 14 C. B. 300; 23 L. J. C. P. 67; 2 W. R. 198; 139 E. R. 123; *sub nom* CAVALIERO *v.* SLATER, 22 L. T. O. S. 243.

4162. *Add. Annotation :*—**Refd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306.

4163. *Add. Annotation :*—**Refd.** Hoystead *v.* Taxation Comr., [1926] A. C. 155.

4167a. Rescission of purchase agreement determining tenancy.]—TURNER *v.* WATTS, No. 6636a, *post.*

4260. *Add. Annotation :*—**Refd.** Swift *v.* Ambrose (1931), 47 T. L. R. 594.

4262. *Add. Annotation :*—**Refd.** Akt. Dampskibs Steinstad *v.* Pearson (1927), 137 L. T. 533.

4276. *Add. Annotation :*—**Refd.** Oakley *v.* Wilson, [1927] 2 K. B. 279.

Part XVI.—Rates and Taxes.

4356. *Add. Citation :-* -(1926–31), 1 B. R. A. 80, C. A.

4368. *Add. Annotation :*—**Refd.** Miller (Lady) *v.* I. R. Comrs. (1930), 15 Tax Cas. 25.

PART XV. SECT. 6, SUB-SECT. 5.—C.

3984 i. *Lands inundated.*]—Unless there is any stipulation in the agreement of tenancy to the contrary, a tenant is not entitled to claim abatement of rent on the ground that the productive powers of the land have deteriorated by reason of its liability to inundation at high water. It is only when a part of the premises leased is entirely lost by inundation of the sea that an abatement of rent on that account can be claimed.—VISHWANATH *v.* RANKRISHUA (1925), I. L. R. 50 Bom. 94.—**IND.**

PART XV. SECT. 7.

4005 i. *Whether future rent released—Refusal of rent for specified period.*]—A landlord's refusal of rent for a certain rental period does not in itself free the tenant from the obligation of paying, or at least tendering, subsequent rent as it falls due.—BLACK *v.* STEBNICKI, [1930] 1 W. W. R. 437; 2 D. L. R. 675; *on appeal*, [1930] 4 D. L. R. 715; 2 W. W. R. 656; 39 Man. L. R. 123.—**CAN.**

PART XV. SECT. 9, SUB-SECT. 3.—C.

3o. *Land & chattels let at single rent—Land & chattels subject to mortgage.*]—An owner of lands & chattels thereon made an equitable mtge. of both the land & chattels. Subsequently, by virtue of Conveyancing Act, 1881, s. 18, he made a lease of both the lands & chattels, reserving a single rent:—*Held :* the rent was not apportionable between the lands & the chattels, as the rent issued out of the lands to the exclusion of the chattels.—MUNSTER & LEINSTER BANK, LTD. *v.* HOLLINSHEAD, [1930] I. R. 187.—**IR.**

PART XV. SECT. 10, SUB-SECT. 2.—B.

4094 i. *General rule—Letting into full possession necessary.*]—Where there is no dispute as to the identity of a lease but the tenant denies that he has got possession of them, it is for the landlord to prove that he has discharged his obligation to put the tenant in possession before he can enforce the tenant's obligation to pay rent. The landlord must show not only that the tenant is in possession but that the possession is attributable to the lease, or might be so. That onus cannot be satisfied where, before rent has been paid, the sisters of the tenant, as heirs of their father, have obtained a decree against the landlord declaring their right to possession of their appropriate share in the property according to Mahomedan law.

Cases are distinguishable where the tenant has already paid rent under the lease, or where the tenant alleges, & the landlord denies, that certain subjects, of which possession has not been given, were within the subjects let; in cases of that nature the onus is primarily on the tenant.—JOGESH CHANDRA ROY *v.* EMDAD MEAH (1931), 59 L. R. Ind. App. 29.—**IND.**

PART XV. SECT. 10, SUB-SECT. 2.—E. (e).

sp. *Some heirs or successors-in-interest.*]—A suit for rent is maintainable against some of the heirs or successors-in-interest of a deceased tenant, without bringing all the heirs or successors-in-interest on the record.—JAGAN MOHAN SARKAR *v.* BROJENDRA KUMAR CHAKRABARTI (1925), I. L. R. 53 Calc. 197.—**IND.**

PART XV. SECT. 10, SUB-SECT. 2.—F. (d).

4154 i. *Validity of lease—Lease by statutory body—Not in accordance with statute.*]—A. sued as clerk to comrs. exercising a public trust under an Act of Parliament, 3 Vict. c. 53, upon an alleged demise of tolls for a year, at a rent payable every fortnight in advance, sect. 27 of that Act requiring the rent to be made payable monthly; the lease stated in the declaration is said to be subject to the Act:—*Held :* on demurrer to the declaration, pltf., as clerk to the comrs., could not be permitted to recover on such a contract, because it was a contract substantially different from the one which the comrs. were expressly directed by the statute to make.—IRELAND *v.* NOBLE (1847), 3 U. C. R. 235.—**CAN.**

4154 ii. —— *Corporate seal of lessors not attached — Tenant never in possession.*]—NEWPORT INDUSTRIAL DEVELOPMENT CO. *v.* HEUGHAN, [1928] 3 D. L. R. 547; 62 O. L. R. 364; *affd.*, [1929] 3 D. L. R. 108; S. C. R. 491.—**CAN.**

PART XV. SECT. 10, SUB-SECT. 2.—F. (f).

4166 i. *Cancellation of lease—After accrual of rent—No bar to action.*]—PETERS *v.* CONFEDERATION LAND CORPN., [1930] 2 D. L. R. 315.—**CAN.**

PART XV. SECT. 10, SUB-SECT. 3.—C. (c).

sq. *Holding over after judgment in favour of landlord—No resumption of possession by landlord.*]—In an action to recover rent of premises leased by deft. from pltf., deft. pleaded, *inter alia*, that the tenancy had been determined. The issue was decided in favour of pltf., & judgment was entered in pltf.'s favour & no appeal taken. No notice to quit was given, & there was no surrender of the premises, & no acceptance of surrender, & no resumption of possession by pltf.:—*Held :* dismissing deft.'s appeal with costs, pltf. was entitled to recover for rental of the premises for the time subsequent to the recovery of the previous judgment.—GANNON *v.* FARQUHAR TRADING CO. (1928), 60 N. S. R. 80.—**CAN.**

PART XV. SECT. 10, SUB-SECT. 3.—C. (e).

4268 ii. —— —— *Assignee of agreement for lease—Lease granted to original lessee.*]—Where the assignee of an agreement for a lease enters upon the subject premises & exercises acts of ownership thereon & also pays money to the lessor in accordance with the amount mentioned as rent in the agreement for a lease, he is liable to the lessor in an action for use & occupation, even though after entry by him the lessor grants a lease of the premises to the original lessee under the terms of the agreement for a lease.—OWEN *v.* BEECHER (1928), 28 S. R. N. S. W. 527; 45 N. S. W. W. N. 67.—**AUS.**

4381. *Add. Annotation :*—**Refd.** Perrin *v.* Dickson, [1929] 98 L. J. K. B. 683.

4382. *Add. Annotation :*—**Refd.** Shanks *v.* I. R. Comrs., [1929] 1 K. B. 342.

4385. After this case add :—

——.]—*See, now,* Finance Act, 1926 (c. 22), s. 26.

4397. *Add. Annotation :—As to* (2) **Refd.** R. *v.* Customs & Excise Comrs., [1928] A. C. 402.

4401. *Add. Annotation :*—**Refd.** *Re* Airedale Garage Co., Anglo-South American Bank, Ltd. *v.* Airedale Garage Co. (1932), 101 L. J. Ch. 289.

4406a. —— Covenant by sub-lessee—Whether assignee of head-lease liable.]—By a head-lease of which pltfs. were assignees, the lessor covenanted to pay all rates, etc., in respect of the demised premises. Deft. was assignee of a sub-lease which contained a covenant to pay to pltfs. all rates, etc. :—*Held :* the covenant in the sub-lease was not subject to an implied term that pltfs. should themselves pay or be liable to pay the rates.—READ (W. H.) & Co., LTD. *v.* WALTER (1931), 48 T. L. R. 15.

4416. *Add. Annotation :*—**Refd.** Musmann *v.* Engelke (1927), 96 L. J. K. B. 824.

4447. *Add. Annotation :*—**Refd.** R. *v.* Customs & Excise Comrs., [1928] A. C. 402.

4457a. Right to deduct from rent—Under landlord's covenant to refund excess over specified sum.]—The lease of a flat beginning at midsummer at a rent of £400 a year, payable in advance at the rate of £100 on each quarter day, contained a covenant by the lessors that, in case the total sum paid by the tenant in any one year of the term in respect of rates & taxes should exceed £125, the lessors would, on production of the relative receipts, refund to the tenant the difference between the total sum paid by him & £125. If this difference were not refunded by the lessors within fourteen days of demand the tenant was to be at liberty to deduct such difference from the next instalment of rent. The lease contained a covenant by the tenant that he would duly & punctually pay & discharge all rates, taxes, duties, charges, assessments, & outgoings payable in respect of the demised premises. The tenant in a year of the tenancy between midsummer & midsummer paid three half-years' rates, amounting in all to over £125, & having demanded the refund of the excess from the landlords, & having failed to get payment of the same within fourteen days of the demand, deducted it from his next instalment of rent :—*Held :* under the landlords' covenant to refund, the tenant was entitled to make the deduction.—SOWERBY *v.* LINDSAY (1928), 139 L. T. 545 ; 44 T. L. R. 714, C. A.

Part XVII.—Assessments, Charges, Outgoings, etc.

4458. *Add. Annotation :—Generally,* **Refd.** Lowther *v.* Clifford, [1927] 1 K. B. 130.

4464. *Add. Annotations :*—**Refd.** Calder's Yeast Co. *v.* Stockdale (1926), 96 L. J. Ch. 357 ; Lowther *v.* Clifford, [1927] 1 K. B. 130.

4465. *Add. Annotation :*—**Refd.** Lowther *v.* Clifford (1926), 135 L. T. 200.

4467. *Add. Annotation :*—**Refd.** Lowther *v.* Clifford, [1927] 1 K. B. 130.

PART XVI. SECT. 1, SUB-SECT. 2.—B.

ar. *Agreement altering incidence of tax—What amounts to.*]—A landlord & a tenant entered into a preliminary agreement for a lease of certain premises for £90 per week, the tenant to pay all taxes, including land taxes. Prior to the execution of the lease the lessor discovered that the provision that the tenant was to pay land tax was contrary to the terms of Federal & State Land Tax Acts. The landlord then required that the lease should provide for a rent of £100 per week, & promised that he would make a voluntary annual allowance to the lessee of an amount equal to the difference between the amount of the Federal & State land tax paid by the lessor in respect of the premises & £520, the latter sum being the annual amount of £10 per week. The lease was then executed, stipulating for a rent of £100 per week :—*Held :* the above facts did not disclose a " contract, agreement or arrangement . . . altering the incidence " of any land tax within Land Tax Act Assessment Act, 1910-1926, s. 63, or Land Tax Act, 1915, s. 68.—*Re* LUCKS, LTD., [1928] V. L. R. 180 ; [1928] Argus L. R. 155.—**AUS.**

PART XVI. SECT. 2, SUB-SECT. 3.

at. *Local improvement rates.*]—Pltfs. as lessees of lands of University of Toronto held liable for local improvement rates under Local Improvement Act, R. S. O., 1927, University of Toronto Act, R. S. O., 1927, & clause 3 of the agreement confirmed by 1889 (Ont.), c. 53.—MCPHEDRAN & CLELAND *v.* TORONTO, [1932] 1 D. L. R. 439 ; O. R. 65 ; 2 D. L. R. 203 ; O. R. 198. —**CAN.**

PART XVI. SECT. 2, SUB-SECT. 4.—A.

bi. —— *" Which now are."*]—Deft., in 1872, leased a farm from pltf. for a year from Sept. 27, 1872 :—*Held :* deft. was not liable for the taxes for 1872, for the words, " all rates, etc., which now are," referred to the kind or character of the taxes assessable against the land.—MACNAUGHTON *v.* WIGG (1874), 35 U. C. R. 111.—**CAN.**

PART XVI. SECT. 2, SUB-SECT. 4.—C.

sx. *Covenant to pay " any future land tax "—Rate imposed under bridge Act not included.*]—JONES (DAVID), LTD. *v.* LEVENTHAL (1927), 27 S. R. N. S. W. 350 ; 44 N. S. W. W. N. 105.—**AUS.**

sz. *Covenant to pay " any future land tax—Bridge rate.*]—By a lease dated Nov. 30, 1909, appts. demised certain business premises in Sydney to resps., who thereby covenanted to pay all rates, taxes & outgoings, parliamentary, municipal, local, or otherwise imposed or to be imposed upon the premises or payable by the owner or occupier in respect thereof, landlord's property tax or land tax only excepted. Appts., as lessors, signed a memorandum dated Mar. 31, 1910, under seal, which recited that it should be read with the lease, & thereby agreed to pay " the land tax at present assessed & any future land tax or municipal tax upon the unimproved capital value." Sydney Harbour Bridge Act of 1922, enacted by the Parliament of New South Wales, provided for the erection of a high level bridge across Sydney Harbour, two-thirds of the expense to be borne by the Exchequer of the State, & one-third to be paid out of the proceeds of " a rate leviable yearly of one half-penny in the pound upon the unimproved value of " (*inter alia*) " all lands within the city of Sydney & rateable under Sydney Corporation Act, 1902." By sect. 10 the Sydney Council were required to collect the rate & pay the proceeds to a special account at the Treasury :—*Held :* resps. in refusing to pay the bridge tax had not committed a breach of covenant as the bridge tax was a land tax being a tax on land directly imposed by the Legislature of the State, & the fact that the area of the tax was limited to the city of Sydney & certain specified shires was immaterial ; therefore the bridge tax was within the meaning of the memorandum & payable by appts. as lessors.—MORRIS LEVENTHAL *v.* DAVID JONES, LTD., [1930] A. C. 259 ; 99 L. J. P. C. 161 ; 142 L. T. 468, P. C.—**AUS.**

PART XVI. SECT. 3, SUB-SECT. 2.

sb. *Limited to proportion of taxes covenanted to be paid—Not penalties accruing on non-payment by tenant.*]—POLLOCK *v.* MILLIGAN (Sask.), [1929 4 D. L. R. 27.—**CAN.**

PART XVII. SECT. 1, SUB-SECT. 4.

4467 i. *Drainage expenses.*]—By a covenant in a lease of licensed premises the lessee undertook to pay, satisfy, & discharge all rates, taxes, charges, assessments, impositions, & outgoings whatsoever at any time charged or imposed upon or in respect of the demised premises. Pursuant to an

4468. *Add. Annotation :*—**Refd.** Lowther *v.* Clifford (1926), 135 L. T. 200.

4471. *Add. Citations :*—[1927] 1 K. B. 130; 95 L. J. K. B. 576; 135 L. T. 200; 90 J. P. 113; 24 L. G. R. 231.

Add. Annotation :—**Refd.** Mansfield *v.* Robinson, [1928] 2 K. B. 353.

4475. *Add. Annotation :*—**Refd.** Lowther *v.* Clifford, [1927] 1 K. B. 130.

4477. *Add. Annotation :*—**Refd.** Lowther *v.* Clifford, [1927] 1 K. B. 130.

4479. *Add. Annotation :*—**Refd.** Lowther *v.* Clifford, [1927] 1 K. B. 130.

4482a. Special expenses rate—Sewerage purposes.]—A special expenses rate levied for the purposes of sewerage is, like a poor rate, an outgoing for which the occupier, & not the owner, of a property is liable.—CALDER'S YEAST Co. *v.* STOCKDALE, [1928] Ch. 340; 96 L. J. Ch. 357; 136 L. T. 458; 91 J. P. 57; *sub nom.* CALVER'S YEAST Co. *v.* STOCKDALE, 25 L. G. R. 354, C. A.

4489. *Add. Annotation :*—**Apld.** Lowther *v.* Clifford, [1927] 1 K. B. 130.

4503. *Add. Annotation :*—**Refd.** Lowther *v.* Clifford (1926), 135 L. T. 200.

4510. *Add. Annotation :*—**Refd.** Dependable Upholstery, Ltd. *v.* Brasted (1931), 47 T. L. R. 521.

4534a. To what tenancies applicable.]—Finance (1909–10) Act, 1910 (c. 8), s. 46, does not apply to tenancies entered into after the passing of the Act.—R. *v.* CUSTOMS & EXCISE COMRS., [1928] A. C. 402; 97 L. J. K. B. 771; 44 T. L. R. 775; *sub nom.* R. *v.* CUSTOMS & EXCISE COMRS., *Ex p.* PEGLER, 139 L. T. 617; 92 J. P. 173; 26 L. G. R. 587, H. L.

Part XVIII.—Repairs.

4546. *Add. Annotation :*—**Refd.** Grant *v.* Edmondson, [1913] 1 Ch. 1.

4552. *Add. Annotation :*—*As to* (3) **Refd.** Grant *v.* Edmondson, [1931] 1 Ch. 1.

4568. *Add. Annotation :*—**Consd.** Morgan *v.* Liverpool Corpn., [1927] 2 K. B. 131.

4569. *Add. Citations :*—90 J. P. 195; 24 L. G. R. 327.

4569a. —— ——.]—MORGAN *v.* LIVERPOOL CORPN., No. 3160a, *ante*.

4578. *Add. Annotations :*—**Refd.** Fisher *v.* Walters, [1926] 2 K. B. 315; Morgan *v.* Liverpool Corpn., [1927] 2 K. B. 131.

4582. *Add. Annotations :*—**Consd.** Griffin *v.* Pillet, [1926] 1 K. B. 17. **Refd.** Fisher *v.* Walters, [1926] 2 K. B. 315; Morgan *v.* Liverpool Corpn., [1927] 2 K. B. 131.

4584. *Add. Annotations :*—**Distd.** Fisher *v.* Walters, [1926] 2 K. B. 315. **Refd.** Morgan *v.* Liverpool Corpn., [1927] 2 K. B. 131.

4588. *Add. Annotations :*—*As to* (2) **Consd.** Fisher *v.* Walters, [1926] 2 K. B. 315; Morgan *v.* Liverpool Corpn., [1927] 2 K. B. 131.

4588a. —— ——.]—MORGAN *v.* LIVERPOOL CORPN., No. 3160a, *ante*.

4609. *Add. Annotation :*—*As to* (1) **Refd.** Marsden *v.* Heyes, [1927] 2 K. B. 1.

4622. *Add. Annotation :*—**Consd.** Jardine *v.* A.-G. for Newfoundland (1932), 48 T. L. R. 199.

4638. For existing citations read "*as reported in* 21 Ch. D. 18."

4662. *Add. Annotation :*—*As to* (2) **Consd.** Field *v.* Curnick, [1926] 2 K. B. 374.

4670. *Add. Annotation :*— **Refd.** Field *v.* Curnick, [1926] 2 K. B. 374.

4694. *Add. Annotation :*—*As to* (1) **Refd.** Haskell *v.* Marlow, [1928] 2 K. B. 45.

4698. *Add. Annotation :*—**Refd.** Haskell *v.* Marlow, [1928] 2 K. B. 45.

4699. *Add. Annotation :*—**Refd.** Haskell *v.* Marlow, [1928] 2 K. B. 45.

4707. For "a house in Spitalfields is now painted," read "never painted."

4735. *Add. Annotation :*—**Refd.** Manchester Corpn. *v.* Audenshaw U. C. & Denton U. C., [1928] Ch. 763.

4739. *Add. Annotation :*—**Refd.** Haskell *v.* Marlow, [1928] 2 K. B. 45.

4739a. —— **Dilapidations—Neglect to repair.**]—Testator devised a dwelling-house to his wife for her life, she "keeping same in good repair & condition, reasonable wear & tear excepted," & after her death he directed that same should fall into his residuary estate, which was to be divided among his children in equal shares. Testator's widow occupied the premises until her death, a period of forty-two years. She did nothing actively to injure the premises, but did nothing substantially to counteract the natural process

order of a licensing inspector a septic tank sanitary system was installed in substitution for the sanitary system already in use :—*Held :* the covenant imposed upon the lessee the obligation to pay the cost of installation.—LOMAX *v.* LOVE, [1929] V. L. R. 84; [1929] Argus L. R. 88.—**AUS.**

PART XVIII. SECT. 2, SUB-SECT. 2.—D. (a).

sv. *Repairs creating trap—Liability of landlord to person residing with tenant.*]—Where a landlord, in making repairs, creates a trap which is known to him, or should be known to him, & an injury is caused thereby to one who has a right to be on the premises & who is ignorant of the trap the landlord is liable.—FRASER *v.* PEARCE, [1928] 2 D. L. R. 54; 1 W. W. R. 837; 39 B. C. R. 338.—**CAN.**

PART XVIII. SECT. 3, SUB-SECT. 1.

sc. *Alterations necessary to comply with law.*]—Where a receipt for rent of a moving-picture theatre stated that "all repairs & alterations" were to be at the lessee's expense, & at the time the lease was made it was not contemplated by the parties that the building was, as in fact it was, contrary to the regulations under Moving Picture Act :—*Held :* the word "alterations" was not intended to cover such alterations as might be necessary to make the building comply with the law, & therefore said receipt was not an "agreement to the contrary" within sect. 17 (3) of Fire Marshal Act.—MCMORDIE *v.* FORD (B. C.), [1929] 3 W. W. R. 159; *affd.*, [1930] 2 W. W. R. 203; 3 D. L. R. 398; 42 B. C. R. 486.—**CAN.**

PART XVIII. SECT. 3, SUB-SECT. 2.—D. (a) vii.

4726 i. *Rebuilding subsidiary part—Floors.*]—A covenant to keep in repair involves an obligation to renew, where the thing affected is a subordinate part of the whole structure, as in the case of a roof, floor, or wall.—STAPLES & Co. *v.* BERRYMAN, [1928] N. Z. L. R. 68.—**N.Z.**

4729 i. —— *Wall.*]—STAPLES & Co. *v.* BERRYMAN, No. 4726 i, *ante*.

sw. —— *Roof.*]—STAPLES & Co. *v.* BERRYMAN, No. 4726 i, *ante*.

of decay. Pltfs., the trustees of the will, alleged that she had neglected to keep the premises in good repair & condition in conformity with the terms of the will, & claimed from her exors. the cost of the necessary repairs:—*Held:* testator's widow, having accepted & occupied the premises, was bound by the terms of the devise; the words of the exception were not to be treated as mere surplusage, & a reasonable meaning must be given to them, but having regard to the length of time during which no substantial repairs had been done to the premises, & to the extent of the damage thereby caused, the widow, as tenant for life, was not protected by the words of the exception, & her exors. were liable for the damage arising from the natural process of decay.—HASKELL *v.* MARLOW, [1928] 2 K. B. 45; 97 L. J. K. B. 311; 138 L. T. 521; 44 T. L. R. 171, D. C.

4749. *Add. Annotation:*—**Consd.** Haskell *v.* Marlow, [1928] 2 K. B. 45.

4750. *Add. Annotation:*—**Consd.** Haskell *v.* Marlow, [1928] 2 K. B. 45.

4757. *Add. Annotation:*—**Refd.** Haskell *v.* Marlow, [1928] 2 K. B. 45.

4760a. To keep in good & proper order & condition—Ornamental waters — Removal of mud.]—Among the covenants in a lease was one by which deft. covenanted at all times during the term to maintain, keep, & leave "all pleasure grounds," lawns, walks, borders, & shrubberies in good & proper order & condition. Included in the pleasure grounds were ornamental waters consisting of two ponds & three lakes, which afforded boating & trout fishing. Pltf. complained of various breaches of the above covenant, particularly in respect of the accumulation of mud in the lodge lake & in a portion of the upper boat lake, thereby causing deterioration in the trout fishing, & required the lakes to be cleared of mud & weeds. Deft. had regularly cut the weeds in the lakes & kept in order the sluices & weirs, but repudiated liability to clean out any of the mud:—*Held:* in order to comply with the covenant which was absolutely unqualified in terms, deft. was liable to remove so much of the mud in the lodge lake, & also in a specified portion of the upper boat lake, as would leave a sheet of water of not less than 2 feet 6 inches in depth throughout.—HORLICK *v.* SCULLY, [1927] 2 Ch. 150; 96 L. J. Ch. 429; 137 L. T. 559; 71 Sol. Jo. 331.

4768. *Add. Annotation:*—**Refd.** Bean *v.* Flaxton R. D. C. (1928), 139 L. T. 320.

4775. *Add. Annotations:*—**Refd.** Field *v.* Curnick, [1926] 2 K. B. 374; Marsden *v.* Heyes, [1927] 2 K. B. 1.

(*f*) *Measure of Damages.*
(Vol. XXXI., p. 339.)

See, now, Landlord & Tenant Act, 1927 (c. 36), s. 18 (1).

4841. *Add. Annotation:*—**Folld.** Terroni *v.* Corsini, [1931] 1 Ch. 515.

4841a. Grant of reversionary lease before determination of original lease.]—JOYNER *v.* WEEKS, No. 4841, *ante.*

4841b. —— —— What is "reversion"—Landlord & Tenant Act, 1927 (c. 36), s. 18 (1).]—Pltfs. & deft. were partners. One of the partnership assets was the lease of the premises on which the business was carried on, expiring on Mar. 25, 1930. On Oct. 7, 1929, the landlord granted to the three partners a reversionary lease for fourteen years from Mar. 25, 1930, at an increased rent. On Oct. 29, 1929, by an agreement made between the parties for dissolution of the partnership, it was provided that the partnership assets should be sold to the highest bidder of the three partners & proceeds divided, deft.'s share being one-half; also, that the date for completion should be Nov. 18, 1929, & that deft. should out of his share make certain payments, & should pay the rent under the lease, all rates, taxes & outgoings in respect of the premises, & "all trade debts & other liabilities whatsoever in respect of the said premises & business" down to the date fixed for completion, making these payments out of his share of the proceeds of sale. The agreement came before the ct. for construction, & it was declared that the phrase. "other liabilities whatsoever in respect of the said premises," included the liability in respect of damages which the landlord could, on Nov. 18, 1929, have recovered for breach of the repairing covenants in the lease. On an application for a decision whether at that date the damages recoverable by him in respect of non-repair were to be estimated on the basis of the depreciation in market value of the reversion expectant on the determination of the lease, or of that expectant on the determination of the reversionary lease:—*Held:* the "reversion" was the immediate reversion expectant on the lease, & the fact that a reversionary lease had been granted, to take effect at a date after the date for the assessment of damages, was immaterial.—TERRONI & NECCHI *v.* CORSINI, [1931] 1 Ch. 515; 100 L. J. Ch. 289; 145 L. T. 95.

4857. *Add. Annotation:*—**Refd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 145.

4866. After this case add:—
Duty to give notice — Compliance with dangerous structure notice.] — *See* METROPOLIS, No. 119a, *post.*

4868. *Add. Annotation:*—**Refd.** St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1.

4869. *Add. Annotation:—Generally,* **Refd.** St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1.

4879. *Add. Annotation:*—**Distd.** St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1.

4882a. —— ——.]—Defts. were the owners, but not the occupiers, of part of an ancient city wall, which also formed the back wall of an ancient inn owned by pltfs. The portion

PART XVIII. SECT. 3, SUB-SECT. 2.—D. (b) i.

sx. *To yield up in good repair—Bridge—Washed away by flood.*]—RIDDIFORD, ETC. *v.* LYSAGHT, [1927] N. Z. L. R. 563.—**N.Z.**

sy. *To leave premises in original state—Destruction by fire.*]—Pltf. let his house to deft. co. to be used as liquor warehouse, deft. co. agreeing to make the necessary structural alterations to suit their purpose, & to restore the house to pltf. at the end of the lease in its original state. During the period of the lease, one night, in the absence of a watchman, the liquor store-room & the whole house were destroyed by fire. In a suit by the lessor for damages:—*Held:* though, under a general covenant such as the above, a lessee would under the English law be liable for all damage including one arising from fire, yet, under Indian Transfer of Property Act, s. 108 (*e*), he is not liable for damage by fire in the absence of proof that the fire was due to his negligence.—EAST INDIA DISTILLERIES *v.* MATHIAS (1928), I. L. R. 51 Mad. 994.—**IND.**

of the wall belonging to defts. collapsed, demolishing pltfs.' inn:—*Held:* (1) the doctrine of *Rylands* v. *Fletcher* (1868), L. R. 3 H. L. 330, had never been applied to affect the liability of an owner who was out of possession at the time when the injury took place; though defts. did not erect the wall, they took it over when they bought the property as the boundary & retaining wall for their property, & they were only using that property in the ordinary ways in which property is used, so that they were outside the authority of that case; (2) there was no reason to suppose that when they let the property to their tenant it was in a ruinous condition, or that in the exercise of a reasonable diligence they should have ascertained that it was in a ruinous condition; & pltfs. failed to bring their case within the principle of *Todd* v. *Flight*, No. 4879, *ante*.—St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1; 92 J. P. 180; 44 T. L. R. 703; 26 L. G. R. 638, C. A.

Annotation:—As to (1) **Apld.** Wilkins *v.* Leighton (1932), 76 Sol. Jo. 232.

4883. *Add. Annotation:*—**Refd.** St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1.

4887. *Add. Annotation:*—**Refd.** St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1.

4889. *Add. Annotation:*—**Refd.** Morgan *v.* Liverpool Corpn., [1927] 2 K. B. 131.

4891. *Add. Annotation:—As to* (2) **Refd.** Fisher *v.* Walters (1926), 90 J. P. 195.

4895. *Add. Annotation:*—**Refd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

4896. *Add. Annotation:*—**Consd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

4900. *Add. Annotations:*—**Consd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46. **Refd.** Morgan *v.* Liverpool Corpn., [1927] 2 K. B. 131; McAlister *v.* Stevenson (1932), 101 L. J. P. C. 119.

4901. *Add. Annotation:*—**Refd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119.

4903. *Add. Annotation:*—**Refd.** Fisher *v.* Walters (1926), 90 J. P. 195.

Part XIX.—Waste.

4932. *Add. Annotation:*—**Apld.** Marsden *v.* Heyes, [1927] 2 K. B. 1.

4943. *Add. Annotations:—As to* (1) **Consd.** Stevens *v.* Willing & Co., [1929] W. N. 53. **Refd.** Price *v.* Corpn. d'Energie de Montmagny, [1927] A. C. 363.

4970. *Add. Annotation:*—**Refd.** Spyer *v.* Phillipson, [1931] 2 Ch. 183.

4978a. Cutting down trees—Excepted from lease.]—Foster's Case (1585), Gouldsb. 1; 75 E. R. 955.

4998. *Add. Annotation:*—**Consd.** Marsden *v.* Heyes, [1927] 2 K. B. 1.

5003. *Add. Annotation:*—**Refd.** Marsden *v.* Heyes (1926), 96 L. J. K. B. 410.

5006. *Add. Annotation:—As to* (2) **Refd.** Rye *v.* Purcell, [1926] 1 K. B. 446.

5016. *Add. Annotation:*—**Consd.** Haskell *v.* Marlow, [1928] 2 K. B. 45.

5050. *Add. Annotations:—As to* (1) **Refd.** Marsden *v.* Heyes, [1927] 2 K. B. 1. *As to* (2) **Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

PART XVIII. SECT. 5, SUB-SECT. 1.—B. (c).

4887 iii. ——.]—Where a balcony common to all the tenants was in a defective condition & was unsafe, & the landlord was notified of such condition, but did not repair it, & thereafter a tenant fell from the balcony & was injured:—*Held:* the landlord was liable.—Amin *v.* Ebrahim (1926), 47 N. L. R. 1.—**S. AF.**

PART XVIII. SECT. 5, SUB-SECT. 2.—A. (b).

4900 ii. —— ——.]—Male pltf. was tenant of a furnished apartment, which contained a gas heater used for heating water for use in the apartment & in the other apartments in the same house. The heater was defective to the knowledge of the landlord, & owing to an escape of burning gas from the heater female pltf. was seriously burned:—*Held:* the landlord was liable to both pltfs., for although the heater was not part of the demised premises, there was a positive agreement to keep it in repair, which gave rise to an action by the tenant for damages for breach of contract.—Horne *v.* Moulds (Alta.), [1927] 2 D. L. R. 839; [1927] 1 W. W. R. 827.—**CAN.**

m i. —— —— —— *Unless undertaking to repair acknowledged.*]—In a house rented by pltf. from deft. there was a defective chimney, which deft. undertook to rebuild. He also undertook to reshingle the roof. Two months after pltf. had moved into the house & placed his chattels in it, the house was burnt down & with it pltf.'s chattels, the undertaking to repair & reshingle not having been fulfilled. The fire was caused by sparks from the chimney reaching the old shingles on the roof. Pltf., who had repeatedly warned deft. of the danger, sued in tort for the value of his chattels:—*Held:* deft. was properly held liable. The rule requiring a tenant to minimise his loss by himself repairing at the expense of his landlord does not apply where the landlord acknowledges his undertaking & promises to fulfil it. By his agreement deft. assumed the duty of repairing within a reasonable time; & his neglect to do so after repeated warnings was negligence entitling pltf. to sue in tort.—Amell *v.* Maloney, [1929] 4 D. L. R. 514; 64 O. L. R. 285.—**CAN.**

n i. —— ——.]—Where the owner of an hotel leased the premises, & pltf. fell through an opening in a verandah:—*Held:* pltf. was not entitled to recover as against the owner, even if there were an express covenant by him to make outside repairs, as pltf. was a stranger to the covenant.—Marcille *v.* Donnelly (1909), 14 O. W. R. 1044; 1 O. W. N. 195.—**CAN.**

n ii. —— ——.]—Premises, the property of deft., were let to W., who let different portions to sub-tenants, including an upstairs room to D. The letting to W. was within Rent Restriction Act, N. I., 1925 (c. 12). Pltf., a district nurse, having visited D., descended the stairs, & whilst taking the last step on to the hall the floor gave way, & pltf. received serious injuries:—*Held:* pltf. could not succeed either in contract on the statutory obligation to repair implied in the letting, or in tort.—O'Reilly *v.* Doherty, [1923] N. I. 32.—**IR.**

PART XIX. SECT. 2, SUB-SECT. 1.—A.

4933 iii. ——.]—*Held:* the lessees of a canal-slip, by enlarging it & making other alterations, had not committed waste; the permanent character of the property demised was not substantially altered, & there was no loss to the inheritance.—Rene *v.* Carling Export Brewing & Malting Co., [1929] 2 D. L. R. 881; 63 O. L. R. 582.—**CAN.**

PART XIX. SECT. 2, SUB-SECT. 1.—B.

sa. *Stones collected by tenant to improve cultivation—Property in.*]—A tenant who, for the purpose of clearing the land & rendering it more fit for cultivation, collects the stones therefrom, has the property in the stones, & the landlord has no interest in them, & is liable for their value if he disposes of them.—Lewis *v.* Godson (1888), 15 O. R. 252.—**CAN.**

sb. *Bushes cut along river—Necessary for exercise of fishing rights.*]—Pltf., by indenture under seal, leased to deft. for a term of years, with the right to renew, pltf.'s land on the East River, G. County, for fishing purposes, with the right to enter & use the same in such a way as might be necessary for fishing in said river. Damages claimed by pltf. were for cutting bushes along the bank of the river:—*Held:* the burden of proof was upon pltf., & the right to fish from the bank of the river involved the right to do such cutting as was necessary for that purpose.—McKeen *v.* Pattillo (1927), 59 N. S. R. 452.—**CAN.**

se. *Cultivating waste land.*]—A lessee who cultivates waste land of the colony is not to be presumed to have done so with the concurrence of his lessor, & for his benefit.—Newman *v.* Goff (1817), 1 Nfld. L. R. 26.—**NFLD.**

Part XX.—Insurance and Damage by Fire.

5069a. In named office "or in some other responsible insurance office to be approved by the lessor"—Duty of lessor.]—A covenant by a lessee to insure the demised premises in the joint names of the lessee & the lessor in a named insurance office, "or in some other responsible insurance office to be approved by the lessor," does not confer upon the lessee an alternative to be exercised at his volition; & under this covenant the lessee cannot properly tender an office which is not approved by the lessor.—TREDEGAR *v.* HARWOOD, [1929] A. C. 72; 97 L. J. Ch. 392; 139 L. T. 642; 44 T. L. R. 790, H. L.

5070a. Not to do anything to impose heavier insurance burden on premises—Obligation of lessor as to adjacent premises.]—Lessees of factory premises for a term of twenty-one years covenanted to pay as additional rent such sums as the lessors might expend in effecting or maintaining the insurance of the demised premises against fire, & not to do or suffer anything on the demised premises which would render payable an increased or extra premium for the insurance of the demised premises or other premises adjacent thereto. The lessors covenanted to keep the demised premises insured against fire & that the lessees should have quiet enjoyment of them. Subsequently, the lessors let premises adjacent to the demised premises to another lessee, whose trade as a woodworker rendered it impossible for the insurance of the demised premises to be effected except at considerably increased premiums: —*Held:* (1) the lessors, by dealing with the adjoining premises in a way which was not unreasonable or unbusinesslike, which did not affect the originally demised premises physically & which had rendered it, not less easy or legal, but substantially more expensive to conduct on them the business for which they had been demised, had not so interfered with the purpose for which those premises had been demised as to have derogated from their own grant of them; (2) the covenant by the lessees not to do or suffer anything on the originally demised premises which would render payable an increased or extra premium for the insurance of those, or adjacent, premises did not impliedly put the lessors under a similar obligation with regard to their user of adjacent premises.—O'CEDAR, LTD. *v.* SLOUGH TRADING CO., [1927] 2 K. B. 123; 96 L. J. K. B. 709; 137 L. T. 208; 43 T. L. R. 382.

5075. *Add. Annotation:*—**Refd.** Tredegar *v.* Harwood (1927), 44 T. L. R. 17.

5122. *Add. Annotation:*—**Apld.** Schlesinger & Joseph *v.* Mostyn, [1932] 1 K. B. 349.

5139. *Add. Annotation:*—**Refd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 145.

Part XXI.—Assignment and Devolution of Leases.

5186a. Covenant not to "part with possession"—Necessity for entire exclusion from legal possession.]—A lessee's covenant not to "part with the possession of the demised premises or any part thereof" is broken only if the lessee entirely excludes himself from the legal possession of part of the premises. On the particular facts & documents in the particular case a seven years' exclusive licence to erect an advertisement hoarding against the front wall of the lessee's house followed by its erection was held no breach of the above covenant.—STENING *v.* ABRAHAMS, [1931] 1 Ch. 470; 100 L. J. Ch. 278; 145 L. T. 18.

Annotation:—**Refd.** Gee *v.* Hazleton, [1932] 1 K. B. 179.

5192. *Add. Annotation:*—**Refd.** Chaplin *v.* Smith, [1926] 1 K. B. 198.

5192a. —— Erection of advertisement hoarding—Covenant not to "part with possession."]—STENING *v.* ABRAHAMS, No. 5186a, *ante.*

5204. *Add. Annotation:*—**Refd.** Roe *v.* Russell, [1928] 2 K. B. 117.

5226. *Add. Annotation:*—**Apld.** Chaplin *v.* Smith, [1926] 1 K. B. 198.

5229. *Add. Annotation:*—**Refd.** Wilkins *v.* Carlton Shoe Co. (1930), 94 J. P. 207.

5239. *Add. Annotation:*—**Refd.** Roe *v.* Russell, [1928] 2 K. B. 117.

5241. *Add. Annotation:*—**Apld.** Chaplin *v.* Smith, [1926] 1 K. B. 198.

D. Assignment subject to Landlord's Consent.

(Vol. XXXI., p. 379.)

See Landlord & Tenant Act, 1927 (c. 36), s. 19.

5269a. Effect of Landlord & Tenant Act, 1927 (c. 36), s. 19 (1) — On breach before Act in force.] — (1) Where a landlord, who is also a brewer, consents to the assignment of the lease of a free public-house, but stipulates that, for the remainder of the term of the lease, the house shall be a tied house, such stipulation is a "fine" or benefit "in the nature of a fine" within Law of Property Act, 1925 (c. 20), s. 144.

(2) Landlord & Tenant Act, 1927 (c. 36), s. 19 (1), does not apply to a breach of contract, which took place before the Act came into force.—GARDNER & CO. *v.* CONE, [1928] Ch. 955; 97 L. J. Ch. 491; 140 L. T. 72.

Annotation:—*As to* (2) **Refd.** Ward *v.* British Oak Insurance Co., [1932] 1 K. B. 392.

PART XX. SECT. 2, SUB-SECT. 2.

5145 i. *Under covenant to rebuild—Extent of liability.*]—DUNKELMAN *v.* LISTER, [1927] 4 D. L. R. 612; 61 O. L. R. 89.—**CAN.**

PART XXI. SECT. 1, SUB-SECT. 2.—B. (a) iii.

sz. *General rule.*]—Unless there is a restriction against the alienation of any portion of the demised property, a restraint upon alienation of the demised premises does not prevent the alienation of a portion.—CUTINHA *v.* SALVADORA MINAZES (1926), I. L. R. 50 Mad. 331.—**IND.**

Add. Annotation :—**Refd.** Curtis Moffat *v.* Wheeler, [1929] 2 Ch. 224.

Add. Annotation :—**Distd.** Farr *v.* Ginnings (1928), 44 T. L. R. 249.

5282a. —— **Covenant to repair.**]—Where a lease contains a covenant by the lessee to repair, & a provision that the lessor's consent to an assignment by the lessee is not to be unreasonably withheld, the mere fact that the lessee is committing a continuing breach of the covenant to repair does not necessarily entitle the lessor to refuse his consent to an assignment, at all events where the amount of disrepair is not very serious.—FARR *v.* GINNINGS (1928), 44 T. L. R. 249.

5286. *Add. Annotation :*—**Dbtd.** Tredegar *v.* Harwood, [1929] A. C. 72.

5291a. —— **Conditional upon covenant by underlessee to observe all covenants of head-lease.**]—BALFOUR *v.* KENSINGTON GARDENS MANSIONS, LTD. (1932), 49 T. L. R. 29; 76 Sol. Jo. 816.

5295a. —— **Stipulation converting free public-house into tied house.**]— GARDNER & Co. *v.* CONE, No. 5269a, *ante*.

5298. *Add. Annotation :*—**Apld.** Gardner *v.* Cone, [1928] Ch. 955.

5310. *Add. Annotation :*—**Refd.** Curtis Moffat *v.* Wheeler, [1929] 2 Ch. 224.

5321. *Add. Annotation :*—**Refd.** Curtis Moffat *v.* Wheeler, [1929] 2 Ch. 224.

5341. *Add. Annotation :*—**Refd.** Curtis Moffat *v.* Wheeler, [1929] 2 Ch. 224.

5361. *Add. Annotation :*—**Consd.** Curtis Moffat *v.* Wheeler, [1929] 2 Ch. 224.

5367. *Add. Annotation :—As to* (2) **Refd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

5450. *Add. Annotations :*—**Consd.** Dalton *v.* Pickard (1911), [1926] 2 K. B. 545, n.; Richmond *v.* Savill, [1926] 2 K. B. 530.

5454. *Add. Annotation :*—**Apld.** Curtis Moffat *v.* Wheeler, [1929] 2 Ch. 224.

5492. *Add. Annotation :*—**Refd.** Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443.

5494. *Add. Annotation :*—**Apld.** Taylor *v.* Twinberrow, [1930] 2 K. B. 16.

5508. *Add. Annotation :*—**Refd.** Akt. Dampskibs Steinstad *v.* Pearson (1927 137 L. T. 533.

5636. *Add. Annotation :—As to* (1) **Consd.** *Re* Harrington Motor Co., *Ex p.* Chaplin, [1928] Ch. 105.

Part XXII.—Assignment and Devolution of Reversion.

5698. *Add. Annotation :*—**Refd.** Grant *v.* Edmondson, [1931] 1 Ch. 1.

5701. *Add. Annotation :*—**Refd.** Rye *v.* Purcell, [1926] 1 K. B. 446.

5714. *Add. Annotation :*—**Consd.** Rye *v.* Purcell, [1926] 1 K. B. 446.

5725. *Add. Annotation :*—**Refd.** Booth *v.* Thomas, [1926] Ch. 397.

5737. *Add. Annotation :*—**Apld.** Rye *v.* Purcell, [1926] 1 K. B. 446.

Part XXIII.—Notice to Quit.

5788a. ·]—DOE d. AUSTIN *v.* COWDEROY (1837), 1 Jur. 793.

5796. *Add. Annotations :*—**Refd.** Roe *v.* Russell, [1928] 2 K. B. 117; Skinner *v.* Geary (1931), 47 T. L. R. 597.

5803. *Add. Annotation :*—**Refd.** Canadian Pacific Ry. Co. *v.* R., [1931] A. C. 414.

PART XXI. SECT. 1, SUB-SECT. 2.—D. (a) iv.

sa. *Refusal to consent to assignment to foreign company.*]—*Held :* that the reason alleged for withholding consent was not adequate to prevent the withholding of such consent being unreasonable.—CHARLES ATKINS & Co., LTD. *v.* BACKHOUSE, [1928] S. A. S. R. 179.—**AUS.**

PART XXI. SECT. 2, SUB-SECT. 1.

sd. *General rule.*]—An assignment of a lease can be validly made only by deed, even though the lease was created by parole.—GLASGOW LUMBER CO., LTD. *v.* FETTES, [1932] 1 W. W. R. 195.—**CAN.**

PART XXI. SECT. 10, SUB-SECT. 1.—B.

5463 i. —— *Express covenant by lessee for payment.*]—Where a lease contains an express covenant to pay rent, the lessee continues liable on his covenant, although the lease is assigned over.—MCCROHAN *v.* EDWARDS (Alta.) [1927] 1 D. L. R. 490; [1927] 1 W. W. R. 9.—**CAN.**

PART XXI. SECT. 10, SUB-SECT. 3.—B. (b).

hl. —— —— *Position of equitable assignee.*]—Where a lease is assigned by a lessee with the consent of the lessor, but the assignment is equitable & not legal, although the equitable assignee has entered into possession, no action lies against him for rent, nor for use & occupation.—THORNTON *v.* THOMPSON, [1930] S. A. S. R. 310.—**AUS.**

PART XXIII. SECT. 1, SUB-SECT. 3.

sm. *Lease subject to landlord's right to sell—Whether term determined by sale.*]—A lease reserved to the landlord "the right to sell the land at any time, but the lessee shall have the right to reap any crop he has sown":—*Held :* this clause did not sufficiently provide that on a sale the term would be determined *ipso facto*; but, at the most, only reserved the right to sell & to determine the term, & unequivocal notice of determination had to be given.—ERNEWEIN *v.* WELCH, [1928] 2 W. W. R. 265; 22 Sask. L. R. 522.—**CAN.**

PART XXIII. SECT. 2, SUB-SECT 1.

so. *Must be reasonable—Not necessarily determining lease at end of year of tenancy.*]—In the case of a lease not governed by Transfer of Property Act, 1882, s. 106, the notice to quit need not necessarily determine the lease at the end of the year of the tenancy, but it must be reasonable. It is, however, for the final ct. of fact, in each case, to determine what is reasonable notice.—DAMODAR PRASAD TEWARI *v.* LACHMI PRASAD SINGH (1928), I. L. R. 7 Pat. 496.—**IND.**

sp. *Lease for five years—Terminable on "— month's notice"—Two months given.*]—A lease of land for five years contained a provision that the tenancy might be determined at the end of any year by either of the parties giving to the other at least "—— months' notice" in writing of his intention to determine at the end of the then current year :—*Held :* two months' notice terminated the tenancy.—*Re* JOHNSTON & LITTLE, [1931] 4 D. L. R. 327; O. R. 711.—**CAN.**

5833. After this case add :—
"-.]—*See now*, Law of Property Act, 1925 (c. 20), s. 61."

5835. *Add. Annotation :*—**Refd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

5840. *Add. Annotation :*—**Distd. & N.F.** Newman *v.* Slade, [1926] 2 K. B. 328.

5841. *Add. Citations :*—95 L. J. K. B. 894 ; 135 L. T. 640 ; 42 T. L. R. 607.

5866. *Add. Annotation :*—*As to* (2) **Apld.** Newman *v.* Slade, [1926] 2 K. B. 328.

5956. *Add. Annotation :*—**Refd.** Fordree *v.* Barrell (1931), 95 J. P. 141.

5979. After this case add :—
"*See, now*, Law of Property Act, 1925 (c. 20), s. 140 (1), (2); Law of Property (Amendment) Act, 1926 (c. 11), s. 2."

5980. *Add. Citation :*—95 L. J. Ch. 49.

5996. *Add. Annotation :*—**Refd.** Taylor *v.* Twinberrow, [1930] 2 K. B. 16.

6065. *Add. Annotation :*—**Refd.** Wilkins *v.* Carlton Shoe Co. (1930), 94 J. P. 207.

Part XXIV.—Determination of Term.

6111. *Add. Annotation :*—**Expld. & Distd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

6113. *Add. Annotation :*—**Refd.** *Re* Airedale Garage Co., Anglo-South American Bank, Ltd. *v.* Airedale Garage Co. (1932), 101 L. J. Ch. 289.

6144. *Add. Annotations :*—*As to* (1) **Distd.** Turner *v.* Watts (1928), 138 L. T. 680. *As to* (2) **Consd.** Turner *v.* Watts (1927), 44 T. L. R. 105.

6192. *Add. Annotation :*—**Consd.** Richmond *v.* Savill, [1926] 2 K. B. 530.

6195. *Add. Annotation :*—*As to* (2) **Refd.** Jardine *v.* A.-G. for Newfoundland (1932), 48 T. L. R. 199.

6231. *Add. Annotation :*—**Consd.** Richmond *v.* Savill, [1926] 2 K. B. 530.

6235. *Add. Annotation :*—**Refd.** Fairclough & Sons, Ltd. *v.* Berliner, [1931] 1 Ch. 60.

6307a. —— **Agreement by tenant to pay arrears of rent & give up possession.**]—The rent of premises being in arrear, the landlord obtained judgment against the tenant for possession of the premises. Subsequently a document was signed by the tenant, which

PART XXIII. SECT. 2, SUB-SECT. 3.—A.

5817 ii. ——.]—In the case of a rural tenancy from year to year a year's notice to quit is not necessary, a reasonable notice only being required. Notice given in Jan. to quit at the end of the following June is reasonable.—TSHABALALA *v.* VAN DER MERWE (1926), 47 N. L. R. 75.—**S. AF.**

5819 iii. ——.]—Where a tenancy from year to year is created by express agreement, & there is no special stipulation providing for its termination, or where such a tenancy is implied by law, a notice to quit in order to be sufficient must be a half-year's notice expiring at the end of the first or some other year of tenancy.—WALKER *v.* ORAM (Alta.), [1929] 3 D. L. R. 734 ; 1 W. W. R. 876.—**CAN.**

PART XXIII. SECT. 2, SUB-SECT. 3.—D.

5837 iv. —— —— *Where tenant held over after termination of tenancy.*]—A weekly tenant, who, after the termination of his tenancy, holds over with the consent of his landlord, without any agreement other than that implied by law from the continuance in possession & acceptance of a weekly rent, continues to hold as a weekly tenant & is not entitled to one month's notice under Conveyancing Act, 1910, s. 127, for the determination of such tenancy.—BURNHAM *v.* CARROLL MUSGROVE THEATRES, LTD. & VICTORIA ARCADE, LTD. (1927), 28 S. R. N. S. W. 169 ; 45 N. S. W. W. N. 23 ; *affd.*, 41 C. L. R. 540.—**AUS.**

5837 v. —— —— *Week's rent payable in advance in arrear.*]—Where in a weekly tenancy of a dwelling-house, there being no finding as to the area of the premises, it appeared that the rent was payable weekly in advance, & that, at the date of the service of notice to quit, a week's rent in advance was owing :—*Held :* the tenant was not entitled to the statutory notice of at least 28 days prescribed by Fair Rents Act of 1920, s. 14, in the case of a lessee who duly pays the rent of the dwelling-house leased by him & otherwise performs the conditions of his lease.—INNES *v.* ARUNDELL, *Ex p.* ARUNDELL (1928), 22 Q. J. P. 83.—**AUS.**

5840 i. *What amounts to week's notice.*]—In order that a weekly tenancy may be determined by a notice to quit, the notice must be one which expires at the end of a periodic week from the commencement of the tenancy.—HOW *v.* MANSFIELD, [1923] N. Z. L. R. 91.—**N.Z.**

5842 vii. —— ——.]—HART *v.* NADEAU ; HART *v.* HANSON (Alta.), [1927] 2 W. W. R. 318.—**CAN.**

PART XXIII. SECT. 5, SUB-SECT. 1.—A.

sf. *Whether demand for possession may be included.*]—A notice of determination of a lease & a demand for possession may be contained in the same document.—ERNEWEIN *v.* WELCH [1928] 4 D. L. R. 498 ; [1928] 2 W. W. R. 628.—**CAN.**

PART XXIII. SECT. 5, SUB-SECT. 1.—B.

5945 ii. *S. P.* SANDISON *v.* ORDER OF ELKS (Alta.), [1927] 2 D. L. R. 1024.—**CAN.**

PART XXIII. SECT. 6, SUB-SECT. 1.—A.

1 i. *Lessor after agreement to sell leased land.*]—The fact that a landlord had agreed to sell the leased land to a third party did not render Landlord & Tenant Act, R. S. S. 1920, c. 160, inapplicable. He had the right under the terms of the lease to terminate it upon such a sale.—ERNEWEIN & WELCH, [1928] 4 D. L. R. 498 ; [1928] 2 W. W. R. 628.—**CAN.**

PART XXIII. SECT. 6, SUB-SECT. 2.

5994 ii. —— ——.]—In the case of joint tenants, each is intended to be bound, & it has long been decided that service of notice to quit upon one joint tenant is *primâ facie* evidence that it has reached the other joint tenants.—BODORDOJA *v.* AJIJUDDIN SARKAR (1929), I. L. R. 57 Calc. 10.—**IND.**

PART XXIV. SECT. 1, SUB-SECT. 2.—A. (b) ii.

sa. *Express right of non-payment for five days—Terms of ease misunderstood by lessee.*]—Upon an application for ejectment, the lessees set up the answer that they had mistaken the terms of the lease & were under the impression that the terms were similar to those of a previous lease, which gave them seven days' grace to pay the arrear rent :—*Held :* as the provision in the lease giving only five days' grace was clear & unambiguous, the answer was no defence.—ILLING *v.* MANNE & MANNE (1925), 46 N. L. R. 58.—**S. AF.**

PART XXIV. SECT. 1, SUB-SECT. 3.

sb. *Power given to lessor to cancel lease—On breach of covenant to pay rent—After giving notice to tenant—Sufficiency of notice.*]—A wharfside site in the B. Harbour, E. London, had been leased to applt. by the Union of S. Africa, who was the owner of the site, & an action for ejectment had been brought by the S. African Rys. & Harbours. Clause 2 of the lease of the site provided that "should the lessees fail to pay the said rental on the day on which the same shall fall due, the administration, after posting written notice to the lessee's address, & receiving no payment within a further period of fourteen days, shall have the right to cancel this lease. The rent being in arrear the administration purported to give the notice required by clause 2 of the lease & thereafter to cancel the lease :—*Held :* a written notice to the effect that the rent was in arrear & calling upon the lessee to pay the same within 14 days from date was a sufficient compliance with the clause.—WINTER *v.* S. AFRICAN RYS. & HARBOURS, [1929] App. D. 100.—**S. AF.**

PART XXIV. SECT. 1, SUB-SECT. 4.—B. (b) i.

6221 i. *Re-letting—To new tenant.*]—When following notice of forfeiture of pltf.'s lease the lessor executed a lease of the same premises to another lessee : —*Held :* there had been an effectual re-entry.—WINTER *v.* CAPILANO TIMBER CO., [1927] 4 D. L. R. 36 ; *varying*, [1927] 2 D. L. R. 784 ; [1927] 1 W. W. R. 811 ; 38 B. C. R. 401.—**CAN.**

provided that, if the landlord would withhold the writ of possession, the tenant would pay the rent & give up possession of the premises at the end of the quarter:—*Held:* the document was not inconsistent with the tenant's right to obtain relief against forfeiture under Jud. (Consolidation) Act, 1925 (c. 49), s. 46.—NANCE *v.* NAYLOR, [1928] 1 K. B. 263; 97 L. J. K. B. 39; 138 L. T. 165; 44 T. L. R. 11, C. A.

6315a. —— —— **On payment of rent—How rent calculated.**]—DOE d. HARCOURT *v.* ROE (1813), 4 Taunt. 883; 128 E. R. 579.

(*a*) *Notice of Breach.*
(Vol. XXXI., p. 483.)

See Landlord & Tenant Act, 1927 (c. 36), s. 18 (2), (3).

6352a. On person on premises.]—Where a notice addressed to the lessee is left with a person on the premises, & there are reasonable grounds for supposing that that person will pass it on to the lessee, the service is good within Law of Property Act, 1925 (c. 20), s. 196 (3).—CANNON BREWERY CO., LTD. *v.* SIGNAL PRESS, LTD. (1928), 139 L. T. 384; 44 T. L. R. 486; 72 Sol. Jo. 285.

6356. *Add. Annotations:*—**Refd.** Field *v.* Curnick, [1926] 2 K. B. 374; Marsden *v.* Heyes, [1927] 2 K. B. 1.

6358. *Add. Annotations:*—**Apld.** Sedgwick, Collins *v.* Rossia Insce. of Petrograd (1926), 136 L. T. 72. **Refd.** Employers' Liability Assce. Corpn. *v.* Sedgwick, Collins, [1927] A. C. 95.

6361a. Joint tenants — Application by one.]—Where joint lessees hold under a lease, no one of them alone is "the lessee" within Law of Property Act, 1925 (c. 20), s. 146 (2).

The co., as lessor, after serving a schedule of dilapidations & two notices on B. & L., who were joint lessees, brought this action, by which they sought, against both defts. to recover possession of premises comprised in two leases. The leases contained full repairing covenants, which defts. had neglected to perform. Defts. originally appeared by the same solrs., & put in a defence signed by counsel on their behalf. But at the date of the hearing deft. L. appeared by another counsel instructed by another firm, while B. did not instruct solrs. but appeared in person. L. asked for relief against the forfeiture under sect. 146 (2); B. did not desire such relief, preferring to give up possession:—*Held:* relief against forfeiture, where there are joint lessees, cannot be granted on the application of only one of them.—FAIRCLOUGH (T. M.) & SONS, LTD. *v.* BERLINER, [1931] 1 Ch. 60; 100 L. J. Ch. 29; 144 L. T. 175; 74 Sol. Jo. 755, *sub nom.* BERLINER *v.* FAIRCLOUGH (T. M.) & SONS, LTD., FAIRCLOUGH (T. M.) & SONS, LTD. *v.* BERLINGER (1930), 47 T. L. R. 4; 74 Sol. Jo. 703.

6388. *Add. Annotation:*—**Refd.** Tredegar *v.* Harwood (1928), 97 L. J. Ch. 392.

6391. *Add. Annotation:*—*As to* (2) **Refd.** *Re* Griffiths, Jones *v.* Jenkins, [1926] Ch. 1007.

6393. *Add Annotation:*—**Apld.** Chaplin *v.* Smith, [1926] 1 K. B. 198.

6399. *Add. Annotation:*—**Refd.** Gee *v.* Harwood (1932), 48 T. L. R. 606.

6399a. —— —— —— **After making of winding-up order.**]—The lessee of certain premises which were used as a mineral water spa sub-demised them to a limited co., whose objects were the carrying on of business as spa & hotel proprietors, at a rent which varied with the quantity of mineral water produced & sold by the underlessees. The underlease contained provisos for re-entry for non-payment of rent, or in the event of the bkpcy. or winding-up of the underlessees. On a winding-up petition being presented against the underlessees, the underlessor purported to re-enter in pursuance of the proviso for forfeiture on bkpcy. or winding-up, but she did not give to the underlessees the notice required by Law of Property Act, 1925 (c. 20), s. 146. On a date more than one year after the presentation of the winding-up petition, but less than one year after the making of the winding-up order, the liquidator of the co. entered into an agreement, which it was contended was a sale of the underlessees' interest in the demised property. On a date less than one year from the presentation of the petition, the underlessees applied for

PART XXIV. SECT. 1, SUB-SECT. 4.—C. (c) i.

6308 xiv. ——.]—GORDON *v.* WILHELM (Sask.), [1926] 4 D. L. R. 1042; [1926] 3 W. W. R. 641.—**CAN.**

6317 iii. —.]—In Saskatchewan, where a lessor has actually re-entered for non-payment of rent, although the re-entry has been without process of law, the ct. cannot grant relief against forfeiture of the lease.—RAMSAY *v.* HILDRED, [1930] 2 W. W. R. 692; 4 D. L. R. 494.—**CAN.**

sx. *Effect of breach of other covenant.*]—Forfeiture for mere non-payment of rent on its due date has always been looked upon as a thing against which a ct. of equity should afford relief. With respect to an alleged breach of a covenant by the tenant to insure, held that, in view of the conduct of the parties in relation to the covenant during the thirteen years which had elapsed since the making of the lease, the lessors should not be allowed to invoke the breach as a ground for refusing the lessees relief from forfeiture for non-payment of rent; although some condition as to the insurance might be made a term upon which such relief should be granted.—GODSON & RAY *v.* PANTAGES, [1930] 3 W. W. R. 401; [1931] 1 D. L. R. 429; 43 B. C. R. 241.—**CAN.**

PART XXIV. SECT. 1, SUB-SECT. 4.—D. (a) i.

6322 viii. ——.]—Where a grant of land to the congregation of S. provided that if the congregation should become united with any other congregation or cease to exist as a separate & independent congregation, the grant should become absolutely null & void, & a power of re-entry was reserved to the grantor, & the grantor served a notice demanding possession on the ground that the grant had become null & void by reason of the union of the congregations of C. & S.:—*Held:* a sufficient notice was a condition precedent to enforcing the forfeiture, & the notice given was not sufficient.—WALSH *v.* WIGHTMAN, [1927] N. I. 1.—**IR.**

PART XXIV. SECT. 1, SUB-SECT. 4.—D. (a) ii.

6334 i. *Particulars of breach—Must be precise—Covenant to sell only goods authorised by lessor.*]—GORDON *v.* WILHELM (Sask.), [1926] 4 D. L. R. 1042; [1926] 3 W. W. R. 641.—**CAN.**

PART XXIV. SECT. 1, SUB-SECT. 4.—D. (b) ii.

6 i. —— *Acceptance of rent by lessor's agent.*]—Where at the time a lease was entered into the lessor's rental agents agreed with the lessee that she could sub-let & thereafter with knowledge of the sub-letting accepted rent derived from the sub-tenants:—*Held:* the lessee was entitled on general equitable principles, apart from the Laws Declaratory Act, to be granted relief from forfeiture because of the breach of a covenant in the lease not to sub-let without leave.—MATTERN *v.* WELCH, [1930] 1 W. W. R. 398; 2 D. L. R. 231; 42 B. C. R. 111, C. A.—**CAN.**

PART XXIV. SECT. 1, SUB-SECT. 4.—D. (e).

6396 i. *Breaches excluded from relief—Re-entry on bankruptcy — Lease of licensed house & other premises.*]—*Held:* a lease of a licensed house & premises, with the out-offices, yard & garden & two small dwelling-houses at the rear was a lease of "a house used or intended to be used as a public-house or a beershop" within Conveyancing Act, 1892, s. 2 (3) (*c*), as the inclusion of the two small dwelling-houses in the lease did not exclude it from the sub-section.—*Re* DREW, [1929] I. R. 504.—**IR.**

relief from forfeiture :—*Held :* (1) the underlease was not a lease of mines or minerals ; (2) it was not a lease of property with respect to which the personal qualifications of the tenant were of importance for the preservation of the value or character of the property ; (3) the underlessees' interest had not been sold within one year from the winding-up ; (4) as the liquidator had applied for relief from forfeiture within one year from the winding-up, Law of Property Act, 1925 (c. 20), s. 146 (10) (*b*), applied ; (5) the underlessees were entitled to be relieved from forfeiture.—GEE *v.* HARWOOD (1932), 48 T. L. R. 606.

6399b. Application for relief within one year of winding up.]—GEE *v.* HARWOOD, No. 6399a, *ante*.

6399c. —— —— Lease of mines & minerals—What amounts to.]—GEE *v.* HARWOOD, No. 6399a, *ante*.

6399d. —— —— Lease of property with respect to which personal qualifications of tenant are material—What amounts to.]—GEE *v.* HARWOOD, No. 6399a, *ante*.

6426. *Add. Annotation :*—**Refd.** Barton *v.* Reed, [1932] 1 Ch. 362.

6450. Add the following para. :—

"Nor is it waived by the acceptance of rent accruing due before the expiration of the three months."

6528. *Add. Annotation :—As to* (1) & (2) **Refd.** Barratt *v.* Richardson & Cresswell, [1930] 1 K. B. 686.

6530. *Add. Annotation :*—**Refd.** Jardine *v.* A.-G. for Newfoundland (1932), 48 T. L. R. 199.

6534. *Add. Annotation :—As to* (2) **Refd.** Gee *v.* Harwood (1932), 48 T. L. R. 606.

6558. *Add. Annotation :*—**Consd.** Turner *v.* Watts (1928), 97 L. J. K. B. 403.

6573. *Add. Annotations :*—**Apld.** Turner *v.* Watts (1927), 44 T. L. R. 105. **Refd.** Turner *v.* Watts (1928), 138 L. T. 680.

6595. *Add. Annotation :*—**Refd.** *Re* Katherine et cie, Ltd., [1932] 1 Ch. 70.

6596. *Add. Annotations :*—**Refd.** *Re* Bruce, Brudenell *v.* Brudenell, [1932] 1 Ch. 316 ; Wirral Estates, Ltd. *v.* Shaw (1932), 96 J. P. 143.

6606a. —— ——.]—Any arrangement between the landlord & tenant which operates as a fresh demise will work a surrender of the old tenancy, & this may result from an agreement under which the tenant gives up part of the premises & pays a diminished rent for the remainder ; & I would add that it may result from the mere alteration in the amount of rent payable (MAUGHAM, J.).—*Re* SAVILE SETTLED ESTATES, SAVILE *v* SAVILE, [1931] 2 Ch. 216.

6623. *Add. Annotation :*—**Refd.** *Re* Savile Settled Estates, Savile *v.* Savile, [1931] 2 Ch. 210.

6628a. —— —— ——.] — *Re* SAVILE SETTLED ESTATES, SAVILE *v.* SAVILE, No. 6606a, *ante*.

6636a. Substitution of licence or tenancy at will under purchase agreement—Rescission of agreement.]—By an agreement in writing dated Aug. 28, 1926, deft., the weekly tenant of a house to which Rent Restriction Acts applied, agreed to buy it from pltf., the landlord, for £900. The agreement provided that deft. acknowledged owing pltf. £63 10*s.* arrears of rent, & that pltf. would accept £50 in settlement ; that, until certain mtges. had been transferred from pltf. to deft., pltf. should remain in absolute ownership of the premises ; & that, until completion of the conveyance, deft., who was to remain in possession, should pay to pltf. interest on the £950 at the rate of 6 per cent. with interest on interest dating from Sept. 1, 1926. Deft. also agreed to pay certain deposits, pltf., on failure of such payments, to be entitled to rescind the agreement & enter into possession of the house. Deft. agreed to maintain the house in a good state of repair & to pay rates, taxes, & insurance. On Feb. 27, 1927, pltf. rescinded the agreement under the powers reserved in it, but deft. refused to give him possession of the house :—*Held :* (1) the effect of the agreement, as indicating the intention of the parties, was to determine the weekly tenancy, & to substitute for it either a licence or a tenancy at will, which, in its turn, was revoked or determined by the rescission of the purchase agreement, & deft.

PART XXIV. SECT. 1, SUB-SECT. 5.—A. (a).

6436 iii. —— *Covenant by landlord to supply goods—Landlord offering to supply goods after serving notice of breach of covenant—No waiver.*]—*Re* JACKSON (J. B.), LTD. & GETTAS, [1926] 2 D. L. R. 721 ; 58 O. L. R. 564.—**CAN.**

PART XXIV. SECT. 1, SUB-SECT. 5.—A. (b) i.

6455 xx. ——.]—GRIFFIN *v.* BEATTIE (N. S.), [1929] 4 D. L. R. 698.—**CAN.**

PART XXIV. SECT. 1, SUB-SECT. 5.—A. (d).

6511 iii. —— ——.]—A landlord cannot, *during* the currency of the lease, re-enter for non-payment of rent for which he has distrained on goods still held by him under the distress.—BLACK *v.* STEBNICKI, [1930] 2 W. W. R. 656 ; 4 D. L. R. 715 ; 39 Man. L. R. 123.—**CAN.**

6517 i. *Where insufficient distress on premises.*]—In an action to recover possession of premises under a lease providing for forfeiture for non-payment of rent :—*Held :* the lessor must prove that he has distrained, & that no sufficient distress was to be found on the premises countervailing the rent ; & an insufficient distress is not a waiver of the right of re-entry.—HARVEY *v.* JOHNSTON (1901), 8 Nfld. L. R. 494.—**NFLD.**

PART XXIV. SECT. 2, SUB-SECT. 2.—A. (a).

6573 i. *Form of words.*]—Pltf., the owner of a building of which defts. as sublessees, occupied a part, sought by this action to eject them. Defts. claimed the right to remain, having accepted, as they alleged, an option for a continuance of their tenancy, provided for in their sublease. Before pltf. became the owner of the building, R. & Co., the lessees of the whole building, whose subtenants defts. were, executed in favour of their landlords the then owners of the building, a document dated Sept. 17, 1927, which recited their lease & default in payment of rent & taxes, & witnessed that they, called in the document the "releasors," abandoned all their rights, privileges, & benefits under the lease & released & quitted claim unto the landlords, called the "releasees" all their right, title, & claim under the lease, upon the understanding & agreement that the releasees did not by or under the document or by any subsequent acts in taking possession of or dealing with the premises, assume any responsibility to the releasors or any one claiming under them in respect of the lease :—*Held :* this document was a surrender & not merely evidence of a forfeiture.—GRAY *v.* CHAMANDY & SONS, [1929] 2 D. L. R. 706 ; 63 O. L. R. 495.—**CAN.**

PART XXIV. SECT. 2, SUB-SECT. 3.—A.

8b. *Abandonment.*] — WONG FON HONG *v.* CHANSEE WONG FONG, [1932] 1 W. W. R. 89 ; 1 D. L. R. 562.—**CAN.**

PART XXIV. SECT. 2, SUB-SECT. 3.—B. (b) i.

8d. *Agreement acted on by parties.*]—The renunciation of an existing lease by the tenant, & the grant of a new lease by the landlord, can be inferred from a written obligation on the part of the landlord to grant a new lease followed by actings of parties amounting to *rei interventus* & by possession on the part of the tenant, not only where the landlord is a fee-simple proprietor, but also where he is an heir of entail in possession ; & a lease so constituted is binding upon succeeding heirs of entail.—CAMPBELTOWN COAL CO. *v.* ARGYLL (DUKE), [1926] S. C. 126.—**SCOT.**

had no contractual right to resist the claim for possession; (2) deft. was not protected by Rent Restriction Acts, because after Aug. 28, 1926, deft. remained in possession of the house by virtue of the contract of purchase, & not as a statutory tenant, & under that contract she was either a licensee or a tenant at will, & after its rescission, if she had been a licensee, she was not a tenant who had held over under the Acts, & if she had been a tenant at will, her tenancy had been at no rent, &, by Increase of Rent & Mtge. Interest (Restrictions) Act, 1920 (c. 17), s. 12 (7), it must be ignored, with the result that the house was to be treated as untenanted & pltf. had an unrestricted right to recover possession of it; (3) the rescission of the purchase agreement did not deprive pltf. of his right to the arrears of rent which had accrued due to him before the agreement was made, but it did destroy deft.'s right to enforce the agreement with pltf. to accept a less sum than that which was in fact owing.—TURNER *v.* WATTS (1927), 97 L. J. K. B. 92; 44 T. L. R. 105; 26 L. G. R. 78, D. C. *Affd.* (1928), 97 L. J. K. B. 403; 138 L. T. 680; 92 J. P. 113; 44 T. L. R. 337; 26 L. G. R. 261, C. A.

6656. *Add. Annotation :*—**Refd.** Metcalfe *v.* Boyce, [1927] 1 K. B. 758.

6674a. ——.]—In 1910, deft., a county police constable, became quarterly tenant of a house. In 1912 the county police authority, which had till then made a grant in aid of the rent of houses occupied by police constables, decided that for the future the chief constable should be the tenant of those houses, that the constables should occupy them as servants, that the chief constable should pay all rent, rates & taxes, & that a deduction should be made in respect thereof from the men's pay. Deft. knew of, & made no demur to, this arrangement, but no express notice to determine his tenancy was given. From 1912 onwards the demands for rent were sent to deft., addressed to the county authority. These deft. took to the police office, received the full amount due, & paid it at the estate office of the landlord, being given a receipt acknowledging payment by the county authority, which receipt he sent to the county treasurer. No demands for rates & taxes were made to deft. This course of business continued for fourteen years, deft. continuing to occupy the house & his name remaining on the estate books as tenant. There was no written surrender or assignment of the tenancy:—*Held:* (1) there was evidence from which the inferences of fact could be drawn that in 1912 deft. agreed with the landlord that he would forthwith surrender his tenancy, that the landlord agreed with deft. to accept the surrender & accept the chief constable as his tenant, & that the deft. would in future occupy the house as a servant of the chief constable & not as a tenant, & on those facts there had been a surrender of the tenancy by operation of law; (2) deft. was in the circumstances estopped from denying that he had surrendered or assigned the tenancy.—METCALFE *v.* BOYCE, [1927] 1 K. B. 758; 96 L. J. K. B. 376; 136 L. T. 606; 91 J. P. 55; 43 T. L. R. 149, D. C.

6709. *Add. Annotation :*—**Refd.** Wirral Estates, Ltd. *v.* Shaw (1932), 96 J. P. 143.

6715. *Add. Annotation :*—**Consd.** Metcalfe *v.* Boyce, [1927] 1 K. B. 758.

6734. *Add. Annotation :*—**Refd.** *Re* Grosvenor Settled Estates, Westminster (Duke) *v.* McKenna, [1932] 1 Ch. 232.

6735. *Add. Annotation :*—**Distd.** Taylor *v.* Twinberrow, [1930] 2 K. B. 16.

6737. *Add. Annotation :*—**Refd.** Taylor *v.* Twinberrow, [1930] 2 K. B. 16.

6742. *Add. Annotation :—As to* (1) **Refd.** Canadian Pacific Ry. Co. *v.* R., [1931] A. C. 414.

6762. *Add. Annotations :*—**Consd.** Dalton *v.* Pickard (1911), [1926] 2 K. B. 545, n.; Richmond *v.* Savill, [1926] 2 K. B. 530.

6764. *Add. Annotation :—As to* (2) **Consd.** Richmond *v.* Savill, [1926] 2 K. B. 530.

6765a. —— ——.]—ESPIR *v.* MILLWARD (1929), 73 Sol. Jo. 158.

6766. *Add. Annotation :*—**Consd.** Richmond *v.* Savill, [1926] 2 K. B. 530.

6767. *Add. Citations :*—95 L. J. K. B. 1052, n.; 136 L. T. 21, n.

Add. Annotation :—**Consd.** Richmond *v.* Savill, [1926] 2 K. B. 530.

6768. *Add. Citations :*—95 L. J. K. B. 1042; 136 L. T. 15.

6837. *Add. Annotation :*—**Folld.** Simons *v.* Associated Furnishers, Ltd. (1930), 47 T. L. R. 118.

6838a. Performance of covenants between giving notice & expiry of notice—Validity.]—By a lease dated Dec. 31, 1925, pltf. demised certain buildings to defts. for a term of years at a yearly rent. The lease contained covenants by defts. that they would at all times during the term keep & at the expiration or sooner determination of the lease yield up the demised promises in substantial repair. The lease contained a proviso that if defts. should desire to determine the lease at the expiration of the first five or ten years of the lease & should give to the lessor six calendar months' notice in writing of such desire, & should, up to the time of such determination, perform & observe the covenants on their part, then immediately on the expiration of such five or ten years, as the case might be, the demise & everything therein contained should cease & be void, but without prejudice to the remedies of either party against the other in respect of an antecedent breach of covenant. On Aug. 17, 1929, defts. served pltf. with a notice in writing to determine the lease on Feb. 28,

PART XXIV. SECT. 2, SUB-SECT. 3.—C. (b) i.

k i. ——.]—LE CAIN *v.* WIELAND (1862), 4 R. & G. 71, n.—**CAN.**

PART XXIV. SECT. 2, SUB-SECT. 3.—D. (b).

6888 iii. —— ——.]—PETROPOLIS *v.* CLARKE, [1928] 1 D. L. R. 1012; 60 N. S. R. 22.—**CAN.**

p i. ——.]—*Held :* retention of the keys & advertising the house for rent were ambiguous acts; they were, upon the evidence, referable to the lessor's promise to try to rent the house, & did not show an acceptance of a surrender.—GREEN *v.* TRESS (1927), 60 O. L. R. 151.—**CAN.**

PART XXIV. SECT. 3, SUB-SECT. 1.—A.

6771 ii. ——.]—DALYE *v.* ROBERTSON (1860), 19 U. C. R. 411.—**CAN.**

PART XXIV. SECT. 6.

sa. *Forfeiture clause—Object of.*]—*Re* STAVISS, ETC. (1928), 66 Que. S. C. 474.—**CAN.**

1930. Pltf., having refused to recognise the validity of the notice on the ground that at the date thereof breaches of the repairing covenants remained unremedied by defts., brought this action claiming a declaration that the lease was still subsisting & binding on defts. :—*Held :* (1) the condition to perform the covenants in the lease upon which defts. were empowered to determine the lease was a condition precedent ; (2) as the breaches, although they were unremedied at the date of the notice, had been remedied by the time the notice expired, the condition was fulfilled, with the result that the lease had been effectually determined.—SIMONS *v.* ASSOCIATED FURNISHERS, LTD., [1931] 1 Ch. 379 ; 100 L. J. Ch. 234 ; 144 L. T. 559 ; 47 T. L. R. 118 ; 75 Sol. Jo. 27.

6848. *Add. Annotations :*—**Refd.** Morris *v.* Harris, [1927] A. C. 252 ; *Re* Katherine et cie, Ltd., [1932] 1 Ch. 70.

After this case add :—

—— ——.]—*See, now*, Companies Act, 1929 (c. 23), s. 296.

SECT. 11.—**RIGHT OF TENANT TO COMPENSATION FOR IMPROVEMENTS AND GOODWILL.**

See Part IX., Sect. 5, *ante*, p. 33.

Part XXV.—Delivery and Recovery of Possession.

6925. *Add. Annotation :—As to* (1) **Refd.** Marsden *v.* Heyes, [1927] 2 K. B. 1.

6930a. —— **Value of premises during period of dispossession—Holding over by subtenant.**]—CITY TAILORS, LTD. *v.* BARDER, CITY TAILORS, LTD. *v.* ROGERS (1929), 73 Sol. Jo. 235.

6955a. —— ——.]—Applt. was in the employment of resp. as farm foreman, the terms of his engagement being " so much a week & a cottage." Resp. served a notice on applt. in the following terms : " Please take one week's notice to quit my service." Subsequently notice under the Small Tenements Recovery Act, 1838 (c. 74), was served on applt. On a case stated :—*Held :* this amounted to a weekly tenancy, & an order for possession was properly made.—SMITH *v.* HUGHES (1930), 169 L. T. Jo. 399, D. C.

6957a. —— **Determination of tenancy by notice to quit " or otherwise "—Mortgagor attorning tenant—Provision for notice in mortgage deed.**]—A mtge. deed contained a clause by which the mtgor. attorned tenant from year to year to the mtgees. at a nominal rent. It was also provided that, if the mtgor. made default in payments under the deed, the mtgees. might give to the mtgor. seven days' notice in writing to determine the tenancy created by the deed. The mtgor. defaulted & the mtgees. served on him a notice to quit. The mtgor. refused to give up possession :—*Held :* the term or interest of the mtgor. in the mortgaged property had been " duly determined by a legal notice to quit or otherwise " within above Act, &, therefore, justices had power to issue a warrant to give possession of the property to the mtgees.—DUDLEY & DISTRICT BENEFIT BUILDING SOCIETY *v.* GORDON, [1929] 2 K. B. 105 ; 98 L. J. K. B. 486 ; 141 L. T. 583 ; 93 J. P. 186 ; 45 T. L. R. 424 ; 27 L. G. R. 448, D. C.

6968a. —— **Statutory tenancy—Closing order—Rent Restriction Acts not in contemplation of parties at commencement of tenancy.**] —Deft.'s husband was from 1917 to his death in 1925 the weekly tenant of an old cottage, & after his death deft. continued to occupy the cottage by virtue of Rent Restriction Acts. The landlords having failed to comply with their obligation under Housing Act, 1925 (c. 14), s. 1, to keep the cottage reasonably fit for habitation, a closing order was made in 1930 under the Act. In an action by the landlords for possession deft. counterclaimed for damages for loss of her tenancy & the county ct. judge gave her £25 damages : —*Held :* when the tenancy commenced in 1917, it could not have been within the contemplation of either the landlords or the tenant that in 1930 the tenant would have under the Rent Restriction Acts security of tenure which would prevent the landlords from determining the tenancy by a week's notice to quit ; the question of damages must therefore be considered without regard to the Rent Restriction Acts, & as the tenant had been given more than a week to vacate the premises she could recover no damages.—JOHN WATERER SONS & CRISP, LTD. *v.* HUGGINS (1931), 47 T. L. R. 305, D. C.

PART XXV. SECT. 2.

6916 i. *Grounds for interference by court.*]—Where, following a dispute, a settlement was made, by which the tenant was to quit the premises, & the tenant vacated accordingly :—*Held :* the tenant's claim for damages for eviction & to set aside the agreement for settlement should be dismissed, as the tenant was not at such a disadvantage with the landlord as to call for the intervention of the ct. for his protection, & he must stand by the bargain he made.—MCKAY *v.* SEXSMITH (1914), 29 W. L. R. 210 ; 20 D. L. R. 986.—**CAN.**

q i. *Tenant holding over & paying rent—Subsequent non-payment of rent.*]—Ejectment lies for non-payment of rent under Consol. Stat., c. 83, s. 19, where the tenant continues in possession & pays rent after the expiration of the lease.—DOE d. DEVEBER *v.* ROE (1888), 27 N. B. R. 494.—**CAN.**

PART XXV. SECT. 4, SUB-SECT. 2.—D.

c i. —— *When applicable—Not to land purchased at tax sale.*]—FYHRI *v.* BURKE, [1924] 4 D. L. R. 445 ; [1924] 3 W. W. R. 328 ; 19 Sask. L. R. 28.—**CAN.**

c ii. —— —— *Not by purchaser under agreement for sale—No assignment of lease.*]—*Re* BERGEN & MOTT, [1924] 1 D. L. R. 499 ; [1924] 1 W. W. R. 494 ; 18 Sask. L. R. 290.—**CAN.**

c iii. —— *Questions determinable.*]—On a summary proceeding under Landlords & Tenants Act, R. S. M., 1913 (c. 109), against an overholding tenant it is competent for & the duty of the county ct. judge to determine the question of tenancy & the termination of it ; & he may do so on conflicting evidence.—TUFTS *v.* THOMSON, [1929] 1 D. L. R. 896 ; 1 W. W. R. 329 ; 38 Man. L. R. 51 ; *affg.*, [1928] 3 W. W. R. 666.—**CAN.**

f i. —— *Appeal—Order by judge in chambers.*]—No appeal lies to the Ct. of Appeal from an order made by a judge of the K. B. in chambers, on an appeal to him from an order made by a district ct. judge on an application under Landlord & Tenant Act for a writ of possession.—CANADA TRUST CO. *v.* SCHULTZ (Sask.), [1926] 4 D. L. R. 724 ; [1926] 2 W. W. R. 797.—**CAN.**

f ii. —— *Proceedings for—Whether applicable in involved case.*]—Pltf. sold a property in Vancouver to defts. under agreement for sale for $40,000. Defts. went into possession & after paying $21,000 were in default. The parties then entered into a further agreement whereby the option to purchase was still in force, but the payments to be made were expressed in rent. After making further payments amounting to $2,500, defts. were again in default, & pltf. applied for & obtained a writ of possession under the overholding sections of

Part XXVII.—Rent and Mortgage Restriction Acts.

7027a. —— —— **Notwithstanding tenant ceasing personally to reside on premises—Members of tenant's family residing on premises.**]—KREITMAN *v.* VIDOFSKY (1927), 43 T. L. R. 335, D. C.

Annotation :—**Overd.** Skinner *v.* Geary (1931), 47 T. L. R. 597.

7028a. Operation of Acts—In rem.]—Certain huts built by H.M. Office of Works in 1915 for munition workers became vacant in 1923. They were subsequently let to tenants. In 1928 the Crown sold the property to the W. Estates, Ltd., who leased the same to pltf. The rental value of the premises brought them within Rent Restrictions Act. Pltf. sought possession of the premises occupied by the two defts., whose tenancies commenced from Oct. 1924. The county ct. judge dismissed the claim, holding that the premises were controlled. Pltf. appealed. The case was argued on the footing that the Acts did not bind the Crown. It was also admitted that the Crown had vacant possession after July 31, 1923 :—*Held :* both appeals must be allowed. The Crown was not bound by Rent Restrictions Acts, otherwise there was no necessity for 1920 Act, s. 12 (10). The Rent Restrictions Acts operated *in rem* & not *in personam*, & so if the principal Act did not apply to the premises, the Act of 1923 also did not apply. There must, therefore, be an order for possession in both cases.—CLARK *v.* DOWNES, CLARK *v.* MAWBY (1931), 145 L. T. 20; 29 L. G. R. 571, D. C.

Annotation :—**Distd.** Wirral Estates, Ltd. *v.* Shaw (1932), 48 T. L. R. 281.

7028b. Acts not binding on Crown.]—CLARK *v.* DOWNES, CLARK *v.* MAWBY, No. 7028a, *ante*.

7028c. —— **Effect of sale by Crown—Subject to existing tenancy.**]—Rent Restrictions Acts, 1920 & 1923, do not affect premises owned by the Crown, even when they fall within the limits laid down by those Acts. But upon a sale or assignment by the Crown this prerogative comes to an end, save only that where the premises are once sold subject to an existing tenancy that exemption continues until that tenancy is determined.—WIRRAL ESTATES, LTD. *v.* SHAW, [1932] 2 K. B. 247; 101 L. J. K. B. 370; 147 L. T. 87; 96 J. P. 143; 48 T. L. R. 281; 76 Sol. Jo. 185; 30 L. G. R. 171, C. A.

7032. *Add. Annotations :*—**Consd.** Skinner *v.* Geary (1931), 47 T. L. R. 597. **Refd.** Roe *v.* Russell, [1928] 2 K. B. 117; Lloyd *v.* Cook, Goudge *v.* Broughton, Simson *v.* Miatt, Bartram *v.* Brown, Barker *v.* Hutson, [1929] 1 K. B. 103.

7036. *Add. Annotations :—As to* (2) **Apprvd.** Lloyd *v.* Cook, Goudge *v.* Broughton, Simson *v.* Miatt, Bartram *v.* Brown, Barker *v.* Hutson, [1929] 1 K. B. 103. **Refd.** Catto *v.* Curry, [1926] 1 K. B. 460.

7037. *Add. Citation :*—24 L. G. R. 321.

Add Annotations :—As to (1) **Dbtd.** Brooks *v.* Liffen, [1928] 2 K. B. 347. **Apprvd.** Lloyd *v.* Cook, Goudge *v.* Broughton, Simson *v.* Miatt, Bartram *v.* Brown, Barker *v.* Hutson, [1929] 1 K. B. 103. **Apld.** Ratkinsky *v.* Jacobs, [1929] 1 K. B. 24. **Refd.** Oakley *v.* Wilson, [1927] 2 K. B. 279.

7037a. —— ——.]—LLOYD *v.* COOK, GOUDGE *v.* BROUGHTON, SIMSON *v.* MIATT, BARTRAM *v.* BROWN, BARKER *v.* HUTSON, No. 7352d, *post*.

7037b. Rent-free tenancy.]—The Rent Restriction Acts afford no protection to a tenant who is rent-free.—BRACEY *v.* PALES, [1927] 1 K. B. 818; 96 L. J. K. B. 305; 136 L. T. 282; 43 T. L. R. 69; 25 L. G. R. 156, D. C.

Annotation :—**Refd.** Turner *v.* Watts (1927), 44 T. L. R. 105.

7037c. -.]—TURNER *v.* WATTS, No. 6636a, *ante*.

7038a. Part of premises sub-let after passing of 1923 Act.]—*Held :* where, after the passing of 1923 Act the mesne tenant of a whole house sub-lets to a tenant rooms which were not previously sub-let & which constitute a dwelling-house, 1920 Act applies to those rooms by virtue of proviso to sect. 2 (1) of 1923 Act.—CHARVONIA *v.* ESTERMAN, [1931] 2 K. B. 541; 100 L. J. K. B. 737; 145 L. T. 419; 95 J. P. 171; 47 T. L. R. 533; 75 Sol. Jo. 459; 29 L. G. R. 493, D. C.

7040. *Add. Annotations :—As to* (1) **Distd.** Leslie *v.* Cumming, [1926] 2 K. B. 417; Ebner *v.* Lascelles, [1928] 2 K. B. 486. **Refd.** Gee *v.* Hazleton, [1932] 1 K. B. 179. *As to* (2) **Apld.** Ratkinsky *v.* Jacobs, [1929] 1 K. B. 24. **Consd.** Fordree *v.* Barrell (1931), 95 J. P. 141; Haskins *v.* Lewis, [1931] 2 K. B. 1. **Refd.** Thompson *v.* Rolls, [1926] 2 K. B. 426; Lloyd *v.* Cook, Goudge *v.* Broughton, Simson *v.* Miatt, Bartram *v.* Brown, Barker *v.* Hutson, [1929] 1 K. B. 103.

Landlord & Tenant Act :—*Held :* in a case so involved & in which if action had been brought relief against forfeiture might be considered, the section of Landlord & Tenant Act invoked did not apply; summary remedy should not be invoked except in cases of the ordinary relationship of landlord & tenant.—RAY *v.* RUBY HOU, [1928] 1 D. L. R. 177; 39 B. C. R. 128 —**CAN.**

f iii. —— *Injunction against enforcement of—Action pending to determine construction of lease.*]—WELCH *v.* ERNEWEIN, [1928] 3 W. W. R. 20.—**CAN.**

q i. —— *Based on wrong decision—Irregularities in proceedings—Validity of order.*]—The fact that summary proceedings under Landlords & Tenants Act were not entitled in the ct., as provided by sect. 21 of the Act, & the fact that the papers were not served as provided in sect. 16 thereof, are irregularities which cannot be attacked except in the proceedings themselves or on an appeal.—TUFTS *v.* THOMSON, [1928] 3 W. W. R. 666.—**CAN.**

sb. *Action for damages—In County Court—Tenant under void lease.*]—A tenant who has entered & paid rent under a parol lease void under Statute of Frauds can maintain an action in the county ct. for damages for wrongful eviction. The argument that the tenant in such a case is relying on acts of part performance, & that he may do so only in a ct. which has jurisdiction, which the county ct. has not, to grant specific performance was held immaterial since pltf. did not require specific performance & was entitled in the county ct. to rely on the common law rule under which on entry & payment of rent under a lease void under the Statute of Frauds a tenancy from year to year is created.—GEBLER *v.* PALMASON, MCDONALD *v.* PALMASON (Man.), [1930] 1 D. L. R. 475; [1929] 3 W. W. R. 534; 38 Man. L. R. 371.—**CAN.**

PART XXVII. SECT. 1, SUB-SECT. 1.

7022 i. *Application to premises—Letting not necessary.*]—The provisions of Rent & Mtge. Restrictions Act, 1923 (No. 19 of 1923), relating to the restriction of rent, only apply as between landlord & tenant, & are applicable only to a house which is let.—WALLACE *v.* FOGARTY, [1926] I. R. 255, 257.—**IR.**

PART XXVII. SECT. 1, SUB-SECT. 2.

7040 i. *Continuation of application of Acts—Sub-letting furnished of un-*

7041. *Add. Citations :*—95 L. J. K. B. 1007 ; 24 L. G. R. 315.

Add. Annotations :—As to (1) **Consd.** Fordree *v.* Barrell (1931), 95 J. P. 141. **Refd.** Ebner *v.* Lascelles, [1928] 2 K. B. 486. *As to* (2) **Refd.** Thompson *v.* Rolls, [1926] 2 K. B. 426.

7041a. —— ——.]—Where the tenant of an entire house within the limits of the Rent Restriction Acts sub-lets part as a dwelling-house & thereby becomes mesne tenant of the whole premises, the part sub-let remains under the protection of the Acts by reason of the proviso to 1923 Act, s. 2 (1).—DOMENDIETTI *v.* RYAN (1929), 141 L. T. 239 ; 93 J. P. 206 ; 45 T. L. R. 432 ; 73 Sol. Jo. 318 ; 27 L. G. R. 451, D. C.

7041b. —— **Grant of licence.**]—Where the tenant of premises protected by Rent Restriction Acts has granted to another person a licence, under which the paramount user of part of the premises is to be user for the purpose of the business of that other person, that part of the premises is no longer protected by the Acts ; & the position is not affected by the fact that a licence only & not a sub-tenancy has been granted.—GEE *v.* HAZLETON [1932] 1 K. B. 179 ; 100 L. J. K. B. 644 ; 145 L. T. 545 ; 95 J. P. 176 ; 47 T. L. R. 528 ; 49 L. G. R. 498, D. C.

7047. *Add. Citation :*—24 L. G. R. 147.

Add. Annotations :—**Distd.** Cohen *v.* Gold, [1927] 1 K. B. 865. **Apprvd.** Lloyd *v.* Cook, Goudge *v.* Broughton, Simson *v.* Miatt, Bartram *v.* Brown, Barker *v.* Hutson, [1929] 1 K. B. 103. **Refd.** Catto *v.* Curry, [1926] 1 K. B. 460 ; Oakley *v.* Wilson, [1927] 2 K. B. 279.

7049. *Add. Annotations :*—**Consd.** Jewish Maternity Soc. Trustees *v.* Garfinkle (1926), 95 L. J. K. B. 766. **Distd.** Barton *v.* Keeble, [1928] Ch. 517. **Refd.** Brooks *v.* Liffen, [1928] 2 K. B. 347.

7051. *Add. Citations :*—135 L. T. 476 ; 24 L. G. R. 543.

7057a. ——.]—Certain premises, part of which was used as a shop, had been let to a tenant who resided on these premises. The landlord having served upon the tenant a notice to increase the rent, the tenant claimed to be protected under the Rent Restriction Acts :—*Held :* as the tenant dwelt in the house & had a right to dwell there, the house was a dwelling-house, & the fact that part of it was used for business purposes did not prevent it being a dwelling-house to which 1920 Act, s. 12 (2), applied.—HICKS *v.* SNOOK (1928), 93 J. P. 55 ; 73 Sol. Jo. 43 ; 27 L. G. R. 175, C. A.

7061. *Add. Annotation :*—**Consd.** Leslie *v.* Cumming, [1926] 2 K. B. 417.

7062. *Add. Annotations :*—**Refd.** Leslie *v.* Cumming, [1926] 2 K. B. 417 ; Ebner *v.* Lascelles, [1928] 2 K. B. 486 ; Gee *v.* Hazleton, [1932] 1 K. B. 179.

7063. *Add. Citations :*—95 L. J. K. B. 1 ; 134 L. T. 21 ; 24 L. G. R. 27.

Add. Annotations :—As to (1) **Folld.** West Wales Joint Board for the Mentally Defective *v.* Evans (1928), 139 L. T. 382. **Consd.** Fordree *v.* Barrell (1931), 95 J. P. 141. **Dbtd.** Haskins *v.* Lewis, [1931] 2 K. B. 1. **Consd.** Gee *v.* Hazleton, [1932] 1 K. B. 179. **Refd.** Leslie *v.* Cumming, [1926] 2 K. B. 417 ; Thompson *v.* Rolls, [1926] 2 K. B. 426 ; Ebner *v.* Lascelles, [1928] 2 K. B. 486.

7063a. Separate use of part as business premises—Other part sub-let.]—A house & shop were let to a tenant in 1900. The house consisted of two rooms in the basement, a shop & parlour on the ground floor, two rooms on the first floor & two rooms on the second floor. The tenant originally carried on a tailor's business in the shop & resided in the house with his family. Subsequently he ceased to carry on the tailor's business & his daughter carried on a drapery business on the ground floor, & his son carried on a betting business on the first floor. In 1927 the tenant moved to another house where he resided with his family ; he then sub-let the two rooms in the basement to one sub-tenant as a residence, and the two rooms on the second floor to another sub-tenant as a residence. The landlord served notice to quit upon the tenant, & then commenced proceedings in the county ct. to recover possession of the premises. The tenant relied upon the protection given by Rent Restriction Acts. The county ct. judge found as a fact that the ground floor & the first floor constituted business premises, & that the tenant had sub-let the remainder of the premises & so parted with possession of them. He accordingly held that the tenant was not entitled to the protection of Rent Restriction Acts & gave judgment for the landlord for possession :—*Held :* an order could be made for the recovery by the landlord of possession of the whole of the premises, notwithstanding that the basement & second floor had been sub-let to two tenants as residences, those sub-tenants being protected by 1920 Act, s. 5 (5) & s. 15 (3), & becoming tenants of the landlord.—HASKINS *v.* LEWIS, [1931] 2 K. B. 1 ; 100 L. J. K. B. 180 ; 144 L. T. 378 ; 95 J. P. 57 ; 47 T. L. R. 195 ; 29 L. G. R. 199, C. A.

Annotations :—**Consd.** Fordree *v.* Barrell (1931), 95 J. P. 141. **Apld.** Skinner *v.* Geary (1931), 47 T. L. R. 597. **Refd.** Gee *v.* Hazleton, [1932] 1 K. B. 179.

7067a. —— **Dwelling-house taken for purpose of subletting.**]—A dwelling-house consisted of a ground floor & basement. The tenant did not herself occupy the dwelling-house or any part of it, but sublet the ground floor furnished, & the basement unfurnished, to sub-tenants

furnished house—Destruction of identity.] —The widow of a tenant of a house let unfurnished sub-let the house furnished :—*Held :* the widow by sub-letting the house furnished made it cease to be a house to which Rent & Mtge. Restrictions Act, 1923 (No. 19 of 1923), applied.—KAVANAGH *v.* WHITTLE, [1926] I. R. 425, 428.—**IR.**

PART XXVII. SECT. 1, SUB-SECT. 3.—A. (a).

7045 ii. —— —— *Rent & Mortgage Restrictions Act*, 1923 (*No.* 19 *of* 1923), *s.* 3 (1).]—The words " let as a separate dwelling " apply to " a house," as well as to " a part of a house."—WALLACE *v.* FOGARTY, [1926] I. R. 255, 257.—**IR.**

PART XXVII. SECT. 1, SUB-SECT. 3.—A. (b).

7055 i. *Shop.*]—Premises in a country town were let to a tenant under a single contract of lease, & at an unapportioned rent of less than £70. The subjects consisted of a dwelling-house, & of a room used as a shop, & constructed to serve that purpose. The house & the shop had separate entrances from the street, but there was internal communication between them. The landlord having brought an action of removing from the shop :—*Held :* the unit of location was a complex one consisting in part of a dwelling-house & in part of a shop, the latter was not part of the dwelling-house, & accordingly Increase of Rent & Mortage Interest (Restrictions) Act, 1920, did not apply to it ; & decree of removing granted.—M'CLYMONTS TRUSTEES *v.* ROSS, [1929] S. C. (Ct. of Sess.) 585.—**SCOT.**

whose occupation ceased shortly before the end of the tenancy:—*Held:* 1920 Act was not prevented from applying to the dwelling-house, so as to entitle the tenant to rely upon sect. 2 (3), because (1) the tenant took & used the dwelling-house only for the purpose of subletting it, inasmuch as the taking & user of premises only for that purpose did not make them business premises to which the Act did not apply; (2) the tenant did not herself occupy the dwelling-house, & her sub-tenants ceased to occupy it before the end of the tenancy; (3) the tenant had sublet the ground floor furnished to sub-tenants, who ceased to occupy it before the end of the tenancy.—EBNER *v.* LASCELLES, [1928] 2 K. B. 486; 97 L. J. K. B. 497; 139 L. T. 140; 92 J. P. 114; 44 T. L. R. 460; 72 Sol. Jo. 303; 26 L. G. R. 295, D. C.

Annotations:—As to (2) **Dbtd.** Fordree *v.* Barrell (1931), 95 J. P. 141. *As to* (3) **Consd.** Fordree *v.* Barrell (1931), 95 J. P. 141.

7090. *Add. Annotation:*—**Refd.** Lloyd *v.* Cook, Goudge *v.* Broughton, Simson *v.* Miatt, Bartram *v.* Brown, Barker *v.* Hutson, [1929] 1 K. B. 103.

7091. *Add. Citation:*—24 L. G. R. 250.

Add Annotations:—**Apld.** Doulin *v.* Purcell (1926), 136 L. T. 633. **Apprvd.** Lloyd *v.* Cook, Goudge *v.* Broughton, Simson *v.* Miatt, Bartram *v.* Brown, Barker *v.* Hutson, [1929] 1 K. B. 103. **Folld.** Domendietti *v.* Ryan (1929), 141 L. T. 239. **Consd.** Charvonia *v.* Esterman (1931), 47 T. L. R. 533. **Folld.** Lefevre *v.* Hirst (1931), 100 L. J. K. B. 733. **Refd.** Oakley *v.* Wilson, [1927] 2 K. B. 279.

7091a. —— ——.] — LEFEVRE *v.* HIRST, No. 7336c, *post.*

7095. *Add. Citation:*—24 L. G. R. 321.

Add Annotations:—**Dbtd.** Brookes *v.* Liffen, [1928] 2 K. B. 347. **Apprvd.** Lloyd *v.* Cook, Goudge *v.* Broughton, Simson *v.* Miatt, Bartram *v.* Brown, Barker *v.* Hutson, [1929] 1 K. B. 103. **Consd.** Ratkinsky *v.* Jacobs, [1929] 1 K. B. 24. **Refd.** Oakley *v.* Wilson, [1927] 2 K. B. 279.

7097. *Add. Annotations:—As to* (1) **Distd.** Lovibond (J.) & Sons *v.* Vincent, [1929] 1 K. B. 687. **Consd.** Skinner *v.* Geary (1931), 47 T. L. R. 597. *Generally,* **Refd.** Roe *v.* Russell, [1928] 2 K. B. 117.

7097a. Meaning of "family"—1920 Act, s. 12 (1) (g).]—PRICE *v.* GOULD, No. 7107b, *post.*

7101. *Add. Annotations:*—**Distd.** Ebner *v.* Lascelles, [1928] 2 K. B. 486. **Consd.** West Wales Joint Board for the Mentally Defective *v.* Evans (1928), 139 L. T. 382; Haskins *v.* Lewis, [1931] 2 K. B. 1; Skinner *v.* Geary (1931), 47 T. L. R. 597.

7103a. —— —— ——.]— SPURLING *v.* PUGH (1926), cited, [1931] 2 K. B. at p. 263, D. C.

Annotation:—**Apprvd.** Fordree *v.* Barrell (1931), 95 J. P. 141.

7103b. —— —— ——.]—The tenant of a dwelling-house which was within the rental limits of 1920 Act, sub-let furnished three rooms of the house to one person & two rooms to another, reserving for herself merely one room & the scullery. The sub-tenants were given by the tenant the right as against herself to exclusive possession of the rooms in question. On becoming aware of the sub-letting the landlord of the house gave notice to terminate the tenancy, & thereafter took proceedings to recover possession of the rooms which had been sub-let:—*Held:* the rooms which had been sub-let had by virtue of sect. 12 (2) of 1920 Act become separate dwelling-houses to which the Act did not apply & therefore the landlord was entitled to recover possession of those rooms.—BARRELL *v.* FORDREE, [1932] A. C. 676; 101 L. J. K. B. 529; 96 J. P. 278; 48 T. L. R. 482; *sub nom.* FORDREE *v.* BARRELL, 147 L. T. 206; 30 L. G. R. 271, H. L.

7103c. —— —— **Application of 1920 Act, s. 2 (3).**] —EBNER *v.* LASCELLES, No. 7067a, *ante.*

7103d. —— ——.]—Where there has been no default by a tenant under 1923 Act, s. 4, no order at all for possession or ejectment can be made in respect of premises protected by the Act, so long as they are lawfully occupied; & the fact that a tenant has sublet the whole & does not occupy any part himself will not be a ground for an order for possession being made against either tenant or sub-tenant.—WEST WALES JOINT BOARD FOR MENTALLY DEFECTIVE *v.* EVANS (1928), 139 L. T. 382; 44 T. L. R. 565; 26 L. G. R. 447, D. C.

7103e. —— ——.]—(1) For a considerable period before 1919 deft. was tenant & occupier of a dwelling-house at N., which came within Rent Restriction Acts. In 1919 he went to live at a house in another locality of which house his wife was tenant. By permission of deft. a sister of his wife, with her husband, then went to reside in the house at N. In May, 1930, notice to quit the premises at N. was served by pltf., the landlord, on deft., who thereby became statutory tenant of the premises. In June, 1930, deft.'s sister-in-law left the premises, & deft. permitted his sister to live in them. In an action brought by pltf. against deft. for possession of the

PART XXVII. SECT. 1, SUB-SECT. 3.—D.

c. For the word "*hotel*" in the catchwords substitute the word

c 1. —— ——.]—A farmhouse was let with a farm, the tenancy expiring at Martinmas 1923. In Mar. 1922, the tenant sub-let the house, garden, & certain offices at a rent of £20, the ratable value of the garden & offices being less than one-quarter of that of the house. On the expiry of the farm tenancy at Martinmas 1923, the landlord let to the subtenant the house, garden, & offices, with the steading & farmyard, at a rent of £35. The ratable value of the garden, offices, steading, a farmyard was more than one-quarter of that of the house:—*Held:* as the value of the land & other premises let with the house since Martinmas exceeded one-quarter of that of the house, 1920 Act did not apply to the subjects, the addition of the farmyard & steading having altered the identity of the house, & thus elided sect. 12 (6) of the Act.—HALDANE *v.* SINCLAIR, [1927] S. C. 562.—SCOT.

PART XXVII. SECT. 2, SUB-SECT. 4.

7100 i. *Person not in occupation.*]—The restrictions imposed by Increase of Rent & Mtge. Interest (Restrictions) Act, 1923, s. 4, on the right of a landlord to recover possession of a dwelling-house to which the Act applies are not intended to benefit a tenant who is not in occupation of the premises.—FOLEY *v.* GALVIN, [1932] I. R. 339.—IR.

7101 i. —— *Where tenant has sub-let.*]—Pltf. let two rooms in a certain house to the National Union of Railwaymen as a meeting-place for the members of the Union. Subsequently the Union sub-let one of the rooms to a shoemaker, who used the room solely for the purposes of his trade. Pltf. obtained a decree in ejectment against the Union & recovered possession of the room occupied by them. He then brought ejectment proceedings against the sub-tenant in respect of the room occupied by him. The sub-tenant relied on Increase of Rent & Mtge. Interest (Restrictions) Act, 1923:—*Held:* deft. was protected by the Act, as, whether the Union was using the rooms "for business, trade, or professional purposes" or not, pltf. was the "landlord" of the room & deft. the "tenant," & the latter used the room for business premises.—O'BRIEN *v.* WALLACE, [1932] I. R. 308.—IR.

house, the county ct. judge found that deft. was not in actual occupation of the house at the material time & that he did not retain possession within Rent Restriction Acts by the occupation of his wife's or his own relations, since the purpose of that occupation was not to preserve the house as a residence for himself. The county ct. judge accordingly made an order for possession of the house, & this order was affirmed by the Div. Ct. On appeal:—*Held:* the appeal should be dismissed on the ground (*per* SCRUTTON & SLESSER, L.JJ.) the fundamental principle of the Rent Restriction Acts being to protect a tenant who is residing in a house, a tenant, to be entitled to the protection of the Acts, must be in personal occupation or actual possession of the premises in respect of which he seeks that protection, & (*per* GREER, L.J.) the findings of the county ct. judge involved that deft. had sub-let the house & so was, by virtue of 1923 Act, s. 4 (*h*), precluded from claiming to retain possession.

(2) In my view *Collis* v. *Flower*, No. 7105, was wrong, for the reasons that I have been stating. The common law tenancy was terminated. The exor. had a common law tenancy, & it was terminated by notice to quit. He did not remain in occupation of the house, &, in my view, the original tenant having no right, as we have now decided, to dispose of the property by will, had no right to give any statutory right to the exor., & the exor., who had not lived in the house, could not claim to be a statutory tenant. In my view, therefore, *Collis* v. *Flower*, No. 7105, is no longer an authority.

The administrator case stands on a different footing, because one has to look in all these cases to see what the facts were. The administrator case is the case of *Mellows* v. *Low*, No. 7097. There the facts were different. The original tenant was a weekly tenant. It was a common law tenancy, & during her tenancy she died intestate. Consequently, whatever rights she had in her common law tenancy remained to her representatives in an intestacy. No notice to quit was ever given. Consequently the common law tenancy remained. Then the landlord claimed that on the death of the tenant intestate, with no member of her family residing in the house, the tenancy lapsed. It was held that the administratrix was a person who derived title under the original tenant, &, consequently, that the residence could not be interfered with. The point of that case which renders it a right decision is that no notice to quit the common law tenancy had ever been given. The common law tenancy, therefore, remained, & it remained in the person who at common law was entitled to it, & her tenancy had never been terminated. Consequently *Mellows* v. *Low*, No. 7097, on the facts, is right, but if notice to terminate the common law tenancy had been given the ct. could not, in my opinion, have said, unless the matter could be brought within the very curious clause about intestacy to which I have referred, that such an administratrix not being in possession is entitled to be protected by the Act (SCRUTTON, L.J.).—SKINNER *v.* GEARY, [1931] 2 K. B. 546; 100 L. J. K. B. 718; 145 L. T. 675; 95 J. P. 194; 47 T. L. R. 597; 29 L. G. R. 599, C. A.

Annotation:—As to (1) **Consd.** Sutton *v.* Dorf (1932), 76 Sol. Jo. 359.

7103f. —.]—HASKINS *v.* LEWIS, No. 7063a, *ante*.

7105. *Add. Annotations:*—**Distd.** Lovibond (J.) & Sons *v.* Vincent, [1929] 1 K. B. 687. **Overd.** Skinner *v.* Geary (1931), 47 T. L. R. 597. **Refd.** Roe *v.* Russell, [1928] 2 K. B. 117.

7105a. ——.]—SKINNER *v.* GEARY, No. 7103e, *ante*.

7106a ——.]—SKINNER *v.* GEARY, No. 7103e, *ante*.

7107. *Add. Annotation:*—**Consd.** Price *v.* Gould (1930), 143 L. T. 333.

7107a. Daughter of deceased tenant.]—Deft.'s father, who was the statutory tenant of a dwelling-house to which Rent Restriction Acts applied, died intestate & leaving no widow. Deft. was admittedly a member of her father's family, "residing with him at the time of his death," within 1920 Act, s. 12 (1) (*g*). When he died deft.'s father owed six months' rent to the landlord of the house:—*Held:* deft. was a statutory tenant of the premises, & had to observe all the terms & conditions of the contract of tenancy which her father had originally held, but her statutory tenancy had begun with her, & she was not liable to pay the arrears of rent owing by her father at the time of his death, they being a liability which had been incurred by a preceding tenant.—TICKNER *v.* CLIFTON, [1929] 1 K. B. 207; 98 L. J. K. B. 69; 140 L. T. 136; 93 J. P. 57; 45 T. L. R. 35; 72 Sol. Jo. 762, D. C.

Compare No. 7107c, *infra*.

7107b. Brothers & sisters of deceased woman tenant.]—The word "family" in sect. 12 (1) (*g*) of the 1920 Act includes brothers & sisters. The primary meaning of the word "family" was children, but that meaning is susceptible of a wider meaning according to the context in which it is used, & the Legislature used the word "family" to introduce a wide & flexible term.—PRICE *v.* GOULD (1930), 143 L. T. 333; 94 J. P. 210; 46 T. L. R. 411; 74 Sol. Jo. 437; 28 L. G. R. 651.

7107c. Death of widow of tenant—No further statutory protection.]—On the death of the statutory tenant of certain premises within

7105 i. *Executor of tenant.*]—*Held:* a tenant's rights under 1920 Act were altogether personal, & no interest in deceased's tenancy could devolve on defts. as her exors.—DRURY *v.* JOHNSTON, [1928] N. I. 25.—**IR.**

sd. *Widow or member of deceased tenant's family.*]—Pltf. was the owner of a dwelling-house subject to Increase of Rent & Mtge. Interest (Restrictions) Act, 1920. The premises had been let as a weekly tenancy, in or about 1923, to N., who was then in pltf.'s employment, at the rent of 5*s.* per week. N. died intestate in June, 1926, leaving deft. his widow, who up to the time of his death resided with him. On the death of her husband, deft. remained in occupation & entered into legal possession of the house under Increase of Rent, etc. (Restrictions) Act, 1920, s. 12 (1) (*g*). Deft. married again in Mar. 1928, & her second husband & his children came to reside in the house occupied by her. The landlord instituted ejectment proceedings against deft., who claimed the protection of Increase of Rent (Restrictions) Acts. Increase of Rent & Mtge. Interest (Restrictions) Act, 1920, s. 12 (1) (*g*), provides that "the expression tenant includes the widow of a tenant dying intestate who was residing with him at the time of his death":—*Held:* the widow acquired a vested interest as tenant, & there was nothing in Increase of Rent & Mtge. Interest (Restrictions) Act, 1920, which divested this interest on her second marriage.—APSLEY *v.* BARR, [1928] N. I. 183.—**IR.**

the limits of the Rent Restriction Acts, his widow continued to occupy by virtue of 1920 Act, s. 12 (1) (*f*). The widow subsequently died, & her daughter, who had been living with her on the premises, contended that by virtue of the same sect. the right of tenancy passed to her:—*Held:* as the Acts do not confer any right of property, but merely a personal right of occupation, the tenancy of the deceased tenant passed to his widow only under the above sect., & did not pass to any one else after his widow's death.—PAIN *v.* COBB (1931), 146 L. T. 13; 95 J. P. 201; 47 T. L. R. 596; 29 L. G. R. 623, D. C.

7112. *Add. Annotation:*—**Apprvd.** Lloyd *v.* Cook, Goudge *v.* Broughton, Simson *v.* Miatt, Bartram *v.* Brown, Barker *v.* Hutson, [1929] 1 K. B. 103.

7125. *Add. Annotation:*—**Refd.** Lloyd *v.* Cook, Goudge *v.* Broughton, Simson *v.* Miatt, Bartram *v.* Brown, Barker *v.* Hutson, [1929] 1 K. B. 103.

7132. *Add. Annotation:*—*As to* (2) **Refd.** Leslie *v.* Cumming, [1926] 2 K. B. 417.

7135. *Add. Annotation:*—*As to* (1) **Consd.** Bracey *v.* Pales (1926), 43 T. L. R. 69.

7145a. **What amounts to increase.**]—By a local Act, the rates in S. were consolidated & became a comprehensive borough rate. In May 1927, by virtue of the Act, which provided that in certain cases owners might be rated instead of occupiers, the city council passed a resolution transferring the liability for the rate as regards premises of which the ratable value did not exceed £10. The resolution took effect on Oct. 5, 1927. The rate, which the owners became liable to pay, was calculated on the basis of nine-tenths of the amount in the pound of the full consolidated rate previously payable by the occupier. The landlords of certain premises of a ratable value not exceeding £10 claimed that they were entitled to increase the rent of one of their tenants, under 1920 Act, by the amount of the full consolidated rate previously payable by the tenant:—*Held:* under sect. 2 (1) (*b*), the landlords were entitled to increase the rent, as there had been an increase in the amount of the rates for the time being payable by the landlords over the corresponding amount paid by them in the period specified by the sect.; but the amount of the permitted increase was an amount equivalent to nine-tenths of the full consolidated rate, & not the full amount of that rate.—HODGKINSON *v.* HEWITT (1928), 139 L. T. 401; 44 T. L. R. 694; 93 J. P. 23; 27 L. G. R. 210, D. C.

7149. *Add. Annotations:*—**Apld.** Hodgkinson *v.* Hewitt (1928), 139 L. T. 401. **Folld.** Evans *v.* Baxter (1930), 94 J. P. Jo. 173.

7149a. -.]—Where a landlord pays the rates & receives an allowance he is not entitled under 1920 Act, s. 2 (1) (*b*), to increase the rent by the full amount of the rates but only by that amount less the allowance.—EVANS *v.* BAXTER (1930), 46 T. L. R. 270; 74 Sol. Jo. 284, D. C.

7150. *Add. Annotation:*—**Refd.** Elvington Tenants *v.* Hatton (1928), 139 L. T. 211.

7154. *Add. Annotation:*—*As to* (2) **Consd.** Harris *v.* Norris (1930), 143 L. T. 230.

7155. *Add. Annotation:*—*As to* (1) & (2) **Consd.** Harris *v.* Norris (1930), 143 L. T. 230.

7155a. **Tenant of part of dwelling-house—Right to notice from landlord of part.**]—On Aug. 4, 1914, a house was let in two parts, upper & lower, each part being let at a rent of 8*s.* 6*d.* a week. Subsequently the tenant of one part became tenant of the whole house at 17*s.* a week, & the landlord gave him notice to increase the rent under 1920 Act, s. 3 (2). Resp. having become tenant of the whole house, desired to sublet the lower part, as had been done previously, & he sublet to applt. at a rent of half the whole rent resp. himself paid for the whole house, namely, 8*s.* 6*d.* plus half the permitted increase. Applt. contended that the 8*s.* 6*d.* a week was the standard rent of the part he occupied, & that as no notice was served upon him of the permitted increase he was not liable to pay any more. Resp. sued for possession on the ground of non-payment of rent & rates in respect of the sub-tenancy. The county ct. judge gave judgment for resp. as pltf. Deft.

PART XXVII. SECT. 2, SUB-SECT. 7.

7108 i. "*Separate*" — *Whether physically separate—Or partitioned off.*]—Pltf., the owner of a house consisting of four floors & a basement, erected in each of the back rooms on the first & second floors a partition, which converted each large back room into two rooms. He put electric fittings in each floor, & did other work in connection with the gas & water supply, & let portion of the house to deft., describing it in the agreement as "consisting of a flat of three rooms & front basement on parlour floor." It had not a separate bath or separate sanitary accommodation, & there was no physical separation of it, as a residence, from the rest of the house:—*Held:* (1) the dwelling-house had not been "*bonâ fide* reconstructed by way of conversion into two or more separate & self-contained flats" within Rent & Mtge. Restrictions Act, 1923 (No. 19 of 1923). The rent being in arrear, pltf. served notice to quit on deft., & instituted ejectment proceedings:—*Held:* (2) the letting was a new letting of portion of altered premises, so as to entitle pltf. to charge a rent without regard to the standard rent of the whole house; (3) deft.'s claim for apportionment of the rent must be dismissed; (4) pltf. was entitled to an order for possession, the ct. granting a stay for a limited period, the order for possession not to issue if the rent was paid within that period.—BOYLE *v.* FITZSIMONS, [1926] I. R. 378.—**IR.**

7109 i. "*Self-contained*"—*Whether complete residence—Necessity for partition.*]—BOYLE *v.* FITZSIMONS, No. 7108 i, *ante*.—**IR.**

PART XXVII. SECT. 3, SUB-SECT. 2.—B. (c).

7128 i. *House converted into flats—Whether rent at first letting as flat.*]—BOYLE *v.* FITZSIMONS, No. 7108 i, *ante*.—**IR.**

s*a.* *Rates previously paid by landlord—Right to throw upon tenant.*]—Apart from any question of special agreement, Increase of Rent & Mortgage Interest (Restrictions) Act, 1923, prevents a landlord of premises to which the Act applies, so long as he is not entitled to obtain possession, from throwing upon the tenant the burden of rates, which he, the landlord, habitually pays or allows, though his contract to pay the rates may be void in law.—MOORE *v.* DAVY, [1928] I. R. 346.—**IR.**

PART XXVII. SECT. 3, SUB-SECT. 3.—C. (a).

s*l.* *Service of notice—Proof.*]—*Held:* (1) as 1920 Act required no particular formalities or solemnities to be observed in connection with the service of notices, service could be proved by evidence in the ordinary way; (2) upon the facts it must be inferred that notice had been received by the tenant.—GUTHRIE *v.* STEWART, [1926] S. C. 743.—**SCOT.**

s*m.* *Agreement for increased rent.*]—Deft. resisted a claim on the ground that, as no notice to quit had been served, nor any valid notice of increase of rent, the increase was irrecoverable under Increase of Rent & Mortgage Interest (Restrictions) Acts of 1920 & 1923, pltf. contending that the latter Act authorised an agreement for an increased rent, not exceeding the limits prescribed by the Act, although a notice to quit & a valid notice of increase of rent had not been served. The circuit judge gave a decree for the amount claimed:—*Held:* the decision must be affirmed.—LANGLEY *v.* POWER, [1928] I. R. 351.—**IR.**

appealed :—*Held :* resp. could not charge a rent in excess of the standard rent unless he could bring himself within the last sentence of sub-sect. (2) of sect. 3 " where a notice of increase of rent which at the time was valid has been served on any tenant, the increase may be continued without service of any fresh notice on any subsequent tenant," but the reference there to the tenant was to the tenant of the dwelling-house in respect of which the question arose & the landlord of part was not entitled to increase the rent of the part unless notice of increase was given to the tenant of the part.—HARRIS *v.* NORRIS (1930), 143 L. T. 230 ; 94 J. P. 199 ; 46 T. L. R. 330 ; 74 Sol. Jo. 201 ; 28 L. G. R. 246, D. C.

7165. *Add. Annotation :—Generally,* **Refd.** Abbey *v.* Barnstyn, [1930] 1 K. B. 660.

7171. *Add. Annotation :*—**Refd.** Roe *v.* Russell, [1928] 2 K. B. 117.

7175. *Add. Annotation :*—**Refd.** Roe *v.* Russell, [1928] 2 K. B. 117.

7181a. Decision of county court judge—Right of appeal to High Court.]—Landlords served on one of their tenants a notice of increase of rent, purporting to increase his rent on account of their liability for repairs & other grounds. The tenant ultimately disputed the increase on the ground of repairs only. The landlords applied to the county ct. under 1920 Act, s. 2 (6), to determine the question whether the notice of increase was valid, whether they were responsible for the whole of the repairs, &, if not for what proportion they were responsible :—*Held :* although questions of law were involved in the matters submitted, the terms of the Act made the decision of the county ct. judge final, & no appeal lay from it.—ELVINGTON TENANTS, LTD. *v.* HATTON (1928), 139 L. T. 211 ; 92 J. P. 92 ; 44 T. L. R. 453 ; 72 Sol. Jo. 319 ; 26 L. G. R. 303, D. C.

7188a. Necessity for apportionment—Onus of proof.]—The tenant of part of a dwelling-house to which the Rent Restriction Acts applied proved, on an application by him for an apportionment of the rent of the whole house to determine the standard rent of the rooms occupied by him, that the whole house was let on Aug. 3, 1914 :—*Held :* he had established a *primâ facie* case of necessity for an apportionment, & the onus was then cast on the landlord to show that the rooms occupied by the tenant were let as a separate dwelling-house on Aug. 3, 1914, & so had a standard rent of their own, an apportionment of the rent of the whole house being thus rendered unnecessary.—PLATMAN *v.* FROHMAN, [1929] 1 K. B. 376 ; 98 L. J. K. B. 351 ; 140 L. T. 405 ; 93 J. P. 134 ; 45 T. L. R. 184 ; 27 L. G. R. 150, D. C.

7195. *Add. Annotation :—As to* (1) **Refd.** Lloyd *v.* Cook, Goudge *v.* Broughton, Simson *v.* Miatt, Bartram *v.* Brown, Barker *v.* Hutson, [1929] 1 K. B. 103.

7219. *Add. Annotation :*—**Refd.** *Re* Keystone Knitting Mills Trade Mk. (1928), 97 L. J. Ch. 316.

7225. *Add. Annotation : —* **Consd.** Elvington Tenants *v.* Hatton (1928), 139 L. T. 211.

7225a. —— **Who is tenant—1920 Act, s. 12 (1).**]—TICKNER *v.* CLIFTON, No. 7107a, *ante.*

7231. *Add. Annotation :*—**Refd.** Wilkins *v.* Carlton Shoe Co. (1930), 94 J. P. 207.

7235a. —— —— ——.]—BOND *v.* PETTLE (1921), *Times*, Jan. 15, D. C.

Annotations :— **Distd.** Lever Bros., Ltd. *v.* Caton (1921), 37 T. L. R. 664. **Folld.** Murton *v.* Aldis (1929), 141 L. T. 168.

7235b. —— —— ——.]—MURTON *v.* ALDIS, No. 7318b, *post.*

7237. *Add. Annotations :*—**Refd.** Roe *v.* Russell, [1928] 2. K. B. 117 ; Lovibond J. & Sons *v.* Vincent (1929), 98 L. J. K. B. 402.

PART XXVII. SECT. 3, SUB-SECT. 3.—C. (b).

sn. *Notice increasing rent during currency of lease.*]—A notice to be a valid notice must be correct in substance as well as if form.

A notice is not valid which purports to increase the rent during the currency of the original term of years for which the tenant holds the premises.—SAMMON *v.* BYRNE, [1926] I. L. 411, 415.—**IR.**

sp. *Notice altering terms of tenancy.*]—A notice is not valid which purports to alter the terms & conditions of the original contract of tenancy, by altering the liability for repairs.—SAMMON *v.* BYRNE, [1926] I. R. 411, 415.—**IR.**

sq. *Immaterial errors—Effect of.*]—In an action for recovery of arrears of rent, the tenant maintained that a previous notice of intention to increase rent was invalid, in respect that (1) the notified increase of rates was inaccurate, & (2) a charge for stair gas had wrongly been included in the increased rates :—*Held :* as the tenant had suffered no prejudice, & as the notice did not contain any statement which was false or misleading in any material respect, & was as accurate as it could be in the circumstances at the time when it was given, the notice was not invalid.—CLYDEBANK INVESTMENT CO., LTD. *v.* MARSHALL, [1927] S. C. 860.—**SCOT.**

PART XXVII. SECT. 3, SUB-SECT. 3.—C. (c).

sr. *As to amount of rent.*]—A notice of intention to increase rent, which was in writing & in the statutory form, was objected to by the tenant as incompetent, on the ground that the landlord had stated, as the " rent payable," not the standard rent, but a higher amount which he was receiving at the date of the notice, & had further failed to set forth how the existing excess over standard rent had become due :—*Held :* as the tenant had already for some time been paying without objection rent at the figure stated in the notice, the *onus* was upon him to establish that the amount in excess of standard rent was not legally exigible, & as he had failed to do so, his objection fell to be repelled.—M'KELLAR *v.* M'MASTER, [1926] S. C. 754.—**SCOT.**

7167 i. *Amendment—Mode of.*]—A notice of intention to increase rent, which was in writing & in the statutory form, showed under the appropriate headings how the proposed increase was made up. As the item of occupier's rates was subsequently found to have been overestimated, the original notice was amended by a corrective notice, sent by the landlord's factors & received by the tenant before any increased rent had become due :—*Held :* amendment of a defective notice was not restricted to the method prescribed by 1923 Act, s. 6, the primary purpose of which was to validate defective notices which had been acted on, & it was competent to amend the notice by the method adopted.—M'KELLAR *v.* M'MASTER, [1926] S. C. 754.—**SCOT.**

7167 ii. —— *Jurisdiction of court.*]—Increase of Rent & Mtge. Interest (Restrictions) Act, 1926 (No. 24 of 1926), s. 14, has been framed to put the ct. into the position of being able to do substantial justice between landlords & tenants, & the power conferred goes far beyond the mere correction of clerical errors or the rectifying of mistakes of fact.—HIGGINS *v.* WARREN, [1927] I. R. 558.—**IR.**

7167 iii. —— *Effect of.*]—The ct. made amendments in the notices on terms which appeared to the ct. to be just & reasonable, & gave judgment for the landlord for portion of the rent claimed :—*Held :* as a result of this procedure, the tenant, instead of holding continuously under her agreement, became a statutory tenant as from the date upon which the first of the amended notices was deemed to have taken effect.—NOLAN *v.* GRAVES, [1929] I. R. 7.—**IR.**

PART XXVII. SECT. 3, SUB-SECT. 3.—D.

st. *As condition precedent to increase of rent—Agreement for increased rent.*]—LANGLEY *v.* POWER, [1928] I. R. 351.—**IR.**

PART XXVII. SECT. 3, SUB-SECT. 4.—B.

7189 i. *Where house reconstructed—Conversion into flats.*]—BOYLE *v.* No. 7108 i, *ante.*—**IR.**

7238a. ·.]—DOMENDIETTI *v.* RYAN, No. 7041a, *ante*.

7250. *Add. Annotation :*—**Refd.** Turner *v.* Watts (1927), 44 T. L. R. 105.

7254. *Add. Annotations :*—**Distd.** Campbell *v.* Lill (1926), 135 L. T. 26. **Consd.** Roe *v.* Russell, [1928] 2 K. B. 117. **Apld.** Lovibond (J.) & Sons *v.* Vincent, [1929] 1 K. B. 687. **Consd.** Price *v.* Gould (1930), 143 L. T. 333; Sutton *v.* Dorf (1932), 76 Sol. Jo. 359. **Refd.** Ebner *v.* Lascelles, [1928] 2 K. B. 486; Haskins *v.* Lewis, [1931] 2 K. B. 1; Skinner *v.* Geary (1931), 47 T. L. R. 597.

7254a. —— **By will.**]—The right of a statutory tenant under 1920 Act is a purely personal right, & cannot be transmitted by will.—LOVIBOND (JOHN) & SONS, LTD. *v.* VINCENT, [1929] 1 K. B. 687; 98 L. J. K. B. 402; 141 L. T. 116; 93 J. P. 161; 45 T. L. R. 383; 73 Sol. Jo. 252; 27 L. G. R. 471, C. A.

Annotations :—**Consd.** Price *v.* Gould (1930), 143 L. T. 333; Sutton *v.* Dorf (1932), 76 Sol. Jo. 359. **Refd.** Abbey *v.* Barnstyn, [1930] 1 K. B. 660; Skinner *v.* Geary (1931), 47 T. L. R. 597.

7254b. ——.]—Where a statutory tenant purports to assign his interest & makes a declaration of trust in favour of the assignee, who is thereupon put into possession, the effect is to terminate the statutory tenancy & the assignee acquires no title or right to possession of the premises, but is simply a trespasser.—WILKINS *v.* CARLTON SHOE CO., LTD. (1930), 94 J. P. 207; 46 T. L. R. 415; 74 Sol. Jo. 463; 28 L. G. R. 358, C. A.

7254c. Right to sublet.]—A statutory tenant of a dwelling-house, holding upon terms which do not prohibit subletting, may sublet part of the dwelling-house, provided the remainder is not already sublet. His power to sublet is subject to apportionment of the standard rent of the dwelling-house.

The words "lawfully sublet" in 1920 Act, s. 15 (3), & in 1923 Act, ss. 2 (2), 4 (5), & 7 (1), do not apply exclusively to a dwelling-house of which the tenant is a contractual tenant, but apply also to a dwelling-house of which the tenant is a statutory tenant.—ROE *v.* RUSSELL, [1928] 2 K. B. 117; 97 L. J. K. B. 290; 138 L. T. 253; 92 J. P. 81; 44 T. L. R. 278; 26 L. G. R. 145, C. A.

Annotations :—**Consd.** Lovibond (J.) & Sons *v.* Vincent, [1929] 1 K. B. 687; Sutton *v.* Dorf (1932), 76 Sol. Jo. 359. **Refd.** Fordree *v.* Barrell (1931), 95 J. P. 141; Haskins *v.* Lewis, [1931] 2 K. B. 1; Skinner *v.* Geary (1931), 47 T. L. R. 597.

——.]—*See, also*, Nos. 7041, 7237.

Whether property within Bankruptcy Acts.]—*See* BANKRUPTCY, Nos. 7681a, 7681b.

7261. *Add. Annotation :*—**Refd.** Middlesex County Council *v.* Hall, [1929] 2 K. B. 110.

7264. *Add. Annotation :*—**Consd.** Roe *v.* Russell, [1928] 2 K. B. 117.

7265. *Add. Annotations :*—**Expld.** Lovibond (J.) & Sons *v.* Vincent, [1929] 1 K. B. 687. **N.F.** Sutton *v.* Dorf (1932), 76 Sol. Jo. 359. **Refd.** Roe *v.* Russell, [1928] 2 K. B. 117.

7268. *Add. Annotation :*—**Refd.** Skinner *v.* Geary (1931), 47 T. L. R. 597.

7280. *Add. Annotations :*—**Apld.** De Vries *v.* Sparks (1927), 137 L. T. 441. **Distd.** Turner *v.* Watts (1927), 44 T. L. R. 105.

7281. *Add. Annotations :*—**Consd.** Standingford *v.* Bruce, [1926] 1 K. B. 466; De Vries *v.* Sparks (1927), 137 L. T. 441.

7281a. Notice to quit—What amounts to.]—An agreement made by a tenant with his landlord for good consideration to give up possession cannot constitute a notice to quit within 1920 Act, s. 5 (1) (*c*), as substituted for the original sect. by 1923 Act, s. 4, so as to entitle a landlord, who on the strength of the agreement has contracted to sell the premises, to recover possession of same.—DE VRIES *v.* SPARKS (1927), 137 L. T. 441; 43 T. L. R. 448; 25 L. G. R. 497, D. C.

7291. *Add. Citations :*—95 L. J. K. B. 901; 24 L. G. R. 531.

Add. Annotation :—Generally, **Refd.** Fordree *v.* Barrell (1931), 95 J. P. 141.

7296. *Add. Annotation :—As to* (1) **Folld.** Hicks *v.* Snook (1928), 93 J. P. 55. **Refd.** Gee *v.* Hazleton, [1932] 1 K. B. 179.

e. Premises Required by Local Authority or for Statutory Undertaking (Vol. XXXI., p. 581).

Add the words "*or for Purpose in Public Interest.*"

7298a. "In public interest"—What is—Whether extension of trade.]—GOOCH *v.* STRATMAN (1927), 43 T. L. R. 475, D. C.

7301a. —— ——.]—WEST WALES JOINT BOARD FOR MENTALLY DEFECTIVE *v.* EVANS, No. 7103b, *ante*.

7302a. ——.]—EBNER *v.* LASCELLES, No. 7067a, *ante*.

PART XXVII. SECT. 5, SUB-SECT. 2.—B. (a).

7275 i. *Breach of covenant—Adjudication as bankrupt.*]—Where a lease of premises contained a proviso that, on the bkpcy. of the lessee, it should be lawful for the lessor to re-enter upon the premises, & that, thereupon, the tenancy should absolutely cease, & as the lessee had been adjudicated a bankrupt, the ct. granted the appln. of the lessor for the recovery of possession of the premises, made within a year of the bkpcy. of the lessee, as, since Conveyancing Act, 1892, s. 2 (3) (*c*), applied, sub-sect. 2 of that section did not apply to the lease; &, accordingly, the restrictions imposed by Conveyancing Act, 1881, s. 14 (1), did not apply to the lessor's right of re-entry. The term of years for which the lease was granted expired in 1924, but the lessee continued to remain in possession :—*Held :* the lessee was not entitled to the protection of Increase of Rent & Mortgage Interest (Restrictions) Act, 1923, as he had broken one of the conditions of his tenancy by allowing himself to be adjudicated bkpt., &, therefore, he was no longer entitled to possession, even as a statutory tenant.—*Re* DREW, [1929] I. R. 504.—**IR.**

PART XXVII. SECT. 5, SUB-SECT. 2.—B. (b).

7278 i. *Premises used for immoral or illegal purpose—What amounts to—Offence against licensing laws.*]—A tenant of licensed premises was convicted of an offence against the licensing laws, but the conviction was not recorded on the licence :—*Held :* the tenant had been convicted of using the premises for an illegal purpose, & the ct., considering it reasonable to do so, made an order for possession.—FOLAN *v.* LEE, [1926] I. R. 87.—**IR.**

PART XXVII. SECT. 5, SUB-SECT. 2.—B. (d).

sv. *"Greater hardship"—Limited to tenant personally.*]—Where deft. was tenant of a house, which was occupied, not by him, but by his sister & her husband, & in proceedings for possession it was contended that the ct. should consider hardship to deft.'s sister & her family :—*Held :* "hardship" under Rent & Mtge. Restrictions Act, 1923 (No. 19 of 1923), s. 4 (1) (*d*), was hardship to a tenant personally, & no hardship borne by third parties could be taken into consideration.—COOLEY *v.* WALSH & COONEY, [1926] I. R. 239.—**IR.**

sw. —— *What amounts to.*]—KAVANAGH *v.* WHITTLE, [1926] I. R. 425, 428.—**IR.**

PART XXVII. SECT. 5, SUB-SECT. 3.

sa. *Where tenant disentitled to protection—Tenant not in occupation.*]—Prior to 1920 F. C. became tenant of a dwelling-house under a contract of tenancy from month to month at the monthly rent of £1 16s. 8*d*. In 1920 F. C went to reside elsewhere & never subsequently returned to the house. In 1920 F. C.'s brother, J. C., went, with F. C.'s permission, to reside in the house. A notice of increase of

7307. *Add. Citation :*—24 L. G. R. 141.
Add Annotation :—**Refd.** De Vries *v.* Sparks (1927), 137 L. T. 441

7308c. Part of premises sub-let—Remainder used for business purposes.]—HASKINS *v.* LEWIS, No. 7063a, *ante*.

7318. *Add. Annotation :*—**Dbtd.** Murton *v.* Aldis (1929), 141 L. T. 168.

7318a. —— —— ——.]—BOND *v.* PETTLE (1921), *Times*, Jan. 15, D. C.
Annotations :—**Distd.** Lever Bros., Ltd. *v.* Caton (1921), 37 T. L. R. 664. **Consd.** Murton *v.* Aldis (1929), 141 L. T. 168.

7318b. —— —— ——.]—On an application for possession of a cottage made before justices under Small Tenements Recovery Act, 1838 (c. 74), it was proved that M. worked for C. at certain gas works from Apr. 1920, till Jan. 1921. Adjoining the gas works was a cottage, the property of C., which was let to M. at the commencement & in consequence of his employment. In Jan. 1921, on the termination of his employment, M. "received notice to quit the cottage, & was asked to pay a certain sum for rent. He applied to the county ct. & the rent was settled by the county ct. judge at 5*s.* per week." M. paid this rent up to Sept. 8, 1928. On June 1, 1928, C. having sold the gas works, including the cottage, to a limited liability co., conveyed the same to the co. On Sept. 22, 1928, the co. served a notice to quit on M., who subsequently tendered the rent due from Sept. 8 to 22, which was refused. On Oct. 13, 1928, the statutory notice under the Act of 1838 was served by the co. on M. The cottage was reasonably required by the co. as a residence for a man engaged in their whole-time employment at the gas works. The existence of alternative accommodation was not proved by the landlord. The justices found that no new tenancy had been created & that there was no obligation on the co. to prove alternative accommodation. Accordingly they ordered that a warrant of ejectment should issue :—*Held :* at the time ejectment was sought the cottage was not let to applt. in consequence of his employment, the tenancy then being held under an entirely new contract, & that there were no materials on which the justices could find that no new tenancy had been created. Accordingly, as resp. had not proved the existence of alternative accommodation, the order that a warrant of ejectment should issue must be quashed.—MURTON *v.* ALDIS (1929), 141 L. T. 168 ; 93 J. P. 184 ; 27 L. G. R. 509, D. C.

7320. *Add. Citation :*—24 L. G. R. 192.

7322. *Add. Annotation :*—**Apld.** Middlesex County Council *v.* Hall, [1929] 2 K. B. 110.

7322a. —— —— ——.]—The alternative accommodation which must be offered to the tenant by an applicant for possession under the Rent Restriction Acts of premises used as a dwelling-house & also as business premises, need only be as regards their user as a dwelling-house, & not as regards their user as business premises.—MIDDLESEX COUNTY COUNCIL *v.* HALL, [1929] 2 K. B. 110 ; 98 L. J. K. B. 482 ; 141 L. T. 243 ; 93 J. P. 188 ; 45 T. L. R. 474 ; 73 Sol. Jo. 366 ; 27 L. G. R. 427, D. C.

7336a. Duty of judge to consider jurisdiction to make order for recovery.]—(1) Where, in an action in the county ct. to recover possession of a dwelling-house, the evidence is sufficient to put the judge upon inquiry whether the house is one to which the Rent (Restrictions) Rules, 1920, to inquire & determine whether the house is within the Act &, if it is, to decide whether the Act permits him, & whether it is reasonable, to make an order or give judgment for the recovery of possession thereof.

(2) The Div. Ct. thought that as no one had expressly mentioned the Rent (Restrictions) Act in the county ct. they ought not to consider its effect. I do not agree with that decision. In my opinion the Act imposes upon the county ct. judge the duty of deciding whether the property comes within its provisions &, if it does, whether he should make or refuse an order for possession (SCRUTTON, L.J.).—SALTER *v.* LASK, [1924] 1 K. B. 754 ; 93 L. J. K. B. 685 ; 130 L. T. 323 ; 68 Sol. Jo. 420 ; 22 L. G. R. 296, C. A.
Annotation :—*As to* (2) **Folld.** Lefevre *v.* Hirst (1931), 100 L. J. K. B. 733.

7336b. Appeal to High Court—Right to raise point of law not taken in county court—Jurisdiction of county court judge to make order for recovery.]—SALTER *v.* LASK, No. 7336a, *ante*.

7336c. —— ——.]—(1) The tenant of a dwelling-house within the scope of the Rent Restrictions Acts sub-let three rooms forming a part thereof, & early in 1929 came into possession of that part. On Lady Day, 1929, he again sub-let the same three rooms to a sub-tenant, & later determined the contractual tenancy so created by a notice to quit. In an action brought by him to recover possession of the three rooms deft. claimed that his tenancy had become a statutory one, & relied on sect. 2 (1) of 1923 Act. Pltf. contended that when he came into possession of the whole house in 1929, the whole house thereby became decontrolled. He also contended that because of the wording of the first proviso to sect. 2 (1) & of the fact that the Act has been held to operate *in rem*, the part sub-let to deft. was not part of a dwelling-house to which the principal Act applied :—*Held :* the first proviso to sect. 2 (1) of 1923 Act applied ; the dwelling-house let to deft. was not decontrolled ; & that pltf. was not entitled to an order for possession.

(2) Deft. had not raised the point on which he now relied in the county ct. :—*Held :* the general rule that it is a condition precedent to the raising by an applt. of a point of law on appeal from a county ct. that that point should have been raised at the trial of the action does not apply to cases within r. 18 of Increase of Rent & Mtge. Interest (Re-

rent was served in 1920, subsequent to J. C. going into occupation. F. C. & J. C. were partners in business, & the rent of the dwelling-house was paid from the office of their firm, & was debited in the firm's accounts to J. C.'s salary or to his share of the profits. J. C. was rated in respect of the occupation of the dwelling-house. Both F. C. & J. C. stated in evidence that there was no assignment of the tenancy from F. C. to J. C. The landlord brought an action in the Circuit Court against both F. C. & J. C. to recover possession :—*Held :* the proper inference from the evidence was that J. C. occupied the dwelling-house as tenant at will to his brother F. C. ; accordingly the proviso to sect. 4 (1) of the 1923 Act, applied ; it therefore followed that the landlord was not precluded from obtaining an order for possession against F. C. ; it further followed that, as the dwelling-house had been lawfully sublet to J. C. before proceedings were commenced, J. C. was entitled to retain possession under sect. 4 (2) of the 1923 Act, notwithstanding the judgment for recovery of possession against F. C.—SISK *v.* CROMIN, [1930] I. R. 98.—IR.

strictions) Rules, 1920.—LEFEVRE *v.* HIRST (1931), 100 L. J. K. B. 733.

7342. *Add. Annotation :*—**Refd.** Sheffield Corpn. *v.* Luxford, Sheffield Corpn. *v.* Morrell, [1929] 2 K. B. 180.

7346a. —— —— **Dispute not on question arising under Rent Restriction Acts—Dispute as to renewal of lease.**]—*Held :* 1920 Act, s. 17 (2), applied.—BRANCH *v.* BENNETT'S DAIRIES, LTD. (1928), 44 T. L. R. 605.

7351a. ——— **Lessee at rent less than two-thirds of ratable value.**]—LLOYD *v.* COOK, GOUDGE *v.* BROUGHTON, SIMSON *v.* MIATT, BARTRAM *v.* BROWN, BARKER *v.* HUTSON, No. 7352d. *post.*

7351b. —— —— **Assignee of lease.**]—In 1913 pltf. became the assignee of a lease of a house with twenty-six years unexpired. He went into occupation with his family & lived there until 1925, when he let three rooms on the ground floor to deft. on a weekly tenancy, the rooms constituting a separate dwelling-house within the Acts. He afterwards claimed to recover possession from deft., on the ground that 1923 Act, s. 2 (1), applied so as to decontrol the premises :—*Held :* the possession by pltf. of the whole house at the passing of 1923 Act & up to the time of the letting to deft. (1) was not possession of the " dwelling-house " in question, (2) nor was it possession by him in the capacity of " landlord," & sect. 2 (1) did not apply so as to decontrol the premises.—COHEN *v.* GOLD, [1927] 1 K. B. 865 ; 96 L. J. K. B. 419 ; 136 L. T. 723 ; 43 T. L. R. 376 ; 25 L. G. R. 198, D. C.

Annotations :— **Overd.** Lloyd *v.* Cook, Goudge *v.* Broughton, Simson *v.* Miatt, Bartram *v.* Brown, Barker *v.* Hutson, [1929] 1 K. B. 103. **N.F.** Ratkinsky *v.* Jacobs, [1929] 1 K. B. 24. **Consd.** Domendietti *v.* Ryan (1929), 141 L. T. 239 ; Lefevre *v.* Hirst (1931), 100 L. J. K. B. 733. **Refd.** Barton *v.* Keeble, [1928] Ch. 517 ; Kingsley *v.* Adler, [1929] 1 K. B. 525.

7352a. —— —— **Quarterly tenant.**]—A quarterly tenant of a dwelling-house which he has sublet may be the " landlord " of the premises within 1923 Act, s. 2, so that, if he obtains possession of the whole of the dwelling-house after the passing of that Act, the house becomes decontrolled.—OAKLEY *v.* WILSON, [1927] 2 K. B. 279 ; 96 L. J. K. B. 783 ; 137 L. T. 479 ; 43 T. L. R. 521 ; 71 Sol. Jo. 409 ; 25 L. G. R. 316, D. C.

Annotations :—**Refd.** Lloyd *v.* Cook, Goudge *v.* Broughton, Simson *v.* Miatt, Bartram *v.* Brown, Barker *v.* Hutson, [1929] 1 K. B. 103 ; Ratkinsky *v.* Jacobs, [1929] 1 K. B. 24.

7352b. —— —— **Mesne tenant—Part subsequently sublet.**]—In Nov. 1922, P. became tenant of an entire house on a three years' lease from a superior landlord. In Nov. 1924, he sublet four of the rooms therein to D., who subsequently applied that the standard rent of his rooms should be fixed by an apportionment of the rent of the entire house :—*Held :* the opening words of the proviso to 1923 Act, s. 2 (1), were merely descriptive of the position at the time when the question of decontrol arose, & should be construed as " where part of a dwelling-house is or during the currency of this Act shall be lawfully sublet," & D.'s rooms were saved from decontrol by the proviso.—DOULIN *v.* PARCELL (1926), 136 L. T. 633 ; 43 T. L. R. 140 ; 25 L. G. R. 71, D. C.

Annotations :—**Apprvd.** Lloyd *v.* Cook, Goudge *v.* Broughton, Simson *v.* Miatt, Bartram *v.* Brown, Barker *v.* Hutson, [1929] 1 K. B. 103. **Refd.** Oakley *v.* Wilson, [1927] 2 K. B. 279.

7352c. —— —— **Tenant at rent less than two-thirds of ratable value.**]—The tenant of a dwelling-house under a ninety-eight years' lease at a rent which was less than two-thirds of the ratable value of the house was in possession of the house at the passing of 1923 Act :—*Held :* notwithstanding 1920 Act, s. 12 (7), the tenant was not, as against the freeholders, to be deemed to be the landlord of the house for the purposes of 1923 Act, s. 2 (1), so as to cause the house to become decontrolled.—BROOKES *v.* LIFFEN, [1928] 2 K. B. 347 ; 138 L. T. 676 ; 92 J. P. 102 ; 44 T. L. R. 350 ; 26 L. G. R. 199, C. A.

Annotations :—**Consd.** Lloyd *v.* Cook, Goudge *v.* Broughton, Simson *v.* Miatt, Bartram *v.* Brown, Barker *v.* Hutson, [1929] 1 K. B. 103. **Apld.** Ratkinsky *v.* Jacobs, [1929] 1 K. B. 24. **Consd.** Domendietti *v.* Ryan (1929), 141 L. T. 239.

7352d. ———.]—(1) The expression " landlord " in 1923 Act, s. 2 (1), is not to be construed in the strict sense as requiring a tenant & a contract of tenancy, but it must be used either in the looser sense of " owner," or in the still looser sense of a person who at a later stage is going to appear as a landlord contesting with a tenant the terms of his tenancy. Neither in 1920 Act, nor in 1923 Act, is the word " landlord " used in its technical sense of a person between whom & the tenant a contractual relationship of landlord & tenant exists.

Where a person who is a " landlord " within 1923 Act, s. 2 (1), can prove either that he was in possession of the whole of the dwelling-house at the date of the passing of 1923 Act, or at any time since that date, 1920 Act ceases to apply to that dwelling-house & to every part of it. The whole house & every part of it is decontrolled, & a subsequent letting of the dwelling-house, or of any part of it, cannot revive control.

(2) The expression " the tenant " in 1923 Act, s. 2 (2), refers to the sitting tenant, *i.e.* the person who is the tenant at the time when the lease referred to in the sub-sect. is granted.

(3) Where a lessee at a rent less than two-thirds of the ratable value is in actual possession of the dwelling-house after July 31, 1923, the dwelling-house is thereby decontrolled, because, under 1920 Act, s. 12, the lessee must be treated as the landlord, & a subsequent sub-letting of certain rooms forming part of that dwelling-house does not revive control.—LLOYD *v.* COOK, GOUDGE *v.* BROUGHTON, SIMSON *v.* MIATT, BARTRAM *v.* BROWN, BARKER *v.* HUTSON, [1929] 1 K. B. 103 ; 97 L. J. K. B. 657 ; 139 L. T. 452 ; 92 J. P. 199 ; 44 T. L. R. 761 ; 72 Sol. Jo. 533 ; 26 L. G. R. 609, C. A.

Annotations :—*As to* (1) **Consd.** Ratkinsky *v.* Jacobs, [1929] 1 K. B. 24 ; Domendietti *v.* Ryan (1929), 141 L. T. 239. *As to* (2) **Folld.** Kingsley *v.* Adler, [1929] 1 K. B. 525. **Consd.** Abbey *v.* Barnstyn, [1930] 1 K. B. 660. *Generally*, **Refd.** Clark *v.* Downes, Clark *v.* Mawby (1931), 145 L. T. 20 ; Lefevre *v.* Hirst (1931), 100 L. J. K. B. 733.

p. Read "7342 i."

7342 ii. —— ——.]—BOYLE *v.* FITZSIMONS, No. 7108 i, *ante*.—IR.

7358a. —— —.]—Where, at the date of the passing of 1923 Act, a landlord was in possession of one part of a dwelling-house, & he had a tenant in possession of the other part, & the tenant subsequently gave up possession of his part:—*Held:* the house became decontrolled, & a subsequent tenant was not protected by Rent Restrictions Acts.—RATKINSKY *v.* JACOBS, [1929] 1 K. B. 24; 97 L. J. K. B. 566; 138 L. T. 739; 92 J. P. 142; 44 T. L. R. 548; 72 Sol. Jo. 354; 26 L. G. R. 380, D. C.

Annotation:—**Apprvd.** Lloyd *v.* Cook, Goudge *v.* Broughton, Simson *v.* Miatt, Bartram *v.* Brown, Barker *v.* Hutson, [1929] 1 K. B. 103.

7358b. ——.]—BARTON KEEBLE, No. 2913a, *ante*.

7358c. —— **Application of proviso to 1923 Act, s. 2 (1).**]—HARRIS *v.* STACEY (1929), 73 Sol. Jo. 568, C. A.

7359a. By grant of lease to tenant—Who is tenant.]—LLOYD *v.* COOK, GOUDGE *v.* BROUGHTON, SIMSON *v.* MIATT, BARTRAM *v.* BROWN, BARKER *v.* HUTSON, No. 7352d, *ante*.

7359b. —— ——.]—Pltf. was the landlord & deft. the tenant of a dwelling-house, containing nine rooms. Subsequently pltf. let to deft. part of the dwelling-house, consisting of six rooms, & forming a separate dwelling-house, for a period of four years terminating after June 24, 1926:—*Held:* that within 1923 Act, s. 2 (2), pltf. was the landlord of the part of the dwelling-house let to the tenant, & deft. was the tenant, although at the time the long lease was granted he was only the tenant of the whole house, & the part consisting of the six rooms was not in existence as a separate dwelling, & consequently, the said part of the dwelling-house was decontrolled.—KINGSLEY *v.* ADLER, [1929] 1 K. B. 525; 98 L. J. K. B. 218; 140 L. T. 438; 93 J. P. 107; 45 T. L. R. 226; 73 Sol. Jo. 93; 27 L. G. R. 220, D. C.

7359c. —— —— **Contractual tenant.**]—By an agreement for a lease dated Jan. 31, 1919, the shop & premises, No. 9, C. S., B., were let to W. for a term of two years from Mar. 25, 1919, at a rent of £45 *per annum*, the tenancy to continue thereafter, but to be terminable by six months' notice in writing. On Sept. 16, 1921, the landlord gave W. six months' notice to determine the tenancy, which expired on Mar. 25, 1922, but W. continued to occupy the premises at a rent of £54 *per annum* after the notice expired. On May 7, 1926, W. died, having by his will appointed his wife his sole executrix & universal legatee. Mrs. W. did not go into physical possession of the premises before May 26, 1926, when she entered into an agreement to take the premises on a three years' tenancy at the same rent. On July 26, 1926, she assigned the benefit of the agreement to deft. On Dec. 5, 1927, pltfs. acquired the freehold of the premises, & on Jan. 5, 1928, gave notice to deft. terminating the tenancy at the expiration of the term. Deft., however, claimed to hold over under Rent & Mortgage Interest Restriction Acts, 1920 & 1923, & pltfs. brought these proceedings for possession, claiming that although the premises had been a dwelling-house within the Acts they had been decontrolled as a result of the agreement of May 26, 1926. On appeal from an order made by the county court judge for possession:—*Held:* (1) there was evidence before the county court judge to support his finding that W. became a contractual tenant at the increased rent after the termination of the tenancy agreement of Jan. 31, 1919; (2) Mrs. W. was consequently a contractual tenant at the date of the agreement of May 26, 1926; (3) the agreement of May 26, 1926, therefore operated to decontrol the premises. There is no reason for giving "the tenant" in 1923 Act, s. 2 (2), the limited meaning of statutory tenant.—ABBEY *v.* BARNSTYN, [1930] 1 K. B. 660; 99 L. J. K. B. 369; 142 L. T. 619; 94 J. P. 196; 46 T. L. R. 293; 28 L. G. R. 313, D. C.

PART XXVII. SECT. 6.

7355 i. *By recovery of possession by landlord—What amounts to possession—Actual distinguished from notional possession.*]—The tenant of a dwelling-house, to which the Acts applied, gave notice of intention to remove at Whitsunday 1924. In Mar. 1924, the landlord let the house as from Whitsunday 1924 to a new tenant. At the Whitsunday term the old tenant removed from the house, & the new tenant entered into possession:—*Held:* the landlord had not come into "actual possession" of the house within 1923 Act, s. 2, & 1920 Act continued to apply to the house.—CALEDONIAN HERITABLE ESTATES, LTD. *v.* METHVEN, [1927] S. C. 39.—**SCOT.**

LIBEL AND SLANDER.

Part I.—In General.

4. *Add. Annotations :*—**Refd.** Broome *v.* Agar (1928), 138 L. T. 698 ; Lockhart *v.* Harrison (1928), 139 L. T. 521.

18. *Add. Annotations :*—**Consd.** Broome *v.* Agar (1928), 138 L. T. 698. **Refd.** Lockhart *v.* Harrison (1928), 139 L. T. 521.

24a. **Limerick.**]—TOLLEY *v.* FRY J. S. & SONS, LTD., No. 167a, *post.*

26a. ——.]—OSBORN *v.* BOULTER (THOMAS) & SON, No. 1084a, *post.*

Part II.—Parties.

41. *Add. Annotations :*—*As to* (1) **Consd.** Horwood *v.* Statesman Publishing Co. (1929), 98 L. J. K. B. 450. **Refd.** The W. H. Randall [1928] P. 41.

Part III.—Identity of Person Defamed.

53a. ——.]—SOLOMONS *v.* MEDEX (1816), 1 Stark. 191 ; 171 E. R. 443, N. P.

75. *Add. Annotation :*—*As to* (1) **Refd.** Cassidy *v.* Daily Mirror Newspapers, [1929] 2 K. B. 331.

77. *Add. Annotations :*—**Apld.** Cassidy *v.* Daily Mirror Newspapers, [1929] 2 K. B. 331. **Refd.** Thomson *v.* McNulty (1927), 71 Sol. Jo. 744.

Part IV.—The Statement.

121. *Add. Annotations :*—*As to* (2) **Apld.** Tolley *v.* Fry & Sons, Ltd., [1931] A. C. 333. *As to* (4) **Consd.** Lockhart *v.* Harrison (1928), 139 L. T. 521. *Generally*, **Consd.** Cassidy *v.* Daily Mirror Newspapers, [1929] 2 K. B. 331.

135. *Add. Annotation :*—**Consd.** Tolley *v.* Fry J. S. & Sons (1929), 46 T. L. R. 108.

146. *Add. Annotation :*—**Apld.** Tolley *v.* Fry J. S. & Sons (1929), 46 T. L. R. 108.

167a. Amateur sportsman—Imputation of professionalism.]—Defts., a firm of chocolate manufacturers, issued, as an advertisement of their goods, a caricature of pltf., a prominent amateur golfer, depicting him as playing golf, with a packet of their chocolate protruding from his pocket, & a caddy was represented with him, who also had a packet of chocolate, the excellence of which he likened to the excellence of pltf.'s drive. The advertisement was published without the knowledge or consent of pltf., who thereupon brought an action claiming damages, alleging that it constituted a libel. By his statement of claim he alleged that "defts. thereby meant, & were understood

PART II. SECT. 1, SUB-SECT. 8.

8a. *Action by unincorporated association.*]—An unincorporated assocn. which was not registered as an assocn. at the time of the publication of an alleged libel, cannot sue for the libel & it cannot sue after incorporation for the injury alleged to be done to its members before it was incorporated.—GIDNEY *v.* ANGLO-INDIAN & DOMICILED EUROPEAN FEDERATION (1930), I. L. R. 8 Ran. 250.—**IND.**

PART III. SECT. 1.

1 i. —— ——.]—THOMSON & Co. *v.* MCNULTY (1927), 71 Sol. Jo. 744, H. L. —**SCOT.**

PART III. SECT. 2.

66 iv. —— *Evidence of sense in which understood — Intention immaterial.*]—Where deft. published an article which the ct. found was intended to convey the meaning that one or more of the editorial staff of a certain newspaper had deliberately falsified for political purposes, a correct report of a speech & witnesses were called who stated that they understood the words to refer to the editor of the newspaper :—*Held :* the article applied to the editor, & it was no defence to show that the writer had not intended to refer to the editor.—NASIONALE PERS *v.* LONG, [1930] App. D. 87.—**S. AF.**

PART IV. SECT. 1, SUB-SECT. 1.—B.

92 ii. *Publication of authorised patent medicine testimonial.*]—Deft. published in the newspapers a testimonial purporting to have been given by pltf. recommending the use of a patent medicine sold by deft. Pltf. had not given or authorised the publication of the testimonial :—*Held :* the testimonial was capable of being held defamatory &, on the evidence, defamation had been established. MAZATTI (OR MASOTTI) *v.* ACME PRODUCTS, LTD., [1930] 3 W. W. R. 13 ; 4 D. L. R. 601.—**CAN.**

n i. *Accusation of being spy.*]—Pltf. alleged that he had been called a Nationalist spy, but alleged no special circumstances :—*Held :* the words were not *per se* defamatory.—HARDAKER *v.* TJABRING (1927), 48 N. L. R. 145.—**S. AF.**

PART IV. SECT. 1, SUB-SECT. 1.—C. (a).

sb. "*I have taken judgment against you.*"]—Resp., being indebted to G. & Co. on an account for goods purchased upon which summons had been issued, called upon G. & Co. for the purpose of pointing out that the account was wrong. He was accompanied by a friend L. who knew the object of his visit. While discussing the account applt., a director of the firm, said to resp. in the hearing of L. & P. (an employee of the firm) : "I have taken judgment against you & you can do what you like." G. & Co. had not in fact taken judgment, applt.'s statement being based upon incorrect information obtained by telephone, during the course of the interview, by P. from the firm's solrs., & conveyed by P. to applt. :—*Held :* the words were not defamatory *per se*, but were capable of a defamatory meaning.—SMITH *v.* LAWRENCE (1929), 50 N. L. R. 132.—**S. AF.**

to mean, that pltf. had agreed or permitted his portrait to be exhibited for the purpose of the advertisement of defts.' chocolate; that he had done so for gain & reward; that he had prostituted his reputation as an amateur golf player for advertising purposes; that he was seeking notoriety & gain by the means aforesaid; & that he had been guilty of conduct unworthy of his status as an amateur golfer." At the trial evidence was given by golfers to the effect that if an amateur golfer lent himself to a scheme for advertising, people might think he was not maintaining his amateur status, & that he might be called upon to resign his membership of any reputable club. It appeared from correspondence passing between defts. & their advertising agents that the question of the possible effect on the amateur status of pltf. & others similarly caricatured had been brought to the attention of the defts.:—*Held:* in the circumstances in which the publication took place, as explained by the evidence, the caricature was capable of bearing the meaning alleged in the innuendo, & there ought to be a new trial limited to the assessment of damages.—TOLLEY *v.* FRY (J. S.) & SONS, LTD., [1931] A. C. 333; 100 L. J. K. B. 328; 145 L. T. 1; 47 T. L. R. 351; 75 Sol. Jo. 220, H. L.

167b. Jockey—Statement as to being warned off.] —COOKSON *v.* HAREWOOD, [1932] 2 K. B. 478, n.; 101 L. J. K. B. 394, n.; 146 L. T. 550, n., C. A.

Annotation:—**Consd.** Chapman *v.* Ellesmere, [1932] 2 K. B. 431.

167c. —— ——.]—By rule 17 of the Rules of Racing of the Jockey Club: "The Stewards of the Jockey Club have power, at their discretion, to grant, & to withdraw, licences to officials, trainers, jockeys, & racecourses; to refuse to allow any person to act or continue as an authorised agent; to fix the dates on which all meetings shall be held; to make inquiry into & deal with any matters relating to racing, & to warn any person off Newmarket Heath; & to authorise the publication in the *Racing Calendar* of their decisions respecting any of the above matters." Pltf., who was a horse trainer, received from the stewards of the Jockey Club a trainer's licence to train horses to run under the Rules of Racing during the year 1930. The licence was expressed to be subject to conditions, condition 3 of which provided that a trainer's licence might be withdrawn or suspended by the stewards of the Jockey Club in their absolute discretion, & such withdrawal or suspension might be published in the *Racing Calendar*, the recognised organ of the Jockey Club, for any reason which might seem proper to them, & that the stewards should not be bound to state their reasons. Pltf. trained a horse which ran in a race at a meeting held under the Rules of the Jockey Club. After the race the acting stewards of the meeting ordered an examination of the horse, & on receiving a report of that examination they referred the matter to the stewards of the Jockey Club. The stewards held an inquiry, & their decision was communicated by the Club's agents to the Press agencies & the *Times*, & was published by them. It was also published in the *Racing Calendar*. The decision contained the following statement: "The stewards of the Jockey Club . . . after further investigation, satisfied themselves that a drug had been administered to the horse for the purpose of the race in question. They disqualified the horse for this race & for all future races under their rules & warned C. C. Chapman the trainer of the horse off Newmarket Heath." In an action by the trainer against the stewards, their agents & the Times Publishing Co., the proprietors of the *Times*, for libel, HORRIDGE, J., after holding that there was no evidence of malice, left questions to the jury which they answered to the effect that this statement was not true in the natural meaning of the words but meant that pltf. was a party to the actual doping of the horse, & they fixed the damages at £10,000, £3,000 & £3,000, in respect of the publication in the *Racing Calendar*, to the new agencies & in the *Times* respectively. Judgment was accordingly entered for £13,000 against the stewards & their agents for publication in the *Racing Calendar* & to the news agencies, & £3,000 against the stewards, their agents, & the Times Publishing Co. for publication in the *Times*. On appeal:—*Held:* (1) in finding that the words published were not true in their natural meaning, the jury must have meant that the statement, which was literally true, involved an untrue innuendo which was defamatory; (2) the publication of the decision of a domestic tribunal in the terms in which the tribunal *bonâ fide* embodied it, in the publication chosen by the parties as the means of communication between the tribunal & the section of the public interested, was privileged; (3) the publication in the *Racing Calendar* of the stewards' decision was therefore privileged, &, as pltf. had agreed to publication in that periodical of the stewards' decision, it was immaterial that the jury put a meaning on the words in which it was *bonâ fide* embodied by the stewards different from that which was intended by them; (4) HORRIDGE, J. was right in holding that there was no evidence of malice, & the action in regard to the privileged publication in the *Racing Calendar* therefore failed; (5) the publication to the news agencies & in the *Times* was not privileged, but the damages awarded both in respect of these publications as well as in respect of the publication in the *Racing Calendar* were excessive; (6) there must in regard to the claims in respect of the publication to the news agencies & in the *Times* be a new trial, which ought not in all the circumstances to be limited to the question of damages, but to go also to the question whether there had been a libel.

(7) *Per* SLESSER, L.J. As publication of the stewards' decision in the *Racing Calendar* was assented to by pltf. & the publication was in fact a true statement of their decision, the principle of *volenti non fit injuria* applied, & no claim for damages in respect of that publication would lie. The fact that the decision was published in such a way as to give rise to a defamatory innuendo was a risk which pltf. by consenting to a report of the decision being published in the *Racing Calendar*, had elected to run.

(8) *Per* ROMER, L.J. The privilege given by the common law to reports of proceedings before a ct. of justice open to the public does not extend to a proceeding before a domestic

tribunal, such as the stewards of the Jockey Club, at which the public are not entitled to be present.—CHAPMAN *v.* ELLESMERE, [1932] 2 K. B. 431 ; 101 L. J. K. B. 376 ; 146 L. T. 538 ; 48 T. L. R. 309 ; 76 Sol. Jo. 248, C. A.

174. *Add. Annotation :*—**Consd.** Tolley *v.* Fry J. S. & Sons (1929), 46 T. L. R. 108.

188. *Add. Annotation :*—**Refd.** Tolley *v.* Fry J. S. & Sons (1929), 46 T. L. R. 108.

229. *Add. Annotation :*—*As to* (1) **Refd.** Watt *v.* Longsdon (1929), 98 L. J. K. B. 711.

292. *Add. Annotation :*—**Consd.** Tolley *v.* Fry J. S. & Sons (1929), 46 T. L. R. 108.

525a. Candidate for seat in Parliament.]—Defamatory words, which are actionable in themselves, are not the less so because they are alleged to have been spoken of one as a candidate to serve in parliament.—HARWOOD *v.* ASTLEY (1804), 1 Bos. & P. N. R. 47 ; 127 E. R. 375, Ex. Ch.

Annotation :—**Refd.** Pankhurst *v.* Hamilton (1887), 3 T. L. R. 500.

541. *Add. Annotation :*—**Refd.** Broome *v.* Agar (1928), 138 L. T. 698

577. *Add. Annotation :*—**Consd.** Cassidy *v.* Daily Mirror Newspapers, [1929] 2 K. B. 331.

672a. —— ——.]—PLUNKET *v.* GILMORE (1725), Fortes. Rep. 211 ; 8 Mod. Rep. 215 ; 92 E. R. 822.

SUB-SECT. 4.—IMPUTATION OF UNCHASTITY IN FEMALE.

866a. Photograph of husband of plaintiff with another woman—Alleged to be engaged.]—(1) Defts. published in a newspaper a photograph of one C. & a Miss X. together with the words "Mr. C., the race-horse owner, & Miss X., whose engagement has been announced." Pltf. was, & was known among her acquaintances as, the lawful wife of C. ; but defts. did not know this :—*Held :* the publication was capable of conveying a meaning defamatory of pltf. &, the jury having found that it conveyed to reasonably minded people an aspersion on her moral character, that she was entitled to damages.

It is impossible for the person publishing a statement which, to those who know certain facts, is capable of a defamatory meaning in regard to A., to defend himself by saying : "I never heard of A. & did not mean to injure him." If he publishes words reasonably capable of being read as relating directly or indirectly to A. &, to those who know the facts about A., capable of a defamatory meaning, he must take the consequences of the defamatory inferences reasonably drawn from his words (SCRUTTON, L.J.).—CASSIDY *v.* DAILY MIRROR NEWSPAPERS, [1929] 2 K. B. 331 ; 98 L. J. K. B. 595 ; 141 L. T. 404 ; 45 T. L. R. 485 ; 73 Sol. Jo. 348, C. A.

Annotation :—**Consd.** Ralston *v.* Ralston, [1930] 2 K. B. 238.

866b. Inscription on tombstone erected to living wife.]—Pltf. married deft. in 1893. In 1899 the parties separated under a deed of separation & thenceforward lived apart. By the deed of separation deft. covenanted to pay an annuity to pltf., & the deed also contained a covenant for further assurance. After the

PART IV. SECT. 1, SUB-SECT. 2.—B. (a).

sc. *Imputation of adultery — Not amounting to crime of seduction.*] MERKOFF *v.* PAWLUK, [1931] 1 W. W. R. 669.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.—C. (a).

240 i. —— *Dishonest trading.*]—RAHIM BAKHSH *v.* BACHCHA LAL (1928), I. L. R. 51 All. 509.—**IND.**

PART IV. SECT. 2, SUB-SECT. 1.—D. (a).

sd. *Accusation of unethical practice.*] —Deft. dictated to his stenographer a letter addressed & sent to pltf., who was a real estate agent, in which it was stated that pltf. was guilty of "unethical practice" :—*Held :* an imputation upon pltf. in the way of his vocation & touching his calling & actionable without proof of special damage.—LAWRENCE *v.* FINCH, [1931] 1 D. L. R. 689 ; 66 O. L. R. 451.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.—D. (b).

se. *Painter — Imputation of non-membership of trade union.*]—*Held :* not defamatory, as the words did touch pltf. in his vocation, nor were they spoken of him in the way of his calling, so as to be actionable without special damage.—M'MULLAN *v.* MULHALL & FARRELL, [1929] I. R. 470.—**IR.**

PART IV. SECT. 2, SUB-SECT. 1.—D. (e).

sm. *Intemperance.*]—Words which impute conduct to a clergyman which in his denomination would be ground for his removal or degradation are slanderous *per se*. Deft. referred, in a debate, to the case of a clergyman going to a wedding, at which he officiated, after he had "loaded up his family, & with a bottle of home-brew in his hip pocket, another under his arm," etc. The words were understood by many of those who heard them to refer to pltf. :—*Held :* said imputation was slanderous *per se*.—STELZER *v.* DOMM, [1932] 2 W. W. R. 139.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.—D. (f).

st. *Stevedore—Misconduct as member of trade union.*]—Pltf., a wharf-labourer, had accused deft., the union secretary, of being short in his cash. A meeting of the union was called to consider pltf.'s conduct, & thereat deft. called pltf. & others "dirty stinking scabs & parasites," & stated that they were the first three men, in the event of industrial trouble, the union would have to fight. After discussion, the meeting resolved that pltf apologise to deft., or in default, should resign. Pltf. did not do either, &, at a subsequent meeting, was expelled from the union for not abiding by a decision of the meeting. Deft. thereafter successfully objected to pltf. being employed as a stevedore :—*Held :* the words were not applicable to pltf.'s conduct in his calling, & were not actionable *per se*.—TAYLOR *v.* HAMILTON, [1927] S. A. S. R. 314.—**AUS.**

PART IV. SECT. 2, SUB-SECT. 1.—E. (b).

sv. *Treasurer.*]—Pltf. who was treasurer of a social service assocn. published a financial statement of the society & submitted it to a meeting of the society. The statement did not contain the name of deft. among those who contributed to the funds of the assocn. Deft. later stated to third parties that he had contributed to the assocn. by the payment of $5 by cheque :—*Held :* the statement made by deft. might be most injurious to pltf., & if true would justify his removal from office, & the repetition of the words was the natural consequence of deft. uttering them.—COOPER *v.* WARBURTON, [1931] 44 B. C. R. 328.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.—E. (c) iii.

525 i. *Member of Parliament.*]—The term "office" includes the position of a member of Parliament, whether or not such person holds an office in the strict common-law sense of the term.—PRATTEN *v.* THE LABOUR DAILY, LTD., [1926] V. L. R. 115 ; 47 A. L. T. 147 ; [1926] Argus L. R. 152.—**AUS.**

PART IV. SECT. 2, SUB-SECT. 2.—A. (a).

549 i. *Description of crime in technical terms unnecessary.*]—In order for words to be actionable *per se* as an imputation of the commission of a crime they need not describe the crime in technical language.—BUREAU *v.* CAMPBELL, [1928] 3 D. L. R. 907 ; [1928] 2 W. W. R. 535.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.—A. (c).

sg. *Stealing names & addresses from files.*]—LAWRENCE *v.* FINCH, [1931] 1 D. L. R. 689.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.—B. (a).

559 iii. ——.]—Words which impute, not the actual commission of a crime, but merely that the person spoken of would, if given the opportunity, commit a particular crime are not slanderous *per se*.—DUBORD *v.* LAMBERT, [1928] 3 D. L. R. 538 ; [1928] 2 W. W. R. 529 ; 23 Alta. L. R. 491.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 3.

858 i. *Charge of having had disease.*]—An imputation of past infection is not actionable *per se*.—HALLS *v.* MITCHELL (1927), 59 O. L. R. 590 ; *revsd. on other grounds*, [1928] 2 D. L. R. 97 ; [1928] S. C. R. 125.—**CAN.**

separation pltf. set up in business as a garage proprietor, & she subsequently converted this business into a private limited co. in which she held the majority of the shares & also was the chairman & managing director. In 1929 she saw in a churchyard near her husband's residence a tombstone on which was the following inscription: "In loving memory of Jennie the dearly beloved wife of W. R. Crawshay Ralston of the Bungalow, Valley. Died 20th May, 1916." Deft. was the W. R. Crawshay Ralston mentioned in the inscription & he had caused the inscription to be made. Pltf. brought an action against her husband for libel & also for a declaration that she was the lawful wife of deft.:—*Held:* though the inscription was capable of a defamatory meaning, the pltf., by reason of Married Women's Property Act, 1882 (c. 75), s. 12, could not sue her husband on it, the action being for a tort & not for the protection & security of her separate property.—RALSTON *v.* RALSTON, [1930] 2 K. B. 238; 99 L. J. K. B. 266; 142 L. T. 487.

883. *Add. Annotation:—As to* (1) **Consd.** Tolley *v.* Fry J. S. & Sons (1929), 46 T. L. R. 108.

885. *Add. Annotations:*—**Refd.** R. *v.* Denyer, [1926] 2 K. B. 258; Auto-Mart (London) *v.* Chilton (1927), 43 T. L. R. 463; Hardie & Lane *v.* Chilton (1927), 96 L. J. K. B. 1040; Cookson *v.* Harewood (1931), 101 L. J. K. B. 394, n.

900. *Add. Annotations:*—**Consd.** Broome *v.* Agar (1928), 138 L. T. 698. **Apld.** Cassidy *v.* Daily Mirror Newspapers, [1929] 2 K. B. 331.

907a. ——.]—CASSIDY *v.* DAILY MIRROR NEWSPAPERS, No. 866a, *ante*.

931 *Add. Annotation:*—**Refd.** Tolley *v.* Fry J. S. & Sons (1929), 46 T. L. R. 108.

951. For the existing paragraph substitute the following paragraph:—

-.]—Pltf. complained of a statement published by defts., in which it was alleged that pltf., then Free State Minister of Labour & head of the Free State Military Secret Service, was responsible for the murder of L., & knew who were the men implicated in an attack on British troops at Queenstown. Defts., in their plea of justification, did not justify the allegation of murder nor the allegation that pltf. was a murderer. But they said: "If & in so far as the words complained of meant or were understood to mean or were capable of meaning that pltf. took no steps to bring to justice persons guilty of the death of L. or of the attack on the British troops at Queenstown, or that pltf. was unfit to hold any office of trust or responsibility, or of any kind, or that pltf. was a person with whom no honest or responsible man ought to have anything to do, such words were & are true in substance & in fact." Pltf. having obtained an order for particulars of the justification, defts. delivered particulars of seventy-two murders committed in Ireland over a period of five years with an allegation that pltf. had assisted to organise them or had employed people to organise them:—*Held:* notwithstanding that defts., in their plea of justification had avoided justifying the allegations of murder, the particulars delivered by defts. were admissible.—MACGRATH *v.* BLACK (1926), 95 L. J. K. B. 951; 135 L. T. 594, C. A.

1006. *Add. Annotation:*—**Consd.** Broome *v.* Agar (1928), 138 L. T. 698.

1010. *Add. Annotations:—As to* (1) **Consd.** Tolley *v.* Fry J. S. & Sons (1929), 46 T. L. R. 108. **Refd.** Cassidy *v.* Daily Mirror Newspapers, [1929] 2 K. B. 331. *Generally,* **Refd.** Watt *v.* Longsdon (1929), 98 L. J. K. B. 711; Minter *v.* Priest, [1930] A. C. 558; Chapman *v.* Ellesmere (1932), 101 L. J. K. B. 376.

PART IV. SECT. 2, SUB-SECT. 4.

h i. ——.]—In order to succeed in an action under Libel Act, R. S. M. 1913 (c. 113), s. 12, the words complained of must unequivocably charge adultery, etc.; the action does not lie for words which may bear both an innocent & injurious meaning.—WILLIAMS *v.* BROWN, [1927] 3 W. W. R. 305; 36 Man. L. R. 101.—**CAN.**

PART IV. SECT. 4, SUB-SECT. 1.

867 vi. ——.]—SUTTER *v.* BROWN, [1926] App. D. 155.—**S. AF.**

867 vii. ——.]—In arriving at the meaning of words alleged to be defamatory, the words must be construed to have the meaning which a reasonable person reading them in their context would be likely to give them.—JOHNSON *v.* RAND DAILY MAILS, [1928] App. D. 190.—**S. AF.**

875 v. ——.]—Deft. published of the directors of pltfs., an incorporated building society, in a newspaper, a notice stating, amongst other matters, that "certain persons representing themselves to be directors of the society had been self-appointed by the most despicable, foul, & fraudulent means, & in consequence, all business transacted by them . . . is wholly & entirely contrary to rules & regulations & law":—*Held:* the paragraph was capable of the meaning attributed to it, namely, that the business of the society was being illegally transacted, & as such it was defamatory of pltfs.—OWEN SOUND BUILDING & SAVINGS SOCIETY *v.* MEIR (1893), 24 O. R. 109.—**CAN.**

PART IV. SECT. 4, SUB-SECT. 2.

883 i. *Unless special circumstances proved.*]—Applt. & resp. were neighbouring shopkeepers. There was trade rivalry between the parties, which interested the whole township. Both applt. & resp. were known to every one. Warfare was conducted by placards. Resp. placed in his window a placard "One man, one trade, one wife." Applt., who was a married man living apart from his wife, & had a housekeeper who was separated from her husband, claimed that the words imputed improper relationships between him & his housekeeper, & claimed damages for libel:—*Held:* the words were capable of bearing the defamatory meaning complained of, & it was a reasonable inference that they referred to the relations between applt. & his housekeeper.—CLARK *v.* VARE, [1930] N. Z. L. R. 430.—**N.Z.**

PART IV. SECT. 5, SUB-SECT. 2.—A.

se. *Words not ordinary English words.*]—Where the words complained of are not ordinary English words, & pltf. adduces no evidence to show that they were understood in the sense alleged in the innuendo, he fails to establish a cause of action.—MEIER *v.* KLOTZ (Sask.), [1928] 1 D. L. R. 91; [1927] 3 W. W. R. 716; *revsd.*, [1928] 4 D. L. R. 4; [1928] 2 W.W. R. 84; 22 S. L. R. 385.—**CAN.**

PART IV. SECT. 6, SUB-SECT. 1.

964 ii. —— ——.]—ROBINSON *v.* ——— (1897), 17 P. R. 419.—**CAN.**

964 iii. —— ——.]—In an action for libel or slander the statement of claim must set out the exact words complained of.—SHANNON *v.* KING, [1931] 2 W. W. R. 913; 44 B. C. R. 383.—**CAN.**

964 iv. —— ——.]—An alleged defamatory statement must be set out *verbatim* in the statement of claim & if in a foreign language the translation must accompany it.—PIRIE *v.* CARROLL, [1931] 4 M. P. R. 127.—**CAN.**

PART IV. SECT. 6, SUB-SECT. 2.—A.

979 ii. ——.]—EVANS *v.* MARTYN. [1926] 2 D. L. R. 698; 37 B. C. R. 231. —**CAN.**

PART IV. SECT. 7, SUB-SECT. 1.—B.

1011 v. ——.]—Where the line can be clearly drawn between what are statements of fact & expressions of opinion, a judge may rule as a matter of construction that the words complained of are incapable of being anything but statements of fact.—ST. LEDGER *v.* BRENNAN (1927), 28 S. R. N. S. W. 23.—**AUS.**

1011 vi. —— ——.]—In a suit for damages for libel based upon an article published in defts.' newspaper, pltf. alleged the article imputed to him the heinous crime of being a member of a terrorist organisation to murder a certain class of persons. Defts. pleaded privilege & fair comment in a matter of public interest:—*Held:* it is for the ct. in such a case in the first place to rule whether or not as a matter of law the article is capable of the construction suggested by pltf., &

1014. *Add. Annotation :*—**Refd.** Tolley *v.* Fry J. S. & Sons (1929), 46 T. L. R. 108.

1019. *Add. Annotations :—As to* (1) **Consd.** Broome *v.* Agar (1928), 138 L. T. 698 ; Lockhart *v.* Harrison (1928), 139 L. T. 521.

1032. *Add. Annotation :*—**Consd.** Broome *v.* Agar (1928), 138 L. T. 698.

1045a. ——.]—Pltf., a chauffeur, brought an action for slander against his former mistress, complaining that she had falsely alleged that he gave "joy rides" in her motor car. Deft. pleaded justification. The jury found that deft. had uttered the words complained of, but that they were not defamatory of pltf. :—*Held :* the question of libel or no libel was peculiarly a question for the jury, & it was only in the most extreme cases that the judge should allow his view to overrule that of the constitutional tribunal.—BROOME *v.* AGAR (1928), 138 L. T. 698 ; 44 T. L. R. 339 C. A.

Annotation :—**Folld.** Lockhart *v.* Harrison (1928), 139 L. T. 521.

1045b. ——.]—In a libel action, where the words complained of are not of necessity defamatory, & the question of libel or no libel has been properly left to the jury, the verdict arrived at by them that the words were not defamatory must stand.

It is not true to say that a jury's verdict in these circumstances can never be assailed. A plain & obvious defamation incapable of any innocent explanation, if found by the jury to be non-libellous, would certainly be set aside (LORD BUCKMASTER).—LOCKHART *v.* HARRISON (1928), 139 L. T. 521 ; 44 T. L. R. 794, H. L.

Part V.—Publication.

1069. *Add. Annotations :*—**Consd.** Watt *v.* Longsdon (1929), 98 L. J. K. B. 711. **N.F.** Osborn *v.* Boulter (Thomas) & Son, [1930] 2 K. B. 226.

1084. *Add. Annotation :*—**N.F.** More *v.* Weaver, [1928] 2 K. B. 520.

1084a. —— —— ——.]—(1) If a business communication is privileged, as being made on a privileged occasion, the privilege covers all incidents of the transmission & treatment of that communication which are in accordance with the reasonable & usual course of business ; & it is in accordance with the reasonable & usual course of business for a business man to dictate his business letters to a typist, even although these letters contain statements defamatory of a third person.

(2) *Semble* (*per* SCRUTTON & SLESSER, L.JJ.) : Where a document containing defamatory statements is published by being read out to a third person, or where the publication of the defamatory statement is to a clerk to whom it is dictated, the communication in either case amounts to slander & not to libel.

Semble (*per* GREER, L.J.) : Such communication amounts to libel.—OSBORN *v.* BOULTER (THOMAS) & SON, [1930] 2 K. B. 226 ; 99 L. J. K. B. 556 ; 143 L. T. 460, C. A.

1085. *Add. Annotation :*—**Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

1086. *Add. Annotation :*—**Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

1087. *Add. Annotations :—As to* (1) **Refd.** Smith *v.* Schilling, [1928] 1 K. B. 429. *Generally*, **Refd.** Martin *v.* Benson, [1927] 1 K. B. 771.

1104. *Add. Annotations :—As to* (2) **Apld.** Bradstreets British, Ltd. *v.* Mitchell (1932), 48 T. L. R. 670. **Refd.** The Edison (1931), 147 L. T. 141.

1104a. — —.]—A contract between a mercantile inquiry agency, which furnishes reports on the financial stability of cos., firms, & persons engaged in trade, & a trading co., providing that all information furnished by the agency to its subscriber, the trading co., is supplied in strict confidence for the exclusive use of the subscriber in the subscriber's business, & that the subscriber shall indemnify the agency in respect of any loss or damage which it may suffer or incur from the breach by the subscriber of any of the conditions of the contract, is not void as being against public policy on the ground that the fundamental element of the contract is the desire on the part of the agency to protect itself against the risk of actions for libel resulting from reports issued by it to subscribers. If, however, a subscriber does disclose information supplied by the agency with the result that the agency has to pay to a third party damages for a libel on that third party contained in the information in question, no special damage being suffered by the third party, the only damages recoverable by the agency from the subscriber in an action for breach of contract are nominal damages, the *causa causans* of the liability to pay damages being the unlawful act of the agency in publishing a libel & the disclosure by the subscriber being only the *causa sine qua non*.—BRADSTREETS BRITISH, LTD. *v.* MITCHELL (1932), 48 T. L. R. 670.

1120. *Add. Annotation :*—**Consd.** Bottomley *v.* Woolworth & Co. (1932), 48 T. L. R. 521.

1122. *Add. Annotation :*—**Consd.** Bottomley *v.* Woolworth & Co. (1932), 48 T. L. R. 521.

1124a. —— ——.]—Consideration of the responsibilities of persons who distribute magazines containing a libel not written by themselves. —BOTTOMLEY *v.* WOOLWORTH (F. W.) & CO., LTD. (1932), 48 T. L. R. 521, C. A.

next to decide whether it is so as a question of fact, *i.e.* whether an ordinary man likely to read the article would understand it in the sense alleged by pltf.—SUBHAS CHANDRA BOSE *v.* KNIGHT & SONS (1928), I. L. R. 55 Calc. 1121.—**IND.**

PART V. SECT. 1, SUB-SECT. 1.—A. (c) i.

1084 v. — —.]—GREENAN *v.* MINNEAPOLIS THRESHING MACHINE CO. & CHRISTIANSEN (Alta.), [1929] 4 D. L. R. 501 ; 3 W. W. R. 215.—**CAN.**

1084 vi. —— —— ——.]—HALL *v.* GEIGER (B. C.), [1929] 4 D. L. R. 420 ; 3 W. W. R. 80.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—A.

1106 iii. ——.]—HARKINS *v.* DONEY (1888), 17 O. R. 22.—**CAN.**

1168. *Add. Annotation :*—**Consd.** Osborn *v.* Boulter (Thomas) & Son, [1930] 2 K. B. 226.

1177. *Add. Annotation :*—**Refd.** The Fagernes, [1926] P. 185.

1201a. —— As to source of information—Libel by trade protection society.]—Defts., an assocn. of traders formed for the purpose (*inter alia*) of supplying information to its members, issued a report in which appeared an inquiry as to the address of pltf. Pltf. sued defts. in respect of this publication, alleging that by it defts. meant & were understood to mean that he had moved from the address where he had resided for eight years, & where he still resided without leaving any indication of his movements, with the object of avoiding payment of his debts. Defts. denied the innuendo & pleaded that the words were published on a privileged occasion & without malice. Defts. by their particulars stated that a member of their assocn. made an inquiry with regard to pltf., & the secretary, in pursuance of his duty to further the objects of the assocn., instructed their inquiry officer to inquire for pltf., & that the inquiry officer was informed that pltf. had left, & thereupon defts. in the honest belief that this was true published the information for the benefit of the members. On an application by pltf. for further & better particulars : —*Held :* defts. were bound to give further particulars to enable pltf. to test the question whether the inquiry was made by a member of deft. assocn.—ELKINGTON *v.* LONDON ASSOCN. FOR PROTECTION OF TRADE (1911), 27 T. L. R. 329, C. A.

Part VI.—Defences.

1245. *Add. Annotation :*—**Refd.** Godman *v.* Times Publishing Co., [1926] 2 K. B. 273.

1302a. Imputation as to disclosure of confidential information—By solicitor—Proof of disclosure of communications made by clients to solicitor.]—MOORE *v.* TERRELL (1833), 4 B. & Ad. 870 ; 1 Nev. & M. K. B. 559 ; 110 E. R. 683.

Annotation :—**Refd.** Taylor *v.* Blacklow (1836), 3 Bing. N. C. 235.

PART V. SECT. 1, SUB-SECT. 3.—C. (a) ii.

1134 iv. —— —— ——.]—*Prima facie* the person who is the "declared printer" of a newspaper is responsible for everything that is printed in it. He can, however, escape liability by showing that he was absent *bonâ fide*, that is, not with the purpose of evading responsibility, when a particular article complained of was printed. But if he does so, he is bound to give evidence as to who the actual printer of the paper in his absence was. —HAR SWARUP *v.* MUHAMMAD SIRAJ (1928), I. L. R. 50 All. 896.—**IND.**

PART V. SECT. 1, SUB-SECT. 4.—A.

sg. *Effect of course of trial.*]—Where a deft. enters upon his defence at the trial, although pltf., by reason of the failure to prove some essential issue, has not yet made out a *prima facie* case, & deft. makes out that issue, it enures to the benefit of pltf. & supports the action. On an appeal by defts. from a judgment against them for libel, defts. contending that publication had not been proved nor, as held by the trial judge, admitted in the pleadings : —*Held :* all parties were bound by the course of the trial & there was no good ground for disturbing the verdict.—PATCHING *v.* HOWARTH, [1930] 3 W. W. R. 129 ; 4 D. L. R. 48.. ; 43 B. C. R. 108 ; *affg.*, [1930] 2 D. L. R. 776 ; 1 W. W. R. 535.—**CAN.**

sh. *Admission — What amounts to.*]—In an action for slander or libel an alternative plea of justification which also denies that the words complained of or any words were spoken of pltf. by deft. is not an admission of the publication of the slander ; & the trial judge may permit the plea to be withdrawn at the trial.—NAGY *v.* WEBB, [1930] 1 W. W. R. 357 ; 2 D. L. R. 234 ; 24 S. L. R. 269.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.—B. (b).

sj. *Notice under Libel & Slander Act, s.* 8.]—SENTINEL-REVIEW CO. *v.* ROBINSON, [1927] 4 D. L. R. 232 ; 61 O. L. R. 62 ; *revsd.*, [1928] 3 D. L. R. 97 ; [1928] S. C. R. 852.—**CAN.**

PART V. SECT. 2, SUB-SECT. 1.—A.

sk. *Words overheard by third party.*]—There is publication of a slander if the defamatory words are overheard by a third person regardless of whether the utterer knew of his presence or not. —GRANDY *v.* MCNICOL, [1931] 1 W. W. R. 814 ; 3 D. L. R. 264 ; 39 Man. L. R. 442 ; *affd.*, [1932] 1 D. L. R. 225 ; [1931] S. C. R. 696.—**CAN.**

PART V. SECT. 2, SUB-SECT. 2.—A. (d).

sl. *Inquiry under Combines Investigation Act.*]—A Comr. appointed by the Crown under the authority of Combines Investigation Act, 1927, & of Inquiries Act, 1927, to conduct an inquiry & investigate the businesses of certain organisations, is entitled to the same protection as if he was a judge of a ct., the occasion being absolutely privileged.—O'CONNOR *v.* WALDRON, [1932] S. C. R. 183 ; 1 D. L. R. 183.—**CAN.**

PART V. SECT. 4, SUB-SECT. 1.

q i. —— ——.]—IRISH PEOPLE'S ASSURANCE SOCIETY *v.* DUBLIN CITY ASSURANCE CO., LTD., [1928] I. R. 204 ; *on appeal*, [1929] I. R. 25.—**IR.**

q ii. —— *Days of publication.*]—In an action for libel based on the circulation of a certain petition to the Minister of Justice in the months of Nov. & Dec. prior to the bringing of the action, one of defts. moved to strike out the statement of claim because of pltf.'s failure to furnish as required by an order for particulars the particular days in those months on which the publication was alleged to have taken place :—*Held :* the order was in this respect too wide & the motion was dismissed without costs.—PECK *v.* LA VALLEY (Alta.), [1929] 2 D. L. R. 370 ; 1 W. W. R. 873.—**CAN.**

sm. *Publication to specified person must be pleaded.*]—In an action for libel the statement of claim alleged publication but did not state the person to whom publication was made. No particulars were asked for, & at the trial pltf., without objection, gave evidence of publication to deft.'s stenographer. At the end of the trial the judge said he would hear applications to amend, but counsel for deft. then said he did not wish to amend & relied on his preliminary objection that, since publication to a third person was not pleaded, the statement of claim disclosed no cause of action. The judge agreed with this contention & dismissed the action. Pltf. appealed : —*Held :* the appeal should be allowed & judgment go for pltf. for the amount of damages the trial judge would have allowed had he given judgment for pltf.—HALL *v.* GEIGER, [1930] 2 W. W. R. 790 ; 3 D. L. R. 644 ; 42 B. C. R. 335 ; *revsg.*, [1929] 4 D. L. R. 420 ; 3 W. W. R. 80 ; 41 B. C. R. 481.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 2.—A.

sh. *Where libel divisible.*]—O'CALLAGHAN *v.* THOMSON D. C. & CO., [1928] S. C. (Ct. of Sess.) 532.—**SCOT.**

PART VI. SECT. 1, SUB-SECT. 3.—A.

1274 ii. ——.]—Under a plea of justification the *onus* lies on deft. to prove that each defamatory statement to which the plea is pleaded, is true & for the public benefit by reason of the facts set out in the plea which facts deft. is also bound to prove, & upon failure to prove any one of these matters the plea fails.—MUTCH *v.* SLEEMAN (1928), 29 S. R. N. S. W. 125 ; 46 N. S. W. W. N. 52.—**AUS.**

PART VI. SECT. 1, SUB-SECT. 3.—B. (b).

1282 i. *General rule—Same strictness of proof required as on indictment.*]—MAYS *v.* DEGERNESS (Sask.), [1929] 4 D. L. R. 771.—**CAN.**

sj. *Newspaper article imputing dishonesty—Admission by plaintiff of sexual misconduct.*]—MALING *v.* S. BENNETT, LTD. (1928), 29 S. R. N. S. W. 280 ; 46 N. S. W. W. N. 113. —**AUS.**

PART VI. SECT. 1, SUB-SECT. 3.—C.

sk. *Unreasonable verdict—Set aside.*]—Where the jury found that the words complained of, if defamatory, were true, & on appeal it was admitted that some of the allegations were untrue :—*Held :* the verdict was such an one "as no jury could have found as reasonable men," & should be set aside, & a new trial had.—ROFE *v.* SMITH'S NEWSPAPERS, LTD. (1927), 27 S. R. N. S. W. 313 ; 44 N. S. W. W. N. 37, P. C.—**AUS.**

1310. *Add. Annotation :*—**Refd.** Godman *v.* Times Publishing Co., [1926] 2 K. B. 273.

1313. *Add. Annotation :*— **Consd.** Godman *v.* Times Publishing Co., [1926] 2 K. B. 273.

1317. *Add. Annotation :*—**Apld.** Godman *v.* Times Publishing Co., [1926] 2 K. B. 273.

1318a. As to witnesses to be called.]—EMDEN *v.* BURNS (1894), 10 T. L. R. 400.

1329. *Add. Annotations :*—*As to* (1) **Refd.** More *v.* Weaver, [1928] 2 K. B. 520. *As to* (2) **Refd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579.

1339. *Add. Annotations :*—*As to* (3) **Refd.** Collins *v.* Whiteway, [1927] 2 K. B. 378. *Generally*, **Refd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579.

1341. *Add. Annotations :*—*As to* (1) **Apld.** Veal *v.* Heard (1930), 46 T. L. R. 448. **Refd.** Bottomley *v.* West Derby Assessment Committee, etc., etc. (1931), 47 T. L. R. 468.

1345. *Add. Annotation :*—**Consd.** Chapman *v.* Ellesmere (1932), 48 T. L. R. 309.

1346. *Add. Annotation :*—**Consd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579.

1347. *Add. Annotations :*—**Refd.** Collins *v.* Whiteway, [1927] 2 K. B. 378; Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579.

1347a. Court of referees—Under Unemployment Insurance Act, 1920 (c. 30).]—A ct. of referees, constituted under the above Act & the regulations thereunder for the purpose of deciding claims made upon the unemployment insurance funds, is a ct. discharging administrative duties only, & communications made to that ct. are not absolutely privileged, as would be the case if they were made to a judicial body in the discharge of its duties.—COLLINS *v.* WHITEWAY (HENRY) & CO., [1927] 2 K. B. 378; 96 L. J. K. B. 790; 137 L. T. 297; 43 T. L. R. 532.

Annotation :—**Consd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579.

1374. *Add. Annotation :*—**Consd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579.

1395. *Add. Annotation :*— **Refd.** De Freville *v.* Dill (1927), 96 L. J. K. B. 1056.

1407. *Add. Annotation :* - **Refd.** More *v.* Weaver, [1928] 2 K. B. 520.

1429. *Add. Citation :*—134 L. T. 286.

1446a. -.]—To constitute a communication made on a privileged occasion there must be a legal, moral, or social duty to make the communication, as well as an interest in the recipient to receive it, & the question, which is for the judge & not the jury, whether such a duty exists depends on the circumstances, the nature of the information, & the relation of the recipient & the informant.

One B., the foreign manager of a co. which carried on business abroad, but was in voluntary liquidation, wrote to deft., who was a director & was also the liquidator of the co. in England, a letter containing gross charges of immorality, drunkenness, & dishonesty on the part of pltf., who was the managing director of the co. abroad. Deft. wrote in answer that he had long suspected the pltf. of immorality, & asked B. whether he could obtain a sworn statement of the matters disclosed in his letter from the persons mentioned therein as his informants, adding that it might "even be necessary to bribe" them, & that he understood that one of them was "a woman of the lowest type on earth—a prostitute all her life"; that pltf.'s wife was an old friend of his, & that he would be unfair to an old friend if he did not place the facts before her, but that without a sworn statement he would not speak. Without obtaining any corroboration of the allegations in B.'s letter, & without communicating with pltf., deft. showed B.'s letter first to S., the chairman of the board of directors & the largest shareholder in the co., & then to pltf.'s wife. The allegations in B.'s letter were unfounded, but deft. believed them to be true :—*Held :* (1) the publications to S. & B. were made upon privileged occasions, but the publication to the pltf.'s wife was not upon a privileged occasion; (2) in the circumstances relating to the publications to S. & to B. & to pltf.'s wife there was evidence of malice which ought to be left to a jury.—WATT *v.* LONGSDON, [1930] 1 K. B. 130; 98 L. J. K. B. 711; 142 L. T. 4; 45 T. L. R. 619; 73 Sol. Jo. 544, C. A.

1455. *Add. Annotation :*—*As to* (2) **Consd.** Watt *v.* Longsdon (1929), 98 L. J. K. B. 711.

1457a. —— ——.]—WATT *v.* LONGSDON, No. 1446a, *ante*.

1460. *Add. Annotation :*—*As to* (3) **Consd.** Minter *v.* Priest, [1930] A. C. 558.

PART VI. SECT. 1, SUB-SECT. 4.—A.

k i. ——.]—If deft. does not in his plea of justification state the specific facts or instances on which he relies, he must do so in his particulars.—BARNES *v.* SYKES (Man.), [1926] 3 W. W. R. 476.—**CAN.**

k ii. ——.]—BURNES *v.* SYKES (Man.), [1927] 1 D. L. R. 282.—**CAN.**

m i. ——.]—BOSSY *v.* NATIONAL PRESS, LTD., [1930] 1 W. W. R. 638; 2 D. L. R. 1003.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 2.—A. (b).

m i. —— *Under Municipal Act. R. S. O.*, 1914 (*c.* 192).]—NIXON *v.* O'CALLAGHAN (1927), 60 O. L. R. 76.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 2.—A. (c) ii.

1358 v. ——.]—NIRSO NARAYAN SINGH *v.* R. (1926), I. L. R. 6 Pat. 224.—**IND.**

1358 vi. ——.]—MIR ANWARRUDIN *v.* FATHIM BAI ARIDIN (1926), I. L. R. 50 Mad. 667.—**IND.**

1358 vii. ——.]—M. BANERJEE *v.* ANUKUL CHANDRA MITRA (1927), I. L. R. 55 Calc. 85.—**IND.**

PART VI. SECT. 2, SUB-SECT. 2.—A. (c) iv.

d i. ——.]—*Held :* where criminal proceedings are taken for defamatory statements alleged to be made by parties to judicial proceedings in affidavits filed by them, the accused cannot claim the protection of the English rule of absolute privilege, & if the statements are in fact defamatory, the accused can protect himself duly under one of the exceptions to Indian Penal Code, s. 499.—MULL CHAND *v.* BUGA SINGH (1930), I. L. R. 8 Ran. 359.—**IND.**

PART VI. SECT. 2, SUB-SECT. 2.—B. (a).

1414 ii. ——.]—Words spoken by a member of Parliament in Parliament are absolutely privileged; the ct. has no jurisdiction to entertain an action in respect of them, & will, upon motion, set aside the writ of summons & statement of claim in such an action.—DILLON *v.* BALFOUR (1887), 20 L. R. Ir. 600.—**IR.**

sg. *Report in course of official duty—Police officer.*]—A report on a fellow officer, made by one police officer to another in the course of his official duty, is absolutely privileged & cannot be made the subject of an action for libel.—GIBBONS *v.* DUFFELL (1931), 48 N. S. W. W. N. 249.—**AUS.**

PART VI. SECT. 3, SUB-SECT. 1.

1437 i. *General rule.*]—SAPIRO *v.* LEADER PUBLISHING CO., [1926] 3 D. L. R. 68; [1926] 2 W. W. R. 268; 20 Sask. L. R. 449.—**CAN.**

1466a. —.]—WATT *v.* LONGSDON, No. 1446a, *ante.*

1466b. —.]—In an action for defamation it is for the judge & not for the jury to decide whether an occasion is privileged or not, & the question of express malice, which destroys the privilege, if it is qualified privilege, ought to be put to the jury only after the judge has ruled that the occasion is privileged.—MINTER *v.* PRIEST, [1930] A. C. 558; 99 L. J. K. B. 391; 143 L. T. 57; 46 T. L. R. 301; 74 Sol. Jo. 200, H. L.

Annotation :—**Refd.** Harris *v.* Harris (1930), 47 T. L. R. 15.

1470. *Add. Annotation :*—**Refd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704.

1485. *Add. Annotation :*—**Consd.** Osborn *v.* Boulter (Thomas) & Son, [1930] 2 K. B. 226.

1486. *Add. Annotation :*—**Apld.** Osborn *v.* Boulter (Thomas) & Son, [1930] 2 K. B. 226.

1487. *Add. Annotation :*—**Consd.** Osborn *v.* Boulter (Thomas) & Son, [1930] 2 K. B. 226.

1489. *Add. Annotations :*—*As to* (1) **Consd.** Chapman *v.* Ellesmere (1932), 48 T. L. R. 309. *As to* (4) **Apld.** Watt *v.* Longsdon (1929), 98 L. J. K. B. 711. **Consd.** Osborn *v.* Boulter (Thomas) & Son, [1930] 2 K. B. 226.

1500. *Add. Annotation :*—**Consd.** Watt *v.* Longsdon (1929), 98 L. J. K. B. 711.

1520. *Add. Annotation :*—**Consd.** Watt *v.* Longsdon (1929), 98 L. J. K. B. 711.

1521. *Add. Annotations :*—**Consd.** Watt *v.* Longsdon (1929), 98 L. J. K. B. 711. **Refd.** Hardie & Lane *v.* Chilton (1927), 96 L. J. K. B. 1040; Tolley *v.* Fry J. S. & Sons, Ltd. (1929), 46 T. L. R. 108.

1526. *Add. Annotation :*—**Refd.** Collins *v.* Whiteway, [1927] 2 K. B. 378.

1539. *Add. Annotation :*—**Consd.** Watt *v.* Longsdon (1929), 98 L. J. K. B. 711.

1545. *Add. Annotations :*—**Consd.** Minter *v.* Priest, [1929] 1 K. B. 655; Watt *v.* Longsdon (1929), 98 L. J. K. B. 711. **Refd.** Chapman *v.* Ellesmere (1932), 48 T. L. R. 309.

1550. *Add. Annotation :*—*As to* (1) **Apld.** Watt *v.* Longsdon (1929), 98 L. J. K. B. 711.

1556. *Add. Annotation :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

1579. *Add. Annotations :*—**Consd.** Minter *v.* Priest, [1930] A. C. 558. **Refd.** More *v.* Weaver, [1928] 2 K. B. 520.

1579a. —.]—Communications passing between a solr. & his client, on the subject upon which the client has retained the solr., & which are relevant to that matter, are absolutely privileged.—MORE *v.* WEAVER, [1928] 2 K. B. 520; 140 L. T. 15; 44 T. L. R. 710; 72 So. Jo. 556, C. A.

Annotation :—**Consd.** Minter *v.* Priest, [1929] 1 K. B. 655.

1592. *Add. Annotations :*—*As to* (1) **Refd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579. *Generally*, **Refd.** Collins *v.* Whiteway, [1927] 2 K. B. 378.

1594a. —— —— **Regarding solicitor employed by body.**]—LAWRENCE *v.* HALL (1928), 72 Sol. Jo. 87.

1596a. Communication to clerk to justices—Objection to grant of moneylender's licence.]—A letter written to a justices' clerk in response to a public notice of an application to the justices for a certificate for a moneylender's licence is not absolutely privileged in a libel action by the moneylender against the writer of the letter, but the occasion on which such a letter is sent is a privileged occasion, & pltf., in order to succeed, must prove malice on the part of deft.—VEAL *v.* HEARD (1930), 46 T. L. R. 448.

1597. *Add. Annotation :*—**Refd.** Hearts of Oak Assurance A.-G. (1931), 47 T. L. R. 579.

1608. *Add. Annotations :*—*As to* (1) **Refd.** Tolley *v.* Fry J. S. & Sons (1929), 46 T. L. R. 108; Minter *v.* Priest, [1930] A. C. 558. *Generally*, **Consd.** Watt *v.* Longsdon (1929), 98 L. J. K. B. 711. **Refd.** Chapman *v.* Ellesmere (1932), 48 T. L. R. 309.

1615. *Add. Annotation :*—*As to* (1) **Refd.** Watt *v.* Longsdon (1929), 98 L. J. K. B. 711.

1626. *Add. Annotation :*—**Consd.** Watt *v.* Longsdon (1929), 98 L. J. K. B. 711.

PART VI. SECT. 3, SUB-SECT. 3.—A. (a).

1500 viii. ——.]—The underlying principle on which is founded protection for a communication otherwise actionable as defamatory, is "the common convenience & welfare society." The communication is only protected when it is fairly warranted by some reasonable occasion or exigency, & when made in discharge of some public or private duty such as would be recognised by people of ordinary intelligence & moral principles, or is fairly made in the legitimate defence of a person's own interests. It is not sufficient that the person making the statement believes, honestly & not without some ground, that the duty or interest exists. There must, in fact, be such a duty or interest as, under all the circumstances, warrants the communication.—HALLS *v.* MITCHELL, [1928] 2 D. L. R. 97; [1928] S. C. R. 125.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—A. (c) v.

1 vi. ——.]—KLEINHANS *v.* USMAR, [1929] App. D. 121.—**S. AF.**

PART VI. SECT. 3, SUB-SECT. 3.—A. (c) vii.

1580 iii. ——.]—A solr., in corresponding with third parties, is in no better position than his client. He is not free to write everything his client may suggest or state. He is bound to exclude from his letter anything defamatory that is not relevant to the occasion.—M'KEOGH *v.* O'BRIEN MORAN, [1927] I. R. 348.—**IR.**

PART VI. SECT. 3, SUB-SECT. 3.—A. (c) ix.

e i. ——. *By member.*]—A communication made to a city council by a member thereof while the subject of the policing of the city was being discussed at a meeting of the council held, in an action for slander, to have been made on a privileged occasion.—EDWARDS *v.* GATTMANN, [1928] 3 D. L. R. 187; [1928] 2 W. W. R. 713.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—A. (c) xii.

o i. ——.]—A public political meeting is not a privileged occasion.—BUREAU *v.* CAMPBELL, [1928] 3 D. L. R. 907; [1928] 2 W. W. R. 535.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—A. (c) xiv.

sl. *Statement as to minister's conduct —By one church office holder to another —Occasion privileged.*]—KNAPP *v.* MCLEOD, [1926] 2 D. L. R. 1083; 58 O. L. R. 605.—**CAN.**

sd. *Statement at public meeting—As to attitude of newspaper—Relating to expenditure of public funds.*]—ROBERTSON *v.* MCBRIDE, [1931] 4 D. L. R. 132.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—B.

1631 vi. ——.]—To clothe an occasion with privilege on the ground of common interest, the common interest must be in the subject-matter of the communication complained of.—SAPIRO *v.* LEADER PUBLISHING CO., [1926] 3 D. L. R. 68; [1926] 2 W. W. R. 268; 20 Sask. L. R. 449.—**CAN.**

sm. *Statements reflecting on missionary appealing for funds—To committee formed to aid appeal.*]—HAYFORD *v.* FORRESTER-PATON, [1927] S. C. 740.—**SCOT.**

sg. *Statement reflecting on doctor By nurse to insurance company.*]—A nurse employed by deft. society to pays calls on ailing policyholders visited a Mrs. B., whose child was insured with deft. society, & another woman, who had no interest in the society, was present during that visit. Mrs. B., appeared very ill, & the nurse diagnosed the case as one of diphtheria although informed by Mrs. B., that her doctor was attending her & treating her for a less serious complaint. The nurse asked for the name of the doctor & the patient gave pltf.'s name, where-

1635. *Add. Annotation :—As to* (1) **Consd.** Chapman *v.* Ellesmere (1932), 101 L. J. K. B. 376.

1638. *Add. Annotation :*—**Refd.** Chapman *v.* Ellesmere (1932), 48 T. L. R. 309.

1638a. —— ——.]—Thomas Withers & Sons, Ltd. *v.* Samuel Withers & Co., Ltd. (1926), 44 R. P. C. 19.

1638b. —— ——.]—An advertisement in a public paper, strongly reflecting upon the character of an individual who has been declared bkpt. is libellous, although published with the avowed intention of convening a meeting of the creditors for the purpose of consulting upon the measures proper to be adopted for their own security if the legal object might have been attained by means less injurious.—Brown *v.* Croome (1817), 2 Stark. 297 ; 171 E. R. 652.

Annotation :—**Consd.** Chapman *v.* Ellesmere, [1932] 2 K. B. 431.

1642. *Add. Annotation :*—**Refd.** Watt *v.* Longsdon (1929), 98 L. J. K. B. 711.

1654a. —— **Report of decision of domestic tribunal.**]—In my judgment any one who knows that a man has been convicted of larceny at a criminal trial before a ct. of competent jurisdiction is entitled to say, without being used for slander or libel, that that man has, in fact, been convicted. It seems to me that also in the case where a man submits to a domestic tribunal, any person is entitled to record the fact that that domestic tribunal decided against him. If it is a question relating to a school, & a boy is properly expelled by the competent authority, I think that any one can say, without being sued for slander or libel, that the boy was, in fact, expelled. The same thing would apply to expulsion from a club. When a man subjects himself to a domestic tribunal he must be in exactly the same position as regards complaining of a record of that domestic tribunal as every citizen who has to submit himself to the lawful tribunals of the country (Greer, L.J.).—Cookson *v.* Harewood, [1932] 2 K. B. 478, n. ; 101 L. J. K. B. 394, n. ; 146 L. T. 550, n., C. A.

Annotation :—**N.F.** Chapman *v.* Ellesmere, [1932] 2 K. B. 431.

1654b. —— —— **To what publications privilege applicable.**]—Chapman *v.* Ellesmere (Lord), No. 167c, *ante*.

1654c. —— —— **Assent to publication.**]—Chapman *v.* Ellesmere (Lord), No. 167c, *ante*.

1661. *Add. Annotation :*—**Refd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579.

1662. *Add. Annotation :*—**Refd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579.

1665. *Add. Annotation :*—**Refd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579.

1666. *Add. Annotation :—As to* (1) **Consd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579.

1667. *Add. Annotation :—Generally* **Refd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579.

1690. *Add. Annotation :*—**Refd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579.

1699. *Add. Annotation :—As to* (1) **Refd.** Mackenzie-Kennedy *v.* Air Council, [1927] 2 K. B. 517.

1735. *Add. Annotation :* —**Refd.** Broome *v.* Agar (1928), 138 L. T. 698.

1739. *Add. Annotation :—As to* (1) **Apld.** Burton *v.* Board, [1929] 1 K. B. 301.

1847a. —— ——.]—Havard *v.* Corbett (1899), 15 T. L. R. 222, C. A.

upon the nurse was alleged to have uttered the following words : " Oh, him ! Like a few more of his cases ! I have never had the pleasure of meeting Dr. R. but when I see him I will tell him what I think of him " :—*Held :* assuming that she uttered the words complained of, the nurse was acting within the scope of her employment ; the occasion was privileged & the fact that they were spoken in the presence of a person having no common interest did not destroy the privilege, provided they were spoken *bond fide* & without malice.—Richards *v.* Australasian Temperance & General Mutual Life Assurance Society, Ltd., [1931] N. Z. L. R. 618.—**N.Z.**

PART VI. SECT. 3, SUB-SECT. 3.—C.

1649 xii. ——.]—Henn *v.* Smith (1912), 11 E. L. R. 1 ; 6 D. L. R. 48. —**CAN.**

PART VI. SECT. 3, SUB-SECT. 4.—B. (b).

sn. *Publicly heard before a Court of Justice—Libel & Slander Act, R. S. O.* 1914.]—Cowie *v.* Robinson, [1928] 3 D. L. R. 776 ; 62 O. L. R. 351.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 4.—B. (c).

so. *Publication of exhibit—Privileged.*]—Butler *v.* Saskatoon Star-Phœnix, Ltd. (Sask.), [1929] 3 W. W. R. 672 ; [1930] 1 D. L. R. 1009 ; 24 S. L. R. 283.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 4.—B. (d).

sp. *Under Libel & Slander Act.*]—Hansen *v.* Nugget Publishers, Ltd., [1927] 4 D. L. R. 791 ; 61 O. L. R. 239.—**CAN.**

sq. ——.]—Sentinel-Review Co. *v.* Robinson, [1927] 4 D. L. R. 232 ; 61 O. L. R. 62.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 4.—B. (e) i.

1678 ii. ——.]—Hughes *v.* Sun Publishing Co. (1925), 35 B. C. R. 422.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 4.—B. (e) ii.

1698 i. —— *Report of judgment alone.*]—Duncan *v.* Associated Scottish Newspapers, Ltd., [1929] S. C. (Ct. of Sess.) 11.—**SCOT.**

g i. ——.] A report of proceedings in a ct. of justice is not necessarily unfair or inaccurate if it purports to be a report of part only of what took place.—Thompson *v.* Truth & Sportsman, Ltd. (No. 4) (1931), 31 S. R. N. S. W. 292 ; 48 N. S. W. W. N. 87.—**AUS.**

sr. *Report of erroneous translation by interpreter.*]—Applt. co., having published a statement alleged to have been made by resp., who was Commissioner of Police in Western Samoa, that the attempted arrest of a certain native was a mistake, was successfully sued by the latter for libel in the High Ct. of Western Samoa. On appeal :—*Held :* the report, being a report in English purporting to set out what resp. said in English, was libellous notwithstanding that it may be a true report of what the interpreter said in Samoan.—Samoan Guardian Newspaper & Printing Co. *v.* McCarthy, [1930] N. Z. L. R. 593.—**N.Z.**

PART VI. SECT. 3, SUB-SECT. 4.—D.

1723 i. *What is a public meeting.*]—The meeting in question herein, one at which a lecture or address was given, to which an admission fee was charged, & which was entirely under the control of the lecturer & at which there was nothing in the nature of a discussion : —*Held :* not to have been a " public meeting " within Libel & Slander Act, R. S. S., 1922 (c. 56), s. 10.—Heffernan *v.* " Regina Daily Star," [1930] 3 W. W. R. 656.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 2.

1738 ii. ——.]—The " rolled up plea " to an action for libel is a plea of fair comment only, & where there is no plea of justification, evidence is not admissible to prove the truth of defamatory allegations of fact, & the defence of fair comment is no answer to such allegations.—Leech *v.* Leader Publishing Co., Ltd., [1926] 2 D. L. R. 28 ; [1926] 1 W. W. R. 673 ; 20 Sask. L. R. 337.—**CAN.**

1738 iii. *S.P.* Barnes *v.* Sykes (Man.), [1926] 3 W. W. R. 476.—**CAN.**

1738 iv. ——.]—In an action for libel, under the " rolled up plea " deft. has the right, without pleading justification, to adduce evidence to establish the truth of allegations of fact upon which comment is based, as distinguished from comment itself.—Boys *v.* Star Ptg. & Pub. Co., [1927] 3 D. L. R. 847 ; 60 O. L. R. 592.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 6.

1844 ii. —— ——.]—Bossy *v.* National Press, Ltd., [1930] 1 D. L. R. 813.—**CAN.**

1849a. Right to give particulars—Although no plea of justification.]—Where deft. in an action for libel pleads that the words complained of are fair comment, made in good faith & without malice, on matters of public interest, he is entitled to give particulars of the facts upon which he based his comments, although those facts are defamatory of pltf. & there is no plea of justification.—BURTON *v.* BOARD, [1929] 1 K. B. 301; 98 L. J. K. B. 165; 140 L. T. 289, C. A.

1854a. Indemnity—& plea of justification—Separate trial of issue as to indemnity.]—In a libel action defts. pleaded justification, & that pltf. had, in return for payment, undertaken in writing to indemnify them against any actions for libel. Pltf., in his reply, disputed his signature, & said that he was not bound by the alleged undertaking. Pltf. then applied for an order that the issue as to the alleged undertaking & its construction should be tried separately before the other issues:—*Held:* when pltf. asked for an order that one issue should be disposed of before the trial of the other issues, the order should be made only when there were special circumstances justifying it, & as there were none in the present case, the order must be refused.—BOTTOMLEY *v.* HURST & BLACKETT, LTD. & HOUSTON (1928), 44 T. L. R. 451, C. A.

Part VII.—Malice.

1868. *Add. Annotations:*—**Consd.** Watt *v.* Longsdon (1929), 98 L. J. K. B. 711; Minter *v.* Priest, [1930] A. C. 558. **Refd.** Cassidy *v.* Daily Mirror Newspapers, [1929] 2 K. B. 331; Tolley *v.* Fry J. S. & Sons (1929), 46 T. L. R. 108; Chapman *v.* Ellesmere (1932), 101 L. J. K. B. 376.

1910a. Accusation of incompetence—Whether proof of competence in other transactions admissible.]—BRINE *v.* BAZALGETTE (1849), 3 Exch. 692; 18 L. J. Ex. 348; 154 E. R. 1021.

1943a. — — — — —.]—MINTER *v.* PRIEST, No. 1166b, *ante*.

1948a. —— ——.]—Where deft. establishes a qualified privilege for a publication, & pltf. fails to adduce any evidence of malice, the judge is not obliged then & there to withdraw the case from the jury, but, if deft. proposes to call evidence, may in his discretion defer ruling on the question of malice until he has heard the evidence for deft. In the exercise of this discretion the position of deft. who has to adduce evidence upon other issues in the action should be considered.—MARBÉ *v.* GEORGE EDWARDS (DALY'S THEATRE), LTD., [1928] 1 K. B. 269; 96 L. J. K. B. 980; 138 L. T. 51; 43 T. L. R. 809, C. A.

Part VIII.—Damages and Costs.

1988. *Add. Annotations:*—**Consd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1; Tolley *v.* Fry J. S. & Sons (1929), 46 T. L. R. 108.

1989. *Add. Annotations:*—**Refd.** Thomson *v.* McNulty (1927), 71 Sol. Jo. 744; Cassidy *v.* Daily Mirror Newspapers, [1929] 2 K. B. 331.

1992. *Add. Annotation:*—**Refd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

1848 i. *"Rolled up plea"—Plea of fair comment not justification.*]—LEECH *v.* LEADER PUBLISHING CO., LTD., No. 1738 ii, *ante*.—**CAN.**

1848 ii. *S. P.* BARNES *v.* SYKES (Man.), No. 1738 iii, *ante*.—**CAN.**

st. ——.]—Where the defence of fair comment is pleaded the comments must be warranted by the facts stated in the writing complained of, in the sense that the facts must afford a reasonable foundation for the comments, & it is not legitimate for defender, by the averment of new facts in his defences, to extend the limits of inquiry.—WHEATLEY *v.* ANDERSON & MILLER, [1927] S. C. 133.—**SCOT.**

PART VI. SECT. 6.

sv. *No libel—Innuendos covered.*]—DALY *v.* IRISH TRANSPORT & GENERAL WORKERS' UNION, [1926] I. R. 118.—**CAN.**

sw. *Implied request to publish.*]—J. was employed as a reporter by the proprietors of "The Mercury," a daily newspaper, & was also employed by the committee of a trotting club to take notes of a private inquiry held by the stewards into the running of pltf.'s horse. As a result of this inquiry, the stewards purported to disqualify a certain horse, its owner & rider for three months, but inasmuch as the owner was not summoned to answer the charge made against him at the inquiry, the disqualification was void. On the morning following the inquiry, the libel complained of was published in "The Mercury," the material portion of which read: "The stewards decided the charge was sustained, & disqualified the horse, owner, & rider for three months." It was proved that defts. issued no instructions to J. not to report information he received at such inquiries, but all other press representatives were excluded:—*Held:* there was sufficient evidence to justify the jury in concluding that the libel had been published at defts.' implied request.—PATMORE *v.* BOON; BOON *v.* PATMORE, 22 Tas. L. R. 75.—**AUS.**

PART VII. SECT. 2, SUB-SECT. 2.—A.

1875 xii. ——.]—DUNNET *v.* NELSON, [1926] S. C. 764.—**SCOT.**

PART VII. SECT. 2, SUB-SECT. 2.—B. (b).

f i. ——.]—Declining to give an apology is not evidence of malice.—HALLS *v.* MITCHELL (1927), 59 O. L. R. 590.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 4.—A.

1957 ii. — —.] COLE *v.* THE OPERATIVE PLASTERERS FEDERATION OF AUSTRALIA (N. S. W. BRANCH) & HUDSON (1927), 28 S. R. N. S. W. 62; 45 N. S. W. W. N. 33.—**AUS.**

PART VII. SECT. 2, SUB-SECT. 4.—B. (a).

a i. —— *Additional slanders.*]—MERCEREAU *v.* HOCK, [1930] 1 W. W. R. 821; 3 D. L. R. 159; 24 S. L. R. 483.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 2.—B. (a).

sx. *Conduct of both parties.*]—Pltf. in opening his case to the jury, stated that he would be satisfied with an undertaking by deft. to publish an apology in their newspaper, & further stated that the defamatory article complained of by him was false from beginning to end. Deft. by his counsel, thereupon offered to give such an undertaking as asked for by pltf. This offer pltf. refused to accept. During the course of the trial, cross-examination was directed to show the truth of the article complained of, though the character of pltf. was not attacked in the article. Pltf. was awarded a verdict & damages were

2020. *Add. Annotation:—As to* (2) **Consd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

2037. *Add. Annotation:*—**Expld.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

2041a. —— ——.]—In an action for libel pltf. set out in his statement of claim the alleged libel, & in a separate paragraph alleged an innuendo which practically repeated, but somewhat extended, the statements in the alleged libel. Defts. did not plead justification or fair comment, but paid 20*s.* into ct. in respect of the alleged libel as sufficient damages; they made no payment into ct. in respect of the innuendo; & they gave notice under R. S. C. Ord. 36, r. 37, of their intention to give in evidence certain matters in mitigation of damages. At the trial pltf. gave evidence that save for one lapse he was a man of unblemished reputation. Thereupon he was cross-examined as to specific incidents not mentioned in the libel or in the particulars served under R. S. C. Ord. 36, r. 37, it being suggested that he was a man of bad reputation. This line of cross-examination was objected to, but was allowed. Before the conclusion of the cross-examination the jury intervened with an intimation that they desired to find for the defts., which they then did without any summing up. On appeal:—*Held:* (1) the cross-examination was admissible as cross-examination to credit, but that if the incidents were denied by pltf. no further evidence could be called to rebut pltf.'s denials, & that the jury should have been told that while they were not bound to accept pltf.'s denials, those denials, though unaccepted, afforded no evidence that the incidents had taken place; (2) the cross-examination was not admissible to mitigate damages, & the jury ought to have been directed to this effect.—HOBBS *v.* TINLING, HOBBS *v.* NOTTINGHAM JOURNAL, [1929] 2 K. B. 1; 98 L. J. K. B. 421; 141 L. T. 121; 45 T. L. R. 328; 73 Sol. Jo. 220, C. A.

2045. *Add. Annotation:—As to* (1) **Apprvd.** Hobbs *v.* Tinling, Hobbs *v.* Nottingham Journal, [1929] 2 K. B. 1.

2174. *Add. Annotation:*—**Refd.** Smith *v.* Schilling, [1928] 1 K. B. 429.

2180. *Add. Annotation:*—**Refd.** Martin *v.* Benson, [1927] 1 K. B. 771.

2184. *Add. Annotation:*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

2195. *Add. Annotation:—As to* (1) **Refd.** Martin *v.* Benson, [1927] 1 K. B. 771.

2198a. —— **Consideration of all circumstances.**]—Where an action for defamation is tried by a judge with a jury, & pltf. recovers nominal damages only, the judge, in deciding whether there is "good cause" for depriving pltf. of costs, should take into consideration all the circumstances of the case, both before & after the issue of the writ. The smallness of the damages is only one element for consideration. The judge must exercise a discretion independent of any view expressed by the jury on the question of costs.—MARTIN *v.* BENSON, [1927] 1 K. B. 771; 96 L. J. K. B. 405; 137 L. T. 183; 43 T. L. R. 217.

2200. *Add. Annotation:*—**Refd.** Martin *v.* Benson, [1927] 1 K. B. 771.

2202. *Add. Annotation:*—**Refd.** Martin *v.* Benson, [1927] 1 K. B. 771.

2203. *Add. Annotation:*—**Refd.** Martin *v.* Benson, [1927] 1 K. B. 771.

2203a. —— ——.]—MARTIN *v.* BENSON, No. 2198a, *ante*.

2206. *Add. Annotations:*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732; Martin *v.* Benson, [1927] 1 K. B. 771.

2207. *Add. Annotation:*—**Consd.** Martin *v.* Benson, [1927] 1 K. B. 771.

Part IX.—Injunction.

2225. *Add. Annotation:* **Refd.** Broome *v.* Agar (1928), 138 L. T. 698.

2263. *Add. Annotation:*—**Refd.** Tolley *v.* Fry J. S. & Sons (1929), 46 T. L. R. 108.

C. Mitigation of Damages.

For "Sect. 3, *ante*," read "Sect. 1, sub-sect. 3, *ante*."

assessed at one farthing:—*Held:* the jury may take into consideration the conduct of both parties, even up to the moment when it returns its verdict.—LEMAIRE *v.* SMITH'S NEWSPAPERS, LTD. (1927), 28 S. R. N. S. W. 161.—**AUS.**

PART VIII. SECT. 1, SUB-SECT. 3.—C.

2080 vi. —— ——.]—SOLOMON *v.* ROBINSON & CO., LTD. (1927), 48 N. L. R. 125.—**S. AF.**

PART VIII. SECT. 1, SUB-SECT. 4.—B. (b).

2156 iv. ——.]—In libel it is not necessary to prove special damage, for the law presumes that some damage will flow in the ordinary course of things from the mere invasion of pltf.'s rights, & the falsity of the imputation is presumed in favour of pltf.—HALLS *v.* MITCHELL (1927), 59 O. L. R. 590.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 1.

sy. *Security for costs—Action against newspaper.*]—CARROLL *v.* NATIONAL PRESS, LTD. (Man.), [1927] 3 W. W. R. 683.—**CAN.**

sz. —— ——.]—BARTMAN *v.* UKRAINIAN PUBLISHING CO. OF CANADA, [1927] 3 D. L. R. 478; [1927] 2 W. W. R. 308; 36 Man. L. R. 581.—**CAN.**

Part X.—Pleading, Practice and Evidence.

2273a. —— —— ——.]—*Held:* since Jud. Act there is no power to pay money into ct. in actions of libel & slander without admitting liability.—VEALE *v.* REID (1901), 117 L. T. Jo. 292.

2298a. —— ——.]—HALL *v.* BRYCE (1890), 6 T. L. R. 314, C. A.

2300a. —— **Separate actions for same libel.**]—Where two pltfs. bring two separate actions against same defts. in respect of the same alleged libel, the ct. has jurisdiction to order consolidation of the two actions. Whether an order for consolidation should be made in any particular case is in the discretion of the judge or the master.—HORWOOD *v.* STATESMAN PUBLISHING CO. (1929), 98 L. J. K. B. 450; 141 L. T. 54; 45 T. L. R. 237; 73 Sol. Jo. 110, C. A.

Part XI.—Criminal Proceedings.

2307. *Add. Annotation:—Generally,* **Refd.** Martin *v.* Benson, [1927] 1 K. B. 771.

2441. *Add. Annotation:*—**Refd.** Broome *v.* Agar (1928), 138 L. T. 698.

2468. *Add. Annotation:*—**Consd.** R. *v.* De Montalk (1932), 23 Cr. App. Rep. 182.

2488. *Add. Annotation:*—**Refd.** R. *v.* Brixton Prison, *Ex p.* Shure, [1926] 1 K. B. 127.

2525. *Add. Annotation:—As to* (1) **Refd.** Killen *v.* MacMillan (1931), 48 R. P. C. 380.

Part XII.—Slander of Title.

2528a. ——.]—CRUSH *v.* CRUSH (1605), Yelv. 80; 80 E. R. 55.

2536a. Title need not be shown.]—MARVIN *v.* MAYNARD (1595), Cro. Eliz. 419; 78 E. R. 661.

2555a. —— ——.]—NURSE *v.* POUNFORD (1629), Het. 161; 124 E. R. 421.

2560a. ——.]—In slander of title for alleging that another had a lease for one thousand years of pltf.'s land, it is no defence that such a lease was actually made, because deft. took upon himself the knowledge of the law.—MILDMAY'S CASE (1584), 1 Co. Rep. 175 a; Jenk. 247; 76 E. R. 379; *sub nom.* MILDMAY *v.* STANDISH, Cro. Eliz. 34; Moore, K. B. 144.

Annotations:—**Refd.** Rowe *v.* Roach (1813), 1 M. & S. 304; British Ry. & Traffic & Electric Co. *v.* C. R. C. Co., Ltd. & L. C. C., [1922] 2 K. B. 260.

2560b. ——.]—MILLMAN *v.* PRATT (1824), 2 B. & C. 486; 3 Dow. & Ry. K. B. 728; 107 E. R. 465.

2579. *Add. Annotation:*—**Consd.** Farr *v.* Weatherhead & Harding (1932), 19 R. P. C. 262.

2582a. ——.]—JOHNSON *v.* SMITH (1584), Moore, K. B. 187; 72 E. R. 522.

2587a. ——.]—If one hath colour of title to land, an action of the case will not lie against him for saying, I have better title to the land than you, though his title be not so good as the other's title is.—ANON. (1654), Sty. 414; 82 E. R. 823.

2591a. ——.]—Where a trade circular is issued *bonâ fide* an interim injunction will not be granted to restrain it unless it is in violation of some contract between pltf. & deft., however much the balance of convenience may be in favour of granting.—SOCIETE ANONYME DES MANUFACTURES DE GLACES *v.* TILGHMAN'S PATENT SAND BLAST CO. (1883), 25 Ch. D. 1; 53 L. J. Ch. 1; 49 L. T. 451; 48 J. P. 68; 32 W. R. 71; Griffin's Patent Cases [1884–86], 209, C. A.

Annotation:—**Apld.** Household & Rosher *v.* Fairburn & Hall (1884), 51 L. T. 498.

PART XI. SECT. 1, SUB-SECT. 4.—A. (b).

sa. *Advocating force to effect governmental, industrial, or economic change.*]—R. *v.* WEIR (Ont.) (1929), 52 Can. Crim. Cas. 111.—**CAN.**

LIEN.

Part II.—Legal or Possessory Lien Generally.

27a. -.]—MULLINER *v.* FLORENCE, No. 193, *post.*

152. *Add. Annotations :*—**Refd.** Lowther *v.* Harris, [1927] 1 K. B. 393. **Mentd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China, [1929] 1 K. B. 40.

171. *Add. Annotation :*—**Apld.** Near East Relief *v.* King, Chasseur & Co., Ltd., [1930] 2 K. B. 40.

180. *Add. Annotation :—As to* (3) **Refd.** Albemarle Supply Co. *v.* Hind (1927), 43 T. L. R. 783.

184. *Add. Annotation :*—**Refd.** Albemarle Supply Co. *v.* Hind (1927), 43 T. L. R. 783.

193. To the existing paragraph add as follows :—"Distinction between a pledge & a lien discussed."

208a. ——.]—ROGERSON *v.* REID (1830), 1 Knapp, 362 ; 12 E. R. 357, H. L.

Part III.—General Lien.

242. *Add. Annotation :*—**Consd.** Near East Relief *v.* King, Chasseur & Co., [1930] 2 K. B. 40.

Part IV.—Particular Lien.

321. *Add. Annotation :*—**Refd.** Albemarle Supply Co. *v.* Hind (1927), 43 T. L. R. 783.

322. *Add. Annotation :*—**Refd.** Albemarle Supply Co. *v.* Hind (1927), 43 T. L. R. 783.

322a. —— **No authority to create lien.**]—B. hired three taxicabs from pltfs. under hire-purchase agreements which required him to keep the cabs & their equipments in good repair, & prohibited him from selling, pledging or parting with possession of the cabs without pltfs.' consent, & from creating a lien upon them in respect of such repairs. B. kept the cabs & two others at the garage of the defts., who cleaned them, supplied them with tyres, grease, oil & petrol, & did all necessary repairs to & charged rent for them. At first B. paid defts.' weekly bills

PART I.

sm. *Origin of—Necessity for statutory authority—In clear & unambiguous language.*]—A lien is not to be considered to be imposed without a plain declaration of the intention of the Legislature to impose it, shown in clear & unambiguous language.—*Re* HARDY, [1929] 1 D. L. R. 300 ; *affg.*, 62 O. L. R. 367.—**CAN.**

PART II. SECT. 9, SUB-SECT. 4.—A.

178 i. *Claim of general lien—Waiver of tender—For amount of particular lien.*]—Where the holder of goods detains them for different claims, as to one of which he has a lien & the other not, the owner must tender the proper amount, unless the holder either expressly or by fair implication dispenses with it.—BUFFALO & LAKE HURON RY. CO. *v.* GORDON (1858), 16 U. C. R. 283.—**CAN.**

PART IV. SECT. 1.

l i. —— *Sale of building—Balance of proceeds after payment of sundry accounts paid into court.*]—KELLY BROS. & CO. *v.* TOURIST HOTEL CO. (1910), 15 O. W. R. 29 ; 20 O. L. R. 267.—**CAN.**

m i. —— *Merchant giving vessel to planter & undertaking to supply vessel for fishery—Failure of merchant to supply vessel.*]—*Held :* the merchant's peculiar lien upon the profits of the vessel ceased to attach.—GILL *v.* POWER (1851), 3 Nfld. L. R. 197.—**NFLD.**

PART IV. SECT. 2, SUB-SECT. 1.—A.

sx. *Lien for repairs—Enforceable against conditional sale vendor.*]—The common-law lien for repairs to a chattel may be maintained against the vendor where the chattel is subject to a conditional-sale agreement, even though the work was done at the request of the purchaser.—EARLY (J. H.) MOTOR CO., LTD. *v.* SIEKAWITCH, [1931] 3 W. W. R. 521.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.—B. (a).

315 i. *General rule.*]—An artificer's lien arises only when the work in respect of which the charges arose has been done by the order or at the request of the owner or of some person authorised by him.—FISHER *v.* AUTOMOBILE FINANCE CO. OF AUSTRALIA, LTD. (1928), 41 C. L. R. 167.—**AUS.**

322a i. *Order given by hire-purchaser—No authority to create lien.*]—*Held :* the vendor was entitled to a return of the subject-matter of the agreement without payment of the cost of repairs ordered by the hire-purchaser.—ALLIANCE FINANCE CO. & STANDARD MOTORS, LTD. *v.* SIMONS GARAGE & GOODCHAP (1925), 36 B. C. R. 117.—**CAN.**

322a ii. —— ——.]—*Held :* the repairers had not acquired a lien, in respect that the hirer's title excluded the right to create a lien.—LAMONBY *v.* FOULDS, LTD., [1928] S. C. 89.—**SCOT.**

332a iii. —— ——.]—Although in a hire-purchase agreement there may be a clause expressly negativing any authority to create a lien, it does not prevent a lien arising for repairs done to the subject-matter of the agreement.—MOYES *v.* MAGNUS MOTORS, LTD., [1927] N. Z. L. R. 906.—**N.Z.**

322a iv. - - - ——.]—Where an agreement for the conditional sale of a motor car contained the following clause : "We shall not at any time (that is, the buyer) suffer or permit any charge or lien whether possessory or otherwise to exist against said automobile," it was held that this clause negatived the idea that the buyer could authorise the doing of repairs in such a way as to give the repairer a lien.—ALLIANCE FINANCE CO. & STANDARD MOTORS, LTD. *v.* SIMONS, [1928] 3 W. W. R. 621.—**CAN.**

322a v. —— ——.]—An artificer's lien arises only when the work in respect of which the charges arose was done by the order or at the request of the owner or some person authorised by him. Where the owner of a motor car let it to another under a hire-purchase agreement, which provided that repairs to the car should be made by the owner's nominee only, & the hirer caused the car to be repaired by a person who was not the owner's nominee : —*Held :* the person who repaired the car was not entitled to a lien for his charges as against the owner.—FISHER *v.* AUTOMOBILE FINANCE CO. OF AUSTRALIA, LTD., [1928] A. L. R. 363 ; [1928] V. L. R. 496.—**AUS.**

322a vi. —— ——.]—Defts. sold an auto-truck, taking a lien agreement to secure the balance of the purchase price, which was duly registered. The owner having an accident, brought the truck to pltf., who made extensive repairs, & held the truck for the cost of the repairs. On the truck being taken for trial by an ostensible buyer, after the owner was in default under the lien agreement, it was seized by deft.'s bailiff under the lien agreement. In an action to recover the truck it was held that pltf. was entitled to hold the car subject to his lien :—*Held :* where the vendor had not taken possession & where there had been no default up to the time of repair, the purchaser had the right & duty to have the property repaired so as to

in full. He then fell into arrear, but defts. allowed him to take the cabs out daily to ply for hire on condition that the cabs continued "in pawn" & were returned to the garage each night. Defts.' weekly accounts then debited B. with the amounts in arrear brought forward; credited the amount paid by B., which was sometimes a lump sum & sometimes the exact amount of the current week's bill; & carried forward the balance. B. then fell into arrear with his hire-purchase instalments, & pltfs. terminated the agreements & demanded the three cabs from debts., who claimed a lien for £113 18*s.* 3*d.* the balance of their general account for all five cabs due from B., but they also gave pltfs. full details of the charges for each of their three cabs. Pltfs., relying on their agreements, made no tender to defts., but commenced this action for detinue. Defts. then sought to appropriate the total sum received from B. to items for which they had no lien against pltfs., & to appropriate the total sum received from B. to items for which they had no lien against pltfs., & to appropriate the balance to pltfs.' three cabs, leaving £91 11*s.* 1*d.* unpaid, for which they claimed a lien as against the £113 18*s.* 3*d.* originally claimed:—*Held:* (1) a contractual limitation of authority not communicated to the repairer did not limit the implied authority derived from the hirer being allowed to possess & use the car, & defts. were entitled to a lien in respect of repairs executed by them; (2) the conditional agreement between B. & defts. that the cabs might be taken out daily to ply for hire, did not prevent the repairer's lien from continuing; (3) defts. had not in the circumstances lost their lien by demanding too large a sum at first, or by basing it partly on the wrong ground; that their attempted appropriations were too late; & that there must be an inquiry how much of the amount of the lien they claimed represented items for repairs to the three cabs.

A person claiming a lien must either claim it for a definite amount or give the owner particulars from which he himself can calculate the amount for which a lien is due. The owner must then, in the absence of express agreement, tender an amount covering the lien really existing. If he does not, unless excused, he has no answer to a claim of lien. He may be excused from tendering (*a*) if he has no knowledge, or means of knowledge, of the right amount; or (*b*) if the person claiming the lien for a wrong cause or amount makes it clear that he will not release the goods unless his full claim is satisfied, & that claim is wrongful. The fact that the claim is made for more than the right amount does not matter unless the claimant gives no particulars from which the right amount can be calculated, or makes it clear that he insists on the full amount of the right claimed (*per* CUR.).—ALBEMARLE SUPPLY CO., LTD. *v.* HIND & CO., [1928] 1 K. B. 307; 97 L. J. K. B. 25; 138 L. T. 102; 43 T. L. R. 783; 71 Sol. Jo. 777, C. A.

Annotation:—**Refd.** Near East Relief *v.* King, Chasseur & Co., Ltd., [1930] 2 K. B. 40.

324. *Add. Annotation:*—**Refd.** Albemarle Supply Co. *v.* Hind (1927), 43 T. L. R. 652.

332. *Add. Annotation:*—*As to* (1) **Distd.** Albemarle Supply Co. *v.* Hind (1927), 43 T. L. R. 652.

370. *Add. Annotation:*—**Refd.** I. R. Comrs. *v.* Holder, [1931] 2 K. B. 81.

471. *Add. Annotation:*—**Refd.** Jebara *v.* Ottoman Bank, [1927] 2 K. B. 254.

give rise to a common law lien in favour of the person who did the work.—GUREVITCH *v.* MELCHOIR (1921, 29) B. C. R. 391.—**CAN.**

322a vii. —— *Acquiescence of vendor.*] A motor car sold under a conditional sale agreement & lent by the buyer to a friend for his temporary use was damaged while in the latter's possession & left by him with a mechanic to be repaired. The agent of pltf., the vendor's assignee, saw the car in the mechanic's garage while it was yet unrepaired &, without questioning the authority of the borrower of the car to order the repairs, which were obviously necessary suffered it to remain there, merely asking the mechanic what the repairs would cost & how long it would take to make them, & requesting him to send in an account of his charges against the car:—*Held:* the agent had so conducted himself as to justify the mechanic in concluding that pltf. expected him to make the repairs, &, therefore, whatever was the extent of the borrower's authority to order them, pltf. could not be heard to say that the mechanic had no authority to make them; & the mechanic was, therefore, entitled to a lien for the repairs.—STERLING SECURITIES CORPN., LTD. *v.* HICKS MOTOR CO., LTD., [1928] 4 D. L. R. 155; [1928] 2 W. W. R. 74; 22 Sask. L. R. 507.—**CAN.**

o i. ——.]—A person setting up a salvage lien for necessary expenses must prove the actual amount expended & establish that, but for such expenditure, the thing over which the lien is claimed would, in the circumstances, necessarily either have depreciated or perished.

In the absence of evidence to show that the garaging of a motor car has saved it from depreciation, the ct. will not infer that it has had that effect.—KING'S HALL MOTOR CO. *v.* WICKENS & MCNICOL (1931), 52 N. L. R. 37.—**S. AF**

PART IV. SECT. 2, SUB-SECT. 1.—C.

m. *Revsd.*, 15 S. C. R. 194.

so. *Manufacturer of bricks For owner of brickyard.*]—ROBERTS *v.* BANK OF TORONTO (1894), 25 O. R. 191; 21 A. R. 629.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 4.

sp. *Wharfinger.*]—It is not necessary that the proprietor of a wharf or quay upon navigable waters, used for the loading & unloading of vessels, should have a warehouse or shed or other convenience for the storage of goods & protection thereof from the weather; & as such wharfinger he is entitled to a lien on goods unloaded at his wharf, for money due to him for wharfage.—SILLS *v.* BICKFORD (1879), 26 Gr. 512.—**CAN.**

PART IV. SECT. 3.

t i. —— *Excessive seizure.*]—A thresher cannot, under Threshers' Lien Act, 57 Vict. c. 36, maintain a lien on grain for the threshing of which he has been paid, to recover the price of a subsequent unpaid threshing.—SIMPSON *v.* OAKES (1902), 14 Man. L. R. 262; 23 C. L. T. 54.—**CAN.**

t ii. —— —— *By assignee of lien.*]—Pltf.'s grain on his farm was seized by defts., purporting to be assignees of C., who had threshed the grain for pltf. & who was, as defts. alleged, entitled to a lien on the grain under Threshers' Lien Ordinance. At the time of the seizure only $38.89 was owing by pltf. to C., & that sum was, by agreement between pltf. & C., not then payable. The alleged assignment to defts. was after this agreement. It was a general assignment of all earnings of a threshing machine used by C. in threshing pltf.'s grain:—*Held:* defts. had no legal right to make the entry & seizure; &, defts.' seizure being for $160, it was, at all events, for an excessive amount, & illegal.—SEMPLE *v.* SAWYER-MASSEY CO. (1910), 13 W. L. R. 428.—**CAN.**

t iii. —— *Damages claimed from thresher for delay.*]—Deft. on Sept. 9 agreed to thresh pltf.'s crop as soon as he finished other threshing. He finished the other threshing in Oct., but, except for a few hours on Dec. 21, he failed to thresh for pltfs. until May. Damages were held recoverable by pltfs., as being fairly supposed to have been in contemplation of the parties, on several heads. When deft. finished threshing in May he seized under the Threshing Lien Act:—*Held:* as pltfs.' existing claims, being for damages as above & a claim for teams supplied which should have been supplied by deft., were not in the nature of payment made on account of threshing, but in the nature of counterclaim, the seizure was lawful & pltfs. could not claim damages for conversion.—FINLAYSON *v.* SILZER, [1921] 1 W. W. R. 882; 14 Sask. L. R. 169.—**CAN.**

t iv. ——.] POOL ELEVATORS, LTD. *v.* MCPHERSON, [1930] 1 D. L. R. 271.—**CAN.**

t v. —— *Notice of claim—Time for*

Part V.—Equitable Lien.

437. *Add. Annotations :*—**Refd.** Ariff *v.* Rai Jadunath Majumdar Bahadur (1931), 47 T. L. R. 238 ; Canadian Pacific Ry. Co. *v.* R., [1931] A. C. 414.

454. *Add. Annotations :*—**Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179 ; Smith *v.* Wood (1928), 139 L. T. 250.

giving.]—While Threshers' Lien Act, R.S.M., 1913, notice of the retention of grain under a claim of lien need not be given forthwith after completion of the threshing, it must be given within thirty days thereof.—UNRAU *v.* MARTENS, [1931] 3 W. W. R. 502 ; [1932] 1 D. L. R. 145.—**CAN.**

f vi. —— *What amounts to.*]—So long as a document establishes, even though it be a mere acknowledgment, that the owner of grain had notice within the prescribed time of a thresherman's intention to exercise the power given him by sect. 3 of Threshers' Lien Act, R.S.S., 1930, it is a sufficient notice with said section.—ADVANCE-RUMELY THRESHER CO. *v.* BRAUNSTEIN, [1932] 1 W. W. R. 321.—**CAN.**

f vii. — "*Straight combining.*"]—Threshers' Lien Act, R.S.S., 1930, is remedial & should be given a liberal interpretation. "Straight combining" will give a lien under said Act.—OSTAVIK *v.* PIONEER GRAIN CO., LTD., *Re* NICCUM *v.* OSTAVIK, [1932] 3 W. W. R. 148.—**CAN.**

f viii. *Thresher employee's lien—On earnings of employer—Nature & extent of.*] The "claim" which Thresher Employees Act, R. S. S. 1920, c. 209, s. 3, gives to a person employed on or about a threshing machine is not a mere right to make a demand but an actual charge on the earnings of the machine, which takes effect as soon as the wages are earned. The claim is restricted, however, to the amount of wages earned with respect to threshing done for the particular person in whose hands are the earnings against which the claim is asserted.—STEEDSMAN *v.* CHRUNIK, [1928] 2 W. W. R. 281.—**CAN.**

f ix. —— *Exemption — Meaning of "earnings."*] WACHNOW *v.* MYERS (No. 2), [1931] 3 W. W. R. 289.—**CAN.**

k i. — *Under Business Profits War Tax Act*, 1916 (*c.* 11), *s.* 24—*Necessity for registration.*]—CANADIAN PEERLESS JEWELRY CO. & ROYAL TRUST CO. *v.* R. (1926), Q. R. 64 S. C. 574.—**CAN.**

k ii. —— *Priority over subsequent mortgage.*]—*Re* ANDREW MOTHERWELL OF CANADA, LTD. (Ont.), [1927] 1 D. L. 80 ; 8 C. B. R. 58.—**CAN.**

k iii. ——.]—*Re* MCKENZIE CO., [1928] 1 D. L. R. 336.—**CAN.**

k iv. *For sale tax—Special War Revenue Act*, 1922—*Effect of.*]—R. *v.* JACK PINE LUMBER CO., LTD. & CANADIAN BANK OF COMMERCE, [1928] 4 D. L. R. 976 ; [1928] 3 W. W. R. 419.—**CAN.**

k v. —— —— *Effect of repeal of.*] —*Re* WILNER, [1928] 2 D. L. R. 396.—**CAN.**

m i. —— —— *Enforcement—By sale—Requisites of valid sale.*]—GILLIS *v.* SOUNDING CREEK, [1927] 2 D. L. R. 136 ; [1927] 1 W. W. R. 481 ; 22 Alta. L. R. 546.—**CAN.**

sa. *For rate s.*]—BURCHELL *v.* SYDNEY CORPN., [1927] 1 D. L. R. 486 ; 59 N. S. R. 94.—**CAN.**

sb. *Under Rural Credits Act, C. A.*, 1924 (*c.* 173).]—A rural credit society's statutory lien under the above Act binds growing crops & crops to be grown, & takes priority over an execution which did not come into the sheriff's hands until after the making of the loan by the society.—LOBB *v.* ROCKWOOD RURAL CREDITS SOCIETY, [1926] 2 D. L. R. 819 ; [1926] 2 W. W. R. 1 ; 35 Man. L. R. 499.—**CAN.**

PART V. SECT. 3, SUB-SECT. 8.—A.

d i. —— —— ——.]—FLETCHER *v.* CLAGGETT, [1927] 3 D. L. R. 751 ; [1927] 2 W. W. R. 362 ; 21 Sask. L. R. 682.—**CAN.**

d ii. —— —— ——.] AUMANN *v.* MCKENZIE, [1928] 3 W. W. R. 235.—**CAN.**

d iii. —— —— ——.] MATEYCHUK *v.* KUCHERNOWSKI, [1930] 1 D. L. R. 367.—**CAN.**

PART V. SECT. 3, SUB-SECT. 8.—C. (a).

438 iii. ——.]—FREEBURG *v.* FARMERS' EXCHANGE BANKERS, [1922] 1 W. W. R. 845 ; 63 D. L. R. 112 ; 15 Sask. L. R. 318.—**CAN.**

PART V. SECT. 3, SUB-SECT. 18. B. (b).

523 i. *Default of purchaser.*]—A purchaser paying earnest money & then refusing to complete the purchase does not obtain a charge on the property for the earnest money.—ADARI SANYASI *v.* NOOKALAMMA (1930), I. L. R. 54 Mad. 708.—**IND.**

PART V. SECT. 3, SUB-SECT. 20.

l (p. 273) **i.** —— *Person hiring out team for logging operations—Driven by employee of contractor.*]—MULLER *v.* SHIBLEY (1908), 8 W. L. R. 42 ; 13 B. C. R. 343.—**CAN.**

l (p. 273) **ii.** —— *Person working with his own team.*]—Pltf. who had hauled poles with his own team under an agreement for payment at so much per lineal foot, & who did all the work himself except for some gratuitous help given him by his young son, held to have been, not a bare contractor, but a wage-earner entitled to a lien under the Woodmen's Lien for Wages Act, R. S. B. C. 1924, *c.* 276.—SCHMIDT *v.* STUCKEY & PEARSE, [1928] 2 D. L. R. 928 ; [1928] 1 W. W. R. 913.—**CAN.**

l (p. 273) **iii.** —— *Person hauling timber to place of shipment.*]—AIKENS *v.* O'BRIEN, [1928] 2 D. L. R. 731.—**CAN.**

o (p. 273) **i.** ——.]—HENDSBEE *v.* SONORA TIMBER CO., LTD., [1928] 1 D. L. R. 642 ; 59 N. S. R. 457.—**CAN.**

p (p. 273) **i.** ——.]—BAXTER *v.* KENNEDY (1900), 35 N. B. R. 179.—**CAN.**

t (p. 273) **i.** —— "*Gippo contractor.*"] —BOYD & ANDERSON *v.* SUPERIOR SPRUCE MILLS, LTD. (B. C.), [1927] 2 W. W. R. 51.—**CAN.**

b (p. 273) **i.** ——.]—SHEEPWASH *v.* DEER MOUNTAIN LUMBER CO. (1925), 37 B. C. R. 418.—**CAN.**

b (p. 273) **ii.** —— *Married woman—Engaged by husband to cook for crew of men engaged to get lumber.*]—PATTERSON *v.* BOWMASTER (1904), 37 N. B. R. 4.—**CAN.**

b (p. 273) **iii.** —— *Not volunteer or trespasser.*]—RODDICK *v.* GRAHAM, [1929] 1 D. L. R. 535 ; 60 N. S. R. 257.—**CAN.**

d (p. 273) **i.** —— *Person receiving logs.*]—VAN KOUGHNET *v.* QUAIFE & ROGERS [1930] 1 W. W. R. 214.—**CAN.**

d (p. 273) **ii.** *Work for which woodman's lien attaches.*]—HAGLUND *v.* DERR (1927), 38 B. C. R. 435.—**CAN.**

e (p. 273) **i.** —— *Deals & manufactured lumber.*]—BAXTER *v.* KENNEDY (1900), 35 N. B. R. 179.—**CAN.**

aa (p. 273) **i.** *Filing woodman's lien—Affidavit — Sufficiency.*]—NELSON *v.* PERSON (B. C.), [1927] 3 W. W. R. 161.—**CAN.**

aa (p. 273) **ii.** —— *Time for — Within statutory period—When period begins.*]—HEANEY *v.* LOBLEY (1909), 11 W. L. R. 545.—**CAN.**

aa (p. 273) **iii.** *Statement of claim for woodman's lien—Power of court to amend—As to location of logs.*]—MONTREAL TRUST CO. *v.* CAN. LUMBER YARDS, LTD., [1928] 2 D. L. R. 37 ; [1928] 1 W. W. R. 509 ; 39 B. C. R. 325.—**CAN.**

cc (p. 273) **i.** ——.]—ARNOLD *v.* GOLDEN (1875), 22 Gr. 314.—**CAN.**

ee (p. 273) **i.** *done for purchaser under executory agreement for sale of mine.*]—ROSENHISER & TYPERT *v.* NOVA MAC MINES & POWER CORPN., [1932] 1 D. L. R. 518 ; 1 M. P. R. 168.—**CAN.**

n (p. 274) **i.** —— *Employed at rate per hour.*]—DUNN *v.* SEDZIAK (1908), 17 Man. L. R. 484 ; 7 W. L. R. 563.—**CAN.**

b (p. 274) **i.** —— *Workman for materialman.*]—ALLEN *v.* HARRISON (1908), 9 W. L. R. 198.—**CAN.**

d (p. 274) **i.** —— *Sub-contractor supplying material.*]—MONTJOY *v.* HEWARD SCHOOL DISTRICT CORPN. (1908), 10 W. L. R. 282.—**CAN.**

d (p. 274) **ii.** —— *Sub-contractor.*]—KEENAN BROS., LTD. *v.* LANGDON, [1928] 2 D. L. R. 849 ; [1928] S. C. R. 203 ; *revsg. sub nom.* LANGDON *v.* KING, 32 O. W. N. 407.—**CAN.**

bb (p. 274) **i.** ——.]—ROSS *v.* GORMAN (1908), 1 Alta. L. R. 516 ; 9 W. L. R. 319.—**CAN.**

bb (p. 274) **ii.** —— *Installation of furnace.*]—MALLETT *v.* KOVAR (1910), 11 W. L. R. 327.—**CAN.**

bb (p. 274) **iii.** —— *Dewatering mine in consideration of grant of option to purchase.*]—KOSOBUSKI *v.* EXTENSION MIN. CO., [1929] 3 D. L. R. 379 ; 64 O. L. R. 8.—**CAN.**

bb (p. 274) **iv.** —— *Plumbing work—Later "trifling work"—Indivisible contract.*]—CARR *v.* DEMPSEY, [1931] 1 D. L. R. 984 ; 43 B. C. R. 305.—**CAN.**

bb (p. 274) **v.** —— *Contract incomplete owing to owner's default.*]—Pltf. partially completed a plumbing contract in deft.'s house while it was under construction, when deft. stopped work & was unable to complete the house. Pltf. was unable to continue his plumbing until construction work was resumed on the house & after one year he filed a lien for the balance due on the plumbing work already done :—*Held :* as long as the contract remained incomplete owing to the owners default, pltf. was entitled to file a lien & he was entitled to judgment for the balance due & to a lien on the property charged.—TAYLOR *v.* FORAN, [1931] 44 B. C. R. 529.—**CAN.**

bb (p. 274) **vi.** —— *Alterations.*]—Under Mechanics' Lien Act, R.S.B.C., 1924, temporary alterations & changes in, or additions to, a building which are essential to the use & purpose for which it was designed are a proper foundation for a lien for the work done & materials furnished thereupon ; & this is particularly so with respect to property used in the production of shows &

457. *Add. Annotation :*—**Refd.** *Re* Provost, Lloyds Bank, Ltd. *v.* Barclays Bank, Ltd., [1930] 2 Ch. 383.

entertainments where the alterations & additions to the buildings & land would necessarily be, in, *e.g.*, the case of a general amusement or exhibition park, continuous & relatively frequent. Pltfs. claimed liens against deft., the owner of the building, for work or service & for material used in erecting a track for a six-day bicycle race in a building used as a skating & hockey rink & sports arena. The track was built for the purposes of holding said race under a six-day lease of the building entered into between deft. & a cycle-race assocn. co. whereunder the co. was allowed two days before the race & two days thereafter for erecting & removing the track. The track was, after some delay, removed after the race :— *Held :* the liens were enforceable against deft.—STIRN *v.* VANCOUVER ARENA CO., LTD., [1932] 2 W. W. R. 651 ; 4 D. L. R. 361.—**CAN.**

qq (p. 274) **i.** ——— ——— ———.]—BEAVER LUMBER CO., LTD. *v.* KOROTKY (Sask.), [1927] 1 W. W. R. 945.—**CAN.**

qq (p. 274) **ii.** ——— ——— ———.]—HOFFSTROM *v.* STANLEY (1902), 14 Man. L. R. 227 ; 22 C. L. T. 337.—**CAN.**

qq (p. 274) **iii.** ——— ——— ———.]—CUNNINGHAM *v.* SIGFUSSON, [1928] 1 D. L. R. 726 ; [1928] 1 W. W. R. 16 ; 22 Sask. L. R. 310.—**CAN.**

qq (p. 274) **iv.** ——— ——— ———.]—FREEDMAN *v.* GUARANTY TRUST CO., [1929] 4 D. L. R. 32 ; 64 O. L. R. 200.—**CAN.**

qq (p. 274) **v.** ——— ——— ———.]—Deft. co., owner of land, leased a portion of it to a club. It was a term of the lease that the club should erect a club-house & the club entered into a contract with pltf. co. to erect the building. On a claim of lien against lessor by pltf. co. :—*Held :* there must be something in the nature of direct dealing between contractor & person whose interest is sought to be charged : mere knowledge of, or consent to, the work being done, is not sufficient.—STUART & SINCLAIR, LTD. *v.* BILTMORE PARK ESTATES (1931), 3 D. L. R. 345 ; O. R. 315.—**CAN.**

qq (p. 274) **vi.** ——— ——— ———.]—Where work has been done or materials furnished on premises at the immediate instance of the tenant, & it is sought to enforce a mechanics' lien therefor against the interest of the owner of the fee by virtue of his alleged "privity or consent," within the definition of "owner" in sect. 2 (c) of Mechanics' Lien Act, R.S.M., 1913, it is necessary to show that there was some direct dealing between him & the contractor ; proof of his mere knowledge & assent is not enough.—PARTRIDGE *v.* DUNHAM, [1932] 1 W. W. R. 99 ; 1 D. L. R. 600 ; 40 Man. L. R. 165.—**CAN.**

tt (p. 274) **i.** ——— ——— *Work done with "privity or consent."*]—MICHAELIS *v.* RYAN MOTORS, [1923] 1 D. L. R. 1186 ; 16 Sask. L. R. 352 ; [1923] 1 W. W. R. 401.—**CAN.**

aaa (p. 274) **i.** ——— ———.]—In order that an agent may bind an owner under Mechanics' Lien Act, R.S.O., 1927, the building must have been erected & the materials furnished with the owner's privity & consent, & there must have been a request by the owner. Such a request may be implied if circumstances warrant it.—NATTOLIN *v.* SKENE, [1932] 1 D. L. R. 412 ; O. R. 97.—**CAN.**

bbb (p. 274) **i.** ——— ——— *Sale of property before lien filed—Draft drawn on vendors for part of lien.*]—MAKINS *v.* ROBINSON (1884), 6 O. R. 1.—**CAN.**

eee (p. 274) **i.** ——— ——— *Sub-contractors claiming for work or material—Contractor fully paid though unable to complete.*] GODDARD *v.* COULSON (1884), 10 A. R. 1.—**CAN.**

eee (p. 274) **ii.** ———.]—TRAVIS *v.* BRECKENRIDGE-LUND LUMBER & COAL CO. (1910), 43 S. C. R. 59.—**CAN.**

eee (p. 274) **iii.** ———.]—CANADIAN EQUIPMENT & SUPPLY CO. *v.* BELL & SCHIESEL (1913), 24 W. L. R. 415 ; 11 D. L. R. 820.—**CAN.**

eee (p. 274) **iv.** ——— ——— *School board.*]—MALLETT *v.* KOVAR (1910), 14 W. L. R. 327.—**CAN.**

eee (p. 274) **v.** ——— ——— *Person entitled under agreement to purchase.*]—MONTJOY *v.* HEWARD SCHOOL DISTRICT CORPN. (1908), 10 W. L. R. 282.—**CAN.**

eee (p. 274) **vi.** ——— ——— *Church erected for unincorporated congregation.*]—ROHL *v.* PFAFFENROTH (1915), 31 W. L. R. 197.—**CAN.**

eee (p. 274) **vii.** ——— ——— *Agreement made with husband of owner.*]—BOGACH *v.* HUHN (Man.), [1929] 4 D. L. R. 1061 ; 2 W. W. R. 249.—**CAN.**

ooo (p. 274) **i.** ———.]—SECURITY LUMBER CO. *v.* ANAKA, [1927] 2 D. L. R. 987 ; [1927] 1 W. W. R. 975 ; 21 Sask. L. R. 459.—**CAN.**

ooo (p. 274) **ii.** ———.]—JACKSON WATER SUPPLY CO. *v.* BARDECK (1915), 31 W. L. R. 151 ; 8 W. W. R. 468.—**CAN.**

ooo (p. 274) **iii.** ——— ——— *Right to abandon lien on part.*]—SPARKS & MCKAY *v.* LORD, DOMINION & COAL CO. *v.* LORD, [1929] 2 D. L. R. 32 ; 63 O. L. R. 393.—**CAN.**

ooo (p. 274) **iv.** ——— ———.]—Mechanics' Lien Act, R. S. O., 1927, s. 5, gives to one who erects a building a lien on the owner's estate or interest in the "building & appurtenances & the land occupied thereby or enjoyed therewith." It is a question of fact in each case what land this includes, to be determined from all the circumstances. The fact that an owner has acquired land in one connected parcel by a single conveyance & has included it all in one or more mtges. does not necessarily imply that those entitled to liens in connection with a building erected on a part of it are entitled to place their liens on the whole parcel. In the case in question it was held that the land to be enjoyed with the building erected for the owner had been severed from the rest of the property by the owner & leased, to be occupied & enjoyed by the lessee, separate from the rest of the owner's property, & this leased land, & including, with regard to the lien, one-half of the wall of an adjoining building, which wall was used as a wall of the new building, was the only land upon which the lien was acquired, & therefore the claim of lien, which was filed against it only, was properly so confined, the contention of applt., second mtgee. of all the land & purchaser thereof at a sale made under power of sale in the first mtge., that the lien should have been filed against all the land, being rejected.—STEEDMAN *v.* SPARKS & MCKAY & LORD, STEEDMAN *v.* DOMINION LUMBER & COAL CO., LTD. & LORD, [1930] S. C. R. 351 ; 3 D. L. R. 185 ; *varg.*, [1929] 2 D. L. R. 32 ; 63 O. L. R. 393.—**CAN.**

mmmm i. ——— ——— *Single contract—Single lien may be filed.*]—COUTU *v.* JAMES (B.C.), [1926] 2 W. W. R. 87.—**CAN.**

mmmm ii. ——— ——— *Whether lien claim divisible.*]—BARR & ANDERSON *v.* PERCY & CO. (1912), 21 W. L. R. 236.—**CAN.**

mmmm iii. ——— ——— ———.]—LEE *v.* HILL (1909), 11 W. L. R. 611.—**CAN.**

mmmm iv. ——— *Lien for entire*

nnnn i. ——— *Homestead.*]—RICHERT CO. *v.* LARKIN, [1928] 4 D. L. R. 861 ; [1928] 3 W. W. R. 305.—**CAN.**

nnnn ii. ——— *Mining property—Materials ancillary to mining operations.*]—TAYLOR HARDWARE, LTD. *v.* CANADIAN ASSOCIATED GOLD FIELDS, LTD., [1929] 3 D. L. R. 709 ; 64 O. L. R. 94.—**CAN.**

nnnn iii. ——— *Municipal hospital.*]—A mechanics' lien can attach to a municipal hospital.—ALBERTA LUMBER CO. *v.* HINES, [1931] 2 W. W. R. 558 ; [1931] 3 D. L. R. 315.—**CAN.**

nnnn iv. ——— *Unpatented lands.*]—Under Mechanics' Lien Act, 1930, there may be a valid lien against an interest in unpatented lands, although, since in such a case there is no certificate of title a "registration" of the lien within the strict meaning of that term in Land Titles Act is impossible.—UNION DRILLING & DEVELOPMENT CO., LTD. *v.* CAPITAL OIL & NATURAL GAS CO., LTD., [1931] 3 D. L. R. 656 ; *affg.*, [1931] 2 D. L. R. 851 ; 2 W. W. R. 508 ; *affg.*, [1931] 1 W. W. R. 786.—**CAN.**

h (p. 275) **i.** ———.]—FITZGERALD *v.* APPERLEY (Sask.), [1926] 3 D. L. R. 734 ; [1926] 2 W. W. R. 689.—**CAN.**

h (p. 275) **ii.** ———.]—BEAVER LUMBER CO., LTD. *v.* CURRY (Sask.), [1926] 4 D. L. R. 619 ; [1926] 3 W. W. R. 404.—**CAN.**

h (p. 275) **iii.** ——— ——— *Whether lien defeated by sale—To purchaser without notice.*]—WANTY *v.* ROBINS (1888), 15 O. R. 474.—**CAN.**

h (p. 275) **iv.** ——— ——— *Although contract payable by future instalments.*]—BEATON *v.* NEDRUVAN, [1930] 1 D. L. R. 826 ; 1 M. P. R. 65.—**CAN.**

q (p. 275) **i.** ———.]—MAGURN *v.* MAGURN (1883), 10 P. R. 570.—**CAN.**

c (p. 275) **i.** ———.]—RUSSELL *v.* ONTARIO FOUNDATION & ENGINEERING CO., [1926] 1 D. L. R. 760 ; 58 O. L. R. 260.—**CAN.**

aa (p. 275) **i.** ——— ———.]—IRWIN *v.* BEYNON (1887), 4 Man. L. R. 10.—**CAN.**

aa (p. 275) **ii.** ——— ———.]—HALL *v.* HOGG (1890), 20 O. R. 13.—**CAN.**

aa (p. 275) **iii.** ——— ———.]—VOKES HARDWARE CO. *v.* GRAND TRUNK RY. CO. (1906), 12 O. L. R. 344 ; 7 O. W. R. 537 ; 8 O. W. R. 24.—**CAN.**

aa (p. 275) **iv.** ——— ———.]—CLARKE *v.* MOORE & SIMPSON (1908), 8 W. L. R. 405, 411 ; 1 Alta. L. R. 49.—**CAN.**

aa (p. 275) **v.** ——— ———.]—SMITH *v.* BERNHART (1909), 11 W. L. R. 623.—**CAN.**

dd (p. 275) **i.** ———.]—T. MCAVITY & SONS, LTD. *v.* WALSH (B. C.), [1927] 1 W. W. R. 242.—**CAN.**

dd (p. 275) **ii.** ———.]—BRIGGS *v.* LEE (1880), 27 Gr. 464.—**CAN.**

dd (p. 275) **iii.** ——— ——— *Fraction of day.*]—CLARKE *v.* MOORE & SIMPSON (1908), 8 W. L. R. 405, 411 ; 1 Alta. L. R. 49.—**CAN.**

dd (p. 275) **iv.** ——— ——— *Work done after period expired—For purpose of preserving lien.*]—SHERRITT *v.* MCCALLUM (1910), 12 W. L. R. 637.—**CAN.**

dd (p. 275) **v.** ——— ——— ——— *For purpose of making plant efficient.*]—WHIMSTER *v.* CROW'S NEST PASS COAL CO. (1910), 13 W. L. R. 621.—**CAN.**

dd (p. 275) **vi.** ——— ——— *Sub-contractor's lien.*]—In a mechanics' lien action brought by a sub-contractor to enforce a lien for what were called "extras" it was contended that the lien had not been registered in time &

560. *Add. Annotation:*—**Refd.** Lowther *v.* Harris, [1927] 1 K. B. 393.

564. *Add. Annotation:*—**Refd.** Halifax Building Society *v.* Keighley, [1931] 2 K. B. 248.

that pltf. was trying to support it by later work which he had done under his original contract. The amount which it was originally agreed pltf. should receive had been already paid him.—EDWARDS *v.* YOUNG WOMEN'S CHRISTIAN ASSOCN. & TREMBLAY, [1932] 1 W. W. R. 1; 1 D. L. R. 755; 40 Man. L. R. 87.—**CAN.**

dd (p. 275) **vii.** —— *Completion of contract—What is.*]—DAY *v.* CROWN GRAIN CO. (1907), 39 S. C. R. 258.—**CAN.**

ff (p. 275) **i.** ——.]—LARSEN *v.* NELSON & FORT SHEPPARD RY. CO. (1895), 4 B. C. R. 151.—**CAN.**

ff (p. 275) **ii.** ——.]—KNOTT *v.* CLINE & BECKWITH (1896), 5 B. C. R. 120.—**CAN.**

ff (p. 275) **iii.** —— *Inclusion of claim for materials.*]—WELLER *v.* SHUPE (1897), 6 B. C. R. 58.—**CAN.**

ff (p. 275) **iv.** —— *Misdescription of land—Application to amend made ex parte after time for filing claim expired.*]—MCDONALD *v.* MCKENZIE (1914), 29 W. L. R. 890; 7 W. W. R. 604; 19 D. L. R. 418; 7 Alta. 435.—**CAN.**

ff (p. 275) **v.** —— *Made by agent.*]—MCARTHUR & CO. *v.* FAGAN, [1928] 2 D. L. R. 875; [1928] 2 W. W. R. 6; 39 B. C. R. 554.—**CAN.**

rr (p. 275) **i.** ——.]—MONARCH LUMBER CO. *v.* GARRISON (1911), 18 W. L. R. 686.—**CAN.**

aaa (p. 275) **i.** —— *Effect of—Materialman—What payments subsequently made by owner valid.*]—MCBEAN *v.* KINNEAR (1892), 23 O. R. 313.—**CAN.**

aaa (p. 275) **ii.** —— *In respect of more goods than delivered—How far valid.*]—RAT PORTAGE LUMBER CO., LTD. *v.* WATSON & ROGERS (1912), 17 B. C. R. 489.—**CAN.**

fff (p. 275) **i.** ——.]—RAINES *v.* HARMAN, [1927] 2 D. L. R. 713; 60 O. L. R. 223.—**CAN.**

dddd (p. 275) **i.** —— *Not limited to price of materials supplied within six years of beginning of action.*]—FITZGERALD *v.* APPERLEY (Sask.), [1926] 3 D. L. R. 734; [1926] 2 W. W. R. 689.—**CAN.**

dddd (p. 275) **ii.** —— *Amount payable by owner to contractor—Right of owner to deduct damages for delay & amount to satisfy wages lien.*]—MCBEAN *v.* KINNEAR (1892), 23 O. R. 313.—**CAN.**

dddd (p. 275) **iii.** ——.]—LUNDY *v.* HENDERSON W. L. R. 327.—**CAN.**

dddd (p. 275) **iv.** —— *On property against which lien enforced.*]—A declaration of a mechanics' lien against a certain property must be limited to the amount remaining unpaid, the costs of the lien, on the contract with respect to that property; it is improper to include therein an amount due for work done on another piece of property, even though it is owned by the same deft.—MACDONALD & YOUNG *v.* HUGGETT & HUGGETT, [1931] 1 D. L. R. 1011; [1930] 3 W. W. R. 545.—**CAN.**

dddd (p. 275) **v.** —— *Contractor to receive half amount to be borrowed—Failure of owner to borrow on mortgage or to pay—Right of contractor to interest.*]—HURST *v.* DOWNARD (1921), 64 D. L. R. 279; 50 O. L. R. 35.—**CAN.**

sa. *Amount due from owner to contractor paid into court—Claims of lienholder against contractor exceeding that sum—Owner granted costs against contractor—Right of owner to payment out of fund in court.*]—PATTEN *v.* LAIDLAW (1895), 26 O. R. 189.—**CAN.**

sb. *Right of lien-holder—To pay off unpaid purchase-money on land affected by lien—& to add amount to lien.*]—RICHERT CO. *v.* LARKIN, [1928] 4 D. L. R. 861; [1928] 3 W. W. R. 305.—**CAN.**

sc. *Sale under Farm Implement Act—Statutory provisions not complied with—New lien note given marked "renewal"—Whether Act still applicable.*]—PLOWMAN TRACTOR CO. *v.* ANDREWS, [1928] 1 D. L. R. 544; [1928] 1 W. W. R. 329.—**CAN.**

sd. *Mechanics' Lien Act, B. C.* 1893, *c.* 23—*Whether applicable to Dominion railways.*]—LARSON *v.* NELSON & FORT SHEPPARD RY. CO. (1895), 4 B. C. R. 151.—**CAN.**

se. *Workmen's Liens Acts,* 1893 & 1896—*Construction & application of.*]—PITT, LTD. *v.* GLENELG TOWN CORPN., [1927] S. A. S. R. 501.—**AUS.**

sg. *Wages Protection & Contractors' Lien Acts—Who is a worker.*]—The definition of "worker" in Wages Protection & Contractors' Liens Act, 1908, is not confined to persons engaged in manual labour.—LEYLAND MOTORS, LTD. *v.* NAPIER HARBOUR BOARD, [1930] N. Z. L. R. 113.—**N.Z.**

sh. —— *Who is a contractor—Architect.*]—An architect who prepares the plans & specifications for, & supervises the construction of, a building for an employer, performs "work" as a "contractor" within Wages Protection & Contractors' Lien Acts, 1908 & 1914.—BROWN *v.* E. G. LAURIE, LTD., [1930] N. Z. L. R. 23.—**N.Z.**

sj. —— *Effect of employer's bankruptcy.*]—Rights of workers under Wages Protection & Contractors' Liens Act, 1908, are not lost by the employer's bkpcy.—LEYLAND MOTORS, LTD. *v.* NAPIER HARBOUR BOARD, [1930] N. Z. L. R. 113.—**N.Z.**

PART V. SECT. 3, SUB-SECT. 21.—A.

e. *Revsd.,* [1919] 3 W. W. R. 366.

572 i. —— *Right in equity.*]—BAKER *v.* DEWEY (1869), 15 Gr. 668.—**CAN.**

sk. *Necessity for interest in land.*]—A vendor's lien cannot arise in favour of a vendor who has no interest at all, legal or equitable, in the land sold. The alleged "squatters' right" relied on herein as the foundation of such a lien was held not to have given the "squatter" any interest in the land.—HORN *v.* SANFORD, [1929] 3 D. L. R. 13; 2 W. W. R. 33; 23 S. L. R. 509.—**CAN.**

PART V. SECT. 3, SUB-SECT. 21.—B. (a) i.

sl. *Land bought by several parties.*]—BOULTON *v.* GILLESPIE (1860), 8 Gr. 223.—**CAN.**

PART V. SECT. 3, SUB-SECT. 21.—B. (a) ii.

sm. *Payment of mortgage as part of purchase price.*]—HAMILTON PROVIDENT LOAN & INVESTMENT CO. *v.* SMITH (1888), 17 O. R. 1.—**CAN.**

PART V. SECT. 3, SUB-SECT. 21.—D.

622 i. *Assignees—Purchaser for value without notice—Covenantor under Land Titles Act.*]—A vendor's implied lien for unpaid purchase-money cannot persist as against a *bonâ fide* purchaser for value without notice. The liability assumed under the covenant implied by sect. 54 of the Land Titles Act on the part of the transferee of mortgaged land is sufficient to make the transferee a purchaser for value.—SAKALUK *v.* CORRY, [1930] 1 W. W. R. 424; 2 D. L. R. 239.—**CAN.**

PART V. SECT. 4.

t (p. 289) **i.** —— *As against mortgage.*]—THOMSON *v.* HARRISON, [1927] 3 D. L. R. 526; 60 O. L. R. 484.—**CAN.**

dd i. ——.]—ROGERS LUMBER YARDS LTD. *v.* JACOBS, [1924] 3 D. L. R. 814; [1924] 2 W. W. R. 1128; 21 Alta. L. R. 56.—**CAN.**

dd ii. ——.]—MANNERS *v.* CAIN, [1927] 3 D. L. R. 1054; 60 O. L. R. 644.—**CAN.**

ee i. ——.]—INDEPENDENT LUMBER CO. *v.* BOCZ (1911), 16 W. L. R. 316; 4 Sask. L. R. 103.—**CAN.**

ee ii. ——.]—RICHARDS *v.* CHAMBERLAIN (1878), 25 Gr. 402.—**CAN.**

ee iii. ——.]—REINHART *v.* SHUTT (1888), 15 O. R. 325.—**CAN.**

ee iv. ——.]—KENNEDY *v.* HADDOW (1890), 19 O. R. 240.—**CAN.**

ee v. ——.]—COOK *v.* BELSHAW (1893), 23 O. R. 545.—**CAN.**

ee vi. ——.]—MCDONALD *v.* CONSOLIDATED GOLD LAKE CO. (1902), 40 N. S. R. 363.—**CAN.**

ff i. —— *Value of property increased.*]—NATIONAL TRUST CO. *v.* BATTELL (1916), 33 W. L. R. 738; 9 W. W. R. 1265.—**CAN.**

d (p. 290) **i.** ——.]—TOLLEY *v.* GUERIN, [1926] 1 D. L. R. 625; [1926] S. C. R. 566.—**CAN.**

d (p. 290) **ii.** ——.]—STEVENSON *v.* GREEN, [1926] 2 D. L. R. 667; 58 O. L. R. 546.—**CAN.**

d (p. 290) **iii.** —— *Abandonment of priority—What amounts to.*]—BEAVER LUMBER CO., LTD. *v.* CURRY (Sask.), [1926] 4 D. L. R. 619; [1926] 3 W. W. R. 404.—**CAN.**

d (p. 290) **iv.** ——.]—GOODING *v.* CROCKER, [1927] 1 D. L. R. 1072; 60 O. L. R. 60.—**CAN.**

e (p. 290) **i.** —— *As against debenture holder.*]—Purchasers of debentures or bonds subsequent to & without notice of liens, either actual or by registration under a bond mtge., which is a prior mtge. within Mechanics' Lien Act, are not entitled to rank prior to the liens.—INGLIS *v.* QUEENS PARK PLAZA CO., [1932] 1 D. L. R. 235; O. R. 110.—**CAN.**

k (p. 290) **i.** —— *Priority of mortgagee to lienholder.*]—O'BRIEN *v.* MCCOIG, [1929] 1 D. L. R. 906; 63 O. L. R. 351.—**CAN.**

k (p. 290) **ii.** —— *Effect of fraud.*]—Although the priority which under sect. 13 (1) of Mechanics' Lien Act, R. S. S., 1920, a registered mtge. takes over a subsequently registered mechanics' lien may be attacked on the ground that the mtge. was registered in fraud of the lienholder:—*Held:* the evidence in the present case did not establish fraud on the part of the mtgee. The fact that the mtgee. on taking the mtge. knows that another person has a mechanics' lien which he is entitled to have registered under Mechanics' Lien Act does not constitute fraud.—SECURITY LUMBER CO., W. W. R. 663; 4 D. L. R. *q.v.* S. C. *sub nom.* SECURITY CO. *v.* LYONS, [1930] 3 D. L. R. 283; 1 W. W. R. 709.—**CAN.**

k (p. 290) **iii.** —— *Priority of lienholder to equitable mortgagee.*]—In an action to enforce mechanics' liens it was found that deft. S. was entitled to priority over the liens with respect to a claim put forward by him as equitable mtgee. of the lands against which the liens were registered:—*Held:* the transactions did not give S. priority; his right was at most an unregistered equitable right & it conferred upon him no greater right than if he had an unregistered legal mtge. & the liens, being registered, obtained priority.—PANNILL DOOR CO., LTD. *v.* STEPHENSON, [1931] 4 D. L. R. 456; O. R. 594.—**CAN.**

k (p. 290) **iv.** ——.]—Questions of priorities with respect to mechanics'

598. *Add. Annotation:—As to* (2) **Refd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

761. *Add. Annotation:*—**Refd.** Cohen *v.* Roche, [1927] 1 K. B. 169.

liens existing under Mechanics' Lien Act, R.S.A., 1922, are not affected by sect. 41 of Mechanics' Lien Act, 1930. Said sect. 41 deals with procedure only. —HAYWARD LUMBER CO., LTD. *v.* MCEACHERN, [1931] 3 W. W. R. 658.—**CAN.**

k (p. 290) **v.** —— *Priority of bondholders.*]—EASTERN TRUST CO. *v.* BOCHNERS, LTD., [1932] 3 D. L. R. 19.—**CAN.**

t (p. 290) **i.** —— *Over railway property.*]—By 54 Vict. c. 11, s. 15, the Crown was given a lien upon the rails, etc., of railways receiving financial aid from the Province, but such lien was only to take effect in case the railway should cease to operate. A railway ceased to operate & a manager was appointed by 4 Geo. 5, c. 57, s. 1. This sect. further provided that "any excess of operating expenses over earnings shall become & be a first lien or charge upon said railway & rolling stock of the co.:—*Held:* the lien created by the 1891 Act had not ceased to exist on the passing of the 1914 Act, but the lien created by the latter Act had priority.—A.-G. OF NEW BRUNSWICK *v.* COHEN (1929), 54 N. B. R. 356.—**CAN.**

sp. *As against purchaser in good faith for valuable consideration—Lien note unregistered.*]—WILLIE *v.* DELISLE (1915), 30 W. L. R. 918; 21 D. L. R. 407.—**CAN.**

sq. *Lien for wages—Under Builders' & Workmen's Act, 1902—As against creditors.*]—BRYSON *v.* ROSSER MUNICIPALITY (1909), 18 Man. L. R. 658.—**CAN.**

PART V. SECT. 5, SUB-SECT. 1.

g (p. 291) **i.** —— *Supreme Court.*]—MARTIN *v.* RUSSELL & JOBSON & THE BRITISH COLUMBIA PAPER MANUFACTURING CO., LTD. (1892), 2 B. C. R. 98.—**CAN.**

g (p. 291) **ii.** —— *County court—Claim for personal order to pay.*]—POST *v.* JONES (1892), 2 B. C. R. 250.—**CAN.**

g (p. 291) **iii.** ——.]—FREEZE *v.* CAREY, MCKAY *v.* CAREY (1907), 7 W. L. R. 287; 1 Alta. L. R. 81.—**CAN.**

g (p. 291) **iv.** —— *Master in chambers—Setting aside judgment of official referee—On failure of defendant to appear.*]—GUEST *v.* LINDEN (1912), 21 O. W. R. 303; 3 O. W. N. 750; 1 D. L. R. 908.—**CAN.**

bb (p. 291) **i.** ——.]—BANK OF MONTREAL *v.* HAFFNER (1884), 10 A. R. 592.—**CAN.**

d (p. 292) **i.** ——.]—HOWLETT & BELL *v.* DORAN & GALLANT (1913), 24 W. L. R. 401; 4 W. W. R. 674; 11 D. L. R. 372.—**CAN.**

d (p. 292) **ii.** ——.]—BUNTING *v.* BELL (1876), 23 Gr. 584.—**CAN.**

d (p. 292) **iii.** ——.]—BLACK *v.* WIEBE (1906), 4 W. L. R. 218.—**CAN.**

d (p. 292) **iv.** ——.]—MCIVER *v.* CROWN POINT MINING CO. (1900), 19 P. R. 335; 21 C. L. T. 127.—**CAN.**

d (p. 292) **v.** ——.]—BAGSHAW *v.* JOHNSTON (1901), 3 O. L. R. 58; 22 C. L. T. 33.—**CAN.**

d (p. 292) **vi.** ——.]—BRITISH COLUMBIA MILLS, TIMBER & TRADING CO. *v.* HORROBIN, HENSHAW & SENKLER (1907), 12 B. C. R. 426.—**CAN.**

d (p. 292) **vii.** —— *Summons insufficiently stamped.*]—JAMES HENDERSON & SONS *v.* RUSSELL HOUSE, LTD., & DARTT, [1931] 1 W. W. R. 342.—**CAN.**

e (p. 292) **i.** ——.]—TOWNSLEY *v.* BALDWIN (1889), 18 O. R. 403.—**CAN.**

e (p. 292) **ii.** ——.]—NELSON *v.* BREWSTER (1906), 7 Terr. L. R. 458; 3 W. L. R. 362.—**CAN.**

e (p. 292) **iii.** ——.]—IMPERIAL ELEVATOR CO. *v.* WELCH (1906), 4 W. L. R. 51; 16 Man. L. R. 136.—**CAN.**

e (p. 292) **iv.** ——.]—GIDNEY *v.* MORGAN (1910), 16 B. C. R. 18.—**CAN.**

e (p. 292) **v.** ——.]—WHITMAN *v.* HARVEY (1910), 13 W. L. R. 287.—**CAN.**

f (p. 292) **i.** —— *Affidavit.*]—Where an affidavit in support of a claim of a mechanics' lien is made by an agent of the claimant & the agent has no personal knowledge of the facts stated, the affidavit is fatally defective. The curative section does not afford relief in such a case. A bookkeeper whose only knowledge is the inferences drawn by him from the charge slips which he has entered in the claimant's books cannot be said to have the required "personal knowledge."—KYLE BROS. *v.* TAYLOR, BRITISH COLUMBIA PLUMBING SUPPLIES CO. *v.* TAYLOR, [1932] 3 W. W. R. 109.—**CAN.**

o (p. 292) **i.** ——.]—COOKE *v.* MOCROFT, [1926] 1 W. W. R. 827; 36 B. C. R. 393.—**CAN.**

o (p. 292) **ii.** ——.]—CHRISTY *v.* MCKAY (1905), 15 Man. L. R. 612; 2 W. L. R. 303.—**CAN.**

o (p. 292) **iii.** ——.]—HOVENDEN *v.* ELLISON (1877), 24 Gr. 448.—**CAN.**

o (p. 292) **iv.** ——.]—MCPHERSON *v.* GEDGE (1883), 4 O. R. 246.—**CAN.**

o (p. 292) **v.** ——.]—HALL *v.* HOGG (1890), 14 P. R. 45.—**CAN.**

o (p. 292) **vi.** ——.]—BICKERTON *v.* DAKIN (1891), 20 O. R. 192, 695.—**CAN.**

o (p. 292) **vii.** ——.]—GARDNER *v.* GORMAN, ROSS *v.* GORMAN (1908), 7 W. L. R. 630; 1 Alta. L. R. 106.—**CAN.**

o (p. 292) **viii.** ——.]—LEIBROCK *v.* ADAMS (1908), 17 Man. L. R. 575.—**CAN.**

o (p. 292) **ix.** ——.]—MCEWEN *v.* BOUCK, [1921] 3 W. W. R. 267.—**CAN.**

o (p. 292) **x.** ——.]—ROGERS LUMBER CO. *v.* GRAY & HOSMER (1913), 23 W. L. R. 920; 10 D. L. R. 698; 4 W. W. R. 294.—**CAN.**

o (p. 292) **xi.** ——.]—IMPERIAL LUMBER YARDS, LTD. *v.* [1928] 2 D. L. R. 150; 1 W. W. R. 409; 22 Sask. 278.—**CAN.**

r (p. 292) **i.** ——.]—HOWLETT & BELL *v.* DORAN & GALLANT (1913), 24 W. L. R. 401; 4 W. W. R. 674; 11 D. L. R. 372.—**CAN.**

r (p. 292) **ii.** ——.]—HALL *v.* PILZ (1886), 11 P. R. 449.—**CAN.**

r (p. 292) **iii.** ——.]—COBBAN MFG. CO. *v.* LAKE SIMCOE HOTEL CO. (1903), 23 C. L. T. 168; 5 O. L. R. 447; 2 O. W. R. 48, 310.—**CAN.**

a (p. 292) **i.** ——.]—WAGNER *v.* O'DONNELL (1891), 14 P. R. 254.—**CAN.**

a (p. 292) **ii.** ——.]—SHERLOCK *v.* POWELL (1899), 18 P. R. 312.—**CAN.**

a (p. 292) **iii.** ——.]—GILLIES SUPPLY CO. *v.* ALLAN (1910), 15 B. C. R. 375.—**CAN.**

cc (p. 292) **i.** —— *Interest.*]—FITZGERALD *v.* APPERLEY (Sask.), [1926] 3 D. L. R. 734; [1926] 2 W. W. R. 689.—**CAN.**

cc (p. 292) **ii.** ——.]—BEAVER LUMBER CO., LTD. *v.* CURRY (Sask.), [1926] 4 D. L. R. 619; [1926] 3 W. W. R. 404.—**CAN.**

cc (p. 292) **iii.** —— *Nature of action.*]—HUTSON *v.* VALLIERS (1892), 19 A. R. 154.—**CAN.**

cc (p. 292) **iv.** —— *Payment into court—Right of materialman to payment out.*]—BROOKFIELD BROS., LTD. *v.* SHOFER (N. S.), [1929] 4 D. L. R. 638; *revsd.*, [1930] 2 D. L. R. 137; 1 M. P. R. 186.—**CAN.**

ll (p. 292) **i.** —— *Exhaustion of lien remedies—Right to personal judgment.*]—A. W. CASSIDY & CO. *v.* HICKS (Sask.), [1929] 2 D. L. R. 353.—**CAN.**

PART V. SECT. 7, SUB-SECT. 1.—A. (b) i.

sw. *By claim for rescission.*]—*Re* MAINLAND PORTLAND CEMENT CO., [1927] 2 D. L. R. 742; 38 B. C. R. 417.—**CAN.**

PART V. SECT. 7, SUB-SECT. 1.—B. (b) i.

sx. *Waiver of mechanic's lien claim—Form of waiver signed by mistake.*]—PALFREY *v.* BROWN (1915), 31 W. L. R. 535.—**CAN.**

PART V. SECT. 7, SUB-SECT. 2.

r i. —— *Revival of lien.*]—EDMUND HIND LUMBER CO. *v.* AMALGAMATED BUILDING CO., [1932] 1 D. L. R. 795.—**CAN.**

LIMITATION OF ACTIONS.

Part I.—The Statutes of Limitation Generally.

8. *Add. Annotation :*—**Refd.** Harnett *v.* Fisher, [1927] A. C. 573.

15. *Add. Annotations :*—**Apprvd.** Ramdutt Ramkissendass *v.* Sassoon E. D. & Co. (1929), 98 L. J. P. C. 58. **Refd.** Board of Trade *v.* Cayzer, Irvine, [1927] A. C. 610; Lynn *v.* Bamber, [1930] 2 K. B. 72.

16. *Add. Citations :*—[1927] 1 K. B. 269; 136 L. T. 7, C. A.; *affd. sub nom.* BOARD OF TRADE *v.* CAYZER, IRVINE & CO., [1927] A. C. 610; 96 L. J. K. B. 872; 137 L. T. 419; 43 T. L. R. 625; 71 Sol. Jo. 560; 17 Asp. M. L. C. 281; 32 Com. Cas. 351, H. L.

Add. Annotation :—**Consd.** Ramdutt Ramkissendass *v.* Sassoon E. D. & Co. (1929), 98 L. J. P. C. 58.

28. *Add. Annotation :*—**Refd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

31. *Add. Annotation :*—**Refd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

36. *Add. Annotation :*—**Refd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

Part II.—Simple Contract Debts and Personal Actions.

56. *Add. Annotation :*—**Consd.** Aylott *v.* West Ham Corpn., [1927] 1 Ch. 30.

57. *In Annos.* for "20 J. P. 99" read "90 J. P. 99."

59. *Add. Annotations :*—**Distd.** Aylott *v.* West Ham Corpn., [1927] 1 Ch. 30. **Refd.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602; Royal Trust Co. *v.* A.-G. for Alberta (1929), 46 T. L. R. 25.

65. *Add. Citation :*—[1927] 1 Ch. 30.

Add. Annotations :—**Refd.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602; Stevens *v.* Hampstead Borough Council, [1929] 2 Ch. 239.

71. *Add. Annotation :*—**Consd.** Austrian Property Administrator *v.* Russian Bank for Foreign Trade (1931), 47 T. L. R. 550.

73. *Add. Annotations :*—**Folld.** Hungarian Property Administrator *v.* Finegold (1931), 100 L. J. K. B. 383. **Refd.** Mackenzie-Kennedy *v.* Air Council, [1927] 2 K. B. 517.

74. *Add. Annotation :*—**Consd.** Austrian Property Administrator *v.* Russian Bank for Foreign Trade (1931), 47 T. L. R. 550.

77. *Add. Annotation :*—**Refd.** *Re* Mason (1928), 97 L. J. Ch. 321.

78. *Add. Annotations :*—**Consd.** *Re* Mason (1928), 97 L. J. Ch. 321. **Apld.** Hungarian Property Administrator *v.* Finegold (1931), 100 L. J. K. B. 383. **Refd.** Wigg *v.* A.-G. of Irish Free State (1927), 96 L. J. P. C. 88.

79. *Add. Citations :*—[1927] 1 K. B. 269; 136 L. T. 7, C. A.; *affd. sub nom.* BOARD OF TRADE *v.* CAYZER, IRVINE & CO., [1927] A. C. 610; 96 L. J. K. B. 872; 137 L. T. 419; 43 T. L. R. 625; 71 Sol. Jo. 560; 17 Asp. M. L. C. 281; 32 Com. Cas. 351, H. L.

Add. Annotation :—**Refd.** Ramdutt Ramkissendass *v.* Sassoon (E. D.) & Co. (1929), 98 L. J. P. C. 58.

80. After this case add :—

—— **Action by administrator of enemy property.**]—*See* ALIENS, Nos. 215r, 215s, *ante.*

84. *Add. Annotation :*—**Consd.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

93. *Add. Annotation :*—**Refd.** Lowe *v.* Bentley (1928), 44 T. L. R. 388.

94. *Add. Annotation :*—**Consd.** Lowe *v.* Bentley (1928), 44 T. L. R. 388.

111a. Claim to interest on loan—Claim to principal barred.]—Pltfs., as the exors. of N. who died

PART I. SECT. 1.

2 i. *Nature—Rule of procedure.*]—It is a settled principle that there is no vested right in procedure. Statutes of Limitation cannot be considered as anything else than matters relating to procedure &, ordinarily, such statutes have their operation from the date fixed in the statute & govern all matters brought before the ct. after the commencement of the operation of the statute.—KHONDKAR MAHAMMAD SALEH *v.* CHANDRA KUMAR MUKHERJI (1929), I. L. R. 56 Calc. 1117.—**IND.**

PART I. SECT. 2, SUB-SECT. 1.

15 i. *Submission to arbitration—Whether defence of limitation excluded.*]—In a reference to arbn. it is an implied term of the contract that the arbitrators must decide the dispute according to the existing law of contract, & that every defence which would have been open in a ct. of law, including limitation, can be raised unless that defence has been excluded by agreement of the parties.—RAM DUTT RAMKISSENDASS *v.* SASSOON F. D. & CO. (1929), 56 L. R. Ind. App. 128.—**IND.**

PART II. SECT. 2, SUB-SECT. 1.

47 iv. —— ——.]—Pltf. sued to recover balance on account of advances made to deft. pursuant to a contract of hypothecation. The agreement provided that the advances should be repaid on demand, & also provided for repayment towards the advances by the sale proceeds of consignments of the goods hypothecated, & sent by deft. to pltf. in Calcutta for sale :—*Held :* the account was not a mutual open & current account, & Art. 59 of Limitation Act (IX. of 1908) applied.—TEA FINANCING SYNDICATE, LTD. *v.* CHANDRA KAMAL BEZBORUAH (1929), I. L. R. 56 Calc. 575.—**IND.**

PART II. SECT. 2, SUB-SECT. 5.—B.

b i. —— *Highway Traffic Act,* 1923 (*c.* 48), *ss.* 43a, 54—*Effect of.*]—CARLINO *v.* ZIMBLARTE, [1927] 2 D. L. R. 945; 60 O. L. R. 269.—**CAN.**

bx. *Damages for wrongful tax-sale.*]—*Held :* action on the case within Statute of Limitations.—KOWNATZKI *v.* BEAR LAKE MUNICIPAL DISTRICT, [1930] 3 W. W. R. 353; [1931] 1 D. L. R. 334; *revsd. on other grounds,* [1931] 1 W. W. R. 757; 2 D. L. R. 318; 25 Alta. L. R. 251.—**CAN.**

PART II. SECT. 2, SUB-SECT. 7.

8a. *Note given under Municipalities Seed Grain Act—Failure to observe conditions of Act.*]—CARMICHAEL RURAL MUNICIPALITY *v.* GILBERG, [1929] 1 D. L. R. 124; [1928] 3 W. W. R. 454.—**CAN.**

PART II. SECT. 2, SUB-SECT. 9.—A.

8b. *Claim for injurious affection—Within Statute of Limitations (Nova Scotia), s.* 2 (*d*).]—MILLER *v.* R., [1927] Exch. C. R. 52.—**CAN.**

in 1921, alleged that about Nov. 4, 1907, N. lent to deft. a sum of £1,500, the loan to bear interest at the rate of 5 per cent. *per annum*, & claimed in this action, the writ in which was issued on Nov. 1, 1928, payment of the loan with the interest thereon which accrued during the six years ending on Nov. 1, 1928. In spite of the fact that the recovery of the loan was barred by the Limitation Act, 1623, on June 30, 1926, that was to say, six years after June 30, 1920, the date when the last payment of interest was made, as pltfs. admitted at the trial, pltfs. nevertheless proceeded with their claim for payment of so much of the interest as accrued between Nov. 1, 1922, & June 30, 1926, the date at which the claim for the principal was barred, on the footing that at each half-year during that period a cause of action accrued in respect of each half-year's payment of interest:—*Held:* the principal sum having been barred by the statute, the interest so claimed was, as being only accessory to the principal, barred with it.—ELDER *v.* NORTHCOTT, [1930] 2 Ch. 422; 99 L. J. Ch. 548; 143 L. T. 614.

128. *Add. Annotation:*—**Refd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

131a. Assault.]—To an action of assault & battery a plea of no assault within six years, is bad; for Stat. Limitations limits it to four years, & the statute must be precisely, & not argumentatively pleaded.—BLACKMORE *v.* TIDDERLEY (1705), 2 Ld. Raym. 1099; 11 Mod. Rep. 38; 2 Salk. 423; 6 Mod. Rep. 240; 88 E. R. 869.

136. *Add. Annotations:*—**Apld.** Betts *v.* Metropolitan Police District Receiver (1932), 96 J. P. 327. **Distd.** Copper Export Assocn. Inc. *v.* Mersey Docks & Harbour Board (1932), 48 T. L. R. 542.

139a. —— Arbitration condition precedent.]—The Crown requisitioned appcts.' ship under a charterparty, which provided that any dispute under the charter should be referred to arbn. under Arbn. Act, 1889 (c. 49), & which concluded as follows: "& it is further mutually agreed that such arbn. shall be a condition precedent to the commencement of any action at law." In July, 1917, the ship was lost, but appcts. did not proceed to arbn. until Dec. 1923. The Crown contended that, as the arbn. was not commenced within six years of the loss, the claim was barred by Stat. Limitations, 1623 (c. 16):—*Held:* under the arbn. clause no cause of action arose until the award was made, & time did not run until the making of the award, & the claim was not barred.—BOARD OF TRADE *v.* CAYZER, IRVINE & Co., [1927] A. C. 610; 96 L. J. K. B. 872; 137 L. T. 419; 43 T. L. R. 625; 71 Sol. Jo. 560; 17 Asp. M. L. C. 281; 32 Com. Cas. 351, H. L.; *affg.* S. C. *sub nom.* CAYZER, IRVINE & Co. *v.* BOARD OF TRADE, [1927] 1 K. B. 269, C. A.

Annotation:—**Consd.** Ramdutt Ramkissendass *v.* Sassoon (E. D.) & Co. (1929), 98 L. J. P. C. 58.

143. *Add. Annotation:*—**Refd.** Lynn *v.* Bamber, [1930] 2 K. B. 72.

154a. Date of document—Bill treated as promissory note.]—On Mar. 23, 1920, the branch of British Trade Corpn., Ltd., at Batoum, drew a document in the following form: "At sight pay this sole exchange to the order of Mr. B. L. Mailoff the sum of one thousand pounds sterling value received which place to account No. 2." The document was signed "For British Trade Corpn." by the manager & account, & it was addressed at the foot "To the British Trade Corpn., 13 Austin Friars, London, E.C." By successive indorsements pltf. became the holder, & on Dec. 20, 1923, his agents presented the document at the London offices of the Corpn. Payment was refused, as it was required that the indorsements should have a banker's certification. On Nov. 23, 1926, a special resolution was passed for the voluntary winding up of the corpn. in connection with an amalgamation with the Anglo-Austrian Bank, Ltd. On Apr. 6, 1931, pltf. sought to prove in the winding up for £1,000 in respect of the document, but the liquidator rejected the proof on the ground that it was barred by the Statute of Limitations, as more than six years had elapsed since the date of the document before the winding-up resolution. The holder took out a summons claiming to have his proof admitted & he elected to treat the document as a promissory note:—*Held:* the document when treated as a promissory note did not need to be presented for payment in order to render the maker liable, because, in order that a place of payment should be specified "in the body" of the note within Bills of Exchange Act, 1882 (c. 61), s. 87 (1), it must be embodied in the actual terms of the contract for payment. Time therefore began to run under Stat. Limitations, as from date of the document, & it was barred before the date of winding-up resolution.—*Re* BRITISH TRADE CORPN., LTD., [1932] 2 Ch. 1; 101 L. J. Ch. 273; 147 L. T. 46, C. A.

182. *Add. Annotation:*—**Refd.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

185. *Add. Annotations:*—**Expld.** Elder *v.* Northcott, [1930] 2 Ch. 422; I. R. Comrs. *v.* Holder, [1931] 2 K. B. 81.

206. *Add. Annotations:*—*As to* (1) **Apld.** *Re* Mason (1928), 97 L. J. Ch. 321. **Refd.** *Re* Blake,

PART II. SECT. 5, SUB-SECT. 1.

134 vi. —— *Undischarged bankrupt.*] Where a creditor, having obtained the leave of the Insolvency ct., sued an insolvent in an ordinary civil ct. to recover a debt, the adjudication being the former was not entitled during the period of limitation suit, to exclude the time during which the insolvency proceedings were pending.—MACHANJEERI AHMED *v.* K. GOVINDA PRABHU (1928), I. L. R. 51 Mad. 862.—**IND.**

PART II. SECT. 5, SUB-SECT. 2.—A.

sd. *Crop-payment agreement.*]—A lessee under a crop-payment lease agreed to deliver in the name of the lessor one-third of the crop & in addition enough thereof to pay certain taxes. He finished delivering wheat to the lessor's credit on Oct. 9, 1923, & on that date had marketed all the remainder of the crop in his own name. The amount delivered for the lessor was not sufficient to fulfil the terms of the covenant to deliver:—*Held:* the breach of the agreement was committed on said date & Stat. Limitations commenced to run therefrom, & the agreement not being under seal, the period of limitation was six years.—GORDON *v.* RISEBOROUGH, [1931] 2 W. W. R. 331.—**CAN.**

PART II. SECT. 5, SUB-SECT. 2.—C. (a).

147 i. *Date of making.*]—Where a promissory note is payable with interest on demand, Stat. Limitations begins to run from the date of the note.—IMPERIAL BANK OF CANADA *v.* SIMPSON (Man.), [1927] 3 W. W. R. 500.—**CAN.**

PART II. SECT. 5, SUB-SECT. 2.—M.

se. *Money repayable "as soon as possible"—Time runs from date of ability to pay.*]—INGREBRETSEN *v.* CHRISTENSEN, [1927] 3 W. W. R. 135; 37 Man. L. R. 93.—**CAN.**

Re Minahan's Petition of Right (1931), 100 L. J. Ch. 251.

210. *Add. Annotation :*—**Consd.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

217. *Add. Annotation :*—**Refd.** Douglass *v.* Lloyds Bank (1929), 34 Com. Cas. 263.

229. *Add. Annotation :*—**Refd.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

254. *Add. Annotations :*—**Refd.** Legh *v.* Legh (1930), 143 L. T. 151 ; Lynn *v.* Bamber, [1930] 2 K. B. 72.

256. *Add. Citations :*—[1927] 1 K. B. 402 ; 96 L. J. K. B. 55, C. A. ; *affd.*, [1927] A. C. 573 ; 96 L. J. K. B 856 ; 137 L. T. 602 ; 91 J. P. 175 ; 43 T. L. R. 567 ; 71 Sol. Jo. 470 ; 25 L. G. R. 454, H. L.

Add. Annotation :—**Consd.** De Freville *v.* Dill (1927), 96 L. J. K. B. 1056.

264. *Add. Annotation :*—*As to* (2) **Refd.** Betts *v.* Metropolitan Police District Receiver (1932), 96 J. P. 327.

284. *Add. Annotation :*—**Refd.** Harnett *v.* Fisher, [1927] A. C. 573.

315. *Add. Annotation :*—**Refd.** Gottliffe *v.* Edelston, [1930] 2 K. B. 378.

355. *Add. Annotation :*—**Apld.** *Re* Blucher (Prince), *Ex p.* Debtor, [1931] 2 Ch. 70.

356a. —— **Promise to pay directors' fees—By adoption of balance sheet including fees.**]—Balance sheets including fees due to directors, & signed by directors pursuant to Cos. (Consolidation) Act, 1908 (c. 69), s. 113, are not acknowledgments of those fees within Lord Tenterden's Act.

After an order for the compulsory winding up of the co. the applicant put in a proof for £950 in respect of creditors' fees. The liquidator rejected the proof to the extent of £350, allowing only £600 on the ground that all directors' fees which had accrued due more than six years before the date of the winding-up order were barred by Stat. Limitations. The director's fees due to appct. appeared from balance sheets duly signed by two directors & passed by the co. Upon a summons taken out by the applicant asking that the decision of the liquidator rejecting his proof to the extent of £350, might be reversed, & that the proof might be allowed in the full sum of £950 :—*Held :* (1) a board of directors, acting as a board, & passing a resolution adopting a balance sheet which includes directors' fees, does not bind the co. to pay those fees ; (2) a balance sheet so adopted & signed by directors pursuant to Cos. (Consolidation) Act, 1908 (c. 69), s. 113, is not a written promise by the co. or its agents to pay the directors' fees.—*Re* Coliseum (Barrow), Ltd., [1930] 2 Ch. 44 ; 99 L. J. Ch. 423 ; 143 L. T. 423 ; [1929-30] B. & C. R. 218.

400a. —— —— **Retrospective operation.**]—Above Act came into operation on Jan. 1, 1829 :—*Held :* an action commenced in Hilary term, 1829, could not be maintained upon a verbal promise made before the passing of the Act.—Towler *v.* Chatterton (1829), 6 Bing. 258 ; L. & Welsb. 74 ; 3 Moo. & P. 619 ; 8 L. J. O. S. C. P. 30 ; 130 E. R. 1280.

Annotations : —**Expld.** Moon *v.* Durden (1848), 2 Exch. 22. **Consd.** R. *v.* Leeds & Bradford Ry. Co. (1852), 18 Q. B. 343 ; Wright *v.* Hale (1860), 6 H. & N. 227. **Refd.** Paddon *v.* Bartlett (1835), 3 Ad. & El. 884 ; Batchelor *v.* Middleton (1848), 6 Hare, 75 ; R. *v.* Crowan (Inhabitants) (1849), 13 Jur. 1099 ; Leary *v.* Pattrick (1850), 14 Jur. 932 ; Henshall *v.* Porter, [1923] 2 K. B. 193.

449. *Add. Annotation :*—**Refd.** *Re* Coliseum (Barrow), Ltd., [1930] 2 Ch. 44.

PART II. SECT. 5, SUB-SECT. 2.—U.

235 ii. —— *Proviso for compensation by will—Time does not run until death of employer.*]—Hunter *v.* Thompson, [1927] 2 D. L. R. 340 ; 60 O. L. R. 185.—**CAN.**

PART II. SECT. 5, SUB-SECT. 3.—A.

sf. *Statute barred claim for damages—Property rendered useless by other causes.*]—Turgeon *v.* Quebec, [1928] 2 D. L. R. 273 ; *affg.*, 40 Que. K. B. 453.—**CAN.**

PART II. SECT. 5, SUB-SECT. 3.—B.

f i. —— ——.]—Kerr *v.* Atlantic & North-West Ry. Co. (1895), 25 S. C. R. 197.—**CAN.**

PART II. SECT. 6, SUB-SECT. 2.—A.

sg. *Action barred by Drought Area Relief Act, 1922.*]—Williams *v.* Sautner (Alta.), [1929] 3 W. W. R. 195.—**CAN.**

PART II. SECT. 8, SUB-SECT. 2.

o i. ——.]—Ganda Singh *v.* Bhag Singh-Bhagwan Singh, Mst. Bhani (1926), I. L. R. 7 Lah. 403.—**IND.**

PART II. SECT. 8, SUB-SECT. 6.—A.

409 viii. —— ——.]—Phul Singh *v.* Bhojraj (1927), I. L. R. 49 All. 801.—**IND.**

409 ix. —— ——.]—In order for a writing to be sufficient to take a case out of Stat. Limitations it must amount either to an express promise to pay the debt or to a clear & unqualified admission of a still-subsisting liability from which an express promise to pay the debt will be implied by law. A conditional promise will not suffice unless there be proof of the fulfilment of the condition, but, if such proof be offered, a promise either express or implied will be converted into an absolute one, & as such will support a claim alleging a promise to pay on request.—Reed *v.* Thiel, [1928] 4 D. L. R. 72 ; [1928] 2 W. W. R. 115 ; 22 Sask. L. R. 495.—**CAN.**

409 x. ——.]—MacBain *v.* MacBain, [1929] S. C. (Ct. of Sess.) 213.—**SCOT.**

PART II. SECT. 8, SUB-SECT. 6.—C.

sh. *Account stated—Effect of general acknowledgment.*]—Where a chitha contained a series of items of debt, all taken by deft. from pltf. with the dates of the loans mentioned therein, & in the end bore the following indorsement "Examined the account. It is correct ":—*Held :* each item was a separate debt in itself, & the indorsement was merely an acknowledgment of the existing debt, giving a fresh start to limitation in respect of such items only as were not, at the date of indorsement, barred by limitation.—Deoraj Tewari *v.* Indrasan Tewari (1929), I. L. R. 8 Pat. 706.—**IND.**

PART II. SECT. 8, SUB-SECT. 6.—D.

450 xi. —— ——.]—Chapman *v.* Paulson (Man.), [1926] 4 D. L. R. 590.—**CAN.**

PART II. SECT. 8, SUB-SECT. 6.—E. (b).

485 ii. ——.]—*Re* Wahn Estate, [1927] 4 D. L. R. 440 ; [1927] 3 W. W. R. 138 ; 37 Man. L. R. 95.—**CAN.**

PART II. SECT. 8, SUB-SECT. 6.—N.

sh. *Use of technical expression by layman.*]—Defts., against whom pltf. claimed a total sum of £1,000 upon various causes of action, some well founded & some not, gave pltf. a document in these words : "In case of my becoming bankrupt & death I owe you £1,000 for money lent ": in law none of the causes of action were money lent, although a layman might have so described them :—*Held :* there was an absolute acknowledgment sufficient to take the causes of action out of the Stat. of Limitations.—Cohen *v.* Cohen (1929), 42 C. L. R. 91 ; 3 A. L. J. 102 ; [1929] Argus L. R. 204.—**AUS.**

PART II. SECT. 9, SUB-SECT. 1.—F. (a).

650 ii. ——.]—In order for a part payment of a debt to avoid the effect of Stat. Limitations it is not necessary that the payment should actually pass from the debtor to the creditor in the form of money. Therefore, where the debtor, the maker of a promissory note, performed work for the creditor for which he was entitled to a certain sum & they agreed that it should be applied on the note then overdue & the creditor so applied it : *Held :* the arrangement took the debt out of the Statute.—Wilson *v.* Brown, [1931] 2 W. W. R. 733.—**CAN.**

PART II. SECT. 9, SUB-SECT. 1.—F. (d).

l i. ——.]—Where two persons who are mutually indebted agree that the smaller account, although doubtful in some respects, shall be acknowledged in full as part payment of a larger, but not fully ascertained, amount owing by the person setting up the former account, such an arrangement,

578. *Add. Annotation :*—**Refd.** Harnett *v.* Fisher, [1927] A. C. 573.

696. *Add. Annotation :—Generally*, **Mentd.** Smith *v.* Wood (1928), 139 L. T. 250.

Part III.—Specialties.

753. *Add. Annotations :*—**Consd.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602. **Refd.** Royal Trust Co. *v.* A.-G. for Alberta (1929), 46 T. L. R. 25.

755. *Add. Annotation :*—**Refd.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

757. *Add. Annotations :*—**Distd.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602. **Refd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

758. *Add. Annotation :*—**Refd.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

785a. —— **In balance sheet.**]—A balance sheet contained in an annual report sent by a co. to its shareholders, & filed with the registrar of companies, & stating the total amount of the co.'s indebtedness under its debentures for principal & interest accrued thereon since their issue is, although not sent to the debenture-holders, a sufficient acknowledgment by the co. of its liability under the debentures to take the case out of the operation of Civil Procedure Act, 1833 (c. 42), s. 3.—*Re* ATLANTIC & PACIFIC FIBRE IMPORTING & MANUFACTURING CO., BURNHAM (VISCOUNT) *v.* ATLANTIC & PACIFIC FIBRE IMPORTING & MANUFACTURING CO., [1928] Ch. 836 ; 97 L. J. Ch. 369 ; 140 L. T. 18 ; 44 T. L. R. 702 ; 72 Sol. Jo. 598.

Part IV.—Money Charged Upon or Payable out of Land or Rent, or Secured by a Judgment, and Legacies, and Personal Estates of Intestates.

819. *Add. Annotation :*—**Refd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

834. *Add. Annotation :*—**Refd.** *Re* Blake, *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251.

848. *Add. Annotation :*—**Refd.** Purnell *v.* Roche, [1927] 2 Ch. 142.

862. *Add. Annotation :*—**Consd.** Barratt *v.* Richardson & Cresswell, [1930] 1 K. B. 686.

864a. —— **Effect of statute—Loss of right of re-**

although made orally, interrupts the running of the Stat. of Limitations with respect to the balance of the larger account.—GUILBERT *v.* CUMMINGS (Man.), [1929] 4 D. L. R. 705; 3 W. W. R. 39.—**CAN**

PART II. SECT. 9, SUB-SECT. 3.—C. (a).

b i. ——.]—The provision of Mercantile Law Amendment Act, 1856, that a payment by one joint debtor shall not keep the debt alive as against his co-debtor, is in force in Saskatchewan. Even if it be not in force, the common law rule that a payment by one joint debtor keeps the liability of all alive does not apply where the relationship between the debtors is that of principal & surety & the payment is made by the principal debtor.—IMPERIAL BANK OF CANADA *v.* KUSZKO, [1932] 3 W. W. R. 186.—**CAN.**

PART II. SECT. 9, SUB-SECT. 5.—A.

740 ii. —— ——.]—When a creditor holds two promissory notes made by the same debtor a payment made generally on account prevents Stat. Limitations from running as against the whole debt. The fact that after such payments equalled the amount due on one of the notes the creditor handed it over to the debtor at the latter's request after crediting to it all the payments made up to that time cannot alter the character of the payments as of the date when each of them was made.—WOOD *v.* RICHMOND, [1928] 3 W. W. R. 737.—**CAN.**

PART III. SECT. 1.

sp. *Debenture.*]—Deft. issued a series of debentures, dated June 31, 1914, in the following form : " On presentation of this debenture to the treasurer " of the H. Club, Incorporated, the bearer will be entitled to receive on Jan. 31, 1919, the sum of ten pounds for value received." The instrument was executed under the seal of the club :—*Held :* a debenture does not cease to be such by reason that it may also be brought within the definition of " promissory note." Being under the seal of the club, they were deeds & specialty contracts, & under Civil Procedure Act, 1833 (c. 42), s. 3, they were not statute-barred.—GOODSON *v.* HAWERA LAWN TENNIS & CROQUET CLUB, INC., [1931] N. Z. L. R. 1096.—**N.Z.**

PART IV. SECT. 1, SUB-SECT. 1.—C.

di. *Re* LING (1908), N. S. R. 60 ; 6 E. L. R. 264.—**CAN.**

q i. —— *Receivership order.*]—A receivership order based on a judgment does not become ineffective, when the remedy on the judgment becomes barred by Stat. Limitations.—WILKINS *v.* MINER (Alta.), [1927] 1 D. L. R. 286 ; [1926] 3 W. W. R. 778.—**CAN.**

sj. *How judgment kept alive—Revivor.*]—Where a judgment is about to become barred by Stat. Limitations, twelve years having nearly run, it may be kept alive by applying for leave to enter on the judgment roll a suggestion reviving the judgment & allowing execution to be issued thereon. Pltf.'s alternative is to resue on the judgmeut. —SECURITY LUMBER CO., LTD. *v.* KOSKIE, [1924] 1 W. W. R. 548.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 1.—E.

852 ii. —— ——.]—A debt under a covenant in a mtge. executed under seal is a specialty debt, & the period of limitation applicable thereto is twelve years.—INVESTORS MORTGAGE SECURITY CO. *v.* MCDONALD & HENRY, [1927] 1 W. W. R. 671 ; 21 Sask. L. R. 409.—**CAN.**

852 iii. —— *In mortgage not under seal.*]—An action on the personal covenant in a mtge., which is registered against land in Alberta but which is not under seal, is an action on a simple contract debt, & the period of limitation applicable thereto is six years.—SOCIETE BELGE D'ENTERPRISES INDUSTRIELLES IMMOBILIERES *v.* WEBSTER & MILL (Alta.) ; [1928] 1 D. L. R. 465 ; 23 Alta. L. R. 129 ; [1927] 3 W. W. R. 817.—**CAN.**

852 iv. —— ——.]—M., by mtge. under seal & registered, mtged. land in the province of Alberta to pltf., & subsequently, by transfer, not under seal, made pursuant to Alberta Land Titles Act, & registered transferred the land to B., who thereby became liable to pltf., under the covenant implied by virtue of s. 54 (1) of said Act, to pay the mtge. money. More than six years, but less than 12 years, after registration of the transfer or any payment on account or written acknowledgment of liability by B., pltf. sued B. in Alberta for payment :—*Held :* B.'s liability to pltf. was not statute barred. The period of limitation in Alberta for bringing action to recover money secured by mtge. made under Alberta Land Titles Act is 12 years. —TRUSTS & GUARANTEE CO., LTD. *v.* BUXTON, [1929] 3 D. L. R. 883 ; S. C. R. 529 ; *revsg.*, [1928] 4 D. L. R. 784 ; 3 W. W. R. 205 ; 23 Alta. L. R. 565.—**CAN.**

852 v. —— ——.]—ASHIQ HUSAIN *v.* CHATARBHUJ & AHMAD-ULLAH KHAN (1927), I. L. R. 50 All. 328.—**IND.**

sa. *Power of sale for arrears of interest under mortgage deed—Whether extending to repayment of principal.*]—JOSEPH *v.* JOSEPH (1925), I. L. R. 6 Ran. 771.—**IND.**

sl. *Breach of condition in mortgage deed.*]—A simple mtge., executed on

entry.]—Where a rentcharge has become statute-barred, a power of re-entry for non-payment thereof is no longer exercisable.—SYKES *v.* WILLIAMS (1932), 101 L. J. Ch. 418; 49 T. L. R. 9; 76 Sol. Jo. 798, C. A.

873. *Add. Annotation :*—**Refd.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

915. *Add. Annotation :*—*As to* (1) **Refd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

956a. —— ——.]—By an indenture of lease dated Feb. 9, 1909, the predecessor in title of pltf. demised certain premises to deft., R., for the term of ninety-nine years from Dec. 25, 1908, at a yearly rent of £6 6*s.*, payable quarterly on the usual quarter days. R. covenanted for himself & his assigns to pay the rent on the said days, & it was provided that, if & when any part of the rent should have been legally demanded or not, it should be lawful for the lessor to re-enter upon the premises. On Apr. 30, 1924, the term became vested in deft., C. Neither on Dec. 25, 1914, nor thereafter to the date of the writ, did either R. or C. pay to pltf. the rent due under the lease. In an action by pltf. for possession of the premises, begun on Jan. 28, 1928 :—*Held :* (1) although pltf.'s right to re-enter upon the premises first accrued to him in respect of the non-payment of rent on Dec. 25, 1914, his claim to possession was not barred by Real Property Limitation Act, 1874 (c. 57), s. 1, & Civil Procedure Act, 1833 (c. 27), s. 3, as not having been made within twelve years next after the time at which the right to make such entry had first accrued, but his right to re-enter accrued afresh in respect of each subsequent quarter day whenever any part of the rent reserved under the lease was in arrear for twenty-one days, & he was, therefore, entitled to rely on the last non-payment of rent before writ issued or any previous non-payment up to twelve years before writ; (2) the case was governed by s. 3 of the Real Property Limitation Act, 1833 (c. 42), s. 3, which provides that all actions for debt for rent there mentioned shall be commenced & sued within twenty years after the cause of such action, but not after, & not by Real Property Limitation Act, 1833 (c. 27), s. 42, which provides that no arrears of rent shall be recovered by any action but within six years next after the same shall have become due, & that, therefore, deft., C., would have to pay or tender to pltf. all, & not merely six years of, the arrears of rent owing under the lease in order to defeat pltf.'s claim by recourse to Common Law Procedure Act, 1852 (c. 76), s. 212, & to obtain relief under Supreme Ct. of Judicature (Consolidation) Act, 1925 (c. 49), s. 46.—BARRATT *v.* RICHARDSON & CRESSWELL, [1930] 1 K. B. 686; 99 L. J. K. B. 451; 142 L. T. 606; 46 T. L. R. 279.

Annotation :—*As to* (1) **Folld.** Sykes *v.* Williams (1932), 48 T. L. R. 625.

959. *Add. Annotation :*—**Consd.** Barratt *v.* Richardson & Cresswell, [1930] 1 K. B. 686.

964a. ——.]—HOLTON *v.* THOMPSON (1855), 25 L. T. O. S. 202, L. JJ.

976. *Add. Annotations :*—**Refd.** *Re* Lloyd, Lloyd *v.* Lloyd, [1903] 1 Ch. 385; Lewis *v.* McKay, Algate *v.* Vugler, Clark *v.* Potter (1924), 93 L. J. K. B. 840.

976a. —— ——.]—The allowance of interest upon a legacy charged upon real estate, & due upwards of six years, is to be calculated from the filing of the bill, & not from the date of the decree, though the bill is not filed by the legatee.—CHAPPELL *v.* REES (1852), 1 De G. M. & G. 393; 20 L. T. O. S. 57; 16 Jur. 415, 417; 42 E. R. 603, L. C.

Annotations :—**Refd.** *Re* Lloyd, Lloyd *v.* Lloyd, [1903] 1 Ch. 385; Lewis *v.* McKay, Algate *v.* Vugler, Clark *v.* Potter (1924), 93 L. J. K. B. 840.

1003. *Add. Annotation :*—**Refd.** Barratt *v.* Richardson & Cresswell, [1930] 1 K. B. 686.

1011. *Add. Annotation :*—**Refd.** *Re* Wait, [1927] 1 Ch. 606.

Part V.—Land or Rent.

1029. *Add. Annotation :*—**Refd.** Palmer *v.* Crone, [1927] 1 K. B. 804.

1033. *Add. Annotation :*—**Refd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

1037. *Add. Annotation :*—**Refd.** Barratt *v.* Richardson & Cresswell, [1930] 1 K. B. 686.

1041. *Add. Annotations :*—*As to* (1) **Refd.** Purnell *v.* Roche, [1927] 2 Ch. 142; Barratt *v.* Richardson & Cresswell, [1930] 1 K. B. 686.

May 1, 1909, for a term of three years, contained a stipulation to the effect that, if the mtgor. transferred the mortgaged property, the mtgee. should be at liberty to sue before the expiry of the term. On Mar. 8, 1911, the mtgor. stood surety for one A. in the amount of R.'s 50 & hypothecated a small share in the property covered by the deed of 1909. No actual notice of this transaction was given to the first mtgee. A suit was filed on the mtge. of 1909, on Mar. 27, 1924, & the plea of limitation was set up by defts. :—*Held :* the suit was within time.—ASHIQ HUSAIN *v.* CHATARBHUJ & AHMAD-ULLAH KHAN (1927), I. L. R. 50 All. 328.—**IND.**

PART IV. SECT. 1, SUB-SECT. 1.—H.

sm. *Money due on covenant—In agreement for sale.*]—Real Property Limitation Act, R. S. M., 1913 (c. 116), s. 24, applies to an action on a covenant in an agreement for sale for payment of the purchase-price.—LOWERY *v.* LAMONT (Man.), [1927] 1 D. L. R. 669; [1927] 1 W. W. R. 95.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 4.—B. (a).

k i. ——.]—SERVAIS *v.* SHEAR, [1928] 1 D. L. R. 549; 61 O. L. R. 490; *revsd. on other grounds*, [1929] 2 D. L. R. 633; 63 O. L. R. 381.—**CAN.**

k ii. ——.]—Mtgors. of land transferred it subject to the mtge. to S., who registered the transfer, & he transferred it subject to the mtge. to G., who registered his transfer, & made payments on the mtge. In an action on the covenant, C., one of the mtgors. & S. who was another of the mtgors., & G. were made defts. G. did not defend & the other two defts. pleaded Limitation of Actions Act :—*Held :* the payments by G. interrupted the running of the Act as against both the other defts. although G. had not been in any manner a party to the contract between mtgor. & mtgee.—NORTH OF SCOTLAND CANADIAN MORTGAGE CO., LTD. *v.* CAMPKIN, [1932] 1 W. W. R. 631; 2 D. L. R. 697.—**CAN.**

PART V. SECT. 1.

c i. —— *As against Crown.*]—An adverse possession of land in Newfoundland for sixty years is a bar to the rights of the Crown, & the same kind of possession for seventy years will deprive the Crown of its right of entry upon those lands.—R. *v.* KOUGH (1819), 1 Nfld. L. R. 172.—**NFLD.**

c ii. —— *Statute of Limitations* 1866, *s.* 9.]—PATTERSON *v.* MCPHERSON (1875), 10 N. S. R. (1 R. & C.) 116.—**CAN.**

c iii. —— *When question for jury*—

1088. *Add. Annotations :—As to* (1) **Folld.** Salisbury & Fordingbridge District Drainage Board *v.* Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566. **Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

1130a. ——.]—BARRATT *v.* RICHARDSON & CRESSWELL, No. 956a, *ante*.

1140. *Add. Annotation :—As to* (1) **Distd.** Taylor *v.* Twinberrow, [1930] 2 K. B. 16.

1145. *Add. Annotation :*—**Refd.** Harnett *v.* Fisher, [1927] A. C. 573.

1157. *Add. Annotation :*—**Consd.** Barratt *v.* Richardson & Cresswell, [1930] 1 K. B. 686.

1162. *Add. Annotation :*—**Refd.** *Re* Grosvenor Settled Estates, Westminster (Duke) *v.* McKenna, [1932] 1 Ch. 232.

1190a. Tenancy created before Act.]—Real Property Limitation Act, 1833 (c. 27), s. 7, is not retrospective, & applies only to tenancies at will, created after the passing of the Act, or at most to such tenancies at will as existed when it passed. Therefore, where B. became tenant at will to A. in 1817, & continued such tenant till 1832, when B. died :—*Held :* the right of A. was not to be deemed to have accrued in 1817, but in 1832, the statute in question having passed in 1833.—DOE d. EVANS *v.* PAGE (1844), 5 Q. B. 767 ; 1 Dav. & Mer. 601 ; 13 L. J. Q. B. 153 ; 2 L. T. O. S. 420 ; 8 Jur. 399 ; 114 E. R. 1439.

Annotations :—**Distd.** Doe d. Jukes *v.* Sumner (1845), 14 M. & W. 39 ; Doe d. Dayman *v.* Moore (1846), 9 Q. B. 555 ; Doe d. Angell *v.* Angell (1846), 9 Q. B. 328. **Apld.** Doe d. Birmingham Canal Navigations (Proprietors) *v.* Bold (1847), 11 Q. B. 127. **Refd.** Comill *v.* Hudson (1857), 6 W. R. 37 ; Devine *v.* Holloway (1861), 14 Moo. P. C. C. 290 : Hogan *v.* Hand (1861), 14 Moo. P. C. C. 310.

: *of plaintiff.*]—DOE d. LYONS *v.* CRAWFORD (1842), 6 O. S. 334.—**CAN.**

c iv. —— *Re-entry by registered owner.*]—Where a person has by uninterrupted possession of land for over twelve years acquired the right to exclusive possession thereof under Limitation of Actions Act, that right cannot be destroyed in favour of the registered owner merely by the latter regaining possession for a period less than the statutory one.—SHIELCLIFFE *v.* LEMON, [1924] 1 W. W. R. 1059.—**CAN.**

c v. — — *Action for purchase price by vendor of land.*]—BRANDON *v.* DALE, [1930] 1 W. W. R. 277 ; 2 D. L. R. 272 ; 21 S. L. R. 302, C. A.—**CAN.**

PART V. SECT. 3, SUB-SECT. 1.—B. (a) i.

1057 v. ——.]—NOBLE *v.* NOBLE (1912), 27 O. L. R. 342 ; 4 O. W. N. 359 ; 9 D. L. R. 735.—**CAN.**

1057 vi. —— *Tenant holding over.*]—DOE d. CHARLES *v.* COTTON (1851), 8 U. C. R. 313.—**CAN.**

1057 vii. ——.]—PIPER *v.* STEVENSON (1913), 28 O. L. R. 379 ; 4 O. W. N. 961 ; 12 D. L. R. 820.—**CAN.**

1057 viii. —— .]—Where it is found by the trial judge, & the evidence supports such finding, that defts. & those under whom they claim have been in possession of the land in question, & exercising acts of ownership for a period of more than 20 years, & that pltfs. & those under whom they claim have been out of possession for a corresponding period, Stat. Limitations bars any action by the latter against the former in respect to the ownership of the land.—HALIFAX POWER CO. *v.* CHRISTIE (1915), 48 N. S. R. 264.—**CAN.**

1057 ix. ——.]—SOULIS *v.* ARMSTRONG (1917), 51 N. S. R. 315 ; 36 D. L. R. 778.—**CAN.**

1057 x. ——.]—MONTREAL TRUST CO. *v.* CROSBY, [1931] 2 D. L. R. 531 ; 3 M. P. R. 241.—**CAN.**

t i. ——.]—WESTERN CANADA LOAN CO. *v.* GARRISON (1888), 16 O. R. 81.—**CAN.**

t ii. ——.]—TOWNSHIP OF COLCHESTER SOUTH *v.* HACKETT, [1927] 4 D. L. R. 317 ; 61 O. L. R. 77 ; *affd. sub nom.* HACKETT *v.* COLCHESTER SOUTH MUNICIPAL CORPN., [1928] 3 D. L. R. 107.—**CAN.**

t iii. ——.]—*Re* BELL (1871), 3 Ch. Ch. 239.—**CAN.**

t iv. — .] CREIGHTON *v.* KUHN, Cass. Dig. 2nd ed. 845.—**CAN.**

t v. — .] *Held :* pltf. had established an actual, visible, undisturbed, & continuous possession of a town lot, of which she or her husband or both had been in possession since 1891, by themselves or their tenants, & which had been used or cultivated as a garden, for more than twelve years ; & she was entitled, under Imperial Real Property Limitation Act, 1874, to a declaration that all the rights of defts. in the lot had been extinguished in her favour.—BRADSHAW *v.* PATTERSON (1911), 18 W. L. R. 402 ; 4 Sask. L. R. 208.—**CAN.**

PART V. SECT. 3, SUB-SECT. 1.—B. (a) ii.

z i. —— *Agreement for possession during life.*]—ROAN *v.* KRONSBEIN (1886), 12 O. R. 197.—**CAN.**

PART V. SECT. 3, SUB-SECT. 1.—B. (b) i.

c i. —— *Acts done with consent of owner.*]—*Held :* the operation of Stat. Limitations in favour of the owner was not suspended.—KAULBACH *v.* COOK (1906), 39 N. S. R. 500.—**CAN.**

c ii. ——.]—CLARKE *v.* BABBITT, [1927] 2 D. L. R. 7 ; [1927] S. C. R. 148.—**CAN.**

d i. *Cutting wood on upland & grass on meadow.*]—*Held :* not of very serious importance in establishing a title by occupation without more.—DUNCANSON *v.* ATWELL (1914), 14 E. L. R. 348.—**CAN.**

PART V. SECT. 3, SUB-SECT. 1.—B. (b) iv.

1089 i. *Adverse title may be acquired—Land acquired for public undertaking.*]—A title by possession may be acquired as against a railway co. to land originally obtained by them for railway purposes.—ERIE & NIAGARA RY. CO. *v.* ROUSSEAU (1890), 17 A. R. 483.—**CAN.**

PART V. SECT. 3, SUB-SECT. 1.—B. (b) v.

1094 i. *Non-user not abandonment.*]—In the case of mineral rights, non-user does not amount to abandonment of possession on the part of the owner, whose right is not barred so long as the minerals are not worked by some one else ; & by working a part of the minerals or opening up particular quarries, possession over a continuous field of minerals or of quarries cannot be obtained.—GOPI RAM BHOTICA *v.* THAKUR JAGARNATH SINGH (1929), I. L. R. 9 Pat. 447.—**IND.**

PART V. SECT. 3, SUB-SECT. 1.—B. (b) xii.

n i. —— *Conflicting grants.*]—LAWSON *v.* WHITMAN (1851), 1 N. S. R. (1 Thom.) 208.—**CAN.**

sg. *Isolated acts of trespass.*]—SHERREN *v.* PEARSON (1887), 14 S. C. R. 581.—**CAN.**

PART V. SECT. 3, SUB-SECT. 1.—B. (b) xiii.

r i. —— ——.]—CUNARD'S *v.* IRVINE (1853), 2 N. S. R. (James) 31.—**CAN.**

r ii. —— *Tenant at will of remainder—Right of owner to enter.*]—Where a party was allowed to enter on a lot of wilderness land, with the privilege of clearing & chopping a portion of it, but under such an arrangement as to the remaining portion as would make him a tenant at will of the whole ; but the owner also entered from time to time & cut & disposed of the timber :—*Held :* Stat. Limitations did not run in favour of the tenant except as to the part exclusively occupied by him.—DOE d. MCKENZIE *v.* MOSHER (1874), 2 Pug. 355.—**CAN.**

c i. — — .]—MCNISH *v.* MUNRO 1875), 25 C. P. 290.—**CAN.**

f i. ——.]—*Re* LINET (1871), 3 Ch. Ch. 230.—**CAN.**

f ii. ——.]—COSGROVE *v.* CORBELL (1868), 14 Gr. 617.—**CAN.**

sn. *No occupation by anyone for nearly twenty years.*]—WALLBRIDGE *v.* GILMOUR (1872), 22 C. P. 135.—**CAN.**

so. *Possession under conditional agreement—Failure of owner to observe condition.*]—BISHOP *v.* COX, [1928] 2 D. L. R. 990.—**CAN.**

sp. *Willingness to pay rent—Adverse possession under order of court.*]—GOPIKA RAMAN ROY *v.* ATAL SINGH (1929), 56 I. R. Ind. App. 119.—**IND.**

PART V. SECT. 3, SUB-SECT. 1.—C.

ff i. —— *Occupation of room in building.*]—IREDALE *v.* LOUDON (1908), 40 S. C. R. 313.—**CAN.**

PART V. SECT. 3, SUB-SECT. 3.—A.

q i. ——.]—A decree against a Hindu widow in relation to her deceased husband's property is binding upon the reversioners although it is founded upon limitation ; but under the Indian Limitation Act, 1908, Sched. I., Art. 141, a suit by the reversionary heir for possession of immovable property of the estate, as to which no decree had been made against the widow, is not barred by limitation if it is brought within twelve years of his estate falling into possession, even though deft. has been in adverse possession for twelve years at the date of the death of the widow.—JAGGO BAI *v.* UTSAVA LAL (1929), L. R. 56 Ind. App. 267.—**IND.**

r. *Revsd.*, 2 O. L. R. 637.

PART V. SECT. 5.

1247 iii. —— —— —— *As guests.*]—The owner of a house allowed his sisters to reside therein & contributed

——— *Annotation :*—**Refd.** *Re* Blake, *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251.

1284. *Add. Annotations :*—**Refd.** Purnell *v.* Roche, [1927] 2 Ch. 142; Barratt *v.* Richardson & Cresswell, [1930] 1 K. B. 686.

1286a. ——— ———.]—PURNELL *v.* ROCHE, No. 1369a, *post.*

1298. *Add. Annotations :*—**Consd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399. **Refd.** Barratt *v.* Richardson & Cresswell, [1930] 1 K. B. 686.

1310. *Add. Annotation :*—**Refd.** Horlick *v.* Scully, [1927] 2 Ch. 150.

1353a. —— Not by possession by permission of mortgagee.]—HALL *v.* DOE d. SURTEES (1822), 5 B. & Ald. 687; 1 Dow. & Ry. K. B. 340; 106 E. R. 1342.

Annotations :—**Refd.** Doe d. Corby *v.* Branston (1835), 4 L. J. K. B. 166; Heath *v.* Pugh (1881), 6 Q. B. D. 345.

1369a. ——— ——— **Subsequent disability of mortgagee.**]—In 1902 freehold hereditaments were assured to a mtgee. In Feb. 1907, the mtgee. became, & thenceforward continued to be, of unsound mind. The last payment in respect of interest before the date on which the mtgee. became of unsound mind was made on Jan. 30, 1907. In Mar. 1907, the husband of the mtgee. accepted, on behalf of the mtgee., a further payment on account of interest. Since that payment no further payment of interest was made. On a summons for foreclosure issued in 1926 by the mtgee.:—*Held :* (1) the right to commence proceedings first accrued, at the latest, at the date fixed for the redemption of the mtge., which was a date earlier than that on which the mtgee. became of unsound mind; (2) the foreclosure proceedings must be dismissed, inasmuch as, in view of the express words of Real Property Limitation Act, 1837 (c. 28), a disability beginning after the date when the right to bring the action first accrued, or must be deemed to have first accrued, would not entitle the mtgee. to the protection given by Real Property Limitation Act, 1874 (c. 57), s. 3.—PURNELL *v.* ROCHE, [1927] 2 Ch. 142; 96 L. J. Ch. 434; 137 L. T. 407; 71 Sol. Jo. 452.

1385. *Add. Annotation :*—**Refd.** Purnell *v.* Roche, [1927] 2 Ch. 142.

1436. *Add. Annotation :*—**Consd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

1478. *Add. Annotation :*—**Refd.** Taylor *v.* Twinberrow, [1930] 2 K. B. 16.

1485. *Add. Annotation :*—**Apld.** Taylor *v.* Twinberrow, [1930] 2 K. B. 16.

1486a. Effect of purchase of freehold reversion on lessor's right of re-entry.]—In 1900 pltf.'s father became the yearly tenant of a cottage, which he thereupon allowed deft.'s husband to occupy rent free as tenant at will. In Feb 1919, pltf.'s father purchased the freehold of the cottage. In 1925 deft.'s husband died & she continued to occupy the cottage on the same terms. In 1928 pltf.'s father died, having by his will devised the cottage to pltf. In Oct. 1929, pltf. brought an action in the county ct. against deft. for possession of the cottage, in which a plea by deft. that the claim was statute barred was overruled, & judgment was given for pltf. On appeal :—*Held :* when pltf.'s father purchased the freehold of the cottage in 1919 his yearly tenancy merged in the freehold & the rights which deft.'s husband had acquired against him as yearly tenant under Real Property Limitation Acts, 1833 & 1874, were gone, &, as the new statutory period against him as freeholder under these Acts had not determined at the date when the action was brought, deft.'s plea failed & the judgment in favour of pltf. should be affirmed.—TAYLOR *v.* TWINBERROW, [1930] 2 K. B. 16; 99 L. J. K. B. 313; 142 L. T. 648.

to their support. He paid the rent & taxes & executed all necessary repairs :—*Held :* the occupation was in the character of guests & not of tenants at will & Stat. Limitations did not run as against the owner.—PEAKIN *v.* PEAKIN, [1895] 2 I. R. 359.—**IR.**

PART V. SECT. 6.

e i. ——— ——— *Acknowledgment by agent.*]—An acknowledgment of title by an agent is ineffectual to satisfy the provisions of Real Property Limitation Act, 1833, s. 14.—MCLEOD *v.* PEARSON, [1931] 3 W. W. R. 4; 4 D. L. R. 673.—**CAN.**

PART V. SECT. 12, SUB-SECT. 1.—A. (a).

1350 iii. ———.]—DOE d. MCGREGOR *v.* HAWKE, DOE d. MCGREGOR *v.* CROW (1837), 5 O. S. 496.—**CAN.**

1350 iv. ——— 6 *Will.* 4, c. 43, *s.* 2.]—DOE d. CHIPMAN *v.* DEVEBER (1854), 8 N. B. R. (3 All.) 23.—**CAN.**

1350 v. ——— *Real Property Limitation Act, R. S. M., c.* 89.]—STOVER *v.* MARCHAND (1895), 10 Man. L. R. 322.—**CAN.**

1350 vi. ———.] — The statutory mtges. under Land Titles Act of Saskatchewan are subject to provisions of Real Property Limitation Act of 1874 (Imp.). Where the time for bringing an action on the mtge. has expired, the mtgee.'s rights under the mtge. are also extinguished & the effect of the extinguishment is to vest the land in the mtgor. free from any rights of the mtgee., as if a release had been executed; & the mtgor. has the right to have the mtge. discharged.—COCKSHUTT PLOW CO., LTD. *v.* KORNYSSYN, [1931] 3 W. W. R. 171; *affd.*, [1932] 1 W. W. R. 369.—**CAN.**

1355 i. *Acknowledgment of right—Insufficient when given by mortgagee to himself—Clause in will.*]—EASTERN TRUST CO. *v.* MCALEER, [1931] 1 D. L. R. 509; 2 M. P. R. 93.—**CAN.**

sq. *Assignment under Insolvent Act,* 1875.]—COURT *v.* WALSH (1883), 9 A. R. 294.—**CAN.**

sr. *Right of equitable mortgagee to recover—Notwithstanding personal remedy barred.*]—*Re* CONLAN'S ESTATE (1892), 29 L. R. Ir. 199.—**IR.**

PART V. SECT. 12, SUB-SECT. 1.—A. (b) i.

st. *Recovery of judgment in action of ejectment within twenty years before suit for foreclosure.*]—*Held :* Stat. Limitations was prevented from operating except from the judgment.—MCKEEN *v.* MCKAY (*circa* 1873), R. E. D. 121.—**CAN.**

PART V. SECT. 12, SUB-SECT. 1.—C.

d i. ——— *Not possession by lessee of mortgagor.*]—*Re* SHANTZ & HALLMAN, [1927] 3 D. L. R. 658; 60 O. L. R. 543; *affd. sub nom.* MODERN REALTY CO. *v.* SHANTZ, [1928] 2 D. L. R. 705; [1928] S. C. R. 213.—**CAN.**

PART V. SECT. 12, SUB-SECT. 2—A. (a).

1398 i. *Entry by mortgagee.*]—DEDFORD *v.* BOULTON (1878), 25 Gr. 561.—**CAN.**

1398 ii. ——— *Twenty years' delay after decree for redemption.*]—*Re* LESLIE (1893), 23 O. R. 143.—**CAN.**

sv. *Sale by mortgagee—Whether remainderman barred.*]—When a mtgee. has transferred possession of the mtged. property for a valuable consideration, a suit to redeem by a pltf. who at the date when the mtgee. transferred possession had a contingent interest in remainder in the property is governed by Art. 140 & not by Art. 134 of Indian Limitation Act, 1908, the suit consequently is not barred, if it is brought within twelve years from the date when pltf.'s estate falls into possession, even though it is brought more than twelve years after the date of the transfer under which deft. claims.—SKINNER *v.* NAUNIHAL SINGH (1929), L. R. 56 Ind. App. 192.—**IND.**

PART V. SECT. 12, SUB-SECT. 2.—B.

1483 v. ———.]—Where of five tenants in common of a farm, three acquired a title against the other two by virtue of the Statute of Limitations :—*Held :* that the title so acquired by the three tenants in common was a joint tenancy of the two-fifths, & they were then tenants in common of their original three-fifths, & joint tenants of the two-fifths so acquired.—*Re* LIVINGSTONE (1901), 21 C. L. T. 521; 2 O. L. R. 381.—**CAN.**

PART V. SECT. 16.

c i. ———.]—COOK *v.* COOK (1915), 8 W. W. R. 506.—**CAN.**

Part VI.—Actions against Trustees.

1532. *Add. Annotation :*—**Consd.** Irish Catholic Church Property Insce. *v.* I. R. Comrs. (1918), 12 Tax Cas. 13.

1548. *Add. Annotation :*—**Refd.** Windsor Steam Coal Co. (1901), Ltd., [1928] Ch. 609.

1551. *Add. Annotation :*—**Consd.** Irish Catholic Church Property Insce. *v.* I. R. Comrs. (1918) 12 Tax Cas. 13.

1568a. —— —— ——.]—Testatrix, who died in 1890, gave her residuary real & personal estate to two persons whom she appointed her exors. upon trust for sale & conversion, & out of the proceeds to set aside £2,000 upon trust to pay the income to L. during widowhood &, after L.'s death or marriage, to fall into residue & subject thereto gave the proceeds of sale of the residue to her six children in equal shares. L. died in 1916. An action was commenced in 1925 by persons interested in a share of residue against the personal representatives of the two exors., who were dead, claiming a declaration that certain sums of Consols & bank stock had been wrongfully expended or disposed of by or converted to the use of the exors., & an order that these sums should be replaced. Defts. alleged that these sums had been expended in 1894 in satisfying liabilities of testatrix, & pleaded the appropriate statute of limitation. The exors. had set aside sums to answer the £2,000 legacy in part, & on L.'s death payments of capital were from time to time made to the persons interested in remainder, the last payment being made in June, 1921. If the stock had been paid away in 1894, the statute of limitation afforded a good defence except in regard to the share of the £2,000 legacy, which only fell into possession in 1916 :—*Held :* (1) as the claim was against exors. holding on express trusts, it was not a claim to recover a legacy within Real Property Limitation Act, 1874 (c. 57), s. 8, & the statute of limitation applicable was Trustee Act, 1888 (c. 59), s. 8, under which the period for which the statute had to run in order to afford a defence was only six years ; (2) the payments relied on, being payments in respect of the part of testatrix's estate accounted for, did not constitute an acknowledgment of liability in regard to that part which the exors. were said to have misapplied ; (3) the statute afforded a good defence in regard to the share of the £2,000 legacy also.—*Re* OLIVER, THEOBALD *v.* OLIVER, [1927] 2 Ch. 323 ; 96 L. J. Ch. 496 ; 137 L. T. 788 ; 71 Sol. Jo. 710.

1584a. —— **Misapplication of fund—Payments in respect of sum accounted for.**]—*Re* OLIVER, THEOBALD *v.* OLIVER, No. 1568a, *ante*.

1588a. ——.]—Stat. Limitations cannot be pleaded by trustees, in answer to a charge of breach of trust, to defend them from the consequences of neglecting their duty in having sold an estate charged with the payment of a sum of money, without satisfying that demand.—MILNES *v.* COWLEY (1817), 4 Price, 103 ; 146 E. R. 408 ; *subsequent proceedings* (1820), 8 Price, 620.

1632. *Add. Annotation :*—**Refd.** *Re* Blake, *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251.

1636. *Add. Annotation :*—**Refd.** Douglass *v.* Lloyds Bank (1929), 34 Com. Cas. 263.

1651. *Add. Annotation :*—**Apld.** *Re* A Debtor, [1927] 1 Ch. 410.

1653. *Add. Annotation :*—**Refd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

1665. *Add. Annotation :*—**Refd.** *Re* Mason (1928), 97 L. J. Ch. 321.

1674. *Add. Annotations :*—**Refd.** *Re* Mason (1928), 97 L. J. Ch. 321 ; *Re* Blake, *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251.

1677. *Add. Annotations :*—*As to* (1) **Refd.** *Re* Mason (1928), 79 L. J. Ch. 321. *As to* (2) **Refd.** *Re* Blake, *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251.

Part VII.—Equity and the Statutes of Limitation.

1687. *Add. Annotation :*—*As to* (2) **Refd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399. *Generally*, **Refd.** *Re* Blake, *Re* Minahan's Petition of Right, [1932] 1 Ch. 54.

1709. *Add. Annotation :*—**Refd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399

1709a. —— —— ——.]—In 1900 W. mortgaged shares to L. to secure a loan with interest. L. received dividends to clear the interest up to 1908, when they ceased & the shares became of practically no value, L. retaining them, but without foreclosing. In 1916 &

PART VI. SECT. 1, SUB-SECT. 1.—D.

1571 i. *Interest in possession—Date of breach of trust.*]—COUCH *v.* WESTERN TRUST CO., [1925] 3 D. L. R. 1117 ; [1925] 2 W. W. R. 678.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 2.

sa. *Payment into Treasury by trustee company—Order of court for payment out.*]—Where money has been paid into the Treasury pursuant to National Trustees, Executors & Agency Co. of Australasia Limited Act, s. 19, the power conferred by s. 20 of the Act on the Supreme Ct. or a judge thereof to order payment out to a claimant is, subject to the specified exceptions, limited to the period of six years after such payment in, whatever procedure is adopted.—NELSON *v.* THE NATIONAL TRUSTEES, EXECUTORS & AGENCY CO. OF AUSTRALASIA, LTD., *Re* GIBBS, [1928] V. L. R. 384 ; [1928] Argus L. R. 243.—**AUS.**

PART VII. SECT. 2, SUB-SECT. 1.

1704 i. —— *Unless inequitable to do so.*]—Though the Stat. of Limitations by its terms does not operate directly upon equitable remedies, such remedies are barred in cts. of equity by analogy to the Statute. The analogy is found in the case of constructive trusts, where the equity is fastened upon the trustee not because he intended to become the fiduciary of property, but because of the character of his dealings & in spite of his intention to take the property for himself. But cts. of equity have refused to see any analogy when a person, intending to act in a capacity which is fiduciary, has received as & for the beneficial property of another, something which he is to hold, apply, or account for specifically for his benefit. Such a person is either an express trustee or, if that name does not in strictness belong to him, he stands in the same position as a direct or express trustee. Therefore, where pltf. entrusted the sale of her furniture to deft. & authorised him to receive the proceeds on her behalf, & where deft. received money from an insurance co. on account of a loss sustained by pltf. :-

thereafter the value of the shares increased enormously, & such large dividends were paid that by 1921 L. had received sufficient to pay off the capital of the loan & all interest in arrear. He died in 1923. Pltfs., who were entitled to the equity of redemption of the mtge., took out a summons claiming redemption, & also repayment of the excess of the amount of dividends received by L. or his exors. over & above the amount due under the mtge.:—*Held:* (1) equity ought not to deprive a mtgor. of his right to redeem if the debt had been or could be repaid, the security were still available, & the position of the mtgee. had not been altered to his prejudice by the delay; (2) the limit of twelve years applicable by Real Property Limitation Act, 1874 (c. 57), in the case of a mtge. of realty would not, by equitable principles, be extended so as to support a plea of delay & laches & be made applicable to a mtge. of personalty.—WELD *v.* PETRE, [1929] 1 Ch. 33; 97 L. J. Ch. 399; 139 L. T. 596; 44 T. L. R. 739; 72 Sol. Jo. 569, C. A.

1758. *Add. Annotations:*—**Consd.** *Re* Blake, *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251. **Refd.** *Re* Mason (1928), 97 L. J. Ch. 321.

1761. *Add. Annotations:*—**Consd.** *Re* Mason (1928), 97 L. J. Ch. 321. **Refd.** *Re* Blake, *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251.

1761a. **Petition of right.**]—Circumstances (*see* DESCENT, No. 336a, *ante*), in which:—*Held:* suppliants' petition was barred by Stat. Limitations, 1623 (c. 16).—*Re* MASON, [1929 [1 Ch. 1; 97 L. J. Ch. 321; 139 L. T. 477; 44 T. L. R. 663; 72 Sol. Jo. 545, C. A.

Annotation:—**Consd.** *Re* Blake, *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251.

1761b. —— —— ——.]—B. died in London in 1876, intestate & without any surviving issue. Under an order of the ct. dated 1883 B.'s personal estate was paid to the Crown. M., the suppliant, as legal personal representative of a grandson of B.'s paternal aunt, by this petition of right claimed to be entitled to the estate:—*Held:* Stat. Limitations, 1623, barred the claim, & also there were no facts alleged in the petition which established a trust in respect to any part of the money, stocks & funds constituting or representing the personal estate of the said B., or forming part of the consolidated fund.—*Re* BLAKE, *Re* MINAHAN'S PETITION OF RIGHT, [1932] 1 Ch. 54; 100 L. J. Ch. 251; 145 L. T. 42; 47 T. L. R. 357.

Part VIII.—Fraud and the Statutes of Limitation.

1776. *Add. Annotation:*—**Refd.** Lynn *v.* Bamber, [1930] 2 K. B. 72.

1793. *Add. Annotation:*—**Refd.** Lynn *v.* Bamber, [1930] 2 K. B. 72.

1795. *Add. Annotations:*—**Dbtd.** Lynn *v.* Bamber, [1930] 2 K. B. 72. **Refd.** Board of Trade *v.* Cayzer, Irvine, [1927] A. C. 610; Ramdutt Ramkissendass *v.* Sassoon E. D. & Co. (1929), 98 L. J. P. C. 58.

1798. *Add. Annotations:*—**Folld.** Legh *v.* Legh (1930), 143 L. T. 151; Lynn *v.* Bamber, [1930] 2 K. B. 72.

1813. *Add. Annotation:*—**Refd.** Aylott *v.* West Ham Corpn., [1927] 1 Ch. 30.

1814. *Add. Annotation:*—**Consd.** Lynn *v.* Bamber, [1930] 2 K. B. 72.

1815. *Add. Annotation:*—**Refd.** Lynn *v.* Bamber, [1930] 2 K. B. 72.

1816. *Add. Annotation:*—**Refd.** Lynn *v.* Bamber, [1930] 2 K. B. 72.

1817. *Add. Annotations:*—**N.F.** Legh *v.* Legh (1930), 143 L. T. 151; Lynn *v.* Bamber, [1930] 2 K. B. 72.

1818. *Add. Annotations:*—**Consd.** Legh *v.* Legh (1930), 143 L. T. 151. **N.F.** Lynn *v.* Bamber, [1930] 2 K. B. 72.

1819. *Add. Annotations:*—**Apld.** Legh *v.* Legh (1930), 143 L. T. 151. **Consd.** Lynn *v.* Bamber, [1930] 2 K. B. 72.

1819a. —— ——.]—In an action for an account where the plea of limitation is raised, a reply that there has been a fraudulent concealment of the true facts is a good answer to the plea, & the doctrine of equity will apply & time only begin to run from the time the truth became known.—LEGH *v.* LEGH (1930), 143 L. T. 151.

Annotation:—**Folld.** Lynn *v.* Bamber, [1930] 2 K. B. 72.

1819b. —— ——.]—Since the Judicature Acts the equitable principle that active & fraudulent concealment on the part of deft. constitutes a good reply to Stat. Limitations is applicable even to pure common law causes of action; & even without the element of active concealment the Statute is no answer to a claim based on fraud.

In 1921 deft. sold pltf. plum trees warranted as "Purple Pershore." Pltf. some years afterwards, finding that the trees were not "Purple Pershore," brought an action in 1928 claiming damages for breach of warranty. Deft. denied the breach & pleaded the Stat. Limitations. In his reply pltf. alleged fraudulent representation by deft. & also fraudulent concealment of the breach:—*Held:* (1) either of these pleas was relevant in answer to the Stat. Limitations; (2) pltf. upon the evidence had failed to establish the charge of fraud.—LYNN *v.* BAMBER, [1930] 2 K. B. 72; 99 L. J. K. B. 504; 143 L. T. 231; 46 T. L. R. 367; 74 Sol. Jo. 298.

1820. *Add. Annotations:*—**Consd.** Legh *v.* Legh (1930), 143 L. T. 151; Lynn *v.* Bamber, [1930] 2 K. B. 72.

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deft. was under an obligation to account specifically for the money, the receipt of which was not intended to create a mere debt; &, therefore, the Stat. of Limitations did not apply to an action to recover such sums; but where pltf. was entitled to payment of a sum of money from a person in Germany & authorised deft. to obtain such money & pay it to her, the transaction which the parties performed to enable deft. to acquire such money showed that he was not expected to account specifically for the money he received or the goods into which it was transformed or the proceeds of these goods, & this cause of action was subject to the Stat. of Limitations.—COHEN *v.* COHEN (1929), 42 C. L. R. 91; 3 A. L. J. 102; [1929] Argus L. R. 204.—**AUS.**

PART VIII. SECT. 1, SUB-SECT. 2.—B. *sc. When time begins to run—Conversion—From first intimation of person in possession.*]—PUGH *v.* ASHUTOSH SEN. (1928), L. R. 56 Ind. App. 93.—**IND.**

Part IX.—Penal Actions and Other Proceedings.

1837a. ——.]—When a statute gives a penalty to the King & to the informer, & the informer does not sue within the year the King may sue for the whole penalty at any time within two years.—R. *v.* FRANKLIN (1704), 6 Mod. Rep. 220 ; 2 Ld. Raym. 1038 ; 3 Salk. 351 ; 87 E. R. 971.

Part XI.—Process to Prevent Statutory Bar.

1879. Add the following paragraph & citations :—

Pltf., suing as assignee of a debt, issued a writ for money lent, without having given notice of the assignment to deft. ; & he afterwards applied to amend his writ by adding the assignor as a party to entitle him to sue. Between the date of the issue of the writ & the application to amend, Stat. Limitations had barred the remedy, & a judge at chambers had given pltf. unconditional leave to amend the writ as of the date of its issue :—*Held :* pltf. ought not to be allowed to make such amendment, as it would take away from deft. a defence which had already accrued to him by virtue of the statute, & would change the substantial rights of the parties (1889), 61 L. T. 772, D. C. ; *affd.* (1890), 34 Sol. Jo. 228, C. A.

Annotation :—**Folld.** Mabro *v.* Eagle, Star & British Dominions Insurance Co., [1932] 1 K. B. 485.

1879a. —— —— ——.]—The ct. will not, under R. S. C., Ord. 16, r. 2, allow a person to be added as pltf. to an action if thereby the defence of Stat. of Limitations would be defeated.—MABRO *v.* EAGLE, STAR & BRITISH DOMINIONS INSURANCE CO., LTD., [1932] 1 K. B. 485 ; 101 L. J. K. B. 205 ; 146 L. T. 433, C. A.

1882. *Add. Annotation :*—**Overd.** Mabro *v.* Eagle, Star & British Dominions Insurance Co., [1932] 1 K. B. 485.

1894. *Add. Annotation :*—**Consd.** Mabro *v.* Eagle, Star & British Dominions Insurance Co., [1932] 1 K. B. 485.

Part XII.—Pleading and Practice.

1948. *Add. Annotations :*—**Apld.** Cheang Thye Phin *v.* Lam Kin Sang, [1929] A. C. 670. **Expld.** Elder *v.* Northcott, [1930] 2 Ch. 422.

1969. *Add. Annotation :*—**Distd.** *Re* Wheater, [1928] Ch. 223.

1975. *Add. Annotation :*—**Consd.** Lowe *v.* Bentley (1928), 44 T. L. R. 388.

1976a. Counterclaim need not be barred when action brought.]—Stat. Limitations 1623 (c. 16), s. 3, bars a counterclaim on a cause of action which arose more than six years before the delivery of the counterclaim, though less than six years before the issue of the writ in the action.—LOWE *v.* BENTLEY (1928), 44 T. L. R. 388 ; 72 Sol. Jo. 254.

1977. *Add. Annotation :*—**Refd.** Lowe *v.* Bentley (1928), 44 T. L. R. 388.

2002. *Add. Annotation :*—**Refd.** Purnell *v.* Roche, [1927] 2 Ch. 142.

2016. *Add. Annotation :*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

PART IX. SECT. 1, SUB-SECT. 2.

1838 i. *Who is "party grieved"—Provincial Treasurer of Alberta.*]—R. *v.* CANADIAN NORTHERN RY. CO., [1923] A. C. 714 ; 93 L. J. P. C. 18 ; 39 T. L. R. 691.—**CAN.**

PART XI. SECT. 1, SUB-SECT. 3.

se. *Writ out of time—Acceptance of service.*]—When a solr. has accepted service of a writ which was issued more than twelve months prior to the date of the acceptance of service & which has not been renewed by order, the claim of pltf. cannot be affected by the fact that the period limited by Stat. Limitations has run between the date of the issue of the writ & the date of the acceptance of service.—MORRISON *v.* BENTALL (No. 2), [1928] 3 W. W. R. 663.—**CAN.**

PART XI. SECT. 2, SUB-SECT. 1.—C. (b).

d i. —— *Reservation of rights under statute.*]—In an action against defts. as makers of a promissory note defts. disclaimed personal liability on the ground that the note in question was given by them as trustees of school section 44, that the money was obtained & used by them for school purposes, that pltf. was aware of the facts & that at the time of action brought defts. had ceased to be trustees for the section :—*Held :* an order allowed, adding as parties the trustees of school section 44, should have been made only upon terms reserving defts.' rights under Stat. Limitations.—DOUGLAS *v.* RAWDING, [1928] 1 D. L. R. 463 ; 59 N. S. R. 519.—**CAN.**

PART XI. SECT. 7.

sw. *Fieri facias—Sale under—Property bought in by defendant—Claim not revived.*]—JONES *v.* HUTTON (1853), 11 U. C. R. 554.—**CAN.**

PART XII. SECT. 2.

r i. ——.]—PULSIFER *v.* KING, [1926 1 D. L. R. 1006 ; 58 N. S. R. 412.—**CAN.**

PART XII. SECT. 3.

1998 iii. —— ——.]—In an action for trespass & conversion alleged to have been committed between certain dates by entering upon pltf.'s land & cutting timber thereon, the combined effect of the statement of claim & of Stat. Limitations was to confine pltf.'s right of redress to wrongs committed within the last seven months of the period alleged. The jury returned a general verdict in favour of pltf. :—*Held :* the evidence was such that the jury could not reasonably have found that a wrong had been committed within the period within which it must have been committed in order for pltf. to succeed.—HUGHES *v.* BEBAN LUMBER CO., [1928] 1 D. L. R. 244 ; [1928] 1 W. W. R. 35 ; 39 B. C. R. 132.—**CAN.**

1998 iv. —— ——.]—Deft. signed an authorisation to pltf. to make use of his name as next friend in an action against him for damages, & so became liable to pltf. for his account for legal services, unless there was an agreement to the contrary. Deft. & his mother swore that there was such an agreement, & the trial judge found against deft. :—*Held :* on appeal, it still remained for pltf. to prove that his cause of action arose within six years, or, otherwise, that it was kept alive by payment, & the burden was not upon deft. to prove a negative, &, there being clear proof that the cause of action did not arise within six years, deft.'s appeal must be allowed.—FULLERTON *v.* BLENKHORN, [1928] 1 D. L. R. 409 ; 59 N. S. R. 494.—**CAN.**

PART XII. SECT. 4.

2005 ix. ——.]—CURTIS *v.* HARRIS, [1928] 4 D. L. R. 317.—**CAN.**

LITERARY AND SCIENTIFIC INSTITUTIONS.

Part I.—Definitions and Nature.

4. *Add. Annotation :—As to* (2) **Consd.** *Re* Prevost, Lloyds Bank, Ltd. *v.* Barclays Bank, Ltd., [1930] 2 Ch. 383.

5. *Add. Annotations :* — **Refd.** Midland Counties Institution of Engineers *v.* I. R. Comrs. (1928), 14 Tax Cas. 285. **Consd.** Institution of Civil Engineers *v.* I. R. Comrs. (1931), 47 T. L. R. 466.

Part II.—Property.

10a. Power to purchase—Statuary—Construction of Chantrey bequest.]—*Re* CHANTREY'S WILL, LEIGHTON *v.* HUGHES & A.-G. (1889), 5 T. L. R. 554, C. A.

LOAN SOCIETIES.

PART I. SECT. 2.

sa. *Registration—Refusal of registrar to issue certificate—Mandamus.*]—On appeal from the refusal of a prerogative writ of mandamus directed to the registrar of cos. compelling him to issue a certificate under Savings & Loan Association Act, 1927, c. 62, s. 80, to enable applt. to continue in business as an assocn. with guaranteed shares:—*Held:* the conditions which, under s. 80, had to be fulfilled before the certificate could be obtained had not been complied with, & the certificate & the writ of mandamus had been rightly refused.—*Re* PIONEER SAVINGS & LOAN SOC. & *Re* REGISTRAR OF COMPANIES, [1928] 1 D. L. R. 830; [1928] 1 W. W. R. 361; 39 B. C. R. 372. —CAN.

sb. *Membership—Whether question for arbitration.*]—Savings & Loan Associations Act, 1926-27, c. 62, s. 20, does not remit to arbitration the question whether a person is or is not a member.—FURNESS *v.* GUARANTEE SAVINGS & LOAN ASSOCN., [1928] 3 D. L. R. 175; [1928] 2 W. W. R. 337. —CAN.

PART II. SECT. 4, SUB-SECT. 1.

sc. *Instalment savings certificate—Application for cancellation—Misrepresentation by society.*]—Deft. assocn., under Savings & Loan Assocns. Act, B. C., could issue four classes of shares, including "instalment shares" & "savings shares." Its agent, C., obtained from pltf. an application, on deft.'s printed form, for an "instalment savings certificate," & deft. issued to pltf. a certificate for "instalment shares." It had no power to issue an "instalment savings certificate." Pltf., after ascertaining his rights & obligations under the certificate issued to him, sued for cancellation of the application & certificate & for return of moneys paid, on the grounds, (*a*) that the application was a nullity; (*b*) that it was for a savings certificate, & in view of the kind of certificate issued, was not accepted; & (*c*) misrepresentation by C.:—*Held:* the application should be declared null & void unless it was clearly established that by "instalment savings certificate" both pltf. & C. meant a certificate for a certain specific kind of share which deft. could issue; & the *onus* of establishing that their minds were *ad idem* as to this rested on deft.—BAKER *v.* GUARANTY SAVINGS & LOAN ASSOCN., [1931] S. C. R. 199; [1931] 1 D. L. R. 968; *revsg.*, [1930] 3 D. L. R. 475.—CAN.

LOCAL GOVERNMENT.

NOTE.—*See, generally*, Local Government Act, 1929 (c. 17).

Part I.—The Ministry of Health.

1. *Add. Annotations :*—**Distd.** A.-G. *v.* Sunderland Corpn. (1929), 46 T. L. R. 10. **Refd.** A.-G. *v.* Manchester Corpn., [1931] 1 Ch. 254.

5. *Add. Annotation :*—**Distd.** A.-G. *v.* Sunderland Corpn. (1929), 46 T. L. R. 10.

Part II.—Local Authorities generally.

9. After this case add :—
——.]—*See* Local Government Act, 1929 (c. 17), s. 10 (1).

13. *Add. Annotation :*—**Consd.** R. *v.* Davies, *Ex p.* Penn (1932), 48 T. L. R. 666.

14a. —— **Employment as roadman by county council—Office held under urban district council—Roads taken over by urban district council.**]—D. was prior to the passing of Local Government Act, 1929 (c. 17), employed as a roadman by the M. County Council, on a main road in the A. urban district. He was elected a member of the A. Urban District Council in 1928. When the Local Government Act, 1929 (c. 17), came into force the A. Urban District Council claimed to exercise the functions of maintenance & repair in respect of county roads in the district, & D. was employed as before, his wages being now paid by the urban district council, which was entitled to be reimbursed by the county council :—*Held :* D. was disqualified for being elected or being a member of the A. Urban District Council under Local Government Act, 1894 (c. 73), s. 46, as the holder of a " paid office " under the Urban District Council.—R. *v.* DAVIES, *Ex p.* PENN (1932), 96 J. P. 416 ; 48 T. L. R. 666 ; 30 L. G. R. 419.

27a. —— ——.]—Pltf. sued deft. for a £50 penalty for acting as a comr. in the execution of a local Act without being qualified. Deft. proved that he was qualified in the particular manner specified by the Act, but did not prove that he had taken & subscribed the oath :—*Held :* a verdict was properly found for deft., since he was sued as acting as a comr. without being qualified, & not for acting as a comr. without having taken & subscribed the oath.—TUPPER *v.* NEWTON (1853), 14 C. B. 114 ; 2 C. L. R. 85 ; 22 L. T. O. S. 103 ; 17 J. P. 824 ; 2 W. R. 36 ; 139 E. R. 48.

27b. —— ——.]—A member of a local board, who having been concerned in a contract by the board has thereupon ceased to be such member by force of P. H. Act, 1875, Sched. II. r. 64, is a person disabled from acting as a member by a provision of the Act within r. 70, & if afterwards he does so act, he is liable to a penalty of £50.—FLETCHER *v.* HUDSON (1881), 7 Q. B. D. 611 ; 51 L. J. Q. B. 48 ; 46 L. T. 125 ; 46 J. P. 372 ; 30 W. R. 349, C. A.

Annotation :—**Apld.** R. *v.* Rowlands, [1906] 2 K. B. 292.

39. *Add. Annotation :*—**Refd.** Witham Outfall Board *v.* Boston Corpn. (1926), 136 L. T. 756.

48a. —— **Increase to meet cost of living—Whether war bonus—Construction of local superannuation Act.**]—The ct. held that increases in remuneration granted during the war to an employee to meet the increased cost of living were not, for the purpose of a local superannuation Act, " war bonuses granted as such."—CANNON *v.* SOUTHWARK BOROUGH COUNCIL (1929), 45 T. L. R. 403.

49. *Add. Annotation :*—**Refd.** Brown *v.* Dagenham Urban Council, [1929] 1 K. B. 737.

50. *Add. Annotations :*—**Refd.** Brown *v.* Dagenham Urban Council, [1929] 1 K. B. 737 ; Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

52a. —— —— **After dismissal—Remuneration accrued due.**]—BROWN *v.* DAGENHAM URBAN COUNCIL, No. 212a, *post.*

54. *Add. Annotation :*—**Consd.** Brown *v.* Dagenham Urban Council, [1929] 1 K. B. 737.

60. *Add. Annotation :*—**Refd.** A.-G. *v.* Still (1927) 44 T. L. R. 102.

PART II. SECT. 3, SUB-SECT. 2.—A.

sx. *Non-payment of taxes.*]—In Aug. 1927, resp. purchased land in the township of G. The taxes for 1927, being then due & unpaid, were assumed by resp. In Oct. 1929, resp. agreed to convey the land to D. upon certain terms, one of which was that she should assume payment of the unpaid taxes :—*Held :* resp.'s taxes being at the time of the election in 1930 overdue & unpaid, he was not eligible to be elected a member of the township council or to sit or vote therein.—R. *v.* SMUCK, [1930] 3 D. L. R. 714 ; 65 O. L. R. 213.—**CAN.**

sy. *Violation of Municipal Act in expenditure of money.*]—Four members of a township council voted for a resolution that the township should borrow $100,000 from a Public Utilities Commission, but the resolution said nothing about the application of the money :—*Held :* not a breach of the Municipal Act, R. S. O., 1927, s. 314.—R. *v.* LITTLE, [1931] 3 D. L. R. 522 ; O. R. 353.—**CAN.**

PART II. SECT. 4.

sa. *Contract for public utilities—Charge of rates under.*]—*Ex p.* MONCTON TRAMWAY ELECTRICITY & GAS CO. (N. B.), [1927] 3 D. L. R. 1112.—**CAN.**

PART II. SECT. 5, SUB-SECT. 1.—A.

sb. *Right to acquire—Under Ordinance 4, 1926.*]—Ordinance 4, 1926, does not expressly or impliedly authorise a Health Board to acquire immovable property. — MAYVILLE LOCAL ADMINISTRATION & HEALTH BOARD *v.* GIELINK (1928), 49 N. L. R. 148.—**S. AF.**

PART II. SECT. 6.

53 i. *Duration of office—42 Vict. c. 1, s. 66.*]—LETTENEY *v.* DILLON (1885), 18 N. S. R. (6 R. & G.) 146.—**CAN.**

PART II. SECT. 7.

sz. *Dates of meetings fixed at first meeting—Right to alter.*]—The fact that a municipal council has exercised its discretionary power to fix the dates for its regular meetings to be held throughout the year, does not prevent it from subsequently advancing the date of one of said meetings, at least where it does so by unanimous resolution of all its members passed at a regular meeting.—SHILLOTO DRUG CO. *v.* HANNA, [1931] 3 W. W. R. 108 ; 3 D. L. R. 567.—**CAN.**

68. *Add. Annotation :*—**Refd.** R. *v.* North Worcestershire Assessment Committee, *Ex p.* Hadley, [1929] 2 K. B. 397.

69a. Resolutions contravening Trade Disputes & Trade Unions Act, 1927 (c. 22)—Duty of local authority.]—Prior to above Act various committees of a local authority passed resolutions, which were confirmed by the council, to the effect that certain of their employees be required to become members of one of the trade unions in the resolutions referred to. By above Act it was provided that it should not be lawful for any local or other public authority to make it a condition of the employment, or continuance in employment, of any person that he should or should not be a member of a trade union ; & that any such condition should be void. Shortly after the passing of above Act instructions were given by a committee that only men belonging to a specified trade union should be employed in respect of certain casual labour ; & an employee, who was dismissed accordingly, obtained a declaration in the county court that his dismissal was illegal. A member of the council thereupon brought forward a motion having for its object that instructions should be given that the resolutions of the committees should cease to be operative ; but the motion was defeated :—*Held :* in the circumstances the ct. should declare that it was not lawful for the local authority to require any person, as a condition of employment or continuance in employment, to become or to be a member of a trade union ; *Semble :* it was not obligatory on the local authority upon the passing of the Act, to resolve that the resolutions of the committees were no longer to have effect.—A.-G. *v.* BIRKENHEAD CORPN. (1928), 93 J. P. 33 ; 27 L. G. R. 192.

SUB-SECT. 2.—ACCOUNTS AND AUDIT.
(Vol. XXXIII., p. 19.)

See, now, Audit (Local Authorities) Act, 1927 (c. 31).

77a. —— Audit (Local Authorities) Act, 1927 (c. 31)—Appeal to Minister of Health—Discretion of Minister as to costs.]—The Div. Ct. having allowed an appeal on a case stated by the Minister of Health under above Act, raising the question whether or not resp., a district auditor, had rightly disallowed certain sums paid by applts., a local education authority, for paving the playgrounds of two non-provided schools :—*Held :* (1) on the construction of the provisions of sect. 2 of above Act, the questions of applts.' costs of the appeal & of resp.'s right to be paid his costs of the appeal out of the funds of applts., were in the discretion of the Minister of Health ; (2) on the construction of these provisions, the ct. had power to grant resp. leave to appeal from its decision to the Ct. of Appeal.—LANCASTER (COUNTY PALATINE) COUNCIL *v.* CROWE (No. 2), [1929] 1 K. B. 604 ; 98 L. J. K. B. 358 ; 140 L. T. p. 560 ; 93 J. P. p. 40 ; 45 T. L. R. p. 173 ; 27 L. G. R. p. 102, D. C.

Annotation :—**Refd.** Stoke Newington Borough Council *v.* Richards (1929), 45 T. L. R. 650.

77b. —— —— Appeal to Court of Appeal—Power of Divisional Court to grant leave.]—LANCASTER (COUNTY PALATINE) COUNCIL *v.* CROWE (No. 2), No. 77a, *ante.*

81. *Add. Annotation :*—**Apld.** A.-G. *v.* London & Home Counties Joint Electricity Authority, [1929] 1 Ch. 513.

83. *Add. Annotations :*—**Apld.** Woolwich Corpn. *v.* Roberts (1927), 96 L. J. K. B. 757. **Consd.** Brown *v.* Dagenham Urban District Council, [1929] 1 K. B. 737. **Distd.** Field *v.* Poplar Corpn., [1929] 1 K. B. 750. **Apld.** A.-G. *v.* Tynemouth Union, [1930] 1 Ch. 616. **Refd.** R. *v.* Grain, *Ex p.* Wandsworth Grdns., [1927] 96 L. J. K. B. 563 ; R. *v.* Health Minister, *Ex p.* Dore, [1927] 1 K. B. 765 ; A.-G. *v.* Smethwick Corpn. (1932), 96 J. P. 105.

84. *Add. Citations :*—*affd.* (1927), 25 L. G. R. 347 ; *sub nom.* WOOLWICH BOROUGH COUNCIL *v.* ROBERTS, 91 J. P. 121 ; 43 T. L. R. 576 ; 71 Sol. Jo. 488, H. L.

91. *Add. Annotations :*—*As to* (1) **Consd.** Clarke *v.* Epsom R. D. C., [1929] 1 Ch. 287 ; Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485.

96. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

99. *Add. Annotation :*—**Consd.** Scammell *v.* Attlee, [1929] 1 K. B. 419.

100. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

PART II. SECT. 8.

sc. *Cannot exercise powers reserved to municipal council as a whole.*]—SIMON *v.* GASTONGUAY, [1931] 2 D. L. R. 75 ; 2 M. P. R. 470. **CAN.**

PART II. SECT. 9, SUB-SECT. 1.

sd. *Debentures—Priority—Debentures issued by Lethbridge Northern Irrigation District.*]—HOME INVESTMENT & SAVINGS ASSOCN. *v.* LETHBRIDGE NORTHERN COLONISATION MANAGER, [1927] 1 D. L. R. 437 ; [1927] 1 W. W. R. 1 ; 22 Alta. L. R. 338.—**CAN.**

se. —— *To be held as collateral security—Rights of holder.*]—*Held :* the debentures of pltf. municipal corpn. issued & placed in the lands of deft. commission were by Hydro-Electric Railway Act, 1914, 4 Geo. V. c. 31, s. 11 (2), to be held by the commission as collateral security to the commission's own bonds issued under sect. 6. This statutory duty was not interfered with by the subsequent legislation. Holding the debentures as collateral security implied making that use of them which was in practice made of collateral security.—ST. CATHERINES CORPN. *v.* HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO, [1928] 3 D. L. R. 200 ; 62 O. L. R. 301 ; *affd.*, [1930] 1 D. L. R. 409, P. C.—**CAN.**

PART II. SECT. 9, SUB-SECT. 2.

of. —— *Right to investigate payments made prior to period under audit.*]—A clerk of a rural district council received, during the period from Mar. 1, 1920, to Sept. 30, 1925, a bonus in addition to his salary, & this bonus, he contended, had been duly granted to him. During that period the payments made to him were entered in the expenditure book & submitted to various inspectors of the Local Govt. Department, who passed them as correct, & such payments up to Oct. 1924, were audited by auditors of the said Department & certified as correct. In Nov. 1925, B., an auditor of the said Department, commenced his audit of the council's accounts for the two half-years ending respectively Mar. 31, & Sept. 30, 1925. He informed the clerk that the legality of the payment of the bonus had been questioned in the Ministry of Local Govt. by reason of the clerk's claim for superannuation : —*Held :* B. had jurisdiction to investigate payments made prior to the period under audit. — WALSH *v.* LOCAL GOVERNMENT & PUBLIC HEALTH MINISTER, [1929] I. R. 377.—**IR.**

PART II. SECT. 10.

sf. *Reference to arbitration—Under 12 & 13 Geo. 5, c. 140 (Ont.)—Arbitrators not entitled to submit questions for opinion of court except upon matters of law.*]—*Re* TOWNSHIP OF YORK & TOWNSHIP OF NORTH YORK (1925), 57 O. L. R. 644.—**CAN.**

105a. —— **Action on contract—Statutory requirements not fulfilled.**]—Pltf., clerk to comrs. of a local lighting & watching Act, drew up a contract to be executed by defts., who had accepted a tender for work to be done according to certain proposals of the comrs., one of which was that the contract should be prepared by the solr. to the comrs., at the expense of the contractors. Defts., as contractors, offered to execute the contract, but refused to pay pltf. his charges for drawing it up, on the ground that they were unreasonable. By the local Act the contract, on the part of the comrs., was required to be signed by five or more of them, which was not done, &, by the metropolitan general paving Act, the comrs. are entitled to sue or be sued in the name of their clerk :—*Held :* pltf. could not sue defts. for refusing to execute the contract in his capacity of clerk, as the contract on the part of the comrs. had not been signed by five or more of them, when tendered to defts., as required by the local Act, & as the charges made by pltf. on defts. for preparing the contract were due to him in his individual character, & not as clerk to the comrs.—CURLING *v.* JOHNSON (1833), 10 Bing. 89 ; 3 Moo. & S. 496 ; 2 L. J. C. P. 264 ; 131 E. R. 839.

110. *Add. Annotation :—As to* (1) **Refd.** Crediton Gas Co. *v.* Crediton U. C., [1928] Ch. 447.

129a. —— **Statutory relief from liability for road repair.**]—In 1928 the parish of A., rural district of G., was on the extension of the boundaries of the county borough of C., transferred to that county borough. The burden thrown on the ratepayers of the rural district in meeting the cost of the maintenance of roads in their district in consequence of the transfer of the parish of A. was £1,150 *per annum.* The parish of A. had been, in the matter of roads, a beneficial parish to the rural district of G. In arbn. proceedings as to the amount of compensation to be paid :—*Held :* (1) the arbitrator was entitled & bound to take into account, in ascertaining the payment to be made by C. to G. the fact G. had been relieved of the cost of maintaining the roads in its district by reason of the statutory provisions in Local Government Act, 1929 (c. 17) ; & (2) the arbitrator could not award anything in respect of the period after Apr. 1, 1930, when Local Government Act, 1929 (c. 17), came into operation.—GODSTONE RURAL DISTRICT COUNCIL *v.* CROYDON CORPN. (1932), 96 J. P. 303 ; 48 T. L. R. 649 ; 30 L. G. R. 460, C. A.

Part III.—The Parish.

176. *Add. Annotation :*—**Refd.** London (City) Corpn. *v.* London County Council (1930), 99 L. J. K. B. 577.

Part V.—The Urban District.

191. *Add. Annotation :*—**Refd.** A.-G. *v.* Leeds Corpn., [1929] 2 Ch. 291.

196. *Add. Citations :*—[1927] 1 Ch. 128 ; 96 L. J. Ch. 38 ; 136 L. T. 235.

210. *Add. Annotation :*—**Consd.** Brown *v.* Dagenham Urban Council, [1929] 1 K. B. 737.

212a. —— —— ——.]—(1) Under P. H. Act, 1875, s. 189, an urban district council have power to remove their clerk from his office at pleasure & without cause or notice, & this power cannot be negatived or impaired by any provision as to notice to be given to terminate the employment in any contract of service entered into between the parties. (2) The clerk can maintain an action against the council for salary accrued due to him at the time of his removal from office.—BROWN *v.* DAGENHAM URBAN COUNCIL, [1929] 1 K. B. 737 ; 98 L. J. K. B. 565 ; 140 L. T. 615 ; 93 J. P. 147 ; 45 T. L. R. 284 ; 73 Sol. Jo. 144 ; 27 L. G. R. 225.

Annotation :—**Distd.** Field *v.* Poplar Corpn., [1929] 1 K. B. 750.

220. *Add. Annotation :—Generally,* **Refd.** R. *v.* Grain, *Ex p.* Wandsworth Grdns., [1927] 1 K. B. 540.

230. *Add. Citations :*—[1927] 1 K. B. 765 ; 96 L. J. K. B. 322 ; 137 L. T. 30 ; 91 J. P. 45 ; 43 T. L. R. 263 ; 71 Sol. Jo. 160 ; 25 L. G. R. 166.

Part VII.—The Borough.

271. *Add. Annotation :*—**Refd.** Edwards *v.* A.-G. for Canada, [1930] A. C. 124.

282. *Add. Annotation :*—**Refd.** Brown *v.* Dagenham Urban Council (1929), 98 L. J. K. B. 565.

PART II. SECT. 12, SUB-SECT. 3.—A.

sk. *Adjustment of assets & liabilities.*]—EAST WINDSOR *v.* ESSEX CO., [1932] 1 D. L. R. 481.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 1.—A.

sg. *Jurisdiction—When court may interfere.*]—A municipal council is a legislative body having a limited & delegated jurisdiction. When it has acted within its jurisdiction, the ct. cannot interfere ; the justness or fairness of its action cannot be questioned by the ct. When it goes beyond its jurisdiction, or when it is shown that members of the council are corruptly seeking to advance, by municipal legislation, their own ends, or those of some favoured individual, the ct. may interfere.—*Re* HOWARD & TORONTO CORPN., *Re* SWEET & TORONTO CORPN., [1928] 1 D. L. R. 952 ; 61 O. L. R. 563.—**CAN.**

303. *Add. Annotations:*—**Refd.** St. Nicholas Acons *v.* L. C. C., [1928] A. C. 469. **Mentd.** Stevens *v.* Willing & Co. (1929), 167 L. T. Jo. 178.

350. *Add. Annotation:*—**Distd.** R. *v.* Transport Minister, *Ex p.* H. C. Motor Works, [1927] 2 K. B. 401.

508a. Senior sanitary inspector—Remuneration — Reduction — Conditions precedent.]— A borough council reduced the salary of the senior sanitary inspector. They had not dismissed him nor had he resigned, & he did not consent to the reduction. The council did not obtain the unconditional consent of the Minister of Health to the reduction:—*Held:* the council had no power to make the reduction.—FIELD *v.* POPLAR CORPN., [1929] 1 K. B. 750; 98 L. J. K. B. 575; 140 L. T. 691; 93 J. P. 157; 45 T. L. R. 333; 73 Sol. Jo. 158; 27 L. G. R. 370.

549. *Add. Annotation:*—**Refd.** A.-G. *v.* Leeds Corpn. (1929), 99 L. J. Ch. 9.

550. *Add. Annotation:*—**Refd.** A.-G. *v.* Leeds Corpn., [1929] 2 Ch. 291.

550a. Maintaining printing, bookbinding & stationery works—Intra vires.]—A corpn., whose statutory duties imposed upon them an expenditure of between £5,000 & £6,000 annually on printing, stationery, & bookbinding, resolved to establish a centralised system whereby instead of each department sending out its own printing work & making its own stationery purchases, a printing, stationery, & bookbinding department should be organised employing direct labour under a manager on corpn. premises, & printing & other machinery should be purchased, involving a capital outlay of £1,000 & an annual expenditure of about £1,420. An action was brought by the A.-G. at the relation of ratepayer claiming a declaration that it was unlawful *& ultra vires* the corpn. & contrary to the provisions of Municipal Corporations Act, 1882 (c. 50), to expend any part of the general rate fund of the borough for the purpose of establishing or carrying on a printing, bookbinding, or stationery works & an injunction to restrain them from so doing:—*Held:* (1) the formation of a

PART VII. SECT. 2, SUB-SECT. 1.—B. (a).

sx. *Implied power to insure—Power exercised for ulterior purpose—Whether contract valid.*]—QUEENSLAND INSURANCE CO., LTD. *v.* SUBIACO MUNICIPALITY (1927), 30 W. A. L. R. 32.—**AUS.**

PART VII. SECT. 2. SUB-SECT. 1.—B. (c) i.

346 iii. ——— ———.]—R. *v.* COUNCIL OF THE TOWN OF CHARLEVILLE, *Ex p.* CORONES, [1928] S. R. Q. 155.—**AUS.**

PART VII. SECT. 2, SUB-SECT. 2.—B.

q (p. 63) i. ——— ———.]—R. (HARDING) *v.* BENNETT (1896), 27 O. R. 314.—**CAN.**

bb i. ——— *Necessity for residence in ward—Candidate cannot be resident of two wards.*]—HOKANSON *v.* LAMPLE (Man.), [1927] 1 W. W. R. 725.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 2.—C. (b).

r i. ——— *Registrar of births, deaths, & marriages.*]—The functions of parish councils were transferred to the county councils under Local Government (Scotland) Act, 1929 (c. 50), s. 1. These functions included the election of a registrar of births, deaths, & marriages for each parish on the occurrence of a vacancy in that office; the levying of the amount required for payment of the registrar's remuneration & the payment thereof, subject to the right of the registrar to initiate, through the Registrar-General, an application to the sheriff for an increase in his remuneration; & power to the county council to apply to the sheriff for removal of the registrar on the grounds of failure or incompetence to perform his duties. The county council issue no instructions to, & have no control or supervision over, the registrar, who is responsible for the performance of his duties to the Sheriff & the Registrar-General. The registrar is not an officer or servant of the county council for the purpose of superannuation:—*Held:* a registrar of births, deaths, & marriages was disqualified under sect. 9 (2) of the 1889 Act for membership of the county council, in respect that his office was held "under" the county council within the section, in view of the council's powers of election, payment, & initiation of proceedings for removal.—BLACK *v.* LANARKSHIRE COUNTY COUNCIL, [1931] S. C. 561.—**SCOT.**

PART VII. SECT. 2, SUB-SECT. 2.—C. (c).

t (p. 66) i. ——— ———.]—R. (HARDING) *v.* BENNETT (1896), 27 O. R. 314.—**CAN.**

d (p. 67) i. ———, ——— ———.]—A member of a municipal council who had at the time of his election a claim for payment for services which he had performed for the corpn. is ineligible under Municipal Act, R. S. O., 1927, s. 53 (1) (*p*), to be elected or sit or vote, notwithstanding that the services were rendered to save the corpn. money, & notwithstanding how the payment is designated.—R. *v.* DEAN, [1932] 1 D. L. R. 324; O. R. 40.—**CAN.**

m (p. 68) i. *S. P.* ELLIOTT *v.* ST. CATHARINES MUNICIPAL CORPN. (1908), 18 O. L. R. 57; 13 O. W. R. 89.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 4.—A.

447 i. *Qualifications—Business assessment—What amounts to assessment.*]—*Re* EDMONTON CHARTER, R. (CLARKE) *v.* BURY (Alta.), [1927] 1 D. L. R. 885; [1927] 1 W. W. R. 456.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 2.—A.

sy. *Suspension — Municipal Act, R. S. N. S., 1923, s. 118—Not applicable to office held during good behaviour.*]—MCDONALD *v.* MCKAY, [1930] 4 D. L. R. 600; *revsg.*, [1930] 2 D. L. R. 50.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 2.—D.

sj. *Secretary-treasurer—Appointment to run till successor appointed—Right to notice.*]—Pltf. was appointed secretary-treasurer of deft. municipality under a bye-law which provided for the appointment of certain officials "for the year 1926, or until their successors be appointed." By another bye-law passed on Feb. 3, 1927, a successor to pltf. was appointed; but no notice of dismissal was given pltf., & he sued for the salary for the month of Feb. 1927:—*Held:* the meaning of the bye-law appointing pltf. was that his hiring was for the whole of the year 1926 & thereafter until his successor was appointed; &, therefore, his contract came to an end on the appointment of his successor, & he was entitled to be paid, with respect to Feb. only for the time during that month that he rendered services.—BLAKELEY *v.* CHARLESWOOD RURAL MUNICIPALITY, [1928] 2 D. L. R. 657; [1928] 1 W. W. R. 828; 37 Man. L. R. 331.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 3.

q i. ——— ———.]—A town council may dismiss its officers without notice & without cause.—NEWBY *v.* BROWNLEE (1916), 34 W. L. R. 278; 10 W. W. R. 249.—**CAN.**

q ii. *S. P.* WILSON *v.* YORK (1881), 46 U. C. R. 289.—**CAN.**

q iii. ——— ———.]—LARKINS *v.* SUMMERSIDE, [1928] 4 D. L. R. 841.—**CAN.**

ri. ——— *B. C. Municipal Act.*]—ZEIGLER *v.* VICTORIA CITY, [1922] 1 W. W. R. 75; 70 D. L. R. 722; 30 B. C. R. 389.—**CAN.**

ai. ——— ——— *Validity of resolution.*]—Where the necessary majority could only be obtained by including the vote of an alderman who had attended meetings at which the question of dismissal had been considered, but who had not been present at a meeting at which important evidence was taken:—*Held:* the resolution of dismissal was null & void.—FOSTER *v.* HALIFAX, [1926] 1 D. L. R. 125; 57 N. S. R. 268.—**CAN.**

a ii. ——— *Right of—Delegated by council to departmental heads.*]—The municipal council of Sydney passed a resolution providing that the discharge or disrating or suspension of any employee should be left in the hands of the heads of the respective departments subject to appeal to the town clerk, whose decision was to be final. An employee who was subsequently dismissed by a departmental head brought an action against the council for wrongful dismissal:—*Held:* the council had power to delegate its authority to discharge employee; the power given to departmental heads in that respect was revocable, & the council had not denuded itself of its authority & the dismissal was lawful.—BAYLY *v.* MUNICIPAL COUNCIL OF SYDNEY (1927), 28 S. R. N. S. W. 149; 45 N. S. W. W. N. 40.—**AUS.**

PART VII. SECT. 4.

r i. ——— *Funds in hand to meet payment—Refusal of corporation to accept goods.*]—NEPTUNE METER CO. *v.* HALIFAX CITY (1909), 7 E. L. R. 2.—**CAN.**

PART VII. SECT. 5, SUB-SECT 1. B. (a) ix.

sk. *Building prison.*]—R. *v.* NEWCASTLE JJ. (1830), Dra 214.—**CAN.**

so. *Grants made under "general welfare" clause.*]—WARD *v.* EDMONTON [illegible]Y, [1932] 3 W. W. R. 451.—**CAN.**

department to do the printing, bookbinding, & stationery work of the corpn. was incidental to or consequential upon the carrying out of the corpn.'s statutory duties & was not therefore *ultra vires*: (2) the expenses of forming & carrying on the department were expenses "necessarily incurred in carrying this Act into effect" within Municipal Corporations Act, 1882 (c. 50), Sched. V., Part II., para. 12, & were therefore payments authorised to be made out of the general rate fund by sect. 140 of the Act. It was immaterial that the expenditure on machinery was of a capital nature, as there were payments authorised in Sched. V. on other matters which involved capital expenditure. —A.-G. *v.* SMETHWICK CORPN., [1932] 1 Ch. 562; 101 L. J. Ch. 137; 146 L. T. 480; 96 J. P. 105; 48 T. L. R. 227; 30 L. G. R. 117, C. A.

557a. —— **Improvement of navigation.**]—The corpn. of N. restrained from soliciting, at the expense of the borough fund a bill in Parliament to enable them to improve the navigation of the river W.—A.-G. *v.* NORWICH CORPORATION (1851), 21 L. J. Ch. 139; 18 L. T. O. S. 58, L. JJ.; *previous proceedings* (1848), 16 Sim. 225.

Annotations:—**Consd.** Munt *v.* Shrewsbury & Chester Ry. Co. (1850), 13 Beav. 1. **Apld.** A.-G. *v.* Plymouth Corpn. (1853), 1 W. R. 445. **Refd.** A.-G. *v.* Wigan Corpn. (1854), Kay, 268.

662. *Add. Annotation:*—**Refd.** Brown *v.* Dagenham Urban Council, [1929] 1 K. B. 737.

Part XII.—The County.

699. *Add. Annotations:*—*As to* (1) **Consd.** Collins *v.* Whiteway, [1927] 2 K. B. 378. **Refd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579.

718. *Add. Annotation:*—**Apld.** A.-G. *v.* London & Home Counties Joint Electricity Authority, [1929] 1 Ch. 513.

SUB-SECT. 1.—THE CLERK OF THE PEACE AND OF THE COUNTY COUNCIL.

(Vol. XXXIII., p. 108.)

NOTE.—*These offices are now separate.*

See Local Government (Clerks) Act, 1931 (c. 45), & references in MAGISTRATES, Part XI., Sect. 3, sub-sect. 2, *post*.

735. *Add. Annotations:*—*As to* (3) **Consd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441. *Generally*, **Refd.** Damps Selsk Svendborg *v.* London, Midland & Scottish Ry. Co. (1929), 20 Ry. & Can. Tr. Cas. 67.

759. *Add. Annotation:*—*As to* (1) **Consd.** Aylott *v.* West Ham Corpn., [1927] 1 Ch. 30.

PART VII. SECT. 8, SUB-SECT. 1.

n. *Varied*, 9 Alta. L. R. 343.

PART VII. SECT. 8, SUB-SECT. 3.—C. (e).

n i. —— *To restrain increase of remuneration of council.*]—An action for an injunction restraining a municipal council from acting on a bye-law passed by it increasing the remuneration of the members of the council does not lie.—ROBERTSON *v.* TORONTO, [1930] 4 D. L. R. 793; 66 O. L. R. 38. —**CAN.**

PART XII. SECT. 3, SUB-SECT. 1.

so. *Allowances.*]—In a special case to determine the liability of a county council for payment of the allowances set forth in Local Government (Scotland) Act, 1929, s. 17 (1), & Sched. IV.: —*Held:* (1) school management committees, district councils, & joint committees are committees of the county council; (2) on the terms of the council's resolution adopting sect. 17, which bore that the rates were to be the "maximum rates," the members of the county council & of its committees & sub-committees were entitled in all cases to payment of the allowances authorised by sect. 17 (1) at the maximum rates fixed by Sched. IV.; (3) the words "time necessarily lost from ordinary employment" in sect. 17 (1) & Pt. III. of Sched. IV., imported a contract of service &, accordingly, the right to the allowances prescribed by Pt. III. was limited to persons whose attendance at meetings would involve loss of wages; (4) railway service in the sense of Pt. I. of Sched. IV. meant a railway service which was direct & reasonably expeditious.—FIFE COUNTY COUNCIL *v.* ARBUCKLE, [1932] S. C. 68.—**SCOT.**

PART XII. SECT. 7.

st. *Action for damage to bridge.*]—The corpn. of a county can maintain an action for damages to, or destruction of, a bridge lying within its limits.—WELLINGTON COUNTY CORPN. *v.* WILSON (1865), 16 C. P. 124.—**CAN.**

LUNATICS AND PERSONS OF UNSOUND MIND.

NOTE.—The cases in this Title must be read subject to the provisions of Mental Treatment Act, 1930 (c. 23), by which the term "asylum" is replaced by "mental hospital"; "pauper" by "rate-aided person," "rate-aided patient" or "rate-aided" & "lunatic" (except criminal lunatic & lunatic outside England), by "person of unsound mind," "person," "patient," "patient of unsound mind" or "of unsound mind," or such other expression as the context requires.

Part I.—In General.

1. To cross-references before this case add "*See, also,* Mental Deficiency Act, 1927 (c. 33), s. 1."

10. *Add. Annotation :*—**Refd.** *Re* Belliss, Polson *v.* Parrott (1929), 141 L. T. 245.

26a. "Legally incapable"—Issue of lunacy commission.]—WINTHROP *v.* WINTHROP (1845), 1 Coop. *temp.* Cott, 196; 5 L. T. O. S. 325; 47 E. R. 815, L. C.; *subsequent proceedings* (1846), 15 L. J. Ch. 403, L. C.

Part II.—Civil Capacity.

151a. ——————.]—HILL (OTHERWISE) *v.* HILL (1932), 173 L. T. Jo. 243.

186a. ——————.]—Whenever a person did an act... which act if done by a person with a perfect mind would make him civilly or criminally responsible to the law, if the disease in the mind of the person doing the act was not so great as to make him unable to understand the nature & consequences of the act which he was doing, that was an act for which he would be civilly or criminally responsible (LORD ESHER, M.R.).—HANBURY *v.* HANBURY (1892), 8 T. L. R. 559, C. A.; *previous proceedings,* [1892] P. 222.

204. *Add. Annotation :—As to* (3) **Apld.** *Re* Belliss, Polson *v.* Parrott (1929), 141 L. T. 245.

204a. —— ——.]—Where a woman aged 93 executed an alleged will a few months before her death altering the principle of equal division of her property between her children, two married daughters, which had been followed in her previous testamentary dispositions & in family benefactions during her lifetime, it was held (*a*) that testatrix entertained an illusory belief that she had benefited one daughter far more than the other, & (*b*) that her memory had so far failed that she could no longer remember her past actions towards her daughters so as to displace illusory notions. Therefore she had not at the time of the making of the alleged will a disposing mind & understanding within the definition in *Banks* v. *Goodfellow,* No. 204, & the alleged will was pronounced against.—*Re* BELLISS, POLSON *v.* PARROTT (1929), 141 L. T. 245; 45 T. L. R. 452; 73 Sol. Jo. 628.

206a. ——.]—He [testator] had such a degree of knowledge & understanding as to . . . know pltf. quite well, to remember that pltf. & he had been engaged in preparing his will & to appreciate that he was asked to execute as his will the document which was then put before him . . . Applying the principle laid down in *Parker* v. *Felgate,* 8 P. D. 171, testator's execution of the will so far as it had been resolved upon while he had the capacity, was *pro tanto* good execution (LORD MERRIVALE, P.).—THOMAS *v.* JONES (1928), as reported in 139 L. T. 214; 44 T. L. R. 467.

264a. Disposition valid—Capacity when instructions given.]—Where a testator is of sound mind when he gives instructions for a will, but at the time of signature accepts the instrument drawn in pursuance thereof without being able to follow its provisions :—*Held :* he must be deemed to be of sound mind when it is executed.—PERERA *v.* PERERA, [1901] A. C. 354; 70 L. J. P. C. 46; 84 L. T. 371; 17 T. L. R. 389, P. C.

Annotation :—**Consd.** Thomas *v.* Jones (1928), 139 L. T. 214.

265a. ——.]—HOBY *v.* HOBY (1828), 1 Hag. Ecc. 146; 162 E. R. 537.

PART II. SECT. 2, SUB-SECT. 2.—A. (a) i.

146 i. *Whether marriage invalidated—Degree of incapacity.*]—Mental capacity to contract marriage may co-exist with many forms of "insanity." Where, however, at the time of the marriage ceremony in question herein the woman had by reason of mental disease no real appreciation of the nature of the engagement apparently entered into, the marriage was declared null & void. Under such circumstances the marriage is, it seems, not merely voidable, but void *ab initio* & incapable of ratification. In any event, in the present case the evidence showed that the wife was mentally incapable of ratifying it.—BROSSEAU & BROSSEAU *v.* BELLAND, [1932] 2 W. W. R. 632.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—A. (a) i.

150 i. *Whether marriage invalidated—Degree of incapacity—Party incapable of understanding nature of contract.*]—The mental capacity required for a valid contract of marriage is the capacity to understand the nature of the contract & the duties & responsibilities which it creates. In an action for the annulment of a marriage on the ground that deft. was at the time of the marriage mentally incapable of entering into the contract the evidence sufficient to establish that conclusion must be of a very clear & definite character.—CHERTKOW *v.* FEINSTEIN (Can.), [1930] 1 D. L. R. 137; [1930] S. C. R. 335; *affg.,* [1929] 3 D. L. R. 339; 2 W. W. R. 257; 24 Alta. L. R. 188; *revsg.,* [1929] 1 D. L. R. 980; 1 W. W. R. 467.—**CAN.**

PART II. SECT. 8, SUB-SECT. 2.—A.

208 i. *Degree of mental soundness.*]—*Re* FRASER ESTATE, [1932] 3 W. W. R. 381.—**CAN.**

PART II. SECT. 8, SUB-SECT. 2.—C

230 i. *Delusions not affecting will—Delusions as to health.*]—*In the Estate of* UZKING, KING *v.* KING, [1931] 3 M. P. R. 367.—**CAN.**

PART II. SECT. 8, SUB-SECT. 3.—A.

264a i. *Disposition valid—Capacity when instructions given.*]—ROGERS *v.* DAVIS, [1932] S. C. R. 407.—**CAN.**

294. *Add. Annotation :*—**Refd.** *In the Estate of* Musgrove, Davis *v.* Mayhew, [1927] P. 264.

339. *Add. Annotation :*—*As to* (2) **Consd.** *Re* Belliss, Polson *v.* Parrott (1929), 141 L. T. 245.

341. *Add. Annotation :*—**Consd.** *Re* Belliss, Polson *v.* Parrott (1929), 141 L. T. 245.

353. *Add. Annotation :*—*As to* (1) **Refd.** Ahamath *v.* Sariffa Umma, [1931] A. C. 799.

Part III.—Presumptions and Proof of State of Mind.

469a. ——.]—WOODFORDE *v.* BURN (1834), 6 Nev. & M. 152, n.
Annotation :—**Refd.** Doe d. Tatham *v.* Wright (1836), 1 Har. & W. 729.

Part V.—Jurisdiction of Chancery Division of High Court of Justice.

498a. —— —— ——.]—NORRIS *v.* SANDFORD (1851), cited in 16 Beav. at p. 361 ; 51 E. R. 818 ; *sub nom.* MORRIS *v.* SANDFORD, 1 W. R. at p. 95.
Annotation :—**Refd.** Norris *v.* Stuart (1852), 16 Beav. 359.

512. *Add. Annotation :*—**Refd.** C. L. *v.* C. F. W., [1928] P. 223.

Part VI.—Jurisdiction in Lunacy.

529a. **Jurisdiction to direct settlement of lunatic's property—Change of circumstances—Causing party to "suffer an injustice"—Law of Property Act, 1925 (c. 20), s. 171 (1).**]—A lunatic not so found had been of unsound mind since 1882. She was a spinster aged eighty-one, & was possessed of personal property of the value of £2,000. From the time when she became of unsound mind she had lived under the care of an uncle & aunt, who had provided £2,076 towards her maintenance. The uncle died in 1885 & the aunt in 1907. By the will of the latter an annuity of £300 was bequeathed for the support of the lunatic. Upon the death of the aunt a sister of the lunatic was appointed receiver of her estate & acted until 1920, when she was relieved & a sister of appts. was appointed in her place. On her death in 1925 one of appts. was appointed & was receiver of the lunatic's estate. In 1880 before her reason left her the lunatic made a will, by which she bequeathed her property to her three sisters, all of whom were dead. On an application by appts., the residuary legatees under the aunt's will & second cousins of the lunatic, to the ct. to exercise the powers vested in it by sect. 171 of the above Act, & to direct a settlement to be made of the property of the lunatic :—*Held :* (1) the phrase "suffer an injustice" in sect. 171 (1) (*c*) must not be rigidly confined to a deprivation of a strict legal right, since that would stultify the operation of the sect. altogether, but it must in its context include the destruction of a clear moral claim, or even the disappointment of a thoroughly legitimate & well founded expectation, & in the circumstances appts. would "suffer an injustice" if the recent change in the law of intestacy were allowed to defeat the moral claim which they had to succeed to the estate of the lunatic, particularly in view of the continuous recognition, pecuniary & otherwise, which their side of the family had throughout shown of the obligations imposed on them by their kinship to the lunatic ; (2) there had been "a change of circumstances" within the sub-sect. since the execution by the lunatic of her will, by reason of the deaths of her three sisters to whom she had left her property ; (3) the case was one in which the ct. ought to exercise the discretion vested in it by sect. 171, by directing the receiver to execute a settlement of the property of the lunatic, to be approved by the judge in lunacy, which must be subject during the life of the lunatic to her right to be maintained out of the income, & if & so far as might be necessary out of the capital thereof, & subject also to any effective disposition by will or deed which the lunatic might make should she recover.—*Re* FREEMAN, [1927] 1 Ch. 479 ; 96 L. J. Ch. 225 ; 136 L. T. 657 ; 71 Sol. Jo. 272, C. A.

Annotation :—*As to* (1) **Consd.** *Re* Greene, *Re* Whitworth, *Re* E. A., *Re* Fraser, *Re* Wood, [1928] Ch. 528.

529b. —— —— —— ——.]—Under a marriage settlement dated Oct. 16, 1879, personalty funds were settled by a husband & wife upon

PART II. SECT. 8, SUB-SECT. 4.—B. (a).

281 ii. —— ——.]—The proof necessary to establish a will is not an absolute or conclusive one, but such proof as would satisfy a prudent man. The burden of proof as to the execution & the testamentary capacity of testator, at the time of the execution of a will, lies upon its propounder, who has to explain away the suspicious circumstances appearing in the case.—SURENDRA NATH CHATTERJI *v.* JAHNAVI CHARAN MUKHERJI (1925), I. L. R. 56 Calc. 390.—**IND.**

PART V. SECT. 3, SUB-SECT. 1.

sb. *To appoint person to convey—Property of lunatic sold in partition action.*]—Where in a partition action the ct. has sold lands the property of a person of unsound mind not so found, a judge of the Ch. Div. exercising the jurisdiction conferred by Trustee Act, 1893, ss. 30, 31, 33, will appoint a person to convey the lands on behalf of the person of unsound mind.—KEATING *v.* KEATING, [1918] 1 I. R. 453.—**IR.**

sd. —— *Mortgages vested in two trustees.*]—*Re* J. J. D., [1928] I. R. 538.—**IR.**

trusts under which, after the death of the husband in 1915, the wife was entitled to the income for life with a power of appointment by deed or will among the issue of the marriage, & in default of appointment the funds were settled in trust for the two surviving children, now aged forty-six & forty-four years, who by inquisitions in 1902 & 1910 had been certified to be of unsound mind. In default of children who attained twenty-one or being daughters married, the wife's fund would have passed to the wife absolutely & the husband's fund to the husband, who had given all his property to his wife. By his will the wife's father, who died in 1885, gave his residuary real & personal estate upon trusts under which, in the events which had happened, his daughter, the wife, received the income for her life with a power of appointment by deed or will amongst her issue. In default of appointment the residue was settled on trusts under which the wife's two children were the only beneficiaries. Neither of the children had made a will &, apart from their mother & an aunt aged eighty-two, who was a spinster of unsound mind, their next of kin were second cousins, so that if they survived their mother & aunt, the Crown would take on their deaths under an intestacy. In these circumstances the wife took out summonses under the above sect., asking the ct. to direct settlements of the children's personal property under the marriage settlement & her father's will, which should include trusts in her favour absolutely after the death of each child or, alternatively, a general power of appointment by will so as to enable her to benefit friends & charities in which the family had always been interested. Before the applications were heard an arrangement was come to between the wife & the Crown by which, subject to the approval of the ct., the Crown consented to the wife's having a general power of appointment over the whole of the marriage settlement funds & over the father's residuary personal estate to the extent of £21,140, being the amount provided by the wife out of her own money as a maintenance fund for the children, upon the wife's abandoning all claim to the rest of her father's residuary estate, valued at about £285,000, & agreeing to supplement the income of the mantenance fund for the benefit of the children as theretofore :—*Held :* there was no ground justifying the ct. in making a settlement in respect of the wife's father's residuary estate, for no injustice would be suffered by the wife within sect. 171 (1) (*c*), if each child's share of the property was allowed to devolve as on an intestacy on his or her death, nor ought the trusts to be altered under sect. 171 (1) (*b*) ; but as the Crown did not oppose a settlement of the marriage settlement funds, orders would be made for settlements of the two children's shares so as to give the wife a general power of disposal over the funds. The provision of the maintenance fund of £21,400 did not afford a ground for directing settlements under sect. 171, but the wife would remain free to apply for recoupment under Lunacy Act, 1890 (c. 5), s. 117, if so advised.

An application for a settlement was made by a widow, aged eighty-one years, & first cousin of the patient, who was sixty-two years of age. The only other near relatives of the patient were two first cousins, who were born in 1847 & 1850 respectively & who were & always had been resident in South America. Appct. stated that by reason of her own great age & that of her two cousins in South America any settlement which the ct. might be pleased to direct would not be of any material benefit to the patient's next of kin, unless its scope were extended to include children of any deceased first cousins of the patient's mother :—*Held :* there was no sufficient ground shown for directing a settlement to be made.

A patient had made a will in 1887, by which he had disposed of his residuary estate equally between his wife & children as a class. The wife had since died, as had also one of patient's sons, leaving issue. The patient's family were desirous that the deceased son's issue should be in no worse position than they would have been if their father had survived the patient :—*Held :* the case was a proper one for the exercise by the ct. of its discretion under sect. 171, by directing a settlement.

The property of a patient was derived under the will of his maternal grandfather. It had been settled by the patient's mother on her marriage with his father, whom she had divorced in 1877, & who had not since been heard of. The object of an application for a settlement was to exclude any claim by the father or his family :—*Held :* a settlement ought to be directed.

A patient had made a will in 1922, leaving the whole of his property to his wife, & in 1925 became of unsound mind. The will had been lost. On an application by the wife for a settlement, evidence was produced which satisfied the ct. as to the fact of the loss & as to the contents of the will :—*Held :* a settlement carrying out the terms of the will ought to be directed.—*Re* GREENE, *Re* WHITWORTH, *Re* E. A., *Re* FRASER, *Re* WOOD, [1928] Ch. 528 ; 97 L. J. Ch. 378 ; 139 L. T. 152 ; 44 T. L. R. 449, C. A.

539. *Add. Annotation :—As to* (1) **Consd.** *Re* Silva, Silva *v.* Silva, [1929] 2 Ch. 198.

545a. Jurisdiction to authorise action by committee.]—*Re* HINCHLIFFE, No. 1428, *post.*

PART VI. SECT. 1, SUB-SECT. 2.

537 ii. —— —— *Policy of Public Trustee disregarded.*]—There is nothing in the 1930 amendments to Hospitals for the Insane Act, 1927, made by 20 Geo. 5 (c. 66), to indicate that the jurisdiction & power of the ct. to make lunacy orders affecting inmates of provincial hospitals for the insane has been taken away or interfered with ; & the ct. upon an application for an order declaring lunacy will be governed, not by any consideration of the policy of the Public Trustee, but by consideration of the rights & welfare of the alleged lunatic & those dependent upon him, having regard to the nature of his estate.—*Re* RIDLER, [1930] 4 D. L. R. 597 ; 65 O. L. R. 559.—**CAN.**

Part VII.—Judicial Inquisitions as to Lunacy.

681. *Add. Annotations :*—**Consd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579. **Refd.** Greenway *v.* A.-G. (1927), 44 T. L. R. 124.

778a. —— **By natural daughter of bastard lunatic tenant for life—As check on remainderman.**] —*Re* WEBB (1846), 2 Ph. 116; 2 Coop. *temp.* Cott. 102; 17 L. J. Ch. 276; 41 E. R. 885, L. C.

820. *Add. Citation :*—*previous proceedings*, 2 L. T. O. S. 325, L. C.

Part VIII.—Appointment of Receiver.

827a. **Committee infirm.**]—*Re* BIRCH (1808), Shelford on Lunatics, 2nd ed. 187.

827b. —— —— **Committee resident at distance from estate.**]—*Re* SEAMAN (1808), Shelford on Lunatics, 2nd ed. 187.

829. After this case add "**On jurisdiction of other courts to enforce claims against lunatic's estate.**]—*See* HUSBAND & WIFE, No. 5360a, *ante*."

Part X.—Judicial Powers over Estate.

980. *Add. Annotation :*—**Refd.** *Re* Freeman, [1927] 1 Ch. 479.

981. *Add. Annotation :*—**Refd.** *Re* Freeman, [1927] 1 Ch. 479.

1009a. ——.]—*Re* FISHER (1850), 2 H. & Tw. 449; 19 L. J. Ch. 521; 14 Jur. 233; 47 E. R. 1759, L. C.

1012. *Add. Annotation :*—*As to* (1) **Refd.** C. L. *v.* C. F. W., [1928] P. 223.

1069. *Add. Annotation :*—**Refd.** C. L. *v.* C. F. W., [1928] P. 223.

1070. *Add. Annotation :*—**Refd.** C. L. *v.* C. F. W., [1928] P. 223.

1091. After this case add "*See, also*, No. 1378a, *post.*

1229. *Add. Annotation :*—**Refd.** *Re* Price, [1928] Ch. 579.

1336a. —— **One of several trustees insane.**]—Testator devised real estate to trustees, their heirs & assigns, upon certain trusts. The surviving trustee devised all estates vested in him as a trustee to three persons, one of whom, after proving his testator's will, became of unsound mind. A petition was presented for the appointment of new trustees, & for the appointment of a person to convey on behalf of the devisees of the

PART IX. SECT. 4.

m i. —— —— *Non-compliance with statutory requirements—Person in fact insane—Habeas corpus not granted.*]—*Ex p.* BOWYER (1930), 54 Can. C. C. 392.—**CAN.**

PART X. SECT. 1, SUB-SECT. 1.—A.

aa. *Guardian appointed by Minister of Public Works & Mines under Hospital Act, R. S. N. S.*, 1923—*Powers & duties—Analogous to powers & duties under Lunacy Act.*]—*Re* CURRAN & EASTERN TRUST CO., [1930] 3 D. L. R. 287.—**CAN.**

PART X. SECT. 1, SUB-SECT. 1.—B. (a).

r i. —— *Transfer of funds to—Lunatic not absolutely entitled—Inquiries ordered.*]—*Re* CHARTERIS (1878), 25 Gr. 376.—**CAN.**

t i. *Foreign committee—Recognition by court.*]—*Re* HICKSON, [1927] 4 D. L. R. 607; 61 O. L. R. 180.—**CAN.**

PART X. SECT. 2, SUB-SECT. 3.—A.

1057 ii. —— ——.]—A sale of the homestead of a lunatic so found made, under an order of the ct., by the committee of his estate cannot be deemed a voluntary sale, &, therefore, the proceeds of the sale are exempt from seizure. Where the estate of a lunatic so found was insolvent, & it was necessary to provide for his future maintenance :—*Held :* in determining the priority as between claims for maintenance & those of the creditors that the Lunacy Act did not expressly cover the case, what was omitted must be supplied by applying the decisions under the English statutes dealing with the same subject, &, in view of them & of the facts of the case, priority must be given to the maintenance charges; but considering the advanced age of the lunatic, the net proceeds of the sale of the "exemptions" should be sufficient for that purpose.—*Re* ALEXANDER ESTATE, [1930] 1 W. W. R. 985; 2 D. L. R. 683; 11 C. B. R. 365. —**CAN.**

PART X. SECT. 2, SUB-SECT. 3.—E. (b).

sd. *Estate insolvent.*]—A person of unsound mind had been placed in a private mental hospital at a fixed annual charge for maintenance & treatment, which had been sanctioned by an order of the ct. She died intestate, & her estate was insufficient to meet all claims :—*Held :* payment should be made in the following order of priority : (1) funeral expenses; (2) the lunacy "percentage"; (3) the committee's costs of dismissing the matter out of lunacy; (4) arrears due to the hospital for maintenance. The assets were not sufficient to meet the payment next in priority, viz., the general costs of the committee.—*Re* P., [1926] I. R. 422.—**IR.**

PART X. SECT. 2, SUB-SECT. 3.—I.

See **case in Sect. 2, sub-sect. 3, E. (b),** *ante.*

PART X. SECT. 5, SUB-SECT. 1.—A.

t i. *Lunatic foreigner residing abroad—Sale of land in Ontario—Power of court.*]—A man resident in the State of New York was declared a lunatic. He was the owner, subject to a mtge., of land in Ontario, & the foreign committee applied to the Supreme Ct. of Ontario for an order declaring him a lunatic, with a view to obtaining authority to sell the land :—*Held :* the ct. had power to declare the man to be a lunatic, to appoint a committee & to authorise & direct the committee to sell the land, although the lunatic was a foreigner in a foreign land, & under the care & custody of the law of that land.—*Re* PIPER, [1927] 4 D. L. R. 924; 61 O. L. R. 257. —**CAN.**

t ii. —— —— ——.]—As regards land situate in Ontario the provisions of Lunacy Act, authorising the sale of land, apply only where the lunatic has been so found by an Ontario ct.—*Re* HICKSON, [1927] 4 D. L. R. 607; 61 O. L. R. 180.—**CAN.**

PART X. SECT. 8, SUB-SECT. 1.—D.

1261 i. *Stock in name of joint trustees—Lunacy of one—New trustee appointed by deed containing vesting declaration—Form of order.*]—*Re* G. H. L., [1928] I. R. 543.—**IR.**

si. *Shares held in joint tenancy—Lunacy of one tenant.*]—*Held :* the ct. had power under its statutory jurisdiction to sever such joint tenancy, & to realise the lunatic's share, if his interest & benefit so required.—O'CONNELL *v.* HARRISON, [1927] I. R. 330.—**IR.**

surviving trustee :—*Held :* the petition was properly presented in Lunacy as well as in Chancery.—*Re* MASON (1875), 10 Ch. App. 273 ; 44 L. J. Ch. 678 ; 23 W. R. 737, L. JJ.

Annotations :—**Expld.** *Re* Gardner's Trusts (1878), 10 Ch. D. 29. **Consd.** *Re* M., [1899] 1 Ch. 79. **Refd.** Caswell *v.* Sheen (1893), 69 L. T. 854.

1336b. Jurisdiction of Chancery Division—Sole trustee insane—& out of jurisdiction.]—A petition for the appointment of new trustees & for a vesting order, where the existing sole trustee is of unsound mind & out of the jurisdiction, need not be presented in Lunacy as well as in Chancery.—*Re* GARDNER'S TRUSTS (1878), 10 Ch. D. 29 ; 40 L. T. 52 ; 27 W. R. 164.

Annotations :—**Consd.** Caswell *v.* Sheen (1893), 69 L. T. 854 ; *Re* M, [1899] 1 Ch. 79.

1336c. —— —— **Not so found.**]—The High Court has jurisdiction under the Trustee Act, 1893 (c. 53), to appoint a new trustee in the place of a sole surviving trustee who is a lunatic not so found.—*Re* M, [1899] 1 Ch. 79 ; 68 L. J. Ch. 86 ; 47 W. R. 267 ; 15 T. L. R. 54 ; *sub nom. Re* J. M., 79 L. T. 459 ; 43 Sol. Jo. 76.

Annotation :—**Consd.** *Re* James' Mortgage Trusts, [1919] 1 Ch. 61.

1378a. —— ——.]—On May 26, 1927, the receiver of a lunatic's estate, who had been authorised to continue the lunatic's business, obtained an order from the master directing him to distribute £1,800 amongst certain scheduled creditors of the business whose debts had been incurred subsequently to the date of the receivership order. The scheduled creditors were not parties to the order. On May 29, three days after the order was pronounced & before it was completed, the lunatic died. The order was subsequently completed on June 14. In July the exors. of the lunatic's will applied for an order for payment out of ct. to them of the fund representing the lunatic's residuary estate, & on July 28 the master refused to make the order except upon the terms of effect being given to the order of May 26. Subsequently to the making of this order an order was made for the administration of the lunatic's estate :—*Held :* (1) the order of May 26 was a mere direction to the receiver to make the payments in question which might have been varied or rescinded at any time by the master before it was finally completed, & it gave the creditors no equitable charge on the £1,800 thereby ordered to be distributed among them ; (2) the jurisdiction in lunacy ceased on the death of the lunatic, & the master had no jurisdiction to direct that effect should be given to the order of May 26 ; (3) the exors. were entitled to the fund in ct. without regard to the order of May 26, but inasmuch as an order had since been made for the administration of the lunatic's estate, the fund must be paid to the credit of the administration action.—*Re* WHEATER, [1928] Ch. 223 ; 97 L. J. Ch. 97 ; 138 L. T. 433 ; 44 T. L. R. 156 ; 72 Sol. Jo. 17, C. A.

1391a. —— ——.]—*Re* WHEATER, No. 1378a, *ante.*

1404. *Add. Annotation :*—*As to* (1) **Apld.** *Re* Wheater, [1928] Ch. 223.

1411. *Add. Annotation :*—**Apld.** *Re* Wheater, [1928] Ch. 223.

1419. After this case add "**Whether deduction admissible for income tax purposes.**]—*See* INCOME TAX, Nos. 545d, 689a, *ante.*"

Part XI.—Actions.

1459a. —— —— ——.]—CHARLTON *v.* WEST (1861), 3 De G. F. & J. 156 ; 30 L. J. Ch. 815 ; 4 L. T. 455 ; 7 Jur. N. S. 614 ; 9 W. R. 511 ; 45 E. R. 837, L. JJ.

1466. After this case add "—— **Married woman.**]—*See* HUSBAND & WIFE, Nos. 2189, 2189a."

Part XII.—Costs.

1606. *Add. Annotation :*—**Consd.** *Re* Wheater, [1928] Ch. 223.

Part XIII.—Administration in Regard to Reception and Care of Lunatics.

1670a. When criminal information granted.]—*Ex p.* LOWE (1872), 36 J. P. Jo. 760.

1688. *Add. Annotation :*—**Refd.** Stoke Newington Borough Council *v.* Richards (1929), 45 T. L. R. 650.

PART XI. SECT. 6, SUB-SECT. 1.

— *Appointment of curator ad litem.*]—DAVIDSON *v.* SCOTT'S SHIPBUILDING & ENGINEERING CO., LTD., 0.—SCOT.

Part XIV.—Certification, Reception, Treatment and Discharge of Lunatics.

1852. *Add. Annotations :*—**Apld.** De Freville *v.* Dill (1927), 96 L. J. K. B. 1056. **Apprvd.** Harnett *v.* Fisher, [1927] A. C. 573.

1856a. ——.]—Pltf. was certified by deft., a medical man, to be a lunatic & a person to be detained under care & treatment :—*Held :* (1) deft., inasmuch as he undertook the statutory duty of certifying pltf. as a lunatic, owed a duty to him to exercise reasonable care ; (2) since no reception order could have been made by a magistrate without the certificate of a doctor, & as the certificate was given by deft. with a view to the obtaining of such an order, the giving of the certificate was the direct cause of the order & of pltf.'s detention.—HARNETT *v.* FISHER, [1927] 1 K. B. 402 ; 96 L. J. K. B. 55 ; 135 L. T. 724 ; 42 T. L. R. 745 ; 70 Sol. Jo. 917. C. A. ; *on appeal*, [1927] A. C. 573, H. L.

Annotations :—As to (1) **Folld.** De Freville *v.* Dill (1927), 96 L. J. K. B. 1056. *As to* (2) **Folld.** De Freville *v.* Dill (1927), 96 L. J. K. B. 1056.

1856b. *S. P.* DE FREVILLE *v.* DILL (1927), 96 L. J. K. B. 1056 ; 138 L. T. 83 ; 43 T. L. R. 702.

1856c. Effect of certificate.]—HARNETT *v.* FISHER, No. 1856a, *ante*.

1856d. *S. P.* DE FREVILLE *v.* DILL (1927), 96 L. J. K. B. 1056 ; 138 L. T. 83 ; 43 T. L. R. 702.

SECT. 1A.—**TEMPORARY TREATMENT WITHOUT CERTIFICATION.**

See Mental Treatment Act, 1930 (c. 23), s. 5.

1859. *Add. Annotation :*—**Refd.** De Freville *v.* Dill (1927), 96 L. J. K. B. 1056.

1862. *Add. Annotations :—As to* (1) **Apld.** De Freville *v.* Dill (1927), 96 L. J. K. B. 1056. **Refd.** Harnett *v.* Fisher, [1927] A. C. 573.

1863. *Add. Annotation :*—**Refd.** De Freville *v.* Dill (1927), 96 L. J. K. B. 1056.

1864. *Add. Annotation :*—**Consd.** Fletcher *v.* Ilkeston Corpn. (1931), 96 J. P. 7.

1865. *Add. Annotation :*—**Refd.** De Freville *v.* Dill (1927), 96 L. J. K. B. 1056.

1867. *Add. Annotation :*—**Refd.** De Freville *v.* Dill (1927), 96 L. J. K. B. 1056.

1869. *Add. Annotations :*—**Refd.** De Freville *v.* Dill (1927), 96 L. J. K. B. 1056 ; Harnett *v.* Fisher, [1927] A. C. 573.

Part XV.—Offences, Penalties and Proceedings.

1882a. —— **Annoyance of receiver & lunatic.**]—*Re* SEATON, [1928] W. N. 307 ; 166 L. T. Jo. 438.

1893. For cross-reference preceding this case "*See, now*, Mental Treatment Act, 1930 (c. 23), s. 16."

1896a. —— ——.]—EASTON *v.* JOHNSON, EASTON *v.* POTTS (1929), 168 L. T. Jo. 537, C. A.

Part XVI.—Mental Deficiency.

1897. For cross-reference before this case read "*See* Mental Deficiency Acts, 1913-1927."

Add. Annotation :—As to (2) **Distd.** Woodward *v.* Oldfield (1927), 96 L. J. K. B. 796.

PART XIV. SECT. 1.

1856 i. *Duty of doctor to act in good faith & with reasonable care.*]—Circumstances in which an application under Mental Diseases Act, R. S. A., 1922 (c. 223), s. 25, for the stay of an action against a doctor for negligence in that pltf. had been committed to an asylum without a proper inquiry being held, was refused.—HIBBERD *v.* (Alta.), [1927] 4 D. L. R. 807, 1095 ; [1927] 3 W. W. R. 543.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 2.

sg. *Action for laying information—Defence of "reasonable care."*]—Mental Diseases Act, 1924, provides that "No person . . . who lays an information under this Act . . . shall be liable to any civil proceedings in respect thereof . . . if such person has acted in good faith & with reasonable care " :—*Held :* the question of the good faith & reasonable care of deft. must be determined by what in the circumstances would have been the conduct of the reasonable or ordinarily prudent & cautious man.—DURAND *v.* PREJET, [1932] 2 W. W. R. 545.—**CAN.**

MAGISTRATES.

Part II.—Qualifications and Disqualifications.

45. *Add. Annotation :*—**Apld.** R. *v.* North Worcestershire Assessment Committee, *Ex p.* Hadley, [1929] 2 K. B. 397.

82a. **Interest as fellow trade unionist—No trade dispute involved.**]—Upon a summons by the wife for a separation order on the ground of desertion under the Summary Jurisdiction (Separation & Maintenance) Acts, 1895 & 1925, the wife complained that her husband had refused to cohabit with her & treated her only as a servant, though they continued to live under the same roof & breakfasted & took their Sunday midday meal together. The justices dismissed the summons. The wife appealed, & submitted that as one of the sitting justices was a member of the same trade union as the husband, that justice must be regarded as an interested person, & therefore the decision was null & void :— *Held :* it would be stretching the law to say that a magistrate could not sit if one of the parties happened to be a member of the same trade union as he in a matter in which no trade dispute was involved.—STEVENS *v.* STEVENS (1929), 93 J. P. 120 ; 27 L. G. R. 362, D. C.

83. *Add. Annotation :*—**Distd.** R. *v.* Leicester JJ., *Ex p.* Allbrighton, [1927] 1 K. B. 557.

84. *Add. Annotation :*—**Refd.** Maclean *v.* Workers' Union, [1929] 1 Ch. 602.

97. *Add. Annotation :*—**Apld.** R. *v.* Essex JJ., *Ex p.* Perkins, [1927] 2 K. B. 475.

97a. **Clerk's firm acting against defendant in earlier proceedings.**]—(1) *Certiorari* will issue to quash a maintenance order made by justices, when it is shown that the justices' clerk is a member of a firm of solrs which acted for the wife at an earlier stage of the same proceedings, even though it is proved that the wife's business was conducted exclusively by a managing clerk in charge of a branch office, & that the justices' clerk was in fact quite unaware that his firm had ever acted for her. The test is not whether there is in fact bias, but whether a reasonable man concerned in the proceedings might think that the tribunal was not impartial.

(2) Appct. for a *certiorari* in such circumstances does not waive his right to take objection to the presence of the clerk by not having exercised it, when he does not know that he was entitled to it.—R. *v.* ESSEX JJ., *Ex p.* PERKINS, [1927] 2 K. B. 475 ; 96 L. J. K. B. 530 ; 137 L. T. 455 ; 91 J. P. 94 ; 43 T. L. R. 415 ; 28 Cox, C. C. 405, D. C.

102. *Add. Annotation :*—**Refd.** Maclean *v.* Workers' Union, [1929] 1 Ch. 602.

105. *Add. Annotations :*—**Consd.** R. *v.* London County Council, *Ex p.* Entertainments Protection Assocn., Ltd., [1931] 2 K. B. 215. **Refd.** R. *v.* Sheffield JJ., *Ex p.* Rawson (1927), 91 J. P. 193.

109. *Add. Annotations :*—**Refd.** Maclean *v.* Workers' Union, [1929] 1 Ch. 602 ; R. *v.* Huntingdon Confirming Authority, [1929] 1 K. B. 698.

114. *Annotation :*—Insert "**Apld.**" before "R. *v.* Middlesex JJ,"

119. *Add. Annotation :*—**Refd.** R. *v.* North Worcestershire Assessment Committee, *Ex p.* Hadley, [1929] 2 K. B. 397.

128. *Add. Annotation :*—**Refd.** Maclean *v.* Workers' Union, [1929] 1 Ch. 602.

150a. —— —— ——.]—R. *v.* ESSEX JJ., *Ex p.* PERKINS, No. 97a, *ante*.

PART I. SECT. 2.

n i. —— *Appointment as town magistrate—Effect on jurisdiction.*]—The fact that a police magistrate holding an appointment for the province of Manitoba is appointed by a later commission a police magistrate for a certain town therein does not cancel the former appointment or affect his jurisdiction thereunder.—R. *v.* PLUMMER (Man.), [1929] 3 W. W. R. 518 ; [1930] 1 D. L. R. 766 ; 38 Man. L. R. 391 ; 52 Can. Crim. Cas. 288.—**CAN.**

PART I. SECT. 4, SUB-SECT. 2.—A.

19 ix. —— ——.]—R. *v.* HARRY FONG, [1930] 3 W. W. R. 179.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.—A. (b) i.

d i. —— *Magistrate insurance agent placing part of insurance on municipal property—Prosecution for breach of municipal bye-law.*]—R. (KINGSETT) *v.* MCELHINNEY (Alta.), [1927] 3 D. L. R. 1189 ; [1927] 3 W. W. R. 284 ; 49 Can. Crim. Cas. 13.—**CAN.**

sa. *Magistrate partner of defending counsel.*]—R. *v.* MCMONAGLE 3 M. P. R. 543.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.—E.

149 iii. —— —— ——.]—R. *v.* BROWN (P. E. I.), [1929] 1 D. L. R. 687 ; 51 Can. Crim. Cas. 218.—**CAN.**

157 i. *Effect of waiver on power of justice.*]—The consent or acquiescence of any party will not supply the defect or want of jurisdiction on a magistrate. —PARASHURAN DATARAM *v.* COCKE (1929), I. L. R. 53 Bom. 716.—**IND.**

PART IV. SECT. 1.

sm. *Police magistrate for Minto Police District.*]—R. *v.* PALMER, *Ex p.* MCCOY, [1929] 3 M. P. R. 344.—**CAN.**

PART VI. SECT. 2.

302 i. *Creature of statute—Offence must be strictly within statute.*]—In order for a magistrate to have jurisdiction, under Criminal Code, Part XVI., to try a charge summarily without the consent of the ... it must plainly appear that the is one with respect to which such jurisdiction is conferred.—R. *v.* FRAY, [1928] 3 D. L. R. 205 ; [1928] 1 W. W. R. 670 ; 49 Can. Crim. Cas. 316 ; 23 Alta. L. R. 344.—**CAN.**

305 i. *Matters not cognisable by justices under summary jurisdiction—Offence punishable by fine & imprisonment.*]—R. *v.* MANUEL, [1928] 2 D. L. R. 755 ; 50 Can. Crim. Cas. 32.—**CAN.**

p i. ——.]—A police magistrate has no jurisdiction to try summarily without the consent of the accused a charge under Criminal Code, s. 295, of assault occasioning actual bodily harm, &, therefore, cannot have such jurisdiction over said offence conferred on him merely by the laying of the charge under sect. 274 for unlawfully wounding or inflicting grievous bodily harm.—R. *v.* LETENDRE, [1928] 3 W. W. R. 580 ; 50 Can. Crim. Cas. 419.—**CAN.**

sb. *Offence at time committed not triable summarily.*]—R. *v.* HEISLER, [1928] 3 D. L. R. 221 ; 49 Can. Crim. Cas. 341.—**CAN.**

sd. *Disobedience of maintenance order—Information heard after order quashed.*]—An order for maintenance made against deft. in 1923 was quashed in Feb. 1928. In May, 1928, an information for disobedience of the maintenance order prior to the date of quashing was heard, & an order was then made that deft. be imprisoned until the maintenance order should be complied with :—*Held :* the maintenance order having been quashed, the justices had no jurisdiction to inquire into any disobedience of the order alleged to have been committed before it was quashed, &, consequently, the information ought to have been dismissed.—GALLOWAY *v.* WATSON, [1928] V. L. R. 308 ; [1928] Argus L. R. 201.—**AUS.**

PART VI. SECT. 3.

sf. *Action to recover debt—Failure of debtor to appear—Warrant issued to arrest party.*]—CLARKE *v.* PLUMMER & MARCELLUS, [1928] 1 D. L. R. 941 ; [1928] 1 W. W. R. 234.—**CAN.**

sh. —— *Contracted in district in which action brought.*]—*Re*

Part VII.—Indictable and Summary Offences.

334a. ——— ——— **" Before charge gone into."**]—Deft., who was represented by a solr., was charged before a ct. of summary jurisdiction with an offence for which, if convicted, he would be liable to imprisonment for a term exceeding three months. He was not informed of his right to trial by a jury on appearing before the ct., before the charge was gone into, but he was so informed afterwards, when all the evidence had been heard, but before the ct. had announced their decision. Deft. protested twice by his solr. that he could not at that stage be put to this election, but on being informed by the chairman that if he did not elect, the case would be sent for trial, he stated by his solr. that he would be dealt with summarily. Deft. was then convicted & fined :—*Held :* the proceedings were a nullity as the giving of that information to the person charged on his appearing before the ct., " before the charge is gone into," in accordance with above sect. is a condition precedent to the validity of the subsequent proceedings. Accordingly the conviction was quashed.—R. *v.* DIXON, SOUTHAMPTON JUSTICES, *Ex p.* PORTEOUS (1929), 142 L. T. 597 ; *sub nom.* R. *v.* HAMPSHIRE JUSTICES, *Ex p.* PORTEOUS, 94 J. P. 70 ; 46 T. L. R. 157 ; 28 L. G. R. 84 ; 29 Cox, C. C. 113, D. C.

343. *Add. Annotation :*—**Folld.** R. *v.* Dixon, Southampton Justices, *Ex p.* Porteous (1929), 142 L. T. 597.

345. *Add. Annotation :*—*As to* (1) **Folld.** R. *v.* Dixon, Southampton Justices, *Ex p.* Porteous (1929), 142 L. T. 597.

Part VIII.—Procedure under Summary Jurisdiction.

432. *Add. Citation :*—2 B. R. A. 626.

433a. ——— **Omission in copy—Signature.**]—Where a summons, issued by a magistrate at a metropolitan police ct., commanding a deft. to answer an information for breach of a nuisance order previously made against deft. *Ex p.* ELECTROLUX, LTD. (1928), 28 S. R. N. S. W. 578 ; 45 N. S. W. W. N. 185.—**AUS.**

aj. ——— ——— *Action for rates.*]—BRISBANE CITY COUNCIL *v.* HODGE, [1928] S. R. Q. 102 ; 22 Q. J. P. R. 63.—**AUS.**

PART VI. SECT. 6.

p i. *In respect of violation of Customs Act—Whether limited by value of goods.*]—R. *v.* BOUTILIER, [1928] 2 D. L. R. 555 ; 49 Can. Crim. Cas. 312.—**CAN.**

sk. *No power to convict under Customs Act, 1927, s. 217.*]—R. *v.* DEAN, [1931] 2 D. L. R. 84 ; 55 Can. C. C. 11 ; 3 M. P. R. 15.—**CAN.**

sl. ———.]—*Re* BATES, [1931] 1 D. L. R. 940 ; 55 Can. C. C. 64 ; 3 M. P. R. 459.—**CAN.**

PART VI. SECT. 7.

sm. *Discretion to order trial before regular court.*]—While under Juvenile Delinquents Act, 1929, the Juvenile Ct. has jurisdiction to conduct the trial of any offence committed by a child within the statutory age limit, yet, since sect. 9 of the Act provides that he may in his discretion order the child to be proceeded against by indictment in the ordinary course, it would seem that the better course for him to pursue is to make such an order where the alleged offence is a very grave one, such as arson.—R. *v.* H., [1931] 2 W. W. R. 917.—**CAN.**

sn. *Jurisdiction—Offender under age when offence committed—Over age when tried.*]—The exclusive jurisdiction of the Juvenile ct. extends to the case where, although the offender was under eighteen years of age at the time the offence was committed, he is over that age when put on trial.—R. *v.* CARDARELLI (B. C.), [1930] 1 D. L. R. 575 ; [1929] 2 W. W. R. 223 ; 52 Can. Crim. Cas. 267.—**CAN.**

so. *Duty of judge of ordinary court—To quash charge against juvenile delinquent.*]—R. *v.* ROOS, [1932] 3 W. W. R. 372.—**CAN.**

PART VII. SECT. 2.

kkj. ———.]—R. *v.* LEE SOW (B. C.), [1922] 2 W. W. R. 208 ; 66 D. L. R. 146 ; 37 Can. Crim. Cas. 196.—**CAN.**

nn i. ——— *Where new trial ordered—Jury trial asked for in notice of appeal.*]—R. *v.* MATTENS, [1928] 4 D. L. R. 831 ; 50 Can. Crim. Cas. 285.—**CAN.**

nn ii. ——— *Corporation.*]—Where a corpn. is charged with keeping a disorderly house contrary to sect. 229 of Criminal Code, the jurisdiction of a magistrate to try the charge in a summary way under Part XVI. of the Code is dependent upon the consent of the corpn. given by its attorney appearing on its behalf.—R. *v.* CALGARY CLUB, [1931] 3 W. W. R. 601 ; [1932] 1 D. L. R. 413 ; 57 Can. C. C. 158 ; 26 Alta. L. R. 113. **CAN.**

rr i. ———.]—R. *v.* NELSON (1901), 8 B. C. R. 110.—**CAN.**

ggg i. *Proceedings under Opium & Narcotic Drug Act, 1923.*]—R. *v.* LEW HING LOY (B. C.), [1926] 2 W. W. R. 543 ; 46 Can. Crim. Cas. 75.—**CAN.**

ggg ii. ———.]—R. *v.* SAM HING, [1926] 1 D. L. R. 1000 ; 45 Can. Crim. Cas. 202 ; 58 O. L. R. 370.—**CAN.**

ggg iii. ———.]—R. *v.* DENIS (Man.), [1927] 3 W. W. R. 400 ; 49 Can. Crim. Cas. 8.—**CAN.**

ggg iv. ———.]—*Re* R. *v.* RUTHERFORD [1927] 4 D. L. R. 434 ; 48 Can. Crim. Cas. 237 ; 60 O. L. R. 654.—**CAN.**

mmm i. ——— *Necessity for consent of accused.*]—LAMBERT *v.* R. (1926), 47 Can. Crim. Cas. 159 ; Q. R. 42 K. B. 91.—**CAN.**

mmm ii. ——— ———.]—R. *v.* BONNIS (1927), 47 Can. Crim. Cas. 193 ; 60 O. L. R. 189.—**CAN.**

mmm iii. ——— ———.]—R. *v.* JOHNSON MCKENZIE (1927), 48 Can. Crim. Cas. 255 ; 59 N. S. R. 326.—**CAN.**

mmm iv. ———.]—R. *v.* ZANINE, [1931] 1 W. W. R. 193 ; 1 D. L. R. 941.—**CAN.**

ooo i. ———.]—R. *v.* DENIS (Man.), [1927] 3 W. W. R. 400 ; 49 Can. Crim. Cas. 8.—**CAN.**

ooo ii. ——— *Opium & Narcotic Drugs Act.*]—Under Opium & Narcotic Drugs Act, a magistrate may hear a charge summarily, without putting the accused to his election.—VIAU *v.* OTIS (1927), 44 Que. K. B. 406.—**CAN.**

sm. *Indictable offences triable summ.*]—The Juvenile Ct., or the magistrate presiding in that ct. has no jurisdiction to summarily try an adult for incest.—LEROUX *v.* R., [1928] 1 D. L. R. 299 ; 49 Can. Crim. Cas. 111 ; 44 Que. K. B. 308.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 1.

d i. ——— ———.]—R. *v.* O'HARA (N. B.) (1927), 48 Can. Crim. Cas. 231.—**CAN.**

f i. ———.]—*Semble :* a sworn information should never be amended unless re-sworn.—R. *v.* NEEDHAM, [1931] O. R. 303 ; 55 Can. C. C. 338.—**CAN.**

so. *Information laid by telephone.*]—C. signed an information for an offence against Canada Temperance Act, leaving the date & a place for the magistrate's name in blank, & mailed it to magistrate J. He, being ill, handed the information to magistrate M. C. then requested magistrate M., over the telephone, to take the information & to issue a summons thereon. Summons was issued &, at the hearing, after the evidence was all in, deft.'s counsel appeared & objected to the magistrate's jurisdiction, but took no further part in the proceedings :—*Held :* the information was improper, because not laid & signed before the magistrate & the magistrate acted without jurisdiction.—R. *v.* MURRAY, *Ex p.* COPP (1910), 40 N. B. R. 289 ; 9 E. L. R. 519.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 4.

362 v. ———.]—District Ct. Rules, r. 8, which was made applicable to proceedings under Customs Acts by r. 58, provides that where it is intended that a summons only shall issue to bring a deft. before the ct., the information or complaint may be made either in writing or orally, as the district justice of the peace shall see fit :—*Held :* therefore, an information in writing required by Customs & Inland Revenue Act, 1879, was no longer a necessary preliminary to the issue of a summons charging an offence under Customs Acts.—A.-G. *v.* HEALY, [1928] I. R. 460.—**IR.**

362 vi. ———.]—Where a deft. illegally brought before justices objects that there is no written complaint or

in the ct., is in all respects in the proper form & duly signed by the magistrate, the omission through inadvertence from the copy of the summons which is served upon deft. of the signature of the magistrate or any signature is a mere defect in form which does not invalidate that copy of the summons or the service thereof.—R. *v.* HAY HALKETT, *Ex p.* RUSH, [1929] 2 K. B. 431; 98 L. J. K. B. 497; 141 L. T. 519; 93 J. P. 209; 45 T. L. R. 507; 27 L. G. R. 523; 28 Cox, C. C. 648, D. C.

439. *Add. Annotation :*—**Consd.** Horsfield *v.* Brown, [1932] 1 K. B. 355.

448a. —— **When power to take oath.**]—OATH BEFORE JUSTICES CASE (1611), 12 Co. Rep. 130; 77 E. R. 1405.

Annotation :—**Apld.** Bano *v.* Methuen (1824), 2 L. J. O. S. C. P. 121.

500a. —— —— **Not necessarily right of property.**]—A local Act authorised the corpn. to make a bye-law prohibiting the playing of mechanical organs anywhere in the borough. In 1892 the corpn. made such a bye-law. The applt. was summoned for playing such an organ in the borough in breach of that bye-law on Apr. 7, 1928. He claimed a right so to play the organ by virtue of a licence which had been given to him by the lord of the manor, & contended that the jurisdiction of the justices was thereby ousted. The justices convicted him, & stated a case :—*Held :* the appeal must be allowed & the conviction quashed, because (*a*) the local Act expressly saved "all rights of a profitable or beneficial nature in, over or affecting the commons" that had been exercised before the passing of the Act; (*b*) the lord of the manor had, before 1890 & continuously until these proceedings, licensed the playing of such organs on the commons & had received between £300 & £400 annually in respect of such licence; (*c*) the applt. had played his organ on a part of the commons in pursuance of such a licence; & (*d*) the claim was not "impossible in law" & ousted the jurisdiction of the justices; *Semble :* there is no sufficient authority for the proposition that the right which alone will avail is the right of property. —ANDREWS *v.* CARLTON (1928), 93 J. P. 65, D. C.

summons, & is nevertheless convicted without either, the conviction is not sustainable & will be quashed as having been made without jurisdiction.—MCCULLOCH *v.* EOLKIN, *Ex p.* EOLKIN, [1929] S. R. (Q.) 113; 23 Q. J. P. R. 59.—**AUS.**

PART VIII. SECT. 1, SUB-SECT. 5.—A. (a).

377 i. *What amount to separate offences—Not "having opium & cocaine."*]—R. *v.* CHOW BEN (1925), 45 Can. Crim. Cas. 152; 36 B. C. R. 319; [1926] 1 W. W. R. 384.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 5.—A. (b).

387 vi. —— ——.]—R. *v.* ISBELL, [1928] 4 D. L. R. 322; 50 Can. Crim. Cas. 81; 62 O. L. R. 489; *affd.*, [1929] 2 D. L. R. 732; 51 Can. Crim. Cas. 362; 63 O. L. R. 384.—**CAN.**

sp. *Necessity to state value of property—Nature of proceedings dependent on value.*]—R. *v.* THOMPSON, [1928] 4 D. L. R. 859; 50 Can. Crim. Cas. 183; 62 O. L. R. 610.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 6.—A.

sq. *Attorney-General—Where prosecution not instituted by minister, department of State or authorised person.*]—A district justice raised a preliminary objection to the hearing of a summons charging an offence under Customs Act, viz.—that complainant was the Attorney-General, the district justice being of opinion that under Customs & Inland Revenue Act, 1879, s. 11, an officer of the customs & excise must be the complainant :—*Held :* the objection was unsustainable as Criminal Justice Administration Act, 1924, s. 9 (2), authorised the A.-G. to prosecute in any ct. of summary jurisdiction in all cases in which a prosecution is not instituted by a minister, dept. of State, or authorised person.—A.-G. *v.* HEALY, [1928] I. R. 460.—**IR.**

PART VIII. SECT. 2, SUB-SECT. 1.—D.

d i. —— —— *Constable must show accused could not conveniently be met with.*]—*Re* MUSIAL (N. S.), [1929] 1 D. L. R. 708; 51 Can. Crim. Cas. 142. —**CAN.**

f i. —— *Impossibility of waiver.*]—A summons issued under Highway Traffic Act was not served within 10 days of the offences as required by sect. 52 of the Act :—*Held :* appearance & plea did not waive the delay. A statutory time limit cannot be so waived.—*Re* ELLERBY (1930), 53 Can. C. C. 355; 65 O. L. R. 167.—**CAN.**

g i. —— ——.]—*Re* DAVID (N. S.), [1929] 2 D. L. R. 701; 51 Can. Crim. Cas. 199.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 2.—A.

sr. *Before whom returnable.*]—Where a magistrate or justice with general jurisdiction, takes an information for an indictable offence under the Code, ss. 653, 654, & issues his warrant, that warrant is returnable before him or before any other "justice" having territorial jurisdiction at the place where the issuing justice had his jurisdiction, but subject to the right of the latter to direct that the accused person be brought before him, if convenient.—R. *v.* ISBELL, [1928] 4 D. L. R. 322; 50 Can. Crim. Cas. 81; 62 O. L. R. 489.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 1.

sa. *Summary trial of indictable offence—Criminal Code, s.* 884.]—R. *v.* ROBERTS (Sask.), [1928] 1 D. L. R. 260; [1927] 3 W. W. R. 844.—**CAN.**

sb. *Effect of adjournment—On jurisdiction of magistrate—Child Welfare Act.*]—The word "heard" in sect. 184 (2) of Child Welfare Act, C. A., 1924 (c. 30), includes "partly heard"; & if a case is continued from day to day it is "heard" on each day it is spoken to until it is finally heard, tried, determined & adjudged.—DIRECTOR OF CHILD WELFARE *v.* ST. CLEMENTS, RURAL MUNICIPALITY OF, [1930] 1 W. W. R. 395; 2 D. L. R. 255; 38 Man. L. R. 482.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 2.

k i. —— *New magistrate—Duty to rehear evidence.*]—R. *v.* CLAREMONT (1931), 56 Can. C. C. 197.—**CAN.**

k ii. —— *Evidence on another similar charge heard—Conviction invalid.*]—R. *v.* ROCHE (1931), 56 Can. C. C. 203.—**CAN.**

o i. —— *Power to authorise another justice to act.*]—The Magistrates Act, R. S. S., 1920, s. 9, which provides that at the request of the justice before whom the information or complaint was made any other justice may "take part in the case," does not merely empower the first justice to call in another justice to act with him in the case, but empowers him to authorise another justice to adjudicate solely in the matter.—BABIUK *v.* ANDERSON, [1929] 3 D. L. R. 944; 1 W. W. R. 728; 52 Can. Crim. Cas. 23; 23 S. L. R. 377.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 3.—A.

st. *Arraignment—Necessity for plea by defendant.*]—Accused was convicted before a stipendiary magistrate on a charge of having been in possession of a still, contrary to the provisions of Excise Act. On an application for a writ of *habeas corpus* with *certiorari* in aid, the proceedings disclosed that accused had not been called upon to plead to the charge :—*Held :* calling upon accused to plead is an essential part of the arraignment & the conviction should be quashed.—R. *v.* CHEW DEB (1928), 41 B. C. R. 403.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 3.—B. (a).

471 ii. —— ——.]—The rule that there is no power to subpœna a deft. to an information as a witness or to serve him with process in the nature of a *subpœna duces tecum* in order to bring his body into ct. for the purpose of identification, applies to a prosecution for an offence created by a by-law of the city of Edmonton.—R. *v.* KELLAS, [1932] 3 W. W. R. 225.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 3.—B. (b) iii.

484 i. —— *Further charge preferred.*]—When accused is brought before a magistrate after being properly arrested he can be proceeded against on a fresh charge, although a summons commanding his appearance or warrant for arrest has not been issued thereunder. —*Re* LAMB (Man.), [1927] 1 W. W. R. 432; 47 Can. Crim. Cas. 277.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 3.—B. (b) iv.

490 i. —— *Objection taken at time of appearance.*]—R. *v.* MURRAY, *Ex p.* COPP (1910), 40 N. B. R. 289; 9 E. L. R. 519.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 5.

q i. ——.]—R. *v.* MCDONALD, [1928] 2 D. L. R. 787; 50 Can. C. C. 65.—**CAN.**

503a. —— Breach of bye-laws—Playing football in street—Open space intersected by public footpaths—Claim overruled.]—PEARSON *v.* WHITFIELD (1888), 52 J. P. Jo. 708, D. C.

503b. —— —— Auction held in street.]—A bye-law made it an offence to sell goods, etc., by auction in any street of a city without the leave of the constable. C. being summoned for selling on a plot of ground, set up the defence that it was private property, & not part of a street:—*Held:* this was a *bonâ fide* claim of title, & the justices properly declined jurisdiction.—PHILLIPS *v.* CANHAM (No. 1) (1872), 36 J. P. 310.

593. *Add. Annotation:*—**Consd.** Pointon *v.* Cox (1926), 136 L. T. 506.

603. *Add. Annotation:*—**Consd.** Pointon *v.* Cox (1926), 136 L. T. 506.

631a. Improper consideration of previous convictions—Inquiry into previous convictions not in open court.]—At a ct. of summary jurisdiction the three applts. were charged for that they then being in a certain fishing district under the control of a board of

PART VIII. SECT. 4, SUB-SECT. 7.

sc. *Power to order arrest of witness—Criminal Code, s. 675.*]—*Ex p.* COYLE (P. E. I.), [1927] 4 D. L. R. 1129; 49 Can. Crim. Cas. 91.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 8.

sd. *Must be according to rules of evidence.*]—R. *v.* DUNN (Ont.) (1926), 45 Can. Crim. Cas. 139.—**CAN.**

g i. —— ——.]—R. *v.* LAPOINTE, [1931] 1 D. L. R. 933; 55 Can. C. C. 9. —**CAN.**

p i. ——.]—A justice of the peace has no authority to administer an oath to accused, & examine him thereunder, after he has pleaded guilty.—R. (ALDRIDGE) *v.* BROWN, [1927] 3 W. W. R. 335.—**CAN.**

r i. —— —— .]—R. *v.* STEPHENS, R. *v.* LARAY (Ont.) (1926), 45 Can. Crim. Cas. 123.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 9.

545 ii. ——.]—R. *v.* HENDERSON, *Ex p.* BRINDLE (N. B.), [1926] 2 D. L. R. 583; 45 Can. Crim. Cas. 310. —**CAN.**

PART VIII. SECT. 4, SUB-SECT. 10.

sf. *To call further evidence.*]—It is within a magistrate's discretion to allow the prosecution to adduce further evidence after its case has been closed. —R. (PARKER) *v.* SMITH, [1927] 4 D. L. R. 410; [1927] 2 W. W. R. 722; 48 Can. Crim. Cas. 219; 21 Sask. L. R. 600. **CAN.**

PART VIII. SECT. 4, SUB-SECT. 11.

556 iii. —— —— .] On a prisoner being brought before a magistrate for trial on the day of the arrest the magistrate was informed, both by the prisoner & by telegram from a counsel, that the latter had been retained for the defence & was requested by them to grant an adjournment to permit of the counsel's attendance:—*Held:* the refusal under such circumstances of a reasonable remand was a wrongful denial to the accused of the right given him by Criminal Code to make a full defence & have his counsel present. The discharge of the prisoner was therefore, ordered.—R. *v.* HALLCHUK, [1928] 1 D. L. R. 731; [1928] 1 W. W. R. 646.—**CAN.**

d (p. 345) i. —— ——.]—R. *v.* DUPRAS, LTD., R. *v.* LATRAVERSE, [1927] 3 D. L. R. 399; 47 Can. Crim. Cas. 324.—**CAN.**

d (p. 345) ii. *Discretion to adjourn—Length of time.*]—Where an accused is out on bail an adjournment of a preliminary inquiry may be for more than eight days; the limitation of eight days imposed by sect. 679 (c) of the Criminal Code on a "remand" is entirely for the benefit & protection of an accused who is in custody.—R. *v.* SOLLOWAY, R. *v.* MILLS, [1930] 1 W. W. R. 486; 53 Can. C. C. 180; 24 Alta. L. R. 404.—**CAN.**

g i. —— *Number of adjournments.*]—MESSENGER *v.* PARKER (1885), 18 N. S. R. (3 R. & G.) 237; 6 C. L. T. 444.—**CAN.**

sl. *Effect of adjournment—Charge under Liquor Act—Whether magistrate deprived of jurisdiction.*]—HALL *v.* TAYLOR, [1926] 3 D. L. R. 34; [1926] 2 W. W. R. 175; 46 Can. Crim. Cas. 50; 20 Sask. L. R. 463.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 13.

h i. —— *Evidence as to one.*]—Applt. was convicted after a summary trial by consent, for unlawfully issuing trading stamps "to one H. & others." The only evidence adduced at the trial was directed to the sale to H. alone, & that sale was proven. On appeal:—*Held:* whatever might be said in support of the contention that the conviction was one for more than one offence & therefore bad for duplicity, it could not be said that any substantial wrong or miscarriage of justice had occurred, &, therefore, the appeal was dismissed.—R. *v.* SMITH, [1932] 1 W. W. R. 131; 44 B. C. R. 422.—**CAN.**

sm. *Charge not supported by evidence—Substituted charge—Whether two charges.*]—Justices cannot convict a man unless a legal offence is proved, & they cannot convict him of an offence with which he has not been charged, but, if he is properly before them on an information which discloses no offence, or which charges an offence which is not supported by the evidence, he may be orally charged with any other offence which the evidence is sufficient to support, &, subject to being given a proper opportunity of meeting it, may be convicted of it. In such a case there are not two independent charges pending against appct. at the same time.—*Re* SINGLETON, *Ex p.* WILLIAMS (1928), 28 S. R. N. S. W. 616; 45 N. S. W. W. N. 189.—**AUS.**

PART VIII. SECT. 5, SUB-SECT. 1.—A.

d i. ——.]—Deft. was convicted by a district justice of an offence under Fisheries Act, 1924, but the district justice omitted to order a forfeiture of the fish as required by the Act:—*Held:* the conviction is the spoken pronouncement of the district justice, & the note in the justice's minute book of his decision, prescribed by District Ct. Rules, r. 50, stating the effect of the conviction is the record of that punishment.—TANGNEY *v.* KERRY COUNTY DISTRICT JUSTICE, [1928] I. R. 358.—**IR.**

PART VIII. SECT. 5, SUB-SECT. 1.—B. (a).

584 vi. ——.]—R. *v.* BARRY (N. S.) (1926), 46 Can. Crim. Cas. 143.—**CAN.**

584 vii. ——.]—R. *v.* RODGERS (Ont.), [1926] 4 D. L. R. 609; 46 Can. Crim. Cas. 372.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 1.—B. (b).

603 ii. —— —— ——.]—*Held:* Justices Procedure Act, 1919, s. 26, which provides "the description or statement of any offence in the words of . . . the Act . . . creating the offence or in similar words . . . shall be sufficient in law" still leaves it necessary to specify in a criminal charge all the particular facts which are the essential ingredients of a concrete case.—BURNETT *v.* BROWN (1931), 24 Tas. L. R. 23.—**AUS.**

PART VIII. SECT. 5, SUB-SECT. 1.—B. (c).

sn. *Value of articles stolen or amount of injury done—Criminal Code, s. 376.*]—A conviction under sect. 376 of the Criminal Code for the theft of part of a fence which imposes a penalty greater than $20 without an adjudication upon & finding by the magistrate of the "value of the article or articles stolen or the amount of injury done" is invalid with respect to the penalty. The intention of the sect. is to permit the magistrate, in addition to imposing a fine payable to His Majesty, to order the amount of the value of the article stolen or the amount of the injury done to the fence in question to be paid to the owner thereof.—R. *ex rel.* ARNOLD *v.* WESTERLAND (Alta.), [1929] 3 W. W. R. 408; 52 Can. Crim. Cas. 127.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 1.—D. (a).

613 i. *Proper hearing of accused party.*]—Criminal Code, s. 721, does not authorise any interrogation of prisoner by a magistrate other than the asking him whether he has any cause to show why he should not be convicted. This can be done by asking, "What does he say, guilty or not," but if the reply be not a clear admission of all the elements of the crime, the magistrate must proceed to inquire into the charge without further questioning.—R. *v.* LEE, [1925] 2 W. W. R. 190; 45 Can. Crim. Cas. 280; 35 B. C. R. 401.—**CAN.**

613 ii. ——.]—R. *v.* JOHNSON MCKENZIE (1927), 48 Can. Crim. Cas. 255; 59 N. S. R. 326.—**CAN.**

a i. —— *Statement of value of articles stolen.*]—A conviction under sect. 376 of Criminal Code for the theft of part of a fence which imposes a penalty greater than $20 without an adjudication upon & finding by the magistrate of the "value of the article or articles stolen or the amount of injury done" is invalid with respect to the penalty. The intention of the section is to permit the magistrate, in addition to imposing a fine payable to His Majesty, to order the amount of the value of the article stolen or the amount of the injury done to the fence in question to be paid to the owner thereof.—R. *ex rel.* ARNOLD *v.* WESTERLAND (Alta.), [1929] 3 W. W. R. 408; 52 Can. Crim. Cas. 127.—**CAN.**

so. *Offence charged proved—Right to convict of minor offence.*]—Where an accused is charged with having opium in his possession contrary to sect. 4 of Opium & Narcotic Drug Act, R. S. C., 1927 (c. 144), & under the magistrate's findings that offence is proved, it is not legally open to the magistrate to refuse to convict therefor & to convict instead of the minor offence of smoking opium, even though he finds that the purpose of the accused in possessing the opium was to smoke it himself & not to traffic in it.—R. *v.* LOUIE YEE, [1929] 2 D. L. R. 452; 1 W. W. R. 882; 51 Can. Crim. Cas. 405; 24 Alta. L. R. 16.—**CAN.**

conservators, unlawfully did fish for salmon or trout otherwise than by means of an instrument which they were duly licensed to use contrary to sect. 63 (1) of the Salmon & Fresh Water Fisheries Act, 1923 (c. 16), s. 63 (1).

The charges related to alleged offences on July 6 & 20, 1929. At the conclusion of the hearing as to the charges relating to July 6, the justices retired to their ante-room, & after they had decided to convict each of applts., sent for information as to any convictions for previous fishing offences by applts. for the purpose of considering the appropriate penalty for each applt. They were informed that two of applts. had been twice previously convicted, & one of them once previously convicted of such offences. They obtained this information from their clerk & did not see the police reports of applts. nor obtain information with regard to anything but these alleged convictions for fishing offences. The justices then returned into ct. & announced that applts. were convicted & each of them fined £5. Thereupon the charges relating to July 20 were commenced. In opening the case against applts., the solr. for the prosecution referred to the convictions which had just been recorded against each of applts. Objection was taken to this by applts.' solr., but the justices proceeded with the case & again convicted applts. & fined each of them £5 :—*Held :* all the convictions must be quashed. On the charges first heard, the justices, having decided to convict, should have returned into ct. & then publicly & openly in the presence of applts. made inquiries into any previous convictions there might be against them, in which case applts. would have had the opportunity of dealing with the matter. As to the charges subsequently heard the prosecuting solr. not only referred to the convictions that had just been recorded against applts., but to convictions which had been vitiated as already stated. The question was not whether substantial injustice had been done, but whether the rules had been observed. They had not been observed.—HASTINGS *v.* OSTLE (1930), 143 L. T. 707 ; 94 J. P. 209 ; 94 J. P. Jo. 222 ; 46 T. L. R. 331 ; 28 L. G. R. 324 ; 29 Cox, C. C. 177, D. C.

631b. —— **Reference by solicitor to convictions improperly obtained.**]—HASTINGS *v.* OSTLE, No. 631a, *ante*.

642. *Add. Annotation :*—**Refd.** Pointon *v.* Cox (1926), 136 L. T. 506.

643. *Add. Annotation :*—**Apld.** R. *v.* Surrey Justices, *Ex p.* Witherick, [1932] 1 K. B. 450.

643a. —— ——.]—Applt. was convicted before justices on an information which charged him with driving a motor vehicle on a road "without due care & attention or without reasonable consideration for other persons using the road contrary to Road Traffic Act, 1930 (c. 43), s. 12 " :—*Held :* the section created two separate offences & that the conviction was bad for duplicity, applt. having been charged with those two offences in the alternative.—R. *v.* SURREY JUSTICES, *Ex p.* WITHERICK, [1932] 1 K. B. 450 ; 101 L. J. K. B. 203 ; 146 L. T. 164 ; 29 Cox, C. C. 414.

643b. —— ——.]—R. *v.* MILLS (1932), 173 L. T. Jo. 57.

679. *Add. Annotation :*—**Refd.** Palmer *v.* Crone, [1927] 1 K. B. 804.

707. *Add. Annotation :*—*As to* (2) **Refd.** Gough *v.* Rees (1929), 46 T. L. R. 103.

PART VIII. SECT. 5, SUB-SECT. 1.—D. (o).

f i. —— ——.]—*Re* BAKER (1900), 20 C. L. T. 16.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 1.—D. (d).

sc. *Conviction under Excise Act, s. 180—Whether in respect of more than one offence.*]—A conviction under Excise Act, s. 180, for that the accused "unlawfully did conceal or keep, or allow, or suffer to be concealed or kept," etc., is not one in respect of two or more offences.—R. *v.* CHENG TONG SENG, [1928] 1 W. W. R. 33 ; 49 Can. Crim. Cas. 79 ; 39 B. C. R. 157.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 1.—D. (e).

644 i. *Joint trial—Separate convictions.*]—A magistrate has no jurisdiction to hear separate offences against different persons together, even where the persons charged consent to the adoption of that course, & the proceedings in such cases are void *ab initio*.—RUSSELL *v.* BATES (1927), 27 S. R. N. S. W. 257 ; 44 N. S. W. W. N. 79 ; *revsd.* 40 C. L. R. 209.—**AUS.**

PART VIII. SECT. 5, SUB-SECT. 1.—E.

n i. —— ——.]—A magistrate may, before making the appropriate entry in the Criminal Record Book, alter his decision as to the quantum of punishment imposed ; but if the alteration is made for a purpose which constitutes an improper exercise of his discretion in the matter of punishment, such alteration is irregular, & the detention of accused in pursuance thereof is illegal.—*Re* CAVENETT, [1926] N. Z. L. R. 755.—**N.Z.**

PART VIII. SECT. 5, SUB-SECT. 3.—A. (a).

697 v. —— ——.]—Applt. was convicted before a stipendiary magistrate for harbouring spirits unlawfully imported into Canada whereon the duties had not been paid, contrary to Customs Act, 1927, s. 217. The warrant of commitment did not show that the value of the goods was under $200, & was, on that ground, attacked as bad on its face, as not showing jurisdiction in the convicting ct. :—*Held :* in not showing such value to be under $200 the warrant of commitment did not fail to show jurisdiction.—*Re* MANUEL, [1929] 1 D. L. R. 661 ; S. C. R. 109 ; 51 Can. Crim. Cas. 60.—**CAN.**

697 vi. —— *p.* DONALD (N. S.) (1928), 51 Can. Crim. Cas. 30.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 3.—A. (b) i.

705 iii. —— —— *Offence under Opium & Narcotic Drug Act, s. 5A (2) (c).*]—R. (WAUGH) *v.* WONG MAN, [1922] 1 W. W. R. 67 ; 66 D. L. R. 517 ; 36 Can. Crim. Cas. 319 ; 17 Alta. L. R. 363.—**CAN.**

712 ii. ——.]—*Re* SHAW (N. S.) (1929), 52 Can. Crim. Cas. 79.—**CAN.**

p i. *Release on bail pending sentence—Non-appearance on another charge of magistrate to sentence for previous charge.*]—R. *v.* WEEDMARK (1928), 50 Can. Crim. Cas. 443.—**CAN.**

sd. *Substitution of new warrant—Term of imprisonment extended—New warrant invalid.*]—*Re* WHETON (N. S.) (1926), 46 Can. Crim. Cas. 247.—**CAN.**

se. *Duplicate warrant—Original warrant lost or destroyed.*]—*Re* MOZELLE (1928), 50 Can. Crim. Cas. 44.—**CAN.**

sm. *Previous conviction set out—No proof of previous conviction.*]—*Re* PARIS (1931), 3 M. P. R. 461 ; 56 Can. C. C. 108.—**CAN.**

sp. *Reference to statute & section—Sufficiency.*]—R. *v.* SCHWANBECK ; R. *v.* DE LA GORGENDIERRE (1931), 55 Can. C. C. 396.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 3.—A. (b) iii.

724 ii. ——.]—Where a valid warrant of commitment has been substituted for an invalid one before the return of a writ of *habeas corpus*, an order for the prisoner's discharge will not be made.—R. *v.* SCHWANBECK, R. *v.* DE LA GORGENDIERRE, [1931] 3 D. L. R. 745 ; 3 W. W. R. 59 ; 56 Can. C. C. 94.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 3.—A. (c).

d i. —— *Validity.*]—After sentencing an accused to six months' imprisonment the convicting magistrate ordered that the warrant of commitment be withheld for 24 hours. Within that time the accused voluntarily left the city but returned thereto about three months later, when she was arrested under said warrant & imprisoned. She applied by way of *habeas corpus* for her release :—*Held :* the arrest & imprisonment were lawful ; the order for the withholding of the warrant was beyond the magistrate's powers, he then being *functus*

793. *Add. Annotations :* — **Consd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485; Ruislip-Northwood Urban District Council *v.* Lee (1931), 145 L. T. 208. **Refd.** Clark *v.* Epsom R. D. C., [1929] 1 Ch. 287.

793a. —— ——.]—MUSICAL PERFORMERS' PROTECTION ASSOCN., LTD. *v.* BRITISH INTERNATIONAL PICTURES, LTD. (1930), 46 T. L. R. 485.

Part X.—Clerks to Justices.

808. *Add. Annotation :*—**Consd.** R. *v.* Ely JJ., *Ex p.* Mann (1928), 45 T. L. R. 92.

811a. Should not act as solicitor for prosecution — At quarter sessions.]—It is highly undesirable that the clerk to county justices, who have committed a prisoner for trial at quarter sessions, should act at quarter sessions as solr. for the prosecution, &, if quarter sessions on proper materials come to the conclusion that he has done so, they are entitled, after prisoner has been convicted, to take that conclusion into consideration in deciding whether they should order the costs of the prosecution to be paid out of the county fund under Costs in Criminal Cases Act, 1908 (c. 15), s. 1.—R. *v.* ELY JJ., *Ex p.* MANN (1928), 93 J. P. 45; 45 T. L. R. 92; 72 Sol. Jo. 861; 27 L. G. R. 35, D. C.

Part XI.—Quarter or General Sessions.

SUB-SECT. 2.—CLERK OF THE PEACE.

(Vol. XXXIII., p. 377.)

865. After this case add :—

——.]—*See, now,* Local Government (Clerks) Act, 1931 (c. 45), s. 4.

874. For cross-reference after this case read "*See, now,* Local Government (Clerks) Act, 1931 (c. 45), s. 2."

880. For cross-reference after this case read "*See, now,* Local Government (Clerks) Act, 1931 (c. 45), s. 4."

889. For statutory cross-references before this case "*See, now,* Local Government (Clerks) Act, 1931 (c. 45), s. 3."

890. *Add. Annotation :*—**Refd.** Stoke Newington Borough Council *v.* Richards (1929), 45 T. L. R. 650.

891. *Add. Annotation :*—**Refd.** Stoke Newington Borough Council *v.* Richards, [1930] 1 K. B.

897. Before this case read "*See* Local Government (Clerks) Act, 1931 (c. 45), ss. 7, 8."

Part XII.—Jurisdiction of Quarter Sessions.

958a. —— **Under Levy of Fines Act, 1822 (c. 46).**]—By above Act the ct. of quarter sessions are empowered to discharge a forfeited recognisance in those cases only where the party has been committed to gaol, or has given security to appear at the sessions, &, therefore, where a party, whose recognisance had become forfeited for not appearing to an indictment, & against whom process had issued, paid to the sheriff the sum mentioned in the recognisance, in order to prevent a sale of his goods, & the justices at sessions afterwards by an order mitigated the recognisance to a small sum, & directed the sheriff to discharge the residue from the recognisance :—*Held :* such order was void, & the party was not entitled to recover from the sheriff the sum which the justices had ordered to be discharged.—HAYNES *v.* HAYTON (1827), 7 B. & C. 293; 5 Man. & Ry. K. B. 307, n.; 5 L. J. O. S. M. C. 136; 108 E. R. 733; *subsequent proceedings,* 6 L. J. O. S. K. B. 231.

Annotations :—**Distd.** Harper *v.* Hayton (1829), 8 L. J. O. S. M. C. 129. **Expld. & Distd.** *Re* Thornton, R. *v.* West Riding of Yorkshire (1837), 7 Ad. & El. 583.

958b. —— ——.]—Above Act empowers the ct. of quarter sessions to discharge a forfeited recognisance in cases where the sheriff has levied part of the amount, & the party has been committed to prison for the remainder; & if, in such a case, the sessions discharge *officio,* & in no way affected the sentence.—R. *v.* SCOTT (Man.), [1929] 3 W. W. R. 70; 52 Can. Crim. Cas. 139.—**CAN.**

sf. *Runs from date of arrest—Not date of conviction.*]—*Re* HILTZ (N. S.) (1929), 52 Can. Crim. Cas. 93.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 3.—A. (e).

sg. *Power to suspend sentence—Summary conviction under Criminal Code, Part XV.*]—R. *v.* BROWNLEE, [1927] 4 D. L. R. 703; 48 Can. Crim. Cas. 218; 61 O. L. R. 28.—**CAN.**

PART VIII. SECT. 5, SUB-SECT. 4.

aa i. —— *Under Liquor Act.*]—In making a conviction under Liquor Act, 1925, 1924-25, c. 53, a justice of the peace has no authority to order that the costs be paid to him, & such a provision in the conviction cannot be treated as a nullity on an appln. for *habeas corpus.*—REX *v.* RABIUK, [1928] 1 W. W. R. 588; 50 Can. Crim. Cas. 318; 22 Sask. L. R. 479.—**CAN.**

sp. *Right of magistrate to fee—Proceedings under Criminal Code, Part XV.*]—R. *v.* SERVETNYK (Sask.) (1926), 45 Can. Crim. Cas. 280.—**CAN.**

PART IX. SECT. 9, SUB-SECT. 3.—M.

sq. —— ——.]—R. *v.* SWITZKI, [1930] 2 W. W. R. 479; 54 Can. C. C. 332; 24 S. L. R. 587.—**CAN.**

PART XI. SECT. 3, SUB-SECT. 2.—D.

sb. *Fees under Naturalisation Act—Taxable.*]—Fees payable under Naturalisation Act, 1914 (Can.), to the Clerk of the Peace, come to him by virtue of his office, & the Public Fees Act, R. S. O., 1927 applies & taxes him in respect of the moneys so received.—*Re* IRWIN & A.-G. FOR ONTARIO, [1932] 2 D. L. R. 77; O. R. 195.—**CAN.**

the recognisance while the money so levied in part is in the hands of the sheriff, he must refund it to the party.—HARPER *v.* HAYTON (1829), 5 Man. & Ry. K. B. 305; 3 Man. & Ry. M. C. 13; 8 L. J. O. S. M. C. 129.

958c. —— ——.]—Where a party bound in recognisance to keep the peace is subsequently convicted at petty sessions of an assault, & the conviction is returned to the quarter sessions, the justices there are not authorised, under above Act, to order an estreat of the recognisance; but the proceeding for that purpose must be by *scire facias*, as before the statute. —R. *v.* WEST RIDING OF YORKSHIRE JUSTICES, *Re* THORNTON (1837), 7 Ad. & El. 583; 2 Nev. & P. K. B. 457; Nev. & P. M. C. 385; 112 E. R. 590; *sub nom.* R. *v.* WEST RIDING OF YORKSHIRE JUSTICES, *Ex p.* THORNTON, 7 L. J. M. C. 9.

Annotation:—**Distd.** R. *v.* Ely Justices (1855), 5 E. & B. 489.

958d. —— ——.]—A party who had applied for a beer licence, under 9 Geo. 4, c. 61, which was refused, appealed against the refusal to the Oct. quarter sessions, & entered into a recognisance to try the appeal, abide the judgment of the ct., & pay such costs as the ct. might award. The appeal was dismissed; & the ct. ordered applt. to pay costs to resp., "forthwith." A blank was left in the order, as to the sums, which the clerk of the peace had not time to fix before the sessions adjourned. The sessions adjourned to the next November. Before the adjournment day, the clerk of the peace fixed the costs, & filled up the order. After the adjourned sessions had terminated, but before the next sessions, which were held on the next Jan., payment was demanded of applt., who did not pay. On affidavit of this, the sessions holden in Jan. estreated the recognisance:—*Held:* the sessions had power to estreat the recognisance, & that process might be taken upon it under above Act.—R. *v.* ELY JUSTICES (1855), 5 E. & B. 489; 25 L. J. M. C. 1; 26 L. T. O. S. 57; 20 J. P. 116; 1 Jur. N. S. 1017; 4 W. R. 5; 119 E. R. 563.

Annotation:—**Refd.** Rawnsley *v.* Hutchinson (1871), L. R. 6 Q. B. 305.

991. *Add. Annotation:*—**Folld.** R. *v.* Judge, *Ex p.* Isle of Ely Justices (1931), 100 L. J. K. B. 350.

991a. —— —— —— ——.]—Though disobedience to a Crown Office subpœna is contempt of the High Ct., disobedience to a subpœna from quarter sessions is not.—R. *v.* JUDGE, *Ex p.* ISLE OF ELY JUSTICES, [1931] 2 K. B. 442; 100 L. J. K. B. 350; 144 L. T. 647; 95 J. P. 97; 47 T. L. R. 263; 75 Sol. Jo. 120; 29 L. G. R. 418, D. C.

1001a. Power to alter sentence—Prisoner absent.]—A prisoner was sentenced by a Chairman of Quarter Sessions to three years' penal servitude for attempted larceny. Subsequently the Chairman sought to alter that sentence to one of two years' imprisonment with hard labour, & instructed the clerk of the peace to make the necessary alteration in the record, & the record was altered accordingly. There was no evidence before the ct. that the sessions had been adjourned to any specified date. The purported alteration of sentence had taken place in the absence of the prisoner:—*Held:* it being at least doubtful whether the Chairman had any power to make the purported alteration, the original sentence of three years' penal servitude must be regarded as the sentence actually passed, &, as that sentence was not warranted in law, it must be reduced.—R. *v.* CASEY (1932), 23 Cr. App. Rep. 193, C. C. A.

1002a. Power to reduce charges—To found jurisdiction.]—Charges of sufficient gravity should not be reduced merely to found the jurisdiction of petty or quarter sessions, but should be committed to assizes.—R. *v.* BENNETT (1928), 20 Cr. App. Rep. 188, C. C. A.

Part XIII.—Appeals from Courts of Summary Jurisdiction.

1015. *Add. Citations:*—*sub nom.* HARRUP *v.* BAYLEY, 6 E. & B. 218; 25 L. J. M. C. 107; 2 Jur. N. S. 882; 119 E. R. 845; *sub nom.* R. *v.* HARROSS, 4 W. R. 461.

1100. *Add. Citation:*—2 B. R. A 1135.

1170. *Add. Annotations:*—**Refd.** R. *v.* Edmonton Income Tax Comrs., *Ex p.* Thompson, [1929] 1 K. B. 220; R. *v.* Newport (Salop) Justices, *Ex p.* Wright, [1929] 2 K. B. 416.

1175a. ——.]—Where an information for a criminal offence has been dismissed by a ct. of summary jurisdiction, that ct. has jurisdiction, on the application of the unsuccessful prosecutor, to state a case on a question of law, & in the event of its refusal the High Ct. has jurisdiction to compel it to do so.—R. *v.* NEWPORT (SALOP) JUSTICES, *Ex p.* WRIGHT, [1929] 2 K. B. 416; 98 L. J. K. B. 555; 141 L. T. 563; 93 J. P. 179; 45 T. L. R. 477; 73 Sol. Jo. 384; 27 L. G. R. 518; 28 Cox, C. C. 658, D. C.

1176. *Add. Annotation:*—*As to* (2) **Refd.** R. *v.* Newport (Salop) Justices, *Ex p.* Wright, [1929] 2 K. B. 416.

1215. *Add. Annotation:*—**Apld.** R. *v.* Edmonton Income Tax Comrs., *Ex p.* Thompson, [1929] 1 K. B. 220.

1219. *Add. Citations:*—96 L. J. K. B. 49; 28 Cox, C. C. 261.

PART XIII. SECT. 1, SUB-SECT. 2.—A. i. ——.]—R. *v.* POCOCK, R. *v.* ELLISON (Ont.), [1927] 4. D. L. R. 1121; 49 Can. Crim. Cas. 95.—**CAN.**

PART XIII. SECT. 1, SUB-SECT. 4.—G. st. *Request for jury—Discretion to grant or refuse*—36 *Vict. c.* 58, *s.* 2.]—R. *v.* WASHINGTON (1881), 46 U. C. R. 221.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 2.—B. (a).

1173 ii. —— *Where complainant failed to appear.*]—The right of appeal given by Criminal Code, s. 749, against the dismissal of an information or complaint does not exist when the dismissal is due to the complainant's or informant's failure to appear.—CHITTERMAN *v.* RALPH, [1928] 2 W. W. R. 631; 50 Can. Crim. Cas. 282.—**CAN.**

1229. For existing paragraph & citations substitute the following :—

(1) Clauses (*d*) & (*f*) of Supreme Ct. of Judicature (Consolidation) Act, 1925 (c. 19), s. 31, have to be read together, &, when so read, they allow of an appeal being brought to the Ct. of Appeal from the decision of the Divisional Ct. on a case stated by justices when leave to appeal has been given.

(2) The recognisance required in the case of a corpn. appealing by case stated from a decision of justices can properly be entered into by a duly authorised attorney doing so on behalf of, & binding the goods of, the corpn. A recognisance entered into by the clerk of the corpn. in his own name & binding only his own goods is insufficient.— LEYTON URBAN DISTRICT COUNCIL *v.* WILKINSON, [1927] 1 K. B. 853 ; 96 L. J. K. B. 383 ; 137 L. T. 10 ; 91 J. P. 61 ; 43 T. L. R. 326 ; 71 Sol. Jo. 293 ; 25 L. G. R. 188, C. A.

Annotation :— **Distd.** Lawrence *v.* Martin, [1928] 2 K. B. 454.

1229a. Appeal by clerk of urban district council—Recognisance entered into by clerk—Validity.]— On the application of a clerk of an urban district council for a case to be stated for the opinion of the High Ct., the clerk himself entered into the recognisance conditioned to prosecute the appeal, rendered necessary by Summary Jurisdiction Act, 1857 (c. 43), s. 3. On a preliminary objection at the hearing of the appeal, that the recognisance should have been entered into by the clerk on behalf of the council, so as to render their goods liable, for the reason that the council had by resolution authorised the clerk to lay the original information &, if unsuccessful, to carry the proceedings further, & that the clerk "duly authorised" had sworn the information, & entered into the recognisance "as principal" : *Held :* the recognisance was good, in that in fact the clerk as informant was applt., being at liberty by virtue of Public Health Act, 1875 (c. 55), s. 259 to institute & carry on any proceedings which the local authority was authorised to institute, & the above words of authorisation were surplusage.—LAWRENCE *v.* MARTIN, [1928] 2 K. B. 454 ; 97 L. J. K. B. 707 ; 139 L. T. 373 ; 92 J. P. 112 ; 44 T. L. R. 621 ; 26 L. G. R. 454.

1236. *Add. Annotation :*—**Distd.** Marsland *v.* Taggart, [1928] 2 K. B. 447.

1236a. —— Death of one justice—Signature by surviving justices.]—A complaint was heard by three justices, who unanimously dismissed it, but agreed to state a case for the opinion of the High Ct. Before the case was stated one of the justices died, & the case was signed by the surviving two justices only :—*Held :* as the obligation of the justice to sign the case was created by law & not by voluntary contract, & as his failure to fulfil that obligation was due to his death & not to any spontaneous act on his part, the Crown had jurisdiction to proceed with the matter.—MARSLAND *v.* TAGGART, [1928] 2 K. B. 447 ; 97 L. J. K. B. 787 ; 139 L. T. 192 ; 92 J. P. 118 ; 44 T. L. R. 543 ; 26 L. G. R. 377 ; 28 Cox, C. C. 511, D. C.

1311. *Add. Annotation :*—**Apld.** R. *v.* Newport (Salop) Justices, *Ex p.* Wright, [1929] 2 K. B. 416.

1316a. Facts incorrectly stated—Costs of restatement.] Where the justices had in stating a case set forth the facts incorrectly & afterwards in pursuance of an order of the ct. had restated the case, the ct. made an order against the justices to pay the costs of & occasioned by the restatement.— EDGE *v.* EDWARDS (1932), 48 T. L. R. 449, D. C.

PART XIII. SECT. 2, SUB-SECT. 4.—B. (a).

sw. *Annexation giving reasons for decision—Whether authorised.*] *Held :* an annexation should not be made to a stated case giving reasons for the decision brought under review, there being no warrant for such an annexation in Summary Jurisdiction (Scotland) Act, 1908.— COCKBURN *v.* GORDON, [1928] S. C. (J.) 87. **SCOT.**

PART XIII. SECT. 2, SUB-SECT. 4.—D. (a).

c i. *Criminal Code, s.* 761—*Strict compliance therewith—Necessity for.*] — In the absence of rules of ct. providing otherwise, the time for serving & filing a case stated under sect. 761 of the Criminal Code is three days from its receipt as provided by sect. 761 (3) (c), & where it was possible to serve & file the case within those three days & it was not served or filed within that time the ct. has no jurisdiction to hear the case.—R. *v.* EMRYK, [1930] 2 W. W. R. 331 ; 54 Can. C. C. 95 ; 39 Man. L. R. 48.— **CAN.**

PART XIII. SECT. 2, SUB-SECT. 6.—A.

1294 ii. —— *Under Excise Act—Unauthorised intervention of justice.*]— A justice of the peace having intervened in a prosecution under Excise Act by assuming to adjourn the trial on the non-appearance of the police magistrate before whom the information was laid & who had issued a summons to deft. to appear before him, a conviction made on the adjourned date of trial by another police magistrate, before whom deft. refused to plead & to whose jurisdiction he objected, was quashed, since said intervention was in direct violation of sect. 134 of said Act.— R. *v.* PYKE, [1928] 1 W. W. R. 590 ; 49 Can. Crim. Cas. 186 ; 23 Alta. L. R. 311.—**CAN.**

sx. *To inquire as to authority & jurisdiction of magistrate—& as to manner in which authority exercised.*]—Upon a motion to quash an information & proceedings taken before a police magistrate or justice of the peace, the ct. may inquire as to his authority & jurisdiction, & as to whether his powers & authority were exercised in such a manner & in such place or places as to bring his acts within his jurisdiction territorial & otherwise.— R. *v.* ISPELL, [1928] 4 D. L. R. 322 ; 50 Can. Crim. Cas. 81 ; 62 O. L. R. 189 ; *affd.*, [1929] 2 D. L. R. 732 ; 51 Can. Crim. Cas. 342 ; 63 O. L. R. 384.— **CAN.**

sy. *To set aside judgment—Irrelevant considerations introduced by magistrate—No opportunity given to applicant to explain.*]—BOUWER *v.* MASONDO (1928), 49 N. L. R. 62.—**S. AF.**

PART XIII. SECT. 2, SUB-SECT. 6.—C.

1301 vi. ——.]—R. *v.* COWELL (1928), 50 Can. Crim. Cas. 381.—**CAN.**

1301 vii. ——.]—R. *v.* WIGGINS (1928), 50 Can. Crim. Cas. 193.—**CAN.**

1301 viii. ——.]—R. *v.* HILL, [1929] 1 D. L. R. 319 ; 50 Can. Crim. Cas. 319.— **CAN.**

1301 ix. ——.]—ANSON *v.* PARKER [1928] N. Z. L. R. 490.— **N.Z.**

PART XIII. SECT. 2, SUB-SECT. 6.—D.

1302 vi. ——.]—R. *v.* BOUTILIER (N. S.) (1928), 50 Can. Crim. Cas. 186.— **CAN.**

k i. ——.]—SUTHERLAND *v.* SHIACH, [1928] S. C. (J.) 19.—**SCOT.**

PART XIII. SECT. 2, SUB-SECT. 8.—A.

sz. *Liability of justice—Refusal to include material facts in case stated.*]— The refusal of a justice of peace to include in a stated case important facts & points found or raised before him held to be arbitrary & unreasonable, &, therefore, he was held liable for the costs of an application to the ct. on behalf of the prosecution to require him to do so, although before the application came on for hearing a further case was stated by the justice which covered the ground as requested by the applt.—R. *e.c rel.* DONALD *v.* THOMPSON (Sask.), [1929] 2 W. W. R. 574 ; 52 Can. Crim. Cas. 13.— **CAN.**

PART XIII. SECT. 3, SUB-SECT. 3.—A. (b) i.

1350 iv. —— .]—An appeal was taken from a summary conviction on the ground that the conviction was bad in that the costs directed to be paid by the accused were not fixed & that the person to whom they were to be paid was not named. After hearing argument on each side of that question, the county ct. judge quashed the conviction for said reasons. Thereafter an order of *mandamus* was obtained directing the county ct. judge to hear & determine the appeal on the merits notwithstanding any defect in the

1376. *Add. Annotation :*—**Consd.** R. *v.* London County Council, *Ex p.* Entertainments Protection Assocn., Ltd., [1931] 2 K. B. 215.

1393a. —*Mandamus* will issue to justices who have refused to hear an application under Small Tenements Recovery Act, 1838 (c. 74), because they have adopted a general practice not to hear such cases on the ground that the county ct. is a more suitable tribunal.

conviction. From that order the accused appealed :—*Held :* the appeal should be allowed without costs & the order of *mandamus* vacated.—R. *v.* STUBBS, *Re* GROSS, [1930] 2 W. W. R. 219 ; *sub nom. Re* GROSS, 4 D. L. R. 299 ; 53 Can. C. C. 384 ; 39 Man. L. R. 1 ; *revsg.*, [1930] 3 D. L. R. 404 ; 1 W. W. R. 902 ; 53 Can. C. C. 175.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 3.—A. (b) ii.

1380 i. *Jurisdiction declined.*]—A *mandamus* goes where a person having a jurisdiction to exercise declines to exercise it because of his decision on a preliminary question which does not go to the merits of the case as regards either the facts or the law. On the opening of an appeal from a conviction by a magistrate for a breach of sect. 176 (*e*) of the Excise Act, applt. objected that the Crown had not filed in the ct. appealed to a transcript of the evidence taken in the police ct., & had made no attempt to order that it should be so filed. The county ct. judge adjourned the hearing of the appeal & ordered the Crown to file the depositions ; the Crown having failed to do so, he allowed the appeal & quashed the conviction. The Crown then applied for a *mandamus* commanding the judge to enter continuances of the appeal, hear the charge & the witnesses on which the conviction was made, & make a decision thereon :—*Held :* the *mandamus* asked for should be granted.—R. *v.* POCHREBNY, [1930] 1 W. W. R. 139 ; *affd.*, [1930] 1 W. W. R. 688 ; 53 Can. C. C. 163 ; 38 Man. L. R. 593.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 3.—B. (b).

sa. *To make order for detention of suspected person—Order refused on grounds unsustainable in law—Offer to state case.*]—Where an appln. has been made to a district justice for an order under Public Safety Act, 1927 (No. 31 of 1927), s. 16 (2), for the detention of a person suspected of an offence under the Act, & the district justice refuses to make the order on grounds unsustainable in law, *mandamus* lies, notwithstanding that the district justice has offered to state a case for the High Ct., a case stated not being equally convenient & effective in the circumstances.—A.-G. *v.* M'BRIDE, [1928] I. R. 451.—**IR.**

PART XIII. SECT. 4.

1 (p. 429) i. —— *Irregularity in trial—At request of appellant.*]—Where an alleged irregularity in the course of a trial, viz., in the taking of a view by the magistrate, had been brought about at the express request of applt. he was held to have no just ground of complaint.—R. *v.* COX, [1929] 2 D. L. R. 785 ; 1 W. W. R. 542 ; 51 Can. Crim. Cas. 203 ; 41 B. C. R. 9.—**CAN.**

bb (p. 430) i. —— ——.]—Justices of the peace & police magistrates cannot give themselves jurisdiction by erroneously & capriciously deciding preliminary points contrary to all evidence. Children's Protection Act, R. S. N. B., 1927, defines a child as a "boy or girl actually or apparently under sixteen years of age." Where the only evidence of the age of a girl before a police magistrate was a statement by the girl herself that she did not know her age, but thought she was sixteen : —*Held :* the police magistrate acted without jurisdiction in finding that she was a child under sixteen years of age, & his order & all proceedings before him were quashed.—R. *v.* LIMERICK, *Ex p.* QUEENS COUNTY (1928), 54 N. B. R. 467.—**CAN.**

bb (p. 430) ii. —— *Jurisdiction in fact existing—Magistrate misdescribing himself.*]—R. *v.* MULLINS, R. *v.* TRUCKER (1930), 54 Can. C. C. 118.—**CAN.**

hh (p. 430) i. —— *Probability of prejudice.*]—Where a legal practitioner, having no direct interest in a local ct. action, on the morning on which judgment in the action was to be delivered, discussed the action with one of the justices who heard the action, & made certain statements calculated to prejudice him against one of the parties :—*Held :* an order in the nature of a writ of *certiorari* should be granted removing the hearing of the action into the Supreme Ct.—BURKE *v.* STAEHR, *Re* ADELAIDE LOCAL COURT ACTION (1927), S. A. S. R. 180.—**AUS.**

hh (p. 430) ii. —— ——.]—*Ex p.* BOEHNER (N. S.) (1929), 52 Can. Crim. Cas. 412 ; [1930] 1 D. L. R. 662.—**CAN.**

kk (p. 430) i. —— *Sufficiency of record—Not clear whether accused questioned as to having defence.*]—R. *v.* MCGILL (N. S.), [1930] 1 D. L. R. 961 ; 1 M. P. R. 85 ; 52 Can. Crim. Cas. 397.—**CAN.**

kk (p. 430) ii. —— *Failure to hear evidence.*]—FITCHITT *v.* HRENO, FITCHITT *v.* SORECK, [1929] 1 W. W. R. 737 ; 51 Can. Crim. Cas. 229 ; 23 S. L. R. 622.—**CAN.**

kk (p. 430) iii. —— *Witness improperly sworn.*]—R. *v.* CUMMINSKEY (1930), 54 Can. C. C. 306.—**CAN.**

h (p. 431) i. —— *Absence of jurisdiction.*]—The "Nat Bell" case does not have the effect of depriving an appct. for *habeas corpus* with *certiorari* in aid from proving *dehors* the record that the magistrate had no jurisdiction to convict him.—R. *v.* HENDERSON (B. C.), [1929] 4 D. L. R. 984 ; 2 W. W. R. 209 ; 52 Can. Crim. Cas. 82.—**CAN.**

h (p. 431) ii. ——.]—While *Rex* v. *Nat Bell Liquors, Ltd.*, holds that, if the jurisdiction of the magistrate is conceded, then the formal conviction is conclusive & excludes from consideration on *certiorari* the sufficiency of the evidence supporting the conviction as to the facts alleged therein, yet the decision does not go so far as to prevent the receipt of extrinsic evidence to show that an accused person pleading not guilty in a ct. with limited territorial jurisdiction was deprived of the right to have it established in the course of the evidence as a condition precedent to the exercise of the jurisdiction that the charge was one triable in the ct. purporting to deal with it.—R. *v.* GUSTAFSON (B. C.), [1929] 3 W. W. R. 209 ; 52 Can. Crim. Cas. 151.—**CAN.**

h (p. 431) iii. ——.]—Two orders were made by police magistrates directing confiscation of certain parcels of intoxicating liquor which had been seized by liquor inspectors for alleged contravention of the Liquor Control Act. Upon motion to quash the orders :—*Held :* the judge had no jurisdiction to inquire whether there was evidence to support the orders or whether the magistrates had misdirected themselves in considering the evidence.—*Re* WINDSOR TERMINAL WAREHOUSE & TRANSPORT CO., LTD., [1929] 3 D. L. R. 926 ; 52 Can. Crim. Cas. 38 ; 63 O. L. R. 630.—**CAN.**

h (p. 431) iv. ——.]—*In re* COLLEGE OF PHYSICIANS & SURGEONS & MAHOOD, [1929] 4 D. L. R. 123 ; 2 W. W. R. 461 ; 24 Alta. L. R. 219.—**CAN.**

h (p. 431) v. ——.]—While *Rex* v. *Nat Bell Liquors, Ltd.*, [1922] 2 W. W. R. 30, holds that, if the jurisdiction of the magistrate is conceded, then the formal conviction is conclusive & excludes from consideration on *certiorari* the sufficiency of the evidence supporting the conviction as to the facts alleged therein, yet the decision does not go so far as to prevent the receipt of extrinsic evidence to show that an accused person pleading not guilty in a ct. with limited territorial jurisdiction was deprived of the right to have it established in the course of the evidence as a condition precedent to the exercise of the jurisdiction that the charge was one triable in the ct. purporting to deal with it.—R. *v.* GUSTAFSON (B. C.), [1929] 3 W. W. R. 209 ; 52 Can. Crim. Cas. 151.—**CAN.**

k (p. 431) i. —— *Reference to repealed Act—Offence in fact committed.*]—Where a conviction is attacked on *certiorari* on the ground that the Act referred to therein & on which it purports to be based had been repealed at the time when the offence was alleged to have been committed, then sect. 1124 of the Criminal Code requires the judge who hears the application to peruse the depositions & determine the guilt of the accused, & if he is satisfied that the offence actually alleged in the conviction has been committed or if the depositions show that an offence of the nature described in the conviction has been committed, the conviction should not be held invalid. Sect. 1124 should not be applied, however, unless the judge is satisfied of the guilt of the accused beyond a reasonable doubt.—R. *v.* LOO YIP YEN, [1930] 1 W. W. R. 351 ; 53 Can. C. C. 38 ; 42 B. C. R. 377—**CAN.**

mm (p. 431) i. —— *Application to speedy trial.*]—R. *v.* O'NEIL & SMITH (1931), 56 Can. C. C. 379.—**CAN.**

nn (p. 431) i. —— *Order for maintenance—Attack on original committal order.*]—Where the judge of a Juvenile Ct. has admitted as evidence a committal order made under Child Welfare Act & regular on its face, & has used that order as the basis for making a maintenance order against a municipality & the municipality has not availed itself of its right of appeal, the Ct. of Appeal should not allow an attack to be made on the original order on a motion to quash the subsequent order as made without jurisdiction.—RURAL MUNICIPALITY OF COLDWELL *v.* CHILDREN'S AID SOCIETY OF ST. ADELARD, [1929] 1 D. L. R. 909 ; 1 W. W. R. 333 ; 51 Can. Crim. Cas. 180 ; 38 Man. L. R. 31.—**CAN.**

nn (p. 431) ii. —— *Failure to hear evidence Nature of evidence need not be disclosed.*]—YORKE *v.* MICHAS, [1930] 2 W. W. R. 62 ; *sub nom.* R. *v.* MICHAS, 53 Can. C. C. 250 ; 24 S. L. R. 414.—**CAN.**

ddd (p. 431) i. ——.]—Before a judge can substitute a conviction for a magistrate's conviction which on being removed on *certiorari* he holds to be invalid he must be satisfied beyond a reasonable doubt & from a perusal of the deposition as his only guide that the accused has been guilty of an offence of the nature described in the invalid conviction. Where he is not

—R. *v.* KENT JJ., *Ex p.* TRIPLOW (1927), 137 L. T. 25; 91 J. P. 38; 43 T. L. R. 227; 25 L. G. R. 120, D. C.

1409. *Add. Annotation:*—**Refd.** R. *v.* London County Council, *Ex p.* Entertainments Protection Assocn., Ltd., [1931] 2 K. B. 215.

so satisfied the conviction must be quashed; there is no provision in the Code warranting the remitting of the case to the magistrate for rehearing.—R. *ex rel.* ARNOLD *v.* WESTERLAND (Alta.), [1929] 3 W. W. R. 408; 52 Can. Crim. Cas. 127.—**CAN.**

ddd (p. 431) ii. ——.]—R. *v.* GLOVER (1930), 53 Can. C. C. 222.—**CAN.**

sc. *Order for return of depositions.*]—Where a magistrate causes depositions to be taken by a stenographer, appointed by himself pursuant to the authority given him by sect. 37 of Summary Convictions Act, R. S. B. C., 1924, & the depositions are ordered to be returned on *certiorari*, the depositions or transcripts must be deemed to be in the custody or power of the magistrate.—R. *v.* WONG YORK (B. C.), [1929] 3 W. W. R. 199; 52 Can. Crim. Cas. 196; *revsd.*, [1930] 1 W. W. R. 388; 2 D. L. R. 552; 53 Can. C. C. 68; *sub nom. Re* JOHNSTON, 42 B. C. R. 246.—**CAN.**

sd. *Extension of time for.*]—*Re* BROWN, [1931] 3 D. L. R. 205.—**CAN.**

sp. *Costs—Motion unopposed & misconduct not shown.*]—*Re* MURPHY (1931), 2 M. P. R. 440.—**CAN.**

PART XIII. SECT. 7.

f (p. 432) i. —— *To first sittings in county where conviction took place.*]—R. *v.* FRASER, [1928] 1 D. L. R. 803; 49 Can. Crim. Cas. 189.—**CAN.**

kk (p. 432) i. —— *To what sittings applicable.*]—Where notice of an appeal governed by sect. 750 of the Criminal Code is duly given for the proper sittings of the ct., the ct. has jurisdiction to enter & hear the appeal at any time during the sittings, & if it is not entered or heard at that sittings the ct., is without jurisdiction to consider it at a subsequent sittings.—R. *v.* REKUSH, [1930] 1 W. W. R. 669; 53 Can. C. C. 199; 24 Alta. L. R. 431. —**CAN.**

eee (p. 432) i. —— *After payment of fine—What amounts to payment.*]—On an appeal under Summary Convictions Act, R. S. B. C., 1924, from a conviction for a violation of Motor Vehicle Act, under which a fine was imposed: —*Held:* on the facts the amount which had been paid by the accused following his conviction had been paid, under the alternative method mentioned in sect. 78 (*c*) of the former Act, as a deposit of a sum sufficient to cover the sum adjudged to be paid together with the further sum which the justice deemed sufficient to cover the costs of the appeal; &, therefore, the objection that since applt. had paid the fine imposed the ct. was without jurisdiction to hear the appeal should be overruled.— R. *v.* TALBOT, [1930] 3 W. W. R. 299; *affd.*, [1931] 3 D. L. R. 676; 1 W. W. R. 662; 55 Can. C. C. 364; 43 B. C. R. 485.—**CAN.**

eee (p. 432) ii. —— *From decision of judge in chambers on case stated.*]—R. *v.* BAER (1930), 54 Can. C. C. 372.—**CAN.**

hhh (p. 432) i. —— —— *Findings of fact.*]—R. *v.* BELLMAN (Ont.) (1925), 45 Can. Crim. Cas. 145.—**CAN.**

hhh (p. 432) ii. —— *Where conviction within fourteen days of next sitting of appeal court.*]—R. *v.* NORMAN (1923), 49 Can. Crim. Cas. 405.—**CAN.**

hhh (p. 432) iii. —— ——.]—R. *v.* MORRIS (1924), 49 Can. Crim. Cas. 389.—**CAN.**

hhh (p. 432) iv. —.]—R. *v.* WENN (1928), 49 Can. Crim. Cas. 401. —**CAN.**

hhh (p. 432) v. —— *Extension of—After expiration of fixed period.*]—R. *v.* BOUTILIER (1928), 50 Can. Crim. Cas. 186.—**CAN.**

sv. *Who may appeal—Under Criminal Code, s.* 749.]—R. *v.* HICKS, [1926] 1 W. W. R. 182; 46 Can. Crim. Cas. 94; 37 B. C. R. 280.—**CAN.**

aaaa i. —— *To nearest court—How nearest court ascertained.*]—R. *v.* HOLT (1925), 46 Can. Crim. Cas. 40; 36 B. C. R. 391; [1926] 1 W. W. R. 47.—**CAN.**

aaaa ii. *S.P.* R. *v.* CANADIAN ROBERT DOLLAR CO., LTD. (1926), 37 B. C. R. 264.—**CAN.**

dddd i. —— ——.]—R. *v.* MCLATCHEY, *Ex p.* STEWART (N.B.), [1926] 2 D. L. R. 334; 45 Can. Crim. Cas. 293.—**CAN.**

dddd ii. —— —— *No power to set aside own decision.*]—R. *v.* MARTINELLO, [1931] 1 D. L. R. 989; 55 Can. C. C. 43; 2 M. P. R. 452.—**CAN.**

dddd iii. —— —— *To order new trial.*]—AMHERST *v.* COULSON, [1932] 2 D. L. R. 670.—**CAN.**

o (p. 433) i. —— *" Nearest to place where cause of action arose "—Proof of nearness.*]—R. *v.* ZARELLI & NEWELL, [1931] 2 W. W. R. 108.—**CAN.**

p (p. 433) i. —— *Nature of—Whether trial de novo.*]—R. *v.* LAURIENTE, [1928] 3 W. W. R. 265.—**CAN.**

p (p. 433) ii. —— *Duty of court—To consider findings of magistrate.*]—R. *v.* AULENBACH (N. S.) (1929), 52 Can. Crim. Cas. 374.—**CAN.**

p (p. 433) iii. —— —— ——.]—R. *v.* GILES (1930), 55 Can. C. C. 76; 2 M. P. R. 447.—**CAN.**

p (p. 433) iv. —— —— ——.]—R. *v.* HILL (1930), 55 Can. C. C. 167; 2 M. P. R. 486.—**CAN.**

p (p. 433) v. —— —— ——.]—R. *v.* OICKLE, [1931] 3 M. P. R. 447; 55 Can. C. C. 145.—**CAN.**

p (p. 433) vi. —— —— ——.]—R. *v.* GILES (1930), 55 Can. C. C. 76; 2 M. P. R. 447.—**CAN.**

p (p. 433) vii. —— *No right to jury—*1900 (*N. S.*), *c.* 44.]—R. *v.* LAWRENCE (1930), 53 Can. C. C. 172; 1 M. P. R. 402.—**CAN.**

bb (p. 433) i. —— *Jurisdiction.*]—On an appeal from a summary conviction under Criminal Code it is compliance with the conditions of appeal, & not proof of such compliance, that gives jurisdiction to the district ct. to hear the appeal; therefore, so long as the case is properly kept alive by adjournments said proof may be made at any time, &, thereupon the ct. will be justified in exercising the jurisdiction thus shown to exist.—R *v.* HOLAYCHUK (Alta.), [1929] 1 D. L. R. 706; 1 W. W. R. 278; 51 Can. Crim. Cas. 98.—**CAN.**

dd (p. 433) i. —— *Ontario—Offence punishable on summary conviction—Appeal does not lie.*]—R. *v.* MARTIN (1931), 55 Can. C. C. 325.—**CAN.**

ee (p. 433) i. —— —— *Over sentence.*]—R. *v.* SKIBO, [1931] 1 W. W. R. 297; 55 Can. C. C. 124; 39 Man. L. R. 355.—**CAN.**

ee (p. 433) ii. —— —— *As to depositions taken before magistrate.*]—R. *v.* CRUIKSHANKS (1930), 53 Can. C. C. 184; 1 M. P. R. 394.—**CAN.**

gg (p. 433) i. —— ——.]—On an appeal from a conviction founded on an alleged plea of guilty, it is open to accused to raise the point that he did not, in the true legal sense, plead guilty to the information or complaint preferred against him, since he did not understand the nature of the charge & pleaded guilty in ignorance.—R. *v.* OLNEY (B. C.), [1926] 4 D. L. R. 869; [1926] 3 W. W. R. 273; 46 Can. Crim. Cas. 196.—**CAN.**

gg (p. 433) ii. —— ——.]—R. *v.* GALSKY, [1931] 2 W. W. R. 475; 55 Can. C. C. 330.—**CAN.**

gg (p. 433) iii. —— *Discretion of judge to allow withdrawal of plea.*]—*Ex p.* STANTON (1928), 28 S. R. N. S. R. 516; 45 N. S. R. W. N. 118.—**AUS.**

hh (p. 433) i. —— —— *In favour of Crown.*]—R. *v.* GILES, [1930] 3 D. L. R. 273; 53 Can. C. C. 248.—**CAN.**

bbb (p. 433) i. —— *Right of Crown to estreat bail bond.*]—On an application to estreat a bail bond given to secure payment of costs on an appeal from a summary conviction to which Part XV. of the Criminal Code was applicable, which appeal was dismissed with costs & the costs subsequently taxed:—*Held:* the Crown was entitled to an order estreating the recognisance & directing that it be enforced against the bondsmen.—R. *v.* MATHESON & MADER, [1930] 1 W. W. R. 609; 53 Can. C. C. 228; 24 S. L. R. 577.—**CAN**

sw. *Postponement of appeal—Grounds for granting.*]—R. *v.* CUMYOW, [1926 1 D. L. R. 623; 45 Can. Crim. Cas. 172; 36 B. C. R. 435.—**CAN.**

sx. *Appeal to Division Court—From conviction imposing fine & imprisonment.*]—*Re* R. *v.* KNOWLES (Ont.) (1929), 52 Can. Crim. Cas. 377.—**CAN.**

sy. —— *On case stated.*]—Under the combined operation of Summary Convictions Act of Ontario, R. S. O., 1927, s. 3, & sect. 761 of the Criminal Code of Canada, an appeal upon a stated case lies from a conviction by a magistrate. The forum for hearing the appeal is the Div. Ct. of the Appellate Division. —R. *v.* RED LINE, LTD., [1930] 2 D. L. R. 149; 53 Can. C. C. 47; 65 O. L. R. 11.—**CAN.**

sz. *Payment of fine under protest—Right to appeal preserved.*]—R. *v.* MCGILL (B. C.) (1929), 52 Can. Crim. Cas. 141.—**CAN.**

sa. *Powers of appellate court—To recall witnesses called in inferior court.*] —On an appeal under the provisions of the Justices Act, 1921, the judge upon the hearing of the appeal, has power in a proper case & in the exercise of a judicial discretion to take further evidence, & for that purpose to order that the witnesses called in the lower ct. be recalled & examined in his presence.—HUNTER *v.* WALSH (1928), S. A. S. R. 336.—**AUS.**

sd. —— *No power to amend sentence already served.*]—R. *v.* CHRISTOPHER (1931), 56 Can. C. C. 388; 2 M. P. R. 439.—**CAN.**

sg. *Informant admitting perjury—Conviction quashed.*]—R. *v.* LE BRETON (1927), 54 N. B. R. 580.—**CAN.**

PART XVII. SECT. 3, SUB-SECT. 1.

sl. *Payment of fine under protest.*]—The payment of a fine " under protest " is improper, because fines can not be paid in that way.—R. *v.* SUTHERLAND (1928), 43 B. C. R. 277.—**CAN.**

Part XIV.—Appeals from Quarter Sessions.

1607. *Add. Annotation :*—**Apld.** Piper *v.* St. Marylebone Licensing JJ., [1928] 2 K. B. 221.

1622a. Proper heading.]—In a case of *D.* v. *P.* the appeal was by resp. The case was headed & set down as *P.* v. *D.*

AVORY, J., said that the rule was that, as the parties were at quarter sessions, so they remained. The present case ought to have been headed between "D. & P., resp."—PRACTICE NOTE (1930), 47 T. L. R. 168.

1622b. Amendment—With consent of parties.]—Under Quarter Sessions Act, 1849 (c. 45), s. 2, it is competent for the parties to consent to an amendment or alteration of the special case subject to the approval of the ct. The special case before the Court of Appeal was adjusted before the recent decisions of the House, & did not afford sufficient information of the exact nature of the uses to which the hereditament was put, & a further statement was asked for by & supplied to the House.—TOOGOOD & SONS, LTD. *v.* GREEN, [1932] A. C. 663; 101 L. J. K. B. 453; 147 L. T. 201; 96 J. P. 249; 48 T. L. R. 463; 76 Sol. Jo. 458; 30 L. G. R. 361, H. L.

1622c. —— Grounds for—Appeal to House of Lords.]—TOOGOOD & SONS, LTD. *v.* GREEN, No. 1622b, *ante.*

1645. *Add. Citation :*—1 B. R. A. 549.

1656. *Add. Annotation :*—**Consd.** Stoke-on-Trent Revenue Officer *v.* Stoke-on-Trent Assessment Committee & Potteries Electric Traction Co., etc., etc. (1930), 143 L. T. 650.

1676a. —— For further information—Order not appealable.] — The Ct. of Appeal cannot interfere with the exercise of the power of the Div. Ct. to remit a case for further information under Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49).—SOUTHWARK REVENUE OFFICER *v.* HOE (R.) & CO. (1930), 143 L. T. 544; 94 J. P. 170; 46 T. L. R. 528; 28 L. G. R. 446; (1926–31), 2 B. R. A. 723.

Part XVI.—Appeal to Court of Appeal.

1713a. Right of appeal with leave.]—LEYTON URBAN DISTRICT COUNCIL *v.* WILKINSON, No. 1229, *ante.*

MALICIOUS PROSECUTION AND PROCEDURE.

Part I.—Distinguished from Trespass and False Imprisonment.

14. For existing citations read MAGNAY *v.* BURT (1843), Dav. & Mer. 652; *sub nom.* BIRT *v.* MAGNAY, 7 Jur. 127; *on appeal, sub nom.* MAGNAY *v.* BURT, 5 Q. B. 381, Ex. Ch.

Part III.—Malicious Abuse of Civil Proceedings.

100a. —— —— **Omission to pass money through court.**]—An order was made against pltf. in a county ct. committing him to prison, but was suspended so long as he paid £1 a month into court. Deft., the judgment creditor, asked him to pay him the £1 direct, & promised to pass it through the ct. Pltf. paid the deft. the money, but deft. did not pass it through the ct. Pltf. having been imprisoned was held entitled to damages.—CHAPMANN *v.* MORLEY (1891), 7 T. L. R. 257.

101a. —— **No detention—Bail given.**]—In an action for a malicious arrest, pltf., in order to support an averment in his declaration, that he had been arrested, proved the writ; the warrant; that the officer sent a messenger to him, informing him that he had such a warrant, the messenger not having it then with him, & desiring him to give bail; that he sent word that he would on the following day; & that he accordingly did so, giving a bail-bond at the officer's house; but never being actually detained:—*Held:* these facts did not amount to an arrest; &, therefore, the averment was not proved.—BERRY *v.* ADAMSON (1827), 6 B. & C. 528; 9 Dow. & Ry. K. B. 558; 108 E. R. 546; *sub nom.* BERRY *v.* SEMPRONIUS, 5 L. J. O. S. K. B. 215.

Annotations:—**Consd.** George *v.* Radford (1828), 3 C. & P. 464. **Apld.** Reece *v.* Griffiths (1829), 5 Man. & Ry. K. B. 120; Amor *v.* Blofield (1832), 9 Bing. 91; Bates *v.* Pilling (1834), 2 Cr. & M. 374. **Refd.** Brown *v.* Chapman (1848), 6 C. B. 365.

Part IV.—Essentials to Action.

148. *Add. Annotations:*—**Apld.** Morriss *v.* Winter (1929), 45 T. L. R. 643; **Refd.** Copper Export Assocn. Inc. *v.* Mersey Docks Harbour Board (1932), 48 T. L. R. 512.

PART II. SECT. 1.

20 i. *General rule.*]—The definition of "prosecution" is not confined to proceedings before a magistrate or a criminal ct. The proceedings relating to the granting of sanction to prosecute, though they may not lead to imposition of fine or imprisonment, render the person charged liable to fine or imprisonment, &, therefore, come within the meaning of the term "prosecution."—RABINDRA NATH DAS *v.* JOGENDRA NATH DEB (1928), I. L. R. 56 Calc. 432.—**IND.**

20 ii. ——.]—A prosecution exists when a criminal charge is made before a judicial officer or tribunal.—NAGENDRA NATH RAY *v.* BASANTA DAS BAIRAGYA (1929), I. L. R. 57 Calc. 25.—**IND.**

33 ii. —— ——.]—A suit for damages for malicious prosecution cannot proceed when the proceeding alleged to give rise to the cause of action had ended in the dismissal of the complaint under Code of Criminal Proceedings, 1898, s. 203, & no process had been issued against pltf., & the mere fact that pltf. had cross-examined the witnesses for complainant cannot alter the character of the proceedings.—SULHAG CHAMAR *v.* NAND LAL SAHU (1928), I. L. R. 8 Pat. 285.—**IND.**

PART II. SECT. 2, SUB-SECT. 2.

40 iii. ——.]—In any country where, as in India, the prosecution is not private, an action for malicious prosecution, in the most literal sense of the word, cannot be raised against any private individual. But giving information to the authorities, which, naturally, leads to prosecution, is just the same thing.—NAGENDRA NATH RAY *v.* BASANTA DAS BAIRAGYA (1929), I. L. R. 57 Calc. 25.—**IND.**

PART II. SECT. 3, SUB-SECT. 1.

74 i. *Who may bring action.*]—There is no such thing as a joint cause of action for damages for malicious prosecution.—LEARY & DUPPERON *v.* MCGHEE (Sask.), [1929] 2 D. L. R. 201; 1 W. W. R. 228.—**CAN.**

PART III. SECT. 1.

78 vi. ——.]—RAMA ROW *v.* SOMASUNDARAM ASARY (1927), I. L. R. 51 Mad. 642.—**IND.**

PART IV. SECT. 1, SUB-SECT. 1.—A.

121 ii. —— ——.]—Pltf. must prove that he was innocent, & that his innocence was pronounced by the tribunal before which the accusation was made. Where a *nolle prosequi* is entered, although it establishes that the proceedings terminated in favour of pltf., it does not establish his innocence.—RICH *v.* FORMAN (1927), 29 W. A. L. R. 13.—**AUS.**

PART IV. SECT. 1, SUB-SECT. 1.—B. (a).

133 ix. —— ——.]—On the trial of an action for malicious prosecution the question whether pltf. was innocent or guilty of the criminal charge of which he complains is still open &, consequently, where the case is one in which all the facts resulting in that charge were within the knowledge of the two parties, a finding in the civil action that pltf. was really guilty, notwithstanding his acquittal, necessarily determines in favour of deft. the issue whether there was reasonable & probable cause for the laying of the criminal charge.—MEIER *v.* ELDER, [1931] 1 D. L. R. 553; [1930] 3 W. W. R. 551; 25 S. L. R. 199. **CAN.**

PART IV. SECT. 1, SUB-SECT. 2.

d i. *Discontinuance of proceedings.*]—DALLING *v.* MCKENDRICK (P. E. I.), [1926] 2 D. L. R. 999.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.—A.

182 xvi. —— ——.]—METCALFE *v.* STEWART, [1930] 1 D. L. R. 1001; 42 B. C. R. 96.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.—B. (a).

205 xi. ——.]—In a suit to recover the price of goods sold, goods in a store were seized under an order of attachment. The suit failed as against A. F., who claimed to be the owner of the business, & the order of attachment was dissolved. A. F. then brought action for damages:—*Held:* the action was not maintainable either for maliciously suing out process, because of the absence of malice & the existence of reasonable & probable cause; or for trespass, because, even assuming A. F. was the owner of the goods, as to which the ct. was not satisfied, the seizure was under a valid attachment order.—FEINSTEIN *v.* PAULIN-

Part V.—Evidence.

574. *Add. Annotations:*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732; Martin *v.* Benson, [1927] 1 K. B. 771

Part VII.—Pleading and Practice.

586. *Add. Annotation:*—**Refd.** La Radiotechnique *v.* Weinbaum (1927), 137 L. T. 638.

CHAMBERS CO., LTD., [1921] 1 W. W. R. 554; 59 D. L. R. 605.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.—A.

230 i. *Acting without just cause or excuse.*]—MANNING *v.* NICKERSON (B. C.), [1927] 3 D. L. R. 728; [1927] 2 W. W. R. 623.—**CAN.**

230 ii. ——.]—PAULSON *v.* CLEMENTS (Alta.), [1927] 3 D. L. R. 716.—**CAN.**

230 iii. ——.]—Govt. Liquor Act, R. S. B. C. 1924, c. 146, has not changed the law with respect to malicious prosecution. Where in an action against a chief of police for malicious prosecution because of his applying for & the execution of a search warrant issued under sect. 73 (1) of said Act, the most charitable view that could be taken of his action was under the information given him by his informant he was requested to investigate &, instead of making a proper investigation, he immediately applied for the warrant, it was held that said view coupled with the finding already made of an absence of reasonable & probable cause would support a finding of malice.—GRADY & GRADY *v.* DEVITT, [1928] 1 W. W. R. 924.—**CAN.**

230 iv. ——.]—NICKERSON *v.* MANNING, [1928] 3 D. L. R. 494; [1928] S. C. R. 91.—**CAN.**

241 vi. ——.]—HENDERSON *v.* BAILLEUL, [1927] 3 D. L. R. 374; [1927] 2 W. W. R. 197; 36 Man. L. R. 519.—**CAN.**

241 vii. —— .]—Deft. took proceedings against pltf., his mother, under Lunacy Act, 1898, s. 4, charging her with being a person deemed to be insane wandering at large. A warrant was issued & she was arrested, but upon being brought before a magistrate she was discharged. She then brought an action for malicious prosecution. Deft. admitted that he was not justified in swearing that she was wandering at large, but he said that he had acted in good faith & in order to prevent her, in her own interests, from disposing of her property. The judge, in directing the jury, told them that on that admission the proceedings must be deemed to have been taken without reasonable or probable cause, but that in determining whether they were taken maliciously they should consider whether the deft. was actuated by an honest desire to protect pltf.'s property in her own interest or by some indirect or improper motive: —*Held:* they were properly directed.—RAPLEY *v.* RAPLEY (1929), 30 S. R. N. S. W. 94; 47 N. S. W. W. N. 36.—**AUS.**

PART IV. SECT. 2, SUB-SECT. 2.—B.

252 i. *Holding to bail—Solicitor taking note in own name for debt due to client.*]—BOURGEOIS *v.* MITTON, [1931] 1 D. L. R. 998; 2 M. P. R. 1.—**CAN.**

m i. —— ——.]—JONES *v.* ECKLEY, [1928] 2 D. L. R. 943.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 4.—A.

284 xiv. ——.]—MECKLENBURG *v.* CANADIAN PACIFIC RY. CO. (Alta.), [1926] 1 D. L. R. 706.—**CAN.**

284 xv. ——.]—MCRAE *v.* MCLAUGHLIN MOTOR CAR CO., LTD. (Alta.), [1926] 1 D. L. R. 372; [1926] 1 W. W. R. 161.—**CAN.**

sa. *Perseverance in prosecution—After discovery that facts relied on are not true.*]—A prosecution, even if commenced under a *bonâ fide* belief in the guilt of the accused, may become *malâ fide* by continuance after it is discovered that the facts upon which it was based are not true.—RABINDRA NATH DAS *v.* JOGENDRA NATH DEB (1928), I. L. R. 56 Calc. 432.—**IND.**

PART IV. SECT. 3, SUB-SECT. 2.—A.

362 v. ——.]—While, in an action for malicious prosecution, malice may be inferred from want of reasonable & probable cause, yet that inference cannot be drawn where all the facts & circumstances of the case would tend to show that there could be no malice in the sense of the initiation of proceedings in a malicious spirit, *i.e.* from an indirect & improper motive.—O'LOUGHLIN *v.* GRANDJEAN, [1929] 1 D. L. R. 198; [1928] 3 W. W. R. 740.—**CAN.**

362 vi. ——.]—PHILLIPS *v.* CODERRE (Sask.), [1929] 4 D. L. R. 658.—**CAN.**

362 vii. —— —.]—GREEN *v.* HARRY (B. C.), [1929] 4 D. L. R. 410.—**CAN.**

l i. —— ——.]—*Held:* upon the evidence, deft. failed to make a full & fair statement of all the facts either to his solr. upon whose advice he said he acted, or to the magistrate, & therefore the advice & direction said to have been received by them did not afford an answer to pltf.'s contention that there was a lack of reasonable & probable cause.—LOVE *v.* DENNY & VINCENT, [1929] 4 D. L. R. 363; 64 O. L. R. 290.—**CAN.**

m i. — — *Police constable.*]—In the absence of a professional adviser, the fact that the prosecutor sought the best advice obtainable in the neighbourhood (that of a police constable), & that he acted on that opinion, will not in itself be a sufficient defence to an action for malicious prosecution.—ASSHETON *v.* MERRETT, [1928] S. A. S. R. 11.—**AUS.**

o i. —— —— *Plaintiff about to leave jurisdiction.*]—DANSEY *v.* ORCUTT, [1928] 4 D. L. R. 27.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 3.—E.

417 i. *Absence of probable cause not implied.*]—SHUBRATI *v.* SHAMS-UDDIN (1928), I. L. R. 50 All. 713.—**IND.**

417 ii. —— *Successful plea of autrefois convict.*]—Pltf., driving a car while drunk, had an accident whereby two persons named D. & the child of pltf. were hurt. An information was laid for causing grievous bodily harm while in charge of an automobile. He pleaded guilty & was sentenced. Deft. read of the trial & thought he was tried for injuring D. She laid an information for criminal negligence causing bodily harm to her child. This was dismissed upon plea of *autrefois convict.* In an action by pltf. for malicious prosecution:—*Held:* there was reasonable & probable cause, & although there was evidence of malice the most express malice is immaterial if there is reasonable & probable cause.—VANVOLKINBURG *v.* GOMMER, [1931] 3 D. L. R. 735; O. R. 384.—**CAN.**

417 iii. ——.]—In an action for malicious prosecution the onus of proving want of reasonable & probable cause cannot be discharged merely by proof of pltf.'s acquittal in the criminal case.—MOHAMMAD HAROON *v.* ASGHAR HUSSAIN (1931), I. L. R. 10 Pat. 842.—**IND.**

sx. *Plaintiff committed for trial.*]—The fact that pltf. in an action for malicious prosecution was committed for trial after a preliminary hearing is not *primâ facie* proof that deft. had reasonable & probable cause for such prosecution.—HALL *v.* GEIGER (No. 2), [1930] 2 W. W. R. 794; 3 D. L. R. 854; 43 B. C. R. 116.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 4.—A.

432 vi. ——.]—OWENS *v.* MARTINDALE, [1928] 4 D. L. R. 932; 63 O. L. R. 87.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 4.—B. (a).

436 xii. —— ——.]—PIDGEON *v.* HOLMAN (P. E. I.), [1926] 3 D. L. R. 480.—**CAN.**

436 xiii. —— ——.]—In an action for malicious prosecution the question whether there was a want of reasonable & probable cause is one for the judge alone to decide &, if the facts pertaining to it are not in dispute, there is, therefore, nothing for the jury to pass on; but where the evidence as to the facts is conflicting the judge does not abdicate his functions by asking the jury: "Did deft. take reasonable care to inform himself of the true facts of the case?" & by instructing it that if it finds in the negative then there is a want of reasonable & probable cause.—PERRY *v.* WOODWARDS, LTD. (B. C.), [1929] 4 D. L. R. 751; 3 W. W. R. 49.—**CAN.**

d i. ——.]—CROFT *v.* DUNPHY, [1932] 1 D. L. R. 749.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 4.—C. (a).

467 iv. —— ——.]—PIDGEON *v.* HOLMAN (P. E. I.), [1926] 3 D. L. R. 480.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.

537 ix. ——.]—PIDGEON *v.* HOLMAN (P. E. I.), [1926] 3 D. L. R 480.—**CAN.**

MARKETS AND FAIRS.

Part II.—Creation and Proof of Markets and Fairs.

45. *Add. Annotation :—As to* (1) **Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

Part III.—Rights and Liabilities in connection with Markets and Fairs.

52. *Add. Annotation :*—**Consd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

68. *Add. Annotation :*—**Refd.** Hardie & Lane *v.* Chiltern (1927), 96 L. J. K. B. 773.

Part IV.—Holding of Markets and Fairs.

103. *Add. Annotation :*—**Refd.** Layzell *v.* Thompson (1927), 137 L. T. 106.

Part VII.—Disturbance.

312. *Add. Annotation :*—**Refd.** Layzell *v.* Thompson (1926), 91 J. P. 89.

339a. Right to prevent sale in dwelling-house.]—DUNSTABLE (PRIOR) *v.* B. (1433), Y. B. 11 Hen. 6, fo. 19, pl. 13.

Annotations :—**Consd.** London City Case (1610), 8 Co. Rep. 121 b; Hutchins *v.* Player (1663), O. Bridg. 272. **Apld.** Moseley *v.* Chadwick (1782), 3 Doug. K. B. 117; Tewkesbury Corpn. *v.* Bricknell (1809), 2 Taunt. 120. **Consd.** Mosley *v.* Walker (1827), 7 B. & C. 40. **Expld.** Macclesfield Corpn. *v.* Chapman (1843), 12 M. & W. 18. **Consd.** Penryn Corpn. *v.* Best (1878), 3 Ex. D. 292. **Expld.** Manchester Corpn. *v.* Lyons (1882), 22 Ch. D. 287. **Refd.** Ballard *v.* Bennet (1759), 2 Burr. 775; Llandaff & Canton District Market Co. *v.* Lyndon (1861), 25 J. P. 295; G. E. Ry. Co. *v.* Goldsmid (1884), 9 App. Cas. 927.

415. *Add. Annotations :*—**Consd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441; Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485.

Part IX.—Sale in Market Overt.

472a. ——.]—Although a sale by a tradesman in a shop in the City of London is a sale in market overt, a sale to a tradesman in a shop in the City of London is not a sale in market overt. —ARDATH TOBACCO CO., LTD. *v.* OCKER (1930), 47 T. L. R. 177.

PART II. SECT. 1.

1a. *Whether structure divided into shops forms private market—Goods displayed on pavement.*]—BOMBAY MUNICIPALITY *v.* YENKANNA ELLAPPA (1928), I. L. R. 52 Bom. 780.—**IND.**

PART II. SECT. 3, SUB-SECT. 1.

36 i. *Acquisition of site—Necessity for bye-law.*]—CITY OF EDMONTON *v.* MACDONALD (Alta.) (1907), 7 W. L. R. 201. —**CAN.**

PART VII. SECT. 1, SUB-SECT. 3.—C.

sf. *Buying goods outside market.*]—Although no market tolls are chargeable by an owner of a market, buyers can disturb, in an actionable sense, the market by buying outside its limits.—LOUGHREY *v.* DOHERTY, [1928] I. R. 103.—**IR.**

Part XI.—Hawkers, Pedlars, etc.

528. *Add. Annotation:*—**Reld.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

531. *Add. Annotation:*—**Folld.** Edwards *v.* Wanstall (1929), 46 T. L. R. 101.

PART XI. SECT. 1, SUB-SECT. 1.—A.

501 ii. —— *What amounts to.*]—R. *v.* THORNBERT, [1925] 2 W. W. R. 175; 19 Sask. L. R. 429.—**CAN.**

PART XI. SECT. 1, SUB-SECT. 2.—A.

sk. *Sale by agent of company—Tax*

44 Can. Crim. Cas. 194; 19 Sask. L. R. 566.—**CAN.**

PART XI. SECT. 1, SUB-SECT. 3.

531 i. —— *Hawking prohibited in certain streets during certain hours.*]—A municipal bye-law that "no person shall act as a hawker or pedlar or trade or exhibit his wares in other such capacity" in certain specified portions of the municipality save between the hours of 6 a.m. & 2 p.m. is *intra vires* sect. 6 (3) of Ordinance 4 of 1928 (Transvaal).—FEINSTEIN *v.* BALETA, [1930] App. D. 319.—**S. AF.**

k i. —— *Restriction for benefit of local shopkeepers.*]—A county council passed a bye-law providing that hawkers should pay a license fee of £5 every half-year. It was admitted that the fee was fixed so high to restrict the trade of hawkers in favour of that of local shopkeepers:—*Held:* the bye-law was void for unreasonableness.—HAMILTON *v.* YATES, [1930] N. Z. L. R. 359.—**N.Z.**

PART XI. SECT. 2.

l i. —— *Sale of controversial religious books.*]—R. *v.* STEWART (1929), 53 Can. C. C. 24.—**CAN.**

PART XI. SECT. 3.

q i. —— *Offer of goods in exchange for trading stamps—Whether sale or offering for sale.*]—Deft. arranged with various retail merchants that each should receive from him trading stamps the property in which, however, was to remain in him, & should pay him fifty cents per hundred stamps, & give one to each customer for every ten cents of cash purchases, while deft. should advertise the merchants in certain directories & otherwise. A blank space was left in these directories for pasting in such stamps, & every customer who brought to deft. one of the directories with a fixed number of stamps pasted in was entitled to receive in exchange any article he might select out of an assortment of goods kept in stock by deft. Apart from this the goods were not for sale:—*Held:* these transactions did not constitute a selling or offering for sale by deft. within a municipal bye-law, passed under R. S. O. 1897, c. 223, s. 583 (30), (31).—R. *v.* LANGLEY (1899), 31 O. R. 295; 20 C. L. T. 2.—**CAN.**

t i. —— —— *For principals assessed in municipality—Though non-resident.*]—R. *v.* MURRAY (1903), 24 C. L. T. 183.—**CAN.**

t ii. —— —— *For non-resident trader—Ostensibly acting for resident trader.*]—R. *v.* GIBB (1928), 50 Can. Crim. Cas. 366.—**CAN.**

—— *Not company selling goods at premises rented for two months.*]—R. *v.* DOMINION GENERAL JOBBERS, LTD., [1925] 3 D. L. R. 570; [1925] 2 W. W. R. 289; 44 Can. Crim. Cas. 229; 35 Man. L. R. 57.—**CAN.**

a ii. —— *Person peddling bread from wagon.*]—R. *v.* MACKEYS BREAD, LTD. (Ont.) (1929), 52 Can. Crim. Cas. 314.—**CAN.**

c i. —— —— *In case of company.*]—A co. incorporated under the Dominion Companies Act is subject to a municipal bye-law, enacted under statutory authority, which requires transient traders to take out a licence, where the real objects of the bye-law are the raising of revenue & regulation & it is not intended, or made, to apply to federally incorporated cos. specially.—R. *v.* CONTINENTAL SALVAGE CORPN., LTD., [1930] 2 W. W. R. 562; 54 Can. C. C. 145; 39 Man. L. R. 70.—**CAN.**

h i. —— ——.]—The conviction was for that deft., being a transient trader, occupying a place of business in the town of M., did sell certain goods, wares & merchandise, contrary to a bye-law:—*Held:* the want of an allegation in the conviction that deft. was a transient trader whose name had not been duly entered on the assessment roll for the current year was fatal.—R. *v.* CATON (1888), 16 O. R. 11.—**CAN.**

h ii. —— *Proof of one sale—No proof that goods to be supplied by person doing business outside municipality.*]—R. *v.* OGLE (1910), 15 W. L. R. 325.—**CAN.**

MASTER AND SERVANT.

Part I.—The Relationship.

8. *Add. Annotations :—As to* (1) **Consd.** Templeton *v.* Parkin Wm. & Co. (1929), 140 L. T. 519. **Refd.** Williams *v.* Larsen (1928), 21 B. W. C. C. 339.

13. *Add. Annotations :*—**Apld.** Williams *v.* Larsen (1928), 21 B. W. C. C. 339. **Consd.** Templeton *v.* Parkin Wm. & Co. (1929), 140 L. T. 519.

14. *Add. Annotation :*—**Refd.** Templeton *v.* Parkin Wm. & Co. (1929), 140 L. T. 519.

15. *Add. Annotations :*—**Consd.** Roberts *v.* Gardner (1928), 21 B. W. C. C. 154; Templeton *v.* Parkin Wm. & Co. (1929), 140 L. T. 519; Hobbs *v.* Royal Arsenal Co-operative Society (1930), 144 L. T. 10. **Refd.** Williams *v.* Larsen (1928), 21 B. W. C. C. 339.

20. *Add. Annotation :*—**Refd.** McGee *v.* Muir Wm. & Co. (1929), 140 L. T. 546.

25a. ——.]—Where the general servant of a master is hired out to another for a particular employment, & while engaged in that employment, causes damage to his master, the servant is to be deemed, for anything done in the course of that employment, the servant of the hirer & the master is entitled to recover from the hirer for the damage caused to him. —LEGGOTT (G. W.) & SON *v.* NORMANTON (C. H.) & SON (1928), 98 L. J. K. B. 145; 140 L. T. 224; 45 T. L. R. 155, D. C.

27. *Add. Annotation :*—**Consd.** Bull *v.* West African Shipping, etc. Co., [1927] A. C. 686.

29. *Add. Annotation :*—**Consd.** Bull *v.* West African Shipping, etc. Co., [1927] A. C. 686.

44. *Add. Annotation :*—**Consd.** Templeton *v.* Parkin Wm. & Co. (1929), 140 L. T. 519.

46. *Add. Annotation :*—**Consd.** Bull *v.* West African Shipping, etc. Co., [1927] A. C. 686.

49. *Add. Annotations :*—**Consd.** Bull *v.* West African Shipping, etc. Co., [1927] A. C. 686. **Refd.** Leggott (G. W.) & Son *v.* Normanton (C. H.) & Son (1928), 98 L. J. K. B. 145.

51. *Add. Annotation :*—**Consd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

52. *Add. Annotation :*—**Consd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

54. *Add. Annotation :*—**Consd.** Bull *v.* West African Shipping, etc. Co., [1927] A. C. 686.

55. *Add. Annotation :*—**Consd.** Leggott (G. W.) & Son *v.* Normanton (C. H.) & Son (1928), 98 L. J. K. B. 145.

55a. **Lightermen hired with lighter.**]— Applts. let on hire to resps. a lighter manned by two native lightermen. The lighter was moored to resps.' ship, & was used by them during the day in loading the ship. During the night the lightermen negligently left the lighter, which got adrift, &, owing to the absence of the lightermen, was carried out to sea, ran ashore, & broke up :—*Held :* the lightermen being under the orders & control of resps. during the night as well as during the actual

PART I. SECT. 1.

a i. *Hospital & nurses.*]—NYBERG *v.* PROVOST MUNICIPAL HOSPITAL BOARD, No. 52 ii, *post.*—**CAN.**

PART I. SECT. 2, SUB-SECT. 1.—A. (b).

21 i. For "**CAN.**" read "**SHANGHAI.**"

PART I. SECT. 2, SUB-SECT. 1.—B. (a).

24 vi. ——.]—MURANYI *v.* VALLANCE COAL & CARTAGE CO. & SMITH BROS. & WILSON, LTD., [1932] 1 W. W. R. 182.—**CAN.**

52 ii. .]—Hospital liable for the negligence of nurses after an operation.—NYBERG *v.* PROVOST MUNICIPAL HOSPITAL BOARD, [1927] 1 D. L. R. 969; [1927] S. C. R. 226.—**CAN.**

52 iii. ——.]—Pltf. entered defts.' hospital for the purpose of undergoing an operation, &, owing to the fact that the regular nursing staff was not sufficient to give her the care considered necessary by her physician a special nurse was employed & added temporarily to the regular staff but charged to pltf. :—*Held :* the special nurse so engaged was the employee of the hospital & not the mere assistant of pltf.'s physician, & the hospital was responsible in damages for negligence on her part resulting in severe injury to pltf.—LOGAN *v.* COLCHESTER COUNTY HOSPITAL, [1928] 1 D. L. R. 1129; 60 N. S. R. 62.—**CAN.**

52 iv. ——.]—In an action against an infirmary for damages for personal injuries pursuer averred that she attended the infirmary for ultra-violet ray treatment; that the nurse in charge, who was in the employment of defenders, allowed her to be exposed to the rays for too long a period; that she thereby sustained injury; & that the injury was due solely to the negligence of the nurse for whom the defenders were responsible. She further averred that she had relied on the knowledge & skill of the nurse in applying the treatment. She did not aver that defenders had acted negligently in the selection of their medical or nursing staffs, or of the apparatus employed. Defenders averred, & pursuer did not deny, that their electrical department was in charge of, & superintended by, a doctor, & that the treatment received by pursuer was administered by the nurse upon his instructions :—*Held :* in the absence of any averment that the nurse or the doctor was professionally incompetent or that the apparatus was defective, pursuer had failed to state a relevant case against the defenders, in respect that the averments disclosed that, at the time of the injury, the nurse was not acting in a ministerial or administrative capacity as a servant of defenders, but was exercising her professional care & skill, &, further, that she was acting under the instructions of a duly qualified doctor over whose orders the defenders had no control; & action dismissed.—LAVELLE *v.* GLASGOW ROYAL INFIRMARY, [1930] S. C. 123.—**SCOT.**

52 v. ——.]—An inmate of a hospital brought an action against certain defts., members of its Board of Management, for personal injuries sustained through the negligence of a nurse employed in the hospital. The rules provided (*inter alia*) that nurses should be selected by the Board, & could not be dismissed by the Board on notice. There was no provision in the rules as to payment of remuneration to any one but the secretary of the hospital, & there was no evidence of any express contract with any member of the nursing staff :—*Held :* there was no evidence that the nurse was the servant of deft. members of the Board. —ATKINS *v.* JAMES, [1928] S. A. S. R. 305.—**AUS.**

52 vi. ——.]—In an action against an infirmary for damages for personal injuries, pursuer averred that she attended the infirmary for ultra-violet ray treatment; that the nurse in charge, who was in the employment of defenders, allowed her to be exposed to the rays for too long a period; that she thereby sustained injury; & that the injury was due solely to the negligence of the nurse, for whom defenders were responsible. She further averred that she had relied on the knowledge & skill of the nurse in applying the treatment. She did not aver that defenders had acted negligently in the selection of their medical or nursing staffs, or of the apparatus employed. Defenders averred, & pursuer did not deny, that their electrical department was in charge of, & was superintended by, a doctor, & that the treatment received by pursuer was administered by the nurse upon his instructions. The Second Division having dismissed the action as irrelevant pursuer appealed to the House of Lords. The House, with the assent of the parties, reversed that decision & ordered a proof before answer.—ANDERSON (OR LAVELLE) *v.* GLASGOW ROYAL INFIRMARY, [1931] S. C. 34.—**SCOT.**

loading, resps. were responsible for their negligence & were liable to applts. in damages.—BULL (A. H.) & Co. *v.* WEST AFRICAN SHIPPING, ETC. Co., [1927] A. C. 686; 96 L. J. P. C. 127; 137 L. T. 498; 43 T. L. R. 548; 17 Asp. M. L. C. 292, P. C.

Annotation:—**Folld.** Leggott (G. W.) & Son *v.* Normanton (C. H.) & Son (1928), 98 L. J. K. B. 145.

66. *Add. Citations:*—96 L. J. K. B. 170; 136 L. T. 377.

71. *Add. Annotation:*—**Refd.** Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292.

89. *Add. Annotation:*—**Refd.** Brooke *v.* Bool, [1928] 2 K. B. 578.

Part II.—Particular Classes of Servants.

138. *Add. Annotations:*—**Apld.** *Re* Mackay, *Re* Rowland, *Re* Barry (1928), 44 T. L. R. 688. **Refd.** Birmingham Corpn. *v.* Labour Minister, *Re* Lee, *Re* Hudson (1927), 92 J. P. 17; *Re* Blackpool Corpn. & Barritt, etc. (1931), 95 J. P. 103.

155a. Police appointed by watch committee of borough.]—The police appointed by the watch committee of a borough corpn., if they arrest & detain a person unlawfully, do not act as the servants or agents of the corpn. so as to render that body liable to an action for false imprisonment.—FISHER *v.* OLDHAM CORPN., [1930] 2 K. B. 364; 99 L. J. K. B. 569; 143 L. T. 281; 94 J. P. 132; 46 T. L. R. 390; 74 Sol. Jo. 299; 28 L. G. R. 293; 29 Cox, C. C. 154.

156. *Add. Annotation:*—**Folld.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

162. *Add. Annotation:*—**Expld. & Distd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

163. *Add. Annotation:*—**Consd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

Part III.—The Contract of Service.

191. *Add. Annotation:*—**Refd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

196. *Add. Annotation:*—**Consd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

212a. —— **Pitman.**]—ORD. *v.* BURKUS (1843), 1 L. T. O. S. 35.

230. *Add. Annotation:*—**Refd.** Marbé *v.* George Edwardes (Daly's Theatre) (1927), 96 L. J. K. B. 980.

237. *Add. Annotation:*—**Refd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

PART I. SECT. 3, SUB-SECT. 5.—A. (a).

80. *Insurance agent.*]—The duties of an agent of a life insurance society were stated in his contract to be to obtain proposals for the society, to collect the required premiums, & to arrange for proponents to be medically examined. He was paid no salary, but only commission which was to include his expenses & was allowed to undertake any other work provided it was not insurance business. The society had no right of supervision or control over the methods employed by the agent who was free to obtain proposals or not as he pleased:—*Held:* he was not a servant of the society, but an independent contractor for whose negligent acts the society was not liable.—COLONIAL MUTUAL LIFE ASSURANCE SOCIETY, LTD. *v.* MACDONALD, [1931] App. D. 412.—**S. AF.**

PART I. SECT. 3, SUB-SECT. 5.—A. (c).

88. *Mining operations.*]—Resp. had charge of the mining operations in applt.'s mine. Applt. supplied the dynamite, the tools & accessories. Resp. hired the men, paid them, controlled them, & discharged them. He was allowed to do the work as he pleased, except that he was indicated where the mining should take place. He was not in any way the subordinate of the co., his whole obligation towards the latter consisting in supplying a sufficient quantity of mineral rock of a given size for the run of the mill. He was responsible in damages if he failed in this respect. He was paid twenty cents per wagon; & in addition, applt. paid the insurance premiums required by the Workmen's Compensation Board to cover accidents to resps.' employees; but this was done as the result of an express condition of the agreement between resp. & applt. Resp. had to deliver rock of the required size. The rock was loaded into small wagons & carried to the mill. The loading was done by means of a steam shovel operated by one of the employees of applt. co. When the rock was found too large, it was laid aside & it became resp.'s duty to reduce it to the required size. Resp., while performing the latter operation, & while engaged in drilling a hole in one of the rocks, was seriously injured by an explosion of dynamite:—*Held:* resp. was an independent contractor.—QUEBEC ASBESTOS CORPN. *v.* COUTURE, [1929] 3 D. L. R. 601; S. C. R. 166.—**CAN.**

PART I. SECT. 3, SUB-SECT. 5.—A. (d).

90 ii. ——.]—PHELAN *v.* MAIN ROADS BOARD (1927), 30 W. A. L. R. 16.—**AUS.**

sb. *Power to veto employment & to insist on dismissal of any employee.*]—*Held:* in the circumstances, a brusher, engaged by a colliery co. to drive a stonemine in one of their pits at a fathomage rate, & permitted by the contract to engage two miners to assist him in the work, was a servant, & not an independent contractor.—PARK *v.* WILSONS & CLYDE COAL CO., HAGGERTY *v.* WILSONS & CLYDE COAL CO., [1928] S. C. 121; *affd.*, [1929] S. C. 38, H. L.—**SCOT.**

PART II. SECT. 9.

sc. *Inspector appointed under Noxious Weeds Act.*]—Where a municipality appoints an officer to perform a public service in which the corpn. has no special interest, & from which it derives no special benefit in its corporate capacity, such officer is not the servant or agent of the municipality, &, therefore, it is not liable for his negligence in the performance of his duties.—MEAD *v.* MARQUIS RURAL MUNICIPALITY, [1928] 2 D. L. R. 524; [1928] 1 W. W. R. 756.—**CAN.**

PART II. SECT. 10.

sx. *Representative before Liquor Board.*]—The relationship between deft. brewery co. & pltf., who was deft.'s representative before the Liquor Board of Saskatchewan & who was remunerated by a commission on beer sold through him to the Board, held to be that of master & servant & not that of principal & agent.—BOLE *v.* PELISSIER'S, LTD., [1931] 1 D. L. R. 483; [1930] 3 W. W. R. 510; 25 S. L. R. 210.—**CAN.**

PART III. SECT. 5, SUB-SECT. 2.—B.

237 i. *To prove usage—Where usage universal.*]—A custom cannot be read into a written contract of service unless it is so universal that no workman could be supposed to have entered into the service without looking to it as part of the contract, & even where because of their generality or universality certain rights may fairly be said to constitute a custom there can be no justification for presuming that a workman who did not in fact know of them entered into his hiring having them in mind.—YOUNG *v.* CANADIAN NORTHERN RY. Co., [1929] 4 D. L. R. 452; 2 W. W. R. 385; 38 Man. L. R. 283; *affd.*, [1931] 1 W. W. R. 49; 1 D. L. R. 645, P. C.—**CAN.**

sd. *To prove value of services.*]—In an action brought on a *quantum meruit* for work done & services rendered evidence was given of an agreement, not in writing, whereby deft. agreed to pay a certain weekly salary & also a sum of £200 at the end of two years. It was also proved that deft. had paid the weekly salary but had refused to pay the sum of £200:—*Held:* although the parol agreement was one to which Stat. Frauds was applicable, it was nevertheless admissible as evidence of the value of pltf.'s services.—WARD *v.* GRIFFITHS BROS., LTD. (1928), 28 S. R. N. S. W. 425; 45 N. S. W. W. N. 130.—**AUS.**

244a. ——.]—ELLIOTT *v.* HUNTER (1909), 128 L. T. Jo. 196.

252. *Add. Annotations :*—**Consd.** Marbé *v.* George Edwardes (Daly's Theatre) (1927), 96 L. J. K. B. 980. **Apprvd.** Herbert Clayton & Jack Waller, Ltd. *v.* Oliver, [1930] A. C. 209.

252. After this case add :—
', *further*, THEATRES, Vol. XLII., p. 910, Nos. 68 *et seq.* & Supp.

Part IV.—Duration and Termination of Contract.

262. *Add. Annotation :*—**Distd.** Milsted *v.* Hamp & Ross & Glendinning (1927), 71 Sol. Jo. 845.

262a. -.]—Pltfs. agreed to employ deft., deft. agreed to serve pltfs., for three years & thereafter from year to year subject to three months' notice by pltfs. Deft. was to devote the whole of his time to the business : —*Held :* the agreement was wholly one-sided & unenforceable.—MILSTED (W. H.) & SON, LTD. *v.* HAMP & ROSS & GLENDINNING, LTD. (1927), 71 Sol. Jo. 845.

296. After this case add :—
"*See, also*, Nos. 387, 388, *post*."

387. *Add. Annotation :*—**Distd.** Jacks Wm. & Co. *v.* Palmers Shipbuilding & Iron Co. (1928), 98 L. J. K. B. 366.

388. *Add. Annotation :*—**Folld.** Jacks Wm. & Co. *v.* Palmers Shipbuilding & Iron Co. (1928), 98 L. J. K. B. 366.

396. *Add. Annotation :*—**Consd.** Savage *v.* British India Steam Navigation Co., Power *v.* Same (1930), 46 T. L. R. 294.

396a. —— —— ——.]—In actions by the captain & by the chief officer of an ocean passenger steamer for alleged wrongful dismissal there was no written contract of employment, & the only documents relating to employment were various circulars dealing with the age at which officers must retire, their rights to pension, & their right to leave on full pay after certain periods of service. The circulars made it clear that pensions were only to be paid at the discretion of the employers :—*Held :* the contract of employment was determinable by either party at any time on reasonable notice, & in the case of the chief officer reasonable length of notice would have been 12 months, & he was entitled to judgment for 12 months' salary. In the case of the captain the action was dismissed.—SAVAGE *v.* BRITISH INDIA STEAM NAVIGATION CO., LTD., POWER *v.* BRITISH INDIA STEAM NAVIGATION CO., LTD. (1930), 46 T. L. R. 294.

396b. —— —— **Chief officer.**] — SAVAGE *v.* BRITISH INDIA STEAM NAVIGATION CO., LTD., POWER *v.* BRITISH INDIA STEAM NAVIGATION CO., LTD., No. 396a, *ante*.

414a. Chief officer.]—SAVAGE *v.* BRITISH INDIA STEAM NAVIGATION CO., LTD., POWER *v.* BRITISH INDIA STEAM NAVIGATION CO., LTD., No. 396a, *ante*.

414b. Tutor.]—The ct. held that in the circumstances pltf., a private tutor, was entitled to three months' salary in lieu of notice.—WILSON *v.* UCELLI (1929), 45 T. L. R. 395.

444a. Written notice required—Agreement for verbal notice.]—A written contract for service which requires a written notice on either side before it can be terminated, can be terminated by word of mouth by mutual agreement.—LATCHFORD PREMIER CINEMA, LTD. *v.* ENNION & PATERSON, [1931] 2 Ch. 409 ; 100 L. J. Ch. 397 ; 145 L. T. 672 ; 47 T. L. R. 595.

453. *Add. Annotation :*—**Refd.** Brown *v.* Dagenham U. D. C., [1929] 1 K. B. 737.

468. *Add. Annotations :*—*As to* (2) **Apprvd.** Bouzourou *v.* Ottoman Bank, [1930] A. C. 271. **Apld.** Ottoman Bank *v.* Chakarian, [1930] A. C. 277.

470a. —— —— **Order relating to place of work.**]—An order by a master to his servant to remain in a place within the area of his employment is a lawful order unless it involves immediately threatening danger by violence or disease to the person of the servant.

PART IV. SECT. 1, SUB-SECT. 3.—A.

m i. —— ——.]—Applt. entered into pltf.'s service at a weekly remuneration of £7 per week as foreman of a packing-shed. Nothing was said as to the period of service, but applt. had inquired by telegram whether the position was permanent or seasonal, & a telegram was sent by resp. informing him that the position was permanent :—*Held :* the period of service was weekly.—TYERS *v.* BARMERA PACKING CO., LTD., [1930] S. A. S. R. 123.—**AUS.**

PART IV. SECT. 2, SUB-SECT. 1.

se. *Termination by servant—Induced by fraudulent misrepresentation of master.*]—MALCOLM *v.* WESTERN CANADIAN MAGIC SILVER BLACK FOX & FUR CO. (B. C.), [1929] 4 D. L. R. 580. —**CAN.**

PART IV. SECT. 2, SUB-SECT. 10.—B. (b) (i).

393 v. —— ——.]—MESSER *v.* BARRETT CO., [1927] 1 D. L. R. 284 ; 59 O. L. R. 566.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 10 B. (c) ii.

421 ii. —— ——.]—Where a contract of employment is for a definite time, & the employee is dismissed without cause, he may at once commence action for the breach of contract. The measure of damages is the actual loss sustained ; the amount of damages may be much less than the wages for the unexpired period, depending upon pltf.'s success in obtaining equally good employment elsewhere. In the case of menial servants, however, usage has established the right to dismiss at any time by giving a month's notice, or a month's wages in lieu of notice. A farm hand is a menial servant within the meaning of this rule.—PEIDL *v.* BONAS, [1931] 1 W. W. R. 225 ; 2 D. L. R. 362.—**CAN.**

421 iii. —— ——.]—(1) In an action for damages for wrongful dismissal, deft. having agreed in writing to employ pltf. for one year "to operate & manage" deft.'s farm :—*Held :* pltf. was not a menial servant entitled only to one month's notice or one month's wages in lieu thereof.
(2) The agreement also provided that pltf. should have the use of one cow & be entitled to all the eggs "from the poultry owned by the employer" during said term. Deft. owned only one cow & it ceased giving milk shortly after pltf. was dismissed :—*Held :* the provision should be construed with regard to this fact, & therefore, pltf. was not entitled to recover an allowance for milk for the unexpired portion of the term.—LITTLE *v.* LAING, [1932] 1 W. W. R. 210.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 10.—D.

p i. ——.]—A notice served on Apr. 4 to take effect on May 3 is not 30 days' notice.—PIERCE *v.* MYLOR SCHOOL DISTRICT, [1929] 3 D. L. R. 49 ; 1 W. W. R. 223 ; 23 S. L. R. 365.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 11.—A. (a).

t i. ——.]—Where the dismissal of an employee is for cause, he is not entitled to any notice.—VAILLANCOURT *v.* R., [1927] Exch. C. R. 21.—**CAN.**

t ii. ——.]—ROSS *v.* WILLARDS CHOCOLATES, LTD. (Man.), [1927] 2 D. L. R. 461.—**CAN.**

Applt., a Christian Turkish subject in the employment of resp. bank, was ordered by them to be transferred from their Stamboul branch to their branch at Mersina, a distant place in Turkish Asia Minor. He refused to go on the grounds: (*a*) that Mersina was not within the area of his employment; (*b*) that the order was unreasonable in the view of his ignorance of Turkish, & the hostile attitude of the Turkish civil authorities to him. He was thereupon dismissed without notice, & brought an action for wrongful dismissal:—*Held:* (1) on the facts, Mersina was within the area of applt.'s employment, & (2) as he did not suggest that compliance with the order would involve him in personal danger, the order was lawful & his disobedience to it a *faute grave* which under the contract justified his dismissal.—BOUZOUROU *v.* OTTOMAN BANK, [1930] A. C. 271; 99 L. J. P. C. 166; 142 L. T. 535, P. C.

470b. —— —— ——.]—Resps., an Armenian & a Turkish subject, was in the permanent employment of applt. bank. In 1922, while employed at their Smyrna branch, he was sent on business of the bank to the head office at Constantinople, & was given temporary employment there. He informed applts. that his life was in danger in Constantinople from the Turkish authorities, & asked to be transferred to a branch outside Turkey. That being refused he fled from Constantinople. He was dismissed without notice, & brought an action for wrongful dismissal:—*Held:* as the evidence established that resp.'s personal safety was in real danger in Constantinople, his flight was not a *faute grave* entitling applts. under the contract to dismiss him; & as his disability to perform his contract, whether in Constantinople or elsewhere, could not at the date of his dismissal be regarded as permanent, his offer to serve outside Turkey entitled him to maintain the action.—OTTOMAN BANK *v.* CHAKARIAN, [1930] A. C. 277; 99 L. J. P. C. 97; 142 L. T. 465, P. C.

481a. —— **By violence or disease.**]—BOUZOUROU *v.* OTTOMAN BANK, No. 470a, *ante*.

481b. ——.]—OTTOMAN BANK *v.* CHAKARIAN, No. 470b, *ante*.

491a. What amounts to.]—VAN WEYENBERGH (E.) *v.* BRITISH ACETATE SILK CORPN., LTD. (1930), 74 Sol. Jo. 90.

502. *Add. Annotations:*—*As to* (1) **Refd.** Harrods, Ltd. *v.* Lemon, [1931] 2 K. B. 157. *As to* (2) **Consd.** Ramsden *v.* David Sharratt & Sons, Ltd. (1930), 35 Com. Cas. 314. *Generally*, **Refd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743.

506. *Add. Annotations:*—**Consd.** Ramsden *v.* David Sharratt & Sons, Ltd. (1930), 35 Com. Cas. 314. **Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

509. *Add. Annotation:*—**Refd.** Brown *v.* Dagenham U. D. C. (1929), 140 L. T. 615.

530a. Driving motor car to common danger.]—Pltf., a commercial traveller, was employed by defts. under an agreement which provided that pltf. was to use a motor car for the carriage of samples. Pltf. was convicted of driving the car to the common danger & was fined, & his driving licence was suspended for three months. Defts. terminated pltf.'s employment, on the ground that these facts constituted misconduct justifying dismissal. In an action for wrongful dismissal defts. also pleaded that, before the agreement was made, pltf. ought to have informed them that he had previously been convicted of being drunk when in charge of a motor car & been sentenced to imprisonment for driving it in a manner dangerous to the public:—*Held:* (1) there was no obligation on pltf. to disclose his previous conviction for a motoring offence; (2) the conviction during the currency of the agreement, even although pltf.'s licence was suspended, was not a ground for terminating the agreement, as pltf. could have got someone to drive the car.—HANDS *v.* SIMPSON, FAWCETT & CO., LTD. (1928), 44 T. L. R. 295; 72 Sol. Jo. 138.

565. *Add. Annotations:*—**Apld.** Hands *v.* Simpson, Fawcett & Co. (1928), 44 T. L. R. 295. **Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

565a. What are material facts—Employment of commercial traveller—Not previous conviction for motoring offence.]—HANDS *v.* SIMPSON, FAWCETT & CO., LTD., No. 530a, *ante*.

565b. Omission to disclose past misconduct.]—HEALEY *v.* SOCIÉTÉ ANONYME FRANÇAISE RUBASTIC, No. 506, *ante*.

565c. ——.]—It is said that there is a contractual duty of the servant to disclose his past faults. I agree that the duty in the servant to protect his master's property may involve the duty to report a fellow-servant whom he knows to be wrongfully dealing with that property. The servant owes a duty not to steal, but when he has stolen is there superadded a duty to confess that he has stolen? I am satisfied that to imply such a duty would be a departure from the well-established usage of mankind & would be to create obligations entirely outside the normal contemplation of the parties concerned. If a man agrees to raise his butler's wages, must the butler disclose that two years previously he received a secret commission from the wine merchant; &, if the master discovers it, can he, without dismissal or after the servant has left, avoid the agreement for the increase in salary & recover back the extra wages paid? If he gives his cook a month's wages in lieu of notice can he, on discovering that the cook has been pilfering the tea & sugar, claim the return of the month's wages? I think not. He takes the risk; if he wishes to protect

PART IV. SECT. 2, SUB-SECT. 11.—A. (g) iv.

k i. —— *Onus of proof.*]—Where in an action for damages for wrongful dismissal it was shown that pltf. was summarily dismissed on account of conduct which was *primâ facie* dishonest:—*Held:* the *onus* then lay upon pltf. of proving that such conduct was not, in fact, dishonest.—MCKAY *v.* NARDOO, [1931] N. L. R. 264.—**S. AF.**

PART IV. SECT. 2, SUB-SECT. 11.—A. (g) vii.

548 ii. ——.]—A native servant addressed a remark of a grossly insolent & insulting nature to one of his employer's customers, a European, in the presence of a gang of native follow servants:—*Held:* the master was justified in summarily him, & was not liable for salary for the unexpired portion of the month.—GOGI *v.* WILSON & COLLINS (1927), 48 N. L. R. 21.—**S. AF.**

PART IV. SECT. 2, SUB-SECT. 11.—A. (j).

566 v. —— ——.]—LUCAS *v.* PREMIER MOTORS, LTD., [1928] 4 D. L. R. 526; [1928] 3 W. W. R. 192.—**CAN.**

himself he can question his servant, & will then be protected by the truth or untruth of the answer (LORD ATKIN).—BELL *v.* LEVER BROS., LTD., [1932] A. C. 161; 101 L. J. K. B. 129; 146 L. T. 258; 48 T. L. R. 133; 76 Sol. Jo. 50; 37 Com. Cas. 98, H. L.

594. Add the following paragraph :—

Another replication to the same plea alleged that pltf. was an African & a negro, & that negroes were enslaved in divers States of the United States of America, & bought & sold as slaves by the citizens of the same States; that the captain of the C., before pltf. deserted, threatened to sell him as a slave to certain citizens of the United States; that San Francisco is in one of the said United States, to wit California: & pltf. had just & reasonable grounds for believing & did believe, that, on the arrival of the C. at San Francisco, the captain was about to carry his threat into execution; & thereupon pltf., in order to prevent the captain from selling him as a slave, deserted the C. :—*Held :* on demurrer, a bad replication, as not showing that California was a State in which pltf. could be sold as a slave.

Part V.—Remuneration.

615. *Add. Annotation :*—**Apld.** Hillas & Co. *v.* Arcos, Ltd. (1931), 36 Com. Cas. 353.

628. *Add. Annotations :*—**Distd.** Stevens *v.* Hampstead Borough Council, [1929] 2 Ch. 239. **Refd.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

628a. —— —— —— ——.]—ADAMS *v.* LIVERPOOL CORPN. (1927), 137 L. T. 396; 91 J. P. 106; 25 L. G. R. 359, C. A.

Annotations :—**Folld.** Kelsey *v.* Birmingham Corpn. (1927), 92 J. P. 12; Stevens *v.* Hampstead Borough Council, [1929] 2 Ch. 239.

628b. —— —— —— ——.]—KELSEY *v.* BIRMINGHAM CORPN. (1927), 92 J. P. 12.

628c. —— —— —— **War bonus not included—Contract to pay "full regular pay."**]—A borough council passed a resolution that all employees volunteering for military service during the war should be paid "full regular pay," less allowances by the Govt., & their positions should be kept open until their return. Pltf. enlisted in Nov. 1914, & served till July, 1919. Between those dates several increments of pay & war bonuses were awarded to the council's employees :—*Held :* the "full regular pay" was the pay he had been receiving down to the date of enlistment & did not include any increases or bonuses.—STEVENS *v.* HAMPSTEAD BOROUGH COUNCIL, [1929] 2 Ch. 239; 98 L. J. Ch. 289; 142 L. T. 229; 45 T. L. R. 430; 93 J. P. Jo. 285; 27 L. G. R. 590.

629. *Add. Annotations :*—**Distd.** Adams *v.* Liverpool Corpn. (1927), 137 L. T. 396. **Apld.** Aylott *v.* West Ham Corpn., [1927] 1 Ch. 30. **Distd.** Stevens *v.* Hampstead Borough Council, [1929] 2 Ch. 239.

630. *Add. Annotations :*—**Apld.** Adams *v.* Liverpool Corpn. (1927), 137 L. T. 396. **Folld.** Stevens *v.* Hampstead Borough Council, [1929] 2 Ch. 239.

640a. What amounts to "sickness"—Accident.]—*Held :* a clause in a wages agreement providing for payment of wages "during periods of sickness" was applicable to a period when a man was incapacitated by an accident.—MALONEY *v.* ST. HELENS INDUSTRIAL CO-OPERATIVE SOCIETY, LTD. (1932), 49 T. L. R. 22, C. A.

644. *Add. Annotation :*—**Refd.** Mellor *v.* Beardmore (1927), 44 R. P. C. 175.

649. *Add. Annotations :*—*As to* (1) **Refd.** Eshelby *v.* Federated European Bank, Ltd., [1932] 1 K. B. 423. *Generally*, **Refd.** Pockney *v.* Atkinson (1929), 142 L. T. 135.

700. *Add. Annotation :*—**Refd.** Brown *v.* Dagenham U. D. C., [1929] 1 K. B. 737.

701. *Add. Annotations :*—**Refd.** Brown *v.* Dagenham U. D. C., [1929] 1 K. B. 737; Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

711a. Agreement to pay commission—Onus of proof.]—HART *v.* BENNETT & CO. (1928), 72 Sol. Jo. 285.

PART V. SECT. 2, SUB-SECT. 1.—C.

q i. —— *"Net profits"—Right of employer to deduct bad debts.*]—MARWOOD *v.* CANADIAN CREDIT CORPN., [1930] 3 D. L. R. 719.—**CAN.**

PART V. SECT. 2, SUB-SECT. 1.—D. (b).

637 vii. ——.]—HEINBIGNER *v.* KINZEL, [1931] 2 W. W. R. 539.—**CAN.**

PART V. SECT. 2, SUB-SECT. 1.—G.

648 vi. —— ——.]—A farm labourer, hired for the season at so much per month, is entitled to payment of his wages at the end of each month, unless the contract provides to the contrary.—COWAN *v.* EISLER, [1927] 2 D. L. R. 713; [1927] 1 W. W. R. 776; 36 Man. L. R. 464.—**CAN.**

PART V. SECT. 2, SUB-SECT. 4.

sd. *Deduction—Assessments under Workmen's Compensation Act.*]—An agreement between a workman & his employer that the latter may deduct from the former's wages assessments payable by the employer under Part I. of Workmen's Compensation Act, R.S.B.C., 1924, is illegal, except with respect to deductions for medical aid.—MCALLISTER *v.* BELL LUMBER & POLE CO., LTD., [1931] 3 W. W. R. 767; [1932] 1 D. L. R. 802.—**CAN.**

PART V. SECT. 2, SUB-SECT. 6.—A. (b).

o i. —— —— ——.]—An infant, who has become emancipated from the control of his father, is entitled to recover wages earned by him by working for a stranger, even though he agreed, at the time of the hiring, that his wages should be credited on a debt due from his father to his employer.—LEZETC *v.* METHERAL (Sask.), [1927] 1 W. W. R. 990.—**CAN.**

sf. *Against whom maintainable—Merchant supplying planter—Wages of planter's servants.*]—DOOLEY *v.* BURKE & HACKETT (1819), 1 Nfld. L. R. 190.—**NFLD.**

PART V. SECT. 2, SUB-SECT. 6.—A. (c).

sj. *Want of notice—Of shipping of servant—21 Vict. c. 9.*]—GOFF *v.* BARRON (1859), 4 Nfld. L. R. 286.—**NFLD.**

Part VI.—Breach of Contract and Remedies Therefor.

732. *Add. Annotations :*—**Refd.** Guy-Pell *v.* Foster, [1930] 2 Ch. 169 ; Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

732a. Failure to obtain permit—Employment of alien.]—BARANOWSKI *v.* EINSTEINS ELECTRO-CHEMICAL PROCESS, LTD., BARANOWSKI *v.* EINSTEINS ELECTRO-CHEMICAL PROCESS, LTD. (CONSOLIDATED) (1931), 75 Sol. Jo. 247

739. *Add. Annotations :*—**Consd.** Fowler *v.* Commercial Timber Co., [1930] 2 K. B. 1. **Apld.** *Re* Gramophone Records, Ltd. (1930), 69 L. Jo. 201.

739a. —— ——.]—By a written agreement pltf. was appointed managing director of deft. co. for five years at a certain salary. Before the expiration of the five years a resolution, which was supported by pltf., was duly passed for the voluntary winding up of the co. as by reason of its liabilities it could not continue its business. In an action by pltf. claiming damages for breach of the agreement to employ him for five years :—*Held :* a term could not be implied in the agreement that if the co. went into voluntary liquidation with the assent or approval of pltf. he should lose all right to recover damages for the breach of the agreement, & that he was entitled to damages for that breach.—FOWLER *v.* COMMERCIAL TIMBER CO., LTD., [1930] 2 K. B. 1 ; 99 L. J. K. B. 529 ; 143 L. T. 391, C. A.

739b. —— -.]—*Re* GRAMOPHONE RECORDS, LTD. (1930), 69 L. Jo. 201 ; 169 L. T. Jo. 193 ; [1930] W. N. 42.

759. *Add. Annotation :*—**Refd.** Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

762. *Add. Annotations :*—**Refd.** Guy-Pell *v.* Foster, [1930] 2 Ch. 169 ; Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

769a. —— —— **Meaning of "year to year."**]—Applt. was by an agreement of service appointed by the resps. as a London manager for a period of six months from Dec. 1, 1928, at a named salary subject to renewal, & by clause 6 of the agreement it was provided that if at the expiration of six calendar months the governing director on behalf of the co. should in his sole & absolute discretion think fit the engagement of applt. should continue from year to year, & by sub-clause (*c*) it was provided that in the event of the agreement being extended the co. should as soon as practicable appoint applt. to be a director of the co. The six months from Dec. 1, 1928, would expire on May 31, 1929. Applt. was not appointed a director, & at the end of a year from the time when the six months expired the co., by their letter dated May 29, 1930, gave him six months' notice to terminate the agreement, whereupon applt. brought an action claiming damages, & the matter went to arbn. :—*Held :* (1) the "year to year" period began at the end of the trial period, *i.e.* at the end of the six months, when the governing director exercised his option & that the applt. was therefore entitled to one year's loss of salary ; & there were no materials on which any damages could be awarded for loss of salary as a director ; (2) applt. was not entitled to recover damages for loss of prestige &/or publicity.—*Re* GOLOMB & PORTER (WILLIAM) & Co., LTD.'S ARBITRATION (1931), 144 L. T. 583, C. A.

771a. —— **Damages for loss or prestige or publicity.**]—*Re* GOLOMB & PORTER (WILLIAM) & Co.'S ARBITRATION No. 769a, *ante.*

782. *Add. Annotation :*—**Refd.** Brown *v.* Dagenham U. D. C., [1929] 1 K. B. 737.

788. *Add. Annotations :*—**Consd.** Marbé *v.* George Edwardes (Daly's Theatre) (1927), 96 L. J. K. B. 980. **Refd.** *Re* Golomb & Porter & Co.'s Arbn. (1931), 144 L. T. 583.

790. *Add. Annotations :*—**Consd.** *Re* Golomb & Porter & Co.'s Arbn. (1931), 144 L. T. 583. **Refd.** Marbé *v.* George Edwardes (Daly's Theatre) (1927), 43 T. L. R. 460.

793. *Add. Annotation :*—**Consd.** Savage *v.* British India Steam Navigation Co., Power *v.* Same (1930), 46 T. L. R. 294.

831. *Add. Annotation :*—**Consd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

832. *Add. Annotation :*—**Refd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

PART VI. SECT. 1, SUB-SECT. 2.

n i. —— *Whether Wages Agreement part of contract.*]—Applt. was verbally engaged in 1920 by resps., a railway co., as a machinist in their shops at the "going rate" of wages. In 1927 he received notice of dismissal on the ground of reduction of staff. He sued for wrongful dismissal, contending that a written agreement, entered into by resps. with a labour organisation & called Wages Agreement No. 4, formed part of his contract of employment, & that under it resps. could not dismiss him upon a reduction of staff, as they had retained men junior to him. The agreement had been applied to applt., who was not a member of the organisation, as to the amount of his wages, the notice given him, & in other respects ; resps. stated at the trial that they had applied the agreement to all the men employed in their shops :—*Held :* Wage Agreement No. 4 did not form part of the contract for the employment of applt., the fact that resps. had applied it to him being equally consistent with the view that they had done so as a matter of policy. Further, that having regard to the terms & nature of the agreement it did not by itself constitute a contract between any individual employee & his employer ; observance of its terms by an employer could not be enforced by action even by the organisation, but only by calling a strike.—YOUNG *v.* CANADIAN NORTHERN RY. CO., [1931] A. C. 83 ; 100 L. J. P. C. 51 ; 144 L. T. 255, P. C.—**CAN.**

sm. *Failure to send out traveller—Remuneration thereby reduced.*]—ERSON *v.* GAULTS, LTD., [1930] 1 W. W. R. 905 ; 2 D. L. R. 999 ; 38 Man. L. R. 613 ; *revsg.*, [1930] 1 D. L. R. 544.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 2.—B. (c) iii.

793 iii. —— ——.]—Where a contract of employment provides that either party may terminate it on notice given at a certain time the servant can recover as damages for wrongful dismissal only the equivalent of the amount of wages agreed on for the period so provided, *i.e.*, where 30 days' notice is provided for he can recover only 30 days' wages.—PIERCE *v.* MYLOR SCHOOL DISTRICT, [1929] 3 D. L. R. 49 ; 1 W. W. R. 223 ; 23 S. L. R. 365.—**CAN.**

Part VII.—Duties and Liabilities of Master.

880. *Add. Annotation :*—**Refd.** James *v.* British General Insce., [1927] 2 K. B. 311.

Part VIII.—Duties and Liabilities of Servant.

890. *Add. Citations :-* -96 L. J. K. B. 152 ; 136 L. T. 271.

895. *Add. Annotation :*—**Refd.** *Re* A Debtor (No. 229 of 1927), [1927] 2 Ch. 367.

908. *Add. Annotations :—As to* (1) **Refd.** Harrods, Ltd. *v.* Lemon, [1931] 2 K. B. 157. *As to* (2) **Consd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743. *Generally*, **Refd.** Ramsden *v.* David Sherratt & Sons, Ltd. (1930), 35 Com. Cas. 314.

927. *Add. Annotation :*—**Refd.** United Indigo Chemical Co. *v.* Robinson (1931), 49 R. P. C. 178.

928. *Add. Annotation :*—**Refd.** Putsman *v.* Taylor, [1927] 1 K. B. 637.

934a. **Use distinguished from disclosure.**]—The first of the two clauses upon which this action is brought is a covenant not to communicate or divulge information as to the customers or affairs of pltfs. acquired by deft. whilst in their employment ; that is, it is a covenant against certain definite overt acts. The statement of claim, however, asked for an injunction not merely against such acts as were expressly mentioned in the first clause, but further against using such information acquired by deft., & so on, which would include, I suppose, making use even in deft.'s own mind, possibly unconsciously, without divulging any fact to another person. No such injunction as this against using information could or ought to be granted unless there were an express agreement in terms to that effect, that is, against using such information, which there is not here, even if such an injunction could then be granted (JOYCE, J.).—HERBERT MORRIS, LTD. *v.* SAXELBY, [1915] 2 Ch. 57 ; 84 L. J. Ch. 521 ; 112 L. T. 354 ; 31 T. L. R. 370 ; 59 Sol. Jo. 412, C. A. ; *on appeal*, [1916] 1 A. C. 688, H. L.

Annotation :—**Folld.** United Indigo Chemical Co. *v.* Robinson (1931), 49 R. P. C. 178.

934b. -.]—UNITED INDIGO CHEMICAL CO., LTD. *v.* ROBINSON (1931), 49 R. P. C. 178.

938. *Add. Annotation :*—**Refd.** Boorne *v.* Wicker, [1927] 1 Ch. 667.

941. *Add. Annotation :*—**Refd.** Putsman *v.* Taylor, [1927] 1 K. B. 637.

Part IX.—Liability of Master to Third Persons.

962a. **Authority to sell.**]—SENIOR *v.* WOLMER (1623), Benl. 132 ; 73 E. R. 990 ; *sub nom.* SEIGNIOR & WOLMER'S CASE, Godb. 360.

966. *Add. Annotation :*—**Refd.** Bull *v.* West African Shipping, etc. Co., [1927] A. C. 686.

970a. ———.]—*Respondeat superior* extends to civil matters only.—R. *v.* LEVER (1746), Barnes, 34 ; 94 E. R. 793.

971. *Add. Annotation :*—**Refd.** Fanton *v.* Denville, [1932] 2 K. B. 309.

972. *Add. Annotation :—As to* (1) **Refd.** Fanton *v.* Denville, [1932] 2 K. B. 309.

PART VII. SECT. 1.

sk. *Contract to supply medical attention—Extent of liability.*]—Pltf., who was an employee of deft. co., brought this action against the co. upon a contract whereby it agreed to furnish him with medical & surgical treatment in case of illness, in consideration of moneys deducted from time to time from his monthly salary. Falling ill, he was treated in the company's hospital by physicians & surgeons employed by the co. He asserted breach of contract in that he had not been skilfully & properly treated :—*Held :* the co. having exercised due care & skill in selecting its medical staff, had done all it undertook to do & was not to be regarded as warranting that in all details of treatment the physicians & surgeons selected would exercise reasonable care & skill, & the action was dismissed.—JARVIS *v.* INTERNATIONAL NICKEL CO., [1929] 2 D. L. R. 842 ; 63 O. L. R. 564.—**CAN.**

sl. —— *No liability for negligence of doctor.*]—Where an employer contracts with a properly qualified physician to furnish medical services to his employees, payment therefor being provided for by periodical deductions from their pay, the employer is not liable in damages to an employee who contracted an infectious disease as the result of the negligence of the physician in not diagnosing as such disease a disease which was prevalent among the employees.—HAMILTON *v.* PHŒNIX LUMBER CO., LTD., & BUNN, [1931] 1 W. W. R. 43 ; 1 D. L. R. 777 ; 25 Alta. L. R. 166.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 1.

923 iii. —— ——.]—An employee, after leaving his employment, may use mentally-stored knowledge of processes, details of management & particulars of customers, which have been obtained by him in the course, & as a necessary consequence, of his employment, but may not use knowledge, details or particulars possessed by him in an objective form, *e.g.*, written particulars. —ORMONOIDS ROOFING & ASPHALTS, LTD. *v.* BITUMENOIDS, LTD. (1931), 31 S. R. N. S. W. 347 ; 48 N. S. W. W. N. 66.—**AUS.**

PART IX. SECT. 3, SUB-SECT. 1.

964 ii. —— ——.]—ANDERSON *v.* ROYER. [1928] 3 D. L. R. 248.—**CAN.**

964 iii. —— ——.]—A master is liable for the conduct of his servant whom he selects & puts in his place to discharge the duty he has undertaken, & this law is applicable in a case of bailment. The conduct of the servant is then the conduct of the master, & the master is liable to the bailor.—VAN GEEL *v.* WARRINGTON, [1929] 1 D. L. R. 94 ; 63 O. L. R. 143. —**CAN.**

PART IX. SECT. 3, SUB-SECT. 4.—A.

981 xxi. ——.]—ESTATE VAN DER BYL *v.* SWANEPOEL, [1927] App. D. 141.—**S. AF.**

981 xxii. ——.]—BURRIS *v.* DARTMOUTH TOWN (1927), 59 N. S. R. 227.—**CAN.**

981 xxiii. —— *Dog shot by servant.*]—SWABEY *v.* PALMER (1869), (1900–1911) 1 Can. Dig. 51.—**CAN.**

981 xxiv. ——.]—Where a co holding a miner's prospecting licence sent employees into the wilderness to prospect for it under conditions which made it necessary for them to cook their own food & supplied them with the cooking utensils :—*Held :* the employees in making a fire to cook breakfast preparatory to their day's work were acting within the scope of their employment, & the co. was, therefore, liable for damages caused by their negligence in failing to put out the fire.—MURDOCH *v.* CONSOLIDATED MINING SMELTING & POWER CO., [1928] 1 D. L. R. 853 ; [1928] 1 W. W. R. 578 ; 39 B. C. R. 386 ; *revsd.*, [1929] 1 D. L. R. 913 ; S. C. R. 141.—**CAN.**

987. *Add. Annotations :*—**Refd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1927] 1 K. B. 826; Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244.

991. *Add. Annotations :*—**Consd.** Kreditbank Cassel G. m. b. H. *v.* Schenkers, [1927] 1 K. B. 826; Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244. **Distd.** Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114. **Refd.** Britt *v.* Galmoye & Nevill (1928), 44 T. L. R. 294; Lloyds Bank *v.* Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609.

996. *Add. Annotations :*—**Consd.** Poland *v.* Parr, [1927] 1 K. B. 236. **Refd.** Britt *v.* Galmoye & Nevill (1928), 44 T. L. R. 293.

1005. *Add. Annotation :*—**Distd.** Addie R. & Sons (Collieries) *v.* Dumbreck, [1929] A. C. 358.

1011. *Add. Annotations :*—**Consd.** Lloyds Bank *v.* Chartered Bank of India, Australia & China (1928), 97 L. J. K. B. 609; Reckitt *v.* Barnett, Pembroke & Slater, [1928] 2 K. B. 244. **Refd.** Fenton Textile Assocn. *v.* Thomas (1929), 45 T. L. R. 264.

1054. *Add. Annotation :*—**Expld. & Distd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

1082a. —— **Accident during dinner hour.**]—HIGBID *v.* R. C. HAMMETT, LTD. (1932), 49 T. L. R. 104, C. A.

1093. *Add. Annotation :*—**Distd.** Britt *v.* Galmoye & Nevill (1928), 44 T. L. R. 294.

1100a. —— ——.]—A., who had B. in his employment as a van-driver, lent him his private motor car, after the day's work was finished, to take friends to a theatre. B. by his negligent driving injured pltf. :—*Held :* as the journey was not on the master's business & the master was not in control, he was not liable for his servant's act.—BRITT *v.* GALMOYE & NEVILL (1928), 44 T. L. R. 294; 72 Sol. Jo. 122.

1143. *Add. Annotations :*—**Consd.** Williams *v.* Larsen (1928), 21 B. W. C. C. 339; Templeton *v.* Parkin Wm. & Co. (1929), 140 L. T. 519.

1145a. ——.]—THE ENTERPRISE, STRONG *v.* TAYLOR (1853), 9 L. T. 302.

1149. *Add. Annotation :*—**Consd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

1173a. —— ——.]—R. *v.* LEVER, No. 970a, *ante*.

1178. *Add. Annotation :*—**Consd.** Allen *v.* Whitehead (1929), 45 T. L. R. 655.

1190. *Add. Annotation :*—**Consd.** Jones *v.* Mighall, Nelson *v.* Mighall (1932), 48 T. L. R. 636.

1202. *Add. Annotation :*—**Consd.** Abercromby *v.* Morris (1932), 48 T. L. R. 635.

1231. *Add. Annotations :*—**Refd.** Silverman *v.* Imperial London Hotels (1927), 137 L. T. 57; Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401; Guilfoyle *v.* Port of London Authority, [1932] 1 K. B. 336; Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

1234. *Add. Annotation :*—**Refd.** Brooke *v.* Bool, [1928] 2 K. B. 578.

985 i. - *Servant acting for master's benefit.*]—WING KEE *v.* BUTT (B. C.), [1927] 2 D. L. R. 641.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 4.—C.

997 iii. ——.] — M'INTOSH *v.* CAMERON, [1929] S. C. (Ct. of Sess.) 44.—**SCOT.**

PART IX. SECT. 3, SUB-SECT. 6.—D.

1026 i. *General rule — Master not liable—Act outside scope of authority.*]—Where a servant, acting on the assumption, not reasonably founded, that property of his master & also property of another were in common peril, took upon himself to interfere, with a view to saving his master's property, with the result that the other owner's property was destroyed : —*Held :* the servant having no express authority so to act, no authority would be implied.—BROKEN HILL ASSOCIATED SMELTERS PTY. *v.* MONAGHAN, [1928] S. A. S. R. 400.—**AUS.**

1030 i. —— —— *Where act contrary to orders.*]—Deft. J., who was the servant of deft. L., was driving his masters motor truck upon a highway, upon the master's business, when he overtook pltf. & invited him to get into the truck. Pltf. did so & the truck proceeded upon its way. J. drove so recklessly & at such a speed that pltf. was injured. J. had been forbidden by L., to take a passenger on the truck :—*Held :* L. was not liable to pltf. for the negligence of J.—CROTON *v.* LEONARD & JOHNS, [1931] 2 D. L. R. 38; 66 O. L. R. 566.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 13.—A.

Relationship of master servant must exist.]—Deft. co. hired to M. a derrick & one of its employees, F., who was to take part in the erection of the derrick. After the derrick had been erected upon M.'s premises, a test as to its efficiency was attempted to be made, in the course of which a cable broke, the derrick fell to the ground, & the mast struck & killed M. In an action by the widow & child of M. against the co. to recover damages for his death, it was found that F. was guilty of negligence which caused M.'s death; but as deft. co. did not contract to erect the derrick itself but placed F. under M.'s control for the purpose of the work, he became the servant of M. & his negligence was not the negligence of deft. co.—MUIR *v.* SARNIA BRIDGE CO., [1931] 1 D. L. R. 742; 66 O. L. R. 365.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 13.—B. (b).

1090 iii. ——.]—When where an employer is sought to be held liable for the negligence of a servant, *e.g.* one employed to drive a motor car, the question arises whether the accident occurred while the driver was in the course of his employment, the master should be held liable unless the proper finding is that at the time of the accident the servant was on an independent & separate journey of his own; in other words, the master is liable even if the proper finding is that the servant was doing something appertaining to the course of his employment, even if at the same time he may also have been carrying out a purpose of his own.—WEST & WEST *v.* MACDONALD'S CONSOLIDATED, LTD., & MALCOLM, [1931] 2 W. W. R. 657; 3 D. L. R. 812.—**CAN.**

1090 iv. ——.] — BATTISTONI *v.* THOMAS, [1932] S. C. R. 144; 1 D. L. R. 877.—**CAN.**

1090 v. ——.]—JARVIS *v.* SOUTHARD MOTORS, LTD., [1931] 2 W. W. R. 812; *affd.*, [1932] 2 W. W. R. 221; 2 D. L. R. 218.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 13.—B. (c).

1096 iv. —— ——.]—BOYD *v.* SMITH, [1931] 3 D. L. R. 748; O. R. 361.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 13.—B. (e).

1111 i. *Servant.*]—In the absence of authority to the driver of a vehicle to entrust another employee with the duty of driving it, the owner is not responsible for the negligence of the substituted driver.—TUDHOPE *v.* HENDERSON, HENDERSON *v.* TUDHOPE, [1930] 3 D. L. R. 245; 65 O. L. R. 238.—**CAN.**

1115 iii. —— ——.]—Applt. employed a man to take his horse from his business premises to a paddock. Without the authority of applt., the man entrusted this duty to a young boy, who rode the horse so recklessly that resp. was knocked down & injured :—*Held :* applt. was not liable. —THOMSON *v.* HAMILTON, [1927] N. Z. L. R. 11.—**N.Z.**

PART IX. SECT. 3, SUB-SECT. 13.—E.

sj. *Negligence in effecting arrest.*]—Where a co. has statutory power to employ &, practically, to appoint constables, & a constable so appointed acts negligently in attempting to effect an arrest in the course of his employment by the co., he renders the co. liable for the damage caused thereby.—VIGNITCH *v.* BOND, [1928] 1 W. W. R. 449; 50 Can. Crim. Cas. 273; 37 Man. L. R. 435.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 2.—A.

1216 viii. ——.]—Defts., a railway co., being authorised to construct a line of railway, entered into a contract with A. for that purpose. The contractors, in order to get ballast to complete the road, laid down a track across pltf.'s land, leading to a gravel pit, & used it for the transportation of gravel to the railway :—*Held :* defts. were not liable for the acts of the contractors, the trespass having been committed without their authority, & being merely collateral to the work which they had agreed with A. to perform.—PAYNE *v.* FREDERICTON RY. CO. (1871), (1825-1897) N. B. Dig. 753. —**CAN.**

1240. *Add. Annotation :*—**Consd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

1255. *Add. Annotation :*—**Refd.** Brooke *v.* Bool, [1928] 2 K. B. 578.

1262. *Add. Annotation :*—**Refd.** McAlister (or Donoghue) *v.* Stevenson (1932), 48 T. L. R. 494.

1266. *Add. Annotation :*—**Refd.** Brooke *v.* Bool, [1928] 2 K. B. 578.

1267. *Add. Annotation :*—**Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

1271. *Add. Annotation :*—**Refd.** Brooke *v.* Bool, [1928] 2 K. B. 578.

1274. *Add. Annotation :*—**Consd.** Reigate Corpn. *v.* Surrey County Council, [1928] Ch. 359.

1275. *Add. Annotation :*—**Refd.** Brooke *v.* Bool, [1928] 2 K. B. 578.

1276. *Add. Annotation :*—**Refd.** Brooke *v.* Bool, [1928] 2 K. B. 578.

1296. *Add. Annotations :*—**Consd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546. **Refd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119.

Part X.—Rights of Master against Third Persons.

1306a. -.]- *v.* PRIE (1373), Y. B. 47 Edw. 3, fo. 14, pl. 15.

Annotation :—**Consd.** Lumley *v.* Gye (1853), 2 E. & B. 216.

1306b. ——.]—ANON. (1469), Y. B. 9 Edw. 4, fo. 31, pl. 4.

1306c. ——.]—ADAMS & BAFEALDS CASE (1591), 1 Leon. 240 ; 74 E. R. 219.

Annotation :—**Consd.** Lumley *v.* Gye (1853), 2 E. & B. 216.

1307. *Add. Annotations :*—**Refd.** Scammell G. & Nephew *v.* Hurley, [1929] 1 K. B. 419 ; Place *v.* Searle (1932), 48 T. L. R. 320.

1315. *Add. Annotation :*—**Refd.** Place *v.* Searle (1932), 48 T. L. R. 320.

1320. *Add. Annotation :*—**Refd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306.

1322. *Add. Annotation :*—**Refd.** Place *v.* Searle (1932), 48 T. L. R. 320.

1489. *Add. Annotation :*—**Refd.** The Edison, [1932] P. 52.

1490. *Add. Annotation :*—**Expld. & Distd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

Part XI.—Liabilities of the Servant to Third Persons.

1505. *Add. Annotation :*—**Consd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

1513. *Add. Annotation :*—**Consd.** Scammell G. & Nephew *v.* Hurley, [1929] 1 K. B. 419.

1525. *Add. Annotation :*—**Consd.** Leitch (William) & Co. *v.* Leydon, Barr (A. G.) & Co. *v.* Macgeoghegan (1930), 47 T. L. R. 81.

1539. *Add. Citation :—sub nom.* MARKWETH *v.* REYNOLDS & WESTWOOD, 2 Barn. K. B. 327.

1240 i. ——.]—NYBERG *v.* PROVOST MUNICIPAL HOSPITAL BOARD, No. 52 ii, *ante*.—**CAN.**

PART IX. SECT. 6, SUB-SECT 2.—B. (c) i.

1266 i. *Fire spreading to adjoining land—Contract to cut & burn bush.*]—NATIONAL TRUST CO., LTD. *v.* HANSON, [1930] 1 W. W. R. 966 ; 3 D. L. R. 149.—**CAN.**

1266 ii. ——.]—ROUSSEAU *v.* LYNCH & FOURNIER, [1931] 1 D. L. R. 595 ; 3 M. P. R. 355.—**CAN.**

PART IX. SECT. 6, SUB-SECT. 2.—B. (c) ii.

sk. *Duty to give warning of danger.*]—Persons lawfully doing a work which interferes with a public right, *e.g.* contractors working on a highway, must use reasonable care not to injure persons lawfully exercising that right, &, therefore, must take reasonable precautions to warn such persons of dangers created by the doing of the work which the latter could not with reasonable care discover.—McCULLOCH *v* STAR CONSTRUCTION CO., [1928] 1 D. L. R. 970 ; [1928] 1 W. W. R. 211 ; 22 Sask. L. R. 231.—**CAN.**

PART X. SECT. 2, SUB-SECT. 1.—A.

b i. —— *Not in absence of enticement or promise.*]—An action for seduction does not lie where the intercourse did not result from enticement or promises on the part of deft.—CLINE *v.* BATTLE, [1928] 4 D. L. R. 189 ; [1928] 3 W. W. R. 11.—**CAN.**

b ii. —— *Pregnancy following second seduction.*]—The fact that a man has seduced an unmarried female without resulting damage does not preclude her from succeeding in an action brought under sect. 5 of Seduction Act, R. S. S., 1930, where his subsequent seduction of her is followed by pregnancy or illness & consequent loss.—BILINSKI *v.* KOWBELL, [1931] 2 W. W. R. 245 ; 4 D. L. R. 756 ; *affd.*, [1930] 3 W. W. R. 638. **CAN.**

PART X. SECT. 2, SUB-SECT. 1.—B.

1344 viii. ——.]—In Jan. 1924, pltf.'s daughter, who was then 16 years of age, went into the service of O'L. The terms of the hiring were not proved, but appeared to be for about 11 months, from Jan. till Christmas, as she continued in O'L.'s service till the end of 1924, & re-entered it in Jan. 1925. During the year 1925 she made the acquaintance of deft., & became on friendly terms with him. About Christmas, 1925, she told deft. that she was not going back to O'L. the following year, but would look for another place. Deft. induced her to re-engage with O'L. During the year 1926 immoral relations took place between her & deft. Towards the end of 1926 she told deft. that she was not going back to O'L. the following year ; but again, at the request of deft., she re-engaged with O'L. in Jan. 1927, for that year. Misconduct took place between them again in that year, 1927, & she became pregnant in Nov. 1927. She remained in O'L.'s employment until Jan. 1928, & then took service with other people. She subsequently went into the Union Hospital, where she gave birth to a child on Aug. 5, 1928. Pltf. brought a civil bill against deft., claiming damages for his daughter's seduction by deft., & also for fraudulently inducing her to enter into the service of O'L. in the years 1926 & 1927 for the purpose of seducing her, with allegations of consequent pregnancy & loss of service. The Circuit Ct. judge dismissed the civil bill. Pltf. appealed to the High Ct. :—*Held :* by the High Ct., &, on appeal, by the Supreme Ct., that the decision of the Circuit Ct. judge was correct, as at the time of the seduction pltf.'s daughter was in the service of O'L. & not that of pltf., & the fact that she was under age was immaterial. Deft. was not estopped from relying upon the existence of the contract of service made between pltf.'s daughter & O'L., although he, deft., had induced her to enter into it in order that he might carry on the illicit intercourse which had commenced in the previous year.—SHINE *v.* ARCHDEACON, [1931] I. R. 466.—**IR.**

PART XI. SECT. 2, SUB-SECT. 2.

1508 ii. ——.]—ANANTAPUR DISTRICT BOARD (PRESIDENT) *v.* ISMAIL SAHIB (1927), I. L. R. 51 Mad. 512.—**IND.**

PART X. SECT. 2, SUB-SECT. 5.

sk. *Effect of order under Child Welfare Act.*]—BILINSKI *v.* KOWBELL, [1930] 3 W. W. R. 638 ; *affd.*, [1931] 2 W. W. R. 245.—**CAN.**

Part XII.—Rights of the Servant against Third Persons.

1553. *Add. Annotations :*—**Refd.** Hardie & Lane *v.* Chilton, [1928] 2 K. B. 306; Hampton *v.* West Cannock Colliery Co., [1932] 2 K. B. 293.

1564. *Add. Annotations :*—**Refd.** Bottomley *v.* Bannister, [1932] 1 K. B. 458; McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119.

1565. *Add. Annotations :*—**Consd.** Silverman *v.* Imperial London Hotels (1927), 137 L. T. 57; Forbes, Abbott & Lennard *v.* G. W. Ry. (1927), 138 L. T. 286. **Apld.** Compania Mexicana de Petroleo " El Aguila " *v.* Essex Transport & Trading Co. (1929), 141 L. T. 106. **Consd.** The Hayle, [1929] P. 275. **Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776; Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

1567. *Add. Annotations :*—**Consd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46; McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119.

1569. *Add. Annotation :*—**Consd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

1570. *Add. Annotations :*—**Consd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46; McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119.

1571. *Add. Annotation :*—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119.

1572. *Add. Annotation :*—**Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

1579. *Add. Annotation :*—**Refd.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353.

Part XIII.—Liability of Master in Case of Accident or Death.

1586. *Add. Annotation :*—*As to* (1) **Refd.** Fanton *v.* Denville, [1932] 2 K. B. 309.

1590. *Add. Annotation :*—**Consd.** Fanton *v.* Denville, [1932] 2 K. B. 309.

1593. *Add. Annotation :*—**Consd.** Fanton *v.* Denville, [1932] 2 K. B. 309.

1611. *Add. Annotation :*—*As to* (2) **Dbtd. & Distd.** Fanton *v.* Denville, [1932] 2 K. B. 309. (Nor can I find in that case any such statement of the law as appears in the headnote, *per* SLESSER, J.)

1621. *Add. Annotation :*—*As to* (2) **Consd.** Fanton *v.* Denville, [1932] 2 K. B. 309.

1628. *Add. Annotation :*—**Refd.** Fanton *v.* Denville, [1932] 2 K. B. 309.

1646. *Add. Annotation :*—**Refd.** Higgins *v.* Harrison (1932), 25 B. W. C. C. 113.

1647. *Add. Annotation :*—*As to* (1) **Apld.** Fanton *v.* Denville, [1932] 2 K. B. 309.

1657. *Add. Annotations :*—*As to* (1) **Expld.** Fanton *v.* Denville, [1932] 2 K. B. 309. **Refd.** Dew *v.* United British S.S. Co. (1928), 139 L. T.

PART XII. SECT. 1.

1553 iii. —.]—Pltf. had been employed by deft. on work for which deft. had the general contract. Deft. discharged him & pltf. threatened deft. that he would " get even with " him. Pltf. then obtained employment by the hour with a sub-contractor on the same contract. Pltf.'s services could be dispensed with at any time with or without cause. Deft. asked the sub-contractor to discharge pltf., &, because of this request, pltf.'s employment was discontinued by the sub-contractor, although he was satisfied with pltf.'s work. Pltf. sued for damages. The trial judge found that there was justification for deft.'s interference with pltf.'s employment with the sub-contractor, & dismissed the action. Pltf. appealed :—*Held :* the appeal should be dismissed.—DIVERS *v.* BURNETT, [1930] 1 W. W. R. 150; 1 D. L. R. 930; 42 B. C. R. 203. —**CAN.**

PART XIII. SECT. 1, SUB-SECT. 1.—B.

1613 vii. —— ——.]—*Held :* the contract between employer & employed involved on the part of the former the duty of taking reasonable care to provide proper appliances, & to maintain them in a proper condition, & so to carry on his operations as not to subject those employed by him to unnecessary risk.—HURLEY *v.* BOYCE, [1928] 1 D. L. R. 1053; 61 O. L. R. 618. —**CAN.**

f (p. 198) **i.** —— *& give warning of dangerous character of work.*]—TREMBLAY *v.* PROULX (Can.), [1929] 3 D. L. R. 469; *affg.*, 43 Que. K. B. 504.—**CAN.**

sl. *Permitting servant to act in contravention of bye-law — Liability of master.*] — A bye-law of Toronto provided that no vehicle should be driven upon any street in the city in charge of any driver less than sixteen years old :—*Held :* the prohibition of the bye-law was not for the protection of the driver, but for the protection of the public; & the breach of it by the employer of a boy under sixteen, in permitting the boy to drive a horse on public streets, did not give the boy a cause of action against his employer for injury sustained while so driving.—MILLIGAN *v.* THORN (1914), 32 O. L. R. 195; 7 O. W. N. 310.—**CAN.**

1623 i. *Duty to maintain premises—Free from concealed danger.*]—Circumstances in which :—*Held :* the master was not liable.—SIGERSETH *v.* PEDERSEN, [1927] 2 D. L. R. 651; S. C. R. 342.—**CAN.**

c (p. 198) **i.** ——.]—For an employer to allow ice & snow to accumulate at a place where its employees are required to go in performing their duties may constitute negligence.—TRACHE *v.* CANADIAN NORTHERN RY. CO., [1929] 2 D. L. R. 321; 1 W. W. R. 100; 35 C. R. C. 258; 23 S. L. R. 576.—**CAN.**

PART XIII. SECT. 1, SUB-SECT. 1.—D.

1624 v. *Varied*, 14 D. L. R. 575.

PART XIII. SECT. 1, SUB-SECT. 3.—B.

h i. ——.]—Pltf., a chambermaid, after making up a room at the end of a corridor on a Dec. afternoon, left the room, &, after taking a few steps, fell over a man lying on the floor, & was injured. The corridor was fairly dark at the time & was not lighted. The man pltf. fell over disappeared immediately after the accident. The jury found defts. were negligent in not having the corridor properly lighted :—*Held :* the verdict should not be disturbed.—BOOTH *v.* FORD & SHAW (1927), 38 B. C. R. 279.—**CAN.**

PART XIII. SECT. 1, SUB-SECT. 3.—C.

1658 vii. ——.]—ARMSTRONG *v.* CANADIAN NORTHERN RY. (Man.), [1917] 3 W. W. R. 219; 35 D. L. R. 568.—**CAN.**

PART XIII. SECT. 1, SUB-SECT. 3.—D. (a).

n i. ——.]—SIGERSETH *v.* PEDERSEN, No. 1623 i, *ante*.—**CAN.**

sm. *Plant let with crew to third party—Plant unfit for required purpose—Owner of plant not informed as to required purpose.*]—*Held :* the owner was not liable for damages for the death of one of the crew.—DUBE *v.* ALGOMA STEEL CORPN., LTD. (1916), 35 O. L. R. 371; 9 O. W. N. 389.—**CAN.**

sn. *Amount of damages recoverable.*]—BELLAMY *v.* GREEN, [1927] 2 D. L. R. 327; 38 B. C. R. 182.—**CAN.**

628; Chapman *v.* Ellesmere (1932), 101 L. J. K. B. 376.

1673. *Add. Annotation :*—**Refd.** Fanton *v.* Denville, [1932] 2 K. B. 309.

1681. *Add. Annotation :—As to* (1) **Consd.** Fanton *v.* Denville, [1932] 2 K. B. 309.

1683. *Add. Annotation :*—**Consd.** Fanton *v.* Denville, [1932] 2 K. B. 309.

1684. *Add. Annotation :*—**Consd.** Fanton *v.* Denville, [1932] 2 K. B. 309.

1697. *Add. Annotation :—As to* (1) **Consd.** Fanton *v.* Denville, [1932] 2 K. B. 309.

1698. *Add. Annotation :*—**Consd.** Fanton *v.* Denville, [1932] 2 K. B. 309.

1717. *Add. Annotation :*—**Refd.** Fanton *v.* Denville, [1932] 2 K. B. 309.

1725. *Add. Annotation :*—**Consd.** Bull *v.* West African Shipping, etc. Co., [1927] A. C. 686.

1726. *Add. Annotation :*—**Refd.** Fanton *v.* Denville, [1932] 2 K. B. 309.

1728. *Add. Annotation :—As to* (1) **Refd.** Fanton *v.* Denville, [1932] 2 K. B. 309.

1731. *Add. Annotation :*—**Consd.** Fanton *v.* Denville, [1932] 2 K. B. 309.

1741. *Add. Annotation :—As to* (2) **Refd.** Fanton *v.* Denville, [1932] 2 K. B. 309.

1742. *Add. Annotation :*—**Consd.** Fanton *v.* Denville, [1932] 2 K. B. 309.

1747. *Add. Annotation :—As to* (1) **Expld.** Fanton *v.* Denville, [1932] 2 K. B. 309.

1759. *Add. Annotation :*—**Consd.** Fanton *v.* Denville, [1932] 2 K. B. 309.

1761. *Add. Annotation :*—**Refd.** Fanton *v.* Denville, [1932] 2 K. B. 309.

1769. *Add. Annotation :*—**Refd.** Fanton *v.* Denville, [1932] 2 K. B. 309.

1773. *Add. Annotation :*—**Refd.** Fanton *v.* Denville, [1932] 2 K. B. 309.

1787. *Add. Annotations :*—**Consd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776. **Refd.** Silverman *v.* Imperial London Hotels (1927), 137 L. T. 57.

1791. *Add. Annotation :*—**Refd.** Fanton *v.* Denville, [1932] 2 K. B. 309.

1802. *Add. Annotation :*—**Refd.** Dew *v.* United British S.S. Co. (1928), 139 L. T. 628.

1815. *Add. Annotations :*—**Consd.** Higgins *v.* Harrison (1932), 25 B. W. C. C. 113. **Refd.** Dew *v.* United British S.S. Co. (1928), 139 L. T. 628; Scammell G. & Nephew *v.* Hurley, [1929] 1 K. B. 419.

1818. *Add. Annotation :*—**Refd.** Dew *v.* United British S.S. Co. (1928), 139 L. T. 628.

1824. *Add. Annotation :*—**Apprvd.** Fanton *v.* Denville, [1932] 2 K. B. 309.

1824a. ——.]—An employer does not warrant to his employees that the plant & property used in his business are safe; he only undertakes that he will use reasonable care to see that they are safe; & he fulfils this obligation by using reasonable care to appoint persons of competent care & skill as his delegates to provide & use the plant & property required for the business, he supplying them with the necessary financial means for this purpose. If the employer satisfies these conditions, he is not liable for injury caused to one of his servants by the negligence of such a delegate in the use of the plant.—FANTON *v.* DENVILLE, [1932] 2 K. B. 309; 101 L. J. K. B. 641; 147 L. T. 243; 48 T. L. R. 433, C. A.

1867. *Add. Annotation :*—**Consd.** Robertson *v.* Kinneil Cannel & Coking Coal Co. (1931), 101 L. J. P. C. 44.

1876. *Add. Annotation :*—**Apld.** Robertson *v.* Kinneil Cannel & Coking Coal Co. (1931), 101 L. J. P. C. 44.

1892a. Defect in good working condition.]—Under Employers' Liability Act, 1880 (c. 42), s. 1 (1), an employee injured by an accident can claim compensation if he establishes that the accident was due to a defect in the condition of the ways & works in a mine when from any cause they are unfit for the uses for which they were designed & to which they were intended to be put, &, by sect. 2 (1) the liability is limited to a case where the defect has arisen from or has not been remedied owing to the negligence of the employer or some person in his service & entrusted by him with the duty of seeing that the ways or works are in proper condition :—*Held :* (1) the defect in condition referred to is a defect in good working condition, & it is not confined to the presence of the physical parts of machinery or plant; (2) it is not necessary that the person under sect. 2 (1) entrusted with the duty should be a person superintending, & therefore the failure of an employee whose duty it was to adjust a clip on a running hutch, with the result that it ran away & killed another employee, was the failure of a person entrusted with a duty within the sub-section which rendered the deceased man's employers liable for the accident.—ROBERTSON *v.* KINNEIL CANNEL & COKING COAL CO. (1931), 101 L. J. P. C. 44; 146 L. T. 312, L. H.

1892b. Defect due to negligence of person entrusted with duty of seeing plant in proper condition—Fellow servant.]—ROBERTSON *v.* KINNEIL CANNEL & COKING COAL CO., LTD., No. 1892a, *ante*.

1900. *Add. Annotation :*—**Apld.** Robertson *v.* Kinneil Cannel & Coking Coal Co. (1931), 101 L. J. P. C. 44.

1976. *Add. Annotation :—As to* (3) **Refd.** Fanton *v.* Denville, [1932] 2 K. B. 309.

PART XIII. SECT. 1, SUB-SECT. 5.—C. (a).

1697 xviii. —— ——.]—M'EWAN *v.* EDINBURGH & DISTRICT TRAMWAYS CO. (1899), 6 S. L. T. 400.—**SCOT.**

o i. ——.]—In Nova Scotia the Crown is entitled to raise the defence of common employment.—CONROD *v.* R. (1913), 14 Exch. C. R. 472.—**CAN.**

PART XIII. SECT. 1, SUB-SECT. 5.—C. (d) iv.

1770 iv. —— ——.]—M'CARTAN *v.* BELFAST HARBOUR COMRS., [1911] 2 I. R. 143, H. L.—**IR.**

PART XIII. SECT. 1, SUB-SECT. 5.—C. (d) v.

1782 ii. —— ——.]—SWITZER *v.* OTTAWA, [1928] 4 D. L. R. 991; 63 O. L. R. 168.—**CAN.**

PART XIII. SECT. 1, SUB-SECT. 5.—C. (e) i.

sa. *Action by Crown servant.*]—THIBOUTOT *v.* R., [1932] Ex. C. R. 189.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 3.—D. (b).

1887 i. *Need not be in employer—Ship's machinery or plant.*]—A labourer, employed by stevedores, brought actions for damages, on account of personal injuries sustained by him through the fall of a stanchion when engaged in discharging cargo, against the shipowners & his own employers :—*Held :* (1) the action against the shipowners was relevant; (2) the action against the stevedores fell to be dismissed as irrelevant, in respect that the stevedores were under no duty of inspecting the vessel to see to its safety for their servants.—M'LACHLAN *v.* THE PEVERILL S.S. CO., LTD. & MACGREGOR & FERGUSON (1896), 23 R. (Ct. of Sess.) 753; 33 Sc. L. R. 634; 4 S. L. T. 19.—**SCOT.**

Part XIV.—Workmen's Compensation Acts.

2045. *Add. Annotation :*—**Refd.** Roberts *v.* Gardner (1928), 21 B. W. C. C. 154.

2057. *Add. Citations :*—136 L. T. 322 ; 20 B. W. C. C. 139.

Add. Annotation :—**Refd.** Watson *v.* Government Instructional Centre (Birmingham) (1928), 97 L. J. K. B. 596.

2057a. —— **Unemployed youth undergoing industrial training—In Government instructional centre.**]—*Held :* not a workman within Workmen's Compensation Acts.—WATSON *v.* GOVERNMENT INSTRUCTIONAL CENTRE, BIRMINGHAM (1926), 97 L. J. K. B. 596 ; 139 L. T. 290 ; 44 T. L. R. 576 ; 72 Sol. Jo. 384 ; 21 B. W. C. C. 174, C. A.

2057b. —— **Film actress.**]—An actress employed to perform in a crowd was injured during the making of a film. The county ct. judge found that she had not entered into a contract of service, but was only employed to render certain services, & therefore held that she was not a "workman" within the Act. The appct. appealed :—*Held :* there was evidence to support the finding & no misdirection. Appeal dismissed.—ARMOUR *v.* BRITISH INTERNATIONAL PICTURES (1930), 23 B. W. C. C. 367, C. A.

2067a. Termination of employment by wreck.]—A deck hand signed on under a running agreement for a voyage to the Iceland fishing grounds in Nov. After encountering bad weather the vessel ran aground in the early morning on a desolate section of the coast of Iceland. The crew remained on board for four & a half hours exposed to strong, cold winds & rain before the master ordered the abandoning of the vessel at 9 a.m. They waded fifteen to twenty yards through the surf, which was between knee & waist deep, & then set out to obtain aid. The deck hand was in good health, & one of the best of the party. They were without food, & had to cross several deep streams, encountering heavy sandstorms on the way. At 1.30 p.m. the deck hand stumbled in one of these streams & was completely submerged, after which he lost heart & strength, & by 2.15 p.m. was losing consciousness & unable to walk. He was carried by his companions until dark, when the party huddled together for warmth under a sandbank. At dawn the deck hand was found to be dead. To a claim by his widow for compensation the employers answered that he was no longer in their employment at the time of the accident. The county ct. judge found that death was due to personal injury by accident arising out of & in the course of the employment, & made an award in favour of the dependants. The employers appealed, & argued that by Merchant Shipping Act, 1894 (c. 60), s. 158, & Merchant Shipping (International Labour Conventions) Act, 1925 (c. 42), s. 1 (1), the employment terminated when the vessel was wrecked :—*Held :* there was evidence to support the finding, & such finding did not run counter to the argument put forward by the employers founded on the Merchant Shipping Acts.—MAVER *v.* "SALON" SHIP OWNERS (1929), 22 B. W. C. C. 424, C. A.

2079a. —— **Not born within normal period of gestation.**]—A claim for compensation in respect of such a child :—*Held :* rightly rejected.—RACE *v.* WARDSEND STEEL CO. (1927), 20 B. W. C. C. 260, C. A.

2086. *Add. Citations :*—96 L. J. K. B. 135 ; 136 L. T. 290 ; 19 B. W. C. C. 457.

PART XIV. SECT. 1.

f i. ——.]—NIELSEN *v.* DORATY, [1927] 1 D. L. R. 358 ; [1927] 1 W. W. R. 20 ; 21 Sask. L. R. 228.—**CAN.**

f ii. ——.]—A motor truck is not a "factory" within Workmen's Compensation Act, R. S. S. 1920, c. 210, s. 5, which provides that "factory means a building, workshop or place where machinery driven by steam, water or other mechanical power is used. . . ."—READER *v.* MOOSE JAW CARTAGE CO., [1928] 3 D. L. R. 532 ; [1928] 2 W. W. R. 404 ; 22 Sask. L. R. 395.—**CAN.**

sp. *Benevolent interpretation.*]—CLARKE *v.* WENTWORTH STORES, LTD., [1928] 2 D. L. R. 796.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 1.—A.

a i. —— ——.]—LYNCH *v.* LIMERICK COUNTY COUNCIL, [1926] I. R. 176.—**IR.**

a ii. —— *Workgang collected & paid by foreman.*]—A steamship co. employed a number of dock labourers, without the intervention of a stevedore or other independent contractor, to unload their vessel at a rate of remuneration which depended, not on the days or hours worked by each man, but on the number of tons of grain taken off the vessel. The rate of remuneration for the work to be done was a fixed sum per ton, & the aggregate amount was paid by the co. to certain representatives of the men, who divided it equally amongst those who had done the work. There were 56 men, divided into 8 gangs of 7 men each. One member of each gang was called a "foreman," but he did the same work & received the same remuneration as the other men. While unloading the vessel one of these men was fatally injured, & his dependants claimed compensation. Resps. contended that they had no control, &, in fact, exercised no control or supervision over the men's work, & that, in view of all the facts, the deceased was not a workman in their employment within the meaning of the Act. The judge found as a fact that he was a workman in their employment :—*Held :* there was evidence to support the finding of the judge.—SCANLON *v.* HARTLEPOOL SEATONIA STEAMSHIP CO., LTD. (No. 2) (1928), 22 B. W. C. C. 945.—**IR.**

c i. —— *Nurse.*]—*Held :* not within Act 25, 1914.—LOWE *v.* BRUCE (1926), 47 N. L. R. 459.—**S. AF.**

c ii. —— "*Domestic service.*"]—A worker who resided at his own home was employed by a retired manufacturer to do gardening & attend generally to the wants of the latter's household, & while engaged in cutting a branch off a tree in his employer's garden fell & suffered injuries from which he died :—*Held :* deceased was engaged in "domestic service" within Workers Compensation Act, 1922.—GOUGH *v.* CHAPMAN, [1930] N. Z. L. R. 81.—**N.Z.**

c iii. —— *Voluntary work—Assistance by neighbour.*]—Applt. & resp. were neighbouring farmers. Applt. being ill, asked resp. to look after his farm for a few days while he went away. Resp. consented, but no remuneration was discussed. During the harvesting of applt.'s crop resp. was removing an obstruction from the harvester when the horses, being restive on account of the proximity of a bush fire, moved on, & resp.'s hand was caught in the machinery & injured :—*Held :* there was no contract of service.—WILLIAMS *v.* GOODWIN, [1928] W. A. L. R. 107.—**AUS.**

c iv. —— *Pupil at private hospital.*]—Pltf. a pupil-dietician, was employed by deft. hospital, a private institution, at a small weekly salary, & was injured by an accident in the hospital, caused by the fall of a dumb-waiter or hoist which she was operating :—*Held :* the hospital was an "establishment" & pltf. a "workman" within sect. 1 (*i*), (*p*) of Workmen's Compensation Act, R. S. O., 1927.—JARVIS *v.* OSHAWA HOSPITAL, [1931] 4 D. L. R. 914 ; O. R. 482.—**CAN.**

c v. —— *Insurance agent.*]—*Held :* deceased did not work under a contract of service & was therefore not a "worker."—PAGE *v.* AUSTRALASIAN TEMPERANCE & GENERAL MUTUAL LIFE ASSURANCE SOCIETY, LTD., [1930] W. C. R. 140.—**AUS.**

PART XIV. SECT. 2, SUB-SECT. 2.—A.

2086 i. —— *Of widow of workman—Workman not the father.*]—*Held :* the word "child" includes illegitimate children of the worker, but does not include other people's children to whom he stands *in loco parentis*.—CLARKSON *v.* CORRIMAL BALGOWNIE COLLIERIES,

2111. *Add. Annotation :*—**Folld.** Bloor *v.* Ship Sutton (1926), 20 B. W. C. C. 12.

2112a. ——.]—A father brought a claim for compensation on the ground of his partial dependency on the earnings of his deceased son. The county ct. judge held on the facts that the family had enough for the ordinary necessaries of life without any contribution from the son, & dismissed the father's application. The father appealed :—*Held :* the existence of dependency was a question of fact for the judge, & there was no misdirection.—MALCOLM *v.* SOUTH GARESFIELD COLLIERY CO., LTD. (1930), 23 B. W. C. C. 44, C. A.

2113a. Validity of marriage—Onus of proof.]—A workman was killed leaving dependent upon his earnings a woman who claimed to be his wife & a daughter of the woman by a former marriage. On a claim for compensation made by these two persons the employer disputed liability on the ground that they were not members of the deceased's family within 1925 Act, sect. 4 (3). He put forward as the lawful wife of the deceased one A., who had gone through a form of marriage with the deceased in 1895. To this the applicants answered that such marriage was invalid, A. being herself a married woman at the time. At the hearing A. was called as a witness, & it was proved that A. had married D. in 1882, but that in 1887 D. deserted her & had never been heard of since. The county ct. judge held that in order to succeed appcts. must displace the validity of the 1895 marriage, & in order to displace the validity of that marriage they must prove that D. was alive in 1895. He found that they had failed to prove that D. was alive in 1895, & made his award in favour of the employer. Appcts. appealed :—*Held :* it was a question of fact for the judge & there was no misdirection. Appeal dismissed.—MONCKTON *v.* TARR (1930), 23 B. W. C. C. 504, C. A.

2114. *Add. Annotations :*—**Consd.** Fife Coal Co. *v.* M'Arthur (1926), 96 L. J. K. B. 330. **Expld.** Welsh Navigation Steam Coal Co. *v.* Evans, [1927] A. C. 834.

2115. *Add. Annotations :*—**Consd.** Fife Coal Co. *v.* M'Arthur (1926), 96 L. J. K. B. 330; Welsh Navigation Steam Coal Co. *v.* Evans, [1927] A. C. 834.

2117. *Add. Annotation :*—**Consd.** Welsh Navigation Steam Coal Co. *v.* Evans, [1927] A. C. 834.

2118. *Add. Annotations :*—*As to* (1) **Refd.** Welsh Navigation Steam Coal Co. *v.* Evans, [1927] A. C. 834. *As to* (2) **Refd.** Welsh Navigation Steam Coal Co. *v.* Evans, [1927] A. C. 834. *As to* (4) **Refd.** Nugent *v.* Londonderry Collieries (1929), 141 L. T. 619.

2120a. —— ——.]—The expression "ordinary necessaries of life" in Workmen's Compensation Act, 1925 (c. 84), s. 4, indicates food, clothing, & shelter, but does not extend to such a thing as savings out of the surplus in earnings.—WELSH NAVIGATION STEAM COAL CO. *v.* EVANS, [1927] A. C. 834; 96 L. J. K. B. 906; 137 L. T. 775; 43 T. L. R. 730; 71 Sol. Jo. 694; 20 B. W. C. C. 537, H. L.; *revsg.* S. C. *sub nom.* EVANS *v.* WELSH NAVIGATION STEAM COAL CO. (1926), 96 L. J. K. B. 290, C. A.

Annotation :—**Apld.** Malcolm *v.* South Garesfield Colliery Co. (1930), 23 B. W. C. C. 44.

2127a. Probability of future support.]—A cab-driver was regularly employed at £2 5*s.* per week but, on the death of that employer, remained out of work for eighteen months. At the end of that time he obtained occasional employment driving to funerals, but his wages at this form of work only averaged 5*s.* a week. On returning from driving to a funeral he fell from the seat of his cab, & died from a fracture of the skull. At the time of his death he was wholly, & his widow mainly, dependent on a son's assistance. On a claim for compensation brought by the widow, as a dependant, the county ct. judge, in making an award in favour of the employer, said that he must be satisfied that there was a partial dependency at the time of death before he could speculate as to what the future might or might not bring forth. The dependant appealed :—*Held :* the probability of the workman, if he had lived, regaining full employment, & once more supporting the dependant being a factor to be considered in deciding whether there was dependency, & it being doubtful whether this factor had been taken into account, the case must go back to the county ct. judge to consider such a probability.—LEE *v.* MUNRO (1928), 98 L. J. K. B. 49; 140 L. T. 129; 72 Sol. Jo. 779; 21 B. W. C. C. 401, C. A.

Annotation :—**Consd.** Nugent *v.* Londonderry Collieries (1929), 141 L. T. 619.

2128a. Probability of increase in earnings.]—*Held :* in deciding whether dependency existed at the death the probability that but for the accident the deceased's earnings would have increased between the date of the accident & the date of his death may be taken into account.—NUGENT *v.* LONDONDERRY COLLIERIES, LTD., [1930] 1 K. B. 159; 99 L. J. K. B. 34; 141 L. T. 619; 45 T. L. R. 623; 22 B. W. C. C. 474, C. A.

2134. *Add. Annotation :*—*As to* (2) **Consd.** Athey *v.* Pickerings (1926), 96 L. J. K. B. 250.

2137a. —— —— **Wife in asylum.**]—On the death of a workman, who was a labourer, killed by an accident arising out of & in the course of his employment, a claim was made for compensation under the Act on behalf of the widow as dependent on the earnings of the deceased workman. The widow, for two years before the accident, had been in an asylum suffering mentally from the after

LTD. (1928), 28 S. R. N. S. W. 583; 45 N. S. W. W. N. 184.—**AUS.**

sa. *Brother — Whether half-brother included.*]—The term "brother" in its primary sense means a brother of the whole blood, & it is only in a secondary & extended sense that the term is deemed to include a brother of the half blood. Whether the term is to be taken in its primary or secondary sense depends in each case upon the context in which it is found. In the Workmen's Compensation Act, which is a quasi-penal, statute, the term "minor brother" in sect. 2 (1) (*d*) of the Act means a minor brother of the whole blood, & does not include a minor half-brother.—*Re* MAUNG KYAN (1930), I. L. R. 9 Ran. 46.—**IND.**

sc. *Adopted child.*]—An adopted daughter of a Hindu is not a "dependent" within sect. 2 (1) (*d*) of Workmen's Compensation Act, 1923.—*Re* MUNSHI RAM (1931), I. L. R. 12 Lah. 658.—**IND.**

PART XIV. SECT. 2, SUB-SECT. 2.—C. (a).

2100 iii. ——.]—CASEY *v.* GREY COUNTY COUNCIL, [1929] N. Z. L. R. 125.—**N.Z.**

effects of childbirth. On the hearing of the arbn. in the county ct. no medical evidence was given as to the condition then of the widow, or of the probability or possibility of her future recovery. The county ct. judge held that there was no intention shown by deceased of bringing the legal relation of a husband to a dependent wife to an end, & he said that it was common knowledge that in many cases women whose mental condition had been deranged by childbirth did recover. The asylum authorities, after consideration of the circumstances that the workman was only earning £2 7*s*. 1*d*. a week & was helping to support his mother & had a child to whose maintenance he was contributing, made no claim during his lifetime or after his death, but on an application the county ct. judge ordered an arbn. in which the widow was to be represented. The employers appealed :—*Held :* the county ct. judge, without medical evidence, could not find a probability of the widow's recovery, or that there was any evidence upon which a finding of dependency could be based.—BACON *v.* LONGRAKE SPAR CO., LTD. (1931), 146 L. T. 115 ; 24 B. W. C. C. 432, C. A.

2143. *Add. Annotations :*—**Consd.** Bacon *v.* Longrake Spar Co. (1931), 146 L. T. 115. **Refd.** M'Arthur *v.* Fife Coal Co. (1926), 19 B. W. C. C. 669 ; Lee *v.* Munro (1928), 98 L. J. K. B. 49 ; Brazewell *v.* Emmott & Wallshaw (1929), 140 L. T. 603 ; Nugent *v.* Londonderry Collieries (1929), 141 L. T. 619.

2143a. Motive of marriage immaterial—Marriage while in dying condition.]—In 1913, the sister of the wife of a workman came to live with both of them. In 1915 the wife died & the sister-in-law stayed on as the workman's housekeeper, becoming entirely dependent on him for her support. In Dec. 1925, the workman was operated on for scrotal epithelioma, but resumed work in June, 1926. In Mar. 1928, he was certified as suffering from an industrial disease & underwent another operation. In Apr. he went to hospital, but was discharged after four days on the ground that his case was incurable, & it was then thought that he was in a dying condition. On June 7, he married his sister-in-law with the view of making her a dependant within the Act. On July 21, 1928, he died. At the time of his death he was in receipt of a weekly payment of compensation from his employers. The widow claimed compensation on the ground of total dependency. The county ct. judge found that the widow would not have been a dependant at the time of his death but for the accident, &, therefore, refused compensation. The widow appealed :—*Held :* appct. having proved that, if the workman had not been incapacitated from earning wages, she would at the time of his death have been totally dependent upon him, & having also proved that at that time she was in fact his wife, she was entitled to an award. The fact that she married him after he had become incapacitated was immaterial, & any motive she may have had for marrying him was irrelevant.—BRAZEWELL *v.* EMMOTT & WALLSHAW, LTD. (1929), 140 L. T. 603 ; 45 T. L. R. 194 ; 73 Sol. Jo. 126 ; 22 B. W. C. C. 152, C. A.

Annotation :—**Apld.** Nugent *v.* Londonderry Collieries, Ltd. (1929), 141 L. T. 619.

2146. *Add. Annotations :*—**Consd.** Bacon *v.* Longrake Spar Co. (1931), 146 L. T. 115. **Refd.** Lee *v.* Munro (1928), 98 L. J. K. B. 49.

2151. *Add. Annotations :*—**Consd.** Bacon *v.* Longrake Spar Co. (1931), 146 L. T. 115. **Refd.** Lee *v.* Munro (1928), 98 L. J. K. B. 49.

2166a. —— —— —— ——.]—A workman, when on shore, which was about three months in a year, lodged with his married sister &, paid her 30*s*. a week, & he also paid her £1 a week whilst at sea, out of which, after paying the expenses of his keep, she made a profit. The county ct. judge found that the sister was partially dependent on his earnings :—*Held :* it was a question of fact, & there was evidence to support the finding, & no misdirection.—BLOOR *v.* SUTTON (OWNERS) (1926), 20 B. W. C. C. 12, C. A.

2167. *Add. Citation :*—19 B. W. C. C. 394.
Add. Annotation :—**Folld.** Shotts Iron Co. *v.* Curran, [1929] A. C. 409.

2173. *Add. Annotations :*—*As to* (1) **Distd.** Lee *v.* Breckman (1928), 138 L. T. 610. **Consd.** Smith *v.* Stepney Corpn. (1929), 22 B. W. C. C. 451.

2179a. **Expenses.**]—Applt., a traveller employed by resps., had been engaged at a salary of £450 a year, but subsequently resps. by a letter agreed at his request to show his remuneration as being £150 salary & £300 for expenses. Applt. met with an accident & applied for compensation. The county ct. judge found that the agreement in the letter was a thing done for income tax purpose, & that applt.'s earnings must be treated as £450 a year, & that he was not a workman within Workmen's Compensation Acts :—*Held :* as there was no evidence as to what applt.'s expenses in fact were, the judge's decision was right.—SKIDMORE *v.* BULLOCK, LADE & CO., LTD. (1928), 44 T. L. R. 575 ; 21 B. W. C. C. 199, C. A.

2199. *Add. Annotations :*—*As to* (1) **Consd.** Nimmo *v.* Thomas Jones (Estates), Ltd. (1929), 22 B. W. C. C. 642. **Folld.** Farleigh *v.* Parker & Lang (1930), 23 B. W. C. C. 490.

2202. *Add. Annotation :*—**Consd.** Farleigh *v.* Parker & Lang (1930), 23 B. W. C. C. 490.

2203. *Add. Annotation :*—**Refd.** Farleigh *v.* Parker & Lang (1930), 23 B. W. C. C. 490.

PART XIV. SECT. 2, SUB-SECT. 2.—C. (c) iii.

2154 iii. —— —— *Sum less than cost of own maintenance.*]—There is no inference of partial dependency in the case of a member of the workman's family who contributes to a family pool, entirely spent upon the necessaries of life of the whole family, a sum less than the proportion of the fund actually spent upon his own necessaries, while retaining surplus earnings sufficient to allow him to contribute his whole proportion.—ELLIOT *v.* GOW HARRISON & CO. (1929), 22 B. W. C. C. 854.—**SCOT.**

PART XIV. SECT. 2, SUB-SECT. 2.—C. (c) iv.

k i. —— *Meaning of "unmarried."*]—On the construction of "unmarried sister" in Workmen's Compensation Act :—*Held :* although ordinarily "unmarried" means a person who has never been married, the expression is susceptible of meaning "a sister whose husband is not alive at the time when the question arises"; if the surrounding circumstances indicate that the word was intended to be used in the statute in that sense.—MUSSAMMAT MOTI BAI *v.* AGENT, NORTH-WESTERN RAILWAY (1931), I. L. R. 12 Lah. 228.—**IND.**

PART XIV. SECT. 3, SUB-SECT. 2.—A.

t i. —— *Nurse.*]—*Held :* employed to perform work of a casual nature.—LOWE *v.* BRUCE (1926), 47 N. L. R. 459.—**S. AF.**

2204a. —.]—A casual labourer was employed by a builder in the doing of the repairs to the roof of a farmhouse & was paid by the hour. The farmer, for whom the repairs were being done, suggested to the builder that when the job was finished the builder's men should assist in removing the branch of a tree which was overhanging & damaging the roof. The builder agreed, but nothing was said as to terms. The work on the roof having been finished at dinner-time, the labourer climbed the tree, & in the course of sawing the branch, fell off the tree & was injured. He claimed compensation from the builder & the farmer in the alternative. The county ct. judge found as facts that the contract of service between the labourer & the builder came to an end at dinner-time & that there was an implied contract that the farmer should pay the labourer for his labour, & held that, although the labourer's employment was of a casual nature, the lopping of the tree was work done for the purposes of the farmer's trade or business. He therefore made an award for the labourer against the farmer. The farmer appealed :—*Held :* there was evidence to support the findings & no misdirection. Appeal dismissed.—FARLEIGH *v.* PARKER & LANG (1930), 23 B. W. C. C. 490, C. A.

2212. *Add. Annotation :*—**Distd.** Templeton *v.* Parkin Wm. & Co. (1929), 140 L. T. 519.

2213a. —— **Jobbing glazier—Supplying own tools.**]—*Held :* there was evidence to support the finding of the county ct. judge that appct. was an independent contractor.—WILLIAMS *v.* LARSEN, LTD. (1928), 21 B. W. C. C. 339, C. A.

2216. *Add. Citation :—subsequent proceedings,* 15 B. W. C. C. 257, C. A.

Add. Annotations :—**Consd.** Templeton *v.* Parkin Wm. & Co. (1929), 140 L. T. 519. **Refd.** Williams *v.* Larsen (1928), 21 B. W. C. C. 339.

2216a. —— —— **Club collector.**]—A club collector was appointed by a co-operative society & received a shilling in the pound on all contributions collected by him. The society reserved the right to terminate the appointment with or without notice, & prohibited the collector from canvassing for any other firm in competition with the society. He was not obliged to work on any particular day or hour &, provided he did not keep money over the week-end, could pay in money collected whenever he pleased & at any branch. He could not go on holiday without the consent of the society. He was given further elaborate written instructions which dealt in detail with the method in which he should carry out his duties. The county ct. judge found that the collector was a workman & not an independent contractor :—*Held :* the question was one of fact & there was evidence to support the finding & no misdirection. Appeal dismissed.—HOBBS *v.* ROYAL ARSENAL CO-OPERATIVE SOCIETY, LTD. (1930), 144 L. T. 10 ; 23 B. W. C. C. 254, C. A.

2220. *Add. Annotations :*—**Consd.** Roberts *v.* Gardner (1928), 21 B. W. C. C. 154. **Refd.** Hobbs *v.* Royal Arsenal Co-operative Society (1930), 144 L. T. 10.

2220a. ——.]—A co., who carried on the business of manufacturing cutlery, let out the grinding of knives to one T. on a verbal agreement, terminable by a month's notice on either side. Under this agreement T. occupied a part of the co.'s premises, for which he paid rent, & was provided with power, water, light, & coal. He on his part provided the necessary labour, grinding wheels & other accessories. He could employ & dismiss what men he liked, & the co. could not object to any workman he employed except by terminating the agreement. Work was given out to him by the co.'s foreman at agreed prices & he made his profit out of the prices. He was allowed to do the work in his own way & in his own hours. He was not paid overtime, & had a key of the room in which he worked. The co. had first claim on his time & their foreman frequently came to see how the work progressed, but gave no directions. If the work had to be finished in a certain time, he was bound to finish it in that time, the co., if necessary, directing him to work overtime or get extra assistance. When work was slack, he was allowed to take in work for other firms, but the co.'s work continued to take precedence. His National Health Insurance cards were stamped by the co. In 1919 he had been paid compensation by the co. for an accident. In Oct. 1927, he ceased working regularly & on Jan. 24, 1928, he was certified as suffering from silicosis. On a claim for compensation, the county ct. judge held on these facts that T. was employed under a contract of service & was a workman entitled to compensation. The co. appealed :—*Held :* there was no evidence of any right on the part of the co. to control & direct how the work was to be done. The man was an independent contractor & not a workman within the meaning

PART XIV. SECT. 3, SUB-SECT. 5.

2213 iv. —— —— ——.]—Deceased & his partner contracted with applt. to cut & cart 1,000 cubic feet of clay at 5*s.* 3*d.* per cubic yard. They used their own tools & lorry, paid their own assistants, & worked when they liked, the only stipulation being that they had to deliver sufficient clay to keep the pottery working. Applt. indicated what part of the pit the clay was to be taken from & where the loads were to be dumped at the pottery. Deceased was killed by a fall of clay in the pit :—*Held :* deceased was an independent contractor.—WEST AUSTRALIAN POTTERY CO., LTD. *v.* NEIL, [1928] W. A. L. R. 105.—**AUS.**

c i. —— ——.]—Pltf. engaged with deft. to sink a well at an agreed rate per foot. Deft. exercised no control or direction over pltf. in the execution of the work, pltf. being an expert well-sinker :—*Held :* pltf. was an independent contractor.—DELLOW *v.* BELL, [1927] N. Z. L. R. 140.—**N.Z.**

2220 i. —— *Engagement at weekly wages.*]—Resp., requiring a sewerage system & a hot & cold water supply put into the house, got into communication with appct., who was a plumber, & he agreed to do the work. He was to be paid £4 4*s.* a week for doing it, & it was to take six weeks. Appct.'s son occasionally helped appct., & the £4 4*s.* a week was to include any help that the son might give. Resp. also employed "a handy man" at 5*s.* a day & another man to assist appct., & she paid both these men. Before beginning the work appct. went to the house, which was vacant, & measured up what it would take to do the work. He dictated a list of the materials required, & these were ordered, & resp. paid for them. A friend of resp.'s, a farmer, showed appct. where to lay the pipes & where the bath was to be put. Resp. on one occasion spoke to appct. about the line one drain would take as regards certain flower beds, but did not tell him where to run the drain. Otherwise appct. was left to himself as to how he would do the work. During the course of the work appct. was injured :—*Held :* there was clear evidence that appct. had entered into a contract of service at the weekly wage of £4 4*s.* for the period required for completing a specified work, & accordingly appct. was entitled to compensation.—LOGUE *v.* PENTLAND, [1930] I. R. 6 ; 23 B. W. C. C. 646. —**IR.**

of the Act.—TEMPLETON *v.* PARKIN WM. & CO., LTD. (1929), 140 L. T. 519; 22 B. W. C. C. 110, C. A.

2225. *Add. Annotation :*—**Refd.** Murphy *v.* Henderson & Glass (1930), 23 B. W. C. C. 91.

2227a. —— ——.]—The beneficiaries under the will of J. formed themselves into a limited co. for the purpose of managing testator's estate consisting of a large amount of house property. Under its memorandum & arts. of assocn. it had power to carry on, *inter alia*, the business of builders, contractors, & dealers in building materials. The co. employed a contractor to do certain house repairs. A labourer employed by the contractor on this work was injured by the collapse of a scaffolding, & claimed compensation from the co. on the ground that the agreement with the contractor had been entered into in the course of or for the purposes of its trade or business & relied on the powers given the co. by its memorandum & arts. The county ct. judge found as a fact that, notwithstanding the memorandum & arts., the co. was formed for the purposes of managing the estate & making a distribution among the beneficiaries. He held that the co. was not carrying on a trade or business & was not, therefore, liable to pay compensation as a principal under sect. 6. The workman appealed :—*Held :* the nature of the purposes for which the co. was formed was a question of fact for the county ct. judge. The finding was supported by the evidence & there was no misdirection.—NIMMO *v.* THOMAS JONES (ESTATES), LTD. (1929), 22 B. W. C. C. 642, C. A.

2229. *Add. Annotation :*—**Distd.** Watson *v.* Government Instructional Centre (Birmingham) (1928), 97 L. J. K. B. 596.

2232a. Limited company managing estate of deceased.]—NIMMO *v.* THOMAS JONES (ESTATES), LTD., No. 2227a, *ante*.

2234a. ——.]—M., Ltd., agreed to deliver a crane to H. & G. & to provide a skilled erector & the necessary unskilled assistance for its erection at their works. The erector sent by M., Ltd., was given authority to engage unskilled assistance but had no express authority to engage or pay for overtime. The crane was late in delivery & H. & G. pressed the erector of M., Ltd., to erect it as quickly as possible. The erector, therefore asked the wages clerk of H. & G. whether a foreman in the regular employment of H. & G. could remain & work overtime on a Sat. afternoon. The foreman duly worked overtime as an unskilled assistant & was paid by the erector. On the following Tues. one of the partners of H. & G. pressed the erector to work overtime again &, after a discussion as to which of them should pay for overtime, suggested that the erector had better have the foreman as before. The partner called the foreman, & the following conversation took place between the partner & the foreman : "C., the erector, wants you to stay. Will you help ?" "Yes, I will." "The same arrangement as Sat." On the same day the partner wrote a letter to M., Ltd., in which he said, "We have instructed your foreman to work overtime to-night & our foreman will help him. . . . We, of course, will debit you with the cost of our man's time." At 9 p.m. that night the foreman fell from a ladder while assisting in the erection of the crane & was killed. H. & G. & M., Ltd., were each made resps. to an application for arbn. by the dependants of deceased workman. The county ct. judge found that the workman had ceased his employment with H. & G. on the Tues. at 5 p.m. & was then engaged by M., Ltd. He made an award for appcts. against M., Ltd. M., Ltd., appealed :—*Held :* there was misdirection, & no evidence to support the finding of a fresh contract of service with M., Ltd. The contract of service with H. & G. was still subsisting at the time of the accident, & the workman was lent or let on hire within sect. 5 (1), & therefore H. & G. remained liable.—MURPHY *v.* HENDERSON & GLASS (1930), 23 B. W. C. C. 91, C. A.

2238. *Add. Annotation :*—**Refd.** Geddes *v.* Dunfermline District Committee (1927), 20 B. W. C. C. 815.

2239. *Add. Annotation :*—**Consd.** Nimmo *v.* Thomas Jones (Estates), Ltd. (1929), 22 B. W. C. C. 642.

2243. *Add. Annotation :*—**Consd.** Nimmo *v.* Thomas Jones (Estates), Ltd. (1929), 22 B. W. C. C. 642.

2256. *Add. Annotation :*—**Refd.** Geddes *v.* Dunfermline District Committee (1927), 20 B. W. C. C. 815.

2261. *Add. Annotations :*—**Consd.** McFarlane *v.* Hutton (Stevedores) (1926), 96 L. J. K. B. 357. **Refd.** Muscroft *v.* Stewarts & Lloyds (1928), 21 B. W. C. C. 274.

2264. *Add. Annotations :*—**Apld.** McFarlane *v.* Hutton (Stevedores) (1926), 96 L. J. K. B. 357; Ferguson *v.* Shotts Iron Co. (1927), 20 B. W. C. C. 741. **Refd.** Flanagan *v.* Ackers Whitley (1926), 19 B. W. C. C. 399; Raeburn *v.* Lochgelly Iron & Coal Co. (1926), 20 B. W. C. C. 637; Muscroft *v.* Stewarts & Lloyds (1928), 21 B. W. C. C. 274; Wiles *v.* Ellerman's Wilson Line (1928), 21 B. W. C. C. 194; Brown *v.* Aveling & Porter (1929), 22 B. W. C. C. 165; James *v.* Partridge Jones & John Paton, Ltd. (1932), 25 B. W. C. C. 92.

2270a. —— ——.]—A railway signalman died on Feb. 28, 1931, from pneumonia following a

PART XIV. SECT. 4, SUB-SECT. 1.

q i. —— *Grantor of a right to take timber.*]—An agreement whereby a landowner grants to another the right of access to his land to take timber therefrom for which the grantee pays a royalty is not a contract or "part of or a process in the trade or calling" of a farmer within Workers' Compensation Act, s. 13, & consequently the landowner is not a principal & cannot be made jointly & severally liable with the grantee pursuant to the provisions of that sect.—MICHALICK *v.* MCGREGOR, [1929] N. Z. L. R. 245.—**N.Z.**

2232 i. *Foreigner resident abroad—Accident to workman in this country.*]—SCANLON *v.* HARTLEPOOL SEATONIA S.S. CO., LTD. (No. 1), [1929] I. R. 96.—**IR.**

PART XIV. SECT. 4, SUB-SECT. 3.—B.

o i. —— *Erecting electric cable for railway company.*]—RABIA *v.* GREAT INDIAN PENINSULAR RY. (1928), I. L. R. 53 Bom. 203.—**IND.**

PART XIV. SECT. 4, SUB-SECT. 3.—D.

ss. *Workman receiving weekly payments from contractor—Workman son of contractor.*]—*Held :* although the contractor explained that he would not have made the payments but for the fact that the workman was his son, the facts justified the arbitrator in finding that the son had elected to take his father as his debtor in the obligation to pay compensation, & he was barred from claiming against the principal.—GEDDES *v.* DUNFERMLINE DISTRICT COMMITTEE, [1927] S. C. 797; 20 B. W. C. C. 815.—**SCOT.**

chill. It was alleged by his widow that on Feb. 20, 1931, which was a fine, dry day, after the end of his shift the relief man found him drying his cardigan at the cabin fire. It was the practice at the close of a shift to leave a clean bucket of water in the cabin & it was alleged that the deceased workman got wet & could only have got wet by falling with the bucket when climbing the steps of the signal cabin. On a claim for compensation by the widow the county ct. judge in making his award said that if he were to find that deceased had met with an accident or, supposing there to have been an accident, that that accident had contributed to his death, he would be going into the realms of guess, conjecture, or surmise. He therefore made his award for the employer. The widow appealed:—*Held:* it was entirely a question of fact for the county ct. judge & there was no misdirection. Appeal dismissed.—BOWLES *v.* SOUTHERN RY. Co. (1931), 24 B. W. C. C. 478, C. A.

2276. *Add. Annotations:*—**Refd.** Raeburn *v.* Lochgelly Iron & Coal Co. (1926), 20 B. W. C. C. 637; Bradley *v.* London & North Eastern Ry. Co. (1931), 145 L. T. 30.

2278. After this case add:—

—— ——.]—*Sec, also*, No. 2281, *post.*

2281. *Add. Annotation:*—**Consd.** Bradley *v.* London & North Eastern Ry. Co. (1931), 145 L. T. 30.

2284. *Add. Annotation:*—**Refd.** Raeburn *v.* Lochgelly Iron & Coal Co. (1926), 20 B. W. C. C. 637.

2285. *Add. Annotation:*—**Consd.** Dixon *v.* Ayresome S.S. Owners (1930), 99 L. J. K. B. 250.

2297. *Add. Annotation:*—**Distd.** Lee *v.* Breckman (1928), 138 L. T. 610.
After this case add "*See, also*, Nos. 2586-2589b, *post.*"

2299. *Add. Annotation:*—**Consd.** Lee *v.* Breckman (1928), 138 L. T. 610.

2300. *Add. Annotations:*—*As to* (1) **Refd.** Simpson *v.* London, Midland & Scottish Ry. Co., [1931] A. C. 351. *As to* (2) **Consd.** Lee *v.* Breckman (1928), 138 L. T. 610; Holden *v.* Premier Waterproof & Rubber Co. (1930), 144 L. T. 519.

2301. *Add. Annotation:*—**Refd.** Smith *v.* Stepney Corpn. (1929), 22 B. W. C. C. 451.

2304. *Add. Annotations:*—*As to* (2) **Consd.** Bradley *v.* London & North Eastern Ry. Co. (1931), 145 L. T. 30. **Refd.** Raeburn *v.* Lochgelly Iron & Coal Co. (1926), 20 B. W. C. C. 637; Ferguson *v.* Shotts Iron Co. (1927), 20 B. W. C. C. 741.

2305. *Add. Annotation:*—**Consd.** Bradley *v.* London & North Eastern Ry. Co. (1931), 145 L. T. 30.

2308. *Add. Annotations:*—*As to* (1) **Apld.** Raeburn *v.* Lochgelly Iron & Coal Co. (1926), 20 B. W. C. C. 637. **Consd.** Bradley *v.* London & North Eastern Ry. Co. (1931), 145 L. T. 30. **Refd.** Ferguson *v.* Shotts Iron Co. (1927), 20 B. W. C. C. 741.

2309. *Add. Annotations:*—**Consd.** Cole *v.* L. & N. E. Ry. (1928), 21 B. W. C. C. 87. **Refd.** Ferguson *v.* Shotts Iron Co. (1927), 20 B. W. C. C. 741.

2310. *Add. Annotations:*—**Consd.** Cole *v.* L. & N. E. Ry. (1928), 21 B. W. C. C. 87. **Refd.** Ferguson *v.* Shotts Iron Co. (1927), 20 B. W. C. C. 741.

2310a. —— **Anthracosis.**]—A platelayer employed by a railway co. worked in tunnels on an average of two days a week. From May 10 to Aug. 2, 1924, he was at work continuously in a long tunnel where a considerable amount of work was being done, & the full train service was running. On Aug. 2, he coughed up a lump of black stuff, & consulted a doctor, who, on Oct. 1, certified that he was suffering from anthracosis, a form of dust disease. He obtained light work as a gardener, but abandoned that on Oct. 9, 1925, & did no further work. No notice of any accident was given, nor was any claim made, until he commenced proceedings for an award some three years after he had given up work as a platelayer. The county ct. judge held appct. had not discharged the burden of proving that his past or present incapacity was due to injury by accident which arose out of or in the course of his employment by resps.:—*Held:* the judge was bound in law to come to the conclusion to which he did, & there was no misdirection.—COLE *v.* LONDON & NORTH EASTERN RY. Co. (1928), 21 B. W. C. C. 87, C. A.

2316. *Add. Annotations:*—**Apld.** Flanagan *v.* Ackers Whitley (1926), 19 B. W. C. C. 399. **Consd.** McFarlane *v.* Hutton (Stevedores) (1926), 96 L. J. K. B. 357. **Distd.** Ferguson *v.* Shotts Iron Co. (1927), 20 B. W. C. C. 741; Muscroft *v.* Stewarts & Lloyds (1928), 21 B. W. C. C. 274. **Consd.** Davis *v.* London, Midland & Scottish Ry. Co. (1930), 23 B. W. C. C. 368; Jones *v.* Blaenavon Co. (1931), 24 B. W. C. C. 148. **Alpd.** Davies *v.* Vipond & Co. (1932), 146 L. T. 498. **Consd.** James *v.* Partridge Jones & John Paton, Ltd. (1932), 25 B. W. C. C. 92. **Refd.** Bradshaw *v.* Richardsons, Westgarth & Co., (1931) 24 B. W. C. C. 64; Hayman *v.* Pensford & Bromley Collieries (1921), Ltd. (1932), 25 B. W. C. C. 37.

2317. *Add. Annotations:*—**Apld.** McFarlane *v.* Hutton (Stevedores) (1926), 96 L. J. K. B. 357. **Distd.** Muscroft *v.* Stewarts & Lloyds (1928), 21 B. W. C. C. 274. **Refd.** Ferguson *v.* Shotts Iron Co. (1927), 20 B. W. C. C. 741; Hayman *v.* Pensford & Bromley Collieries (1921), Ltd. (1932), 25 B. W. C. C. 37.

PART XIV. SECT. 5, SUB-SECT. 1.—C. (c).

2282 ia. *S. P.* BRESAND *v.* NORTHERN S.S. Co., LTD., [1928] N. Z. L. R. 461.—**N.Z.**

PART XIV. SECT. 5, SUB-SECT. 1.—C. (d).

sb. *Heart failure caused by strain—No evidence of excessive strain—Whether injury by accident.*]—A workman, who was employed as a brusher in a mine, began a shift at 11 p.m. on Dec. 30. It was the last shift of the year, & the man worked more vigorously than usual in order to finish early for his own purposes. About 12.20 a.m. on Dec. 31, he complained of a pain in his side. He collapsed while at work about ten minutes later, & died shortly afterwards. Death was due to heart failure, caused by the strain of the whole work of the shift operating upon a diseased condition of the heart. There was no proof of any particular or exceptional strain, & it was not proved that the extra vigour with which the deceased had been working caused his death:—*Held:* the arbitrator was entitled to hold that the workman's death was not caused by injury by "accident" within Workmen's Compensation Acts.—MILLAR *v.* COLTNESS IRON CO., LTD., [1929] S. C. (Ct. of Sess.) 429.—**SCOT.**

2317a. Workman with heart disease—Death from strain.]—A workman, employed in a mine, exerted himself in the ordinary course of his employment in lifting & replacing the wheels of a tub which had left the rails. He immediately complained of pain. He went to work the following day, & on his way home fell dead. Death was due to the bursting of the right auricle, owing to the walls of the heart having steadily become thinner over a period of years. Medical evidence was given to the effect that the strain of lifting would tend to make the workman's condition more critical & so lead to the collapse. The county ct. judge held the workman's death was caused by an accident, & he awarded compensation:—*Held:* it was a question of fact, as to which there was evidence to support the finding.—FLANAGAN *v.* ACKERS WHITLEY & Co. (1926), 19 B. W. C. C. 399, C. A.

2317b. -.]—A stevedore, who for many years had done his work without ailing, while employed unloading a ship had to fill a tub with iron ore, & at a certain point in the transit of the tub to deflect it so as to allow it to clear an obstacle. While pulling the tub into the right position he suddenly said "Oh!" & ceased work for a moment, but, recovering, put some iron ore into the tub, when he again felt ill & stopped. He lay down, & within half an hour from his saying "Oh!" was dead. On a *post mortem* examination it was found that he suffered from coronary disease of the heart, which sooner or later would have caused death:—*Held:* death resulted from a strain incurred in the ordinary exercise of the man's work, & this amounted to an accident, as to establish an accident it was not necessary to find a sudden or special strain, & an award should be made in favour of the dependant.—MCFARLANE *v.* HUTTON BROTHERS (STEVEDORES), LTD. (1926), 96 L. J. K. B. 357; 136 L. T. 547; 20 B. W. C. C. 222, C. A.

Annotations:—**Consd.** Muscroft *v.* Stewarts & Lloyds (1928), 21 B. W. C. C. 274. **Apld.** Hore *v.* General Steam Navigation Co. (1929), 22 B. W. C. C. 100. **Expld.** Davies *v.* Vipond & Co. (1932), 146 L. T. 498. **Refd.** James *v.* Partridge Jones & John Paton, Ltd. (1932), 25 B. W. C. C. 92.

2317c. —— ——.]—A workman was employed loading & unloading a ship, & on May 25, 1931, started the work at 6 a.m. of loading bags of sugar & china clay weighing a hundredweight each or more slung on board by a crane. It was common ground he had a diseased heart. He was a man of small stature, forty-six years of age. He worked till 8 a.m., & at breakfast felt queer, but resumed work, & at 9.30 tried to stop a sling of sacks swinging; there was a jerk, & he injured his finger, but continued work. There was a slight pause, when the men were sitting down, but the deceased workman got up to hook a bag, tried to strike his hook in the bag, but fell & died. The question arose whether he died purely from disease of the heart, or whether the work contributed to the death, in which latter event the death would be an accident arising out of the employment. The county ct. judge held the accident was due to disease & not to the employment. The death was certified to be caused by myocarditis & syncope:—*Held:* there was no evidence on which the county ct. judge could find as he did, & the death was contributed to by the ordinary course of the work, it not being necessary, in order to so hold, to prove there had been some abnormal strain caused by the work; consequently the accident arose out of the employment, & the dependent on the earnings of the deceased was entitled to compensation under sect. 1 (1), of 1925 Act.—TRELOAR *v.* FALMOUTH DOCKS & ENGINEERING CO., LTD. (1932), 147 L. T. 271, C. A.

2320. *Add. Annotation:*—**Refd.** Davis *v.* London, Midland & Scottish Ry. Co. (1930), 23 B. W. C. C. 368.

2327. *Add. Annotations:*—*As to* (1) **Refd.** Raeburn *v.* Lochgelly Iron & Coal Co. (1926), 20 B. W. C. C. 637; Ferguson *v.* Shotts Iron Co. (1927), 20 B. W. C. C. 741; Bradley *v.* London & North Eastern Ry Co. (1931), 145 L. T. 30.

2329. *Add. Annotation:*—**Folld.** Bradley *v.* London & North Eastern Ry. Co. (1931), 145 L. T. 30.

2329a. -.]—BRADLEY *v.* LONDON & NORTH EASTERN RY. CO., No. 2737a, *post.*

2331a. —— ——.]—A workman, employed as a ripper, was subject to the disease of osteoperiostitis, rendering his bones brittle & even liable to a spontaneous fracture, but he was able to do his work, & in 1919, by an accident whilst so employed, suffered a fracture of his right femur. He received compensation, but in 1920 resumed work, & continued so to work until 1924, when the seam on which he

PART XIV. SECT. 5, SUB-SECT. 1.—C. (f) iv.

sf. *Facial paralysis—Resulting from chill.*]—Award in workman's favour upheld.—BURT *v.* BROKEN HILL SOUTH, LTD. (1926), 26 S. R. N. S. W. 307; 43 N. S. W. W. N. 69.—**AUS.**

sk. *Disease proceeding from bacilli.*]—A disease proceeding from bacilli may be a personal injury by accident.—SIMPSON *v.* FINLAYSON (1926), 26 S. R. N. S. W. 280; 43 N. S. W. W. N. 60.—**AUS.**

sl. *Infective jaundice.*]—*Held:* there was evidence on which the arbitrator was entitled to hold the contracting of the disease was an accident, & the workman's death resulted from an injury by accident.—RAEBURN *v.* Co., LTD.,

PART XIV. SECT. 5, SUB-SECT. 2.—A.

2332 ii. ——.]—Where it cannot be said that it was part of the workman's duty to hazard, to suffer or to do the act which was the cause of his injury, it follows that the accident was not one "arising out of" the employment, within Workmen's Compensation Act, R. S. S. 1920, c. 210, s. 4.—KILGREN *v.* BROWNING RURAL MUNICIPALITY, [1928] 3 W. W. R. 699.—**CAN.**

2332 iii. ——.]—The rule that "arising out of the employment" means arising out of the work which the workman was employed to do, applied in holding that pltf., who was employed as a blacksmith in or about the construction of a railroad, was entitled to recover for an injury from a piece of molten babbit which exploded while he was engaged in "babbitting" & when he was looking into an axle-box on machinery used in the construction work to ascertain if sufficient babbit had been poured. It was held on the evidence that it was part of pltf.'s duty to do the babbitting on the occasion of the accident; & that when for said purpose he looked into the axle-box, while his assistant was pouring the metal, he did something incident to his employment.—WELL *v.* MORGAN, [1929] 2 D. L. R. 155; 23 S. L. R. 241; [1928] 3 W. W. R. 710.—**CAN.**

p i. —— *Fighting with fellow-workman.*]—Appct. was employed in a room of resp.'s factory with instructions, he alleged, to prevent employees from other rooms from loitering there. An employee from another room having entered, appct. ordered him to leave, following which blows ensued between this employee & appct., & appct. received facial injuries:—*Held:* the accident to appct. did not arise out of or in the course of his employment.—BROWN *v.* ALBANY BELL, LTD. (1927), 29 W. A. L. R. 132.—**AUS.**

2337 i. "*In the course of the employment.*"]—WELLS *v.* MORGAN, [1928] 3 W. W. R. 710.—**CAN.**

q i. ——.]—RALLI BROS. *v.* PERUMAL (1929), I. L. R. 52 Mad. 747.—**IND.**

was employed was shut down & he ceased to work. In Aug. 1925, he was out for a walk, & after walking two or three miles & while standing still his right tibia suddenly snapped, & he claimed compensation for the injury, on the ground that it was attributable to the accident suffered by him in 1919. The medical theory advanced was that, after the injury suffered from the accident in 1919, the muscles of the leg became inelastic, & if he slipped his power of recovering himself would be affected. There was no evidence that he did slip when the tibia snapped in Aug. 1925. The county ct. judge held the injury was due to the first accident in 1919, & awarded compensation:—*Held:* there was no evidence to support the finding, & the award must be set aside.—WERRIN *v.* UNITED NATIONAL COLLIERIES, LTD. (1926), 20 B. W. C. C. 166, C. A.

2336. *Add. Annotations:*—**Distd.** Lawrence *v.* Matthews (1924), Ltd. (1928), 97 L. J. K. B. 758. **Consd.** Lee *v.* Breckman (1928), 138 L. T. 610. **Refd.** Holden *v.* Premier Waterproof & Rubber Co. (1930), 144 L. T. 519.

2339. *Add. Annotations:*—*As to* (1) **Distd.** McCullum *v.* Northumbrian Shipping Co. (1931), 146 L. T. 124. **Expld. & Distd.** Northumbrian Shipping Co. *v.* McCullum (1932), 48 T. L. R. 568. **Refd.** Moule *v.* Marmite Food Extract Co. (1927), 20 B. W. C. C. 446. *As to* (2) **Consd.** Gorman *v.* Barclay Curle (1925), 19 B. W. C. C. 564. **Refd.** Robertson *v.* S.S. Appalachee, Rovira *v.* Same (1926), 136 L. T. 488; Simpson *v.* London, Midland & Scottish Ry. Co., [1931] A. C. 351.

2340a. ——.]—PRUCE *v.* DAVEY, No. 2460b, *post.*

2340b. Distinction between negligence & performance of act in unusual manner—Question of fact.]—Deceased was the driver of a steam lorry. He left the lorry, which had been proceeding along the high road, for purposes of his own for a few minutes. Returning to the road he beckoned to the steersman of the lorry to come on. Apparently he attempted to board the lorry when in motion; he slipped & fell under the wheels & was killed. His widow claimed compensation. The county ct. judge held that the act of the deceased was not done for the purposes of & in connection with his employers' trade or business & made an award in favour of the employer:—*Held:* the distinction between negligently doing an act which was within the authority & doing an act which you are employed to do in such an unusual way as to take it outside the authority had not been sufficiently considered by the county ct. judge. It was a question of degree & of fact. The matter must therefore go back for reconsideration.—TAYLOR *v.* LOCK (1930), 99 L. J. K. B. 245; 142 L. T. 537; 23 B. W. C. C. 55, C. A.

2342. *Add. Annotation:*—**Consd.** Howells *v.* G. W. Ry. (1928), 97 L. J. K. B. 183.

2342a. —— —— ——.]—A dock labourer was employed to load cargo into a steamer in a dock. He could have reached the shed where he worked by a provided route over a metalled road, but as this was a long way round he took a shorter cut, which involved his crossing a number of railway lines on the level, & while doing so was knocked down & killed by a light engine. The county ct. judge found that deceased could have used the provided way through the docks, but as he did not do so, but used an unauthorised route, albeit one commonly used to the knowledge & with the implied permission of the co.'s officials by a large number of workmen, & as at the time when the accident happened he was not doing anything which he was under any obligation to do, the accident did not arise in the course of the employment:—*Held:* this was a misdirection. On the facts, the workman was on the employers' premises, proceeding to work over an accustomed & permitted, though not a provided, route, & the accident arose out of & in the course of the employment.—HOWELLS *v.* GREAT WESTERN RY. CO. (1928), 97 L. J. K. B. 183; 138 L. T. 544; 21 B. W. C. C. 18, C. A.

Annotation:—**Distd.** Black *v.* Hesperides S.S. Owners (1929), 22 B. W. C. C. 295.

2345. *Add. Annotation:*—**Refd.** Sparey *v.* Bath R. D. C. (1930), 23 B. W. C. C. 263.

2347. *Add. Annotation:*—**Refd.** Anderson *v.* Hickman H. & Co. (1928), 21 B. W. C. C. 369.

2348. *Add. Annotations:*—**Consd.** Sparey *v.* Bath R. D. C. (1930), 23 B. W. C. C. 263. **Refd.** Lye *v.* British & Argentine Meat Co. (1923), Ltd. (1927), 20 B. W. C. C. 341.

2349a. —— ——.]—DUNNING *v.* BINDING (1932), 147 L. T. 520, C. A.

2349b. Engine driver—Accident after coming off duty—In hostel provided by employer.]—BRENTNALL *v.* LONDON & NORTH EASTERN RY. CO. (1932), 48 T. L. R. 544, C. A.

2350. *Add. Annotation:*—**Consd.** Sparey *v.* Bath R. D. C. (1930), 23 B. W. C. C. 263.

2354a. —— **Leaving dock side for ship.**]—The deceased workman signed on as boatswain for a voyage, & joined the ship when lying in Swansea Harbour. The contract of service contemplated that he might be called on to act as night watchman with overtime payment. He was acting as such when, returning from his home to the ship, he disappeared, after calling at a public-house just outside the entrance to the dock premises, which were private property, & his body was

PART XIV. SECT. 5, SUB-SECT. 2.—B. (a) i.

t i. —— ——.]—HOLDING *v.* SOUTH AUSTRALIAN RAILWAYS COMR., [1925] S. A. S. R. 92.—**AUS.**

c i.—— *Partly due to wilful misconduct of workman.*]—BAKER *v.* NEW SOUTH WALES RAILWAY COMRS. (1927), 28 S. R. N. S. W. 50; 45 N. S. W. W. N. 21.—**AUS.**

PART XIV. SECT. 5, SUB-SECT. 2.—B. (a) ii.

e i. *Workman riding in jigger belonging to fellow workman.*]—Pltf. was employed by deft. corpn. as a platelayer on a length of tram line, approximately two miles in length, running between the H. waterworks dam & quarry. A construction camp had been erected near the dam, & pltf. & other workmen elected to live at this camp. Pltf.'s work was confined to the section of the line running between the dam & the quarry. Pltf. often spent week-ends at the H. Bay, & with other workmen he frequently returned from H. Bay to the camp on a jigger owned by one of the men. Such use of the jigger was known to & acquiesced in by the corpn.'s officers. Pltf. was returning to the camp on the morning of Aug. 3, 1929, on the jigger, when the latter was derailed & pltf. seriously injured. The place of the accident was some two miles & a half from the nearest part of the section of line at which he would normally have reported for duty:—*Held:* though pltf. had a right to be at the place where the accident happened, at the time he was not then there in pursuance of his obligation to deft. & his claim must fail.—FLOWERDAY *v.* AUCKLAND CITY CORPN., [1930] N. Z. L. R. 331.—**N.Z.**

found in the water a thousand yards from the ship:—*Held:* deceased, by taking on the special duty of night watchman, did not divest himself of the character of a seaman, & as he must be inferred at the time of the accident to have been on the private premises of the harbour in which the ship lay, & sustained the accident by reason of risks incidental to his employment, which he would not have encountered but for his employment, therefore the accident arose out of & in the course of the employment. The principle in all the cases of a seaman returning from shore leave to his ship in a public harbour is that the question to be decided must be whether the risk run was shared with all the public, or was incidental to the seaman's employment.—NORTHUMBRIAN SHIPPING CO., LTD. *v.* MCCULLUM (1932), 101 L. J. K. B. 664; 48 T. L. R. 568; 76 Sol. Jo. 494; *sub nom.* MCCULLUM *v.* NORTHUMBRIAN SHIPPING CO., LTD., 147 L. T. 361, H. L.

2355. *Add. Annotations:*—**Consd.** Sparey *v.* Bath R. D. C. (1930), 23 B. W. C. C. 263. **Refd.** Black *v.* Hesperides S.S. Owners (1929), 22 B. W. C. C. 295.

2355a. —— **Road repairer—Accident on scene of repairs.**]—Applt. was a workman who was employed by resps. in road repairing & tar spraying. The work consisted in sweeping & tarring the road; the last portion of his work for the day was to sweep another portion of the road above the section which had been tarred. On July 5, 1929, the foreman blew his whistle at five o'clock, & the men knocked off work. Applt. got to his work on a bicycle, which he left just off the road, & when work ceased he proceeded in the ordinary way to get his bicycle. At the end of the swept portion of the road were some horses belonging to a separate contractor & used for moving the tarring machines. As he passed the horses he was kicked by one of them, knocked off his bicycle & severely injured. On those facts the county ct. judge found that the accident did not arise in the course of applt.'s employment:—*Held:* the decision of the county ct. judge raised a question not of fact but of law, & the proper legal inference to be drawn from the facts was that the accident did not occur in the course of applt.'s employment. When he mounted his bicycle & started off to ride home he had resumed his freedom of action as a citizen on the public highway.—SPAREY *v.* BATH RURAL DISTRICT COUNCIL (1932), 146 L. T. 285; 48 T. L. R. 87; 75 Sol. Jo. 813; 24 B. W. C. C. 414, H. L.

2356. *Add. Annotations:*—**Consd.** Dixon *v.* Ayresome S.S. Owners (1930), 99 L. J. K. B. 250. **Refd.** Morrison *v.* S.S. Aboukir, Woods *v.* Same (1928), 21 B. W. C. C. 163; Black *v.* Hesperides S.S. Owners (1929), 22 B. W. C. C. 295; Northumbrian Shipping Co. *v.* McCullum (1932), 48 T. L. R. 568.

2357. *Add. Annotations:*—**Consd.** Howells *v.* G. W. Ry. (1928), 97 L. J. K. B. 183; Sparey *v.* Bath R. D. C. (1931), 48 T. L. R. 87. **Apld.** Northumbrian Shipping Co. *v.* McCullum (1932), 48 T. L. R. 568.

2360. *Add. Annotations:*—**Apld.** Howells *v.* G. W. Ry. (1928), 97 L. J. K. B. 183. **Folld.** Anderson *v.* Hickman H. & Co. (1928), 21 B W. C. C. 369.

2364. *Add. Annotations:*—**Apld.** M'Pherson *v.* Reid M'Farlane (1926), 19 B. W. C. C. 575; Pruce *v.* Davey (1926), 136 L. T. 601; Robertson *v.* S.S. Appalachee, Rovira *v.* Same (1926), 136 L. T. 488. **Consd.** Lye *v.* British & Argentine Meat Co. (1923), Ltd. (1927), 20 B. W. C. C. 341; Moule *v.* Marmite Food Extract Co. (1927), 20 B. W. C. C. 446; Howells *v.* G. W. Ry. (1928), 97 L. J. K. B. 183; Black *v.* Hesperides S.S. Owners (1929), 22 B. W. C. C. 295; Sparey *v.* Bath R. D. C. (1931), 48 T. L. R. 87. **Apld.** Medler *v.* Medler (1931), 24 B. W. C. C. 345. **Refd.** Anderson *v.* Hickman H. & Co. (1928), 21 B. W. C. C. 369.

2366. *Add. Annotations:*—**Apld.** Robertson *v.* S.S. Appalachee, Rovira *v.* Same (1926), 136 L. T. 488; Moule *v.* Marmite Food Extract Co. (1927), 20 B. W. C. C. 446. **Refd.** Anderson *v.* Hickman H. & Co. (1928), 21 B. W. C. C. 369; Sparey *v.* Bath R. D. C. (1931), 48 T. L. R. 87.

2367a. —— —— **Accident while riding motor cycle.**]—A fruiterer had a business in N. & a small branch at L. One of his sons lived at L., but not over the L. premises. The son periodically travelled between L. & N. to assist his father in N. & would tell him of the requirements of the L. branch. He travelled by motor cycle except in wet weather, when he went by train. While riding his motor cycle from L. to N. the son collided with a lorry & was killed. The widow claimed compensation. There was no evidence forthcoming in the arbn. as to whether the son had called at the L. branch before leaving for N. The county ct. judge made an award in favour of the widow. The employer appealed:—*Held:* there was no evidence that at the time of the accident the workman was engaged on his employer's business & it was not therefore proved that the workman was in the course of his employment at the time. Appeal allowed.

In the present case the facilities had been provided by the employer, & the deceased chose to travel to his work by motor cycle (LAWRENCE, L.J.).—MEDLER *v.* MEDLER (1931), 24 B. W. C. C. 345, C. A.

2368a. —— **No obligation to use conveyance.**]—Employers used female labour for the picking of potatoes on their farm. In order to induce women to come from a distance they provided a horse lorry to convey them to & from their homes, but the women were under no obligation to use the lorry. The usual course was for the women, when they had finished

PART XIV SECT. 5, SUB-SECT. 2.—B. (b).

2368 i. *Conveyance provided by farmer.*]- A berrypicker was engaged to work on a fruit farm eight miles distant from her home, on the undertaking that wages would be paid her at a daily rate & that she would be conveyed by her employer to & from her work. The hour of commencing work on the farm was generally 7 a.m., but was sometimes 8 a.m., & each evening the workers were informed when the employer's conveyance would call for them on the following morning. No other means of conveyance was available to the berrypicker, & she would not have accepted the employment except on the condition that her employer conveyed her to & from work. While travelling to work on a lorry belonging to her employer she was injured through the lorry being accidentally overturned:—*Held:* the accident to the worker had not arisen in the course of her employment.—CRAW *v.* FORREST, [1931] S. C. 634.—**SCOT.**

their work, to walk back to the employers' yard, where the lorry was waiting. On a particular day the worker, having finished her work, was standing in the yard with her fellow-employees, & the employers' foreman told them to load up on the lorry. The women sat as usual with their legs dangling over the side of the lorry. As the lorry left the yard one of the worker's legs was crushed between the lorry & a gate-post. The county ct. judge held that the worker was not in the yard under any express or implied term of her contract of service, that the yard was not within the ambit of her work, & that it was unnecessary for her to be there either for the performance of her duties or for the purpose of going home, & made an award in favour of the employers. The worker appealed:—*Held:* the case was covered by authority, & the accident arose out of & in the course of the worker's employment. It is sufficient for a workman to show that an accident occurs when he is on his employer's premises & travelling by a permitted route.—ANDERSON *v.* HICKMAN H. & Co., LTD. (1928), 21 B. W. C. C. 369, C. A.

2369. *Add. Annotation:*—**Refd.** Robertson *v.* S.S. Appalachee, Rovira *v.* Same (1926), 136 L. T. 488.

2370. *Add. Annotation:*—**Refd.** Robertson *v.* S.S. Appalachee, Rovira *v.* Same (1926), 136 L. T. 488.

2370a. —— **Different boat used by workman.**]—ROBERTSON *v.* APPALACHEE (OWNERS), ROVIRA *v.* SAME, No. 2552a, *post.*

2372. *Add. Annotation:*—**Consd.** Gorman *v.* Barclay Curle (1925), 19 B. W. C. C. 564.

2381. *Add. Annotation:*—**Distd.** Standen *v.* Smith (1927), 20 B. W. C. C. 305.

2384a. ——.]—A butcher's boy was allowed to go home for his tea, for which there was not a fixed time, & generally he was told to deliver or take orders from customers on his way there or back. If he had orders to deliver, he rode a bicycle, & on Dec. 17, 1926, he was told he might go for his tea, & was to deliver an order on the way, & take two orders coming back. He delivered the order, had his tea, & was bicycling back, but before he had called for the two orders he was knocked down by a motor lorry & injured. The county ct. judge found that at the time of the accident the boy was engaged on his own affairs in returning from tea, & that the accident did not arise out of & in the course of his employment:—*Held:* there was evidence to support the finding, & no misdirection.—LYE *v.* BRITISH & ARGENTINE MEAT CO. (1923), LTD. (1927), 20 B. W. C. C. 341, C. A.

2384b. —.]—A workman employed on a night shift was permitted to leave the premises to get his supper. There was no necessity for this, & he could do as he pleased. He did in fact leave the premises for his supper & met with an accident in a public street:—*Held:* the accident did not arise out of & in the course of the employment, because at the time of the accident the workman was not doing anything in discharge of a duty which he owed to his employers.—MOULE *v.* MARMITE FOOD EXTRACT CO. (1927), 20 B. W. C. C. 446, C. A.

2388a. ——.]—A watchman was employed on an estate in which sewers were being constructed in a trench by the side of a highway. He could go anywhere on the estate, but had to give special attention to the open trench & to look after the red lights at night-time. He was provided with a watchman's box & a coke brazier. During one of his watches, which was twenty-four hours in length, he took the brazier into a workman's day shelter on the estate, but 300 yards from the trench, covered the shelter completely over with a tarpaulin, took his boots off, & lay down to sleep. He was later found dead in this situation, having been suffocated by the fumes from the coke brazier. On a claim by the widow the county ct. judge held that, as the deceased was on his employer's premises in pursuance of his duty, the accident arose out of & in the course of the employment. The employers appealed:—*Held:* there was, on the evidence, no causal connection between the employment & the death, &, therefore, the accident did not arise out of & in the course of the employment.—BUCKLAND *v.* FRENCH (W. & C.) (1929), 45 T. L. R. 193; 22 B. W. C. C. 132, C. A.

2390. *Add. Annotation:*—**Refd.** Dixon *v.* Ayresome S.S. Owners (1930), 99 L. J. K. B. 250.

2395. *Add. Annotations:*—**Consd.** Dixon *v.* Ayresome S.S. Owners (1930), 99 L. J. K. B. 250; Dyson *v.* Vickers-Armstrong, Ltd. (1929), 142 L. T. 340. **Refd.** Shephard *v.* London Midland & Scottish Railway (1930), 143 L. T. 220.

2401. *Add. Annotations:*—**Consd.** Durie *v.* Anchor-Donaldson Line (1925), 19 B. W. C. C. 512. **Apld.** Gorman *v.* Barclay Curle (1925), 19 B. W. C. C. 564.

2407. *Add. Annotations:*—**Consd.** Taylor *v.* Lock (1930), 99 L. J. K. B. 245; Taylor *v.* Lock (No. 2) (1930), 144 L. T. 428. **Refd.** Altobelli *v.* Ellis (1926), 136 L. T. 602.

2407a. Injured workman leaning on tubs.]—A workman injured his finger while working underground in a coal pit, & went to the

PART XIV. SECT. 5, SUB-SECT. 2.—D. (b) i.

sn. *Workman standing by open door of railway carriage—Door left open.*]—*Held:* the workman had not exposed himself to any greater risk than that to which an ordinary traveller in the train would have been exposed, & the accident had arisen out of his employment.—GREAT INDIAN PENINSULAR RY. CO. *v.* KASHINATH CHIMAJI (1927), I. L. R. 52 Bom. 45.—**IND.**

PART XIV. SECT. 5, SUB-SECT. 2.—D. (b) ii.

g i. —— *Workman urinating by stationary truck—Without preliminary inquiry as to shunting.*]—M'INTOSH *v.* CARMICHAEL, [1929] S. C. (Ct. of Sess.) 200.—**SCOT.**

g ii. —— *Cycling along platform.*]—A workman, employed at a railway station on shunting & other duties, was instructed to deliver a letter at a signal cabin 300 yards distant from the station. The usual & only recognised method of doing so was for the messenger to go on foot along the platform & across several sets of rails. The workman, however, borrowed a fellow-servant's bicycle which had been left in the station office. He proceeded to ride along the platform, but failed to keep a straight course & fell from the platform to the rails, sustaining injuries from which he died:—*Held:* while the accident had happened in the course of the deceased's employment, he had taken a risk, in using the bicycle, which was not reasonably incidental to his employment, but was an added peril to which by his own conduct he had exposed himself; &, accordingly, the accident did not arise out of the employment.—ROONEY *v.* LONDON & NORTH EASTERN RY. CO., [1931] S. C. 31; 23 B. W. C. C. 606.—**SCOT.**

sp. *Workman employed to water sheep & look after & bring in horses—Death through accidental discharge of gun—Use of gun expressly forbidden.*]—*Held:* the accident did not arise out of deceased's employment.—DORIZZI *v.* MACKEY (1925), 27 W. A. L. R. 93.—**AUS.**

underground first-aid station, a quarter of mile away, to have it dressed. He returned to his work along the haulage way. Going in the same direction as himself, & at the same pace, was a line of empty tubs. He availed himself of this line of tubs by leaning on them as he walked, & putting his lamp into one of them. As he approached his place of work he leaned over the edge of the tub to get his lamp without noticing that the roof immediately in front was low. He was caught between the tub & the roof & injured his spine. The county ct. judge accepted the workman's story of the accident, & held that he had not added a peril to his employment. The employers appealed:—*Held:* there was evidence to support the finding, & no misdirection. Appeal dismissed.—BAKER *v.* WEST CANNOCK COLLIERY CO., LTD. (1931), 24 B. W. C. C. 231.

2409. *Add. Annotation:*—**Refd.** Stephen *v.* Cooper, [1929] A. C. 570.

2415. *Add. Annotations:*—**Consd.** Altobelli *v.* Ellis (1926), 136 L. T. 602; Edwards *v.* Gwauncaegurwen Colliery Co., James *v.* Same, Jenkins *v.* Same (1926), 96 L. J. K. B. 337; James *v.* Penderyn Limestone Quarries (Hirwain) (1926), 20 B. W. C. C. 27; Jardine *v.* Steel Co. of Scotland (1926), 19 B. W. C. C. 726; Clarke *v.* Southern Ry. (1927), 96 L. J. K. B. 572; Stephen *v.* Cooper, [1929] A. C. 570. **Apld.** Davison *v.* Holmside & South Moor Collieries, Napper *v.* Lambton, Hetton & Joicey Collieries (1929), 140 L. T. 511. **Consd.** Dixon *v.* Ayresome S.S. Owners (1930), 99 L. J. K. B. 250; Dyson *v.* Vickers-Armstrong, Ltd. (1929), 142 L. T. 340; Quickfall *v.* London & North-Eastern Ry. Co. (1929), 142 L. T. 315; Shephard *v.* London, Midland & Scottish Railway (1930), 143 L. T. 220; Hannaby *v.* Lay Main Collieries, Ltd., [1931] 1 K. B. 602. **Refd.** Durie *v.* Anchor-Donaldson Line (1925), 19 B. W. C. C. 512; Taylor *v.* Lock (No. 2) (1930), 144 L. T. 428; Muteham *v.* Gentle (F. W.) & Son (1931), 24 B. W. C. C. 310; Thomas *v.* Ocean Coal Co. (1931), 146 L. T. 183.

2417. *Add. Annotation:*—**Consd.** Dixon *v.* Ayresome S.S. Owners (1930), 99 L. J. K. B. 250.

2417a. Workmen repairing hydraulic apparatus—Not using ladder provided—Electrocution.]—Deceased workmen, whilst employed on Oct. 24, 1929, by resps. in the repair of hydraulic apparatus, met with a fatal accident. When the repair was effected it was necessary to go about 100 yards in the works to turn on a valve starting the water power to see whether the repair would resist the water pressure, & if it failed to resist the pressure some one had to turn off the valve as soon as possible. The obvious & proper route to the valve was up a ladder & along an air pipe, using the hydraulic pipe as a handrail, & for an ordinary able workman this was neither difficult nor dangerous. Deceased went to the valve by this route, turned it on, but returned another way, which involved his going along the crane-way, on which there was a danger from moving cranes & a live electric wire, & he put his hand on this wire & was electrocuted. Directly the valve was turned on the workman gave or received a signal from the workmen at the place of repair. The county ct. judge found that one of the objects of the deceased in returning by the way he did was to give or receive a signal as soon as possible, but held that the deceased workman, in adopting that route for the purpose of effecting that object, had acted in an unnecessary & unreasonable way & had by so acting stepped outside the sphere of his employment, & therefore the accident did not arise out of the employment, & consequently s. 1 (2) did not apply:—*Held:* there was evidence to support the finding of the county ct. judge, & being a question of fact the Ct. of Appeal could not interfere with the finding.—SHEPHARD *v.* LONDON, MIDLAND & SCOTTISH RAILWAY (1930), 143 L. T. 220; 23 B. W. C. C. 105, C. A.

2419a. Workman putting hand into exhaust pipe—To find hammer.]—The workman was employed as a labourer by resps., & occasionally as a grinder. The grinders' shop had some fifteen pipes running into it, all of which except one were inhaust pipes to draw the dust, arising from the grinding, out of the air. One was an exhaust pipe with a strong draught of air into the shop. Some days before the accident the workman, whilst employed in the shop, mislaid his hammer, & being told that sometimes the hammers were put in the mouth of a pipe he put his hand in one of the inhaust pipes & drew out his hammer, the end of the hammer being visible. He again mislaid the hammer, & next day, Sept. 19, 1928, put his hand again in the same pipe, but not finding it there, tried the next pipe which was the exhaust pipe which had a fan close to the mouth, & his fingers were cut off. He claimed compensation under the Act. It would have been possible without danger to have put his hand in any of the pipes except the exhaust one. The county ct. judge held that the act of the man in searching in the mouth of the pipe was an added peril to his employment, & a peril voluntary superinduced by him on what arose out of the employment; the accident did not arise out of & in the course of his employment, & further, the act being entirely unnecessary because the hammer could have been seen if it had been placed in the exhaust with the fan so near the mouth of the pipe, & absolutely unreasonable because the outward draught was very strong & quite sufficient to show that there must have been a rapidly revolving fan close to the outlet, the act was not within the sphere of the employment at all:—*Held:* the question whether this act of the workman was one within the scope of his employment was one of fact involving a question of degree, & therefore a question to be decided by the county ct. judge, & his award could not be interfered with.—DYSON *v.* VICKERS-ARMSTRONG, LTD. (1929), 142 L. T. 340; 22 B. W. C. C. 551, C. A.

2425. *Add. Annotations:*—**Consd.** Edwards *v.* Gwauncaegurwen Colliery Co., James *v.* Same, Jenkins *v.* Same (1926), 96 L. J. K. B. 337; Clarke *v.* Southern Ry. (1927), 96 L. J. K. B. 572. **Apld.** Howells *v.* G. W. Ry. (1928), 97 L. J. K. B. 183; Stephen *v.* Cooper, [1929] A. C. 570. **Consd.** Dyson *v.* Vickers-Armstrong, Ltd. (1929), 142 L. T. 340; Quickfall *v.* London & North-Eastern Ry. Co. (1929), 142 L. T. 315; Shephard *v.*

London, Midland & Scottish Railway (1930), 143 L. T. 220; Taylor *v.* Lock (1930), 99 L. J. K. B. 245; Thomas *v.* Ocean Coal Co. (1931), 146 L. T. 183. **Refd.** Hannaby *v.* Llay Main Collieries, Ltd., [1931] 1 K. B. 602; Taylor *v.* Lock (No. 2) (1930), 144 L. T. 428; Dugdale *v.* Johnson & Phillips, Ltd. (1931), 24 B. W. C. C. 502; Muteham *v.* Gentle (F. W.) & Son (1931), 24 B. W. C. C. 310.

2425a. —— Workman walking along line—Short cut.]—An electrician was employed in the erection of an overhead cable to convey electrical current across country. The work had reached a stage where the cable was being carried over a single line of railway. The workman entered his employment when he met his foreman in the morning, but he had to walk a mile & a half after meeting the foreman, to the spot where he had to work. The proper route to this spot was along a road, then along a footpath, & then across a field, but a considerable distance could be saved by walking part of the way along the railway line. The workman chose to trespass along the line, but, as a gale was blowing, he walked with his head down against the wind. He thus failed to notice the approach of a train which struck & killed him. The widow claimed compensation. The county ct. judge made his award for the widow on the ground that the workman was merely acting negligently in the course of his employment. The employers appealed:—*Held:* the workman was not employed to trespass on the railway, & the accident arose out of the added peril to which he had thereby exposed himself & not out of the employment. Appeal allowed.—STEPHENSON *v.* BRITISH INSULATED CABLES, LTD. (1930), 23 B. W. C. C. 549, C. A.

2426. *Add. Annotation:*—**Refd.** Taylor *v.* Lock (1930), 99 L. J. K. B. 245.

2426a. Alighting from train in motion.]—ALTOBELLI *v.* JOHN ELLIS & SONS, LTD., No. 2574a, *post.*

2430a. —— Taking short cut through danger area.]—The deceased workman was a general labourer employed by resps. as a stand-by man around a mechanical navvy to assist the engine-driver. During a short interval when he was not required at the navvy, he went away to a neighbouring kiln to warm his hands or to warm himself, which he was entitled to do. He returned to his proper place for his work by taking a "short cut" which brought him under the bucket of the navvy. This he had been warned by his employers not to do. As he was proceeding back to work by this "short cut," the engine-driver's foot slipped off the controls, with the result that the bucket fell on the workman's head & killed him:—*Held:* the workman was performing the work which he was employed to do in a way in which he was warned not to do it, but he was, nevertheless, doing something for the purposes of his employment. The case therefore came within Workmen's Compensation Act, 1925 (c. 84), s. 1 (2), & the widow was entitled to compensation.—BROTHERTON *v.* JACKSON (J. & A.) (1928), 98 L. J. K. B. 76; 140 L. T. 271; 21 B. W. C. C. 382, C. A.

2437. *Add. Annotations:*—**Consd.** Altobelli *v.* Ellis (1926), 136 L. T. 602; Clarke *v.* Southern Ry. (1927), 96 L. J. K. B. 572; Taylor *v.* Lock (No. 2) (1930), 144 L. T. 428. **Refd.** Davison *v.* Holmside & South Moor Collieries, Napper *v.* Lambton, Hetton & Joicey Collieries (1929), 140 L. T. 511; Dixon *v.* Ayresome S.S. Owners (1930), 99 L. J. K. B. 250; Taylor *v.* Lock (1930), 99 L. J. K. B. 245; Thomas *v.* Ocean Coal Co. (1931), 146 L. T. 183; Dugdale *v.* Johnson & Phillips, Ltd. (1931), 24 B. W. C. C. 502.

2437a. Attempt to board lorry in motion.]—Deceased workman at the time of the accident was twenty-five years old, & an active man. He was employed by resp. as driver of a motor steam lorry of about 7 tons burden, & a steersman was also employed on the lorry. On Apr. 12, 1929, whilst driving, he got down & went across a field, in which he had seen his father, to get some tobacco from him. After he had got the tobacco he relieved nature against the hedge, & joined the road some 300 yards in front of the lorry. He beckoned to the steersman, who then drove on at three miles an hour, & whilst it was moving the deceased attempted to get on, but fell & was run over by the hind wheel & killed. The steersman did not see what happened, but felt a bump when the lorry went over the deceased. There was a step about 17 inches from the ground, & then an iron platform 12 inches by 13 inches next to the small door leading into the cab where the driver sat. The door opened outwards on to the iron platform. There was no handrail or handle on the outside of the lorry to give any help to any one entering the cab. There was evidence that men got on to these lorries every day when going at three miles an hour. The question arose whether the accident arose out of & in the course of the employment. The county ct. judge held that it was a question of degree, & taking into consideration the speed of the steam lorry, its weight, its construction, & its accessibility whilst moving at three miles an hour, the deceased, in attempting to enter it & trying to get through the open door or clambering over it, added a hazard & needless peril to his employment, & was thereby doing something different in kind from what he was employed to do, & voluntarily exposing himself to a risk which was not reasonably incident to his employment; & therefore the accident did not arise out of & in the course of the employment:—*Held:* the county ct. judge had not misdirected himself in law & there was some evidence on which he could come to the conclusion he did, therefore his award could not be interfered with.—TAYLOR *v.* LOCK (No. 2) (1930), 144 L. T. 428; 23 B. W. C. C. 444, C. A.

2439a. Farm hand adjusting mower.]—A workman employed as a harvest hand on a farm was engaged in driving a two-horse mower with a cutting-blade for cutting the corn, & had occasion to replace a chain which had become detached from the back-band of one of the horses. He did not put the cutting-blade out of gear, but stood up from his seat on the machine & attempted to walk out on the pole between the horses in order to reach the detached chain. There was no express prohibition against walking on the pole, but

the customary & proper method of replacing a chain was to stop the mower, put the cutting-blade out of gear, fasten the reins, dismount from the machine & walk to the horses' heads. The weight of the workman on the pole caused the horses to start, setting the cutting-blade in motion. He fell on to the blade & was seriously & permanently injured. In a claim for compensation the arbitrator found that the injury sustained was not due to an accident arising out of the employment. On appeal by the workman it was held by the Second Division of the Ct. of Session that there was evidence on which the arbitrator could make that finding. The workman again appealed :—*Held :* the accident arose from an added peril to which the workman had voluntarily exposed himself & consequently did not arise out of his employment.—STEPHEN *v.* COOPER, [1929] A. C. 570 ; 98 L. J. P. C. 97 ; 141 L. T. 300 ; 45 T. L. R. 413 ; 73 Sol. Jo. 268 ; 22 B. W. C. C. 339, H. L.

Annotations :—**Apld.** Stephenson *v.* British Insulated Cables, Ltd. (1930), 23 B. W. C. C. 549 ; Thomas *v.* Ocean Coal Co. (1931), 146 L. T. 183. **Reld.** Quickfall *v.* London & North-Eastern Ry. (1929), 142 L. T. 315 ; Shephard *v.* London, Midland & Scottish Ry. (1930), 143 L. T. 220 ; Taylor *v.* Lock (No. 2) (1930), 144 L. T. 428 ; Mutcham *v.* Gentle (F. W.) & Son (1931), 24 B. W. C. C. 310 ; Race *v.* Postmaster-General (1932), 146 L. T. 489 ; Dugdale *v.* Johnson & Phillips, Ltd. (1931), 24 B. W. C. C. 502.

2439b. Riding bicycle along railway platform carrying heavy weight.]—A workman in the course of his employment had to take a mud-door from the ship on the repair of which he was engaged to get it repaired. The mud-door was a piece of metal about 9 in. by 4 in. & weighing 7 lb. to 8 lb. He walked with it down the pier to the shore-end where the repairing shop was, & when it was mended got on to a bicycle & rode along a platform on the east side of the pier reserved for passengers. A railway ran down the centre of the pier & on each side was a raised platform about 7 ft. wide, the one on the eastern side for passengers the other for traffic. Public notices were put up at the water end of the pier that the eastern platform was for pedestrians only, & at the other end that the western platform was for traffic only. The man fell in front of an approaching train & was killed. His widow claimed compensation as being dependent on the earnings of the deceased workman, but the county ct. judge held that she was not entitled, as though the accident arose in the course of the employment it did not arise also out of the employment, as the getting on the bicycle was an act which it was no part of his employment to hazard or do, & therefore the accident, not being within sect. 1 (1) of the Act, it was immaterial that in fact the act was done for the purposes of & in connection with the employers' trade or business, since before sect. 1 (2) was applicable, the workman must show that the act arose out of the employment within sect. 1 (1) :—*Held :* the riding of the bicycle along the pier was something different in kind from anything the man was required or expected to do in his employment, & such an act was outside of the sphere of the employment, consequently the accident did not arise out of the employment, & sect. 1 (2) of the Act of 1925 had no operation.—QUICKFALL *v.* LONDON & NORTH-EASTERN RY. CO. (1929), 142 L. T. 315 ; 22 B. W. C. C. 653, C. A.

2439c. Postman using motor cycle—Permission to use bicycle—Accident at level crossing.]—An auxiliary postman was employed to deliver letters in relief of his father who was sub-postmaster of a country post office. Ten years earlier the father had obtained permission to use a bicycle on the round. In the course of this round it was necessary to go across a level crossing. The son went on the round on a motor cycle & crossed the level crossing in front of an approaching train riding his motor cycle with the engine in gear. As he was crossing the engine of the train caught the motor cycle. He was thrown off & died of his injuries. His widow claimed compensation. At the arbn. it was conceded on behalf of the employer that the permission granted to the father to use a bicycle extended to the son, but it was also argued on the employer's behalf that the deceased workman by using a motor cycle instead of a pedal cycle had added a peril to his employment & was doing something different in kind from what he was employed to do. The county ct. judge found that the permission to use a bicycle did not cover the use of a motor cycle & found that the accident did not arise out of the employment. The widow appealed :—*Held :* the deceased workman by riding a motor cycle as he did at the level crossing was doing an act outside the scope of his employment.

Appeal dismissed.—RACE *v.* POSTMASTER-GENERAL (1932), 146 L. T. 489 ; 25 B. W. C. C. 24, C. A.

2440. *Add. Annotation :*—**Consd.** Poland *v.* Parr, [1927] 1 K. B. 236.

2446. *Add. Annotation :—As to* (1) **Reld.** James *v.* Penderyn Limestone Quarries (Hirwain) (1926), 20 B. W. C. C. 27.

2447. *Add. Annotations :*—**Apld.** Painter *v.* C. & S. L. Ry. (1926), 20 B. W. C. C. 157. **Reld.** Vickers *v.* Miners, Thames Steam Tug & Lighterage Co. *v.* Ingram (1927), 96 L. J. K. B. 490.

2448a. —— —— ——.]—A porter, after a gate of a train had been shut, got on to the small piece of platform outside the gate to talk to the gateman, &, as the train gathered speed very quickly, was carried into the tunnel &

PART XIV. SECT. 5, SUB-SECT. 2.—D. (c).

sq. *Farm labourer taking gun to shoot crows.*]—A man, who was employed by a farmer to do general work on the farm, was working in a potato field, grubbing potatoes. He was using, with the assistance of another man, a grubber, which was a machine drawn by two horses. He had taken his employer's gun from a storeroom in a house on the farm without his employer's permission, & he fired at a crow which flew down. He then placed the gun on the grubber, the gun shortly afterwards accidentally went off, & he received injuries from which he died. Evidence was given that a number of crows were in the field earlier in the day & that crows would injure the potatoes. The employer had a licence for the gun, enabling him to shoot over his own land. He did not use the gun himself & he had no ammunition. He never gave the workman permission to use the gun. The workman had no licence :—*Held :* the act of the workman in carrying a loaded gun was entirely different in kind from the class of acts which he was employed to do ; the risk occasioned by so doing was not a risk incidental to his employment ; & the workman was not acting in a manner which was reasonably within the contemplation of the parties when the contract of service was made, & accordingly that the accident did not arise out of the employment.—LOUGHREY *v.* MORRISON, [1930] 1. R. 93 ; 23 B. W. C. C. 660.—**IR.**

that was also a regulation ... to do what he was doing at the time of the accident. The county ct. judge held the accident did not arise out of the employment, & as the act that caused it was not done for the purposes of & in connection with the employers' trade or business, the accident was not to be deemed to have arisen out of the employment:—*Held:* there was evidence to support the award, & no misdirection.—PAINTER *v.* CITY & SOUTH LONDON RY. Co. (1926), 20 B. W. C. C. 157, C. A.

2449. *Add. Annotation:*—**Refd.** Taylor *v.* Lock (1930), 99 L. J. K. B. 245.

2452. *Add. Annotations:*—**Refd.** Durie *v.* Anchor-Donaldson Line (1925), 19 B. W. C. C. 512; Gorman *v.* Barclay Curle (1925), 19 B. W. C. C. 564.

2456. *Add. Annotations:*—**Consd.** Pruce *v.* Davey (1926), 136 L. T. 601; Robertson *v.* S.S. Appalachee, Rovira *v.* Same (1926), 136 L. T. 488; Moule *v.* Marmite Food Extract Co. (1927), 20 B. W. C. C. 446.

2460. *Add. Annotation:*—**Consd.** Taylor *v.* Lock (1930), 99 L. J. K. B. 245.

2460a. Farm labourer—Carting turf to own cottage.]—Applt. was employed by resp., his cousin, as a farm labourer. He had all his meals in the farmhouse & was paid 10*s.* a week. Resp. allowed him to cut turf & use it for his own purposes, & also allowed him to have the use of a horse & cart to cart the turf to his cottage. While so carting it, he was run into by a motor car & received serious injuries:—*Held:* the accident did not arise out of & in the course of applt.'s employment.—STANDEN *v.* SMITH (1927), 20 B. W. C. C. 305, C. A.

2460b. Leaving premises to purchase provisions.]—Deceased was employed as the only shop assistant in a shop, & used to have his tea in the shop & went to fetch the milk for his tea from across the road. The shop was left open during his tea hour if he liked. While crossing the road to get the milk, he was knocked down by a motor cyclist, & was killed. Deceased paid for his own milk for his tea, & if he chose to might have got his tea out:—*Held:* the injury having occurred at the time when deceased had left the place of & the course of his employment to get the milk for his tea at his own cost for his own purposes, the accident did not arise out of & in the course of his employment, as he was not within the test laid down in *Parker* v. *Black Rock*), No. 2456, & by LORD ATKINSON in *St. Helens Colliery Co., Ltd.* v. *Hewitson*, No. 2364.—PRUCE *v.* DAVEY (1926), 136 L. T. 601; 20 B. W. C. C. 237, C. A.

2472. *Add.* Edwards *v.* Colliery Co., James *v.* Jenkins *v.* Same (1926), 136 L. T. 494. **Refd.** Hannaby *v.* Llay Main Collieries, Ltd., [1931] 1 K. B. 602.

——.]—A young girl was injured while cleaning a machine for pulping cheese. She was employed to dust bottles & sweep the floors & not to do any work in connection with the machine, & permission to help on the machine had been refused:—*Held:* as the girl was injured when doing something entirely different in kind from what she was employed to do, the accident did not arise out of or in the course of her employment, & Workmen's Compensation Act, 1923 (c. 42), s. 7, did not apply to such a case.—DENNISON *v.* KEILLER, LTD. (1926), 19 B. W. C. C. 409, C. A.

2483. *Add. Annotation:*—**Refd.** Clarke *v.* Southern Ry. (1927), 96 L. J. K. B. 572.

2486. *Add. Citation:*—136 L. T. 208.

2488a. Riding on engine.]—The duty of C., a workman in the employ of the S. Railway, required him to go from point A. to point B. on their premises. Instead of going by a public road he proceeded to walk along the permanent way, a shorter route, in disregard of an emphatic prohibition. It was a common practice, acquiesced in by the railway's responsible officers, though forbidden by their rules, for workmen passing between A. & B. to travel on an engine if one happened to be running at a convenient time. When C. had walked about three-quarters of the distance along the line an engine going in the same direction passed him at a low speed, &, to save himself the trouble of completing the journey on foot, he attempted to mount the engine in motion, with the result that he was seriously & permanently injured. The county ct. judge found that, although the prohibition was a very real one, C. was entitled to compensation, as he was acting "for the purposes of & in connection with" the railway's business within Workmen's Compensation Act, 1925 (c. 84), s. 1 (2):—*Held:* the above sub-sect. did not extend compensation to workmen who were not in their employment at all, &, as C. in going into a definitely prohibited area, had gone outside his sphere of employment, he could not recover.—CLARKE *v.* SOUTHERN RY. Co. (1927), 96 L. J. K. B. 572; 137 L. T. 200; 20 B. W. C. C. 309, C. A.

Annotations:—**Distd.** Brotherton *v.* Jackson (1928), 98 L. J. K. B. 76. **Consd.** Quickfall *v.* London & North-Eastern Ry. Co. (1929), 142 L. T. 315; Shephard *v.* London, Midland & Scottish Railway (1930), 143 L. T. 220. **Apld.** Stephenson *v.* British Insulated Cables, Ltd. (1930), 23 B. W. C. C. 549.

2489. *Add. Annotations:*—**Consd.** Edwards *v.* Gwauncaegurwen Colliery Co., James *v.* Same, Jenkins *v.* Same (1926), 96 L. J. K. B.

PART XIV. SECT. 5, SUB-SECT. 2.—E. (a).

st. *Workman standing by open door of railway carriage—In disobedience of notice.*]—*Held:* the notice was framed for securing the safety of passengers in general, & not of workmen, & the employer was liable.—GREAT INDIAN PENINSULAR RY. Co. *v.* KASHINATH CHIMAJI (1927), I. L. R. 52 Bom. 45.—**IND.**

PART XIV. SECT. 5, SUB-SECT. 2.—E. (b) i.

sa. *Craneman neglecting to use safety ladder.*]—A craneman in charge of an electric crane climbed from his cabin, which was 16 feet above the floor of the works, to the top platform of the crane, in order to inspect the mechanism, as the crane had failed to act. Such inspection was part of his duty. The cabin was connected by an inside safety ladder with the top platform, around which, for the purposes of safety, was a handrail. The craneman's duties required him to return, on completion of his inspection, to his cabin. He attempted to descend from the platform by climbing over the handrail, & clambering down the outside structure, & in doing so he fell to the floor of the works, & was fatally injured:—*Held:* the arbitrator was entitled to hold that the accident did not arise out of the employment, as the workman was doing a prohibited act.—M'CORMACK *v.* STEWARTS & LLOYDS, [1930] S. C. 1038; 23 B. W. C. C. 576.—**SCOT.**

337; Jardine *v.* Steel Co. of Scotland (1926), 19 B. W. C. C. 726; Clarke *v.* Southern Ry. (1927), 96 L. J. K. B. 572. **Apld.** Stephen *v.* Cooper, [1929] A. C. 570. **Expld. & Folld.** Hannaby *v.* Llay Main Collieries, Ltd., [1931] 1 K. B. 602, C. A. **Refd.** Dixon *v.* Ayresome S.S. Owners (1930), 99 L. J. K. B. 250; Dyson *v.* Vickers-Armstrong, Ltd. (1929), 22 B. W. C. C. 551; Shephard *v.* London, Midland & Scottish Railway (1930), 143 L. T. 220; Race *v.* Postmaster-General (1932), 146 L. T. 489.

2492a. ——.]—Some miners had been conveyed from their work at the face to the shaft in a train of tubs provided by the employers. Some conveyance was necessary in order to enable the men to leave the pit within the limit of seven hours permitted for each shift. Subsequently the employers provided a "spake," *i.e.*, a train of special vehicles containing seats. On the occasion of the accident the driver in charge of the spake, for some purpose of his own, did what he had sometimes done before, namely, instead of using the spake used a train of tubs for conveying the miners, who knew that riding on tubs was prohibited, but did not complain. The train of tubs broke & overturned, & two of the miners were killed, & one was slightly injured:—*Held:* the prohibition was of the class that dealt with conduct within the sphere of the employment, & Workmen's Compensation Act, 1925 (c. 84), s. 1 (2), applied. It was necessary for the employers that the men should leave within a specified time, & the act was done for the purposes of the employers' trade or business, & compensation should be awarded to the dependants of the two miners who were killed, but not to the slightly injured miner, who was, for that reason, not covered by sect. 1 (2).—EDWARDS *v.* GWAUNCAEGURWEN COLLIERY CO., JAMES *v.* SAME, JENKINS *v.* SAME (1926), 96 L. J. K. B. 337; 136 L. T. 491; 20 B. W. C. C. 75, C. A.

Annotations:—**Consd.** Brotherton *v.* Jackson (1928), 98 L. J. K. B. 76. **Expld.** Hannaby *v.* Llay Main Collieries, Ltd., [1931] 1 K. B. 602. **Consd.** Dugdale *v.* Johnson & Phillips, Ltd. (1931), 24 B. W. C. C. 502. **Refd.** Mutcham *v.* Gentle (F. W.) & Son (1931), 24 B. W. C. C. 310.

2494. *Add. Annotations:—As to* (1) **Consd.** Hannaby *v.* Llay Main Collieries, Ltd., [1931] 1 K. B. 602, C. A. **Refd.** James *v.* Penderyn Limestone Quarries (Hirwain) (1926), 20 B. W. C. C. 27; Stephen *v.* Cooper, [1929] A. C. 570. *As to* (2) **Refd.** Mersey Docks & Harbour Board *v.* West Derby Assessment Committee, Bottomley *v.* West Derby Assessment Committee & Mersey Docks & Harbour Board, etc., [1932] 1 K. B. 40.

2494a. ——.]—A shunter was employed to accompany a short train & to get down to open gates, through which the train had to pass, & also to do the necessary shunting. He should have ridden in the front waggon, but used to ride by means of his coupling stick on the buffer so as to enable him to get off & on more easily. Whilst so engaged the train went over a stone & jolted him off, & the injury he received resulted in the loss of a leg. Riding on a waggon by means of a coupling pole was prohibited:—*Held:* the prohibition was not one defining the sphere of the man's employment, though the breach of it, apart from Workmen's Compensation Act, 1925 (c. 84), s. 1 (2), would have prevented the accident arising out of the employment. There was evidence to support the finding of the county ct. judge that the act done was for the purposes of & in connection with the employers' trade or business, & the accident, by sect. 1 (2), was to be deemed to arise out of the employment.—JAMES *v.* PENDERYN LIMESTONE QUARRIES (HIRWAIN), LTD. (1926), 20 B. W. C. C. 27, C. A.

Annotations:—**Apld.** Davison *v.* Holmside & South Moor Collieries, Napper *v.* Lambton, Hetton & Joicey Collieries (1929), 140 L. T. 511. **Consd.** Quickfall *v.* London & North-Eastern Ry. Co. (1929), 142 L. T. 315; Hannaby *v.* Llay Main Collieries, Ltd., [1931] 1 K. B. 602. **Refd.** Stokoe *v.* Mickley Coal Co. (1928), 138 L. T. 566.

2496. *Add. Annotations:—As to* (1) **Consd.** Ford *v.* Wellerman Bros. (1930), 99 L. J. K. B. 600. **Refd.** Edwards *v.* Gwauncaegurwen Colliery Co., James *v.* Same, Jenkins *v.* Same (1926), 96 L. J. K. B. 337.

2498. *Add. Annotation:*—**Distd.** Paleokas (or Pollock) *v.* Mount Vernon Colliery Co., [1931] A. C. 597.

2499. *Add. Annotations:—As to* (1) **Consd.** Edwards *v.* Gwauncaegurwen Colliery Co., James *v.* Same, Jenkins *v.* Same (1926), 96 L. J. K. B. 337; **Apld.** M'Corquindale *v.* Carnbroe Coal Co. (1926), 20 B. W. C. C. 689. **Consd.** Clarke *v.* Southern Ry. (1927), 96 L. J. K. B. 572. **Distd.** Wood *v.* Garscube Colliery Co. (1927), 20 B. W. C. C. 837; Brotherton *v.* Jackson (1928), 98 L. J. K. B. 76. **Refd.** Dennison *v.* Keiller (1926), 19 B. W. C. C. 409. **Expld.** Hannaby *v.* Llay Main Collieries, Ltd., [1931] 1 K. B. 602. **Apld.** Paleokas (or Pollock) *v.* Mount Vernon Colliery Co., [1931] A. C. 597. **Consd.** Stephenson *v.* British Insulated Cables, Ltd. (1930), 23 B. W. C. C. 549; Mutcham *v.* Gentle (F. W.) & Son (1931), 24 B. W. C. C. 310; Dugdale *v.* Johnson & Phillips, Ltd. (1931), 24 B. W. C. C. 502. **Refd.** Thomas *v.* Ocean Coal Co. (1931), 146 L. T. 183; Race *v.* Postmaster-General (1932), 173 L. T. Jo. 131. *As to* (2) **Apld.** Edwards *v.* Gwauncaegurwen Colliery Co., James *v.* Same, Jenkins *v.* Same (1926), 96 L. J. K. B. 337. **Consd.** James *v.* Penderyn Limestone Quarries (Hirwain) (1926), 20 B. W. C. C. 27; Carter *v.* British Thomson-Houston Co. (1927), 137 L. T. 329. **Apld.** Stokoe *v.* Mickley Coal Co. (1928), 138 L. T. 566. **Consd.** Stephenson *v.* British Insulated Cables, Ltd. (1930), 23 B. W. C. C. 549. **Refd.** Clarke *v.* Southern Ry. (1927), 96 L. J. K. B. 572. *Generally*, **Refd.** Davison *v.*

PART XIV. SECT. 5, SUB-SECT. 2.—E. (b) iii.

2498 iii. —— —— *Firing shots—Shot firer connecting cable with charge—Premature firing by miner.*]—*Held:* the shot firer was entitled to compensation.—WOOD *v.* GARSCUBE COLLIERY CO., LTD., [1927] S. C. 877; 20 B. W. C. C. 837.—**SCOT.**

b i. —— *Fireman converting electric detonator into fuse detonator.*]—*Held:* the workman, when injured, was doing an act not within the scope of his employment, &, even assuming it was done for the purposes of the employer's business, it was not an act to which Workmen's Compensation Act, 1923 (c. 42), s. 7, applied.—M'CORQUINDALE *v.* CARNBROE COAL CO., LTD., [1927] S. C. 14.—**SCOT.**

d i. *Allowing burning material to lie about mine.*]—*Held:* (1) a smouldering cigarette was "burning material" within Coal Mines General Regulations, 1913, r. 12; (2) there was evidence on which the arbitrator was entitled to hold that the workman had been guilty of serious & wilful misconduct, in respect that the facts showed that he had created a dangerous situation as a result of a deliberate act of the will.—SMITH *v.* WEMYSS COAL CO., [1928] S. C. 180.—**SCOT.**

Holmside & South Moor Collieries, Napper *v.* Lambton, Hetton & Joicey Collieries (1929), 140 L. T. 511; Quickfall *v.* London & North-Eastern Ry. Co. (1929), 142 L. T. 315.

2499a. —— —— **Order by unauthorised contractor.**]—Resps., coal masters, employed a contractor to win coal in a pit they were working, & the contractor employed applt. as a mine worker for that purpose. It having become necessary to fire certain shots in this pit, the shot-firing was entrusted by the resps. to a duly appointed fireman, who alone was authorised to fire the shots. The fireman, in breach of Explosives in Coal Mines Order of Sept. 1, 1913, allowed the contractor to couple up the cable employed in the process of shot-firing to the shot, the fireman then connecting the other end of the cable to the firing apparatus & firing the shot. After six shots had been fired in this way, the contractor, without informing the fireman, instructed applt. to couple up the cable to the seventh shot, & while applt. was in the act of coupling up the cable, the charge exploded & seriously & permanently injured him. Upon an application by applt. for compensation from resps., the arbitrator found in law that the accident arose out of & in the course of his employment & made an award in favour of the applt.:—*Held:* the accident to applt. did not arise out of or in the course of his employment, but arose out of & in the course of the prohibited act, & 1925 Act, sect. 6 (1), did not apply, as applt. was not employed on any work which the contractor had undertaken with the principal to execute.—PALEOKAS (OR POLLOCK) *v.* MOUNT VERNON COLLIERY CO., LTD., [1931] A. C. 597; 100 L. J. P. C. 225; 145 L. T. 460; 47 T. L. R. 485; 24 B. W. C. C. 283, H. L.

2501. *Add. Annotations:*—**Consd.** Edwards *v.* Gwauncaegurwen Colliery Co., James *v.* Same, Jenkins *v.* Same (1926), 96 L. J. K. B. 337. **Distd.** Carter *v.* British Thomson-Houston Co. (1927), 137 L. T. 329. **Consd.** Dugdale *v.* Johnson & Phillips, Ltd. (1931), 24 B. W. C. C. 502. **Refd.** James *v.* Penderyn Limestone Quarries (Hirwain) (1926), 20 B. W. C. C. 27; Stokoe *v.* Mickley Coal Co. (1928), 138 L. T. 566; Hannaby *v.* Llay Main Collieries, Ltd., [1931] 1 K. B. 602.

2506. *Add. Annotations:*—**Consd.** Stokoe *v.* Mickley Coal Co. (1928), 138 L. T. 566. **Refd.** Guest *v.* Gaston, [1927] 1 K. B. 1. **Refd.** Dugdale *v.* Johnson & Phillips, Ltd. (1931), 24 B. W. C. C. 502.

2506a. —— —.]—S., a stoneman, was employed by resps. driving a drift through rock by shotfiring & was found dead within three yards of the working face, his body being very badly damaged & his left arm practically blown off, he being a left-handed man. The drill & ratchet were found burnt, broken, & twisted a few yards from the working face, & the standard some way from the face & undamaged. The drill & ratchet together with the standard were used for drilling holes to put the shots in, but if a shot misfired & the stemming was drilled out the standard was not used. S. was a licensed shot firer, & his duty would be to deal with the case of a misfire, but the use of a hole in which a shot had misfired was prohibited, as also the drilling out of it the stemming in order to put in another charge, it being directed that a fresh hole must be bored not less than a foot from the old hole. There was no evidence that there had been any attempt to drill a fresh hole. The county ct. judge held the man was killed whilst doing a prohibited act, but, as his motive was to save himself the trouble of drilling a fresh hole, he was not at the time of the accident doing an act for the purposes of & in connection with the employers' trade or business within Workmen's Compensation Act, 1925 (c. 84), s. 1 (2), & his dependant was not entitled to recover compensation:—*Held:* the personal motive of the man in doing the prohibited act was not a criterion as to whether he was doing it for the purposes of & in connection with the employers' trade or business, & as the man was engaged at the working face within the sphere of his employment he must be deemed to have acted for the purposes of & in connection with the employers' trade or business, &, though doing a prohibited act, he was brought back within sect. 1 (1), & compensation was payable as for an accident arising out of & in the course of the employment.—STOKOE *v.* MICKLEY COAL CO., LTD. (1928), 138 L. T. 566; 21 B. W. C. C. 70, C. A.

Annotation:—**Refd.** Davison *v.* Holmside & South Moor Collieries, Napper *v.* Lambton, Hetton & Joicey Collieries (1929), 140 L. T. 511.

2511. *Add. Citations:*—96 L. J. P. C. 17; 136 L. T. 66.

Add. Annotations:—*As to* (2) **Consd.** James *v.* Penderyn Limestone Quarries (Hirwain) (1926), 20 B. W. C. C. 27. **Apld.** Stokoe *v.* Mickley Coal Co. (1928), 138 L. T. 566. **Refd.** Davison *v.* Holmside & South Moor Collieries, Napper *v.* Lambton, Hetton & Joicey Collieries (1929), 140 L. T. 511. *Generally*, **Consd.** Thomas *v.* Ocean Coal Co. (1931), 146 L. T. 183.

2511a. —.]—THOMAS *v.* OCEAN COAL CO., LTD. (1932), 49 T. L. R. 57; 76 Sol. Jo. 849, H. L.

2512a. ——.]—By the Coal Mines Act, 1911 (c. 50), s. 43 (11), an official of a mine is permitted to travel on foot on a haulage road while the haulage is in motion, but by sect. 43 (12) of that Act is not permitted in the circumstances of this case to ride on the tubs. An overman, whose duties took him to all parts of the mine, was at some distance from the bottom of the shaft at the time when it was his duty to hand over his duties to another. He got into a moving tub for the purpose of riding to the person to whom he had to hand over his duties, & whilst so riding received injuries which caused his death. On a claim by his widow the county ct. judge found that the workman's act in riding on the tub was done for the purposes of & in connection with his employers' business, but it was an act which was not within the scope of his employment. He therefore made an award in favour of the employers. A shifter, in contravention of Regulation 25 (*a*), made under Coal Mines Act, 1911 (c. 50), got into an open train, which was being hauled along the way by a pony, without the permission of the manager. In consequence he received injuries which caused his death. On a claim by his widow, the county ct. judge made a similar award. Both appcts. appealed:—*Held:* the question of whether the workman

was acting within the scope of his employment at the time of the accident was one of fact, & there was evidence to support the finding that he was not. This being so, the accident did not arise out of & in the course of the employment, notwithstanding that the act of the workman was one done for the purposes of & in connection with his employers' business. The judge's decision was right & there was no misdirection.—DAVISON *v.* HOLMSIDE & SOUTH MOOR COLLIERIES, LTD., NAPPER *v.* LAMBTON, HETTON & JOICEY COLLIERIES, LTD. (1929), 140 L. T. 511; 45 T. L. R. 188; 22 B. W. C. C. 51, C. A.

Annotation :—**Consd.** Hannaby *v.* Llay Main Collieries, Ltd., [1931] 1 K. B. 602.

2512b. —.]—By Coal Mines Act, 1911 (c. 50), s. 43 (2), no miner may ride on sets or trains of tubs where the haulage is worked by gravity or mechanical power. A workman, when signing on for work at a colliery where he was employed as a salvage man, was supplied with a summarised copy of this provision. Men-riding trolleys were provided for carrying the men up the dips at the end of their shift. The workman, with two other salvage men, was ordered in the middle of a shift to move twenty-six pipes from the bottom to the top of a dip, a distance of about seventy yards. Half the pipes were loaded & hauled up on a timber-trolley. The workman, instead of walking down to assist in loading the remainder, got into an empty tub attached to the descending timber-trolley. In the descent the tub became derailed by an accident in the haulage engine-house & the workman was killed. His widow claimed compensation. The county ct. judge found that the workman rode in the tub for the purposes of & in connection with his employer's business in that he did it to save time, & held that he was still within the scope of his employment, although acting in contravention of the statutory prohibition, inasmuch as the prohibition was only concerned with the mode of carrying out his work. An award having been made in favour of the dependant, the employers appealed :—*Held :* the question was one of degree & therefore one of fact for the county ct. judge. In this case there was evidence to support the finding & no misdirection.—HANNABY *v.* LLAY MAIN COLLIERIES, LTD., [1931] 1 K. B. 602; 100 L. J. K. B. 353; 144 L. T. 490; 23 B. W. C. C. 403, C. A.

2512c. Riding on journey of trams.]—A miner & his son, working on the same shift, had to return to the pit shaft by the main drift along which journeys of trams were being hauled. While they were returning, the cable of a journey of trams broke & ran back some twenty yards. The son was then found to be pinned underneath the corner of an overturned tram & the father was found lying across another derailed tram, holding the signal rope & seriously injured. The boy died immediately & the father died two days later. The widow claimed compensation on behalf of herself & her surviving children. The county ct. judge found that the workman had been riding on the journey of trams contrary to the prohibition contained in Coal Mines Act, 1911 (c. 50), s. 43 (2), & consequently was not acting in the course of his employment at the time of the accident. He therefore made an award in favour of the employers. The dependants appealed :—*Held :* there was evidence to support the finding & no misdirection.—EDWARDS *v.* OCEAN COAL CO., LTD. (1929), 22 B. W. C. C. 254, C. A.

2515a. Workman entering prohibited place by mistake.]—A series of cubicles for electrical works were in course of being fitted up, some of which had been completed & contained live electrical machinery, & were locked. There was an express order to the workmen not to enter the completed cubicles. The cubicles being worked upon were quite close to those finished, being in the same series. The workman, a very competent man at his job, was very short-sighted, & was found electrocuted in one of the completed cubicles, he having unlocked the others. The county ct. judge drew the inference that the workman had entered a completed cubicle by mistake, & was there for the purposes of his employers' trade or business, & that the accident arose out of & in the course of his employment :—*Held :* there was evidence to support this inference of fact, & although the workman was acting contrary to a prohibition, the accident must be deemed to arise out of & in the course of the employment.—CARTER *v.* BRITISH THOMSON-HOUSTON CO., LTD. (1927), 137 L. T. 329; 20 B. W. C. C. 331, C. A.

2528. *Add. Annotation :*—**Consd.** Dixon *v.* Ayresome S.S. Owners (1930), 99 L. J. K. B. 250.

2535. *Add. Annotations :*—**Consd.** Hannaby *v.* Llay Main Collieries, Ltd., [1931] 1 K. B. 602. **Refd.** Edwards *v.* Gwauncaegurwen Colliery Co., James *v.* Same, Jenkins *v.* Same (1926), 96 L. J. K. B. 337.

2541. *Add. Annotation :*—**Refd.** Dixon *v.* Ayresome S.S. Owners (1930), 99 L. J. K. B. 250.

2544a. Operating machine without guard.]—An infant workman was in charge of a sausage machine which was perfectly safe to use when fitted with a guard, but unsafe without it. He admitted that he had been repeatedly told not to operate the machine without the guard, but nevertheless did so & in conse-

PART XIV. SECT. 5, SUB-SECT. 2.—F.

r i. ——.]—The chief engineer of a ship lying in harbour went ashore on leave on his own business. On returning to the ship in the evening, which was dark, he fell from the quay, & was drowned. The recorder found that he fell in either by stepping off the quay thinking that he was stepping on to the gangway, or in an attempt to get from the place where he reached the quay edge to the gangway & that appet. was entitled to compensation :—*Held :* there was ample evidence to support the finding.—TODD *v.* MACCALLUM, [1932] N. I. 130.—**IR.**

sv. *Fall from ship lying between barge & quay.*]—A canal barge, with a cargo of grain, which was to be transferred to a ship lying alongside the quay, drew up on the river side of this ship & lay alongside it secured in that position by hawsers. The only reasonable way the men on the barge had of going ashore was to cross this ship & then cross the gangway between it & the quay. In the interval before the discharging of the cargo began, the master of the barge went ashore to obtain refreshments, cash a cheque, & to use a lavatory, there being no lavatory on the barge. On his return, having crossed the ship he was proceeding to get from it to the barge, there being no gangway between the ship & the barge, when he slipped & fell into the river & was drowned. There was some evidence that the crew of the barge could not go ashore without the permission of the master of the barge, but there was no evidence that the master could not go ashore without leave from some superior officer of his employers :—*Held :* the accident arose out of & in the course of the employment.—LAWLOR *v.* GRAND CANAL CO., [1929] I.R. 623.—**IR.**

quence suffered an accident which resulted in the loss of all the fingers of his right hand. The county ct. judge found that the workman was employed to operate the machine with a guard which would have prevented any possibility of injury & was never employed to operate the machine without the guard. He therefore held that the accident did not arise out of & in the course of the employment, but was due to an "added peril." The workman appealed:—*Held:* there was evidence to support the findings & no misdirection.

Appeal dismissed.—MUTEHAM *v.* GENTLE (F. W.) & SON (1931), 24 B. W. C. C. 310, C. A.

2547. *Add. Annotations:—As to* (1) **Consd.** McCullum *v.* Northumbrian Shipping Co. (1931), 146 L. T. 124. *As to* (2) **Refd.** Durie *v.* Anchor-Donaldson Line (1925), 19 B. W. C. C. 512; Taylor *v.* Lock (1930), 99 L. J. K. B. 245. *Generally,* **Refd.** Simpson *v.* London, Midland & Scottish Ry. Co., [1931] A. C. 351.

2548. *Add. Annotations:*—**Apld.** Morrison *v.* S.S. Aboukir, Woods *v.* Same (1928), 21 B. W. C. C. 163. **Refd.** Black *v.* Hesperides S.S. Owners (1929), 22 B. W. C. C. 295; Simpson *v.* London, Midland & Scottish Ry. Co., [1931] A. C. 351; Northumbrian Shipping Co. *v.* McCullum (1932), 48 T. L. R. 568.

2552. *Add. Annotation:*—**Refd.** Dixon *v.* Ayresome S.S. Owners (1930), 23 B. W. C. C. 29.

2552a. Drowned when using boat not provided by employer.]—Five sailors got leave to go on shore. The bo'sun said that they were not bound to be back in the ship until 6.15 a.m. A launch had been provided to take the sailors on leave to the shore & back again, & the captain told the men that the last journey to the ship by the launch would be made at 8 p.m., & that if they came back later than that, they would have to find some other means of returning to the ship. The men desired to enjoy their leave till later than 8 p.m., & tried to arrange with the man who worked the launch to come for them at 10 p.m., offering to pay him 2*s.* each, but the launch never came for them at 10 p.m., so they got into the first boat handy, a dinghy, & borrowed a scull with which they propelled the dinghy from the stern. The dinghy, though the men were unaware of it, was rotten & sank, the result being that three of the five men were drowned:—*Held:* there was no contractual obligation on the deceased men to return to their ship by the boat they used, which was not provided by the employers, & as no such duty was on the men to use that boat, the accident by which they lost their lives was not in the course of performing some duty arising out of their contract of service, or, in other words, in the course of their employment.—ROBERTSON *v.* APPALACHEE (OWNERS), ROVIRA *v.* SAME (1926), 136 L. T. 488; 20 B. W. C. C. 57, C. A.

Annotations:—**Consd.** Morrison *v.* SS. Aboukir, Woods *v.* Same (1928), 21 B. W. C. C. 163; Black *v.* Hesperides S.S. Owners (1929), 22 B. W. C. C. 295.

2552b. Standing up in boat to take hold of gangway—Boat sinking.]—M. & W. were members of the crew of a ship lying in a river about twenty-five feet from the wharf. The ship provided no boat for the purpose of going to or from the shore. A game of football was being played on shore, at which the captain & some of the officers were present & in which M. took part. On returning to the wharf after the game M. hailed W., who got into a canoe at the foot of the gangway & fetched M. When M. got up to take hold of the gangway, the canoe filled, & both men were drowned. The county ct. judge held the accident was occasioned by a reasonable attempt to get hold of the gangway, & such attempt involved more than an ordinary risk of navigation to which any passenger would be exposed, & was an act specifically connected with his employment on the ship, & he made an award in favour of the dependants in both cases, on the ground that both men had been drowned in an accident arising out of & in the course of their employment:—*Held:* there was evidence to support the finding.—MORRISON *v.* ABOUKIR (OWNERS), WOODS *v.* SAME (1928), 21 B. W. C. C. 163, C. A.

2552c. Seaman crossing barges instead of using boat.]—A sailor who was on shore on leave from his ship returned to the ship by walking over barges which lay between it & the quay, &, while doing so, fell into the water & was drowned. The employers had provided a boat & boatman for the members of the crew to get from & to the ship, but most of the crew used the way over the barges, & that was acquiesced in by the officers:—*Held:* the sailor being under no obligation or duty to his employers to return by this means, was not in the course of his employment in so doing, & therefore the accident did not arise in the course of the employment.—BLACK *v.* HESPERIDES S.S. OWNERS (1929), 22 B. W. C. C. 295, C. A.

2552d. Fall from ship's bulwark.]—The deceased workman was a coal trimmer. On the day of the accident, he & the foreman of the trimmers had gone on resps.' steamship *A.* to place the chute in position, so that the coal could be shot into the hold. Having done that they both left the ship. The foreman stepped on to the ship's bulwark & from there he stepped on to the top of the handrail on the quay, a distance of about two feet, & then hopped on to the quay. The deceased workman followed, but in stepping off the ship's bulwark he slipped, fell, & was killed. After the accident the foreman noticed for the first time that there was a ladder provided to bridge the two-foot space between the ship's bulwark & the handrail on the quay, & it was admitted that stepping across from the ship's bulwark to the quay was not the right way of leaving the ship. The county ct. judge made an award in favour of the employers:—*Held:* the manner in which the deceased workman left the ship was not so far removed from anything contemplated by either party as to preclude the ct. from holding that the accident arose out of & in the course of the employment. The case must be remitted to the county ct. judge to assess compensation.—DIXON *v.* AYRESOME S.S. OWNERS (1930), 99 L. J. K. B. 250; 142 L. T. 455; 18 Asp. M. L. C. 115; 23 B. W. C. C. 29, C. A.

2557a. No order before accident—Liability to receive order to work on machine from which injury received.]—A workman employed in a brick factory had to work according to the

instructions of a foreman. He might be put to work at any moment on any machine, including a plunger machine. He was instructed by the foreman to work a pressing machine & then to collect broken bricks. After collecting the bricks he was asked by a fellow workman to work a plunger machine. While working on this machine he was injured by an accident which resulted in serious & permanent disablement. The county ct. judge found as a fact that although he was working on the plunger machine without instructions from the foreman, the act was one within the scope of his general employment, & held that as the act was done for the purposes of & in connection with the employers' business, the accident must be deemed to have arisen out of & in the course of his employment. The employers appealed: —*Held:* there was evidence to support the finding & no misdirection. Appeal dismissed. —THORNTON *v.* WILLIAM COCHRAN-CARR, LTD. (1931), 24 B. W. C. C. 411, C. A.

2559. *Add. Annotations:—As to* (3) **Apld.** Howells *v.* G. W. Ry. (1928), 97 L. J. K. B. 183. **Consd.** Dyson *v.* Vickers-Armstrong, Ltd. (1929), 142 L. T. 340. **Refd.** Jardine *v.* Steel Co. of Scotland (1926), 19 B. W. C. C. 726; Sparey *v.* Bath R. D. C. (1932), 48 T. L. R. 87.

2560. *Add. Annotation:*—**Consd.** Hannaby *v.* Llay Main Collieries, Ltd., [1931] 1 K. B. 602.

2566a. Handling electric cable before permit given.] —A linesman of some experience was employed by contractors in their work of laying overhead electric cables. The work was done in three stages, unrolling, gunning, & lifting the wire on to the insulators on the poles. He had been instructed by his foreman that cables were not to be fixed to the insulators on the poles until information had been received that the current had been turned off from the live wires already in position. The first two stages of the work having been completed, the workman without waiting for the necessary permit, proceeded to lift a wire into position on top of the poles. While doing so he struck a live wire & sustained severe burns from which he died. On a claim for compensation by the dependants, the county ct. judge though he found the foregoing facts & also that the workman was a quick workman who was anxious to proceed with the job, & that, provided care was used, there was no danger from the live wires, held that, as the workman was instructed not to work in the area where he met with his accident until the current had been turned off, the accident did not arise out of the employment within sect. 1 (1), & made his award in favour of the employers. The dependants appealed:—*Held:* on the facts found by the county ct. judge the accident must be deemed to have arisen out of the employment within sect. 1 (2). Appeal allowed. Case remitted for apportionment of compensation.— DUGDALE *v.* JOHNSON & PHILLIPS, LTD. (1931), 24 B. W. C. C. 502, C. A.

Annotation:—**Consd.** Thomas *v.* Ocean Coal Co., Ltd. (1931), 146 L. T. 183, C. A.

2569. *Add. Annotation:*—**Refd.** Gorman *v.* Barclay Curle (1925), 19 B. W. C. C. 564.

2572. *Add. Annotations:*—**Expld.** Edwards *v.* Gwauncaegurwen Colliery Co., James *v.* Same, Jenkins *v.* Same (1926), 96 L. J. K. B. 337. **Consd.** Clarke *v.* Southern Ry. (1927), 96 L. J. K. B. 572. **Refd.** James *v.* Penderyn Limestone Quarries (Hirwain) (1926), 20 B. W. C. C. 27; Stokoe *v.* Mickley Coal Co. (1928), 138 L. T. 566; Davison *v.* Holmside & South Moor Collieries, Napper *v.* Lambton, Hetton & Joicey Collieries (1929), 140 L. T. 511; Hannaby *v.* Llay Main Collieries, Ltd., [1931] 1 K. B. 602.

2573. *Add. Annotations:*—**Consd.** Dennison *v.* Keiller (1926), 19 B. W. C. C. 409. **Apld.** Stephen *v.* Cooper (1928), 21 B. W. C. C. 543; Davison *v.* Holmside & South Moor Collieries, Napper *v.* Lambton, Hetton & Joicey Collieries (1929), 140 L. T. 511. **Refd.** James *v.* Penderyn Limestone Quarries (Hirwain) (1926), 20 B. W. C. C. 27; Brotherton *v.* Jackson (1928), 98 L. J. K. B. 76. Stephenson *v.* British Insulated Cables, Ltd; (1930), 23 B. W. C. C. 549.

2574a. —.]—Deceased was a mosaic worker employed by applts., who had a flooring contract at K., & deceased was carrying out at K. mosaic work for the purposes of the contract. It was the duty of deceased to travel by train from L. to K. daily, & he was paid by applts. for the time occupied in so travelling, & his railway ticket was also paid for by applts. Deceased, having gone to sleep, got out of the train whilst it was in motion leaving K. & slipped on the platform as he landed, fell heavily on his back, his head striking the platform violently, & died of the injuries received:—*Held:* though deceased was in the course of his employment while travelling in the train, he was committing an illegal act in getting out of the train while in motion, & was doing an act which did not arise out of the employment, but under the above sect. it must be deemed to arise out of & in the course of the employment as having been done in pursuance of & for the purposes of the employers' trade or business, & the act done was not so contrary to law as to put the man wholly outside the sphere of the employment, & his widow was entitled to compensation.—ALTOBELLI *v.* JOHN ELLIS & SONS, LTD. (1926), 136 L. T. 602; 20 B. W. C. C. 190, C. A.

2578. *Add. Annotations:*—**Apld.** Lye *v.* British & Argentine Meat Co. (1923), Ltd. (1927), 20 B. W. C. C. 341; Moule *v.* Marmite Food Extract Co. (1927), 20 B. W. C. C. 446. **Refd.** Pruce *v.* Davey (1926), 136 L. T. 601.

2579. *Add. Annotations:*—**Consd.** Moule *v.* Marmite Food Extract Co. (1927), 20 B. W. C. C. 446. **Refd.** Gorman *v.* Barclay Curle (1925),

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1 i. *Workman fetching hot water for tea.*]—Following a practice or custom known to his employer, a worker left the job upon which he was working to go from one part of his employer's premises to another during his employer's time, in order to procure hot water for tea for the midday meal of himself & his fellow-workers; he was doing this for the purpose of more conveniently supplying them with the hot water which the employer habitually provided, generally as a matter of statutory obligation, sometimes without that compulsion, but in like case. Whilst on the way to the employer's boiler containing the hot water, he was injured by a motor car on a road on the employer's premises:—*Held:* the accident arose in the course of his employment, & he was entitled to compensation.—PEARSON *v.* FREMANTLE HARBOUR TRUST (1929), 42 C. L. R. 320.—**AUS.**

19 B. W. C. C. 564; Pruce *v.* Davey (1926), 136 L. T. 601.

2581. *Add. Annotation :*—**Consd.** Holden *v.* Premier Waterproof & Rubber Co. (1930), 144 L. T. 519.

2582. *Add. Annotations :*—**Consd.** Lawrence *v.* Matthews (1924), Ltd. (1928), 97 L. J. K. B. 758; Holden *v.* Premier Waterproof & Rubber Co. (1930), 144 L. T. 519.

2583. *Add. Annotation :*—**Refd.** Lawrence *v.* Matthews (1924), Ltd. (1928), 97 L. J. K. B. 758.

2586. *Add. Annotation :*—**Refd.** Holden *v.* Premier Waterproof & Rubber Co. (1930), 144 L. T. 519.

2589a. ——.]—A porter employed by furniture & upholstery makers claimed compensation for injury by accident arising out of an assault committed upon him in the course of his employment. Whilst engaged in loading furniture into a railway van outside resp.'s premises an altercation arose between appct. & the van driver in consequence of a suggestion made to the driver that he should assist in expediting the work. The driver struck appct. in the face, & so injured one of his eyes that it had to be removed. The county ct. judge dismissed the application, finding that though the assault was an accident, it was not one of the risks of appct.'s employment that he should be assaulted, & it was not the result of doing anything of service to his employer, & it was not an accident arising out of the employment :—*Held :* the decision was right, as there was evidence upon which the judge could support his decision, & no misdirection.—LEE *v.* BRECKMAN (S. & I.) & Co. (1928), 138 L. T. 610; 44 T. L. R. 235; 72 Sol. Jo. 154; 21 B. W. C. C. 32, C. A.

2589b. ——.]—A ship's fireman who had been on shore was carried back to the ship quite drunk. The ship sailed with the drunken man absent from his duty. An hour after the ship had sailed a fellow-workman was ordered to go & fetch him. The workman found the drunken man in his bunk & gave the message, whereupon the drunken man seized a razor & inflicted severe injuries on the workman. The injured man claimed compensation. The county ct. judge found that the workman was injured by accident arising out of & in the course of his employment & made an award in his favour. The employers appealed :—*Held :* there was evidence to support the finding & no misdirection. Appeal dismissed.—RENNIE *v.* DALGLEISH STEAMSHIPPING CO., LTD. (1930), 23 B. W. C. C. 501, C. A.

2594a. Attendant of urinal—Assault by drunkard.]—A workman employed as an underground urinal attendant in the East End of London, was struck in the eyes by a drunken sailor who refused to pay a penny for using a water-closet. As a result, the workman, who already suffered from partial loss of sight, was totally blinded. The county ct. judge heard no evidence as to the *quantum* of compensation, but decided as a point of law that he could not hold that the accident arose out of the employment in the absence of evidence that the employment exposed the workman to some risk of assault. He therefore made an award in favour of the employers. The workman appealed :—*Held :* the workman, by the nature of his employment, was exposed to risks to which ordinary members of the public were not exposed & the accident arose out of the employment.—SMITH *v.* STEPNEY CORPN. (1929), 22 B. W. C. C. 451, C. A.

Annotation :—**Refd.** Holden *v.* Premier Waterproof & Rubber Co. (1930), 23 B. W. C. C. 460.

2594b. Workman murdered by mad fellow-workman.]—A workman was murdered in a rubber factory by a fellow-workman, who suddenly developed homicidal mania. His father claimed compensation as a dependant. The county ct. judge made an award in his favour, holding that, though there was no special risk attached to the nature of the employment, the workman was bound by his duty to work near the man who ultimately went mad, & was therefore exposed to a risk not equally shared with the rest of the community. The employers appealed, & it was argued on behalf of the dependant on appeal that a risk was attached to the locality in which the workman was murdered by reason of the presence of a madman :—*Held :* the risk of being attacked by a madman did not arise out of the employment either by reason of the duties performed by the workman or by reason of the locality in which they were performed.—HOLDEN *v.* PREMIER WATERPROOF & RUBBER CO., LTD. (1930), 144 L. T. 519; 47 T. L. R. 169; 23 B. W. C. C. 460, C. A.

2597. *Add. Annotations :*—**Refd.** Holden *v.* Premier Waterproof & Rubber Co. (1930), 23 B. W. C. C. 460; Simpson *v.* London, Midland & Scottish Ry. Co., [1931] A. C. 351.

2602a. —— ——.]—A ship's fireman was found injured at midnight at the bottom of a roped-in hold, after having been helped on board three hours earlier in a hopelessly drunken condition. The accident happened when he was engaged in carrying food, it being no part of his duty to do so, on that night. The county ct. judge found that the workman must have crawled through the ropes round the hold without having any duty whatsoever to do so, & held the accident arose neither out of nor in the course of his employment :—*Held :* the judge could have come to no other conclusion on the evidence, & there was no misdirection.—WATSON *v.* ALEPPO (OWNERS) (1927), 20 B. W. C. C. 634, C. A.

2604. *Add. Annotation :*—*As to* (2) **Refd.** Lawrence earthquake, which was a general catastrophe, does not arise " out of " the employment unless the accident is due to a " locality risk " & the worker establishes that he was exposed to some special risk due to the incidents of his employment.—BORTHWICK (THOS.) & SONS (AUSTRALIA), LTD. *v.* RYAN, BORTHWICK (THOS.) & SONS (AUSTRALIA), LTD. *v.* BROOKER, NELSONS (N. Z.), LTD. *v.* PRENDERGAST, BRENNAN & MANNING *v.* ASHWELL, [1932] N. Z. L. R. 225.—**N.Z.**

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so. —— *Buyer at fruit market.*]—A worker employed by a wholesale fruit vendor at a market while recovering some fruit cases from some buyers was assaulted by one of the buyers & as a consequence his right eye had to be enucleated. The buyer who assaulted the worker was one of a very rough class of men. These men thieved from vendors in the markets, became quarrelsome & in a number of cases assaulted persons who recovered stolen goods :—*Held :* there was a special risk of assault attaching to appct.'s employment.—HARDER *v.* STEVENS (F. J.) & SON, [1930] W. C. R. 137.—**AUS.**

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sg. *Earthquake.*]—An accident caused to a worker in the course of his employment within Workers' Compensation Act, 1922, s. 3, as a result of a severe

atthews (1924), Ltd. (1928), 97 L. J. K. B. 758.

2695. *Add. Annotation :*—**Refd.** Lawrence *v.* Matthews (1924), Ltd. (1928), 97 L. J. K. B. 758.

2612a. Splinter in finger—Workman making packing-cases.]—A workman engaged in making wooden packing-cases complained to a welfare worker in his employers' works that he thought he had a splinter in the little finger of his right hand, but she could find nothing except a small black speck. It was a frequent occurrence for a workman to request the welfare worker to remove a splinter from a finger, & this particular workman had done so on several occasions. The finger became red & swollen, & five days later a doctor found a small bleb on it containing pus. The workman was feverish & was sent to hospital, where he died of septic pneumonia ten days after his complaint to the welfare worker. In his evidence the house-surgeon of the hospital said, " There was no sign of a foreign body. In my view there must have been some injury or crack at place of bleb. Crack might be microscopical or it might be a foreign body entering there. The latter is the most usual." There was no evidence that the workman did any work at home which might cause a similar injury. On a claim by the dependants, the county ct. judge found the following facts : (*a*) sepsis was due to the entry of a foreign body, the point of entry being indicated by the bleb, (*b*) deceased had previously got splinters in his hand, such as led to festering, (*c*) such a splinter would be likely to produce the condition of deceased's finger. From these facts he drew the inference that the deceased was infinitely more likely to get a splinter at work than elsewhere, & that he, therefore, died from an accident arising out of & in the course of his employment. The employers appealed :—*Held :* there was evidence to support the findings of fact, & the county ct. judge was entitled to draw from those facts the inference which he did.—HURST *v.* WALTER'S PALM TOFFEE CO., LTD. (1929), 22 B. W. C. C. 215, C. A.

2618a. Scratches—Furniture remover.]—A workman, employed to drive a lorry & move furniture, frequently received scratches in the course of his work, but usually took no notice of them. On returning from his work one evening he showed his wife that his fingers were scratched. He suffered great pain under the arm during the night & died within seven days of septic poisoning. He had no hobby or occupation at home which exposed him to scratches. The county ct. judge found that death was due to an injury arising out of the employment. The employers appealed :—*Held :* there was evidence to support the finding & no misdirection.—PIPER *v.* DE'ATH BROS. (1929), 22 B. W. C. C. 73, C. A.

2619. *Add. Annotations :*—**Apld.** Lawrence *v.* Matthews (1924), Ltd. (1928), 97 L. J. K. B. 758. **Consd.** Lee *v.* Breckman (1928), 138 L. T. 610 ; Holden *v.* Premier Waterproof & Rubber Co. (1930), 144 L. T. 519. **Refd.** Simpson *v.* London, Midland & Scottish Ry. Co., [1931] A. C. 351 ; Hutchings *v.* Devon County Council (1931), 24 B. W. C. C. 320.

2619a. ——.]—A commercial traveller was killed by a falling tree while motor-cycling upon his employers' business. The fall of the tree was apparently caused by a gale of unusual force :—*Held :* as deceased was brought into a danger zone by reason of his employment, the accident arose " out of the employment " within Workmen's Compensation Act, 1925 (c. 84), s. 1, & the question as to what caused the fall of the tree was irrelevant.—LAWRENCE *v.* GEORGE MATTHEWS (1924), LTD., [1929] 1 K. B. 1 ; 97 L. J. K. B. 758 ; 140 L. T. 25 ; 44 T. L. R. 812 ; 21 B. W. C. C. 345, C. A.

Annotation :—**Consd.** Holden *v.* Premier Waterproof & Rubber Co. (1930), 144 L. T. 519.

2624. *Add. Annotation :*—**Consd.** Holden *v.* Premier Waterproof & Rubber Co. (1930), 144 L. T. 519.

2627. *Add. Annotations :*—*As to* (1) **Consd.** Holden *v.* Premier Waterproof & Rubber Co. (1930), 144 L. T. 519 ; Simpson *v.* London, Midland & Scottish Ry. Co., [1931] A. C. 351 ; Sparey *v.* Bath R. D. C. (1930), 23 B. W. C. C. 263. **Refd.** Lawrence *v.* Matthews (1924), Ltd. (1928), 97 L. J. K. B. 758 ; Smith *v.* Stepney Corpn. (1929), 22 B. W. C. C. 451 ; Hutchings *v.* Devon County Council (1931), 24 B. W. C. C. 320 ; Rosen *v.* Quercus S.S. Owners (1932), 146 L. T. 559. *As to* (2) **Refd.** Lawrence *v.* Matthews (1924), Ltd. (1928), 97 L. J. K. B. 768.

2629. *Add. Annotation :*—**Consd.** Holden *v.* Premier Waterproof & Rubber Co. (1930), 144 L. T. 519.

2646. *Add. Annotation :*—**Consd.** Muscroft *v.* Stewarts & Lloyds (1928), 21 B. W. C. C. 274.

2647. *Add. Annotations :*—**Consd.** Davis *v.* London, Midland & Scottish Ry. Co. (1930), 23 B. W. C. C. 368. **Refd.** Hurst *v.* Walter's Palm Toffee Co. (1929), 22 B. W. C. C. 215. **Refd.** Hutchings *v.* Devon County Council (1931), 24 B. W. C. C. 320.

2647a. —— ——.]—A colliery repairer, fifty-eight years of age & apparently in excellent health, was scooping out a hole in the earth with an iron bar. After kneeling at this work for a minute or two he fell forward without a word & died some hours later without regaining consciousness. There was no *post mortem* or inquest as the medical man called to the deceased was alleged to have said at the time that death was due to " natural causes." At the arbn. brought by the widow the same medical man in his evidence said that he did not understand the meaning of the phrase " natural causes " in its legal significance, & that he now thought that the work was connected with the death. The county ct. judge, sitting with a medical assessor, said that on the evidence he was entitled in law to find either way, but having discussed the medical aspect with the medical assessor he did not feel that appct. had discharged the *onus* of showing that the death had any connection with the work on which deceased was engaged at the time of his collapse, & made his award in favour of the employer. The widow appealed :—*Held :* there was evidence to support the finding &

no misdirection. Appeal dismissed.—HAYMAN *v.* PENSFORD & BROMLEY COLLIERIES (1921), LTD. (1932), 25 B. W. C. C. 37, C. A.

2649. *Add. Annotations:*—**Apld.** Stroud *v.* Bath Gas Light & Coke Co. (1927), 137 L. T. 623. **Consd.** Stokoe *v.* Mickley Coal Co. (1928), 138 L. T. 566. **Apld.** Edwards *v.* Ocean Coal Co. (1929), 22 B. W. C. C. 254.

2651. *Add. Annotation:*—**Consd.** Simpson *v.* London, Midland & Scottish Ry. Co., (1931] A. C. 351.

2652. *Add. Annotation:*—**Refd.** Stroud *v.* Bath Gas Light & Coke Co. (1927), 137 L. T. 623.

2653a. —— ——.]—A workman in charge of a coke-conveyor was found entangled in the machinery, & died shortly after being released. There was no explanation of how he met with the accident, but when last seen shortly before he was acting in the course of his duty. The county ct. judge drew the inference from the facts before him that the workman was acting in the course of his employment:—*Held:* the county ct. judge was entitled to draw the inference he did, & there was no misdirection.—STROUD *v.* BATH GAS LIGHT & COKE CO. (1927), 137 L. T. 623; 20 B. W. C. C. 496, C. A.

Annotation:—**Consd.** Muscroft *v.* Stewarts & Lloyds (1928), 21 B. W. C. C. 274.

2656. *Add. Annotations:*—*As to* (1) **Consd.** Jones *v.* Cory (1926), 20 B. W. C. C. 251; Muscroft *v.* Stewarts & Lloyds (1928), 21 B. W. C. C. 274. **Refd.** Hayman *v.* Pensford & Bromley Collieries (1921), Ltd. (1932), 25 B. W. C. C. 37; James *v.* Partridge Jones & John Paton, Ltd. (1932), 25 B. W. C. C. 92.

2658. *Add. Annotation:*—**Apld.** Edwards *v.* Ocean Coal Co. (1929), 22 B. W. C. C. 254.

2660. *Add. Annotation:*—**Refd.** Gill *v.* Perrott (1928), 21 B. W. C. C. 9.

2665. *Add. Annotations:*—**Consd.** Raeburn *v.* Lochgelly Iron & Coal Co. (1926), 20 B. W. C. C. 637; Bradley *v.* London & North Eastern Ry. Co. (1931), 145 L. T. 30. **Refd.** Ferguson *v.* Shotts Iron Co. (1927), 20 B. W. C. C. 741.

2666. *Add. Annotations:*—**Consd.** Cole *v.* L. & & N. E. Ry. (1928), 21 B. W. C. C. 87. **Refd.** Ferguson *v.* Shotts Iron Co. (1927), 20 B. W. C. C. 741.

2668a. **Dispenser—Scratch.**]—Appct. was employed by two doctors in partnership as a dispenser, her duties being to fill medicine bottles & clean instruments. On Nov. 9, 1926, at 10.30 a.m., whilst so employed, she noticed that her right thumb was bleeding, but was not sure how the scratch which caused the bleeding had occurred, & she had not felt pain. She inferred that she must have knocked it at the time on a rough bit of wood at the side of the sink or on the edge of a cork box. She applied iodine, but as the bleeding did not stop she went to the assistant, who bandaged her thumb, & she continued at work until 11.30, when she went to one of the partners, who dressed the wound. On Nov. 16 she felt too unwell to go to work, & subsequently was in the infirmary until Jan. 18, 1927, suffering from septic poisoning:—*Held:* (1) there were sufficient facts proved before the county ct. judge to enable him to draw an inference one way or the other, so that there was no necessity for surmise, conjecture, or guess; (2) the employers had had knowledge of the accident, & notice was not necessary.—GILL *v.* PERROTT (1928), 21 B. W. C. C. 9, C. A.

2668b. **Workman moving gutters with sharp edges.**]—On May 16 a workman was employed as a labourer in moving semi-circular rain gutters with somewhat sharp edges, & returned home with a slight wound in his right shoulder. On the following day he told a fellow-workman that he was "feeling his shoulder," but he continued at work until May 21. A doctor was called in on May 23, but the workman rapidly grew worse & died on May 25 from septicæmia. The widow spoke to the employers' time-keeper of the death & gave formal notice on June 11. The county ct. judge held he was entitled to infer an injury resulting from an accident which arose out of & in the course of the employment, & also held the employers were not prejudiced by any delay in giving notice:—*Held:* there was evidence to support the findings, & no misdirection.—FLETCHER *v.* SINCLAIR IRON CO., LTD. (1928), 21 B. W. C. C. 62, C. A.

2675a. —— **Cut finger—Sheet metal worker.**]—An engineer's fitter was employed in cutting, shaping & filing metal sheets, a work likely to cause cuts to those engaged in it. The workman showed his finger to his mate at work on a Monday, when the mate said it looked inflamed. He then went to the ambulance room & returned with the finger dressed. Septicæmia set in, & after some weeks the workman died. His parents claimed compensation as dependants. At the hearing the workman's panel doctor said that he had seen the cut which was very small, & it was of a kind consistent with having been caused in numerous ways. Another doctor said that definite signs of inflammation after such a cut would appear in about twelve hours. The county ct. judge held that there was ground for comparing the balance of probabilities in this case, & that it was more probable that the workman sustained a cut while at work than at some other time, & made his award for the dependants. The employer appealed:—*Held:* on the medical evidence the balance of probabilities was against the dependants' contention, & they had not discharged the *onus* of proving that the accident arose out of & in the course of deceased's employment.—DAVIES *v.* ARMSTRONG-WHITWORTH (SIR W. G.) AIRCRAFT, LTD. (1932), 25 B. W. C. C. 227, C. A.

2676. *Add. Annotation:*—**Refd.** Simpson *v.* London, Midland & Scottish Ry. Co., [1931] A. C. 351.

2680. *Add. Annotations:*—**Consd.** Simpson *v.* London, Midland & Scottish Ry. Co., [1931] A. C. 351. **Refd.** McCullum *v.* Northumbrian

Shipping Co. (1931), 146 L. T. 124; Rosen *v.* Quercus S.S. Owners (1932), 146 L. T. 559.

2681. *Add. Annotations:*—**Consd.** Simpson *v.* London, Midland & Scottish Ry. Co., [1931] A. C. 351. **Refd.** Stroud *v.* Bath Gas Light & Coke Co. (1927), 137 L. T. 623.

2690a. —— —— **Chronic glaucoma.**]—A stoker, who was already blind in his left eye, complained that he had become completely blind. He alleged that a foreign body had entered his right eye, but at the time of the alleged accident he made no complaint of anything having entered his right eye. A doctor, who examined him, diagnosed the case as one of chronic glaucoma. The county ct. judge found that the workman was at all material times suffering from chronic glaucoma, & that there was no injury by accident arising out of or in the course of his employment:—*Held:* there was evidence to support the finding, & no misdirection.—WARSAWA *v.* WATSNESS (OWNERS) (1921), 21 B. W. C. C. 85, C. A.

2690b. —— —— **Cataract.**]—A foreman electrician had since the age of seven worn spectacles in order to save a permanent squint. On Apr. 16, 1926, an ignition tube burst, & some particles of dust & carbon struck his right eye. The right side of the face was blackened, but after his eye had been bathed & particles of carbon washed out, he continued at work until Jan. 1928, although from time to time the right eye became inflamed. In Feb. 1928, cataract was diagnosed, & in Oct. 1928, the right eye was excised. After the operation the workman resumed his work with the same employer & earned the same wages. On an application for compensation the county ct. judge said he was not satisfied that the workman had made out a *primâ facie* case of incapacity due to the accident in 1926 & did not call on the employers, but dismissed the application with costs. The workman appealed on the ground that the award was against the weight of evidence:—*Held:* the evidence justified the county ct. judge in finding that the incapacity was not due to the accident.—JONES *v.* PETTIFER (A. & E.), LTD. (1929), 22 B. W. C. C. 405, C. A.

2691. *Add. Annotations:*—*As to* (1) **Consd.** Johnson *v.* Warren (F.) & Co. (1928), 21 B. W. C. C. 411. **Expld.** Church *v.* Dugdale & Adams, Ltd. (1929), 22 B. W. C. C. 444.

2692. *Add. Annotation:*—**Consd.** Simpson *v.* London, Midland & Scottish Ry. Co., [1931] A. C. 351.

2693. *Add. Annotations:*—**Apld.** Stroud *v.* Bath Gas Light & Coke Co. (1927), 137 L. T. 623. **Consd.** Stokoe *v.* Mickley Coal Co. (1928), 138 L. T. 566. **Apld.** Edwards *v.* Ocean Coal Co. (1929), 22 B. W. C. C. 254. **Consd.** Simpson *v.* London, Midland & Scottish Ry. Co., [1931] A. C. 351.

2693a. —— **Railway guard travelling as passenger.**]—A railway guard, instructed to travel from Glasgow to Gourock in order to take charge of a train there, got into an empty compartment at Glasgow. On arrival of the train at Gourock he was missing, but articles belonging to the man were found on the seat of the compartment. He was afterwards found lying unconscious in a tunnel between Glasgow & Gourock at the left side of the direction of the train, & he died from a fractured skull without recovering consciousness. The compartment at Gourock had its left door shut but the window open. Upon a claim by his dependants for compensation, the arbitrator negatived violence & suicide, & found that the man met his death by falling accidentally from the window of the compartment, & on these facts he concluded that the accident arose out of & in the course of the deceased's employment & awarded compensation:—*Held:* the arbitrator was entitled on the facts found to draw the inference that the accident to the deceased arose out of as well as in the course of his employment.

The rule to be deduced from the authorities for application to unexplained accident cases is that where the evidence establishes that in the course of his employment the workman was properly in a place to which some risk particular thereto attaches, & an accident occurs capable of explanation solely by reference to that risk, it is legitimate, notwithstanding the absence of evidence as to the immediate circumstances of the accident, to attribute the accident to that risk, & to hold that the accident arose out of the employment, but the inference as to the origin of the accident may be displaced by evidence tending to show that the accident was due to some action of the workman outside the scope of his employment (*per* CUR.).—SIMPSON *v.* LONDON, MIDLAND & SCOTTISH RY. CO., [1931] A. C. 351; 100 L. J. P. C. 98; 144 L. T. 730; 47 T. L. R. 266; 75 Sol. Jo. 155; 24 B. W. C. C. 1, H. L.

Annotations:—**Apld.** Geary *v.* Mathew Brown & Co. (1931), 24 B. W. C. C. 210; McCullum *v.* Northumbrian Shipping Co. (1931), 146 L. T. 124. **Refd.** Hutchings *v.* Devon County Council (1931), 24 B. W. C. C. 320; Rosen *v.* Quercus S.S. Owners (1932), 146 L. T. 559.

2697. *Add. Annotations:*—**Expld.** Simpson *v.* London, Midland & Scottish Ry. Co., [1931] A. C. 351. **Refd.** Hutchings *v.* Devon County Council (1931), 24 B. W. C. C. 320; McCullum *v.* Northumbrian Shipping Co. (1931), 146 L. T. 124; Rosen *v.* Quercus S.S. Owners (1932), 146 L. T. 559.

PART XIV. SECT. 5, SUB-SECT. 4.—B. (i).

b 1. —— *Workman leaving work to relieve nature.*]—The premises of a coal importer adjoined the Grand Canal Docks. Although a considerable number of men were employed on these premises, no lavatory accommodation was provided, & it was customary for the employees to go across a paling on to a track about three feet wide which passed along the edge of the docks & to relieve nature either on the track, which was on the employer's premises, or at some little distance outside the premises at steps which led down to the water's edge. The dinner hour for the men was from 1 to 2 o'clock. One of the workmen was told by the foreman to return to work one day before 2 o'clock to do certain work, & he returned as ordered. But when he returned he found that the work, which it was intended he should do, was not required to be done. As it was then only a short time before the ordinary hour for resuming work, he remained on the employer's premises in a shed in the company of some of his fellow-workmen. He subsequently went out of the hut, making use of a slang expression used by the men when retiring to relieve nature. He was never seen alive again. Several hours later his body was found floating in the Canal Basin. The cause of death was, admittedly, drowning:—*Held:* there was evidence from which the judge could infer that when the workman left the hut he had gone for the purpose of relieving nature; there was also evidence that the death of the workman was caused by an accident; & that accident arose out of & in the course of the employment.—TRACEY *v.* KELLY, [1929] I. R. 634.—IR.

2702a. —.]—A fireman on a ship moored at Port A. in Brazil went to sleep on deck, a practice against which there was no prohibition. It was a warm, clear night. He slept some distance from the side of the ship. The lower of the two bars of the rail at the very edge of the deck had been removed for mooring purposes, leaving a space of about three feet between the upper bar & the deck. The workman was found missing in the early hours of the morning, & his body was found in the water on the following afternoon with a cut over one eye. No explanation could be given as to how he came to fall overboard. On a claim being brought by his dependants, the county ct. judge, on the facts proved before him, drew the inferences that the workman met his death by accident by going overboard in some manner unknown, & that that accident arose in the course of the employment, but he held that the dependants had failed to discharge the burden of proving that the accident arose out of the employment. He therefore made his award in favour of the employers. The dependants appealed :—*Held :* the county ct. judge had directed himself correctly in law, & his judgment on the facts could not be disturbed. Appeal dismissed. — ROSEN *v.* S.S. "QUERCUS" OWNERS (1932), 146 L. T. 559 ; 25 B. W. C. C. 5, C. A.

2706. *Add. Annotations :*—**Consd.** Muscroft *v.* Stewarts & Lloyds (1928), 21 B. W. C. C. 274. **Expld.** Simpson *v.* London, Midland & Scottish Ry. Co., [1931] A. C. 351. **Consd.** Hutchings *v.* Devon County Council (1931), 24 B. W. C. C. 320 ; Rosen *v.* Quercus S.S. Owners (1932), 146 L. T. 559. **Refd.** Gill *v.* Perrott (1928), 21 B. W. C. C. 9.

2710. *Add. Annotation :*—**Consd.** Muscroft *v.* Stewarts & Lloyds (1928), 2 B. W. C. C. 274.

2710a. — ——.]—A miner, who was known to be suffering from valvular disease of the heart, returned to work against his doctor's advice. His condition was such that he was liable to collapse or sudden death at any moment. He went down the mine at 10.30 p.m., & was alive & well at 3 o'clock. At 4 o'clock he was found dead in his stall, lying back as though asleep. There was no evidence of any fall of roof, & he had no pick in his hand. He was alone at the time of his death, & there was no evidence of what the man was actually doing :—*Held :* there was no evidence that the man's death was caused by any strain at work, & no evidence that death resulted from any injury by accident arising out of the employment.—MUSCROFT *v.* STEWARTS & LLOYDS, LTD. (1928), 140 L. T. 64 ; 21 B. W. C. C. 274, C. A.

Annotation :—**Refd.** James *v.* Partridge Jones & John Paton, Ltd. (1932), 25 B. W. C. C. 92.

2710b. —— ——.]—A plasterer's labourer was whitewashing while standing on a plank supported by trestles. He suddenly fell dead on to the floor. A *post-mortem* examination showed that he had been suffering from advanced disease of the heart. The widow claimed compensation. The county ct. judge held that there was no evidence of any accident. The dependant appealed :—*Held :* it was purely a question of fact for the county ct. judge & there was no misdirection. Appeal dismissed.—POGSON *v.* TUNNACLIFFE (1931), 24 B. W. C. C. 86, C. A.

2710c. —— ——.]—A miner was engaged in filling a tram, & in the course of his work had to reach over a tram to get a piece of coal with a pick. He reached over the tram, said "Oh !" twice, & died. The *post mortem* examination showed that he had been suffering from a large rupture of the left ventricle of the heart which burst & caused his death. The dependants filed a request for arbn. At the hearing a fellow-workman gave evidence that chipping coal was no heavy work & there was no unusual strain, while one of the medical witnesses said that the workman might just as well have died in his bed so far as physical condition went. The county ct. judge in his award stated that he was unable to find that the work contributed to the death, & made his award in favour of the employer. The dependants appealed :—*Held :* as to whether the workman's death was accelerated by the work he was doing in any material degree was a question of fact. The evidence supported the judge's decision & there was no misdirection.—DAVIES *v.* VIPOND (JOHN) & CO., LTD. (1932), 146 L. T. 498 ; 25 B. W. C. C. 47, C. A.

2713. *Add. Annotation :*—**Refd.** Ferguson *v.* Shotts Iron Co. (1927), 20 B. W. C. C. 741.

2714. *Add. Annotation :*—**Consd.** Flanagan *v.* Ackers Whitley (1926), 19 B. W. C. C. 399.

2720a. Hernia strangulated in fresh employment.]—On Feb. 6, 1930, a blacksmith ruptured himself while at work. A doctor showed him how to reduce the hernia & he was able to continue his work without any outward sign of incapacity until on May 14, 1930, he was discharged owing to slackness of trade. On June 25 he entered the employment of fresh employers as a blacksmith & on the same day, while lifting a steel bar weighing a hundredweight, strangulated the hernia & an immediate operation became necessary. The lift was not an abnormal one, but was in the ordinary course of a blacksmith's work. He was totally incapacitated for seven weeks & claimed compensation for that period from the previous employer. The county ct. judge found that the incapacity caused on June 25 was a direct consequence of the accident on Feb. 6. The employers appealed :—*Held :* it was a question of fact for the county ct. judge, & there was evidence to support the finding & no misdirection. Appeal dismissed.—BRADSHAW *v.* RICHARDSONS, WESTGARTH & CO., LTD. (1931), 24 B. W. C. C. 64, C. A.

Annotation :—**Consd.** Hutchings *v.* Devon County Council (1931), 24 B. W. C. C. 320.

PART XIV. SECT. 5, SUB-SECT. 4.—B. (j).

c 1. ——.]—FERGUSON *v.* SHOTTS IRON CO., LTD., [1927] S. C. 321 ; 20 B. W. C. C. 741.—**SCOT.**

PART XIV. SECT. 5, SUB-SECT. 4.—B. (k).

d 1. ——.]—Pltf., who was operated on for hernia some years previously, suffered a recurrence of the trouble while at his work :—*Held :* although, if there is an unexpected personal injury arising from some physiological condition set up in the course of the work, that may be described as an accident even when there is nothing unusual or particular which sets it up, yet the *onus* on pltf. in the present case of establishing that his condition was the result of a recent hernia had not been discharged.—AYLING *v.* WELLINGTON CORPN., [1930] N. Z. L. R. 337.—**N.Z.**

2721. *Add. Annotation :*—**Refd.** Simpson *v.* London, Midland & Scottish Ry. Co., [1931] A. C. 351.

2731a. Death from drinking caustic soda in tea.]—A workman was entitled to refresh himself with a cup of tea while he was working. Near to his place of work there was a bucket of caustic soda which was occasionally used to wash the walls. On drinking from his cup he felt a burning sensation & became totally incapacitated from the effects of drinking caustic soda. There was no evidence as to how, or by whom, the caustic soda could have been put into the cup. The county ct. judge held that the accident did not arise out of the employment, & made his award for the employer. The workman appealed :—*Held :* on the evidence no inference could be drawn that the accident arose out of the employment. Appeal dismissed.—GEARY *v.* MATHEW BROWN & Co., LTD. (1931), 24 B. W. C. C. 210.

Annotation :—**Consd.** Rosen *v.* Quercus S. S. Owners (1932), 146 L. T. 559.

2734a. -A miner was about to insert a fuse in a detonator in the course of his duties when the detonator exploded & injured him. The sheriff-substitute held that the cause of the explosion was not proved &, the workman having discharged any onus laid on him by proving that the explosion caused the injury, found that the accident arose out of the employment & made an award in his favour. The employers appealed. The First Division of the Ct. of Session by a majority affirmed the award. The employers appealed to the House of Lords :—*Held :* it followed from the facts of the case that the accident arose out of & in the course of the employment.—LOCHGELLY IRON & COAL Co., LTD. *v.* LINDORES (1929), 22 B. W. C. C. 376, H. L.

2735a. Seaman stooping in course of duty—Burst blood-vessel.]—The chief officer of a vessel, fifty-eight years old, while on duty on the bridge, stooped to get some string out of a cupboard in the course of his duty & then stated to the captain that he felt queer, sat down, & later fell unconscious on the bridge. He recovered consciousness in five minutes, but died about eight hours afterwards. There was no inquest or *post mortem*. At the hearing of a claim by the widow the doctors on both sides agreed that he died very probably from cerebral hæmorrhage. His own doctor, who had attended him for twenty-five years, said he was a healthy man, & there was no evidence of anything wrong with his heart. The county ct. judge found that the cause of death was the breaking of some blood-vessel due to the stooping which caused the fall which subsequently led to the death, but held that he would not be justified in making an award for the dependant. The dependant appealed :—*Held :* on the finding that death was due to the stooping, it followed that death resulted from injury by accident arising out of the employment.—HORE *v.* GENERAL STEAM NAVIGATION Co. (1929), 22 B. W. C. C. 100, C. A.

2737a. —— Fumigation of ship with sulphur—Gastritis from fumes.]—At 6 p.m. on July 30, 1930, a ship was fumigated with sulphur, all hatches being battened down. All hatches were opened at 2 a.m. on July 31, & at 8 a.m. a body of workmen came on board to remove gear. Among them was a man in good health & forty-six years old, who worked at a winch about two feet from one of the hatches & nearer to the fumes than any other of the workmen. The fumes from the sulphur were coming up the hatches at that time but were not bad. At midday the workman felt very ill & complained that it was due to the fumes. He vomited during the dinner hour, but worked in the afternoon on another ship. He worked on & off feeling very ill until Aug. 8, when he was sent to hospital suffering from gastritis. None of his fellow-workmen appeared to suffer from the sulphur fumes. At the subsequent arbitration the county ct. judge found, in accordance with medical evidence, that the illness was due to the fumes & also that the occurrence was an accident. He therefore made his award in favour of the workman. The employers appealed :—*Held :* there was evidence on which the judge could find that there had been personal injury by accident within the Act & there was no misdirection. Appeal dismissed.—BRADLEY *v.* LONDON & NORTH EASTERN RY. Co. (1931), 145 L. T. 30 ; 24 B. W. C. C. 41, C. A.

2737b. —— Farm bailiff hiring employer's horses.]—A farm bailiff hired horses from his employer for the purpose of moving his furniture to the residence appointed for him. The workman unbridled one of the horses in order to use the straps to tie up his furniture, but the horse took fright, knocked him down, & killed him. The county ct. judge found as a fact that the accident arose out of the employment & made an award in favour of the widow. The employer appealed :—*Held :* the question was one of fact for the county ct. judge. There was evidence to support the finding & no misdirection. Appeal dismissed. JACKSON *v.* FROST (1930), 23 B. W. C. C. 347, C. A.

2742. *Add. Annotation :*—**Refd.** Smith *v.* Wemyss Coal Co. (1927), 21 B. W. C. C. 483.

PART XIV. SECT. 5, SUB-SECT. 4.—B. (m).

h i. —— *No evidence how accident occurred—Deceased killed by railway wagons at place of work.*]—Deceased, who was employed by deft. co. to sweep up the coal dropping on the wharf alongside one of its ships which was discharging, was discovered some short distance away from the scene of his work jammed between two railway wagons & fatally injured, it being impossible to say how he got into the position in which he was found :—*Held :* there being evidence that deceased was seen at his work shortly before the accident, a presumption arose that he continued in the course of his employment.—ARCHIBALD *v.* UNION STEAMSHIP CO. OF NEW ZEALAND, [1930] N. Z. L. R. 179.—**N.Z.**

h ii. —— *Rheumatic fever—Working in damp room.*]—Appct. worked for three months in a damp room. She was in good health when she commenced to work there, but contracted rheumatic fever as a result of exposure to the damp conditions :—*Held :* she had suffered injury by accident.—RYAN *v.* NEWSOME (1929), W. A. L. R. 69.—**AUS.**

PART XIV. SECT. 5, SUB-SECT. 5.—A.

2740 iii. *Onus of proof on workman.*]—WILSON *v.* W. WINN & Co., LTD. (1928), 28 S. R. N. S. W. 470 ; 45 N. S. W. W. N. 145.—**AUS.**

PART XIV. SECT. 5, SUB-SECT. 5.—B. (b).

sx. *Workman on railway track.*]—Contributory negligence on the part of the employee does not exonerate the employer from liability to compensate the employee if the accident could have been avoided by deft. by the exercise of ordinary care &

2747. *Add. Annotation :*—**Refd.** Wood *v.* Garscube Colliery Co. (1927), 20 B. W. C. C. 837.

2757. *Add. Annotation :*—**Refd.** Wood *v.* Garscube Colliery Co. (1927), 20 B. W. C. C. 837.

2759. *Add. Annotations :*—*As to* (2) **Consd.** Hutchings *v.* Devon County Council (1931), 24 B. W. C. C. 320. **Refd.** Gilmour *v.* Garrallan Coal Co. (1926), 19 B. W. C. C. 683.

2766. *Add. Annotation :*—*As to* (2) **Consd.** Young *v.* Keeble (1928), 21 B. W. C. C. 294.

2768. *Add. Annotation :*—**Apld.** Thorpe *v.* Sadler, Sadler *v.* Thorpe (1927), 20 B. W. C. C. 488.

2768a. ——.]—A workman was struck on the elbow while passing through a swing door. He suffered great pain & had to see a doctor. At the end of a week symptoms of osteomyelitis showed themselves. The arm gradually grew worse & was finally amputated. The county ct. judge held the incapacity was due to the accident :—*Held :* there was evidence to support the finding, & no misdirection.—VINCE *v.* ABEL & IMRAY (1928), 21 B. W. C. C. 151, C. A.

2768b. ——.]—BRADSHAW *v.* RICHARDSONS, WESTGARTH & CO., LTD., No. 2720a, *ante.*

2768c. .]—A quarryman, aged thirty-seven & in good health, was working a pneumatic drill on a ledge when the drill jumped causing him to fall six feet off the ledge & then to roll down a slope of twenty feet to the bottom of the quarry. Although bruised on the legs he resumed work, but the foreman gave him a lighter job for the rest of the day. After work he bicycled 2½ miles home & slept well, but it was noticed that he was not his usual self. On his return to work the next morning the foreman took care not to put him to work on too high a spot. After a while he was missed & was found dead in a shallow stream eighty yards from his work to which he had probably gone to relieve nature. The medical witnesses agreed that he had not drowned but had died from shock. The county ct. judge held that there was no break in the chain of causation between the accident & death, & that falling into the stream did not amount to a *novus actus interveniens.* He therefore made his award in favour of the widow of the deceased workman. The employers appealed :—*Held :* it was a question of fact for the county ct. judge, & there was evidence to support the finding & no misdirection.—HUTCHINGS *v.* DEVON COUNTY COUNCIL (1931), 24 B. W. C. C. 320, C. A.

2783. *Add. Annotation :*—**Apld.** Gilmour *v.* Garrallan Coal Co. (1926), 19 B. W. C. C. 683.

2787. *Add. Annotations :*—**Consd.** Lewis *v.* Guest, Keen & Nettlefolds, Watkins *v.* Same, Tucker *v.* Same, Ingram *v.* Crawshay (1927), 90 L. J. K. B. 664. **Apprvd.** Birch Bros., Ltd. *v.* Brown, [1931] A. C. 605.

2790. *Add. Annotations :*—**Consd.** Evans *v.* Gilbie (1926), 96 L. J. K. B. 117 ; Wagstaff *v.* Gutta Percha Co. (1927), 20 B. W. C. C. 430 ; Williams *v.* Tredegar Iron & Coal Co. (1927), 96 L. J. K. B. 722 ; Stevens *v.* Birmingham Corpn. (1929), 22 B. W. C. C. 311 ; Wilsons & Clyde Coal Co. *v.* Burrows (1929), 141 L. T. 594 ; Bitch Bros., Ltd. *v.* Brown, [1931] A. C. 605. **Refd.** Wilsons & Clyde Coal Co. *v.* Burrows (1929), 22 B. W. C. C. 430.

2793. *Add. Annotations :*—**Refd.** Stevens *v.* Birmingham Corpn. (1929), 22 B. W. C. C. 311 ; Birch Bros., Ltd. *v.* Brown. [1931] A. C. 605.

2795. *Add. Annotation :*—**Refd.** Gilmour *v.* Garrallan Coal Co. (1926), 19 B. W. C. C. 683.

2797. *Add. Annotation :*—**Expld.** Hutchings *v.* Devon County Council (1931), 24 B. W. C. C. 320.

2799. *Add. Annotations :*—**Consd.** Werrin *v.* United National Collieries (1926), 20 B. W. C. C. 166. **Refd.** Bradshaw *v.* Richardsons, Westgarth & Co. (1931), 24 B. W. C. C. 64.

2803. *Add. Annotations :*—**Consd.** Lewis *v.* Guest, Keen & Nettlefolds, Watkins *v.* Same, Tucker *v.* Same, Ingram *v.* Crawshay (1927), 96 L. J. K. B. 664. **Distd.** Ruddy *v.* L. M. & S. Ry. (1929), 22 B. W. C. C. 138. **Consd.** Birch Bros. *v.* Brown, [1930] 2 K. B. 225. **Refd.** Williams *v.* Cwmaman Coal Co. (1927), 20 B. W. C. C. 476 ; Lyon *v.* Taylor Bros. (1928), 21 B. W. C. C. 415 ; White *v.* London & North-Eastern Ry. Co. (1929), 22 B. W. C. C. 613.

2811. *Add. Annotation :*—**Refd.** Fyfe *v.* Fife Coal Co. (1926), 20 B. W. C. C. 548.

2811a. -.]—Where an award was made terminating weekly payments, on the grounds that refusal to undergo certain treatment was unreasonable, & that the *onus* lay on the workman to prove that the proposed operation would not have cured him & that he was reasonable in refusing the operation :—*Held :* the *onus* lay on the employers to show that the workman would have recovered if he had undergone the treatment.—INDIA RUBBER, GUTTA PERCHA & TELEGRAPH WORKS CO., LTD. *v.* CHAPMAN (1926), 20 B. W. C. C. 184, C. A.

2815. *Add. Annotation :*—**Refd.** Cauldon Potteries *v.* Johnson (1926), 20 B. W. C. C. 42.

2822a. —— **Whether refusal unreasonable.**]—The question whether the refusal of a workman to undergo treatment is reasonable or unreasonable, is one of fact.—FYFE *v.* FIFE COAL CO., LTD. (1927), 138 L. T. 65 ; 20 B. W. C. C. 548, H. L.

2823a. —— ——.]—A workman strained the muscles of his back in the course of his employment & received compensation for five months. He also suffered from septic teeth. Acting on their doctor's certificate his employers stopped compensation & the workman filed a request for arbn. The employers answered that, if the workman was still incapacitated, the incapacity was due to natural causes. The workman's doctor had advised him to have his teeth out, as their condition retarded his recovery, but he had refused to have this done, & at the hearing the county ct. judge was advised by

diligence. Where, therefore, the finding of the comr. was that the workman was passing along a railway track contrary to the rules framed by deft. co., & was run over by an engine which was going faster than the prescribed speed :—*Held :* the accident was not directly attributable to the wilful disobedience of the workman within Workmen's Compensation Act, 1923, s. 3 (1) (*b*) (ii).—URMILA DASI *v.* TATA IRON CO. (1928), I. L. R. 8 Pat. 24.—**IND.**

PART XIV. SECT. 6, SUB-SECT. 1.

sy. *Possibility of future injury—Whether court may consider.*]—SAMSON *v.* WILLIAM BAIRD & CO., [1929] S. C. (Ct. of Sess.) 21.—**SCOT.**

the medical assessor that the condition of the teeth had perpetuated the injury. The county ct. judge found that the workman had acted unreasonably in not having his teeth removed, as by that means he would probably have fully recovered by the time that the employers had stopped compensation. He found "that appct. had failed to prove that his continued incapacity was due solely to the accident." He made an award of a penny a week, allowing the workman the costs of the arbn. The workman appealed from the award of a penny a week, & the employers cross-appealed on the question of costs:—*Held:* the county ct. judge was justified in awarding only a penny a week, because he found that he could not otherwise assess the quantum of incapacity due to the accident so long as the effect of the septic teeth remained, also the award as to costs could not be disturbed because he had found that there was some incapacity due to the accident.—RUDDY *v.* LONDON, MIDLAND & SCOTTISH RY. (1929), 22 B. W. C. C. 138, C. A.

Annotations:—**Folld.** Watts, Watts & Co. *v.* Hole (1930), 23 B. W. C. C. 119. **Refd.** Sedgwick *v.* Leeds Forge Co. (1930), 23 B. W. C. C. 144.

2831. *Add. Annotations:*—**Consd.** Church *v.* Dugdale & Adams, Ltd. (1929), 22 B. W. C. C. 444; Dixon *v.* Sutton Heath & Lea Green Colliery, Ltd. (1929), 22 B. W. C. C. 521. **Refd.** Johnson *v.* Warren (F.) & Co. (1928), 21 B. W. C. C. 411.

2831a. ——.]—A miner received an injury to the spine, which caused paralysis of the lower part of the body. An operation was unsuccessful, & the injury was classed as incurable. The miner was taken to his home & suffered great pain. He committed suicide by cutting his femoral artery, & left a letter addressed to his wife explaining his act. The county ct. judge held the man was not insane when he committed suicide, & death had not resulted from the injury:—*Held:* it was a question of fact, as to which there was evidence to support the finding, & there was no misdirection.—BEVAN *v.* LANCASTERS STEAM COAL COLLIERIES (1927), 20 B. W. C. C. 241, C. A.

Annotation:—**Consd.** Church *v.* Dugdale & Adams, Ltd. (1929), 22 B. W. C. C. 444.

2833. *Add. Annotations:*—*As to* (2) **Refd.** Bevan *v.* Lancasters Steam Coal Collieries (1927), 20 B. W. C. C. 241. *Generally*, **Consd.** Johnson *v.* Warren (F.) & Co. (1928), 21 B. W. C. C. 411; Church *v.* Dugdale & Adams, Ltd. (1929), 22 B. W. C. C. 444; Dixon *v.* Sutton Heath & Lea Green Colliery, Ltd. (1929), 22 B. W. C. C. 521.

2836. *Add. Annotation:*—**Refd.** Johnson *v.* Warren (F.) & Co. (1928), 21 B. W. C. C. 411.

2836a. ——.]—A workman while leading a horse was badly injured by the animal falling on him. He did no work for two years, & then committed suicide. He had received medical attention throughout the two years. On a claim made by the widow for compensation, the county ct. judge found that the workman was not insane when he committed suicide, & that death did not result from the injury, & made an award in favour of the employers. The widow appealed:—*Held:* there was evidence to support the finding of fact & no misdirection.—JOHNSON *v.* WARREN (F.) & CO. (1928), 21 B. W. C. C. 411, C. A.

Annotations:—**Refd.** Church *v.* Dugdale & Adams, Ltd. (1929), 22 B. W. C. C. 444; Dixon *v.* Sutton Heath & Lea Green Colliery, Ltd. (1929), 22 B. W. C. C. 521.

2836b. ——.]—A baker suffered from dermatitis, which was pronounced incurable. He became depressed &, it was said, had delusions, one of which was that, by receiving weekly compensation, he was robbing his employers. Six months after being certified as suffering from dermatitis, he committed suicide. On a claim for compensation by his widow, as dependant, the county ct. judge made an award in favour of the employers on the ground that death was not due to causes directly attributable to the accident:—*Held:* the award of the county ct. judge amounted to a finding of fact that there was no insanity. The finding was supported by the evidence, & there was no misdirection.—CHURCH *v.* DUGDALE & ADAMS, LTD. (1929), 22 B. W. C. C. 444, C. A.

Annotations:—**Consd.** Bradshaw *v.* Bickerstaffe Collieries (1931), 24 B. W. C. C. 451. **Refd.** Dixon *v.* Sutton Heath & Lea Green Colliery, Ltd. (No. 2) (1930), 23 B. W. C. C. 135.

2836c. ——.]—A miner was certified in Jan. 1926, as suffering from miner's nystagmus. He had been a cheerful man before the onset of the disease, but gradually became depressed & ultimately showed signs of marked nervous & mental derangement. He walked unsteadily & failed to recognise his friends. On the evening of Oct. 12, 1928, he attended on the certifying surgeon & was afterwards put on a tram, his home being not far from the tram terminus. A friend found him at a spot about 400 yards from the tram terminus & about 400 yards from his home, crawling on his hands & knees. The friend led him to a fence which led to his house. His body was subsequently found in a canal 2½ miles from where his friend had left him. The widow claimed compensation on the grounds that her husband committed suicide, that he committed suicide while he was insane, & that the insanity was a direct effect of the nystagmus. The county ct. judge made an award in her favour, in which he said, "I do not say he was insane, but that the suicide was due to mental derangement." The employers appealed:—*Held:* there was evidence to support the findings & no misdirection.—DIXON *v.* SUTTON HEATH & LEA GREEN COLLIERY, LTD. (NO. 2) (1930), 23 B. W. C. C. 135, C. A.

Annotation:—**Consd.** Bradshaw *v.* Bickerstaffe Collieries (1931), 24 B. W. C. C. 451.

2836d. ——.]—A miner was certified on Jan. 12, 1931, to be suffering from nystagmus. He complained of pains in the head & had been depressed for several months. On Feb. 21, 1931, he was found dead, having committed suicide by cutting his throat. His dependants made a claim for compensation. The county ct. judge, who sat with a medical assessor, found that the depression was due to the nystagmus & that the suicide was due to the depression, but held that there was no evidence of insanity which would entitle him to attribute the suicide to the accident. He therefore made his award in favour of the employer. The dependants appealed:—*Held:* the evidence supported the findings, & there was no misdirection.—BRADSHAW *v.* BICKERSTAFFE COLLIERIES (1931), 24 B. W. C. C. 451, C. A.

2839. *Add. Annotation :*—**Consd.** Lewis *v.* Guest, Keen & Nettlefolds, Watkins *v.* Same, Tucker *v.* Same, Ingram *v.* Crawshay (1927), 96 L. J. K. B. 664.

2840. *Add. Annotation :*—**Refd.** Lewis *v.* Guest, Keen & Nettlefolds, Watkins *v.* Same, Tucker *v.* Same, Ingram *v.* Crawshay (1927), 96 L. J. K. B. 664.

2849a. —— —— **Error in entry—Verbal notice correctly given.**]—The workman, a miner, met with an accident arising out of & in the course of his employment with applts. He went into his employers' ambulance room & received treatment. An entry was made in the accident book describing his injury as an injury to the left knee. The injury was in fact to the right knee, & the workman subsequently developed tubercular trouble in his right knee. In answer to a claim for compensation, the employers relied on the entry in the accident book & said that they had had no notice of the injury to the right knee, in accordance with Workmen's Compensation Act, 1925 (c. 84), s. 14. The county ct. judge found on the evidence that the workman's right knee was in fact injured by the accident & that the entry in the accident book was an error. He also held that the entry in the accident book referred to the accident & that notice of the accident was given orally by the workman in the ambulance room, & that that notice complied with sect. 14 (2); that the incorrect entry was no bar to the claim for compensation, & that the employers were not prejudiced, & he made an award in favour of the workman :—*Held :* the employers were not prejudiced by the incorrect entry in the accident book, as notice of the accident had been properly given to them in compliance with sect. 14. Therefore the award of the county ct. judge must be affirmed.—Crouch *v.* Appleby Iron Co., Ltd. (1930), 143 L. T. 264; 23 B. W. C. C. 69, C. A.

2849b. Contents—All injuries need not be specified.]—The mere fact that notice has to be given does not imply that all injuries must be specified.

A workman gave notice of an accident, in which he complained of injury to his ribs, & his employers paid him compensation. He returned to work after two months. He then began to suffer with his hip, & eventually had to cease work on that account. His employers resisted a second claim for compensation, on the ground that no injury to the hip was specified in the notice of the accident. The county ct. judge found that the injury to the hip was due to the original accident, that the employers had not been prejudiced by any failure to mention the hip in the notice of accident, as they had paid compensation to the workman after an examination by their own doctor :—*Held :* there was evidence to support the findings, & no misdirection.—Wiles *v.* Ellerman's Wilson Line (1928), 21 B. W. C. C. 194, C. A.

2855. *Add. Annotation :*—**Consd.** Evans *v.* Pen-Maen-Mawr & Welsh Granite Co. (1931), 24 B. W. C. C. 443.

2856. *Add. Annotation :*—**Consd.** Evans *v.* Pen-Maen-Mawr & Welsh Granite Co. (1931), 24 B. W. C. C. 443.

2856a. —— —— ——.]—A workman cut his finger slightly. He continued at work for about a month, when his thumb became swollen & he had to go to the infirmary, where a week later he died of blood-poisoning. Notice of the accident was not given to the employers until a month after the workman's death. The county ct. judge found that notice of the accident had not been given as soon as practicable, & that the employers were prejudiced by the want of notice :—*Held :* it was a question of fact, as to which there was evidence to support the finding.—Evans *v.* Simpson (James) & Son (1926), 19 B. W. C. C. 407, C. A.

2856b. —— —— ——.]—On Jan. 31, 1927, a workman suffered an accident to his right thumb. He left work as a result of the accident, & a week later, on Feb. 7, notice of the accident was given to the employers on his behalf. The county ct. judge found that the notice was not given as soon as practicable after the accident, but he also found that the employers were not prejudiced in their defence by such want of notice :—*Held :* there was evidence to support the findings, & no misdirection.—Hinks *v.* Riscoe (James) & Sons (1927), 96 L. J. K. B. 1068; 20 B. W. C. C. 558, C. A.

2857. *Add. Annotation :*—**Refd.** Evans *v.* Pen-Maen-Mawr & Welsh Granite Co. (1931), 24 B. W. C. C. 443.

2885a. —— ——.]—Gill *v.* Perrott, No. 2668a, *ante.*

2887. *Add. Annotation :*—**Refd.** White *v.* Leicestershire Colliery & Pipe Co. (1931), 24 B. W. C. C. 128.

2890a. —— ——.]—When notice of an accident has not been given as soon as practicable after the accident, it is a question of fact for the county ct. judge whether the employer is or is not prejudiced in his defence by the want of such notice, & if there was evidence upon which the judge could so decide, the ct. will not interfere.—Derry *v.* Great Western Ry. Co. (1926), 19 B. W. C. C. 405, C. A.

2890b. —— ——.]—Evans *v.* Simpson (James) & Son, No. 2856a, *ante.*

2890c. —— ——.]—Hinks *v.* Riscoe (James) & Sons, No. 2856b, *ante.*

2890d. —— ——.]—Fletcher *v.* Sinclair Iron Co., Ltd., No. 2668b, *ante.*

2900a. —— **Opportunity to examine workman lost.**]—On Nov. 29, 1929, applt. suffered some hurt to his right arm while in the employment of resps., but with assistance worked till the end of the shift. He went home & lay on a sofa, which he was unable to leave until he was removed to hospital on Dec. 9, 1929. He remained in hospital until May, 1930, where he was operated on nine times & became totally incapacitated. On July 31, 1930, he filed a request for arbn. proceedings claiming compensation under Workmen's Compensation Act, 1925. The stepfather & mother of applt. said that whilst he lay on the sofa he was not in

complete possession of his mental faculties, but the panel doctor gave evidence that his mentality was not affected until the third or fourth day & his temperature was normal. The question was raised whether before the accident the applt. suffered from osteo-myelitis or whether the osteo-myelitis had developed after the injury at the seat of the injury. No notice of the injury was given to the resps. until Mar. 1930: —*Held:* (1) the only conclusion on the evidence was that resps. were prejudiced in their defence by the delay in giving notice of the injury, as they were deprived of the opportunity of obtaining medical evidence as to applt.'s condition during the first three days of his illness upon the issue whether there had been pre-accident osteo-myelitis, & it was irrelevant to consider whether the employers would have been likely to take advantage of the opportunity or not; (2) the failure to give notice earlier was not occasioned by reasonable cause. Applt., therefore, having failed to give notice of the accident as soon as practicable after the happening thereof within sect. 14 (1) of the Act, was not excused from such failure on either of those two grounds, within the meaning of clause (*a*) of the proviso to that sub-section.—WHITE *v.* LEICESTERSHIRE COLLIERY & PIPE CO. (1932), 101 L. J. K. B. 617; 147 L. T. 303; 25 B. W. C. C. 189, H. L.

2912a. —— **& failure to hear counsel.**]—An agreement made between an injured workman & employers was embodied in an award given by a county ct. judge in 1929. By this agreement the employers agreed to pay a certain sum weekly to the workman on the basis of partial incapacity. In 1930 the employers applied for a review of the weekly payments before another county ct. judge, who sat with a medical assessor. At this hearing the judge at an early stage in the case expressed the view that the material question for him to decide was the present condition of the workman, & that he was not concerned with the condition in 1929. Counsel for the workman took no objection to this expression of opinion, & did not attempt to tender evidence as to the workman's previous condition. The judge then suggested that the workman should be examined by the medical assessor, which was done, neither counsel offering any objection. On receiving the report of the assessor the judge immediately proceeded to make an award ending the compensation on the ground that the workman had entirely recovered, without first calling on counsel to address him. No objection was taken by counsel for the workman, nor did he ask for an opportunity to address the ct. The workman appealed on the grounds (*a*) that the judge had refused to hear evidence as to the workman's condition in 1929, & (*b*) that he had given no opportunity for counsel to address him on behalf of the workman before making his award:—*Held:* counsel for the workman, having by his silence allowed the judge to think that he acquiesced in the manner in which the trial was being conducted, could not now raise objections which could, & should, have been raised in the ct. below.—NAVY, ARMY & AIR FORCE INSTITUTES *v.* LINDSEY (1930), 23 B. W. C. C. 172, C. A.

2917. *Add. Annotations:—As to* (1) **Consd.** Piper *v.* De'ath Bros. (1929), 22 B. W. C. C. 73. **Refd.** White *v.* Leicestershire Colliery & Pipe Co. (1931), 24 B. W. C. C. 128.

2918. *Add. Annotation:*—**Consd.** Evans *v.* Pen-Maen-Mawr & Welsh Granite Co. (1931), 24 B. W. C. C. 443.

2921. *Add. Annotations:*—**Refd.** Drewitt *v.* Britannic Assce. (1927), 137 L. T. 511; Soyer *v.* Johnson, Matthey (1927), 96 L. J. K. B. 1011.

2925. *Add. Annotation:*—**Refd.** Brown *v.* Aveling & Porter (1929), 22 B. W. C. C. 165.

2925a. —— **Erroneous entry in accident book as to limb injured—Verbal notice correctly given.**] —CROUCH *v.* APPLEBY IRON CO., LTD., No. 2849a, *ante*.

2930. *Add. Annotations:*—**Consd.** Drewitt *v.* Britannic Assce. (1927), 137 L. T. 511; Soyer *v.* Johnson, Matthey (1927), 96 L. J. K. B. 1011. **Apld.** Brown *v.* Aveling & Porter (1929), 22 B. W. C. C. 165. **Consd.** Halsey *v.* Erith Oil Works (1930), 23 B. W. C. C. 1; Sharrod *v.* Warwickshire Coal Co. (1929), 22 B. W. C. C. 599. **Refd.** Shotts Iron Co. *v.* Fordyce, [1930] A. C. 503; Templeton *v.* Coupe & Sons, Ltd. (1932), 146 L. T. 518.

2939. *Add. Annotations:*—**Consd.** Sharrod *v.* Warwickshire Coal Co. (1929), 22 B. W. C. C. 599. **Refd.** Evans *v.* Pen-Maen-Mawr & Welsh Granite Co. (1931), 24 B. W. C. C. 443.

2941a. —— ——.]—In Jan. 1925, a miner was struck in his right eye by a piece of coal. He never went off work, but from the first suffered pain in the eye which increased. A year after the accident a white patch appeared on the eye. In Apr. 1928, he was run over by an omnibus & prevented by that accident from working. He then began to go blind in the right eye. In Sept. 1928, he first gave notice to his employers of the accident to his eye in 1925, & subsequently claimed compensation. At the hearing medical evidence was given to the effect that the condition of the eye was consistent with the blow it received in 1925. The county ct. judge said in his award, that he was satisfied that the blindness was caused by the blow received in 1925, but that the workman never thought that the injury was in any way serious. He therefore held that, in those circumstances, there was reasonable cause for giving no notice of the accident until Sept. 1928. The employers appealed: —*Held:* there was misdirection; on the evidence the injury was serious to the man's knowledge from the first, & the workman had shown no reasonable cause for failing to give notice of the accident at the time it occurred.—SHARROD *v.* WARWICKSHIRE COAL CO., LTD. (1929), 22 B. W. C. C. 599, C. A.

2947. *Add. Annotation:*—**Consd.** Sharrod *v.* Warwickshire Coal Co. (1929), 22 B. W. C. C. 599.

2948a. ——.]—A quarryman, while lifting a granite block on Nov. 13, 1930, cracked one of his fingers which bled. He did not visit his employer's doctor who was stationed at the quarry to attend to injuries, but tied up the finger & continued at work. He worked

on Nov. 14 although in pain. On Nov. 15, a Saturday, he stayed at home & put a poultice on it. On Monday, Nov. 17, the finger was so swollen that he sent for his panel doctor who diagnosed septic poisoning & treated him accordingly. It was not disputed that the treatment prescribed by the panel doctor from Nov. 17 onwards was correct. The doctor asked the workman on Nov. 17 whether he had reported the accident & the workman replied that he had not. Notice of the accident did not reach the employer until Dec. 1 through the workman's friendly society. The employer contended that notice of the accident had not been given in accordance with the requirements of the Act, but the county ct. judge found as facts that Nov. 17 was the first practicable date on which notice could have been given as that was the first date on which the workman knew his finger was septic & did not until then realise he had received an injury for which he would be entitled to claim compensation. He further found that the employer was not prejudiced by want of notice after that date. He accordingly made his award in favour of the workman. The employer appealed :—*Held :* there was evidence to support the findings & no misdirection. Appeal dismissed.—EVANS *v.* PEN-MAEN-MAWR & WELSH GRANITE CO., LTD. (1931), 24 B. W. C. C. 443, C. A.

2949a. —— ——.]—WILES *v.* ELLERMAN'S WILSON LINE, No. 2849b, *ante*.

2951a. ——.]—WHITE *v.* LEICESTERSHIRE COLLIERY & PIPE CO., LTD. (1932), 101 L. J. K. B. 617 ; 147 L. T. 303 ; 25 B. W. C. C. 189, H. L.

2954. *Add. Annotations :—As to* (3) **Apld.** Dobson Steam Fishing Co. *v.* Lewis (1929), 22 B. W. C. C. 419. *Generally*, **Refd.** Hayter *v.* Southern Railway, [1931] 2 K. B. 274 ; Winfield *v.* London Midland & Scottish Ry. Co., [1931] 2 K. B. 284.

2956. *Add. Annotations :*—**Consd.** Telephone Manufacturing Co. *v.* Abel (1928), 21 B. W. C. C. 289. **Apld.** Dobson Steam Fishing Co. *v.* Lewis (1929), 22 B. W. C. C. 419. **Refd.** Hayter *v.* Southern Railway, [1931] 2 K. B. 274 ; Winfield *v.* London, Midland & Scottish Ry. Co. (1931), 145 L. T. 242.

2958. *Add. Annotation :—As to* (2) **Consd.** Telephone Manufacturing Co. *v.* Abel (1928), 21 B. W. C. C. 289.

2968a. —— ——.]—An injured workman was treated in hospital by a consultant of the hospital. She returned to work, but ceased work again owing to the injury. She was then requested by her employers to submit to an examination by the same consultant acting as their medical adviser. She refused, on the ground that he would be a necessary witness on her behalf in any arbn. proceedings. The employers applied for suspension of weekly payments until the examination had taken place. The county ct. judge granted the application, on the ground that the reason given for the refusal was itself unreasonable :—*Held :* to find that the refusal was unreasonable merely because the workman objected to being examined, at the instance of the employer, by a consultant at the hospital at which she had been treated, was not sufficient. The matter must be further inquired into to ascertain (1) whether this consultant was the only medical adviser available to the workman, & (2) whether the woman's case, if it went to arbn., would be imperilled by reference to this particular consultant.—TELEPHONE MANUFACTURING CO., LTD. *v.* ABEL (1928), 21 B. W. C. C. 289, C. A. ; *subsequent proceedings* (1929), 22 B. W. C. C. 84, C. A.

2968b. Reasonableness of refusal.]—An injured workman was treated in hospital by a consultant of the hospital. She returned to work, but ceased work again owing to the injury. She was then requested by her employers under Workmen's Compensation Act, 1925 (c. 84), s. 18, to submit to an examination by the same consultant acting as their medical adviser. She refused on the ground that he would be a necessary witness on her behalf in any arbn. proceedings. On an appln. by the employers under sect. 18 to suspend the weekly payments, the county ct. judge held that her refusal was unreasonable & granted the appln. On appeal the case was remitted for further inquiry to ascertain (*a*) whether this consultant was the exclusive adviser of the workman, (*b*) whether the workman's case, if it went to arbn., would be imperilled in any way by reference to this particular consultant, & (*c*) whether the employers' request that the workman should be examined by this consultant was reasonable. The county ct. judge found in favour of the employers on all points. The workman appealed :—*Held :* on the evidence the workman was reasonable in refusing to submit to examination by this consultant at the instance of the employer, & the county ct. judge's findings could not be supported.—TELEPHONE MANUFACTURING CO., LTD. *v.* ABEL (No. 2) (1929), 22 B. W. C. C. 84, C. A.

2970a. Voluntary payments under agreement—Employer's right to examination.]—Where a workman & employers come to an agreement whereby voluntary payments are in future to be made to the workman, in lieu of payments under an order of the ct., the em-

PART XIV. SECT. 7, SUB-SECT. 4.—A.

sb. *Application for reference to medical referee—Where justified.*]—*Held :* an arbitrator is entitled to refuse to allow a reference only where there is some exceptional difficulty or other sufficient reason referable to the particular case ; an arbitrator, who had, on the ground of the diversity of general medical opinion as to the nature & curability of miner's nystagmus, refused to allow the question whether a workman had recovered from miner's nystagmus to be referred to a medical referee & had allowed a proof, had misdirected himself with regard to the meaning of sect. 19 (2), & his refusal was not justified.—M'GUICKIN *v.* ADDIE & SONS' COLLIERIES, LTD., [1931] S. C. 620.—**SCOT.**

PART XIV. SECT. 7, SUB-SECT. 4.—B.

sd. *Extent of reference.*]—Employers, who had been paying compensation to a workman in respect of an injury through accident, applied for a reference to a medical referee under 1925 Act, s. 19, averring in their application that that workman had become fit for light work of a general character "as far as the accident is concerned." In the remit made by the sheriff-clerk, the medical referee was asked to certify as to the condition of the workman & his fitness for work, & also as to whether or to what extent his incapacity was due to the accident :—*Held :* the words "as far as the accident is concerned" in the application warranted the sheriff-clerk in including in the remit the question whether the workman's remaining incapacity was due to the accident.—MEECHAN *v.* BAIRD (WILLIAM) & CO., [1932] S. C. 468.—**SCOT.**

ployers are entitled to have the workman examined by their medical adviser under sect. 18.—DOBSON STEAM FISHING CO., LTD. *v.* LEWIS (1929), 22 B. W. C. C. 419, C. A.

2971. *Add. Annotation :—As to* (3) **Refd.** Kitchen *v.* Koch & Co. (1930), 23 B. W. C. C. 349.

2983. *Add. Annotation :—* **Refd.** Drewitt *v.* Britannic Assce. (1927), 137 L. T. 511.

2999. *Add. Annotations :—* **Consd.** Soyer *v.* Johnson, Matthey (1927), 96 L. J. K. B. 1011; Shotts Iron Co., Ltd. *v.* Fordyce, [1930] A. C. 503. **Apld.** Sharrod *v.* Warwickshire Coal Co. (1929), 22 B. W. C. C. 599.

2999a. ——.]—(1) The question whether the facts found by an arbitrator constitute reasonable cause for the failure of the injured workman to give notice of the accident or to claim compensation within the statutory period is a question of law, & therefore the arbitrator's decision on the question is open to review.

(2) In Apr. 1924, resp., while working as a drawer in applts.' employment, injured the muscles of his back. He immediately reported his injury to the proper officer, who, thinking the injury trivial, did not report it to headquarters. Resp. continued his work as a drawer at full wages, with the exception of a fortnight in Sept. 1927, for nearly four years, when he became totally incapacitated, & he had since been fit for light work only. His injury took the form of muscular rheumatism in the back & attendant sciatica. In Oct. 1928, he made a claim for compensation, & until that date applts. had no knowledge that he intended to make any claim against them. Throughout the whole period he suffered considerable pain, which he associated with the injury. He did not intend to claim compensation so long as he was able to earn full wages in applts.' employment. The arbitrator found in law that resp.'s failure to claim compensation timeously was without reasonable cause & refused compensation :—*Held :* resp. had proved that his failure to make a claim within the statutory period was occasioned by mistake or other reasonable cause.—SHOTTS IRON CO., LTD. *v.* FORDYCE, [1930] A. C. 503; 99 L. J. P. C. 101; 143 L. T. 200; 46 T. L. R. 354; 74 Sol. Jo. 400; 23 B. W. C. C. 73, H. L.; *affg.*, S. C. *sub nom.* FORDYCE *v.* SHOTTS IRON CO., LTD. (1929), 22 B. W. C. C. 911.

Annotation :—As to (1) **Consd.** White *v.* Leicestershire Colliery & Pipe Co. (1931), 24 B. W. C. C. 128. *As to* (2) **Consd.** Templeton *v.* Coupe (E. & J.) & Sons, Ltd. (1932), 146 L. T. 518.

3005. *Add. Annotation :—* **Consd.** Soyer *v.* Johnson, Matthey (1927), 96 L. J. K. B. 1011.

3006. *Add. Annotations :—* **Consd.** Drewitt *v.* Britannic Assce. (1927), 137 L. T. 511. **Consd.** Kitchen *v.* Koch & Co. (1930), 23 B. W. C. C. 349.

3013. *Add. Annotations :—* **Refd.** Drewitt *v.* Britannic Assce. (1927), 137 L. T. 511; Soyer *v.* Johnson, Matthey (1927), 96 L. J. K. B. 1011.

3016. *Add. Annotations :—* **Consd.** Drewitt *v.* Britannic Assce. (1927), 137 L. T. 511; Soyer *v.* Johnson, Matthey (1927), 96 L. J. K. B. 1011.

3019a. —.]—A french-polisher left his employment on Apr. 10, 1913, on account of inability to continue at work. A certifying surgeon certified on Oct. 10, 1931, that he was suffering from dermatitis produced by dust or liquids, but gave no date of disablement. Proceedings were begun on Nov. 17, 1931. The county ct. judge found that any delay in making the claim was due to the conduct of the employer, with whom the workman had been in constant touch since he left his employment, & held that there was therefore reasonable cause for such delay. He made his award for the workman. The employers appealed :—*Held :* there was evidence to support the finding & no misdirection. Appeal dismissed.—MAYNARD *v.* BERCOVITCH (1932), 25 B. W. C. C. 71, C. A.

3020. *Add. Annotations :—As to* (2) **Consd.** Soyer *v.* Johnson, Matthey (1927), 96 L. J. K. B. 1011. **Refd.** Kitchen *v.* Koch & Co. (1930), 23 B. W. C. C. 349.

3025a. ——.]—A workman, who had been employed by the same employers for thirty-nine years, received a jerk while helping to pull a barrow through loose sand on Jan. 5, 1926. He felt pain & reported that he thought he had ruptured himself, but he continued at work until June 17, 1927, when he became very ill after attempting to lift a heavy article & went to bed. On the following day he was found to have a hernia. He made a claim for compensation on Aug. 3, 1927, giving the date of the accident as Jan. 5, 1926. The employers contended that no claim had been made within six months of the alleged accident. The county ct. judge held that there was reasonable cause for failing to make a claim within six months, because the workman believed that the pain was temporary, & that he would soon recover. The employers appealed :—*Held :* there was misdirection, & the workman had shown no reasonable cause for failing to make a claim within six months.—

PART XIV. SECT. 8, SUB-SECT. 1.

sx. *Failure of employer to file prescribed statement—Effect of.*]—BLACKBURN *v.* MCINTOSH (N. B.), [1927] 1 D. L. R. 1084.—**CAN.**

PART XIV. SECT. 8, SUB-SECT. 4.—E.

3021 iv. ——.]—In Apr. 1924, a colliery drawer injured his back in assisting to replace a derailed hutch. With the exception of a fortnight in Sept. 1927, when he was off work for medical treatment, he continued at his usual occupation, earning full wages, until Mar. 1928, when he left his employment to undergo treatment for trouble arising from the injury. In Oct. 1928, while still incapacitated, he made a claim for compensation. In addition to the above facts it was established that the workman was suffering from muscular rheumatism & sciatica, & that these troubles arose from the injury in Apr. 1924; that ever since the date of the accident the workman had associated his trouble with the accident; but that he had not intended to claim compensation so long as he was able to earn full wages. It was also established that, immediately after the accident, the workman had notified the fireman of the injury, but that the latter, considering the injury trivial, had not reported it to his superiors, & that prior to Oct. 1928, the employers had no knowledge, either actual or imputed, of any intended claim :—*Held :* although the workman was throughout aware of his injury, the fact that he was able to earn full wages in his ordinary employment for four years after the accident showed that he was not unreasonable in assuming that the injury was not such as would cause him to become incapacitated; &, accordingly, that his delay in claiming compensation was due to a "reasonable cause."—FORDYCE *v.* SHOTT'S IRON CO., LTD., [1929] S. C. 813.—**SCOT.**

BROWN *v.* AVELING & PORTER, LTD. (1929), 22 B. W. C. C. 165, C. A.

Annotations :—**Folld.** Halsey *v.* Erith Oil Works (1930), 23 B. W. C. C. 1. **Refd.** Sharrod *v.* Warwickshire Coal Co. (1929), 22 B. W. C. C. 599 : Templeton *v.* Coupe & Sons, Ltd. (1932), 146 L. T. 518.

3025b. ——.]—A workman, on Jan. 6, 1927, trod on a piece of pipe, causing him to fall on his right arm. He made no claim until Aug. 1929. At the hearing he said : " I felt sick, but could not find the first-aid man. Fourteen days after I went to a doctor. I carried on with my work ; it was difficult & painful. . . . At the time I realised there was an accident. I thought a good deal of the injury, but I thought it would work off. I made no claim because I thought it would work off & there would be no necessity to make a claim. That was why I made no claim. I was able to earn my money." He continued working until Nov. 1928, when he went off work on account of bursitis until Apr. 1929. After Apr. he worked for two months, & then, owing to slackness of trade, was discharged. In Nov. 1929, a medical man reported that from Nov. 1928, to Apr. 1929, his incapacity was due to the bursitis, & in all probability the bursitis dated from the fall in Jan. 1927. The county ct. judge decided that on those facts he was bound to hold that the workman had shown no reasonable cause for not making the claim within six months of Jan. 6, 1927 :—*Held :* there was evidence to support the finding & no misdirection.—HALSEY *v.* ERITH OIL WORKS (1930), 23 B. W. C. C. 1, C. A.

Annotation :—**Refd.** Templeton *v.* Coupe & Sons, Ltd. (1932), 146 L. T. 518.

3025c. —.]—On Feb. 20, 1931, the left eye of a workman was injured by a chipping from a flagstone. He gave notice to his employer of the accident on Feb. 23, but neither he nor his employer considered the injury serious as he had frequently got chips in his eye without serious results. Though the eye gave trouble he was able to continue his work until May when he was discharged owing to slackness of work. He had been advised to go to an eye hospital in Apr., but he alleged that it was not until Aug. 20, 1931, that he realised that the condition of his eye was serious. He made a claim for compensation on Aug. 29. The employer denied liability on the ground that the claim had not been made within six months. At the arbn. the workman in cross-examination said, " At the end of June I knew the sight had gone." The county ct. judge stated that the workman was entirely honest in giving his evidence, although it contained flagrant inconsistencies, & he was convinced that the man did not realise his condition was serious until Aug. 20, 1931. He therefore found that there was reasonable cause for failure to make the claim within six months as throughout that period the injury had honestly been treated as a trivial one. The employer appealed :—*Held :* there was evidence to support the finding & no misdirection.—TEMPLETON *v.* COUPE (E. & J.) & SONS, LTD. (1932), 146 L. T. 518 ; 25 B. W. C. C. 56, C. A.

3029. *Add. Annotation :* — **Refd.** Drewitt *v.* Britannic Assce. (1927), 137 L. T. 511.

3030. *Add. Annotations :*—**Consd.** Sharrod *v.* Warwickshire Coal Co. (1929), 22 B. W. C. C. 599 ; Shotts Iron Co., Ltd. *v.* Fordyce, [1930] A. C. 503. **Refd.** Soyer *v.* Johnson, Matthey (1927), 96 L. J. K. B. 1011 ; Brown *v.* Aveling & Porter (1929), 22 B. W. C. C. 165.

3031. *Add. Annotation :* — **Apld.** Drewitt *v.* Britannic Assce. (1927), 137 L. T. 511.

3031a. ——.]—On Apr. 16, 1926, a workman fell & injured his knee. He was paid full wages, although incapacitated, until Sept. 3, when he was summarily dismissed from employment for misconduct. In the hope of being reinstated, he threatened to bring an action for wrongful dismissal, but made no claim under Workmen's Compensation Act, 1925 (c. 84), until two days after the statutory six months had expired. The county ct. judge found that the workman never intended to claim within the necessary period of six months, & there was no reasonable cause for the delay, & he refused to award compensation :—*Held :* the evidence supported the findings, & there was no misdirection.

When the workman knows that the injury he suffers from was occasioned by an accident giving him a right to compensation, & fails to make a claim within six months, if that failure was prompted by his own interests, & was not induced by any action of the employer which would lead him to believe he could get compensation without making a claim, he shows no reasonable cause (SCRUTTON, L.J.).—DREWITT *v.* BRITANNIC ASSURANCE CO., LTD. (1927), 137 L. T. 511 ; 20 B. W. C. C. 434, C. A.

Annotations :—**Apld.** Brown *v.* Aveling & Porter (1929), 22 B. W. C. C. 165. **Consd.** Shotts Iron Co. Ltd. *v.* Fordyce, [1930] A. C. 503. **Refd.** Halsey *v.* Erith Works (1930), 23 B. W. C. C. 1.

3033. *Add. Annotations :*—**Consd.** Holt *v.* Hobson & Sons (1930), 23 B. W. C. C. 242 ; Kitchen *v.* Koch & Co., [1931] A. C. 753.

3033a. Unwillingness to claim compensation.]—SHOTTS IRON CO., LTD. *v.* FORDYCE, No. 2999a, *ante.*

3033b. Expectation of compensation without necessity of making claim.]—In Apr. 1925, a chef severed the ligaments of his right hand in handling a dish which broke, but he continued his work at his full wages. His employers knew of the accident, but were not aware the chef could not do his full work. In July, 1926, he was dismissed, & in that month made a claim for compensation. The county ct. judge found that the workman did not refrain from making a claim because he formed the view that he would receive compensation should incapacity supervene in the future without the necessity of making a claim, & that the employers did nothing to encourage such a view, & there was no reasonable cause for not making the claim within six months of the accident :—*Held :* there was evidence to support the findings, & no misdirection.

There would be reasonable cause for not making a claim within six months, if the workman could prove that there was a tacit understanding that the employers knew all about the possibility of a claim & were prepared to give him compensation, even though his claim might fall outside the six months (LORD HANWORTH, M.R.).—SOYER *v.* JOHNSON, MATTHEY & CO. (1927), 96 L. J. K. B. 1011 ; 20 B. W. C. C. 504, C. A.

3035. *Add. Annotations :—As to* (1) **Consd.** Drewitt *v.* Britannic Assce. (1927), 137 L. T. 511. **Folld.** Soyer *v.* Johnson, Matthey (1927), 96 L. J. K. B. 1011. **Apld.** Sharrod *v.* Warwickshire Coal Co. (1929), 22 B. W. C. C. 599 ; White *v.* Leicestershire Colliery & Pipe Co. (1931), 24 B. W. C. C. 128. **Consd.** Templeton *v.* Coupe & Sons, Ltd. (1932), 146 L. T. 518. **Refd.** Brown *v.* Aveling & Porter (1929), 22 B. W. C. C. 165 ; Shotts Iron Co. *v.* Fordyce, (1930), A. C. 503.

3038a. Delay of certifying surgeon.]—KITCHEN *v.* KOCH (C.) & Co., No. 3815a, *post.*

3038b. Omission of date of disablement in medical certificate.]—A miner suffered from nystagmus in 1914 & again in 1919, but after each attack resumed his work underground. He again had to cease work owing to the same disease on Dec. 28, 1930. The employer & his insurers both knew by Feb. 5, 1931, that a claim was being contemplated by the workman for compensation as from this date. On Feb. 6 the workman obtained a certificate from a certifying surgeon, but it did not give any date for the commencement of the disablement. The workman filed an application for arbn. based on this certificate, but claiming compensation as from Dec. 28, 1930, for a recurrence of the attack in 1919, but when the arbn. came on in Apr. these proceedings were abandoned. The workman then obtained a fresh certificate in Aug. 1931, which gave the commencement of the disablement as Dec. 28, 1930. From this the employers appealed to the medical referee, who gave a certificate in accordance with that of the certifying surgeon, but stating that the workman was fit for surface work. Proceedings on the basis of these certificates were commenced on Oct. 19, 1931. At the arbn. the employers contended that the claim was out of time as it had not been made within six months from Dec. 28, 1930, & there was no reasonable cause for the delay. The county ct. judge made his award in favour of the workman, & ordered that the partial incapacity should be treated as total under the 1931 Act. The employers appealed :—*Held :* (1) on the evidence the workman had always intended to claim as from Dec. 28, 1930, to the knowledge of all parties. In view of this & that the certifying surgeon had omitted to fill in the date of disablement in the Feb. certificate, there was reasonable cause for the delay in making the claim ; (2) though the medical referee had certified only partial incapacity, the judge was at liberty on the evidence to make his award on the basis of total incapacity under sect. 9 (4) as amended by 1931 Act. Appeal dismissed.—WILLIAMS *v.* NEW BRITISH RHONDDA COLLIERY CO., LTD. (1932), 25 B. W. C. C. 75, C. A.

3044. *Add. Annotation :*—**Apld.** Delahunt *v.* Moody (1927), 21 B. W. C. C. 588.

3045. *Add. Annotation :*—**Apld.** Delahunt *v.* Moody (1927), 21 B. W. C. C. 588.

3047. *Add. Annotations :*—**Refd.** Woodrow *v.* Trawlers (White Sea) & Grimsby (1929), 141 L. T. 676 ; R. *v.* Webster, *Ex p.* Marshall (1931), 95 J. P. 226.

3055. *Add. Annotation :*—**Apld.** Pullen *v.* Enthoven (1927), 20 B. W. C. C. 248.

3056a. ——.]—Appct. was in receipt of a weekly payment on account of injuries received in the course of his employment. The employers gave notice of termination of the weekly payment, on the ground of recovery as certified by their doctor. The workman replied with a counter-certificate of his doctor. The matter was submitted to the medical referee, who certified that the man was fit for most forms of work. The employers ceased making the weekly payments, & the workman appealed to the county ct. judge as to the effect of the certificate. The judge, sitting with the same medical referee as assessor, who explained his certificate as being one of complete recovery, held the man was fit for work on the date when compensation ceased, but awarded compensation from the date of cessation of the weekly payment to the date of his award :—*Held :* (1) compensation was not payable after incapacity had ceased ; (2) the certificate of the medical referee was sufficient & conclusive.—PULLEN *v.* ENTHOVEN & SON (1927), 20 B. W. C. C. 248, C. A.

3056b. ——.]—In a reference to a medical referee made under Workmen's Compensation Act, 1925 (c. 84), s. 19 (2), the medical referee certified that the workman was fit to resume his ordinary occupation, but described it as being something different from what in fact it had previously been. The county ct. judge refused to treat the certificate as conclusive, & received evidence as to the nature of the respective occupations, the parties having objected to the certificate being sent back to the medical referee for explanation or correction :—*Held :* the certificate being ambiguous was not conclusive, & the parties having refused the opportunty of the ambiguity being explained by the medical referee, the judge was entitled to hear the evidence tendered & act upon it.—AUSTIN *v.* PARTINGTON STEEL & IRON CO., LTD. (1928), 21 B. W. C. C. 1, C. A.

3056c. ——.]—A stoneman in a colliery was certified by a medical referee to be suffering from miners' nystagmus, & unable to do work which involved stooping. The county ct. judge, after hearing evidence, interpreted that certificate as meaning that the workman was unable to do work which involved con-

PART XIV. SECT. 9, SUB-SECT. 1.

1 i. ——.]—The Workmen's Compensation Board has no jurisdiction over rights of action or proceedings in the Exchequer Ct. in Admlty.—DAGELAND *v.* S.S. CATALA, [1927] 4 D. L. R. 426 ; [1927] 3 W. W. R. 97 ; 38 B. C. R. 440.—**CAN.**

sa. *Control of Board—By court.*]—On construction of Workmen's Compensation Act (Accident Fund), R. S. A., 1922, c. 177, s. 13 :—*Held :* the jurisdiction of the ct. to interfere with acts of the board is excluded only with respect to acts within the jurisdiction of the board, & the board's jurisdiction is limited to "matters arising under this Act," & its regulations are to be for the purpose of "carrying out the provisions of this Act." Therefore where a regulation of the board goes beyond the authority which the Act confers on the board, the ct. can declare it, & an assessment based thereon, unauthorised & invalid. —R. *ex rel.* DAVIES *v.* F. W. MCDOUGALL CONSTRUCTION CO., LTD. (Alta.), [1929] 3 W. W. R. 650 ; [1930] 1 D. L. R. 621 ; 24 Alta. L. R. 338.—**CAN.**

PART XIV. SECT. 9, SUB-SECT. 3.

3044 i. *Position of judge—Sits as arbitrator.*]—DELAHUNT *v.* MOODY, [1928] I. R. 208 ; *subsequent proceedings,* 28 B. W. C. C. 939, P. C.—**IR.**

PART XIV. SECT. 9, SUB-SECT. 5.

3053 xv. ——.]—M'CREADIE *v.* DOULTON & Co., [1928] S. C. 29.—**SCOT.**

tinuous stooping, such as his old employment necessitated, & made an award on the basis of partial incapacity:—*Held:* the judge had properly treated the certificate as conclusive, & interpreted it rightly, & was justified in hearing evidence as to the amount of stooping that would incapacitate the man in order to make an award for the proper compensation.—TAYLDER *v.* LAMBTON, HETTON & JOICEY COLLIERIES, LTD. (1928), 21 B. W. C. C. 115, C. A.

3056d. —— **As to possibility of recurrence.**]—A medical referee, to whom a dispute as to the condition of a workman who had sustained injuries by accident arising out of & in the course of his employment had been referred under Workmen's Compensation Act, 1925 (c. 84), s. 19, after giving two certificates of partial recovery, certified that in his opinion the workman had completely recovered from the accident & was fit for his ordinary work:—*Held:* the medical referee must be taken to have directed his mind, not merely to the condition of the workman at the moment, but to the possibility of a recurrence of incapacity, & that his certificate was final & conclusive.

Where, therefore, upon an application by the employer to end the compensation, the workman lodged a minute informing the ct. that skiagrams taken since the last certificate of the medical referee had disclosed conditions not apparent on external examination, & that there was a reasonable probability of a recurrence of incapacity:—*Held:* it was not competent to the arbitrator, or, failing him, to the appellate ct., to direct an inquiry into the facts set forth in the minute, & that the only course open to the arbitrator was to end the compensation.—WILSONS & CLYDE COAL CO. *v.* BURROWS, [1929] A. C. 651; 98 L. J. P. C. 151; 141 L. T. 594; 45 T. L. R. 615; 22 B. W. C. C. 430, H. L.

Annotation:—**Consd.** Connor *v.* Cadzow Coal Co., [1932] A. C. 1.

3057a. **What amounts to ambiguity.**]—EVANS (RICHARD) & CO., LTD. *v.* GILBIE, No. 3541a, *post.*

3057b. —— ——.]—AUSTIN *v.* PARTINGTON STEEL & IRON CO., LTD., No. 3056b, *ante.*

3057c. **What amounts to.**]—A medical referee certified that a workman was fit for work as a stevedore, or at any other form of unskilled labour, but that occasionally in actions where a particularly strong grip was necessary he would be working at a small disadvantage as compared with his condition before the accident. The county ct. judge, contrary to his own opinion that the man was not fit for work as a stevedore, held that the certificate was conclusive against the workman:—*Held:* the certificate was unambiguous & there was no misdirection.—MONTGOMERY *v.* GENERAL STEAM NAVIGATION CO., LTD. (1929), 22 B. W. C. C. 48, C. A.

3058a. —— —— —— **No injustice caused.**]—The registrar of a county ct. made an order under 1925 Act, s. 19 (2), referring a dispute to a medical referee. The application to the registrar had been made by the employers *ex parte* without notice to the workman contrary to the provisions of Workmen's Compensation Rules, r. 57 (2). On appeal, all parties being then before him, the judge confirmed the order & dismissed the appeal on the grounds that the merits of this case required a reference to the medical referee & no injustice had been caused by the failure to comply with the rules:—*Held:* the judge had power, under County Ct. Rules, Ord. 54, r. 24, to deal with the matter in this way. Appeal dismissed.—RIXON *v.* ASHFORD HOSPITAL TRUSTEES (1931), 24 B. W. C. C. 518, C. A.

3059. *Add. Annotations:*—**Consd.** Somerville *v.* Barclay Curle (1925), 19 B. W. C. C. 536; Penman *v.* Caprington & Auchlochan Collieries (1926), 19 B. W. C. C. 604. **Refd.** Lafferty *v.* Darngavil Coal Co. (1926), 20 B. W. C. C. 671; Catton *v.* Ashwell & Nesbit, [1928] Ch. 484; Dugdale *v.* Johnson & Phillips, Ltd. (1931), 24 B. W. C. C. 502.

3061. *Add. Annotations:*—**Refd.** Lewis *v.* Tredegar Iron & Coal Co. (1929), 22 B. W. C. C. 268; Hands *v.* Great Western Colliery Co. (1930), 23 B. W. C. C. 477.

3061a. —— ——.]—A miner was certified in Dec. 1925, as suffering from miner's nystagmus, & was paid compensation. In Aug. 1926, the employers stopped compensation after serving notice under Workmen's Compensation Act, 1925 (c. 84), s. 12, on the ground that the workman no longer suffered from the disease. A counter-notice having been served, the issue was referred by the registrar to the medical referee, who certified that the workman was totally incapacitated, but that such incapacity was due to other causes than nystagmus. On an application by the workman for an arbitration in Jan. 1929, evidence was tendered that nystagmus had once more become active, but the employers raised the preliminary objection that the medical referee's certificate was conclusive against the workman, & destroyed the effect of the certifying surgeon's certificate of Dec. 1925. The county ct. judge upheld the objection & made an order dismissing the application for arbitration. The workman appealed:—*Held:* the certificate of a medical referee being only conclusive as to the matters therein certified, & miner's nystagmus being a recurrent disease, the certificate was not of itself a bar to the claim of the workman for compensation, & it was for the county ct. judge to decide whether there had been in fact any

3057 i. *Ambiguous report—Duty of judge to clear.*]—Employers, who had been paying compensation to a labourer in respect of an injury to his eye, served upon him a medical certificate to the effect that he had recovered; &, no counter-certificate having been received from him, they stopped payment of compensation on Apr. 5, 1927. In a subsequent application by the workman to have a memorandum of agreement recorded, the arbitrator, on the application of the employers, made a remit to a medical referee. On Feb. 2, 1928, the referee reported that the workman's condition was such that he was not "at present" debarred from doing labouring work. The arbitrator granted warrant to record the memorandum, but suspended compensation as from Apr. 5, 1927, until the further orders of the Ct.:—*Held:* the arbitrator was not entitled, on the evidence before him, to suspend compensation as from Apr. 5, 1927, &, in view of the circumstances disclosed, the capacity of the workman as between Apr. 5, 1927, & Feb. 2, 1928, should be inquired into by the arbitrator rather than by a further remit to the medical referee.—M'LELLAN *v.* THORBURN & SON, [1929] S. C. (Ct. of Sess.) 34.—**SCOT.**

recrudescence of the original disease.—LEWIS *v.* TREDEGAR IRON & COAL CO. (1929), 22 B. W. C. C. 268, C. A.

:—**Apprvd.** Edwards *v.* Penrhiceiber Navigation Colliery Co. (1931), 24 B. W. C. C. 117. **Refd.** Hands *v.* Great Western Colliery Co. (1930), 23 B. W. C. C. 477.

3068. *Add. Annotation :*—**Distd.** Parker *v.* London Brick Co. & Forders (1927), 20 B. W. C. C. 573.

3074. *Add. Annotation :*—**Folld.** Lewis *v.* Cammell, Laird & Co. (1929), 22 B. W. C. C. 410.

3076. *Add. Annotation :*—**Folld.** Lewis *v.* Cammell, Laird & Co. (1929), 22 B. W. C. C. 410.

3076a. —— ——.]—A stevedore earning 65*s.* a week injured his knee on Mar. 14, 1928, & remained totally incapacitated until Mar. 16, 1929. He was then given light work, but left it on Aug. 1, 1929, stating that he was once more totally incapacitated. Correspondence followed between the representatives of the workman & the representatives of the employer ; in the course of this correspondence the latter repudiated the suggestion that the workman was totally incapacitated but eventually agreed to pay certain sums to the workman as compensation, partly in the form of a lump sum for arrears & partly in the form of weekly payments for the future. In accordance with this agreement the workman on Jan. 21, 1930, signed a receipt agreeing to accept the sum, " being weekly compensation at the rate of £1 a week from Aug. 1, 1929, to Jan. 23, 1930." The wording of the receipt continued : " This weekly payment is to be continued during my partial disablement resulting from the accident in accordance with the provisions of the (Workmen's Compensation) Act, the amount of any payment due during decreased partial disablement to be settled hereafter." Weekly payments of £1 were paid to the workman under this agreement. On Nov. 5, 1930, the workman filed an original request for arbn. asking for compensation on the basis of total incapacity at 30*s.* a week from Aug. 1, 1929, and claiming the difference. The county ct. judge found that a binding agreement had been made between the parties as to the amount payable for partial incapacity, but on a finding that the workman was in fact totally incapacitated, he held that, though there had been no change in the workman's physical condition since Aug. 1, 1929, he could make an award for 30*s.* a week on the basis of total incapacity from that date, as the agreement did not purport to deal with anything but partial incapacity. On appeal by the employer the Ct. of Appeal held that the agreement dealt with the question of the extent of the incapacity as well as with the rate of compensation, & the judge could not disregard the agreement that the man was in fact only partially incapacitated, which was binding. They allowed the appeal & set the award aside with costs. The workman appealed to the House of Lords :—*Held :* the agreement precluded the workman from claiming compensation on the basis of total incapacity between Aug. 1, 1929, & Jan. 23, 1930, but it did not preclude him from applying for a review of the weekly payments paid under the agreement for any period subsequent to Jan. 23, 1930, on proof of " change of circumstances or knowledge " justifying such a review. The proceedings brought by the workman in the county ct. were misconceived & should have been by way of review & not by way of original arbn. Appeal dismissed with costs to applt. Declaration that order of Ct. of Appeal setting aside award to be without prejudice to right of workman to apply for review of weekly payments made after Jan. 23, 1930.—SMITH *v.* UNION CASTLE STEAMSHIP CO., LTD. (1932), 25 B. W. C. C. 176, H. L.

3081. *Add. Annotations :—As to* (1) **Apld.** Dodd *v.* Oceanic Steam Navigation Co. (1928), 21 B. W. C. C. 118 ; Tempus Shipping Co. *v.* Trott (1929), 141 L. T. 19. **Extd.** Hayter *v.* Southern Ry. Co. (1930), 100 L. J. K. B. 378 ; Winfield *v.* London, Midland & Scottish Railway (1931), 24 B. W. C. C. 158. **Refd.** Robinson *v.* Vickers-Armstrong (1929), 22 B. W. C. C. 171 ; Ruddy *v.* L. M. & S. Ry. (1929), 22 B. W. C. C. 138 ; Mockbill *v.* Homer City S.S. Owners (1929), 22 B. W. C. C. 260 ; Evans *v.* El Uruguayo S.S. Owners, Barlow *v.* Pacific Steam Navigation Co. (1930), 23 B. W. C. C. 383 ; Fairfield Shipbuilding Co. *v.* Harris (1931), 24 B. W. C. C. 110 ; White *v.* Winterton Pottery (Longton), Ltd., [1932] 2 K. B. 265. *As to* (2) **Refd.** Lafferty *v.* Darngavil Coal Co. (1926), 20 B. W. C. C. 671. *Generally*, **Refd.** Howarth *v.* Singleton (1926), 20 B. W. C. C. 136.

3086. *Add. Annotation :*—**Consd.** Parker *v.* London Brick Co. & Forders (1927), 20 B. W. C. C. 573.

3090. *Add. Annotation :—As to* (1) **Consd.** Hayter *v.* Southern Ry. Co. (1930), 100 L. J. K. B. 378.

3091. *Add. Annotations :—As to* (1) **Folld.** Parker *v.* London Brick Co. & Forders (1927), 20 B. W. C. C. 573. **Refd.** Cockerline (W. H.) & Co. *v.* I. R. Comrs. (1930), 16 Tax Cas. 1.

3096. *Add. Annotation :*—**Distd.** Parker *v.* London Brick Co. & Forders (1927), 20 B. W. C. C. 573.

3097. *Add. Annotation :*—**Folld.** Parker *v.* London Brick Co. & Forders (1927), 20 B. W. C. C. 573.

3098. *Add. Annotation :*—**Folld.** Parker *v.* London Brick Co. & Forders (1927), 20 B. W. C. C. 573.

3098a. ——.]—An infant workman lost his left arm below the elbow as a result of an accident. The employers admitted liability, & paid full compensation. On Nov. 5, 1926, the workman signed a receipt for payments in the form of an agreement, by which he agreed that the payments were to be continued only so long as he was totally disabled, but that the amount of payment in respect of any subsequent partial incapacity should be settled if & when the question arose. In Jan. 1927, he applied for registration of an agreement in the terms of Form 24, that the weekly payments should continue during partial or total incapacity or until the same should be ended or diminished in accordance with 1925 Act. The employers objected to that agreement being recorded, on the ground that the terms of the real agreement of Nov. 5, 1926, were not therein correctly stated, & thereupon the workman filed a request for arbn. on Feb. 23, 1927. The boy obtained work as a messenger boy on Feb. 11, 1927.

The county ct. judge ordered the document of Nov. 5 to be recorded as the agreement between the parties, & dismissed the request for arbn.:—*Held:* a totally incapacitated workman in receipt of full compensation under an admission of liability was entitled, either to a recorded memorandum of agreement stating his rights in the terms of Form 24, or, if the employers objected to that, he was entitled, on the question so raised, to apply in arbn. proceedings for the judge to grant an award in such terms; the document of Nov. 5 did not give the workman his full rights as expressed in Form 24, & was not binding on the workman, being an infant, & when the employers objected to the recording of a memorandum in the terms of Form 24 a question was raised fit for arbn., & an award should have been made having regard to the terms of Form 24, & there was no power on the proceedings to order a memorandum of agreement to be recorded, & the case must be remitted for the proper award to be made to suit the circumstances of the workman having actually returned to work.—PARKER *v.* LONDON BRICK CO. & FORDERS, LTD. (1927), 97 L. J. K. B. 42; 20 B. W. C. C. 573, C. A.

3099. *Add. Annotation:*—**Distd.** Parker *v.* London Brick Co. & Forders (1927), 20 B. W. C. C 573.

3100. *Add. Annotation:*—**Folld.** Parker *v.* London Brick Co. & Forders (1927), 20 B. W. C. C. 573.

3116. *Add. Annotations:*—**Consd.** Hall *v.* British Oil & Cake Mills (1930), 23 B. W. C. C. 529. **Refd.** Ford *v.* Wellerman Bros. (1930), 99 L. J. K. B. 600.

3129a. —— ——.]—Deceased, on leaving off work, remarked to a fireman that he had been hit by a fall of rock. He died the next day. The *post mortem* examination showed he was suffering from heart & other diseases, & might have died at any moment. The county ct. judge rejected the remark as evidence of an accident, &, after hearing all the evidence, found that no accident had occurred:—*Held:* the statement was inadmissible as evidence of an accident, & the finding, being one of fact, & there being no misdirection, could not be disturbed.—JONES *v.* CORY BROTHERS & CO., LTD. (1926), 20 B. W. C. C. 251, C. A.

3129b. WOLSEY *v.* PETHICK BROTHERS, No. 3897, *post.*

3140. *Add. Annotations:*—**Distd.** Rees *v.* Imperial Navigation Coal Co. (1926), 20 B. W. C. C. 287. **Refd.** Broome *v.* Minister of Labour (1926), 136 L. T. 322.

3140a. —— ——.]—An infant workman lost a little finger while handling a machine. He was paid varying amounts of compensation for some months, & when this was stopped asked for an award. The county ct. judge allowed the employers to give evidence as to the scope of the workman's employment, & found as a fact that he was not employed to touch or handle any machinery:—*Held:* the employers were not estopped by previous payments of compensation from putting the true facts of the workman's employment before the judge, & his finding thereon was purely a question of fact.—NOMERACSKY *v.* CANTERBURY DRESSING WORKS (1928), 21 B. W. C. C. 41, C. A

3145a. -.]—A workman was certified as suffering from dermatitis, & applied for arbn. At the hearing in the county ct. it was agreed between the parties that the dermatitis had come to an end, & the county ct. judge made an award for a lump sum in respect of past liability. A fortnight after the making of this award the workman obtained a fresh certificate which certified that he was again disabled by dermatitis, the fresh disablement being certified as commencing on a date subsequent to the making of the award. The workman applied for a new trial on the ground that the parties were under a mutual mistake of fact when they agreed that the dermatitis had come to an end. The county ct. judge granted the application. The employer appealed:—*Held:* the county ct. judge had power to grant a new trial by virtue of rule 29 of Workmen's Compensation Rules, 1926, & sect. 93 of County Cts. Act, 1888 (c. 43), & the order made was within his discretion. Appeal dismissed. Leave to both parties to raise at new trial all questions arising on both certificates.—NASH *v.* NANI (1932), 25 B. W. C. C. 68, C. A.

PART XIV. SECT. 11, SUB-SECT. 1.

3101 i. *Jurisdiction of court of district where accident happened—Accident in Ireland—Employer resident in England.*]—SCANLON *v.* HARTLEPOOL SEATONIA S.S. CO., LTD. (No. 1), [1929] I. R. 96.—**IR.**

PART XIV. SECT. 11, SUB-SECT. 3.

sy. *Statement of claim—Action under Workmen's Compensation Act, R. S. S., 1920 (c. 210)—Date of accident.*]—LIEB *v.* DEACON, [1927] 3 D. L. R. 332; [1927] 2 W. W. R. 173; 21 Sask. L. R. 485.—**CAN.**

PART XIV. SECT. 11, SUB-SECT. 5.

sz. *Joint committee—Consideration of extraneous matters on hearing of application—Effect of.*]—Workmen's Compensation (Broken Hill) Act, Sched., Part II., provides that awards of compensation shall be made by the joint committee to a mine-worker, whom the medical authority has certified to be suffering from pneumaconiosis &/or tuberculosis to such a degree that he should not be re-engaged. Upon an application for compensation by a mine-worker, whom the medical authority had certified to be suffering from pneumaconiosis & tuberculosis to the degree mentioned in the schedule, the joint committee, refused to make an award upon the ground, amongst others, that the mine-worker had received compensation in respect of his disablement through lead poisoning under Workmen's Compensation Act, 1916:—*Held:* the receipt of compensation by a mine-worker under Workmen's Compensation Act, 1916, was a matter outside the ambit of the jurisdiction of the joint committee, &, the action of the joint committee in taking into consideration extraneous matters which were outside its jurisdiction, amounted in law to a failure to hear & determine the application, & a writ of mandamus should issue.—*Re* ATKINSON, *Ex p.* ROWE (1928), 28 S. R. N. S. W. 601; 45 N. S. W. W. N. 194.—**AUS.**

PART XIV. SECT. 11, SUB-SECT. 6.—A.

sa. *Power to refuse application "without prejudice."*]—Where a circuit ct. judge ordered an application to be "refused without prejudice":—*Held:* the refusal of compensation was final, & as the refusal could not be treated as a nullity, nor as a mere adjournment of the application, the judge had no jurisdiction to entertain a second application.—DELAHUNT *v.* MOODY, [1928] I. R. 208; *subsequent proceedings*, 22 B. W. C. C. 939, P. C.—**IR.**

sb. *Power to grant decree for expenses in name of agent-disburser.*]—*Held:* although Workmen's Compensation Act, 1925, did not in terms authorise the sheriff, sitting as arbitrator, to allow decrees for expenses to go out in the name of the agent-disburser, such a power, not being expressly excluded, was to be inferred, there being no reason, on grounds of equity or expediency, for refusing to the sheriff, as a statutory arbitrator, a power which he possessed in his ordinary judicial capacity.—COAKLEY *v.* SUMMERLEE IRON CO., LTD., [1929] S. C. (Ct. of Sess.) 182.—**SCOT.**

3151. *Add. Annotations :*—**Refd.** Delahunt *v.* Moody (1927), 21 B. W. C. C. 588 ; Woodrow *v.* Trawlers (White Sea) & Grimsby (1929), 141 L. T. 676.

3161. *Add. Annotation :*—**Consd.** Dixon *v.* Sutton Heath & Lea Green Colliery, Ltd. (1929), 22 B. W. C. C. 521.

3162a. —— ——.]—Where conflicting medical evidence was given, & the county ct. judge followed the view expressed by the medical assessor, who was sitting with him :—*Held :* the county ct. judge must form his own opinion on the facts as proved & then accept advice given by the medical assessor as to the scientific inference to be drawn from those facts, & having entirely founded his award on the opinion formed by the medical assessor his award could not stand.—FOX *v.* PRICE (1926), 20 B. W. C. C. 160, C. A.

Annotations :—**Consd.** Dixon *v.* Sutton Heath & Lea Green Colliery, Ltd. (1929), 22 B. W. C. C. 521. **Distd.** Colley & Sons, Ltd. *v.* Moone (1931), 24 B. W. C. C. 429. **Refd.** Davis *v.* London, Midland & Scottish Ry. Co. (1930), 23 B. W. C. C. 368.

3162b. -.]—A painter's labourer was injured by a ladder falling on his left foot was paid compensation for a year. The employers applied for the termination or diminution of the weekly payments on the ground that the incapacity due to the injury had ceased. The county ct. judge sat with a medical assessor. In his award the county ct. judge said : " The medical assessor took the view, which was upheld by the ct., that, although there might still be disability due to resp.'s flat feet, this disability was not due to the accident, any disability due to that having come to an end." The workman appealed on the ground that the decision was that of the assessor & not the judge :—*Held :* the county ct. judge had rightly taken the burden of the decision on himself & had not left it to the medical assessor. Appeal dismissed.—COLLEY (B.) & SONS, LTD. *v.* MOONE (1931), 24 B. W. C. C. 429, C. A.

3165. *Add. Annotations:*—**Apld.** Fox *v.* Price (1926), 20 B. W. C. C. 160. **Consd.** Dixon *v.* Sutton Heath & Lea Green Colliery, Ltd. (1929), 22 B. W. C. C. 521.

3165a. **Duty of judge to deal with questions of fact.**]—*Held :* the county ct. judge had not himself dealt with those questions of fact with which it was his duty to deal, but had relied on the findings & opinions of the medical assessor. The case must go back for the judge to find the relevant facts, & give his decision.—DIXON *v.* SUTTON HEATH & LEA GREEN COLLIERY, LTD. (1929), 22 B. W. C. C. 521, C. A.

3165b. ——.]—A workman was pushing a handcart laden with scaffolding & ladders when he slipped & injured his right knee. He received compensation for six months. The employers then discontinued the weekly payment after serving a notice under 1925 Act, s. 12. The workman's application for resumption of the compensation was resisted on the ground that the incapacity, if any, was due, not to the accident, but to ulceration due to syphilis. The county ct. judge sat with an assessor to whom, after hearing the medical evidence, he addressed three questions which were stated to counsel & were not objected to. On receiving the answers of the assessor the county ct. judge made his award in favour of the workman. The employers appealed :—*Held :* the county ct. judge had exercised his own judgment on the evidence, including the evidence contained in the answers given by the medical assessor.—HALL *v.* BRITISH OIL & CAKE MILLS (1930), 23 B. W. C. C. 529, C. A.

3169. *Add. Annotation :*—**Refd.** Maxwell *v.* Keun, Lane, Bodley Head & Butler & Tanner, Maxwell *v.* Keun, Jonathan Cape & Butler & Tanner (1927), 44 T. L. R. 100.

3172a. —— **Pending arbitration—Application for leave to issue execution for arrears.**]—LEWIS *v.* DOBSON STEAM FISHING CO., LTD. (1929), 73 Sol. Jo. 483.

3184a. ——.]—A workman, whose right arm was injured, was for some time paid compensation on the basis of total incapacity. The employers then applied for a review on the ground that he had partially recovered. At the hearing the workman was not called, but the county ct. judge examined his arm. The only evidence given was that of two doctors, one called by each side, who agreed that the workman was suffering from a 40 per cent. incapacity. The judge made an award diminishing the compensation payable, in which he said that he was unable to find on the evidence that the workman was either an " odd lot " or came within Workmen's Compensation Act, 1925 (c. 84), s. 9 (4). The workman appealed on the ground that no sufficient evidence had been given that he had regained sufficient capacity to work to take him out of the category of " odd lot," & that, therefore, the onus was upon the employers of proving that there was in fact work available at which the man could earn wages which onus had not been discharged :—*Held :* taking into consideration the judge's power to use his own knowledge of the local labour conditions, there was evidence to support the finding & no misdirection.—GLADSTONE SPINNING CO. *v.* NANGLE (1928), 98 L. J. K. B. 161 ; 140 L. T. 171 ; 21 B. W. C. C. 394, C. A.

3188. *Add. Annotation :*—*As to* (1) **Folld.** Cauldon Potteries *v.* Johnson (1926), 20 B. W. C. C. 42.

3192a. —— —— ——.]—CAULDON POTTERIES, LTD. *v.* JOHNSON, No. 3821a, *post.*

3197. *Add. Annotation :*—**Refd.** Jones *v.* Blaenavon Co. (1931), 24 B. W. C. C. 148.

3199. *Add. Annotation :*—*As to* (1) **Consd.** Gilbert *v.* Coles (No. 2) (1931), 24 B. W. C. C. 481.

3200a. —— ——.]—A carpenter alleged in his application for compensation that he had fractured his skull nine months earlier by hitting his head against a tie-pole & then tumbling on to a concrete floor. The county ct. judge found that he had failed to establish the occurrence of any such accident, but allowed him to amend his application by alleging in the alternative that the fracture

PART XIV. SECT. 11, SUB-SECT. 6. —B.

sc. *Duty to refer—On application of party.*]—*Held :* it was not for the sheriff to determine whether in his opinion there was, or would be, a conflict in medical testimony, but he was bound to summon a medical referee, if either party applied for a medical referee on the ground that there was, or would be, such a conflict.—COCHRANE *v.* BAIRD (WILLIAM) & CO., [1930] S. C. 640.—**SCOT.**

was due to hitting his head against the concrete floor. The county ct. judge again found against the workman, but in the course of his award said: "I adopt LORD SALVESEN'S reasoning in *Wright and Greig* v. *M'Hendry* (1918), 11 B. W. C. C. 402," & quoted a passage dealing with various possible causes for the falling down of workmen, some being causes arising out of the employment & some not. He also stated a sum to which the workman would be entitled if in law there had been an accident. The workman appealed:—*Held:* the county ct. judge, by the form in which he had given his reasons, had introduced a doubt into the award, & as it was possible that he might have held that there was some special risk incidental to the employment, the case must go back for re-hearing.—EVANS *v.* BIERRUM & PARTNERS (1930), 23 B. W. C. C. 131, C. A.

3208. *Add. Annotation:*—**Distd.** Parker *v.* London Brick Co. & Forders (1927), 20 B. W. C. C. 573.

3224. *Add. Annotations:*—**Consd.** Evans *v.* Ebbw Vale Steel Iron & Coal Co. (1929), 22 B. W. C. C. 274. **Refd.** Williams *v.* Watson (H. J. & S. A.) (1930), 23 B. W. C. C. 151.

3226a. ——.]—Where a workman injured his left hand, but the county ct. judge found that there was no incapacity resulting from the accident & no probability of any:—*Held:* the evidence supported the findings, & there was no misdirection.—WAGSTAFF *v.* GUTTA PERCHA Co. (1927), 20 B. W. C. C. 430, C. A.

3226b. ——.]—A workman earned £9 9*s.* a week as a stone contractor under a contract at a fixed price, upon which he himself worked, & also employed others. While so working he was injured by an accident. The county ct. judge said that he did not accept the evidence which had been given as to the inability of the workman to do the full work of a contractor, & refused compensation:—*Held:* it was a question of fact, as to which there was evidence to support the finding, & no misdirection.—JONES *v.* GARFORTH COLLIERIES, LTD. (1926), 20 B. W. C. C. 109, C. A.

Annotation:—**Refd.** Dodd *v.* Oceanic Steam Navigation Co. (1928), 21 B. W. C. C. 118.

3226c. ——.]—In July a seaman caught his left hand in the cogs of a windlass, & in Aug. had the little finger amputated. He was paid compensation until Dec. He claimed compensation as for total incapacity, with a declaration of liability. The county ct. judge made an award in favour of the employers:—*Held:* there was abundant evidence to support the award.—BARRY *v.* PORTHLEVEN SHIP OWNERS (1928), 21 B. W. C. C. 219, C. A.

3226d. ——.]—A timber-feller was injured while felling trees by reason of a chip flying into his right eye. After six weeks his panel doctor certified that he was fit to resume his ordinary work. He resumed work, but with some assistance. The workman claimed compensation, alleging permanent partial incapacity. At the hearing the panel doctor who had granted the certificate gave evidence to the effect that the workman's right eye had lost 50 per cent. of its visual power. The county ct. judge found that there was a difference of 2*s.* between the pre-accident & post-accident earnings, & made his award for the workman for 1*s.* a week. The employer appealed:—*Held:* there was evidence to support the finding & no misdirection. Appeal dismissed.—ROBERTS *v.* GREGSON (1931), 24 B. W. C. C. 155, C. A.

3227a. -.]—A workman suffered an injury to his finger by an accident arising out of & in the course of his employment, with the result that the finger had to be amputated. Compensation was paid, but was determined upon the certificate of the employer's doctor that the workman was no longer incapacitated. In proceedings instituted by the workman medical evidence was given on his behalf that his grip was weakened, that the muscles were still tender, & that he was still partially incapacitated. The doctor called on behalf of the employers agreed that the grip was weak, but stated that the workman was capable of doing some work which would be beneficial. The county ct. judge found that the workman had fully recovered, & made a declaration of liability only:—*Held:* there was no evidence to support the finding, & the case must be remitted for compensation to be assessed.—BUCK *v.* DENNING (1926), 19 B. W. C. C. 388, C. A.

3228. *Add. Annotations:*—*As to* (2) **Consd.** Williams *v.* Tredegar Iron & Coal Co. (1927), 96 L. J. K. B. 722; Bevan *v.* Nixon's Navigation Co. (1928), 139 L. T. 647; Tannoch *v.* Browniside Coal Co., [1929] A. C. 642. **Apld.** Stevens *v.* Birmingham Corpn. (1929), 22 B. W. C. C. 311; Birch Bros., Ltd. *v.* Brown, [1930] 2 K. B. 255. **Consd.** Birch Bros., Ltd. *v.* Brown, [1931] A. C. 605. **Extd.** Bywater *v.* Sothert & Pitt (1932), 174 L. T. Jo. 121. **Consd.** Byrne *v.* Evans Lifts, Ltd. (1932), 25 B. W. C. C. 41. **Refd.** Broughton *v.* London & North Eastern Ry. Co., [1930] 1 K. B. 578; The Croxteth Hall, The Celtic, [1930] P. 197; Earl *v.* Thomas W. Ward, Ltd. (1930), 143 L. T. 745; Mothersdale *v.* Cleveland Bridge & Engineering Co. (1930), 99 L. J. K. B. 261; West Leigh Colliery Co. *v.* McNeil (1929), 22 B. W. C. C. 541; Jensen *v.* Jones (R. E.), Ltd. (1930), 23 B. W. C. C. 518. *Generally*, **Refd.** Lewis *v.* Guest, Keen & Nettlefolds, Watkins *v.* Same, Tucker *v.* Same, Ingram *v.* Crawshay (1927), 96 L. J. K. B. 664.

3230. *Add. Annotations:*—**Consd.** Lewis *v.* Guest, Keen & Nettlefolds, Watkins *v.* Same, Tucker *v.* Same, Ingram *v.* Crawshay (1927),

PART XIV. SECT. 12, SUB-SECT. 1.

3215 i. —— ——.]—MOORE *v.* NIMMO, [1929] S. C. (Ct. of Sess.) 607.—**SCOT.**

PART XIV. SECT. 12, SUB-SECT. 3.

3228 iii. ——.]—A workman was awarded compensation in respect of total incapacity in Feb. 1925. On May 13, 1926, he became fit for light work. He made efforts to obtain such work, but, owing to abnormal economic conditions, he was unable to do so. If he had obtained light work the effects of his injury would have worn off, & he would have recovered full capacity by Sept. 13, 1926. Owing, however, to his failure to obtain light work he was still partially incapacitated at the latter date. Apart from this failure to obtain work, his condition was not due to any failure on his part to take reasonable measures to promote the recovery of capacity. The arbitrator having suspended payment of compensation as from Sept. 13, 1926:—*Held:* the continuance of incapacity, not being due to any unreasonable conduct on the workman's part or to the intervention of any new cause apart from economic circumstances, was still attributable to the original accident; &, accordingly, that the arbitrator was not entitled to suspend payment of compensation.—KENNEDY *v.* SHOTTS IRON Co., [1929] S. C. (Ct. of Sess.) 29.—**SCOT.**

96 L. J. K. B. 664; Birch Bros., Ltd. *v.* Brown, [1930] 2 K. B. 255. **Refd.** Bevan *v.* Nixon's Navigation Co. (1928), 139 L. T. 647; White *v.* London & North-Eastern Ry. Co., [1931] A. C. 52.

3231a. —.]—A miner working at the face had his right hand crushed in June, 1905. As a result, in May, 1912, the middle finger of that hand was amputated & he returned to work on the surface as a trimmer. His earnings as a trimmer exceeded his pre-accident earnings, & his compensation was therefore reduced to a penny a week. In Jan. 1929, the pit was closed down. The workman was unable to obtain work & applied for compensation. The employers contended that the workman was fully able to work, & that his inability to obtain work was due to labour conditions. The county ct. judge made an award for 2*s.* 2*d.* a week. The employers appealed:—*Held:* there was evidence of partial incapacity & no misdirection.—WOODCOCK *v.* TYDESLEY COAL Co. (1929), 22 B. W. C. C. 502, C. A.

3231b. —.]—A workman employed as a wheelwright & van driver met with an accident arising out of & in the course of his employment, which necessitated the removal of his left eye. After a period of total incapacity he resumed his work as a wheelwright, but was unable to drive a van, & he was ultimately discharged for business reasons. In respect of his injury he obtained an award of compensation, first, for partial incapacity, &, afterwards, on his application for a review in consequence of his inability to get work owing to his obvious disfigurement, for total incapacity. After he had become nearly blind owing to cataract in his right eye, the employers' insurance co. offered him employment as a cleaner in their office at a wage which was double the market rate of wages for that work, but the workman refused this offer by reason of his infirmity. Upon an application by the employers for a review terminating or reducing the compensation, the county ct. judge found that the offer of the insurance co. was a genuine offer & reduced the compensation to half the difference between the workman's pre-accident wages & the wages offered him by the insurance co.:—*Held:* there was no evidence on which the county ct. judge could properly find that the workman's proved inability to earn wages by reason of the loss of his left eye had ceased to exist, inasmuch as the offer of the insurance co., in the circumstances in which it was made, had no evidential value as a test of the man's earning capacity in the open market.—BIRCH BROS., LTD. *v.* BROWN, [1931] A. C. 605; 100 L. J. K. B. 651; 145 L. T. 398; 47 T. L. R. 495; 75 Sol. Jo. 488; 24 B. W. C. C. 255, H. L.

3231c. ——.]—BYWATER *v.* SOTHERT & PITT (1932), 174 L. T. Jo. 121, C. A.

3232. *Add. Annotations:*—**Consd.** Lewis *v.* Guest, Keen & Nettlefolds, Watkins *v.* Same, Tucker *v.* Same, Ingram *v.* Crawshay (1927), 96 L. J. K. B. 664. **Refd.** Cushion *v.* Tredegar Iron & Coal Co. (1927), 20 B. W. C. C. 454; Bevan *v.* Nixon's Navigation Co. (1928), 139 L. T. 647.

3233. *Add. Annotation:* — **Refd.** Broughton *v.* London & North-Eastern Ry. Co., [1930] 1 K. B. 578.

3235a. —— ——.]—The amount of the average weekly earnings of a workman before accident was 50*s.* After the accident he returned to lighter work, but was paid at exactly the same rate as before the accident. He, however, only earned an average weekly amount of 37*s.* 8*d.*, owing to slackness of trade. He brought a claim for compensation at the rate of 6*s.* 2*d.* a week, being one-half the difference between his pre-accident & post-accident earnings. The county ct. judge made a declaration of liability only on the ground that he found no loss of earning capacity due to the accident since the return to work. The workman appealed:—*Held:* the loss of earnings after the accident being entirely due to labour conditions & not to the fact that the workman was injured, the decision of the county ct. judge was right.—LYON *v.* TAYLOR BROS. (1928), 21 B. W. C. C. 415, C. A.

Annotations:—**Distd.** White *v.* London & North-Eastern Ry. Co., [1931] A. C. 52. **Refd.** The Croxteth Hall, The Celtic, [1930] P. 197.

3238. *Add. Annotation:*—*As to* (1) **Refd.** Lewis *v.* Guest, Keen & Nettlefolds, Watkins *v.* Same, Tucker *v.* Same, Ingram *v.* Crawshay (1927), 96 L. J. K. B. 664.

3239. *Add. Citations:*—96 L. J. K. B. 295; 136 L. T. 427; 19 B. W. C. C. 475.
Add. Annotation:—**Refd.** Lewis *v.* Guest, Keen & Nettlefolds, Watkins *v.* Same, Tucker *v.* Same, Ingram *v.* Crawshay (1927), 96 L. J. K. B. 664.

3239a. —— ——.]—A miner who, in Apr. 1926, had the symptoms of nystagmus, on Apr. 30 went on strike until Dec. 2. On July 13, he obtained a certificate that he was disabled by the disease as from June 14. The county ct. judge held, although totally incapacitated from June 14, the workman would not, in any case, have been at work owing to the strike, & refused compensation:—*Held:* if a workman was totally incapacitated by an accident, it was immaterial that he might also have been prevented from earning money by some other cause.—WILLIAMS *v.* CWMAMAN COAL Co., LTD. (1927), 20 B. W. C. C. 476, C. A.

3240. *Add. Annotation:*—**Consd.** Lewis *v.* Guest, Keen & Nettlefolds, Watkins *v.* Same, Tucker *v.* Same, Ingram *v.* Crawshay (1927), 96 L. J. K. B. 664.

3241. *Add. Annotation:*—**Refd.** Lewis *v.* Guest,

PART XIV. SECT. 12, SUB-SECT. 4.

3235 i. *Whether incapacity within the Acts—Slackness of work.*]—A workman, employed as a drawer in a mine, who had been injured, was paid compensation first as for total, & later as for partial, incapacity. He then obtained work with the same employers as a pump engineman at wages higher than he had earned as a drawer, & compensation was suspended by agreement. The pit in which he was employed as a pump engineman having been closed, the workman was thrown out of employment. He was unfit, owing to his injury, for his former work as a drawer, but he was fit for various jobs, including that of pump engineman, at which he could earn his former wage. He was unable to find work owing to the state of the coal mining industry & not owing to his injury. The arbitrator having ended compensation in the meantime as at the date when the workman obtained work as a pump engineman:—*Held:* as the workman was fit for work at which he could earn as high wages as he had earned as a drawer, he was not entitled to compensation.—INVERARITY *v.* EDINBURGH COLLIERIES, LTD., [1929] S. C. (Ct. of Sess.) 338.—**SCOT.**

Keen & Nettlefolds, Watkins *v.* Same, Tucker *v.* Same, Ingram *v.* Crawshay (1927), 96 L. J. K. B. 664.

3243a. **Cesser of work obtained in lieu of compensation.**]—When a workman, partially incapacitated by an accident during the course of his employment, obtains work in lieu of compensation, the cesser of that work entitles him to an award, even in cases where the cesser is due to the state of the labour market & would have resulted in his being unemployed in any event.—LEWIS *v.* GUEST, KEEN & NETTLEFOLDS, LTD., WATKINS *v.* SAME, TUCKER *v.* SAME, INGRAM *v.* CRAWSHAY BROTHERS, [1928] 1 K. B. 20; 96 L. J. K. B. 664; 137 L. T. 386; 43 T. L. R. 436; 71 Sol. Jo. 388; 20 B. W. C. C. 359, C. A.

Annotations :—**Apld.** Williams *v.* Cwmaman Coal Co. (1927), 20 B. W. C. C. 476; Lyon *v.* Taylor Bros. (1928), 21 B. W. C. C. 415. **Refd.** Cushion *v.* Tredegar Iron & Coal Co. (1927), 20 B. W. C. C. 454; Bevan *v.* Nixon's Navigation Co. (1928), 139 L. T. 647; Birch Bros., Ltd. *v.* Brown, [1930] 2 K. B. 255; White *v.* London & North-Eastern Ry. Co. (1929), 142 L. T. 435; Williams *v.* Watson (H. J. & S. A.) (1930), 23 B. W. C. C. 151.

3243b. -.]—A coal miner, who had worked for many years underground, became, by reason of an attack of nystagmus, only able to do surface work at a lower wage. This work was unavailable, owing to the state of the labour market, though the workman, but for the nystagmus, would probably have been able to obtain employment underground :—*Held :* the effect of Workmen's Compensation Act, 1923 (c. 43), s. 16, which was re-enacted as Workmen's Compensation Act, 1925 (c. 84), s. 9 (4), was necessarily to exclude the idea that the words "able to earn" in Workmen's Compensation Act, 1906 (c. 58), Sched. I., applied to any circumstances not personal to the workman himself. It dealt expressly with the case of the man who could not find work, & it set the criterion whether the failure to find work was due wholly or mainly to the accident, but failure to find work due solely to the state of the labour market was expressly excluded by the sect., & it was impossible to say that *Cardiff Corpn.* v. *Hall*, No. 3284, *post*, when applied to a case after the passing of 1923 Act, was wrong.—BEVAN *v.* NIXON'S NAVIGATION CO., LTD., [1929] A. C. 44; 139 L. T. 647; 44 T. L. R. 805; 21 B. W. C. C. 237, H. L.

Annotations :—**Apld.** Lyon *v.* Taylor Bros. (1928), 21 B. W. C. C. 415. **Expld.** Tannoch *v.* Brownlieside Coal Co., [1929] A. C. 642. **Distd.** Evans *v.* Ebbw Vale Steel, Iron & Coal Co. (1929), 22 B. W. C. C. 274. **Consd.** Statham *v.* Oxcroft Colliery Co. (1929), 22 B. W. C. C. 330; Mothersdale *v.* Cleveland Bridge & Engineering Co. (1930), 99 L. J. K. B. 261. **Distd.** White *v.* London & North-Eastern Ry. Co., [1931] A. C. 52. **Apld.** Woodcock *v.* Tydesley Coal Co. (1929), 22 B. W. C. C. 502. **Refd.** Gladstone Spinning Co. *v.* Nangle (1928), 98 L. J. K. B. 161; Wemyss Coal Co. *v.* Walker (1929), 22 B. W. C. C. 366; Birch Bros., Ltd. *v.* Brown, [1930] 2 K. B. 255; Broughton *v.* London North-Eastern Ry. Co., [1930] 1 K. B. 578; The Croxteth Hall, The Celtic, [1930] P. 197. **Refd.** Williams *v.* Watson (H. J. & S. A.) (1930), 23 B. W. C. C. 151.

3243c. ——.]—Applt., who was totally incapacitated by an injury by accident arising out of & in the course of his employment by resps. whilst working as a fitter in the erecting department of their works, on becoming fit for light work, was employed by resps. in the gauge department of their works. A claim by him for compensation in respect of the difference between his pre-accident earnings & his present earnings was opposed by resps. on the ground that the full week's work in that department was five & a half days, but that owing to trade conditions the department was only working five days, & that, if applt. had worked a full week, as he was physically capable of doing, his earnings would have exceeded his pre-accident earnings. The arbitrator awarded compensation :—*Held :* on the facts, resps. had failed to prove that a normal week's work in the gauge department was more than five days & that the award was rightly made.

The question whether, where a partially disabled workman is actually earning wages, the compensation to which he is entitled is to be assessed by reference to the normal earnings under normal market conditions in that employment or by reference to his actual earnings in the conditions prevailing at the time was left open by the House.

Semble : it does not necessarily follow from *Bevan* v. *Nixon's Navigation Co.*, No. 3243b, where a man is actually earning wages in a suitable employment & the wages which he is receiving are the wages usually paid at the time in that employment, that the arbitrator is bound to assess his compensation on the basis of what he would have been earning if the conditions of employment in that occupation had been more prosperous.—WHITE *v.* LONDON & NORTH EASTERN RY. CO., [1931] A. C. 52; 99 L. J. K. B. 633; 144 L. T. 1; 46 T. L. R. 648; 23 B. W. C. C. 330, H. L.

3247a. ——.]—A blacksmith was injured while at work by a splinter of iron entering an eye, & impairing its vision by one-half. He returned to work for a short period, but did not do overtime, & threw up the work on the ground that it was unsuitable. He was nervous of losing the sight of the other eye. The employers called medical evidence that he was fully able to do his work. The county ct. judge made an award in favour of the workman on the basis of partial incapacity. The employers appealed :—*Held :* there was evidence to support the finding & no misdirection.—COLQUITT *v.* UNITED STEEL CO., LTD. (1928), 21 B. W. C. C. 409, C. A.

3251a. —— ——.]—A workman lost an eye in the course of his employment. He refused to follow medical advice & wear a glass eye, but brooded over his accident, & got into a nervous state. The county ct. judge held the nervous condition caused incapacity & was directly due to the accident :—*Held :* it was a question of fact, as to which there was evidence to support the finding, & no misdirection.—HODSON *v.* STAR PAPER MILLS, LTD. (1927), 20 B. W. C. C. 265, C. A.

3261. *Add. Annotation :*—**Consd.** Bevan *v.* Nixon's Navigation Co. (1928), 139 L. T. 647.

3264. *Add. Annotation :*—**Consd.** Statham *v.* Oxcroft Colliery Co. (1929), 22 B. W. C. C. 330.

PART XIV. SECT. 12, SUB-SECT. 5.

3248 ii. ——.]—Where it appeared from the medical evidence that subsequent to an injury the workman developed a mental condition in which he could not bring himself to begin work, & did not carry out medical advice to do light work of any sort as a curative measure :—*Held :* the finding of the arbitrator refusing to award compensation should not be disturbed. —FORRESTER *v.* TORRENSFORD SAND & GRAVEL PITS, LTD., [1928] S. A. S. R. 427.—**AUS.**

3269a. —— ——.]—A collier suffered a succession of accidents, but was given work with partial compensation until, in 1921, he left the colliery & became a club steward at higher wages. In 1922 he was granted a declaration of liability against the colliery co. In 1928 he was dismissed from his position of club steward & failed at three clubs where there were vacancies to obtain the position of a club steward. He claimed that he was unfit to work as a collier at the coal face, & his old employers refused to employ him otherwise. He therefore made a claim for compensation against his old employers in the form of a review of the declaration of liability. The county ct. judge made an award in his favour of 7*s.* 6*d.* a week on the grounds that, although he could do surface work, he was unable to work at the coal face, & that the job of a club steward was not a well-known branch of the labour market, & should therefore be disregarded:—*Held:* there was no evidence on which the county ct. judge could find that the work of a club steward was exceptional; it was a well-known class of employment in which the man was capable of working. The case must be remitted for a rehearing, taking this fact into consideration.—STATHAM *v.* OXCROFT COLLIERY CO., LTD. (No. 2) (1929), 22 B. W. C. C. 330, C. A.

3269b. —— **After retirement.**]—A workman lost the use of an eye by accident & wore a shade over it in consequence. Liability being admitted he received full compensation until he was able to do his ordinary work again. An agreement was recorded whereby the employers undertook to provide the workman with employment, & admitted their liability to pay compensation "as & when their liability shall arise." The workman continued doing his work without compensation until having reached the age of sixty-six he was compulsorily retired under his employers' superannuation scheme, but at the same time became entitled thereunder to a pension of 10*s.* per week. After his retirement the workman filed a request for arbitration, claiming to be entitled to be paid full compensation as from the date of his retirement. He gave evidence that he had tried to obtain work since his retirement but had failed. The county ct. judge held that although the workman was physically capable of performing his old work with his old employers, his age & the loss of the eye prevented him getting fresh work in the labour market. He made an award in his favour of 10*s.* a week. He found the workman's average weekly earnings before the accident to be £3 5*s.* & his post-accident earnings £2 2*s.* The first figure included payment for overtime & the second did not. Furthermore there had been a fall in the rate of wages since the accident. The employers appealed on the grounds that the workman was not incapacitated, & that, if he was, compensation had been calculated on the wrong basis, because the judge had not taken into consideration the question of overtime & fall in the rate of wages:—*Held:* there was evidence on which the county ct. judge could find that the workman was partially incapacitated, but, in arriving at the amount of compensation payable he had not taken into account the high rate of pre-accident wages & overtime. Also the question of pension must be considered.—STEVENS *v.* BIRMINGHAM CORPN. (1929), 22 B. W. C. C. 311, C. A.

Annotation:—**Refd.** Birch Bros., Ltd. *v.* Brown, [1931] A. C. 605.

3274a. -.]—A workman, whose left eye was defective, suffered, in 1919, an injury to his right eye while working as a miner, for which compensation was received until the beginning of 1924, when he was given work underground. This was found to be unsuitable, & he was given surface work on the screens, & was paid compensation for partial incapacity. He left this work at the commencement of the stoppage due to a dispute in the coal trade in 1926, but was not re-employed at the conclusion of the stoppage, in Dec. 1926. In Feb. 1927, the workman applied to have his compensation increased, on the ground that the work on which he had been employed was a special kind of surface work found for him by his employers. The county ct. judge held resps. were not liable to pay compensation as claimed on the grounds set out in their particulars. The particulars referred to in resps.' answer contained the allegation that the workman was not incapacitated from doing ordinary surface work:—*Held:* the award must be taken to mean that the judge had found as a fact that the workman was capable of doing ordinary surface work, & there was evidence to support such a finding.—CUSHION *v.* TREDEGAR IRON & COAL CO., LTD. (1927), 20 B. W. C. C. 454, C. A.

3275a. -.]—A miner, in 1916, lost his right eye by accident, & received compensation. He subsequently returned to work at the face, but in June, 1924, had another accident through which his left eye was injured, & he was paid compensation. In Mar. 1925, he returned to light work, receiving also a weekly sum by way of compensation. On July 1, 1925, the employers applied for a review & termination of the weekly payments. The workman stated in evidence that he was afraid to work below ground again, & the county ct. judge held work at the coal face was not suitable, & the man's refusal to do it was reasonable:—*Held:* the case must go back for the judge to decide whether the unsuitability of the work resulted from the first accident or the second, or both, & to assess the compensation payable only in regard to incapacity from the second accident.—ASTON COAL CO., LTD. *v.* STANCIL (1926), 20 B. W. C. C. 198, C. A.

3282. *Add. Annotation:*—**Consd.** Evans *v.* Ebbw Vale Steel, Iron & Coal Co. (1929), 22 B. W. C. C. 274.

3283. *Add. Annotations:*—**Refd.** Lewis *v.* Guest, Keen & Nettlefolds, Watkins *v.* Same, Tucker *v.* Same, Ingram *v.* Crawshay (1927), 137 L. T. 386; Birch Bros., Ltd. *v.* Brown, [1930] 2 K. B. 255.

3283a. Accident to infant—Inability to do work of employer on becoming adult.]—An infant employed by a railway co. lost his left foot in an accident while at work. He was fitted with an artificial foot & given suitable employment until he came of age. His employers, being then unable to find him work in an adult grade, dismissed him. The workman

claimed compensation as a totally incapacitated adult worker, but the employers refused to pay except on the basis of partial incapacity. The county ct. judge held that the workman was not entitled to be treated as totally incapacitated either as an "odd lot" or under Workmen's Compensation Act, 1925 (c. 84), s. 9 (4). The workman appealed :—*Held :* there was evidence to support the finding & no misdirection.—BARNES *v.* LONDON & NORTH EASTERN RY. CO. (1929), 22 B. W. C. C. 205, C. A.

Annotations :—**Refd.** Earl *v.* Thomas W. Ward, Ltd. (1930), 143 L. T. 745 ; Williams *v.* Watson (H. J. & S. A.) (1930), 23 B. W. C. C. 151.

3284. *Add. Annotations :*—**Consd.** Hamilton *v.* Shelton Iron, Steel & Coal Co., Leigh *v.* Same, Timmis *v.* Same (1926), 136 L. T. 427 ; Lewis *v.* Guest, Keen & Nettlefolds, Watkins *v.* Same, Tucker *v.* Same, Ingram *v.* Crawshay (1927), 96 L. J. K. B. 664 ; Rhodes *v.* Digby Colliery Co., [1927] 1 K. B. 152. **Apprvd.** Bevan *v.* Nixon's Navigation Co. (1928), 139 L. T. 647. **Consd.** Gladstone Spinning Co. *v.* Nangle (1928), 98 L. J. K. B. 161 ; Barnes *v.* L. & N. E. Ry. Co. (1929), 22 B. W. C. C. 205 ; Evans *v.* Ebbw Vale Steel, Iron & Coal Co., Ltd. (1929), 22 B. W. C. C. 274. **Apld.** Wemyss Coal Co., Ltd. *v.* Walker (1929), 22 B. W. C. C. 366. **Consd.** Earl *v.* Thomas W. Ward, Ltd. (1930), 143 L. T. 745. **Distd.** White *v.* London & North-Eastern Ry. Co., [1931] A. C. 52. **Dbtd.** Williams *v.* Watson (H. J. & S. A.), (1930), B. W. C. C. 151. **Refd.** Cushion *v.* Tredegar Iron & Coal Co. (1927), 20 B. W. C. C. 454 ; Tannoch *v.* Browneside Coal Co., [1929] A. C. 642 ; Statham *v.* Oxcroft Colliery Co. (1929), 22 B. W. C. C. 330 ; The Croxteth Hall, The Celtic, [1930] P. 197 ; Mothersdale *v.* Cleveland Bridge & Engineering Co. (1930), 99 L. J. K. B. 261 ; Birch Bros., Ltd. *v.* Brown, [1931] A. C. 605.

3286. *Add. Annotation :*—**Refd.** Bevan *v.* Nixon's Navigation Co. (1928), 139 L. T. 647.

3287. *Add. Annotations :*—**Refd.** Bevan *v.* Nixon's Navigation Co. (1928), 139 L. T. 647 ; Hughes *v.* Pwll-Heli Granite Co. (1929), 22 B. W. C. C. 637 ; Willis *v.* Howie (1931), 24 B. W. C. C. 352.

3288. For cross-reference after this case read "*See, now,* Workmen's Compensation Act, 1931 (c. 18)."

3288a. Application to industrial disease.]—Applt., who was a miner employed by the resps., was disabled by miners' nystagmus & was paid compensation, but ultimately the medical referee certified under 1925 Act, sect. 19 (3), that applt. had recovered & was fit for ordinary work. On an application by resps. to end the compensation the medical referee informed the arbitrator that he did not intend to certify that applt. had completely recovered in the sense that he was not more susceptible to the disease than before the attack :—*Held :* sect. 9 (4) of the Act applies not merely to physical incapacity for work but also to cases of industrial disease, &, as complete recovery had not been established, the arbitrator was not entitled to end the compensation as from the date of the certificate, & applt. must be permitted to go to proof of his averments in opposition to resps.' claim to have the compensation ended.—CONNOR *v.* CADZOW COAL CO., LTD., [1932] A. C. 1 ; 101 L. J. P. C. 59 ; 146 L. T. 97 ; 48 T. L. R. 10 ; 75 Sol. Jo. 763 ; 24 B. W. C. C. 396, H. L.

Annotation :—**Refd.** Penrikyber Navigation Colliery Co., Ltd. *v.* Edwards (1932), 173 L. T. Jo. 261.

3288b. Application of Workmen's Compensation Act, 1931 (c. 18), s. 1—Finding of partial incapacity by medical referee.]—WILLIAMS *v.* NEW BRITISH RHONDDA COLLIERY CO., LTD., No. 3038b, *ante.*

3288c. —— Condition for termination on receipt of unemployment benefit—Right to compensation for period prior to order.]—(1) The proviso to sect. 1 of 1931 Act applies only to a period after the date of the order made by the county ct. judge, & therefore does not prevent full compensation being awarded from a date antecedent to the order although unemployment benefit may have been paid throughout such antecedent period.

(2) The county ct. judge has a discretion under the section to attach such conditions to his order as he may think fit with regard to the repayment of unemployment benefit received prior to the date of the order. Appeal dismissed.—GOODMAN *v.* RUSTON & HORNSBY, LTD., [1932] 2 K. B. 60 ; 101 L. J. K. B. 353 ; 146 L. T. 522 ; 48 T. L. R. 319 ; 25 B. W. C. C. 98, C. A. ; *affd. sub nom.* RUSTON & HORNSBY, LTD. *v.* GOODMAN, 49 T. L. R. 55 ; 76 Sol. Jo. 815, H. L.

Annotation :—**Folld.** Foster *v.* Scunthorpe & District Bill-posting Co. (1932), 101 L. J. K. B. 357.

3288d. —— —— ——.]—A carpenter was seriously injured by an accident for which his employer admitted liability & paid him full compensation. He was subsequently given light work, sitting on a bench making boxes, the materials being brought to him. It was work which had to be done in the normal course of the employer's business, & was done satisfactorily. On an application for compensation he was awarded 4*s.* a week, & received this in addition to the wages paid to him for the light work. After a year & a half he had to be discharged owing to trade depression. After his discharge he applied for & received unemployment benefit & was still receiving it at the date of the hearing of an application by him for the review of his weekly payment of 4*s.* by an increase to 30*s.* At the arbn. the medical evidence was to the effect that the workman was in the same condition as when he was awarded 4*s.* a week, but he claimed an increase to 30*s.* a week on the ground of total incapacity. The county ct. judge found that the workman was as capable of doing work as when the award for 4*s.* a week was made, but that owing to trade conditions he had lost his employment & had since drawn, & was still drawing, unemployment pay on the ground that he could do the work if he could get it. He found he was not an "odd lot," & further held that the 1931 Act had rendered it impossible for the workman to obtain an increase, & made his award for the employer. The workman appealed : —*Held :* the award was unsatisfactory as it might be read as meaning that the receipt of unemployment benefit by the workman before the date of the hearing had disentitled him from claiming full compensation, contrary to the decision in *Goodman* v. *Ruston & Hornsby, Ltd.*, No. 3288c, *ante.*—ROBINSON *v.* ENGLISH STEEL CORPN., LTD. (1932), 25 B. W. C. C. 203, C. A.

3288e. —.]—The words in proviso (ii) to sect. 1 of 1931 Act are words of futurity only, & should be incorporated in every order made under that Act. Appeal dismissed.—FOSTER *v.* SCUNTHORPE & DISTRICT BILLPOSTING CO. (1932), 101 L. J. K. B. 357; 25 B. W. C. C. 111, C. A.

3288f. —— **What conditions must be imposed—General rule.**]—Sect. 1 of 1931 Act not being mandatory, there is no obligation on a county ct. judge in making an order under that Act to specify any period for, or to impose any conditions to, such order, but if he does not wish to specify any period or conditions, it is wise for him to record that the order is to continue until the weekly payment shall be ended, diminished, or redeemed in accordance with the Acts, & that no conditions are imposed save only the condition contained in proviso (ii) to sect. 1, the terms of which should be set out. Appeal dismissed.—MARSH *v.* ROBERT PARKER, LTD. (1932), 25 B. W. C. C. 197, C. A.

3288g. —— —— **Condition for termination on receipt of unemployment benefit.**]—GOODMAN *v.* RUSTON & HORNSBY, LTD., No. 3288c, *ante*.

3288h. —— —— ——.]—FOSTER *v.* SCUNTHORPE & DISTRICT BILLPOSTING CO., No. 3288e, *ante*.

3288j. Condition for repayment of unemployment benefit received prior to order—Discretion of judge.]—GOODMAN *v.* RUSTON & HORNSBY, LTD., No. 3288c, *ante*.

3289a. Unable to find former employment.]—A miner who had lost the sight of his right eye in an accident recovered sufficiently to be fit to resume his old work. Although he had taken all reasonable steps to obtain work as a miner or quarryman, he failed to obtain any. The sheriff-substitute found that the workman's failure to obtain employment was mainly a consequence of the injury & treated his incapacity as total under sect. 9 (4). On appeal to the First Division of the Ct. of Session the decision of the sheriff-substitute was reversed on the ground that sect. 9 (4) did not apply to a case where the workman had recovered sufficiently to be fit for his former employment. The workman appealed to the House of Lords:—*Held:* the words "employment of a certain kind," in sect. 9 (4) are applicable although the employment which the workman is fit for & is attempting to obtain is his pre-accident employment.—TANNOCH *v.* BROWNIESIDE COAL CO., [1929] A. C. 642; 98 L. J. P. C. 156; 141 L. T. 599; 45 T. L. R. 599; 73 Sol. Jo. 499; 22 B. W. C. C. 383, H. L.

Annotations:—**Consd.** Hughes *v.* Pwll-Hell Granite Co. (1929), 22 B. W. C. C. 637; Mothersdale *v.* Cleveland Bridge & Engineering Co. (1930), 99 L. J. K. B. 261. **Refd.** Birch Bros., Ltd. *v.* Brown, [1930] 2 K. B. 255; Charlton *v.* Union Castle Line, Ltd. (1930), 143 L. T. 66; Williams *v.* Englefield Collieries, Ltd. (1929), 22 B. W. C. C. 532; Connor *v.* Cadzow Coal Co., Ltd., [1932] A. C. 1.

3290. *Add. Annotation:*—**Consd.** Birch Bros., Ltd. *v.* Brown, [1931] A. C. 605.

3290a. ——.]—In May, 1923, a miner suffered a permanent injury by accident to his left foot & was paid compensation. In May, 1924, he was given by his employers light employment as a signalman, together with compensation for partial incapacity, & he continued to do the work satisfactorily until the general stoppage in 1926. His services were then dispensed with, & he was unable to obtain employment elsewhere. At the hearing it was proved that the workman could not do work which involved activity of the feet. The sheriff-substitute found that the workman was fit only for a special & limited class of work which he would have no chance of obtaining in the competitive labour market, & awarded him compensation for total incapacity. On appeal this decision was affirmed by the First Division of the Ct. of Session. The employers again appealed: —*Held:* there was ample evidence to support the finding of the arbitrator.—WEMYSS COAL CO., LTD. *v.* WALKER (1929), 22 B. W. C. C. 366, H. L.

Annotation:—**Refd.** Smith *v.* Union Castle Steamship Co. 1931), 24 B. W. C. C. 71.

3291a. Charitable employment given by employer.]—An hotel employee was in 1922 injured by an accident which converted him for all practical purposes into a one-armed man. He received compensation until 1926, when, as a result of an arbn., the county ct. judge made an order that the employers were liable to pay him compensation, & that he was at liberty to apply to the ct. "should he at any time be so advised." No other award was made, as the employers undertook to find him employment at 30*s.* a week. The employment found for him was to stand in the street holding a sign advertising the hotel. In 1930 he was dismissed for pilfering & applied to the ct. for compensation by way of review. The county ct. judge made an award in his favour on the basis of total incapacity. The employers appealed:—*Held:* (1) the award of the county ct. judge must have been made on findings that the workman was totally incapacitated & that the employment found for him by his employers was only a charitable employment, & there was evidence to support these findings; (2) the workman, being found to be in the category of "odd lot" labour, the fact that he had been dismissed for misconduct was irrelevant in coming to a decision as to whether or not there was incapacity for work. Appeal dismissed.—JENSEN *v.* JONES (R. E.), LTD. (1930), 23 B. W. C. C. 518, C. A.

3291b. One hand becoming useless.]—As a result of an accident a workman lost the third finger of his left hand, the second & fourth fingers were shrunken, & the thumb & first finger became weak, thus making the hand practically useless. The county ct. judge found that the workman was an "odd lot," & also that he should be treated as totally incapacitated under 1925 Act, s. 9 (4). The employers appealed:—*Held:* there was evidence to support the findings, & no misdirection. Appeal dismissed. — EVANS *v.* THOMAS W. WARD, LTD. (1930), 23 B. W. C. C. 364, C. A.

Annotation:—**Consd.** Earl *v.* Thomas W. Ward, Ltd. (1930), 23 B. W. C. C. 229.

3292. *Add. Annotation:*—**Refd.** Earl *v.* Thomas W. Ward (1930), 143 L. T. 745.

3295. *Add. Annotation:*—**Consd.** Lewis *v.* Guest, Keen & Nettlefolds, Watkins *v.* Same, Tucker *v.* Same, Ingram *v.* Crawshay (1927), 96 L. J. K. B. 664.

3295a. -.]—In 1911, a workman lost his right arm as a result of an accident. From 1913 to 1922 his employers engaged him on light work. In 1922 it was agreed that he should in the future be paid 7*s.* 6*d.* a week compensation in respect of the estimated difference between what he could earn at light work & what he would have been earning if he had not been injured. After 1924 he was given the work of record-keeping. On Dec. 24, 1927, he was discharged, the works being closed on account of trade difficulties. On Jan. 9, 1928, after sixteen days, he was re-engaged on light work on the terms of the 1922 agreement. The workman received unemployment benefit for the period he was unemployed & also the weekly compensation of 7*s.* 6*d.*, & did not try to obtain other employment. On May 13, 1928, he filed an application for arbitration, claiming an increase of compensation during the period he was unemployed on the basis of total incapacity. It was agreed that the amount recoverable in these proceedings, if successful, was 55*s.*, being two sums of 35*s.* a week less the two payments of 7*s.* 6*d.* The arbitration was begun in Aug. 1928, & continued in Oct. In his evidence the workman said that he was " a storekeeper plus messenger," & that he could act as a watchman-gatekeeper. At the hearing in Oct. the county ct. judge intimated that he was prepared to accept the argument put forward on behalf of the workman that he was an " odd lot," but again adjourned the case to Feb. 1929, for further consideration. In Feb., after hearing further argument, the county ct. judge found that the workman was partially incapacitated, that there were classes of employment in which he could earn his pre-accident wages, & that 7*s.* 6*d.* was sufficient compensation during the two weeks in question. The workman appealed :—*Held :* the findings of the county ct. judge amounted to a finding of fact that the workman was not an " odd lot," & there was evidence to support such a finding & no misdirection.—EVANS *v.* EBBW VALE STEEL, IRON & COAL CO., LTD. (1929), 22 B. W. C. C. 274, C. A.

3295b. - - - ——.]—A partially incapacitated workman in receipt of reduced compensation was unable to obtain work & claimed compensation on the basis of total incapacity on the ground that the injury was responsible for the fact that he was now only fit for light work, which was in fact unobtainable. The county ct. judge found that the workman was neither an " odd lot " nor within 1925 Act, s. 9 (4), but fit for light work. He also found that his failure to obtain employment was due to industrial conditions & not to his physical disability, & that the employers were right in reducing the compensation. The workman appealed :—*Held :* the findings of the county ct. judge were the exact findings in the case of *Cardiff Corpn.* v. *Hall*, No. 3284, which was approved in *Bevan* v. *Nixon's Navigation Co., Ltd.*, No. 3243b, & there was no misdirection. Appeal dismissed.—WILLIAMS *v.* WATSON (H. J. & S. A.) (1930), 23 B. W. C. C. 151, C. A.

3298a. ——.]—A wood-working machinist cut his hand on a circular saw. He was paid full compensation for over two months, but when the cut had healed the compensation was stopped & he applied for continuance of the compensation. After filing the application he obtained a job with fresh employers & cut himself again. At the hearing, at which it was alleged that the workman was suffering from traumatic neurasthenia, the county ct. judge found that he was able to do light work on the ground in the open air, but away from machinery, if such work could be found, but that he was quite unfit to go back to his old job. On the ground that there was no evidence that there was any light work available of that particular limited kind, the judge awarded him continuance of compensation at the full rate from the date when it had been stopped. The employers appealed :—*Held :* there was no evidence to justify an award for payment of compensation at the full rate. Appeal allowed. Case remitted.—ATKINS *v.* SPRECKLEY (CHARLES) & CO., LTD. (1931), 24 B. W. C. C. 59, C. A.

3299a. -A workman met with an accident arising out of & in the course of his employment which resulted in the loss of his right arm. He received full compensation based on total incapacity for some time, when it was reduced. Owing to failure to obtain work he again claimed full compensation. Arbn. proceedings having taken place, the county ct. judge made an award based on partial incapacity, holding that the failure to obtain work was not " wholly or mainly " due to the injury, but to the state of the labour market :—*Held :* there was material upon which the county ct. judge could base his decision. The workman having failed to prove that his failure to obtain work was a consequence, wholly or mainly, of the injury, & there being no misdirection, the appeal failed.—MOTHERSDALE *v.* CLEVELAND BRIDGE & ENGINEERING CO. (1930), 99 L. J. K. B. 261 ; 142 L. T. 541 ; 23 B. W. C. C. 47, C. A.

3300a. —— ——.]—A workman, in Dec. 1924, lost his left eye in an accident, & received compensation until he was re-employed at full wages at his old work in Mar. 1925. In Aug. 1925, he was discharged owing to slackness of trade & received unemployment benefit for a year. He was unable to give any clear evidence of what he had done subsequently, but from Oct. 1928. to June, 1929, he was employed by the guardians. From June, 1929, he was again in receipt of unemployment benefit. He made a claim for compensation in Aug. 1929. Evidence was given that he had applied three or four times to his old employers for work, but unsuccessfully, & that he had been unsuccessful in his applications for work to two other firms. The employers alleged that the only reason why they had been unable to re-employ him was because he had always applied for work at times when there was no work to be had, but that there had been work available for him in the past, & there was work available for him at the date of the hearing. There was no evidence that the refusal of work by the other two firms was due to the fact that he had lost an eye. The judge found that the workman had failed to obtain employment wholly or mainly in consequence of his injury, & made an award in his favour under sect. 9 (4) on the basis of total incapacity.

The employers appealed on the ground that there was no evidence of either partial or total incapacity & no evidence to bring the case within sect. 9 (4) :—*Held :* there was misdirection & no evidence to support a finding of incapacity due to the injury.—HUGHES *v.* PWLL-HELI GRANITE CO., LTD. (1929), 22 B. W. C. C. 637, C. A.

3301a. Ability to do work in ordinary course of employer's business.]—On Jan. 5, 1923, the workman, who was at the time of this appeal fifty-nine years old, while working as a general labourer, was injured by an accident arising out of & in the course of his employment by resps. His left foot & leg thickened & swelled, & ever since he has walked with a limp with the aid of sticks, & been unable to do any work involving standing up. In Jan. 1924, an award was made in his favour for full compensation on the ground that his injuries left his labour as an " odd lot," but on resp.'s undertaking to give him some work suitable to his impaired powers & to pay him a wage equal to his pre-accident earnings. the only award made was a declaration of liability. He was given the work of cleaning valves to do, for which he could sit at a bench, & he continued so to work till Nov. 1929, when, owing to slackness of trade, he, with many other able-bodied & injured men, was discharged. Since that time he had been unable to obtain any work, employers having told him they were slack & had nothing to suit him. Applts. having refused to pay him compensation, he filed a request for arbn. & the county ct. judge awarded him full compensation on the basis of total incapacity on the ground that he was the class of man for whom employers were called upon to find special jobs of light work, & that consequently his labour was an " odd lot " :—*Held :* the workman being able to do, & having done, the job for six years, of cleaning valves, a job necessary to be done in the ordinary course of business of his employers, his labour was not an " odd lot," that was to say, he was not only able to do certain very special jobs depending on finding a very special employer who either from compassion or because he had a special job was able to give him employment, therefore he was not totally incapacitated.—EARL *v.* THOMAS W. WARD, LTD. (1930), 143 L. T. 745 ; 23 B. W. C. C. 229, C. A.

3301b. Occasional unemployment.]—A workman recovered from an injury by accident sufficiently to return to his old work though he was unable to do all that he could do before the accident. After his return he was occasionally without work, owing to slackness of trade. While still employed he made a claim for compensation. The county ct. judge found that he was fit only for light work but had failed to obtain employment wholly or mainly in consequence of his injury, & held that under the 1931 Act his incapacity must be treated as total. He ordered payment to him by his employer of £1 10*s.* a week from the date of his return to work, & to continue. The employers appealed :—*Held :* the award could not be supported. Appeal allowed. New trial ordered in another county ct.—SNAPE *v.* MELLOWES & Co., LTD. (1931), 24 B. W. C. C. 497, C. A.

3302. *Add. Annotation :*—**Refd.** Bevan *v.* Nixon's Navigation Co. (1928), 139 L. T. 647.

3303. *Add. Annotation :*—**Consd.** Birch Bros., Ltd. *v.* Brown, [1931] A. C. 605.

3305. *Add. Annotations :*—**Consd.** Lewis *v.* Guest, Keen & Nettlefolds, Watkins *v.* Same, Tucker *v.* Same, Ingram *v.* Crawshay (1927), 96 L. J. K. B. 664 ; Barnes *v.* L. & N. E. Ry. Co. (1929), 22 B. W. C. C. 205 ; Evans *v.* Ebbw Vale Steel, Iron & Coal Co. (1929), 22 B. W. C. C. 274. **Refd.** Cushion *v.* Tredegar Iron & Coal Co. (1927), 20 B. W. C. C. 454.

3315a. ——.]—A workman was employed as a seaman on a fishing-boat at £3 a week. On Feb. 11, 1926, his finger was cut by a rope, & he was paid compensation until July 2, when he was certified fit for light work. He then obtained a situation on a trawler, until Sept., payment being on a profit-sharing basis, & his share of the profits being £21. He next worked on another trawler until Feb. 1927, payment being on the same basis, but there were no profits. On Nov. 5, 1926, he filed a request for arbn. claiming half the difference between his pre-accident wages & what he was able to earn on the trawlers on the profit-sharing basis. The county ct. judge assessed his weekly earning capacity since July 2, 1926, at £2 5*s.*, & awarded him 7*s.* 6*d.* a week compensation :—*Held :* (1) there was no evidence that the workman suffered any loss of earnings by reason of his injury, & no evidence to support the award ; (2) the workman had not discharged the *onus* of showing a reasonable probability that incapacity would ensue in the future, & was not entitled to a declaration of liability. —MCLEOD *v.* BLACK (1927), 20 B. W. C. C. 530, C. A.

3317. *Add. Annotation :*—**Refd.** Byrne *v.* Evans Lifts, Ltd. (1932), 25 B. W. C. C. 41.

3325. *Add. Annotation :*—*As to* (1) **Consd.** Gardner *v.* Vickers (1928), 44 T. L. R. 563.

3329. *Add. Annotations :*—*As to* (1) **Refd.** White *v.* London & North-Eastern Ry. Co. (1929), 142

PART XIV. SECT. 12, SUB-SECT. 9. —A.

sf. *Disfigurement—No evidence of difficulty in obtaining employment.*]—The employers of a dock labourer, who had lost his left index finger by accident in their employ & had been receiving compensation, obtained a medical reference as a result of which the referee reported that the workman had again become fit for his ordinary work. It was, however, not in dispute that the workman was permanently disfigured by the loss of his finger. In arbn. proceedings brought by the employers, the arbitrator refused a motion at their instance that he should end compensation, & pronounced a suspensory award, on the ground that the workman's disfigurement might make it difficult for him to obtain employment. The workman tendered no evidence to show that his prospects of employment had been prejudiced by the disfigurement : —*Held :* in the absence of evidence showing that the workman's disfigurement would make it difficult or impossible for him to secure employment, the arbitrator was not entitled to make a suspensory award, but was bound to end compensation. M'AVOY *v.* CALEDONIA STEVEDORING CO., [1932] S. C. 31.—**SCOT.**

PART XIV. SECT. 13, SUB-SECT. 1.— B. (b).

3339 i. *From what sum deducted—Not from children allowance.*]—Workmen's Compensation Act, 1925, enacts that weekly payments of compensation made to the workman before his death shall be deducted from the lump sum, but not from the children's allowance : —*Held :* such payments fell to be deducted from the lump sum prior to its aggregation with the children's

L. T. 435. *Generally*, **Refd.** Gardner *v.* Vickers (1928), 44 T. L. R. 563.

3341. *Add. Citations:*—[1927] A. C. 126; 96 L. J. K. B. 284; 136 L. T. 258; 19 B. W. C. C. 416.

Add Annotation:—**Refd.** Curran *v.* Kays, [1928] 2 K. B. 469.

3354. *Add. Annotation:—As to* (1) **Refd.** Nugent *v.* Londonderry Collieries (1929), 141 L. T. 619.

3355. *Add. Annotations:*—**Consd.** Welsh Navigation Steam Coal Co. *v.* Evans, [1927] A. C. 834; Nugent *v.* Londonderry Collieries (1929), 141 L. T. 619.

3357. *Add. Annotations:*—**Consd.** Campbell *v.* Portland Colliery Co. (1926), 19 B. W. C. C. 594; Shotts Iron Co. *v.* Curran, [1929] A. C. 409.

3359a. —— ——.]—Where a workman who had been killed by an accident arising out of & in the course of his employment left his mother & several brothers & sisters under the age of fifteen partially dependent on his earnings:—*Held:* the brothers & sisters were entitled to the children's allowance.—Shotts Iron Co. *v.* Curran, [1929] A. C. 409; 98 L. J. P. C. 73; 141 L. T. 65; 45 T. L. R. 251; 22 B. W. C. C. 1, H. L.

3359b. —— **Brother under fifteen.**]—Shotts Iron Co. *v.* Curran, No. 3359a, *ante*.

3359c. How calculated—Period of calculation—Posthumous child.]—A workman having been killed by accident arising out of his employment, his widow claimed compensation for herself & her posthumous child born some ten weeks after the workman's death. The employers paid a sum of money into ct. in respect of the child's allowance based on 15 per cent. of £2 a week for 780 weeks or fifteen years:—*Held:* the child was entitled to a sum calculated by taking 15 per cent. of £2 a week over a period from the death of the workman to the date when the child in fact would attain the age of fifteen, which, in this case, was some ten weeks more than fifteen years.—Athey *v.* Pickerings, Ltd. (1926), 96 L. J. K. B. 250; 136 L. T. 535; *sub nom. Re* Athey, Pickerings, Ltd.'s Application, 20 B. W. C. C. 215, C. A.

3359d. —— **Amount of lump sum.**]—A workman died as the result of an accident, having previously received from his employers £65 5*s.* 5*d.* in weekly payments as compensation. On his death his employers paid into ct. £534 14*s.* 7*d.*, made up of £234 14*s.* 7*d.*, *i.e.*, £300 less £65 5*s.* 5*d.*, for the lump sum payable to the widow, & £300 for children's allowance. The total amount to which the children would have been entitled, if not limited in any way, was calculated to be £617 14*s.* The county ct. judge decided that the amount paid in was reasonable &, at the request of the widow, made an order for payment out of part of the amount:—*Held:* (1) the amount paid into ct. by the employers was insufficient, & the dependants were entitled to the full £600, since if the lump sum calculated under Workmen's Compensation Act, 1925 (c. 84), s. 8 (2), was reduced below £300, then, if the figures warranted it, the children's allowance under sect. 8 (3) might exceed £300, provided that the lump sum & the children's allowance together did not exceed £600; (2) the widow was not deprived of her right of appeal by having accepted payment of part of the amount paid in, because, although she might have approbated the order on her own behalf, she had reprobated it in the interests of her children. (3) *Semble:* a request for arbn., & not an appeal, was the proper procedure for the widow.—Malcolm *v.* Barber, Walker & Co., Ltd. (1927), 137 L. T. 470; 20 B. W. C. C. 516, C. A.

3359e. —— **One child over fifteen partially dependent.**]—A workman died as a result of an accident leaving a widow & two children under fifteen all wholly dependent, & also one daughter over fifteen partially dependent. The county ct. judge held the presence of the daughter over fifteen, & only partially dependent, required him to calculate the children's allowance on the basis of partial allowance, & not from the aggregate of the lump sum & the allowance; &, accordingly, such portion of the children's allowance, calculated according to the rules, as was necessary to raise the aggregate to the maximum of £600, fell to be added to the lump sum after deduction from the latter of any payments made to the workman.—Farrell *v.* Murdostoun Colliery Co., [1931] S. C. 143; 23 B. W. C. C. 639.—**SCOT.**

PART XIV. SECT. 13, SUB-SECT. 1.—C. (b).

3348 iv. —— *Contributions from unemployment benefit.*]—A workman who was fatally injured in his employment was, at the time of his death, living in family with his father, mother, & two sisters. The family was maintained out of a common fund, to which the workman, his father, & other members of the family contributed weekly, the whole fund being expended upon necessaries. During the year preceding the workman's death, his father was in employment only for eleven weeks; during the remainder of the year his father's sole contribution to the fund consisted of unemployment benefit. The workmen's own contribution to the fund during the year amounted to rather more than one-third of it; his averaged £1 13*s.* 9*d.*, & he contributed to the fund, on an average, 13*s.* 9*d.* more than he received from it. The other members of the family were all partially dependent on his contribution; &, on his death, they claimed compensation:—*Held:* the compensation payable to claimants fell to be measured by the extent to which the workman's death had in fact deprived them of the ordinary necessaries of life.

Opinions that, in determining the extent of the claimants' partial dependency on the workman's earnings, the arbitrator was entitled to take into account the father's contributions to the common fund from unemployment benefit.—Pollock *v.* Baird (William) & Co., Ltd., [1931] S. C. 667.—**SC T.**

3349 ii. —— ——.]—Applts., being the father, mother, brothers, & sisters of deceased, claimed compensation under Workers' Compensation Act, 1912–1924, on the ground that they were partially dependent on deceased. Applts. & deceased had resided together, & deceased, who was an infant, had been in receipt of a wage of 12*s.* 6*d.* per week at the time of his death, which, or most of which, he was in the habit of contributing towards the expenses of the household of which he was a member. The magistrate found that the cost of the keep of deceased came to more than the amount which he paid into the family & that applts. were not dependent on him:—*Held:* the magistrate was entitled to find that applts. were not dependent on deceased.—Edmondstone *v.* Greaves (1926), 29 W. A. L. R. 83.—**AUS.**

11. —— *Incapacity of wage-earning father — Result of son's accident.*]—A workman who was killed by an accident arising out of his employment, left his mother & sister partially dependent upon his earnings. His father, a wage-earner & not dependent, was totally incapacitated by the news of his son's death. The arbitrator took the loss of the father's earnings into consideration in assessing the lump sum payable to the dependants. The employers appealed:—*Held:* the loss of the father's wage-earning capacity was irrelevant to the assessment of the compensation.—Swan *v.* Coltness Iron Co., Ltd. (1928), 21 B. W. C. C. 567.—SCOT

o. *Revsd.*, 19 B. W. C. C. 461.

PART XIV. SECT. 13, SUB-SECT. 2.—A.

ad. *Application of Workmen's Compensation Act, R. S. S.*, 1920, *s.* 15.]—Orton *v.* Pangman Rural Telephone Co., Ltd., [1930] 2 W. W. R. 163; 4 D. L. R. 78; 24 S. L. R. 371.—**CAN.**

dependency :—*Held :* the children's allowance must be calculated on the basis of their being wholly dependent, & the existence of another member of the family over fifteen, who happened to be only partially dependent, did not affect the calculation.—GREEN *v.* PREMIER GLYNRHONWY SLATE CO., LTD., [1928] 1 K. B. 561 ; 97 L. J. K. B. 32 ; 138 L. T. 90 ; 20 B. W. C. C. 563, C. A.

3363a. During the previous twelve months—Twelve months prior to accident.]—BYWATER *v.* SOTHERT & PITT (1932), 174 L. T. Jo. 121, C. A.

3364. *Add. Annotation :*—**Consd.** Lewis *v.* Guest, Keen & Nettlefolds, Watkins *v.* Same, Tucker *v.* Same, Ingram *v.* Crawshay (1927), 96 L. J. K. B. 664.

3366. *Add. Annotations :*—**Consd.** Lewis *v.* Guest, Keen & Nettlefolds, Watkins *v.* Same, Tucker *v.* Same, Ingram *v.* Crawshay (1927), 96 L. J. K. B. 664. **Refd.** Bevan *v.* Nixon's Navigation Co. (1928), 139 L. T. 647 ; Barber, Walker & Co. *v.* Flint (1928), 98 L. J. K. B. 83.

3371a. —— —— ——.]—STEVENS *v.* BIRMINGHAM CORPN., No. 3269b, *ante*.

3373. *Add. Annotations :*—**Consd.** Hamilton *v.* Shelton Iron, Steel & Coal Co., Leigh *v.* Same, Timmins *v.* Same (1926), 96 L. J. K. B. 295 ; Lewis *v.* Guest, Keen & Nettlefolds, Watkins *v.* Same, Tucker *v.* Same, Ingram *v.* Crawshay (1927), 96 L. J. K. B. 664. **Refd.** Bevan *v.* Nixon's Navigation Co. (1928), 139 L. T. 647.

3375. *Add. Annotation :*—**Consd.** Birch Bros., Ltd. *v.* Brown, [1930] 2 K. B. 255.

3377a. Accident occurring before operative date of 1923 Act—Compensation to be calculated by reference to 1906 Act.]—A workman earning £1 18*s.* 6*d.* a week was injured by an accident on July 10, 1923. Liability was admitted & compensation paid. The 1923 Act did not come into operation until Jan. 1, 1924. In Sept. 1924, he resumed work at lighter employment, but was in receipt of higher wages. In Dec. 1928, he was discharged. In June, 1929, he filed an application for arbn. The county ct. judge found that he was still partially incapacitated & made an award for a weekly payment of £1. The employers appealed :—*Held :* the accident having occurred before Jan. 1, 1924, compensation for partial incapacity should have been awarded in accordance with the 1906 Act, & the judge, in making the award he did, must have applied the principles of the later Acts.—WILLIAMS *v.* ENGLEFIELD COLLIERIES, LTD. (1929), 22 B. W. C. C. 532, C. A.

3377b. Duty of court to apply 1925 Act, sect. 10.]—A workman was injured on Feb. 6, 1929. Out of the fifty-two weeks prior to that date he had been in work for twenty-three weeks & out of work for twenty-nine. He had been employed by the same employer since 1914, but owing to bad trade his contract of service had since 1921 become terminable at a day's notice, & it was the practice of the employer to put up notices from time to time announcing that the particular mill in which the workman was engaged would cease work on the following week. Whenever he was thus thrown out of work the workman attempted to get other work, but always failed & had to draw unemployment benefit. He would, if the mill happened to have reopened, apply at the works on the chance of being taken on again. Liability for the accident was admitted by the employer, but a dispute arose as to the amount of the average weekly earnings on which the rate of compensation should be calculated. The county ct. judge held that the total earnings during the fifty-two weeks should be divided by twenty-three, representing the number of weeks of employment. There was no evidence before the judge that the irregular cessation of work was a normal incident of the workman's employment beyond the statement of the workman that employment had been irregular since 1921. The employer appealed :—*Held :* the county ct. judge had not computed the workman's average weekly earnings in the manner best calculated to give the rate per week at which the workman was being remunerated. Appeal allowed. Case remitted for reconsideration on the basis of 1925 Act, s. 10 (i), & the proviso thereto.—MCGEE *v.* UNITED STEEL COMPANIES, LTD. (1930), 23 B. W. C. C. 273, C. A.

Annotation :—**Folld.** Fenton *v.* Charlton (J. E.), Ltd. (1931), 24 B. W. C. C. 176.

3377c. —.]—At the hearing of an arbn. at which the county ct. judge found partial incapacity only, a dispute arose as to the average weekly earnings of the workman, a stevedore. The workman claimed that they amounted to £5 10*s.*, but the employer contended that they were £3 10*s.*, being the actual weekly amount paid by them to the workman while in their employment. The county ct. judge, without considering the provisions of 1925 Act, s. 10, in calculating the average weekly earnings, took the figure of £5 10*s.* for the purpose of assessing the amount of compensation. The employer appealed :—*Held :* average weekly earnings must be calculated in accordance with 1925 Act, s. 10. Appeal allowed. Case remitted for reconsideration of compensation on the basis of both sects. 9 & 10.—FENTON *v.* CHARLTON (J. E.), LTD. (1931), 24 B. W. C. C. 176, C. A.

3385. *Add. Annotation :*—**Refd.** Broughton *v.* London & North-Eastern Ry. Co., [1930] 1 K. B. 578.

3389. *Add. Annotation :*—**Refd.** Stevens *v.* Birmingham Corpn. (1929), 22 B. W. C. C. 311.

3390. *Add. Annotation :*—**Refd.** Colquitt *v.* United Steel Co. (1928), 21 B. W. C. C. 409.

3390a. ——.]—A miner, in 1913, sustained a fracture of his right leg & was wholly incapacitated, for which he received full compensation at 35*s.* a week. The employers subsequently claimed to reduce the compensation to 3*s.* 5*d.* a week, on the ground that he was then capable of earning wages as a clerk, storekeeper, or lampman. The

PART XIV. SECT. 13, SUB-SECT. 2.—C. (a).

3374 i. —— *Offer of suitable work—As non-union worker.*] *Held :* as the employers had not discharged the *onus* of proving that acceptance of the condition in their offer would not have made the workman's position materially worse than it had been under the old contract, the arbitrator was not entitled to refuse compensation.—M'DONALD *v.* OUTRAM (GEORGE) & CO., LTD., [1927] S. C. 333.—**SCOT.**

workman filed an application for arbn. claiming the continuance of compensation for total incapacity. The judge referred certain questions to the medical referee who, in his replies, stated that the workman suffered pain in his right leg which would prevent him standing eight hours as a storekeeper or lampman; but which would not prevent him doing the full work of a clerk. The judge examined letters written by the workman & found that he was sufficiently well educated to earn 30*s.* a week as a clerk &, on the answers given by the medical referee, made an award for 7*s.* 8*d.* a week with costs. The workman appealed:—*Held:* there was evidence to support the finding of fact & no misdirection.—YEOMAN *v.* GREAT WESTERN COLLIERY CO., LTD. (1929), 22 B. W. C. C. 547, C. A.

3392a. —— Lack of accommodation for workman's family.]—A workman employed by a railway co. as a foreman ganger, living in a village in Lincolnshire with his wife, whose lungs were delicate, & his four children, was partially incapacitated as the result of an injury from an accident arising out of & in the course of his employment. His average weekly earnings before the accident amounted to £3 1*s.* 11*d.* The co. offered him, first at B. & then at S., work which he was capable of doing & in which he could earn £2 6*s.* 9*d.* a week; & they made him weekly payments of 7*s.* 7*d.* The workman refused the employment offered as not being "suitable" on the grounds that, as he alleged: (*a*) in neither of the places mentioned could he find accommodation for his family, & (*b*) that his wife's health would suffer if she had to live in either of them; & he applied to the county ct. for an award of compensation:—*Held:* the lack of accommodation for the family of the workman & the possible or probable injury to his wife's health were irrelevant to the question whether available employment was "suitable."—BROUGHTON *v.* LONDON & NORTH-EASTERN RY. CO., [1930] 1 K. B. 578; 99 L. J. K. B. 238; 142 L. T. 475; 46 T. L. R. 202; 74 Sol. Jo. 138; 23 B. W. C. C. 17, C. A.

3392b. —— Injury to wife's health.]—BROUGHTON *v.* LONDON & NORTH-EASTERN RY. CO., No. 3392a, *ante*.

3396. *Add. Annotation:*—**Refd.** Yates *v.* Hemsworth Rural District Council (1929), 22 B. W. C. C. 649.

3399. *Add. Annotations:*—**Refd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 243; Yates *v.* Hemsworth Rural District Council (1929), 22 B. W. C. C. 649; Nixon *v.* A.-G., [1931] A. C. 184.

3401a. —— Must be paid in respect of incapacity.]—By Local Government & other Officers' Superannuation Act, 1922 (c. 59), s. 6 (3), where a servant of a local authority adopting the Act has attained the age of sixty-five, he shall cease to hold his employment, provided that the local authority may, with the consent of the servant, by resolution extend the period of employment for one year or any less period & so from time to time as they may deem expedient. A dustman, aged sixty-seven, employed by a local authority which had adopted the above Act was injured & became entitled to be paid compensation. He was paid full compensation for a short time & then given a small weekly pension. The workman claimed compensation on the basis of total incapacity. There was no evidence as to whether the employment of the workman had been extended by resolution, or as to whether the pension was paid in respect of the incapacity. The county ct. judge found partial incapacity & held that the pension was being paid by the employers in respect of such incapacity. He, therefore, made an award of compensation for partial incapacity, reducing the weekly payment by the amount of the weekly pension. The workman appealed:—*Held:* there were insufficient materials before the county ct. judge to enable him to come to a proper decision as to whether the pension was in respect of incapacity or not. Appeal allowed. Case remitted for rehearing.—YATES *v.* HEMSWORTH RURAL DISTRICT COUNCIL (1929), 22 B. W. C. C. 649, C. A.

3420. *Add. Annotation:*—**Distd.** McGee *v.* Muir Wm. & Co. (1929), 140 L. T. 516.

3423a. Payments received under part-time agency agreement.]—A workman was employed as a fitter by a firm of engineers, & at the same time was acting under an agreement with a benefit society as their part-time agent. Under this agreement he agreed to obey the orders of the society & perform all his duties in accordance with official instructions. He was to be paid a weekly salary calculated on a percentage basis. The workman suffered an accident in the course of his employment as a fitter. The county ct. judge, in order to compute his average weekly earnings, added together the weekly payments received from both sources. The employers appealed on the ground that the relationship between the society & the workman was that of principal & agent, & not master & servant, & that his payments under the agreement should not be taken into account:—*Held:* the judge had rightly construed the agreement as establishing the relationship of master & servant between the society & the workman.—ROBERTS *v.* GARDNER (WILLIAM) & SONS (1928), 21 B. W. C. C. 154, C. A.

Annotation:—**Refd.** Hobbs *v.* Royal Arsenal Co-operative Society (1930), 144 L. T. 10.

3423b. Payments out of public funds—Compensation for loss of wages—Workman sitting on Court of Referees.]—The earnings which are to be taken as the basis of the compensation payable to an injured workman under Workmen's Compensation Act, 1925 (c. 84), are the earnings in his employment, & do not include other earnings such as payments

PART XIV. SECT. 13, SUB-SECT. 3.—A. (a).

3415 i. *Whether incidental advantages included—Value of tuition to apprentice.*]—An apprentice, not in receipt of any wages, was totally incapacitated as a result of an accident arising out of & in the course of his employment:—*Held:* the value of the tuition he received could not be taken into account for the purpose of awarding compensation.—DAVIS *v.* DELAHUNT, [1930] I. R. 262; 23 B. W. C. C. 668.—**IR.**

sa. *Amount he is actually earning.*]—*Held:* as the workman was employed & there was no other employment open to him at which he could earn higher wages, the proper figure to take in assessing compensation was the amount he was actually earning.—DYKES *v.* BAIRD, [1929] S. C. (Ct. of Sess.) 555.—**SCOT.**

sb. *Profit sharing by fisherman—Deemed to earn wages at $780 a year—Amount fixed conclusively.*]—MARITIME FISH CORPN. *v.* COHOON, [1930] 1 D. L. R. 809.—**CAN.**

to the workman from public funds to make up loss of wages for days when instead of working he sits as workmen's representative on the Ct. of Referees of a local employment committee.—McGEE *v.* MUIR W. & Co., LTD. (1929), 140 L. T. 546; 45 T. L. R. 202; 73 Sol. Jo. 109; 22 B. W. C. C. 193, C. A.

3427. *Add. Annotation :*—**Consd.** McGee *v.* United Steel Companies, Ltd. (1930), 23 B. W. C. C. 273.

3431. *Add. Annotation :*—**Consd.** McGee *v.* United Steel Companies, Ltd. (1930), 23 B. W. C. C. 273.

3433. *Add. Annotations :*—*As to* (1) **Refd.** Hamilton *v.* Shelton Iron, Steel & Coal Co., Leigh *v.* Same, Timmins *v.* Same (1926), 96 L. J. K. B. 295. *As to* (5) **Refd.** Bevan *v.* Nixon's Navigation Co. (1928), 139 L. T. 647; Doncaster *v.* Sudlow (R.) & Sons (1929), 22 B. W. C. C. 564. *Generally*, **Refd.** Lewis *v.* Guest, Keen & Nettlefolds, Watkins *v.* Same, Tucker *v.* Same, Ingram *v.* Crawshay (1927), 96 L. J. K. B. 664; Birch Bros., Ltd. *v.* Brown, [1930] 2 K. B. 255.

3449a. Irregular employment—Workman liable to day's notice.]—McGEE *v.* UNITED STEEL COMPANIES, LTD., No. 3377b, *ante*.

3455a. —— Overtime.]—STEVENS *v.* BIRMINGHAM CORPN., No. 3269b, *ante*.

3455b. Pension.]—STEVENS *v.* BIRMINGHAM CORPN., No. 3269b, *ante*.

3455c. Occasional increased wages when working away from home.]—The workman, a ganger, aged fifty-five years, met with an accident in the course of his employment & two fingers of his right hand were injured. After receiving compensation on the basis of total incapacity for about four months, he resumed work with his old employers. He was afterwards discharged & was out of work for about two months. He then obtained work with a municipal authority, his weekly wages varying from £2 to £3 1*s.* 6*d.* He claimed compensation under the Act, on the basis of partial incapacity, alleging that his average weekly earnings before the accident were £4 & that he was able to earn £2 10*s.* 8*d.* after the accident. At the hearing he stated that his average pre-accident weekly earnings as a ganger when at home amounted to £3 15*s.*, & when not at home £5. The county ct. judge made an award in favour of the workman of £1 a week to take effect from the date of the accident. The county ct. judge said that he thought he had arrived at that figure by taking into account the workman's occasional pre-accident earnings of £5 a week :—*Held :* there was no ground for interfering with the award of £1 per week, as the county ct. judge had not considered anything irrelevant. The award must therefore be affirmed.—FORD *v.* WELLERMAN BROS. (1930), 99 L. J. K. B. 600; 143 L. T. 590; 23 B. W. C. C. 183, C. A.

3466. *Add. Annotation :*—*As to* (1) **Consd.** Templeton *v.* Parkin Wm. & Co. (1929), 140 L. T. 519.

3469. *Add. Annotations :*—*As to* (1) **Refd.** Templeton *v.* Parkin Wm. & Co. (1929), 140 L. T. 519. *As to* (2) **Refd.** Hobbs *v.* Royal Arsenal Co-operative Society (1930), 170 L. T. Jo. 159. *As to* (3) **Consd.** Roberts *v.* Gardner (1928), 21 B. W. C. C. 154. **Refd.** Williams *v.* Larsen (1928), 21 B. W. C. C. 339.

3472. *Add. Annotation :*—**Folld.** McGee *v.* Muir Wm. & Co. (1929), 140 L. T. 546.

3475. *Add. Annotations :*—**Apld.** Gardner *v.* Vickers (1928), 44 T. L. R. 563; *Re* Unemployment Insurance Act, 1920, *Re* Leeds Corpn. & Chadwick (1928), 92 J. P. 192. **Refd.** Scott *v.* Summerlee Iron Co. (1930), 99 L. J. P. C. 170.

3477. *Add. Annotation :*—**Consd.** Kinneil Cannel & Coking Coal Co. *v.* Sneddon (or Waddell), [1931] A. C. 575, H. L.

3482a. —— Causing temporary unemployment.]—Applt., who was employed by resps. as a riveter on piecework, received notice, on Sept. 3, 1926, owing to the coal strike of that year, that there was no more work available for him. He accordingly ceased to work till Dec. 8, when he was re-employed by resps. On Jan. 11, 1927, he met with an accident causing total incapacity. On an application for compensation, the county ct. judge held the interruption was a normal incident & there was no break in the employment, & he awarded compensation on the basis of applt.'s earnings for the twelve months prior to the accident :—*Held :* the interval was not one of the incidents of a discontinuous employment, & there was a break in the employment, & the case must go back to the judge to assess compensation on that basis.—GARDNER *v.* VICKERS, LTD. (1928), 44 T. L. R. 563; 21 B. W. C. C. 129, C. A.

Annotation :—**Refd.** McGee *v.* United Steel Companies, Ltd. (1930), 23 B. W. C. C. 273.

3491. *Add. Annotation :*—**Refd.** Marchant *v.* Char Steam Trawling Co. (1929), 22 B. W. C. C. 247.

3493a. Promotion due to illness.]—A workman, who had been employed as a deck-hand, was promoted boatswain of a steam trawler, owing to the illness of one of the vessel's officers just before she left harbour. Within twenty-four hours of putting to sea, the workman suffered an accident. In the course of subsequent proceedings regarding the payment of compensation, an issue was raised between the parties as to whether the weekly payment should be calculated on the earnings of a boatswain or a deck-hand. The county ct. judge held that at the time of the accident the workman was employed in the grade of a boatswain, & awarded compensation on that basis. The employers appealed :—*Held :* the

PART XIV. SECT. 13, SUB-SECT. 3.—B. (a).

3432 viii. ——.]—DUNSTONE *v.* FERRARI. [1926] V. L. R. 155; 47 A. L. T. 111; [1926] Argus L. R. 133.—**AUS.**

PART XIV. SECT. 13, SUB-SECT. 3.—B. (e) ii.

sh. *Employment during summer months as club servant.*]—Pltf.'s employment, with a club, lasted only during the summer months, for which he received a weekly wage of £4 15*s.*, & during the winter months he was engaged as an independent contractor on his own account :—*Held :* compensation should be assessed on the basis of an average weekly wage of £4 15*s.*, & the break in the employment during the winter months was not to be regarded as so incidental to his employment with the club as to disentitle him to assessment on this basis.—LEATHAM *v.* PETONE CENTRAL BOWLING CLUB [1930] N. Z. L. R. 176.—**N.Z.**

judge had rightly directed himself as to the grade of the workman at the date of the accident.—MARCHANT *v.* CHAR STEAM TRAWLING CO., LTD. (1929), 22 B. W. C. C. 249, C. A.

3494. *Add. Annotation :*—**Consd.** McGee *v.* United Steel Companies, Ltd. (1930), 23 B. W. C. C. 273.

3511. *Add. Annotation :*—**Consd.** Niddrie & Benhar Coal Co. *v.* Dee, [1927] A. C. 299.

3513. *Add. Annotations :*—**Refd.** Leonard *v.* Redbrook Tinplate Co., [1930] 1 K. B. 643; Willis *v.* Howie (1931), 24 B. W. C. C. 352.

3521. *Add. Annotation :*—**Apld.** Williams *v.* Crawshay Bros. (Cyfarthfa) (1929), 22 B. W. C. C. 223.

3530a. -.]—On a finding that a workman has fully recovered & there is no evidence of any probability of future incapacity, the judge has no power to order a declaration of liability to be recorded.—PORTER *v.* WHITBYS, LTD. (1926), 19 B. W. C. C. 414, C. A.

3530b. —— ——.]—A miner had his right eye injured by a splinter of coal while working at the coal face & was paid compensation therefor. The employers subsequently applied to terminate the weekly payments. At the hearing the medical evidence was conflicting, & accordingly the judge referred certain questions to the medical referee, who answered that the workman was fit for work at the coal face & that he did not think that there was any greater danger to either eye from such work than there would be if the vision of the right eye were normal. The judge thereupon terminated the weekly payments, but made a declaration of liability. The employers appealed :—*Held :* there was no evidence of any reasonable probability of incapacity arising at a later day, &, therefore, no ground for making a declaration of liability.—WEST LEIGH COLLIERY CO., LTD. *v.* MCNEIL (1929), 22 B. W. C. C. 541, C. A.

3530c. Admission by employer of partial incapacity. —On Sept. 26, 1926, a workman was kicked on the knee by a horse & injured. He was paid full compensation until May 5, 1927, when the employers gave notice of their intention to reduce the weeky compensation to 10*s.*, & did in fact so reduce it. The workman applied for 30*s.* to be continued. The employers in their answer submitted to an award of 10*s.* a week to continue. The county ct. judge found that the man was able to do his full work on May 5, 1927, but ordered that compensation should be paid at 30*s.* up to July 4, 1927, & then terminate altogether : —*Held :* the award was inconsequent, & the case must be sent back to the judge for a rehearing.—SHEAY *v.* TITE (B. W.) & SONS (1927), 20 B. W. C. C. 616, C. A.

3531a. —— **Onus of proof on workman.**]—Where the county ct. judge found that employers were not liable to pay compensation, as the workman was not incapacitated from doing his ordinary work at his ordinary wages :—*Held :* the judgment of the county ct. judge involved a finding that the workman was not entitled to a declaration of liability, & the evidence supported the finding, in that the workman had failed to show that there was a reasonable probability of an ensuing incapacity.—WILLIAMS *v.* TREDEGAR IRON & COAL CO., LTD. (1927), 96 L. J. K. B. 722 ; 137 L. T. 464 ; 20 B. W. C. C. 480, C. A.

Annotations :—**Folld.** West Leigh Colliery Co. *v.* McNeil (1929), 22 B. W. C. C. 541. **Consd.** Birch *v.* John (1930), 23 B. W. C. C. 345.

3531b. —— ——.]—MCLEOD *v.* BLACK, No. 3315a, *ante*.

3532. *Add. Annotation :*—**Consd.** Birch *v.* John (1930), 23 B. W. C. C. 345.

3540a. —— ——.]—A grocer's assistant lost his left index finger & received compensation for a year. When his compensation was terminated, he claimed a renewal of the weekly payments or a declaration of liability. The county ct. judge found as a fact that the workman could do his ordinary work & refused to grant a declaration of liability. The workman appealed :—*Held :* on that finding of fact a declaration of liability could not be granted. Appeal dismissed.—BIRCH *v.* JOHN (1930), 23 B. W. C. C. 345, C. A.

3540b. —— ——.]—A guillotine cutter on May 2, 1930, by an accident injured his right eye, which subsequently had to be removed. He was paid compensation by his employers until Sept. 22, 1930, when they alleged that he was no longer incapacitated for work by reason of his injury. On a claim for a continuance of compensation the county ct. judge on Dec. 10, 1930, found that by Nov. 3, 1930, the workman had become capable of earning as much as before his accident, though he should not for the present resume work as a guillotine cutter or attend machinery, & awarded him a lump sum representing compensation from Sept. 22 to Nov. 3. The award stated that the lump sum was " in full satisfaction & discharge of all claims for " compensation. No request was made in the county ct. for a declaration of liability. The workman appealed :—*Held :* the award should be varied by deleting the words " in full satisfaction & discharge of all claims for " & adding a declaration of liability in the terms of *King* v. *Port of London Authority*, No. 3548. Appeal allowed. No costs on either side.—ARMSTRONG *v.* VULCO DRY BATTERY CO., LTD. (1931), 24 B. W. C. C. 38, C. A.

3541a. After termination of compensation.]—(1) Where a county ct. judge, upon a certificate of a medical referee that a workman who has been injured has entirely recovered & is fit for his usual employment, not containing any suggestion of the possibility of a recurrence of incapacity due to the injury at a future date, makes an order terminating the compensation, there is no jurisdiction to make a declaration of liability. (2) The fact that the certificate does not refer, one way or the other, to the possibility of future recurrence or complications, does not make it in any way ambiguous. " Recovery " *primâ facie* means that there is no liability of a recurrence of illness & consequent incapacity.—EVANS (RICHARD) & CO., LTD. *v.* GILBIE (1926), 96

L. J. K. B. 117; 136 L. T. 93; 19 B. W. C. C. 375, C. A.

Annotations:—As to (1) **Consd.** McLeod *v.* Black (1927), 20 B. W. C. C. 530; Wagstaff *v.* Gutta Percha Co. (1927), 20 B. W. C. C. 430; Williams *v.* Tredegar Iron & Coal Co., Ltd. (1927), 96 L. J. K. B. 722.

3541b. Award of one penny a week—When justified.]—RUDDY *v.* LONDON, MIDLAND & SCOTTISH RY., No. 2823a, *ante*.

3541c. —— ——.]—In Nov. 1926, a seaman was moving planks during heavy weather in the Channel, when, owing to a lurch of the ship, he was thrown down & at the same time struck by one of the planks. He complained of injuries & was examined by a doctor when the ship called at R. No serious injury was discovered & he proceeded with the ship to B. On the voyage to B. he became so ill that he was only able to take his turn at the wheel by sitting in a chair. At B. he was operated on for hernia & his back was put into a plaster jacket. He returned home in Apr. 1927, & in June, 1927, his employers agreed to pay him full compensation. In Apr. 1928, he underwent a second operation for hernia, which was completely successful. In Dec. 1929, the employers applied for a review of the weekly payments, specifying in their application that they asked only for diminution. The county ct. judge, sitting with a medical assessor, found that he was no longer incapacitated by the hernia, but that he was incapacitated by osteo-arthritis not due to the accident. On those findings he made an award of a penny a week. The workman appealed:—*Held:* there was evidence to support the findings & the judge was justified in diminishing the compensation to a penny a week.—WATTS, WATTS & CO., LTD. *v.* HOLE (1930), 23 B. W. C. C. 119, C. A.

3543. *Add. Annotations:—As to* (1) **Consd.** Williams *v.* Tredegar Iron & Coal Co. (1927), 96 L. J. K. B. 722. *As to* (2) **Consd.** McLeod *v.* Black (1927), 20 B. W. C. C. 530; West Leigh Colliery Co. *v.* McNeil (1929), 22 B. W. C. C. 541.

3545a. Order giving liberty to apply.]—Employers having paid a workman full compensation for some months for an accident in their employment, applied for a review of the weekly payment & for termination, but offered to accept a declaration of liability. The county ct. judge held they were not entitled to terminate the weekly payments, as the workman was still partially incapacitated, but such payments should cease, & no such payments should be made so long as they employed & continued to employ the workman at a wage equivalent to his pre-accident wages, with liberty to either party to apply. He also ordered the employers to pay the costs:—*Held:* (1) the order was a right order, as liberty to apply carried out the effect of a declaration of liability; (2) the employers having failed to establish their right to termination of the weekly payments, the judge rightly exercised his discretion in ordering that the employers should pay the costs.—SIDNEY LEE (EXETER), LTD. *v.* JAMES (1928), 21 B. W. C. C. 220, C. A.

3548. *Add. Annotations:—As to* (1) **Consd.** Birch Bros., Ltd. *v.* Brown, [1930] 2 K. B. 255; Birch *v.* John (1930), 23 B. W. C. C. 345; Brewer *v.* Firestone Tyre Rubber Co. (1931), 24 B. W. C. C. 366. **Refd.** Evans *v.* Gilbie (1926), 96 L. J. K. B. 117; Williams *v.* Crawshay Bros. (Cyfarthfa) (1929), 22 B. W. C. C. 223; Wilsons & Clyde Coal Co., Ltd. *v.* Burrows (1929), 141 L. T. 594; Wilsons & Clyde Coal Co. *v.* Burrows (1929), 22 B. W. C. C. 430. *As to* (2) **Consd.** McLeod *v.* Black (1927), 20 B. W. C. C. 530; Wagstaff *v.* Gutta Percha Co. (1927), 20 B. W. C. C. 430. **Apld.** Williams *v.* Tredegar Iron & Coal Co. (1927), 96 L. J. K. B. 722. **Consd.** Ruddy *v.* L. M. S. Ry. (1929), 22 B. W. C. C. 138. **Apld.** West Leigh Colliery Co. *v.* McNeil (1929), 22 B. W. C. C. 541. **Refd.** Watts, Watts & Co. *v.* Hole (1930), 23 B. W. C. C. 119; Armstrong *v.* Vulco Dry Battery Co. (1931), 24 B. W. C. C. 38. *As to* (3) **Consd.** Drewitt *v.* Britannic Assce. (1927), 137 L. T. 511. **Distd.** Soyer *v.* Johnson, Matthey (1927), 96 L. J. K. B. 1011. **Apld.** Maynard *v.* Bercovitch (1932), 25 B. W. C. C. 71. **Refd.** Sharrod *v.* Warwickshire Coal Co. (1929), 22 B. W. C. C. 599; Shotts Iron Co. *v.* Fordyce, [1930] A. C. 503. *Generally*, **Refd.** Lee (Exeter) *v.* James (1928), 21 B. W. C. C. 220.

3558a. ——.]—A coppersmith was injured by an accident which caused permanent partial incapacity by loss of the left index finger & was paid full compensation for a short period. He was then re-employed, earning an average weekly amount equal to his pre-accident wages. Help was given him where heavy work was involved, but his capacity was nearly as good as before the accident. From time to time his employers before the accident had to stand men off from work as the amount of work varied, & after the accident the workman was stood off work in the same way for periods of two & six weeks in 1928 & of seven weeks up to the middle of June, 1930. Alleging that he had been stood off more than other men on account of his injury, the workman made a claim for varying amounts of compensation as from the date of his first return to work & for a declaration of liability. The employers submitted to a declaration of liability. The county ct. judge found that the workman had not been stood off more than other workmen, that he was receiving his pre-accident rate of pay, & that that rate of pay was really being earned by him. He therefore held that the workman was only entitled to a declaration of liability. The workman appealed:—*Held:* there was evidence to support the findings & no misdirection. Appeal dismissed.—DOUGHTY *v.* BRAITHWAITE (H.) & CO., LTD. (1930), 23 B. W. C. C. 437, C. A.

3558b. —— **Recurrence of incapacity.**]—In 1915 appct. met with an accident & rupture supervened. Resps. paid him compensation. In Dec. 1916, the rupture was operated upon. Appct. returned to work, but shortly afterwards the rupture broke down again & appct. left his work. After a short absence he again returned to work at reduced wages & received compensation on a sliding scale according to the amount he was able to earn. In Dec. 1921, he left resp.'s employment to take up a position as steward of a club for which he received approximately the same wages as he had earned with resps. before the accident. About five months later he claimed a declaration of liability. Resps. contended that

application was too late, & as the man was able to earn the same wages as before the accident & there was no evidence that these wages would cease or the appct. would be unable to earn the same wages in the future, there was no evidence upon which a declaration could be granted. The deputy county ct. judge said that the injury being a rupture which had in fact broken down once after operation for so called radical cure, appct. was entitled to a declaration :—*Held :* there was evidence upon which the judge was entitled to grant a declaration of liability.—STATHAM *v.* OXCROFT COLLIERY CO., LTD. (1922), 15 B. W. C. C. 271, C. A.

Annotation :—**Consd.** Brewer *v.* Firestone Tyre Rubber Co. (1931), 24 B. W. C. C. 366.

3559. *Add. Annotations :—As to* (1) **Consd.** Barnes *v.* L. & N. E. Ry. Co. (1929), 22 B. W. C. C. 205; Evans *v.* Ebbw Vale Steel, Iron & Coal Co. (1929), 22 B. W. C. C. 274. **Apld.** Earl *v.* Thomas W. Ward, Ltd. (1930), 143 L. T. 745. **Refd.** Williams *v.* Tredegar Iron & Coal Co. (1927), 96 L. J. K. B. 722; Williams *v.* Watson (H. J. & S. A.) (1930), 23 B. W. C. C. 151. *As to* (2) **Refd.** Evans *v.* Gilbie (1926), 96 L. K. J. B. 117.

3559a. ——.]—A workman having been injured, the employers entered into an agreement with him, which was duly recorded. This agreement gave the workman 30*s.* a week for total or partial incapacity " or until same shall be ended, diminished, increased or redeemed." Later the workman returned to work at his old wages, on the express agreement contained in correspondence that his rights under the registered agreement were kept alive, & that if the work was not continued & old wages paid, he should go back to such rights. As he was able to continue at work, the employers applied for a review to diminish or terminate the payments payable under the registered agreement. The workman claimed that he had not been paid his full old rate of wages under the second agreement & was entitled to have them made up to the old rate, & further, that by reason of this agreement the employers had no power to review the payments payable under the registered agreement. The county ct. judge held the employers' application to review was in breach of the agreement in the correspondence, & dismissed the application :—*Held :* the employers had expressly reserved their rights under the registered agreement to have the weekly payment reviewed. The workman's attempt at work having been successful, the employers' application to review was a proper one, & the judge was wrong in dismissing it. The right order on the facts was to discharge the registered agreement & direct a declaration of liability to be recorded.—HITCHENS & CO., LTD. *v.* HART (1927), 20 B. W. C. C. 609, C. A.

3562a. —— **Dismissal on closing down of works.**]—A workman was injured by accident in Oct. 1929, & received 30*s.* a week until July, 1930, when the compensation was reduced by the employer to 15*s.* a week. In consequence the workman began arbn. proceedings. The arbn. was heard in Oct. 1930, when the county ct. judge found that at that time the workman was able to earn his pre-accident wages at work which was offered to him by his old employers. He awarded 30*s.* a week from July to Oct. The man was re-employed at his old wages & remained at work until Jan. 1931, when he was dismissed with others on the closing down of the factory. In Feb. 1931, he began fresh proceedings, claiming a declaration of liability. In his answer the employer raised the defence of *res judicata.* It was agreed that subject to this defence the workman was entitled to a declaration of liability. The county ct. judge held that the doctrine of *res judicata* did not apply, & made an award in favour of the workman for a declaration of liability. The employer appealed :—*Held :* the county ct. judge had never intended the first arbn. to operate as *res judicata*, & the fact that the workman had obtained employment at his old rate of wages did not prevent a subsequent original application for a declaration of liability. Appeal dismissed.—BREWER *v.* FIRESTONE TYRE RUBBER CO. (1931), 24 B. W. C. C. 366, C. A.

3562b. —— **Prevented by general fall in wages.**]—A workman who was employed sometimes as a casual, sometimes as a general, labourer, & sometimes as a bricklayer's labourer, lost his left eye by an accident arising out of & in the course of his employment & received compensation for some years. The employers applied for a review, seeking termination or, alternatively, diminution. In his evidence the workman said, " I can work just as well as I could before, & the only diminution is due to the drop in wages." On this evidence the county ct. judge terminated the weekly payments & refused a declaration of liability. The workman appealed :—*Held :* on the evidence before him the county ct. judge had rightly refused to make a declaration of liability & there was no misdirection. Appeal dismissed.—UNION COLD STORAGE CO., LTD. *v.* POOLE (1932), 25 B. W. C. C. 1, C. A.

3563. *Add. Annotation :*—**Distd.** Union Cold Storage Co., Ltd. *v.* Poole (1932), 25 B. W. C. C. 1.

3571a. Consideration for agreement—Sufficiency.]—An underground colliery workman left his employment in Mar. 1921, on account of illness. On July 18, 1922, he was certified to be suffering from nystagmus, the disablement, according to the certificate, being deemed to commence on that day. The workman applied for compensation, & the employers paid full compensation for total incapacity for four years, & then ceased payment. In proceedings for an award, instituted by the workman, the case was treated by both parties on the basis of an agreement to pay compensation as for total incapacity having been made, but the county ct. judge held there had been no consideration on the part of the workman for the agreement, & as the workman was not entitled to any compensation since he had not been employed by resps. during twelve months prior to the date of the certificate, the agreement was outside Workmen's Compensation Act, 1925 (c. 84), & could not give jurisdiction within the Act :—*Held :* there had been good consideration, inasmuch as the workman had forborne to take steps, either by applying to the certifying surgeon, or by appeal to the medical referee, to get the date of the certificate of disablement altered, & the agreement was binding upon resps., & the workman was entitled to an

award.—REES *v.* IMPERIAL NAVIGATION COAL CO., LTD. (1927), 20 B. W. C. C. 287, C. A.

3580a. —— —— ——.]—A workman injured by accident in Dec. 1927, was paid compensation at the rate of £1 2*s.* 3*d.* a week, this rate being based by the employers on the supposition that the pre-accident wage was £1 18*s.* 10*d.* a week. These payments were accepted by the workman until Dec. 1928, when the payments were reduced to 15*s.* a week. In Jan. 1929, the workman was given light work at a weekly wage of £2 1*s.* 8*d.* He then claimed a review of the weekly payments on the ground that his pre-accident wages were £2 10*s.* 3*d.*, & that he was therefore entitled to £1 5*s.* 1½*d.* during the period of his total incapacity instead of the £1 2*s.* 3*d.* which he had been paid & had accepted, & 4*s.* 4½*d.* a week from the time he was given light work. The county ct. judge held that the payment of the compensation over so long a period implied an agreement between the parties on the terms that the rate of compensation should be £1 2*s.* 3*d.* a week based on a pre-accident wage of £1 18*s.* 10*d.* & that since there had been no change of circumstances & no question had arisen within the meaning of the Act, the workman was bound by that agreement. The workman appealed:—*Held:* the county ct. judge, having found on the evidence that there was an implied agreement, was right in holding that the parties were bound by it.—LEWIS *v.* CAMMELL, LAIRD & CO., LTD. (1929), 22 B. W. C. C. 410, C. A.

Annotation:—**Apld.** Emsley *v.* Haggas (J.) & Co. (1931), 24 B. W. C. C. 332.

3631a. —— —— ——.]—By an accident arising out of & in the course of the employment on Jan. 10, 1928, a workman aged fifteen suffered a cut on the scalp behind & above the ear. He was able to return to work at the beginning of Feb. 1928. On Mar. 14 & 20 he had epileptic fits, & on the latter date gave up work, receiving compensation in respect of the accident. In July, 1929, the employers requested a review of the weeky payment, but in Sept. 1929, an agreement was made between the parties whereby the workman agreed to accept £350 & costs in redemption of all further payments. Both the registrar & the county ct. judge, who had certificates before them of three doctors that the epilepsy was due to the accident, refused to record the agreement on the ground that the sum was inadequate & compensation was therefore continued. On Mar. 13, 1931, the weekly payments were stopped under sect. 12 after a doctor had reported that the epilepsy was not due to the accident. The workman filed a request for arbn. The county ct. judge, sitting with a medical assessor, held that the workman had not proved that there was any connection between the accident & the epileptic condition. The abortive agreement was not mentioned at the arbn. The workman appealed:—*Held:* the county ct. judge was free to decide in favour of the employer on the evidence before him & was in no way fettered by his previous refusal to record the agreement between the parties.—EMSLEY *v.* HAGGAS (J.) & CO., LTD. (1931), 24 B. W. C. C. 332, C. A.

3657. *Add. Annotation:*—**Consd.** Paterson *v.* Ardrossan Harbour Co. (1926), 10 B. W. C. C. 621.

3659a. Grounds for removal—Allegation by workman that scope of agreement not understood by him.]—Circumstances in which:—*Held:* an order for removal of a memorandum from the record was wrong, & must be discharged.—QUARRELL *v.* LAMPORT & HOLT (1928), 21 B. W. C. C. 112, C. A.

3660. *Add. Annotation:*—**Distd.** Fowkes *v.* Leicestershire Colliery & Pipe Co., [1931] 2 K. B. 570.

3665. *Add. Annotation:*—**Consd.** Winfield *v.* London, Midland & Scottish Railway (1931), 24 B. W. C. C. 158.

3668. For "No. 3340" read "No. 3090."

3668a. —— —— —— **Adjournment of application for leave to issue execution.**]—HAYTER *v.* SOUTHERN RY. CO., No. 3668e, *post.*

3668b. —— —— **Award of one penny a week—Execution for arrears.**]—In 1903 a workman lost two fingers of his right hand & received compensation until 1906. An agreement was then made between the parties that the employers should employ the workman at his pre-accident average weekly earnings, & that an award should be made for one penny a week to continue during such period as the workman should be so employed or until the same should be ended, diminished, increased or redeemed. The award was duly made by consent on Nov. 9, 1906. The workman remained at work until Sept. 7, 1929, when the employers closed down their works. The workman then claimed his arrears of 1*d.* a week & applied for leave to levy execution for these arrears. The county ct. judge made the necessary order. The employers appealed:—*Held:* there having been no variation of the award for a penny a week the workman was entitled to issue execution for the accumulated arrears. Appeal dismissed.—SEDGWICK *v.* LEEDS FORGE CO., LTD. (1930), 23 B. W. C. C. 144, C. A.

3668c. —— —— **What is sufficient memorandum relating to future payments.**]—The workman, having suffered an accident arising out of & in the course of his employment, was paid by applts., his employers, full compensation for a time. On Mar. 10, 1930, notice to end the compensation was given by the employers under 1925 Act, s. 12, based on a certificate of complete recovery. The workman replied with a counter certificate, & the question was referred to a medical referee. Meanwhile the employers paid four weeks' compensation into ct. An agreement was then come to between the employers & the workman under which the money in ct. was to be paid out to the employers, & the compensation was fixed at 18*s.* 6*d.* a week to

PART XIV. SECT. 16, SUB-SECT. 1.

r i. —— *Withdrawal of.*]—It is competent to withdraw an application for the recording of a memorandum if it is done timeously.—M'GINLEY *v.* FARME COAL CO., [1927] S. C. 149; 20 B. W. C. C. 725.—**SCOT.**

PART XIV. SECT. 16, SUB-SECT. 3.—A.

3614 ii. —— ——.]—It is the duty of the sheriff-clerk to consider the question whether he ought or ought not to refuse to record the memorandum on the ground of inadequacy of compensation, & thereafter, according as his decision is in the affirmative or in the negative, to refer the matter to the sheriff or to record the memorandum.—TONNER *v.* WILLIAM BAIRD & CO., LTD., GALLACHER *v.* WILLIAM BAIRD & CO., LTD., [1927] S. C. 870.—**SCOT.**

be paid by the employers as from the date when they stopped the compensation until further review of that amount. This agreement was sent to the registrar & was recorded by him. The registrar then made an order for payment out of the sum in ct. to the employers. Subsequently, again proceeding under sect. 12, the employers reduced the weekly payments, & the workman, not continuing the proceedings under that sect., applied for leave to issue execution under r. 82 of the Workmen's Compensation Rules, 1926. The county ct. judge gave leave to issue execution, & the question arose whether, having regard to the agreement & the order of the registrar, the compensation was owing under a memorandum, award, or certificate within the meaning of r 82 :—*Held :* agreement between the parties on which the registrar made his order was a memorandum within r. 82 relating to the future as well as the past, & therefore execution was properly leviable as to the future weekly payments.—ALLEN *v.* DIGBY COLLIERY CO., LTD. (1931), 145 L. T. 501 ; 24 B. W. C. C. 214, C. A.

3668d. —— —— **Appeal lies to Court of Appeal.**]—An appeal from a decision of a county ct. judge on an application for leave to issue execution in respect of compensation due to an injured workman does not lie to the Div. Ct., but to the Ct. of Appeal.—FOWKES *v.* LEICESTERSHIRE COLLIERY & PIPE CO., LTD., [1931] 2 K. B. 570 ; 100 L. J. K. B. 593 ; 145 L. T. 421 ; 24 B. W. C. C. 205.

3668e. —— —— **After commencement of proceedings to terminate payment under 1925 Act, sect. 12.**]—In Aug. 1929, a workman met with an accident, & was paid full compensation by his employers. In Apr. 1930, an agreement was recorded under which he was paid compensation at an agreed rate. In July the employers obtained a certificate from their doctor that the workman had practically recovered from the accident in 1929, & served upon the workman a notice of their intention to terminate the compensation under 1925 Act, s. 12. The workman did not follow the procedure prescribed by that sect., but applied under r. 82 of Workmen's Compensation Rules, 1926, for leave to issue execution under the recorded agreement. The county ct. judge refused the application :—*Held :* (1) under the recorded agreement a workman was in the position of a judgment creditor, & was entitled under r. 82 to apply for leave to issue execution, notwithstanding the fact that the employers had already commenced proceedings under sect. 12 to terminate or reduce the weekly payments under the recorded agreement ; (2) the employers could always apply under r. 82, sub-r. (5), for an adjournment of the application to enable them to proceed under sect. 11 of the Act by way of review ; (3) leave to issue execution ought to be allowed, but execution ought to be suspended for one month to enable the employers to apply for a review ; (4) the decision of the question whether sect. 12 extended to anything but payments made under agreements that are not recorded was reserved.—HAYTER *v.* SOUTHERN RY. CO., [1931] 2 K. B. 274 ; 100 L. J. K. B. 378 ; 144 L. T. 539 ; 23 B. W. C. C. 389, C. A.

ations :—As to (1), (2) & (3) **Folld.** Winfield *v.* London, Midland & Scottish Railway (1931), 24 B. W. C. C. 158. **Refd.** Allen *v.* Digby Colliery Co. (1931), 145 L. T. 501.

3668f. —— —— ——.]—In 1928 a workman having met with an accident his employers paid him full compensation of 30*s.* a week on the basis of total incapacity. In Aug. 1930, an agreement was recorded under which the payments of 30*s.* a week were to be continued by the employers. In Jan. 1931, the employers, following the procedure prescribed by sect. 12 , served upon the workman a notice, in accordance with a certificate of a medical practitioner which stated that the workman had partially recovered, that they would from & after the expiration of ten days therefrom reduce the weekly payment of 30*s.* under the recorded agreement to 11*s.* 1*d.* The workman did not follow the procedure open to him under the proviso to sect. 12 (3), but applied to the registrar under r. 82 of Workmen's Compensation Rules, 1926, for leave to issue execution under the recorded agreement. The matter was referred by the registrar to the judge, who held that the workman was entitled to leave to issue execution unless the employers applied for a review. On appeal by the employers :—*Held :* leave to issue execution ought to be granted, as the certificate of the employers' doctor, on which they relied as a ground for ending the compensation, was not final & conclusive, & did not establish partial incapacity, & therefore they were in default in making weekly payments under the recorded agreement within the meaning of r. 82, sub-r. (1) ; but the execution must be suspended in order to give the employers an opportunity to apply for a review under sect. 11 of the Act.—WINFIELD *v.* LONDON, MIDLAND & SCOTTISH RAILWAY, [1931] 2 K. B. 284 ; 100 L. J. K. B. 453 ; 145 L. T. 242 ; 24 B. W. C. C. 158, C. A.

Annotation :—Cotton *v.* Lutton (1931), 24 B. W. C. C. 179.

3668g. —— —— ——.]—An employer, after serving notice under 1925 Act, s. 12, stopped the weekly payments of compensation paid to an injured workman under a recorded memorandum of agreement. The workman obtained leave under r. 82 to issue execution against the goods of the employer. The employer appealed to the Div. Ct. :—*Held :* the appeal could not succeed in view of the decision of the Ct. of Appeal in *Winfield* v. *London, Midland & Scottish Railway Co.*, No. 3668f.

Qu. : whether an appeal did not properly lay to the Ct. of Appeal instead of to the Div. Ct.—COTTON *v.* LUTTON (1931), 24 B. W. C. C. 179.

3668h. —— **Suspension—Pending application for review.**]—HAYTER *v.* SOUTHERN RY. CO., No. 3668e, *ante.*

3668j. —— —— ——.]—WINFIELD *v.* LONDON, MIDLAND & SCOTTISH RY., No. 3668f, *ante.*

3669. *Add. Annotation :*—**Refd.** Bundy *v.* Motor Cab Owner Drivers' Assocn. (1930), 143 L. T. 334.

PART XIV. SECT. 18, SUB-SECT. 1.

3673 i. *Effect of payment in—Money not subject to arrestment.*]—WILLIAM BAIRD & CO. *v.* CAMPBELL, [1928] S. C. 314.—SCOT.

3676. *Add. Annotation :—As to* (2) **Consd.** Vickers *v.* Miners Thames Steam Tug & Lighterage Co. *v.* Ingram (1927), 96 L. J. K. B. 490.

3690. *Add. Annotation :—***Refd.** Catton *v.* Ashwell & Nesbit, [1928] Ch. 484.

3692. *Add. Citations :—*96 L. J. P. C. 143 ; 136 L. T. 609 ; 20 B. W. C. C. 1.
*Add. Annotations :—***Apld.** Macauley *v.* Baird (1927), 20 B. W. C. C. 802 ; Catton *v.* Ashwell & Nesbit, [1928] Ch. 484. **Consd.** Anchor Donaldson *v.* Crossland, [1929] A. C. 297. **Refd.** Woodrow *v.* Trawlers (White Sea) & Grimsby (1929), 141 L. T. 676.

3694a. —— **Whether applicable when agreement recorded.**]—HAYTER *v.* SOUTHERN RAILWAY, No. 3668e, *ante*.

3694b. —— ——.]—WINFIELD *v.* LONDON, MIDLAND & SCOTTISH RY., No. 3668f, *ante*.

3695. *Add. Annotation :—As to* (1) **Refd.** Yates *v.* Hemsworth Rural District Council (1929), 22 B. W. C. C. 649.

3697. *Add. Citations :—*[1927] 1 K. B. 152 ; 96 L. J. K. B. 127 ; 136 L. T. 134.

*Add. Annotations :—***Consd.** Tempus Shipping Co. *v.* Trott (1929), 141 L. T. 19. **Refd.** Robinson *v.* Vickers-Armstrong (1929), 22 B. W. C. C. 171.

3698a. —— **Notice of intention to end payments—Validity.**]—A workman was injured by accident arising out of & in the course of his employment. Resps.' doctor gave his certificate that the man had partially recovered, & resps. served notice on the workman in pursuance of Workmen's Compensation Act, 1923 (c. 42), s. 14, that they would cease payment of compensation within ten days. No counter-certificate by the workman's doctor was served in pursuance of the sect., but the workman filed a request for arbn. The county ct. judge awarded 8*s.* a week on the basis of partial incapacity from the date of the hearing in the county ct., & not from the date of termination of the weekly payment, on the ground that the workman had not complied with sect. 14, & was not entitled to compensation from that date :—*Held :* the notice was bad, in that it purported to end compensation when the workman was certified to be partially recovered only, & the compensation of 8*s.* a week for partial incapacity was payable from the date the employers ceased payment of compensation.—HOWARTH *v.* SINGLETON (J. E.) & SONS (1926), 20 B. W. C. C. 136, C. A.

3698b. —— —— ——.]—In pursuance of Workmen's Compensation Act, 1925 (c. 84), s. 12 (3), resps. served a workman with notice that they would end the weekly payments, or alternatively would take him back to work, & they ceased to pay him compensation on a date which was two days short of the ten clear days required. The workman filed a request for arbn. claiming (*inter alia*) a declaration of liability, alleging that he was still incapacitated. Resps. offered to accept an award of a declaration of liability, & before the hearing offered the sum by which the weekly payments fell short of the proper amount that was due in respect of the two days. The county ct. judge was satisfied the workman had recovered & was able to do his work, & held, payment for the two days having been offered, there was no further liability on resps., & made the declaration of liability offered :—*Held :* the notice was good, & was not invalidated because the payments were not made for the full period of ten days from the date thereof.—COOPER *v.* COLLINS ELECTRICAL, LTD. (1926), 20 B. W. C. C. 152, C. A.

3698c. —— **Jurisdiction of registrar—Limited to matters relating to sums paid into court.**]—Where proceedings for ending or diminishing weekly payments have been commenced under sect. 12 & prosecuted as far as to obtain a certificate of a medical referee, but no money is paid into ct. by the employers under sect. 12 (ii), any questions arising on the certificate are not for the registrar but for the judge, either on review under sect. 11 or on original arbitration under sect. 21, the jurisdiction conferred on the registrar by sect. 12 (ii) being limited to determine the destination of sums paid into ct. under sect. 12 (ii).—TEMPUS SHIPPING CO., LTD. *v.* TROTT (1929), 141 L. T. 19 ; 45 T. L. R. 201 ; 22 B. W. C. C. 181, C. A.

3700. *Add. Citations :—*[1927] 1 K. B. 435 ; 96 L. J. K. B. 261 ; 136 L. T. 88.

3701. For the existing paragraph substitute the following paragraph :—
Power to terminate payments—Incapacity ceased.]—On Oct. 17, 1923, a workman contracted miners' nystagmus in the course of

PART XIV. SECT. 18, SUB-SECT. 3.—A.

3686 i. *Limit of preferential payment—Under Workmen's Compensation Act, 1906, s. 5 (3)—Not where liability accrued prior to liquidation.*]—*Held :* the workman was entitled to the whole of the amount due to him for compensation as a preferential debt, without any limitation to £100 as mentioned in s. 5, sub-s. 3, Workmen's Compensation Act, 1906, the liability for such compensation having accrued before the receivers were appointed or took over possession of the assets of the co., & whether or not the accident occurred before Jan. 1, 1924 (*i.e.* the date on which the Workmen's Compensation Act (N. I.) came into operation).—GRAHAM *v.* MASKEIL & SMYLIE, [1928] N. I. 187.—**IR.**

PART XIV. SECT. 19.

3700 i. *Failure by employer to adopt procedure—Omission to serve report of medical practitioner—Report of workman's medical practitioner served on employer.*]—An injured workman, who was in receipt of weekly payments of compensation, was examined by the employers doctor, who certified that he had partially recovered. A copy of this certificate was sent to the workman, together with notice of the intention of the employers at the expiry of ten days to diminish the weekly payments, but the copy was not received by the workman until after the expiry of the six days allowed for sending it under para. 15 of Sched. I. to 1906 Act. The workman was then examined by his own doctor who reported that he was not fit for any work, & a copy of this report was sent to the employers within six days of the examination. The employers then applied for a medical reference under Sched. I. para. 15 & they consigned a portion of the weekly payments in terms of sect. 14, proviso (ii) of 1923 Act :—*Held :* the report of the workman's doctor disagreeing with the employer's medical certificate, even though it was sent merely for the purpose of preventing the diminishing of the weekly payments under sect. 14 of the 1923 Act, was a report within Sched. I., para. 15 of 1906 Act &, as it had been received by the employers within six days of the examination they were entitled, under para. 15 as amended by sect. 11 (1) of 1923 Act, to apply for a medical reference, although the certificate of their own doctor had not been received by the workman within the six days required by that paragraph & accordingly, as the application for a medical reference had been duly made, they were entitled to consign the amount of the weekly payments in dispute as from the date of that application.—WHITE *v.* BAIRD (WILLIAM) & CO., LTD., [1932] S. C 160.—**SCOT.**

his employment, & by voluntary agreement the employers paid him a weekly sum by way of compensation until Sept. 3, 1925, when they stopped the weekly payments, on the ground that the man had completely recovered. After the employers had commenced proceedings for a review, the workman admitted that the incapacity had ceased on Sept. 3, but claimed compensation up to the date of the award:—*Held:* the county ct. judge had no jurisdiction under Workmen's Compensation Act, 1923 (c. 42), s. 14, to award any payment after the incapacity had ceased, & he ought to make a retrospective award terminating the weekly payments as from the date of recovery.—OCEAN COAL CO. *v.* DAVIES, [1927] A. C. 271; 96 L. J. K. B. 364; 136 L. T. 449; 43 T. L. R. 108; 70 Sol. Jo. 1219; 19 B. W. C. C. 429, H. L.; *revsg.* (1926), 90 L. J. K. B. 255, C. A.

Annotations:—**Consd.** Macaulay *v.* Baird (1927), 20 B. W. C. C. 802; Niddrie & Benhar Coal Co. *v.* Dee, [1927] A. C. 299; Thorpe *v.* Sadler, Sadler *v.* Thorpe (1927), 20 B. W. C. C. 488. **Apld.** Lowe *v.* Essex County Council (1927), 20 B. W. C. C. 452; Pullen *v.* Enthoven (1927), 20 B. W. C. C. 248. **Consd.** Catton *v.* Ashwell & Nesbit, [1928] Ch. 484; Dodd *v.* Oceanic Steam Navigation Co. (1928), 21 B. W. C. C. 118; Anchor Donaldson *v.* Crossland, [1929] A. C. 297; Mockbill *v.* Homer City S.S. Owners (1929), 22 B. W. C. C. 260. **Apld.** Lewis *v.* Dobson Steam Fishing Co. (1929), 73 Sol. Jo. 483; Bevan *v.* Grovesend Steel & Tinplate Co., Ltd. (1929), 22 B. W. C. C. 572. **Folld.** Fairfield Shipbuilding Co. *v.* Harris (1931), 24 B. W. C. C. 110. **Refd.** Akers *v.* L. & N. E. Ry. (1926), 20 B. W. C. C. 195; Howarth *v.* Singleton (1926), 20 B. W. C. C. 136; Parker *v.* London Brick Co. & Forders (1927), 20 B. W. C. C. 573; Woodrow *v.* Trawlers (White Sea) & Grimsby (1929), 141 L. T. 676; Evans *v.* El Uruguayo S.S. Owners, Barlow *v.* Pacific Steam Navigation Co. (1930), 23 B. W. C. C. 383.

3701a. —— ——.]—PULLEN *v.* ENTHOVEN & SON, No. 3056a, *ante*.

3701b. ——.]—A workman was injured by an accident & was paid compensation by his employers for total incapacity. On receipt of their doctor's report that the workman was fit for light work, the employers made two offers of light work to the workman at the same rate of wages as before his accident. After the second refusal, the employers ceased to pay compensation. The county ct. judge held the workman was unreasonable in refusing the offers of light work &, applying *Ocean Coal Co.* v. *Davies*, No. 3701, *ante*, the employers were entitled to stop payment of compensation when they did:—*Held:* the evidence supported the findings, & the judge had correctly applied *Ocean Coal Co.* v. *Davies*, No. 3701, *ante*.—LOWE *v.* ESSEX COUNTY COUNCIL (1927), 20 B. W. C. C. 452, C. A.

3701c. —— ——.]—BEVAN *v.* GROVESEND STEEL & TINPLATE CO., LTD., No. 3954c, *post*.

3701d. —— ——.]—A boiler-maker's riveter, whose compensation for the loss of his right finger had been stopped under 1925 Act, s. 12, filed a request for arbn. The employers in their answer offered to submit to an award on the basis of partial incapacity, but at the same time gave notice that they denied liability. An award was consequently made for an agreed amount until the same should be ended or diminished. Eleven months later the employers applied to review with a view to termination of the weekly payment on the ground that the workman had completely recovered. The county ct. judge found as facts that the workman could do his pre-accident work, but that his physical condition was the same in all material respects as at the time of the previous award & refused to terminate the weekly payments. The employers appealed:—*Held:* the two findings of fact were wholly inconsistent with each other, but once the county ct. judge had found that the workman could do his pre-accident work, all right to compensation ceased.—FAIRFIELD SHIPBUILDING CO., LTD. *v.* HARRIS (1931), 24 B. W. C. C. 110, C. A.

3701e. Failure by workman to adopt procedure—Application for review—Right to amend.]—Employers, using the machinery provided by Workmen's Compensation Act, 1925 (c. 84), s. 12, stopped weekly payments to a workman on their doctor's certificate. The workman did not avail himself of sect. 12, but began fresh proceedings for an arbn. by way of review, asking for an order that the weekly payments should be continued. At the arbn. the employers, at the close of the workman's case, objected to the method adopted by the workman & submitted that there was no case to answer. The workman applied for leave to amend, to turn the proceedings into an original appln. under sect. 21 of the Act, but the county ct. judge refused to allow this, & upheld the employers' objection, making an award in favour of the employers. The workman appealed:—*Held:* the county ct. judge should have allowed the amendment, so that the case could have been considered on its merits.—ROBINSON *v.* VICKERS-ARMSTRONG, LTD. (1929), 22 B. W. C. C. 171, C. A.

3702a. —— ——.]—A workman met with an accident, which he alleged caused an inguinal swelling. He was paid full compensation until Sept. 20, 1926, when the payments were reduced. The workman filed an application claiming compensation at the old rate, & the employers filed a counter-application for termination of compensation. The county ct. judge found that the workman had entirely recovered on Sept. 20, 1926, & that the swelling from which he suffered at the date of the trial was not a result of the accident, & made an award for the employers on both applications:—*Held:* the employers, by paying compensation, were not estopped from saying that the injury was not caused by the accident, & there was evidence to support the judge's findings, & no misdirection.—THORPE *v.* SADLER (A. L.) & SON, SADLER (A. L.) & SON *v.* THORPE (1927), 20 B. W. C. C. 488, C. A.

Annotation:—**Refd.** Watts, Watts & Co., Ltd. *v.* Hole (1930), 23 B. W. C. C. 119.

3702b. —— ——.]—On May 15, 1927, a trimmer met with an accident on board a liner causing hernia. He received compensation until Nov. 12. On receipt of a medical report that he was fit to resume work, his employers gave notice on Nov. 2, that the weekly payments would be terminated. The workman did not obtain a counter-certificate, but, on Nov. 24, his solrs. wrote suggesting that he had not been examined for hernia, that an operation would be necessary, & that the notice of Nov. 2 should be cancelled. The employers thereupon requested the workman to present himself for further examinations, & as a result of these examinations again repudiated liability to pay compensation. The county ct. judge found that

there was no incapacity on Jan. 7, 1928, but he made an award of compensation for eight weeks from Nov. 12, 1927, on the ground that compensation was not properly terminated on that date, in that the employers by subjecting the workman to further examinations had shown that they did not rely on their first medical report. He estimated the period during which the employers were satisfying themselves after Nov. 12 as to the workman's condition at eight weeks:—*Held:* the workman had not discharged the *onus* of proving incapacity after Nov. 12, 1927. The judge, in awarding compensation to the workman, in fact, for the trouble he had been put to by the employers after notice of termination had been given, had misdirected himself.—DODD *v.* OCEANIC STEAM NAVIGATION CO., LTD. (1928), 21 B. W. C. C. 118, C. A.

3702c. Action for declaration—Of breach of statutory duty by employer—Whether maintainable.]—Pltf., a workman in the employment of defts., was injured by an accident, & defts. admitted liability & made a weekly payment of compensation. Ultimately a doctor reported that pltf. had recovered, & defts. stopped the payments & applied for a review thereof, & paid into ct., with a denial of liability, the amount of the weekly payments up to that date. While the county ct. proceedings were still pending, pltf. brought an action, alleging that he had not recovered from his injury, & claiming (1) a declaration that under Workmen's Compensation Act, 1925 (c. 84), s. 12, defts. had committed a breach of their duty by stopping the payments otherwise than in pursuance of an agreement or arbn., & (2) an injunction restraining a continuance of the breach:—*Held:* under sect. 21 the only tribunal to determine the question of incapacity was the county ct., &, as that question had not yet been determined by that tribunal, pltf. could not show that his incapacity was continuing since the date when defts. stopped the weekly payments, & the action failed.—CATTON *v.* ASHWELL & NESBIT, LTD., [1928] Ch. 484; 97 L. J. Ch. 199; 139 L. T. 34; 44 T. L. R. 422; 72 Sol. Jo. 317; 21 B. W. C. C. 97, C. A.

Annotations:—**Consd.** Anchor Donaldson *v.* Crossland, [1929] A. C. 297. **Reld.** Robinson *v.* Vickers-Armstrong (1929), 22 B. W. C. C. 171; Woodrow *v.* Trawlers (White Sea) & Grimsby (1929), 141 L. T. 676.

3702d. Power to make interim award—Payment into court.]—A workman suffered injuries through an accident arising out of & in the course of his employment, & his employers paid him weekly compensation until a certain date. They then terminated the payment, on the ground that his incapacity had ceased, but there was no award or recorded agreement. The workman had not returned to work, & his employers had not served on him a notice under Workmen's Compensation Act, 1925 (c. 84), s. 12 (3). On the termination of the payments the workman, on the ground that his incapacity was still continuing, applied for an award of weekly compensation & for an interim award of weekly compensation until the question of the liability of his employers should be decided. The arbitrator made an interim award of a weekly payment, & authorised the employers to pay the money into ct. instead of paying it to the workman:—*Held:* under sect. 12 the workman was entitled to an interim award, & the arbitrator had no power to authorise the employers to pay the money due thereunder

3702d i. *Power to make interim award—Withdrawal by employers of application for medical reference.*]—*Held:* an *interim* award fell to be refused, in respect that the employers, having applied for a medical reference, were entitled to the protection of consignation until the settlement of the dispute.—MACALLAY *v.* WILLIAM BAIRD & CO., [1927] S. C. 788; 20 B. W. C. C. 802.—**SCOT.**

o i. — - *On return to work.*]—The employers of a workman, who had been injured by accident, paid compensation, as for total incapacity, without any award having been made or any memorandum of agreement having been recorded. After a time the workman started work again with the same employers, not at his former work as a machine moulder, but as a labourer. The employers ceased payment of compensation as from the date of the workman's re-employment, without having served any certificate or notice under sect. 12 (3). The workman brought an application for an award of compensation as for partial incapacity from the date of the cessation of payments, & moved the arbitrator to make an interim award of compensation. The arbitrator refused the motion:—*Held:* an interim award was incompetent, in respect that, as the workman had "actually returned to work," the employers were entitled, under sect. 12 (1), to end all payments of compensation.—M'DOUGAL *v.* SINGER MANUFACTURING CO., [1931] S. C. 47; 23 B. W. C. C. 616.—**SCOT.**

sc. "*Weekly payment*"—*What is.*]—In order to make a payment a "weekly payment under the principal Act" within Workmen's Compensation Act, 1923 (c. 42), s. 14, it must be shown (*a*) that there was an admission, express or implied, of liability under the Act, & (*b*) that the payment was made in respect of that admission.

Where employers paid a sum of money to a workman, who signed a receipt bearing that the payment was made without an admission of liability on their part:—*Held:* as it did not appear that the payment complied with the above requirements, sect. 14 did not apply.—LAFFERTY *v.* DARNGAVIL COAL CO., LTD., [1927] S. C. 60; 20 B. W. C. C. 671.—**SCOT.**

sd. *Service of certificate of recovery—Time for—Service more than 6 days after examination.*]—A medical practitioner, instructed by an employer to examine a workman in receipt of weekly payments, reported to the employer on Jan. 16, 1930, that he had examined the workman on Dec. 30, 1929, when he had found him to have wholly recovered, & that, to confirm his diagnosis, he had subsequently had the workman X-rayed & a surgeon's opinion taken. On Jan. 18, two days after receiving the medical certificate, the employer served it upon the workman, along with notice that his weekly payments would be ended. In arbn. proceedings the workman maintained that the employer was not entitled under sect. 12 (3) to end his weekly payments, because he had failed to serve the certificate within six days after the medical examination, & he contended that the six days' time-limit contained in sect. 19 (2) must be read into the provisions of sect. 12 (3):—*Held:* the employer had ended the workman's weekly payments in compliance with sect. 12 (3).—M'GEE *v.* M'BRAYNE, [1931] S. C. 69; 23 B. W. C. C. 627.—**SCOT.**

sf. *Power to diminish payments—From what date.*]—A dock labourer, who, in consequence of injuries to both ankles, had been found by an arbitrator to be in a permanent state of partial incapacity, was paid compensation up till June 7, 1930, at a weekly rate of 25*s.* On May 23 his employers served upon him a medical certificate to the effect that he was fit for light work, & intimated their intention to diminish his weekly payments to 7*s.* 6*d.* per week. The workman served a counter certificate to the effect that he would never be fit for any but sedentary work. On June 2 his employers offered him light cleaning-up work. Thereafter they applied for, & obtained a medical reference; &, on Aug. 9, the referee reported that the workman was fit for light cleaning-up work on a level surface. Subsequently the workman accepted the light work offered. The employers having thereafter applied to the arbitrator to diminish the weekly payments to 7*s.* 6*d.* per week as from June 7, the workman contended that, as the referee had made no finding upon his condition before Aug. 9, there was no evidence to justify the arbitrator in diminishing the payments prior to that date. The arbitrator having diminished the weekly payments as from June 7:—*Held:* as no change in the workman's condition between June 7 & Aug. 9 had been alleged to the referee or to the arbitrator, the arbitrator was, in the circumstances, entitled to treat the referee's report as conclusive of the workman's condition as from June 7, & to diminish the compensation payable to him as from that date.—DOCHERTY *v.* ROSS & MARSHALL, LTD., [1931] S. C. 603.—**SCOT.**

into ct. instead of paying it to the workman. —ANCHOR DONALDSON, LTD. *v.* CROSSLAND, [1929] A. C. 297; 98 L. J. P. C. 7; 140 L. T. 282; 45 T. L. R. 97; 21 B. W. C. C. 448, H. L.

Annotations :—**Distd.** Mockbill *v.* Homer City S.S. Owners (1929), 22 B. W. C. C. 260. **Folld.** Woodrow *v.* Trawlers (White Sea) & Grimsby (1929), 141 L. T. 676. **Consd.** Bevan *v.* Grovesend Steel & Tinplate Co. (1929), 22 B. W. C. C. 572; Evans *v.* El Uruguayo S.S. Owners, Barlow *v.* Pacific Steam Navigation Co. (1930), 23 B. W. C. C. 383.

3702e. ——.]—Where employers, on receiving a certificate of the workman's doctor that he is fit for work, stop the payment of the weekly sums to him for compensation for an accident arising out of & in the course of his employment, but are informed that the certificate was no admission of recovery having regard to the fact that it was made on a National Health Insurance form, which did not admit of stating a man is fit for light work only, & subsequently the workman's doctor reports that he is only fit for light work, on an application by the workman for an interim award that the employers should continue to pay the compensation until the hearing of the arbitration, the county ct. judge, sitting as an arbitrator, has a power inherent in him under Workmen's Compensation Act, 1925 (c. 84), s. 12, to make such an interim award in order that the provisions in the section shall be made effective.—WOODROW *v.* TRAWLERS (WHITE SEA) & GRIMSBY, LTD., [1930] 1 K. B. 176; 99 L. J. K. B. 7; 141 L. T. 676; 22 B. W. C. C. 456, C. A.

Annotations :—**Consd.** Bevan *v.* Grovesend Steel & Tinplate Co. (1929), 22 B. W. C. C. 572; Evans *v.* El Uruguayo S.S. Owners, Barlow *v.* Pacific Steam Navigation Co. (1930), 23 B. W. C. C. 383.

3702f. —— **Time for making application.**]—An application for an interim award being an interlocutory application can only be made pending arbn. & cannot be made for the first time at the arbn. itself.—EVANS *v.* EL URUGUAYO S.S. OWNERS, BARLOW *v.* PACIFIC STEAM NAVIGATION CO., LTD. (1930), 23 B. W. C. C. 383, C. A.

3704a. Under recorded agreement—Effect of supplemental unrecorded agreement.]—HITCHENS & CO., LTD. *v.* HART, No. 3559a, *ante*.

3704b. Application to review subsequent to application to redeem—Ineffective.]—ELLIOTT, LTD. *v.* HOBBS, No. 3769a, *post*.

3708. *Add. Annotations* :—**Consd.** Willis *v.* Howie (1931), 24 B. W. C. C. 352; Vickers-Armstrongs, Ltd. *v.* Regan (1932), 147 L. T. 298. **Refd.** Curran *v.* Kays, [1928] 2 K. B. 469.

3708a. —— **Payment of money.**]—A workman, a minor, was injured by an accident in the course of his employment, & was paid compensation. Subsequently, having obtained other work, he agreed to the compensation being terminated, with the making in his favour of a declaration of liability. On Dec. 3, 1931, his solrs. wrote to the employers' solrs. informing them that the workman had attained his majority on July 6, 1931, & adding: "I shall be glad to know whether your clients are prepared to pay my client compensation on the basis of partial incapacity." The workman subsequently, on Jan. 18, 1932, gave notice of his intention to apply to the ct. under sect. 11 (2) of 1925 Act to award him increased weekly payments of compensation, in view of his having attained full age. The employers contended: (*a*) that whereas by sect. 1 of 1926 Act, the claim under sect. 11 (2) of 1925 Act should have been made by "application for the review . . . before or within six months after the workman attains the age of twenty-one years," it had not been made until Jan. 18, 1932, twelve days after the prescribed period; & (*b*) that sect. 11 (2) being for the review of "any weekly payment" it was not applicable to a case where no weekly payments were being made:—*Held*: (1) the words "application for the review" in sect. 1 of 1926 Act were not restricted to a formal application to the ct. An application within the section could be made informally to the employer, & this had been done by the solrs.' letter of Dec. 3, 1931; (2) the declaration of liability which had been made, being in lieu of the old order for payment of 1*d*. a week, was a declaration intended to keep open the rights of the parties, & took effect as if there were a weekly payment which was at the moment in abeyance.—VICKERS-ARMSTRONG, LTD. *v.* REGAN (1932), 101 L. J. K. B. 657; 147 L. T. 298; 25 B. W. C. C. 211, C. A.

3708b. Award for fixed period under 1925 Act, s. 9 (4)—Partial incapacity continuing beyond fixed period.]—A workman was injured in June, 1928, & received full compensation until June, 1929. In July, 1929, he applied for the restoration of compensation on the ground of continuing incapacity. The county ct. judge heard the application in Oct. 1929, & ordered that the workman's partial incapacity should be treated as total incapacity under sect. 9 (4). Under this order he awarded full compensation until Jan. 7, 1930. On Jan. 7, 1930, the employers ceased payment. In Apr. 1930 the workman applied for review but subsequently altered his application to one to restore the proceedings begun in July, 1929, to deal with the amount of compensation payable for his partial incapacity after Jan. 7, 1930. The county ct. judge in Nov. 1930 refused to assent to this application. In consequence the workman once more filed an application for review. On this application the county ct. judge held that he was by virtue of sect. 9 (4) entitled to review the matter, although no liberty to apply was expressly given under the award made in Oct. 1929, & made an award of £1 a week for partial incapacity from Jan. 7, 1930. The employer appealed on the ground that there could be no right of review of a weekly payment that did not exist. The workman cross-appealed on the ground that the judge was wrong in refusing to restore the original proceedings:—*Held*: as the award made in Oct. 1929, dealt solely with matters referable to sect. 9 (4), there still remained the issue of partial incapacity considered apart from sect. 9 (4) &, although the award appealed from was made in review proceedings, it should properly be treated as an award made in the proceedings initiated in July, 1929, which the workman was entitled to have restored, the court having had seisin of the matter throughout. Appeal dismissed. Cross-appeal allowed.—WILLIS *v.* HOWIE (1931), 24 B. W. C. C. 352, C. A.

3710a. ·.]—A miner was certified on Nov. 22, 1919, as suffering from nystagmus & received compensation. After some years the employers requested a review, on which the county ct. judge terminated the weekly

payments as from Aug. 21, 1925, the date of his award, on the ground that the workman had recovered from his disablement & was able to do his ordinary work as a miner. There was no appeal by the workman from this award. Three years later, on June 12, 1928, the workman obtained from a certifying surgeon a certificate to the effect that he was suffering from nystagmus, & thereby disabled from earning full wages at his old employment. The date of the commencement of disablement not appearing on this certificate, the workman went to the medical referee, who issued a certificate confirming the certificate of the certifying surgeon, & fixing Nov. 22, 1919, as the date of the commencement of disablement. The medical referee also certified that the workman was only fit for surface work. On that the workman commenced arbn. proceedings, claiming compensation for partial incapacity as from 1925 & a declaration of liability. The employers contended that the matter was *res judicata*, & this contention was accepted by the county ct. judge. The workman appealed :—*Held :* the award of Aug. 21, 1925, was final between the parties & could not be affected by the certificate of the medical referee.—WILLIAMS *v.* CRAWSHAY BROS. (CYFARTHFA), LTD. (1929), 22 B. W. C. C. 223, C. A.

3716a. ——— ———.]—SMITH *v.* UNION CASTLE STEAMSHIP CO., LTD., No. 3076a, *ante*.

3718. *Add. Annotations :*—**Distd.** Thorpe *v.* Sadler, Sadler *v.* Thorpe (1927), 20 B. W. C. C. 488. **Consd.** Curran *v.* Kays, [1928] 2 K. B. 496.

3721. *Add. Annotation :*—**Consd.** Charlton *v.* Union Castle Line, Ltd. (1930), 143 L. T. 66.

3725. *Add. Annotation :*—**Refd.** Lewis *v.* Guest, Keen & Nettlefolds, Watkins *v.* Same, Tucker *v.* Same, Ingram *v.* Crawshay (1927), 96 L. J. K. B. 664.

3726. *Add. Citation :*—136 L. T. 129.

3726a. ——.]—A baker's assistant, aged eighteen years, lost his right index finger. The employers consented to an award for a weekly payment & then applied for a review asking for termination. Their application was granted, but the workman obtained a declaration of liability. The workman then applied for a review, asking for an increase, & produced evidence that he had tried other work but was unable to do it. The county ct. judge refused the workman's application on the ground that the workman had failed to satisfy him that he was unable to do his pre-accident work. The workman appealed :—*Held :* there was evidence to support the finding & no misdirection. Appeal dismissed. —ALLVEY *v.* WILSON (1930), 23 B. W. C. C. 525, C. A.

3731. *Add. Annotations :*—**Consd.** Lewis *v.* Guest, Keen & Nettlefolds, Watkins *v.* Same, Tucker *v.* Same, Ingram *v.* Crawshay (1927), 96 L. J. K. B. 664; Charlton *v.* Union Castle Line, Ltd. (1930), 143 L. T. 66. **Refd.** Cushion *v.* Tredegar Iron & Coal Co. (1927), 20 B. W. C. C. 454.

3733. *Add. Annotation :*—*As to* (2) **Refd.** Lewis *v.* Guest, Keen & Nettlefolds, Watkins *v.* Same, Tucker *v.* Same, Ingram *v.* Crawshay (1927), 96 L. J. K. B. 664.

3734a. Workman generally more fit for work.]—A colliery repairer had a series of hernia & operations for hernia commencing in 1922. In 1927, on the workman's appln. for compensation, the county ct. judge found as a fact that he was not fit to do the work of repairer, & awarded compensation. In 1928, the employers applied to terminate the weekly payment, & the matter was referred by the judge to the medical referee, who reported that the workman was fit for his former work as a repairer. The judge said that, on this occasion, he accepted the evidence of the employers' doctors which he had rejected at the former hearing & made an award terminating the weekly payments. The workman appealed on the ground that the judge had merely reversed his first decision without any change of circumstances. In view of this argument, the judge was written to & asked what change of circumstances he found which justified him in coming to his decision in 1928. In reply the judge said he had found that the workman was generally more fit for work :—*Held :* there was evidence that the man was fitter generally, & there had been, therefore, such a change of circumstances as justified the later award.—PARTRIDGE, JONES & PATON JOHN, LTD. *v.* SULWAY (1928), 21 B. W. C. C. 423, C. A.

3737. *Add. Annotations :*—**Consd.** Lewis *v.* Guest, Keen & Nettlefolds, Watkins *v.* Same, Tucker *v.* Same, Ingram *v.* Crawshay (1927), 96 L. J. K. B. 664; Bevan *v.* Nixon's Navigation Co. (1928), 139 L. T. 647. **Refd.** Cushion *v.* Tredegar Iron & Coal Co. (1927), 20 B. W. C. C. 454; Barber, Walker & Co. *v.* Flint (1928), 98 L. J. K. B. 83.

3737a. —— ——.]—The principles laid down in *Bevan* v. *Energlyn Colliery Co.*, No. 3366, *ante*, for computing the weekly payment in cases of partial incapacity, where there has been a fluctuation of wages since the accident, have been incorporated in Workmen's Compensation Act, 1925 (c. 84), to a limited extent by sect. 11 (3). Apart from that sect. the principle does not apply to cases under the Act, the provisions of Workmen's Compensation Act, 1906 (c. 58), Sched. I. (3), with regard to partial incapacity, having been repealed by Workmen's Compensation Act, 1923 (c. 42).—CALOW *v.* SHELTON IRON, STEEL & COAL CO., LTD. (1928), 21 B. W. C. C. 125, C. A.

3737b. —— **General fall in wages.**]—A collier being partially incapacitated by an accident arising out of & in the course of his employment, entered into an agreement with his employers by which, after reciting that the workman's average weekly earnings for twelve months before the accident were £3 19*s.* 4*d.*, it was agreed that the employers should find him suitable employment & pay him the wages which he could earn therein &, in addition to those wages in each week, half the difference between his said average weekly earnings & the wages he could earn at the

PART XIV. SECT. 20, SUB-SECT. 3. —C.

3719 i. *Whether applicable—To question of calculation of compensation.*] —*Held :* in view of the arbitrator's express finding that there had been no agreement between the parties as to the average weekly amount of the workman's pre-accident earnings, the arbitrator was entitled to determine that amount *de novo* upon the whole evidence before him.—FOTHERI *v.* ALLOA COAL CO., LTD., [1931] S. 611, 612.—**SCOT.**

said employment by working while the pit was at work, but not in any case exceeding £1. After weekly payments under the agreement had been made for some years, the rate of wages having fallen, the employers applied to have the payments reviewed under Workmen's Compensation Act, 1906 (c. 58), Sched. I., s. 16 :—*Held :* a change in the rate of wages, being one of the events contemplated & provided for by the agreement, was not such a change in the circumstances as entitled either party to have the weekly payments reviewed.—BARBER, WALKER & Co. *v.* FLINT, [1929] 1 K. B. 256 ; 98 L. J. K. B. 83 ; 140 L. T. 154 ; 21 B. W. C. C. 428, C. A.

3745a. ——.]—A workman, who was paid compensation for the loss of three fingers, & who had returned to light work, was discharged owing to the closing down of his employers' works. He registered with the Labour Exchange & for some months received unemployment benefit, together with a proportionate amount of compensation from his late employers. When the unemployment benefit ceased he claimed full compensation, proving that he had made genuine attempts to obtain work but had failed owing to his injury. The county ct. judge awarded a sum, less than the full compensation, to date from the application for review & not from the cessation of the unemployment benefit :—*Held :* the workman was entitled to compensation on the basis of total incapacity as from the date when the unemployment benefit ceased.—KING *v.* BRITISH STEEL CORPN., LTD. (1928), 21 B. W. C. C. 37, C. A.

Annotation :—**Refd.** Hughes *v.* Pwll-Heli Granite Co. (1929), 22 B. W. C. C. 637.

3748a. ——.]—A workman was injured by accident on July 4, 1926, & was paid compensation for total incapacity until Jan. 1929, when the weekly payments were reduced to 25*s.* In Mar. 1929, the workman applied for an increase by way of review. The county ct. judge held that there had been no change of circumstances & refused the application. The workman later renewed his application, alleging that a change of circumstances had been created by the combined effect of the state of the labour market & his own injury, & claimed to come within sect. 9 (4). The county ct. judge found that the workman had not really tried to obtain employment, & again held that there had been no change of circumstances that would justify a review. The workman appealed :—*Held :* there was evidence to support the finding, & no misdirection.—CHARLTON *v.* UNION CASTLE LINE, LTD. (1930), 143 L. T. 66 ; 23 B. W. C. C. 65, C. A.

3749. *Add. Annotation :—As to* (1) **Apld.** Gladstone Spinning Co. *v.* Nangle (1928), 98 L. J. K. B. 161.

3753a. —— **Effect of Workmen's Compensation Act, 1926 (c. 42).**]—A workman, being a minor, who met with an accident arising out of & in the course of his employment before the above Act came into force, is, if he was still under twenty-one years of age when the Act came into force, entitled to obtain a review during the extended period permitted by the amending Act.—EDWARD CURRAN & Co. *v.* KAYS, [1928] 2 K. B. 469 ; 97 L. J. K. B. 806 ; 139 L. T. 294 ; 21 B. W. C. C. 203, C. A.

Annotation :—**Consd.** Vickers-Armstrongs, Ltd. *v.* Regan (1932), 147 L. T. 298.

3753b. **Time for making claim.**]—An infant sustained an accident on Jan. 14, 1930, & received compensation at the rate of £1 a week. On June 24, 1930, he was given light work, & in addition to his pay for this work received 8*s.* 3*d.* a week as compensation. He was discharged on Dec. 3, 1930. He became twenty-one on June 30, 1931. In Nov. 1931 certain correspondence passed between the employers' insurers & the workman's solrs. whereby it was agreed that the sum of 8*s.* 3*d.* a week should be paid to the workman as compensation. This letter said, "We think it will be necessary to record an agreement to show the review by consent of the post-infancy basis of compensation. Before doing so, however, we shall be glad to know whether you are prepared to settle this case." The workman never signed this agreement nor was it recorded. He received 8*s.* 3*d.* a week for three weeks only, when he was taken back to work at £2 4*s.* a week. On Jan. 4, 1932, an application was filed by the workman for arbn. by way of review on the ground that, but for the accident, he would have been earning £3 0*s.* 6*d.* a week. The county ct. judge held that no agreement capable of being recorded was contained in the letters, & that the application for review was out of time. The workman appealed, & also instituted proceedings to record a memorandum of agreement :—*Held :* without deciding whether any agreement was in fact contained in the letters, & without prejudice to the proceedings to record a memorandum of agreement, the application for review was out of time. Appeal dismissed.—JOHNSON *v.* SHARP BROS. & KNIGHT, LTD. (1932), 25 B. W. C. C. 86, C. A.

Annotation :—**Consd.** Vickers-Armstrongs, Ltd. *v.* Regan (1932), 147 L. T. 298, C. A.

3753c. —— **Informal notice to employer within six months after attaining majority.**]—VICKERS-ARMSTRONGS, LTD. *v.* REGAN (1932), 101 L. J. K. B. 657 ; 147 L. T. 298 ; 25 B. W. C. C. 211, C. A.

3754. *Add. Annotation :*—**Consd.** Miller *v.* Taylor & Son (1931), 100 L. J. K. B. 641.

3754a. —— —— ——.]—An infant workman at fifteen years of age commenced work at 8*s.* a week. At sixteen years of age when he met with an accident he was receiving 12*s.* a week, & received compensation based on that figure. When he was twenty years old he applied for a review of the weekly payment, his evidence being that three years earlier he had been offered a post on a liner. The county

PART XIV. SECT. 20, SUB-SECT. 4.—B. (d).

sg. *Limitation to light work not due to accident medical report going beyond reference.*]—The employers of a workman, who had been receiving compensation for an injury to his back alleged that he was now "fit for ordinary work" & craved that the matter should be referred to a medical referee under sect. 19. The medical referee certified that the workman was fit for light work only, but added that his unfitness was not due to the accident, the effects of which had completely passed off, but to rheumatic fibrosis. The arbitrator having refused a motion by the employers to end the compensation :—*Held :* the arbitrator had acted rightly in refusing to end the compensation, in respect that the only matter referred to the medical referee was the question under sect. 19 (2) & the referee has decided that question in the workman's favour.—QUINN *v.* MOUNT VERNON COLLIERY Co., [1932] S. C. 23.—**SCOT.**

ct. judge found that the workman was not suitable for a post at sea, &, apparently without considering whether the man might have obtained work elsewhere at an increased wage, he further found that at the date of the hearing the workman would probably have been earning. if uninjured, no more than the amount which he was earning when he met with the accident. The workman appealed: —*Held:* the reasons given by the county ct. judge for his award were unsatisfactory & the case must be remitted for further consideration. Appeal allowed. Case remitted.—MILLER *v.* TAYLOR & SON (1931), 100 L. J. K. B. 641; 145 L. T. 539; 24 B. W. C. C. 237, C. A.

3754b. —— **Question of fact.**]—An infant workman met with an accident while employed as a motor-lorry driver's mate & received compensation. On attaining twenty-one the workman asked for a review of the weekly payment, alleging that but for the accident he would now have been able to earn wages as a motor-lorry driver. At the hearing of the arbn. the workman called evidence to show that he had learned to drive a motor lorry, but the county ct. judge disbelieved this evidence & made an award in accordance with an offer submitted to by the employers. The workman appealed:—*Held:* the question was purely one of fact & there was no misdirection. Appeal dismissed.—RUSTON *v.* RYBURN (1931), 24 B. W. C. C. 101, C. A.

3755. *Add. Annotation:*—*As to* (2) **Consd.** Miller *v.* Taylor & Son (1931), 100 L. J. K. B. 641.

3762a. What court has jurisdiction.]—Where an arbn. is heard in a county ct. in the district of which both workman & employer reside, & an award is made capable of being reviewed, it is competent for either party to apply for a review in another county ct. in the district of which the accident happened, & the judge of the second county ct. has jurisdiction to hear & determine the case, & is under no obligation to transfer the proceedings to the first county ct. Application to stay proceedings pending appeal.—THOMAS ALLEN, LTD. *v.* HAGGER (No. 1) (1931), 24 B. W. C. C. 373, C. A.

3762b. ——.]—A claim for compensation was heard by the county ct. judge of the district in which both employer & workman resided. An award was given in favour of the workman & recorded in that ct. The employer then applied for a review, in the county ct. of the district in which the accident happended, having first obtained a certified copy of the award & filed it in the second ct. The county ct. judge of the second ct. refused to transfer the proceedings to the first ct. & found that the workman had recovered & made an award ending the weekly payments. The workman appealed, alleged that the second judge had no jurisdiction to hear the review:—*Held:* the word "shall" in 1925 Act, s. 27, is not mandatory but is qualified by the words "subject to rules of ct." & by rule 89 of Workmen's Compensation Rules, 1926, the county ct. judge had jurisdiction to hear the review. He also had jurisdiction by virtue of County Ct. Act, 1919 (c. 73), s. 10 (1). Appeal dismissed.—THOMAS ALLEN, LTD. *v.* HAGGER (No. 3) (1931), 24 B. W. C. C. 513, C. A.

3766a. Particulars—Contents of.] — Upon an application by an employer to review a weekly payment & diminish it, or terminate or diminish it, the appropriate form is Form 5, under which certain particulars are to be given. These do not include particulars of the extent to which diminution is asked for, but the county ct. judge has a discretion to order or to refuse such further particulars under r. 29 (2). His decision on the point is not a decision on a question of law, & there is no appeal therefrom. *Semble:* such particulars ought to be sparingly ordered, & not with the object of compelling the county ct. judge to give costs to one side or the other, & there is much greater reason for asking for particulars of the extent of diminution of a weekly payment where termination is not asked for, than where the employer is asking for termination or diminution.—VICKERS, LTD. *v.* MINERS, THAMES STEAM TUG & LIGHTERAGE CO. *v.* INGRAM (1927), 96 L. J. K. B. 490; 137 L. T. 226; 71 Sol. Jo. 350; 20 B. W. C. C. 269, C. A.

3769. *Add. Annotation:*—**Apld.** Elliott, Ltd. *v.* Hobbs (1929), 22 B. W. C. C. 509.

3769a. ——— ——— ———.]—A workman suffered an accident to his right eye in Apr. 1923. Liability was admitted & compensation paid. In Dec. 1927, the weekly payments were reviewed & the county ct. judge made an award in respect of partial incapacity at the rate of 17*s.* 6*d.* a week, such rate to date from Feb. 1927. Compensation continued to be paid at this rate without any suggestion on the part of the workman that the rate should be altered. In June, 1929, the employers filed an application for redemption of the 17*s.* 6*d.* per week under sect. 13 on the basis of permanent partial incapacity. The workman's solrs. wrote to the employers that the workman objected to the application to redeem, but that they could not object to it as they themselves felt that his medical condition was & would continue to be the same as it had been for the past two years. At the hearing of the application on July 1, medical evidence was called to the effect that the workman's condition was stabilised & that there was unlikely to be any change in either eye. The county ct. judge, however, dismissed the application to redeem, stating that he was doing so in the exercise of the discretion which, in his opinion, the legislature had given to him. The employers gave notice of appeal, & later the workman filed an application for review on the ground that his incapacity had increased: —*Held:* (1) the employers have an absolute right to redeem, & the judge has no discretion to refuse such application; (2) the application of the workman to review not being in existence at the date of the hearing of the employers' application to redeem & the right of the employers to redeem having become crystalised by that date, the subsequent application to review could have no effect.—ELLIOTT, LTD. *v.* HOBBS (1929), 22 B. W. C. C. 509, C. A.

3775. *Add. Annotation :—As to* (1) **Consd.** Curran *v.* Kays, [1928] 2 K. B. 469.

3777. *Add. Annotation :—***Apld.** Elliott, Ltd. *v.* Hobbs (1929), 22 B. W. C. C. 509.

3781. *Add. Annotations :—As to* (2) **Refd.** Curran *v.* Kays, [1928] 2 K. B. 469. *Generally*, **Refd.** Elliott, Ltd. *v.* Hobbs (1929), 22 B. W. C. C. 509.

3799. *Add. Annotations :—As to* (1) **Apld.** Raeburn *v.* Lochgelly Iron & Coal Co. (1926), 20 B. W. C. C. 637. **Consd.** Bradley *v.* London & North Eastern Ry. Co. (1931), 145 L. T. 30.

3801a. —— Scheme inapplicable where employment occasional—What is occasional work.]—By Metal Grinding Industries (Silicosis) Scheme, clause 2, the scheme is made to apply to all workmen employed in the grinding of metal by mechanical power or in glazing, when such glazing is carried on in the same room as the grinding, but by proviso (*a*) thereof the scheme is not to apply, if such employment is occasional only, & for not more than eight hours in any week. A workman, employed by knife-blade manufacturers, superintended the girls in the glazing shop, & also worked on the processes of glazing known as rebuffing & whittening. In the course of his work he used an abrasive wheel in the whittening shop, whittening involving the raising of silica dust. He became totally disabled from silicosis & was certified accordingly. The county ct. judge found that the work done by the workman in rebuffing & whittening was "occasional only & for not more than eight hours in any week," & was, therefore, within the above proviso, & that he was thereby precluded from the benefit of the scheme. The workman appealed :—*Held :* for the employment to fall within the proviso it must be both "occasional only" & "for not more than eight hours in any week." In this case the workman was called on, under his ordinary employment, to do the work, &, therefore, such work was not "occasional only."—MAKIN *v.* NEEDHAM, VEALL & TYZACK, LTD. (1929), 22 B. W. C. C. 76, C. A.

3801b. —— Disablement before Scheme in operation.]—By Various Industries (Silicosis) Scheme, dated Dec. 11, 1928, workmen engaged in certain processes are brought within the operation of the 1925 Act. By para. 2 the scheme came into operation on Feb. 1, 1929, & is made to apply to all workmen employed at any time on or after Jan. 1, 1929, in the processes therein specified. By para. 11 1925 Act, s. 14, requiring the claim to be made within six months of the happening of the accident, is made to apply, the disablement being treated as the date of the accident. A street mason employed on Jan. 1, 1929, on a process within the scheme was taken ill on Jan. 8, & later went to hospital suffering from silicosis. He did not know until Apr. that he was entitled to compensation. On Apr. 28 he wrote to the certifying surgeon who, however, was away. He took no further steps to get certified until at the end of June he was discharged from hospital in order to see the certifying surgeon, who examined him & certified him on July 2, 1929, to be disabled by silicosis as from Jan. 10, 1929. On July 12 he first gave notice to his employer of the accident & made a claim. The county ct. judge held that the accident having occurred between Jan. 1 and Feb. 1, 1929, was not one to which the scheme applied, & that there was no reasonable cause why the workman should have delayed making his claim until two days after the six months had expired. The workman appealed :—*Held :* although the Scheme did not become operative until Feb. 1, 1929, it nevertheless applied to all workmen employed on or after Jan. 1, 1929, & therefore applied to a workman employed on Jan. 1, 1929, who was certified after that date as being disabled. On the second point the award was upheld on the ground that there was here no reasonable cause for the delay in making a claim. Appeal dismissed. —HOLT *v.* HOBSON (ANDREW) & SONS (1930), 23 B. W. C. C. 242, C. A.

3801c. Order extending Workmen's Compensation Act, 1906 (c. 58), s. 8, to ironworkers' cataract — Construction of Order.] — *Held :* the proviso to Workmen's Compensation (Ironworkers' Cataract) Order, 1925, was not governed by the operative words in par. 2 which contained the absolute limit of six months in all, & where the incapacity was continuing, compensation could be allowed for the continuing incapacity. *Semble :* the absence of a bed in a ward or a vacancy in a place for an operation would be a good medical reason for the non-performance of an operation within the four months.—DAVIES *v.* BALDWINS, LTD. (1926), 136 L. T. 462 ; 20 B. W. C. C. 116, C. A.

*Annotation :—***Consd.** Leonard *v.* Redbrook Tinplate Co., [1930] 1 K. B. 643.

3801d. Right to compensation not limited to skilled workers.]—Applt. was employed by resps., who were varnish manufacturers, as a general labourer. He was twenty-two years of age & his wages were £2 a week. His work was to help with the loading & unloading of vehicles, & clean & fill old varnish drums. In the course of his work he came into contact with rosin, turps, wood-oil, gum, etc., & he had to use turpentine for cleaning his hands as soap would not remove the dirt. In Dec. 1929, the certifying surgeon certified that he was suffering from dermatitis produced by dust & liquids & was thereby disabled for work. On a claim for compensation under the Act the county ct. judge awarded him a weekly sum for compensation from Dec. 7, 1929, until Feb. 1, 1930, when it was to be terminated. He held that applt. was not

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sc. *Various Industries (Silicosis) Scheme*, 1928—*Duty to furnish information as to previous employment—Time for furnishing.*]—Various Industries (Silicosis) Scheme, 1928, para. 13, enacts that a claimant for compensation under the Scheme must furnish the employer from whom compensation is claimed with true information as to his previous employment, & that, if the claimant withholds information, he shall forfeit any right to compensation under the Scheme. A workman, who had been certified by the certifying surgeon to be totally disabled by silicosis, claimed compensation from his employer. His claim having been refused, he brought arbn. proceedings, & in the initial writ furnished for the first time the particulars as to his previous employment required by para. 13 of the Scheme :—*Held* ; there being in para. 13 no time limit within which the information must be furnished, the workman, having furnished it in the initial writ, was not in breach of para. 13 ; &, accordingly, he had not forfeited his right to compensation.—HENRY *v.* GLADSTONE, [1931] S. C. 228.—**SCOT.**

then disabled from earning full wages at the work at which he was employed ; that he was employed as a labourer simply & that he had full capacity to perform all kinds of general labouring work ; & that the wording of sect. 43 (1) (i) precluded applt., who was a labourer, from recovering compensation as a worker in the varnish-making industry or otherwise than as a general labourer :— *Held :* the view taken by the county ct. judge that the workman did not come within sect. 43 was erroneous. There was nothing in the words of that sect. which limited its application to skilled workers in a process. It applied to any ordinary unskilled labourer who suffered from any industrial disease due to the nature of his employment, & who was thereby disabled from earning full wages at the work at which he was employed.— GILMORE *v.* FREDERICK BOEHM, LTD. (1930), 99 L. J. K. B. 640 ; 143 L. T. 307 ; 46 T. L. R. 484 ; 74 Sol. Jo. 402 ; 23 B. W. C. C. 198, C. A.

3801e. Extension of section to other diseases by Order in Council—Subject to modification—What amounts to modification.]—1925 Act, s. 43 (3), gives the Secretary of State power to " make Orders for extending the provisions of this section to other diseases & other processes, & to injuries due to the nature of any employment specified in the Order not being injuries by accident, either without modification or subject to such modifications as may be contained in the Order." Workmen's Compensation (Industrial Diseases) Consolidation Order, 1929, para. 1, extends the provisions of sect. 43 " subject to the modifications hereinafter specified," to (*inter alia*) cataract caused by exposure to rays from molten or red-hot metal. Para. 3 provides that " a person suffering from cataract shall not be entitled to compensation under the provisions of the said sect. on account of that disease for more than six months in all," subject to a power of extension at the discretion of the arbitrator acting on the advice of the medical referee :— *Held :* para. 3 was a " modification " within sect. 43 (3), & was therefore not *ultra vires.*— LEONARD *v.* REDBROOK TINPLATE CO., LTD., [1931] A. C. 205 ; 100 L. J. K. B. 225 ; 144 L. T. 346 ; 47 T. L. R. 187 ; 23 B. W. C. C. 375, H. L.

3801f. Metal Grinding Industries (Silicosis) Scheme—Necessity for employment on process when Scheme brought into force.]—By para. 2 of Metal Grinding Industries (Silicosis) Scheme, which came into force on July 1, 1927, the Scheme is made to apply to any workman employed on or after that date in certain processes connected with the grinding of metals. By para. 7 the certifying surgeon is to certify the date of disablement, & by para. 4 the workman, to qualify for compensation, must have been employed in the specified processes within the three years previous to the certified date. By para. 5, where the workman has been employed in the processes for not less than five years, the onus is on the employer to prove that the disease is not due to employment in the processes instead of on the workman to prove that the disease is so due. A workman had been employed as a nail & tack maker for thirty-five years & as such had for many years to use a sandstone grindstone. On Feb. 7, 1930, the workman ceased work, & on Aug. 19, 1930, he was certified by the certifying surgeon to be suffering from silicosis, the date of disablement being fixed as Feb. 7, 1930. On a claim for compensation the county ct. judge found that, although the workman had not been employed in any process mentioned in para. 2 of the Scheme since the Scheme came into force, yet as he had been employed previously in such a process for not less than five years, he held that the employers had failed to discharge the onus put upon them by para. 5 of the Scheme, & therefore held that the disease must be deemed to be due to the employment. He accordingly made an award in favour of the workman. The employer appealed :— *Held :* by the finding of fact that the workman had not been employed in any process mentioned in the Scheme on or after the date when the Scheme came into force, the workman was not within the Scheme at all, & therefore para. 5 could not be made to apply to him. Appeal allowed.—HUGHES *v.* HARRISON & COOK (1931), 24 B. W. C. C. 104, C. A.

3801g. Date of disablement—No date in certificate—Date of accident.]—Various Industries (Silicosis) Amendment Scheme, 1930, which came into force on Feb. 1, 1931, held applicable to a workman who ceased work by reason of silicosis on Dec. 27, 1930, for the reason that no date of commencement of the disease was stated in the surgeon's certificate which was given on May 7, 1931.—BRIDGES *v.* NEW ROCK COLLIERIES CO. (1932), 101 L. J. K. B. 557 ; 25 B. W. C. C. 155, C. A.

3802. *Add. Annotation :*—**Apld.** Young *v.* Keeble (1928), 21 B. W. C. C. 294.

3805. *Add. Annotation :*—**Consd.** O'Neil *v.* Wilsons & Clyde Coal Co. (1926), 19 B. W. C. C. 656.

3807. *Add. Annotations :*—**Consd.** Ellerbeck Collieries, Ltd. *v.* Cornhill Insurance Co., [1932] 1 K. B. 401. **Refd.** O'Neil *v.* Wilsons & Clyde Coal Co. (1926), 19 B. W. C. C. 656.

3810. *Add. Citations :*—[1927] A. C. 461 ; 96 L. J. K. B. 608 ; 137 L. T. 257 ; 71 Sol. Jo. 429 ; 20 B. W. C. C. 391.

Add Annotations :—**Consd.** Ellerbeck Collieries, Ltd. *v.* Cornhill Insurance Co., [1932] 1 K. B. 401. **Refd.** M'Dougall *v.* Summerlee Iron Co. (1927), 20 B. W. C. C. 419.

3811a. Silicosis—Construction of Various Industries (Silicosis) Scheme, 1928.]—By clause 2 (vii) of Various Industries (Silicosis) Scheme, the scheme is made to apply to all workmen employed in the potteries in certain specified processes only. One of such specified processes is " any process in or incidental to the manufacture of china or earthenware, including sanitary earthenware, electrical earthenware, & ware tiles." A workman was employed to put spouts & handles on teapots made of Jet & Rockingham ware, & was certified as being totally disabled from silicosis. Evidence was given before the county ct. judge that Jet & Rockingham ware was a special branch of the pottery trade & did not come within the meaning of the trade term " earthenware "—*Held :* the words used in describing the processes specified in the scheme are to be interpreted in the technical sense in which they would

be understood by those engaged in the trades concerned & not in the wide sense in which they might be understood by the general public.—DONCASTER *v.* SUDLOW (R.) & SONS (1929), 22 B. W. C. C. 564, C. A.

3813. *Add. Annotation :*—**Consd.** Edwards *v.* Penrhiceiber Navigation Colliery Co. (1931), 24 B. W. C. C. 117.

3814. *Add. Citations :*—[1928] 1 K. B. 291; 96 L. J. K. B. 347; 137 L. T. 26; 91 J. P. 43; 21 B. W. C. C. 226.

3815a. —— —— ——.]—A certificate of disablement granted to a workman under 1925 Act, s. 43, certified as the date of disablement a date more than six months before the date of the certificate. Consequently a claim by the workman for compensation founded upon the certificate was not made within the period prescribed by 1925 Act, s. 14 (1), namely, six months from the occurrence of the accident, the disablement being treated by sect. 43 as the happening of the accident. If the certificate had been granted immediately after the examination of the workman by the certifying surgeon the claim for compensation could have been made in time :—*Held :* on the facts, the failure to make the claim within the prescribed period was due to the delay of the certifying surgeon &, so far as the workman was concerned, was occasioned by reasonable cause, within proviso (*b*) to sect. 14 (1), & the workman was entitled to compensation. —KITCHEN *v.* KOCH (C.) & CO., LTD., [1931] A. C. 753; 100 L. J. K. B. 459; 145 L. T. 618; 47 T. L. R. 558; 75 Sol. Jo. 571; 24 B. W. C. C. 294, H. L.

3815b. Omission of date of disablement.]—WILLIAMS *v.* NEW BRITISH RHONDDA COLLIERY CO., LTD., No. 3038b, *ante*.

3816. *Add. Annotations :*—*As to* (2) **Consd.** Cauldon Potteries *v.* Johnson (1926), 20 B. W. C. C. 42. **Apld.** Young *v.* Keeble (1928), 21 B. W. C. C. 294.

3816a. Certificate of death—Various Industries (Silicosis) Scheme, 1928—Whether presence of medical referee at post-mortem essential.]—By clause 14 (1) of Various Industries (Silicosis) Scheme, 1928, it is provided that where an application is made on behalf of dependants of a deceased workman to a medical referee for a certificate that death has been due to silicosis or silicosis & tuberculosis, the medical referee must, after a post-mortem examination, give a certificate in accordance with the facts & such certificate shall be conclusive. It is further provided by the same paragraph that the post-mortem examination shall, if possible, be made by or under the personal supervision of the medical referee. The last provision is directory & not imperative. Therefore, where, on the death of a workman, a coroner ordered a post-mortem examination, which the medical referee was not invited to attend, & subsequently, after an examination of portions of the lungs, the medical referee gave a certificate that death was due to silicosis & tuberculosis :—*Held :* (1) the provisions of clause 14 (1) of the Scheme were complied with & the certificate was conclusive; (2) *further*, the correct procedure to quash a certificate would be to obtain a rule *nisi* for a writ of *certiorari*.—HINDMARSH *v.* JOHNS (EDWARD) & CO., LTD. (1930), 23 B. W. C. C. 537, C. A.

3818a. —.]—A french polisher had suffered intermittently from dermatitis since 1925, while working for different employers. The medical referee issued a certificate on Jan. 30, 1928, in which he certified that on Jan. 30, 1928, appct. was no longer disabled by dermatitis. On Mar. 10, 1928, appct. was examined by the certifying surgeon, who on that date certified that she was suffering from dermatitis & had been disabled thereby since Sept. 29, 1927. On a claim by the workman for compensation based on the certifying surgeon's certificate of Mar. 10, 1928, the county ct. judge held the two certificates being inconsistent, the certificate of the medical referee must prevail to the effect that the workman was not disabled after Jan. 30, 1928 :—*Held :* there was no vital inconsistency between the two certificates, bearing in mind the intermittent character of dermatitis, & the certificate of Mar. 10 was consistent with dermatitis having broken out again.—MACY *v.* CORK MANUFACTURING CO., LTD. (1928), 21 B. W. C. C. 306, C. A.

Annotation :—**Consd.** Williams *v.* Crawshay Bros. (Cyfarthfa) (1929), 22 B. W. C. C. 223.

3819a. Certificate incomplete—Death of certifying surgeon—Subsequent certificate by successor—Validity.]—On July 12, 1926, eighteen months after the workman had left his employment, Dr. S., the certifying surgeon of the district, certified that the workman was suffering from lead poisoning. The certificate did not comply with the regulations as no date of disablement was filled in, nor were the words "I certify that the disablement commenced on the day of " struck out. Before the workman could see Dr. S. to have the omission put right the doctor died. After Dr. F. had been appointed in his place the workman, on Aug. 12, 1926, obtained a certificate from him in which the date of disablement was filled in as Nov. 23, 1924. In answer to the workmen's request for arbn., based on Dr. F.'s certificate, the employers denied liability to pay compensation on the ground that, as Dr. S.'s certificate did not specify the date of disablement, such date was deemed to be the date of the certificate, & was final & conclusive, & Dr. F.'s certificate was accordingly invalid, & as the workman had not been in their employment for more than twelve months prior to that date of disablement, he could not recover compensation. The county ct. judge upheld that contention :—*Held :* the first certificate was incomplete in that it had not dealt with the date of disablement in either manner provided by the regulations & was invalid, & the workman, not being able by reason of the death of Dr. S. to have the matter put in order, was entitled to rely on the second certificate.—POWELL *v.* CAULDON POTTERIES, LTD. (1926), 96 L. J. K. B. 245; 136 L. T. 532; 20 B. W. C. C. 16, C. A.

Annotation :—**Folld.** Hands *v.* Great Western Colliery Co. (1930), 23 B. W. C. C. 477.

3819b. Certificate ineffective—Issue of second certificate.]—A miner was certified by the certifying surgeon as being disabled from Mar. 31, 1924, by miner's nystagmus. From Oct. 1924, to Mar. 1929, he worked on the surface as a partially incapacitated workman. On Mar. 8, 1929, he was served under 1925 Act, s. 12 (3) with a doctor's certificate alleging complete recovery, & the question was ultimately referred to a medical referee, who, in Apr. 1929, certified that the workman was not then suffering from miner's nystagmus & was fit to resume work underground. On Dec. 12, 1929, the workman obtained from the same certifying surgeon a certificate that he was disabled by miner's nystagmus, but the certificate did not certify a date from which disablement commenced, nor were the words " & I certify that the disablement commenced on the day of " struck out in accordance with the instructions contained in Form 3 in the schedule to the regulations as to certifying surgeons, which states " [if the surgeon is unable to certify a date on which the disablement commenced, he should strike out this part of the certificate. In that case the disablement will be deemed to have commenced on the date on which this certificate is given]." On obtaining this certificate the workman made a claim for compensation on his employers, who appealed to a medical referee. The medical referee on Jan. 4, 1930, dismissed the employer's appeal. The certifying surgeon then issued a second certificate which he ante-dated Dec. 12, 1929, & in which he certified that the workman's disablement commenced on Mar. 31, 1924. In Mar. 1930, the workman filed an application for arbn. based on an allegation of recurrence of the industrial disease which originally manifested itself in 1924. The county ct. judge made an award in favour of the employers on the ground that the date of disablement must be taken to be Dec. 12, 1929, & that the certifying surgeon had no power to displace the certificate given on Dec. 12, 1929, by the certificate given in Jan. The workman appealed:—*Held:* the certificate of Dec. 12, 1929, was ineffective, as no date of disablement could be inferred from it, & the certifying surgeon was entitled to issue an effective certificate giving the date of disablement as Mar. 31, 1924. Case remitted for compensation to be awarded.—HANDS *v.* GREAT WESTERN COLLIERY CO., LTD. (1930), 23 B. W. C. C. 477, C. A.

3820. *Add. Annotations:*—**Apld.** Cauldon Potteries *v.* Johnson (1926), 20 B. W. C. C. 42. **Consd.** Davies *v.* Baldwins (1926), 136 L. T. 462. **Apld.** Young *v.* Keeble (1928), 21 B. W. C. C. 294.

3821a. -.]—A certificate was given by the certifying surgeon that a workman was suffering from lead poisoning. A leading symptom of the disease was stated on the form to be dupuytrens contraction. Full compensation was paid until an application by the employers to review the weekly payments. The workman was still incapacitated by dupuytrens contraction. The county ct. judge refused to treat the certificate as conclusive as to dupuytrens contraction being a symptom of lead poisoning, &, on contradictory medical evidence given at the hearing, & also on knowledge he had acquired some years before while sitting on a commission to consider industrial diseases, including dupuytrens contraction, held the symptoms, though still the same as those set out in the certificate, were not due to the certified disease, & reduced the compensation to 1*d.* a week. The case involved a point of law, &, early in the hearing, counsel called attention to that fact, but the judge omitted to take any notes of the proceedings:—*Held:* (1) the certificate that the symptoms were due to the certified disease was conclusive, & evidence to the contrary was inadmissible, & there was no evidence of any new factor or new disease to support an award in reduction of compensation. (2) Observations on the judge's duty to take a note.—CAULDON POTTERIES, LTD. *v.* JOHNSON (1926), 20 B. W. C. C. 42, C. A.

Annotation:—As to (1) **Apld.** Young *v.* Keeble (1928), 21 B. W. C. C. 294.

3821b. As to cause of death or incapacity.]—A workman, employed as a painter, was from July to Sept. 1927, laid up with an ulcer on his ankle & with heart trouble. From Oct. 19 onwards he became unfit for further work with loss of power in his left arm & leg, he became mentally incapable, his memory failed, & his heart got worse On Nov. 15 he was admitted to hospital, where the medical superintendent found that he had long-standing disease of the heart caused by kidney trouble. On Nov. 23, the certifying surgeon visited the hospital, & on Nov. 28 certified that the workman was suffering from lead poisoning or its sequelæ, & had been disabled as from Oct. 19. The medical superintendent was ignorant both of the visit & of the certificate of the certifying surgeon &, when the workman died on Dec. 23, certified that the cause of death was cerebral hæmorrhage caused by valvular disease of the heart. The county ct. judge held he was not bound to find that death was due to the disease certified by the certifying surgeon, & refused to make an award in favour of the dependants, on the ground that they had not discharged the *onus* of proving that lead poisoning either caused, contributed to, or accelerated death:—*Held:* there was evidence to support the finding, & no misdirection.—YOUNG *v.* KEEBLE, LTD. (1928), 21 B. W. C. C. 294, C. A.

3821c. ——.]—An odd job man in spinning mills was certified as suffering from epitheliomatous ulceration of the skin due to mineral oil. He died five months later. The county ct. judge held the certificate of the certifying surgeon was conclusive & debarred him from hearing any evidence on behalf of the

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sf. *As to date of commencement of disease.*]—A miner, who had previously suffered from miner's nystagmus, obtained work from new employers. Shortly after entering this employment he obtained from a certifying surgeon a certificate that he was disabled owing to miner's nystagmus, & that disablement had commenced on a date since he entered his new employment. An appeal by the employers against the certificate was dismissed by the medical referee. In an arbn. the arbitrator, after a proof, held that the disablement had commenced on a date earlier than that certified by the certifying surgeon, & more than twelve months before the workman entered his new employment & refused compensation:—*Held:* the date of disablement stated in the certificate of the certifying surgeon was conclusive.—TENNENT *v.* MOORE (A.-G.) & Co., LTD., [1929] S. C. (Ct. of Sess.) 7.—**SCOT.**

employers, which tended to show that he had not contracted the disease in their employment & that death did not result from the disease :—*Held :* the judge was not entitled to refuse to hear the evidence, & the case must be remitted for rehearing.—NEEDHAM *v.* ACE MILL, LTD. (1928), 21 B. W. C. C. 189, C. A.

3821d. As to date of disablement.] — The certificate which a workman must obtain from the certifying surgeon under 1925 Act, s. 43, as a condition precedent to a claim for compensation on the ground of disablement by an industrial disease is conclusive as to the date of disablement, & it is therefore not competent for the arbitrator to determine that the disablement commenced at an earlier date.—WILSONS & CLYDE COAL CO., LTD. *v.* FLYNN, [1930] A. C. 516 ; 99 L. J. P. C. 139 ; 143 L. T. 362 ; 46 T. L. R. 441 ; 74 Sol. Jo. 437 ; 23 B. W. C. C. 159, H. L.

Annotation :—**Consd.** Edwards *v.* Pearhiceiber Navigation Colliery Co. (1931), 24 B. W. C. C. 117.

3821e. ——.]—Pltfs., who were a colliery co., had in their employment early in 1929 two piecework miners who, for reasons not here material, were not actually working & received no wages, though their names appeared in the pay sheets, for a period including Mar. 8 to Mar. 19. On Mar. 8 deft. insurance co. issued to pltfs. a cover note which insured pltfs. from Mar. 8 to Mar. 19 against claims for non-fatal accidents. During the currency of the cover note the certifying surgeon certified that the two workmen were suffering from miners' nystagmus & fixed the date of the beginning of the diablement as Mar. 11 in one case & Mar. 12 in the other case. The county ct. judge awarded both workmen compensation, but defts. refused to indemnify pltfs. on the grounds that the workmen suffered no injury between Mar. 8 & Mar. 19 & were not engaged in work for pltfs. between those dates. In an action for an indemnity :—*Held :* the policy, though not actually issued, was intended to cover pltfs.' liability for the results of industrial disease, & as an "accident," namely, disablement by industrial disease, had happened within the period of cover, & as the Act created the statutory fiction that a workman, at the date of the certified disablement, was employed by the last relevant employer before that date, defts. were liable to indemnify pltfs.—ELLERBECK COLLIERIES, LTD. *v.* CORNHILL INSURANCE CO., LTD., [1932] 1 K. B. 401 ; 101 L. J. K. B. 117 ; 146 L. T. 153 ; 48 T. L. R. 78 ; 24 B. W. C. C. 376, C. A.

3821f. —— Failure to give notice of disablement.] —A workman was employed by resp. as a labourer at breaking up concrete floors & relaying them. After varying periods of employment he ultimately stopped work on July 22, 1929, & on July 30 obtained a certificate from the certifying surgeon that he was disabled from dermatitis contracted during his employment by resp., & fixing the date of disablement as Mar. 14, 1929. Resp. paid the workman compensation till Nov. 19, 1929, when resp.'s doctor reported that the workman had practically recovered & was fit for any work except on cement. Resp. then employed the workman at other work till Dec. 24, 1929, when he was dismissed for want of work. After a period of unemployment the workman obtained work in Apr. 1930, with new employers in unloading lorries containing old iron, rags & bones. By May 2 the dermatitis had become so bad that he had to cease work. On Aug. 28, 1930, he obtained a second certificate from the certifying surgeon that he was suffering from dermatitis, but fixing the date of disablement at the date of the original disablement, Mar. 14, 1929. On this occasion no notice of disablement was given to resp., & he remained unaware of the certificate till the workman commenced the present proceedings against him for compensation on Sept. 19, 1930. The county ct. judge declined in the circumstances to treat the second certificate as conclusive of the date of disablement in accordance with 1925 Act, s. 43 (2), & on the evidence that the workman had recovered from the disablement of Mar. 14, 1929, by Nov. of that year, dismissed the application. On appeal : —*Held :* (1) as no notice of disablement had been given after the second certificate as required by 1925 Act, s. 14 & r. 41, subr. 2, of Workmen's Compensation Rules, 1926, so that resp. was never given the opportunity of appealing to the medical referee as provided by reg. 8 of the Regulations as to Certifying Surgeons, the certificate was not conclusive of the date of disablement ; (2) as there was evidence to support the county ct. judge's finding that the workman had recovered from the old disablement, the appeal must be dismissed.—MASON *v.* FOSTER, [1931] 2 K. B. 172 ; 100 L. J. K. B. 395 ; 145 L. T. 88 ; 24 B. W. C. C. 88, C. A.

3822a. Where possibility of recurrence.]—A miner obtained from a certifying surgeon a certificate to the effect that since Oct. 17, 1920, he had been disabled by miner's nystagmus. From 1920 to 1924 he was paid compensation on the basis of total incapacity. From 1924 to 1926 he worked on the surface. In Oct. 1926, a medical referee certified that he was still disabled by miner's nystagmus. From 1926 to 1930 he was out of employment, & was paid compensation on the basis of partial incapacity. In Jan. 1930, the employer served a notice under 1925 Act, s. 12, together with a doctor's certificate ; the workman served a counter-certificate & the dispute was referred to the medical referee. On Feb. 15, 1930, the medical referee certified that the workman was not then suffering from miner's nystagmus, but that his incapacity to do other than surface work was due to other defects. The workman then went to a certifying surgeon, & on Mar. 27, 1930, obtained another certificate to the effect that he was then suffering from miner's nystagmus, & that the date of disablement was Oct. 17, 1920. In May, 1930, the workman filed an application for arbn. claiming compensation on the basis of partial incapacity. The arbn. took place on July 7, 1930. The county ct. judge held that the medical referee's certificate of Feb. 15, 1930, was conclusive, & refused to allow the workman to give evidence of events subsequent to that date on the ground that such evidence would contradict that certificate. He accordingly made his award in favour of the employer. The workman appealed :—*Held :* the county ct. judge had misdirected himself

in not considering whether the evidence tendered went to show that there had been a recurrence of the disease since Feb. 15, 1930. Appeal allowed. Order for new trial. —EDWARDS *v.* PENRHICEIBER NAVIGATION COLLIERY CO. (1931), 24 B. W. C. C. 117, C. A.

3822b. Various Industries (Silicosis) Scheme, 1931 —Examination & certification by Medical Board—When certificate conclusive — Re-examination not made "in pursuance of any Compensation Scheme."]—A pottery worker to whom Various Industries (Silicosis) Scheme, 1928, applied ceased work on Sept. 25, 1930. On Sept. 30 the certifying surgeon certified that he was totally disabled from silicosis & that the disablement commenced on Sept. 25. An appeal by the employer to the medical referee having been dismissed, compensation on the basis of total incapacity was paid to the workman. On June 1, 1931, there came into force Silicosis & Asbestosis (Medical Arrangements) Scheme, 1931, which instituted a medical board to deal with Silicosis, & Various Industries (Silicosis) Scheme, 1931. By the preamble to Various Industries (Silicosis) Scheme, 1931, the 1928 Scheme was made to continue to apply in the case of workmen who were within that scheme with the exception that the provisions of the new scheme as to the examination & certification by the medical board were substituted for the provisions of the former scheme as to the examination & certification by the certifying surgeon & medical referee. This preamble further stated that the medical board shall have the same powers & duties in cases under the old scheme as under the new scheme. By para. 12 of Various Industries (Silicosis) Scheme, 1928, & para. 11 of Various Industries (Silicosis) Scheme, 1931, the provisions of the 1925 Act relating to submission to medical examination continued to apply to workmen within the respective schemes. By a proviso to para. 11 of the 1931 Scheme any reference to be made to a medical referee under the provisions of the 1925 Act was to be made to the medical board. By para. 9 of Silicosis & Asbestosis (Medical Arrangements) Scheme, 1931, where, "in pursuance of any compensation scheme" an employer applied to a medical board for re-examination of a workman under that scheme or any compensation scheme, the board should re-examine & give a fresh certificate in the appropriate form. On Sept. 9, 1931, the employer applied to the medical board for re-examination of the workman. The workman having submitted under protest to such re-examination, the medical board, on Oct. 21, certified that he was no longer totally incapacitated. The employer thereupon refused to pay further compensation, & on Oct. 26, 1931, the workman filed a request for arbitration claiming a continuance of the weekly payments. The county ct. judge held that the certificate of the medical board was valid & conclusive against the workman & that therefore he had no jurisdiction to hear the case. The workman appealed: *Held:* (1) the application to the medical board for re-examination had not been made "in pursuance of any compensation scheme" as there was no scheme applicable which gave such power. The certificate of the medical board was therefore not given in accordance with the provisions of Silicosis & Asbestosis (Medical Arrangements) Scheme, 1931, & was not conclusive evidence within para. 5 of such scheme; (2) the substitution by Various Industries (Silicosis) Scheme, 1931, of a medical board for certifying surgeon & medical referee, as stated in the preamble, related only to the functions performed in conjunction by the certifying surgeon & medical referee in originally bringing a workman within the 1928 Scheme. Appeal allowed. Case remitted to hear arbitration on all points.—WHITE *v.* WINTERTON POTTERY (LONGTON), LTD., [1932] 2 K. B. 265; 101 L. J. K. B. 546; 147 L. T. 177; 25 B. W. C. C. 129, C. A.

3822c. —— —— When applicable.]—WHITE *v.* WINTERTON POTTERY (LONGTON), LTD., No. 3822b, *ante*.

3824. *Add. Annotation:*—**Refd.** Mason *v.* Foster, [1931] 2 K. B. 172.

3825. *Add. Annotations:*—**Consd.** Rees *v.* Imperial Navigation Coal Co. (1926), 20 B. W. C. C. 287. **Refd.** Powell *v.* Cauldon Potteries, (1926), 96 L. J. K. B. 245; Williams *v.* Crawshay Bros. (Cyfarthfa) (1929), 22 B. W. C. C. 223.

3828. *Add. Annotation:*—**Consd.** Lowe *v.* Wilsons & Clyde Coal Co. (1929), 23 B. W. C. C. 558; Ellerbeck Collieries, Ltd. *v.* Cornhill Insurance Co., [1932] 1 K. B. 401.

3829a. What amounts to decision.]—A medical referee, in his certificate, said that it was impossible for him to give a certificate either agreeing with or against that given by the certifying surgeon, as it was outside his province as an ophthalmic surgeon. The county ct. judge having held the certificate of the certifying surgeon was conclusive:—*Held:* there had been no decision by the medical referee, & the case must go back for the appointment of a fresh medical referee.—JONES *v.* WILLIAM MUIRHEAD MACDONALD WILSON & CO., LTD. (1926), 19 B. W. C. C. 412, C. A.

3830. *Add. Annotation:*—**Refd.** Wilsons & Clyde Coal Co. *v.* Flynn, [1930] A. C. 516.

3831. *Add. Annotations:*—**Distd.** Macy *v.* Cork Manufacturing Co. (1928), 21 B. W. C. C. 306. **Refd.** Wilsons & Clyde Coal Co. *v.* Flynn, [1930] A. C. 516.

3832a. ——.]—WILSONS & CLYDE COAL CO. *v.* FLYNN, No. 3821d, *ante*.

3832b. —— .]— A miner obtained from a certifying surgeon on Oct. 17, 1920, a certificate that he was suffering from miners' nystagmus. He was paid compensation on the basis of total incapacity up to June, 1924, on which date he was given work above ground at a lower wage. In Oct. 1926 a medical referee certified that he was still suffering from miners' nystagmus. In Jan. 1930 the employers served a notice upon the workman under sect. 12 of the Act together with a

PART XIV. SECT. 22, SUB-SECT. 3.—D.

3827 i. *Powers of referee—Fixation of date of disablement.*]—Opinion by LORD HUNTER that a medical referee has no power to alter the date certified by the certifying surgeon as the date of disablement.—LOWE *v.* WILSONS & CLYDE COAL CO., LTD., [1930] S. C. 32; 23 B. W. C. C. 558.—**SCOT.**

certificate from a doctor. This was met by a counter notice on the part of the workman, & the matter was accordingly referred to a medical referee. On Feb. 15, 1930, the same medical referee who had made the report in 1926 certified that the workman was not then suffering from miners' nystagmus, but that his incapacity was due to other defects. On Mar. 27, 1930, the workman obtained a report from the certifying surgeon for the district that he was suffering from miners' nystagmus, & was disabled from earning full wages, & that the disablement commenced on Oct. 17, 1920. Upon this report the workman applied for arbitration. The arbitrator made an award in favour of the employers, but this was set aside by the Ct. of Appeal. On appeal to the House of Lords the medical referee in answer to a further question put by the House, said that his certificate of Feb. 15, 1930, meant that although the workman had now recovered from miners' nystagmus he was likely to develop a second attack sooner or later & in much shorter time than it took to produce the first attack: —*Held:* the mere fact that a second attack would develop quicker than a first was a natural concomitant to susceptibility, & was compatible with complete recovery from the original development having taken place. Disablement from the second attack would be caused thereby & not by the first. The certificate here was one of complete recovery, & that being so, it could not be contradicted by a finding by some one else which was incompatible with complete recovery.—PENRIKYBER NAVIGATION COLLIERY CO., LTD. *v.* EDWARDS (1932), 101 L. J. K. B. 744; 147 L. T. 421, H. L.

3834. *Add. Citations:—affd. sub nom.* EVANS (RICHARD) & CO., LTD. *v.* SCAHILL (1927), 137 L. T. 161; 20 B. W. C. C. 348, H. L.
Add. Annotations:—**Apld.** Lewis *v.* Tredegar Iron & Coal Co. (1929), 22 B. W. C. C. 268. **Refd.** Connor *v.* Cadzow Coal Co., [1932] A. C. 1.

3834a. ——.]—MACY *v.* CORK MANUFACTURING CO., LTD., No. 3818a, *ante*.

3835a. Certificate of death—Under Various Industries (Silicosis) Scheme, 1928.]—HINDMARSH *v.* JOHNS (EDWARD) & CO., LTD., No. 3816a, *ante*.

3837a. Continuity of employment.]—The words "the employment" in modification (*b*) of 1925 Act, s. 43 (1), meant any employment, to the nature of which the disease was due, in which the workman was employed within the twelve months previous to the date of disablement.

Applt., a miner, who had suffered from miners' nystagmus, entered the service of

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PART XIV. SECT. 22, SUB-SECT. 4.

sg. *False representation—Whether made "at time of entering employment."*]—A miner who had previously suffered from miner's nystagmus, an industrial disease, obtained employment at his trade in Apr. 1927. In May, 1927, he wilfully & falsely made a representation in writing that in Apr. 1927, he had not previously suffered from the disease. For a period of three weeks in Aug. 1927, he was unemployed, after which he again obtained employment under the same employers. He continued in their employment until Nov. 1927, on which date he was certified by the certifying surgeon to be incapacitated by nystagmus from earning full wages:—*Held:* he was not barred by the provisions in sect. 43 (1) (*b*) from recovering compensation, in respect that the written representation was not made "at the time of entering the employment."—JOHNSTONE *v.* MOUNT VERNON COLLIERY CO., LTD., [1929] S. C. (Ct. of Sess.) 227.—**SCOT.**

sh. —— ——.]—*Held:* a false representation, made by a workman on entering any employment to the nature of which the disease is due & in which he has been engaged within the twelve months previous to the date of disablement, is a bar to the recovery of compensation by him, although he has entered the employment & made the representation outwith the twelve months, & although there has been a break in the employment within the twelve months.—HIGGINS *v.* CADZOW COAL CO., [1931] S. C. 54; 23 B. W. C. C. 621.—**SCOT.**

sj. —— ——.]—*Held:* the words "the employment" in modification (*b*) of 1925 Act, s. 43 (1), mean any employment, to the nature of which the disease was due, in which the workman was employed within the twelve months previous to the date of disablement, & therefore (1) where a miner had on entering the employment of one employer, made a false representation as to previous immunity from miner's nystagmus, & was, within twelve months of so entering but while in the employment of another employer, certified to be suffering from miner's nystagmus, he was not entitled to compensation, & (2) where a miner had, on entering the employment of one employer, made a false representation as to previous immunity from miner's nystagmus, & was, more than twelve months after leaving that employment, & while in the employment of another employer, certified to be suffering from miner's nystagmus, he was not barred from claiming compensation from the second employer; (3) where a miner had made a false representation of immunity from miner's nystagmus on re-entering the employment of a previous employer after a period of unemployment, that representation had been made on "entering the employment" within the sub-sect., &, accordingly, he was barred from recovering compensation on the recurrence of the disease.—SCOTT *v.* SUMMERLEE IRON CO., LTD., CONNELLY *v.* A. G. MOORE & CO., LTD., GILLULEY *v.* A. G. MOORE & CO., LTD., [1929] S. C. 830; *affd.*, [1931] A. C. 37, H. L. —**SCOT.**

sk. —— ——.]—A workman entered the employment of a colliery co. in Jan. 1927. The employees of this co. were engaged by persons described as contractors, who were, however, admitted, for the purposes of the case, to be merely the co.'s agents. The particular contractor by whom the workman had been engaged received notice from the co. that he & his squad would not be required after Nov. 7, 1927. Before that date the workman arranged with another contractor for a new job in the colliery, to begin on Nov. 8; &, on starting work on Nov. 8, he signed a declaration in which he falsely represented that he had not previously suffered from miner's nystagmus. After being employed under this contract for more than twelve months, he was certified as disabled by miner's nystagmus as from Dec. 22, 1928:—*Held:* the false declaration made on Nov. 8, 1927, was not made by the workman at the "time of entering the employment," within sect. 43 (1) (*b*), &, accordingly, he was not deprived of his right to compensation.—MOORE *v.* MANOR POWIS COAL CO., [1931] S. C. 1; 23 B. W. C. C. 593.—**SCOT.**

so. —— ——.]—A workman entered the employment of a colliery co. on June 19, 1928, on which occasion he signed a declaration that he had not previously suffered from miner's nystagmus. This declaration was false & wilfully made. He worked until Sept. 12, 1928, when he was discharged, & he thereafter received unemployment benefit until Oct. 26, 1928. On the latter date he was again employed by the co., & he remained continuously in their employment until Jan. 16, 1931, when he was certified to be suffering from miner's nystagmus. He had not signed any declaration subsequent to that dated June 19, 1928:—*Held:* the workman was not deprived of his right to compensation, in respect that the false declaration signed on June 19, 1928, was not made at the time of entering the employment in which he was engaged at any time within twelve months of his disablement, the entry into that employment having taken place on Oct. 26, 1928.—M'GUIGAN *v.* MOORE (A. G.) & CO., [1932] S. C. 12.—**SCOT.**

sr. —— *Employers' officials' knowledge of falsity.*]—A miner, who had been disabled by nystagmus, received compensation from his employers until Dec. 1929. In Jan. 1930, he re-entered the employment of the same employers at a different colliery, & on so doing he knowingly signed a false statement that he had not previously suffered from nystagmus. He did not, however, intend to deceive, & did not in fact deceive, the employers' officials who were responsible for re-engaging him, as these officials were, in his knowledge, aware that the statement was false & they acquiesced in his making it. A statement of previous immunity from nystagmus was required by the employers from all appcts. for employment underground. The workman having again become incapacitated by nystagmus:—*Held:* the arbitrator was entitled to make an award of compensation.—M'KEAN *v.* BAIRD (WILLIAM) & CO., [1932] S. C. 258.—**SCOT.**

resp. coal co. on Apr. 27, 1927. After two periods of unemployment, during which he received unemployment benefit, he returned to the resps.' colliery on Nov. 7, 1927, & before commencing work wilfully & falsely represented himself in writing as having never suffered from miners' nystagmus. He ceased working for the resps. on Aug. 26, 1928, & was certified as disabled by miners' nystagmus as from that date. Upon a claim by applt. for compensation, the arbitrator stated that applt.'s employment was continuous from Apr. 27, 1927, down to Aug. 26, 1928, except for the periods when he was temporarily out of work owing to slackness of trade, & as no false declaration was made when he first entered resps.' service he awarded him compensation:—*Held:* the employment of applt. was not a continuous employment from Apr. 27, 1927, but that his resumption of work with resps. on Nov. 7, 1927, after a period of unemployment was "entering the employment" within modification (*b*), &, as the false declaration was made by applt. within twelve months of his disablement, no compensation was payable.—SCOTT *v.* SUMMERLEE IRON CO., [1931] A. C. 37; 99 L. J. P. C. 170; 143 L. T. 726; 46 T. L. R. 625; 23 B. W. C. C. 312, H. L.

3842. *Add. Annotation:*—**Refd.** Lewis *v.* Tredegar Iron & Coal Co. (1929), 22 B. W. C. C. 268.

3843. *Add. Annotation:*—**Consd.** Mason *v.* Foster, [1931] 2 K. B. 172.

3843a. —— New accident.]—MASON *v.* FOSTER, No. 3821f, *ante*.

3843b. Recurrence after settlement & return to work.]—M'DOUGALL *v.* SUMMERLEE IRON CO., LTD. (1927), 20 B. W. C. C. 419, H.L.

Annotations:—**Expld.** Wilsons & Clyde Coal Co. *v.* Flynn, [1930] A. C. 516. **Consd.** Connor *v.* Cadzow Coal Co., [1932] A. C. 1. **Refd.** Mason *v.* Foster, [1931] 2 K. B. 172.

3847. *Add. Annotation:*—**Apprvd.** Blatchford *v.* Staddon & Founds, [1927] A. C. 461.

3852a. —— —— Application for leave to issue execution.]—FOWKES *v.* LEICESTERSHIRE COLLIERY & PIPE CO., No. 3668d, *ante*.

3855a. —— Order giving leave to issue execution.]—COTTON *v.* LUTTON, No. 3668g, *ante*.

3858. *Add. Annotations:*—*As to* (1) **Consd.** Vickers *v.* Miners, Thames Steam Tug & Lighterage Co. *v.* Ingram (1927), 96 L. J. K. B. 490. *As to* (2) **Refd.** Vickers *v.* Miners, Thames Steam Tug & Lighterage Co. *v.* Ingram (1927), 96 L. J. K. B. 490.

3860a. Effect of agreement for compensation—Facts as to agreement not presented in county court.]—On an application for review & redemption of weekly payments a workman alleged that he had negotiated with persons representing a new co. which had taken over the business of his employers, & the new co. had agreed to pay him £650 in full settlement of his claims. The county ct. judge had previously decided in a similar case that the workman could not rely upon such an agreement with the new co., as such agreement was only with a third party, & not with his employers. The parties treated the case as governed by that decision, & the question of the agreement was not gone into at the hearing. The application was then proceeded with as an application for review & the judge held the workman had recovered, & by his award stopped further weekly payments. The workman appealed, on the ground that the judge could not terminate the payments in view of the agreement:—*Held:* (1) the ct. could not entertain an appeal as to the effect of the agreement, as the facts as to that agreement had not been presented in the county ct., & there were no materials before the ct. on which they could come to a decision; (2) the question whether the workman had recovered was a question of fact, as to which there was evidence to support the finding, & there was no misdirection.—EAST KENT COLLIERY CO. *v.* HEATH (1926), 20 B. W. C. C. 97, C. A.

3873a. .]—HOBBS *v.* ROYAL ARSENAL CO-OPERATIVE SOCIETY (1930), 170 L. T. Jo. 159 C. A.

3880a. ——.]—HEWORTH COAL CO. *v.* BARNES (1930), 23 B. W. C. C. 46, C. A.

3881a. ——.]—Employers applied to

PART XIV. SECT. 22, SUB-SECT. 5.

3843a i. *Recurrence after settlement & return to work.*]—*Held:* when a workman who had suffered from nystagmus was certified as being no longer disabled by the disease, compensation must be ended, & that, on any recurrence of the disease, a fresh application must be made to the certifying surgeon.—BROWN *v.* WILLIAM DIXON, LTD., [1929] S. C. (Ct. of Sess.) 206.—**SCOT.**

PART XIV. SECT. 22, SUB-SECT. 6.

sg. *Failure to obtain declaration of immunity—Whether bar to claim for contribution.*]—A miner, who was employed by a colliery co. from Sept. 4 to Dec. 5, 1929, at the time of entering the employment signed a true declaration that he had not previously suffered from miner's nystagmus. On Dec. 7 he became disabled by miner's nystagmus, & the co. after paying him weekly compensation finally discharged his claim for a lump sum in Apr. 1930. On May 12, 1930, the workman entered the employment of another colliery co. who, however, took from him no declaration as to previous immunity from nystagmus. He left their employment after two days & was certified as having again become disabled by nystagmus on May 16. His last employers, having duly paid him compensation, claimed a contribution from his previous employers. The latter maintained that pursuers' claim was barred by their having failed to take from the workman a declaration of his previous immunity from disease:—*Held:* pursuers' claim, under sect. 43, to a contribution was not so barred. UNITED COLLIERIES *v.* ROBERT ADDIE & SONS' COLLIERIES, [1932] S. C. 45.—**SCOT.**

PART XIV. SECT. 23, SUB-SECT. 2. A.

sl. *Sufficiency of evidence Case stated.*]—*Re* PETERS, [1931] 3 M. P. R. 252.—**CAN.**

PART XIV. SECT. 28, SUB-SECT. 2.—B. (a).

3865 iv. ——.]—On the hearing before the Workers' Compensation Commission of a claim by a workman for compensation it was submitted that there was no evidence to support the claim, but the commission overruled the submission & an award was made in favour of the claimant. Thereafter, at the request of resp., the chairman stated a case asking the opinion of the Supreme Ct. whether there was evidence to justify the finding of the commission:—*Held:* after the making of the award the question could not be submitted to the ct. unless the commission had decided to reconsider the matter; the mere fact that the chairman had stated a case did not establish that it had so decided, & therefore it was not competent for the ct. to entertain the matter.—ROBERTS *v.* JONES (1928), 28 S. R. N. S. W. 543; 45 N. S. W. W. N. 156.—**AUS.**

3865 v. —— ——.]—BATHURST *v.* WORKMEN'S COMPENSATION BOARD, [1928] 1 D. L. R. 114.—**CAN.**

3865 vi. —— ——.]—An award of compensation having been made in favour of the widow of a deceased workman, the employer obtained a stated case. Thereafter the employer presented a note craving an order for transmission of the process, in order that the notes of evidence might be available to satisfy the ct. that there was no evidence before the arbitrator upon which he could reasonably arrive at certain of his findings in fact:—*Held:* the ct. could not, by a review of the evidence, interfere with the arbitrator's findings in fact, & motion refused.—SCOTT *v.* MITCHELL, [1930] S. C. 105.—**SCOT.**

weekly payments being made on the basis of total incapacity. They called a doctor who said he thought the man might do watchman's work or wash motor cars. Two doctors called on behalf of the workman said he was unfit for anything but the lightest form of work sitting down without bending. The judge found the man was only partially incapacitated, & consequently reduced the compensation :—*Held :* it was purely a question of fact, & there was evidence to support the finding.—MEARS BROS. *v.* DAVIES (1929), 22 B. W. C. C. 292, C. A.

3885a. -.]—DAVISON *v.* HOLMSIDE & SOUTH MOOR COLLIERIES, LTD., NAPPER *v.* LAMBTON, HETTON & JOICEY COLLIERIES, LTD. No. 2512a, *ante.*

3885b. ——.]—HANNABY *v.* ILLAY MAIN COLLIERIES, LTD., No. 2512b, *ante.*

3887a. Duration of exposure—Resulting in dermatitis.]—A woman worked as a washer in a laundry during July & Aug. 1928. She left without any signs of dermatitis. On Sept. 6, 1928, she was employed in a similar capacity by another laundry, & left work on Sept. 19 with symptoms of dermatitis. On Sept. 26, she obtained a certificate from the certifying surgeon under sect. 43. Her second employers admitted liability & paid compensation, but discontinued the payments in Dec. on their doctor's certificate that she had recovered. He further stated that she suffered from a condition of the skin which rendered her particularly susceptible to dermatitis, & that but for this she would not have developed the disease after so short a period of exposure. On a claim for continuance of the compensation, the county ct. judge made an award in favour of the employers. He found that the exposure of the workman to dust or liquids was of short duration & only resulted in dermatitis owing to an unusual proclivity to such disease on her part. The workman appealed. On appeal it was argued that the employers were estopped from denying that the disease had been contracted through long-continued exposure within Statutory Rules & Orders, 1929, No. 2, by reason of their admission of liability & payment of compensation :—*Held :* the point as to estoppel not having been taken in the county ct. could not be raised on appeal, & on the evidence the county ct. judge was bound to find that exposure was not of long-continued duration. The question was one of fact.—Appeal dismissed.—LANE *v.* "PUREWITE" LAUNDRY SERVICE CO., LTD. (1929), 22 B. W. C. C. 396, C. A.

3891a. ——.]—MALCOLM *v.* BARBER, WALKER & CO., LTD., No. 3359d, *ante.*

3892a. Quantum in excess of evidence.]—An electric lift erector's mate was being tried out as an erector & paid accordingly when he injured his left thumb by an accident arising out of & in the course of his employment. The top of the thumb was amputated but not to such an extent as to prevent the thumb-nail from growing. He returned to work at the wage of a mate & was again tried as an erector but on simpler jobs. After about two months he was dismissed as incompetent. He filed an application for arbn. & then entered into an agreement with his employer that he should receive £30 in final settlement of all claims. A memorandum of agreement was drawn up together with a statement of facts, both of which were signed by the workman. From the statement it appeared that the workman's average pre-accident earnings were £3 0*s.* 2*d.*, & his average post-accident earnings were £3 4*s.* 3*d.*, & that his employment ceased for reasons unconnected with his injury. The registrar &, on appeal, the county ct. judge refused to record the memorandum on the ground of inadequacy. The parties proceeded to arbn. At the hearing the workman admitted the facts contained in the statement accompanying the memorandum. The medical men called on each side disagreed as to whether the disability caused by the injury amounted to 5 per cent. or 20 per cent. The county ct. judge in his award assessed the loss of earning capacity at 16*s.* a week & ordered payment of compensation at the rate of 8*s.* a week. The employer appealed :—*Held :* the county ct. judge in awarding to the workman a sum based on an incapacity equivalent to 25 per cent. of his earnings had gone beyond the evidence called before him. Appeal allowed. New trial ordered before another county ct. judge. Observations on sending cases back to the same county ct. judge for rehearing.—BYRNE *v.* EVANS LIFTS, LTD. (1932), 25 B. W. C. C. 41, C. A.

3896a. Hearing unsatisfactory—Rehearing ordered.]—HUCKNALL *v.* MANCHESTER CORPN. (1928), 21 B. W. C. C. 8, C.A.

3897. *Add. Annotation :*—**Refd.** Jones *v.* Cory (1926), 20 B. W. C. C. 251.

3901a. —— ——.]—A workman, who had suffered an injury to his knee, was paid compensation by his employers for a time. He underwent a successful operation & his compensation was stopped. He later suffered another injury to the same knee, & brought proceedings for further compensation. After hearing evidence, the county ct. judge came to the conclusion that he was not satisfied as to any further injury after the cessation of compensation. The county ct. judge then considered the question of a declaration of liability &, while doing so, asked a medical man, who happened to be present in ct., whether there was any probability of further injury to the workman. The opinion of the medical man was not given as evidence on oath nor was he called by consent of the parties. The county ct. judge then made an award to the effect that the workman had recovered from his injury on the date when compensation was stopped, but granted a declaration of liability by consent. The workman appealed :—*Held :* although the procedure followed with regard to the doctor was undesirable & irregular, it had not been detrimental to the workman, because the

PART XIV. SECT. 23, SUB-SECT. 2.—B. (b).

3884 ii. ——.]—NAGY *v.* WORKMAN'S COMPENSATION BOARD, [1931] 3 M. P. R. 516.—**CAN.**

sn. *Added peril.*]—The question of added peril is one of fact, upon which the determination of the arbitrator was conclusive.—WALKINGSHAW *v.* COAL CO., LTD., [1931] S. C. 506.—**SCOT.**

sp. *Failure of company to file payroll.*]—WORKMAN'S COMPENSATION BOARD *v.* ST. JOHN TUGBOAT CO., [1931] 1 M. P. R. 9.—**CAN.**

county ct. judge had already made up his mind on the main question before him. There was ample evidence to support his finding on the question.—RANSOM *v.* FULHAM FOOTBALL & ATHLETIC CO., LTD. (1928), 21 B. W. C. C. 375, C. A.

3904a. —— ——.]—A workman, whose compensation had been stopped, claimed a continuance of compensation on the basis of total incapacity, & it was argued on his behalf that he was entitled to be paid on this basis under Workmen's Compensation Act, 1925 (c. 84), s. 9 (4). The county ct. judge found as a fact that the workman was partially incapacitated as a result of the accident but had, since the payment ceased, been doing work which he did before the accident. He held that sect. 9 (4) did not apply, but gave no reasons for so holding beyond stating that the workman refused work offered him on the ground that he could not do it when in fact he could have done it. He, therefore, refused to find total incapacity but gave a declaration of liability. On the appeal by the workman it was argued that, the county ct. judge having found partial incapacity, the case should be remitted to him to assess the amount of such incapacity:—*Held:* although the finding of the county ct. judge on the point was not too clear, the case had been argued & dealt with under sect. 9 (4) alone. The issue as to partial incapacity, not having been raised on the claim, in the ct. below, or in the notice of appeal, could not be taken in the Ct. of Appeal.—PLUMB *v.* RALEIGH CYCLE CO. (1928), 21 B. W. C. C. 378, C. A.

3915a. Estoppel.] — LANE *v.* "PUREWITE" LAUNDRY SERVICE CO., LTD., No. 3887a, *ante*.

3922a. —— ——.]—A miner, who was a healthy man of forty-seven, was engaged for an hour in pulling down coal with an iron bar. His mate then asked for the bar, & worked with it. The miner appeared to be quite well when he handed over the bar to his mate, but within a few minutes he was lying on the ground dead. An autopsy was made by a surgeon. At the hearing of a claim for compensation by the widow the surgeon was not called but his report was by agreement read to the county ct. judge. He therein stated that the cause of death was syncope following double pneumonia of one or two days' duration, & that in his opinion death was accelerated by the strain put upon an overburdened heart by his work. That was the only medical evidence before the ct., & it was accepted as correct by the judge, who made an award in favour of the employers on the ground that there was "no real evidence within the meaning of the decided cases that any particular piece of work caused death." The widow appealed:—*Held:* it being doubtful from the use in the award of the words "particular piece of work" whether the county ct. judge had not misdirected himself by thinking that he had to find as a fact that some particular or special strain had to be proved in order to connect the death with the work, the case must be remitted to him for reconsideration. Appeal allowed. Order for new trial.—WALKER *v.* BROWN (JOHN) & CO., LTD. (1932), 25 B. W. C. C. 166, C. A.

3927a. Date of termination of incapacity.]—A fireman had to have his right thumb amputated as the result of an accident in the stokehold of a ship. On Nov. 5, 1928, his employers obtained a certificate to the effect that he was fit to return to his work, & thereupon gave notice to terminate the weekly payments on Nov. 15. The weekly payments were stopped on that day although a certificate had been furnished by the workman which stated that he was not fit to resume his old occupation, but also stated that there was plenty of other work he could do. The workman applied for an arbn. The arbn. took place on Jan. 29, & Feb. 5, 1929. On Mar. 1, the county ct. judge made his award in which he found as a fact that the workman was able to earn his pre-accident wages, & that up to the date of the hearing there was a dispute whether he had recovered. He did not give a finding as to the date on which the workman had become able to earn his pre-accident wages, but ordered the employers to continue to pay the full amount of weekly payments as from Nov. 15, 1928, to Feb. 5, 1929. The employers appealed:—*Held:* the judge should have found in fact the date when incapacity ceased. If by fixing Feb. 5, 1929, as the date down to which compensation must be paid, he intended to hold that incapacity continued to that date, there was no evidence to support such a finding.—MOCKBILL *v.* HOMER CITY S.S. OWNERS (1929), 22 B. W. C. C. 260, C. A.

Annotations:—**Consd.** Evans *v.* El Uruguayo S.S. Owners, Barlow *v.* Pacific Steam Navigation Co. (1930), 23 B. W. C. C. 383. **Refd.** Bevan *v.* Grovesend Steel & Tinplate Co. (1929), 22 B. W. C. C. 572.

3927b. Whether workman within Workmen's Compensation Act, 1925 (c. 84), s. 9 (4).]—An employer having reduced a workman's compensation to 12*s.* 3*d.* a week, the workman applied for an arbn. on the ground that, although he was only partially incapacitated, he was unable to earn anything. At the hearing the workman said that it was impossible to say what he could earn if he could get light work. On that evidence it was submitted on his behalf that he was brought within sect. 9 (4). The county ct. judge made an award in favour of the employer that the workman was only entitled to 12*s.* 3*d.* a week as from the date of reduction. An appln. was subsequently made to the county ct. judge on behalf of the workman for an amendment of his note, or for a new trial, on the ground that sect. 9 (4) had not been properly considered at the hearing. The county ct. judge refused to grant a new trial, but said that he had not considered sect. 9 (4) until the end of the case. The workman appealed from the award & from the refusal to grant a new trial:—*Held:* the appln. was clearly made under sect. 9 (4), & the county ct. judge must be taken to have realised that fact in making the award which he did.—STORER *v.* MORRIS (1929), 22 B. W. C. C. 177, C. A.

3927c. Contract of service.]—A miner in receipt of unemployment benefit died from the effects of fire-damp while working at an outcrop of coal on a farm. The widow filed an application for compensation on behalf of herself & other dependants. No evidence was given at the arbn. to show by whom or on what terms the deceased man was employed to get the coal. The county ct. judge made his

award for the widow. Resps. appealed:—*Held:* the hearing was unsatisfactory as the county ct. judge had not found the facts which were necessary to enable him to come to a decision. Appeal allowed. New trial ordered before a different judge.—MEAKIN *v.* LOMAS (1932), 25 B. W. C. C. 73, C. A.

3927d. Whether accident arising in course of employment.]—A workman after a few minutes' interval from the time he was working as a dipper in a galvanising department suddenly fell dead. Death was diagnosed as being due to *angina pectoris*. There was some medical evidence pointing to a connection between the arduous nature of the work & the death. The county ct. judge in making his award for the employer said that he was unable to find as a fact that the workman suffered any strain or that the work contributed in any way to his death. The widow appealed:—*Held:* in view of the medical evidence, it was not clear that the judge had rightly directed himself in law & there should be a new trial. Appeal allowed. New trial ordered.—JAMES *v.* PARTRIDGE JONES & JOHN PATON, LTD. (1932), 25 B. W. C. C. 92, C. A.

3927e. Whether fresh accident — Unsatisfactory pleadings.]—A wagon-tippler suffered an inguinal hernia in 1923 while at work. After a few weeks' absence, for which he received compensation, he returned to light work which he continued to perform until 1930 In June, 1930, he had further intestinal trouble & was away from work for two weeks for which he received compensation. After some difficulty with regard to wearing a truss he applied in Nov. 1930, for further compensation, alleging the 1923 accident as the cause of incapacity. It was then discovered that he was suffering from a femoral hernia. The workman then by leave amended his application by adding the femoral hernia, but still alleged that his incapacity was caused by the inguinal hernia. The county ct. judge held that the incapacity was due to the femoral hernia & not to the inguinal hernia, & dismissed the application. The workman appealed:—*Held:* the hearing was unsatisfactory, largely owing to the condition of the pleadings which did not make the issues clear. Appeal allowed. New trial ordered.—HARDSTAFF *v.* SHERWOOD COLLIERY CO. (1931), 24 B. W. C. C. 349, C. A.

3932a. Reliance on medical assessor On question of fact.]—An engine-driver while coaling felt sudden pain in his stomach. He continued to drive his engine, but the pain increased & he went home. The next morning his doctor stated that he had a strangulated hernia. The workman claimed compensation. At the hearing the judge sat with a medical assessor. He held that the workman had not discharged the onus of proving that there had been an accident in the sense of an abnormal strain, & stated in his judgment that the medical assessor had advised him that the man never had a strangulated hernia. He made an award in favour of the employers. The workman appealed, asking for a new trial:—*Held:* the hearing was unsatisfactory, the judge having misdirected himself on the points at issue, & having accepted the opinion of the assessor as to what his findings of fact should be. Appeal allowed. New trial ordered in another county ct. with directions to apply the principles laid down in *Clover, Clayton & Co., Ltd.* v. *Hughes*, No. 2316.—DAVIS *v.* LONDON, MIDLAND & SCOTTISH RY. CO. (1930), 23 B. W. C. C. 368, C. A.

3932b. No details in award.]—A domestic servant alleged that while carrying a bottle of her own nail polish she slipped on a mat & the bottle broke in her hand, cutting it. On a claim for compensation the county ct. judge made a short award stating that the workman had not discharged the *onus* that was on her to satisfy him that the accident arose out of & in the course of her employment. The workman appealed on the ground that the county ct. judge had not stated the facts on which he based his decision & asked for a new trial:—*Held:* it not being a case in which a detailed finding was required, the shortness of the award was no ground for a new trial. Appeal dismissed.—GILBERT *v.* COLES (No. 2) (1931), 24 B. W. C. C. 481, C. A.

3932c. Contradictory judgment.]—A miner who had suffered from periodical attacks of miner's nystagmus & was in receipt of weekly payments was examined by a medical referee who certified that the man "is not now suffering from miner's nystagmus, but from nervous debility." On his report the employer stopped the weekly payments. Six months later the workman applied for further compensation. The county ct. judge found as a fact that the workman was not suffering from nystagmus, & looked the picture of health, but said that he thought it possible, & even likely, that he might have a recurrence though he was not satisfied that such would be the case. His award was in the form that the employers were to be liable to pay the workman further compensation if at any time he became incapacitated for work from nystagmus. The workman appealed:—*Held:* as the award made by the county ct. judge was not consistent with his judgment, & the judgment was contradictory in itself, there must be a new trial. Appeal allowed. Order for new trial.—HILLIER *v.* EBBW VALE STEEL, IRON & COAL CO., LTD. (1932), 25 B. W. C. C. 238, C. A.

3932d. Excessive award.]—A workman claimed compensation on the basis of partial incapacity. On the matter coming before him, the county ct. judge referred it to a medical referee, who reported as follows: "S. has good general health, but is not fit for his ordinary work." The judge, without considering the effect of sect. 9 (4), made an award of 30*s.* a week on a finding of total incapacity. The employers appealed:—*Held:* the hearing was unsatisfactory, the judge having made an award in excess of what the workman was claiming & not justified by the evidence. Appeal allowed. New trial ordered.—SINGLETON *v.* DRAKE (D.) & SONS (1931), 24 B. W. C. C. 369, C. A.

3945a. —— Not to be supplemented by note taken by articled clerk—Note apparently complete.]—A miner, after helping to put a tram on the rails, died within a few minutes. At the *post-mortem* examination it was found that death was due to effusion in the pericardium. At the arbn., on the claim by his dependant for compensation, the employer's doctor gave evidence to the effect that there was no

connection between the exertion & the sudden collapse. In making his award for the employer, the county ct. judge said that he preferred the evidence given for the employer to that given for the dependant, & held that death was not caused by accident arising out of & in the course of the employment. The dependant appealed, & on the hearing of the appeal counsel for the dependant asked for permission to read, in addition to the judge's note, a note taken at the hearing in the ct. below by an articled clerk. Permission was refused:—*Held:* there was evidence to support the finding, which was purely a question of fact for the county ct. judge, & no misdirection. Appeal dismissed.—JONES *v.* BLAENAVON CO., LTD. (1931), 24 B. W. C. C. 148, C. A.

3953. *Add. Annotation:*—**Distd.** Bevan *v.* Grovesend Steel & Tinplate Co. (1929), 22 B. W. C. C. 572.

3954a. Acceptance of money paid into court—Appeal as to costs.]—On the hearing of a claim for compensation applt. agreed to accept £10 paid into ct. on Jan. 7, 1927, the date of the answer filed by resps., in full satisfaction of the claim. Under the award, the £10 was to be paid to applt. with a declaration of liability, but resps. were given costs after the date of filing of their answer. Applt. appealed from so much of the order as directed costs to be so paid:—*Held:* applt. could not take the benefit of the award & appeal from a part of it to which she objected, & there was no right of appeal.—WALDEN *v.* GRAMOPHONE CO., LTD. (1927), 20 B. W. C. C. 346, C. A.

3954b. —— By widow—Appeal as to amount of children's allowance.]—MALCOLM *v.* BARBER, WALKER & CO., LTD., No. 3359d, *ante*.

3954c. Appeal against date of termination of compensation—Application for review.]—An infant workman was in receipt of compensation from the date of his injury to Aug. 10, 1928. On that date the employers, without following the procedure indicated in sect. 12, stopped the compensation on the ground that the workman had fully recovered. The county ct. judge heard the workman's claim for a continuance of the weekly payments on Jan. 8, 1929, when he found as a fact that the workman had fully recovered on Aug. 10, 1928, but granted a declaration of liability. The workman claimed that on this finding he was entitled to a continuance of the weekly payments to Jan. 8, 1929, in accordance with sect. 12. The county ct. judge adjourned the case for further argument on this point, & on Aug. 14, 1929, gave a considered judgment in which he held that, on his previous finding as to the date of recovery, the liability of the employers to make weekly payments ceased on Aug. 10, 1928. In May, 1929, the infant workman had come of age. In Sept. 1929, he entered an appeal against the decision of Aug. 14, 1929, by which the judge had ended payments as from Aug. 10, 1928, & in Oct. 1929, he filed an application in the county ct. for a review of the declaration of liability. On the hearing of the appeal the employers took the preliminary objection that by starting proceedings both by way of appeal & by way of review, the workman was both approbating & reprobating the award:—*Held:* (1) on the preliminary objection, the two sets of proceedings were in respect of independent matters & did not amount to approbation & reprobation; (2) on the merits, the county ct. judge having fixed the date of recovery of the workman, the employers could not then be ordered to continue the weekly payments after that date.—BEVAN *v.* GROVESEND STEEL & TINPLATE CO., LTD. (1929), 22 B. W. C. C. 572, C. A.

3961a. —— ——.]—*Ex parte* application on behalf of the workman for extension of time within which to serve notice of appeal granted on the ground that the county ct. judge had not furnished appct. with a copy of his notes within the time given for appealing, though requested to do so.—GILBERT *v.* COLES (No. 1) (1931), 24 B. W. C. C. 372, C. A.

3963a. —— **Mistake.**]—An application for leave to extend the time for service of notice of appeal on the ground of mistake under the rules dismissed.—BROWN *v.* BIRCH BROS., LTD. (1929), 22 B. W. C. C. 404, C. A.

3963b. —— **Receipt of ex gratia payment.**]—An application for leave to extend the time for appealing against an order made in 1924 ending the weekly payments dismissed, the workman having in the meantime received from the employer a sum expressed to be paid *ex gratia*.—HOLDEN *v.* MASSEY (1929), 22 B. W. C. C. 507, C. A.

3967. *Add. Citations:*—96 L. J. K. B. 254; 20 B. W. C. C. 198.

3969a. —An infant workman having obtained an award, the employer appealed. Pending the appeal the employer agreed to withdraw the appeal, provided a lump sum was accepted by those acting on behalf of the infant:—*Held:* the proper order was to remit the case to the county ct. judge to consider the sufficiency of the amount offered in view of the chances of appeal being successful, & on the approval of the judge being given, the appeal should stand dismissed with liberty to apply.—MARSHALL *v.* KIDDLE (1927), 20 B. W. C. C. 614, C. A.

3969b. ——.]—In a proper case pending the hearing of an appeal the Ct. of Appeal will approve the terms of a lump sum settlement of a question as to the extent of an employer's liability to an infant workman.—SEAMAN *v.* INGRAM (J. G.) & SON, LTD. (1929), 22 B. W. C. C. 393, C. A.

3969c. Remission of compromise to registrar for registration.]—KNIGHT *v.* SKINNER (1928), 21 B. W. C. C. 368.

3976a. ——.]—DAVIS *v.* LONDON, MIDLAND & SCOTTISH RY. CO., No. 3932a, *ante*.

3976b. ——.]—BYRNE *v.* EVANS LIFTS, LTD., No. 3892a, *ante*.

3976c. ——.]—MEAKIN *v.* LOMAS, No. 3927c, *ante*.

3978a. Remission to medical referee—To explain certificate.]—A workman had been certified by the medical referee as not suffering from miner's nystagmus, but upon a subsequent recurrence of the disease was certified to be so suffering by a certifying surgeon at a date after the medical referee's report. The House of Lords remitted the case to the medical referee as to the meaning of his report as it was doubtful whether he had considered the

possibility of a recrudescence as a result of the original attack.—PENRIKYBER NAVIGATION COLLIERY CO., LTD. *v.* EDWARDS, [1932] W. N. 76; 173 L. T. Jo. 261; 73 L. Jo. 273, H. L.; *subsequent proceedings*, 147 L. T. 421, H. L.

3981. *Add. Annotations:*—**Refd.** Middleton Estate & Colliery Co. *v.* Finan (1926), 20 B. W. C. C. 207; Vickers *v.* Miners, Thames Steam Tug & Lighterage Co. *v.* Ingram (1927), 96 L. J. K. B. 490.

3981a. — —.]—Employers applied by way of review that a weekly payment payable to a workman might be ended or diminished. The county ct. judge made an award diminishing the weekly payment but ordering the employers to pay the costs. The employers appealed from so much of the award as related to costs:—*Held:* the judge has an unfettered discretion in the matter of costs, & there was no evidence in this case that the discretion had not been exercised judicially.—CO-OPERATIVE WHOLESALE SOCIETY, LTD. *v.* LALLY (1930), 23 B. W. C. C. 513, C. A.

3983. *Add. Annotation:*—**Refd.** Middleton Estate & Colliery Co. *v.* Finan (1926), 20 B. W. C. C. 207.

3988a. —— ——.]—RUDDY *v.* LONDON, MIDLAND & SCOTTISH RY., No. 2823a, *ante*.

3990. *Add. Annotation:*—*As to* (1) **Refd.** Vickers *v.* Miners, Thames Steam Tug & Lighterage Co. *v.* Ingram (1927), 96 L. J. K. B. 490.

3993a. —— —— **Denial of liability.**]—A workman having been injured by accident, his employers applied for a reference to a medical referee under Workmen's Compensation Act, 1925 (c. 84), s. 19, on the ground that there was a dispute as to whether he was fit for his employment & as to whether any incapacity from which he might be suffering was due to the accident. Four days later the workman filed an objection to the reference on the ground that, as the employers were refusing to admit that the accident arose out of & in the course of the employment, the matter should be dealt with by arbn. & not by reference. On the same day he filed his appln. for arbn. The sheriff-clerk allowed the reference to the medical referee & his decision was not appealed from. The employers filed an answer to the workman's appln. for arbn., in which they objected to the arbn. proceedings on the ground that the matter had already been referred to a medical referee, & further alleged that the workman was not entitled to any compensation because the accident had not arisen out of & in the course of the employment. The medical referee reported that the workman was partially incapacitated, & two days later the parties arrived at an agreement for settlement. On argument as to the costs the sheriff-substitute held that the workman's appln. for arbn. was premature, unwarranted & unnecessary, & while awarding no costs on the reference to the medical referee, gave the costs of the alleged abortive arbn. proceedings to the employers. On appeal it was held by the Second Division of the Ct. of Session that the sheriff-substitute was wrong in depriving the workman of the costs of the arbn. proceedings on the ground stated by him, & remitted the question of costs to him for further argument. The employers appealed:—*Held:* the medical referee having no power to decide whether the accident arose out of or in the course of the employment, it was perfectly proper for the workman to take the earliest opportunity of getting that point determined by arbn., & was entitled to act as he had done.—BARR & HIGGINS, LTD. *v.* GREEN (1928), 98 L. J. P. C. 17; 140 L. T. 441; 21 B. W. C. C. 439, H. L.

4009. *Add. Annotation:*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

4012a. —— **Employer ordered to pay costs.**]—SIDNEY LEE (EXETER), LTD. *v.* JAMES, No. 3545a, *ante*.

4013. *Add. Annotation:*—**Refd.** Middleton Estate & Colliery Co. *v.* Finan (1926), 20 B. W. C. C. 207.

4014a. ——.]—On an application to review weekly payments the employers received a letter from the workman's solrs., asking what was the exact amount of diminution they claimed, & replied that they intended to ask for a reduction of the 15*s.* a week to 2*s.* 6*d.* a week or to such other sum as the ct. should hold proper. The county ct. judge reduced the weekly payment to 10*s.*, & ordered the employers to pay the costs:—*Held:* on the correct reading of the letter stating the diminution claimed the employers were successful on the award given, & the order as to costs should be set aside, &, by consent of the employers, each party was ordered to pay their own costs.—MIDDLETON ESTATE & COLLIERY CO., LTD. *v.* FINAN (1926), 20 B. W. C. C. 207, C. A.

4014b. ——.]—It is not a judicial exercise of discretion for the county ct. judge to order the employers to pay the costs of proceedings for review in which they have been successful in obtaining a reduction of the weekly payments. On appeal the Ct. of Appeal ordered that the costs of the arbn. should be paid by the workman.—GREAVES (J. W.) & SONS, LTD. *v.* ROBERTS (1929), 22 B. W. C. C. 401, C. A.

4014c. —— **Ambiguous answer by workman—Workman to pay costs.**]—Employers asked for termination or diminution of a weekly payment to a workman on the ground that he was fit to resume work. The workman put in an answer in which he admitted that he was fit for light work, but alleged that the employers had neglected to provide any light work. He also said that he was prepared to accept such reduced compensation as might be found to be half the difference between his average pre-accident earnings & the average weekly amount he could earn at such light work as might be available for him. The county ct. judge made an award diminishing the weekly payment, & giving the costs to the employers on the ground that they had succeeded on the main issue, the answer being ambiguous, & leaving it open to the workman to argue at the hearing that his labour was an "odd lot" & that he was, therefore, entitled to resist any reduction. The workman appealed on the ground that

the county ct. judge had failed to exercise judicially his discretion as to costs:—*Held:* the county ct. judge had not violated any principle of law in exercising his discretion as to costs. Appeal dismissed.—MIDLAND EMPLOYERS' MUTUAL ASSURANCE, LTD. *v.* LEWIS (1930), 23 B. W. C. C. 192, C. A.

4019. *Add. Annotation:*—**Consd.** Campbell *v.* Pollak, [1927] A. C. 732.

4032a. Workman's expenses in getting to medical referee's house.]—The ct. has no power to make an order that a workman, who is ordered to attend before a medical referee to determine whether he is entitled to continue in the receipt of a weekly payment for compensation, shall be paid a sum for his expenses in getting to the medical referee's house.—RICHARDS *v.* UNITED NATIONAL COLLIERIES, LTD. (1927), 96 L. J. K. B. 716; 137 L. T. 467; 71 Sol. Jo. 490; 20 B. W. C. C. 465, C. A.

4034a. Taxing fee—Liability of workman to refund to employers.]—Notwithstanding Workmen's Compensation Act, 1925 (c. 84), Sched. I. (12), where a workman has brought unsuccessful proceedings against his employers, & has been ordered to pay their costs, he may also be made to refund to them the taxing fee which they have paid for having those costs taxed.—ELWELL *v.* CRANE FOUNDRY CO. [1929] 1 K. B. 88; 97 L. J. K. B. 641; 139 L. T. 300, C. A.

4042a. ——.]—KNIGHT *v.* SKINNER (1928), 21 B. W. C. C. 344, C. A.; *subsequent proceedings*, 21 B. W. C. C. 368, C. A.

4042b. ——.]—EVANS *v.* URIGUAYO S.S. OWNERS (1930), 23 B. W. C. C. 227, C. A.

4042c. ——.]—EMSLEY *v.* HAGGAS (J.) & CO., LTD. (1931), 24 B. W. C. C. 243, C. A.

4042d. ——.]—BARLOW *v.* PACIFIC STEAM NAVIGATION CO. (1930), 23 B. W. C. C. 228, C. A.

4043a. Stay of order pending application to Poor Persons Committee.]—THOMAS ALLEN, LTD. *v.* HAGGER (No. 2) (1931), 24 B. W. C. C. 375, C. A.

4055a. —— **Owing to subsequent decision of appellate court.**]—Where a county ct. judge's award was according to the law as interpreted at the date of the hearing, but such interpretation, owing to a subsequent decision of the House of Lords, was proved since to have been wrong:—*Held:* his order giving costs to the successful workman must be set aside, & applts, the employers, must have their costs both in the county ct. & in the Ct. of Appeal.—AKERS *v.* LONDON & NORTH EASTERN RY. CO. (1926), 20 B. W. C. C. 195, C. A.

4067. *Add. Annotation:*—**Consd.** Kinneil Cannel & Coking Coal Co. *v.* Sneddon (or Waddell), [1931] A. C. 575.

4068. *Add. Citation:*—96 L. J. K. B. 268.

Add. Annotation:—**Consd.** Kinneil Cannel & Coking Coal Co. *v.* Sneddon (or Waddell), [1931] A. C. 575.

4068a. —— **Claim for compensation by stepson — Right to widow to common law remedy.**]—After an action of damages under the common law of Scotland had been brought against a colliery co. by the widow of a miner who had been killed in the pit, on behalf of herself & children, a stepson of deceased, who had no claim at common law, presented an application for compensation under 1925 Act. In that process the co. paid into ct. the maximum amount payable under the Act, & the arbitrator awarded the stepson compensation. In their defences to the common law action the co. pleaded that the defenders having paid into ct. the maximum compensation payable under 1925 Act, & not being liable to proceedings independently of said Act, the present action was incom-

PART XIV. SECT. 24, SUB-SECT. 1.—J.

sk. *Remit to medical referee—Fee of referee—By whom payable.*]—The person liable for payment of the fee under Workmen's Compensation Act, 1923 (c. 42), s. 25 (1), is the person applying for registration at the time when the remit to the medical referee is made.—EASTON *v.* NIDDRIE & BENHAR COAL CO., LTD., [1927] S. C. 3; 20 B. W. C. C. 652.—**SCOT.**

PART XIV. SECT. 24, SUB-SECT. 1.—K.

sl. *Set-off—Costs of separate decrees.*]—*Held:* as both decrees were steps in the statutory adjustment of liability for compensation in respect of the same accident, & therefore *partes ejusdem negotii*, the employers should not be deprived of their right to set off the one decree for expenses against the other.—BYRNE *v.* BAIRD & CO., [1929] S. C. (Ct. of Sess.) 624.—**SCOT.**

PART XIV. SECT. 24, SUB-SECT. 1.—P.

sm. *Remission to arbitrator on appeal — Power of arbitrator as to costs.*]—An arbitrator, after a proof, decided against the workman, & found the employers entitled to expenses. In a stated case the question of law was whether the arbitrator was entitled, on the facts found proved, to decide against the workman. The ct. answered the question of law in the negative, & remitted the case to the arbitrator. The arbitrator refused a motion by the workman for the expenses of the proof, on the ground that he had already awarded them to the employers & could not recall his own award:—*Held:* the effect of the answer to the question of law was to recall the interlocutor of the arbitrator on the merits, that the award of expenses being merely ancillary fell with it, &, accordingly, it was now open to the arbitrator to reconsider the question of the expenses of the proof.—MORTON *v* DAVID COLVILLE & SONS, [1931] S. C. 234.—**SCOT.**

sn. *Fee of court for recording memorandum—Payable by employer only—Validity of Act of Sederunt.*]—The fee of 10*s.* prescribed by the Act of Sederunt of July 16, 1929, for examining & recording a memorandum of agreement is a "fee of ct." within the meaning of sect. 40 of Sheriff Cts. (Scotland) Act, 1907, & the further provision in the Act of Sederunt that the fee is payable by the employer whether the memorandum is presented by him or by the workman does not make it *ultra vires*.—CARRON CO. *v.* THOM (1931), 24 B. W. C. C. 245, H. L. — **SCOT.**

PART XIV. SECT. 24, SUB-SECT. 2.—B.

4062 i. *Jurisdiction to vary order as to costs—Judgment specifically dealing with costs.*]—An award was made by an arbitrator under Workmen's Compensation Act, 1916, in favour of a workman who was allowed a certain weekly payment & the costs of the arbitration. From this award the workman appealed, & that appeal was dismissed with costs. Subsequently an application was made on behalf of resp. employer for an order that the costs incurred by him in the appeal should be made costs in the arbitration:—*Held:* although the order asked for might have been made on the hearing of the appeal, the Ct. had now no jurisdiction to make it.—LAUER *v.* BRIGGS (1928), 28 S. R. N. S. W. 389; 45 N. S. W. W. N. 110.—**AUS.**

PART XIV. SECT. 25, SUB-SECT. 1.—A.

f i. —— ——.]—The fact that pltf., who was suing in Admlty. for damages resulting from a collision which caused the death of her husband, had accepted benefits under Workmen's Compensation Act:—*Held:* not to bar her, under the principle of election, from proceeding against the ship.—DAGGLAND *v.* S.S. CATALA, [1927] 4 D. L. R. 426; [1927] 3 W. W. R. 97; 38 B. C. R. 440; *revsd. sub nom.* THE CATALA *v.* DAGSLAND, [1928] 3 D. L. R. 334; Ex. C. R. 83.—**CAN.**

r i. —— ——.]—A workman who has suffered injury owing to the negligence of his employer is not debarred by Workers' Compensation Act, 1926, s. 63, from bringing an action at common law against his employer to recover damages for the injury so sustained unless he has made a claim under the Act & obtained a decision thereon.—CONNELL *v.* UNION STEAMSHIP CO. (1928), 28 S. R. N. S. W. 242; 45 N. S. W. W. N. 62.—**AUS.**

petent:—*Held:* the option of the widow either to claim compensation under the Act or to take proceedings independently of it could not be defeated by the arbn. proceedings taken by the stepson, & the action was competent.—KINNEIL CANNEL & COKING COAL CO., LTD. *v.* SNEDDON (OR WADDELL), [1931] A. C. 575; 100 L. J. P. C. 113; 145 L. T. 289; 47 T. L. R. 386; 75 Sol. Jo. 295; 24 B. W. C. C. 181, H. L.; *affg.*, S. C. *sub nom.* WADDELL *v.* KINNEIL CANNEL & COKING COAL CO., LTD. (1930), 23 B. W. C. C. 567.

4070. *Add. Annotation:*—**Refd.** Higgins *v.* Harrison (1932), 25 B. W. C. C. 113.

4071. *Add. Annotations:*—**Dbtd. & Distd.** M'Cafferty *v.* MacAndrews & Co., [1930] A. C. 599; **Refd.** Higgins *v.* Harrison (1932), 25 B. W. C. C. 113.

4071a. Action for breach of statutory duty.]—An infant workgirl lost the ring finger of her right hand by accident arising out of & in the course of her employment. She received compensation under the Workmen's Compensation Act for a time, & then accepted £20 in purported settlement on the promise by the employer to re-employ her. No memorandum of this agreement was recorded. She worked at this employment for five years when, by reason of trade conditions, she was discharged. She then commenced an action against the employer for damages for personal injuries resultant from the employer's alleged breach of statutory duty to fence the machine. The action was tried by a judge alone who found that the injury had been caused by the employer's breach of statutory duty to fence, & that there was no contributory negligence on the part of pltf. He, however, also found, having regard to the fact that the infant had received employment for five years after her accident under the agreement, that the agreement to accept compensation, though not registered, was for her benefit & therefore binding, with the result that the action was barred by sect. 29 of the Act The infant appealed:—*Held:* without deciding whether the agreement was for the infant's benefit or whether further proceedings might be taken under Workmen's Compensation Act, the action for breach of statutory duty failed because, on the evidence, the machine was not a dangerous machine within Factory & Workshop Act, 1901 (c. 22), s. 10, & therefore there was no duty on the employer to fence it. Further, on the evidence, the accident was caused by the negligence of pltf. which was a complete defence to the action even if such negligence had only been of a contributory character.—HIGGINS *v.* HARRISON (1932), 25 B. W. C. C. 113, C. A.

4072a. Appeal from order on question of law.]—*Held:* (1) an appeal lies (in Scotland by means of a reclaiming note) from an order of the ct. in the action assessing compensation under 1925 Act, s. 29 (2), but on the same principle as if the proceedings had been by arbn., namely, that the determination is final as to fact, but is open to review as to law; (2) upon the construction of 1925 Act, s. 29 (2), in conjunction with 1925 Act, s. 14 (1), the expression "within the time hereinbefore limited for taking proceedings under this Act" does not mean that the action must be brought within six months from the occurrence of the accident, but means that the claim must be made within the six months as a condition of taking proceedings for the recovery of compensation; if the conditions of sect. 14 (1) are complied with the Act imposes no limit of time within which the action must be brought.—M'CAFFERTY *v.* MACANDREWS & CO., LTD., [1930] A. C. 599; 99 L. J. P. C. 145; 143 L. T. 682; 46 T. L. R. 559; 23 B. W. C. C. 286 H. L.

4076. *Add. Annotations:*—*As to* (1) **Distd.** Adair *v.* Colville (1926), 20 B. W. C. C. 702. **Refd.** Delahunt *v.* Moody (1927), 21 B. W. C. C. 588.

4081a. —— — —.]—M'CAFFERTY *v.* MACANDREWS & CO., LTD., No. 4072a, *ante*.

PART XIV. SECT. 25, SUB-SECT. 1.—B.

4075 iv. —— —— *Whether award open to review.*]—M'CAFFERTY *v.* MACANDREWS & CO., [1929] S. C. (Ct. of Sess.) 529.—**SCOT.**

4077 i. —— *Deduction of costs of unsuccessful action.*]—ADAIR *v.* COLVILLE & SONS, LTD., [1927] S. C. 116; 20 B. W. C. C. 702.—**SCOT.**

4081 i. — — *Unsuccessful proceedings brought more than six months after accident.*]—M'CAFFERTY *v.* MACANDREWS & CO., LTD. (1929), 22 B. W. C. C. 807.—**SCOT.**

h i. —— —— ——.]—ADAIR *v.* COLVILLE & SONS, LTD., [1927] S. C. 116; 20 B. W. C. C. 702.—**SCOT.**

k i. —— —— ——.]—A workman, who has brought an action against his employer, founded solely upon the employer's liability at common law, & who has obtained a judgment in his favour, is not entitled, if that judgment be subsequently set aside upon appeal, to have compensation assessed in the action under Workmen's Compensation Act, 1906 (c. 58).—WARD *v.* DEVLIN, [1927] I. R. 299.—**IR.**

PART XIV. SECT. 25, SUB-SECT. 2.—A.

4083 iii. ——.]—On Jan. 22, 1926, a workman sustained injury by accident arising out of & in the course of his employment. On Feb. 4 his wife received from his employers £3 as compensation for two weeks, & on Feb. 15 she received 30*s.* as compensation for a further week. She had no authority from the workman to apply for or obtain compensation, &, while he knew that she had received the payment of £3, he did not know that it had been paid as compensation. He knew, however, that the payment of 30*s.* made to his wife on Feb. 15 was a payment of compensation, & he allowed her to retain & use the money. The workman having subsequently brought an action against a third party to recover damages in respect of his injuries:—*Held:* he was barred from suing for damages, in respect that he had already recovered compensation within sect. 30 (1) of the 1925 Act.—REID *v.* STEVENSON, [1928] S. C. (Ct. of Sess.) 799.—**SCOT.**

4085 i. — *Payment of compensation —No claim under Act.*]—In an action claiming damages for personal injuries caused by deft.'s negligence, deft. specially pleaded in bar that pltf. was precluded from recovering damages from him by Workmen's Compensation Act, s. 38, in that the accident was one in respect of which compensation was payable under the Act by pltf.'s employer, from whom pltf. had in fact claimed & recovered such compensation. It was admitted that, for a period of 6 months from the date of the accident, pltf.'s employer had paid him weekly, upon the day of each week upon which his weekly salary was paid before the accident, an amount equal to half the amount of his previous salary. The ct. found as a fact that pltf. accepted the payments with the knowledge that they were made to him as being due under the Act:—*Held:* pltf. notwithstanding he had made no claim under the Act, had recovered compensation & so was barred under sect. 38.—DIXON *v.* SHAVE (1929), 50 N. L. R. 245.—**S. AF.**

n i. —— —— *From contractor.*]—GEDDES *v.* DUNFERMLINE DISTRICT COMMITTEE, [1927] S. C. 797; 20 B. W. C. C. 815.—**SCOT.**

sm. *"Recover" damages — What amounts to.*]—The phrase "to recover" damages in Workmen's Compensation Act, 1925 (c. 84), s. 30 (1), means "to receive payment of" damages, & where a workman has been unable to obtain payment under a common law judgment in his favour against a third party, he is entitled to claim compensation from his employers.—CUMBERLAND *v.* LANARKSHIRE TRAMWAYS CO., [1927] S. C. 407; 20 B. W. C. C. 780.—**SCOT.**

SECT. 27.—**REPAYMENT OF POOR RELIEF.**

See Workmen's Compensation Act, 1925 (c. 84), s. 41.

4137a. When right arises—Payment by guardians pending settlement of claim—By arbitration or agreement.]—In an action brought by debenture holders against a co. to realise their security receivers were appointed of the assets comprised in the debentures. At the date of their appointment there were a number of workmen in receipt of weekly payments from the co. as compensation for accidents suffered by them causing total or partial incapacity. These payments having ceased on the appointment of the receivers, the workmen were paid outdoor relief by the guardians. On an application by the guardians under Workmen's Compensation Act, 1925 (c. 84), s. 41, for repayment of the money so expended by them:—*Held:* the words "pending the settlement of his claim" in sect. 41 did not refer to the settlement of the workman's claim by the payment of a lump sum, but to the settlement of compensation by an award or by agreement between the workman & the employer; therefore, as the claims of the workmen in the present case had long since been settled by the co. by the weekly sums, the guardians were not entitled to the repayment they claimed.—*Re* LEWIS MERTHYR CONSOLIDATED COLLIERIES, LLOYDS BANK *v.* THE CO. (No. 2), [1929] 1 Ch. 589; 98 L. J. Ch. 77; 140 L. T. 356; 93 J. P. 105; 45 T. L. R. 159; 73 Sol. Jo. 92; 27 L. G. R. 184; 22 B. W. C. C. 31; [1928] B. & C. R. 149, C. A.

Part XV. Apprenticeship.

4197. *Add. Annotation:*—**Refd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

4200. *Add. Annotation:*—**Refd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

4230a. Exemption in case of apprenticeship by public charity—What amounts to "public charity."]—It is not necessary that a public charity should be a permanent charity (LORD MANSFIELD, C.J.).—R. *v.* ST. MATTHEW'S, BETHNAL GREEN (1767), Burr. S. C. 574.

4230b. ——— ———.]—R. *v.* CLIFTON-UPON-DUNSMORE (INHABITANTS) (1772), Burr. S. C. 697.

4230c. ——— ———.]—R. *v.* FAKENHAM (INHABITANTS), No. 4429, *post.*

——— ———.]—*See, also,* REVENUE, Vol. XXXIX., p. 265, No. 485.

4415. At end of paragraph add:—

", the indenture was invalid, & a service by the apprentice under it conferred on him no settlement."

4421a. Omission of consideration.]—The premium given by the parish officers upon the binding out of a poor apprentice need not be set out in the indenture in words at length; such an indenture being exempted from any duty by 8 Anne, c. 5, s. 40, & the insertion of the premium being required for no other purpose but to ascertain the amount of the duty.—R. *v.* OADBY (INHABITANTS) (1818), 1 B. & Ald. 477; 106 E. R. 175.

Annotation:—**Refd.** R. *v.* Baildon (Inhabitants) (1832), B. & Ad. 427.

PART XIV. SECT. 25, SUB-SECT. 2.—B. (a).

4096 i. *From whom recoverable—Agent of employer.*]—A workman employed by the County Council of the County of Galway obtained an award of compensation under Workmen's Compensation Act, 1906, against the County Council in respect of injuries sustained by being knocked down by a motor ambulance to the County Galway Board of Health & Public Assistance. The County Council sued the Board of Health for indemnity under sect. 6 of that Act:—*Held:* that the Board of Health was merely the statutory agent of the County Council, & that the indemnity given by sect. 6 was not intended to enable an employer to seek an indemnity against his own agent.—GALWAY CO. COUNCIL *v.* GALWAY BOARD OF HEALTH, [1931] I. R. 658; *affg.*, [1931] I. R. 549.—**IR.**

MAYOR'S AND CITY OF LONDON COURT.

Part I.—The Court.

Officers.]—*See, also*, COUNTY COURTS, Vol. XIII., p. 450, No. 18.

Part II.—Jurisdiction.

21a. Specific performance.]—This [specific performance] being an equitable right appearing incidentally in the course of the cause, the recorder was bound to give effect to it (*per* CUR.).—WILLIAMS *v.* SNOWDEN, [1880] W. N. 124.

31. *Add. Annotation :*—**Distd.** Lake *v.* Cronin, Hunt *v.* Cronin, [1929] 1 K. B. 31.

Part III.—Practice and Procedure.

58. *Add. Annotation :*—**Reld.** *Re* Keystone Knitting Mills Trade Mk. (1928), 97 L. J. Ch. 316.

MEDICINE AND PHARMACY.

Part I.—Physicians and Surgeons.

15. *Add. Annotation :*—**Distd.** Way *v.* Bishop, [1928] Ch. 647.

16. *Add. Annotation :*—**Refd.** Institution of Civil Engineers *v.* I. R. Comrs., [1932] 1 K. B. 149.

Part II.—The General Medical Council and Similar Bodies in the Dominions.

21a. Removal from register—On application—Discretion of Council.]—A medical practitioner whose name was on the medical register applied to have his name removed at his own request under chapter 13 of the Standing Orders. After the application was received by the Council & before it was heard & determined the Council received information that the practitioner had been guilty of conduct *primâ facie* constituting infamous conduct in a professional respect. An inquiry was then held & the Council adjudged that the practitioner was guilty of infamous conduct in a professional respect & by their direction his name was erased from the register :—*Held :* the practitioner was not entitled to have his name removed from the medical register on his mere application for that purpose ; until the Council ordered his name to be removed he was still a registered medical practitioner, & in ordering his name to be erased for infamous conduct in a professional respect the Council had acted within the powers conferred upon them by the Act & by their Standing Orders validly made thereunder.—R. *v.* GENERAL MEDICAL COUNCIL, [1930] 1 K. B. 562 ; 99 L. J. K. B. 217 ; *sub nom.* R. *v.* GENERAL MEDICAL COUNCIL, *Ex p.* KYNASTON, 142 L. T. 390 ; 94 J. P. 94 ; 46 T. L. R. 197 ; 28 L. G. R. 159, C. A.

24. *Add. Annotations :*—*As to* (1) **Refd.** R. *v.* General Medical Council, [1930] 1 K. B. 562. *As to* (2) **Consd.** Maclean *v.* Workers' Union, [1929] 1 Ch. 602.

28. *Add. Annotations :*—*As to* (2) **Consd.** Chapman *v.* Ellesmere (1932), 48 T. L. R. 309. *Generally*, **Refd.** Hearts of Oak Assurance Co. *v.* A.-G., [1931] 2 Ch. 370.

30. *Add. Annotations :*—*As to* (2) **Apld.** Maclean *v.* Workers' Union, [1929] 1 Ch. 602. **Refd.** R. *v.* General Medical Council, [1930] 1 K. B. 562. *As to* (3) **Refd.** R. *v.* General Medical Council, [1930] 1 K. B. 562.

Part III.—Medical Practitioners.

72. *Add. Annotation :*—**Refd.** De Freville *v.* Dill (1927), 96 L. J. K. B. 1056.

87. *Add. Annotation :*—**Consd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

PART II. SECT. 2.

c i. —— —— *Must be specified in report of discipline committee.*]—CHURCH *v.* COLLEGE OF PHYSICIANS & SURGEONS, [1927] 2 D. L. R. 957 ; [1927] 2 W. W. R. 9 ; 47 Can. Crim. Cas. 297 ; 22 Alta. L. R. 560 ; *varying*, [1927] 2 D. L. R. 701.—**CAN.**

a i. —— *Jurisdiction of discipline committee.*]—*Re* MCLAUCHLAN & COLLEGE OF PHYSICIANS & SURGEONS, [1927] 2 D. L. R. 953 ; [1927] 2 W. W. R. 4 ; 47 Can. Crim. Cas. 290 ; 22 Alta. L. R. 553.—**CAN.**

b i. —— —— —— ——.]—LATIMER *v.* COLLEGE OF PHYSICIANS & SURGEONS OF BRITISH COLUMBIA, [1931] 3 D. L. R. 304 ; 55 Can. C. C. 132. **CAN.**

b ii. —— — *Power of appellate court — To set aside order of council made without jurisdiction.*]—*Re* MCLAUCHLAN & COLLEGE OF PHYSICIANS & SURGEONS, [1927] 2 D. L. R. 953 ; [1927] 2 W. W. R. 4 ; 47 Can. Crim. Cas. 290 ; 22 Alta. L. R. 553.—**CAN.**

b iii. —— —— —— *To refer matter back to discipline committee for reconsideration.*]—CHURCH *v.* COLLEGE OF PHYSICIANS & SURGEONS, [1927] 2 D. L. R. 957 ; [1927] 2 W. W. R. 9 ; 47 Can. Crim. Cas. 297 ; 22 Alta. L. R. 560 ; *varying*, [1927] 2 D. L. R. 701.—**CAN.**

b iv. —— —— —— *To mitigate punishment.*]—Where applt.'s conduct was such as to bring him within the disciplinary powers of the council & it was right in punishing him therefor, but in all the circumstances of the case the punishment imposed was too severe :—*Held :* his name should be restored to the register on Dec. 31, 1927.—*Re* MCLAUCHLAN & COLLEGE OF PHYSICIANS & SURGEONS (Alta.), [1927] 3 D. L. R. 225 ; [1927] 2 W. W. R. 388 ; 48 Can. Crim. Cas. 148. —**CAN.**

aa i. —— ——.]—CRAWFORD *v.* COLLEGE OF PHYSICIANS & SURGEONS (Alta.), [1929] 3 D. L. R. 62.—**CAN.**

aa ii. —— —— *No right to adopt findings of committee.*]—The Medical Act, R. S. B. C., 1924 (c. 157), does not authorise the executive committee of the Council of the College of Physicians & Surgeons to do more than find the facts & report same to the Council. It cannot adjudicate on the facts found by it. The fact that the membership of the executive committee was identical with that of the Council when a certain case was before them does not entitle the Council to merely adopt the adjudication made by the committee in that case. Where on an appeal from the Council the ct. holds that it has not adjudicated on the matter before it, the matter should be remitted to the Council for rehearing & adjudication.—*Re* MURPHY, [1930] 3 W. W. R. 231 ; 4 D. L. R. 1008.—**CAN.**

aa iii. —— —— *Right of member to counsel.*]—A member of the College whose conduct is the subject of inquiry is entitled to be represented by counsel not only before the committee but also before the Council.—*Re* MURPHY, [1930] 3 W. W. R. 234 ; 4 D. L. R. 1008.—**CAN.**

aa iv. —— *Liability of member to pay costs of proceedings.*]—*Re* MURPHY (1931), 55 Can. C. C. 113.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.

sa. *Practice—Whether time spent in study of profession.*]—Time put in in the study of a science or profession cannot be considered as time spent in the "practice" of it as that term is commonly understood.—INNIS *v.* SATCHWELL, [1928] 3 D. L. R. 624 ; [1928] 2 W. W. R. 638 ; 23 Alta. L. R. 495.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.—B.

57 iv. —— *Use of apparatus.*]—The test of the efficient use by a physician of an apparatus for ascertaining a diseased condition, *e.g.* an X-ray machine, is the ordinary standard of skill maintained by its competent

manipulators.—ANTONIUK *v.* SMITH, [1930] 2 W. W. R. 721; 4 D. L. R. 215; 24 Alta. L. R. 585; *revsg.*, [1930] 3 D. L. R. 500.—**CAN.**

64 i. *Less degree than might have been shown by others.*]—Against M., the medical superintendent in charge of the hospital, damages were sought for his alleged negligent treatment. The evidence showed that M. failed to diagnose the ear-trouble from which pltf. suffered as mastoiditis, & although M. was not able to ascertain what the exact trouble was, he did not send for nor advise sending for an ear-specialist:—*Held:* all a medical practitioner is required to bring to the performance of his duty is reasonable care & average skill; & he is not responsible merely because some other practitioner of greater skill & greater knowledge might have prescribed a different treatment. If a physician in charge of a case is unable to diagnose the trouble he is under no legal obligation so to inform the patient & to advise the calling in of a specialist.—JARVIS *v.* INTERNATIONAL NICKEL CO., [1929] 2 D. L. R. 842; 63 O. L. R. 564.—**CAN.**

sa. *Insurance against malpractice, error or mistake—Neglect to adjust table for examination.*]—The reasonable care & skill which a physician must exercise in his treatment of a patient includes such care & skill with respect to everything he requires the patient to do in order to determine what else should be done. When a physician requires a patient to get upon a table in order that he may continue his diagnosis, he is bound to exercise reasonable care to see that the table is safe & properly adjusted so that the patient will not be injured as a result of getting upon it. The physician's neglect to so adjust the table is "malpractice, error or mistake in the practice of his profession," within the meaning of those words in an insurance policy under which the insurer agreed to indemnify him against liability for damages in consequence thereof.—BALTZAN *v.* FIDELITY INSURANCE CO. OF CANADA, [1932] 3 W. W. R. 140.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.—C.

67 vi. ——.]—When a surgeon minimises the danger of the treatment to induce the patient to proceed, & refrains from explaining the advantages of an alternative course well known to him, he brings himself within the field of liability. If the surgeon assures the patient of results of which he cannot speak with certainty, he must be taken to have spoken recklessly, & is liable. If the patient, in this case had received the advice which it was the duty of the surgeon to impart, she would not have had the operation at all, & for this failure of duty resulting in damage to her hand, she was entitled to recover damages.—KINNEY *v.* LOCKWOOD CLINIC, LTD., [1931] 4 D. L. R. 906; O. R. 438.—**CAN.**

67 vii. ——.]—In a case where a joint has been injured & dislocation is suspected the fact that the surgeon who is consulted, & who applies the recognised tests & gives the usual instructions, does not advise the taking of an X-ray examination does not necessarily constitute negligence on his part: even though it is subsequently disclosed as a result of such an examination that his diagnosis was erroneous.—MOORE & MOORE *v.* LARGE, [1932] 2 W. W. R. 568.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.—D.

a i. —— ——.]—DAVY *v.* MORRISON, [1931] 4 D. L. R. 619; [1932] O. R. 1.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.—G.

sd. *Tube left in patient.*]—THOMPSON *v.* BARRY, [1932] 1 D. L. R. 805; *revsd.*, 2 D. L. R. 814.—**CAN.**

sf. *Duty as to advice—Extent of duty.*]—The duty of a surgeon is to be honest in fact; he need not disclose fully the nature & possible effects of an operation.—KENNY *v.* LOCKWOOD, [1932] 1 D. L. R. 507; O. R. 141.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.—H.

86 iv. —— ——.]—Hospital liable for the negligence of nurses after an operation.—NYBERG *v.* PROVOST MUNICIPAL HOSPITAL BOARD, [1927] 1 D. L. R. 969; [1927] S. C. R. 226.—**CAN.**

86 v. ——.]—Pltf. entered defts.' hospital for the purpose of undergoing an operation, &, owing to the fact that the regular nursing staff was not sufficient to give her the care considered necessary by her physician, a special nurse was employed & added temporarily to the regular staff but charged to pltf.:—*Held:* the special nurse so engaged was the employee of the hospital, & not the mere assistant of pltf.'s physician, & the hospital was responsible in damages for negligence on her part resulting in severe injury to pltf.—LOGAN *v.* COLCHESTER COUNTY HOSPITAL, [1928] 1 D. L. R. 1129; 60 N. S. R. 62.—**CAN.**

86 vi. *Insufficient staff.*]—Defts., the O. Board of Health, maintained a County Hospital, to which pltf. was admitted, & where she underwent an operation. Pltf. was admitted to the hospital upon the terms that her father would pay defts. 4*s.* per day for the treatment therein. After the operation pltf. was burnt by a hot-water jar, which, she alleged, had been placed in her bed by another patient, & she sued the defts for damages. The jury found that defts. contracted to care & maintain pltf.; that defts. were guilty of negligence or breach of duty in the care & maintenance of pltf.; &, in answer to the question whether the negligence was that of some of defts.' employees, answered: "Through insufficient staff":—*Held:* once defts. went outside the statutes relating to the relief of the poor, & proceeded to contract with paying patients, they were bound by the ordinary law of contract.—MULRENNAN *v.* OFFALY BOARD OF HEALTH, [1930] I. R. 345.—**IR.**

86 vii. ——.]—In an action against an infirmary for damages for personal injuries pursuer averred that she attended the infirmary for ultra-violet ray treatment; that the nurse in charge, who was in the employment of defenders, allowed her to be exposed to the rays for too long a period; that she thereby sustained injury; & that the injury was due solely to the negligence of the nurse for whom defenders were responsible. She further averred that she had relied on the knowledge & skill of the nurse in applying the treatment. She did not aver that defenders had acted negligently in the selection of their medical or nursing staffs, or of the apparatus employed. Defenders averred, & the pursuer did not deny, that their electrical department was in charge of, & superintended by, a doctor, & that the treatment received by the pursuer was administered by the nurse upon his instructions:—*Held:* in the absence of any averment that the nurse or the doctor was professionally incompetent or that the apparatus was defective, pursuer had failed to state a relevant case against defenders, in respect that the averments disclosed that, at the time of the injury, the nurse was not acting in a ministerial or administrative capacity as a servant of defenders, but was exercising her professional care & skill, &, further, that she was acting under the instructions of a duly qualified doctor over whose orders the defenders had no control; & action dismissed.—LAVELLE *v.* GLASGOW ROYAL INFIRMARY, [1930] S. C. 123.—**SCOT.**

86 viii. —— *Negligent operation of apparatus.*]—A boy of three years, a patient in deft. corpn.'s hospital, was scalded & burnt by steam escaping from an apparatus designed for his treatment by steam inhalation for pneumonia. The nurse in charge was absent from the room at the time, & was recalled by the boy's screams. She found the apparatus in order & was not able to account for the condition of the patient. In an action by the patient & his father to recover damages arising from the former's injuries, it was not shown how the accident happened, but there was evidence to show that the apparatus was safe if proper care was taken:—*Held:* the obligation of deft. corpn. being not merely to supply properly qualified nurses, but to nurse the patient, the only inference to be drawn from what happened was that there was an absence of proper care on the part of the hospital attendants, & deft. corpn. was liable for the negligence of its servants. HARKIES *v.* LORD DUFFERIN HOSPITAL, [1931] 2 D. L. R. 440; O. L. R. 572.—**CAN.**

86 ix. —— ——.]—In an action against an infirmary for damages for personal injuries, pursuer averred that she attended the infirmary for ultra-violet ray treatment; that the nurse in charge, who was in the employment of defenders, allowed her to be exposed to the rays for too long a period; that she thereby sustained injury; & that the injury was due solely to the negligence of the nurse, for whom defenders were responsible. She further averred that she had relied on the knowledge & skill of the nurse in applying the treatment. She did not aver that defenders had acted negligently in the selection of their medical or nursing staffs, or of the apparatus employed. Defenders averred, & pursuer did not deny, that their electrical department was in charge of, & was superintended by, a doctor, & that the treatment received by pursuer was administered by the nurse upon his instructions. The Second Division having dismissed the action as irrelevant the pursuer appealed to the House of Lords. The House, with the assent of the parties, reversed that decision & ordered a proof before answer.—ANDERSON OR LAVELLE *v.* GLASGOW ROYAL INFIRMARY, [1931] S. C. 34.—**SCOT.**

86 x. ——.]—An infirmary was governed by managers, none of whom took any control over the treatment of the patients. The nurses were engaged, & might be suspended, by the matron, whose duty it was to see that they were attentive to their duties. The electrical department of the infirmary was under the control of a director, who was a qualified medical practitioner, & its staff included several qualified nurses. The director prescribed for a patient treatment by ultra-violet rays. He did not specify the time for which the patient was to be exposed, but the regular period for a first exposure was ten minutes. The first exposure was supervised by a nurse, no doctor being present at the time. The patient was burned by the rays, & she alleged that her injuries were due to the negligence of the nurse in allowing her to be exposed for forty-five minutes. In an action against the infirmary for damages:—*Held:* no negligence on the part of the nurse had been established.—LAVELLE *v.* GLASGOW ROYAL INFIRMARY, [1932] S. C. 245.—**SCOT.**

PART III. SECT. 4, SUB-SECT. 2.—A.

r i. —— *General rule.*]—The law does not raise an implied promise on the part of a person who calls a physician to perform services for another to

103a. —— Work performed before operative date of Medical Act.]—The Medical Act, 1858 (c. 90), has not a retrospective effect, so as to prevent a person who is not registered under it from maintaining an action for medical or surgical advice given, or medicine supplied, before the Act came into operation.—WRIGHT *v.* GREENROYD (1861), 1 B. & S. 758; 31 L. J. Q. B. 4; 5 L. T. 347; 26 J. P. 118; 8 Jur. N. S. 98; 121 E. R. 896.

105. *Add. Annotation:*—**Folld.** Macnaghten *v.* Douglas, [1927] 2 K. B. 292.

106. For the existing paragraph substitute the following paragraph:—

—— ——.]—Medical Act, 1858 (c. 90), s. 32, does not apply to an osteopath, so as to prevent him from recovering at law fees charged for treatment as distinct from diagnosis or advice.—MACNAGHTEN *v.* DOUGLAS, [1927] 2 K. B. 292; 96 L. J. K. B. 738; 137 L. T. 518; 91 J. P. 143; 43 T. L. R. 525; 71 Sol. Jo. 409, D. C.

109a. Failure to effect cure—Whether breach of warranty.]—Pltf., who had been treated for cancer by deft., an unqualified medical practitioner, brought an action against him for (1) fraudulent representations; (2) negligence; & (3) breach of a warranty that he could cure pltf. in three months. The jury could not agree as to the alleged fraudulent representations or as to the alleged negligence, but they found that deft. did not warrant a cure in three months:—*Held:* deft. was entitled to judgment on the cause of action for alleged breach of warranty, although there must be a new trial of the claims on which the jury had disagreed.—BURRELL *v.* EVANS (1930), 46 T. L. R. 578, C. A.

113. *Add. Annotation:*—**Refd.** Whitwell *v.* Shakesby (1932), 147 L. T. 157.

122. *Add. Annotation:*—**Consd.** Whitwell *v.* Shakesby (1932), 147 L. T. 157.

130. *Add. Annotation:*—**Consd.** Whitwell *v.* Shakesby (1932), 147 L. T. 157.

132a. By osteopath.]—An osteopath, who was not registered under the Medical Act, 1858 (c. 90), & who was not a legally qualified medical practitioner, affixed outside his house a plate bearing his name & following on his name the words "Bonesetter, Osteopathic Physician & Surgeon":—*Held:* in using the words "physician & surgeon" he had committed an offence under Medical Act, 1858 (c. 90), s. 40.—WHITWELL *v.* SHAKESBY (1932), 147 L. T. 157; 96 J. P. 307; 48 T. L. R. 489; 76 Sol. Jo. 360; 30 L. G. R. 327.

Part VI.—Dentists.

SECT. 1.—IN GENERAL.

201a. Constitution of Dental Board — Member ceasing to be member of General Medical Council & Branch Council—Vacation of office.]—Under Dentists Act, 1921 (c. 21), a Dental Board is constituted for the regulation & registration of members of the dental profession, & by Shed. I. the Board is to be composed of seven appointed members & six elected members. Of the appointed members three are to be appointed by the General Medical Council, of whom one shall be a member of the Branch Council for England. By para. 6 of the Sched. provision is made in the event of the place of a member of the Board becoming vacant before the expiration of his term of office by death, resignation or otherwise, for the filling of the vacancy:—*Held:* a member of the Board who had been

pay for such services, unless the relation of such person to the person who is ill is such as to put him under obligation to provide medical attention for the patient, or unless the circumstances are such as to show an intention on his part to pay for the services rendered. Such obligation does not arise from the relationship of brother & sister.—ALLEN *v.* FROH, [1932] 1 W. W. R. 593.—**CAN.**

sg. *Services rendered in emergency.*]—Pltf., a surgeon, sued to recover from an extrix. his fees for operating on testator. The latter had been found in his home in a very serious condition as the result of a wound from a shot-gun which had, apparently, been discharged by his own hand. Deft. was not there, but two friends, who were in the house, called in a doctor immediately after making the discovery. The doctor, considering the case to be a surgical one, brought in pltf. The wounded man said something to pltf., but the ct. found that he was in such a condition that no words of his could be construed as a request for pltf.'s services or as an acquiescence in their being rendered on a contractual basis:—*Held:* pltf. was entitled to recover.—MATHESON *v.* SMILEY, [1932] 1 W. W. R. 758; 2 D. L. R. 787; 40 Man. L. R. 247.—**CAN.**

PART III. SECT. 7, SUB-SECT. 2.—A.

sv. *Drugless practitioner — Practising without licence—What must be proved.*]—R. *v.* LAUDIE (1930), 53 Can. C. C. 189.—**CAN.**

PART III. SECT. 7, SUB-SECT. 2.—B. (c).

t i. ——.]—HORSEMAN *v.* NAIRN, [1923] S. A. S. R. 1.—**AUS.**

t ii. ——.]—O'CONNELL *v.* CULLEY, [1927] V. L. R. 502; 49 A. L. T. 92; [1927] Argus L. R. 423.—**AUS.**

t iii. ——.]—*Held:* deft., an osteopath, holding the degree of Doctor of Osteopathy, used the word "Doctor" in advertisements, in conjunction with "osteopath," as an occupational designation relating to the treatment of human ailments, & was therefore guilty of an infraction of Ontario Medical Act, s. 49 (1925). The addition of the word "osteopath" after the words "Doctor Pocock" in his advertisements, simply indicated the method which he, professing to be a doctor, in the sense in which that word is ordinarily understood, used in the treatment of human ailments.—R. *v.* POCOCK, [1928] 2 D. L. R. 937; 50 Can. Crim. Cas. 75; 62 O. L. R. 113.—**CAN.**

PART VI. SECT. 1.

a i. —— —— ——.]—The rule as to the skill required of a dentist is the same as that with regard to the skill of a member of any other branch of the therapeutic art. Where he is registered & injury results from his treatment, the presumption is that he is competent & that the treatment was correct, until the contrary is shown.—MCTAGGART *v.* POWERS, [1927] 1 D. L. R. 28; 36 Man. L. R. 73; [1926] 3 W. W. R. 513.—**CAN.**

a ii. ——.]—The doctrine that the question whether treatment by a physician was negligent is to be tested by the principles of the physician's school is not applicable to the mechanical manipulative labour of a dentist involved in the pulling of teeth; such work is governed by the rule applicable to all skilled labourers, *i.e.* that if the work undertaken by them implies skill it must be used, & when injury is sustained that could not have arisen unless there had been an absence of reasonable skill, or negligence, then there is liability.—DRINNEN *v.* DOUGLAS, [1931] 1 W. W. R. 160; 2 D. L. R. 606; 43 B. C. R. 362.—**CAN.**

a iii. —— *Excessive extraction.*]—Pltf. went to deft., a dentist, to have a tooth extracted. Deft. by an honest misunderstanding of pltf.'s instructions extracted, after he had put pltf. under an anæsthetic, twelve teeth, & pltf. brought this action for trespass, assault & battery upon his person:—*Held:* (1) deft. was negligent in that he failed to make sure what he had to do before rendering pltf. unconscious; (2) as the action was not begun within six months from the day of the operation, it was barred by sect. 28 of Dentistry Act, R. S. O., 1927.—BOASE *v.* PAUL, [1931] 1 D. L. R. 562; 66 O. L. R. 237; *affd.*, [1931] 4 D. L. R. 435; O. L. R. 625.—**CAN.**

appointed thereon by the Branch Council for England as being a member of that Branch Council, but who had ceased to be a member of the General Medical Council & of the Branch Council, was no longer qualified to be a member of the Dental Board, & that his office was vacant.—GENERAL MEDICAL COUNCIL *v.* WARING, [1932] 2 Ch. 115; 101 L. J. Ch. 389; 147 L. T. 497.

205a. —— —— **Non-payment of annual retention fee.**]—Dentists Act, 1921 (c. 21), s. 7 (1), impliedly authorises the Dental Board to provide for non-retention on, or removal from, the register in default of payment of the annual retention fee.—TATTERSALL *v.* SLADEN, [1928] Ch. 318; 97 L. J. Ch. 145; 138 L. T. 577; 44 T. L. R. 237; 26 L. G. R. 217.

205b. —— —— **Conviction for misdemeanour.**]—The word "misdemeanour" in Dentists Act. 1878 (c. 33), s. 13, is not confined to indictable misdemeanours.—PICKUP *v.* UNITED KINGDOM DENTAL BOARD, [1928] 2 K. B. 459; 97 L. J. K. B. 604; 139 L. T. 607; 92 J. P. 147; 44 T. L. R. 544; 72 Sol. Jo. 369; 28 Cox, C. C. 536; 26 L. G. R. 393, D. C.

213. *Add. Annotation :*—**Refd.** R. *v.* Registrar of Joint Stock Companies, *Ex p.* More, [1931] 2 K. B. 197.

217. *Add. Annotation :*—**Consd.** A.-G. *v.* Weeks, [1932] 1 Ch. 211.

218a. —— **"Dental surgeon"—Registration after practising without qualification.**]—By Dentists Act, 1921 (c. 21), s. 4, "A person registered under the principal Act—(*a*) shall, by virtue of being so registered, be entitled to take & use the description of dentist or dental practitioner; (*b*) shall not take or use, or affix to or use in connection with his premises, any title or description reasonably calculated to suggest that he possesses any professional status or qualification other than a professional status or qualification which he in fact possesses & which is indicated by particulars entered in the register in respect of him":—*Held:* a person who has no qualification, but who has been registered under the provisions of the above Act on the ground of his previous practice of dentistry, is not entitled to describe himself as a "dental surgeon"—A.-G. *v.* Weeks, [1932] 1 Ch. 211; 101 L. J. Ch. 26; 146 L. T. 59.

223. *Add. Annotation :*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 307.

224. *Add. Annotation :*—**Refd.** Dominion Press *v.* Customs & Excise Minister, [1928] A. C. 340.

Part VII.—Midwives.

226. To cross-refs. before this case add "*See, also*, Midwives & Maternity Homes Act, 1926 (c. 32).

Part IX.—Drugs.

242. *Add. Citation :*— 28 Cox, C. C. 303, D. C.

242a. —— **Prosecution under Dangerous Drugs Act, 1925 (c. 74)—Act not in operation.**]—Conviction quashed.—R. *v.* KYNASTON (1926), 19 Cr. App. Rep. 180, C. C. A.

242b. —— **"Person authorized" to supply drugs—Manager of shop owned by company.**]—Whether or no the qualified manager of a chemist's shop owned by a limited co. carrying on business in pursuance of Poisons & Pharmacy Act, 1908 (c. 55), is himself "keeping open shop" as well as the co. which employs him, he is at all events a "person authorized" to supply the drugs to which the Dangerous Drugs (Consolidation) Regulations, 1928, apply, & is bound to keep the register prescribed by reg. 11 (1) "at all

PART VI. SECT. 2.

202 ii. —— *Conditions precedent.*]—Medical (Dentists) Act, 1927 (Vict.), s. 14 (1) (*b*), requires that an appct. shall have "entered on a definite course of training":—*Held:* the words were satisfied by appct. entering upon a defined & continuous course of practical instruction in dental surgery & dentistry.—DENTAL BOARD OF VICTORIA *v.* DENISON (1928), 41 C. L. R. 102.—**AUS.**

202 iii. —— *Principal means of livelihood derived from dentistry.*]—The fact that during part of the five years mentioned in sect. 36 (1) (*a*) (ii) of Act 13, 1928, an appct. was under apprenticeship as a dental mechanic does not make it impossible for his sole or principal means of livelihood during that period to have been derived from dental work outside his work as an apprenticed dental mechanic.—HIRST *v.* SOUTH AFRICAN MEDICAL COUNCIL (1929), 50 N. L. R. 170.—**S. AF.**

207 iv. —— —— ——.]—*Ex p.* KEENE (1926), 26 S. R. N. S. W. 463 43 N. S. W. W. N. 136.—**AUS.**

207 v. —— —— ——.]—ALBERTA DENTAL ASSOCN. *v.* SHARP, [1930] 2 W. W. R. 45: 3 D. L. R. 652; 24 Alta. L. R. 580.—**CAN.**

sc. *Application for registration—"Entered on a definite course of training"—What amounts to.*]—From 1905 to Mar. 1910, appct. pursued a course of practical instruction in the various branches of a dentist's work under the direction of a qualified & practising dentist. From Mar. 1910, onwards, until the Medical (Dentists) Act, 1927, came into operation, he acted as assistant to different qualified & practising dentists, performing the mechanical & surgical work in the practice of dentistry:—*Held:* the words "entered on a definite course of training," in s. 14 (1) (*b*) of the Act were satisfied by the applicant entering on a defined & continuous course of practical instruction in dental surgery & dentistry.—DENTAL BOARD OF VICTORIA *v.* DENISON, [1928] V. L. R. 371; [1928] Argus L. R. 253.—**AUS.**

sd. *Registration—Graduate—Meaning of.*]—The word "graduate" in Dentistry Act, R. S. B. C. 1924, c. 66, s. 22 (*b*), does not import that appct. must have gone through a course of training prior to graduation.—*Re* NEFF & COLLEGE OF DENTAL SURGEONS [1928] 4 D. L. R. 839; [1928] 3 W. W. R. 299.—**CAN.**

PART VI. SECT. 3.

q i. —— ——.]—Applt. a registered dentist had agreed to manage for resp., who was not a dentist, a dental practice which had been carried on by resp.'s former husband. In answer to an action by resp. to restrain applt. from practising in a certain specified locality in terms of a covenant to such effect contained in the agreement, applt. pleaded the illegality of the agreement:—*Held:* a person carries on a business who employs a servant to work for him though he may take no practical part in it; & the agreement in the present case was illegal, as constituting the carrying on of the "practice of dentistry" by a person who was not a registered dentist in contravention of Dentists Amendment Act, 1921–22, ss. 2, 3.—SCOTT *v.* WATKINS, [1928] N. Z. L. R. 628.—**N.Z.**

q ii. —— ——.]—A person who for gain takes impressions of patients' mouths & subsequently fits the plates into their mouths, performs functions specially belonging to the calling of a dentist, within sect. 5 of Act 21, 1899 (Natal).—R. *v.* ROBERTSON, [1929] App. D. 10.—**S. AF.**

q iii. —— ——.]—R. *v.* SUTCLIFFE, [1932] 3 W. W. R. 377.—**CAN.**

iv.

ALBERTA *v.* LEES & COURTNEY, [1932] 3 W. W. R. 533.—**CAN.**

times available for inspection." Some limitation must be put on the words "at all times," but they must be taken at least to mean "at all times when the premises are open for business," & therefore when the manager on going out to lunch left the register, for safety's sake, locked up in the poison cupboard, so that his assistant was unable to produce it to a police officer who called:—*Held:* the manager was rightly convicted of an offence against the regulations.—DAVIES *v.* WINSTANLEY (1930), 144 L. T. 433; 95 J. P. 21; 47 T. L. R. 104; 29 L. G. R. 94; 29 Cox, C. C. 242.

242c. —— Register to be "at all times available for inspection"—Meaning of "at all times."] —DAVIES *v.* WINSTANLEY, No. 242b, *ante*.

252. *Add. Annotation:*—**Consd.** A.-G. *v.* Lewis & Burrows, Ltd. (1931), 146 L. T. 165.

252a. —— Article made up by manufacturer at request of retailer.]—A.-G. *v.* LEWIS & BURROWS, LTD., No. 253a, *post*.

253a. Exemption—Article of which properties "known admitted & approved of"—What amounts to.]—A retail chemist ordered a remedy for chest complaints to be made up by manufacturers in accordance with a formula which was contained in a well-known book of pharmaceutical formulas under the name "Chest Vapour Rub." He then put it into cartons, & sold it to the public with a label which described it as "Vapour Rub" & bore his trade mark. There was evidence that the words "Vapour Rub" alone described a class of medicines & not any individual one. In an action brought upon information by the A.-G. for non-payment of medicine stamp duty:—*Held:* "Vapour Rub," as described above, was not a remedy whose properties were "known, admitted & approved" within the exemption contained in the Sched. to Medicines Stamp Act, 1812 (c. 150).

The "denomination, properties, qualities, virtues & efficacies" of a mixture cannot be "known, admitted & approved" unless the vendor clearly identifies them either by description or by reference to a known & accessible formula.—A.-G. *v.* LEWIS & BURROWS, LTD., [1932] 1 K. B. 538; 101 L. J. K. B. 327; 146 L. T. 165; 96 J. P. 25; 48 T. L. R. 77; 75 Sol. Jo. 885; 30 L. G. R. 13; 29 Cox, C. C. 418.

Part X.—Poisons.

257. *Add. Annotations:*—**Consd.** Davies *v.* Winstanley (1930), 47 T. L. R. 104. **Apld.** Orpen *v.* Haymarket Capital, Ltd. (1931), 145 L. T. 614. **Refd.** R. *v.* Cory, [1927] 1 K. B. 810; A.-G. *v.* Walkergate Press, Ltd., Same *v.* Bloomfield, Same *v.* Carlton (1930), 142 L. T. 408.

PART IX. SECT. 1.

242 i. *Dangerous drugs—Procuring drugs for unlicensed or unauthorised person—Doctor supplying wife with orders on chemist.*]—A complaint, which charged a medical practitioner with procuring dangerous drugs for his wife, in contravention of Dangerous Drugs Act, 1920 (c. 46), s. 7, & Dangerous Drugs Regulations, 1921, reg. 4, libelled that accused had delivered to his wife five order forms of different dates, signed by him, in which he pretended that the drugs specified in the orders were required by him for professional use only, "while you well knew that the order forms were granted by you for the purpose of enabling your wife to obtain the drugs for her own use, she not being a person licensed or otherwise authorised to be in possession of the drugs," & that his wife presented the order forms to certain chemists & thereby obtained the drugs:—*Held:* the complaint relevantly charged an offence against the Act & regulation libelled, in respect that (1) the order forms, inasmuch as they bore to be "for professional use *only*," were not prescriptions; (2) the procedure alleged to have been followed negatived the view that accused was dispensing his own medicine; (3) the wife was not a messenger on behalf of her husband, but a person obtaining drugs on her own behalf & for her own use.—STRATHERN *v.* ROSS, [1927] S. C. (J.) 70.—**SCOT.**

sf. "*Distribution*" *of drugs—What amounts to.*]—MARINO & YIPP *v.* R., [1931] S. C. R. 482; 4 D. L. R. 530; 56 Can. C. C. 136.—**CAN.**

sg. *Selling drugs—Imposition of maximum penalty—Not varied by Court of Appeal.*]—R. *v.* NIP GAR (1930), 53 Can. C. C. 321; 42 B. C. R. 327.—**CAN.**

sk. —— *Mail order—Vendor not within jurisdiction.*]—QUEBEC PHARMACEUTICAL ASSOCN. *v.* T. EATON CO. (1931), 56 Can. C. C. 172.—**CAN.**

sl. *Possession of drugs—Liability for—Bailment from trafficker in drugs.*]—LAMONTAGNE *v.* R. (1929), 54 Can. C. C. 338; 48 Que. K. B. 474.—**CAN.**

sn. —— *Demand for trial by jury by Attorney-General—No right to summary trial.*]—ASTROFF *v.* R. (1931), 56 Can. C. C. 263.—**CAN.**

PART IX. SECT. 2.

246 i. "*Held out or recommended to public*"—*Necessity for notice or advertisement to be affixed—Tonic food.*]—Manufacturers & vendors of a preparation known as "Zomogen," on which the duty had not been paid, were charged with a contravention of the Acts. It was proved that no skill in chemistry was needed or used in the process of manufacture of the preparation. It was composed mainly of ox blood & marrow. Its predominant constituent as a health preserving & restoring commodity was hæmoglobin, an article which was frequently recommended by medical men to supply deficiencies of red blood corpuscles in their patients, & was used especially in cases of anæmia. It was advertised & sold to the public as a tonic food, & the labels on the bottles stated that medical men from every part of the world described it as a marvellous success in the immediate restoration of health:—*Held:* the method in which the preparation was manufactured, used, & sold rendered it liable to duty under the Act.—ADAM *v.* ZOMOGEN FOOD PRODUCTS, LTD. [1929] S. C. (J.) 22.—**SCOT.**

PART X. SECT. 1.

h i. —— ——.]—R. *v.* SMITH, [1924] 4 D. L. R. 427; 55 O. L. R. 549.—**CAN.**

h ii. —— —— *Duty to convict.*]—*Held:* if a charge of having possession of opium contrary to sect. 4 (*d*) of Opium & Narcotic Drug Act, R. S. C., 1927, be proved, the ct. should convict under that sect. & not reduce or substitute an offence under other sects. of the Act.—R. *v.* WONG SACK JOE (1929), 41 B. C. R. 254.—**CAN.**

h iii. —— ——.]—R. *v.* LEE KIM, [1930] 2 W. W. R. 441; *sub nom.* R. *v.* MAH POY, R. *v.* HENRY CHAN, R. *v.* CHARLIE SAM, 53 Can. C. C. 252; 42 B. C. R. 360.—**CAN.**

h iv. —— ——.] —Opium was found by the police in the house of accused, but he was absent at the time, & testified before a police magistrate that the opium found was not there with his authority, knowledge, or consent:—*Held:* accused had discharged the onus cast on him by Opium & Narcotic Drug Act, R. S. C., 1927, s. 15.—R. *v.* GUN YING, [1930] 3 D. L. R. 925; 53 Can. C. C. 378; 65 O. L. R. 369.—**CAN.**

h v. —— —— *Sentence.*]—R. *v.* HENRY CHOW, [1930] 2 W. W. R. 389; 53 Can. C. C. 247; 42 B. C. R. 365.—**CAN.**

h vi. —— —— —— *Whether Court of Appeal may revise.*]—R. *v.* CHOW DUCK YUET (1929), 43 B. C. R. 152.—**CAN.**

h vii. —— ——.]—Accused was found in an opium den lying on a couch beside another man. Between them on the couch was a pipe. The accused had a packet of opium in his hands & was in the act of opening it up. He was convicted under sect. 4 (*d*) of Opium & Narcotic Drug Act, 1929, of having opium in his possession.—R. *v.* LEE PO., [1932] 2 W. W. R. 313.—**CAN.**

h viii. —— —— *Distinguished from offence of smoking.*]—R. *v.* LEE WAH YUEN, [1932] 3 D. L. R. 234.—**CAN.**

h ix. —— *Conviction under amended Act—Amendment not in operation.*]—*Held:* the conviction was bad.—R. *v.* SOO GONG, [1927] 2 D. L. R. 269; [1927] 1 W. W. R. 669; 47 Can. Crim. Cas. 275; 38 B. C. R. 321.—**CAN.**

h x. —— ——.]—Deft. was convicted in 1928 for "unlawfully having in his possession a drug, to wit, opium,

257a. —.]—DAVIES *v.* WINSTANLEY, No. 242b, *ante.*

259a. **Qualified manager of company.**]—DAVIES *v.* WINSTANLEY, No. 242b, *ante.*

260a. **"Conducted by himself"—Sale of poison from automatic machine.**]—By sect. 3, subsect. (1), of the Poisons and Pharmacy Act, 1908: "Any person who, being a duly registered pharmaceutical chemist or chemist & druggist, carries on the business of pharmaceutical chemist or chemist & druggist shall, unless in every premises where the business is carried on the business is *bonâ fide* conducted by himself or some other duly registered pharmaceutical chemist or chemist & druggist, as the case may be, . . . be guilty of an offence under sect. 15 of the Pharmacy Act, 1868."

Deft., a duly registered chemist & druggist, sold & offered for sale (*inter alia*) lysol, a poison, from an automatic machine which he had placed just outside the door of his shop:—*Held:* the sale of the lysol by means of the automatic machine was not an offence under Pharmacy Act, 1868 (c. 121), s. 15, & Poisons & Pharmacy Act, 1908 (c. 55), s. 3. The business carried on by means of the automatic machine was *bonâ fide* conducted by deft. himself within Poisons & Pharmacy Act, 1908 (c. 55), s. 3 (1).—PHARMACEUTICAL SOCIETY OF GREAT BRITAIN *v.* WATKINSON, [1931] 2 K. B. 323; 100 L. J. K. B. 577; 145 L. T. 257; 95 J. P. 139; 47 T. L. R. 399; 75 Sol. Jo. 312; 29 L. G. R. 457, D. C.

260b. —— **Exercise of control sufficient.**]—*Held:* the words "*bona fide* conducted" in Poisons & Pharmacy Act, 1908 (c. 55), s. 3 (1), were wider than the words "carries on the business." They meant that the business might be conducted by a person who did not himself perform every act which formed part of the business; it was enough that he controlled & regulated it & had the power, which he exercised, of giving orders as to how it should be carried on. Accordingly, it was not sufficient to make it an offence under the section that one sale was not conducted by the chemist himself or by some other duly registered pharmaceutical chemist. How many sales must be proved was a question of degree & therefore of fact.—PHARMACEUTICAL SOCIETY COUNCIL OF GREAT BRITAIN *v.* FULLER (1932), 96 J. P. 422; 48 T. L. R. 643; 30 L. G. R. 468, C. A.

272a. —— —— **Use need not be confined to agriculture or horticulture.**]—*Held:* that in order to bring a preparation within the exception in Poisons & Pharmacy Act, 1908 (c. 55), Sched., Part II., it is not necessary to show that the article has been exclusively prepared for some purpose in connection with agriculture or horticulture or that it cannot be used for any other purpose.—PHARMACEUTICAL SOCIETY OF GREAT BRITAIN *v.* BROWN (1932), 48 T. L. R. 427.

contrary to sect. 4 of the Opium & Narcotic Drug Act, 1923." Said Act had been amended in 1925 by severing sub-sect. (*d*) of said sect. 4 into two sub-sects., but no change was made in the nature of the offences, which remained identical in their legal effect; & said Act as amended was repealed & re-enacted in the same words by R. S. C., 1927, the short title of which was The Opium & Narcotic Drug Act:—*Held:* in view of the above & of sect. 8 of the Act Respecting the Revised Statutes of Canada, 1924, there had been no period of time since the Act of 1923 in which the transaction upon which deft. was convicted did not constitute an identical offence against all of the statutes in question; &, therefore, the clerical error made in the conviction by adding the date "1923" to the then existing Act was a mere matter of surplusage which could be disregarded.—R. *v.* QUONG WONG, [1930] 1 W. W. R. 299; 2 D. L. R. 422; 53 Can. C. C. 60; 42 B. C. R. 241.—**CAN.**

h xi. —— *Trial before police magistrate—No appeal.*]—R. *v.* LEE SAM (1931), 55 Can. C. C. 74.—**CAN.**

h xii. —— *Opium & Narcotic Drug Act, 1929, ss. 4 (d), 17—Whether construed together.*]—TOM YOUCK *v.* R., [1932] 1 D. L. R. 201; 56 Can. C. C. 286.—**CAN.**

h xiii. —— —— ——.]—R. *v.* MORELLI, [1932] 3 D. L. R. 611; 57 Can. C. C. 267.—**CAN.**

h xiv. —— *Sale of—Amendment of conviction.*]—Accused was convicted of selling opium & sentenced to imprisonment for one year & a day & fined $200. On appeal by the Crown that the sentence be amended in order to comply with sect. 14 of Opium & Narcotic Drug Act, the Ct. of Appeal added to the sentence that in default of payment of the fine he be imprisoned until the fine be paid, or for a period of three months, to commence to run at the end of the term awarded:—*Held:* the Ct. of Appeal did not make a new conviction but only added to it sufficient to bring the sentence within the requirements of the Act.—*Re* CHOW DUCK YUET (1931), 55 Can. C. C. 344; 43 B. C. R. 556.—**CAN.**

PART X. SECT. 2.

258 iii. —— ——.]—*Held:* a complaint, which set forth that a duly registered chemist on a specified date did keep an open shop for retailing poisons, contrary to Pharmacy Act, 1868 (c. 121), ss. 1, 15, as amended by Poisons & Pharmacy Act, 1908 (c. 55), s. 3 (1), & stated that accused, "not being personally present & *bonâ fide* conducting the sale," did sell to a person named, by the hand of an assistant who was not a duly registered chemist, certain poisons, did not relevantly charge a contravention of the statutes libelled, in respect that the alleged transaction, being merely an isolated sale when the registered chemist did not happen to be present, was not an offence under the statutes, & particularly was not an offence under 1908 Act, s. 3 (1).—LINSTEAD *v.* SIMPSON, [1927] S. C. (J.) 101.—**SCOT.**

sm. *Opium & Narcotic Drugs Act—Jurisdiction of magistrate under.*]—VIAU *v.* OTIS (1927), 44 Que. K. B. 406.—**CAN.**

sn. *Opium—Furnished by physician to addict—Onus of proof on physician.*]—While under Opium & Narcotic Drug Act, 1923, a physician may furnish a "drug" for self-administration to an addict or habitual user who is suffering from a diseased condition caused otherwise than by the excessive use of any "drug," yet, even in such a case, an accused physician must nevertheless bring himself within the requirements of sect. 6 of the Act by showing that the "drug" was required for medicinal purposes or was prescribed for the medical treatment of a person under professional treatment by such physician. Where a diseased condition is proved, or the medical evidence is such that the physician should be given the benefit of the doubt on the point, the question whether one of the other two conditions which permit of the furnishing of the "drug" existed is not to be decided by accepting the physician's own judgment & evidence as conclusive, but the ct. must determine each case on its own facts as disclosed by all the evidence.—R. *v.* GORDON, [1928] 2 D. L. R. 315; [1928] 1 W. W. R. 678; 49 Can. Crim. Cas. 272.—**CAN.**

Part XI.—Optometry.

See cases *infra.*

PART XI.

so. *Board of Examiners — Disciplinary powers.*]—Sect. 8 of the Optometry Act does not give the Board of Examiners authority to conduct a trial in the first instance to ascertain whether a person is guilty of illegal practices, etc., & the words "where the board is satisfied that any person has been found guilty" in s. 8 (1) point to a finding that has already been made by some tribunal other than the Board, & that it is only after a person has "been found guilty," & the Board has become "satisfied of that fact," that notice is to be given under said sect. & the person concerned offered an opportunity of being heard.—WITHROW *v.* NOVA SCOTIA BOARD OF OPTOMETRY, [1929] 1 D. L. R. 766; 60 N. S. R. 318.—**CAN.**

sq. *Breach of Medical Act, R. S. O.*, 1927.]—Optometry is a method of treating a human ailment & therefore an optometrist who uses the title "Doctor" or "Dr." in connection with his occupation as optometrist, uses it as an occupational designation contrary to Medical Act, R. S. O., 1927. —R. *v.* LOWRIE, [1932] O. R. 107.—**CAN.**

METROPOLIS.

Part III.—The London County Council.

8. *Add. Annotations :-* **-Refd.** Collins *v.* Whiteway, [1927] 2 K. B. 378 ; Hearts of Oak Assurance Co. *v.* A.-G., [1931] 2 Ch. 370.

Part VII.—Officers of Metropolitan Authorities.

29a. —— **" Emoluments "—Annual allowances in respect of superannuation.**]—KIDDIE *v.* PORT OF LONDON AUTHORITY, DURRANT *v.* SAME (1929), 45 T. L. R. 430 ; 93 J. P. 203 ; 27 L. G. R. 398.

29b. —— —— **Fees of town clerk acting as registration officer.**]—*Held :* the fees received by the town clerk of a metropolitan borough in respect of his duties as registration officer are " emoluments of his office " as town clerk & properly included in calculating the superannuation allowance payable to him under Superannuation (Metropolis) Act, 1866 (c. 3), s. 4.—STOKE NEWINGTON BOROUGH COUNCIL *v.* RICHARDS, [1930] 1 K. B. 222 ; 99 L. J. K. B. 1 ; 142 L. T. 257 ; 45 T. L. R. 650 ; 27 L. G. R. 660 ; 94 J. P. 27, D. C.

29c. **Transfer of existing officer to borough council —Right to remuneration for additional duties —London Government Act, 1899 (c. 14), ss. 8 (3), 30 (1).**]—GRAY *v.* HACKNEY BOROUGH COUNCIL (1904), 2 L. G. R. 429.

Part XI.—Metropolitan Building Legislation.

NOTE.—The London Building Acts as amended to 1928 were consolidated & re-enacted by London Building Act, 1930 (c. clviii.).

44. *Add. Annotation :*—**Refd.** London County Council *v.* Stilgoe (1931), 95 J. P. 149.

81. In lieu of the paragraph following the catchwords substitute as follows :—

The comrs. under Metropolitan Building Act, 1855 (c. 122), having incurred expense under sect. 73 of the Act, demanded payment of the owner of the structure, who refused to pay :—*Held :* the six months, within which a complaint was to be made, were to be reckoned from the demand & refusal, not from the incurring of the expense.

Add. Annotation :—**Apld.** Ashby-de-la-Zouch Grdns. *v.* Summers, [1928] 2 K. B. 397.

87. *Add. Annotation :*—**Folld.** London County Council *v.* Stilgoe (1931), 95 J. P. 149.

87a. —— ——.]—M. Co. were the occupiers of a building on which was a bridge certified to be a dangerous structure under the London Building Act, 1894, holding it under a subdemise for twenty-one years from H., who held it on a ninety-nine years' lease from the owners in fee simple. Neither owner nor occupier having complied with a notice under sect. 5 of 1898 Act to take the bridge down or otherwise secure it, or with an order to the same effect made by a metropolitan police magistrate under sect. 107 of 1894 Act, the London County Council acting under their statutory powers took down the bridge themselves & then forthwith brought a complaint to recover the expenses thereof from the owners in fee simple :—*Held :* the complaint was rightly dismissed, as by sect. 173 (1) of 1894 Act, proceedings to recover their expenses must proceed in the first instance against the owner immediately entitled in possession to the premises or the occupier.—LONDON COUNTY COUNCIL *v.* STILGOE, [1932] 1 K. B. 303 ; 100 L. J. K. B. 563 ; 145 L. T. 287 ; 95 J. P. 149 ; 47 T. L. R. 435 ; 29 L. G. R. 470.

92. For " 8 L. T. 369 " read " 89 L. T. 369."

98a. **Height of wall for purpose of determining thickness—Bressummers between each storey —Whether one wall or series of walls.**]—A building in London was constructed as follows : The front & rear exterior walls of the basement storey, & the rear exterior wall of the ground storey were on a different vertical plane from the front & rear exterior walls on the first, second, & third storeys. There was no front exterior wall on the ground storey, but in lieu thereof a shop front. The front & rear exterior walls were, respectively, in one vertical plane throughout the height of the first, second, & third storeys. Between each storey there was a metal girder or bressummer. These metal girders or bressummers were supported by metal pillars, those at the front standing at the ground floor level on brick pillars, those at the rear going down into foundation under the basement floor level. The wall or piece of wall between the first & second floors stood on one of those metal girders or bressummers. If this wall or piece of wall were taken away, the wall or piece of wall between the second floor & the roof would remain in position. The same facts applied *mutatis mutandis* to the walls or piece of wall between the second & third floors & the third floor & roof. The walls on each floor depended for their strength & support upon the girders or bressummers upon which they were built. The walls from outside appeared to be each one solid

wall. The height of the building from the first floor to the top of the topmost storey was 38 feet. The height of the first storey was 14 feet, of the second 13 feet, & of the third 11 feet. On a complaint by the district surveyor for contravening the London Building Act, 1894, the builders contended that for the purpose of determining the thickness of the walls, the exterior wall of each storey at the front & at the back was a separate wall, that of the first storey 14 feet, that of the second 13 feet, & that of the third 11 feet, respectively. The metropolitan magistrate upheld this contention:—*Held:* without considering the question whether the walls began at the ground level, the front & rear walls were each one wall from the first floor to the top of the topmost storey, & consequently their height for the purpose of determining the thickness of the walls was 38 feet.—BLACK *v.* PARKER (GEORGE) & SONS, LTD. (1929), 142 L. T. 130.

116a. – – – – – – ,† LONDON COUNTY COUNCIL *v.* STILGOE, No. 87a, *ante*.

119a. Compliance with dangerous structure notice by lessor—Right of entry—Duty to give notice to lessee.]—Defts. granted to first pltf. a lease of the second & third floors of certain premises in London with a covenant for quiet enjoyment, & the first pltf. sub-let the third floor to the second pltf. During the currency of the lease the London County Council served on defts. a dangerous structure notice in respect of the whole building, & defts. entered on both the demised floors to carry out the work necessitated by the notice. In an action in which first pltf. claimed damages for breach of the covenant for quiet enjoyment, & in which second pltf. claimed damages for trespass, defts. pleaded that they were under no liability, as they were bound to do the work. Defts. had not served on pltfs., as occupiers, a notice, under 1894 Act, s. 192, of the intention to enter the premises & do the work required:—*Held:* defts. had no right of entry without complying with sect. 192, & both pltfs. were entitled to damages.—TROTTER *v.* LOUTH (1931), 47 T. L. R. 335; 75 Sol. Jo. 259.

MINES, MINERALS AND QUARRIES.

Part I.—In General.

12. *Add. Annotations :—As to* (1) **Consd.** South Staffordshire Mines Drainage Comrs. *v.* Elwell (1927), 91 J. P. 113. **Apld.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

26. *Add. Annotations :—As to* (1) **Consd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33. *As to* (2) **Refd.** *Re* Jenkins, Jenkins *v.* Davies, [1931] 2 Ch. 218.

36. *Add. Annotation :—***Consd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

39a. Substances exceptional in use, value, & character.]—WARING *v.* FODEN, WARING *v.* BOOTH CRUSHED GRAVEL CO., No. 651a, *post.*

41. *Add. Annotation :—***Consd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

43. *Add. Annotation :—***Apld.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

43a. ——.]—WARING *v.* FODEN, WARING *v.* BOOTH CRUSHED GRAVEL CO., LTD., No. 651a, *post.*

50. *Add. Annotation :—As to* (1) **Consd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

55a. —— ——.]—WARING *v.* FODEN, WARING *v.* BOOTH CRUSHED GRAVEL CO., LTD., No. 651a, *post.*

59a. Question of fact.]—WARING *v.* FODEN, WARING *v.* BOOTH CRUSHED GRAVEL CO., LTD., No. 651a, *post.*

59b. "Minerals" & "mineral substances"—Equivalent terms.]—WARING *v.* FODEN, WARING *v.* BOOTH CRUSHED GRAVEL CO., LTD., No. 651a, *post.*

60. *Add. Annotation :—As to* (2) **Refd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

73. *Add. Annotation :—***Refd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

74a. ——.]—WARING *v.* FODEN, WARING *v.* BOOTH CRUSHED GRAVEL CO., LTD., No. 651a, *post.*

77a. ——.]—WARING *v.* FODEN, WARING *v.* BOOTH CRUSHED GRAVEL CO., LTD., No. 651a, *post.*

79. *Add. Annotation :—***Refd.** Waring *v.* Foden, Waring *v.* Booth Crushed Gravel Co. (1931), 101 L. J. Ch. 33.

Part II.—Property in Mines.

140. *Add. Annotation :—***Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

142. *Add. Annotation :—***Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

150. *Add. Annotation :—***Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

173a. ——.]—As a general rule, where title is founded on adverse possession the title will be limited to that area of which actual possession has been enjoyed. But the extent of possession enjoyed may be an inference of fact, & in applying the rule to the case of a mineral field regard is to be had to the nature of the subject & the possession to which it is susceptible.—NAGESHWAR BUX ROY *v.* BENGAL COAL CO. (1931), 58 L. R. Ind. App. 29, P. C.

Part III.—Amalgamation and Absorption Schemes.

180a. —— ——.]—Observations on the meaning of the expression "national interest" in sect. 7 (2) (*a*) of the above Act.—*Re* AMALGAMATED ANTHRACITE COLLIERIES, LTD.'S APPLICATION (1927), 43 T. L. R. 672.

Part IV.—Right to work Mines and Quarries.

263. *Add. Annotation :*—**Refd.** Glenboig Union Fireclay Co. *v.* I. R. Comrs. (1922), 12 Tax Cas. 427.

277a. —— **Damages for unworkable coal & payments for unworked coal.**]—*Re* CANNER, BURY *v.* CANNER (1923), 155 L. T. Jo. 211.

315. *Add. Annotation :*—**Refd.** A.-G. *v.* Leeds Corpn., [1929] 2 Ch. 291.

327. After this case add :—
Coal mines.]—*See* Mining Industry Act, 1926 (c. 28).

327a. —— —— ——.]—In considering whether it is in the national interest to grant ancillary rights to facilitate the proper & efficient working of minerals under Mines (Working Facilities & Support) Act, 1923 (c. 20), the Railway & Canal Commission is entitled to take into account not only difficulties which physically obstruct the getting & carrying away of minerals, but also economic difficulties which militate against their effective marketing.

The expressions "carrying away" in sect. 1 (2), & "conveyance of minerals" in sect. 3 (2) (*b*), of the Act are to be construed not in a technical sense, but broadly as entitling the person to whom ancillary rights are granted under the Act to transport the minerals from the land where they have been won for sale elsewhere.

The Railway & Canal Commission made an order granting to a colliery co. the ancillary right under the Act to construct an aerial ropeway over the land of other persons from their colliery to Dover, a distance of seven miles, which would enable them to transport their minerals more cheaply & more conveniently than by other means :—*Held :* the Railway & Canal Commission had jurisdiction to make this order.—*Re* TILMANSTONE (KENT) COLLIERIES, LTD., [1928] 1 K. B. 599 ; 97 L. J. K. B. 169 ; 138 L. T. 452 ; 44 T. L. R. 167 ; 19 Ry. & Can. Tr. Cas. 26, C. A.

Annotation :—**Refd.** *Re* Hamsterley Ganister Co., Application (1931), 75 Sol. Jo. 602.

327b. —— —— —— **Reasonable rent.**]—*Re* HAMSTERLEY GANISTER CO., LTD., APPLICATION (1931), 75 Sol. Jo. 602.

327c. —— **Coal Mines Act, 1930 (c. 34)—Quota exceeded — Standard tonnage wrongly assessed.**]—MIDLAND (AMALGAMATED) DISTRICT (COAL MINES) SCHEME, 1930, EXECUTIVE BOARD *v.* SHIPLEY COLLIERIES, LTD. (1932), 174 L. T. Jo. 445.

327d. **Application under Mining Industry Act, 1926 (c. 28), s. 13—What must be shown—National interest in grant.**]—*Held :* it is not necessary for an appct., in order to support his application under Mining Industry Act, 1926 (c. 28), s. 13, to assert that, in the words of Mines (Working Facilities & Support) Act, 1923 (c. 20), s. 1, there is a danger of the minerals being left permanently unworked, but it is sufficient to establish that it is in the national interest that the application should be granted.—*Re* HENRY LOWSON, LTD., APPLICATION OF (1930), 144 L. T. 128 ; 46 T. L. R. 595.

Part V.—Powers Incidental to Ownership.

335a. —.]—*Re* MERCHANTS' TRUST & NEW BRITISH IRON CO. (1894), 38 Sol. Jo. 253.

335b. ——.]—*Re* THOMAS'S TRUSTS (1895), 40 Sol. Jo. 98.

335c. ——.]—*Re* STAMFORD & WARRINGTON EARL TRUSTS (1896), 40 Sol. Jo. 771.

396a. —— **Power to vary lease.**]—The tenant for life under a resettlement executed in 1884 granted two mining leases, in 1924 & 1928, respectively, each for the period of 60 years. On a summons asking for the determination of the question, among others, whether he had power, under Settled Land Act, 1925 (c. 18), s. 59, or otherwise, to vary the leases by substituting in each of them a term of 100 years in lieu of the term of 60 years :—*Held :* he had power to vary by deed the terms of the leases, provided that their length after variation should not be more than 100 years from the respective dates of execution.—*Re* SAVILE SETTLED ESTATES,

PART IV. SECT. 1.

c (p. 620) i. ——— ———.]—Substantial compliance as nearly as circumstances will reasonably permit with the requirements of the Mining Act of Ontario as to staking out of mining claims is sufficient. Every reasonable intendment ought to be made to uphold the validity of a claim where there has been actual discovery & an honest attempt to comply with the directions of the Legislature in staking & describing the location of the discovery.—*Re* DUPONT & COLE, [1931] 1 D. L. R. 320 ; 65 O. L. R. 526.—**CAN.**

mmm (p. 620) i. —— *Sufficiency of evidence.*]—BERG *v.* BOSENCE, [1931] 2 W. W. R. 469 ; 3 D. L. R. 611 ; 44 B. C. R. 71.—**CAN.**

eeee (p. 620) i. —— —— —— *Not misleading record of claim.*]—If the description of a mining claim as recorded is so erroneous as to mislead parties locating other claims in the vicinity, the error is not cured by a certificate of work done by the first locator on land not included in such description & covered by the subsequent claims.—COLPEN *v.* CALLAHAN (1899), 30 S. C. R. 555.—**CAN.**

n (p. 621) i. —— *Power to cancel claim.*]—*Re* COLE & KNOWLES, [1927] 3 D. L. R. 950 ; 60 O. L. R. 638.—**CAN.**

bb (p. 621) i. —— *Variance between located ground & plan—Position of location posts binding.*]—MCCALLUM *v.* CENTRAL MANITOBA MINES, LTD. (Man.), [1928] 1 D. L. R. 119 ; [1927] 3 W. W. R. 556.—**CAN.**

ad. *Claims recorded through fraud & inadvertence.*]—Set aside.—WEKUSKO MINES, LTD. *v.* MAY, [1927] 1 W. W. R. 383 ; 36 Man. L. R. 351.—**CAN.**

ae. *Adverse claim—Extension of time for action on—Minerals Act.*]—*Re* "GOOD FRIDAY," ETC., MINERAL CLAIMS (1896), 4 B. C. R. 496.—**CAN.**

af. *Prospecting & mining"—Right to exclude lands from by proclamation.*]—R. *v.* NOLTE, [1928] App. D. 377.—**S. AF.**

PART IV. SECT. 2, SUB-SECT. 2.—C. (a).

ah. *Partnership as distinguished from co-owners.*]—DAVIES *v.* SCHUILLI, [1928] 4 D. L. R. 132 ; [1928] 3 W. W. R. 158.—**CAN.**

PART V. SECT. 2, SUB-SECT. 2.—B. (a).

ak. *Covenant for renewal—Whether court may sanction.*]—Where it is proposed to grant a mining lease pursuant to the provisions of Settled Land Act, 1908, & its amendments, the ct. has no power to approve of the insertion in such lease of a covenant for renewal, even although it is agreed in such covenant that the rental payable under the renewed lease shall be fixed by arbn.—MCKINNON *v.* GLEN AFTON COLLIERIES, LTD., [1929] N. Z. L. R. 202.—**N.Z.**

SAVILE *v.* SAVILE, [1931] 2 Ch. 210; 100 L. J. Ch. 274; 145 L. T. 17.

Annotation:—**Consd.** *Re* Bruce, Brudenell *v.* Brudenell, [1932] 1 Ch. 316.

417a. Effect of surrender & regrant after commencement of Settled Land Act, 1925 (c. 18).]—A deed executed on Mar. 25, 1931, purported, under the provisions of Settled Land Act, 1925 (c. 18), s. 59, to vary a mining lease, the term of which was forty years, expiring on Mar. 25, 1947, by extending the term of forty years to one of ninety-nine years, expiring on Mar. 25, 2006:—*Held:* (1) as the 1931 deed merely varied the lease, & did not put an end to it, the provisions of Settled Land Act, 1925 (c. 18), s. 47, applied to the lease as varied, & not to a new lease; but in accordance with the expressed intention of the settlement the whole of the rents or royalties should go to the tenant for life throughout the whole of the original term; (2) as there was no contrary intention expressed in the settlement with reference to the extended portion of the term, & as the tenant for life was unimpeachable for waste, there would be capitalisation of one-fourth of the rents from the beginning of the extended portion of the term in 1947; (3) although it might be that, as between all persons interested in the settlement on the one hand, & the lessees on the other, the principle of estoppel would prevent any allegation that the deed of 1931 operated otherwise than as a surrender of the old lease, with the result that a new lease would have been deemed to have been created from 1931, there was no authority for extending such principle of estoppel as between the tenant for life & remaindermen so as to nullify the effect of sect. 59, which expressly gives power to vary leases without destroying them.—*Re* BRUCE, BRUDENELL *v.* BRUDENELL, [1932] 1 Ch. 316; 101 L. J. Ch. 204; 146 L. T. 363.

Part VI.—Rights Incidental to Ownership.

540a. Cost of erecting barrier—Although damage not yet occurred.]—The owners of a coal mine sued the lessees of an adjacent mine for damages in consequence of an encroachment upon, & removal of coal from, their mine:—*Held:* as part of the damages pltfs. could recover the cost of erecting an artificial barrier to protect their mine from the risk of fire, water, or foul gases coming through the encroaching galleries worked by defts.; they were not bound to wait until that risk actually emerged, & an artificial barrier was necessary, as pltfs. were entitled to work out the pillars of coal left by defts. in the encroaching galleries.—ADJAI COAL CO. *v.* PANNA LAL GHOSH (1930), 57 L. R. Ind. App. 144, P. C.

551. *Add. Annotations:*—**Refd.** Legh *v.* Legh (1930), 143 L. T. 151; Lynn *v.* Bamber, [1930] 2 K. B. 72.

Part VII.—Contracts.

576. *Add. Annotation:*—**Refd.** Arseculeratne *v.* Perera, [1928] A. C. 173.

584. *Add. Annotation:*—*As to* (1) **Refd.** *Re* Sandwell Park Colliery Co., Field *v.* Sandwell Park Colliery Co., [1929] 1 Ch. 277.

623. *Add. Annotation:*—**Consd.** *Re* Wait, [1927] 1 Ch. 606.

623a. Regulation of prices of coal—By Executive Board & Central Sale Committee—Extent of powers.]—*Held:* the Executive Board & the

PART VI. SECT. 2, SUB-SECT. 5.—A. (d).

552 i. *Value of minerals at pit's mouth—Less costs of severance & bringing to bank.*]—BARTLETT *v.* NOVA SCOTIA STEEL CO. (1906), 1 E. L. R. 226.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 5.—A. (h).

d i. —— *Deduction of costs of bringing to bank.*]—By an agreement in writing deft. was licensed by a mining co. to prospect, mine for & sell ore from a shaft, the property of the co. After the expiry of the licence, deft. continued to mine until restrained by interlocutory injunction:—*Held:* on the construction of the document, deft. had not an exclusive licence to work the mine; he had committed trespass, &, on the facts, the damages should be assessed according to the rule in *Martin* v. *Porter*, No. 567.—MOONTA PROSPECTING SYNDICATE, LTD. *v.* NEILL (1929), S. A. S. R. 335.—**AUS.**

so. *Damage to future working of claim.*]—HILDITCH *v.* YOTT (1908), 90 W. L. R. 53.—**CAN.**

PART VII. SECT. 1.

m i. ——.]—LARSEN *v.* MONTGOMERY, [1930] 2 W. W. R. 796; 3 D. L. R. 966; 43 B. C. R. 89.—**CAN.**

sp. *Agreement to provide funds—In consideration of services on claim—Failure to provide funds—Effect.*]—TURNBULL *v.* EDEN (B. C.), [1929] 4 D. L. R. 261.—**CAN.**

sa. *Application of Mineral Act, R. S. B. C.*, 1924.]—An agreement with respect merely to a division of the proceeds of a sale of mineral claims & to a declaration of trusteeship as to such proceeds is not one to which sect. 19 of Mineral Act, R. S. B. C., 1924, applies.—*Re* SIEMAN (No. 3), [1930] 2 W. W. R. 411.—**CAN.**

sb. ——.]—An agreement with respect merely to a division of the proceeds of a sale of mineral claims & to a declaration of trusteeship as to such proceeds is not one to which sect. 19 of Mineral Act, R. S. B. C., 1924 (c. 167), applies.—HARRIS *v.* LINDEBORG, [1931] S. C. R. 235; 1 D. L. R. 945; *varying*, [1930] 1 W. W. R. 411; 2 D. L. R. 117; 42 B. C. R. 276; *revsg. in part*, [1929] 4 D. L. R. 178; 41 B. C. R. 262.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 1.

sq. *Sale of land subject to gas lease—Where gas treated as chattel.*]—TILBURY TOWN GAS CO. *v.* MAPLE CITY OIL & GAS CO., MAPLE CITY OIL & GAS CO. *v.* TILBURY TOWN GAS CO. (1915), 7 O. W. N. 786; 9 O. W. N. 301; 35 O. L. R. 186.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 1.

c i. —— *For sale of option to purchase mining claims.*]—GORDON *v.* EARLE (Man.) [1927] 3 W. W. R. 242.—**CAN.**

e i. —— *Sale of assets of company—Whether mining rights included.*]—MAJESTIC MINES, LTD. *v.* ROYAL TRUST CO. (Alta.), [1929] 4 D. L. R. 568.—**CAN.**

sr. *Contract to pay for mineral claim on sale thereof—Claim allowed to lapse—Measure of damages.*]—MCGEE *v.* CLARKE, [1927] 1 W. W. R. 593; 38 B. C. R. 156.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 5.

sv. *Application of Security Frauds Prevention Act, 1930, s. 3 (h).*]—DEVINE *v.* SOMERVILLE & SOMERVILLE, [1931] 3 W. W. R. 264; 44 B. C. R. 502.—**CAN.**

Central Sale Committee appointed under the Midland (Amalgamated) District (Coal Mines) Scheme under the Coal Mines Act, 1930, had power to fix minimum prices for bunker coal on a f.o.b. basis, but, assuming the trade, industry, or other category of the consumer to be the same, there could only be one such f.o.b. price for the same type of bunker coal for every port in Great Britain.—A.-G. *v.* WRIGHT (1932), 49 T. L. R. 6.

Part VIII.—Absolute Dispositions.

651a. —— **Reservation of "mines, minerals, & mineral substances"—Whether sand & gravel included.**]—(1) *Primâ facie* the meaning of the word "minerals" both in private deeds & in statutory provisions will yield to the expressed or implied intention of the parties. (2) In arriving at the construction of a reservation of mines & minerals in a private deed, regard must be had to cases relating to the construction of the words "mines & minerals" in statutory provisions. (3) The two main principles to be gathered from the authorities are: that the word "minerals" when found in a reservation out of a grant of land means substances, exceptional in use, in value & in character, & does not mean the ordinary soil of the district which, if reserved, would practically swallow up the grant, & (4) in deciding whether or not in a particular case exceptional substances are "minerals" the true test is what the word means in the vernacular of the mining world, the commercial world & landowners at the time of the grant & whether the particular substance came within that meaning. (5) The question whether a given substance is or is not a "mineral" within the meaning of the instrument in which it is mentioned is a question of fact to be decided according to the circumstances of the particular case. (6) For all practical purposes "minerals" & "mineral substances" are synonymous terms, & the latter yields to the expressed or implied intention of the parties as much as the former, & accordingly what is said in the authorities as to the meaning of the word "minerals" applies with equal force to the words "mineral substances." (7) A conveyance of land made in 1925 contained a reservation of "all mines, minerals, & mineral substances":—*Held:* that the words must be construed according to their meaning in the vernacular of the mining world, the commercial world & landowners at the time of the execution of the conveyance, & that, upon the evidence, the words did not include sand or gravel.—WARING *v.* FODEN, WARING *v.* BOOTH CRUSHED GRAVEL CO., LTD., [1932] 1 Ch. 276; 101 L. J. Ch. 33; 146 L. T. 107; 75 Sol. Jo. 852, C. A.

Part XI.—Leases.

673. *Add. Annotation:*—*As to* (2) **Refd.** Glenboig Union Fireclay Co. *v.* I. R. Comrs. (1922), 12 Tax Cas. 427.

678. *Add. Annotation:*—**Expld.** Flexman *v.* Corbett, [1930] 1 Ch. 672.

799. *Add. Citation:*—*Affg.*, S. C. *sub nom.* FORSTER *v.* ELVET COLLIERY CO., [1908] 1 K. B. 629, C. A.

Add. Annotation:—**Apld.** Grant *v.* Edmondson, [1931] 1 Ch. 1.

827. *Add. Annotation:*—**Apld.** Simons *v.* Associated Furnishers, Ltd. (1930), 47 T. L. R. 118.

PART VIII. SECT. 1, SUB-SECT. 1.

624 iii. ——.]—MAJESTIC MINES, LTD. *v.* ROYAL TRUST CO., LTD. (No. 2), [1930] 2 W. W. R. 488; 3 D. L. R. 1010.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 2.

650 iii. ——.]—STUART *v.* CALGARY & EDMONTON RY. CO. (Alta.), [1928] 1 D. L. R. 24; [1927] 3 W. W. R. 678; *varying*, [1927] 2 D. L. R. 271; [1927] 1 W. W. R. 639.—**CAN.**

PART X.

a i. —— *For sublease of petroleum rights—Obligations of parties under agreement.*]—OHLSON *v.* WEISS (Alta.), [1927] 3 D. L. R. 24; [1927] 2 W. W. R. 25.—**CAN.**

PART XI. SECT. 3, SUB-SECT. 1.

st. *Chattels appurtenant to lease—What are.*]—Pltf. obtained an option on several mining leases. The ground had previously been worked by one H., who constructed a water system for washing the gravel, but after operating for a time abandoned the property, leaving certain chattels used in connection with the water system on the ground. Upon pltf. co. commencing operations it purchased the chattels from H.'s estate & used them until it in turn abandoned the properties. The owners took possession & refused to give up the chattels, claiming that the water licences authorising pltf. to use water were together with all works constructed appurtenant to the lease, & could not be separated from the property:—*Held:* defts had not satisfied the burden of proof which was upon them to show that these chattels were in fact to be regarded as part of the works which are appurtenant to the leases. They were in fact parts of the mining machinery & appliances for recovering the gold, not of the water system, & were quite separate & distinct from those works, & not attached in any way to them or to the soil.—ENNIS GOLD MINING CO. *v.* HENDERSON (1927), 39 B. C. R. 76.—**CAN.**

sv. *Lease of right to win oil—Discovery of natural gas—Rights of parties.*]—Applt., the owner of oil sites & grantee from Govt. of the right to win oil therefrom, leased the sites & the right to win oil for twenty-five years to respts., who agreed to pay royalties on oil won by them. In sinking wells, which did not produce oil in commercial quantities, respts. found natural gas. They tapped the gas by pipes & for six years used it for their own purposes:—*Held:* applt. was not entitled to compensation for the gas so taken since (*a*) that right was not included in the right to royalties upon the oil won; & (*b*) the lease on its true construction was not merely a lease for the purpose of winning oil, & applt. having no property in the gas, respts. were entitled to reduce into possession & use it, provided they did so without injury to the leased property.—U PO NAING *v.* BURMA OIL CO., LTD. (1929), L. R. 56 Ind. App. 140.—**IND.**

PART XI. SECT. 6, SUB-SECT. 2.

d i. *Fine in lieu of forfeiture.*]—A warden of mines having recommended the forfeiture of a mineral lease on account of default, without reasonable cause, in compliance with the covenant with regard to the expenditure of money, the Mining Board imposed a fine of £200 in lieu of forfeiture.—HILL *v.* THE TASMANIAN METALS EXTRACTION CO., LTD. (1925), Tas. L. R. 38.—**AUS.**

PART XI. SECT. 7.

t i. ——.]—*Re* MCGREGOR, [1927] 2 D. L. R. 588; 59 N. S. R. 231.—**CAN.**

sm. *By impossibility of performance—What amounts to.*]—FIRTH *v.* HALLORAN (1926) 38 C. L. R. 261.—**AUS.**

Part XII.—Licences.

869. *Add. Annotation :—As to* (3) **Refd.** Grant *v.* Edmondson, [1931] 1 Ch. 1.

Part XIII.—Easements and Rights affecting Mines.

913. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

1054. *Add. Annotation :*—**Refd.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

1065. *Add. Annotation :*—**Refd.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

1067. *Add. Annotation :*—**Refd.** Pontardawe Rural Council *v.* Moore-Gwyn, [1929] 1 Ch. 656.

1071. *Add. Annotations :—As to* (2) **Consd.** St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1. *As to* (3) **Refd.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114; Wilkins *v.* Leighton, [1932] W. N. 68.

1077. *Add. Annotation :*—**Refd.** Conquer *v.* Boot, [1928] 2 K. B. 336.

1086. *Add. Annotation :*—**Refd.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

1089. *Add. Annotations :*—**Distd.** St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1. **Consd.** Pontardawe Rural District Council *v.* Moore-Gwyn, [1929] 1 Ch. 656. **Distd.** Fardon *v.* Harcourt-Rivington (1932), 48 T. L. R. 215; Wilkins *v.* Leighton, (1932) 76 Sol. Jo. 232. **Apld.** A.-G. *v.* Corke (1932), 48 T. L. R. 650. **Refd.** Glanville *v.* Sutton (1927), 44 T. L. R. 98; G. W. Ry. *v.* S.S. Mostyn, [1928] A. C. 57; Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

Part XIV.—Statutory Regulation of Mines.

1104. *Add. Annotation :—As to* (2) **Refd.** Catton *v.* Ashwell & Nesbit, [1928] Ch. 484.

1106a. Wages agreement—Decision of chairman of conciliation board—Whether award.]—By a Conciliation Board agreement provision was made for the payment of a subsistence allowance to low-paid colliery workers in South Wales, &, the parties having failed to agree as to the amount & conditions of payment, the matter came before the independent chairman of the board, & he gave a decision. The parties failed to agree as to the interpretation of the decision, & representative workmen then brought an action against representative employers for declarations, (*a*) that on the true construction of the decision the subsistence allowance ought to be calculated for each shift separately, & (*b*) as to the method of reckoning overtime for the purpose of calculating subsistence allowance. The judge in chambers, on the grounds that the wages agreement incorporating the conciliation agreement amounted to a submission to arbitration, & that the chairman's decisions were awards, made an order that the action be adjourned & that the awards be remitted to the chairman to deal with the two questions raised by the pleadings. The Ct. of Appeal set aside the order of the judge & granted the declarations claimed :—*Held :* the chairman had decided both questions in favour of pltfs. & they were entitled to the declarations claimed—CARDIFF COLLIERIES, LTD. *v.* MEREDITH (1929), 45 T. L. R. 321, H. L.; *affg.* S. C. *sub nom.* CHARLES *v.* CARDIFF COLLIERIES, LTD. (1928), 44 T. L. R. 448, C. A.

1117a. —— Validity—Failure to give notice to all persons entitled to appoint.]—(1) A checkweigher in a mine appointed by a majority, ascertained by ballot, of the persons employed in the mine, & paid according to the mineral gotten, & acting as such checkweigher, is entitled to payment of a proportionate part of his wages from all persons so employed & paid, & it is no defence to such claim against any one of these persons that another checkweigher has been appointed, during

PART XII. SECT. 1, SUB-SECT. 2.

d i. —— *Assignment.*]—SHAW *v.* ROBINSON (1910), 8 E. L. R. 557.—**CAN.**

PART XII. SECT. 2, SUB-SECT. 3.

sa. *Licence to bore for oil—Royalties payable under—Whether recoverable.*]—Pltf. sought to recover from defts. under a certain deed granting oil-boring rights a sum reserved by the deed by way of rental in the following terms : " Provided further that if after the expiration of the said first 5 years as aforesaid the co., the predecessor in title of present defts., shall commence & regularly & punctually continue to pay to the grantors, the predecessors in title of pltf., for & in respect of the said lands mentioned in the said schedule by equal monthly payments at the rate of . . . then this grant or licence shall remain in full force & effect " :—*Held :* the deed amounted merely to a qualified grant of the rights conferred, depending for its continuance on defts. regularly paying the rentals or royalties therein specified, & implied no covenant by defts. to keep up such payments, which were accordingly not recoverable.—BLOOMFIELD *v.* LYSNAR, [1928] N. Z. L. R. 285.—**N.Z.**

PART XIII. SECT. 1, SUB-SECT. 2.—A.

sb. *Right of tenant against landlord—Landlord proprietor of underground workings causing subsidence.*]—In an action of damages for personal injuries brought by a woman against a colliery co., the pursuer averred that, while residing in a house belonging to defenders of which her son was tenant, she was injured by the fall of a ceiling, due to the fact that, unknown to the pursuer & the other residents in the house, defenders were working their coal seams beneath the house. She further averred that it was the duty of defenders, in working these seams, to avoid any operation which might render the house unsafe for any of its occupants, & that, in breach of this duty, they had proceeded with their operations, although aware that she was living in the house & that its stability was being imperilled :—*Held :* although defenders were under no obligations to pursuer *qua* landlords of the house, her averments set forth a relevant case of negligence towards her on their part *qua* proprietors of the underground workings, which, if established, would entitle her to damages.—M'CORMICK *v.* FIFE COAL CO., [1931] S. C. 19.—**SCOT.**

PART XIV. SECT. 1, SUB-SECT. 2.—B.

r i. —— *Deduction for indebtedness on account of purchased goods—Invalid.*]—R. *v.* DOMINION COAL CO. (1907), 41 N. S. R. 137.—**CAN.**

the material period, by ballot, but not by a majority as aforesaid, to act as checkweigher on his behalf.

(2) A notice convening a meeting to appoint a checkweigher addressed to a part of those entitled to appoint is bad, & the appointment of a person chosen by the subsequent meeting is invalid.—BELL *v.* BENNETT, [1928] 2 K. B. 206; 97 L. J. K. B. 713; 139 L. T. 70; 92 J. P. 106; 44 T. L. R. 424; 72 Sol. Jo. 284; 26 L. G. R. 249, D. C.

1120a. Who entitled to recover—Co-existence of majority & minority checkweighers.]—BELL *v.* BENNETT, No. 1117a, *ante*.

1123. *Add. Annotation :*—**Refd.** Hampton *v.* West Cannock Colliery Co. (1932), 96 J. P. 197.

1124. *Add. Annotation :*—**Consd.** Hampton *v.* West Cannock Colliery Co. (1932), 96 J. P. 197.

1126. *Add. Annotation :*—**Refd.** Hampton *v.* West Cannock Colliery Co. (1932), 96 J. P. 197.

1126a. —— —— **Act need not be unlawful.**]—A checkweigher at a certain pit was also secretary of the local branch of the miners' union of which the men employed at that pit were members. It had been the custom of the district to work a short shift on a Saturday. The colliery gave notice that a full shift would in future be worked at that pit on a Saturday instead of a short shift. The checkweigher tried to persuade the managers of the colliery to work only a short shift on Saturdays. On the Friday he chalked on the pavements in the neighbourhood of the colliery words to the effect that the workmen at that pit had decided at a mass meeting not to work on Saturday unless a short shift should be worked. On Saturday a number of miners assembled at the pit in their pit clothes with their water bottles filled & day's food. After the checkweigher had been told by the manager that the mine would work a full shift instead of a short shift, he went to the men & said: "It's a full shift. Come on, lads," & walked away, & the men did the same & did not work that day:—*Held:* there was evidence upon which the justices were entitled to come to the conclusion that the checkweigher had interfered with the management of the mine contrary to Coal Mines Regulation Act, 1887 (c. 58), s. 13, & to make an order removing him from his office of checkweigher.

Per AVORY, J. It was sufficient that the act of the checkweigher did in fact interfere with the management of the mine. It was not necessary that the act should be unlawful either as being in breach of some statute or unlawful according to the common law.—HAMPTON *v.* WEST CANNOCK COLLIERY CO., LTD., [1932] 2 K. B. 293; 101 L. J. K. B. 366; 147 L. T. 76; 96 J. P. 197; 48 T. L. R. 387; 30 L. G. R. 257.

1132. *Add. Annotation :*— **Consd.** Pockney *v.* Atkinson, [1930] 1 K. B. 197.

1133. *Add. Annotation :—Generally*, **Refd.** Pockney *v.* Atkinson (1929), 45 T. L. R. 639.

1188. *Add. Annotation :*—**Refd.** Edwards *v.* Gwauncaegurwen Colliery Co., James *v.* Same, Jenkins *v.* Same (1926), 96 L. J. K. B. 337.

1190. *Add. Annotation :—As to* (1) **Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

1192. For "—— ——."]—read "**Prohibiting order by Secretary of State—Application of order.**"]

1199. *Add. Annotation :*—**Consd.** Hampton *v.* West Cannock Colliery Co. (1932), 96 J. P. 197.

Part XV.—Quarries.

1228. *Add. Annotation :*—**Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

PART XIV. SECT. 1, SUB-SECT. 9.—A.

sp. *Statutory defence—Nature of.*]—Observations on the nature of the statutory defence competent to mine-owners under Coal Mines Act, 1911 (c. 50), s. 102 (8).—PARK *v.* WILSONS & CLYDE COAL CO., HAGGERTY *v.* WILSONS & CLYDE COAL CO., [1928] S. C. 121.—**SCOT.**

PART XIV. SECT. 1, SUB-SECT. 9.—B. (d).

sq. *Coal Mines Act*, 1911, *s.* 55—*Meaning of dangerous machinery.*]—*Held:* the question whether a part of the machinery in a mine was "dangerous" within Coal Mines Act, 1911, was always one of degree, & sect. 55 did not apply to machinery which, in normal conditions & circumstances, was not a source of danger, & which became dangerous only in the extraordinary & exceptional circumstances of a general breakdown.—TODRICK *v.* HALLIDAY, [1928] S. C. (J.) 61.—**SCOT.**

PART XIV. SECT. 1, SUB-SECT. 9.—B. (j).

sr. *Duty to inspect every part of mine in which work is carried on.*]—*Held:* a disused cut through was part of a mine, in respect of which inspection was necessary.—*Ex p.* DELLACA (1927), 27 S. R. N. S. W. 64; 44 N. S. W. W. N. 39.—**AUS.**

PART XIV. SECT. 1, SUB-SECT. 10.

sw. *Penal Act—Where no penalty imposed—Construction.*]—*Held:* a contravention of the amendment to sect. 4 of Coal Mines Regulations Act, prohibiting the employment of Chinamen, was not made an offence under the Act for which any penalty is imposed, & the penal Act should not be extended beyond the reasonable construction which the words used would bear.—R. *v.* LITTLE (1898), 6 B. C. R. 78; 1 M. M. Cas. 220.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 4.

† i. —— *Mining Act of Ontario, R. S. O.*, 1914 (c. 32), *s.* 164.]—DOYLE *v.* FOLEY-O'BRIEN, LTD. (1915), 7 O. W. N. 780; 8 O. W. N. 362; 34 O. L. R. 42.—**CAN.**

† ii. —— ——.]—HULL *v.* SENECA SUPERIOR SILVER MINES, LTD. (1915), 8 O. W. N. 301; 33 O. L. R. 557; 24 D. L. R. 254.—**CAN.**

MISREPRESENTATION AND FRAUD.

Part I.—Representations Generally.

1. *Add. Annotations :—As to* (1) *&* (2) **Consd.** Sullivan *v.* Constable (1932), 48 T. L. R. 267. *As to* (3) **Refd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

11. *Add. Annotation :—As to* (1) **Refd.** De Tchihatchef *v.* Salerni Coupling, Ltd., [1932] 1 Ch. 330.

12. *Add. Annotation :*—**Refd.** *Re* Wait, [1927] 1 Ch. 606.

16. *Add. Annotation :—Generally.* **Refd.** R. *v.* Kylsant (Lord), [1932] 1 K. B. 442.

24. *Add. Annotation :—As to* (1) **Refd.** Public Trustee *v.* Lancaster Duchy, [1927] 1 K. B. 516.

52. *Add. Annotation :*—**Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

Part II.—How Representations may be Made.

79. *Add. Annotations :*—**Refd.** Jameson *v.* Kinmell Bay Land Co. (1931), 47 T. L. R. 410; Miller *v.* Cannon Hill Estates, Ltd., [1931] 2 K. B. 113.

Part III.—What Constitutes Misrepresentation.

113. *Add. Annotations :*—**Apld.** Hands *v.* Simpson Fawcett (1928), 44 T. L. R. 295. **Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

118. *Add. Annotation :*—**Refd.** Lever Bros., Ltd. *v.* Bell (1930), 47 T. L. R. 47.

119. *Add. Annotations :—As to* (2) **Refd.** Collins *v.* Associated Greyhounds Racecourses (1929), 141 L. T. 529. *Generally.* **Refd.** R. *v.* Kylsant (Lord), [1932] 1 K. B. 442.

138a. —— ——.]—The L. Co., who held more than 99 per cent. of the share capital of the N. Co., agreed with one B. that he should be in the service of the L. Co. for a term of years, during which he should act as chairman of the board of directors of the N. Co. at a salary of £8,000 a year. They made a similar agreement with one S. that he should be vice-chairman of the board at a salary of £6,000 a year. While acting as chairman & vice-chairman respectively, B. & S. entered on their own account into secret speculations in cocoa, a commodity in which the N. Co. dealt, of such a character as, on the finding of the jury in answer to a specific question, would have justified the L. Co. in terminating their agreements of service & the N. Co. in dismissing them from their offices of chairman & vice-chairman. Subsequently the N. Co. became amalgamated with another co., & it became necessary to cancel the appointments of B. & S. as chairman & vice-chairman. Being unaware of the aforesaid breaches of duty by B. & S., the L. Co. agreed to pay to B. £30,000 & to S. £20,000 as compensation for terminating their services; B. & S. agreed to accept these sums, & they were duly paid. The jury, in answer to a further specific question, found that the L. Co. if they had been aware of the breaches of duty by B. & S. would have terminated their agreements, & B. & S. would have been dismissed from their offices without any compensation. The action in which the jury so found was brought in the first instance by the L. Co. alone, the N. Co. being joined in the course of the proceedings as co-pltfs. against B. & S., claiming rescission of the compensation agreements & repayment of the sums paid thereunder on the ground of

PART I. SECT. 2, SUB-SECT. 3.

19 i. *Distinguished from representation.*]—A collateral promise to do some act, though it may effectively induce the promisee to enter into a contract, is not, properly speaking, a representation at all.—LALA HIRA LAL *v.* MUNSHI JAGATPATI SAHAI (1928), I. L. R. 8 Pat. 2.—**IND.**

PART I. SECT. 4.

32 ii. —— ——.]—Since the law is presumed to be equally within the knowledge of both parties to a contract, a misrepresentation of law does not render a contract voidable by the party misled thereby, unless there are special circumstances.—RULE *v.* PALS, [1928] 3 D. L. R. 295; [1928] 2 W. W. R. 123; 22 Sask. L. R. 514.—**CAN.**

32 iii. —— ——.]—A false representation as to a point of law will not support an action for damages.—KAVANER *v.* BOWHEY, [1928] 4 D. L. R. 907; [1928] 3 W. W. R. 267.—**CAN.**

PART I. SECT. 6.

53 i. *Effect—Contents misdescribed—To one unable to read.*]—J. R. WATKINS Co. *v.* MINKE, [1928] 3 D. L. R. 557; [1928] S. C. R. 414.—**CAN.**

53 ii. —— *Printed contract—Where misleading.*]—INTERNATIONAL TRANSPORTATION ASSOCN. INCORPORATED *v.* CAPITAL STORAGE CO., [1928] 4 D. L. R. 480.—**CAN.**

PART I. SECT. 7.

g i. ——.]—LAMB *v.* WALTERS, [1926] App. D. 358.—**S. AF.**

g ii. ——.]—An honest expression of value, even if erroneous, is not a misrepresentation of fact; but a statement of value which is known to the representor not to be the true value cannot be deemed the expression of an honest opinion.—BERGE *v.* GREW, [1928] 1 D. L. R. 361; 23 Alta. L. R. 281; [1927] 3 W. W. R. 811.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—A. (a).

123 i. *Whether amounting to misrepresentation.*]—Where although representations, inducing the making of a contract, are true so far as they go, they do not cover the whole truth, the non-disclosure, whether fraudulent or innocent, may, according to circumstances, so relate to the essence of the contract as to entitle the representee to rescission.—CANADIAN FARM IMPLEMENT CO., LTD. *v.* ALBERTA FOUNDRY & MACHINE CO., LTD. (Alta.), [1927] 2 D. L. R. 871; [1927] 1 W. W. R. 1025.—**CAN.**

123 ii. ——.]—FRIGHT *v.* SCHECK (1863), 10 Gr. 254.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—A. (b).

m i. —— *Fiduciary relationship.*]—PICKFORD *v.* THOMPSON (1902), 40 N. S. R. 632.—**CAN.**

fraudulent misrepresentation, & alternatively, as the House construed the points of claim, on the ground of unilateral mistake induced by fraud, but not on any ground of mutual mistake innocently made by the defts. so far as they were concerned. There was a specific alternative claim that the agreements of settlement & the payments under them were made under a mistake of fact. The jury negatived the charges of fraud, & found that at the time of negotiating the compensation agreements B. & S. had not in mind their breaches of duty:—*Held:* the action failed as to unilateral mistake, on the ground that defts. under their contracts of service with the L. Co. owed no duty to them to disclose the impugned transactions.—BELL *v.* LEVER BROS., LTD., [1932] A. C. 161; 101 L. J. K. B. 129; 146 L. T. 258; 48 T. L. R. 133; 76 Sol. Jo. 50; 37 Com. Cas. 98, H. L.; *revsg.* S. C. *sub nom.* LEVER BROS., LTD. *v.* BELL, K. B. 557, C. A.

Part IV.—Fraudulent and Innocent Misrepresentation.

185. *Add. Annotations:—As to* (1) **Refd.** Clark *v.* Urquhart, Stracey *v.* Urquhart, [1930] A. C. 28. *As to* (2) **Refd.** Greer *v.* Downs Supply Co., [1927] 2 K. B. 28.

187. *Add. Annotation:—Generally*, **Refd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119.

219. *Add. Annotation:*—**Refd.** Torbay Hotel *v.* Jenkins, [1927] 2 Ch. 225.

325. *Add. Annotation:*—**Refd.** Trading Co. L. & J. Hoff *v.* De Rougemont (1928), 34 Com. Cas. 291.

Part V.—Inducement, Materiality, and Alteration of Position.

396. *Add. Annotation:—As to* (2) **Apld.** Clark *v.* Urquhart, Stracey *v.* Urquhart (1929), 141 L. T. 641.

432. *Add. Annotation:*—**Refd.** Collins *v.* Associated Greyhound Racecourses, Ltd., [1930] 1 Ch. 1.

434a. ——.]—HUTCHINSON *v.* MORLEY (1839), 2 Arn. 2; 7 Scott, 341; 3 Jur. 288.

439. *Add. Annotation:*—**Refd.** Lake *v.* Simmons, [1927] A. C. 487.

445a. —— ——.]—Pltf. desired to be present at the first performance of a play at a theatre. He knew that, in consequence of his having made certain serious & unfounded charges against some members of the theatre staff, an application for a ticket in his own name would be refused. He therefore obtained a ticket through the agency of a friend, who bought the ticket at the theatre without disclosing that it was for pltf. By order of deft., the managing director of the theatre, pltf. was refused admission to the theatre on the night in question. Pltf. claimed damages from deft. for maliciously procuring the proprietors of the theatre to break a contract for the admission of pltf. to the theatre, alleged to have been made by them with pltf. by the sale of the ticket:—*Held:* the non-disclosure of the fact that the ticket was bought for pltf. prevented the sale of the

PART IV. SECT. 1, SUB-SECT. 2.—B. (a).

173 ii. ——.]—MACFARLANE *v.* DAVIS (Sask.) (1911), 18 W. L. R. 498—**CAN.**

sd.——*Pleading.*]—Where a declaration alleged that representations were made by deft. falsely & fraudulently, to induce pltf. to act upon them, but did not contain any allegation that deft. knew the representations so made by him to be false:—*Held:* the declaration was sufficient.—MCKAY *v.* CAMPBELL (1871), 8 N. S. R. (2 G. & O.) 475.—**CAN.**

se. —— ——.]—The declaration alleged that deft. before the committing of the grievance, etc., was a carrier & express agent; that pltf. delivered to one W. a sum of money to be handed to deft., to be carried & delivered to S., & that deft. falsely & fraudulently represented to pltf. that W. had delivered said money to him, whereby pltf. was satisfied of the fact, whereas in truth it had not been so delivered, but appropriated by W. to his own use; & by reason of such false & fraudulent representation W. obtained time to & did abscond, & pltf. lost said money, which he would otherwise have recovered from W.:—*Held:* it was unnecessary to allege that deft. knew the representations to be false, the words falsely & fraudulently being equivalent to knowingly.—YOUNG *v.* VICKERS (1872), 32 U. C. R. 385.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 8.—A.

300 iii. —— ——.]—ELLIOTT *v.* DALGETY & CO., LTD., [1929] Argus L. R. 201; [1929] S. R. (Q). 253.—**AUS.**

PART IV. SECT. 1, SUB-SECT. 8.—C.

d i. —— *Conversation with third party.*]—FITZPATRICK *v.* MICHEL (1928), 28 S. R. N. S. W. 285; 45 N. S. W. W. N. 69.—**AUS.**

PART V. SECT. 1, SUB-SECT. 1.

337 v. ——.]—CANADIAN BANK OF COMMERCE *v.* DISTRICT REGISTRAR OF WINNIPEG, [1929] 4 D. L. R. 318; 2 W. W. R. 467; 38 Man. L. R. 275; *affg.*, [1928] 3 W. W. R. 630.—**CAN.**

337 vi. ——.]—Since in an action for deceit pltf. cannot succeed without proof of deft.'s fraudulent intent, deft.'s state of mind is of the essence of the case; & the inference as to what his state of mind was is one which the jury must make for itself from the facts given in evidence.—MCLEOD *v.* HUGHES, [1930] 1 W. W. R. 835; 2 D. L. R. 937 24 Alta. L. R. 427.—**CAN.**

337 vii. ——.]—A claim for damages for misrepresentation inducing the making of a contract cannot be sustained in the absence of proof of a fraudulent intent.—WHITNEY *v.* MACLEAN, [1932] 1 W. W. R. 417.—**CAN.**

PART V. SECT. 1, SUB-SECT. 6.—C. (c).

428 i. *Admission that inducement not relied on.*]—S. purchased certain farming land from the C. Co. S. brought an action against the co. & H. its managing director jointly, claiming damages incurred by him as a result of being induced to purchase the land by reason of the fraudulent representations made to him by the co. & H. The jury returned a verdict in favour of S. In cross-examination S. admitted that he had had experience as a dairy farmer in other parts of the State, & that he went over the land in question before purchasing it & had used his own judgment in what he saw:—*Held:* the jury were not bound to interpret the admission made by S. as being that he had relied exclusively on his own judgment, but might accept it as meaning that he applied his own judgment to the facts presented to him by his own observations & by the information he derived from defts.—SAGAR *v.* CLOSER SETTLEMENT, LTD. (1929), 29 S. R. N. S. W. 199; 46 N. S. W. W. N. 79.—**AUS.**

ticket from constituting a contract as alleged, the identity of pltf. being in the circumstances a material element in the formation of the contract, & the action failed.—SAID *v.* BUTT, [1920] 3 K. B. 497; 90 L. J. K. B. 239; 124 L. T. 418; 36 T. L. R. 762.

Annotations :—**Consd.** Dyster *v.* Randall, [1926] Ch. 932. **Apld.** Scammell *v.* Hurley, [1929] 1 K. B. 419. **Refd.** A.-G. *v.* Walkergate Press, Ltd., Same *v.* Bloomfield, Same *v.* Carlton (1930), 142 L. T. 408.

454. *Add. Annotation :*—**Refd.** South London Greyhound Racecourses, Ltd. *v.* Wake, [1931] 1 Ch. 496.

455. *Add. Annotation :*—**Refd.** James *v.* British General Insce., [1927] 2 K. B. 311.

Part VI.—Who are deemed Parties to the Representation.

464. *Add. Annotations :*—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119; **Refd.** Konskier *v.* Goodman, [1928] 1 K. B. 421.

Part VII.—Remedies for Misrepresentation.

SUB-SECT. 3.—INJUNCTION (Vol. XXXV., p. 52). For "**Passing off action.**]—*See* TRADE & TRADE UNIONS" read "**Passing off action.**]—*See* TRADE MARKS, Vol. XLIII., pp. 264 *et seq.*"

474. *Add. Annotations :*—**Consd.** Bottomley *v.* Bannister, [1932] 1 K. B. 458; McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119.

486. *Add. Annotation :*—**Consd.** Sullivan *v.* Constable (1932), 48 T. L. R. 267.

493. *Add. Annotation :*—**Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

509. *Add. Annotations :*—**Refd.** Houghton *v.* Nothard, Lowe & Wills (1927), 44 T. L. R. 76; Ariff *v.* Rai Jadunath Majumdar Bahadur (1931), 47 T. L. R. 238.

PART V. SECT. 3.

sf. *Representation relating to restrictive covenant.*]—Where a person entitled to the benefit of a restrictive covenant has made a positive representation to another person, that the covenant will not be enforced as against him, & has thereby induced the other person to alter his position for the worse, so that it would be unjust to ask a ct. of equity to compel the performance of the covenant by injunction, the representation raises an equity which debars a claim for equitable relief in respect of the covenant.—GREATER SYDNEY DEVELOPMENT ASSOCN., LTD. *v.* RIVETT (1929), 29 S. R. N. S. W. 356; 46 N. S. W. W. N. 99.—**AUS.**

PART VII. SECT. 1.

468 i. *Damages & rescission alternative—Except as to damages due to partial execution of contract.*]—A party to a contract entitled to have it declared rescinded on the ground of fraudulent misrepresentations may, in addition to rescission, obtain judgment for damages for any loss incurred by him owing to his partial execution of it. The rule that a party who has been led into a contract by fraud cannot both repudiate the contract & recover damages contemplates those damages which are given for breach of contract & which, therefore, are incompatible with repudiation.—HILL *v.* STEPHEN MOTOR & AERO CO., LTD., [1929] 3 D. L. R. 676; 2 W. W. R. 97; 23 S. L. R. 552; *revsg.*, [1929] 2 D. L. R. 556.—**CAN.**

468 ii. ——.]—MORGAN *v.* HUDSON BAY MINING & SMELTING CO., [1930] 2 D. L. R. 587.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 2.—A.

531 iv. —— ——.]—IRVING *v.* MERYGOLD (1847), 5 U. C. R. 272.—**CAN.**

531 v. —— ——.]—ADAIR *v.* TILTON, [1928] 4 D. L. R. 183; [1928] 3 W. W. R. 92.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 2.—B.

543 i. *General rule—Proof of damage necessary.*]—In order to establish a cause of action for deceit pltf. must not only allege but also prove that he suffered actual damage in consequence of deft.'s false representation.—CALGARY HERALD, LTD. *v.* BARNES CORPN., [1929] 1 D. L. R. 992; 1 W. W. R. 428; 24 Alta. L. R. 120; *revsg.*, [1929] 1 D. L. R. 114; [1928] 3 W. W. R. 543.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 2.—C.

549 v. ——.]—In an action of deceit:—*Held :* the co. whose bonds pltf. had been induced by deft. applt. to buy was not, as represented by applt., "an established industry making money," & since applt. knew it was not & pltf. was induced by said representation into making the purchase, he was entitled to damages.—FERGUSON *v.* NORTHWEST BRICK & SUPPLY CO., LTD., [1931] 1 W. W. R. 543; [1931] 2 D. L. R. 275; 25 Alta. L. R. 198.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 5.—A.

sa. *Misrepresentation as to number of sheep—Date of ascertaining number for assessment of damages.*]—On a claim for damages for fraudulent misrepresentation, it was found that in order to induce pltf. to enter into an agreement on Aug. 15, 1928, deft. fraudulently represented that, in his opinion, there were 7,000 ewes of the value of 25*s.* each depasturing on a certain property. A muster made on Sept. 18, 1928, showed that there were 4,050 ewes then on the property:—*Held :* in assessing the amount of damages, Aug. 15 & not Sept. 18 was the date on which the number & value of the ewes should be ascertained.—GERAGHTY *v.* RIDGE, [1929] S. R. (Q.) 205.—**AUS.**

PART VIII. SECT. 1, SUB-SECT. 5.—B.

572 i. *Damage must be natural result of representation.*]—GOSSE-MILLERD, LTD. *v.* DEVINE, [1928] 2 D. L. R. 869 [1928] S. C. R. 101.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 5.—C.

583 iii. ——.]—BLOIS *v.* CITY OF HALIFAX (1921), 54 N. S. R. 207; 56 D. L. R. 239.—**CAN.**

583 iv. ——.]—JENSEN *v.* LEACH, [1931] 2 W. W. R. 815.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 5.—D.

588 viii. ——.]—In an action for damages for deceit, pltfs. alleged false representations by deft. in regard to land in B. C. which deft. had conveyed to pltf. in exchange for land in A.:—*Held :* deft. made no knowingly false representations as to the situation of the western boundary of the land, or as to the amount of timber upon the land; but deft. did represent to pltf. that there were two springs upon the land, which was not the truth, as he knew, & that this misrepresentation was material, was relied upon by pltf., & constituted fraud & deceit which rendered deft. liable in damages. The true measure of damages was the difference between the value of the land, without the springs & its value assuming the springs to be on it as represented.—PERRY *v.* DOWNS (1913), 24 W. L. R. 407; 11 D. L. R. 670.—**CAN.**

593 i. *Date of ascertainment of value—Date of purchase.*]—HARDMAN *v.* MCLEOD (1926), 26 S. R. N. S. W. 578; 43 N. S. W. W. N. 194.—**AUS.**

Part IX.—Proceedings for Rescission.

634. *Add. Annotation :*—**Refd.** Lynn *v.* Bamber, [1930] 2 K. B. 72.

645. *Add. Annotation :—As to* (3) **Refd.** Lynn *v.* Bamber, [1930] 2 K. B. 72.

649. *Add. Annotation :*—**Refd.** Public Trustee *v.* Lancaster Duchy, [1927] 1 K. B. 516.

673. *Add. Annotation :*—**Consd.** Delavenne *v.* Broadhurst (1930), 70 L. Jo. 355.

682. *Add. Annotation :*—**Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

686. *Add. Annotation :*—**Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

695. *Add. Annotations :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes (1928), 139 L. T. 416; May *v.* May (1929), 98 L. J. K. B. 770.

725. *Add. Annotation :*—**Refd.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293.

748. *Add. Annotations :*—**Refd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399; Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557.

751a. ——.]—STEEDMAN *v.* FRIGIDAIRE CORPN., [1932] W. N. 248; 74 L. Jo. 405, P. C.

755. *Add. Annotation :*—**Refd.** Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557.

Part X.—Misrepresentation as a Defence.

774. *Add. Annotation :*—**Refd.** *Re* Wait, [1927] 1 Ch. 606.

Part XI.—Effect of Fraud on Innocent Parties.

782. *Add. Annotation :*—**Refd.** *Re* Lloyds Bank, Ltd., Bomze *v.* Bomze (1930), 47 T. L. R. 38.

794. *Add. Annotation :*—**Refd.** Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114.

PART IX. SECT. 1, SUB-SECT. 1.

616 viii. —— ——.]—An action for the rescission of an executory contract for the sale of land will lie on the ground of a material innocent misrepresentation inducing the contract, & in such action it is not necessary for pltf. to establish that the misrepresentation is such as to go to the root of the consideration, the test of materiality being the same as that applicable where it is sought to set aside a contract on the ground of fraud.—WILSON *v.* BRISBANE CITY COUNCIL, [1931] S. R. (Q.) 360.—**AUS.**

PART IX. SECT. 1, SUB-SECT. 2.—B.

639 ii. —— ——.]—Where a party to a contract seeks to vitiate it for fraud he is under the burden of pleading & establishing facts sufficient for that purpose. The burden of proof cannot be shifted until he has established a *primâ facie* case.—LASBY *v.* JOHNSON & SIGMETH, [1928] 4 D. L. R. 956; [1928] 3 W. W. R. 447.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 2.—C.

642 iv. ——.]—WHEELER *v.* ATKINSON (1920), 28 W. A. L. R. 12.—**AUS.**

PART IX. SECT. 1, SUB-SECT. 2.—D.

648 i. *Whether ground for dismissing entire action.*]—Where a statement of claim which alleges fraud also alleges other facts sufficient, if proved, to entitle pltf. to judgment although no fraud is proved, the failure to prove fraud does not prevent pltf. from recovering.—MACLEAN *v.* REIDRUG, LTD., [1932] 1 W. W. R. 223.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 3.—A.

sd. *Sale of assets & goodwill—Misrepresentation that trade mark registered.*]—Deft., managing director & chief owner in deft. co. entered into an agreement for sale of the assets & goodwill of the co. to pltfs., including a secret formula & trade mark which deft. represented as duly registered :—*Held :* the statement that a trade mark was registered when it was not is a material misrepresentation upon which rescission of a contract will be ordered.—SCEATS & MURRAY *v.* YOUNG (1930), 43 B. C. R. 321.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 1.

703 v. ——.]—CANADIAN CREDIT MEN'S TRUST ASS'N *v.* BUNGALOW CONSTRUCTION CO., [1928] 2 D. L. R. 84.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 4.—A.

708 i. *When ordered.*]—HESS *v.* ROSS (Sask.) (1912), 22 W. L. R. 742; 3 W. W. R. 251; 8 D. L. R. 798.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 5.—C.

722 i. *General rule.*]—KLEYNHAUS BROTHERS *v.* WESSELS' TRUSTEE, [1927] App. D. 271.—**S. AF.**

PART IX. SECT. 3, SUB-SECT. 6.

742 ii. ——.]—CARRIQUE *v.* CATTS (1914), 7 O. W. N. 500; 32 O. L. R. 548.—**CAN.**

742 iii. ——.]—MORIN *v.* ANGER, [1931] 1 D. L. R. 827; 66 O. L. R. 327.—**CAN.**

742 iv. ——.]—WEYERMAN *v.* FAGEOL MOTOR SALES CO., [1931] 2 D. L. R. 817.—**CAN.**

742 v. ——.]—Pltf. corpn. sued deft. for the price of a refrigeration plant furnished to & used by deft. The contract was brought about by the payment of a secret commission to L., an agent of deft. The trial judge gave judgment rescinding the contract & directing repayment with interest, but, on appeal :—*Held :* the conduct of deft. in operating the refrigerating apparatus made it impossible to reinstate the parties in their former positions & the judgment must be set aside.—FRIGIDAIRE CORPN. *v.* STEEDMAN, [1931] 3 D. L. R. 370; O. R. 285.—**CAN.**

PART IX. SECT. 3, SUB-SECT. 9.

757 vii. —— ——.]—In proceedings for curial rescission of a contract to take shares, the shareholder's claim for rescission may be barred by laches or delay on the ground that equity will not lend its aid to those who sleep on their rights.—*Re* LUCKS, LTD. (SERPELL'S CASE), [1928] V. L. R. 466; [1928] Argus L. R. 288.—**AUS.**

757 viii. —— ——.]—CAHILL *v.* NICHOLLS, [1929] 1 D. L. R. 239.—**CAN.**

PART X. SECT. 3, SUB-SECT. 1.

773 ii. A doctor sold his practice for £500. The purchaser paid two instalments of the price, but, when sued for the balance of the price, he stated in defence that he had been induced to enter into the contract by the false & fraudulent misrepresentations of the seller :—*Held :* the purchaser's claim of damages, being illiquid, & based not upon the contract of sale but upon delict, could not constitute a relevant defence to the action, & could not be dealt with as a counterclaim in that action.—SMART *v.* WILKINSON, [1928] S. C. 383.—**SCOT.**

PART XI.

r i. *S. P.* RUTLEDGE *v.* ANDERSON (1914), 27 W. L. R. 75; *affd.* (1915), 28 W. L. R. 393; 20 D. L. R. 97; 24 Man. L. R. 403.—**CAN.**

MISTAKE.

Part II.—Mistake of Law.

27. *Add. Annotations :—As to* (1) **Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258. *As to* (2) **Consd.** Robert A. Munro & Co. *v.* Meyer, [1930] 2 K. B. 312.

31. *Add. Annotation :*—**Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

34. *Add. Citation :—previous proceedings, sub nom.* AINSWORTH *v.* WILDING, [1896] 1 Ch. 673.

Add. Annotation :—Generally, **Refd.** Kinch *v.* Walcott, [1929] A. C. 482.

36a. —— **Payment of tax.**]—The suppliant co. paid betting duty under Finance Act, 1926 (c. 22), s. 15, in respect of a totalisator, & afterwards the House of Lords, in a precisely similar case, held that betting duty was not payable. The suppliant co. then presented a petition of right claiming the return of the amount of the duty on the ground that it had been paid under a mistake of fact :—*Held :* the suppliants' mistake as to their liability to the duty was a mistake of law & not of fact, & therefore they could not recover.—NATIONAL PARI-MUTUEL ASSOCN., LTD. *v.* R. (1930), 47 T. L. R. 110, C. A.

Part III.—Mistake of Fact.

58a. ——.]—The L. Co., who held more than 99 per cent. of the share capital of N. Co., agreed with one B. that he should be in the service of L. Co. for a term of years, during which he should act as chairman of the board of directors of N. Co. at a salary of £8,000 a year. They made a similar agreement with one S. that he should be vice-chairman of the board at a salary of £6,000 a year. While acting as chairman & vice-chairman respectively, B. & S. entered on their own account into secret speculations in cocoa, a commodity in which N. Co. dealt, of such a character as, on the finding of the jury in answer to a specific question, would have justified the L. Co. in terminating their agreements of service & N. Co. in dismissing them from their offices of chairman & vice-chairman. Subsequently N. Co. became amalgamated with another co., & it became necessary to cancel the appointments of B. & S. as chairman & vice-chairman. Being unaware of the aforesaid breaches of duty by B. & S., L. Co. agreed to pay to B. £30,000 & to S. £20,000 as compensation for terminating their services ; B. & S. agreed to accept these sums, & they were duly paid. The jury, in answer to a further specific question, found that the L. Co. if they had been aware of the breaches of duty by B. & S. would have terminated their agreements, & B. & S. would have been dismissed from their offices without any compensation. The action in which the jury so found was brought in the first instance by the L. Co. alone, N. Co. being joined in the course of the proceedings as co-pltfs., against B. & S., claiming rescission of the compensation agreements & repayment of sums paid thereunder on the ground of fraudulent misrepresentation, & alternatively, as the House construed the points of claim, on the ground of unilateral mistake induced by fraud, but not on any ground of mutual mistake innocently made by the defts. so far as they were concerned. There was a specific alternative claim that the agreements of settlement & the payments under them were made under a mistake of fact. The jury negatived the charges of fraud, & found that at the time of negotiating the compensation agreements B. & S. had not in mind their breaches of duty :—*Held :* the action failed ; as to mutual mistake, on the ground that the mutual mistake related not to the subject-

PART II. SECT. 2, SUB-SECT. 1.

11 v. ——.]—*Held :* even if the money had been paid under a mistake of law, it could not be recovered back. —CAULFIELD *v.* ARNOLD (No. 2), [1925] 1 D. L. R. 298 ; 34 B. C. R. 398.—**CAN.**

11 vi.——.]—Where a licence fee is demanded by a municipality under a claim of right, without fraud or imposition, & the person of whom it is demanded knows that it is demanded only by reason of a certain bye-law, & chooses to yield to the demand rather than contest it, the payment is regarded as a voluntary one & the money cannot be recovered back even if the bye-law was *ultra vires.*—COLWOOD PARK ASSOCN., LTD. *v.* OAK BAY CORPN., [1928] 3 D. L. R. 812 ; [1928] 2 W. W. R. 593.—**CAN.**

PART II. SECT. 2, SUB-SECT. 2.

a i. —— *Payment of tax.*]—Money paid voluntarily to a municipal corporation under a claim of right, without fraud or imposition, for a tax or licence cannot, without statutory aid, be recovered back, even though such tax or licence could not have been legally demanded or enforced.—FOWLER & ANDREWS *v.* SPALLUMCHEEN TOWNSHIP, [1930] 3 W. W. R. 12 ; 53 B. C. R. 47.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.

53 ii. —— ——.]—Deft. as purchaser signed a contract of sale & purchase of a piece of land, which, in her ignorance, she believed was a contract for the purchase of an option to purchase the land. Deft., however, pleaded that she informed pltf.'s agent that she desired an option only, & that later the agent saw her & said that he had seen pltf. & "fixed it up." She alleged that the contract which was signed was put forward & signed in the belief that it gave effect to an agreement for an option only. The jury found that such belief was not induced by the representations of pltf.'s agent :—*Held :* as deft. had herself misconstrued the document she was bound by the contract, &, as she had charged fraud & failed, she should not succeed on another ground.—BURROWS *v.* WINTER (1931), 24 Tas. L. R. 45.—**AUS.**

58a. *Ignorance of rights dependent on mixed questions of law & fact—Mistake of title—"Belief."*]—In K. B. R. 603, which provides for the relief of a person who makes lasting improvements on the land of another under the belief that it is his own, the words "under the belief that the land is his own" imply a mistake regarding sufficiency of title & not a mistake regarding the boundaries of his own land ; &, even if the rule covers mistakes as to boundaries, the "belief" must be real, *bonâ fide* & reasonable, that is, it must be founded on information or assurances such as would guide an ordinarily careful & competent man, & not predicted merely on the absence of information or inquiry, especially where inquiry is suggested by the nature of the circumstances.—AUMANN *v.* MCKENZIE, [1928] 3 W. W. R. 233.—**CAN.**

matter, but to the quality of the service contracts.—BELL *v.* LEVER BROS., LTD., [1932] A. C. 161; 101 L. J. K. B. 129; 146 L. T. 258; 48 T. L. R. 133; 76 Sol. Jo. 50; 37 Com. Cas. 98, H. L.; *revsg.* S. C. *sub nom.* LEVER BROS., LTD. *v.* BELL, [1931] 1 K. B. 557, C. A.

64. *Add. Citations:*—96 L. J. K. B. 621; 137 L. T. 233; 43 T. L. R. 417; 33 Com. Cas. 16, H. L.

65. *Add. Annotation:*—**Refd.** Greer *v.* Downs Supply Co., [1927] 2 K. B. 28.

66. *Add. Annotation:*—**Consd.** Greer *v.* Downs Supply Co., [1927] 2 K. B. 28.

71. *Add. Annotation:*—**Refd.** Lake *v.* Simmons, [1927] A. C. 487.

72. *Add. Annotation:*—**Refd.** Greer *v.* Downs Supply Co., [1927] 2 K. B. 28.

75. After this case add "*See, also,* MISREPRESENTATION & FRAUD, No. 445a."

85. *Add. Annotation:*—*As to* (2) **Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

86. *Add. Annotation:*—**Refd.** Chaney *v.* Maclow, [1929] 1 Ch. 461.

87. *Add. Citations:*—96 L. J. Ch. 38; 136 L. T. 235.

94. *Add. Annotations:*—**Apld.** Kennedy *v.* Thomassen, [1929] 1 Ch. 426. **Consd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

After this case add "*See, also,* CONTRACT, No. 3081a."

95. *Add. Annotations:*—**Consd.** Lever Bros., Ltd. *v.* Bell (1931), 146 L. T. 258. **Refd.** Robert A. Munro & Co. *v.* Meyer, [1930] 2 K. B. 312.

100. *Add. Annotations:*—**Consd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258. **Refd.** Robert A. Munro & Co. *v.* Meyer, [1930] 2 K. B. 312.

101. *Add. Annotation:*—**Refd.** Lever Bros., Ltd. *v.* Bell (1930), 47 T. L. R. 47.

125. *Add. Annotations:*—*As to* (1) **Consd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628. *As to* (3) **Apld.** London Holeproof Hosiery Co. *v.* Padmore (1928), 44 T. L. R. 499. **Consd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258; Sullivan *v.* Constable (1932), 48 T. L. R. 369.

135. *Add. Annotation:*—**Consd.** Lever Bros., Ltd. *v.* Bell (1930), 47 T. L. R. 47.

157. *Add. Annotation:*—**Refd.** Lawrence *v.* Cassel, [1930] 2 K. B. 83.

173. *Add. Annotation:*—*Generally,* **Refd.** Home & Colonial Insce. *v.* London Guarantee & Accident Co. (1928), 45 T. L. R. 134.

Part IV.—Mistake in Expression of Intention and Relief Therefor.

203a. ——.]—P. & M., who had been partners as garage proprietors, agreed to dissolve the partnership as from Mar. 4, 1929, on the terms, as was found, that M. should take over all liabilities of the firm incurred after Mar. 4. P. informed his father, who was a solr., of the dissolution of the partnership, & the father prepared a written agreement to carry it out. By this document M. was made liable to indemnify P. in respect of all rent due before Mar. 4. This agreement was handed to M., who was asked to read it, & he looked through it & signed it, although he said he could not understand it. On a claim by P. to be indemnified in accordance with the written agreement in respect of rent accrued due before Mar. 4, M. pleaded that he signed the agreement under the belief that it embodied the oral agreement of Mar. 4, that it was drawn up under a mutual mistake of fact, & that the only agreement arrived at was that M. should indemnify P. to the extent agreed upon orally. Fraud was not pleaded, nor was rectification claimed in the pleadings. At the trial the judge found that M. signed the agreement handed to him with practically no consideration of its terms, & that as a stipulation had been inserted therein which he had not orally agreed to, that term could not be relied upon, &, accordingly, that the written agreement must be rectified to make it conform to the oral agreement. P. appealed:—*Held:* (1) as M. knew that the agreement which he signed was an agreement for the dissolution of the partnership between him & P., it was not open to him, in the absence of fraud or misrepresentation by P. as to the legal effect of the document, to rely on the plea of *non est factum* merely because if he had carefully read & understood the document he would have objected to one of its terms as not in accordance with the oral agreement; (2) in the absence of any allegation of fraud or conduct amounting to fraud, & in the absence of any claim for rectification, it was not open to the judge to rectify the written agreement; (3) there was no evidence of mutual mistake.—BLAY *v.* POLLARD & MORRIS, [1930] 1 K. B. 628; 99 L. J. K. B. 421; 143 L. T. 92; 74 Sol. Jo. 284, C. A.

PART III. SECT. 2, SUB-SECT. 3.

e i. —— *Mistake as to identity of payee—Intention of payor—Question for jury.*]—BUNGE (AUSTRALIA) PTY., LTD. *v.* YING SING (1928), 28 S. R. N. S. W. 265; 45 N. S. W. W. N. 60.—**AUS.**

PART III. SECT. 2, SUB-SECT. 7.

1 i. ——.]—BURKE *v.* RITCHIE (1906), Cout. 365.—**CAN.**

PART III. SECT. 2, SUB-SECT. 8.—A.

r i. —— —— ——.]—ARMSTRONG *v.* WRIGHT (1930), 2 M. P. R. 309.—**CAN.**

r ii. —— —— ——.]—TATTRIE *v.* DYKINS (1930), 2 M. P. R. 118.—**CAN.**

PART III. SECT. 2, SUB-SECT. 8.—C.

sb. *Assignment of judgment.*]—The assignment specifically mentioned two judgments, & the judgment in question was a third judgment owned by the assignor:—*Held:* since at the time of the assignment the assignee did not have said third judgment in mind at all & it was not mentioned, there was no *consensus ad idem* with respect to it, &, therefore, the assignment did not cover it, although the assignor was willing to assign it, & believed he was assigning it.—RYGUS *v.* ZAWITKOWSKI & ROSS, [1928] 1 D. L. R. 521; [1928] 1 W. W. R. 332; 22 Sask. L. R. 305.—**CAN.**

PART III. SECT. 2, SUB-SECT. 9.—C.

d i. —— ——.]—STINSON *v.* MOORE (1863), 10 Gr. 94.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 1.—A.

192 ii. ——.]—MASTER *v.* PHIPPS (1855), 5 Gr. 253.—**CAN.**

Part V.—Relief in Cases of Mistake.

216. *Add. Annotation :*—**Consd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

244. *Add. Annotations :*—**Refd.** Robert A. Munro & Co. *v.* Meyer, [1930] 2 K. B. 312 ; Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557.

249. *Add. Annotation :*—*As to* (1) **Refd.** Public Trustee *v.* Lancaster Duchy, [1927] 1 K. B. 516.

254. *Add. Annotation :*—**Refd.** Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557.

293. *Add. Annotation :*—**Refd.** Eagle Star & British Dominions Insce. *v.* Reiner (1927), 43 T. L. R. 259.

300a. ——.]—Blay *v.* Pollard & Morris, No. 203a, *ante*.

308. *Add. Annotation :*—*As to* (2) **Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

403. *Add. Annotation :*—**Refd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

414a. —— ——.]—Smith *v.* Pawson (1855), 25 L. T. O. S. 40, C. A.

420. *Add. Annotations :*—**Expld.** *Re* Mason (1928), 97 L. J. Ch. 321. **Refd.** *Re* Blake, *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251.

Part VI.—Recovery of Money Paid under Mistake.

458. *Add. Annotation :*—**Apld.** Home & Colonial Insce. *v.* London Guarantee & Accident Co. (1928), 45 T. L. R. 134.

463. *Add. Annotation :*—**Refd.** *Re* Regent Finance & Guarantee Corpn., Ltd. (1930), 69 L. Jo. 283.

464a. Mistake must have been cause of payment.]—Where an action was brought for money paid under a mistake of fact, & pltf.'s evidence showed that if he had known of the fact, his ignorance of the law would still have led him to pay :—*Held :* as knowledge of the fact would not have affected his conduct the action failed.—Home & Colonial Insurance Co., Ltd. *v.* London Guarantee & Accident Co., Ltd. (1928), 45 T. L. R. 134 ; 73 Sol. Jo. 60 ; 34 Com. Cas. 163.

471. *Add. Annotation :*—**Refd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

PART V. SECT. 2, SUB-SECT. 1.

216 ii. —— *Mistaken belief that money due—Onus of proof on plaintiff.*]—Recsey *v.* Reiche, [1927] App. D. 554.—**S. AF.**

PART V. SECT. 3, SUB-SECT. 1.—C. (b).

r i. —— ——.]—Mahon *v.* McLean (1867), 13 Gr. 361.—**CAN.**

PART V. SECT. 3, SUB-SECT. 2.—A. (a).

282 iii. *Revsd.* on other grounds, [1919] 3 W. W. R. 480 ; 48 D. L. R. 447.

282 ix. —— ——.]—Samson *v.* Butt, [1927] N. Z. L. R. 119.—**N.Z.**

282 x. —— ——.]—An agreement for the sale of mineral claims held to have been entered into under a mistake common to both parties, they thinking that they were contracting with respect to claims of a reasonable size, whereas the claims in question were in fact substantially encroached upon by a previously Crown granted claim. The purchasers were, therefore, held entitledto an abatement of the purchase-price.—Barron *v.* Morgan & Silver Leaf Mines, Ltd., [1930] 3 W. W. R. 65 ; 4 D. L. R. 985 ; 43 B. C. R. 84.—**CAN.**

sf. *Reasonableness of mistake.*]—*Held :* not a question in issue.—Tshoba Colliery (Natal), Ltd. *v.* Tshoba Coal Syndicate, Ltd. (1926), 47 N. L. R. 526.—**S. AF.**

PART V. SECT. 3, SUB-SECT. 2.—A. (b).

300 ii. ——.]—Cottingham *v.* Boulton (1857), 6 Gr. 186.—**CAN.**

300 iii. —— *Unless induced by other party.*]—*Re* Gold Medal Furn. Mfg. Co., *Ex p.* Scythes & Co. (Ont.), [1927] 2 D. L. R. 323 ; 8 C. B. R. 169.—**CAN.**

PART V. SECT. 3, SUB-SECT. 2.—A. (f).

326 i. *Whether granted.*]—Where an instrument purporting to evidence an agreement for the sale of land does not accurately represent the true agreement, the ct. will entertain an action to have it rectified & for the specific performance of the real agreement, even though only oral evidence is adduced in support of the claim for rectification.—Lings *v.* Zbryski, [1930] 3 W. W. R. 415 ; 4 D. L. R. 1040.—**CAN.**

PART V. SECT. 4, SUB-SECT. 1.—B. (a).

363 iii. —— ——.]—Even in a common-law action on a written contract, the defence of mutual mistake may be raised, & parol evidence admitted to support it, although deft. does not claim rectification or rescission of the contract.—Clark *v.* Appleby, [1928] 2 D. L. R. 95 ; [1928] 1 W. W. R. 784.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 1.

456 v. ——.]—Maxwell E. J., Ltd. *v.* Bank of Nova Scotia, [1929] 1 D. L. R. 616 ; 63 O. L. R. 323 ; *revsg.* [1928] 4 D. L. R. 490 ; 62 O. L. R. 660.—**CAN.**

sg. *Extent of onus of proof.*]—In order to succeed in an action to recover back money paid under a mistake of fact pltf. must prove, not only the mistake of fact which induced him to part with the money, but also that under the particular circumstances the law is able to impute to deft. the fiction of a promise to repay it. The conditions under which the law will impute such a promise cannot, it seems, be reduced to a common formula.—Garden River Rural Municipality *v.* Montreuil, [1928] 3 W. W. R. 22 ; *affd.*, [1929] 2 D. L. R. 396 ; 1 W. W. R. 486 ; 23 S. L. R. 439.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 2.

466 i. *General rule.*]—In a proper case money paid under a mistake of fact may be recovered back. The four conditions of a proper case are : (*a*) the mistake was an honest one, *i.e.* there was a genuine *bonâ fide* belief on the part of the payer of the money that certain facts existed which did not exist ; laches or negligence do not of themselves affect the *bona fides* of his belief, & means of knowledge will not impute knowledge unless he wilfully abstained from inquiry ; (*b*) the mistake must have been between the payer & the receiver of the money, *i.e.* the receiver must have been in some way a party to the mistake, either as inducing it or as responsible for it or connected with it ; (*c*) the facts as they were believed to be must have imposed an obligation, legal, equitable or moral, to make the payment ; (*d*) the receiver of the money had no legal, equitable or moral right to retain the money as against the payer.—Royal Bank of Canada *v.* R., [1931] 1 W. W. R. 709 ; 2 D. L. R. 685.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 3.

475 xix. ——.]—Canadian Mortgage Assocn. *v.* R., [1917] 1 W. W. R. 1130 ; 10 Sask. L. R. 30 ; 33 D. L. R. 43.—**CAN.**

475 xx. —— ——.]—The rule that where money is paid upon the supposition that a specific fact, which if true would entitle the payee to the money, is true, but it is in reality untrue, the money may, generally speaking, be recovered back, was applied herein in favour of pltf., a co. engaged in financing the sale of motor cars, where it advanced money to deft., a wholesale dealer in cars, thinking that it was dealing with respect to & obtaining title to a car then being sold by deft., whereas in truth the car in question had, without the knowledge of deft., & through the

487. *Add. Annotation :—As to* (2) **Apld.** Home & Colonial Insce. *v.* London Guarantee & Accident Co. (1928), 45 T. L. R. 134.

511. *Add. Annotations :*—**Consd.** *Re* Mason (1928), 97 L. J. Ch. 321. **Refd.** Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292.

533. *Add. Annotations :—As to* (1) **Refd.** Marconi's Wireless Telegraph Co. *v.* Newman [1930] 2 K. B. 292. *As to* (2) **Distd.** Reckitt *v.* Barnett, Pembroke & Slater (1927), 44 T. L. R. 63. **Refd.** Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557. *Generally*, **Refd.** Home & Colonial Insce. *v.* London Guarantee & Accident Co. (1928), 45 T. L. R. 134.

536. *Add. Annotation :*—**Consd.** *Re* Mason (1928), 97 L. J. Ch. 321. **Refd.** *Re* Blake, *Re* Minahan's Petition of Right, [1932] 1 Ch. 54.

537. *Add. Annotation :*—**Refd.** British & North European Bank *v.* Zalzstein, [1927] 2 K. B. 92.

540. *Add. Citations :*—[1927] 2 K. B. 92; 96 L. J. K. B. 539; 137 L. T. 127; 43 T. L. R. 299.

562. *Add. Citations :*—137 L. T. 533; 17 Asp. M. L. C. 305.

Add. Annotation :—**Expld.** Smith Hogg *v.* Bamberger (1928), 97 L. J. K. B. 458.

577 *Add. Annotation :*—**Refd.** *Re* Regent Finance & Guarantee Corpn., Ltd. (1930), 69 L. Jo. 283.

fraud of a retail dealer, been sold by the latter & title thereto had passed to the purchaser from him.—PACIFIC FINANCE CO., LTD. *v.* FREEMAN CO., LTD., [1931] 2 W. W. R. 493; 3 D. L. R. 755; 25 Alta. L. R. 395.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 5.

488 iv. *– —.*]—Money honestly paid under a mistake of fact can be recovered back even though the person paying it did not avail himself of the means of knowledge which he possessed.—ST. ROSE RURAL MUNICIPALITY *v.* ROYAL BANK OF CANADA, [1928] 1 W. W. R. 663.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 1.

t i. *——.*]—FISHER *v.* LUKE, [1926] V. L. R. 190; 47 A. L. T. 165.—**AUS.**

562 i. *Effect of change in understanding of law—Subsequent declaration of law by court.*]—Money voluntarily paid at a time when the law is in favour of the payee cannot be recovered, if a subsequent judicial decision reverses the former understanding of the law.—JULIAN *v.* AUCKLAND (MAYOR, ETC.), 1927] N. Z. L. R. 453.—**N.Z.**

MONEY AND MONEY-LENDING.

Part I.—Money.

8. *Add. Annotations:*—**Refd.** Anchor Donaldson *v.* Crossland, [1929] A. C. 297; Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292.

10. *Add. Annotation:*—**Refd.** *Re* Wait, [1927] 1 Ch. 606.

Part II.—Currency and Rate of Exchange.

12. *Add. Annotation:*—*As to* (1) **Refd.** Buerger *v.* New York Life Assce. (1927), 96 L. J. K. B. 930.

17. After this case add:—
Money payable abroad on demand in foreign currency—Refusal to pay—Whether remedy in debt or damages.]—*See* BANKERS & BANKING, No. 276a, *ante*.

17a. —— **Agreement to pay "the sum of £100 in sterling in gold coin."**]—A bond dated Sept. 25, 1928, & issued by a Belgian co., provided that the co. would pay the bearer "the sum of £100 in sterling in gold coin of the United Kingdom of or equal to the standard of weight & fineness existing on Sept. 1, 1928," & the interest was made payable on similar terms with varying dates. The bond was to be construed according to English law. The holder claimed a declaration that by the bond the co. guaranteed to pay gold coin, & that they were bound to pay such a sum in sterling as would purchase gold sufficient to discharge such payment if falling due on Sept. 1, 1928:—*Held:* under the bond there was an obligation to pay £100 in gold currency, & the co. satisfied that obligation by tendering £100 in any form which was legal tender in England.—*Re* SOCIETE INTERCOMMUNALE BELGE D'ELECTRICITE, FEIST *v.* SOCIETE INTERCOMMUNALE BELGE D'ELECTRICITE (1932), 49 T. L. R. 8; 76 Sol. Jo. 779.

17b. **Bill payable abroad—Sum in sterling—Of "value cheque on London."**]—Resp., a British subject residing in Manchester, was in the habit of consigning Manchester goods to customers in Beyrout. The course of business was for him to draw a bill at sight on the customers for the amount in sterling, representing the cost of the goods & commission, & to hand it, with the bills of lading & invoices, to the Manchester branch of applts., a bank incorporated in Turkey. The Manchester branch then made an advance to him on the bill, & sent the documents to their Beyrout branch, who collected the price from the customer in exchange for the goods. On the Manchester branch being advised by the Beyrout branch that the price had been paid, a cheque for the sterling value of the goods, less any advance made, was handed to resp. In accordance with this practice resp. consigned to Beyrout goods which arrived there shortly before the outbreak of war, on Nov. 5, 1914, between this country & Turkey, on which date applts. held the bills & the documents representing the goods. The bills were in the following form: "Please pay to our order value cheque on London the sum of £ sterling. Shipping documents attached to be given up on payment." After the outbreak of war the Beyrout branch of applts. delivered the goods to the customers, taking payment in piastres of a sum fixed by the Beyrout branch as the price of sterling in London, & on the conclusion of the war, the piastres having fallen in value, the applts. claimed that they were only liable to pay the resp. an amount in sterling which at the then current rate of exchange represented the value of the piastres they had received for the goods. Resps. sued applts. to recover the sterling amount of the bills, or, alternatively, damages for the conversion of the goods:—*Held:* the words "value cheque on London" meant that the payment, which would ordinarily be in Turkish currency, must be so calculated on the exchange of the day as to represent the price of a cheque on London for the amount of the bill.—OTTOMAN BANK *v.* JEBARA, [1928] A. C. 269; 97 L. J. K. B. 502; 139 L. T. 194; 44 T. L. R. 525; 72 Sol. Jo. 516; 33 Com. Cas. 260, H. L.

17c. **Charterparty—Commission on freight.**]—KING LINE, LTD. *v.* WESTRALIAN FARMERS, LTD. (1932), 48 T. L. R. 598, H. L.; *revsg.* S. C. *sub nom.* WESTRALIAN FARMERS, LTD. *v.* KING LINE, LTD. (1931), 47 T. L. R. 586.

17d. **Repayment of bank deposit—Application of foreign law.**]—In 1913 pltf., who was a Turkish subject & was then resident in Smyrna, deposited with the Smyrna branch of the Ottoman Bank 12,500 piastres in Turkish pounds. In 1930 he demanded repayment of the balance of his account in gold, but the bank refused to pay otherwise than in the paper piastres which were then the currency at Smyrna. In an action against the bank to recover the value of the the balance on a gold basis with compound interest evidence was given that by decisions of the Turkish Cts., even if the original con-

8a. "*Gold*" *bond issue by Toronto company—Holder of interest coupons resident in Belgium—Currency of payment.*]—DERWA *v.* RIO DE JANEIRO TRAMWAY, LIGHT & POWER CO., [1928] 4 D. L. R. 542; 62 O. L. R. 669.—**CAN.**

tract was to repay in gold, the debt could, in consequence of certain decrees, be satisfied by payment in paper :—*Held :* that in these circumstances pltf.'s claim failed—KRICORIAN *v.* OTTOMAN BANK (1932), 48 T. L. R. 247 ; 76 Sol. Jo. 147.

17e. **Insurance policy—Application of Treaty of Lausanne.**]—In 1909 an insurance co., whose principal place of business at all times material was at Trieste, issued a policy to a man & his wife, Ottoman subjects domiciled in Palestine, agreeing that upon the death of either the co. would pay 10,000 gold francs to the survivor. Trieste was Austrian territory in 1909, but in 1920 it became Italian territory under the Treaty of St. Germain. The Treaty of Lausanne made between the allied powers, including Italy, & the Ottoman Empire was signed on July 24, 1923, & became part of the municipal law of Palestine in 1924. The Treaty, as translated, provided that "life assurance policies contracted in currencies other than Turkish pounds, entered into before Oct. 29, 1914, between cos. possessing at this date [*actuellement*] the nationality of an allied power & Turkish nationals" should be settled, if the amount was stipulated in gold francs, by paying French francs for the period before Nov. 18, 1915, & Turkish paper pounds for the period after that date. The wife having died in 1925, the husband claimed 10,000 gold francs under the policy. The co. was willing to pay 10,000 francs at the then rate of exchange in Paris ; that was more favourable to the assured than payment in Turkish pounds :—*Held :* the provision of the Treaty of Lausanne applied, as the co. was of Italian nationality at the date of the Treaty, & consequently the assured was not entitled to payment in gold francs.—ASSICURAZIONI GENERALI *v.* SELIM COTRAN, [1932] A. C. 268 ; 101 L. J. P. C. 81 ; 146 L. T. 233 ; 76 Sol. Jo. 50, P. C.

39. *Add. Annotation :*—**Consd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

43. *Add. Annotation :*—**Consd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

52. *Add. Annotations :*—**Consd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465. **Refd.** Richardson *v.* Richardson, [1927] P. 228.

52a. ——.]—Resp., an Armenian & a Turkish subject, was in the permanent employment of applt. bank. In 1922, while employed at their Smyrna branch, he was sent on business of the bank to the head office at Constantinople, & was given temporary employment there. He informed applts. that his life was in danger in Constantinople from the Turkish authorities, & asked to be transferred to a branch outside Turkey. That being refused he fled from Constantinople. He was dismissed without notice, & brought an action for wrongful dismissal :—*Held :* conversion into sterling of the damages in Turkish currency in respect of resp.'s pension under the contract should be at the rate of exchange at the date of his dismissal, not at the date of the judgment.—OTTOMAN BANK *v.* CHAKARIAN, [1930] A. C. 277 ; 99 L. J. P. C. 97.

61a. **Debentures of Australian company—Option for payment in Australia or London—Payment in London.**]—*Held :* the redemption of & payment of interest on debentures payable in London by an Australian co., where the debenture-holders had an option to require payment in Australia or in London, should, if the option to require payment in London was exercised, be paid in sterling without deduction on account of the exchange value of the pound in Australia.—BROKEN HILL PROPRIETARY CO., LTD. *v.* LATHAM (1932), 48 T. L. R. 630 ; 76 Sol. Jo. 576.

63. *Add. Citations :*- 96 L. J. K. B. 930 ; 137 L. T. 431.

Part III.—Interest.

101a. ——.]—SWEETLAND *v.* SMITH (1833), 1 Cr. & M. 585 ; 3 Tyr. 491 ; 2 L. J. Ex. 190 ; 149 E. R. 532.

114. *Add. Annotation :*—**Folld.** Maine & New Brunswick Electrical Power Co. *v.* Hart, [1929] A. C. 631.

119. *Add. Annotation :*—**Refd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1928] Ch. 31.

123. *Add. Annotations :*—**Refd.** Maine & New Brunswick Electrical Power Co. *v.* Hart, [1929] A. C. 631 ; Simpson *v.* Maurice's Exors. (1929), 45 T. L. R. 581.

125. *Add. Annotations :*—**Apprvd.** Maine & New Brunswick Electrical Power Co. *v.* Hart, [1929] A. C. 631. **Refd.** Shell Mex, Ltd. *v.* Elton Cop Dyeing Co., Ltd. (1928), 34 Com. Cas. 39.

PART II. SECT. 3, SUB-SECT. 1.

ab. *Winding-up of partnership—Payment to assignee of partner—Rate at date of realisation of assets.*]—As regards the rate of conversion of dollars into British Indian currency, to which the assignee was entitled, the rate prevailing at the date on which the winding-up of the partnership was completed & the assets were realised is the proper rate to be allowed to the c.—VEERAPPA CHETTY *v.* MUTHIAH CHETTY (1929), I. L. R. 52 Mad. 509.—**IND.**

PART III. SECT. 2, SUB-SECT. 1.—A.

sc. *General rule.*] -A successful pltf. in an action for debt may recover interest if he can show that deft. agreed expressly or impliedly to pay interest or, in the absence of such agreement, if he can convince the ct. that he is entitled to interest as damages. It is only, however, in the case of a contract express or implied to pay interest at a fixed rate that the claim can be said to constitute a liquidated demand.—VALADE *v.* MCEWEN, [1930] 2 W. W. R. 490 ; 4 D. L. R. 123 ; 24 S. L. R. 527. —**CAN.**

n. *Revsd.*, 64 S. C. R. 396.

PART III. SECT. 2, SUB-SECT. 1.—B.

95 vi. ——.]—DUNN *v.* R. (1901), 1 Cout. Dig. 728.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2. —A.

117 v. ——.]—When an instrument provides for future payments, but the time for payment, & the amount, if any, payable, both depend upon contingent events, there is not "a sum certain payable by a written instrument at a certain time" so as to enable interest to be allowed under sect. 24, sub-sect. 1, of the New Brunswick Jud. Act, 1909, the language of which is not distinguishable from that in the English Civil Procedure Act, 1833, s. 28.—MAINE & NEW BRUNSWICK ELECTRICAL POWER CO. *v.* HART, [1929] A. C. 631.—**CAN.**

219. *Add. Annotation :*—**Refd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

224. *Add. Citation :*—136 L. T. 114.

243. *Add. Annotation :*—**Consd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

255. *Add. Annotation :*—**Refd.** *Re* Mansel, Smith *v.* Mansel, [1930] 1 Ch. 352.

257. *Add. Annotation :*—**Refd.** *Re* Mansel, Smith *v.* Mansel, [1930] 21 Ch. 352.

260. *Add. Annotation :*—**Refd.** *Re* Mansel, Smith *v.* Mansel, [1930] 1 Ch. 352.

262. *Add. Annotation :*—*As to* (1) **Refd.** I. R. Comrs. *v.* Holder, [1931] 2 K. B. 81.

270. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* Holder, [1931] 2 K. B. 81.

Part IV.—Money-Lending.

286. *Add. Annotation :*—*Generally*, **Refd.** Glaskie *v.* Watkins, [1927] 2 K. B. 181.

302. *Add. Annotation :*—**Refd.** Glaskie *v.* Watkins, [1927] 2 K. B. 181.

303. *Add. Annotation :*—**Consd.** *Re* Mason (1928), 97 L. J. Ch. 321.

304. *Add. Annotation :*—**Consd.** Pirie *v.* Richardson, [1927] 1 K. B. 448.

316. *Add. Annotation :*—**Refd.** Merz *v.* South Wales Equitable Money Soc., [1927] 2 K. B. 366.

343. *Add. Annotation :*—**Refd.** Merz *v.* South Wales Equitable Money Soc., [1927] 2 K. B. 366.

345. *Add. Annotation :*—**Refd.** Merz *v.* South Wales Equitable Money Soc., [1927] 2 K. B. 366.

346. *Add. Annotation :*—*As to* (1) **Refd.** Merz *v.* South Wales Equitable Money Soc., [1927] 2 K. B. 366.

346a. —— Company registered as money-lender—Security payable to secretary.]—Deft. society became incorporated as a limited co. & began to carry on business as money-lenders & were registered as such, & they made an advance to pltfs., who signed a promissory note agreeing to pay the amount to the secretary of deft. society, which was mentioned by name in the note as the society of which he was secretary. In an action for a declaration that the transaction was void, on the ground that defts. had taken a security in a name other than their registered name, contrary to Money-lenders Act, 1900 (c. 51), s. 2 (1) (*c*) :—*Held :* as no one could sue on the note except the secretary, the security had been taken in a name other than defts.' registered name, & pltfs. were entitled to the declaration claimed.—MERZ *v.* SOUTH WALES EQUITABLE MONEY SOCIETY, LTD., [1927] 2 K. B. 366 ; 96 L. J. K. B. 1020 ; 137 L. T. 626 ; 43 T. L. R. 456, C. A.

SUB-SECT. 5.—RESTRICTIONS ON CONTRACTS.

See Money-lenders Act, 1927 (c. 21), ss. 6, 8.

353a. Note or memorandum signed by borrower—Contract contemplating security—Whether contract must set out terms of security.]—Money-lenders brought an action against a borrower to recover sums of £200, £100, & £100 lent by them to the borrower & alleged to be due upon three promissory notes payable at a specified address, the first in fourteen monthly instalments with interest at 60 per cent. *per annum*, & the others in three months after their respective dates with

PART III. SECT. 2, SUB-SECT. 2.—C.

f i. ——.]—THE CUSTODIAN *v.* BLUCHER, [1927] 3 D. L. R. 40 ; [1927] S. C. R. 420.—**CAN.**

sd. *Under Crown Suits Act*, 1898 (62 *Vict. No.* 9, *W. A.*)—*Whether payable by Crown.*]—R. *v.* MCNEIL, [1927] A. C. 380 ; 96 L. J. P. C. 41 ; 136 L. T. 646.—**AUS.**

se. *Under Interest Act.*]—The proviso to the Interest Act, s. 1, only enables the ct. to award interest in all cases where it was payable in law before the Act, & the cts. in India, following the practice of the English cts., did not, prior to the Indian Act, award interest in the case of ordinary debts, but did so only in certain special cases.—NANCHAPPA GOUNDAN *v.* ITTICHATHARA MANNADIAR (1929), I. L. R. 53 Mad. 549.—**IND.**

PART III. SECT. 2, SUB-SECT. 3.—A.

sk. *Money obtained by threat.*]—FURPHY *v.* NIXON (1925), 37 C. L. R. 161 ; 26 S. R. N. S. W. 380.—**AUS.**

sl. *Rescission of contract & return of purchase-money.*]—Where the ct. gives a purely equitable relief as in the case of rescission of a contract & repayment of the money paid by the purchaser, the moneys will carry interest from the date of the payment until the date of repayment, whenever repayment takes place, but will not carry interest as a judgment.—SKINNER *v.* JAMES SYPHONIC VISIBLE MEASURES, LTD. (1927), 28 S. R. N. S. W. 20.—**AUS.**

PART III. SECT. 6, SUB-SECT. 1.

261 v. ——.]—CLYDE NAVIGATION TRUSTEES *v.* KELVIN SHIPPING CO., LTD., [1927] S. C. 622.—**SCOT.**

sm. *Rule in India.*]—In India compound interest is common, & often may be necessary & proper upon a borrowing for necessity.—SUNDER MULL *v.* SATYA KINKER SAHANA (1927), L. R. 55 Ind. App. 85.—**IND.**

PART IV. SECT. 1, SUB-SECT. 1.—A.

282 i. *Question of fact.*]—In each case it is a question of fact whether a person is carrying on the business of money-lending.—KERR *v.* LOUISSON, [1928] N. Z. L. R. 154.—**N.Z.**

282 ii. ——.]—A pltf., who alleges that deft. is carrying on business as a money-lender, discharges the *primâ facie onus* resting on him upon proof merely of a series of loan transactions by deft. of a volume & frequency sufficient to indicate the existence of a money-lending business; but if further evidence is adduced which explains the real nature of those transactions & the circumstances surrounding their creation, it then becomes a question of fact upon a consideration of the whole of the evidence whether the existence of a business of money-lending has been affirmatively established.—LAPIN *v.* HEAVENER (1929), 29 S. R. N. S. W. 514 ; 46 N. S. W. W. N. 164.—**AUS.**

PART IV. SECT. 1, SUB-SECT. 1.—B.

sn. *Cash order business.*]—Resp. co. carried on the business of providing its customers with written orders on shopkeepers requesting them to supply goods to a certain amount to the customer. The customer signed a memorandum stating that in consideration of the co. making a certain advance at his request he undertook to pay to the co. a sum larger than the price of goods supplied by a deposit & instalments :—*Held :* the business so carried on was not that of money-lending, & resp. co. was not under an obligation to register under the Money-lenders Act, 1924.—ALLCHURCH *v.* POPULAR CASH ORDER CO., LTD., [1928] S. A. S. R. 189.—**AUS.**

PART IV. SECT. 2, SUB-SECT. 1.—A.

301 ii. —— ——.]—Where a person whose business is that of money-lending, or who advertises or announces himself or holds himself out in any way as carrying on that business, & does any of those acts within the Irish Free State, he must, in order to make his contracts legal & enforceable within the Irish Free State, comply in the Irish Free State with the provisions as to registration contained in Money-lenders Act 1900, s. 2 (1) (*a*).—LONDON FINANCE & DISCOUNT CO., LTD. *v.* BUTLER, [1929] I. R. 90.—**IR.**

PART IV. SECT. 2, SUB-SECT. 3.

324 i. *What amounts to—Question of fact.*]—GOLDSTEIN *v.* CRAFT (1926), 26 S. R. N. S. W. 354 ; 43 N. S. W. W. N. 13.—**AUS.**

interest at 80 per cent. *per annum* until payment. If default were made the whole unpaid principal & interest thereon became due & was to carry interest in the case of the first sum at 60 per cent. *per annum* & in the case of the other two sums at 80 per cent. *per annum* from the date of default until payment. In intended compliance with Money-lenders Act, 1927 (c. 21), s. 6, in each case before the money was lent there was made & signed by the borrower a note or memorandum of the contract stating that the sum referred to therein was advanced on the security of a promissory note, but not stating where repayment of the sum was to be made. Copies of the notes or memoranda were duly delivered to the borrower:— *Held:* (1) the note or memorandum in each case was sufficient. The ct., without deciding the point, inclined to the view that the terms of a security given for repayment of a loan need not be set out in the note or memorandum of the contract, at any rate where the security does not impose terms more onerous than those stated in the note or memorandum.

(2) Where the interest charged exceeds the rate mentioned, Money-lenders Act, 1927 (c. 21), s. 10 (1), imposes on the money-lender the burden of showing that the interest is not excessive & that the transaction of loan is not harsh or unconscionable; & in the circumstances pltfs. had in each case discharged themselves of this burden.—READING TRUST, LTD *v.* SPERO, SPERO *v.* READING TRUST, LTD., [1930] 1 K. B. 492; 99 L. J. K. B. 186; 142 L. T. 361; 74 Sol. Jo. 12; 46 T. L. R. 117, C. A.

Annotations:—As to (1) **Refd.** Bennett & Co. *v.* Smith (1931), 47 T. L. R. 592. *As to* (2) **Refd.** Parkfield Trust *v.* Dent, [1931] 2 K. B. 579.

353b. —— —— Substituted contract in settlement of action to recover loan.]—The male deft. borrowed, by promissory note, money from pltfs., a firm of money-lenders, & agreed to repay the same by monthly instalments. In this transaction the requirements of Money-lenders Act, 1927 (c. 21), s. 6, were duly complied with. The borrower made default in paying the instalments, whereupon pltfs. issued a writ to recover the amount. Negotiations then took place, & in the result an arrangement was made by which the male deft. & the second deft., his wife, gave pltfs. a joint & several promissory note in respect of the amount unpaid on the first promissory note, an amount for interest, & certain agreed costs. A memorandum of this contract was signed by both defts., but no copy was sent to them within seven days, as required by sect. 6. The amount of the promissory note not having been repaid on the due date, pltfs. sued defts. to recover the same:— *Held:* (1) although the contract sued on was a substituted agreement for, or a variation of, the original contract entered into by the male deft., it was nevertheless a contract "for the repayment by a borrower of money lent to him" within sect. 6; (2) as a copy of the contract had not been sent as required by that sect., the contract was unenforceable against the male deft.; (3) it was likewise unenforceable against the female deft., inasmuch as it appeared that she signed the promissory note solely as a surety, & the male deft. not being liable she also was discharged from liability.—ELDRIDGE & MORRIS *v.* TAYLOR, [1931] 2 K. B. 416; 100 L. J. K. B. 689; 145 L. T. 499; 47 T. L. R. 516.

Annotation:—**Refd.** Bennett & Co., Ltd. *v.* Smith (1931), 47 T. L. R. 592.

353c. —— —— What amounts to security—Guarantee.]—TEMPERANCE LOAN FUND, LTD. *v.* ROSE, No. 353r, *post.*

353d. —— Duty to send copy to borrower.]—ELDRIDGE & MORRIS *v.* TAYLOR, No. 353b, *ante.*

353e. —— Discharge of surety—On failure to send copy.]—ELDRIDGE & MORRIS *v.* TAYLOR, No. 353b, *ante.*

353f. —— —— Omission of date.]—TEMPERANCE LOAN FUND, LTD. *v.* ROSE, No. 353r, *post.*

353g. —— Date of loan inaccurately stated.]—If the memorandum required by Money-lenders Act, 1927 (c. 21), s. 6, states the date of the loan incorrectly, the contract is unenforceable, even although the inaccuracy has caused no deception & is due merely to a clerical error.—GASKELL, LTD. *v.* ASKWITH (1929), 45 T. L. R. 566; 73 Sol. Jo. 465, C. A.

Annotation:—**Consd.** Reading Trust, Ltd. *v.* Spero, Spero *v.* Reading Trust, Ltd., [1930] 1 K. B. 492.

353h. —— ——.]—The copy of the memorandum required by sect. 6 of the Money-lenders Act, 1927 (c. 21), s. 6, to be delivered to the borrower is not vitiated by the absence of a copy of the signature of the borrower, & the memorandum itself is not vitiated by an accidental slip in the date of the loan.—SHERWOOD *v.* DEELEY (1931), 47 T. L. R. 419; 75 Sol. Jo. 345.

Annotation:—**Consd.** Bennett & Co., Ltd. *v.* Smith (1931), 47 T. L. R. 592.

353j. —— ——.]—The copy of the memorandum required by Money-lenders Act, 1927 (c. 21), s. 6, to be delivered to the borrower must be an exact copy, & therefore, when the memorandum correctly states the date of the loan, the copy is vitiated by an imperfect statement of the date.—BENNETT (T. W.) & CO., LTD. *v.* SMITH (1931), 47 T. L. R. 592; 75 Sol. Jo. 645.

353k. —— Effect of clerical error.]—TEMPERANCE LOAN FUND, LTD. *v.* ROSE, No. 353r, *post.*

353l. —— Omission of copy of borrower's signature.]—SHERWOOD *v.* DEELEY, No. 353h, *ante.*

353m. —— Power of court to go behind.]—(1) A memorandum under Money-lenders Act, 1927 (c. 21), s. 6, must be stamped before it can be received in evidence.

(2) If such a memorandum is not a true representation of the transaction, the ct. will go behind it, & if there is no memorandum of the real transaction there is no enforceable contract.—B. S. LYLE, LTD. *v.* CHAPPELL (1931), 47 T. L. R. 562; 75 Sol. Jo. 511; *revsd. on other grounds*, [1932] 1 K. B. 691, C. A.

353n. —— Necessity for stamp.]—B. S. LYLE, LTD. *v.* CHAPPELL, No. 353m, *ante.*

353o. —— ——.]—(1) By virtue of Money-lenders Act, 1927 (c. 21), s. 10, where a money-lender seeks to recover judgment against a borrower for more than a sum equal to the money lent

& 48 per cent. *per annum* interest, he must satisfy the ct. that, in all the circumstances of the case, the rate of interest which he claims to recover is not excessive & that the transaction is not harsh & unconscionable. Although the borrower does not appear to the writ, or does not further defend the action, the onus is still on pltf. money-lender to satisfy the ct. on these two points. He must therefore prove a transaction which comes within Money-lenders Act, 1927 (c. 21), s. 6, & consequently he must prove a note or memorandum of the contract made in accordance with that sect.

(2) Such a note or memorandum is a memorandum of a contract within Stamp Act, 1891 (c. 39), s. 1 & Sched. I. to that Act, & therefore must be stamped with a 6*d.* stamp.—PARKFIELD TRUST, LTD. *v.* DENT, [1931] 2 K. B. 579; 101 L. J. K. B. 6; 146 L. T. 90.

353p. Onus of proof.]—PARKFIELD TRUST, LTD. *v.* DENT, No. 353o, *ante*.

353q. —— Renewal—Must appear on second memorandum.]—When the time for payment of an original loan granted by a money-lender has expired without complete repayment, there is no objection to extending the time for repayment on altered terms by treating the old loan as paid off by means of a new loan on the altered terms, provided that the fact that this is being done is shown on the face of the second memorandum signed by the borrower before the new security is given. Such a memorandum is signed by the borrower before the money is lent within the meaning of sect. 6 (1) of the Money-lenders Act, 1927 (c. 21), s. 6 (1).

At the time when the second memorandum is signed neither a cheque nor cash need be handed over by the money-lender to the borrower & then returned. The money is lent within Money-lenders Act, 1927 (c. 21), s. 6, if it is appropriated by the money-lender to the purposes of the borrower, in any way which the borrower authorises (GREER, L.J.). —B. S. LYLE, LTD. *v.* CHAPPELL, [1931] 1 K. B. 691; 101 L. J. K. B. 185; 48 T. L. R. 119, C. A.

353r. —— —— ——.]—(1) Every contract between a money-lender & a borrower for the repayment by the latter of money lent to him, & that includes a promise by the borrower to pay the balance of money previously lent to him, is brought within the purview of Money-lenders Act, 1927 (c. 21), s. 6. Where a transaction is the renewal of an old loan, the fact that it is such ought to be set out in the memorandum in order to comply with sect. 6.

(2) If the transaction between a money-lender & a borrower is unenforceable against the borrower by reason of non-compliance by the money-lender with the requirements of sect. 6, for example, by the omission from the memorandum of the date on which the loan was made, it is equally unenforceable against a person who has guaranteed the payment of the debt.

(3) A security "given by the borrower" within sect. 6 of the Act of 1927 may take the form of a guarantee given by a third party.

(4) *Gaskell* v. *Askwith* (1929), 45 T. L. R. 566, did not decide that a mere clerical error in the memorandum required by sect. 6 will invalidate the memorandum; & it must not be taken that a mere clerical error will have that effect (SCRUTTON, L.J.).

The Money-lenders Acts are not to be construed strictly in favour of lenders; they are to be construed on the same canons as any other Act (SLESSER, L.J.).—TEMPERANCE LOAN FUND, LTD. *v.* ROSE, [1932] 2 K. B. 522; 101 L. J. K. B. 609; 147 L. T. 330, C. A.

353s. Duty of money-lender to supply information—Application to proceedings on judgment summons.]—PRACTICE NOTE (1929), 45 T. L. R. 476; [1929] 1 B. & C. R. 54.

366. *Add. Annotation:*—**Refd.** Humphery *v.* Wilson (1929), 141 L. T. 469.

376. *Add. Annotation:*—**Consd.** Reading Trust, Ltd. *v.* Spero, Spero *v.* Reading Trust, Ltd., [1930] 1 K. B. 492.

377. *Add. Annotations:—As to* (1) **Refd.** Crossingham *v.* Park (1927), 96 L. J. K. B. 1036. *Generally*, **Refd.** Reading Trust, Ltd. *v.* Spero, Spero *v.* Reading Trust, Ltd., [1930] 1 K. B. 492.

377a. Before proceedings taken by money-lender for recovery of money lent.]—(1) A county ct. has jurisdiction under Money-lenders Act, 1900 (c. 51), s. 1 (2), to entertain an application by a borrower from a registered money-lender to reopen a money-lending transaction, only when the amount of the money lent, whether repayable by instalments or otherwise, without the addition of any claims arising under any agreement to pay interest or an amount charged for "expenses, inquiries, fines, bonus, premium, renewals, or any other charges," is within the jurisdiction of the county ct.

(2) If this condition is fulfilled, the ct. may entertain the application, although the money-lender has not taken any proceedings to recover the money lent, & although the time has not come for taking such proceedings.—CROSSINGHAM *v.* PARK, [1928] 1 K. B. 330; 96 L. J. K. B. 1036; 137 L. T. 651; 43 T. L. R. 647, D. C.

379a. Jurisdiction of county court—Amount of money lent over £100.]—CROSSINGHAM *v.* PARK, No. 377a, *ante*.

380a. Construction of Moneylenders Acts—Whether in favour of lender.]—TEMPERANCE LOAN FUND, LTD. *v.* ROSE, No. 353r, *ante*.

381a. —— —— ——.]—(1) *Held:* in Money-lenders Act, 1927 (c. 21), s. 5 (3), the words "no person shall act as such agent or canvasser" must be construed as meaning "no person shall act as an agent or canvasser employed by a money-lender or any person on his behalf for the purpose of inviting any person to borrow money or to enter into any transaction involving the borrowing of money from a money-lender." The Act does not, therefore, prohibit canvassing or touting for this purpose, where the canvasser acts without the authority or mandate of the money-lender to whom he is introducing a customer.

(2) Although a rate of interest on a loan not exceeding 48 per cent. does not carry the legal presumption introduced by sect. 10 of the Act that the transaction is harsh & unconscionable; yet, where in addition to his contract for repayment of the loan the borrower gives a bill of sale over his furniture

of ample security for such repayment, a rate of 48 per cent. is, in such circumstances, so excessive as to render the transaction harsh & unconscionable for the purposes of Money-lenders Act, 1900 (c. 51), s. 1.—VERNER-JEFFREYS *v.* PINTO, [1929] 1 Ch. 401; 98 L. J. Ch. 337; 140 L. T. 360; 45 T. L. R. 163, C. A.

409. *Add. Annotations :*—**Apprvd.** Reading Trust *v.* Spero (1929), 46 T. L. R. 117. **Refd.** Parkfield Trust, Ltd. *v.* Dent, [1931] 2 K. B. 579.

410a. ——.]—VERNER-JEFFREYS *v.* PINTO, No. 381a, *ante*.

410b. ——.]—READING TRUST, LTD. *v.* SPERO, SPERO *v.* READING TRUST, LTD., No. 353a, *ante*.

410c. -.]—PARKFIELD TRUST, LTD. *v.* DENT, No. 353o, *ante*.

410d. —— **Effect of consent to judgment.**]—*Held :* in a case where the interest charged exceeded 48 per cent. *per annum* & deft. consented to judgment, such consent did not relieve the ct. of the duty of enforcing the presumption arising under Money-lenders Act, 1927 (c. 21), s. 10, in the absence of proof to the contrary thereof, & the ct. was not entitled by reason merely of such consent to enter judgment in accordance therewith.—MILLS' CONDUIT INVESTMENTS, LTD. *v.* DENHOLM, [1932] 1 K. B. 233; 100 L. J. K. B. 685; 145 L. T. 585; 47 T. L. R. 514, C. A.

Annotations :- **Consd.** Parkfield Trust, Ltd. *v.* Dent, [1931] 2 K. B. 579. **Refd.** B. S. Lyle, Ltd. *v.* Chappell (1931), 146 L. T. 236.

434. *Add. Annotation :*—*As to* (2) **Refd.** Glaskie *v.* Watkins, [1927] 2 K. B. 181.

434a. Remitting action to county court—Whether claim founded on contract—County Courts Act, 1919 (c. 73), s. 1.]—Pltf., a borrower from a money-lender, issued a writ claiming to have re-opened a money-lending transaction between pltf. & deft., a declaration that the interest charged therein was excessive & the transaction harsh & unconscionable, accounts & inquiries, payment of the sum found due to pltf. & other & necessary relief under Money-lenders Acts. Pltf. having applied to have the action remitted to the county ct. for trial, the claim being restricted to £100 :—*Held :* pltf.'s claim was founded on contract within County Cts. Act, 1919 (c. 73), s. 1, & could be remitted to the county ct. under that sect. for hearing.—WHITE *v.* SMITH (1927), 96 L. J. K. B. 397; 137 L. T. 48; 43 T. L. R. 288; 71 Sol. Jo. 191, C. A.

438a. —— —— **Onus of proof.**]—READING TRUST, LTD. *v.* SPERO, SPERO *v.* READING TRUST, LTD., No. 353a, *ante*.

438b. —— —— ——.]—PARKFIELD TRUST, LTD. *v.* DENT, No. 353o, *ante*.

438c. —— —— **Effect of consent to judgment.**]—MILLS' CONDUIT INVESTMENTS, LTD. *v.* DENHOLM. No. 410d, *ante*.

442. For "**Party seeking relief—Ordered to pay costs**" read "**Costs—Party seeking relief—Ordered to pay costs.**"]

442a. —— **Action by money-lender—Judgment for reduced amount—Discretion to deprive plaintiff of costs.**]—In an action by money-lenders in the county ct. for money lent & interest, where the judge is satisfied that the transaction was harsh & unconscionable & the interest excessive, & where, after reopening the transaction, he gives judgment for pltfs. for a reduced amount, he has a discretion to deprive pltfs. of costs.—TEMPERANCE LOAN FUND *v.* ERWOOD (1927), 137 L. T. 449; 43 T. L. R. 530, D. C.

445. *Add. Annotation :*—**Consd.** Glaskie *v.* Watkins, [1927] 2 K. B. 181.

446. *Add. Annotation :*—**Refd.** Glaskie *v.* Watkins, [1927] 2 K. B. 181.

447. *Add. Annotations :*—**Consd.** Crossingham *v.* Park (1927), 96 L. J. K. B. 1036. **Refd.** Glaskie *v.* Watkins, [1927] 2 K. B. 181.

448. *Add. Annotation :*—**N.F.** Glaskie *v.* Watkins, [1927] 2 K. B. 181.

449. *Add. Citations :*—[1927] 2 K. B. 181; 96 L. J. K. B. 469; 137 L. T. 132 : 71 Sol. Jo. 192, C. A.

456a. Employment of agent or canvasser—Money-lenders Act, 1927 (c. 21), s. 5 (3).]—VERNER-JEFFREYS *v.* PINTO, No. 381a, *ante*.

PART IV. SECT. 7, SUB-SECT. 1.—C. (d).

sp. *Money borrowed for illegal transaction—Excessive interest paid cannot be recovered.*]—SIEGEL *v.* O'BRIEN, [1931] 2 D. L. R. 882.—**CAN.**

PART IV. SECT. 7, SUB-SECT. 1.—F. (a).

sq. *Bill in favour of money-lender—"Summary diligence"—Money-lenders Act, 1927, s 18 (h).*]—*Held :* "summary diligence" in sect. 18 (*h*) means the execution of diligence & not the obtaining of the summary warrant on which it proceeded; &, accordingly, an arrestment executed after Jan. 1, 1928, on a bill in favour of a money-lender was incompetent, although the warrant on which the arrestment proceeded was obtained before that date.—MURRAY *v.* M'GUIRE, [1928] S. C. (Ct. of Sess.) 647.—**SCOT**

MORTGAGE.

Part I.—Nature of Mortgage.

4. *Add. Annotations :*—**Refd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399; Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

20a. Distinguishes mortgage for sale.]—*Re* George Inglefield, Ltd. (1932), 101 L. J. Ch. 360; 147 L. T. 411; 48 T. L. R. 536, C. A.

72a. *S. P.* Ratcliff *v.* Davis (1610), 1 Bulst. 29; Cro. Jac. 244; Yelv. 178; Noy, 137; 80 E. R. 733.

Annotations :—**Consd.** Ryall *v.* Rolle (1749), 1 Atk. 165 **Refd.** Kinsey *v.* Heyward (1699), 1 Ld. Raym. 432; Donald *v.* Suckling (1866), L. R. 1 Q. B. 585.

78a. ——.]—Ordinarily by the common law, although a mtge. may be given without delivering possession, yet a mere pledge cannot be given without the delivery of the possession of the goods (Mellish, L.J.). —Ayers *v.* South Australian Banking Co. (1871), L. R. 3 P. C. 548; 7 Moo. P. C. C. 432; 19 W. R. 860; 17 E. R. 163; *sub nom.* Ayres *v.* South Australian Banking Co., 40 L. J. P. C. 22, P. C.

Annotation :—**Refd.** Burdick *v.* Sewell (1883), 10 Q. B. D. 363.

Part II.—Classification of Mortgages.

260. *Add. Annotation :*—**Refd.** *Re* Wait, [1927] 1 Ch. 606.

268. *Add. Annotation :*—**Refd.** Chowood, Ltd. *v.* Lyall (2), [1930] 2 Ch. 156.

305. *Add. Annotation :*—*As to* (1) **Consd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

PART I. SECT. 1.

sa. *Agreement to deliver mortgage—Meaning of mortgage—Registrable mortgage.*]—Basant Singh & Jagat Singh *v.* Kehar Singh Gill (B. C.), [1929] 4 D. L. R. 396; 2 W. W. R. 431.—**CAN.**

PART I. SECT. 4, SUB-SECT. 2.

37 v. —— ——.]—Where a registered instrument clearly shows a transaction between the parties to be a sale, oral evidence to show that it was intended to be a mtge. is inadmissible in evidence.—Maung Shwe Phoo *v.* Maung Tun Shin (1927), I. L. R. 5 Ran. 644.—**IND.**

PART I. SECT. 6, SUB-SECT. 1.

51 xvii. ——.]—Herron *v.* Mayland (Alta.), [1927] 4 D. L. R. 171; [1927] 2 W. W. R. 768; *affd.*, [1928] 2 D. L. R. 858; [1928] S. C. R. 225.—**CAN.**

51 xviii. ——.]—Bhagwan Sahai *v.* Bhagwan Din (1890), I. L. R. 12 All. 387; L. R. 17 Ind. App. 98.—**IND.**

51 xix. ——.]—Where the instrument professes fully & clearly to give the reasons & considerations on which it proceeds, collateral evidence is admissible to show that the transaction is not thereby truly stated, although, in such cases, only the most cogent evidence avails to rebut the presumption to the contrary.—Wilson *v.* Ward, [1930] S. C. R. 212; 2 D. L. R. 433; *revsg.*, [1929] 2 W. W. R. 122; 3 D. L. R. 209; 24 Alta. L. R. 48.—**CAN.**

65 i. —— *Sufficiency of agreement for repurchase.*]—*Re* Webber, *Ex p.* Valinsky, [1931] 4 D. L. R. 583.—**CAN.**

PART II. SECT. 1.

sq. *Form of—Whether statutory form essential.*]—Imperial Elevator & Lumber Co. *v.* Olive (1914), 29 W. L. R. 339; 6 W. W. R. 1562; 19 D. L. R. 248.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.

91 v. ——.]—Pltf., as administrator, sued upon deft.'s alleged promise to execute a mtge. to testator on certain land, in consideration that testator would discharge a mtge. which he then held thereon, so as to enable deft. to give a first mtge. on the land to one L.:—*Held :* the alleged promise required to be in writing, as relating to an interest in land.—Stoddart *v.* Stoddart (1876), 39 U. C. R. 203.—**CAN.**

PART II. SECT. 2, SUB-SECT. 2.—A.

e i. —— ——.]—Leys *v.* Hollinghead (1878), 29 C. P. 66.—**CAN.**

PART II. SECT. 2, SUB-SECT. 2.—B.

109 i. *Specific performance.*]—Jewan Lal Daga *v.* Nilmani Chaudhuri (1927), I. R. 55 Ind. App. 107.—**IND.**

PART II. SECT. 2, SUB-SECT. 5.—A.

sc. *Necessity for good faith—Effect of laches.*]—*Re* Aylward, *Ex p.* McMillan (P. E. I.), [1927] 4 D. L. R. 305; 8 C. B. R. 352.—**CAN.**

PART II. SECT. 2, SUB-SECT. 5.—B.

sd. *Transfer in blank—& certificate of title.*]—*Re* Hans C. Christensen, Ltd., Thom *v.* Everett, [1928] 4 D. L. R. 668; [1928] 3 W. W. R. 314.—**CAN.**

PART II. SECT. 2, SUB-SECT. 5.—I.

se. *Property as it stands at date of sale or foreclosure.*]—For the purpose of creating an equitable mtge. of a share in an indigo concern it is quite sufficient to deposi the title deeds under which that share was acquired. Where such a share is mortgaged the parties must be taken to intend that when foreclosure or sale takes place, at some subsequent date, the share shall pass to the purchaser as it stands at the date of the foreclosure or sale, & not merely as it existed at the date of the various title deeds when it was acquired.—Toomey *v.* Bhupendra Nath Bose (1928), I. L. R. 7 Pat. 520. —**IND.**

PART II. SECT. 2, SUB-SECT. 6.

sf. *Agreement giving rights over building to creditor.*]—Clutterbuck *v.* Imperial Lumber Co., [1928] 3 W. W. R. 123.—**CAN.**

PART II. SECT. 2, SUB-SECT. 7.—A.

sg. *Charge on debt—Order to debtor to pay third party out of specific fund.*]—An agreement between a debtor & a creditor that the debt owing shall be paid out of a specific fund coming to the debtor will create a valid equitable charge upon such fund.—Prabodh-chandra Mitra *v.* Road Oils (India), Ltd. (1930), I. L. R. 57 Calc. 1101.—**IND.**

PART II. SECT. 3, SUB-SECT. 1.—A.

n i. ——.]—An instrument of transfer lodged for registration under Transfer of Land Act, 1915, expressed the consideration for the transfer to be "the sum of £200, this day lent to me by M., which sum is to be repaid within two years from the date hereof, together with interest at the rate of £6 per cent. *per annum* in the meantime." The transaction between the parties to the transfer was, to the knowledge of the registrar of titles, a mtge. transaction. The registrar refused to register the transfer :—*Held :* the registrar was justified in refusing to register the transfer.—Putz *v.* Registrar of Titles, [1928] V. L. R. 348; [1928] Argus L. R. 224.—**AUS.**

n ii. ——.]—In order to be registrable under Land Titles Act a document given to secure a debt or loan must be in the form prescribed for a mtge.—Devenish *v.* Connacher, [1930] 1 W. W. R. 958; 2 D. L. R. 973; *on appeal*, [1930] 2 W. W. R. 254; 3 D. L. R. 977; 24 Alta. L. R. 535.—**CAN.**

b i. *Certificate of registry—Requisites of.*]—*Re* Bradshaw & Simcoe County Registrar (1867), 26 U. C. R. 464.—**CAN.**

bb i. —— *How ascertained.*]—*Re* Land Titles Act (1921), 65 D. L. R. 770.—**CAN.**

hh i. —— *Proceedings for foreclosure—Who has jurisdiction.*]—A mtge. of land, under a new system, operates as a security only, & not as a transfer of the land or of any estate or interest therein, Real Property Act, s. 100; & proceedings for foreclosure can be taken only before the district registrar, as provided for in sects. 113, 114 of the Act; & the ct. of K. B. has no jurisdiction to make a final or other order of foreclosure in respect of such a mtge., in the absence at all events of a special agreement between the parties raising equities as to title or for a conveyance of an estate in the land.—*Re* Alaire & Frechette (1913), 25 W. L. R. 648.—**CAN.**

sl. *Necessity for affidavit in Form E—Land Titles Act*, 1917, *s.* 100.]—*Re* Land Titles Act (Sask.), [1919] 1 W. W. R. 713.—**CAN.**

sm. —— ——.]—*Re* Land Titles Act, Canada's Life Assurance Co.'s Case (Sask.), [1919] 2 W. W. R. 47.—**CAN.**

sn. *Registration fees—By whom payable.*]—A purchaser who, to secure a balance of purchase-money, has given a mtge. to the ct., must pay the fees for registration of his mtge.—Sweetnam *v.* Sweetnam (1873), 6 P. R. 83.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—B. (g).

o i. —— *Action to redeem & set aside sale under power in mortgage—No allegation of fraud—Subsequent action to redeem & set aside on ground of fraud.*]—Rudge *v.* Haddington Island Quarry Co., Ltd. (1929), 41 B. C. R. 502.—**CAN.**

PART II. SECT. 6, SUB-SECT. 3.

293 i. *Validity—Omission of penal sum in obligatory clause.*]—*Held :* the omission did not render the bond uncertain & ineffectual.—Great West Life Assurance Co. *v.* Campbell (Man.), [1928] 1 D. L. R. 263; 37 Man. L. R. 164; [1927] 3 W. W. R. 645.—**CAN.**

Part III.—Parties to Mortgages.

368a. Cost of purchasing adjoining land—Maintenance of value of trust property.]—*Re* HAIG (1912), cited in Underhill's Law of Trusts & Trustees, 8th ed., p. 231.

371. *Add. Annotation:—Generally,* **Refd.** Pirie *v.* Richardson, [1927] 1 K. B. 448.

383a. —— —— ——.]—As a general rule long terms of years do not answer the description of "real securities," within the meaning of a power for trustees to lend on mortgage of "real securities."—*Re* BOYD'S SETTLED ESTATES (1880), 14 Ch. D. 626; 49 L. J. Ch. 808; 43 L. T. 348.

385a. —— Fourteen years.]—Trustees being empowered under a settlement to invest trust moneys upon mtge. of freehold, copyhold, or leasehold estate, invested upon mtge. of leaseholds, with only fourteen years to run, the ct. directed the mtge. to be called in, without prejudicing any question as to the liability of the trustees in the event of a loss. —PINCE *v.* BEATTIE (1863), 2 New Rep. 546; 32 L. J. Ch. 734; 9 L. T. 315; 27 J. P. 804; 9 Jur. N. S. 1119; 11 W. R. 979.

385b. ——.]—BOURNE *v.* MOLE (1843), 1 L. T. O. S. 12; *subsequent proceedings* (1845), 8 Beav. 177; 50 E. R. 70.

389a. Real security in Scotland—Power forbidding investment on real security in Ireland.]—Trustees of the will of a testator, who died in 1845, had power to invest on "real securities in England or Wales, but not in Ireland." The ct. declined advising the trustee to invest, under the powers contained in the 22 & 23 Vict. c. 35, s. 32, on a mtge. of Scottish estate.—*Re* MILES' WILL (1859), 27 Beav. 579; 29 L. J. Ch. 47; 1 L. T. 122; 23 J. P. 805; 5 Jur. N. S. 1236; 8 W. R. 54; 54 E. R. 229.

389b. House property—Value dependent on covenants.]—An investment by trustees of £2,183, trust funds, which they were empowered to lend on real security, in a mtge. of house property in a town, occupied for commercial purposes & valued at £2,800, a value also in some measure dependent on the performance of covenants, held not to be justified.—PHILLIPSON *v.* GATTY, GATTY *v.* PHILLIPSON (1848), 7 Hare, 516; 12 L. T. O. S. 445; 13 Jur. 318; 68 E. R. 213.

Annotations:—**Apld.** Norris *v.* Wright (1851), 14 Beav. 291. **Refd.** *Re* Massingberd's Settlement, Clark *v.* Trelawny (1890), 63 L. T. 296.

415a. Investment improvident owing to nature of property.]—*Re* SALMON, PRIEST *v.* UPPLEBY (1889), 42 Ch. D. 359; 62 L. T. 270; 38 W. R. 150; 5 T. L. R. 583, C. A.

Annotations:—**Consd.** Exploring Land & Minerals Co. *v.* Kolckmann (1905), 94 L. T. 234. **Refd.** Blyth *v.* Fladgate, Morgan *v.* Blyth, Smith *v.* Blyth, [1891] 1 Ch. 337; *Re* Turner, Barker *v.* Ivimey, [1897] 1 Ch. 536; Head *v.* Gould, [1898] 2 Ch. 250; *Re* Lake, *Ex p.* Howe, Trustees, [1903] 1 K. B. 439.

438. *Add. Annotation:—As to* (1) **Refd.** *Re* Vickery, Vickery *v.* Stephens, [1931] 1 Ch. 572.

Part IV.—Form and Contents of Mortgage.

488. *Add. Annotation:*—**Distd.** Sowerby *v.* Lindsay (1928), 44 T. L. R. 501.

490. *Add. Annotation:—As to* (1) **Consd.** Sowerby *v.* Lindsay (1928), 44 T. L. R. 501.

501. In the catchwords for "**charged**" read "**changed.**"

501a. —— ——.]—JACKSON *v.* INNES (1819), 1 Bli. 104; 4 E. R. 38, H. L.

Annotations:—**Apld.** Clark *v.* Burgh (1845), 2 Coll. 221. **Consd.** Whitbread *v.* Smith (1854), 3 De G. M. & G. 727. **Apld.** Heather *v.* O'Neill (1857), 4 Jur. N. S. 181. **Consd.** Atkinson *v.* Smith (1858), 3 De G. & J. 186. **Apld.** Hastings *v.* Astley (1861), 30 Beav. 260. **Expld.** Dawson *v.* Bank of Whitehaven (1877), 6 Ch. D. 218. **Distd.** Jones *v.* Davies (1878), 8 Ch. D. 205. **Refd.** Reeve *v.* Hicks (1825), 2 Sim. & St. 403; Hipkin *v.* Wilson (1850), 15 L. T. O. S. 559; Plowden *v.* Hyde (1852), 2 De G. M. & G. 684; Eddleston *v.* Collins (1853), 3 De G. M. & G. 1; Walker *v.* Armstrong (1856), 21 Beav. 284; Heather *v.* O'Neill (1858), 27 L. J. Ch. 512; Plomley *v.* Fleton (1888), 14 App. Cas. 61.

505a. —— ——.]—A mtge. of property does not alter the existing limitations affecting it, except for the purpose of the mtge., unless an express intention be shown to resettle it.—HASTINGS (LORD) *v.* ASTLEY (1861), 30 Beav.

PART III. SECT. 1, SUB-SECT. 1.

o i. —— ——.]—Under Act Respecting Homesteads, s. 2, the registrar cannot register a mtge. of homestead land if the same is not signed by mtgor.'s wife, although in a paper attached to the mtge. she purports to have relinquished her homestead rights in favour of mtgee.—*Re* LAND TITLES ACT, [1919] 1 W. W. R. 711.—**CAN.**

o ii. —— —— *& acknowledgment.*] —A mtge. by a husband of his homestead was in fact consented to by his wife of her own free will & knowing what it was. To it was attached her written consent & a certificate by a comr. of her acknowledgment of execution of it of her own free will, etc. Being on its face in compliance with the Dower Act, 1917, it was registered. The facts, however, were that the wife had not made before the comr. the acknowledgment to which he certified. The husband had participated in this breach of the statute in order, apparently, to save his wife, who was in ill-health, the inconvenience of going from the farm to the comr.'s office:—*Held:* since the wife's consent was not evidenced in the manner prescribed by the statute, the mtge. was, in this sense, not made with her consent, & was null & void as against her dower right; there were no grounds for holding her estopped. But since the husband by his conduct had induced the mtgee. to believe that his wife's consent had been properly & regularly given & the mtgee. had on the strength of this belief parted with the property for the payment of which the mtge. was security, the husband was estopped from setting up her lack of effective consent as a defence to an action on the mtge. Moreover, he was, in any event, personally liable on the covenant.—PARSLOW *v.* MOORE, [1930] 2 W. W. R. 310; 4 D. L. R. 750.—**CAN.**

sp. *Mortgage by alleged absolute owner—Third party in possession.*] —GREY *v.* COUCHER (1868), 15 Gr. 419.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.

341 ii. —— —— *What estate passes.*] —BANQUE PROVINCIALE DU CANADA *v.* CAPITAL TRUST CORPN., [1928] 4 D. L. R. 390; 62 O. L. R. 458.—**CAN.**

PART III. SECT. 3, SUB-SECT. 2.—A. (a) i.

343 i. *Whether mortgagee concerned with application of money.*]—PLACE *v.* SPAWN (1859), 7 Gr. 406.—**CAN.**

sr. *Power given by testator to mortgage "my estate"—Property subject to life interest of wife.*]—PURDOM *v.* NORTHERN LIFE ASS'CE CO. OF CANADA, [1928] 4 D. L. R. 679; 63 O. L. R. 12; *affd.*, [1930] S. C. R. 119; 1 D. L. R. 1003.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 1.

483 iv. ——.]—There is an implied covenant on the part of a mtgor. to repay the mtge. money, even though the bond contains no express promise to repay it.—CHHATHI LALBAH KALWAH *v.* BINDESHWARI PRANAD SAHU (1928), I. L. R. 8 Pat. 16.—**IND.**

260; 8 Jur. N. S. 225; 10 W. R. 73; 54 E. R. 888.

508. *Add. Annotation:*—**Refd.** *Re* Park, Public Trustee *v.* Armstrong, [1932] 1 Ch. 580.

525. *Add. Annotation:*—**Refd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

538. *Add. Annotation:*—**Refd.** Spyer *v.* Phillipson, [1931] 2 Ch. 183.

583a. —— —— ——.]—On a mtge. of a public house the goodwill is not included unless expressly mentioned.—*Re* BENNETT, CLARKE *v.* WHITE, [1899] 1 Ch. 316; 68 L. J. Ch. 104; 47 W. R. 406.

587. *Add. Annotations:*—**Refd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443.

590. *Add. Annotation:*—*As to* (2) **Consd.** Halifax Building Society *v.* Keighley, [1931] 2 K. B. 248.

590a. ——.]—HALIFAX BUILDING SOCIETY *v.* KEIGHLEY, No. 1357a, *post*.

623a. —— —— **Covenant for payment of yearly premium & other costs & charges of insurance.**]—*Held:* a mtge. for £1,500, with covenants for payment of the yearly premium & other costs & charges of an insurance of £1,000 upon a particular life for seven years, required a £25 stamp.—HALSE *v.* PETERS (1831), 2 B. & Ad. 807; 1 L. J. K. B. 2; 109 E. R. 1342.

Annotations:—**N.F.** Doe d. Merceron *v.* Bragg (1838), 8 Ad. & El. 620. **Consd.** Richards *v.* Macclesfield, Cocks *v.* Edwards (1841), 10 L. J. Ch. 329. **Distd.** Wroughton *v.* Turtle (1843), 1 Dow. & L. 473. **Dbtd.** Lawrance *v.* Boston (1851), 21 L. J. Ex. 49. **Refd.** Loyd *v.* Heathcote (1833), 3 Tyr. 309.

625a. —— **Second mortgage—Covenant to pay sum secured by first mortgage—First mortgage duly stamped.**]—A second mtge. of freehold property subject to an existing first mtge. contained a covenant by the borrower to pay by instalments (*a*) a sum equivalent to the amount of the loan, the subject of the first mtge., (*b*) a sum equivalent to the amount of the loan, the subject of the second mtge., & (*c*) a sum equivalent to the interest on the amounts remaining unpaid under both mtges. There was a proviso for redemption on payment of the amount of the second mtge. & interest thereon. The first mtge. had been duly stamped with the appropriate duty on the amount thereby secured:—*Held:* the second mtge. was liable to stamp duty in the aggregate of the two sums secured by the two mtges., the covenant contained in the second mtge. to pay the amount secured by the first mtge. being an additional covenant made with a different covenantee.—MUTUAL PROPERTY INSURANCE CO., LTD. *v.* INLAND REVENUE COMRS. (1926), 136 L. T. 354.

Part VI.—Rights and Liabilities of the Mortgagor.

633. *Add. Annotation:*—**Refd.** Purnell *v.* Roche, [1927] 2 Ch. 142.

732a. Service of notice to quit—Whether Small Tenements Recovery Act, 1838 (c. 74), applicable.]—A mtge. deed contained a clause by which the mtgor. attorned tenant from year to year to the mtgees. at a nominal rent. It was also provided that, if the mtgor. made default in payments under the deed, the mtgees. might give to the mtgor. seven days' notice in writing to determine the tenancy created by the deed. The mtgor. defaulted & the mtgees. served on him a notice to quit. The mtgor. refused to give up possession:—*Held:* the term or interest of the mtgor. in the mortgaged property had been "duly determined by a legal notice to quit or otherwise" within sect. 1 of above Act, &, therefore, justices had power to issue a warrant to give possession of the property to the mtgees.—DUDLEY & DISTRICT BENEFIT BUILDING SOCIETY *v.* GORDON, [1929] 2 K. B. 105; 98 L. J. K. B. 486; 141 L. T.

PART IV. SECT. 5, SUB-SECT. 3.—A. (a).

517 iv. —— ——.]—DOMINION TRUST CO. *v.* MUTUAL LIFE ASSURANCE CO., BRITISH CANADIAN SECURITIES *v.* MUTUAL LIFE ASSURANCE CO., [1917] 3 W. W. R. 941.—**CAN.**

PART IV. SECT. 7, SUB-SECT. 1.

620 ii. —— —— *Security for future advances—Construction of Stamp Act, 1891 (c. 39), ss. 15 (1), 88 (1) (2).*]—O'SULLIVAN *v.* LOUGHNAN, [1927] I. R. 493.—**IR.**

620 iii. —— ——.]—A trust deed to secure debentures recited that the C. Co. had determined to issue a series of debentures for a sum not exceeding £100,000, & the first of the conditions indorsed on each debenture stated: "This debenture is one of a series of debentures all in the like form for securing principal sums not exceeding at any one time in the aggregate £100,000." The trust deed also contained a capitalisation clause, the effect of which was that if any interest should be in arrear for a period of six months, it should be added to the principal sum due under the debenture, & treated as principal money for all purposes. The debentures were expressed to become payable on Jan. 11, 1938. The mtgor. claimed that stamp duty was payable not on a limited sum, but as on an amount "uncertain or without limit":—*Held:* the amount which the trust deed was intended to secure was a sum readily ascertainable by arithmetical calculation, &, therefore, was not "without any limit" within Sched. 1 of Stamp Duties Act, 1882, & that duty should be paid in respect of £100,000. — CASCADE BREWERY CO., LTD. *v.* A COLLECTOR OF STAMP DUTIES (1929), 23 Tas. L. R. 18.—**AUS.**

PART VI. SECT. 3, SUB-SECT. 5.

sa. *No right to growing crops.*]—JACKSON *v.* PENFOLD, [1931] 1 D. L. R. 808; 66 O. L. R. 140.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 7.

665 iv. —— —— ——.]—A mtgor. in possession is entitled to cut timber on the land & to give third persons a licence to do so, unless it is shown that the security is thereby impaired. The *onus* is on the party seeking to establish impairment to plead & offer proof of it.—REID *v.* GALBRAITH, [1927] 2 D. L. R. 857; [1927] 1 W. W. R. 780; 38 B. C. R. 287; *varying*, [1926] 4 D. L. R. 814; [1926] 3 W. W. R. 500; 38 B. C. R. 36.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 2.—D.

g i. —— *Position of mortgagor.*]—Where a mtgee. leases the land to the mtgor., the latter does not take the lease in his character as mtgor., but in his individual capacity only, & as such he stands in the same position as a stranger to the mtge.—MASSEY-HARRIS CO. *v.* MANLEY, [1927] 1 D. L. R. 464; [1927] 1 W. W. R. 35; 21 Sask. L. R. 256.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 3.—A.

h. *Revsd.*, [1924] 1 W. W. R. 1233; 18 Sask. L. R. 269.

sk. *Effect of Landlord & Tenant Act R. S. O., 1914 (c. 155), s. 3.*]—KENNEDY *v.* AGRICULTURAL DEVELOPMENT BOARD, [1926] 4 D. L. R. 717; 59 O. L. R. 374.—**CAN.**

sl. *Effect of Land Titles Act, s. 117.*]—MATTHEWSON BROTHERS & MATHER *v.* GOOD, [1927] 3 D. L. R. 422; [1927] 1 W. W. R. 728; 21 Sask. L. R. 403.—**CAN.**

583; 93 J. P. 186; 45 T. L. R. 424; 27 L. G. R. 448, D. C.

737. *Add. Annotation :*—**Apld.** Dudley & District Benefit Building Society *v.* Gordon, [1929] 2 K. B. 105.

739. *Add. Annotation :*—**Refd.** *Re* Wait, [1927] 1 Ch. 606.

772a. .]—KING *v.* BIRD, No. 774, *post.*

845. *Add. Annotation :*- **Refd.** The W. H. Randall, [1928] P. 41.

846. *Add. Annotations :*—**Refd.** Torbay Hotel *v.* Jenkins, [1927] 2 Ch. 225; *Re* Sunnyfield, [1932] 1 Ch. 79.

Part VII.—Equity of Redemption.

853. *Add. Annotation :*—*As to* (2) **Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617.

866a. Whether mortgagee trustee of equity of redemption.]—*Re* WELLS, SWINBURNE-HANHAM *v.* HOWARD, No. 1017a, *post.*

971a. Clause giving mortgagee interest in property on redemption.]—Provisions in a mtge. deed conferring on the mtgee. upon redemption an interest in the mortgaged premises are a clog or fetter on the equity of redemption, & being so are void not only against the mtgor., but also against the purchaser of his interest, since they are inconsistent with the very nature & essence of a mtge.—MEHRBAN KHAN *v.* MAKHNA (1930), 57 L. R. Ind. App. 168, P. C.

984. *Add. Annotation :*—**Consd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

1017a. Mortgage by company—Dissolution of company—Whether bona vacantia.]—In 1899 a limited co. mortgaged to trustees of a will certain leasehold properties by way of absolute assignment subject to the equity of redemption. In 1910 the co. went into liquidation, & in 1913, the trustees having called in the mtge., the co. made default & the trustees appointed a receiver. In 1916 the co. was dissolved, the income of the property being at that time insufficient to meet the mtge. interest, & nothing was done in respect of the equity of redemption as the liquidator considered it to be of no value. The value of the property having since largely increased, the surviving trustee claimed to be entitled to the property absolutely, & the Crown claimed the equity of redemption as *bona vacantia :—Held :* (1) Cos. Act, 1929 (c. 23), s. 296, did not apply, as that section was not retrospective; (2) after the disappearance of the legal entity which had had the right of redemption the Crown was entitled to the property as *bona vacantia.*

(3) The equity of redemption, then, was a right of property which could be disposed of by the mtgor. In a general sense the mtgee. was not a trustee for the mtgor.; their interests were antagonistic, though the mtgee. might be trustee in a limited sense—that was, in respect of surplus purchase-

PART VI. SECT. 5, SUB-SECT. 6.—B. (a).

784 vii. —— ——.]—Where a lease made by a mtgor. is subsequent to the mtge., the mtgee. has not the right at common law to require the tenant to pay the rent to him & to sue for its recovery unless the relationship of the landlord & tenant has been created between them by mutual agreement; & the mere fact of the tenant remaining in possession after notice from the mtgee. to pay the rent to him is not evidence of such an agreement. The provision in Real Property Act, R. S. M., 1913, s. 114, that a mtgee. upon default by the mtgor. "may enter into possesson of the mortgaged or encumbered land by receiving the rents & profits thereof," does not give the mtgee. a right of action for rent against a tenant holding under a lease made by the mtgor. after the mtge.—AIKENHEAD *v.* SPIVAK, [1931] 2 W. W. R. 721; 4 D. L. R. 721; 39 Man. L. R. 541.—**CAN.**

PART VI. SECT. 7.

c i. —— —— *Mortgage overdue—Right of possession in mortgagee.*]—Ejectment cannot be sustained by a mtgor. against a stranger where the mtge. is overdue & unsatisfied, & the fee & right of possession being in the mtgee.—DOE d. MCBERNIE *v.* LUNDY (1844), 1 U. C. R. 186.—**CAN.**

sl. *Payment into court of amount due on mortgage—Application for order under Mortgages Act, R. S. O.*, 1914 (c. 112)—*Mode of application.*]—*Re* APPLETON & ROSS, [1927] 4 D. L. R. 1125; 61 O. L. R. 338.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 8.

sm. *Under decree for sale—What is incident to land—Manure in heaps on land.*]—Manure in heaps on land, not the produce thereof, does not pass to the purchaser of the equity of redemption under a decree of sale, as an incident to the land; & if he uses it, it is a conversion, for which the mtgor. may recover in trover without a demand.—THOMSON *v.* WALSH (1852), 2 All. 369.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 2.—A.

968 iv. —— —— —— ——.]—TOOHEY *v.* GUNTHER (1927), 28 S. R. N. S. W. 229; 45 N. S. W. W. N. 11.—**AUS.**

PART VII. SECT. 4, SUB-SECT. 2.—B. (c).

sn. *Agreement for future advances.*]—Where a mtge. is for a definite amount & also covers future advance but the amount outstanding & secured by the mtge. may be ascertained at any time, & on payment thereof there is nothing to prevent the mtgor. from getting back the mortgaged property & enjoying it just as he did before making the mtge., it cannot be said that the mtge. constitutes a clog on the equity of redemption.—STEPHEN & STEPHEN *v.* TRANS-CANADA FINANCE CORPN. LTD., [1931] 2 W. W. R. 448; 4 D. L. R 783.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 2.—F.

q i. —— *Permanent lease.*]—Permanent leases executed by the mtgor. in favour of the mtgee. subsequent to the mtge. constitute a clog on the equity of redemption & are null & void.—PARSHARAM YESHWANTSHET *v.* LAXMIBAI (1928), I. L. R. 53 Bom. 360.—**IND.**

sp. *Covenant creating right of pre-emption in favour of mortgagee—Limited to life of parties.*]—A covenant in a mtge. deed creating a right of pre-emption in favour of the mtgee., the operation of which is not meant to extend beyond the lifetime of the parties, is neither a clog on the equity of redemption nor obnoxious to the rule against perpetuities.—MATURA SUBBA RAO *v.* SURENDRANATH SAHU (1928), I. L. R. 8 Pat. 243.—**IND.**

PART VII. SECT. 5.

1013 i. *Amount appearing in receipt clause—How far conclusive.*]—A bill alleged that a mtge. was executed by W. to deft. in consideration of $450; that deft. advanced only $150 thereon, & W. being entitled to receive the balance assigned such right & conveyed his equity of redemption to plff.; that deft. refused to pay the balance & claimed to hold the mtge. as security for $450. The prayer was for specific performance or, in the alternative, a declaration of the above facts, & for general relief :—*Held :* upon the facts alleged in the bill, namely, that the mtge. was being held for more than had been advanced thereon, &, therefore, to that extent had formed a cloud on the title, plff. would be entitled to a declaration to that effect, & appropriate relief.—CALVERT *v.* BURNHAM (1881), 6 A. R 620.—**CAN.**

a i. —— —— ——.]—FREDERIKSEN *v.* WESTERN CAN. INV. CO. (Sask.), 1927] 1 D. L. R. 804.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 1.

sq. *Statute for Sale of Equities of Redemption—When applicable.*]—FITZGIBBON *v.* DUGGAN (1865), 11 Gr. 188.—**CAN.**

moneys after his own claims had been satisfied (LORD HANWORTH, M.R.).—*Re* WELLS, SWINBURNE-HANHAM *v.* HOWARD (1932), 101 L. J. Ch. 346; 48 T. L. R. 617, C. A.

1024. *Add. Annotation:*—**Refd.** Ideal Films *v.* Richards, [1927] 1 K. B. 374.

1025. *Add. Annotation:*—**Refd.** Ideal Films *v.* Richards, [1927] 1 K. B. 374.

1049. For the existing catchwords read "—— —— ——."

1085. *Add. Annotation:*—**Refd.** Smith *v.* Wood (1928), 139 L. T. 250.

1091a. —— Claim for repayment of excess received by mortgagee over amount due under mortgage.]—Where shares in a co. were mortgaged to secure a loan with interest, & the value of the shares increased enormously so that the mtgee. received dividends sufficient to pay off the loan & interest, & a summons was subsequently taken out claiming redemption, & also repayment of the excess of the amount of dividends received by the mtgee. over & above the amount due under the mtge.:—*Held:* an order for payment of the excess claimed against the mtgee. could, by R. S. C., Ord. 55, r. 5A, be obtained upon originating summons.—WELD *v.* PETRE, [1929] 1 Ch. 33; 97 L. J. Ch. 399; 139 L. T. 596; 44 T. L. R. 739; 72 Sol. Jo. 569, C. A.

1092. *Add. Annotation:*—**Refd.** Ruislip-Northwood Urban District Council *v.* Lee (1931), 145 L. T. 208.

Part VIII.—Assignment and Devolution of Mortgage.

1177. *Add. Annotation:*—**Refd.** Bonham *v.* Maycock (1928), 138 L. T. 736.

1279a. Sale on bankruptcy of mortgagor of mortgage of settled premises—Effect of—Right of purchaser to hold mortgage as first charge on estate.]—SIMPSON *v.* O'SULLIVAN (1840), 7 Cl. & Fin. 550; West, 332; 7 E. R. 1179.

1324a. —— ——.]—The legal estate in property vested in a testator by way of mtge. does not pass under the description of "securities for money," or "money invested on any security."—*Re* GORFETT'S TRUST, *Ex p.* PRICE (1850), 19 L. J. Ch. 173; 14 Jur. 53.

1326a. —.]—Testator, who was a mtgee., devising all the rest & residue of his freehold, leasehold, & copyhold estates in possession or reversion, together with all his goods, chattels, etc. mtges. & debts to a legatee, subject to the payment of his debts, etc., & also appointing the legatee exor. of his will:—*Held:* not to have thereby devised the legal estate in the mortgaged premises to such legatee.—SILVESTER *v.* JARMAN (1822), 10 Price, 78; 147 E. R. 248, Ex. Ch.

Annotations:—**Refd.** Galliers *v.* Moss (1829), 9 B. & C. 267; Doe d. Guest *v.* Bennett (1851), 6 Exch. 892; *Re* Field's Mortgage (1851), 15 Jur. 1004.

Part IX.—Rights and Liabilities of the Mortgagee.

1352. To the existing paragraph, after the last words "toll gates," add as follows:—

; (3) he was entitled to have a receiver appointed.

1357. *Add. Annotation:*—**Folld.** Halifax Building Society *v.* Keighley, [1931] 2 K. B. 248.

1357a. Effect of Law of Property Act, 1925 (c. 20), s. 108—On Conveyancing Act, 1881 (c. 41), s. 23.]—A mtge. deed made in 1919 provided that the mtgees. might insure the premises against fire, & that the mtgors. should pay the premiums to them. Before 1925 the mtgees. effected insurances of the premises under the deed. Before that year the mtgors. also effected with other insurers an insurance of the premises apart from statute or the deed in their own names. In 1930,

PART VII. SECT. 6, SUB-SECT. 2.

o i. —— *Assignee not barred by twenty years' possession of assignor claiming under mortgagor.*]—COLLINS *v.* REID (1866), 6 N. S. R. (2 Old.) 252. —**CAN.**

PART VII. SECT. 8, SUB-SECT. 4.—B.

sr. *By motion for judgment—Proceedings by action—Limitation of costs recoverable.*]—MALKOWICH *v.* GENIK, [1928] 3 W. W. R. 65.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 1.

b i. —— *Mortgage paid off by mortgagor.*]—Sect. 99 of Land Titles Act, which provides that a mtgee. on receiving payment of a mtge. which the mtgor. is entitled to pay off is bound to transfer the mtge. to a third party if the mtgor. so directs, does not have the effect of continuing the life of a mtge. so transferred if it has been paid off in full by the mtgor. himself. In such a case there is nothing to assign or transfer.—DEVENISH & DEVENISH *v.* CONNACHER (Alta.), [1929] 4 D. L. R. 1004; 3 W. W. R. 355.—**CAN.**

sa. *Executor—Necessity for proof of probate.*]—An assignment of a mtge. by an exor. is not admissible in evidence without proof of the probate.—DOE *v.* HANSON (1857), 8 N. B. R. (3 All.) 427.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 2.

b i. ——.]—Since by virtue of the covenant implied by sect. 54 of Land Titles Act, R. S. A., 1922 (c. 133), there is a direct personal liability of the transferee of mortgaged land to the mtgee., the original mtgor. becomes a surety for the transferee to the mtgee. &, therefore, is entitled to pay off the mtge. money as soon as there is default, without waiting till he is sued or pressed for payment, & on paying it off is entitled, under sect. 99 of the Act & under sect. 5 of Mercantile Law Amendment Act (Imp.) (19 & 20 Vict. c. 97), to require the mtgee. to transfer the mtge. to a third party as a valid security.—DEVENISH *v.* CONNACHER, [1930] 2 W. W. R. 254; 3 D. L. R. 977; 24 Alta. L. R. 535; *revsg.*, [1930] 2 D. L. R. 973; 1 W. W. R. 958.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 3.

1172 vi. —— ——.]—The covenant which is implied by Real Property Act, R. S. M., 1913, s. 97, on the part of the transferee of mortgaged land with the transferor is one which can be rebutted by evidence of circumstances which make it inequitable that it should be enforced. The sect., therefore, leaves the law for all practical purposes the same as it was before the section was enacted.—SOKOLOV *v.* KACHMARK, [1929] 2 D. L. R. 305; 1 W. W. R. 353; 38 Man. L. R. 99.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 4.—F.

i. *Revsd.*, 19 Gr. 59.

PART VIII. SECT. 1, SUB-SECT. 15.

sb. *Effect of transfer on lease by mortgagee in possession.*]—*Semble:* an assignment of a mtge. is not by itself effective to transfer a lease given by the mtgee. in possession.—KONKIN *v.* CANADIAN BANK OF COMMERCE (Sask.), [1927] 3 W. W. R. 123.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.

b i. ——.]—GARRETT *v.* SAUNDERS (1876), 23 Gr. 566.—**CAN.**

while the deed & insurances were all in force, the premises were damaged by fire. The respective insurers paid to the mtgors. & mtgees. the proportions of the loss for which they were responsible. The mtgees. brought an action against the mtgors. for payment over of the money paid to the latter by their insurers :—*Held :* pltfs. were not entitled to succeed in the action, either (1) under Conveyancing Act, 1881 (c. 41), s. 23 (4), inasmuch as that sub-sect. had been repealed by Law of Property Act, 1925 (c. 20), s. 207), subject to a proviso that the repeal should not affect any right acquired before the latter Act, & no right to the money which pltfs. claimed had accrued to them before that Act; or (2) under Law of Property Act, 1925 (c. 20), s. 108 (4), inasmuch as the insurance effected by defts. was not an insurance effected under that Act or any enactment replaced thereby, or an insurance for the maintenance of which defts. were liable under the mortgage deed; or (3) on the footing that defts. were trustees of the money for pltfs. or otherwise liable to them therefor.

Conveyancing Act, 1881 (c. 41), s. 23 (4), in so far as it may remain unrepealed by Law of Property Act, 1925 (c. 20), is not subject to the limitation which restricts sub-sect. (3) of that sect. to money received on an insurance effected under the mtge. deed or under the Act; but is subject to the limitation that it applies only to money received on an insurance in which the mtgor. & the mtgee. are one or other or both interested.—HALIFAX BUILDING SOCIETY *v.* KEIGHLEY, [1931] 2 K. B. 248; 100 L. J. K. B. 390; 145 L. T. 142.

1361. *Add. Annotation :*—**Folld.** *Re* Smith's Mortgage, Harrison *v.* Edwards, [1931] 2 Ch. 168.

1362a. ——.]—Trespass will not lie against the occupier of land at the suit of the mtgee., who has never been in actual possession or been seised of the land, & has not obtained a judgment in ejectment, either by default or by verdict; & therefore he cannot, in such case, waive the tort, & maintain an action of use & occupation.—TURNER *v.* CAMERON'S COALBROOK STEAM COAL CO. (1850), 5 Exch. 932; 20 L. J. Ex. 71; 16 L. T. O. S. 285; 155 E. R. 407.

1408a. Right to possession as against subsequent lessee.]—SPENCER *v.* MASON (1931), 75 Sol. Jo. 295.

1445. *Add. Annotation :*—**Refd.** Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65.

1502. *Add. Annotation :*—**Consd.** Clayton *v.* Clayton, [1930] 2 Ch. 12.

1506. *Add. Annotation :*—**Consd.** Clayton *v.* Clayton, [1930] 2 Ch. 12.

Part XII.—Priority of Mortgagees.

1989. *Add. Annotations :*—**Refd.** *Re* Murphy's Estate, Morton *v.* Marchanton (1930), 74 Sol. Jo. 321; Parker *v.* Judkin, [1931] 1 Ch. 475.

PART IX. SECT. 1, SUB-SECT. 2.—D.

a. *Varied.*, [1927] 2 D. L. R. 857; [1927] 1 W. W. R. 780; 38 B. C. R. 287.

PART IX. SECT. 1, SUB-SECT. 2.—E.

sc. *Seizure & sale of mortgaged goods.*]—A mtgee. may maintain an action against a person seizing & selling the property mtged., the right of possession of the goods at the time of such sale being rightfully in the mtgor., & the reversionary estate in pltf. as mtgee.—MCLEOD *v.* MERCER (1856), 6 C. P. 197.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 1.

sd. *Whether possession by lessee of mortgagor—Under lease made after mortgage.*]—*Re* SHANTZ & HALLMAN, [1927] 3 D. L. R. 658; 60 O. L. R. 543; *affd. sub nom.* MODERN REALTY CO. *v.* SHANTZ, [1928] 2 D. L. R. 705; [1928] S. C. R. 213.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 2.—A.

oi. —— *Against lessee—Under Land Acts.*]—MUNGALL *v.* MANN, *Ex p.* MANN (1928), 22 Q. J. P. R. 66.—**AUS.**

PART IX. SECT. 4, SUB-SECT. 1.

se. *No liability to pay taxes.*]—A mtgee. who has never been in possession of the land or in receipt of any income therefrom is not, in the absence of an agreement therefor, under any obligation to the mtgor. to pay the taxes; & the fact that he has paid part of them does not bind him to pay them all.—BATTISCOMBE *v.* NOAKES, [1931] 2 W. W. R. 74; 3 D. L. R. 91; *affd.*, [1931] 1 W. W. R. 213; 25 S. L. R. 253.—**CAN.**

PART IX. SECT. 7, SUB-SECT. 1.—A.

sf. *Validity of lease—Non-compliance with Land Titles Act, R. S. S.*, 1920 (*c.* 67), *s.* 108).]—MASSEY-HARRIS CO. *v.* MANLEY, [1927] 1 D. L. R. 464; [1927] 1 W. W. R. 35; 21 Sask. L. R. 256.—**CAN.**

PART IX. SECT. 14.

sh. *Right to indemnity—Mortgage of shares.*]—MASTERS *v.* MCLELLAN (1889), (1825–97), N. B. Dig. 316.—**CAN.**

PART X. SECT. 2, SUB-SECT. 2.

1603 i. *One mortgage by sole mortgagor—Other jointly with partner.*]—J. & T., who were partners, made a mtge. to pltf. upon partnership land, parcel B., & J. alone, at a later date, made a mtge. to pltf., upon a different parcel of land, A. J. became bkpt., & deft. was the authorised trustee of his estate. T. afterwards conveyed his undivided half interest in parcel B. to deft. as authorised trustee of the estate of J. :—*Held :* pltf. was not entitled to consolidation, & either mtge. might be redeemed without redeeming the other.—WATKINS *v.* ADAMSON, [1929] 1 D. L. R. 572; 63 O. L. R. 315.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 2.—A.

1838 iv. ——.]—A person who pays off a first mtge. on property & accepts a new mtge. on the property & a discharge of the old first mtge. is entitled to rank as first mtgee. upon the property, although there is a mtge. subsequent to the original mtge. but prior to his mtge. registered upon the property.—GORDON *v.* SNELGROVE, [1932] O. R. 253; 2 D. L. R. 300.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 3.—A.

1903 iv. —— ——.]—By a memorandum of agreement, made in 1915, between C. & his aunt, M., C. agreed to give M. "during her life the exclusive use of the drawing-room & bedroom over same, with fuel & suitable support & maintenance," in a certain dwelling-house, "free of charge, the consideration for same being natural love & affection & services rendered" by M. to C.; & C. thereby agreed with M. "to execute a deed whenever called upon to carry out & give effect to the foregoing contract." No deed was ever executed pursuant to the said agreement. The agreement was not registered in the Registry of Deeds. M. went into exclusive occupation of the two rooms, & so continued, & was supplied with fuel & maintenance. The rest of the house was in the occupation of C., who held the premises under a fee-farm grant. In 1921 C. deposited the title deeds of the premises with a bank by way of equitable mtge. to secure the payment of present & future advances. In 1927, C. being indebted to the bank for a large sum, the bank issued a summary summons to enforce the mtge. against C. M. claimed to be entitled under the agreement to an equitable life interest in the two rooms, & also to a charge on the whole of the premises in her favour for fuel & suitable support & maintenance during her life, & that the bank's equitable mtge. was puisne to her life interest & charge. She stated in an affidavit that on the faith of the agreement, & on the security of the rights thereby conferred on her, she had from time to time made advances to C. of sums amounting to £252. The

2013. *Add. Annotation :*—**Consd.** Clayton *v.* Clayton, [1930] 2 Ch. 12.

2019a. ——.]—MANCHESTER & COUNTY BANK, LTD. *v.* MONK (1929), 73 Sol. Jo. 465.

2036. *Add. Annotation :—Generally,* **Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

2038. *Add. Annotation :*—**Consd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

2044. *Add. Annotation :*—**Apld.** Manchester & County Bank *v.* Monk (1929), 73 Sol. Jo. 465.

2136. *Add. Annotation :*—**Refd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

2173. *Add. Annotation :*—**Refd.** *Re* King's Settlement, King *v.* King, [1931] 2 Ch. 294.

Part XIII.—Remedies of Mortgagee.

2258. *Add. Annotation :*—**Consd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

2291a. Part of mortgage debt due.]—There is nothing in Law of Property Act, 1925 (c. 20), s. 101, to prevent a mtgee. from exercising his power of sale when part only of the mtge. debt has become due, & where a mtge. debt is payable in instalments the right to enforce payment arises as each instalment becomes due.—PAYNE *v.* CARDIFF RURAL DISTRICT COUNCIL, [1932] 1 K. B. 241 ; 100 L. J. K. B. 626 ; 145 L. T. 575 ; 95 J. P. 173 ; 47 T. L. R. 532 ; 29 L. G. R. 507.

2291b. Debt payable in instalments.]—PAYNE *v.* CARDIFF RURAL DISTRICT COUNCIL, No. 2291a, *ante.*

2299a. Personal representative of transferee of mortgagee.]—SALOWAY *v.* STRAWBRIDGE (1855), 7 De G. M. & G. 594 ; 25 L. J. Ch. 121 ; 1 Jur. N. S. 1194 ; 4 W. R. 34 ; 44 E. R. 232, L. JJ.

Annotations :—**Consd.** Ashton *v.* Wood (1857), 30 L. T. O. S. 85. **Refd.** *Re* Rumney & Smith, [1897] 2 Ch. 351.

2312a. ——.]—Property comprised in a mtge. was sold by the mtgee. by public auction, & at the sale the mtgee.'s solr. became the purchaser :—*Held :* the purchase by the solr. was invalid, & must be set aside.—LAWRANCE

manager of the bank stated in an affidavit that at the date of the deposit the bank had no knowledge of any claim by M. against the premises :—*Held :* M. was entitled to an equitable life estate in the two rooms, which interest was not subject to the bank's equitable mtge. M. was not entitled to a charge upon the premises for fuel & support & maintenance.—NATIONAL BANK *v.* KEEGAN, [1931] 1. R. 344.—**IR.**

m i. *Charge on land—Whether priority given over registered assignment—Dealing only with estate which assignor then had.*]—CANADIAN PORT HURON CO. *v.* BURNETT (1907), 17 Man. L. R. 55.—**CAN.**

PART XII. SECT. 1, SUB-SECT. 4.—C.

f (p. 458) **i.** ——.]—THOMSON *v.* HARRISON, [1927] 3 D. L. R. 526 ; 60 O. L. R. 484.—**CAN.**

f (p. 458) **ii.** ——.]—CARROLL *v.* ROGERS (1900), 2 N. B. Eq. Rep. 159 ; 21 C. L. T. 96.—**CAN.**

o (p. 458) **i.** —— —— ——.]—SCHATZ *v.* STEINHAUER, [1930] 2 D. L. R. 998.—**CAN.**

o (p. 458) **ii.** ——*What amounts to caveating interest.*]—By an agreement, one C., the owner of certain land, agreed to "allow" resp. an equal third share of the "net profits" which C. might make on the resale of this land. The land was sold at a considerable profit. On the completion of the purchase, a mtge. was given by the purchasers to applt. for £1,800, which purported to be a loan by applt., but, in fact, part of this amount was the balance of the purchase-money which applt. was to hold in trust for C., subject to a charge for money advanced. Resp. entered a *caveat* against dealings with the mtge. :—*Held :* applt. had, at most, a claim against C. under his contract to an account, & for payment of any moneys found due thereon, &, accordingly, had no caveating interest.—SHEPHERD *v.* HOUSTON, [1927] S. A. S. R. 144.—**AUS.**

sx. *Effect of omission from memorial of addition of witness.*]—*Held :* under 9 Vict. c. 34, registry in accordance with the Act was imperative ; & a deed registered upon a memorial in which the addition of the witness to the deed was omitted was, therefore, fraudulent & void as against a subsequent mtgee.—ROBSON *v.* WADDELL (1865), 24 U. C. R. 574.—**CAN.**

sy. *Postponement of mortgage—Power of registrar to register.*]—*Re* WINDOVER & GREAT WEST LIFE ASSURANCE CO. (Alta.), [1927] 3 D. L. R. 829 ; [1927] 2. W. W. R. 414.—**CAN.**

sz. *Right to registration—Duplicate certificate in hands of mortgagor.*]—*Re* TOTH & CASE J.I. THRESHING MACHINE CO. (1910), 14 W. L. R. 704 ; 3 Sask. L. R. 270.—**CAN.**

PART XII. SECT. 13, SUB-SECT. 1.—A. (a).

1995 iii. —— —— ——.]—KIRK *v.* HARVEY (1913), 26 W. L. R. 747 ; 5 W. W. R. 980 ; 15 D. L. R. 488 ; 18 B. C. R. 645.—**CAN.**

1995 iv. —— —— ——.]—COLPITTS *v.* SHERWOOD (Alta.), [1927] 3 D. L. R. 7.—**CAN.**

PART XII. SECT. 13, SUB-SECT. 3.—B. (b).

2170 i. *Mortgagee parting with deeds to mortgagor—Failure to return—Laches of mortgagee.*]—G., a customer, deposited the title deeds of immovable property with deft. bank to secure an overdraft. Subsequently G. obtained possession of the title deeds on a misrepresentation to deft. bank that he wanted them for inspection by an intending purchaser, & deposited the deeds with pltf. bank to secure a loan ; —*Held :* by the conduct of deft. bank pltf. bank had priority of charge over the mortgaged property.—LLOYDS BANK *v.* GUZDAR & CO. (1929), I. L. R. 56 Calc. 868.—**IND.**

PART XII. SECT. 13, SUB-SECT. 4.

sa. *Priority of mortgage over lien of lender—Of advance in reduction of mortgage.*]—*Held :* the lender could not claim priority for his advance.—IMPERIAL LOAN & INVESTMENT CO. *v.* O'SULLIVAN (1879), 8 P. R. 162.—**CAN.**

sb. —— *Of advance in payment of purchase money.*]—*Held :* the lender could not claim priority in respect of his lien for unpaid purchase money.—WATSON *v.* DOWSER (1881), 28 Gr. 478.—**CAN.**

sc. *Prior mortgagee purchasing rights of puisne mortgagee.*]—FATEH ALI *v.* GEHNA (1927), I. L. R. 9 Lah. 88.—**IND.**

PART XIII. SECT. 1, SUB-SECT. 1.

2190 i. *Application of rule—Foreclosure—Proceedings on bond.*]—*Re* CHANDLER'S ESTATE (1883), 17 N. S. R. (5 R. & G.) 78.—**CAN.**

k i. —— *Action on covenant—Entry into possession.*]—GREAT WEST LIFE ASSURANCE CO. *v.* POLLOCK (Alta.), [1929] 2 D. L. R. 468 ; 1 W. W. R. 742.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 1.—B. (b) i.

sd. *Length of.*]—*Held :* (1) in enacting Property Law Amendment Act, 1927, the Legislature must be presumed to have intended the repeal of Mortgages Final Extension Act, 1924, s. 70 ; (2) until the mtgor. took some active step towards availing himself of the protection granted him he acquired no right which survived the repeal of the protecting Act, & the mtgee. was, therefore, entitled to exercise his power of sale without giving three months' notice of his intention to do so.—MATHIESON *v.* HALL, [1929] N. Z. L. R. 333.—**N.Z.**

PART XIII. SECT. 2, SUB-SECT. 1.—D.

se. *Sale of two properties subject to mortgages—Sale by mortgagee of one property on default by purchaser—Rights of purchaser of other property against mortgagor & defaulting purchaser.*]—NORRIS *v.* MEADOWS (1882), 7 A. R. 237.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 3.—D.

sf. *Sale under Land Titles Act—Jurisdiction to stay proceedings.*]—*Re* LAND TITLES ACT, *Re* FIELDING & NORTH OF SCOTLAND MTGE. CO., [1927] 3 D. L. R. 690 ; [1927] 2 W. W. R. 423 ; 22 Alta. L. R. 575.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 5.—A.

k i. *Order permitting purchase at price fixed by court—With leave to recover deficiency—Whether foreclosure.*]—SECURITY TRUST CO., LTD. *v.* SAYRE & GILROY, [1920] 3 W. W. R. 469.—**CAN.**

k ii. —.]—CANADA LIFE INSURANCE CO. *v.* MCHARDY, [1922] 3 W. W. R. 855 ; 69 D. L. R. 712.—**CAN.**

v. GALSWORTHY (1857), 30 L. T. O. S. 112; 3 Jur. N. S. 1049.

Annotation :—**Refd.** Nutt *v.* Easton (1899), 80 L. T. 353.

2333. *Add. Annotation :*—**Refd.** Payne *v.* Cardiff R. D. C., [1932] 1 K. B. 241.

2504. *Add. Annotation :*—**Refd.** Ideal Films *v.* Richards, [1927] 1 K. B. 374.

2535. *Add. Annotation :*—**Refd.** *Re* Wait, [1927] 1 Ch. 606.

2578a. —.]—MASTERS *v.* CROUCH (1927), 63 L. Jo. 557.

2605. *Add. Annotation :*—*As to* (1) **Apld.** Manchester & County Bank *v.* Monk (1929), 73 Sol. Jo. 465.

2631. *Add. Annotations :*—**Refd.** Houghton *v.* Nothard, Lowe & Wills, [1927] 1 K. B. 246; Liggett (Liverpool) *v.* Barclays Bank (1927), 137 L. T. 443.

PART XIII. SECT. 2, SUB-SECT. 5.—D.

so. *Servant of mortgagee.*]—Under a power of sale enabling a bank as mtgee. to sell certain land by private sale or public tender, it sold the land by private sale to a servant in its employ for the amount owing to the bank on the mtge. for principal & interest, after unsuccessfully attempting to sell by tender or otherwise. The sale to the servant was made in good faith & not at an undervalue. It was the servant's duty to help generally in the administration of the bank's business in the district where the land was situate, but he had no power to sell land, & all he could do was to submit offers to the head office of the bank, which had a separate sales department. The servant was the person who would have received tenders if any had been made, but he would have transmitted them to the head office with such advice as he thought fit. In fact, no tender & no offer had been received, & the servant had taken no active step in relation to the exercise of the bank's power of sale :—*Held :* the sale to the servant was not wrongful.—SEWELL *v.* AGRICULTURAL BANK OF WESTERN AUSTRALIA (1931), 44 C. L. R. 104.—**AUS.**

PART XIII. SECT. 2, SUB-SECT. 6.—A.

2331 i. *Position of mortgagee—Whether a trustee.*]—A mtgee., in exercising his power of sale, must exercise it in good faith. He has a right to look after himself first, but he is not at liberty to look after his own interests alone. He must not wilfully & recklessly deal with the property in such a manner that the interests of the mtgor. are sacrificed. Therefore, he is bound to take reasonable precautions in exercising the power of sale to see that the advertisements of the sale are adequate, & that the property is not sold at such a manifest undervalue as in itself to indicate disregard of the mtgor.'s interest.—HARTLEY *v.* HUMPHRIS, [1928] S. R. Q. 83; *affd.*, 2 A. L. J. 106.—**AUS.**

PART XIII. SECT. 2, SUB-SECT. 8.—A.

sg. *Sale under second mortgage.*]—FLEMING *v.* MCDOUGALL (1880), 8 P. R. 200.—**CAN.**

sh. *Right of purchaser of part of mortgaged property to marshal—Against purchaser of other part subject to entire mortgage debt.*]—KAMTA SINGH *v.* CHATURBHUJ SINGH (1929), I. L. R. 8 Pat. 585.—**IND.**

sj. *Whether fee passes.*]—Where mtgees. in fee in possession executed a deed purporting to "convey, assign, release & quit claim" to the grantees, "their heirs & assigns for ever," all & singular the mortgaged land, *habendum* "as & for all the estate & interest" of the grantors "in & to the same" :—*Held :* sufficient to pass the fee to the grantees.—BRIGHT *v.* MCMURRAY (1882), 1 O. R. 172.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 8.—B. (a).

q. *Revsd.*, 7 A. R. 10.

PART XIII. SECT. 2, SUB-SECT. 9.

sk. *Sale under second mortgage—Purchaser's right to possession—Lease from first mortgagee to mortgagor.*]—Land having been sold under a power of sale in a second mtge. :—*Held :* the mtgor. was estopped from setting up a lease from the first mtgee. as against a claim for possession by a transferee from the purchaser, even though at the time of securing the lease the equity of redemption was no longer in the mtgor.—SEWELL *v.* HNATIW & HNATIW (Man.), [1927] 3 W. W. R. 577; *revsd.*, [1928] 1 D. L. R. 570; [1928] 1 W. W. R. 274; 37 Man. L. R. 247.—**CAN.**

sl. *Right of second mortgagee of part of mortgaged property—Where other portion already sold by mortgagor—To compel first mortgagee to proceed against that portion—& have purchaser joined as party.*]—THANMUL SOWCAR *v.* NATTU RAMADOSS REDDIAR (1927), I. L. R. 51 Mad. 648.—**IND.**

PART XIII. SECT. 2, SUB-SECT. 10.—A.

sm. *No liability for wages of persons working mortgaged lands.*]—MACPHERSON *v.* LONDON LOAN ASSETS, LTD., [1931] 2 D. L. R. 630; O. R. 109; 12 C. B. R. 302.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 10.—D.

sa. *Subrogation — Contribution.*]—BOUCHER *v.* SMITH (1862), 9 Gr. 347.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 1.—E. (d).

2565 i. *Receiver appointed.*]—BRANTFORD CORPN. *v.* GRAND RIVER NAVIGATION CO. (1860), 8 Gr. 246.—**CAN.**

PART XIII. SECT. 3, SUB-SECT. 1.—H. (a).

2589 i. *Interlocutory application.*]—EASTERN TRUST CO. *v.* NOVA SCOTIA STEEL & COAL CO., [1927] 1 D. L. R. 421; 59 N. S. R. 123.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 2.

d i. —— *Mortgage for purchase-money.*]—TULLY *v.* BRADBURY (1861), 8 Gr. 561.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 3.—A.

2647 i. *General rule—Assignee not liable.*]—POWER *v.* NOVA SCOTIA TRUST CO., [1928] 4 D. L. R. 570.—**CAN.**

l i. —— ——.]—The implied covenant under Land Titles Act, R. S. A., 1922 (c. 133), s. 54, does not arise in the case of the transfer of only part of the mortgaged land.—*Re* MACDONALD, [1925] 2 D. L. R. 748; [1925] 1 W. W. R. 1031; 21 Alta. L. R. 66.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 4.

sm. *Effect of consent to variation of principal sum.*]—MORTLEMAN *v.* PUBLIC TRUSTEE, [1927] N. Z. L. R. 642.—**N.Z.**

sn. *Mortgage for purchase-money—Vendor accepting from purchaser transfer of other land subject to incumbrances—Right of vendor to add amount of incumbrances to claim under mortgage.*]—MAULSON *v.* MOORE (1860), 8 Gr. 448.—**CAN.**

so. *Mortgage to managing director of company assigned to company—Right of mortgagor to set off against amount due—claim against managing director for services rendered.*]—NORTHARD & LOWE CO. *v.* DURNO, [1927] 2 D. L. R. 892; 59 N. S. R. 310.—**CAN.**

PART XIII. SECT. 5, SUB-SECT.—5. B. (a).

2664 v. ——.]—MCCUAIG *v.* BARBER (1898), 29 S. C. R. 126.—**CAN.**

2664 vi. ——.]—Where after a final order of foreclosure the mtgee. sues the mtgor. on his covenant, the mtgee. must be in the position, if redemption is sought, to restore the mortgaged property intact.—COLONIAL INVESTMENT & LOAN CO. *v.* MARTIN (Man.), [1927] 3 D. L. R. 360; [1927] 2 W. W. R. 94; *affd.*, [1928] 3 D. L. R. 781; [1928] S. C. R. 440—**CAN.**

2664 vii. ——.]—Pltf., mtgee., being the transferee of the title under a tax-sale, was held entitled to recover in an action upon the covenant in the mtge. deed, notwithstanding he had put it out of his power to transfer the land to defts. in case they paid the mtge. moneys.—SERVAIS *v.* SHEAR, [1929] 2 D. L. R. 633; 63 O. L. R. 381; *revsg.*, [1928] 1 D. L. R. 549; 61 O. L. R. 490.—**CAN.**

sd. *Deterioration of property—No defence to action on covenant.*]—SASKATCHEWAN FARM LOAN BOARD *v.* MORGAN, [1932] 2 W. W. R. 676.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 5.—C.

t i —— *Right of mortgagor to repay debt & redeem.*]—Even after foreclosure under Land Titles Act, the mtgee. may sue upon the covenant for the payment of the mtge. moneys, though, if he does, the mtgor., on payment of the debt is entitled to redeem his property.—DOUGLAS *v.* THE MUTUAL LIFE ASSURANCE CO., [1918] 3 W. W. R. 529; *sub nom.* MUTUAL LIFE *v.* DOUGLAS, 44 D. L. R. 115.—**CAN.**

PART XIII. SECT. 5, SUB-SECT. 5.—E.

m i. —— *To purchaser from mortgagor.*]—In an action by a mtgee. against a mtgor. on his covenant to pay, the mtgor. pleaded that he had been released by an extension of time given without his consent to a purchaser of the land from him :—*Held :* judgment must be given for pltf.—ALLOWAY & CHAMPION, LTD. *v.* STEPHENSON, [1927] 3 D. L. R. 220; [1927] 2 W. W. R. 337; 36 Man. L. R. 636.—**CAN.**

so. *Mortgage containing receipt clause but no covenant for repayment.*]—A mtgo., which contains an acknowledgment of receipt of the money, but no covenant for repayment, does not of itself afford conclusive evidence of a debt, so that the mtgee., or his assigns, can maintain an action for its recovery.—LONDON LOAN CO. *v.* SMYTH (1882), 32 C. P. 530.—**CAN.**

sp. *Money advanced for illegal purpose.*]—WILKINSON *v.* HARWOOD & COOPER, [1931] S. C. R. 141; [1931] 2 D. L. R. 479.—**CAN.**

sq. *Variation of mortgage—By assignee of mortgagor—Mortgagor consenting provided liability not increased.*]—PUBLIC TRUSTEE *v.* MORTLEMAN, [1928] N. Z. L. R. 337.—**N.Z.**

PART XIII. SECT. 6.

2687 i. *Varied*, 39 U. C. R. 280.

2688. *Add. Annotation :*—**Refd.** Humphery *v.* Wilson (1929), 141 L. T. 469.

2757. After this case add "*See, also,* LIMITATION OF ACTIONS, No. 1369a, *ante.*"

2876. *Add. Annotation :*—**Consd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

2890. *Add. Annotation :*—**Refd.** Purnell *v.* Roche, [1927] 2 Ch. 142.

2897a. —— ——.]—As a general rule, all persons beneficially interested in an equity of redemption ought to be made parties to a foreclosure suit.—CROPPER *v.* MELLERSH (1855), 3 Eq. Rep. 492 ; 24 L. J. Ch. 430 ; 24 L. T. O. S. 267 ; 1 Jur. N. S. 299 ; 3 W. R. 202.

Annotation :—**N.F.** Wilkins *v.* Reeves (1855), 3 Eq. Rep. 494.

2897b. —— ——.]—A suit was instituted by a mtgee. against the trustee for sale of the property & exor. of the mtgor. for a foreclosure :—*Held :* the persons beneficially interested in the equity of redemption were not necessary parties to the suit.—WILKINS *v.* REEVES (1855), 3 Eq. Rep. 494 ; 24 L. T. O. S. 337 ; 3 W. R. 305.

2928a. —— ——.]—A surviving trustee & extrix., who was also tenant for life of mortgaged property, was made sole deft. to a bill for foreclosure or sale :—*Held :* the parties interested in remainder were sufficiently represented.—MARRIOTT *v.* KIRKHAM (1862), 3 Giff. 536 ; 31 L. J. Ch. 312 ; 6 L. T. 17 ; 8 Jur. N. S. 379 ; 10 W. R. 340 ; 66 E. R. 521.

2991. *Add. Annotation :*—**Refd.** Friern Barnet U. C. *v.* Adams, [1927] 2 Ch. 25.

2997a. Application for foreclosure of registered charge—Should not ask for rectification of register.]—PRACTICE NOTE, [1932] W. N. 6 ; 173 L. T. Jo. 40.

3122. *Add. Annotation :*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617.

PART XIII. SECT. 7, SUB-SECT. 2.—A. (a).

sx. *Application for sale after order nisi—Mortgage to secure barrister's fees—Objection that fees not taxed.*]—Where the period fixed by an order *nisi* for the redemption of a mtge. given to a barrister & solr. to cover his fees has expired & an application is made in pursuance of the order for the sale of the mortgaged property, it is then too late to raise the objection that the agreement fixing the amount for which the mtge. was given had not been examined & allowed by a taxing officer as required by r. 748.—MACKIE *v.* IVANCHUK, [1930] 2 W. W. R. 43 ; 4 D. L. R. 76 ; 24 Alta. L. R. 635.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 2.—A. (d).

sr. *Duty of mortgagor—To see to parcelling out of land directed to be sold.*]—BEATY *v.* RADENHURST (1871), 3 Ch. Ch. 344.—**CAN.**

st. *Postponement of sale—Fresh advertisement unnecessary—Note of postponement at foot of old advertisement sufficient.*]—THOMPSON *v.* MILLIKEN (1868), 15 Gr. 197.—**CAN.**

su. *Conveyance—Parties—Wife joining in execution of incumbrance.*]—MOORE *v.* SHINNERS (1858), 1 Ch. Ch. 59.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 2.—B. (a).

1 i. —— ——.]—DE COTEAU *v.* PHILLIPS (No. 2), [1930] 3 W. W. R. 615.—**CAN.**

sv. *Mortgagee executor de son tort—Sufficient assets of deceased mortgagor—No right to foreclose.*]—KENNY *v.* KENNY (1825–1897), N. B. Dig. 311.—**CAN.**

sx. *Breach of covenant to pay taxes—Defence.*]—In an action for foreclosure of a mtge. on the ground that the mtgor. had defaulted in performing his covenant to pay taxes, it was shown that deft. was paying the arrears of taxes by instalments under an arrangement satisfactory to the city to which the taxes were payable, & it was held that he was, therefore, entitled to relief from the consequences of his default, & that the action should be dismissed, subject to the right of the pltf. to apply forthwith for judgment should deft. default in the performance of the order made herein for the payment of costs & for the continuance of the instalments on the taxes.—TILLET *v.* CARLSON & BRITTON, [1932] 1 W. W. R. 463.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 2.—E.

2869 i. —— *Mortgagees by deposit—Deposit of debentures.*]—Debentures secured by a trust deed were issued by deft. co. under an arrangement with pltf. that the proceeds expected therefrom should be used in paying off the debt owing from the co. to him & in continuing deft.'s business. The trust deed provided that the debentures, after execution thereof by the directors, should be delivered to the trustee & certified to by him from time to time as required by resolution of the directors, & should be returned to them or delivered to their order. It being found impossible to sell any of the debentures, deft.'s managing director, at the request of pltf., instructed the trustee to deposit the debentures with pltf. as collateral security for said indebtedness & to secure further advances. Thereafter advances were made by pltf. & the business continued for a year :—*Held :* pltf. was entitled to enforce his security by requiring the trustee to enforce the trust deed in the usual manner.—ANDERSON *v.* MCNAIR LUMBER & SHINGLE CO., LTD., [1929] 2 D. L. R. 209 ; 1 W. W. R. 480 ; 40 B. C. R. 466.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 4.—D. (b).

sw. *Widow of intestate mortgagor—Application for widow to represent estate.*]—*Held :* an application under K. B. Rule 205 should be refused, since Surrogate Cts. Act made ample provision for the requirements of the mtgee.—*Re* GREAT WEST LIFE ASSURANCE CO., *Re* CHRISTIE ESTATE (Man.), [1927] 3 W. W. R. 302.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 4.—E.

m i. —— *Death after commencement of action.*]—NETHERLANDS INVESTMENT CO. *v.* TRUSTS & GUARANTEE CO., [1929] 1 D. L. R. 463 ; 1 W. W. R. 62 ; 23 Alta. L. R. 631.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 4.—H.

2945 iv. ——.]—KAULBACH *v.* TAYLOR (1880), R. E. D. 400.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 6.—B. (a).

sa. *Questions of mixed law & fact involved—Defendant though not appearing filing notice disputing amount claimed.*]—RAFELMAN *v.* KIPROFF, [1928] 4 D. L. R. 310 ; 62 O. L. R. 629.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 6.—B. (c).

m i. —— *Power of master to compute.*]—TORONTO GENERAL TRUST CORPN. *v.* TURTON, [1929] 4 D. L. R. 1072 ; 1 W. W. R. 915 ; 23 S. L. R. 625.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 6.—C. (b) i.

sc. *Inclusion of injunction against waste by mortgagor in possession.*]—CAWTHRA *v.* MCGUIRE (1859), C. L. J. O. S. 142.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 6.—C. (b) ii.

3105 v. —— ——.]—REDMOND *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD., [1931] 1 W. W. R. 197.—**CAN.**

d i. —— ——.] — WALLACE *v.* MCMASTER, [1931] 1 W. W. R. 79 ; 1 D. L. R. 1016 ; 25 S. L. R. 219.—**CAN.**

sy. *Effect of payment—Action at an end.*]—DE COTEAU *v.* PHILLIPS, [1930] 1 W. W. R. 844 ; 2 D. L. R. 1004 ; 24 S. L. R. 397.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 6.—C. (c).

sz. *Crown judgment creditor for income tax & sales tax—Foreclosure as subsequent encumbrancer.*]—In a mtge. action, the King & the A.-G. for Canada were added as parties in a local master's office, as subsequent encumbrancers in respect of executions against the mtgor. upon judgments recovered for income & sales tax :—*Held :* the Crown was not in any sense the owner of the equity of redemption, & having submitted itself to the ordinary rules of procedure in an action, by recovering judgment & issuing execution for Crown debts, could be foreclosed in another action as an ordinary execution creditor of the mtgor.—BARTLETT *v.* OSTERHOUT, [1931] 3 D. L. R. 609 ; O. R. 358.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 6.—D. (b) i.

sd. *Sale of mortgagor's interest—Not land itself.*]—It is the proper practice in Nova Scotia, in an action by a mtgee. for foreclosure & sale, that the order provide for the advertisement & sale, not of the lands & premises in question *simpliciter*, but only of the interest of deft., mtgor., & of persons claiming under or through him. The ct. has full power & control over the advertising & the form of the deed which the sheriff is to execute.—MORTGAGE CORPN. OF NOVA SCOTIA *v.* ALLEN, [1930] S. C. R. 16 ; *affg.*, [1929] 4 D. L. R. 529.—**CAN.**

sf. *Provision that sale be subject to reserve bid.*]—In Saskatchewan an order for sale in a mtge. action should not provide that the sale be subject to a reserve bid.—BK. TORONTO *v.* MATHESON & MCCASKILL, [1928] 2 D. L. R. 991 ; [1928] 1 W. W. R. 846 ; 22 Sask. L. R. 467.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 6.—D. (b) ii.

q i. —— *To postpone sale.*]—MURDOCK *v.* LAWSON (1874), 9 N. S. R. 454.—**CAN.**

3378. *Add. Citations :—sub nom. Re* CLAYTON & BARCLAY'S CONTRACT, [1895] 2 Ch. 212 ; 64 L. J. Ch. 615 ; *sub nom.* CLAYTON *v.* BARCLAY, 72 L. T. 764 ; 59 J. P. 489 ; 43 W. R. 549 ; 11 T. L. R. 415 ; 39 Sol. Jo. 503 ; 13 R. 556.

Add. Annotations :—**Refd.** London & County Contract *v.* Tallack (1903), 51 W. R. 408 ; Official Receiver *v.* Cooke, [1906] 2 Ch. 661 ; *Re* Kent County Gas Light & Coke Co., [1909] 2 Ch. 195.

Part XIV.—Discharge of Mortgages.

3404. *Add. Annotation :*—**Refd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

3423. *Add. Annotation :*—**Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

3427. *Add. Annotation :*—**Refd.** Bonham *v.* Maycock (1928), 138 L. T. 736.

3433. *Add. Annotation :*—**Apld.** Bonham *v.* Maycock (1928), 138 L. T. 736.

3434. *Add. Annotation :*—**Apld.** Bonham *v.* Maycock (1928), 138 L. T. 736.

3436a. —In the absence of express authority or holding out, the mere receiving of interest on a mtge. by the mtgee.'s solr. does not imply authority to receive the principal. The solr. is, for this purpose, agent of the mtgor. & not of the mtgee.—BONHAM *v.* MAYCOCK (1928), 138 L. T. 736 ; 44 T. L. R. 387 ; 72 Sol. Jo. 254.

3451. *Add. Annotation :*—**Refd.** *Re* Simms, [1930] 2 Ch. 22.

3453a. —— —— ——.]—By a mtge. made in 1922 the widow of J., who was tenant for life under his will, mtged. a farm to W., a brother of J., to secure £1,000 & interest at 5 per cent. The widow died in 1923, having appointed her two daughters, E. & A., exors. of her will. The mtge. contained no personal covenant for payment of the principal, & the mtgee. accepted interest at 3½ per cent., reduced in 1924 to 3 per cent. In 1924 W., who was on very friendly terms with his brother's family, gave the deeds relating to the farm, other than the mtge. deed, to E. & A. to retain in their custody. On Dec. 11, 1927, W., who had since 1922 been suffering from an incurable disease & knew that he could not possibly live long, called upon his nieces, who were aware of his state of health, & gave them an envelope indorsed in his own handwriting : " Deeds relating to X. farm to be given up at death. W.," saying : " I have brought this down for you ; put it away." After he had left the house the envelope was opened, & was found to contain the mtge., which the nieces placed in their safe. On Jan. 23, 1928, W. died of pneumonia following a chill. In an action by his exors. for a declaration that the mtge. was a subsisting security & to enforce it :—*Held :* there was a valid *donatio mortis causâ* by W., & a release of the mtge. to the two daughters of J. for the benefit of his estate.—WILKES *v.* ALLINGTON, [1931] 2 Ch. 104 ; 100 L. J. Ch. 262 ; 144 L. T. 745 ; 47 T. L. R. 307 ; 75 Sol. Jo. 221.

PART XIII. SECT. 7, SUB-SECT. 6.—E. (a).

3169 i. —— *On default of defence.*]—ANGLICAN SYNOD *v.* RUSSELL & MAY (1927), 38 B. C. R. 400.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 6.—E. (c) i.

g i. —— ——.]—W., having a " charge " on lands duly recorded in the land titles office, alleging that the charge was in arrear, began foreclosure proceedings in the Supreme Ct. of Ontario, which resulted in a decree & final order for foreclosure :—*Held :* the master should record W. as owner of the land if he found that all persons having claims subsequent to the charge were foreclosed by the decree & order. It is not the duty of the master of titles to review the proceedings in the ct. ; he must give the orders of the ct. their full effect without going behind them in any way. He is entitled to ask for proof that there has been no appeal or application to open the foreclosure ; but not for proof that the proceedings leading up to the decree & final order were regular & sufficient.—*Re* WEST, [1928] 1 D. L. R. 937 ; 61 O. L. R. 540.—**CAN.**

sw. *Ex parte application—No right to apply for immediate possession.*]—Rule 542 (*f*) does not warrant the making on an *ex parte* application for a final decree of foreclosure in a mtge. action a special application for immediate possession. The application which may be made *ex parte* under rule 542 (*f*) is for the decree provided in the rules. If pltf. is seeking greater or different relief, or setting up facts not impliedly admitted on default of defence, deft. is entitled to notice thereof & must be given an opportunity to contest the new issue thus raised. On an *ex parte* application the applicant is under the duty of disclosing all pertinent facts.—SANFASON *v.* ALTICE, [1931] 1 W. W. R. 118.—**CAN.**

PART XIII. SECT. 7, SUB-SECT. 8.—H. (a).

g i. —— *Agreement in mortgage to extend time.*]—MACKENZIE *v.* MACKENZIE ESTATE, [1932] 3 W. W. R. 159.—**CAN.**

PART XIV. SECT. 1, SUB-SECT. 2.—C. (b).

3389 i. *Creditors of testator.*]—*Re* HOLLAND, *Ex p.* HOLLAND (1928), 28 S. R. N. S. W. 369 ; 45 N. S. W. W. N. 88.—**AUS.**

PART XIV. SECT. 2, SUB-SECT. 1.—A.

d (p. 603) **i.** ——.]—CAMPBELL *v.* RAYNOR, [1926] 4 D. L. R. 686 ; 59 O. L. R. 466.—**CAN.**

sx. *Payments on account—Whether mortgage discharged.*]—*Held :* the transactions which had taken place discharged the mtge. debt.—BUCHANAN *v.* KERBY (1855), 5 Gr. 332.—**CAN.**

sy. —— ——.]—*Held :* the circumstances were sufficient to show that the mtge. was intended to cover a floating balance, & was not satisfied.—RUSSELL *v.* DAVEY (1858), 7 Gr. 13.—**CAN.**

3423 i. *Set-off.*]—DICK *v.* SCHWARTZ (Man.), [1926] 3 D. L. R. 894.—**CAN.**

b (p. 604) **i.** —— *Defects in.*]—The absence of the residence & occupation of the subscribing witness to a certificate of discharge of mtge., on the face of the certificate, though stated in the affidavit :—*Held :* clearly no objection, being cured by 36 Vict. c. 17, s. 8 (O.).—STODDART *v.* STODDART (1876), 39 U. C. R. 203.—**CAN.**

d (p. 604) **i.** ——.]—EWART *v.* DRYDEN (1867), 13 Gr. 50.—**CAN.**

sz. *Payment to mortgagor's nominee—Nominee absconding — Mortgagor liable.*]—CORSINI *v.* PALM (1925), 35 B. C. R. 417.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 1.—B.

p i. ——.]—ROWE *v.* JOHNSON, [1928] V. L. R. 515 ; 49 A. L. T. 311.—**AUS.**

sa. *Payment by assignee of second mortgage—To solicitor of first mortgagee—Misappropriation by solicitor—Position of assignee.*]—LIVINGSTONE *v.* JANNETTA, [1932] S. C. R. 175 ; 1 D. L. R. 529.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 1.—D.

sk. *On rights of subsequent encumbrancer.*]—KERSCHNER *v.* CONVENTION OF BAPTIST CHURCHES, [1930] 2 W. W. R. 280 ; 4 D. L. R. 135 ; 43 B. C. R. 4.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 2.

sm. *Discharge of mortgage on execution & performance of agreement.*]—WEST *v.* ACCIDENTAL FIRE INSURANCE CO. (Sask.), [1927] 3 D. L. R. 260.—**CAN.**

PART XIV. SECT. 3, SUB SECT. 1.

n i. ——.]—Pltf. was the assignee of a mtge., & defts., the purchasers of the equity of redemption from R., the mtgor., covenanted to assume the incumbrances on the land, & pltf., in consideration of the assignment to him of that covenant of indemnity, released R. from all liability upon his personal covenant contained in the mtge. :—*Held* the mtge. debt was

3453b. —— ——.]—RICHARDS *v.* SYMS (1740), Barn. Ch. 90; 2 Eq. Cas. Abr. 617; 27 E. R. 567, L. C.

Annotations:—**Consd.** Hassell *v.* Tynte (1756), Amb. 318; Cross *v.* Sprigg (1849), 6 Hare, 552. **Refd.** Duffield *v.* Elwes (1827), 1 Bli. N. S. 497.

3495a. Jurisdiction to stay—Terms.]—In an ejectment on a forfeiture in not paying mtge. money, deft. is entitled to have proceedings stayed under Mortgage Act, 1733 (c. 20), upon payment of the principal & interest due on the mtge. deed, with the costs incurred, without paying any bygone interest not included in the mtge. or the expense of preparing the mtge. deed or any assignment of it.—DOE d. BLAGG *v.* STEEL (1832), 1 Dowl. 359.

Part XV.—Avoidance of Mortgages.

3646. *Add. Annotation:*—**Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

Part XVI.—Accounts.

3694. *Add. Annotation:*—**Distd.** Schlesinger & Joseph *v.* Mostyn, [1932] 1 K. B. 349.

3698. *Add. Annotations:*—**Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179; Smith *v.* Wood (1928), 139 L. T. 250.

3765. *Add. Annotation:*—**Refd.** Barratt *v.* Richardson & Cresswell, [1930] 1 K. B. 686.

3777. *Add. Annotation:*—**Folld.** *Re* Smith's Mortgage, Harrison *v.* Edwards, [1931] 2 Ch. 168.

Part XVII.—Interest on Mortgages.

3950. *Add. Annotation:*—*As to* (1) **Consd.** Sowerby *v.* Lindsay (1928), 44 T. L. R. 501.

3974. *Add. Annotation:*—**Refd.** I. R. Comrs. *v.* Holder, [1931] 2 K. B. 81.

3990. *Add. Annotation:*—**Consd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

not wiped out by the release, & pltf. was entitled to enforce the covenant of indemnity.—ESSER *v.* PRITZKER, [1926] 2 D. L. R. 645; 58 O. L. R. 537.—**CAN.**

f i. *Statutory discharge executed by one of two executors of deceased mortgagee.*]—*Held:* effective, when registered, as a reconveyance of the land.—*Re* A. & B., [1927] 3 D. L. R. 1070; 60 O. L. R. 647.—**CAN.**

sb. *Right of mortgagee to release portion of mortgaged property—To purchaser of that portion—Bond given by purchaser to mortgagor for payment of proportion of debt.*]—BANK OF MONTREAL *v.* HOPKINS (1864), 2 E. & A. 458.—**CAN.**

PART XIV. SECT. 4, SUB-SECT. 2.—C.

3556 iv. ——.] — The principle, enunciated in *Smith* v. *Phillips*, No. 3578, which is based on *Toulmin* v. *Steere*, No. 3555, is not applicable to India.—MANGTULAL BAGARIA *v.* UPENDRA MOHAN PAL CHAUDHURI (1929), I. L. R. 57 Calc. 82.—**IND.**

PART XIV. SECT. 4, SUB-SECT. 2.—E.

n i. ——.]—CLARY *v.* BOULAY, [1928] 2 D. L. R. 144.—**CAN.**

3573 xv. —— ——.]—In order that a subsequent mtgee., who has paid off a prior mtge., should have priority over the rest, it is sufficient to show that the parties intended that the mtgee. should have the first & only charge, & it is immaterial whether there was any intention to keep alive the prior mtge.—PANDIT DURGA MISSIR *v.* BAIJNATH SARAN (1928), I. L. R. 8 Pat. 360.—IND

PART XIV. SECT. 4, SUB-SECT. 2.—G. (b) i.

3605 xi. ——.]—An owner of land who has paid off a mtge. thereon is deemed to have extinguished the mtge., unless it appears from the circumstances of the transaction that he intended to keep it alive for his own benefit.—HOPI'S *v.* BOROWSKI, [1928] 2 D. L. R. 72; [1928] 1 W. W. R. 545; 22 Sask. L. R. 434.—**CAN.**

PART XIV. SECT. 4, SUB-SECT. 2.—G. (b) iv.

3624 i. *Devise to mortgagee.*]—*Re* PARSHALLE ESTATE, SHAW *v.* COX, [1930] 2 W. W. R. 802; 3 D. L. R. 1004; *sub nom. Re* PARSHALLE, KUNHARDT *v.* COX, 43 B. C. R. 68.—**CAN.**

PART XV.

sc. *Lien granted over unpatented land — Transfer to third party—Patent issued to third party on payment of arrears.*]—NORTHWEST THRESHER CO. *v.* BOURDIN (1910), 15 W. L. R. 181.—**CAN.**

PART XVI. SECT. 1, SUB-SECT. 2.

sd. *Subsequent encumbrancers—In absence of fraud or collusion.*]—In the case of a common-law mtge. an account whether taken in or out of ct. between a mtgee. & mtgor., or person standing in his place, binds subsequent encumbrancers, though they were not privy to the taking of it, unless there is fraud or collusion; & there is nothing in Land Titles Act, R.S.A., 1922, which renders this rule inapplicable with respect to a mtge. under that Act.—CANADIAN BANK OF COMMERCE *v.* POSTMAN & POSTMAN, [1931] 3 W. W. R. 737.—**CAN.**

PART XVI. SECT. 2, SUB-SECT. 3.—B.

3770 i. *Improvements by mortgagee—Occupation rent not increased—Unless improvements allowed.*]—DONOVAN *v.* HANNA, [1926] N. Z. L. R. 883.—**N.Z.**

PART XVI. SECT. 2, SUB-SECT. 4.—A.

sf. *Mortgagees carrying on business with mortgagor in their employ—Payment of wages—Value of goodwill.*]—VAN VOLKENBERG *v.* WESTERN CANADA RANCHING CO. (1898), 6 B. C. R. 284.—**CAN.**

PART XVI. SECT. 2, SUB-SECT. 4.—C.

n i. —— ——.]—FOSTER *v.* MORDEN (1881), 29 G. R. 25.—**CAN.**

PART XVII. SECT. 1.

3907 i. *A charge on mortgaged property.*]—MANGHI *v.* DIAL CHAND (1926), I. L. R. 7 Lah. 559.—**IND.**

e i. —.]—Applt. agreed to loan to T. Co., on mtge. of real estate, $30,000, at 7½ per cent. interest, but stipulated that, in consideration of making the loan, it should receive a bonus of $3,000, to which T. Co. agreed. The mtge. on its face was one for $30,000, bearing interest half-yearly at 7½ per cent. *per annum*, & containing no reference to the bonus. Applt. issued its cheque to T. Co. for $28,505.55, being the $30,000 less deductions for taxes, insurance premiums & solrs.' costs, & took a cheque from T. Co. for the $3,000 bonus. Some payments were made, but T. Co. became insolvent, &, the mtge. being in arrear, applt. advertised the property for sale, & the liquidator paid off the amount owing, on the basis of the full face amount of the mtge., without knowledge of the bonus. He sued to recover the $3,000, with interest paid thereon, invoking sects. 6 to 9 of Interest Act, R. S. C., 1927 (c. 102):—*Held:* he could not recover. The agreement for the bonus was legal & enforceable. The Act did not apply; in view of the effect of the legislation in question, its application should be confined to mtges. coming clearly within its description; &, taking the precise language of sect. 6, it applies only to mtges. which on their face come within the description in that sect.—LONDON LOAN & SAVINGS CO. OF CANADA *v.* MEAGHER, [1930] S. C. R. 378; 2 D. L. R. 849; *revsg.*, [1930] 1 D. L. R. 701; 64 O. L. R. 600; *affg.*, [1929] 4 D. L. R. 565; 64 O. L. R. 221.—**CAN.**

e ii. ——.]—Where a mtge. does not comply with Interest Act, 1927, s. 6, the mtgor. is relieved from all liability for interest.—ROGERS *v.* LABOW, [1929] 3 D. L. R. 845; 64 O. L. R. 309.—**CAN.**

Part XVIII.—Costs, Charges, and Expenses.

4054. *Add. Annotations:*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732; Thomas *v.* Jones, [1928] P. 162.

4061a. ——.]—In 1897 the trustees of the will of J. & Mrs. J. executed a consolidating mtge. to B. upon certain securities to secure a certain amount. In 1924 & 1926 B. made further advances to Mrs. J., who was the owner in fee, upon the same securities. Mrs. J. died in 1926. In Jan. 1927 her trustees applied for & were granted a further advance on the same securities by B., whose solrs. had attended to the previous transactions. The deed secured an immediate advance, & it also secured all the previous existing securities, although the old securities had been kept on foot for the purpose of preserving priorities, & there was a new proviso for redemption. B.'s solrs. carried in a bill for taxation, the charges being according to the scale in Sched. I., Part I., of the General Order under Solrs.' Remuneration Act, 1881 (c. 44), for "investigating title & preparing & completing deed of security." The taxing master took the view that Sched. I. did not apply, & taxed the bill accordingly:—*Held:* there had been an "investigation of title" within Sched. I., & the matter must be referred back to the taxing master.—*Re* COWARD, CHANCE & Co., [1928] Ch. 379; 97 L. J. Ch. 234; 139 L. T. 113; 72 Sol. Jo. 225.

4127a. Action by devisee of mortgagee—Against heir & executor of mortgagor—Heir of mortgagee also party.]—The devisee of a mtgee. filed his bill against the heir & exor. of the mtgor. for a foreclosure, & also made the heir of the mtgee. a party in order to establish the will against him. This latter party cannot have his costs out of the estate.—SKIPP *v.* WYATT (1787), 1 Cox, Eq. Cas. 353; 29 E. R. 1200.

4246a. ——.]—In [actions for redemption of mtges.] where redemption is opposed altogether, the mtgee. may either be deprived of costs up to trial or may be—more frequently is—ordered to pay them; but never, so far as I am aware, is the mtgor. who succeeds, in spite of opposition, in obtaining a judgment for redemption ordered to pay any of the mtgee.'s costs up to judgment (WARRINGTON, L.J.).—CARLTON MAIN COLLIERY CO., LTD. *v.* CLAWLEY, [1917] 2 K. B. 691; 86 L. J. K. B. 1294; 117 L. T. 324; 33 T. L. R. 448; 61 Sol. Jo. 629; 10 B. W. C. C. 384, C. A.; *revsd. on other grounds, sub nom.* CLAWLEY *v.* CARLTON MAIN COLLIERY CO., LTD., [1918] A. C. 744, H. L.

4324. *Add. Annotation:*—**Folld.** *Re* Smith's Mortgage, Harrison *v.* Edwards, [1931] 2 Ch. 168.

4326a. —— **Sale by mortgagee under power—Bid by mortgagor—Registration of estate contract—Costs of action for specific performance & of removal of estate contract from register.**]—The first mtgees. of property subject to a second mtge. put it up for sale by auction in exercise of their statutory power. The mtgor. attended the sale & bid for the property, but her bid was not accepted; & the highest genuine bidder was declared the purchaser. The mtgor. claiming that she had purchased the property, registered an estate contract in respect of it & sued the vendors for specific performance. The action was dismissed with costs. Upon a summons taken out by the first mtgees. against the second mtgees.:—*Held:* the costs of the action & of taking the estate contract off the register were not "costs, charges or expenses, properly incurred incident to the sale" within Law of Property Act, 1925 (c. 20), s. 105, & the first mtgees. were not entitled to deduct them from the net proceeds of the sale.—*Re* SMITH'S MORTGAGE, HARRISON *v.* EDWARDS, [1931] 2 Ch. 168; 100 L. J. Ch. 276; 145 L. T. 441.

4391. *Add. Annotation:*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

4392. *Add. Annotation:*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

4393. *Add. Annotation:*—**Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

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e iii. ——.]—LAURIER *v.* VALLEE, [1931] 1 D. L. R. 465.—**CAN.**

e iv. ——.]—Where there was nothing upon the face of the mtge. which brought it within Interest Act, R. S. C., 1927, s. 6, & where the mtge. had on its face a statement showing the amount of the principal money & the rate of interest chargeable, the mtge. was held not to come within sect. 6, & therefore sect. 9 did not apply.—BOWMAN *v.* DENISON, [1930] 4 D. L. R. 671; 65 O. L. R. 613.—**CAN.**

e v. ——.]—LEVY *v.* BOOKSPAN, [1931] 2 D. L. R. 1007.—**CAN.**

g (p. 657) i. —— *When granted.*]—The ct. cannot reduce the rate of interest or interfere with the stipulation for compound interest merely on the ground that the interest stipulated is considered to be excessive or that the interest has amounted to a large sum owing to deft. not paying it at the stipulated periods of the rests agreed upon in the bond.—RAM KRISHNA KULASI *v.* HERAMBA CHANDRA RAY (1929), I. L. R. 56 Calc. 960.—**IND.**

PART XVII. SECT. 4, SUB-SECT. 2.

3964 x. ——.]—*Re* BROWN, [1928] 1 D. L. R. 1125; 61 O. L. R. 602.—**CAN.**

PART XVII. SECT. 16.

sm. *Effect of consent to variation of rate of interest.*]—MORTLEMAN *v.* PUBLIC TRUSTEE, [1927] N. Z. L. R. 642.—**N.Z.**

PART XVIII. SECT. 3, SUB-SECT. 2.

q i. —— *Not limited to sum paid into court.*] — LEMIEUX *v.* MCDONALD (Sask.), [1929] 3 D. L. R. 644.—**CAN.**

PART XVIII. SECT. 3, SUB-SECT. 4.—B.

4240 i. *Overstatement of amount due.*]—The mere fact that a mtgee. suing for foreclosure claims a larger amount than that found due to him is not such misconduct as justifies depriving him of his costs.—MAYHEW *v.* ADAMS, [1931] 1 D. L. R. 611; [1930] 3 W. W. R. 359; 25 S. L. R. 204.—**CAN.**

PART XVIII. SECT. 3, SUB-SECT. 4.—C.

so. *Right of mortgagee to set off amount of taxes paid against liability for costs—Parties entitled to costs not liable for taxes.*]—FRIESEN *v.* SASKATCHEWAN MORTGAGE & TRUST CORPN., [1924] 2 D. L. R. 1246; [1924] 2 W. W. R. 608.—**CAN.**

PART XVIII. SECT. 13.

4398 i. *Costs of appeal—How borne—Right to payment forthwith.*]—A mtgor. & *puisne* mtgee. having appealed unsuccessfully from an order setting aside the registrar's certificate & directing a new account to be taken:—*Held:* the mtgee. was entitled to have the usual rule, that the cost of an unsuccessful appeal are payable forthwith, adhered to.—CANADA PERMANENT MORTGAGE CORPN. *v.* DALGLEISH, [1928] 3 D. L. R. 59; [1928] 1 W. W. R. 922.—**CAN.**

PART XIX.

sc. *Debt Adjustment Act*, 1931—*Application for cancellation of certificate—Matters for consideration.*]—A certificate under Debt Adjustment Act, 1931, should not be withheld or withdrawn if, without real injustice & hardship to any creditor, it offers a reasonable possibility that "the resident" will be able to recover himself financially when conditions become normal again.—*Re* PETRICH & ERICKSON & DEBT ADJUSTMENT COMR., [1932] 1 W. W. R. 459.—**CAN.**

sf. —— —— ——.]—ANDERSON *v.* DEBT ADJUSTMENT COMR., [1932] 2 W. W. R. 120.—**CAN.**

sg. —— *Restraint of sale of homestead.*]—REIDER *v.* NATIONAL TRUST CO., LTD., [1932] 3 W. W. R. 428.—**CAN.**

sh. —— *Mortgage after Apr. 1, 1931, for prior indebtedness.*]—MCDIARMID *v.* MCDIARMID (J.) CO., LTD., [1932] 3 W. W. R. 370.—**CAN.**

NAME AND ARMS.

Part I.—Name.

62a. Costs of compliance.]—The tenant for life under a will must pay the expenses of taking testator's name & arms as directed by the will. —*Re* MERCER, DREWE-MERCER *v.* DREWE-MERCER (1889), 6 T. L. R. 95.

64. *Add. Citations:*—96 L. J. Ch. 9; 136 L. T. 23; *subsequent proceedings*, [1927] 1 Ch. 593.

64a. ——.]—SEMPLE *v.* HOLLAND (1863), 33 Beav. 94; 55 E. R. 302.

NEGLIGENCE.

Part I.—General Principles.

2. *Add. Annotation :*—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119.

Add. Annotations :—Generally, **Refd.** Cosmopolitan Shipping Co. (Inc.) *v.* Hatton & Cookson, Ltd. (Liverpool) (1929), 143 L. T. 296 ; Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39 ; McGowan *v.* Stott (1923), 99 L. J. K. B. 357, n. ; Simpson *v.* London, Midland & Scottish Ry. Co., [1931] A. C. 351. McCullum *v.* Northumbrian Shipping Co. (1931), 146 L. T. 124.

4a. —— —— ——.] — HARGROVE *v.* BURN (1929), 46 T. L. R. 59.

7. *Add. Annotation :*—**Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

9. *Add. Annotations :*—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119. **Refd.** Oliver *v.* Sadler & Co., [1929] A. C. 584 ; Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

10. *Add. Annotation :*—**Refd.** Fanton *v.* Denville, [1932] 2 K. B. 309.

12. *Add. Annotations :*—**Consd.** *Re* Munton, Munton *v.* West, [1927] 1 Ch. 262. **Apld.** *Re* Vickery, Vickery *v.* Stephens, [1931] 1 Ch. 572. **Refd.** *Re* Windsor Steam Coal Co. (1901), Ltd., [1929] 1 Ch. 151.

26. *Add. Annotation :—As to* (1) **Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119.

38. *Add. Annotation :*—**Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

53. *Add. Annotations :*—**Distd.** Oliver *v.* Sadler & Co., [1929] A. C. 584. **Apld.** Farr *v.* Butters Bros. & Co. (1932), 174 L. T. Jo. 86. **Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119. **Refd.** Bottomley *v.* Bannister, [1932] 1 K. B. 458.

58. *Add. Annotation :*—**Refd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39.

59. *Add. Annotation :*—**Consd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

59a. ——.]—In Mar. 1926, defts. carried out demolition work on premises adjoining other premises, called X., under a limited licence given by the owners of premises X. One of the conditions of the licence was that defts. should make good all damage done to premises X. by reason of the demolition operations. In the course of the operations defts. allowed debris to drop on an inaccessible part of the roof of premises X. & did not remove all the debris therefrom when the demolition work was completed. In July pltf. became the occupier of premises X. under a lease. In Sept. a heavy storm of rain washed the debris which had been left by defts. on the roof of premises X. into the gutters on the roof, & a gulley was choked & the basement of premises X. was flooded, & goods which pltf. kept there were damaged. In an action by pltf. claiming damages for defts.' negligence :—*Held :* there could be no negligence, as there was no duty on the part of defts. towards pltf.—KONSKIER *v.* GOODMAN (B.), LTD., [1928] 1 K. B. 421; 97 L. J. K. B. 263; 138 L. T. 481; 44 T. L. R. 91, C. A.

59b. ——.]—HARGROVE *v.* BURN (1929), 46 T. L. R. 59.

66. *Add. Annotation :*—**Refd.** Winkworth *v.* Raven, [1931] 1 K. B. 652.

79. *Add. Annotation :*—**Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

PART I. SECT. 1, SUB-SECT. 1.

5 iv. —— ——.]—Negligence is not the absence of care which will prevent an accident, but rather the absence of that care which a reasonably prudent person would exercise.—MACGREGOR *v.* CANADIAN NATIONAL RYS. & EDMONTON CITY, [1930] 3 W. W. R. 392 ; [1931] 1 D. L. R. 87 ; 25 Alta. L. R. 104 ; *varg.*, [1930] 3 W. W. R. 237.—**CAN.**

PART I. SECT. 2, SUB-SECT. 1.

33 xxv. ——.]—An action of damages was brought against a firm of ginger beer manufacturers on behalf of two children who had been injured through drinking a bottle of ginger beer, manufactured by defenders, which contained the decayed body of a mouse. The bottle was bought from a retailer, but the mouse, unknown to the manufacturers, was in the bottle when it left their factory. It was possible for mice to enter empty bottles at a factory, but the manufacturers' system of cleansing & inspecting the bottles before filling was the best system known in the trade. There was no affirmative proof of carelessness by any of the manufacturers' servants in carrying out the system :—*Held :* defenders fell to be assoilzied ; on the ground that, as defenders neither knew that the contents of the bottle were dangerous, nor were dealers in articles *per se* dangerous, they owed no duty to the consumers, who had not contracted with them.—MULLEN *v.* BARR & CO., LTD., M'GOWAN *v.* BARR & CO., LTD., [1929] S. C. (Ct. of Sess.) 461.—**SCOT.**

m vi. —— ——.]—Where two motor cars are approaching an intersection & the one on the left of the other makes a substantial entry thereon before the latter, the right of way which the latter would otherwise have had is displaced.—CHAMBERS, CLARK & CRIGHTON *v.* SAMPSON, [1931] 2 W. W. R. 251 ; 3 D. L. R. 206 ; 44 B. C. R. 134.—**CAN.**

PART I. SECT. 2, SUB-SECT. 3.—A.

73 iv. ——.]—PACIFIC STAGES, LTD. *v.* JONES, [1928] 2 D. L. R. 897 ; [1928] S. C. R. 92.—**CAN.**

PART I. SECT. 2, SUB-SECT. 3.—C.

77 ii. ——.]—ARMAND *v.* CARR & CARR & WILCOX, [1926] 3 D. L. R. 592 ; [1926] S. C. R. 575.—**CAN.**

PART I. SECT. 2, SUB-SECT. 3.—D. (a).

80 xxii. ——.]—ZEIDEL *v.* WINNIPEG ELEC. CO., [1928] 3 D. L. R. 570 ; [1928] 2 W. W. R. 601 ; 34 Can. Ry. Cas. 267 ; 37 Man. L. R. 412 ; *revsd., sub nom.* WINNIPEG ELEC. CO. *v.* ZEIDEL, [1929] 3 D. L. R. 610 ; S. C. R. 538.—**CAN.**

80 —.]—Even though a motor car is travelling on the right-hand side of the road, the driver is not justified in holding to his course regardless of the consequences, but is bound to exercise reasonable care to avoid injuring others, & owes this duty to the driver of an approaching car even if the latter has not yet complied with the statutory provision requiring him to turn out to the right of the centre of the highway.—AUDET *v.* WETSCH, [1928] 3 W. W. R. 655.—**CAN.**

80 xxiv. ——.]—MANN *v.* SHARP (P. E. I.), [1929] 4 D. L. R. 949.—**CAN.**

82 vii. —— —— ——.]—Persons lawfully doing a work which interferes with a public right, *e.g.* contractors working on a highway, must use reasonable care not to injure persons lawfully exercising that right, &, therefore, must take reasonable precautions to warn such persons of dangers created by the doing of the work which the latter could not with reasonable care discover.—MCCULLOCH *v.* STAR CONSTRUCTION CO., [1928] 1 D. L. R. 970 ; [1928] 1 W. W. R. 211 ; 22 Sask. L. R. 231.—**CAN.**

82 viii. —— —— ——.]—HARVIE *v.* CANADIAN PACIFIC RY. CO. & HURST ENGINEERING & CONSTRUCTION CO., LTD., [1929] 2 D. L. R. 422 ; 1 W. W. R. 72 ; 35 Crim. Ry. Cas. 274 ; 23 S. L. R. 257.—**CAN.**

85. *Add. Annotations :*—**Refd.** Silverman *v.* Imperial London Hotels (1927), 137 L. T. 57; Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159; Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

112. *Add. Annotation :*—**Refd.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353.

128. *Add. Annotation :*—**Refd.** De Freville *v.* Dill (1927), 96 L. J. K. B. 1056.

131a. ——.]—HARGROVE *v.* BURN (1929), 46 T. L. R. 59.

134. *Add. Annotation :—As to* (1) **Refd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39.

135. *Add. Annotation :*—**Refd.** The Edison, [1932] P. 52.

139. *Add. Annotation :*—**Refd.** The Edison (1932), 147 L. T. 141.

142. *Add. Annotations :*—**Consd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46; McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119.

143. *Add. Annotations :—As to* (2) **Refd.** Pontardawe Rural District Council *v.* Moore-Gwyn, [1929] 1 Ch. 656; Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

151. *Add. Annotations :*—**Refd.** Compania Mexicana De Petroleo El Aguila *v.* Essex Transport & Trading Co. (1929), 141 L. T. 106; The Edison, [1932] P. 52.

156. *Add. Annotation :* — **Refd.** S.S. Singleton Abbey *v.* S.S. Paludina, [1927] A. C. 16.

161. *Add. Annotation :*—**Refd.** H. *v.* H., [1928] P. 206.

162. *Add. Annotation :*—**Consd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369.

181. *Add. Annotation :*—**Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

Part II.—Negligence in regard to Property.

208. *Add. Annotations :*—**Consd.** Forbes, Abbott & Lennard *v.* G. W. Ry. (1927), 138 L. T. 286. **Apld.** Compania Mexicana De Petroleo El Aguila *v.* Essex Transport & Trading Co. (1929), 141 L. T. 106. **Refd.** Silverman *v.* Imperial London Hotels (1927), 137 L. T. 57; Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776; The Hayle, [1929] P. 275; Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

209. *Add. Annotation :*—**Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

213. *Add. Annotation :*—**Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

217. *Add. Annotations :*—**Refd.** Silverman *v.* Imperial London Hotels (1927), 137 L. T. 57; Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

219. *Add. Annotation :*—**Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

223. *Add. Annotations :—As to* (1) **Consd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776; Addie (R.) & Sons (Collieries) *v.* Dumbreck, [1929] A. C. 358. *As to* (2) **Consd.** Compania Mexicana De Petroleo El Aguila *v.* Essex Transport & Trading Co. (1929), 141 L. T. 106. *Generally*, **Refd.** De Freville *v.* Dill (1927), 96 L. J. K. B. 1056.

242. *Add. Annotation :*—**Consd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

82 ix. —.]—Where a person driving a motor car on a narrow country road sees men & teams engaged on construction work on the road ahead of him he should at once slow down & look for a signal to proceed unless upon a careful survey it is clear that the road is open to traffic.—PHILLIPS *v.* MCKAY, [1932] 1 W. W. R. 730; 2 D. L. R. 614; 40 Man. L. R. 235.—**CAN.**

PART I. SECT. 2, SUB-SECT. 3.—F.

93 i. *Carriers.*]—A motor vehicle owned by two defts. was being driven by one of them, L., & pltf. was injured in a collision which followed :—*Held :* pltf., though not a passenger for hire, could maintain an action for damages for his injuries, want of ordinary & reasonable care on the part of L. being shown.—PARLOV *v.* LOZINA & RAOLOVICH (1920), 47 O. L. R. 376; 18 O. W. N. 139.—**CAN.**

PART I. SECT. 4, SUB-SECT. 2.—A.

132 iv. *Revsd.*, [1919] 1 W. W. R. 806.

150 i. *Injury not capable of being foreseen or anticipated—Liability only where negligence established.*]—HARDING *v.* EDWARDS & TATISICH, EDWARDS *v.* TATISICH, GALL *v.* EDWARDS & TATISICH, [1929] 4 D. L. R. 598; 64 O. L. R. 98.—**CAN.**

PART I. SECT. 4, SUB-SECT. 3.—B.

171 iv. ——.]—STEPHEN *v.* MCNEILL, [1929] 1 D. L. R. 1003; S. C. R. 537; *affg.*, [1928] 4 D. L. R. 172; [1928] 3 W. W. R. 182.—**CAN.**

PART II. SECT. 1, SUB-SECT. 1.

206 iv. ——.]—Pltf. was hired with his teams by L., who had a contract with deft. co. to get out logs for use in co.'s lumber business. Pltf. took a team over a private way leading to the co.'s limits, & in crossing a culvert one of the horses met with an accident by stepping upon a board which broke under its weight. Pltf. charged negligence in respect of the rotten condition of the board. There was no evidence that deft. co. placed the board there, or knew or should have known of its presence there :—*Held :* pltf. had failed to prove any negligence of deft. co.—GUERTIN *v.* FASSETT LUMBER CO., [1931] 4 D. L. R. 916; O. R. 589.—**CAN.**

PART II. SECT. 1, SUB-SECT. 2.—A. (b).

242 i. *Spectator at public exhibition.*]—At a motor cycle race meeting conducted by a co., a spectator was injured through a motor cycle getting out of control, & after colliding with another motor cycle, jumping over the fence. The racing took place at high speeds on a flat track surrounded by a wire mesh safety fence, a foot outside which was a picket fence of the same height. In addition, in places, there was another fence erected on top of the picket fence. Outside the picket fence there were seats, & the heads of persons sitting thereon would be below the level of the picket & safety fences. The spectator, who had not been to motor cycle races before, attended in consequence of an advertisement, paid for admission, & took a seat at a place where there was no fence above the picket fence. He saw a notice: "Danger. Do not lean on fence." He assumed that the fence gave him sufficient protection. Unknown to the spectator, a motor cycle had on a previous occasion similarly gone over the fence :—*Held :* deft. was liable.—CHATWOOD *v.* NATIONAL SPEEDWAYS, LTD., [1929] S. R. (Q.) 29.—**AUS.**

242 ii. ——.]—In an action for damages for injuries sustained by pltfs. by the sudden stopping of an amusement device known as a "whoopee wheel" upon which they were seated as paying passengers :—*Held :* the negligence of deft. in not providing an emergency brake was the cause of the breaking of the shaft & the consequent injuries.—BALNE *v.* SUNNYSIDE AMUSEMENT CO., LTD., [1931] 4 D. L. R. 487; O. R. 549.—**CAN.**

242 iii. *Child in corporation playground.*]—Deft. city corpn. established & conducted "supervised playgrounds" throughout the city & employed supervisors to take charge of them :—*Held :* the corpn. assumed, or held itself as having assumed, the obligation of taking reasonable care of such children as should resort to the playgrounds, & was bound to make some reasonable effort to protect them from dangers known or reasonably to be apprehended.—MCSTRAVICK *v.* OTTAWA, [1929] 4 D. L. R. 492; 64 O. L. R. 275; *affg.*, [1929] 3 D. L. R. 317; 63 O. L. R. 626.—**CAN.**

242 iv. *Person sharing offices with friend.*]—Pltf. had for a number of

243a. ——.]—Resps. were the proprietors of a space of land known as "Dreamland," which was a place for the entertainment of the public. On part of this land the "Atlantic Flyer" was erected by S., under the terms of an agreement with resps., by which a part of the land at "Dreamland" was taken over by S. for the purpose of erecting & running the "Atlantic Flyer." Resps. under the agreement were to be paid 33⅓ per cent. of S.'s gross receipts, but all moneys were in the first instance to be paid to the resps., who had the right to appoint the cashiers. Under rules & regulations attached to the agreement, a right was reserved to resps. to refuse admission to any person & to charge for admission to the ground. S. was bound to provide at his own expense a ticket-taker. Resps. advertised inviting persons to "Dreamland." W. was killed while on one of the boats of the "Flyer" in consequence of a bolt giving way & the occupants being flung out. Applt., as his mother & partial dependant, claimed damages under Fatal Accidents Act, 1846 (c. 93), against resps.:—*Held:* on the terms & rules of the agreement, there was no contractual relation between resps. & deceased, & as the advertisements of resps. did no more than invite people to the area of land owned by them, there was no invitation to deceased to enter upon property on which there was a hidden danger under the control of the inviter.—HUMPHREYS *v.* DREAMLAND (MARGATE), LTD. (1930), 100 L. J. K. B. 137; 144 L. T. 529; 74 Sol. Jo. 862, H. L.

243b. ——.]—Action for injuries received while watching a polo match, through a polo pony leaving the ground & passing through a hedge:—*Held:* there was no negligence.—PIDINGTON *v.* HASTINGS (1932), The "Times" Mar. 12.

Annotation:—**Consd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

243c. ——.]—Pltf. had paid for admission to witness motor car races on a course occupied & managed by defts. As the result of a collision between two motor cars near the railing behind which pltf. was standing one of the cars leapt into the air & went right through the railing, with the result that pltf. & several other spectators sustained serious personal injuries. It was not disputed that this accident was the first time when any spectator had been injured by a car leaving the track. In an action claiming damages for personal injuries the jury found (*inter alia*) that defts. had omitted to take reasonable precautions for the safety of spectators, & awarded damages to pltf. On appeal:—*Held:* there was no evidence that defts. had failed to take proper care to make their premises reasonably safe for spectators. Defts. were not under any obligation to insure safety under all circumstances, but only to provide against damage to spectators which any reasonable person in their position would have anticipated as likely to happen. The spectator himself took the risk of remoter damage when he elected to attend the races.—HALL *v.* BROOKLANDS AUTO-RACING CLUB (1932), 101 L. J. K. B. 679; 147 L. T. 404; 48 T. L. R. 546, C. A.

256. *Add. Annotations:*—*As to* (1) **Consd.** Addie R. & Sons (Collieries) *v.* Dumbreck, [1929] A. C. 358. **Refd.** Oldham *v.* Sheffield Corpn. (1927), 136 L. T. 681. *Generally*, **Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

260. *Add. Annotation:*—**Consd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

261. *Add. Annotations:*—**Consd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546. **Refd.** Silverman *v.* Imperial London Hotels (1927), 137 L. T. 57; Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

267a. Proprietor of Turkish baths—Dangerous insects.]—Circumstances (*see* CONTRACT, No. 5168a, *ante*), in which:—*Held:* apart from contract, defts. were under an obligation to a person using their premises to abstain from negligence, & if they, knowing of the danger, did not take sufficient precautions & such person were injured, he could recover.—SILVERMAN *v.* IMPERIAL LONDON HOTELS, LTD. (1927), 137 L. T. 57; 43 T. L. R. 260.

years shared with a friend an office in deft.'s building which the friend leased from deft. Pltf. paid the friend half of the rent, & they gave one another mutual assistance in their business. When pltf. was entering a passenger elevator in the building it began to slide downwards, with the result that pltf. fell forward & was injured. A jury returned a verdict for damages on which judgment was given for pltf., & deft. appealed:—*Held:* pltf. was an invitee, &, therefore, deft. was under the duty towards him of taking reasonable care that the premises were safe.—GORDON *v.* CANADIAN BANK OF COMMERCE, [1931] 3 W. W. R. 185, 373; 4 D. L. R. 635; 44 B. C. R. 213.—**CAN.**

PART II. SECT. 1, SUB-SECT. 2.—B. (a).

247 xi. —— ——.]—GUILFOIL *v.* MCAVITY (T.) & SONS, LTD. (N. B.), [1927] 3 D. L. R. 672.—**CAN.**

252 i. —— —— —— *Danger unknown to invitee.*]—GORDON & GORDON *v.* BLAKELY, [1931] 2 W. W. R. 902.—**CAN.**

PART II. SECT. 1, SUB-SECT. 2.—B. (b).

261 ii. ——.]—Pltf. went to deft.'s butcher shop to buy meat; he asked the employee who served him about peas, & the employee motioned with his head to a shelf where there were peas; pltf. walked across the shop to the shelf, but stepped into a hole in the floor near the shelf, fell into the cellar & was injured. The employee knew the trap door which guarded the hole was up, & did not warn pltf. The shelf was in a part of the shop to which customers occasionally went:—*Held:* pltf., an invitee, was not in a part of the shop to which he was not invited, & it could not be said that he was not exercising ordinary care because, going across a shop to look at goods upon a particular shelf, he did not cast his eyes on the floor to see that no trap had been laid for him.—RUDLEN *v.* BRIDGEMAN, [1930] 3 D. L. R. 224; 65 O. L. R. 224.—**CAN.**

PART II. SECT. 1, SUB-SECT. 2.—B. (f).

sb. *Public Library Board.*]—*Held:* liable for injury sustained by pltf., by a fall upon an icy step of the public library building, which she was leaving after exchanging books in the library.—NICKELL *v.* CITY OF WINDSOR, [1927] 1 D. L. R. 379; 59 O. L. R. 618.—**CAN.**

PART II. SECT. 1, SUB-SECT. 2.—C.

268 iv. ——.]—Pltf., looking for employment, came by permission of defts.' foreman upon their premises during the erection thereon of a building, & spoke to the foreman at the foot of a stair. The foreman told him to wait there, or wait where he was & he would see about him. Pltf. was injured by a piece of wood, part of an open hoist, which some time afterwards fell upon him when he was in another part of the premises:—*Held:* although pltf. was an invitee, the invitation to remain was limited, & did not justify him in leaving the place indicated & going to another part of the premises where there was danger; he had no right to be where he was when struck & defts. in the circumstances owed him no duty.—AZZOLE *v.* YATES CONSTRUCTION CO., [1928] 1 D. L. R. 233; 61 O. L. R. 416.—**CAN.**

268 v. ——.]—It would be imposing too great a liability on a landowner who permits his premises to be used as a picnic ground, in the hope of profit, to hold him liable for a disaster to a child whose parents permit him, not merely to bathe upon the safe beach in front of the picnic grounds, but to stray away to a danger in front of adjacent premises where he could not be supposed to be invited to disport himself.—DRINKWALTER *v.* MORAND, [1929] 4 D. L. R. 421; 64 O. L. R. 124.—**CAN.**

275. *Add. Annotation :*—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119.

280. *Add. Annotation :*—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119.

291. *Add. Annotations :*—**Consd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776. **Refd.** Oldham *v.* Sheffield Corpn. (1927), 136 L. T. 681.

304. *Add. Annotation :*—*As to* (1) **Consd.** Oldham *v.* Sheffield Corpn. (1927), 136 L. T. 681.

309. *Add. Annotation :*—**Consd.** Addie R. & Sons (Collieries) *v.* Dumbreck, [1929] A. C. 358.

309a. —— ——.]—A piece of waste land, whose owner was laying it out as a building estate, adjoined the highway & was unfenced, & the children of the neighbourhood, without any licence to do so, used it as a playground. On the land there was a large elm tree, & by a contract between the owner & deft., who was a nurseryman, the latter undertook to fell the tree. On the day on which the tree was expected to fall there were many children on the land, & deft. or his assistant more than once drove them back from the tree. At 5.15 p.m. the tree was held up by one root only, & deft., knowing that when that root was cut the tree would fall within two minutes & without giving any further warning to the children, cut that last root, whereupon the tree fell & in its fall hurt pltf., a boy ten years of age. In an action in the county ct. by pltf. against deft. for personal injuries the judge found that deft. had been guilty of negligence in not warning the children that the tree was about to fall, & that pltf.'s injuries were due to that negligence ; but he further found that pltf. was a trespasser on the land, & on that ground he gave judgment for deft. On appeal :—*Held :* deft. owed a duty even to a trespasser not to do any act, which would alter the condition of the land & might injure him, without giving him warning ; the judge in finding that deft. had been negligent had found that he had committed a breach of that duty towards pltf., though a trespasser ; & pltf. was entitled to judgment.—MOURTON *v.* POULTER, [1930] 2 K. B. 183 ; 99 L. J. K. B. 289 ; 143 L. T. 20 ; 35 Com. Cas. 308 ; *sub nom.* MOULTON *v.* POULTER, 94 J. P. 190 ; 46 T. L. R. 256 ; 74 Sol. Jo. 170.

310a. —— —— **Felling tree.**]—MOURTON *v.* POULTER, No. 309a, *ante*.

321. *Add. Annotation :*—**Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

322. *Add. Citations :*—136 L. T. 681 ; 91 J. P. 69 ; 25 L. G. R. 94.

Add. Annotation :—**Distd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

PART II. SECT. 1, SUB-SECT. 3.—A.

285 ii. —— *Children walking along track.*]—ACADIA COAL CO. *v.* MCNEIL, [1927] 3 D. L. R. 871 ; [1927] S. C. R. 497 ; 33 Can. Ry. Cas. 49.—**CAN.**

287 i. *Guests.*]—Pltfs., who were gratuitous passengers in deft.'s motor car, were injured in a collision between it & another motor car. The trial judge found negligence on the part of deft. & awarded both pltfs. damages. Deft. appealed :—*Held :* the appeals should be dismissed.—LECHTZIER *v.* LECHTZIER, LEVY *v.* LECHTZIER, [1931] 1 W. W. R. 425 ; 1 D. L. R. 1004 ; 43 B. C. R. 423.—**CAN.**

PART II. SECT. 1, SUB-SECT. 3.—B. (a).

286 xiii. —— ——.]—ACADIA COAL CO. *v.* MCNEIL, [1927] 3 D. L. R. 871 ; [1927] S. C. R. 497 ; 33 Can. Ry. Cas. 49.—**CAN.**

288 xiv. —— ——.]—The driver of a motor car is liable for injuries caused a gratuitous passenger by his negligence in driving the car.—LIMB & LIMB *v.* STEWART (B. C.), [1929] 2 D. L. R. 349 ; *revsg.*, [1926] 3 D. L. R. 550 ; 3 W. W. R. 205.—**CAN.**

288 xv. —— ——.]—The driver of a motor car which is travelling behind another car is under the duty to a passenger in his car to anticipate & take reasonable care to avoid the risk which may arise from the driver of the car ahead doing what he should not do, *e.g.* making a sudden left-hand turn at an intersection without giving any signal of his intention to turn.—MCLEOD *v.* BOULTBEE & ATKINS, [1931] 2 W. W. R. 805 ; 4 D. L. R. 912 ; 44 B. C. R. 375.—**CAN.**

288 xvi. —— ——.]—In an action for damages for personal injuries, brought against the magistrates of a burgh as the owners & occupiers of an esplanade, pursuer averred that the esplanade included a granolithic footway ; that adjacent to the footway were a number of seats on platforms clear of the footway ; that the public were permitted by defenders to have access to the footway ; that the esplanade was not lighted at night ; & that he, while walking on the footway at night, had fallen over a seat placed on the footway, & had been injured. He further averred that he had believed that the footway was free from obstructions, & that all the seats were on the platforms & not on the footway ; that he was entitled to expect that the footway would be kept safe for foot traffic, or guarded & lighted if not so ; the defenders ought to have known that the seat was in a dangerous position, & in leaving it unlit after dark they were guilty of negligence :—*Held :* as pursuer was merely a licencee, defenders' only duty was not to subject him to a trap & there were no relevant averments of a trap.—BOLTON *v.* GOUROCK MAGISTRATES, [1932] S. C. 239.—**SCOT.**

PART II. SECT. 1, SUB-SECT. 4.

307 xiv. ——.]—The adult pltf., having business with defts., drove his motor-truck into their enclosed premises & left it standing therein. His daughter, the infant pltf., who had accompanied him, remained seated in the truck. It was struck by a car of deft.'s which was pushed over the end of a railway siding. The truck was damaged & the infant pltf. injured :—*Held :* the infant pltf. was a mere trespasser & could not recover.—BETTLES *v.* CANADIAN NATIONAL RYS., [1929] 4 D. L. R. 175 ; 35 Can. Ry. Cas. 309 ; 64 O. L. R. 211 ; *revsg.*, [1929] 2 D. L. R. 782 ; 35 Can. Ry. Cas. 305 ; 63 O. L. R. 537.—**CAN.**

PART II. SECT. 1, SUB-SECT. 6.

d i. *Window broken by negligence of servants.*]—Defts. were the occupiers of a building abutting on the street. Two servants of defts. were engaged on the third floor of the building in moving a large table by means of an electric hoist. Overlooking the street on this floor was a window, half of which was projecting over the street, having been opened to give the table more play. One servant was holding the table top, & the other servant was working the hoist. At a time when the table was suspended in the air, the foot of the servant holding the table slipped, & in consequence the table struck that half of the window projecting over the street. The window was broken & the glass fell on pltf. passing in the street below & injured him. The other windows on this floor of the building had been broken on previous occasions by rolls of linoleum whilst being moved by the electric hoist :—*Held :* pltf.'s injuries were caused by the negligent use & management of defts.' property by their servants, & that such negligence was the effective cause of pltf.'s injuries.—MORE *v.* EDWARDS & LAMB, [1929] S. R. (Q.) 171.—**AUS.**

d ii. —— *Dead tree falling on highway.*]—The occupier of land on which there is standing a dead tree which had grown there naturally & which is not overhanging his boundary is not liable to a person who while on the adjoining highway is injured by the falling of the tree across the highway.—PATTERSON *v.* BOARD OF SCHOOL TRUSTEES OF NORTH VANCOUVER, PATTERSON *v.* CANADIAN ROBERT DOLLAR CO., [1929] 3 D. L. R. 33 ; 2 W. W. R. 181 ; 41 B. C. R. 123.—**CAN.**

sx. *Unguarded excavation on property—Property unfenced from sidewalk.*]—Deft. owned a property at the corner of F. Street & First Avenue. There was a fence along F. Street but no fence on First Avenue. There was an unguarded excavation on the property intended for the basement of a house, about two feet from the line of F. Street & about twenty feet from the line of First Avenue. On a dark & foggy night pltf., who was a stranger in the town, was walking to his home. He missed his way on First Avenue where there was no sidewalk, fell into the excavation & was injured :—*Held :* as there was no fence, pltf. in straying upon deft.'s land was not a trespasser, & there was a duty upon deft. not to maintain a trap such as this excavation. Pltf. was therefore entitled to recover.—BLANCHARD *v.* VA (1930), 42 B. C. R. 446.—**CAN.**

353. *Add. Annotations :*—**Consd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46; McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119.

353a. ——**Hot water boiler—Heated by gas burner without flue.**]—Defts., who were builders, sold a house to a purchaser, the contract providing that before conveyance the house was to be completed with a design similar to that of other houses on defts.' building estate & to be fit for habitation. In these houses the hot water for the bath was provided by a kitchen boiler heated by a gas burner with no flue to carry off waste products & with a linen shoot between the kitchen & the bathroom. A similar apparatus was installed by defts. in the house in question, & after the installation the gas co., on behalf of the purchaser, who was already in occupation as a tenant-at-will pending completion, set the regulator at 45 feet an hour, & the apparatus, when so regulated, was perfectly safe. The purchaser or his wife, in all probability, afterwards altered the regulator to 75 feet an hour, which was dangerous, & they were found dead in the bathroom, death being due to the inhalation of carbon monoxide. On behalf of their infant daughter their administrators brought against defts. an action for damages, (*a*) for breach of a contract to render the house fit for habitation, & (*b*) for negligently installing the apparatus so that noxious gases or products of combustion would be omitted into the house. The evidence established that such an installation, properly regulated, was not dangerous, & that defts. had nothing to do with the regulation :—*Held :* (1) since, apart from statutory exceptions which did not apply, a landlord or a vendor of real estate was not, in the absence of express contract, liable to his tenant or purchaser for dangerous defects, & since there was no evidence of the house being unfit for habitation with the apparatus properly regulated, pltfs. could not succeed on the ground of contract; (2) since the apparatus as installed by defts. was not dangerous, pltfs. could not recover on the ground of tort.—BOTTOMLEY *v.* BANNISTER, [1932] 1 K. B. 458; 101 L J. K. B. 46; 146 L. T. 68; 48 T. L. R. 39, C. A.

Annotation :—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119.

354. *Add. Annotations :*—**Consd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46; McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119.

356. *Add. Annotation :*—**Refd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

359. *Add. Annotation :*—**Consd.** Langham *v.* Wellingborough School Governors & Fryer (1932), 147 L. T. 91.

361a. -.]—The law seems to be (1) if a barge which has carried petrol is an article dangerous in itself, it is the duty of the owners to take proper & reasonable precautions to prevent its doing damage to people likely to come in contact with it. These precautions may be fulfilled by entrusting it to a competent person with reasonable warning of its dangerous character, if that danger is not obvious. If such precautions are not taken, the owner will be liable to third persons with whom he has no contract for damage done by the barge, which they could not have avoided with reasonable care; (2) If the barge which has carried petrol is not dangerous in itself, but becomes dangerous because it has been insufficiently cleaned, & the owner is ignorant of the danger, the owner is not liable for damage caused by it to persons with whom he has no contract; (3) In the case of a thing dangerous in itself, where either the danger is obvious or the owner has given proper warning to the person entrusted with it, not being his servant, the owner is not liable for negligence of such person causing injury to a third party; such negligence is *nova causa interveniens* (SCRUTTON, L.J.).—HODGE & SONS *v.* ANGLO-AMERICAN OIL CO. (1922), 12 Ll. L. Rep. 183.

Annotations :—**Consd.** Bottomley *v.* Bannister, [1932] 1 K. B. 458; McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119.

361b. ——.]—TAYLOR (J.) & SONS, LTD. *v.* UNION-CASTLE MAIL S.S. CO., LTD. (1932), 48 T. L. R. 249; 76 Sol. Jo. 148.

364. *Add. Annotations :*—**Consd.** Bottomley *v.* Bannister, [1932] 1 K. B. 458; McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119.

——— ——— ———.]—By Scots & English law alike the manufacturer of an article of food, medicine, or the like, sold by him to a distributor in circumstances which prevent the distributor or the ultimate purchaser or consumer from discovering by inspection any defect, is under a legal duty to the ultimate purchaser or consumer to take reasonable care that the article is free from defect likely to cause injury to health.—M'ALISTER (OR DONOGHUE) *v.* STEVENSON, [1932] A. C. 562; 101 L. J. P. C. 119; 147 L. T. 281; 48

PART II. SECT. 3, SUB-SECT. 1.

337 vi. —— *Application of R. S. O.*, 1927, c. 146.]—An "accidental fire" within above Act does not include a fire which had its origin in negligence, but is confined to the case of a fire produced by mere chance, or incapable of being traced to any cause.—MCAULIFFE *v.* HUBBELL, [1931] 1 D. L. R. 835; 66 O. L. R. 349.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.—A.

342 xvi. ——.]—Deft. who set fire to orchard prunings & brush which he had piled up on his land, held to have been negligent in failing to take proper precautions to see that the fire did not get beyond his control to the injury of pltf.'s adjoining property.—MARSHALL *v.* HUTTON, [1928] 2 W. W. R. 33.—**CAN.**

342 xvii. ——.] — MCRURY *v.* DOMINION COAL CO., LTD. (1896), 40 N. S. R. 89.—**CAN.**

342 xviii. -.] — When a fire is caused by negligence on uncleared arable land damages are to be assessed on the ordinary principle that pltf. is entitled to have the difference in value to him of the property before & after the fire. Damages allowed should take into account the extra cost of clearing, loss of productivity, & loss of feed. & against these should be offset any advantages arising, such as the sale of timber partially burnt & any deductions such as the restoration of the land to its original condition by natural growth before there is a likelihood of its being used for farming purposes.—GENDERS *v.* SOUTH AUSTRALIAN RYS. COMR., [1928] S. A. S. R. 272.—**AUS.**

PART II. SECT. 4, SUB-SECT. 2.—A

362 i. *Liability of manufacturer of dangerous article—To warn purchaser of dangerous character—Liability to third party—Article dangerous in itself.*] —Where the vendor of a chattel, in this case a firework, which belongs to the dangerous class delivers it with a proper warning to recipient, he owes no further duty to the person who receives it from the recipient, nor, where the danger is apparent on the face of the thing, does he owe a greater duty with regard to the manufacture of the article than if it was not a dangerous thing in itself.—BROWNLEE *v.* HAND FIREWORK CO., [1931] 1 D. L. R. 127; 65 O. L. R. 646.—**CAN.**

T. L. R. 494; 76 Sol. Jo. 396; 37 Com. Cas. 350, H. L.

Annotation :—**Distd.** Farr *v.* Butters Bros. & Co. (1932), 174 L. T. Jo. 86.

364b. Defect discoverable on examination—& discovered by injured party.] —Crane manufacturers sold a crane in parts to a firm of builders, the arrangement being that the parts were to be assembled by the builders' men. The builders had in their employment an experienced crane erector, who in assembling the parts found that certain cog-wheels worked stiffly, did not fit accurately, & required to be remedied; he accordingly marked in chalk the places where there was inaccurate fitting, saying at the same time that he would have to report the matter to his employers. Before the defects so discovered had been remedied the erector began working the crane, & while he was so engaged a part of it fell & killed him, the fall being due to the defects above mentioned. In an action by his widow under Fatal Accidents Act, 1846 (c. 93), against the manufacturers of the crane :—*Held :* the defects being discoverable on reasonable inspection, &, having in fact been discovered by the deceased man, the manufacturers owed him no duty & were not liable for the accident.—FARR *v.* BUTTERS BROS. & CO., [1932] 2 K. B. 606; 101 L. J. K. B. 768; 147 L. T. 427, C. A.

Part III.—Negligence in relation to Highways.

382a. Motor-van mounting pavement.]—Where a motor-van gets on to a pavement intended for foot-passengers & injures persons standing there, these facts, in the absence of explanation, constitute evidence of negligence.—ELLOR *v.* SELFRIDGE & CO., LTD. (1930), 46 T. L. R. 236; 74 Sol. Jo. 140.

Annotation :—**Refd.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353, C. A.

PART III. SECT. 9, SUB-SECT. 1.—B.

g (p. 59) i. —— *Driving in fog.*]—The driver of a tramcar when driving in a fog should keep his car under such control that he may stop it within the limits of his vision.—VANCOUVER ICE & STORAGE CO. *v.* BRITISH COLUMBIA ELECTRIC RY. CO., [1927] 1 W. W. R. 631; 38 B. C. R. 234.—**CAN.**

h (p. 60) i. ——.]—The driver of a motor vehicle upon city streets may be grossly negligent if his car is travelling at the permitted speed of 20 miles per hour, or even at a much lower rate of speed: what is an excessive rate must depend upon the circumstances of each case. In this case, where there was a collision of motor vehicles at the intersection of two city highways :—*Held :* the driver of the vehicle on the right had not such a clear view of approaching traffic as made it safe to approach the intersection at the rate at which his vehicle was travelling—15 miles an hour or more.—MARTIN *v.* POWELL, POWELL *v.* MARTIN, [1928] 4 D. L. R. 149; 62 O. L. R. 436.—**CAN.**

h (p. 60) ii. ——.]—In ordinary circumstances, if a driver turns out of & across the line of traffic, after giving the usual warning by putting out his hand (although his duty may not be so great as to make sure), he acts negligently unless he has at least reasonable ground, beside the mere fact of his warning, for believing that he can cut across without endangering approaching traffic.—GREEN *v.* HARDY, [1929] S. A. S. R. 58.—**AUS.**

h (p. 60) iii. ——.]—CAMERON *v.* MCDONALD, [1931] 1 W. W. R. 731; 2 D. L. R. 978.—**CAN.**

u (p. 61) i. ——.]—COLLINS *v.* GENERAL SERVICE TRANSPORT CO. (B. C.), [1927] 2 D. L. R. 353.—**CAN.**

u (p. 61) ii. ——.]—SCHONBERNER *v.* BARRON (Alta.), [1927] 3 D. L. R. 708; [1927] 2 W. W. R. 417.—**CAN.**

u (p. 61) iii. ——.]—Even though a motor car is travelling on the right-hand side of the road, the driver is not justified in holding to his course regardless of the consequences, but is bound to exercise reasonable care to avoid injuring others, & owes this duty to the driver of an approaching car even if the latter has not yet complied with the statutory provision requiring him to turn out to the right of the centre of the highway.—AUDET *v.* WELSCH, [1929] 2 D. L. R. 186; 23 S. L. R. 165; [1928] 3 W. W. R. 655.—**CAN.**

u (p. 61) iv. —.]—A driver of a motor vehicle must expect the presence of other persons & animals on the highway, & his failure to see them in time to avoid running into them may amount to negligence.—KEATLEY *v.* SPEARING, [1931] 2 W. W. R. 309.—**CAN.**

u (p. 61) v. ——.]—Pltf., a pedestrian, was proceeding over a footpath to a gate into a place on a racecourse where motor vehicles parked. A motor car proceeding over the footpath, which at this point was asphalted as a track for motor cars, & into the parking place, ran down pltf. from behind. Pltf. did not see or hear deft.'s car, but before approaching the asphalted track he looked into the motor park & also on to the roadway, but along the direction opposite to which pltf. was approaching. On approaching the gate, he stopped momentarily facing the motor park. The driver of the car gave no sufficient warning, & came from such a direction that the pltf. was entitled to expect a warning. The car was accelerated just before it struck pltf. :—*Held :* deft. was guilty of negligence in driving at an excessive speed, & had disabled himself from avoiding the consequences of pltf.'s default in not keeping a more careful look out.—RANKIN *v.* RICHARDS (1929), S. A. S. R. 100.—**AUS.**

386 x. —.]—SOLOMON *v.* MUSSETT & BRIGHT, LTD., [1926] App. D. 427.—**S. AF.**

386 xi. —— ——.]—A motor truck proceeding westerly upon a highway was about 5 feet from the south kerb, when, as it approached an intersecting highway, it struck a boy riding a bicycle & injured him. In an action to recover damages for the injury from the owner of the truck alleging negligence of the driver, the trial judge directed the jury as a matter of law that they were entitled to find the driver negligent, from the one circumstance that he was on the wrong side of the highway :—*Held :* misdirection, & a new trial was ordered.—ALLEN *v.* LORD, [1928] 4 D. L. R. 62; 62 O. L. R. 433.—**CAN.**

386 xii. —— ——.]—The driver of a motor vehicle is guilty of negligence in travelling on the left side of the road, without any just excuse for doing so, if he knows or ought to know that by so proceeding he is likely to collide with another vehicle coming from the opposite direction, & under such conditions he is under the duty to use more care & keep a better look out to avoid a collision than would be required of him if he were on his proper side of the road.—ERICKSON *v.* KLATT, [1929] 3 D. L. R. 295; 2 W. W. R. 5; 23 S. L. R. 567.—**CAN.**

389 i. *Insufficient lighting.*]—In an action for damages resulting from a collision between automobiles the judge found that the real cause of the accident was that deft.'s car was being driven at night with only one lighted headlight. Deft. appealed :—*Held :* said finding was justified & the appeal should be dismissed.—NESBITT *v.* CARNEY, [1930] 3 W. W. R. 504; [1931] D. L. R. 106; 25 S. L. R. 129.—**CAN.**

389 ii. ——.]—RUBBERNUS *v.* DOWNARD, [1930] 2 D. L. R. 767.—**CAN.**

se. *Failure to give signal—Of intention to turn.*]—It is incumbent upon the driver of a vehicle, who desires to change his course & to turn into another street, to give a warning to that effect, & to turn the corner at a pace which will give him complete control over his vehicle.—UYS *v.* UYS, [1927] App. D. 394.—**S. AF.**

sf. *Lack of sufficient control.*]—The driver of an automobile should have his car under such control that he is able to come to a stop in the space which he sees clear ahead.—MACGILL *v.* HOLMES (1927), 39 B. C. R. 65.—**CAN.**

sg. *Failure to give notice of intention to cross street.*]—BLOW *v.* MAYLAND (Alta.), [1929] 4 D. L. R. 561.—**CAN.**

sh. *Absence of "clear view"—Insufficient headlight.*] — RUTTAN *v.* O'CONNOR-FENTON, [1929] 4 D. L. R. 62; 64 O. L. R. 208.—**CAN.**

sj. *Failure to slow down.*]—When a person driving a motor car at night knows that another car is on the road a short distance ahead, & his vision is so interfered with by the lights of an approaching car that he cannot see the location of the car ahead, he is under the duty of slowing down & proceeding with his car under such control as will prevent it from crashing into the car ahead.—FLETCHER *v.* MULLEN, [1930] 2 W. W. R. 529; 3 D. L. R. 919; 24 S. L. R. 520.—**CAN.**

sk. —— ——.]—No general rule can be laid down as to the duty of a driver of a motor car to stop when the lights of an approaching car interferes with his vision. The circumstances of each case must be carefully examined before

396. *Add. Annotation :*—**Apld.** Brooke *v.* Bool, [1928] 2 K. B. 578.

400a. Presumption that car driven by owner or agent.]—Where a pltf. in an action for negligence proves that damage has been caused by deft.'s motor car, the fact of ownership of the motor car is *primâ facie* evidence that the motor car, at the material time, was being driven by the owner, or by his servant or agent.—BARNARD *v.* SULLY (1931), 47 T. L. R. 557, D. C.

407. *Add. Annotations :*—**Consd.** Bottomley *v.* Bannister, [1932] 1 K. B. 458 ; McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119.

408. *Add. Annotations :*—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119. **Refd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

420a. Unhorsed van.]—DONOVAN *v.* UNION CARTAGE CO., LTD. (1932), 49 T. L. R. 125.

421a. Parties—Defendant insured—Institution of third party proceedings against insurer.]—(1) As a general rule, in the absence of special circumstances, the insurance co. which has issued a motorist's insurance policy should not be brought in as a third party at the hearing of an action for damages by the injured party against the motorist.

(2) It is a well established rule of practice at the Bar, enforced by the judges, that in an action against a motorist the jury should not be informed that deft. is insured.—GOWAR *v.* HALES, [1928] 1 K. B. 191 ; 96 L. J. K. B. 1088 ; 137 L. T. 580, C. A.

Annotations :—As to (1) **Refd.** Grinham *v.* Davies (1928), 139 L. T. 379. *As to* (2) **Apld.** Grinham *v.* Davies (1928), 139 L. T. 379.

421b. —]—LOTHIAN *v.* EPWORTH PRESS (1926), [1928] 1 K. B. 199, n. ; 96 L. J. K. B. 1092, n. ; 137 L. T. 582, n., C. A.

Annotation :—**Dist.** Gowar *v.* Hales, [1928] 1 K. B. 191.

concluding that a driver should stop, or almost stop, when his vision for any reason is impaired.—NORTHERN ELECTRIC CO., LTD. *v.* KELLY, [1931] 3 W. W. R. 527.—**CAN.**

sm. *Restarting taxi in fog—Passengers not told to alight.*]—While a taxicab was being driven in a dense fog astride a street-car rail its engine stalled, & before the driver could start it again the cab was run into by a street car which, despite the warnings of the taxi driver, approached from behind & the passengers in the cab were injured :—*Held :* the fact that the driver did not first get his passengers out of the cab before attempting to get it under way again did not constitute negligence ; nor did the driver by driving astride the rail or because of the position of the car after it stalled violate the traffic bye-law relied on by pltfs.—NOWELL *v.* YELLOW CAB CO., LTD., [1930] 1 D. L. R. 491 ; [1929] 3 W. W. R. 616 ; 41 B. C. R. 494 ; *revsg.*, [1929] 4 D. L. R. 280 ; 1 W. W. R. 822.—**CAN.**

sn. *Failure to keep distance from cars ahead.*]—There is no authority for propounding a rule that the failure of the driver of a motor car to keep at a greater distance than six to eight feet from cars ahead of him always constitutes negligence.—STANLEY *v.* NATIONAL FRUIT CO., [1929] 3 W. W. R. 522 ; *revsd.*, [1931] 1 D. L. R. 306 ; S. C. R. 60.—**CAN.**

so. *Car parked for reasonable time.*]—The driver of a vehicle has a right to stop temporarily upon a highway to load or unload his vehicle, but this right is limited by the correlative right of others to pass along the highway. The right of the driver so to stop must be exercised reasonably ; & whether the length of time or extent of stoppage is reasonable is a question of fact to be determined by the circumstances of each case.—BRAIN *v.* CRINMAN, [1931] 1 D. L. R. 546 ; 66 O. L. R. 223.—**CAN.**

sp. *No liability to pedestrian appearing suddenly from behind parked cars.*]—Deft. driving car had a right to expect that pedestrians would act reasonably ; & she had no reason to anticipate that any one would be so foolish as to come out suddenly from between two lines of parked cars without looking to see if there were any moving cars too near, as pltf. did.—TAYLOR *v.* AINSLIE, [1931] 3 D. L. R. 26 ; O. R. 188.—**CAN.**

sq. *Intersection controlled by light signals—No liability when pedestrian suddenly disobeys signals.*]—When the driver of a motor vehicle has the signal lights with him he knows that they are against pedestrians crossing his path, & he has a right to expect that the signals will be obeyed by them. He must use every precaution to avoid an accident, but he is not in all cases to be regarded as negligent because he fails to observe negligent conduct of a pedestrian.—HULME *v.* CREELMAN, [1931] 1 D. L. R. 682 ; 66 O. L. R. 360.—**CAN.**

sr. *Driver of one car negligent—Damage caused by driver of second car swerving to avoid accident—Liability of first driver.*]—TATISICH *v.* EDWARDS, [1931] S. C. R. 167 ; 2 D. L. R. 521.—**CAN.**

ss. *Approaching intersection at excessive speed.*]—*Held :* pltf. was also negligent in approaching the intersection at an unlawful & excessive rate of speed, namely, about forty miles an hour.—ANDERSON *v.* PARNEY, [1930] 4 D. L. R. 833 ; 66 O. L. R. 112.—**CAN.**

sv. *Glaring headlights.*]—TINKLER *v.* GOEBEL, [1931] 2 W. W. R. 413.—**CAN.**

sb. ——.]—(1) No absolute rule can be formulated as to the duty of the driver of a motor car to stop when his eyes are dazzled by the lights of an approaching vehicle ; the facts of the particular case must determine the necessity for his doing so. (2) In the absence of an apparent danger of a grazing collision, it is not negligence for the driver of a motor car to drive with his left elbow projecting over the window sill.—BEARDSLEY *v.* CLARK, [1932] 2 W. W. R. 481 ; 4 D. L. R. 237. —**CAN.**

sd. ——.]—Resp.'s servants left a roller on the side of a road at night without any light or other warning. The driver of pltf.'s truck, seeing a car coming towards him, pulled further over to the left of the road, but being dazzled by the lights of the car he did not see the roller & collided with it, damaging the truck :—*Held :* there was no negligence on the part of the driver of the truck, & the negligence of deft. was the real cause of the accident. —TAYLOR *v.* MAIN ROADS BOARD, [1931] W. A. L. R. 48.—**AUS.**

sw. *Putting chains on car after dark—No rear light.*]—It is negligence for the driver of a motor car to kneel in the roadway after dark for such a purpose as the putting on of chains without having the red light on the rear end of his car which is called for by Motor Vehicle Act.—STEFURA *v.* RIDGE, [1931] 1 D. L. R. 694 ; [1930] 3 W. W. R. 465 ; 39 Man. L. R. 256.—**CAN.**

sx. *Backing car into lane without warning.*]—EVA *v.* JOHNSON, [1932] 3 W. W. R. 502.—**CAN.**

sy. *Breach of lighting regulation as contributory negligence.*]—MORRISON *v.* FERGUSON, [1930] 1 D. L. R. 913 ; 1 M. P. R. 81.—**CAN.**

PART II. SECT. 9, SUB-SECT. 1.—C.

Vehicle driven by third party—With owner's permission.]—*See* AGENCY, Part IX., Sect. 4, sub-sect. 1, C.

PART III. SECT. 9, SUB-SECT. 1.—D.

401 i. *Duty of driver to give place to pedestrian.*]—ELLIOTT *v.* JOHNSON, [1929] 1 D. L. R. 208 ; [1928] S. C. R. 408.—**CAN.**

402 i. *Injury must be attributable to negligence of driver—Effect of contributory negligence of pedestrians—Effect of bye-law against "jay-walking."*—CHESTER *v.* KINNEAR (Alta.), [1927] 1 D. L. R. 47 ; [1926] 3 W. W. R. 601.—**CAN.**

402 ii. —— —— *Duty of tramcar drivers.*]—SYMONS *v.* WINNIPEG ELECTRIC CO. (Man.), [1928] 1 D. L. R. 159 ; [1927] 3 W. W. R. 650 ; *affd. sub nom.* WINNIPEG ELECTRIC CO. *v.* SYMONS, [1929] 2 D. L. R. 197 ; [1928] S. C. R. 627.—**CAN.**

402 iii. —— ——.]—HOARE *v.* INVERARITY (1926), 29 W. A. L. R. 67. —**AUS.**

PART III. SECT. 9, SUB-SECT. 2.

413 i. *Defective steering gear of motor car—Knowledge of defect.*]—MOIR *v.* HILL (1927), 30 W. A. L. R. 56.—**AUS.**

413 ii. *Defective steering gear of motor car.*]—Deft. was driving a motor car with defective steering gear when the car swerved owing to such defect & ran over pltf.'s dog :—*Held :* that driving a motor car in a defective condition if the injury may reasonably be discovered or is known renders a person liable for the injuries of which the defect is the effective cause.—MOIR *v.* HILL, [1928] W. A. L. R. 56.—**AUS.**

PART III. SECT. 9, SUB-SECT. 7.

n i. —— *Absence of licence & lights.*]—The failure to take out a licence to operate a motor car does not bar the recovery of damages resulting from the negligence of the driver of another car ; & a breach of the statutory duty as to carrying lights is a bar only if it can be shown that such breach was a proximate cause of the accident.—CASSEL *v.* THOMPSON, [1930] 1 W. W. R. 1000 ; 3 D. L. R. 65.—**CAN.**

Part VII.—Children.

440a. —.]—DONOVAN *v.* UNION CARTAGE CO., LTD. (1932), 49 T. L. R. 125.

450. *Add. Annotation :*—**Expld.** Addie R. & Sons (Collieries) *v.* Dumbreck, [1929] A. C. 358.

451a. ——.]—A co. having works near a railway, under a licence from an adjoining landowner, constructed a siding on his land & erected thereon a post to which a pulley block was attached called a sheave. To move a truck along the siding, a wire rope passed through the sheave & round a winch worked by a dynamo, & one end of the rope was fastened to the front of the truck & the other to the back. The siding adjoined some fields which were let to the local authority as a playground. A boundary fence between the siding & the fields had disappeared, &, to the knowledge of the co., children frequented the siding & played round the sheave without interruption except when the haulage machinery was about to be put in motion, which occurred about three times a week. On one occasion when a truck had to be moved two of the co.'s employees, in accordance with their usual practice, walked to the sheave for the purpose of seeing that the rope was properly adjusted & of driving children away. After the men went back to start the machine a little girl, aged five, was seen swinging on the rope, & the movement of the rope caused her hands to be caught in the pulley & crushed, & her brother, aged nine, was similarly injured in coming to her rescue. The father, for himself & as next friend of the children, claimed damages against the co. for the injuries sustained by the children :—*Held :* it being well known to the co. that when the machine was going to start it was extremely likely that children would be near the sheave, the duty owed by the co. when they set the machine in motion was to see that no child was in such a position as to be exposed to danger by the occasional use to which the machine was put, & that they had failed in that duty. The immediate danger being apparent, it was not material whether the children were or were not trespassers.—EXCELSIOR WIRE ROPE CO., LTD. *v.* CALLAN, [1930] A. C. 404 ; 99 L. J. K. B. 380 ; 142 L. T. 531 ; 94 J. P. 174 ; 35 Com. Cas. 300 ; 28 L. G. R. 543, H. L.

Annotations :—**Folld.** Mourton *v.* Poulter, [1930] 2 K. B. 183 ; **Refd.** Sycamore *v.* Ley (1932), 74 L. Jo. 41.

457. *Add. Annotation :*—**Apprvd.** Addie R. & Sons (Collieries) *v.* Dumbreck, [1929] A. C. 358.

457a. ——.]—A boy four years of age was killed by being crushed in the terminal wheel of a haulage system belonging to a colliery co. The system, which was used for depositing ashes on a bing situated in a field adjoining the colliery, consisted of an endless wire cable operated from time to time, as might be necessary, from the pithead by an electric motor, while at the other end of the system, which was not visible from the pithead, there was a heavy horizontal iron wheel round which the cable passed & returned. The field was surrounded by a hedge, which was quite inadequate to keep out the public, & it was, to the knowledge of the colliery co., used as a playground by young children. The colliery officials at times warned children out of the field, but their warnings were disregarded. The wheel was dangerous & attractive to children, & at the time of the accident it was insufficiently protected. The accident occurred owing to the wheel being set in motion by the colliery servants without taking any precaution to avoid accident to persons frequenting the field. The boy had been warned by his father not to go near the field or the wheel. In an action for damages by the father against the co. :—*Held :* the boy was a trespasser & went on the colliery premises at his own risk, & the co. owed him no duty to protect him from injury.—ADDIE, R. & SONS (COLLIERIES) *v.* DUMBRECK, [1929] A. C. 358 ; 98 L. J. P. C. 119 ; 140 L. T. 650 ; 45 T. L. R. 267 ; 34 Com. Cas. 214, H. L.

Annotations :—**Expld.** Mourton *v.* Poulter, [1930] 2 K. B. 183. **Refd.** Excelsior Wire Rope Co. *v.* Callan, [1930] A. C. 404.

457b. ——.]—EXCELSIOR WIRE ROPE CO., LTD. *v.* CALLAN, No. 451a, *ante*.

457c. ——.]—MOURTON *v.* POULTER, No. 309a, *ante*.

PART VII. SECT. 1.

433 i. *Liability dependent on breach of duty—Public park close to railway.*]—*Held :* there was no obligation on the corpn. owning the park to build a fence to separate it from the railway.—RICHARDSON *v.* CANADIAN NATIONAL RY. CO., [1927] 2 D. L. R. 801 ; 32 Can. Ry. Cas. 411 ; 60 O. L. R. 296.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 2.—B.

445 i. *Duty to guard against—Trap or lure—Moving freight train.*]—PINKAS & PINKAS *v.* CANADIAN PACIFIC RY. CO., [1928] 1 W. W. R. 321.—**CAN.**

446 xi. ——.]—Resp., as father & tutor of his minor son, brought an action in damages against applt. for injuries sustained by his son, then seven years of age, resulting from a serious accident due to the alleged fault of applt. Resp.'s son was playing with a small tricycle in a lane behind his father's house ; in that lane, facing the house, applt. had placed a cement mixer at a short distance from a garage which he was constructing. Resp.'s son, on his tricycle, approached the mixer & put his hand on the machine while in motion, with the result that his hand was caught & drawn into the machine, where it remained until he was extricated. The evidence shows that the machine had been left unattended & unguarded at the moment of the accident :—*Held :* applt. was liable.—BOUVIER *v.* FEE, [1932] S. C. R. 118 ; 2 D. L. R. 424.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 2.—C.

450 vii. ——.]—HAYMAN *v.* CITY PROPERTY INVESTMENT TRUST CORPN., LTD., [1929] S. C. (H. L.) 65.—**SCOT.**

PART VII. SECT. 2, SUB-SECT. 3.

454 x. ——.]—PINKAS & PINKAS *v.* CANADIAN PACIFIC RY. CO., [1928] 1 W. W. R. 321.—**CAN.**

454 xi. ——.]—In an action for injuries sustained by a child through letting her fingers get caught in a bread-mixing machine in deft.'s bake shop :—*Held :* the child was a trespasser &, therefore, even if the omission to provide a guard for the revolving gears of the machine might in some circumstances be negligence with respect to an invitee or licensee, there was no duty to take such a precaution with respect to the child.—HUMENY *v.* CHAIKOWSKI, [1931] 3 W. W. R. 398.—**CAN.**

458 i. *Licensee.*]—ACADIA COAL CO. *v.* MCNEIL, [1927] 3 D. L. R. 871 ; [1927] S. C. R. 497 ; 33 Can. Ry. Cas. 49.—**CAN.**

458 ii. ——.]—EDWARDS *v.* LONDON MIDLAND & SCOTTISH RY. CO., [1928] S. C. (Ct. of Sess.) 471.—**SCOT.**

PART VII. SECT. 4, SUB-SECT. 1.

469 iii. ——.]—A woman went with her child two & a half years old to the defts.' shop to buy clothing for both. While there a mirror fixed in the wall, & in front of which the child was, fell & injured him :—*Held :* it was a question for the jury whether the mirror fell without any active interference on the child's part ; if so, that in itself was evidence of negligence ; but if not, the question for the jury would be whether defts. were negligent in having the mirror so insecurely placed that it could be overturned by a child ; & if that question was answered in the affirmative, the child, having come upon defts.' premises by

471. *Add. Annotation:*—**N.F.** Oliver *v.* Birmingham & Midland Motor Omnibus Co. (1932), 48 T. L. R. 540.

471a. ——.]—An infant four years old was crossing a road in charge of his grandfather. He was struck by a motor omnibus & received permanent injuries to his left hand. The jury found that the accident occurred through the negligence of the driver of the motor omnibus, & the contributory negligence of the grandparent. The county ct. judge held that the doctrine of identification no longer applied & gave judgment for pltfs. Defts. appealed: —*Held:* the county ct. judge was right. Since the decision of the House of Lords in *Mills* v. *Armstrong; The Bernina*, No. 807, the doctrine of identification was no longer part of the law of England. The appeal must be dismissed.—OLIVER *v.* BIRMINGHAM & MIDLAND MOTOR OMNIBUS CO., LTD. (1932), 147 L. T. 317; 48 T. L. R. 540.

Part VIII.—Liability of Persons Jointly Interested.

473a. Liability of party in control of proceedings.] —Circumstances (*see* AGENCY, No. 2318b, *ante*) in which:—*Held:* the landlord was liable for the damage, on the grounds (*inter alia*) of (*a*) control of the proceedings, & (*b*) a joint tortious enterprise, & (*c*) that, having undertaken the examination, he was under a duty to take reasonable care to avoid damage resulting from it, & could not escape liability by getting some one else to make the examination or part of it for him.—BROOKE *v.* BOOL, [1928] 2 K. B. 578; 97 L. J. K. B. 511; 139 L. T. 376; 44 T. L. R. 531; 72 Sol. Jo. 354, D. C.

Part IX.—Proof of Negligence.

507. *Add. Annotations:*—*As to* (1) **Distd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39. **Consd.** McGowan *v.* Stott (1923), 99 L. J. K. B. 357, n. *As to* (2) **Refd.** Cosmopolitan Shipping Co. (Inc.) *v.* Hatton & Cookson, Ltd. (Liverpool) (1929), 143 L. T. 296. *Generally*, **Refd.** Simpson *v.* London, Midland & Scottish Ry. Co., [1931] A. C. 351; McCullum *v.* Northumbrian Shipping Co. (1931), 146 L. T. 124.

510a. -.]—Pltfs. were the widow & children of a workman who was killed by being crushed between the buffers of two trucks during shunting operations on a siding of the Great Western Railway. No one saw the accident happen, & there was no evidence to show how the deceased came to be at the place where he was killed. Pltfs. sued under Lord Campbell's Act, & obtained judgment, but the judgment was reversed on appeal & pltfs. their invitation & for their benefit, would not be debarred from recovering by reason of his having directly brought the injury upon himself.—SANGSTER *v.* EATON (T.) & CO., LTD. (1894), 25 O. R. 78; *affd.* (1894), 21 A. R. 624; *affd.* (1895), 24 S. C. R. 708.—**CAN.**

q i. ——.]—In children's cases the question of contributory negligence resolves itself into whether, having regard to pltf.'s age & appreciation of the risk, his conduct was culpable negligence or not. If he showed as much care as a person of his age & appreciation may reasonably be expected to show he cannot be said to have been culpable. Deft. held liable for injuries suffered by the infant pltf. as the result of the tipping of doors which deft. had piled on top of a cupboard which he had put in a public lane & which the infant pltf., while at play, climbed upon.—TURNER & TURNER *v.* KOREN, [1931] 3 W. W. R. 684; *affd.*, [1932] 1 W. W. R. 480; 26 Alta. L. R. 129.—**CAN.**

t i. —— ——.]—While passing a group of small boys the driver of defts.' motor truck invited them, or at least permitted a number of them, to get on the truck. Before one of the group, pltfs.' son aged six & a half years, could secure a place on the running board it became filled & he grabbed a rod that extended along the truck in front of the rear wheels & was keeping up in this way with the truck when, its speed being increased, he fell & was killed by being run over by a rear wheel. The driver testified that he had told the boys for whom there was no room to stand back & that then pltfs.' boy had gone as far from the truck as to the side ditch. The testimony adduced by pltfs. contradicted that of the driver. The trial judge excluded the question of contributory negligence from the consideration of the jury, & it returned a general verdict for pltfs.':—*Held:* the direction of the trial judge to the jury on the questions of law was correct, & the verdict of the jury was justified by the evidence.—LESLIE & LESLIE *v.* CLARKE & BUZZA, LTD. & BUZZA, [1930] 1 W. W. R. 513; 3 D. L. R. 369; 42 B. C. R. 391.—**CAN.**

PART VIII.

474 i. *Joint liability—Co-owners of vehicle—Negligent driving.*]—MCEWEN *v.* ARMOUR, [1928] 2 D. L. R. 958.—**CAN.**

477 i. *What defendants may be joined —Separate torts.*]—ENDERBY *v.* SCOTT & WANGANUI CITY, [1928] N. Z. L. R. 407.—**N.Z.**

477 ii. —— *Employer of driver & of owner of car.*]—Where the driver & owner of a car are sued, an order may be made under Negligence Acts, 1930 (Ont.) & 1931 (Ont.) joining as party deft. the employer of both driver & owner where owner was paid for use of car & driver was alleged to be on employer's business.—LANG *v.* HOOEY, [1932] O. R. 363; 2 D. L. R. 778.—**CAN.**

sf. *Costs awarded to successful defendant—Recovery from unsuccessful defendant.*]—Where a passenger injured in a collision between two motor cars, in one of which he was travelling, brought an action for negligence against both drivers, he was held entitled to recover as against the unsuccessful deft. the costs awarded against him in respect of the successful deft.—KIRKLAND *v.* MERRETT & MCLUCAS, [1930] N. Z. L. R. 223.—**N.Z.**

PART IX. SECT. 1, SUB-SECT. 1.

sg. *Wilful neglect—A question of law.*] —The term "wilful neglect" has a special significance in law, as established by judicial decisions, & the question whether facts established in the case amounted to "wilful neglect" is a question of law & not of fact.—SECRETARY OF STATE *v.* GHANAYA LAL-SRI KISHAN (1928), I. L. R. 10 Lah. 329.—**IND.**

sh. *Contradictory evidence—Decision of trial judge binding on court of appeal.*] —ABBOTT *v.* DAVIS (Man.), [1929] 4 D. L. R. 993.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 2.—A.

sk. *Non-suit—Based upon answers to interrogatories—Effect of defendants tendering no further evidence.*]—KIRBY *v.* PALMER, [1928] 1 W. W. R. 968; 37 Man. L. R. 277.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 2.—B.

485 i. *General rule.*] — While the general rule of law is that a judge may withdraw an action for negligence from the jury & non-suit pltf., where, on the undisputed facts of the case, it appears that the accident was directly caused by pltf.'s own negligence, although there may have been, on the facts, some negligence on the part of defts., yet this power should not be exercised unless the evidence is so strong that it would be wholly unreasonable for the jury to find that pltf. had not caused the accident by his own negligence.—ERICKSON *v.* CANADIAN PACIFIC RY., [1928] 3 W. W. R. 694; *affg.*, 22 Sask. L. R. 299.—**CAN.**

now appealed to the House of Lords:—*Held:* although there was no direct evidence relating to the accident, it was a reasonable inference from all the circumstances that it had been caused by the negligence of the railway co., & pltfs. were therefore entitled to recover.—JONES *v.* GREAT WESTERN RY. Co. (1930), 144 L. T. 194; 47 T. L. R. 39; 36 Com. Cas. 136, H. L.

512. *Add. Annotation:—As to* (2) **Refd.** Fanton *v.* Denville, [1932] 2 K. B. 309.

518. *Add. Annotation:*—**Refd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39.

519a. ——.]—A widow, whose husband had been killed in a motor accident, brought an action for damages against the driver of the motor car in which her husband was riding when he was killed. At the close of pltf.'s case, the trial judge, partly at the invitation of deft.'s counsel, held that there was no case to go to the jury & gave judgment for deft. On appeal by pltf., the Ct. of Appeal held that the facts proved required explanation by the driver of the motor car, as they constituted an accident of a kind which would not usually happen with proper driving, & therefore the case ought not to have been withdrawn from the jury. There must therefore be a new trial. There must be a special order with regard to the costs. Pltf. must have the costs of the appeal, but with regard to the costs of the first trial, if pltf. succeeded in the new trial, she would have the costs of the first trial, but deft. was not to have the costs of the first trial in any event.—HALLIWELL *v.* VENABLES (1930), 99 L. J. K. B. 353; 143 L. T. 215; 74 Sol. Jo. 264, C. A.

565. *Add. Annotation:*—**Refd.** Broome *v.* Agar (1928), 138 L. T. 698.

578. *Add. Annotation:*—**Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

580a. ——.]—HARGROVE *v.* BURN (1929), 46 T. L. R. 59.

590. *Add. Annotations:*—**Consd.** Ellor *v.* Selfridge & Co. (1930), 46 T. L. R. 236; McGowan *v.* Stott (1923), 99 L. J. K. B. 357, n.

594. *Add. Annotation:*—**Distd.** McGowan *v.* Stott (1923), 99 L. J. K. B. 357, n.

PART IX. SECT. 1, SUB-SECT. 3.

544 xxii. ——.]—*Held:* there being a dispute as to the facts from which the inference of contributory negligence was to be drawn, the question was properly left to the jury by the trial judge for the jury to decide.—ANSON *v.* BLACK & WHITE CABS, LTD., BLACK & WHITE CABS, LTD. *v.* ANSON, [1928] N. Z. L. R. 321.—**N.Z.**

c i. ——.]—The jury need not answer specific questions put to it by the ct. in an action for negligence, but can return a general verdict.—EVANS *v.* HUDSON'S BAY CO., [1930] 2 W. W. R. 718; 3 D. L. R. 951; 43 B. C. R. 81.—**CAN.**

sl. *Speed of car.*]—BRANCH *v.* ELLIS, [1930] 2 D. L. R. 756.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 4.—A.

554 iii. ——.]—HOYT'S PROPRIETARY, LTD. *v.* O'CONNOR, [1928] V. L. R. 222; [1928] Argus L. R. 117; 40 C. L. R. 566.—**AUS.**

554 iv. ——.]—Non-direction is a ground for granting a new trial only when it produces a verdict against the evidence.—MOUNTAIN *v.* EDMONTON CITY, [1928] 4 D. L. R. 697; [1928] 3 W. W. R. 270.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 4.—B.

561 ii. ——.]—HARRIS *v.* HEALING A. G. & CO. PTY., LTD., [1927] S. A. S. R. 131.—**AUS.**

PART IX. SECT. 1, SUB-SECT. 4.—C.

565 xlv. —.]—DAVISON *v.* CONRAD (1924), 58 N. S. R. 218.—**CAN.**

565 xlvi. ——.]—ANSON *v.* BLACK & WHITE CABS, LTD., [1928] N. Z. L. R. 321.—**N.Z.**

565 xlvii. ——.]—DALGETTY *v.* HAMILTON RADIAL ELECTRIC RY. CO. (1928), 62 O. L. R. 613.—**CAN.**

so. *Judgment entered for defendant—Power of Court of Appeal.*]—After the third trial of an action for damages resulting from a collision, motions for judgment on the jury's answers to questions were made by both parties & referred by the judge to the Ct. of Appeal. In their view the findings for pltf. were against the weight of evidence, &, therefore, judgment for pltf. was out of the question. It appeared from their opinions that, but for the fact that the action had been tried already before three juries, they would have ordered a new trial only; but deeming it impossible to conclude, on the then undisputed facts of the case, that any verdict for pltf. by any subsequent jury could be other than perverse, the ct. directed judgment to be entered at once for deft. Pltf. appealed:—*Held:* after reviewing the facts & the findings of the jury, the Ct. of Appeal had in so directing judgment usurped the functions of the jury; & pltf.-applt. was in accordance with the verdict of the jury entitled to judgment as a matter of right.—BENSON *v.* KWONG CHONG, [1932] 3 W. W. R. 61.—**N.Z.**

PART IX. SECT. 1, SUB-SECT. 4.—D.

h i. —— *Inconclusive.*]—MARSHMAN *v.* MCDOWELL, [1928] S. R. Q. 308.—**AUS.**

k i. —— —— ——.]—KEETCH *v.* JOHNSON (N. B.), [1929] 1 D. L. R. 503.—**CAN.**

r i. —— ——.]—PEDLOW *v.* CANADIAN NATIONAL RY. CO., [1928] 4 D. L. R. 776; 62 O. L. R. 481.—**CAN.**

sj. *Damages assessed on wrong principle.*]—Where damages have been assessed on a wrong principle a new trial will be ordered.—DRYDEN *v.* ORR (1928), 28 S. R. N. S. W. 216; 45 N. S. W. W. N. 44.—**AUS.**

PART IX. SECT. 2, SUB-SECT. 1.—A.

573 xxvi. ——.]—CHIPPENDALE *v.* WINNIPEG ELECTRIC CO., [1928] 1 D. L. R. 920; [1928] 1 W. W. R. 238; 37 Man. L. R. 207.—**CAN.**

PART IX. SECT. 2, SUB-SECT. 1.—B.

581 xxi. —— ——.]—BLACKER *v.* WATERS (1928), 28 S. R. N. S. W. 406; 45 N. S. W. W. N. 111.—**AUS.**

PART IX. SECT. 4, SUB-SECT. 1.

589 xiii. —— *Tooth in patient's lung after extraction of teeth.*]—*Held:* the maxim *res ipsa loquitur* did not apply.—MCTAGGART *v.* POWERS, [1927] 1 D. L. R. 28; 36 Man. L. R. 73; [1926] 3 W. W. R. 513.—**CAN.**

589 xiv. —— *Fault possibly due to action of third party.*]—Observations upon the applicability of the maxim *res ipsa loquitur* in cases where there is a possibility that the fault may be due to the action of a third party.—CARRUTHERS *v.* MACGREGOR, [1927] S. C. 816.—**SCOT.**

589 xv. ——.]—HENDERSON *v.* MAIR, [1928] S. C. I. —**SCOT.**

589 xvi. *Dangerous article thrown from train.*]—HOFFMAN NIELSEN, [1928] S. R. Q. 364 22 Q. J. P. R. 147.—**AUS.**

589 xvii. ——.]—SEREDIUK *v.* POSNER, [1928] 1 D. L. R. 648; [1928] 1 W. W. R. 258; 37 Man. L. R. 230.—**CAN.**

589 xviii. ——.]—While proceeding at a moderate speed deft.'s car struck pltf., a pedestrian, who was crossing the street at a slow pace. The accident took place near the centre of the street; there were no other vehicles or pedestrians in the vicinity, & there was nothing to obstruct deft.'s view of pltf.:—*Held:* the *onus* was on deft. to show, if he was to escape the imputation of negligence, that the accident happened without fault on his part.—KATZENSTEIN *v.* DUVENHAGE (1929), 50 N. L. R. 294.—**S. AF.**

589 xix. ——.]—Pltfs. agreed with defts. to clean the brick & stone front of a block of stores. During the cleaning, water mixed with acid entered a display window of one of the stores & damaged the goods in the window, stained the varnished floor, etc.:—*Held:* the onus was upon pltfs. to account for the entry of the water & acid.—CAPITAL BUILDING CLEANERS *v.* SLATER-SHERWOOD, [1930] 3 D. L. R. 596; 65 O. L. R. 364.—**CAN.**

589 xx. —— *Manhole blown off waterworks system—Accumulation of gas.*]—The infant pltf., five years old, was playing upon a city street when an explosion took place in a subterranean chamber erected by the city corpn. under the street pavement as part of its waterworks system. The explosion blew a heavy iron lid into the air, & the boy was injured seriously by burns from flames which came from the opened manhole & by bruises received as he fell upon the pavement:—*Held:* the maxim *res ipsa loquitur* should be applied & the city corpn. found guilty of negligence.—CORSINI *v.* HAMILTON, [1931] 4 D. L. R. 313; O. R. 598.—**CAN.**

589 xxi. ——.]—Generally speaking, when one car runs into another from behind the fault is in the driving of the rear car, & the driver of the rear car must satisfy the ct. that the collision did not occur as a result of his negligence.—BEAUMONT *v.* RUDDY, [1932] O. R. 441; 3 D. L. R. 75.—**CAN.**

595. *Add. Annotation :*—**Expld.** Langham *v.* Wellingborough School Governors & Fryer (1932), 147 L. T. 91.

595a. ——.]—McGowan *v.* Stott (1923), 99 L. J. K. B. 357, n.; 143 L. T. 217, C. A.

Annotation :—**Folld.** Halliwell *v.* Venables (1930), 99 L. J. K. B. 353.

595b. ——.]—Ellor *v.* Selfridge & Co., Ltd., No. 382a, *ante*.

601. *Add. Annotations :*—**Consd.** Ellor *v.* Selfridge & Co. (1930), 46 T. L. R. 236; Halliwell *v.* Venables (1930), 99 L. J. K. B. 353. **Apld.** McGowan *v.* Stott (1923), 99 L. J. K. B. 357, n. **Distd.** Langham *v.* Wellingborough School Governors & Fryer (1932), 147 L. T. 91. **Refd.** Gosse Millard *v.* Canadian Government Merchant Marine, American Can Co. *v.* Same, [1927] 2 K. B. 432.

607. *Add. Annotation :*—**Consd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39.

Part X.—Defences.

628. *Add. Annotation :*—**Refd.** Cleghorn *v.* Oldham (1927), 43 T. L. R. 465.

633. *Add. Annotations :*—**Consd.** Fanton *v.* Denville, [1932] 2 K. B. 309. **Refd.** Dew *v.* United British S.S. Co. (1928), 139 L. T. 628; Chapman *v.* Ellesmere (1932), 101 L. J. K. B. 376.

636a. -Pltfs., stevedores at the port of Tampico, in Mexico, undertook to load a steamship of defts.', the Essex Isles, with kerosine & gasoline. The cargo being of a dangerous character, pltfs., who had had much experience in handling such cargoes, stipulated that they should have entire control of the loading. While the loading was in progress an explosion occurred, which killed & injured many of the workmen engaged & destroyed the ship. There was no direct evidence as to the cause of the explosion. Pltfs. brought an action against defts. for damages, & it was found as a fact that the explosion was caused by a spark made by a beam which fell into the hold, the fall of the beam being caused by a blow from a tray which was being hoisted by pltfs.' men from the hold. Pltfs. contended that if the beam had been properly secured by bolts it would not have fallen, & they said that defts. had been negligent in leaving the beam unbolted. Defts. contended that the proximate cause of the explosion was the negligence of pltfs. in not hoisting the tray with proper care, & they counter-claimed for the loss of their ship :—*Held :* on the facts the shipowners had not been guilty of negligence in leaving the beam unbolted, or that if they had been guilty of negligence in so leaving it pltf. stevedores knew, or ought to have known, that the beam was unbolted, & took the risk; & the stevedores themselves had been negligent in failing to use proper care in hoisting the tray.—Compania Mexicana De Petroleo El Aguila *v.* Essex Transport & Trading Co., Ltd. (1929), 141 L. T. 106; 34 Com. Cas. 198; 17 Asp. M. L. C. 590, C. A.

643. *Add. Annotation :*—**Refd.** Fanton *v.* Denville, [1932] 2 K. B. 309.

647. *Add. Annotation :*—**Consd.** Fanton *v.* Denville, [1932] 2 K. B. 309.

658. *Add. Annotation :*—**Consd.** Brooke *v.* Bool, [1928] 2 K. B. 578.

662a. —— ——.]—A firm of stevedores employed by a shipowner & a porterage co. employed by the consignee of the ship's cargo were engaged in unloading a ship. The cargo consisted of bags of maize, which were made up into loads by the stevedores & held together by rope slings provided by the stevedores, & the bags were then raised by the stevedores from the hold to a steelyard on the deck. The stevedores' duty ended with the deposit of the bags on the steelyard, from which they were transported to the dock by the porterage co. by means of a dock crane. The stevedores gratuitously permitted the porterage co. to use their slings, which were already round the bags, for the

596 i. *Sparks from engine.*]—*Held :* there being evidence which would justify the jury in drawing the inference that the fire was occasioned by a spark from the engine, it was not necessary for pltf. to show negligence in the operation of the engine.—Morwick *v.* Provincial Contracting Co., Ltd. (1923), 55 O. L. R. 71.—**CAN.**

g i. ——.]—Burnside *v.* Reid, [1928] 2 D. L. R. 303.—**CAN.**

sk. *Rebuttal of presumption.*]—*Held :* assuming the maxim *res ipsa loquitur* applied, defender would still be entitled to succeed in respect (1) that he had offered several reasonable explanations of the accident, & so had discharged the *onus* laid upon him by the application of that maxim, & (2) that, in any event, he had definitely disproved negligence on his part.—Henderson *v.* Mair, [1928] S. C. 1.—**SCOT.**

PART IX. SECT. 4, SUB-SECT. 2.

sl. *Application of maxim.*]—There being no evidence showing how an accident happened :—*Held :* the maxim *res ipsa loquitur* did not apply.—Richardson *v.* Canadian National Ry. Co., [1927] 2 D. L. R. 801; 32 Can. Ry. Cas. 411; 60 O. L. R. 296.—**CAN.**

sm. ——.]—The distinction between cases in which the maxim *res ipsa loquitur* applies & those in which the cause of the accident is unknown, referred to.—McClintock *v.* Winnipeg Electric Co., [1927] 3 D. L. R. 519; [1927] 2 W. W. R. 226; 33 Can. Ry. Cas. 39; 36 Man. L. R. 497.—**CAN.**

PART X. SECT. 1, SUB-SECT. 1.

608 ii. ——.]—General Trust of Canada *v.* St. Jacques, [1931] 3 D. L. R. 654.—**CAN.**

608 iii. ——.]—Pltf. was travelling with a friend along a street in Durban in a ricksha hired by the latter when she was injured by a motor vehicle driven by deft.'s servant. The street had been proclaimed a "one-way" street by notice boards affixed at each end. The ricksha was travelling in the prohibited direction when it collided with the motor vehicle which was travelling in the opposite direction :—*Held :* the maxim *volenti non fit injuria* did not apply in the absence of evidence to show that pltf. knew that the ricksha was travelling in a prohibited direction, or that she appreciated the danger of its so travelling.—Coombs *v.* Mason (1931), 52 N. L. R. 105.—**S. AF.**

PART X. SECT. 1, SUB-SECT. 2.—A.

622 ix. ——.]—Reid *v.* Mimico, [1927] 1 D. L. R. 235; 59 O. L. R. 579.—**CAN.**

PART X. SECT. 1, SUB-SECT. 2.—B.

638 v. ——.]—McLean *v.* Bourcet (B. C.), [1929] 4 D. L. R. 359; 3 W. W. R. 44.—**CAN.**

PART X. SECT. 1, SUB-SECT. 2.—C.

643 iii. ——.]—Leopold *v.* Wile, [1930] 3 D. L. R. 445.—**CAN.**

PART X. SECT. 1, SUB-SECT. 3.

m i. ——.]—Jesson *v.* Rural Municipality of Livingstone (Sask.), [1929] 2 D. L. R. 474; 1 W. W. R. 474.—**CAN.**

transport of the bags to the dock, & it was a matter of mutual convenience that the same slings should be used throughout. The stevedores employed a servant specially charged with the duty of inspecting the slings, &, as the stevedores knew, the porters relied on the care of the stevedores for the safety of the slings. A sling broke while the bags were being transported from the steelyard to the dock, & the bags fell & killed a servant of the porterage co. In an action of damages brought by his dependants against the stevedores:—*Held:* in the special circumstances of the case the firm of stevedores owed a duty to the porters to see that the sling was in a fit condition to take the weight of the load entrusted to it, & on the facts, the finding of the Lord Ordinary that they had failed to discharge that duty ought not to be disturbed.—CHAPMAN OR OLIVER *v.* SADDLER & CO., [1929] A. C. 584; 98 L. J. P. C. 87; 141 L. T. 305; 45 T. L. R. 456; 34 Com. Cas. 277, H. L.

Annotation:—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119.

667. *Add. Annotation:*—**Apld.** Brooke *v.* Bool, [1928] 2 K. B. 578.

674. *Add. Annotation:*—**Refd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369.

678. *Add. Annotation:*—**Refd.** Winnipeg Electric Co. *v.* Geel (1932), 48 T. L. R. 657.

681. *Add. Annotation:*—**Refd.** Winnipeg Electric Co. *v.* Geel (1932), 48 T. L. R. 657.

695. *Add. Annotations:*—**Refd.** G. W. Ry. *v.* S.S. Mostyn, The Mostyn, [1928] A. C. 57; St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1.

703. *Add. Annotation:*—**Dbtd.** G. W. Ry. *v.* S.S. Mostyn, The Mostyn, [1928] A. C. 57.

704. *Add. Annotation:*—**Dbtd.** G. W. Ry. *v.* S.S. Mostyn, The Mostyn, [1928] A. C. 57.

705. *Add. Annotations:*—**Consd.** G. W. Ry. *v.* S.S. Mostyn, The Mostyn, [1928] A. C. 57. **Refd.** Witham Outfall Board *v.* Boston Corpn. (1926), 136 L. T. 756; Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

706. *Add. Citations:*—*Revsd. sub. nom.* GREAT WESTERN RY. CO. *v.* MOSTYN (OWNERS), THE MOSTYN, [1928] A. C. 57; 97 L. J. P. 8; 138 L. T. 403; 92 J. P. 18; 44 T. L. R. 179; 72 Sol. Jo. 16; 26 L. G. R. 91; 17 Asp. M. L. C. 367, H. L.

Add. Annotations:—**Refd.** Witham Outfall Board *v.* Boston Corpn. (1926), 136 L. T. 756; Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

718. *Add. Annotation:*—**Refd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

720. *Add. Annotation:*—**Refd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

722. *Add. Annotations:*—**Consd.** Forbes, Abbot & Lennard *v.* G. W. Ry. (1927), 138 L. T. 286; G. W. Ry. *v.* Durnford (1928), 139 L. T. 145. **Refd.** Marbe *v.* George Edwardes (Daly's Theatre) (1927), 138 L. T. 51; Silverman *v.* Imperial London Hotels (1927), 137 L. T. 57; Livock *v.* Pearson (1928), 33 Com. Cas. 188; Great Western Railway *v.* Monmouthshire County Council (1929), 94 J. P. 6.

Part XI.—Contributory Negligence.

726. *Add. Annotation:*—**Apld.** Service *v.* Sundell (1929), 45 T. L. R. 569.

729. *Add. Annotations:*—**Apld.** Service *v.* Sundell (1929), 45 T. L. R. 569. **Consd.** Cooper *v.* Swadling (1929), 46 T. L. R. 73. **Refd.** M'Lean *v.* Bell (1932), 48 T. L. R. 467.

731. *Add. Annotation:*—**Refd.** The Vectis, [1929] P. 204.

731a. ——.]—In an action for damages under Lord Campbell's Act brought by pltf. in respect of the death of her husband, who had been killed in a collision between his motor-

PART X. SECT. 6, SUB-SECT. 1.

673 vii. —— —— ——.]—The fact that a motor vehicle, proceeding along a wide roadway, owing to the icy nature of the surface, of the danger of which the driver was fully aware, endeavours to but fails to make a slight turn & skids across the pavement into an oncoming vehicle, demonstrates that the accident was not unavoidable under the circumstances.—MCINTOSH *v.* BELL, [1932] 2 D. L. R. 55; O. R. 179.—**CAN.**

PART X. SECT. 8.

719 i. —— *Professional assistance called in—Local authority providing medical attention.*]—Hospital liable for the negligence of nurses after an operation.—NYBERG *v.* PROVOST MUNICIPAL HOSPITAL BOARD, [1927] 1 D. L. R. 969; [1927] S. C. R. 226.—**CAN.**

PART XI. SECT. 1, SUB-SECT. 1.

726 ix. ——.]—KENZIE *v.* HART (Sask.), [1927] 3 D. L. R. 839.—**CAN.**

726 x. ——.]—JOHNSTON *v.* MCMORRAN (B. C.), [1927] 4 D. L. R. 335; [1927] 3 W. W. R. 37.—**CAN.**

726 xi. ——.]—PEACOCK *v.* STEPHENS (B. C.), [1929] 4 D. L. R. 490.—**CAN.**

726 xii. ——.]—NASON *v.* HODNE (B. C.), [1929] 4 D. L. R. 490.—**CAN.**

726 xiii. ——.]—ATWOOD *v.* LUBOTINA (1928), 40 B. C. R. 446.—**CAN.**

732 lxviii. ——.]—MCLAUGHLIN *v.* LONG, [1927] 2 D. L. R. 186; [1927] S. C. R. 303; *varying*, [1926] 3 D. L. R. 918.—**CAN.**

732 lxix. ——.]—The statutory *onus* on the driver of a motor car of showing that loss or damage resulting from its use did not arise from his negligence does not operate to compel the ct. to hold to be negligence that which would not otherwise be negligence or to refuse to give effect to the defence of contributory negligence where the evidence supports it, but merely goes to the burden of proof.—PRUDEN *v.* FOXON, [1928] 3 W. W. R. 245.—**CAN.**

732 lxx. ——.]—DENT *v.* USHER, [1929] 4 D. L. R. 716; 64 O. L. R. 323; *affd.*, [1930] 2 D. L. R. 736; 65 O. L. R. 117.—**CAN.**

732 lxxi. ——.]—SCHMULAND *v.* LUCAS (Alta.), [1929] 3 D. L. R. 848.—**CAN.**

732 lxxii. ——.]—ROOT *v.* MCKINNEY, [1930] S. C. R. 337; 2 D. L. R. 984; [1929] 4 D. L. R. 138; 2 W. W. R. 340; 24 Alta. L. R. 181; *affg.*, [1929] 2 D. L. R. 604; 1 W. W. R. 884.—**CAN.**

732 lxxiii. ——.]—In an action against the comrs. of a development district for damages because of the freezing of the water pipes in pltf.'s house after he had closed the house up & had asked the man in charge of defts.' waterworks system to cut off the water from the branch service pipe: *Held:* pltf. must fail on the ground that his own failure to take the reasonable precautions which he should have taken under the circumstances was the cause of his loss, & also on the ground that said loss was not shown to have been the natural & probable consequence of defts.' negligence. The alternative claim under Contributory Negligence Act was also disposed of by the above findings, since this Act applies only to a case where the fault of two or more persons causes damage to one of them, & the failure of deft. to shut off the water at the main did not "contribute" to cause the pltf.'s loss.—LEARY *v.* NAKUSP DEVELOPMENT DISTRICT COMRS., [1930] 1 W. W. R. 97.—**CAN.**

732 lxxiv. ——.]—Pltf. alighted from a motor omnibus & ran behind into deft.'s automobile:—*Held:* deft. was not bound to anticipate that the

bicycle & deft.'s motor car, the judge directed the jury that, if they found that the accident was due to the negligence of both parties substantially, there would be contributory negligence on the part of the deceased man & both would be to blame, & the jury would have to find for deft. The jury found for deft. The Ct. of Appeal directed a new trial, holding that the jury should have been directed that if the deceased man was guilty of negligence, but deft. could by exercising reasonable care have avoided the collision, they were still entitled to find for pltf. :—*Held :* since, on the facts of the case, from the moment when the parties became aware of their respective positions there could have been no time for deft. to do anything to avoid the impact, & therefore the negligence of each party contributed to the collision, the judge's directions to the jury were sufficient, & there must be judgment for deft.—SWADLING *v.* COOPER, [1931] A. C. 1 ; 100 L. J. K. B. 97 ; 46 T. L. R. 597; 74 Sol. Jo. 536; *sub nom.* COOPER *v.* SWADLING, 143 L. T. 732, H. L.

Annotation :—**Consd.** M'Lean *v.* Bell (1932), 48 T. L. R. 467.

735. *Add. Annotation :*—**Apld.** Dew *v.* United British S.S. Co. (1928), 139 L. T. 628.

736a. Jury unable to decide liability.]—In an action for damages for personal injuries alleged to have been caused by deft.'s negligent driving of a motor car, the jury found that there was negligence on both sides, but they were unable to agree on the question whose negligence was really responsible for the accident :—*Held :* on this verdict judgment could not be given for either party.—SERVICE *v.* SUNDELL (1929), 99 L. J. K. B. 55; 46 T. L. R. 12 ; 73 Sol. Jo. 729, C. A.

Annotation :—**Expld.** Cooper *v.* Swadling (1929), 46 T. L. R. 73.

743. *Add. Annotations :*—**Dbtd.** Service *v.* Sundell (1929), 45 T. L. R. 569. **Refd.** Dew *v.* United British S.S. Co. (1928), 139 L. T. 628.

745. *Add. Annotations :*—**Distd.** Swadling *v.* Cooper (1930), 46 T. L. R. 597. **Refd.** Hargrove *v.* Burn (1929), 46 T. L. R. 59.

751. *Add. Annotations :*—**Apld.** Hargrove *v.* Burn (1929), 46 T. L. R. 59.; Swadling *v.* Cooper (1930), 46 T. L. R. 597. **Consd.** M'Lean *v.* Bell (1932), 48 T. L. R. 467. **Refd.** The Vectis, [1929] P. 204 ; The Chatwood, [1930] P. 272.

765a. ——.]—The fact that a man was killed while endeavouring to cross in front of an electric tramcar at the intersection of two streets in a town, at a place where the rules of the tramway co. laid down that " the speed must be reduced & the car kept carefully under control," is not evidence of recklessness on his part amounting to contributory neglience sufficient to free the co. from liability for the accident, the jury having found that the driver of the tramcar was in fault.—TORONTO RY. CO. *v.* KING, [1908] A. C. 260 ; 77 L. J. P. C. 77 ; 98 L. T. 650, P. C.

770a. ——.]—HARGROVE *v.* BURN (1929), 46 T. L. R. ——

770b. ——.]—In a running-down case, if it is established that although pltf. was negligent deft. could have avoided the collision by the exercise of reasonable care, then it is deft.'s failure to take that reasonable care to which the resulting damage is due, & pltf. is entitled to recover.—MCLEAN *v.* BELL (1932), 147 L. T. 262 ; 48 T. L. R. 467 ; 76 Sol. Jo. 414, H. L.

781. *Add. Annotations :*—**Distd.** Compania Mexicana De Petroleo El Aguila *v.* Essex Transport & Trading Co. (1929), 141 L. T. 106. **Apld.** Service *v.* Sundell (1929), 45 T. L. R.

girl would run into the road in front of her so as not to give deft. a chance to stop ; deft. could not be expected to know the actual intention of every one on the road, but only the intention manifested by outward acts or to be expected from the ordinary course of events ; the sole negligence causing the accident was that of the girl herself.—WILSON *v.* REBOTOY, [1930] 1 D. L. R. 273 ; 61 O. L. R. 458.—**CAN.**

732 lxxv. ——.]—PRICE *v.* BRITISH COLUMBIA MOTOR TRANSPORT, LTD. & LEDBURY, [1932] S. C. R. 310 ; 2 D. L. R. 161. —**CAN.**

732 lxxvi. ——.]—WATT *v.* REID, BURCH *v.* REID, [1930] 2 D. L. R. 215 ; 42 B. C. R. 90.—**CAN.**

sn. *Breach of statutory regulation by plaintiff.*]—If a breach by the pltf. of a statutory regulation against pillion-riding occurs, then, provided that the circumstances are such that the management of pltf.'s motor vehicle was a determining factor of the collision, it is to be assumed, without further evidence, that the pillion-riding did in fact make the management of the motor vehicle more difficult, & was negligence contributing to the accident.—MORTESS *v.* FRY, [1928] S. A. S. R. 60.—**AUS.**

PART XI. SECT. 1, SUB-SECT. 2.—A.

744 xxxii. ——.]—DAVIDGE *v.* JOHNSON & MCDONALD, LTD. (1926), 59 N. S. R. 76.—**CAN.**

744 xxxiii. ——.]—BALLANTINE *v.* INTERNATIONAL RY. CO., [1927] 4 D. L. R. 951 ; 61 O. L. R. 273.—**CAN.**

744 xxxiv. ——.]—Where in an action for damages arising out of the collision of two motor cars at the crossing of two roads it was proved that deft. had been negligent in not keeping a proper look out, but it was also proved that the driver of pltf.'s car had seen deft.'s car at a considerable distance from the crossing, but had ignored it, considering as he was on the main road & had the right of way he could continue his course :—*Held :* the driver of pltf.'s car had not acted reasonably in ignoring the approaching car on the assumption that deft. would respect his right of way, & he had been guilty of contributory negligence which disentitled pltf. from succeeding.—ROBINSON BROS. *v.* HENDERSON, [1928] App. D. 138.—**S. AF.**

744 xxxv. ——.]—TREVOR-SMITH *v.* WALTERS (1928), 49 N. L. R. 351.—**S. AF.**

744 xxxvi. ——.]—The fact that the gates at a railway crossing have been left open does not excuse a person approaching the track from taking reasonable precautions before crossing it in order to discover whether a train is coming.—MICHALINSKI *v.* CANADIAN PACIFIC RAILWAY CO., [1928] 3 W. W. R. 238.—**CAN.**

744 xxxvii. ——.]—JOHNSON *v.* HILBORN, [1932] 1 D. L. R. 683.—**CAN.**

PART XI. SECT. 1, SUB-SECT. 2.—B.

771 xxxix. *Subsequent proceedings,* [1923] 4 D. L. R. 727 ; [1923] S. C. R. 730 ; [1923] 3 W. W. R. 938.

771 lv. ——.]—HEALING (A. G.) & CO. PROPRIETARY, LTD. *v.* HARRIS (1927), 39 C. L. R. 560 ; [1927] Argus L. R. 386.—**AUS.**

771 lvi. ——.]—PENROSE *v.* BARR (B. C.), [1927] 4 D. L. R. 407 ; [1927] 3 W. W. R. 104.—**CAN.**

771 lvii. ——.]—HAMILTON *v.* PALLISER HOTEL AUTO & TAXI CO., LTD., [1928] 4 D. L. R. 962 ; [1928] 3 W. W. R. 497.—**CAN.**

771 lviii. ——.]—NELSON *v.* DENNIS (Man.), [1929] 4 D. L. R. 282 ; 2 W. W. R. 513 ; *revsd.*, [1930] 1 W. W. R. 656 ; 3 D. L. R. 215 ; 38 Man. L. R. 553.—**CAN.**

771 lix. ——.]—JEREMY & JEREMY *v.* FONTAINE, [1931] 1 W. W. R. 671 ; *affd.*, [1931] 3 W. W. R. 203 ; 4 D. L. R. 556.—**CAN.**

771 lx. ——.]—Where in an action for negligence the jury finds on sufficient evidence that, notwithstanding the negligence which it found pltf. guilty of, deft. could by the exercise of reasonable care have avoided the accident pltf. is entitled to recover ; & the Contributory Negligence Act, 1925, has no application.—KEY *v.* BRITISH COLUMBIA ELECTRIC RY. CO., [1931] 1 D. L. R. 532 ; [1930] 3 W. W. R. 569 ; *affd.*, [1931] 3 D. L. R. 587.—**CAN.**

771 lxi. ——.]—LANGSET *v.* DUFF FLINT & CO., [1930] 2 D. L. R. 142.—**CAN.**

771 lxii. ——.]—BRITISH COLUMBIA ELECTRIC RY. CO. *v.* KEY, [1931] 3 D. L. R. 587 ; [1932] S. C. R. 106.—**CAN.**

771 lxiii. ——.]—CHISHOLM *v.* AIRD (1930), 43 B. C. R. 354.—**CAN.**

569. **Consd.** Cooper *v.* Swadling (1929), 46 T. L. R. 73; Hargrove *v.* Burn (1929), 46 T. L. R. 59; Service *v.* Sundell (1929), 99 L. J. K. B. 55. **Consd.** M'Lean *v.* Bell (1932), 48 T. L. R. 467.

781a. ——.]—HARGROVE *v.* BURN (1929), 46 T. L. R. 59.

782. *Add. Annotation :*—**Consd.** The Vectis, [1929] P. 204.

783. *Add. Annotations :*—**Refd.** The Vectis, [1929] P. 204; Oliver *v.* Birmingham & Midland Motor Omnibus Co. (1932), 48 T. L. R. 540.

784. *Add. Annotation :*—**Refd.** Cooper *v.* Swadling (1929), 46 T. L. R. 73.

784a. ——.]—HARGROVE *v.* BURN (1929), 46 T. L. R. 59.

790a. Stevedores loading dangerous cargo—Stipulation for sole control of loading.]—COMPANIA MEXICANA DE PETROLEO EL AGUILA *v.* ESSEX TRANSPORT & TRADING CO., LTD., No. 636a, *ante*.

791. *Add. Annotation:*—**Refd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369.

792. *Add. Annotation :*—**Refd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

793. *Add. Annotation :*—**Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

798. *Add. Citation :*—17 Asp. M. L. C. 117.

Add. Annotation:—**Refd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369.

803. *Add. Annotations :*—**Refd.** Hargrove *v.* Burn (1929), 46 T. L. R. 59; Swadling *v.* Cooper (1930), 46 T. L. R. 597.

PART XI. SECT. 2.

782 xvi. ——.]—HOARE *v.* INVERARITY (1926), 28 W. A. L. R. 125.—**AUS.**

782 xvii ——.]—ERICKSON *v.* CAMPBELL'S, LTD. (1928), 39 B. C. R. 472.—**CAN.**

h i. —— ——.]—VANCOUVER ISLAND COACH LINES, LTD. *v.* E. LEBUS & CO., LTD., [1931] 2 W. W. R. 337; 3 D. L. R. 811; 44 B. C. R. 102.—**CAN.**

h ii. *Contributory Negligence Act*, 1925 —*Application of.*]—In applying above Act, the questions which the trial judge should ask himself are: "By whose fault was the accident caused? By one of the parties only, or by both parties, &, if so, in what proportions?"—HARPER *v.* MCLEAN, [1928] 2 D. L. R. 220; [1928] 1 W. W. R. 444; 39 B. C. R. 426.—**CAN.**

h iii. —— ——.]—TEDLOCK *v.* MCKELVIE (B. C.), [1929] 4 D. L. R. 691.—**CAN.**

h iv. —— —— *Costs.*]—HARPER *v.* MCLEAN, [1928] 2 D. L. R. 986; [1928] 1 W. W. R. 912; 39 B. C. R. 480.—**CAN.**

wherein damages were apportioned under Contributory Negligence Act, 1925, as between the adult pltf. & deft., & damages were awarded the infant pltf., a gratuitous passenger in the adult pltf.'s car, as against deft.:—*Held:* the latter was entitled to have the damages payable to the infant pltf. included as part of the loss sustained by deft. & to claim payment from the adult pltf. of his proportion thereof according to his degree of blame for the accident.—PRICE *v.* FRASER VALLEY MILK PRODUCERS ASSOCN., [1931] 3 W. W. R. 48; *varied*, [1932] 2 W. W. R. 65; 3 D. L. R. 55.—**CAN.**

h vi. —— ——.]—PATTERSON *v.* HALE & PUGH, [1932] 3 W. W. R. 280. —**CAN.**

so. *Where negligence continuous.*]—COMMISSIONER OF RAILWAYS *v.* SKINNER (1927), 30 W. A. L. R. 45.—**AUS.**

sq. *Negligence Act*, 1930 (*Ont.*)—*Application of.*]—STEELE *v.* FERGUSON, [1931] 3 D. L. R. 810; O. R. 427.—**CAN.**

st. —— ——.]—LECOMTE *v.* BELL TELEPHONE CO., LTD., & OTTAWA, [1932] 3 D. L. R. 220.—**CAN.**

PART XI. SECT. 3.

785 vii. ——.]—In an action of damages against a corpn., as the statutory authority charged with the duty of providing light in common stairs within the city during the hours of darkness, defenders moved that the action should be dismissed as irrelevant, in respect that upon her own averments pursuer was guilty of contributory negligence in going down a stair which she knew to be in darkness without first obtaining a light:—*Held:* pursuer's averments did not disclose contributory negligence on her part such as to warrant dismissal of the action.—JACKSON *v.* GLASGOW CORPN., [1928] S. C. 37.—**SCOT.**

785 viii. ——.]—Knowledge alone of the dangerous condition of premises is not a bar to a claim by an invitee against an invitor in respect of an injury resulting therefrom. Such knowledge is relevant to the question of the extent of the duty of care owed by the invitor; & it is relevant also where there is a defence of *volenti non fit injuria* or of contributory negligence.—HOY *v.* AUCKLAND HARBOUR BOARD, [1928] N. Z. L. R. 716.—**N.Z.**

785 ix. —— *Excessive speed of car—Failure of passenger to remonstrate.*]—Pltf. was well aware from experience that deceased was a fast driver, but he also knew that he had always driven him carefully & he had no reason to anticipate that fast driving on this occasion would result in an accident:—*Held:* therefore, no contributory negligence.—SMYTHE *v.* CAMPBELL, [1930] 4 D. L. R. 376; 65 O. L. R. 597.—**CAN.**

788 i. —— *Entering vehicle when driver perceptibly drunk.*]—In an action against the driver of a motor car to recover damages for injuries sustained in a collision caused by the driver's negligence, pltf. is not entitled to succeed where such negligence was due to the intoxicated condition of deft., of which condition pltf. was aware at the time that he accepted the invitation to travel in the car.—FINNIE *v.* CARROLL (1927), 27 S. R. N. S. W. 495; 44 N. S. W. W. N. 182.—**AUS.**

789 i. *Effect of warning of danger.*]—The fact that a pltf. suing for damages for negligence received a casual warning from a friend against the danger does not afford much support to a plea of contributory negligence; nor is forgetfulness *per se* contributory negligence, the question still remains whether it amounted under all the circumstances to a failure to exercise ordinary care.—HILL *v.* CITY OF SASKATOON, [1929] 2 D. L. R. 627; 1 W. W. R. 562; 23 S. L. R. 249.—**CAN.**

PART XI. SECT. 4.

791 i. ——.]—A man who, by another's want of care, finds himself in a position of imminent danger cannot be held guilty of negligence merely because in that emergency he does not act in the best way to avoid the danger.—THORNTON *v.* FISHER, [1928] App. D. 398.—**S. AF.**

t i. ——.]—PATTERSON *v.* GOODERHAM, [1928] 1 D. L. R. 131.—**CAN.**

t ii. ——.]—CARTER *v.* VAN CAMP & ANDERSON, VAN CAMP *v.* CARTER & ANDERSON, [1930] S. C. R. 156; *affg.* [1929] 4 D. L. R. 625; *vard.*, [1929] 1 D. L. R. 429; 63 O. L. R. 257.—**CAN.**

t iii. ——.]—WILKINS *v.* DODDS (Sask.), [1929] 4 D. L. R. 119.—**CAN.**

t iv. ——.]—The negligence of the driver of deft. co.'s automobile, at the intersection of two streets, forced pltf. who was driving his own automobile, in the face of imminent collision with deft. co.'s automobile, to choose between collision & the chance of avoiding it by turning his automobile up the intersecting street, which in attempting to do he ran into the curbing & damaged his automobile:—*Held:* the negligence of deft. co.'s driver in effect caused the damage sustained by pltf.—HARDIMAN *v.* YELLOW CAB, LTD., [1929] 1 D. L. R. 947; 60 N. S. R. 352.—**CAN.**

t v. ——.]—Deft., the driver of an automobile trying to overtake & pass another automobile on a curve at an excessive rate of speed, collided with the automobile of pltf. approaching the curve from the opposite direction on his proper side of the road. The former contended that the latter might have passed between the overtaking & overtaken automobiles:—*Held:* there was no duty on the driver of the approaching automobile to do so.—MCDONALD *v.* BEZANSON, [1929] 1 D. L. R. 272; 60 N. S. R. 332.—**CAN.**

t vi. ——.]—Applt. H., driving a car belonging to applt. co., proceeding along the road on his correct side, finding himself suddenly confronted by resp.'s approaching car, which had cut a blind corner leading into the road, in order to avoid what appeared to be an imminent collision, swerved to the opposite side of the road, & there collided with resp.'s car, which had simultaneously swerved on to its correct side:—*Held:* applt.'s action in swerving to his wrong side of the road was reasonable & unattended by negligence.—HINDMARSH *v.* GUTHRIE, SHELL CO. OF NEW ZEALAND *v.* GUTHRIE, [1930] N. Z. L. R. 15.—**N.Z.**

PART XI. SECT. 5.

803 iv. —— —— ——.]—The contributory negligence of the driver of a vehicle who is not the servant or agent of a passenger therein is no defence to an action by the latter for damages for personal injuries caused by the negligence of another person.—MCCULLOCH *v.* STAR CONSTRUCTION CO., [1928] 1 D. L. R. 970; [1928] 1 W. W. R. 211; 22 Sask. L. R. 231.—**CAN.**

803 v. —— —— —— ——.]—The mere fact of a passenger being a passenger does not so identify him with his driver as to make him responsible for the driver's negligence.—MARA *v.* HARTLEY, [1931] 2 D. L. R. 734; O. R. 69.—**CAN.**

804. *Add. Annotation :*—**N.F.** Oliver *v.* Birmingham & Midland Motor Omnibus Co. (1932), 48 T. L. R. 540.

807. *Add. Annotations :*—*As to* (1) **Consd.** Oliver *v.* Birmingham & Midland Motor Omnibus Co. (1932), 48 T. L. R. 540. *Generally*, **Refd.** The Vectis, [1929] P. 204.

Part XII.—Damages.

817. *Add. Annotation :*—**Refd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

837. *Add. Annotations :*—**Apld.** Bradstreets British, Ltd. *v.* Mitchell (1932), 48 T. L. R. 670. **Refd.** The Edison (1932), 147 L. T. 141.

842. *Add. Annotation :*—**Consd.** Grinham *v.* Davies (1928), 139 L. T. 379.

842a. —— ——.]—Gowar *v.* Hales, No. 421a, *ante*.

842b. —— ——.]—It is an established rule of practice that, in an accident case, it should not be intimated to a jury that deft. is insured &, where this rule has been violated, it is within the discretion of the judge to discharge the jury, at the expense of the party whose advocate has violated the rule.—Grinham *v.* Davies, [1929] 2 K. B. 249; 98 L. J. K. B. 703; 139 L. T. 379; 44 T. L. R. 523; 72 Sol. Jo. 303, D. C.

842c. —— ——.]—Ellis *v.* Mayhew (M.), Ltd. (1926), cited in [1929] 2 K. B. at p. 252; 98 L. J. K. B. at p. 705.

Annotation :—**Consd.** Grinham *v.* Davies, [1929] 2 K. B. 249.

803 vi. —.]—Pltf., while a member of a family party on a motor car outing, was injured as the result of her brother's negligence in driving the car, which was owned by her step-father, & sued her brother for damages. Pltf. did not drive a car at all & trusted solely to her brother to do the driving :—*Held :* it could not be said that pltf. was in any way in control of the car &, therefore, identified with her brother's negligence.—Kerr *v.* Stephen, [1930] 1 W. W. R. 896; 2 D. L. R. 978; 42 B. C. R. 518.—**CAN.**

803 vii. ——.]—Pltf. M. sued as administrator of the estate of his son who was a passenger, on a "joy jaunt," in pltf. H.'s car & was killed in the collision :—*Held :* although he was not identified with the negligence of his driver, yet, since he must have known the condition of the car in which he was travelling, he was identified with it, & was an accomplice in the offence of operating the car without legal lighting : the result being that both he & H. were in the same legal position with respect to deft.—McMartin *v.* Elliott & Burns & Co., Ltd., Hadley & Hadley *v.* Elliott & Burns & Co., Ltd., [1932] 2 W. W. R. 664.—**CAN.**

c i. ——.]—If an injury is done by the wrongful act of one to the property of another, the wrongdoer is liable to the owner quite apart from the existence of any contract of bailment. The Contributory Negligence Act, R. S. O., 1927, does not affect the rights of a bailor who is not guilty of any negligence.—Fletcher *v.* Thomas, [1931] 3 D. L. R. 142; O. R. 195.—**CAN.**

PART XII. SECT. 2, SUB-SECT 2.

818 i. *Fear of personal injury—Impending collision.*]—Walker *v.* Pitlochry Motor Co., [1930] S. C. 565.—**SCOT.**

PART XII. SECT. 3, SUB-SECT. 1.

a i. *Sum sufficient to give annuity equal to annual earnings—Whether awarded on wrong principle.*]—Bloudoff *v.* Canadian National Railway (Sask.), [1928] 4 D. L. R. 29; [1928] 2 W. W. R. 519.—**CAN.**

832 i. —— *Not cost of re-instatement.*]—Rousseau *v.* Lynch & Fournier, [1931] 4 D. L. R. 595; 3 M. P. R. 355.—**CAN.**

835 iv. —.]—In an action for damages for personal injuries a claim for loss of wages or earnings to the date of the commencement of the action or of the trial is not recoverable as special damages; such a loss is one to be taken into consideration by the jury in assessing general damages.—Trache *v.* Canadian Northern Ry. Co., [1929] 2 D. L. R. 321; 1 W. W. R. 100; 35 C. R. C. 258; 23 S. L. R. 576.—**CAN.**

835 v. —— ——.]—In an action for damages for personal injuries a claim for wages lost by reason of the injury is an element of damage to be considered in assessing general damages; it cannot be recovered as special damages because, by reason of the uncertainties connected with employment & with human life, it is incapable of exact assessment.—Taylor *v.* Addems & Addems, [1932] 1 W. W. R. 505.—**CAN.**

c i. —— ——.]—An impairment of a young woman's prospects of marriage because of injuries or disfigurement may be taken into consideration in assessing damages for personal injuries.—Taylor *v.* Addems & Addems, [1932] 1 W. W. R. 505.—**CAN.**

d i. —— *Unreasonable refusal to submit to operation.*]—Where the continuance or increase of an injured person's incapacity is due to his unreasonableness in refusing to allow himself to be operated on, the quantum of damages allowable to him must be limited to what would be reasonable compensation if he had acted as a reasonable man.—Masny *v.* Carter-Halls-Aldinger Co., Ltd. (Sask.), [1929] 3 W. W. R. 741.—**CAN.**

sr. *Loss of limb.*]—Damages to be allowed to pltf., who has sustained the loss of part of his leg through the negligence of deft., discussed.—Clark *v.* Wilson, [1926] S. A. S. R. 342.—**AUS.**

st. *Action by husband for injury to wife—Effect of contributory negligence of wife.*]—Damages having been assessed by the jury to both husband & wife :—*Held :* the finding of negligence on the part of the wife cut down the award of damages to the husband.—Dority *v.* Ottawa Roman Catholic Separate Schools Trustees, [1930] 3 D. L. R. 633; 65 O. L. R. 360.—**CAN.**

sv. —— *No loss of consortium.*]—Where a husband sued a surgeon in respect of an operation performed by him on pltf.'s wife, on the grounds that the surgeon should not have operated at all :—*Held :* the action failed, as there was no evidence that pltf. lost more of the *consortium* than if there had been no operation.—Davy *v.* Morrison, [1931] 4 D. L. R. 619; [1932] O. R. 1.—**CAN.**

sf. *Damage to car.*]—In an action for injuries to a motor car where the cost of putting the car back into the same condition it was in before the injury would have cost more than the sum for which the car as repaired could be sold for :—*Held :* the proper measure of damages was the fair value of the car just before it was injured, *i.e.* the price for which a similar car in like condition could have been bought, less what the injured car was worth as scrap.—Dewees *v.* Morrow, [1932] 2 W. W. R. 228; 2 D. L. R. 800.—**CAN.**

sh. *Duty of jury.*]—It is the duty of the jury in an action for negligence to pass upon general damages as well as the special damages claimed, & then failure to do so will be ground for ordering a new trial.—Jamieson *v.* British Columbia Amusements Co. (1930), 43 B. C. R. 317.—**CAN.**

PART XII. SECT. 4.

sv. *Mitigation—Whether contributory negligence of plaintiff may go in.*]—In an action for negligence if pltf. is held entitled to succeed he cannot be deprived of part of the damages which he has proved or of his costs, on the ground that he was guilty of contributory negligence.—Barry *v.* Winnipeg Electric Co., [1926] 2 W. W. R. 791; 36 Man. L. R. 27.—**CAN.**

sw. —— *Payment under insurance policy.*]—In an action by pltf. to recover damages for the destruction of his dwelling-house & a quantity of chattel property caused by sparks emitted from deft.'s steam tug through deft.'s negligence :—*Held :* deft. was not entitled to deduct from the amount of damages found to have been sustained by pltf. an amount paid to pltf. by an insurance co. under an insurance on the property.—Brown *v.* McRae (1889), 17 O. R. 712.—**CAN.**

sx. —— ——.]—Farmer *v.* Grand Trunk Ry. Co. (1891), 21 O. R. 299.—**CAN.**

PART XII. SECT. 6.

842 i. *Defendant insured against liability—Whether court informed thereof.*]—Walsh *v.* Peat (N. B.), [1927] 2 D. L. R. 1120.—**CAN.**

842 ii. —— ——.]—Although it is, as a general rule, improper for counsel for pltf., when cross-examining deft., to ask whether deft. is entitled to an indemnity from an insurance co., yet special circumstances may justify the judge in not withdrawing the case from the jury.—Wilson *v.* Kent (George) & Sons, Ltd., [1928] N. Z. L. R. 166.—**N.Z.**

sy. *Particulars — When ordered.*]—Where an action for negligence is one in which the onus of disproving negligence is placed by statute upon

Part XIII.—Negligence causing Death.

846. *Add. Annotation :*—**Refd.** The Edison, [1932] P. 52.

899. *Add. Annotation :*—**Consd.** Fanton *v.* Denville, [1932] 2 K. B. 309.

900. *Add. Annotation :*—**Refd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

905. *Add. Annotation :*—**Consd.** Fanton *v.* Denville, [1932] 2 K. B. 309.

906. *Add. Annotation :*—**Refd.** Kinneil Cannel & Coking Coal Co. *v.* Sneddon (or Waddell), [1931] A. C. 575.

909. *Add. Annotation :*—**Consd.** Fanton *v.* Denville, [1932] 2 K. B. 309.

910. *Add. Annotation :*—**Apld.** Dew *v.* United British S.S. Co. (1928), 139 L. T. 628.

943. *Add. Annotation :*—**Refd.** Carling *v.* Lebbon, [1927] 2 K. B. 108.

944. *Add. Citations :*—[1927] 2 K. B. 108; 96 L. J. K. B. 515; 137 L. T. 255; 43 T. L. R. 454.

After this case add :—

"—— —— ——.]—*See, now,* Widows', Orphans' & Old Age Contributory Pensions Act, 1929 (c. 10), s. 22."

deft., pltf. will not be required to give particulars of the negligence alleged.—WHITE *v.* HENTON, [1930] 1 W. W. R. 685; 2 D. L. R. 959; 24 Alta. L. R. 423.—**CAN.**

sd. *New trial.*]—WINSTON *v.* NELLES, [1932] S. C. R. 341; 3 D. L. R. 527.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 2.

865 i. *Child—Adopted child—Fatal Accidents Act, R. S. O.,* 1914 (c. 151), s. 2 (a).]—HOWIE *v.* LAWRENCE, [1927] 1 D. L. R. 477; 59 O. L. R. 641.—**CAN.**

g i. ——.]—Sisters of deceased are not entitled, as such, to the benefits of Fatal Accidents Act, 1920 (c. 29); & the mere allegation that they were dependent on him does not bring them within the Act.—SHTITZ *v.* CANADIAN NATIONAL RY. CO., [1927] 1 D. L. R. 951; [1927] 1 W. W. R. 193; 21 Sask. L. R. 345.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 3.

o i. ——.]—W. was injured by falling into a gullet, which was in a street under the care of an urban district council. W. brought no action in his lifetime, & died within six months after the accident, & in consequence thereof. An action was instituted by the widow under Lord Campbell's Act, 1846 (c. 93), more than six months after the accident, & more than eight months from the death of W.:—*Held :* pltf. was entitled to maintain the action.—WALSH *v.* BALLINA URBAN DISTRICT COUNCIL (1921), 55 I. L. T. 140.—**IR.**

PART XIII. SECT. 2, SUB-SECT. 5.—B. (a).

883 xiv. ——.]—In order to succeed in an action under Lord Campbell's Act it is necessary for pltf. to show that he has lost a reasonable probability of pecuniary advantage.—SANFORD *v.* CROSSLEY, [1931] 44 B. C. R. 481.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 7.—B.

907 ix. ——.]—A claim for damages by a widow or the minor children of a person, whose death is alleged to have been caused by the negligence of deft., is not barred by the fact that the death was caused by the combined negligence of the latter & deceased.—UNION GOVERNMENT (MINISTER OF RAILWAYS) *v.* LEE, [1927] App. D. 202.—**S. AF.**

907 x. ——.] — MORAWITSKI *v.* KOSTUCHENKO (Man.), [1929] 2 W. W. R. 384; 38 Man. L. R. 228; *affg.*, [1929] 1 W. W. R. 585.—**CAN.**

907 xi. ——.]—In an action under Fatal Accidents Act, R. S. O., 1927, where deceased has been guilty of contributory negligence, & though his degree of fault has much exceeded that of deft., Contributory Negligence Act, R. S. O., 1927, is applicable to enable the action to be maintained; & it is also applicable for the purpose of providing for apportionment of the liability for damages.—LITTLEY *v.* BROOKS & CANADIAN NATIONAL RY. CO., [1932] S. C. R. 462; 2 D. L. R. 386.—**CAN.**

907 xii. ——.]—Contributory Negligence Act, 1925, applies to an action brought under Families' Compensation Act, R. S. B. C., 1924.—HUNTER *v.* CLARKE, [1932] 1 W. W. R. 466; 44 B. C. R. 554.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 8.—E.

h i. ——.]—The dependants of a person who has lost his life through the negligence of deft. are entitled to compensation only for the material loss caused to them by the accident, & not for mental suffering or distress, or to improve their material prospects.—SMART *v.* S. AFRICAN RYS. & HARBOURS (1928), 49 N. L. R. 361.—**S. AF.**

m i. —— —— *Consideration of insurance.*]—BURNS *v.* MACDONALD CONSOLIDATED, [1931] 3 W. W. R. 54.—**CAN.**

sa. *Fine imposed under Penal Code in respect of accident—Taken into account.*]—NATHU RAM *v.* CHAND KUAR (1927), I. L. R. 50 All. 408.—**IND.**

PART XIII. SECT. 2, SUB-SECT. 8.—F.

e i. ——.]—YOUNG *v.* CANADIAN PACIFIC RY. CO. (NO. 2) (Sask.), [1927] 3. W. W. R. 175.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 9.

953 i. *Verdict not set aside—If evidence in support.*]—FLYNN *v.* IRISH SUGAR MANUFACTURING CO., [1928] I. R. 525.—**IR.**

f i. ——.]—FITZPATRICK *v.* SCHRAM, [1928] 1 W. W. R. 751.—**CAN.**

f ii. —— ——.]—MILLER *v.* CANADIAN PACIFIC RY. CO., [1932] 3 W. W. R. 515.—**CAN.**

g i. —— *Sufficiency.*]—SHTITZ *v.* CANADIAN NATIONAL RY. CO., [1927] 1 D. L. R. 951; [1927] 1 W. W. R. 193; 21 Sask. L. R. 345.—**CAN.**

p i. ——.]—An action for negligence resulting in personal injuries was commenced by the injured party. Pltf. died, the action not having been brought to trial :—*Held :* the action was properly revived in the name of the administratrix, she being entitled, under Trustee Act, R. S. O., 1927, s. 37, to maintain an action for all torts or injuries to the person of deceased.—BOWLER *v.* BLAKE, [1930] 1 D. L. R. 683; 64 O. L. R. 499.—**CAN.**

a (p. 142) **i.** ——.]—LESLIE *v.* BUZZA, [1929] 1 D. L. R. 903; 40 B. C. R. 441.—**CAN.**

sb. *Fatal Accidents Act,* 1920, *s.* 7—*Neglect to file affidavit under.*]—An order dispensing with the filing of the affidavit required under above sect. should not be made when the result of making it would be to prejudice a right of deft. which has accrued since the commencement of the action.—SWINDELL *v.* NORTHERN ELEVATOR CO., LTD., [1928] 4 D. L. R. 982; [1928] 3 W. W. R. 433.—**CAN.**

sd. *Particulars.*]—In an action under Fatal Accidents Act, 1846, in respect of the alleged negligence of deft. in the driving of a car, the particulars of negligence furnished by pltf. included the following para.: "Pltf. will rely also upon any other acts or omissions of deft. constituting negligence or breach of duty as may be given in evidence or otherwise appear at the trial of this action." Upon a motion by deft. for an order striking out this particular it was ordered that the following should be substituted: "Pltf. will also rely on such facts in proof of the negligence alleged in the statement of claim as are in the knowledge of deft. but not of pltf. & appear in the evidence of deft. & her witnesses at the hearing of the action." The order further provided that pltf. should have liberty to rely also upon such other particulars of negligence as pltf. might, not later than ten days before the commencement of the trial of the action, give notice of, in writing, to deft.—MCWATTERS *v.* MAXWELL, [1932] I. R. 176.—**IR.**

NOTARIES.

PART II. SECT. 1, SUB-SECT. 1.

b 1. —— *Number of notaries practising in district.*]—*Re* STEWART (B. C.), [1929] 4 D. L. R. 528.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.

sa. *Who may appoint—Whether local judge.*]—BRITISH COLUMBIA LAW SOC. *v.* STEWART, [1928] 4 D. L. R. 572.—**CAN.**

PART III.

g 1. ——.]—There is impropriety, to say the least, for a notary to insert in a will passed before him a clause by which the testator directs that the exors. & the heirs shall employ the execution of the will. It is consonant to sound legal principle, & even to public order, that a deed passed before a notary do not contain any stipulation in his favour.—ST. DENIS *v.* THIBODEAU, [1929] 3 D. L. R. 749; S. C. R. 346; *affg.*, 44 Que. K. B. 207. —**CAN.**

NUISANCE.

Part I.—Definition, Nature and Characteristics.

1. *Add. Annotation :*—**Refd.** Vanderpant *v.* Mayfair Hotel Co. (1929), 27 L. G. R. 752.

8. *Add. Annotation :*—**Consd.** Pontardawe Rural District Council *v.* Moore-Gwyn, [1929] 1 Ch. 656.

18. *Add. Annotation :—As to* (3) **Refd.** The Carlgarth, The Otarama, [1927] P. 93.

31. *Add. Annotation :*—**Consd.** Vanderpant *v.* Mayfair Hotel Co. (1929), 27 L. G. R. 752.

58. *Add. Annotation :*—**Refd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441.

66. *Add. Annotation :—As to* (2) **Refd.** Vanderpant *v.* Mayfair Hotel Co. (1929), 27 L. G. R. 752.

Part II.—Nuisances in respect of Particular Matters.

76. *Add. Annotation :*—**Consd.** Great Western Railway *v.* Monmouthshire County Council (1929), 94 J. P. 6.

77. *Add. Annotation :*—**Consd.** Farnworth *v.* Manchester City Corpn., [1929] 1 K. B. 533.

98a. Hotel kitchen.]—The making or causing of such a noise on premises as materially interferes with the ordinary physical comfort of a neighbour constitutes an actionable nuisance; & it is no answer to say that the best known means have been taken to reduce or prevent the noise complained of or that the cause of the nuisance is the exercise of a business or trade in a reasonable & proper manner. In accordance with these principles an injunction was granted in an action by the occupier of a house abutting on a highway to restrain the owners of a neighbouring hotel from causing a nuisance to pltf. by noise arising from the hotel kitchen.—VANDERPANT *v.* MAYFAIR HOTEL CO., LTD., [1930] 1 Ch. 138; 99 L. J. Ch. 84; 142 L. T. 198; 94 J. P. 23; 27 L. G. R. 752.

121a. ——.]—VANDERPANT *v.* MAYFAIR HOTEL CO., LTD., No. 98a, *ante*.

134a. Manure manufacture.]—CARDELL *v.* NEW QUAY LOCAL BOARD (1875), 39 J. P. Jo. 742.

134b. Rag & bone business.]—P. set up a business of a rag & bone merchant without leave. The bones were stored in bags & removed weekly. The justices having found as a fact that the business was noxious & *ejusdem generis* with those specified, convicted P. :—*Held :* the conviction was right.—PASSEY *v.* OXFORD LOCAL BOARD (1879), 43 J. P. 622, D. C.

152. *Add. Annotation :*—**Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

212. After this case add :—"——.]—*See, also,* PUBLIC HEALTH, Vol. XXXVIII., p. 198, Nos. 337, 341."

223a. ——.]—WALLIS *v.* UNITED FRENCH-POLISHERS' LONDON SOCIETY (1905), Times, Nov. 28th.

232a. Meaning of premises—Overhanging rock.]—PONTARDAWE RURAL COUNCIL *v.* MOORE-GWYN, No. 364a, *post*.

PART II. SECT. 9, SUB-SECT. 1.

91 i. *Building operations—Mechanical drills.*]—DAILY TELEGRAPH CO., LTD. *v.* STUART (1928), 28 S. R. N. S. W. 291; 45 N. S. W. W. N. 48.—**AUS.**

95 i. *Dairy — Noisy churns.*]—MCKELVEY *v.* INVERCARGILL MILK SUPPLY CO., LTD., [1928] N. Z. L. R. 223.—**N.Z.**

95 ii. —.]—DUCHMAN OAKLAND DAIRY CO., [1929] 1 D. L. R. 9; 63 O. L. R. 111.—**CAN.**

so. *Milk vendor—Noise of horses.*]—In an action for nuisance, where it was shown that deft. had taken much trouble to make the carrying on of his business as unobjectionable as possible, & had carried on his business in a fair & reasonable way & at a site proper for such a business :—*Held :* on the evidence that noises caused in the early mornings by the movements & stamping of horses which disturbed the sleep of pltf. constituted an actionable nuisance & should be restrained by injunction.—PAINTER *v.* REED, [1930] S. A. S. R. 295.—**AUS.**

PART II. SECT. 9, SUB-SECT. 2.

e i. ——.]—Every person has a right, independent of custom, to worship in his own method, & according to his own rites; the right, however, is not absolute, but is limited by the rights of others.—JANKI PRASAD *v.* KARAMAT HUSAIN (1931), I. L. R. 53 All. 836.—**IND.**

sa. *Crowing cocks.*]—An injunction had been granted, after a trial by affidavit, restraining deft. from keeping roosters, or allowing roosters to be kept, on his premises, in a residential area, in such manner & under such conditions as to cause a nuisance to pltfs. :—*Held :* on the evidence it was impossible to determine the real degree of noise caused by deft.'s birds during the relevant period, & consequently pltfs. had not established a nuisance.—RUTHNING *v.* FERGUSON (1930), S. R. (Q.) 325.—**AUS.**

PART II. SECT. 11, SUB-SECT. 7.

sb. *Fox farm.*]—A fox farm 20 feet from pltf.'s house held not a nuisance *per se;* but, in view of evidence of a certain slackness in conducting the farm for some time prior to the time when the present action became imminent, an order was granted that defts. should so carry on the business of the farm as not to occasion a nuisance to the pltf.—MILLER *v.* KRAWITZ, [1931] 1 W. W. R. 577; 2 D. L. R. 784.—**CAN.**

PART II. SECT. 13, SUB-SECT. 4.

sd. *Hospital.*]—SHUTTLEWORTH *v.* VANCOUVER GENERAL HOSPITAL, No. 673 iv, *post*.—**CAN.**

PART II. SECT. 14, SUB-SECT. 2.—B.

se. "*Unfit for human habitation*"—*Absence of plumbing.*]—Although under sect. 35 of Public Health Act, 1924, the determination of the question whether a particular building or part of a building is unfit for human habitation depends upon the opinion of the medical health officer or other official mentioned therein, nevertheless, it was not intended that such opinion should be made arbitrarily but only upon reasonable grounds. Where it is based upon "absence of plumbing," a proper opinion would seem to predicate at least a personal examination of the building by the officer, & an exposition of conditions arising from the absence of plumbing which would justify a reasonable conclusion that they rendered it unfit for human occupation because they created a situation which "was or might become injurious or dangerous to health or which prevented or hindered in any manner the suppression of disease." The absence of plumbing does not in itself render a house "unfit for human habitation."—R. (WILSON) *v.* HOLMES, [1931] 2 W. W. R. 41; 3 D. L. R. 218.—**CAN.**

Part III.—Neighbouring Owners.

302. *Add. Annotation :*—**Refd.** Bull *v.* West African Shipping, etc. Co., [1927] A. C. 686.

309. *Add. Annotation :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

310. *Add. Annotation :—As to* (2) **Overd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

311. *Add. Annotations :*—**Distd.** St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1. **Consd.** Pontardawe Rural District Council *v.* Moore-Gwyn, [1929] 1 Ch. 656. **Distd.** Fardon *v.* Harcourt-Rivington (1932), 48 T. L. R. 215 ; Wilkins *v.* Leighton (1932), 76 Sol. Jo. 232. **Apld.** A.-G. *v.* Corke (1932), 48 T. L. R. 650. **Refd.** Glanville *v.* Sutton (1927), 44 T. L. R. 98 ; G. W. Ry. *v.* S.S. Mostyn, The Mostyn, [1928] A. C. 57 ; Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

316a. Confined to owners in possession.]—St. Anne's Well Brewery Co. *v.* Roberts No. 349a, *post.*

323. *Add. Annotation :*—**Refd.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

325. *Add. Annotation :*—**Distd.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

330a. Tapping springs.]—Before the year 1919 the land of pltf. & of deft. was in the same ownership. On Mar. 25, 1919, the common owners conveyed a cottage & garden to C., & on Aug. 25, 1919, part of the land. On July 19, 1921, C. conveyed the whole of the land to pltf. On Dec. 20, 1929, the common owners conveyed other part of their land to deft. In about 1888 a tank Y. had been constructed by the common owners, mainly on what became the land of pltf., but which projected partly on to the land which became the land of deft. The water from that tank was led by a pipe to another tank Z. wholly situate on deft.'s land. The tank Z. was tilted so that the water overflowed on to land which became pltf.'s. The overflow was diminished by the cattle using the tank as a drinking trough ; what overflowed was conveyed by a stone drain to a point where it discharged into an open watercourse which was also fed by an underground spring on pltf.'s land. The open watercourse became a natural stream along the southern boundary of pltf.'s land, where there were two dipping places used by pltf. for watering his cattle & by some cottagers. Pltf.'s land was always boggy in places, & was now overgrown with rank vegetation. In Feb. 1930, deft. replaced tank Z. by another, which had two outlet holes, one only of which acted as an overflow outlet on to pltf.'s land. The overflow from the other outlet, which was on the west side, was led to a ram on deft.'s land. These alterations diminished the overflow on to pltf.'s land, who alleged that it affected the supply at the dipping places. He also alleged deft., in the alternative, had tapped springs the water from which escaped on to pltf.'s land, rendering part of it waterlogged. Pltf. claimed the right to a continuance of the overflow by grant as successor in title to C. or by prescription :—*Held :* the fact that owing to the natural & proper user by deft. of her own land some of the water in the water-bearing stratum below the surface had, to a small extent, been diverted, did not entitle pltf. to damages for any alleged injury arising from such diversion, & deft. not having diverted any defined watercourse nor altered the level of her land nor erected any structure upon it so as to cause rain water which would ordinarily soak into her ground to pass on to pltf.'s land, pltf. was not entitled to the relief claimed in paras. 3 & 4 of the prayer of the statement of claim.—Bartlett *v.* Tottenham, [1932] 1 Ch. 114 ; 101 L. J. Ch. 160 ; 145 L. T. 686.

332. *Add. Annotation :—Generally,* **Refd.** Scammell *v.* Hurley, [1929] 1 K. B. 419.

344a. Collapse of wall.]—St. Anne's Well Brewery Co. *v.* Roberts, No. 349a, *post.*

344b. ——.]—Wilkins *v.* Leighton, No. 349b, *post.*

PART III. SECT. 2, SUB-SECT. 2.—B. (e).

326 ii. —— —— *Measure of damages.*]—Where by digging a ditch beneath the natural surface of the soil an occupant of land causes surface water, not moving in any defined watercourse, to be discharged upon the land of another, he is liable in damages. The damages in the present case were held to include the net value to pltf. of the crop which he would have put in on the flooded part of his land but for the flooding.—Qualley *v.* Day, [1929] 2 D. L. R. 928 ; 1 W. W. R. 200 ; 23 S. L. R. 425 ; *revsg.*, [1928] 3 D. L. R. 56 ; 1 W. W. R. 961 ; 22 S. L. R. 442.—**CAN.**

m i. —— *Alteration of land.*]—Where deft. co. carried out alterations to its land with the result that, when rain fell, rain water poured from deft.'s land on to pltf.'s council's streets in a more concentrated form & carried with it more sand & silt than would be the case in the ordinary course of nature : —*Held :* pltf. was entitled to an injunction restraining deft. from permitting its land to remain in such a condition that these results ensued, & an inquiry as to what damage had accrued to pltf.'s streets arose from the operations of deft.—Newcastle Council *v.* Australian Agricultural Co., Ltd. (1928), 29 S. R. 212 ; 9 L. G. R. 71.—**AUS.**

PART III. SECT. 2, SUB-SECT. 2.—B. (i).

d i. ——.]—McCartney *v.* Miller (1905), 7 Terr. L. R. 367 ; 2 W. L. R. 87.—**CAN.**

d ii. ——.]—Bettcher *v.* Turner (Sask.) (1913), 25 W. L. R. 136.—**CAN.**

sg. *Overloading floor of warehouse.*]—Pltf., an automobile dealer, was the tenant of part of the ground floor of a warehouse. Deft., a dealer in seed grain, was the tenant of part of the third floor directly above pltf.'s premises. About three months after deft. had stored a large quantity of oats on his floor it collapsed, the oats fell through & brought the second floor down upon pltf.'s cars. In an action for the resulting damage, the immediate cause for the collapse could not be definitely assigned, but it was shown that the floors of a building constructed for general warehousing purposes should have a carrying capacity far in excess of the load under which deft.'s floor collapsed. There was no evidence that the building in question was ever held out to the public, or prospective tenants, as a general warehouse, although parts of it had been leased from time to time to various tenants for miscellaneous storage purposes :—*Held :* deft. was guilty of negligence, not only in overloading, but in disregarding the duty which, under the circumstances including the general flimsiness of the building, was upon him to inquire & inspect ; & also his liability could be based on the principle of *Rylands* v. *Fletcher.*—Madder *v.* McKenzie (A. E.) & Co., Ltd., [1931] 1 W. W. R. 344 ; 2 D. L. R. 522 ; *affd.*, [1931] 3 W. W. R. 540 ; [1932] 1 D. L. R. 129 ; 40 Man. L. R. 24.—**CAN.**

sl. *Flood lighting.*]—Flood lighting does not come within *Rylands* v. *Fletcher*, as light is not noxious or dangerous.—Noyes *v.* Huron & Erie Mortgage Corpn., [1932] O. R. 426 ; 3 D. L. R. 143.—**CAN.**

344c. Permitting occupation of land by caravan dwellers—Misconduct by occupants.]—Deft., in return for payment, allowed persons to place caravans on a disused brickfield & to live in them, & some of these persons committed in the vicinity, but not in the brickfield, acts which interfered with the comfort of people in the neighbourhood. In an action by the A.-G. at the suit of the local district council for an injunction to restrain deft. from permitting the brickfield to be occupied in such a way as to be a nuisance :—*Held :* as deft. was putting his land to an abnormal use he was responsible for the nuisance which existed in the vicinity, & he must be restrained from permitting the occupiers of the land to do the acts constituting the nuisance.—A.-G. *v.* CORKE (1932), 48 T. L. R. 650 ; 76 Sol. Jo. 593.

349a. —— —— No knowledge of danger or defect.]—Pltfs. were the owners of an ancient inn, one side of which was bounded by the ancient city wall of Exeter, part of which was the property of defts. On either side of the fireplace in the kitchen of the inn recesses had at some time unknown been formed by means of excavations made in the wall. In 1927 a considerable portion of the wall belonging to defts. collapsed & completely demolished pltfs.' inn :—*Held :* (1) inasmuch as the damage caused to pltfs.' premises did not arise from an abnormal or unnatural user of defts.' property, & defts. were not occupiers of the wall at the time the damage took place, the doctrine of *Rylands* v. *Fletcher* did not apply, & (2) it had not been proved that defts. had knowledge of the defect which ultimately resulted in the fall of the wall or that there had been a failure on their part by due diligence to ascertain that knowledge.—ST. ANNE'S WELL BREWERY CO. *v.* ROBERTS (1928), 140 L. T. 1 ; 92 J. P. 180 ; 44 T. L. R. 703 ; 26 L. G. R. 638, C. A.

Annotation :—As to (2) **Folld.** Wilkins *v.* Leighton, [1932] 2 Ch. 106.

349b. -.]—The owner of land situate on a steep natural slope built in 1888 a house called "A. Hall." The ground was then excavated on the upper side to a depth of thirteen feet, forming a vertical bank on the boundary. In order to protect this from weathering & crumbling the owner erected a retaining wall some seventy feet long & thirteen feet high. The adjoining land beyond & above the wall was left unbuilt on until 1925, when a house was erected & was afterwards purchased by deft. A. L. Early in 1930 the retaining wall collapsed almost entirely, causing pressure against & damage to an outside wall of a room which had been on to "A. Hall." Pltf. alleged & the ct. found as a fact that the collapse of the wall was due to the additional pressure upon it caused by the weight of the new house built in 1925, & he claimed a mandatory order to restore the wall & to take such further steps as might be necessary to prevent any further damage to his property, & an injunction & damages :—*Held :* (1) deft. A. L. as the owner of the house was under no liability to pltf. based on the doctrine of *Rylands* v. *Fletcher*, as her predecessor in title had only used the land for the natural & normal purpose of building a house on it ; (2) the claim as based on nuisance failed, as there was no evidence that deft. knew or could have known that her house constituted a nuisance or hidden danger to pltf.'s property, or that any such nuisance in fact existed.—WILKINS *v.* LEIGHTON, [1932] 2 Ch. 106 ; 101 L. J. Ch. 385 ; 147 L. T. 495 ; 76 Sol. Jo. 232.

353. *Add. Annotations :*—**Refd.** Pontardawe Rural District Council *v.* Moore-Gwyn, [1929] 1 Ch. 656 ; Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

356. *Add. Annotation :*—**Refd.** St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1.

357. *Add. Annotation :*—**Refd.** O'Cedar *v.* Slough Trading Co., [1927] 2 K. B. 123.

359. *Add. Annotation :*—**Consd.** Pontardawe Rural District Council *v.* Moore-Gwyn, [1929] 1 Ch. 656.

363. *Add. Annotations :*—**Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117 ; Vanderpant *v.* Mayfair Hotel Co. (1929), 27 L. G. R. 752.

364. *Add. Annotations :*—**Consd.** St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1 ; **Refd.** Wilkins *v.* Leighton (1932), 76 Sol. Jo. 232.

364a. Maintaining overhanging rock.]—The owner of land on which there is an outcrop of rock overhanging a steep slope is not liable for damage caused by reason of portions of that rock breaking away & falling down the slope if the break is due to natural causes, such as weathering, & the owner has used his land in an ordinary way, without any mining or quarrying operations. Rocks in such a position, though they may become dangerous are not "premises in such a state as to be a nuisance" within Public Health Act, 1875 (c. 55), s. 91.—PONTARDAWE RURAL COUNCIL *v.* MOORE-GWYN, [1929] 1 Ch. 656 ; 98 L. J. Ch. 242 ; 141 L. T. 23 ; 93 J. P. 141 ; 45 T. L. R. 276 ; 27 L. G. R. 493.

372. *Add. Annotation :—As to* (1) **Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

374. *Add. Annotation :*—**Consd.** St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1.

376. *Add. Annotations :*—**Refd.** G. W. Ry. *v.* S.S. Mostyn, The Mostyn, [1928] A. C. 57 ; St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1.

386. *Add. Annotations :*—**Consd.** Vanderpant *v.* Mayfair Hotel Co. (1929), 27 L. G. R. 752. **Refd.** Aldridge *v.* Wright, [1929] 2 K. B. 117 ; Keewatin Power Co., Ltd. *v.* Lake of the Woods Milling Co., [1930] A. C. 640.

389. *Add. Annotation :*—**Refd.** St. Anne's Well Brewery Co. *v.* Roberts (1928), 140 L. T. 1.

PART III. SECT. 2, SUB-SECT. 2.—C. (f).

ss. *Sparks from machine used by defendant on another's land causing fire on plaintiff's land.*]—PETT *v.* SIMS PAVING & ROAD CONSTRUCTION CO. PTY., LTD., [1928] V. L. R. 247 ; [1928] Argus L. R. 213.—**AUS.**

PART III. SECT. 2, SUB-SECT. 3.

389 i. *Duty of neighbouring owner.*] - During a windstorm, one of the brick walls of deft.'s garage was drawn outwards, & the falling wall injured the infant pltf. who was playing in her father's yard on the adjoining property. The judge found that both in design & construction the wall was sufficient for the purpose for which it was intended, & that its fall was due to the storm, which he found to be one of such extraordinary violence that it could not reasonably have been anticipated ; he found also that the wall was not a nuisance ; & that the breach of a building bye-law, in not employing an architect, could not be said to have caused the accident ; moreover the bye-law in question gave no right of action to pltf. :—*Held :* deft. was not liable.—MARCHYSHYN *v.* FANE AUTO WORKS, LTD., [1932] 1 W. W. R. 689.—**CAN.**

Part IV.—Remedies.

438. *Add. Annotation :*—**Refd.** Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226.

439. *Add. Annotation :—As to* (1) **Refd.** Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226.

444. *Add. Annotations :—As to* (1) **Refd.** Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226. *Generally*, **Refd.** The Carlgarth, The Otarama, [1927] P. 93.

445. *Add. Annotation :*—**Consd.** Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226.

447. *Add. Annotation :—As to* (1) **Refd.** Salisbury & Fordingbridge District Drainage Board *v.* Southern Tanning Co. (1920), Ltd., [1927] 2 K. B. 566.

465. *Add. Annotation :*—**Consd.** Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226.

542. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

545. *Add. Annotation :*—**Refd.** Vanderpant *v.* Mayfair Hotel Co., [1930] 1 Ch. 138.

549. *Add. Annotation :*— **Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

550. *Add. Annotation :*—**Refd.** Vanderpant *v.* Mayfair Hotel Co. (1929), 27 L. G. R. 752.

552. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

553. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

567a. ——.]—SHORT *v.* TAYLOR (1709), 2 Eq. Cas. Abr. 522 ; 22 E. R. 441.

Annotation :—**Apld.** Williams *v.* Jersey (1841), Cr. & Ph. 91.

598a. Jus tertii.]—In an action of trespass a deft. cannot set up a *jus tertii* against a possessory title. The same rule applies to an action for polluting a several fishery & damaging the fish.

Now does the *jus tertii* rule apply to such an action ? I must confine my remarks most strictly to actions of the kind before me. There are many kinds of nuisance actions, *e.g.* an action for infringement of ancient lights, & so on. & I am very far from saying that the *jus tertii* rule applies to every kind of nuisance action. But in this case I am dealing with a nuisance action of a kind peculiar to itself & to other pollution actions. It is not trespass, but it is very analogous to trespass. In my judgment where defts. are doing acts *per se* illegal, & therefore not justifiable under any outside authority, they cannot set up a *jus tertii* as a defence in an action of this kind (FARWELL, J.).—NICHOLLS *v.* ELY BEET SUGAR FACTORY, [1931] 2 Ch. 84, 87 ; 100 L. J. Ch. 259 ; 145 L. T. 113.

608. *Add. Annotation :*—**Refd.** Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226.

609. *Add. Annotation :*—**Refd.** Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226.

612. *Add. Annotation :*—**Refd.** Lagan Navigation Co. *v.* Lambeg Bleaching, Dyeing & Finishing Co., [1927] A. C. 226.

613. *Add. Citation :*—25 L. G. R. 1.

626. *Add. Annotation :*—**Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

640. *Add. Annotation :*—**Refd.** Mayhead *v.* Hydraulic Hoist Co. (1931), 100 L. J. K. B. 369.

660. *Add. Annotation :*—**Refd.** Farnworth *v.* Manchester City Corpn., [1929] 1 K. B. 533.

681. *Add. Annotation :*—**Refd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1928] Ch. 235.

793. *Add. Annotation :*—**Consd.** Pointon *v.* Cox (1926), 136 L. T. 506.

794. *Add. Annotation :*—**Apld.** R. *v.* Surrey Justices, *Ex p.* Witherick, [1932] 1 K. B. 450.

799. *Add. Annotation :*—**Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

PART III. SECT. 4.

c i. —— *Ammonia plant causing loss of patronage to theatre—Loss due to change in character of district.*]—AVENUE THEATRE, LTD. *v.* VANCOUVER GAS CO. (1928), 40 B. C. R. 275.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 2.—B. (a).

442 ii. ——.]—MCLOUGHLAN *v.* MARTIN (1864), 5 Nfld. L. R. 44.—**NFLD.**

PART IV. SECT. 2, SUB-SECT. 2.—B.

sg. *Liability of joint contributors.*]—Where two or more persons contribute in part only to the creation of a nuisance, each is severally liable. Each may be restrained from doing the act which contributes to that which becomes, in the aggregate, a nuisance. —L'ESTRANGE *v.* THE BRISBANE GAS CO., [1928] S. R. Q. 180.—**AUS.**

PART IV. SECT. 2, SUB-SECT. 4.

sl. *Nominal damages.*]—MURPHY *v.* BACON, [1931] 1 D. L. R. 1001 ; 1 M. P. R. 586.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 6.—A. (e).

673 iv. ——.]—In a *quia timet* action for an injunction restraining the establishment of a hospital, on the ground that it will constitute a nuisance to pltf., he must prove a strong probability almost amounting to moral certainty that the hospital will be an actual nuisance.—SHUTTLEWORTH *v.* VANCOUVER GENERAL HOSPITAL, [1927] 2 D. L. R. 573 ; [1927] 1 W. W. R. 476 ; 38 B. C. R. 300.—**CAN.**

673 v. ——.]—Pltfs. moved for an injunction to prevent a nuisance, which they feared would arise from noise & vibration caused by the establishment of a factory then in course of erection : —*Held :* as it had not been established that the damage apprehended was imminent & of a substantial character, the claim was premature.—ROBERTSON *v.* DUTHIE STEEL CASEMENT CO., LTD., [1927] N. Z. L. R. 826.—**N.Z.**

OPEN SPACES AND RECREATION GROUNDS.

Part I.—General Rights of Public.

1. *Add. Annotation :*—**Refd.** Hue *v.* Whiteley, [1929] 1 Ch. 440.

Part II.—Exemption from Rates, Charges, etc.

12. *Add. Annotations :*—**Consd.** Consett Iron Co. *v.* Durham County Assessment Committee for No. 5 or North-West Area (1930), 99 L. J. K. B. 277. **Distd.** London Playing Fields Society *v.* Essex (S. W. Area) Assessment Committee (1930), 94 J. P. 241.

13. *Add. Annotation :*—**Dbtd.** London Playing Fields Society *v.* Essex (S. W. Area) Assessment Committee (1930), 94 J. P. 241.

14a. —— ——.]—Applts. were a body incorporated by Royal Charter for the purpose of providing playing fields for the use of clubs & persons who could not afford to pay full economic rents. Land was conveyed to applts. by a deed containing a restrictive covenant that the land should be used for the purposes of Recreation Grounds Act, 1859 (c. 27), as though it had been conveyed under that Act, but subject to the power of applts. to sell the whole or any part of the land. Applts. successfully appealed to Quarter Sessions against a poor rate in which they were rated & assessed in respect of the land. On resps.' appeal by case stated :—*Held :* since the land was not " struck with sterility " as a matter of law, there being no statutory & irrevocable dedication to the public, applts. were in rateable occupation.—LONDON PLAYING FIELDS SOCIETY *v.* ESSEX (S. W. AREA) ASSESSMENT COMMITTEE (1930), 144 L. T. 233 ; 94 J. P. 241 ; 46 T. L. R. 631 ; 74 Sol. Jo. 662 ; 28 L. G. R. 591 ; (1926–31), 1 B. R. A. 367, D. C.

Part IV.—User of Open Spaces.

35 *Add. Annotations :*—**Distd.** A.-G. *v.* Sunderland Corpn. (1929), 46 T. L. R. 10. **Refd.** A.-G. *v.* Manchester Corpn., [1931] 1 Ch. 254.

38. *Add. Annotations :*—**Folld.** *Re* Cranstoun, National Provincial Bank, Ltd. *v.* Royal Society for Encouragement of Arts, Manufactures & Commerce, [1932] 1 Ch. 537. **Refd.** I. R. Comrs. *v.* Yorkshire Agricultural Soc. (1927), 44 T. L. R. 59.

39. *Add. Annotation :*—**Consd.** A.-G. *v.* Sunderland Corpn., [1929] 2 Ch. 436.

PARLIAMENT.

Part I.—Nature and Powers.

2a. —— ——.]—It is not the practice in Acts of Parliament to attempt to restrain future Parliaments in their enactments; & the Legislature could not have intended to suggest such an object without expressing it in very distinct terms (WILDE, C.J.).—BODEN *v.* SMITH (1849), 18 L. J. C. P. 121; 12 L. T. O. S. 377; 13 J. P. 153; 13 Jur. 428.

Annotations :—**Refd.** R. *v.* Smith (1873), L. R. 8 Q. B. 146; Jenkins *v.* Great Central Ry. Co., [1921] 1 K. B. 1.

2b. The exemption is in general terms. It may have been intended to include all taxes & assessments whatsoever, present or future, then imposed or to be imposed by any future Act of Parliament. But even if the exemption had been enacted in those very terms, it is plain that such an enactment could not have bound future Parliaments (CHANNELL, J.).—ASSOCIATED NEWSPAPERS, LTD. *v.* LONDON CITY CORPN., [1913] 2 K. B. 281; 82 L. J. K. B. 928; 108 L. T. 789; 77 J. P. 273; 11 L. G. R. 554; *on appeal*, [1914] 2 K. B. 603, C. A. *sub nom.* LONDON CITY CORPN. *v.* ASSOCIATED NEWSPAPERS, LTD., [1915] A. C. 674, H. L.

Part II.—The House of Lords.

4. *Add. Annotation :*— **Refd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

22. *Annotation :*—Delete Wycombe Grdns. *v.* Barton-upon-Irwell Grdns. (1926), 43 T. L. R. 89.

37. *Add. Annotation :*—**Consd.** Campbell *v.* Pollak, [1927] A. C. 732.

38. *Add. Citations :*—[1927] A. C. 732; 96 L. J. K. B. 1093; 137 L. T. 656.

Add. Annotations : — **Consd.** Co-operative Wholesale Society, Ltd. *v.* Lally (1930), 23 B. W. C. C. 513. **Refd.** The Young Sid, [1929] P. 190; Clark *v.* Urquhart, Stracey *v.* Urquhart, [1930] A. C. 28; London Welsh Estates, Ltd. *v.* Philip (1931), 144 L. T. 643; Midland Employers' Mutual Assurance, Ltd. *v.* Lewis (1930), 23 B. W. C. C. 192; Mabro *v.* Eagle Star & British Dominions Insurance Co., [1932] 1 K. B. 485.

39. *Add. Annotation :* — **Consd.** Campbell *v.* Pollak, [1927] A. C. 732.

41. *Annotation :*—For "*As to* (1) **Mentd.**" read "*As to* (1) **Refd.**"

Add. Annotation :—*As to* (3) **Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

54a. —— **Citations of cases referred to by Judge.**]—In a properly prepared case, where, in the course of the judgments printed in the appendix, a judge mentions a reported case, without giving the reference, the reference should be added in the margin.—PRACTICE NOTE, [1932] W. N. 61; 173 L. T. Jo. 243; 73 L. Jo. 273, H. L.

99. *Add. Annotation :*—*As to* (1) **Refd.** Campbell *v.* Pollak, [1927] A. C. 732.

135a. ——.]—In an action by an agent for a claim for commission from the purchaser on the sale of a business, the trial judge found on the facts that the agent had earned his commission, & his decision was affirmed by the appellate ct. :—*Held :* the concurrent findings of the cts. below ought not to be disturbed.—BOW'S EMPORIUM, LTD. *v.* BRETT (A. R.) & CO., LTD. (1927), 44 T. L. R. 194, H. L.

155a. In Admiralty actions—Collision cases—Both vessels to blame.]—CANTON (OWNERS) *v.* RHESUS (OWNERS), [1928] W. N. 214; *sub nom.* THE CANTON, 31 Lloyd, L. R. 289, H. L.

Annotation :—**Refd.** The Young Sid, [1929] P. 190.

162. *Add. Annotation :* — **Consd.** Campbell *v.* Pollak, [1927] A. C. 732.

190. *Add. Annotation :*—**Consd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 243.

Part III.—The House of Commons.

229. After this case add *See* House of Commons Disqualification (Declaration of Law) Act, 1931 (c. 13), s. 1.

PART II. SECT. 2, SUB-SECT. 1.

16 i. *Appeals from Scottish courts—From Lords of Session—From interlocutory order.*]—Ross *v.* Ross, [1927] S. C. (H. L.) 1.—**SCOT.**

PART II. SECT. 2, SUB-SECT. 7.—C.

85 i. *Not admitted.*] — PORTLAND *v.* WOOD'S TRUSTEES, [1927] S. C. (H. L.) 1.—**SCOT.**

PART II. SECT. 2, SUB-SECT. 12.—A.

168 i. *Lords may vary own order—Order inconsistent with judgment.*]—An order pronounced by the House of Lords disposing of an appeal, which had been submitted to both parties prior to its pronouncement & had not been objected to by them, was subsequently discovered to contain an error which prevented it from giving effect to the judgment of the House. In a petition presented by applts., the House altered the order so as to make it conform to the judgment of the House.—COATS *v.* UNION BANK OF SCOTLAND, [1930] S. C. (H. L.) 63.—**SCOT.**

Part V.—The Legislative Work of Parliament.

256a. —— **Metropolis Gas Act, 1860 (c. 125).]**— Sect. 56 of above Act enacts that "the costs, charges, expenses of & incident to the passing of this Act, & preliminary thereto, shall be paid by the Metropolitan Board of Works" out of certain funds:—*Held:* the persons to whom such payment is to be made by the board are the promoters of the Act, & not the solr. or parliamentary agent retained & employed by them for hire & reward to do the necessary work.—WYATT *v.* METROPOLITAN BOARD OF WORKS (1862), 11 C. B. N. S. 744; 31 L. J. C. P. 217; 142 E. R. 988.

Annotations:—**Apld.** *Re* Skegness & St. Leonard's Tram. Co., *Ex p.* Hanly (1888), 41 Ch. D. 215. **Refd.** *Re* Kent Tram. Co. (1879), 12 Ch. D. 312.

See, also, COMPANIES, Vol. X., p. 1113, No. 7830.

261. *Add. Citations:*—*sub nom. Re* PETERSON, [1909] 2 Ch. 398; 79 L. J. Ch. 53; 101 L. T. 480; 73 J. P. 461.

263a. **Metropolis Gas Act, 1860 (c. 125).]**— WYATT *v.* METROPOLITAN BOARD OF WORKS, No. 256a, *ante.*

286. This is the same case as No. 287, *post.* The order made was subsequently reconsidered & reversed, *see* [1876] W. N. 80.

288a. **Failure to invest—Liability of Paymaster-General.]**—*Re* WILDBORE (1903), Y. S. C. P.

291a. —— **Leave for claimant to attend to examine other claims.]**—*Re* PECKHAM & EAST DULWICH TRAMWAYS CO., [1911] W. N. 15.

Part VII.—Privileges of Parliament.

365. *Add. Annotation:*—**Refd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 243.

437. *Add. Annotation:*—**Refd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 243.

PART VIII.

m (p. 295) i. —— *Canadian senate—Eligibility of women.]*—The words "qualified persons" in British North America Act, 1867, s. 24, include women, &, therefore, women are eligible for membership of the Senate of Canada.—EDWARDS *v.* A.-G. FOR CANADA (1929), 46 T. L. R. 4.—**CAN.**

PARTITION.

Part III.—Partition by Agreement.

33. After this case add:—

—— —— **Application of Law of Property Act, 1925 (c. 20), s. 28 (3).**]—*See* TRUSTS & TRUSTEES, No. 3639a, *post.*

35a.—— ——.]—ANON. (1820), 4 Bro. C. C. (Belt's edn.), 284 n.; 29 E. R. 894, L. C.

Annotation:—**Consd.** Bradshaw *v.* Fane (1856), 4 W. R. 422.

PART I.

h (p. 300) **i.** —— ——.]—It is essential for the maintainability of a suit for partition that pltf. should be in actual or constructive possession of the properties.—SABJAN BIBI *v.* ASHANULLA BEPARI (1926), I. L. R. 54 Calc. 524.—**IND.**

h (p. 300) **ii.** —— ——.]—Pltf. & deft. were entitled, after their mother's life estate in certain land, to the remainder as tenants in common. The mother refused to consent to a partition:—*Held:* pltf. was not entitled as against deft. to an order for partition of the lands. Only those entitled to possession of their shares in land are entitled to partition.—BUNTING *v* SERVOS, [1931] 4 D. L. R. 167; O. R. 409.—**CAN.**

ll (p. 300) **i.** —— —— *In case of absentee.*]—Sect. 4 of Partition Act, R. S. O., 1927, is intended to operate so as to convey the estate & interest of an absentee in lands sought to be partitioned; &, if he is dead leaving a widow, she should be regarded as one entitled to claim under or through him. The lands being sold under the partition order, her claim for dower would be upon the money which would stand in the place of the lands.—*Re* STROUD & MANDELL, [1930] 2 D. L. R. 135; 65 O. L. R. 4.—**CAN.**

c (p. 301) **i.** —— —— ——.]—HUESTIS *v.* HUESTIS (1928) 54 N. B. R. 1.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—C. (a) i.

329 xxvii. ——.]—In a partition suit, if, for the purpose of giving relief to pltf., a question has to be decided as between the different parties, whether they are arrayed as pltfs. or defts., the decision is binding on all the parties, so as to be *res judicata* as between any co-defts., although there was no conflict of interest in the suit as between those defts.—EJAZ AHMAD *v.* SAGHIR BANO (1929), I. L. R. 51 All. 850.—**IND.**

PART III. SECT. 4, SUB-SECT. 2.

—— —— *part performance.*]—STEVENS *v.* STEVENS, [1930] 3 D. L. R. 762.—**CAN.**

PART III. SECT. 9.

ss. *Agreement to pay amount in equalisation—Evidence.*]—PHERRILL *v.* PHERILL (1867), 13 Gr. 476.—**CAN.**

PARTNERSHIP.

Part I.—Partnership Generally.

8. *Add. Annotation :*—**Refd.** Dominion Iron & Steel Co. *v.* Invernairn, [1927] W. N. 277.

Part II.—Tests of Partnership.

43. *Add. Annotation :*—**Refd.** Arseculeratne *v.* Perera, [1928] A. C. 173.

44. *Add. Annotation :*—**Refd.** Arseculeratne *v.* Perera, [1928] A. C. 173.

77. *Add. Annotation :*—**Refd.** English Insce. Co. *v.* National Benefit Assce. Co. (Official Receiver), [1929] A. C. 114.

89. *Add. Annotation :*—**Consd.** Stanley & Co. *v.* Solomon, Ltd., [1932] 2 K. B. 287.

91. *Add. Annotation :*—*As to* (1) **Refd.** Marconi's Wireless Telegraph Co. *v.* Newman, [1930] 2 K. B. 292.

107. *Add. Annotation :*—*As to* (2) **Refd.** Watson *v.* Haggitt (1927), 44 T. L. R. 90.

171. *Add. Annotation :*—**Refd.** *Re* Debtor (No. 229 of 1927), [1927] 2 Ch. 367.

Part III.—Creation and Duration of Partnership.

210. *Add. Annotation :*—**Refd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

213. *Add. Annotation :*—**Refd.** Humphery *v.* Wilson (1929), 141 L. T. 469.

226. *Add. Annotation :*—*As to* (2) **Refd.** Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99.

Part IV.—Relations between Partners and Third Parties.

845a. ——.]—A. & B. partners as woollen drapers, A. receives money in the shop, & gives his note for it. Though no proof that this money was brought into stock, or used in trade; yet this note being given in the shop by one of the partners, it shall bind both; & though this note at law binds only the exor. of the surviving partner, yet in equity the creditor may follow the estate of the other.—LANE *v.* WILLIAMS (1692), 2 Vern. 277, 292; 23 E. R. 779, 789.

Annotations :—**Consd.** Devaynes *v.* Noble (1816), 1 Mer. 539. **Refd.** Bank of Australasia *v* Breillat (1847), 6 Moo. P. C. C. 152.

PART I. SECT. 2.

d i. *S. P.* BROJO LAL SAHA BANIKYA *v.* BUDH NATH PYARILAL (1927), I. L. R. 55 Calc. 551.—**IND.**

PART II. SECT. 1.

sx. *Statutory partnership under Registration of Partnerships Act, R. S. N. S., 1923—What amounts to.*]—HOBRECKER *v.* JAMES, [1930] 2 D. L. R. 415; 1 M. P. R. 177.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.

43 iii. —— *Co-owners of coal leases.*]—DAVIES *v.* SCHULLI, [1928] 4 D. L. R. 132; [1928] 3 W. W. R. 158.—**CAN.**

PART II. SECT. 3, SUB-SECT. 3.

sy. *Contract for dismantling vessel.*]—The relationship between the parties herein created by a contract for the dismantling by them of the hulk of a vessel :—*Held :* not to constitute a partnership.—GILCHRIST MANUFACTURING CO., LTD. *v.* INTERNATIONAL JUNK CO., LTD., [1931] 1 W. W. R. 101; 1 D. L. R. 595; 43 B. C. R. 258.—**CAN.**

PART II. SECT. 5, SUB-SECT. 1.

78 i. *Builder & building owner.*]—A building contractor & the owner of a lot agreed that the former should build a house on the lot for a certain sum in cash plus what the contractor could obtain on a mtge. by the owner; & the agreement further provided that the house when completed should be sold by the owner & the profit thereon, *i.e.* the surplus over said contract price, should be divided equally between them. Pltfs., lumber merchants, sued for the balance due on lumber supplied to the contractor & used in building the house :—*Held :* the relationship between the owner & contractor was not that of partners, or such as to entitle pltfs. to say that the contractor was the agent of the owner to pledge his credit for the materials used in the house.—SHUCKETT *v* LOCKHART & KYLE, [1932] 2 W. W. R. 330; 3 D. L. R. 466.—**CAN.**

PART II. SECT. 5, SUB-SECT. 2.

91 xxi. ——.]—LOTBINIERE LBR. CO. *v.* FORTIN, [1927] 4 D. L. R. 167.—**CAN.**

PART II. SECT. 5, SUB-SECT. 4.

110 iv. ——.]—RAGHUNANDAN NANU KOTHARE *v.* HORNASJEE BEZONJEE BAMJEE (1926), I. L. R. 51 Bom. 342.—**IND.**

PART II. SECT. 6, SUB-SECT. 1.

152 xvii. ——.]—IDEAL COAL CO. *v.* GEDDES (Sask.), [1929] 2 D. L. R. 588.—**CAN.**

PART III. SECT. 3, SUB-SECT. 2.—B.

237 iii. *S. P.* ARCHIBALD *v.* MCNERHANIE (1899), 29 S. C. R. 564.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 1.—D.

sa. *Disclaimer—Whether alternative plea permissible.*]—CHIHATTOO LAL MISSER *v.* NARAINDAS BAIJNATH PRASAD (1928), I. L. R. 56 Calc. 704.—**IND.**

PART IV. SECT. 1, SUB-SECT. 2.—F.

c i. —— ——.]—Defts., A. & B., were registered as partners carrying on the business of money-lending. A., the active partner, had from time to time borrowed money from M., giving as security promissory notes in the name of the partnership. M. sued A. & B. jointly on the promissory notes. A. did not appear. B. appeared & defended the action. The partnership between A. & B. did not contain any express authority to borrow money. A verdict was found for pltf. :—*Held :* as the partnership agreement did not give express authority to borrow money, & as the business of money-lending did not necessarily involve the borrowing of money so as to give an implied authority, the verdict should be set aside & a non-suit entered.—MANDELBERG *v.* ADAMS (1931), 31 S. R. N. S. W. 50; 48 N. S. W. W. N. 23.—**AUS.**

520. *Add. Annotation :*—**Refd.** Smith *v.* Wood (1928), 139 L. T. 250.

556a. —— **Contract for work & labour.**]—Pltf. was directed by the captain of a vessel to repair it, & also to repair the fitting-up of the cabins for passengers ; afterwards there was an agreement come to between the parties to the effect that deft. & the captain should become partners in the ultimate profits ; deft. did not hold himself out that he would be liable for these repairs :—*Held :* deft. was not liable for the repairs to the vessel or to the cabin fittings.—ELLIS *v.* STEELE (1855), 25 L. T. O. S. 183.

609. *Add. Annotation :*—**Refd.** *Re* Blake, *Re* Minahan's Petition of Right, [1932] 1 Ch. 54.

631a. ——.]—CAMPBELL *v.* BAILLIE (1823), Coop. Pr. Cas. 503 ; 47 E. R. 622.

653. *Add. Annotation :*—**Consd.** Graves *v.* Cohen (1929), 46 T. L. R. 121.

656a. —— ——.]—C., M., & N. carried on business under the name of J. K. & Sons ; & being indebted to A., C. retired from the partnership, & M. & N. agreed to liquidate all the concerns of the partnership. M. afterwards retired, & advertisements of the dissolutions of both partnerships were at the same time inserted in the *Gazette*. N. then took in a new partner, & the business was carried on in the original name of J. K. & Sons. A.'s account was transferred to the new firm, & he received accounts & payments from them ; but it did not appear that he ever saw the *Gazette*, or that either he or the new partner ever agreed to the substitution of the responsibility of the new firm for that of the old :—*Held :* the three original partners were not released from their responsibility, but were liable at the suit of A.—KIRWAN *v.* KIRWAN (1834), 2 Cr. & M. 617 ; 4 Tyr. 491 ; 3 L. J. Ex. 187 ; 149 E. R. 907.

Annotations :—**Consd.** *Re* Waldon, *Ex p.* Bradbury (1839), 4 Deac. 202 ; Mills *v.* Boyd (1842), 6 Jur. 943 ; Harris *v.* Farwell (1851), 15 Beav. 31. **Refd.** Thompson *v.* Percival (1834), 3 L. J. K. B. 98 ; Oakeley *v.* Pasheller (1836), 4 Cl. & Fin. 207 ; Hart *v.* Alexander (1837), 2 M. & W. 484 ; Longmore *v.* Calvert (1859), 32 L. T. O. S. 310.

662. *Add. Annotations :*—**Refd.** Albemarle Supply Co. *v.* Hind, [1928] 1 K. B. 807 ; Near East Relief *v.* King, Chasseur & Co., [1930] 2 K. B. 40.

718a. Action by partnership—In respect of goods supplied to partner before creation of partnership.]—Defts. contracted in writing with first pltf. to supply him with all the brass ashes produced at their mill at a certain fixed price, the ashes being agreed to be equal to a certain sample. Some ashes were delivered, & then pltf. took co-pltfs. into partnership, & ashes were delivered by defts. to the firm without any new or special contract. Neither the ashes supplied before the formation of the partnership nor those supplied afterwards were equal to sample, & pltfs. commenced an action to recover damages in respect of the breach of agreement :—*Held :* pltfs. could not recover in respect of the deliveries of ashes which took place prior to the formation of the partnership, but they could do so in respect of those which took place afterwards.—BOUNTY *v.* HEATON (1865), 13 L. T. 238.

PART IV. SECT. 1, SUB-SECT. 2.—G.

401 i. *Contract for tenancy—For partnership purposes—Possession not taken.*]—H. entered into a partnership with N. Desiring an office, N. signed on behalf of the partnership & in the partnership name a lease of property owned by pltf. N. told nothing of this to H. The firm never took possession of pltf.'s premises :—*Held :* there having been no occupation of the premises by the firm, & N. having had no authority to bind his partner, H. & the firm were not liable for the rent. —SECURITIES DEVELOPMENT CO., LTD. *v.* NOBLE & HODGINS, [1931] 4 D. L. R. 161 ; O. R. 749.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 3.—B. (b).

581 ii. —— —— *Liability of retired partner.*]—When after a dissolution of partnership the business is continued in the same firm name, a partner who has retired at the dissolution is liable upon a contract made by the new firm with a person who has previously dealt with the old firm, unless that person has received notice of the dissolution, even though public notice by advertisement has been given.—JWALADUTT R. PILLANI *v.* BANSILAL MOTILAL (1929), L. R. 56 Ind. App. 174.—**IND.**

PART IV. SECT. 2, SUB-SECT. 3.—B. (c).

582 xi. ——.]—Creditors of a partnership who had received notice that it had been dissolved & that the business was being continued by one of the dissolved firm & a new partner :—*Held :* by their course of dealing with the new firm to have adopted it as their debtors with respect to debts incurred both before & after the dissolution & thereby to have discharged the retiring partners from liability. Other creditors who were found neither to have received notice of the change nor to have so acted after it were held entitled to recover against the former partners.—BURNS & CO., LTD. *v.* MARCUS & DIMOR, PALMER & CO. *v.* DIMOR, MARCUS & DIMOR, [1931] 1 W. W. R. 169 ; 2 D. L. R. 1004 ; 43 B. C. R. 517.—**CAN.**

582 xii. ——.]—The agreement required by sect. 18 (3) of the Partnership Act in order to release a retiring partner must be an agreement between the creditor & each of the two partners ; an agreement between any two of them would not be enough.—MCWHIRTER *v.* CREBER, [1931] 1 D. L. R. 642 ; 66 O. L. R. 372 ; *affg.*, [1930] 3 D. L. R. 804 ; 65 O. L. R. 389 ; 11 C. B. R. 457. —**CAN.**

PART IV. SECT. 2, SUB-SECT. 3.—C. (a).

593 ii. ——.]—Where a partner dies before the institution of a suit against the partnership, & a decree is obtained against the firm alone in the firm name, the private estate of the deceased partner is not liable to be proceeded against in execution of such decree.—MAHOMED YUSUF *v.* BADSHA SAHIB (1929), I. L. R. 52 Mad. 885.—**IND.**

PART IV. SECT. 3, SUB-SECT. 1.

sl. *Insurances effected by firm—Firm turned into limited company.*]—*Held :* there was such a change of interest as to invalidate the insurances, in the absence of notification of the change to, & assent by, the insurance co.—PEUCHEN CO. *v.* CITY MUTUAL FIRE INSURANCE CO. (1891), 18 A. R. 446.—**CAN.**

PART IV. SECT. 6, SUB-SECT. 1.—B

737 ii. ——.]—*Held :* a partner with whom a contract has been personally made is entitled to sue upon that contract in his own name, without joining the co-partners as pltfs., although the benefit of the contract will result to the partnerships firm.—KAPURJI MAGNIRAM *v.* PANAJI DERICHAND (1928), I. L. R. 53 Bom. 110.—**IND.**

PART IV. SECT. 6, SUB-SECT. 1.—C.

sm. *Medical partnership.*]—A partnership consisting of members of the College of Physicians & Surgeons of the Province of Alberta is entitled to sue in the firm name for professional services rendered by one of the members of the firm at deft.'s request. —CALGARY ASSOCIATE CLINIC *v.* JOHNSTON, [1931] 2 W. W. R. 717 ; 4 D. L. R. 247 ; 25 Alta. L. R. 470.—**CAN.**

PART IV. SECT. 6, SUB-SECT. 2.—A.

d i. ——.]—Defts. as named in the writ of summons herein were " L. P. & J. G., carrying on business as the W. L. Co. & the said W. L. Co." G. moved to have his name struck out of the style of cause or, alternatively, that pltf. be compelled to elect to proceed against defts. L. P. & J. G. or against deft. W. L. Co. ; the ground of the motion being that it was improper to sue defts. thus in their own names & also in their alleged partnership name : —*Held :* the action was properly constituted & the motion was, therefore, dismissed.—DOMINION BANK OF CANADA *v.* PALITTI, [1931] 3 W. W. R. 377.—**CAN.**

PART IV. SECT. 6, SUB-SECT. 2.—D.

799 ii. *Action in firm name—Whether representatives of deceased partner necessary parties.*]—In a suit against a firm in the firm name, the firm having been dissolved to pltf.'s knowledge before the institution of the suit by reason of the death of a partner, the suit as so framed does not include the legal representatives of the deceased partner, & it is necessary to add them as parties in order to obtain judgment against the private estate of the deceased partner, as opposed to mere judgment against the partnership assets.—MATHURDAS CANJI MATANI *v.* EBHRAHIM FAZALBHOY (1927), I. L. R. 51 Bom. 986.—**IND.**

814. *Add. Annotation :*—*As to* (1) *&* (2) **Expld.** Hobbs *v.* Australian Press Assocn. (1932), 48 T. L. R. 586.

816. *Add. Annotation :*—**Consd.** Hobbs *v.* Australian Press Assocn. (1932), 48 T. L. R. 586.

817. *Add. Annotation :*—**Consd.** Hobbs *v.* Australian Press Assocn. (1932), 48 T. L. R. 586.

821. *Add. Annotation :*—**Refd.** Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65.

822. *Add. Annotation :*—**Refd.** Hobbs *v.* Australian Press Assocn. (1932), 48 T. L. R. 586.

824. *Add. Annotation :*—**Consd.** Hobbs *v.* Australian Press Assocn. (1932), 48 T. L. R. 586.

826. *Add. Annotation :*—**Consd.** Hobbs *v.* Australian Press Assocn. (1932), 48 T. L. R. 586.

830a. —— ——.]—Pltf. brought an action for libel in respect of a statement published in the Melbourne *Argus*, a newspaper published in Melbourne & in London. Defts. were the Australian Press Assocn., who carried on business in London, & the firm of W. & M., proprietors of the *Argus*, who, as stated in the paper itself, were a Melbourne firm, but who had a branch office in London & carried on business there. W. & M., who were British subjects, were sued in the firm name. Pltf., in ignorance that W. & M. had a London branch, applied under R. S. C., Ord. 11, for leave to serve the writ on the firm of W. & M. out of the jurisdiction, which HUMPHREYS, J., granted, & the writ was served in Melbourne. W. & M. applied to CHARLES, J., to discharge the order, on the grounds that they had a place of business in this country, &, further, that the right allowed by R. S. C., Ord. 48a, r. 1, of suing two or more partners in the firm's name, did not apply to cases of service of a writ outside the jurisdiction under R. S. C., Ord. 11. CHARLES, J., made the order as prayed :—*Held :* there being an inter-relation between the various Orders of the Supreme Ct., & so between R. S. C., Ord. 11 & Ord. 48a, the right conferred by the former Order was not inapplicable to the case of a pltf. availing himself of the latter one. The order made by HUMPHREYS, J., was therefore right, & the service effected under it was good service.—HOBBS *v.* AUSTRALIAN PRESS ASSOCN. (1932), 101 L. J. K. B. 713 ; 147 L. T. 225 ; 48 T. L. R. 586 ; 76 Sol. Jo. 494, C. A.

858. *Add. Annotations :*—**Refd.** Cumberland *v.* Lanarkshire Tram. Co. (1927), 20 B. W. C. C. 780 ; Jenkins *v.* Jenkins, [1928] 2 K. B. 501.

859. *Add. Annotation :*—**Refd.** Pirie *v.* Richardson, [1927] 1 K. B. 448.

Part V.—Relations of Partners inter se.

926. *Add. Annotation :*—**Consd.** Hole *v.* Garnsey, [1930] A. C. 472.

945a. —— **Of interest in partnership effects & profits.**]—WARTNABY *v.* SHUTTLEWORTH & TAYLOR (1837), 1 Jur. 469, L. C.

952a. —— ——.]—A deed of partnership provided that each original partner could, by will or codicil, nominate a qualified person as a new general partner ; that the admission to the partnership was to be subject to the consent, not to be unreasonably withheld, of the general partners ; & that a general partner or the qualified nominee, if of opinion that the consent to admission had been unreasonably withheld, could require the matter to be referred to arbn. An original partner nominated by will F., a qualified person, as a new general partner. After the death of the nominator the general partners refused to admit F. into the partnership. F. made an application under Arbn. Act, 1889 (c. 49), s. 5, asking that some fit & proper person might be appointed to act as arbitrator :—*Held :* only a party to the submission could make an application under sect. 5, & F. was not such a party.—*Re* FRANKLIN & SWATHLING'S ARBITRATION, [1929] 1 Ch. 238 ; 98 L. J. Ch. 101 ; 140 L. T. 403.

955. *Add. Annotation :*—**Distd.** *Re* Franklin & Swathling's Arbitration, [1929] 1 Ch. 238.

PART V. SECT. 2, SUB-SECT. 2.—A

r i. ——.]—COLE *v.* REED (1914), 29 W. L. R. 786.—**CAN.**

r ii. —— *Construction of agreement.*]—DAVIS *v.* LOWRY (1912), 20 W. L. R. 839 ; 3 D. L. R. 157.—**CAN.**

b i. —— *Partner confidential agent of other partners.*]— GROSCH *v.* LOVERIDGE, SMITH *v.* LOVERIDGE, [1930] 1 D. L. R. 309 ; 64 O. L. R. 465 ; *affd.*, [1931] S. C. R. 142 ; 2 D. L. R. 502.—**CAN.**

PART V. SECT. 2, SUB-SECT. 3.

917 ii. —— ——.]—Where a partner during the partnership, which was about to expire, received an offer for himself to negotiate for the renewal of a lease enjoyed by the partnership : —*Held :* he was under no obligation to accept the offer for the benefit of the partnership.—WELZEL *v.* KAIN (1926), 27 S. R. N. S. W. 140 ; 44 N. S. W. W. N. 17.—**AUS.**

PART V. SECT. 7, SUB-SECT. 1.

c i. —— *Does not belong to individual partners.*]—SAWYER-MASSEY *v.* SCHLEY (1914), 29 W. L. R. 454.—**CAN.**

e i. —— *Delivery to Pool—One partner only member of Pool.*]—Pltf. & one B. were equal partners in a fishing business. B. was a member of the "Fish Pool," under Manitoba Co-operative Associations Act, 1925, & had entered into the "Uniform Pool Contract" with it. Pltf. delivered fish to the Pool, & a receipt therefor was issued to him & B. :—*Held :* the fish in question was partnership property, which was delivered to the pool as such, *i.e.* as the property of pltf. & B., & its delivery must be held to have been governed by the Pool rules as stated in said pool contract. —KRIST-JANSON *v.* MANITOBA CO-OPERATIVE FISHERIES, LTD., [1931] 3 W. W. R. 743.—**CAN.**

PART V. SECT. 7, SUB-SECT. 2.—A.

sc. *Membership in livestock exchange.*]—*Re* HENDERSON & RUDD ESTATE, [1931] 3 W. W. R. 142.—**CAN.**

PART V. SECT. 8, SUB-SECT. 3.—C. (c).

sd. *Whether bound by settlement of accounts—After date of assignment.*]—The assignee of the interest of a partner is not bound by a settlement of accounts of the partnership, made behind his back after the date of the assignment. —VEERAPPA CHETTY *v.* MUTHIAH CHETTY (1929), I. L. R. 52 Mad. 509.—**IND.**

PART V. SECT. 9, SUB-SECT. 1.

1091 i. *Right of contribution.*]—WALKER *v.* CORNELL, Cass. Dig. (2nd edn.) 595.—**CAN.**

se. *Advances due to defendant partner's default in contributing capital.*]—A. agreed with B. & C. to join them in contributing in equal shares the money required for a venture which B. & C. had agreed with D. to carry on & in which D. was to get one-third of the profits & stand one-third of the losses. In entering into the first-mentioned agreement neither the possibility of losses nor the amount of capital required was discussed. As money was required from time to time to carry on the business, A. failed to pay his share & B. advanced amounts in excess of B.'s one-third share. The venture resulted in a loss. D., on the

1127. *Add. Annotation :*—**Consd.** Naval Colliery Co. *v.* I. R. Comrs. (1928), 138 L. T. 593.

1192a. Interest on overdrawings.]—SULEMAN *v.* ABDUL LATIF, No. 1199a, *post.*

1199a. From date of final decree.]—The decree in a suit for dissolution of partnership & accounts should provide for payment of interest upon the amount due only from the date of the final decree by which the amount (if any) is found due, not from the date of the plaint.

A partner is not charged with interest in respect of overdrawings in the absence of special circumstances.—SULEMAN *v.* ABDUL LATIF (1930), 57 L. R. Ind. App. 245, P. C.

1219. *Add. Annotation :*—**Refd.** Robinson *v.* South Australia State (No. 2), [1931] A. C. 704.

1242. *Add. Annotation :*—**Consd.** Manley *v.* Sartori, [1927] 1 Ch. 157.

1370. *Add. Annotation :*—**Refd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll (1928), 98 L. J. K. B. 282.

1397. *Add. Annotation :*—*As to* (1) **Refd.** Green *v.* Weatherill, [1929] 2 Ch. 213.

1407a. Balance found to be due.]—DUNN *v.* CAMPBELL (1879), 27 Ch. D. 254 a.

Annotations :—**Apld.** Hampden *v.* Wallis (1884), 27 Ch. D. 251 ; Wanklyn *v.* Wilson (1887), 35 Ch. D. 180.

1459a. Foreign firm—Branch office in England.]—Partnership Act, 1890 (c. 39), s. 23, applies to a foreign firm having a branch house of business in England.—BROWN, JANSON & Co. *v.* HUTCHINSON & Co., [1895] 1 Q. B. 737 ; 64 L. J. Q. B. 359 ; 73 L. T. 437 ; 43 W. R. 533 ; 11 T. L. R. 291 ; 14 R. 354, C. A. ; *subsequent proceedings*, [1895] 2 Q. B. 126.

1480a. ——.]—(1) Where it is not the object of a suit to obtain the dissolution of a partnership, but, on the contrary, to continue the partnership, it is not according to the practice of the ct. in the course of that suit to grant a receiver & manager. (2) Cases, however, may arise in which the conduct of deft. being such as to endanger the existence of the partnership concern, the ct. will appoint an interim receiver & manager.—HALL *v.* HALL (1850), 3 Mac. & G. 79 ; 20 L. J. Ch. 585 ; 17 L. T. O. S. 11 ; 15 Jur. 363 ; 42 E. R. 191, L. C.

Annotation :—*As to* (1) **Refd.** Medwin *v.* Ditcham (1882), 47 L. T. 250.

1496a. —.]—HALL *v.* HALL, No. 1480a, *ante.*

1604. *Add. Annotation :*—**Consd.** Farey *v.* Cooper, [1927] 2 K. B. 384.

1610. *Add. Citation :*—*sub nom.* CARL BROS., LTD. *v.* WEBSTER, 52 W. R. 413.

1614. *Add. Citations :*—96 L. J. Ch. 361 ; 137 L. T. 409.

Add. Annotation :—**Refd.** *Re* Thomson Thomson *v.* Allen, [1930] 1 Ch. 203.

termination of the business, did not, & admittedly was unable to, pay any part of the loss. A.'s exors. sued B. with respect to another claim, & B. counterclaimed for payment or a set-off of said excess amounts expended by him :—*Held :* A.'s liability to B. arose from time to time as B. made the advances & was not dependent either on the ultimate condition of the business or on D.'s fulfilling or failing to fulfil his agreement to pay part of the loss.—MCGOUGAN *v.* MACDONALD & MACAW (Man.), [1929] 3 W. W. R. 337.—**CAN.**

sx. *Effect of obtaining declaration of indemnity.*]—LUKIS, STEWART & Co. *v.* HUMPHREY, [1930] 4 D. L. R. 330.—**CAN.**

PART V. SECT. 10, SUB-SECT. 1.

sz. *Division of assets.*]—On the dissolution of a firm of three members carrying on a hotel & restaurant business they executed a quit claim deed under which two of them transferred to the third J. D. all their interest in the goods & chattels pertaining to the restaurant business, subject to the payment by him of the outstanding liabilities incurred with respect to said part of the partnership business, & he covenanted to assume & pay said liabilities :—*Held :* a proper construction of the deed did not show that it was intended that the two transferring partners should have a lien on the chattels as security for the payment by J. D. of the outstanding liabilities.—*Re* DIMOR, [1932] 1 W. W. R. 53.—**CAN.**

PART V. SECT. 11, SUB-SECT. 1.—B. (a).

sf. *Profits on sale of portion of individual share.*]—MITCHELL *v.* GORMLEY (1885), 9 O. R. 139 ; *affd.* (1886), 14 A. R. 55.—**CAN.**

PART V. SECT. 12, SUB-SECT. 3.—C.

1213 i. *Production of partnership documents—Grounds for refusal—Denial of partnership.*]—HARNAM SINGH *v.* KAPOOR SINGH (1927), 39 B. C. R. 485.—**CAN.**

PART V. SECT. 13, SUB-SECT. 5.—C. (b).

e i. ——.]—The rule of English law that a mitgee, or an assignee of a partner cannot sue the other partners for accounts represents the law in India where there is no statutory provision to that effect.—MISTRY GOA PETHA *v.* N. H. MOOS (1931), I. L. R. 10 Pat. 792.—**IND.**

PART V. SECT. 13, SUB-SECT. 5.—H. (b).

1366 ii. ——.]—MOMPLE *v.* MOMPLE (1927), 48 N. L. R. 374.—**S. AF.**

PART V. SECT. 13, SUB-SECT. 5.—H. (d).

1378 i. *Denial of partnership—Onus of proof.*]—WONG *v.* HOU, [1928] 1 W. W. R. 480 ; 39 B. C. R. 425.—**CAN.**

PART V. SECT. 13, SUB-SECT. 8.—C. (a).

sg. *Where existence of partnership disputed.*]—There is no rule of practice that, where in a suit for dissolution of a partnership the existence of the alleged partnership is denied, the ct. will not appoint an interim receiver unless the assets are in danger.—TATE *v.* BARRY (1928), 28 S. R. N. S. W. 380 ; 45 N. S. W. W. N. 83.—**AUS.**

PART V. SECT. 13, SUB-SECT. 9.—B. (e) ii.

r i. ——.]—A dispute having arisen between pltf. & deft. as to whether a partnership existed between them, pltf. brought an action to have the matter determined. Subsequently the parties agreed to refer the matter to arbn., & the arbitrator found that a partnership had existed between them, but that it had been dissolved. By his award the arbitrator directed that the goodwill, stock in trade, & all other assets of the business should belong to the pltf. absolutely, & that deft. was entitled to a certain sum of money for his share of the goodwill, stock in trade, & other assets of the business. The trade that had been carried on during the partnership was that of wholesale dealers supplying the retail trade with sweets, confectionery, etc. Deft. used to travel through the country soliciting orders from retail dealers for these goods. After the arbitrator had made his award deft. continued to travel through the country soliciting orders from retailers who had been customers of the firm before it was dissolved. Pltf. applied for an interlocutory injunction to restrain deft. from so doing :—*Held :* pltf. was entitled to an interlocutory injunction to restrain deft. from applying personally or by a traveller to any person who was at the date of the dissolution of the partnership a customer of the firm asking such customer to continue after the dissolution to deal with him, deft., or not to deal with pltf. ; but the restraint on deft. from applying as aforesaid by a traveller was to be in force only so long as deft. should carry on the business, either under his own name or any name introducing it, of a wholesale dealer in goods of the general class of those for which pltf. was at the date of the dissolution of the said partnership an agent.—GARGAN *v.* RUTTLE, [1931] I. R. 152.—**IR.**

Part VI.—Dissolution.

1654a. Death of partner sending notice before notice received—Date of dissolution of partnership.]—Where a partner sends by post a notice to the other partner to determine the partnership as from the date of the notice, & dies before the other partner receives the notice, the partnership is dissolved, not by the notice, but by the death of the partner sending it, inasmuch as the statutory dissolution by notice is not brought about until receipt of the notice. In such a case the surviving partner has the rights which by the terms of the partnership he is to have on the death of a partner during the partnership.—MCLEOD *v.* DOWLING (1927), 43 T. L. R. 655.

1670a. Partner sending notice of intention to dissolve partnership—Death before notice received by other partner.]—MCLEOD *v.* DOWLING, No. 1654a, *ante*.

SUB-SECT. 1.—COURTS HAVING JURISDICTION.
(Vol. XXXVI., p. 503.)

County court—Action for declaration & account—Denial of partnership.]—*See* COUNTY COURTS, No. 244a.

1835. *Add. Citations:*—96 L. J. Ch. 65; 136 L. T. 238.

1841a. —— **For share of "net profits"—Dissolution by death.**]—Applt. & H. entered into partnership, the arts. providing that each partner was entitled to a salary & half the "net profits" during the term of the partnership, & that if either partner died the surviving partner was for five years to pay to the exors. a third of the "net annual profits." H. died, & the partnership was thereby dissolved:—*Held:* the expression "net profits" was not necessarily to be interpreted as having the same meaning in every part of the arts., & applt., in calculating the share of the net profits payable to the exors., was not entitled to deduct any salary for himself.—WATSON *v.* HAGGITT, [1928] A. C. 127; 97 L. J. P. C. 33; 138 L. T. 306; 44 T. L. R. 90; 71 Sol. Jo. 963, P. C.

1845. *Add. Annotation:*—**Consd.** Manley *v.* Sartori, [1927] 1 Ch. 157.

1899a. —— —— ——.]—The rule that in the bkpcy. of a firm the exors. of a deceased partner may not prove in competition with the creditors of his surviving partners may be inapplicable when the share of the deceased partner has been ascertained before the adjudication in bkpcy., & no joint liability can be shown to exist. On the death of a partner in a London firm a sum was found due to his estate from the surviving partners in respect of his share in the business, & certain claims & accounts between the deceased partner & another firm in Dundee, of which during his life he was also a partner, & which firm was after the death of the deceased partner a creditor of the London firm, were also compromised & settled by his exors. before the bkpcy. of the London firm:—*Held:* the proof of a debt put in by the deceased partner's exors. in the bkpcy. of the London firm ought to be admitted.—*Re* DOUGLAS, *Ex p.* DOUGLAS' (JAMES) EXECUTORS, [1930] 1 Ch. 342; 142 L. T. 379; [1929] B. & C. R. 76; *sub nom. Re* DOUGLAS, DOUGLAS & HILL *v.* MYERS (J. E.), 99 L. J. Ch. 97.

Part VII.—Limited Partnership.

1909a. Bankruptcy of sole general partner—What debts provable.]—Where an individual who is the sole general partner in one or more limited partnerships is adjudged bkpt., all the debts & liabilities owing by such limited partnerships at the date of the receiving order are provable in bkpcy., whether the firms are mentioned in the proceedings or not. Accordingly, if the bkpt. be the sole general partner in two limited partnerships, namely, the "A" firm & the "B" firm, it makes no difference if there are successive bkpcies., in one of which only the A firm & in the other of which only the B firm are mentioned in the proceedings. Creditors will be entitled to prove in the same way as they are entitled to prove against an individual in successive bkpcies. *Qu.:* whether, for purposes of administration, the trustee ought not to distinguish between the assets of the respective firms & the bkpt.'s own separate estate.—*Re* BARNARD, MARTIN'S BANK, LTD. *v.* TRUSTEE, [1932] 1 Ch. 269; 101 L. J. Ch. 43; 146 L. T. 191; [1931] B. & C. R. 73.

PART VI. SECT. 1, SUB-SECT. 3.

sl. *Death of partner intestate—Disposal of interest in partnership assets.*]—*Ex p.* SESSIONS (1869), 2 Ch. Ch. 360.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 8.

m i. —— *Construction of agreement.*]—ARMSTRONG *v.* WHITTEN, [1932] 1 W. W. R. 818; 40 Man. L. R. 284; 3 D. L. R. 38.—**CAN.**

sm. *Transfer of partnership assets—Subject to payment of existing liabilities.*]—KERR *v.* BRADFORD (1876), 26 C. P. 318.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 2.—A.

sg. *Proceedings in county court—Practice.*]—Proceedings for the dissolution of a partnership within the competence of the county ct. by virtue of Partnership Act, R. S. O., 1927, ss. 1, 35, cannot be initiated in that ct. by an originating notice of motion.—BENDJY *v.* MUNTON, [1932] 1 D. L. R. 534; O. R. 123.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 3.—C. (b) ii.

1731 i. *Violation of articles—Promotion of companies by chartered accountant.*]—The financing & promotion of cos. does not fall within the scope of a chartered accountant's business as such, & the doing of such work by one partner does not constitute, by itself, a breach of the partnership agreement entitling the other partner to a dissolution of the partnership.—PETTIT *v.* COX (1928), 54 N. B. R. 246.—**CAN.**

sn. *Refusal to accept business—Reasonable refusal.*]—Where on partner is in charge of a business, his refusal to accept certain business on the ground that it would not be profitable, will not afford a ground upon which dissolution should be granted, if he has honestly exercised his best judgment, even if he were wrong in the conclusion he arrived at.—PETTIT *v.* COX (1928), 54 N. B. R. 246.—**CAN.**

PART VI. SECT. 4.

sp. *Registration of memorandum of dissolution—Under Partnership Registration Act, R. S. O., 1914 (c. 139)—Effect of.*]—DOMINION SUGAR CO. *v.* WARRELL, [1927] 2 D. L. R. 198; 60 O. L. R. 169.—**CAN.**

PATENTS AND INVENTIONS.

Part I.—Definitions.

Before this case add :—

Statutory definition—Includes patents of addition.]—*See Re* Maschinenfabrik Augsburg-Nurnberg A. C. Patents (1929), 47 R. P. C. 193.

8. *Add. Annotation :—As to* (2) **Distd.** Walsh *v.* Albert Baker & Co. (1898), Ltd. (1930), 47 R. P. C. 283.

Part III.—"True and First Inventor."

39. *Add. Citations :*—41 T. L. R. 545 ; *affd.* (1927), 96 L. J. Ch. 470 ; 137 L. T. 794 ; 43 T. L. R. 717 ; 44 R. P. C. 453, C. A.

Add Annotation :—**Refd.** Mackenzie-Kennedy *v.* Air Council 1927), 138 L. T. 8.

48. For " 86 L. J. Ch. 468 " read " 86 L. J. Ch. 486."

Add. Annotation :—**Refd.** Adamson *v.* Kenworthy (1931), 49 R. P. C. 57.

49a. —— ——.]—Deft. was a leading draughtsman in the employ of pltfs. In 1924 deft. was instructed by pltfs. to design an unlubricated crane brake, a branch of work upon which deft. had not been directly engaged. The design he produced was tested but was unsatisfactory. In 1926 deft. was again instructed to design such a brake, & did in fact design a brake incorporating a resilient disc which proved to be satisfactory. This design was patented in deft.'s name. Pltfs. claimed that deft. was a trustee for them of his interest in the patent & claimed a declaration to this effect. Deft. alleged that the successful feature of the resilient disc had been evolved solely by him in 1918 outside the scope of his duties, & claimed to be entitled to the beneficial interest in the patent :—*Held :* it is the duty of a draughtsman when instructed by his employer to prepare a design to use such skill & inventive faculty as he may possess in order to produce the best possible design within his ability, & in this case deft. evolved the invention which was the subject of the patent as a result of instructions given to him by pltfs. & in the discharge of his duty. The declarations & injunction asked for were granted, & an order upon deft. to assign the patent to pltfs. was made with costs.—ADAMSON *v.* KENWORTHY (1931), 49 R. P. C. 57.

49b. —— ——.]—Deft., M., was employed by pltf. co. as chief draughtsman for the purpose (*inter alia*) of developing a gyroscopic turn indicator for use on aeroplanes. The terms of his employment contained a specific covenant, namely, " that all work done whilst in the service of said co. was to be secret & confidential & the property of said co." In the course of developing the instrument certain problems arose & discussions took place as to proposed solutions of them, in which deft., M., took part. Before an instrument embodying features of design & construction, made possible as a result of the solution of the various problems, was put into production by pltf. co. deft., M., left the service of said co. Deft., M., together with one Pierce, an ex-employee of pltf. co., promoted deft. co., which began to incorporate the said features of design & construction in a gyroscopic turn indicator which was offered for sale & sold in competition with the instruments made & sold by pltf. co. Deft., M., also applied for letters patent, & he filed provisional specifications describing said features of design & construction. Deft., M., alleged that the features of design were not novel, that they had not been evolved by pltf. co., & that knowledge of them had not been acquired by him in the course of his employment by pltf. co. Deft., M., also stated that he had not disclosed or made any wrongful use of any confidential information acquired by him in the course of his employment by pltf. co. :—*Held :* letters patent granted in accordance with the first provisional specification filed by deft., M., would, if valid, enable M. to prevent pltf. co. from making gyroscopic turn indicators in accordance with their present design ; the second provisional specification filed by deft., M., included matters discussed with him while he was in pltf. co.'s employ, & letters patent granted in accordance with this provisional specification would, if valid, enable M. to prevent pltf. co. from making use of one at least of the matters discussed with him while he was in their employ ; deft., M., must be assumed to know what he was claiming as his invention, & that he could only claim what he sought to protect on the ground that it was secret & confidential ; it was not unfair to treat deft. M.'s provisional specifications as an admission by him of such fact ; further, the gyroscopic turn indicators made by deft. co. were made substantially in accordance with informatien & knowledge acquired by deft., M., while he was in pltf. co.'s employ ; the designing of a gyroscopic turn indicator by deft., M., with assistance, suggestions, & advice from pltf. co., was, from the start of M.'s employment by pltf. co., a confidential matter ; deft., M. was not at liberty, while he remained in the employ of

pltf. co., to disclose to any one difficulties which had arisen in the manufacture of gyroscopic turn indicators nor the methods discussed, used, or proposed to be used for overcoming such difficulties; deft., M., was not at liberty to make drawings embracing matters discussed with him while he was in pltf. co.'s employ, & while still in their employ to disclose such drawings to any third party; & deft., M., could not better his position by terminating his employment with pltf. co. An injunction was granted; & delivery up of all turn indicators which would constitute a breach of the injunction was ordered. A declaration was made that pltfs. were entitled to the benefit of the applications for grant of letters patent covered by the provisional specifications filed by deft., M., subject to certain limitations, together with costs.—REID & SIGRIST, LTD. *v.* MOSS & MECHANISM, LTD. (1932), 49 R. P. C. 431.

63. *Add. Annotation:*—**Refd.** Boyce *v.* Morris Motors (1927), 44 R. P. C. 105.

Part IV.—Subject-Matter of Patent.

97. *Add. Annotation:—As to* (1) **Refd.** *Re* Farbenindustrie (I. G.) A. G.'s Patents (1930), 47 R. P. C. 289.

109. *Add Annotations:*—**Refd.** *Re* Simon-Carves & Robinson's Patent (1928), 45 R. P. C. 407; *Re* Farbenindustrie Akt.'s Application (1928), 46 R. P. C. 271.

116. *Add. Annotation:*—**Refd.** *Re* Farbenindustrie Akt.'s Application (1928), 46 R. P. C. 271.

117. *Add. Annotations:—As to* (2) **Consd.** Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153; *Re* Simon-Carves & Robinson's Patent (1928), 45 R. P. C. 707. **Refd.** Boyce *v.* Morris Motors (1927), 44 R. P. C. 105.

128a. Subjection of known material to known process.]—Subjection, for the first time, of a known material to a known process may support an application.—*Re* FARBENINDUSTRIE AKTIENGESELLSCHAFT, APPLICATION FOR A PATENT (1928), 46 R. P. C. 271.

134. *Add. Annotation:*—**Refd.** Adelmann & Ham Boiler Corpn. *v.* Llanrwst Foundry Co. (1928), 45 R. P. C. 413.

138. *Add. Annotations:*—**Refd.** Boyce *v.* Morris Motors (1927), 44 R. P. C. 105; Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153; *Re* Farbenindustrie (I. G.) A. G.'s Patents (1930), 47 R. P. C. 289.

142. *Add. Annotation:*—**Refd.** British United Shoe Machinery Co. *v.* Gimson Shoe Machinery Co. (1928), 45 R. P. C. 290.

147. *Add. Annotation:*—**Refd.** Parkes Samuel & Co., Ltd. *v.* Cocker Bros. (1929), 46 R. P. C. 241.

149. *Add. Annotation:—As to* (3) **Refd.** Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.

162. *Add. Annotations:—As to* (3) **Consd.** British Thomson-Houston Co. *v.* Metropolitan Vickers Electrical Co. (1928), 45 R. P. C. 1. **Refd.** Pope Appliance Corpn. *v.* Spanish River Pulp & Paper Mills, [1929] A. C. 269.

163. *Add. Annotation:*—**Refd.** Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.

187. *Add. Annotation:—As to* (2) **Refd.** Rondo Co., Ltd. *v.* Gramophone Co. (1929), 46 R. P. C. 378.

192. *Add. Annotations:*—**Refd.** Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153; Heap Samuel & Son *v.* Bradford Dyers' Assocn. (1929), 46 R. P. C. 254.

PART III. SECT. 2, SUB-SECT. 2.

f. *Varied*, [1927] S. C. 597; 44 R. P. C. 175.

PART IV. SECT. 1, SUB-SECT. 3.—C. (a).

k i. ——.]—A patented process to be valid must denote ingenuity of invention. It is not enough, in order to constitute invention, to disclose something which has been but dimly seen before.—ELECTROLYTIC ZINC PROCESS CO. *v.* FRENCH'S COMPLEX ORE REDUCING CO. OF CANADA, LTD., [1927] Exch. C. R. 94; *affd.*, [1930] S. C. R. 462; 4 D. L. R. 902.—**CAN.**

m i. ——.]—There is no invention in a mere adaptation of an idea in a well-known manner for a well-known, or clear purpose without ingenuity, though the adaptation may effect an improvement which may supplant an article already on the market.—VAN HEUSEN, PRODUCTS INC. *v.* TOOKE BROS., LTD., [1929] Ex. C. R. 89.—**CAN.**

sa. *Not mere mechanical skill.*]—*Held:* the lantern in question was new & useful, & the changes made in the ventilation in the lantern to control the quantity & direction of the air currents was not the result of mere mechanical skill, but required thought, study & an inventive mind, & constituted invention.—ADAMS & WESTLAKE CO. *v.* E. T. WRIGHT, LTD., [1928] Exch. C. R. 112; *affd. sub nom.* E. T. WRIGHT, LTD. *v.* ADAMS & WESTLAKE CO., [1929] 4 D. L. R. 1061, S. C. R. 81.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 3.—C. (b).

133 iii. ——.]—GUETTLER *v.* CANADIAN INTERNATIONAL PAPER CO., [1928] 2 D. L. R. 801; [1928] S. C. R. 438; *affg.*, [1927] 4 D. L. R. 517; [1928] Ex. C. R. 21.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 4.—A.

153 i. *Unless coupled with discovery of mode of putting principle into practice.*]—A principle cannot be the subject of a patent, & a claim to every mode or means of carrying a principle into effect amounts to a claim for the principle itself. A patent may be granted for a principle coupled with a mode of carrying the principle into effect, but such principle may be carried into effect under several patents operating in different ways & by different means.—GRISSINGER *v.* VICTOR TALKING MACHINE CO. OF CANADA, LTD., [1929] Ex. C. R. 24; *affd.*, [1931] S. C. R. 144; [1930] 4 D. L. R. 617.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 4.—B. (b).

176 iii. —— ——.]—PRENTICE MANUFACTURING CO. *v.* KENNY, [1931] 2 D. L. R. 465; Ex. C. R. 24.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 4.—B. (c).

185 ii. ——.]—GILLETTE SAFETY RAZOR CO. OF CANADA, LTD. *v.* MAILMAN, [1932] Ex. C. R. 54.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 5.—A.

193 vii. —.]—GUETTLER *v.* CAN. INTERNAT'L PAPER CO., [1927] 4 D. L. R. 517.—**CAN.**

193 viii. ——.]—Where a specific machine already exists producing certain effects, & additions have been made to such machine to produce the same effect in a better manner:—*Semble:* a patent cannot be taken for the whole machine, but for the improvement only.—SHERBROOKE MACHINERY CO., LTD. *v.* HYDRAULIC CO., LTD., [1927] Exch. C. R. 114.—**CAN.**

193 ix. ——.]—Every trifling improvement is not invention, & the industrial public should not be embarrassed by patents for every small improvement. A slightly more efficient way of doing a thing, small changes in size, shape, degree, or quality in a manufacture or machine, even assuming novelty, is not invention. More is necessary to justify a monopoly.—LIGHTNING FASTENER CO., LTD. *v.* COLONIAL FASTENER CO., LTD. & PRENTICE (G. E.) MANUFACTURING CO. (No. 13633), [1932] Ex. C. R. 101.—**CAN.**

193 x. ——.]—*Held:* factory improvements, the little improvements

210a. ——.]—*Held:* the patentee had obtained a result superior to any other at the date of the patent, & there was good subject-matter & the patent was valid.—RONDO CO., LTD. *v.* GRAMOPHONE CO., LTD. (1929), 46 R. P. C. 378.

222a. ——.]—The claim was as follows: "In a coin-controlling vending machine of the kind set forth, means for arresting the legend displaying wheels independently of the automatic stop mechanism, wherein the usual, automatically operated, locking pawl is divided intermediately of the length of its normally upright end position, the two parts being pivoted together about a transverse axis, stops being provided on the pawl lever so as to limit the pivotal movement of the outer portion, & wherein said outer portion is connected by lever, or link & lever, mechanism with a key or other handle outside the mechanism so as to be adapted when said key is depressed, to engage with the teeth of the star wheel." In an action for infringement of the patent it was contended on behalf of pltfs. that the patented invention, when incorporated in a known type of machine, changed a game of chance into a game of skill, & that defts. had used a modified form of pltfs.' invention:—*Held:* the patentees' idea was not new, & no problem had had to be solved in carrying it into effect, & that all that the patentees had done was to effect a perfectly natural & ordinary workshop alteration in a known machine, & that the patent was bad for want of subject-matter—LENNARDS PERFECT SKILL CONTROL CO., LTD. *v.* HOLLOWAY & SAMPSON NOVELTY CO., LTD. (1929), 46 R. P. C. 353.

231. *Add. Annotation:*—**Refd.** Mellor *v.* Beardmore (1927), 44 R. P. C. 175.

246. *Add. Annotation:*—**Refd.** Parkes Samuel & Co. *v.* Cocker Bros. (1929), 46 R. P. C. 241.

249a. ——.]—Letters patent were granted for "Improvements in or relating to boot or shoe end stiffeners." Claim 1 of the specification was as follows: "As an article of manufacture, a thermoplastic impregnated-fabric toe puff which prior to its incorporation in a shoe upper has had flexibility imparted to its back margin by hot pressure in a die having a bevelled marginal portion, so as to expel impregnant from said margin by graduated pressure thereon & to leave the surface of the puff substantially free from local excess of impregnant." Claim 5 was as follows: "In the manufacture of a toe puff of the kind claimed in Claims 1, 2, 3, or 4 the use of a die & an advancing pressure which causes a pinch to travel over the margin or margins to be treated":—*Held:* there was a problem to be solved, namely, to produce a thermoplastic puff with a flexible back margin which was produced gradually in the sense that there was a gradual & practically imperceptible descent from the thick portion of the puff to the outer margin & prior to the patent the nearest to which any one had got was a double operation process, & there was an inventive step & the patent possessed subject-matter.—BRITISH UNITED SHOE MACHINERY CO., LTD. *v.* PEMBERTON (ALBERT) & CO. (1930), 47 R. P. C. 134.

284. *Add. Annotation:—Generally,* **Refd.** Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.

299. *Add. Annotation:*—**Refd.** Boyce *v.* Morris Motors (1927), 44 R. P. C. 105.

302. *Citation:*—For "14 L. R. 487, H. L.," read "14 T. L. R. 487, H. L."

308a. ——.]—*Held:* the applying to a ham boiler of a rack & catch was the addition of something which in itself had no novelty, & the patent was invalid for want of subject-matter.—ADELMANN & HAM BOILER CORPN. *v.* LLANRWST FOUNDRY CO. (1928), 45 R. P. C. 413.

308b. ——.]—*Held:* (1) the first claim as to an apparatus was so vague as to be bad; (2) a combination claimed in the second claim did not produce a new result, & was merely the use successively of two pieces of apparatus, neither of which was patentable, & did not constitute a patentable combination, but was mere juxtaposition.—HANKS *v.* COOMBES (1928), 45 R. P. C. 237, C. A.

308c. ——.] — JOHN WRIGHT & EAGLE RANGE, LTD. *v.* GENERAL GAS APPLIANCES, LTD. (1928), 46 R. P. C. 169, C. A.

315. *Add. Annotations:*—**Refd.** Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153; *Re* Farbenindustrie (I. G.) A. G.'s Patents (1930), 47 R. P. C. 289.

325. *Add. Annotation:*—**Refd.** Hanks *v.* Coombes (1928), 45 R. P. C. 237.

327. *Add. Annotation:*—**Refd.** Hanks *v.* Coombes (1928), 45 R. P. C. 237.

329. *Add. Annotation:*— **Refd.** Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.

336. *Add. Annotation:*—**Refd.** Jones & Attwood *v.* National Radiator Co. (1928), 45 R. P. C. 71.

339. *Add. Annotation:*—**Refd.** *Re* Higginson & Arundel's Patent (1927), 44 R. P. C. 430.

& betterments in technique that skilled workmen devise, because they are skilled, should not be the subject of monopoly & do not constitute subject-matter for a patent.—GILLETTE SAFETY RAZOR CO. OF CANADA, LTD. *v.* PAL BLADE CORPN., LTD. & METROPOLITAN STORES, LTD., [1932] Ex. C. R. 132.—**CAN.**

8a. *Extent of protection—Means used.*] —The invention in question is for an improvement in locking devices, for use on separable slider fasteners:—*Held:* as the essence of the invention was the production of an old result, even though there is invention, the patentee is only protected in respect of the particular means he sets forth in his specification, & in such circumstances it may not be infringement to achieve the same result by using other means, by a different device.—LIGHTNING FASTENER CO., LTD. *v.* COLONIAL FASTENER CO., LTD. & PRENTICE (G. E.) MANUFACTURING CO., [1932] Ex. C. R. 127.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 5.—B.

250 iv. *affd.*, [1928] 2 D. L. R. 448 [1928] S. C. R. 8.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 7.—A.

270 xx. —— ——.]—CANADIAN GENERAL ELECTRIC CO., LTD. *v.* FADA RADIO, LTD., [1927] 2 D. L. R. 911; [1927] Exch. C. R. 134.—**CAN.**

270 xxi. —— ——.]—Though the action & properties of each constituent of a chemical composition or mixture was known, where a new formula has been made known & the constituents have been so combined as to overcome difficulties or disadvantages in known herbicides, such combination is patentable. A chemical compound intended for the accomplishment of a specific purpose, which has never before been known, used, or published within the meaning of the Patent law, may be patented, provided one may assume some degree of skill & ingenuity, or the exercise of intelligent research & experiment successfully directed to a particular purpose or end.—CHIPMAN CHEMICALS, LTD. *v.* FAIRVIEW CHEMICAL CO., LTD., [1932] Ex. C. R. 107.—**CAN.**

346. *Add. Annotations :*—**Refd.** Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153; *Re* Farbenindustrie (I. G.) A. G.'s Patents (1930), 47 R. P. C. 289.

349. *Add. Annotations :*—**Refd.** Safveans Akt. *v.* Ford Motor Co. (England) (1926), 44 R. P. C. 49; *Re* Farbenindustrie (I. G.) A. G.'s Patents (1930), 47 R. P. C. 289.

351. *Add. Annotation :*—**Refd.** *Re* Carpmael's Application (1928), 46 R. P. C. 321.

351a. If giving substantial advantage to all selected members.]—(1) Selection patents do not differ in their nature from other patents, but they must be based on some substantial advantage to be gained by the use of the selected members, the whole of the selected members must possess this advantage & this advantage must be of a special character peculiar to the selected group.

(2) Amendments which sought to exclude certain groups of bodies altered the basis of the selection & the patents would then claim an invention substantially different from that originally claimed, & the amendments were therefore inadmissible.—*Re* FARBENINDUSTRIE A. G.'s PATENTS (1930), 47 R. P. C. 289.

361. *Add. Annotations :*—**Consd.** Pope Appliance Corpn. *v.* Spanish River Pulp & Paper Mills, [1929] A. C. 269. **Refd.** Boyce *v.* Morris Motors (1927), 44 R. P. C. 105; Mellor *v.* Beardmore (1927), 44 R. P. C. 175; Wright (John) & Eagle Range *v.* General Gas Appliances (1928), 46 R. P. C. 169.

365. *Add. Annotation :*—**Refd.** Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.

372. *Add. Annotation :*—*Generally*, **Refd.** Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.

383. *Add. Annotation :*—**Refd.** *Re* Farbenindustrie Akt.'s Application (1928), 46 R. P. C. 271.

390. *Add. Annotations :*—*As to* (1) **Consd.** Pope Appliance Corpn. *v.* Spanish River Pulp & Paper Mills, [1929] A. C. 269. *Generally*, **Refd.** Mellor *v.* Beardmore (1927), 44 R. P. C. 175.

391a. —.]—*Held :* the specification claimed the process of mercerising the cotton in a mixed fabric of cotton & cellulose acetate silk by applying for that purpose the old familiar process of mercerisation; that it was only discovery for the patentee to find that an application of the old process to the particular mixed fabric did not occasion deleterious effect to the cellulose acetate artificial silk, & the patent was invalid for want of subject-matter.—HEAP (SAMUEL) & SON, LTD. *v.* BRADFORD DYERS' ASSOCN., LTD. (1929), 46 R. P. C. 254.

402. *Add. Annotation :*—*Generally*, **Refd.** Mellor *v.* Beardmore (1927), 44 R. P. C. 175.

409. *Add. Annotation :*—**Consd.** Wright & Eagle Range *v.* General Gas Appliances (1928), 45 R. P. C. 346.

412. *Add. Annotation :*—**Refd.** Wright John & Eagle Range *v.* General Gas Appliances, Ltd. (1928), 46 R. P. C. 169.

412a. ——.]—Where a known apparatus is first used for a particular purpose, a presumption of patentable subject-matter is raised by novelty in the mode of use, as distinguished from novelty of purpose. New mode of use may be based on advantage in treatment of particular materials.—*Re* SIMON-CARVES, LTD. & ROBINSON'S PATENT (1928), 45 R. P. C. 407.

423. *Add. Annotation :*—*Generally*, **Refd.** Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.

434. *Citations :*—For "44 R. P. C. 69," read "44 R. P. C. 367; *affd.* 45 R. P. C. 153, C. A."

435. *Add. Annotation :*—**Consd.** Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.

457. *Add. Annotation :*—**Consd.** Sharpe & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.

459a. —— ——.]—WHITE *v.* TODD OIL BURNERS, LTD. (1929), 46 R. P. C. 275.

459b. —— ——.]—Letters patent were granted for "combined Bag & Cushion." Claim 1 of the specification was as follows: "A combined bag & cushion consisting of a bag made of waterproof material lined at one or both sides with padding covered by ordinary fabric, & adapted to be turned inside out." In an action for infringement of the letters patent pltfs. alleged infringement of claims 1, 2, & 3. Defts. denied infringement & alleged that the patent was invalid by reason of want of novelty & subject-matter, prior public user, & prio publication :—*Held :* the patent was invalid for want of subject-matter. The action was dismissed with costs.—BERTON (ARTHUR), LTD. *v.* JARRETT RAINSFORD & LAUGHTON, LTD. (1930), 47 R. P. C. 444.

PART IV. SECT. 1, SUB-SECT. 9.—A.

352 viii. *affd.*, [1928] 2 D. L. R. 448; [1928] S. C. R. 8.—**CAN.**

352 x. —— ——.]—BERGEON *v.* DE KERMOR ELECTRIC HEATING CO., LTD., [1927] 3 D. L. R. 99; [1927] Exch. C. R. 181.—**CAN.**

352 xi. —— ——.]—DETROIT RUBBER PRODUCTS INC. *v.* REPUBLIC RUBBER CO., [1927] 4 D. L. R. 724; *affd.*, [1928] 3 D. L. R. 81.—**CAN.**

352 xii. —— ——.]—NIEBLO MANUFACTURING CO. *v.* STANDARD CO., [1927] 4 D. L. R. 785; *affd.*, [1929] 2 D. L. R. 186; [1928] S. C. R. 579.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.

436 xii. —— ——.]—ELECTROLYTIC ZINC PROCESS CO. *v.* FRENCH'S COMPLEX ORE REDUCING CO. OF CANADA, LTD., [1927] Exch. C. R. 94; *affd.*, [1930] S. C. R. 462; 4 D. L. R. 902.—**CAN.**

436 xiii. —— ——.]—There must be a substantial exercise of the inventive power, though it may in some cases be very slight, to sustain a grant for a patent for invention. Slight alterations may produce important results & may disclose great ingenuity.—CANADIAN GENERAL ELECTRIC CO., LTD. *v.* FADA RADIO, LTD., [1927] 2 D. L. R. 911; [1927] Exch. C. R. 134.—**CAN.**

436 xiv. —— ——.]—LOWE-MARTIN CO., LTD. *v.* OFFICE SPECIALTY MANUFACTURING CO., LTD., [1930] Ex. C. R. 181; 4 D. L. R. 918.—**CAN.**

436 xv. —.]—*Held :* where all deft. has done was to adopt pltf.'s combination of materials & device, functioning similarly, producing similar results obtained in a similar manner, with slight mechanical changes, there is no ingenuity of invention; & where in view of the disclosures in pltf.'s patent no ingenuity of invention was required to construct deft.'s device, then such latter device is an infringement of the said patent.—INTERNATIONAL FIRE EQUIPMENT CORPN. *v.* FIREGAS SERVICE, LTD., [1930] Ex. C. R. 168; 4 D. L. R. 708.—**CAN.**

436 xvi. —.]—*Held :* utility is not an infallible test of originality, & to support a patent there must be something more than a new & useful manufacture, the invention must have required for its evolution some amount of ingenuity to constitute subject-matter or invention.—CANADIAN GYPSUM CO., LTD. *v.* GYPSUM, LIME & ALABASTINE, CANADA, LTD., [1931] Ex. C. R. 180.—**CAN.**

436 xvii. —— ——.]—BURT BUSINESS FORMS, LTD. *v.* AUTOGRAPHIC REGISTER SYSTEMS, LTD., [1932] Ex. C. R. 39.—**CAN.**

459c. FRANC-STROHMENGER & COWAN (INC.) *v.* PETER ROBINSON, LTD. (1930), 46 T. L. R. 579; 47 R. P. C. 493.

459d. —— ——.]—Letters patent were granted for "improvements in electric combs for the hair." Claim 1 of the specification was as follows: "As a new article of manufacture, a self-contained electric hair comb in which a comb complete in itself has insulated comb members in a simple circuit with a removable battery which is attached to the comb." In an action for infringement of the patent pltfs. alleged infringement of claims 1, 2, 3, 7, 13, 14, & 15. Defts. denied infringement & alleged that the patent was invalid by reason of want of novelty & subject-matter. Further allegations of prior user, & inutility, & an allegation that the patentee was not the true & first inventor, were not relied on by defts. at the trial:—*Held:* all the claims which were alleged to have been infringed were invalid for want of subject-matter. The action was dismissed, & defts. were given the general costs of the action save in so far as they had been increased by the inclusion of the allegations upon which defts. did not rely at the trial. Pltfs. were given their costs so far as they had been increased by the inclusion of the said allegations, with a set-off.—WILDEY & WHITES MANUFACTURING CO., LTD. *v.* FREEMAN (H.) & LETRIK, LTD. (1931), 48 R. P. C. 405.

459e. —— ——.]—In 1924 letters patent were granted in respect of "improvements in record strips for autographic registers," Claim 1 being as follows: "A record strip for autographic registers adapted to be fed by said register, said strip being provided with filing or folding apertures arranged in series therein & adapted to co-operate with strip folding mechanism to fold the strip into a zig-zag pad, all of the said filing apertures being so disposed as to assume positions at the same end of the said zig-zag pad." It was stated in the specification that the invention related to improvements in record strips employed in autographic registers & more especially to an improved zig-zag supply pad for autographic registers as described in specification No. 229,616, which was a specification of the same patentees & of the same date. Pltfs. commenced an action for infringement of this patent & of two other patents in respect of which they discontinued the action at the trial. Defts. denied infringement & alleged that the patents were invalid by reason of want of novelty, subject-matter & utility:—*Held:* although the strip was novel, the patent was invalid for want of subject-matter, since any invention that may have been exercised was in the machine which was the subject of Patent No. 229,616, & not in the strip. The action was dismissed with costs. A certificate for the particulars of objections was granted in respect of the patent proceeded upon, the costs in connection with the other two patents being left to the absolete discretion of the taxing master.—LAMSON PARAGON SUPPLY CO., LTD. *v.* CARTER-DAVIS, LTD. (1930), 48 R. P. C. 133.

459f. —— ——.]—Letters patent were granted to A. for "improvements in or relating to means or apparatus for use in combined cinematograph & phonograph productions." The specification claimed a method of inserting into a cinematograph film blank pieces of film marked with letters or numbers which, when flashed upon the screen, indicated to the operator when he was to start or stop a mechanical sound-producing apparatus. Defts. showed a "talking picture" in which the operator was provided with a "cue sheet" which told him at what points in showing the film, indicated by sub-titles appearing upon the screen which were part of the film, he was to operate or change over the sound-producing apparatus. Pltf. claimed that this was an infringement of his patent:—*Held:* there could be no novelty in using an incident, such as a sub-title, in the film as a cue for the operator, what defts. were doing was no infringement, & the invention as disclosed in pltf.'s specification was not novel.—JOHNSON *v.* WARNER BROS. PICTURES LTD. (1930), 48 R. P. C. 343.

459g. —— ——.]—In 1913 letters patent were granted in respect of "an improved process & apparatus for sterilising water & rendering it aseptic." Claim 1 was as follows: "A process for sterilising flowing water, which consists in a minor body of running water being brought as a film or in a state of fine distribution into contact with chlorine gas, which is thus quantitively absorbed, this minor body of water being led continuously to the main body of flowing water, through which it becomes immediately & uniformly distributed." In 1929 pltfs. commenced an action for infringement of the patent, claiming a declaration that defts. had infringed the patent, & other relief. Defts. denied infringement, & alleged that the patent was invalid by reason of want of novelty, subject-matter, & utility:—*Held:* that there was no subject-matter to support the patent, & the action was dismissed with costs. A certificate was granted with respect to certain of the particulars of objections.—PATERSON ENGINEERING CO., LTD. *v.* CANDY FILTER CO., LTD. (1932), 49 R. P. C. 229.

472a. ——.]—It is not enough to show that an apparatus described in an earlier specification alleged as an anticipation could have been used to produce a certain result; it must also be shown that the specification contains clear & unmistakable directions so to use it.—BRITISH THOMSON-HOUSTON CO., LTD. *v.* METROPOLITAN-VICKERS ELECTRICAL CO., LTD. (1928), 45 R. P. C. 1, H. L.; *affg.* S. C. *sub nom.* METROPOLITAN-VICKERS ELECTRICAL CO., LTD. *v.* BRITISH THOMSON-HOUSTON CO., LTD. (1925), 43 R. P. C. 76, C. A.

Annotation:—**Consd.** Pope Appliance Corpn. *v.* Spanish River Pulp & Paper Mills, [1929] A. C. 269.

502a. ——.]—BIRTWHISTLE *v.* SUMNER ENGINEERING CO., LTD. (1928), 46 R. P. C. 59.

502b. ——.]—HOROWITZ *v.* WALD (H.) & CO. (1930), 47 R. P. C. 183.

502c. ——.]—In 1926 letters patent were granted for "Improvements in & relating to the spinning of metal hollow-ware." Claim 1 was as follows: "An improved method of spinning metal hollow-ware consisting in hammer-marking or otherwise embossing or ornamenting the face or faces of a chuck or mandrel upon which a blank is spun, so that similar ornamenting is produced in the metal of the blank which is forced into close contact with the mandrel by the pressure of the

spinning tool or tools." Pltfs. brought an action for infringement & defts. alleged that the patent was invalid by reason of prior publication in certain specifications & by reason of a prior public user. Defts. also alleged that there was no subject-matter & that the invention was not useful; they also denied infringement:—*Held:* the patent was invalid for want of novelty by reason of public prior user, & the action was dismissed with costs.—JOSEPH *v.* JENKINS (B. J.), LTD. (1929), 47 R. P. C. 61.

517. *Add. Annotation:*—**Refd.** Wright John & Eagle Range *v.* General Gas Appliances, Ltd. (1928), 46 R. P. C. 169.

518. *Add. Annotations:*—**Consd.** British Thomson-Houston Co. *v.* Metropolitan-Vickers Electrical Co. (1928), 45 R. P. C. 1. **Refd.** Pope Appliance Corpn. *v.* Spanish River Pulp & Paper Mills, [1929] A. C. 269; Wright John & Eagle Range *v.* General Gas Appliances, Ltd. (1928), 46 R. P. C. 169.

556. *Add. Annotations:*—**Refd.** Sharpe & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153; Pope Appliance Corpn. *v.* Spanish River Pulp & Paper Mills (1929), 98 L. J. P. C. 50.

559. *Add. Annotations:*—**Refd.** Mellor *v.* Beardmore (1927), 44 R. P. C. 175: Pope Appliance Corpn. *v.* Spanish River Pulp & Paper Mills, [1929] A. C. 269.

560. *Add. Annotations:*—**Refd.** Mellor *v.* Beardmore (1927), 44 R. P. C. 175; Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153; *Re* Simon-Carves & Robinson's Patent (1928), 45 R. P. C. 407.

561. *Add. Annotation:*—**Refd.** Boyce *v.* Morris Motors (1927), 44 R. P. C. 105.

574. *Add. Annotation:*—**Refd.** Boyce *v.* Morris Motors (1927), 44 R. P. C. 105.

585. *Add. Annotations:*—**Consd.** Wright John & Eagle Range *v.* General Gas Appliances (1928), 46 R. P. C. 169. **Refd.** Boyce *v.* Morris Motors (1927), 44 R. P. C. 105.

589a. —.]—Letters patent were granted in 1917 for "improvements in electric heating apparatus." Claim 1 was as follows: "improvement in & relating to electric heating apparatus characterised by the insulating supporting blocks, through which the conductor passes, being suspended in such a manner as to be capable of movement with the conductor under the influence of heat." Pltfs. brought an action for infringement of the patent. Defts. denied infringement & alleged that the patent was invalid by reason of anticipation by prior publication, & for want of subject-matter & utility:—*Held:* the patent was invalid by reason of anticipation by prior publication & for want of subject-matter, & it was not infringed. The action was dismissed with costs.—NAAMLOOZE VENNOOTSCHAP FABRIEK VAN INSTRUMENTEN EN ELECTRISCHE APPARATEN "INVENTUM" *v.* SCHNEIDER (1931), 48 R. P. C. 87.

593. *Add. Annotations:*—*As to* (3) **Refd.** British Thomson-Houston Co. *v.* Metropolitan-Vickers Electrical Co. (1928), 45 R. P. C. 1; Pope Appliance Corpn. *v.* Spanish River Pulp & Paper Mills, [1929] A. C. 269. *Generally*, **Refd.** Société Anonyme Servo-Frein Dewandre *v.* Citroen Cars, Ltd. (1929), 47 R. P. C. 221.

598. *Add. Annotation:*—**Refd.** Jones & Attwood *v.* National Radiator Co. (1928), 45 R. P. C. 71.

625. *Add. Annotation:*—**Refd.** Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.

636. *Add. Annotation:*—**Refd.** *Re* Higginson & Arundel's Patent (1927), 44 R. P. C. 430.

640. *Add. Annotation:*—**Refd.** Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.

655a. —— **Question of construction—Evidence of intention inadmissible.**]—Whether a specification is an anticipation of a later patent, apart from statutory provisions, depends

PART IV. SECT. 2, SUB-SECT. 2.—B. (b) ii.

523 iii. ——.]—GEORGESON *v.* URWIN & Co., [1928] N. Z. L. R. 207.—**N.Z.**

c i. —— ——.]—POPE APPLIANCE CORPN. *v.* SPANISH RIVER PULP & PAPER MILLS, [1929] A. C. 269.—**CAN.**

c ii. —— —— "*Not known or used by any other person.*"]—*Held:* though, as decided in *Pope Appliance Corpn.* v. *Spanish River Pulp & Paper Mills, Ltd.*, the public use or sale for more than a year previously to the application must be public use or sale in Canada, yet the words "which was not known or used by any other person before his [appct.'s] invention thereof," are not qualified by the words "in Canada," & accordingly, if it can be shown that the invention was known or used by any other person in any part of the world before the invention in Canada, that fact alone would render the patent invalid.—CANADIAN GENERAL ELECTRIC CO., LTD. *v.* FADA RADIO, LTD. (1929), 46 T. L. R. 18.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.—B. (b) iii.

540 i. *User followed by abandonment.*]—An experiment which never becomes completed, but up to the last remains an experiment & nothing more does not as a rule anticipate a novel machine, device or process, but if the experimental stage is over & the machine or device operates effectively for the purpose for which it was designed, & it is used by persons capable of understanding its use there is a completed invention & a completed publication even though for some other reason work with it is subsequently discontinued.—VEASEY *v.* DENVER ROCK DRILL & MACHINERY CO., LTD., [1930] App. D. 243.—**S. AF.**

PART IV. SECT. 2, SUB-SECT. 2.—B. (b) v.

sj. "*On sale*"—*Within Patent Act—What amounts to.*]—SEMET-SOLVAY CO. *v.* COMR. OF PATENTS, [1927] 3 D. L. R. 385; [1927] Exch. C. R. 218; *affd.*, [1929] 4 D. L. R. 1081; S. C. R. 172.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.—C. (a).

594 ii. ——.]—CANADIAN GENERAL ELECTRIC CO., LTD. *v.* FADA RADIO, LTD., [1927] 2 D. L. R. 911; [1927] Exch. C. R. 134.—**CAN.**

594 iii. ——.]—MAUNDER *v.* WANGANUI SASH & DOOR FACTORY & TIMBER CO., LTD., [1928] N. Z. L. R. 566.—**N.Z.**

594 iv. ——.]—By sect. 7 (1) of Patent Act, 1923, of Canada, any person who has invented any (*inter alia*) new & useful art, process, machine or manufacture "not known or used by others before his invention thereof," & as to which other specified circumstances do not exist, may obtain a patent granting him an exclusive property in the invention:—*Held:* the knowledge or user by others contemplated by the words quoted above is not confined to knowledge or user within Canada, nor to knowledge or user of a public or open character excluding that which is secret or confidential. In construing the provision the natural & ordinary meaning of the words should not be departed from in order to reconcile it with any theory of patent law evolved otherwise than from the language of the Act itself.—RICE *v.* CHRISTIANI, [1931] A. C. 770; 100 L. J. P. C. 202; 145 L. T. 624; 47 T. L. R. 537; 75 Sol. Jo. 525, P. C.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.—C. (b).

615 iii. ——.]—*Held:* the proper principle to be applied in testing anticipation is that the specification which is relied upon as an anticipation must give the same knowledge as the specification of the invention itself.—LIGHTNING FASTENER CO., LTD. *v.* COLONIAL FASTENER CO., LTD., [1932] Ex. C. R. 89.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.—C. (c).

615 iii. ——.]—CANADIAN GENERAL ELECTRIC CO., LTD. *v.* FADA RADIO, LTD., [1927] 2 D. L. R. 911; [1927] Exch. C. R. 134.—**CAN.**

upon the construction of the specification, verbal evidence as to the intention of the person whose specification it is being inadmissible.—CANADIAN GENERAL ELECTRIC CO., LTD. *v.* FADA RADIO, LTD., [1930] A. C. 97; 99 L. J. P. C. 58; 142 L. T. 106; 47 R. P. C. 69, P. C.

Annotation :—**Refd.** Rice *v.* Christiani (1931), 47 T. L. R. 537.

659. *Add. Citation :—Affd. sub nom.* BRITISH THOMSON-HOUSTON CO., LTD. *v.* METROPOLITAN-VICKERS ELECTRICAL CO., LTD. (1928), 45 R. P. C. 1, H. L.

Add. Annotation :—**Consd.** Pope Appliance Corpn. *v.* Spanish River Pulp & Paper Mills, [1929] A. C. 269.

659a. —— ——.]—In 1927, a patent was granted in respect of "improvements in or relating to actuating devices for the control of the carburetters of internal combustion engines, but applicable for other purposes." The first claim was as follows: "Actuating provision suitable for use in connection with the control of the carburetters of internal combustion engines but applicable for other purposes having a rotary hand grip or operating member adapted to displace a longitudinally movable member incorporated within or substantially within the overall transverse dimension of said grip or operating member & a front collar for said grip or operating member said front collar being adapted to embrace the handle bar or other supporting member upon which the said actuating member is adapted to be mounted & in which the said grip or operating member is of a character such that power transmission mechanism which it may be adapted to actuate can be disconnected from it at a time at which it is mounted or located upon said handle bar or supporting member with said front collar in its normal position." Pltfs. commenced an action for infringement of the patent. Defts. denied infringement & alleged that the patent was invalid by reason of anticipation by prior specifications & prior users, for want of subject-matter & utility & for insufficiency, & counterclaimed for the revocation of the patent. Pltfs. alleged that the object of the invention was to be able to expose the point of attachment of the power transmission mechanism, for ease of replacement, while keeping all the parts in operative engagement upon the handle bar. One of the prior specifications of A.M.A.C. relied on by defts. described such a device in the letter-press, but showed in the drawings a mechanism which could not be operated so as to fulfil the objects of pltfs.' patent :—*Held :* assuming that the specification was not ambiguous, & that its object was as alleged by pltfs., the specification of A.M.A.C. disclosed in its drawings a device that could be modified by a skilled mechanic so as to fulfil pltfs.' objects & that accordingly the patent was invalid either by reason of anticipation or want of subject-matter. The action was dismissed with costs & an order was made for the revocation of the patent, such order to lie in the office for six weeks, or if notice of appeal be given, until judgment in the appeal.—AMALGAMATED CARBURETTERS, LTD. *v.* BOWDEN WIRE, LTD. (1930), 48 R. P. C. 105.

680a. ——.]—In an action for infringement defts. denied infringement, & alleged that the patent was invalid by reason of (*inter alia*) want of utility. Pltfs. proved the utility of their invention :—*Held :* the patent was valid, & had been infringed.—BRITISH UNITED SHOE MACHINERY CO., LTD. *v.* LAMBERT HOWARTH & SONS, LTD. & GIMSON SHOE MACHINERY CO., LTD. (1927), 44 R. P. C. 511; *subsequent proceedings* (1929), 46 R. P. C. 315.

680b. *S. P.* BRITISH UNITED SHOE MACHINERY CO., LTD. *v.* GIMSON SHOE MACHINERY CO., LTD. (1928), 45 R. P. C. 290, C. A.

680c. *S. P.* PARKES S. & CO., LTD. *v.* COCKER BROS., LTD. (1929), 46 R. P. C. 241, C. A.

688a. ——.]—ROSE STREET FOUNDRY & ENGINEERING CO., LTD. *v.* INDIA RUBBER GUTTA PERCHA & TELEGRAPH WORKS CO., LTD. (1929), 46 R. P. C. 294, C. A.

Annotation :—**Refd.** Cincinnati Grinders (Inc.) *v.* B. S. A. Tools, Ltd. (1930), 48 R. P. C. 33.

Part V.—Application for Patent.

700a. Effect of.]—Samples & indorsements thereon, deposited under Patents & Designs Act, 1907 (c. 29), s. 2 (5), can be relied on in aid of the interpretation of the specification, & as effective prior publication against a subsequent claim.—NOTES OF OFFICIAL RULINGS 1928 (B) (1928), 45 R. P. C. App. iv.

704. *Add. Annotation :*—**Refd.** *Re* Farbenindustrie Akt.'s Application (1928), 46 R. P. C. 271.

709a. Power to modify forms.]—The Comptroller may only modify patents forms so as to adapt them for some purpose akin to the purpose for which they are primarily intended.—*Re* SALLES' APPLICATION (1927), 45 R. P. C. 61.

709b. Power to divide or antedate application on second application.]—*Re* WINGATE'S PATENT, No. 724a, *post.*

PART IV. SECT. 3, SUB-SECT. 1.

664 ii. *affd.*, [1928] 2 D. L. R. 448; [1928] S. C. R. 8.

683 i. *Degree of utility necessary to support patent.*]—*Held :* a definite amount of utility is not required by law to sustain an invention; a slight amount of utility being sufficient. Commercial utility is the very essence of a patent, & a favourable reception by the purchasing public is strong evidence of that degree of utility required by law.—PRENTICE *v.* DOMINION RUBBER CO., LTD., [1928] Exch. C. R. 196.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 2.

690 i. *Effect of non-user.*]—ELECTROLYTIC ZINC PROCESS CO. *v.* FRENCH'S COMPLEX ORE REDUCING CO. OF CANADA, LTD., [1927] Exch. C. R., 94; *affd.*, [1930] S. C. R. 462; 4 D. L. R. 902.—**CAN.**

PART V. SECT. 5, SUB-SECT. 1.

1 i. —— *Statement of date—No power to amend.*]—*Held :* after disclosure made between the parties in conformity with r. 32, an order in chambers should not be made allowing one of the parties to amend its statement of the date of the invention relied on in the action.—LARKIN-WARREN REFRIGERATING CORPN. *v.* FRIGIDAIRE L., [1932] Ex. C. R. 67.—**CAN.**

717. *Add. Annotations:—As to* (1) **Refd.** *Re* Farbenindustrie Akt.'s Application (1928), 46 R. P. C. 271. *As to* (2) **Refd.** *Re* Wingate's Patent (1931), 47 T. L. R. 541.

724a. **Whether prohibition lies.**] — On Oct. 26, 1928, W. lodged an application & provisional specification for a patent for improvements in folding spectacles. The complete specification was lodged in July, & accepted in Dec. 1929, as No. 322,297. In Feb. 1930, notice of opposition was given by E. & the T. Optical Co. In Apr. 1930, W. lodged another application with a complete specification, differing only from No. 322,297 in the claims, which were fewer in number, but widened by the omission of certain limiting words. This specification was accepted on Apr. 28, 1930, as No. 328,584. W. then made an application for a division of the patent under r. 13 of the Patents Rules, & the Comptroller allowed it, holding that No. 328,584 should be treated as an application for a patent for an invention excluded by amendment from specification No. 322,297, & should bear date Oct. 26, 1928. The opponents, contending that the Comptroller could not divide or antedate the application, & that his decision, in the circumstances, was *ultra vires* the Patents & Designs Act & the rules thereunder, moved for a writ of prohibition to restrain the Comptroller & W. from proceeding with application No. 328,584: —*Held:* (1) the decision of the Comptroller being in a matter of the administration of the Patent Office & the procedure in granting a patent, was final, subject to an appeal to the Law Officer under the Act, & to directions which might be given by the officer under sect. 74, & prohibition would not lie against the Comptroller or the Law Officer in respect of any act or decision so done or made; (2) the division or antedating of an application for a patent provisionally decided by the Comptroller before opponents have been heard is a matter which can be reopened & the decisions thereon reviewed in opposition proceedings, according to long established practice in the Patent Office, notwithstanding that such questions are not specifically included in the grounds of opposition enumerated in sect. 11 of the Act.—*Re* WINGATE'S PATENT, [1931] 2 Ch. 272; 100 L. J. Ch. 370; 145 L. T. 572; 47 T. L. R. 541; 48 R. P. C. 416.

727. For the existing paragraph substitute the following paragraph:—

Injunction to restrain acceptance — Lawful ground of objection—"Secret processes."]— Where an injunction had been granted to restrain appct. for a patent from disclosing processes derived from pltf. co., or from doing any act which might cause same to become public or commonly known, & the Comptroller-General refused to undertake when he should receive an application for the acceptance of a complete specification to consider such injunction a "lawful ground of objection" to the acceptance of the complete specification within Patents & Designs Act, 1907 (c. 29), s. 7 (3), objecting to his duty prescribed by the Patent Acts being in any way interfered with by the ct., the ct. granted an injunction restraining the Comptroller-General from accepting the complete specification, as under sect. 9, on such acceptance, the matter would be thrown open to public inspection, the specification being concerned with some of the processes which, as between pltf. co. & appct., appct. had been restrained from disclosing, & because the Comptroller-General might accept the complete specification on the footing that the injunction against appct. would not constitute a lawful ground of objection within sect. 7 (3). On appeal the S.-G. on behalf of the Comptroller-General undertook that the injunction granted against appct. would be properly considered in deciding whether the specification should be accepted as being something which might constitute "a lawful ground of objection" to such acceptance, & by consent the order against the Comptroller-General was discharged, notice of discontinuance to be served upon him. Appct. was also further restrained from proceeding with his application in addition to the injunction granted against him in the ct. below.—REX CO. & REX RESEARCH CORPN. *v.* MUIRHEAD & COMPTROLLER-GENERAL OF PATENTS (1926), 96 L. J. Ch. 121; 136 L. T. 568; 44 R. P. C. 38, C. A.

Part VI.—Specifications.

736. *Add. Annotation:*—**Refd.** Kraft, Kraft Cheese Co. (Incorporated) & Kraft Walker Cheese Co. Proprietary, Ltd. *v.* McAnulty (1931), 48 R. P. C. 536.

773. *Add. Annotation:*—**Refd.** *Re* Dreyfus' Applns. (1927), 44 R. P. C. 291.

789. *Add. Annotation:*—**Consd.** Kraft, Kraft Cheese Co. (Incorporated) & Kraft Walker Cheese Co. Proprietary, Ltd. *v.* McAnulty (1931), 48 R. P. C. 536.

789a. —— ——.]—*Held:* assuming applts.' contention that a process for the production of a permanently keeping cheese was the main object of the specification was right, the patentee had not fulfilled his promise & shown the way to secure a permanently keeping cheese, even allowing that the patentee used the expression in a commercial sense intelligible to those concerned in the trade; & there was insufficiency in the description of the process to be followed; the patent was invalid.—KRAFT, KRAFT CHEESE CO. (INCORPORATED) & KRAFT WALKER CHEESE CO. PROPRIETARY, LTD. *v.* MCANULTY (1931), 48 R. P. C. 536, P. C.

les.]—DE FOREST PHONOFILM OF CANADA, LTD. *v.* FAMOUS PLAYERS CANADIAN CORPN., LTD., [1931] D. L. R. 803.—CAN.

795. *Add. Annotations:*—**Refd.** Pope Appliance Corpn. *v.* Spanish River Pulp & Paper Mills, [1929] A. C. 269; *Re* Farbenindustrie (I. G.) A. G.'s Patents (1930), 47 R. P. C. 289.

796a. ——.]—ROSE STREET FOUNDRY & ENGINEERING CO., LTD. *v.* INDIA RUBBER GUTTA PERCHA & TELEGRAPH WORKS CO., LTD. (1929), 46 R. P. C. 294, C. A.

Annotation:—**Refd.** Cincinnati Grinders (Inc.) *v.* B. S. A Tools, Ltd. (1930), 48 R. P. C. 33.

796b. ——.]—Pltfs. were owners of letters patent for "improvements in & relating to apparatus for grinding cylindrical bodies." The machine, the subject of the patent, was known as a centreless grinding machine, since the work to be ground was not supported between centres, but was caused to rotate between the grinding wheel & two other points of support. In pltfs.' embodiment of the invention & in the machine illustrated in the specification, the work rotated between a peripherally acting grinding wheel & a peripherally acting regulating wheel & rested upon a work rest placed between the two wheels. The specification described a theory according to which the machine was said to work. Claim 1 of the specification was for "a method of grinding cylindrical bodies, which consists in supporting a substantially cylindrical body in operative relation to a grinding surface having portions progressively more distant from the surface supporting the cylindrical body, rotating said body by means of a driving member, & in moving said rotating body into contact with more distant portions of said grinding surface as said driving member moves said body relative thereto when said member engages projecting irregularities in said body." Centreless grinders using non-peripherally acting wheels either for regulating or grinding were old. Pltfs. brought an action for infringement against defts. who had built a machine with peripherally acting wheels, similar to pltfs.' machine. Defts. disputed the validity of the patent, & also submitted that, as their machine had been sold & supplied in parts & assembled at the works of the purchasers, this did not constitute infringement by them. Defts. counterclaimed for revocation of the patent:—*Held:* it had not been proved that pltfs.' machine worked according to the theory given in the specification; the claims were not limited to peripheral grinding or regulating wheels, but included machines whose grinding or regulating wheels were discs; the "driving member" claimed was a mechanical equivalent of a fixed back rest which was therefore included in the claim; & therefore the claims were anticipated & were invalid for lack of novelty; also that, on a construction of the specification put forward by pltfs., the invention had not been distinctly stated & that it merely consisted in certain, not novel, adjustments of well-known parts of a well-known machine, &, if the patent had been valid, the infringement would have been committed by the user who operated the machine in the infringing configuration & not by defts., the sellers of the machine alleged to infringe. The action was therefore dismissed & an order was made for revocation under the counterclaim. Pltfs. appealed:—*Held:* the patent was not limited to the use of peripherally acting wheels & was therefore bad for want of subject-matter & novelty; it was also bad for ambiguity & want of utility; & the specification as drawn was calculated to prevent a workman from using the tools of his trade. The appeal was therefore dismissed.—CINCINNATI GRINDERS (INC.) *v.* B. S. A. TOOLS, LTD. (1930), 48 R. P. C. 33.

Annotation:—**Refd.** Lamson Paragon Supply Co., Ltd. *v.* Carter-Davis, Ltd. (1930), 48 R. P. C. 133.

804. *Add. Annotations:*—**Consd.** Hanks *v.* Coombes (1928), 45 R. P. C. 237; Rose Street Foundry & Engineering Co. *v.* India Rubber Gutta Percha & Telegraph Works Co. (1929), 46 R. P. C. 294. **Refd.** Submarine Signal Co. *v.* Henry Hughes & Son, Ltd. (1931), 49 R. P. C. 149.

804a. As to apparatus.]—HANKS *v.* COOMBES, No. 308b, *ante*.

810a. ——.]—*Re* CHEMISCHE FABRIK AUF ACTIEN (VORM E. SCHERING) PATENT (1928), 45 R. P. C. 403.

814. *Add. Annotation:*—**Refd.** Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.

843. *Add. Annotation:*—**Refd.** *Re* Chemische Fabrik auf Actien (Vorm E. Schering) Patent (1928), 45 R. P. C. 403.

894a. Suitable drawings—What are.]—*Re* STANDARD TELEPHONES & CABLES, LTD.'S APPLICATION (1928), 46 R. P. C. 183.

910. *Add. Annotations:*—*As to* (3) **Refd.** Boyce *v.* Morris Motors (1927), 44 R. P. C. 105. *Generally*, **Refd.** Parkes Samuel & Co. *v.* Cocker Bros. (1929), 46 R. P. C. 241.

918. *Add. Annotation:*—**Refd.** Mellor *v.* Beardmore (1927), 44 R. P. C. 175.

921. *Add. Annotations:*—*As to* (1) **Refd.** Mellor *v.* Beardmore (1927), 44 R. P. C. 175; Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153; *Re* Simon-Carves & Robinson's Patent (1928), 45 R. P. C. 407.

PART VI. SECT. 4, SUB-SECT. 2.—A. (b).

q 1. —— *Quantities of ingredients.*]—MICO PRODUCTS, LTD. *v.* ACETOL PRODUCTS, INC., [1930] Ex. C. R. 64; 3 D. L. R. 190.—**CAN.**

sm. *As 'to process.*]—The specification of a patent for a process must point out clearly the method by which the process is to be performed so as to accomplish the object in view.—ELECTROLYTIC ZINC PROCESS CO. *v.* FRENCH'S COMPLEX ORE REDUCING CO. OF CANADA, LTD., [1927] Exch. C. R. 94.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 4.

955 i. *Whether necessary to distinguish novelty or improvement—General rule.*]—A patentee, in a patent for an improvement on a known device, must not throw his net so wide as to omit to disclose honestly what belongs to the prior art as distinct from his new claim.—BERGEON *v.* DE KERMOR ELECTRIC HEATING CO., LTD., [1927] 3 D. L. R. 99; [1927] Exch. C. R. 181.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 1.

989 i. *Necessity for claim.*]—(1) A patentee must define & limit with precision what he claims to have invented, & everything not clearly claimed becomes *publici juris*.

(2) A patentee must clearly set forth the various steps in a process claimed, & if designedly or unskilfully he makes it ambiguous, vague or indefinite, the patent is bad.—ELECTROLYTIC ZINC PROCESS CO. *v.* FRENCH'S COMPLEX ORE REDUCING CO. OF CANADA, LTD., [1927] Exch. C. R. 94; *affd.*, [1930] S. C. R. 462; 4 D. L. R. 902.—**CAN.**

989 ii. ——.]—Anything disclosed in the specifications of a patent, & for which no claim is made, becomes *publici juris*.—BERGEON *v.* DE KERMOR ELECTRIC HEATING CO., LTD., [1927] 3 D. L. R. 99; [1927] Exch. C. R. 181.—**CAN.**

992 i. *Necessity for clear statement.*]—ELECTROLYTIC ZINC PROCESS CO. *v.* FRENCH'S COMPLEX ORE REDUCING

996. *Add. Annotations :*—**Apld.** Hanks *v.* Coombes (1928), 45 R. P. C. 237. **Consd.** Rose Street Foundry & Engineering Co. *v.* India Rubber Gutta Percha & Telegraph Works Co. (1929), 46 R. P. C. 294. **Refd.** *Re* Farbenindustrie (I. G.) A. G.'s Patents (1930), 47 R. P. C. 289.

1040. *Add. Annotation :*—**Consd.** Rose Street Foundry & Engineering Co. *v.* India Rubber Gutta Percha & Telegraph Works Co. (1929), 46 R. P. C. 294.

1081. *Add. Annotation :*—**Refd.** Fuel Economy Co. *v.* Murray, [1930] 2 Ch. 93.

1178. *Add. Annotation :*—**Consd.** *Re* Farbenindustrie (I. G.) A. G.'s Patents (1930), 47 R. P. C. 289.

1182a. —— As to time & mode of hearing.]—*Held :* by the Ct. of Appeal, the appeal must be dismissed with costs as the matter was within the discretion of the judge.—BRITISH CELANESE, LTD. *v.* COURTAULDS, LTD. (1932), 49 R. P. C. 345, C. A.

1205a. —— —— Order of Court of Appeal in action for infringement.]—DOUGLAS PACKING CO. (INCORPORATED). DOUGLAS PECTIN CORPN. & POSTUM CO. (INCORPORATED) *v.* EVANS & CO. (HEREFORD & DEVON), LTD. (1929), 46 R. P. C. 493, C. A.

1209. *Add. Annotation :*— **Refd.** *Re* Keystone Knitting Mills Trade Mk. (1928), 97 L. J. Ch. 316.

1212. *Add. Annotation :*—**Refd.** Sharpe & Dohme Inc. *v.* Boots Pure Drug Co (1927), 44 R. P. C. 367.

1213a. —— —— —— ——.]—Letters patent were granted in 1916 for a "method & apparatus for separating quantities of molten glass or like material from mass." Claim 1 was as follows: "The method of delivering charges of viscous glass from a viscous mass thereof which consists in producing by preforming a charge of glass of such form & dimensions & so related to the condition under which it is to be deposited that it will not fold, lap or coil when so deposited, & depositing it in such a manner that it will not fold, lap or coil." After commencing an action for infringement, pltfs. moved for leave to amend the specification pursuant to sect. 22 of Patents & Designs Acts, 1907–28, but deleting some of the claims & certain optional alternatives, & by incorporating other consequential amendments. Defts. contended that the amended form of one claim, which was appendant upon a claim which the amendment sought to delete, was inadmissible :—*Held :* leave be granted to amend the specification by deleting the claims desired, appendant claim to have the whole of the claim to which it was appendant incorporated in it, & by deleting the optional alternatives as asked for; the costs of the motion & the costs of & occasioned by such amendments of the pleadings as were necessitated by the amendment of the specification to be defts. in any event.—HOLLANDSCHE (N. V.) GLAS-EN METAALBANK *v.* ROCKWARE GLASS SYNDICATE, LTD. (1931), 48 R. P. C. 425.

1248. *Add. Annotation :*—**Refd.** Boyce *v.* Morris Motors (1927), 44 R. P. C. 105.

1257a. ——.]—Letters patent were granted in 1927 for "an improved reflector & advertising sign for window, shop, & general display purposes." Claim 1 was as follows: "A combined lighting unit & advertising sign of the kind hereinbefore referred to wherein the means for carrying the lamp or lamps is formed integral with the portion of the body of the sign which acts wholly as a reflector." After commencing an action for infringement, pltf. moved for leave to amend the specification pursuant to sect. 22 of the Patents & Designs Acts, 1907–1928, by limiting the construction covered by the claims to one embodying a particular means of suspension :—*Held :* the desired amendment limited the claim, but would result in a claim for protection for an invention which had not been foreshadowed in the original specification & was a different invention from that claimed by the original specification. The motion was dismissed with costs.—WALSH *v.* ALBERT BAKER & CO. (1898), LTD. (1930), 47 R. P. C. 283; 47 R. P. C. 458, C. A.

1261a. Amendments altering basis of selection patent.]—*Re* FARBENINDUSTRIE A. G.'s PATENTS, No. 351a, *ante*.

1337a. Costs occasioned by amendment during action for infringement.]—HOLLANDSCHE (N. V.) GLAS-EN METAALBANK *v.* ROCKWARE GLASS SYNDICATE, LTD., No. 1213a, *ante*.

CO. OF CANADA, LTD., No. 989 i, *ante*.—**CAN.**

k i. *Failure to claim advisable addition as necessary element of invention.*]—Where in the specification in a patent for an oven the patentee states that a certain device or addition is advisable or preferable, but does not claim it as a necessary element of the invention, any oven so constructed as to represent the invention patented, but without such additional device, will be an infringement of the patent.—SEMET-SOLVAY CO. *v.* COMR. OF PATENTS, [1927] 3 D. L. R. 385; [1927] Exch. C. R. 218; *affd.*, [1929] 4 D. L. R. 1081; S. C. R. 172.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 1.—A.

1059 i. *General rule—Question for judge—Identity of two inventions.*]—*Held :* the construction of the language of the specification of a patent is a question of law for the ct., & pltf. co.'s specification covered not merely the precise mechanism described, but the attainment of a novel result at which, according to the arbitrator's findings, deft.'s machine was designed to arrive by means of a process substantially equivalent to that disclosed in pltf. co.'s specification, such findings in consequence establishing what is in law an infringement of pltf. co.'s patent.—FARMERS' MILKING MACHINE CO., LTD. *v.* KNAPP, [1928] N. Z. L. R. 501.—**N.Z.**

PART VI. SECT. 6, SUB-SECT. 2.—C.

1105 i. *General rule.*]—The language in a patent should be liberally construed with a view to maintaining its validity.—DAVIS LOG & RAFT PATENTS CO. *v.* GATHELS (B. C.), [1927] 4 D. L. R. 95; [1927] 2 W. W. R. 753.—**CAN.**

PART VI. SECT. 7, SUB-SECT. 2.—B.

5a. *To sanction amendment notwithstanding action for infringement or revocation.*]—When an application has been made under sect. 71 of Patents Act, 1903–1921, of Australia, to amend a complete specification, & afterwards an action for infringement, or for revocation, is commenced, sects. 80 & 81 of the Act do not preclude the ct. which has seisin of the application from permitting a modification of the amendments proposed & from sanctioning the modified amendments. After the High Ct. of Australia had affirmed an order by which a patentee's application under sect. 71 had been dismissed upon the ground that the amendments, contrary to sect. 78, would make the invention substantially different from that originally claimed, proceedings were commenced for revocation of the patent. Upon appeal to the Privy Council the patentee was allowed to modify the amendments proposed, but the Board, not being satisfied that the amendments even as modified were permissible under sect. 78 except as to certain uncontested items, affirmed the judgment of the High Ct., subject to allowing the uncontested amendments.—COWPER (N. L.) *v.* PAPER SACKS PROPRIETARY, LTD., [1932] A. C. 709; 101 L. J. P. C. 165.—**AUS.**

Part VII.—Grant of Patent.

1352a. —— -.]—*Re* A. B.'s Application (1902), 19 R. P. C. 403.

1353. *Add. Annotation:—As to* (2) **Refd.** *Re* Wingate's Patent (1931), 47 T. L. R. 541.

1363a. —— ——.]—The manufacturer of a particular article may be regarded as interested in commercial processes for making such article marketable; but an opposition is not necessarily admissible, merely because it is not frivolous, vexatious or blackmailing. —*Re* Clavel's Application (1928), 45 R. P. C. 222.

1364. *Add. Annotation:*—**Refd.** *Re* Clavel's Appln. (1928), 45 R. P. C. 222.

1369. *Add. Annotation:*—**Consd.** *Re* Clavel's Appln. (1928), 45 R. P. C. 222.

1413. *Add. Annotation:*—**Apld.** *Re* Carpmael's Application (1928), 46 R. P. C. 321.

1419. *Add. Annotation:*—**Folld.** *Re* Carpmael's Application (1928), 46 R. P. C. 321.

1424a. ——.]—Letters patent were granted for "Improvements in apparatus for breaking up, untwisting, & teasing the fibres in the form of ropes & the like." Claim 1 of the specification was as follows: "In a rope untwisting, breaking up, & teasing machine, the combination with a rotary right-angled nozzle having a guide passage adapted to receive a rope through its axial arm & discharge it through the radial one, of stationary teasing spikes fixed in the plane of rotation of the rope end, & a hood or casing so shaped as to form a guide for the end of the rope whirled round by the said radial arm so as to direct it against the spikes." In an action for infringement of the patent pltfs. alleged infringement of Claims 1 & 2. Defts. denied infringement & alleged that the patent was invalid by reason of want of novelty & subject-matter, inutility, insufficiency & ambiguity:—*Held:* the patent was confined to, or at any rate included, lateral guidance by the casing; on a proper construction of the specification the passages in the rotating fan in defts.' machine could not be described as a rotating right-angled nozzle & there was no infringement of Claims 1 or 2; the patent was, on this construction, admittedly not anticipated by any of the prior specifications, but there was no inventive step between certain of the latter & pltfs.' patent, & the patent was also invalid on the grounds of insufficiency & ambiguity. The action was dismissed with costs.—Bore & Bore *v.* Greaves & Thomas (1932), 49 R. P. C. 571.

1437. *Add. Annotation:*—**Refd.** *Re* Mooney's Appln. (1927), 44 R. P. C. 294.

1495a. —— ——.]—*Re* Carpmael's Application (1928), 45 R. P. C. 411.

1496a. —— **Interlocutory orders—Order for discovery.**]—A. having applied for the grant to him of letters patent, the application was opposed by B., who claimed that he was the first & true inventor. In the course of the proceedings before the Comptroller an order for the discovery & production of documents was made against A. A. thereupon applied by originating summons by way of appeal asking that the order be set aside. At the hearing B. took a preliminary objection to the ct.'s jurisdiction:—*Held:* the jurisdiction of the ct. to entertain the appeal was excluded by sect. 11 (3) of the Patents & Designs Acts, 1907 to 1928. The provision for appeal to the law officer thereby made includes not only final decisions but interlocutory matters; & this is not affected by sect. 77 (2) of the Consolidated Patent Acts. The words which put the Comptroller in the same position in all respects as an official referee do not imply any other right of appeal.—*Re* Robertson's Application for Letters Patent, [1930] 1 Ch. 186; 99 L. J. Ch. 145; 142 L. T. 307; 46 T. L. R. 17; 47 R. P. C. 215.

1503a. —— **Essentials.**]—Practice of the Comptroller-General under rr. 42 & 43 of the Patents Rules, 1920, in relation to the filing of statements & counter-statements in proceedings by way of opposition to the grant of a patent or of application for the revocation of a patent. The statement filed under r. 42 must fully set out the facts upon the opponent bases his case, & the counter-statement filed under r. 43 must fully set out the grounds upon which the opposition is contested. The issue between the parties should be clearly defined in the statement & counter-statement, & should not be left to be defined later in declarations filed under rr. 44 & 45.—Notes of Offical Rulings (1932), 49 R. P. C. 1.

1505a. —— **Essentials.**]—Notes of Official Rulings, No. 1503a, *ante*.

1505b. Disclosure of vital documents—Time for—Not limited to five days provided by rule 48.]—Notes of Official Rulings (1929) B. (1929), 46 R. P. C. App. iii.

Part VIII.—Register of Patents.

1522a. Agreement as to ownership.]—*Re* Smith's (H. E.) Patent (1929), 46 R. P. C. 400.

Part X.—Assignment and Devolution of Patents.

1534a. Agreement for assignment—Whether representation that grantee was "original inventor" material misrepresentation.]—*Held:* it had not been proved that a material

misrepresentation had been made.—THOMPSON *v.* JEFFERSON (1928), 45 R. P. C. 309, P. C.

—— **Construction.**]—*See* Nos. 1555–1557a, *post.*

1546. *Add. Annotations :*—**Refd.** Palmolive Co. (of England) *v.* Freedman (1927), 44 T. L. R. 86. **Mentd.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174.

1557a. —— **Of all patents in relation to preparation & application of gutta percha—What patents within agreement.**]—BEWLEY *v.* HANCOCK (1856), 6 De G. M. & G. 391 ; 26 L. T. O. S. 264 , 2 Jur. N. S. 289 ; 4 W. R. 334 ; 43 E. R. 1285, L. C.

—— **By joint owners of patents—Assignments to "contain covenants by vendors" that patents valid—"& such other covenants as may be reasonably required."**]—*See* CONTRACT, Vol. XII., pp. 29, 30, No. 73.

1557b. **Assignment of all assignor's interest in patent—Passes right to apply for extension of term.**]—*Re* BEARD & SCOTT'S PATENT, *Re* SCOTT & BEARD'S PATENT (1927), 45 R. P. C. 31.

1562. *Add. Annotation :—As to* (3) **Apld.** The W. H. Randall, [1928] P. 41.

1577. *Add. Annotations :*—**Overd.** English Scottish & Australian Bank, Ltd. *v.* I. R. Comrs. (1931), 48 T. L. R. 170. **Refd.** Curtis Brown, Ltd. *v.* Jarvis, Jarvis *v.* Curtis Brown, Ltd. (1929), 14 Tax Cas. 744.

Part XI.—Licences.

1590. *Add. Citation :*—28 R. P. C. 229.
Add. Annotation :—**Refd.** Lacteosote *v.* Alberman, [1927] 2 Ch. 117.

1603. *Add. Annotation :—As to* (1) **Apld.** Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

1603a. ——.]—(1) A licence to "make use, exercise, & vend" a patented invention for a particular form of collapsible tube contained a condition that the licencees should purchase from the inventor all such wires for connecting the caps with the tubes as they should use with the tubes, the cap being not within the protection of the patent :—*Held :* the condition was null & void under Patents & Designs Act, 1907 (c. 29), s. 38.

(2) Another condition in the licence provided that the patentee should at his own cost, at the request of the licencees, commence & prosecute all legal proceedings in respect of infringement or suspected infringement of the patent :—*Held :* in the circumstances of the case a refusal to take proceedings when requested to do so by the licencees was not such a breach of the contract as would disentitle the assignees of the licencors to sue upon another stipulation contained in it.—HUNTOON CO. *v.* KOLYNOS (INCORPORATED), [1930] 1 Ch. 528 ; 99 L. J. Ch. 321 ; 143 L. T. 165 ; 46 T. L. R. 253 ; 47 R. P. C. 403 ; *subsequent proceedings*, 48 R. P. C. 98, C. A.

1603b. **Interdependent conditions—What are.**]—HUNTOON CO. *v.* KOLYNOS (INCORPORATED), No. 1603a, *ante.*

1608. *Add. Annotation :*—**Refd.** Fuel Economy Co. *v.* Murray, [1930] 2 Ch. 93.

1609. *Add. Annotation :—As to* (1) **Dbtd.** Fuel Economy Co. *v.* Murray, [1930] 2 Ch. 93.

1619a. **Executed agreements.**]—Pltf., who exploited patents, in 1930 acquired from one S. the sole rights of exploitation of letters patent No. 267,795 for a three-wheel motor delivery carrier. On Oct. 29, 1930, he entered into an agreement with defts. that they should take over the sole manufacturing rights for Great Britain & export to any part of the world except Germany, in which it was (*inter alia*) agreed that the manufacture of the vehicle was to commence forthwith on the understanding that the patent rights were sound & that defts. were kept safeguarded & indemnified against infringement. Defts. were to provide the necessary facilities to enable the manufacture to be accomplished & to make an original payment, part of which was payable on signing the agreement & to pay certain royalties. In Sept. 1931, pltf. commenced an action against defts., claiming a certain sum under the agreement. Defts. by their defence denied that the agreement was binding on them, alleging (*inter alia*) fraud & misrepresentation, & that the agreement was entered into upon the understanding that the patent rights were sound, & that they were not sound, & that the patent was on various grounds invalid ; they also denied the title of pltf. to grant the rights granted under the agreement. Defts. counter-claimed for money paid to pltf. & for expenses incurred by them :—*Held :* the defences of fraud & misrepresentation failed & the agreement did not contain any guarantee of the validity of the patent by pltf., but it meant that both parties had agreed that manufacture should begin forthwith on the assumption that the patent was valid & that they should co-operate to prevent infringement ; the agreement had been executed & therefore, even if there had been a guarantee of validity by pltf., defts. could not set up a plea of invalidity whilst continuing to manufacture under the agreement ; the doctrine of estoppel applied & defts. were not entitled to deny pltf.'s title. Judgment was given for pltf. with costs & the counter-claim was dismissed with costs.—SUHR (R. F. H.) *v.* CROFTS (ENGINEERS), LTD. (1932), 49 R. P. C. 359.

PART X. SECT. 3.

1545 i. *Covenant for payment of royalties by assignees—Covenant to "warrant & defend" by assignor.*]—GREEN *v.* WATSON (1884), 10 A. R. 113.—**CAN.**

PART XI. SECT. 1, SUB-SECT. 5.—B.

1604 v. ——.]—In an action for royalties against the licensee of a patent :—*Held :* No covenant that the patent was valid was to be implied in the agreement, the licensee is a purchaser of personal property & the rule of *caveat emptor* applies. A judgment declaring the patent void would be no defence to an action for royalties.—ANDERSON *v.* SHEPARD, LTD., [1931] 1 D. L. R. 204 ; 66 O. L. R. 105.—**CAN.**

1638. *Add. Annotation :*—**Refd.** Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

1650. *Add. Annotation :*—**Refd.** Curtis Brown, Ltd. *v.* Jarvis, Jarvis *v.* Curtis Brown, Ltd. (1929), 14 Tax Cas. 744.

1651a. —— ——.]—*Held:* the phrase "the public interest" was to be construed in its widest meaning, & not simply with regard to the purchasing public.—*Re* BROWNIE WIRELESS CO. OF GREAT BRITAIN, LTD. (1929), 45 T. L. R. 584; 46 R. P. C. 457.

Annotation :—**Refd.** *Re* Loewe Radio Co.'s Application (1929), 46 R. P. C. 479.

1652. *Add. Annotation :—Generally,* **Consd.** *Re* Brownie Wireless Co. of Great Britain (1929), 45 T. L. R. 584.

1655a. —— ——.]—*Re* BROWNIE WIRELESS CO. OF GREAT BRITAIN, LTD. (1929), 45 T. L. R. 584; 46 R. P. C. 457.

Annotation :—**Refd.** *Re* Loewe Radio Co.'s Application (1929), 46 R. P. C. 479.

1656a. —— **Question of degree.**]—*Re* LOEWE RADIO CO., LTD.'S APPLICATIONS FOR THE GRANT OF COMPULSORY LICENCES (1929), 46 R. P. C. 479.

1665. *Add. Annotation :*—**Refd.** *Re* Brownie Wireless Co. of Great Britain (1929), 45 T. L. R. 584.

1665a. —— **Undertakings to Comptroller-General —Should not be required.**]—*Re* LOEWE RADIO CO., LTD.'S APPLICATIONS FOR THE GRANT OF COMPULSORY LICENCES (1929), 46 R. P. C. 479.

1666a. Cancellation of endorsement—Procedure.]—(1) Where a patentee applies, under sect. 24 (5), of Patents & Designs Acts, 1907 & 1919, for the cancellation of the indorsement, "licences of right," on a patent, the Comptroller-General of Patents may advertise the application, indicating the procedure to be followed by any person wishing to oppose it, may require the filing of statements & evidence by the patentee & an opponent, & may hear the parties before deciding the application.

(2) Rules 73, 74, & 75 of Patents Rules, 1920, are *intra vires* & valid.—R. *v.* COMPTROLLER-GENERAL OF PATENTS, *Ex p.* ENGL, [1930] 1 K. B. 517; 99 L. J. K. B. 271; 142 L. T. 600; 47 R. P. C. 118.

1669. *Add. Annotation :—As to* (1) **Refd.** Constantinesco *v.* R. (1927), 11 Tax Cas. 730.

1673a. —— —— ——.]—(1) No action for a declaration of the validity of a patent, or for compensation for user of the invention by the Crown, against the Govt. department concerned is competent or open to the patentee under Patents & Designs Act, 1919 (c. 80), s. 8, if the Crown do not consent to its being dealt with in proceedings under sect. 8, but the remedy is by petition of right or by originating notice of motion addressed to the department. The true effect of sect. 8 is to give merely a right of compensation to the patentee against the Crown for the use by its officers of his invention for the purposes of the Crown, & it does not give any right in itself to sue the department concerned.

(2) A claim for a declaration of the validity of the patent is not a claim in tort because the Crown has the right to use the patent on the statutory terms set out in sect. 8.

An action in which such a declaration was claimed against the Air Council, dismissed on the above grounds.—ROWLAND & MACKENZIE-KENNEDY *v.* AIR COUNCIL (1927), 96 L. J. Ch. 470; 137 L. T. 794; 43 T. L. R. 717; 44 R. P. C. 453, C. A.

Annotations :—Generally, **Refd.** Mackenzie-Kennedy *v.* Air Council (1927), 138 L. T. 8; Gilleghan *v.* Minister of Health (1931), 47 T. L. R. 439.

Part XII.—Term of Patent.

1681a. **Being beneficial owner.**]— *Re* WHITE & GRAY'S PATENT (1927), 45 R. P. C. 119.

1684a. —— **Interests of foreign shareholders acquired by Public Trustee—Patents & Designs Acts, 1907–1919, s. 18 (6).**]—*Re* STIRLING'S PATENT, *Re* STIRLING & SCHMIDT'S SUPERHEATING CO. (1910), LTD.'S PATENT (1928), 46 R. P. C. 133.

1687a. Joinder of grantee—Application by assignee.]—Where a grantee declines to join in an application for the extension of the term of a patent & lodges notice of opposition, it is necessary to join such grantee as a party to the summons.—*Re* BEARD & SCOTT'S PATENT, *Re* SCOTT & BEARD'S PATENT (1927), 45 R. P. C. 31.

1687b. —— **Discretion of court to dispense with.**]—*Re* DRESSLER'S PATENTS (No. 2) (1928), 46 R. P. C. 165.

1687c. ——.]—*Re* SMITH'S (E. J.) PATENTS (1928), 46 R. P. C. 166.

1687d. ——.]—*Re* ALLEN & BENNETT BROS. LTD. PATENTS (1929), 46 R. P. C. 397.

1687e. Assignor.]—*Re* OWEN'S PATENT (1928), 46 R. P. C. 333.

1687f. Person entitled to apply for Convention patent.]—A co. became entitled in 1914 to apply for a patent in this country for an invention protected by letters patent in America dated May 18, 1914, & was therefore in a position to apply under sect. 91 of Consolidated Patents & Designs Acts, 1907 & 1919, for a Convention patent, the date of which when granted would be the same as that of the American letters patent. Owing to the war the co. made no application for any grant of letters patent until Mar. 1920, when by virtue of powers of extension

PART XI. SECT. 1, SUB-SECT. 6.

sp. *Sub-assignment—Position of parties.*]—HILL *v.* MOISAN, [1927] 2 D. L. R. 1089.—**CAN.**

PART XI. SECT. 1, SUB-SECT. 8.

h i. —— *Invalidity of patent.*]—CHANNELL *v.* O'CEDAR CORPN. (1927), 60 O. L. R. 525; *varied,* [1928] 3 D. L. R. 843; [1928] S. C. R. 542.—**CAN.**

PART XI. SECT. 2, SUB-SECT. 1.

sq. *Non-manufacture in Canada—Cost when imported unreasonably large.*]—MITCHELL CO. *v.* ATLAS SYSTEMS, [1929] 1 D. L. R. 538.—**CAN.**

PART XI. SECT. 2, SUB-SECT. 2.

1662i. *Grant of licence—On what terms granted—Licence fee—How calculated.*]—CONSOLIDATED WAFER CO., LTD. *v.* INTERNATIONAL CONE CO., LTD., [1927] 1 D. L. R. 402; [1927] S. C. R. 300.—**CAN.**

st. *Appeal—From Exchequer Court—Proceedings under Patent Act,* 1923 (*c.* 23), *s.* 40—*Jurisdiction of Supreme Court of Canada.*]—CONSOLIDATED WAFER CO., LTD. *v.* INTERNATIONAL CONE CO., LTD., [1927] 1 D. L. R. 402; [1927] S. C. R. 300.—**CAN.**

vested in the Comptroller under temporary rules made by the Board of Trade & having statutory force, a grant was made to the co. of letters patent in respect of the invention. Shortly before the expiration of this grant the co. in 1929 applied by originating summons for an extension of the term of the letters patent on the ground of losses which they alleged they had suffered by reason of the war:—*Held:* the patentees having been entitled to apply for a Convention patent were within the description of "patentee as such" in sect. 18 (6) of Consolidated Patents & Designs Acts, 1907 & 1919, the application for a grant had been properly postponed, & they had suffered loss or damage owing to the war. They were therefore entitled to the extension they sought. As the term of the letters patent had expired at the date of the hearing a re-grant was necessary.—*Re* WESTERN ELECTRIC CO., LTD.'S PATENT, [1931] 1 Ch. 68; 100 L. J. Ch. 82; 144 L. T. 299; 46 T. L. R. 549; 48 R. P. C. 155.

Annotation:—**Refd.** *Re* British Thomson-Houston Co., Letters Patent Nos. 15,448 of 1915 & 148,129 (1931), 49 R. P. C. 218.

1690a. Government Departments—Represented by Comptroller.]—Western Electric Co., Ltd., applied by originating summons for the extension of the term of two patents granted in respect of "improvements in Cores for Pupin Loading Coils, electromagnets, & the like." One of the patents expired prior to the hearing of the summons. The application was opposed by the Postmaster-General, who alleged that there had been a postponed demand owing to the War & arising out of the non-installation of older types of apparatus:—*Held:* (1) in the preliminary proceedings Govt. Depts. were sufficiently represented by the Comptroller, & should not be otherwise represented; (2) at the hearing there had been loss of opportunity owing to the war, but this had been counterbalanced in part by a postponed demand. An extension of eighteen months was granted.—*Re* WESTERN ELECTRIC CO., LTD., LETTERS PATENT NO. 103,188 & 107,007 (1932), 49 R. P. C. 342.

1695a. -.]—*Re* BRITISH THOMSON-HOUSTON CO., LTD., LETTERS PATENT NOS. 15,448 of 1915 & 148,129 (1931), 49 R. P. C. 218.

1706a. ——.]—*Re* BEARD & SCOTT'S PATENT, *Re* SCOTT & BEARD'S PATENT (1927), 45 R. P. C. 31.

1711. *Add. Annotation:*—**Refd.** *Re* Maschinenfabrik Augsburg-Nürnberg A. G. Patents (1929), 47 R. P. C. 193.

1743. *Add. Annotation:*—**Refd.** *Re* Maschinenfabrik Augsburg-Nürnberg A. G. Patents (1929), 47 R. P. C. 193.

1750a. ——.]—*Re* NEUFELDT & KUHNKE G.m.b.H. PATENTS (1930), 47 R. P. C. 553.

1750b. ——.]—P. & B. were the grantees of two patents. The first patent was granted in respect of an invention for "improvements in or relating to gyro-compasses." The second patent was granted for another invention for "improvements in or relating to gyro-compasses." P. died on Aug. 4, 1920, & under his will the patents became vested in B. On June 17, 1930, leave was granted to present the petition out of time:—*Held:* the inventions were of exceptional merit & utility; the patentees had made a substantial loss & in the circumstances no objection should be taken to the accounts; & each patent should be extended for ten years from the date of expiry in each case.—*Re* PERRY & BROWN'S PATENTS (1930), 48 R. P. C. 200.

1750c. ——.]—A. H., Ltd., T. & G., were the grantees of a patent granted in respect of improvements in finishing prisms or lenses or combinations of the same & in apparatus therefor; A. H., Ltd., & T. were the grantees of a later patent granted in respect of improved process & apparatus for finishing lenses. The patentees applied for extensions of the terms of the patents:—*Held:* the inventions were of very exceptional merit & utility; the patentees had been inadequately remunerated; possible purchasers of the patented apparatus were few & commercial development of the patents must necessarily be slow; taking all these matters into consideration the first patent must be extended for ten years, & the second patent extended for such a term as to expire contemporaneously with the first patent.—*Re* ADAM HILGER, LTD., TWYMAN & GREEN PATENTS (1931), 49 R. P. C. 245.

1765. *Add. Annotations:*—**Consd.** *Re* Maschinenfabrik Augsburg-Nürnberg A. G. Patents (1929), 47 R. P. C. 193. **Refd.** *Re* Neufeld. & Kuhnke Patents (1930), 47 R. P. C. 553.

1777. *Add. Annotation:*—*As to* (4) **Consd.** *Re* Neufeldt & Kuhnke Patents (1930), 47 R. P. C. 553.

1783. *Add. Annotation:*—*As to* (2) **Consd.** *Re* Neufeldt & Kuhnke Patents (1930), 47 R. P. C. 553.

1795. *Add. Annotation:*—**Consd.** *Re* Neufeldt & Kuhnke Patents (1930), 47 R. P. C. 553.

1836. *Add. Annotations:*—**Consd.** *Re* Maschinenfabrik Augsburg-Nürnberg A. G. Patents (1929), 47 R. P. C. 193. **Refd.** *Re* Neufeldt & Kuhnke Patents (1930), 47 R. P. C. 553.

1863. *Add. Annotation:*—*As to* (1) **Consd.** *Re* Neufeldt & Kuhnke Patents (1930), 47 R. P. C. 553.

1883a. ——.]—*Re* LAKE'S PATENTS (1928), 46 R. P. C. 135.

1904. *Add. Annotation:*—**Refd.** *Re* Maschinenfabrik Augsburg-Nürnberg A. G. Patents (1929), 47 R. P. C. 193.

1914. *Add. Annotation:*—**Consd.** *Re* Neufeldt & Kuhnke Patents (1930), 47 R. P. C. 553.

1925a. Patent endorsed "licences of right"—Form of order for extension.]—*Re* SANDERS' (THOMAS) PATENT (1931), 48 R. P. C. 342.

1944. *Add. Annotation:*—**Refd.** *Re* Neufeldt & Kuhnke Patents (1930), 47 R. P. C. 553.

1945. *Add. Annotation:*—**Refd.** *Re* Maschinenfabrik Augsburg-Nürnberg A. G. Patents (1929), 47 R. P. C. 193.

1955. *Add. Annotation:*—*As to* (2) **Consd.** *Re* Maschinenfabrik Augsburg-Nürnberg A. G. Patents (1929), 47 R. P. C. 193.

1956a. —— ——.]—*Re* MASCHINENFABRIK AUGSBURG-NÜRNBERG A. G. PATENTS (1929), 47 R. P. C. 193.

1959a. Not confined to profits of petitioner assignee—Includes profits of original inventor & all subsequent holder.]—*Re* MASCHINENFABRIK AUGSBURG-NÜRNBERG A. G. PATENTS (1929), 47 R. P. C. 193.

1997a. Irregularity in service of advertisements—Excused.]—*Re* PANICALI & BRENNI'S PATENT (1927), 44 R. P. C. 509.

2005a. Withdrawal of opposition—Terms on which permitted.] — *Re* MASCHINENFABRIK AUGSBURG-NÜRNBERG A. G. (1929), 47 R. P. C. 193.

2005b. Necessity for accurate statements in affidavits.]—*Re* BROWN & BOSTOCK PATENT (1931), 48 R. P. C. 215.

2012. *Add. Annotation:*—**Refd.** *Re* Maschinenfabrik Augsburg-Nürnberg A. G. Patents (1929), 47 R. P. C. 193.

2019a. —— Over eight months prior to expiry—Hearing over five months prior to expiry.]—*Re* MILLS & MORRIS, LETTERS PATENT NO. 105,857 (1932), 49 R. P. C. 326.

2021. *Add. Annotation:*—**Refd.** *Re* Chambers' Patent (1927), 44 R. P. C. 332.

2021a. ——.]—*Re* BOUYER'S PATENT (1928), 45 R. P. C. 268.

2023a. —— Six months after expiry.]—*Re* HORSTMANN, HORSTMANN & EDGAR'S PATENT (1928), 46 R. P. C. 1.

2027a. —— Notice of opposition.] — *Re* MASCHINENFABRIK AUGSBURG-NÜRNBERG A. G. PATENTS (1929), 47 R. P. C. 193.

2027b. Form of petition.]—*Re* RUTH'S PATENT (1931), 48 R. P. C. 553.

2029a. —— —— ——.] — *Re* MORF'S PATENT (1929), 46 R. P. C. 335.

2031. *Add. Annotation:*—**Refd.** *Re* Higginson & Arundel's Patent (1927), 44 R. P. C. 430.

2036a. ——.]—*Re* BRITISH THOMSON-HOUSTON CO., LTD.'S PATENT (1929), 46 R. P. C. 367.

Annotation:—**Mentd.** *Re* Western Electric Company's Patent (1930), 46 T. L. R. 549.

2044a. —— —— ——.]—*Re* WADE'S PATENT, *Re* DOUGLAS' PATENT (1929), 46 R. P. C. 518.

2056. *Add. Annotation:*—**Consd.** *Re* Neufeldt & Kuhnke Patents (1930), 47 R. P. C. 553.

2060a. ——.]—*Re* CLYDE & DOBBIE MCINNES, LTD. PATENTS (1929), 46 R. P. C. 429.

2062a. —— ——.] — *Re* GILBERT'S PATENTS (1927), 44 R. P. C. 527.

2062b. ——.]—*Re* WESTERN ELECTRIC CO., LTD.'S PATENTS (1927), 45 R. P. C. 117.

2062c. Manufacture in Irish Free State—Before Treaty.]—*Held:* as the patentee was working within the area of the British patent before the Irish Treaty, the considerations as to manufacture abroad were subject to modification & did not debar extension; also in the case of war losses the merits scarcely came into consideration.—*Re* HILTON (JOHN) PATENT (1932), 49 R. P. C. 398.

2064a. —— Loss partly made good by subsequent profits.]—An application for an extension of the term of a patent was opposed on the ground (*inter alia*) that sales lost during the war had been balanced by accumulated deferred sales after the war:—*Held:* there had been a loss which had been in part, but not wholly, made good by a subsequent gain, & an extension of two & a half years should be granted.—*Re* HIGGINSON & ARUNDEL'S PATENT (1927), 44 R. P. C. 430.

2064b. —— —*Held:* in order to show that a loss had been counterbalanced by subsequent gains, it should be established that, as the result of the cessation of hostilities, those who had been holding up their demands had loosed them. so that, in the post-war years, the arrears of orders had been executed in addition to the work which would normally have been done in the normal development of the patent.—*Re* BATES & UNITED SHOE MACHINERY CO., LTD.'S PATENT, *Re* BATES RICHARDS & UNITED SHOE MACHINERY CO., LTD.'S PATENT (1928), 45 R. P. C. 270.

2064c. ——.]—*Re* BOUYER'S PATENT (1928), 45 R. P. C. 268.

2077a. Illness of patentee owing to war.]—*Re* EVANOVITCH'S PATENT (1928), 46 R. P. C. 168.

2090a. ——.]—*Re* ENFIELD CYCLE CO., LTD. & SMITH'S PATENT (1927), 44 R. P. C. 526.

2094. *Add. Annotation:*—**Refd.** *Re* Chambers' Patent (1927), 44 R. P. C. 332.

2105a. ——.]—*Re* SPENGLER'S PATENT (1929), 46 R. P. C. 331.

2112. *Add. Annotation:*—**Refd.** *Re* Chambers' Patent (1927), 44 R. P. C. 332.

2113a. ——.]—Electrical Research Products, Inc., & Standard Telephones & Cables, Ltd., applied by originating summons for the extension of the term of a patent granted in respect of "improvements" in electric wave amplifying apparatus." The patent expired prior to the hearing of the summons. The application was opposed by Radio Manufactures Assocn., Columbia Graphophone Co., Ltd., Mullard Radio Valve Co., Ltd., Mitcham Works, Ltd., & Philips Lamps, Ltd. The opponents denied that any loss was suffered by reason of the war, & alleged that by the earlier development by reason of the war of various uses to which the patent could be applied. the use of the patent had been accelerated & not retarded by the war. They further contended that the ct. must not consider the mere length of time lost, but its relative value compared with a similar period of time at the end of the life of the patent:—*Held:* the opponents failed to show that appcts. had been compensated by reason of the war for loss of opportunity for the period during which they were prevented by the war from dealing with the patent, & that the patent should be extended for four years.—*Re* WESTERN ELECTRIC CO., LTD.'S PATENT (NO. 275 OF 1915) (1931), 48 R. P. C. 218.

2123a. —— Postponed demand.]—*Re* WESTERN ELECTRIC CO., LTD., LETTERS PATENT NO. 103,188 & 107,007, No. 1690a, *ante*.

2124. *Add. Annotation:*—*As to* (2) **Consd.** *Re* Western Electric Co.'s Patent (1930), 46 T. L. R. 549.

PART XII. SECT. 2, SUB-SECT. 8.—F.

2029 i. *Form of application—Petition.*]—In 1916 a patent was granted to M. for "A piece of furniture convertible for use as a bed, a couch, a bath chair or the like." The patentee expended a considerable sum in connection with the patent, but very few of the articles were sold. Manufacture of the article had been impeded by the war. The patentee petitioned for an extension of the term of the patent:—*Held:* the patent did not possess sufficient merit & utility to justify an extension of its term from war loss; but, on the ground that the patentee had sustained loss by reason of the war, the patent was extended for two years, notwithstanding that the application for extension was made by way of petition & not by originating summons.—*Re* MURRAY'S PATENT (1932), 49 R. P. C. 445.—**SCOT.**

2127a. ——.]—*Re* MELLINGER'S PATENT, *Re* AUTOMATIC TELEPHONE MANUFACTURING CO., LTD. (1928), 46 R. P. C. 4.

2130a. —— ——.]—*Re* HOGG & CARR'S PATENTS (1927), 45 R. P. C. 120.

2130b. Three years' difference in grant—Adjournment.]—*Re* EDUCATIONAL SUPPLY ASSOCN., LTD.'S PATENTS (1928), 46 R. P. C. 330.

2136a. Within statutory definition of patent.]—*Re* MASCHINENFABRIK AUGSBURG-NÜRNBERG A. G. PATENTS (1929), 47 R. P. C. 193.

2136b. Right to extension—Limited to period of extension of main patent.]—*Re* MASCHINENFABRIK AUGSBURG-NÜRNBERG A. G. PATENTS (1929), 47 R. P. C. 193.

2136c. —— **What must be considered.**] — *Re* MASCHINENFABRIK AUGSBURG-NÜRNBERG A. G. PATENTS (1929), 47 R. P. C. 193.

Part XIII.—Revocation.

2171a. —— **Razor blades.**]—In 1925 letters patent were granted for "Improvements in Safety Razors." The patentee claimed to have discovered that each time a razor is used for shaving, the cutting edge is upturned or bent back by reason of the resistance offered by the hair of the face; that honing the blade returned the bent back portions of the blade to their original position in the line of the cutting edge, & that, if the upturning or bending back always takes place in the same direction, greatly increased life is obtained from the cutting edge. In order to ensure that the upturning always takes place in the same direction, the patentee provided that the blade should be non-reversible in the holder. This was done by means of cut out portions in the blade asymmetrically disposed relatively to the longitudinal & transverse axes of symmetry of the blade & positioning studs similarly mounted on the holder adapted to engage the cut out parts of the blade. Claim 1 was as follows: "In a safety razor, the combination of a thin cutting blade, a holder for said blade, cut out parts provided in said blade asymmetrically disposed relatively to the longitudinal & transverse axes of the said blade & positioning studs similarly mounted on said holder & adapted to engage said cut out parts in the blade." Claim 5 was as follows: "Safety razor blades substantially as described & illustrated in the accompanying drawing." The Valet Auto Strop Co., Ltd., petitioned to revoke the patent on the ground that it was invalid by reason of prior publication, that it lacked subject-matter & utility, & that the patent had been obtained by false suggestion:—*Held:* the theory upon which the patent was founded was erroneous; there was no subject-matter or utility in the invention, & the patent was anticipated by at least one of the prior specifications cited & was invalid. An order for the revocation of the patent was made, with costs.—*Re* LE RASOIR APOLLO, LETTERS PATENT No. 239,112 (1931), 49 R. P. C. 1.

2174a. Prior publication.]—In the case of an application for the revocation of a patent already granted, appct. must establish his case in the clearest possible manner, & where prior publication is relied on, it is necessary to point to a clear & specific disclosure of something which can fairly be stated to be the patentee's invention.—*Re* LOWNDES' PATENT (1927), 45 R. P. C. 48.

2186. After this case add:—

Application for directions.]—*See* R. S. C., Ord. 53A, r. 21A, & Nos. 2944a–2944f, *post.*

2222a. Power to order amendment of specification—Extent of power.]—*Re* EVENO'S PATENT, No. 2261b, *post.*

2251a. —— ——.]—*Re* KOERNER'S PATENT (1928), 45 R. P. C. 442.

2254a. Application to make order rule of court—By Side Bar Motion.] — PRACTICE NOTE (1930), 69 L. Jo. 80; 169 L. T. Jo. 54; [1930] W. N. 9.

2260a. Ambiguity.]—I. B. E., Ltd., applied to the Comptroller-General of Patents under sect. 26 of Patents & Designs Acts, 1907–1928, for the revocation of letters patent No. 321,721 granted to D. The Assistant-Comptroller ordered the specification to be amended. I. B. E., Ltd., appealed to the ct. It was contended (*inter alia*) for applts. that the letters patent ought to be revoked on the ground of (1) insufficient description, & (2) ambiguity. It was contended (*inter alia*) for resps. that the ct., on an appeal under sect. 26, had no power to order an amendment:—*Held:* by virtue of sect. 92 (2) of Patents & Designs Acts, 1907–1928, & of R. S. C., Ord. 53a, r. 6, the ct. has jurisdiction to order an amendment; & the ground of ambiguity, unless it be identical with the ground of insufficiency of description covered by sect. 11 (1) (*c*), is not open to a petitioner under sect. 26. The

PART XIII. SECT. 1, SUB-SECT. 1.—A.

so. *Person interested—Who is.*]—Pltf. is licensee in Canada of a patent issued to G. Co., relating to improvements in cooling containers, & deft. W. S. Incorporated is the owner of a patent for improvements in a method of refrigeration, & the other deft. is licensee under the same patent:—*Held:* where an individual is using an invention in respect of which another person claims to have a patent, which the unlicensed user believes to be invalid; or where a person is desirous of using anything described in a patent, but which patent he has reason to believe is void, then he has such an interest as to qualify him to initiate proceedings to annul such letters patent; & is a person "interested" within the rules of this ct.—REFRIGERATING EQUIPMENT, LTD. *v.* DRUMMOND & CALTHAM SYSTEM, INCORPORATED, [1930] Ex. C. R. 154; 4 D. L. R. 926. —**CAN.**

PART XIII. SECT. 1, SUB-SECT. 1.—B.

sp. *Proceedings by information—Validity.*]—*Held:* the present action to impeach & annul certain patents of invention instituted in this ct. by information in the name of the A.-G. of Canada was properly instituted under rule 16, notwithstanding the provisions of sect. 37 of Patent Act providing for procedure by *scire facias;* (2) the Exchequer Ct. Act authorises the Crown to institute proceedings upon the information of the A.-G. of Canada to impeach a patent of invention, without showing that it is otherwise a party interested.—R. *v.* MYERS CANADIAN AIRCRAFT CO., LTD., [1931] Ex. C. R. 146.—**CAN.**

PART XIII. SECT. 1, SUB-SECT. 2.—F.

m i. ——.]—WRIGHT *v.* BELL TELEPHONE CO. (1887), 2 Exch. C. R. 552.—**CAN.**

order of the Assistant-Comptroller was varied, & further amendments ordered.—*Re* INTERNATIONAL BITUMEN EMULSIONS, LTD., PETITION FOR THE REVOCATION OF DEHN'S PATENT (1932), 49 R. P. C. 368.

2261a. Power of court—To order amendment of specification.]— *Re* INTERNATIONAL BITUMEN EMULSIONS, LTD., PETITION FOR THE REVOCATION OF DEHN'S PATENT (1932), 49 R. P. C. 368.

2261b. Extent of power.]—In proceedings for the revocation of a patent under sect. 26 of Patents & Designs Acts, 1907 & 1919, the power of the Comptroller to require the specification to be amended by disclaimer, correction, or explanation does not enable him to accept an amendment put forward by the patentee covering a wider claim or a different claim from that made in the unamended specification. Sect. 26 does not widen or enlarge the powers of amendment conferred on the Comptroller under sect. 21 or on the ct. under sect. 22.

The procedure of amendment by way of disclaimer cannot be used so as to extract from the specification some feature or features not claimed or suggested as constituting the original invention, & to claim them as being the invention.—*Re* EVENO'S PATENT, [1932] 2 Ch. 167; 101 L. J. Ch. 395; 147 L. T. 478; 49 R. P. C. 385.

Part XIV.—Infringement.

2273. *Add. Annotation :—As to* (4) **Folld.** Pittevil & Co. *v.* Brackelsberg Melting Processes, Ltd., [1932] 1 Ch. 189.

2274a. —— —— ——.]—PITTEVIL & CO. *v.* BRACKELSBERG MELTING PROCESSES, LTD., No. 3317a, *post*.

2281a. ——.]—STELOS RE-KNIT, LTD. *v.* LADDA-MEND CO., LTD. (1931), 48 R. P. C. 435.

2312. *Add. Annotations :*—**Reld.** Sharpe & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153; Pope Appliance Corpn. *v.* Spanish River Pulp & Paper Mills (1929), 98 L. J. P. C. 50.

2337a. —— **Form of patented article modified.**]—The patentee of a collapsible tube & cap for holding tooth paste licensed defts. to make & sell the tube & cap, but with the condition that each tube should be stamped with certain words. Defts. sold a modified form of tube & cap unstamped :—*Held :* the modified form was not within the patent, & there was consequently no infringement.—HUNTOON CO. *v.* KOLYNOS (INCORPORATED) (1930), 47 T. L. R. 57; 47 R. P. C. 430; *affd.*, 48 R. P. C. 98, C. A.

2342. *Add. Annotation :*—**Folld.** Chloride Electrical Storage Co. *v.* Silvia Wireless Stores (1931), 48 R. P. C. 468.

2344a. —— —— **Attached to article.**] — The owners of letters patent relating to electrical batteries brought an action for infringement against defts. claiming damages & an injunction restraining them from infringing by selling certain batteries of the D. T. G. type manufactured by pltfs. below authorised prices. It was alleged by pltfs. that each of the said batteries had a label pasted upon it that it must not be sold below the catalogue price fixed by the patentee, & was enclosed in a carton on which was printed a notice in the same terms. P. J. S., trading as deft. firm which carried on business at a shop in L., admitted in evidence & in his answers to interrogations that he had knowledge of the restrictions, but denied (*a*) that all of the batteries sold by pltfs. bore the alleged label; (*b*) that all of such batteries were enclosed in the alleged cartons; (*c*) that deft. firm had ever sold any of such batteries below the price fixed by pltfs. as alleged :—*Held :* defts. having had knowledge of the restrictions upon the evidence sold batteries at prices lower than that fixed by pltfs. as patentees. Judgment was given for pltfs. & an injunction was granted with costs.—CHLORIDE ELECTRICAL STORAGE CO., LTD. *v.* SILVIA WIRELESS STORES (1931), 48 R. P. C. 468.

2358a. ——.]—Letters patent were granted in 1916 for "Improvements in ironing machines & apparatus." One of the claims was as follows : "In an ironing machine of the type specified, mounting the device employed to control the movements of the iron on the mechanism by which reciprocating motion is imparted to the iron in such a manner that said device partakes of both the horizontal & the vertical movements of the element which carries the iron." Pltfs. alleged that defts. had infringed the patent. Defts. denied infringement, & alleged that the patent was invalid for want of novelty, by reason of prior publication & prior public general knowledge, & for want of subject-matter :—*Held :* there was novelty & subject-matter & the patent was valid, but that the claims were limited to machines "of the type in which a flat iron of such a weight as will give the necessary pressure is employed," & defts.' machine was not of this type & consequently there was no infringement. The action was dismissed. Pltfs. & defts. were directed to tax their respective costs of the action, pltfs. to have one-fifth & defts. four-fifths of such costs.—LISTER BROS. *v.* THORP, MEDLEY & CO. (1930), 47 R. P. C. 99; *affd.*, 47 R. P. C. 526, C. A.

2358b. -.]—In 1924 letters patent were granted for "Improvements in electric couplings, terminals, & the like." Claim 14 was as follows : "An electric coupling substantially as described with reference to figs. 11 & 12 of the accompanying drawing." Pltfs. brought an action for infringement of this claim. Defts. denied infringement & alleged that the patent was invalid by reason of prior publication & for want of utility :—

PART XIV. SECT. 1, SUB-SECT. 6.—A.

2337 i. ***Sale in breach of limited licence —Necessity for knowledge of limitation.***]—In a suit by a patentee of articles against a vendor of them for infringement of pltf.'s patent by selling them contrary to conditions imposed by the patentee, it is necessary to allege in the statement of claim that deft. acquired the patented articles with knowledge of those conditions.—COLUMBIA GRAMOPHONE CO., LTD. *v.* FOSSEY (1927), 27 S. R. N. S. W. 240; 44 N. S. W. W. N. 87.—**AUS.**

Held: Claim 14 was for a combination of a plug & socket & that, as defts. sold a plug that was not combined with a socket, they did not infringe.—CHAPMAN & COOK & LECTRO LINX, LTD. *v.* DELTAVIS, LTD. (1930), 47 R. P. C. 163.

2389. *Add. Annotation:*—**Refd.** *Re* Higginson & Arundel's Patent (1927), 44 R. P. C. 430.

2479. *Add. Annotation:*—*As to* (1) **Refd.** Rondo Co., Ltd. *v.* Gramophone Co. (1929), 46 R. P. C. 378.

2556. *Add. Annotation:*—**Refd.** The Jupiter (No. 3) (1927), 137 L. T. 333.

2560. *Citations:*—For "47 Sol. Jo. 365" read "67 Sol. Jo. 365."
Add. Annotation:—**Refd.** Mackenzie-Kennedy *v.* Air Council (1927), 138 L. T. 8.

2563. *Add. Annotation:*—**Refd.** British Oxygen Co. *v.* Gesellschaft für Industriegasverwertung M. B. H. (1930), 48 R. P. C. 130.

2570a. Motion to strike out—Action for declaration.]—Pltf., who was the grantee & registered legal owner of four letters patent, commenced an action against deft. claiming a declaration that he was the first & true inventor of the subject-matter of the patents & an injunction restraining deft. from representing that he had any claim or interest in the patents. By his statement of claim pltf. alleged (*inter alia*) that he was the first & true inventor of the subject-matter of the patents & that deft. had falsely represented that he was the co-inventor, together with pltf., of the inventions & that he had a claim to or interest in the patents. Deft. moved to strike out the statement of claim on the grounds that it disclosed no cause of action & tended to prejudice, embarrass or delay the trial of the action:—*Held:* the discretion of the ct. was one to be exercised at the trial, having regard to the facts which might then be established, & the motion must be dismissed with costs.—KILLEN *v.* MACMILLAN (1931), 48 R. P. C. 380.

2596. After this case add:—
——— ———.]—*See, also,* INJUNCTION, No. 839a.

2601a. Application stood over—Where unreasonable & oppressive.]—Pltfs. commenced an action for the infringement of four patents granted in respect of improved manufacture of cathodes for electric discharge valves. By their particulars of breaches pltfs. alleged that defts. had infringed the patents by importing into this country certain wireless valves which had certain specified characteristics, or some of them, & which had been manufactured by a process comprising certain specified steps, or some of them. Defts. issued a summons for further particulars of the aforesaid characteristics & steps:—*Held:* defts. had full knowledge of the patented processes & of those used for the production of the alleged infringing valves, & their application for particulars was unreasonable & oppressive. The application was stood over generally with liberty to restore.—MULLARD RADIO VALVE CO., LTD. *v.* TUNGSRAM ELECTRIC LAMP WORKS (GREAT BRITAIN), LTD. (1932), 49 R. P. C. 279.

2606a. -.]—LEKTOPHONE CORPN. *v.* BROWN (S. G.), LTD. (1929), 46 R. P. C. 203; *affd.*, 46 R. P. C. 439, C. A.

2614. *Add. Annotations:*—**Apld.** Heap Samuel & Son *v.* Bradford Dyers' Assocn. (1929), 46 R. P. C. 254. **Refd.** British United Shoe Machinery Co. *v.* Gimson Shoe Machinery Co. (1928), 45 R. P. C. 85; Cincinnati Grinders (Inc.) *v.* B. S. A. Tools, Ltd. (1930), 48 R. P. C. 33.

2641a. Plea by licencee—Sued as stranger.]—The rule that the licencee of a patent is estopped from denying the validity of the novelty of his licencor's patent is limited to proceedings in which the licencee is sued as such, & does not apply in an action for infringement of patent by making & selling the patented article in a manner & to an extent in & to which the licence would be no defence.

PART XIV. SECT. 1, SUB-SECT. 9.

2419 i. *Not conclusive of infringement—Difference in method.*]—*Held:* the essence of the alleged invention rested on what the patentee describes as a process of destructive distillation of waste liquors, the evaporation of all water & combustion of nearly all the consumable products in the liquor, *i.e.* woody or ligneous matter, in its downward flight in the upper zone of the furnace, leaving nothing but a carbon residue & non-volatile salts reaching the floor of the furnace, & the method employed by defts., where recovery takes place on the hearth & not by distillation in the upper zone, was radically different, was based on an altogether different idea & principle & could not be said to be an infringement of pltfs.' patent.—Ross (J. O.) ENGINEERING CORPN. & C. L. W. PATENTS CORPN. *v.* CANADA PAPER CO. & HOWARD SMITH PAPER MILLS, LTD., [1932] Ex. C. R. 141.—**CAN.**

PART XIV. SECT. 1, SUB-SECT. 14.

n i. ——— ———.]—PARIS *v.* LEDINGHAM, [1931] 44 B. C. R. 289.—**CAN.**

n ii. ——— *Obvious equivalent.*]—When an invention consists in the production of a new result, the patentee is not tied down to the particular means, or the identical parts mentioned in his specification. In other words one cannot make use of the novel principle of an invention, the carrying of which into effect is the real substance of the patentee's invention, by substituting obvious equivalents for some of the parts mentioned in the patentee's specifications, & thus escape infringement.—CANADIAN RADIO PATENTS, LTD. *v.* HOBBS HARDWARE CO., LTD., [1929] 4 D. L. R. 82; Ex. C. R. 238.—**CAN.**

PART XIV. SECT. 1, SUB-SECT. 15.

2519 ii. -.]—Pltf., owner of a patent of invention, known as the H. patent, for a radio receiving circuit, alleged that the circuit used in the set manufactured & sold by deft. was an infringement of the said H. patent & asked that it be so declared & that deft. be restrained from further manufacturing & using the said circuit:—*Held:* even assuming that deft.'s circuit contained component parts & arrangements distinguishing it from the specific circuit disclosed by H., & were patentable improvements, nevertheless, the H. invention being new & useful, the fact that it was more useful with the subsequent improvements, afforded no ground for infringing the original invention by using it with the subsequent improvement.—WESTERN ELECTRIC CO., LTD. *v.* BELL, [1929] 4 D. L. R. 943; Ex. C. R. 213.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 1.—A.

2536 iii. ———.]—CHANNELL *v.* O'CEDAR CORPN. (1927), 60 O. L. R. 525; *varied* [1928] 3 D. L. R. 843; [1928] S. C. R. 542.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 3.—B. (b).

sz. *Inapplicability of English practice.*]—Under r. 28 of the General Rules & Orders of this ct., the ct. or a judge thereof may order such further & better particulars as such ct. or judge may see fit. The practice laid down in Order 53A of the High Ct. of Justice in England has not so far been adopted in this ct.—CANADIAN RADIO PATENTS, LTD. *v.* HIGEL RADIO, LTD., [1929] Ex. C. R. 107.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 3.—C. (a).

2621 i. *Patent irregularly obtained—Untruth in affidavit verifying petition for patent.*]—FADA RADIO, LTD. *v.* CANADIAN GENERAL ELECTRIC CO., LTD., [1927] 3 D. L. R. 922; [1927] S. C. R. 520.—**CAN.**

2621 ii. ——— *Absence of affidavit in support of petition for re-issued patent.*]—FADA RADIO, LTD. *v.* CANADIAN GENERAL ELECTRIC CO., LTD., [1927] 3 D. L. R. 922; [1927] S. C. R. 520.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 3.—C. (b).

sa. *Defendant cannot impeach patent by counterclaim.*]—NIEBLO MANUFACTURING CO. *v.* STANDARD CO., [1927] 2 D. L. R. 843; [1927] Exch. C. R. 82; *affd.*, [1929] 2 D. L. R. 186; [1928] S. C. R. 579.—**CAN.**

Deft. was a licencee of a patent for the making & fitting of boiler joints, the licence being limited to the counties of Northumberland, Durham, Lincoln, & part of Yorkshire, & entitled under the terms of the licence to trade under a certain registered business name within that limited area. He traded in the patented articles & in the said business name outside that area, whereupon pltfs., who were the owners of the patent, brought an action against him for infringement & passing-off. The licence was referred to in the pleadings for the purpose of defining the limited area within which it was available to deft. Deft. by his defence pleaded that the patent was invalid by reason of objections, particulars of which were given, & also for want of novelty. Pltfs. moved to strike out the paragraphs setting up the invalidity of the patent & the particulars of objections, on the ground that deft. as a licencee was estopped from denying the validity of the patent:—*Held:* the objection failed, as deft. was not sued as licencee, but as a stranger for infringement outside the area for which the licence was available.—FUEL ECONOMY CO., LTD. *v.* MURRAY, [1930] 2 Ch. 93; 99 L. J. Ch. 456; 143 L. T. 242; 47 R. P. C. 346, C. A.

2648a. Mutual licence agreement—Covenant not to dispute validity.]—Pltf. & defts., who were respective owners of patents for conveying apparatus, entered into an agreement whereby each was granted a licence to use the invention of the other. The agreement recited the acknowledgment by the parties of the validity of the respective patents of the other, & contained a covenant by defts. not at any time hereafter to dispute the validity of pltf.'s patent. The agreement also contained a clause referring to arbn. any dispute between the parties other than the question of infringement or the recovery of royalties. In an action for royalties under the agreement & damage for infringements committed prior to it defts. pleaded that pltf.'s patent was invalid, & that there was an implied term in the agreement that pltf. should accept the same in satisfaction of all claims in respect of infringements then outstanding. The questions as to whether in view of the covenant in the agreement defts. could put the validity of pltf.'s patent in issue, & whether such a term as pleaded in the defence could be implied, were set down for hearing as preliminary questions of law:—*Held:* in view of the covenant in the agreement defts. were not entitled to dispute the validity of pltf.'s patent, & such a term as pleaded in the defence must be implied in the agreement in order to give business efficacy to the contract.—CAMPBELL *v.* HOPKINS (G.) & SONS (CLERKENWELL), LTD. (1931), 49 R. P. C. 38.

2648b. —— Infringement prior to agreement—Implied term precluding denial of validity.]—CAMPBELL *v.* HOPKINS (G.) & SONS (CLERKENWELL), LTD., No. 2648a, *ante*.

2664a. —— Objection of want of conformity between provisional & complete specifications.]—Where deft. in a patent action objects to the validity of pltf.'s patent on the ground that there is a want of conformity between the provisional & complete specifications, it is not sufficient for him to state in his particulars of objection that the invention described in the complete specification is not the same as the invention described in the provisional specification: he must state in what the difference consists.—ANGLO-AMERICAN BRUSH ELECTRIC LIGHT CORPN. *v.* CROMPTON (1886), 34 Ch. D. 152; 56 L. J. Ch. 167; 55 L. T. 722; 35 W. R. 125; 3 T. L. R. 136; (1884-1886), Griffin's Patent Cases 34, C. A.

2668a. Ambiguity.]—Pltfs. commenced an action against defts. for infringement of letters patent. Defts. denied infringement & alleged that the patent was invalid by reason of want of novelty, subject-matter, & utility, & because the specification & claims of the patent were ambiguous. Pltfs. issued a summons asking for particulars of what parts & in what respects defts. alleged the specification was ambiguous:—*Held:* no useful purpose would be served by the particulars, & they might be embarrassing to defts. The application for particulars was refused.—MARCONI'S WIRELESS TELEGRAPH CO., LTD. *v.* CRAMER (J. B.) & CO., LTD. (1932), 49 R. P. C. 400.

2697a. —— ——.]—BIRTWHISTLE *v.* SUMNER ENGINEERING CO., LTD. (1928), 46 R. P. C. 59.

2723a. Defendant relying on manufacture out of United Kingdom.]—In an action for infringement of three patents, defts. revised (*inter alia*) the defence that the patents were liable to the revoked under sects. 25, 27 of Patents & Designs Act, 1907 (c. 29), on the ground that the patented articles & processes were manufactured & carried on exclusively as mainly outside the United Kingdom. Pltfs. obtained an order in chambers directing certain particulars to be given (*inter alia*) of whom & by whom such articles have been manufactured as aforesaid, where & by whom the processes had been carried on, & by whom & from whom the impartial commodity had been obtained. The order was appealed against by way of motion to discharge, but this motion was refused with costs. Defts. gave particulars under the order. These particulars alleged (*inter alia*) manufacture on the continent of Europe by pltfs. as other persons who manufactured for or sold to pltfs. & by named persons, & "by persons who are the manufacturers of the Saccharin referred to" in an official annual statement, the names of such persons & their places of manufacture being unknown to defts. Pltfs. then obtained an order for certain further particulars to be given within fourteen days after service of notice of trial, & defts. moved to discharge this order:—*Held:* the particulars given amounted to a mere general statement that all the Saccharin imported into the United Kingdom was Saccharin manufactured exclusively on the continent, & was manufactured for & sold to pltfs. The motion was dismissed & the costs to be pltfs.' in any event.—SACCHARIN CORPN. *v.* NATIONAL SACCHARIN CO., LTD. (1910), 27 R. P. C. 354, C. A.

2736a. ——.]—LUSTY (W.) & SONS *v.* SCOTT (G. W.) & SONS, LTD. (1931), 48 R. P. C. 475.

2761. *Add. Annotation:—Generally*, Refd. Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.

2781a. -.]—BRITISH THOMSON-HOUSTON CO., LTD. *v.* HENRY (P.) & CO., LTD. (1928), 45 R. P. C. 218, C. A.

2819a. **Plaintiffs' contract unreasonable & oppressive.**]—Pltfs. were the registered legal owners of letters patent granted in respect of loud speakers, & sold units made in accordance therewith subject to the limited licence that they were not to be resold at a price less than 25*s.* Deft. sold such a unit for 17*s.* 6*d.* Pltfs. demanded that deft. should sign an undertaking not to sell pltfs.' loud speaker units below the authorised price, to pay pltfs.' costs & to pay for the publication of a full page apology in two trade papers, of which the cost would be £29 15*s.* Defts. signed the undertaking & paid the sum demanded by pltfs. in respect of their costs, but refused to pay the costs of advertising the apology, & stated that, if proceedings were commenced against them, they would submit to a consent order. Pltfs. thereon moved for an interlocutory injunction :—*Held :* pltfs.' demands were unreasonable & oppressive, & defts. were not threatening or intending to continue to sell pltfs.' loud speaker units below the authorised price. The motion was dismissed, the costs to be deft.'s costs in any event. Pltfs. subsequently obtained judgment with costs upon motion for judgment in default of defence.—BRITISH BLUE SPOT CO., LTD. *v.* KEENE (1931), 48 R. P. C. 375.

2848a. -.]—MARSHALL & THE LACE WEB SPRING CO., LTD. *v.* THE CROWN BEDDING CO., LTD. (1929), 46 R. P. C. 267.

2873. After this case add :—

——.]—*See* R. S. C., Ord. 53A, r. 21A, & No. 2944a, *post.*

2906. *Add. Annotation :*—**Refd.** Jonesco *v.* Beard, [1930] A. C. 298.

2944. *Add. Annotation :—Generally,* **Refd.** Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.

After this case add :—

Application for directions.]—*See* R. S. C., Ord. 53A, r. 21A.

2944a. —— **Order for inspection.**]—Letters patent were granted in 1918 in respect of " improvements in axles for motor-driven road vehicles." Pltfs. commenced an action for infringement of the patent & defts. denied infringement & alleged that the patent was invalid. Pltfs. issued a summons under R. S. C., Ord. 53A, r. 21A, for further directions & that they might have inspection of defts.' process, & asked that the time for setting down the action for trial should not run until after the date of inspection, in order that costs of preparing for trial should not be incurred unnecessarily. Defts. were willing to give inspection & also to undertake not to do anything to increase the costs of the action until three weeks after the date of the inspection :—*Held :* an order for inspection be made to take place before the expert witnesses of both sides at a date to be mutually agreed & upon defts. giving an undertaking as above, the action should be set down in the usual way within six weeks of the close of pleadings.—BUTLER *v.* ENGLISH STEEL CORPN., LTD. (1931), 48 R. P. C. 551.

2944b. **Whether order for particulars of prior common general knowledge granted.**]—SOLAFLEX SIGNS AMALGAMATED, LTD. *v.* ALLAN MANUFACTURING CO., LTD. (1931), 48 R. P. C. 577.

2944c. -.]—In 1924, letters patent were granted to M. in respect of " improvements in or relating to electrically operated indicating apparatus for vehicles." In 1931, M. commenced an action for infringement of the patent against S. & B. S. denied infringement & B. denied infringement & alleged that the patent was invalid for want of novelty by reason of prior publication & prior common general knowledge, & for want of subject-matter & utility. S. issued a summons for an order that the issue of infringement might be tried before the issue of validity. M. issued a summons for an order that B. should (*inter alia*) give particulars of the matters referred to in the patent which he alleged were prior common general knowledge :—*Held :* upon S. undertaking to be bound by the decision against B., all further proceedings should be stayed against S. until after the action against B. was determined. The order that B. should give particulars of prior common general knowledge was refused.—MCCREATH *v.* SOUTH SHIELDS & BAKER CORPN. (1932), 49 R. P. C. 349.

2944d. **Jurisdiction in regard to summons.**]—It has been decided that, though the master has jurisdiction to deal with a summons under R. S. C., Ord. 53A, r. 21A, for the present it must be adjourned to the Judge in Chambers, who, if he is of opinion that the matter is of sufficient importance, may adjourn it into ct.—PRACTICE NOTE, [1932] W. N. 22 ; 173 L. T. Jo. 76.

2944e. -.]—*Held :* (1) extra time might be allowed for deposit in view of exchange difficulties, but that the action must be set down at once ; (2) under the above rule that interrogatories should normally be dealt with by the master. The form of order concerning experiments & models was settled. —JUNKERS *v.* FORD MOTOR CO., LTD., & COOPER (1932), 49 R. P. C. 347.

2944f. —— **Failure to apply—Dismissal for want of prosecution.**]—*Held :* eight months was undue delay, the ct. had an inherent jurisdiction in this matter apart from the rules, & defts. were entitled to make an application to dismiss the action in lieu of giving notice under the rule. It was ordered that, unless pltfs. proceeded under the rule before a certain date, the action should be dismissed. —BAIRD TELEVISION, LTD. *v.* GRAMOPHONE CO., LTD. (1932), 49 R. P. C. 227.

2963. *Add. Annotation :*—**Refd.** Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.

2967. *Add. Annotation :*—**Refd.** *Re* Chemische Fabrik auf Actien (Vorm E. Schering) Patent (1928), 45 R. P. C. 403.

2976. *Add. Annotation :*—**Consd.** Fuel Economy Co. *v.* Murray, [1930] 2 Ch. 93.

After this case add :—

.]—*Compare* FUEL ECONOMY CO. *v.* MURRAY, No. 2641a, *ante.*

2996a. Motion for leave for further cross-examination.]—Letters patent were granted in 1919 in respect of "improvements in methods of & apparatus for feeding molten glass." Claim 1 was as follows: "Method of feeding molten glass wherein successive masses or gathers are suspended beneath an outlet & mold charges are separated therefrom while suspended, whilst the shape of the masses or gathers is controlled by variation of the movement of a movable controlling member adapted to act as a piston in the outlet, or by the means for separating the mold charges, or by the variation of the location of the controlling member or of the said separating means relatively to the outlet." Pltfs. commenced an action for infringement. Defts. denied infringement & counterclaimed for the revocation of the patent on the grounds that it lacked novelty, subject-matter, & utility, & that the specification was ambiguous & insufficient. It was held that the patent was invalid on the grounds that it had been anticipated & lacked subject-matter in that it merely used an old method for controlling the weight of gathers for the new purpose of controlling their shape; but defences of prior grant, inutility, & insufficiency failed; & that, if the patent had been valid, defts. would have infringed it. The action was dismissed & an order for revocation of the patent was made, the order to lie in the office for one month &, if the pltfs. appealed & prosecuted the appeal with due diligence, until after the appeal. Pltfs. were ordered to pay the costs of the action & counterclaim, a certificate for certain of the particulars of objections being granted. Pltfs. appealed to the Ct. of Appeal & moved for an order that the expert witness called on behalf of defts. at the trial might be called before the Ct. of Appeal for further cross-examination, or alternatively that the witness' evidence given in another case might be read as part of the evidence in the case:—*Held:* the patent was invalid on the grounds that it had been anticipated & lacked subject-matter, & for ambiguity & uncertainty. The appeal was dismissed with costs & a stay of the order for revocation pending an appeal to the House of Lords was refused. The motion for leave to further cross-examine defts.' expert witness was dismissed with costs.—BRITISH HARTFORD-FAIRMONT SYNDICATE, LTD. *v.* JACKSON BROS. (KNOTTINGLEY), LTD. (1932), 49 R. P. C. 495, C. A.

2997a. Declaration that plaintiff true & first inventor.]—KILLEN *v.* MACMILLAN, No. 2570a, *ante*.

2997b. Patents & Designs Act, 1907 (c. 29), s. 32A—Application of.]—SUBMARINE SIGNAL CO. *v.* HUGHES (HENRY) & SON, LTD. (1931), 49 R. P. C. 149.

3081a. —— To date of amendment of specification.]—BRITISH UNITED SHOE MACHINERY CO., LTD. *v.* GIMSON SHOE MACHINERY CO., LTD. (No. 2) (1928), 46 R. P. C. 137.

3081b. On proof of valid claim—Validity of other claims not proved.]—BENJAMIN ELECTRIC, LTD. *v.* GARNET, WHITELEY & CO. (1930), 47 R. P. C. 44; 169 L. T. Jo. 7; [1929] W. N. 293.

3093. *Add. Annotation:*—**Consd.** Mellor *v.* Beardmore (1927), 44 R. P. C. 175.

3108a. Refusal to grant certificate that validity in question—Whether appeal lies to Court of Appeal.]—No appeal lies to the Ct. of Appeal under Jud. Act, 1873 (c. 66), s. 19, against the decision of a ct. or a judge in an action for infringement of a patent granting a certificate under Patents, Designs & Trade Marks Act, 1883 (c. 57), s. 31, that the validity of the patent came in question.—HASLAM FOUNDRY & ENGINEERING CO., LTD. *v.* HALL (1888), 20 Q. B. D. 491; 57 L. J. Q. B. 352; 59 L. T. 102; 36 W. R. 407; 4 T. L. R. 350; 5 R. P. C. 144, C. A.

Annotation:—**Refd.** Acetylene Illuminating Co. *v.* United Alkali Co., [1902] 1 Ch. 494.

3120a. —— ——.]—In an action for infringement, the ct. held defts. had not infringed, & the action was dismissed with costs. A certificate, that the validity of the patent had come into question, was granted.—TECALEMIT, LTD. *v.* WAKEFIELD (C. C.) & CO., LTD. (1927), 44 R. P. C. 471.

3120b. —— ——.]—In an action for infringement, the ct. held defts. had not infringed, & the action failed. A certificate of particulars of objections was granted to defts., & a certificate of validity to pltfs.—TECALEMIT, LTD. *v.* EWARTS, LTD. (1927), 44 R. P. C. 488.

3130a. -.]—DESCOMBES & ARONDEL *v.* LESTOR & PARTON (1931), 48 R. P. C. 473.

3137a. —— ——.]—ENTICKNAP E. G. & ENTICKNAP CONCRETE MACHINES, LTD. *v.* HUMBYS, LTD. (1929), 46 R. P. C. 351.

3150. *Add. Annotation:*—**Refd.** Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.

3151a. ——.]— BRITISH HARTFORD-FAIRMONT SYNDICATE, LTD. *v.* JACKSON BROS. (KNOTTINGLEY), LTD., No. 2996a, *ante*.

3152a. —— Sale of patented articles below price fixed by licence—Plaintiff awarded costs.]—COLUMBIA PHONOGRAPH CO., GENERAL *v.* REGENT FITTINGS CO. (1913), 30 R. P. C. 484.

3161a. Defendant successful—General costs of action—Except as to allegations dropped at trial.]—WILDEY & WHITE'S MANUFACTURING CO., LTD. *v.* FREEMAN (H.) & LETRIK, LTD., No. 459d, *ante*.

3165a. -LISTER BROS. *v.* MEDLEY & CO., No. 2358a, *ante*.

3165b. —— ——.]—*Held:* both patents were valid, but since on the construction argued by pltfs. the patents would have been invalid, the action was dismissed with costs except so far as those costs had been increased by the defence of invalidity & the counterclaim was dismissed without costs.—HOLLANDSCHE

PART XIV. SECT. 2, SUB-SECT. 9.—C.

2986 ii. —— —— ——.]—DAVIS LOG & RAFT PATENTS CO. *v.* GATHELS (B. C.), [1927] 4 D. L. R. 95; [1927] 2 W. W. R. 753.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 9.—D.

sb. *Evidence discoverable at time of trial.*]—*Held:* the evidence which it was sought to adduce having been discoverable for the hearing before the Supreme Ct., & no special grounds having been advanced for the granting of the application, the motion should be dismissed, notwithstanding any injury which applt. might suffer from the evidence not having been adduced at the hearing.—KNAPP *v.* FARMERS' MILKING MACHINE CO., LTD., [1928] N. Z. L. R. 308.—**N.Z.**

PART XIV. SECT. 2, SUB-SECT. 10.—D. (a).

sc. *Expiration of patent.*]—An action for damages for infringement of a patent will lie, although the patent has expired.—JENYNS *v.* JENYNS, [1927] S. R. Q. 313.—**AUS.**

(N. V.) GLAS EN METAALBANK *v.* ROCKWARE GLASS SYNDICATE, LTD. (1932), 49 R. P. C. 288.

3174. *Add. Annotations :*—**Refd.** British Thomson-Houston Co. *v.* Metropolitan-Vickers Electrical Co. (1928), 45 R. P. C. 1; Pope Appliance Corpn. *v.* Spanish River Pulp & Paper Mills, [1929] A. C. 269.

3177. *Add. Annotation :—Generally*, **Refd.** Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.

3185. *Add. Annotation :*—**Refd.** Mellor *v.* Beardmore (1927), 44 R. P. C. 175.

3200. *Add. Annotation :*—**Refd.** White *v.* Todd Oil Burners (1929), 46 R. P. C. 275.

3207a. ——.]—Letters patent were granted in 1930 in respect of "improvements in electric switches, of the push & pull type." Claim 1 was as follows: "An electric switch, of the type referred to comprising a base, a sliding actuating rod or stem passing through the base, fixed contacts on the base, a transversely disposed contact bar or bridge extending from opposite sides of the said rod or stem so as to engage & connect the said fixed contact contacts by an outward pull of the rod or stem, & laterally spaced outstanding guard parts or walls on the base between which the contact bar or bridge moves throughout its range of travel & which thus prevent turning or rotating of the actuating rod or stem in both the 'on' & 'off' positions of the switch." Pltfs. commenced an action for infringement of the patent. Defts. denied infringement & alleged that the patent was invalid by reason of want of novelty, subject-matter, & utility :—*Held :* in the alleged infringement the contact bar or bridge did not move throughout its range of travel between the outstanding guard parts or walls, & consequently defts. had not infringed the patent; & under the circumstances it was unnecessary to consider or express any opinion upon the validity of the claims of the patent. The action was dismissed with costs, &, after argument, a certificate was granted that the particulars of objections were reasonable.—BUSBY & CO., LTD., & TWINE *v.* TELSEN ELECTRIC CO., LTD. (1932), 49 R. P. C. 587.

3212a. —— **Plaintiff failing on issue of infringement.**]—TECALEMIT, LTD. *v.* EWARTS, LTD., No. 3120b, *ante*.

3283. *Add. Annotations :*—**Refd.** Mellor *v.* Beardmore (1927), 44 R. P. C. 175; Sharp & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153; *Re* Simon-Carves & Robinson's Patent (1928), 45 R. P. C. 407.

3292a. Extension of time for—Grounds for—Exchange difficulties.]—JUNKERS *v.* FORD MOTOR CO., LTD., & COOPER (1932), 49 R. P. C. 347.

3301. *Add. Annotation :*—**Folld.** Société Anonyme Servo-Frein Dewandre *v.* Citroen Cars, Ltd. (1929), 47 R. P. C. 221.

3301a. —— —— ——.]—An application on behalf of the resps. for an order that the expenses of the attendance of two experts during the hearing of the appeal should be allowed on taxation refused.—SODIÉTÉ ANONYME SERVO-FREIN DEWANDRE *v.* CITROEN CARS, LTD. (1929), 47 R. P. C. 221, C. A.

Part XV.—Legal Proceedings.

3312a. Stay of proceedings—Pending determination of action between other parties.]—MULTIPLE UTILITIES CO., LTD. *v.* SOUCH (1929), 46 R. P. C. 402, C. A.

3314a. Action for declaration that plaintiff first & true inventor—Whether Attorney-General necessary party—Effect of admission by defendant.]—Pltf., who was the grantee of four letters patent, commenced an action against deft., alleging that deft. had falsely represented to be co-inventor & entitled to an interest in the patents, & claiming a declaration that pltf. was the sole first & true inventor & an injunction to restrain deft. from representing that he had any interest in the patents. Deft. denied that pltf. was the sole first or true inventor. At the trial pltf. withdrew his claim to an injunction, & deft. admitted that pltf. was the sole first and true inventor :—*Held :* although it was doubtful whether a declaration could be made that a certain person was a first & true inventor in the absence of the A.-G., upon deft.'s admission at the trial pltf. was to be treated as the successful party so far as the claim was for a declaration. An order was made that, upon deft. admitting that pltf. was the sole first & true inventor, deft. should pay the costs of the action, except so far as they had been increased by the claim for an injunction, & that pltf. should pay deft.'s costs of the action so far as they had been increased by the claim for an injunction, with a set-off.—KILLEN *v.* MACMILLAN (1932), 49 R. P. C. 258.

3314b. —— **Costs.**]—KILLEN *v.* MACMILLAN, No. 3314a, *ante*.

3317a. -.]—(1) The amendment of Patents & Designs Act, 1907 (c. 29), s. 36, by Patents & Designs Act, 1919 (c. 80), was not intended to abrogate the rule which had prevailed ever since *Challender* v. *Royle*, No. 2273, was decided, that a pltf. in a threats action might, if he so desired, raise the question of the validity of the patent. The obvious reason for the amendment was to widen the scope of the section so as to enable a threats action to be brought not merely against the patentee, but against any person claiming to have an interest in the patent. The alterations in the subsequent part of the section were consequential upon the main alteration & were not intended to, & did not in fact, abrogate the rule which was laid down in *Challender* v. *Royle*, No. 2273.

(2) I do not understand how a patent that is invalid can be infringed. The truth of the matter is, that when one talks of the infringement of a patent one does not mean an infringement of the document, but the letters patent itself. You cannot infringe a document. One means infringement of the monopoly rights conferred by the letters patent

(ROMER, L.J.).—PITTEVIL & CO. *v.* BRACKELSBERG MELTING PROCESSES, LTD., [1932] 1 Ch. 189; 101 L. J. Ch. 8; 146 L. T. 53; 75 Sol. Jo. 797; 49 R. P. C. 23, C. A.

3322a. .]—An English co., having brought an action against a German co. to restrain threats in respect of certain letters patent, applied for & obtained leave to serve notice in lieu of service of the writ out of the jurisdiction upon defts. Defts., having entered a conditional appearance, applied by motion to discharge the order giving such leave on the ground that the evidence on that application did not fully & fairly disclose the facts or the true nature of the action to enable the ct. properly to exercise its discretion, & evidence was filed on that motion:—*Held:* the motion must be dismissed, the ct. not being judicially satisfied that the facts, if proved, would not support the action, & it seeming to the ct. that there was a substantial question between pltfs. & defts. as to whether pltfs. were entitled to have the trial.—BRITISH OXYGEN CO., LTD. *v.* GESELLSCHAFT FÜR INDUSTRIEGASVERWERTUNG M. B. H. (1930), 48 R. P. C. 130.

3326. *Add. Annotation:—Generally,* **Refd.** Farr *v.* Weatherhead & Harding (1932), 49 R. P. C. 262.

3343a. Question of fact—Threat may be implied from words used.]—LUNA ADVERTISING CO., LTD. *v.* BURNHAM & CO. (1928), 45 R. P. C. 258.

3351a. —— In respect of registered design.]—FINKELSTEIN *v.* BILLIG (1930), 47 R. P. C. 516.

3353a. —— ——.]—TIBO PRODUCTS CO., LTD. *v.* SALT (1929), 46 R. P. C. 451.

3413a. -.]—Pltfs., who were the exclusive licencees in this country for the sale of a furnace known as a "Sesci" furnace, in Apr. 1931, brought an action to restrain threats made by defts., who claimed to have a beneficial interest in two patents Nos. 283,381 & 306,141 granted to B. Deft. co.'s legal title to the patents was not completed till Dec. 2, 1931, & the writ issued by them in an action for infringement was not issued until Dec. 3, 1931. Defts. admitted that threats had been made, & at the trial stated that they did not intend to contest the case with regard to the second patent. They submitted to an injunction in terms of the writ as regards that patent. Pltfs. alleged that the first patent was neither valid nor infringed & they relied on prior publication, prior common general knowledge, & lack of utility. Defts. affirmed that the patent was valid & that it had been infringed; & they proposed to rely also on the proviso to sect. 36 of Patents & Designs Acts, 1907–1928:—*Held:* the proviso had no application to the present case, as the action for infringement had not been commenced & prosecuted with due diligence; the patent was valid but that there was no infringement. An injunction was granted & defts. were ordered to pay the costs of the action except in so far as the costs had been increased by the issue of validity of the first patent, & defts. were given the costs as far as related to the validity of that patent with a set-off; & an inquiry as to damages was ordered.—PITTEVIL & CO. *v.* BRACKELSBERG MELTING PROCESSES, LTD. (1931), 49 R. P. C. 73; *affd.* (1932), 49 R. P. C. 327, C. A.

3414a. —— No mala fides or special damage.]—In Apr. 1929, letters patent were granted to W. & H. In Oct. 1930, W. & H. commenced an action against F. for infringement of the patent; F. denied infringement & counterclaimed for revocation of the patent. In Mar. 1931, the patent was revoked by order of the ct. In June, 1931, F. commenced an action against W. & H., alleging that between Aug. & Dec. 1930, W. & H. had falsely & maliciously published statements that machines manufactured by F. were infringements of the patent, whereby he had been injured in his business & lost profits that he otherwise would have made:—*Held:* the statements published by W. & H. amounted to threats & they were not justifiable, but there was no evidence of *mala fides* or of special damage. The action was dismissed with costs.—FARR *v.* WEATHERHEAD & HARDING (1932), 49 R. P. C. 262.

Part XVI.—International and Colonial Arrangements.

3432. *Add. Annotation:—Generally,* **Refd.** Sharpe & Dohme Inc. *v.* Boots Pure Drug Co. (1928), 45 R. P. C. 153.

PART XVI.

3426 1. *To whom patent granted under International Convention—Assignee of foreign inventor.*]—The right of a foreign inventor, who had applied for protection in his own country, to apply under Patents Act, 1903–1909, s. 121, for a patent for his invention in priority to other appcts. is purely personal, & could not have been exercised by his assignees in their own names prior to Patents Act, 1921.—MARCONI'S WIRELESS TELEGRAPH CO., LTD. *v.* DAVID JONES, LTD. (1928), 28 S. R. N. S. W. 355; 45 N. S. W. W. N. 96.—**AUS.**

p. *Revsg.*, [1924] 4 D. L. R. 484.

se. *Application in several countries—Priorities.*]—Under the International Convention, where inventors have filed applications for patents for invention in the United States, & subsequently apply for patents in Canada for the same thing, they are entitled to have the priority of invention determined by the date of the filing of their applications in the United States.—GOODYEAR TIRE & RUBBER CO. *v.* RUBBER SERVICE LABORATORIES CO., [1929] Ex. C. R. 63.—**CAN.**

Part XVII.—Patent Agents.

3434. *Add. Annotations :—As to* (1) **Distd.** Minister of Health *v.* R., *Ex p.* Yaffe, [1931] A. C. 494. *As to* (2) **Refd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485; A.-G. *v.* Premier Line, Ltd. (1931), 48 T. L. R. 104. *Generally,* **Refd.** Tattersall *v.* Sladen, [1928] Ch. 318; A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441.

3442a. —— **Inference from correspondence.**]—THOMPSON *v.* BETTINGER (No. 2) (1928), 46 R. P. C. 189.

3443. *Add. Annotation :*—**Refd.** Maclean *v.* Workers' Union, [1929] 1 Ch. 602.

PART XVII.

sf. Registration of patent agents—Solicitor in Irish Free State.]—O'NEILL *v.* BRADLEY, [1929] I. R. 422.—**IR.**

PAWNS AND PLEDGES.

Part II.—Pawns at Common Law.

7. *Add. Annotation :—As to* (2) **Refd.** Best *v.* Butler & Fitzgibbon, [1932] 2 K. B. 108.

30. *Add. Annotations :*—**Refd.** Albemarle Supply Co. *v.* Hind (1927), 43 T. L. R. 652 ; Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

138. *Add. Annotation :*—**Consd.** Weld *v.* Petre (1928), 97 L. J. Ch. 399.

146. *Add. Annotation :*—**Refd.** Lowther *v.* Harris, [1927] 1 K. B. 393.

168. *Add. Annotation :*—**Consd.** Lake *v.* Simmons, [1927] A. C. 487.

171. *Add. Annotation :*—**Refd.** Lowther *v.* Harris, [1927] 1 K. B. 393.

173a. **Revesting of property in stolen goods—Sale of Goods Act, 1893 (c. 71), s. 24—Who may sue—Owner from whom goods actually stolen.**]—Pltfs. were wholesale dealers. They had as clients the S. S. Co., who introduced a customer, a Captain Le M. Captain Le M. was accompanied by a friend, M. Captain Le M. purchased a ring, which he was allowed to take away, & which was immediately pawned by M. with defts. A few days later M., purporting to act on behalf of Captain Le M., took away a diamond bracelet, which he disposed of in the same way to defts. Both the ring & bracelet were invoiced to the S. S. Co. M. was convicted & sentenced for larceny by a trick, but the ct. refused restitution of the property. Pltfs. had been paid the price of the ring by the S. S. Co. as invoiced to them, & now sought to recover the bracelet from defts. :—*Held :* pltfs. had no title in law to maintain the action. A fundamental point fatal to pltfs.' claim was that the words " owner of the goods " in Sale of Goods Act, 1893 (c. 71), s. 24 (1), meant the owner of the goods from whom they were actually stolen, & not some previous owner from whom the title had been derived. In the present case the sale was to the S. S. Co., & the property in the goods had passed to them & from them to Captain Le M., by whose authority it had been pledged.—BULLER & Co., LTD. *v.* BROOKS, T. J., LTD. (1930), 142 L. T. 576 ; 46 T. L. R. 233 ; 74 Sol. Jo. 139 ; 35 Com. Cas. 205.

Part III.—Pawns under Pawnbrokers Acts.

178. *Add. Annotation :*—**Refd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

PART II. SECT. 1, SUB-SECT. 2.—A. e i. ——.]—In the case of the pledge of an instrument creating or evidencing a right the thing pledged must be taken to be both the instrument & the right, not the bare instrument without the right nor the mere right without the instrument.—ROYAL BK. OF CANADA *v.* TALBOT, [1928] 3 D. L. R. 157 ; [1929] 2 W. W. R. 190 ; 34 Alta. L. R. 395.—**CAN.**

PEERAGES AND DIGNITIES.

Part I.—Peerage.

68. *Add. Annotation :*—**Refd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

69. *Add. Annotation :*—**Refd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

89a. —— -.]—Deft. having voted at the election of Scotch peers :—*Held :* as a Scotch peer, entitled to be discharged from arrest, although his vote had been protested against, his claim to the title disputed, & never recognised by the House of Lords or at ct.—DIGBY *v.* STIRLING (LORD) (1831), 8 Bing. 55 ; 1 Dowl. 248 ; 1 Moo. & S. 116 ; 131 E. R. 321 ; *sub nom.* DIGBY *v.* ALEXANDER, 1 L. J. C. P. 42.

Annotation :—**Refd.** Smart *v.* Johnstone (1837), Murp. & H. 351.

PERPETUITIES.

Part I.—The Rule Against Perpetuities.

2. *Add. Annotation :*—**Refd.** *Re* Villar, Public Trustee *v.* Villar, [1928] Ch. 471.

19a. ——.]—CLEMENTI *v.* FIELDING (1848), 12 L. T. O. S. 309.

29. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* Bone (1927), 13 Tax Cas. 20.

53. *Add. Citation :—sub nom.* ALFORD'S CASE, O. Bridg. 584, L. C.

Add. Annotations :—**Refd.** Howard *v.* Norfolk (Duke) (1681), 3 Cas. in Ch. 14 ; Goodtitle d. Gurnall *v.* Wood (1740), Willes, 211 ; Thellusson *v.* Woodford (1798), 4 Ves. 227.

54. *Add. Annotation :*—**Refd.** *Re* Villar, Public Trustee *v.* Villar, [1928] Ch. 471.

56. *Add. Annotation :—As to* (2) **Refd.** *Re* Villar, Public Trustee *v.* Villar, [1928] Ch. 471.

58. *Add. Citations :—subsequent proceedings* (1788), 2 Term Rep. 241 ; 2 Bro. C. C. 344, L. C.
Add. Annotation :—**Refd.** *Re* Villar, Public Trustee *v.* Villar, [1928] Ch. 471.

64. *Add. Annotation :*—**Refd.** *Re* Lanyon, Lanyon *v.* Lanyon, [1927] 2 Ch. 264.

66. *Add. Annotation :*—**Apprvd.** *Re* Villar, Public Trustee *v.* Villar, [1929] 1 Ch. 243.

66a. **Survivor of Queen Victoria's descendants living.**]—By his will dated June 14, 1921, & confirmed by a codicil of Feb. 2, 1926, testator, who died on Sept. 6, 1926, gave his property to his trustees upon certain trusts as to income & capital for his participating issue as therein defined, using a well known common form so as to tie it up in such a way that the capital was not to vest until the expiration of "the period ending at the expiration of twenty years from the day of the death of the last survivor of all the lineal descendants of Her Late Majesty Queen Victoria who shall be living at the time of my death" :—*Held :* though the existing lives selected were very numerous & it would be extremely difficult & expensive in the future to ascertain the date of the survivor's death, it could not be said to be so impracticable or beyond the scope of the ordinary legal testimony probably then available as to avoid the trust *ab initio* for uncertainty or perpetuity, & the trust was valid.—*Re* VILLAR, PUBLIC TRUSTEE *v.* VILLAR, [1929] 1 Ch. 243 ; 98 L. J. Ch. 223 ; 140 L. T. 90 ; 45 T. L. R. 13; 72 Sol. Jo. 761, C. A.

67. *Add. Annotations :—As to* (4) **Apld.** *Re* Villar, Public Trustee *v.* Villar, [1928] Ch. 471. *Generally*, **Refd.** *Re* Villar, Public Trustee *v.* Villar (1928), 45 T. L. R. 13.

70. *Add. Annotation :—As to* (1) **Consd.** Athey *v.* Pickerings (1926), 96 L. J. K. B. 250.

138. *Add. Annotation :*—**Refd.** *Re* Cockerill, Mackaness *v.* Percival, [1929] 2 Ch. 131.

166a. ——.]—OAKES *v.* CHALFONT (1674), Poll. 38 ; 86 E. R. 504 ; *sub nom.* CHALFONT *v.* OAKES, 1 Cas. in Ch. 239.

Annotation :—**Refd.** Smith *v.* Clever (1688), 2 Vern. 59.

175. *Add. Annotation :*—**Refd.** *Re* Villar, Public Trustee *v.* Villar, [1929] 1 Ch. 243.

181. *Add. Annotation :*—**Refd.** *Re* Villar, Public Trustee *v.* Villar, [1929] 1 Ch. 243.

277. *Add. Annotation :*—**Refd.** *Re* Gwyon, Public Trustee *v.* A.-G. (1929), 46 T. L. R. 96.

289. *Add. Annotation :*—**Refd.** *Re* Prevost, Lloyds Bank, Ltd. *v.* Barclays Bank, Ltd., [1930] 2 Ch. 383.

293. *Add. Annotation :*—**Refd.** *Re* Chardon, Johnston *v.* Davies, [1928] Ch. 464.

295. *Add. Annotation :*—**Refd.** I. R. Comrs. *v.* Bone (1927), 13 Tax Cas. 20.

346. *Add. Annotations :—As to* (1) **Consd.** *Re* Payne, Taylor *v.* Payne, [1927] 2 Ch. 1. **Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197 ; *Re* Marshall, Graham *v.* Marshall, [1928] Ch. 661.

372. *Add. Annotation :—As to* (1) **Refd.** *Re* Lanyon, Lanyon *v.* Lanyon, [1927] 2 Ch. 264.

397. *Add. Annotations :*—**Apld.** *Re* Marshall, Graham *v.* Marshall, [1928] Ch. 661. **Refd.** *Re* Monk, Giffen *v.* Wedd, [1927] 2 Ch. 197 ; *Re* Payne, Taylor *v.* Payne, [1927] 2 Ch. 1.

402a. **First person becoming adult tenant in tail in possession.**]—Testator gave his real & personal estate to trustees as to the personal

PART I. SECT. 2, SUB-SECT. 3.—B

191 i. *Discretionary trust—For maintenance.*]—*Re* ANTROBUS, HENDERSON *v.* SHAW & MORTON, [1928] N. Z. L. R. 364.—**N.Z.**

PART I. SECT. 2, SUB-SECT. 4.—A.

197 i. *Contract giving equitable interest—Land.*]—Where an agreement for the sale to a co. of the oil & gas rights under a parcel of land in consideration of a certain number of shares in the co. provided that, if the co. should cease to do business for a specified period, said rights should revert to the vendor, & the shares were allotted & the co. failed to go ahead for said period, the reverting of said rights to the vendor was held not to be subject to her returning the shares to the co. Plff. co., which had purchased the assets of the co. above referred to & was the assignee of its interests under said agreement sued the vendor for specific performance & contended that the condition that if the co. failed to go ahead the oil rights should revert to the vendor was void under the rule against perpetuities as applied in *London & S. W. Ry. Co.* v. *Gomm*, No. 197 :—*Held :* the rule did not apply under the circumstances.—NEW FEDERAL OILS, LTD. *v.* ROWLAND, [1929] 1 D. L. R. 472 ; 1 W. W. R. 263 ; 24 Alta. L. R. 19.—**CAN.**

PART I. SECT. 2, SUB-SECT. 4.—D.

206 ii. —— ——.]—KALACHAND MUKHERJI *v.* JATINDRA MOHAN BANERJI (1928), I. L. R. 56 Calc. 487.—**IND.**

PART I. SECT. 3, SUB-SECT. 1.

290 i. *General rule—No remoteness after vesting.*]—*Re* CRICHTON ESTATE (1913), 25 W. L. R. 18 ; 4 W. W. R. 1188 ; 13 D. L. R. 169 ; 23 Man. L. R. 594.—**CAN.**

PART I. SECT. 3, SUB-SECT. 5.—A.

342 vi. —— —— *Application to Hindus.*]—*Held :* the principle in *Leake* v. *Robinson* applies to Hindus.—SEWDAYAL RAMJEEDAS *v.* OFFICIAL TRUSTEE OF BENGAL (1930), I. L. R. 58 Calc. 768.—**IND.**

estate upon trusts for conversion & investment & upon trust to pay the income thereof to the person, if any, who under the trusts or limitations thereinafter contained should for the time being be tenant for life of or otherwise entitled to the possession or receipt of the rents & profits of his real estate until such real estate should become vested in some person who should become adult tenant in tail thereof in possession, & from & after the happening of such last-mentioned event then as to both capital & income upon trust for such last-mentioned person absolutely; & as to his real estate upon trust for his brother during his life, & from & after his death upon trust for the first & every other son of his said brother successively in remainder one after another according to their respective seniorities in tail general:—*Held:* the trust of the personal estate in favour of the person who should become adult tenant in tail in possession could not be construed as applying to a tenant in tail by purchase only, & was therefore void for remoteness.—*Re* ATKINSON, ATKINSON *v.* ATKINSON, [1916] 1 Ch. 91; 85 L. J. Ch. 159; 114 L. T. 44; 60 Sol. Jo. 190.

408a. Interest in personalty analagous to determinable fee—Gift to cemetery so long as graves maintained.]— Testator gave £200 to his trustees on trust to invest it, & to pay the income thereof to a cemetery co. "during such period as they shall continue to maintain & keep" two specified graves "in the cemetery in good order & condition with flowers & plants thereon, as same have hitherto been kept by me," & he declared that, if the graves should not be kept in such order & condition, his trustees should pay & apply the income in manner therein mentioned:—*Held:* the gift did not infringe the rule against perpetuities.—*Re* CHARDON, JOHNSTON *v.* DAVIES, [1928] Ch. 464; 97 L. J. Ch. 289; 139 L. T. 261.

428. *Add. Annotation:*—**Refd.** A.-G. *v.* Farrell (1930), 99 L. J. K. B. 605.

453. *Add. Annotation:*—**Refd.** *Re* Villar, Public Trustee *v.* Villar, [1928] Ch. 471.

466. *Add. Annotation:*—**Expld.** *Re* Silva, Silva *v.* Silva, [1929] 2 Ch. 198.

545. *Add. Annotation:*—**Consd.** *Re* Payne, Taylor *v.* Payne, [1927] 2 Ch. 1.

Part II.—The Rule Prohibiting Limitations to Issue of Unborn Persons.

576. *Add. Annotation:*—**Refd.** *Re* Villar, Public Trustee *v.* Villar, [1928] Ch. 471.

Part III.—Restriction of Accumulation.

610. *Add. Annotation:*—*As to* (3) **Apld.** *Re* Villar, Public Trustee *v.* Villar, [1929] 1 Ch. 243.

646. *Add. Annotation:*—*As to* (1) **Refd.** Athey *v.* Pickerings (1926), 96 L. J. K. B. 250.

652a. —— Commencement during twenty-one years from testator's death.]—Testator, who died in 1893, gave his net residue, subject to certain life annuities which did not exhaust the income, in trust for a bachelor's children who should attain twenty-one with a gift over in default. On Mar. 11, 1896, the surplus income was ordered to be accumulated for twenty-one years from testator's death, *i.e.*, until Nov. 6, 1914, or until the bachelor's previous death without leaving issue. During this twenty-one years' period the bachelor married & died leaving three children, two of whom were still living. Temporary orders for maintenance were made. On Nov. 12, 1914, it was declared that as from Nov. 6, 1914, the two children then living were entitled to maintenance under Conveyancing Act, 1881 (c. 41), s. 43 (1), but that notwithstanding sect. 43 (2) any income not so applied passed as on an intestacy. On July 20, 1927, the elder child attained twenty-one, & her contingent moiety vested in possession. The question having arisen whether, having regard to Law of Property Act, 1925 (c. 20), s. 165, the order of Nov. 12, 1914, ought still to be acted on with regard to the younger child's contingent moiety:—*Held:* (1) the effect of sect. 165 was that the years of minority accumulation, which commenced during the twenty-one years' period, were not to be reckoned in ascertaining that period, & the income of the younger child's contingent

PART I. SECT. 4, SUB-SECT. 5.—B.

466 i. *Power changing nature of interests—Outside limit of rule.*]—DAVIS *v.* SAMUEL (1926), 28 S. R. N. S. W. 1.—**AUS.**

PART III. SECT. 2, SUB-SECT. 1.

612 ii. —— —— ——.]—When a direction to accumulate contained in an *inter vivos* deed comes into operation in the lifetime of the grantor, the only period during which the accumulation can, under above Act, be lawfully continued is the lifetime of the grantor.—UNION BANK OF SCOTLAND, LTD. *v.* CAMPBELL, [1929] S. C. (Ct. of Sess.) 143.—**SCOT.**

a i. —— *Applicable in Scotland—Notwithstanding repeal in England.*]—*Held:* the operation of above Act in Scotland has not been affected by the repeal of that Act by Law of Property Act, 1925 (c. 20), in respect that sect. 209 (3) of the latter Act has expressly limited its application to England & Wales.—SMITH'S TRUSTEES *v.* [1931] S. C. 533.—**SCOT.**

moiety must in the first place be applied for her maintenance under Conveyancing Act, 1881 (c. 41), s. 43 (1), & the balance could be validly accumulated under sect. 43 (2); (2) quite apart from sect. 165, the moment the elder child attained a vested interest as a member of the contingent class, there could be no question of intestacy as to any part of the capital or income.—*Re* MABER, WARD *v.* MABER, [1928] Ch. 88; 97 L. J. Ch. 101; 138 L. T. 318.

679. *Add. Annotation:—As to* (2) **Consd.** *Re* Chartres, Farman *v.* Barrett, [1927] 1 Ch. 466.

721. *Add. Annotation:—***Apld.** *Re* Knapp, Spreckley *v.* A.-G., [1929] 1 Ch. 341.

724. *Add. Annotations:—As to* (1) **Consd.** *Re* O'Hagan, O'Hagan *v.* Lloyds Bank, Ltd., [1932] W. N. 188. **Refd.** *Re* Tong, Hilton *v.* Bradbury, [1920] 2 Ch. 400.

725. *Add. Annotation:—As to* (1) **Refd.** *Re* Tong, Hilton *v.* Bradbury. [1930] 2 Ch. 400.

726a. ——.]—Where certain funds were settled upon trust to accumulate the surplus income until the death or remarriage of the settlor's wife, it was held that the accumulations made after the death of the settlor were invalid, & there was a resulting of them to his estate. The right to receive the surplus income was in the nature of a terminable annuity, & until sold by the exors. the surplus income as it accrued ought to be applied as income of the estate of the settlor.—*Re* O'HAGAN, O'HAGAN *v.* LLOYDS BANK, LTD., [1932] W. N. 188; 174 L. T. Jo. 122; 74 L. Jo. 196.

PERSONAL PROPERTY.

Part I.—Definitions and Enumeration.

9. *Add. Annotation :*—**Refd.** *Re* Mason (1928), 97 L. J. Ch. 321.

Part III.—Ownership.

78. *Add. Annotation :—As to* (1) **Refd.** Ellis *v.* Stenning & Son, Ltd. (1932), 76 Sol. Jo. 232.

94. For "—Mutual wills by husband & wife—Agreement not to revoke" read "—— Mutual wills—By husband & wife—Agreement not to revoke."

94a. —— ——.]—Leasehold property was given to two sisters as joint tenants, & they mutually agreed to bequeath it in trust for each other for life, & for their nieces after the death of the survivor :—*Held :* the agreement between the sisters, carried out by the making of mutual wills, severed the joint tenancy.—*Re* WILFORD'S ESTATE, TAYLOR *v.* TAYLOR (1879), 11 Ch. D. 267 ; 48 L. J. Ch. 243 ; 27 W. R. 455.

Annotation :—**Refd.** *In the Estate of* Heys, Walker *v.* Gaskill, [1914] P. 192.

Part IV.—Alienation.

114. *Add. Annotation :*—**Refd.** Republica de Guatemala *v.* Nunez, [1927] 1 K. B. 669.

121a. Contract for exchange by infant—Void.]—A contract for the exchange of chattels entered into by an infant is a contract for goods supplied, &, if not for necessaries, is absolutely void under Infants Relief Act, 1874 (c. 62), s. 1.—PEARCE *v.* BRAIN, [1929] 2 K. B. 310 ; 98 L. J. K. B. 559 ; 141 L. T. 264 ; 45 T. L. R. 501 ; 73 Sol. Jo. 402 ; 93 J. P. Jo. 380, D. C.

PART III. SECT. 3.

74 ii. —— —— *Extent of right.*]—The cts. cannot suffer a man to take for himself that which he cannot obtain by way of an action. The right of recaption does not exist unless there is a right to the possession of the property, & a right to possession means, for this purpose, one that is specifically enforceable by judicial proceedings. If, therefore, the claimant cannot by way of judicial proceedings obtain specific restitution of the property, he cannot recover it by recaption either. Even when the retention of another's property is unjustifiable, the owner is not entitled to seriously injure the wrongdoer in attempting to recover it.—PHILLIPS *v.* MURRAY (Sask.), [1929] 3 D. L. R. 770 ; 2 W. W. R. 314.—**CAN.**

PART III. SECT. 4, SUB-SECT. 1.—B.

r 1. —— *Murder of one joint tenant by the other—Whether right of survivorship operates.*]—*Re* BARROWCLIFF, ELDER'S TRUSTEE & EXECUTOR CO., LTD. *v.* KENNY, [1927] S. A. S. R. 147. —**AUS.**

PART III. SECT. 4, SUB-SECT. 2.

sd. *How arising—Joint purchase of shares.*]—*Held :* even if the shares were purchased out of money contributed in equal amounts, & though transferred into the joint names of the purchasers, the shares were held by them in equity as tenants in common.—O'CONNELL *v.* HARRISON, [1927] I. R. 330.—**IR.**

PART IV. SECT. 2, SUB-SECT. 1.—A. (a) ii.

s. *Dependent on nature of property.*]—There is no such thing as "actual" or "symbolical" delivery of possession irrespective of the nature of the property to be delivered. The difference is due to the nature of the property & not on account of the difference in the nature of possession.—RAM PRASAD OJHA *v.* BAKSHI BINDESHWARI PRASAD SINHA (1932), I. L. R. 11 Pat. 165.—**IND.**

PART IV. SECT. 2, SUB-SECT. 1.—A. (c).

st. *Exchange of cars—Action for breach of contract.*]—SWEENEY *v.* STARRAT, [1931] 2 D. L. R. 473 ; 2 M. P. R. 544.—**CAN.**

PLEADING.

Part VII.—Amendment of Pleadings.

886. *Add. Citations :*—101 L. J. K. B. 245 ; 146 L. T. 336, C. A.

1067a. —— ——.]—*Held :* any amendment of their pleadings to enable pltfs. to raise a case of mutual mistake implying good faith on the part of defts. could not without injustice to them be allowed after an action based exclusively on fraud had failed, & that accordingly the issue was not open to pltfs. in this House.—BELL *v.* LEVER BROS., LTD., [1932] A. C. 161 ; 101 L. J. K. B. 129 ; 146 L. T. 258 ; 48 T. L. R. 133 ; 76 Sol. Jo. 50 ; 37 Com. Cas. 98 ; H. L. ; *revsg. sub nom.* LEVER BROS., LTD. *v.* BELL, [1931] 1 K. B. 557, C. A.

1095a. Amendment causing injustice.]—BELL *v.* LEVER BROS., LTD., No. 1067a, *ante.*

POLICE.

Part II.—Police Forces.

Add. Citation :—1 B. R. A. 500.

24. *Add. Annotation :*—**Expld. & Distd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

75. *Add. Annotation :*—**Consd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

76. *Add. Annotation :*—**Distd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

Part IV.—Duties, Powers, and Privileges of Constables.

82. *Add. Annotations :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375. **Refd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

92. *Add. Annotation :*—**Refd.** Vanderpant *v.* Mayfair Hotel Co. (1929), 27 L. G. R. 752.

Part V.—Legal Proceedings by and against Police.

97. *Add. Annotation :*—**Consd.** Sheffield Corpn. *v.* Kitson, [1929] 2 K. B. 322.

100. *Add. Annotation :*—**Refd.** R. *v.* Ely JJ., *Ex p.* Mann (1928), 45 T. L. R. 92.

SECT. 2.—**PROCEEDINGS AGAINST POLICE** (Vol. XXXVII., p. 189).

Civil proceedings—Acceptance of bribes.]—*See* AGENCY, No. 1608b.

Part VII.—Superannuation and Other Allowances.

136. *Add Annotation :*—**Apld.** Piper *v.* St. Marylebone Licensing JJ., [1928] 2 K. B. 221

142. After this case add :—

Effect of bankruptcy.]—*See* BANKRUPTCY, No. 6296a.

Compensation for loss of office.]—*See* PUBLIC AUTHORITIES, No. 1048a.

PART I.

a i. —— *Power of Commissioner of Police.*]—POWER *v.* R., [1929] N. Z. L. R. 267.—**N.Z.**

b i. —— *What amounts to "hearing" by Police Commission.*]—TAYLOR *v.* RITCHIE, [1932] 4 D. L. R. 418.—**CAN.**

sa. *Policeman—Meaning of—Railway Act (Dom.), s.* 351.]—R. *v.* CANADIAN PACIFIC RY. CO. & CANADIAN NATIONAL RY., [1928] 2 D. L. R. 386; [1928] 1 W. W. R. 785; 34 C. R. C. 292; 23 Alta. L. R. 401.—**CAN.**

PART VII.

132 i. *Computation of pension—Based on annual pay—What included therein—Allowance for special duties.*]—MARTIN *v.* R. (1928), 40 C. L. R. 162; [1928] V. L. R. 38; [1928] Argus L. R. 17.—**AUS.**

POOR LAW.

NOTE 1.—The Act now in force is the Poor Law Act, 1930 (c. 17). References to sections of the 1927 Act should therefore be checked with the Comparative Table appended below. Omitted sections of the 1927 Act were either repealed or replaced by the Local Government Act, 1929 (c. 17).

1927.	1930.	1927.	1930.	1927.	1930.	1927.	1930.	1927.	1930.	1927.	1930.
1	1 (1)	48	23	77	47	107	75	157 (4), (5)	156	221	9 (1–3)
2 (1)	2	49	21	78	52	108	93, 94	158	120	222	9 (2)
29 (1–3)	10	50	22	79	26	109	84	162	111	223	160 (1–6)
29 (4)	12	51	28	80	83	110	85	165	121	224	155
30	11 (1), (2)	52	33	81	53 (1–3)	111	86	170	123	225 (1)	158
		53	34	82	53 (4), (5)	112	87	171	124	226 (1), (2)	144
31	13	54	27	84	54	113	88	172	125	227	145
32	116	55	112	85	55	114	89	174	126	228	146
34	15	56	24	86	58	115	90	183	133	229	147
35 (1)	16 (1), 17 (1)	57	25	87	56	116	91, 108	184	127	230	148
		58	82	88	57	117	92	186	128	231	149
(2)	79	59	29	89	71	118	104	187	129	232	151
(3)	17 (2)	60	30	90	72	119	105	188	130	233	153
(4)	17 (2), 79	61	31	91	73	120	102	189	131	234	154
		62	32	92	74	121	95	190	132	235	159
(5)	16 (2)	63	35	93	59	122	96	192	134	236	157
36 (1)	80	64	36	94	61	123	98	209	135	241	140
(2)	17 (3)	65	37	95	62	124	99 (1–7)	210	11 (3)	242	162
37	81	66	38	96	63	125	99 (8)	211	136 (1), (2)	244	163
38	67	67	39	97	64	126	100			245	164, 165 (4)
39	70	68	40	98	60	127	97	212 (1)	1 (2)	Sch. V.	Sch. II.
40	150	69	41	99	65	128	103	213	161	Sch. VI.	Schs. I. & III.
41	14	70	42	100	66	129	106	214	136 (3–5)		
42	18	71	44	101	69	130	107	215	137		
43	19	72	43	102	68	131	101	216	138		
44	20	73	45	103	75	132	109	217	141		
45	49	74	46	104	77	145	114	218	139		
46	50	75	152	105	78	147	113	219	142		
47	51	76	48	106	76	148 (1)	115				

NOTE 2.—By Local Government Act, 1929 (c. 17), Sched. X., para. 1, references in any enactment to the terms mentioned in the first column, *infra*, must be constructed as references to the terms mentioned in the second column. These adaptations, so far as affecting Poor Law Act, 1927 (c. 14), have since been embodied in Poor Law Act, 1930 (c. 17).

Reference.	*Adaptation.*
Board of guardians	County Council or County Borough Council.
Board of management or managers of a school district	County Council or County Borough Council.
Chargeability for any poor law purpose to any parish, township or place, or to a parish or union, or to a union or parish, or to the common fund of a union.	Chargeability to a County or County Borough.
Clerk to the guardians	Clerk of County Council or town clerk of County Borough or such other officer as may be appointed or designated by the council.
Common fund of the union or fund of board of guardians for a single parish.	County fund or general rate fund of County Borough.
District school or district poor law school	Separate school.
Guardian—as an individual	Member of County Council or County Borough.
Guardians—as a corporate body	County Council or County Borough.
Medical officer of board of guardians or of a union	Poor law medical officer of a County or County Borough.
Officer of a board of guardians, or guardians, or officer of a union or other area for which a board are constituted.	Officer concerned with the relief of the poor.
Parish—as the area for which a board of guardians are constituted.	County or County Borough.
Parish—as the area in which a settlement is acquired or derived.	County or County Borough.
Parochial relief	Poor relief.
Poor law union	County or County Borough.
Treasurer of poor law union	County treasurer or treasurer of County Borough.
Union or other area for which a board of guardians are constituted.	County or County Borough.
Union or parochial relief	Poor relief.

Part I.—Poor Law Authorities.

SECT. 4.—**OVERSEERS** (Vol. XXXVII., p. 204).

24a. Overseer becoming transferred officer—Removal—Powers of rating authority.]—By Local Government Act, 1894 (c. 73), s. 5 (1), the power of appointing & revoking the appointment of an assistant overseer for any rural parish having a parish council is transferred to & vested in the parish council.—An assistant overseer so appointed by a parish council which was subsequently transformed into an urban district council, became a "transferred officer" under the Rating & Valuation Act, 1925 (c. 90). He was summarily dismissed by the urban district council as the rating authority:—*Held:* the council could dismiss the officer without notice or cause, & without affording him a hearing, provided that in so dismissing him they did not act dishonestly, corruptly, or in bad faith—BROWN *v.* DAGENHAM URBAN COUNCIL, [1929] 1 K. B. 737; 98 L. J. K. B. 565; 140 L. T. 615; 93 J. P. 147; 45 T. L. R. 284; 73 Sol. Jo. 144; 27 L. G. R. 225.

:—**Distd.** Field *v.* Poplar Corpn., [1929] 1 K. B. 750.

31. *Add. Citations*:—96 L. J. K. B. 741; 137 L. T. 558; 25 L. G. R. 267.

34a. Abolition—Local Government Act, 1929 (c. 17), s. 1—Transfer of "parish property"—What included.]—Pltfs., the City of London Corpn., claimed a declaration that a certain capital fund invested in 5 per cent. War Loan Stock in the hands of the City of London Guardians, being the balance of the proceeds of the sale by defts. of a poor law institution as the H. Institution, was "parish property" within Local Government Act, 1929 (c. 17), s. 115, & that it was "property with respect to which special provision is made" within sect. 113 of the 1929 Act, & would on Apr. 1, 1930, by virtue of sect. 115 of the 1929 Act, be transferred to & vest in pltfs. & not in the London County Council. By sect. 1 of 1929 Act, the functions of the City of London Guardians were transferred to the London County Council on Apr. 1, 1930, on which date the Guardians were abolished. Sect. 113 of the 1929 Act transferred to the London County Council all property & liabilities of the City of London Guardians, except those for which special provision was made in the Act. The only special provision which was suggested to apply was that contained in sect. 115. By sect. 115, sub-sect. 1, of all parish property on the appointed day, namely, Apr. 1, 1930, vested in a board of guardians was to be transferred to the appropriate council, in this case the Common Council of the City of London. The H. Institution & Infirmary was acquired by the City of London Guardians in 1871 for the purposes of their functions in the relief of the poor. By an order dated Apr. 6, 1921, the Minister of Health, the successor of the Local Government Board, sanctioned the sale by the City of London Guardians by the H. Institution, &, by a further order, directed that the net proceeds of the sale should be invested in 5 per cent. War Loan Stock, & that the Guardians should stand possessed of the securities so purchased on trust to receive & pay into the common fund of the Union the interest accruing therefrom:—*Held:* (1) the property in the capital fund in question & the interest thereon was not "parish property" within 1929 Act, s. 115; (2) it was not transferred by that Act to the representative of the City of London; (3) the property in the fund was transferred to & vested in the London County Council for the benefit of the whole area administered by the London County Council; & (4) it was not subject to any condition that the income of the fund should be credited to the City Corpn. in computing the amount of the contributions due from the City Corpn. to the County fund.—LONDON (CITY) CORPN. *v.* LONDON COUNTY COUNCIL. [1931] 1 K. B. 25; 99 L. J. K. B. 577; 143 L. T. 372; 94 J. P. 219; 46 T. L. R. 533; 74 Sol. Jo. 421; 28 L. G. R. 451, C. A.

38a. Loans to strikers' families—Resolution cancelling repayment—Void.]—Defts., a board of guardians, upon the outbreak of the coal dispute of 1926 resolved to give outdoor relief to the wives & families of miners & other workmen who were unemployed because of the dispute, & that such relief should be given by loan, subject to an undertaking to be given by the head of each household to repay the loan by weekly instalments, or, by arrangement with the employers, deductions from wages to commence five weeks after the resumption of work. In pursuance of this resolution defts. granted relief to miners' families during the continuance of the dispute to the amount of £195,957. Repayment commenced in Jan. 1927, the terms being modified from time to time. On July 11, 1929, the total balance due on the loans was £145,924, & it was then being repaid by about 5,000 miners at the rate of nearly £400 a week, some having already repaid their loans in full, & others having been entirely released from payment. On that day defts. passed a resolution that the whole balance of the loans owing in respect of relief received by miners' wives & families should be excused & cancelled. In an action by pltf. at the relation of the corpn. of a borough situate & owning rateable property within defts.' area:—*Held:* (1) the resolution to cancel the loans was *ultra vires* & void & must not be acted upon; (2) even if there was any general discretionary power in defts. to release the debtors, it was not properly or reasonably exercised, as they had considered solely the interest of the debtors, without any inquiry into the ability of all or any of them to continue paying off their loans, there being no evidence of any general inability to repay, or request for the cancellation of the debts.—A.-G. *v.* TYNEMOUTH UNION, [1930] 1 Ch. 616; 99 L. J. Ch. 307; 143 L. T. 70; 94 J. P. 191; 46 T. L. R. 272; 74 Sol. Jo. 169; 28 L. G. R. 179.

63a. Guardians acting in loco parentis—Right to grant of administration.]—By Poor Law Act, 1927 (c. 14), a board of guardians may act in certain circumstances as *in loco parentis* in respect of an orphan child, & in that

capacity is entitled to take out letters of administration of the estate of the child's deceased parent for the benefit of the child.—*Re* PETERS (1929), 142 L. T. 328; 46 T. L. R. 119; 74 Sol. Jo. 13.

87. *Add. Annotation :*—**Refd.** Brown *v.* Dagenham Urban Council, [1929] 1 K. B. 737.

100a. **"Regularly employed"—Employment as deputy.**]—Pltf. was in the service of defts.' predecessors in their capacity of poor law guardians for fifteen years before his retirement, but during five of those years he was only employed as gate porter to a poor law institution in substitution for its regular gate porter who was away on war service :—*Held :* in computing the amount of his superannuation allowance under Poor Law Officers' Superannuation Act, 1896 (c. 50), pltf., though only a temporary substitute for the regular gate porter, was entitled to reckon his actual five years' deputy service as regular employment in the capacity of a poor law officer or servant.—HAMMOND *v.* LONDON COUNTY COUNCIL, [1931] 1 Ch. 540; 100 L. J. Ch. 125; 144 L. T. 720; 95 J. P. 97; 29 L. G. R. 350; *sub nom.* HAMMOND *v.* WESTMINSTER GUARDIANS, 47 T. L. R. 249.

105. *Add. Annotation :*—**Refd.** R. *v.* Grain, *Ex p.* Wandsworth Grdns., [1927] 1 K. B. 540.

120. *Add. Annotation :*—**Refd.** R. *v.* London County Council, *Ex p.* Entertainments Protection Assocn., Ltd., [1931] 2 K. B. 215.

Part II.—Poor Law Areas.

157. *Add. Annotation :*—**Consd.** Stoke Newington Borough Council *v.* Richards (1929), 45 T. L. R. 650.

164. *Add. Annotation :*—**Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

Part III.—Workhouses.

174. *Add. Annotation :*—**Refd.** London (City) Corpn. *v.* London County Council (1930), 99 L. J. K. B. 577.

Part IV.—Relief of the Poor.

188. *Add. Annotations :*—*As to* (1) **Refd.** Reeve *v.* Walker, [1932] 1 K. B. 454. *As to* (3) **Consd.** R. *v.* Grain, *Ex p.* Wandsworth Grdns., [1927] 2 K. B. 205.

206. *Add. Annotation :*—**Refd.** *Re* Carroll, [1931] 1 K. B. 317.

225a. **Within what time proceedings must be taken.**]—Applts., a board of guardians, in 1926 gave relief, by way of loan, to resp. under Poor Law Amendment Act, 1834 (c. 76), s. 58. In Feb. 1927 applts. made a written application to resp. for repayment, & in Aug. 1927 summonses were issued against resp. & against his employers to recover the amount due. The justices held, as more than six months had elapsed since the date when the last instalment of the loan was advanced, they had no jurisdiction by reason of Summary Jurisdiction Act, 1848 (c. 43), s. 11, & they dismissed the summons :—*Held :* the matter of complaint did not arise until the application for repayment was made.—ASHBY-DE-LA-ZOUCH GUARDIANS *v.* SUMMERS, [1928] 2 K. B. 397; 97 L. J. K. B. 397; 139 L. T. 46; 92 J. P. 72; 44 T. L. R. 406; 72 Sol. Jo. 241; 26 L. G. R. 245; 28 Cox, C. C. 494, D. C.

225b. **In what court proceedings must be taken.**]—A ct. of summary jurisdiction is not a "county ct. or other ct. for the recovery of small debts" within Poor Law Act, 1927 (c. 14), s. 46 (1), & under that sub-sect. relief granted by way of loan by the guardians to a poor person cannot be recovered therein.—EVANS *v.* MORGAN, [1928] 2 K. B. 527; 97 L. J. K. B. 703; 139 L. T. 612; 92 J. P. 146; 44 T. L. R. 544; 26 L. G. R. 386, D. C.

PART IV. SECT. 1.

r i. ——— ———.]—BUTTS *v.* SYDNEY MINES, [1927] 1 D. L. R. 546; 59 N. S. R. 90.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 3.

3a. ——— ——— ——— *Capricious finding of age of child in order to give jurisdiction.*]—*Re* KELLY (N. B.), [1929] 1 D. L. R. 716; 51 Can. Crim. Cas. 113.—**CAN.**

3b. *Deserted child—Order for maintenance — Jurisdiction.*]—Under an order of the police magistrate for the county of F. made in Jan. 1927, under Children Protection Act, R. S. O., 1914, & amendments, two infants were delivered into the custody of pltf. society & became its wards. The order directed that the corpn. of the united counties of L. & G. should pay a weekly sum to the society for the maintenance of the infants. It was afterwards discovered that the town of X., of which the infants were residents, was a separate municipality, so constituted by Act of Ontario legislature in 1922; & on May 19, 1927, the magistrate amended his order by directing that the maintenance money should be paid by the town corpn. instead of the counties corpn. The town corpn. repudiated its liability & this action was brought to enforce payment :—*Held :* the magistrate had jurisdiction to make the first order, but the magistrate not having, on or before May 19, 1927, been designated a "judge" within Children's Protection Act, 1927, had no jurisdiction to make the amending order.—FRONTENAC CHILDREN'S AID SOC. *v.* GANANOQUE, [1929] 3 D. L. R. 104; 63 O. L. R. 560.—**CAN.**

3c. *Extent of liability of municipality—Child Welfare Act, C. A.*, 1924.]—DIRECTOR OF CHILD WELFARE *v.* RURAL MUNICIPALITY OF CARTIER, [1931] 2 W. W. R. 7; 2 D. L. R. 845.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 2.—A. (a).

3d. *Parents' Maintenance Act*, 1923 *—What amounts to dependence.*]—If a father has a sufficient income of his own to provide him with food, clothing, & other necessaries, his age, disease, or

Part V.—Settlement.

327. *Add. Citations :*—[1927] 2 K. B. 511; 96 L. J. K. B. 793; 137 L. T. 524.

335. *Add. Citations :*—96 L. J. K. B. 511; 137 L. T. 98; 91 J. P. 41; 25 L. G. R. 21, H. L.

351. *Add. Annotation :*—**Consd.** Glamorgan County Council *v.* Birmingham Corpn. (1932), 48 T. L. R. 664.

415. *Add. Annotation :*—**Refd.** Norwich Union *v.* Henstead Union, [1927] 2 K. B. 511.

436. *Add. Annotation :*—*As to* (2) **Consd.** Norwich Union *v.* Henstead Union, [1927] 2 K. B. 511.

482a. —— **Nurse—Sent to training establishment.**]—On July 20, 1920, A. signed an agreement at C. in the parish of F., by which she was to undergo a year's free training in nursing under the C. Nursing Assocn. & thereafter to remain in their employment for three years. She was sent to D. on the same day for her training & returned to C. on July 9, 1921. She remained at C. under her contract till July 2, 1924, on which day she was allowed to go on holiday, & had no intention of returning, as her three years expired during her holiday. She subsequently became chargeable as a pauper lunatic :—*Held :* since she had not resided physically in the parish of F. for three complete years when she left on July 2, 1924, & had then no *animus revertendi*, she had not acquired a settlement there, there being no evidence that she resided there between July 20, 1920, & July 9, 1921.—FARNHAM UNION *v.* CAMBRIDGE UNION, [1929] 1 K. B. 307; 98 L. J. K. B. 177; 140 L. T. 377; 93 J. P. 21; 45 T. L. R. 78, D. C.

498. *Add. Annotation :*—**Apld.** Farnham Union *v.* Cambridge Union, [1929] 1 K. B. 307.

503. *Add. Annotation :*—**Refd.** Morris *v.* Britannic Assurance Co., [1931] 2 K. B. 125.

720. *Citations :*—For "(1733), Cun. 76; 2 Sess. Cas. K. B. 245," read "(1734), Cun. 76; 1 Sess. Cas. K. B. 251."

Part VI.—Removal.

1146. *Add. Annotation :*—**Consd.** Glamorgan County Council *v.* Birmingham Corpn. (1932), 48 T. L. R. 664.

1148. *Add. Annotation :*—**Consd.** Glamorgan County Council *v.* Birmingham Corpn. (1932), 48 T. L. R. 664.

1148a. —— **Poor Law Act, 1930 (c. 17).**]—Poor Law Act, 1930 (c. 17), has destroyed the common law rule that a husband & wife should not be separated by the removal of the wife to her husband's place of settlement, & irremovability can now only be acquired under the Act.

The common law rule itself was based upon the *consortium* of husband & wife; & where no *consortium* in fact existed, as when the husband was serving a term of imprisonment, it would not have applied.—GLAMORGAN COUNTY COUNCIL *v.* BIRMINGHAM CORPN. (1932), 96 J. P. 409; 48 T. L. R. 664; 30 L. G. R. 426, D. C.

Part VII.—Vagrancy.

1607a. Making false statement to obtain relief—Poor Law Act, 1930 (c. 17), s. 150—Meaning of "relief"—Work coupled with payment.]—Applt. was convicted, under Poor Law Act, 1930 (c. 17), s. 150, of making a false statement to a relieving officer for the purpose of obtaining relief for himself & his wife. The false statement in question was made to induce the relieving officer to give to applt. a card entitling him to work on the roads maintainable by the local authority & to be paid for his work a sum of 23*s*. No benefit other than the employment to be provided & the payment to be made was sought or

other infirmities will not enable him to claim any money from his children as their "dependent" within Parents' Maintenance Act, 1923.—STE. MARIE *v.* STE. MARIE (Sask.), [1929] 4 D. L. R. 1076; 1 W. W. R. 890.—**CAN.**

sb. *Settlement by judgment.*]—BOTSFORD OVERSEERS *v.* WELLINGTON OVERSEERS, [1932] 1 D. L. R. 400.—**CAN.**

PART V. SECT. 3, SUB-SECT. 3.—A.

339 i. —— —— *Derivative settlement.*] — OLD KILPATRICK PARISH COUNCIL *v.* KILMARNOCK PARISH COUNCIL, [1929] S. C. (Ct. of Sess.) 651.—**SCOT.**

PART V. SECT. 4, SUB-SECT. 2.—B. (a).

433 i. *Whether relegated to birth settlement where mother's settlement derivative—Settlement derived from subsequent marriage.*]—ROTHES PARISH COUNCIL *v.* ELGIN PARISH COUNCIL, [1928] S. C. (Ct. of Sess.) 918.—**SCOT.**

PART V. SECT. 5, SUB-SECT. 2.—B.

se. *Before settlement acquired—Liability of former district.*]—Where a person resident in one municipal district who has not previously received relief as an indigent moves into another district, & such relief is furnished to him by the latter district before he has become a "resident" therein within Municipal District Act, 1926, s. 150 (3) (*c*), & continued after the date when he becomes a "resident," it is only for the relief furnished before said date that the relieving district can obtain reimbursement from the district of which he was previously a resident.—WHEATLAND MUNICIPAL DISTRICT *v.* IRON CREEK MUNICIPAL DISTRICT, [1929] 2 D. L. R. 15; 1 W. W. R. 531; 24 Alta. L. R. 141.—**CAN.**

PART V. SECT. 5, SUB-SECT. 3.—A.

493 i. *Capacity of child to acquire independent settlement.*]—Where, while a child is living with its own parents as a member of the family under a foster agreement made with them by the Comr. of Child Protection, they change their residence to another municipality, & the child continues to so live with them therein for six months, it then, if one year of age or older, "belongs" to said municipality within Child Welfare Act, 1927, c. 60, s. 28 (2).—*Re* BALASANOVICH (OR BAILEY), FOAM LAKE TOWN *v.* RURAL MUNICIPALITY OF INSINGER, [1928] 4 D. L. R. 127; [1928] 2 W. W. R. 448.—**CAN.**

PART VII. SECT. 1, SUB-SECT. 1.

p i. —— —— *Restaurant.*]—R. *v.* BENSON, [1928 3 W. W. R. 605; 50 Can. Crim. Cas. 426.—**CAN.**

g i. —— *Impeding passengers—What must be proved.*]—The mere holding of a meeting in the street does not necessarily imply the impeding or incommoding of passengers, & proof of actual impeding is essential to justify a conviction.—R. *v.* BURAY, [1930] 1

received by applt. :—*Held :* the provision of work & wages constituted relief within sect. 150 & applt. was rightly convicted.—REEVE *v.* WALKER, [1932] 1 K. B. 454 ; 101 L. J. K. B. 324 ; 146 L. T. 137 ; 96 J. P. 3 ; 48 T. L. R. 102 ; 30 L. G. R. 17 ; 29 Cox, C. C. 410, D. C.

1616. *Add. Annotations :*—**Refd.** R. *v.* Grain, *Ex p.* Wandsworth Grdns., [1927] 2 K. B. 205 ; Reeve *v.* Walker, [1932] 1 K. B. 454.

1628. *Add. Annotation :*—**Expld. & Distd.** Prothero *v.* Watson (1931), 47 T. L. R. 627.

1629. *Add. Annotation :*—**Expld. & Distd.** Prothero *v.* Watson (1931), 47 T. L. R. 627.

Part VIII.—Old Age Pensions.

1672a. Statutory conditions—Widow's pension—Husband's "entry into insurance."]—The expression "entry into insurance" in Widows', Orphans', & Old Age Contributory Pensions Act, 1925 (c. 70), s. 5, means "last entry into insurance."—WADSWORTH *v.* MINISTER OF HEALTH (1927), 138 L. T. 519 ; 44 T. L. R. 159, D. C.

1672b. Contributions—Payments made after appointed day—Widows', Orphans', & Old Age Contributory Pensions Act, 1925 (c. 70), s. 8.]—TAYLOR *v.* MINISTER OF HEALTH, [1928] W. N. 244, D. C.

D. L. R. 540 ; 52 Can. C. C. 263 ; 64 O. L. R. 531.—**CAN.**

g ii. —— *Whether single disturbance sufficient to support conviction.*]—The commission of a single disturbance of the kind, & at a place, referred to in sub-sect. (*f*) of sect. 238 of Criminal Code is sufficient to justify a conviction thereunder for being a disorderly person or vagrant. The other sub-sections of said section seem, however, to require that the conduct complained of be something more than a single act, & at least a manner of behaviour of some duration.—R. *v.* OISEBERG, [1931] 3 W. W. R. 507 ; [1932] 1 D. L. R. 348 ; 40 Man. L. R. 5.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 1.

so. *Application of Marriage Act,* 1915.]—Marriage Act, 1915, s. 97 (1), refers to a person who, being in Victoria, or resident in Victoria, deserts his wife or children. After the accused had left Victoria & had been for some months resident in New Zealand, he deserted his wife, & children, who had remained in Victoria, & left them without adequate means of support " :—*Held :* no offence under the sect. was disclosed.—R. *v.* FRANKE, [1929] V. L. R. 285 ; Argus L. R. 230. —**AUS.**

PART VII. SECT. 4.

sa. *Vagrancy—Allegation of—Criminal Code, s.* 238.]—R. *v.* ROSENFELD, [1928] 3 W. W. R. 67 ; 50 Can. Crim. Cas. 305.—**CAN.**

sb. —— —— ——.]—*Re* R. *v.* KNOWLES (Ont.), (1929), 52 Can. Crim. Cas. 377.—**CAN.**

POST OFFICE.

Part II.—Constitution.

1. *Add. Annotation:*—**Refd. Mackenzie-Kennedy** *v.* **Air Council, [1927] 2 K. B. 517.**

PART I.

sd. *Right of public to use postal service.*]—All members of the public in Canada have the right to make use of the public postal service provided the Post Office Act is complied with, & an illegal denial by the Postmaster-General of that right would be actionable.—LITERARY RECREATIONS, LTD. *v.* SAUVE, [1932] 3 W. W. R. 123.—**CAN.**

PART II. SECT. 1.

a i. —.]—The power of the Postmaster-General under sect. 7 of Post Office Act, R. S. C., 1927, & reg. 219 made in pursuance thereof, to determine what is & what is not " mailable matter " & to prohibit the use of the mails for what he has declared not to be " mailable matter," is absolute & not open to review by a ct.—LITERARY RECREATIONS, LTD. *v.* SAUVE, [1932] 3 W. W. R. 123.—**CAN.**

PART VII.

sa. *Grant of licence to sell stamps by automatic machine—Whether revocable.*] —The Postmaster-General granted to resp. a general licence to sell postage stamps, etc., by means of automatic machines, " such licence to be for a period of ten years . . . & if this contract has been properly fulfilled then for a further period of ten years without further agreement & upon the termination of the said periods above the licence shall be renewed for further periods of ten years each successively unless & until " either party terminated by notice. The Postmaster-General terminated the agreement at the end of 10 years:—*Held:* the licence was revocable at the Postmaster-General's discretion. He had no authority to grant it so as to bind his successor or the country at a future time. The question was one of statutory administration of the public service; the Minister could depute the performance of his duties only so far as authorised by Parliament.—R. *v.* DOMINION OF CANADA POSTAGE STAMP VENDING CO., LTD., [1930] S. C. R. 500; 4 D. L. R. 241.—**CAN.**

POWERS.

Part I.—Definition and Classification.

9. *Add. Annotation :*—**Refd.** *Re* Mills, Mills *v.* Lawrence, [1930] 1 Ch. 654.

Part II.—Creation of Powers.

17. *Add. Annotation :—As to* (1) **Apld.** *Re* Graham, Graham *v.* Graham, [1929] 2 Ch. 127.

Part III.—Construction of Powers.

28. *Add. Annotation :*—**Refd.** *Re* Mathieson, [1927] 1 Ch. 283.

133a. **Power to appoint part of share—Whether including accrued shares.**]—*Re* HUTCHINSON'S SETTLEMENT, *Ex p.* DUNN (1852), 5 De G. & Sm. 681 ; 17 Jur. 59 ; 64 E. R. 1297.

145. *Add. Annotation :—As to* (1) **Refd.** *Re* Gooch, Gooch *v.* Gooch, [1929] 1 Ch. 740.

Part IV.—Exercise of Powers.

187a. —— **Appointment on "protective trusts."**]—Testator, in exercise of a power of appointment among children & issue contained in his marriage settlement, bequeathed specific property to his son W., & directed his trustees to hold the income of the remainder of the trust property upon protective trusts for the benefit of his son O., & subject thereto to hold the remainder of such property in trust for his granddaughter M. :—*Held :* as the appointment upon "protective trusts," as defined by Trustee Act, 1925 (c. 19), s. 33, gave a discretion to the trustees to apply the income in the event of a forfeiture for the benefit either of O. or of his wife or children, it was to that extent void, both as being (1) a delegation of the power & (2) in excess of it, & the clause contained in sect. 33 (1) (ii) must be struck out of the will for all purposes ; (3) there was no interval of time during which the income of the appointed fund was undisposed of, but there was a valid appointment to O. for life or until an event should happen depriving him of the right to receive the income, & subject thereto for the granddaughter M. absolutely.—*Re* BOULTON'S SETTLEMENT TRUST, STEWART *v.* BOULTON, [1928] Ch. 703 ; 97 L. J. Ch. 243 ; 139 L. T. 288.

208. *Add. Annotations :*—**Refd.** Salvesen (or von Lorang) *v.* Austrian Property Administrator, [1927] A. C. 641 ; H. & H., [1928] P. 206.

256. *Add. Annotations :*—**Folld.** *Re* Phillips, Lawrence *v.* Huxtable, [1931] 1 Ch. 347. **Distd.** *Re* Watts, Coffey *v.* Watts, [1931] 2 Ch. 302. **Apld.** *Re* Joicey, Thompson *v.* Duncan (1932), 173 L. T. Jo. 453.

256a. —— ——.]—Under a settlement a fund was given to such persons, after the death of A., as he should, with the consent of the trustees, appoint by deed :—*Held :* the power was a general power, & the power having been exercised, the fund was equitable assets for the payment of A.'s debts, notwithstanding that the consent of the trustees to the exercise of the power was necessary.—*Re* PHILLIPS, LAWRENCE *v.* HUXTABLE, [1931] 1 Ch. 347 ; 100 L. J. Ch. 65 ; 144 L. T. 178.

Annotations :—**Distd.** *Re* Watts, Coffey *v.* Watts, [1931] 2 Ch. 302. **Apld.** *Re* Joicey, Thompson *v.* Duncan (1932), 173 L. T. Jo. 453.

256b. —.]—*Re* JOICEY, THOMPSON DUNCAN (1932), 76 Sol. Jo. 459.

256c. —— **Consent of settlor's mother.**]—A marriage settlement, dated in 1904, contained a clause empowering the settlor, the wife, at any time during the life of her mother by deed to revoke, with the consent of her mother, the trusts declared by the settlement, & to appoint & declare, with the consent of her mother, any new or other trusts powers & provisions concerning the premises to which such revocation should extend. By a deed, dated in 1913, the settlor, with the consent of her mother, exercised the power of revocation & new appointment in such a manner that after her death in 1928 the question arose whether certain trusts declared by the deed of 1913 were valid, their validity depending upon the decision by the ct. of the question whether the power of revocation & new appointment was a general power or a special power :—*Held :* it would not be right to hold that, upon the terms of the powers contained in the marriage settlement, the

settlor was in substance the owner of the property, & consequently free to deal with it in any way she pleased, & the power was a special power.—*Re* WATTS, COFFEY *v.* WATTS, [1931] 2 Ch. 302; 100 L. J. Ch. 353; 145 L. T. 520.

269a. **Exercise by joint will.**]—Testator devised & bequeathed the residue of his real & personal estate to his wife for life & after her death to his son & daughter for their sole & separate use during the term of their natural lives & after their decease to such persons & to such ends & purposes as the son & daughter should by will appoint & in default of appointment to his right heirs for ever. The brother & sister executed a joint will. The brother died in Nov. 1917, having by his separate will confirmed the joint will, & the joint will, the separate will, & a codicil thereto were admitted to probate as being his last testamentary disposition. The mother died on Aug. 8, 1931. The question then arose whether the appointment by the joint will was a good exercise of the power of appointment by the brother & sister:—*Held:* a joint appointment by will could be made by two persons; if the sister did not revoke the joint will, then upon her death & the joint will being admitted to probate as part of her testamentary dispositions it would be an effective exercise of the power of appointment, & would comply with the requirements in the will of the father.—*Re* DUDDELL, ROUNDWAY *v.* ROUNDWAY, [1932] 1 Ch. 585; 101 L. J. Ch. 248; 146 L. T. 565.

299a. —.]—ELLIS *v.* ATKINSON (1792), 3 Bro. C. C. 565; 2 Dick. 759; 29 E. R. 701, L. C.

Annotations:—**Refd.** Socket *v.* Wray (1793), 4 Bro. C. C. 483; Guise *v.* Small (1794), 1 Anst. 277; Whistler *v.* Newman (1798), 4 Ves. 129; Sperling *v.* Rochfort (1803), 8 Ves. 164; Parkes *v.* White (1805), 11 Ves. 209; Richards *v.* Chambers (1805), 10 Ves. 580; Francis *v.* Wigzell (1816), 1 Madd. 258.

351a. **Limitation to more restricted class in default of appointment.**]—Testator gave his widow E. full & complete control in the disposal of the principal moneys of his estate, at such times & in such proportions as she might see fit, whether by will or otherwise, for the benefit of his children or grandchildren; but in the event of E.'s marriage or death, the trustees of the will were to divide the estate ratably amongst testator's children share & share alike. E. executed a deed poll appointing a portion to a child, a portion to a grandchild, & a further portion to trustees in trust for the child:—*Held:* all these appointments were valid executions of the power.—JOB *v.* JOB (1853), 2 W. R. 25.

352. *Add. Annotation:*—**Consd.** *Re* Turner, Hudson *v.* Turner, [1932] 1 Ch. 31.

360. *Add. Annotation:*—**Refd.** *Re* Turner, Hudson *v.* Turner, [1932] 1 Ch. 31.

360a. ——.]—Testator empowered his wife to appoint his estate, subject to her own life interest therein, to his two children, a son & a daughter, in such proportions as she should think fit, & directed that in default of appointment it should be divided equally between them. The son predeceased him, leaving one child. Testator's widow by her will appointed the estate to the daughter. Upon a summons to determine whether the power was valid at the date of testator's death, & whether the appointment was valid in regard to one-half of the estate:—*Held:* (1) by reason of the death of the son before testator the widow had power to appoint only one-half of the estate; (2) the appointment, though excessive, was not wholly void, but was valid up to one-half of the estate.—*Re* TURNER, HUDSON *v.* TURNER, [1932] 1 Ch. 31; 101 L. J. Ch. 49; 146 L. T. 209.

362. *Add. Annotation:*—**Consd.** *Re* Turner, Hudson *v.* Turner, [1932] 1 Ch. 31.

429. *Add. Annotations:*—*As to* (3) **Refd.** *Re* Phillips, Lawrence *v.* Huxtable, [1931] 1 Ch. 347. *Generally,* **Refd.** *Re* Park, Public Trustee *v.* Armstrong, [1932] 1 Ch. 580.

452. *Add. Annotation:*—**Consd.** *Re* Vander Byl, Fladgate *v.* Gore (1930), 74 Sol. Jo. 770.

453. *Add. Annotation:*—**Refd.** *Re* Vander Byl, Fladgate *v.* Gore, [1931] 1 Ch. 216.

484. *Add. Annotation:*—**Refd.** *Re* Phillips, Lawrence *v.* Huxtable, [1931] 1 Ch. 347.

486. *Add. Annotation:*—**Refd.** *Re* Phillips, Lawrence *v.* Huxtable, [1931] 1 Ch. 347.

487. *Add. Annotation:*—**Refd.** *Re* Phillips, Lawrence *v.* Huxtable, [1931] 1 Ch. 347.

505a. —— —— ——.]—Under the will of a testator who died in 1890, A. had a general testamentary power of appointment over a share of his residuary trust estate. There was a provision that in default of appointment the unappointed share should be held in trust for the persons who at the death of A. would be entitled under Statutes of Distribution. A. by her will appointed her sister I. her executrix & directed that all her debts & funeral expenses should be paid, & after giving certain pecuniary legacies she gave "all the remainder of my property to my sister, I., to be disposed of as she thinks fit at her death." A. died a spinster in Feb. 1929, but, as the husband of I. had witnessed the will, the residuary gift could not take effect. Doubts having arisen whether A. had effectually exercised the general power of appointment given her by the will of testator:—*Held:* testatrix had shown an intention of taking the property subject to the power of appointment out of the instrument creating the power by treating it as forming one mass with her own property. It passed, therefore, as if she had died intestate in respect of it & went to the persons entitled according to the Administration of Estates Act, 1925 (c. 23).—*Re* VANDER BYL, FLADGATE *v.* GORE, [1931] 1 Ch. 216; 100 L. J. Ch. 108; 144 L. T. 401; 74 Sol. Jo. 770.

521a. —— **Subsequent confirmation by codicil.**]—(1) Testatrix in her will expressed an intention to exercise a power to appoint a life interest in certain trust funds or other property to her husband, but at the date of the will no such power had been created. Subsequently, a power was created whereby she was given a power to appoint a life interest in certain trust funds to her husband, &, subsequently to the creation of such power, the testatrix made a codicil confirming her will in respect *inter alia* to the exercise of such power:—*Held:* there was a valid exercise of the power of appointment of such life interest in favour of her husband.

(2) Subsequently to the date of the codicil another power was created, whereby the testatrix was given a power to appoint a life interest in other trust funds to her husband, but before her death she made no other will

or codicil nor executed any other instrument whereby she exercised such other power :— *Held :* there had been no valid appointment of such life interest in such other trust funds in favour of her husband.—*Re* BOWER, BOWER *v.* MERCER, [1930] 2 Ch. 82 ; 99 L. J. Ch. 17 ; 141 L. T. 639 ; 143 L. T. 674.

521b. —— **No subsequent exercise of power.**]—*Re* BOWER, BOWE : *v.* MERCER, No. 521a, *ante.*

637a. ——.]—GUINAND *v.* NAISH (1845), 6 L. T. O. S. 18 ; 9 Jur. 703.

652. *Add. Annotation :*—**Refd.** *Re* Vander Byl, Fladgate *v.* Gore, [1931] 1 Ch. 216.

671a. **Appointment to husband by will—Husband predeceasing testatrix—No intention to benefit husband's estate.**]—A wife, who was of illegitimate birth, having under the trusts of her marriage settlement, made in 1892, a general testamentary power of appointment in default of issue, by her will in express exercise of that power & " to the intent that this my will shall take effect, whether I survive or predecease my husband," appointed the residue of the settled funds, after payment thereout of her debts & some legacies, to her husband for his own use & benefit absolutely. Her will contained no other disposition than the appointment. Her husband having predeceased her & she having died on Mar. 11, 1932, childless :— *Held :* even assuming testatrix knew that, if she died childless & her husband predeceased her, the settlement funds would in consequence of her illegitimacy pass to the Crown, the prefatory words were ineffectual to appoint the residue of those funds to the exors. of the husband, so as to make it part of his estate, & the appointment failed by lapse.—*Re* LADD, HENDERSON *v.* PORTER, [1932] 2 Ch. 219 ; 101 L. J. Ch. 392 ; 147 L. T. 433.

723. *Add. Annotation :*—**Refd.** *Re* Phillips, Lawrence *v.* Huxtable, [1931] 1 Ch. 347.

726. *Add. Annotation :*—**Consd.** *Re* Phillips, Lawrence *v.* Huxtable, [1931] 1 Ch. 347.

748. *Add. Annotation :*—**Consd.** *Re* Chartres, Farman *v.* Barrett, [1927] 1 Ch. 466.

768. *Add. Annotation :*— **Refd.** *Re* Mathieson, [1927] 1 Ch. 283.

783. *Add. Annotation :*—**Refd.** *Re* Bower Williams, *Ex p.* Trustee, [1927] 1 Ch. 441.

Part V.—Appointment Not in accordance with Terms of Power.

830a. —— **Appointment to trustees of child's marriage settlement — Share settled.**] — A daughter being entitled under the marriage settlement of her father & mother to such share & interest in land & money as the surviving mother should appoint, provided by her own marriage settlement that all such share & interest to which she should become entitled, under her mother's settlement, should be vested in trustees to the use of her intended husband for life, remainder to herself for life, remainder to the children of the marriage. Four years after the marriage the mother appointed a sum to be paid to the trustees of the daughter's settlement, upon the uses therein expressed, in satisfaction of the daughter's share & interest under the marriage settlement of the father & mother :—*Held :* this was substantially an appointment to the daughter, & valid.—LIMBERT *v.* GROTE (1832), 1 My. & K. 1 ; 39 E. R. 581 ; *sub nom.* LAMBARD *v.* GROTE, 2 L. J. Ch. 10.

Part VI.—Excessive, Defective, and Fraudulent Appointments.

872a. **Appointment on " protective trusts."**]—*Re* BOULTON'S SETTLEMENT TRUST, STEWART *v.* BOULTON, No. 187a, *ante.*

887. *Add. Annotation :*—**Consd.** *Re* Payne, Taylor *v.* Payne, [1927] 2 Ch. 1.

891. *Add. Citation :—subsequent proceedings,* 2 Bro. C. C. 344, L. C.

910a. ——.]—*Re* TURNER, HUDSON *v.* TURNER, No. 360a, *ante.*

PART IV. SECT. 10, SUB-SECT. 2.—B. (a).

683 ii. ——.]—In execution of the powers reserved by a marriage settlement, a revocable appointment was made by deed whereby the appointors, husband & wife, directed the trustees to hold the net purchase-money already received & to be received in respect of a certain contract of sale upon trust, on the death of the survivor of the appointors, as to three several sums of £15,000 for each of three of their daughters, & as to £12,500 for their fourth daughter, & as to the " remainder " one moiety to each of their two sons. The contract of sale referred to was for a sum of £100,000, of which £20,000 had already been paid. The contract of sale was subsequently rescinded on the purchaser paying a further sum of £20,000 :—*Held :* in the events which had happened, the principle that, where a person disposing of a sum among different persons acts on the assumption that he is dealing with a fund of specific amount, & gives part of the fund to one or more persons & the residue to another, if the fund falls short, all the gifts abate proportionately, would not apply, & the sons would get nothing under the gift of the " remainder."—A'BECKETT *v.* TRUSTEES, EXECUTORS & AGENCY CO. (1908), 5 C. L. R. 512.—**AUS.**

PART V. SECT. 3.

sa. *Appointment to issue of child—Where not among objects of power.*]—MOUBRAY'S TRUSTEES *v.* MOUBRAY, [1929] S. C. (Ct. of Sess.) 254.—**SCOT.**

sb. *Power to appoint among children—Appointment to child—With power to appoint to child's children—Void.*]—*Re* MCLEAN, PERPETUAL EXORS. & TRUSTEES ASSOCN. OF AUSTRALIA, LTD. *v.* LAWRANCE, [1929] Argus L. R. 216.—**AUS.**

PART VI. SECT. 1, SUB-SECT. 2.—A.

1 i. ——.]—Where the exercise of a power, in so far as it purported to reduce the right of fee conferred on the objects of the power to a life rent, was *ultra vires* & invalid :—*Held :* as it was impossible to separate the valid from the invalid portions of the appointment without dislocating the whole scheme of division contemplated by the truster, the whole exercise of the power fell to be disregarded.—MACKENZIE'S TRUSTEES *v.* MACKENZIE, [1927] S. C. 424.—**SCOT.**

971. *Add. Annotation :—As to* (1) **Refd.** *Re* Mills, Mills *v.* Lawrence, [1930] 1 Ch. 440.

986. *Add. Annotation :—***Consd.** *Re* Phillips, Lawrence *v.* Huxtable, [1931] 1 Ch. 347.

1051. *Add. Annotation :—As to* (1) **Refd.** *Re* Lanyon, Lanyon *v.* Lanyon, [1927] 2 Ch. 264.

Part VIII.—Extinguishment and Suspension of Powers.

1093. *Add. Annotation :—***Consd.** *Re* Mills, Mills *v.* Lawrence, [1930] 1 Ch. 654.

1101a. —— **Power appendant or appurtenant.**]—A testator by his will directed the income of his net residuary estate to be accumulated for a period of twenty-one years from his death, & subject to certain trusts in favour of an infant grandson, & his issue which failed owing to the death of the grandson unmarried, declared that the trust fund & all statutory accumulations of income were to be held upon such trusts for the benefit of all or any one of the children & remoter issue of testator's father, who in the opinion of testator's brother, one of the two trustees of the will, should evidence an ability & desire to maintain the family fortune by replacing the sums of which it had been depleted by death duties & other taxation, as testator's brother should by any deed revocable or irrevocable appoint, & in default of such appointment in trust for such brother absolutely :—*Held :* the power was a power appendant or appurtenant & not a power coupled with a trust or a duty in the nature of a trust, & accordingly that it could be validly released by the donee.—*Re* MILLS, MILLS *v.* LAWRENCE, [1930] 1 Ch. 654 ; 99 L. J. Ch. 396 ; 143 L. T. 409 ; 46 T. L. R. 328 ; 74 Sol. Jo. 437, C. A.

1102. *Add. Annotation :—***Distd.** *Re* Mills, Mills *v.* Lawrence, [1930] 1 Ch. 654.

1103. *Add. Annotation :—***Distd.** *Re* Mills, Mills *v.* Lawrence, [1930] 1 Ch. 440.

1104. *Add. Annotation :—***Distd.** *Re* Mills, Mills *v.* Lawrence, [1930] 1 Ch. 654.

1105a. **Mutual wills—Wife expressly refraining from exercising power.**]—Where by her will the wife expressly refrained from exercising a power of appointment, which she had, but abstained from extinguishing it, & confined the operation of her will to her own property, & there was nothing in the husband's will, which either put the wife to her election or put her in the position of seeking at the same time to approbate & to reprobate its provisions :—*Held :* she was in no way precluded from exercising her power of appointment by a subsequent will.—GRAY *v.* PERPETUAL TRUSTEE CO., [1928] A. C. 391 ; 97 L. J. P. C. 85 ; 139 L. T. 469 ; 44 T. L. R. 654, P. C.

1111. *Add. Annotation :—***Refd.** *Re* Mills, Mills *v.* Lawrence, [1930] 1 Ch. 654.

1115. *Add. Annotation :—***Refd.** *Re* Mills, Mills *v.* Lawrence, [1930] 1 Ch. 440.

Part IX.—Powers in the Nature of Trusts.

1135. *Add. Citation :—on appeal, sub nom.* WALTER *v.* MAUNDE (1815), 19 Ves. 424, L. C.

*Add. Annotations :—***Refd.** *Re* Sinclair's Settlement, Crump *v.* Leicester (1886), 56 L. T. 83. **Mentd.** Christian *v.* Foster (1846), 2 Ph. 161.

1151a. **Validity—Power to donee to appoint to any one " other than herself."**]—A power to a donee to appoint the income of a fund to any person, " other than herself," or persons or charitable institution or institutions, is valid.

Testator gave his residuary estate to his trustee in trust to pay the income thereof to any person, " other than herself," or persons or charitable institution or institutions, & in such shares & proportions as his sister, J., should from time to time during her lifetime direct in writing, & from & after her decease in trust as to both capital & income for the Imperial Merchant Service Guild for the benefit of their stress fund absolutely :—*Held :* the trust was a valid & effectual trust, & the power conferred thereby on J. was a valid power, exercisable by her.—*Re* PARK, PUBLIC TRUSTEE *v.* ARMSTRONG, [1932] 1 Ch. 580 ; 101 L. J. Ch. 295 ; 147 L. T. 118.

1213. *Add. Annotation :—***Refd.** *Re* Blackwell, Blackwell *v.* Blackwell, [1929] A. C 318.

1233a. —— ——.]—DAVIE *v.* HOOPER (1711), 6 Bro. Parl. Cas. 51 ; 2 E. R. 926 ; *sub nom.* DAVY *v.* HOOPER, 2 Vern. 665 ; 1 Eq. Cas. Abr. 336, pl. 6, H. L.

*Annotations :—***Refd.** Bellasis *v.* Uthwatt (1737), West *temp.* Hard. 273 ; Cholmondeley *v.* Meyrick (1758), 1 Eden, 77.

PRACTICE.

Part XI.—Service of Writ of Summons.

443a. .]—THE LALANDIA (1932), 49 T. L. R. 69.

459. *Add. Citations :*—[1932] 1 K. B. 617 ; 101 L. J. K. B. 65 ; 146 L. T. 240, C. A. ; *affd.* 49 T. L. R. 94, H. L.

Part XIX.—Parties.

1303a. —— —— **Bankruptcy proceedings—Security for costs.**]—*Re* DEBTOR (1932), 74 L. Jo. 291, C. A.

Part XX.—Third-Party Procedure.

1478. *Add. Citations :-* -[1932] 2 Ch. 122 ; 101 L. J. Ch. 321 ; 147 L. T. 185, C. A. *affd.*, 49 T. L. R. 94, H. L.

Part XXVIII.—Discontinuance of Action or Withdrawal of Part.

1738a. Notice to deliver affidavit of documents.]—A formal notice to deliver an affidavit of documents given by a pltf.'s solrs., after receipt of defence, is not " any other proceeding in the action " within Ord. 26, r. 1, & a subsequent notice of discontinuance by pltf. is valid. It follows that special terms (*e.g.* as to prohibiting pltf. from bringing another action) cannot be imposed upon pltf.—MUNDY *v.* BUTTERLEY CO., LTD., [1932] 2 Ch. 227.

Part XXXVI.—District Registries.

1924a. —— **Contents of order.**]—In proceedings in a District Registry, where an order for any account or inquiry is made, a direction is to be inserted in the order either that the proceedings are to be transferred to London or that the account or inquiry is to proceed in the District Registry. It is the duty of the party obtaining the order to ask for this direction.—PRACTICE NOTE, [1932] W. N. 252 ; 174 L. T. Jo. 403.

Part XXXVII.—Trial.

2016. *Add. Citations :*—[1932] P. 98 ; 101 L. J. P. 36 ; 147 L. T. 40 ; 48 T. L. R. 469 ; 76 Sol. Jo. 433.

F. Power to Submit Question to Court or State Facts Specially (p. 569).

R. S. C., Ord. XXXVI., r. 52. In Rule 52 the phrases " before the conclusion of any trial before him or " and " re-trial or " shall be omitted, and after the words " reference made to him " there shall be inserted the words " under Section 88 of the Act." (*Amended by R. S. C.* (*No.* 4), 1932.)

G. Power as to Questions or Issues of Fact (p. 570).

R. S. C., Ord. XXXVI., r. 52A. In Rule 52A the expression " to 51 " shall be substituted for the expression " to 52 ", and the Rule shall stand as Rule 51A. (*Amended by R. S. C.* (*No.* 4), 1932.)

I. Adoption or Variation of Report (p. 570).

R. S. C., Ord. XXXVI., rr. 54, 55. In Rules 54 and 55 the phrase " section 88 of the Act " shall be substituted for the phrase " section 13 of the Arbitration Act, 1889." (*Amended by R. S. C.* (*No.* 4), 1932.)

Part XLIII.—Entry of Judgment.

2539. *Add. Citations :*—[1932] 2 K. B. 87 ; 147 L. T. 399 ; 48 T. L. R. 292 ; 76 Sol. Jo. 249.

2552. For " No. 2439, *ante*," read " No. 2539, *ante*."

2561. For " No. 2439, *ante*," read " No. 2539, *ante*."

2563. For " No. 2439, *ante*," read " No. 2539, *ante*."

Part LV.—Transfers and Consolidation.

2788. Add the following para. & citations :—

A lady, who was a widow, agreed with pltf. that he should act as companion to her son, a young man of full age, & exercise general supervision over him & over his expenditure in consideration of a certain salary, a certain allowance which was not to be unduly exceeded, & payment of pltf.'s travelling & other, not being merely personal, expenses. The agreement was subject to one month's notice of termination. Pltf. brought two actions, one against the lady for wrongful dismissal & other breaches of the contract, & the other against the young man for indemnity against liabilities incurred & for repayment of disbursements made by pltf. on his behalf :—*Held :* in view of the change in procedure effected by Ord. 16, rr. 1 & 4, an

order might properly be made under Ord. 49, r. 8, consolidating the two actions.—BAILEY *v.* CURZON OF KEDLESTON (MARCHIONESS), BAILEY *v.* DUGGAN, [1932] 2 K. B. 392; 101 L. J. K. B. 627; 147 L. T. 269; 48 T. L. R. 283, C. A.

Part LXI.—Patents.

SECT. 2.—**INTERPRETATION.**

(p. 682.)

R. S. C., Ord. LIIIA., r. 1. In Rule 1, the words "by the Patents and Designs Act, 1919" shall be omitted. (*Amended by R. S. C.* (*No.* 4), 1932.)

SUB-SECT. 3.—WHAT MUST BE STATED IN ADVERTISEMENTS—COPY TO SOLICITOR TO BOARD OF TRADE (p. 683).

R. S. C., Ord. LIIIA., r. 3. In Rule 3, the word "Illustrated" shall be omitted from paragraph (*c*). (*Amended by R. S. C.* (*No.* 4), 1932.)

B. Title, Service, etc. (p. 686).

R. S. C., Ord. LIIIA., r. 4. In Rule 4, for the expression "and 1919" in paragraph (*a*) there shall be substituted the expression "to 1932"; and the word "Illustrated" in paragraph (*d*) shall be omitted. (*Amended by R. S. C.* (*No.* 4), 1932.)

D. Public Advertisement of Application.

See B, supra.

SUB-SECT. 1.—APPEALS BY PETITION, CONTENTS OF PETITION, ETC. (p. 688).

R. S. C., Ord. LIIIA., r. 5. In Rule 5, paragraph (*a*), there shall be inserted after the number "20," the number "21," and after the number "27," the expression "37 and"; and the expression "49 and 58" shall be omitted. (*Amended by R. S. C.* (*No.* 4), 1932.)

SUB-SECT. 3.—SERVICE OF NOTICE OF MOTION, ETC., ON COMPTROLLER, ADVERTISEMENT OF PROPOSED AMENDMENT, ETC. (p. 692).

R. S. C., Ord. LIIIA., r. 21. In Rule 21, the word "Illustrated" shall be omitted from paragraphs (*c*) and (*f*). (*Amended by R. S. C.* (*No.* 4), 1932.)

SUB-SECT. 6.—ORDER ALLOWING AMENDMENT—LODGMENT OF COPY WITH COMPTROLLER, ADVERTISEMENT OF ORDER, ETC. (p. 693).

See Sub-sect. 3, *supra.*

Part LXXIII.—Appeals and Proceedings under Particular Acts.

SECT. 6.—**HOUSING ACT, 1930.**

(*Added by R. S. C.* (*No.* 2), 1932.)

SUB-SECT. 1.—INTERPRETATION.

R. S. C., Ord. LVB., r. 77. In this Part of this Order "the Act" means the Housing Act, 1930.

SUB-SECT. 2.—INSTITUTION OF PROCEEDINGS.

R. S. C., Ord. LVB., r. 71. An application under section eleven of the Act shall be made by an originating notice of motion to a judge of the High Court selected for the purpose by the Lord Chancellor.

SUB-SECT. 3.—EVIDENCE UPON HEARING OF APPLICATION.

R. S. C., Ord. LVB., r. 72. The evidence upon the hearing of the application shall be by affidavit except in so far as the court at the hearing may direct oral evidence to be given.

SUB-SECT. 4.—CONTENTS OF NOTICE OF MOTION.

R. S. C., Ord. LVB., r. 73. The notice of motion shall state the grounds for the application, and the date mentioned in the notice for the hearing of the application shall be not less than fourteen days after the service of the notice.

SUB-SECT. 5.—SERVICE OF NOTICE OF MOTION.

R. S. C., Ord. LVB., r. 74. The notice of motion shall be served before the expiration of six weeks after the publication of the notice of confirmation of the order to which the application relates on the local authority by whom the order was made and on the Minister of Health, and shall be entered at the Crown Office within the same period.

SUB-SECT. 6.—APPLICATION OF ORDINARY RULES AND PRACTICE IN KING'S BENCH DIVISION.

R. S. C., Ord. LVB., r. 75. The ordinary practice and rules of the King's Bench Division shall apply so far as they are applicable, and are not inconsistent with the provisions of the Act, or of the Rules contained in this part of this Order.

SUB-SECT. 7.—SUPERSESSION OF RULES IN HOUSING ACT.

R. S. C., Ord. LVB., r. 76. The Rules contained in this Part of this Order supersede the Rules set forth in Part I. of the Fourth Schedule to the Act.

Part LXXVII.—Appeals to Court of Appeal, Rehearing, etc.

3485a. Dismissal of petition for divorce—Application for new trial—Power to grant decree nisi.]—On an appeal from an order of the Divorce Ct. dismissing a petition for divorce, the Ct. of Appeal has power under Ord. LVIII., r. 4, & Ord. XXXIX., if it has before it all the necessary materials, & comes to the conclusion that the verdict of the jury finding there has been no misconduct was wrong, itself to grant a decree *nisi* instead of sending the case back for a new trial.—CROKER *v.* CROKER, [1932] P. 173; 101 L. J. P. 69; 147 L. T. 464; 48 T. L. R. 597; 76 Sol. Jo. 527, C. A.

(*a*) *Old Jurisdiction* (p. 814).

R. S. C., Ord. LVIII., r. 19A. At the end of the Rule 19A of Order LVIII the phrase ", or from an official referee under the Administration of Justice Act, 1932" shall be inserted. (*Added by R. S. C.* (*No.* 4), 1932.)

Part LXXIX.—Appeals from Official or Special Referees.

SECT. 1.—**RIGHT OF APPEAL FROM FINDING, DECISION, ORDER, Etc.**

(p. 825.)

R. S. C., Ord. LIXA., r. 1. In Rule 1 the word "a" shall be substituted for the words "an official or". (*Amended by R. S. C.* (*No.* 4), 1932.)

SECT. 5.—**APPLICATION OF R. S. C., ORDER XL., rr. 6, 6a, AND R. S. C., ORDER XXXVI., r. 52.**

(p. 827.)

R. S. C., Ord. LIXA., r. 5. Rule 5 is hereby annulled. (*R. S. C.* (*No.* 4), 1932.)

Part LXXXV.—Time.

SUB-SECT. 1A.—CAUSES FOR NEW PROCEDURE LIST.

R. S. C., Ord. LXIV., r. 4A. (1) In causes intended to be tried in the New Procedure List under Order XXXVIIIA summonses may be issued and pleadings may be amended, delivered, or filed in the Long Vacation on and after the 1st day of October in any year, but pleadings, in such causes, shall not be amended, delivered, or filed during any other part of such Vacation, unless by direction of one of the Judges nominated under Order XXXVIIIA, Rule 2 (4).

(2) Any summons issued under this Rule may be heard by one of the Judges so nominated, or in the absence of both of such Judges shall, if necessary, be heard by the Vacation Judge. (*Added by R. S. C. (No. 2)*, 1932.)

As to New Procedure, *see* Part XCIV.

Part LXXXVI.—Costs.

4181a. -.]—Action against husband & wife for goods supplied to wife, & held not to be necessaries. Judgment against wife for amount claimed, with costs, & for husband, with costs, the husband's remedy to be against the wife.—KNIGHT *v.* GORDON (1931), 76 Sol. Jo. 68.

SECT. 19.—**SOLICITORS.**

SUB-SECT. 2.—FEES.

B. Higher Scale.

(p. 900.)

R. S. C., Ord. LXV., r. 10. Rule 10 of Order LXV. shall be designated and stand as paragraph (1) of Rule 10 of that Order.

The following paragraphs shall be substituted for Rules 10A and 10B of Order LXV. (which are hereby revoked) and shall stand as paragraphs (2), (3), (4), and (5) of Rule 10 of that Order:—

"(2) The total in any bill of costs of the fees prescribed by this Order (as distinct from payments) shall in respect of business done in any cause or matter in the Supreme Court after the 31st day of December, 1917, be increased as follows, that is to say,

(*a*) if done before the 1st day of September, 1919, by 20 per centum;

(*b*) if done after the 31st day of August, 1919, and before the 12th day of October, 1932, by 33⅓ per centum;

(*c*) if done after the 11th day of October, 1932, by 25 per centum;

and any such increase shall be allowed upon any taxation of costs in respect of any such business as well between party and party as between solicitor and client, and in taxations under or pursuant to the Solicitors Act, 1843.

(3) In respect of any bill of costs which was delivered to the client sought to be charged therewith or to the person chargeable therewith or any bill of costs which was taxed and certified or allowed before the 28th day of May, 1918, paragraph (2) of this Rule shall not apply; and in respect of any bill so delivered or taxed and certified or allowed after the 31st day of August, 1919, but before the 1st day of May, 1920, all business included therein shall for the purpose of paragraph (2) of this Rule be deemed to have been done before the 1st day of September, 1919.

(4) Paragraph (2) of this Rule shall not—

(*a*) apply to the remuneration prescribed by or under the Solicitors Remuneration Act, 1881, or

(*b*) affect the question whether a bill of costs when taxed is or is not less by one-sixth part than the bill delivered, sent or left, or

(*c*) affect the power to direct payment of a sum in lieu of costs under Order LXV., Rule 23, or the power to allow a fixed sum for costs under Order LXV., Rule 27 (38), or a gross sum under Order LXV., Rule 27 (38A).

(5) Paragraphs (2), (3) and (4) of this Rule shall apply to all references to arbitration and to all proceedings on the Crown side and to all proceedings assigned to the Crown Office Department and to all business done after 31st day of August, 1919, in all criminal proceedings in the Supreme Court and, so far as applicable thereto, to all divorce and matrimonial causes in the Supreme Court." (*Added by R. S. C. (No. 2)*, 1932.)

SUB-SECT. 3.—ADDITIONAL REMUNERATION.

(p. 901.)

R. S. C., Ord. LXV., r. 10B. *See* new rule 10, *ante*.

Part XCIV.—New Procedure.

SUB-SECT. 3.—REPLY.

(p. 985.)

R. S. C., Ord. XXXVIIIA., r. 6. The following Rule shall be substituted for Rule 6 which Rule is hereby revoked:—

"6. Where the defendant has set up a counterclaim the plaintiff shall, within seven days of the delivery thereof, deliver a reply." (*Replaced by R. S. C. (No. 2)*, 1932.)

SECT. 5.—**SUMMONS FOR DIRECTIONS.**

(p. 985.)

SUB-SECT. 1.—SUMMONS.

R. S. C., Ord. XXXVIIIA., r. 7. In paragraph (1) of Rule 7 the word "four" shall be substituted for the word "seven"; and the words "or of the reply (if any)" shall be omitted.

In Rule 7 the following paragraph shall be added as paragraph (3):—

"(3) If, within twenty-eight days from the date when appearance has been entered no summons for directions has been issued it shall be the duty of the plaintiff's solicitor to inform the Court of the reason why the provisions of this Order are not being complied with." (*Amended by R. S. C. (No. 2)*, 1932.)

SUB-SECT. 2.—POWERS OF JUDGE AT HEARING.

(p. 985.)

R. S. C., Ord. XXXVIIIA., r. 8. In paragraph (5) of Rule 8 after the words "leave of the Judge" there shall be inserted the words "or of the Court of Appeal." (*Added by R. S. C. (No. 2)*, 1932.)

SECT. 8.—**INTERLOCUTORY PROCEEDINGS BEFORE MASTER.**

(p. 987.)

R. S. C., Ord. XXXVIIIA., r. 13. In paragraph (3) of Rule 13 after the words "unless the Judge" there shall be inserted the words "or the Court of Appeal." (*Added by R. S. C. (No. 2)*, 1932.)

SECT. 9.—**LIVERPOOL AND MANCHESTER DISTRICT REGISTRIES.**

(p. 987.)

R. S. C., Ord. XXXVIIIA., r. 14. In Rule 14 after the words "unless the Judge" there shall be inserted the words ", or the Court of Appeal." (*Added by R. S. C. (No. 2)*, 1932.)

PRESS AND PRINTING.

Part II.—Printers and Publishers.

13. After this case add :—
Printers of bank-notes — Standard of care required.]—*See* BANKERS, No. 456a.

16. *Add. Annotation :*—**Consd.** Bradstreets British, Ltd. *v.* Mitchell (1932), 48 T. L. R. 670.

Part III.—Editors, Authors, and Journalists.

36. *Add. Annotation :*—**Refd.** Tolley *v.* Fry J. S. & Sons (1929), 46 T. L. R. 108.

40. *Add. Annotation :*—**Refd.** Messager *v.* British Broadcasting Co. (1928), 97 L. J. K. B 251.

44. *Add. Annotation :*—**Refd.** Messager *v.* British Broadcasting Co., [1927] 2 K. B. 543.

Part IV.—Newspapers.

79. *Add. Annotation :*—*As to* (2) **Refd.** *Re* Nicholson & Sons, Ltd., Application, *Re* Bass, Ratcliff & Gretton's Trade Mark, [1931] 2 Ch. 1.

83. *Add. Annotation :*—**Refd.** Cope *v.* Evans (1875), 30 L. T. 292.

90. *Add. Annotation :*—**Refd.** Sinanide *v.* La Maison Kosmeo (1928), 139 L. T. 365.

102a. Plumber & Decorator, Gas & Sanitary Engineering Journal—Plumbing & Decorating, Sanitary, Water, & Gas Engineering Chronicle.] —*Held :* there was no such close resemblance of title between these titles as would justify the ct. in granting an injunction restraining the publication of the latter journal.—DALE, REYNOLDS & Co. *v.* GENERAL NEWSPAPER Co. (1884), 1 T. L. R. 177, D. C.

Part V.—Publications Other than Newspapers.

114. *Add. Annotation :*—**Refd.** United Indigo Chemical Co. *v.* Robinson (1931), 49 R. P. C. 178.

115a. Title of publication—Infringement of right of property—What amounts to.]—This action was brought to restrain defts., Sir Isaac Pitman & Sons, Ltd., from selling or offering for sale two books which they had recently put on the market entitled : " How to appeal against your rates within the Metropolis " & " How to appeal against your rates without the Metropolis " as being books offered for sale under titles likely to be confused with two books published by pltf. entitled : " How to appeal against your rates in the Metropolis," & " How to appeal against your rates outside the Metropolis." Pltf.'s books were first published in the year 1887 & went through several editions. The books had been extensively advertised & the last editions of the books were published in Nov. 1929. Defts.' books were first published in Jan. 1930. Notwithstanding the fact that it was proved defts.' books had on one occasion been confused with pltf.'s books it was held not to be established by the evidence that defts. had been passing off their books as the books of pltf. :—*Held :* the words " How to Appeal against your Rates " which were fairly descriptive of the contents of defts.' book as well as of pltf.'s, had not acquired a secondary or special meaning as meaning pltf.'s books only. The action was dismissed with costs.—MATHIESON *v.* PITMAN (SIR ISAAC) & SONS, LTD. (1930), 47 R. P. C. 541.

PART II. SECT. 1.

sa. *Liability — In general.*]—HAR SWARUP *v.* MUHAMMAD SIRAJ (1928), I. L. R. 50 All. 806.—**IND**

sb. *Right of action for work done—Preparation of layout & cover—No order for printing given.*]—MORTIMER Co., LTD. *v.* FRONTENAC BREWERIES, LTD., [1930] 1 D. L. R. 182.—**CAN.**

PART III. SECT. 3.

sc. *Duty to become acquainted with his duties & liabilities.*]—K. E. *v.* MAUNG TU SAW (1927), I. L. R. 6 Ran. 39. —**IND.**

PART IV. SECT. 1.

sd. *What are.*]—The " Social & Industrial Review," a publication printed & published by the Dept. of Labour appearing once a month & containing some items of news of a special character, but principally articles upon industrial & economic subjects :—*Held :* not to be a newspaper within sect. 7 (2) of Act 27 of 1925.—R. *v.* LEWIN, [1930] App. D. 344.—**S. AF.**

se. *Local newspaper—What is.*]—" Local newspaper " in sect. 55 (2) of Railways Act means a newspaper which is issued from the locality & not one which, issued from elsewhere, may be read in the locality.—SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* HARNARAIN BENGALCHAND (1931), I. L. R. 53 All.—**IND.**

PART V.

sl. *What amounts to printing—In Press Act.*]—The operation of multiplying copies by means of a cyclostyle machine is a printing operation within Press & Registration of Books Act, 1867.—RAMESHWAR PRASAD VERMA *v.* KING-EMPEROR (1932), I. L. R. 10 Pat. 492.—**IND.**

Part VI.—Advertisements.

119. *Add. Annotation :*—**Consd.** R. *v.* London County Council, *Ex p.* Entertainments Protection Assocn., Ltd., [1931] 2 K. B. 215.

Part IX.—Stationery Office.

140. After this case add :—

e, also, COPYRIGHT, Vol. XIII., pp. 198, 199, Nos. 333-343."

PART VI. SECT. 4.

sf. *Action for refusal to insert.*]—Pltf. published the programmes for all the motor cycle race meetings conducted by W. A. Speedways, Ltd. Pltf.'s canvasser interviewed deft., & obtained from him a written order to insert a full page advertisement in each issue of the programme at the rate of £2 per issue. After the advertisement had appeared several times, deft. refused to go on with the arrangement :—*Held :* on the facts there was a valid contract for the insertion of the advertisement in the whole issue of programmes for the season.—CUNEEN *v.* VAN HEURCK & THOMAS, LTD. (1930), W. A. L. R. 13.—**AUS.**

PRISONS.

Part II.—Prison Officers.

8a. —— **Detention after receipt of remission marks.**]—MORRISS *v.* WINTER, No. 34b, *post.*

Part III.—Prisoners.

34a. Receipt of remission marks.]—MORRISS WINTER, No. 34b, *post.*

SUB-SECT. 2.—ON EARNING REMISSION (Vol. XXXVII., p. 561).

34b. No legal right to discharge.]—M. was convicted in Dec. 1925, of certain misdemeanours & sentenced to two years' imprisonment with hard labour & twelve months' imprisonment, the sentences to run consecutively. An order was made by the ct. directing that he should be detained in prison in conformity with the sentences passed. He was first detained in Portsmouth Prison & afterwards in Pentonville Prison. In Dec. 1927, after M. had been removed to Pentonville Prison, the Governor of Portsmouth Prison indorsed on M.'s stage card the forfeiture of five remission marks, to make it agree with M.'s record. There was a dispute whether or not the Governor of Portsmouth Prison had ordered the forfeiture of those marks on May 10, 1926, & the jury differed with regard to it. As a result of the forfeiture of those five marks M. was released by the Governor of Pentonville Prison on July 21, 1928, instead of on July 20. On Aug. 2, 1928, M. brought an action against the Governors of both prisons to recover damages for his detention in prison during that one day. The jury found that the Governor of Portsmouth Prison had not acted maliciously nor with intention to injure M., & that he had not made a false statement:—*Held:* the Prison Rules did not confer upon M. any legal right to an earlier discharge by the obtaining of remission marks, & that therefore the action could not succeed against either of the Governors; having regard to the findings of the jury the action could not succeed against the Governor of Portsmouth Prison; that deft. was protected by Public Authorities Protection Act, 1893 (c. 61), as the action was not brought within six months of the act that caused the damage, there being no continuance of the injury or damage, as there was no continuance of the act by that deft. which caused the damage; lastly, the Governor of Pentonville Prison was protected, as he had merely acted in pursuance of the order of the ct.—MORRISS *v.* WINTER, [1930] 1 K. B. 243; 99 L. J. K. B. 101; 142 L. T. 67; 45 T. L. R. 643; 28 Cox, C. C. 687.

PART III. SECT. 1, SUB-SECT. 1.

8a. *Irregular removal of prisoner—Under Police & Prisons Regulation Act—Release by habeas corpus.*]—Police & Prisons Regulation Act, R. S. B. C. 1924, c. 91, s. 33, cannot be invoked to support the A.-G.'s removal from one gaol to another of a prisoner who has been committed for an offence under the Criminal Code. Where a prisoner convicted under the Code was so removed under said section after serving part of his sentence an order for his release was made under *habeas corpus.*—R. *v.* TARCHUK, [1928] 3 W. W. R. 577; 50 Can. Crim. Cas. 423.—CAN.

PRIZE LAW AND JURISDICTION.

Part II.—Rights in Prize.

29a. Power unaffected by Civil List Acts.]—The power of bounty which the Crown was accustomed to exercise by way of redress of hardship to subjects or neutrals from decrees of the Prize Ct. exists unimpaired by the Civil List Acts.—THE ODESSA, THE WOOLSTON, [1916] 1 A. C. 145; 85 L. J. P. C. 49; 114 L. T. 10; 32 T. L. R. 103; 60 Sol. Jo. 292; 13 Asp. M. L. C. 215, P. C.

Annotation:—**Consd.** The Zamora, [1916] 2 A. C. 77.

Part III.—Enemy Character.

176. *Add. Annotation:*—**Refd.** Sassoon *v.* International Banking Corpn., [1927] A. C. 711.

192. *Add. Annotation:*—**Refd.** Allgemeine sicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672.

220. *Add. Annotation:*—**Distd.** Allgemeine Versicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672.

220. After this case add:—
Abandonment to neutral underwriter by enemy—After seizure in prize—Detention under Order in Council — Application of Trading with the Enemy Amendment Act, 1914 (c. 12), s. 6.]—*See* ALIENS, No. 389a.

Part IV.—Capture.

327. *Add. Annotation:*—*As to* (1) **Refd.** Allgemeine Versicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672.

Part V.—Rights, Duties and Liabilities of Captors.

497. *Add. Annotation:*—**Refd.** Croft *v.* Dunphy (1932), 48 T. L. R. 652.

Part VII.—Contraband.

780. *Add. Annotation:*—**Refd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

866. *Add. Annotation:*—*Generally*, **Refd.** Sassoon *v.* International Banking Corpn., [1927] A. C. 711.

Part IX.—Jurisdiction of Prize Courts.

1071. *Add. Annotation:*—*Generally*, **Consd.** Allgemeine Versicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672.

1080. *Add. Annotation:*—**Refd.** Allgemeine sicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672.

PART V. SECT. 4, SUB-SECT. 3.—A.

571 i. *Liability for wrongful capture.*]—THE ZODIACK (1812), Stewart, 333.—CAN.

PART VI. SECT. 4, SUB-SECT. 6.

f. *Revsd.*, Stewart, 38, n.

PART VI. SECT. 7

n. *Revsd.*, Stewart, 38, n.

PART VII. SECT. 6, SUB-SECT. 4.

r. *Revsd.*, Stewart, 122, n.

Part X.—Claims.

1121. *Add. Annotation :*—**Refd.** Allgemeine Versicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672.

1131. *Add. Annotation :*—**Consd.** Allgemeine Versicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672.

1177a. ——.]—THE ANNA CHRISTIANA (1778), Hay & Marr. 161 ; 165 E. R. 37.

1189a. ——.]—THE VROUW HENRIETTA (1803), 5 Ch. Rob. 75, n. ; 165 E. R. 702.

Annotation :—**Apld.** The Roland (1915), 84 L. J. P. 127.

Part XI.—Procedure.

1302a. Ship formerly enemy property—Transfer of ownership.]—THE KANKAKEE, THE HOCKING, THE GENESEE (1917), 8 Lloyd, Pr. Cas. 74, P. C.

PUBLIC AUTHORITIES, BODIES AND OFFICERS.

Part I.—Acts of State.

11. *Add. Annotation :*—**Consd.** Musmann *v.* Engelke, [1928] 1 K. B. 90.

13. *Add. Annotation :*—**Refd.** Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65.

14. *Add. Annotation :*—**Apld.** Engelke *v.* Musmann, [1928] A. C. 433.

16. After the cross-reference following this case add "**Status of person claiming diplomatic privilege.**]—*See* CONSTITUTIONAL LAW, No. 418a."

47. *Add. Annotations :* —**Folld.** Civilian War Claimants Assocn., Ltd. *v.* R., [1932] A. C. 14. **Consd.** Hungarian Property Administrator *v.* Finegold (1931), 100 L. J. K. B. 383. **Refd.** *Re* Mason (1928), 97 L. J. Ch. 321.

48a. ——.]—By Treaty of Versailles (Art. 232), Germany undertook to make compensation for all damage done to the civilian population of the Allied & Associated Powers & to their property during the period of the belligerency of each as an Allied or Associated Power against Germany by the aggression of Germany & her allies, & moneys were received by the Crown under this Article. By a petition of right the suppliants, as assignees of civilian claimants who had suffered loss or damage by German aggression during the War, claimed on their behalf payment of compensation out of the moneys paid or payable as reparations under the above Article. The case made by the petition was that the claimants had sent particulars of their claims, first, to Foreign Claims Office &, afterwards, to Reparation Claims Department in accordance with the instructions of His Majesty's Govt., that these claims had been duly verified by the Govt., & were included in the agreed total of claims for reparations which Germany was required to pay under the treaty, & that the Crown in inviting the claimants to submit their claims had constituted itself an agent or a trustee for claimants in respect of any money received by it from Germany on account of reparations, & that any such money was money had & received by the Crown to the use of claimants :—*Held :* on demurrer by the Crown, the petition afforded no ground for the contention that the money received under the treaty was received by the Crown as an agent or a trustee for claimants, or as money had & received to their use, & was bad as disclosing no ground of claim cognizable by the ct.—CIVILIAN WAR CLAIMANTS ASSOCN., LTD. *v.* R., [1932] A. C. 14 ; 101 L. J. K. B. 105 ; 146 L. T. 169 ; 48 T. L. R. 83 ; 78 Sol. Jo. 813, H. L.

57. *Add. Annotation :*—**Refd.** Croft *v.* Dunphy (1932), 48 T. L. R. 652.

66. To the cross-references following this case add "**Decrees of Russian Soviet Government —Effect of.**]—*See* No. 13, *ante* ; COMPANIES, Nos. 8523, 8524, 8527a ; CONSTITUTIONAL LAW, No. 387a ; INSURANCE, 712a."

66a. ——.]—The English cts. will not inquire into the validity of acts done by a recognised foreign Govt. against its own subjects in respect of property situate in its own territory.

In 1918 a section of Russian revolutionaries took & retained possession of movables in Russia belonging to pltf. against her will. The act of those revolutionaries was subsequently adopted by the Soviet Republic, which was recognised in 1924 by the British Government as the *de jure* Govt. of Russia. In 1928 the movables in question were sold in Russia by the Soviet Republic to defts., who brought them to England. In an action by pltf. to recover those movables or damages for their detention or conversion :—*Held :* the action failed, as the ct. could not inquire into the validity of the acts of a foreign sovereign Power which had been recognised by the Govt. of this country.—PALEY OLGA PRINCESS *v.* WEISZ, [1929] 1 K. B. 718 ; 98 L. J. K. B. 465 ; 141 L. T. 207 ; 45 T. L. R. 365 ; 73 Sol. Jo. 283, C. A.

Part III.—Exercise of Statutory Powers, Duties, etc.

84a. **Acquiescence in wrongful exercise—What amounts to.**]—Pltf. does not acquiesce in the wrong-doing of a local authority by simply standing by & assuming that the local

PART II.

sa. *Remuneration.*] — (1) The fact that a statute which creates a public office provides that the remuneration of the officer as fixed by order in council shall be paid out of the consolidated revenue fund does not imply a condition that there must be a special vote of supply by the Legislature for such remuneration in order to render the officer entitled to payment thereof ; & the fact that the Legislature does make such special votes from year to year does not establish that such practice is legally necessary.

(2) Where such a statute provided that the officer was to be appointed by order in council & should hold office during good behaviour but be removable by the Lieutenant-Governor in Council for cause & an order in council had appointed, & fixed the remuneration of, an officer, who gave no cause for removal, & an amendment to the statute transferred his duties & repealed the provision as to his tenure of office & removal for cause, but did not abolish the office :—*Held :* even if such amendment placed the officer in a position where his remuneration might be terminated by the Lieutenant-Governor in Council, yet an order in council was necessary to terminate it, & until such order was passed the officer, having continued ready to perform his duties, was entitled to receive said remuneration.—MACDONALD *v.* R., [1930] 1 W. W. R. 700 ; 3 D. L. R. 465.—**CAN.**

PART III. SECT. 1.

sx. *Exercise of discretion—No interference by courts.*]—The rule that the ct. will not interfere with the exercise of the discretion of Ministers of the Crown provided no statutory provision is infringed applied herein in holding that the payment by the Department of Education of the secondary school grant to the S. school district was legal & authorised under Public Schools Act.—RUSSELL SCHOOL DISTRICT *v.* SHELLMOUTH RURAL MUNICIPALITY, [1931] 2 W. W. R. 629 ; 4 D. L. R. 309 ; 39 Man. L. R. 528.—**CAN.**

authority is acting within its statutory powers.—PIGGOTT *v.* MIDDLESEX COUNTY COUNCIL, [1909] 1 Ch. 134; 77 L. J. Ch. 813; 99 L. T. 662; 72 J. P. 461; 52 Sol. Jo. 698; 6 L. G. R. 1177.

86. *Add. Annotation :*—**Consd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

90. *Add. Annotations :*—**Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159; Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401. **Refd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

103. *Add. Annotation :*—*As to* (2) **Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

105. *Add. Annotation :*—**Refd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

109. *Add. Annotation :*—**Consd.** Guilfoyle *v.* Port of London Authority, [1932] 1 K. B. 336.

114. *Add. Annotation :*—**Refd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

127. *Add. Annotation :*—**Consd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

132. *Add. Annotation :*—**Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

135. *Add. Annotation :*—**Consd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

137. *Add. Annotations :*—*As to* (3) **Consd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85; Blundy, Clark & Co. *v.* London & North Eastern Ry. Co., [1931] 2 K. B. 334.

140. *Add. Annotation :*—*As to* (2) **Refd.** Blundy, Clark & Co. *v.* London & North Eastern Ry. Co., [1931] 2 K. B. 334.

141. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

147. *Add. Annotation :*—**Refd.** St. Anne's Well Brewery Co. *v.* Roberts (1928), 92 J. P. 180.

160. *Add. Annotation :*—*As to* (1) **Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

177. *Add. Annotations :* — **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1930] A. C. 549; West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

178. *Add. Annotation :*—**Refd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1928] Ch. 235.

193. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Ry. Co., [1931] 2 K. B. 334.

209. *Add. Annotations :*—*As to* (1) **Refd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546. *As to* (3) **Consd.** Guilfoyle *v.* Port of London Authority, [1932] 1 K. B. 336. *As to* (5) **Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159; Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

221. *Add. Annotations :*—*As to* (3) **Consd.** Rawlins *v.* Gillingham Corpn. (1932), 146 L. T. 486. *Generally*, **Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

226. *Add. Annotation :*—*Generally*, **Consd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

244. *Add. Annotation :*—*Generally*, **Refd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

249. *Add. Annotation :*—*Generally*, **Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

256. *Add. Annotation :*—**Consd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

PART III. SECT. 4, SUB-SECT. 1.

aa. Delete this case.

e (p. 28) i. ——.]—Applt. municipality in the exercise of powers conferred by Municipal Corpns. Act, 1906, s. 235, constructed certain roads, & there was evidence that in consequence thereof storm waters which formerly soaked away now flowed down on to the resp.'s lands, which were low-lying, to a greater extent than formerly & flooded them. It was within the powers of applt. municipality to carry out at considerable cost such a system of drainage as might have obviated the injury to resps., but it did not do so :—*Held :* resps. were without remedy since applt. municipality constructed the roads without negligence in a proper manner & in the *bonâ fide* exercise of its statutory powers.—CLAREMONT MUNICIPALITY *v.* FERGUSON, CLAREMONT MUNICIPALITY *v.* L. M. FERGUSON, CLAREMONT MUNICIPALITY *v.* A. E. N. FERGUSON, [1928] W. A. L. R. 117.—**AUS.**

e (p. 28) ii. ——.]—Owing to the bursting of a water pipe which was part of deft. city's waterworks system pltfs.' lands were flooded & damaged. The system was installed by the city under statutory authority, & it was found that the city in doing so had not been guilty of any negligence & had not acted in any unreasonable or oppressive way :—*Held :* the city was not liable.—RENAHAN *v.* VANCOUVER CITY, [1930] 3 W. W. R. 166; 4 D. L. R. 1018; 43 B. C. R. 147.—**CAN.**

PART III. SECT. 4, SUB-SECT. 3.

n. *Revsd.*, [1923] S. C. R. 397.

PART III. SECT. 5, SUB-SECT. 1.

192 xiv. *Revsd.*, 31 S. C. R. 61.

sa. *Liability of municipality to councillor—Contributory negligence.*]—What an officer of a corpn. does in his corporate capacity cannot hurt him in his individual capacity. Thus the mere fact that a pltf. who has sustained personal injury as the result of the negligence of a village council is a member of the council does not preclude him from recovering damages from the village. Pltf., a member of the council of the deft. village, was injured by the explosion of a chemical fire extinguisher while he was proceeding to use it in helping, together with others, to put out a fire in the village. The jury found that deft. village was negligent in not having the fire extinguisher properly inspected & kept in perfect working order, & also found pltf. guilty of contributory negligence, but only because of the fact that he was a councillor & not because of his operation of the extinguisher. The village had appointed a fire chief & instructed him, at a council meeting, to see that the fire extinguishers were kept in proper working order :—*Held :* judgment should be entered for pltf.—SMITH *v.* KELLIHER VILLAGE, [1931] S. C. R. 672; 4 D. L. R. 102; *affg.*, [1930] 2 W. W. R. 638; 4 D. L. R. 938; 25 S. L. R. 65; *revsg.*, [1930] 1 D. L. R. 878; 24 S. L. R. 198; [1929] 3 W. W. R. 655.—**CAN.**

PART III. SECT. 6, SUB-SECT. 1.—A.

228 i. —— *Flooding.*]—SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* ALLADIN (1928), I. L. R. 51 All. 291.—**IND.**

228 ii. —— ——.]—BIFROST RURAL MUNICIPALITY *v.* STADNICK, [1928] 3 D. L. R. 103; [1928] S. C. R. 304.—**CAN.**

228 iii. —.]—STEWART *v.* SPRINGFIELD & TACHE RURAL MUNICIPALITIES, [1928] 4 D. L. R. 593; [1928] 3 W. W. R. 198; 37 Man. L. R. 453.—**CAN.**

228 iv. —— *In handling of wheat—Delivered under Wheat Harvest Acts—Right of indorsee of certificates.*]—When an owner of wheat who has delivered it to the Govt. of South Australia under Wheat Harvest Acts, 1915–17, indorses & delivers the certificate for supplementary advances issued to him, there passes to the transferee, not only the right to receive the advances, but also the right of the owner to sue the Govt. for damages for negligence in the care & handling of the wheat so delivered for the year whereby the amount payable under the certificates is diminished.—ROBINSON *v.* STATE OF SOUTH AUSTRALIA, [1929] A. C. 469.—**AUS.**

sm. *Action against municipality—Effect of change o boundaries.*]—OBIREK *v.* BIFROST RURAL MUNICIPALITY, [1930] 1 W. W. R. 949; 3 D. L. R. 507.—**CAN.**

263a. —— **Fumes from power station.**]—Pltf., who was a farmer, was the occupier of property in the neighbourhood of an electricity power station which had been erected by deft. corpn. under Parliamentary powers, & which emitted fumes heavily charged with sulphur & sulphur compounds so as to damage the property occupied by pltf. In an action for a nuisance:—*Held:* the Electric Lighting (Clauses) Act, 1899 (c. 19), did not expressly make defts. liable for a nuisance, but as defts. had not proved the nuisance to be the inevitable result of the exercise of their statutory powers pltf. was entitled to an injunction & damages.—MANCHESTER CORPN. *v.* FARNWORTH, [1930] A. C. 171; 99 L. J. K. B. 83; 94 J. P. 62; 46 T. L. R. 85; 73 Sol. Jo. 818; 27 L. G. R. 709; *sub nom.* FARNWORTH *v.* MANCHESTER CORPN., 142 L. T. 145, H. L.

268. *Add. Annotation:*—**Consd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

273. *Add. Annotation:*—**Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

275. *Add. Annotation:*—**Refd.** Manchester Corpn. *v.* Farnworth, [1930] A. C. 171.

280. *Add. Annotation:*—*Generally*, **Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

282. *Add. Annotations:*—*As to* (1) **Consd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533. **Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

288. *Add. Annotation:*—**Apld.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

289. *Add. Annotation:*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

298. *Add. Annotation:*—**Folld.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

298a. ——.]—The police appointed by the watch committee of a borough corpn., if they arrest & detain a person unlawfully, do not act as the servants or agents of the corpn. so as to render that body liable to an action for false imprisonment.—FISHER *v.* OLDHAM CORPN., [1930] 2 K. B. 364; 99 L. J. K. B. 569; 143 L. T. 281; 94 J. P. 132; 46 T. L. R. 390; 74 Sol. Jo. 299; 28 L. G. R. 293; 29 Cox, C. C. 154.

317. *Add. Annotations:*—**Apld.** Stevens *v.* Aldershot Gas, Water & District Lighting Co. (now Mid-Southern District Utility Co.) (1932), 74 L. Jo. 95. **Refd.** Seammell *v.* Hurley, [1929] 1 K. B. 419.

318. *Add. Annotation:*—**Refd.** Clark *v.* Epsom R. D. C., [1929] 1 Ch. 287.

330. *Add. Annotation:*—**Refd.** Scammell *v.* Hurley, [1929] 1 K. B. 419.

334. *Add. Annotation:*—**Apld.** Holt Bros. & Whitford *v.* Axbridge Rural District Council (1931), 95 J. P. 87.

PART III. SECT. 6, SUB-SECT. 2.—A.

261 i. —— *Vibration from blasting operations.*]—In the course of its operations in constructing a weir, deft. co., by blasting with dynamite, caused injury to some of pltf.'s buildings:—*Held:* liable for damages. While Department of Railways & Canals Act, R. S. B. C., 1927, gives general authority to direct the construction of all railways & canals & all works appertaining thereto, Parliament did not sanction the use of a particular means, namely, dynamite.—PILLITERRI *v.* NORTHERN CONSTRUCTION CO., [1930] 4 D. L. R. 731; 66 O. L. R. 128.—**CAN.**

PART III. SECT. 6, SUB-SECT. 2.—B.

268 i. *General rule.*]—SURATEE, BARA BAZAAR CO., LTD. *v.* MUNICIPAL CORPN. OF RANGOON (1927), I. L. R. 5 Ran. 722.—**IND.**

275 xxi. ——.]—The provisions of Public Health Act, R. S. A., 1922, read together with those of the Edmonton Charter with respect to sewerage systems & the expropriation of land required therefor held to give the city more than mere permissive authority for their construction. Therefore, the maintenance by the city of a sewage disposal plant, in accordance with said provisions, gives no cause of action for nuisance, in the absence of negligence in its construction or operation.—TOPHAM *v.* EDMONTON CITY, [1932] 1 W. W. R. 636.—**CAN.**

283 i. *Exemption from liability—Obstruction in highway.*]—The Legislature of Ontario has not given the municipalities of the Province authority to permit telephone cos. to occupy the streets & highways with their poles & wires for a longer period, at one time than five years. An agreement by a municipality to permit, by irrevocable licence, a telephone co. to occupy the streets with poles & wires is *ultra vires.*—COBALT CORPN. *v.* TEMISKAMING TELEPHONE CO. (Ont.) (1919), 59 S. C. R. 62; 47 D. L. R. 301.—**CAN.**

sc. *Interference with level of water—Private corporation in charge of dam—Subject to control of Government Commission—Exemption from liability.*]—STIRRETT & SONS, LTD. *v.* KAMINISTIQUIA POWER CO., LTD., [1930] 1 D. L. R. 445.—**CAN.**

PART III. SECT. 7.

296 xxiii. ——.]—MCSORLEY *v.* ST. JOHN CORPN. (1882), 6 S. C. R. 531.—**CAN.**

296 xxiv. ——.]—Where a municipality, in obedience to an Act of the Legislature, appoints an officer to perform a public service in which the corpn. has no special interest, & from which it derives no special benefit in its corporate capacity, such officer is not the servant or agent of the municipality, &, therefore, it is not liable for his negligence in the performance of his duties.—MEAD *v.* MARQUIS RURAL MUNICIPALITY, [1928] 2 D. L. R. 524; [1928] 1 W. W. R. 756.—**CAN.**

PART III. SECT. 9, SUB-SECT. 1.

sa. *Injunction—Claim to take more land than necessary.*]—Deft. corpn. issued to pltf. notice of its intention to take the whole of her land for a certain public work, although it admitted that the area was larger than that actually required for the contemplated work. It also refused pltf.'s application for a permit to build on the land, on the ground of its intention to take same for the work:—*Held:* granting an injunction restraining the corpn. from taking the whole of the land, it had no power under Public Works Act, 1908, to take a larger area than it actually required for the public work; & further it was not legally justified in refusing the appln. for a permit to build on the ground of its intention to take the land, & a writ of *mandamus* should issue compelling it to hear & determine the appln.—QUINLAN *v.* WELLINGTON CORPN., [1929] N. Z. L. R. 491.—**N.Z.**

PART III. SECT. 9, SUB-SECT. 2.

316 i. *Whether general jurisdiction of courts ousted.*]—Deft. corpn. erected a power-house, & pltf. claimed damages against the corpn. for the escape of grit & smoke from the power-house, & asked for an injunction to restrain the corpn. from using the power-house as it was being used:—*Held:* pltf. must be nonsuited, as his only remedy must be determined in the manner provided by Public Works Act, 1908.—O'BRIEN *v.* WELLINGTON CITY CORPN., [1928] N. Z. L. R. 215.—**N.Z.**

o i. ——.]—Pltf., by her statement of claim, alleged that deft. village corpn. in 1927 lowered the grade of a street in the village in front of her lands, thereby cutting off her access to her property from the street:—*Held:* there being no allegation in the statement of claim that the corpn. was guilty of negligence in the construction of the work, & no ground alleged which would entitle pltf. to damages at common law, &, so far as appeared from the statement of claim, the corpn. having acted within its powers in constructing the work, the only right of pltf. was to claim compensation for the injurious affection of her lands, under sect. 342 of Municipal Act, & she was restricted to that right & had no right to bring an action.—HOWE *v.* PT. DALHOUSIE, [1929] 1 D. L. R. 585; 63 O. L. R. 305.—**CAN.**

sb. *Order of Public Utility Board—Right of appeal.*] — NORTHWESTERN UTILITIES, LTD. *v.* EDMONTON CITY, [1929] S. C. R. 186.—**CAN.**

——.]—The Public Utilities Amendment Act, 1927, provides for an appeal from an order of the Board upon a question of jurisdiction or upon a question of law, but upon no other ground. In fixing a base for rates to be charged by applt. co. the Board took into account the fact that the co. had earned undistributed profits beyond the return rate fixed for the preceding period & the Board, as a consequence of treating such earnings as excessive profits & available for the amortisation fund, had reduced the base on which the rates for the ensuing period were fixed. The co., which contended that this method of calculation was unfair & unreasonable & involved questions of jurisdiction or questions of law, applied

Part IV.—Exemptions from Liability.

343. *Add. Annotation :*—**Refd.** Gilleghan *v.* Minister of Health (1931), 47 T. L. R. 439.

343a. —— **Ministry of Health.**]—Ministry of Health Act, 1919 (c. 21), s. 7 (1), does not enable an action to be brought against the Minister for alleged breach of a contract made by the Minister as a servant of the Crown, & the proper remedy is against the Crown by petition of right.—GILLEGHAN *v.* MINISTER OF HEALTH, [1932] 1 Ch. 86; 101 L. J. Ch. 81; 146 L. T. 231; 47 T. L. R. 439.

349. *Add. Annotation :*—**Refd.** North Charterland Exploration Co. (1910), Ltd. *v.* R. (1930), 99 L. J. Ch. 483.

355. *Add. Annotation :*—**Refd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743.

362. *Add. Annotation :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

363. *Add. Annotation :*—**Refd.** Gilleghan *v.* Minister of Health (1931), 47 T. L. R. 439.

364. *Add. Annotation :*—**Refd.** Gilleghan *v.* Minister of Health (1931), 47 T. L. R. 439.

365a. Ministry of Health.]—GILLEGHAN *v.* MINISTER OF HEALTH, No. 343a, *ante*.

378. *Add. Annotation :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

387. *Add. Citation :*—138 L. T. 8.

391. *Add. Annotation :*—**Refd.** Constantinesco *v.* R. (1927), 11 Tax Cas. 730.

401. *Add. Annotation :*—**Folld.** Morriss *v.* Winter (1929), 45 T. L. R. 643.

402a. —— **Detention after receipt of remission marks.**]—MORRISS *v.* WINTER, No. 940a, *post*.

420. *Add. Annotation :*—**Refd.** Leitch (William) & Co. *v.* Leydon, Barr (A. G.) & Co. *v.* Macgeoghegan (1930), 47 T. L. R. 81.

436a. —— **Failure to record appearance—Officer of court.**]—FINCH *v.* RISLEY (1593), cited Poph. 25; 79 E. R. 1145.

482a. —— ——.]—Pltf. having left his wife & two children, his wife obtained a maintenance order under Summary Jurisdiction (Married Women) Act, 1895 (c. 39), for the payment by him of a weekly sum. Pltf. having failed to comply with the order, his wife made complaint to a magistrate at D., which was within the county of Chester, that £19 12*s.* 6*d.* was then in arrear under the order, & thereupon the magistrate issued a warrant, addressed to each & all of the constables of the county of Chester, commanding them to apprehend pltf. & convey him before a ct. of summary jurisdiction at D. to be dealt with according to law. The warrant showed on its face that £19 17*s.* was payable by pltf. & was in the form prescribed by the Bastardy (Forms) Order, 1915, but it did not contain the words " unless said sum & all costs & charges be sooner paid " which were directed to be inserted in such warrants by Bastardy (Forms) Amendment Order, 1921. The warrant was delivered to deft., the superintendent of police at D., & some time later pltf. was arrested by a constable acting under deft.'s orders. Pltf. was taken in custody through the streets & placed in a cell by deft.'s order. At the time the arrest was effected the warrant was in deft.'s possession at the police station, & was not in the possession of the constable who made the arrest. Pltf.'s father immediately after the arrest tendered £19 17*s.* to deft. & asked for his son's release, but deft. refused to accept the money. Pltf.'s solr. then sent a letter to deft. enclosing £19 17*s.* & demanding pltf.'s release, but deft. did not open the letter & pltf. was kept

for leave to appeal :—*Held :* no point of jurisdiction or of law was involved & the appeal could not be entertained. —WAINWRIGHT GAS CO., LTD. *v.* WAINWRIGHT, TOWN OF, & BOARD OF PUBLIC UTILITY COMRS. OF ALBERTA, [1930] 3 W. W. R. 337; 4 D. L. R. 1000.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 1.—A.

b i. *made for ulterior purpose.*]—QUEENSLAND INSURANCE CO., LTD. *v.* SUBIACO MUNICIPALITY (1927), 30 W. A. L. R. 32.—**AUS.**

c i. —— *Secretary of State for India in Council.*]—In order that a contract may be binding upon the Secretary of State for India in Council, it must be made in strict conformity with the provisions laid down in the statutes governing the matter.—KESSORAM, PODDAR & CO. *v.* SECRETARY OF STATE FOR INDIA (1926), I. L. R. 54 Calc. 969.—**IND.**

c ii. —— *Minister of Agriculture.*]—On the proper construction of Dried Fruits Act, 1924, in acquiring under that Act dried fruits on behalf of His Majesty, the Minister of Agriculture acts merely as the instrument of the Crown. The obligation to pay for the fruits is upon the Crown & not upon the Minister as such, &, therefore, is not subject to attachment by garnishee proceedings.—MILDURA CO-OPERATIVE FRUIT CO., LTD. *v.* NOYCE, *Re* NOYCE, *Ex p.* MINISTER OF AGRICULTURE [1928] V. L. R. 390; (1928), Argus L. R. 234.—**AUS.**

344 i. *Personal liability—Question of fact.*]—BOCZ *v.* HUGONNARD (1899), 4 Terr. L. R. 69.—**CAN.**

sb. *Indemnity Act*, 1920 (*c.* 48)—*Effect of.*]—Indemnity Act, 1920, s. 1 (1), does not apply to actions to enforce the implement by Govt. Departments of their wartime contracts. The saving of actions in respect of " rights under, or alleged breaches of, contract " contained in sect. 1 (1) (*b*) applies to cases in which rights under a contract have been interfered with, or a contract has been directly breached, by the exercise of some prerogative power.—GREENOCK CORPN. *v.* THE ADMIRALTY, [1928] S. C. 227.—**SCOT.**

sd. *British Columbia Magistrates Act —Meaning of " officer."*]—The term " officer " in sect. 9 of the British Columbia Magistrates Act should not be limited in such a way as to exclude all officers who are not judicial officers from its denotation : such interpretation would involve the contention that an act or thing done by any person, in order to fall within the ambit of the section, must be an act or thing in its nature judicial. Any public officer, not belonging to any of the specific classes of officers enumerated, is, when performing executive duties, within the descriptive words of the section, &, subject to the conditions prescribed, entitled to claim the benefit of it.—JOHNSTON *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., [1932] S. C. R. 219; 2 D. L. R. 462.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 2.—A.

366 ii. ——.]—A servant of the Crown is liable for his own wrongful acts.—MORTON *v.* BARTLETT (1874), 15 N. B. R. (2 Pug.) 215.—**CAN.**

373 xii. —— *Trespass by pathmaster.*]—In trespass against a municipal corpn. for the act of their pathmaster, in causing statute labour to be performed on certain land of pltf., alleged by defts. to be an orginal allowance for road, it appeared that the pathmaster acted under an order written by the clerk, by the direction of the council while in session :—*Held :* sufficient to render the corpn. liable, & a bye-law was not necessary.—NEVILLE *v.* ROSS TOWNSHIP CORPN. (1872), 22 C. P. 487.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 2.—B. (a).

378 xviii. ——.]—The Land Settlement Board, created by Land Settlement & Development Act, R. S. B. C. 1924, c. 128, is a department of the Govt., &, there being nothing in said Act or other statutes which gives it a right to sue or be sued, no action lies against it for acts done in its official capacity.—RATTENBURY *v.* LAND SETTLEMENT BOARD, [1928] 3 D. L. R. 382; [1928] 2 W. W. R. 475; 39 B. C. R. 523; *affd.*, [1929] 1 D. L. R. 242.—**CAN.**

overnight in the cell. Pltf. was brought on the following morning before a ct. of summary jurisdiction at D., when the solr.'s letter was produced & found to contain £19 17*s.*, whereupon the magistrates ordered pltf.'s immediate release. Pltf. brought an action against deft. for false imprisonment, & the jury returned a verdict in pltf.'s favour & awarded £175 as damages for arrest, & £175 as damages for unlawful detention at the police station after the tender of the money: —*Held:* deft. was not protected by Constables Protection Act, 1750 (c. 44), s. 6, in respect of the arrest, but he was protected by that Act in respect of the unlawful detention at the police station after the tender of the money, inasmuch as deft. in detaining pltf. was merely acting in obedience to the warrant.—HORSFIELD *v.* BROWN, [1932] 1 K. B. 355; 101 L. J. K. B. 177; 146 L. T. 280; 96 J. P. 123; 30 L. G. R. 153; 29 Cox, C. C. 422.

483. *Add. Annotation:*—**Refd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

486. *Add. Annotation:*—**Refd.** Horsfield *v.* Brown, [1932] 1 K. B. 355.

494. *Add. Annotation:*—**Consd.** Horsfield *v.* Brown, [1932] 1 K. B. 355.

511. *Add. Annotation:*—**Consd.** Horsfield *v.* Brown, [1932] 1 K. B. 355.

513. *Add. Annotation:*—**Refd.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

541. *Add. Annotations:*—**Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159. **Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401; Guilfoyle *v.* Port of London Authority, [1932] 1 K. B. 336; Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

558. *Add. Annotation:*—*As to* (2) **Refd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579.

555. *Add. Annotation:*—**Refd.** R. *v.* Divine, *Ex p.* Walton, [1930] 2 K. B. 29.

601. *Add. Annotation:*—**Consd.** More *v.* Weaver, [1928] 2 K. B. 520.

604. *Add. Annotations:*—**Consd.** More *v.* Weaver, [1928] 2 K. B. 520. **Refd.** Hearts of Oak Assurance Co. *v.* A.-G., [1931] 2 Ch. 370.

636. In the third line of the existing paragraph read " 1813 " for " 1913."

698. *Add. Annotation:*—**Consd.** Wisbech R. D. C. *v.* Ward (1928), 138 L. T. 308.

701. *Add. Citations:*—[1928] 2 K. B. 1; 97 L. J. K. B. at p. 59; 138 L. T. 308; 26 L. G. R. 10.

707. *Add. Annotation:*—**Refd.** Chapman *v.* Ellesmere (1932), 48 T. L. R. 309.

708. *Add. Annotation:*—*As to* (2) **Refd.** Brown *v.* Dagenham U. D. C., [1929] 1 K. B. 737.

Part V.—Interest or Bias of Judicial and Quasi-Judicial Bodies.

719. *Add. Annotation:*—*Generally*, **Refd.** Maclean *v.* Workers' Union, [1929] 1 Ch. 602.

721. *Add. Annotations:*—**Refd.** Maclean *v.* Workers' Union, [1929] 1 Ch. 602; R. *v.* Huntingdon Confirming Authority, *Ex p.* George & Stamford Hotels, Ltd., [1929] 1 K. B. 698.

PART IV. SECT. 3, SUB-SECT. 2.—C. (d) ii.

516 i. *Compliance with demand.*]—*Held:* production, perusal, & a copy of a search-warrant having been demanded by pltfs. & furnished to them, their remedy, if aggrieved, was against those issuing the warrant, & an action against the constables was stayed by an order made upon summary application under Public Authorities Protection Act, R. S. O., 1927, ss. 8, 10.—SOLLOWAY MILLS & CO. *v.* WILLIAMS, [1930] 3 D. L. R. 953; 53 Can. C. C. 403; 65 O. L. R. 243.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 4.—A. (a).

so. *Secretary of State for India.*]—No suit lies against the Secretary of State for damages for wrongful arrest & detention of a person by a police officer.—M. A. KADER ZAILANY *v.* SECRETARY OF STATE IN COUNCIL (1931), I. L. R. 9 Ran. 375.—**IND.**

PART IV. SECT. 3, SUB-SECT. 4.—A. (b).

sf. *Commissioners of Public Works.*]—By a private Act, St. Stephen Green, Dublin, which previously had been vested in comrs. as a private square, was vested in the Comrs. of Public Works, who were, by the Act, charged with the duty of maintaining the same, to be used as a public park, with power to accept private subscriptions from persons willing to contribute towards carrying into execution the purposes of the Act, but with no power to levy rates or tolls, though authorised to defray such of the expenses incurred in carrying the Act into execution as could not be defrayed out of moneys received by them under the Act out of moneys to be provided by Parliament. Pltf. in this action sought damages for injuries received by him while lawfully using the square, by coming in contact with an iron railing, which the statement of claim alleged was erected therein by the Comrs. of Public Works in a negligent & dangerous manner:—*Held:* the Comrs. of Public Works in Ireland were not, by virtue of the Act, constituted servants of the Crown.—WHEELER *v.* COMRS. OF PUBLIC WORKS, [1903] 2 I. R. 202.—**IR.**

PART IV. SECT. 3, SUB-SECT. 4.—B.

f i. *Driver of fire-engine.*]—MORASH *v.* DARTMOUTH, [1931] 1 D. L. R. 413.—**CAN.**

t. *Revsd.*, [1927] 1 D. L. R. 969; [1927] S. C. R. 226.

sg. *Inspectors appointed under Noxious Weeds Act.*]—Inspectors appointed by a municipality under Noxious Weeds Act, 1924, c. 20, are not employees or agents of the municipality, but are public officers performing public services for the benefit, not of the municipality in its corporate capacity, but of its inhabitants & those of the Province generally.—MEAD *v.* MARQUIS RURAL MUNICIPALITY, [1928] 2 D. L. R. 524; [1928] 1 W. W. R. 756.—**CAN.**

PART IV. SECT. 4, SUB-SECT. 1.

543 ii. —— ——.]—*Re* O'CONNOR *v.* LEMIEUX, [1927] 3 D. L. R. 831; 60 O. L. R. at p. 374.—**CAN.**

PART IV. SECT. 4, SUB-SECT. 6.—B. (b).

sh. *Failure to return conviction—Form of action.*]—DRAKE *v.* PRESTON (1873), 34 U. C. R. 257.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 2.—B. (c).

g i. —— *Board of Public Utility Commissioners—Public Utilities Act*, 1923 (*c.* 53), *s.* 137 (2).]—*Re* STANTON & GORDON, [1927] 1 D. L. R. 273; [1926] 3 W. W. R. 769; 22 Alta. L. R. 387.—**CAN.**

Part VI.—Statutory Protection—Public Authorities Protection Act.

733. *Add. Annotation :—As to* (1) **Consd.** Scammell *v.* Hurley, [1929] 1 K. B. 419.

736. *Add. Annotation :*—**Refd.** Graigola Merthyr Co. *v.* Swansea Corpn. (1928), 138 L. T. 465.

739a. *S. P.* MOSS *v.* SALFORD CORPN. (1908), 72 J. P. Jo. 341.

766. *Add. Annotation :*—**Refd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1929] A. C. 344.

777a. Duty to prosecute.]—*Held :* the duty to prosecute for an offence is not a "public duty" within Public Authorities Protection Act, 1893 (c. 61), s. 1.—HARTIN *v.* LONDON COUNTY COUNCIL (1929), 141 L. T. 120; 93 J. P. 160; 45 T. L. R. 318; 27 L. G. R. 497; 28 Cox, C. C. 618.

Annotation :—**Refd.** Betts *v.* Metropolitan Police District Receiver (1932), 96 J. P. 327.

777b. Stolen goods handed over to alleged owner by Receiver for Metropolitan Police.]—In the end of 1924 the Metropolitan Police found at the house of pltf. & took into their possession a quantity of goods including certain cloth. Pltf. was brought before the police ct. on charges of receiving, & some of the evidence there given tended to show, but did not prove, the identity of the cloth with cloth which had been stolen from a firm of carriers. Pltf. was committed for trial at the London sessions on indictments charging him with having received certain of the goods other than the cloth knowing them to have been stolen, & on an indictment charging him with a similar offence in respect of the cloth, & in Feb. 1925, he was convicted on the first-mentioned indictments & sentenced to five years' penal servitude. He was never tried on the indictment relating to the cloth, but it was allowed to remain upon the record. On Apr. 2, 1925, pltf. not having as yet made any credible claim to the cloth, the Receiver for the Metropolitan Police District handed it over to the firm of carriers, who claimed it, taking from them a written indemnity. On Jan. 16, 1931, pltf. having less than six months before made an unsuccessful demand for the cloth as his property, brought an action against the Receiver & the firm of carriers claiming damages for detinue & conversion of the cloth. The first-named deft. relied, among other defences, upon Public Authorities Protection Act, 1893 (c. 61). The jury, having heard the evidence, found that it did not establish the identity of the cloth with that stolen from the carriers, & they returned a verdict for pltf. against both defts. :—*Held :* (1) the first deft. in handing over the cloth to the second defts. in Apr. 1925, had acted in "intended execution" of a "public duty" within Public Authorities Protection Act, 1893 (c. 61), s. 1, & as the action in respect of the act of conversion so effected had not been commenced within six months after that act, it was not maintainable in respect thereof; (2) pltf. could not elect to rely only on his claim in detinue, so as to make the time run from his demand & to bring the date of the action within six months after the cause of action. Therefore, judgment should be entered for the first deft. against pltf., & for pltf. against the second deft.—BETTS *v.* METROPOLITAN POLICE DISTRICT RECEIVER & CARTER PATERSON & CO., LTD., [1932] 2 K. B. 595; 101 L. J. K. B. 588; 147 L. T. 336; 96 J. P. 327; 48 T. L. R. 517; 76 Sol. Jo. 474; 30 L. G. R. 349.

784. *Add. Annotations :*—**Refd.** Scammell *v.* Hurley, [1929] 1 K. B. 419; Graigola Merthyr Co. *v.* Swansea Corpn., [1929] A. C. 344; Betts *v.* Metropolitan Police District Receiver (1932), 96 J. P. 327.

795. *Add. Annotation :*—**Refd.** Scammell *v.* Hurley, [1929] 1 K. B. 419.

800. *Add. Annotation :*—**Refd.** Scammell *v.* Hurley, [1929] 1 K. B. 419.

803. *Add. Annotation :*—**Apld.** Graigola Merthyr Co. *v.* Swansea Corpn., [1928] Ch. 235.

804. *Substitute Citations.*—[1929] A. C. 344; 98 L. J. Ch. 233; 140 L. T. 505; 93 J. P. 121; 45 T. L. R. 219; 73 Sol. Jo. 109; 27 L. G. R. 243, H. L.

808a. ——.]—If a party *bonâ fide*, & not absurdly, believes that he is acting in pursuance of a statute, he is entitled to the special protection which the legislature intended for him, although he has done an illegal act.—SPOONER *v.* JUDDOW (1850), 4 Moo. Ind. App. 353; 6 Moo. P. C. C. 257; 18 E. R. 734, P. C.

827. *Add. Annotation :*—**Consd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

839. *Add. Annotation :*—**Consd.** Scammell *v.* Hurley, [1929] 1 K. B. 419.

854. *Add. Annotation :—As to* (1) **Refd.** Scammell *v.* Hurley, [1929] 1 K. B. 419.

PART VI. SECT. 2.

739 iii. —— —— *Harbour trustees.*]—The mere fact that bodies such as harbour trustees administer their undertakings under Acts of Parliament is not sufficient to entitle them, as successful defenders, to expenses as between agent & client under Public Authorities Protection Act, 1893 (c. 61), s. 1 (*b*). They must base their motion upon such of the enactments regulating their constitution & functions as are relevant to the question whether the action was "for an act done in pursuance, or execution, or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Act, duty, or authority."—LIVINGSTONIA S.S. CO., LTD. *v.* CLYDE NAVIGATION TRUSTEES, [1928] S. C. 270.—**SCOT.**

PART VI. SECT. 3, SUB-SECT. 2.

f 1. —— *Negligence—Claim under Fatal Accidents Act.*]—APPELBE *v.* WEST CORK BOARD OF HEALTH, [1929] I. R. 107.—**IR.**

PART VI. SECT. 5, SUB-SECT. 1.

sm. *Admiralty proceedings in Exchequer Court of Canada—Act not applicable.*]—SYDNEY, CAPE BRETON & MONTREAL S.S. CO. *v.* MONTREAL HARBOUR COMRS. (1913), 15 Exch. C. R. 1; 20 D. L. R. 828.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 2.

861 i. "*Action*" — *Against "person"* — *Wrongful tax sale.*] — *Held :* Public Authorities Protection Act not applicable.—KOWNATZKI *v.* BEAR LAKE MUNICIPAL DISTRICT, [1931] 1 D. L. R. 334; [1930] 3 W. W. R. 353; *revsd. on other grounds*, [1931] 1 W. W. R. 757; 2 D. L. R. 318; 25 Alta. L. R. 351.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 3.

sp. *Continuing trespass—Action not barred by Towns Incorporation Act, 1895 (c. 4).*]—ARCHIBALD *v.* TRURO CORPN. (1900), 33 N. S. R. 401.—**CAN.**

854a. ——.]—Where deft. appears to be acting as a member of a public body under statutory authority & pleads the six months' limitation imposed by Public Authorities Protection Act, 1893 (c. 61), as the period within which an action must be brought in respect of his acts, pltf. can defeat that claim by proving, on sufficient evidence, that deft. was not really intending to act in pursuance of his statutory authority, but was using his pretended authority from some improper motive, such as spite or for a purpose entirely outside statutory justification.

Where defts. are found purporting to execute a statute, the burden of proof is on pltf. to prove the existence of such a dishonest motive & the absence of any honest desire to execute the statute, & such existence & absence should be found only on strong & cogent evidence.—SCAMMELL G. & NEPHEW, LTD. *v.* HURLEY, [1929] 1 K. B. 419; 98 L. J. K. B. 98; 140 L. T. 236; 93 J. P. 99; 27 L. G. R. 53; *sub nom.* SCAMMELL G. & NEPHEW, LTD. *v.* ATTLEE, 45 T. L. R. 75; 73 Sol. Jo. 12, C. A.

Annotation :—**Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

857. *Add. Annotation :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

860. *Add. Annotation :*—**Folld.** Runcorn Guardians *v.* Worrall (1930), 94 J. P. Jo. 205.

860a. —— **Recovery of loan by guardians.**]—RUNCORN GUARDIANS *v.* WORRALL (1930), 94 J. P. Jo. 205, D. C.

861. *Add. Annotation :*—**Refd.** R. *v.* L. C. C., *Ex p.* Swan & Edgar (1927) (1929), 141 L. T. 590.

863. *Add. Annotation :*—**Apld.** Graigola Merthyr Co. *v.* Swansea Corpn., [1929] A. C. 344.

864. *Add. Annotation :*—**Consd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1928] Ch. 235.

869. *Add. Annotation :*—**Refd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1929] A. C. 344.

870. *Add. Annotation :*—**Consd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1928] Ch. 235.

876. *Add. Annotation :*—**Refd.** Scammell *v.* Hurley, [1929] 1 K. B. 419.

882a. ——.]—*Certiorari* is not a "proceeding" within Public Authorities Protection Act, 1893 (c. 61), s. 1.—R. *v.* LONDON COUNTY COUNCIL, *Ex p.* SWAN & EDGAR (1927), LTD. (1929), 141 L. T. 590; 45 T. L. R. 512, D. C.

884. *Add. Annotation :*—**Refd.** R. *v.* L. C. C., *Ex p.* Swan & Edgar (1927) (1929), 141 L. T. 590.

885. *Add. Annotation :*—**Refd.** R. *v.* L. C. C., *Ex p.* Swan & Edgar (1927) (1929), 141 L. T. 590.

886. *Add. Annotation :*—**Refd.** R. *v.* L. C. C., *Ex p.* Swan & Edgar (1927) (1929), 141 L. T. 590.

887. *Add. Annotation :*—**Refd.** R. *v.* L. C. C., *Ex p.* Swan & Edgar (1927) (1929), 141 L. T. 590.

888. *Add. Annotations :*—**Refd.** R. *v.* L. C. C., *Ex p.* Swan & Edgar (1927) (1929), 141 L. T. 590. **Mentd.** Pickford *v.* Quirke, Pickford *v.* I. R. Comrs. (1927), 138 L. T. 500; R. *v.* St. Marylebone Income Tax Comrs., *Ex p.* Schlesinger (1928), 13 Tax Cas. 746.

920a. ——.]—BETTS *v.* METROPOLITAN POLICE DISTRICT RECEIVER, No. 777b.

931. *Add. Annotations :*—**Consd.** Morriss *v.* Winter (1929), 45 T. L. R. 643. **Refd.** Copper Export Assocn. Inc. *v.* Mersey Docks & Harbour Board (1932), 48 T. L. R. 542.

940a. Detention after receipt of remission marks—Continuance by successive prison Governors.]—M. was convicted in Dec. 1925, of certain misdemeanours & sentenced to two years' imprisonment with hard labour & twelve months' imprisonment, the sentences to run consecutively. An order was made by the ct. directing that he should be detained in prison in conformity with the sentences passed. He was first detained in Portsmouth Prison & afterwards in Pentonville Prison. In Dec. 1927, after M. had been removed to Pentonville Prison, the Governor of Portsmouth Prison indorsed on M.'s stage card the forfeiture of five remission marks, to make it agree with M.'s record. There was a dispute whether or not the Governor of Portsmouth Prison had ordered the forfeiture of those marks on May 10, 1926, & the jury differed with regard to it. As a result of the forfeiture of those five marks M. was released by the Governor of Pentonville Prison on July 21, 1928, instead of on July 20. On Aug. 2, 1928, M. brought an action against the Governors of both prisons to recover damages for his detention in prison during that one day. The jury found that the Governor of Portsmouth Prison had not acted maliciously nor with intention to

PART VI. SECT. 6, SUB-SECT. 1.—A.

h i. —— *Release of insurance company by corporation from liability for accident.*]—On an appln. under The Town Act, 1927, s. 566, for leave to bring an action against a town for injuries sustained, more than three months previously, owing to alleged defective wiring belonging to the town:—*Held :* the fact that the town had released an insurance co. from further liability with respect to the accident did not prejudice it in such a manner as to lead the ct. to refuse to exercise its discretion under said section to allow the action to be brought.—*Re* RUTH & ESTEVAN TOWN, [1928] 4 D. L. R. 509; [1928] 2 W. W. R. 686.—**CAN.**

PART VI. SECT. 6, SUB-SECT. 6.

n (p. 133) i. —— *Where action in respect of want of repair caused by misfeasance.*]—PRENTICE *v.* SAULT STE. MARIE, [1927] 4 D. L. R. 800; 61 O. L. R. 246; *revsd.*, [1928] 3 D. L. R. 564; [1928] S. C. R. 309.—**CAN.**

s (p. 134) i. —— ——.]—MCGREGOR *v.* R., [1929] 1 D. L. R. 181.—**CAN.**

s (p. —— *As to injuries.*]—*v.* CITY OF LETHBRIDGE (Alta.), [1927] 4 D. L. R. 1019; [1927] 3 W. W. R. 421.—**CAN.**

oo (p. 135) i. —— ——.] — Pltf. was injured by his car striking an obstruction in deft.'s highway. During the ten days following the accident he was incapacitated by reason of his physical & mental condition from giving the notice required by Municipal Act, sect. 469 (4):—*Held :* there being no evidence that deft. corpn. was prejudiced by the failure to give notice within the statutory time, the ct. should be astute in finding reasonable excuse.—WEIR *v.* TURNBERRY, [1931] 3 D. L. R. 255; O. R. 309.—**CAN.**

oo (p. 135) ii. —— ——.]—To constitute reasonable excuse there must be such incapacity, either mental or physical, on the part of the injured person, as to render him incapable of discussing business affairs or giving instructions for the notice.—BISSELL *v.* ROCHESTER, [1930] 3 D. L. R. 825; 65 O. L. R. 310.—**CAN.**

oo (p. 135) iii. *Infancy.*]—An adult is not excused by ignorance of the law from giving the notice of claim & injury required by the Municipal Act, but an infant of ten years of age cannot be presumed to know the law, & ignorance of the law is a good excuse for him.—FERGUS *v.* TORONTO CITY, [1932] O. R. 257; 2 D. L. R. 807.—**CAN.**

sq. *Fishery inspector.*]—In an action by an Indian living on an Indian reserve against a fishery inspector & a game & fishery overseer in trover, to recover the value of a seine fishing net, the property of pltf. seized by defts. upon the reserve, defts. justified under Dominion Fisheries Act, 1914, & Ontario Game & Fisheries Act, 1914, no license to fish having been taken out by pltf. or those who used the seine for fishing:—*Held :* no notice of action was necessary.—SERO *v.* GAULT (1921), 50 O. L. R. 27; 64 D. L. R. 327.—**CAN.**

sr. *Effect of negotiations by city claims agent—After notice given—Limitation period suspended.*]—CAMILLO *v.* EDMONTON, [1930] 3 D. L. R. 670.—**CAN.**

injure M., & that he had not made a false statement :—*Held :* the Prison Rules did not confer upon M. any legal right to an earlier discharge by the obtaining of remission marks, & that therefore the action could not succeed against either of the Governors ; having regard to the findings of the jury the action could not succeed against the Governor of Portsmouth Prison ; & that deft. was protected by the Public Authorities Protection Act, 1893 (c. 61), as the action was not brought within six months of the act that caused the damage, there being no continuance of the injury or damage, as there was no continuance of the act by that deft. which caused the damage, & the Governor of Pentonville Prison was protected, as he had merely acted in pursuance of the order of the ct.—MORRISS *v.* WINTER, [1930] 1 K. B. 243 ; 99 L. J. K. B. 101 ; 142 L. T. 67 ; 28 Cox, C. C. 687.

942. *Add. Annotation :*—**Consd.** Rawlins *v.* Gillingham Corpn. (1932), 146 L. T. 486.

947. *Add. Annotation :*—**Consd.** Rawlins *v.* Gillingham Corpn. (1932), 146 L. T. 485.

949. *Add. Annotation :—As to* (1) **Refd.** Copper Export Assocn. Inc. *v.* Mersey Docks & Harbour Board (1932), 48 T. L. R. 542.

949a. Negligence of dock company—Improper repair of ship.]—A dock co. were empowered by a private Act of Parliament to raise, destroy, & remove wrecks in their docks, to sell the wreck & cargo, &, after paying expenses, to pay over the balance to the owners. A ship caught fire & partially sank in their dock. In Feb. 1930 the dock co. repaired the ship, but on taking her out of the dockyard it was found that the repairs were useless, & in June, 1931, she was sold to ship-breakers, & a statement was then prepared & issued by the dock co. showing the amount available for division amongst the cargo owners. In July, 1931, the cargo owners issued a writ claiming damages from the dock co. by reason of their having acted negligently in having tried to repair the ship, whereby the sum available for division amongst the owners was diminished. The dock co. relied on the Public Authorities Protection Act, 1893 (c. 61), s. 1 (*a*), but the cargo owners contended that the action was in time, as their rights were not ascertainable until the preparation of the adjustment statement, & as part of their complaint was the rendering to them of a statement showing too small a balance :—*Held :* the act or default complained of was in substance the alleged negligence of the dock co. in repairing the ship, this had taken place more than six months before action brought, & therefore the action was barred by the operation of the Public Authorities Protection Act, 1893 (c. 61), s. 1 (*a*).—COPPER EXPORT ASSOCN. INCORPORATED *v.* MERSEY DOCKS & HARBOUR BOARD (1932), 147 L. T. 320 ; 48 T. L. R. 542.

953. *Add. Annotations :*—**Consd.** Rawlins *v.* Gillingham Corpn. (1932), 146 L. T. 486. **Refd.** Morriss *v.* Winter (1929), 45 T. L. R. 643 ; Copper Export Assocn. Inc. *v.* Mersey Docks & Harbour Board (1932), 48 T. L. R. 542.

955. *Add. Annotations :*—**Consd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1928] Ch. 235. **Refd.** Morriss *v.* Winter (1929), 45 T. L. R. 643 ; Copper Export Assocn. Inc. *v.* Mersey Docks & Harbour Board (1932), 48 T. L. R. 542.

955a. ——.]—Pltf., who had sustained injuries in an accident on Jan. 3, 1930, which he alleged was due to the negligence of defts., commenced an action for damages on July 4, 1930. There was no suggestion that any act done by defts. after Jan. 3 had caused any repetition of damage to pltf. :—*Held :* the action was not maintainable, as it had not been commenced within the time limited by Public Authorities Protection Act, 1893 (c. 61), s. 1.—RAWLINS *v.* GILLINGHAM CORPN. (1932), 146 L. T. 486 ; 96 J. P. 153.

956. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

966. *Add. Annotation :*—**Consd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1929] A. C. 344.

Part VIII.—Tenure and Compensation for Abolition of Office.

1037. *Add. Annotation :*—**Apld.** Stoke Newington Borough Council *v.* Richards (1929), 45 T. L. R. 650.

1039a. Children of deceased constable—Constabulary (Ireland) Act, 1922 (c. 55), Sched. Part I, r. 4.]—EGAN *v.* A.-G., No. 1048a, *post.*

PART VIII. SECT. 1, SUB-SECT. 2.

h i. —— —— *Notwithstanding contract for term certain—Contract ultra vires.*]—LARKINS *v.* SUMMERSIDE, [1928] 4 D. L. R. 841.—**CAN.**

k i. *Appointment until successor appointed—Appointment of successor—Right to salary in lieu of notice.*]—BLAKELEY *v.* CHARLESWOOD RURAL MUNICIPALITY, [1928] 2 D. L. R. 657 ; [1928] 1 W. W. R. 828 ; 37 Man. L. R. 331.—**CAN.**

l i. —— *Of weights & measures.*]—*Held :* (1) the office of inspector was a freehold public office tenable during life or good behaviour ; (2) an inspector was not liable to dismissal at the pleasure of the Governor in Council as the holder of a public office under the Govt., but could only be removed from office by the justices in petty sessions for good cause, & after being called upon to show cause against his removal ; (3) the acceptance of a salary did not affect the tenure of his office, or render him liable to dismissal by the Govt. as a public servant.—*Ex p.* EVANS (1909), 10 S. R. N. S. W. 1 ; 26 N. S. W. W. N. 189 ; 9 C. L. R. 140.—**AUS.**

st. *Delegation of authority to departmental heads.*]—The municipal council of Sydney passed a resolution providing that the discharge or disrating or suspension of any employee should be left in the hands of the heads of the respective departments subject to appeal to the town clerk, whose decision was to be final. An employee who was subsequently dismissed by a departmental head brought an action against the council for wrongful dismissal :—*Held :* the council had power to delegates it authority to discharge employee.—BAYLY *v.* SYDNEY MUNICIPAL COUNCIL (1927), 28 S. R. N. S. W. 149 ; 45 N. S. W. W. N. 40.—**AUS.**

PART VIII. SECT. 2, SUB-SECT. 2.

n. For " WIGG *v.* COCHRANE *v.* A.-G., [1927] I. R. 285 " read " WIGG *v.* A.-G. OF IRISH FREE STATE, [1927] A. C. 674 ; 96 L. J. P. C. 88 ; 137 L. T. 460 ; 43 T. L. R. 457."

See, further, DEPENDENCIES, Nos. 714b, 714c.

1046. *Add. Annotation :*—**Consd.** Stoke Newington Borough Council *v.* Richards (1929), 45 T. L. R. 650.

1047. *Add. Annotation :*—**Consd.** Kiddie *v.* Port of London Authority (1929), 93 J. P. 203.

1048a. For loss of salary—Meaning of salary—Constabulary (Ireland) Act, 1922 (c. 55).]—(1) In Constabulary (Ireland) Act, 1922 (c. 55), by which compensation on the basis of salary is payable to the members of the disbanded Royal Constabulary, the word "salary" means wages or pay & does not include allowances, such as allowances for lodging, house-rent, & servant. (2) Under Part I, r. 4 of the Sched. to the Act the children of a constable who has received compensation on his compulsory retirement are not, on his death, entitled to any pension or gratuity unless his death has taken place within 12 months from the date of his receipt of such compensation, inasmuch, as, by clause 6 of Royal Irish Constabulary Pensions Order, 1922, the children of a pensioned constable are not, by the mere fact of his death, entitled to any allowances unless he has died within 12 months from the grant of his pension.—EGAN *v.* A.-G., [1931] A. C. 113; 100 L. J. Ch. 18; 144 L. T. 227; 47 T. L. R. 91; 74 Sol. Jo. 849, H. L.

1057. *Add. Annotation :*—**Consd.** Stoke Newington Borough Council *v.* Richards (1929), 45 T. L. R. 650.

PART VIII. SECT. 2, SUB-SECT. 3.

sw. *Calculated on years of actual service—Addition of years under county scheme.*]—O'SULLIVAN *v.* LIMERICK C. C. *v.* LIMERICK C. C., [1928] I. R. 493.—**IR.**

PUBLIC HEALTH AND LOCAL ADMINISTRATION.

Part III.—Control by Ministry of Health.

9. *Add. Annotation :*—**Refd.** A.-G. *v.* Sunderland Corpn. (1929), 46 T. L. R. 10.

10a. —— **Confirmation of unauthorised improvement scheme—Effect of Housing Act, 1925 (c. 14), s. 40 (5).**]—MINISTER OF HEALTH *v.* R., *Ex p.* YAFFE, No. 506c. *post.*

14. *Add. Annotation :*—**Dbtd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

20. *Add. Annotation :—As to* (1) **Consd.** Crediton Gas Co. *v.* Crediton U. C., [1928] Ch. 447.

23. *Add. Annotation :*—**Refd.** Clark *v.* Epsom R. D. C., [1929] 1 Ch. 287.

29. *Add. Annotation :—Generally*, **Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

—— —— —— ——.]—The duty of a local authority under 1875 Act, s. 15, to keep sewers in repair cannot be enforced by an action by a private person for a mandatory injunction. The proper remedy is a complaint to the Minister of Health under sect. 299 of the Act.—CLARK *v.* EPSOM RURAL DISTRICT COUNCIL, [1929] 1 Ch. 287; 98 L. J. Ch. 88; 140 L. T. 246; 93 J. P. 67; 45 T. L. R. 106; 27 L. G. R. 328.

38. *Add. Annotations :*—**Apld.** Clark *v.* Epsom R. D. C., [1929] 1 Ch. 287. **Refd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485.

Part V.—Bye-Laws.

49. *Add. Annotation :*—**Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

70. *Add. Annotation :*—**Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

PART I.

aa. *Power to acquire land—For offices.*]—MAYVILLE LOCAL ADMINISTRATION & HEALTH BOARD *v.* GIELINK (1928), 49 N. L. R. 148.—**S. AF.**

PART II. SECT. 3.

c i. —— *Order for abatement of nuisance made on report of—Effect of report of Department of Health.*]—LEATHER *v.* DOOLITTLE CO., LTD., [1928] 2 D. L. R. 805; 62 O. L. R. 162.—**CAN.**

PART III. SECT. 1.

sb. *Meaning of "public show" in bye-law — Dog racing.*]—*Held :* dog racing handicaps, conducted in a ground specially adapted for dog racing, to which the public were admitted as spectators on payment, were not a "public show" within Burgh Police (Scotland) Act, 1892, s. 397.—BREMNER *v.* MORRISON, [1930] S. C. (J.) 42.—**SCOT.**

PART V. SECT. 1.

a (p. 156) **i.** —— *By Railway & Municipal Board—Does not validate invalid bye-law.*]—*Re* CASA LOMA, [1927] 4 D. L. R. 645; 61 O. L. R. 187.—**CAN.**

a (p. 156) **ii.** —— —— *Leave to appeal from Board—Grounds for granting.*]—*Re* CASA LOMA, [1927] 4 D. L. R. 645; 61 O. L. R. 187.—**CAN.**

ee (p. 156) **i.** —— ——.]—*Re* MCCUTCHEON & TORONTO CORPN. (1863), 22 U. C. R. 613.—**CAN.**

jj (p. 156) **i.** —— —— —— *Non-compliance with condition precedent.*]—When in passing a bye-law a municipal council exceeds its limited jurisdiction or ignores a condition precedent to the exercise of the powers conferred on it by statute the duty of the ct. is to quash the bye-law for illegality or, in the case of a prosecution under it, to dismiss the charge; &, therefore, evidence is admissible to show that the condition precedent had not been complied with.—R. *ex rel.* DONALD *v.* THOMPSON (No. 1) (Sask.), [1929] 4 D. L. R. 958; 2 W. W. R. 563; 52 Can. Crim. Cas. 47.—**CAN.**

mm (p. 156) **i.** Where the illegality of a bye-law appears upon its face there is no discretion in the ct. to refrain from quashing it. A rating bye-law provided "that the rate for public school purposes be as requested by public school trustees":—*Held :* it was invalid, because it attempted to delegate the power which by the Municipal Act is vested solely in the township council to the public school trustees of the several school sections, & the illegality appeared on the face of the bye-law.—*Re* MIDDLETON & GODERICH, [1931] 4 D. L. R. 75; O. R. 392.—**CAN.**

PART V. SECT. 2, SUB-SECT. 1.

52 v. —— ——.]—R. *v.* PENNER, [1930] 1 D. L. R. 834; 53 Can. C. C. 242.—**CAN.**

ooo (p. 157) **i.** —— *Bye-law prohibiting keeping of animals—Except with consent of council — Conditions under which consent given not set out.*]—MILLER *v.* BRIGHTON CITY, [1928] V. L. R. 375; [1928] Argus L. R. 209.—**AUS.**

dddd (p. 157) **i.** —— ——.]—*Re* FOXCROFT & LONDON, [1927] 4 D. L. R. 684; 61 O. L. R. 209; *revsd.* [1928] 1 D. L. R. 819; 61 O. L. R. 553.—**CAN.**

r (p. 158) **i.** —— —— *Scrutiny—Powers of county court judge.*]—A county ct. judge holding a scrutiny of the ballot papers deposited in a vote on a municipal bye-law may go behind the voters' list & inquire if a tenant whose name is placed thereon has the residential qualification entitling him to vote. The judge has no power to inquire whether rejected ballots were cast for or against the bye-law. Ballots rejected on a scrutiny must be deducted from the total number of votes cast in favour of the bye-law.—MCPHERSON *v.* MEHRING, [1913] 47 S. C. R. 451.—**CAN.**

aa (p. 158) **i.** —— ——.]—*Re* HOWARD & TORONTO CORPN., *Re* SWEET & TORONTO CORPN., [1928] 1 D. L. R. 952; 61 O. L. R. 563.—**CAN.**

aa (p. 158) **ii.** —— *Question for municipal council.*]—A bye-law expropriating a public park land passed by a township council was attacked upon the ground that it was not enacted in the public interest, but in the interest of a land co.:—*Held :* the matter was one to be determined by the council.—HURST *v.* MERSEA, [1931] 3 D. L. R. 355; O. R. 290.—**CAN.**

bb (p. 158) **i.** —— *Test.*]—In determining whether a municipal bye-law was passed in the public or a private interest the primary moving force behind the bye-law must be looked at, & if that force emanates from a private source & is to save harmless or to reimburse the corpn. with respect to all costs & is to reap the primary direct benefit from the bye-law, it may safely be concluded that the bye-law was in a private & not in the public interest.—WALLACE *v.* DAUPHIN TOWN, [1932] 2 W. W. R. 405.—**CAN.**

sc. *Right to question validity—In summary proceedings.*]—*Held :* it is competent in a summary proceeding to challenge the validity of a bye-law made by a local authority, even though it has obtained the approval of the Sheriff & of the Secretary of State.—DAVID LAWSON, LTD. *v.* TORRANCE, [1929] S. C. 119 (J.).—**SCOT.**

sd. *Bye-law in the "interests of the city."*]—In determining whether a city bye-law was "passed *bonâ fide* in the interests of the city" within the city's charter, allegations of unreasonableness, oppressiveness & unequal operation are of importance only so far as they have a bearing upon the questions of "*bona fides*" & "public interests." The question of what are the interests of the city is certainly, at least *primâ facie*, one for the city council to pass upon without undue interference from the cts. The mere fact that a bye-law benefits one individual or class at the expense of another does not necessarily indicate that it is not in the "interests of the city." The burden of showing that a bye-law, otherwise valid, was

120. *Add. Annotation :*—**Reld.** Bean *v.* Flaxton R. D. C. (1928), 139 L. T. 320.

121a. —— ——.]—Pltfs., a firm of builders who had, as a private enterprise of their own, built a number of houses upon land situate within the jurisdiction of defts., had not complied with defts.' bye-laws as to the drainage, with the result that differences arose between the parties. Subsequently, by agreement, defts. appointed a sub-committee to settle all outstanding matters, & an agreement was arrived at between pltfs. & the sub-committee. One of the terms of that agreement was that pltfs.' drainage scheme should remain, although it was contrary to defts.' bye-laws. Defts. having repudiated the agreement to which their sub-committee was a party, pltfs. brought an action claiming specific performance :—*Held :* as it had not been established that the building of the houses by pltfs. was, or formed part of, a housing scheme to which Housing Act, 1925 (c. 14), s. 99, applied, the verbal contract made by the sub-committee was not binding on defts., for the reason that defts. could not confer upon the sub-committee a power of entering into any such contract. Neither had the Minister power under sect. 99 to relax the bye-laws in a private building scheme.—William Bean & Sons, Ltd. *v.* Flaxton Rural District Council, [1929] 1 K. B. 450 ; 98 L. J. K. B. 20 ; 139 L. T. 320 ; 92 J. P. 121 ; 26 L. G. R. 335, C. A.

Part VI.—Legal Proceedings.

137a. —— —— **Town Police Clauses Act, 1847 (c. 89).**]—A corpn. was convicted upon an information preferred on behalf of a limited co. under sect. 47 of above Act, by one of

not passed in good faith in the interests of the city is on the person attacking it.—Kelly *v.* Edmonton City, [1931] 1 W. W. R. 365 ; 2 D. L. R. 705.—**CAN.**

se. *Bye-law in future tense—Valid.*]—St. Gervais *v.* Goulet, [1931] 3 D. L. R. 604.—**CAN.**

PART V. SECT. 2, SUB-SECT. 2.

54 iii. ——.]—*Re* Dunlop & Township of Douro (1859), 18 U. C. R. 227.—**CAN.**

k (p. 160) **i.** —— —— *Creation of monopoly.*]—Toronto *v.* Mandelbaum. [1932] 3 D. L. R. 604.—**CAN.**

ee (p. 160) **i.** —— *Bye-law creating lien—For unpaid water rates—Ultra vires.*]—Burchell *v.* Sydney Corpn., [1927] 1 D. L. R. 486 ; 59 N. S. R. 94.—**CAN.**

h (p. 161) **i.** —— —— ——.]—*Re* Boylan & Toronto Corpn. (1887), 15 O. R. 13.—**CAN.**

m (p. 161) **i.** —— —— —— *New Year's Day.*]—A county licensing ct. issued a bye-law that all licensed premises within the district including inns & hotels, except as regarded travellers & lodgers therein, should be closed wholly on New Year's Day, &, when New Year's Day fell on a Sunday, then on Monday, Jan. 2 :—*Held :* under this bye-law a Monday falling on Jan. 2 must be treated as a Sunday, &, accordingly, that an hotel-keeper who had supplied a customer on such a Monday outwith the permitted week-day hours had not infringed his certificate where the customer was a *bonâ fide* traveller, who could lawfully have been supplied on Sunday.—Henderson *v.* Ross, [1928] S. C. (J.) 74.—**SCOT.**

t (p. 161) **i.** —— —— *Rate likely to produce less money than required.*]—*Held :* the ct. would not interfere.—*Re* Gilchrist & Sullivan Corpn. (1879), 44 U. C. R. 588.—**CAN.**

e (p. 161) **i.** —— —— —— *Street not yet opened.*]—A bye-law provided for the construction of side walks on a street to be opened :—*Held :* as the street shown on the plan was not yet & might never be a public street, the council exceeded its authority in passing the bye-law, which should therefore be quashed ; the discretion of the ct. should not be exercised in favour of the bye-law.—*Re* Chappus & La Salle Town, [1928] 2 D. L. R. 950 ; 62 O. L. R. 140.—**CAN.**

e (p. 161) **ii.** —— —— *Bye-law authorizing improvement of street—Passed before land . acquired.*]—*Re* Chappus & La Salle Town, [1928] 2 D. L. R. 950 ; 62 O. L. R. 140.—**CAN.**

e (p. 161) **iii.** —— —— *Bye-law regulating width of streets on laying-out building sites—Whether applicable to roads giving access to building estate.*]—Rose *v.* Sydenham Local Administration & Health Board (1928), 49 N. L. R. 203.—**S. AF.**

ud (p. 161) **i.** —— —— *Fee imposed on every truck delivering merchandise—Whether applicable to trucks belonging to owner outside municipality.*]—Municipal Act, R. S. B. C. 1924, c. 179, s. 290 (34), as enacted by 1925, c. 35, s. 28, which empowers a municipality to impose a licence fee on "the owner or driver of every truck plying for hire or used for the delivery of wood, coal, merchandise or other commodity," authorises it to demand the fee from every owner of a truck used for the delivery of merchandise within the municipality, even though the owner is an outsider.—North Vancouver *v.* F. R. Stewart & Co., [1928] 1 W. W. R. 586 ; 49 Can. Crim. Cas. 216 ; 39 B. C. R. 401.—**CAN.**

dd (p. 161) **ii.** —— —— *Bye-law requiring vehicles licensed by town council to obtain additional county licence.*]—Scottish Motor Traction Co., Ltd. *v.* Lanarkshire County Council, [1928] S. C. (Ct. of Sess.) 909 ; *revsd.* (1929), 142 L. T. 170 H. L.—**SCOT.**

dd (p. 161) **iii.** —— —— *Bye-law prohibiting use of vehicle in jitney bus service without licence—Jitney licences no longer issued.*]—*Re* Shawra, [1929] 1 D. L. R. 321 ; 50 Can. Crim. Cas. 267 ; 63 O. L. R. 158.—**CAN.**

dd (p. 161) **iv.** —— *Bye-law prescribing parking areas for vehicles—Whether bye-law regulating traffic—Right to charge for use of parking areas.*]—Schilling *v.* Melbourne City, [1928] V. L. R. 302 ; [1928] Argus L. R. 203.—**AUS.**

h (p. 162) **i.** —— *Bye-law restricting the carrying-on of restaurants.*] —*Re* Bye-Law No. 304 of Minnedosa Town, Wong Sing *v.* Minnedosa, [1918] 3 W. W. R. 181.—**CAN.**

o (p. 162) **i.** —— —— *Power to sweep chimneys confined to chimney inspectors.*]—R. *v.* Johnston (1876), 38 U. C. R. 549.—**CAN.**

se. —— *Regulation of botanic park—Bye-law prohibiting meetings without consent of governors—Valid.*]—Fox *v.* Allchurch, [1926] S. A. S. R. 384 ; *affd.*, 40 C. L. R. 135.—**AUS.**

sf. —— *Licensing taverns.*]—*Re* Brodie & Bowmanville Corpn. (1876), 38 U. C. R. 580.—**CAN.**

sg. —— *Bye-law increasing service tax—Invalid.*]—Hardy *v.* Edmonton Corpn. (Alta.), [1925] 1 D. L. R. 256 ; [1924] 3 W. W. R. 936.—**CAN.**

sh. —— *Bye-law regulating the housing of motor trucks & apparatus used in truck cartage business—Construction.*]—*Re* Stronach, [1928] 3 D. L. R. 216 ; 49 Can. Crim. Cas. 336 ; 61 O. L. R. 636.—**CAN.**

si. —— *Tax on non-resident building contractors—Amounts to indirect taxation—Ultra vires.*]—Charlottetown *v.* Foundations Maritime, Ltd., [1932] 3 D. L. R. 353 ; 3 M. P. R. 196 ; *affd.*, [1932] S. C. R. 589.—**CAN.**

PART V. SECT. 4.

1 i. —— *Attorney-General.*]—Where the law resulting from the exercise of a statutory power to make a bye-law operates for the general advantage of the public at large, none but the A.-G. may sue in respect of its breach.—A.-G. & Lumley *v.* T. S. Gill & Son Pty., Ltd., [1927] V. L. R. 22 ; [1927] Argus L. R. 223.—**AUS.**

sj. *Action to restrain enforcement of illegal bye-law—Effect of Rural Municipality Act, s.* 335.]—The provision of sect. 335 of Rural Municipality Act, R. S. S., 1920 (c. 89), that no action can be commenced in respect of anything done under an illegal bye-law or resolution until a month after the quashing or repealing of the bye-law or resolution & until a month after written notice of the intention to bring the action does not apply to an action to prevent the municipality from enforcing rights claimed by it under an illegal bye-law.—Villeneuve *v.* Rural Municipal of Kelvington, [1929] 2 D. L. R. 919 ; 1 W. W. R. 186 ; 23 S. L. R. 406.—**CAN.**

PART V. SECT. 5.

sr. *Bye-law relating to licensing of chimney-sweeps—Municipality not entitled to fix charges for cleaning.*]—Scanes *v.* Johnston, [1930] 4 D. L. R. 290.—**CAN.**

PART VI. SECT. 2.

sy. *Keeping marine store without licence—In whose name action lies.*]—Halifax City *v.* O'Connor (1882), 15 N. S. R. (3 R. & G.) 190.—**CAN.**

its directors, for permitting a motor omnibus to be used as a hackney carriage within the prescribed area, without having obtained the necessary licence under the Act:—*Held:* that P. H. Act, 1875, s. 253, takes the place of Town Police Clauses Act, 1847 (c. 89), s. 73, which enabled "any person" to recover penalties for offences against that Act, & therefore except in the case of information by a party aggrieved or the local authority for the district, the consent of the A.-G. is now a condition precedent to proceedings for the recovery of penalties under the Town Police Clauses Act, 1847 (c. 89).—SHEFFIELD CORPN. *v.* KITSON, [1929] 2 K. B. 322; 98 L. J. K. B. 561; 142 L. T. 20; 93 J. P. 135; 45 T. L. R. 515; 73 Sol. Jo. 348; 27 L. G. R. 533; 28 Cox, C. C. 674, D. C.

139. *Add. Annotation:*—**N.F.** Sheffield Corpn. *v.* Kitson, [1929] 2 K. B. 322.

168. *Add. Annotation:*—**Apld.** Holt Bros. & Whitford *v.* Axbridge Rural District Council (1931), 95 J. P. 87.

Part VII.—Particular Provisions.

198. *Add. Annotation:*—**Refd.** London County Council *v.* Stilgoe (1931), 95 J. P. 149.

199. *Add. Annotation:*—**Refd.** *Re* Whitaker, Rooke *v.* Whitaker, [1929] 1 Ch. 662.

200. *Add. Annotation:*—**Refd.** *Re* Whitaker, Rooke *v.* Whitaker, [1929] 1 Ch. 662.

203. *Add. Annotation:*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

204a. —— **Validity.**]—By the proviso to Advertisements Regulation Act, 1907 (c. 27), s. 2, any bye-laws made under that section must provide for the exemption from the operation of such bye-laws of any hoardings or similar structures in use for advertising purposes at the time of the making of the bye-laws & of any advertisements exhibited at that time for a period not less than five years. In 1911 a county council made bye-laws under the section containing such an exemption as is there specified. In 1927 the council made further bye-laws under Advertisements Regulation Acts, 1907 (c. 27) & 1925 (c. 52), containing a similar exemption, which, however, was qualified by the words "but this exemption shall not extend to any hoarding or similar structure or any advertisement to which the bye-law (of 1911) applied":—*Held:* (1) the bye-law in this form was valid & *intra vires*, since hoarding, etc., to which the earlier bye-law applied had already enjoyed the statutory period of exemption, & were not entitled to a second period; while others were in no way prejudiced by the exception; (2) a gable end of a building 25 feet high was not a "hoarding or similar structure."—GLOUCESTER BILLPOSTING CO., LTD. *v.* HOPKINS (1932), 96 J. P. 462; 30 L. G. R. 488.

204b. —— **Construction—"12 feet in height."**]—Deft. was summoned for erecting & maintaining for advertising purposes a hoarding or similar structure in contravention of a bye-law made under Advertisements Regulation Act, 1907 (c. 27), s. 2, prohibiting the erection or maintenance for advertising purposes of any hoarding or similar structure exceeding 12 feet in height. The alleged hoarding or structure consisted of rectangular panels or advertisement boards measuring approximately 20 feet in length horizontally & 10 feet in height vertically & attached to the wall of a building. On these panels picture posters were pasted. Although the panels did not themselves exceed 12 feet in height, they were fixed in such a position on the wall as to be more than 12 feet above ground level:—*Held:* (1) the words 12 feet in height meant the measurement of the hoarding itself & not the height at which it was above ground level; (2) *per* AVORY, J., neither the wall nor the panels were hoardings or similar structures within the meaning of the bye-law, which was intended to apply to some independent structure erected on the ground & not to panels fixed to a wall.—ROYLE *v.* ORME (1932), 96 J. P. 468; 30 L. G. R. 494.

204c. **"Hoarding or similar structure"—What amounts to.**]—GLOUCESTER BILLPOSTING CO., LTD. *v.* HOPKINS, No. 204a, *ante*.

204d. —— ——.]—ROYLE *v.* ORME, No. 204b, *ante*.

265a. —— **Caravan-bungalows.**]—RUISLIP-NORTHWOOD URBAN DISTRICT COUNCIL *v.* LEE (1931), 145 L. T. 208; 95 J. P. 164; 29 L. G. R. 335, C. A.

286. *Add. Annotation:*—*As to* (3) **Apld.** Bean *v.* Flaxton R. D. C. (1928), 139 L. T. 320.

308. *Add. Annotation:*—**Apld.** Bean *v.* Flaxton R. D. C. (1928), 139 L. T. 320.

PART VI. SECT. 5, SUB-SECT. 1.

sz. *Powers of arbitrator — Assessment of compensation—Where corporation had no power to expropriate claimant's land.*]—*Re* ST. MICHAEL'S COLLEGE & TORONTO CORPN., [1928] 3 D. L. R. 710; 62 O. L. R. 410.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 1.

k i. —— *Requiring licence—Valid.*]—WROBLEWSKI *v.* MCLAREN (1927), 29 W. A. L. R. 24.—**AUS.**

PART VII. SECT. 5, SUB-SECT. 1.—A.

sd. "*Store.*"]—*Held:* a gasoline service station is a "store."—*Re* DOMESTIC STORAGE & FORWARDING CO. & FOREST HILL, [1932] O. R. 350; 3 D. L. R. 175.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 2.—C.

sn. "*Addition*" *to building—What amounts to—Not new gambrel roof in lieu of old pitch roof.*]—DANBY *v.* VILLAGE OF WAKAW & KRAUS (Sask.), [1927] 3 W. W. R. 107.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 4.—A.

so. *What is public building — Club premises used for dances—Liability of club secretary.*]—LISTER *v.* HUMPHRIES, [1928] V. L. R. 106; [1928] Argus L. R. 27.—**AUS.**

PART VII. SECT. 5, SUB-SECT. 4.—B.

sp. *Who are owners—County court house.*]—R. *v.* TYRONE COUNTY JJ., [1928] N. I. 103.—**IR.**

PART VII. SECT. 5, SUB-SECT. 6.—B. (a).

sq. *Bye-law providing for formation of residential area—Permitting erection of shops in specified streets.*]—BARNES *v.* COBURG CITY, [1928] V. L. R. 334; [1928] Argus L. R. 197.—**AUS.**

PART VII. SECT. 5, SUB-SECT. 9.—A.

312 i. *For "Not retrospective" read "Retrospective."*

312 ii. ——.]—*Held:* the mere deposit of plans & the making of an application for a permit under the then existing building bye-law, while constituting a *primâ facie* right to have the plans approved, was not enough to prevent the council from exercising its statutory power to pass a bye-law to prevent the erection of buildings of the character proposed, within a

313. *Add. Annotation :*—**Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

333a. **Relaxation of bye-law—Under Housing Act, 1925 (c. 14), s. 99.**]—WILLIAM BEAN & SONS, LTD. *v.* FLAXTON RURAL DISTRICT COUNCIL, No. 121a, *ante.*

339. *Add. Annotation :*—*Generally*, **Refd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1928] Ch. 325.

356. *Add. Annotation :*—**Consd.** Brown *v.* Dagenham U. D. C., [1929] 1 K. B. 737.

357. After " D " following this case add :—

SUB-SECT. 1A.—NURSING HOMES.

See Nursing Homes Registration Act, 1927 (c. 38).

Servant in—Liability for unemployment insurance.]—*See* WORK & LABOUR, Vol. XLIV., p. 1306, No. 122.

386. *Add. Citation :*—[1928] 1 K. B. 65, D. C.

SUB-SECT. 4.—HOUSING OF WORKING CLASSES.

(Vol. XXXVIII., p. 212.)

See Housing Act, 1930 (c. 39).

471. *Add. Annotation :*—**Distd.** *Re* Bowman, South Shields (Thames Street) Clearance Order, 1931 (1932), 96 J. P. 207.

defined area.—*Re* UPPER CANADA ESTATES & MACNICOL, [1931] 4 D. L. R. 459; O. R. 465; *affd.*, [1932] 2 D. L. R. 528.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 9.—C.

329 i. *Continuing offence—Erection of building without approval of plans—No notice of disapproval served by council.*]—*Held :* the contravention of the bye-laws was a continuing offence. —PORTSTEWART URBAN DISTRICT COUNCIL *v.* HAMILL, [1927] N. I. 181.—**IR.**

PART VII. SECT. 6, SUB-SECT. 1.—B.

352 ii. —— —— *Employer—Evidence of contract for medical & surgical care of employees.*]—QUEEN VICTORIA MEMORIAL HOSPITAL *v.* BOOTH, LTD., [1927] 4 D. L. R. 1016; 61 O. L. R. 293.—**CAN.**

352 iii. —— —— *Patient admitted as resident of City—But having legal settlement elsewhere.*]—On the certificate of her physician that she was a resident of the City of Sydney, G. was admitted to the Sydney hospital as a patient for treatment. It was discovered some time later that G. had a legal settlement at Glace Bay, & she was removed there & accepted. In the meantime there was due to the Sydney hospital the sum of $194.5 for hospital services, including drugs & medicines. The amount due was admitted :—*Held :* the City of Sydney, paying the claim of the hospital, was entitled to indemnity against deft., & judgment should be entered in favour of pltf. for the amount claimed with costs.—SYDNEY CITY *v.* GLACE BAY TOWN, [1928] 1 D. L. R. 729; 59 N. S. R. 448.—**CAN.**

352 iv. —— *Charge on patient's land—Gives no charge on land of husband for treatment of wife.*]—*Re* LAND TITLES ACT, *Re* MCCRANEY RURAL MUNICIPALITY CAVEAT, [1922] 2 W. W. R. 898; 66 D. L. R. 819.—**CAN.**

352 v. —— —— *No precedence over prior mortgage.*]—MANUFACTURERS LIFE INSURANCE CO. *v.* FLOWERY PLAINS (No. 33), [1924] 1 D. L. R. 66; 20 Alta. L. R. 100; [1923] 3 W. W. R. 1301.—**CAN.**

352 vi. —— *Action to recover—Condition precedent.*]—Proof of the written order required by Town Act, 1927, s. 153 (4), is essential to the maintenance of an action under s. 153 (9) for the recovery by a municipality of the value of the treatment & care furnished in a municipal hospital to an indigent sick person.—SISTERS OF CHARITY OF THE PROVIDENCE GENERAL HOSPITAL OF DAYSLAND *v.* MARTY, EDMONTON CITY *v.* MARTY (Alta.), [1929] 4 D. L. R. 797; 3 W. W. R. 265.—**CAN.**

352 vii. —— —— *Implied contract.*]—VERNON JUBILEE HOSPITAL *v.* POUND, [1932] 2 D. L. R. 813.—**CAN.**

k i. —— *For treatment of indigents—Emergency.*]—Where an indigent resident of a rural municipality was admitted to a hospital, as an emergency case, & the matron of the hospital called in a doctor on the rota to treat the case, held that, under Rural Municipality Act, R. S. S., 1920, c. 89, he was entitled to recover from the rural municipality his reasonable charges for necessary services rendered the patient. —COLES *v.* WAWKEN RURAL MUNICIPALITY, [1928] 3 W. W. R. 532; *affd.*, [1929] 4 D. L. R. 1071; 1 W. W. R. 603.—**CAN.**

k ii. —— —— ——.]—The phrase " in case of emergency " in sect. 208 (1) of Rural Municipality Act, R. S. S., 1930, which imposes a liability on rural municipalities for hospital services rendered their indigent residents at the municipality's request or " in case of emergency," refers to some urgent need, some condition of the patient requiring his immediate admission to a hospital.—PRINCE ALBERT CITY *v.* CANWOOD RURAL MUNICIPALITY, [1931] 2 W. W. R. 36; 2 D. L. R. 955.—**CAN.**

k iii. —— —— *Contract—Fulfilment of statutory conditions.*]—The council of deft. municipality passed a resolution authorising the reeve & secretary to " handle the case " of a boy who had been admitted to pltf.'s hospital, &, following a report from the secretary as to his interview with pltf., the council passed another resolution authorising the payment of a certain sum per week while the boy continued in the hospital. Pltf. sued for the balance of an amount alleged to be due to him under said arrangement :—*Held :* pltf. was entitled to assume in entering into the contract that the conditions necessary to enable the council to act had been fulfilled & was not obliged to prove at the trial that the patient came within them.—BUDD *v.* CAMBRIA RURAL MUNICIPALITY, [1931] 1 W. W. R. 177; 2 D. L. R. 258. —**CAN.**

k iv. —— —— *Tubercular patients.*]—Sect. 15 (2) of Sanatoria for Consumptives Act, R. S. O., 1927, is not impliedly repealed by sect. 21 of Hospitals & Charitable Institutions Act, R. S. O., 1927. Pltf. assocn., therefore, held entitled to recover from deft. municipality for treatment of an indigent patient resident in the municipality.—NATIONAL SANATORIUM ASSOCN. *v.* BRACEBRIDGE, [1930] 4 D. L. R. 417; 65 O. L. R. 623; *revsg.*, 65 O. L. R. 395.—**CAN.**

k v. —— ——.]—It is only in cases where the municipality has authorised the treatment or attendance that it can be held liable under Rural Municipality Act, 1920, to a physician for services rendered by him to an indigent. —BLACK *v.* EDENWOLD RURAL MUNICIPALITY OF, [1931] 1 D. L. R. 577; [1930] 3 W. W. R. 529; 25 S. L. R. 136.—**CAN.**

k vi. —— ——.]—Where a city owns a hospital & the hospital board is not a body corporate, but merely a managing body which the city may appoint to conduct the hospital, the right of action to recover for the treatment of indigents which arises under Rural Municipality Act, ss. 198, 199, is vested in the city, not in the hospital board. In such an action the fact that deft. municipality did not answer the notice which the hospital board, as required by sect. 199 (1) (*a*), sent to it, does not preclude it from disputing the alleged residence & indigence of the patients in question. —MOOSE JAW, CITY OF *v.* RURAL MUNICIPALITY OF TERRELL (Sask.), [1930] 2 D. L. R. 81; [1929] 3 W. W. R. 573; 24 S. L. R. 170.—**CAN.**

k vii. —— ——.]—A physician or surgeon cannot hold a municipal district liable for services rendered a resident indigent in the absence of the written order required by sect. 150 (4) of Municipal District Act, 1926, except where under sect. 150 (5) the order may be dispensed with in respect of a first visit in a case of sudden & urgent necessity; but even in the latter case the practitioner who voluntarily renders such services cannot hold the district liable therefor unless they have been sanctioned by the district.—WAGNER *v.* PINE LAKE MUNICIPAL DISTRICT, [1931] 2 W. W. R. 481; 4 D. L. R. 481; 25 Alta. L. R. 473.—**CAN.**

k viii. —— —— *Whether village liable.*]—Sect. 179 of Village Act, R. S. S., 1920, does not render a village liable to a physician for medical services rendered to an indigent. In order for a village to be held to be under such liability, there must be proof of a contractual relationship between the village & the physician.—JACKES *v.* ST. WALBURG VILLAGE, [1931] 3 W. W. R. 534.—**CAN.**

k ix. —— ——.]—Under Hospitals Act, R. S. A., 1922, a municipal district is not liable to a hospital for hospital services rendered an indigent resident of the district unless they have been authorised by the written order of the municipal authority or, where the case was one of urgent & sudden necessity, by a verbal order.—EDMONTON HOSPITAL BOARD *v.* MUNICIPAL DISTRICT OF LIBERTY, [1932] 1 W. W. R. 599; 2 D. L. R. 374; 26 Alta. L. R. 166.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 2.—C.

sr. *Liability of municipality to pay nurses—& those furnishing necessities at request of health officer.*]—CAMERON *v.* DAUPHIN (1904), 14 Man. L. R. 573; 24 C. L. T. 99.—**CAN.**

PART VII. SECT. 10.

st. *Dangerous slope adjoining street—Liability of owner to pay cost of fencing—Erected by local authority.*]—BUCKIE MAGISTRATES *v.* SEAFIELD'S DOWAGER COUNTESS TRUSTEES, [1928] S. C. (Ct. of Sess.) 525.—**SCOT.**

PART VII. SECT. 11, SUB-SECT. 4.—B. (a).

476 i. *Disobedience of order—Letting by husband of proprietrix.*]—The proprietrix of two houses, with regard to which a closing order was then operative, was charged with a contravention of Housing (Scotland) Act, 1925 (c. 15),

481a. Power to make order when satisfied that house unfit for habitation—Meaning of " satisfied."]—By Housing Act, 1930 (c. 39), s. 19 (1), a local authority, if, upon consideration of an official representation or a report from their officers or other information in their possession, they are " satisfied " that a dwelling-house is unfit for human habitation & is not capable at a reasonable expense of being rendered so fit, may make a demolition order :—*Held :* (1) " satisfied " must mean *primâ facie* satisfied. It was the duty of the local authority to treat that satisfaction merely as a temporary satisfaction on the information then before them & open to be modified or changed should the owner of the house give them further information or make a further offer to do certain works ; (2) an appeal lay to a county ct. judge against a demolition order made by a local authority both on questions of fact & on questions of law.—FLETCHER *v.* ILKESTON CORPN. (1931), 96 J. P. 7 ; 48 T. L. R. 44 ; 30 L. G. R. 6, C. A.

502a. —— —— From owner—Who is owner.]—A solr., acting for the administratrix of a deceased person's estate, employed a builder to collect the rents of three working-class houses, & to pay the proceeds over to him. The local authority having executed works under Housing, Town Planning, etc. Act, 1919 (c. 35), s. 38 (*see, now,* Housing Act, 1925 (c. 14), s. 3), sought to recover the expenses from the solr. as " owner " within sect. 38 :—*Held :* he was the owner, though he was not the person who received the rent directly from the tenants, as there might be more than one owner, & every one receiving the rent, as rent, in succession became the " owner."—WATTS *v.* BATTERSEA CORPN., [1929] 2 K. B. 63 ; 98 L. J. K. B. 273 ; 140 L. T. 594 ; 93 J. P. 137 ; 45 T. L. R. 224 ; 73 Sol. Jo. 143 ; 27 L. G. R. 307, C. A.

502b. —— —— Statutory charge—Incidence of charge.]—The charge created by Housing Act, 1925 (c. 14), s. 3, is not a charge on the interests of the rack-rent owner only, but is a charge upon the entirety of the interests in the premises.—PADDINGTON BOROUGH COUNCIL *v.* FINUCANE, [1928] Ch. 567 ; 97 L. J. Ch. 219 ; 139 L. T. 368 ; 92 J. P. 68 ; 26 L. G. R. 283.

Annotation :—**Followed.** Bristol Corpn. *v.* Virgin, [1928] 2 K. B. 622.

502c. —— —— —— ——.]—The charge given to a local authority in respect of repairs by Housing Act, 1925 (c. 14), s. 3, is a charge on the whole of the proprietary interests in the premises, & ranks in priority to a fee farm rent already issuing out of the premises.—BRISTOL CORPN. *v.* VIRGIN, [1928] 2 K. B. 622 ; 97 L. J. K. B. 522 ; 139 L. T. 375 ; 92 J. P. 145 ; 44 T. L. R. 546 ; 26 L. G. R. 443, D. C.

(e) Clearance Areas.

See Housing Act, 1930 (c. 39), s. 1 (1).

502d. What is " dwelling-house "—Common lodging-house.]—A common lodging-house is a " dwelling-house " within Housing Act, 1930 (c. 39), s. 1 (1), so as to come within the scope of the section. The fact that the people who dwell in it are of such a character & live under such conditions as to make it a common lodging-house does not cause it to cease to be a dwelling-house.—*Re* ROSS & LEICESTER CORPN. (1932), 96 J. P. 459 ; 30 L. G. R. 382.

502e. Validity of clearance order—Mistake in number of days allowed for vacation—Confirmation with modification by Minister of Health.]—A clearance order made by a local authority under Housing Act, 1930 (c. 39), purported to require that certain of the buildings to which it related should be vacated in a less number of days from the date on which it would become operative than the period of twenty-eight days from that date as required by the Act. The Minister of Health confirmed the order with the modification that the less number of days was altered to twenty-eight days. The order did not include a " starred " note to the form of clearance order prescribed by Provisional Regulations, 1930, made under the Act setting forth the substance of sect. 11 of the Act. On an application to the High Ct. under sect. 11 (3) by the owner of these buildings as a person aggrieved by the order to question its validity in regard to them :—*Held :* (1) the mistake as to the number of days in the order as originally made did not render it an order which was not within the powers of the Act, or prevent it from applying to these buildings ; the order having been confirmed by the Minister with the above-mentioned modification, it could not be said that the requirement of the Act as to the number of days was not complied with by the order ; &, therefore, that mistake in the order as originally made was not a ground on which the High Ct. should quash the order in so far as it affected these buildings ; (2) the omission of the starred note did not render the order an order which was not within the powers of the Act ; assuming that it was a requirement of the Act that that note should be included in the order, there was no evidence in the case before the ct. to show that the interests of appct. had been substantially prejudiced by that requirement not having been complied with ; &, therefore, the omission of the note was not a ground on which the High Ct. ought to quash the order.

s. 9, in respect that she, " being the owner within the meaning of the Act," had let the houses as dwelling-houses, or alternatively had permitted them to be so occupied. It appeared that the houses, which had been closed in 1928 under a closing order, remained unoccupied until 1930, when, by permission of the husband of the accused, they were occupied by tenants, from whom he collected rents. It further appeared that, for the period involved in the case, the husband was generally known to act as factor for his wife in the management of her properties, including the houses in question. On these facts the Sheriff-substitute found the charge not proven :—*Held :* in the absence of an express finding that the husband was in fact his wife's factor, & that, in that capacity, he had let the subjects with his wife's knowledge & approval, it could not be said that she had been proved to have let them, or permitted them to be occupied, within the meaning of the statute.—HAIG *v.* THOMPSON, [1931] S. C. (J.) 29.—**SCOT.**

PART VII. SECT. 11, SUB-SECT. 4.—C.

sv. *Town Planning & Development Act, 1920—Whether applicable to sub-division into farming areas—Private roads marked on plan.*]—A piece of land, comprising about 14,000 acres, situated in a farming district, & within the boundaries of a district council area, was subdivided by the owner into twelve lots. A plan was deposited in the Lands Titles Registration Office, & showed certain private roads which were marked " private roads to be vested in " the owner :—*Held :* the fee-simple of these roads did not vest, by virtue of Town Planning & Development Act, 1920, in the district council. —LOXTON DISTRICT COUNCIL *v.* BRUCE, [1927] S. A. S. R. 463.—**AUS.**

that it was not a requirement of the Act that the starred note should be included in the order.

(3) The High Ct. will entertain an application under Housing Act, 1930 (c. 39), s. 11 (3), by a person aggrieved by a clearance order, who desires to question its validity only on the grounds mentioned in that sub-section or either of them, namely, that the order is not within the powers of the Act, or that any requirement of the Act has not been complied with, or possibly on the further ground that there is no evidence to support the order; & not on the ground that the evidence is insufficient to support the order.—*Re* BOWMAN, SOUTH SHIELDS (THAMES STREET) CLEARANCE ORDER, 1931, [1932] 2 K. B. 621; 101 L. J. K. B. 798; 147 L. T. 150; 96 J. P. 207; 48 T. L. R. 351; 76 Sol. Jo. 273; 30 L. G. R. 245.

502f. —— Omission of starred note relating to Housing Act, 1930 (c. 39), s. 11.]—*Re* BOWMAN, SOUTH SHIELDS (THAMES STREET) CLEARANCE ORDER, 1931, No. 502e, *ante*.

502g. —— Alternative accommodation—For residential & not business purposes.]—*Re* GATESHEAD (BARN CLOSE) CLEARANCE ORDER, 1931 (1932), 49 T. L. R. 101.

506a. Improvement scheme—Validity—Particulars of proposed development must be shown.]—An improvement scheme purporting to be made under the provisions of Housing Act, 1925 (c. 14), after providing for the acquisition & clearing of an unhealthy area, proceeded to empower the local authority to sell, lease or otherwise dispose of, as they thought fit, the cleared area or to appropriate or use it for any purpose approved by the Minister of Health. The scheme further provided that if the Minister so required, the local authority should provide a number of dwellings, not exceeding 72, suitable for accommodation of persons of the working classes, on a site either within or without the area, according to a scheme to be approved by the Minister. The scheme had been presented to the Minister with a petition for its confirmation: —*Held:* in order to be a valid improvement scheme within Part II. of the Act, a scheme must, besides providing for the acquisition & clearance of an area, contain particulars of the proposed development of the area, & not confer on the local authority an unrestricted power to sell or lease the cleared area.—R. *v.* MINISTER OF HEALTH, *Ex p.* DAVIS, [1929] 1 K. B. 619; 98 L. J. K. B. 636; 141 L. T. 6; 93 J. P. 49; 45 T. L. R. 345; 27 L. G. R. 677, C. A.

Annotations:—**Distd.** Minister of Health *v.* R., *Ex p.* Yaffe, [1931] A. C. 494. **Consd.** R. *v.* Webster, *Ex p.* Marshall (1931), 95 J. P. 226. **Reid.** R. *v.* London County Council, *Ex p.* Entertainments Protection Assocn., Ltd., [1931] 2 K. B. 215.

506b. —— —— Power of local authority to sell or lease cleared area.]—R. *v.* MINISTER OF HEALTH, *Ex p.* DAVIS, No. 506a, *ante*.

506c. —— —— Confirmation of unauthorised scheme—Effect of Housing Act, 1925 (c. 14), s. 40 (5).]—Housing Act, 1925 (c. 14), s. 40, which empowers the Minister of Health to make an order confirming, with or without modifications, an improvement scheme made under the Act, & provides that "the order of the Minister when made shall have effect as if enacted in this Act," does not preclude the ct. from calling in question the order of the Minister where the scheme presented to him for confirmation is inconsistent with the provisions of the Act.

The Corpn. of Liverpool submitted to the Minister of Health for confirmation a document under the common seal purporting to be an improvement scheme under Housing Act, 1925 (c. 14), s. 35, in respect of an unhealthy area within the city. The first part of this document, after defining the area proposed to be dealt with, by clause 5, empowered the corpn. in general terms to make & widen & stop up or deviate any street in the area, directed them to appropriate other parts of the land to the erection of dwelling-houses for the working classes, & provided that any lands not required for these purposes might be disposed of as the corpn. might think fit. The second part contained estimates of the cost of acquiring the land & of the lay-out, & stated that there were no surplus lands. The Minister, after holding a public local inquiry, made an order modifying the scheme by providing (*inter alia*), in lieu of clause 5, that the whole of the lands in the area should, subject to the provision of any necessary streets & approaches, be used for the purposes of rehousing, & confirming the scheme as so modified. The owner of two houses which it was proposed to acquire compulsorily under the scheme on account of their sanitary condition obtained a rule *nisi* for a writ of *certiorari* to quash the order of the Minister as being made without jurisdiction, inasmuch as the scheme which the order purported to confirm was not an improvement scheme within the meaning of the Act in respect that (*a*) it was not accompanied by a lay-out plan & (*b*) it provided that land within the area might be disposed of as the corpn. might think fit:—*Held:* the scheme, whatever its defects, was an improvement scheme within the meaning of the Act, & any defects in the scheme had been cured by the order of the Minister.—MINISTER OF HEALTH *v.* R., *Ex p.* YAFFE, [1931] A. C. 494; 100 L. J. K. B. 306; 47 T. L. R. 337; 75 Sol. Jo. 232; *sub nom.* R. *v.* MINISTER OF HEALTH, *Ex p.* YAFFE, 145 L. T. 98; 95 J. P. 125; 29 L. G. R. 305, H. L.

Annotations:—**Consd.** R. *v.* Webster, *Ex p.* Marshall (1931), 95 J. P. 226. **Reid.** R. *v.* London County Council, *Ex p.* Entertainments Protection Assocn., Ltd. (1931), 144 L. T. 464; *Re* Bowman, South Shields (Thames Street) Clearance Order, 1931 (1932), 96 J. P. 207.

509a. Subsidy—Amount—Houses completed after passing of Housing Financial Provisions Act, 1924 (c. 35).]—STEIN (JOHN G.) & CO., LTD. *v.* STIRLING COUNTY COUNCIL EASTERN DISTRICT COMMITEE (1927), 91 J. P. 205; 26 L. G. R. 51, H. L.

509b. —— Agreement waiving compliance with bye-law—Whether authorised under Housing Act, 1925 (c. 14), s. 99.]—WILLIAM BEAN & SONS, LTD. *v.* FLAXTON RURAL DISTRICT COUNCIL, No. 121a, *ante*.

513a. —— Appeal to county court—Not limited to question of law.]—FLETCHER *v.* ILKESTON CORPN., No. 481a, *ante*.

518. *Add. Annotation:—As to* (2) **Reid.** Brown *v.* Dagenham U. D. C., [1929] 1 K. B. 737.

524. After " *(d)* " following this case add :—

(e) Clearance Orders.

See Housing Act, 1930 (c. 39), s. 11 ; R. S. C. (No. 2), 1932, S. R. & O., 1932, No. 514. PRACTICE, Part LXIII., *post.*

524a. Application to High Court—Grounds for.]—*Re* BOWMAN, SOUTH SHIELDS (THAMES STREET) CLEARANCE ORDER, 1931, No. 502e, *ante.*

533. *Add. Citations :—sub nom.* R. *v.* WARBLINGTON OVERSEERS, 22 L. T. O. S. 304 ; 18 J. P. 647 ; *sub nom. Ex p.* WARBLINGTON OVERSEERS, 18 Jur. 494.

534. *Add. Citation :—sub nom.* R. *v.* DEVERELL, 23 L. J. M. C. 121.

Add. Annotations :—**Refd.** R. *v.* Kingswinford Overseers (1854), 2 E. & B. 688 ; Backhouse *v.* Bishopwearmouth (1861), 7 Jur. N. S. 338.

549. *Add. Annotation :*—**Consd.** Woolliscroft *v.* Stoke-on-Trent Corpn. (1928), 92 J. P. 150.

556a. Registration—Removal from register—Grounds for.]—Pltfs. were the owners of premises which had been used for a long period prior to Mar. 1924, as a slaughter-house in connection with their business as meat salesmen, & were a registered slaughter-house within Towns Improvement Clauses Act, 1847 (c. 34), s. 126. By a resolution passed by the City Council on July 22, 1926, pltfs.' slaughter-house was removed from the register upon the ground that no slaughtering had been done on the premises between Mar. 1924, & July, 1926 :—*Held :* upon the evidence, these premises had throughout the period in question been continuously occupied by pltfs. as a slaughter-house & used as such. The local authority were therefore not entitled under sect. 126 to remove the name from the register, even although there had been a breach of the regulations on the part of pltfs.—WOOLLISCROFT *v.* STOKE-ON-TRENT CORPN. (1928), 92 J. P. 150 ; 26 L. G. R. 522, C. A.

SUB-SECT. 1.—IN GENERAL.

(Vol. XXXVIII., p. 227.)

584a. Adoption of Acts—Right to poll.]—A meeting of ratepayers was summoned for the purpose of determining whether the provisions of the Public Libraries Acts should be adopted in defts.' district. A chairman having been chosen, the resolution to adopt the Acts was carried upon a show of hands ; a poll was demanded, but the chairman refused to grant it. Defts. declined to put in force the Acts : —*Held :* the right to demand a poll existed by the common law, & had not been taken away by any of the provisions contained in the Public Libraries Acts, & defts. could not be compelled by mandamus to carry out the Acts.

The question is whether it is not an attribute at common law of all public meetings, that any qualified person may demand a poll, & the meeting may be enlarged so that all persons duly qualified may come in & take part in the decision. Cannot a meeting be adjourned at common law ? Both reason & authority show that where a large class of persons exists who are qualified to take part in a meeting, an opportunity ought to be given of summoning them & of allowing them to record their votes (BRETT, L.J.).—R. *v.* WIMBLEDON LOCAL BOARD (1882), 8 Q. B. D. 459 ; 51 L. J. Q. B. 219 ; 46 L. T. 47 ; 46 J. P. 292 ; 30 W. R. 400, C. A.

607. *Add. Annotations :*—**Refd.** Grant *v.* Derwent, [1929] 1 Ch. 390 ; Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

PART VII. SECT. 12, SUB-SECT. 1.

1 i. —— *Injury to employee—Whether negligence must be proved.*]—Pltf. while working for deft. in clearing brush from the latter's farm was injured by an explosive which deft. had brought on to the land for use in the clearing of it, & which pltf. by pure chance struck with an axe :—*Held :* pltf. must prove negligence.—PIETRZAK *v.* ROCHELEAU, [1928] 2 D. L. R. 46 ; [1928] 1 W. W. R. 428 ; 23 Alta. L. R. 337.—**CAN.**

sw. *Explosives Act, R. S. C.*, 1927—*Not binding on Crown.*]—R. *v.* LEBLANC (1930), 1 M. P. R. 21.—**CAN.**

PART VII. SECT. 12, SUB-SECT. 2.—B.

529 i. *Petroleum for light vehicles—Locomotives on Highways Act*, 1896, *c.* 36, *s.* 5—*Application to Scotland of regulations made by Home Secretary.*]—GALLOWAY *v.* ANDERSON, [1928] S. C. (J.) 70.—**SCOT.**

PART VII. SECT. 14, SUB-SECT. 4.

h i. —— *Negligence.*]—FORREST *v.* METROPOLITAN MEAT INDUSTRY BD. (1928), 28 S. R. N. S. W. 621 ; 45 N. S. W. W. N. 193.—**AUS.**

h ii. —— —— *Bye-law depriving owners of animals slaughtered of portion of offal—Whether reasonable.*]—A bye-law, made by a controlling authority of an abbatoir, in pursuance of Slaughtering & Inspection Act, 1908, s. 18, & sect. 3 of the Amendment Act, 1910, is *intra vires* & reasonable notwithstanding that its operation deprives the owners of animals slaughtered of a proportion of the offal & effects a confiscation of same.—SMITH *v.* BLENHEIM BOROUGH COUNCIL, [1928] N. Z. L. R. 536.—**N.Z.**

PART VII. SECT. 20, SUB-SECT. 1.—A.

sx. *Depositing refuse so as to be nuisance.*]—Health Act, 1919, s. 32 (2), makes it unlawful for a private citizen, as well as for a municipal council, to deposit refuse or rubbish in any place where it may be a nuisance. A deposit contributing to a continuing nuisance held sufficient to support a conviction under the section.—PAINTER *v.* O'CONNELL, [1928] V. L. R. 259 ; [1928] Argus L. R. 159.—**AUS.**

PART VII. SECT. 20, SUB-SECT. 1.—B.

sy. *Right of disposal of owner of garbage.*]—A statute giving a municipality power to " establish, maintain, equip, own, & operate garbage collection & garbage disposal & reduction works " does not support a bye-law which purports to take away from an owner of garbage his right to dispose of it to whomsoever he pleases provided he does not thereby create a nuisance or violate some valid health or other regulation.—R. *v.* BELL (Alta.), [1929] 2 W. W. R. 337 ; 51 Can. Crim. Cas. 414.—**CAN.**

RAILWAYS AND CANALS.

Part I.—Railway Companies Generally.

5a. **Purchase of Indian railway—Deductions for sinking fund—Construction of Act.**]—*Held:* on a summons taken out by the annuity trustees under the Great Indian Peninsular Railway Purchase Act, 1900 (63 & 64 Vict. c. cxxxviii), that, for the purpose of providing the sinking fund to replace capital at the end of a fixed period, the sum to be deducted under sect. 21 of the Act from each half-yearly payment of Class B annuities was 5*s.* 8*d.* in the pound, being the amount fixed by resolution in Dec. 1900; & the trustees had no power to vary the rate of deduction.—ARMSTRONG *v.* MEAD (1930), 46 T. L. R. 216.

31a. —— ——.]—EDINBURGH, PERTH & DUNDEE RY. CO. *v.* PHILIP, No. 855, *post.*

50. After cross-reference following this case add:—

Abolition of duty.]—*See* Finance Act, 1929 (c. 21), s. 3.

Part II.—Construction and Repair of Railways.

69. *Add. Annotation:*—**Refd.** A.-G. *v.* Smethwick Corpn., [1932] 1 Ch. 562.

118. *Add. Annotation:*—**Refd.** Farnworth *v.* Manchester Corpn. (1929), 98 L. J. K. B. 224.

136. *Add. Annotation:*—**Consd.** Manchester Corpn. *v.* Audenshaw U. C. & Denton U. C., [1928] Ch. 763.

171. *Add. Annotation:*—**Refd.** Vanderpant *v.* Mayfair Hotel Co., [1930] 1 Ch. 138.

197a. —— ——.]—A railway co. agreed with a landowner, through whose estate the railway would pass, to construct & maintain a siding connected with their railway at B., together with all necessary approaches thereto for

PART I. SECT. 4, SUB-SECT. 1.

aa. *Power of federal railway to sell its assets—Necessity for sanction of Governor-General in Council.*]—OTTAWA VALLEY RY. CO. *v.* CENTRAL RY. CO., LTD. (1926), Q. R. 42 K. B. 284.—**CAN.**

ab. *Power to carry on business reasonably incidental to operation of railway—Sale of souvenirs, photographs & refreshments.*]—QUEEN VICTORIA NIAGARA FALLS PARK COMRS. *v.* INTERNATIONAL RY. CO., [1928] 4 D. L. R. 755; 63 O. L. R. 49.—**CAN.**

PART I. SECT. 4, SUB-SECT. 3.

n (p. 252) **i.** —— —— *Powers of Minister.*]—The Crown expropriated a certain area for use in the building of the terminal of the Hudson Bay Railway at Churchill & for a port on Hudson Bay. At the date of the taking there were no permanent habitations anywhere in the vicinity save a Hudson Bay Post & Mounted Police Post. The future of Churchill was altogether dependent upon the completion of the work for which the land was taken:—*Held:* under the Expropriation Act a Minister of the Crown may take any land for the use of His Majesty as he thinks advisable to take, & his decision or judgment that the lands so taken are necessary for a public work is not open to review by the cts. This power or authority does not interfere with the security in the enjoyment of private property, as the Crown must compensate the owner of any lands so taken for the value thereof & all damages resulting from the expropriation. Speculative prices paid by purchasers of real estate in the vicinity, some fifteen years before the expropriation in question, are not a fair criterion of the market value of similar property at the date of the expropriation thereof. The advantages due to the carrying out of the scheme for which the lands were taken cannot be considered in fixing the compensation to be paid for the said lands.—R. *v.* BEECH, [1930] Ex. C. R. 133.—**CAN.**

n (p. 253) **ii.** —— *None to Supreme Court of Canada.*]—CEDAR RAPIDS MFG. & POWER CO. *v.* LACOSTE, [1927] 2 D. L. R. 83.—**CAN.**

nee (p. 253) **i.** —— *Jurisdiction of Exchequer Court—Effect on proceedings commenced in Provincial Court.*]—*Held:* (1) the Exchequer Ct. of Canada has no jurisdiction to hear & determine an action by the Canadian National Railway, for fixing the compensation to be paid for lands expropriated by it before June 14, 1929, date when the C. N. R. Act came into force, conferring jurisdiction on this ct.; (2) the legal proceedings already instituted before the Provincial Cts., under the Railway Act, should be there continued & even enforced, defts. having a vested right to do so under the law existing at the date of expropriation. When the effect of a repeal is to take away a right, *primâ facie*, it is not retroactive; but when it deals exclusively with procedure it is retroactive.—CANADIAN NATIONAL RY. CO. *v.* LEWIS, [1930] Ex. C. R. 145; 4 D. L. R. 537.—**CAN.**

nn. *Right to alienate lands taken.*]—PRATT *v.* GRAND TRUNK RY. CO. (1884), 8 O. R. 499.—**CAN.**

nn. *Acquisition from tenant for life.*]—M DLAND RY. OF CANADA *v.* YOUNG (1893), 22 S. C. R. 190.—**CAN.**

no. *For what purpose land may be taken—Hotel purposes—Minerals not included.*]—The Canadian National Rys. Co. has the right to expropriate land for the purposes of a hotel; but has no right to expropriate the minerals that may be in or under that land.—*Re* CANADIAN NATIONAL RYS. CO. & TERWINDT, [1930] 3 W. W. R. 52; 4 D. L. R. 1004.—**CAN.**

nm. *Costs.*]—Costs of an arbn. to fix the compensation to be paid in an expropriation by a railway are to be taxed as between party & party on a rather more liberal scale than party & party costs, but not as between solr. & client.—*Re* EWART & TORONTO TERMINALS RY. CO., [1932] 1 D. L. R. 582; O. R. 170.—**CAN.**

PART I. SECT. 4, SUB-SECT. 5.

nf. *Lien of Government for subsidies—Priority of bondholders.*]—MINISTER OF RAILWAYS & CANALS *v.* HEREFORD RY. CO., *Re* BOND & MACKINNON & MINISTER OF RAILWAYS & CANALS, [1928] Ex. C. R. 223; *affd.*, [1930] S. C. R. 37; 1 D. L. R. 187; 36 C. R. C. 149.—**CAN.**

PART I. SECT. 4, SUB-SECT. 6.

p (p. 254) **i.** —— *When demurrage chargeable.*]—J. BROWNLEE & CO. *v.* CANADIAN NATIONAL RYS. (1926), 32 Can. Ry. Cas. 291.—**CAN.**

p (p. 254) **ii.** —.]—CONSOLIDATED RENDERING CO. *v.* CANADIAN NATIONAL RYS. (1926), 32 Can. Ry. Cas. 294.—**CAN.**

uu i. —— *Application of stop-off charge.*]—DOMINION MILLERS' ASSOCN. *v.* CANADIAN NATIONAL & CANADIAN PACIFIC RY. COS. (1925), 33 Can. Ry. Cas. 6.—**CAN.**

uu ii. *Dressing in transit—Application of stop-off.*]—NEILSON MACANN LUMBER CO. *v.* CANADIAN PACIFIC RY. CO. (1926), 32 Can. Ry. Cas. 286.—**CAN.**

oo (p. 256) **i.** ——.]—CANADIAN LUMBERMEN'S ASSOCN. *v.* CANADIAN NATIONAL & CANADIAN PACIFIC RY. COS. (1927), 33 Can. Ry. Cas. 1.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—C.

f i. ——.]—WINDSOR CORPN. *v.* CANADIAN PACIFIC RY. CO. (WYANDOTTE STREET BRIDGE CASE) (1926), 32 Can. Ry. Cas. 26.—**CAN.**

sf. *Liability to reconstruct private bridge as highway bridge.*]—LEDUC *v.* CANADIAN PACIFIC RY. CO. (1927), 33 Can. Ry. Cas. 24.—**CAN.**

PART II. SECT. 3, SUB-SECT. 2.

sg. *Claim for damage—Three months' notice of claim.*]—*Re* ST. ANDREW'S CHURCH TRUSTEES & GREAT WESTERN RY. CO. (1862), 12 C. P. 399.—**CAN.**

public use, & for the reception & delivery of goods:—*Held:* (1) specific performance could be decreed of the agreement to construct the siding & approaches, without decreeing the co. to maintain them when made; (2) the agreement did not bind the co. to erect sheds, or to keep one of their servants in attendance at the siding, but it obliged them to construct a proper siding, with approaches & a wharf or raised platform for the loading & unloading of goods; (3) "necessary approaches" meant "proper approaches."—LYTTON *v.* GREAT NORTHERN RY. Co. (1856), 2 K. & J. 394; 27 L. T. O. S. 42; 2 Jur. N. S. 436; 4 W. R. 441; 69 E. R. 836.

263. *Add. Annotation:*—**Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1930] A. C. 549.

265. *Add. Annotation:*—**Refd.** Manchester Corpn. *v.* Audenshaw U. C. & Denton U. C., [1928] Ch. 763.

Part III.—Equipment and Working of Railways.

312. *Add. Annotations:*—**Apld.** Farr *v.* Butters Bros. & Co. (1932), 174 L. T. Jo. 86. **Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119. **Refd.** Bottomley *v.* Bannister, [1932] 1 K. B. 458.

316. *Add. Annotation:*—*Generally*, **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1930] A. C. 549.

Part IV.—Level Crossings.

322. *Add. Annotation:*—*Generally*, **Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

355. *Add. Annotations:*—**Distd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39. **Consd.** McGowan *v.* Stott (1923), 99 L. J.

PART II. SECT. 6, SUB-SECT. 4.—B. (b).

aa. *Revsd.*, 31 S. C. R. 155.

PART II. SECT. 6, SUB-SECT. 4.—C. (a).

215 xiv. ——.]—JAMES *v.* GRAND TRUNK RY. Co. (1900), 31 O. R. 672.—**CAN.**

PART II. SECT. 8.

p i. ——.]—R. *v.* SMITH (1878), 43 U. C. R. 369.—**CAN.**

sh. *Laying down of railway in public street — Necessity for consent — Who proper authority.*]—PORT ADELAIDE CITY CORPN. *v.* SOUTH AUSTRALIAN RYS. COMRS., [1927] S. A. S. R. 197.—**AUS.**

PART III. SECT. 9.

sk. "*Policemen travelling on His Majesty's service*"—*Whether Provincial policemen included.*]—R. *v.* CANADIAN PACIFIC RY. Co. & CANADIAN NATIONAL RY., [1928] 2 D. L. R. 386; [1928] 1 W. W. R. 785; 34 C. Ry. Cas. 292; 23 Alta. L. R. 401.—**CAN.**

PART IV. SECT. 1.

sj. *Extent of duty—Effect of Railway Act*, 1919 (*c.* 68).]—COLEBOURNE *v.* HARROP (Ont.), [1927] 1 D. L. R. 116; 32 Can. Ry. Cas. 208.—**CAN.**

324 i. ——.]—SCOTT *v.* WINNIPEG ELECTRIC Co., [1927] 2 D. L. R. 686; [1927] 1 W. W. R. 739; 32 Can. Ry. Cas. 397; 36 Man. L. R. 357; *affd.*, [1928] 2 D. L. R. 420; [1928] S. C. R. 52; 34 C. Ry. Cas. 260.—**CAN.**

324 ii. —— *Power to remove planks—From farm crossing.*]—MACDONALD *v.* CANADIAN PACIFIC RY. Co. (Que.) (1927), 33 Can. Ry. Cas. 60.—**CAN.**

324 iii. —— ——.]—Although a road allowance had never been graded, or had work done on it by the municipality, & had not been regularly travelled, it was held to be a highway within sect. 265 of Railway Act (Dom.); & its intersection by deft. co.'s railway was held not to be a "farm crossing" within general order 47 of Feb. 10, 1909, of the Board of Railway Comrs.; & therefore the co. was held liable for injuries sustained by pltf. owing to the absence of planking between the rails, which projected about five inches above the level of the ground.—BRUCE *v.* CANADIAN PACIFIC RY. Co., [1929] 1 D. L. R. 344; 1 W. W. R. 56; 35 C. R. C. 145; 23 Alta. L. R. 595.—**CAN.**

324 iv. —— *Railway Act, ss.* 264, 265 *&* 266—*Not applicable.*]—Pltfs.' tractor & threshing outfit, moving along a highway, became stalled upon a level crossing of defts.' railways & were struck by a train & destroyed:—*Held:* sects. 264, 265 & 266 of the Railway Act, 1927, impose no liability in respect of a level crossing.—OSTRANDER *v.* MICHIGAN CENTRAL RY. Co. & PERE MARQUETTE RY. Co., [1930] 1 D. L. R. 34; 36 C. R. C. 60; 64 O. L. R. 408.—**CAN.**

324 v. ——.]—Rails of a railway track projecting four or more inches above the highway at a level crossing held to constitute an obstruction which, not being authorised by statute or other lawful authority, constituted a nuisance for the maintenance of which the ry. co. was liable to a person injured thereby.—MACGREGOR *v.* CANADIAN NATIONAL RYS. & EDMONTON CITY, [1930] 3 W. W. R. 392; [1931] 1 D. L. R. 87; 25 Alta. L. R. 104; *varg.*, [1930] 3 W. W. R. 237.—**CAN.**

m i. —— *Effect of accident causing death or injury—Application of "slow order."*]—*Re* RAILWAY ASSOCN. OF CANADA & SLOW ORDERS (1926), 32 Can. Ry. Cas. 238.—**CAN.**

m ii. ——.]—CANADIAN NATIONAL RYS. *v.* HYDRO ELECTRIC POWER COMMISSION & DEPARTMENT OF HIGHWAYS FOR ONTARIO (WESTHILL CROSSING CASE) (1926), 32 Can. Ry. Cas. 297.—**CAN.**

f (p. 309) **i.** —— ——.]—MONTREAL CORPN. *v.* CANADIAN PACIFIC RY. Co. (GOUIN BOULEVARD CROSSING CASE) (1926), 32 Can. Ry. Cas. 245.—**CAN.**

f (p. 309) **ii.** —— ——.]—SPRINGFIELD (VILLAGE) *v.* MICHIGAN CENTRAL RY. Co. (1926), 32 Can. Ry. Cas. 254.—**CAN.**

f (p. 309) **iii.** —— ——.]—MONTREAL CORPN. *v.* CANADIAN NATIONAL RYS. (1927), 33 Can. Ry. Cas. 29.—**CAN.**

f (p. 309) **iv.** —— —.]—CANADIAN NATIONAL RYS. *v.* MONTREAL TRAMWAYS (GUY ST. CROSSING CASE) (1927), 33 Can. Ry. Cas. 32.—**CAN.**

f (p. 309) **v.** —— —.]—SHERBROOKE CORPN. *v.* CANADIAN PACIFIC RY. Co. (1927), 33 Can. Ry. Cas. 35.—**CAN.**

sk. *Railway Act*, 1927, *ss.* 264, 265, 266—*Not applicable to level crossings.*]—OSTRANDER *v.* MICHIGAN CENTRAL RAILROAD CO. & PERE MARQUETTE RY. Co., [1930] 1 D. L. R. 34; 64 O. L. R. 408.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.

sm. *Gate left open—Obligation on person crossing track to take reasonable precautions.*]—The fact that the gates at a railway crossing have been left open does not excuse a person approaching the track from taking reasonable precautions before crossing it in order to discover whether a train is coming.—MICHALINSKI *v.* CANADIAN PACIFIC RY. Co., [1928] 3 W. W. R. 238.—**CAN**

sp. — —.]—A person who found the gates of a railway level crossing open, & was thereby misled into thinking the line safe for crossing, was held not bound to minute circumspection, & the co. was liable to him in damages, his car having been broken by a passing engine.—DAYA SHANKAR *v.* BOMBAY, BARODA & CENTRAL INDIA RY. Co. (1931), I. L. R. 53 All. 943.—**IND.**

PART IV. SECT. 2, SUB-SECT. 2.

a (p. 311) **i.** —— *Whether gate wilfully left open—Gate wilfully opened by stranger.*]—BROWN *v.* GREAT NORTHERN RY. Co., [1927] 2 D. L. R. 316; [1927] 1 W. W. R. 516; 32 Can. Ry. Cas. 326; 38 B. C. R. 115.—**CAN.**

PART IV. SECT. 3.

aa (p. 314) **i.** ——.]—SMART *v.* SOUTH AFRICAN RYS. & HARBOURS (1928), 49 N. L. R. 129.—**S. AF.**

aa (p. 314) **ii.** ——.]—In an action for damages resulting from a collision at an unguarded level crossing, between a motor car & a freight train which had been standing on a siding:—*Held:*

K. B. 357, n.; Simpson *v.* London, Midland & Scottish Ry. Co., [1931] A. C. 351. **Refd.** Cosmopolitan Shipping Co. (Inc.) *v.* Hatton & Cookson, Ltd. (Liverpool) (1929), 143 L. T. 296; McCullum *v.* Northumbrian Shipping Co. (1931), 146 L. T. T. 124.

357. *Add. Annotation :*—**Refd.** Jones *v.* Great Western Ry. Co. (1930), 47 T. L. R. 39.

361. *Add. Annotations :* — **Distd.** Compania Mexicana De Petroleo " El Aguila " *v.* Essex Transport & Trading Co. (1929), 141 L. T. 106. **Consd.** Hargrove *v.* Burn (1929), 46 T. L. R. 59; Service *v.* Sundell (1929), 99 L. J. K. B. 55; M'Lean *v.* Bell (1932), 48 T. L. R. 467. **Refd.** Service *v.* Sundell (1929), 45 T. L. R. 569; Cooper *v.* Swadling (1929), 46 T. L. R. 73.

Part V.—Arrangements between Railway Companies.

371. *Add. Annotation :—As to* (1) **Distd.** Crediton Gas Co. *v.* Crediton U. D. C., [1928] Ch. 447.

475. *Add. Annotations :—As to* (1) **Consd.** A.-G. *v.* Leeds Corpn., [1929] 2 Ch. 291. *Generally*, **Refd.** A.-G. *v.* Smethwick Corpn. (1932), 96 J. P. 105.

503a. Claim for compensation—" Determination " by company—What amounts to.]—Pltfs. were transferred to the co.'s employment when it became an amalgamated co. under Railways Act, 1921 (c. 55). In accordance with Sched. 3 to that Act they put forward claims to compensation for loss suffered by reason of the amalgamation. Sched. 3, para. 4, provides that any question whether the provisions of para. 3, dealing with the transfer of existing officers or servants, has been complied with, should be referred to a Standing Arbitrator or board of arbitrators

even if the evidence favourable to deft. as to the time when the peril arose was correct, it was negligence on the part of the train crew not to have seen the motor car in time to give an effective warning before backing up the train, & such negligence was the cause of the accident.—DOWSER *v.* CANADIAN NATIONAL RY. (Alta.), [1929] 4 D. L. R. 233; 2 W. W. R. 654.—**CAN.**

aa (p. 314) **iii.** ——.]—A farm-crossing is not a highway-crossing, & sect. 308 of Railway Act, 1927, which requires, in the case of a train approaching a highway-crossing at rail level, that the engine-whistle shall be sounded at least 80 rods before reaching the crossing, has no application to a farm-crossing. — HIGHLEY *v.* CANADIAN PACIFIC RY., [1930] 1 D. L. R. 630; 36 C. R. C. 217; 64 O. L. R. 615.—**CAN.**

e (p. 315) **i.** ——.]—CANADIAN NATIONAL RY. *v.* POMERLEAU, [1931] S. C. R. 287; 1 D. L. R. 209; *affg.*, [1930] 3 D. L. R. 841; 37 C. R. C. 76; 48 Que. K. B. 97.—**CAN.**

p (p. 315). *Revsd.*, [1927] 3 D. L. R. 888; [1927] S. C. R. 505; 33 Can. Ry. Cas. 55.

p (p. 315) **i.** —— ——.]—TREMBLAY *v.* CANADIAN PACIFIC RY. Co. (1927), Q. R. 65 S. C. 406.—**CAN.**

r (p. 315) **i.** —— ——.]—Where the Railway Administration has used a particular warning to announce the approach of a train at a level crossing, thereafter, upon an occasion when such warning is not given, a collision occurs between an engine & a vehicle crossing the line, the ct. in deciding whether the driver of the vehicle took reasonable care in approaching the crossing will take into account the fact that the driver may have been thrown off his guard by the absence of the usual form of warning.—MANCHO *v.* SOUTH AFRICAN RYS. & HARBOURS, [1928] App. D. 89.—**S. AF.**

r (p. 315) **ii.** —— ——.]—MAYGARD *v.* CANADIAN PACIFIC RY. (Alta.), [1929] 4 D. L. R. 1064; 2 W. W. R. 652.—**CAN.**

r (p. 315) **iii.** —— ——.]—Two actions were brought against defts. by the driver & passenger of a car to recover damages for injuries sustained by the car being struck by a train at a level crossing. It was found that the train was travelling more than 10 miles an hour in breach of sect. 309 (c) of the Railway Act, but the actual & proximate cause of the collision was the negligence of the driver of the car in attempting to cross the tracks when the train was so near. Defts. therefore held not liable.—GAULEY *v.* CANADIAN PACIFIC RY., BIRKETT *v.* CANADIAN PACIFIC RY., [1930] 4 D. L. R. 354; 36 C. R. C. 365; 65 O. L. R. 477; *revsg.*, [1930] 1 D. L. R. 225; 36 C. R. C. 215; 64 O. L. R. 527.—**CAN.**

r (p. 315) **iv.** —— ——.]—In an action for damages for personal injuries resulting from a collision between an automobile & a railway train at a level crossing the trial judge, who misdirected himself in treating the whistling of the mile post as one of the warnings required by sect. 308 of the Railway Act, R. S. C., 1927, said that he accepted the testimony of the engineer " corroborated in some particulars by the evidence of other witnesses." The engineer's testimony was corroborated as to one only of the statutory signals & by only one of the three witnesses referred to. The testimony of the other two witnesses was that the train whistled at the mile post. On appeal: —*Held:* it being impossible for the ct. to say whether the trial judge would have concluded that the statutory signals had been given if he had properly appreciated the requirements of the statute & the limited amount of the corroborative testimony with respect to them, his finding could not stand & there must be a new trial.—NAGEL & NAGEL *v.* CANADIAN NORTHERN RY. Co., [1930] 2 W. W. R. 431; 4 D. L. R. 366, 24 S. L. R. 502; *setting aside*, [1930] 1 D. L. R. 1004.—**CAN.**

r (p. 315) **v.** —— ——.]—It is negligence to attempt to pass over a level railway crossing without looking both ways for trains as carefully as a reasonably prudent man would, unless there is some reasonable excuse for not doing so.—GREEN *v.* CANADIAN NATIONAL RAILWAYS CO., [1931] 3 W. W. R. 448; [1932] 1 D. L. R. 253; *revsd.*, [1932] S. C. R. 689.—**CAN.**

r (p. 315) **vi.** —— —— *Question for jury.*]—Pltf., while standing on a railway track at a level crossing, was struck by a train. There was a snowstorm at the time, & he was assisting in getting clear of the track a motor car driven by another person which had stuck in a drift on the track. The jury found that the engine whistle was not blown nor was the bell rung, as required by statute; that the absence of these signals caused the accident; & that there was no contributory negligence on the part of pltf. At the close of pltf.'s case deft.'s counsel had moved to have the case withdrawn from the jury on the ground that it was manifest that there had been contributory negligence:—*Held:* the case should have been taken from the jury on the ground that it was evident from pltf.'s own case that, even if the facts were that deft. had not given the proper warnings, the accident could not have happened but for pltf.'s negligence in remaining on the track.—CONVERSE *v.* CANADIAN PACIFIC RY. Co., [1932] 2 W. W. R. 1.—**CAN.**

r (p. 315) **vii.** —— ——.]—A guest passenger in a motor car held to have been under no duty, under the circumstances, to keep a look out when approaching a level railway crossing, &, therefore, the fact that he did not do so was held, in an action resulting from a collision of the motor car with a train, not to have been contributory negligence on his part.—TOLLPASH *v.* CANADIAN NATIONAL RY., [1932] 1 W. W. R. 846.—**CAN.**

r (p. 315) **viii.** —— *Admissibility of order made by provincial railway—Before becoming federal railway.*]—LITTLEY *v.* BROOKS & CANADIAN NATIONAL RY. Co., [1930] S. C. R. 416; 4 D. L. R. 1; 37 C. R. C. 13; *revsg.*, 36 C. R. C. 357.—**CAN.**

q (p. 316). *Revsd.*, [1923] S. C. R. 397.

o (p. 316) **i.** *Defective approach to crossing.*]—RASPBERRY *v.* CANADIAN NATIONAL RY. Co., [1928] 3 D. L. R. 831; 62 O. L. R. 406.—**CAN.**

b (p. 317) **i.** ——.]—CANADIAN NATIONAL RAILWAYS *v.* POMERLEAU, [1931] S. C. R. 287; [1931] 1 D. L. R. 209.—**CAN.**

o (p. 317). *Revsd.*, 48 S. C. R. 561.

d (p. 317) **i.** *Duty to trespasser.*]—In an action for damages for personal injuries sustained by a pedestrian at a level railway crossing the jury found deft. negligent & that pltf. had been contributorily negligent, & apportioned the damages under Contributory Negligence Act. Deft. appealed:—*Held:* pltf., who when he was struck by the train was on a pathway at the side of the plank roadway, was a trespasser, & deft. had not been guilty of any breach of duty towards him.—JURE *v.* VANCOUVER HARBOUR COMRS., [1931] 3 W. W. R. 157; 4 D. L. R. 916; 44 B. C. R. 271.—**CAN.**

PART V. SECT. 4, SUB-SECT. 2.

t. *Revsd.*, 1 O. L. R. 575, 594.

appointed by the Lord Chancellor, & para. 5 provides that claims shall be determined in accordance with Local Government Act, 1888 (c. 41), s. 120, with the necessary modifications. By sub-sect. 4 of that sect., the time for appeal to a Standing Arbitrator is fixed at three months from the date of the determination. The claims were discussed at a meeting held on Apr. 26, 1928, at the co.'s registered office. L., the co.'s assistant general manager, concluded by asserting that the cases of all pltfs. were governed by a decision of the Standing Arbitrator refusing the claim of one B., but no formal letter refusing the claims was sent to pltfs. or their solr. It was subsequently contended on behalf of the railway co. that the co. had given its "determination" of the claims, within Railways Act, 1921 (c. 55), at the meeting of Apr. 26, & that the proposed appeals were out of time. In an action by pltfs. for a declaration that their claims were not determined by the co. on Apr. 26, 1928, within Railways Act, 1921 (c. 55), Sched. 3, para. 5, or at all:—*Held:* decisions on claims for compensation must be formulated in a definite manner in the name & on behalf of the co. & communicated forthwith to the claimants; & on the facts there had been no such determination.—MACDONALD *v.* GREAT WESTERN RY. CO., [1930] 1 Ch. 364; 99 L. J. Ch. 164; 142 L. T. 460; 28 L. G. R. 171.

503b. —— Loss of employment must be due to amalgamation.]—*Re* DAWSON & LONDON, MIDLAND & SCOTTISH RY. (1929), 73 Sol. Jo. 748.

Part VI.—Relations between Railway Companies and the Public.

543. *Add. Annotation:*—**Distd.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

545. *Add. Annotation:*—**Refd.** Manchester Corpn. *v.* Farnworth, [1930] A. C. 171.

554. *Add. Annotation:*—**Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

557. *Add. Annotation:*—**Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

558. *Add. Annotation:*—**Consd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

564. *Add. Annotation:*—**Refd.** Manchester Corpn. *v.* Farnworth (1929), 46 T. L. R. 85.

580. *Add. Annotation:*—**Refd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

Part VII.—Railway Companies and their Servants.

598a. Injury to ganger—Duty to provide look-out man—Prevention of Accidents Rules, 1902, r. 9.]—The foreman of a gang in the employ of a railway co. was employed to repair some signalling apparatus on the permanent way, & took with him a member of his gang to assist him. Whilst engaged in working on the down line he with his fellow workman stepped off the line on the up line to avoid a down train & both men were killed by an

PART VI. SECT. 1.

f i. —— —— *Passenger standing on platform of car—Contrary to statutory notice duly posted.*]—DOBIE *v.* CANADIAN PACIFIC RAILWAY (B. C.), [1931] S. C. R. 277; 3 D. L. R. 856; *revsg.*, [1930] 1 D. L. R. 790; [1930] 1 W. W. R. 6; 36 C. R. C. 200; 42 B. C. R. 30; *affg.*, [1929] 2 D. L. R. 901; 35 Can. Ry. Cas. 302.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 1.

m (p. 347) i. ——.]—A railway co. dug pits upon their land & allowed water to escape, to the injury of their neighbour. In an action for damages:—*Held:* the limitation sect. of the Railway Act was not applicable, the right sought to be enforced not arising from the statute, but the action was upon the case & must be brought within 6 years after the cause of action arose.—TORONTO GENERAL TRUSTS CORPN. *v.* CANADIAN NATIONAL RY., [1930] 2 D. L. R. 286; 36 C. R. C. 187; 64 O. L. R. 622; *revsg.*, [1929] 1 D. L. R. 600; 35 C. R. C. 119; 63 O. L. R. 320.—**CAN.**

sn. *Liability of Government railway for negligence—Application of Provincial Contributory Negligence Act.*]—CANADIAN NATIONAL RY. CO. *v.* ST. JOHN MOTOR LINE, LTD., [1930] S. C. R. 482; 3 D. L. R. 732; 37 C. R. C. 29.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 3.—A.

556 iii. —— ——.]—When in pursuance of the authority or obligation conferred on it by sect. 281 (*a*) of Railway Act. R. S. C., 1927, & the regulations of the Board of Railway Comrs. issued thereunder, a railway co. proceeds to burn a fireguard it is not liable for damage caused by the spread of the fire therefrom unless it is shown that the escape of the fire was due to the co.'s negligence.—YOUNG & YOUNG *v.* CANADIAN PACIFIC RY. CO., [1931] 2 W. W. R. 14; 2 D. L. R. 968.—**CAN.**

so. *Damage to timber—Failure to patrol right of way—Defects in locomotive.*]—MID-LAKES TIMBER CO. *v.* CANADIAN PACIFIC RY. CO., [1928] 4 D. L. R. 922; [1928] 3 W. W. R. 745.—**CAN.**

sp. *Death due to fire caused by sparks from engine—Claim by dependants—Where enforceable — Meaning of "losses."*]—VICTORIAN RYS. COMRS. *v.* SPEED, [1928] V. L. R. 150; [1928] Argus L. R. 77; 40 C. L. R. 434.—**AUS.**

PART VII. SECT. 1.

k. *Revsd.*, 47 S. C. R. 634.

sq. *Injury while on duty—Salary during incapacity—Rate.*]—Pltf., who was a temporary cleaner employed by deft., but who was qualified to act as a fireman, was injured, & temporarily incapacitated, while acting, for one day, in the latter capacity:—*Held:* under sect. 100B of Govt. Rys. Act, 1912, as inserted by sect. 22 of Govt. Rys. (Amendment) Act, 1916, the rate at which pltf. was entitled to be paid, during the period of his incapacity, was that prescribed for a temporary cleaner, & not that prescribed for a fireman.—LINDFIELD *v.* NEW SOUTH WALES RY. COMRS. (1929), 30 S. R. N. S. W. 346; 47 N. S. W. W. N. 115.—**AUS.**

st. *Injury through failure to apply emergency brake.*]—Pltf., a workman employed by deft., was injured while laying new track on deft.'s right-of-way. His foot was caught between a rail & a tie & a wheel of the "pioneer" of the work train which was proceeding behind the workmen struck & crushed his leg. The jury found deft. responsible for the injury because of the fault of the brakesman on the "pioneer" in not responding quickly enough in applying the emergency air-brake when sensing the danger. The jury negatived any negligence on pltf.'s part. The evidence as to whether the brakesman applied the emergency brake at all was contradictory:—*Held:* the jury's finding must be taken to mean that, if the brakesman did apply the brake, he did not do so as quickly as he might

up train. In an action by the widow of the foreman for damages against the co. for breach of statutory duty, the judge directed the jury that a regulation of the co. under which the foreman of a gang was entrusted with the duty of seeing that a look-out man was provided whenever he or any of his gang were at work upon the line was a compliance with r. 9. The jury found that the co. had not omitted to perform their statutory duty of providing a look-out man, & that the foreman's death was caused by the negligence of one or the other or both of the men, & judgment was entered for the co. :—*Held :* (1) a motion for a new trial, on the grounds of misdirection & that the verdict was against the weight of evidence, must be refused ; (2) the rule does not require the look-out man provided to be some one who is not a member of the gang itself, but is appointed additionally. (3) *Semble :* the duty of the railway co. under the rule in any case of danger is an absolute duty to provide a look-out man & to see that he is instructed to act. The co. does not comply with the rule by merely making regulations under which the foreman of a gang is entrusted with the duty of appointing a look-out man ; &, if the foreman fails in that duty, the co. may be made liable for injury happening to a member of the gang other than the foreman himself.—VINCENT *v.* SOUTHERN RY. CO., [1927] A. C. 430 ; 96 L. J. K. B. 597 ; 136 L. T. 513 ; 71 Sol. Jo. 34, H. L.

Part IX.—Controlling Powers of Ministry of Transport.

602. *Add. Annotation :—As to* (2) **Refd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441.

Part X.—Railway Tribunals.

631. *Add. Annotation :*—**Refd.** British Trawlers Federation, Ltd. *v.* London & North Eastern Ry. Co. (1932), 48 T. L. R. 491.

631a. Facilities must arise out of railway traffic.]—The jurisdiction of the Railway & Canal Traffic Commission is limited to questions arising directly or indirectly out of traffic upon a railway. Therefore the Commission refused to entertain an application for improved facilities by the owner of an occupation road which was crossed by a line of railway & interrupted by gates which were said to be kept shut ; & on a summons taken out by resps. the application was dismissed, no evidence being heard, on the ground that it disclosed no matter with which the Commission was competent to deal.—SANDILANDS *v.* LONDON, MIDLAND & SCOTTISH RY. Co. (1927), 20 Ry. & Can. Tr. Cas. 136.

684. *Add. Annotation :*—**Refd.** Tate & Lyle, Ltd. *v.* London & North Eastern Ry. Co. & London, Midland & Scottish Ry. Co. (1926), 20 Ry. & Can. Tr. Cas. 166.

691a. Effect of death of judge during hearing.]—*Held :* if the judge assigned to the Commission dies during the hearing of an application, but after the evidence has been completed, it is a proper course (the parties consenting) for his successor to read the shorthand notes of the evidence & of the arguments, & to continue the hearing from the point reached at the last adjournment.—BRITISH REINFORCED CONCRETE ENGINEERING CO., LTD. *v.* LONDON & NORTH EASTERN RY. CO. (1928), 45 T. L. R. 186 ; 20 Ry. & Can. Tr. Cas. 78.

691b. Dismissal of application irrelevant on face.]—SANDILANDS *v.* LONDON, MIDLAND & SCOTTISH RY. CO., No. 631a, *ante.*

703. *Add. Annotations :*—**Apld.** R. *v.* St. Marylebone Income Tax Comrs., *Ex p.* Schlesinger (1928), 13 Tax Cas. 746. **Refd.** R. *v.* Electricity Comrs., *Ex p.* Yorkshire Electric Power Co. (1927), 138 L. T. 230.

& ought to have applied it ; & on the evidence it was open to the jury to so find.—KLAPISCHUK *v.* CANADIAN PACIFIC RY. CO., [1932] 1 W. W. R. 528.—**CAN.**

sv. *Injury through defective brake.*]—An employee of deft. was killed while engaged in switching operations in deft.'s yard. The accident was not seen, but he was found dead on the ground after "riding" down a "hump" a car which, as later found, had a defective brake :—*Held :* deft.'s appeal to this ct. should be dismissed.—CANADIAN PACIFIC RY. CO. *v.* MURRAY, [1932] S. C. R. 112 ; 2 D. L. R. 806.—**CAN.**

sx. *Contributory negligence.*]—Pltf., while engaged in operating a steam shovel in deft.'s railway yards, was drawn into the coils of a steel cable about a revolving drum. In an action for damages the jury, in answer to questions, found that deft. was guilty of negligence "that caused the accident," which negligence it described as lack of protection at the niggerhead, & absence of proper signalling when about to start operation of the shovel : the jury also found that pltf. was guilty of negligence that caused the accident in that he approached too close to the niggerhead when the latter was in motion :—*Held :* the judge was right in interpreting the verdict as a dismissal of pltf.'s claim.—CHERBON *v.* CANADIAN PACIFIC RY. CO., [1932] 1 W. W. R. 513.—**CAN.**

PART VII. SECT. 3.

sr. *Superannuation allowance — Who entitled to.*]—F. entered the employment of the Railway Comrs. in 1919, & remained in their employ for upwards of ten years. He was employed on the temporary staff until 1927, when he joined the permanent staff. He remained a member of the permanent staff until his retirement in 1929. He was then over the age of 60 years :—*Held :* F. was entitled to a superannuation allowance under Govt. Rys. Act, 1912, s. 113 (*a*).—*Re* CLEARY, *Ex p.* FULLER (1929), 30 S. R. N. S. W. 407 ; 47 N. S. W. W. N. 189.—**AUS.**

PART VIII.

st. *Arrest without warrant — When justifiable.*]—Under Railways Act, s. 122, to justify an arrest without a warrant, much more than trespass on railway premises or travelling without a ticket is necessary. In the case of trespass, it will have to be shown that there was reason to believe that the person to be arrested would abscond, or that his name & address were unknown & he refused to give his name & address, or that the name & address given by him was incorrect. In the case of travelling without a ticket, it will, further, have to be shown that there was a refusal to pay the sum charged.—HAMID *v.* SUDHIRMOHAN GHOSH (1929), I. L. R. 57 Calc. 102.—**IND.**

736. *Add. Annotations:*—**Consd.** Lloyd del Pacifico *v.* Board of Trade (1930), 46 T. L. R. 476. **Refd.** London Welsh Estates, Ltd. *v.* Phillip (1931), 144 L. T. 643.

752. *Add. Annotation:*—**Refd.** Sandilands *v.* London, Midland & Scottish Ry. Co. (1927), 20 Ry. & Can. Tr. Cas. 136.

755. *Add. Annotation:*—**Refd.** Rownson, Drew & Clydesdale *v.* G. W. Ry., L. M. & S. Ry., L. & N. E. Ry. & Southern Ry. (1928), 19 Ry. & Can. Tr. Cas. 235.

756a. Adjustment of charges to revenue—Railway carrying on subsidiary business—Railways Act, 1921 (c. 55), s. 58.]—In dealing with the subject of dock undertakings belonging to railway cos. the Railway Rates Tribunal accepted the division between "railway" & "dock" set out in the railway cos.' estimates, by which all receipts & expenses in respect of railways, sidings & warehouses, whether they were within the area of a dock or not, were treated as "railway" receipts & expenses, & all receipts & expenses in respect of "docks" other than those entered as "railway" receipts & expenses, were treated as "dock" receipts & expenses:—*Held:* (1) this division of receipts & expenditure between railways & docks could not be supported, as it involved the exclusion from consideration of charges at dock warehouses or storage spaces where none of the goods stored therein used railways, & all charges in respect of the conveyance on railways in docks in whatever circumstances the rails were laid or charges were made for their use; (2) (BANKES, L.J.) under sect. 58 (4) of the above Act the Tribunal has to take into consideration the different operations which go to make up the business of a dock undertaking, for which operations separate & distinct charges are made; (3) *Semble* (SCRUTTON, L.J.): warehousing on a dock undertaking goods exported or imported, storing such goods in the open on dock lands, the use of transit sheds, & services such as coopering, are dock & not railway charges.—MANCHESTER SHIP CANAL CO.'S & DOCK & HARBOUR AUTHORITIES ASSOCN.'S APPLICATIONS, [1927] 2 K. B. 154; 96 L. J. K. B. 421; 137 L. T. 39; 43 T. L. R. 301; *sub nom.* STANDARD CHARGES (DOCKS HARBOURS & PIERS), 19 Ry. & Can. Tr. Cas. 75, C. A.

756b. —— —— ——.]—STANDARD CHARGES (COLLECTION & DELIVERY-WAREHOUSING) (1925), 19 Ry. & Can. Tr. Cas. 53.

756c. —— **Consideration of ancillary business—Modification condition precedent.**] — *Held:* Railways Act, 1921 (c. 55), s. 58 (2), (4), does not become applicable until the Tribunal, having reviewed the charges, has decided to modify them.—STANDARD & EXCEPTIONAL CHARGES (FIRST REVIEW) (1929), 20 Ry. & Can. Tr. Cas. 87.

756d. —— —— ——.]—*Held:* (1) if on review the Rates Tribunal does not modify charges it has no discretion to consider the financial results obtained from ancillary businesses; (2) the Tribunal will not exercise any discretion it may have, under Railways Act, 1921 (c. 55), s. 59 (4), to limit the allowance in respect of additional capital, where such capital has been invested under statutory powers, & the investment has not been shown to be unwise or imprudent.—STANDARD & EXCEPTIONAL CHARGES (SECOND REVIEW) (1930), 20 Ry. & Can. Tr. Cas. 90.

756e. Allowance in respect of additional capital—Discretion to limit—When exercised.]—STANDARD & EXCEPTIONAL CHARGES (SECOND REVIEW), No. 756d, *ante.*

761a. Interrogatories—Discretionary.]—*Held:* (1) the ordering of interrogatories by the Rates Tribunal is discretionary; (2) the Tribunal is not bound by the practice of the High Ct.; (3) the Ct. of Appeal will not interfere with their discretion except where it is shown that there were no grounds on which it coyld have been exercised.—BRISTOL CORPN. *v.* GREAT WESTERN RY. CO. (1928), 20 Ry. & Can. Tr. Cas. 28, C. A.

761b. Not bound by practice of High Court.]—BRISTOL CORPN. *v.* GREAT WESTERN RY. CO., No. 761a, *ante.*

761c. Discretion—Interference by Court of Appeal.]—BRISTOL CORPN. *v.* GREAT WESTERN RY. CO., No. 761a, *ante.*

761d. Who may oppose.]—By Railways Act, 1921 (c. 55), s. 37, a railway co. may grant new exceptional rates, "so, however, that a new exceptional rate so granted shall not, without the consent of the rates tribunal, be less than 5 per cent. or more than 40 per cent. below the standard rate chargeable." By sect. 78 (3) of the same Act, any authority or body having the privileges conferred by the Act on a representative body of traders, "may appear in opposition to any application, representation or submission in any case where such authority, or the persons represented by them, appear to the Board of Trade to be likely to be affected by the decision on any such application, representation or submission":—*Held:* (1) on an application for the consent of the Rates Tribunal to the granting of a new exceptional rate more than 40 per cent. below the standard rate chargeable, such a body so certified by the Board of Trade has a right to appear & be heard, whether in support of or in opposition to the proposed new rate; (2) where a party is

PART X. SECT. 3.

a (p. 375) **i.** —— —— *To Dominion railways only.*]—The B. C. Co. was incorporated in England & operates in British Columbia under a provincial licence. Under agreement with the C. P. R. Co. it operates by electricity the V. & L. I. Ry., which connects with the C. P. R., & which, in 1901, was leased to the C. P. R. Co. for 999 years, & was declared by Parliament to be a work for the general advantage of Canada. The B. C. Co.'s "Central Park Line" runs from Vancouver to its connection with a branch of the V. & L. I. Ry. & thence over the latter to the latter's terminus at or near New Westminster, from which terminus the B. C. Co.'s "Central Park Line" continues for one mile to a point where it makes physical connection with the Canadian National Ry. The Board of Railway Comrs. for Canada directed the B. C. Co. & the Canadian National Rys. to publish & file, between stations on the V. & L. I. Ry. & points on the Canadian National Rys., "*via* direct connection between the co.s," joint rates on the same basis as those published between the said V. & L. I. points & stations on the C. P. R. The B. C. Co. appealed against the order on the ground of lack of jurisdiction in the Board to compel it to file joint rates as aforesaid over the said one mile of its line, which, it contended, was subject only to provincial jurisdiction:—*Held:* the Board had not jurisdiction to make the order.—BRITISH COLUMBIA ELECTRIC RY. CO., LTD. & CANADIAN PACIFIC CO. *v.* CANADIAN NATIONAL RY. CO., NORTH FRASER HARBOUR COMRS. & PROVINCE OF BRITISH COLUMBIA, [1932] S. C. R. 161.—**CAN.**

a (p. 375) **ii.** —— —— *To lines within legislative authority of Parliament of Canada.*]—NORTH FRASER HARBOUR COMR. *v.* BRITISH COLUMBIA

heard to object to the proposed new rate the only grounds of objection that can be entertained are the fiscal effects of the proposed new rate upon the standard revenue of the company proposing it. *Semble:* a trader interested in the proposed new rate has no right to be heard in opposition thereto.—GREAT WESTERN RY. CO. & LONDON, MIDLAND & SCOTTISH RY. CO. *v.* BRISTOL CORPN. (1928), 20 Ry. & Can. Tr. Cas. 22.

ELECTRIC RY. CO. & CANADIAN PACIFIC RY., [1932] 2 D. L. R. 728. —CAN.

a (p. 375) iii. —— *Over street railway incorporated by provincial legislature—Work for general advantage of Canada.*] —Where a street railway co. operating within a province was originally incorporated by a provincial legislature, but its undertaking is subsequently declared by a Dominion Act to be a work for the general advantage of Canada, the execution of its powers is within the jurisdiction of the Board of Railway Comrs. for Canada.—QUEBEC RAILWAY, LIGHT & POWER CO. *v.* MONTCALM LAND CO., [1928] 1 D. L. R. 143; [1927] S. C. R. 545.—CAN.

a (p. 375) iv. —— *Under Railway Act, ss.* 345, 351.]—PROVINCES OF BRITISH COLUMBIA & ALBERTA *v.* CANADIAN NATIONAL & CANADIAN PACIFIC RY. COS. (FARES FOR PROVINCIAL POLICE CASE) (1927), Can. Ry. Cas. 322.—CAN.

d (p. 375) i. —— —— —— *Or to employ servants in inferior position.*]—DEATH *v.* NEW SOUTH WALES RAILWAY COMRS. (1927), 27 S. R. N. S. W. 187; 44 N. S. W. W. N. 53.—AUS.

e (p. 375) i. —— —— ——.]—ST. BRIGID'S PARISH, IBERVILLE COUNTY, P.Q. *v.* CANADIAN NATIONAL RYS. (1927), 33 Can. Ry. Cas. 15.—CAN.

ll (p. 375) i. —— —— —— *To contribute to cost of works.*]—The Board of Railway Comrs. for Canada when making an order for contribution to the costs of works is entitled to have regard to the state of matters existing when the order for contribution is made. If new interests which are affected by the work have arisen since it was originally ordered, the Board can competently order contribution to the cost to be made from such quarters. The test of liability to contribute is not necessarily to be found in the answer to the question whether an order to execute the work could originally have been pronounced against the party sought to be made liable to contribute. Once it is established that a co., municipality or person was within the meaning of the Railway Act "interested in or affected by" the construction of a work, the jurisdiction of the Railway Board under the Act to order it to contribute to the cost of the works is unassailable. The question of the quantum of the contribution is a matter entirely in the discretion of the Board. The Parliament of Canada has jurisdiction to confer on the Board authority to compel such contribution from a corpn. so interested or affected even though it is a provincial corpn.—CANADIAN PACIFIC RY. CO. *v.* TORONTO TRANSPORTATION COMMISSION, TORONTO TRANSPORTATION COMMISSION *v.* CANADIAN NATIONAL RYS., [1930] 3 W. W. R. 189; 4 D. L. R. 849 A. C. 686; *affg.*, [1930] 1 D. L. R. 231 S. C. R. 94; 36 C. R. C. 175; *revsg. in part*, [1930] 1 D. L. R. 290 S. C. R. 73; 36 C. R. C. 157.—CAN.

oo (p. 375) i. —— —— *As to effect of order of Board.*]—*Re* BOLAND & CANADIAN NATIONAL RYS. (1926), 32 Can. Ry. Cas. 127.—CAN.

oooo i. —— —— *Prevention of alteration in routing of traffic.*]—BOARD OF TRADE OF HALIFAX, ST. JOHN & SACKVILLE, N.B., CANADIAN LUMBERMEN'S ASSOCN. *v.* CANADIAN NATIONAL RYS. (1926), 32 Can. Ry. Cas. 37.—CAN.

t (p. 376) i. —— —— *Transit rate—With stop-over privileges—Refusal to order.*]—ROSS LEAF TOBACCO CO., LTD. *v.* CANADIAN FREIGHT ASSOCN. (1927), 32 Can. Ry. Cas. 320.—CAN.

oo (p. 376) i. —— —— ——.]—STANDARD HARDWOOD LUMBER CO. *v.* CANADIAN PACIFIC RY. CO. & CANADIAN NATIONAL RYS. (COAL & COKE RATES CASE) (1926), 32 Can. Ry. Cas. 282.—CAN.

pp (p. 376) i. —— —— ——.]—The Board of Railway Comrs. for Canada, by its General Order No. 448, dated Aug. 26, 1927, ordered (*inter alia*) "that the rates on grain & flour from all points on Canadian Pacific branch lines west of Fort William to Fort William . . . be equalised to the present Canadian Pacific main line basis of rates of equivalent mileage groupings (the rates governed by the Crow's Nest Pass agreement not to be exceeded)" & "that all other railway companies adjust their rates" on grain & flour to the Canadian Pacific rates:—*Held:* (1) what was required of the Canadian National Rys. under Order 448 was to adjust its rates in such a way that in territory competitive as between it & the Canadian Pacific Ry. Co. grain shippers in such territory would be placed on as equal a rate basis as possible, all things considered; & the Canadian National Rys., in adopting the mileage grouping in effect from the nearest point, parallel or contiguous, main or branch line station, on the Canadian Pacific, had complied with the order; (2) the Board's order (construed as above) & the Board's allowance of the rates in question (fixed on above basis) were within its powers.—ALBERTA GOVERNMENT *v.* CANADIAN NATIONAL RYS. & CANADIAN PACIFIC RY. CO., [1931] S. C. R. 656; [1932] 1 D. L. R. 335.—CAN.

qq (p. 376) i. —— —— ——.]—CANADIAN SHIPPERS' TRAFFIC BUREAU *v.* CANADIAN NATIONAL RYS. (1926), 32 Can. Ry. Cas. 3.—CAN.

yy (p. 376) i. —— —— *Goods of same description.*]—HARDY'S, LTD. *v.* NEW SOUTH WALES RAILWAY COMRS. (1928), 28 S. R. N. S. W. 318; 45 N. S. W. W. N. 82.—AUS.

yy (p. 376) ii. —— —— *Compulsory reduction—Application of Maritime Freight Rates Act*, 1927.]—CANADIAN NATIONAL RY. CO. *v.* NOVA SCOTIA PROVINCE, [1928] 1 D. L. R. 369; [1928] S. C. R. 106; 34 Can. Ry. Cas. 223.—CAN.

yy (p. 376) iii. —— —— *Wharfage rates.*]—The Board of Railway Comrs. for Canada has no power, under Railway Act, R. S. C., 1927, to regulate, no question as to discrimination being involved, as to absorption by a railway co. of wharfage charges in respect of transpacific freight, at the point where the goods are transferred from rail to ship for ocean carriage to the transpacific country. The function of the Board as to tolls & charges is, excepting as to powers conferred by sect. 358 of the Act, limited to regulating charges for carriage & for those other services which are incidental to carriage, as railway services, within the meaning of the Act. The wharfage service in question is not such a service. This would appear to be so independently of, but is put beyond doubt by, sect. 358. The definition of "toll" cannot properly be construed as declaring that any wharfage service is a railway service in the above sense.—*Re* POWERS TO WHARFAGE CHARGES, [1931] S. C. R. 431.—CAN.

yy (p. 376) iv. —— —— *Consideration of other statutes & agreements.*]—Sub-sect. (5) of sect. 325 of the Railway Act declares the powers of the Board under the Act to fix & determine just & reasonable rates shall not be limited or in any manner affected by the provisions of any Act of the Parliament of Canada, or by any agreement made or entered into pursuant thereto, save & except as to rates on grain & flour from points west of Fort William to Fort William and Port Arthur. The wording of this sub-sect. should not be construed as a restriction upon the powers of the Board to fix the rates set out in the Order now in question. On the contrary, it seems from the language used that Parliament contemplated that the Board would look at & consider the statutes & agreements relating to rates which had been in force or agreed upon, & desired to make it clear that, with the exception of the Crow's Nest Agreement, the Board was not to be bound by any such statute & agreement. What weight these statutes & agreements shall have is left to the discretion of the Board; &, subject to certain conditions, the obligation rests upon the Board of fixing rates which are "fair & reasonable." In this case, the own conduct of the Canadian National Railways since the Order in question was made has been such as to justify the inference that, in their judgment, the rates were not unfair or unreasonable.—*Re* BOARD OF RY. COMRS. ORDER NO. 448 REGARDING RY. FREIGHT RATES IN CANADA, [1930] S. C. R. 288.—CAN.

ccc (p. 376) i. —— —— *Refusal of facility involving variation of established principle.*]—PARISH OF LANCASTER, ST. JOHN, N.B. *v.* DOMINION EXPRESS CO. & CANADIAN NATIONAL EXPRESS CO. (1926), 32 Can. Ry. Cas. 33.—CAN.

mmm (p. 376) i. —— —— ——.]—MULDOON *v.* CANADIAN PACIFIC RY. CO. (1927), 33 Can. Ry. Cas. 13.—CAN.

rrr (p. 376) i. —— —— ——.]—*Re* CANADIAN PACIFIC RY. CO., GRAND PILES, P.Q. (1926), 3 2Can. Ry. Cas. 1. —CAN.

hh (p. 377) i. —— —— *Restoration of train services—Refusal to order.*]—ANNAPOLIS MUNICIPALITY N.S. *v.* CANADIAN NATIONAL RYS. (1926), 32 Can. Ry. Cas. 257.—CAN.

pp (p. 377) i. —— —— —— *Refusal to fix responsibility for future accidents.*] —CANADIAN NATIONAL RYS. *v.* TOWNSHIP OF STAMFORD (1926), 32 Can. Ry. Cas. 252.—CAN.

qq (p. 377) i. —— —— —— *Power to order substitution of private crossing.*] —CALHOUN *v.* CANADIAN NATIONAL RYS. (1926), 32 Can. Ry. Cas. 236.—CAN.

vv. *Revsd.*, [1912] A. C. 224.

vv i. —— —— *Use of railway bridge for vehicular traffic.*]—SASKATCHEWAN DEPARTMENT OF HIGHWAYS *v.* CANADIAN NATIONAL RYS. (1926), 32 Can. Ry. Cas. 23.—CAN.

aaa (p. 377) i. —— —— *Removal of utilities on construction of subway.*]—The Canadian National Railways applied to the Board of Railway Comrs. for the approval of plans & profiles for carrying its tracks across certain highways. The Board, in final Orders granting the applications, authorised the construction of subways or other structures in connection with the highway crossings &, at the same time, directed the present applts., amongst others, to move such of their utilities as may be affected by the construction or changes so authorised. Applts. urged that the Board was without

Part XIII.—Canals.

888. *Add. Annotation:*—**Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1929] 1 Ch. 686.

925. *Add. Annotation:*—**Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

931a. —— **Extent of duty.**]—(1) The duty of a railway co. under Regulation of Railways Act, 1873 (c. 48), s. 17, to keep its canals in repair & open for navigation is not an absolute duty, nor, on the other hand, is it limited, as in the case of highway authorities, to acts of misfeasance. It is a duty to take reasonable care.

(2) A railway co. acquired a canal 150 years after it had been constructed. One of the locks collapsed. It was found that the baulks of timber on which the walls rested were laid transversely on the soil which formed the bed of the lock. The proper method would have been to lay the baulks upon vertical piles driven into the ground:—*Held:* no evidence of negligence on the part of the railway co. that on the appearance of cracks in the walls & subsidence of the soil at the side of the walls they failed to investigate the foundations of the lock, an operation which might have involved the closing of the canal for some months.

(3) In order to found a claim for damages for the closing of a canal, pltf. must show that there has been caused to him thereby peculiar damage greater than that caused to the general public.

(4) An agreement by traders with a railway co., that they would establish a gravel business near a canal of the railway co., & would pay a reduced rate to be afterwards agreed for the transport of gravel by the canal, & would erect machinery at their own expense, in consideration whereof the railway co. would permit the traders to erect machinery & other plant for carrying gravel over the canal & railway, & would repair the canal:—*Held:* to be void for uncertainty.

(5) A district engineer of the railway co. has no general authority to enter into such an agreement.—BLUNDY, CLARK & CO., LTD. *v.* LONDON & NORTH EASTERN RY. CO., [1931] 2 K. B. 334; 100 L. J. K. B. 401, C. A.; *sub nom.* LONDON & NORTH EASTERN RY. CO. *v.* BLUNDY, CLARK & CO., LTD., 145 L. T. 269; 20 Ry. & Can. Tr. Cas. 92, C. A.

Annotation:—As to (1) **Consd.** Guilfoyle *v.* Port of London Authority, [1932] 1 K. B. 336.

934a. —— **Damages—Right of individual to sue.**]—BLUNDY, CLARK & CO., LTD. *v.* LONDON & NORTH EASTERN RY., No. 931a, *ante.*

936a. —— **What amounts to negligence.**]—BLUNDY, CLARK & CO., LTD. *v.* LONDON & NORTH EASTERN RY. CO., No. 931a, *ante.*

948a. —— **Pumping from one level to another.**]—ELLWELL *v.* BIRMINGHAM CANAL NAVIGATION PROPRIETORS (1852), 3 H. L. Cas. 812; 10 E. R. 323, H. L.

970. *Add. Annotations:*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401; Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

978. *Add. Annotation:*—**Expld. & Distd.** Great Western Railway *v.* Monmouthshire County Council (1929), 94 J. P. 6.

978a. —— —— —— **Liability of county council on covenant—Tow-path raised to avoid flooding.**]—The construction of a canal involved the interception of a certain public road; & the canal co., in accordance with its statutory obligations, carried the road over the canal by means of a bridge. The canal subsequently became vested in a railway co., who

jurisdiction to make the Orders in so far as it directed applts. to move their utilities; that, in any event, the Orders were made irregularly & not in accordance with the rules binding upon the Board: that sects. 255, 256 & 257 of the Railway Act were not applicable to the Canadian National Railways, & that the Board had not the power to compel public utilities cos. to remove their facilities without previous compensation:—*Held:* these Orders were made within the exercise of the powers vested in the Board by the Railway Act, & more particularly by the provisions of sects. 39, 255, 256 & 257 of that Act.—BELL TELEPHONE CO. OF CANADA *v.* CANADIAN NATIONAL RYS., MONTREAL LIGHT, HEAT & POWER CONSOLIDATED *v.* CANADIAN NATIONAL RYS., MONTREAL TRAMWAYS CO. & MONTREAL TRAMWAYS COMMISSION *v.* CANADIAN NATIONAL RYS., BELL TELEPHONE CO. OF CANADA *v.* TORONTO, HAMILTON & BUFFALO RY. CO. & HAMILTON CORPN., [1932] S. C. R. 224; 2 D. L. R. 753.—**CAN.**

(p. 377) **ii.** *Electric lines across railways.*]—The Board of Railway Comrs. issued a General Order in respect of the conditions & specifications applicable to the erection, placing & maintaining of electric lines, wires or cables along or across all railways, subject to the jurisdiction of the Board; & sect. 2 of the Order stipulated that "the appct. shall, at all times, wholly indemnify the co. owning, operating or using the railway, from & against all loss, damage, injury & expense to which the railway co. may be put by reason of any damage or injury to persons or property, caused by any of appct.'s wires or cables, or any works herein provided for by the terms & provisions of this order, as well as against any damage or injury resulting from the imprudence, neglect or want of skill of the employees or agents of the appct., unless the cause of such loss, cost, damage, injury or expense can be traced elsewhere":—*Held:* the Order was within the jurisdiction of the Board.—CANADIAN ELECTRICAL ASSOCIATION & HYDRO ELECTRIC POWER COMMISSION OF ONTARIO *v.* CANADIAN NATIONAL RAILWAYS, [1932] S. C. R. 451; 3 D. L. R. 118.—**CAN.**

aaa (p. 377) **iii.** —— —— *Repair of bridge over railway.*]—TORONTO CORPN. *v.* FOREST HILL VILLAGE, YORK TOWNSHIP & CANADIAN NATIONAL RAILWAYS, [1932] S. C. R. 602; 4 D. L. R. 401.—**CAN.**

ccc (p. 377) **i.** —— —— *Construction of branch line.*] — CANADIAN NATIONAL RYS. *v.* CANADIAN PACIFIC RY. CO., [1929] 4 D. L. R. 1076; S. C. R. 135.—**CAN.**

ccc (p. 377) **ii.** —— *To order Provincial undertaking to contribute to cost of work.*]—Under sect. 39 of the Railway Act of Canada, R. S. Can., 1927, c. 170, the Railway Board has jurisdiction to impose a proportion of the cost of work, which in the exercise of its powers it has ordered to be carried out, only upon a co., municipality, or person interested in or affected by the order. But in determining whether a particular co., municipality or person is so interested or affected the Railway Board can have regard to the circumstances existing not only when the work was ordered but also when it makes its order allocating the cost, or reviews that order under sect. 51; further, absence of benefit from the work executed does not necessarily show absence of interest in or affection by the order to carry out the work. In cases in which the Railway Board has jurisdiction the amount of the contribution is within the discretion of the Board. The sect. is not invalid to the extent to which it enables the Railway Board to order a Provincial undertaking to contribute.—CANADIAN PACIFIC RY. CO. *v.* TORONTO TRANSPORTATION COMMISSION, TORONTO TRANSPORTATION COMMISSION *v.* CANADIAN NATIONAL RYS., [1930] A. C. 686; 99 L. J. P. C. 210, P. C.—**CAN.**

ccc (p. 377) **iii.** *Action against commissioners—When triable in Supreme Court.*]—M. B. RAIL ANCHOR, LTD. *v.* VICTORIAN RYS. COMRS., [1928] V. L. R. 339; [1928] Argus L. R. 114.—**AUS.**

g (p. 378) **i.** —— ——.]—*Re* CASA LOMA, [1927] 4 D. L. R. 645; 61 O. L. R. 187.—**CAN.**

PART XIII. SECT. 2, SUB-SECT. 4.

sz. *Repair of railway embankment—Liability for consequent damage—Limitation of action.*]—PUNJAB COTTON PRESS CO. *v.* SECRETARY OF STATE (1927), I. L. R. 10 Lah. 161.—**IND.**

were required under s. 17 of the Regulation of Railways Act, 1873 (c. 48), s. 17, to keep the canal open & navigable. At a later date the railway co. entered into an agreement with the county council having jurisdiction in the locality under which the council agreed to remove the bridge & to construct a new bridge in substitution therefor; & the council covenanted that they would "from time to time & at all times thereafter well & sufficiently maintain & repair the new bridge & the roadway & footpaths upon the same & the approaches thereto." The agreement provided for a headway of six feet between the arch of the new bridge & the towing-path passing under it. The bridge & the neighbouring part of the canal for considerable distances on both sides of the bridge were in a mining area which had been subsiding for a long time prior to the agreement; & within sixteen years thereafter, owing to further subsidences, there was a general sinking of the bridge, & the towing-path. As, however, the water level remained the same, the railway co. found it necessary, in order to avoid flooding, to raise the towing-path—the resulting effect being that the headway between the bridge & the towing-path was reduced to four feet six inches, which was insufficient for the convenient working of the canal:—*Held:* the covenant on the part of defts. to "maintain" the bridge did not impose upon them an obligation to raise the bridge so as to obtain the six feet of clearance for the use of the waterway, even although pltfs. had found it necessary to raise the towing-path.—GREAT WESTERN RY. *v.* MONMOUTHSHIRE COUNTY COUNCIL (1930), 94 J. P. 6; 27 L. G. R. 569, C. A.

980. Add the following paragraph:—

The right to navigate the dredged channel is confined to vessels paying dues to enter or leave the canal, & the right of navigation does not include a right to ground on the bank (*per* CUR.).—

1032. *Add. Annotation:*—**Refd.** Coleshill *v.* Manchester Corpn., [1928] 1 K. B. 776.

1043a. Agreement void for uncertainty.]—BLUNDY, CLARK & CO., LTD. *v.* LONDON & NORTH EASTERN RY. CO., No. 931a, *ante.*

1043b. Authority of district engineer.]—BLUNDY, CLARK & CO., LTD. *v.* LONDON & NORTH EASTERN RY. CO., No. 931a, *ante.*

RATES AND RATING.

Part I.—Liability to be Rated.

5. *Add. Annotation :*—**Consd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

14. *Add. Annotation :*—**Consd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

PART I. SECT. 1.

8 iii. —— —— ——.]—Sect. 476 of the Halifax City Charter applies to cases when the interest of the occupier of real estate is assessed as well as to cases, when the owner of the real estate is assessed, & a retroactive assessment may be made under s. 476 for the business tax authorised by the legislation of 1918.—HALIFAX *v.* DILL, [1929] 1 D. L. R. 643 ; 60 N. S. R. 219. **CAN.**

y i. —— ——.]—*Re* COLEMAN TOWNSHIP & NORTHERN ONTARIO LIGHT & POWER CO., LTD. (1927), 60 O. L. R. 405.—**CAN.**

y ii. —— —— *Mercantile business.*]—On the question whether the business of manufacturing lumber is a " mercantile business " within Rural Municipality Act, R. S. S., 1920, s. 232, which provided for the assessment of every person who was engaged in mercantile business & owner of a stock in trade liable to assessment :—*Held :* it is a mercantile business.

Under a statute authorising the assessment of " land, buildings, & business," a stock in trade is not assessable. — PEARSE & EDWORTHY BROS. *v.* RURAL MUNICIPALITY OF BJORKDALE, B. F. HARRIS CO., LTD. *v.* RURAL MUNICIPALITY OF BJORKDALE, [1929] 2 D. L. R. 507, 537 ; 1 W. W. R. 682 ; 23 S. L. R. 386.—**CAN.**

y iii. —— —— *Licence fee in lieu.*]—ATLAS CONSTRUCTION CO., LTD. *v.* ST. JOHN CITY, [1931] 4 M. P. R. 100. —**CAN.**

y iv. — — —.]—A business having ceased prior to the year of levy of business tax, the fact of its appearance on the assessment roll upon which such levy was made did not make the tax enforceable, as the property had ceased to be rateable.—*Re* LYMAN BROS., [1932] O. R. 419 ; 3 D. L. R. 343.—**CAN.**

y v. —— —.]—A practising dentist incorporated a co. with power *inter alia* to buy, hold & sell real estate & to carry on the business of real estate agents. He held all but two shares & he contended that his purpose was that the co. manage his own property & control real estate for the investment of his own money, not for speculation. He conveyed his real estate property to the co. in exchange for shares. These lands increased considerably in value & were sold at a profit. He contended that such profits were accretions to capital & not income made in the business of buying & selling real estate &, therefore, not subject to assessment as such :—*Held :* these profits were profits acquired in a scheme for profit making, which applt. co. was putting into effect as part of its business, &, therefore, were liable to assessment under the provincial Income Tax Act.—MERRITT REALTY CO., LTD. *v.* BROWN, [1932] S. C. R. 187 ; 2 D. L. R. 465 ; *affg.*, [1932] 1 W. W. R. 234 ; 1 D. L. R. 795 ; 44 B. C. R. 438.—**CAN.**

y vi. —— —— *Club.*]—ONTARIO JOCKEY CLUB *v.* TORONTO, [1932] 4 D. L. R. 423.—**CAN.**

fff i. —— —.]—*Re* STOUT & TORONTO, [1927] 2 D. L. R. 1100 ; 60 O. L. R. 313.—**CAN.**

fff ii. —— —.]—*Re* DONALD MASON & CO. (Ont.), [1927] 4 D. L. R. 1061.—**CAN.**

fff iii. —— —.]—Money received by manufacturers under fire policies insuring them in respect of loss of net profits that would have accrued had there been no interruption of business caused by fire is income from a business within the meaning of sect. 2 of British Columbia Taxation Act, R. S. B. C., 1924, & accordingly is to be brought into account in computing the net income chargeable to tax under that Act.—R. *v.* BRITISH COLUMBIA FIR & CEDAR LUMBER CO., LTD., [1932] A. C. 441 ; 101 L. J. P. C. 113 ; 147 L. T. 1 ; 48 T. L. R. 284, P. C.

fff iv. —— —.]—Resp. co. was incorporated to *(inter alia)* " purchase . . . lands & to sell " the same &, although it had wide powers, it was apparently formed to acquire & resell at a profit, if possible, the property in question herein. Of its authorised capital of 50,000 shares of $1 each five shares only were issued. It purchased a certain lot in V. for $40,000 in 1926, & sold it for $70,000 in 1928 : & the Minister of Finance sought to recover income tax on said difference of $30,000, which, he contended, was profit made by the co. It had not had, of course, sufficient subscribed capital to make the purchase in the ordinary way & had consummated the deal by obtaining proportionate parts of the purchase-price from its shareholders, in consideration of its undertaking to distribute the anticipated profits among them, & it did so distribute them. The co. contended that it had not made a profit in the ordinary course of its business, but had merely distributed to its shareholders a capital asset which had appreciated in value : —*Held :* the $30,000 profit was " income " of the co. within the meaning of Taxation Act, R. S. B. C., 1924.—*Re* HASTINGS STREET PROPERTIES, LTD., [1931] 1 D. L. R. 604 ; [1930] 3 W. W. R. 561 ; 43 B. C. R. 209.—**CAN.**

fff v. —— —.]—On the expropriation of the property of a co. being wound up annual payments were provided for which were held to be an addition to the fixed purchase-price in consideration for the extended time for payment :—*Held :* such annual payments were taxable as income of the co. under Taxation Act, R. S. B. C., 1924 (c. 254).—ESQUIMALT WATER WORKS CO. *v.* LEEMING, [1930] 1 W. W. R. 401 ; 2 D. L. R. 37 ; 42 B. C. R. 163.—**CAN.**

fff vi. —— —.]—On the expropriation of the property of a co. being wound up annual payments were provided for which were held to be an addition to the fixed purchase-price in consideration for the extended time for payment :—*Held :* said sums were taxable under Part III., not under Part IX., of Taxation Act, R. S. B. C., 1924.—LEEMING *v.* ESQUIMALT WATERWORKS CO. (No. 2), [1931] 1 W. W. R. 148 ; 1 D. L. R. 615 ; 43 B. C. R. 251. —**CAN.**

fff vii. —— —.]—R. *v.* BRITISH COLUMBIA FIR & CEDAR LUMBER CO., [1930] 3 D. L. R. 609 ; 42 B. C. R. 401.—**CAN.**

fff viii. —— —— *Effect of death.*]—K., a resident of the city of T., died on Aug. 12, 1929. In 1928 he had made a return to the assessment comr. of the city of his income received in the year ending Dec. 31, 1927. He was assessed on that return in 1928 & paid the income tax due in respect thereof in 1929. On Feb. 8, 1929, he made a return of the income received by him for the year ending Dec. 31, 1928, & an assessment of $365,120 was made :—*Held :* his exors. were not assessable in respect of an income that had not been received ; the income was received in 1928 by K. himself, whose death before the completion of the roll made impossible his assessment in 1929 for the 1928 income.—*Re* KEMP & TORONTO, *Re* NATIONAL TRUST CO. & TORONTO, *Re* KILMER & TORONTO, [1930] 4 D. L. R. 91 ; 65 O. L. R. 423. —**CAN.**

fff ix. —— —— —.]— This action was brought by a city corpn. against P.'s executrix for the amount of the income tax purported to be imposed upon P. after his decease :—*Held :* the attempt to tax P. after his death was a mere nullity.—TORONTO *v.* POWELL, [1931] 3 D. L. R. 86 ; *affd.*, 4 D. L. R. 336 ; [1931] O. R. 495.—**CAN.**

fff x. —— —— —— *Assessment Amendment Act*, 1930 (*Ont.*).]—The amendments made to the Assessment Act by Assessment Amendment Act, 1930, do not justify the assessment of the legal personal representative of a deceased person in respect of income received by him prior to Jan. 1, 1930. The amendments have no retroactive operation either over persons or income as to any period before that date.—*Re* NATIONAL TRUST CO., LTD. *v.* TORONTO, [1931] 4 D. L. R. 355 ; O. R. 496.—**CAN.**

fff xi. —— —— —— *Several executors residing in different municipalities —Whether income taxable where deceased resided.*]—*Re* JOST, [1932] 3 D. L. R. 555.—**CAN.**

ppp i. —— —— —— *Income not " brought into " Province—Cheques.*]—Resp., a Dominion co., which is engaged in refining sugar in British Columbia & has its head office in Vancouver, had invested its surplus profits in Dominion bonds & shares of the Steel Co. of Canada, whose head office is at Hamilton, the bonds & shares being held by resp. in Vancouver. Cheques for the interest on these two investments were sent from Ottawa & Hamilton respectively to resp. in Vancouver. Resp. endorsed the cheques & immediately remitted them to a bank in Montreal for deposit to the credit of an account which the resp. maintained there. The amount of the cheques was shown in resp.'s profit & loss account :—*Held :* the money represented by said cheques was income " brought into " the province within sect. 42 (*d*) of Taxation Act, R. S. B. C., 1924.—A.-G. FOR BRITISH COLUMBIA *v.* BRITISH COLUMBIA SUGAR REFINING CO., [1931] 3 W. W. R. 639 ; [1932] 1 D. L. R. 626 ; 44 B. C. R. 531. —**CAN.**

b (p. 426) **i.** —— —— —.]—Resp. co. was incorporated with power to generate & sell electric power. Sect. 23 (1) provided that for a certain period " the co. & its property in N. B. pertaining to the development of power on the Saint J. river shall be exempt from all municipal & other taxation & assessment " The question before this ct. was whether or not the co. was liable to be assessed in the town of G. F., N. B., where its head office was, upon or with respect to income derived by it from or by virtue of the

15. *Add. Annotation :*—**Consd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

16. *Add. Annotation :*—**Consd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

17. *Add. Annotation :*—**Expld.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

36. *Add Annotation :*—**Consd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

37a. ——.]—Defts. were the overseers of a parish. Within the parish was a building, the property in which was vested in pltfs., managed by them in the early part of 1926 as an industrial school. After Mar. 1926 the building was no longer used as an industrial school & pltfs. removed their stores & furniture. The removal was completed in Apr. 1926, except that a caretaker was left in possession with a few articles of furniture for his use. In Mar. 1927 pltfs. decided to use the premises partly as an elementary school & partly for other purposes. Defts. rated pltfs. in respect of the building for the two periods ending Sept. 30, 1926, & Mar. 31, 1927, & it was admitted that the rate was duly made & confirmed. Pltfs. objected that the rate was invalid, as there was no beneficial occupation by them. Upon their refusing to pay, defts. complained to the justices, who issued a distress warrant, & defts. seized a tramcar belonging to pltfs. Pltfs. did not appeal to quarter sessions, but took proceedings in replevin :—*Held :* (1) pltfs. were not in beneficial occupation during the relevant period, & were not ratable; (2) the jurisdiction of the justices to grant a distress warrant depended on the question of actual occupation within the parish & not on that of beneficial occupation, & as pltfs. had failed to show that the distress was unlawful, the action of replevin failed.—LONDON COUNTY COUNCIL *v.* HACKNEY BOROUGH COUNCIL, [1928] 2 K. B. 588 ; 97 L. J. K. B. 694 ; 139 L. T. 407 ; 92 J. P. 138 ; 44 T. L. R. 592 ; 26 L. G. R. 366 ; (1926–31), 1 B. R. A. 249.

42. *Add. Annotations :—As to* (1) **Refd.** Consett Iron Co. *v.* Durham County Assessment Committee for No. 5 or North-West Area (1930), 99 L. J. K. B. 277 ; London Playing Fields Society *v.* Essex (S. W. Area) Assessment Committee (1930), 144 L. T. 233.

62. *Add. Annotation :*—**Refd.** Bottomley *v.* West Derby Assessment Committee, etc., etc. (1931), 47 T. L. R. 468.

65. *Add. Annotation :*—**Consd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

66. *Add. Annotation :*—**Consd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

69. *Add. Annotation :*—**Consd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

86. *Add. Annotation :*—**Consd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

87. *Add. Annotation :*—**Consd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

122. *Annotations :*—Delete " **Consd.** Jones *v.* I. R. Comrs., Sweetmeat Automatic Delivery Co. *v.* I. R. Comrs., [1895] 1 Q. B. 484."
Add. Annotation :—**Refd.** Gee *v.* Hazleton, [1932] 1 K. B. 179.

139. *Add. Citation :*—(1926–31), 1 B. R. A. 183.
Add. Annotation :—**Apld.** Towler *v.* Thetford Rural Council (1929), 99 L. J. K. B. 258.

139a. Shooting rights.]—TOWLER *v.* THETFORD RURAL COUNCIL, No. 552b, *post.*

154. *Add. Annotations :*—**Consd.** Salisbury House Estate *v.* Fry, [1930] 1 K. B. 304. **Apld.** Towle *v.* Improved Industrial Dwellings Co., [1931] 1 K. B. 263.

160. *Add. Annotation :*—**Refd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

171. *Add. Annotation :*—**Refd.** Manchester Corpn. *v.* Bolton Assessment Committee & Westhoughton Urban District Council (1930), 144 L. T. 618.

178. *Add. Annotation :*—**Refd.** New Liverpool Eastham Ferry & Hotel Co., Ltd. *v.* Ocean Accident & Guarantee Corpn., Ltd. (1929), 142 L. T. 349.

189. *Add. Annotation :*—**Refd.** Ilford Corpn. *v.* Mallinson (1932), 96 J. P. 185.

202. *Add. Annotation :*—**Refd.** Towle *v.* Improved Industrial Dwellings Co., [1931] 1 K. B. 263.

218. *Add. Annotation :—As to* (3) **Consd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

sale of power generated at its plant in G. F. from the use of the waters of said river :—*Held :* the co. was not liable to be so assessed.—KELLY *v.* SAINT JOHN RIVER POWER CO., [1931] S. C. R. 349 ; 2 D. L. R. 553 ; *affg.*, 3 M. P. R. 56.—**CAN.**

PART I. SECT. 2, SUB-SECT. 2.—A.

14 ii. ——.]—OTTAWA CORPN. *v.* OTTAWA PUBLIC SCHOOL BOARD (1923), 54 O. L. R. 633.—**CAN.**

PART I. SECT. 2, SUB-SECT. 2.—B.

e i. —— *Closed during trade depression.*]—Premises purchased by resps. in 1923 were used by them as a malthouse until the autumn of 1927, when, owing to trade depression, they dismissed their staff & closed the premises indefinitely. The premises were not subsequently utilised by resps. in any way. When the premises were closed the machinery therein was left intact, but none of it could be removed without damaging the building, except a screening cylinder, which would cost more to remove than it was worth. Resps. tried to sell the premises, but failed to do so. The premises as they stood were not capable of use save as a malt-house :—*Held :* the premises were capable of being used as malting premises at any time, but there had been no beneficial occupation of the premises during the year for which the poor rate was claimed. — OFFALY COUNTY COUNCIL & RIORDAN *v.* WILLIAMS, [1930] I. R. 39.—**IR.**

sa. *Holding certificate of free grant entry under Soldier Settlement Act.*]—POPLAR VALLEY, RURAL MUNICIPALITY *v.* MOYER, [1929] 3 D. L. R. 365 ; 2 W. W. R. 88 ; 23 S. L. R. 628.—**CAN.**

PART I. SECT. 2, SUB-SECT. 3.—B. (f).

f i. —— *Station agent.*]—*Held :* not occupying the land in an official capacity under the Crown.—*Re* COCHRANE TOWN & KING, [1925] 2 D. L. R. 550 ; 56 O. L. R. 477.—**CAN.**

PART I. SECT. 2, SUB-SECT. 4.—A.

113 i. *Necessity for.*]—CHRISTCHURCH (MAYOR, ETC.) *v.* PYNE, GOULD, GUINNESS, [1928] N. Z. L. R. 318.—**N.Z.**

PART I. SECT. 2, SUB-SECT. 4.—B. (c).

sb. *Licence to cut timber.*]—The holder of a permit to cut timber on Dominion lands is not the " occupant " within Rural Municipality Act, R. S. S. 1920, c. 89, of the land included in the berth ; & since, in assessing him as such, the assessor acts without jurisdiction, the confirmation of the assessment by the Saskatchewan Assessment Commission does not, under the effect given it by sect. 270 of said Act, prevent him from defending an action to collect the taxes. — BUCKLAND RURAL MUNICIPALITY *v.* DONALDSON & HORTON, [1928] 1 D. L. R. 436 ; [1928] 1 W. W. R. 40 ; 22 Sask. L. R. 326.—**CAN.**

sc. *Lessee of right of way.*]—A lessee of a portion of the right of way of the Canadian Pacific Railway who is in physical possession thereof is subject to assessment as an " occupant " within the City Act, 1926, s. 433 (3), although the land itself is specially exempted by law from taxation.—MAPLE LEAF MILLING CO., LTD. *v.* WEYBURN, CITY OF (Sask.), [1929] 4 D. L. R. 1063 ; 2 W. W. R. 452.—**CAN.**

PART I. SECT. 2, SUB-SECT. 5.—C.

sd. *Owner rated for whole property—Notice that parcels of land sold to specified persons—Whether sufficient notice of change of ownership.*]—CLEARVIEW, LTD. *v.* YATALA SOUTH DISTRICT COUNCIL, [1927] S. A. S. R. 555.—**AUS.**

PART I. SECT. 2, SUB-SECT. 7.

203 i. *Revsd.*, 32 S. C. R. 505.

SUB-SECT. 4.—UNDER RATING AND VALUATION (APPORTIONMENT) ACT, 1928 (c. 44).

Agricultural hereditaments.]—*See* Local Government Act, 1929 (c. 17), s. 67, & No. 552a, *post.*

226a. Industrial hereditaments—Whether used as factory or workshop—Test to be applied.]—In determining whether a hereditament occupied & used as a factory is primarily occupied & used for purposes which are not those of a factory it is the actual use to which the hereditament itself is put that has to be considered, & not the use to be made of the products of the hereditament or of the work there carried on.—MOON (LAMBETH REVENUE OFFICER) *v.* LONDON COUNTY COUNCIL, POTTERIES ELECTRIC TRACTION CO., LTD. *v.* BAILEY (STOKE-ON-TRENT REVENUE OFFICER), [1931] A. C. 151; 100 L. J. K. B. 153; 144 L. T. 410; 95 J. P. 64; 47 T. L. R. 154; 29 L. G. R. 131; (1926–31), 2 B. R. A. 573, H. L.

Annotations:—**Consd.** Toogood & Sons, Ltd. *v.* Green (1932), 96 J. P. 249. **Reld.** Bottomley *v.* West Derby Assessment Committee, etc., etc. [1931], 47 T. L. R. 468; Carmarthen Revenue Officer *v.* United Dairies (Wholesale), Ltd. (1931), 95 J. P. Jo. 88; Sedgwick *v.* Watney, Combe, Reid & Co., [1931] A. C. 447.

226b. —— —— Particular instances—Printing works of tramway undertaking.]—The owners of a tramway undertaking occupied certain printing offices & works used exclusively for the printing of tramway tickets & other matter required for the purposes of their undertaking. The hereditament in question was a factory within the Factory & Workshop Act, 1901 (c. 22):—*Held:* the hereditament was not primarily occupied & used for purposes which were not those of a factory or workshop & was therefore an industrial hereditament.—MOON (LAMBETH REVENUE OFFICER) *v.* LONDON COUNTY COUNCIL, [1931] A. C. 151; 100 L. J. K. B. 153; 144 L. T. 410; 95 J. P. 64; 47 T. L. R. 154; 29 L. G. R. 131; (1926–31), 2 B. R. A. 573, H. L.; *affg.*, [1931] 1 K. B. 385, C. A.

226c. —— —— —— Omnibus repair shop.]—An omnibus co. operating a fleet of motor omnibuses occupied & used a hereditament, so far as material to the present appeal, for the manufacture of spare parts for the fleet & for other manufacturing & repair processes distinct from ordinary maintenance in connection with the fleet. The hereditament was registered as a factory:—*Held:* the hereditament was not occupied & used for purposes which were not those of a factory or workshop; (2) the manufacture of an article needed to maintain differed from "maintenance" as used in 1928 Act, s. 3 (2), & the hereditament, except as to one part thereof used as a paint shop. was a factory within the sub-sect. & was an industrial hereditament.—POTTERIES ELECTRIC TRACTION CO., LTD. *v.* BAILEY (STOKE-ON-TRENT REVENUE OFFICER), [1931] A. C. 151; 100 L. J. K. B. 153; 144 L. T. 410; 95 J. P. 64; 47 T. L. R. 154; 29 L. G. R. 131, H. L.; (1926–31), 2 B. R. A. 573; *revsg.*, [1931] 1 K. B. 385, C. A.

Annotations:—**Consd.** Bottomley *v.* West Derby Assessment Committee, etc., etc. (1931), 47 T. L. R. 468; Cardiff Revenue Officer *v.* Cardiff Assessment Committee, etc., etc. [1931] 1 K. B. 47.

226d. —— —— —— Barge building & repairing yard.]—*Held:* entitled to benefit of Act.—BARTON (POPLAR REVENUE OFFICER) *v.* UNION LIGHTERAGE CO., LTD., [1931] 1 K. B. 385; 100 L. J. K. B. 1; 143 L. T. 650; 94 J. P. 177; 46 T. L. R. 601; 74 Sol. Jo. 581; 28 L. G. R. 550; (1926–31), 2 B. R. A. 742, C. A.

226e. —— —— —— Coffee blending warehouse.]—*Held:* entitled to benefit of Act.—BARTON (STEPNEY REVENUE OFFICER) *v.* TWINING (R.) & CO., LTD., [1931] 1 K. B. 385; 100 L. J. K. B. 1; 143 L. T. 650; 94 J. P. 177; 46 T. L. R. 601; 74 Sol. Jo. 688; 28 L. G. R. 550; (1926–31), 2 B. R. A. 730, C. A.

Annotation:—**Folld.** Toogood & Sons, Ltd. *v.* Green, Lipton, Ltd. *v.* Barton (1931), 47 T. L. R. 565.

226f. — Tea blending premises.]—Resps. occupied & used premises which were registered under the Factory & Workshops Acts. They imported teas from Ceylon, Java, India, China, & other foreign countries. The teas were brought to the premises in question for blending, sifting, cutting, milling, & packing for export abroad for sale wholesale to the public as tea. No tea went out of the premises until after blending, & no blended teas from the premises were supplied or distributed to any part of the United Kingdom, & no blended teas came into the premises. Apart from the basement, which was used & occupied solely as a tin-box factory, the premises were used (*a*) as premises for blending, sifting, cutting, milling, & packing teas imported from abroad so as to make the teas suitable for export abroad for sale wholesale to the public as tea; & (*b*) as premises for exporting abroad for sale to the oublic as blended tea the tea leaves so blended. There was no finding that wholesale business was carried on on the premises:—*Held:* the primary purpose of the occupation & use of the premises was a factory purpose, & therefore the premises must be derated.—LIPTON, LTD. *v.* BURTON [1932] 1 K. B. 204; 100 L. J. K. B. 529; 145 L. T. 476; 95 J. P. 211; 47 T. L. R. 565; 29 L. G. R. 642; (1926–31), 2 B. R. A. 940, C. A.

226g. —— —— —— Cold storage.]—A hereditament was occupied & used for the refrigeration & the refrigerated storage of food & other produce. The hereditament was a factory, & the refrigeration was effected by means of an elaborate process involving the use of machinery. Seventy-five per cent. of the produce received was already refrigerated & was kept by the occupiers in that state:—*Held:* the hereditament was primarily occupied for the purposes of storage within exception (*d*) in 1928 Act, s. 3 (1).—UNION COLD STORAGE CO., LTD. *v.* BANCROFT (MANCHESTER REVENUE OFFICER), [1931] A. C. 459; 100 L. J. K. B. 271; 145 L. T. 73; 95 J. P. 115; 47 T. L. R. 308; 29 L. G. R. 279; (1926–31), 2 B. R. A. 886, H. L.; *affg.*, [1931] 1 K. B. 385, C. A.

Annotation:—**Distd.** Carmarthen Revenue Officer *v.* United Dairies (Wholesale), Ltd. (1931), 95 J. P. Jo. 88.

Compare No. 226jj, *post.*

226h. —— —— —— Premises where seeds cleaned for sale.]—A seed merchant's warehouse was used for the cleansing & preparation for sale of seeds by the use of machinery. The revenue officer objected to the inclusion of this hereditament in the special list as an industrial hereditament on the ground that

it was primarily occupied & used for the purposes of wholesale distributive business: —*Held:* it was an industrial hereditament.—HINES (IPSWICH REVENUE OFFICER) *v.* EASTERN COUNTIES FARMERS' CO-OPERATIVE ASSOCN., LTD., [1931] A. C. 456; 100 L. J. K. B. 271; 145 L. T. 73; 95 J. P. 115; 47 T. L. R. 308; 29 L. G. R. 279; (1926–31), 2 B. R. A. 886, H. L.; *affg.*, [1931] 1 K. B. 385, C. A.

Annotation:—**Consd.** Toogood & Sons, Ltd. *v.* Green (1932), 96 J. P. 249.

226j. —— —— —— ——.]—*Held:* entitled to benefit of Act. — PRITCHARD (CARDIFF REVENUE OFFICER) *v.* LEWIS (WILLIAM) & SONS, [1931] 1 K. B. 386; 100 L. J. K. B. 1; 143 L. T. 650; 94 J. P. 177; 46 T. L. R. 601; 74 Sol. Jo. 661; 28 L. G. R. 550; (1926–31), 2 B. R. A. 742, C. A.

Annotation:—**Distd.** Toogood & Sons, Ltd. *v.* Green (1932), 96 J. P. 249.

226k. —.]—Applts., a firm of seed merchants, owned & occupied a hereditament consisting of a large warehouse, used for cleaning & testing seeds of their own growth for the purposes of sale, & certain subsidiary buildings, including offices, which were admittedly not used for industrial purposes. The hereditament was registered as a factory. A claim that the hereditament was an industrial hereditament was opposed by the Crown on the ground that the premises were primarily occupied & used for the purposes of a retail shop. By a special case stated it was found that all the seeds were sold to customers other than the trade, that orders for the same were received by applts. at their offices, & that the seeds were despatched from the warehouse in fulfilment of such orders. At the hearing in the House of Lords, in answer to a request by the House for further information as to the exact nature of the uses to which the hereditament was put, it was agreed that the seeds were sold in approximately equal quantities to trade customers & to customers other than the trade, that the retail sales were effected either by travellers or by letters addressed to the hereditament or by telephone; that the offices had none of the physical features of a shop, & that the applts. had no accommodation adapted for the purpose of the physical resort of customers:—*Held:* the hereditament was not primarily occupied & used for the purposes of a retail shop & it was an industrial hereditament.—TOOGOOD & SONS, LTD. *v.* GREEN, [1932] A. C. 663; 101 L. J. K. B. 453; 147 L. T. 201; 96 J. P. 249; 48 T. L. R. 463; 76 Sol. Jo. 458; 30 L. G. R. 301, H. L.

226l. —— —— —— **Wool sorters.**] — *Held:* entitled to benefit of Act.—WEATHERHEAD (BRADFORD REVENUE OFFICER) *v.* BRADFORD ASSESSMENT COMMITTEE & LAYCOCK, SON & Co., LTD., [1931] 1 K. B. 386; 100 L. J. K. B. 1; 143 L. T. 650; 94 J. P. 177; 46 T. L. R. 601; 74 Sol. Jo. 628; 28 L. G. R. 550; (1926–31), 2 B. R. A. 632, C. A.

226m. —— —— —— **Scrap metal works.**]—*Held:* entitled to benefit of Act.—PICKIN (LANGBAURGH REVENUE OFFICER) *v.* LANGBAURGH ASSESSMENT COMMITTEE & ROBERT CHEYNE & Co., LTD., [1931] 1 K. B. 386; 100 L. J. K. B. 1; 143 L. T. 650; 46 T. L. R. 601; 74 Sol. Jo. 629; (1926–31), 2 B. R. A. 742, C. A.

226n. —— —— —— ——.]—*Held:* entitled to benefit of Act.—LOFTHOUSE (LANGBAURGH REVENUE OFFICER) *v.* LANGBAURGH ASSESSMENT COMMITTEE & A. BAINBRIDGE, LTD., [1931] 1 K. B. 386; 100 L. J. K. B. 1; 143 L. T. 650; 46 T. L. R. 601; 74 Sol. Jo. 629; (1926–31), 2 B. R. A. 742, C. A.

226o. —— —— —— **Rag sorters.**] — A rag merchant's warehouse was occupied & used, as to one-third of its area, for the grading, blending & sorting of rags, &, as to two-thirds, for the storage of rags (*a*) awaiting these processes; (*b*) in the course of preparation; & (*c*) fully dealt with & ready for despatch to the rag merchant's customers. The rags, after being subjected to the above processes, were sold wholesale to heavy woollen cloth manufacturers for use in the heavy woollen cloth industry, & until so

PART I. SECT. 3, SUB-SECT. 4.

3a. *Agricultural lands & heritages—Piggery.*]—*Held:* entitled to benefit of Act.—INLAND REVENUE *v.* RENFREWSHIRE ASSESSOR, [1930] S. C. 345.—**SCOT.**

3b. —— *Golf course—Additional rent paid for grazing rights.*]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* ROSS & CROWN, [1930] S. C. 404.—**SCOT.**

3c. —— *House & garden adjoining nursery garden.*]—*Held:* not entitled to benefit of Act.—LANARKSHIRE ASSESSOR *v.* FINDLAY BROS., [1930] S. C. 407.—**SCOT.**

3d. —— ——.]—*Held:* entitled to benefit of Act.—DOUGLAS *v.* EDINBURGH ASSESSOR, [1931] S. C. 407.—**SCOT.**

3e. —— *House & poultry farm.*]—*Held:* they fell to be assessed as a *unum quid.*—CARTER *v.* LANARKSHIRE ASSESSOR., [1932] S. C. 424.—**SCOT.**

3f. —— *Farm for breeding silver foxes.*]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* ARDROSS ESTATES CO., [1930] S. C. 487.—**SCOT.**

3g. —— *House occupied by chief constable with grazing ground attached.*]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* BANFF ASSESSOR, [1930] S. C. 552.—**SCOT.**

3h. *Farmhouse sublet as dwelling-house.*]—*Held:* not entitled to benefit of Act.—FIFE ASSESSOR *v.* WEMYSS'S TRUSTEES, [1931] S. C. 412.—**SCOT.**

3j. *Industrial lands & heritages—Factory or workshop—Meaning of "used."*]—In determining the question whether "silent works," *i.e.*, works standing idle were or were not industrial lands & heritages:—*Held:* the word "used" did not mean "fit & ready for immediate use," but meant "actually in use," subject to the qualification that works in which for the moment no work was being done owing to some temporary cause, as contrasted with works for which there was no reasonable prospect of a resumption of business in the near future, might be regarded as "actually in use" for the purposes of the sect.—MITCHELL BROS. *v.* INLAND REVENUE, INLAND REVENUE *v.* STEPHENS, SONS & Co., [1930] S. C. 531.—**SCOT.**

3k. —— —— *Rooms in decorators' premises where paints mixed.*]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* EDINBURGH ASSESSOR (SINCLAIR'S CASE), [1930] S. C. 342.—**SCOT.**

3l. —— —— *Editorial department of newspaper premises.*]—*Held:* having regard to Sects. 4 (2) & 9 (6) of the Act, & Factories Act, 1901, s. 149 (4), the part of the premises in question was used for a purpose other than the manufacturing process carried on in the other part of the premises, & there must be apportionment of the valuation.—OUTRAM & Co. *v.* INLAND REVENUE, [1930] S. C. 351.—**SCOT.**

3m. —— —— *Fish hatchery & fish-breeding ponds.*]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* HOWIETOUN & NORTHERN FISHERIES Co., [1930] S. C. 355.—**SCOT.**

3n. —— —— *Saddler's workshop & smithy forming part of contractor's stables.*]—*Held:* not entitled to benefit of Act, as being merely ancillary to contractor's business.—WORDIE & Co. *v.* INLAND REVENUE, [1930] S. C. 365.—**SCOT.**

3o. —— —— *Repair shop & garage of contractor.*]—*Held:* not entitled to benefit of Act.—WORDIE *v.* INLAND REVENUE (No. 2), [1930] S. C. 370.—**SCOT.**

3p. —— —— *Estate sawmill.*]—*Held:* not entitled to benefit of Act. The subject was not a factory or workshop, in respect that the sawmill was not carried on "by way of trade or for purposes of gain."—INLAND REVENUE *v.* PERTHSHIRE ASSESSOR, [1930] S. C. 379.—**SCOT.**

3q. —— —— *Recreation grounds for employees of industrial company.*]—

treated were useless for that purpose. The revenue officer objected to the inclusion of these premises in the special list as an industrial hereditament, on the ground that the premises were primarily occupied & used for the purposes of wholesale distributive business or for the purposes of storage:—*Held:* (1) the hereditament was primarily occupied & used not for the purposes of wholesale distributive business, but for the conversion of the articles which entered the hereditaments into finished & saleable articles by means of the processes to which they were there subjected, & that this was an adaptation for sale; (2) the storage was merely incidental to those processes. Therefore the hereditament was an industrial hereditament.—KAYE (DEWSBURY REVENUE OFFICER) *v.* BURROWS & DEWSBURY ASSESSMENT COMMITTEE, [1931] A. C. 454; 100 L. J. K. B. 271; 145 L. T. 73; 95 J. P. 115; 47 T. L. R. 308; 29 L. G. R. 279; (1926–31), 2 B. R. A. 886, H. L.; *affg.*, [1931] 1 K. B. 385, C. A.

226p. —— —— —— **Bakehouse & baker's shop.**]—Resp. carried on a retail business in bread & confectionery in a hereditament comprising a shop with living rooms over & a bakehouse in the rear:—*Held:* the bakehouse, which made goods for the business, although a factory, was an ordinary part of a baker's shop, & the whole hereditament was primarily occupied & used for the purposes of a retail shop, & was therefore not an industrial hereditament.—FINN (WIMBLEDON REVENUE OFFICER) *v.* KERSLAKE, [1931] A. C. 457; 100 L. J. K. B. 271; 145 L. T. 73; 95 J. P. 115; 47 T. L. R. 308; 29 L. G. R. 279; (1926–31), 2 B. R. A. 886, H. L.; *revsg.*, [1931] 1 K. B. 385, C. A.

Annotations:—**Distd.** Toogood & Sons, Ltd. *v.* Green (1932), 96 J. P. 249. **Folld.** Wilkinson *v.* Sibley, [1932] 1 K. B. 194.

226q. —— —— —— ——.]—*Held:* entitled to benefit of Act.—LUTON REVENUE OFFICER *v.* DEELEY, [1931] 1 K. B. 386; 100 L. J. K. B. 1; 143 L. T. 650; 94 J. P. 177; 46 T. L. R. 601; 74 Sol. Jo. 596; 28 L. G. R. 550; (1926–31), 2 B. R. A. 742, C. A.

226r. —— — **Motor repair shop & garage.**]—A garage & motor repair depot was occupied & used for repairing motor cars, motor boats & agricultural tractors brought or sent to the premises by the owners, for garaging cars, & for the sale of petrol & small motor accessories, but the greater part of the business there carried on consisted in the repair of motor cars:—*Held:* the hereditament was primarily occupied & used for the purpose of a retail shop, as defined by 1928 Act, within exception (*b*) in sect. 3 (1), & was not an industrial hereditament.—TURPIN *v.* MIDDLESBROUGH ASSESSMENT COMMITTEE & BAILEY, [1931] A. C. 451; 100 L. J. K. B. 271; 145 L. T. 73; 95 J. P. 115; 47 T. L. R. 308; 29 L. G. R. 279; (1926–31), 2 B. R. A. 886, H. L.; *revsg.*, [1931] 1 K. B. 385, C. A.

Annotations:—**Folld.** Wilkinson *v.* Sibley, [1932] 1 K. B. 194. **Distd.** Toogood & Sons, Ltd. *v.* Green (1932), 96 J. P. 249.

226s. —— —— —— ——.]—A hereditament was occupied & used for the repair of motor cars & the storage of motor cars undergoing repair, & for the storage of spare parts & accessories needed for repairs, & petrol was sold there as incidental to such repairs only.

Held: not entitled to benefit of Act, as not being *unum quid* with factory.—INLAND REVENUE *v.* FALKIRK ASSESSOR, [1930] S. C. 402.—**SCOT.**

sr. —— —— *Corporation slaughter-houses.*]—*Held:* entitled to benefit of the Act.—INLAND REVENUE *v.* EDINBURGH ASSESSOR (SLAUGHTERHOUSES CASE), [1930] S. C. 429.—**SCOT.**

ss. —— —— *Plasterers' premises.*]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* M'INTYRE & CO., [1930] S. C. 465.—**SCOT.**

sv. —— —— *Metal merchants' premises where scrap metal cut & bundled for blast furnaces.*]—*Held:* the metals were "adapted for sale" within Factory & Workshop Act, 1901, s. 149, & so the premises were entitled to benefit of the Act.—BROWN, MACFARLANE & CO. *v.* INLAND REVENUE, INLAND REVENUE *v.* EDINBURGH ASSESSOR (WAUGH'S CASE), [1930] S. C. 468.—**SCOT.**

sw. —— —— *Rag merchants' & sack restorers' premises.*]—*Held:* not entitled to benefit of Act, since the articles were not altered or "adapted for sale."—INLAND REVENUE *v.* EASSON BROS., [1930] S. C. 480.—**SCOT.**

sx. —— —— *Joiner's workshop belonging to co-operative society & doing work for society's property.*]—*Held:* not entitled to benefit of Act, in respect that work carried on was not "by way of trade or for purposes of gain" with Factory & Workshop Act, 1901.—INLAND REVENUE *v.* PAISLEY PROVIDENT CO-OPERATIVE SOCIETY, [1930] S. C. 497.—**SCOT.**

sy. —— —— *Premises for demolishing & reconditioning motor cars & selling parts & scrap.*]—*Held:* entitled to benefit of Act, in respect that articles were altered & adapted for sale.—INLAND REVENUE *v.* CAPLAN, [1930] S. C. 507.—**SCOT.**

sz. —— —— *Premises of asphalt work contractors.*]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* CURRIE & CO., [1930] S. C. 513.—**SCOT.**

sa. —— —— *Plumbers' premises.*]—INLAND REVENUE *v.* COLIN TURNER, LTD., [1930] S. C. 520.—**SCOT.**

sb. —— —— *Warehouse, excise office, railway siding, & pend of distillery.*]—*Held:* not entitled to benefit of Act.—DISTILLERS CO. *v.* EDINBURGH ASSESSOR, DISTILLERS CO. *v.* GLASGOW ASSESSOR, [1931] S. C. 393.—**SCOT.**

sc. —— *Exceptions—Dwelling-house —Country bakehouse.*]—*Held:* entitled to benefit of Act.—INLAND REVENUE *v.* WIGTOWNSHIRE ASSESSOR, [1930] S. C. 543.—**SCOT.**

sd. —— —— —— *Country smithy.*]—*Held:* entitled to benefit of Act.—INLAND REVENUE *v.* WIGTOWNSHIRE ASSESSOR, [1930] S. C. 543.—**SCOT.**

se. —— —— —— *Country joiner's shop.*]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* WIGTOWNSHIRE ASSESSOR, [1930] S. C. 543.—**SCOT.**

sf. —— —— *Retail shop—Workshop of garage.*]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* EDINBURGH ASSESSOR (HUNTER'S CASE), [1930] S. C. 362.—**SCOT.**

sg. —— —— —— ——.]—*Held:* not entitled to benefit of Act.—SCOTTISH MOTOR TRACTION CO. *v.* EDINBURGH ASSESSOR, WYLIES, LTD. *v.* GLASGOW ASSESSOR, [1931] S. C. 416.—**SCOT.**

sh. —— —— —— *Bespoke tailor's premises.*]—*Held:* as to certain premises, entitled to benefit of Act; as to other premises, not so entitled.—INLAND REVENUE *v.* GUNN, COLLIE & TOPPING, [1930] S. C. 389.—**SCOT.**

sk. —— —— —— ——.]—*Held:* not entitled to benefit of Act.—ABERDEEN ASSESSOR *v.* COLLIE, [1932] S. C. 301.—**SCOT.**

entitled to benefit of Act.—BRODIE & SONS *v.* GLASGOW ASSESSOR, [1932] S. C. 373.—**SCOT.**

sm. —— —— —— *Bootmaker's premises.*]—INLAND REVENUE *v.* MOFFAT, [1930] S. C. 412.—**SCOT.**

sn. —— —— —— *Boot repairing premises.*]—*Held:* not entitled to benefit of Act.—GLASGOW ASSESSOR *v.* MATHIESON, [1931] S. C. 718.—**SCOT.**

so. —— —— —— *Photographer's shop & studio.*]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* HAMPTON, [1930] S. C. 419.—**SCOT.**

sp. —— —— —— *Bakehouse & baker's shop.*]—*Held:* entitled to benefit of the Act.—INLAND REVENUE *v.* MALCOLM, [1930] S. C. 437.—**SCOT.**

sq. — —— —— ——.]—*Held:* not entitled to benefit of Act.—BROWN (M. & A.) *v.* GLASGOW ASSESSOR, [1932] S. C. 354.—**SCOT.**

sr. —— —— —— *Saddler's shop & workshop.*]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* EDINBURGH ASSESSOR (GIBSON'S & ALLEN'S CASES), [1930] S. C. 443.—**SCOT.**

ss. —— —— —— *Jeweller's shop & workshop.*]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* EDINBURGH ASSESSOR (GIBSON'S & ALLEN'S CASES), [1930] S. C. 443.—**SCOT.**

sv. —— —— —— *Shop for the repair of weighing-machines.*]—*Held:* not entitled to benefit of Act.—INLAND

The occupiers owned other premises in the borough, where they sold cars & motor accessories:—*Held:* the hereditament was primarily occupied & used for the purpose of a retail shop, as defined by 1928 Act, within exception (*b*) in sect. 3 (1). & was not an industrial hereditament.—KAYE (BARNSLEY REVENUE OFFICER) *v.* EYRE BROS., LTD., [1931] A. C. 451; 100 L. J. K. B. 1; 145 L. T. 73; 95 J. P. 115; 47 T. L. R. 308; 29 L. G. R. 279; (1926–31), 2 B. R. A. 886, H. L.; *revsg.*, [1931] 1 K. B. 385, C. A.

Annotation:—**Distd.** Toogood & Sons, Ltd. *v.* Green (1932), 96 J. P. 249.

REVENUE *v.* AVERY (W. & T.), [1930] S. C. 490.—**SCOT.**

sw. —— —— —.]—*Held:* not entitled to benefit of Act.—AVERY (W. & T.) *v.* GLASGOW ASSESSOR, [1932] S. C. 421.—**SCOT.**

sx. —— —— —— *Creamery where milk pasteurised, chilled, & bottled, prior to distribution.*]—*Held:* entitled to benefit of Act.—INLAND REVENUE *v.* TRANENT CO-OPERATIVE SOCIETY, [1930] S. C. 503.—**SCOT.**

sy. —— —— —— *Plumbers' premises.*]—INLAND REVENUE *v.* COLIN TURNER, LTD., [1930] S. C. 520.—**SCOT.**

sz. —— —— —— *Premises where machinery reconditioned & sold.*]—*Held:* not entitled to benefit of Act.—THOS. W. WARD, LTD. *v.* GLASGOW ASSESSOR, [1931] S. C. 438.—**SCOT.**

sa. —— —— —— *Workshops of electrical engineers.*]—*Held:* not entitled to benefit of Act.—M'WHIRTER & SONS *v.* GLASGOW ASSESSOR, [1932] S. C. 407.—**SCOT.**

sb. —— —— —— *Sawmakers.*]—*Held:* not entitled to benefit of Act.—GLASGOW ASSESSOR *v.* WRIGHT, BINDLEY & GELL, [1932] S. C. 393. **SCOT.**

sc. —— —— —— *Premises of lorry & marine engine builders.*]—*Held:* entitled to benefit of Act.—GLASGOW ASSESSOR *v.* THORNYCROFT (JOHN I.) & Co., [1932] S. C. 387.—**SCOT.**

sd. —— —— —— *Engraver's shop.*]—*Held:* entitled to benefit of Act.—ABERDEEN ASSESSOR *v.* LUMSDEN'S HEIRS, [1932] S. C. 379.—**SCOT.**

se. —— —— —— *Horse-shoers' premises.*]—*Held:* not entitled to benefit of Act.—WEIR & SON *v.* GLASGOW ASSESSOR, [1932] S. C. 368.—**SCOT.**

sf. —— —— —— *Workshops of co-operative society.*]—*Held:* entitled to benefit of Act.—ST. CUTHBERT'S CO-OPERATIVE ASSOCN. *v.* EDINBURGH ASSESSOR, [1931] S. C. 386.—**SCOT.**

sg. —— —— —— —.]—*Held:* not entitled to benefit of Act.—ST. CUTHBERT'S CO-OPERATIVE ASSOCN. *v.* EDINBURGH ASSESSOR, [1932] S. C. 340.—**SCOT.**

sh. —— —— —— —.]—*Held:* not entitled to benefit of Act.—DALZIEL CO-OPERATIVE SOCIETY *v.* MOTHERWELL & WISHAW ASSESSOR, CARLUKE CO-OPERATIVE SOCIETY *v.* LANARKSHIRE ASSESSOR, [1932] S. C. 413.—**SCOT.**

sj. —— —— —— *Motor repair shop.*]—*Held:* entitled to benefit of Act.—GLASGOW ASSESSOR *v.* HENDERSON & Co., [1932] S. C. 337.—**SCOT.**

sk. —— —— —— *Monumental sculptor's yards & workshops.*]—*Held:* entitled to benefit of Act.—MUIR & GRAY *v.* GLASGOW ASSESSOR, [1932] S. C. 313.—**SCOT.**

sn. —— —— *Distributive wholesale business—Wholesale seed merchants' premises where seeds cleaned, stored, & sold.*]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* DONALDSON & Co., [1930] S. C. 348.—**SCOT.**

so. —— —— —— *Premises of wholesale manufacturing chemists also dealing in proprietary medicines.*]—*Held:* the premises were industrial, but were subject to apportionment.—INLAND REVENUE *v.* HATRICK & Co., [1930] S. C. 359.—**SCOT.**

sp. —— —— —— *Premises where proprietary whisky blended, bottled, boxed, & dispatched.*]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* JOHNNIE WALKER & SONS, [1930] S. C. 372.—**SCOT.**

sq. —— —— —— —.]—*Held:* entitled to benefit of Act.—BUCHANAN (JAMES) & Co. *v.* GLASGOW ASSESSOR, [1932] S. C. 358.—**SCOT.**

sr. —— —— —— *Factory for treating brewers' draff, grain, & yeast.*]—*Held:* entitled to benefit of Act.—INLAND REVENUE *v.* BREWERS FOOD SUPPLY CO. (No. 2), [1930] S. C. 383.—**SCOT.**

st. —— —— —— *Warehouse of glass manufacturers where glass cut to suit customers.*]—*Held:* not entitled to benefit of Act.—PILKINGTON BROS. *v.* INLAND REVENUE, [1930] S. C. 387.—**SCOT.**

sv. —— —— —— —.]—*Held:* entitled to benefit of Act.—PILKINGTON BROS. *v.* GLASGOW ASSESSOR, [1932] S. C. 330.—**SCOT.**

sw. —— —— —— *Premises for the repair of packing cases & washing of bottles of whisky blenders.*]—*Held:* not entitled to benefit of Act.—WHITE HORSE DISTILLERS *v.* INLAND REVENUE, [1930] S. C. 426.—**SCOT.**

svv. —— —— —— *Wool brokers' & Wool merchants' premises.*]—*Held:* not entitled to benefit of Act.—M'LEOD & SONS *v.* INLAND REVENUE, [1930] S. C. 434.—**SCOT.**

sww. —— —— —— *Brewers' premises where beer chilled, carbonised, bottled, packed, & dispatched.*]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* MACLACHLANS, LTD., [1930] S. C. 449.—**SCOT.**

sxx. —— —— —— —.]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* WILLIAM YOUNGER & Co., [1930] S. C. 548.—**SCOT.**

syy. —— —— —— *Premises for oil-blending.*]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* SHARP & Co., [1930] S. C. 463.—**SCOT.**

szz. —— —— —— *Printing machine manufacturers' distributing depot—Old machines taken in part payment, reconditioned & sold.*]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* DAWSON, PAYNE & ELLIOTT, [1930] S. C. 493.—**SCOT.**

sza. —— —— —— *Creamery where milk pasteurised, chilled, & bottled, prior to distribution.*]—*Held:* entitled to benefit of Act.—INLAND REVENUE *v.* TRANENT CO-OPERATIVE SOCIETY, [1930] S. C. 503.—**SCOT.**

sbb. —— —— —— *Premises where coffee essence bottled & pasteurised.*]—*Held:* entitled to benefit of Act.—PATERSON & SONS *v.* GLASGOW ASSESSOR, [1931] S. C. 432.—**SCOT.**

scc. —— —— —— *Warehouse in Scotland of English brewery used for quieting, fining, bottling, & maturing beer.*]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* WHITBREAD & Co., [1930] S. C. 516.—**SCOT.**

sdd. —— —— —— *Premises where grain cleaned & dressed to make it fit for sale.*]—*Held:* entitled to benefit of Act.—INLAND REVENUE *v.* ABERDEEN COMMERCIAL CO., INLAND REVENUE *v.* HUTCHEON, [1930] S. C. 555.—**SCOT.**

see. —— —— —— *Wholesale produce dealers & ham curers.*]—*Held:* not entitled to benefit of Act.—LAIRD & Co. *v.* GLASGOW ASSESSOR, [1931] S. C. 442.—**SCOT.**

sff. —— —— *Purposes of storage—Duty-free warehouse of distillery.*]—*Held:* not entitled to benefit of Act.—DISTILLERS CO. *v.* INLAND REVENUE, [1930] S. C. 329.—**SCOT.**

not entitled to benefit of Act.—SCOTTISH MALT DISTILLERS, LTD. *v.* INLAND REVENUE, [1930] S. C. 335.—**SCOT.**

shh. —— —— —— *Premises of cold storage company.*]—*Held:* not entitled to benefit of Act.—UNION COLD STORAGE CO. *v.* INLAND REVENUE, [1930] S. C. 337.—**SCOT.**

sii. —— —— —— *Wholesale seed merchants' premises where seeds cleaned, stored, & sold.*]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* DONALDSON & Co., [1930] S. C. 348.—**SCOT.**

skk. —— —— —— *Contractor's building where fodder cut, crushed, & mixed by machinery.*]—*Held:* not entitled to benefit of Act.—WORDIE & Co. *v.* INLAND REVENUE, [1930] S. C. 365.—**SCOT.**

sll. —— —— —— *Factory for treating brewers' draff, grain, & yeast.*]—*Held:* entitled to benefit of Act.—INLAND REVENUE *v.* BREWERS FOOD SUPPLY CO. (No. 2), [1930] S. C. 383.—**SCOT.**

smm. —— —— —— *Premises of public works contractor.*]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* MELVILLE, DUNDAS & WHITSON, [1930] S. C. 477.—**SCOT.**

snn. —— —— —— *Warehouse in Scotland of English brewery used for quieting, fining, bottling, & maturing beer.*]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* WHITBREAD & Co., [1930] S. C. 516.—**SCOT.**

soo. —— —— —— *Wholesale produce dealers & ham curers.*]—*Held:* not entitled to benefit of Act.—LAIRD & Co. *v.* GLASGOW ASSESSOR, [1931] S. C. 442.—**SCOT.**

spp. —— —— —— *Premises where machinery reconditioned & sold.*]—*Held:* not entitled to benefit of Act.—THOS. W. WARD, LTD. *v.* GLASGOW ASSESSOR, [1931] S. C. 438.—**SCOT.**

srr. —— —— *Primary purpose other than that of factory or workshop—Refuse destructor of town council.*]—*Held:* not entitled to benefit of Act.—PAISLEY ASSESSOR *v.* INLAND REVENUE, [1930] S. C. 339.—**SCOT.**

stt. —— —— —— *Photographer's shop & studio.*]—*Held:* not entitled to benefit of Act.—INLAND REVENUE *v.* HAMPTON, [1930] S. C. 419.—**SCOT.**

suo. —— —— —— *Corporation slaughterhouses.*]—*Held:* entitled to benefit of the Act, as the premises were primarily occupied & used for the purpose of a factory or workshop, & not for providing the necessary statutory facilities for the slaughter of animals, a purpose which would have brought the premises within exception (*f*).—INLAND REVENUE *v.* EDINBURGH ASSESSOR (SLAUGHTERHOUSES CASE), [1930] S. C. 429.—**SCOT.**

spp. —— —— *Manufacturing & repairing shops of steamship owners.*]—*Held:* entitled to benefit of Act. The premises were occupied for the purposes of manufacture & repair, which were factory purposes, & as they were expressly included among factories by

226t. **Beer bottling premises.** Brewers occupied a bottling store in which beer brewed by them elsewhere was matured, carbonated, filtered & bottled, & from which, after the bottles had been corked & labelled, it was distributed to the trade. The beer when it entered the premises was unmarketable, & was converted by processes carried on therein into the commodity known as bottled beer. The hereditament was a factory within Factory & Workshop Acts. The revenue officer objected to the inclusion of the hereditament in the special list as an industrial hereditament under 1928 Act, s. 3, on the ground that it was primarily occupied & used for the purposes of distributive wholesale business within exception (*c*) in sect. 3 (1):—*Held:* the treatment to which the beer was subjected in the hereditament was not a mere prelude to distribution, but changed the liquid from an unfinished article to a finished one, namely, bottled beer, which was not ready for distribution until the bottles had been corked & labelled, & the hereditament did not fall within the exception & was therefore an industrial hereditament.—SEDGWICK (CAMBERWELL REVENUE OFFICER) *v.* CAMBERWELL ASSESSMENT COMMITTEE & WATNEY, COMBE, REID & Co., [1931] A. C. 447; 100 L. J. K. B. 271; 145 L. T. 73; 95 J. P. 115; 47 T. L. R. 308; 29 L. G. R. 279; (1926–31), 2 B. R. A. 886, H. L.; *affg.*, [1931] 1 K. B. 385, C. A.

Annotation:—**Followed.** Toogood & Sons, Ltd. *v.* Green, Lipton, Ltd. *v.* Barton (1931), 47 T. L. R. 565.

226u. —— **Chain cable testing establishment.**]—Resps. occupied & used a testing establishment for the purpose of carrying on the business of testing & finishing cables & anchors under a licence from the Board of Trade, pursuant to the Anchors & Chain Cables Act, 1899, & they gave certificates in respect of the cables & anchors which had passed the tests. The Act of 1899 prohibited the sale in this country of anchors & cables which had not been proved according to its provisions. The hereditament was admitted to be a factory within Factory & Workshop Acts. The processes employed involved the manufacture & replacement of faulty links in cables or faulty parts in anchors, & the scaling, tarring & finishing of cables & anchors before delivery to the ultimate consignees. The revenue officer objected to the inclusion of the hereditament in the special list as an industrial hereditament on the ground that it was primarily occupied & used for purposes which were not those of a factory or workshop within exception (*f*) in 1928 Act, s. 3 (1):—*Held:* the hereditament was primarily occupied & used for the purpose of testing operations, which were not factory purposes, & fell within the exception.—GROVE (DUDLEY REVENUE OFFICER) *v.* LLOYD'S BRITISH TESTING CO., LTD., [1931] A. C. 450; 100 L. J. K. B. 271; 145 L. T. 73; 95 J. P. 115; 47 T. L. R. 308; 29 L. G. R. 279; (1926–31), 2 B. R. A. 886, H. L.; *revsg.*, [1931] 1 K. B. 385, C. A.

226v. —— —— —— **Oil-blending factory.**]—*Held:* entitled to benefit of Act.—POPLAR REVENUE OFFICER *v.* POPLAR ASSESSMENT COMMITTEE (1930), 99 L. J. K. B. 510; 143 L. T. 490; 94 J. P. 142; 46 T. L. R. 428; 74 Sol. Jo. 320; 28 L. G. R. 327; (1926–31), 2 B. R. A. 502, D. C.

226w. —— —— —— **Bespoke tailor's workshop.**]—*Held:* not entitled to benefit of Act.—STAINCROSS REVENUE OFFICER *v.* STAINCROSS ASSESSMENT COMMITTEE & WHITEHEAD (1930), 143 L. T. 525; 94 J. P. 161; 46 T. L. R. 516; 28 L. G. R. 414; (1926–31), 2 B. R. A. 698, D. C.

226x. —— —— —— —— **Retail shop on same premises.**]—Resps. were the occupiers of a hereditament entered by the assessment committee in the special list & therein apportioned as to £59 industrial user & as to £146 non-industrial user. The revenue officer appealed against the inclusion of the hereditament in the special list on the ground (*inter alia*) that it was primarily occupied & used for the purposes of a retail shop. The hereditament consisted of a three-storied building which was in the sole occupation of resps., who were bespoke tailors & outfitters. They also owned a retail shop for the sale of shirts, collars, socks, hats & ties on the same premises in which the manufacture of clothes was carried on. The hereditament was registered as a workshop:—*Held:* as a matter of law the hereditament could not be dissected as being occupied & used partly as a retail shop but mainly as a workshop. The business conducted on the hereditament was a unified business & the workshop must be treated as ancillary to the trade or business of a retail shop.—WILKINSON (REVENUE OFFICER) *v.* SIBLEY & DONOVAN [1932] 1 K. B. 194; 101 L. J. K. B. 26; 146 L. T. 1; 95 J. P. 208; 29 L. G. R. 633; (1926–31), 2 B. R. A. 926, C. A.

Annotation:—**Consd.** Toogood & Sons, Ltd. *v.* Green, [1932] 1 K. B. 204.

226y. —— —— —— **Receiving office of dyers & cleaners.**]—*Held:* not entitled to benefit of Act.—IDEAL CLEANERS & DYERS, LTD. *v.* WEST MIDDLESEX ASSESSMENT COMMITTEE & REVENUE OFFICER FOR WEST MIDDLESEX (1930), 143 L. T. 483; 94 J. P. 139; 46 T. L. R. 371; 74 Sol. Jo. 319; 28 L. G. R. 341; (1926–31), 2 B. R. A. 536, D. C.

the Factory & Workshop Act, 1901, Sched. VI, they were within the 1928 Act.—INLAND REVENUE *v.* CLAN LINE STEAMERS, [1930] S. C. 445.—**SCOT.**

sqq. —— —— *Creamery where milk pasteurised, chilled, & bottled, prior to distribution.*]—*Held:* entitled to benefit of Act.—INLAND REVENUE *v.* TRANENT CO-OPERATIVE SOCIETY, [1930] S. C. 503.—**SCOT.**

srr. *Freight-transport lands & heritages—Dock purposes—Ground, warehouses, custom-house, & cattle sheds at docks.*]—As regarded the buildings belonging to the dock authority & the ground within the dock precincts leased to shipowners, the Inland Revenue Officer, in view of an undertaking given in Parliament, conceded that, with the exception of the custom-house, they were freight-transport lands & heritages.

As regarded the custom-house, the buildings erected & owned by the occupiers, the ground out-with the dock precincts leased to the occupiers, & the cattle sheds:—*Held:* they were not freight transport subjects, in respect that they were not occupied & used for dock purposes as part of a dock undertaking, but for the special purposes of the occupiers.—CLYDE NAVIGATION TRUSTEES *v.* INLAND REVENUE, INLAND REVENUE *v.* KIRKWALL ASSESSOR, [1930] S. C. 454.—**SCOT.**

stt. —— *Dock purposes—Offices let to stevedores by dock company.*]—*Held:* entitled to benefit of Act.—CLYDE NAVIGATION TRUSTEES *v.* GLASGOW ASSESSOR, [1931] S. C. 400.—**SCOT.**

svv. *Who may appeal as to classification—Officer of Inland Revenue—Sect. 9 (10).*]—*Held:* an appeal at his instance was competent.—INLAND REVENUE *v.* BREWERS FOOD SUPPLY CO., [1930] S. C. 323.—**SCOT.**

. —— —— —— **Newspaper offices & printing works—Apportionment of editorial & advertising rooms.**]—Printing offices & works in which a newspaper was composed, printed, & published, were included in the special list under 1928 Act as an industrial hereditament, & an apportionment was made of the net annual value of the hereditament according as its various parts were used for industrial or non-industrial purposes:—*Held:* (1) the hereditament was properly included in the special list as an industrial hereditament, as the composing, printing, & publishing of a newspaper was the making of an article & the adapting for sale of an article within Factory & Workshop Act, 1901 (c. 22), s. 149, & therefore the hereditament came within the definition of a non-textile factory, the primary purpose for which the hereditament was occupied & used being an industrial purpose; (2) the annual value of the hereditament must be apportioned according to the occupation & use thereof for industrial purposes, & the occupation & use for other purposes; those portions of the premises which were occupied & used for printing, composing, engraving, publishing & circulating were used for industrial purposes & entitled to be derated, but that those portions of the premises which were occupied & used for the editorial department, general administrative offices & clerical staff, advertising department, stationery counter, & returns store were used for non-industrial purposes & not entitled to be derated.—CARDIFF REVENUE OFFICER *v.* CARDIFF ASSESSMENT COMMITTEE & WESTERN MAIL, LTD., CARDIFF REVENUE OFFICER *v.* CARDIFF ASSESSMENT COMMITTEE & DAVID DUNCAN & SONS, LTD., WESTMINSTER REVENUE OFFICER *v.* DAILY MIRROR NEWSPAPERS, LTD., [1931] 1 K. B. 47; 99 L. J. K. B. 672; 143 L. T. 500; 94 J. P. 146; 46 T. L. R. 499; 74 Sol. Jo. 466; 28 L. G. R. 372; (1926–31), 2 B. R. A. 542, D. C.

226aa. **Wholesale dairy.**]—Resps., who were wholesale dairymen, occupied & used certain premises for carrying out the processes of cleaning & pasteurising milk & of cheesemaking. The milk, after cleaning & pasteurisation, & the cheese after ripening, were sent to the respondents' selling centres. The assessment committee found that the premises were an industrial hereditament & were entitled to be derated:—*Held:* as the question was one of fact, & as there was no evidence on which the conclusion of the assessment committee could be varied, their decision must be affirmed.—CARMARTHEN REVENUE OFFICER *v.* UNITED DAIRIES (WHOLESALE), LTD. (1931), 47 T. L. R. 233; 75 Sol. Jo. 138.

226bb. ——**Meaning of "contiguous."**]—The only point decided in this case which was then remitted to sessions for further consideration of other points was that a hereditament in the occupation of the resps. was not "contiguous" to another 235 yards away, & that Quarter Sessions was wrong in law in holding that it was contiguous so as to be treated as forming one hereditament with the other premises for purposes of de-rating.—SOUTHWARK REVENUE OFFICER *v.* HOE (R.) & CO., LTD. (1930), 143 L. T. 544; 94 J. P. 170; 46 T. L. R. 528; 28 L. G. R. 446; (1926–31), 2 B. R. A. 723.

226cc. —.]—The word "contiguous" must be construed in its ordinary & proper sense as meaning "touching," & not in its loose sense as meaning "neighbouring."

In five cases properties in the same occupation as the main industrial hereditaments were alleged to be part of the main industrial hereditament as being contiguous thereto. The distance in a direct line between the two properties sought to be treated as part of a single hereditament varied from 20 yards to 60 yards. In one case the properties were only separated by a public thoroughfare, but in that case the property sought to be added was used as a stable. In the other four cases the properties were separated by other properties in different ownership:—*Held:* the two properties in four of the cases were not contiguous to each other & therefore could not be treated as parts of a single hereditament within sect. 3 (3), & in the fifth case, inasmuch as the property sought to be added was used as a stable, & therefore, under sect. 3 (2), was to be deemed not to form part of the factory or workshop, it could not therefore be one of the properties which "are used as parts of a single . . . factory" within sect. 3 (3).—SPILLERS, LTD. *v.* CARDIFF ASSESSMENT COMMITTEE & PRITCHARD (CARDIFF REVENUE OFFICER), PIERCE (WIRRAL REVENUE OFFICER) *v.* WIRRAL ASSESSMENT COMMITTEE & SPILLERS, LTD., PINSENT (PLYMOUTH REVENUE OFFICER) *v.* PLYMOUTH ASSESSMENT COMMITTEE & OCTAGON BREWERY CO., BLUNT (WEST DERBY REVENUE OFFICER) *v.* WEST DERBY ASSESSMENT COMMITTEE & TATE & LYLE, LTD., [1931] 2 K. B. 21; 100 L. J. K. B. 233; 144 L. T. 503; 95 J. P. 49; 47 T. L. R. 231; 75 Sol. Jo. 173; 29 L. G. R. 411; (1926–31), 2 B. R. A. 818.

226dd. —— **Allowance of difference in rates to sub-lessee — Whether "outgoing" as between head-lessor & lessee.**]—*Held:* the meaning of the word "landlord" in Local Government Act, 1929 (c. 17), s. 73 (1), is not confined to a head landlord, but extends to a lessee who has sub-let the hereditament, so that the lessee is liable to his sub-lessee, the occupying tenant, for the amount of the difference in rates; (2) where a lessor covenanted to indemnify his lessee against "all rates, taxes & outgoings whatsoever," & the lessee was compelled to pay his sub-lessee the amount referred to in the above section, the payment was not an "outgoing" for which the lessor was liable to indemnify his lessee under the covenant.—DEPENDABLE UPHOLSTERY, LTD. *v.* BRASTED, [1932] 1 K. B. 291; 100 L. J. K. B. 631; 145 L. T. 588; 47 T. L. R. 521; (1926–31), 2 B. R. A. 485, C. A.

226ee. **Meaning of "landlord."** DEPENDABLE UPHOLSTERY, LTD. *v.* BRASTED, No. 226dd, *ante*.

226ff. **Freight-transport hereditament—Particular instances.**]—(1) Certain bonded warehouses near the port of Liverpool were used for the storage of tobacco, wine & sugar passing through the port, & the bulk of these goods was stored for a very substantial time:—*Held:* on the facts the warehouses were primarily used for warehousing merchandise not in the course of transport & were not subjects for derating.

(2) A wool warehouse not actually connected with any particular dock & not a bonded warehouse was used as a storage place for wool conveyed thereto by the Dock Authority at the charge of the consignee to be sold at the regular wool sales :—*Held :* the warehouse was not used for transport purposes, but as a place for preparing goods for sale, & was not entitled to be derated.

(3) Three grain warehouses had as their special feature an elevator by which grain was discharged from ships, barges or carts into the warehouse, & when sold, moved out again into sea or land vehicles. The bulk of the grain remained in the warehouses for a short time only, & the revenue derived from shipping & unshipping exceeded that derived from storage & warehousing :—*Held :* the warehouses were used to a substantial extent for purposes of shipping & unshipping & were entitled to be derated as freight-transport hereditaments.

(4) By Supreme Ct. of Judicature (Consolidation) Act, 1925 (c. 45), s. 225, an action is defined as a civil proceeding begun by writ " or in such other manner as may be prescribed by rules of ct." By R. S. C., Ord. 58, r. 15, no appeal to the Ct. of Appeal from any order, whether final or interlocutory, in any matter not being an action, shall be brought after the expiration of fourteen days from the time at which the order is signed, entered or otherwise perfected :—*Held :* an appeal from the Div. Ct. to the Ct. of Appeal on a special case stated by Quarter Sessions on an appeal from a draft rating assessment made by an Assessment Committee was an appeal in a proceeding which was not an action as defined, & the time for appeal was therefore fourteen days.—BOTTOMLEY *v.* WEST DERBY ASSESSMENT COMMITTEE, MERSEY DOCKS & HARBOUR BOARD *v.* WEST DERBY ASSESSMENT COMMITTEE, BOTTOMLEY *v.* MERSEY DOCKS & HARBOUR BOARD, BOTTOMLEY *v.* LIVERPOOL GRAIN STORAGE & TRANSIT CO., LTD., [1932] 1 K. B. 40 ; 95 J. P. 186 ; 47 T. L. R. 468 ; (1926-31), 2 B. R. A. 846, C. A.

Annotation :—As to (4) **Folld.** Wilkinson *v.* Sibley & Donovan (1931), 101 L. J. K. B. 26.

226gg. —— Railway—Transfer of benefit to public—Who entitled—General engineering works.]—The mischief which the Railway Freight Rebate Scheme is designed to cure is a mischief in respect of iron & steel works, not a mischief in respect of general engineering works. Therefore, when a general engineering works consists of four departments, one of which falls within the definition of " iron & steel works " in Local Government Act, 1929 (c. 17), Sched. XI., Part I., para. 17, it cannot for the purpose of the above scheme be considered as four separate works, but must be regarded as a whole, & a general engineering works is not an iron & steel works.—CENTRAL MARINE ENGINE WORKS *v.* AMALGAMATED RY. COS. (1930), 20 Ry. & Can. Tr. Cas. 141.

226hh. —— Canal—Building occupied by canal company's employees.]—*Held :* not entitled to benefit.—LEE CONSERVANCY BOARD *v.* R. (1931), 39 Ll. L. R. 47, D. C.

226jj. —— Cold storage—Apportionment.]—Applt. co. occupied two hereditaments abutting on the Thames which were used as cold stores, being equipped with refrigerating machinery & insulation necessary for dealing with shipments of refrigerated goods arriving in the port of London from colonial & foreign markets. The goods were brought to the hereditaments from the ocean-going steamers in insulated barges, on delivery into which the liability of the shipowners ceased. The goods were sorted to marks in the hereditaments. In one of these 17½ per cent. of the goods were delivered out immediately after sorting, while of the balance of 82½ per cent. part did not remain in the hereditament longer than twenty-eight days, & part remained for a longer period. In the other hereditament 12 per cent. were delivered out immediately after sorting, the balance remaining for a period up to twenty-eight days or longer. Each hereditament had, besides its refrigerating chambers & machinery, a crane for the unshipping of goods, a non-insulated reception front & a non-insulated delivery front. On a claim by applt. co. for the derating of the hereditaments :—*Held :* (1) the hereditaments, so far as regarded the refrigerating machinery & chambers, were " primarily occupied & used for warehousing merchandise not in the course of being transported," & therefore were not entitled to be derated ; (2) the crane, non-insulated reception front & non-insulated delivery front were primarily used for dock purposes, & were entitled to be derated ; & therefore (3) the value of the hereditaments for derating purposes must be apportioned, the apportionment being between the value of the refrigerating chambers, etc., which were not the subject of derating, on the one hand, & the value of the crane, non-insulated reception & delivery fronts, which were the subject of derating, on the other hand.

Per SCRUTTON, L.J. : The primary use of refrigerating chambers is to store goods not being transported, rather than, like barges, to serve as a means of transport.—UNION COLD STORAGE CO. *v.* MOON, [1932] 2 K. B. 648 ; 101 L. J. K. B. 791 ; 147 L. T. 487 ; 96 J. P. 432 ; 30 L. G. R. 433, C. A.

Compare No. 226g, *ante*.

230. Before this case add " *See, now,* Local Government Act, 1929 (c. 17), s. 67."

235. *Add. Annotation :—***Reld.** Engelke *v.* Musmann, [1928] A. C. 433.

PART I. SECT. 4 SUB-SECT. 6.—A.

h i. —— ——.]—Christ College Trust, as the owner of certain lands & buildings in Hobart, was rated by the municipal council in respect of such buildings which were used as a public boys' school. All pupils, with unimportant exceptions, were liable to pay fees. The fees received were considerably less than the expense of the school. The deficiency was made good from income derived from capital invested in trust for the school. Under the trust deed by which the school was established, & Christ College Acts, 1926, no member of the board of management could derive any profit from the school :—*Held :* even if the school were used for charitable purposes it was not used solely for such purposes, in that the compulsory payment of fees by pupils made the institution a business ; &, the words " charitable purposes " should be construed *ejusdem generis* with hospital & benevolent society, & not in their technical sense.—CHRIST COLLEGE TRUST *v.* HOBART CORPN., 22 Tas. L. R. 67.—**AUS.**

n i. —— —— *Whether buildings used solely for educational purposes exempted.*]—*Held :* in Hobart Corpn. Act, 1893 (Tas.), s. 116, as amended by Hobart Corpn. Act, 1921 (Tas.), s. 18, & in Hobart Water Act, 1893 (Tas.), s. 60, the words " charitable purposes " should be construed *ejusdem generis* with hospital & benevolent asylum & not in their technical sense, therefore,

267a. —— **Roman Catholic Church divided into "blessed" & "unblessed" parts.**]—A Roman Catholic Church was divisible by a movable partition into two parts, a "blessed" part in which the altar stood, & an "unblessed" part. The whole building was used for public religious worship, but on certain nights in the week the partition was drawn across & the "unblessed" part was used for dances, the proceeds of which were devoted exclusively to church purposes:—*Held:* the "unblessed" part was not exempt from rates under the Poor Rates Exemption Act, 1833 (c. 30), & was properly included in the valuation list.—CARDIFF ARCHDIOCESE TRUSTEES *v.* PONTYPRIDD AREA ASSESSMENT COMMITTEE & MOUNTAIN ASH RATING AUTHORITY (1930), 144 L. T. 207; 94 J. P. 246; 46 T. L. R. 633; 28 L. G. R. 535; (1926–31), 1 B. R, A. 389, D. C.

Annotation:—**Consd.** Ladies' Hosiery & Underwear, Ltd. *v.* West Middlesex Assessment Area Assessment Committee (1932), 96 J. P. 336.

281. *Add. Annotations:*—**Consd.** Metropolitan Meat Industry Board *v.* Sheedy (1927), 97 L. J. P. C. 1. **Apld.** Fisher *v.* Oldham Corpn., [1930] 2 K. B. 364.

286. *Add. Annotation:*—*As to* (3) **Consd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

327. *Add. Annotation:*—**Refd.** Metropolitan Meat Industry Board *v.* Sheedy (1927), 97 L. J. P. C. 1.

SUB-SECT. 14A.—INDUSTRIAL HEREDITAMENTS.

See Sect. 3, sub-sect. 4, *ante*.

384. *Add. Annotation:*—**Refd.** New Liverpool Eastham Ferry & Hotel Co. *v.* Ocean Accident & Guarantee Corpn., Ltd. (1929), 142 L. T. 349.

444. *Add. Annotation:*—**Consd.** R. *v.* London County Council, *Ex p.* Swan & Edgar (1927) (1929), 45 T. L. R. 512.

buildings used solely for educational purposes were not exempted from rates by those sections, even if such purposes were charitable in the technical sense. —CHRIST COLLEGE TRUST *v.* HOBART CORPN. (1928), 40 C. L. R. 308.—**AUS.**

t i. —— *Y. W. C. A.*]—City Act, R. S. S., 1930, s. 447 (6), provides that the buildings, & grounds not exceeding four acres, of the "Y. W. C. A." shall be exempt from taxation, & a like provision for exemption is made for "any assocn. or organisation doing work for young women similar to the work done by the Y. W. C. A.":—*Held:* the word "work" in said provision means the goal or objective of an assocn. & not its activities, &, since the objective of pltf. assocn. was "similar" to that of the Y. W. C. A., it was entitled to the benefits of the provision.—SISTERS OF SION (SOCIETY) *v.* SASKATOON (CITY), [1931] 2 W. W. R. 553.—**CAN.**

b i. —— ——.]—On the hearing of valuation appeals in the Circuit ct., it was held that a convent, in which resided 43 nuns, was not exempt; & that a laundry, managed by some of the nuns & worked by the inmates of a Magdalen Asylum, & which returned a profit of £1,300 a year, was not exempt. The nuns appealed in respect of the convent. Of the 43 nuns residing in the convent, 14 were allocated to manage an Industrial School; the remaining 29 attended to the management of the Asylum & the laundry. There was no evidence as to the number of nuns exclusively engaged in working the laundry. The produce of the land went to the support of the nuns & the penitents in the Magdalen Asylum:—*Held:* the convent was not used exclusively for charitable purposes, since it accommodated not only those nuns who were engaged exclusively in charitable work, but also those who were engaged in working the laundry, & therefore it was not exempt from rateability.—GOOD SHEPHERD NUNS *v.* COMR. OF VALUATION, [1930] 1. R. 616.—**IR.**

c i. —— *Seamen's Friendly Society—Work given up by society & continued by Navy League of Canada.*]—*Held:* the latter body was not exempt.—*Re* NAVY LEAGUE OF CANADA (ASSESSMENT OF HALIFAX BRANCH OF), [1927] 2 D. L. R. 184; 59 N. S. R. 212.—**CAN.**

g (p. 460) **i.** —— *Reserve for show ground.*]—CONNOR *v.* ROCKHAMPTON CITY COUNCIL (1928), 22 Q. J. P. R. 91. —**AUS.**

g (p. 460) **ii.** —— *Salvation Army Home.*]—Certain land in the City of Sydney was vested in deft. upon trust for social work of the Salvation Army. Upon the land was a building known as the Salvation Army Men's Home, & used exclusively to supply needy persons with accommodation in the way of beds & meals which otherwise they could not obtain. The charge made for beds was generally less than that made elsewhere, & in some cases no charge was made. In the majority of cases meals were supplied free of charge:—*Held:* the land was used solely for a charitable purpose & therefore was not rateable.—SYDNEY MUNICIPAL COUNCIL *v.* SALVATION ARMY (N. S. W. PROPERTY TRUST) (1931), 31 S. R. N. S. W. 585; 48 N. S. W. W. N. 219; 10 L. G. R. 113.—**AUS.**

PART I. SECT. 4, SUB-SECT. 7.

l i. —— *Seminary for eduration of missionary priests.*]—*Held:* the building could not be deemed to be one "used for church purposes" within School Assessment Act, R. S. A., 1922 (c. 52), s. 24 (*d*), & was not exempt.—RUTHENIAN CATHOLIC MISSION OF THE ORDER OF ST. BASIL THE GREAT IN CANADA *v.* MUNDARE SCHOOL DISTRICT, NO. 1603, [1924] 2 D. L. R. 1143; [1924] 2 W. W. R. 481; 20 Alta. L. R. 338.—**CAN.**

m i. —— *Building also used for receipt of rent.*]—*Held:* a building which is used or occupied for religious teaching is "solely" used or occupied for that purpose within Metropolitan Water, Sewerage & Drainage Act, s. 88 (1) (*h*), notwithstanding that rent for land of the owner, other than the land which is occupied by & used in connection with the building, is payable & is paid in the building.—ROMAN CATHOLIC ARCHBISHOP OF SYDNEY *v.* METROPOLITAN WATER, SEWERAGE & DRAINAGE BOARD (1928), 40 C. L. R. 472; [1928] Argus L. R. 162.—**AUS.**

PART I. SECT. 4, SUB-SECT. 10.—C.

sf. *Liability before issue of patent.*]—RUDDELL *v.* GEORGESON (1873), 9 Man. L. R. 407.—**CAN.**

sg. ——.]—O'GRADY *v.* MCCAFFRAY (1882), 2 O. R. 309.—**CAN.**

sh. —— *Half-breed lands.*]—*Re* MATHERS (1891), 7 Man. L. R. 434.—**CAN.**

sj. *Whether lessee of Commonwealth land liable.*]—The lessee of land leased by a private individual from the Commonwealth of Australia, the owner of the land, is not liable to be rated by a local authority, the land itself not being rateable land.—COALDRAKE *v.* BRISBANE CITY COUNCIL (1928), 22 Q. J. P. R. 34.—**AUS.**

PART I. SECT. 4, SUB-SECT. 12.—A. (a).

sk. *Agreement with municipality exempting taxpayer from taxes—School taxes collected separately by school trustees—Whether exemption applies to school taxes.*]—*Ex p.* BATHURST CO., [1928] 4 D. L. R. 65.—**CAN.**

sl. *Professors' residences.*]—EDMONTON CITY *v.* EVANGELICAL LUTHERAN SYNOD OF MISSOURI, OHIO, & OTHER STATES, [1932] 3 W. W. R. 275.—**CAN.**

PART I. SECT. 4, SUB-SECT. 20.—A.

t i. —— —— *Construction of Assessment Act, R. S. O.*, 1927.]—The interpretation which should be placed upon the words "used mainly for obtaining minerals from the ground" in sect. 40 (4) of Assessment Act, 1927, is that it was thereby intended to relieve from municipal taxation all buildings, plant, & machinery, situate upon mining lands, which form an essential part of the system actively in operation in obtaining the minerals. There is no intention to narrow the construction so as to cover only that which is used directly in getting out the minerals.—*Re* HOLLINGER CONSOLIDATED GOLD MINES, LTD., & TISDALE TOWNSHIP, [1931] 4 D. L. R. 239; O. R. 640.—**CAN.**

t ii. —— *Loading pier & equipment for shipment of coal.*]—*Re* ACADIA COAL CO.'S ASSESSMENT, [1925] 1 D. L. R. 1179; 58 N. S. R. 17.—**CAN.**

PART I. SECT. 4, SUB-SECT. 24.—C. (a).

l i. —— *Land used for quarrying stone for harbour works.*]—Land used for quarrying stone for the purposes of harbour works is not exempt from rating.—NAPIER BOROUGH COUNCIL *v.* NAPIER HARBOUR BOARD, [1930] N. Z. L. R. 239.—**N.Z.**

PART I. SECT. 4, SUB-SECT. 24.—K

432 ii. ——.]—ESTCOURT CORPN. *v.* UNION GOVERNMENT (1929), 50 N. L. R. 21.—**S. AF.**

PART I. SECT. 4, SUB-SECT. 24.—L.

sn. *Land leased to commissariat officer & occupied by troops.*]—*Held:* exempt. —PRINCIPAL SECRETARY OF STATE FOR WAR *v.* TORONTO CORPN. (1863), 22 U. C. R. 551.—**CAN.**

PART I. SECT. 4, SUB-SECT. 24.—Q.

a i. ——.]—*Re* HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO & THOROLD & PELHAM TOWNSHIPS (1924), 55 O. L. R. 431.—**CAN.**

sl. *Land used for public reserve—Zoological gardens.*]—*Held:* the land was used for a public reserve within s. 132 (c) of the Local Government Act, 1919, s. 132 (c), & was exempt from

Part II.—Basis of Assessment.

698. *Add. Annotation :—Generally,* **Refd.** Ladies' Hosiery & Underwear, Ltd. *v.* West Middlesex Assessment Area Assessment Committee (1932), 96 J. P. 336.

703. *Add. Annotation :—***Consd.** Consett Iron Co. *v.* Durham County Assessment Committee for No. 5 or North-West Area (1930), 99 L. J. K. B. 277.

705. *Add. Annotation :—***Apld.** Consett Iron Co. *v.* Durham County Assessment Committee for No. 5 or North Western Assessment Area, [1931] A. C. 396.

725. *Add. Annotation :—***Distd.** Consett Iron Co. *v.* Durham County Assessment Committee for No. 5 or North Western Assessment Area, [1931] A. C. 396.

726. *Add. Annotation :—***Refd.** Consett Iron Co. *v.* Durham County Assessment Committee for No. 5 or North Western Assessment Area, [1931] A. C. 396.

727. *Add. Annotation :—Generally,* **Refd.** Consett Iron Co. *v.* Durham County Assessment Committee for No. 5 or North-West Area, [1931] A. C. 396.

735. *Add. Annotations :—***Refd.** Consett Iron Co., Ltd. *v.* Durham County Assessment Committee for the North-Western Area, [1931] A. C. 396; Salisbury House Estate *v.* Fry, [1930] 1 K. B. 304.

754. *Add. Annotation :—***Consd.** Consett Iron Co. *v.* Durham County Assessment Committee for No. 5 or North-West Area (1930), 99 L. J. K. B. 277.

769. *Add. Annotation :—***Refd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

SUB-SECT. 1.—RAILWAYS.

(Vol. XXXVIII., p. 534.)

* *See, now,* Railways (Valuation for Rating Act, 1930 (c. 24).

800. After this case add :—

Derating of railways.]—*See* Rating & Valuation (Apportionment) Act, 1928 (c. 44) ss. 1, 5; Local Government Act, 1929 (c. 17) ss. 68, 136; Sched. XI.; & No. 226gg, *ante.*

875. *Add. Annotation :—As to* (1) **Refd.** Manchester Corpn. *v.* Bolton Assessment Committee & Westhoughton Urban District Council (1930), 144 L. T. 618.

901. *Add. Citation :—*(1926–31), 1 B. R. A. 111.

Add. Annotations :— **Consd.** Manchester Corpn. *v.* Bolton Area Assessment Committee & Little Hulton Urban District Council (1930), 144 L. T. 570; Manchester Corpn. *v.* Bolton Assessment Committee & Westhoughton Urban District Council (1930), 144 L. T. 618; St. James' & Pall Mall Electric Light Co. *v.* Westminster (City) Assessment Committee (1932), 96 J. P. 296.

903. *Add. Annotations :—***Followed.** Manchester Corpn. *v.* Bolton Area Assessment Committee & Little Hulton Urban District Council (1930), 144 L. T. 570. **Consd.** St. James' & Pall Mall Electric Light Co. *v.* Westminster (City) Assessment Committee (1932), 96 J. P. 296.

903a. —— ——.]—By sect. 111 of the Manchester Corpn. Waterworks Act, 1847, the corpn. were authorised to levy a domestic water rate on occupiers of property in the city & a public water rate on owners of such property. A poor rate was made in respect of a hereditament consisting of part of the aqueduct from T. to M. in the township of L. The method of assessment adopted by the corpn. & the assessment committee was that approved by the House of Lords in *Kingston Union* v. *Metropolitan Water Board,* No. 901, the profits basis system. For the relevant year the revenue of the corpn. in respect of their water undertaking was £755,043 5*s.* 8*d.*, including £79,099 13*s.* 11*d.*, the amount collected in respect of the public water rate. After deducting the expenditure of carrying on the undertaking there remained a balance of £462,335 4*s.* 2*d.*, &, out of this, provision was made (i) for payment of interest & dividends; (ii) for sinking fund in respect of the moneys borrowed by the corpn. under the statutory powers for their water undertaking, including sums to meet expenditure on the construction of works, none of which were completed or occupied or brought into use until after the period for which this rate

PART II. SECT. 1, SUB-SECT. 1.

y i. ——.]—*Re* HUDSON'S BAY CO. & CITY OF EDMONTON, [1932] 1 W. W. R. 796; 2 D. L. R. 815.—**CAN.**

y ii. —— *Possible use of property restricted.*]—GRAMPIAN REALITIES CO. *v.* MONTREAL EAST, [1932] 1 D. L. R. 705.—**CAN.**

sy. *Agreement for fixed assessment value—Basis of valuation—Construction of agreement.*]—CITY OF OTTAWA *v.* CANADIAN NATIONAL RYS., [1925] 3 D. L. R. 762; [1925] S. C. R. 494.—**CAN.**

sz. *Valuation for unearned increment tax.*]—*Re* WALLBRIDGE & REGISTRAR OF LAND TITLES, [1930] 2 W. W. R. 361; 3 D. L. R. 752; 4 D. L. R. 768; 3 W. W. R. 259.—**CAN.**

sa. *Equalisation of assessment.*]—Sect. 96a of Assessment Act was intended to govern the future method of equalising the assessment. The curtailment of the power to levy in future was to be in respect of an equalisation arrived at by the altered method but effected according to the orderly procedure already established by the Assessment Act & not otherwise.—*Re* ROCKCLIFFE PARK VILLAGE & CARLETON COUNTY, [1931] 4 D. L. R. 737; O. R. 737.—**CAN.**

sc. *Benefit from local improvements—Burden to be considered.*]—Where under City Act, R. S. S., 1930, the cost of local improvements is charged in whole or in part against the abutting or other property specially benefited thereby, the general assessment of such property should not be increased because of its additional value due to the local improvements, without, at least, taking into consideration the burden of the special assessments therefor.—HILLIER *v.* REGINA CITY, [1932] 2 W. W. R. 561.—**CAN.**

PART II. SECT. 1, SUB-SECT. 2.—A.

dd i. ——.]—EDINBURGH ASSESSOR *v.* CAIRA & CROLLA, [1928], S. C. 398.—**SCOT.**

dd ii. ——.]—HERITABLE SECURITY & MTGE. INVESTMENT ASSOCN., LTD. *v.* GLASGOW ASSESSOR, [1928] S. C. 401.—**SCOT.**

sv. *Farm let by father to son—Whether rent conditioned as fair annual value.*]—MARSHALL *v.* WIGTOWNSHIRE ASSESSOR, [1929] S. C. (Ct. of Sess.) 333.—**SCOT.**

PART II. SECT. 1, SUB-SECT. 2.—B.

f i. ——.]—RANGOON CITY CORPN. *v.* DAWOODJEE (1928), I. L. R. 6 Ran. 669.—**IND.**

g i. ——.]—RANGOON TURF CLUB *v.* RANGOON CORPN. (1927), I. L. R. 6 Ran. 75.—**IND.**

PART II. SECT. 2, SUB-SECT. 3.—A. (a).

t i. —— —— *Extraordinary cost of constructing reservoir during war.*]—FIFE ASSESSOR *v.* DUNFERMLINE DISTRICT COMMITTEE, [1929] S. C. (Ct. of Sess.) 304.—**SCOT.**

was made; & (iii) for the promotion of the Bill for the Manchester Corpn. Act, 1919, by which the corpn. were empowered to make & maintain further reservoirs at H. & other works, the construction of no part of which had been commenced The sum which had to be provided in the following year for debt charges in respect of moneys borrowed for the last-mentioned purposes amounted to £114,674, but there was no earmarking of the proceeds of the public water rate against this sum. The assessment committee, for the purposes of their valuation of this hereditament, included the whole of the sum of £79,099 13*s.* 11*d.*, the proceeds of the public water rate, in the gross revenue of the corpn.'s water undertaking & made no deduction in respect of debt charges:—*Held:* this sum should be excluded. But for the fact that the landlords' charges were included in the account there would have been no need for the hypothetical tenant to raise this public water rate or any part of it. The sum raised by the public water rate was part of a larger sum provided to meet debt charges in respect of money borrowed by the corpn. for the construction of additional works uncompleted & not in occupation at the date of the rate.—MANCHESTER CORPN. *v.* BOLTON AREA ASSESSMENT COMMITTEE & LITTLE HULTON URBAN DISTRICT COUNCIL (1931), 144 L. T. 571; (1926-31), 1 B. R. A. 463.

904. *Add. Annotation:*—**Refd.** Manchester Corpn. *v.* Bolton Area Assessment Committee & Little Hulton Urban District Council (1930), 144 L. T. 570.

920. *Add. Annotation:—Generally*, **Refd.** Consett Iron Co., Ltd. *v.* Durham County Assessment Committee for the North-Western Area (1930), 99 L. J. K. B. 277.

928a. —— **Hereditament must be assessed as productive or unproductive.**]—In the rating of a water undertaking extending over several parishes, ascertained on the profits basis as approved by the House of Lords in *Kingston Union & Metropolitan Water Board*, No. 901, a hereditament, part of the undertaking, in a parish which has been assessed on the contractor's basis as "indirectly productive" in that parish, cannot be at the same time further assessed at an additional sum as "directly productive." To do so would be to produce that very injustice which the profits formula was designed to prevent.—MANCHESTER CORPN. *v.* BOLTON AREA ASSESSMENT COMMITTEE & WESTHOUGHTON URBAN DISTRICT COUNCIL (1930), 144 L. T. 618; 95 J. P. 60; 47 T. L. R. 210; 29 L. G. R. 185; (1926-31), 1 B. R. A. 445, D. C.

1017. *Add. Annotation:*—**Consd.** London Playing Fields Society *v.* Essex (S. W. Area) Assessment Committee (1930), 94 J. P. 241; St. James' & Pall Mall Electric Light Co. *v.* Westminster (City) Assessment Committee (1932), 96 J. P. 296. **Refd.** Ladies' Hosiery & Underwear, Ltd. *v.* West Middlesex Assessment Area Assessment Committee (1932), 96 J. P. 336.

1057a. —— —— —— ——.]—On an appeal to quarter sessions against a rate for the half-year ended Mar. 31, 1928, in respect of certain coal mines of which applts. were occupiers, applts. contended that, inasmuch as the mines had been worked at a loss since 1925, the rateable values thereof should be reduced to nil, or, alternatively, to nominal amounts. On May 10, 1928, applts. entered into a new lease for a term of twenty years of part of their properties. Quarter sessions found that under the trade conditions prevailing

PART II. SECT. 2, SUB-SECT. 3.—B.

c i. —— *Houses occupied by employees —Showroom for sale of gas appliances.*]—CHIEFF GAS LIGHT CO., LTD. *v.* PERTHSHIRE ASSESSOR, KELTY GAS CO. *v.* FIFE ASSESSOR, [1928] S. C. (Ct. of Sess.) 455.—**SCOT.**

sb. *Gas mains—Taxable where situated.*]—MONTREAL LIGHT, HEAT & POWER CONSOLIDATED *v.* OUTREMONT, [1932] 2 D. L. R. 305.—**CAN.**

PART II. SECT. 2, SUB-SECT. 6.—A.

d i. ——.]—COUSIN *v.* EDINBURGH ASSESSOR, [1928] S. C. 392.—**SCOT.**

PART II. SECT. 2, SUB-SECT. 7.—A.

n i. *Whether houses let to miners entitled to deduction as being used for purposes of working mine.*]—CADZOW COLLIERY CO., LTD. *v.* LANARKSHIRE ASSESSOR, [1928] S. C. (Ct. of Sess.) 441.—**SCOT.**

PART II. SECT. 2, SUB-SECT. 13.

n (p. 574) **i.** ——.]—QUEENSLAND DEPOSIT BANK, LTD. *v.* BRISBANE CITY COUNCIL, [1928] S. R. Q. 13.—**AUS.**

h (p. 574) **i.** —— *Assessment made in one year adopted as assessment for following year—Removal of person from municipality.*]—Pltf. removed from the City of T. to the Township of Y. on Dec. 14, 1923. He paid an income tax to the City of T. in 1923 & to the Township of Y. in 1924. An assessment roll for the City of T. was prepared & settled in 1923, pursuant to bye-law under Assessment Act, R. S. O., 1914, s. 57, & pltf., then resident in T., was entered on that roll for income. This assessment of 1923 was, pursuant to sub-sect. 5 of said sect. 57, adopted by the City council of 1924, by bye-law passed Feb. 28, 1924, & the City levied on pltf. an income tax in 1924, which he paid under protest. He now sought repayment:—*Held:* pltf. should succeed.—SIFTON *v.* TORONTO CITY, [1929] 3 D. L. R. 852; S. C. R. 484; *revsg.*, [1929] 1 D. L. R. 933; 63 O. L. R. 397.—**CAN.**

h (p. 574) **ii.** —— —— ——.]—Pltf. corpn. sued deft. for income tax levied on her in 1930, based on an assessment roll prepared in 1929 & completed & returned by the assessor on Sept. 20, 1929, at which time deft. was residing in Ottawa. On Nov. 8, 1929, she removed from Ottawa & did not reside there again:—*Held:* from Nov. 8, 1929, to Apr. 3, 1930, deft. had a vested right to freedom from municipal taxation in Ottawa for 1930, & the Assessment Amendment Act of 1930, which came into force on Apr. 3, 1930, was not retroactive so as effectively to cancel & destroy deft.'s vested right.—OTTAWA *v.* KEMP, [1931] 4 D. L. R. 412; O. R. 753.—**CAN.**

aa (p. 574) **i.** *Effect of change of conditions in locality.*]—HUDSON'S BAY CO. *v.* PRINCE ALBERT, [1930] 3 W. W. R. 81.—**CAN.**

dd (p. 574) **i.** *Bridge over international river—Whether doctrine of "ad medium filum" applies.*]—*Re* FORT ERIE VILLAGE & BUFFALO & FORT ERIE PUBLIC BRIDGE CO., [1928] 1 D. L. R. 723; 61 O. L. R. 502.—**CAN.**

n (p. 575) **i.** *Lands converted from "dry" to "wet."*]—SECRETARY OF STATE FOR INDIA *v.* RAMANUJACHARIAR (1928), L. R. 55 Ind. App. 289.—**IND.**

r (p. 575) **i.** —— *Proper deductions from gross income.*]—(1) A joint stock trading co. being assessed for income by a city corpn. was held to have no right to deduct from its gross receipts a sum received from a building co. for dividends upon shares of the building co. owned by the trading co. The profit from which the dividends were paid by the building co., though derived from rentals of real property, & therefore not subject to assessment as income of the building co., were not received by the trading co. as rentals.

(2) The amount of the allowance for "overhead expenses" should be fixed & determinable in the proportion which the amount of non-taxable income bears to total gross income.

(3) The trading co., having power under its charter to acquire, hold, & sell the bonds & shares of other incorporated cos. purchased shares & bonds of the A. Co.; &, to finance the purchase, borrowed money from a bank:—*Held:* in the circumstances, interest paid by the trading co. to the bank upon the money borrowed should not, in fixing the amount of the trading co.'s assessable income, be deducted, as being expenses or carrying charges, from the gross receipts.—*Re* WALLACE REALTY CO. & OTTAWA, [1929] 4 D. L. R. 784; 64 O. L. R. 265; *affd. as to* (1) & (2); *revsd. as to* (3), [1930] S. C. R. 387; 3 D. L. R. 417.—**CAN.**

sw. *Deduction in respect of—Works used for manufacture of steel—What are —Not works preparing scrap metal for sale to steel manufacturers.*]—JOHN JACKSON & CO. (IRON MERCHANTS), LTD. *v.* GLASGOW ASSESSOR, [1928] S. C. 416.—**SCOT.**

sx. —— *Works for refining crude oil —What are—Works for refining tar.*]—

at the time when the rate was made, none of applts.' properties could be worked except at a loss, & that there was no indication that conditions of trade were likely to improve within a year; &, further, that the only basis on which any one could have been found who might have entered into a tenancy of the properties at that time would have been on the assumption that his tenancy would continue for a term of years & in the hope that conditions of trade would improve during that period. Upon these findings they rejected applts.' contention:—*Held:* (1) the expression "term of years," as used by quarter sessions, meant a tenancy from year to year, which might be put an end to on notice; where a colliery was actually being worked by the occupier as a going concern the expectation of better trade subsequent to the year of assessment was a consideration which might be taken into account in arriving at the true assessment; (2) inasmuch as quarter sessions had not included any matter of law which they ought to have excluded, or excluded any matter of law which they ought to have included, the *quantum* of the rateable values of the mines was a pure question of fact for that ct.—CONSETT IRON CO., LTD. *v.* DURHAM COUNTY ASSESSMENT COMMITTEE FOR NO. 5 OR NORTH-WESTERN AREA, [1931] A. C. 396; 100 L. J. K. B. 242; 144 L. T. 649; 95 J. P. 98; 47 T. L. R. 301; 29 L. G. R. 231; (1926-31), 1 B. R. A. 308, H. L.

Part III.—Special Rate.

1123. *Add. Citation:*—[1928] Ch. 340.

Part IV.—The Assessment.

1145. *Add. Annotation:*—**Distd.** Ladies' Hosiery & Underwear, Ltd. *v.* West Middlesex Assessment Area Assessment Committee (1932), 96 J. P. 336.

1146. *Add. Citations:*—97 L. J. K. B. 10; (1926-31), 1 B. R. A. 231.

1146a. —— —— **Rating & Valuation Act, 1925 (c. 90), Sched. I., provisions 11, 12.**]—By provision 12 of Sched. I. to the Rating & Valuation Act, 1925: "No person who is a member of any committee to which the duties of the rating authority with respect to the preparation of the valuation list are delegated shall be qualified for appointment as a member of the assessment committee."

A rating authority had appointed a sub-committee to fix the values of properties in the district for the purpose of the preparation of the valuation list. They appointed P. & G. members thereof, & subsequently appointed the same two persons as their representatives on the resp. assessment committee. The applicant had given notice of objections to his assessment to the resp. committee, & on learning the above facts, obtained a rule *nisi* for a prohibition to that committee from hearing & determining his objection:—*Held:* (1) a writ of prohibition would lie to an assessment committee; (2) within provision 12, the duties of the rating authority with respect to the preparation of the valuation list had been delegated to the sub-committee of which P. & G. were members, &, consequently, they were disqualified from sitting on the assessment committee under provision 12, although at the time of their appointment thereto they were not disqualified; (3) P. & G. were not interested "otherwise" within provision 11, which refers to an interest *ejusdem generis* as that of an owner or occupier.—R. *v.* NORTH WORCESTERSHIRE ASSESSMENT COMMITTEE, *Ex p.* HADLEY, [1929] 2 K. B. 397; 98 L. J. K. B. 605; 141 L. T. 557; 93 J. P. 199; 45 T. L. R. 525; 27 L. G. R. 458; (1926-31), 1 B. R. A. 279, D. C.

1146b. —— **Jurisdiction of High Court—Prohibition.**]—R. *v.* NORTH WORCESTERSHIRE ASSESSMENT COMMITTEE, *Ex p.* HADLEY, No. 1146a, *ante*.

JAMES ROSS & CO. (LIME WHARF), LTD. *v.* STIRLINGSHIRE ASSESSOR, [1928] S. C. 420.—**SCOT.**

sy. —— *Manufactory—What is—Not cellars & warehouse used for "quieting," "fining," bottling & maturing beer.*]—WHITBREAD & CO., LTD. *v.* EDINBURGH ASSESSOR, [1928] S. C. 425.—**SCOT.**

sz. —— —— —— *Not warehouse, stores & workshops of whisky blender.*]—JOHN WALKER & SONS, LTD. *v.* KILMARNOCK ASSESSOR, [1928] S. C. 430.—**SCOT.**

sb. *Distillery—Bonded warehouses apart from distillery—Whether whole entitled to deduction as manufactory.*]—DISTILLERS CO., LTD. *v.* EDINBURGH ASSESSOR, [1928] S. C. (Ct. of Sess.) 435.—**SCOT.**

sc. —— *Bonded warehouse forming integral part of distillery—Whether whole entitled to deduction as manufactory.*]—LANARKSHIRE ASSESSOR *v.* DISTILLERS . C. (Ct. (

sd. —— *Erected on ground rented by manufacturer—Whether works & ground entitled to deductions.*]—LONDON & NORTH-EASTERN RY CO. *v.* GLASGOW ASSESSOR, [1929] S. C. (Ct. of Sess.) 325.—**SCOT.**

se. *Grandstand & buildings erected for greyhound racing track.*]—SCOTTISH GREYHOUND RACING CO., LTD. *v.* GLASGOW ASSESSOR, [1929] S. C. (Ct. of Sess.) 285.—**SCOT.**

sh. *Manufactory—Part of process carried on at separate works—Whether whole entitled to deduction.*]—GLASGOW ASSESSOR *v.* SCOTTISH TUBE CO., LTD., [1928] S. C. (Ct. of Sess.) 466.—**SCOT.**

sk. —— *Stores, warehouses or other subjects associated with but not forming integral part of manufactory—Whether whole entitled to deduction.*]—JOHN LENG & CO., LTD. *v.* DUNDEE ASSESSOR, DUNDEE ASSESSOR *v.* DON BROS. BUIST & CO., LTD., DUNDEE ASSESSOR *v.* CAIRD (DUNDEE), LTD., BELL & SIME *v.* DUNDEE ASSESSOR, DISTILLERS CO., LTD. *v.* GLASGOW ASSESSOR, [1929] S. C. (Ct. of Sess.) 315.—**SCOT.**

sl. —— *Premises used for cold storage —& manufacture of ice—Whether premises entitled to deduction.*]—MILNE, WILLIAM, LTD. *v.* GLASGOW ASSESSOR, UNION COLD STORAGE CO., LTD. *v.* GLASGOW ASSESSOR, [1929] S. C. (Ct. of Sess.) 296.—**SCOT.**

sm. *Combined iron & steel works—Whether to be treated as unum quid for purposes of deductions.*]—COLVILLE DAVID & SONS, LTD. *v.* AYRSHIRE ASSESSOR, [1928] S. C. (Ct. of Sess.) 460.—**SCOT.**

sn. *Carting contractor's premises—Comprising stables, workshops, etc.—Capable of being let for separate occupation—Whether whole to be treated as unum quid.*]—COWAN & CO. *v.* EDINBURGH ASSESSOR, COWAN & CO. *v.* GLASGOW ASSESSOR, [1928] S. C. (Ct. of Sess.) 450.—**SCOT.**

1157. *Add. Annotation :*—**Consd.** Ladies' Hosiery & Underwear, Ltd. *v.* West Middlesex Assessment Area Assessment Committee (1932), 96 J. P. 336.

1158a. —— No injustice—Similar properties incorrectly assessed.]—Applts., who were assessed in respect of their premises at £325 gross & £267 rateable value, objected that they had been incorrectly & unfairly assessed in that seven other hereditaments of the same class in the same valuation list had been assessed at lower figures. Applts. called no evidence to prove that their assessment was higher than the rent which might be expected to be obtained for their premises, & their only witness agreed that the rent would be at least £325 ; nor did applts. seek to alter the assessments of the seven other hereditaments, but they sought to use these as evidence that their own assessment was excessive & unfair :—*Held :* as applts.' hereditament had been entered in the valuation list at the proper figure, evidence that the seven other hereditaments had been assessed at a lower figure was irrelevant & could not be used to justify a reduction of applts.' assessment. That evidence was of no weight unless for the purpose, on proper notice, of correcting the inaccuracy of the other hereditaments.—LADIES' HOSIERY & UNDERWEAR, LTD. *v.* WEST MIDDLESEX ASSESSMENT COMMITTEE, [1932] 2 K. B. 679 ; 101 L. J. K. B. 632 ; 147 L. T. 390 ; 96 J. P. 336 ; 30 L. G. R. 369, C. A.

1158b. Return required by rating authority—Form—Validity.]—Defts. for the purpose of making a new valuation list under Rating & Valuation Act, 1925 (c. 90), s. 40, having served a notice on pltf. requiring him to make a return of certain particulars, including " gross takings & outgoings " of his licensed premises & other particulars not contained in Rating & Valuation Act (Returns) Rules, 1926, Sched., pltf. commenced an action for a declaration that the form of returns required was illegal, unauthorised & *ultra vires*, & called evidence to prove that the offending requisitions were not " reasonably required for the purpose of carrying out this Act " within the above sect. :—*Held :* pltf. had proved his case & was entitled to the declaration claimed.—GRANT *v.* KNARESBOROUGH URBAN COUNCIL, [1928] Ch. 310 ; 97 L. J. Ch. 106 ; 138 L. T. 488 ; 92 J. P. 30 ; 44 T. L. R. 224 ; 26 L. G. R. 165 ; (1926–31), 1 B. R. A. 238.

1159. *Add. Annotation :—As to* (2) **Refd.** R. *v.* West Norfolk Assessment Committee, *Ex p.* Ward (F. B.) (1930), 94 J. P. 201.

1162. *Add. Annotation :—As to* (2) **Refd.** Ladies' Hosiery & Underwear, Ltd. *v.* West Middlesex Assessment Area Assessment Committee (1932), 96 J. P. 336.

1164. *Add. Citation :*—(1926–31), 1 B. R. A. 70. *Add. Annotation :*—**Consd.** Kingston Mill, Stockport *v.* Owen (1928), 141 L. T. 161.

1168a. —— Valuation officer present—Proceedings invalid.]—R. *v.* SURREY COUNTY ASSESSMENT COMMITTEE, NORTH-EASTERN AREA, *Ex p.* WOOLWORTH & CO. (1932), 174 L. T. Jo. 507, D. C.

1169. *Add. Annotation :*—**Refd.** *Re* Airedale Garage Co., Anglo-South American Bank, Ltd. *v.* Airedale Garage Co. (1932), 101 L. J. Ch. 289.

Part V.—Making of the Rate.

SECT. 2.—AMENDMENT OF RATE (Vol. XXXVIII., p. 585).

Add the following case :—

1184a. Duty of rating authority to alter " then current rate "—On alteration of valuation list by assessment committee.]—Applts., in Jan. 1927, gave notice of objection to the valuation list, & relief was refused by the assessment committee. In Nov. 1927 the new assessment committee which came into being on Apr. 1, 1927, reconsidered applts.' objection & granted relief, as from Apr. 1, 1926. They altered the valuation list accordingly, but the rating authority refused to alter the rate book, on the ground that the assessment committee could not make their reconsidered decision relate back to the earlier rating period in which the objection had been originally taken & decided :—*Held :* it was the duty of the rating authority to alter their " then current rate " on receipt of notice from the assessment committee, & " then current rate " meant the rate current at the date of the objection.—KINGSTON MILL, STOCKPORT, LTD. *v.* OWEN (1928), 141 L. T. 161 ; 93 J. P. 58 ; 45 T. L. R. 107 ; 27 L. G. R. 12 ; (1926–31), 1 B. R. A. 273, D. C.

1188a. Change in amount—Disallowance of relief.]—Where in the assessment of property relief has been claimed & in the first instance allowed in the valuation list under the derating provisions of Local Government Act, 1929 (c. 17), but subsequently disallowed, the resulting change in the amount of a rate payable in respect of that property takes effect as from the date of the making of the rate, as if the change had been caused by a proposal for the amendment of the rateable value.—*Re* AIREDALE GARAGE CO., LTD., ANGLO-SOUTH AMERICAN BANK *v.* AIREDALE GARAGE CO. (1932), 101 L. J. Ch. 289 ; 147 L. T. 372 ; 96 J. P. 312 ; 48 T. L. R. 477 ; 30 L. G. R. 286, C. A.

1193. *Add. Annotation :*—**Refd.** A.-G. *v.* Leeds Corpn., [1929] 2 Ch. 291.

1225. *Add. Annotation :*—**Apld.** A.-G. *v.* London & Home Counties Joint Electricity Authority, [1929] 1 Ch. 513.

PART IV. SECT. 2, SUB-SECT. 1.

n (p. 580) **i.** —— ——.]—VARSON *v.* TOWN OF VEGREVILLE (1916), 34 W. L. R. 504.—**CAN.**

ff (p. 580) **i.** —— *Error as to ownership.*]—KRUMM *v.* SHEPARD (Alta.), [1927] 3 D. L. R. 364 : [1927] 2 W. W. R. 330 : *affd.*, [1928] 3 D. L. R. 887 ; [1928] S. C. R. 487.—**CAN.**

i (p. 581) **i.** —— ——.]—*Re* GERMANTOWN LAKE DISTRICT SEWERS COMRS. *Ex p.* CALHOUN (1863), 10 N. B. R. (5 All.) 454.—**CAN.**

q (p. 582) **i.** —— —— " *Parcel* "—*What is.*]—*Re* MCBRIDE (1927), 38 B. C. R. 431.—**CAN.**

PART V. SECT. 4, SUB-SECT. 1.

sb. *Expense of aqueduct.*]—ST. HYACINTHE (ŒUVRE DU PATRONAGE DE) *v.* ST. HYACINTHE CITY (1926), Q. R. 41 K. B. 496.—**CAN.**

PART V. SECT. 4, SUB-SECT. 2.—C.

sc. *Government annuity.*]—*Held :* the annuity paid to a person by virtue of a Dominion Government annuity contract, issued under the provisions of 7 & 8 Edw. 7, c. 5, is " income " within Income War Tax Act, 1917, &

Part VI.—Appeals.

1297a. No appeal from sessions on question of fact —What is question of fact—Quantum of rateable value of mine.]— CONSETT IRON CO., LTD. *v.* DURHAM COUNTY ASSESSMENT COMMITTEE FOR NO. 5 OR NORTH-WESTERN AREA, No. 1057a, *ante.*

1297b. Appeal from Divisional Court to Court of Appeal — Time for.]— BOTTOMLEY *v.* WEST DERBY ASSESSMENT COMMITTEE, MERSEY DOCKS & HARBOUR BOARD *v.* WEST DERBY ASSESSMENT COMMITTEE, BOTTOMLEY *v.* MERSEY DOCKS & HARBOUR BOARD, BOTTOMLEY *v.* LIVERPOOL GRAIN STORAGE & TRANSIT CO., LTD., No. 226ff, *ante.*

1309. For " *affg.*" read " *revsg.*"

Add. Annotation :—As to (1) **Consd.** R. *v.* West Norfolk Assessment Committee, *Ex p.* Ward (F. B.) (1930), 94 J. P. 201.

1321a. —— Appeal by county valuation committee —Against several assessments—One notice sufficient.]—Where a county valuation committee appointed under Rating & Valuation Act, 1925 (c. 90), s. 18, appeals to quarter sessions in respect of the assessments of a number of hereditaments in the same assessment area, it may serve one notice of appeal, & set out the particulars of the assessments in a schedule. Separate appeals are not necessary, provided that copies of the notice are served upon all persons who would be entitled to be served if separate appeals were lodged.—GLAMORGAN COUNTY VALUATION COMMITTEE *v.* BARRY AREA ASSESSMENT COMMITTEE, [1931] 1 K. B. 157; 99 L. J. K. B. 516; 144 L. T. 203; 94 J. P. 238; 46 T. L. R. 635; 28 L. G. R. 523; (1926-31), 1 B. R. A. 433, D. C.

1328a. —— Where one notice of appeal against several assessments.]—GLAMORGAN COUNTY VALUATION COMMITTEE *v.* BARRY AREA ASSESSMENT COMMITTEE, No. 1321a, *ante.*

1332. *Add. Annotation :*—**Consd** Embleton *v.* Norwich Union Life Insce. Soc., Norwich Union Life Insce. Soc. *v.* Embleton (1927), 11 Tax Cas. 681.

1355. *Add. Annotation :*—**Refd.** Ladies' Hosiery & Underwear, Ltd. *v.* West Middlesex Assessment Area Assessment Committee (1932), 96 J. P. 336.

1381. *Add. Annotation :—As to* (2) **Consd.** Glamorgan County Valuation Committee *v.* Barry Area Assessment Committee (1930), 99 L. J. K. B. 615.

1392a. Next sessions after date of rate—Not date of realisation of grievance—County Rate Act, 1852 (c. 81), s. 22.]—The appeal given by above sect., to a parish which is " aggrieved by any rate or assessment " made upon the county rate basis to " the next quarter sessions of the peace after such cause of appeal shall have arisen " must be brought to the next practicable quarter sessions after the parish is in fact aggrieved by the rate; the appeal is not to the next practicable quarter sessions to be held after the parish finds out that it is aggrieved.

A county rate which affected the parish of M. was made in Oct. 1904. In Jan. 1905, as the result of an appeal by a railway co. against their assessment to the poor rate in the parish of M., the rateable value of the parish for the purpose of the county rate basis or standard was reduced by a considerable sum. On Apr. 17, 1905, the parish council of M. gave notice of appeal to the next quarter sessions against such part of the basis or standard as affected that parish, & also against the rate existing upon that basis or standard,

is not issued free of taxation.—KENNEDY *v.* MINISTER OF NATIONAL REVENUE, [1929] Ex. C. R. 36.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 1.

b (p. 600) **i.** ——.]—Observations upon the impropriety of members of a valuation committee taking part in the decision of a case, in which they have a personal interest.—LANARKSHIRE ASSESSOR *v.* O'HARA, [1928] S. C. 391.—**SCOT.**

b (p. 600) **ii.** —— *To report to municipal council.*]—COLQUHOUN *v.* DRISCOLL (1894), 10 Man. L. R. 254.—**CAN.**

b (p. 600) **iii.** —— *Appeal against equalised assessment—Under Public Schools Act.*]—On an appeal against the equalised assessments made under Public Schools Act, s. 133, as amended by 1928, c. 48, s. 13, the only question for the judge to decide is whether the equaliser has done what the statute as amended requires him to do, *i.e.* made his equalisation on the basis of the equalisation made by the Manitoba Tax Commission.—*Re* BEAUSEJOUR SCHOOL DISTRICT, [1928] 3 W. W. R. 310.—**CAN.**

b (p. 600) **iv.** —— *Board of Revision & Valuation—To state case—Question of law.*] — *Re* WINNIPEG CHARTER, [1928] 1 W. W. R. 613.—**CAN.**

b (p. 600) **v.** ——.]—*Re* VANCOUVER INCORPORATION ACT & CANADIAN PACIFIC RY., [1930] 4 D. L. R. 80.—**CAN.**

l (p. 601) **i.** ——.]—B. was tenant of property in a city when an assessor was making his rounds, & she was correctly entered on his roll as a separate school supporter. Some time later, before the roll was finally revised, B. vacated the premises & they were occupied by another resident who was a public school supporter :—*Held :* although the entry of B.'s name was not an error at the time it was made, it became an error before the roll was finally returned, & the absence from the roll of the new tenant was an omission; & the error as to one tenant & the omission as to the other were, upon a proper appeal, open to correction by the ct. of revision or by the county ct. judge upon appeal from the ct. of revision.—*Re* BAYACK, [1929] 3 D. L. R. 480; 64 O. L. R. 14.—**CAN.**

l (p. 601) **ii.** —— ——.]—The Ct. of Revision under s. 56 of Assessment Act, R. S. O., 1927, has no higher power than to make such corrections as the assessor might, & if he had been aware of them, ought to have made.—CAVEN *v.* OTTAWA, [1932] O. R. 369; 3 D. L. R. 42.—**CAN.**

bb (p. 601) **i.** —— *Lands Valuation Appeal Court—Appeal not involving question of value.*]—GLASGOW ASSESSOR *v.* GLASGOW CORPN., [1929] S. C. (Ct. of Sess.) 291.—**SCOT.**

tt (p. 601) **i.** ——.]—*Re* FRASER'S APPEAL, *Re* WINNIPEG CHARTER, [1927] 4 D. L. R. 213; [1927] 2 W. W. R. 600; 36 Man. L. R. 597.—**CAN.**

tt (p. 601) **ii.** ——.]—QUINN *v.* SALMON ARM, [1929] 4 D. L. R. 1085; 40 B. C. R. 111.—**CAN.**

tt (p. 601) **iii.** ——.]—A complaint having been made to a ct. of revision against an assessment it merely dismissed the complaint & ordered a new assessment. Two days later it adopted the assessor's report of the new assessment which reduced the former assessment :—*Held :* the taxpayer could not be deprived by said procedure of his right of appeal to the judge of the county ct.—BAIRD *v.* WEST KILDONAN, [1929] 4 D. L. R. 306; 2 W. W. R. 455; 38 Man. L. R. 232.—**CAN.**

xx (p. 601) **i.** —— *Method of appeal laid down by taxing statute.*]—CHARLOTTETOWN *v.* TANTON, [1930] 4 D. L. R. 61.—**CAN.**

ss. *Whether barred where appellant has furnished statement of value.*]—*Held :* when a person has, under Lands Valuation (Scotland) Act, 1854, s. 7, furnished the assessor with a written statement of value, he is not thereby barred from appealing, under sect. 9 of the Act, against that value as excessive.—COWDENBEATH PUBLIC-HOUSE SOCIETY, LTD. *v.* FIFE ASSESSOR, [1929] S. C. (Ct. of Sess.) 280.—**SCOT.**

PART VI. SECT. 1, SUB-SECT. 7.

a i. —— —— —— *Time for bringing action.*]—BARISH & CO. *v.* GAP NO. 3 RURAL MUNICIPALITY & BISS, [1925] 3 D. L. R. 738; [1925] 2 W. W. R. 518; 19 Sask. L. T. 560.—**CAN.**

they alleging that they only knew of the result of the appeal by the railway co. & its effect on the county rate basis on Mar. 28 :— *Held :* the parish council had not appealed against the county rate to the next quarter sessions after the "cause of appeal" had arisen within above sect., & therefore the quarter sessions had no jurisdiction to entertain the appeal against the rate.—WEST RIDING OF YORKSHIRE COUNTY COUNCIL *v.* MIDDLETON PARISH COUNCIL, [1906] 2 K. B. 157 ; 75 L. J. K. B. 485 ; 94 L. T. 785 ; 70 J. P. 326 ; 22 T. L. R. 493 ; 4 L. G. R. 624, D. C.

Annotations :—**Consd.** Glamorgan County Council *v.* Barry Overseers, [1912] 2 K. B. 603 ; R. *v.* Carnarvonshire JJ. *Ex p.* Carnarvon County Council, [1918] 1 K. B. 280.

Part VIII.—Recovery of Rate.

1464. After this case in cross-reference "**Poverty of ratepayer.**]—See Rating & Valuation Act, 1925 (c. 90), s. 4" read "s. 2 (3), (4)" for "s. 4."

1477a. —— **Depends on actual occupation.**]—LONDON COUNTY COUNCIL *v.* HACKNEY BOROUGH COUNCIL, No. 37a, *ante*.

PART VIII. SECT. 1.

e (p. 621) i. —— *What defences available.*]—VILLAGE OF HAGERSVILLE *v.* HAMBLETON, [1927] 4 D. L. R. 1044 ; 61 O. L. R. 327.—**CAN.**

e (p. 621) ii. —— *Effect of distraining on right to sue.*]—When a rural municipality distrains under Rural Municipality Act, R. S. S., 1920, for overdue taxes, its right to recover judgment for the taxes as a debt is suspended while the distress exists & until the sale thereunder, since although the Act provides that overdue taxes may be recovered by distress & also by action as a debt it does not provide that these remedies may be pursued concurrently.—GISLASON *v.* RURAL MUNICIPALITY OF FOAM LAKE & WARD, [1929] 2 D. L. R. 386 ; 1 W. W. R. 233 ; 23 S. L. R. 359.—**CAN.**

e (p. 621) iii. —— *Against purchaser of land—Effect of War Revenue Amendment Act, 1926, s. 6.*]—*Held :* the expression "the personal covenant to pay" in above sect. means "any personal covenant to pay," & thereby protects a purchaser from actions to recover on a covenant to pay interest or taxes as well as on one to pay the purchase-money, even though the taxes agreed to be paid by the purchaser have been paid by the vendor.—ROBSON *v.* GRAHAM, [1929] 4 D. L. R. 902 ; 3 W. W. R. 149 ; 38 Man. L. R. 336.—**CAN.**

e (p. 621) **iv.** *In summary way — Impost sanctioned under Water Act, 1912.*]—The impost sanctioned in Water Act, 1912, s. 88 (1), is a rate & may be recovered in a summary way in accordance with the procedure prescribed by sect. 89 (3) of that Act.—*Re* JAMIESON, *Ex p.* CHRISTIAN (1928), 28 S. R. N. S. W. 275.—**AUS.**

n (p. 621) i. —— —— ——.]—CLARY *v.* BOULAY (Ont.), [1928] 2 D. L. R. 144.—**CAN.**

n (p. 621) ii. —— —— *Lessee.*]—HEYDEN *v.* CASTLE (1888), 15 O. R. 257.—**CAN.**

p (p. 621) i. —— —— *Mayor.*]—GREENSTREET *v.* PARIS HYDRAULIC CO. (1874), 21 Gr. 229.—**CAN.**

q (p. 621) i. —— —— *Reeve.*]—TOTTEN *v.* TRUAX (1889), 16 O. R. 490.—**CAN.**

bb (p. 621) i. —— —— ——.]—TETRAULT *v.* VAUGHAN (1899), 12 Man. L. R. 457.—**CAN.**

bb (p. 621) ii. —— —— ——.]—BANNATYNE *v.* PRITCHARD (1906), 16 Man. L. R. 407 ; 5 W. L. R. 478.—**CAN.**

bb (p. 621) iii. —— —— *Agricultural co-operative association.*]—MEASNER *v.* BENGERT, [1927] 3 D. L. R. 938 ; [1927] 2 W. W. R. 713 ; 21 Sask. L. R. 572 ; *varying*, [1927] 3 D. L. R. 205.—**CAN.**

bb (p. 621) **iv.** —— —— *Life tenant —Whether rights of remainderman defeated.*]—A life tenant cannot by defaulting in the payment of taxes & then acquiring the tax-sale title, instead of redeeming, defeat the remainderman's rights.—MAYO *v.* LEITOVSKI, [1928] 1 W. W. R. 700.—**CAN.**

dd (p. 621) i. —— ——.]—CONNOR *v.* MCPHERSON (1871), 18 Gr. 607.—**CAN.**

ff (p. 621) i. —— —— ——.]—GEMMEL *v.* SINCLAIR (1885), 1 Man. L. R. 85.—**CAN.**

kk (p. 621) i. —— —— *Lots on plan in registry not duly certified by surveyor.*]—ASTON *v.* INNIS (1878), 26 Gr. 42.—**CAN.**

kk (p. 621) ii. —— —— —— *Fixtures—Buildings & machinery.*]—Buildings erected by the owner of land for use in the making of bricks held to form part of the realty, although some of them were attached to the land by nothing but their own weight. They therefore became the property of deft., who became registered owner of the land in pursuance of the purchase thereof at a tax sale under Assessment Act. Certain machinery in said buildings was also held part of the realty.—MCCUTCHEON *v.* LIGHTFOOT, [1928] 2 W. W. R. 240.—**CAN.**

ll (p. 621) i. —— ——.]—*Re* HENDERSON (1891), 7 Man. L. R. 481.—**CAN.**

ll (p. 621) ii. —— ——.]—*Re* CAREY & LOT 65, SUB-DIVISION OF LOT 39 E., ST. JOHN (1893), 9 Man. L. R. 483.—**CAN.**

ll (p. 621) iii. —— ——.]—RUSH *v.* PEMBINA (Alta.), [1927] 1 D. L. R. 394 ; [1927] 1 W. W. R. 215.—**CAN.**

qq (p. 621) i. —— *How far deed conclusive.*]—ARCHIBALD *v.* YOUVILLE (1891), 7 Man. L. R. 473.—**CAN.**

qq (p. 621) ii. —— —— ——.]—SCHULTZ *v.* ALLOWAY (1894), 10 Man. L. R. 221.—**CAN.**

tt (p. 621) i. —— —— ——.]—WEEGAN *v.* MCDIARMID (1862), 12 C. P. 499.—**CAN.**

vv i. —— —— —— ——.]—LOUNT *v.* WALKINGTON (1868), 15 Gr. 332.—**CAN.**

e (p. 622) i. —— —— —— *Whether seal valid.*]—MCRAE *v.* CORBETT (1890), 6 Man. L. R. 426.—**CAN.**

e (p. 622) ii. —— —— ——.]—NANTON *v.* VILLENEUVE (1894), 10 Man. L. R. 213.—**CAN.**

e (p. 622) iii. —— —— —— *Deed not in duplicate.*]—NANTON *v.* VILLENEUVE (1894), 10 Man. L. R. 213.—**CAN.**

e (p. 622) iv. —— —— —— *Injunction to restrain issue of deed—No bye-law passed.*]—JAMES *v.* BELL, 11 C. L. T. Occ. N. 57.—**CAN.**

e (p. 622) v. —— *Amendment of Tax Recovery Act*, 1919 (c. 20), s. 44a.]—THACKER *v.* SMOKY LAKE MUNICIPAL DISTRICT, SHEARER *v.* SMOKY LAKE MUNICIPAL DISTRICT, A.-G. OF ALBERTA *v.* SMOKY LAKE MUNICIPAL DISTRICT, PELLETIER *v.* OPAL MUNICIPAL DISTRICT (Alta.), [1924] 3 W. W. R. 929.—**CAN.**

g (p. 622) i. —— ——.]—If when land has been sold by a municipality for taxes the notice provided for by sect. 42 of Tax Recovery Act, or in lieu thereof that provided for by sect. 9 of Tax Sale Relief Act, 1922, has not been sent to the owner the sale is invalid. If in an action by the owner to recover damages for the wrongful sale he testifies that he never received said notice & the ct. sees no reason to disbelieve him, the onus is on the municipality to prove that it was sent.—KOWNATZKI *v.* BEAR LAKE, MUNICIPAL DISTRICT, [1930] 3 W. W. R. 353 ; [1931] 1 D. L. R. 334 ; *revsd. on other grounds*, [1931] 1 W. W. R. 757 ; 2 D. L. R. 318 ; 25 Alta. L. R. 351.—**CAN.**

n (p. 622) i. —— ——.]—DOE d. UPPER *v.* EDWARDS (1849), 5 U. C. R. 594.—**CAN.**

n (p. 622) ii. —— —— ——.]—DONOVAN *v.* HOGAN (1888), 15 A. R. 432.—**CAN.**

bb (p. 622) i. —— ——.]—WHITE *v.* MUNICIPAL DISTRICT OF INGA & PIDGEON, [1929] 1 D. L. R. 360 ; 1 W. W. R. 172 ; 23 Alta. L. R. 585 ; *revsg.*, [1928] 3 D. L. R. 829 ; 3 W. W. R. 251.—**CAN.**

dd (p. 622) i. —— —— —— *Notice to mortgagee of application for title sent to wrong address & not delivered.*]—HOWE *v.* KIPP, [1927] 3 D. L. R. 1048 ; [1927] 2 W. W. R. 522 ; 21 Sask. L. R. 637.—**CAN.**

ff (p. 622). *Revsd.*, [1927] 1 D. L. R. 1063 ; [1927] S. C. R. 50.—**CAN.**

gg (p. 622) i. —— ——.]—RUSH *v.* PEMBINA (Alta.), [1927] 1 D. L. R. 394 ; [1927] 1 W. W. R. 215.—**CAN.**

kk (p. 622) i. —— —— —— ——.]—DONOVAN *v.* HOGAN (1888), 15 A. R. 432.—**CAN.**

ggg (p. 622) i. ——.]—SUMMERLAND DEVELOPMENT CO., LTD. *v.* SUMMERLAND, [1928] 4 D. L. R. 258 ; [1928] 3 W. W. R. 145.—**CAN.**

mmm (p. 622) i. —— —— ——.]—HILL *v.* MACAULAY (1884), 6 O. R. 251.—**CAN.**

mmm (p. 622) ii. —— —— ——.]—REED *v.* SMITH (1884), 1 Man. L. R. 341.—**CAN.**

mmm (p. 622) iii. —— —— ——.]—TETRAULT *v.* VAUGHAN (1899), 12 Man. L. R. 457.—**CAN.**

rrr (p. 622) i. —— ——.]—GREENSTREET *v.* PARIS HYDRAULIC CO. (1874), 21 Gr. 229.—**CAN.**

ttt (p. 622) i. —— ——.]—WOOD *v.* BIRTLE (1887), 4 Man. L. R. 415.—**CAN.**

1488. *Add. Annotation :*—**Refd.** L. C. C. *v.* Hackney B. C., [1928] 2 K. B. 588.

1525a. Effect of compounding allowance—On proceedings for recovery under Poor Rate Assessment & Collection Act, 1869 (c. 41), s. 2.]—Where owners are rated instead of the occupiers, the fact that the owners are entitled to an allowance if the rate is paid by a certain date does not preclude the rating authority from enforcing at an earlier date payment of so much of the rate as is recoverable at one time under Poor Rate Assessment & Collection Act, 1869 (c. 41), s. 2.—LOWERY *v.* KINGSTON-UPON-HULL CORPN., [1930] 1 K. B. 368 ; 73 Sol. Jo. 819 ; *sub nom.* LOWERY *v.* HULL CORPN., 99 L. J. K. B. 127 ; 142 L. T. 286 ; 94 J. P. 50 ; 28 L. G. R. 27 ; 46 T. L. R. 57 ; (1926-31), 1 B. R. A. 359, D. C.

Part IX.—Rates and Rating in the Metropolis.

1536. *Add. Annotation :*—**Refd.** Consett Iron Co. *v.* Durham County Assessment Committee for No. 5 or North-West Area (1930), 99 L. J. K. B. 277.

1545. *Add. Annotation :*—**Refd.** Towle *v.* Improved Industrial Dwellings Co., [1931] 1 K. B. 263.

1546. *Add. Annotation :*—**Refd.** Towle *v.* Improved Industrial Dwellings Co., [1931] 1 K. B. 263.

1561. *Add. Annotation :*—**Refd.** R. *v.* Stepney Corpn., *Ex p.* Walker & Sons, Ltd. (1932), 96 J. P. 360.

1564a. Failure to object in time—Whether mandamus to alter lies.]—The prosecutors were the occupiers of hereditaments which they claimed to be industrial hereditaments, but on Dec. 11, 1929, quarter sessions decided, subject to a special case, that the said hereditaments were not entitled to be placed in the special list. Before the case stated was heard, the quinquennial valuation list, 1930, was deposited & approved. No objection to that list, which included all the said hereditaments as non-industrial, was taken by the prosecutors on the assumption that, if the Div. Ct. decided in their favour on the case stated, the amendment of the new valuation list would follow automatically. On Apr. 6, 1931, the new valuation list came into force, and on Apr. 23, 1931, the Div. Ct. allowed the prosecutors' appeal from quarter sessions, & ordered the hereditaments to be inserted in the special list. This was done so far as the old valuation list was concerned, but the rating authority refused to alter the new valuation list, on the ground that they

k (p. 623) i. —— —— —— ——.]—MCDONALD *v.* ROBILLARD (1863), 23 U. C. R. 105.—**CAN.**

r (p. 623) i. —— —— *Whether sale conducted in fair, open & proper manner.*]—DONOVAN *v.* HOGAN (1888), 15 A. R. 432.—**CAN.**

r (p. 623) ii. —— —— ——.]—MCRAE *v.* CORBETT (1890), 6 Man. L. R. 426.—**CAN.**

r (p. 623) iii. —— —— ——.]—SCOTT *v.* IMPERIAL LOAN CO. (1896), 11 Man. L. R. 190.—**CAN.**

dd (p. 623) i. —— —— *Right to recover damages against municipality—Assessment Act, R. S. M. (c. 101), s. 192.*]—CLEMONS *v.* ST. ANDREWS (1896), 11 Man. L. R. 111.—**CAN.**

oo (p. 623) i. —— —— —— *Property not sufficiently defined or described.*]—TOWNSEND *v.* ELLIOTT (1861), 11 C. P. 217.—**CAN.**

oo (p. 623) ii. —— —— —— ——.]—DOMANISKY *v.* FITZGERALD (1921), 62 D. L. R. 524 ; 55 N. S. R. 1.—**CAN.**

pp (p. 623) i. —— —— —— *Issued under repealed statute.*]—NANTON *v.* VILLENEUVE (1894), 10 Man. L. R. 213.—**CAN.**

nnn (p. 623) i. —— —— *Burden of proof—Of invalidity.*]—MCRAE *v.* CORBETT (1890), 6 Man. L. R. 426.—**CAN.**

nnn (p. 623) ii. —— —— —— *Of validity.*]—ALLOWAY *v.* CAMPBELL (1891), 7 Man. L. R. 506.—**CAN.**

ooo (p. 623) i. —— —— *Bidding more than amount due for taxes and costs—Effect of.*]—*Re* DUNN & EXPROPRIATION ACT (1898), 12 Man. L. R. 78.—**CAN.**

ooo (p. 623) ii. —— —— *Mortgagee—Taking assignment of tax sale certificate & obtaining title—Extinguishment of mortgagor's rights.*]—FARROW *v.* MASSEY-HARRIS CO., LTD., [1927] 3 D. L. R. 997 ; [1927] 2 W. W. R. 539 ; 21 Sask. L. R. 610.—**CAN.**

ooo (p. 623) iii. —— —— *Statement in certificate of title that title subject to existing leases—Effect of.*]—SHEWCHUK *v.* SEAFRED, [1927] 3 D. L. R. 280 ; [1927] 2 W. W. R. 207 ; 36 Man. L. R. 469.—**CAN.**

ooo (p. 623) iv. —— —— *Issue of certificate of title—Effect of—On judgment for alimony filed against land.*]—*Re* SMITH, *Re* LAND TITLES ACT, [1925] 2 D. L. R. 556 ; [1925] 1 W. W. R. 1057 ; 19 Sask. L. R. 577.—**CAN.**

ooo (p. 623) **v.** —— —— *No liability to mortgagee for rentals received.*]—Deft. purchased at a tax sale land of which pltf. co. was mtgee. & let the land to a tenant. Pltf. co. redeemed the land & then sued deft. for the rental he had received in the interval : —*Held :* deft. had the right to lease the land as an owner could, & to receive the rents. The mtgee., not being in possession, could not claim an accounting merely because it had paid the arrears of taxes.—NATIONAL TRUST CO. *v.* BARKER, [1931] 3 D. L. R. 583 ; O. R. 388.—**CAN.**

k (p. 624) i. —— —— *Time for bringing.*]—GRERNSTREET *v.* PARIS HYDRAULIC CO. (1874), 21 Gr. 229.—**CAN.**

k (p. 624) ii. —— —— *Costs—Liability of purchaser.*]—BLANCHARD *v.* SCANLAN (1885), 3 Man. L. R. 13.—**CAN.**

d (p. 624) i. —— —— —— ——.]—*Re* LEWIS & PHALEN (N. W. T.) (1905), 1 W. L. R. 36.—**CAN.**

) (p. 624) i. —— —— *Meaning of "sale."*]—There is a "sale" within the meaning of "sale" in Tax Recovery Act, R. S. A., 1922, s. 21 (1), as amended by 1923, s. 28, when a *bona fide* agreement has been made to sell to a purchaser at the auction sale authorised by said Act.—STANDARD TRUST CO. *v.* MUNICIPALITY OF STEWART, [1929] 2 D. L. R. 271 ; 1 W. W. R. 660 ; 24 Alta. L. R. 56 ; *revsg.*, [1928] 4 D. L. R. 802 ; 3 W. W. R. 409.—**CAN.**

f (p. 624) i. —— —— —— *Purchaser of land sold under decree.*]—TURRILL *v.* TURRILL (1877), 7 P. R. 142.—**CAN.**

ff (p. 624) i. —— —— ——.]—FONSECA *v.* SCHULTZ (1891), 7 Man. L. R. 458.—**CAN.**

kk (p. 624) i. —— —— *Whether adequate remedy.*]—SCHULTZ *v.* ALLOWAY (1894), 10 Man. L. R. 221.—**CAN.**

kk (p. 624) ii. —— —— *Sale by purchaser—Whether waiver of right to tender.*]—NEW BRUNSWICK LAND & INVESTMENT CO. *v.* SIME, [1928] 4 D. L. R. 214 ; *affd.*, [1929] 3 D. L. R. 197.—**CAN.**

oo (p. 624) i. —— —— *Rates owing to local authority—Incorporated with municipality before payment.*]—BRISBANE CITY COUNCIL *v.* HODGE, [1928] S. R. Q. 102 ; 22 Q. J. P. R. 63.—**AUS.**

ooo (p. 624) i. —— —— *When proceedings taken to collect tax.*]—*Re* MCKENZIE H. D. CO., [1928] 1 D. L. R. 336 ; 8 C. B. R. 509.—**CAN.**

ppp (p. 624) i. —— —— ——.]—A person who, although he has not yet any estate in possession, is entitled to an estate in remainder for life, is a "person who has some interest in the land," within the meaning of sect. 229 of Assessment Act, 1924.—ROGERS *v.* CICNYK, [1931] 3 W. W. R. 20 ; 40 Man. L. R. 233.—**CAN.**

ppp (p. 624) ii. —— *Crop payment lease—Whether lessor assignee of lessee.*]—Where there is a crop-payment lease the lessor's title to his share of the undelivered crop cannot be said to be derived by "assignment from a taxable person" within sect. 357 (*c*) (ii) of Municipal District Act, 1926, but is vested in the lessor directly by virtue of Crop Payments Act, 1922 ; &, therefore, is not property which is "liable to seizure for taxes" within sect. 361 of said Municipal District Act.—GREAT WEST LIFE ASSURANCE CO. *v.* STERLING MUNICIPAL DISTRICT, [1931] 3 W. W. R. 730 ; [1932] 1 D. L. R. 688 ; 26 Alta. L. R. 199.—**CAN.**

were neither bound nor entitled to do so, the prosecutors not having objected to the new valuation list. On a rule *nisi* for a *mandamus* to command the rating authority to insert the hereditaments in the special list:—*Held:* the prosecutors not having objected to the new valuation list at the proper time, the rating authority had no power to alter it, & the K. B. D. had no jurisdiction by *mandamus* to compel a body to do what it had no power to do, & the rule must be discharged.—R. *v.* STEPNEY CORPN., *Ex p.* WALKER (JOHN) & SONS, LTD. (1932), 96 J. P. 360; 48 T. L. R. 660; 30 L. G. R. 416, D. C. *revsd.* 49 T. L. R. 103; 76 Sol. Jo. 868, C. A.

1603. *Add. Annotation:*—**Consd.** Lewis *v.* Elgy (1927), 11 Tax Cas. 723.

1616a. Time for hearing appeal.]—When it is impossible for justices to dispose of their list by Mar. 31, they have jurisdiction after that date to hear an appeal of which notice was given at the proper time, &, if the parties are not ready for trial as soon as the justices are able to hear the appeal, the justices have a discretion to postpone the hearing, so that they may have proper materials before them.—R. *v.* LONDON COUNTY JJ., *Ex p.* LOCKE LANCASTER & JOHNSON (W. W. & R.) & SONS, LTD., [1929] 1 K. B. 81; 98 L. J. K. B. 44; 139 L. T. 609; 92 J. P. 183; 44 T. L. R. 728; 72 Sol. Jo. 584; 26 L. G. R. 549; (1926–31), 1 B. R. A. 267, D. C.

Annotation:—**Consd.** R. *v.* London Justices, *Ex p.* Shoreditch Assessment Committee (1932), 96 J. P. 323.

1617a. —— **Power to extend time.**]—The time fixed by Valuation (Metropolis) Act, 1869 (c. 67), s. 42 (13), for the hearing of appeals is imperative & not merely directory. Therefore the jurisdiction conferred on justices by sect. 34 of that Act to order notice of appeal to be given after the date, Jan. 14, specified in s. 42 (12) in an appropriate year only enables that to be done where the notice can be given in time for the hearing of the appeal before the ensuing Mar. 31, as provided by s. 42 (13).—R. *v.* LONDON JUSTICES, *Ex p.* SHOREDITCH ASSESSMENT COMMITTEE, [1932] 2 K. B. 697; 101 L. J. K. B. 599; 147 L. T. 357; 96 J. P. 323; 48 T. L. R. 531; 30 L. G. R. 357, D. C.

REAL PROPERTY AND CHATTELS REAL.

Part I.—In General.

14. *Add. Annotation :*—**Refd.** Grant *v.* Edmondson, [1931] 1 Ch. 1.

Part II.—Estates and Interests in Real Estate.

159a. ——.]—A leasehold for lives being settled on A. for life, with remainder to B., as *quasi* tenant in tail, with remainders over :—*Held :* the *quasi* tenant in tail could not, by fine or otherwise, during the life of A., bar the subsequent remainders without the concurrence of A.—SLADE *v.* PATTISON (1835), 5 L. J. Ch. 51.

Annotations :—**Refd.** Edwards *v.* Champion (1853), 3 De G M. & G. 202 ; Pickersgill *v.* Grey (1862), 30 Beav. 352.

183a. Cestui que vie dead—& death concealed.]—*Re* JOBBERNS, *Ex p.* FLETCHER (1835), 4 L. J. Ch. 219.

220. *Add. Annotation :*—**Refd.** *Re* Wells, Swinburne-Hanham *v.* Howard (1932), 48 T. L. R. 617.

PART I. SECT. 1.

3 ii. —— ——.]—HUNTER *v.* FARRELL (N. B.) (1913,) 13 E. L. R. 354 ; 14 D. L. R. 556.—**CAN.**

PART I. SECT. 3, SUB-SECT. 1.

f i. —— *Right to build.*]—The right to build a house on another man's land is not an incorporeal hereditament. Such a right is a mark of title & of exclusive enjoyment, & is not an easement or *profit à prendre.*—FITMAN *v.* NICKERSON (1891), 40 N. S. R. 20.—**CAN.**

PART I. SECT. 6.

c i. —— —— *Erections by purchaser under instalment agreement.*] — What may be only a chattel if erected by a tenant for years may well become part of the soil if erected by a purchaser of the land under an agreement for sale.

Wire fencing & fence posts erected or completed by the deft. while he occupied land, previously rented to him, as purchaser under an instalment agreement made with the Crown held to have become part of the soil, &, therefore, to have passed to the Crown when deft. gave up the agreement & surrendered all his interest in the land to the Crown, & to have become subsequently the property of pltf. when he purchased the land from the Crown.—LAROCHELLE *v.* MARCHAND, [1928] 3 W. W. R. 731.—**CAN.**

c ii. —— ——.]—On the question whether articles affixed to land have become part of the realty, the intention of the person who affixed them is material only in so far as it can be presumed from the degree & object of the annexation. Buildings erected by the owner of land for use in the making of bricks held to form part of the realty, although some of them were attached to the land by nothing but their own weight. They, therefore, became the property of deft., who became registered owner of the land in pursuance of the purchase thereof at a tax sale under Assessment Act. Certain machinery in said buildings was also held part of the realty.—MCCUTCHEON *v.* LIGHTFOOT, [1928] 2 W. W. R. 240.—**CAN.**

l i. *Printing presses.*]—RICHARDSON *v.* HARDIE, [1928] 2 W. W. R. 246.—**CAN.**

m (p. 663) i. *How far English law of fixtures applicable in Canada—As between original vendor & subsequent vendees.*]—TRAVIS-BARKER *v.* REED (1922), 66 D. L. R. 426 ; 17 Alta. L. R. 319 ; [1921] 3 W. W. R. 770 ; *revsd.* on the facts, [1923] 3 D. L. R. 927 ; [1923] 3 W. W. R. 451.—**CAN.**

PART I. SECT. 7.

o. —— *When presumed—After long possession.*]—DOE d. MCKAY *v.* ALLEN (1851), 7 N. B. R. (2 All.) 191.—**CAN.**

PART II. SECT. 1, SUB-SECT. 1.

sm. *" Use forever " — Effect.*]—An Act provided that the county of L. should pay a sum towards the cost of a building owned by the town of L. for the " use forever " of certain rooms in the building :—*Held :* an interest in land unknown to the common law may be created by statute. The words " use forever " did not give a fee simple or a joint tenancy, but gave a right in perpetuity, the fee simple remaining in the town.—LUNENBERG (TOWN) *v.* LUNENBERG (MUNICIPALITY), [1932] 1 D. L. R. 386 ; 4 M. P. R. 181.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—A. (a).

sa. *Estate of widow of locatee—Public Lands Act (Ont.),* 1914, *s.* 47.]—*Re* COURT, [1930] 1 D. L. R. 113 ; [1929] S. C. R. 50.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—A. (b).

a i. —— *To grantee " for ever."*]—TRUST & LOAN CO. *v.* CLARKE (1878), 3 A. R. 429.—**CAN.**

a ii. —— *" & the heirs of his body for twenty-one years or the term of his life fully to be completed."*]—Deft. on Oct. 13, 1852, granted the land in question to one S. to hold " to the said S. & the heirs of his body for twenty-one years, or the term of his natural life, from Apr. 1, 1853, fully to be completed & ended " :—*Held :* by the lease S. took a life estate, in which the term merged, & he, therefore, had no interest which the sheriff could sell under the *fi. fa.* against goods.—DALYE *v.* ROBERTSON (1860), 19 U. C. R. 411.—**CAN.**

PART II. SECT. 5.

pp (p. 679) i. —— —— ——.]—CAMPBELL *v.* ROYAL CANADIAN BANK (1872), 19 Gr. 334.—**CAN.**

o (p. 680) i. —— —— ——.]—*Re* LESPERANCE, [1927] 4 D. L. R. 391 ; 61 O. L. R. 94.—**CAN.**

o (p. 680) ii. —— —— ——.]—*Re* WILLIAMS (1903), 24 C. L. T. 91 ; 7 O. L. R. 156 ; 3 O. W. R. 251.—**CAN.**

t (p. 680) i. ——.]—*Re* TIERNEY, [1927] 3 D. L. R. 943 ; 60 O. L. R. 652.—**CAN.**

qq (p. 680) i. —— *Lands passing to husband under intestacy of father—Husband dying intestate.*]—*Re* ARCHIBALD (1908), 5 E. L. R. 510.—**CAN.**

aaa (p. 680) i. —— —— *What is.*]—IRONSIDES *v.* GREEN (Man.), [1927] 3 D. L. R. 168 ; [1927] 2 W. W. R. 59.—**CAN.**

aaa (p. 680) ii. —— —— ——.]—*Re* RIPSTEIN ESTATE (Man.), [1927] 3 W. W. R. 791.—**CAN.**

aaa (p. 680) iii. —— —— ——.]—A claim of homestead under the Dower Act, C. A., 1924, c. 54, rests upon a dwelling-house being not merely occupied by the owner but " as his home." The words " his home " import something more than a mere temporary or occasional lodging place. Though not every home is a homestead, yet, subject to certain qualifications as to the need of a written consent to a change of homestead, the homestead (if any) can only be where the home is. There cannot be more than one homestead at any one time.—NATIONAL TRUST CO., LTD. *v.* GREENGARD (Man.), [1930] 1 D. L. R. 58 ; [1929] 3 W. W. R. 363.—**CAN.**

aaa (p. 680) iv. —— —— ——.]—An upstairs suite in an apartment block cannot be a " homestead " within Dower Act, C. A., 1924, c. 53 ; nor can the fact that the owner of such a block resides in one of the suites therein render the whole block his " homestead."—*Re* RIPSTEIN ESTATE, [1929] 2 D. L. R. 935 ; 1 W. W. R. 788 ; 38 Man. L. R. 184 ; *affg.*, [1927] 3 W. W. R. 791.—**CAN.**

aaa (p. 680) v. —— ——.]—FROSTAD *v.* LIBEK, [1927] 3 D. L. R. 916 ; [1927] 2 W. W. R. 550 ; 21 Sask. L. R. 603.—**CAN.**

aaa (p. 680) vi. —— —— *Effect of adultery.*]—Neither at common law nor under Dower Act does adultery disentitle a wife to dower, although it is a circumstance to be taken into account by the judge in deciding whether it is fair & reasonable to order that her consent to the disposition of the homestead be dispensed with under sect. 8. Except, however, by her consent or under such an order her right to dower in the homestead cannot be denied her.—*Re* MILLER, [1929] 1 D. L. R. 147 ; [1928] 3 W. W. R. 643.—**CAN.**

aaa (p. 680) vii. —— —— *Change of homestead without wife's consent.*]—A husband & wife lived together on property owned by him in the town of V. She left him & they lived separately thereafter. After the

297a. Whether court will supply word " of."]—By a voluntary settlement A. & his cousin limited certain gavelkind lands to a relative, C., for life, with remainder to her issue, & for default of such issue " to the use of the right heirs of E., deceased, & J.," who was then living, " the two sisters of the said A., their heirs & assigns, as tenants in common for ever " :—*Held :* the ct. declining to read the limitation as a limitation to " the right heirs of E., deceased, & of J.," J. herself took a vested remainder in fee simple in a moiety of the property expectant on the death of C., without issue ; &, accordingly on the death of C., who survived J., & died without issue, the moiety passed to J.'s co-heirs in gavelkind.—HAWES *v.* HAWES (1880), 14 Ch. D. 614 ; 43 L. T. 280.

Annotations :—**Folld.** *Re* Featherstone's Trusts (1882), 22 Ch. D. 111. **Consd.** *Re* Dale, Mayer *v.* Wood, [1931] 1 Ch. 357.

separation he changed his residence to a farm where he resided until his death. Her consent to the change was not given &, apparently, never asked for ; although while they were living together in the town she consented to a mtge. placed on the farm : —*Held :* on his death, she was entitled to select either property as the homestead in which to take her life estate.—*Re* MCLEOD ESTATE, MCLEOD *v.* MCLEOD (Alta.), [1929] 4 D. L. R. 659 ; 3 W. W. R. 241 ; *affg.*, [1929] 3 D. L. R. 640 ; 2 W. W. R. 252.—**CAN.**

ccc (p. 680) **i.** —— *Land purchased subject to mortgage—Registration of conveyance before discharge of mortgage by vendor.*]—*Re* KUNTZ & HODGINS, [1927] 4 D. L. R. 1009 ; 61 O. L. R. 298.—**CAN.**

ddd (p. 680) **i.** —— *Lands in which testator had any estate of freehold by virtue of any mortgage.*]—LOW *v.* SPARKS (1863), 14 C. P. 25.—**CAN.**

ddd (p. 680) **ii.** —— *Lands assigned by husband for benefit of creditors—& released by wife from dower—Subsequent reassignment to husband.*]—*Re* IRVINE, [1928] 3 D. L. R. 268 ; 62 O. L. R. 319.—**CAN.**

ddd (p. 680) **iii.** —— *Land granted by Crown subject to mineral rights—Whether land granted as mining land.*]—*Re* IRVINE, [1928] 3 D. L. R. 268 ; 62 O. L. R. 319.—**CAN.**

ddd (p. 680) **iv.** —— *Land comprised in offer to purchase—Accepted by husband—Acceptance not posted till after husband's death.*]—*Re* IRVINE, [1928] 3 D. L. R. 268 ; 62 O. L. R. 319.—**CAN.**

ttt (p. 681) **i.** ——.]—MCLENNAN *v.* GRANT (1868), 15 Gr. 65.—**CAN.**

ttt (p. 681) **ii.** ——.]—LEYS *v.* TORONTO GENERAL TRUSTS CO. (1892), 22 O. R. 603.—**CAN.**

ttt (p. 681) **iii.** ——.]—SABINE *v.* WOOD (1910), 9 E. L. R. 169.—**CAN.**

ttt (p. 681) **iv.** ——.]—Testator, after bequeathing certain legacies, devised his lands to his sons, charging them, however, with the legacies & also with an annuity of $100 to his widow, to whom he also bequeathed his furniture, apartments in his dwelling-house, & sundry other things. The estate was sufficient to answer all legacies, & also the widow's dower :—*Held :* the widow was not put to her election as between the will & her dower.—WILSON *v.* WILSON (1883), 7 O. R. 177.—**CAN.**

ttt (p. 681) **v.** ——.]—A will bequeathing to a wife the dwelling-house for her natural life, the household goods, & an annuity of $300 secured to her out of the estate :—*Held :* not to put the widow to her election.—*Re* BIGGAR, BIGGAR *v.* STINSON (1884), 8 O. R. 372.—**CAN.**

ttt (p. 681) **vi.** ——.]—A will bequeathed to a wife one-third of the net income from the whole blended fund of his realty & personalty for her life or during widowhood :—*Held :* she was put to her election.—*Re* HENDRY, [1931] 4 D. L. R. 908 ; O. R. 448.—**CAN.**

f (p. 682) **i.** ——.]—PULKER *v.* EVANS (1856), 13 U. C. R. 456.—**CAN.**

f (p. 682) **ii.** ——.]—Where a will in express terms makes provision for the testator's wife in lieu of dower, thus bringing directly to her mind that she cannot have dower & the benefits of the will as well, a much slighter dealing with the property left to her will evidence an election on her part to take under the will, than would be sufficient in the absence of such express provision :—*Held :* there being such provision, the evidence set out in the report of the case was sufficient to establish an election to take under the will, though, otherwise, it would not have been.—NIXON *v.* ASHENHURST (1884), 7 O. R. 664.—**CAN.**

ooo (p. 682) **i.** ——.]—HILL *v.* GREENWOOD (1864), 23 U. C. R. 404.—**CAN.**

c (p. 683) **i.** —— *Consent judgment in alimony action.*]—In an action for alimony, a judgment was pronounced by consent whereby it was adjudged that pltf. should deed to deft. all her interest in properties owned by pltf. & deft. jointly, & pltf. should stand debarred of any interest in any property, real or personal, hereafter acquired by deft. The wife executed in favour of the husband a deed in fee simple of land of which they were joint tenants, wherein she released to him all her claims upon the land :—*Held :* pltf. was, by the consent judgment, barred of any right to dower, inchoate or otherwise, which she might have had in this land, which was acquired by him after the judgment.—LUBOVICH *v.* CUCKOVICH, [1930] 4 D. L. R. 339 ; 65 O. L. R. 451 ; *revsg.*, 37 O. W. N. 49.—**CAN.**

k (p. 683) **i.** ——.]—Where a wife of her own consent leaves the society of her husband & then commits adultery, she is barred of her action for dower.—WHIMBEY *v.* HYDE, [1927] 3 D. L. R. 237 ; 60 O. L. R. 399.—**CAN.**

m (p. 683) **i.** —— *Determination of issue—Jurisdiction.*]—The issue which arises under sect. 21 of the Dower Act, 1924, *i.e.* whether the wife was at the time of the death of the husband living separate & apart from him, is one which must be disposed of, in the summary method provided by the Act, by the Surrogate Ct. judge. The Ct. of K. B. has no jurisdiction to entertain an action to determine it.—WEAVER *v.* BAIRD, [1930] 1 W. W. R. 918 ; 3 D. L. R. 875.—**CAN.**

m (p. 683) **ii.** ——.]—Where a husband & wife live apart under an agreement between them neither can be said to have " left " the other, within Dower Act, C. A., 1924, s. 20, &, therefore, to have forfeited his or her rights under the Act.—*Re* MATCHETT ESTATE, [1931] 2 W. W. R. 512.—**CAN.**

oo (p. 683) **i.** —— *Lapse of time.*]—PYATT *v.* MCKEE (1883), 3 O. R. 151.—**CAN.**

f (p. 684) **i.** —— *Res judicata.*]—Issues adjudicated in proceedings in the Surrogate Ct. with respect to an executorship & not in any way with respect to a claim for dower under Dower Act, C. A., 1924, or incidental thereto, held not to be *res judicata* in an action brought by the widow in the King's Bench in which she claimed dower rights.—PERCY *v.* CANADIAN GUARANTEE & TRUST CO., [1931] 1 D. L. R. 1013 ; [1930] 3 W. W. R. 498 ; 39 Man. L. R. 251.—**CAN.**

oo (p. 684) **i.** —— *Competency of wife as witness—Action by husband & wife.*]—In an action for dower by husband & wife, the wife is a competent witness.—CADMAN *v.* STRONG (1843), 10 U. C. R. 591.—**CAN.**

kkk. (p. 684) **i.** —— *Claim admitted—Award by commissioners—Right of court to disturb.*]—ROBINET *v.* PICKERING (1879), 44 U. C. R. 337.—**CAN.**

l (p. 685) **i.** *Application for order under Dower Act, R. S. O.*, 1897 (c. 164), *s.* 12—*Duty of court.*]—*Re* KING (1899), 18 P. R. 365.—**CAN.**

sa. *Priority in administration—Devise of portion to which widow entitled under Dower Act.*]—Testator devised his estate to his exors. in trust to pay & convey to his widow " that portion of my estate which she shall be entitled to under the provisions of the Manitoba Dower Act " & the remaining estate in his residence ; & upon further trusts with respect to the balance of his estate :—*Held :* the portion of the estate given to the widow was that which without the will she would have been entitled to under said Act, &, also, that what was given & what incidents would attach to it were to be determined by applying the provisions of the Act, including sect. 20 thereof.—*Re* COWAN ESTATE, [1932] 1 W. W. R. 79 ; 1 D. L. R. 771 ; 40 Man. L. R. 221.—**CAN.**

PART II. SECT. 6, SUB-SECT. 1.—C. (d).

sg. *Purchase of house by husband & wife as joint tenants—Death of husband—Wife not liable for husband's share of purchase-price.*]—H. & C., husband & wife, who had been separated, came together under a written agreement providing for the formation of a fund to be held in trust to pay for the purchase of a house & premises to be a home for the re-united spouses, & to be vested in them as joint tenants. A property was selected, paid for out of the fund, & conveyed to them as joint tenants. A mtge. of the property was made by the two :—*Held :* the presumption was that the husband & wife were as between themselves equally liable, & neither could call on the other to pay more than his proper share.—MCMILLAN *v.* NATIONAL TRUST CO., [1931] 2 D. L. R. 369 ; 66 O. L. R. 601.—**CAN.**

PART II. SECT. 6, SUB-SECT. 1.—D. (a).

sb. *By execution.*]—Lands were conveyed to a man & his wife as joint tenants, & not as tenants in common : —*Held :* estates by entireties having been abolished, the joint estate was severable ; & the interest of one joint tenant could be sold under execution.—*Re* CRAIG, [1929] 1 D. L. R. 142 ; 63 O. L. R. 192.—**CAN.**

sd. ——.]—A joint tenancy is severed by (*inter alia*), execution of a writ of *fi. fa.* But mere delivery of a

509a. —— ——.]—WILLIAMS *v.* WATERS (1845), 14 M. & W. 166; 5 L. T. O. S. 130; 153 E. R. 434.

Annotation:—**Folld.** *Re* Watson & Morrison's Contract, Watson *v.* Kerr (1900), 44 Sol. Jo. 529.

520a. ——.]—CAIN *v.* TEARE (1843), 4 Moo. P. C. C. 249; 7 Jur. 567; 13 E. R. 297, P. C.

535. *Add. Annotation:*—**Reld.** Clayton *v.* Clayton, [1930] 2 Ch. 12.

536a. ——.]—BARCLAY *v.* COLLETT (1838), 4 Bing. N. C. 658; 1 Arn. 287; 6 Scott, 408; 7 L. J. C. P. 235; 132 E. R. 942.

537a. ——.]—He who has occasion to use a deed is legally entitled to the custody of it; &, where several are equally interested in it, either having possession may retain it against the others.—FOSTER *v.* CRABB (1852), 12 C. B. 136; 21 L. J. C. P. 189; 16 Jur. 835; 138 E. R. 853; *subsequent proceedings*, 12 C. B. 379.

Annotations:—**Reld.** Taylor *v.* Sparrow (1863), 4 Giff. 703; Leathes *v.* Leathes (1877), 36 L. T. 646; Wright *v.* Robotham (1886), 33 Ch. D. 106.

537b. —— **Common law rule confined to assurances.**]—Testator died, having by his will bequeathed settled legacies & having thereby also by legal limitations settled freeholds which in the events which happened became vested free from incumbrances & charges in pltf. From time to time there had been appointments of new trustees of testator's will for the purposes of the Settled Land Acts & other purposes, including three by deeds of 1902, 1904, & 1915. In 1924 pltf. had been appointed Settled Land Act trustee of testator's will, jointly with the then trustees thereof, the appointment being limited to the freeholds. At the date when the freeholds became vested absolutely in pltf., the trusts of some of the settled legacies were still on foot. In an action by pltf. claiming the custody of the appointments of 1902, 1904, & 1915, as forming part of his title to the freeholds:—*Held:* absolute ownership of land does not necessarily carry with it the right to title deeds; *semble:* the phrase "title deeds" in the old authorities includes only deeds assuring or dealing with land or legal interests therein.—CLAYTON *v.* CLAYTON, [1930] 2 Ch. 12; 99 L. J. Ch. 498; 143 L. T. 696.

584a. ——.]—WARMAN *v.* SEAMAN (1677), Cas. *temp.* Finch, 279; 23 E. R. 153.

Annotations:—**Reld.** *Ex p.* Wynch (1854), 5 De G. M. & G. 188; Roddy *v.* Fitzgerald (1858), 6 H. L. Cas. 823.

592a. —— **Addition of "& if more children than one."**]—By a marriage settlement estates were limited to the wife & the husband for their lives, with remainder to the heirs of the body of the husband on the body of the wife, & their heirs, & if more children than one, equally to be divided among them as tenants in common, & for default of such issue to the wife & her heirs:—*Held:* the husband did not take an estate in tail special, but for life only, & the children took by purchase as tenants in common in fee in remainder.—NORTH *v.* MARTIN (1833), 6 Sim. 266; 58 E. R. 593.

Annotations:—**Consd.** Jordan *v.* Adams (1861), 9 C. B. N. S. 483. **Reld.** Gummoe *v.* Howes (1857), 23 Beav. 184.

628a. Limitation to particular persons.]—WAKER *v.* SNOWE (1622), Palm. 359; 81 E. R. 1123.

Annotations:—**Reld.** Sayer *v.* Masterman (1757), Amb. 344; Doe d. Long *v.* Laming (1760), 2 Burr. 1100; Winter *v.* Perratt (1843), 9 Cl. & Fin. 606; Tarleton *v.* Liddell (1851), 17 Q. B. 390.

663a. —— **Death of protectors.**]—The trustees of the real estate under a will were appointed also protectors of the estates tail created by the will. They all died, & new trustees of the real estate were appointed by the ct.:—*Held:* the tenant for life had become protector of the settlement, & he & the first tenant in tail could convey.—CLARKE *v.* CHAMBERLIN (1880), 16 Ch. D. 176; 29 W. R. 415.

677. For "(1841)" read "(1839)."

697. *Add. Annotation:*—**Consd.** *Re* Duncombe's Will Trusts, Wrixon-Becher *v.* Faversham (Earl) (1932), 146 L. T. 412.

761a. —— —— ——.]—SMITH *v.* RISLEY (1639) Cro. Car. 529; 79 E. R. 1058; *sub nom.* GERMAN *v.* RISLEY, W. Jo. 418.

Annotation:—**Reld.** Barker *v.* Keete (1678), Freem. K. B. 249.

writ of *fi. fa.* to the sheriff is not part of execution. Therefore death of one joint tenant after delivery to but before execution by the sheriff of a writ of *fi. fa.* vests the property in the survivor free from the claim of the execution creditor.—POWER *v.* GRACE, [1932] 2 D. L. R. 793; O. R. 357; *affg.*, [1932] 1 D. L. R. 801.—**CAN.**

PART II. SECT. 6, SUB-SECT. 1.—D. (b).

r i. —— —— *Admission of parol evidence.*]—TAN CHEW HOE NEO *v.* CHEE SWEE CHENG (1928), L. R. 56 Ind. App. 112.—**IND.**

PART II. SECT. 6, SUB-SECT. 1.—D. (c).

c i. —— ——.]—*Re* WHITE, [1928] 1 D. L. R. 846.—**CAN.**

PART II. SECT. 6, SUB-SECT. 1.—D. (d).

sc. *Intention to sever—Sufficiency of evidence.*]—A husband & wife, under a certain deed executed in 1884, prior to their marriage, became equitable joint tenants of a farm at C., held under a tenancy from year to year, & also of another farm at R. In 1900 the wife purchased the farm at R., & was registered a owner in fee simple, subject to equities. In 1911 the husband purchased the farm at C., & was registered as owner in fee simple, subject to equities. The husband died in 1921, &, by his will, left the farm at C. to one of his sons. The wife claimed the farm by survivorship:—*Held:* a severance of the joint tenancy in the farm did not, as a matter of law, result from the purchase of the fee simple by the husband. Also, on the evidence, the ct. could not infer that the husband & wife had agreed to sever the joint tenancy in both farms.—FLYNN *v.* FLYNN, [1930] I. R. 337.—**IR.**

PART II. SECT. 6, SUB-SECT. 1.—E. (a).

sd. *General rule.*]—CHANDRA KISHORE CHAKRAVARTY *v.* BISESWAR PAL (1927), I. L. R. 55 Calc. 396.—**IND.**

PART II. SECT. 6, SUB-SECT. 1.—E. (b) i.

394 ii. —— —— *Method of accounting.*]—SPROULE *v.* CLEMENTS (B. C.), [1927] 3 D. L. R. 955; [1927] 2 W. W. R. 825.—**CAN.**

PART II. SECT. 6, SUB-SECT. 1.—E. (c).

c i. —— ——.]—A co-sharer, by himself, can maintain an action of trespass against a wrongdoer.—CURRIMBHOY & Co., LTD. *v.* CREET (1929), I. L. R. 57 Calc. 170.—**IND.**

PART II. SECT. 6, SUB-SECT. 2.

g i. ——.]—HARKESH SINGH *v.* HARDEVI (1927), I. L. R. 49 All. 763.—**IND.**

PART II. SECT. 10, SUB-SECT. 1.

sa. *Real Chattels Act*, 1834—*Effect of.*]—DOE d. EVANS *v.* DOYLE (1860), 4 Nfld. L. R. 432.—**NFLD.**

PART II. SECT. 10, SUB-SECT. 4.—E.

p i. ——.]—It is, at least, doubtful whether a mtge. in fee by a tenant in tail in possession bars the entail; & whether, upon a discharge being executed, the mtgor. does not take back his original estate.—*Re* DOLSEN (1872), 4 Ch. Ch. 36.—**CAN.**

PART II. SECT. 13, SUB-SECT. 2.—B.

li. ——.]—BABBITT *v.* CLARKE, [1925] 3 D. L. R. 55; 57 O. L. R. 60.—**CAN.**

l ii. ——.]—The statement that possession is evidence of seisin in fee means that there is some evidence that the title to the land has come to the person claiming possession in one of the following ways, namely: by Crown grant, sixty years' possession adverse to the Crown, conveyance from a prior owner, devolution or by twenty years' adverse possession.—NOLAN *v.* THOMPSON (1928), 28 S. R. N. S. W. 479; 45 N. S. W. W. N. 141.—**AUS.**

sc. *How far possession extends—*

Part III.—Transfer of Land inter vivos.

885a. Effect of memorial—Evidence of contents of deed.]—The registered memorial of a deed conveying lands in Middlesex is secondary evidence of the contents of such deed against the personal representatives of the party by whom such deed in registered.—WOLLASTON *v.* HAKEWILL (1841), 3 Man. & G. 297; 3 Scott, N. R. 593; 10 L. J. C. P. 303; 133 E. R. 1157.

891. In the last line of the existing paragraph substitute the word " register " for the words " sale without registration."

902. *Add. Citations :—sub nom. Re* REGISTERED TITLE, No. 213,437; 63 L. Jo. 82; 163 L. T. Jo. 52.

Occupation of small portion of wild land.]—When a referee finds in favour of a title acquired by adverse possession against the legal paper title, his certificate must show of what portion of the lot the claimant has been in possession, for by the occupation of one or more acres of a wild lot of land a party will not acquire title to the whole lot.—LOW *v.* MORRISON (1868), 14 Gr. 192.—**CAN.**

sd. *Possession under agreement—Subject to performance of condition—Possession for ten years after time fixed for performance.*]—BISHOP *v.* COX, [1928] 2 D. L. R. 990.—**CAN.**

PART III. SECT. 1.

834 i. *Grant must not commence in futuro.*]—*Re* SMITH & DALE (1920), 46 O. T. R. 403.—**CAN.**

b i. —— *Assigned by husband alone—Subsequent abandonment of homestead—Right of wife to oppose validity of assignment.*]—After a homestead under Homesteads Act has ceased to be such owing to its permanent abandonment as a place of residence, the wife has no status under said Act to oppose the validity of an assignment of the land executed by her husband prior to said date, although the assignment was not executed, as the Act requires it to be, by her; & her husband is in no better position in this respect than she is.—DOUGLAS *v.* ADDIE, [1928] 4 D. L. R. 167; [1928] 3 W. W. R. 37; *affd.*, [1929] 2 D. L. R. 401; 1 W. W. R. 610; 23 S. L. R. 463.—**CAN.**

b ii. —— *Effect.*]—The fact that the transfer by a husband of an interest in a homestead under the Homesteads Act is not executed in compliance wih said Act does not render it absolutely void; it is merely unenforceable so long as the property remains the homestead & the Act is not complied with.—DOUGLAS *v.* ADDIE (Nos. 1 & 2), [1929] 2 D. L. R. 401; 1 W. W. R. 610; 23 S. L. R. 463 *affg.*, [1928] 4 D. L. R. 167; 3 W. W. R. 37.—**CAN.**

b iii. —— *Order dispensing with consent of wife—Under Dower Act, 1922—Husband's conduct conducing to adultery of wife.*]—*Re* MILLER, [1929] 1 D. L. R. 147; [1928] 3 W. W. R. 643.—**CAN.**

b iv. —— *Without wife's consent—Void.*]—*Re* MILLER, [1929] 1 D. L. R. 147; [1928] 3 W. W. R. 643.—**CAN.**

b v. —— *Mortgage — Examination of wife—Conclusiveness of certificate.*]—The certificate in the required form that the wife of a mtgor. of a homestead was examined in the manner called for by Homestead Act, is, in the absence of fraud, conclusive. The statute seems to contemplate an examination nearly contemporaneous with, if not preceding, the signing of the mtge. or other instrument, but the antedating of the certificate in the present case so as to make it appear that the signing & examination were on the same day was held innocuous.—FREY *v.* HERDE (Sask.), [1929] 3 W. W. R. 700; [1930] 1 D. L. R. 997; *affd.*, [1930] 2 W. W. R. 152; 4 D. L. R. 314; 24 S. L. R. 426.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.

se. *Abandonment.*]—Real estate or an interest therein cannot pass from one person to another by " abandonment."—JONES *v.* MCCLEAN, [1931] 1 W. W. R. 315; 2 D. L. R. 244; 39 Man. L. R. 321; 12 C. B. R. 238.—**CAN.**

PART III. SECT. 3, SUB-SECT. 2.

e i. —— *Effect of 26 Geo. 3, c. 3.*]—DOE d. WILT *v.* JARDINE (1836), 2 N. B. R. (Ber.) 245.—**CAN.**

PART III. SECT. 3, SUB-SECT. 4.

sf. *Crown leaseholds—Duty of transferor to obtain consent.*]—MAY *v.* DALY, [1927] S. A. S. R. 428.—**AUS.**

PART III. SECT. 4.

865 i. *What words operate as grant—" Demise."*]—SPEARS *v.* MILLER (1882), 32 C. P. 661.—**CAN.**

PART III. SECT. 6, SUB-SECT. 2.

r (p. 746) **i.** —— *Portion of land acquired for improvement of road—Not sub-divided.*]—The D. County Council acquired, in order to lay out, maintain & keep a new road or an improvement of an existing road, the use of a portion of a holding subject to a land purchase annuity, without the consent of the Ministry of Finance:—*Held:* the county council were entitled to have registered under the Act as a burden the use of portion of the holding, as no " sub-division " of the holding within Northern Ireland Land Act, 1925, s. 30 (1), had been effected.—*Re* LENNON, [1928] N. I. 195.—**IR.**

k (p. 747) **i.** *S.P.* WATERLOO *v.* BARNARD (Man.) (1915), 33 W. L. R. 223; 9 W. W. R. 870.—**CAN.**

k (p. 747) **ii.** —— *What is.*]—BOURQUE *v.* CHAPPELL (1900), 21 C. L. T. 132; 2 N. B. Eq. Rep. 187.—**CAN.**

n (p. 747) **i.** ——.]—SPEPPARD *v.* KENNEDY (1884), 10 P. R. 242.—**CAN.**

n (p. 747) **ii.** —— *Subsequent discontinuance of action—Whether filing of lis pendens constitutes cause of action.*]—COWAN *v.* MACAULAY (1897), 5 B. C. R. 495.—**CAN.**

n (p. 747) **iii.** —— *Discharge of.*]—GRAHAM *v.* CHALMERS (1866), 2 Ch. Ch. 53.—**CAN.**

n (p. 747) **iv.** —— *By plaintiff in creditors' action.*]—BEVILOCKWAY *v.* SCHNEIDER (1893), 3 B. C. R. 90.—**CAN.**

r (p. 747) **i.** *Subdivision.*]—There is implied in Transfer of Land Act, 1915, s. 201, a right in a registered proprietor to submit to the office of title a plan of a proposed subdivision of his land, & a corresponding duty on the part of the Registrar to receive the plan & take into consideration the proposed subdivision. The Registrar may then exercise such of the powers given to him in relation to the plan as he thinks proper.—R. *v.* THE REGISTRAR OF TITLES, *Ex p.* FORESTRY PULP & PAPER CO. OF AUSTRALIA, LTD., [1929] V. L. R. 178; [1929] Argus L. R. 152.—**AUS.**

sk. *Final order for cancellation of agreement for sale.*]—*Re* LAND TITLES ACT, AVELSGAARD'S CASE (Sask.), [1918] 2 W. W. R. 946.—**CAN.**

sl. *Judgment—Registration of as mortgage—Sufficiency of affidavit.*]—*Re* MURPHY, [1928] I. R. 479.—**IR.**

sm. *Conveyance by mortgagee under power of sale—Where judgment registered subsequently to mortgage—& quit claim deed taken from mortgagor.*]—*Re* LOT 5, SECTION 13, SPRING RIDGE, VICTORIA CITY, *Re* LAND REGISTRY ACT & AMENDING ACTS (B. C.), [1929] 3 D. L. R. 723; 1 W. W. R. 739; 41 B. C. R. 74.—**CAN.**

sn. *Not notice of trust—What amounts to—Description of owner as " executor."*]—A trust corpn. claimed the right to be registered under Land Titles Act, 1927, as owner of a charge, & to be described, not as a trustee, but as exor. of C., deceased:—*Held:* the description of appct. as exor. of C. was not notice of any trust, express, implied or constructive, & the entry therefore would not contravene sect. 95 (1) of the Act.—*Re* CASSIDY (1931), 3 D. L. R. 392; O. R. 259.—**CAN.**

PART III. SECT. 6, SUB-SECT. 4.

aa (p. 747) **i.** —— —— *Upon registration of transfer—Whether certificate should be clear of subsequent executions.*]—QUEBEC BANK *v.* ROYAL BANK (1916), 34 W. L. R. 137; 10 W. W. R. 218.—**CAN.**

q (p. 748) **i.** —— —— *Executor of estate entitled to lands as devisee—Whether execution to be registered as against executor personally.*]—*Re* GALLOWAY (1898), 3 Terr. L. R. 88.—**CAN.**

bb (p. 748) **i.** —— —— *As against claimant by adverse possession.*]—WASHINGTON & G. N. TOWNSITE CO. *v.* HOLBROOK, [1924] 1 D. L. R. 818; [1924] 1 W. W. R. 511; 33 B. C. R. 388.—**CAN.**

bb (p. 748) **ii.** —— —— *On sale by owner of two adjoining lots to separate purchasers—Alleged arrangement between vendor & purchaser of one lot.*]—CANADIAN BIRKBECK INVESTMENT & SAVINGS CO. *v.* RYDER (1905), 12 B. C. R. 92; 2 W. L. R. 158.—**CAN.**

bb (p. 748) **iii.** —— —— *Transfer by administrators to one of themselves entitled only as life tenant—Claim by remainderman.*]—BREMNER *v.* TRUSTS & GUARANTEE CO., [1928] 4 D. L. R. 913; [1928] 3 W. W. R. 415.—**CAN.**

bb (p. 748) **iv.** —— *Issued to municipality—Failure to offer land for sale—Rights of former owner.*]—SHAW *v.* YOUNGSTOWN, [1928] 3 D. L. R. 404; [1928] 2 W. W. R. 310.—**CAN.**

bb (p. 748) **v.** —— *Duty of registrar when issuing.*]—*Re* CANADIAN PACIFIC RY. CO. (1899), 4 Terr. L. R. 227.—**CAN.**

bb. (p. 748) **vi.** —— *Under Quieting Titles Act—Title acquired by adverse possession—Costs.*]—LOW *v.* MORRISON (1868), 14 Gr. 192.—**CAN.**

bb (p. 748) **vii.** —— —— *Certificate of sheriff—Form of.*]—Where the petitioner's title was acquired within two years before the filing of the petition, the sheriff's certificate was required as to executions against the prior owner, as any such executions, if duly renewed, might bind the land.—

Ex p. LYONS (1869), 2 Ch. Ch. 357.—**CAN.**

bb (p. 748) viii. —— —— —— ——.] —*Re* HARDING (1871), 3 Ch. Ch. 232.—**CAN.**

bb (p. 748) **ix.** —— —— —— *Necessity for production.*]—A certificate from the sheriff of no executions against petitioner must be produced.—*Re* RUNDEL (1872), 4 Ch. Ch. 71.—**CAN.**

bb (p. 748) **x.** *Certificate from county treasurer—Form of.*]—*Re* HARDING (1871), 3 Ch. Ch. 232.—**CAN.**

bb (p. 748) **xi.** —— —— *Title derived through hands of trustee to pay creditors—Notices & advertisements necessary.*]—*Re* RUNDEL (1872), 4 Ch. Ch. 71.—**CAN.**

bb (p. 748) **xii.** —— —— *Affidavit in proof—By whom made.*]—*Re* RUNDEL (1872), 4 Ch. Ch. 71.—**CAN.**

ff (p. 748) i. —— *Not executor of administratrix.*]—PUBLIC TRUSTEE *v.* REGISTRAR-GENERAL OF LAND, [1927] N. Z. L. R. 839.—**N.Z.**

hh (p. 748) i. —— *Under Quieting Titles Act—Not purchaser selling before completion of contract.*]—*Re* BROWN (1871), 3 Ch. Ch. 158.—**CAN.**

hh (p. 748) ii. —— *Purchaser under sale by order of court—In foreclosure action.*]—CANADIAN PACIFIC RY. CO. *v.* MANG (1908), 8 W. L. R. 774; 1 Sask. L. R. 219.—**CAN.**

hh (p. 748) iii. —— *Executrix of Scottish will—Resealed in British Columbia.*]—*Re* CLAZY, [1928] 2 D. L. R. 971; [1928] 1 W. W. R. 974.—**AUS.**

hh (p. 748) iv. —— *Purchaser from trustee in bankruptcy—Selling with permission of inspectors.*]—The proper conclusion from the provisions of Land Titles Act, R. S. O. 1927, c. 158, ss. 66, 69 (5), having regard to Bankruptcy Act, R. S. C. 1927, c. 11, s. 27, is that when land, vested in a trustee in bkpcy., has been transferred by the trustee with the permission in writing of the inspectors, the transferee, upon proper proof of the fact, is entitled to have himself registered as owner.—*Re* PACEY, [1928] 4 D. L. R. 425; 62 O. L. R. 616.—**CAN.**

mm (p. 748) i. —— *Filed by registrar —Form of—Necessity for affidavit.*]—HAMILTON & WRAGGE *v.* STOKES, [1921] 2 W. W. R. 921; 62 D. L. R. 282; 30 B. C. R. 65.—**CAN.**

q (p. 749) i. —— —— —— *Minister of Agriculture—In respect of claim under Live Stock Encouragement Act, R. S. A.*, 1922 (*c.* 65).]—R. *v.* RUMSEY & MORTHEN NO. 551 MUNICIPAL DISTRICT (Alta.), [1926] 2 D. L. R. 792; [1926] 2 W. W. R. 34.—**CAN.**

d (p. 749) i. —— —— *Person claiming partnership interest in land—Claim not founded on written document.*]—*Re* MACCULLOUGH & GRAHAM (Alta.) (1912), 21 W. L. R. 349; 5 D. L. R. 834.—**CAN.**

d (p. 749) ii. —— —— *Execution creditor.*]—The vendor & purchaser under an agreement for the sale of land executed a deed by which the purchaser gave up to the vendor all of whatever interest he, the purchaser, had in the land as such & took in lieu of such interest the vendor's covenant to do all she could to effect a resale of the land & to pay to said purchaser a certain amount out of the purchase-price received on the resale. There was nothing in the deed to give the purchaser any equitable mtge. or equitable charge on the land. The vendor resold the land:—*Held:* purchaser had no longer any interest in the land &, therefore, sect. 120 of Land Titles Act did not entitle an execution creditor of his to maintain a caveat.—HAY *v.* MCCULLOCH'S, LTD., [1930] 1 W. W. R. 434; 2 D. L. R. 93. —**CAN.**

e (p. 749) i. —— —— *Husband having interest under Dower Act, C. A.*, 1924 (*c.* 53).]—SHINBANE *v.* MINUK, [1927] 3 D. L. R. 550; [1927] 2 W. W. R. 121; 36 Man. L. R. 530.—**CAN.**

e (p. 749) ii. —— —— *Rural municipality—Against Crown lands for money advanced for seed grain.*]—*Re* LAND TITLES ACT, [1918] 3 W. W. R. 13.—**CAN.**

e (p. 749) iii. —— —— *Claimant to part proceeds of sale of land.*]—SHEPHERD *v.* HOUSTON, [1927] S. A. S. R. 144.—**AUS.**

e (p. 749) iv. —— —— *Person entitled to benefit of restrictive covenant.*]—WANEK *v.* THOLS, [1928] 2 D. L. R. 793; [1928] 1 W. W. R. 903.—**CAN.**

o (p. 749) i. —— —— *On failure to file evidence of commencement of proceedings—Whether applicable to caveat filed by registrar.*]—HAMILTON *v.* STOKES, [1921] 2 W. W. R. 921.—**CAN.**

dd (p. 749) i. —— —— *Lis pendens on file.*]—Land Registry Act, s. 49 (8), does not require that the *lis pendens*, or other evidence, of a caveator shall be filed during the currency of the caveat; the words "have filed" are to be construed as meaning "have on file."—CROFT *v.* WHITING (1910), 14 W. L. R. 634.—**CAN.**

ff (p. 749) i. —— —— *Appeal from order for discharge—Registration of order pending appeal.*]—*Re* MCINNIS, [1927] 1 D. L. R. 481; [1927] 1 W. W. R. 209; 21 Sask. L. R. 309.—**CAN**

ff (p. 749) ii. —— —— *Claim under agreement for sale—No proof of agreement.*]—BABITT *v.* BOILEAU (1907), 7 Terr. L. R. 481; 6 W. L. R. 260.—**CAN.**

ff (p. 749) iii. —— —— *Where caveator does not assert rights actively—How made.*]—*Re* MACDONALD, [1924] 2 D. L. R. 802.—**CAN.**

rr (p. 749) i. —— —— ——.]—WILKINSON *v.* SHACKLETON, [1930] 1 W. W. R. 721; 3 D. L. R. 304; 24 Alta. L. R. 377.—**CAN.**

o (p. 750) i. —— —— ——.]—LENG *v.* SMITH (1902), 14 Man. L. R. 258.—**CAN.**

oo (p. 750) i. —— —— ——.]—MCKAY *v.* MCDOUGALL, [1921] 3 W. W. R. 833; 63 D. L. R. 247; 15 Sask. L. R. 24; *affd.* (1921), 68 D. L. R. 245.—**CAN.**

oo (p. 750) ii. —— —— ——.]—BISHOP *v.* WESTERN TRUST CO. (Sask.), [1922] 3 W. W. R. 818; 70 D. L. R. 451.—**CAN.**

ll (p. 750) i. —— —— *When maintainable.*]—PENDLETON *v.* PENDLETON, [1927] 2 W. W. R. 720; 21 Sask. L. R. 579.—**CAN.**

qq (p. 750) i. —— *Filed before registration of transfer—Interest of caveator purchased by transferor—Right of transferee.*]—BENNETT *v.* GILMOUR (1906), 4 W. L. R. 196; 16 Man. L. R. 304.—**CAN.**

m (p. 751) i. —— —— *Sub-division of parcel into lots under unregistered plan.*]—*Re* RYAN & VANCOUVER DISTRICT REGISTRAR OF TITLES (B. C.) (1914), 26 W. L. R. 982.—**CAN.**

gg (p. 751) i. —— *To accept caveat based on mortgage before registration of grant from Crown.*]—*Re* LAND TITLES ACT, CANADA LIFE ASSURANCE CO.'S CASE, (Sask.), [1919] 2 W. W. R. 47.—**CAN.**

gg (p. 751) ii. —— —— *Transfer for executory consideration—Right to mandamus on refusal to register.*]—R. *v.* REGISTRAR OF TITLES, *Ex p.* MOSS, [1928] V. L. R. 411; [1928] Argus L. R. 293.—**AUS.**

gg (p. 751) iii. —— —— *After foreclosure decree.*]—*Re* WEST, [1928] 1 D. L. R. 937; 61 O. L. R. 540.—**CAN.**

nn (p. 751) i. —— —— ——.]—HALL *v.* YORKTON LAND REGISTRATION DISTRICT (REGISTRAR) (1911), 16 W. L. R. 568.—**CAN.**

eee (p. 751) i. —— *To decide as to status of person applying to amend plan.*] —*Re* CHISHOLM & OAKVILLE TOWN CORPN. (1885), 12 A. R. 225.—**CAN.**

eee (p. 751) ii. —— *To pay over proportion of fees to treasurer—After deducting disbursements—Whether court can review inspector's decision as to disbursements.*]—SIMCOE COUNTY *v.* SANDERSON, [1923] 1 D. L. R. 1185; 51 O. L. R. 239.—**CAN.**

eee (p. 751) iii. —— *Registration under Real Property Act, 1913—Effect of.*]—CANADIAN BANK OF COMMERCE *v.* WINNIPEG DISTRICT REGISTRAR, [1928] 3 W. W. R. 630; *affd.*, [1929] 4 D. L. R. 318; 2 W. W. R. 467; 38 Man. L. R. 275.—**CAN.**

a (p. 752) i. —— —— *Land not described in assignment — Effect of affidavit made for purposes of registration.*]—*Re* ASTON & WHITE (1920), 48 O. L. R. 168; 18 O. W. N. 5.—**CAN.**

ee (p. 752) i. —— ——.]—PUTZ *v.* TITLES REGISTRAR, [1928] V. L. R. 348; [1928] Argus L. R. 224.—**AUS.**

sn. *Application under Quieting Titles Act—Jurisdiction of court—To grant certificate.*]—*Ex p.* CHAMBERLAIN (1869), 2 Ch. Ch. 352.—**CAN.**

so. —— —— *To waive irregularity—In advertisement.*]—*Re* HARRIS (1888), 12 P. R. 430.—**CAN.**

sp. *Liability of county council—To pay for books supplied to registrar.*]—READ *v.* KENT COUNTY MUNICIPAL COUNCIL (1857), 13 U. C. R. 572.—**CAN.**

sq. —— *To furnish offices, vaults, etc.*] —R. *v.* NORTHUMBERLAND & DURHAM COUNTIES CORPN. (1861), 10 C. P. 526. —**CAN.**

sr. *Liability of city council—To pay for statement of titles—Furnished by registrar of county—To registrar of city separated from county.*]—DURAND *v.* KINGSTON CITY (1864), 14 C. P. 439.—**CAN.**

PART III. SECT. 6, SUB-SECT. 5.

q (p. 753) i. —— —— ——.]—"Fraud" under Land Titles Act, 1917, ss. 59, 174 & 194, means actual fraud.—DOMINION FIRE-BRICK & CLAY PRODUCTS, LTD. *v.* POLLOCK (Sask.), [1919] 2 W. W. R. 215.—**CAN.**

g (p. 753) i. —— *Certificate given by Commissioner under ch. 126, Acts, N. S.* 1908.]—*Re* TRINITY CHURCH, LIVERPOOL (1930), 3 M. P. R. 209.—**CAN.**

r (p. 753) i. —— ——.]—ANNABLE *v.* COVENTRY (1912), 22 W. L. R. 254; 5 D. L. R. 661; 2 W. W. R. 816.—**CAN.**

aa (p. 753) i. —— ——.]—PARAMOUNT THEATRES, LTD. *v.* BRANDENBERGER, [1928] 4 D. L. R. 573; 62 O. L. R. 579.—**CAN.**

kk (p. 753) i. —— —— ——.]—CANADIAN PROVINCIAL POWER CO., LTD. *v.* NOVA SCOTIA POWER COMMISSION, [1927] 2 D. L. R. 475; 59 N. S. R. 234.—**CAN.**

r (p. 754) i. —— —— ——.]—HALL *v.* PELMADULLA VALLEY TEA & RUBBER CO. (1929), 98 L. J. P. C. 174.—**IND.**

aaa (p. 754) i. —— —— *Conveyance by registered owner—Judgment registered against registered owner after date of conveyance.*]—*Re* MURPHY, [1928] I. R. 479.—**IR.**

h (p. 755) i. —— ——.]—THOMAS *v.* GUAY, [1927] 2 D. L. R. 1146.—**CAN.**

cc (p. 755) i. *Rights of purchaser from ostensible owner.*]—P. L. T. A. R. CHETTYAR FIRM *v.* MAUNG KYAING (1929), I. L. R. 7 Ran. 276.—**IND.**

mm (p. 755) i. *Right of owner of land sold for taxes to sue under Land Titles Act, s.* 110—*Delay in bringing action.*]—BLACKSTOCK *v.* NORTH ALBERTA LAND REGISTRATION DISTRICT REGISTRAR (Alta.), [1917] 2 W. W. R. 938.—**CAN.**

rr (p. 755) i. —— *Conveyance of Crown land by squatter.*]—ROBIN, COLLAS & CO., LTD. *v.* THERIAULT

906. *Add. Annotation :*—**Refd.** Chowood, Ltd. *v.* Lyall (2), [1930] 2 Ch. 156.

907a. Vesting order — Contents.]— Originating summonses asking for an order vesting registered land should not ask for rectification of the Register. They should not be entitled in the matter of the Land Registration Act. The order should contain a direction to the trustees to produce the order to the Land Registrar.—PRACTICE NOTE, [1932] W. N. 6 ; 173 L. T. Jo. 40.

908a. Unregistered sub-demise—By mortgagor—In breach of covenant.]—BRITISH MARITIME TRUST *v.* UPSONS, LTD., [1931] W. N. 7 ; 71 L. Jo. 135 ; 171 L. T. Jo. 77.

911a. First registration under Land Transfer Acts, 1875 & 1897—Effect of Land Registration Act, 1925 (c. 21), s. 147.]—The purchasers of freehold land caused themselves to be registered as first proprietors with an absolute title under Land Transfer Acts, 1875 & 1897, of the land purporting to be conveyed to them, which included two narrow strips of woodland of which, as the ct. decided in this action, an adjoining owner was in possession, having acquired a good title by possession to the fee simple at the time of the registration :—*Held :* that notwithstanding Land Registration Act, 1925 (c. 21), s. 147, the power to rectify the register conferred by sect. 82 (1) of that Act enabled the ct. to order rectification of entries made in the register under Land Transfer Acts, 1875 & 1897, & accordingly that the order for rectification of the register by excluding from pltfs.' registered title the land erroneously included in it had been properly made.—CHOWOOD, LTD. *v.* LYALL (2), [1930] 2 Ch. 156 ; 99 L. J. Ch. 405 ; 143 L. T. 546, C. A.

Part IV.—Extinguishment of Title.

921. *Add. Annotation :*—**Apld.** *Re* Silva, Silva *v.* Silva, [1929] 2 Ch. 198.

Part V.—Action for Recovery of Land.

956. *Add. Annotation :*—**Refd.** Ladies Hosiery & Underwear, Ltd. *v.* Parker, [1930] 1 Ch. 304.

1040a. ——— —— —.]—SPEAR'S GLASS WORKS (LTD.) *v.* SPEAR (1902), 37 L. Jo. 578.

1042a. Suit for redemption.]—PHILLIPS *v.* PHILLIPS (1900), 44 Sol. Jo. 551.

1064. *Add. Annotation :*—**Distd.** Dudley & District Benefit Building Soc. *v.* Gordon, [1929] 2 K. B. 105.

(1904), 25 C. L. T. 68 ; 3 N. B. Eq. Rep. 14.—**CAN.**

ccc (p. 755) i. —— —— *Right of purchaser of one lot on building estate—As to roads.*]—*Re* MCILMURRAY & JENKINS (1895), 22 A. R. 398.—**CAN.**

ggg (p. 755) i. —— *Restrictive covenants.*]—*Re* ROWAN & EATON, [1927] 2 D. L. R. 722 ; 60 O. L. R. 245.—**CAN.**

sx. *Real nature of transaction immaterial to stranger.*] — MORRIS *v.* MORRIS, [1931] 3 D. L. R. 325 ; 3 W. W. R. 427 ; 44 B. C. R. 166.—**CAN.**

PART III. SECT. 6, SUB-SECT. 6.

h i. —— *Equitable interest subsequently acquired by transferor.*]—A transfer of land, in the form provided in Real Property Act, made by the registered owner, & without any special covenants or recitals, does not operate as an estoppel & does not vest in the transferee an equitable interest subsequently acquired by the transferor in the absence of any fraud or misrepresentation by the latter.—BENNETT *v.* GILMOUR (1906), 16 Man. L. R. 304.—**CAN.**

h ii. —— *On registration of transfer—Previous transfer without consideration—Transferor subsequently becoming of unsound mind.*]—RATTIGAN *v.* REGAN, [1929] I. R. 342.—**IR.**

st. *Owner giving agent authority to sell—Agreement between agent & purchaser—Purchaser taking transfer from owner—Whether entitled to registration.*]—JOHNSON *v.* SENFT (Sask.), [1929] 4 D. L. R. 519.—**CAN.**

PART III. SECT. 6, SUB-SECT. 8.—A.

sw. *Lis pendens—Dismissal of bill—Order discharging lis pendens unnecessary.*]—DEXTER *v.* COSFORD (1858), 1 Ch. Ch. 22 ; 5 C. L. J. O. S. 67.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 1.

e. *Revsd.*, [1927] 3 D. L. R. 1 ; [1927] S. C. R. 403.

PART V. SECT. 1.

sa. *Duty of court—To decide upon legal rights of parties.*]—A judge sitting at *nisi prius* & hearing an action of ejectment has only to decide upon the legal rights of the parties, & if pltf. makes out a legal title to the property he is entitled to recover, even though deft. may be entitled to relief in equity.—DOE d. MOFFATT *v.* THOMPSON (1877), 1 P. & B. 516.—**CAN.**

PART V. SECT. 3, SUB-SECT. 1.—B. (a) i.

1057 vi. ——.]—STEVENS *v.* SKIDMORE, [1931] 2 D. L. R. 467 ; *affd.*, [1931] 3 D. L. R. 455 ; O. R. 649.—**CAN.**

PART V. SECT. 3, SUB-SECT. 2.

f (p. 766) **i.** *Claimant by adverse possession—Against Crown grantee.*]—DOBEK *v.* JENNINGS, [1928] 1 D. L. R. 736 ; [1928] 1 W. W. R. 348 ; 23 Alta. L. R. 306.—**CAN.**

sc. *Lessor—Suit to obtain possession for lessee.*]—A landlord, though he has given a lease to a third person, is entitled, for the purpose of putting his lessee in possession, to maintain a suit to eject a trespasser.—DAMODAR PRASAD TEWARI *v.* LACHMI PRASAD SINGH (1928), I. L. R. 7 Pat. 496.—**IND.**

sf. *Trustees of church—Unincorporated body.*]—DOE d. GALT PRESBYTERIAN CHURCH TRUSTEES *v.* BAIN (1847), 3 U. C. R. 198.—**CAN.**

PART V. SECT. 3, SUB-SECT. 3.—A.

t i. —— ——.]—LOUNT *v.* SMITH (1848), 5 U. C. R. 302.—**CAN.**

f i. —— *Wife living apart from husband—Circumstances precluding presumption of being husband's agent.*]—Where a wife, living apart from her husband, is in possession of land, under such circumstances as precludes the presumption of her being agent of her husband, she must be made a deft. in ejectment for the land.—WOODWARD *v.* CUMMINGS (1873), 6 P. R. 110.—**CAN.**

sg. *Tenants in one house—Occupying separate tenements.*]—Where several tenants occupied different apartments in one house, as several tenements :—*Held :* a single action might be brought for the premises, serving each tenant with a copy & notice.—DOE d. BELL *v.* ROE (1834), 3 O. S. 64.—**CAN.**

sh. *Whether sub-tenants necessary parties.*]—In an action by a landlord for possession of the premises, it is not necessary to make sub-tenants in actual possession parties deft., & a judgment for possession may be given against the tenant under which the sub-tenants must go out.—INCORPORATED SYNOD OF TORONTO *v.* FISKEN (1898), 29 O. R. 738.—**CAN.**

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b i. —— —— *Tenancy terminable by either party.*]—ECKHARDT *v.* RABY (1861), 20 U. C. R. 458.—**CAN.**

b ii. —— *Defendant put into possession by lessor of plaintiff—Denial of lessor's title.*]—DOE d. BOUTER *v.* FRAZER (1835), 4 O. S. 80.—**CAN.**

b iii. —— *Defendant put into possession by devisee for life—Right of remainderman.*]—DOE d. FIELDS *v.* MCKAY (1844), 4 N. B. R. (2 Kerr) 435.—**CAN.**

o (p. 770) **i.** —— *Action dismissed for failure to give—Right to bring second action after making demand.*]—Where an appln. for a writ of possession was dismissed because no notice of determination of the lease had been given :—*Held :* the landlord was not thereby barred from making another appln.

after giving such notice.—*Re* ERNEWEIN & WELCH, [1928] 4 D. L. R. 498; [1928] 2 W. W. R. 628.—**CAN.**

PART V. SECT. 7, SUB-SECT. 2.—B.

1076 iii. —— *Affidavit of service—Contents of.*]—Affidavit of service of declaration by fixing a copy to the door of house should state the name of the tenant from whom the rent is due.—DOE d. WHITE *v.* ROE (1844), 4 N. B. R. (2 Kerr) 360.—**CAN.**

PART V. SECT. 8.

sm. *Claim under paper title—Defendant setting up right under lease from plaintiff—Right of defendant to rely upon forfeiture of lease—Though not pleaded.*]—PETTIGREW *v.* DOYLE (1867), 17 C. P. 459.—**CAN.**

PART V. SECT. 10.

1125 i. —— *Title of plaintiff defective.*]—DOE d. MUNRO *v.* HANSON (1831), (1825–1897) N. B. Dig. 293.—**CAN.**

r (p. 777) **i.** —— ——.]—TOWNSHIP OF COLCHESTER SOUTH *v.* HACKETT, [1927] 4 D. L. R. 317; 61 O. L. R. 77; *affd. sub nom.* HACKETT *v.* COLCHESTER SOUTH MUNICIPAL CORP'N., [1928] 3 D. L. R. 107.—**CAN.**

r (p. 777) **ii.** —— —— *Act of Limitations—Effect of possession by tenant in common.*]—DOE d. WILLIAMS *v.* LEAVITT (1843), 4 N. B. R. (2 KERR) 83.—**CAN.**

r (p. 777) **iii.** —— —— *Against plaintiff taking forcible possession.*]—Possession short of twenty years is a sufficient title in ejectment against a party, who, without any show of title, comes & takes forcible possession of land.—DOE d. FRENCH *v.* DUNN (1859), 4 Nfld. L. R. 404.—**NFLD.**

r (p. 777) **iv.** —— ——.]—SOHAN LAL *v.* MOHAN LAL (1928), I. L. R. 50 All. 986.—**IND.**

aa (p. 777) **i.** —— —— *Title acquired through person who entered by permission of plaintiff.*]—In an action to recover possession of land, defts. limited their defence to a portion of the land claimed, & as to that portion depended upon title acquired from H., who entered by permission of pltf.:—*Held:* both defts. & H. were estopped from denying pltf.'s title.—LAKEVIEW MINING CO. *v.* MOORE (1903), 36 N. S. R. 333.—**CAN.**

o (p. 778) **i.** —— ——.]—MILNER *v.* RINGWOOD (*circa* 1875), R. E. D. 123.—**CAN.**

o (p. 778) **ii.** —— —— *Possession obtained by exchange from plaintiff's father.*]—BELL *v.* CARRUTHERS (1869), 2 N. S. D. 1.—**CAN.**

o (p. 778) **iii.** —— —— *Agreement by plaintiff to grant perpetual lease—Performance of acts referable to agreement.*]—ARIFF *v.* JADU NATH MAJUMDAR (1928), I. L. R. 55 Calc. 1090.—**IND.**

t (p. 778) **i.** —— *Purchase at sale under writ of execution—Judgment irregular to purchaser's knowledge.*]—*Held:* the sheriff's deed could not defeat pltf.'s right to recover.—HAMILTON *v.* LIGHTBODY (1870), 21 C. P. 126.—**CAN.**

t (p. 778) **ii.** —— *Colour of title.*]—BOYD *v.* MILLETT (1873), 9 N. S. R. 292.—**CAN.**

t (p. 778) **iii.** ——.]—MCDONALD *v.* MCISAAC (1905), 38 N. S. R. 163; *affd. sub nom.* MCISAAC *v.* MCDONALD, 39 S. C. R. 157.—**CAN.**

t (p. 778) **iv.** —— *Defendant in possession as tenant of plaintiff.*]—FISHER *v.* JOHNSTON (1866), 25 U. C. R. 616.—**CAN.**

t (p. 778) **v.** —— *Transfer to plaintiff made by party not in possession.*]—GAMMON *v.* JODREY (1877), 11 N. S. R. (2 R. & C.) 314.—**CAN.**

t (p. 778) **vi.** —— *Tenant of mortgagee—Title of mortgagee—Against holder of equity of redemption.*]—DOE d. SMITH *v.* [illegible] 7), 17 N. B. R. (1 P. & B.)

t (p. 778) **vii.** —— *Defendant tenant from year to year—No notice to terminate tenancy.*]—LAPORTE *v.* WILSON (1913), 24 O. W. R. 543.—**CAN.**

t (p. 778) **viii.** —— *Defendant in possession under conveyance from plaintiff — Error in conveyance — Boundaries agreed between vendor & vendee.*]—MCDONALD *v.* KNUDSEN, [1928] 3 D. L. R. 242; [1928] 2 W. W. R. 577.—**CAN.**

PART V. SECT. 11, SUB-SECT. 1.

d i. —— *Sufficiency of evidence.*]—ALLISON *v.* SMITH (1877), 1 P. & B. 199.—**CAN.**

aa (p. 779) **i.** ——.]—In a suit for ejectment, although pltf. may not be able to establish any title in himself, he is entitled to succeed if he can prove that he was in possession of the property in dispute until he was forcibly ousted by deft., provided deft. does not establish a better title in himself.—RANJIT SINGH PRINCE *v.* JHORI SINGH (1928), I. L. R. 8 Pat. 351.—**IND.**

sd. *Ejectment for non-payment of rent—Motion for judgment against casual ejector—Tenant in possession not lessee—Whether necessary to show how tenant holds.*]—DOE d. ST. JOHN CORPN. *v.* ROE (1885), 25 N. B. R. 149.—**CAN.**

se. *Unregistered lease—Prior in date to Crown grant—Whether admissible to prove right of tenant.*]—NORTH PACIFIC LUMBER CO. *v.* BRITISH AMERICAN TRUST CO. (1917), 23 B. C. R. 332.—**CAN.**

PART V. SECT. 11, SUB-SECT. 2.—A.

1134 i. *Plaintiff recovers on own title.*]—CLARKE *v.* HANEY & DUNLOP (1899), 8 B. C. R. 130; 1 M. M. Cas. 281.—**CAN.**

1140 i. *Plaintiff claiming as purchaser under writ of execution—Proof of judgment & writ.*]—PERRY *v.* PIQUOTT (1855), 12 U. C. R. 372.—**CAN.**

o (p. 780) **i.** —— ——.]—PENLINGTON *v.* BROWNLEE (1868), 28 U. C. R. 189.—**CAN.**

aa (p. 780) **i.** —— *Proof of judgment unnecessary.*]—RALSTON *v.* HUGHSON (1867), 17 C. P. 364.—**CAN.**

aa (p. 780) **ii.** ——.]—JEX *v.* HICKS (1876), 39 U. C. R. 606.—**CAN.**

n (p. 781) **i.** —— *Loan to be paid off by instalments—Date of expiration of mortgage uncertain—Release of mortgagor by mortgagee after action brought.*]—ASHFORD *v.* MCNAUGHTON (1854), 11 U. C. R. 171.—**CAN.**

q (p. 781) **i.** —— *Not registered—Admissible where no registered instrument.*]—An unregistered Crown grant is admissible in evidence where it is not sought to set it up against a registered instrument.—DORRELL *v.* CAMPBELL (No. 2), [1917] 1 W. W. R. 500; 23 B. C. R. 500.—**CAN.**

c (p. 781) **i.** —— *Purchaser for value without notice—Defendant in possession—Claim by adverse possession.*]—CANADA PERMANENT LOAN & SAVINGS CO. *v.* MCKAY (1881), 32 C.P. 51.—**CAN.**

ff (p. 781) **i.** *Title acquired pendente lite.*]—*Held:* insufficient.—ADAMSON *v.* ADAMSON (1878), 25 Gr. 550.—**CAN.**

hh (p. 781) **i.** —— *Question for jury.*]—EADES *v.* MAXWELL (1859), 17 U. C. R. 173.—**CAN.**

sm. *Claim by executrix under mortgage from defendant—Right to show mortgage to testator.*]—SKEAHON *v.* WHELAN (1864), 24 U. C. R. 174.—**CAN.**

sn. *Evidence that ancestor of plaintiff's lessors had cut wood off land.*]—MCDONALD *v.* CHISHOLM (1858), 3 N. S. R. (2 Thom.) 404.—**CAN.**

so. *Claim by devisee—Land mortgaged by testator—Foreclosure—Land sold under decree of court.*]—KEARNEY *v.* CREELMAN (1886), 14 S. C. R. 33.—**CAN.**

sp. *Title derived from foreclosure in equity suit—Property mortgaged by remainderman—Defendant in possession as tenant for life.*]—COLONIAL INVESTMENT & LOAN CO. *v.* DEMERCHANT (1908), 38 N. B. R. 431; 4 E. L. R. 546.—**CAN.**

PART V. SECT. 13.

sy. *Nature of action.*]—An action for mesne profits is in origin an action of trespass, & is regulated by the broad principles applicable to actions for damages against wrongdoers.—KAMALA PROSAD SUKUL *v.* KISHORI MOHAN PRAMANIK (1927), I. L. R. 55 Calc. 666.—**IND.**

p i. ——.]—HERR *v.* WESTON (1872) 32 U. C. R. 402.—**CAN.**

q i. —— *Right to costs of ejectment—Before taxation.*]—In an action for mesne profits, after judgment by default in ejectment, it is not necessary that the costs of the ejectment should be taxed before they can be recovered.—BANK OF UPPER CANADA *v.* ARMSTRONG (1843), (1823–1900), 1 Ont. Dig. 2158.—**CAN.**

q ii. —— —— *Necessity for proof of payment.*]—DOE *v.* CAHILL (1853), 2 All. 650.—**CAN.**

1175 v. ——.]—Under the definition of "mesne profits" in Code of Civil Procedure, 1908, s. 2 (12), the sum to be awarded is not what pltf. has lost by his exclusion from the land, but what deft. has made, or might with reasonable diligence have made, by his wrongful possession. In the case of agricultural land that depends upon what an ordinary prudent agriculturist would have grown, & if deft. for his own purposes has grown a less profitable crop the mesne profits are not thereby limited. If deft. has let the land the rent received is ordinarily the measure of the profits in the absence of evidence that a higher rent could have been obtained by reasonable diligence; but if he has cultivated the land himself the cultivation profits are the primary consideration.—GRAY *v.* BHAGU MIAN (1929), 57 L. R. Ind. App. 105, P. C.—**IND.**

PART V. SECT. 14.

e i. *Decision of master in chambers—On originating notice—Whether valid.*]—A master in chambers has no power to make an order, upon originating notice, for the delivery up of possession of land by an overholding tenant.—MACDONALD *v.* GEORGIADES (1916), 34 W. L. R. 964.—**CAN.**

sq. *Motion for—Plaintiff's case not conclusively made out.*]—COOK *v.* LEMIEUX (1885), 10 P. R. 577.—**CAN.**

sr. *Verdict entered for plaintiff by consent—Enforcement conditional on certain payments—Judgment entered on verdict before payments made—Right of defendant to damages.*]—WATSON *v.* KETCHUM (1882), 2 O. R. 237.—**CAN.**

PART V. SECT. 15.

p i. —— —— *Notice to quit as to part given too late.*]—Ejectment for a house & small lot of land adjoining. It appeared that, as to the house, notice to quit had been given too late, but that pltf. was entitled to the land. It was ordered that unless pltf. would confine his judgment to the land, deft. should have a new trial.—CONLEY *v.* LEE (1855), 12 U. C. R. 456.—**CAN.**

st. *Rebuttal of plaintiff's evidence—Defendant in actual adverse occupation for twenty years.*]—DOE d. MCMACKIN *v.* DEVINE (1841), 3 N. B. R. (1 Kerr) 411.—**CAN.**

PART V. SECT. 17.

sv. *Death of lessor of plaintiff before trial—Whether sciere facias necessary.*]—In ejectment under the old form, where the lessor of the pltf. died before the trial:—*Held:* no *sci. fa.* was necessary, but that judgment might be entered, & a writ of possession obtained.—DOE d. HAY *v.* HUNT (1855) 12 U. C. R. 625.—**CAN.**

RECEIVERS.

Part II.—Appointment by Court.

106a. —— ——.]—An *interim* appointment of a receiver of property in the possession of, & claimed by, deft. in the suit should be made only if there is a well-founded fear that, in the absence of protection, the property will be dissipated or irreparably injured.—BEVOY KRISHNA MUKHERJEE *v.* SATISH CHANDRA GIRI (1927), 55 L. R. Ind. App. 131.

233a. ——.]—A receiver appointed to collect in assets, & to bring actions in the name of an extrix., must give security to indemnify the extrix. on account of such actions.—TAYLOR *v.* ALLEN (1741), 2 Atk. 213; 26 E. R. 532, L. C.

Annotations :—**Refd.** Anon. (1806), 12 Ves. 4; Pemberton *v.* Chapman (1857), 7 E. & B. 210.

233b. -.]—SNARE *v.* BAKER, BEASLEY *v.* SNARE (1849), 13 Jur. 203.

403. *Add. Annotation :—Generally,* **Refd.** *Re* Pinto Leite & Nephews, *Ex p.* Visconde Des Olivaes, [1929] 1 Ch. 221.

451a. ——.]—HALL *v.* JENKINSON (1813), 2 Ves. & B. 125; 35 E. R. 266, L. C.

555. *Add. Annotation :*—**Refd.** Townshend *v.* Child (1932), 48 T. L. R. 575.

556. *Add. Annotation :*—**Refd.** Townshend *v.* Child (1932), 48 T. L. R. 575.

557. *Add. Annotation :*—**Refd.** Townshend *v.* Child (1932), 48 T. L. R. 575.

571. *Add. Annotation :*—**Apld.** A.-G. *v.* Glen Line, Ltd. & Liverpool & London War Risks Insce. Assocn., Ltd. (1929), 34 Com. Cas. 309.

Part III.—Effect of Appointment.

682. *Add. Annotation :*—**Refd.** *Re* A Debtor, [1929] 1 Ch. 170.

Part IV.—Rights, Powers and Duties.

755. *Add. Annotation :*—**Apld.** *Re* Debtor No. 76 of 1929, [1929] 2 Ch. 146.

Part VI.—Interference with Receiver.

895a. —— ——.]—A libel on the business carried on by a receiver & manager appointed by the ct. is a contempt of ct., & may be punished by committal of the offender.—HELMORE *v.* SMITH (No. 2) (1886), 35 Ch. D. 449: 56 L. J. Ch. 145; 56 L. T. 72; *sub nom.* HELMORE *v.* SMITH, *Ex p.* SMITH, 35 W. R. 157; 3 T. L. R. 139, C. A.

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PART II. SECT. 1, SUB-SECT. 2.—A.

h i. *Master.*]—The master of the High Ct. has no jurisdiction to make an order appointing a receiver by way of equitable execution.—BAIRD *v.* MURPHY, [1928] I. R. 125.—**IR.**

PART II. SECT. 6, SUB-SECT. 2.—N.

n i. —— ——.]—In an action by a vendor of land for specific performance an order may be made, before the land is sold, for the appointment of a receiver of the rents & profits of the land.—KNOWLES *v.* JENKINS (Alta.), [1923] 1 W. W. R. 1279.—**CAN.**

PART III. SECT. 1.

n i. —— *Possession of receiver is possession of court—For benefit of person entitled thereto.*]—BISHESHWAR PRATAP NARAYAN SAHI *v.* CHANDRESHWAR PRASAD NARAYAN SINGH (1928), I. L. R. 7 Pat. 319.—**IND.**

PART III. SECT. 2.

587 iv. ——.]—BOTTOMS *v.* PACIFIC NORTHWEST LBR. CO. (B. C.), [1929] 4 D. L. R. 415.—**CAN.**

PART III. SECT. 5, SUB-SECT. 5.—B.

685 viii. ——.]—NATIONAL TRUST CO. *v.* DOM. IRON & STEEL CO. (N. S.), [1927] 3 D. L. R. 1063.—**CAN.**

PART IV. SECT. 4.

p (p. 66) i. —— *Against receiver—Effect of order.*]—An order of the ct. giving leave to a party to sue its receiver does not amount to a relinquishment of possession of the properties by that ct., & an order of decree against the receiver cannot be enforced in execution as against him without leave of the ct. appointing him.—SRIMATI JUGAL KISHORE DEBI *v.* DEVA PRASANNA MUKHERJI (1928), I. L. R. 7 Pat. 684.—**IND.**

p (p. 66) ii. —— *In British court—Receiver appointed in Baroda.*]—A receiver appointed by a ct. of the Baroda State can be recognised as a proper party for the purpose of filing suits in a British ct.—CHANDULAL MADHAVLAL *v.* MANEKLAL LALLURAM (1930), I. L. R. 55 Bom. 309.—**IND.**

PART IV. SECT. 5.

776 i. *Purchase by receiver—Without leave of court—Purchasing receiver a trustee.*]—The rule in *Nugent* v. *Nugent*, No. 776, *supra*, that a person in a fiduciary position, having special means of knowledge, ought not to be allowed to buy or bid for property without the leave of the ct., is a sound & salutary rule & should be followed in British India. In the case of receivers it is well recognised in England & the United States of America.—JITESWARI DASI *v.* SUDHAKRISHNA MUKHERJI (1931), I. L. R. 59 Calc. 956.—**IND.**

PART X. SECT. 5.

sa. *Stipulation that receiver to sign bond—Failure to sign.*]—Where a surety on a receiver's bond executes the bond on the distinct understanding that it is also to be executed by the receiver himself, the failure to secure the signature of the receiver thereto discharges said surety.—LARBONNE *v.* SHORE, [1928] 2 D. L. R. 977; [1928] 2 W. W. R. 8; 39 B. C. R. 508.—**CAN.**

REGISTRATION OF BIRTHS, MARRIAGES AND DEATHS.

Part I.—Central and Local Registration Authorities.

SECT. 2.—**REGISTRATION DISTRICTS.**

(Vol. 39, p. 99.)

See, now, Local Government Act, 1929 (c. 17), ss. 21–28.

Part II.—The Registers.

16. *Add. Annotation :—As to* (1) **Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375

PART III.

sh. " *Indians in province of Natal*" —*Includes only Indian immigrants—Act* 17, 1923, *ss.* 6, 42 (1).]—*Ex p.* BADAT (1927), 48 N. L. R. 435.—**S. AF.**

PART IV.

sj. *Amendment of register—When order granted.*]—Appct., whose first name was, according to his birth certificate, S., but who had always believed it to be C., was married in Natal in 1928, the latter name being recorded in the marriage register. He applied for an order authorising the registrar to amend the marriage register so as to show his first name as S., alleging that it was only when he obtained a copy of his birth certificate that he discovered his name was S. :—*Held :* order should be granted.—*Ex p.* KYRIAKIDES (1929), 50 N. L. R. 305.—**S. AF.**

RENTCHARGES AND ANNUITIES.

Part I.—Nature.

52. *Add. Annotation :*—**Refd.** Bristol Corpn. *v.* Virgin, [1928] 2 K. B. 622.

54. *Add. Annotation :*—**Consd.** *Re* Alington & L. C. C. Contract (1927), 138 L. T. 131.

58. *Add. Annotation :*—**Apld.** Hennell *v.* I. Comrs. (1932), 76 Sol. Jo. 397.

Part II.—Creation of Rentcharges and Annuities.

85a. —— **No words of inheritance—Limitations exhausting fee simple.**]—GRANT *v.* EDMONDSON, No. 912a, *post.*

221a. —— **Bankruptcy of covenantor.**]—A marriage having been dissolved by a decree absolute in 1925, the wife remarried shortly afterwards. Immediately before the remarriage the former husband executed a settlement on his former wife in consideration of her release of any claim to alimony or maintenance from him. By the settlement the husband covenanted with his former wife & as a separate covenant with the trustees to pay her, during their joint lives, an annuity of such an amount as after deduction of income tax would yield the clear sum of £3,000 a year for her separate use without power of anticipation whilst under coverture. In 1929 the former husband was adjudicated bkpt. Pltfs., as trustees of the settlement, & defts., the former wife, jointly proved in the bkpcy. for a large sum made up of several items, of which £41,723 represented the capital value of the annuity of £3,000. The proof was admitted, & in Dec. 1931 a dividend of 6*d.* in the pound was paid to pltfs. This amounted to £2,322, of which £1,043 1*s.* 6*d.* was the proportion attributable to the annuity. On a summons taken out by pltfs. to determine the question whether they ought to pay to deft. the dividend so far as it was attributable to the annuity, notwithstanding the restraint upon anticipation, or whether they ought to invest the same, as being capital, in purchasing an annuity for the life of deft. :—*Held :* the trustees could properly pay the whole dividend to deft.—*Re* HORNE'S SETTLEMENT, COUTTS & CO. *v.* DUCHESSA DUSMET DE SMOURS, [1932] 2 Ch. 180 : 101 L. J. Ch. 359 ; 147 L. T. 492.

231. *Add. Annotation :*—**Refd.** Wimbledon & Putney Commons Conservators *v.* Tucly, [1931] 1 Ch. 190.

Part III.—Alienation of Rentcharges and Annuities and Estates Charged Therewith.

246. *Add. Annotation :*—**Refd.** *Re* Reeves, Reeves *v.* Pawson, [1928] Ch. 351.

247. *Add. Annotations :*—**Apld.** Kennedy *v.* Thomassen, [1929] 1 Ch. 426. **Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

247a. —— ——.]—Under the will of her then husband made in 1902 & a separation deed & settlement made in 1903 V. was entitled to two annuities of £200 each. Testator, who was also the settlor, died in 1913, & V. afterwards married a Dutch subject, & for the remainder of her life resided in Holland. In 1927 the trustees of the will offered to redeem both annuities, & after some negotiations were informed by V.'s solrs. that they would advise her to accept £6,000 for redemption, the annuities to be paid in full up to the date of redemption. The trustees sent the solrs. a draft release for their approval. V. having informed her solrs. that she would accept the offer of £6,000, they sent her the release engrossed for her execution, & she executed it on Jan. 12, 1928. On Jan. 17 she died, but no notification of her death was received by her solrs. in London until Jan. 31. In the meantime, the trustees having been informed by V.'s solrs. on Jan. 24 that she had accepted the £6,000, on Jan. 30 paid the money to them, being in ignorance of V.'s death :—*Held :* there was no concluded contract for the sale & purchase of the annuities, as the purchasers could not have intended their offer to be accepted by the vendor merely executing a document. But even assuming there was a concluded

PART I. SECT. 1.

11 i. —— *Devise of land subject to annuity.*]—Testator devised a half interest in land to his son & two daughters "subject to the payment" of an annuity :—*Held :* the annuity was charged upon the half interest.—PEARCE *v.* WRIGHT (1926), 39 C. L. R. 16.—**AUS.**

PART II. SECT. 2, SUB-SECT. 2.—A.

k i. —— *Mode of ascertaining capital sum.*]—Testator directed that on the happening of a certain event, & at a certain time, his trustees should give to certain persons such capital sum as should fairly represent the capital value of a perpetual annuity of £400. The event had happened, & the date at which the gift should take effect had arrived & was found to be May 7, 1929. The only irredeemable Govt. stock in the State of New South Wales is the 4 per cent. Interminable Stock of N. S. W., which is free of Federal & State income tax. Testator had not directed that the beneficiaries should receive the capital value of a perpetual annuity of £400 free of those taxes :—*Held :* as the basis for ascertaining the amount of the capital money bequeathed by the will that Government security in this State, which is the most permanent & the least likely to be redeemed, must be selected.—GILMOUR *v.* GILMOUR (1931), 31 S. R. N. S. W. 83 ; 48 N. S. W. W. N 15.—**AUS.**

contract, there was a total failure of consideration, owing to the death of the annuitant before completion, & the trustees were entitled to recover back the £6,000.—KENNEDY *v.* THOMASSEN, [1929] 1 Ch. 426; 98 L. J. Ch. 98; 140 L. T. 215; 45 T. L. R. 122.

254a. —— **Sale to raise charge paramount to annuities — Annuitants necessary parties to conveyance.**]—SULLIVAN *v.* SULLIVAN (1860), 28 Beav. 102; 54 E. R. 304.

Annotation :—**Refd.** Thompson *v.* Raine (1873), 28 L. T. 362.

254b. —— **Annuity charged on premises & business—Sale of business to company—Undertaking of company to pay annuity.**]—By his will made in 1913 P. appointed his two sons exors. & devised & bequeathed to them the freeholds upon which his business was carried on & the businesses subject to the payment of an annuity of £300 to his wife. Testator died in 1914. In Feb. 1923 the two sons agreed to sell to a trustee for an intended co. the undertaking & assets of the business in consideration of cash & shares in the co. & an undertaking by the co. to pay all the liabilities of the vendors in relation to the business, including the annuity & a charge to secure the bank overdraft of the vendors' firm. That agreement was carried out by two deeds dated June 1, 1923, one an assignment of the goodwill & the other a conveyance of the freehold premises of the vendors in connection with the business, including freehold premises at L. The conveyance recited the charge to the bank effected by deposit of the deeds, but made no reference to the annuity, & the will was also shortly recited. The conveyance was made by the vendors as beneficial owners, & the *habendum* was expressed to be subject to a charge by way of collateral security to the bank to secure £774 8*s.* 4*d.*, the amount of the firm's overdraft. On Nov. 19, 1929, the co. sold the freehold premises at L. to deft. J. by a conveyance of the fee simple free from incumbrances in the usual form. The co. having paid off the £774 8*s.* 4*d.* were able to hand over the title deeds to J. The widow was paid her annuity to Dec. 1929, when the co., owing to bad trade, were unable to pay it. The widow then brought this action claiming that J. had taken the property with notice which ought to have put him on inquiry whether the premises were freed from the annuity:—*Held:* the conveyance to the co. being made subject to the bank charge prevented any inference by J. that the vendors had ceased to act as exors., & the vendors to the co. were shown on the conveyance to be sole beneficiaries under their father's will as well as exors., & the fact that the vendors to the co. conveyed as beneficial owners did not put J. on inquiry, as he was entitled to assume that they were selling as exors.—PARKER *v.* JUDKIN, [1931] 1 Ch. 475; 100 L. J. Ch. 159; 144 L. T. 662, C. A.

Part IV.—Rights as Affected by Various Forms of Limitation.

292a. —— ——.]—A. devises to his nephew £5 *per annum*, without saying to his exors. or administrators, to be paid him during his, the testator's, wife's life, whom he made executrix, on condition that he demeaned himself civilly to her. By his death the £5 *per annum* is determined.—NEAL *v.* HANBURY (1701), Prec. Ch. 173; 24 E. R. 83; *sub nom.* ANON., 2 Eq. Cas. Abr. 362.

Annotation :—**Refd.** Savery *v.* Dyer (1752), Amb. 139.

296. *Add. Annotation :*—**Refd.** *Re* Fitch's Will Trusts, Public Trustee *v.* Nives (1928), 139 L. T. 556.

336a. Bequest to several—No words of survivorship.]—A bequest of an annuity to several persons during their lives, without words of survivorship, is a bequest to each of them of a separate annuity for an aliquot share of the whole, & upon the death of each his separate annuity ceases.—*Re* EVANS, THOMAS *v.* THOMAS (1908), 77 L. J. Ch. 583; 99 L. T. 271.

336b. During continuance of fund.]—Testator having bequeathed annuities issuing out of a leasehold estate, to some annuitants for life, to some during the continuance of the fund, & to others indefinitely, with a general provision for an increase or diminution of the annuities, in proportion to the increased or diminished income of the estate; & a particular provision that, on the death of some of the annuitants for life, their portions should be paid to the survivors; the annuities given indefinitely are payable during the continuance of the fund.—HACK *v.* TUCK (1818), 3 Swan. 270; 36 E. R. 858.

353. *Add. Annotations :*—**Refd.** *Re* Nelson, Norris *v.* Nelson (1918), 140 L. T. 371, n.; *Re* Smith, Public Trustee *v.* Aspinall (1928), 140 L. T. 369.

Part V.—Rights as Affected by Insufficiency of Grantor's Estate.

498. *Add. Annotation :*—**Refd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

501. *Add. Annotation :*—**Refd.** *Re* Cockell, Jackson *v.* A.-G., [1931] 1 Ch. 389.

511a. ——].—A. gave by will an annuity of £1,000 to his widow, & directed that in case of his estate being insufficient to make up her income from all sources to that amount, a

sufficient part of the *corpus* to make up the deficiency should from time to time be sold. B. subsequently by will gave her an annuity of £200, & directed that it should not be taken into account in regard to any other income, it being his express will & desire that it should be a clear beneficial addition to her income :—*Held :* the widow was not bound to include the £200 annuity in her computation of income, & was entitled to have a sufficient amount of the *corpus* sold to make up her income, independently of that annuity to £1,000.—*Re* HEDGES' TRUST ESTATE (1874), L. R. 18 Eq. 419 ; 44 L. J. Ch. 116 ; 31 L. T. 160 ; 22 W. R. 819.

525a. ——.]—A testator directed his trustees, of whom his wife was one, to permit his wife to receive the rents & profits of his real estates, & thereout in the first place to retain to herself an annuity of £400 a year, & to pay annuities of £100 a year to each of his daughters :—*Held :* these words did not give a priority to the wife in respect of her annuity over the daughters.—JENKINS *v.* BRIANT (1834), 6 Sim. 603 ; 3 L. J. Ch. 169 ; 58 E. R. 719 ; *subsequent proceedings* (1836), 5 L. J. Ch. 348.

548. *Add. Annotation :—As to* (2) **Refd.** Bristol Corpn. *v.* Virgin, [1928] 2 K. B. 622.

Part VI.—Payment of Rentcharges and Annuities.

589. *Add. Annotations :*—**Consd.** *Re* Reckitt, Reckitt *v.* Reckitt (1932), 173 L. T. Jo. 452. **Refd.** *Re* Hulton, Hulton *v.* Midland Bank Exor. & Trustee, Ltd. (1930), 99 L. J. Ch. 316.

590. *Add. Annotations :*—**Consd.** *Re* Reckitt, Reckitt *v.* Reckitt (1932), 173 L. T. Jo. 452. **Refd.** *Re* Armaghdale, Craig *v.* Armaghdale (1928), 44 T. L. R. 239.

591. *Add. Annotations :*—**Consd.** *Re* Reckitt, Reckitt *v.* Reckitt (1932), 173 L. T. Jo. 452. **Distd.** *Re* Veale's Will & Codicils, Malone *v.* James (1931), 75 Sol. Jo. 780.

592a. —— ——.]—By his will dated Nov. 12, 1924, testator, after appointing exors. & trustees, & giving certain specific & pecuniary bequests, bequeathed to his trustees the sum of £200,000 upon trust to invest the same in any of the investments thereinafter authorised, & to hold the said investments upon trust thereout to pay his wife during her life the annual sum of £5,000 " free of income tax " :—*Held :* the wife was entitled to the annual sum free of sur-tax as well as of ordinary income tax.—*Re* RECKITT, RECKITT *v.* RECKITT, [1932] 2 Ch. 144 ; 101 L. J. Ch. 333 ; 147 L. T. 275, C. A.

592b. **Devise 'free & clear of all taxes & incumbrances whatsoever."**]—*Re* WILL & CODICILS, MALONE *v.* JAMES (1931), 75 Sol. Jo. 780, C. A.

593. *Add. Annotations :*—**Consd.** *Re* Armaghdale, Craig *v.* Armaghdale (1928), 44 T. L. R. 239; Fleetwood-Hesketh *v.* Fleetwood-Hesketh, [1929] 2 K. B. 55. **Foll.** *Re* Hulton, Hulton *v.* Midland Bank Executor & Trustee, Ltd. (1930), 99 L. J. Ch 316.

593a. **Application to sur-tax—Devise free of super-tax.**]—Where a testator who died before 1927 has directed under his will that his trustees shall pay to an annuitant out of the income of the trust estate " a clear yearly sum after paying or deducting income tax & super-tax," the proportion of the sur-tax payable in respect of the annuity under the provisions of Finance Act, 1927 (c. 10), s. 38, & Finance Act, 1928 (c. 17), s. 15, is payable out of the income of the trust estate. In every essential feature super-tax & sur-tax are the same tax.—HULTON, *Re*, HULTON *v.* MIDLAND BANK EXECUTOR & TRUSTEE, LTD. [1931] 1 Ch. 77 ; 99 L. J. Ch. 316 ; 144 L. T. 343 ; 46 T. L. R. 348 ; 74 Sol. Jo. 233.

632. *Add. Annotation :*—**Refd.** *Re* McKee, Public Trustee *v.* McKee, [1931] 2 Ch. 145.

Part VII.—Forfeiture and Extinguishment of Rentcharges and Annuities.

810. After this case add " **Money paid in ignorance of death of annuitant—Recovery of.**]—*See* CONTRACT, No. 3081a."

814. *Add. Citation :*—138 L. T. 131.

Add. Annotation :—**Refd.** *Re* Draycott S. E., [1928] Ch. 371.

821. *Add. Annotation :*—**Refd.** Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] P. 1.

PART VI. SECT. 3, SUB-SECT. 1.

k l. —— ——.]—UNION BANK OF SCOTLAND, LTD. *v.* CAMPBELL, [1929] S. C. (Ct. of Sess.) 143.—**SCOT.**

PART VI. SECT. 3, SUB-SECT. 2.

n i. ——.]—By his trust disposition & settlement testator directed his trustees to dispose of " the free annual income of the residue " of his means & estate between the date of his death, which was May, 1925, & Martinmas, 1931 (*inter alia*), as follows : (1) By paying to an adopted daughter " an annual allowance of £600," which he declared to be alimentary ; (2) by paying in certain events, to each of her daughters " an annual allowance of £100 " ; & (3) by paying, in certain events, to each of her sons " such an annual allowance as my trustees in their sole direction . . . shall think right & proper, but not exceeding £100." Testator also directed " My trustees shall accumulate whatever balance may remian of said annual income, all accumulations of income to be added to the capital of my estate & dealt with as residue " :—*Held :* the annual allowances fell to be paid under deduction of income tax.—HUNTER'S TRUSTEES *v.* MITCHELL, [1930] S. C. 978.—**SCOT.**

Part VIII.—Recovery of Rentcharges and Annuities.

906. *Add. Annotation :—As to* (2) **Expld.** Grant *v.* Edmondson, [1931] 1 Ch. 1.

907. *Add. Annotation :*—**Consd.** Grant *v.* Edmondson, [1931] 1 Ch. 1.

908. *Add. Annotation :*—**Consd.** Grant *v.* Edmondson, [1931] 1 Ch. 1.

911. *Add. Annotation :*—**Folld.** Grant *v.* Edmondson, [1931] 1 Ch. 1.

912a. —— ——.]—The benefit of a covenant to pay a rentcharge does not run with the rentcharge at law, but the covenant is only in gross.

By deed dated Apr. 26, 1867, the Earl of W., the tenant for life of the W. estates, in exercise of certain powers under a private Act, conveyed part of the settled lands to E. in fee simple ; & E. granted thereout to the Earl & the person or persons who would for the time being have been entitled to the receipt of the rents & profits thereof if the conveyance had not been made yearly & for every year for ever thereafter the rent of £142 7*s.* 3*d.* There were the usual powers of distress & entry & a covenant by the grantee for himself, his heirs, exors., administrators & assigns with the Earl his heirs & assigns & other the person or persons who would for the time being have been entitled as aforesaid that he, the grantee, his heirs & assigns, would pay the yearly rent thereby reserved to the person or persons entitled thereto under the reservation thereinbefore contained. The Earl died in 1882, & under & by virtue of various deaths & two successive disentailing deeds & resettlements the W. estates passed ultimately to the present infant tenant in tail & became vested in the pltfs. as statutory owners thereof. In none of those title deeds was there an express assignment of the benefit of the covenant to pay the rentcharge. E. died in 1887, leaving a will of which the first deft. was exor., he & the other defts. being the present trustees thereof. In 1920 the trustees sold & conveyed the land conveyed to their testator in 1867 to W. in fee simple, subject to the rentcharge & to the covenants on the part of the grantee contained in the conveyance of 1867. In 1927 W. became bkpt., & by an order of Aug. 8, 1929, the bkpt.'s interest in the land was vested in pltfs. in fee simple. Payments of the rentcharge having ceased to be made since Dec. 25, 1927, pltfs. brought this action for payment by defts. of £231, the arrears which accrued down to the date when the land was vested in them :—*Held :* (1) notwithstanding the absence of express words of limitation a perpetual rentcharge had been effectually created ; (2) the benefit of a covenant to pay the rentcharge did not run with the rentcharge ; (3) Real Property Act, 1845 (c. 106), s. 5, now Law of Property Act, 1925 (c. 20), s. 56, did not affect the second question, as the sect. only applied to covenants which ran with the land or property.—GRANT *v.* EDMONDSON, [1931] 1 Ch. 1 ; 100 L. J. Ch. 1 ; 143 L. T. 749, C. A.

948. *Add. Annotation :*—**Consd.** Grant *v.* Edmondson (1931), 100 L. J. Ch. 1.

REVENUE.

Part I.—Authorities Controlling the Revenue.

2. *Add. Annotation :*—**Refd.** North Charterland Exploration Co. (1910), Ltd. *v.* R. (1930), 99 L. J. Ch. 483.

3a. **Appropriations in aid—Payment for armed guards for British ships.**]—There is no legally enforceable duty on the Crown to protect British subjects from danger in foreign parts & to provide armed guards for British ships. Shipowners who require those services must pay for them if the Crown requires them to pay. The payment, when made, is sanctioned & controlled by Parliament in the Appropriation Act under the system of appropriations in aid under the Public Accounts & Charges Act, 1891 (c. 24).—CHINA NAVIGATION CO., LTD. *v.* A.-G., [1932] 2 K. B. 197 ; 101 L. J. K. B. 478 ; 147 L. T. 22 ; 48 T. L. R. 375, C. A.

Part IV.—Duties on Land Values.

53. *Add. Annotation :*—*Generally*, **Refd.** Miller (Lady) *v.* I. R. Comrs. (1930), 15 Tax Cas. 25.

55a. —— **What amounts to.**]—*Re* WINDSOR STEAM COAL CO. (1901), LTD. (1928), 165 L. T. Jo. 32.

61. For "[1914] 2 K. B. 192" read "[1914] 3 K. B. 192."

Add. Annotation :—**Refd.** Simbro Trading Co. *v.* Posograph Parent Corpn. [1929] 2 K. B. 266.

Part V.—Customs Duties.

70a. **"Baggage of passengers"—What amounts to—Parcels of cinematograph films.**]—BUCKLAND *v.* R. (1932), 49 T. L. R. 39 ; 76 Sol. Jo. 850.

80. *Add. Annotation :*—**Refd.** British Trawlers Federation, Ltd. *v.* London & North Eastern Ry. Co. (1932), 48 T. L. R. 491.

PART II. SECT. 1, SUB-SECT. 1.

sa. *Power to reward informer—Validity of agreement before receiving information.*]—*Held :* Inland Revenue Regulation Act, 1890, s. 32, does not warrant the Comrs. of Inland Revenue, or the Treasury, before receiving information from an informer, in entering into an agreement with him as to the payment of a reward.—RIACH *v.* LORD ADVOCATE, [1932] S. C. 138.—**SCOT.**

PART II. SECT. 2, SUB-SECT. 2.—D. (b) ii.

39 ii. —— *Seizure outside three mile limit.*]—MASON *v.* COFFIN, [1928] 2 D. L. R. 263 ; 49 Can. Crim. Cas. 276.—**CAN.**

PART V. SECT. 1, SUB-SECT. 1.

bb i. —— *Meaning of.*]—"Value for duty" wherever used in the Customs Act & amendments has reference to the basis on which the true amount of duty *ad valorem* is payable, & to nothing else.—R. *v.* CORNET, [1928] 2 D. L. R. 767 ; 49 Can. Crim. Cas. 200 ; 61 O. L. R. 583.—**CAN.**

sc. *Goods transferred within territorial waters.*]—Where goods are transferred within the territorial waters of Canada, without the intention of fraudulently relanding or bringing the same back into Canada, no offence is committed under Customs Act.—COOK *v.* R., [1928] Exch. C. R. 49.—**CAN.**

sf. *Offence of smuggling—Not complete until opportunity of reporting to Customs House.*]—R. *v.* LANGILLE, [1932] 2 D. L. R. 226.—**CAN.**

PART V. SECT. 1, SUB-SECT. 2.

c i. ——.]—MORIN *v.* R. (1927), 49 Can. Crim. Cas. 231 ; 43 Que. K. B. 192.—**CAN.**

PART V. SECT. 1, SUB-SECT. 4.

t (p. 229) **i.** —— —— ——.]—*Held :* inasmuch as by the first part of sect. 181 of Customs Act, which deals with the penalty for having liquor in one's possession illegally, it is provided that the offence exists "whether (the party is) the owner thereof or not," & in the second part, where provision is made for the forfeiture of the liquor or vehicle in which it is being transported, the words "whether the owner thereof or not" are omitted, if it is proved that the vehicle used is the property of an innocent party who claims it, the Crown has no power to forfeit the same.—R. *v.* KRAKOWEC, DAHLBERG & EKLUND & CONTINENTAL GUARANTY CORPN. OF CANADA, LTD., [1931] Ex. C. R. 137 ; 56 Can. C. C. 150 ; *revsd.*, 57 Can. C. C. 96, [1932] 1 D. L. R. 316.—**CAN.**

se. *For failure to answer questions—By master of vessel.*]—*Held :* the delivery of the report required by Customs Act, s. 96 (1), to the Customs officer by the master was not the "answer of questions demanded of him" referred to in Customs Act, s. 246.—PARKER *v.* R., [1928] Exch. C. R. 36.—**CAN.**

sf. *Power of election as to penalty—Whether power exerciseable by Revenue Commissioners or by Attorney-General.*]—*Held :* by the High Ct., on a case stated, the power of election which is conferred upon the Revenue Comrs., as the successors of the Comrs. of Customs, as to which of the two penalties prescribed by Customs Consolidation Act, 1876, s. 186, shall be imposed for any offence under that section, must be exercised by them, & not by the A.-G.—A.-G. *v.* PERCY, [1929] I. R. 514.—**IR.**

sg. *Damages—Measure of.*]—On assessment of damages for rum-running, damages held to be the value of the rum where purchased, together with cost of containers, local tax & freight, but profit on cargo was not included as there was no evidence of an available market at the port of seizure.—CROSS *v.* MCCARTHY, [1931] 3 M. P. R. 414.—**CAN.**

Part VI.—Excise Duties.

SUB-SECT. 1.—BETTING DUTY (Vol. XXXIX., p. 232).

NOTE.—*This Duty was abolished by Finance Act*, 1930 (*c.* 28), *s.* 4.

Add the following case :—

93a. Who liable to duty — Club — Managing totalisator.]—A limited co. was the proprietor of a club formed for social intercourse. Upon the club premises betting on horse races was transacted through the instrumentality of two machines, called totalisators, owned by the co. & worked by the co.'s servants. Any member desiring to use these machines for the purpose of backing horses applied to join the club pool, &, if elected as a pool member, he became entitled on payment of a small subscription to operate, & for this purpose he was supplied with credit vouchers of varying amounts. Under the rules of the pool 10 per cent. of the gross amount of the stakes on each race was retained by the co. in respect of the facilities provided & the expenses of management, & the balance was divided among the backers, called in the rules " investors," of the winning horse in the proportion of their stakes. The winnings for each week were paid by the co. from its own funds irrespective of any possible loss owing to dishonour of the vouchers. The rules provided that the club acted simply as a distributing agent. Upon an information preferred by the A.-G. against the co. alleging that the co. was liable to pay betting duty in respect of wagers on horse races made by members of the club by means of these machines, it was admitted that the co. was a bookmaker & that the transactions in question were bets within Finance Act, 1926 (c. 22), s. 15 :—*Held :* the bets were not made with the co., but by the members *inter se*, & the claim of the Crown failed.—A.-G. *v.* LUNCHEON & SPORTS CLUB, LTD., [1929] A. C. 400 ; 98 L. J. K. B. 359 ; 141 L. T. 153 ; 45 T. L. R. 294, H. L.

Annotations :—**Consd.** National Pari-Mutuel Assocn., Ltd. *v.* R. (1930), 47 T. L. R. 110 ; Everett *v.* Shand (1931), 145 T. L. 216. **Refd.** Baker *v.* Sillitoe (1931), 47 T. L. R. 632 ; Daniels *v.* Pinks (1930), 100 L. J. K. B. 337.

93b. —— Employee of bookmaker.]—A bookmaker, who held a bookmaker's certificate & also an entry certificate in respect of certain premises, had in his service at the premises an employee, who received a weekly salary & was the only person employed there. The employee had sole charge of the premises in the absence of the bookmaker, who attended race meetings in other towns during the flat racing season, & had on one occasion been absent from the premises for ten days consecutively. Although the employee had

PART VI. SECT. 4, SUB-SECT. 1.

sh. *On what bets exigible—Ready-money office-betting.*]—SMITH *v.* ADAM, [1929] S. C. (J.) 33.—**SCOT.**

sj. —— *Any bet by bookmaker—Street bet.*]—A licensed bookmaker who made a bet in the public street under circumstances which might possibly have made him liable to prosecution under Street Betting Act, 1906, held liable to pay the betting duty imposed by Finance Act, 1926, s. 24, in respect of said bet. The section is not limited to bets either upon a horse race or upon a greyhound coursing contest, but the words " &, in every other case, 5 per cent. of the amount of the bet " cover every other case of a bet made by a bookmaker.—A.-G. *v.* MEEHAN, [1932] I. R. 61.—**IR.**

sk. *Statutory power to issue " tax-paid betting pads "—Authorised issue of " betting sheets "—Valid.*]—*Held :* regulations made by the Revenue Comrs. under Finance Act, 1926, s. 25, by which provision was made for the issue of " official betting sheets " were *intra vires.*—A.-G. *v.* M'LOUGHLIN, [1931] I. R. 430.—**IR.**

PART VI. SECT. 4, SUB-SECT. 6.

e. *Affd. sub nom.* DOMINION PRESS, LTD. *v.* CUSTOMS & EXCISE MINISTER, [1928] A. C. 340 ; 97 L. J. P. C. 91 ; 139 L. T. 338.

f i. —— —— *Equitable mortgagee or pledgee realising security.*]—The sales tax was not intended to be imposed upon the person realising, by means of sale, property pledged to him to secure a debt ; a going concern was in contemplation.—R. *v.* DOMINION BANK, [1930] 1 D. L. R. 664 ; 11 C. B. R. 152 ; 64 O. L. R. 448.—**CAN.**

n i. —— —— *Imported goods—Change in form on coming out of bond.*]—*Held :* where goods imported are so changed before taking them out of the bonded warehouse for consumption that they take on a form altogether different from that in which they were imported, the sales tax, under the Special War Revenue Act, 1915, should be calculated on the sale price of the goods after such change, & not upon the duty-paid value thereof as imported in bulk.—R. *v.* DOMINION DISTILLERY PRODUCTS CO., [1928] Exch. C. R. 170. —**CAN.**

n ii. —— —— *Exempting regulation of Minister of Customs & Excise—Necessity for strict compliance.*]—A.-G. FOR CANADA *v.* GOLDBERG (Ont.), [1929] 1 D. L. R. 711.—**CAN.**

n iii. —— —— *Sale by manufacturer to sales agency—Tax computed on price charged by sales agency to trade.*]—R. *v.* CAPUANO & PASQUALE CO. (Que.), [1929] 1 D. L. R. 1004.—**CAN.**

n iv. —— —— —— ——.]—A.-G. FOR CANADA *v.* COLEMAN PRODUCTS CO. (Ont.), [1929] 1 D. L. R. 658.—**CAN.**

n v. —— —— *On beverages.*]—The word " beverages " in Sched. II. of Special War Revenue Act, 1915, controls the whole classification of the products referred to in that portion of the sched. which is introduced by said word. The product in question herein which was sold by deft. to " bottlers " &, after certain ingredients were added to it by the latter, was sold by them to the consuming public :—*Held :* not to be a " beverage " in the condition in which it was when sold by deft.—R. *v.* WHISTLE CO. (OF CANADA), LTD., [1929] 3 W. W. R. 30 ; 38 Man. L. R. 347 ; *affd.*, [1930] 1 W. W. R. 92 ; 1 D. L. R. 1000 ; 38 Man. L. R. 420.—**CAN.**

n vi. —— —— *Market price.*]—The shares of both deft. cos. outside of qualifying shares, were owned & held by P. Co. of Delaware, U.S.A. Previous to 1924, C. Co., Ltd., manufactured & sold soap & toilet articles at Toronto & in that year P. M. Co. (Ontario), Ltd., was organised to take over the manufacturing end of the business. The business of both cos. was carried on in the same premises & the officers of both were the same. The manufacturing co. sold the major portion of its products to the selling co. on the basis of costs plus 15 per cent. profit. The Crown claimed that the manufacturing, or alternatively both cos. were liable for the sales tax upon the basis of the sales price to the public by the selling co., namely, the market price.—*Held :* the selling price arranged between the two deft. cos. was not the sale price within the statute. In a taxing statute where the tax is based on the selling price of goods, sale price can only mean the market price unless there are express words saying it is some other kind of price.—R. *v.* COLGATE-PALMOLIVE-PEET CO., LTD. & PALMOLIVE MANUFACTURING CO. (ONTARIO), LTD., [1932] Ex. C. R. 120. —**CAN.**

o. *affd. sub nom.* BRADSHAW *v.* MINISTER OF CUSTOMS & EXCISE, [1928] 2 D. L. R. 352 ; [1928] S. C. R. 54.—**CAN.**

o i. —— *Exemption of goods exported —Onus of proof.*]—*Held :* the Act being a taxing statute, must be construed strictly, & the *onus* was upon the Crown to show that defts. came within the taxing provisions, but the exemption of goods " exported " being in the nature of a proviso, it was incumbent upon defts. to plead it, & the *onus* was upon them to show that they came within it.—R. *v.* GOODERHAM & WORTS, LTD., [1928] 3 D. L. R. 109 ; 62 O. L. R. 218.—**CAN.**

o ii. —— —— *Meaning of export.*]—The words "sale" & "export" as used in the Act, mean a sale & export by the manufacturer or producer, the exportation being an act consummating a transaction to which the tax does not apply. The language of the proviso relates only to exportation by the manufacturer, & cannot be extended to a case where the manufacturer loses control of the goods by selling & disposing of the same to a purchaser in Canada.—R. *v.* FROWDE, LTD., [1929] 2 D. L. R. 721 ; Ex. C. R. 119 ; *affd.*, [1930] S. C. R. 375 ; 2 D. L. R. 725.—**CAN.**

o iii. —— —— ——.]—Special War Revenue Act, 1915, of Canada, as amended by later statutes, imposes gallonage tax and the sales tax upon specified goods, including beer, manufactured in Canada. It is provided,

no authority to open new accounts in the absence of his employer, he could accept personal bets & bets over the telephone, & he had said that he had no responsibility, but answered the telephone & recorded messages. On a certain date the employee when in sole charge of the premises was seen to take two or three bets on the telephone & enter them upon a slip, he himself not holding a bookmaker's certificate. On proof of these facts :—*Held :* the employee carried on business as a "bookmaker" within Finance Act, 1926 (c. 22), s. 18 (1).—LAKE *v.* CRONIN, HUNT *v.* CRONIN, [1929] 1 K. B. 31 ; 98 L. J. K. B. 47 ; 140 L. T. 118 ; 92 J. P. 191 ; 44 T. L. R. 819 ; 72 Sol. Jo. 546 ; 28 Cox, C. C. 554 ; 26 L. G. R. 568, D. C.

Payment under mistake of fact.]—*See* MISTAKE, No. 36a, *ante*.

SUB-SECT. 6.—OTHER CASES (Vol. XXXIX., p. 232).

93c. Safeguarding Acts—Construction—Duty of court to consider intention of Legislature—Duty on "packing or wrapping paper."]—POWELL LANE MANUFACTURING CO., LTD. *v.* PUTNAM (1928), [1931] 2 K. B. 305, n. ; 100 L. J. K. B. 347, n.

Annotation :—**Folld.** Newman Manufacturing Co. *v.* Marrable (1930), 100 L. J. K. B. 345.

93d. —— —— —— Duty on "buttons."]—By Finance Act, 1928 (c. 17), s. 9 (1), a customs duty is imposed on buttons imported into the United Kingdom. By sect. 9 (3) the expression "buttons" means buttons made of any material, & whether finished or unfinished, of a description commonly used for the fastening or decorating of wearing apparel or household linen, not being buttons

however, that gallonage tax shall not be payable "when such goods are manufactured for export under regulations prescribed by the Minister of Customs & Excise," & that sales tax shall not be payable on "goods exported," with a provision for a refund on "domestic goods exported under regulations" similarly prescribed :—*Held :* the exemption from gallonage tax, like that from sales tax, applied only to goods actually exported, & it operated although no regulations had been prescribed ; & an export of beer to the U.S.A. was within the exempting provisions although the import was contrary to the law of that country. Further, beer sold to a purchaser in the U.S.A. was within the exemptions where it had been consigned to him at a Canadian port, & was proved to have been shipped from there into the U.S.A. in smaller consignments, mostly to sub-purchasers.—CARLING EXPORT BREWING & MALTING CO., LTD. *v.* R., [1931] A. C. 435 ; 100 L. J. P. C. 140 ; 145 L. T. 26 ; 47 T. L. R. 319, P. C.—**CAN.**

o iv. —— *Exemption of magazine—What is.*]—*Held :* the pamphlet in question, printed by deft. monthly for the Canadian Kodak Co., Ltd., & called "Kodakery," was a "magazine," & as such exempt from sales tax. The word "magazine" in the exempting provision is used in its ordinary sense & must be construed & applied in that sense. Its meaning in ordinary usage discussed, with regard to its application to the pamphlet in question.—MILN-BINGHAM PRINTING CO., LTD. *v.* R., [1930] S. C. R. 282 ; 2 D. L. R. 263 ; *revsg.*, R. *v.* MILN-BINGHAM PRINTING CO., LTD., [1929] EX. C. R. 133.—**CAN.**

o v. —— *Government charge on assets of person indebted for sales taxes—Meaning of assets.*]—In 12 & 13 Geo. V., c. 47, s. 17, which sect. gave the Crown a first charge on the assets of a person indebted for sales taxes, the word "assets" was not intended to include any other assets than such as were the property of the debtor at the time his assets were sought to be administered or distributed.—R. *v.* HYDE, [1928] 2 W. W. R. 253.—**CAN.**

o vi. —— —— ——.]—GOODMAN & A.-G. FOR CANADA *v.* BANK OF TORONTO (1924), 56 O. L. R. 318.—**CAN.**

o vii. —— —— *Effect of section—Priority of Crown on insolvency—Not lien.*]—R. *v.* DOMINION BANK, [1930] 1 D. L. R. 664 ; 11 C. B. R. 152 ; 64 O. L. R. 448.—**CAN.**

o viii. —— —— *Liability of purchaser of goods not subject to tax.*]—R. *v.* JACK PINE LUMBER CO. & CANADIAN BANK OF COMMERCE, [1928] 4 D. L. R. 976 ; [1928] 3 W. W. R. 419.—**CAN.**

o ix. —— —— *Liability of purchaser without notice.*]—A bank advanced money to a manufacturer, took an assignment of a chattel mtge. on his assets & seized & sold thereunder without knowing that he was indebted to the Crown for sales taxes & without inquiring into the question. The Crown issued an information claiming damages for conversion, the seizure being alleged to constitute the conversion, & a declaration that the bank was indebted to the Crown for the taxes collected by the manufacturer & paid to the credit of his account with the bank. The mortgaged goods were still intact on the manufacturer's premises :—*Held :* no liability had been established against the bank.—R. *v.* BANQUE CANADIENNE NATIONALE (Man.), [1929] 2 W. W. R. 668 ; *affd.*, [1930] 2 W. W. R. 586 ; 4 D. L. R. 441 ; 39 Man. L. R. 108.—**CAN.**

o x. —— *Effect of repeal—On lien of Crown for taxes.*]—*Re* WILNER, [1928] 2 D. L. R. 396.—**CAN.**

o xi. —— —— *On liability incurred before repeal.*]—In view of Interpretation Act, s. 10, a liability for sales taxes under special War Revenue Act, 1915, & amendments thereto, which was incurred prior to enactment of 1925 Act, c. 26, s. 9, remains in force.—R. *v.* BANQUE CANADIENNE NATIONALE (Man.), [1929] 2 W. W. R. 668.—**CAN.**

o xii. —— *Goods manufactured—By contractor for company.*]—R. *v.* DOMINION PRESS CO., [1928] Exch. C. R. 122.—**CAN.**

o xiii. —— —— *For person's own use.*]—When goods are manufactured & produced in Canada, not for sale, but for the use of the manufacturer or producer, such transactions are for the purposes of the Act to be regarded as sales.—R. *v.* BANK OF NOVA SCOTIA, [1929] Ex. C. R. 155 ; [1930] 1 D. L. R. 721 ; S. C. R. 174.—**CAN.**

o xiv. —— —— —— *Used for purpose for which made.*]—Resp. was a manufacturer of lumber for sale, & consumed a portion in construction & building operations, carried on over a period of years, the lumber so consumed having been taken from stock in its yards, produced & manufactured in the ordinary course of its business of manufacturing for sale, & not produced or manufactured especially for the purpose for which it was used :—*Held :* resp. was liable, under Special War Revenue Act, R. S. C., 1927, ss. 86, 87, for sales tax on the lumber so consumed. The intention of the Act was to levy the tax on the sale price of all goods produced or manufactured in Canada, whether they be sold by the manufacturer or consumed by himself for his own purposes.—R. *v.* FRASER COMPANIES, LTD., [1931] S. C. R. 490 ; 3 D. L. R. 145.—**CAN.**

o xv. —— —— —— *Samples.*]—Deft., in the course of its business as a manufacturer of pharmaceutical preparations, put up in special small packages & distributed free amongst physicians & druggists samples of its products, to acquaint them with their character & quality. The question in issue was whether or not deft. was liable for the consumption or sales tax in respect of the samples, under sects. 86 (*a*) & 87 (*d*) of Special War Revenue Act, R. S. C., 1927, c. 179. Clause 4 of the special case agreed on stated that "the cost of producing such samples was paid by [deft.] as a necessary expense of business, & [deft.] in its books treated such expense as a necessary cost of production of articles manufactured & sold, in respect of which last-mentioned articles [deft.] has paid sales tax" :—*Held :* the "use" by the manufacturer or producer of goods not sold, dealt with in sect. 87 (*d*), includes any use whatever that he may make of such goods, & is wide enough to cover their "use" for advertising purposes by their distribution as free samples, & would have covered their use in the present case, & the samples would have been subject to the tax, but for said clause 4 of the special case, which must be taken as an admission that the sales tax had already been paid upon the cost of producing the samples for free distribution, in which case to hold them now subject to the tax would involve double taxation, which the legislature should not be taken to have intended.—R. *v.* HENRY K. WAMPOLE & CO., LTD., [1931] S. C. R. 494 ; 3 D. L. R. 754.—**CAN.**

o xvi. —— —— *"Leads."*]—Deft. carried on both the business of a saw mill & the business of coal mining, & manufactured at its mills "leads" for use in its mining operations. In some isolated cases it would purchase such "leads" in the market for the same purpose. These "leads" are logs put through the mill, sawn in half longitudinally & again into the required lengths for the use aforesaid :—*Held :* such "leads" were manufactured at deft.'s mill & used by them not in the course of manufacturing the same, but were used in a different & distinct undertaking or operation quite apart from manufacturing of the same at their mill, & they were manufactured articles bought & sold on the market, & clearly within the Act.—R. *v.* MIRAMICHI LUMBER CO., LTD., [1929] Ex. C. R. 172.—**CAN.**

o xvii. —— —— *Who is "manufacturer" — Not merchant tailor.*]—MINISTER OF NATIONAL REVENUE *v.* OGULNIK & CO., LTD., [1932] 4 D. L. R. 412.—**CAN.**

o xviii. —— *To what sales applicable.*]—Sales tax imposed by Sales Tax Acts (No. 1), 1930, is chargeable on goods manufactured in Australia, & treated by the manufacturer as stock for sale by him by retail prior to

forming part of any other article. Beads or button blanks, nearly spherical in shape, made of trocas shell & perforated by one hole were imported into the United Kingdom. After grading them the importers made or completed the making of them into shoe-buttons in the United Kingdom, by the insertion of shanks by means of a machine into & through the holes, & then sorting, cleaning, dyeing, repolishing & resorting them for shade. The cost of the shanking was one-seventh of the total cost of the completed article; material, labour & a proportion of overheads:—*Held:* in deciding what is the meaning of the expression "unfinished" button in sect. 9 (3), the ct. should consider the object of the sect., which is to protect the English button trade. The statute was directed against those who imported goods, which were not quite buttons, but upon which the bulk of the work had been done abroad, very little remaining to be done by the manufacturers in the United Kingdom. The bead or button blank was an "unfinished" button within sect. 9 (3).—NEWMAN MANUFACTURING CO. *v.* MARRABLE, [1931] 2 K. B. 297; 100 L. J. K. B. 345; 145 L. T. 117.

93e. Duty on buttons—"Unfinished" buttons—What are.]—NEWMAN MANUFACTURING CO. *v.* MARRABLE, No. 93d, *ante*.

Part VII.—Excise Licences.

104. *Add. Citation:*—97 L. J. K. B. 36.

128. *Add. Annotation:*—**Apld.** Dennis *v.* Leonard (1929), 141 L. T. 94.

140a. Petrol-electric vehicle—Whether "electrically-propelled."] — A vehicle commonly known as a "petrol-electric" motor derived its primary motive power from an ordinary internal combustion engine; that engine was connected with an electric dynamo, & the electricity generated in the dynamo was transmitted to an electric motor, which drove the rear wheels of the car through a cardan shaft & differential gear:—*Held:* the vehicle was an "electrically propelled" vehicle within Finance Act, 1926 (c. 22), Sched. I., para. 5.—TILLING-STEVENS MOTORS *v.* KENT COUNTY COUNCIL, [1929] A. C. 354; 98 L. J. Ch. 198; 140 L. T. 624; 93 J. P. 146; 45 T. L. R. 249; 27 L. G. R. 261, H. L.

140b. Private car used for conveyance of goods.]—In 1931 applt., who carried on business as a greengrocer at Neath in Glamorganshire, held a licence for a private motor-car, duty being paid thereon at the "horse-power" rate under Finance Act, 1920 (c. 18), Sched. II., para. 6. The car was neither "constructed" nor "adapted" for use for the conveyance of goods, but applt. while the licence was in force, used it occasionally for the conveyance of goods in the course of his trade. An information was preferred against him at Cardiff under Finance Act, 1922 (c. 17), s. 14, on the ground that this user was for a purpose which brought the car within a class to which the higher rate of duty under Sched. II., para. 5, of 1920 Act, became chargeable. Upon this applt. was convicted & fined:—*Held:* the user was "for a purpose" which brought the car within Finance Act, 1920 (c. 18), Sched. II., para. 5, & applt. was rightly convicted.—PAYNE *v.* ALLCOCK, [1932] 2 K. B. 413; 101 L. J. K. B. 775; 147 L. T. 96; 96 J. P. 283; 48 T. L. R. 396; 76 Sol. Jo. 308; 30 L. G. R. 294, D. C.

143. *Add. Annotation:*—**Distd.** Gough *v.* Rees (1929), 46 T. L. R. 103.

144. *Add. Annotation:*—**Consd.** Abercromby *v.* Morris (1932), 48 T. L. R. 635.

145a. Use of car without licence—Car loaned subject to condition of renewing licence—Owner not liable.]—ABERCROMBY *v.* MORRIS (1932), 147 L. T. 529; 96 J. P. 392; 48 T. L. R. 635; 76 Sol. Jo. 560; 30 L. G. R. 407, D. C.

224. *Add. Annotation:*—**Consd.** Abercromby *v.* Morris (1932), 48 T. L. R. 635.

SUB-SECT. 6.—GUN LICENCES.

For "Pistols Act, 1903 (c. 18), ss. 3, 8" read "Firearms Act, 1920 (c. 43)."

302a. Firearms Act, 1920 (c. 43), s. 12 (1)—What is "firearm"—Air pistol.]—An air pistol is not *per se* a firearm within the definition of "firearm" in above sect., but it is an "air gun or air rifle" within the proviso, which empowers a Secretary of State to make rules declaring certain types of air guns & air rifles to be specially dangerous, &, if it is so declared, it is to be deemed to be a firearm.—SAINT *v.* HOCKLEY (1925), 41 T. L. R. 555; 69 Sol. Jo. 575.

302b. What is "air gun or air rifle"—Air pistol.]—SAINT *v.* HOCKLEY, No. 302a, *ante*.

Aug. 1, 1930, where such goods were on that date or afterwards sold, either to persons not registered under Sales Tax Assessment Acts (Nos. 1–9), 1930, or to persons who had not under those Acts quoted their certificate of registration.—TAXATION COMR. *v.* BEARD, WATSON & CO., LTD., [1931] Argus L. R. 278.—**AUS.**

o xix. —— *Priority of Crown in winding up.*]—In the winding-up of a co. under Cos. Act, 1899, the Commonwealth Govt. is entitled to priority over unsecured creditors for the amount due from the co. in respect of unpaid sales tax.—*Re* KEEP, MCPHERSON, LTD. (1931), 48 N. S. W. W. N. 180.—**AUS.**

PART VII. SECT. 3, SUB-SECT. 5.

sl. *Finance Act,* 1926—*Whether applicable to street bookmaker.*]—*Held:* the provision of the Finance Act, 1926, which imposes a penalty on any one carrying on business as a bookmaker without having in force the certificate required by the Act, applies not only to a bookmaker carrying on his business legally, but also to a street bookmaker carrying on his business in contravention of Street Betting Act, 1906.—M'COLL *v.* HYNDMAN, COOKSON *v.* MACKIE, HERLIHY *v.* KELLY, [1928] S. C. (J.) 17.—**SCOT.**

sm. *Registration—Continuation of certificate of suitability—Conditions of.*]—SCOTT *v.* M'CARTHY, [1928] I. R. 611.—**IR.**

PART VII. SECT. 4, SUB-SECT. 1.

so. *Invalid condition—What is.*]—Where a municipal corpn. is empowered to collect a licence fee "from any retail trader, not exceeding twenty dollars, for every six months," the licence to be granted "so as to terminate on the 15th day of July or the 15th day of Jan.," the corpn. may not stipulate that appct. shall confine his trading to week days only of the period of the licence, & may not withhold the licence if he refuses to subscribe to such a condition.—VASILATOS *v.* VICTORIA CORPN. (1910), 15 B. C. R. 153.—**CAN.**

sp. *Licence for delivery trucks—Delivery within municipality—Owner outsider.*]—NORTH VANCOUVER *v.* STEWART F. R. & CO., [1928] 1 W. W. R. 586; 49 Can. Crim. Cas. 216; 39 B. C. R. 401.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 3.—C.

sr. *Person using vehicle.*]—COCKBURN *v.* GORDON, [1928] S. C. (J.) 87.—**SCOT.**

PART VII. SECT. 4, SUB-SECT. 3.—D.

ss. *"Weight unladen"—How ascertained—Loose equipment.*]—Movable shelving, fitted to slide on brackets in a baker's van, & used to facilitate the delivery of goods to customers, is loose equipment within Roads Act, 1920 (c. 72), s. 7 (6), & does not fall to be included in the weight unladen of the vehicle.—DARLING *v.* BURTON, [1928] S. C. (J.) 11.—**SCOT.**

Part VIII.—Drawbacks and Excise Allowances.

360. *Add. Annotation :*—**Refd.** Fenton Textile Assocn. *v.* Lodge, [1928] 1 K. B. 1.

Part IX.—Stamp Duties.

372. *Add. Annotation :*—**Folld.** Hennell *v.* I. R. Comrs. (1932), 76 Sol. Jo. 397.

440a. Voluntary disposition inter vivos—Property disposed of including stock exempt from stamp duty.]—A deed of settlement, which operated as a voluntary disposition *inter vivos*, was made of certain stocks, shares, marketable securities & policies of life insurance; including certain Govt. stocks. The settlement operated as a transfer of the policies of life insurance, but the stocks, shares & marketable securities were subsequently transferred to the trustees of the settlement by separate transfers. *Ad valorem* "voluntary disposition" duty under Finance (1909–10) Act, 1910 (c. 8), s. 74, was subsequently paid or assessed, without dispute, in respect of the stocks, shares & marketable securities & policies of life insurance, with the exception of the Govt. stocks, which were exempt from duty on transfer by the General Exemptions from all Stamp Duties in the First Schedule to Stamp Act, 1891 (c. 39). The comrs. held that the settlement was also chargeable with *ad valorem* "settlement" duty on the value of the Govt. stocks included in it. The settlor, however, contended that no duty was payable in respect of those stocks, as they were included in the settlement with other stocks in respect of which *ad valorem* transfer duty & not settlement duty was payable under Finance (1909–10) Act, 1910 (c. 8), s. 74 (1) :—*Held :* the Govt. stocks were distinct matters, within Stamp Act, 1891 (c. 39), s. 4 (*a*), from the other property dealt with by the settlement, &, therefore, the settlement could be separately charged as if it were a separate instrument, with settlement duty in respect of the Govt. stock.—ANSELL *v.* INLAND REVENUE COMRS., [1929] 1 K. B. 608 ; 98 L. J. K. B. 384 ; 143 L. T. 437.

478. *Add. Annotation :*—**Refd.** Bottomley *v.* West Derby Assessment Committee, etc., etc. (1931), 47 T. L. R. 468.

482. Add the following paragraph :—
Semble : such a charterparty must be stamped with an impressed & not an adhesive stamp.
After this case add :—

——— ——— ———.]—*See, now,* Stamp Act, 1891 (c. 39), ss. 49–51.

548a. Memorandum within Money-lenders Act, 1927 (c. 21), s. 6.]—A note or memorandum in writing within Money-lenders Act, 1927 (c. 21), s. 6, is a memorandum of a contract within Stamp Act, 1891 (c. 39), s. 1 & Sched. I., & therefore must be stamped with a 6*d.* stamp.—PARKFIELD TRUST, LTD. *v.* DENT, [1931] 2 K. B. 579 ; 101 L. J. K. B. 6 ; 146 L. T. 90.

548b. ———.]—A memorandum under Money-lenders Act, 1927 (c. 21), s. 6, must be stamped before it can be received in evidence.—LYLE (B. S.), LTD. *v.* CHAPPELL (1931), 47 T. L. R. 562 ; 75 Sol. Jo. 511 ; *revsd. on other grounds,* [1932] 1 K. B. 691, C. A.

619. *Add. Annotation :*—**Folld.** Hennell *v.* I. R. Comrs. (1932), 76 Sol. Jo. 397.

619a. Covenant to pay during joint lives of covenantor & covenantee.]—A covenant to pay during the joint lives of the covenantor & the covenantee "the sum of £21 13*s.* 4*d.*, hereinafter referred to as 'the monthly sum,' on the first day of every calendar month" is not a "security for an annuity" within the first clause of the heading "Bond, Covenant, or Instrument of any kind whatsoever" in Stamp Act, 1891 (c. 39), Sched. I., but is a covenant for a "sum periodically payable" within the same clause.—HENNELL *v.* INLAND REVENUE COMRS. (1932), 49 T. L. R. 31 ; 76 Sol. Jo. 849, C. A.

PART IX. SECT. 1.

ak. *Reference to court on abstract question—Incompetent.*]—A reference by the Chief Controlling Revenue Authority for opinion of ct. on an abstract question is incompetent & is not within the purview of Indian Stamp Act, 1899, s. 57.—*Re* MARINE INSURANCE POLICIES (1929), I. L. R. 57 Calc. 669.—**IND.**

PART IX. SECT. 6, SUB-SECT. 3.—B.

el. *Assignment.*]—There is no necessity for an assignment to be stamped, unless it is in the special form of an order, & possibly also unless it is directed to the persons having control of the money in question in such circumstances as to lead to the conclusion that they hold to the order of the person assigning it.—LIVERPOOL & LONDON & GLOBE INSURANCE CO., LTD. *v.* HARTLEY & FORD, [1927] V. L. R. 523 ; 49 A. L. T. 70 ; [1927] Argus L. R. 417.—**AUS.**

em. *Bank guarantee.*]—By instrument of guarantee addressed to a bank, the granter guaranteed to the bank payment to the extent of £3,000 of all sums for which a third party was, or might become, liable to the bank. It had been the practice of the Inland Revenue authorities to treat such instruments for the purposes of stamp duty as "agreements," &, as such, liable to a duty of 6*d.* under Stamp Act, 1891, Sched. I. ; but they now maintained that the instrument was a "bond" for the payment of £3,000, &, as such, liable to an *ad valorem* duty under that Sched. :—*Held :* the instrument of guarantee was an "agreement" within the meaning of the Sched., &, accordingly, was liable to a duty of 6*d.* only.—NORTH OF SCOTLAND BANK *v.* INLAND REVENUE COMRS., [1931] S. C. 149.—**SCOT.**

PART IX. SECT. 6, SUB-SECT. 18.—A. (a).

631 i. *Partnership property—Transfer of share by partner's executors.*]—DUCKETT *v.* COLLECTOR OF IMPOSTS, [1927] V. L. R. 457 ; 49 A. L. T. 82 ; [1927] Argus L. R. 379.—**AUS.**

so. *Land—Undivided share.*]—A transfer of an undivided share of land is, for the purposes of Stamps Act, 1915, a transfer of land. A transfer of land may be dutiable as a transfer of land on a sale thereof, though the sale includes both land & personal property.—DUCKETT *v.* COLLECTOR OF IMPOSTS, [1927] V. L. R. 457 ; 49 A. L. T. 82 ; [1927] Argus L. R. 379.—**AUS.**

sp. *Licence to use property.*]—An agreement between a racing club & S. conferred on the latter, for valuable consideration, the sole right of supplying, at prices fixed by the club, all the refreshments, eatables & drinkables to be sold or disposed of within two reserves during race meetings to be held on the club's course for a period of three years. All plant, etc., was to be supplied by S., & it was implied that he should have the use of the club's refreshment rooms. It was a term of the agreement that no sub-letting or assignment of interest would under any circumstances be allowed unless written permission be granted for same by the chairman of the club. The right was reserved by the club to enter & view the refreshment rooms at any time & to take such steps as appeared necessary from time to time to secure

627. *Add. Annotations :—As to* (2) **Expld.** English, Scottish & Australian Bank, Ltd. *v.* I. R. Comrs. (1931), 48 T. L. R. 170. **Refd.** *Re* John Sinclair, Ltd.'s Trade Mark 437,870 (1932), 146 L. T. 417.

640. *Add. Annotation :—***Overd.** English, Scottish & Australian Bank, Ltd. *v.* I. R. Comrs. (1931), 48 T. L. R. 170.

661. *Add. Annotation :—***Overd.** English, Scottish & Australian Bank, Ltd. *v.* I. R. Comrs. (1931), 48 T. L. R. 170.

661a. —— ——.]—An agreement for sale of, amongst other things, simple contract debts owed by debtors resident out of the United Kingdom is exempt from *ad valorem* stamp duty in respect of such debts upon the ground that they are "property locally situate out of the United Kingdom" within the exception in Stamp Act, 1891 (c. 39), s. 59 (1).—ENGLISH, SCOTTISH & AUSTRALIAN BANK, LTD. *v.* INLAND REVENUE COMRS., [1932] A. C. 238; 101 L. J. K. B. 193; 146 L. T. 330; 48 T. L. R. 170, H. L.

667. *Add. Citations :—*[1928] 1 K. B. 703; 97 L. J. K. B. 116; 138 L. T. 171.

Add. Annotation : — **Overd.** Stanyforth *v.* I. R. Comrs., [1930] A. C. 339.

669a. —— **Whether overriding powers of revocation & reappointment to be considered.**]—By a deed poll dated in 1911 a partial resettlement was effected of the Portman family estates. The deed poll was executed under a joint power of revocation & new appointment contained in previous dispositions of the estates & the appointment thereby made was expressly subject to a further exercise of such power; & the deed poll itself also contained a fresh power of revocation & new appointment. In arriving at the value of the property transferred by the deed poll for the purpose of assessing the *ad valorem* stamp duty payable thereon under Finance (1909–10) Act, 1910 (c. 8), s. 74, the I. R. Comrs. disregarded the powers of revocation & new appointment :—*Held :* these overriding powers ought to have been regarded as affecting the value.—STANYFORTH *v.* INLAND REVENUE COMRS., [1930] A. C. 339; 99 L. J. K. B. 327; 142 L. T. 641; 46 T. L. R. 288, H. L.

670. *Add. Annotations :—***Apld.** Westmorland *v.* I. R. Comrs., [1928] 1 K. B. 703. **Refd.** Stanyforth *v.* Inland Revenue Comrs. (1929), 98 L. J. K. B. 764.

674. After this case add :—

—— **Exemption of copies of probate & letters of administration.**]—*See* Finance Act, 1930 (c. 28), s. 43.

734. To cross-references before this case add "*See, also,* Finance Act, 1930 (c. 28), s. 44."

Part X.—Corporation Duty.

780. *Add. Annotations :—***Distd.** General Medical Council *v.* I. R. Comrs., English Branch Council of General Medical Council *v.* I. R. Comrs. (1928), 97 L. J. K. B. 578. **Consd.** Midland Counties Institution of Engineers *v.* I. R. Comrs. (1928), 14 Tax Cas. 285. **Apld.** Institution of Civil Engineers *v.* I. R. Comrs. (1931), 47 T. L. R. 466.

Part XII.—Entertainments Duty.

784. *Add. Annotation :—***Consd.** A.-G. *v.* Arts Theatre of London, Ltd. (1932), 48 T. L. R. 545.

785. *Add. Annotation :—***Consd.** A.-G. *v.* Arts Theatre of London, Ltd. (1932), 48 T. L. R. 545.

786. *Add. Annotation :—***Consd.** A.-G. *v.* Arts Theatre of London, Ltd. (1932), 48 T. L. R. 545.

786a. —— **Theatre club.**]—Defts. were the proprietors of a club, providing the usual amenities of a social club & having on the premises a theatre to which members & associate members & their guests, but no others, were admitted for payment, this payment being in addition to the subscriptions :—*Held :* an apportioned part of the subscriptions was chargeable with entertainments duty, as the payment of the subthe proper management & control of the business. Y., with two other persons, entered into a joint & several bond with the club to secure the due performance by S. of the contract. S. died, & by an agreement between Y. & the club it was arranged that Y. should carry out the terms of the original agreement in the place of S., the currency thereof being extended for a further three years :—*Held :* the agreement was not within sect. 41 (1) or sect. 65 of Stamp Duties Act, 1920–24 (N.S.W.), because it was an executory contract giving rise to a mere personal right of selling refreshments with ancillary stipulations. Such a right was not "property" within the meaning of the Act, & therefore the agreement was not liable to *ad valorem* duty appropriate to a conveyance. Nor was the agreement within sect. 71, as there was neither a sale nor a right within that sect.—COMR. OF STAMP DUTIES (NEW SOUTH WALES) *v.* YEEND (1929), 43 C. L. R. 235; 3 A. L. J. 319.—**AUS.**

PART IX. SECT. 6, SUB-SECT. 34.

734 xi. —— *Receipt granted to heritor on account of stipend.*]—In the case of a parish where a minister was in right of the whole standardised stipend, a question arose whether a receipt granted by the General Trustees to a heritor on account of stipend paid by him was exempt from stamp duty in virtue of Finance Act, 1924, s. 36 :—*Held :* in virtue of the nature of standardised stipend as determined by Church of Scotland (Property & Endowments) Act, 1925, s. 36, the receipt granted by the General Trustees to the heritor on account of standardised stipend could not be described as given on account of any salary or other like payment within Finance Act, 1924, s. 36, even though the minister of the parish was in right of the whole standardised stipend thereof; & accordingly, the receipt was not entitled to the exemption from stamp duty conferred by that section.—CHURCH OF SCOTLAND GENERAL TRUSTEES *v.* INLAND REVENUE COMRS. [1932] S. C. 97.—**SCOT.**

PART IX. SECT. 6, SUB-SECT. 35.

h i. —— ——.]—NEW SOUTH WALES STAMP DUTIES COMRS. *v.* THOMSON (1928), 40 C. L. R. 394; [1928] Argus L. R. 30.—**AUS.**

PART XII.

aa. *Club picnic—Sea trip & shore amusements.*]—A club conducted an excursion to a seaside resort & a picnic there & sold tickets in connection with the excursion & picnic. The holders of tickets were conveyed to the resort

scriptions was to be attributed in part to the purchase of a right to purchase tickets for the entertainments in the theatre.—A.-G. *v.* ARTS THEATRE OF LONDON, LTD. (1932), 48 T. L. R. 545; 76 Sol. Jo. 512; *affd.*, 49 T. L. R. 38; 76 Sol. Jo. 831, C. A.

Part XIII.—Recovery of Revenue Duties and Penalties.

799. *Add. Annotation:*—**Apld.** Chowood, Ltd. *v.* Lyall, [1929] 2 Ch. 406.

811a. Order of Inland Revenue Commissioners—When necessary—Prosecution under Railway Passenger Duty Act, 1842 (c. 79), s. 13.]—An information was preferred by a police officer against the conductor of a motor omnibus, alleging that he had allowed the omnibus to carry at one time a greater number of passengers than it had been constructed to carry, contrary to Railway Passenger Duty Act, 1842 (c. 79), s. 13:—*Held:* the prosecution was not a proceeding for the recovery of a fine or penalty under an Act relating

by a boat chartered by the club, where for a few hours ashore they might take part in games, pastimes & amusements in a park, of which the club had the use for the day. They afterwards returned by the same boat. The whole outing extended over some eleven or twelve hours. No ticket or special payment was needed for participation in the amusements in the park, in which persons other than ticket-holders were at liberty to join:—*Held:* there was no payment for admission to an entertainment.—TAXATION COMR. *v.* VICTORIAN HARDWARE CLUB, [1931] Argus L. R. 145.—**AUS.**

PART XIII. SECT. 1, SUB-SECT. 1.

st. *Trial of issue—To determine fact essential to defence—Amendment of defence.*]—R. *v.* MUTUAL FIRE ASSOCN. OF CANADA, LTD. (1926), 58 N. S. R. 420.—**CAN.**

su. *Statutory presumption from possession—Whether waived by proof of unlawful importation.*]—R. *v.* LEGGE, [1929] 1 D. L. R. 808; 51 Can. Crim. Cas. 11; 60 N. S. R. 226.—**CAN.**

sa. *Unlawful removal from distillery.*] —*Held:* (1) where an inspection of the stock of spirits in a distillery, made according to the directions of the statute, shows that on a given date a substantive quantity of spirits had in some way been removed from the distillery, & that the distillery stock books, required to be kept under the Act, did not show said deficiency to have been lawfully removed, such evidence, unless rebutted by proper & legal evidence, will be proof that said shortage was unlawfully removed; (2) it results from the proper reading of sects. 53, 149, 151 & 152 of the Excise Act, that, upon it being shown that any distilled spirits have been unlawfully removed from a distillery, the excise duties thereon become payable forthwith; (3) it is no defence in the present action to show that the spirits had been unlawfully removed by its sales manager, who was also a director, without the knowledge of the other directors.—R. *v.* ATLANTIC DISTILLING CO., LTD., [1931] Ex. C. R. 117.—**CAN.**

PART XIII. SECT. 1, SUB-SECT. 2.—A.

806 iv. ——.]—R. *v.* CHENG TONG SENG, [1928] 1 W. W. R. 33; 49 Can. Crim. Cas. 79; 39 B. C. R. 157.—**CAN.**

806 v. ——.]—R. *v.* BOUTILIER, [1928] 2 D. L. R. 555; 49 Can. Crim. Cas. 312.—**CAN.**

806 vi. ——.]—R. *v.* MANUEL, [1928] 2 D. L. R. 755; 50 Can. Crim. Cas. 32.—**CAN.**

806 vii. —— *Railway Passenger Duty Act,* 1842.]—*Held:* under Burgh Police Act, sect. 454, the burgh magistrate had no jurisdiction to entertain the complaint, in respect that, while the duties imposed by the Act of 1842 had been repealed, & other duties substituted therefor, a contravention of sect. 13 was still an offence against an Inland Revenue or Customs Act, within the meaning of Burgh Police Act, s. 454.—CAMERON *v.* SWEENEY, [1928] S. C. (J.) 34.—**SCOT.**

811a i. *Order of Inland Revenue Commissioners—When necessary—Prosecution under Railway Passenger Duty Act,* 1842 (c. 79), *s.* 13.]—HORN *v.* DUCKETT, [1929] S. C. (J.) 63.—**SCOT.**

1 i. —— *Notice of seizure.*]—The giving of the notice of seizure which is required by Excise Act, 1927, s. 77, is not a condition precedent to the prosecution of a charge laid under sect. 176 (*e*) of said Act.—R. *v.* KOLYK, [1929] 2 D. L. R. 636; 1 W. W. R. 766; 51 Can. Crim. Cas. 372; 38 Man. L. R. 166.—**CAN.**

sw. *Improper adjournment—Effect of.*] —A justice of the peace having intervened in a prosecution under the Excise Act by assuming to adjourn the trial on the non-appearance of the police magistrate before whom the information was laid, & who had issued a summons to deft. to appear before him, a conviction made on the adjourned date of trial by another police magistrate, before whom deft. refused to plead & to whose jurisdiction he objected, was quashed.—R. *v.* PYKE, [1928] 1 W. W. R. 590; 49 Can. Crim. Cas. 186; 23 Alta. L. R. 341.—**CAN.**

sx. *Information in writing—By whom laid.*]—Since only inland revenue officers can lay an information for an offence under Excise Act, such an information must state that the person laying the information is an inland revenue officer.—R. *v.* WITSIEWICZ, [1928] 2 W. W. R. 19; 49 Can. Crim. Cas. 330.—**CAN.**

sy. —— *Whether necessary.*]—*Held:* an information in writing required by Customs & Inland Revenue Act, 1879, is no longer a necessary preliminary to the issue of a summons charging an offence under the Customs Acts.—A.-G. *v.* HEALY, [1928] I. R. 460.—**IR.**

sz. *Information — Description of informant—Sufficiency.*]—An information for an offence against the Excise Act which describes the informant as a Customs & Excise officer "on behalf of His Majesty the King" shows sufficiently that he belonged to the class of persons by whom such an information may be laid & gives the magistrate the right to proceed thereunder.—R. *v.* HENDERSON (B. C.), [1929] 4 D. L. R. 984; 2 W. W. R. 209; 52 Can. Crim. Cas. 82.—**CAN.**

sb. —— *Must be laid before two justices.*]—R. *v.* O'HALLORAN (1928), 54 Can. C. C. 227.—**CAN.**

sc. —— *Must state value of goods illegally imported.*]—R. *v.* BENT (1930), 54 Can. C. C. 169.—**CAN.**

sd. —— *Necessity for averment that goods unlawfully imported.*]—R. *v.* REID, [1932] 2 D. L. R. 303.—**CAN.**

se. —— *Description of offence—Sufficiency—Whether "without lawful excuse" necessary.*]—JACOBS *v.* R. (1931), 56 Can. C. C. 200.—**CAN.**

sf. *Penalty should be proportionate to extent of illegal operations.*]—R. *v.* PETIT, [1931] 4 D. L. R. 548.—**CAN.**

PART XIII. SECT. 1, SUB-SECT. 2.—C.

n i. —— ——.]—*Held:* where goods alleged to have been smuggled are found & seized in the possession of any person, the *onus*, under Customs Act, s. 264, is upon such person to explain how the goods had come into his possession or how they had been imported into Canada, & if so, to prove that the duty upon them was paid.—WEISS *v.* R., [1928] Exch. C. R. 106.—**CAN.**

r i. —— —— ——. R. *v.* [illegible] ZINSKI, [1930] 2 W. W. R. 636; 54 Can. C. C. 158; 39 Man. L. R. 152.—**CAN.**

r ii. —— —— ——.] The present action was one to recover a penalty to the amount of the duty paid value of goods harboured by D. unlawfully imported, & incurred under the provisions of Customs Act. Pltf. proved the finding of the goods in the premises of D. & the duty paid value thereof. D. offered no evidence at all:—*Held:* by sect. 217 of Customs Act, the burden of proving that the goods harboured were lawfully imported is upon the person in whose possession the goods are found, & sect. 262 provides that in case of any question relating to identity, origin, importation or payment of duty, the burden is on the owner or possessor of the goods, & D. having failed to discharge the burden put upon him by law, pltf. was entitled to judgment for the duty paid value of the goods so found on his premises.—R. *v.* DOULL, [1931] Ex. C. R. 159.—**CAN.**

t i. ——.]—R. *v.* MOYLE (1928), 49 Can. Crim. Cas. 375.—**CAN.**

PART XIII. SECT. 1, SUB-SECT. 2.—D.

sa. *Sentence of imprisonment in default of payment of costs—Invalid.*]—*Ex p.* MONAHAN (N. B.), [1929] 1 D. L. R. 804; 51 Can. Crim. Cas. 15.—**CAN.**

PART XIII. SECT. 1, SUB-SECT. 2.—E.

sb. *Evidence—Retrospective operation of amending Act.*]—Statutes of Canada, 1928 (c. 16), s. 5, which amended R. S. C., 1927 (c. 42), s. 262, & changed the law of evidence in prosecutions under c. 42, is retroactive in effect & applicable to the hearing of an appeal to the county ct. from a conviction made prior to its passing.—R. *v.* BINGLEY, [1929] 1 D. L. R. 777; 51 Can. Crim. Cas. 268; 60 N. S. R. 311.—**CAN.**

PART XIII. SECT. 2.

sc. *Ship within three mile limit—Entry due to "unavoidable cause."*]—Deft. ship was seized by the Customs Authorities under sect. 183 (c. 42) of

to inland revenue within Inland Revenue Regulation Act, 1890 (c. 21), s. 21 (1), & it could, therefore, lawfully be commenced without an order of the Inland Revenue Comrs.—KIRKBY *v.* MINTY, [1929] 2 K. B. 165; 98 L. J. K. B. 733; 141 L. T. 515; 93 J. P. 176; 45 T. L. R. 427; 27 L. G. R. 438; 28 Cox, C. C. 640, D. C.

Part XIV.—Expenditure of the Revenue.

837. *Add. Annotations:*—**Apprvd.** Nixon *v.* A.-G. (1930), 100 L. J. Ch. 70. **Refd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 243.

839. *Add. Annotations:*—**Apprvd.** Nixon *v.* A.-G. (1930), 100 L. J. Ch. 70. **Refd.** *Re* Transferred Civil Servants (Ireland) Compensation, [1929] A. C. 243.

841a. Right to pension—Not enforceable at law.]—An established civil servant of the Crown has, on the true construction of Superannuation Acts, 1834 to 1909, no legal right to a superannuation allowance or, when such an allowance has been awarded to him by the Lords Comrs. of the Treasury, to an allowance of an amount fixed by reference to the scale contained in Superannuation Act, 1859 (c. 26), s. 2, as amended by Superannuation Act, 1909 (c. 10), ss. 1, 3 (1).

Applts., four retired civil servants who had qualified for the award of a superannuation allowance, claimed to be entitled as of right to have superannuation allowances calculated on the full amount of their annual salaries & emoluments, including a bonus granted by the Treasury to civil servants, in accordance with the scale provided by Superannuation Act, 1859 (c. 26), s. 2, as amended by Superannuation Act, 1909 (c. 10), ss. 1, 3 (1). Two of applts. entered the Civil Service on the faith of a statement contained in a Treasury minute of June 14, 1859. to the effect that all persons appointed subsequent to the passing of the Act of 1859 were to be held entitled to the retiring allowances prescribed by the second sect. of that Act, & they contended that the minute was a continuing offer by the Treasury on behalf of the Crown to such persons that they should receive superannuation allowances on the terms therein contained, & that that offer had been accepted by both applts. A third applt. entered the service of the National Telephone Co. in 1895, & on the transfer of the telephones to the Post Office under Telephone Act, 1911 (c. 26), assigned his share in a contributory pension fund to the Postmaster-General, & was appointed to a pensionable office in the Post Office which qualified him for a superannuation allowance under sect. 6 of that Act, which, by sect. 10, was to be read as one with the Superannuation Acts, 1834 to 1909. The Lords Comrs. of the Treasury, acting in accordance with a Treasury minute dated Mar. 20, 1922, awarded to each of applts. a superannuation allowance calculated on a basis differing from & less favourable to him than that provided by sect. 2 of 1859 Act, as amended by sect. 1 & sect. 3 (1) of 1909 Act, & computed his allowance (*a*) on his fixed annual salary & emoluments, exclusive of his bonus emoluments; & (*b*) on a sum less than the full amount of his annual bonus emolument:—*Held:* (1) applts. had no legal right enforceable in a ct. of law to superannuation allowances calculated accord-

R. S. C., 1927 (c. 42), s. 183, as being in Canadian waters contrary to its provision. The defence alleged that the entry into Canadian waters was due to the fact that the sole man in command, during the illness of the master believed himself without the three mile limit. The anchorage was made in the dark, & this man had been battling with the elements for two days alone, had only had three hours' sleep in 72, & was exhausted:—*Held:* in the circumstances, he could not be regarded as a mariner in ordinary conditions, & could not be called upon to take such precautions as would in other circumstances be required by this ct., & the entry was due to "unavoidable causes."—R. *v.* "MARY C. FISCHER" (B. C. Adm.), [1929] 4 D. L. R. 679; Ex. C. R. 207; 52 Can. Crim. Cas. 273.—**CAN.**

se. *Seizure of unregistered motor boat — Departure without clearance.*]—A certain unregistered motor boat of less than 10 tons tonnage was seized under sect. 244 of Customs Act for departing from a port in Canada without a clearance. She had been moored at one pier in the Customs port of Sydney & left this pier to go to another point in the same port:—*Held:* (1) inasmuch as the motor boat in question was not required to be registered, & was not eligible for clearance by Customs on a coasting voyage, she was not required to obtain a clearance under the provisions of the Customs Act before leaving her port or place of mooring &, in consequence, she was not liable for penalty imposed by sect. 244 of the Act; (2) the boat in question did not depart from the port of Sydney within the meaning of said section & the provisions of the statute do not apply to a small boat which is unregistered & which is proceeding from one point in any port to another point in the same port without goods on board, & that she was not required to clear.—HEARN *v.* R., [1931] Ex. C. R. 201.—**CAN.**

PART XIV. SECT. 1.

841a i. *Right to pension—Not enforceable at law.*]—*Held:* a civil servant, retired or removed from office, has no right of action to recover any allowance under the Superannuation Act, such allowance being entirely in the discretion of the executive authority. That no contractual relationship arises between the Crown & its servants with respect to such allowances. To create such contractual relationship would require express statutory enactment.—MILLER *v.* R., [1931] Ex. C. R. 22.—**CAN.**

I i. — — ——.]—G. entered the service of the Govt. Railways in 1887. On Nov. 11, 1911, he was dismissed for misconduct. On Mar. 6, 1913, he was again engaged & continued in the service until Feb. 1, 1928, when he retired. The Superannuation Board decided that he was entitled to a retiring allowance calculated only in respect of his service from Mar. 6, 1913, to the date of his retirement:—*Held:* he was entitled to the payment of superannuation allowance calculated upon the whole period of his service, viz. 39 years.—*Ex p.* GIBBONS (1928), 29 S. R. N. S. W. 182; 46 N. S. W. W. N. 56.—**AUS.**

q i. — — *Except when "in service of the State"—Who is.*]—Superannuation (Amendment) Act, 1918, s. 3, provides as follows: "A person to whom a superannuation allowance under any Acts relating to the Public Service . . . may be at any time payable shall not be deemed . . . to be entitled to be paid such allowance . . . in respect of any period . . . during which he . . . is employed in the service of the State . . . ":—*Held:* a tipstaff to a justice of the Industrial Arbn. Ct. was "in the service of the State" within the sect., &, therefore, while so employed was not entitled to be paid any superannuation allowance which had accrued due to him.—*Re* THE SUPERANNUATION BOARD, *Ex p.* DOCKRELL (1929), 47 N. S. W. W. N. 91.—**AUS.**

q ii. —— *Meaning of salary.*]—Sums of money paid by the Govt. Savings Bank Comrs. to its officers in respect of their children, & known as "family allowances," are not salary within Superannuation Act, 1916, s. 3.—*Re* SUPERANNUATION ACT, *Ex p.* NEW SOUTH WALES, COMRS. OF THE GOVERNMENT SAVINGS BANK (1929), 47 N. S. W. W. N. 165.—**AUS.**

sf. *Right of Crown to fix amount.*]—KIDD *v.* R., [1924] Exch. C. R. 29.—**CAN.**

ing to the scale fixed by sect. 2 of 1859 Act as amended by sect. 1 & sect. 3 (1) of 1909 Act; (2) as to the claim founded on contract, the only power of the Lords Comrs. of the Treasury was conferred by statute, & they had no authority to contract themselves out of it; (3) applt. employed in the Post Office received his superannuation allowance on the same footing as the other applts.—NIXON *v.* A.-G., [1931] A. C. 184; 100 L. J. Ch. 70; 144 L. T. 249; 47 T. L. R. 95, H. L.

843a. Savings Certificates — Nomination to — Validity.]—War Savings Certificates Regulations, 1919, although they do not expressly mention Savings Banks Act, 1887 (c. 40), are not *ultra vires*, because they modify, & incorporate & apply as modified, the rules as to nominations contained in that Act. Thus, they make it possible for any holder of War Savings Certificates to nominate recipients of the certificates held, & any such nomination may include certificates held in excess of the authorised maximum, notwithstanding that certificates so held are liable to be forfeited.—*Re* KIMBER, VALE *v.* ROCKMAN, [1928] Ch. 749; 97 L. J. Ch. 430; 139 L. T. 550; 72 Sol. Jo. 545.

853. *Add. Annotation :*—**Apld.** Green *v.* Weatherill, [1929] 2 Ch. 213.

880a. ——.]—*Ex p.* ROSKNOW, [1885] W. N. 3.

ROYAL FORCES.

Part I.—The Royal Navy.

27. *Add. Annotation :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

31. *Add. Annotation :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

33a. Right to indemnity—For expenses in case of damage to ship or stores.]—A Govt. steamer assisted a merchantman, on a stipulation to reimburse all expenses arising from damage to the steamer or the stores :—*Held :* such stipulation was no bar to salvage compensation.—THE LUSTRE (1834), 3 Hag. Adm. 154 ; 166 E. R. 363.

Annotations :—**Consd.** The Ewell Grove (1835), 3 Hag. Adm. 209 ; China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375. **Refd.** The Lord Dufferin (1849), 7 Notes of Cases Supp. xxxiii.

51. *Add. Annotation :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

56a. —— Ship "specially equipped with salvage plant."]—A cable ship belonging to the Admlty. & in the employ of the Post Office rendered salvage services to a vessel, which had lost her propeller & required towage assistance. The cable ship was fitted with grappling ropes & other salvage gear, & was specially constructed for laying & repairing submarine telegraph cables :—*Held :* even assuming the equipment constituted "salvage plant," the vessel was not "specially equipped with salvage plant," which meant plant of a kind that a vessel would not be equipped with except for the purpose of rendering salvage services, & the Admlty. were not entitled to claim salvage remuneration in respect of the services of the vessel under Merchant Shipping (Salvage) Act, 1916 (c. 41).—THE MORGANA, [1920] P. 442 ; 89 L. J. P. 232 ; 124 L. T. 254 ; 36 T. L. R. 747 ; 15 Asp. M. L. C. 160.

SECT. 2.—**COLONIAL NAVAL FORCES.**

See, now, Colonial Naval Defence Act, 1931 (c. 9).

Part V.—The Regular Army.

111. *Add. Annotations :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375. **Refd.** Nixon *v.* A.-G., [1930] 1 Ch. 566.

120a. Disposition of forces—Prerogative right of Crown.]—When Parliament has by the Army (Annual) Act sanctioned the raising & keeping of the army for one year, the right of the Crown in time of peace as to the disposition & use of the forces so raised is a prerogative right the exercise of which cannot be controlled by the cts.—CHINA NAVIGATION CO., LTD. *v.* A.-G., [1932] 2 K. B. 197 ; 101 L. J. K. B. 478 ; 147 L. T. 22 ; 48 T. L. R. 375, C. A.

130. *Add. Annotation :*—**Refd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

137a. Whether action lies against Crown.]—KYNASTON *v.* A.-G. (1932), 49 T. L. R. 114.

139. *Add. Annotation :*—**Consd.** Nixon *v.* A.-G. (1930), 100 L. J. Ch. 70.

Part VIII.—The Air Force.

Acquisition of land.]—*See* COMPULSORY PURCHASE, No. 263a, *ante.*

PART V. SECT. 1.

sa. *Effect of enlistment.*]—Enlistment by a subject under the Militia Act, is in the nature of a formal transmutation of a citizen into a soldier for the time being, & as required by the Defence of the Realm, & does not constitute a contract between the subject & the Crown creating mutual rights & obligations.—COOKE *v.* R., [1929] Ex. C. R. 20.—**CAN.**

PART V. SECT. 3, SUB-SECT. 2.

d i. .] —Military officers & soldiers, while in the service of the Crown hold their positions at & during the pleasure of the Crown, & no action at law lies for their pay.—COOKE *v.* R., [1929] Ex. C. R. 20.—**CAN.**

sb. *Pension act of grace only.*]—Pensions are an act of grace & bounty of the Crown which must be left to the discretion of the Govt. ; & there can be no review of the discretion of the Pensions Board by the ct.—THOMAS *v.* R., [1928] 2 D. L. R. 535 ; [1928] Exch. C. R. 26.—**CAN.**

sc. *Jurisdiction of Federal Appeal Board.*]—In Jan. 1923, the Board of Pension Comrs. refused pension in the matter of one S. on the ground that his death was not attributable to military service. An appeal was taken to the Federal Appeal Board under 13 & 14 Geo. 5, c. 62, s. 10, & the latter found the death was due to military service. By 14 & 15 Geo. 5, c. 60, s. 10, the Appeal Board was required to give certain information in its judgment. The Comrs., claiming the Appeal Board had not complied with the statute, refused to pay the pension. The Minister, under 18 & 19 Geo. 5, c. 38, s. 30 (8), referred the matter to this ct. for determination : —*Held :* the appeal having been heard & decided in 1926, the question of its jurisdiction must be determined under the law in force at that time, & under 13 & 14 Geo. 5, c. 62, s. 10, the Appeal Board had jurisdiction to hear & determine appeals from the refusal of pension by the Board of Pension Comrs.—SKITCH *v.* MINISTER OF PENSIONS & NATIONAL HEALTH, [193 Ex. C. R. 97.—**CAN.**

Part IX.—Matters Common to Navy, Army and Air Force.

265. *Add. Annotation :*—**Consd.** Mackenzie-Kennedy *v.* Air Council (1927), 138 L. T. 8.

SECT. 6.—**WAR PENSIONS.**

266a. Final award—Notice of right of appeal—Construction of Regulation.]—War Pensions Act, 1921 (c. 49), s. 4, provided for final awards & for appeals within one year from those awards. Sub-sect. 3 provided : " The Minister shall, in such manner as may be prescribed by regulations made by him under this section, bring the provisions of this sub-section to the notice of persons having a right of appeal thereunder."

Sub-sect. 4 brought into the scope of the section officers in whose cases final awards had been made before the Act, but substituted for one year from the award one year from a date to be fixed by the Minister by regulations. By War Pensions (Final Awards) Amendment Regs., 1923, the date fixed was Feb. 7, 1923, & Reg. 3 provided :

" Notice of the right of appeal shall be published in three successive issues of the *British Legion* & in six successive issues of the principal daily or weekly newspapers circulating in London & the provinces, & suitable notices shall be displayed in the local offices of the Ministry :—*Held :* so far as the regulation required publication in London newspapers it did not require publication in more than one principal daily newspaper.—R. *v.* WHYTT, *Ex p.* MINISTER OF PENSIONS (1931), 48 T. L. R. 189 ; 76 Sol. Jo. 68.

Part X.—Disciplinary Tribunals.

281. *Add. Annotation :*— **Consd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579.

SALE OF GOODS.

Part I.—The Contract of Sale Generally.

9. *Add. Annotation :*—**Refd.** Dominion Press *v.* Customs & Excise Minister, [1928] A. C. 340.

11a. ——.]—BOWMAKER, LTD. *v.* WILLIAMS (1930), 74 Sol. Jo. 836.

28a. Option clause—Terms of future contract not set out—"Prices to be agreed upon."]—MAY & BUTCHER *v.* R. (1929), cited 36 Com. Cas. 366.

Annotation :—**Distd.** Hillas *v.* Arcos Ltd. (1932), 147 L. T. 503.

28b. Option clause—Terms of future contract not set out.]—A contract relating to the sale of timber contained (*inter alia*) a clause providing that the buyers should have the option of entering into a contract with the sellers for the purchase of further timber in the future. The option clause did not specify the precise kinds, sizes, & quantities of the timber to be supplied under the contemplated future contract, nor did it state the ports or the manner of shipment :—*Held :* both on the authority of *May & Butcher* v. *The King* ([1929] not reported) & on general principles that the option clause, in view of the number of matters relating to the future contemplated contract which it left undetermined, was not itself an agreement, but was only an agreement to make an agreement & was therefore not enforceable at law.—HILLAS (W. N.) & CO., LTD. *v.* ARCOS, LTD. (1931), 36 Com. Cas. 353, C. A.; *revsd.*, 147 L. T. 503 ; 38 Com. Cas. 23, H. L.

34. *Add. Annotation :*—**Refd.** Spyer *v.* Phillipson, [1931] 2 Ch. 183.

44. *Add. Annotation :*—**Refd.** Dominion Press *v.* Customs & Excise Minister, [1928] A. C. 340.

Part II.—Formation of Contract.

180a. ——**Pending alterations.**] GOLFING AMUSEMENTS, LTD. *v.* EVERARD & ELLIS (1931), 75 Sol. Jo. 330.

200. *Add. Citations :*—138 L. T. 154 14 ; 33 Com. Cas. 101.

341. *Add. Annotation :*—**Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179.

380. *Add. Annotations :*—**Consd.** Gaze W. H. & Sons *v.* Port Talbot Corpn. (1929), 93 J. P. 89. **Refd.** *Re* Windsor Steam Coal Co. (1901) (1928), 140 L. T. 80 ; Bentall, Horsley & Baldry *v.* Vicary (1930), 47 T. L. R. 99 ; Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

401 *Add. Annotations :*—Robert A. Munro & Co. *v.* Meyer, [1930] 2 K. B. 312 ; Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

403a. ——**Perishing of only part of goods.**]—Sale

PART I. SECT. 1.

e i. —— *Contract between fishermen & cannery.*]—SALO *v.* ANGLO BRITISH COLUMBIA PACKING CO., LTD., [1929] 1 D. L. R. 874 ; 1 W. W. R. 385 ; 40 B. C. R. 481.—**CAN.**

sm. *Distinguished from contract in respect of trade-mark or copyright.*]—BERTRAND *v.* WARRÉ, [1932] S. C. R. 364 ; 2 D. L. R. 47.—**CAN.**

PART I. SECT. 2.

sa. *Real nature of transaction regarded—Provision for payment by commission.*]—By agreement between pltf. co. & deft., deft. was granted the sole selling-rights for New Zealand for certain of pltf. co.'s manufactures. The agreement provided that deft. should be entitled by way of remuneration to a "commission" of 10 per cent. on the invoiced value of the manufactures, to be deducted by deft. therefrom. Payments for the manufactures were to be made against receipt of shipping documents by deft.'s London or other English agent. In an action by pltf. co. against deft. for an account of the proceeds of sales of pltf. co.'s products by deft. :—*Held :* notwithstanding that the agreement provided for the remuneration of deft. by way of a "commission," the provisions therein relative to payment for the goods by deft. pointed to the relationship between the parties being that of vendor & purchaser & the account should be taken on that basis. —GANNOW ENGINEERING CO., LTD. *v.* RICHARDSON, [1930] N. Z. L. R. 361.—**N.Z.**

sl. *Contract to deliver potatoes—As payment for fertiliser.*] WADE *v.* WALKER (1930), 2 M. P. R. 405. **CAN.**

sm. *Purchase of grain by elevator company.*]—Pltf. stored grain with deft. elevator co. & was given a graded storage receipt therefor in pursuance of sect. 148 of the Canada Grain Act, 1925. Afterwards pltf. & deft. agreed that pltf. would sell the grain to deft. at a price three cents per bushel above the Fort William price, less freight & charges, at any time that pltf. elected so to sell, & deft. agreed to purchase the grain on such election. The grain was put in a particular bin by itself & most of it remained there until it was destroyed by fire before pltf. had made such election : —*Held :* the ownership of the grain had not passed to deft. under the contract.—BUSSE *v.* EDMONTON GRAIN & HAY CO., LTD., [1932] 1 W. W. R. 296 ; 1 D. L. R. 745 ; 26 Alta. L. R. 83.—**CAN.**

PART I. SECT. 6.

sp. *Shares in company.*]—"Goods," as defined in the Indian Contract Act, 1872, comprise every kind of movable property, including shares in a co.—DOMINGO *v.* DE SOUZA (1928), I. L. R. 50 All. 695.—**IND.**

PART II. SECT. 4, SUB-SECT. 7.—B. (a).

sc. *Marginal note—Giving power to vary or confirm option.*]—*Held :* the contract form containing the marginal note constituted a memorandum sufficient to satisfy Stat. Frauds.—J. B. ROGERS, LTD. *v.* HARRY LESNIE, LTD. (1927), 27 S. R. N. S. W. 427 ; 44 N. S. W. W. N. 149.—**AUS.**

PART II. SECT. 4, SUB-SECT. 7.—C. (b) i.

sd. *Place of delivery.*]—A verbal agreement, made at the business premises of the purchaser of goods, included a term that the vendor should deliver the goods at the purchaser's premises. Immediately afterwards a written order was signed on behalf of the purchaser, & handed to the vendor's representative, which contained the names of the parties, particulars of the goods, & the price, & also the words "Please supply us with the following goods," but which did not contain any further reference to the place at which the goods were to be delivered : —*Held :* giving the ordinary business meaning to the words quoted, & having regard to the fact that the parties were business men, & to the circumstances in which the document was written, the document indicated with sufficient clearness where the place of delivery of the goods was to be, & constituted a sufficient note or memorandum of the agreement within Goods Act, 1915, s. 9 (1).—WISKIN *v.* TERDICH BROS. PTY., LTD., [1928] V. L. R. 387 ; [1928] Argus L. R. 242.—**AUS.**

PART II. SECT. 4, SUB-SECT. 8.—C. (d).

se. *Oral contract by agent—Revocation of agency before signature.*]—MOYER & CO. *v.* SMITH & GOLDBERG, LTD., [1929] 4 D. L. R. 416 ; S. C. R. 625 ; *affg.*, [1929] 2 D. L. R. 542 ; 63 O. L. R. 388.—**CAN.**

PART II. SECT. 4, SUB-SECT. 9.

339 x. ——.]—PAGE *v.* PROCTOR (1884), 5 O. R. 238.—**CAN.**

346 i. —— *By execution of contract.*]—COOLIN *v.* COOLIN (Sask.), [1920 3 W. W. R. 812.—**CAN.**

of Goods Act, 1893 (c. 71), s. 6, applies where there is a contract for the sale of specific goods & a part, but not the whole, of the goods has, without the knowledge of the parties to the contract, already ceased to exist.—BARROW, LANE & BALLARD, LTD. *v.* PHILLIP PHILLIPS & CO., LTD., [1929] 1 K. B. 574; 98 L. J. K. B. 193; 140 L. T. 670; 45 T. L. R. 133; 72 Sol. Jo. 874; 34 Com. Cas. 119.

424. *Add. Annotation :*—**Refd.** Shell-Mex *v.* Elton Cop Dyeing Co. (1928), 34 Com. Cas. 39.

430a. "Current prices."]—By an agreement dated July 12, 1927, pltfs. & defts. agreed that pltfs. were to deal with defts.' entire output of Jarrow pig iron available for delivery in Scotland, pltfs. undertaking to push the sale of the same in Scotland in preference to any other brand. They were to base their prices on the current prices for Middlesbrough pig iron, free on truck makers' works or f.o.b. makers' wharf, excluding Tees dues, & to pay cash on Mondays for the previous weeks' shipments. Disputes having arisen between the parties about the prices which pltfs. ought to charge for the pig iron which they sold, defts. notified pltfs. that they terminated the agreement as from Apr. 22, 1928. Pltfs. brought an action for breach of contract, because, as they alleged, defts. refused to supply them at "the current prices for the Middlesbrough pig iron." Defts. contended that the phrase "current prices" were the list prices which were published every week in a trade newspaper by a group or combine of iron founders in Middlesbrough, but pltfs. contended that "current prices" meant the price at which pig iron was actually being sold in Scotland by the sole agent of the combine :—*Held :* the expression "current prices" in the agreement meant the list prices which were published every week by the combine in Middlesbrough, & did not mean the price at which pig iron was actually being sold in Scotland by the sole agent of the combine.—JACKS & CO. *v.* PALMER'S SHIPBUILDING & IRON CO. (1928), 98 L. J. K. B. 366; 140 L. T. 473; 34 Com. Cas. 107, C. A.

433a. Minimum price—Construction of standard contract.]—The ct. held, on the construction of a standard contract for the sale of sugar-beet by the growers thereof to manufacturers of beet-sugar at a price depending on variable factors, there being a provision for a sliding scale minimum price & for a tonnage bonus, that the manufacturers were entitled to include the tonnage bonus in the minimum price, & the bonus applied only if it would bring the contract price above the minimum.—BROWN & SONS *v.* LINCOLNSHIRE BEET SUGAR CO., LTD. (1929), 45 T. L. R. 199, D. C.

434. *Add. Annotation :*—**Refd.** Ellesmere (Earl) *v.* Wallace, [1929] 2 Ch. 1.

453a. —— **"Free house London."**]—*Held :* an "agreement to the contrary" within Finance Act, 1901 (c. 7), s. 10, & the foreign seller was liable for duty imposed by Abnormal Importations (Customs Duties) Act, 1931.—LANIFICIO DI MANERBIO S. A. *v.* GOLD (I. & R.) (1932), 76 Sol. Jo. 289.

462. *Add. Annotation :*—**Refd.** Shell-Mex *v.* Elton Cop Dyeing Co. (1928), 34 Com. Cas. 39.

472. *Add. Annotation :*—**Consd.** Charles *v.* Cardiff Collieries (1928), 44 T. L. R. 448.

Part III.—Conditions and Warranties.

512. *Add. Annotation :*—**Refd.** Morelli *v.* Fitch & Gibbons, [1928] 2 K. B. 636.

526. *Add. Annotation :*—**Consd.** Sullivan *v.* Constable (1932), 48 T. L. R. 267.

527a. —— ——.]—A quantity of Finnish timber was sold to buyers in London by a contract providing that the goods were to be properly seasoned for shipment, & that in the event of a dispute the buyers should not reject the goods but should accept or pay for them against shipping documents. Owing to bad weather the sellers were unable to season part of the goods properly :—*Held :* the provision as to seasoning was not a condition but only a warranty, & therefore the buyers were not entitled to reject the goods, but could only claim an allowance off the price.—MONTAGUE L. MEYER, LTD. *v.* KIVISTO (1929), 142 L. T. 480; 46 T. L. R. 162; 74 Sol. Jo. 58, C. A.

Annotation :—**Consd.** Montague L. Meyer, Ltd. *v.* Osakeyhtio Carelia Timber Co. (1930), 36 Com. Cas. 17.

539a. Omission of usual trade description in invoice.]—STOPP *v.* HILL & SONS (1928), 72 Sol. Jo. 122.

PART II. SECT. 7, SUB-SECT. 1.

sf. *Meaning of "cost landed price."*]—REVILLON WHOLESALE, LTD. *v.* GAULTS, LTD., [1929] 3 D. L. R. 700; S. C. R. 528; *affg.*, [1929] 2 D. L. R. 217; 1 W. W. R. 825; 24 Alta. L. R. 129.—**CAN.**

sg. *"Current market price."*]—Defts. oil co. agreed to furnish pltf., a dealer, with gasoline "at the same current market price" as furnished to the trade generally; & because pltf. agreed to buy his gasoline from defts. for three years defts. agreed to give him an extra discount of one cent. The usual & current trade discount at the time was four cents off the retail or "tank wagon price." Subsequently defts. made special contracts with other dealers, representing about 90 per cent. of the trade. Under these contracts defts. was given the exclusive sale to said dealers for a period of years & the dealers were allowed an extra discount of two cents over the usual four cents :—*Held :* said subsequent special contracts did not displace the original "current market price" as the foundation of pltf.'s rights under his contract, &, therefore, he was not, as he contended, entitled to a discount of seven cents below the retail price.—JACKSON *v.* SHELL OIL CO., [1931] 1 W. W. R. 477; 43 B. C. R. 449.—**CAN.**

PART II. SECT. 7, SUB-SECT. 6.—A.

sh. *Sale of logs—Time for measurement—When delivered into water.*]—MCKENZIE *v.* MCDONNELL, [1931] 3 D. L. R. 229; 3 M. P. R. 18.—**CAN.**

PART III. SECT. 2, SUB-SECT. 3.

si. *Buyer to supply ship—Failure to ... within reasonable time—Liability in damages.*]—SNOW *v.* HARRIS, [1930] 1 D. L. R. 802; 1 M. P. R. 51.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.

sa. *Mistake.*]—Where a sale, which was not by order or description but of a specific chattel known to the buyer, was made on the understanding & in the honest belief that it was inherently a better article than it really was, *e.g.* that it was a new motor car of recent make, whereas it was in fact a used & damaged car of an earlier make, but there was no representation or warranty, & title passed before the parties discovered their mistake, the purchaser was held not to be entitled to rescission or other relief.—BROOK *v.* CRIPPS, [1930] 1 W. W. R. 595; 2 D. L. R. 818.—**CAN.**

Cases 553—845a. English and Empire Digest Supplement.

contracted in the belief that the goods supplied by the sellers were in accordance with the contract, whereas the meal was not in accordance with the contract, & he counterclaimed for rescission of the agreement & for the return of the money paid under it & also for damages for the breach of contract:—*Held:* the various deliveries of meal which had been made by the sellers before the date of the agreement did not, by reason of the adulteration, answer the contract description & therefore might have been rejected by the buyer if the defects had been discovered in time, notwithstanding the clause in the contract: "the goods to be taken with all faults & defects, damaged or inferior, if any, at valuation to be arranged . . ." because that clause applied only to goods which answered the trade description, & did not shut out the overriding warranty in Sale of Goods Act, 1893 (c. 71), s. 13, that in a sale of goods by description there is an implied condition that the goods shall correspond with the description. Further, that the clause in the contract that "Each delivery or shipment shall be treated as a separate contract, & the failure to give or to take any delivery or shipment shall not cancel the contract as to future deliveries or shipments" could not be construed so as to defeat the rights of the buyer under Sale of Goods Act, 1893 (c. 71), s. 31 (2), to treat the breach of contract by the sellers as a repudiation of the whole contract; notwithstanding that the sellers had no knowledge of the defects & had no intention to deliver defective articles, inasmuch as the intention of a seller must be judged from his acts. But although the buyer, if he had at the date of the agreement for cancellation ascertained all the facts relating to the past deliveries, might have been entitled to treat the contract as having been repudiated by the sellers, yet as it was in the circumstances doubtful whether he would have so elected, the defence that the agreement had been entered into under such a mutual mistake as would justify a rescission of the agreement failed, even apart from any question of *restitutio in integrum*. The buyer, however, was entitled to damages in respect of the defective quality of the meal that had been delivered, & to a declaration that, in view of the defective quality of the meal, he was not bound to take delivery of the meal that was undelivered.—ROBERT A. MUNRO & CO., LTD. *v.* MEYER, [1930] 2 K. B. 312; 99 L. J. K. B. 703; 143 L. T. 565; 35 Com. Cas. 232.

674a. Timber sold as "under deck"—Carried on deck & damaged.]—Buyers bought a quantity of timber to be shipped from Sweden to London, the contract describing the goods as "under deck" & providing that "the buyers shall not reject the goods herein specified, but shall accept or pay for them in terms of the contract against shipping documents." When the timber arrived the buyers found that almost the whole of it had been carried on deck & had been damaged by sea water, & they refused to accept it, on the ground that it was not the timber specified in the contract:—*Held:* the words "under deck" were a condition of the contract, & were part of the contract description of the goods, & on both grounds the buyers were entitled to reject.—MONTAGUE L. MEYER, LTD. *v.* TRAVARU A/B H. CORNELIUS, OF GAMLEBY (1930), 46 T. L. R. 553; 74 Sol. Jo. 466.

675a. Effect of adulteration.]—ROBERT A. MUNRO & CO., LTD. *v.* MEYER, No. 645a, *ante*.

682. *Add. Annotations:*—**Refd.** London Holeproof Hosiery Co. *v.* Padmore (1928), 44 T. L. R. 499; Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258; Sullivan *v.* Constable (1932), 48 T. L. R. 369.

705. *Add. Annotation:*—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119.

715a. —— —— Mineral water.]—MCALISTER (OR DONOGHUE) *v.* STEVENSON, No. 856a, *post*.

726. *Add. Annotation:*—**Refd.** Canada Atlantic Grain Export Co. (Inc.) *v.* Eilers (1929), 35 Com. Cas. 90.

744a. Effect of Sale of Goods Act, 1893 (c. 71), s. 14 (1).]—MEDWAY OIL & STORAGE CO., LTD. *v.* SILICA GEL CORPN. (1928), 33 Com. Cas. 195, H. L.

766. *Add. Annotation:*—**Refd.** Canada Atlantic Grain Export Co. (Inc.) *v.* Eilers (1929), 35 Com. Cas. 90.

780a. —— —— Bottle—For wine.]—MORELLI *v.* FITCH & GIBBONS, No. 619a, *ante*.

782. *Add. Annotation:*—**Refd.** Morelli *v.* Fitch & Gibbons, [1928] 2 K. B. 636.

788. *Add. Annotation:*—**Refd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

790. *Add. Annotation:*—**Refd.** Canada Atlantic Grain Export Co. (Inc.) *v.* Eilers (1929), 35 Com. Cas. 90.

813. *Add. Annotation:*—**Refd.** Canada Atlantic Grain Export Co. (Inc.) *v.* Eilers (1929), 35 Com. Cas. 90.

849. *Add. Annotations:*—*As to* (2) **Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119. **Refd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

852. *Add. Annotation:*—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119.

854. *Add. Annotations:*—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J.

PART III. SECT. 4, SUB-SECT. 2.—C. (a).

sb. "*Furber*"—*Sale of violin.*]—Pltf., who was learning to play the violin, bought a violin from deft., who is a dealer in violins & a violin & bow maker. Pltf. had informed deft. that he wished to exchange the violin he then had for a better one, paying the difference in cash. Deft. showed pltf. a violin which had been recently received from England & told pltf. that it was one made by Furber, "one of the old English makers":—*Held:* an essential term of the sale was the description of the article as a Furber.—BAILEY *v.* CROFT, [1932] 1 W. W. R. 106; 1 D. L. R. 777; 40 Man. L. R. 146.—**CAN.**

PART III. SECT. 5, SUB-SECT. 1.

681 vfil. —— —— ——.]—MURRAY *v.* REEVES SUPPLY CO., [1928] 2 D. L. R. 873.—**CAN.**

PART III. SECT. 5, SUB-SECT. 2.—A.

sf. Exceptions to rule—Goods intended for one purpose—Use for another.]—MCNEILL *v.* MOTOR SERVICE CO. (Alta.), [1929] 1 D. L. R. 594.—**CAN.**

PART III. SECT. 5, SUB-SECT. 2.—B. (a).

sg. Proof that purpose known—Notwithstanding warranty limiting liability.]—CRISS *v.* ALEXANDER (1928), 28 S. R. N. S. W. 297; 45 N. S. W. W. N. 76.—**AUS.**

PART III. SECT. 5, SUB-SECT. 3.—A.

765 v. ——.]—WINSLEY BROS. *v.* WOODFIELD IMPORTING CO., [1929] N. Z. L. R. 480.—**N.Z.**

P. C. 119; Bottomley *v.* Bannister, [1932] 1 K. B. 458.

856a. —— ——.]—Under English & Scots law alike a manufacturer of products which he sells in such a form as to show that he intends them to reach the ultimate consumer in the form in which they left him with no reasonable possibility of intermediate examination, & with the knowledge that the absence of reasonable care in the preparation & putting up of the products will result in injury to consumer's life or property owes a duty to consumer to take that reasonable care, & an action by the ultimate consumer will lie against the manufacturer.

Applt. drank a bottle of ginger beer, manufactured by resp., which a friend had bought from a retailer & given to her. The bottle contained the decomposed remains of a snail which were not & could not be detected (the glass of the bottle being of a dark colour):—*Held:* she was entitled to succeed in a claim for damages for injury to health against the manufacturer of the ginger beer put by him in the bottle.—M'ALISTER (OR DONOGHUE) *v.* STEVENSON, [1932] A. C. 562; 101 L. J. P. C. 119; 147 L. T. 281; 48 T. L. R. 494; 76 Sol. Jo. 396; 37 Com. Cas. 350, H. L.

Annotation:—**Distd.** FARR *v.* Butters Bros. & Co., [1932] 2 K. B. 606.

856b. —— —— **Defect ascertained by third party.**] Crane manufacturers sold a crane in parts to a firm of builders, the arrangement being that the parts were to be assembled by the builders' men. The builders had in their employment an experienced crane erector, who in assembling the parts found that certain cog-wheels worked stiffly, did not fit accurately, & required to be remedied; he accordingly marked in chalk the places where there was inaccurate fitting, saying at the same time that he would have to report the matter to his employers. Before the defects so discovered had been remedied the erector began working the crane, & while he was so engaged a part of it fell & killed him, the fall being due to the defects above mentioned. In an action by his widow under the Fatal Accidents Act, 1846 (c. 93), against the manufacturers of the crane:—*Held:* the defects being discoverable on reasonable inspection, &, having in fact been discovered by the deceased man, the manufacturers owed him no duty & were not liable for the accident.—FARR *v.* BUTTERS BROS. & Co., [1932] 2 K. B. 606; 101 L. J. K. B. 768; 147 L. T. 427, C. A.

857. *Add. Annotation:*—**Consd.** Bottomley *v.* Bannister, [1932] 1 K. B. 458; McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119.

877. *Add. Annotation:*—**Refd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

877a. —— **Nomination of vessel by buyer—No warranty of seaworthiness.**]—A contract for the sale of oil by a series of deliveries provided for delivery at B. into tank steamers of the buyers, & 15 days' notice of arrival of steamer was to be given to the sellers. The contract further provided that in the event of accidents on board steamers the operation of the contract was to be suspended & at the buyers' option the contract quantity was to be reduced *pro rata*. For one of the deliveries the buyers nominated a steamer which they had on time charter, but at the time the steamer, without the knowledge of the buyers, was unseaworthy, & the buyers, on learning that the steamer had had an accident & must be dry docked, intimated their exercise of their option to reduce the quantity of oil to be taken. The sellers contended that it was the duty of the buyers to charter some other vessel:—*Held:* on a case stated by an arbitrator, the buyers did not warrant the seaworthiness of vessels which they nominated for the performance of such a contract, & they were entitled to exercise their option.—MEDWAY OIL & STORAGE CO., LTD. *v.* RUSSIAN OIL PRODUCTS, LTD. (1931), 47 T. L. R. 402; 75 Sol. Jo. 408.

885a. Date of shipment—In bill of lading—C.i.f. contract.]—JAMES FINLAY & CO. *v.* N. V. KWIK HOO TONG HANDEL MAATSCHAPPIJ, No. 1814a, *post*.

893. *Add. Annotations:*—*As to* (2) **Refd.** Livock *v.* Pearson (1928), 33 Com. Cas. 188; Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

916a. —— **Warranty excluded as to defect not apparent on reasonable examination.**] —Claimants, grain exporters in Canada, sold a quantity of barley to resps., merchants in Germany. The sale was on c.i.f. terms, & the contract contained a clause providing that the grain was not warranted free from defect rendering it unmerchantable if such defect would not be apparent on reasonable examination. The barley was of a type which was generally used for feeding pigs, & shortly before the consignment which was the subject of this contract arrived in Germany other barley from the same crop

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PART III. SECT. 17, SUB-SECT. 1.

sh. *Goods "to be reshipped" by vendor—Whether reshipment by carrying vessel necessary.*]—SCARLETT & CO. *v.* H. A. STEPHENSON & SON, LTD., [1929] W. A. L. R. 1.—**AUS.**

sk. *Insurance by vendor—Parol evidence.*]—WATERLOO MOTORS, LTD. *v.* FLOOD, [1931] 1 D. L. R. 762; 3 M. P. R. 318.—**CAN.**

PART III. SECT. 17, SUB-SECT. 2.

sl. *Sale of seed flax.*]—The representation by a farmer selling seed flax that it was good seed flax held to be a warranty.—UHLE *v.* KROEKER, [1928] 1 D. L. R. 97; 37 Man. L. R. 154; [1927] 3 W. W. R. 636.—**CAN.**

PART III. SECT. 18, SUB-SECT. 1.

c. *Revsd. on the facts*, 59 S. C. R. 118.

c i. —— —— ——.]—Defts. purchased from pltf. a second-hand motor truck under a buyer's order signed by defts. containing a clause providing that "the whole agreement between the parties is contained herein & no representations, warranties or conditions expressed or implied other than those herein contained shall be binding upon the vendor." Defts. required a truck for immediate use on a contract for the construction of a new highway, necessitating a truck in first-class mechanical condition for immediate & continuous use for hauling purposes. All this was known to one H., pltf.'s representative, who stated to defts. that the truck was in first-class mechanical condition. Defts. had trouble from the start in keeping the truck running, but they continued to use it, both parties trying to remedy its condition. In an action to recover the purchase price defts. counterclaimed for damages for breach of warranty:—*Held:* both parties understood the order to call for a certain second-hand truck in first-class mechanical condition, & such being the subject-matter of the sale the above recited clause in the order did not give pltf. the right to supply something different. Pltf. failed to provide a truck of the standard contemplated by the parties, & was liable in damages to defts. for breach of warranty.—HAYES MANUFACTURING CO. *v.* PERDUE & COPE, [1931] 2 D. L. R. 610; 43 B. C. R. 545.—**CAN.**

PART III. SECT. 18, SUB-SECT. 2.

k. *Revsd.*, 43 S. C. R. 614.

1399. *Add. Annotation :*—**Refd.** English Hop Growers *v.* Dering, [1928] 2 K. B. 174.

1399a. —— **Appointment as "sole selling agents."**]—By an agreement in writing certain manufacturers of bricks & other building materials appointed a firm of builders' merchants "sole selling agents of all bricks & other materials manufactured at their works." The agreement was expressed to be for three years & afterwards continuous subject to twelve months' notice by either party. While the agreement was in force the manufacturers informed the merchants that they intended in the future to sell their goods themselves without the intervention of any agent, & thereafter they effected sales to customers directly. In an action by the merchants against the manufacturers for breach of the agreement :—*Held :* (1) the effect of the agreement was to confer on pltfs. the sole right of selling the goods manufactured by defts. at their works, so that neither defts. themselves nor any agent appointed by them, other than pltfs., should have the right of selling such goods ; (2) the agreement was one of vendor & purchaser & not one of principal & agent.—LAMB (W. T.) & SONS *v.* GORING BRICK CO., LTD., [1932] 1 K. B. 710 ; 101 L. J. K. B. 214 ; 146 L. T. 318 ; 48 T. L. R. 160 ; 37 Com. Cas. 73, C. A.

1403. *Add. Annotation :*—**Apld.** Palmolive Co. (of England) *v.* Freedman, [1928] Ch. 264

1404. *Add. Citations :*—[1928] Ch. 264 ; 138 L. T. 274.

1409. *Add. Annotation :*—**Consd.** Palmolive Co. (of England) *v.* Freedman, [1928] Ch. 264.

1417. *Add. Annotation :*—**Refd.** Shell-Mex *v.* Elton Cop Dyeing Co. (1928), 34 Com. Cas. 39.

1421. *Add. Annotation :*—**Refd.** Shell-Mex *v.* Elton Cop Dyeing Co. (1928), 34 Com. Cas. 39.

1435. *Add. Annotation :*—**Refd.** Barker *v.* Agius (1927), 33 Com. Cas. 120.

1441. *Add. Annotation :*—*Generally,* **Refd.** Buller & Co. *v.* Brooks (T. J.), Ltd. (1930), 142 L. T. 576.

Part VI.—Performance of the Contract.

1516. *Add. Annotation :*—*As to* (1) **Refd.** Royal Exchange Assce. *v.* Hope, [1928] Ch. 179.

1569. *Add. Annotation :*—**Refd.** Shell-Mex *v.* Elton Cop Dyeing Co. (1928), 34 Com. Cas. 39.

1682a. ——.]—GABRIEL, WADE & ENGLISH, LTD. *v.* ARCOS, LTD. (1929), 73 Sol. Jo. 483.

1686a. —— ——.]—TAMVACO *v.* LUCAS (1859), 1 E. & E. 581, 592 ; 120 E. R. 1027, 1032 ; *sub nom.* TANVACO *v.* LUCAS, 28 L. J. Q. B. 150, 301 ; 1 L. T. 161 ; 5 Jur. N. S. 731, 1258 ; 7 W. R. 568.

Annotations :—**Consd.** Shipton, Anderson & Co. *v.* Weil Bros. & Co., [1912] 1 K. B. 574. **Refd.** Ireland *v.* Livingston (1866), L. R. 2 Q. B. 99.

1745a. Agreement to cancel future instalments—In consideration of payments by buyer—Buyer ignorant that goods not corresponding with description—Rights of parties.]—ROBERT A. MUNRO & CO., LTD. *v.* MEYER, No. 645a, *ante.*

PART IV. SECT. 1, SUB-SECT. 9.—B.

sq. *Assumption of chattel mortgage as part of purchase-price—Liability to indemnify seller.*]—Where on a sale of personal property the buyer assumes a chattel mtge. thereon as part of the purchase-price, he is under an implied obligation to indemnify the seller against the latter's personal liability to the mtgee.—WALKER *v.* WOODYATT, [1931] 2 W. W. R. 306 ; 3 D. L. R. 516 ; 44 B. C. R. 110.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.

1440 i. *Goods obtained by larceny—Title of bonâ fide purchaser.*]—Where the owner of a motor car was induced to part with possession of it by the representations of the recipient that he was acting as agent for another person whom he named as the buyer of it & the owner when delivering the car thought he had sold it to the alleged principal, a cheque in the latter's name having been given for the purchase-price, but the alleged buyer was a fictitious person, held that the car had been stolen by a trick, &, therefore, deft. who innocently bought it from the thief obtained no title to it.—CUFF-WALDRON MANUFACTURING CO., LTD. *v.* HEALD, [1930] 2 W. W. R. 135 ; 3 D. L. R. 901 ; 24 S. L. R. 441. - **CAN.**

h i. ——.]—The mere fact that the owner of a chattel has given the possession or use of it to another, not a mercantile agent, who, purporting to be the actual owner, fraudulently sells it to an innocent purchaser, does not estop the owner from asserting his title against the purchaser.—NACHTIGAL *v.* PREMIER MOTORS, LTD., [1929] 2 D. L. R. 190 ; 1 W. W. R. 641 ; 24 Alta. L. R. 80.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 7.

so. *Sale by dealer — Subsequent fraudulent sale to third person.*]—E., a dealer in automobiles, sold or went through the form of selling an automobile to C., under a conditional sale agreement, taking a promissory risk for a part of the price. This note he took to defts., an automobile financing co., & discounted it, at the same time transferring the agreement to defts., who duly filed it in accordance with Conditional Sales Act. The automobile was left in the possession of E., who dishonestly sold it to pltf. :—*Held :* the real owner of the car being E. or C. or both. E. had authority to dispose of his security, the conditional sale agreement to defts., & defts. were thereafter the owners in law of the automobile ; the effect of the transaction between E. & C. along with that between defts. & E. was a "sale," & whether defts. or C. should be considered the purchaser, E., the person having sold the goods continued in possession & was in possession when he sold the automobile to pltf., & this was effective to transfer the property to pltf. under Sale of Goods Act, R. S. O., 1927, s. 25.—BENDER *v.* NATIONAL ACCEPTANCE CORPN., [1929] 1 D. L. R. 222 ; 63 O. L. R. 215.—**CAN.**

PART IV. SECT. 4, SUB-SECT. 3.

197 viii. —— —— *Subsequent charge on crops—Priorities.*]—Pltf. in 1929 agreed to sell a certain half-section of land to one A. In pursuance of the agreement a lease was entered into reserving to pltf. as rent one-third of the crop of each of the years, 1929, 1930, 1931, to be applied on the instalments of the purchase price, interest & taxes. In Apr. 1930, A., in consideration of extensions of time, & advances, agreed to give pltf. the whole of the crop & authorised pltf. to sell it as pltf. saw fit & deduct from the proceeds payments due under the agreement for sale plus any advances. The advances were for the purchase of cattle & clover seed. Subsequently, in response to a letter written by a solr. on behalf of A., deft. advanced A. money on the notes of A. & his son. In pursuance of a promise made in said letter A. later consigned a car of wheat grown on the land to order of the deft. The bill of lading was, at A.'s instance, issued to A. & a co. which was the agent of pltf. A. delivered the bill of lading to said agent, who endorsed to the order of deft. & forwarded it to deft. with instructions to sell. Deft. procured & sold the grain, & wrote said agent of pltf. offering to pay it one-third of the proceeds of the car. Pltf. insisted on receiving the whole proceeds of the car less the usual charges :—*Held :* deft. was not entitled to retain its advance.—LAW UNION & ROCK INSURANCE CO. *v.* NORTH WEST COMMISSION CO., [1931] 2 W. W. R. 905.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 2.

1476 v. ——.]—WEBB & HENDERSON *v.* CUPPLES, [1928] S. R. Q. 316.—**AUS.**

PART VI. SECT. 1, SUB-SECT. 3.

1498 iii. —— *C.i.f. contract.*]—Under a c.i.f. contract providing for payment against documents the purchaser is under no obligation to take up documents that do not in fact relate to goods of the description contracted for, & a refusal to take up a draft does not necessarily prove that the buyer was not ready & willing to perform the contract.—HENRY DEAN & SONS (SYDNEY), LTD. *v.* P. O'DAY PROPRIETARY, LTD. (1927), 39 C. L. R. 330 ; [1927] Argus L. R. 233.—**AUS.**

1747. *Add. Annotation :*—**Refd.** Robert A. Munro & Co. *v.* Meyer, [1930] 2 K. B. 312.

1765. *Add. Annotation :*—**Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

1769. *Add. Annotation :* — **Consd.** Robert (A.) Munro & Co. *v.* Meyer, [1930] 2 K. B. 312.

1769a. —— **Notwithstanding agreement that each instalment separate contract — Goods not corresponding with description.**]—ROBERT A. MUNRO & CO., LTD. *v.* MEYER, No. 645a, *ante*.

1801. *Add. Annotation :*—**Refd.** Canada Atlantic Grain Export Co. (Inc.) *v.* Eilers (1929), 35 Com. Cas. 90.

1811. *Add. Annotation :*—**Refd.** Foreman & Ellams *v.* Blackburn, [1928] 2 K. B. 60.

1812. *Add. Annotation :*—*As to* (2) **Consd.** Foreman & Ellams *v.* Blackburn, [1928] 2 K. B. 60.

1812a. —— —— **Shipment of goods before contract—Ship visiting other ports before issue of bill of lading.**]—A contract, dated July 2, provided for the sale of frozen rabbits & their shipment from Sydney c.i.f. Liverpool by a named steamer to sail during Aug. The bill of lading, which was dated Aug. 17, stated that the goods had been shipped by the steamer, then lying in Sydney. The steamer shipped the goods, or the bulk of them, at Sydney on June 25, when she proceeded to Queensland ports, thereafter returning to Sydney, & finally sailing from that port for Liverpool on Aug. 17. The buyers declined to take delivery of the goods, & the sellers claimed damages from them for breach of contract :—*Held :* the sellers were not entitled to recover, inasmuch as they had themselves committed breaches of the contract, by supplying goods the shipment of which had already taken place before the date of the contract of sale, & by tendering a bill of lading the issue of which had been delayed for so long as seven weeks after the shipment, the steamer having in the meantime visited other ports several hundred miles from the port of shipment.—FOREMAN & ELLAMS, LTD. *v.* BLACKBURN, [1928] 2 K. B. 60 ; 97 L. J. K. B. 355 ; 139 L. T. 68 ; 33 Com. Cas. 359 ; 17 Asp. M. L. C. 461.

1813. *Add. Annotation :*—**Refd.** Finlay (James) & Co. *v.* N. V. Kwik Hoo Tong (1928), 98 L. J. K. B. 251.

1814a. Date of shipment incorrectly stated.] The seller under a c.i.f. contract tendered to the buyer a bill of lading which stated, not fraudulently, but contrary to the fact, that the shipment had taken place in the contract month. Being unaware of this fact at the time of the tender, the buyer accepted the shipment, & entered into sub-contracts for the sale of a portion of the goods, those sub-contracts containing a clause that " the bill or bills of lading shall be conclusive evidence of the date of shipment." The sub-purchasers refused to take delivery, alleging that the shipment had not been made during the contract month. The buyer under the original contract having then ascertained that the goods had not been shipped during the contract month :—*Held :* (1) he was entitled to damages for the breach by the seller of his obligation to deliver a bill of lading stating the date of shipment correctly, the measure of damages being the difference between the market price & the contract price of the goods ; (2) the buyer was not bound to enforce, for the purpose of minimising the damages, the contracts with the sub-purchasers, as to do so, after he knew that the shipment date was incorrect, might seriously injure his commercial reputation.—FINLAY (JAMES) & CO. *v.* N. V. KWIK HOO TONG H. M., [1929] 1 K. B. 400 ; 98 L. J. K. B. 251 ; 140 L. T. 389 ; 45 T. L. R. 149 ; 34 Com. Cas. 143 ; 17 Asp. M. L. C. 566, C. A.

Annotations :—*As to* (1) **Refd.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48. *As to* (2) **Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd., Waterlow & Sons, Ltd. *v.* Banco de Portugal, [1932] A. C. 452 ; The Edison (1932), 147 L. T. 141.

1816. *Add. Annotations :*—**Refd.** De Monchy *v.* Phœnix Insce. of Hartford (1928), 138 L. T. 703 ; Tredegar *v.* Harwood, [1928] Ch. 59.

1850. *Add. Annotation :*—**Refd.** De Monchy *v.* Phœnix Insce. of Hartford (1928), 138 L. T. 703.

1858. *Add. Annotation :*—**Distd.** Aronson *v.* Mologa Holzindustrie A/G Leningrad (1927), 138 L. T. 470.

1887a. ——.]—MONTAGUE L. MEYER, LTD. *v.* OSAKEYHTIO CARELIA TIMBER CO., LTD., No. 622a, *ante*.

1887b. ——.]—Applts., defts. in the action, sold to resps. a quantity of staves for making barrels to hold cement. The contract in

PART VI. SECT. 2, SUB-SECT. 9.—D.

hm. *Refusal to take one instalment—Whether repudiation or separable breach.*]—THOMSON & ALIX, LTD. *v.* SMITH (1929), 1 M. P. R. 510.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 11.—B.

1828 i. *Irregularity in documents—Invoice—C.i.f. contract.*]—*Semble :* the office of the invoice in a c.i.f. contract is to show how the amount of the draft for the contract goods is arrived at, & provided it makes that clear, the fact that there is on the face of the invoice matter not in accordance with the contract does not justify the buyer in refusing to accept the usual shipping documents, nor in itself does it amount to a breach by the seller of his obligation to tender such valid & effectual shipping documents as are contemplated by the contract or as are usual.—SAMUEL MCCAUSLAND, LTD. *v.* RAILTON, [1931] V. L. R. 247.—**AUS.**

PART VI. SECT. 3, SUB-SECT. 1.

sp. *Retention of goods—With knowledge of mistake by vendor—Acceptance implied.*]—ACKERMAN *v.* MORRISON (1911), 45 N. S. R. 185 ; 9 E. L. R. 307.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 2.

1866 i. *Whether implied.*]—SCOTIA FLOUR & FEED CO. *v.* STRONG, [1928] 4 D. L. R. 678 ; [1928] S. C. R. 319.—**CAN.**

sq. *Special contract—" Inspection acceptance Winnipeg."*]—SCOTT *v.* ROGERS FRUIT CO., [1928] 1 D. L. R. 201 ; 37 Man. L. R. 145 ; [1927] 3 W. W. R. 628.—**CAN.**

sr. *Nature of right.*]—Where a buyer of a motor car took delivery thereof under a contract which expressly acknowledged acceptance & used the car in the usual course of his business for 10 days it was held that, in the absence of any agreement giving him the right to test the car for that time, it was not possible to hold that he had not accepted it. The reasonable opportunity, given by Sale of Goods Act, R. S. B. C., 1924, s. 40, of examining the goods for the purpose of ascertaining whether they are in conformity with the contract is, in at least an action for rescission, a right of inspection, & not a right to make use of a piece of machinery for an indefinite or any time to test its capacity of performance & perfection of construction.—REEVIE *v.* WHITE CO., LTD. (B. C.), [1929] 4 D. L. R. 296 ; 3 W. W. R. 33.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—B. (a).

1887 vii. ——.]—WENTWORTH ORCHARD CO., LTD. *v.* MERCHANTS CONSOLIDATED, LTD. (Man.), [1922] 1 W. W. R. 291 ; 68 D. L. R. 227.—**CAN.**

1887 viii. ——.]—CANADIAN INTERNATIONAL PAPER CO. *v.* SOPER, [1931] 3 D. L. R. 801 ; S. C. R. 718.—**CAN.**

r i. —— *Sale of " stack branded " or " stack graded " goods—Brand marks matter of identification not description.*]—NEW ZEALAND LOAN & MERCANTILE AGENCY CO., LTD. *v.* WRIGHT STEPHENSON & CO., LTD., [1930] N. Z. L. R. 630.—**N.Z.**

fixing the dimensions of the goods did not provide for any variation in thickness such as would have been permitted by use of the word "about." Shipment was to be made by a summer shipment & was in fact made on Oct. 9. Resps. refused to accept, on the ground that there had not been a summer shipment. The question was referred to arbn. & an award was made that the shipment was in order because it had been made during the period of open water & was therefore a summer shipment within the meaning of that phrase in the particular trade. The award was accepted by both parties, but subsequently resps. again refused to accept the goods, on the ground that they did not comply with the contract description. This dispute also was referred to arbn., & an award was made that, although the goods were not in fact of the contract description, they were so nearly of the contract description that they were commercially within it & must be accepted. The award was in the form of a special case, & on argument of the case the award was reversed. Applts. now appealed:—*Held:* dismissing the appeal, as the goods were not strictly of the contract description, & the variation from that description was not so small as to come within the principle *de minimis non curat lex*, & applts. had not protected themselves by inserting in the contract the word "about" or other like provision, the resps. were entitled to reject.—RONAASEN (E. A.) & SON *v.* ARCOS, LTD. (1932), 48 T. L. R. 356; 37 Com. Cas. 291, C. A.

1887c. —— **Goods to be carried "under deck"—Carriage as deck cargo.**]—WHITE SEA TIMBER TRUST, LTD. *v.* W. W. NORTH, LTD. (1932), 174 L. T. Jo. 507.

1889. *Add. Annotations:*—**Apld.** Montague L. Meyer, Ltd. *v.* Kivisto (1929), 142 L. T. 480. **Consd.** Montague L. Meyer, Ltd. *v.* Osakeyhtio Carelia Timber Co. (1930), 36 Com. Cas. 17; Green *v.* Arcos, Ltd., (1931) 47 T. L. R. 336.

1897. *Add. Annotation:*—**Apld.** Barrow, Lane & Ballard *v.* Phillip, Phillips & Co., [1929] 1 K. B. 574.

1905a. —— **No right to reject goods specified—Wrong quantity tendered.**]—A buyer bought a quantity of timber to be shipped from Russia, the contract providing that at sellers' option the quantity was subject to a variation of 10 per cent. not exceeding twenty standards on any item, & that "buyers shall not reject the goods therein specified, but shall accept or pay for them in terms of contract against shipping documents." When the cargo arrived the buyer found that, after allowing for the permitted variation, in some classes of the timber there had been overshipment, in some classes there had been short shipment, & in some classes there had been no shipment at all. The buyer thereupon rejected the whole of the timber on the ground that the sellers had failed to perform the contract:—*Held:* on a special case stated by an arbitrator, the clause as to rejection could not prevent rejection where the goods tendered were not the goods "specified," &, as the goods tendered were not, in respect of quantity, the goods specified, the clause did not apply, & the buyer was entitled to reject.—GREEN *v.* ARCOS, LTD. (1931), 47 T. L. R. 336, C. A.

1923. *Add. Annotation:*—*As to* (2) **Refd.** Robert A. Munro & Co. *v.* Meyer, [1930] 2 K. B. 312.

Part VII.—Rights of Unpaid Seller Against Goods.

2164. *Add. Annotation:*—**Refd.** Bottomley *v* West Derby Assessment Committee, etc., etc. (1931), 47 T. L. R. 468.

2169. *Add. Annotation:*—**Refd.** Bottomley *v.* West Derby Assessment Committee, etc., etc. (1931), 47 T. L. R. 468.

2171. *Add. Annotation:*—**Refd.** Bottomley *v.* West Derby Assessment Committee, etc., etc. (1931), 47 T. L. R. 468.

2384. *Add. Annotation:*—**Apld.** A.-G. *v.* Pritchard (1928), 97 L. J. K. B. 561.

After this case add:—"As regards hire-purchase agreements generally, *see* BAILMENT, Vol. III., p. 96, Nos. 257, 258."

2388. *Add. Annotation:*—**Distd.** A.-G. *v.* Pritchard (1928), 97 L. J. K. B. 561.

PART VI. SECT. 3, SUB-SECT. 3.—D. (b) i.

st. *Execution of chattel mortgage on goods.*]—METALS, LTD. *v.* DIAMOND, [1930] 3 D. L. R. 886.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 4.—C. (a).

r i. ——.]—E. who had been for some time selling & delivering carcasses of beef for cash to a meat co., delivered four carcasses at the co.'s shop, whereupon the manager who was then busy asked him to call back for his cheque. The seller thereupon left the shop & came back a few hours later for the cheque, but in the meantime a garnishee order had been served on the manager by a creditor of the seller:—*Held:* by his conduct the seller had agreed to give credit to the buyer.—COUPLAND *v.* ELMORE, [1928] 2 D. L. R. 308; [1928] 1 W. W. R. 380.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 6.—G.

sv. *Right of holder to follow proceeds of goods.*]—LEIGH *v.* ADAMS, WOOD & WEILLER, LTD., & O'NEIL, [1931] 1 W. W. R. 686; [1931] 2 D. L. R. 595; 25 Alta. L. R. 341.—**CAN.**

PART VI. SECT. 4, SUB-SECT. 11.—A.

2014 ii. —— —— ——.]—CLARKE BROS. & CO. *v.* LAWRENCE, [1931] 1 W. W. R. 252; 2 D. L. R. 503.—**CAN.**

PART VI. SECT. 7, SUB-SECT. 2.

2248 i. *General rule.*]—A contract for the sale of goods that is in violation of the law will not be enforced by the ct.—ERNST *v.* CHRISTIAN, [1929] 1 D. L. R. 207; 60 N. S. R. 447.—**CAN.**

Part VIII.—Breach of the Contract.

2390. *Add. Annotation :—As to* (1) **Consd.** Calico Printers' Association, Ltd. *v.* Barclays Bank (1930), 145 L. T. 51.

2427. *Add. Annotation :—***Refd.** Shell-Mex *v.* Elton Cop Dyeing Co. (1928), 34 Com. Cas. 39.

2473. *Add. Citation :—revsg.* S. C. *sub nom.* STEWARDS & Co., LTD. *v.* R. (1900), 17 T. L. R. 111, C. A.

2487. *Add. Annotation :—***Refd.** Shell-Mex *v.* Elton Cop Dyeing Co. (1928), 34 Com. Cas. 39.

2493a. —— ——.]—STURGE *v.* PHILPOTTS (1839), 8 L. T. 30.

2501. *Add. Annotation :—***Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

2519a. Failure of seller to deliver correct bill of lading — Measure of damages.] — JAMES FINLAY & CO. *v.* N. V. KWIK HOO TONG HANDEL MAATSCHAPPIJ, No. 1814a, *ante.*

2557. *Add. Annotation :—As to* (2) **Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

2569. *Add. Annotation :—***Distd.** *Re* Hall & Pim's Arbitration (1928), 139 L. T. 50.

2570. *Add. Annotations :—As to* (2) **Consd.** Finlay (James) & Co. *v.* N. V. Kwik Hoo Tong, [1929] 1 K. B. 400. **Refd.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

2571. *Add. Annotations :—***Consd.** Finlay (James) & Co., Ltd. *v.* N. V. Kwik Hoo Tong, [1929] 1 K. B. 400, C. A. **Refd.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

2575. *Add. Citations :—*97 L. J. K. B. 60 ; 33 Com. Cas. 60.

2583. *Add. Annotation :—Generally,* **Refd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co. (1931), 47 T. L. R. 481.

2585. *Add. Annotation :—As to* (1) **Refd.** Shell-Mex *v.* Elton Cop Dyeing Co. (1928), 34 Com. Cas. 39.

2590. *Add. Annotations :—***Refd.** Kasler & Cohen *v.* Slavouski, [1928] 1 K. B. 78 ; The Edison, [1932] P. 52.

2612. *Add. Citations :—revsd.* (1928), 139 L. T. 50 ; 33 Com. Cas. 324, H. L.

*Add. Annotations :—***Consd.** Finlay (James) & Co. *v.* N. V. Kwik Hoo Tong, [1929] 1 K. B. 400. **Refd.** The York, [1929] P. 178.

2618. *Add. Annotation :—***Refd.** Finlay *v.* N. V. Kwik Hoo Tong Handel Maatschappij, [1928] 2 K. B. 604.

2644. *Add. Citation :—*[1927] B. & C. R. 140.

Add Annotation :—As to (2) **Apld.** Shell-Mex *v.* Elton Cop Dyeing Co. (1928), 34 Com. Cas. 39.

2684. *Add. Annotation :—***Refd.** Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258.

2687. *Add. Citation :—*138 L. T. 470.

2699a. —— Loss of freight—C.i.f. contract—Policy not in accordance with contract—Refusal of insurer to pay.]—A quantity of copra was sold for shipment from Australasia to London on the terms of cost, freight, & insurance, & the contract provided : " Insurance including war risk on free from particular average terms to be effected by sellers at the contract price plus 5 per cent. on the net shipping weight. . . . Such insurance to cover the copra until delivered in the ordinary course of transit into warehouse at the port of destination." In policies taken out by the sellers the goods & the freight were valued separately, & there was a " freight contingency clause," as follows : " On freight payable at destination . . . being increased

PART VIII. SECT. 2, SUB-SECT. 1.—E. (a).

2445 i. *Effect of joinder of claims.*]—WETTLAUFER BROS., LTD. *v.* ROBERT ELDER CARRIAGE WORKS, LTD., ROBERT ELDER CARRIAGE WORKS, LTD. *v.* SNOW MOTORS INCORPORATED, [1928] S. C. R. 580.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 2.—A.

h i. —— *Shipment f.o.b.*]—VIPOND *v.* SISCO (1913), 29 O. L. R. 200 ; 4 O. W. N. 1498.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 2.—C. (a).

2501 i. —— *No available market.*]—Where a purchaser of a motor-truck chassis from a dealer refused to accept delivery of the motor-truck, which was then re-sold at a profit, there being evidence that similar motor-trucks were available for immediate delivery, & the property not having passed :—*Held :* the seller was entitled to retain the profit on re-sale, & also to damages for loss of profit on the original sale. It cannot be said that an available market for a particular make of motor chassis within Sale of Goods Act, 1895, s. 49 (3), exists in South Australia.—CAMERON *v.* CAMPBELL & WORTHINGTON, LTD., [1930] S. A. S. R. 402.—**AUS.**

PART VIII. SECT. 3, SUB-SECT. 1.

st. *Contract in breach of duty to employer.*]—The mere fact that an employee who has contracted to give all his working time to his employer's business & not to deal personally in any kind of goods dealt in by the employer is guilty of a breach of duty in entering into a personal contract with a third party for the purchase of goods of such a kind does not disentitle him to recover damages for breach of the contract.—MADDISON *v.* DONALD H. BAIN, LTD., [1929] 1 D. L. R. 843 ; 1 W. W. R. 437 ; 40 B. C. R. 499 ; *affd.*, [1930] S. C. R. 299 ; 1 D. L. R. 63. —**CAN.**

PART VIII. SECT. 3, SUB-SECT. 2.—A.

t i. ——.]—ROBINSON (E. S. & A.), LTD. *v.* WAYAGAMACK PULP & PAPER CO., [1930] 1 D. L. R. 369.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 2.—B. (a).

sv. *Sale of fishing tackle—No licence to fish—Failure of seller to procure licence.*]—To a claim for damages for delay in the delivery of fishing-net equipments sold by pltf. to deft. the seller set up the defence that the buyer had no licence to fish on the days for which he claimed damages :—*Held :* since the seller had undertaken to obtain the licence for the buyer & had neglected to do so for several months, he could not rely on its absence as a defence, unless the buyer was guilty of wrongdoing of a character which the ct. could not overlook.—JONASSON *v.* DUBINAK, [1928] 3 D. L. R. 501 ; [1928] 2 W. W. R. 588 ; 37 Man. L. R. 430.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 2.—C. (a).

sw. *Self-elected measure.*]—BURKARD & Co., LTD. *v.* WAHLEN (1928), 28 S. R. N. S. W. 607 ; 45 N. S. W. W. N. 201.—**AUS.**

PART VIII. SECT. 3, SUB-SECT. 3.

2643 i. —— *Property in goods not passed — Growing timber.*]—*Re* WESTERN CANADA PULPWOOD & LUMBER CO., LTD., NEWTON *v.* MANITOBA PULP & PAPER CO., LTD., [1929] 4 D. L. R. 337 ; 3 W. W. R. 81 ; 38 Man. L. R. 351 ; 11 C. B. R. 28 ; *affd.*, [1929] 3 W. W. R. 544 ; [1930] 1 D. L. R. 652 ; 38 Man. L. R. 378 ; 11 C. B. R. 125.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 4.

2656 i. *Whether granted—Where specific performance would not be decreed.*]—The ct. will not grant an injunction to restrain the breach of a contract for the sale & delivery of future chattels, expressed in an affirmative form, even though the contract so expressed involves a negative in substance, in a case where damages would be a complete remedy, where the contract is of such a nature that it cannot be specifically enforced, & where payment for the goods in question has not been made.—WOOD *v.* CORRIGAN (1928), 28 S. R. N. S. W. 492 ; 45 N. S. W. W. N. 134.—**AUS.**

value of copra through payment of freight or from such time as freight becomes due at destination, this insurance being deemed to be part of the total amount insured on the copra valued at such total amount." By the bill of lading the freight was payable only if the vessel arrived at the place of destination. The vessel took fire on the voyage & with her cargo became a total loss. The insurance co. paid to the buyers the insurance on the goods, but refused to pay the insurance on the freight on the ground that it had never become covered. The buyers then claimed damages from the sellers on the ground that the policies did not comply with the contract :— LODERS & NUCOLINE, LTD. *v.* BANK OF NEW ZEALAND (1929), 45 T. L. R. 203.

2701. *Add. Annotation :*—**Refd.** Dobell (C. G.) & Co. *v.* Barber & Garratt (1930), 47 T. L. R. 66.

Part IX.—Misrepresentation and Fraud.

2719. *Add. Annotation :*—**Refd.** Lever Bros., Ltd. *v.* Bell (1930), 47 T. L. R. 47.

2720. *Add. Annotation :*—**Refd.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293.

PART X.

e (p. 688) **i.** —— · *Sale in ordinary course of business of substantially whole stock-in-trade.*]—A sale of 80 per cent. of the stock of one co. to another held to be a bulk sale.—COMMERCIAL MOTOR BODIES & CARRIAGES, LTD. *v.* PERTH, LTD., [1930] 4 D. L. R. 1010 ; 66 O. L. R. 209 ; *affg.*, [1930] 3 D. L. R. 617 ; 65 O. L. R. 383.—**CAN.**

e (p. 688) **ii.** —— —— *Seizure under lien note.*]—OGILVIE FLOUR MILLS CO., LTD. *v.* EMPIRE BAKERY, LTD., [1931] 2 W. W. R. 766.—**CAN.**

dd (p. 688) **i.** —— —— ——.]—PADDON *v.* MCFARLAND & MCFARLAND & GOLDBERG, [1930] 3 W. W. R. 632.—**CAN.**

m (p. 689) **i.** —— —— —— *Creditor —Who is.*]—Pltf. was held not to be in a position to attach the bulk sale, as he was not a creditor as the result of any contractual relationship between them. The term cannot be extended to include persons who have contingent claims arising out of torts or transactions of a tortious character until the relationship has become really that of debtor & creditor by virtue of a judgment.—COMMERCIAL MOTOR BODIES & CARRIAGES, LTD. *v.* PERTH, LTD., [1930] 4 D. L. R. 1010 ; 66 O. L. R. 209 ; *affg.*, [1930] 3 D. L. R. 617 ; 65 O. L. R. 383.—**CAN.**

q (p. 689) **i.** —— —— —— *Landlord.*]—A lease of shop premises contained a proviso that if the term should be taken in execution or attachment, or if the lease should make any assignment for the benefit of creditors or, becoming bkpt. or insolvent, should take the benefit of any Act in force for bkpt. or insolvent debtors, the then current month's rent & the rent for the three months following should immediately become due & payable & the term forfeited & void. During the term, the lessee made a bulk sale of the goods in the shop, & deft. co. was appointed trustee under Bulk Sales Act :—*Held :* the making of a bulk sale did not bring the proviso into operation. Bulk Sales Act, s. 4, makes the Assignments & Preferences Act applicable to the distribution of the bulk sale purchase-money ; but the latter Act does not give a landlord a preferential lien for uncarned rent.—MORTON *v.* CANADIAN CREDIT MEN'S ASSOCN., [1929] 1 D. L. R. 911 ; 63 O. L. R. 334 ; 10 C. B. R. 442.—**CAN.**

q (p. 689) **ii.** —— —— *On failure to comply with Act.*]—The creation in the Bulk Sales Act of a presumption of fraud on the part of both purchaser & vendor as against the vendor's creditors, indicates a legislative intention to put a sale in bulk made without compliance with that Act in the same category as sales made with an intention to defraud the vendor's creditors. This presumption of fraud has the effect of bringing into play all other statutes passed for the protection of creditors against a fraudulent sale of his goods by a debtor to the prejudice of his creditors, & the right to recover from a fraudulent transferee the proceeds of goods coming into his possession by an invalid transfer, & resold by him, is given by Assignments Act, R. S. N. S., 1928, s. 21 (1).—GARSON *v.* CANADIAN CREDIT MEN'S TRUST ASSOCN., [1929] 3 D. L. R. 300 ; S. C. R. 282 ; 10 C. B. R. 504 ; *affg., sub nom. Re* CROUSE, [1928] 2 D. L. R. 985 ; 60 N. S. R. 214 ; 10 C. B. R. 123 ; *affg.*, 8 C. B. R. 576.—**CAN.**

ll (p. 689) **i.** —— —— —— ——.]—NATIONAL DISCOUNT CORPN. *v.* FRECH & JACKSON, [1928] 2 D. L. R. 256 ; 61 O. L. R. 659.—**CAN.**

g (p. 690) **i.** —— —— *Sufficiency of.*]—The fact that the name of the vendor of a motor car sold under a lien agreement appears on the covering over the spare tire carried at the rear of the car is not a sufficient compliance with sect. 9 of Conditional Sales Act, R. S. S., 1920 (c. 201), as amended by 1928 (c. 81), s. 3.—GLOEDEN *v.* HICKS MOTOR CO., LTD. (Sask.), [1929] 4 D. L. R. 245 ; 3 W. W. R. 126.—**CAN.**

g (p. 690) **ii.** —— —— *Non-renewal of—Effect on creditor with notice.*]—CANADIAN CREDIT MEN'S TRUST ASSOCN., LTD. *v.* DEALERS FINANCE CORPN., LTD., [1932] 1 W. W. R. 681.—**CAN.**

k (p. 690) **i.** —— —— ——.]—Deft. & H. purchased from pltf. a team of horses, to be paid for in weekly instalments. The terms of the bargain were embodied in a document signed by deft. & H. in which they promised to pay at the times stated in a schedule endorsed on the document, & it was provided that "possession of the said property shall not pass until this note is paid in full," & pltf. "has full power to declare the note due & take possession of said property at any time he deems himself unsecure, even before the maturity of this note." Possession was in fact given to the purchasers :—*Held :* the parties did not really intend that possession should be retained by pltf.—HARRIS *v.* TONG, [1930] 3 D. L. R. 32 ; 65 O. L. R. 133.—**CAN.**

m (p. 690) **i.** —— —— ——.]—A contract for the erection of a building is not one for the sale of goods but for work & labour, & the owner is not a "purchaser," within Conditional Sales Act, of materials, *e.g.* a refrigeration system, placed in accordance with the contract in the building ; &, in any event, if the materials are not bought by the contractor until after he has entered into the contract with the owner, the latter is not a "subsequent purchaser."—WELCH *v.* GENERAL REFRIGERATION, LTD., [1930] 2 D. L. R. 672 ; 42 B. C. R. 107 ; [1929] 3 W. W. R. 660:—**CAN.**

n (p. 690) **i.** —— —— *Document giving power to seize goods.*]—A document purporting to be a lien note, but made payable to one who did not own the goods on which it was given & had not sold them to the maker of the note, is not a lien note within Conditional Sales Act, but merely an authority to seize & sell the goods in default of payment ; &, for the same reasons that a chattel mtgee. cannot buy at the mtge. sale, the holder of the note is not entitled to buy at his sale under the note.—MCCORMICK *v.* HAWORTH (or HARWORTH), [1929] 2 D. L. R. 835 ; 1 W. W. R. 129 ; 23 S. L. R. 312.—**CAN.**

n (p. 690) **ii.** —— —— *Exchange between retail dealers.*]—Two retail dealers in motor cars agreed upon an exchange of a certain car from the stock of one for a certain car from the stock of the other, the difference in value between the two cars to be paid for in cash. The cars were delivered & each gave the other a cheque for the full value of the respective cars :—*Held :* whether or not the transaction was a sale or a barter, it was not a sale "in the ordinary course of his business" within Conditional Sales Act, s. 4.—ALBUTT (W. J.) & Co., LTD. *v.* RIDDELL, [1930] 1 W. W. R. 555 ; 2 D. L. R. 166 ; 42 B. C. R. 344 ; *revsd.*, [1930] 2 W. W. R. 623 ; 4 D. L. R. 111 ; 43 B. C. R. 74.—**CAN.**

p (p. 690) **i.** —— —— —— *Notice of seizure—Whether necessary.*]—There can be no seizure by a person of goods which are in his own possession & control. The word "seizure" in Extra-Judicial Seizures Act, R. S. A., 1922, has the ordinary meaning of the word, *i.e.* a forcible taking of possession. Since said Act applies only to cases where seizure is required, it does not apply to the case where goods sold under a conditional sale agreement have been voluntarily returned by a buyer in default to the seller & are in the latter's possession.—PACIFIC FINANCE CO. *v.* IRELAND, [1931] 2 W. W. R. 593 ; 4 D. L. R. 186 ; 25 Alta. L. R. 369.—**CAN.**

kk (p. 690) **i.** —— —— —— ——.]—The mere retaking of possession will not, without more, bring the contract to an end, if it is made clear that the seller's purpose in retaining possession is to hold the goods as security for the purchase-money, the contract will not be rescinded nor will the purchaser be released from his obligation to pay the purchase price.—MAXWELL RADIO CO. *v.* DE WILDE, MAXWELL RADIO CO. *v.* BLONTROCK, [1931] 2 D. L. R. 123 ; 66 O. L. R. 519.—**CAN.**

mm (p. 690) **i.** —— —— *Authority to resell.*]—E., a dealer in automobiles, sold, or went through the form of selling, an automobile to C under a conditional sale agreement, taking a promissory note for a part of the price. This note he took to defts., an automobile financing co., & discounted it, at the same time transferring the agree-

ment to defts. who duly filed it in accordance with Conditional Sales Act. The automobile was left in the possession of E. who dishonestly sold it to pltf. :—*Held :* the real owner of the car being E. or C. or both, E. had authority to dispose of his security, the conditional sale agreement, to defts., & defts. were thereafter the owners in law of the automobile.—BENDER *v.* NATIONAL ACCEPTANCE CORPN., LTD., [1929] 1 D. L. R. 222 ; 63 O. L. R. 215.—**CAN.**

mm (p. 690) **ii.** —— —— —— *Delivery of goods for purpose of resale—What amounts to.*]—Defd. co. having a lien upon two houses being erected by F. obtained a judgment for its claim & afterwards, in satisfaction of the judgment, took from F. a quit-claim deed of the houses. Thereafter, the co. agreed to sell the houses to pltf. A furnace had been purchased by F. upon a conditional sale agreement with the vendor & placed in one of the houses :—*Held :* the furnace was not delivered to a purchaser " for the purpose of resale by him " within Conditional Sales Act, R. S. O., 1927, s. 2 (3) ; it was to be placed by him in the house he was building, of which it would become an integral part ; a sale of the house would not be the sale of a chattel.—COLLIS *v.* CAREW LUMBER CO., LTD., [1930] 4 D. L. R. 996 ; 65 O. L. R. 520.—**CAN.**

mm (p. 690) **iii.** —— —— —— *Notwithstanding buyer's claim for breach of warranty.*]—The fact that a buyer of goods under a conditional sale contract has asserted a claim for damages for breach of warranty does not prevent the seller from repossessing the car on the buyer defaulting in his payments.—LOVE *v.* MOTOR FINANCE CO., LTD., [1931] 3 W. W. R. 510 ; [1932] 1 D. L. R. 268 ; 40 Man. L. R. 106.—**CAN.**

mm (p. 690) **iv.** —— —— —— *Effect of acceleration clause.*]—In an action by the seller under a conditional sale contract the seller, who had retaken possession of the goods, set up an acceleration provision in the contract & claimed the whole of the unpaid balance of the purchase-price :—*Held :* although under the terms of the contract the seller had a right of action for said balance & the further right to take possession of the goods, yet the result of the bringing of the action for the balance was that the goods became the property of the buyer & the right which the seller had over them by virtue of its possession was equivalent to the unpaid seller's lien provided for by sect. 38 of Sale of Goods Act, R. S. S., 1930.—INDUSTRIAL ACCEPTANCE CORPN., LTD. *v.* DOUGHAN, [1932] 1 W. W. R. 619.—**CAN.**

nn (p. 690) **i.** —— ——.]—In order to hold a buyer under a conditional sale agreement who has defaulted thereunder liable for the deficiency on a resale of the goods by the seller the notice to the buyer of said resale must be in strict accordance with the requirements of Conditional Sales Act, R. S. B. C. 1924, c. 44, s. 10 (3), notwithstanding that the agreement provides that the seller can exercise the power of resale " by public or private sale with or without notice."—MARSH *v.* SIMPSON [1928] 1 W. W. R. 956.—**CAN.**

nn (p. 690) **ii.** —— —— —— ——.]—So long as the buyer under a conditional sale agreement has five days' notice of the intended resale, whether he gets it as the result of personal service or because it is left at his place or sent to him by registered mail, the Conditional Sales Act, R. S. A. 1922, c. 150, s. 11, is complied with.—MINNEAPOLIS STEEL & MACHINERY CO. *v.* PAULERROU (No. 2), [1928] 1 W. W. R. 976.—**CAN.**

nn (p. 690) **iii.** —— —— —— *Sufficiency—Onus of proof.*]—Where, in an action by a vendor, under a conditional sale agreement for the balance of the purchase-price after he has repossessed & resold the goods, the defence is raised that the Act has not been complied with, the burden of proving compliance rests on the vendor.—THOMPSON *v.* SHOLINDER, [1928] 1 W. W. R. 386.—**CAN.**

nn (p. 690) **iv.** —— —— —— —— ——.]—Notice is not required to be given the buyer in a case where the seller merely exercises his right under the contract of repossessing the goods on the buyer's default & continues to hold them without a resale or without making any use of them for his own purposes.—WATKINS GARAGE, LTD. *v.* MCKORYK, [1928] 3 W. W. R. 429.—**CAN.**

nn (p. 690) **v.** —— —— —— —— ——.]—MOTOR CAR LOAN CO. *v.* BONSER, [1928] 3 D. L. R. 875 ; [1928] 1 W. W. R. 801.—**CAN.**

nn (p. 690) **vi.** —— —— —— —— —.]—A notice that, failing to receive payment of the amount due to the holder of the security before a certain hour of a certain day, the holder would sell the goods, was held not to comply with Conditional Sales Act, s. 7 (2), as not being notice of a definite proposed sale.—INDUSTRIAL ACCEPTANCE CORPN., LTD. *v.* CODE, [1931] 1 D. L. R. 980 ; 66 O. L. R. 376.—**CAN.**

b (p. 691) **i.** —— —— —— —— ——.]—HEALMAN *v.* PRYCE, [1930] 2 D. L. R. 608 ; 42 B. C. R. 104.—**CAN.**

d (p. 691) **i.** —— —— —— —— ——.]—Where goods sold under a conditional sale agreement are repossessed by the seller but the required statutory notice of the resale thereof is not given, the seller cannot after reselling recover for a deficiency as to the purchase-price unless the agreement expressly so provides.—THOMAS GARAGE, LTD. *v.* PROZANOWSKI, [1931] 1 W. W. R. 248 ; 2 D. L. R. 179 ; 25 Alta. L. R. 457.—**CAN.**

g (p. 691) **i.** —— —— —— —— *Request to retake.*]—Under a conditional sale agreement which provided that on default in payment of any instalment the seller would have the right to re-enter & take possession of the goods & " to forthwith cancel this agreement," held that the retaking of possession of the goods did not in itself cancel the agreement, but that something more was required to be done in order to exercise the right of cancellation. A request by the buyer that the seller retake possession of the goods is not a waiver of the requirements of the Conditional Sales Act. In the absence of a provision in the agreement to the contrary, where a conditional sale agreement provides for the retaking possession & resale of the goods the resale contemplated must be taken to be one in accordance with the abovementioned provisions, & a resale made without complying therewith rescinds the contract.—ADELKIND *v.* AMES, [1930] 2 W. W. R. 702 ; [1931] 1 D. L. R. 181 ; 25 S. L. R. 87.—**CAN.**

mm (p. 691) **i.** —— —— —— *Necessity for retention for 20 days.*]—Where goods sold under a conditional sale agreement & repossessed by the seller are not retained by him for at least 20 days, as provided by sect. 10 of Conditional Sales Act, R. S. A., 1922, before being resold, he cannot recover the balance remaining unpaid under said agreement if the buyer has not waived his right to the protection of said sect. The goods in question herein had been seized by pltf., the seller's assignee, under an execution issued on a judgment for the balance of the purchase-price, & were in the hands of the sheriff's bailee under said seizure when pltf. claimed & obtained possession from the sheriff in order that it might realise under its lien under the agreement :—*Held :* the 20 days prescribed by said sect. 10 ran from the date when possession was retaken under the agreement.—MUTUAL ACCEPTANCE CORPN. *v.* MCDERMID, [1930] 3 W. W. R. 349 ; [1931] 1 D. L. R. 497.—**CAN.**

mm (p. 691) **ii.** —— —— —— *No duty to resell.*]—Where a chattel sold under a conditional sale agreement is repossessed by the seller because of default by the buyer, the seller is not, in the absence of a provision therefor in the contract, under a duty to the buyer to resell the chattel at all, &, if he does exercise his right under the contract to resell, he will not be held liable to the buyer because the chattel brought less, owing to a falling market, than it would have brought had it been resold sooner.—STERLING SECURITIES CORPN., LTD. *v.* WAFFLE, [1931] 2 W. W. R. 273 ; 4 D. L. R. 765.—**CAN.**

c (p. 692) **i.** —— —— —— *Pleading.*]—GREAT WEST SADDLERY CO. *v.* PRIME, [1928] 3 W. W. R. 705.—**CAN.**

f (p. 692) **i.** —— —— ——.]—The taking by the seller under a conditional sale agreement of a chattel mortgage from the buyer upon the very goods covered by the conditional sale agreement, held to be consistent only with an agreement between the parties that the property in the goods should pass to the buyer, the conditional sale agreement cease to be effective & the chattel mortgage take its place.—ASHMORE *v.* TRANS-CANADA FINANCE CORPN., LTD., [1930] 2 W. W. R. 558 ; 4 D. L. R. 982 ; 39 Man. L. R. 52 ; *affg.*, [1930] 3 D. L. R. 488 ; 1 W. W. R. 537.—**CAN.**

k (p. 692) **i.** —— —— —— *To declaration of ownership.*]—EDWARD RENNEBURG & SONS CO. *v.* ALBION FISHERIES, LTD., [1931] 1 W. W. R. 231.—**CAN.**

p (p. 692) **i.** —— —— *Against landlord selling goods under distress warrant.*]—Goods purchased under a conditional sale agreement & not yet paid for in full were sold under a distress warrant issued by defd. co. for rent owing by assignees of the purchasers. Pltf., who had been employed by the tenants & had also become an assignee of the vendor's interest in said agreement, notified defd. co. before the distress sale of his interest in the goods. On the day of the sale he sued the tenants for wages, & in that action garnished defd. co. for the amount thereof. Out of the proceeds of the distress it paid amounts into ct. or directly to pltf. which nearly equalled his claim for wages. He then brought the present action for the balance remaining due under the conditional sale agreement : —*Held :* while pltf. had, it seemed, debarred himself from bringing an action for conversion, his present action was not in form one for conversion but one for money had & received for that part of the proceeds of the distress sale which he was entitled to as assignee of the original vendors ; & it was, therefore, consistent with the garnishee proceedings which were directed to that part, if any, of the proceeds which the tenants were entitled to as purchasers of the goods.—CLEARWATER *v.* CHILDS CO. OF MANITOBA, LTD., [1929] 3 D. L. R. 305 ; 2 W. W. R. 228 ; 38 Man. L. R. 205.—**CAN.**

t (p. 692) **i.** —— —— —— *Furnace.*]—The furnace, having become a fixture, was not " building material " within sect. 8 of Conditional Sales Act, R. S. O., 1927.—COLLIS *v.* CAREW LUMBER CO., LTD., [1930] 4 D. L. R. 996 ; 65 O. L. R. 520.—**CAN.**

t (p. 692) **ii.** —.]—Sect. 8 of Conditional Sales Act does not say that the goods, having been affixed to the realty, are, nevertheless, to be & remain chattels. If a vendor of chattels wishes to protect himself against subsequent purchasers he must register his conditional sale agreement in the registry or Land Titles office,—

HOPPE *v.* MANNERS, [1931] 2 D. L. R. 253; 66 O. L. R. 587.—**CAN.**

aa (p. 692) *affd.*, [1928] 3 D. L. R. 175; [1928] S. C. R. 200.—**CAN.**

aa (p. 692) i. ——— ——— ——— ———.]—Pltf. co. sold a motor car, under a conditional sale agreement, to Pacific Motors, Ltd., retail dealers in cars, who sold it, also under a conditional sale agreement, to a buyer who defaulted in her payments. With pltf.'s consent, the car was taken back by Pacific Motors, Ltd., & then, with pltf.'s consent, resold to one F. under a conditional sale agreement which was assigned to pltf. F. defaulted & the car, without pltf.'s knowledge or consent, was taken back again & sold by Pacific Motors, Ltd., to deft. S. under a conditional sale agreement which the Pacific Motors, Ltd., discounted with deft. Guaranty Corpn. which took the assignment in good faith. All the agreements were duly registered. Pltf. sued for damages for conversion & also sought a declaration that it was the owner of the car & entitled to possession of it. Guaranty Corpn. disclaimed any interest in the car. The judge applying Conditional Sales Act, s. 4, & Sale of Goods Act, s. 60, held that S. had obtained title to the car & dismissed the action. Pltf. appealed:—*Held:* the appeal should be allowed, except as to the claim for damages for conversion, & pltf. should be declared the owner & entitled to possession of the car.—ALLBUTT (W. J.) & CO., LTD. *v.* CONTINENTAL GUARANTY CORPN. OF CANADA, LTD. (B. C.), [1930] 1 D. L. R. 26; [1929] 3 W. W. R. 292; 41 B. C. R. 537.—**CAN.**

aa (p. 692) ii. ——— ——— ——— ———.]—KERR *v.* MOTORCAR LOAN CO., LTD., [1930] 2 W. W. R. 367.—**CAN.**

cc (p. 692) i. ——— ——— ——— ———.]—Where an agreement for the conditional sale of a motor car contained the following clause: "We shall not at any time, that is the buyer, suffer or permit any charge or lien whether possessory or otherwise to exist against said automobile":—*Held:* this clause negatived the idea that the buyer could authorise the doing of repairs in such a way as to give the repairer a lien.—ALLIANCE FINANCE CO. & STANDARD MOTORS, LTD. *v.* SIMONS, [1928] 3 W. W. R. 621.—**CAN.**

hh (p. 692) i. ——— ——— *To claim goods—After judgment for balance owing.*]—RUSSELL *v.* REID, [1928] 1 D. L. R. 628.—**CAN.**

hh (p. 692) ii. ——— ——— *To return of purchase-money on rescission by vendor.*]—Where the seller of goods under a conditional sale agreement rescinds the agreement against the will of the buyer it is not in all cases an inevitable result of the application of the principle of *restitutio in integrum* that the buyer is entitled to the return of moneys paid by him under the contract. If he has made use of the goods & is only able to return them to the seller in a depreciated condition an amount may be allowed to the seller with respect to said use of the goods by the buyer.—STEARNS *v.* NEYS (Alta.), [1929] 3 D. L. R. 954; 3 W. W. R. 177.—**CAN.**

kk (p. 692) i. ——— ———.]—The seller's assignee of a conditional-sale agreement is not a "purchaser" or "mtgee." within sect. 2 of Conditional Sales Act, R. S. S., 1930, &, therefore, is not a person entitled to the protion thereof.—GLOBE FINANCIAL CORPN., LTD. *v.* STERLING SECURITIES CORPN., LTD., [1932] 1 W. W. R. 347.—**CAN.**

kk (p. 692) ii. ——— ——— *Receipt of proceeds of refinancing agreement by vendor—Effect on right of assignee to* ———.]—HARDEN *v.* STERLING SECURITIES CORPN., LTD., [1932] 2 W. W. R. —**CAN.**

mm (p. 692) i. ——— ——— *Lien agreement not registered.*]—The good title which, because of non-compliance with Conditional Sales Act, is acquired by one who without knowledge of the lien buys from the bailee is one which he can pass on to a subsequent purchaser. Even if the fact that such subsequent purchaser was the original vendor restores the lien for the benefit of an assignee of the lien agreement, nevertheless one who afterwards purchases from the original vendor is protected by the Act.—MUTUAL ACCEPTANCE CORPN. *v.* SCHIELKE, [1931] 2 W. W. R. 458; 3 D. L. R. 447; 25 Alta. L. R. 467.—**CAN.**

b (p. 693) i. ——— ——— *Presumed in absence of evidence of compliance with Act.*]—Deft. had bought three horses & other animals under a conditional sale agreement. The present action was brought by the administrator of the seller for the balance due under the agreement. Deft. pleaded that the exor. *de son tort* of the seller had taken the horses in satisfaction of the indebtedness out of the possession of a man to whom deft. had sold them. There was no evidence herein as to what the exor. *de son tort* did with the chattels:—*Held:* the burden of proving that the exor. *de son tort* had complied with the terms of the agreement & of Conditional Sales Act as to retention of the chattels & notice of their sale was on pltf. herein, the administrator, &, in the absence of said proof, the exor. must be presumed to have taken the chattels in satisfaction of deft.'s debt & so to have rescinded the contract.—NATIONAL TRUST CO., LTD. *v.* LARSON, [1929] 2 D. L. R. 863; 23 S. L. R. 457; [1928] 3 W. W. R. 723.—**CAN.**

r (p. 693) i. ——— ——— *Action to determine amount due to seller.*]—BOTTOMS *v.* PACIFIC NORTHWESTERN LUMBER CO. (B. C.), [1929] 2 W. W. R. 495.—**CAN.**

aa (p. 693) i. ——— ——— *Transaction amounting to chattel mortgage—Necessity for compliance with Bills of Sale Act.*]—*Re* SMITH & HOGAN, LTD., [1931] 2 D. L. R. 663; *affd.*, [1931] 4 D. L. R. 348; 4 M. P. R. 39; *revd.*, [1932] 4 D. L. R. 145; S. C. R. 661.—**CAN.**

bb (p. 693) i. ——— ——— ——— ———.]—Deft. had bought three horses & other animals under a conditional sale agreement. The present action was brought by the administrator of the seller for the balance due under the agreement. Deft. pleaded that the exor. *de son tort* of the seller had taken the horses in satisfaction of the indebtedness out of the possession of a man to whom the deft. had sold them. The authority of the exor. *de son tort* to take the chattels & so bind the administrator was established by a prior decision in an action by deft. herein against the buyer from him. There was no evidence herein as to what the exor. *de son tort* did with the chattels:—*Held:* the burden of proving that the exor. *de son tort* had complied with the terms of the agreement & of the Conditional Sales Act as to retention of the chattels & notice of their sale was on pltf. herein, the administrator.—NATIONAL TRUST CO., LTD. *v.* LARSON, [1928] 3 W. W. R. 723.—**CAN.**

cc (p. 693) i. ——— ———.]—The C. co. contracted with defts. to construct sewers. To enable the co. to perform its contract, it agreed to buy the necessary sewer pipes from pltfs. & to secure to pltfs. payment of the contract price, assigned to them the money payable by defts. under the contract. Notice of the assignment was not given at the time nor until after the failure of the C. co. & after the completion of the work by new contractors employed by defts. After all the pipes had been placed in position, pltfs. asserted a right to remove the pipes, the price not having been fully paid to them & there being a provision in their contract with the C. co. that the property in the pipes was not to pass to the latter unless & until the whole price was paid:—*Held:* by Conditional Sales Act, R. S. O., 1914, s. 3 (4), the property in the pipes passed to defts., notwithstanding pltfs. had complied with the Act. The C. co. was an "other person," & the pipes were entrusted to it with the intention that the title should pass to defts.—DOMINION LOCK JOINT PIPE CO. *v.* YORK, [1929] 4 D. L. R. 806; 64 O. L. R. 365.—**CAN.**

ee (p. 693) i. ——— ———.]—Where a conditional sale agreement does not provide that the goods shall be at the risk of the buyer during the continuance of the lien the loss falls on the seller in case the goods are damaged or destroyed before the property passes.—BURKE *v.* WEIR, [1928] 4 D. L. R. 837; [1928] 3 W. W. R. 257.—**CAN.**

ff (p. 693) i. ——— *What amounts to delivery.*]—IKEAR *v.* MCCULLOUGH, [1928] 2 D. L. R. 434; [1928] 1 W. W. R. 716; 22 Sask. L. R. 446.—**CAN.**

hh (p. 693) i. ——— ———.]—Under Farm Implement Act, R. S. S. 1920, c. 128, the contract in Form C. for the sale of a second-hand implement on credit constitutes the entire contract between the parties; &, therefore, where no warranties have been stated thereon, evidence of alleged oral warranties is not admissible, nor can it be added to or varied by introducing the provisions of the Sale of Goods Act as to implied warranties.—HAUG & SONS *v.* STACK, [1928] 4 D. L. R. 987; [1928] 3 W. W. R. 443.—**CAN.**

d (p. 694) i. ——— ——— ———.]—Where a contract for the sale of a large implement within Farm Implement Act, R. S. S. 1920, c. 128, omits from par. 4 thereof, as prescribed by Form A., which provides for the length of time repairs are to be kept available by the vendor, the words "for a period of ten years from the date of this order," the contract is invalid; since said Act provides that no contract for the sale of such an implement shall be valid unless it is worded in accordance with said form, & said omission cannot be said to constitute a "slight deviation."—WATERLOO MFG. CO., LTD. *v.* WOEPPELL, [1928] 2 D. L. R. 494; [1928] 1 W. W. R. 765.—**CAN.**

d (p. 694) ii. ——— ———.]—In a contract in Form of the Act the blanks left for the insertion of the dates of shipment were filled in by the words "at once," & it was held that, whatever the exact meaning of "at once" may be in any particular case, the deviation from the form affected the substance of the contract &, therefore, was not curable by the application of Interpretation Act, s. 23, & consequently under sect. 12 of Farm Implement Act invalidated the contract, although, under the circumstances of the case, the insertion of said words could not possibly have prejudiced deft. in any way.—ADVANCE RUMELY THRESHER CO. *v.* SELBEE (Sask.), [1929] 4 D. L. R. 103; 2 W. W. R. 553; *affg.*, [1929] 3 D. L. R. 153; 1 W. W. R. 275; 23 S. L. R. 302.—**CAN.**

d (p. 694) iii. ——— ——— ———.]—The form of contract prescribed by Farm Implement Act, R. S. S., 1920, is of the essence of the contract; but an immaterial deviation from the phraseology thereof is not a ground on which either party can avoid his proper obligation. With respect to the words "work" & "purpose" in the clause relating to the work which the machine is intended to perform, in so far as work implies purpose, it rests with the purchaser to state the purpose & he is equally responsible with the vendor for the words inserted to express it.— ——— & MACHINERY CO.

v. EBERLE, [1930] 3 W. W. R. 231; *affd.*, [1931] 1 W. W. R. 236: 1 D. L. R. 999; 25 S. L. R. 248.—**CAN.**

d (p. 694) **iv.** ——— ——— ——— ———. —RUMELY THRESHER CO., INCORPORATED *v.* STAHL, [1930] 3 W. W. R. 623.—**CAN.**

k (p. 694) **i.** ——— ——— ——— *Proof.*]—An affidavit which meets the requirements of Farm Implement Act, R. S. S., 1920, c. 128, s. 18 (2), is conclusive proof that sub-sect. (1) of said sect., which requires a contract for the sale of a "large implement" to be read over & explained to the purchaser in a language which he understands, if he does not understand English, was complied with.—PELLETIER *v.* MINNEAPOLIS THRESHING MACHINE CO., [1928] 3 W. W. R. 463.—**CAN.**

k (p. 694) **ii.** ——— ——— ——— *Effect of affidavit.*]—The affidavit provided for by sect. 18 (2) of the Act need not state what particular language was used in reading & explaining the contract to the purchaser nor give details of the explanation. An affidavit to the effect required by said sub-sect. is conclusive proof of the facts stated therein, upon proof being given of the signature of the officer before whom the affidavit purports to have been sworn & that he was an officer authorised to take such affidavit.—ADVANCE-RUMELY THRESHER CO. *v.* ZOMAR (Sask.), [1929] 4 D. L. R. 65; 2 W. W. R. 544.—**CAN.**

t (p. 694) **i.** ——— ——— *Every sale on credit of small implement.*]—The intention of sect. 13 of Farm Implement Act, R. S. S., 1930, is that in every case of a sale on credit of a "small implement" form B. is, in so far as the warranty is concerned, to be the contract whether the contract was in said form or not, & that to this contract the parties must look for their respective rights. Therefore, representations made by the seller's agents to the buyer to induce the latter to buy cannot form part of the contract or relieve the buyer from liability.—DE LAVAL CO., LTD. *v.* DAVIES, [1931] 2 W. W. R. 408.—**CAN.**

bb (p. 694) **i.** ——— ——— *Evidence of ulfilment—Provision in contract as to.*]—While a contract for the sale of farm machinery cannot validly exclude the warranties under Farm Machinery Act, R. S. A., 1922, a provision therein that the failure of the buyer to give the vendor written notice within a specified time that the machine is not working well shall be deemed conclusive evidence of the fulfilment of those warranties as well as of the warranties expressed in the contract, will be upheld as valid if clearly stated & if the periods limited thereby for the trial of the machine & for the giving of the notice are not unreasonable under all the facts & circumstances of the case.—MASSEY HARRIS CO., LTD. *v.* BOND, [1930] 1 W. W. R. 72; 2 D. L. R. 57.—**CAN.**

cc (p. 694) **i.** ——— ——— ———.]—SAWYER-MASSEY CO., LTD. *v.* STURGILL, [1928] 1 D. L. R. 213; [1928] 1 W. W. R. 23; 22 Sask. L. R. 321.—**CAN.**

ee (p. 694) **i.** ——— *Right of vendor to take debt as security.*]—There is nothing in Farm Implement Act, R. S. S., 1930, to prevent a vendor to whom money is owing under a farm implement contract from taking, by way of security for the satisfaction of his claim, a debt due to the purchaser, *e.g.*, one due for the earnings in threshing of the implement in question.—ADVANCE-RUMELY THRESHER CO. *v.* BRAUNSTEIN, [1932] 1 W. W. R. 321.—**CAN.**

d (p. 695) **i.** ——— *Novation.*]—PLOWMAN TRACTOR CO. *v.* ANDREWS, [1928] 1 D. L. R. 544; [1928] 1 W. W. R. 329.—**CAN.**

d (p. 695) **ii.** ——— *Notice of defects—Right of seller to reasonable notice.*]—The fact that the particular time limited under an agreement for the sale of farm machinery for the giving of notice by the buyer that the machine does not work well is held by the ct. to be unreasonable within sect. 3 of Farm Machinery Act, is not a ground for holding that the seller has lost the right to be notified as soon as is reasonably possible.—MINNEAPOLIS THRESHING MACHINE CO. *v.* JOHNSON & JOHNSON, [1931] 2 W. W. R. 827.—**CAN.**

p (p. 695) **i.** ——— ——— *Right of vendor to recover value of use.*]—Where a contract in Form A. of Farm Implement Act, R. S. S., 1920, was executed by deft. as purchaser but was not accepted by pltf. as vendor as required by sect. 19 thereof, the fact that pltf.'s agent left the implement with deft. to give him an opportunity to pay for it & deft was willing to obtain money for that purpose by making use of the implement, did not alter the fact that because of said Act there was no enforceable contract; &, therefore, the property in the implement remained in pltf. Pltf. was held, however, to be entitled to what had been earned by deft. by using the implement.—OLIVER, LTD. *v.* TAVENDER, [1932] 2 W. W. R. 94.—**CAN.**

SALE OF LAND.

Part I.—The Contract of Sale.

26a. Verbal acceptance—Proof of.]—In a conflict of recollection as to statements made at an interview, considerable weight ought to be attached to contemporaneous writings throwing some light on what in fact occurred. The *onus* of proving an unconditional verbal acceptance of an offer in writing to sell real estate ought to be regarded as a heavy one, to be discharged only by clear evidence of the fact. In a case of reasonable doubt the ct. must take the view that the verbal acceptance has not been established (MAUGHAM, J.).—WATSON *v.* DAVIES, [1931] 1 Ch. 455, 468; 100 L. J. Ch. 87; 144 L. T. 545.

27. *Add. Annotation:—As to* (1) **Distd.** Neale *v.* Merrett (1930), 70 L. Jo. 95.

28. *Add. Annotation:*—**Consd.** Curtis Moffat *v.* Wheeler, [1929] 2 Ch. 224.

28a. —— —— ——.]—CURTIS MOFFAT *v.* WHEELER, No. 2475a, *post*.

32a. —— **Acceptance "subject to surveyor's report."**]—MARKS *v.* BOARD (1930), 46 T. L. R. 421; 74 Sol. Jo. 354.

32b. —— **Method of payment of purchase-price.**]—NEALE *v.* MERRETT (1930), 70 L. Jo. 95; 170 L. T. Jo. 99; [1930] W. N. 189.

73a. Agreement to construct road.]—An estate co., by their agent, orally promised an intending purchaser of a building plot that a road, marked on a plan shown to him & giving access to the plot, would be constructed by them & be ready for use within a reasonable time. Relying on this promise, the purchaser entered into a written agreement to purchase, & the plot was duly conveyed to him. The co. did not construct the road within a reasonable time, or at all, & the purchaser brought an action claiming damages for breach of contract:—*Held:* a promise to construct a road, apart from any conveyance of the land over which it was intended to run, was not a "contract for the sale or other disposition of land or any interest in land" & consequently that an action would lie upon it, although it was oral, without infringing the provisions of Law of Property Act, 1925 (c. 20), s. 40 (1).—JAMESON *v.* KINMELL BAY LAND CO., LTD. (1931), 47 T. L. R. 593, C. A.

87. *Add. Annotation:*—**Consd.** Farr, Smith *v.* Messers, [1928] 1 K. B. 397.

104. *Add. Annotation:*—**Refd.** Reading Trust *v.* Spero (1929), 46 T. L. R. 117.

128. *Add. Annotation:*—**Refd.** *Re* Howden & Hyslop's Contract, [1928] Ch. 479.

133. *Add. Annotation:—Generally,* **Refd.** Bernard *v.* Williams (1928), 139 L. T. 22.

195. *Add. Annotation:*—**Refd.** Ariff *v.* Rai Jadunath Majumdar Bahadur (1931), 47 T. L. R. 238.

198. *Add. Annotation:—As to* (1) **Refd.** Chaney *v.* Maclow, [1929] 1 Ch. 461.

199. *Add. Annotation:*—**Refd.** Ariff *v.* Rai Jadunath Majumdar Bahadur (1931), 47 T. L. R. 238.

214. *Add. Annotation:*—**Refd.** Arseculeratne *v.* Perera, [1928] A. C. 173.

228a. —— **Of part of property.**]—There being a parol agreement for the purchase of a farm & farm house, the possession of the farm by the purchaser will be held an act of part performance sufficient to authorise the ct. to execute the contract, even though the house should have been occupied adversely to him.—KING *v.* TURNER (1824), 3 L. J. O. S. Ch. 58.

232. *Add. Annotation:—As to* (1) **Consd.** Raingold *v.* Bromley, [1931] 2 Ch. 307.

PART I. SECT. 2, SUB-SECT. 2.—B. c i. —— —— *Acceptance subject to approval of title.*]—SHENSTONE *v.* HEWSON (No. 2) (1928), 29 S. R. N. S. W. 39.—**AUS.**

PART I. SECT. 4.

8a. *Agreement as to interest.*]—Pltf. inquired by telegram whether deft. would sell his farm for $400–$600 cash "& balance 3 years, 7 per cent." Deft. answered: "Will sell farm for $1,500, six hundred cash. Balance $200 year, paid in full 3 years." Pltf. replied that "your offer" was accepted. Deft. executed the transfer prepared by pltf. & sent it to a bank for delivery to pltf. on payment of $600 & delivery of a mtge. for the $900 payable on deft.'s terms with interest at 7 per cent. Pltf. refused to agree to pay interest, & in a suit for specific performance contended that the whole contract as to interest was evidenced by the above telegram from deft. & pltf.'s reply to it. Deft. contended that pltf.'s first telegram offering to pay interest was a material part of the correspondence forming the basis of the contract:—*Held:* there was an enforceable contract between the parties for the sale & purchase of the land & that deft.'s contention as to the interest was correct.—MORAW *v.* MAGINNIS (Alta.), [1929] 1 D. L. R. 458; 1 W. W. R. 68.—**CAN.**

PART I. SECT. 7, SUB-SECT. 1.

8b. *Agreement permitting party to receive rents.*]—JONES *v.* RYDER, [1931] 1 D. L. R. 441; *affg.*, [1930] 3 D. L. R. 449.—**CAN.**

PART I. SECT. 8, SUB-SECT. 4.—B. (a).

149 iii. ——.]—A receipt for a deposit paid on an agreement for the sale of land which omits reference to a term of the agreement providing for the deferring of the payment of the remainder of the purchase-money is not a memorandum sufficient to satisfy Stat. Frauds.—LESIUK *v.* SCHNEIDER, [1917] 2 W. W. R. 747; 36 D. L. R. 598.—**CAN.**

149 iv. ——.]—Applt. co. & resp. were in negotiation for the sale by applt. to resp. of a Crown leasehold station property & of cattle. Three directors of the co. & resp. attended simultaneously at the office of the co.'s agent for sale. After certain written suggestions were communicated between the parties, a discussion took place & points which had been raised were settled. As each was agreed on it was noted by one of the agents' men. The result was a memorandum which contained short notes of the terms of the arrangement, but did not comprise all the detail necessary in a contract to meet such a sale as that contemplated. Then a document was signed by resp. by which he expressed himself as handing to the agent portion of deposit on purchase of the property for a specified price "on terms as arranged between the vendors & the purchasers":—*Held:* the "terms as arranged" mentioned in the document signed by the agent referred to the whole arrangement made at the interview between the parties & not merely to written terms, & there was no sufficient memorandum in writing to satisfy the Statute of Frauds.—SINCLAIR, SCOTT & CO., LTD. *v.* NAUGHTON (1929), 43 C. L. R. 310.—**AUS.**

PART I. SECT. 9, SUB-SECT. 2.—A. (a).

191 iii. ——.]—BROWN *v.* HARROWER (1886), 3 Man. L. R. 441.—**CAN.**

198 ii. —— ——.]—MORRIS *v.* WHITING (1913), 26 W. L. R. 494; 5 W. W. R. 936; 15 D. L. R. 254; 24 Man. L. R. 56.—**CAN.**

PART I. SECT. 9, SUB-SECT. 2.—E.

259 i. *Whether collateral agreement binding—Condition to detriment of party seeking to enforce agreement.*]—KIBBLEWHITE *v.* GARLAND, [1928] N. Z. L. R. 135.—**N.Z.**

260 ii. ——.]—KITCHEN *v.* BOON (1876), 24 Gr. 195.—**CAN.**

282. *Add. Annotation :*—**Folld.** *Re* Belcham & Gawley's Contract, [1930] 1 Ch. 56.

283. *Add. Annotation :*—**Apld.** Johnson *v.* Clarke, [1928] Ch. 847.

286. *Add. Annotation :*—**Distd.** *Re* Belcham & Gawley's Contract, [1930] 1 Ch. 56.

330. After this case add "**In lease.**]—*See* LANDLORD & TENANT, Vol. XXX., pp. 472–477."

Part III.—Sale by the Court.

334a. —— **Reversionary Interest.**]—NUNN *v.* HANCOCK (1871), 6 Ch. App. 850; 40 L. J. Ch. 700; 25 L. T. 469; 19 W. R. 1041, L. JJ.

Annotations :—**Refd.** Debenham *v.* Sawbridge (1901), 49 W. R. 502; *Re* Wells, Boyer *v.* Maclean, [1903] 1 Ch. 848.

420a. ——.]—YOUNG *v.* TREGEAR (1872), 21 W. R. 215.

Part IV.—Conditions of Sale, Particulars and Special Stipulations.

576a. —— ——.]—Leasehold shops described in the particulars of sale as "Valuable business premises" were put up for sale by auction, subject to special conditions of sale & also to the National Conditions of Sale, by one of which, namely, the sixth, it was stipulated that the leases or copies thereof might be examined at the office of the vendors' solrs. before the sale & that the purchaser, whether or not he inspected the same, should be deemed to have bought with notice of the contents thereof. Deft. only became aware of the sale on the day when it was held &, having on that day been supplied by the auctioneers with the particulars & special conditions, but not with the National Conditions, & relying upon the truth of the description in the particulars, he bid at the sale & was declared to be the highest bidder thereat. He then signed the usual form of memorandum to the effect above stated & paid a deposit to the auctioneers. In the course of investigating the title it came to deft.'s knowledge for the first time that the leases under which the properties were held were subject to covenants which prohibited any other trade or business than that of a ladies' outfitter, fancy draper & manufacturer of ladies' clothing from being carried on upon the properties. In consequence of the existence of those restrictive covenants & the failure of the pltfs. to procure their removal or the licence of the lessors to use the properties for the purposes of any business, the deft. refused to complete the purchase. In an action by the vendors for specific performance in which deft. counterclaimed rescission of the contract & to recover his deposit :—*Held :* (1) a shop which could be used for one purpose only was not fairly described as "valuable business premises"; (2) such a misleading representation by pltfs. in their particulars of sale disentitled them, notwithstanding the sixth condition, to the assistance of the ct. to compel deft., who purchased in reliance upon the truth of such representation, to specifically perform his part of a contract for a consideration different from that which he was led to expect.—CHARLES HUNT, LTD. *v.* PALMER, [1931] 2 Ch. 287; 100 L. J. Ch. 356; 145 L. T. 630; 75 Sol. Jo. 525.

585. *Add. Annotation :*—**Refd.** Charles *v.* Cardiff Collieries (1928), 44 T. L. R. 448.

634. *Add. Citations :*—97 L. J. Ch. 4; 138 L. T. 26.

636. *Add. Annotation :*—**Consd.** Bernard *v.* Williams (1928), 139 L. T. 22.

683. *Add. Annotation :*—**Consd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

771a. —— ——.]—At a sale by auction of property belonging to deft. pltf. became the purchaser of a freehold cottage, subject to the National Conditions of Sale, clause 10 of which provided that no error, misstatement or omission in the particulars should annul the sale, nor should any compensation be allowed by either party in respect thereof. The particulars stated that the cottage was let to a tenant whose notice to quite had determined, but who had been allowed to remain in occupation on sufferance, & that the premises would be sold with vacant possession on completion. The statement was misleading, as the premises were in fact in the occupation of a sub-tenant, who claimed to be entitled to remain on as a statutory tenant under Increase of Rent & Mortgage Interest (Restriction) Acts, & refused to vacate them. The purchaser refused to complete without vacant possession, with which he could have resold the property at a profit, & sued the vendor for damages for breach of contract :—*Held :* the action failed. There was no breach of contract, the statement in the particulars being an error or misstatement within clause 10 of the conditions in respect of which the purchaser

PART I. SECT. 11.

sc. *Effect of disclaimer of option by trustee in bankruptcy.*]—One C. had an option under a certain agreement to purchase land by a certain date. The land, until purchased, was subject to certain trusts. Prior to that date he was adjudicated insolvent, & his trustee in insolvency disclaimed the option :—*Held :* by virtue of the disclaimer, C.'s option had come to an end, & the trustees under the agreement held the land free from the option.—*Ex p.* CANDY, [1929] S. A. S. R. 10.—**AUS.**

PART III. SECT. 8, SUB-SECT. 2.—A.

k. *Revsd.*, 7 A. R. 282.

PART IV. SECT. 2, SUB-SECT. 7.—A. (b) i.

r i. —— *When time begins to run—From delivery of proper abstract.*]—SHENSTONE *v.* HEWSON (1927), 28 S. R. N. S. W. 53.—**AUS.**

PART IV. SECT. 2, SUB-SECT. 7.—B. (f).

n i. —— —.]—LOUCH *v.* PAPE AVENUE

could claim no compensation.—CURTIS *v.* FRENCH, [1929] 1 Ch. 253; 98 L. J. Ch. 29; 140 L. T. 133; 45 T. L. R. 15; 72 Sol. Jo. 762.

814. *Add. Annotation:*—**Consd.** *Re* Belcham & Gawley's Contract, [1930] 1 Ch. 56.

829. *Add. Annotation:*—**Consd.** Lawrence *v.* Cassel, [1930] 2 K. B. 83.

838. *Add. Annotation:*—**Refd.** *Re* Belcham & Gawley's Contract, [1930] 1 Ch. 56.

838a. —.]—At an auction sale the purchaser bought freehold property sold subject to certain special conditions & to the General Conditions of Sale, 1925. The particulars & conditions of sale did not disclose the fact that two sewers, vested in the local authority & known by the vendors to exist, ran along the east side of the premises & along the yard at the back. Objection was taken on behalf of the purchaser. The vendors refused to release him from the contract, contending that the existence of the sewers did not prevent the use of the premises as a dwelling-house, for which the purchaser had bought them; but abatement of the purchase price was offered by way of compensation. The purchaser declined the offer, & by this summons asked for a declaration that the property was substantially different from that agreed to be sold, & for rescission, or, alternatively, a declaration that he was entitled to compensation:—*Held:* the failure to disclose the existence of the sewers, although materially affecting the description, did not force upon the purchaser property substantially different from that agreed to be sold; & the contract could be performed subject to compensation under Condition 35 of the General Conditions of Sale, 1925.—*Re* BELCHAM & GAWLEY'S CONTRACT, [1930] 1 Ch. 56; 99 L. J. Ch. 37; 142 L. T. 182.

842. *Add. Annotation:*—**Distd.** *Re* Belcham & Gawley's Contract, [1930] 1 Ch. 56.

880a. Contract for completion "on or about" given date.]—By a contract dated Oct. 19, 1928, pltf. agreed to sell to deft. all her right, title & interest in a licensed house known as The Thorns, of which she was the licensee. The contract provided that the purchase money should be paid "on or about" Nov. 10, 1928, & that deft. should forfeit the deposit of £120 which he had paid if he should fail to fulfil his part of the contract; also that either party refusing to comply with or neglecting to perform any part of the agreement should pay to the other, on demand, the sum of £200. On Oct. 3, 1928, deft. had given to the brewers who were the freeholders of The Thorne references which they had accepted by Oct. 10. He went to the magistrates' clerk & signed the ordinary notices on reference to a request for a temporary transfer on Nov. 10, & for full transfer on Dec. 8. At least a week before Nov. 10 deft. knew that he would be unable to complete the purchase of The Thorns unless he could raise a loan. His brokers acting in the matter sent him a notice to attend on Nov. 10. He did so, & first saw the brewers, telling them that he could not complete, & that the notice of application for transfer would have to be withdrawn & another one given. He then arranged with pltf. that completion should take place on Dec. 8. Deft., however, did not attend to complete. On Dec. 22 deft. stated that he would complete on Jan. 30. In an action by pltf. for a declaration that the contract had been rescinded & the deposit of £120 forfeited, & for damages:—*Held:* in the circumstances, & particularly having regard to the subject-matter, time was of the essence of the contract.—LOCK *v.* BELL, [1931] 1 Ch. 35; 100 L. J. Ch. 22; 144 L. T. 108.

895. *Add. Annotations:*—**Expld.** Bernard *v.* Williams (1928), 139 L. T. 22. **Consd.** Lock *v.* Bell [1931] 1 Ch. 35.

901. *Add. Annotation:*—**Consd.** Lock *v.* Bell [1931] 1 Ch. 35.

903a. —— —— ——.]—LOCK *v.* BELL, No. 880a, *ante*.

912. *Add. Annotations:*—**Consd.** *Re* Sandwell Park Colliery Co., Field *v.* The Co., [1929] 1 Ch. 277; Lock *v.* Bell, [1931] 1 Ch. 35. **Refd.** Bernard *v.* Williams (1928), 93 L. T. 22.

913. *Add. Annotation:*—**Refd.** Bernard *v.* Williams (1928), 139 L. T. 22.

916. *Add. Annotation:*—**Refd.** Bernard *v.* Williams (1928), 139 L. T. 22.

925. *Add. Annotation:*—**Refd.** Bernard *v.* Williams (1928), 139 L. T. 22.

1010. *Add. Annotation:*—**Refd.** Oxford Corpn. *v.* Oxford Electric Co. (1930), 143 L. T. 577.

1016a. Condition to indemnify purchaser—"Local land charge of which vendor has had notice"—Apportionment under Private Street Works Act, 1892 (c. 57)—Effect of Law of Property Act, 1925 (c. 20), s. 198.]—*Re* MIDDLETON & YOUNG'S CONTRACT (1929), 167 L. T. Jo. 244; 67 L. Jo. 274; [1929] W. N. 70.

1017. *Add. Annotation:*—**Refd.** Dennerley *v.* Prestwich U. D. C. (1929), 141 L. T. 602.

1030. *Add. Annotation:*—**Distd.** *Re* Belcham & Gawley's Contract, [1930] 1 Ch. 56.

LAND CO., [1928] 3 D. L. R. 620; [1928] S. C. R. 518.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 9.—B. (d) i.

814 iii. —— ——.]—L. sold to N. a piece of land which was described in the contract as "containing by measurement 137 acres or thereabouts being farm property on C. Road at present occupied by W. & being the land comprised in" certain certificates of title. The contract also contained the following clause: "No error of misdescription of the property shall annul the sale but compensation shall be made in respect thereof. . . ." The farm occupied by W., & comprised within the said certificates, was conveyed to N., but it only contained 134 acres, & of this latter fact N. was aware before completion:—*Held:* the transactions amounted to a sale of specific property & that the deficiency of three acres was not such a qualification as to area of the description of the land as would entitle N. to recover compensation under the contract.—NIXON *v.* LOFTS (1928), 29 S. R. N. S. W. 9; 46 N. S. W. W. N. 7.—**AUS.**

PART IV. SECT. 2, SUB-SECT. 10.—B. r (p. 118) i. —— ——.]—SHERRIN *v.* WIGGINS, [1917] 2 W. W. R. 895; 27 Man. L. R. 572.—**CAN.**

sc. *Payment into bank—Payment must be made during banking "day."*]—BOERICKE *v.* SINCLAIR, [1929] 1 D. L. R. 561; 63 O. L. R. 237.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 10.—C. (a).

sd. *Interest on unpaid purchase-money to be added to principal.*]—Where, by a contract for sale of land, it was stipulated that, in the event of interest on the unpaid purchase-money being unpaid at the end of each year, the same should be added to the principal, the ct. refused to decree specific performance by the vendor on payment of the principal & simple interest only, or except upon payment of the interest according to the agreement.—HENDERSON *v.* DICKSON (1862), 9 Gr. 379.—**CAN.**

Part V.—Vendor's Title.

1064. *Add. Annotation :—As to* (1) **Folld.** Flexman *v.* Corbett, [1930] 1 Ch. 672.

1075. *Add. Annotation :—***Consd.** Flexman *v.* Corbett, [1930] 1 Ch. 672.

1078. *Add. Annotation :—***Distd.** Turner *v.* Watts (1928), 138 L. T. 680.

1100a. ——.]—Declaration in assumpsit stated, that pltf. bargained to buy of deft., & deft. agreed to sell to him, a dwelling-house & the fixtures therein, for the residue of a term of years then and still unexpired therein, to commence from a certain day, to wit, Jan. 1, 1840, for the sum of £60 ; & that thereupon deft. promised to execute a proper conveyance, to make out an abstract of title, & deliver possession from Jan. 1, 1840, etc. At the trial, the following paper, signed by deft., was read in evidence : " I agree to sell the house & fixtures, No. 163, Piccadilly, to commence from Jan. 1 next, for £60 " :—*Held :* this document imported the sale of an interest in fee simple, & did not sustain the contract as alleged in the declaration.—HUGHES *v.* PARKER (1841), 8 M. & W. 244 ; 5 Jur. 730.

1104a. Sale by vendor in specified capacity.]—Where, in a vendor & purchaser contract, it is stated that the vendor will make title in a specified capacity, the contract does not amount to a warranty that he will make title in a particular manner. The warranty is no more than a warranty that a good title shall be made ; & the purchaser can be forced to accept such good title, even though made by the vendor in a capacity other than that specified.

By special conditions of sale, subject to which two houses were sold by auction, it was stated that the vendors were selling as " trustees for sale " under the will of A. On examination of the title by the purchasers, it appeared that no trust for sale was contained in the will :—*Held :* the above statement did not affect the powers of the vendors to make a good title as the legal personal representatives of A.—*Re* SPENCER & HAUSER'S CONTRACT, [1928] Ch. 598 ; 97 L. J. Ch. 335 ; 139 L. T. 287 ; 72 Sol. Jo. 336.

1115. *Add. Annotation :—Generally,* **Refd.** *Re* Sand well Park Colliery Co., Field *v.* The Co., [1929] 1 Ch. 277.

1151. *Add. Annotation :—***Folld.** *Re* Spencer & Hauser's Contract, [1928] Ch. 598.

1152. *Citation :*—For " [1928] W. N. 135 " read " No. 1104a, *ante*."

1162a. ——— **Covenant by vendor to indemnify mortgagee—Registered charge.**]—On July 11, 1929, the purchaser bought Lot 2 at a sale by auction & paid a deposit. The particulars of sale described Lot 2 as an unrestricted freehold, practically an island block, with four frontages to Little Orford Street & three other streets in Chelsea, the block forming an excellent building site, when the existing buildings came into hand. On examining the vendors' registered absolute title the purchaser found Entry 7 in the Charges Register stating in effect that on the transfer of Lot 2 & other property to the vendors on May 23, 1929, by mtgees. selling under their power of sale in a mtge, of Feb. 17, 1903, from Co. A., the former owners, the vendors by way of indemnity to the mtgees., but not further or otherwise covenanted to perform the obligations of Co. A. under a deed of Dec. 23, 1905, made between Co. A. & the Chelsea Borough Council & under a London County Council Order of Dec. 12, 1905. The deed of Dec. 23, 1905, made in pursuance of a large building scheme by Co. A. provided for the stopping up (*inter alia*) of Little Orford Street & for making certain new streets, including a new transverse street bisecting Lot 2. The Borough Council were to obtain the necessary Closing Orders, & Co. A. were to lay out the new streets at their own expense. By their order of Dec. 12, 1905, the London County Council on the application of Co. A. sanctioned the new streets subject to certain conditions including a condition that Co. A. should covenant to lay them out, & on Dec. 21, 1905, Co. A. covenanted accordingly. On July 10, 1906, on the Borough Council's application, the justices made a Closing Order for Little Orford Street. For financial & other reasons this part of Co. A.'s scheme had not yet been proceeded with. Little Orford Street was still open ; it was in fact repaired by the Borough Council ; & at the date of the contract neither the vendors nor the purchaser knew of the Closing Order's existence. On discovering Entry 7 the purchaser required the vendors to delete it from the Register & to obtain a release of the obligations, &, on their refusal, he issued a vendor & purchaser summons for a declaration that a good title was not shown. On subsequently discovering the Closing Order he discontinued the summons & brought this action claiming a declaration that he was entitled to repudiate the contract, damages for breach, & return of the deposit. The vendors denied any breach & counterclaimed for specific performance :—*Held :* (1) as the title of the vendors & their mtgee. predecessors was paramount to the 1905 documents, so that they were not bound by Co. A.'s obligations thereunder, & the vendors' covenant of indemnity was a mere personal covenant to indemnify the mtgees. against a non-existent liability, the purchaser was not entitled to require the removal of Entry 7 from the vendors' registered title, but must be satisfied with a clean transfer not referring to the indemnity, & it would be the Registrar's duty to omit any reference thereto in the purchaser's registered title ; (2) the twenty-four years' old Closing Order did not affect the title, but, if & so far as it was inconsistent with the particulars, merely raised a case of innocent misrepresentation, on which the purchaser could neither repudiate the contract nor recover damages, his only remedy being to resist specific performance. Therefore, the purchaser's action failed on both points ; (3) on the

vendors' counterclaim for specific performance that there was in fact no misrepresentation in the particulars, as the word "street" even in London did not necessarily mean a public highway. There was therefore no ground for refusing specific performance.—BARNES *v.* CADOGAN DEVELOPMENTS, LTD., [1930] 1 Ch. 479; 99 L. J. Ch. 274; 142 L. T. 626.

1177. *Add. Annotation :*—**Consd.** *Re* Belcham & Gawley's Contract, [1930] 1 Ch. 56.

1178a. Property subject to closing order—Unknown to vendor.]—BARNES *v.* CADOGAN DEVELOPMENTS, LTD., No. 1162a, *ante*.

1219. *Add. Annotation :*—**Refd.** *Re* Spencer & Hauser's Contract, [1928] Ch. 598.

1220. *Add. Annotation :*—**Folld.** Charles Hunt, Ltd. *v.* Palmer, [1931] 2 Ch. 287.

1220a. Property described as "valuable business premises"—Covenants restricting carrying on of business.]—CHARLES HUNT, LTD. *v.* PALMER, No. 570a, *ante*.

1242. *Add. Annotation :*—**Folld.** Flexman *v.* Corbett, [1930] 1 Ch. 672.

1259. *Add. Annotation :*—*Generally*, **Refd.** Manchester & County Bank *v.* Monk (1929), 73 Sol. Jo. 465.

1275. *Add. Annotation :*—**Refd.** *Re* Sandwell Park Colliery Co., Field *v.* The Co., [1929] 1 Ch. 277.

1321. At end of paragraph for "gave notice of a trust," read "gave no notice of a trust."

1416a. —— Subsequent purchase by solicitor from client.]—A solr., who has been employed to advise on a title, cannot, on purchasing the land himself of his client, set up an objection, which he did not think of any importance when advising his principal.—BEEVOR *v.* SIMPSON (1829), Taml. 69; 48 E. R. 28.

1458a. *S. P.* FLOOD *v.* PRITCHARD (1879), 40 L. T. 873.

1466. After this case add :—

, Law of Property Act, 1925 (c. 20), s. 45 (4).

Part VI.—Position of Parties Pending Completion.

1481. *Add. Annotation :*—**Refd.** Halifax Building Society *v.* Keighley, [1931] 2 K. B. 248.

1488a. — — — —.]—It is sometimes said that under a contract for the sale of an interest in land the vendor becomes a trustee for the purchaser of the interest contracted to be sold subject to a lien for the purchase-money; but however useful such a statement may be as illustrating a general principle of equity, it is only true if & so far as a ct. of equity would under all the circumstances of the case grant specific performance of the contract (*per* CUR.).—HOWARD *v.* MILLER, [1915] A. C. 318; 84 L. J. P. C. 49; 112 L. T. 403, P. C.

Annotation :—**Refd.** Central Trust & Safe Deposit Co. *v.* Snider, [1916] 1 A. C. 266.

1509a. ——.]—PUDDICOMBE *v.* BYTHESEA (1823), 1 L. J. O. S. Ch. 186.

1538. *Add. Annotation :*—**Distd.** Watson *v.* Davies, [1931] 1 Ch. 455.

1588. *Add. Annotation :*—**Refd.** Halifax Building Society *v.* Keighley, [1931] 2 K. B. 248.

1594. *Add. Annotation :*—**Refd.** Page *v.* Scottish Insce. Corpn. (1929), 98 L. J. K. B. 308.

1597a. —— ——.]—PINCKE *v.* CURTEIS (1793), 4 Bro. C. C. 333, n.; 29 E. R. 920.

PART V. SECT. 3.

sa. *Sale by company—After removal from register.*]—A co. incorporated in N. S. W. was registered in Tasmania as a foreign co. It acquired certain land in Tasmania. On Aug. 14, 1924, the co. filed a notice that it had ceased to carry on business in Tasmania, & the registrar thereupon removed its name from the register. On May 16, 1925, the co. contracted to sell the said land to B.: *—Held :* the land in question was still vested in the co., & there would be a declaration that it could show a good marketable title.—*Re* LABOR PAPERS, LTD. & BUTTON'S CONTRACT (1925), 21 Tas. L. R. 35.—**AUS.**

sd. *Property subject to apparent easements.*]—Title held good, since purchaser must have had notice from the lay out of the property, of the existence of the easements.—LUBIENSKI *v.* SILVERMAN, [1932] O. R. 396; 3 D. L. R. 320.—**CAN.**

PART V. SECT. 5, SUB-SECT. 8.—B.

sf. *Proof of charge—Note of execution on abstract of title.*]—HIND *v.* WESBROOK (1900), 7 Terr. L. R. 10.—**CAN.**

PART V. SECT. 5, SUB-SECT. 10.—C.

e i. —— *Certificate that no arrears of income tax outstanding.*]—The production of a certificate under Finance Act, 1928, s. 6, from the Revenue Comrs. that no arrears of income tax were outstanding, if required by the purchaser, is an expense which, by Conveyancing Act, 1881, s. 3 (6), must be borne by him, as the contract of sale contained no provision to the contrary.—HOPKINS *v.* GEOGHEGAN, [1931] I. R. 135.—**IR.**

PART VI. SECT. 1, SUB-SECT. 2.—A.

1515 ii. — — ——.]—The right to possession in the purchaser is not a necessary incident to an executory contract for the sale of land. This right remains in the vendor until full payment of the purchase price, unless express provision to the contrary is made in the contract.—MANSELL *v.* SMITH, [1931] 1 W. W. R. 563.—**CAN.**

sg. *What amounts to possession—Actual occupation of part.*]—MCKINNON *v.* MCDONALD (1867), 13 Gr. 152.—**CAN.**

sh. *Right to possession as against transferee of land.*]—Pltf., a purchaser under an agreement for the sale of land which provided that he should have the right to immediate possession, entered into possession & filed a *caveat*, claiming an interest as owner under the agreement. The vendor assigned the agreement to the M. H. Co. & subsequently transferred the land to deft. co. which obtained a certificate of title subject to the *caveat*, but acquired no rights under the agreement for sale. Pltf. having left the property, deft. co. put deft. into possession without the knowledge or consent of pltf.:—*Held :* pltf. was entitled to a judgment declaring him entitled to immediate possession of the property, & was entitled also to damages for the wrongful user of his land, such damages to be calculated & allowed up to & inclusive of the day of the entry of the judgment.—WADDELL *v.* GRAY-CAMPBELL, LTD. & SCARROW, [1929] 3 D. L. R. 488; 2 W. W. R. 113; 23 S. L. R. 527; *revsg.*, [1929] 2 D. L. R. 362; 1 W. W. R. 241.—**CAN.**

PART VI. SECT. 1, SUB-SECT. 3—B.

si. *Covenant to leave improvements—Liability for removal of house.*]—Under an agreement for the sale of land, the registered owner being the vendor, the purchaser agreed for himself, his assigns, etc., that all improvements placed on the land should remain thereon & not be removed or destroyed until final payment for the land had been made. Deft. P., the assignee of the purchaser, built a house on the land. P. sold the house to deft. S., who was ignorant of the terms of said agreement. The house, although built on skids, was found to have become in fact & within the intention of the agreement part of the soil at the time of the sale to S. The vendor obtained a final order for "foreclosure," but before it was granted S. had removed the house from the land & refused to return it :—*Held :* both defts. were liable in damages to the vendor for the value of the house at the time of its removal, although it was not shown that the land was worth less than the amount owing to the vendor under the agreement for sale.—CANADIAN PACIFIC RY. CO. *v.* PRICKETT & SHOWALTER, [1930] 2 W. W. R. 65; 3 D. L. R. 800.—**CAN.**

1631. *Add. Annotation :*—**Refd.** Oxford Corpn. *v.* Oxford Electric Co. (1930), 143 L. T. 577.

1640. *Add. Citation :*—[1928] Ch. 340.

1656. *Add. Annotation :*—**Refd.** Oxford Corpn. *v.* Oxford Electric Co. (1930), 143 L. T. 577.

1682. *Add. Annotation :*—**Refd.** Oxford Corpn. *v.* Oxford Electric Co. (1930), 143 L. T. 577.

1716. *Add. Annotation :*—**Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

1786. *Add. Citation :*—[1927] B. & C. R. 137.

Part VII.—Vendor and Purchaser Summons.

1802. *Add. Annotation :*—**Consd.** Clayton *v.* Clayton, [1930] 2 Ch. 12.

1822. *Add. Annotation :*—**Refd.** Flexman *v.* Corbett, [1930] 1 Ch. 672.

1823. *Add. Annotation :*—**Refd.** Johnson *v.* Clarke, [1928] Ch. 847.

1832. *Add. Annotation :—As to* (2) **Folld.** Charles Hunt, Ltd. *v.* Palmer, [1931] 2 Ch. 287.

1873. In cross-references before this case, for " Ord. 63 " read " Ord. 58."

Part VIII.—Remedies under an Uncompleted Contract.

1944a. *S. P.* WESTERMAN *v.* PANTLIN (1900), 3 Seton on Judgments & Orders, 7th ed. 2218.

Annotation :—**Folld.** Olde *v.* Olde, [1904] 1 Ch. 35.

2006. *Add. Annotation :*—**Refd.** Wilson *v.* Balfour (1929), 45 T. L. R. 625.

2009a. —— ——.]—BERNARD *v.* WILLIAMS, No. 2182, *post.*

2013. *Add. Annotation :*—**Dbtd.** Bernard *v.* Williams (1928), 139 L. T. 22.

2014. *Add. Annotation :*—**Refd.** Bernard *v.* Williams (1928), 139 L. T. 22.

2049. *Add. Annotation :*—**Refd.** *Re* Sandwell Park Colliery Co., Field *v.* The Co., [1929] 1 Ch. 277.

PART VI. SECT. 1, SUB-SECT. 5.

g i. —— *Taxes—Composition with revenue authorities—Effect of.*]—KEILL *v.* HUNTER (1928), 39 B. C. R. 396.—**CAN.**

n i. —— *To knowledge of vendor—Effect of sale on action for purchase-money.*]—Resp., representing the vendor, sued applt., representing the purchaser, for the balance of the price of sale of a certain parcel of land. The latter denied his liability on the ground that the property could not be transferred to him by the vendor as it had been sold for unpaid taxes; but the vendor contended that the purchaser was still bound because the sale of the property for taxes was due to the failure by the purchaser to pay them as covenanted :—*Held :* resp.'s action should be dismissed. The vendor was aware that the taxes had not been paid & was looking to the purchaser for the money wherewith to pay them; he had already collected some rent for the property which he was holding as a credit against the taxes, & it can be inferred that the vendor anticipated that payments on account of taxes, when made, would pass through his hands. When, therefore, the property was sold for taxes, it was not because the vendor was misled into a belief that the purchaser had paid or intended to pay the taxes; the vendor had been notified, previously to the sale for taxes, that the purchaser repudiated the contract & was looking for a refund of his payments, & in withholding payment of the municipal claim the vendor acted deliberately, with a full knowledge of the facts.—ROYAL TRUST CO. *v.* KENNEDY, [1930] S. C. R. 602; 4 D. L. R. 868.—**CAN.**

o i. —Every vendor & purchaser of land situate in Alberta must be held to have contracted with reference to Unearned Increment Tax Act, &, in the absence of an agreement to the contrary, there is implied in an agreement for the sale & purchase of such land an obligation on the vendor to pay or cause to be paid the portion of the tax payable in respect of any increase in value prior to the making of said agreement, or, at least, there is implied an agreement by the vendor that, if the purchaser pays the vendor's portion of the tax, the purchaser will be entitled to recover it from him.—CANADIAN AMERICAN TRUST CO., LTD. & CENTRAL PROPERTIES, LTD. *v.* MCMULLEN, [1929] 3 D. L. R. 867; 2 W. W. R. 295; 24 Alta. L. R. 153; *revsg.*, [1929] 2 D. L. R. 555.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 1—A.

sm. *Lease by purchaser.*]—A lease given by a person with only a limited right, *e.g.* a purchaser under an agreement for sale, must be subject to the infirmities or limitations of his own title. An assignment, by the purchaser, of his rights under the agreement to purchase cannot convey the interest which he had vested in his lessee by the lease, & the fact that the assignment is to his vendor makes no difference in this respect.—LINDSAY *v.* GIBBONEY, [1931] 1 W. W. R. 728; *revsg.*, [1931] 1 W. W. R. 618.—**CAN.**

PART VIII. SECT. 1, SUB-SECT. 1.—A.

k (p. 221) i. —— *Requisites of valid cancellation notice.*]—BROWN *v.* ROBERTS (1912), 17 B. C. R. 16.—**CAN.**

o (p. 223) i. —— —— ——.]—HAMILTON *v.* TAYLOR (1919), 47 N. B. R. 145.—**CAN.**

aa i. —— *On liability of defendant for costs.*]—Where a vendor suing for specific performance, personal judgment, & in default of payment the usual relief by way of cancellation elects immediately on becoming entitled to judgment to take a judgment for cancellation, a provision for payment of costs by the deft. personally on his failure to redeem should not ordinarily be included in the judgment, at least where deft. has not defended the action.—BEATON *v.* HAMBICKI (Man.), [1929] 1 D. L. R. 982; 1 W. W. R. 375.—**CAN.**

ee i. ——.]—In an action to have an agreement for the sale of land declared determined & the payments made thereunder forfeited :—*Held :* a defaulting purchaser who is persisting in his default & refusing to perform his contract cannot have any relief under the equitable jurisdiction of the ct.; therefore defts. were not entitled to have the moneys paid under the agreement returned to them.—OUGHTON *v.* OSEPREGHY, [1931] 1 W. W. R. 604; 2 D. L. R. 996.—**CAN.**

sm. *Vendor unable to give title—Through purchaser's acts—Liability of purchaser under contract.*]—WILKIN *v.* BROWN (Alta.), [1927] 2 D. L. R. 87.—**CAN.**

sn. *Time allowed purchaser to make good default—Dependent on circumstances.*]—SINGER *v.* GARRETT, [1929] 4 D. L. R. 132; 2 W. W. R. 201; 41 B. C. R. 160.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 2.—A.

1971 x. —— ——.]—In an action by a purchaser to have an agreement for the sale of land declared rescinded & for the return of a sum of money paid thereunder & another sum, which was an amount realised by the vendor, out of grain sold from the land, in excess of the interest payable under the agreement :—*Held :* the two items should be considered as a deposit & as part of the cash payment respectively, that the purchaser had in fact abandoned the land, & that through the failure of the purchaser to complete the vendor had suffered loss in an amount in excess of the aggregate of said sums. Therefore, although the declaration of rescission, which was also asked for by deft., was granted, the claim for the return of the money was dismissed.—KWARA *v.* PIPER (Man.), [1930] 1 D. L. R. 83; [1929] 3 W. W. R. 392.—**CAN.**

a i. —— *Default by vendor—Prior to default by purchaser.*]—ROGERS & BROWN *v.* HAZELHURST, [1930] 2 D. L. R. 609; 65 O. L. R. 81.—**CAN.**

PART VIII. SECT. 2, SUB-SECT. 3.—C. (b).

o. *Revsd.*, 33 O. L. R. 78.

2061. *Add. Annotations :*—**Consd.** *Re* Sandwell Park Colliery Co., Field *v.* The Co., [1929] 1 Ch. 277; Lock *v.* Bell (1930), 69 L. Jo. 219. **Refd.** Bernard *v.* Williams (1928), 139 L. T. 22.

2080. *Add. Annotation :*—**Distd.** *Re* Belcham & Gawley's Contract, [1930] 1 Ch. 56.

2087. *Add. Annotation :*—**Refd.** Curtis Moffat *v.* Wheeler, [1929] 2 Ch. 224.

2151. *Add. Annotation :*—**Refd.** *Re* Sandwell Park Colliery Co., Field *v.* The Co., [1929] 1 Ch. 277.

2153. *Add. Annotation :*—*As to* (1) **Consd.** *Re* Sandwell Park Colliery Co., Field *v.* The Co., [1929] 1 Ch. 277.

2182. To the existing paragraph add as follows :—*Semble :* if time had not been of the essence, pltf. would not, in an action for recovery of deposit, have been entitled to rely on the absence of any memorandum in writing of the contract.

Add. Citation :—139 L. T. 22.

2199. *Add. Annotation :*—**Distd.** *Re* Belcham & Gawley's Contract, [1930] 1 Ch. 56.

2215. *Add. Annotation :*—**Folld.** Flexman *v.* Corbett, [1930] 1 Ch. 672.

2220. *Add. Annotation :*—**Consd.** *Re* Belcham & Gawley's Contract, [1930] 1 Ch. 56.

2223. *Add. Annotation :*—**Folld.** *Re* Belcham & Gawley's Contract, [1930] 1 Ch. 56.

2224. *Add. Annotation :*—**Consd.** *Re* Belcham & Gawley's Contract, [1930] 1 Ch. 56.

PART VIII. SECT. 2, SUB-SECT. 3.—C. (e).

2062 i. *Misrepresentation—Of agent of vendor.*]—Where the ground of rescission of a contract for the purchase of land is the fraudulent misrepresentation of the agent of the vendor, &, therefore, in law of the vendor himself, the purchaser is entitled to *restitutio in integrum* from the vendor & therefore even though a deposit under the contract has been paid to the agent as "stakeholder" the purchaser is entitled to an order for the repayment of the deposit by the vendor.—SWINDLE *v.* KNIBB (1929), 29 S. R. N. S. W. 325; 46 N. S. W. W. N. 102.—**AUS.**

PART VIII. SECT. 2, SUB-SECT. 3.—C. (h).

so. *Deposit paid—Provision for payment of further sum on fixed date—Failure of purchaser to pay.*]—*Held :* although the vendor had neither executed nor offered to execute a conveyance he was entitled to sue before completion, inasmuch as the contract fixed a definite date for the payment & did not postpone it until completion or until after completion.—PERPETUAL TRUSTEE CO. *v.* UNION TRUSTEE CO. (1927), 28 S. R. N. S. W. 222; 45 N. S. W. W. N. 30.—**AUS.**

PART VIII. SECT. 2, SUB-SECT. 3.—E.

f i. ——.]—Where the ct. gives a purely equitable relief as in the case of rescission of a contract & repayment of the moneys paid by the purchaser, the moneys will carry interest from the date of the payment until the date of repayment, whenever repayment takes place, but will not carry interest as a judgment.—SKINNER *v.* JAMES SYPHONIC VISIBLE MEASURES, LTD. (1927), 28 S. R. N. S. W. 20.—**AUS.**

PART VIII. SECT. 2, SUB-SECT. 3.—G.

sp. *Form of action.*]—CLARKE *v.* ANDERSON (1839), 4 Ont. Dig. 7210.—**CAN.**

PART VIII. SECT. 3.

m (p. 242) **i.** —— ——.]—When a contract of sale & purchase is put an end to by the vendor on the purchaser's default, & it is silent as to the right in that event to retain or recover back instalments of the purchase-money already paid, the purchaser can recover them from the vendor subject to the deduction of the amount of such loss as the vendor has suffered through the purchaser's failure to complete.—STEPHENSON *v.* BROMLEY, [1928] 4 D. L. R. 737; [1928] 3 W. W. R. 370; 37 Man. L. R. 487.—**CAN.**

o (p. 242) **i.** —— ——.]—HAGEN *v.* FERRIS (1915), 31 W. L. R. 661; 8 W. W. R. 1039.—**CAN.**

m (p. 243) **i.** —— *Repudiation by ——r.*]—Where an agreement for the sale of land is silent as to what is to become of instalments of purchase-money already paid on the cancellation of the contract, the purchaser is not entitled to recover them from the vendor where the purchaser has repudiated or voluntarily abandoned the contract.—GREAT WEST LIFE ASS'CE CO. *v.* PRAIRIE DEVELOPMENTS, LTD., [1928] 3 W. W. R. 601.—**CAN.**

sr. *On cancellation—Necessity for express agreement.*]—CRONHOLM *v.* COLE [1928] 3 D. L. R. 321.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 1.

a i. —— *Failure of vendor to perform condition—Condition to leave bond on property.*]—FREEMAN *v.* MAXWELL, [1928] S. C. (Ct. of Sess.) 682.—**SCOT.**

PART VIII. SECT. 4, SUB-SECT. 3.—A. (a).

2151 vi. —— ——.]—The agreement for sale held to show an intention to sell the minerals as well as the surface; &, since the vendor was unable to make title to the minerals, the purchaser was held entitled to have the vendor's action for specific performance dismissed & to succeed on his counterclaim for rescission.—KNIGHT SUGAR CO., LTD. *v.* WEBSTER, [1929] 4 D. L. R. 591; 2 W. W. R. 505; 24 Alta. L. R. 174; *revsd.*, [1930] S. C. R. 518; 4 D. L. R. 343.—**CAN.**

st. *Vendor unable to give title—Public Works Act*, 1908, *s.* 116.]—UPHAM *v.* BARDEBS, [1927] N. Z. L. R. 722.—**N.Z.**

sw. *Prior sale to another purchaser.*]—Where a vendor of land under an agreement for sale maintained in force a judgment recovered against the purchaser for the purchase-money he was held to have thereby continued the purchaser's right to pay the money, cure his default & reinstate the agreement; & where such right in the purchaser had been so continued & was existing at the time the vendor brought suit to enforce a subsequent agreement with another purchaser, deft., for the sale of the same land & deft. had repudiated his agreement promptly on discovery of said outstanding right in the first purchaser :—*Held :* the vendor could not succeed, even though he was able to make title at the time of the hearing. Pltf.'s position was held not to have been improved by a clause in the agreement providing for acceptance of title by deft.—HARVEY *v.* MALANCHUK, [1931] 3 W. W. R. 596; [1932] 1 D. L. R. 407; 40 Man. L. R. 78.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 3—C.

h i. —— *Waiver.*]—WILCOX *v.* JEWELL, [1931] 2 W. W. R. 460; 2 D. L. R. 873; 25 Alta. L. R. 464.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 3.—D. (a).

p. *Revsd.*, 15 Sask. L. R. 410.

r i. —— ——.]—WALKER *v.* ELLIOTT, [1931] 1 D. L. R. 420; 66 O. L. R. 195.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 3.—D. (b).

f i. —— —— *In certificates—Agreement to sell land "as described in certificates."*]—MCLEAN *v.* STANDARD TRUSTS CO., [1931] 1 W. W. R. 442; 2 D. L. R. 463; 25 Alta. L. R. 550.—**CAN.**

t i. —— *Value of crop.*]—In ascertaining whether an unfounded representation by a buyer or seller is open to redress in any form, the means of knowledge of the parties must be considered. If the misrepresentation is on a subject peculiarly within the knowledge of the party making it & be relied on by the other party it may be legally cognisable, but where the facts are not only available to the other party but also he applies or is able to apply unrestricted means of injury, & is not induced to withhold inquiry, the alleged misrepresentation is probably no more than "dealers' talk" in which each party from his own standpoint of buyer or seller usually indulges.

A purchaser of a farm sued for rescission of the contract of sale on the ground that he had been induced to buy by the vendor's statement that the crop, which was then cut & included in the sale but not yet threshed, was worth a certain amount which, after threshing, proved to be excessive, to the extent of about two & a half times its real value. The judge, who dealt with the representation as an innocent one, decreed rescission, & deft. appealed :—*Held :* because of the application of the above principle, & also because of the difficulty in finding that a representation of that kind was one which was really relied on by pltf. & went to the root of the contract, the appeal should be allowed.—RASCH *v.* HORNE, [1930] 1 W. W. R. 816; 3 D. L. R. 647; 38 Man. L. R. 600; *revsg.*, [1929] 4 D. L. R. 809; 2 W. W. R. 673.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 3.—E.

st. *Restrictive covenant—Disclosure of "building covenant."*]—Certain land was sold subject to a special condition that the sale was made "subject to the existing building covenant which provides (*inter alia*) that no building may be erected other than of brick or stone or at cost of less than £500." The building covenant later disclosed on the title further provided, "& no such building so erected shall be used or occupied for any other purpose than a private dwelling-house" :—*Held :* the phrase "building covenant" did not primarily denote a covenant dealing only with the construction of the building, but included a covenant dealing with its user, & therefore, there was a sufficient disclosure by the vendors.—SHENSTONE *v.* HEWSON (No. 3) (1929), 29 S. R. N. S. W. 377; 46 N. S. W. W. N. 93.—**AUS.**

2242a. **— Part of purchase-money & money spent on improvements.**]—CORNWALL *v.* WILLIAMS (1701), Colles, 117; 1 E. R. 209, H. L.

2287. *Add. Annotation :*—**Refd.** Curtis Moffat *v.* Wheeler (1929), 98 L. J. Ch. 374.

2306. *Add. Annotations :*—**Refd.** Curtis Moffat *v.* Wheeler, [1929] 2 Ch. 224; Barnes *v.* Cadogan Developments, Ltd., [1930] 1 Ch. 479.

Part IX.—The Conveyance.

2366. *Add. Annotation :*—**Refd.** Bernard *v.* Williams (1928), 139 L. T. 22.

2367. *Add. Annotation :*—**Refd.** Curtis Moffat *v.* Wheeler, [1929] 2 Ch. 224.

2379a. —— ——.]—*Re* DURRANT & STONER (1881), 18 Ch. D. 106; 45 L. T. 363; 30 W. R. 37, C. A.

Annotations :—**Refd.** *Re* Newton's Trusts (1882), 23 Ch. D. 181; Miller *v.* Collins, [1896] 1 Ch. 573.

2382. *Add. Annotation :*—**Refd.** General Medical Council *v.* I. R. Comrs., English Branch Council of General Medical Council *v.* Same (1928), 139 L. T. 225.

2459. *Add. Annotation :*—*As to* (3) **Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

2475. *Add. Annotation :*—**Refd.** Curtis Moffat *v.* Wheeler, [1929] 2 Ch. 224.

2475a. —— **Consent in favour of specified nominee.**]—On a sale of leaseholds by an original lessee, completion in favour of a solvent nominee of the purchaser can be enforced, unless it is shown that the sale was granted upon considerations purely personal to the purchaser, but the purchaser must join in the assignment for the purpose of guaranteeing the performance of the covenants.

Pltf. co. agreed to purchase from deft. property of which deft. was under-lessee. Her underlease contained a covenant not to assign without the under-lessor's consent, not to be withheld in the case of a responsible assignee. The under-lessor refused a licence to assign to pltf. co., but deft.'s solrs. were informed that a licence would be granted to complete in favour of a specified nominee. The licence was in fact available, but deft. never formally applied for it; & ultimately her solrs. returned the deposit paid by pltf. co., who thereupon brought this action for specific performance :—*Held :* deft. could be compelled to complete in favour of the specified nominee.

LORD CAIRNS indeed seems to have considered that, if the phrase [subject to the title being approved by our solrs.] meant

PART VIII. SECT. 7, SUB-SECT. 1.

r i. —— ——.]—A vendor suing a purchaser in default under an agreement for the sale of land is entitled to apply for personal judgment with leave to issue execution thereon & with liberty to apply further in the event of it being found impossible to realise the amount of the judgment. This further relief may take the form of a sale of the land or rescission of the agreement, depending on what has been done under the execution issued on the judgment.—BUCKLEY & SCHELL *v.* HECKERT, [1932] 1 W. W. R. 831.—**CAN.**

PART VIII. SECT. 7, SUB-SECT. 3.

c i. —— *Sale of hotel & licence.*]—*Held :* the measure of damages was the difference between the price agreed & the value of the land considered as a security for realising the deficiency in the sum contracted to be paid, less the amount of the deposit paid by the purchaser, & the net amount of the compensation received by the owner under the Licensing Act.—SUMMERS *v.* COCKS, [1928] W. A. L. R. 115.—**AUS.**

PART VIII. SECT. 7, SUB-SECT. 4. A. (c).

2335 i. *Revsd.*, 10 Alta. L. R. 478.

sv. *Auction fees.*]—Pltf., at an auction of certain property, was declared the purchaser, & he thereupon paid the deposit & the auctioneer's fees, as provided by the conditions of sale. These conditions contained one in the usual form enabling the vendor to rescind the contract if the purchaser made any objection or requisition which the vendor was unable or unwilling to remove or comply with. The sale broke down following the vendor's reply to a requisition of the purchaser, the vendor having added that if the purchaser insisted on the requisition he would rescind the contract, pursuant to the conditions of sale. This reply was, in the opinion of the ct., neither capricious nor unreasonable. The purchaser replied stating that he insisted on his objection, & that he required the vendor to return the deposit & the auctioneer's fees. The vendor returned the deposit, but not the auctioneer's fees, & the purchaser subsequently sued the vendor for the amount of them :—*Held :* as the only way in which the purchaser could recover these fees was as damages for breach of contract, & as there had been no breach of contract on the vendor's part, the claim failed.—M'MAHON *v.* GAFFNEY, [1930] I. R. 576.—**IR.**

PART IX. SECT. 1.

sw. *What passes by conveyance.*]—Buildings erected by the owner of land for use in the making of bricks held to form part of the realty, although some of them were attached to the land by nothing but their own weight. They therefore became the property of deft. who became registered owner of the land in pursuance of the purchase thereof at a tax sale under the Assessment Act. Certain machinery in said buildings was also held part of the realty.—MCCUTCHEON *v.* LIGHTFOOT, [1928] 2 W. W. R. 240.—**CAN.**

sx. ——.]—Wire fencing & fence posts erected or completed by the deft. while he occupied land, previously rented to him, as purchaser under an instalment agreement made with the Crown held to have become part of the soil, & therefore, to have passed to the Crown when the deft. gave up the agreement & surrendered all his interest in the land to the Crown, & to have become subsequently the property of the pltf. when he purchased the land from the Crown.—LAROCHELLE *v.* MARCHAND, [1928] 3 W. W. R. 731.—**CAN.**

PART IX. SECT. 5, SUB-SECT. 1.—E. (a).

sy. *Description by reference to monuments.*]—Apart from special statutory provisions, the description in a conveyance of land is to be construed by reference to the monuments on the ground.—MCDONALD *v.* KNUDSEN, [1928] 3 D. L. R. 242; [1928] 2 W. W. R. 577.—**CAN.**

PART IX. SECT. 5, SUB-SECT. 1,—E. (c).

sl. *Fixtures—What are.*]—On the question whether a certain thing is a fixture the position of an unpaid vendor with respect to a purchaser of the land, like that of a mtgee. with respect to a mtgor., is much stronger than that of a landlord where the thing is claimed by a tenant. Since the intention with which the thing was placed upon the land is one of the main factors in determining said question the inference that the real intention was that the thing should be a permanent improvement of the freehold is more readily to be drawn in the case of a purchaser who placed the thing on land which he has agreed to buy or found it already there than it is in the case where the thing is placed upon the land by a tenant. The thing in question in the present case was a two-storey building with an attached lean-to, the whole resting on stones laid on the ground, there being a dirt cellar under the main building.—PEIKOFF *v.* BRIGHTWELL (No. 2), [1932] 1 W. W. R. 59; 1 D. L. R. 732; 40 Man. L. R. 124.—**CAN.**

sm. —— —— *Fanning mill.*]—BANFORD *v.* BUCKERFIELDS, LTD., [1932] 2 D. L. R. 804.—**CAN.**

sn. —— —— *Oil burner.*]—An oil burner although only annexed to the freehold by slight attachment to the furnace & by pipes & wires attached to the walls of the house is a fixture.—FESS OIL BURNERS, LTD. *v.* MUTUAL INVESTMENTS, LTD., [1932] 2 D. L. R. 16; O. R. 203.—**CAN.**

what the Ct. of Appeal thought it meant, it would follow that the purchaser was at liberty through the medium of his solr. to decline the title from mere caprice; but none of the judges accepted this extreme view. It is reasonable, they thought, to imply good faith as a necessary ingredient. On the other hand, it seems to be putting an undue strain on the words to construe them, when used by a layman, as connoting not the approval of his own solr., which is their plain, ordinary meaning, but the decision of a ct. of justice after an unknown delay & at an unascertainable cost (MAUGHAM, J.).—CURTIS MOFFAT, LTD. *v.* WHEELER, [1929] 2 Ch. 224; 98 L. J. Ch. 374; 141 L. T. 538.

2530a. Right to give directions as to application of purchase-money — Application of Law of Property Act, 1925 (c. 20), s. 27.]—*Re* WIGHT & BEST'S BREWERY CO., LTD.'S CONTRACT (1928), 73 Sol. Jo. 76.

Part X. Title Deeds.

2571. *Add. Annotation:*—**Consd.** Clayton *v.* Clayton, [1930] 2 Ch. 12.

2576. *Add. Annotation:*—**Refd.** Clayton *v.* Clayton, [1930] 2 Ch. 12.

2588. *Add. Annotation:*—**Consd.** Clayton *v.* Clayton, [1930] 2 Ch. 12.

2596a. Statutory acknowledgment—Purchase from administrator.]—In view of Administration of Estates Act, 1925 (c. 23), s. 36, which provides for the indorsement, after Jan. 1, 1926, on the probate or letters of administration of notices of assents or conveyances of a legal estate by a personal representative, a purchaser of real estate can now require a vendor to include a probate or letters of administration in such statutory acknowledgment for production & delivery of copies of muniments of title as the vendor may be bound to give.—*Re* MILLER & PICKERSGILL'S CONTRACT, [1931] 1 Ch. 511; 100 L. J. Ch. 257; 144 L. T. 635.

Part XI. Position of Parties after Completion.

2614. *Add. Annotation:*—**Refd.** Grant *v.* Edmondson (1930), 143 L. T. 749.

2615. *Add. Annotation:*—**Consd.** Grant *v.* Edmondson, [1931] 1 Ch. 1.

2618. *Add. Annotation:*—**Consd.** Grant *v.* Edmondson, [1931] 1 Ch. 1.

2623a. Covenant for joint user of cistern—Construction.]—HEY *v.* APPLEYARD (1855), 24 L. T. O. S. 310.

2625. *Add. Annotation:*—**Consd.** *Re* Belcham & Gawley's Contract, [1930] 1 Ch. 56.

2646. *Add. Annotation:*—**Refd.** Chatsworth Estates Co. *v.* Fewell, [1931] 1 Ch. 224.

2664. *Add. Annotation:*—*As to* (1) **Folld.** *Re* Sunnyfield, [1932] 1 Ch. 79.

2665. *Add. Annotation:*—*As to* (2) **Folld.** *Re* Sunnyfield, [1932] 1 Ch. 79.

2667. *Add. Annotation:*—**Refd.** Grant *v.* Edmondson (1930), 143 L. T. 749.

2683a. —— ——.]—STEVENS *v.* WILLING & CO., LTD. (1929), 167 L. T. Jo. 178; 67 L. Jo. 223; [1929] W. N. 53.

PART IX. SECT. 8, SUB-SECT. 3.—A.

sz. *Crop-payment plan—Conversion of crop—Liability of purchaser.*]—GROVES *v.* HULL (Alta.), [1926] 2 D. L. R. 640; [1926] 1 W. W. R. 910.—**CAN.**

sa. *Agreement by purchaser to pay a certain sum & to take over a loan of specified amount—Loan of smaller amount—Subsequent agreement by purchaser to pay difference—Action for balance of purchase price.*]—LONGOBARDI *v.* LARKIN (1928), 28 S. R. N. S. W. 248; 45 N. S. W. W. N. 64.—**AUS.**

PART IX. SECT. 8, SUB-SECT. 3.—B. (c) i.

b i. —— *Effect of death of agent.*]—(1) In view of the course of dealing adopted by the parties to an agreement for the sale & purchase of land:—*Held:* a private banker, to whom the purchaser made the cash payment & the payment agreed to be deposited pending the clearing of the title, was a trustee owing duties to both parties. (2) A clear title was obtained by the banker & delivered to the purchaser, but before the vendor obtained payment from the banker of the full amount of the purchase-price deposited with him the banker died & his office closed its doors. The vendor, having failed to obtain the balance of the purchase-money, sued the purchaser therefor:—*Held:* the loss which had occurred must be borne by the vendor.—STUFFCO *v.* FAHN, [1931] 1 W. W. R. 268; 2 D. L. R. 237; 25 S. L. R. 235.—**CAN.**

PART IX. SECT. 8, SUB-SECT. 3.—B. (c) ii.

2532 i. *Authority to receive purchase-money.*]—Where the vendor's solicitor appropriated the purchase-money to his own use:—*Held:* the solr. was agent for the vendor, who must bear the loss.—CHEESEMAN *v.* COREY (1913), 13 E. L. R. 469; 15 D. L. R. 445.—**CAN.**

PART IX. SECT. 8, SUB-SECT. 3.—D. (a).

sb. *Conveyance to trustee—Agreement for sale by holders of equitable estate—Party entitled to purchase-money.*]—DRAPER *v.* RADENHURST (1892), 21 S. C. R. 714.—**CAN.**

PART XI. SECT. 2, SUB-SECT. 1.

q. *affd.* [1928] 3 D. L. R. 491; [1928] 2 W. W. R. 307; 23 Alta. L. R. 474.—**CAN.**

sc. *Covenant against assignment—Waiver.*] — PEIKOFF *v.* PAISNER, BRIGHTWELL *v.* PEIKOFF, [1929] 4 D. L. R. 1077; 1 W. W. R. 931; 38 Man. L. R. 151.—**CAN.**

PART XI. SECT. 2, SUB-SECT. 3.—B.

n i. —— *Covenant for supply of water.*]—ROSAMUND *v.* FORGIE (1871), 18 Gr. 370.—**CAN.**

PART XI. SECT. 2, SUB-SECT. 4.—B.

2666 viii. ——.]—WANEK *v.* THOLS, [1928] 2 D. L. R. 793; [1928] 1 W. W. R. 903.—**CAN.**

PART XI. SECT. 2, SUB-SECT. 4.—C. (a) i.

d i. —— *"Sunroom"—Whether verandah or porch.*]—*Re* CAMPBELL & COWDY, [1928] 1 D. L. R. 1034; 61 O. L. R. 545.—**CAN.**

d ii. —— *"Duplex house"—Whether detached residence.*] — *Re* TORONTO GENERAL TRUSTS CORPN. & CROWLEY, [1928] 4 D. L. R. 609; 62 O. L. R. 593.—**CAN.**

PART XI. SECT. 2, SUB-SECT. 4.—C. (a) ii.

sz. *Covenant to erect "house"—Garage.*]—Pltf. & another sold certain property to deft. subject to the condition that deft. erect a house of certain value thereon which would not be within less than six feet from the west side of the lot so sold:—*Held:* the word "house" as so used included the ordinary outbuildings, &, therefore, pltf. was entitled to an injunction restraining deft. from proceeding with the building of a garage.—MILLIKEN *v.* YOUNG, [1928] 3 W. W. R. 547; *on appeal*, [1929] 3 D. L. R. 64; 1 W. W. R. 213; 23 S. L. R. 370.—**CAN.**

2686. *Add. Annotation :*—**Folld.** *Re* Sunnyfield, [1932] 1 Ch. 79.

2698. *Add. Annotation :*—**Consd.** Sunderland & South Shields Water Co. *v.* Hilton (1928), 97 L. J. K. B. 516.

2700. *Add. Annotations :*—**Distd.** Sunderland & South Shields Water Co. *v.* Hilton (1928), 97 L. J. K. B. 516. **Refd.** Towle *v.* Improved Industrial Dwellings Co., [1931] 1 K. B. 263.

2701a. Covenant against building bungalow—Meaning of "bungalow."]—A conveyance contained a covenant by the purchaser "not to erect more than one bungalow" on the piece of land conveyed :—*Held :* a bungalow was a building of which the walls, with the exception of any gables, were no higher than the ground floor, & of which the roof started at a point substantially not higher than the top of the wall of the ground floor, & that it was immaterial in what way the space in the roof of the building so constructed was used.—WARD *v.* PATERSON, [1929] 2 Ch. 396 ; 45 T. L. R. 519 ; 98 L. J. Ch. 446 ; 141 L. T. 683.

2705a. —.]—Pltf. & deft. both derived title to their respective properties from a common predecessor, who on his own purchase of both properties in 1876 covenanted with his vendors not to erect any dwelling-house at a less cost price than £800, or any pair of semi-detached villas at a less cost price than £1,200. In 1927 deft. built houses at prices exceeding these amounts, but the houses, owing to the great increase of building prices since 1876, were not of the type indicated by the prices of that date :—*Held :* deft. had not broken the 1876 covenants, which, on construction, related to the building prices ruling at the time the houses were actually erected.—GRANT *v.* DERWENT, [1929] 1 Ch. 390 ; 98 L. J. Ch. 70 ; 140 L. T. 330 ; 93 J. P. 113 ; 73 Sol. Jo. 59 ; 27 L. G. R. 179, C. A.

2751. *Add. Annotation :*—**Consd.** Grant *v.* Edmondson, [1931] 1 Ch. 1.

2757. *Add. Annotations :* — **Consd.** Southwark Revenue Officer *v.* Hoe (R.) & Co. (1930), 143 L. T. 544. **Refd.** Shaw *v.* Public Trustee (1929), 141 L. T. 465.

2776. *Add. Annotation :*—**Apld.** Coplovitch *v.* Williams (1929), 73 Sol. Jo. 484.

2779. *Add. Annotation :*—**Refd.** Grant *v.* Derwent [1928] Ch. 902.

2785a. ——.]—In an action to enforce restrictive covenants against a purchaser with notice, bound only in equity, the deft. relied on two equitable defences, namely : (*a*) A general change in the character of the neighbourhood ; (*b*) An allegation that this change was brought about by the acts or omissions of the pltfs. or their predecessors :—*Held :* (1) in order to succeed on the first ground deft. must show so complete a change in the character of the neighbourhood as to render the covenants valueless to pltfs., so that an action to enforce them would be unmeritorious, not *bonâ fide*, & merely brought for some ulterior purpose ; (2) in order to succeed on the second ground deft. must make out a sort of estoppel by showing that pltfs.' acts & omissions were such as to justify a reasonable person in believing that the covenants were no longer enforceable. (3) In order to keep their estate purely residential pltfs.' predecessors had imposed covenants preventing any house being used "otherwise than as a private dwelling-house." They or pltfs. had, however, licensed a number of schools, some blocks of flats, a hotel, &, in certain exceptional circumstances, three boarding houses, & without pltfs.' knowledge about half a dozen other boarding houses were being carried on in the area, which, however, still remained mainly residential :—*Held :* these acts & omissions did not prevent the pltfs. from restraining deft. from using his house as a guest house.—CHATSWORTH ESTATES CO. *v.* FEWELL, [1931] 1 Ch. 224 ; 100 L. J. Ch. 52 ; 144 L. T. 302.

2807a. Action to enforce restrictive covenant—What included—Exercise of power of re-entry of leasehold premises.]—An action by a reversioner to recover possession of leasehold land, under a power of re-entry, for breach of a restrictive covenant contained in the lease is not a "proceeding by action . . . to enforce a restrictive covenant" within Law of Property Act, 1925 (c. 20), s. 84 (9). The ct. therefore will not stay such an action to enable the deft. to apply to the authority referred to in the section for an order modifying or discharging the restriction which is the subject of the action.—IVEAGH *v.* HARRIS, [1929] 2 Ch. 142 ; 98 L. J. Ch. 280 ; 141 L. T. 508 ; 45 T. L. R. 319.

2807b. Application for discharge.]—Where a conveyance of land never the subject of a building scheme contains restrictive covenants not expressed to be for the benefit of adjacent property or of a defined area & never passing by an assignment under which they can be enforced, the ct. in the exercise of its discretion under Law of Property Act, 1925 (c. 20), s. 84, & Land Registration Act, 1925 (c. 21), s. 82, may declare them no longer effective.

Appct. was the freeholder of premises which a predecessor in title, on buying them

PART XI. SECT. 2, SUB-SECT. 4.—C. (a) iii.

2698 i. *What constitutes breach—Restriction to single dwelling—Block of flats.*]—A building two storeys in height & structurally divided into eight self-contained flats, with a carriageway or passage in the middle of the building, & a roof as one constructional unit over all, & having the entrances to all the flats contained in a common portico, constitutes more than "one house" within the meaning of a covenant not to erect more than one house.—*Ex p.* HIGH STANDARD CONSTRUCTIONS, LTD. (1928), 29 S. R. N. S. W. 274 ; 46 N. S. W. W. N. 75.—**AUS.**

2698 ii. —— —— ——.]—Where the lots in a certain township had all been sold subject to the condition (*inter alia*) that "the said lot is sold for residential purposes only & the purchaser shall have no right to subdivide or transfer any portion of the lot aforesaid, but on the contrary shall only have the right to erect one residence with the necessary outbuildings & accessories on the said lot" :—*Held :* the erection of a block of flats upon a lot was prohibited by the condition.—TRANSVAAL CONSOLIDATED LAND & EXPLORATION CO., LTD. *v.* BLACK, [1929] A. D. 454.—**S. AF.**

PART XI. SECT. 2, SUB-SECT. 4.—C. (a) iv.

& BEDFORD PARK PRESBYTERIAN CHURCH, [1928] 1 D. L. R. 354 ; 61 O. L. R. 430.—**CAN.**

PART XI. SECT. 2, SUB-SECT. 4.—C. (a) v.

p. *Revsd.*, [1930] 3 W. W. R. 185.

PART XI. SECT. 2, SUB-SECT. 4.—D. (a).

sa. *Notice under Property Law Act*, 1908, s. 94.]—MCCONNELL *v.* MCCORMICK, [1929] N. Z. L. R. 560.—**N.Z.**

from the Ecclesiastical Comrs. had covenanted for himself, his heirs & assigns, to use not otherwise than as a private residence & not for any purpose which, in the opinion of the surveyor for the time being of the Comrs. might be or become injurious to the adjacent property of the Comrs. their successors or assigns. These restrictions were entered in the Charges Register at the Land Registry. Appct., unable to sell the premises as a private residence, negotiated with persons willing to buy them if the restrictions could be proved no longer effective. So far as could be ascertained, the premises had never been the subject of a building scheme: the Comrs. no longer owned any property in the immediate neighbourhood; & neither they nor their successors in title to properties adjacent to the premises claimed the right to enforce the restrictions. On a summons for a declaration, under sect. 84 (2) of Law of Property Act, 1925 (c. 20), that no part of the premises was any longer affected by any of the restrictions, & for the cancellation of the entry of the restrictions in the Charges Register:—*Held:* as there had never been a building scheme, & as the restrictions had never been expressly assigned or expressed to be for the benefit of adjacent property of the Comrs. or of any defined area near the premises, there was no one who could enforce the restrictions, which therefore no longer affected the premises.—*Re* SUNNYFIELD, [1932] 1 Ch. 79; 101 L. J. Ch. 55; 146 L. T. 206.

2809. *Add. Annotation:*—**Refd.** Grant *v.* Edmondson, [1931] 1 Ch. 1.

2922. *Add. Annotation:*—**Consd.** Lawrence *v.* Cassel, [1930] 2 K. B. 83.

2922a. —— ——.]—By an agreement in writing deft. agreed to sell to pltf. a plot of land, part of a building estate, with a dwelling-house thereon in course of erection, & to complete the dwelling-house in accordance with plans of other houses, with fittings similar in all material particulars to those in other houses, erected on the estate. A deed of conveyance of the premises to pltf. was subsequently executed by the parties. The deed contained no reference to the building of the house or to any work done or to be done by deft. in the way of completing it or otherwise. Pltf. brought an action for breach of the agreement, alleging that deft. had thereby contracted that the builders' work should be carried out in a proper, efficient, & workmanlike manner, & that the materials used should be fit & proper for the purpose, & averring that none of these terms or conditions had been fulfilled:—*Held:* the agreement to complete the house being collateral to the deed of conveyance was not merged therein &, breaches of that agreement having been proved, pltf. was entitled to recover.—LAWRENCE *v.* CASSEL, [1930] 2 K. B. 83; 99 L. J. K. B. 525; 143 L. T. 291; 74 Sol. Jo. 421, C. A.

Annotations:—**Folld.** Miller *v.* Cannon Hill Estates, Ltd., [1931] 2 K. B. 113. **Refd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

2922b. —— ——.]—In a contract with builders or with the owners of a building estate for the purchase of a house to be erected or in course of erection, there is an implied warranty by the vendors that the house shall be built in an efficient & workmanlike manner & of proper materials, & that it shall be fit for habitation.—MILLER *v.* CANNON HILL ESTATES, LTD., [1931] 2 K. B. 113; 100 L. J. K. B. 740; 144 L. T. 567; 75 Sol. Jo. 155.

2922c. —— ——.]—At common law in the absence of express contract a landlord of an unfurnished house is not liable to his tenant, nor is a vendor of real estate liable to his purchaser, for defects in the house or land rendering it dangerous or unfit for occupation, even if the defects are due to his construction or are within his knowledge.

A firm of builders, having built several houses which was nearly completed. They agreed to complete the house by the end of Oct. 1929, & to make it fit for habitation, & like in decoration & design to the other houses on the estate. The agreement contained a clause enabling C. B. to go into possession before completion as tenant at will. The house, like the others on the estate, was fitted with a particular make of boiler, which was placed on the kitchen & was heated by a Bunsen gas burner. Above the kitchen was a bathroom. From a cupboard in the bathroom a linen chute ran down to a cupboard in the kitchen connected with the boiler by a pipe. There was no flue to carry gas or fumes from the burner to the outward air. C. B. with his wife & child went into occupation on Sept. 28. The C. Gas. Co.'s inspector examined the gas fittings & set the regulator fitted to the burner so that 45 cubic feet of gas & no more passed into burner per hour. On Oct. 26, C. B. & his wife were found dead in bathroom, poisoned by carbon monoxide gas. A few days afterwards the regulator was found so set that much more than 45 cubic feet could pass into the burner in an hour. The boiler with its burner & the linen chute were parts of the realty. The boiler with the burner properly regulated was not dangerous. It was the business of the Gas

PART XI. SECT. 2, SUB-SECT. 5.—A.

se. *What amounts to—Security bond undertaking to compensate purchaser if land taken—Covenant of indemnity—Not covenant for title.*]—NATESA VANNIYAN *v.* GOPALASWAMI MUDALIAR (1927), I. L. R. 51 Mad. 688.—**IND.**

PART XI. SECT. 2, SUB-SECT. 5.—B. (d).

11. —— ——.]—VANDERBURGH *v.* VANALSTINE (1837), 5 O. S. 454.—**CAN.**

PART XI. SECT. 2, SUB-SECT. 5.—C. (a).

sd. *Implied covenant for quiet enjoyment.*]—Deft., being registered under Land Titles Act as owner in fee of a parcel of land, sold & conveyed it to B. who, with deft.'s knowledge, sold & conveyed it to pltf. The two conveyances were not registered; & deft. knowing that he had no longer any interest in the land, & that pltf. was the true owner, executed a conveyance or transfer to it., & thereby (R. having registered his transfer) wrongfully deprived pltf. of his title:—*Held:* assuming that R. purchased in good faith & without notice, so that pltf. could not recover the land, pltf. was entitled to recover damages from deft.—GUEST *v.* COCHLIN, [1929] 3 D. L. R. 790; 64 O. L. R. 165.—**CAN.**

PART XI. SECT. 4, SUB-SECT. 1.

se. *Execution — Whether "liquid assets" within Land Titles Act, s.* 94.]—NORTH *v.* LAUWERYSSEN (Alta.), [1927] 2 D. L. R. 758; [1927] 1 W. W. R. 687.—**CAN.**

sf. *Breach of warranty—Recovery of damages.*]—Damages are recoverable by a purchaser for breach of an oral collateral warranty made on a sale of land, even though he made payments on account of the purchase-price & accepted a transfer of title after having become aware that the warranty had not been fulfilled.—GREENWELL *v.* JOHNSTON, [1930] 3 W. W. R. 181; 4 D. L. R. 1026.—**CAN.**

Co. & not that of the builders to regulate the flow of gas to the burner. In an action under the Fatal Accidents Act, 1846 (c. 93), by the administrators of C. B. & his wife against the builders :—*Held :* there was no evidence of a breach of any duty which the law cast upon defts. as vendors or lessors of the house towards C. B. or his wife, & pltfs. could not recover.—BOTTOMLEY *v.* BANNISTER, [1932] 1 K. B. 458 ; 101 L. J. K. B. 46 ; 146 L. T. 68, C. A.

Annotation :—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119.

2963. *Add. Annotation :*—**Refd.** Lynn *v.* Bamber, [1930] 2 K. B. 72.

2976. *Add. Annotations :*—**Refd.** Robert A. Munro & Co. *v.* Meyer, [1930] 2 K. B. 312 ; Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557.

2985. *Add. Annotation :*—**Refd.** Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557.

2987. *Add. Annotations :*—**Refd.** Robert A. Munro & Co. *v.* Meyer, [1930] 2 K. B. 312 ; Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557.

3040. *Add. Annotation :*—**Refd.** Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557.

PART XI. SECT. 4, SUB-SECT. 4.—A. (a) ii.

a i. —— *Representation that house warm.*]—Pltf. agreed to purchase a dwelling-house relying on the owner's oral representation that he would "guarantee that it was a good, warm house." Pltf. went into possession, & being unable to keep the house warm, sued for rescission. The judge found that it was a very cold house :—*Held :* pltf. was entitled to rescission.—SIEGERIST *v.* PAIN, [1930] 1 W. W. R. 951 ; 2 D. L. R. 980.—**CAN.**

PART XI. SECT. 4, SUB-SECT. 4.—A. (b) i.

2978 iv. —— ——.]—HARILAL DALSUKHRAM *v.* MULCHAND (1928), I. L. R. 52 Bom. 883.—**IND.**

PART XI. SECT. 4, SUB-SECT. 4.—E.

3029 i. *What purchaser may be allowed—Costs of repairs & improvements.*]—Pltf., who knew that the municipality's claim against the land arose out of non-payment of taxes, went into possession & made improvements while the land was subject to redemption & before the municipality was entitled to put him into possession. He contended that he relied on an assurance by the municipal officer that title would issue to him, but it was found that no such assurance had been given :—*Held :* pltf. was not entitled to a declaration of lien for improvements made under mistake of title.—HILLER *v.* RURAL MUNICIPALITY OF SHAMROCK (Sask.), [1929] 3 W. W. R. 458 ; *affd.*, [1930] 2 W. W. R. 680 ; 4 D. L. R. 276.—**CAN.**

SET-OFF AND COUNTERCLAIM.

Part I.—Set-Off.

48. *Add. Annotation :*—**Refd.** Ellesmere (Earl) *v.* Wallace, [1929] 2 Ch. 1.

75. *Add. Annotation :*—**Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

117. *Add. Annotation :*—**Refd.** *Re* Pinto Leite & Nephews, *Ex p.* Visconde des Olivaes, [1929] 1 Ch. 221.

180. *Add. Annotation :*—**Refd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

192. *Add. Annotations :*—**Refd.** Cottage Club Estates *v.* Woodside Estate Co., Amersham (1927), 97 L. J. K. B. 72 ; Earle *v.* Hemsworth R. D. C., [1928] 140 L. T. 69 ; Williams *v.* Atlantic Assurance Co. (1932), 37 Com. Cas. 304.

193. *Add. Annotation :*—**Refd.** *Re* Pinto Leite & Nephews, *Ex p.* Visconde des Olivaes, [1929] 1 Ch. 221.

225. *Add. Annotation :*—**Refd.** London & North Eastern Ry. Co. *v.* Blundy, Clark & Co. (1931), 20 Ry. & Can. Tr. Cas. 92.

295. *Add. Annotation :*—**Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

Part II.—Counterclaim.

307. *Add. Annotation :*—*As to* (1) **Refd.** Lowe *v.* Bentley (1928), 44 T. L. R. 388.

314. *Add. Annotation :*—**Refd.** Lowe *v.* Bentley (1928), 44 T. L. R. 388.

319. *Add. Annotation :*—**Refd.** Aktieselskabet Ocean *v.* Harding, [1928] 2 K. B. 371.

327. *Add. Citation :*—72 Sol. Jo. 254.

379. *Add. Annotations :*—**Consd.** Eshelby *v.* Federated European Bank, Ltd., [1932] 1 K. B. 254. **Refd.** Lowe *v.* Bentley (1928), 44 T. L. R. 388.

Part III.—Pleading and Practice.

535. *Add. Annotation :*—**Refd.** Medway Oil & Storage Co. *v.* Continental Contractors [1929] A. C. 88.

550. *Add. Annotation :* —**Consd.** Medway Oil & Storage Co. *v.* Continental Contractors, [1929] A. C. 88.

555. *Add. Annotation :*—**Consd.** Medway Oil & Storage Co. *v.* Continental Contractors, [1929] A. C. 88.

562. For existing paragraph substitute :—

Where a claim & counterclaim are both dismissed with costs, upon the taxation of

PART I. SECT. 3, SUB-SECT. 1.

38 xvi. ——.]—Clarkson *v.* Allis-ton Corpn., [1928] 2 D. L. R. 715 ; 62 O. L. R. 149.—**CAN.**

PART I. SECT. 4, SUB-SECT. 1.

p. *Revsd.*, [1913] A. C. 160.

k (p. 377). For "(1867), 3 Agra, 43" read "(1868), 4 Agra, 43."

PART I. SECT. 10, SUB-SECT. 8.—A.

222 ii. —— —— *& debt due in representative capacity.*]—The rule that where an action is brought by an exor. only in his capacity of exor. deft. cannot set up by counterclaim claims against him personally & also as an exor. :—*Held :* not to apply to the case where deft. seeks, in aid of the judgment which he may obtain against the exor. personally, relief from the estate.—Mackay *v.* London & Western Trusts Co., Ltd., [1931] 1 D. L. R. 978 ; [1930] 3 W. W. R. 620.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.

317 vi. ——.]—Thomas *v.* Worden, [1928] 1 D. L. R. 217.—**CAN.**

317 vii. ——.]—Neither at law nor in equity can a claim unenforceable by action because of the Statute of Frauds be enforced by counterclaim or defence. —Perpetual Exors. & Trustees Assocn. of Australia, Ltd. *v.* Russell, [1931] V. L. R. 125 ; Argus L. R. 89 ; 5 A. L. J. 40.—**AUS.**

317 viii. ——.]—A counterclaim even though it raises an issue entirely extraneous to the claim can only be struck out if it is embarrassing to pltf.—Export Brewing & Malting Co. *v.* Dominion Bank, [1932] O. R. 446 ; 3 D. L. R. 128.—**CAN.**

321 x. ——.]—To allow a counterclaim or set-off the ct. must as a condition precedent be vested with the jurisdiction of hearing both the action & the counterclaim or set-off.—R. *v.* Cosgrave Export Brewing Co., Ltd., R. *v.* John Labatt, Ltd., [1928] Ex. C. R. 103.—**CAN.**

sx. *Must not be embarrassing.*]—The right to counterclaim should not be used in such a way as to embarrass & inconvenience the fair trial of the action as originally constituted.—Oaks *v.* British North Western Fire Insce. Co., [1929] 2 D. L. R. 959 ; 63 O. L. R. 593.—**CAN.**

PART II. SECT. 2, SUB-SECT. 2.—A.

sy. *Contributory negligence.*] — Cameron *v.* Murray, [1931] 2 D. L. R. 654 ; O. R. 83.—**CAN.**

PART II. SECT. 2, SUB-SECT. 5.

r (p. 414) **i.** —— *Counterclaim for fraudulent misrepresentation.*]—*Held :* the counterclaim being based not upon the contract but upon delict, could not be dealt with in the action on the contract.—Smart *v.* Wilkinson, [1928] S. C. 383.—**SCOT.**

sb. *Action for alimony—Counterclaim for divorce.*]—A claim for divorce may be set up by a counterclaim to an action for alimony.—Scheerer *v.* Scheerer, [1928] 1 W. W. R. 305 ; 22 Sask. L. R. 302.—**CAN.**

PART II. SECT. 4.

378 iii. ——.]—Thompson *v.* Scollard (B. C.), [1929] 3 D. L. R. 857 ; 2 W. W. R. 466.—**CAN.**

PART III. SECT. 1, SUB-SECT. 2.

p. For "Q. R. 29 S. C. 516," read "*revsd.*, 29 S. C. R. 516."

PART III. SECT. 2, SUB-SECT. 4.—C. (a).

sc. *Statute of Limitations.*]—With respect to the application of Stat. Limitations to a counterclaim it is sufficient for pltf. to prove that the counterclaim was barred when it was pleaded.—Reed *v.* Thiel, [1928] 4 D. L. R. 72 ; [1928] 2 W. W. R. 115 ; 22 Sask. L. R. 495.—**CAN.**

se. *Res judicata.*]—Davis *v.* Davis, [1928] 3 D. L. R. 69 ; [1928] 2 W. W. R. 130 ; 23 Alta. L. R. 355.—**CAN.**

PART III. SECT. 2, SUB-SECT. 9.—B. (a).

552 xvii. —— ——.]—Stark *v.* Batchelor, [1928] 4 D. L. R. 815 ; 63 O. L. R. 135.—**CAN.**

the costs, the true rule is that the claim should be treated as if it stood alone, & the counterclaim should bear only the amount by which the costs of the proceedings have been increased by it. No costs not incurred by reason of the counterclaim can be costs of the counterclaim. In the absence of special directions by the ct. there should be no apportionment. The same principle applies where both the claim & the counterclaim have succeeded.—MEDWAY OIL & STORAGE CO. *v.* CONTINENTAL CONTRACTORS, [1929] A. C. 88; 98 L. J. K. B. 148; 140 L. T. 98; 45 T. L. R. 20, H. L.; *reversing* S. C. *sub nom.* CONTINENTAL CONTRACTORS *v.* MEDWAY OIL & STORAGE CO., [1928] 1 K. B. 238, C. A.

568. *Add. Annotation :*—**Distd.** Medway Oil & Storage Co. *v.* Continental Contractors, [1929] A. C. 88.

569. *Add. Annotation :*—**Folld.** Medway Oil & Storage Co. *v.* Continental Contractors, [1929] A. C. 88.

570. *Add. Annotation :*—**Refd.** Medway Oil & Storage Co. *v.* Continental Contractors, [1929] A. C. 88.

571. *Add. Annotation :*—**Apprvd. & Folld.** Medway Oil & Storage Co. *v.* Continental Contractors, [1929] A. C. 88.

574. *Add. Annotation :*—*As to* (3) **Consd.** Medway Oil & Storage Co. *v.* Continental Contractors, [1929] A. C. 88.

PART III. SECT. 2, SUB-SECT. 9.—B. (b).

sg. *Discretion of judge.*]—AUSTIN *v.* O'KEEFE, [1928] V. L. R. 485; [1928] Argus L. R. 374.—**AUS.**

SETTLEMENTS.

Part II.—Creation and Construction of Settlements.

To be settled at attainment of majority.] *v.* LAING (1839), 10 Sim. 315; 9 L. J. Ch. 48; 3 Jur. 1119; 59 E. R. 636.

74a. Express estate given not enlarged by implication.]—THEEBRIDGE *v.* KILBURNE (1751), 2 Ves. Sen. 233; 28 E. R. 150, L. C.

Annotations :—**Consd.** Campbell *v.* Harding (1831), 2 Russ. & M. 390; Verulam Earl *v.* Bathurst (1843), 13 Sim. 374. **Refd.** Lyon *v.* Mitchell (1816), 1 Madd. 467.

83a. Gift followed by proviso against absolute vesting—Subsequent trusts not exhausting absolute interest.]—Where there was an absolute gift, followed by a proviso against absolute vesting & for retention of the funds by the trustees, & the subsequent trusts did not exhaust the absolute interest, but there was a failure of those trusts :—*Held :* the proviso only had the effect of cutting down the absolute interests to the extent to which it was necessary to give effect to the trusts & no further, & the absolute gift accordingly remained.—*Re* COHEN, COHEN *v.* COHEN (1915), 60 Sol. Jo. 239.

86a. —— Ambiguity.]—GARNER *v.* GARNER (1860), 29 Beav. 114; 3 L. T. 396; 7 L. T. 182; 54 E. R. 570.

134a. "For default of such issue."]—DOE d. LEES *v.* FORD (1853), 2 E. & B. 970; 2 C. L. R. 654; 23 L. J. Q. B. 53; 22 L. T. O. S. 181; 18 Jur. 420; 118 E. R. 1029.

136. *Add. Annotation :*—**Distd.** *Re* Hall, Hall *v.* Hall, [1932] 1 Ch. 262.

140a. "My own heirs whatsoever."]—GORDON *v.* GORDON (1882), 7 App. Cas. 713, H. L.

146a. "Any husband who might survive her"—Whether applicable to divorced husband.]—A woman beneficiary under a settlement was given a power of appointment "for the benefit of any husband who might survive her." The beneficiary married, & she exercised the power of appointment in favour of her husband in the event of his surviving her. Afterwards she divorced her husband, & she died without having been remarried, leaving her divorced husband surviving her :—*Held :* the power could be exercised only in favour of a person who was the beneficiary's husband at the time of her death, & therefore the divorced husband did not take under the exercise of the power.—BOSWORTHICK *v.* CLEGG (1929), 45 T. L. R. 438.

Annotation :—**Apprvd.** *Re* Williams' Settlement, Greenwell *v.* Humphries, [1929] 2 Ch. 361.

146b. —— ——.]—Under a marriage settlement made in 1902 of property belonging to the wife, power was reserved to her in the event, which happened, of there being but one child of the then intended marriage, to revoke the trusts of the settlement as to three-quarters of the settled funds & to resettle the same for the benefit of any husband who might survive her, but so that he should not take more than a life interest therein, & any child or other issue of a future marriage. The wife, having been divorced, remarried in 1908, & exercised the power in favour of her second husband. In 1923 the second marriage was dissolved upon the husband's petition, & the wife again remarried. She died in 1928, leaving her first, second & third husbands surviving her :—*Held :* the second husband, although he survived his former wife, was not entitled to any interest under the appointment of 1908, as he had ceased to be her husband on the dissolution of the marriage.—*Re* WILLIAMS' SETTLEMENT, GREENWELL *v.* HUMPHRIES, [1929] 2 Ch. 361; 98 L. J. Ch. 358; 141 L. T. 579; 45 T. L. R. 541; 73 Sol. Jo. 384, C. A.

Annotation :—**Apld.** Bosworthick *v.* Clegg (1929), 45 T. L. R. 438.

Part III.—Contracts for Settlements.

165. *Add. Annotation :*—**Refd.** Chaney *v.* Maclow (1928), 97 L. J. Ch. 349.

203. *Add. Annotation :*—*As to* (2) **Apld.** *Re* Marshall, Graham *v.* Marshall, [1928] Ch. 661.

204a. —— ——.]—JOHNSTONE *v.* MAPPIN (1891), 60 L. J. Ch. 241; 64 L. T. 48.

225. *Add. Annotation :*—**Refd.** London & North-Eastern Ry. Co. *v.* Blundy, Clark & Co. (1931), 145 L. T. 269.

386a. ——.]—OTWAY *v.* BRAITHWAITE (1679), Cas. *temp.* Finch, 405; 23 E. R. 221.

392. *Add. Annotation :*—**Refd.** Cotton *v.* Heyl, [1930] 1 Ch. 510.

533. *Add. Annotation :*—**Refd.** *Re* Smith, Franklin *v.* Smith, [1928] Ch. 10.

535. *Add. Annotation :*—**Apld.** *Re* Smith, Franklin *v.* Smith, [1928] Ch. 10.

583. *Add. Annotations :*—**Refd.** *Re* Brooks, Public Trustee *v.* White, [1928] Ch. 214; *Re* Turner, Hudson *v.* Turner, [1932] 1 Ch. 31.

687. *Add. Annotation :*—**Refd.** Ditcham *v.* Miller (1931), 100 L. J. P. C. 177.

PART II. SECT. 3, SUB-SECT. 1.

sg. *Provision for devolution of property—Valid.*]—There is nothing in Intestate Succession Act, R. S. S., 1930, or other statutes of Saskatchewan, to prevent the parties to a marriage from providing by a marriage settlement for the devolution of property covered thereby.—*Re* JUTRAS ESTATE, [1932] 2 W. W. R. 533.—**CAN.**

PART II. SECT. 3, SUB-SECT. 3.—E.

sa. *The right heir.*]—A settlement provided that in certain events the settled lands should revert to "the right heir of (the settlor) & his or her heirs & assigns for ever" :—*Held :* the words "the right heir" designated the next of kin of settlor.—*Re* MACDONALD'S SETTLEMENT, O'CALLAGHAN *v.* O'CALLAGHAN, [1928] V. L. R. 421; [1928] Argus L. R. 148.—**AUS.**

Part V.—Consideration for Settlements.

736. *Add. Annotation :*—**Refd.** Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44.

740a. ——— ———.]—E. *v.* E. (1893), 37 Sol. Jo. 250.

740b. Cohabitation without marriage for several years.]—By a settlement executed in 1877, in consideration of a then intended marriage, it was declared that a sum of stock, the property of the intended wife, which had been transferred by her to two trustees, should be held by them on trust for the benefit of the intended wife, the intended husband, & the issue of the intended marriage. The marriage was not solemnised, but the parties cohabited without marriage, & three children were born. In 1883 an action was brought by the father & mother against the trustees of the settlement, to obtain a transfer of the fund to the mother :—*Held :* the contract to marry had been absolutely put an end to, & the ct. could order the stock to be transferred to the lady.—ESSERY *v.* COWLARD (1884), 26 Ch. D. 191 ; 53 L. J. Ch. 661 ; 51 L. T. 60 ; 32 W. R. 518.

Annotation :—**Apld.** E. *v.* E. (1893), 37 Sol. Jo. 250.

803a. ——.]—BURROWS *v.* GREENWOOD (1840), 4 Y. & C. Ex. 251 ; 5 Jur. 384 ; 160 E. R. 999.

803b. ——.]—The trustees & *cestui que trust* under a voluntary settlement cannot compel the settlor to perform any further act than he has already done to render such a settlement operative.—DENING *v.* WARE (1856), 22 Beav. 184 ; 4 W. R. 523 ; 52 E. R. 1078.

Part VI.—Rectification and Variation of Settlements and Articles.

840. *Add. Annotation :*—*As to* (1) **Apld.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

875. After this case add :—
Effect on construction of referential trusts.]—*See* TRUSTS, No. 493a, *post.*

Part VII.—Revocation and Avoidance of Settlements.

897a. ——— **By subsequent sale of settled property.**]—*Held :* the selling out of the settled stock did not amount to a virtual revocation of the settlement.—BLACKWELL *v.* WOOD (1831), 1 L. J. Ch. 35.

899. *Add. Annotation :*—**Refd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

913a. ——.]—GUY *v.* DORMER (1677), T. Raym. 295 ; 83 E. R. 152.

Annotations :—**Consd.** Doe d. Nowell *v.* Roake (1825), 2 Bing. 497. **Refd.** Bath & Mountague's Case (1693), 3 Cas. in Ch. 55.

934. *Add. Annotation :*—**Consd.** *Re* Duncombe's Will Trusts, Wrixon-Becher *v.* Faversham (Earl) (1932), 146 L. T. 412.

938a. ——— .]—LAMPERT *v.* LAMPERT (1789), 1 Ves. 20 ; 30 E. R. 210.

976. *Add. Annotation :*—**Consd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

Part VIII.—Beneficial Interests in Personalty.

1008a. ——— **Order to raise capital money for benefit of tenant for life—Policy on tenant's life assigned to trustees—Premiums paid by tenant.**]—The tenant for life of a settled legacy whose life interest was protected against any assignment or charge "whereby the income or some part thereof would if belonging absolutely to him become payable to some other person or a corpn.," with a gift over upon failure of such trust, applied to the ct. under the powers of Trustee Act, 1925 (c. 19), s. 57, for an order to authorise the trustees to raise £15,000 out of the capital of the settled legacy, which amounted to £150,000, & to apply the same in payment of his debts & generally for his benefit.

An order was made authorising the trustees to raise the money & to apply it accordingly, upon the terms that the tenant for life should effect a policy for £15,000 upon his own life & assign the same to the trustees to secure repayment of the capital raised, & that the

PART V. SECT. 5, SUB-SECT. 3.

768 i. ··· *Settlor must do everything necessary to transfer property.*]—In order to constitute a valid & effective voluntary settlement binding upon the settlor, he must have done everything which, according to the nature of the property comprised in the settlement, was necessary to be done to transfer the property either to the persons for whom he intends to provide, or to a trustee for the purposes of the settlement, or have declared that he himself holds it in trust for such purposes : & the expression of a mere executory intention to create a trust, or voluntary agreement to do so is insufficient for such purpose.—HAMILTON *v.* IZARD, [1929] N. Z. L. R. 498.—**N.Z.**

PART VI. SECT. 1, SUB-SECT. 4.

m i. ——— *Mistake—Sufficiency of evidence.*]—GOODWIN *v.* ROYAL TRUST CO., [1928] 1 D. L. R. 309 ; 39 B. C. R. 113.—**CAN.**

trustees should pay the premiums on the policy out of the income unless pltf. should within seven days of each renewal date produce to the trustees a receipt for the amount of the premium paid to the insurance co. On a summons taken out to determine the question whether the tenant for life by applying for & obtaining this order had forfeited his life interest:—*Held:* so long as the tenant for life paid the premiums on the policy & produced the receipt for them to the trustees, so that the trustees were not called upon to apply any part of the income of the legacy in payment of the premiums, the order would not effect a forfeiture of the life interest.—*Re* SALTING, BAILLIE-HAMILTON *v.* MORGAN, [1932] 2 Ch. 57; 101 L. J. Ch. 305; 147 L. T. 432; 76 Sol. Jo. 344.

1011a. —— ——.]—By the second clause of marriage articles, it was agreed, that a sum should be settled on the wife, not stating how, & the husband renounced his marital right over it during the coverture. The fourth clause provided that, in case of her death leaving issue, it should belong to the husband & children successively; the fifth gave her a power of appointment, if she died without issue; & the sixth provided that the income should, "in all cases," belong to the husband during his life. There was no express life estate given to the wife:—*Held:* the wife, by implication, took an immediate life estate to her separate use.—BYAM *v.* BYAM (1854), 19 Beav. 58; 24 L. J. Ch. 209; 1 Jur. N. S. 79; 3 W. R. 95; 52 E. R. 270.

1054. *Add. Annotation:*—**Apld.** *e* Gooch, Gooch *v.* Gooch, [1929] 1 Ch. 740.

1059a. Application of accumulations during minority.]—Certain property was vested in the Public Trustee under a settlement, whereby the settlor directed him after her decease to pay the income to the tenants for life therein mentioned, & directed that after the death of any tenant for life the share of that tenant for life should be held in trust for the grandchildren of the settlor in manner therein mentioned. One of the tenants for life died in the lifetime of the settlor. A summons was taken out by the Public Trustee for the direction of the ct. as to the application of the accumulations of income of the share of the tenant for life who died in the lifetime of the settlor, having regard to the facts that (*a*) no grandchild of the settlor had attained the age of twenty-one years, or being female had married, at the death of the settlor; (*b*) one of the grandchildren of the settlor was born after the dates, when two of such grandchildren had attained the age of twenty-one years, & (*c*) a grandchild of the settlor, who survived the settlor, died under the age of twenty-one years:—*Held:* (1) the property from which the accumulated income arose must be regarded as the share to which the infant would become ultimately entitled, even though that share might be reduced by reason of other members of the class coming into existence; (2) the share of the grandchild, who had died under the age of twenty-one years, which had been provisionally assigned to that grandchild, ought to be treated as not having been properly assigned, & that portion of the money which had accrued while the infant was a member of the class, & which had not been applied in the maintenance & education of the infant, ought to be reassigned amongst the other persons who were at that time members of the class; (3) observations on the method of dealing with accumulations of income provisionally assigned to infant members of a class, having regard to Conveyancing Act, 1881 (c. 41), s. 43, & Trustee Act, 1925 (c. 19), s. 31.—*Re* KING, PUBLIC TRUSTEE *v.* ALDRIDGE, [1928] Ch. 330; 97 L. J. Ch. 172; 138 L. T. 641.

1071a. —— —— ——.]—PECK *v.* PARROT (1749), 1 Ves. Sen. 236; 27 E. R. 1004, L. C.

Part IX.—Beneficial Interests in Realty.

1260. *Add. Annotation:*—**Distd.** *Re* Williams' Settlement, Greenwell *v.* Humphries, [1929] 2 Ch. 361.

1526a. —— **Sale of lands charged to pay debts—Charge on other lands of settlor.**]—LEGH *v.* LEGH (1846), 15 Sim. 135; 60 E. R. 568.

Annotation:—**Reld.** *Re* Saunders-Davies, Saunders-Davies *v.* Saunders-Davies (1887), 56 L. J. Ch. 492.

1604a. —— ——.]—STAWELL *v.* AUSTIN (1677), 2 Rep. Ch. 125; 21 E. R. 635.

1779a. ——.]—WARMAN *v.* SEAMAN (1675), 2 Cas. in Ch. 209; Freem. Ch. 306; Poll. 112; Cas. *temp.* Finch, 279; 22 E. R. 914; *sub nom.* SEAMAN *v.* WARMAN, Freem. K. B. 306; 3 Keb. 544.

Annotations:— **Reld.** Lyon *v.* Mitchell (1816), 1 Madd. 467; *Re* Wynch Trusts, *Ex p.* Wynch (1854), 5 De G. M. & G. 188; Roddy *v.* Fitzgerald (1858), 6 H. L. Cas. 823.

1786a. —— **Conditional gift.**]—By marriage settlement, C., the husband, in consideration of the intended marriage & of the fortune of S., the wife, to which C. was to become entitled on the marriage, released land to the use of himself in fee until the marriage; &, after the marriage, to the use of himself for life; remainder to trustees to preserve contingent remainders; &, after the decease of C., in case S. should survive him, to the use of S. for life; remainder to trustees to preserve contingent remainders; &, after the decease of the survivor of C. & S., in case there should be only one child of the marriage, then living, & no other child then dead leaving issue, to the use of such child in fee; but, in case there should happen to be more than one such child living at the decease of the survivor of C. & S., or any child or children then dead leaving issue, then to the use of all such children of C. & S. & such children's children, respectively, for such estates as C. & S. should jointly appoint, &, in default of such appointment, as the survivor should appoint: &, in default of such appointment, to the use of all the children of the marriage as tenants

in common & of the heirs of their respective bodies, with cross remainders; & "for default of all such issue," to the use of four brothers & sisters of S. as tenants in common in fee. S. survived C.: there were two children of the marriage, of whom both died, without leaving issue, in the lifetime of S. No appointment was made:—*Held:* the remainder to S.'s brothers & sisters took effect, as it was not a limitation in remainder after the determination of the estates given to the children as tenants in common in tail by the limitation immediately preceding, but was an independent limitation to take effect in case there were, at the time of the death of the survivor of C. & S., no issue in whom any of the previous limitations could vest.—DOE d. LEES *v.* FORD (1853), 2 E. & B. 970; 23 L. J. Q. B. 53; 22 L. T. O. S. 184; 18 Jur. 420; 2 C. L. R. 654; 118 E. R. 1029.

Part X.—Tenant for Life and Remainderman.

1869. *Add. Annotations:—As to* (2) **Apld.** *Re* Robins, Holland *v.* Gillam, [1928] Ch. 721. **Refd.** *Re* Conquest, Royal Exchange Assurance *v.* Conquest, [1929] 2 Ch. 353; *Re* Whitaker, Rooke *v.* Whitaker, [1929] 1 Ch. 662; *Re* Smith, Vincent *v.* Smith, [1930] 1 Ch. 88.

1872. *Add. Annotations:—As to* (1) **Refd.** *Re* Whitaker, Rooke *v.* Whitaker, [1929] 1 Ch. 662. *As to* (2) **Distd.** *Re* Robins, Holland *v.* Gillam, [1928] Ch. 721. **Expld.** *Re* Conquest, Royal Exchange Assurance *v.* Conquest, [1929] 2 Ch. 353. **Consd.** *Re* Smith, Vincent *v.* Smith, [1930] 1 Ch. 88.

1873. For the existing paragraph substitute the following paragraph:—

—— —— ——.]—Testator, who died in 1871, devised his real estate to his trustees upon trust to divide the income during a long period, namely during the joint lives & the life of the survivor of a large class of persons, amongst another class of persons, their respective exors., administrators & assigns; & declared that, on cesser of the period, the land should be sold, & the net proceeds of sale divided amongst a third class of persons only then ascertainable, & he gave his trustees a power of sale until the trust for sale arose. Immediately before the commencement of Law of Property Act, 1925 (c. 20), all the *cestuis que vie* were dead except one, & all the original participants in income were also dead except one, & the income for many years had been distributed amongst their respective estates or assigns:—*Held:* (1) the land was held in undivided shares within Law of Property Act, 1925, Sched. I., Part IV., par. 1.

The trustees having received, through their surveyor, a notice from the local authority that certain premises, forming part of the trust estate, were in a defective condition, carried out the necessary repairs, & temporarily paid the cost thereof out of the rents of the trust estate:—*Held:* (2) the trustees having asked the ct. for directions, the ct. was free to determine how the expenses ought to be borne; (3) the expenses should be borne by capital.—*Re* ROBINS, HOLLAND *v.* GILLAM, [1928] Ch. 721; 97 L. J. Ch. 417; 139 L. T. 393.

Annotations:—As to (1) **Apld.** *Re* House, Westminster Bank *v.* Everett, [1929] 2 Ch. 166. *As to* (3) **Folld.** *Re* Smith, Vincent *v.* Smith, [1930] 1 Ch. 88. **Refd.** *Re* Conquest, Royal Exchange Assce. *v.* Conquest, [1929] 2 Ch. 353; *Re* Whitaker, Rooke *v.* Whitaker, [1929] 1 Ch. 662.

1873a. —— —— ——.]—Law of Property Act, 1925 (c. 20), s. 28 (2), has not deprived the ct. of its inherent jurisdiction to decide, in a proper case, that the cost of certain repairs to settled land ought to be borne by capital.

The intestate died possessed of an estate which included freehold cottages in a bad state of repair. After the death the local authority served notices to carry out repairs, including re-roofing & pointing of chimney stacks. Some of these repairs, in view of the state of the property at the intestate's death, would have amounted to "permanent improvements"; & this summons, issued upon the application of the administrator of the estate, raised questions as to the incidence of their cost:—*Held:* (1) the cost of repairs which are "improvements" within Settled Land Act, 1925 (c. 18), Sched. III., Pts. I, II., may properly & *primâ facie* ought to be borne by capital; (2) works not being "improvements" within these parts of that Sched. may properly be so borne if they are shown to be works in the nature of permanent improvements; (3) ordinary current repairs & "casual repairs," *i.e.*, those carried out in the ordinary course, generally at the cost of the tenant for life, cannot be treated as being "permanent improvements"; (4) Law of Property Act, 1925 (c. 20), s. 28 (2), does not compel Settled Land Act trustees to pay the costs of all repairs out of income, & does not deprive them of their discretion under Settled Land Act, 1925 (c. 18), s. 102.—*Re* SMITH, VINCENT *v.* SMITH, [1930] 1 Ch. 88; 99 L. J. Ch. 27; 142 L. T. 178.

1873b. — **Effect of Law of Property Act, 1925 (c. 20), s. 28 (1).**]—The effect of above sub-sect. is (*a*) to give to trustees for sale powers of management of land, including the repair & rebuilding of houses, the cost of which, by virtue of sub-section 3 of Settled Land Act, 1925 (c. 18), s. 102, is payable out of income, & (*b*) to give power to trustees to make improvements which, under Settled Land Act, 1925 (c. 18), s. 84, coupled with the provisions of Sched. III. thereto, can be paid for out of capital. Therefore where trustees have a choice of powers under above sub-sect., they should be guided in their choice by the equitable principles laid down & applied in *Re Hotchkys, Freke* v. *Calmady*, No. 1869, & the language of the judgment in *Re Gray, Public Trustee* v. *Woodhouse*, No. 1872, is not to be construed as an authority

PART X. SECT. 3, SUB-SECT. 4.—A. *Re* DWYER, [1930] 2 D. L. R. 897.—CAN.

g 1. —— —— *Ordinary repairs payable out of income by tenant for life.*]—sm. *Extent of rule—Corpus liable only for repairs necessary to keep estate in saleable condition.*]—WILSON *v.* WHELPLEY (1929), 1 M. P. R. 196.—CAN.

for the contrary proposition.—*Re* CONQUEST, ROYAL EXCHANGE ASSCE. *v.* CONQUEST, [1929] 2 Ch. 353; 98 L. J. Ch. 441; 141 L. T. 685.

Annotation:—**Refd.** *Re* Smith, Vincent *v.* Smith, [1930] 1 Ch. 88.

1878a. —— **Permanent structural repairs.**]—Dangerous structure notices were served by a local authority on trustees in respect of houses forming part of a trust estate. The necessary work involved pulling down, rebuilding, & reinstatement of the houses:—*Held:* the work involved structural reconstruction of a permanent nature, & that therefore the cost was to be provided for out of capital.—*Re* WHITAKER, ROOKE *v.* WHITAKER, [1929] 1 Ch. 662; 98 L. J. Ch. 312; 141 L. T. 28.

Annotations:—**Apld.** *Re* Conquest, Royal Exchange Assce. *v.* Conquest, [1929] 2 Ch. 353. **Consd.** *Re* Smith, Vincent *v.* Smith, [1930] 1 Ch. 88.

1878b. —— ——.]—*Re* SMITH, VINCENT *v.* SMITH, No. 1873a, *ante*.

1884a. —— ——.]—Devise to A. & others on trust to apply the rents in payment of certain debts, then to apply them for the benefit of A. for life with remainders over, with a direction that A. should be allowed to occupy the premises, keeping them in repair, & paying £100 *per annum*, or such other rent as the trustees should think reasonable. A. was the only acting trustee. He continued to occupy the premises after testator's death. They were afterwards burnt down:—*Held:* A. was bound to reinstate the premises, & to pay £100 a year during the occupation after the fire.—GREGG *v.* COATES, HODGSON *v.* COATES (1856), 23 Beav. 33; 2 Jur. N. S. 964; 4 W. R. 735; 53 E. R. 13.

Annotations:—**Apld.** *Re* Williames, Andrew *v.* Williames (1885), 54 L. T. 105; *Re* Bradbrook, Lock *v.* Willis (1887), 56 L. T. 106. **Refd.** Woodhouse *v.* Walker (1880), 5 Q. B. D 404; Batthyany *v.* Walford (1886), 33 Ch. D. 624.

1891. *Add. Annotation:*—**Refd.** *Re* Weld-Blundell Estate, Mowbray (Lord) *v.* Weld-Blundell (1929), 73 Sol. Jo. 585.

1917. *Add. Annotation:*—**Apld.** Spyer *v.* Phillipson, [1931] 2 Ch. 183.

1955. *Add. Annotation:*—**Refd.** *Re* Fulford, Fulford *v.* Hyslop, [1930] 1 Ch. 71.

1960a. —— **Vested legacy fund—Payment postponed.**]—(1) The income of a fund set apart to answer a legacy vested but not payable until a future date falls into the residue as capital, & must, as between the tenant for life & the remainderman of the residue, be invested, & the income only arising from such investment paid to the tenant for life.

(2) The unapplied income of a fund set apart to answer an annuity payable at the discretion of trustees belongs to the tenant for life of the residue as income.—*Re* WHITEHEAD, PEACOCK *v.* LUCAS, [1894] 1 Ch. 678; 63 L. J. Ch. 229; 70 L. T. 122; 42 W. R. 491; 38 Sol. Jo. 183; 8 R. 142.

Annotation:—*Generally*, **Refd.** *Re* Hawkins, White *v.* White, [1916] 2 Ch. 570.

1975a. ——.]—In 1838 property was demised for a term determinable on the dropping of three lives, reserving a yearly rent & a heriot payable on the dropping of each life, with a covenant for perpetual renewal at a specified fine on the dropping of each life. In 1869 the persons who had then become absolute owners subject to the lease settled the property in strict settlement, giving to a trustee ample powers of management, with powers to grant leases with or without covenants for renewal, & to perform any covenant for renewal previously entered into by any previous owner, or by the trustee for the time being, so that in every such appointment, lease or demise the best rent be reserved without taking any fine or premium. During the continuance of a tenancy for life under this settlement two lives dropped, & on each occasion a heriot was paid & the lease renewed by the trustee at a fine in pursuance of the covenant:—*Held:* the powers given to the trustee did not affect the question, & the fines & heriots were casual profits payable to the tenant for life.—BRIGSTOCKE *v.* BRIGSTOCKE (1878), 8 Ch. D. 357; 47 L. J. Ch. 817; 38 L. T. 760; 26 W. R. 761, C. A.

Annotation:—**Refd.** *Re* Rodes, Sanders *v.* Hobson, [1909] 1 Ch. 815.

1998a. "Distribution of capital assets."] — A limited co. not in liquidation can make no payment by way of return of capital to its shareholders except as a step in an authorised reduction of capital. Any other distribution of money, whether called dividend or bonus or any other name, can only be made by way of dividing profits. Moneys so paid to a shareholder who is a trustee consequently will belong *primâ facie* to the person beneficially entitled to the income of the trust estate. If the moneys or any part of them are to be treated as *corpus*, there must be some provision of the trust deed which brings about that result; no statement by the co. or its officers can affect the rights of the beneficiaries in the matter.

In 1925 a pastoral co. in New South Wales sold substantially the whole of its lands, live stock & other assets, & ceased to carry on its business. In 1926 a dividend was declared & paid as "a distribution of capital assets in advance of the winding up." No question arose in the appeal as to that dividend. In Nov. 1927, the co. declared & paid a dividend, stating that it was paid out of the sale of the breeding stock. Upon an originating summons issued by trustees, who held over two-thirds of the shares issued, the Supreme Ct. held that the dividend should be treated as capital of the trust estate. Upon appeal to the Privy Council resps., while supporting that decision, contended alternatively that the dividend could not have been paid but for a breach of duty by the trustees in not opposing resolutions passed in 1926 altering one of the co.'s articles of assocn.:—*Held:* the dividend should be treated as income of the trust estate, but the moneys should be retained by the trustees for a limited period, in order that the beneficiaries might, if they wished, assert in hostile litigation a claim based upon the alternative contention above stated, the materials necessary to dispose of that point not being fully before the board.—HILL (R. A.) *v.* PERMANENT TRUSTEE CO. OF NEW SOUTH WALES, LTD., [1930] A. C. 720; 144 L. T. 65; *sub nom. Re* HILL (RICHARD), HILL *v.* PERMANENT TRUSTEE CO. OF NEW SOUTH WALES, 99 L. J. P. C. 191, P. C.

8a. *Dividend out of profit on sale of assets.*]—*Re* HILL, PERMANENT TRUSTEE CO. *v.* HILL (1929), 29 S. R. N. S. W. 53; 46 N. S. W. W. N. 10.—AUS.

2007. *Add. Annotation :*—**Apld.** *Re* Bates, Mountain *v.* Bates, [1928] Ch. 682.

2009a. ——.]—The directors of a co. owning & operating steam trawlers, having sold some of their vessels for sums largely exceeding the values at which they stood in the co.'s balance sheet, carried the proceeds to a suspense account & afterwards distributed them as cash bonuses to the shareholders, with a covering letter stating that such bonuses were capital payments not liable to income tax or super tax :—*Held :* not having been capitalised by the issue of bonus shares increasing the total capital, the payments were income receivable by the tenant for life during his life.—*Re* BATES, MOUNTAIN *v.* BATES, [1928] Ch. 682 ; 97 L. J. Ch. 240 ; 139 L. T. 162 ; 72 Sol. Jo. 468.

Annotation :—**Apprvd.** Hill (R. A.) *v.* Permanent Trustee Co. of New South Wales, Ltd., [1930] A. C. 720.

2020a. ——.]—CALTHORPE'S LORD WILL CASE (*circa* 1795), cited in 14 Ves. at p. 77 ; 33 E. R. 450.

Annotations :—**Distd.** Barclay *v.* Wainewright (1807), 14 Ves. 66. **Refd.** *Re* Bouch, Sproule *v.* Bouch (1885), 29 Ch. D. 635.

2035. *Add. Annotations :*—**Distd.** *Re* Bates, Mountain *v.* Bates, [1928] Ch. 682 ; Parker *v.* Chapman (1928), 138 L. T. 729 ; Hill (R. A.) *v.* Permanent Trustee Co. of New South Wales, Ltd., [1930] A. C. 720.

2059. *Add. Annotation :*—**Distd.** Hill (R. A.) *v.* Permanent Trustee Co. of New South Wales, Ltd., [1930] A. C. 720.

2090. *Add. Annotations :*—**Consd.** *Re* McKee, Public Trustee *v.* McKee, [1931] 2 Ch. 145. **Refd.** *Re* Sullivan, Dunkley *v.* Sullivan (1929), 45 T. L. R. 590.

2127. Add the following paragraph :—

If that sum had been six months' interest paid by the mtgor. instead of six months' notice before repayment of the mtge. moneys, then it would have been payable to the tenant for life (NORTH, J.).

2131a. Repayment of income tax.] — Testator directed that his residuary estate should be held in trust for such of his sons as should attain the age of twenty-one years & such of his daughters as should attain that age or marry. He further directed his trustees to hold the share of a daughter in trust to pay her the income thereof during her life, & after her death in trust for such persons as she should by will appoint, & in default of appointment in trust for all her children in equal shares, & in default of any issue of a daughter in trust for his other sons or daughters as part of their shares. Testator died in 1906, leaving one son & one daughter. The daughter attained the age of twenty-one years in 1926, & married in 1927. There was issue of that marriage one son. In 1927 the daughter claimed, under Income Tax Act, 1918 (c. 40), s. 25), repayment of moneys paid or deducted on account of tax in respect of the income of her share accumulated under the will during her minority. In 1928 the Board of Inland Revenue admitted her claim in this respect to the amount of £7,770 19*s.* 4*d.*, & that amount had been paid to her. A question was then raised whether that sum should be treated as an accretion to the capital of the daughter's share, or whether she was entitled to it absolutely :—*Held :* the daughter was entitled absolutely to the sum of £7,770 19*s.* 4*d.* —*Re* FULFORD, FULFORD *v.* HYSLOP, [1930] 1 Ch. 71 ; 99 L. J. Ch. 80 ; 142 L. T. 185.

2140a. —— Dividends on bonus shares created after death of tenant for life.]—*Re* HYDE (WILLIAM) WILL TRUSTS, HYDE *v.* BRYCE (1930), 74 Sol. Jo. 467.

2157a. Benefits gained by compromise of claim against estate of testator.]—A claim made against the estate of testator was compromised by the payment of a large sum several years after testator's death :—*Held :* the amount due for principal & interest at testator's death must be treated as a debt due from his estate, & the *corpus* thereof reduced by that amount ; & any benefit gained to the estate by the compromise must, as between the persons entitled to the *corpus* & income thereof, be apportioned in the ratio of the amount due from testator at the day of his death, to the further amount calculated to have been due from his estate at the time when the compromise was effected.—MACLAREN *v.* STAINTON (1867), L. R. 4 Eq. 448 ; 15 W. R. 974.

2157b. Insufficiency of assets—Sums received on realisation.]—Testator bequeathed a legacy of £10,000 with interest from his death at 4 per cent. *per annum*, to trustees upon trust to pay the income to certain persons during the life of one of them, & after her death upon trust for other persons. Testator's estate was insufficient for payment in full of his

PART X. SECT. 4, SUB-SECT. 3.—M. (g).

sd. *Proceeds from sale of assets—& rents & profits from leasehold & freehold properties.*]—*Held :* the moneys so received by the trustees must be treated as part of the capital of the estate.—UNION TRUSTEE CO. OF AUSTRALIA *v.* WATSON (1931), 48 N. S. W. W. N. 102.—**AUS.**

PART X. SECT. 4, SUB-SECT. 3.—P. (b).

2101 i. *Whether interest equal to interest on authorised investments.*]—A tenant for life is entitled to be paid, pending conversion, the amount allowed by the rule in *Howe* v. *Earl of Dartmouth*, notwithstanding that the income actually received falls short of the amount allowed under that rule, & is entitled to a charge on capital accordingly. The tenant for life has the same rights pending conversion in a case where the ct. authorises postponement of the sale of assets which without such authorisation the trustees would be bound to realise under the rule in *Howe* v. *Earl of Dartmouth*. *Qu. :* whether the tenant for life is entitled pending conversion to require the amount of any deficiency in the actual income to be raised by enforcement of the charge.—UNION TRUSTEE CO. OF AUSTRALIA, LTD. *v.* GRAHAM (1931), 31 S. R. N. S. W. 528 ; 48 N. S. W. W. N. 194.—**AUS.**

PART X. SECT. 4, SUB-SECT. 3.—Q.

sb *Company dealing in lands of specific estate—Profits on sale.*]—*Re* VICKERS (1923), 54 O. L. R. 352.—**CAN.**

sd. *Profits from carrying on station.*]—In carrying on a station property it is the duty of the trustees to hold the scales as evenly as possible between the life tenant & remaindermen consistently with prudent management, starting with the basic principle that the capital of the business is the capital which was embarked therein at the date of the testator's death, that any profit which that capital earns as the result of a strict method of accountancy belongs to the life tenant as soon as that profit is realised in cash, that that profit should be realised in cash so soon as it prudently can be realised, & that the life tenant is only entitled to such profits as is from time to time during the life tenancy realised in cash. —*Re* PORTER, PORTER *v.* PORTER (1931), 31 S. R. N. S. W. 115 ; 48 N. S. W. W. N. 17.—**AUS.**

sf. ——.]—For the purpose of ascertaining the amount due to life tenants for income derived from the carrying on of a station for the purpose of the realisation of an estate, the whole period during which the station is carried on must be treated as one period. A book profit shown in an administrator's accounts for a part of such period is not income necessarily to be appropriated to a life tenant.—UNION TRUSTEE CO. OF AUSTRALIA, LTD. *v* ECKFORD (1931), 31 S. R. N. S. W. 92 ; 48 N. S. W. W. N. 40.—**AUS.**

legacies, & the realisation of his assets occupied several years:—*Held:* moneys from time to time received by the trustees & applicable to the legacy were divisible rateably between capital & income, so as to attribute to income £4 per cent. from testator's death on the amount attributed to capital.—*Re* TINKLER'S ESTATE (1875), L. R. 20 Eq. 456; 45 L. J. Ch. 135.

Annotation:—**Refd.** *Re* Foster, Lloyd *v.* Carr (1890), 45 Ch. D. 629.

2197a. Cost of rendering accounts for succession duty.]—*Held:* (1) the expense of fencing waste lands granted to a trustee for the benefit of the estate must be paid out of capital; (2) the costs of rendering accounts for the succession duty, payable for the first equitable tenant for life, must be paid out of income.—COWLEY (EARL) *v.* WELLESLEY (1866), L. R. 1 Eq. 656; 35 Beav. 635; 14 L. T. 245; 14 W. R. 528; 55 E. R. 1043.

2197b. Calls on shares.]—Testator bequeathed residuary personalty to trustees upon trust, either to continue existing investments or sell any part of the estate, & invest in certain stocks, shares & bonds. He directed calls, if any, which, at or after his death, might be or become due in respect of shares for the time being constituting part of his residuary personal estate, to be paid out of income:—*Held:* the direction applied to calls on railway shares held by testator at his death, but not to such shares acquired by the trustees.—BEVAN *v.* WATERHOUSE (1876), 3 Ch. D. 752; 46 L. J. Ch. 331.

2202. *Add. Annotation:*—*As to* (1) **Refd.** *Re* Whitaker, Rooke *v.* Whitaker, [1929] 1 Ch. 662.

2203. *Add. Annotation:*—**Refd.** *Re* Whitaker, Rooke *v.* Whitaker, [1929] 1 Ch. 662.

2204. *Add. Annotations:*—**Apld.** *Re* Smith, Vincent *v.* Smith, [1930] 1 Ch. 88. **Refd.** *Re* Whitaker, Rooke *v.* Whitaker, [1929] 1 Ch. 662.

2205a. Enlargement of canal, docks & harbour.]—*Held:* the expenditure was a charge on the *corpus* of the estates comprised in the term.—*Re* BUTE (MARQUESS), BUTE (MARQUESS) *v.* RYDER (1884), 27 Ch. D. 196; 53 L. J. Ch. 1090; 32 W. R. 996.

2205b. Cost of fencing waste lands.]—COWLEY (EARL) *v.* WELLESLEY, No. 2197a, *ante*.

2207a. Liability for performance of covenants in lease.]—Testator, who had assigned during his life certain leasehold property, bequeathed by his will other leaseholds & the residue of his property to tenants for life, with remainders over. The assignees of the leaseholds became bkpt., & the exors. of testator took a reassignment of those leaseholds. Liabilities having arisen under the covenants in the original lease, it was held that those liabilities must fall upon the *corpus*, & not upon the income, of testator's estate.—ALLEN *v.* EMBLETON (1858), 4 Drew. 226; 27 L. J. Ch. 297; 4 Jur. N. S. 79; 6 W. R. 272; 62 E. R. 87.

Annotation:—**Apld.** *Re* Owen, Slater *v.* Owen, [1912] 1 Ch. 519.

2209a. —— —— —.]—*Re* LORIMER (1850), 12 Beav. 521; 19 L. J. Ch. 524; 16 L. T. O. S. 406; 14 Jur. 1126; 50 E. R. 1160.

2209b. —.]—A sum of money having been paid into court under Trustee Relief Act, a petition was presented by the tenant for life for payment of the dividends:—*Held:* the *corpus* of the fund was not liable to bear the costs of the appln.—*Re* BANGLEY'S TRUST (1852), 21 L. J. Ch. 875; 19 L. T. O. S. 269; 16 Jur. 682.

2209c. —.]—*Re* BUTLER'S TRUST (1852), 16 Jur. 324.

2222. For "*Re* WOOD'S ESTATE, No. 2311, *post*," substitute the following: "*Re* WOOD'S TRUSTS (1870), L. R. 11 Eq. 155; 40 L. J. Ch. 179; 23 L. T. 586; 19 W. R. 227."

Annotation:—**Consd.** *Re* Evans' Trusts (1872), 26 L. T. 682.

2243. *Add. Annotation:*—*As to* (2) **Refd.** Garland *v.* Archer-Shee (1930), 142 L. T. 443.

2243a. —.]—POWYS *v.* BLAGRAVE (1854), 4 De G. M. & G. 448; 2 Eq. Rep. 1204; 24 L. J. Ch. 142; 24 L. T. O. S. 17; 2 W. R. 700; 43 E. R. 582, L. C.

Annotations:—**Consd.** *Re* Hotchkys, Freke *v.* Calmady (1886), 32 Ch. D. 408. **Refd.** Barnes *v.* Dowling (1881), 44 L. T. 809; *Re* Williames, Andrew *v.* Williames (1884), 52 L. T. 41; *Re* Cartwright, Avis *v.* Newman (1889), 41 Ch. D. 532; *Re* Freman, Dimond *v.* Newburn, [1898] 1 Ch. 28.

2243b. —— —— **Opposition to Bill in Parliament.**]—An estate was settled by the will of a testator, his widow being the first, & his nephew the second tenant for life. During the lifetime of the widow she expended out of her own moneys various sums in making improvements upon the estate. Some of these sums were expended before, & some after the commencement of Settled Land Act, 1882 (c. 38). With regard to those which were expended after the commencement of the Act, no scheme was, prior to the execution of the works, submitted for approval, either to the trustees of the settlement or to the ct., in accordance with sect. 26 of the Act. The widow also, prior to the commencement of the Act, paid out of her own moneys the costs of the successful opposition of the trustees to some bills in Parliament, which contained provisions injuriously affecting the estate. The repayment to the widow of all the sums thus expended by her was secured by four bonds given to her by the nephew. After the death of the widow the nephew, being then tenant for life in possession of the estate, applied to the ct. of a direction to the trustees to apply capital money in their hands in payment of the amounts due upon the bonds:—*Held:* independently of Settled Land Act, 1882 (c. 38), s. 36, the ct., under its general jurisdiction, had power to direct the payment of the costs of the Parliamentary opposition out of the capital money, & payment was directed accordingly.—*Re* ORMROD'S SETTLED ESTATE, [1892] 2 Ch. 318; 61 L. J. Ch. 651; 66 L. T. 845; 40 W. R. 490; 36 Sol. Jo. 427.

Annotations:—**Refd.** *Re* Bristol's (Marquis) Settled Estates, [1893] 3 Ch. 161; *Re* L. C. C., *Ex p.* Pennington (1901), 84 L. T. 808.

2254a. .]—HAWKINS *v.* HAWKINS (1836), 6 L. J. Ch. 69.

Annotation:—**Distd.** Makings *v.* Makings (1860), 1 De G. F. & J. 355.

PART X. SECT. 6, SUB-SECT. 1.

sp. Power of trustee to effect hail insurance.]—Where it is a prudent & proper precaution to adopt, a trustee has power to effect hail insurance, although there is no statutory provision authorising him to do so.—*Re* SEIBEL ESTATE, [1931] 2 W. W. R. 581.—**CAN.**

2297a. Annuity fund—Unapplied income.]—*Re* WHITEHEAD, PEACOCK *v.* LUCAS, No. 1960a, *ante*.

2319a. Temporary investment—Apportionment of loss.]—A sum of money appointed to be laid out in a purchase to the use of A. for his life, remainder to his eldest son, subject to a charge for the provision of younger children; the money to be let out in any public fund, till a convenient purchase found: if a loss happens before the purchase, it must be born in an average.—CHAMBERS *v.* CHAMBERS (1730), Fitz-G. 127; 1 Eq. Cas. Abr. 115; Mos. 333; 94 E. R. 684, L. C.

Annotations:—**Expld.** Oke *v.* Heath (1748), 1 Ves. Sen. 135. **Consd.** Booth *v.* Allington (1856), 6 De G. M. & G. 613.

Part XI.—Custody of Title Deeds.

2357. *Add. Annotation:*—**Refd.** Clayton *v.* Clayton, [1930] 2 Ch. 12.

2358. *Add. Annotation:*—**Consd.** Clayton *v.* Clayton, [1930] 2 Ch. 12.

2358a. ——.]—GARROD *v.* MOOR (1846), 8 L. T. O. S. 270.

2359. *Add. Annotation:*—**Refd.** Clayton *v.* Clayton, [1930] 2 Ch. 12.

2377a. Trustees with duties to perform.]—A testator died, having by his will bequeathed settled legacies & having thereby also by legal limitations settled freeholds which in the events which happened became vested free from incumbrances & charges in pltf. From time to time there had been appointments of new trustees of testator's will for the purposes of the Settled Land Acts & other purposes, including three by deeds of 1902, 1904, & 1915. In 1924 pltf. had been appointed Settled Land Act trustee of testator's will, jointly with the then trustees thereof, the appointment being limited to the freeholds. At the date when the freeholds became vested absolutely in the pltf., the trusts of some of the settled legacies were still on foot. In an action by pltf. claiming the custody of the appointments of 1902, 1904, & 1915, as forming part of his title to the freeholds:—*Held:* trustees who have duties to perform in relation to their trusts may retain title deeds lawfully in their possession as trustees.—CLAYTON *v.* CLAYTON, [1930] 2 Ch. 12; 99 L. J. Ch. 498; 143 L. T. 696.

2379. *Add. Annotation:*—**Refd.** Clayton *v.* Clayton, [1930] 2 Ch. 12.

Part XII.—Express Powers in Instruments.

2396. *Add. Annotation:*—**Refd.** Johnson *v.* Clarke, [1928] Ch. 847.

2398a. —— Sale to tenant for life.]—Where the trustees of lands in strict settlement have a power to sell, with the consent of the tenant for life, a sale by the trustees to the tenant for life will be held good.—HOWARD *v.* DUCANE (1823), Turn. & R. 81; 1 L. J. O. S. Ch. 85; 37 E. R. 1025, L. C.

Annotations:—**Expld.** Eland *v.* Baker (1867), 29 Beav. 137. **Apld.** Dicconson *v.* Talbot (1870), 6 Ch. App. 32. **Refd.** Grover *v.* Hugell (1827), 3 Russ. 428; Greenlaw *v.* King (1841), 10 L. J. Ch. 129; Beaden *v.* King (1952), 9 Hare, 499; Bevan *v.* Habgood (1860), 1 John. & H. 222.

2399a. —— —— ——.]—EISDELL *v.* HAMMERSLEY (1862), 31 Beav. 255; 6 L. T. 706; 54 E. R. 1136.

Annotations:—**Apprvd.** Alexander *v.* Mills (1870), 6 Ch. App. 124. **Consd.** *Re* Cooper, Cooper *v.* Slight (1884), 27 Ch. D. 565; Hardaker *v.* Moorhouse (1884), 26 Ch. D. 417. **Apld.** *Re* Bedingfeld & Herrings' Contract, [1893] 2 Ch. 332. **Refd.** Parr *v.* A.-G., [1926] A. C. 239.

2399b. Power to sell under subsequent settlement—Reference to former settlement—"Ulterior to limitations therein."]—*Held:* the expression "ulterior to the limitations therein" meant ulterior in point of position in the deed, & not ulterior in point of time.—MORGAN *v.* RUTSON (1848), 16 Sim. 234; 17 L. J. Ch. 419; 11 L. T. O. S. 238; 12 Jur. 813; 60 E. R. 863.

2570. *Add. Annotations:*—**Refd.** A.-G. *v.* Tasker (1928), 92 J. P. 157; A.-G. *v.* Manchester Corpn., [1931] 1 Ch. 254.

Part XIII.—Statutory Powers in Relation to Settled Property.

2579. *Add. Annotation:—Generally,* **Refd.** *Re* Austen, Collins *v.* Margetts, [1929] 2 Ch. 155.

2596. *Add. Annotation:*—**Refd.** *Re* Draycott Settled Estate, [1928] Ch. 371.

PART X. SECT. 8, SUB-SECT. 1.—B.

2320 ii. —— —— ——.]—Where a loss occurs under a mtge. of trust funds, the income of which is payable to a life tenant, the loss should be apportioned between the tenant for life & the remainderman by adding the amount actually realised from the security to the amount of interest theretofore received by the tenant for life & dividing the whole sum between the latter & the remainderman in the proportion in which they would have been entitled to share if the security had been paid in full, the tenant for life giving credit for the amounts already received.—*Re* PLUMB (1896), 27 O. R. 601.—**CAN.**

PART XII. SECT. 3.

n i. —— *Power to retain non-trustee securities.*]—FOGO *v.* FOGO'S TRUSTEES [1929] S. C. (Ct. of Sess.) 546.—**SCOT.**

2597. For the existing paragraph substitute the following paragraph:—

—— **Settled Land Act, 1925 (c. 18), ss. 1, 2.**]—Land was, on Dec. 31, 1925, held by two persons under a devise contained in a will, made in 1888, as joint tenants in fee simple absolutely, subject to a charge for £1,000 created in 1869 in consideration of marriage:—*Held:* (1) the land was settled land within Settled Land Act, 1925, ss. 1 (1) (*v*) & 2, & it was excepted from the application of Law of Property Act, 1925 (c. 20), s. 36 (1); (2) there was nothing in the context to give to the words "settled land" in Law of Property Act, 1925, s. 36 (1), any other meaning than that given by sect. 205 (1) (xxvi).—*Re* GAUL & HOULSTON'S CONTRACT, [1928] Ch. 689; 97 L. J. Ch. 362; 139 L. T. 473, C. A.

2598. *Add. Citations:*—97 L. J. Ch. 193; 139 L. T. 59.

2600a. Land subject to payment of perpetual annuity—Settled Land Act, 1925 (c. 18), s. 1 (1) (v).]—A perpetual annuity, created voluntarily, is a payment of a periodical sum for the "benefit" of the person receiving it within Settled Land Act, 1925 (c. 18), s. 1 (1) (v). Therefore land subject to such a charge became, on Jan. 1, 1926, settled land.—*Re* AUSTEN, COLLINS *v.* MARGETTS, [1929] 2 Ch. 155; 98 L. J. Ch. 384; 141 L. T. 325.

2602. *Add. Annotation:*—**N.F.** *Re* Parker's Settled Estates, Parker *v.* Parker, [1928] Ch. 247.

2602a. Settlement of undivided moiety—Settlement of remaining moiety—Merger before operation of Law of Property Act, 1925 (c. 20).]—By a voluntary settlement made in 1909 an undivided moiety of a freehold estate was settled upon the usual limitations of a strict settlement, & the settlor having acquired the other moiety afterwards settled it by his will upon the same uses & trusts & with the same trustees as the settlement. The settlor died in 1910 & the tenant for life under the two settlements died in 1930:—*Held:* the entirety of the land was settled land, the two moieties having completely merged before 1926, & on the death of the tenant for life it vested in his special exors.—*Re* EGTON SETTLED ESTATE, FOSTER *v.* FOSTER, [1931] 2 Ch. 180; 100 L. J. Ch. 273; 145 L. T. 70.

2619. *Add. Annotations:*—**Refd.** *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276; *Re* Davies' Will Trusts, Bevan *v.* Williams, [1932] 1 Ch. 530.

2632. *Add. Annotation:*—*As to* (2) **Apld.** *Re* Alston-Roberts-West's Settled Estates, [1928] W. N. 41.

2633a. Not tenant under lease at rent.]—A person who is a tenant of settled land under a lease at a rent is, as a matter of necessary implication from the language of sect. 20 (1) (iv), of Settled Land Act, 1925 (c. 18), excluded from the class of persons upon whom the section confers the powers of a tenant for life. The amount of the rent is immaterial.—*Re* CATLING, PUBLIC TRUSTEE *v.* CATLING, [1931] 2 Ch. 359; 100 L. J. Ch. 390; 145 L. T. 613.

2648. *Add. Annotation:*—**Consd.** *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276.

2652. *Add. Annotation:*—**Refd.** *Re* Acklom, Oakeshott *v.* Hawkins, [1929] 1 Ch. 195.

2676. *Add. Annotation:*—**Consd.** *Re* Robins, Holland *v.* Gillam, [1928] Ch. 721.

2679. *Add. Annotation:*—*As to* (2) **Distd.** *Re* Stevens & Dunsby's Contract, [1928] W. N. 187.

2679a. —— **Trust for accumulation of income for payment of mortgages.**]—*Re* STEVENS & DUNSBY'S CONTRACT, [1928] W. N. 187.

2727a. —— **With "intent" to extinguish—Settled Land Act, 1925 (c. 18), s. 105—To what assignors applicable—Any person in whom life estate vested.**]—*Held:* the operation of Settled Land Act, 1925 (c. 18), s. 105 (1), is not confined to the case of an assurance by the tenant for life himself of his estate, but extends to an assurance by any person in whom the life estate is vested, including a trustee in bkpcy. of the tenant for life. The "intent" referred to in the sect. was the intent of the assignor.

Where therefore a tenant for life was bkpt., & his trustee in bkpcy. sold & assured the estate for life to the tenant in tail in remainder, but the tenant for life refused to execute a vesting deed in his favour:—*Held:* the tenant in tail was entitled to a vesting order under Settled Land Act, 1925 (c. 18), s. 12 (1) (*a*).—*Re* SHAWDON ESTATES SETTLEMENT, [1930] 2 Ch. 1; 99 L. J. Ch. 189; 142 L. T. 566; 74 Sol. Jo. 215; [1929] B. & C. R. 152, C. A.

2727b. —— —— —— —— **Trustee in bankruptcy of tenant for life.**]—*Re* SHAWDON ESTATES SETTLEMENT, No. 2727a, *ante*.

2727c. —— —— —— **Whose intent referred to—Assignor.**]—*Re* SHAWDON ESTATES SETTLEMENT, No. 2727a, *ante*.

2732. *Add. Annotations:*—**Consd.** *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276. **Refd.** *Re* Acklom, Oakeshott *v.* Hawkins, [1929] 1 Ch. 195.

2738a. Restriction on power of letting.]—Testator by his will, dated Nov. 22, 1927, directed his trustees to retain £3,000 & to apply the interest yearly in payment of the taxes, rates & repairs of his freehold house, & he desired that his aunt should "have the use of it & my furniture free of cost for her occupation during her life or so long as she may require them, but without the power to sub-let the same or any part thereof. On the termination of her occupation the house is to be sold," & from the proceeds, added to the above £3,000, certain specific legacies were given. He also directed that when the house had been sold, his nephew, G. P., should have the furniture:—*Held:* (1) the provision forbidding the tenant for life to sub-let was void under Settled Land Act, 1925 (c. 18), s. 106 (1), & the provision requiring the house to be sold & the gift over of the proceeds of sale upon the termination of her occupation was also avoided by that sub-sect., so far as that provision would operate in the event of her

PART XIII. SECT. 1, SUB-SECT. 1.—D. (h) iii.

2643 ii. —— *Mere licensee.*]—The persons qualified to exercise the powers of leasing under Conveyancing & Law of Property Act, 1898, s. 68, are those having an estate in land, either an estate for life or a chattel interest. A person having a mere right of personal residence in a house for his life has not an estate of any kind therein, but a mere licence, &, therefore, is not qualified to exercise the powers of leasing referred to.—STEVENSON *v.* MYERS (1929), 47 N. S. W. W. N. 94.—**AUS.**

exercising any of her powers as tenant for life; (2) the gift over of the £3,000 was a provision which tended to induce her to abstain from exercising her powers of leasing as a tenant for life, & was void, therefore, in so far as it had that tendency; & that it should be read to take effect only upon her ceasing to reside for any reason other than the exercise of her powers of leasing as a tenant for life; (3) in the event of her selling the house she would not be entitled to be paid any part of the income of the £3,000; (4) she was entitled to the furniture during her life or until she ceased to occupy the house for any reason other than the exercise of her powers as tenant for life.—*Re* PATTEN, WESTMINSTER BANK *v.* CARLYON, [1929] 2 Ch. 276; 98 L. J. Ch. 419; 141 L. T. 295; 45 T. L. R. 504.

2739. *Add. Annotation:*—*As to* (2) **Refd.** *Re* Acklom, Oakeshott *v.* Hawkins, [1929] 1 Ch. 195.

2739a. this will dated Jan. 4, 1918, the testator bequeathed his leasehold house, garden & grounds, W. Ct., together with the fixtures & fittings & all his furniture, pictures (except some), china, plate, linen, grand piano, & all chattels & other effects therein, to his trustees upon trust to permit his sister, E., to reside there after his death, if she should wish to do so, & to have the use & enjoyment thereof during her life free of rent or other payment, & he gave to his sister the use & enjoyment of his said house, garden, & grounds, & everything contained therein, for her life accordingly, & he directed his trustees after her death or during her life if she should not wish to reside or continue to reside there to sell the same (except certain articles therein), with power to postpone such sale as they might think proper, & divide the proceeds between certain charities. He died on June 26, 1918, & the lady entered into possession thereof immediately. In 1925 she went abroad temporarily for the benefit of her health, the place being left in charge of servants, & she paid the Sched. A. tax. In 1926, owing to severe illness, she was prevented from returning to England, & the house was let by her from time to time, & she still paid Sched. A. tax thereon. In 1927 she sold the house as tenant for life or a person having the powers of a tenant for life, & shortly after the contents, other than the excepted articles, were sold by the trustees. On a summons taken out by the trustees asking whether she had any, &, if any, what interest in the proceeds of sale of the leasehold property & the income thereof:—*Held:* on the evidence, it must be deemed that those powers were properly exercised by her. The power of sale in the trustees never arose, nor did they purport to exercise it. She had not therefore forfeited her interest in the proceeds of sale of the leasehold property or the income thereof.—*Re* ACKLOM, OAKESHOTT *v.* HAWKINS, [1929] 1 Ch. 195; 98 L. J. Ch. 44; 140 L. T. 192; *sub nom. Re* ADELOM, OAKSHOTT *v.* HAWKINS, 72 Sol. Jo. 810.

2747a. **Of proceeds of settled land.**]—*Re* PATTEN, WESTMINSTER BANK *v.* CARLYON, No. 2738a, *ante*.

2798. *Add. Annotation:*—**Refd.** *Re* Price, [1928] Ch. 579.

2819. *Add. Annotation:*—*As to* (2) **Folld.** *Re* Patten, Westminster Bank *v.* Carlyon, [1929] 2 Ch. 276

2829. *Add. Annotation:*—**Folld.** Bernhardt *v.* Galsworthy, [1929] 1 Ch. 549.

2889a. **Power to vary leases—Settled Land Act, 1925 (c. 18), s. 59—Construction of section.**]—It is apparent, in my opinion, that Settled Land Act, 1925 (c. 18), s. 59 (1), is dealing only with a question of form, because it is clear from the final words of sect. 59 (1) that no more is being authorised than what might have been done under Settled Land Act, 1925 (c. 18), s. 52 (1). The provision in question is that "every such lease or grant shall, after such variation, release, waiver or modification as aforesaid, be such a lease or grant as might then have been" granted after a surrender, etc. In my opinion sect. 59 (1) is not limited to cases where the result of the variation, release, waiver or modification will at common law effect a surrender & regrant. This section is conferring a power on the tenant for life to execute documents in a particular form which he could have executed in another form as the result of the surrender or the surrender & regrant of the land previously dealt with. It relates to the widest possible release, variation, waiver or modification, including cases in which only part of the land comprised in the old lease or grant is the subject of those alterations (MAUGHAM, J.).—*Re* SAVILE SETTLED ESTATES, SAVILE *v.* SAVILE, [1931] 2 Ch. 210, 216; 100 L. J. Ch. 274; 145 L. T. 17.

Annotation:—**Consd.** *Re* Bruce, Brudenell *v.* Brudenell, [1932] 1 Ch. 316.

2900a. —— —— **Effect of existence of underlease.**]—A lease may be authorised under the Leases & Sales of Settled Estates Acts upon the surrender of an existing lease, although an underlease granted by the surrendering lessee is unexpired.—*Re* FORD'S SETTLED ESTATE (1869), L. R. 8 Eq. 309.

Annotation:—**Folld.** *Re* Grosvenor Settled Estates, Westminster (Duke) *v.* McKenna, [1932] 1 Ch. 232.

2900b. ——.]—Part of the freehold property comprised in a settlement was subject to a lease & also to an underlease. The tenant for life under the settlement wished to take a surrender of the lease &, without having a surrender of the underlease, to grant a new lease. On the evidence the proposed new lease reserved the best rent that could reasonably be obtained, & contained a proviso for re-entry on non-payment of the rent for twenty-one days:—*Held:* the tenant for life had power under Settled Land Act, 1925 (c. 18), s. 42 (1), & Law of Property Act, 1925 (c. 20), s. 150, to grant the new lease although the underlease remained outstanding. The new lease would take effect in immediate possession notwithstanding the existence of the underlease, & would therefore comply with Settled Land Act, 1925 (c. 18), s. 42 (1).—*Re* GROSVENOR SETTLED ESTATES, WESTMINSTER (DUKE) *v.* MCKENNA, [1932] 1 Ch. 232; 101 L. J. Ch. 145; 146 L. T. 402; 49 T. L. R. 7; 76 Sol. Jo. 779.

2950. *Add. Annotation:*—**Folld.** *Re* Weld-Blundell Estate, Mowbray (Lord) *v.* Weld-Blundell (1929), 73 Sol. Jo. 585.

2950a. **Express provision for proper preservation.**]—*Re* WELD-BLUNDELL ESTATE, MOWBRAY (LORD) *v.* WELD-BLUNDELL (1929), 73 Sol. Jo. 585.

3032a. —— —— ——.]—*Re* WATSON, BRAND *v.* CULME-SEYMOUR, [1928] W. N. 309; 166 L. T. Jo. 439.

3032b. Architect's fees—Short occupation lease.]—*Re* WATSON, BRAND *v.* CULME-SEYMOUR, [1928] W. N. 309; 166 L. T. Jo. 439.

3032c. Solicitors' fees—Obtaining short occupation lease.]—*Re* WATSON, BRAND *v.* CULME-SEYMOUR, [1928] W. N. 309; 166 L. T. Jo. 439.

3043. *Add. Annotations:*—**Consd.** *Re* Curwen, Curwen *v.* Graham, [1931] 2 Ch. 341. **Refd.** *Re* Cayley & Evans' Contract, [1930] 2 Ch. 143.

3046. *Add. Annotations:*—*As to* (1) **Apld.** *Re* Catchpool, Harris *v.* Catchpool, [1928] Ch. 429. **Consd.** *Re* Gaul & Houlston's Contract, [1928] Ch. 689. **Refd.** *Re* Parker's Settled Estates, Parker *v.* Parker, [1928] Ch. 247.

3047. *Add. Citation:*—97 L. J. Ch. 161.

Add. Annotations:—*As to* (1) **Refd.** *Re* Gaul & Houlston's Contract, [1928] Ch. 689; *Re* Norton, Pinney *v.* Beauchamp, [1929] 1 Ch. 84.

3047a. -.]—On Dec. 31, 1925, certain land stood limited to the use of A. for life, & after his death, subject to certain jointure rentcharges for life, & subject to certain portions which had been charged upon the estate, & which had been further secured by the limitation of a legal term, to the use of trustees upon trust for sale. The settlement under which the land so stood limited was a compound settlement, consisting of various documents, including two deeds of 1911 & 1913. In due course a vesting deed was executed in favour of A. A. died on Dec. 4, 1926, & probate, limited to the settled land, was granted to the trustees of the compound settlement as his special representatives, on the footing that that settlement did not come to an end on his death. There were separate trustees of the two deeds of 1911 & 1913. Clause 11 of the 1911 deed gave to the trustees thereof all the powers conferred on a tenant for life by Settled Land Acts, 1882 to 1890:—*Held:* (1) the whole legal estate, the subject-matter of the settlement, was not held upon trust for sale; (2) in view of clause 11 of the 1911 deed the trustees of the two deeds of 1911 & 1913 were persons on whom Settled Land Act, 1925 (c. 18), s. 23 (1), conferred the powers of a tenant for life, & they were statutory owners under the compound settlement; & when they sold the land they would sell it as statutory owners & not as trustees for sale, & they must pay over the proceeds of sale to the trustees of the compound settlement.—*Re* NORTON, PINNEY *v.* BEAUCHAMP, [1929] 1 Ch. 84; 98 L. J. Ch. 219; 140 L. T. 348.

3048. *Add. Annotation:*—**Folld.** *Re* Shelton's Settled Estates, [1928] W. N. 27.

3049a. —— **Private Act & three conveyances.**]—On the death intestate of the tenant in tail in possession of an estate settled by a private Act & three conveyances, it was held that the Act & conveyances together constituted one settlement & the ct. appointed two trustees for the purposes of the Settled Land Act, 1925 (c. 18), & gave them liberty to apply for a grant of administration limited to the settled lands.—*Re* HEREFORD'S SETTLED ESTATES, HEREFORD *v.* DEVEREUX, [1932] W. N. 34; 173 L. T. Jo. 115; 73 L. Jo. 153.

3074a. Refusal to execute—Order of Court under Settled Land Act, 1925 (c. 18), s. 12 (1) (a).]—*Re* SHAWDON ESTATES SETTLEMENT, No. 2727a, *post.*

3074b. Contents—Vesting deed on resettlement—Compound settlement.]—X. & Y., the trustees of an indenture of resettlement dated Aug. 26, 1915, by which certain property was settled subject to a jointure, executed on May 1, 1926, a vesting deed reciting the resettlement & purporting to vest the property in the tenant for life. On Dec. 31, 1925, X. was the sole surviving trustee for the purposes of the Settled Land Acts of an indenture of settlement dated July 12, 1882, which together with the resettlement & two other documents formed the compound settlement of the property. On July 5, 1926, the tenant for life entered into four contracts for the sale of a portion of the property to a purchaser. The purchaser raised objections to the title on the ground that the vesting deed was not framed in accordance with the provisions of the Settled Land Act, 1925 (c. 18): (*a*) as it only dealt with the resettlement & not with the compound settlement; (*b*) as it was not executed by the trustees of the compound settlement; & (*c*) as it did not contain the names of the persons who were the trustees of the compound settlement. The tenant for life took out a summons for a declaration that a good title to the property had been shown:—*Held:* the vesting deed did not comply with the requirements of the 1925 Act with reference to the compound settlement & the tenant for life was not able to exercise his statutory powers as tenant for life in respect of the disposal of his property; & the summons must be dismissed.—*Re* CAYLEY & EVANS' CONTRACT, [1930] 2 Ch. 143; 99 L. J. Ch. 411; 143 L. T. 405.

Annotation:—**Distd.** *Re* Curwen, Curwen *v.* Graham, [1931] 2 Ch. 341.

3074c. —— **Description of trustees as trustees of principal settlement—Sufficiency.**]—A vesting deed, executed with the intended object of giving effect to the provisions of Settled Land Act, 1925 (c. 18), with regard to the vesting of settled land in a tenant for life, contained a statement that the trustees, who were executing the deed, were trustees of the principal settlement, but it contained no reference to the fact that they were trustees of a compound settlement, consisting of the principal settlement & other documents:—*Held:* the trustees were sufficiently described, & the vesting deed was a valid & effectual principal vesting deed, made pursuant to Settled Land Act, 1925 (c. 18), in respect of the land comprised in the compound settlement, constituted by the various documents.—*Re* CURWEN, CURWEN *v.* GRAHAM, [1931] 2 Ch. 341; 100 L. J. Ch. 387; 146 L. T. 7.

Part XIV.—Trustees of Settlements.

3098. After this case add :—
Jurisdiction of court—To appoint trustees of settled land in Ireland.]—*See* COURTS, Vol. XVI., p. 104, No. 42.

Part XV.—Land Held in Undivided Shares.

3138. For the existing paragraph substitute the following paragraph :—
—— —— **Settled land.**]—By the will of testator, who died in 1884, his real estate was devised to trustees upon trust to permit his widow to receive the rents thereof during her life, & after her decease upon trust to pay same to or for the benefit of such of his two daughters, E. & M., as should be then living & should for the time being be single & unmarried in equal shares if more than one, & when both should be married upon trust as to both capital as well as income for all testator's children in equal shares. Testator's widow died in 1889, & on the death of E., in 1927, questions arose as to the respective interests of E. & M. & testator's children in the income & capital of the real estate. The ct. having decided that E. & M. were entitled to the income of the real estate during their joint lives in equal shares, & upon the death of E. her sister M. became entitled to the whole of the income during her spinsterhood, & upon her marriage or death the whole estate would become divisible in equal shares between the children of testator, the further question arose whether, on Law of Property Act, 1925 (c. 20), coming into force, the devised real estate vested in the then surviving trustee of the will upon the statutory trusts under Sched. I., Part IV., par. 1 (1), or in her or the Public Trustee under par. 1 (3) :—*Held :* (1) as the purposes of the trusts of testator's will were such as might continue beyond the life of his widow, the real estate devised by the will was, at the date of Law of Property Act, 1925, coming into force, by the effect of Wills Act, 1837 (c. 26), s. 31, vested in the then surviving trustee of the will in fee simple in trust for E. & M., who were then beneficially interested in equity until one of them should marry or die in undivided shares vested in possession ; (2) although their interests were not absolute interests, the case fell within Sched. I., Part IV., par. 1 (1), & the real estate thereupon vested in the trustee of the will upon the statutory trusts ; (3) when a case fell within par. 1 (1) it did not become necessary to consider whether it fell within any of the subsequent sub-paragraphs.—*Re* DAWSON'S SETTLED ESTATES, [1928] Ch. 421 ; 97 L. J. Ch. 343 ; 139 L. T. 94.

Annotations :—As to (2) **Folld.** *Re* Barrat, Body *v.* Barrat, [1929] 1 Ch. 336. **Refd.** *Re* Robins, Holland *v.* Gillam, [1928] Ch. 721.

3138a. —— —— ——.]—Testator, who died on June 16, 1881, leaving a widow & eight children, by his will gave all his estate to his wife & four children, whom he appointed exors. & trustees, upon trust to pay his debts, etc., & bequeathed the remainder of his personal effects to his wife & the income of his freeholds & leaseholds, subject to certain payments, & after her decease to pay such income to his four sons & daughters in certain shares, which were to cease at death, with a proviso as to four quarterly payments to widows of sons, &, subject thereto, gave his estate to the longest liver of his children absolutely. The widow died in 1900, & on the coming into force of the Law of Property Act, 1925, the deft. & daughter, who had since died, were the surviving trustees. All parties interested in the estate now desired a sale, & the question raised by this summons was first, whether pltf. & deft. R., the surviving trustee, were together tenant for life for the purposes of the Settled Land Act. Secondly, if it be not settled land, whether the entirety was now vested in the surviving trustee, or in the Public Trustee on the statutory trusts :—*Held :* Law of Property Act, 1925 (c. 20), Sch. I., Pt. IV., para. 4, added by the amending Act of 1926, was not applicable to the case; &, secondly, having regard to Wills Act, 1837 (c. 26), s. 31, & following *Re Dawson's Settled Estates*, No. 3138, the entirety was now vested in the surviving trustee under para. 1 (1), upon the statutory trusts.—*Re* BARRAT, BODY *v.* BARRAT, [1929] 1 Ch. 336 ; 98 L. J. Ch. 74 ; 140 L. T. 328.

3138b. —— —— ——.]—*Re* COLLINS, TOWERS *v.* COLLINS, [1929] 1 Ch. 201 ; 140 L. T. 223 ; 72 Sol. Jo. 779 ; *sub nom. Re* COLLINS, JOWERS *v.* COLLINS, 98 L. J. Ch. 47.

3139. *Add. Citation :*—72 Sol. Jo. 86.
Add. Annotations :—**Consd.** *Re* Robins, Holland *v.* Gillam, [1928] Ch. 721. **Refd.** *Re* Dawson's S. E., [1928] Ch. 421.

3139a. —— **Land held under one & same settlement —Vesting in trustees—Who are trustees.**]—Where immediately before the coming into operation of Law of Property Act, 1925 (c. 20), the entirety of the land is settled land held under one & the same settlement, it vests in the trustees, if any, of the settlement under the old law as joint tenants upon the statutory trusts If there are no such trustees then, pending their appointment, the land vests in the Public Trustee upon the statutory trusts.—*Re* CATCHPOOL, HARRIS *v.* CATCHPOOL, [1928] Ch. 429 ; 97 L. J. Ch. 181 ; 139 L. T. 17 ; 72 Sol. Jo. 226.

3140. *Add. Annotations :—As to* (1) **Refd.** *Re* Robins, Holland *v.* Gillam, [1928] Ch. 721. *As to* (2) **Refd.** Bernhardt *v.* Galsworthy, [1929] 1 Ch. 549 ; *Re* House, Westminster Bank *v.* Everett, [1929] 2 Ch. 166. *Generally*, **Refd.** *Re* Thomas, Thomas *v.* Thompson, [1930] 1 Ch. 194.

3143. *Citation :*—For the existing citation read " No. 1873, *ante*."

3143a. **Only one trustee—Vesting of land in Public Trustee.**]—Under & by virtue of the will of a testator who died in 1921, & of subsequent dispositions, acts in the law & events, the legal estate in certain freehold land was, immediately before the commencement of the Law of Property Act, 1925, vested in two persons for their lives share & share alike, the legal estate in remainder expectant upon the lives of those persons & the life of the survivor of them being vested in a single trustee upon trust after the death of the surviving tenant for life to sell the land & divide the proceeds between the testator's nephews & nieces. Upon a summons by the tenants for life, who were desirous of selling the land, to have it determined in whom, upon the coming into force of the Law of Property Act, 1925, the land was vested: — *Held:* (1) as immediately before the commencement of that Act the land was held at law & in equity in undivided shares, vested in possession, & the entirety thereof was settled land, Law of Property Act, 1925 (c. 20), Sched. I., Part IV., para. 1, sub-para. 3, would apply, if there were more than one trustee of the settlement constituted by the will, in whom the land could vest as joint tenants; but that, as there was only one trustee, the land vested, under clause (i) of the proviso to that sub-para., in the Public Trustee upon the statutory trusts; (2) if, before the Public Trustee accepted the trust, the present trustee (who before the commencement of the Law of Property Act, 1925, was the trustee of the settlement constituted by the will for the purposes of the Settled Land Acts then in force) appointed an additional trustee or trustees of that settlement, the land would vest in the trustees of the settlement as joint tenants upon the statutory trusts.—*Re* PRICE, PRICE *v.* PRICE, [1929] 2 Ch. 400; 98 L. J. Ch. 417; 141 L. T. 511.

——— **Appointment of additional trustee —Before acceptance by Public Trustee.**]—*Re* PRICE, PRICE *v.* PRICE, No. 3143a, *ante*.

3143c. ———.]—Immediately before the commencement of the Law of Property Act, 1925 (c. 20), the legal estate in land was outstanding in the personal representatives of the settlor & held upon the trusts of a marriage settlement which, in the events which had then happened, were for two daughters of the settlor in undivided shares absolutely:—*Held:* as the personal representatives then held the land in trust for the daughters in undivided shares vested in possession, they held it, after the Act came into force, upon the statutory trusts, by virtue of Sched. I., Part IV., sub-para. 1 (*b*) of the Act, with the result that the settlement trustees were not entitled, as, but for Part IV., they would be to call for a conveyance of the legal estate; but the personal representatives held the land on trust for sale & were entitled to sell the same, unless the daughters elected to call for a conveyance.—*Re* FORSTER, SOMERVILLE *v.* OLDHAM, [1929] 1 Ch. 146; 98 L. J. Ch. 27; 140 L. T. 277; 72 Sol. Jo. 761.

3143d. ——— **What is "settled land" within paragraph 2.**]—Under a settlement contained in a will the settled property was directed to be held, after the death of the first tenant for life, in trust, as to both *corpus* & income, for the children & issue of the first tenant for life in equal shares as therein mentioned. The first tenant for life died in 1929, having by her will appointed to be her exors. & trustees two persons who, at the date of her death, were trustees of the settlement & of the will containing it. On a summons by the exors. & trustees as pltfs. for the determination (*inter alia*) of the question whether, for the purpose of vesting in themselves the land the subject of the settlement contained in the will, they should, as executors of the first tenant for life, execute in favour of themselves, as trustees of the will containing the settlement, a vesting assent upon the statutory trusts for sale of the land the subject of the settlement, or should apply for a grant to themselves of probate of the will of the first tenant for life limited to that land:—*Held:* Settled Land Act, 1925 (c. 18), s. 36, applied, & pltfs., as exors. of the first tenant for life, ought, pursuant to that sect., to execute a vesting assent in favour of themselves as trustees of the will containing the settlement.—*Re* CUGNY'S WILL TRUSTS, SMITH *v.* FREEMAN, [1931] 1 Ch. 305; 100 L. J. Ch. 145; 144 L. T. 525.

——— **Conversion.**]—*See* EQUITY, Nos. 817a–817c, *ante*.

3143e. ——— **Effect on interest of tenant for life under condition to reside on premises.**]—Testator died in 1922, having by his will made in 1915 directed (*inter alia*) that pltf. should pay the net income of his freehold farm & lands & of his share of minerals thereunder equally between herself & his nephew until testator's youngest or only daughter should attain the age of twenty-one & thereafter between herself for life or until marriage, the nephew for life "or so long as he shall reside upon & assist in the management of my said farm," & testator's two daughters for their lives & the survivor of them for her life. Subject thereto testator devised the farm & lands to the children of his daughters as in the will mentioned. Testator's nephew lived with him at the farm, & assisted in its management until the testator's death, after which he continued to live there & to manage it. Accordingly, upon the coming into force of the Law of Property Act, 1925 (c. 20), the property vested in pltf. upon the statutory trusts. On a summons taken out by pltf. in 1931 & asking (*inter alia*) whether, upon a sale of the farm & lands under the statutory trusts, or upon the exercise by her of any power of leasing conferred on her by statute or by the will, & in particular upon the exercise of any such power in favour of testator's nephew, his interest in the income would determine:—*Held:* upon the true construction of Law of Property Act, 1925 (c. 20), s. 35, the nephew's life interest would not be forfeited upon any exercise in his lifetime of the statutory trusts.—*Re* DAVIES' WILL TRUSTS, BEVAN *v.* WILLIAMS, [1932] 1 Ch. 530; 101 L. J. Ch. 301; 147 L. T. 334.

3146. *Add. Annotations:*—**Folld.** *Re* Robins, Holland *v.* Gillam, [1928] Ch. 721. **Apld.** *Re* House, Westminster Bank *v.* Everett, [1929] 2. Ch. 166. **Refd.** *Re* Barrat, Body *v.* Barrat, [1929] 1 Ch. 336.

3148. *Add. Citations:*—97 L. J. Ch. 197; 138 L. T. 735.

3151a. Application of Law of Property Act, 1925 (c. 20), s. 34—Land settled upon trust for sale—After specified period.]—The trustees of a will, which came into operation after the commencement of the Law of Property Act, 1925 (c. 20), were directed to stand possessed of testator's residuary real & personal estate upon trust to pay out of the income thereof four life annuities, & while any annuity remained payable to divide the surplus income amongst such of testator's grandchildren as should be living for the period during which any annuity remained payable; &, on cesser of all the annuities, to stand possessed of the residuary estate in trust for his grandchildren & the issue then living of any then dead, as tenants in common according to the stocks. By a codicil power was conferred upon the trustees after the expiration of five years from the testator's death to sell his residuary estate or any part thereof by public auction but not by private contract. Upon a summons raising questions, whether the trustees or the persons entitled to the surplus income until cesser of the annuities were the proper persons in whom the land ought to be vested by the exor.; &, if the trustees were the proper persons, whether the annuitants were persons whose wishes ought to be given effect to by the trustees for sale:—*Held:* (1) the land was held in equity in undivided shares; (2) the land was devised in undivided shares within Law of Property Act, 1925 (c. 20), s. 34 (3), with the result that it was devised to the trustees, who were trustees for the purposes of the Settled Land Act, 1925, upon the statutory trusts; (3) those trustees were the persons in whom the land ought to be vested.—*Re* HOUSE, WESTMINSTER BANK *v.* EVERETT, [1929] 2 Ch. 166; 98 L. J. Ch. 381; 141 L. T. 582.

3151b. Open space held in undivided shares—Meaning of open space—Any land unbuilt upon—Back yard.]—The expression "an open space of land" in Law of Property Act, 1925 (c. 20), Sched. I., Pt. V., para. 2, means any land that is unbuilt upon.

A small yard & ashes place at the rear of two houses in a town was, immediately before the commencement of the Act, held in undivided shares by the owners of the houses with rights of access & user over same:—*Held:* the yard & ashes place were an open space within the par. & had vested in the Public Trustee. Leave given to the Public Trustee to sell same.—*Re* BRADFORD CITY PREMISES, [1928] Ch. 138; 138 L. T. 517; *sub nom. Re* BRADFORD CITY PREMISES, SCAIFE *v.* PUBLIC TRUSTEE, 97 L. J. Ch. 84.

Annotation:—**Consd.** *Re* Townsend, Townsend *v.* Townsend, [1930] 2 Ch. 338.

3151c. Private railway siding.]—A private railway siding consisted partly of freehold land, vested in the trustees of a will, & partly of leasehold land held for a long term by trustees of a lease containing a declaration of trust subsequently varied by deed. Neither set of trustees held upon trust for sale or had any power of sale. All rights of access to & user of the siding were vested, at the commencement of Law of Property Act, 1925 (c. 18), in lessees of adjoining property, licensees, & other persons entitled under the declaration of trust, & rents were paid by all parties interested for such user:—*Held:* that the siding was not an open space vested in undivided shares in right whereof each owner had rights of access & user thereof & did not therefore vest in the Public Trustee under Law of Property Act, 1925 (c. 20), Sched. I., Pt. V., para. 2, but was vested in the respective sets of trustees upon the statutory trusts.—*Re* TOWNSEND, TOWNSEND *v.* TOWNSEND, [1930] 2 Ch. 338; 99 L. J. Ch. 508; 143 L. T. 608.

Part XVI.—Resettlements.

3171. *Add. Annotation:*—*Generally*, **Refd.** *Re* Parker's Settled Estates, Parker *v.* Parker, [1928] Ch. 247.

Part XVII.—Miscellaneous Clauses in Settlements.

3236. *Add. Annotation:*—**Refd.** *Re* Duncombe's Will Trusts, Wrixon-Becher *v.* Faversham (Earl) (1932), 146 L. T. 412.

3238. *Add. Annotation:*—**Refd.** *Re* Duncombe's Will Trusts, Wrixon-Becher *v.* Faversham (Earl) (1932), 146 L. T. 412.

3260a. —— Payment by trustees—Right to reimbursement.]—The husband in a marriage settlement covenanted (*inter alia*) to pay the premiums on a policy of life insurance. In default of his doing so, the trustees paid the premium & sought to recover the amount so paid from the covenantor. The settlement expressly empowered the trustees to apply the income in making any payments for keeping on foot the policy, & provided that it should not be obligatory on them to enforce the husband's covenants. There was no covenant by the husband to reimburse the trustees in respect of any payment so made by them:—*Held:* (1) it was an implied term that the husband should reimburse the trustees; (2) the claim of the trustees was not in debt but for damages for breach of covenant, & therefore they could not specially indorse their writ; (3) the damages were substantial & not merely nominal, & the trustees were entitled to recover the full amount paid by them.—SCHLESINGER & JOSEPH *v.* MOSTYN, [1932] 1 K. B. 349; 101 L. J. K. B. 62; 146 L. T. 326; 48 T. L. R. 111.

3260b. Whether claim in debt or damages.]—SCHLESINGER & JOSEPH *v.* MOSTYN, No. 3260a, *ante*.

3260c. —— —— Measure of damages.]—SCHLESINGER & JOSEPH *v.* MOSTYN, No. 3260a, *ante*.

SEWERS AND DRAINS.

Part I.—Sewers and Drains for Sanitary Purposes.

14a. —— —— ——.]—Applts. were the owners of three adjoining houses in the borough of Aldershot. Resp. corpn. claimed to recover from applts. certain sums as due to them under Public Health Act, 1875 (c. 55), s. 41, & Public Health Acts Amendment Act, 1890 (c. 50), s. 19, in respect of certain drainage works executed by resps. The three houses owned by applts. formed part of a row of fifteen houses, the remaining twelve belonging to other owners. The drainage in the case of each house was discharged by one pipe into a large single pipe which ran the whole length of the houses under the public highway & took the drainage from all the fifteen houses. Resps. claimed that the whole of that single pipe was a "single private drain" within sect. 19 (1) of 1890 Act:—*Held:* the large single pipe which carried the drainage of all the fifteen houses, being one continuous pipe, was not a "single private drain" within sect. 19 (1) of 1890 Act. Resps. had therefore not established their case.—HILL *v.* ALDERSHOT BOROUGH COUNCIL (1932), 96 J. P. 493, C. A.

19. *Add. Annotation:*—**Distd.** Clark *v.* Epsom R. D. C., [1929] 1 Ch. 287.

19a. ——.]—Pltf. was the owner of a house & grounds on the X. estate, a leaseholder in 1900 & freeholder since 1920. Down to 1912 there was no drainage system for the estate, but in that year a system was established, which so far as affected this property was called "the northern system," by the then owners of the estate with an effective outfall, but without any reference to the local authority, which was maintained since 1920 by means of contributions from property owners to the owner of the part where the disposal works were situated. From these works the effluent passed into the river M., but owing to the filter bed ceasing to function, pollution of the river occurred, & this outfall being stopped by the action of the Thames Conservancy, the effluent was now carried over the adjoining land. In an action by pltf. for a declaration that the system vested in defts. & that they were liable to maintain it:—*Held:* the line of pipes which communicated with the disposal works was a sewer which vested in the local authority, but the remedy of pltf. was to appeal on behalf of the whole of the persons in the district to the Ministry of Health under P. H. Act, 1875 (c. 55), s. 299.—CLARK *v.* EPSOM RURAL COUNCIL, [1929] 1 Ch. 287; 98 L. J. Ch. 88; 140 L. T. 246; 93 J. P. 67; 45 T. L. R. 106; 27 L. G. R. 328.

54. *Add. Annotation:*—**Refd.** *Re* Belcham & Gawley's Contract, [1930] 1 Ch. 56.

95. *Add. Annotation:*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Ry. Co., [1931] 2 K. B. 334.

107. *Add. Annotation:*—**Refd.** Clark *v.* Epsom R. D. C., [1929] 1 Ch. 287.

116. *Add. Annotation:*—**Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

121. *Add. Annotation:*—**Refd.** *Re* Belcham & Gawley's Contract, [1930] 1 Ch. 56.

125a. —— ——.]—SOLIHULL RURAL DISTRICT COUNCIL *v.* FORD (1931), 30 L. G. R. 483.

148. *Add. Annotations:*—**Refd.** Clark *v.* Epsom R. D. C., [1929] 1 Ch. 287; Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485.

158. *Add. Annotation:*—**Refd.** Clark *v.* Epsom R. D. C., [1929] 1 Ch. 287.

174. *Add. Annotation:*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt, [1932] 2 K. B. 1.

181a. ——.]—CLARK *v.* EPSOM RURAL COUNCIL, No. 19a, *ante*.

182. *Add. Annotation:*—*As to* (2) **Refd.** Blundy, Clark & Co. *v.* London & North Eastern Ry. Co., [1931] 2 K. B. 334.

184. *Add. Annotation:*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway [1931] 2 K. B. 334.

197a. —— **Sewer laid above ground—By private owner—Maintenance by local authority.**]—Defts., who were the urban sanitary authority, served notices, under Public Health Act, 1875 (c. 55), ss. 23, 36, upon the owners of a row of houses within the district requiring them within a certain time to provide water-closets in the houses & to connect the same with the main sewer. By arrangement among the owners the work was carried out by the owner of two of the houses, one of which was occupied by pltf. A six-inch earthenware pipe was laid through the gardens at the backs of the houses to receive the drainage of each house & to discharge into the main sewer. This pipe was laid underground until it came to the garden of the house in which pltf. lived, where, owing to a fall in the land half the pipe appeared above the ground. About three years after the pipe was laid pltf. in going down her garden slipped on the pipe & was injured. In an action against the urban district council to recover damages for the personal injuries so sustained, the pipe being a "sewer" which was vested in them, the jury found that the sewer was constructed so as to be dangerous to the occupants of the house, that defts. had notice of its dangerous condition, & were negligent in not obviating the danger:—*Held:* as deft. council would have been entitled, if they had themselves constructed the sewer, to lay it above ground, they were not guilty of any breach of duty in maintaining the sewer in the same condition as it was when laid, &

PART I. SECT. 1, SUB-SECT. 1.—A.

sa. *Whether drain or sewer.*]—SWEENEY *v.* LISNASKEA R. D. C., [1929] N. I. 119.—IR.

PART I. SECT. 1, SUB-SECT. 4.

sb. *Non-navigable river.*]—Where a non-navigable river lies wholly within the boundaries of a county, such river is a public drain, & the county council has power to restrain the removal of gravel from the river bed.—PAHIATUA COUNTY COUNCIL *v.* AKITIO COUNTY COUNCIL, [1930] N. Z. L. R. 344.—N.Z.

were therefore not liable to pltf.—MORRIS *v.* MYNYDDISLWYN URBAN COUNCIL, [1917] 2 K. B. 309; 86 L. J. K. B. 1094; 117 L. T. 108; 81 J. P. 261; 15 L. G. R. 453, C. A.

217. *Add. Annotation:*—**Reld.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

250. *Add. Citation:*—26 L. G. R. 174.

262a. Liability for maintenance.]—The Lewisham Board of Works was constituted under Metropolis Management Act, 1855 (c. 120), with an area extending over Penge, & all sewers in their district, except the main sewer, were vested in the Board, who were bound to repair them. Metropolis Management Act, 1862 (c. 102), empowered the Board to execute sewerage works beyond their own district where necessary, & in 1865 the Board, for the purpose of the drainage of Penge, constructed a sewer in Penge, which passed through the Beckenham district, not under the control of the Board, to the Lewisham district, where it joined the main sewer. The Act of 1862 did not vest this sewer in the Board, & did not in terms oblige the Board to repair it, but this obligation was expressly imposed on the Board by the Beckenham Sewerage Act of 1873, which empowered the Beckenham authority to connect up with the sewer in their area in return for certain money payments. This sewer having become inadequate, a second was constructed nearly alongside, & it assisted to carry off the sewage of Penge. By London Government Act, 1899 (c. 16), District Boards of Works were abolished, & the Lewisham Corporation was created, but by the Penge Order of 1900, made in pursuance of this Act, the district of Penge was taken out of the control of the corpn. & became part of the county of Kent, & a scheme of adjustments was made, whereby all property of the Lewisham Board used, & all liabilities of the Board incurred, solely or mainly for the benefit of Penge, where transferred to the Penge District Council, & the question whether any property had been used or any liability had been incurred solely or mainly for the benefit of Penge was to be finally determined by the commissioners appointed under the Act; but the scheme made no provision dealing with the question whether the obligation to maintain the Penge sewers, so far as they were laid in Beckenham, was cast upon the Lewisham Corpn. or not. In an action by the Urban District Council of Penge against the Lewisham Corpn. for a declaration that this obligation was cast upon the corpn.:—*Held:* (1) the jurisdiction of the ct. to determine this question was not ousted by the Penge Order; (2) both the original & the relief sewers were constructed wholly or mainly for the benefit of Penge, & that the action failed.—PENGE URBAN DISTRICT COUNCIL *v.* LEWISHAM CORPN. (1930), 95 J. P. 77.

264. *Add. Annotation:*—**Reld.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

304a. Reconstruction of drain — What amounts to.]—The L. C. C. made a bye-law that a person who should entirely or partially reconstruct any pipe or drain communicating with a sewer should deposit plans of the proposed work, with the proviso that plans should not be required in the case of any repair which did not involve the entire reconstruction of the pipe or drain; & another bye-law as to ventilation, which was to apply to every person who should reconstruct in an existing building any pipe or drain communicating with a sewer. Premises situate in the metropolis were drained at the rear by a line of pipes which took the surface water drainage of the premises through two gullies in the yard & which communicated with a sewer. This line of pipes was not laid upon concrete & was not ventilated, & the drain having become a nuisance, notice was served on the owner to abate the same. The owner opened up the ground, took up the pipes, most of which were defective or broken, & relaid the drain in the same line upon a foundation of concrete. He put in four new lengths of pipes & a new gully & connection, replacing in the drain one old pipe & gully only, & leaving in the ground an old pipe which was not defective:—*Held:* the work done to the drain was a "reconstruction" of the drain, & not merely a "repair" of it, & that the bye-laws applied.—AGAR *v.* NOKES (1905), 93 L. T. 605; 69 J. P. 374; 3 L. G. R. 1168, D. C.

319. *Add. Annotation:*—**Distd.** Grant *v.* Derwent, [1928] Ch. 902.

319a. —— —— Liability of owner requesting local authority to lay connecting pipe.]—Subject to the rights of a corpn. as highway & sewer authority, pltf. owned the soil of a public road with a sewer therein. Deft.'s property abutted on this road, as well as on another sewered road, & he was entitled under Public Health Act, 1875 (c. 55), s. 21, to cause his drains to empty into the corpn.'s sewers, on giving proper notice & complying with regulations. At deft.'s request & acting under their local Act, the corpn. connected deft.'s combined drain with the

PART I. SECT. 3, SUB-SECT. 3.

1 (p. 29) i. ——————.]—Pltfs. claimed damages from deft. municipalities for flooding of lands caused, as alleged, by the municipalities failing to keep drainage ditches in repair:—*Held:* pltfs. could not recover from the municipalities because, while the municipalities would be liable for loss suffered by their failure to keep the ditches in repair, yet it was not shown that any of the damage suffered arose from such failure; rather, it appeared that the damage was due to the unprecedented character of the rain storms, the inadequacy of the drainage system, for which the municipalities could not be held liable, to drain lands lying as low as those of pltfs., & the damming of the main ditch by the other defts.—MAYTAG *v.* HANOVER RURAL MUNICIPALITY, [1932] S. C. R. 298; 2 D. L. R. 208.—**CAN.**

sc. *Petition for establishment of drainage district—Effect of repeal of statute.*]—R. *v.* SPRUCE GROVE MUNICIPAL DISTRICT, [1930] 3 W. W. R. 277; 4 D. L. R. 843; *affg.*, [1930] 3 W. W. R. 135.—**CAN.**

sd. *Liability of municipality to repair—Who may enforce.*]—*Held:* in view of all other relevant provisions of the Act, sect. 740 of Municipal Act, R. S. M., 1913, was intended merely to make it clear that, as between the government of the province & the municipality, the duty was on the latter to keep such drains in repair, & it was not intended to make the municipality liable to an action at the suit of an individual who might suffer damage from the municipality's failure to perform duty.—PIERCE *v.* WINCHESTER RURAL MUNICIPALITY, [1930] 2 W. W. R. 752; [1931] 1 D. L. R. 237; 39 Man. L. R. 132; *affd.*, [1931] S. C. R. 628; 4 D. L. R. 724.—**CAN.**

PART I. SECT. 9, SUB-SECT. 3.

sd. *Construction by municipality on private land—Sufficiency of bye-law.*]—MONTGOMERY *v.* ASSINIBOIA, RURAL MUNICIPALITY OF, [1930] S. C. R. 494; 4 D. L. R. 67; *varg.*, [1930] 2 D. L. R. 947; 1 W. W. R. 500; 38 Man. L. R. 527.—**CAN.**

sewer in pltf.'s road, carrying the connecting pipe through a small portion of pltf.'s subsoil :—*Held :* the corpn.'s acts were fully justified by the local Act, even if not by Public Health Acts, & whatever right for compensation pltf. might have against the corpn. for damage sustained by reason of the exercise of their statutory powers, he had no cause of action against deft. for requesting the corpn. to exercise those powers.—GRANT *v.* DERWENT, [1929] 1 Ch. 390 ; 98 L. J. Ch. 70 ; 140 L. T. 330 ; 93 J. P. 113 ; 73 Sol. Jo. 59 ; 27 L. G. R. 179, C. A.

Part III.—Sewers under Commissioners of Sewers.

341. After this case add " *See, now,* Land Drainage Act, 1930 (c. 44)."

383. *Add. Annotation :*—**Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

403. *Add. Annotation :*—**Refd.** Graigola Merthyr Co. *v.* Swansea Corpn., [1928] Ch. 235.

407. *Add. Annotation :*—*As to* (1) **Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

412. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

Part IV.—Sewers Rate.

423. After this case add " *See, now,* Land Drainage Act, 1930 (c. 44), ss. 24–28."

457. *Add. Citations :*—97 L. J. K. B. 13 ; 138 L. T. 72 (1926–31), 1 B. R. A. 191.

PART III. SECT. 1, SUB-SECT. 2.

b i. ——.]—MCKILLOP TOWNSHIP CORPN. *v.* LOGAN TOWNSHIP CORPN. (Ont.) (1899), 29 S. C. R. 702.—**CAN.**

c i. —— —— *Time for making ditch.*]—MURRAY *v.* DAWSON (1867), 17 C. P. 588.—**CAN.**

PART III. SECT. 1, SUB-SECT. 3.

d i. ——.]—ANDERTON TOWNSHIP *v.* MALDEN & COLCHESTER SOUTH TOWNSHIPS (1912), 23 O. W. R. 320 ; 4 O. W. N. 327 ; 8 D. L. R. 812.—**CAN.**

d ii. ——.]—*Re* BRIGHT & SARNIA, *Re* WILSON & SARNIA (1913), 24 O. W. R. 817 ; 4 O. W. N. 1535 ; 12 D. L. R. 848.—**CAN.**

se. *Appeal from fence viewer.*]—*Re* MCDONALD & CATTANACH (1870), 30 S. C. R. 432.—**CAN.**

sd. ——.]—*Re* BOWKER & RICHARDS (1905), 1 W. L. R. 194.—**CAN.**

se. *Award under Ditches & Watercourses Act—Who may enforce.*]—The purchaser of land from an owner who was a party to proceedings under the Act in respect of that land is entitled to enforce the award.—DALTON *v.* TOWNSHIP OF ASHFIELD (1898), 26 A. R. 363.—**CAN.**

PART III. SECT. 2.

sf. *Construction of ditch under Private Ditches Act, 1920, s. 6—Notice.*]—The service of the notice which Private Ditches Act, R. S. S., 1920 (c. 162), s. 6, requires to be made on the owners or occupants of other lands to be affected by a proposed ditch is a condition which must be complied with before the ditch can legally be proceeded with, & where such an owner has not been served an award of an engineer & an assessment & tax levy made under said Act on said owner is null & void.—VILLENEUVE *v.* RURAL MUNICIPAL OF KELVINGTON, [1929] 2 D. L. R. 919 ; 1 W. W. R. 186 ; 23 S. L. R. 406.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 3.

sg. *" Owner for the time being "—Who is.*]—The term " the owner for the time being " in Nova Scotia Acts, 1920, c. 131, s. 4, an Act relating to sewers & sidewalks in the town of Springhill does not necessarily mean the registered owner.—SPRINGHILL *v.* MCLEOD, [1929] 1 D. L. R. 882 ; 60 N. S. R. 272.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 4.

sh. *Consideration of prior assessments.*]—CROW *v.* RALEIGH TOWNSHIP [1931] 4 D. L. R. 330.—**CAN.**

SHERIFFS AND BAILIFFS.

Part V.—Powers, Duties, and Liabilities.

274. *Add. Annotation :*—**N.F.** R. *v.* Jones, *Ex p.* McVittie, [1931] 1 K. B. 664.

274a. ——.]—Pltf. obtained judgment in a county ct. against deft. for a sum of money & costs, & an appeal to the Divisional Ct. by deft. was dismissed with costs. Pltf.'s solr. made various but futile efforts to obtain the fruits of the judgment. Deft. disobeyed a bkpcy. notice & an order for payment of the judgment debt & costs by instalments. Several judgment summonses were obtained against the deft., but deft. evaded service of them. Eventually pltf.'s solr. served deft. with a judgment summons within the precincts of a ct. of justice where deft. was waiting for a case, in which he was pltf., to be called on. Deft. applied for a writ of attachment against pltf.'s solr. for contempt of ct. in so doing :—*Held :* in the circumstances, no contempt had been committed & the rule must be discharged.—R. *v.* JONES, *Ex p.* MCVITTIE, [1931] 1 K. B. 664 ; 100 L. J. K. B. 193 ; 144 L. T. 597, D. C.

539. *Add. Annotation :*—**Refd.** Morriss *v.* Winter, [1930] 1 K. B. 243.

539a. -.]—An attorney, who is arrested on a writ of *capias*, cannot maintain an action of trespass against pltf. & the officer for such arrest : his only remedy is an action on the case.—NOEL *v.* ISAAC (1835), 1 Cr. M. & R. 753 ; 5 Tyr. 376 ; 4 L. J. Ex. 56 ; 149 E. R. 1284.

Annotation :—**Refd.** Newton *v.* Constable (1841), 6 Jur. 317.

Part VI.—Fees, Poundage, and Other Charges.

860. *Add. Annotation :*—*As to* (1) **Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

PART II. SECT. 3.

sa. *Right of sheriff to appoint.*]—There is nothing in the statutes of Saskatchewan which provides or implies that a sheriff cannot appoint bailiffs or officers to assist him in the discharge of his duties.—R. *v.* REZNEK, [1931] 1 W. W. R. 607 ; 3 D. L. R. 430 ; 55 Can. C. C. 153.—**CAN.**

sb. *Special bailiffs—Jurisdiction confined to county where residing.*]—DEVINE *v.* CARSON & Co., [1929] N. I. 26.—**IR.**

PART IV. SECT. 2, SUB-SECT. 5.

2020 ii. —— —— *Burden of proof of reasonableness of charges.*]—With respect to the reasonableness of a sheriff's charges against an execution creditor for caring for live stock & chattels seized under a writ of execution the *onus* is not on the creditor to prove the charges unreasonable ; the sheriff has no *primâ facie* right to anything he may charge or to any disbursement, but, like any other agent acting for his principal, he must establish that the charge was properly incurred in the execution of the process within the authority entrusted to him. —MCGREGOR *v.* KLOTZ (Sask.), [1929] 4 D. L. R. 792 ; 3 W. W. R. 183.—**CAN.**

PART V. SECT. 6, SUB-SECT. 7.—J. (a).

e i. ——.]—HIGGINS *v.* MACDONALD, [1928] 4 D. L. R. 241 ; [1928] 3 W. W. R. 115 ; 50 Can. Crim. Cas. 353.—**CAN.**

PART VI. SECT. 2, SUB-SECT. 1.

c i. —— *Execution of writ of capias ad satisfaciendum.*]—Poundage fees in respect of the execution of a writ of *ca. sa.* become due upon execution of the writ, that is, upon taking the body of the judgment debtor in execution, & such poundage may be recovered at the rate prescribed by the scale of fees under Sheriff's Act, 1900, upon the amount for which the writ was issued. —*Re* WILLIAM ARNOTT, *Ex p.* THE SHERIFF (1929), 29 S. R. N. S. W. 339; 46 N. S. W. W. N. 127.—**AUS.**

SHIPPING AND NAVIGATION.

Part I.—In General.

SECT. 1.—**THE MERCHANT SHIPPING ACTS.**

SUB-SECT. 1.—IN GENERAL (p. 159).

Powers of colonial legislatures—Exclusion of Dominions.]—*See* Statute of Westminster, 1931, s. 5.

Part II.—Ownership and Control of Ships.

177. *Add. Annotation :*—**Refd.** Aron *v.* Miall (1928), 139 L. T. 562.

195. *Add. Annotation :*—**Refd.** *Re* King's Settlement, King *v.* King, [1931] 2 Ch. 294.

274. *Add. Annotation :*—**Refd.** The Zigurds (No. 1) (1932), 48 T. L. R. 556.

342. *Add. Annotation :*—**Refd.** The Zigurds (No. 1) (1932), 48 T. L. R. 556.

347. *Add. Annotation :*—**Distd.** The Zigurds (No. 1) (1932), 48 T. L. R. 556.

384. *Add. Annotation :—As to* (2) **Refd.** Newsholme Bros. *v.* Road Transport & General Insce. Co., [1929] 2 K. B. 356.

493. *Add. Annotation :*—**Refd.** Kerr *v.* Marine Products (1928), 44 T. L. R. 292.

Part III.—Master, Officers and Crew.

551. *Add. Annotation :*—**Consd.** Savage *v.* British India Steam Navigation Co., Power *v.* Same (1930), 46 T. L. R. 294.

551a. —— ——.]—In actions by the captain & by the chief officer of an ocean passenger steamer for alleged wrongful dismissal there was no written contract of employment, & the only documents relating to employment were various circulars dealing with the age at which officers must retire, their rights to pension, & their right to leave on full pay after certain periods of service. The circulars made it clear that pensions were only to be paid at the discretion of the employers :—*Held :* the contract of employment was determinable by either party at any time on reasonable notice, & that in the case of the chief officer reasonable length of notice would have been 12 months, & he was entitled to judgment for 12 months' salary. In the case of the captain the action was dismissed. —SAVAGE *v.* BRITISH INDIA STEAM NAVIGATION CO., LTD., POWER *v.* BRITISH INDIA STEAM NAVIGATION CO., LTD. (1930), 46 T. L. R. 294.

560a. **Termination of contract—Right to reasonable notice—What amounts to.**]—SAVAGE *v.* BRITISH INDIA STEAM NAVIGATION CO., LTD., POWER *v.* BRITISH INDIA STEAM NAVIGATION CO., LTD., No. 551a, *ante.*

582. *Add. Annotation :*—**Refd.** Ellerman Lines, Ltd. *v.* Murray, White Star Line of Royal & United States Mail Steamers Oceanic Steam Navigation Co. *v.* Comerford, [1931] A. C. 126.

589. *Add. Annotation :*—**Refd.** The Croxteth Hall, The Celtic, [1930] P. 197.

600. *Add. Annotation :*—**Refd.** The Croxteth Hall, The Celtic, [1930] P. 197.

614a. **Protection of open hatchways—Breach of statutory duty—Effect of contributory negligence.**]—Pltf. was a coal trimmer, & in proceeding to his work on defts.' ship along a passage-way which he was entitled to go along, he stumbled & fell down an open hatchway into one of the holds of the ship, & was injured. He sued defts. for damages, basing his action on a breach of a statutory regulation made under 1894 Act, which provided for the fencing & protection of open hatchways on ships :—*Held :* pltf.'s own contributory negligence was an answer to his claim against defts. based on a breach of statutory duty.—DEW *v.* UNITED BRITISH S.S. CO., LTD. (1928), 98 L. J. K. B. 88 ; 139 L. T. 628 ; 17 Asp. M. L. C. 513, C. A.

Annotation :—**Consd.** Service *v.* Sundell (1929), 99 L. J. K. B. 55.

633. *Add. Annotation :*—**Refd.** Ellerman Lines, Ltd. *v.* Murray, White Star Line of Royal & United States Mail Steamers Oceanic Steam Navigation Co. *v.* Comerford, [1931] A. C. 126.

680. *Add. Annotation :*—**Consd.** Maver *v.* " Solon " Ship Owners (1929), 22 B. W. C. C. 424.

685. *Add. Annotations :—As to* (3) **Refd.** First Russian Insce. *v.* London & Lancashire Insce. [1928] Ch. 922. *As to* (4) **Refd.** First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922. *Generally*, **Refd.** The Penelope, [1928] P. 180 ; Ottoman Bank *v.* Chakaria, [1930] A. C. 277 ; Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 145.

685a. **Indemnity under Merchant Shipping (International Labour Convention) Act, 1925 (c. 42) —For what period seaman entitled.**]—*Held :* upon the true construction of sect. 1 of above Act a seaman whose service had been prematurely terminated by the wreck or loss of the

ship was entitled to receive wages at the rate payable under his agreement of service for each day on which he was in fact unemployed during a period of two months from the date of the termination of the service, whether his service under the agreement would in the normal course have terminated before the expiration of that period or not, unless the owner discharged the *onus* cast upon him by sect. 1 (2).—ELLERMAN LINES, LTD. *v.* MURRAY, WHITE STAR LINE OF ROYAL & UNITED STATES MAIL STEAMERS OCEANIC STEAM NAVIGATION CO., LTD. *v.* COMERFORD, [1931] A. C. 126; 36 Com. Cas. 159, H. L.; *sub nom.* THE CROXTETH HALL, THE CELTIC, 100 L. J. P. 25; 144 L. T. 441; 47 T. L. R. 147; 18 Asp. M. L. C. 184, H. L.

685b. —— **Unemployment due to wreck—Onus of proof.**]—ELLERMAN LINES, LTD. *v.* MURRAY, WHITE STAR LINE OF ROYAL & UNITED STATES MAIL STEAMERS OCEANIC STEAM NAVIGATION CO., LTD. *v.* COMERFORD, No. 685a, *ante*.

763. *Add. Annotation:*—**Refd.** Ellerman Lines, Ltd. *v.* Murray, White Star Line of Royal & United States Mail Steamers Oceanic Steam Navigation Co. *v.* Comerford, [1931] A. C. 126.

796. *Add. Annotations:*—**Refd.** Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528; Pockney *v.* Atkinson (1929), 142 L. T. 135; Eshelby *v.* Federated European Bank, Ltd., [1932] 1 K. B. 423.

847. *Add. Annotation:*—**Refd.** Bottomley *v.* West Derby Assessment Committee, etc., etc. (1931), 47 T. L. R. 468.

932a. —— —— ——.]—R. *v.* WALL (1890), 112 C. C. Ct. Cases, 880.

932b. —— —— ——.]—R. *v.* PHILLIPS, ETC. (1891), 113 C. C. Ct. Cases, 622.

935a. —— **Whether condition precedent to hearing of complaint.**]—A complaint was made before justices by the master of a British ship against six seamen for continuing to neglect duty, contrary to 1894 Act, s. 225 (1) (*e*). No entry of the offence had been made in the official log-book, & the justices dismissed the complaint on this ground for want of jurisdiction:—*Held:* the making of the entry in the official log-book was not a condition precedent to the hearing of the complaint. Even where no entry of an offence had been made, & there had consequently been default under the section, the Court was not without jurisdiction to proceed. The effect of 1894 Act, s. 228 (*d*), was to confer on the ct. in such a case a discretion either to receive other evidence or to refuse to do so & dismiss the complaint.—PATTERSON *v.* ROBINSON, [1929] 2 K. B. 91; 98 L. J. K. B. 457; 141 L. T. 165; 93 J. P. 165; 27 L. G. R. 422; 28 Cox C. C. 626; 18 Asp. M. L. C. 35, D. C.

956. *Add. Annotation:*—*As to* (2) **Refd.** Ellerman Lines, Ltd. *v.* Murray, White Star Line of Royal & United States Mail Steamers Oceanic Steam Navigation Co. *v.* Comerford, [1931] A. C. 126.

Part IV.—Authority and Liability of Master as Custodian.

988a. —.]—THE "GLENLUCE" (1930), 170 L. T. Jo. 399.

1001. *Add. Annotation*—**Refd.** Foscolo Mango Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

PART III. SECT. 4, SUB-SECT. 3.—A.

685 b i. *Indemnity under Merchant Shipping (International Labour Convention) Act, 1925—Unemployment due to wreck—What amounts to.*]—A seaman was engaged under an agreement to serve as an engineer of a trawler for the period from July to Dec. 1930. On Sept. 25, 1930, the trawler sustained damage in consequence of a collision at sea, but she was able to make port under her own steam. On reaching port the crew were paid off, & the ship was laid up for repairs for a period of fourteen days; thereafter the seaman was re-engaged. He claimed wages, in terms of Merchant Shipping (International Labour Conventions) Act, 1925, s. 1 (1), for the fourteen days during which the ship was under repair, on the ground that his service had been terminated by reason of the "wreck" of the ship:—*Held:* the damage did not constitute a "wreck" within sect. 1 (1), in respect that the period required for repairs was not so prolonged as to render the ship unable to continue within a reasonable time the adventure contemplated in the agreement with the seaman.—BARRAS *v.* ABERDEEN STEAM TRAWLING & FISHING CO., [1932] S. C. 432.—**SCOT.**

PART III. SECT. 4, SUB-SECT. 9.

797 i. *Advance note—Liability on.*]—Deft. gave a seaman's advance note to B. a seaman for a one-half month's wages at V., payable five days after the sailing of the M. from B.C. Pltf. cashed the note for B., who then joined his ship before sailing to Victoria, where the ship (being a rum runner) was held by the authorities for breach of customs regulations, & not allowed to leave B.C. Deft. was duly notified that pltf. held the note:—*Held:* deft.'s conduct was the sole cause of the impossibility of performance, & having by his own conduct made it impossible for the ship to leave B.C. he was liable on the note.—IMPERIAL VETERANS IN CANADA *v.* EASTERN FREIGHTERS, LTD. (1927), 39 B. C. R. 17.—**CAN.**

PART III. SECT. 4, SUB-SECT. 12.—A.

sa. *Action for unearned wages.*]—The captain, mate, & certain seamen of the *A.* had the ship arrested in a joint action *in rem* for wages. The claim made was for one month & some days, being not only the amount actually earned, but also for substantial sums not earned, which were more in the nature of damages:—*Held:* wages cannot be sued for until earned, & where a hiring at so much a month is made, no wages are or can be earned until the whole month's service is performed.—BURKE *v.* THE AMLA. [1929] 4 D. L. R. 873; Ex. C. R. 191.—**CAN.**

PART III. SECT. 4, SUB-SECT. 12.—D.

847 i. *Appeal—From sheriff substitute—Does not lie.*]—BAIN *v.* ORMISTON, [1928] S. C. (Ct. of Sess.) 764.—**SCOT.**

PART IV. SECT. 2, SUB-SECT. 2.—B.

sb. *Purchaser suffering judgment—Whether liable to interest.*]—The vendee of a ship without notice of a claim for necessaries against her, who offers to suffer judgment for the amount of such claim is not liable for interest upon the same.—HODDER (W. W.) CO., INCORPORATED *v.* "STRANDHILL" (N. S. Adm.), [1929] Ex. C. R. 253.—**CAN.**

Part V.—General Statutory Provisions for Safety of Ship and Cargo.

1596. *Add. Citation :*—17 Asp. M. L. C. 303.

1597. *Add. Annotation :*—**Refd.** Great Western Ry. Co. *v.* Kassos Steam Navigation Co. (1930), 144 L. T. 121.

1599a. —— **Method of measurement—Necessity for compliance with statute.**]—Measurement of the space occupied by deck cargo on a ship must, in accordance with the provisions of Merchant Shipping Act, 1894 (c. 60), s. 85 (3), be made in the manner directed by Sched. II., r. 1, of the Act. A memorandum by an officer of Customs that the proper measurement has been made, if, in fact, that measurement has been made by some other method, is of no effect.—GREAT WESTERN RY. CO. *v.* KASSOS STEAM NAVIGATION CO. (1930), 144 L. T. 121 ; 18 Asp. M. L. C. 174.

Part VII.—Carriage of Goods.

1651. *Add. Annotation :*—**Refd.** The Erik Boye (1929), 142 L. T. 335.

1682. *Add. Annotations :*—**Refd.** A.-G. *v.* Blackpool Corpn. (1928), 92 J. P. 50 ; *Re* Jenkins, Jenkins *v.* Davies, [1931] 2 Ch. 218 ; Lazard Bros. & Co. *v.* Brooks (1932), 37 Com. Cas. 224.

1690. *Add. Annotation :*—**Refd.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

1715. *Add. Annotations :*—**Distd.** Frenkel *v.* McAndrews & Co., [1929] A. C. 545. **Consd.** Foscolo Mango & Co. *v.* Stag Line, Ltd. (1931), 48 T. L. R. 127. **Refd.** Kaufmann *v.* British Surety Insce. Co. (1929), 45 T. L. R. 399.

1723a. " Approved commercial bills on London "—Trade usage—Ninety day bills.]—GRIPAIOS *v.* WALLIS (KAHL.) & CO., LTD. (1928), 45 T. L. R. 161.

1731a. Payment of stevedores at " current rates."]—BRITAIN S.S. CO., LTD. *v.* BUNGE & CO., LTD. (1929), 46 T. L. R. 40 ; 73 Sol. Jo. 818 ; 35 Com. Cas. 163.

1750. *Add. Annotation :*—*As to* (1) **Refd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119.

1780a. Breach of duty—Broker assuming to charter vessel to himself—Ratification of wrongful act.]—Pltfs., owners of the *D.*, instructed H., a broker, to procure a charterparty for their ship. H. being minded, in breach of his duty as a broker, to make use of the ship for his own ends, purported to effect a charterparty dated Aug. 9, 1926, between pltfs & an export co. of Danzig " & others " as charterers. This document was signed by H. " as agent only " for the owners & by H. " on behalf of the charterers as per separate chartering notes." By one of the clauses of the document the shipowners were to have a lien for all dead freight & demurrage at the port of loading. H. had no authority to act on behalf of the export co., who knew nothing about the transaction. Defts., timber merchants in London, bought from S. & Co., shippers in Danzig, red wood at a price including cost, freight & insurance from Danzig to London. S. & Co. engaged cargo space for the wood on board the *D.*, by means of chartering notes signed by H. purporting to act " by order of the owners," but without their authority, & the wood was shipped on board the *D.* at Danzig under bills of lading signed by H. purporting to act for & on behalf of & with the authority of the master. Each bill of lading incorporated the terms, conditions & clauses of the so-called charterparty of Aug. 9, among which was the above lien clause. The bills of lading were indorsed by S. & Co. & tendered under the contract of sale to defts., who accepted them & paid S. & Co. for the goods. The *D.* left Danzig without a full cargo several days after the lay days had expired. When she arrived in London the master deposited the wood with wharfingers subject to a lien in favour of pltfs. for dead freight & demurrage, & pltfs. brought an action against defts. for a declaration that they were entitled to the lien :—*Held :* the lien clause in the document of Aug. 9 was incorporated in the bills of lading, on the grounds that (1) pltfs., by taking the cargo on board their ship & issuing bills of lading in respect of it after they knew of H.'s breach of duty in assuming to charter their vessel to himself, had ratified his act & so validated the charterparty, & (2) the incorporation of the lien clause was not in any way dependent or contingent upon the charterparty being a valid or effective document, for in the absence of a condition to the contrary, one document, or part thereof, might be incorporated in another, although the first document had, of itself, no legal effect whatever ; (3) defts. could not support a plea in avoidance of circuity of action, because it was essential to that plea that the amount recoverable by deft. pleading it

PART V. SECT. 1.

1 i. ——.]—Sect. 44 (2) of Navigation Act, 1912-1926 provides that " If a ship proceeds to sea being short in her crew of not more than one-fifth of her engine-room staff, or one-fifth of her deck complement, the master or owner shall not be liable under this sect. if it is proved that the breach was not occasioned through any fault of his own " :—*Held :* (1) the excuse contained in sub-sect. (2) is established when it is proved that deft. honestly endeavoured to obtain a full crew & that his failure to do so did not arise from his omission to do something which he reasonably ought to have done ; (2) firemen & trimmers form part of a ship's engine-room staff within the sub-section.—DAY *v.* YATES (1931), 45 C. L. R. 32 ; 4 A. L. J. 410 ; [1931] Argus L. R. 128.—**AUS.**

PART VII. SECT. 2, SUB-SECT. 3.

1781 i. *Necessity for authority by deed.*]—HICKMAN & CO., LTD. *v.* ERNST SHIPBUILDING CO., LTD., [1928] 2 D. L. R. 229 ; 60 N. S. R. 100.—**CAN.**

from pltf. in the action in which it was pleaded should be the exact amount recoverable by pltf. from him; & as S. & Co. were not parties to the action, it could not be averred that the damages, if any, recoverable by defts. from S. & Co. for breach of the contract of sale would be the same in amount as the sum recoverable by pltfs. from defts. under the terms of the bills of lading, & it did not appear that S. & Co. had any cause of action against pltfs., whose liabilities depended upon the bills of lading.—AKT. OCEAN *v.* HARDING (B.) & SONS, LTD., [1928] 2 K. B. 371; 97 L. J. K. B. 684; 139 L. T. 217; 33 Com. Cas. 277; 17 Asp. M. L. C. 465, C. A.

1796. *Add. Annotation:—As to* (1) **Refd.** The Penelope, [1928] P. 180.

1840. *Add. Annotations:—As to* (1) **Consd.** Sullivan *v.* Constable (1932), 48 T. L. R. 267. **Refd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

1899. *Add. Annotation:*—**Refd.** The Erik Boye (1929), 142 L. T. 335.

1958. *Add. Annotation:—As to* (4) **Refd.** Akt. Ocean *v.* Harding, [1928] 2 K. B. 371.

1968. *Add. Annotation:*—**Refd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co. (1931), 47 T. L. R. 373.

1971. *Add. Annotation:*—**Refd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co., [1931] 2 K. B. 393.

2001. *Add. Annotation:—As to* (2) **Refd.** Bentall, Horsley & Baldry *v.* Vicary, [1931] 1 K. B. 253.

2006. *Add. Annotations:*—**Refd.** Gaze W. H. & Sons *v.* Port Talbot Corpn. (1929), 93 J. P. 89; Bentall, Horsley & Baldry *v.* Vicary [1931] 1 K. B. 253.

2059. *Add. Annotation:*—**Refd.** Istros S.S. Owners *v.* Dahlstroem (F. W.) & Co., [1931] 1 K. B. 247.

2059a. Express exception in charterparty.]—By a charterparty in the form known as the Baltic & White Sea Conference Uniform Time Charter it was agreed between the owner of a steamship & charterers that the steamship should be taken on time charter by the charterers on terms & conditions which included: "Clause 8: Captain to prosecute all voyages with utmost dispatch. . . ." "Clause 10: . . . Should steamer be driven into port, or to anchorage, by stress of weather . . . causing detention to steamer, time so lost & expenses incurred shall be for charterers' account, even if caused through fault or want of due diligence by owners' servants." "Clause 12: Owners only to be responsible . . . for delay during the currency of this charter . . . if such delay . . . has been caused by want of due diligence on the part of owners or their manager, in making steamer seaworthy & fitted for the voyage, or any other personal act, or omission, or default of owners or their manager. Owners not to be responsible in any other case, nor for damage or delay whatsoever & howsoever caused, even if caused by neglect or default by owners' servants." During a voyage under the charterparty the captain, owing to bad weather, put into three harbours or sheltering places. The charterers having alleged that the captain had failed to prosecute his voyage "with utmost dispatch" within clause 8 of the charterparty & having claimed an allowance of hire in respect of the delay, recourse was had to arbn. The umpire found that there was nothing to justify the captain in putting into the harbours or sheltering places which he entered, that he had not prosecuted the voyage "with utmost dispatch" & that delay had been caused thereby, but that the delay had not been caused by any "personal act, or omission, or default" of the owner or his manager within clause 12. The award having been stated in the form of a special case:—*Held:* the owner was protected from liability for the delay by the provisions of clause 12 of the charterparty which, while not qualifying the duty to prosecute all voyages with utmost dispatch, placed on the captain by clause 8, afforded the owner a defence in such an action as the present.—ISTROS, S.S. OWNER *v.* DAHLSTROEM (F. W.) & Co., [1931] 1 K. B. 247; 100 L. J. K. B. 141; 144 L. T. 124; 36 Com. Cas. 65; 18 Asp. M. L. C. 177.

2104a. —— Damage sustained before making of charterparty.]—A time charterparty contained the following cesser clause: "In the event of loss of time from deficiency of men or stores, breakdown of machinery, whether partial or otherwise, collision, stranding, fire in ship & (or) cargo, damage or interference by authorities preventing the working of the vessel for more than twelve running hours, the payment of hire shall cease until she be again in an efficient state to resume her service at the place where the accident occurred. . . ." After the steamer came on hire she went into dry dock for four days to repair damage which she had sustained in collision before coming on hire. The owners allowed the charterers four days' hire, & claimed to recover the amount so allowed from the defts. in the collision action:—*Held:* the above cesser clause applied to damage arising before as well as after the making of the charterparty; the charterers were entitled to deduct four days' hire; & the owners were entitled to recover the amount so deducted from the defts. as damages for loss of use of their steamer.—THE ESSEX ENVOY (1929), 141 L. T. 432; 35 Com. Cas. 61; 18 Asp. M. L. C. 54.

2129. *Add. Annotations:*—**Consd.** First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922; Hyman *v.* Hyman, Hughes *v.* Hughes, [1929] 1 K. B. 1. **Refd.** The Penelope, [1928] P. 180; May *v.* May, [1929] 2 K. B. 386.

PART VII. SECT. 2, SUB-SECT. 22.—C.

2115 i. *Duration.*] — The pltf. chartered his boat to the deft. for fishing in the north for 60 days or longer if required. At the end of the 60 days deft. informed pltf. personally at V. that deft. would not require the boat any longer, & undertook to notify his cannery manager to that effect, but the notification did not reach the latter before the boat had left for another of deft.'s canneries, & on arrival there the manager told the captain, & also the engineer who was representing pltf., that he would not release the boat & that they should fish at a certain place. Fishing was carried on for another 30 days:—*Held:* the charterparty had been put an end to at the expiration of the 60 days.—PETERSON *v.* MILLERD PACKING CO., [1928] 4 D. L. R. 833; [1928] 3 W. W. R. 279.—CAN.

2136. *Add. Annotations :—As to* (1) **Refd.** The Penelope, [1928] P. 180 ; May *v.* May, [1929] 2 K. B. 386 ; Bell *v.* Lever Bros., Ltd. (1931), 146 L. T. 258. *As to* (2) **Consd.** First Russian Insce. *v.* London & Lancashire Insce., [1928] Ch. 922. *Generally*, **Refd.** Hyman *v.* Hyman, [1929] P. 1.

2212. *Add. Annotation :—As to* (2) **Consd.** Foreman & Ellams *v.* Blackburn, [1928] 2 K. B. 60.

2219. *Add. Annotation :*—**Consd.** Svenssons (C. Wilh) Travaruaktiebolag *v.* Cliffe S.S. Co., Ltd., [1932] 1 K. B. 490.

2230a. ——.]—Defts. bought timber to be shipped to Liverpool, & it was shipped in pltf.'s steamer along with the cargo of other shippers. The bill of lading was a clean bill, stating that a specified quantity had been shipped in good condition, & incorporating the terms of the charterparty, which provided that the statements in the bill of lading as to the goods having been shipped in good condition, & as to the aggregate number of pieces delivered to the steamer, should be conclusive evidence against the shipowner. At the time of signing the bill of lading the master signed a protest stating that part of defts.' goods was in bad condition. Defts. were indorsees of the bill of lading, & after the arrival of the steamer pltf. informed them that part of the cargo had been damaged before shipment. There being nothing to indicate to defts. that the damaged part belonged to them, defts. accepted the bill of lading, when presented, & they paid for the timber. On delivery they found that the timber was defective, & that the quantity was less than the specified quantity. The shipowner sued defts. for balance of freight, & defts. counterclaimed for damages for delivering part of the goods in a damaged condition, & for failing to deliver part of the goods shipped :—*Held :* as the information of defts. was not of such a nature as to justify them in rejecting the bill of lading, pltf. was estopped from disputing the statements in it, & defts. were entitled to succeed on their counterclaim.—EVANS *v.* JAMES WEBSTER & BROTHERS, LTD. (1928), 45 T. L. R. 136 ; 73 Sol. Jo. 60 ; 34 Com. Cas. 172.

2249. *Add. Citation :*—17 Asp. M. L. C. 307.

2254. *Add. Annotations :—As to* (2) **Apld.** Silver *v.* Ocean Steamship Co. (1929), 46 T. L. R. 78. **Refd.** Evans *v.* Webster (1928), 45 T. L. R. 136.

2256. *Add. Annotation :*—**Consd.** The Torni, [1932] P. 27.

2257. *Add. Annotations :—As to* (2) **Apld.** Silver *v.* Ocean Steamship Co. (1929), 46 T. L. R. 78. **Refd.** Evans *v.* Webster (1928), 45 T. L. R. 136.

2257a. ——.]—Where a shipowner issues a bill of lading acknowledging the receipt of goods "in apparent good order & condition," he cannot afterwards prove, as against a holder or indorsee of the bill of lading, that the goods were damaged before shipment, if such damage would have been apparent on reasonable inspection ; nor can he rely on the exception of insufficiency of packing within Carriage of Goods by Sea Act, 1924, Art. IV., r. 2 (*n*), if the insufficient packing was apparent on reasonable inspection.—SILVER *v.* OCEAN STEAMSHIP CO., LTD., [1930] 1 K. B. 416 ; 99 L. J. K. B. 104 ; 142 L. T. 244 ; 46 T. L. R. 78 ; 73 Sol. Jo. 849 ; 35 Com. Cas. 140 ; 18 Asp. M. L. C. 74, C. A.

2257b. **Collateral protest as to damage signed by master.**]—EVANS *v.* WEBSTER JAMES & BROS., LTD., No. 2230a, *ante*.

2259. *Add. Annotation :*—**Distd.** Evans *v.* Webster (1928), 45 T. L. R. 136.

2262a. **Damage before shipment.**]—EVANS *v.* JAMES WEBSTER & BROTHERS, LTD., No. 2230a, *ante*.

2286. *Add. Annotation :*—**Refd.** Silver *v.* Ocean Steamship Co. (1929), 46 T. L. R. 78.

2287. *Add. Annotations :*—**Refd.** Evans *v.* Webster (1928), 45 T. L. R. 136 ; Silver *v.* Ocean S.S. Co., [1930] 1 K. B. 416.

2288. *Add. Annotation :—As to* (1) **Apld.** Silver *v.* Ocean Steamship Co. (1929), 46 T. L. R. 78.

2318. *Add. Annotation :*—**Refd.** Dobell (C. G.) & Co. *v.* Barber & Garratt (1930), 47 T. L. R. 66.

2450. *Add. Annotation :*—**Refd.** Akt. Ocean *v.* Harding, [1928] 2 K. B. 371.

2479. *Add. Annotation :—As to* (2) **Refd.** Newsholme Bros. *v.* Road Transport & General Insce. Co., [1929] 2 K. B. 356.

2502a. **Understatement of weight of cargo—Duty of charterer to indemnify shipowner.**]—Where by a charterparty the master is required to sign the bill of lading as presented by the charterers, & the bill of lading so presented understates the weight, the charterers are bound to indemnify the shipowner for any loss thereby resulting.

By a charterparty the charterers were entitled to pay freight "on bill of lading weight less 2 per cent. in lieu of weighing." The shipowners, believing that more cargo

PART VII. SECT. 3, SUB-SECT. 3.

2189 i. *Value of contents—Failure to insert — Limitation of shipowners' liability—To specific sum.*]—In an action by the indorsee of a bill of lading to recover damages in respect of a machine carried by the defts. ship & delivered in a damaged condition, the evidence established that its market value had been considerably depreciated & that the extent of the depreciation, based upon the market value of the machine delivered in good condition in Sydney, exceeded £100. The value of the machine had not been declared by the skipper before shipment & inserted in the bill of lading. Defts. failed to establish a case of statutory immunity from liability :—*Held :* pltf. should be awarded £100, the maximum amount of damages recoverable in those circumstances under Carriage of Goods by Sea Act, 1924, Sched., Art. IV., r. 5.—PARKE, LACEY, HARDIE, LTD. *v.* CLAN MACFADYEN, THE SHIP (1930), 30 S. R. N. S. W. 438 ; 47 N. S. W. W. N. 160. —**AUS.**

PART VII. SECT. 3, SUB-SECT. 4.—A.

o. *Revsd.*, 30 S. C. R. 473.

PART VII. SECT. 3, SUB-SECT. 9.—B. (a).

c 1. —— *Refusal to pay demand draft.*]—Pltf. co., made a written contract of sale & purchase with P. for the supply of certain oils. The contract contained (*inter alia*) the following "terms" : "Net cash by demand draft on arrival of vessel or vessels carrying the goods. . . . Seller's liability shall cease upon presentation of bill of lading, or, at their option, by presentation of an order for delivery alone . . . shipment of the goods to constitute delivery." P. on giving the order, gave to pltf. co. a cheque for £50, such sum to be deducted from the purchase-price when draft was presented for payment. The bill of lading, which was made to order & not to P., was tendered, with a demand draft attached, to P. & refused. The oils, upon arrival, were seized by defts. under several distress warrants on unsatisfied judgments obtained against P. On an originating summons to determine in whom was the property in the oil :—*Held :* upon a consideration of the contract & all the surrounding circumstances, the intention of the parties was that the property in the goods should not pass until payment of the demand draft, & the property in the goods never passed from pltf. co.—SOCONY PROPRIETARY, LTD. *v.* BEGG [1931] N. Z. L. R. 567.—**N.Z.**

had been shipped than that stated in the bill of lading presented by the charterers, had the cargo weighed at the port of discharge, where it was found that the weight had been understated :—*Held :* the charterers were not entitled to deduct 2 per cent. from the out-turn weight.—DAWSON LINE, LTD. *v.* AKTIENGESELLSCHAFT ADLER FÜR CHEMISCHE INDUSTRIE OF BERLIN, [1932] 1 K. B. 433 ; 101 L. J. K. B. 57 ; 146 L. T. 187 ; 37 Com. Cas. 28, C. A.

2503. *Add. Annotation :*—*As to* (1) **Apld.** Dawson Line, Ltd. *v.* Aktiengesellschaft Adler für Chemische Industrie of Berlin, [1932] 1 K. B. 433.

2508. *Add. Annotation :*—**Expld. & Apprvd.** Louis Dreyfus & Co. *v.* Tempus Shipping Co. (1931), 47 T. L. R. 542.

2515. *Add. Annotation :*—**Refd.** Akt. Ocean *v.* Harding, [1928] 2 K. B. 371.

2526. *Add. Annotation :*—**Refd.** Akt. Ocean *v.* Harding, [1928] 2 K. B. 371.

2549. *Add. Annotation :*—*As to* (2) **Consd.** Widnes Foundry (1925), Ltd. *v.* Cellulose Acetate Silk Co. (1931), 47 T. L. R. 373.

2580. *Add. Annotation :*—**Refd.** Goodwin, Ferreira & Co. *v.* Lamport & Holt (1929), 141 L. T. 494.

2607. *Add. Annotation :*—*As to* (2) **Consd.** Tempus Shipping Co. *v.* Louis Dreyfus & Co. (1930), 144 L. T. 13.

2609. *Add. Annotations :*—**Apld.** Firemen's Fund Insce. *v.* Western Australian Insce. & Atlantic Insce. (1927), 138 L. T. 108. **Apprvd.** Louis Dreyfus & Co. *v.* Tempus Shipping Co. (1931), 47 T. L. R. 542.

2611. *Add. Annotation :*—**Consd.** Tempus Shipping Co. *v.* Louis Dreyfus & Co. (1930), 144 L. T. 13.

2613. *Add. Annotation :*—**Apprvd.** Louis Dreyfus & Co. *v.* Tempus Shipping Co. (1931), 47 T. L. R. 542.

2616. *Add. Annotation :*—**Consd.** Tempus Shipping Co. *v.* Louis Dreyfus & Co. (1930), 144 L. T. 13.

2620. *Add. Annotations :*—*As to* (2) **Refd.** Compania Mexicana De Petroleo " El Aguila " *v.* Essex Transport & Trading Co. (1929), 141 L. T. 106 ; The Edison, [1932] P. 52.

2642. *Add. Annotation :*—**Refd.** Gosse Millard *v.* Canadian Government Merchant Marine, [1928] 1 K. B. 717.

2654. *Add. Annotation :*—**Refd.** Tempus Shipping Co. *v.* Louis Dreyfus & Co. (1930), 144 L. T. 13.

2655. *Add. Annotations :*—*As to* (3) **Refd.** Akt. Ocean *v.* Harding, [1928] 2 K. B. 371; Fiumana Società Di Navigazione *v.* Bunge & Co., [1930] 2 K. B. 47 ; Tempus Shipping Co. *v.* Louis Dreyfus & Co., [1931] 1 K. B. 195.

2677. *Add. Annotations :*—**Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51. **Refd.** Svenssons (C. Wilh) Travaruaktiebolag *v.* Cliffe S.S. Co. (1931), 37 Com. Cas. 83.

2679. *Add. Annotation :*—**Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

2680. *Add. Annotations :*—*As to* (1) **Expld. & Apprvd.** Louis Dreyfus & Co. *v.* Tempus Shipping Co. (1931), 47 T. L. R. 542, H. L. **Refd.** Gosse Millard *v.* Canadian Government Merchant Marine, [1928] 1 K. B. 717.

2683. *Add. Annotations :*—**Consd.** Foreman & Ellams *v.* Federal Steam Navigation Co., [1928] 2 K. B. 424. **Apld.** Gosse Millerd *v.* Canadian Government Merchant Marine, The Canadian Highlander, [1929] A. C. 223.

2691. *Add. Annotations :*—*As to* (1) **Consd.** Tempus Shipping Co. *v.* Louis Dreyfus & Co., [1931] 1 K. B. 195. **Refd.** Cosmopolitan Shipping Co. (Inc.) *v.* Hatton & Cookson, Ltd. (Liverpool) (1929), 143 L. T. 296.

2693. *Add. Annotations :* — **Refd.** Cosmopolitan Shipping Co. (Inc.) *v.* Hatton & Cookson, Ltd. (Liverpool) (1929), 143 L. T. 296 ; Fiumana Società Di Navigazione *v.* Bunge & Co., [1930] 2 K. B. 47 ; Louis Dreyfus & Co. *v.* Tempus Shipping Co. (1931), 47 T. L. R. 542.

2697. *Add. Annotation :*—**Consd.** The Torni (1932), 48 T. L. R. 471.

2700. *Add. Annotation :*—**Refd.** Gosse Millard *v.* Canadian Government Merchant Marine, [1928] 1 K. B. 717.

2703. *Add. Annotation :*—**Expld.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

2704. *Add. Annotation :*—**Consd.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

2711. *Add. Annotations :*—**Consd.** Foreman & Ellams *v.* Federal Steam Navigation Co., [1928] 2 K. B. 424. **Apld.** Gosse Millard *v.* Canadian Government Merchant Marine, [1928] 1 K. B. 717. **Refd.** Gosse Millerd *v.* Canadian Government Merchant Marine, The Canadian Highlander, [1929] A. C. 223 ; The Touraine, [1928] P. 58.

2712. *Add. Annotations :*—**Consd.** Foreman & Ellams *v.* Federal Steam Navigation Co., [1928] 2 K. B. 424 ; Gosse Millerd *v.* Canadian Government Merchant Marine, The Canadian Highlander, [1929] A. C. 223.

2713. *Add. Annotation :*—*As to* (3) **Apld.** Dawson Line, Ltd. *v.* Aktiengesellschaft Adler für Chemische Industrie of Berlin, [1932] 1 K. B. 433.

2714. *Add. Annotation :*—**Consd.** Gosse Millerd *v.* Canadian Government Merchant Marine, The Canadian Highlander, [1929] A. C. 223.

2720. *Add. Citation :*—17 Asp. M. L. C. 294.

Add. Annotations :—*As to* (1) **Consd.** Foreman & Ellams *v.* Federal Steam Navigation Co.,

PART VII. SECT. 4, SUB-SECT. 6.—A.

sb. *Effect of unseaworthiness.*]—A consignment of goods placed aboard ship was damaged by the admission of sea-water to the hold of the ship through corrosion of the ship's plates from the inside, arising without negligence on the part of the shipowner, but rendering the vessel unseaworthy :—*Held :* the proximate cause of the damage being the unseaworthiness of the ship, it could not be regarded as a loss arising from " danger of the sea " within Sea Carriage of Goods Act, 1922, s. 3. —WANGANUI HERALD NEWSPAPER CO. *v.* COASTAL SHIPPING CO., [1929] N. Z. L. R. 305.—**N.Z.**

PART VII. SECT. 4, SUB-SECT. 12.

2664 iv. ——— ———.]—SCOTTISH, METROPOLITAN ASSURANCE CO., LTD. *v.* CANADA STEAMSHIP LINES, LTD., [1930] S. C. R. 262 ; 1 D. L. R. 201 ; *revsg.*, 46 Que. K. B. 305.—**CAN.**

m i. ———.]—BURNS JOHN & CO. *v.* S.S. CANADIAN EXPLORER, [1928] N. Z. L. R. 767.—**N.Z.**

PART VII. SECT. 4, SUB-SECT. 14.—D.

2720 i. *Negligence or error in navigation or management—Carriage of Goods by Sea Act*, 1924 (c. 22), *Sched., Art. IV., r.* 2 (*a*), (*n*)—*Insufficient packing.*]—Where goods carried under a bill of lading under Carriage of Goods by Sea Act, 1924, are described in the bill of lading as being shipped in apparent good order & condition, but noted as

[1928] 2 K. B. 424 ; Gosse Millerd *v.* Canadian Government Merchant Marine, The Canadian Highlander, [1929] A. C. 223.

2721. *Add. Citations :—revsd. sub nom.* Gosse Millerd, Ltd. *v.* Canadian Government Merchant Marine, Ltd., The Canadian Highlander, [1929] A. C. 223 ; 98 L. J. K. B. 181 ; 140 L. T. 202 ; 45 T. L. R. 63 ; 34 Com. Cas. 94 ; 17 Asp. M. L. C. 549, H. L. *Add. Annotations :*—**Consd.** Foreman & Ellams *v.* Federal Steam Navigation Co., [1928] 2 K. B. 424 ; Silver *v.* Ocean Steamship Co. (1929), 46 T. L. R. 78.

2722. *Add. Citations :*—44 T. L. R. 204 ; 17 Asp. M. L. C. 413.

2724. *Add. Citation :*—33 Com. Cas. 70.

2725. *Add. Citations :*—[1928] 2 K. B. 424 ; 72 Sol. Jo. 103 ; 17 Asp. M. L. C. 447 ; 33 Com. Cas. 168.
Add. Annotations :—As to (1) **Refd.** Stag Line, Ltd. *v.* Foscolo Mango & Co. (1931), 48 T. L. R. 127.

2727a. **" At charterer's risk."**]—Svenssons (C. Wilh) Travaruaktiebolag *v.* Cliffe S.S. Co., Ltd., No. 2974b, *post.*

2730. *Add. Annotation :—As to* (1) **Apld.** Svenssons (C. Wilh.) Travaruaktiebolag *v.* Cliffe S.S. Co. (1931), 37 Com. Cas. 83.

2736a. **Loading stopped by ice — Whether " weather " preventing loading.**]—It was provided in a charterparty that a steamship should proceed to a port in Finland in mid-November & load pit-props at a specified rate " per weather working day " :—*Held :* that days on which, owing to ice, loading could not proceed were not weather working days.—Dampskibsselskabet Botnia A/S *v.* Bell (C. P.) & Co., [1932] 2 K. B. 569 ; 101 L. J. K. B. 574 ; 147 L. T. 499 ; 48 T. L. R. 93 ; 76 Sol. Jo. 10.

2777. *Add. Citation :*—17 Asp. M. L. C. 265.
Add. Annotation :—Generally, **Refd.** Silver *v.* Ocean Steamship Co. (1929), 46 T. L. R. 78.

2777a. **" Insufficiency of packing "—Not confined to packing of goods damaged.**]—Goodwin, Ferreira & Co., Ltd. *v.* Lamport & Holt, Ltd., No. 3649a, *post.*

2777b. —— **Insufficiency apparent to reasonable inspection.**]—Silver *v.* Ocean Steamship Co., Ltd., No. 2257a, *ante.*

2796. *Add. Annotations :*—**Consd.** The Erik Boye (1929), 142 L. T. 335 ; Fiumana Società Di Navigazione *v.* Bunge & Co., [1930] 2 K. B. 47. **Refd.** Cosmopolitan Shipping Co. (Inc.) *v.* Hatton & Cookson, Ltd. (Liverpool) (1929), 143 L. T. 296 ; Silver *v.* Ocean Steamship Co. (1929), 46 T. L. R. 78.

2800. *Add. Annotations :*—**Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51. **Refd.** The Hayle, [1929] P. 275. Svenssons (C. Wilh.) Travaruaktiebolag *v.* Cliffe S.S. Co. (1931), 37 Com. Cas. 83.

2856. *Add. Citations :*—[1928] P. 180 ; 97 L. J. P. 127 ; 139 L. T. 355 ; 72 Sol. Jo. 557 ; 17 Asp. M. L. C. 486.

2923. *Add. Annotation :*—**Refd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 274.

2931a. **Option as to port of discharge—Damages reduced by cost of unloading at port most favourable to charterer.**]—Kaye Steam Navigation Co., Ltd. *v.* Barnett (W. & R.), Ltd. (1932), 48 T. L. R. 440 ; 76 Sol. Jo. 415.

2955. *Add. Annotation :*—**Refd.** Walton Harvey, Ltd. *v.* Walker & Homfrays, Ltd., [1931] 1 Ch. 145.

2962. *Add. Annotation :*—**Refd.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 458.

2974. *Add. Annotation :—As to* (1) **Apld.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 725.

2974a. **Whether included in loading.**]—Construction of the following clause in a charterparty : " Cargo to be loaded & discharged free of expense to the steamer " :—*Held :* " load " included the operation of stowing.—A.-G. *v.* Leopold Walford (London), Ltd. (1924), 18 Ll. L. R. 314.

Annotation :—**Consd.** National S.S. Co., Ltd. *v.* Sociedad Anónima Comercial de Exportacion Y. Importacion (Louis Dreyfus Y. Cia), Ltd. (1932), 48 T. L. R. 325 (*see* 49 T. L. R. 50).

2974b. ——.]—(1) The operation of loading a ship involves all that is required, *i.e.*, stowing &, *semble*, where necessary, lashing, to put the cargo in a condition in which it can be carried.

By a charterparty a ship was to proceed to specified ports as ordered by the charterers, there load a cargo of pit props, & deliver it to an English port. By the charterparty the vessel was to be " provided with a deck load, at full freight, at charterers' risk, not exceeding what she can reasonably stow & carry." By an exception clause accidents of navigation, or latent defects in, or accidents to, hull &/or machinery were (*inter alia*) excepted " even when occasioned by the negligence, default, or error in judgment of the . . . master, mariners, or other persons employed by the shipowner, or for whose acts he is responsible. . . ." The ship loaded part of her cargo at one port & then proceeded to B. to ship the remainder. When the last sling load of deck cargo had been placed on deck, but before it had been stowed, the ship took a list, first to starboard & then to port, the bulwarks carried away, & a large quantity of cargo shot overboard & was lost. The judge held on the evidence that at the time of the loss the ship was unseaworthy owing to the deck load being excessive & that the captain was negligent in loading the ship as he did. In an action by the charterers against the shipowners for the value of the cargo lost :—*Held :* (2) as, at the beginning of the loading, the ship was seaworthy to receive & hold the cargo, & as, at the time of the loss, the operation of loading had not been completed, all the cargo not having been stowed, there was no breach of the warranty of seaworthiness & pltfs. were not entitled to recover ; (3) although the words in the

" deemed insufficiently packed," & the owner proves that the goods were delivered in a damaged condition, if the carrier claims the benefit of the immunity specified in r. 2 (*n*) of Art. IV. of the Sched., the onus lies on him of affirmatively establishing (*a*) the goods were insufficiently packed, & (*b*) that the insufficient packing was the cause of the damage to the goods.—Parke, Lacey, Hardie, Ltd. *v.* Clan MacFadyen, The Ship (1930), 30 S. R. N. S. W. 438 ; 47 N. S. W. W. N. 160.—**AUS.**

Although charter maintained.]—Westralian Farmers, Ltd. *v.* Tyneside Line (1920), Ltd., [1929] W. A. L. R. 14.—**AUS.**

charterparty, " at charterers' risk," standing alone, did not excuse defts. in the case of a loss due to negligence on their part or on the part of their servants, those words must be read with the exception clause, & the effect of reading the two together was to enable defts. to rely on the exception clause, which protected them against the consequences of such negligence.—SVENSSONS (C. WILH.) TRAVARUAKTIEBOLAG *v.* CLIFFE S.S. CO., [1932] 1 K. B. 490; 101 L. J. K. B. 521; 147 L. T. 12; 37 Com. Cas. 83.

2979a. **Expenses of shore winchmen.**]—Where by a clause in a charterparty it was provided that " the charterers shall provide stevedors to load the cargo at a cost to the vessel of 25 cents. gold per English ton," & owing to trade union regulations in the port of loading shore winchmen had to be employed at the cost of the charteres to work the vessel's winches:—*Held:* the cost of those winchmen was an expense of the owners of the vessel with which the charterers were entitled to debit them.—SOCIEDAD ANÓNIMA COMERCIAL DE EXPORTACION Y. IMPORTACION (LOUIS DREYFUS Y CIA), LIMITADA *v.* NATIONAL STEAMSHIP CO., LTD. (1932), 49 T. L. R. 50, H. L.; *revsg.*, S. C. *Sub nom.* NATIONAL STEAMSHIP CO., LTD. *v.* SOCIEDAD ANÓNIMA COMERCIAL DE EXPORTACION Y. IMPORTACION (LOUIS DREYFUS Y. CIA), LTD., 48 T. L. R. 325; 37 Com. Cas. 283, C. A.

3005a. ——.]—Where a charterparty uses the words " provide & pay " or " employ & pay " [a stevedore] I think the effect of such a clause is to transfer the duty & obligation, which would otherwise rest on the shipowner, to the charterer, of stowing the cargo in the way it ought to be stowed (GREER, J.).—BRYS & GYLSEN, LTD. *v.* DRYSDALE & CO. (1920), 4 Ll. L. R. 24.

Annotation:—**Consd.** National S.S. Co., Ltd. *v.* Sociedad Anónima Comercial de Exportacion Y. Importacion (Louis Dreyfus Y. Cia), Ltd., (1932), 48 T. L. R. 325 (*see* 49 T. L. R. 50).

3036. *Add. Annotation:*—**Consd.** Cosmopolitan Shipping Co. (Inc.) *v.* Hatton & Cookson, Ltd. (Liverpool) (1929), 143 L. T. 296.

3045. *Add. Annotation:*—**Apld.** Firemen's Fund Insce. *v.* Western Australian Insce. & Atlantic Insce. (1927), 138 L. T. 108.

3054. *Add. Citation:*—17 Asp. M. L. C. 311.

3056. *Add. Annotations:* — **Consd.** The Hayle, [1929] P. 275. **Refd.** Cosmopolitan Shipping Co. (Inc.) *v.* Hatton & Cookson, Ltd. (Liverpool) (1929), 143 L. T. 296; Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51; Tempus Shipping Co. *v.* Louis Dreyfus & Co. (1930), 144 L. T. 13.

3059a. —— ——.]—Resp. defts., in Oct. 1919, shipped 412 tons of West African produce on the applt. pltfs.' schooner, the *R.*, for carriage from C. on the west coast of Africa to Liverpool. A clause in the bill of lading provided that freight was due on shipment & should be payable on demand, ship or goods lost or not lost. Defts. paid half the freight on shipment. The vessel & cargo were lost during the voyage, & as the goods never reached Liverpool, defts. refused to pay pltfs. the balance of freight, & pltfs. now claimed the balance of freight. Defts. pleaded that the vessel was in fact unseaworthy, & that therefore the bill of lading contract could not be enforced against them. By clause 2 of the bill of lading: " The co. shall not be liable for, or for any loss or damage arising from or due to, collision, . . . or any other peril of the sea . . . of whatsoever nature or kind, whether any perils, causes, or things in this clause mentioned are due to or arise . . . from the wrongful act, omission, or error in judgment or negligence of . . . any person whomsoever in the service of the co. . . . & whether due to or arising . . . from unseaworthiness of the ship . . . provided in case of any loss, injury, or damage arising from or due to unseaworthiness of the ship at the beginning of the voyage all reasonable means shall have been taken to provide against such unseaworthiness. The co. may entrust to experienced or qualified officers, servants, or agents the duty of providing against unseaworthiness, & shall then be deemed to have fulfilled its obligations hereunder . . ." :—*Held:* defts. had failed to discharge the *onus* which lay on them of proving that the vessel was unseaworthy at the beginning of the voyage. Moreover, even if the vessel had in fact been unseaworthy pltfs. were protected by clause 2 of the bill of lading, as (*a*) they had taken all reasonable means to provide against unseaworthiness, & (*b*) they had entrusted to experienced & qualified officers, servants, or agents, the duty of providing against unseaworthiness, & must therefore be deemed to have fulfilled their obligations under the bill of lading.—COSMOPOLITAN SHIPPING CO. (INC.) *v.* HATTON & COOKSON, LTD. (LIVER-

PART VII. SECT. 5, SUB-SECT. 5.—A.

2979 i. —— —— *Construction of charterparty.*]—ROBIN LINE STEAMSHIP CO. *v.* CANADIAN STEVEDORING CO., SEAS SHIPPING CO. *v.* CANADIAN STEVEDORING CO., [1928] 3 D. L. R. 856; [1928] S. C. R. 423.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 1.—B.

3039 v. —— ——.]—BURJOR F. R. JOSHI *v.* ELLERMAN CITY LINES, LTD., (1927), I. L. R. 52 Bom. 327.—**IND.**

e i. —— *Whether contract within Carriage of Goods by Sea Act*, 1924.]—A firm of shipowners contracted to carry a cargo of machinery belonging to a firm of shipbuilders from the latter's premises in Glasgow to their shipyards at Belfast. The contract was arranged by correspondence, in the course of which the shipowners stipulated that the cargo was to be conveyed at owner's risk & subject to the conditions in their sailing-bills. These included a condition that, in contracts were there was no bill of lading, the shipowners would not be liable for loss resulting from unseaworthiness of the ship. The vessel carrying the machinery was lost on the voyage, along with the cargo. No bill of lading had been issued, but, after the loss of the cargo, the shipowners gave the shipbuilers a letter acknowledging receipt of the cargo & specifying it in detail. In an action at the instance of the shipbuilders against the shipowners for recovery of the value of the cargo based on the alleged unseaworthiness of the vessel, the pursuers contended that the contract between the parties was regulated by the Act of 1924, & that the defenders had failed to comply with the provisions of the Act for contracting out of their statutory liability:—*Held:* that the contract between the parties was not a " contract of carriage " within the meaning of the Carriage of Goods by Sea Act, 1924, in respect (*a*) that the only receipt granted for the cargo, *viz.* the letter of acknowledgment given by the defenders to the pursuers, did not constitute either a " bill of lading " or " similar documents of title " within Art. 1 (*b*) of the Schedule to the Act, & (*f*) that, the issue of a bill of lading not being within the contemplation of the parties to the contract, the contract could not reasonably be described as " covered " by a bill of lading within the meaning of Art. 1 (*b*); &, accordingly, that defenders were entitled to contract out of liability for loss resulting from their vessel's unseaworthiness without reference to the Act; & action dismissed.—HARLAND & WOLFF, LTD. *v.* BURNS & LAIRD LINES, LTD., [illegible] S. C. 722.—**SCOT.**

POOL) (1929), 143 L. T. 296; 35 Com. Cas. 113; 18 Asp. M. L. C. 130, C. A.

Annotation :—**Refd.** Tempus Shipping Co. *v.* Louis Dreyfus & Co. (1930), 144 L. T. 13.

3059b. —— —— **Effect of incorporation of Harter Act.**]—Where a cargo of flour, shipped under bills of lading which incorporated the United States Harter Act, was damaged owing to insufficient ventilation & failure to draw off hot air from the holds, such failure being due to the character & construction of the ship :—*Held :* (1) the damage to the flour was caused by breach of the implied warranty of seaworthiness for the cargo in question; & (2) the United States Harter Act did not exclude the implied warranty of seaworthiness for cargo, or cut down such implied warranty to an undertaking on the part of the shipowner to use due diligence to make the ship seaworthy.—THE ERIK BOYE (1929), 142 L. T. 335; 18 Asp. M. L. C. 66.

3070a. —— —— **After additional cargo taken on board.**]—Pltfs. engaged defts., who were barge owners, to lighter certain machinery from a steamer in Millwall Docks to Fulham, the contract containing an owner's risk clause. Defts.' barge, having taken the machinery on board, proceeded to another steamer & took in additional cargo. While alongside this other steamer the barge was holed by an unknown vessel, & owing to the entrance of water pltfs.' machinery was injured by rust. In an action for breach of the warranty of seaworthiness defts. denied liability on the grounds that the barge was seaworthy when pltfs.' machinery was loaded, & that since, so far as pltfs. were concerned, the loading of additional cargo was part of the voyage, defts. were protected by the owner's risk clause :—*Held :* the loading was not completed until the additional cargo had been taken on board, &, therefore, as the barge was unseaworthy at the time when she started on her voyage, pltfs. were entitled to recover.—THOMPSON & NORRIS MANUFACTURING CO., LTD. *v.* ARDLEY, P. H., & CO. (1929), 46 T. L. R. 120; 74 Sol. Jo. 27.

3070b. —— —— **Completion of loading.**]—SVENSSONS (C. WILH.) TRAVARUAKTIEBOLAG *v.* CLIFFE S.S. CO., No. 2974b, *ante*.

3089a. —— **Sailing without mate.**]—BURNARD & ALGERS, LTD. *v.* PLAYER, RICHARD & CO. (1928), 72 Sol. Jo. 503.

3099a. —— ——.]—A steamship was chartered to proceed to various ports in the River Plate & there load a cargo of grain for carriage to Hamburg. The shipowners had provided bunker coal more than enough to take the ship to the loading ports. Some of this coal was stowed in a reserve bunker on the port side separated from one of the ship's holds only by an unprotected steel bulkhead. The coal was unfit for the voyage. In this respect the vessel was unseaworthy. Shortly after she started on the return voyage a serious fire broke out in the port reserve bunker. The captain put into a port of refuge & incurred expense for the benefit of ship & cargo. In an action by the shipowners against cargo owners for contribution towards a general average expenditure defts. counterclaimed for damages for injury to their cargo owing to the fire. The fire having happened without the actual fault or privity of pltfs. :—*Held :* (1) by virtue of Merchant Shipping Act, 1894 (c. 60), s. 502, which relieved pltfs. from liability for loss of or damage to the cargo, they were entitled to general average contribution; (2) notwithstanding the unseaworthiness of the ship, pltfs. were not liable for loss of or injury to the cargo.—LOUIS DREYFUS & CO. *v.* TEMPUS SHIPPING CO., [1931] A. C. 726; 100 L. J. K. B. 673; 145 L. T. 490; 47 T. L. R. 542; 75 Sol. Jo. 554; 36 Com. Cas. 318, H. L.; *affg.*, S. C. *sub nom.* TEMPUS SHIPPING CO., LTD. *v.* LOUIS DREYFUS & CO., LTD., [1931] 1 K. B. 195, C. A.

3099b. —— ——.]—FIUMANA SOCIETÀ DI NAVIGAZIONE *v.* BUNGE & CO., LTD., No. 4313a, *post*.

3100. *Add. Annotations :*—**Refd.** Foreman & Ellams *v.* Federal Steam Navigation Co., [1928] 2 K. B. 424; Gosse Millerd *v.* Canadian Government Merchant Marine, The Canadian Highlander, [1929] A. C. 223.

3107. *Add. Annotations :*—**Consd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51. **Refd.** The Hayle, [1929] P. 275; Svenssons (C. Wilh.) Travaruaktiebolag *v.* Cliffe S.S. Co. (1931), 37 Com. Cas. 83.

3110a. Flour—Insufficient ventilation of holds.]—THE ERIC BOYE, No. 3059b, *ante*.

3114. *Add. Annotation :*—**Consd.** Svenssons (C. Wilh.) Travaruaktiebolag *v.* Cliffe S.S. Co. (1931), 37 Com. Cas. 83.

3114a. —— ——.]—SVENSSONS (C. WILH.) TRAVARUAKTIEBOLAG *v.* CLIFFE S.S. CO., LTD., No. 2974b, *ante*.

3118. *Add. Annotations :*—**Apld.** Firemen's Fund Insce. *v.* Western Australian Insce. & Atlantic Insce. (1927), 138 L. T. 108. **Consd.** Cosmopolitan Shipping Co. (Inc.) *v.* Hatton & Cookson, Ltd. (Liverpool) (1929), 143 L. T. 296. **Refd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

3124. *Add. Annotation :*—**Refd.** The Touraine, [1928] P. 58.

3128a. —— ——.]—COSMOPOLITAN SHIPPING CO. (INC.) *v.* HATTON & COOKSON, LTD. (LIVERPOOL), No. 3059a, *ante*.

3129. *Add. Annotation :*—**Consd.** Cosmopolitan Shipping Co. (Inc.) *v.* Hatton & Cookson, Ltd. (Liverpool) (1929), 143 L. T. 296.

3161. *Add. Annotation :—As to* (2) **Refd.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

3162a. —— **Within Carriage of Goods by Sea Act, 1924 (c. 22), Sched., Art. IV., r. 4.**]—A cargo of coal was loaded on defts.' steamship, the *I.*, at Swansea, for carriage to Constantinople under bills of lading, which gave the shipowners " liberty . . . to call at any ports in any order, for bunkering or other purposes, . . . all as part of the contract voyage." The shipowners were exempted by the bills of lading from liability for loss due to perils of the seas. The *I.* was fitted, in the interests of the shipowners, with a superheater, & when she started from Swansea she had on board two engineers, who were there to observe whether the superheater was working efficiently. It was intended that these two engineers should be landed with the pilot at Lundy, but when the vessel reached that island no satisfactory trial of the superheater having been obtained, the two

engineers remained on board, & were, later, landed in St. Ives Bay. In proceeding there, & for some time after leaving there, the *I.* was off the usual route. Shortly after resuming her voyage from St. Ives Bay & before she had returned to the usual route the *I.* stranded on the Cornish coast, & both ship & cargo were lost. In an action in respect of the loss of the cargo :—*Held :* (1) the departure of the *I.* from the contract route did not come within the liberty given by the bills of lading " to call at any ports in any order, for bunkering or other purposes," as the words " or other purposes " must be construed *ejusdem generis* with the word " bunkering," & as meaning the calling at a port for some purpose having relation to the contract voyage ; (2) the deviation was not a " reasonable deviation " within Art. IV., r. 4, of Sched. to Carriage of Goods by Sea Act, 1924 (c. 22).

In considering whether a deviation is " reasonable " within Art. IV., r. 4, the interests to be considered are those of the parties to the contract adventure, & this may include consideration of the position of the underwriters (*per* SCRUTTON, L.J.).

The words " reasonable deviation " mean a deviation whether in the interests of the shipowner, or the cargo owner or both, to which no reasonably minded cargo owner would raise any objection (*per* GREER, L.J.).

The reasonableness of a deviation must depend upon what would be contemplated reasonably by both parties to the contract adventure, having regard to the exigencies of the route, known or assumed to be known to both parties (*per* SLESSER, L.J.).

(3) As the Act of 1924 has not altered the former rule whereby any unauthorised deviation from the contract route has the effect of displacing the exemptions in favour of the shipowners contained in the contract of carriage, the exemption from liability in respect of loss due to perils of the seas did not protect the shipowners ; (4) the shipowners were liable in damages, the measure of which was the value of the coal at Constantinople if it had been delivered there in due course.—FOSCOLO, MANGO & CO., LTD. *v.* STAG LINE, LTD., [1931] 2 K. B. 48 ; 100 L. J. K. B. 421 ; 145 L. T. 146 ; 47 T. L. R. 278 ; 36 Com. Cas. 213 ; 18 Asp. M. L. C. 210, C. A. ; *affd., sub nom.* STAG LINE, LTD. *v.* FOSCOLO MANGO & CO., LTD., [1932] A. C. 328 ; 146 L. T. 305 ; 101 L. J. K. B. 165 ; 48 T. L. R. 127 ; 75 Sol. Jo. 884 ; 37 Com. Cas. 54, H. L.

Annotation :—As to (1) **Consd.** Lazard Bros. & Co. *v.* Brooks (1932), 37 Com. Cas. 224.

3163. *Add. Annotation :*—**Refd.** Foscolo, Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

3165. *Add. Annotation :—Generally,* **Refd.** Stag Line, Ltd. *v.* Foscolo Mango & Co. (1931), 48 T. L. R. 127.

3169. *Add. Annotation :*—**Refd.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

3170. *Add. Annotations :—As to* (1) **Refd.** Cosmopolitan Shipping Co. (Inc.) *v.* Hatton & Cookson, Ltd. (Liverpool) (1929), 143 L. T. 296. *As to* (2) **Refd.** Akt. Ocean *v.* Harding, [1928] 2 K. B. 371 ; Tempus Shipping Co. *v.* Louis Dreyfus & Co., [1931] 1 K. B. 195.

3172. *Add. Annotations :*—**Refd.** Frenkel *v.* McAndrews & Co., [1929] A. C. 545 ; Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48 ; The Torni, [1932] P. 27.

3175. *Add. Annotation :*—**Folld.** Frenkel *v.* McAndrews & Co., [1929] A. C. 545.

3176. *Add. Annotation :*—**Consd.** Frenkel *v.* McAndrews & Co., [1929] A. C. 545.

3177. *Add. Citations :—affd.* [1929] A. C. 545 ; 98 L. J. K. B. 389 ; 141 L. T. 33 ; 45 T. L. R. 311 ; 34 Com. Cas. 241 ; 17 Asp. M. L. C. 582, H. L. *Add. Annotation :*—**Refd.** The Torni, [1932] P. 27.

3179a. —— —— **For bunkering " or other purposes "—Construction ejusdem generis.**]—FOSCOLO, MANGO & CO. *v.* STAG LINE, LTD., No. 3162a, *ante.*

3179b. —— —— —— **Purpose relating to contract voyage.**]—FOSCOLO, MANGO & CO., LTD. *v.* STAG LINE, LTD., No. 3162a, *ante.*

3188. *Add. Annotation :—As to* (1) **Apld.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369.

3193a. —— —— **By peril of the sea.**]—FOSCOLO MANGO & CO., LTD. *v.* STAG LINE, LTD., No. 3162a, *ante.*

3193b. —— —— **Measure of damages.**]—FOSCOLO MANGO & CO., LTD. *v.* STAG LINE, LTD., No. 3162a, *ante.*

3199. *Add. Annotation :—As to* (1) **Refd.** The Adriatic (1931), 47 T. L. R. 638.

3201. *Add. Annotation :*—**Refd.** The Adriatic (1931), 47 T. L. R. 638.

3224. *Add. Annotations :*—**Refd.** Vlassopoulos *v.* British & Foreign Marine Insce. Co., [1929] 1 K. B. 187.

3245. *Add. Annotation :*—**Refd.** Tempus Shipping Co. *v.* Dreyfus & Co., [1931] 1 K. B. 195.

3286. *Add. Annotation :—As to* (1) **Refd.** Frenkel *v.* MacAndrews & Co. (1929), 17 Asp. M. L. C. 582,

3293. *Add. Annotation :*—**Refd.** The Vectis, [1929] P. 204.

3449. *Add. Annotation :—As to* (2) **Refd.** Ellis *v.* Stenning & Son, Ltd. (1932), 76 Sol. Jo. 232.

3471. *Add. Annotation :—As to* (3) **Refd.** The Varing, [1931] P. 79.

3504. *Add. Annotation :—As to* (1) **Refd.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

3604. *Add. Annotations :*—**Distd.** Dampselskab Svendborg *v.* L. M. & S. Ry. Co. (1929), 141 L. T. 521. **Consd.** The Varing, [1931] P. 79. **Refd.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 725.

PART VII. SECT. 7, SUB-SECT. 2.—B.

sd. " *Customary berth* " — *Berth designated by consignee not customary berth—Refusal to discharge.*]—NOVA SCOTIA FERTILIZER CO., LTD. *v.* S.S. " NIDAR " (Can.), [1929] 3 D. L. R. 184.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 4.—B.

3589 v. —— ——.]—A cargo was shipped during the war from Archangel to Dundee. The consignee named in the bill of lading was the War Office. On the arrival of the ship at Dundee no bill of lading was presented to the ship's agents, who, accordingly, warehoused the goods to await the arrival of the bill. Thereafter, as the result of negotiations between the agents & a third party, the agents, after obtaining from him a letter of guarantee & indemnity which was in favour of themselves only, delivered the cargo to him without insisting on the production of the bill of lading. On Sept. 18, 1918, the third party sold the goods to the War Office & retained the price, & afterwards became bkpt. In an action at the instance of the owners against the agents for delivery of the cargo or, alternatively, for payment of the price of the goods :—*Held :* the agents were liable to the owners for the loss that had been sustained, in respect that they could have justified their action only by showing that they

3609. *Add. Annotation :*—**Apld.** Leeds Shipping Co. *v.* Duncan Fox & Co. (1932), 37 Com. Cas. 213.

3620. *Add. Annotation :*—**Consd.** Foster *v.* Driscoll, Lindsay *v.* Attfield, Lindsay *v.* Driscoll, [1929] 1 K. B. 470.

3623a. Provision of lighters with men willing to perform work.]—FITZGERALD *v.* LONA S.S. OWNERS (1932), 49 T. L. R. 77.

3624. *Add. Citation :*—17 Asp. M. L. C. 305.
Add. Annotation :—**Refd.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 458.

3634a. Charges for work done beyond "delivering cargo"—Meaning of delivery.]—By a charterparty for the carriage of a cargo of timber from the B. to G. it was provided (*inter alia*) as follows : clause 15 : "For any work done by the vessel at the port of discharge beyond delivering cargo at the ship's rail if delivered by hand, or within reach of the ship's tackle or of the shore crane tackle if thereby discharged, the consignees shall pay to the shipowner the cost thereof plus 15 per cent." :—*Held :* upon the true construction of clause 15 of the charterparty the vessel had not delivered the cargo until it had lowered it into wagons & released the attachment to the crane which lowered it.—DAMPSKIP SELSKAB SVENDBORG *v.* LONDON MIDLAND & SCOTTISH RY. CO., [1930] 1 K. B. 83 ; 99 L. J. K. B. 66 ; 18 Asp. M. L. R. 27 ; *sub nom.* DAMPSELSKAB SVENDBORG *v.* LONDON MIDLAND & SCOTTISH RY. CO., 141 L. T. 521 ; 45 T. L. R. 591 ; *sub nom.* SVENDBORG *v.* LONDON MIDLAND & SCOTTISH RY. CO., 34 Com. Cas. 359 ; 20 Ry. & Can. Cas. 67, C. A.

Annotation :—**Consd.** The Varing, [1931] P. 79.

3634b. Consignee to select method—Right to alter method.]—FITZGERALD *v.* LONA S.S. OWNERS (1932), 49 T. L. R. 77.

3635. *Add. Annotation :*—**Consd.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 725.

3642. *Add. Annotation :*—**Refd.** Lambert *v.* I. R. Comrs. (1927), 12 Tax Cas. 1053.

3649a. —— —— No other goods to be discharged.]—Certain cotton goods were carried from L. to B., where they were discharged into a lighter. Certain other iron goods, packed in a wooden case, were being lowered into the same lighter when the case broke & the iron goods fell out into the lighter & holed it. Sea-water entered & damaged the cotton goods. Under the contract of carriage lighterage was to be at the risk of the owners, & the provisions of the Carriage of Goods by Sea Act, 1924 (c. 22), were also incorporated. The owners of the cotton goods claimed damages from the owners of the ship :—*Held :* (1) if the sea transit had ended when the goods were placed in the lighter, defts. were protected by the terms of the bill of lading. The sea transit, however, had not ended : the discharge into the lighter was part of the operation of discharge from the ship & was not complete as long as there were other goods to be discharged into the lighter ; (2) the exception relating to loss due to insufficiency of packing in Carriage of Goods by Sea Act, 1924 (c. 22), Art. IV. (2) (*n*), was wide enough to cover the case of the packing of other goods, though primarily it would apply to the goods themselves that were lost or damaged ; (3) on the evidence defts. had shown no negligence on the part of themselves or their servants & were therefore exempt from liability under Art. IV. (2) (*q*).—GOODWIN, FERREIRA & CO., LTD. *v.* LAMPORT & HOLT, LTD. (1929), 141 L. T. 494 ; 45 T. L. R. 521 ; 73 Sol. Jo. 402 ; 18 Asp. M. L. C. 38.

Annotation :—*As to* (1) **Distd.** Lindsay Blee Depots, Ltd. *v.* Motor Union Insce. Co. (1930), 46 T. L. R. 572.

3665a. "Reversible" working days—How interpreted.]—Pltf., the owner of a motor-schooner, chatrered her to defts. to make a number of voyages with cargoes of bricks from R., in Belgium, to London. The charterparty provided : "The cargo to be loaded & discharged together within five reversible working days, time to commence from first high water at or off loading or discharging berth. Charterer is entitled to keep the vessel on demurrage not exceeding ten days at the rate of 1*s.* per net register ton per day payable day by day." On a claim by the owner against the charterers, for demurrage : —*Held :* the word "reversible" did not entitle the charterers to set off days saved on one voyage against days lost on another voyage under the same charter.—VERREN *v.* ANGLO-DUTCH BRICK CO. (1927), LTD. (1929), 45 T. L. R. 556 ; 73 Sol. Jo. 451, C. A.

3668. *Add. Annotation :*—*As to* (1) **Apld.** Leeds Shipping Co. *v.* Duncan Fox & Co. (1932), 37 Com. Cas. 213.

3710. *Add. Annotation :*—**Refd.** Stag Line, Ltd. *v.* Foscolo Mango & Co. (1931), 48 T. L. R. 127.

3801. *Add. Annotation :*—**Refd.** Akt. Ocean *v.* Harding, [1928] 2 K. B. 371.

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had acted on the authority of the owners or of the War Office.—KOLBIN (A. S.) & SONS *v.* KINNEAR (W.) & CO., KOLBIN (A. S.) & SONS *v.* UNITED SHIPPING CO., LTD., [1931] S. C. 128, H. L.—**SCOT.**

PART VII. SECT. 7, SUB-SECT. 5.—C. (a).

o. *Revsd.* [1928] V. L. R. 188; [1928] Argus L. R. 152.—**AUS.**

PART VII. SECT. 7, SUB-SECT. 6.

3652 i. *Revsd.*, 30 S. C. R. 473.

PART VII. SECT. 7, SUB-SECT. 7.—B. (b) i.

3666 iii. ——.]—A charter-party which provided for loading at a daily rate contained a clause that the steamer should employ stevedores appointed by the charterers, but the cargo was to be stowed under the captain's supervision. Time for loading was to be reckoned from twenty-four hours after the master had given written notice that the steamer was ready to load. The master, on arriving at the port of loading, gave notice of readiness. There was only one firm of stevedores at the port, which had been nominated by the charterers, but owing to shortage of labour caused by congestion of shipping the ship could not commence to load until some days after notice had been given. There was available during this time sufficient casual labour to put the cargo, which was ready in trucks, into the ship's slings. Loading at the port was a joint operation :—*Held :* the charterers were liable for demurrage.—*Re* LOUIS DREYFUS & CO. & SIR WILLIAM REARDON SMITH & SONS, LTD., [1928] S. A. S. R. 117.—**AUS**

PART VII. SECT. 7, SUB-SECT. 9.—A.

se. *Defences—Practice as to delivery at port of destination.*]—Pltf. consigned a package of goods by deft.'s ship from Melbourne to Sydney under the terms of a bill of lading which provided that all liability of deft. should cease "as soon as the goods are free from the ship's tackles," & by another clause, indorsed thereon, that "should the owner fail to take delivery of the goods in accordance with the terms of this contract, such goods may be without notice transhipped into lighters or other craft, landed, warehoused, stored, or in any other way provided for, at the owner's sole risk & expense." Evidence was given that the invariable practice on the part of deft. in discharging cargo of the kind in question was that instead of the consignee taking delivery at the ship's slings the goods were taken by deft.'s servants & tallied into a store, & were subsequently tallied out by deft.'s servants to the consignees ; that a small charge was made by deft. for stacking the goods ; that the package in question was tallied into the store but could not subsequently be found. In an action by pltf. for damages for loss of the goods :—*Held :* pltf. was not entitled to succeed.—KEANE *v.* AUSTRALIAN STEAMSHIPS PTY., LTD. (1929), 41 C. L. R. 484 ; [1929] V. L. R. 116 ; 2 A. L. J. 367 ; [1929] Argus L. R. 81.—**AUS.**

3816. *Add. Annotations :—As to* (2) **Apld.** Finlay, James & Co. *v.* N. V. Kwik Hoo Tong, [1929] 1 K. B. 400. **Refd.** Foscolo, Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

3820. *Add. Annotation :—As to* (2) **Consd.** The Edison, [1932] P. 52.

3836. *Add. Citation :*—17 Asp. M. L. C. 245.

3850a. —— **Notwithstanding statutory exemption from liability of shipper.**]—LEEDS SHIPPING CO., LTD. *v.* DUNCAN FOX & CO., LTD., No. 3887a, *post.*

3872a. —— **Agreement by charterers to provide ice-breakers—Ice-breakers provided but withdraw.**]—ANASTASIA S.S. OWNERS *v.* UGLE-EXPORT CHARKOW (1932), 49 T. L. R. 68.

3872b. —— —— —— **" To enable her to leave the port "—Geographical limits of obligation.**]—DAMPSKIBSSELSKABET " HEIMDAL " *v.* RUSSIAN WOOD AGENCY, LTD. (1932), 49 T. L. R. 73; 76 Sol. Jo. 903.

3886. *Add. Annotation :—Generally,* **Refd.** National S.S. Co. *v.* Sociedad Anónima Comercial de Exportacion Y. Importacion (Louis Dreyfus Y. Cia.), Ltd. (1932), 48 T. L. R. 325.

3887a. ——.]—(1) A steamer belonging to pltfs. was chartered by defts. to take a grain cargo from Australia to Callao. The charterparty provided (*inter alia*) that discharge at Callao should be made at an average rate of 450 tons per weather working day, & that if the steamer should be longer detained demurrage should be payable at a rate calculated on her tonnage, which worked out to £65 per day. The steamer arrived at Callao in due course. At that port discharge could only be effected by the employment of stevedors who were members of a trade union which would not allow each man to do more than a limited amount of work per day & would not allow more than 80 tons per day to be discharged from any one hold. As the steamer had only four holds this rule of the union made it impossible to discharge more than 320 tons per day, although the charterparty required a rate of 450 tons. After discharge had proceeded very slowly for some days the captain made an arrangement with the stevedores that in consideration of an increased wage they would do more work, & by spending £123 in this way he saved the steamer two days' demurrage, which would have amounted to £130. In this action pltfs. claimed demurrage which had been actually incurred & also the £123 by which two days' demurrage had been avoided :—*Held :* the charterparty being one for discharge in a fixed time amounted to a guarantee by defts. that discharge would be completed within that time unless it was delayed by some fault of the shipowner, & as the idleness of the stevedores was not due to any fault of pltfs. demurrage was payable for the time occupied in discharge beyond the time allowed by the charterparty. Pltfs. must also recover the £123, the expenditure of which by the captain had saved demurrage amounting to £130, for which the defts. would have been liable.

(2) The charterparty incorporated the Australian Sea Carriage of Goods Act, 1924, which contains a provision identical with that of r. 3, Art. IV. of the English Carriage of Goods by Sea Act, 1924 (c. 22), as follows : " The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault, or neglect of the shipper, his agents or his servants." Defts. contended that as the idleness of the stevedores was not due to any act, fault, or neglect on their part they were protected by this rule : —*Held :* the rule did not abolish the old-established principle of law rendering the charterer liable for demurrage. — LEEDS SHIPPING CO., LTD. *v.* DUNCAN FOX & CO., LTD. (1932), 37 Com. Cas. 213.

3914a. Sum expended by master to avoid demurrage.]—LEEDS SHIPPING CO., LTD. *v.* DUNCAN FOX & CO., LTD., No. 3887a, *ante.*

3920a. —— **" Per working hatch."**]—A charterparty on a modified Form A of the Chamber of Shipping Welsh Coal Charter, 1896, provided that a coal cargo was to be taken from alongside by consignees at the port of discharge at " the average rate of 125 tons per working hatch per day." A marginal note or memorandum stated that consignees were not obliged to take cargo at a higher rate than 500 tons per day. Despatch money was to be payable at the rate of £15 per day. The cargo, which consisted of about 4,600 tons of coal, was loaded in unequal portions in four holds. In a dispute between the shipowners & charterers as to the method of calculating the lay days & the consequential payment or non-payment of despatch money :—*Held :* the term in the charterparty " working hatch " denoted a hatch which could be worked because there was cargo in the hold underneath it waiting to be discharged ; the charterparty provided for discharge at the average rate of 125 tons per each working hatch per available day & not 500 tons per day for the whole ship ; when in the ordinary course one hold became empty the rate of discharge from the remaining holds remained at 125 tons & was not proportionately increased ; & the lay days were in the circumstances easily ascertainable by simply dividing by 125 the number of tons of coal in the hatch which contained the largest quantity of cargo.—THE SANDGATE, [1930] P. 30 ; 99 L. J. P. 49 ; 142 L. T. 356 ; 35 Com. Cas. 221 ; 46 T. L. R. 116 ; 18 Asp. M. L. C. 83, C. A.

3975. *Add. Annotation :*—**Apld.** Verren *v.* Anglo-Dutch Brick Co. (1927) (1929), 45 T. L. R. 404.

3978a. —— **Ice preventing loading.**]—DAMPSKIBSSELSKABET BOTNIA A/S. *v.* BELL (C. P.) & Co. No. 2736a, *ante.*

3988a. —— **Former religious holidays in Russia—Effect of establishment of five-day week.**]—WESTFAL-LARSEN & CO. AKTIESELSKABET *v.* RUSSO NORWEGIAN TRANSPORT CO., LTD. (1931), 75 Sol. Jo. 571.

3989. *Add. Annotation :*—**Refd.** Verren *v.* Anglo-Dutch Brick Co. (1927) (1929), 45 T. L. R. 404.

3996a. —— **No time lost on balance.**]—A steamer was chartered to bring a cargo from the Danube & was to go to Sulina for orders. The charterers were to pay demurrage for detention for more than six hours in waiting for orders, and for time saved in loading they were to have £15 a day despatch money. Clause 9 of the charterparty provided that " if the steamer be longer detained than the time stipulated above demurrage shall be paid . . . at the rate of £30 per running

day." The charterers were nearly five days late in giving orders as to the port of loading, but they saved 7¾ days in loading :—*Held :* clause 9 covered all references to time in the preceding clauses, &, as the steamer had spent a shorter time on her visit to the Danube than she might have taken under the charterparty, nothing was payable by the charterers to the shipowners either as demurrage or as damages for detention.—SOCIETA LIGURE DI ARMAMENTI *v.* JOINT DANUBE & BLACK SEA SHIPPING AGENCIES OF BRAILA (1931), 47 T. L. R. 296 ; 75 Sol. Jo. 191.

4001a. —— —— **Whether lien clause incorporated in bill of lading.**]—AKT. OCEAN *v.* HARDING (B.) & SONS, LTD., No. 1780a, *ante*.

4026a. —— **Insistence on special mode of discharge by consignee.**]—Under several bills of lading, which incorporated all the terms of two charterparties in identical terms, pltfs. contracted to carry on board their vessel certain timber consigned to the respective defts. from a Norwegian port to the port of Garston. Under the charterparties the vessel was to " proceed to Garston or so near thereto as she may safely get " ; &, by clause 13, the cargo was to be discharged in the customary manner " on to the quay &/or into lighters &/or craft &/or wagons &/or on to bogies & thereon stowed &/or stacked as customary at the port of discharge, the consignees having the right to select any one or more of these alternatives if customary & available at the time of discharge." Owing to congestion at Garston dock the L. M. & S. Ry. Co., the owners of the dock, informed pltfs.' agents that the co. were unable to accept any vessels for which storage accommodation was required for any material portion of their cargo, but that they could accept vessels where the whole cargo could be discharged into main line railway wagons & sent direct from ship to destination. When the ship arrived off Garston dock defts. refused to agree to this method of discharge & alleged that the customary method of discharge for cargo destined for Garston itself was into " domestic " wagons which took the timber to the storage ground for sorting &/or storing. Ultimately, to put an end to the deadlock, the railway co. arranged to take the timber to another storage ground at Widnes, ten miles away. Pltfs. claimed demurrage or alternatively damages for the detention of their vessel. The judge of the Liverpool Ct. of Passage found for defts. on the ground that defts.' insistence that the timber should be sorted & stored was not a breach of their contract. Pltfs. appealed :—*Held :* defts. had no right to claim that they were entitled to store the timber on the railway co.'s ground at Garston ; it appeared that the respective consignments of timber could be, & in fact were, delivered without sorting ; &, as main line wagons were available, defts. were liable in damages for their breach of contract in preventing the ship arriving in her discharging berth on the date when but for their insistence on having their timber stored the railway co. would have admitted the ship into dock.—THE VARING, [1931] P. 79 ; 100 L. J. P. 105 ; 145 L. T. 433 ; 18 Asp. M. L. C. 231 ; *sub nom.* FORNYADE REDERIAKTIEBOLAGET COMMERCIAL *v.* BLAKE, 36 Com. Cas. 278, C. A.

4046a. -.]—A charterparty provided that despatch money was payable for time saved in loading, " including Sundays & holidays saved " :—*Held :* the question whether a provincial or municipal holiday, as distinguished from a national holiday, was a " holiday " within the charterparty was a question of fact.—HAIN S.S. CO., LTD. *v.* SOCIEDAD ANÓNIMA COMERCIAL DE EXPORTACION Y. IMPORTACION (1932), 48 T. L. R. 363.

4048a. Days saved including working holidays—Meaning of " working holiday."] — A steamer was chartered by her owners to the Joint Danube & Black Sea Shipping Agencies of Braila to go to the Danube to load a grain cargo. The charterparty provided (*inter alia*) : " 4. The cargo shall be loaded at the average rate of 400 units per running day (Sundays & non-working holidays excepted). . . . 26. For all time saved in loading the steamer to pay £15 per day despatch money or *pro rata* for any part of a day saved, including Sundays & holidays saved " :—*Held :* if the labourers working on the ship & the men who passed the grain from the warehouses to the ship worked on a holiday without any substantial addition to their ordinary wages, that day was a working holiday.—PANAGOS LYRAS, S.S. OWNERS *v.* JOINT DANUBE & BLACK SEA SHIPPING AGENCIES OF BRAILA (1931), 47 T. L. R. 403 ; 75 Sol. Jo. 373.

4075. *Add. Annotation :—As to* (2) **Refd.** Tempus Shipping Co. *v.* Louis Dreyfus & Co., [1931] 1 K. B. 195.

4113. *Add. Annotation :—As to* (2) **Consd.** Flatau, Dick & Co. *v.* Keeping (1931), 36 Com. Cas. 243.

4126a. Validity of charterparty—Breach of duty by broker procuring charterparty — Ratification of wrongful act.]—AKT. OCEAN *v.* HARDING (B.) & SONS, LTD., No. 1780a, *ante*.

4165. *Add. Annotation :—As to* (5) & (6) **Consd.** Louis Dreyfus & Co. *v.* Tempus Shipping Co. (1931), 47 T. L. R. 542.

4173. *Add. Annotation :*—**Refd.** Tempus Shipping Co. *v.* Louis Dreyfus & Co., [1931] 1 K. B. 195.

4202a. Claim based on Merchant Shipping Act, 1894 (c. 60), s. 502.]—TEMPUS SHIPPING CO., LTD. *v.* DREYFUS (LOUIS) & CO., LTD., No. 3099a, *ante*.

4218. *Add. Annotations :—As to* (1) **Refd.** Svenssons (C. W lh.) Travaruaktiebolag *v.* Cliffe S.S. Co. (1931), 37 Com. Cas. 83. *Generally*, **Refd.** Louis Dreyfus & Co. *v.* Tempus Shipping Co., [1931] A. C. 726.

4221. *Add. Annotations :*—**Refd.** Symington *v.* Union Insce. Soc. of Canton (1928), 97 L. J. K. B. 646 ; Louis Dreyfus & Co. *v.* Tempus Shipping Co. (1931), 47 T. L. R. 542.

4225. *Add. Annotations :—As to* (1) **Consd.** Fiumana Società Di Navigazione *v.* Bunge & Co., [1930] 2 K. B. 47. *As to* (2) **Consd.** Louis Dreyfus & Co. *v.* Tempus Shipping Co. (1931), 47 T. L. R. 542.

4247. *Add. Annotation :*—**Folld.** Wetherall & Co. *v.* London Assurance (1931), 144 L. T. 645.

4247a. ——.]—Detention of a vessel after the completion of the voyage while repairs

necessitated by a general average act are being effected is not in itself admissible in general average; &, consequently, under a policy of marine insurance indemnifying a shipowner against general average, the insurer is not liable to the insured in respect of such detention.—WETHERALL (J. H.) & Co., LTD. *v.* LONDON ASSURANCE, [1931] 2 K. B. 448; 100 L. J. K. B. 609; 144 L. T. 645; 36 Com. Cas. 181; 18 Asp. M. L. C. 205.

4248a. -.]—Resps. insured claimant's steamer by a policy providing that general average was to be adjusted according to the York-Antwerp Rules of 1924. The ship was chartered to go to Bordeaux to load for Cardiff, the charterparty also providing that average, if any, should be settled according to those rules. During loading at Bordeaux the foremast broke, & damage was done to the ship. For the purpose of repair she was moved to another dock within the port, & the shipowners incurred expenses as follows: wages & provisions of crew, cost of handling & discharging cargo for the purpose of repairs, cost of coal consumed in going in & out & keeping steam up, expense of towing in & out & mooring & port expenses, & cost of coal consumed in shifting the vessel. While staying at Bordeaux the ship was in no danger. On completion of repairs & loading she left for Cardiff, & while she was at sea she fouled some wreckage without any negligence of those on board her, & though there was no immediate danger she was made unfit to encounter the ordinary perils of the sea, & the master put into Cherbourg, as a port of refuge, & had repairs effected. The expenses at Cherbourg were similar to those at Bordeaux:—*Held:* (1) the cost of repairs in each case was recoverable as particular average; (2) the other expenses at Bordeaux could not be claimed as general average, since no danger was in operation there; (3) the other expenses at Cherbourg could be claimed as general average since, though there was no immediate danger, the vessel was not fit, without repair, to encounter the perils of the sea.—VLASSOPOULOS *v.* BRITISH & FOREIGN MARINE INSURANCE CO., LTD., [1929] 1 K. B. 187; 98 L. J. K. B. 53; 140 L. T. 44; 44 T. L. R. 725; 72 Sol. Jo. 612; 34 Com. Cas. 65; 17 Asp. M. L. C. 544.

4253a. —VLASSOPOULOS *v.* BRITISH & FOREIGN MARINE INSURANCE CO., LTD., No. 4248a, *ante*.

4260. *Add. Annotation:—Generally*, **Refd.** Vlassopoulos *v.* British & Foreign Marine Insce. Co., [1929] 1 K. B. 187.

4260a. -.]—VLASSOPOULOS *v.* BRITISH & FOREIGN MARINE INSURANCE CO., LTD., No. 4248a, *ante*.

4280. *Add. Annotation:*—**Consd.** Louis Dreyfus & Co. *v.* Tempus Shipping Co. (1931), 47 T. L. R. 542.

4283a. Cost of shifting ship.]—VLASSOPOULOS *v.* BRITISH & FOREIGN MARINE INSURANCE CO., LTD., No. 4248a, *ante*.

4294. *Add. Annotation:*—**Refd.** Louis Dreyfus & Co. *v.* Tempus Shipping Co. (1931), 47 T. L. R. 542.

4303. *Add. Annotation:*—**Consd.** Green Star Shipping Co. *v.* London Assurance (1931), 145 L. T. 160.

4313. *Add. Annotations:—As to* (2) **Folld.** Fiumana Società Di Navigazione *v.* Bunge & Co., [1930] 2 K. B. 47. **Consd.** Louis Dreyfus & Co. *v.* Tempus Shipping Co. (1931), 47 T. L. R. 542.

4313a. -.]—A steamship belonging to pltfs. was chartered to carry a cargo of grain from various ports in the River Plate & to deliver the same at Antwerp or Rotterdam. The charterparty provided that average, if any, was to be payable according to York-Antwerp Rules, 1924. It also contained an exceptions clause which provided that the steamer should not be liable for loss or damage occasioned "by fire from any cause or wheresoever occurring . . . or any latent defects in hull, machinery or appurtenances . . . arising in the navigation of the steamer, even when occasioned by the negligence, default or error of judgment of the . . . master, mariners or other servants of the shipowners . . . (not resulting, however, in any case from want of due diligence by the owners of the steamer, or by the ship's husband or manager)." The steamer bunkered at Rotterdam, where she took on board enough bunker coal to take her to the Plate & bring her back to Europe. She carried a cargo of coal from Cardiff to a port in the Plate & was kept waiting a fortnight before she could get into her berth to discharge that cargo. Shortly after she had arrived at her first loading port in the Plate & had commenced to load a cargo of maize a fire broke out by spontaneous combustion in her bunker coal, which had been on the ship for two & a half months since June 30, & had been carried through the tropics, & a portion of the bunker coal was shifted on to the deck. The ship then proceeded to another port in the Plate to complete loading her cargo of maize. On the way another fire was discovered in the bunker coal, which was extinguished after a fortnight & after discharging all the bunker coal on to the deck & subsequently replacing it in the bunkers. The owners of the steamer claimed to recover from defts., who were the indorsees of the bills of lading in respect of the cargo of maize, a contribution in general average for the expense so incurred:—*Held:* (1) the unexplained occurrence of the fires afforded a reasonable presumption that they were due to a defect or unfitness of the bunker coal at the time of the loading of the cargo which amounted to a breach of warranty, & as the ship was unseaworthy pltfs. could not recover a general average contribution from the cargo owners for sacrifice due to their own fault & breach of contract; (2) neither the exception in the charterparty of latent defects nor Rule D of the York-Antwerp Rules, 1924, which provided that a claim in general average was not to be barred because it arose by the default of the carrier, enabled pltfs. to maintain their claim for a contribution in general average.—FIUMANA SOCIETÀ DI NAVIGAZIONE *v.* BUNGE & CO., LTD., [1930] 2 K. B. 47; 99 L. J. K. B. 626; 143 L. T. 287; 35 Com. Cas. 193; 18 Asp. M. L. C. 147.

4313c. **Effect of exception of latent defects.**] — FIUMANA SOCIETÀ DI NAVIGAZIONE *v.* BUNGE & Co., LTD., No. 4313a, *ante.*

4347. *Add. Annotation :*—**Refd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

4363. *Add. Annotations :*—**Refd.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 458; Dampselskab Svendborg *v.* L. M. & S. Ry. Co. (1929), 141 L. T. 521.

4372. *Add. Annotation :*—**Distd.** Akt. Ocean *v.* Harding, [1928] 2 K. B. 371.

4392. *Add. Annotation :*—**Refd.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 458.

4394. *Add. Annotations :*—**Distd.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 725. **Consd.** Dampselskab Svendborg *v.* L. M. & S. Ry. Co. (1929), 141 L. T. 521. **Refd.** Finlay, James & Co., Ltd. *v.* N. V. Kwik Hoo Tong, [1929] 1 K. B. 400.

4440. *Add. Annotation :*—**Refd.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 458.

4449. *Add. Annotation :*—**Consd.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 725.

4452. *Add. Annotation :*—**Refd.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 458.

4461a. **Discharge of bulk & bag cargoes—Construction of Schedule of Stevedores' Association.**]—Defts.' consignment of wheat was carried in bags in pltfs.' steamship from Australia to Avonmouth, & on arriving at its destination was by arrangement between the parties bulked in the ship's hold & thence discharged by means of defts.' bucket elevator. By the current Sched. of the Stevedores' Assocn. of Bristol, Avonmouth, & Portishead different rates were fixed for the discharging of bulk cargoes & bag cargoes :—*Held :* there was no provision in the sched. for a bag cargo which became a bulk cargo by bag starting, & on the proper interpretation of the sched. the cargo in question was a bag cargo & defts. were entitled to charge the shipowners on the basis of the stevedoring rate applicable thereto.—THE ALDINGTON COURT, [1932] P. 21; 101 L. J. P. 9; 146 L. T. 256; 48 T. L. R. 35.

4470. *Add. Citations :*—[1929] 1 K. B. 150; 97 L. J. K. B. 725; 139 L. T. 575; 72 Sol. Jo. 435; 34 Com. Cas. 47; 17 Asp. M. L. C. 505.

Add. Annotation : — **Refd.** Dampselskab Svendborg *v.* L. M. & S. Ry. Co (1929), 141 L. T. 521.

4472. *Add. Annotations :*—**Consd.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 725. **Refd.** Dampselskab Svendborg *v.* L. M. & S. Ry. Co. (1929), 141 L. T. 521.

4475. *Add. Annotation :*—*As to* (1) **Consd.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 458.

4485. *Add. Annotations :*—**Distd.** Smith, Hogg *v.* Bamberger (1928), 97 L. J. K. B. 725. **Refd.** Dampselskab Svendborg *v.* L. M. & S. Ry. Co. (1929), 141 L. T. 521.

4499a. —— —— — — BREWSTER & Co. (WOKING), LTD. BECKETT (1929), 34 Lloyd L. R. 337.

4502a. — —.]—It is put for pltfs. that defts. are liable for a breach of duty on defts.' part through the lighterman having given a receipt for goods as marked, when, in fact, they were not marked. . . . The evidence before me is that the course of business is for the stevedore to tally the marks, & for the lighterman, unless he is specially instructed, to accept the tallying of the stevedore.—VAVASSEUR & Co., LTD. *v.* PORT OF LONDON AUTHORITY (1920), 4 Ll. L. Rep. 289; *no appeal*, 6 Ll. L. Rep. 192, C. A.

Part VIII.—Freight.

4521. *Add. Annotation :*—**Apprvd.** Glen Line, Ltd. *v.* A.-G. (1930), 46 T. L. R. 451.

4539a. —— ——.]—Pltfs., shipowners & brokers of West Hartlepool, acted as ship's agents for the steamship *Z.*, of Riga, & before making any necessary disbursements on behalf of or incurring any liabilities in respect of the vessel obtained from the master the following document : " Please pay the freight for my vessel, the *Z.*, & all demurrage which may be payable under the charter, to my agents, Messrs. E. A. Caspar, Edgar & Co., Ltd., & oblige." The persons described in the document as the master's agents were the pltfs. In an action by pltfs. for necessaries the evidence showed that this document came into being with the approval of the managing owner of the *Z.* & after he had agreed to assign to pltfs. all freight & demurrage :—*Held :* the document operated as an assignment of the freight & demurrage & pltfs. were entitled to judgment.—THE ZIGURDS (1931), 47 T. L. R. 525.

4604. *Add. Annotation :*—**Refd.** Glen Line, Ltd. *v.* A.-G. (1930), 36 Com. Cas. 1.

4650. *Add. Annotation :*—*As to* (1) **Apld.** A.-G. *v.* Glen Line & Liverpool & London War Risks Insce. Assocn. (1929), 34 Com. Cas. 309.

4700. After this case add :—

—— ——.]—*See, also,* CHOSES, Nos. 204a–204c.

4714a. **Stevedore—As against equitable mortgagee of freight.**]—A stevedore who unloads cargo & so by completing the adventure contributes to the bringing of the freight fund into existence is not entitled upon his claim for stevedoring charges to priority over a mtgee. who has an equitable assignment of the freight.—THE ZIGURDS (No. 4), [1932] P. 113; 48 T. L. R. 563.

PART VII. SECT. 15, SUB-SECT. 1.

4339 i. *Revsd.*, 33 S. C. R. 1

4357 i. *Revsd.*, 33 S. C. R. 1.

PART VII. SECT. 15, SUB-SECT. 4.—E. r. *Revsd.*, 30 S. C. R. 473.

PART VIII. SECT. 3, SUB-SECT. 3.—B. sm. *Stipulation for payment of difference in freight between steamships & first-class sailing ships—Construction.*] —COULSON *v.* GZOWSKI (1862), 22 U. C. R. 33.—**CAN.**

4761. *Add. Annotation :*—**Refd.** A.-G. *v.* Glen Line & Liverpool & London War Risks Insce. Assocn. (1929), 34 Com. Cas. 309.

4837. *Add. Annotations :—Generally,* **Refd.** Shell-Mex *v.* Elton Cop Dyeing Co. (1928), 34 Com. Cas. 39 ; Maine & New Brunswick Electrical Power Co. *v.* Hart, [1929] A. C. 631.

4846. *Add. Annotation :*—**Refd.** The Adriatic (1931), 47 T. L. R. 638.

4862. *Add. Annotation :*—**Refd.** Canada Atlantic Grain Export Co. (Inc.) *v.* Eilers (1929), 35 Com. Cas. 90.

4882. *Add. Annotation :*—**Refd.** Akt. Ocean *v.* Harding, [1928] 2 K. B. 371.

4896. *Add. Annotation :*—**Consd.** Dawson Line, Ltd. *v.* Aktiengesellschaft Adler für Chemische Industrie of Berlin, [1932] 1 K. B. 433.

4931. *Add. Annotation :*—**Refd.** Perry *v.* Equitable Life Assce. Society of U.S.A. (1929), 45 T. L. R. 468.

4945. *Add. Annotation :*—**Refd.** A.-G. *v.* Glen Line & Liverpool & London War Risks Insce. Assocn. (1929), 34 Com. Cas. 309.

Part IX.—Carriage of Passengers.

4987. *Add. Annotation :*—**Consd.** Oliver *v.* Birmingham & Midland Motor Omnibus Co. (1932), 48 T. L. R. 540.

Part XI.—Contract of Towage.

5126. *Add. Annotation :*—**Refd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1930), 145 L. T. 51.

5130. *Add. Citations :*—44 T. L. R. 140 ; 17 Asp. M. L. C. 344.

Part XII.—Collisions.

5175. *Add. Annotation :*—**Consd.** Winnipeg Electric Co. *v.* Geel (1932), 48 T. L. R. 657.

5186. *Add. Annotation :—As to* (1) **Consd.** The Otranto, [1930] P. 110.

5194. *Add. Annotation :—As to* (3) **Refd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369.

5354. *Add. Annotation :-* **-Refd.** The Vectis, [1929] P. 204.

5359. *Add. Annotation :*—**Consd.** The Vectis, [1929] P. 204.

5373. *Add. Annotation :*—**Refd.** McGowan *v.* Stott (1923), 99 L. J. K. B. 357, n.

5400. *Add. Annotation :*—**Folld.** The Harkaway, [1928] P. 199.

5400a. —— ——.]—Defts.' sailing barge came to anchor in a river. She was lying on the mud anchored with fifteen fathoms of chain

PART IX. SECT. 2, SUB-SECT. 1.

c i. —— ——.]—At the trial of the owner of a motor boat for a contravention of 1894 Act, s. 271 (1), the evidence adduced was that on a certain occasion the boat carried a party of more than twelve persons, gratuitously, on a pleasure excursion on the Clyde, without a Board of Trade certificate :—*Held :* that the expression " passenger steamer " did not necessarily include every ship which on any occasion carried persons other than the owner & his family, & the master & crew ; &, accordingly, that it was not established that the motor boat was a passenger steamer, & that the sheriff substitute who heard the case was entitled to find the accused not guilty of the charge.—YOUNG *v.* DOCHERTY, YOUNG *v.* KYLE, [1929] S. C. (J.) 57.—**SCOT.**

PART XI. SECT. 3, SUB-SECT. 2.

5146 i. *Liability for*

The owners of the *P.* contracted with a towing co. to have the *P.* towed from her berth to a grain elevator to unload her cargo. The *P.* had no motive power. Owing to the breaking of the tow line at one stage of the movement the *P.* continued her forward movement past the elevator & reached the south end of the harbour where the *S.* was laid up, puncturing the latter under the water line, by an anchor left hanging down on the port bow of the *P.* partly under water. This anchor was left so hanging down by those on the tow notwithstanding a warning by the tug master :—*Held :* (1) when commencing the towing of a ship her anchor is left, by the joint negligence of the tug master & those in charge of the ship, in such a position as to constitute a danger to other vessels, & does in fact cause such damage, the tow & tug are each responsible & liable for the damages so caused ; (2) when a vessel at anchor or moored at a dock is run into by another, the *onus* is upon the moving vessel to justify or excuse her action ; (3) towage is a joint undertaking, & although the motive power may be wholly that of the tug, yet both tug & tow are bound to take reasonable care & to use reasonable skill in performing the operation. This duty is not affected by the terms of the towage contract, which cannot regulate the relations between the tug & tow & third parties ; (4) persons on board the tow such as a shipkeeper & his helpers, though not a regular navigating crew, in regard to reasonable care & skill, may be treated as agents of the owners of the ship in performing or neglecting to perform such duties as the towage contract or the exigencies of the operation casts upon them ; (5) provision in a towage contract that the operation is at " owner's risk " will not absolve the tug in case of negligence in navigation so far as third parties are concerned.—CANADA S.S. LINES, LTD. *v.* S.S. PAISLEY & JAMES RICHARDSON & SONS, LTD. *v.* S.S. PAISLEY, [1930] EX. C. R. 105 ; *revsg.*, JAMES RICHARDSON & SONS, LTD. *v.* S.S. PAISLEY, [1930] 2 D. L. R. 257 ; [1929] 2 D. L. R. 42 ; S. C. R. 359.—**CAN.**

PART XII. SECT. 2, SUB-SECT. 2.

5169 i. *Want of due caution—Canal.*]—THE KINGDOC *v.* CANADA STEAMSHIP LINES, LTD., PATERSON STEAMSHIPS, LTD. *v.* THE OXFORD, [1931] S. C. R. 288 ; 1 D. L. R. 146 ; *revsg.*, [1930] Ex. C. R. 1.—**CAN.**

PART XII. SECT. 2, SUB-SECT. 15. —F.

5403 iv. —— ——.]—The descending vessel coming with the current is entitled to consideration, & an upcoming vessel, in a narrow channel, where navigation is intricate, seeing another vessel coming down stream, must stop, & if necessary come to a position of safety below the point of danger & there remain until the channel is clear.—STANDARD OIL CO. OF NEW JERSEY *v.* S.S. " IKALA," INDUSTRY S.S. CO., LTD. *v.* S.S. JAMES MCGEE, [1929] Ex. C. R. 230.—**CAN.**

leading from her bows on to the mud & thence to the anchor lying in the channel, which at low water was a mere gut-way thirty feet wide. Pltfs.' motor boat, drawing 5 feet 3 inches aft & with about one foot of water under her, coming up the river in the deepest water there was at the time, went over one of the flukes of the anchor projecting up out of the mud at the bottom of the river, & was holed & sank :—*Held :* having regard to the shallowness of the water the anchor ought to have been buoyed or some other warning given of its position, & defts. were liable to pltfs. for the damage sustained.—THE HARKAWAY, [1928] P. 199 ; 97 L. J. P. 113 ; 139 L. T. 615 ; 44 T. L. R. 649 ; 17 Asp. M. L. C. 503.

Annotation :—**Refd.** Burley C. *v.* Lloyd Edw. (1929), 45 T. L. R. 626.

5439. *Add. Annotation :*—**Consd.** The Otranto, [1930] P. 110.

5446. *Add. Annotation :*—**Refd.** Kitano Maru S.S. *v.* Otranto, S.S., [1931] A. C. 194.

5517a. —— —— ——.]—THE DAGMAR, No. 5608a, *post.*

5521. *Add. Annotation :*—**Apld.** The Palembang, [1929] P. 246.

5528. *Add. Annotation :—As to* (1) **Consd.** The Palembang, [1929] P. 246.

5566a. **Steering definite course to definite destination.**]—A pilot vessel when not engaged on her station on pilotage duty but steering a definite course to a definite destination, for example, returning to port to land a pilot, must not exhibit the pilot boat lights prescribed by Art. 8 of the Regulations for Preventing Collisions at Sea, 1910, but must exhibit the ordinary navigation lights for vessels of her tonnage prescribed by the regulations.—THE KINGSTOWN (1929), 99 L. J. P. 19.

5573. *Add. Annotation :*—**Refd.** The Tovarisch, [1929] P. 293.

5576. *Add. Annotation :—As to* (2) **Apld.** Doncaster *v.* Sudlow (R.) & Sons (1929), 22 B. W. C. C. 564.

5592. *Add. Annotation :—As to* (1) **Refd.** The Tovarisch, [1929] P. 293.

5608a. —— —— **Other vessel moored.**]—A dumb hopper made fast by forward moorings to a moored vessel, & swinging with the tide, is herself a moored vessel, & not a vessel under way within the Port of London River bye-laws. The *M.*, a dumb hopper loaded with spoil, had been moored alongside a dredger in Blackwall Reach, River Thames. Her after moorings were cast off, & she commenced to swing with the tide, being still made fast forward by her forward moorings. She was exhibiting one white riding light forward & one white riding light aft. In these circumstances the *D.*, a steamship bound up-river, came into collision with the *M.* :—*Held :* (1) the *M.* was not a vessel under way ; (2) in any case the *M.* was probably a " lighter " within the meaning of the Port of London River bye-laws 1914–26, & was not required to carry side lights when under way, & no lights were laid down by the bye-laws for her to carry ; (3) the *M.*, being moored to the dredger, which was moored to buoys, was herself moored & bound to exhibit two white riding lights in accordance with bye-law 14 ; (4) the *D.* was alone to blame for the collision.—THE DAGMAR (1929), 141 L. T. 271 ; 45 T. L. R. 303 ; 18 Asp. M. L. C. 41.

5608b. —— **Dumb barge.**]—Pltfs.' steamship *S.* was lying moored at a tier on the south side of the River Thames. Defts.' dumb barge *P.* was lying inside of the *S.* & attached to her by ropes fore & aft. When the work of receiving cargo from the *S.* ceased for the day the *P.* was left alongside the *S.* unlighted & unattended. The *S.* was exhibiting the usual anchor light. During the night some unknown craft came into collision with the *P.* & she filled & sank, &, as the tide ebbed, the *S.* rested on the submerged hull of the *P.* & both vessels were damaged. Under bye-law 14 of the Port of London River Bye-laws, a vessel under 150 feet in length " when at anchor or moored " by night must exhibit a riding light ; but by proviso (*a*) to the bye-law : " Where masted vessels are lying made fast at the moorings in the tiers, only the outermost off shore of such vessels in each tier shall be required to exhibit the riding light " ; & by proviso (*c*), " . . . Lighters made fast at wharves, piers or jetties or alongside vessels thereat, shall not be required to exhibit the riding light " :—*Held :* (1) it was not negligent to leave the *P.* unattended ; but (2) not being a masted vessel nor made fast to a vessel at a wharf, pier or jetty, the *P.* could not bring herself within either proviso (*a*) or (*c*) ; accordingly there was nothing to take her out of the obligation imposed upon her under the main part of the bye-law to exhibit a riding light ; (3) as defts. could not prove that the absence of the light was not a cause of the collision with the unknown craft, they failed to discharge the *onus* upon them, & there must be judgment for pltfs.—THE PRINCESS, [1929] P. 287 ; 98 L. J. P. 158 ; 142 L. T. 94 ; 45 T. L. R. 627 ; 18 Asp. M. L. C. 56.

5617. *Add. Annotation :*—**Consd.** The Palembang, [1929] P. 246.

5630a. **Coloured flare.**]—A large four-masted barque, after seeing both lights of an approaching steamship about one & a half to two points on the starboard bow, saw only the green light at an estimated distance of about half a mile. Thereupon a green pyrotechnic flare was exhibited on the starboard side of the barque. Immediately afterwards the steamship ported her helm, &, in attempting to cross the bows of the barque, was struck on the port side by the bowsprit & stem of the barque & sank with all hands except one :—*Held :* the exhibition of the green flare by the barque was not a breach of Article 12 ; the green flare was intended simply to attract attention, & did not call upon the steamship to do anything

PART XII. SECT. 3, SUB-SECT. 3.—B. (b).

5447 iv. —— ——.]—*Held :* when a danger of collision occurs, a vessel is not justified in arbitrarily & obstinately insisting on her right of way conferred under rule 25. If in obstinately following out the letter of the rules regulating the course, a collision thereby occurs, she becomes at fault under rule 37.—" ELFSTONE " *v.* CHICAGO TRIBUNE TRANSPORTATION CO., LTD., CRETE SHIPPING CO., LTD. *v.* " CHICAGO TRIBUNE," [1931] Ex. C. R. 132.—CAN.

except that which it was her duty to do when she saw a sailing vessel approaching with lights green to green; & the steamship, by improperly porting, was alone to blame for the collision.—ALCANTARA, S.S. OWNERS *v.* TOVARISCH, S.S. OWNERS, [1931] A. C. 121; *sub nom.* THE TOVARISCH, ALCANTARA S.S. OWNERS *v.* TOVARISCH S.S. OWNERS, 100 L. J. P. 46; 144 L. T. 230; 47 T. L. R. 89; 18 Asp. M. L. C. 182, H. L.

Annotation:—**Consd.** Leopold L. D. S.S. *v.* Hochelaga S.S. Co., Louis Dreyfus & Co. *v.* Hochelaga S.S., Hochelaga S.S. *v.* Louis Dreyfus & Co., Hochelaga S.S. Co. *v.* Leopold L. D. S.S. (1931), 101 L. J. P. C. 65.

5648a. **Vessel under way—Meaning of "under way."**]—Under bye-law 28 (*e*) of the Port of London River Bye-laws, 1914–1926, in fog, "a steam vessel under way about to turn & whilst turning round shall sound at intervals of not more than two minutes four short blasts in rapid succession, followed, if turning with her head to . . . port, by two short blasts." Bye-law 5 provides that "in these bye-laws . . . unless there be something in the subject or context repugnant to such construction . . . the expression 'under way' when used in relation to a vessel means when she is not at anchor . . . & includes a vessel dropping up or down the river with her anchor on the ground." In order to come to anchor on account of fog pltfs.' vessel *Pakeha*, bound up-river on the flood tide, sounded the appropriate signal under bye-law 28 (*e*), hard-a-starboarded her helm, & put her engines full speed astern. When she had swung two or three points the anchor was let go with thirty fathoms of chain & was reported to be holding. Her navigation lights were then switched off, the anchor lights switched on & the bell commenced to be rung for fog. The engines had then to be worked half ahead & full speed ahead for about a minute & a half to avoid a small vessel at anchor, & were then put full speed astern for about a minute & then stopped. About ten minutes after the anchor had been let go, & when the *Pakeha* had nearly swung head to tide, she was run into by defts.' steamship. Defts. alleged (*inter alia*) that the *Pakeha* was a vessel under way & turning in the river, & required, therefore, to continue sounding the signal of four short blasts followed by two:—*Held:* following the criterion laid down in *The Esk*, *The Gitana*, No. 5521, as the *Pakeha* was holden by & under the control" of her anchor during all the time in question, she was not "under way," & was right in ringing her bell, the appropriate signal for a vessel at anchor in a fog.—THE PALEMBANG, [1929] P. 246; 98 L. J. P. 129; 141 L. T. 399; 45 T. L. R. 495; 18 Asp. M. L. C. 45.

5657. *Add. Annotation:*—**Distd.** The Palembang, [1929] P. 246.

5659. *Add. Annotation:*—*As to* (1) **Refd.** The Bremen (1931), 47 T. L. R. 505.

5660. *Add. Annotation:*—*Generally*, **Refd.** Canton Owners *v.* Rhesus Owners, [1928] W. N. 214.

5686a. **—— Meaning of "existing circumstances & conditions"—Aircraft carrier with aircraft in the air.**]—The words in Art. 16 of the Collision Regulations, "existing circumstances & conditions" & "circumstances of the case," refer to circumstances affecting the navigation of the ship & not to outside influences on the minds of persons on board the ship. The fact of the aircraft being in the air with only a limited supply of petrol was not a circumstance which justified the aircraft carrier for failure to comply with the regulations.—H.M.S. "GLORIOUS," [1932] W. N. 213; 74 L. Jo. 109.

5720. *Add. Annotation:*—*As to* (1) **Refd.** The Bremen, [1931] P. 166.

5732. *Add. Annotation:*—*As to* (1) **Refd.** The Bremen, [1931] P. 166.

5748a. ——.]—*Held:* to comply with the direction to "stop" & then "navigate with caution" a vessel should run her way off & bring herself as nearly as possible to a standstill; & a vessel which alleged that, on hearing the fog whistle of the other vessel, she went dead slow by stopping her engines & then putting them slow ahead, & so continued alternately stopping & going slow ahead, was not complying with art. 16.—THE UNION, [1928] P. 175; 97 L. J. P. 126; 139 L. T. 448; 17 Asp. M. L. C. 483.

5748b. —— **Unless clear that safe to continue course.**]—Under Article 16, a steam vessel hearing the fog signals of a vessel, apparently forward of the beam, is required to stop her engines & then navigate with caution.

The *B.*, a large liner going down Channel in a dense fog at a speed of about 4 knots, heard, on the starboard side about abeam or a little abaft it, the fog whistle of the steamship *B. G.* After the whistle had been heard four or five times more, getting louder & nearer & apparently still on the same bearing, the master of the *B.* decided that he must act. He accordingly starboarded & increased his engine power to assist the helm. The *B. G.* then came into sight 100 to 150 yards away on the starboard side, crossing the bows of the *B.* from starboard to port, & the two vessels came into collision:—*Held:* (1) the main cause of the collision was the bad navigation of the *B. G.* (*inter alia*) in altering her course in fog, proceeding at excessive speed, & failing to stop on hearing the whistle of the *B.* forward of her beam.

The conclusion on the authorities is that in fog, unless the vessel hearing a whistle is quite clear that to continue course & speed will not involve risk of collision, she should always stop her engines (*per* CUR.).

(2) The *B.* was also partly to blame, inasmuch as the fact that the fog signals of the *B. G.* were getting louder & nearer on the same bearing was a clear indication of danger, & that accordingly good seamanship required the *B.* to stop after hearing the second or third blast, when those on board would know for certain that the other ship

PART XII. SECT. 3, SUB-SECT. 5.—C. (f) i.

sl. *Bare steerage way.*]—EASTERN S.S. CO., LTD. *v.* CANADA ATLANTIC TRANSIT CO., [1928] Exch. C. R. 129.—**CAN.**

PART XII. SECT. 3, SUB-SECT. 5.—C. (f) iv.

Ten knots.]—OLSEN & CO. *v.* S.S. HAMHOLM *v.* C. P. R. Co., [1930] Ex. C. R. 10; 4 D. L. R. 778; *affg.*, [1930] 3 D. L. R. 423; *varg.*, [1929] 3 D. L. R. 383; Ex. C. R. 199; 2 W. W. R. 629; 11 B. C. R. 274.—**CAN.**

was approaching & causing risk of collision. Both vessels accordingly held to blame, the *B. G.* to the extent of 80 per cent. & the *B.* 20 per cent.—THE BREMEN, [1931] P. 166; 100 L. J. P. 122; 145 L. T. 565; 47 T. L. R. 505, C. A.

5748c. —— **"So far as the circumstances of the case admit"—Aircraft carrier with aircraft in the air.**]—H.M.S. GLORIOUS, No. 5686a, *ante.*

5754. *Add. Annotation:*—**Consd.** The Bremen, [1931] P. 166.

5757. *Add. Annotations:—As to* (1) **Refd.** The Bremen, [1931] P. 166. *Generally*, **Refd.** The Young Sid, [1929] P. 190.

5775. *Add. Annotation:*—**Refd.** The Bremen (1931), 47 R. L. R. 505.

5925. *Add. Annotations:*—**Refd.** The Tovarisch, [1930] P. 1; Kitano Maru S.S. *v.* Otranto S.S., [1931] A. C. 194.

5933. *Add. Annotation:—As to* (1) **Consd.** The Otranto, [1930] P. 110.

5934. *Add. Annotation:*—**Refd.** The Otranto, [1930] P. 110.

5935. *Add. Annotation:—As to* (1) **Refd.** Kitano Maru S.S. *v.* Otranto S.S., [1931] A. C. 194.

5935a. —— ——.]—The first duty of a vessel keeping her course & speed under Art. 21 of the Sea Regulations, 1897, is to keep her course & speed as long as that will enable the other vessel to keep out of the way; after that point, her second duty is to take such action as will best aid to avert collision, but this second duty is not to be very severely pressed, & if the master of the vessel is found to have been watching the other vessel & doing his best to make up his mind when to act, he ought not to be held to blame for waiting a moment too long before acting.—THE RANZA (1898), 79 L. J. P. 21, n.

Annotations:—**Apprvd.** The Ornen (1900), 79 L. J. P. 23. **Consd.** The Otranto, [1930] P. 110. **Refd.** The Gulf of Suez, [1921] P. 318.

5935b. —— ——.]—Two steamships were meeting almost end on, showing red light to red light, & defts.' vessel ported slightly. When still a long way off pltfs.' vessel wrongly starboarded & showed her green. Defts.' vessel then kept her course & speed, & the vessels approached close together, green to red. Not more than one minute before the collision, defts.' vessel sounded a short blast & hard a-ported, & afterwards before the collision stopped & reversed; pltfs.' vessel blew a short blast in reply, but by some mistake starboarded instead of porting, though, if she had ported, there would have been no collision:—*Held:* defts.' vessel was bound under Art. 21 of the Sea Regulations, 1897, to keep her course & speed until the other vessel could not by her own action alone avoid the collision.—THE ORNEN (1900), 79 L. J. P. 23, n.; 16 T. L. R. 149; 44 Sol. Jo. 195, C. A.; *revsd. on other grounds* (1901), 17 T. L. R. 359, H. L.

5935c. —— ——.]—Two steam vessels, the *K. M.* & the *O.*, were approaching each other on crossing courses of nearly a right angle at a joint speed of nearly 30 knots. The *O.*, the stand-on vessel, had the *K. M.* broad on the port bow at a distance of several miles. As the bearing of the *K. M.* did not alter, the *O.*, when the vessels were under three-quarters of a mile apart, hard-a-starboarded to pass under the stern of the *K. M.* & sounded two short blasts. Twenty or thirty seconds afterwards the *K. M.* hard-a-ported & sounded one short blast, & the two vessels came into collision less than three minutes after the alteration of course by the *O.* It being admitted that the *K. M.* was partly to blame for the collision, the question was whether the *O.* was also to blame:—*Held:* the master of the *O.* was justified in acting when he did, but not in starboarding & maintaining his speed. He ought, first of all, to have stopped & reversed his engines &, in addition, whatever action he took should have been under a port helm:—*Held:* both vessels were to blame.—KITANO MARU S.S. OWNERS *v.* OTRANTO S.S. OWNERS, THE OTRANTO, [1931] A. C. 194; 100 L. J. P. 11; 111 L. T. 251; 47 T. L. R. 103; 18 Asp. M. L. C. 193, H. L.

Annotation:—**Refd.** The Bremen (1931), 47 T. L. R. 505.

5938. *Add. Annotation:—As to* (3) **Consd.** The Otranto, [1930] P. 110.

5960. *Add. Annotation:*—**Refd.** Kitano Maru S.S. *v.* Otranto S.S., [1931] A. C. 194.

PART XII. SECT. 3, SUB-SECT. 5.—C. (h).

5757 i. *When duty arises—Vessel approaching.*]—The question whether vessels approaching one another in a fog should not merely stop their engines but also their way, or reverse their engines, must be decided under the circumstances of each case. In the present case it was held that the *H.*, which did not reverse her engines immediately after hearing the second whistle of the *A.*, did not "navigate with caution," within the meaning of art. 16 of the Collision Regulations, after, at least, she heard that whistle & thereupon should have realised that as it showed no indication of broadening the danger was imminently increasing.—OLSEN & CO. (OWNERS OF THE "HAMPHOLM") *v.* "PRINCESS ADELAIDE," CANADIAN PACIFIC RY. CO. (OWNERS OF "PRINCESS ADELAIDE") *v.* "HAMPHOLM" (B. C. Adm.), [1929] 3 D. L. R. 383; Ex. C. R. 199; 2 W. W. R. 629; *varied*, [1930] 3 D. L. R. 423; *affd.*, [1930] 4 D. L. R. 778; Ex. C. R. 10.—**CAN.**

PART XII. SECT. 3, SUB-SECT. 5.—C. (i).

sh. *What amounts to.*]—A vessel in fog should run at such a speed that upon sighting an approaching vessel, she can pull up in the distance she can see. Art. 16 does not require a vessel running in fog to reverse her engine upon hearing of a fog signal apparently forward of her beam, but only to stop her engines & then navigate with caution, & as the *H.* could come to a stop in thirty feet & could see a vessel at three hundred feet, she was navigating with caution within Art. 16, & was not called upon to reverse before she did.—OLSEN & CO. *v.* S.S. PRINCESS ADELAIDE & S.S. HAMPHOLM *v.* CANADIAN PACIFIC RY. CO., [1930] Ex. C. R. 10; 4 D. L. R. 778; *affg.*, [1930] 3 D. L. R. 423; *varg.*, [1929] 3 D. L. R. 383; Ex. C. R. 199; 2 W. W. R. 629 41 B. C. R. 274.—**CAN.**

PART XII. SECT. 3, SUB-SECT. 5.—D. (e) iii.

5933 i. *Duty to give appropriate signal.*]—The collision herein occurred in Halifax harbour, the bow of the *C.* striking the *K.* on her starboard quarter. The *C.* was heading for the Inner Automatic Buoy & the *K.* was northward & westward of the buoy, each showing her red light to the other, until the *K.*, almost immediately after passing the buoy, altered her course suddenly, showing her green light on the port bow of the *C.* which would be about half to three-quarters of a mile S.S.E. of the buoy, & in attempting to cross the bow of the *C.* was struck as aforesaid. The *K.* gave no signal of her intention to change her course:—*Held:* as the vessels were travelling red to red, the *K.* by altering her course without justification, & especially without signalling the *C.* her intention to do so, & in attempting to cross the *C.'s* bow, thus creating a danger of collision, violated Arts. 19, 22, 23, 27 & 29 of the International Rules of the Road, & was guilty of mismanagement & bad seamanship, & was solely to blame for the collision which occurred.—THE CAVELIER *v.* LIVERPOOL SHIPPING CO., [1931] Ex. C. R. 205.—**CAN.**

PART XII. SECT. 3, SUB-SECT. 5.—D. (e) v.

5961 i. *Vessel entering or leaving dock.*]—RINFRET *v.* CANADIAN S.S. LINES, LTD., [1928] Exch. C. R. 165.—**CAN.**

5961 ii. ——.]—Although a vessel emerging from a dock must be navigated with utmost care, yet other

5965. *Add. Annotation :*—**Reld.** The Otranto, [1930] P. 110.

5967. *Add. Annotation :*—**Consd.** The Bremen, [1931] P. 166.

5977. *Add. Annotation :*—**Reld.** The Vectis, [1929] P. 204.

6038. *Add. Annotation :*—**Reld.** The Otranto, [1930] P. 110.

6039. *Add. Annotation :*—**Consd.** The Otranto, [1930] P. 110.

6050a. Navigable channel divided into two fairways.]—THE ZILLAH, No. 6064a, *post.*

6064a. -.]—A collision occurred between pltfs.' & defts.' steamships in a part of Queenstown Harbour known as the inner man-of-war anchorage, where the navigable fairway is bisected by a line of Admiralty battleships' mooring buoys, thus forming a northern & a southern channel. The two vessels were navigating, pltfs.' steamship up & defts.' steamship down, the northern channel, & the collision was found by the ct. to have taken place on the south side of the said channel. By virtue of their powers under Dockyard Ports Regulation Act, 1865 (c. 125), the Lords Comrs. of the Admiralty exercise authority over Queenstown Harbour as a dockyard port, but by Order in Council of Aug. 10, 1903, it was provided that a fairway would be kept through the inner man-of-war anchorage, & in 1909 the Cork Harbour Comrs., "in pursuance of the powers vested in them by the Cork Harbour Acts, 1820–1903," issued with the approval of the Board of Trade & the consent of the Admiralty, required by sect. 60 of the Cork Harbour Act, 1903, bye-laws for the regulation of navigation in Queenstown Harbour. By bye-law 41 : "Any regulations for preventing collisions at sea for the time being in force, under the provisions of the Merchant Shipping Acts, shall be deemed to apply to the port, & shall be construed as if the following bye-laws, Nos. 42 to 52 (inclusive), were added thereto, & the entire fairway shall be deemed to be a narrow channel." By bye-law 53 : "The foregoing bye-laws, where they refer to any part of the man-of-war anchorages or any other part of the dockyard port, shall apply to any merchant ships that may be temporarily using such parts of the port." The interpretation clause prefixed to the said bye-laws defined "fairway" as "the space within the port for the time being reserved as a highway for vessels in motion." In 1916 the Harbour Comrs. issued a "Description of Fairway," para. 6 of which was as follows : "From the eastern limit of the inner man-of-war anchorage to the White Point Buoy there are two fairways—the northern fairway & the southern fairway. The northern fairway is bounded on the north by an imaginary line from 20 fathoms south of Copper Point Buoy to the western end of Queenstown Deep-water Quay, & thence towards White Point House until Rushbrooke Church bears N.W. by W.½W., & thence to White Point Buoy showing a fixed white light, & on the south by the line of Admlty. battleships' mooring buoys. The southern fairway is bounded on the north by the line of Admlty. battleships' mooring buoys, & on the south by the line of Admlty. torpedo-boat & other mooring buoys along the north of Spit Bank & Haulbowline" :—*Held :* subject to the general overriding jurisdiction of the Lords Comrs. of the Admiralty, the Harbour Comrs. have power to reserve space within the port as a highway for vessels in motion, & that the effect of the bye-laws, as explained by the reservation contained in the "Description of Fairway," was to constitute in the inner man-of-war anchorage two separate fairways, divided by the line of mooring buoys, in either of which vessels, whether proceeding up or down the harbour, were entitled to navigate, & pltfs.' vessel was alone in fault for the collision for failing to keep on her own starboard side of the northern fairway, in compliance with art. 25.—THE ZILLAH, [1929] P. 266 ; 98 L. J. P. 124 ; 141 L. T. 174 ; 45 T. L. R. 440 ; 17 Asp. M. L. C. 604.

6069a. River Plate.]—THE BUCCARI (1929), 35 Ll. L. Rep. 26.

Annotation :—**Consd.** Leopold L. D. S.S. *v.* Hochelaga S.S. Co., Louis Dreyfus & Co. *v.* Hochelaga S.S. Hochelaga S.S. *v.* Louis Dreyfus & Co., Hochelaga S.S. Co. *v.* Leopold L.D. S.S. (1931), 101 L. J. P. C. 65.

6070a. -.]—The *L.* was going down the river St. Lawrence outward bound, stemming the tide, following a course in mid-channel, a narrow channel within the meaning of Art. 25, & when about two miles apart sighted the *H.*, which was well over the southern side of the channel, her port side. The available fairway, which was limited by shoals on each side, was well lighted & about twelve hundred feet wide. The *H.* blew two port helm signals which were not heard, but when within 1,500 feet blew one short blast, put her helm hard-a-port & kept it there until collision. The *L.* only heard the last short blast. The Regulations of 1910 provided for no signal to warn an oncoming ship of an intended breach of rule by the approaching vessel :—*Held :* the two ships were jointly liable & equally to blame, & it ought to be inferred from the Regulations of 1910 that signals other than those specified & prescribed were given at the risk of the vessel which gave them ; the *L.* ought to have sounded two short blasts as a signal to the *H.* of her intention to continue on her course so as to pass green to green.—LEOPOLD L. D. S.S. *v.* HOCHELAGA S.S. CO. ; LOUIS DREYFUS & CO. *v.* HOCHELAGA S.S. ; HOCHELAGA S.S. *v.* LOUIS DREYFUS & CO. ; HOCHELAGA S.S. CO. *v.* LEOPOLD L. D. S.S. (1932), 101 L. J. P. C. 65.

vessels should be manœuvred with consideration to the difficulties of the vessel that is emerging. The manœuvres & caution to be taken in such cases all depend on the distance at which the ships sight each other.—OCEANIC STEAMSHIP NAVIGATION CO., LTD. *v.* S.S. "LINGAN" & LINGAN S.S. CO., LTD. *v.* S.S. "DORIC" (Que. Adm.), [1929] Ex. C. R. 71.—**CAN.**

PART XII. SECT. 3, SUB-SECT. 5.—E. (a).

s]. *Negligent navigation — What amounts to.*]—"WENCHITA" *v.* BEECHBAY," BEECHBAY S.S. CO. *v.* "WENCHITA," [1928] Exch. C. R. 178.—**CAN.**

sk. *Duties of masters.*]—*Held :* when two vessels are meeting in a narrow channel, careful watch must be kept by the masters of each vessel over the movement of the other vessel, & they must be prompt to signal in case of emergency resulting from their manœuvres. Carelessness or neglect to so act, if damage results therefrom, is negligence for which each vessel offending is liable.—EASTERN STEAMSHIP CO. *v.* "ALICE," J. P. PORTER & SONS, LTD. *v.* "WARREN," [1927] Exch. C. R. 228.—**CAN.**

6104. *Add. Annotations :*—**Consd.** Leopold L. D. S.S. *v.* Hochelaga S.S. Co., Louis Dreyfus & Co. *v.* Hochelaga S.S., Hochelaga S.S. *v.* Louis Dreyfus & Co., Hochelaga S.S. Co. *v.* Leopold L. D. S.S. (1931), 101 L. J. P. C. 65. **Refd.** The Otranto, [1930] P. 110.

6104a. —— **Liability for.**]—LEOPOLD L. D. S.S. *v.* HOCHELAGA S.S. CO.; LOUIS DREYFUS & CO. *v.* HOCHELAGA S.S.; HOCHELAGA S.S. *v.* LOUIS DREYFUS & CO.; HOCHELAGA S.S. CO. *v.* LEOPOLD L. D. S.S., No. 6070a, *ante*.

6104b. **Right to give signal—Vessel without steerage way.**] — CLAN LINE STEAMERS, LTD. (OWNERS OF THE "CLAN STUART") *v.* USKSIDE STEAMSHIP CO., LTD. (OWNERS OF THE "USKHAVEN"), [1929] S. C. (H. L.) 69, H. L.

6115. *Add. Annotation :*—**Refd.** The Vectis, [1929] P. 204.

SUB-SECT. 9A.—SCHELDT.

6163a. **Vessel turning—Duties of other vessels—Both to blame.**]—By Article 40, r. 3, of the Scheldt Bye-laws a vessel turning in the river must give the appropriate signal, & every vessel in the vicinity ("*proche*") proceeding against the tide must stop her way over the ground, & every vessel proceeding with the tide must slacken her speed, until the vessel turning no longer presents any obstacle "*au passage.*"

Applts.' steamship *C.*, a collier, bound up the Scheldt with the tide, had ahead of her the steamship *A.*, which sounded the appropriate signal, that she was going to swing to get head on tide. Resps.' vessel *B.*, one of the Harwich & Antwerp mail boats, was coming down the river at her full speed of 14 knots. She saw the lights of the *C.* coming up astern of the *A.*, & when she got down towards the *A.*, which was blocking about half of the navigable waterway of some 1,000 feet, she saw the lights of the *C.* coming under the stern of the *A.* on the *B.*'s side of the waterway. The *B.* kept her speed until about one minute before the collision when she slowed, &, about half a minute afterwards, stopped & went full astern. The President absolved the *B.* from blame for the ensuing collision on the ground that Article 40, r. 3, did not apply to her under the circumstances, as there was ample waterway for her on her own proper side of the river under the stern of the *A.* He held that the *B.* was justified in keeping her speed "until her master saw that there was an element of risk in the turning movement of the *A.* combined with the oncoming of the *C.* but before that risk had developed." He held the *C.* alone to blame for over-starboarding into the water of the *B.* & for not sounding a signal that she was starboarding. The owners of the *C.* appealed :—*Held :* Article 40, r. 3, is directed, not to the moment when the approaching ships get up to the turning ship, but to the time when they are coming towards her & do not know where she may be when they get up to her; the ship coming against the tide cannot excuse herself by saying that when she arrived in the vicinity of the turning ship there was in fact room for her to pass; (*per* GREER, L.J.) r. 3 is a regulation for the purpose of ensuring the safety of vessels navigating the river at the time the turning movement is taking place quite as much as it is directed to the safety of the turning vessel herself, & that the rule has to be applied until the turning vessel no longer presents any obstacle "*au passage*"; & (*per* CUR.) while the *C.* was to blame, the *B.* was also to blame for keeping her speed & not stopping & reversing her engines until the risk of collision was apparent. Decision of the President varied by holding both vessels to blame in equal degrees.—THE "CHATWOOD," [1930] P. 272; 100 L. J. P. 1; 143 L. T. 735; 18 Asp. M. L. C. 165, C. A.

6166. *Add. Annotation :—Generally*, **Refd.** The Otranto, [1930] P. 110.

6174. *Add. Citation :*—17 Asp. M. L. C. 289.

6195. *Add. Annotation :*—**Expld.** The Vectis, [1929] P. 204.

6212. After this case add :—

I. Vessel leaving Dock.

6212a. **St. Katherine's Docks—Sufficiency of signal.**] —Bye-law 26 of the Port of London River Bye-Laws, 1914–21, provides that "A steam vessel coming out of dock or leaving a wharf or tier shall signify the same by a prolonged blast of the steam whistle, except in the case of a vessel coming out of the St. Katharine Docks requiring the bascules of the Tower Bridge to be raised in order to get into position in the river which shall signify the same by a prolonged blast of the steam whistle followed by three short blasts in rapid succession."

PART XII. SECT. 3, SUB-SECT. 5.—E. (d).

m i. ——.]—A collision occurred between the *I.*, & the *McG.*, soon after midnight, in a narrow channel of the St. Lawrence River between buoys 23 & 24, south of the fairway, & close to buoy 23. The weather was fine & clear, somewhat overcast, but without haze, & visibility was good. Both ships were going at full speed. The *McG.* outbound, going with the stream & a tide of 3 knots an hour & the *I.* inbound. When the *McG.* was abreast of the buoy 24 she gave a one-blast signal which was answered by the *I.* when abreast of buoy 23, indicating that they would pass port to port. The *I.* always going at full speed, then directed her course to port instead of keeping to starboard, contrary to the signal given, & to Art. 25, shoving the *McG.* to the south; & the collision occurred, the *I.* striking the *McG.* on the port side just amidships, with her port bow :—*Held :* as the two vessels were travelling port to port after exchanging signals indicating they would keep their course, the speed of the *McG.* in no way contributed to the collision, but that the collision was entirely due to the fault of the *I.* in not keeping to starboard of the channel & neglecting to slow up or stop as good seamanship required.—STANDARD OIL CO. OF NEW JERSEY *v.* S.S. "IKALA," INDUSTRY S.S. CO., LTD. *v.* S.S. JAMES MCGEE (Que. Adm.), [1929] Ex. C. R. 230.—**CAN.**

n i. ——.]—UNITED STATES SHIPPING BOARD *v.* THE SHIP ST. ALBANS (1928), 28 S. R. N. S. W. 429; 45 N. S. W. W. N. 104.—**AUS.**

PART XII. SECT. 3, SUB-SECT. 5.—F. (a) i.

a i. —— *Failure to answer due to agony of collision.*]—C. P. R. *v.* S.S. ROSECASTLE, DOMINION SHIPPING CO. *v.* S.S. MONTROSE, [1931] 4 D. L. R. 141.—**CAN.**

PART XII. SECT. 3, SUB-SECT. 5.—G. (a).

6121 iii. —— *In narrow channel —Check signal.*]—Where a vessel is overtaking another in a narrow channel such as the Welland Canal & signifies her desire to pass by blowing one blast, but receives no reply, she is bound to wait, & not attempt to go forward so as to affect the overtaken vessel until permission is obtained. Rule 29 of the Rules of the Road for the Great Lakes is imperative, & overrides the General Rules which deal with conditions not covered expressly by said Rule.

The "check" signal is not recognised by the Great Lakes Rules, & its meaning & effect can only be determined by the circumstances under which it is given & received.—SINCENNES-MCNAUGHTON LINES *v.* "STEEL CHEMIST," [1928] Exch. C. R. 182.—**CAN.**

Defts.' steamship having, on the flood tide, come stern first out of the lock of the St. Katharine Docks into the Upper Pool of the Thames, was in collision with the pltfs.' steamship. When entering the lock defts.' steamship sounded a signal of one long blast followed by three short blasts, & this signal she twice repeated as she passed through the lock & into the river. It was contended for pltfs. that she ought in addition to have sounded the prolonged blast mentioned in the first part of bye-law 26 :—*Held :* the framers of the bye-laws must have had in mind that almost the only occasion when a vessel leaving St. Katharine Docks would require the bascules of the Tower Bridge to be raised was when she was coming out of the docks stern first on the flood tide & so would need all the room she could obtain in which to turn head down river ; the combination of one long blast & three short blasts conveyed a warning to those whom it might concern that a vessel was leaving the dock & in doing so coming astern ; if the bye-law required a vessel in those circumstances also to sound the general warning signal of a prolonged blast prescribed in the earlier part thereof, it followed that she must also, while going astern, sound three short blasts if & when any other vessel in the crowded reach came in sight ; & such a series of blasts would be wholly unnecessary & lead to confusion, & defts.' steamship was right in sounding only a signal of one long & three short blasts.—THE FALCON (1931), 47 T. L. R. 621.

6240a. —— ——.]—" BARON VERNON " S.S. *v.* S.S. " METAGAMA," [1928] S. C. (H. L.) 21, H. L.

6241. *Add. Annotation :*—**Consd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369.

6248. *Add. Annotation :*—**Apld.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369.

6255. *Add. Annotation :—As to* (1) **Apld.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369.

6256. *Add. Annotation :*—**Refd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369.

6267. *Add. Annotation :*—**Refd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369.

6325. *Add. Annotation :*—**Refd.** Winnipeg Electric Co. *v.* Geel (1932), 48 T. L. R. 657.

6369. *Add. Annotation :*—**Refd.** Winnipeg Electric Co. *v.* Geel (1932), 48 T. L. R. 657.

6377a. —— ——.]—THE PRINCESS, No. 5608b, *ante.*

6414. *Add. Annotations :*—**Consd.** Service *v.* Sundell (1929), 45 T. L. R. 569. **Refd.** Dew *v.* United British S.S. Co. (1928), 139 L. T. 628.

6417. *Add. Annotations :*—**Consd.** Dew *v.* United British S.S. Co. (1928), 139 L. T. 628 ; The Vectis, [1929] P. 204. **Refd.** The Chatwood, [1930] P. 272 ; The Otranto, [1930] P. 110 ; Service *v.* Sundell (1929), 99 L. J. K. B. 55 ; Swadling *v.* Cooper (1930), 46 T. L. R. 597.

6423a. Vessels failing to stop in fog.]—THE BREMEN, No. 5748b, *ante.*

6429. *Add. Annotation :*—**Expld.** The Vectis, [1929] P. 204.

6430. *Add. Annotation :*—**Consd. & Expld.** The Vectis, [1929] P. 204.

6433a. —— ——.]—Pltfs., as owners of the barge *H.*, brought an action in the Mayor's & City of London Ct. against the owners of the barge *V.* in respect of damage sustained by the *H.* in Milton Creek, River Swale, through coming in contact with the *V.*'s anchor, which was admittedly being carried in an improper position, with the stock projecting over the bows, in breach of one of the Milton Creek bye-laws. But for the position of the anchor, the use of fenders would have avoided damage to either vessel. The judge held that the master of the *H.* knew of the position of the anchor & took the risk of coming in contact with the *V.* when the rush of the flood tide swung the H., which was aground, athwart the creek & into contact with the *V.* lying moored on the opposite bank. He found that the master of the *H.* was negligent in not taking measures to avoid coming in contact with the *V.*, &, on the authority of *The Monte Rosa*, No. 6430, which he thought was in conflict with *The Dunstanborough*, No. 6429, gave judgment for defts. Pltfs. appealed :—*Held :* defts. had not established either knowledge of the position of the anchor or negligence on the part of the master of the *H.*, & the appeal succeeded.—THE VECTIS, [1929] P. 204 ; 98 L. J. P. 135 ; 140 L. T. 563 ; 45 T. L. R. 384 ; 17 Asp. M. L. C. 574.

6437a. ——.]—A steamer having stopped but not having, as she should have done, reversed immediately before a collision, though the ct. found as a fact that her not having done so did not affect the collision, & having thus infringed rule 14 of the Thames Rules :—*Held :* she was nevertheless not to blame, for the Thames Rules do not fall within the operation of Merchant Shipping Act, 1873 (c. 85), s. 17.—THE HARTON (1884), 9 P. D. 44 ; 53 L. J. P. 25 ; 50 L. T. 370 ; 5 Asp. M. L. C. 213 ; 32 W. R. 597.

6441. *Add. Annotations :—As to* (2) **Consd.** The Vectis, [1929] P. 204. *As to* (3) **Consd.** The Vectis, [1929] P. 204.

PART XII. SECT. 5, SUB-SECT. 3.—A.

6289 iii. ——.]—BURRARD INLET TUNNEL & BRIDGE CO. *v.* S.S. EURANA (B. C. Adm.), [1929] 3 D. L. R. 161 ; 2 W. W. R. 275 ; *on appeal*, [1931] A. C. 300.—**CAN.**

PART XII. SECT. 5, SUB-SECT. 5.—A.

6413 xviii. ——.]—SINCENNES-MCNAUGHTON LINE, LTD. *v.* " BRULIN " S.S., [1928] Exch. C. R. 45 ; *revsd.*, [1929] 3 D. L. R. 536.—**CAN.**

PART XII. SECT. 5, SUB-SECT. 5.—B.

q i. ——.]—*Held :* where vessels are meeting in narrow channels or areas & improper signals by whistle are exchanged, rules 22 & 23 being violated by both vessels, liability for negligence which causes a collision must be determined by the weight of evidence after consideration of the action of each vessel, having regard to rule 37.—" MANLEY " S.S. (OWNERS OF) *v.* " HECTOR " S.S. (OWNERS OF) & THE NORTHERN CONSTRUCTION CO., [1928] Exch. C. R. 42.—**CAN.**

PART XII. SECT. 5, SUB-SECT. 5.—C.

6436 i. *Breach by both vessels—Rules for navigating Great Lakes.*]—" GLENROSS " *v.* CANADA S.S. LINES, LTD., SWAN, HUNTER & WIGHAM RICHARDSON, LTD. *v.* " GLENLEDI," [1929] 3 D. L. R. 282 ; S. C. R. 549.—**CAN.**

PART XII. SECT. 5, SUB-SECT. 6.—C. (a).

6447 i. *Rules of Common Law & Admiralty distinguished.*]—Where the negligence of defts. is not the sole cause of the damage different principles for assessing liability are applicable at common law from those to be applied in Admiralty, for at common law the suit will fail, whereas in Admiralty where the damage is caused by the combined default of two or more vessels, the liability is to be apportioned.—" RABENFELS," THE (1929), I. L. R. 56 Calc. 763.—**IND.**

6448. *Add. Annotation :*—**Consd.** The Otranto, [1930] P. 110.

6451. *Add. Annotation :*—**Consd.** The Vectis, [1929] P. 204.

6455a. —.]—THE BREMEN, No. 5748b, *ante.*

6465. *Add. Annotation :*—**Refd.** The Young Sid, [1929] P. 109.

6480 *Add. Annotation :*—**Consd.** Oliver *v.* Birmingham & Midland Motor Omnibus Co. (1932), 48 T. L. R. 540.

6484. *Add. Annotation :*—**Refd.** The Edison, [1932] P. 52.

6499. *Add. Annotation :*—**Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

6501. *Add. Annotation :*—**Refd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

6504. *Add. Annotation :*—**Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

6546. *Add. Annotation :*—**Refd.** The Carlton, [1931] P. 186.

6562. *Add. Annotations :*—**Refd.** Dew *v.* United British S.S. Co. (1928), 139 L. T. 628 ; Service *v.* Sundell (1929), 45 T. L. R. 569.

6591. *Add. Annotation :*—**Apld.** Brooke *v.* Bool, [1928] 2 K. B. 578.

6594. *Add. Annotation :*—**Consd.** Banco de Portugal *v.* Waterlow & Sons, Ltd., Waterlow & Sons, Ltd. *v.* Banco de Portugal, [1932] A. C. 452.

6594a. —— ——.]—" HARVEST HOME," THE, No. 5217, *ante.*

6618. *Add. Annotation :*—**Refd.** The Edison (1931), 47 T. L. R. 635.

6624. *Add. Annotations :*—**Consd.** Strathfillan S.S. Owners *v.* Ikala S.S. Owners. The Ikala, [1929] A. C. 196. **Refd.** The Edison (1932), 48 T. L. R. 224.

6627. *Add. Annotations :*—**Apld.** A.-G. *v.* GlenLine & Liverpool & London War Risks Insce. Assocn. (1929), 34 Com. Cas. 309. **Consd.** The Edison (1932), 48 T. L. R. 224.

6628a. —— **Detention due to collision—Owner unable to use ship owing to contract during period of detention.**]—On Mar. 12, 1927, resps.' steamship suffered damage by a collision with applts.' steamship, for which the applts. admitted liability. The damage did not render resps.' vessel unseaworthy, & she continued trading without effecting repairs. While she was so trading her owners by a memorandum of agreement dated Dec. 21, 1927, contracted to sell her. The agreement set forth that the vessel was " due London on Dec. 24, thence H. & A., expected ready for delivery between, say, Jan. 10 & Jan. 31, & to be delivered to buyer at Antwerp or a U.K. port at seller's option, but not later than Feb. 25, 1928, subject to buyer's approval afloat & to bottom examination in dry dock, as specified in Clauses 4 & 5 of this contract . . . 4. The buyer shall commence the inspection of the steamer afloat within twenty-four hours of receiving notice of steamer's readiness for inspection, & if on superficial inspection the buyer is satisfied with the general condition of the steamer, seller shall at his own risk & expense open up the engines, boilers & tanks for the inspection of the steamer afloat by the buyer. . . . The buyer shall declare acceptance or refusal of the steamer in writing within twenty-four hours after completion of such inspection afloat . . . 5. For examination of bottom &/or other water parts &/or tailend shaft, seller agrees to put the vessel into dry dock. . . ." The steamship arrived at Antwerp on Jan. 10, 1928, & her owners gave notice to the buyer of her readiness. On Jan. 16 they proceeded to open up the vessel's engines, boilers & tanks for inspection, & while the vessel was in that condition & therefore unable to trade, they took the opportunity to effect the repair of the collision damage, which was of such a nature that it could be repaired while the ship was afloat. The repairs admittedly occupied four days, & were completed on Jan. 24. Subsequently the vessel was put into dry dock for bottom examination. On the reference to assess the damage caused by the collision resps. claimed (*inter alia*) loss & expenses in respect of four days' detention while their ship was undergoing repairs :—*Held :* inasmuch as resp. shipowners had entered into contractual obligations which prevented them from trading with the vessel & earning profits during the time when the repair of the collision damage was being executed, they had not suffered any loss by the detention of their vessel in consequence of the collision, & were therefore not entitled to recover from the wrongdoer.—THE YORK, [1929] P. 178 ; 98 L. J. P. 147 ; 141 L. T. 215 ; 17 Asp. M. L. C. 600, C. A.

PART XII. SECT. 6, SUB-SECT. 1.—C. (a) i.

6524 i. *Tug negligently navigated.*]—" ROBERT J. PAISLEY " *v.* JAMES RICHARDSON & SONS, LTD., " ROBERT J. PAISLEY " *v.* CANADA S.S. LINES, LTD., [1930] 2 D. L. R. 257 ; *revsg.*, [1929] 2 D. L. R. 42 ; S. C. R. 359.—**CAN.**

PART XII. SECT. 6, SUB-SECT. 1.—D.

q i. ——.]—The master of the *T.*, which was at all relevant times compulsorily in charge of a pilot, was in as favourable a position as the pilot to determine whether any risk of navigation was being incurred, & was aware of all the circumstances immediately preceding & leading up to the collision, but stood by & gave no warning to the pilot as to the possibility of danger or as to the breach of regulations as to speed :—*Held :* in the circumstances the master was *particeps* in the negligence of the pilot & the defence of compulsory pilotage was not available to the owners of the *T.*—FERRIES (SYDNEY), LTD. *v.* TAHITI, THE SHIP (1929), 30 S. R. N. S. W. 360 ; 47 N. S. W. W. N. 130.—**AUS.**

PART XII. SECT. 6, SUB-SECT. 2.—A.

o i. ——.]—Sect. 117 of Navigation Act, 1901, is a valid exercise of the power conferred on Colonial Legislatures by sect. 735 of Merchant Shipping Act, 1894, of repealing or altering the provisions of the latter Act relating to ships locally registered. Consequently, sect. 117 of Navigation Act, 1901, is not to be read as subject to sect. 419 (4) of Merchant Shipping Act, 1894. Therefore, the provisions of sect. 419 (4) of Merchant Shipping Act, 1894, are not applicable to ships registered in New South Wales, & the presumption of fault does not arise against any such vessel on proof merely that she has infringed any of the collision regulations, but only where it appears to the ct. that the collision was occasioned by such breach of regulation.—BUTLER *v.* MILLIMUMUL SHIP (1929), 30 S. R. N. S. W. 182 ; 47 N. S. W. W. N. 66.—**AUS.**

PART XII. SECT. 6, SUB-SECT. 4.

s1. *Effect of Maritime Conventions Act*, 1914, *s.* 9.]—The present action is one *in rem* against the tug *S.* for damages to pltf.'s canal boat, when in tow of the *S.*, as a result of a collision between the said canal boat, a dumb tow, & the wall of the inner basin of the harbour of Quebec, which collision was alleged to be due to the negligent navigating of the *S.* :—*Held :* sect. 9 was not limited in its application solely to actions for damages due to collision between vessels, & the present action not having been commenced within two years from the date when the damages or loss or injury was caused should be dismissed.—" SPRAY " *v.* ST. CLAIR, [1928] Exch. C. R. 56.—**CAN.**

6635. *Add. Annotation :*—**Refd.** The Edison (1932), 147 L. T. 141.

6640. *Add. Annotation :*—**Consd.** The Edison, [1932] P. 52.

6642. *Add. Annotation :*—**Consd.** The Edison, [1932] P. 52.

6653a. —— —— ——.]—A British battleship damaged by collision was put into a naval dry dock for her repairs. The ship's effective life was estimated at twenty years & she was under four years old at the time of the collision. In assessing the damages the registrar allowed nothing in respect of the use of dock & cranes, on the ground that the Admiralty had suffered no pecuniary expenses or loss, & in respect of the loss of use of the ship for fifteen days, the time estimated for the collision repairs, he allowed interest at 2½ per cent., on half the initial costs of the ship for the fifteen days. The Admiralty appealed :—*Held :* that the case must go back to the registrar for re-assessment, for (i) the ship occupied the dock & used the cranes, etc., to the exclusion of other vessels & some allowance, therefore, must be made to the Admiralty in respect of these items, & (ii) having regard to the estimated life of the ship, her annual depreciation & cost of maintenance, the amount awarded for detention appeared to have been computed on a wrong basis.—THE WEST WALES, [1932] P. 165.

6656. *Add. Annotation :*—**Consd.** The York, [1929] P. 178 ; 101 L. J. P. 92.

6659. *Add. Annotations :*—**Refd.** Canadian Pacific Ry. *v.* Kelvin Shipping Co. (1927), 138 L. T. 369 ; The Edison (1932), 147 L. T. 141.

6663. *Add. Annotations :*—**Refd.** The Ikala, [1928] P. 86 ; The Edison (1932), 48 T. L. R. 224.

6671. *Add. Annotation :*—**Apld.** The York, [1929] P. 178.

6674. *Add. Annotation :*—**Apld.** The York, [1929] P. 178.

6677. *Add. Citations :*—*affd. sub nom.* STRATHFILLAN S.S. OWNERS *v.* IKALA S.S. OWNERS, THE IKALA, [1929] A. C. 196 ; 98 L. J. P. 49 ; 140 L. T. 177 ; 17 Asp. M. L. C. 555, H. L.

Add. Annotation :—**Consd.** The York, [1929] P. 178.

6678. *Add. Annotation :*—**Refd.** The Young Sid, [1929] P. 190.

6689. *Add. Annotation :*—**Consd.** The Edison, [1932] P. 52.

6690. *Add. Annotation :*—**Consd.** The Edison, [1932] P. 52.

6694a. —— —— **On special contract.**]—In Nov. 1928, pltfs.' dredger *L.* was sunk through the negligence of defts., who in May, 1930, admitted liability. At the time of the casualty pltfs. were engaged in dredging operations in Patras Harbour, Greece, under a constructional contract with the Harbour Commissioners. The contract was a profitable one to pltfs., but contained severe terms as to penalties if the work was not completed within the specified period. Pltfs. had strained to the utmost their resources of cash & credit to obtain the necessary plant which would qualify them to perform the contract, & had not the means to purchase another dredger when the *L.* was sunk. In order to carry on the contract, therefore, after the lapse of some time, pltfs. hired the dredger *A.* at a high rate. Ultimately the Harbour Comrs. purchased the *A.* & resold her on easy terms to pltfs.

In assessing the damages the registrar allowed the value of the *L.* which he took as being the price paid for the *A.*, some £9,000 odd. He allowed in addition the cost of hiring the *A.*, certain expenses while the plant was lying idle, a certain sum to compensate pltfs. for delay in receiving their profits on the contract, & interest on the several sums from varying dates. Defts. moved in objection to the report, & LANGTON, J. confirmed the report. Defts. appealed :—*Held :* the assessment had proceeded on the wrong basis ; the losses sustained by pltfs. owing to the fact that they were using the *L.* in the performance of a very special contract with the Harbour Comrs. were not the direct & natural consequences of the collision & must be excluded ; if pltfs. were given the value of the *L.* as a going concern at the time & place of her loss, which the ct. would take in round figures at £9,000, plus interest at 5 per cent. to the date of judgment, no extra sums could be awarded in respect of loss of profit or the hiring of the *A.*—THE EDISON, [1932] P. 52 ; 101 L. J. P. 12 ; 147 L. T. 141 ; 48 T. L. R. 224 ; 37 Com. Cas. 182, C. A.

Annotation :—**Refd.** The Castor (1932), 48 T. L. R. 604.

6694b —— **Expenses of hiring substitute—Whether expenses reasonably incurred.**] — THE EDISON, No. 6694a, *ante.*

6705. *Add. Annotation :*—**Refd.** The Edison, [1932] P. 52.

6706. *Add. Annotations :*—**Apld.** A.-G. *v.* Glen Line & Liverpool & London War Risks Insce. Assoc. (1929), 34 Com. Cas. 308. **Consd.** The Edison, [1932] P. 52 ; The Castor (1932), 48 T. L. R. 604.

6708. *Add. Annotations :*—**Apld.** A.-G. *v.* Glen Line & Liverpool & London War Risks Insce. Assocn. (1929), 34 Com. Cas. 309. **Refd.** The Edison (1932), 48 T. L. R. 224.

6710. *Add. Annotations :*—**Consd.** The Castor (1932), 48 T. L. R. 604 ; The Edison (1932), 48 T. L. R. 224.

6733. *Add. Annotation :*—**Consd.** The Edison, [1932] P. 52.

6736a. Allowance to charterer under cesser clause.]—THE ESSEX ENVOY, No. 2104a, *ante.*

6736b. Use of naval dock & cranes—Repairs to warship.]—THE WEST WALES, No. 6653a, *ante.*

6742. *Add. Annotation :*—**Refd.** The Point Breeze, [1928] P. 135.

6758. *Add. Annotation :*—**Refd.** Engelke *v.* Musmann, [1928] A. C. 433.

PART XII. SECT. 6, SUB-SECT. 5.—J.

6711 i. —— *No market for such type of ship.*]—On Aug. 14, 1926, a hopper digger barge belonging to the trustees of the Clyde Navigation was sunk in collision with the s.s. *Ronda*, admitted that those in charge of her were solely to blame for the accident. In an action at the instance of the trustees, brought on Jan. 24, 1928, to assess & recover damages for (*inter alia*), the loss of the barge, it was proved that there was no market for such a vessel, so that the test of market value was not available. The Lord Ordinary awarded the pursuers the cost of a reasonably efficient second-hand hopper barge, & the cost of adapting it for their special purpose :—*Held :* the Lord Ordinary's method of assessing the value of the barge was not erroneous.—CLYDE NAVIGATION TRUSTEES *v.* BOWRING S.S. CO., LTD., [1929] S. C. 715.—**SCOT.**

PART XIII. SECT. 2.

h i. —— *Bridge.*]—A.-G. FOR BRITISH COLUMBIA *v.* "PACIFIC FOAM," [1928] 2 D. L. R. 877 ; [1928] 1 W. W. R. 965. —**CAN.**

Part XIV.—Wreck.

6794. *Add. Annotation :—As to* (2) **Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

6796. *Add. Annotation :*—**Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

6797. *Add. Annotations :*—**Apld.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159. **Refd.** The Chr. Knudsen (1932), 48 T. L. R. 619.

6805. After this case add :—
—— —— **Negligent repair—Limitation of action.**]—*See* PUBLIC AUTHORITIES, No. 949a, *ante.*

6807. *Add. Annotations :—As to* (1) **Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159; G. W. Ry. *v.* S.S. Mostyn, [1928] A. C. 57. **Refd.** Allgemeine Versicherungs-Gesellschaft Helvetia *v.* German Property Administrator, [1931] 1 K. B. 672; Ruislip-Northwood Urban District Council *v.* Lee (1931), 145 L. T. 208.

6809a. —— —— ——.]—A ketch belonging to defts. sank, owing to their negligence, in a river, of which first pltfs. were the conservators, & thereby obstructed the navigation of the river & second pltfs.' wharf & the approaches thereto. Immediately after the sinking of the ketch, & before any expenses were incurred in removing her, defts. abandoned her. Pltfs. jointly incurred expenses in removing the obstruction, & sued to recover the amount from defts. :—*Held :* (1) the ketch having sunk through the negligence of defts., they became liable at common law for the damage caused by the obstruction to the navigation of the river & the blocking of the approach to the wharf, & they could not escape liability for that damage by abandoning the wreck; (2) the damages recoverable were the reasonable cost of removing the obstruction.—DEE CONSERVANCY BOARD *v.* MCCONNELL, [1928] 2 K. B. 159; 97 L. J. K. B. 487; 138 L. T. 656; 92 J. P. 54; 26 L. G. R. 204; 17 Asp. M. L. C. 433, C. A.

6811a. —— —— —— ——.]—Defts.' steamship, a Norwegian vessel, while docking in Stalbridge Dock, Garston, came into collision with & sank a barge. Pltfs., as owners of the dock, took steps to raise & remove the wreck, & by a writ *in rem* in the present action claimed to recover from defts. the expenses which they had incurred "in & about the lighting, buoying, removal, & destruction of the barge." The owners of the barge had given notice that they abandoned their vessel. On a motion by defts. to set aside the service of the writ :—*Held :* the claim was for "damage done by a ship," namely, damage done by defts.' ship to pltfs.' dock by putting an obstruction in it, with Supreme Ct. of Judicature (Consolidation) Act, 1925 (c. 49), s. 22 (1), (*a*), (iv.), & was properly commenced by a writ *in rem.*—THE CHR. KNUDSEN, [1932] P. 153; 101 L. J. P. 72; 48 T. L. R. 619.

Part XV.—Salvage.

6821. *Add. Annotation :—As to* (1) **Consd.** The Castor (1932), 48 T. L. R. 604.

7056. *Add. Annotations :—As to* (2) **Refd.** Akt. Ocean *v.* Harding, [1928] 2 K. B. 371; Fiumana Società Di Navigazione *v.* Bunge & Co., [1930] 2 K. B. 47; Tempus Shipping Co. *v.* Louis Dreyfus & Co., [1931] 1 K. B. 195.

7473. *Add. Annotation :*—**Consd.** The Castor (1932), 48 T. L. R. 604.

7474. *Add. Annotation :*—**Apld.** The Castor (1932), 48 T. L. R. 604.

7475. *Add. Annotation :—As to* (1) **Expld.** The Castor (1932), 48 T. L. R. 604.

7475a. —— **What should be considered—Earning power of ship—Existence of time charter.**]—In a salvage action pltfs. obtained an order for the appraisement of defts.' ship. The valuer appraised the ship on the footing that she was employed & likely to be employed, but the fact that she was under a profitable time charter which had nearly seven years unexpired was not disclosed to the valuer :—*Held :* an appraisement should be based on the value of a ship to her owners as a going concern; the earning power under the charterparty should be taken into account as one of the elements of value; accordingly the appraisement was not conclusive; &, on further evidence adduced in ct., the value should be raised from £72,820 to £85,000.—THE CASTOR, [1932] P. 142; 101 L. J. P. 88; 147 L. T. 359; 48 T. L. R. 604.

7476. This case should be No. 7477a.

7477b. ——.]—THE CASTOR, No. 7475a, *ante.*

7881. *Add. Annotation :*—**Consd.** Louis Dreyfus & Co. *v.* Tempus Shipping Co. (1931), 47 T. L. R. 542.

7910. *Add. Annotation :*—**Refd.** Tempus Shipping Co. *v.* Louis Dreyfus & Co., [1931] 1 K. B. 195.

Part XVI.—Pilotage.

8002. *Add. Citation :*—17 Asp. M. L. C. 338.

8030. *Add. Annotation :*—**Distd.** Humber Conservancy Board *v.* Federated Coal & Shipping Co., [1928] 1 K. B. 492.

PART XV. SECT. 9, SUB-SECT. 1.—G. (a).
o i. —— —— ——.]—PACIFIC SALVAGE CO., LTD., & VANCOUVER DRYDOCK & SALVAGE CO., LTD. *v.* THE M.S. "TEX," HOME INSURANCE CO. OF NEW YORK *v.* THE M.S. "TEX," [1931] 1 W. W. R. 153; 2 D. L. R. 657; 43 B. C. R. 434.—CAN.

Part XVII.—Shipping Casualties.

8057. *Add. Annotation :*—**Refd.** The Royal Star (1927), 97 L. J. P. 49.

Part XVIII.—Limitation of Liability of Owners and Others.

8083. *Add. Citation :*—17 Asp. M. L. C. 270.

Add. Annotations :—**Consd.** The Ruapehu (No. 2), [1929] P. 305. **Refd.** Gosse Millard *v.* Canadian Government Merchant Marine, American Can Co. *v.* Same, [1927] 2 K. B. 432.

8099. *Add. Annotation :*—*As to* (2) **Consd.** Tempus Shipping Co. *v.* Louis Dreyfus & Co. (1930), 144 L. T. 13.

8103. *Add. Annotations :*—*As to* (1) **Consd.** Tempus Shipping Co. *v.* Louis Dreyfus & Co., [1931] 1 K. B. 195. **Refd.** Cosmopolitan Shipping Co. (Inc.) *v.* Hatton & Cookson, Ltd. (Liverpool) (1929), 143 L. T. 296.

8103a. —— **Loss direct consequence of fire.**]—TEMPUS SHIPPING CO., LTD. *v.* DREYFUS (LOUIS) & CO., LTD., No. 3099a, *ante*.

8104a. Dock owner with controlling interest in second dock—Whether second dock included in "the area" for purpose of calculating liability.]—Pltfs., a limited co., owned docks at B., in one of which defts.' vessel *R.* received damage. The *R.* was the largest vessel which had been in those docks within the statutory period, but pltfs. also had a controlling interest in docks at F. owned by another limited co. in which a larger vessel than the *R.* had been docked :—*Held :* even assuming pltfs. exercised any power over the F. docks within 1900 Act, s. 2 (1), those docks were not within "the area" contemplated by the sect., namely, the area containing within it the particular dock in which the damage was caused ; & pltfs. were entitled to a limitation decree based on the tonnage of the *R.*—THE RUAPEHU, No. 2, [1929] P. 305 ; 98 L. J. P. 167 ; 142 L. T. 96 ; 45 T. L. R. 657 ; 18 Asp. M. L. C. 64 ; *sub nom.* GREEN (R. & H.) & SILLEY WEIR, LTD. *v.* RUAPEHU S.S. OWNERS, 35 Com. Cas. 86.

8108. *Add. Annotation :*—*As to* (1) **Refd.** Great Western Ry. Co. *v.* Kassos Steam Navigation Co. (1930), 144 L. T. 121.

8121a. Whether Merchant Shipping Act, 1906 (c. 48), s. 69, retrospective.]—Above sect., with reference to the calculation of the tonnage of a steamship for the purposes of limitation of liability, is not retrospective so as to apply to a collision occurring before the Act came into operation, though the limitation of liability action was commenced after the Act came into operation.—THE LANGDALE (1907), 76 L. J. P. 154 ; 23 T. L. R. 683.

8132. *Add. Annotation :*—**Refd.** Young *v.* Merchants Marine Insurance Co. (1932), 37 Com. Cas. 250.

8134. *Add. Annotation :*—**Refd.** Young *v.* Merchants Marine Insurance Co. (1932), 37 Com. Cas. 250.

8135. *Add. Annotation :*—**Refd.** Young *v.* Merchants Marine Insurance Co. (1932), 48 T. L. R. 579.

Part XIX.—Liens on Ship, Freight and Cargo.

8189. *Add. Annotation :*—**Refd.** The Zigurds (No. 1) (1932), 48 T. L. R. 556.

8215. *Add. Annotation :*—**Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

PART XVIII. SECT. 1.

sm. *Whether limitation binding on Crown.*]—The Crown is not bound by Merchant Shipping Act, 1894 (c. 60), s. 503. Where therefore the South African Railways & Harbours sued resp. co. for damages arising out of the sinking of a ship owned by resp. in the approach to a harbour & the latter pleaded sect. 503 :—*Held :* an exception to this portion of the plea should have been allowed.—SOUTH AFRICAN RAILWAYS & HARBOURS *v.* SMITH'S COASTERS (PTY.), LTD., [1931] App. D. 113.—**S. AF.**

PART XVIII. SECT. 2.

sa. *Dumb barge.*]—A lighter was not registered, & although originally fitted with a rudder, at the time of the collision it had neither a rudder nor sidelights nor any means of propulsion. It was used by the owner to carry cargo from a deepwater port to a shallow water port :—*Held :* such a lighter was a "ship" within sect. 503 of Merchant Shipping Act, 1894.—HOLYMAN (WILLIAM) & SONS PTY., LTD. *v.* MARINE BOARD OF LAUNCESTON (1931), 24 Tas. L. R. 64.—**AUS.**

PART XVIII. SECT. 5, SUB-SECT. 4.

sc. *Onus of proof.*]—*Held :* the *onus* was on petitioners of showing that the damage did not arise on distinct occasions ; they must therefore establish that the second collision was caused by the same mistake as caused the first.—THE "LUCULLITE" *v.* THE "R. MACKAY," [1929] S. C. (Ct. of Sess.) 401.—**SCOT.**

PART XVIII. SECT. 5, SUB-SECT. 5.

g i. —— —— ——.]—*Held :* the words "engine-room space deducted" as found in Canada Shipping Act, R. S. C., 1927, s. 904, & in the corresponding provision of the Merchant Shipping Act, 1894, refers to the deduction allowed for propelling power as appearing in the certificate of registry. In calculating the tonnage of a ship in limitation of liability proceedings, the tonnage allowed for the power propelling space must be added to the register tonnage.—EASTERN S.S. CO., LTD. *v.* CANADA ATLANTIC TRANSIT CO., [1929] Ex. C. R. 103. —**CAN.**

g ii. —— —— ——.]—*Held :* for the purposes of limitation of liability under Merchant Shipping Act, 1894, s. 503, as amended by Merchant Shipping Act, 1906, s. 69, the words "engine room space" in sects. 78, 503 of the Act of 1894, & in r. 3 in Sched. II. thereto, mean the whole of the space occupied by the propelling power of a steamship, including the engine room space, &, accordingly, the proper method of calculating the tonnage of a vessel for the above purpose is to add to the net register tonnage, as shown by the ship's certificate of registry, the tonnage therein deducted "on account of space required for propelling power."—THE MILLIMUMUL (1929), 30 S. R. N. S. W. 461 ; 47 N. S. W. W. N. 170, 191.—**AUS.**

PART XIX. SECT. 1, SUB-SECT. 1.

so. *Whether assignable.*]—*Held :* in an action for damages by collision, the sale of one of the ships by the owner does not disentitle him from enforcing a maritime lien on the other ship. Such a lien is in general, & in such a case as this is unassignable.—DUFF *v.* THE "PROGRESS," [1928] Exch. C. R. 157.—**CAN.**

8216. *Add. Annotation :*—**Refd.** G.W. Ry. *v.* S.S. Mostyn, [1928] A. C. 57.

8232. *Add. Annotation :*—**Refd.** The Zigurds (No. 4) (1932), 48 T. L. R. 563.

8298. *Add. Annotation :—Generally,* **Refd.** The Zigurds (No. 1) (1932), 48 T. L. R. 556.

8406a. Lien for wages & disbursements on same footing.]—In June, 1931, the steamship *M.* was supplied by a firm of necessaries men with bunker coal, for which the then master bound himself & the ship, & in Jan. 1932, another firm supplied the ship with coal, for which the succeeding master bound himself & the ship. In actions *in rem* in the names of the respective masters for disbursements :—*Held :* (1) the claims ranked *pari passu* & not in the inverse order of their attachment ; (2) the lien of the master for disbursements is the same as his lien for wages, & accordingly ranks on the same footing ; (3) the master's lien for wages is postponed to that of the crew.—The Mons, [1932] P. 109 ; 101 L. J. P. 67 ; 147 L. T. 260 ; 48 T. L. R. 555.

8406b. Disbursements by successive masters.]—The Mons, No. 8406a, *ante.*

8409. *Add. Annotation :—As to* (2) **Folld.** The Mons, [1932] P. 109.

8437a. ——.]—The Mons, No. 8406a, *ante.*

8443. *Add. Annotation :—Generally,* **Refd.** The Zigurds (No. 1) (1932), 48 T. L. R. 556.

8448. *Add. Annotation :*—**Refd.** The Zigurds (No. 4) (1932), 48 T. L. R. 563.

8457. *Add. Annotation :*—**Distd.** The Zigurds (No. 1) (1932), 48 T. L. R. 556.

8498. *Add. Annotation :*—**Refd.** The London, [1931] P. 14.

Part XX.—Lighthouses.

8511a. Liability as foreign-going ship—Effect of loading & unloading cargo at home ports on outward voyage.]—Under Merchant Shipping (Mercantile Marine Fund) Act, 1898 (c. 44), a vessel which has, at a home port, loaded cargo for abroad & has paid light dues for a voyage as a foreign-going ship & then calls at other home ports & loads cargo at those home ports with a foreign destination, is not liable in addition to pay light dues as a home-trade ship merely because she also loads cargo at one of those home ports & discharges it at her last home port of loading.—TRINITY HOUSE CORPN. *v.* CEDAR BRANCH S.S. OWNERS (1930), 46 T. L. R. 541 ; 143 L. T. 352 ; 74 Sol. Jo. 438 ; 18 Asp. M. L. C. 151.

Part XXI.—Harbours, Docks and Piers.

8534. *Add. Citation :*—26 L. G. R. 1.

8543. *Add. Annotation :—As to* (1) **Refd.** British Trawlers Federation, Ltd. *v.* London & North Eastern Ry. Co. (1932), 48 T. L. R. 491.

8546. *Add. Annotation :*—**Refd.** Busby *v.* Avgherino, [1928] A. C. 290.

8564a. Exemption—Abolition of.]—*Held :* the exemption claimed having been shown to be in existence for over one hundred years, the ct. would endeavour to find a legal origin for it, but, assuming the exemption to have been proved, it was abolished by Shipping Dues Exemption Act, 1867 (c. 15).—NEWPORT CORPN. *v.* ISLE OF WIGHT FARMERS' TRADING SOCIETY, LTD. (1928), 92 J. P. 109.

8594a. —— **Construction of special Act against company.**]—By the Liverpool Dock Acts of 8 Anne & 2 Geo. 3, certain tonnage duties are payable to the dock co. on all vessels sailing with cargoes outwards or inwards, so as no ship shall be liable to pay more than once for the same voyage out & home. This is one entire duty imposed upon one entire

PART XIX. SECT. 1, SUB-SECT. 4.—B. (a).

b i. —— ——.]—Services performed by a man engaged to superintend the installation of machinery in a ship, to have charge of all the operations of fitting out, purchasing supplies, & finding occupation for the ship, etc., do not create in his favour a maritime lien. His subsequent assumption of the duties of master involving the navigation of the vessel would, if properly proven, create a maritime lien for his services during the period when he was engaged in carrying out his duties as master.—NICHOLSON & SHAW *v.* THE JOYLAND, [1931] Ex. C. R. 70.—**CAN.**

PART XIX. SECT. 4, SUB-SECT. 1.

8370 i. *Determined by lex fori.*]—The *A.* was an American vessel on which H. & E. Holding Company Inc., of New York held a mtge. Messrs. B., C. & M., Inc., of Connecticut had furnished certain necessaries to the vessel, for which the laws of the United States gave a maritime lien. The vessel was subsequently libelled & sold in New Brunswick, Canada, & the proceeds of the sale were deposited in ct. for subsequent distribution. The mtgee. appeared & claimed that his mtge. should be preferred to the claim of materialmen :—*Held :* though by English law a maritime lien created by a foreign law, under circumstances which do not give rise to a maritime lien according to English law, is recognised ; the priority which it will be given in the distribution of proceeds is treated as relating only to the remedy determined by the law of the *forum* at which the vessel is libelled & sold, the mtge. should be preferred to the claims of the materialman.—MARQUIS *v.* THE ASTORIA, [1931] Ex. C. R. 195.—**CAN.**

PART XXI. SECT. 1.

sp. *Lease of wharf—Ejectment.*]—Where a wharfside site in the B. Harbour E. London, had been leased to applt. by the Union of S. Africa, who was the owner of the site, & an action for ejectment had been brought by the S. African Rys. & Harbours :—*Held :* as pltf. was the Governor-General in Council, who in railway & harbour matters sued in the name of the S. African Rys. & Harbours as directed by sect. 65 of Act 22 of 1916, & who owned the wharfside site, a contention that pltf. was not the owner of the site could not be sustained.—WINTER *v.* S. AFRICAN RYS. & HARBOURS, [1929] App. D. 100.—**S. AF.**

PART XXI. SECT. 4.

b i. —— —— *Ship sunk in harbour—Liability of owner for expenses of lighting, buoying & destruction.*]—Reg. 63 of the regs. under Railways & Harbours Regulation, Control & Management Act is *ultra vires* in so far as it purports to provide that the expenses reasonably incurred by the administration in the lighting, buoying, & destruction of a ship sunk in the harbour may be recovered from the owner or his agent.—SMITH'S COASTERS (PROPRIETARY), LTD. *v.* SOUTH AFRICAN RAILWAYS & HARBOURS, [1930] N. L. R. 103.—**S. AF.**

voyage out & home, if there be either an outward or an inward cargo in such voyage, but without making any advance if there should be both.

Must we not suppose that the legislature intended to use these words in the sense in which they are commonly understood; that is, as descriptive of a voyage commencing from & terminating in the country to which the ship belongs, or, as here, in some particular port of such country? If the words would fairly admit of different meanings, it would be right to adopt that which would be most favourable to the interest of the public, & most against that of the co.; because the co. in bargaining with the public ought to take care to express distinctly what payments they were to receive; & because the public ought not to be charged, unless it be clear that it was so intended (LORD ELLENBOROUGH, C.J.).—GILDART *v.* GLADSTONE (1809), 11 East, 675; 103 E. R. 1167.

Annotations:—**Consd.** Portsmouth Floating Bridge Co. *v.* Nance (1843), 6 Scott N. R. 823; Stockton & Darlington Ry. Co. *v.* Barrett (1844), 7 Man. & G. 870; Pryce *v.* Monmouth Canal & Ry. Co. (1879), 4 App. Cas. 197.

8629a. —— —— **No duty to disclose condition of berth.**]—Pltfs.' steamship was damaged by lying in an uneven berth at a wharf owned by defts., a railway co. Defts.' harbour master at the wharf acted as ship's agent for pltfs. for the limited purposes of reporting the ship at the Custom House, paying the pilot, & providing the master with funds to pay the labourers discharging the cargo. Before pltfs. arranged to send the vessel to the wharf the harbour master had in writing informed them that the berths were "perfectly safe for steamers to lie aground." Defts. alleged that the vessel came to the wharf subject to printed conditions, known to the harbour master, whereby the railway co. did not represent, warrant or guarantee that the berths alongside the wharf were safe or suitable for the accommodation of vessels, & all vessels brought alongside remained at the sole risk of their owners & on the terms that the co. should "in no event whatever be liable for any damage . . . however caused to or suffered by any such vessel." The harbour master did not in fact know that the berth was defective:—*Held:* (1) even if the harbour master ought to have known of the defective condition of the berth, which was doubtful, it was not his duty to impart to pltfs. information, acquired as harbour master, which would be against the interests of defts. & of the harbour master to disclose; (2) the notice did not form part of the contract between pltfs. & defts., & afforded defts. no defence; & accordingly pltfs. were entitled to judgment.—THE HAYLE, [1929] P. 275; 99 L. J. P. 145; 141 L. T. 429; 45 T. L. R. 560; 18 Asp. M. L. C. 50.

8643. *Add. Annotation:*—*Generally.* **Refd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

8645. *Add. Citations:*—92 J. P. 18; 44 T. L. R. 179; 72 Sol. Jo. 16; 26 L. G. R. 91; 17 Asp. M. L. C. 367.
Add. Annotation:—**Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159.

8661. *Add. Citations:*—*affd.* (1927), 138 L. T. 382; 26 L. G. R. 1; *sub nom.* BOSTON CORPN. *v.* WITHAM OUTFALL BOARD, 92 J. P. 1, H. L.

8665. *Add. Annotations:*—**Consd.** Dee Conservancy Board *v.* McConnell, [1928] 2 K. B. 159; Guilfoyle *v.* Port of London Authority, [1932] 1 K. B. 336. **Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401; Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

8688a. ——.]—THE HAYLE, No. 8629a, *ante.*

8697a. Damage "in connection with" towage—What amounts to.]—Pltfs.' steamship with two tugs in the employ of defts., the Port of London Authority, fast to her, was proceeding from the Albert Dock to the Victoria Dock. Defts.' lock foreman had signalled to her to enter the narrow Cutting, some 300 feet long, between the two docks, but at about the same time he had signalled to another tug that she could enter the Cutting from the opposite end. In order to avoid collision with that tug the steamship put her engines astern, with the result that she got out of position & struck the walls of the Cutting, doing herself damage. Defts. relied on the terms of the towage contract, which contained a clause that the owners of the ship being towed or transported would "indemnify & hold harmless the Port Authority" against claims in respect of damage of any kind "arising in the course of & in connection with the towage or transport," & whether caused or contributed to by any negligence on the part of the Port Authority's servants:—*Held:* (1) the clause was not an indemnity against party & party claims, but only against third party claims; (2) the damage did not arise "in connection with" the towage or transport; & accordingly the shipowners were entitled to recover the amount of the damage caused by the negligence of defts.' servant.—THE CARLTON, [1931] P. 186; 100 L. J. P. 100; 145 L. T. 423; 47 T. L. R. 517; 18 Asp. M. L. C. 240.

8698a. Whether applicable to party & party claims.]—THE CARLTON, No. 8697a, *ante.*

PART XXI. SECT. 7.

ST. *Liability of caretaker of buoys—Damage to individual.*]—HARKINS *v.* BENSON (1895), 33 N. B. R. 93.—**CAN.**

PART XXI. SECT. 12, SUB-SECT. 2.—B. (b).

8685 iii. ——.]—In an action of damages brought by a shipowner against harbour trustees for injuries sustained by his ship through being given a foul berth in their harbour, it was established that the berth in question was in a tidal river; that *débris* discharged into the berth from a sewer formed a mound on the bottom of the berth which was a danger to ships taking the ground at the ebb of the tide; that when dredging the berth defenders, in view of this tendency, made it their practice to dredge at the *locus* of the mound to a greater depth than at other parts of the berth, but that no regular system of examination existed; that the berth had in fact been dredged some three weeks before the ship arrived, but that no special precaution had been taken to ascertain its condition before assigning her to it:—*Held:* defenders had failed to establish that they had taken reasonable care to make sure that the berth should be in a safe condition for vessels using it; & accordingly, as the ship had been injured owing to the condition of the berth, defenders were liable for the damage occasioned by their negligence.—CORMACK (OWNER OF THE S.S. "COLINTON") *v.* DUNDEE HARBOUR TRUSTEES, [1930] S. C. 112.—**SCOT.**

8700. *Add. Annotations :*—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932); 101 L. J. P. C. 119. **Refd.** Oliver *v.* Sadler & Co., [1929] A. C. 584; Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

8711a. —— ——.]—THE HAYLE, No. 8629a, *ante.*

8715. *Add. Citations :*—138 L. T. 286; 17 Asp. M. L. C. 347; 33 Com. Cas. 79.

Add. Annotations :—As to (1) **Folld.** Wickett *v.* Port of London Authority (1928), 138 L. T 668. **Refd.** The Hayle, [1929] P. 275.

8715a. -.]—Pltf., a lighterman, was in charge of a barge, which was being taken from a dock through a lock. The dock & lock were both the property of defts. While pltf. was navigating the barge under the orders & directions of defts., a rope attached to the barge broke & struck pltf., causing him personal injuries. Pltf. had no option to refuse to take the rope on board. Defts. relied on the terms of a notice, exhibited on the pierhead of the lock, to the effect that lightermen availing themselves of the facilities & assistance of defts.' servants must do so at their own risk, & upon the understanding that no liability whatsoever should attach to defts. or their servants for any injury from whatever cause arising to or by the craft or to or by any person on board thereof :—*Held :* the words of the above notice were *primâ facie* adequate to exempt defts. from liability for the negligence of their servants, & the fact that pltf. was compelled to regulate the barge according to the directions of the dockmaster was in no way inconsistent with the fact that he was in the circumstances " availing himself of the facilities & assistance " of defts., & did not deprive defts. of the exemption afforded by the notice.—WICKETT *v.* PORT OF LONDON AUTHORITY, [1929] 1 K. B. 216; 98 L. J. K. B. 222; 138 L. T. 668.

Part XXIII.—Pleasure Yachts.

8732a. Survey by Lloyd's Register—Liability of individual surveyor—Negligence.]—Pltf., who was the owner of a yacht, requested the society known as Lloyd's Register to make a special survey of the yacht for classification. The society stipulated for freedom from liability, & the survey was conducted by two of the society's surveyors. Deft., who was one of these two surveyors, was responsible for the mainmast. The society certified that the yacht had been reported to be in a good & efficient state & that she had been classed as A1. In fitting out the yacht for sea pltf. found that the mainmast was rotten in places & wholly unfit for use, & he claimed damages from deft. for negligence & breach of duty :—*Held :* there was no privity of contract between pltf. & deft., & that independently of contract deft. owed to pltf. no duty of care or skill with regard to the survey, & therefore the action failed.—HUMPHERY *v.* BOWERS (1929), 45 T. L. R. 297; 73 Sol. Jo. 191; 34 Com. Cas. 189.

Yacht broker—Business carried on by executor—Duty not to enter into competition.]—*See* EXECUTORS, No. 5977a, *ante.*

Part XXV.—Requisition of Ship by Government.

8733. *Add. Annotation :—As to* (2) **Distd.** Ensign Shipping Co. *v.* I. R. Comrs. (1928), 139 L. T. 111.

8749. *Add. Annotation :*—**Consd.** Clan Line Steamers *v.* Board of Trade, [1928] 2 K. B. 557.

8750. *Add. Annotations :*—**Consd.** Clan Line Steamers *v.* Board of Trade (1928), 140 L. T. 33; The Clan Matheson, [1929] C. A. 514. **Refd.** Hain S.S. Co. *v.* Board of Trade, [1928] 2 K. B. 534.

8751. *Add. Annotations :*—**Consd.** Hain S.S. Co. *v.* Board of Trade, [1928] 2 K. B. 534. **Refd.** Clan Line Steamers *v.* Board of Trade, The Clan Matheson, [1929] A. C. 514.

8753. *Add. Annotations :*—**Consd.** Clan Line Steamers *v.* Board of Trade, The Clan Matheson, [1929] A. C. 514; Hain S.S. Co. *v.* Board of Trade, [1928] 2 K. B. 534.

8754. *Add. Annotation :*—**Refd.** Clan Line Steamers *v.* Board of Trade (1928), 97 L. J. K. B. 735.

8755. *Add. Annotations :—As to* (1) **Consd.** Clan Line Steamers *v.* Board of Trade, [1928] 2 K. B. 557. **Refd.** Hain S.S. Co. *v.* Board of Trade, [1928] 2 K. B. 534. *As to* (2) **Apld.** Board of Trade *v.* Hain S.S. Co.,

PART XXV. SECT. 2.

8746 i. *Amount of Interest.*]—The Crown, in Apr. 1918, pursuant to Order in Council passed under War Measures Act, 1914, requisitioned resps.' ship. The Exchequer Ct. of Canada fixed the compensation at $11,000 with interest thereon from date of requisition to date of judgment. The Crown appealed against the allowance of interest :—*Held :* the allowance for interest should be set aside. The right to interest does not depend on the income earning capacity of the property requisitioned. Where interest is allowed, it is on the ground of express or implied contract or by virtue of a statute; & no such ground existed here. Interest was really asked for here as damages for detention of the compensation money pending the ascertainment of what was due; & as such it could not be recovered.—R. *v.* MACKAY, [1930] S. C. R. 130; 1 D. L. R. 1005; *revsg. in part,* [1928] Ex. C. R. 149.—**CAN.**

h i. —— *Value at time of requisition.*]—The *S.* was requisitioned by the Canadian Government in 1918. In 1924 the claimant was notified of the release of the vessel. At that time she was lying partly submerged, at Kingston, a derelict hulk of no value, & claimant refused to take delivery thereof :—*Held :* on the facts, the question of hire disappeared, & that the controversy resumed itself into a question of compensation for the value of the vessel so appropriated, as at the date of the requisition thereof, & not for the profits that could have been made out of the vessel during the period of requisition.—MACKAY *v.* R., [1928] Exch. C. R. 149; *on appeal,* [1930] S. C. R. 130.—**CAN.**

[1929] A. C. 534. **Consd.** Clan Line Steamers *v.* Board of Trade, The Clan Matheson, [1929] A. C. 514.

8755a. ——.]—The *C. M.* was requisitioned on behalf of the Crown in 1917 by a charterparty, which provided that the Crown should not be liable for marine risks, but should be liable for "all consequences of hostilities or warlike operations." Whilst so requisitioned, the *C. M.* sailed from New York in convoy, destined for Nantes, then a war base, but also an ordinary commercial port, with a cargo, 84 per cent. of which in weight was for the civil commissariat, & 16 per cent. in weight was for war purposes. She was the third ship in the second column from the port hand in the convoy, another vessel, the *W. F.*, which admittedly was at all material times engaged upon & carrying out a warlike operation, being in the corresponding position on the port column. While the convoy was proceeding at night without lights the steering-gear of the *C. M.* suddenly broke down, she sheered seven points off her course & came across the bows of the *W. F.*, by which she was struck & sunk. There was no negligence on the part of those on board the *C. M.*:—*Held:* (1) the arbitrator was entitled to find that the *C. M.* was at no material time engaged, upon or carrying out a warlike operation, notwithstanding a portion of her cargo consisted of war material; (2) the loss of the *C. M.* was not the consequence of a warlike operation, inasmuch as the dominant & direct cause of the loss was the break-down of her steering-gear & her sheering off her course.—CLAN LINE STEAMERS, LTD. *v.* BOARD OF TRADE, THE CLAN MATHESON, [1929] A. C. 514; 98 L. J. K. B. 408; 141 L. T. 275; 45 T. L. R. 408; 35 Com. Cas. 15; 18 Asp. M. L. C. 1, H. L.

Add. Annotations:—As to (2) **Distd.** Board of Trade *v.* Hain S.S. Co., [1929] A. C. 534. *Generally*, **Refd.** Lazard Bros. & Co. *v.* Brooks (1932), 37 Com. Cas. 224.

8760. *Add. Citations:*—[1928] 2 K. B. 534; 139 L. T. 566; 34 Com. Cas. 1; 17 Asp. M. L. C. 520, C. A.; *affd. sub nom.* BOARD OF TRADE *v.* HAIN S.S. Co., [1929] A. C. 534; 98 L. J. K. B. 625; 141 L. T. 435; 45 T. L. R. 550; 35 Com. Cas. 29; 18 Asp. M. L. C. 15, H. L.

Add. Annotation:—As to (2) **Apld.** Clan Line Steamers *v.* Board of Trade, The Clan Matheson, [1929] A. C. 514.

Part XXVI.—The Trinity Masters.

8788. *Add. Annotations:—As to* (1) **Refd.** The Otranto, [1930] P. 110; Hall *v.* British Oil & Cake Mills (1930), 23 B. W. C. C. 529 *As to* (2) **Apld.** The Tovarisch, [1930] P. 1.

SMALL HOLDINGS, SMALL DWELLINGS AND ALLOTMENTS.

Part III.—Allotments.

23. After this case add :—**Exemption from rates.**]—*See* Local Government Act, 1929 (c. 17), s. 67.

PART I. SECT. 5.

5a. *Agreement to quit before expiry of lease—Subsequent demand for renewal—Small Landholders (Scotland) Act*, 1911, s. 32.]—A statutory small tenant, under a lease terminating at Whit Sunday, 1929, entered into an agreement with his landlord to quit the holding at Martinmas 1926, the landlord undertaking to buy the straw produced at the threshing of that year's crop, & to pay certain compensations. On the faith of the agreement the landlord advertised the farm for sale with entry at Martinmas 1926, & the farm was sold. The tenant, who knew of these proceedings, refused to remove when the term arrived, & some days later took up the position that he was entitled to a renewal of his lease under above sect. (4) :—*Held :* above sect. did not apply to the circumstances of the case.—CHEYNE *v.* PATERSON, [1929] S. C. (Ct. of Sess.) 119.—**SCOT.**

SOLICITORS.

Part II.—Admission and Registration.

6. *Add. Annotation :*—**Refd.** Edwards *v.* A. G. for Canada (1929), 46 T. L. R. 4.

Part IV.—Solicitor and Client.

699. *Add. Annotation :*—**Refd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

813. *Add. Citation :—affd.* (1929), 45 T. L. R. 264, C. A.

904a. —— ——.]—LUCK *v.* MEYLER (1928), 72 Sol. Jo. 337.

962a. Exchange of lands.]—BARTTER *v.* GAMBRILL (1932), 76 Sol. Jo. 868.

1096. *Add. Annotation :*—**Refd.** *Re* Lloyds Bank, Ltd., Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

1103. *Add. Annotation :*—**Refd.** Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114.

PART II. SECT. 2, SUB-SECT. 1.

sx. *Effect of alteration of law—On right to admission.*]—Appct. on July 30, 1930, entered into written articles with an attorney who had not been in practice for seven years. On Aug. 1, 1930, R. S. C., Ord. 32, r. 53, was repealed & a new rule was substituted which provided that no attorney who had not practised in Natal for at least seven years should be entitled to take under articles any candidate attorney. Appct. applied for admission as a candidate attorney & the application was opposed by the Law Society :—*Held :* granting the application, by entering into the articles prior to the repeal of r. 53 appct. had acquired a right which was preserved to him by sect. 13 of Act 5, 1910.—*Ex p.* DE SOUZA (1930), 51 N. L. R. 221.—**S. AF.**

PART II. SECT. 2, SUB-SECT. 5.

sm. *Absence during illness—Additional service.*]—The Rules of the Council of Legal Education provided that an articled clerk may serve under special provisions in the articles for such term as is necessary to complete the full term of service required by the rules, where he has been absent from the service for a period not exceeding thirty days in each year with the consent of the person to whom he is bound. An articled clerk, whose articles contained such special provisions & whose required term of service was four years, was absent from service during the fourth year for 114 days owing to illness. Under the special provisions in the articles he served for an additional period of thirty days, which ended on Apr. 16. He continued to serve the master, & on June 27 entered into supplementary articles for a further period of eighty-four days :—*Held :* the clerk's service did not comply with the requirements as to service under articles, & a special order that his service had been sufficient should be refused.—*Ex p.* AHERN, [1931] V. L. R. 292 ; Argus L. R. 246.—**AUS.**

PART II. SECT. 5.

179 i. *When application granted—Solicitor called to the Bar—Appointed to judicial office—Office abolished.*]—A solr., admitted in 1894, was struck off the roll at his own request in 1900 in order to be called to the Irish Bar. He was called to the Bar in the latter year. In 1918 he became a judge of the Chancery Div. of the then High Ct. in Ireland, & later in the same year a Lord Justice of the then Ct. of Appeal in Ireland. He held the latter office until 1924, when, following the change of government in Ireland, the office was abolished. Subsequently he was called to the English Bar, but, owing to illness, was compelled to abandon his practice. He was then disbarred both in Ireland & in England at his own request, with a view to his being readmitted a solr. in the Irish Free State. He now applied to be so readmitted. The Incorporated Law Society did not oppose the application : —*Held :* the application be granted having regard to the special circumstances of the case, *viz.*, that appct. did not retire from his judicial office voluntary, but owing to its abolition ; that as a solr. he would not be an officer of, or practise in, any ct. in which he sat as a judge ; that upwards of five years had elapsed since he had ceased to hold judicial office, & during the greater part of that time he had lived out of Ireland ; & that the reason for the application was the state of his health, which required active occupation, this motive displacing the idea of any improper or corrupt consideration behind the application. Appct. was, however, required to give an undertaking that he would not seek personal audience in any of the cts.—*Re* SOLICITORS ACT & SIR JAMES O'CONNOR, [1930] I. R. 623.—**IR.**

PART IV. SECT. 1, SUB-SECT. 1.

380 ii. ——.]—It is the duty of a solr. to obtain a written authority from his client before he commences a suit.—SALE & SALE *v.* MCMILLAN, [1931] 4 D. L. R. 203 ; O. R. 418 ; *revsd. on other grounds*, [1932] 2 D. L. R. 315 ; S. C. R. 543.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 3.

t i. —— —— ——.]—Where a solr. has undertaken legal business without a written retainer, & afterwards has a dispute with the client as to the authority conferred thereby, & there is nothing but assertion against assertion, the ct. must accept the client's denial as against the affirmation of the solr.—ECCLES *v.* RUSSELL, [1928] 3 W. W. R. 765 ; *affd.*, [1929] 3 D. L. R. 32 ; 2 W. W. R. 143.—**CAN.**

t ii. —— —— ——.]—A solr. may prove the fact of his retainer by a client without the production of a written retainer, but if the only evidence as to retainer is on affidavit, & consists merely of assertion & counter-assertion, the solr. fails to prove the retainer.—MURPHY *v.* LIESFIELD (1930), V. L. R. 142 ; Argus L. R. 94.—**AUS.**

PART IV. SECT. 1, SUB-SECT. 7.—F.

sy. *Joint retainer—Denial of liability —"Reasonably necessary services."*]—NORTHERN LIFE ASS'CE CO. OF CANADA *v.* MCMASTER, [1928] 3 D. L. R. 497 ; [1928] S. C. R. 512 ; *affg.* S. C. *sub nom. Re* SOLICITORS, 33 O. W. N. 175.—**CAN.**

sz. *Whether permissible — Separate defences—No conflict of interest.*]—Where there is no conflict of interest between co-defts. so far as the action is concerned, there is no reason why a solr. who had acted as solr. for one of them prior to the action & with respect to it should not act as the other's solr. & counsel in the action, even though they put in separate defences.—WADDELL *v.* GRAY-CAMPBELL, LTD. & SCARROW, [1929] 3 D. L. R. 488 ; 2 W. W. R. 113 ; 23 S. L. R. 527 ; *revsg.*, [1929] 2 D. L. R. 362 ; 1 W. W. R. 241.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.—A. (c).

t i. —— *Liability of solicitor.*]—MCRAN *v.* SCHERMERHORN (1858), 2 P. R. 261.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.—B. (d).

sa. *Submission to judgment.*]—DUBUC *v.* MARSTON CORP'N., [1928] 1 D. L. R. 225 ; [1927] S. C. R. 526.—**CAN.**

PART IV. SECT. 3, SUB-SECT. 3.—B.

r i. ——.]—The same considerations which apply to a purchase by a solr. from his client apply also to a sale by a solr. to his client ; & the obligations of a clerk in the service of a solr., to whom the solr. has delegated a matter, or to whom the solr.'s client goes direct, are no less in the matter upon which the clerk proceeds than are the obligations of the solr. himself. In such circumstances the solr.'s clerk will stand in a fiduciary relation to the client, although there be no privity of contract between himself & such client : & before selling his own property to the client he will be bound to make full disclosure to such client of his interest in such property.—BLAIR *v.* MARTIN, [1929] N. Z. L. R. 225.—**N.Z.**

Part VI.—Remuneration of Solicitors—Costs.

1203. After this case add :—

Tender of debt without costs—Before action brought.]—*See* BANKERS, Vol. III., p. 200, No. 453; CONTRACT, Vol. XII., p. 327, Nos. 2720, 2721.

1207. *Add. Annotation :—As to* (1) **Consd.** *Re* Debtor, [1929] 2 Ch. 146.

1228a. —— **Agreement to give security.**]—By Attorneys' & Solrs.' Act, 1870 (c. 28), s. 4, amended by Solrs. Remuneration Act, 1881 (c. 44), ss. 2, 8, a solr. may make an agreement in writing with his client respecting the amount & manner of payment for the whole or any part of any past or future services, fees, charges, or disbursements in respect of contentious business done or to be done by the solr. either by a gross sum or by commission or percentage, or by salary or otherwise, & either at the same or at a greater or at a less rate as or than the rate at which he would otherwise be entitled to be remunerated: Provided that the amount payable under the agreement shall not be received by the solr. until the agreement has been examined & allowed by a Taxing Master :—*Held :* this section does not apply to an agreement by a client to give his solr. security, whether by way of a charge upon or an assignment of part of a fund to be received by the solr. for the amount of costs to which upon taxation the solr. may be found to be entitled; but an agreement to that effect may be made orally & without any writing between solr. & client.—JONESCO *v.* EVENING STANDARD CO., LTD., *Re* UNDERTAKING BY WINGFIELDS, HALSE & TRUSTRAM, [1932] 2 K. B. 340; 101 L. J. K. B. 447; 147 L. T. 49, C. A.

1275. *Add. Annotation :*—**Refd.** Ward *v.* British Oak Insurance Co., [1931] 2 K. B. 637.

1391a. To what court appeal lies—Divisional Court—Not " matter of practice & procedure " within Supreme Court of Judicature (Consolidation) Act, 1925 (c. 49), s. 31 (3).]—Resps., a firm of solrs., acted for applt. in defending him in criminal proceedings before magistrates & at the assizes. Applt. was found guilty & sentenced to imprisonment. In respect of those proceedings resps. delivered their bill of costs in summary form to applt.'s attorney, who paid it. A few years later applt. took out an originating summons under Solicitors Act, 1843 (c. 73), asking for delivery of a detailed bill of costs. The master made an order for its delivery. The judge at chambers set aside the master's order, but gave leave to appeal :—*Held :* the appeal did not relate to a matter of practice & procedure within above sub-sect., & therefore that the appeal lay not to the Ct. of Appeal but to the Div. Ct.—*Re* WITHERS & Co., [1930] 2 K. B. 192; 99

PART VI. SECT. 1.

e i. ——.]—Where there is no tariff of costs which can be applied to charges for business done by a solr., & there is no specific contract between the solr. & his client, the general custom & practice of solrs. is to be the guide, if such custom or practice exists; if there is no custom, the value of the services rendered is to be estimated on a *quantum meruit.*—*Re* ROYAL BANK OF CANADA *v.* MARS (No. 3), *Re* MCLEAN & COOK, [1931] 1 W. W. R. 138; 25 S. L. R. 225.—**CAN.**

e ii. ——.]—MCLEAN *v.* COOK, [1931] 4 D. L. R. 904.—**CAN.**

h i. *Right to charge commission—Validity of Order.*]—Ord. 65, r. 29, of the Supreme Court Rules, which provides that, " In the absence of special agreement a solr. shall be entitled to charge his client a commission in lieu of costs on the collection of accounts or claims according to the following scale . . . " :—*Held :* valid & given effect to in the present action.—CORNWALL & ARCHIBALD *v.* DOYLE CONTRACTING CO., LTD., [1932] 1 W. W. R. 8.—**CAN.**

r i. —— —— ——.]—Where a collusive settlement between the parties to an action has the effect of depriving the solr. of one of them of his lien for costs, the opposite party will be made to pay them. The intent to defraud the solr. may be inferred from the actions of the parties.—OBIREK *v.* BIFROST RURAL MUNICIPALITY & COLEMAN (No. 2), [1931] 1 W. W. R. 359; 2 D. L. R. 476; 39 Man. L. R. 357.—**CAN.**

r ii. —— —— ——.]—The rule that a collusive settlement between the parties to an action will not be permitted to deprive a solr. of his lien for costs, is applicable to the case where the action was one for damages which had not ripened into judgment.—PONSER *v.* A. R. MCDIARMID CO., LTD., & FOSTER & MCQUARRIE, [1931] 1 W. W. R. 362; 2 D. L. R. 598; 39 Man. L. R. 360.—**CAN.**

ff i. *No contract to do work at sum named.*]—The solrs. rendered to a client a bill of costs amounting to $750 for services in drawing a will for the client. Upon taxation the taxing officer allowed the amount charged :—*Held :* there was no agreement as to the amount & no obligations upon the solrs. to state to the client during the course of preparation that their original rough estimate of the probable amount of their bill, before they had entered upon the work, which proved to take ninety hours of the time of one of the solrs. in consultations, drafting, revising, redrafting, etc., was inadequate; & the amount of the bill was not excessive.—*Re* SOLICITORS, [1931] 1 D. L. R. 819; 66 O. L. R. 443.—**CAN.**

sl. *Right of assignee to issue execution.*]—A firm of solrs. with a certificate of taxation of a bill of costs against applt. herein made, for valuable consideration, an absolute assignment of the costs to resp. herein. Resp. then obtained an order from a judge, giving him liberty to issue execution against applt. upon the certificate. On appeal :—*Held :* the appeal should be dismissed.—*Re* TAJA SINGH & NUTTA SINGH, [1932] 2 W. W. R. 671; 4 D. L. R. 303.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 3.—A.

sb. *Absence of agreement as to scale of commission—Effect.*]—Where a solr. & client agree that the former's remuneration for collecting a claim shall be a commission, but they decide to leave the matter of the scale of the commission in abeyance, the solr., if he intends to exact payment according to the scale provided by Ord. 65, r. 27, reg. 29, should draw the client's attention to said rule & give the client to understand that, in the event of the scale of commission, not being otherwise agreed on, he will apply the rule in demanding payment. The failure to so inform the client was held to be good cause in the present case for depriving the solrs. of their costs.—CAMERON & CAMERON *v.* BOULTON, [1930] 3 W. W. R. 61; 4 D. L. R. 1021; 43 B. C. R. 39.—**CAN.**

sc. " *Fair & reasonable* "—*What is.*]—In deciding whether a contract between a solr. & client is " fair & reasonable to the client," within sect. 73, Law Society Act, R. S. M., 1913, the word " fair " is to be taken as relating to the means by which the contract was brought about, & " reasonable " as relating to the quantum of remuneration therefrom resulting to the solr. In deciding whether the amount is reasonable the actual work which the solr. was called on to do is a factor but not the sole factor to be considered; & where the contract is one on the contingency & percentage basis, the mere fact that under the percentage agreed on the amount payable to the solr. in the event of success has turned out to be in excess of the costs taxable on the ordinary solr. & client basis is not ground for holding the contract unreasonable. The reasonableness of such excess must depend on the reality & extent of the risk the solr. undertook & the amount of work anticipated at the time he assumed his obligation.—GALBRAITH *v.* MURRAY, ROBERTSON & THOMAS, [1930] 3 W. W. R. 120; 4 D. L. R. 1005.—**CAN.**

PART VI. SECT. 3, SUB-SECT. 5.

sd. *Special agreement to look to third party for payment.*]—Where a retainer or employment of a solr. or counsel is proved, coupled with services rendered, the burden of proof that some person other than the client was to pay for the services rests upon the party asserting that such mode of payment was agreed to.—MCGEER, MCGEER & WILSON *v.* FLETCHER, MCLELAN *v.* FLETCHER (B. C.), [1929] 4 D. L. R. 348; 2 W. W. R. 500.—**CAN.**

L. J. K. B. 565; 143 L. T. 347; 46 T. L. R. 540; 74 Sol. Jo. 464, C. A.

1524. *Add. Annotation:*—**Refd.** Jonesco *v.* Evening Standard Co., *Re* Undertaking by Solicitors, [1932] 2 K. B. 340.

1531. *Add. Annotation:*—**Refd.** *Re* C. B. & M. (Tailors), Ltd., [1932] 1 Ch. 17.

1545. *Add. Annotation:*—**Refd.** *Re* Louch, [1930] 2 Ch. 63.

1582a. —— —— **Omission of permitted increase from bill.**]—A solr. who has omitted the 33⅓ per cent. increase allowed by R. S. C., Ord. 55, r. 10B, from his bill of costs can claim to have it allowed after his bill of costs has been taxed.—*Re* LOUCH, [1930] 2 Ch. 63; 99 L. J. Ch. 421; 143 L. T. 469; 74 Sol. Jo. 387.

1594. *Add. Annotation:*—*As to* (1) **Refd.** *Re* Louch, [1930] 2 Ch. 63.

1823a. —— —— ——.]—*Re* FENTON, [1894] W. N. 128.

Part VII.—Amount of Costs Recoverable.

2807a. Junior counsel.]—Pltf.'s solr. employed a Queen's Counsel & a junior to oppose a motion for further time to answer. The ct. held that he was justified in so doing; & ordered the taxing master, who had disallowed the fees of the junior counsel, to review his taxation.—COOKE *v.* TURNER (1844), 12 Sim. 649; 59 E. R. 1282.

2813a. Counsel attending judge's chambers.]—The Supreme Ct. Rules, Special Allowances, r. 14, that "as to counsel attending at judge's chambers no costs thereof shall in any case

PART VI. SECT. 5, SUB-SECT. 1.—B.

se. *Arbitrators—Public Works Act, R. S. B. C.* 1924, *s.* 24.]—Under Public Works Act, R. S. B. C. 1924, c. 211, s. 24, the arbitrators only are vested with authority to grant or withhold witness fees in the case of any particular witness, at any rate to the extent of deciding whether such fees should be included in the bill of costs for taxation or not, & what amount of preparation was reasonably necessary. —*Re* GALT BROS. & BURNABY ARBITRATION, [1928] 1. W. W. R. 798; 39 B. C. R. 470.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 1.—D. (b).

sf. *Whether solicitor entitled—On withdrawal of general retainer.*]—A solr. was retained by C. to conduct proceedings in an action against S. The retainer was not disputed. The solr. conducted the action until the judgment of the trial judge was given. C. decided to appeal & commenced proceedings for an appeal. From that time he took over from the solr. the conduct of & control of the proceedings & of the appeal, & thereafter the solr. merely performed such services as C. from time to time required of him. The solr. then delivered his bill of costs, & in due time obtained on *præcipe* an order for its taxation pursuant to Solicitors Act, s. 33 (c):—*Held:* C., by taking over the conduct & control of the proceedings put an end to the general retainer, as he had a right to do, & the solr. was thereupon entitled to claim payment of his costs, &, in the absence of "special circumstances," to have a *præcipe* order for taxation of his bill.—*Re* SAVIGNAC, [1928] 4 D. L. R. 433; 62 O. L. R. 589.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 3.—B. (a).

sg. *Change of solicitor.*]—Where a solr.'s retainer to defend an action was terminated by the client by a change of solrs. before the trial & there had not been prior to the change such a break in the proceedings as to entitle the solr. to demand payment of his bill without terminating the retainer, held that the month within which, under sect. 56 of Legal Profession Act, bills of costs may be referred to taxation did not begin to run until the change of solrs.—*Re* LEGAL PROFESSION ACT, CANADIAN BANK OF COMMERCE *v.* ANNABLE, [1929] 2 D. L. R. 372; 1 W. W. R. 700; 23 S. L. R. 613.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 3.—C. (c) i.

1996 ii. ——.]—A solr.'s bill of costs was adjusted & settled & paid in the life-time of the client, on Nov. 20, 1928. On Aug. 21, 1930, the widow & executrix of the client launched an application for taxation of the bill:—*Held:* the application, not being made within a year from the date of payment, as required by Solrs. Act, could not succeed.—*Re* SOLICITOR, [1931] 1 D. L. R. 315; 66 O. L. R. 201.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 3.—D. (f).

2152 i. *Whether special circumstance.*]—The relationship of client & solr. is not of itself a "special circumstance," within Legal Profession Act, s. 58, for allowing the taxation of a bill of costs after the expiration of said month; but it is a circumstance that should always be considered on an application to allow such taxation.—*Re* LEGAL PROFESSION ACT, CANADIAN BANK OF COMMERCE *v.* ANNABLE, [1929] 2 D. L. R. 372; 1 W. W. R. 700; 23 S. L. R. 613.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 10.—E. (a).

sh. *To ascertain "costs in the cause."*]—MCLEAN *v.* RATEKIN, [1928] 3 W. W. R. 592.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 11.—A.

sj. *Effect of reference by court to costs as "taxed."*]—In the reasons for judgment herein, by which defts. was declared entitled to a solr.'s lien for costs, the ct., due to a misconception, referred to the bill of costs in question as "taxed." The bill of costs was not, however, finally allowed & certified by the taxing officer until two months after the delivery of said reasons, Pltf. within 15 days after the giving of the certificate gave notice under rule 693 of an application to have the taxation reviewed by a judge in chambers:—*Held:* said judgment of the ct. having not yet been entered, use of the term "taxed" did not prevent pltf. from having the review of taxation proceeded with.—ROYAL BANK OF CANADA *v.* MARS (No. 2), [1930] 2 W. W. R. 215; 3 D. L. R. 530; 1 W. W. R. 262; 24 S. L. R. 340, 433.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 11.—B.

o i. —— —— *Jurisdiction of court to extend.*]—*Re* GENT ONE, *Ex p.* PRATT (1927), 27 S. R. N. S. W. 48.—**AUS.**

PART VI. SECT. 5, SUB-SECT. 11.—D. (a).

2371 v. —— ——.]—A taxing officer's ruling as to whether any particular item should be allowed or excluded ought rarely to be interfered with on appeal, if it appears he understood the governing principle.—CANADIAN EDUCATIONAL FILMS, LTD. & GOODART PICTURES INCORPORATED *v.* HORAN & NICHOLS THEATRES, LTD. (1928), 39 B. C. R. 424.—**CAN.**

2371 vi. —— ——.]—NOBLE *v.* BROMILEY, [1928] 2 D. L. R. 605; [1928] 1 W. W. R. 899; 39 B. C. R. 518.—**CAN.**

PART VI. SECT. 5, SUB-SECT. 11.—D. (b) ii.

2415 ii. *Whether order made.*]—Though the ct. will be desirous of giving the greatest weight to the opinion of the taxing master, on a question of the quantum of counsel's fees, upon an appeal it is the duty of the ct. to review that opinion, & if it think that the master has clearly made a mistake to rectify the mistake, & to give such decision as to it seems just.—*Re* MELBOURNE PARKING STATION, LTD. (IN LIQUIDATION) (1929), V. L. R. 5.—**AUS.**

PART VII. SECT. 1, SUB-SECT. 1.

sl. *Solicitor to executor—"General counsel fee."*]—The practice which has been followed in Saskatchewan of allowing the solr. for an exor. a "general counsel fee" in addition to the amount of his specific charges is without legal justification.—*Re* ROEMER ESTATE, *Re* MOTT & ROEMER, [1928] 3 D. L. R. 860; [1928] 2 W. W. R. 566. —**CAN.**

PART VII. SECT. 1, SUB-SECT. 4.—B. (c).

sm. *Investigation of title—Of assignee of equity of redemption—On extension of mortgage—Whether covered by scale fee.*]—It is a question whether acts are so sufficiently connected with the extension of the mtge. as to be comprised within the scale fee for effecting such extension. The investigation of the title of the assignee of an equity of redemption is not so connected, & the costs of such investigation are not covered by the scale fee.—*Re* RUSS (1927), 28 S. R. N. S. W. 7—**AUS.**

PART VII. SECT. 2, SUB-SECT. 1.—B. (b).

so. *Attendances before registrar to settle judgment.*]—MAIR *v.* DUNCAN LUMBER CO., LTD. (No. 2), [1928] 1 W. W. R. 431; 39 B. C. R. 399.—**CAN.**

be allowed unless the judge certifies it to be a proper case for counsel to attend " applies to taxation of costs between solr. & client as well as between party & party.—*Re* CHAPMAN (1882), 10 Q. B. D. 54; 52 L. J. Q. B. 75; 47 L. T. 426; 31 W. R. 266, C. A.

Part VIII.—Solicitor's Lien.

3028. *Add. Annotation :*—**Refd.** Clayton *v.* Clayton, [1930] 2 Ch. 12.

Part IX.—Solicitor's Remedies for Costs.

3451a. ·.]—HORNER *v.* CREW (1928), 72 Sol. Jo. 103.

3544a. -.]—HAMILTON *v.* CARTER & BELL (1932), 173 L. T. Jo. 452, H. L.

Part X.—Solicitors as Officers of the High Court.

3684. *Add. Annotation :*—**Refd.** Clayton *v.* Clayton, [1930] 2 Ch. 12.

3970. *Add. Annotation :*—**Folld.** Cooper *v.* Dummett (1930), 70 L. Jo. 394.

3970a. ——.]—COOPER *v.* DUMMETT (1930), 70 L. Jo. 394; 170 L. T. Jo. 468; [1930] W. N. 248.

PART VII. SECT. 2, SUB-SECT. 1.—B. (c).

sb. *Personal attendance abroad at taking evidence on commission.*]—In a suit for dissolution of marriage in which W. acted as solr. for the petitioner, an order was made for the issue of a commission to take evidence in Java. W. warned petitioner that the costs of his personal attendance at Java might be disallowed on taxation, but he also wrongly advised her that it was necessary that he should attend personally :—*Held :* the costs of his attendance at Java were rightly disallowed on taxation between him & his client.—*Re* WINDEYER, FAWL & CO., *Ex p.* FOLEY (1931), 31 S. R. N. S. W. 145; 48 N. S. W. W. N. 71.—**AUS.**

PART VIII. SECT. 2, SUB-SECT. 3.—B.

sc. *For work done by English solicitors & auctioneers employed by solicitor.*]—The law agent of a co., who also acted as its secretary, was instructed to expose for sale a property in England belonging to the co. For this purpose he employed English solrs., who in turn employed auctioneers. The co. went into liquidation, & a petition was brought by the liquidator against the law agent for delivery of the titles of certain heritable properties belonging to the co. The law agent maintained that he had a lien over the titles for his own account as law agent, which was admitted, & also for the accounts of the English solrs. & auctioneers, for which the English solr. had intimated that they held him personally liable :—*Held :* the accounts of the English solrs. & auctioneers, having been properly incurred by the resp. in the ordinary course of law agency, were covered by his lien.—ROBERTS (H. STAVELEY) *v.* SNODGRASS, [1931] S. C. 580.—**SCOT.**

PART VIII. SECT. 3, SUB-SECT. 2.—A.

sd. *Sum paid into court by defendant —Defendant successful in first action—Unsuccessful in second action—Solicitor entitled to retainer for costs of first action on sum paid in.*]—RAY *v.* HOU (1928), 40 B. C. R. 438.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 5.—B.

3192 iii. ——.]—Deft. was given costs against the three pltfs. One of pltfs. had recovered a judgment against deft. for a much larger sum in a previous action to which the other two pltfs. were not parties, & claimed the right to set-off deft.'s costs against that judgment. Deft. argued that the set-off would defeat the lien of his solr. The ct. allowed the set-off, & an appeal from the order was dismissed.—INLAY HARDWOOD FLOOR CO., LTD. *v.* DIERSSEN, [1928] 2 D. L. R. 560; [1928] 1 W. W. R. 897; 39 B. C. R. 514.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 2.—B. (a).

p i. —— *Basis of right—Salvage.*]—The principle of salvage is the key to the construction of Legal Professions Act, R. S. B. C., 1924, s. 104, which gives a solr. a charge on & a right of payment out of property " recovered or preserved " through his services. Claims for costs due solr. for defending actions brought for personal services, goods sold, & on a promissory note were held, therefore, not to come within said section; but a claim with respect to a mechanic's lien action in which the lien was reduced was held to be within it.—MILLER *v.* WOLLASTON, [1929] 3 D. L. R. 348; 2 W. W. R. 136; 41 B. C. R. 145.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 3.

sf. *Retainer.*]—The solr. was held not to be entitled to a lien with respect to a claim for a certain sum which his client had agreed to pay him, as a retainer, over & above his taxed costs.—*Re* CRUX, ENFANTE *v.* ENFANTE, [1932] 1 W. W. R. 93.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 4.—D.

k i. ——.]—*Semble :* it is not incumbent upon a solr. to show that he cannot recover his costs from his client in order to entitle him to a charging order upon the judgment which is for those particular costs.—DELTA FINANCE CO., LTD. *v.* BYERS, [1932] 1 W. W. R. 827; 3 D. L. R. 139.—**CAN.**

PART VIII. SECT. 4, SUB-SECT. 6.

sq. *Protection of lien by declaratory judgment—Jurisdiction of court.*]—CASSIDY *v.* STUART, [1928] 3 D. L. R. 879; 62 O. L. R. 374.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 1.

f i. —— *Collusion by defendants to deprive solicitor of costs.*]—ENFANTE *v.* ENFANTE, [1932] 1 D. L. R. 788; 44 B. C. R. 472.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 4.—A.

st. *After one month from delivery of bill—Not applicable where amount agreed on.*]—MACMILLEN *v.* TAYLOR, [1932] 3 W. W. R. 264.—**CAN.**

PART X. SECT. 2, SUB-SECT. 4.—B. (a).

3656 i. *Delivery up ordered.*]—Notwithstanding the provisions of Legal Profession Practice Act, 1915, s. 8, the ct. still has power, in a proper case, to order a solr. to deliver up to his client or former client the latter's documents & papers which the solr. has in his possession.—*Re* LONG, [1929] V. L. R. 318; [1929] Argus L. R. 271.—**AUS.**

Part XI.—Solicitors and Third Persons.

4177a. ——.]—In trespass by A. against B. for false imprisonment, B. pleaded that J. recovered a judgment against A. in the sheriffs' ct., London, that A. was summoned, & appeared before the judge of that ct., who ordered the sum recovered to be paid by instalments, that the first instalment was demanded & not paid; that the judge duly, by warrant under his hand & seal according to 8 & 9 Vict. c. 127, ordered the officer of the ct. to take A., & convey him to prison for forty days; & that B. as the attorney of J. delivered the warrant to the officer, who took A. Replication, that, by this order, it was not directed that A. should be committed, *modo et forma*:—*Held*: deft., having acknowledged actual participation in the act of trespass, by pleading in confession & avoidance, could not protect himself, upon this issue, by showing that he had acted merely as the attorney of J.—KINNING *v.* BUCHANAN (1849), 8 C. B. 271; 7 Dow. & L. 169; 18 L. J. C. P. 332; 13 L. T. O. S. 546; 13 Jur. 812; 137 E. R. 513; *subsequent proceedings* (1850), 15 L. T. O. S. 305.

Annotation:—**Apld.** Abley *v.* Dael (1850), 10 C. B. 62.

Part XII.—Partnership between Solicitors.

4204. *Add. Annotation*:—**Refd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

4278. *Add. Annotation*:—**Apld.** Stoke Newington Borough Council *v.* Richards (1929), 45 T. L. R. 650.

Part XIII.—London and other Legal Agents.

4354. *Add. Annotation*:—**Refd.** Calico Printers' Assocn., Ltd. *v.* Barclays Bank (1931), 145 L. T. 51.

Part XIV.—Discipline and Removal from Roll.

4437a. Misconduct while practising abroad—Investigation by coroner & attorney of the court.]—*Re* SOLICITOR (1928), 72 Sol. Jo. 570, D. C.

4636a. Application to court—Necessity for appearance by counsel.]—An application for a rule requiring an attorney to answer the matters of an affidavit must be made by a gentleman at the bar.—*Ex p.* PITT (1834), 5 B. & Ad. 1077; 2 Dowl. 439; 110 E. R. 1091; *sub nom. Re* ——, 3 Nev. & M. K. B. 566.

Annotation:—**Folld.** *Re* Solicitor, A, *Ex p.* Incorporated Law Society, [1903] 1 K. B. 857.

4636b. —— ——.]—Solrs. Act, 1888 (c. 65), s. 13, by which an application to strike the name of a solr. off the rolls, or to require him to answer allegations contained in an affidavit, is to be heard by a committee of the Incorporated Law Society, who are to embody their findings in the form of a report to the High Ct. of Justice, provides that any person, who but for the Act would have been entitled to apply to the ct. to strike a solr. off the rolls, or to require him to answer allegations contained in an affidavit, shall still be entitled so to apply, & "shall be

PART XIV. SECT. 1, SUB-SECT. 5.

sl. *Dispute as to terms of contract—Powers of Law Society.*]—It is not the proper function of the Benchers of the Law Society to assume the jurisdiction of the cts. in determining questions of contract where a solr. is interested as a party. When on the hearing of a complaint against a solr. for not paying over moneys alleged to belong to a client, the discipline committee becomes aware that a question of the terms of a contract is involved, as to which there is a dispute of fact, its proper course is to direct the complainant to take such action in the cts. as he may be advised.—*Re* A SOLICITOR, [1932] 2 W. W. R. 122.—**CAN.**

PART XIV. SECT. 2, SUB-SECT. 8.

so. *Assisting director to obtain undue preference.*]—A practitioner, while acting as a solr., was knowingly party to a scheme whereby L., a director, who was an unsecured creditor of a co., obtained an undue preference over the assets of the co. The scheme was carried through by B., a party to the scheme, purporting to lend money to the co. & securing a debenture to himself for the loan. The "loan" was arranged by L., the director, obtaining from the co.'s bank, a bank cheque drawn on the co.'s account, which cheque was paid to the credit of B.'s account at another Bank. The amount of the cheque thus paid in, except a negligible sum, was immediately withdrawn by B. by cheque, & this cheque was paid to the credit of the co.'s account. A document purporting to be a transfer of the debenture from B. to L. was prepared in anticipation of the debenture being given, which furnished evidence that the practitioner knew that the money lent to the co. was not B.'s but L.'s money. The co. went into liquidation within six months of the giving of this debenture. The practitioner did not disclose to the liquidators the circumstances under which the debenture had been given:—*Held*: guilty of unprofessional conduct.—*Re* PRACTITIONER OF THE SUPREME COURT, [1930] S. A. S. R. 142.—**AUS.**

PART XIV. SECT. 2, SUB-SECT. 9.

sr. *Issuing valueless cheques.*]—Where a practitioner had drawn & passed to persons not clients of his several valueless cheques without any reasonable expectation that they would be met on presentation, & had not paid the amounts for which they were drawn:—*Held*: he had been guilty of unprofessional conduct, & should be struck off the rolls.—*Re* R. (No. 2), [1927] S. A. S. R. 448.—**AUS.**

st. *Failing to have trust account audited.*]—M., a solr., was convicted & fined for failing to have his trust account audited as required by the regulations under Law Practitioners Amendment Act, 1913. A subsequent audit proved that the account was in order & correct:—*Held*: notwithstanding the conviction & fine & the fact that the solr.'s trust account was subsequently found to be correct, his neglect to have same audited amounted to professional misconduct quite irrespective of the offence against the regulations & of the punishment for that offence, & he should be

entitled to be heard, if the society brings the report of the committee before the ct." :—*Held :* such an appct. could not be heard in person, but must appear by counsel.—*Re* A SOLICITOR, [1903] 2 K. B. 205 ; 72 L. J. K. B. 643 ; 89 L. T. 118 ; 51 W. R. 561 ; 19 T. L. R. 553 ; 47 Sol. Jo. 603, C. A.

4660a. Extension of time to appeal—Application under R. S. C., Ord. 59, r. 16—When granted.]—*Re* A SOLICITOR (1929), 73 Sol. Jo. 191, D. C.

4737a. Acting under power of attorney.]—An unqualified clerk purporting to act under a power of attorney in the management of the practice of a solr. who was abroad was held to be guilty of a misdemeanour and contempt of ct., & was committed to prison for two months.—*Re* THORPE (J. W.) (1932), 76 Sol. Jo. 919.

4775. After this case add :—

Jurisdiction of county court.]—*See* COUNTY COURTS, Vol. XIII., p. 555, No. 1122.

ordered to pay the Law Society's costs of proceedings.—*Re* M., [1930] N. Z. L. R. 285.—**N.Z.**

PART XIV. SECT. 4.

4682 ii. —— ——.]—Where a solr. has been proved guilty of theft & his name has been removed from the rolls, the ct. will not, except in exceptional circumstances, permit him to have his name restored.—*Ex p.* MACAULAY (1929), 30 S. R. N. S. W. 193 ; 47 N. S. W. W. N. 82.—**AUS.**

sv. *Mandamus—When granted.*]—MARION *v.* CAMPBELL, [1932] S. C. R. 433 ; 3 D. L. R. 433.—**CAN.**

PART XV. SECT. 2, SUB-SECT. 1.

sv. *Legal Profession Act, R. S. A., 1922, s. 46—Right of assignee of debt to sue.*]—*Held :* that a person not enrolled who is the assignee of a debt under an assignment which complies with the requirements of sect. 37 of Judicature Act, R. S. A., 1922, does not violate sect. 46 of above Act by bringing an action on the debt in his own name, without the intervention of a solr., even though he gave no consideration for the assignment & has no beneficial interest in the recovery of the debt & the sole motive for the assignment was to save the expense of solr.'s fees.—R. *v.* COOK, [1931] 3 W. W. R. 707 ; [1932] 1 D. L. R. 89 ; 26 Alta. L. R. 156.—**CAN.**

PART XV. SECT. 3, SUB-SECT. 2.—C.

4767 iv. ——.]—*Held :* as resps. had done a thing which is usually done by a solr., & had done it in such a way as to lead to the reasonable inference that they were solrs., they had acted in contravention of s. 87 of the Imperial Acts Application Act, 1922, s. 87, & were therefore guilty of a contempt of the Supreme Ct. & punishable accordingly.—*Re* BERRY & GULLIVER, *Ex p.* LAW INSTITUTE OF VICTORIA, [1929] V. L. R. 224 ; [1929] Argus L. R. 192.—**AUS.**

SPECIFIC PERFORMANCE.

Part II.—Limits of Jurisdiction.

61. *Add. Annotation :*—**Refd.** Grant *v.* Edmondson (1930), 143 L. T. 749.

105. *Add. Annotation :*—**Refd.** *Re* Sandwell Park Colliery Co., Field *v.* The Co., [1929] 1 Ch. 277.

107. *Add. Annotation :*—**Distd.** Watson *v.* Davies, [1931] 1 Ch. 455.

107a. —— **Acceptance by agent of purchaser subject to ratification—Withdrawal by vendor before ratification.**]—Pltf. was chairman of the board of management of a charity. Deft. wrote a letter to the board saying that he would sell certain property to the board for £6,500. At a full meeting of the board instructions were given to arrange for an inspection of the property by members of the board on a specified date. A deputation, consisting of pltf. & twelve other members of the board, viewed the property & had an interview with the deft. The price of £6,500 was again mentioned, & deft. was told that all the members of the board present had resolved to buy the property, & that they could carry the necessary resolution, & they purported to accept deft.'s offer subject to a formal meeting. The secretary of the charity stated that the deputation was not a *quorum* & could not act as a properly constituted board. On the next day deft. wrote to the secretary promising that the deeds of the property should be left to be inspected by the solr. to the charity, & that his own solr. would forward a form of contract; & the secretary thereupon sent out a notice to members of the board of a special meeting to be held two days later "to receive the report & recommendation of the deputation." On the day of that meeting deft. telegraphed to the secretary cancelling all negotiations. The meeting, however, passed resolutions to ratify the deputation's acceptance of deft.'s offer to sell for £6,500, & to instruct the solr. to the charity to require deft. to complete. In an action by pltf. on behalf of himself & of all other members of the board for specific performance of an agreement to sell the property to the charity for £6,500 :—*Held :* (1) on the facts the members of the deputation did not warrant their authority to bind the board, & that their acceptance of the deft.'s offer was subject to ratification by the board; (2) where an offer is accepted by an agent subject to ratification by the principal there is no contract or contractual relation until ratification, & at any time before ratification the offer may be withdrawn.—WATSON *v.* DAVIES, [1931] 1 Ch. 455; 100 L. J. Ch. 87; 144 L. T. 545.

Part III.—Defences to Claim for Specific Performance.

198. *Add. Annotation :*—**Refd.** De Tchihatchef *v.* Salerni Coupling, Ltd., [1932] 1 Ch. 330.

257. *Add. Annotations :*—**Refd.** Cotton *v.* Heyl, [1930] 1 Ch. 510; *Re* Williams, Richards *v.* Williams, [1930] 2 Ch. 378; Blakey *v.* Pendlebury Property Trustees, [1931] 2 Ch.

282a. Agreement subject to "model form of con-

PART II. SECT. 5, SUB-SECT. 2.

77 i. *Employment as manager—Theatre.*]—In an action for damages for wrongful ouster from a theatre property :—*Held :* the agreement under which pltf. claimed the right of possession was merely one of hiring & service, the remuneration being measured by reference to the profits of the theatre business; & therefore pltf. was not entitled to specific performance of the agreement, & pltf.'s possession being only ancillary to the contract of service, any interest which he had in the property ended with the termination of the contract.—DOWSLEY *v.* BRITISH CANADIAN TRUST CO., [1932] 2 W. W. R. 601; 4 D. L. R. 97.—**CAN.**

PART II. SECT. 8, SUB-SECT. 1.

127 iv. —— ——.]—RAMJI *v.* RAO KISHORESINGH (1929), L. R. 56 Ind. App. 280.—**IND.**

PART III. SECT. 1, SUB-SECT. 1.

191 iv. —— ——.]—Defts. were in business as land agents, & were the agents of G. for the sale of certain lots. Pltf. made an offer to defts. for the lots & paid them $100 as a deposit. There was nothing in writing, & the oral offer & deposit were accepted by defts. subject to confirmation by G. The offer was submitted to G., who notified defts. of his acceptance. Defts. then, without informing pltf., obtained from G. an agreement to sell to themselves, & paid him a portion of the purchase-money. They then refused to make the sale to pltf., & returned his $100 :—*Held :* there being no contractual, fiduciary, or other relationship between pltf. & defts., pltf. was not entitled to any relief against them.—ARMSTRONG *v.* BASTEDO (Sask.) (1913), 24 W. L. R. 87; 4 W. W. R. 481; 11 D. L. R. 241.—**CAN.**

191 v. —— ——.]—CREAGHAN (J. D.) CO., LTD. *v.* DAVIDSON, [1929] 3 D. L. R. 146; *revsg.*, [1928] 3 D. L. R. 632.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—A.

235 viii. —— ——.]—An option given the lessee of a hotel to purchase it within a year for $45,000, $15,000 cash & "the balance to be arranged" :—*Held :* unenforceable because incomplete.—MCSORLEY *v.* MURPHY (B. C.), [1928] 4 D. L. R. 790; [1928] 3 W. W. R. 589; *affd. sub nom.* MURPHY *v.* MCSORLEY & PRINCE EDWARD HOTELS, LTD.—**CAN.**

235 ix. —— ——.]—GEARY *v.* CLIFTON CO., [1928] 3 D. L. R. 64; 62 O. L. R. 257.—**CAN.**

PART III. SECT. 2, SUB-SECT. 7.

277 i. *Term omitted from written agreement—Terms contained in parol agreement.*]—In an action by a vendor for specific performance of an agreement for the sale of farm lands deft. contended that the whole agreement was based upon the understanding that the farming equipment would be included in the sale although no express mention of it was made in the written agreement. Deft. or his tenant remained in possession of the equipment during the winter following the making of the agreement, without any suggestion being made by pltf. that deft. was not entitled to the equipment. In Mar. pltf. retook possession of the equipment & testified that he did so because deft. had defaulted in paying certain instalments :—*Held :* if the omission of express reference in the written agreement to the equipment deprived deft. of any remedy at law, the case was a proper one in which to apply sect. 13 (*i*) of King's Bench Act, which authorises "the administration of justice in all cases in which there exists no adequate remedy at law," & justice could be done only by replacing the parties as nearly as possible in the same position in which they were before the agreement was reduced to writing.—MCLEOD *v.* KRYSKO, [1930] 3 W. W. R. 601; *revsd.*, [1931] 3 D. L. R. 282; 2 W. W. R. 27; 39 Man. L. R. 465.—**CAN.**

m i. ——.]—Specific performance refused of an agreement in writing for sale of a store where all the terms agreed upon were not included in the agreement.—MYERS *v.* COOK, [1932] 4 M. P. R. 198.—**CAN.**

veyance specially prepared "—Absence of model form.]—Where one or more of the material terms of an alleged contract cannot be determined, either by interpretation or as being of a kind which the law will supply, there is no contract, even though there has been an act of part performance, & the ct. can grant neither specific performance nor damages.

Pltf. signed an agreement, in the form of a letter prepared on behalf of deft., to purchase certain premises subject to the conditions indorsed thereon, & to take the conveyance " in the model form of conveyance specially prepared " for use in relation to the same. The conditions stated (*inter alia*) that the property sold was subject to restrictions appearing in the model form, & that if the purchaser should not after notice withdraw any objection which the vendor could not or would not remove, the vendor might by notice in writing annul the agreement. The premises were part of property conveyed to deft. by three conveyances, among others, dated respectively 1908, 1910 & 1911. They were comprised in the 1908 conveyance, & were part of what was known in deft.'s agent's office as block 4, other parts of the property being there known as blocks with other numbers. Most of the property had come to deft. subject to restrictions against user for trade purposes. At the date of the agreement the restrictions were obsolete in regard to blocks 4, 7 & 9 ; but in all dealings with property comprised in those blocks deft. had imposed like restrictions. No model form had been prepared for use in dealings with block 4, & through a mistake of deft.'s agent, pltf. received one appropriate to block 8. Pltf. took possession before completion, & soon raised the question of turning the premises into a shop. After long negotiations, during which the question of restrictions was thoroughly discussed, deft. refused permission, maintaining that, despite his agent's mistake in sending the wrong model form, the restrictions against trade ought to stand ; & a new draft conveyance, incorporating such restrictions, was prepared on his behalf. Pltf. refused to execute it, & sought by this action to enforce the original agreement subject only to restrictions in one of the schedules to the conveyance of 1908, & thus free from restrictions on trading :—*Held :* there was no enforceable contract, as by reason of the non-existence of the appropriate model form of conveyance there were missing from the original agreement material terms which the ct. could not supply, & also that damages could therefore not be assessed.—STIMSON *v.* GRAY, [1929] 1 Ch. 629 ; 98 L. J. Ch. 315 ; 141 L. T. 456.

285. *Add. Annotation :*—**Refd.** Stimson *v.* Gray, [1929] 1 Ch. 629.

285a. ——.]—STIMSON *v.* GRAY, No. 282a, *ante*.

314a. ——.]—LANSDOWN'S LORD CASE (*circa* 1786), cited in 16 Ves. at p. 310 ; 33 E. R. 1002.

Annotation :—**Consd.** Moody *v.* Walters (1809), 16 Ves. 283.

548. *Add. Annotation :*—**Consd.** *Re* Belcham & Gawley's Contract, [1930] 1 Ch. 56.

639. *Add. Annotation :*—**Consd.** *Re* Belcham & Gawley's Contract, [1930] 1 Ch. 56.

703. *Add. Annotation :*—**Refd.** Curtis Moffat *v.* Wheeler, [1929] 2 Ch. 224.

707a. Property subject to old closing order.]—On July 11, 1929, the purchaser bought Lot 2 at a sale by auction & paid a deposit. The particulars of sale described Lot 2 as an unrestricted freehold, practically an island block, with four frontages to Little Orford Street & three other streets in Chelsea, the block forming an excellent building site, when the existing buildings came into hand. On examining the vendors' registered absolute title the purchaser found Entry 7 in the Charges Register stating in effect that on the transfer of Lot 2 & other property to the vendors on May 23, 1929, by mtgees. selling under their power of sale in a mtge. of Feb. 17, 1903, from Co. A., the former owners, the vendors by way of indemnity to the mtgees., but not further or otherwise covenanted to perform the obligations of Co. A. under a deed of Dec. 23, 1905, made between Co. A. & the Chelsea Borough Council & under a London County Council Order of Dec. 12, 1905. The deed of Dec. 23, 1905, made in pursuance of a large building scheme by Co. A. provided for the stopping up (*inter alia*) of Little Orford Street & for making certain new streets, including a new transverse street bisecting Lot. 2. The Borough Council were to obtain the necessary Closing Orders, & Co. A. were to lay out the new streets at their own expense. By their order of Dec. 12, 1905, the London County Council on the application of Co. A. sanctioned the new streets subject to certain conditions including a condition that Co. A. should covenant to lay them out, & on Dec. 21, 1905, Co. A. covenanted accordingly. On July 10, 1906, on the Borough Council's application the justices made a Closing Order for Little Orford Street. For financial & other reasons this part of Co. A.'s scheme had not yet been proceeded with. Little Orford Street was still open ; it was in fact repaired by the Borough Council ; & at the date of the contract neither the vendors nor the purchaser knew of the Closing Order's existence. On discovering Entry 7 the purchaser required the vendors to delete it from the Register & to obtain a release of the obligations, &, on their refusal, he issued a vendor & purchaser summons for a declaration that a good title was not shown. On subsequently discovering the Closing Order he discontinued the summons & brought this action claiming a declaration that he was entitled to repudiate the contract, damages for breach, & return of the deposit. The vendors denied any breach & counterclaimed for specific performance :—*Held :* (1) the twenty-four years' old Closing Order did not affect the title, but, if & so far as it was inconsistent with the particulars, merely raised a case of innocent misrepresentation, on which the purchaser could neither repudiate the contract nor recover damages, his only remedy being to resist specific performance. Therefore, the purchaser's action failed ; (2) on the vendors' counterclaim for specific performance that there was in fact no misrepresentation in the particulars, as the word " street " even in London did not necessarily mean a public highway. There was therefore no ground for refusing specific performance.—BARNES *v.* CADOGAN DEVELOPMENTS, LTD., [1930] 1 Ch. 479 ; 99 L. J. Ch. 274 ; 142 L. T. 626.

707b. **Property represented as bounded by " street " —Whether confined to public highway.]**—BARNES *v.* CADOGAN DEVELOPMENTS, LTD., No. 707a, *ante*.

709. *Add. Annotation :*—**Consd.** Flexman *v.* Corbett, [1930] 1 Ch. 672.

730. *Add. Annotation :*—**Refd.** *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

768. *Add. Annotations :*—**Consd.** *Re* Sandwell Park Colliery Co., Field *v.* The Co., [1929] 1 Ch. 277; Lock *v.* Bell, [1931] 1 Ch. 35.

773. *Add. Annotation :*—**Consd.** Lock *v.* Bell, [1931] 1 Ch. 35.

801. *Add. Annotation :*—**Refd.** Hyman *v.* Hyman, [1929] A. C. 601.

829. *Add. Annotation :*—**Consd.** Grant *v.* Derwent (1928), 140 L. T. 330.

Part IV.—Particular Contracts.

951. *Add. Annotation :*—**Consd.** *Re* Franklin & Swathling's Arbn., [1929] 1 Ch. 238.

Part V.—Proceedings for Specific Performance.

990. *Add. Annotation :* — **Refd.** Mayhead *v.* Hydraulic Hoist Co. (1931), 100 L. J. K. B. 369.

1138. *Add. Annotation :*—**Refd.** Lever Bros., Ltd. *v.* Bell, [1931] 1 K. B. 557.

1140. *Add. Annotation :*—*Generally*, **Refd.** Oxford Corpn. *v.* Oxford Electric Co. (1930), 94 J. P. 86.

1287. *Add. Annotation :*—**Refd.** Blay *v.* Pollard & Morris, [1930] 1 K. B. 628.

1365. *Add. Annotation :*—**Consd.** *Re* Belcham & Gawley's Contract, [1930] 1 Ch. 56.

1519a. —— **On adjournment into court—Liability for costs of adjournment.]**—RAMPTON *v.* MORLEY [1928] W. N. 268; 66 L. Jo. 427.

PART III. SECT. 13, SUB-SECT. 2.

p i. ——.]—*Resale by plaintiff under conditions inconsistent with completion of original contract.*]—NEW SOUTH WALES PUBLIC TRUSTEE *v.* GAVEL (1927), 40 C. L. R. 169.—**AUS.**

PART III. SECT. 15, SUB-SECT. 1.

q i. —— *Land of deceased intestate—Administratrix without power of sale.*]—B. died in 1920, leaving a widow & four children; letters of administration were granted to the widow. Pltf. made an offer for land which B. had owned. At this time the two younger children were infants. In 1927 the widow signed a document by which she agreed to sell certain marsh land " owned by & belonging to the estate of my late husband ":—*Held :* in 1927 no marsh land belonged to the estate of B. for what had been his under Devolution of Estates Act vested in defts., & as administratrix the widow had no power of sale.—BROWN *v.* BARBER, [1929] 2 D. L. R. 391; 63 O. L. R. 512.—**CAN.**

PART III. SECT. 15, SUB-SECT. 3.

sd. *Agreement for sale of licensed premises—Subsequent loss of licence.*]—SUMMERS *v.* COCKS, [1928] A. L. R. 107; 40 C. L. R. 321.—**AUS.**

PART IV. SECT. 26.

sf. *Agreement for possession & devise or conveyance in return for services.*]—Under an oral agreement between pltf. & defts. the latter were to have exclusive possession of a parcel of pltf.'s land in return for personal services to be rendered by them to her during her lifetime or until she sold or disposed of her adjoining property, & she also agreed to leave them said parcel by her will or, in the event of the sale of the adjoining property & the removal of her residence therefrom, to convey it to them. Defts. took up their residence on the land & built a house & other improvements thereon referable only to said agreement. Pltf. brought an action to recover possession, & defts. counterclaimed for specific performance. The ct. dismissed the action & declared that defts. were entitled to specific performance on the death of pltf. or upon her removing from the neighbourhood :—*Held :* on appeal, the dismissal of the action ought to be sustained, but the decree of specific performance was premature. —LYELL *v.* CORMACK, [1928] 4 D. L. R. 902; [1928] 3 W. W. R. 284.—**CAN.**

sg. *Contract to take supply of gas.*]—Under a contract between deft. city & a co. to whose rights thereunder pltf. co. was held to have succeeded, the city agreed to permit the co. to connect gas wells, which the co. agreed to drill by a certain date, with the city's main & then to withdraw from the main for its own use a certain percentage of the gas thus added to the city's supply. The co. not having proceeded to drill, the city notified it that the city would not perform its part of the contract after a date specified, which was prior to that to which the contract was found on the trial to have been extended by agreement of the parties. The co. then sued for a declaration that the contract was a good & subsisting contract extending to said later date, which should be specifically performed by deft., & for an extension of time in which to complete the well or wells, & for damages. Said later date had passed at the time of the trial :—*Held :* although the contract had been broken by the city, it was one with respect to which it was impossible to decree specific performance; moreover, it was beyond the power of the ct. to extend the time, &, since the question whether the co. had really sustained any damage depended upon a question which could not be answered, *viz.*, whether by said date the co. could or would have sunk the well or wells & have found sufficient gas to justify it in carrying it to the city's main, pltf. could recover nominal damages only.—MEDALTA POTTERIES, LTD. *v.* MEDICINE HAT CITY, [1931] 1 W. W. R. 217.—**CAN.**

PART V. SECT. 2.

a i. —.]—BURRELL *v.* WATT & HARDINGE, [1928] 3 D. L. R. 505; [1928] 2 W. W. R. 482.—**CAN.**

PART V. SECT. 4, SUB-SECT. 2.—A.

q i. —— *Under Real Property Act, 1900.*]—The principle of *Tasker* v. *Small*, No. 1043, that in proceedings to enforce specific performance of a contract the parties to the contract are the necessary & sufficient parties to the action, & that where a third party sets up some equity against dealing with the land which is the subject-matter of a contract the purchaser cannot in a suit for specific performance join that third party, applies to land under the Real Property Act, 1900, as well as to land held under a common law title.—THOMSON *v.* RICHARDSON (1928), 29 S. R. N. S. W. 221; 46 N. S. W. W. N. 77.—**AUS.**

PART V. SECT. 6, SUB-SECT. 3.—B.

o i. —— —— *Whether varied on appeal.*]—SMITH *v.* OBORN, [1931] 2 W. W. R. 817; 25 Alta. L. R. 549.—**CAN.**

PART V. SECT. 6, SUB-SECT. 4.—D. (b) iii.

1185 ii. ——.]—Where in a suit by the purchaser for specific performance of a sale of land, a decree was passed, directing an inquiry as to whether the vendor " can make out a good title " & if so, directing him to convey :—*Held :* it is desirable to follow the English practice of including in the order directing the principal inquiry (*i.e.*, as to whether a good title can be made) a secondary inquiry (*i.e.*, as to the time at which a good title was shown).—HARISHANKAR PAL *v.* SARADAPRASAD DAS (1931), I. L. R. 59 Calc. 536.—**IND.**

PART V. SECT. 6, SUB-SECT. 6.

sh. *Whether court will consider—Where claim to specific performance abandoned.*]—LEVY *v.* NORTON-CULBANE (1928), 28 S. R. N. S. W. 302; 45 N. S. W. W. N. 51.—**AUS.**

PART V. SECT. 6, SUB-SECT. 11.—A.

sn. *Amendment of claim—When allowed.*]—MAMA *v.* SASSOON (1928), L. R. 55 Ind. App. 360.—**IND.**

PART V. SECT. 8, SUB-SECT. 1.

sp. *By whom enforceable.*]—A decree for specific performance operates in favour of both parties & a deft. is as much entitled to enforce it as pltf.—HERAMBACHANDRA MAITRA *v.* JYOTISHCHANDRA SINGHA (1931), I. L. R. 59 Calc. 501.—**IND.**

STATUTES.

Part I.—In General.

3a. Meaning of Act of Parliament—Act of Imperial Parliament.]—In 1800, by the Act of Union, 39 & 40 Geo. 3, c. 67, the two Parliaments were united, & thereafter the words "some Act of Parliament" mean an Act of Parliament of the United Kingdom. Now looking at the Lotteries Act, 1923 (c. 60), it is clear to me that the words "some Act of Parliament" mean some Act of the Imperial Parliament. Although it is true that in 1922 an Act of the United Kingdom set up a Legislature for Ireland, that has not altered the meaning of the expression, "Act of Parliament" in the Act of 1823, & it is impossible to say that an Act passed by the Irish Legislature is an "Act of Parliament" within Lotteries Act, 1823 (c. 60), s. 41 (SLESSER, L.J.).—R. *v.* REGISTRAR OF JOINT STOCK COMPANIES, *Ex p.* MORE, [1931] 2 K. B. 197, 203; 100 L. J. K. B. 638; 145 L. T. 522; 95 J. P. 137; 47 T. L. R. 383; 29 L. G. R. 452, C. A.

15a. May contravene international law.]—Legislation of the Imperial Parliament, even in contravention of generally acknowledged principles of international law, is binding upon & must be enforced by the cts. of this country, for in these cts. the legislation of the Imperial Parliament cannot be challenged as *ultra vires* (*per* CUR.).—CROFT *v.* DUNPHY (1932), 48 T. L. R. 652.

Part II.—Classification and Framework.

52. *Add. Annotations :*—**Refd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533; Moon *v.* London County Council, Potteries Electric Traction Co. *v.* Bailey, [1931] A. C. 151.

58. *Add. Annotation :*—**Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

70. *Add. Annotation :*— **Consd.** Nixon *v.* A.-G., [1930] 1 Ch. 566.

78a. —— ——.]—One further point was taken upon the Superannuation Act, 1859 (c. 26), with which it is necessary to deal. The marginal notes of sect. 3 refer to "existing rights" & of sect. 12 to "right." It was contended that these catchwords could be used to explain the meaning of sects. against which they appear. For my part I cannot allow this. As explained by BAGGALLAY, L.J., in *A.-G.* v. *Great Eastern Ry. Co.*, No. 70, marginal notes are not a part of an Act of Parliament. The Houses of Parliament have nothing to do with them, & I agree with the learned Lords Justices in that case, BRAMWELL, JAMES, & BAGGALLAY, that the cts. cannot look at them. Their imperfections, spoken of by BRAMWELL, L.J., are illustrated by the note of sect. 9 of this Act (LORD HANWORTH, M.R.).—NIXON *v.* A.-G., [1930] 1 Ch. 566, 593; 99 L. J. Ch. 259; 143 L. T. 176; 46 T. L. R. 246, C. A.; *affd. on other grounds*, [1931] A. C. 184, H. L.

Part III.—Interpretation.

134. *Add. Annotation :*—**Consd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

135. *Add. Annotation :*—**Refd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

137. *Add. Annotation :*—*As to* (1) **Refd.** Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

139. *Add. Annotation :*—*As to* (1) **Expld. & Distd.** Minister of Health *v.* R., *Ex p.* Yaffe, [1931] A. C. 494.

142a. —— —— ——.]—Housing Act, 1925 (c. 14), s. 40, which empowers the Minister of Health to make an order confirming, with or without modification, an improvement scheme made under the Act, & provides that "the order of the Minister when made shall have effect as if enacted in this Act," does not preclude the ct. from calling in question the order of the Minister where the scheme presented to him for confirmation is inconsistent with the provisions of the Act.—MINISTER OF HEALTH *v.* R., *Ex p.* YAFFE, [1931] A. C. 494; 100 L. J. K. B. 306; 47 T. L. R. 337; 75 Sol. Jo. 232, H. L.

Annotation :—**Consd.** *Re* Bowman (1932), 48 T. L. R. 351.

143. *Add. Annotation :*—**Apld.** Stumbles *v.* Whitley (1929), 46 T. L. R. 37.

PART I.

a 1. ——.]—The general rule that before a law or any regulation or bye-law having the force of a law can become operative, it must be duly promulgated, must be read subject to the qualifications that the word "law" in the rule must not be given too wide a connotation, & that the enabling enactment must be looked to in order to see whether the necessity for promulgation is or is not excluded. —BYERS *v.* CHINN, [1928] App. D. 322.—S. AF.

PART II. SECT. 2, SUB-SECT. 6.

79 iii. ——.]—In the matter of interpretation of status, punctuation is not to be deemed a part of the statute.—NIAZ AHMAD KHAN *v.* PARSHOTAM CHANDRA (1931), I. L. R. 53 All. 374.—**IND.**

PART III. SECT. 1, SUB-SECT. 2.—B.

126 ix. ——.]—*Held :* in interpreting a statute, reference cannot be made to the debates in the Legislative Council, or the report of the Select Committee.—GURDIAL SINGH *v.* SRI DARBAR SAHIB AMRITSAR (CENTRAL BOARD LOCAL COMMITTEE) (1928), I. L. R. 9 Lah. 689.—**IND.**

151. *Add. Annotation :—As to* (1) **Consd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

222. *Add. Annotation :*—**Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1930] A. C. 549.

239. *Add. Annotation :*—**Refd.** A.-G. *v.* Adamson (1932), 76 Sol. Jo. 95.

240a. ——.]—It is a fundamental principle in construing Acts of Parliament to give words their ordinary sense, if by that there arises no repugnancy or inconsistency (LORD TOMLIN). —*Re* JENKINS, JENKINS *v.* DAVIES, [1931] 2 Ch. 218 ; 100 L. J. Ch. 265 ; 145 L. T. 184 ; 47 T. L. R. 379, C. A.

253. *Add. Annotation :*—**Refd.** Doncaster *v.* Sudlow (R.) & Sons (1929), 22 B. W. C. C. 564.

277. *Add. Annotations :*—**Apld.** *Re* Jenkins, Jenkins *v.* Davies (1931), 100 L. J. Ch. 265. **Refd.** Shaw *v.* Public Trustee (1929), 141 L. T. 465.

289. *Add. Annotation :*—**Refd.** Leitch *v.* Emmott, [1929] 2 K. B. 236.

337. *Add. Annotation :*—**Refd.** Doncaster *v.* Sudlow (R.) & Sons (1929), 22 B. W. C. C. 564.

342a. ——.]—The words " charitable institution " in any legislative Act should be given their technical legal sense, unless a contrary intention appears from the context.—ADAMSON *v.* MELBOURNE & METROPOLITAN BOARD OF WORKS, [1929] A. C. 142 ; 98 L. J. P. C. 20 ; 140 L. T. 107 ; 45 T. L. R. 3, P. C.

350. *Add. Annotation :*—**Consd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

351. *Add. Annotation :*—**Consd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

359. *Add. Annotation :*—**Apld.** *Re* Blücher (Prince) (1930), 47 T. L. R. 19.

376. *Add. Annotation :*—**Refd.** Edwards *v.* A.-G. for Canada (1929), 46 T. L. R. 4.

394. *Add. Annotation :*—**Refd.** Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

448a. —— ——.]—*Held :* Merchant Shipping (International Labour Conventions) Act, 1925 (c. 42), s. 1, being unambiguous, it was not permissible to refer to the preamble of the Act or to the draft convention to which the Act was intended to give effect in order to give the section a meaning other than its natural meaning.—ELLERMAN LINES, LTD. *v.* MURRAY, WHITE STAR LINE OF ROYAL & UNITED STATES MAIL STEAMERS OCEANIC STEAM NAVIGATION CO., LTD. *v.* COMERFORD, [1931] A. C. 126 ; 36 Com. Cas. 159 ; *sub nom.* THE CROXTETH HALL, THE CELTIC, 100 L. J. P. 25 ; 144 L. T. 441 ; 47 T. L. R. 147 ; 18 Asp. M. L. C. 184, H. L.

464. *Add. Annotation :*—**Refd.** Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

467. *Add. Annotation :*—**Refd.** Green Star Shipping Co. *v.* London Assurance (1931), 145 L. T. 160.

492. *Add. Annotation :*—**Apld.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

497. *Add. Annotation :*—**Refd.** Allen *v.* Whitehead (1929), 45 T. L. R. 655.

503. *Add. Annotation :*—**Refd.** Ellerman Lines, Ltd. *v.* Murray, White Star Line of Royal & United States Mail Steamers Oceanic Steam Navigation Co. *v.* Comerford, [1931] A. C. 126.

516. *Add. Annotation :*—**Refd.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

PART III. SECT. 2, SUB-SECT. 2.—A.

153 xxii. ——.]—In construing an Indian Act words should be given their widest possible meaning consistent with the context unless there is something in the Act itself to indicate that they are intended to be used in the artificial & technical sense which they have acquired in English law or in any other restricted sense.—HAJI RAHIMBUX ASHAN KARIM *v.* CENTRAL BANK OF INDIA (1928), I. L. R. 56 Calc. 367.—**IND.**

PART III. SECT. 2, SUB-SECT. 2.—C.

257 xii. ——.]—R. *v.* COFFEY (Ont.), [1929] 1 D. L. R. 693 ; 51 Can. Crim. Cas. 100.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—D.

297 vii. ——.]—The ct. will not give to a statute an interpretation which results in a palpable injustice unless the legislature has manifested by express words an intention to produce that result. Such an intention will not be inferred from the use of merely general words.—*Re* THE EXCISE ACT (Man.), [1929] 4 D. L. R. 154 ; 2 W. W. R. 353.—**CAN.**

PART III. SECT. 2, SUB-SECT. 3.

369 iv. —— ——.]—Where the actual words of a statute afford no guidance as to the intention of the legislature the ct. will conclude the legislature intended an equitable & not an inequitable result.—BORCHERDS *v.* RHODESIA CHROME & ASBESTOS CO., LTD., [1930] App. D. 112.—**S. AF.**

PART III. SECT. 2, SUB-SECT. 4.—A.

376 xxii. ——.]—A lien is not to be considered to be imposed without a plain declaration of the intention of the legislature to impose it, shown in clear & unambiguous language.—*Re* HARDY, [1929] 1 D. L. R. 300 ; 63 O. L. R. 246.—**CAN.**

376 xxiii. ——.]—Where the legislature has prohibited the making of a contract, & has expressly provided, or, having regard to the language in which the Act is couched, has manifested its intention, that the contract should be void for all purposes, such contract is utterly null & void.—MURSHIDABAD NAWAB *v.* BILAS ROY CHOUDHURI (1928), I. L. R. 56 Calc. 252.—**IND.**

376. xxiv. ——.]—Where a special Act of the Dominion Legislature has authorised the construction of a bridge carrying a railway over a navigable channel " so as not to interfere with navigation," & has incorporated the Railway Act, an order made by the Railway Board under sect. 268 of that Act, which empowers the Board to authorise the construction of a bridge over navigable waters according to plans approved by the Governor in Council, affords no defence to a claim in respect of damage caused to a ship by reason of the bridge constructed being a substantial interference with navigation & therefore a public nuisance. The protection of the public right of navigation being dealt with both in the special Act & in the general Act, the express provision of the special Act overrides those of the general Act, both having regard to sect. 3 of the Railway Act & apart therefrom.—EURANA S.S. *v.* BURRARD INLET TUNNEL & BRIDGE CO., [1931] A. C. 300 ; 100 L. J. P. C. 68 ; 144 L. T. 556, P. C.—**CAN.**

376 xxv. ——.]—If the language of a section of a statute is such that in order to give a meaning to the section it must be completely altered or so materially added to as to make it differ considerably from that used by the Legislature then, especially in criminal matters, the ct. should hesitate to alter the language so as to give to the words a meaning which is not manifest from the statute.—*Ex p.* MINISTER OF JUSTICE, *Re* R. *v.* JACOBSON & LEVY, [1931] App. D. 466.—**S. AF.**

PART III. SECT. 2, SUB-SECT. 4.—C.

445 ii. ——.]—When construing a statute which was the outcome of a report of comrs. appointed to draft & submit a bill for adoption by the legislature, there is not the same disposition on the part of the cts. that there formerly was to deny reference to said report.—R. *v.* JEANOTTE, [1932] 2 W. W. R. 283.—**CAN.**

PART III. SECT. 2, SUB-SECT. 6.

479 iv. ——.]—*Re* SECT. 24 OF BRITISH NORTH AMERICA ACT, [1928] 4 D. L. R. 98 ; [1928] S. C. R. 276.—**CAN.**

PART III. SECT. 2, SUB-SECT. 7.

505 iv. ——.]—Where a sect. of a statute is ambiguous ; because it is open to be grammatically construed as bearing two different meanings, a Ct. of Appeal in deciding which of these two meanings the legislature intended the statute to bear, should adopt that construction which, upon a reading of the Act & its amendments as an entire enactment, appears to better accord with the body of the enactment than does the alternative construction. —R. *v.* PUBLIC UTILITIES COMRS. (1926), 54 N. B. R. 138.—**CAN.**

542. *Add. Annotation :*—**Refd.** Bottomley *v.* West Derby Assessment Committee, etc., etc. (1931), 47 T. L. R. 468.

543. *Add. Annotations :* —**Refd.** The Croxteth Hall, The Celtic, [1930] P. 197 ; Bottomley *v.* West Derby Assessment Committee, etc., etc. (1931), 47 T. L. R. 468.

545a. —— ——.]—Bottomley *v.* West Derby Assessment Committee, Mersey Docks & Harbour Board *v.* West Derby Assessment Committee, Bottomley *v.* Mersey Docks & Harbour Board, Bottomley *v.* Liverpool Grain Storage & Transit Co., Ltd., No. 764a, *post.*

569. *Add. Annotation :*—**Consd.** The Croxteth Hall, The Celtic, [1930] P. 197.

598a. ——.]—Ellerman Lines, Ltd. *v.* Murray, White Star Line of Royal & United States Mail Steamers Oceanic Steam Navigation Co., Ltd. *v.* Comerford, No. 448a, *ante.*

604. *Add. Annotation :*—**Refd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

649a. May not be referred to.]—Nixon *v.* A.-G., No. 78a, *ante.*

674. *Add. Annotation :*—**Refd.** Fordree *v.* Barrell (1931), 95 J. P. 141.

689. *Add. Annotation :*—**Refd.** Fordree *v.* Barrell (1931), 95 J. P. 141.

731. *Add. Annotation :—As to* (1) **Consd.** Egan *v.* A.-G., [1930] 1 Ch. 238.

745. *Add. Annotation :*—**Apld.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

761. *Add. Annotation :*—**Consd.** Egan *v.* A.-G., [1930] 1 Ch. 238.

764a. ——.]—It was suggested by the A.-G. in the course of his argument for the Revenue Officers, that the ct. was entitled to consider some of the provisions of the later Derating Act as affecting the construction of the 1928 Act. It was contended that as the later Act obliged railways to pass on the benefit of the derating by reduction of railway rates to the users of railways the definition clauses of the 1928 Act should, if possible, be read as applying only to that part of their property which earned rates that could be reduced in proportion to the derating benefits received by the railway, & therefore the Act should if possible be read as exclusing from the privileged classes warehouses for the use of which a customer pays rent & not railway rates & therefore could not be given the advantage of having the derating benefit passed on to him. It was further argued that if railway warehouses are outside the definition for these reasons, dock warehouses should also be deemed outside the definition. In my judgment this argument ought not to have any weight attached to it. The Act of 1928 cannot be interpreted by what Parliament chose to do by an Act of 1929. We are not entitled to assume that the need of so wording the Act as to confine the prospective advantages of differential rating to those hereditaments whose rateable occupiers could pass on the benefit to their trade customers was present to the mind of the Legislature when they passed the Act of 1928. We can, however, treat as relevant the purposes for which the Act was passed as stated in the title (Greer, L.J.).—Bottomley *v.* West Derby Assessment Committee, Mersey Docks & Harbour Board *v.* West Derby Assessment Committee, Bottomley *v.* Mersey Docks & Harbour Board, Bottomley *v.* Liverpool Grain Storage & Transit Co., Ltd., [1932] 1 K. B. 40 ; 101 L. J. K. B. 8 ; 95 J. P. 186 ; 46 T. L. R. 468 (1926–31), 2 B. R. A. 846, C. A.

765. *Add. Annotation :*—**Refd.** Port of London Authority *v.* Canvey Island Comrs., [1932] 1 Ch. 446.

766a. —— ——.]—I do not think that, in the circumstances of this case, the subsequent statute can properly be referred to for the

PART III. SECT. 2, SUB-SECT. 8.—A.

540 iii. ——.]—If there is an ambiguity or uncertainty in the language of an Act, the title may be looked to in order to ascertain the scope of the Act & to remove the ambiguity ; but where the language of the Act is plain it must be given effect to notwithstanding the fact that it goes beyond the matters mentioned in the title. The application of c. 61, 1925–26 (Sask.), entitled An Act respecting Improvements under Mistake of Title, is not confined to mistakes of title, but extends to all cases, including those of mistake of the identity of the land or of its boundaries, where a person has made "lasting improvements under the belief that the land is his own." It is, however, a question for the ct. to determine in each case whether the person claiming for the improvements was under a *bonâ fide* belief that the land was his own.—Schiell & Hunt *v.* Morrison & Morrison, [1930] 2 W. W. R. 737 ; 4 D. L. R. 664.—**CAN.**

PART III. SECT. 2, SUB-SECT. 8.—B. (d).

599 iv. ——.]—In order to restrict the scope of an Act by the terms of its preamble the ct. must be satisfied that there was an intention on the part of the Legislature that its scope should be so restricted.—Kannammal *v.* Kanakasabai (1930), I. L. R. 54 Mad. 845.—**IND.**

PART III. SECT. 2, SUB-SECT. 8.—C.

645 vii. —— ——.]—Headings in a statute may be read, not only as explaining sects. which immediately follow them, as the preamble to the statute may be looked at to explain its enactments, but as affording a better key to the construction of the sects. which follow than might be afforded by a mere preamble.—*Re* Mid-West Glass Co., Ltd., [1931] 3 W. W. R. 165 ; 40 Man. L. R. 289.—**CAN.**

PART III. SECT. 2, SUB-SECT. 8.—D.

m i. ——.]—Marginal notes to sections of an Act can be referred to for the purpose of interpretation if they can be regarded as inserted by, or under the authority of, or assented to by the legislature.—Ram Saran Das *v.* Bhagwat Prasad (1928), I. L. R. 51 All. 411.—**IND.**

PART III. SECT. 2, SUB-SECT. 8.—E.

650 ii. ——.]—*Semble :* the illustrations to Indian Acts of legislature are to be used as guides only & not as authoritative & binding declarations of law.—Myingyan Municipality *v.* Maung Po Nyun (1930), I. L. R. 8 Ran. 320.—**IND.**

PART III. SECT. 2, SUB-SECT. 8.—G. (c).

658 ii. ——.]—If there are two sections in an Act which seem to clash but which can be interpreted so as to give full force & effect to both, then such an interpretation is to be adopted rather than one which will partly destroy the effect of one of them.—Principal Immigration Officer *v.* Bhula, [1931] App. D. 323.—**S. AF.**

658 iii. ——.]—If in one section of a statute imposing taxation there are express words which in their plain or literal meaning disclose an exemption from taxation of the income of non-residents in Canada, & there are also words of ambiguous import in another section of the same statute which might be construed as displacing the exemption, these latter words are not sufficient to rebut the intention to exempt non-residents as expressed in the former section.—Holden *v.* Minister of National Revenue, [1931] Ex. C. R. 215.—**CAN.**

PART III. SECT. 2, SUB-SECT. 12.—B. (c).

747 ii. ——.]—As both the Customs Tariff Act & the Tax Act are revenue Acts, a clear definition in one of these enactments of a term common to both may reasonably be referred to for the purpose of dispelling any ambiguity of meaning in the other.—R. *v.* Milnbingham Printing Co., Ltd., [1929] Ex. C. R. 133.—**CAN.**

purpose of interpreting the earlier. It is, of course, certain that Parliament can by statute declare the meaning of previous Acts. It would be competent for them to do so, even though their declaration offended the plain language of the earlier Act. It would be an unnecessary step to take, unless it were intended, contrary to the general principles of legislation, to make the explanatory Act retrospective, seeing that the subsequent statute could by independent enactment do what was desired. It is also possible that where Acts are to be read together, as they are in this case, a provision in an earlier Act that was so ambiguous that it was open to two perfectly clear & plain constructions could, by a subsequent incorporated statute, be interpreted so as to make the second statute effectual, which is what the cts. would desire to do, & it is also possible that, where a statute has created a crime or imposed a penalty, a subsequent Act showing that that crime was intended to have a limited interpretation or the circumstances regarded as narrow in which the penalty attached, would be used for the purpose of giving effect to the well-known principle of construction to which I referred at an earlier stage (LORD BUCKMASTER).—ORMOND INVESTMENT CO. *v.* BETTS, [1928] A. C. 143; 97 L. J. K. B. 342; 138 L. T. 600; 13 Tax Cas. 400, H. L.

Annotation :—**Consd.** Port of London Authority *v.* Canvey Island Comrs., [1932] 1 Ch. 446.

766b. —— **Erroneous recital of effect in preamble to later statute.**]—Deft. comrs. relied, first, upon the statement contained in the preamble of the 1883 Act that by the 1792 Act the comrs. thereby appointed were invested with powers (*inter alia*) of acquiring lands in the Island for the purposes of the Act. . . . In my opinion the erroneous recital of the effect of the 1792 Act does not affect the construction of that Act (LAWRENCE, L.J.).—PORT OF LONDON AUTHORITY *v.* CANVEY ISLAND COMRS., [1932] 1 Ch. 492; 101 L. J. Ch. 63; 146 L. T. 195; 96 J. P. 28; 30 L. G. R. 42, C. A.

772a. —— **Addition to provisions incorporated—Not necessarily incorporated in later Act.**]—Where provisions of an Act have been incorporated by reference into a later Act, the repeal of the earlier Act does not affect the latter Act; so, too, an addition to the provisions incorporated, unless it is expressly made applicable to the later Act, is not deemed to be incorporated into it, at all events if it is possible for the later Act to function effectually without the addition.—SECRETARY OF STATE FOR INDIA *v.* HINDUSTHAN CO-OPERATIVE INSCE. SOCIETY (1931), 58 L. R. Ind. App. 259, P. C.

795. *Add. Annotation :*—**Apld.** R. *v.* Southampton County Confirming Committee, *Ex p.* Slade, [1929] 1 K. B. 263.

856. *Add. Annotation :*—**Refd.** Taxes Comr. *v.* Union Trustee Co. of Australia, Ltd., [1931] A. C. 258.

863. *Add. Annotation :*—**Consd.** Glamorgan County Council *v.* Birmingham Corpn. (1932), 48 T. L. R. 664.

905a. —— **Application to articles of association.**]—Interpretation Act, 1889 (c. 63), s. 1 (1), which deals with the inclusion of the plural in words in the singular & *vice versâ*, & which governs Table A in Companies Act, 1862 (c. 89), Sched. I., applies also to special articles of a co. which have replaced certain articles of Table A, but which are used together with the remaining articles of Table A.—FELL *v.* DERBY LEATHER CO., LTD., [1931] 2 Ch. 252; 100 L. J. Ch. 311; 145 L. T. 356.

927. *Add. Annotation :*—**Refd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

992. *Add. Annotation :*—**Refd.** Egan *v.* A.-G., [1930] 1 Ch. 238.

PART III. SECT. 2, SUB-SECT. 13.—A.

774 iii. —— ——.]—Where there is a doubt as to the meaning of a statute, or an award made thereunder, a construction placed thereon & long acquiesced in by all parties will not be departed from.—GAUSSEN *v.* LOWER BANN NAVIGATION TRUSTEES, [1929] N. I. 11.—**IR.**

PART III. SECT. 2, SUB-SECT. 13.—B.

789 vii. ——.]—It is a well-settled principle of construction that the Legislature must be presumed to know, not only the general principles of law, but, also, the constructions which the cts. have put upon particular statutes, & when a section of an Act, which had received a judicial construction, is re-enacted in the same words, such re-enactment must be treated as a legislative recognition of the construction.—BIPULBIHARI CHAKRAVARTI *v.* NIKHILCHANDRA CHAKRAVARTI (1929), I. L. R. 57 Calc. 381.—**IND.**

PART III. SECT. 2, SUB-SECT. 17.—A.

o i. —— ——.]—HEATHERTON CO-OPERATIVE CO. *v.* GRANT, [1930] 1 D. L. R. 975; 1 M. P. R. 145.—**CAN.**

PART III. SECT. 3, SUB-SECT. 2.

907 ii. ——.]—In the construction of a statute a definition given in an interpretation clause of the statute will not be adhered to when the context & subject-matter show that the words defined were intended to have a meaning different from that set forth in the interpretation clause.—TOWN COUNCIL OF SPRINGS *v.* MOOSA, [1929] A. D. 401.—**S. AF.**

907 iii. ——.]—*Primâ facie*, where there is a definition of a particular word used in a statute, that definition must be applied wherever that word occurs, but the ct. is justified in departing from the definition where an adherence to it would work an injustice which both the context & subject-matter show that the legislature never intended.—SUTHERLAND *v.* R., [1930] N. L. R. 24.—**S. AF.**

PART III. SECT. 6, SUB-SECT. 1.

948 i. *Whether equitable construction adopted.*]—Where a statute is clear the ct. must give effect to the intention of the Legislature however harsh its operation may be to individuals affected thereby, but where two meanings may be given to a section & the one meaning leads to harshness & injustice while the other does not, the ct. will hold that the Legislature rather intended the milder than the harsher meaning.—PRINCIPAL IMMIGRATION OFFICER *v.* BHULA, [1931] App. D. 323.—**S. AF.**

PART III. SECT. 6, SUB-SECT. 2.

sa. *Workmen's Compensation Acts.*]—CLARKE *v.* WENTWORTH STORES, LTD., [1928] 2 D. L. R. 796.—**CAN.**

PART III. SECT. 9.

981 i. *Doctrine of contemporanea expositio.*]—When the construction of a statute is doubtful, it is accepted as a canon of interpretation that a useful exposition of the statute may be that which it has received from contemporary authority.—DINKEL *v.* UNION GOVT., [1929] App. D. 150.—**S. AF.**

Part IV.—Operation.

1057. *Add. Annotation :*—**Consd.** A.-G. *v.* Jackson (1932), 48 T. L. R. 261.

1083. *Add. Annotation :*—**Consd.** Ward *v.* British Oak Insurance Co., [1932] 1 K. B. 392.

1116. *Add. Annotations :*—*As to* (1) **Consd.** Ward *v.* British Oak Insurance Co., [1932] 1 K. B. 392. **Refd.** Gardner & Co. *v.* Cone (1928), 140 L. T. 72.

1172a. *Add. Annotation :*—**Refd.** *Re* National Benefit Assurance Co., [1931] 1 Ch. 46.

1207. *Add. Annotations :*—**Refd.** A.-G. *v.* Manchester Corpn., [1931] 1 Ch. 254 ; Skinner *v.* Geary (1931), 47 T. L. R. 597.

1212. *Add. Annotation :*—**Consd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 147 L. T. 122.

1217. *Add. Annotations :*—**Apld.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533; West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159. **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1930] A. C. 549.

1244. *Add. Annotations :*—**Apld.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1929] 1 Ch. 686. **Refd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

1248. *Add. Annotation :*—**Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

1248a. —— **Unless contrary construction clearly intended.**]—There is a well-known canon of construction applicable to private Acts of Parliament that if the words used by the statute are ambiguous, the meaning that is most favourable to the public should be adopted ; but I do not think that this has the effect of preventing the ct. from saying that if, when the whole of the statute in question is considered, it appears by necessary intendment that the privilege claimed was intended to be granted, the ct. should refuse to draw this inference because the Act does not contain express words creating the privilege claimed (GREER, L.J., *in a dissenting judgment*).—BOURNEMOUTH-SWANAGE MOTOR ROAD & FERRY CO. *v.* HARVEY & SONS, [1929] 1 Ch. 686 ; 98 L. J. Ch. 118 ; 140 L. T. 415 ; 93 J. P. 129 ; 27 L. G. R. 264, C. A. ; *affd.*, [1930] A. C. 549, H. L.

1334. *Add. Annotation :*—**Refd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

1351. *Add. Annotation :*—*Generally*, **Refd.** Sheffield Corpn. *v.* Luxford, Same *v.* Morrell, [1929] 2 K. B. 180.

1364a. -.]—" May " always means may. " May " is a permissive or enabling expression ; but there are cases in which, for various reasons, as soon as the person who is within the statute is entrusted with the power it becomes his duty to exercise it. One of those cases is where he is applied to to use the power which the Act gives him in order to enforce the legal right of appct.

PART IV. SECT. 2.

b i. -.]—Sect. 1 of c. 30, 1923, provided for the appointment of one or two examiners for the city of Halifax. The Act was to come into force on a day to be fixed by proclamation. C. 54 of 1924, passed May 9, 1924, repealed s. 1 of c. 30, 1923, & substituted another sect. providing for the appointment of one or two examiners for the city of Halifax. On May 23, 1924, it was proclaimed that c. 30, 1923, as amended, should come into force on June 1, 1924. On the same day, May 23, 1924, M. was appointed as an examiner for the city of Halifax. Applt. contended that his appointment was void, because made under the authority of a statute that was not in force at the time of his appointment : —*Held :* the proclamation that c. 30, 1923, as amended, should come into force on June 1, 1924, had the same effect as if that date had been fixed by the statute itself as the date when it should become effective as law ; & it was common ground that in the latter case appointments could be made in anticipation of the statute coming into force ; the proclamation made that certain which had been contingent ; it must be presumed that everything was done regularly unless the contrary was shown ; the proclamation & order of appointment bore the same date & were gazetted the same day ; & it must be presumed that the proclamation preceded the appointment ; the appointment was, therefore, valid.—MCKENZIE *v.* HUYBERS, [1929] 4 D. L. R. 1059 ; S. C. R. 38 ; *affg.*, 60 N. S. R. 203.—**CAN.**

PART IV. SECT. 5, SUB-SECT. 1.

p i. —— ——.]—A statute is not to be construed so as to have a greater retrospective effect than its language renders necessary.—KIRPA SINGH *v.* AJAIPAL SINGH (1928), I. L. R. 10 Lah. 165.—**IND.**

PART IV. SECT. 5, SUB-SECT. 2.—A.

1087 vi. ——.]—Statutes regulate future conduct & are construed as operating only on cases or facts which came into existence after they were passed.—PRINCIPAL IMMIGRATION OFFICER *v.* BHULA, [1931] App. D. 323. —**S. AF.**

PART IV. SECT. 5, SUB-SECT. 2.—B. (b).

1099 x. —— *Res judicata.*]—Hong Kong Ordinance 20 of 1908 by its retroactive effect gave a right of action for criminal conversation committed prior to its enactment :—*Held :* without explicit words to that effect it did not avail the respondent, whose cause of action was barred as *res judicata* by a final judgment prior to the Ordinance & founded on the then existing law.—LEMM *v.* MITCHELL, [1912] A. C. 400.—**HONG KONG.**

PART IV. SECT. 5, SUB-SECT. 6.

1146 xxvi. -.]—METROPOLITAN ABATTOIRS BOARD *v.* SCHOLE, [1927] S. A. S. R. 444.—**AUS.**

1146 xxvii. ——.]—Alterations in procedure are always retrospective unless there be some good reason against it.—*Re* WICKS & ARMSTRONG, [1928] 2 D. L. R. 210 ; 49 Can. Crim. Can. 281 ; 61 O. L. R. 667.—**CAN.**

1146 xxviii. ——.]—Where a statute deals with practice & procedure only, it applies, unless the contrary is expressed, to actions begun before it came into force.—HAFFNER *v.* WESTON & DETCHON, [1928] 1 D. L. R. 711 ; 22 Sask. L. R. 203 ; [1927] 3 W. W. R. 839.—**CAN.**

1146 xxix. ——.]—An action begun after the time limited by the statute that was in force when the writ was issued cannot, because of an amending Act, be held to have been begun in time. It is erroneous to assume that a statute imposing a time limit for the commencement of actions for damages, or extending a time already limited, is necessarily to be treated as a statute effecting procedure only & so to be given a retrospective effect.—KEARLEY *v.* WILEY, [1931] 2 D. L. R. 433 ; 66 O. L. R. 490 ; *affd.*, [1931] 3 D. L. R. 68 ; O. R. 167.—**CAN.**

1168 i. *Right of appeal not matter of procedure.*]—Legislation conferring a new jurisdiction on an appellate ct. to entertain an appeal cannot be construed retrospectively, so as to cover cases arising prior to such legislation, unless there is something making unmistakeable the legislative intention that it should be so construed. The matter is one of substance & of right.—SINGER *v.* R., [1932] S. C. R. 70 ; 1 D. L. R. 279.—**CAN.**

PART IV. SECT. 6, SUB-SECT. 1.

1169 xiii. ——.]—ST. CATHERINES CORPN. *v.* HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO, [1928] 3 D. L. R. 200 ; 62 O. L. R. 301 ; *affd.*, [1930] 1 D. L. R. 409, P. C.—**CAN.**

PART IV. SECT. 6, SUB-SECT. 2.—A.

1184 iii. ——.]—*Held :* the amendments made to the Insurance Act subsequent to the year 1926 were not retroactive & did not take away contractual rights acquired under legislation in force when the contracts were entered into.—BULLAS *v.* EMPIRE LIFE INSCE. CO., [1931] 4 D. L. R. 443 ; O. R. 769.—**CAN.**

PART IV. SECT. 7, SUB-SECT. 9.

1 i. ——.]—When a statute confers upon the ct. a specific power, the ct. cannot, by relying upon its inherent jurisdiction, extend the scope of that power.—R. *v.* SUKH DEV (1929), I. L. R. 11 Lah. 220.—**IND.**

(TALBOT, J.).—SHEFFIELD CORPN. *v.* LUXFORD, SAME *v.* MORRELL, [1929] 2 K. B. 180; 98 L. J. K. B. 512; 141 L. T. 265; 93 J. P. 235; 45 T. L. R. 491, D. C.

1381. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

1386. *Add. Annotation :*—**Consd.** A.-G. *v.* London & Home Counties Joint Electricity Authority, [1929] 1 Ch. 513.

1403. *Add. Annotation :*—**Refd.** Mayhead *v.* Hydraulic Hoist Co. (1931), 100 L. J. K. B. 369.

1408. *Add. Annotation :*—**Apld.** A.-G. *v.* Sunderland Corpn. (1929), 46 T. L. R. 10.

1452a. —— ——.]—Pltf., who was a farmer, was the occupier of property in the neighbourhood of an electricity power station which had been erected by deft. corpn. under Parliamentary powers & which emitted fumes heavily charged with sulphur & sulphur compounds so as to damage the property occupied by pltf. In an action for a nuisance :—*Held :* Electric Lighting (Clauses) Act, 1899, did not expressly make defts. liable for a nuisance, but as defts. had not proved the nuisance to be the inevitable result of the exercise of their statutory powers plaintiff was entitled to an injunction & damages.—MANCHESTER CORPN. *v.* FARNWORTH, [1930] A. C. 171; 99 L. J. K. B. 83; 94 J. P. 62; 46 T. L. R. 85; 73 Sol. Jo. 818; 27 L. G. R. 709; *sub nom.* FARNWORTH *v.* MANCHESTER CORPN., 142 L. T. 145, H. L.

Part V.—Criminal and Penal Statutes.

1531. *Add. Annotation :*—*As to* (1) **Consd.** The Torni, [1932] P. 78.

1539. *Add. Annotation :*—**Refd.** Sheffield Corpn. *v.* Kitson, [1929] 2 K. B. 322.

1560. *Add. Annotation :*—**Consd.** Stoke-on-Trent Revenue Officer *v.* Stoke-on-Trent Assessment Committee & Potteries Electric Traction Co., etc., etc. (1930), 143 L. T. 650.

Part VI.—Fiscal and Revenue Statutes.

1577. *Add. Annotation :*—**Consd.** I. R. Comrs. *v.* Dalgety & Co. (1929), 98 L. J. K. B. 542.

1578. *Add. Annotation :*—**Consd.** I. R. Comrs. *v.* Dalgety & Co. (1929), 98 L. J. K. B. 542.

1587. After this case add :—

—— **Safeguarding Acts.**]—*See* REVENUE, Nos. 93c, 93d.

1591. *Add. Citations :*—[1929] A. C. 354; 98 L. J. Ch. 198; 140 L. T. 624; 93 J. P. 146; 27 L. G. R. 261.

1607. *Add. Annotation :*—**Refd.** Foscolo Mango & Co. *v.* Stag Line, Ltd., [1931] 2 K. B. 48.

1612. *Add. Annotations : — Generally,* **Refd.** Diggines *v.* Forestal Land, Timber & Railways Co. (1930), 142 L. T. 509; I. R. Comrs. *v.* Dalgety & Co., [1930] A. C. 527.

Part VII.—Local, Personal and Private Statutes.

1617. *Add. Annotations :*—**Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1929] 1 Ch. 686; Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

1621. *Add. Annotation :*—**Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1929] 1 Ch. 686.

1638. *Add. Annotation : —* **Refd.** Bournemouth Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1930] A. C. 549.

1659. *Add. Annotations :*—**Consd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1929] 1 Ch. 686; Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

PART V. SECT. 2, SUB-SECT. 3.

1525 iv. ——.]—Even a penal statute must not be construed so as to narrow its words to the exclusion of cases which those words in their ordinary acceptation would comprehend.—R. *v.* KRAKOWEC, DAHLBERG & EKLUND & CONTINENTAL GUARANTY CORPN. OF CANADA, LTD., [1932] S. C. R. 134; 1 D. L. R. 316.—**CAN.**

PART V. SECT. 3, SUB-SECT. 1.

1532 vi. ——.]—A statute which casts upon an accused the *onus* of disproving a charge is retrospective &, therefore, applies to a case where it has come into force between the time of the information therefor.—R. *v.* KUMPS [1931] 1 W. W. R. 812; 3 D. L. R. 767; 55 Can. C. C. 320; 39 Man. L. R. 445.—**CAN.**

1532a. *Extra-territorial operation—Intention must be shown.*]—General words in a penal statute will not be given an extra-territorial operation unless an intention to give such an operation to the statute appears expressly or by necessary implication.—R. *v.* FRANKE, [1929] V. L. R. 285; Argus L. R. 230.—**AUS.**

PART V. SECT. 3, SUB-SECT. 2.

1543 ii. ——.]—In so far as it deals with the disqualification of a candidate for a corrupt practice the Ontario Election Act is a penal statute, & the charge against the candidate must be proved beyond a reasonable doubt before such disqualification is ordered. —*Re* SOUTH BRUCE PROVINCIAL ELECTION, JOHNSTON *v.* MCCALLUM, [1928] 1 D. L. R. 104; 61 O. L. R. 392.—**CAN.**

PART VI. SECT. 2.

1588 ii. ——.]—Special canons of interpretation are no more applicable to a taxing Act than to any other Act. —FOWLER & ANDREWS *v.* SPALLUMCHEEN TOWNSHIP, [1930] 3 W. W. R. 12; 53 B. C. R. 47.—**CAN.**

1588 xi. *Construction with reference to English law.*]—In continuing a statute which, like a taxing statute, is meant to apply to all persons irrespective of their personal law, it is quite unnecessary to investigate the meaning of the words in the particular system of jurisprudence that may be followed by the assessee, & it is proper to construe the words in question with reference to the English Law on the point. — UMAR BAKHSH *v.* PUNJAB COMR. OF INCOME TAX (1931), I. L. R. 12 Lah. 725.—**IND.**

1674. *Add. Citations :*—[1929] 1 Ch. 686; 98 L. J. Ch. 118; 140 L. T. 415; 93 J. P. 129; 27 L. G. R. 264; *subsequent proceedings* (No. 2), 144 L. T. 132.

1678. *Add. Annotation :*—**Consd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932), 96 J. P. 159.

1679. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt (1932) 96 J. P. 159.

Part VIII.—Enforcement.

1723. *Add. Annotations :*—**Refd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441; Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485.

1726. *Add. Annotations :* — **Apld.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485. **Distd.** Ruislip-Northwood Urban District Council *v.* Lee (1931), 145 L. T. 208. **Refd.** Clark *v.* Epsom R. D. C., [1929] 1 Ch. 287.

1755. *Add. Annotations :*—*As to* (1) **Consd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485. **Refd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441; A.-G. *v.* Premier Line, Ltd. (1931), 48 T. L. R. 104. *Generally.* **Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1931] A. C. 494.

1757. *Add. Annotation :*—**Refd.** Clark *v.* Epsom R. D. C., [1929] 1 Ch. 287.

1758. *Add. Annotation :*—**Consd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485.

1768. *Add. Annotation :*—**Consd.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485.

1777a. —— —.]—Had this provision been contained in the English statute I entertain no doubt that in the absence of express penalty where some one was in terms by statute in a public matter required to do a certain act, or if the act were to be done, to do it in a certain way, that if that person failed to obey that statute, the act done would be in contempt of the statute, & therefore, though there were no express penalty provided, the ordinary common law rules would apply. In such case, the matter being one of public obligation & the act done in contempt of the statute, in an appropriate case the remedy would lie for misdemeanour (SLESSER, L.J.). —THE TORNI, [1932] P. 78, 90; 101 L. J. P. 44; 147 L. T. 208; 48 T. L. R. 471, C. A.

1779. *Add. Annotation :*—**Refd.** A.-G. *v.* Sharp (1930), 99 L. J. Ch. 441.

1812. *Add. Annotation :*—**Refd.** Minter *v.* Priest, [1929] 1 K. B. 655.

Part IX.—Repeal.

1896. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt, [1932] 2 K. B. 1.

1919. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt, [1932] 2 K. B. 1.

1928a. ——.]—SECRETARY OF STATE FOR INDIA *v.* HINDUSTHAN CO-OPERATIVE INSURANCE SOCIETY, No. 772a, *ante.*

1968. *Add. Annotation :*—*As to* (1) **Consd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

1974. *Add. Annotation :*—**Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt, [1932] 2 K. B. 1.

1989. *Add. Annotation :*—**Refd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

1990. *Add. Annotation :*—**Refd.** Farnworth *v.* Manchester Corpn. (1929), 98 L. J. K. B. 224.

2007. *Add. Annotation :*—**Refd.** R. *v.* London County Council, *Ex p.* Entertainments Protection Assocn., Ltd., [1931] 2 K. B. 215.

2048. *Add. Annotation :*—**Refd.** Smith *v.* Metropolitan Properties Co., [1932] 1 K. B. 314.

PART VII. SECT. 4.

1682 iii. ——.]—VANCOUVER CITY *v.* RICHMOND, [1928] 4 D. L. R. 506; [1928] 3 W. W. R. 166.—**CAN.**

PART VIII. SECT. 1.

s. *Right to enforce statutory duty—No right of waiver.*]—A person entitled to sue to enforce the performance of a statutory duty cannot waive that right by acquiescence or conduct or even by an express contract.—OUTEN *v.* STEWART & GRANT & WINNIPEG CITY, [1932] 3 W. W. R. 193.—**CAN.**

PART VIII. SECT. 3, SUB-SECT. 1.

1734 xxv. ——.]—Where a liability not existing at common law is created by a statute which at the same time gives a special & particular remedy for enforcing it, the remedy provided by the statute must be followed.—FT. PULP CO. *v.* SPANISH RIVER PULP CO., [1928] 1 D. L. R. 753; 61 O. L. R. 512; *affd.*, [1929] 4 D. L. R. 192; 64 O. L. R. 148.—**CAN.**

1734 xxvi. ——.]—Where a liability not existing at common law is created by a statute which also gives a particular & special remedy for enforcing it that remedy must be followed.—DISTRICT MUNICIPALITY, COLDSTREAM OF *v.* BELLEVUE (B. C.), [1929] 4 D. L. R. 52; 2 W. W. R. 597.—**CAN.**

1734 xxvii. ——.]—FORT FRANCES PULP & PAPER CO. *v.* SPANISH RIVER PULP & PAPER MILLS, LTD., [1931] 2 D. L. R. 97.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 2.—D.

1924 ii. ——.]—Sections of a public Act which are incorporated by reference in a private Act are not repealed by the repeal of the public Act.—GRANBY CONSOLIDATED MINING, SMELTING & POWER CO., LTD. *v.* WEST KOOTENAY POWER & LIGHT CO., LTD., [1929] 2 D. L. R. 651; 2 W. W. R. 470; 41 B. C. R. 89; *affg.*, [1928] 4 D. L. R. 724; 3 W. W. R. 301; 40 B. C. R. 269.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 2.—F. (b) iv.

1975 vii. ——.]—In the case of conflict between a general statute & one passed for a particular purpose the latter must, so far as that purpose extends, prevail, whether the special Act was passed before or after the general Act.—LYNE *v.* CHECKER STAGE SERVICE, LTD., [1932] 1 W. W. R. 335.—**CAN.**

PART IX. SECT. 1, SUB-SECT. 2.—G. (b).

1983 vii. ——.]—R. *v.* RUDDICK, [1928] 3 D. L. R. 208; 49 Can. Crim. Cas. 323; 62 O. L. R. 248.—**CAN.**

Part XI.—Codifying and Consolidating Statutes.

2094. *Add. Annotations :*—**Consd.** Shotts Iron Co. *v.* Curran, [1929] A. C. 409. **Apld.** Stag Line, Ltd. *v.* Foscolo Mango & Co. (1931), 48 T. L. R. 127.

Part XII.—Statutory Rules and Orders.

2114. *Add. Annotation :*—**Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

2132. *Add. Annotation :*—**Consd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

2134. *Add. Annotation :*—**Consd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

PART XII. SECT. 1.

sg. *Power of disallowance—Time limit for exercise.*]—Sect. 10 of the Acts Interpretation Act, 1904-1930, requires all Regulations made under statutory power to be laid before both Houses of Parliament, & further provides that : " If either House of the Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation, such regulation shall thereupon cease to have effect " :—*Held :* the words above quoted indicated that it was the intention of the legislature to fix a time beyond which the disallowance of any Regulation should not be effected, & not to impose a condition on the power to disallow.—DIGNAN *v.* AUSTRALIAN STEAMSHIPS PTY., LTD., [1931] Argus L. R. 213 ; 5 A. L. J. 74.—**AUS.**

PART XII. SECT. 2.

2126 iii. ——.]—BYERS *v.* CHINN, [1928] App. D. 322.—**S. AF.**

2126 iv. —— *Not when in conflict with statute.*]—R. *v.* WRIGHT, [1928] 1 D. L. R. 701 ; 59 N. S. R. 443.—**CAN.**

PART XIII. SECT. 4.

sc. *Object & construction.*]—All rules of ct. are nothing but provisions intended to secure the proper administration of justice, & it is essential that they should be made to serve & be subordinate to that purpose.—SALDANHA *v.* SALDANHA (1929), I. L. R. 54 Bom. 288.—**IND.**

STOCK EXCHANGE.

Part II.—Constitution.

14. *Add. Annotation :*—**Refd.** Cookson *v.* Harewood (1931), 101 L. J. K. B. 394, n.

Part III.—Relation between Parties to Stock Exchange Transactions.

101. *Add. Citations :*—[1929] 1 K. B. 321 ; 98 L. J. K. B. 243 ; 73 Sol. Jo. 13.

195. *Add. Annotations :*—**Refd.** Legh *v.* Legh (1930), 143 L. T. 151 ; Lynn *v.* Bamber, [1930] 2 K. B. 72.

215. *Add. Annotation :*—**Consd.** Stanley & Co. *v.* Solomon, Ltd., [1932] 2 K. B. 287.

217a. —— —— **What amounts to "loss sustained" by principal.**]—By an agreement in writing between pltfs., who were stockbrokers & members of the Stock Exchange, & defts., who were also stockbrokers but not members of the Stock Exchange, the latter agreed that in consideration of receiving 50 per cent. of any commission on business introduced by them to pltfs. they would be liable for 50 per cent. of any "loss sustained" by pltfs. in connection with such business. Defts. introduced to pltfs. one W., & as a result of his transactions he incurred a debt to pltfs. no part of which had been paid. W. executed a deed of assignment of his property for the benefit of his creditors, & both pltfs. & defts. were assenting creditors to the deed. Pltfs. claimed that on the execution of that deed of assignment a loss had been sustained by them within the meaning of the abovementioned agreement, & they brought an action to recover 50 per cent. of W.'s debt :—*Held :* the mere signing of the deed of assignment by W. did not establish a loss sustained by pltfs., & that in the absence of evidence of actual loss sustained by them the action failed.—Stanley (Montagu) & Co. *v.* Solomon (J. C.), Ltd., [1932] 2 K. B. 287 ; 101 L. J. K. B. 532 ; 147 L. T. 196, C. A.

223a. Necessity for consent of principal.]—Under the Rules & Regulations of the Stock Exchange & under the general law half-commission is not payable to an agent without the principal's consent.—Waithman, Donegan & Co. *v.* Ramirez (1932), 48 T. L. R. 360 ; 76 Sol. Jo. 290.

PART III. SECT. 2, SUB-SECT. 1.

24 i. *Fiduciary relation—Agency—Client's right to follow money.*]—Where share certificates are delivered by the owner thereof to a broker with instructions to sell them the broker's relation to the owner is a fiduciary one, the certificates are impressed with a trust, & the broker should not be heard to give any explanation of his dealing with the certificates inconsistent with his authority.—Plummer *v.* Mack & Timms, [1930] 2 W. W. R. 107 ; 3 D. L. R. 999 ; *affd.*, [1930] 3 W. W. R. 188 ; 4 D. L. R. 768.—**CAN.**

24 ii. —— ——.]—The legal relationship of a stockbroker & his client is a fiduciary one, that of agent & principal ; &, therefore, the broker is not entitled, without the fullest knowledge & assent of the client, to put himself in a position where his interest conflicts with that of his client. He must deal for a client in the capacity of agent, &, therefore, has not the right to trade on the stock markets for himself & at the same time transact his clients' business thereon as their broker.—R. *v.* Solloway & Mills, [1930] 2 W. W. R. 516 ; 54 Can. C. C. 129.—**CAN.**

h i. ——.]—Hunnings (H. E.) & Co., Ltd. *v.* Hall, [1932] 2 W. W. R. 511 ; 4 D. L. R. 270.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—A.

sx. *Onus of proof.*]—In an action by a customer against a stockbroker for wrongfully selling certain stocks & bonds, which he had deposited with the broker as collateral security for his account, & retaining the proceeds : —*Held :* pltf. was not under the onus of proving that the conditions which under the contract between the parties would give deft. the right to sell the securities had not come into existence, but that the onus was on deft. to prove that said conditions had arisen ; & even if this view as to the onus was incorrect, pltf. had at any rate made out a *primâ facie* case.—Lockett *v.* Solloway Mills & Co., Ltd., [1931] 3 W. W. R. 302 ; *affd.*, [1932] 1 W. W. R. 886.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2.—B.

sa. *Pledging securities of client—For advances to broker.*]—*Held :* when collateral security is deposited with a broker & is by him pledged to a bank for any sum, & the loan from the bank is entirely paid off, & at the same time the debt to the broker for which the collateral has been deposited, the rights of both the broker & the bank are at an end, & the owner of the collateral is entitled to its return.—*Re* Wiggins, Ltd., [1931] 3 D. L. R. 383 ; O. R. 337.—**CAN.**

PART III. SECT. 2, SUB-SECT. 3.—B.

50 iii. ——.]—English *v.* Kern Agencies, Ltd., [1931] 2 W. W. R. 22 ; 2 D. L. R. 948.—**CAN.**

q i. —— ——.]—Pltf., a customer of a broker, delivered to the latter a share certificate registered in his name with instructions to sell the shares at a certain price or better. The broker sold the shares for its own purposes at a lower price, & when pltf. demanded his certificate the broker tendered him another certificate of the same co. for the same number of shares. This pltf. refused ; & sued for conversion :—*Held :* pltf. was entitled to judgment &, in the absence of other evidence of the value of the shares at the date of the sale, the amount to which pltf. was entitled was that for which the shares were sold. MacInnes *v.* Cartwright & Crickmore, Ltd., [1931] 1 W. W. R. 81 ; 1 D. L. R. 572 ; *affd.*, [1931] S. C. R. 425 ; 3 D. L. R. 693.—**CAN.**

t i. —— *Defence—Rules of stock exchange.*]—Damages were claimed for breach of an alleged agreement to carry certain stocks & maintain pltf. in a short position with respect thereto :—*Held :* even if there was such a definite agreement, the claim failed because under the rules of the stock exchange deft. was obliged to return the stock borrowed with respect to the short transactions before the shares had dropped to the covering point which was alleged by pltfs., & deft.'s evidence had not been refuted that other stock could not be secured to take their place &, therefore, deft. had to buy "to cover."—Clay & Clay *v.* Powell & Co., Ltd., [1931] 2 W. W. R. 325 ; 3 D. L. R. 538 ; 44 B. C. R. 124 ; *revsd. on other grounds*, [1932] S. C. R. 210 ; 1 D. L. R. 366.—**CAN.**

PART III. SECT. 2, SUB-SECT. 6.

f i. —— *Fictitious transactions—What must be proved.*]—Where a stockbroker acting as agent for a customer does not obey the latter's orders in making sales & purchases, but reports to him fictitious transactions, it is not necessary for the customer, in order to make out a cause of action for the recovery of the money paid to, & the value of the securities deposited with, the broker, to prove that all the transactions so reported were fictitious. The customer's right to maintain such an action is not affected by the fact that some of the transactions in the series of dealings between him & the broker were for cash, nor is his right of action dependent on his returning or tendering a return of the shares which he had in fact received.

Part VII.—Illegality and Fraud.

430. *Add. Annotations :—As to* (1) **Consd.** Weddle, Beck & Co. *v.* Hackett, [1929] 1 K. B. 321. **Refd.** Ironmonger & Co. *v.* Dyne (1928), 44 T. L. R. 497.

JOHNSON *v.* SOLLOWAY, [1932] 1 W. W. R. 481; *affd.*, [1932] 3 W. W. R. 316.—**CAN.**

PART IV. SECT. 7, SUB-SECT. 1.

sb. *Delay in delivery of certificates—What is reasonable time.*]—Defts., stockbrokers in C., on Sept. 14, 1929, wired pltfs., stockbrokers in T., to buy certain shares at a named price. Pltfs. were, to the knowledge of defts., members of the T. Stock Exchange. Pltfs. bought the shares upon the Exchange on the same day & at the named price. Defts. knew that the shares would be bought on the Exchange & according to its rules & customs. Pltfs. were not able to procure delivery of the certificates for the shares until Sept. 27. On Oct. 1 they drew on defts. for the price, attaching the certificates to the draft. Defts. on Oct. 4 refused to take delivery on account of the delay:—*Held:* in the absence of an express stipulation as to the immediate forwarding of the certificates or of a demand to forward them at once, the delay in procuring & forwarding them was not unreasonable & defts. were not justified in repudiating the contract.—CRANG & CO. *v.* PLOTKE & CO., [1931] 1 D. L. R. 668; 66 O. L. R. 332.—**CAN.**

PART V. SECT. 1.

373 ii. —— *Failure to deliver within reasonable time—Waiver.*]—CLARK & CO. *v.* ROBINSON, [1930] 4 D. L. R. 158; 42 B. C. R. 409.—**CAN.**

373 iii. —— ——.]—In an action in which stockbrokers were held liable in damages to a customer for selling without his authority shares of his which they were holding for him:—*Held:* in assessing damages, the date when pltf. would have sold the shares had he not been prevented from doing so by their prior sale by the brokers should be determined on the assumption that he would have done what prudent people would have done & have sold when the hour came to sell. In the present case it was held that this point of time was fixed as at that date when pltf., after objecting to a statement of his account which showed said shares as sold, requested that they be placed to his credit because he wanted to sell them. He was, therefore, awarded the difference between the low market price on that day & the price at which defts. had previously sold.—SUNDERLAND *v.* SOLLOWAY MILLS & CO., LTD., [1930] 3 W. W. R. 641; 43 B. C. R. 297; *affd.*, [1931] 2 W. W. R. 393; 44 B. C. R. 24; *affd.*, [1931] S. C. R. 714.—**CAN.**

PART VI. SECT. 2.

400 i. *Property available for distribution among creditors—Shares purchased by broker for client.*]—In determining on the bkpcy. of a stockbroker whether certain shares, certificates for which were in his possession at the time of the bkpcy., are the property of a claimant thereto who had been dealing, as a buyer of such shares, with the broker, or are assets in the hands of the trustee, the distinction must be observed between the case where the relationship of the broker & the claimant was that of vendor & purchaser & the case where the relationship was that of agent & principal. In the former case the shares will not be held to be the property of the claimant unless certificates therefor have been specifically appropriated to the claimant's contract. In the latter case, *i.e.* where the relationship was that of principal & agent, it must be held that the certificates on hand include those for the shares bought for the claimant if the certificates on hand of the kind in question are sufficient to meet the demands of all purchasers of such shares; & the claimant will be entitled to delivery of the certificates provided he has either paid, or pays therefor in full, or if he has to his credit on the books of the broker an amount sufficient to meet the balance, if any, due from him on said shares.—*Re* STOBIE-FORLONG-MATTHEWS, LTD., *Re* KERN AGENCIES, LTD., [1931] 1 W. W. R. 817; 3 D. L. R. 170; 39 Man. L. R. 476; 12 C. B. R. 313; *revsg.*, [1931] 1 W. W. R. 304.—**CAN.**

400 ii. —— *Card of membership of Exchange.*]—A registered broker in the Sir Dinshaw Petit Native Share Brokers' Hall, Bombay, was declared a defaulter & his card of membership was forfeited by the directors. Shortly afterwards he was adjudicated an insolvent under Presidency Towns Insolvent Act, 1909, & by virtue of the material sections thereof all his property wherever situated which might belong to or be vested in him vested in the Official Assignee of Bombay & became divisible among the insolvent's creditors. In an action by the Official Assignee claiming against the Native Share & Stock Brokers' Assocn. a declaration that the card of the insolvent & all rights & benefits annexed thereto were vested in the Official Assignee, & that he was entitled to the net proceeds of their sale:—*Held:* by virtue of the nature & character of the assocn. as regulated by the deed of assocn. & the rules made thereunder, in the case of a defaulting member who was expelled from the assocn., no interest in his card remained in himself & none that could pass to his assignee. —BOMBAY OFFICIAL ASSIGNEE *v.* SHROFF (1932), 48 T. L. R. 443, P. C.—**IND.**

n i. —— *Payment to obtain shares—Lien for salvage.*]—Where in pursuance of the authority of an order of the ct. the stockbroker's trustee in bkpcy. has obtained share certificates from another broker who acted as the bkpt.'s correspondent on another exchange & in order to do so has had to pay said correspondent the amount due on said shares, these shares are, except with respect to the money so expended, in the same position as shares which, in the ordinary course, come into the hands of the trustee in taking possession of the assets of the bkpt.; the amount expended to salvage such shares, & interest thereon, constitutes, however, a lien upon them which should be paid *pro rata* by the customers who benefited by the course pursued by the trustee.—*Re* CLARK (R. P.) & CO. (VANCOUVER), LTD., [1931] 3 W. W. R. 79; 44 B. C. R. 301.—**CAN.**

sx. *Rights of clients.*]—On the bkpcy. of a stockbroker, if there are sufficient shares of any particular description on hand to satisfy orders given therefor by customers to the broker they should be delivered to such customers if the latter have paid for them in full. If the shares have not been fully paid for by the customers they should, before receiving the shares, be required to make payment of the balance due thereon with interest & to make payment of any other indebtedness owing the broker. If there are not available sufficient share certificates of a particular description to satisfy the purchases by the different customers, the latter should be given their *pro rata* number of the shares which are available.—*Re* CLARK (R. P.) & CO. (VANCOUVER), LTD., [1931] 3 W. W. R. 79. —**CAN.**

sy. ——.]—On the bkpcy. of a stockbrokerage co.:—*Held:* the procedure by which it recorded its transactions on behalf of its customers was such as enabled the latter to identify & claim certain specific securities or the proceeds thereof as their property.—*Re* KERN AGENCIES, LTD. (NO. 3), [1932] 1 W. W. R. 585.—**CAN.**

sa. *Pledge of own & client's stock—Right of client to payment out of proceeds.*]—*Re* WIGGINS, LTD., TRAVERS' & SPRATT'S CLAIMS, [1931] 4 D. L. R. 338; O. R. 573.—**CAN.**

sb. *Recovery of amount paid for shares on behalf of customer.*]—The trustee in bkpcy. of a stock-brokerage co. sued to recover money paid by the brokers for the purchase of shares on behalf of deft. Pltf. was at all times ready to deliver, & during the trial did deliver, enough shares of the particular stocks purchased, free from the demands of others, to satisfy deft.'s demand:—*Held:* it was not necessary that the identical shares purchased for deft. should have been earmarked & kept available for him, the brokers being only required to have available for delivery, on demand & payment, enough of the kind of shares ordered by him; but deft. was obliged to tender the amount due the brokers before he could insist on delivery of the shares, & since he had not done so, & enough shares were available for him, the trustee was entitled to judgment.—STOBIE-FORLONG ASSETS, LTD. *v.* BARKER, [1932] 2 W. W. R. 274; 3 D. L. R. 182.—**CAN.**

sd. *Pledge of shares to bank—Return of shares by bank to trustee—Customer not entitled to return of specific shares.*]—*Re* CARROLL & WRIGHT, *Ex p.* BAIN, [1932] 3 D. L. R. 410.—**CAN.**

PART VI. SECT. 3.

sd. *Differences payable from one stockbroker to another—Whether divisible among stock exchange creditors only on insolvency.*] — KAIKUSHROO TALYARKHAN *v.* BAI GULAB (1928), I. L. R. 53 Bom. 508.—**IND.**

PART VII. SECT. 1, SUB-SECT. 1.

sf. *Security Frauds Prevention Act, 1930 (Ont.)—Security—Agreements relating to real property—"Lunch & lecture" method.*]—*Held:* the purpose & intent of the Act are to prevent & put an end to such dealings & therefore an order enjoining resps. for so trading in securities was granted.—A.-G. OF ONTARIO *v.* HUTESON, [1931] 1 D. L. R. 56; 66 O. L. R. 387.—**CAN.**

sh. —— *Officer of Dominion company trading—No defence.*]—R. *v.* HAZZARD (1931), 57 Can. C. C.—**CAN.**

si. *Security Frauds Prevention Act, 1929—What amounts to trading.*]—The conduct of applt. in systematically soliciting & obtaining from the public subscriptions to the capital stock of a proposed co. which was in process of incorporation, held to constitute a "trading" in "securities" within Security Frauds Prevention Act, 1929 (c. 10).—R. *ex rel.* SYMONS *v.* SPRINGER, [1930] 2 W. W. R. 396.—**CAN.**

so. *Liability of company.*]—A co. is subject to indictment under sect. 231

432. *Add. Annotations :*—**Consd.** Ironmonger & Co. *v.* Dyne (1928), 44 T. L. R. 497. **Reld.** Ellesmere Earl *v.* Wallace, [1929] 2 Ch. 1 ; Weddle, Beck & Co. *v.* Hackett, [1929] 1 K. B. 321.

433. *Add. Annotations :*—**Reld.** Ellesmere (Earl) *v.* Wallace, [1929] 2 Ch. 1 ; Weddle, Beck & Co. *v.* Hackett, [1929] 1 K. B. 321.

434a. —— —— **One party agent.**]—BROWN *v.* ST. PHALLE, LTD. (1930), 74 Sol. Jo. 122.

450. *Add. Annotation :*—**Reld.** Ellesmere (Earl) *v.* Wallace, [1929] 2 Ch. 1.

of the Criminal Code.—WEBSTER & *v.* SOLLOWAY MILLS & CO., LTD. (No. 2), [1930] 3 W. W. R. 381 ; *on appeal*, [1931] 1 D. L. R. 831 ; [1930] 3 W. W. R. 445.—**CAN.**

PART VII. SECT. 1, SUB-SECT. 2.

425 xi. —— ——.]—BEYEA *v.* JOHNSTON & WARD, [1930] 4 D. L. R. 421 ; *affd.*, [1930] 1 D. L. R. 219.—**CAN.**

sp. *Burden of proof.*]—In order for transactions between a broker & his customer to be illegal under sect. 231 of the Criminal Code both parties must intend that instead of the delivery of the article dealt in there shall be a mere payment of the difference between the contract price & the market price. The burden of proving that the transaction was illegal as being a mere cover for the settlement of "differences" rests with the party making the assertion ; he must plead the other party's participation in the illegal purpose & prove facts such as to lead to the judicial inference that the other party knew of the illegal purpose & knowingly assisted in carrying it out.—TULL (G. F.) & ARDERN, LTD. *v.* SHOULDICE, [1932] 1 W. W. R. 144.—**CAN.**

STREET AND AERIAL TRAFFIC.

Part I.—Regulation of Traffic.

3. *Add. Annotation :*—**Follo.** Edwards *v.* Wanstall (1929), 46 T. L. R. 101.

3a. —— —— —— ——.]—Under sect. 21 of above Act, a local authority is not confined to making orders for special occasions, but may make an order of a general character restricting traffic of certain kinds in certain streets between specified hours daily, & such order is valid without being confirmed as a bye-law under Public Health Act, 1875 (c. 55), s. 184.—EDWARDS *v.* WANSTALL (1929), 142 L. T. 288 ; 94 J. P. 51 ; 46 T. L. R. 101 ; 28 L. G. R. 38 ; 29 Cox, C. C. 56, D. C.

3b. —— —— **Whether confirmation of order necessary—Under Public Health Act, 1875 (c. 55), s. 184.**]—EDWARDS *v.* WANSTALL, No. 3a, *ante*.

5a. **Acquisition of land for parking places—Public Health Act, 1925 (c. 71), s. 68—Objection—When appeal lies.**]—Where a local authority has given notice under sect. 68 (2) of above Act, of a proposal to acquire land in order to provide parking places for vehicles, & has given a decision against an objection duly made thereto under sub-sect. 3, the objector, being entitled to make the objection, is a "person . . . aggrieved" by the decision, & may accordingly appeal therefrom under the provisions of sub-sect. 3, although he alleges no grounds of objection personal to himself, but such only as are common to himself & other ratepayers & inhabitants.—SEVENOAKS URBAN DISTRICT COUNCIL *v.* TWYNAM, [1929] 2 K. B. 440 ; 98 L. J. K. B. 537 ; 141 L. T. 566 ; 93 J. P. 189 ; 45 T. L. R. 508 ; 73 Sol. Jo. 334 ; 27 L. G. R. 525, D. C.

5b. —— —— **To what land applicable—Land acquired for street widening.**]—*Held :* where land may be lawfully applied for the purpose of street widening, a local authority can, pursuant to its powers under sect. 68 (1) of above Act, use it as a parking place for motor cars.—A.-G. *v.* SUNDERLAND CORPN., [1929] 2 Ch. 436 ; 93 J. P. Jo. 480 ; 45 T. L. R. 618 ; *affirmed*, [1930] 1 Ch. 168 ; 99 L. J. Ch. 44 ; 142 L. T. 61 ; 94 J. P. 57 ; 46 T. L. R. 10, C. A.

18. After this case add :—

——.]—*See, now*, Road Traffic Act, 1930 (c. 43), s. 49.

PART I. SECT. 1.

sa. *"Parking" of vehicles—Whether regulation of traffic.*]—SCHILLING *v.* MELBOURNE CITY, [1928] V. L. R. 302 ; [1928] Argus L. R. 203.—**AUS.**

PART I. SECT. 2, SUB-SECT. 1.

e i. ——.]—WIMBLE F. T. & Co. *v.* GUILLESSER, [1928] S. R. Q. 20 ; 22 Q. J. P. R. 38.—**AUS.**

e ii. ——.]—When two vehicles approach one another at an intersection the driver of the vehicle on the left is under a duty to permit the other vehicle to pass over the intersection first, & if a person is injured because of the failure of the driver on the left to observe this rule there is evidence of negligence on the part of said driver, & the burden is cast upon him to show that under all the circumstances he was not negligent.—MESS *v.* CALVER, [1929] 3 D. L. R. 684 ; 2 W. W. R. 442 ; 23 S. L. R. 505.—**CAN.**

e iii. ——.]—LLOYD *v.* HANNAFIN [1931] 1 W. W. R. 415 ; 2 D. L. R. 1000 ; 43 B. C. R. 401.—**CAN.**

e iv. —— *Validity of municipal bye-law.*]—A regulation as to the right of way of vehicles at street intersections is a rule of the road within the meaning of a statute which empowers a municipality to regulate traffic, but limits this power to regulations other than rules of the road. Therefore a municipal bye-law which lays down a rule as to the right of way which is in conflict with the rule established by a statute applicable to the municipality is *ultra vires*.—PIPE *v.* HOLLIDAY, [1930] 1 W. W. R. 225 ; 2 D. L. R. 73 ; 42 B. C. R. 230.—**CAN.**

e v. ——.]—*Held :* the fact that the car to the left is within the intersection before the car to the right enters it does not displace the latter's right to have the right of way. "On the contrary, in an action resulting from a collision within an intersection the first question to be answered is : Why did not the driver to the left give way & keep out of the danger zone ?—KENNEDY LUMBER CO., LTD. *v.* PORTER, [1932] 1 W. W. R. 230.—**CAN.**

e vi. ——.] With respect to motorists approaching an intersection from different directions the fact that the one on the left has been the first to reach or even enter upon the intersection does not render the rule of the road inoperative.—HALL *v.* TINCK, [1932] 3 W. W. R. 101.—**CAN.**

m i. —— ——.]—It is the duty of traffic on a side road to give way to that on the main road, but the traffic on the main road is not entitled to continue its course & speed without regard to traffic from the side roads.—RENNIE *v.* FREMANTLE MUNICIPAL TRAMWAYS & ELECTRIC LIGHT BOARD (1927), 29 W. A. L. R. 130.—**AUS.**

m ii. —— ——.]—BURNS & CO., LTD. *v.* CORRY, [1928] 1 W. W. R. 889 ; *sub nom.* BURNS & CO. *v.* CARLTON HOTEL, [1928] 2 D. L. R. 845.—**CAN.**

m iii. —— ——.]—The fact that the driver of a motor car has the right of way with respect to the driver of a car on an intersecting street does not entitle him to recover for damage resulting from a collision where the real cause of the damage was the excessive speed of his car & his failure to take precautions to avoid the collision.—RADIO TAXICAB CO., LTD. *v.* AVERBACK, [1928] 1 W. W. R. 685.—**CAN.**

m iv. —— ——.]—HORNBY *v.* PATERSON (B. C.), [1930] 1 D. L. R. 86 ; [1929] 3 W. W. R. 276 ; 41 B. C. R. 548.—**CAN.**

m v. —— ——.]—PAUL *v.* DINES, [1929] 3 D. L. R. 617 ; 3 W. W. R. 287 ; 41 B. C. R. 49.—**CAN.**

m vi. —— ——.]—Although it is the duty of the driver of a motor vehicle entering a main road from a private road or cross road to proceed with the greatest caution, it does not follow that a driver on the main road is relieved from responsibility ; he is not entitled to rely on the driver on the private road stopping & allowing him to pass, but he must watch the vehicle on the private road & take the steps necessary to avoid a collision if the driver on the private road does not give way.—CURRIE *v.* MILNE & MILNE, [1930] 2 W. W. R. 159 ; 3 D. L. R. 995 ; 24 S. L. R. 437.—**CAN.**

m vii. —— ——.] HOLLIS *v.* KIRKPATRICK (1930), 2 M. P. R. 418.—**CAN.**

m viii. —— ——.]—Observations on the duties of drivers of vehicles approaching an intersection.—LYALL *v.* MCALINDEN, [1930] W. A. L. R. 113. —**AUS.**

n i. —— *Traveller on cross road reaching intersection first.*]—The mere fact that the traveller holding the servient position reaches the limit of intersection first, while relevant evidence, does not of itself give him the right of way.—SANDS *v.* GREER, [1930] 3 D. L. R. 67 ; 65 O. L. R. 169.—**CAN.**

PART I. SECT. 2, SUB-SECT. 3.

19 i. *No other traffic on road.*]—Notwithstanding Highway Traffic Act, 1930, requiring vehicles to travel on the right-hand side of the road, the driver of a vehicle may travel on any part of a road so long as there is no other traffic in the neighbourhood.—BELL *v.* HUTCHINGS, [1931] 2 W. W. R. 488 ; *revsd. on other grounds*, [1932] 1 W. W. R. 49 ; 1 D. L. R. 468.—**CAN.**

PART I. SECT. 2, SUB-SECT. 4.

sb. *General rule.*] — Drivers of vehicles on highways cannot be required to regulate their driving as if in constant fear that other drivers who are under observation, & apparently acting reasonably & properly, may possibly act at a critical moment in disregard of their own as well as others, safety.—COLDWELL *v.* MUNICIPAL TRAMWAYS TRUST, [1929] S. A. S. R. 88.—**AUS.**

26 iii. —— ——.]—The driver of a motor-car is usually able, & is expected, to keep a look out for vehicles & pedestrians crossing his path upon their lawful occasions, & to warn them if

SECT. 4.—RESTRICTIONS AS TO TRAFFIC.

(Vol. XLII., p. 846.)

See, also, Road Traffic Act, 1930 (c. 43), ss. 46, 47.

33a. Restriction of motor coaches in certain areas —Validity of regulations.]—A motor coach co., which held a number of metropolitan stage-carriage licenses, owned coaches which plied for hire on regular services in the metropolitan area & home counties. These coaches started from Upper Regent Street, London, where the booking office of the co. was. The Minister of Transport gave notice that he proposed to make regulations under London Traffic Act, 1924 (c. 34), s. 10, which in effect provided that motor coaches should not at any time on any week-day be on any street within a prescribed "inner area" of London, & that they should not be on any street within a prescribed "outer area" except at certain permitted hours. Upper Regent Street was within the outer area, & just on the border of the inner area:—*Held:* the Minister had power under the Act to make the proposed regulations.—R. *v.* MINISTER OF TRANSPORT, *Ex p.* SKYLARK MOTOR COACH CO., LTD. (1931), 144 L. T. 700; 47 T. L. R. 325.

Part II.—Traffic Nuisances and Offences.

34. *Add. Annotation:*—**N.F.** Sheffield Corpn. *v.* Kitson, [1929] 2 K. B. 322.

34a. Proceedings under Town Police Clauses Act, 1847 (c. 89), s. 47—Consent of Attorney-General.]—A corpn. was convicted upon an information preferred on behalf of a limited co. under above sect. by one of its directors, for permitting a motor omnibus to be used as a hackney carriage within the prescribed area, without having obtained the necessary licence under the Act:—*Held:* Public Health Act,

they appear to be unaware of his approach.—MATHEWS *v.* WARD, [1930] S. A. S. R. 286.—**AUS.**

k i. —— *Duty to slow up at intersection.*]—A pedestrian crossing at an intersection has a right to assume that anyone who may come up to the crossing she has already entered will exercise care by reducing his speed, or stopping.—ALTER *v.* SOLOWAY, [1931] 2 D. L. R. 328; 66 O. L. R. 610.—**CAN.**

k ii. —— *Pedestrian walking in same direction.*]—The fact that a motorist sounds his horn once or oftener on seeing a pedestrian on the road ahead of him & walking in the same direction does not justify him in driving on without taking due care according to the circumstances. If he perceives that the pedestrian is not heeding the horn it is his duty to bring his car under such control, even to the extent of coming to a full stop, that he will be able to guard against an accident should the pedestrian suddenly swerve in his course so as to come in front of the car.—WOOD *v.* POWELL, [1932] 3 W. W. R. 100.—**CAN.**

k iii. —— ——.]—MALAWSKI *v.* WALTON, [1932] 3 W. W. R. 330.—**CAN.**

k iv. —— *Pedestrian boarding street car.*]—JAMES & JAMES *v.* PIROL, [1932] 3 W. W. R. 365.—**CAN.**

30 iii. —— *Observance of rule of road not sufficient.*]—ACORN *v.* MACDONALD (P. E. I.), [1929] 3 D. L. R. 173.—**CAN.**

o i. —— ——.]—*Held:* even if a driver has no intimation that a street-car ahead of him is about to stop until he is within ten feet from it, he is nevertheless bound to stop his car as quickly as possible as soon as he becomes aware that the street-car is about to stop for the purpose of taking on or letting off passengers.—KATZ *v.* CONSOLIDATED MOTORS, LTD., & THOMSON, [1930] 1 W. W. R. 305; 2 D. L. R. 241; 42 B. C. R. 214.—**CAN.**

sc. *When accident occurs—Duty to stop—Extent of duty.*]—Under Motor Vehicles Act, 1921, s. 36, as amended by Acts of 1925 & 1927, there is an obligation on the driver of a motor vehicle to stop when such motor vehicle is concerned in any accident happening on any road or street:—*Held:* the obligation to "stop" must be understood in the light of the circumstances in each case, & a reasonable interpretation of the obligation was that the motor vehicle must be brought to rest within such a distance & period of time as is reasonable in all the circumstances, including those peculiar to the driver, such as his power or loss of self-control.—MINERVINI *v.* WALSH, [1928] S. A. S. R. 286.—**AUS.**

sd. —— *Duty to report to police station.*]—In rule 32 of the rules framed by the United Provinces Govt. under Motor Vehicles Act, 1914, the words "if any person is injured" govern the whole of the clause; the duty of reporting an accident at the nearest police station arises, therefore, only if any person is injured.—R. *v.* MANSA SINGH (1929), I. L. R. 51 All. 996.—**IND.**

se. *Duty to sound horn.*]—Under s. 40 of the Vehicles & Highways Traffic Act, 1924, which provides that every motor vehicle shall be equipped with a suitable bell, horn, or other sufficient means of giving warning of its approach, but gives no direction as to under what circumstances the horn should be sounded or the warning given, the necessity for the sounding of the horn or the giving of a warning is a matter of discretion on the part of the driver determinable by the particular circumstances confronting him.—BLISS *v.* MALBERG (Alta.), [1930] 1 D. L. R. 361; [1929] 3 W. W. R. 641; 24 Alta. L. R. 334; *revsd.*, [1931] 4 D. L. R. 264; S. C. R. 710.—**CAN.**

sf. *Vehicle approaching bridge.*]—A person driving a motor car in a country where the roads are not yet permanently & smoothly surfaced must expect to meet varying surface conditions therein & is under the duty when approaching a bridge to exercise that reasonable care by which the effect of an inequality, if any, between the surface of the road & the floor of the bridge may be avoided.—BURGESS *v.* HODGINSON (Alta.), [1929] 3 D. L. R. 133; 2 W. W. R. 21.—**CAN.**

sg. *Vehicle driving into dark area.*]—There is a duty on the driver of an automobile in driving from a well-lighted area into a darkened area to take increased precautions, commensurate with the darkness, against possible dangers lurking therein.—OWENS *v.* CRANSTON (Man.), [1929] 4 D. L. R. 1072; 1 W. W. R. 498.—**CAN.**

sh. *Duty to move seasonably to right of road.*]—In an action for damages resulting from a collision between a bicycle which pltf. was riding & an automobile driven by deft. H.:—*Held:* the cause of the accident was the fact that deft. did not "seasonably" move his car to the right of the centre line of the highway; under the circumstances pltf. when faced with the oncoming car was not negligent in turning his bicycle to his left when he saw deft. was not moving his car to his right.—HARRIS *v.* HOWES & CHEMICAL DISTRIBUTORS, LTD., [1929] 4 D. L. R. 1066; 1 W. W. R. 217; 23 S. L. R. 306.—**CAN.**

si. *Duty in case of vehicle driving upon private drive opening on busy street.*]—COATES *v.* PARKER (N. B.), [1929] 3 D. L. R. 148.—**CAN.**

sg. *Driving in high wind.*]—The standard of skill & experience which the law requires of the driver of a motor car on a highway of varying surface resistances & running through open & sheltered stretches is not that of a novice; & a person driving a car when a normally high wind is blowing should be prepared for any normal exigencies to which the wind may give rise.—HIRD *v.* MILNE. [1930] 1 W. W. R. 977; 3 D. L. R. 513.—**CAN.**

sh. *Duties of driver of car to driver of horse.*]—Pltfs. were proceeding upon a highway in a vehicle drawn by a horse when deft. in an automobile came along behind them & wishing to pass them, ran into the horse as it was being turned to the left to go into a lane:—*Held:* pltf. driving the horse had the right to expect that deft. would give a signal, as required by Highway Traffic Act, s. 38. As no signal was given, there was no contributory negligence on the part of pltfs. in not seeing deft.—DE MOTT *v.* CLYSDALE, [1931] 2 D. L. R. 316; O. R. 1.—**CAN.**

sk. *Effect of automatic signals on standard of care.*]—The fact that a motor car is brought to a stop at a street intersection marked by a "stop" sign does not entitle the driver thereof to abandon care upon resuming the journey. Care must be exercised at all stages, & the first requirement of motor-car drivers is to be alert: to keep a sharp look out for possible dangers.—PIPE *v.* HOLLIDAY, [1930] 1 W. W. R. 225; 2 D. L. R. 73; 42 B. C. R. 230.—**CAN.**

1875 (c. 55), s. 253, takes the place of Town Police Clauses Act, 1847 (c. 89), s. 73, which enabled "any person" to recover penalties for offences against that Act, & therefore except in the case of information by a party aggrieved or the local authority for the district, the consent of the A.-G. is now a condition precedent to proceedings for the recovery of penalties under the Town Police Clauses Act, 1847 (c. 89).—SHEFFIELD CORPN. *v.* KITSON, [1929] 2 K. B. 322; 98 L. J. K. B. 561; 142 L. T. 20; 93 J. P. 135; 45 T. L. R. 515; 73 Sol. Jo. 348; 27 L. G. R. 533; 28 Cox, C. C. 674, D. C.

SUB-SECT. 21.—RINGING DOOR BELLS.

See Town Police Clauses Act, 1847 (c. 89), s. 28.

50a. Offence by tradesman — Delivery of newspapers.]—The mere fact of a man being instructed to deliver papers at the house of a third person is no answer to a complaint against him under Town Police Clauses Act, 1847 (c. 89), s. 28, charging him with having "wilfully & wantonly" disturbed the party & his family by violently knocking & ringing at the door at an unreasonable hour of the night.—CLARKE *v.* HOGGINS (1862), 11 C. B. N. S. 545; 142 E. R. 909.

Part III.—Lights on Vehicles.

55a. Effect of Road Transport Lighting Act, 1927 (c. 37), s. 11 (2)—On powers of Minister of Transport under Roads Act, 1920 (c. 72), s. 12 (1).]—*Held:* the words "or other authority" in Road Transport Lighting Act, 1927 (c. 37), s. 11 (2), did not include the Minister of Transport, & his power to make regulations under the powers conferred upon him by Roads Act, 1920 (c. 72), s. 12 (1), had not been revoked by Road Transport Lighting Act, 1927 (c. 37), s. 11 (2), & therefore a regulation which the Minister of Transport made on June 12, 1928, requiring a lamp to be carried on vehicles on the road at night for the illumination of the identification plate, was not *ultra vires*.—SWAITS *v.* ENTWISTLE, [1929] 2 K. B. 171; 98 L. J. K. B. 648; 142 L. T. 22; 93 J. P. 232; 45 T. L. R. 483; 73 Sol. Jo. 366; 27 L. G. R. 540; 28 COX, C. C. 680, D. C.

Part IV.—Hackney and Stage Carriages.

As to Public Service Vehicles, *see, now*, Road Traffic Act, 1930 (c. 43), Part IV.

76. *Add. Annotation:*—**Consd.** White *v.* Cubitt (1929), 46 T. L. R. 99.

76a. Public service vehicles—Transitional provisions—Right to continue service operating before Road Traffic Act, 1930 (c. 43)—Validity of regulation fixing date when service must have been operating.]—Road Traffic Act, 1930 (c. 43), s. 72 (1) prohibits the use of any vehicle as a stage carriage or express carriage for public service, as defined by sect. 61, except by persons holding a road service licence or licences to be granted by the comrs. of the traffic areas created by the Act, through which the route passes subject to the conditions thereby provided. By sect. 96 the Minister of Transport is authorised to make such orders as he may consider necessary for the transition from the enactments superseded by Part IV. of the Act, regulating the use of public service vehicles, to the pro-

PART IV. SECT. 1.

56 iv. ——.]—Railway Passenger Duty Act, 1842, ss. 13 & 15, contain regulations for the prevention of overcrowding in any "stage carriage." The Act contains no definition of the term "stage carriage":—*Held:* a motor omnibus, which had been chartered by the secretary of a football club to convey a party of club to a match at a fixed fare per passenger, was not a stage carriage on the occasion in question, in respect that it was not plying for hire from one stage to another, but was engaged in the performance of a private contract; & conviction of the conductor for overcrowding accordingly quashed. —M'KEE *v.* WEIR, [1929] S. C. (J.) 14. —**SCOT.**

sa. *"Carrying passengers for reward at separate & distinct fares for each passenger"—Some passengers so carried.*]—A motor-car is "used for carrying passengers for reward at separate & distinct fares for each passenger," within the definition of "motor omnibus" in Motor Omnibus Act, 1928, s. 21, if some of its passengers are so carried.—BLYTH *v.* ANDERSON, [1931] V. L. R. 153; Argus L. R. 154.—**AUS.**

PART IV. SECT. 2, SUB-SECT. 1.

o i. —— *Regulation of taxicabs.*]—The city bye-law in question which required operators & drivers of cabs for hire to take out licences, prescribed a "zone tariff" for non-taximeter cabs, a tariff by distance for cabs equipped with taximeters & a rate "by the hour" for both classes of cabs, with a proviso in this case of a minimum charge. It also provided that no owner of a licensed cab should require or permit any driver employed by him to be on duty more than sixty hours in any week. A further provision prohibited the granting of a licence to an operator of a motor vehicle who was not insured in the form required by Part VII. of Highway Traffic Act, 1930, subject to a proviso in the case of an owner of ten cabs; & provided for depriving of his licence an operator whose insurance had terminated:—*Held:* said provisions of the bye-law, except that requiring insurance, were valid.—*Re* WINNIPEG BYE-LAW NO. 14272, [1932] 2 W. W. R. 679; 3 D. L. R. 625.—**CAN.**

ob. *Licence fee for trucks plying for hire—Liability of owners outside municipality.*]—NORTH VANCOUVER *v.* STEWART F. R. & CO., [1928] 1 W. W. R. 586; 49 Can. Crim. Cas. 216; 39 B. C. R. 401.—**CAN.**

oc. *Omnibus licensed by town council plying for hire in county—Bye-law requiring additional licence to be taken out—Whether valid.*]—SCOTTISH MOTOR TRACTION CO., LTD. *v.* LANARKSHIRE COUNTY COUNCIL, [1928] S. C. (Ct. of Sess.) 909; *revsd. sub nom.* LANARKSHIRE COUNTY COUNCIL *v.* SCOTTISH MOTOR TRACTION CO., LTD. (1929), 142 L. T. 170, H. L.—**SCOT.**

od. *Compliance with statutory requirements—Personal to owner of public vehicle—Effect on contract to assign "stage - run."*]—MCLEAN - BUTORAC MOTORS *v.* CAMPBELL. [1930] 3 W. W. R. 39.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 3.

oe. *Omnibus—Agreement to carry passengers on specified journey for lump sum—Whether licence necessary.*]—BLYTH *v.* HUDSON, [1928] V. L. R. 587; [1928] Argus L. R. 397.—**AUS.**

of. *Motor omnibus.*]—The definition of "motor omnibus" in Motor Omnibus (Urban & Country) Act, 1927 (Vict.), s. 3, may be satisfied although the reward at separate & distinct fares for each passenger is not paid to a person who is an "owner" of the vehicle.—BLYTH *v.* HUDSON (1929), 41 C. L. R. 465; 2 A. L. J. 370; [1929] V. L. R. 82; Argus L. R. 73.—**AUS.**

og. *Construction of bye-law—Carrying on business of hiring vehicles "within the town."*]—THOM *v.* SIMPKIN, [1932] 3 W. W. R. 522.—**CAN.**

visions of Part IV., & may provide that existing licences in force before the commencement of the Act shall continue in force for a period fixed by the Order. By Public Service Vehicles (Transitory Provisions) No. 2 Order 1931, dated Mar. 13, the Minister ordered that where a person was, on Feb. 9, 1931, operating a service of public vehicles, & had before Mar. 31, 1931, applied for a road service licence under the Act, it should not be deemed to be an offence for him to continue that service pending the grant or refusal of that application. The prohibition contained in sect. 72 (1) of the Act was first brought into force, by Order of the Minister of Transport, on Apr. 1, 1931. Defts. commenced to operate a service of express coaches over a route between London & Aylesbury on Feb. 26, 1931, & applied in the prescribed manner for the grant of a road service licence from the Comrs. of the Eastern Area through which the route passed before Mar. 31, 1931, but their application was refused & an appeal to the Minister from the refusal dismissed. Defts. were later prosecuted & convicted at petty sessions for running their service without a road service licence, but, notwithstanding the conviction, continued to do so. In an action by the A.-G., at the relation of other motor coach owners holding licences to operate on the same route, for an injunction to restrain defts. from continuing their service :—*Held :* (1) the action was maintainable notwithstanding that the Act created a statutory offence & provided a penalty for its breach ; (2) as defts. were not operating a service of coaches on the route in question on Feb. 9, 1931, they did not come within the terms & conditions of Public Service Vehicles (Transitory Provisions) Order, No. 2 ; (3) in fixing Feb. 9 as the critical date on which coach services must have been in operation to obtain the protection of the last-mentioned Order, the Minister was not acting *ultra vires* the Act or unreasonably ; (4) sect. 81 (3), dealing with appeals to the Minister from a refusal to grant a new licence to a person who had held an old licence did not apply to defts. as they had never held any licences for the particular route under the Act, only under earlier superseded Acts ; (5) the ct. made a declaration in favour of the relators on defts. undertaking not to renew the service without obtaining a licence.—A.-G. *v.* PREMIER LINE, LTD., [1932] 1 Ch. 303 ; 101 L. J. Ch. 132 ; 146 L. T. 297 ; 48 T. L. R. 104 ; 75 Sol. Jo. 852 ; 30 L. G. R. 126.

76b. —— **Road service licence—Omission to obtain—Injunction.**]—A.-G. *v.* PREMIER LINE, LTD., No. 76a, *ante*.

76c. —— —— **Licence continuing in force pending appeal to Minister—Must be licence obtained under Road Traffic Act, 1930 (c. 43).**]—A.-G. *v.* PREMIER LINE, LTD., No. 76a, *ante*.

76d. —— —— **"Stage carriages"—What amount to.**]—A motor coach proprietor, having no road service licence for the conveyance of spectators from a point in T. to the football ground of the T. City Club, arranged that the coaches should be hired by the club, which conveyed the spectators to the ground at separate fares, which were paid to the club :—*Held :* on these facts, the coaches were "stage carriages" not "contract carriages" & the proprietor ought to have been convicted on an information for permitting them to be used without a road service licence.—OSBORNE *v.* RICHARDS (1932), 147 L. T. 419 ; 96 J. P. 377 ; 48 T. L. R. 622 ; 30 L. G. R. 385.

76e. —— —— **"Contract carriages"—What amount to.**]—OSBORNE *v.* RICHARDS, No. 76d, *ante*.

76f. —— —— **"Express carriages"—What amount to.**]—A co. which owned motor omnibuses entered into an agreement with a railway co. whereby they undertook to provide motor vehicles for the conveyance of passengers arriving by certain specified excursion trains at a named station to a neighbouring works, where conducted tours took place. Persons taking part in these combined rail & road excursions obtained from the railway co. two tickets, one for the rail journey & the other for the journey by road from the station to the works, & did not pay any fare direct to the motor omnibus owners, who received from the railway co. a certain sum for each passenger carried. Part of the sum paid by the railway co. was contributed by the owners of the works where the conducted tours took place. Neither the railway co. nor the motor omnibus owners held a road service licence to operate public service vehicles in connection with the visits to the works :—*Held :* the motor omnibus owners were guilty of an offence under Road Traffic Act, 1930 (c. 43), s. 72, as their vehicles were being operated as "express carriages" within sect. 61 (1) (*b*). They were not protected by the proviso to that section as the vehicles were not being used "for the conveyance of a private party" nor "on a special occasion."—BIRMINGHAM & MIDLAND MOTOR OMNIBUS CO., LTD. *v.* NELSON (1932), 147 L. T. 435 ; 96 J. P. 385 ; 48 T. L. R. 620 ; 30 L. G. R. 390.

76g. —— —— —— **Exemption—"Conveyance of a private party."**]—BIRMINGHAM & MIDLAND MOTOR OMNIBUS CO., LTD. *v.* NELSON, No. 76f, *ante*.

76h. —— —— —— —— **"On a special occasion."**]—BIRMINGHAM & MIDLAND MOTOR OMNIBUS CO., LTD. *v.* NELSON, No. 76f, *ante*.

86. *Add. Annotation :*—**Apld.** A.-G. *v.* Sharp (1929), 45 T. L. R. 628.

86a. —— ——.]—Deft., who was licensed to ply for hire with motor omnibuses in two districts connected by roads through M., but who had no licence to ply for hire in M., had garages in M., & his omnibuses stopped outside them to take up persons who had bought tickets in the garages :—*Held :* defts.' omnibuses were plying for hire in M.—A.-G. *v.* SHARP (1929), 45 T. L. R. 628 ; 27 L. G. R. 764.

92. *Add. Citations :*—98 L. J. K. B. 209 ; 140 L. T. 194 ; 93 J. P. 61 ; 27 L. G. R. 39 ; 28 Cox, C. C. 576.

PART IV. SECT. 2, SUB-SECT. 4.

sg. *Vehicle engaged to carry club under contract—Fares collected by driver.*]—*Held :* deft. was "plying for hire" within Motor Omnibus Act, 1924, s. 13 (1).—DICKENS *v.* MULHOLLAND (1929), 41 C. L. R. 397 ; 2 A. L. J. 369 ; [1929] Argus L. R. 76.—AUS.

94a. —— **Private ground—Separated from highway by stone setts.**]—A motor car stood on a piece of private ground belonging to a public-house at Barnes & separated from the highway only by a line of level stone setts, which offered no obstruction to the passage either of the motor car or of persons desiring to enter it from the highway. There members of the public entered the car, which was licensed as a hackney carriage for revenue purposes, but which was not licensed to ply for hire within the Metropolitan Police District, & on payment of 6*d.* to the driver were driven to the Richmond Park Golf Club :—*Held :* the motor car was plying for hire in a " public street, road, or place " within Metropolitan Public Carriage Act, 1869 (c. 115).—WHITE *v.* CUBITT, [1930] 1 K. B. 443; 99 L. J. K. B. 129; 142 L. T. 427; 94 J. P. 60; 46 T. L. R. 99; 73 Sol. Jo. 863; 28 L. G. R. 44; 29 Cox, C. C. 80, D. C.

116. *Add. Citation :*—28 Cox, C. C. 515.

117a. —— **Overcrowding—Liability of employer for aiding & abetting.**]—The conductor of an omnibus was convicted of permitting the omnibus to be overloaded contrary to Railway Passenger Duty Act, 1842 (c. 79), s. 13, which, by sect. 15, imposed a penalty for this offence on the " driver, conductor, or guard." His employer was not present at the time :—*Held :* the employer was liable to be proceeded against for " aiding & abetting, counselling & procuring " the commission of the offence.—GOUGH *v.* REES (1929), 142 L. T. 424; 94 J. P. 53; 46 T. L. R. 103; 28 L. G. R. 32; 29 Cox, C. C. 74, D. C.

117b. —— —— **Commencement of proceedings—Whether order of Commissioners of Inland Revenue necessary.**]—An information was preferred by a police officer against the conductor of a motor omnibus alleging that he had allowed the omnibus to carry at one time a greater number of passengers than it had been constructed to carry, contrary to Railway Passenger Duty Act, 1842 (c. 79), s. 13 : —*Held :* the prosecution was not a proceeding for the recovery of a fine or penalty under an Act relating to inland revenue within Inland Revenue Regulation Act, 1890 (c. 21), s. 21 (1), & it could, therefore, lawfully be commenced without an order of the Inland Revenue Comrs.—KIRKBY *v.* MINTY, [1929] 2 K. B. 165; 98 L. J. K. B. 733; 141 L. T. 515; 93 J. P. 176; 45 T. L. R. 427; 27 L. G. R. 438; 28 Cox, C. C. 640, D. C.

Part V.—Locomotives and Motor Cars.

See, now, Road Traffic Act, 1930 (c. 43), Part I.

163. After this case add :—

—— ——.]—*See, now,* Finance Act, 1920 (c. 18), s. 13, Sched. II., para. 4, as amended by Finance Act, 1926 (c. 22), s. 13, & Finance Act, 1927 (c. 10), s. 11, Sched. IV.; Roads Act, 1920 (c. 72), ss. 1, 20 (3).

PART IV. SECT. 3.

sh. *Overcrowding—Whether mens rea necessary—Dublin Carriage Act.*]—*Held :* the prohibitions contained in this regulation were absolute, &, accordingly, in the case of a summons charging an offence under the regulation the absence of *mens rea* was no defence.—M'ADAM *v.* DUBLIN UNITED TRAMWAYS CO., [1929] I. R. 327.—**IR.**

sj. —— *Vehicle not on hire.*]—Where the permit granted in respect of a motor vehicle prohibits the carrying of more than four passengers, the carrying of more than this number is an infringement of the terms of the permit & is punishable under Motor Vehicles Act, 1914, s. 16, even though, at the time of the infringement, the vehicle was not on hire.—KING-EMPEROR *v.* RAM TAHAL SINGH (1929), I. L. R. 9 Pat. 169.—**IND.**

sk. *Passengers standing on cars.*]—GLASGOW CORPN. *v.* STRATHERN, [1929] S. C. (J.) 5.—**SCOT.**

sl. *Permitting omnibus to be overcrowded—Whether offence against Inland Revenue & Customs Acts.*]—A complaint was brought in a burgh police ct., which set forth that the accused was the conductor of a motor omnibus, in which a greater number of passengers were conveyed than the omnibus was constructed to carry, in contravention of Railway Passenger Duty Act, 1842, s. 13 :—*Held :* under Burgh Police Act, s. 454, the burgh magistrate had no jurisdiction to entertain the complaint, in respect that, while the duties imposed by the Act of 1842 had been repealed, & other duties substituted therefor, a contravention of sect. 13 was still an offence against an Inland Revenue or Customs Act, within Burgh Police Act, s. 454.—CAMERON *v.* SWEENEY, [1928] S. C. (J.) 34.—**SCOT.**

sm. —— ——.]—HORN *v.* DUCRETT, [1929] S. C. (J.) 63.—**SCOT.**

so. —— *Summary proceedings—Limitation of time.*]—ORR *v.* STRATHERN, [1929] S. C. (J.) 30.—**SCOT.**

PART IV. SECT. 4, SUB-SECT. 1.

sp. *Motor Omnibus Act—Minimum fares prescribed by Order in Council—Liability of owner.*]—DICKENS *v.* MITCHELL, [1928] V. L. R. 506; [1928] A. L. R. 323.—**AUS.**

PART IV. SECT. 5.

g i. —— *Classification of vehicles on basis of possession of metres—Validity of bye-law.*]—R. *v.* JOHNSTON (1931), 56 Can. C. C. 358.—**CAN.**

PART IV. SECT. 9.

sq. *Licence granted subject to approval of time-table—Failure to observe time-table—Liability of owner.*]—Art. 14 of the Omnibus Bye-laws for Aberdeen, 1926, is as follows : " the proprietor of any omnibus shall submit, for the approval of the magistrates, a time-table showing the time of arrival at & departure from the stance . . . & every such omnibus shall leave the aforesaid stance . . . punctually at the time stated in the said time-table as approved by the magistrates." A co. owning motor omnibus, with which it was duly licenced to ply for hire in Aberdeen, obtained from the magistrates approval of a time-table showing the starting times of its omnibuses from a particular stance. On a day when it was anticipated that, owing to special traffic congestion, the arrivals at the stance of the co.'s incoming omnibuses would be delayed, a servant of the co. acting with the manager's approval, took out an additional omnibus to augment the usual service. He started from the stance with this omnibus at a time which was not one of those authorised in the co.'s approved time-table. In a prosecution of the manager, as representing the co. for the contravention of art. 14 :—*Held :* a contravention of art. 14 by one of the co.'s servants acting within the scope of his employment, was an offence for which the manager, as representing the co. was responsible.—BEAN *v.* SINCLAIR, [1930] S. C. (J.) 31.—**SCOT.**

sr. *Agreement between corporation & street railway—Prevention of competition—What amounts to breach of bye-law—Sight-seeing omnibus.*]—R. *v.* RED LINE, LTD., [1930] 3 D. L. R. 747; 53 Can. C. C. 280; 65 O. L. R. 199.—**CAN.**

PART V. SECT. 2, SUB-SECT. 2.

r i. —— *Licensing of vehicles carrying goods.*]—R. *v.* STORIE, R. *v.* VALENS, [1930] 3 W. W. R. 366; 54 Can. C. C. 403.—**CAN.**

PART V. SECT. 2, SUB-SECT. 4.

g i. —— —— *Necessity for averment of Order.*]—Under powers conferred by Locomotives on Highways Act, 1896, s. 12, regulations were made by the Heavy Motor Car (Scotland) Order, 1905, & amending orders, with regard to heavy motor cars, the effect of which was to fix a speed of 20 miles an hour for motor cars exceeding 3 tons in weight. A motor driver was charged in the Sheriff Ct. upon a complaint which set forth that over a distance of

180a. **Liability for damage to bridges—Locomotive Act, 1861 (c. 70), s. 7—To what bridges applicable—County bridge.**]—*Held:* above sect. does not apply to a county bridge.—R. *v.* KITCHENER (1873), L. R. 2 C. C. R. 88; 43 L. J. M. C. 9; 29 L. T. 697; 38 J. P. 134; 22 W. R. 134; 12 Cox, C. C. 522, C. C. R.

Annotations:—**Rfd.** R. *v.* Dorset Inhabitants (1881), 45 L. T. 308; Sharpness New Docks & Gloucester & Birmingham Navigation Co. *v.* Worcester Corpn., A.-G. *v.* Sharpness New Docks & Gloucester & Birmingham Navigation Co., [1913] 1 K. B. 422.

185. *Add. Annotation:*—**Apld.** Dennis *v.* Leonard (1929), 141 L. T. 94.

185a. —— **Steam tractor.**]—CARPENTER *v.* FOX, No. 232a, *post.*

185b. —— **Petrol-driven tractor.**]—An "Austin" petrol-driven tractor was driven on a public highway. Upon an information under Locomotives on Highways Act, 1896 (c. 36), s. 7, for breach of Motor Cars (Use & Construction) Order, 1904, Article II., clause 3, the justices held that the vehicle in question was not a motor car within the meaning of that order & Act, stating that the tractor type of vehicle was never contemplated when the order of 1904 was made:—*Held:* that the tractor was such a motor car.—DENNIS *v.* LEONARD (1929), 141 L. T. 94; 28 Cox, C. C. 621, D. C.

186. *Add. Citations:*—[1929] A. C. 354; 98 L. J. Ch. 198; 140 L. T. 624; 93 J. P. 146; 27 L. G. R. 261.

188a. **Trade licence—"Some other or further use"—What amounts to.**]—By Art. D of reg. 29 of Part II. of Road Vehicles (Registration & Licensing) Regulations, 1924, S. R. & O., 1924, No. 1462: "(1) A general trade licence shall not be used upon any vehicle other than a vehicle which is in the possession of the holder of such licence in the course of his business as a manufacturer or repairer of or dealer in mechanically propelled vehicles. (2) A general trade licence shall not at any time be used upon a vehicle which is being used for the conveyance of passengers for profit or reward. . . . (4) Subject to the provisions of paras. (1) & (2) of this article a vehicle may be used upon a public road under a general trade licence for any purpose connected with the business as a manufacturer or repairer of or dealer in mechanically propelled vehicles of the holder of such licence, & so long as such vehicle is *bonâ fide* being used for such purpose the holder of the licence shall not by reason only that some other or further use is being made of the vehicle be deemed to commit a breach of these regulations":—*Held:* the words "some other or further use" are limited to a use by the holder of the licence, & do not cover the delivery, for reward, by an intending purchaser of a motor vehicle of his own goods to his customers during a demonstration run.—WESTOVER GARAGE, LTD. *v.*

7 miles on a public highway he "did drive a motor car, viz., a motor omnibus, at a speed exceeding 20 miles per hour, viz., about 27 miles per hour, contrary to the Motor Car Act, 1903, s. 9." The weight of the omnibus unladen exceeded 3 tons. None of the Statutory Orders were libelled in the complaint. The sheriff having repelled an objection that sect. 9 did not apply to the omnibus, & having convicted the accused:—*Held:* the complaint as laid was irrelevant, in respect that the provisions of sect. 9 of the 1903 Act applied only to motor vehicles under 3 tons in weight; to make it relevant it was necessary to libel the Statutory Orders which made vehicles exceeding 3 tons in weight subject to a speed limit.—DURNION *v.* PATERSON, [1930] S. C. (J.) 12.—**SCOT.**

g ii. —— —— *Whether notice of prosecution necessary.*]—Two police officers, who had detected a heavy motor car travelling in excess of the speed limit of twenty miles an hour, overtook & stopped the car, & one of them thereupon informed the driver that he had been travelling at a speed exceeding twenty miles an hour, & that his speed was twenty-six miles an hour. The driver was subsequently prosecuted for an offence against the Order of 1905. In defence he pleaded that he had not received the warning required by sect. 9 of Motor Car Act, 1903:—*Held:* a prosecution for a contravention of the Order of 1905 is not a prosecution for an offence under sect. 9 of Motor Car Act, 1903; &, accordingly, the warning or notice required by that sect. is not a condition precedent to conviction for a contravention of the Order.—TAYLOR *v.* HORN, [1929] S. C. (J.) 111.—**SCOT.**

g iii. —— *Evidence of—Speedometer.*]—The driver of a motor charabanc was convicted of exceeding the speed limit of twenty miles an hour. The only evidence was that of two police officers, who followed the charabanc along the street, travelling in a motor cycle combination fitted with a recently tested speedo-meter. They deponed that, for a distance of 300 yards, their motor cycle kept 20 yards behind the charabanc, & that, during this distance, the speedometer registered a speed of twenty-six miles per hour. An objection to the sufficiency of the evidence, on the ground that the method of registering the speed of the charabanc was unreliable, repelled; & conviction sustained.—TAYLOR *v.* HORN, [1929] S. C. (J.) 111.—**SCOT.**

PART V. SECT. 3, SUB-SECT. 2.

188 b i. *Driver's licence—Driving car while disqualified—In place to which public have access.*]—The driver of a motor vehicle was convicted of an offence under sect. 7 (4) of Road Traffic Act, 1930, on the ground that, while disqualified for holding a driving licence, he had driven a vehicle on a road forming the access from a public highway to a farm. The road in question was part of the farm & led only to the farmhouse, where it terminated. It had no other houses on it, & it was not maintained by any public authority but by the farm tenant in terms of his lease. There was no gate at the entrance to it, & no intimation that it was not open to the public; & except at times in summer, when the farmer placed a pole across it to prevent the straying of cattle, there was no obstacle to prevent the public having access to it. The road was used by the public as an access to the farm, & members of the public not having business there also frequently walked on it. They had, on several occasions, been turned off by the farmer when there were growing crops in the adjoining fields:—*Held:* the road was a road to which the public had access within Road Traffic Act, 1930, s. 121 (1).—HARRISON *v.* HILL, [1932] S. C. (J.) 13.—**SCOT.**

a (p. 868) i. —— *Officer driving car owned by Crown.*]—A provision of a provincial Act which prohibits the driving of a motor car by any one, other than the owner of the vehicle holding a certificate of registration, unless he, the driver, is a duly licensed chauffeur or the holder of a permit to operate, cannot be applied to the driving of a motor car by a member of His Majesty's Permanent Forces where the car is owned by His Majesty in the right of the Dominion & is being used by said driver in the discharge of his military duties.—R. *v.* ANDERSON, [1930] 2 W. W. R. 595; 54 Can. C. C. 321; 39 Man. L. R. 84.—**CAN.**

d i. —— ——.]—BULLOCK *v.* HANSEN, [1928] 2 W. W. R. 528; 37 Man. L. R. 450.—**CAN.**

d ii. —— ——.]—By Highway Traffic Act, R. S. O., 1927, s. 66, the result of driving without a licence is liability to a fine; the unlicensed driver does not become an outlaw on the road. In a proper case, therefore, he may recover damages in respect of negligent driving by another party.—DOWNEY *v.* HYSLOP, [1930] 4 D. L. R. 578; 65 O. L. R. 548.—**CAN.**

f i. —— *Person "using."*]—COCKBURN *v.* GORDON, [1928] S. C. (J.) 87.—**SCOT.**

m i. —— —— ——.]—The fact that a person drives a vehicle on a highway without carrying the number plates required by statute does not preclude him from recovering damages for injuries sustained as the result of the negligence of the driver of another vehicle.—SEYMOUR *v.* ARROWSMITH, [1931] 3 W. W. R. 561.—**CAN.**

n (p. 869) i. —— *New car using number plates of old car.*]—Although under Vehicles Act, 1924, c. 42, where a registered car has been disposed of & another one obtained the number plates on the former are to be used on the latter car, the new car must first be registered before the owner is entitled to drive it on public highways with the old plates on it.—BUNK *v.* BOUFFARD, [1928] 3 W. W. R. 219.—**CAN.**

o (p. 869) i. —— *Meaning of learning.*]—A person is "*bonâ fide* learning to drive a motor car" if the relation of pupil & teacher in fact exists, even although he is receiving instruction after he has completely learnt the art of driving & guiding a motor car. When a pupil is being *bonâ fide* taught matters pertaining to the safe control of a motor car on a highway he comes within the Act.—HUDD *v.* WILSON, [1929] V. L. R. 132; [1929] Argus L. R. 138.—**AUS.**

DEACON (1931), 145 L. T. 357; 95 J. P. 155; 47 T. L. R. 509; 29 L. G. R. 474; 29 Cox, C. C. 327, D. C.

188b. Driver's licence—Applicant suffering from specified disability — Refusal of licence — Whether applicant entitled to appeal.]—The Ct. of Appeal, reversing a decision of the Div. Ct., granted a rule *nisi* for a *mandamus* to justices to hear an appeal from a licensing authority under Road Traffic Act, 1930 (c. 43), s. 5, but held, when the rule came on for argument, that as appct. suffered from a specified disability which he admitted in his declaration & which compelled the licensing authority to refuse the licence the rule must be discharged.—R. *v.* CUMBERLAND JUSTICES, *Ex p.* HEPWORTH (1931), 146 L. T. 5; 95 J. P. 206; 47 T. L. R. 610; 30 L. G. R. 1; 29 Cox, C. C. 374, C. A.

192. *Add. Citation :*—28 Cox, C. C. 498.

207a. Motor coach—Schedule necessitating excessive speed—Liability of employer for aiding & abetting.]—Resps. owned a motor coach which was a heavy motor car fitted with pneumatic tyres, & was restricted under Heavy Motor Car Order, 1904, to a maximum speed limit of twelve miles per hour. The vehicle was driven by a servant of the resps. between L. & P. Resps. advertised times of departure & arrival which necessitated an average speed of eighteen miles per hour without allowing for stops. While driving the coach at thirty-five miles per hour on one of the scheduled journeys, resps.' servant was stopped by the police, & the resps. were summoned for counselling, procuring, aiding & abetting the commission of the offence :—*Held :* resps. ought to have been convicted of counselling & procuring.—NEWMAN *v.* OVERINGTON, HARRIS & ASH, LTD. (1928), 93 J. P. 46; 27 L. G. R. 85, D. C.

210. *Add. Annotation :*—**Refd.** R. *v.* Surrey Justices, *Ex p.* Witherick (1931), 146 L. T. 164.

216. *Add. Annotation :*—**Consd.** R. *v.* Surrey Justices, *Ex p.* Witherick, [1932] 1 K. B. 450.

217. *Add. Annotation :*—**Consd.** R. *v.* Surrey Justices, *Ex p.* Witherick, [1932] 1 K. B. 450.

222a. Under Road Traffic Act, 1930 (c. 43)—"Driving without due care & attention or without reasonable consideration"—Separate offences.]—Applt. was convicted before justices on an information which charged him with driving a motor vehicle on a road "without due care & attention or without reasonable consideration for other persons using the road contrary to sect. 12 of Road Traffic Act, 1930" :—*Held :* the section created two separate offences & the conviction was bad for duplicity, applt. having been charged with those two offences in the alternative.—R. *v.* SURREY JUSTICES, *Ex p.* WITHERICK, [1932] 1 K. B. 450; 101 L. J. K. B. 203; 146 L. T. 164; 95 J. P. 219; 48 T. L. R. 67; 75 Sol. Jo. 853; 29 L. G. R. 667; 29 Cox, C. C. 414, D. C.

222b. —— "Driving recklessly or in a manner dangerous to the public"—Separate offences.]—R. *v.* MILLS (1932), 173 L. T. Jo. 57 (Quarter Sessions).

222c. —— "Driving in a manner dangerous to the public"—Charge reduced to "driving without due care & attention"—Jurisdiction of justices.]—When a person is charged with driving a motor car in a manner dangerous to the public contrary to sect. 11 of Road Traffic Act, 1930 (c. 43), the justices have no jurisdiction, without the consent of the accused, to reduce the charge to one of driving without due care & attention under sect. 12 of the Act.—R. *v.* SOUTHAMPTON JUSTICES, *Ex p.* TWEEDIE (1932), 147 L. T. 530; 96 J. P. 391; 48 T. L. R. 636; 76 Sol. Jo. 545; 30 L. G. R. 410, D. C.

222d. Driving under influence of drink—In 'public place"—Field to which public admitted.]—A field to which the public are admitted is "a public place" within sect. 15 (1) of above Act.—R. *v.* COLLINSON (1931), 75 Sol. Jo. 491; 23 Cr. App. Rep. 49, C. C. A.

222e. —— —— Ambiguous verdict.]— R. *v.* HAWKES (1931), 75 Sol. Jo. 247; 22 Cr. App. Rep. 172, C. C. A.

223. *Add. Annotation :*—**Apld.** Gough *v.* Rees (1929), 46 T. L. R. 103.

232a. Leaving car so as to obstruct highway—To what vehicles applicable—Steam tractor.]—*Held :* (1) Motor Cars (Use & Construction) Order, 1904, Article IV., clause 2, does not apply to a steam tractor weighing 13 tons unladen, which while being driven on the high-

PART V. SECT. 3, SUB-SECT. 4.—A. (a).

d i. *Evidence of speed — Speedometer.*]—Instruments such as, & including, speedo-meters, may be presumed to function accurately, unless the contrary is shown.—PETERSON *v.* HOMES, [1927] S. A. S. R. 419.—**AUS.**

g i. —— *Wrongful admission of constable's notes.*]—Where, on a prosecution for exceeding the speed limit, the special magistrate, who stated that he believed the police evidence, wrongly admitted as evidence notes taken by the police constables, & said in his judgment that the police evidence was supported by notes taken at the time :—*Held :* as it could not be inferred that the conviction would have been made had the notes been excluded, the conviction must be set aside.—PELHAM *v.* HOMES, [1928] S. A. S. R. 105.—**AUS.**

k i. —— —— ——.]—R. *v.* KNOTT (Alta.), [1929] 1 D. L. R. 773; 1 W. W. R. 304; 51 Can. Crim. Cas. 189.—**CAN.**

sr. *Motor fire engine—Whether exempt from regulations.*]—The fact that a motor vehicle operated by a fire department is answering a fire alarm does not exempt its driver from the obligations of the Motor Vehicle Act, even though it has the right of way.—LAWTON *v.* WINNIPEG & INTERURBAN SERVICES, LTD., [1928] 4 D. L. R. 887; [1928] 3 W. W. R. 354; 37 Man. L. R. 468.—**CAN.**

sv. *What constitutes speed limit—Erection of notice board.*]—A speed limit of fifteen miles per hour is not constituted by the erection of a single notice board on which the figure "15" appears without any indication of the limits within which the restriction is to apply.—WALLACE *v.* DURBAN INSPECTION OF POLICE, [1931] N. L. R. 282.—**S. AF.**

PART V. SECT. 3, SUB-SECT. 4.—A. (b).

210 ii. —— *Speed of car—Possibility of control.*]—R. *v.* DURAND, [1928] 2 D. L. R. 703; 49 Can. Crim. Cas. 217; 60 N. S. R. 54.—**CAN.**

PART V. SECT. 3, SUB-SECT. 4.—A. (c).

m i. ——.]—The liability imposed by Highway Traffic Act, Ont., 1927 (c. 251), ss. 9 (1), 41 (1), exists even in absence of negligence; the failure to have a tail light burning & visible on a motor vehicle in accordance with s. 9 (1) is a violation of the Act, &, if a cause of a collision resulting in damages, may involve civil liability under s. 41 (1), even though the light was burning until shortly before the accident & went out without the knowledge or personal fault or negligence of the driver of the vehicle.—HALL *v.* TORONTO GUELPH EXPRESS CO. & HATCH, [1929] 1 D. L. R. 375; S. C. R. 92; 63 O. L. R. 355; setting aside O. L. R., *loc. cit.*—**CAN.**

PART V. SECT. 3, SUB-SECT. 4.—A. (e.)

q i. —— *Charge of having care & control of automobile "while under the influence of liquor"—No offence.*]—R.

way caused an obstruction, inasmuch as it is not a motor car; (2) although the above tractor was in motion, being driven along the highway at the time of the commission of the offence, it was "standing" thereon within the meaning of Article IV., clause 2.—CARPENTER *v.* FOX, [1929] 2 K. B. 458; 98 L. J. K. B. 779; 142 L. T. 234; 93 J. P. 239; 45 T. L. R. 571; 27 L. G. R. 601; 29 Cox, C. C. 42, D. C.

232b. **What amounts to standing.**]—CARPENTER *v.* FOX, No. 232a, *ante*.

232b. **Obstruction of "road"—Whether footway included.**]—The word "road" as used in Road Traffic Act, 1930 (c. 43), & in the Motor Vehicles (Construction & Use) Regulations, 1931, includes the footway as well as the carriageway, & therefore:—*Held:* a person who left a motor car standing on the footway ought to have been convicted of allowing it to stand on the "road" so as to cause unnecessary obstruction thereof.—BRYANT *v.* MARX (1932), 147 L. T. 499; 96 J. P. 383; 48 T. L. R. 624; 76 Sol. Jo. 577; 30 L. G. R. 405, D. C.

v. OEULETTE (1931), 55 Can. C. C. 389.—**CAN.**

d i. ——— ———.]—MARANO & MARANO *v.* LETT (Alta.), [1929] 4 D. L. R. 982; 3 W. W. R. 345; *affg.*, [1929] 4 D. L. R. 314; 3 W. W. R. 170.—**CAN.**

s v. *Drunkenness — Alternative offences — Validity of conviction.*] — *Held:* a finding by a magistrate that deft. while intoxicated was in charge of a motor vehicle did not justify a conviction for driving while intoxicated, as s. 285 (4) of the Criminal Code deals with two alternative offences.—R. *v.* HIGGINS, [1929] 1 D. L. R. 269; 50 Can. Crim. Cas. 381; 63 O. L. R. 101. —**CAN.**

PART V. SECT. 3, SUB-SECT. 4.—B.

s w. *Motor Vehicles Act—Penal provisions—Liability of owner.*]—R. *v.* DOYLE (1928), 50 Can. Crim. Cas. 233. —**CAN.**

PART V. SECT. 3, SUB-SECT. 5.

s a. *Motor Traffic Regulations—Passing stationary tramcar—Whether evidence of negligence.*]—LANE *v.* NORTON (1927), 28 S. R. N. S. W. 143; 45 N. S. W. W. N. 38.—**AUS.**

s l. *Meaning of "intersection of highways."*]—*Semble:* a right-angled bend in a highway is not an "intersection of highways" within sect. 35 (1) of Vehicles Act, 1924 (c. 42), which provides that a person operating a motor or other vehicle shall at the intersection of highways keep to the right of the intersection of such highways when turning to the right, & pass to the left of such intersection when turning to the left.—CLARK *v.* HETHERTON, [1930] 1 W. W. R. 165; 1 D. L. R. 964; 24 S. L. R. 275. C. A.—**CAN.**

s m. ——.]—A private road is not a "highway" within Vehicles Act, 1924 (c. 42), & the point at which such a road opens on to a highway is, therefore, not an intersection of highways within the meaning of sect. 35 (2) of said Act.—COPELAND *v.* ROBERTS, [1930] 1 W. W. R. 145; 3 D. L. R. 460; 24 S. L. R. 224.—**CAN.**

q (p. 878) i. —— ——.]—R. *v.* TORONTO TRANSPORTATION COMMISSION (Ont.) (1929), 52 Can. Crim. Cas. 413.—**CAN.**

q (p. 878) ii. —— —— *Onus of proof.*]—*Held:* under s. 42 of Highway Traffic Act the onus of proof that the loss or damage did not arise through the negligence or improper conduct of the driver or owner of the motor vehicle was upon defts.—ROSS *v.* GRAY COACH LINES, LTD., [1929] 3 D. L. R. 841; 64 O. L. R. 178.—**CAN.**

q (p. 878) iii. —— —— *Effect of Highway Traffic Amendment Act*, 1929, s. 9.]—The effect of above sect. repealing Highway Traffic Act, R. S. O., 1927, s. 41, is to reduce the responsibility of the owner of a motor vehicle to that at common law.—TUDHOPE *v.* HENDERSON, HENDERSON *v.* TUDHOPE, [1930] 3 D. L. R. 245; 65 O. L. R. 238.—**CAN.**

q (p. 878) iv. —— ——.]—Motor Vehicle Act, R. S. B. C., 1924, does not add to the civil liability at common law of an owner of a motor vehicle who has entrusted it to another person through whose negligence in operating it a third person is injured.—RUFF *v.* SUTHERLAND & MOSS, [1931] 1 D. L. R. 651; [1930] 3 W. W. R. 544; 43 B. C. R. 218.—**CAN.**

q (p. 878) v. —— ——.]—While deft. H. was negotiating with the local agent of deft. co. for the purchase of a motor car its wholesale salesman arrived in the course of one of his regular trips, & it was arranged that H. & the local agent would go on with him so that H. could get practice in driving such a car. Before starting, the wholesale salesman met pltf.'s husband & agreed to the latter's request to be taken along with them. They started on the trip with H. at the wheel & had gone less than a mile when the car overturned, & pltf.'s husband was thrown out & killed. The local agent testified that H. was to his knowledge an incompetent driver, at least of a car of the type in question, & that he, the agent, had informed the wholesale representative that H. was an "erratic" driver. H. had been driving a car with two-wheel brakes for about two years, but had not driven one with four-wheel brakes, which the car in question had. The judge found that no negligence had been established against either deft. On appeal, the ct. found that the accident was caused by H.'s incompetence to handle a car of such, to him, a new & different type; & both defts., the co. & H., were liable.—KERR *v.* HAUG MOTORS, LTD. (No. 2), [1931] 1 D. L. R. 962; [1930] 3 W. W. R. 470; 39 Man. L. R. 238.—**CAN.**

q (p. 878) i. ——.]—NEILSON *v.* RICHARD (B. C.), [1929] 4 D. L. R. 1052; 2 W. W. R. 153; *revsd.*, [1930] 1 W. W. R. 656; 3 D. L. R. 215; 38 Man. L. R. 553.—**CAN.**

c (p. 879) i. ——.]—CHORBA *v.* KIMBRIEL, [1928] 3 D. L. R. 718; [1928] 2 W. W. R. 386; 22 Sask. L. R. 602.—**CAN.**

c (p. 879) ii. —— ——.]—The statutory onus does not increase the degree of diligence required of the owner or driver of a motor vehicle.—STANLEY *v.* NATIONAL FRUIT CO. (Sask.), [1929] 3 W. W. R. 522; [1930] 2 D. L. R. 106; 24 S. L. R. 137; *revsd.*, [1931] 1 D. L. R. 306; S. C. R. 60.—**CAN.**

c (p. 879) iii. —— —— ——.]—HEITNER *v.* GILLSTROM (Sask.), [1929] 4 D. L. R. 670; 3 W. W. R. 227; *revsd.*, [1930] 2 W. W. R. 113; 3 D. L. R. 860; 24 S. L. R. 462.—**CAN.**

c (p. 879) iv. —— —— ——.]—MARANO & MARANO *v.* LETT (Alta.), [1929] 4 D. L. R. 982; 3 W. W. R. 345; *affg.*, [1929] 4 D. L. R. 314; 3 W. W. R. 170.—**CAN.**

c (p. 879) v. —— —— ——.]—YONKER *v.* SERVANT, [1931] 1 W. W. R. 433; 2 D. L. R. 495; 25 Alta. L. R. 247.—**CAN.**

(p. 879) vi. —.]—Under sect. 62 of Manitoba Motor Vehicle Act, which provides that when any injury is caused to a person by a motor vehicle the *onus* of proof that the injury did not arise through his negligence shall be upon the owner or driver of the motor vehicle, the *onus* of negativing negligence in an action for damages so caused remains on deft. throughout the proceedings. Thus, although deft. has adduced the evidence of credible witnesses that the accident was due to a latent defect in the mechanism of the motor vehicle & pltf. has adduced no evidence to the contrary, the case should not be withdrawn from the jury but should be left to them to decide by their verdict whether deft. has satisfied the statutory *onus* of proof.—WINNIPEG ELECTRIC CO. *v.* GEEL, [1932] A. C. 690; 101 L. J. P. C. 187; 48 T. L. R. 657, P. C.—**CAN.**

c (p. 879) vii. —— —— ——.]—CHERNIAK *v.* PARSONS, [1931] 2 W. W. R. 549.—**CAN.**

c (p. 879) viii. —— —— ——.]—Where in an action for damages for injuries caused by a motor car the judge, after hearing & weighing the whole of the evidence, comes to the definite conclusion that the accident was caused solely by pltf.'s own negligence, the *onus* which sect. 43a of Vehicles Act, 1924, places on the owner or driver of disproving negligence ceases to be a factor in the case.—PURCELL *v.* WALLACE, [1930] 1 W. W. R. 732; 2 D. L. R. 1004; 24 S. L. R. 1004.—**CAN.**

c (p. 879) ix. —— —— —— *Application of Act in favour of passenger.*]—*Semble:* the *onus* of negativing negligence which sect. 62 of Motor Vehicle Act, 1924, places on the driver of a motor car applies, not only in favour of pedestrians, but also in favour of a passenger in the motor car which caused the damage.—HIRD *v.* MILNE, [1930] 1 W. W. R. 977; 3 D. L. R. 513.—**CAN.**

c (p. 879) x. —— —— —— *Injury to guest while car driven by owner.*]—DREW *v.* MACK, [1931] 4 D. L. R. 395. —**CAN.**

c (p. 879) xi. —— ——.]—KUHMO & LAAKSO *v.* HELBERG, [1931] 4 D. L. R. 323.—**CAN.**

c (p. 879) xii. —— *Liability of owner for damages caused by third party driving his car without permission.*]— Pltfs. were injured by a motor car while it was being driven by the 17 year old son of the owner. The boy, who was attending school, lived with his father as a member of the household & was found to have used the car at least seven or eight times during the two years prior to the accident. The car was kept in a yard between the father's house & his store, & one of the two car-keys was either in the house or in the store where it was accessible to the son. The trial judge accepted the testimony of the father that he had never given the son permission to use the car & did not know that he had ever driven it. The father did not say that he had forbidden the son to drive it:—*Held:* the father could not be heard to say that the car had been "wrongfully taken out of his possession" within Motor Vehicle Act, C. A., 1924 (c. 131), s. 63.—BOBBY *v.* CHODIKER, [1929] 2 D. L. R. 590; 1

Duties in case of accident.]—*See* Road Traffic Act, 1930 (c. 43), s. 22.

232c. —— Refusal to give name & address—Accident reported to police—Not compliance with Act.]—DAWSON *v.* WINTER (1932), 174 L. T. Jo. 490, D. C.

245a. Service of notice of prosecution—When excused.]—Under Road Traffic Act, 1930 (c. 43), s. 21, it is necessary for the prosecution to show that none of the alternative conditions as to giving notice of an intended prosecution can be complied with before the ct., *i.e.* the judge & not the jury, may be asked to excuse the failure to perform them. —R. *v.* BOLKIS (1932), 96 J. P. Jo. 832 ; 174 L. T. Jo. 469 ; 74 L. Jo. 424, C. C. A.

W. W. R. 770 ; 38 Man. L. R. 171 ; *revg.*, [1928] 3 W. W. R. 392.—**CAN.**

c (p. 879) **xiii.** —— ——.]—NELSON *v.* DENNIS (Man.), [1929] 4 D. L. R. 282 ; 2 W. W. R. 513.—**CAN.**

c (p. 879) **xiv.** —— ——.]—WALKER *v.* SCOTT, NICHOL *v.* SCOTT (Man.), [1929] 3 D. L. R. 647 ; 2 W. W. R. 92.—**CAN.**

c (p. 879) **xv.** —— ——.]—BOYD *v.* SMITH, [1931] 1 D. L. R. 729.—**CAN.**

c (p. 879) **xvi.** —— ——.]—Deft., the owner of a car, refused to let M. have or hire it unless deft.'s chauffeur, P., was taken along to drive it. During the journey M. got drunk, & insisted on driving the car. He was resisted by P. who, though not actually ejected by force, was threatened with a fight & gave way. While M. was driving on a highway the car struck pltf.'s car & damaged it :—*Held :* the charge of operators was due to duress, & brought about a situation contrary to deft.'s express instructions & the bargain made with M., &, the car being "in the possession of some person other than the owner or his chauffeur, without the owner's consent," deft. was not liable.—KUHMO & LAAKSO *v.* HELBERG, [1931] 4 D. L. R. 328 ; O. R. 630.—**CAN.**

c (p. 879) **xvii.** —— *Crown bound by Act—Liability of officer of the Crown —Reckless driving in execution of duty.*]—R. *v.* MCLEOD, [1930] 4 D. L. R. 226 ; 53 Can. C. C. 292.—**CAN.**

c (p. 879) **xviii.** —— *Who is "chauffeur"*]—"Chauffeur" in Vehicles Act, R. S. S., 1930, s. 2 (1), does not include a person employed for the main purpose of doing work other than driving a motor car but which incidentally requires him to drive a car part of the time ; especially if at the time as to which he is charged with driving a motor car without having a chauffeur's licence he was not driving it on his employer's business but for his own purposes.—R. (ARMSTRONG) *v.* PRESTON, [1931] 3 W. W. R. 505.—**CAN.**

c (p. 879) **xix.** —— *Limitation of action.*]—A statute limiting the time for commencing an action is to be construed retroactively, in the absence of words therein showing a contrary intention ; especially where the statute itself expressly provides that its operation is to be postponed.—BEATTIE *v.* DOROSZ & DOROSZ, [1932] 2 W. W. R. 289.—**CAN.**

sg. *Breach of statutory duty by plaintiff —Whether defence to action for damages.*]—The fact that at the time of a collision between an automobile & a motor cycle, the driver of the motor cycle was violating sect. 19A of Motor-Vehicle Act, R. S. B. C., 1924, by allowing a passenger to occupy the driver's seat, & was, therefore, liable to a penalty :—*Held :* not to deprive driver or his passenger, pltf. herein, of his civil rights against the driver of the automobile, where such violation in no way caused or contributed to the accident.—GAMON *v.* EASTMAN, [1932] 2 W. W. R. 622.—**CAN.**

PART VII.

sa. *Aircraft in distress—Right to land.*]—The aeroplane in question was seized by the Customs authorities on the ground that it had landed at a place other than an airport & for not reporting to a Customs Officer :—*Held :* where the evidence establishes that an aeroplane was forced to land on account of engine trouble & to avoid a crash, she is justified in so doing at any place that such landing can be safely made & for the same reasons that a vessel in distress may enter a port for shelter.—PENTZ *v.* R., [1931] Ex. C. R. 172.—**CAN.**

sb. *Regulation of aviation — Whether exclusive power of Dominion Legislature.*]—*See* DEPENDENCIES, No. 130g, *ante.*

sl. *Insurance—Flight contrary to Government regulations.*]—OBALSKI CHIBOUGAMAU MINING CO. *v.* AERO INSURANCE CO., [1932] S. C. R. 540 ; 3 D. L. R. 25.—**CAN.**

TELEGRAPHS AND TELEPHONES.

Part I.—Definitions.

4a. —— **Broadcasting.**]—Their Lordships think broadcasting falls within the description of "telegraphs." No doubt in everyday speech telegraph is almost exclusively used to denote the electrical instrument which by means of a wire connecting that instrument with another instrument makes it possible to communicate signals or words of any kind. But the original meaning of the word "telegraph" as given in the Oxford Dictionary is:

"An apparatus for transmitting messages to a distance, usually by signs of some kind" (*per* CUR.).—*Re* RADIO COMMUNICATION IN CANADA, A.-G. OF QUEBEC *v.* A.-G. OF CANADA, A.-G. OF ONTARIO, A.-G. OF NEW BRUNSWICK, A.-G. OF MANITOBA, A.-G. OF SASKATCHEWAN, A.-G. OF ALBERTA & CANADIAN RADIO LEAGUE, [1932] A. C. 304; 101 L. J. P. C. 94; 146 L. T. 409; 48 T. L. R. 235, P. C.

Part III.—Construction and Maintenance of Telegraphs.

15. *Add. Annotation:*—**Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

24a. Erection of posts on railway—Acquiescence—Implied licence—Revocability.]—Whether any & what restrictions exist on the power of a licensor to determine a revocable licence to occupy land depends upon the circumstances of each case. In 1926 the Crown proceeded against applts. alleging that poles, carrying telegraph wires, which they had erected on the roadway of a Canadian Govt. railway, were a trespass thereon, & claiming damages; alternatively the Crown claimed a declaration of the applts.' rights, if any. As to the main section of the telegraph line, the poles, as they stood in 1926, had been erected upon the roadway between 1905 & 1910 without leave or licence. As to two branch lines, the poles had been erected in 1893 & 1911 respectively, in each case while an agreement was in negotiation though no agreement was eventually concluded. The whole telegraph line, which was about 500 miles in length, was used by the public as well as by applts.:—*Held:* (1) on the facts, at the date of the proceedings all the poles were on the roadway with the licence of the Crown. Although the applts. had originally been trespassers in respect of the main line poles, many years' acquiescence & a claim to the payment of rent, had long since prevented them from being so regarded; in the case of the branch lines, it was to be inferred that the poles had been erected by licence. (2) The licence was revocable in the absence of any facts from which a contract that it should be irrevocable could be implied; having regard to the circumstances, the licence could be revoked only by a notice determining it upon a specified future date such as would give the applts. sufficient time, not only to remove the poles & wires, but also to arrange for erecting them elsewhere.—CANADIAN PACIFIC RY. CO. *v.* R., [1931] A. C. 414; 100 L. J. P. C. 129; 145 L. T. 129, P. C.

Part VIII.—Adjustment of Differences.

49. *Add. Annotation:*—*As to* (2) **Refd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt, [1932] 2 K. B. 1.

Part IX.—Compensation.

53. *Add. Annotation:*—**Refd.** Kiddie *v.* Port of London Authority (1929), 93 J. P. 203.

PART V.

sa. *Regulations by Governor-General—Validity.*]—*Held:* reg. 21A (2) of the Telephone Regulations, 1913, which provides that a person who enters into occupation of any premises having a telephone service shall not be entitled to use the service until he has obtained a transfer of it, & that if he uses it before transfer he shall be deemed to have assumed the service & shall be liable for all amounts owing in respect of the service, at the time he entered into occupations of the premises, is not *ultra vires.*—GIBSON *v.* MITCHELL (1929), 41 C. L. R. 275; 2 A. L. J. 332.—**AUS.**

PART X.

sc. *Wireless licence—Liability for failing to take out.*]—On Sept. 8, 1928, deft. was the owner of an unlicenced wireless receiving set. Later in the same day, after a visit of an inspector which was not shown to have been communicated to him, he took out a licence. On a charge of maintaining an unauthorised wireless set:—*Held:* the fractions of the day were to be taken into account, & deft. was guilty of the offence.—BEARE *v.* WARD, [1928] S. A. S. R. 1.—**AUS.**

sd. —— —— *Radio receiving set—*

Part XIV.—Rateability of Property occupied for Telegraphic Purposes.

74. *Add. Annotation :*—**Refd.** Kiddie *v.* Port of London Authority, Durrant *v.* Same (1929), 45 T. L. R. 430.

Whether "radiotelegraph" — Within Radiotelegraph Act, 1913.—NOLAN *v.* MCASSEY, [1930] 2 D. L. R. 323.—**CAN.**

se. —— —— —— —— *Within Radiotelegraph Act*, 1927.]—NOLAN *v.* SHARP, [1930] 4 D. L. R. 1016.—**CAN.**

sg. *Damage to telephone pole—Defence—Abatement of nuisance.*]—Deft. was convicted for that he wilfully did, without legal justification or excuse, & without colour of right, unlawfully commit damage by cutting down a telephone pole belonging to a telephone co. A telephone line to a summer hotel was erected many years ago across deft.'s property. It was never used for more than a few months in summer, & for years it was not used at all. No easement for the extension of wires over deft.'s lands existed : & it did not appear that the telephone co. acquired any right to use the line. So far as was established in evidence, the pole was a nuisance to deft. & he acted in what he thought was the exercise of a right when he cut it down :—*Held :* he had good grounds for supposing that he had a right to abate what was to him a nuisance on his own land ; according to the evidence, the telephone co. was a mere trespasser there.—R. *v.* PIMMETT, [1931] O. R. 705 ; 56 Can. C. C. 363.—**CAN.**

PART XII.

n i. —— *Order imiting liability—Whether binding on sender of telegram.*]—The order of the Board of Railway Comrs., contemplated by sub-sect. (2) of sect. 348 of Railway Act, R. S. C., 1927, merely determines the extent to which a railway co. may limit its liability with respect to the carriage of traffic, leaving it to the co. to make such limitation if it sees fit to do so ; but does not prevent the co. from carrying traffic without limiting its liability. General Order No. 162 of said Board, approving conditions of liability, set out therein, with respect to the transmission of telegraphic messages :—*Held :* to be an order made under the powers given by the provision then in force corresponding with sub-sect. (2). It, therefore, has not the effect of making a statutory contract between the sender of a telegram & the co., but only authorises such a contract to be made ; &, consequently, the conditions are not binding on a sender who had in fact no knowledge of them & to whom they cannot be held to have been communicated.—JANKELSON *v.* CANADIAN NATIONAL TELEGRAPHS, [1931] 1 W. W. R. 337; [1931] 2 D. L. R. 86; 25 Alta. L. R. 230.—**CAN.**

THEATRES AND OTHER PLACES OF ENTERTAINMENT.

Part I.—Theatres.

11a. ——— ——— **Discretion must be properly exercised.**]—R. *v.* CARDIFF CORPN., *Ex p* WESTLAN PRODUCTIONS, LTD., NEW THEATRE (CARDIFF), LTD. & MOSS EMPIRES, LTD. (1929), 73 Sol. Jo. 766, D. C.

36. *Add. Annotation :*—**Refd.** A.-G. *v.* Walkergate Press, Ltd., Same *v.* Bloomfield, Same *v.* Carlton (1930), 142 L. T. 408.

49. *Add. Annotations :*—**Consd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546. **Refd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119.

52. *Add. Annotation :*—**Consd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

53. *Add. Annotation :*—**Consd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

55. *Add. Annotation :*—**Consd.** Hall *v.* Brooklands Auto-Racing Club (1932), 48 T. L. R. 546.

59. After this case add :—

Liability for income tax — Appropriate schedule.]—*See* INCOME TAX, No. 312a, *ante*.

63. *Add. Annotation :*—**Refd.** Hillas & Co. *v.* Arcos, Ltd. (1931), 36 Com. Cas. 353.

64a. ——— **"Formal contract to be signed in due course."**]—RONALD FRANKAU PRODUCTIONS, LTD. *v.* BELL (1927), 65 L. Jo. 33; 164 L. T. Jo. 504.

68. *Add. Annotation :*—**Apprvd.** Herbert Clayton & Jack Waller, Ltd. *v.* Oliver, [1930] A. C. 209.

68a. ———.]—Applts., theatrical producers, agreed to engage resp., an American actor, to play one of the three leading comedy parts in a musical play about to be produced at the London Hippodrome for six weeks certain at a salary of £55 per week, & the contract contained a provision prohibiting resp. during the continuance of his engagement from acting elsewhere without the consent of the applts. Resp. objected that the part assigned to him was not one of the three leading comedy parts, &, on the refusal of applts. to recast him, declined to appear in the play & sued applts. for damages for breach of contract. At the trial of the action before a judge & jury the jury found for resp. for £1,000 damages for loss of publicity & for three weeks' salary, & judgment was entered accordingly. The Ct. of Appeal affirmed the verdict & judgment except as to the salary :—*Held :* (1) upon the construction of the contract, it bound applts. to give resp. an opportunity of appearing in public in a part answering the stipulated description; (2) it was competent to the jury, having regard to the character of the contract, to give damages to resp. for loss of publicity.—HERBERT CLAYTON & JACK WALLER, LTD. *v.* OLIVER, [1930] A. C. 209; 99 L. J. K. B. 165; 142 L. T. 585; 46 T. L. R. 230; 74 Sol. Jo. 187, H. L.

71. *Add. Annotation :*—**Apprvd.** Herbert Clayton & Jack Waller, Ltd. *v.* Oliver, [1930] A. C. 209.

78. *Add. Annotations :*—**Refd.** Guy-Pell *v.* Foster, [1930] 2 Ch. 169; Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

89. *Add. Annotation :*—**Overd.** Herbert Clayton & Jack Waller, Ltd. *v.* Oliver, [1930] A. C. 209.

89a. -.]—HERBERT CLAYTON & JACK WALLER, LTD. *v.* OLIVER, No. 68a, *ante*.

——— ———.]—Our attention has been quite rightly called to the cases which have been decided in the Ct. of Appeal & the House of Lords with regard to the rights of an actress or an actor, or a public performer, who has been deprived of the opportunity of gaining the prestige & reputation that he would have obtained if he had been allowed to perform in the agreed character. It may be, & I think it is, that very special considerations apply to an agreement with an artist who is to perform in public, because it is a matter of common knowledge that in a large majority of the cases the consideration to the artist when he accepts the engagement is just as much, if not more, the opportunity, certainly in the early stage of the artist's career, to appear before the public & make his reputation, which is of much greater value than the mere money wages fixed for the period of his employment. It seems to me it is for that reason that it is regarded as the essence of the matter that the artist should have the opportunity for which he has bargained, & these considerations make exceptional principles applicable to the case of artists who perform in public (GREER, L.J.).—*Re* GOLOMB & PORTER & Co.'s, LTD., ARBITRATION (1931), 144 L. T. 583, C. A.

92. *Add. Annotation :*—**Distd.** Graves *v.* Cohen (1929), 46 T. L. R. 121.

PART I. SECT. 1, SUB-SECT. 1.

sa. *Greenock Corporation Act*, 1909, *s.* 251—*Theatre—Whether picture house included.*]—*Held :* a building, which it was proposed to erect for use as a picture house was not a "theatre" within the meaning of, & subject to the regulations of, above sect., in respect that its general character, as disclosed by the plans before the ct., was that of a picture house, rather than of a theatre, & that the sect., as it imposed a restriction on a right of property, must be strictly construed; & according to *contemporanea expositio*, the expression "theatre" in the sect. did not include a building devoted to the exhibition of cinematograph films.—SCOTTISH CINEMA & VARIETY THEATRES, LTD. *v.* RITCHIE, [1929] S. C. (Ct. of Sess.) 350.—**SCOT.**

PART I. SECT. 1, SUB-SECT. 2.

sd. *Who should take out—Person keeping theatre open—Lessee.*]—The lessee of a theatre is the person who "keeps the theatre open" & not its owner.—UPENDRAKUMAR MITRA *v.* CALCUTTA CORPN. (1931), I. L. R. 58 Calc. 1293.—**IND.**

Part III.—Music and Dancing and Other Public Entertainments.

164a. —— **Subsequent order permitting Sunday opening subject to conditions—Invalid.**]—It was the practice of a certain County Council, in granting licences to use premises for cinematograph exhibitions, to impose the condition that the premises should not be so used on Sundays, Christmas Day or Good Friday; but also to entertain applications for permission to open the premises for cinematograph entertainments on those days. A co. applied for a licence to open & use premises for cinematograph entertainments, & also for permission to open the premises for such purposes on Sundays, Christmas Day & Good Friday. In compliance with this application the County Council made an order to the effect that, "subject to arrangements at the premises being completed to its satisfaction, the council will take no action for the present in the event of the above-named premises being opened for cinematograph entertainments on Sundays, Christmas Day & Good Friday as from & including Sunday, July 6, 1930, provided: (i) that a sum of £35 be paid to charity in respect of each Sunday, Christmas Day & Good Friday on which the premises are opened for cinematograph entertainments." The permission was also subject to conditions relating to the auditing of receipts & expenses, the character & hours of the entertainments, & the employment of servants:—*Held:* that a writ of *certiorari* should issue to bring up & quash the order of the County Council as having been made without jurisdiction, the council having no power to dispense with the provisions of the Sunday Observance Act, 1780 (c. 49).—R. *v.* LONDON COUNTY COUNCIL, *Ex p.* ENTERTAINMENTS PROTECTION ASSOCN., LTD., [1931] 2 K. B. 215; 100 L. J. K. B. 760; 144 L. T. 464; 95 J. P. 89; 47 T. L. R. 227; 75 Sol. Jo. 138; 29 L. G. R. 252, C. A.

Sunday Entertainments Act, 1932 (c. 51).

PART I. SECT. 7, SUB-SECT. 4.

p i. —— *Rental based on "gross receipts" — Amusement tax not included.*]—LYNN *v.* NATHANSON, [1931] 2 D. L. R. 457.—**CAN.**

PART III. SECT. 2, SUB-SECT. 3.—A.

151 i. *Discretion of justices—Bona fides in exercise.*]—R. *v.* CHARLEVILLE TOWN COUNCIL, *Ex p.* CORONES, [1928] S. R. Q. 155.—**AUS.**

PART III. SECT. 3.

sc. *Regulations for securing safety in cinematograph exhibitions — Moving Picture Act—Order of fire marshal.*]—Letters from the fire marshal to the agent of a theatre owner insisting that certain alterations be made in the theatre in order to comply with the regulations under Moving Picture Act, R. S. B. C., 1924, held to have been given by him as fire marshal acting in pursuance of Fire Marshal Act, R. S. B. C., 1924, & to have amounted to an "order" within the meaning of sect. 17 (3) of the latter Act.—MCMORDIE *v.* FORD (B. C.), [1929] 3 W. W. R. 159; *affd.*, [1930] 2 W. W. R. 203; 3 D. L. R. 398; 42 B. C. R. 486.—**CAN.**

TIME.

Part I.—The Calendar and Divisions of Time.

19. After this case add :—
——].—*See, now,* Law of Property Act, 1925 (c. 20), s. 61.

Part II.—Sundays and Holidays.

105. After this case add :—
——.]—*See, now,* Hairdressers' & Barbers' Shops (Sunday Closing) Act, 1930 (c. 35).

127. After this case add :—
(*c*) *Action for Penalties.*

127a. Discharge of action by statute—Right of common informer to costs.]—The ct. held that a common informer in an action against a co. for penalties for breach of the Sunday Observance Act, 1781 (c. 49), was entitled to costs down to the date when by Sunday Performances (Temporary Regulation) Act, 1931 (c. 52), the action was discharged & made void, the question of costs being made by the Act a question for the ct.—ORPEN *v.* NEW EMPIRE, LTD. (1931), 48 T. L. R. 8; 75 Sol. Jo. 763.

131a. London County Council (General Powers) Act, 1927—Sale of vegetables on Sunday—Invalidity of licence.]—Under London County Council (General Powers) Act, 1927, there is no power to grant a licence for the sale of vegetables in the streets on Sunday, as such sale is a contravention of Sunday Observance Act, 1677 (c. 7).—CLIFTON *v.* HOLBORN BOROUGH COUNCIL (1929), 142 L. T. 160; 93 J. P. 196; 45 T. L. R. 633; 73 Sol. Jo. 500; 27 L. G. R. 658; 29 Cox, C. C. 17, D. C.

Annotation :—**Refd.** Baars *v.* Keep, Brooks *v.* Kensington Borough Council (1931), 95 J. P. 153.

PART I. SECT. 2, SUB-SECT. 2.

sy. *Supply of electric energy for fifteen years—Agreement to operate street railway continuously "throughout the year"—Calendar year.*]—MONCTON TRAMWAYS *v.* MONCTON (1931), 3 M. P. R. 158.—**CAN.**

PART I. SECT. 4.

68 i. *Sunday to Sunday—Notice of intention to appropriate.*]—ROGERS *v.* FREDERICTON (1931), 3 M. P. R. 161.—**CAN.**

sa. *Publication of notice—"Once a week for four successive weeks."*]—"For," as used in Lakes & Rivers Improvement Act, R. S. O., 1927, s. 52, is not equivalent to "in," but implies duration, & week does not mean a calendar week :—*Held :* therefore, a notice published in a daily newspaper on Sat. Feb. 9, Sat. Feb. 16, Sat. Feb. 23, & Wed. Feb. 27, was not a notice published "once a week for four successive weeks."—*Re* KYRO RIVER IMPROVEMENT CO., [1929] 4 D. L. R. 610; 64 O. L. R. 225.—**CAN.**

PART II. SECT. 2, SUB-SECT. 1.

sc. *Sale of food, drink & cigarettes.*]—R. *v.* NINOS (1928), 50 Can. Crim. Cas. 155.—**CAN.**

PART II. SECT. 2, SUB-SECT. 2.—A.

f i. ——.]—Sect. 4 of Lord's Day Act, 1927, provides that "It shall not be lawful for any person on the Lord's Day, except as provided herein, or in any provincial Act or law now or hereafter in force, to sell . . . or to carry on or transact any business of his ordinary calling . . . " :—*Held :* the word "law" therein means, not the common law, but a positive enactment dealing with Sunday observance. —R. *v.* THOMPSON, [1931] 2 D. L. R. 282; 1 W. W. R. 26; 55 Can. C. C. 33; 39 Man. L. R. 277.—**CAN.**

sd. *Meaning of "any person whatsoever"—Construed ejusdem generis with other classes in Lord's Day Act,* 1859, *s.* 1.]—A.-G. OF ONTARIO *v.* HAMILTON STREET RAILWAY CO. (1902), 54 Can. C. C. 344; *revsd. on other grounds,* [1903] A. C. 524, P. C.—**CAN.**

PART II. SECT. 2, SUB-SECT. 2.—B. (a) ii.

se. *Farm manager — Contract of hiring—Sale of goods involved—Invalid.*]—Defts. through an agent S., entered into an agreement with pltf. on Sunday, Mar. 23, 1930, to employ pltf. as manager of their dairy farm for one year. Pltf. took over the management of the farm at once, remaining there until Oct. 16, when he was dismissed. In an action for wrongful dismissal :—*Held :* the hiring of pltf. on a Sunday was a "transaction in connection with the ordinary calling" of defts. & so within the prohibition of the Lord's Day Act, & the action should be dismissed.—LISTER *v.* BURNS & CO., [1931] 3 D. L. R. 105; 55 Can. C. C. 197; 43 B. C. R. 468.—**CAN.**

PART II. SECT. 2, SUB-SECT. 2.—C. (b).

k i. —— *Conditional sale of car.*]—The contract in question herein, one for the conditional sale of a motor car, held to have been made on a Sunday when, after deft's wife had approved of the car, it was handed over to him & he delivered to pltf.'s manager the documents evidencing the contract which he, deft., had signed on Saturday but had taken home with him, & the manager took possession of deft.'s old car which pltf. had agreed to accept in part payment for the new one. The contract was, therefore, unenforceable. —SUPERIOR MOTORS, LTD. *v.* CADE, [1930] 2 W. W. R. 448; 3 D. L. R. 1003; 24 S. L. R. 558.—**CAN.**

t i. —— *Building contract.*]—A contract executed on a Sunday for the doing of work which is within the ordinary calling of a party thereto, *e.g.,* a building contract with a carpenter & contractor, is illegal under the Lord's Day, R. S. C., 1927 (c. 123), s. 4.

Where in the carrying out of an illegal building contract the contractor's work & materials have been incorporated into a building he cannot recover on a *quantum meruit* based on deft.'s retention of the premises, since the latter is unable to exercise an option to return the materials.—FARRELL *v.* SAWITSKI (Sask.), [1929] 4 D. L. R. 289; 3 W. W. R. 23.—**CAN.**

PART II. SECT. 2, SUB-SECT. 3.

k i. —— *Miniature golf course.*]—Deft. was convicted for operating a miniature golf course on Sunday, contrary to a municipal bye-law passed under powers authorising township councils to pass bye-laws for regulating & licensing exhibitions held for hire or gain, theatres, music-halls, bowling alleys, moving picture shows, & other places of amusement :—*Held :* there appearing to be no genus to which all of the specified places of amusement belonged & from which the miniature golf course could be excluded, there was no reason for saying that the golf course was not one of the places dealt with by the statute, & therefore the bye-law was one which the statute conferred authority to pass.—R. *v.* EPSTEIN, [1931] O. R. 726; 56 Can. C. C. 139.—**CAN.**

sg. *Construction of Act—"Some game or other"—Miniature golf.*]—Sect. 7 of Sunday Observance Law 28 of 1896 (T.) prohibits the owner of a public billiard room or other public place of recreation from allowing "some game or other" to be played there on Sunday :—*Held :* the word game in the section had its ordinary meaning, namely, an amusement bringing several people together in competition with each other, & included miniature golf.—R. *v.* CLARKE, [1931] App. D. 453.—**S. AF.**

PART II. SECT. 2, SUB-SECT. 4.—C.

p i. ——.]—A search & seizure made, without warrant, by a preventive officer of Alberta Liquor Control Board under the authority conferred on him by sect. 113 (2) of the Government Liquor Control Act of Alberta is not illegal because made on a Sunday. Such exercise of said authority is not within the prohibition of 29 Car. 2, c. 7, & being a ministerial act is lawful at common law.—R. *ex rel.* BEAUMONT *v.* POSTERNAK,

Part III.—Computation of Time.

246. *Add. Annotation :*—**Refd.** Stag Line, Ltd. *v.* Foscolo Mango & Co. (1931), 48 T. L. R. 127.

319. *Add. Annotations :*—**Refd.** Legge *v.* Legge (1928), 45 T. L. R. 157; Shearn *v.* Shearn (1930), 143 L. T. 772; Stephen *v.* Stephen, [1931] P. 197.

324a. "**During.**"]—If one was describing a thing which occupied the whole of a period, such as tenure, or presence in a given place, "during" & "for" were admirable words. But if one said that a series of payments to be made on particular dates was "during" or "for" a period, "during" or "for" must mean "in respect of" that period (ROWLATT, J.).—INLAND REVENUE COMMISSIONERS *v.* ST. LUKE, HOSTEL, TRUSTEES, REGISTERED (1930), 46 T. L. R. 412; 74 Sol. Jo. 465; *revsd. on other grounds*, 144 L. T. 50, C. A.

324b. "**For.**"] — INLAND REVENUE COMMISSIONERS *v.* ST. LUKE, HOSTEL, TRUSTEES, REGISTERED, No. 324a, *ante*.

330a. ——.]—For the purposes of the statutory notice of appeal Sunday is not a *dies non*.—R. *v.* GREVILLE (1929), 21 Cr. App. Rep. 108, C. C. A.

367. *Add. Annotation :*—**Refd.** R. *v.* Scoffin, [1930] 1 K. B. 741.

[1929] 2 W. W. R. 487; 51 Can. Crim. Cas. 426; 24 Alta. L. R. 202.—**CAN.**

p ii. ——.]—R. *v.* WRIGHT (Alta.), [1929] 1 W. W. R. 917; 52 Can. Crim. Cas. 285.—**CAN.**

PART II. SECT. 2, SUB-SECT. 5.

a i. —— *Preparation of meals.*]—The preparation & service of meals on Sunday is a "work of necessity within the Lord's Day Act.—GEORGES *v.* CHARLOTTETOWN, [1932] 2 D. L. R. 443; 4 M. P. R. 133.—**CAN.**

b i. ——.]—*Held :* neither a co., nor its agent, selling land in subdivision, came within the provisions of sect. 1 of Sunday Observance Act.—LAND DEVELOPMENT CO., LTD. *v.* PROVAN (1929), 43 C. L. R. 583; 4 A. L. J. 165; (1930), Argus. L. R. 301.—**AUS.**

PART III. SECT. 2, SUB-SECT. 2.—C.

230 xv. —— ——.]—An action for the recovery of damages occasioned by a motor vehicle on Sept. 8, 1928, was begun by writ issued on Mar. 8, 1929 :—*Held :* it was not barred by Highway Traffic Act, s. 53 (1). Where anything is to be done in a certain time after a given event or date, the day of the occurrence is to be excluded.—SWITZER *v.* KAHN, [1929] 4 D. L. R. 232; 64 O. L. R. 219.—**CAN.**

230 xvi. —— ——.]—An action arising out of a collision of two motor vehicles upon a highway was begun by a writ of summons issued on Tuesday Apr. 22. The collision took place on Oct. 20 of the previous year, at about 11 a.m. Highway Traffic Act provides that no action shall be brought after the expiration of six months from the *time* when the damages were sustained. Apr. 20 & 21 were holidays :—*Held :* the action was brought in time. The day of the date of the accident was to be excluded & the ct. was not required to take notice of the hour of the day when the accident occurred.—BROWN *v.* CROUCHER & DOUSE, [1931] 4 D. L. R. 219; O. R. 541.—**CAN.**

230 xvii. —— ——.]—The phrase "more than fourteen days before a sittings," in sect. 750 Criminal Code, means at least fifteen clear days.—R. *v.* SHENOWSKI, [1932] 1 W. W. R. 192; 40 Man. L. R. 218.—**CAN.**

s]. "*Within seven clear days.*"]—R. 1 of the rules (Sask.) for cases stated under sect. 761 of the Criminal Code, provides that "an application to a justice of the peace to state & sign a case shall be . . . delivered . . . within seven clear days from the date of the proceeding questioned" :—*Held :* the word "within" was the governing word &, therefore, the word "clear" did not have the effect of rendering an application made on the eighth day in time.—*Re* BONNER & WESTFALL, [1931] 1 W. W. R. 334.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.

239 i. *Construed to effectuate intention of parties.*]—Where, under a building contract work was to be completed by "Nov. 31" under penalty of damages :—*Held :* this must be construed to mean Nov. 30.—MCBEAN *v.* KINNEAR (1892), 23 O. R. 313.—**CAN.**

PART III. SECT. 5.

334 i. *Legal proceedings—Act to be done by party—Service of notice of appeal.*]—R. *v.* CHRISTIAN COMMUNITY UNIVERSAL BROTHERHOOD, LTD., [1931] 1 W. W. R. 255.—**CAN.**

g i. —— *Adjournment to day of legal holiday.*]—The fact that a motion is adjourned to a statutory holiday does not render the notice of motion void.—ROSA *v.* KELLINGTON, [1928] 3 D. L. R. 562; [1928] 2 W. W. R. 399; 22 Sask. L. R. 505.—**CAN.**

PART III. SECT. 6, SUB-SECT. 1.

343 iv. ——.]—On Sept. 8, 1928, deft. was the owner of an unlicensed wireless receiving set. Later in the same day, after a visit of an inspector which was not shown to have been communicated to him, he took out a licence. On a charge of maintaining an unauthorised wireless set :—*Held :* the fractions of the day were to be taken into account, & deft. was guilty of the offence.—BEARE *v.* WARD, [1928] S. A. S. R. 1.—**AUS.**

TORT.

Part I.—Nature of Torts.

3. *Add. Annotations :*—**Consd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119. **Refd.** Bottomley *v.* Bannister (1931), 101 L. J. K. B. 46.

35. *Add. Annotation :—Generally,* **Refd.** Hampton *v.* West Cannock Colliery Co., [1932] 2 K. B. 293.

Part II.—Liability for Torts.

62. *Add. Annotation :*—**Refd.** Chapman *v.* Ellesmere (1932), 48 T. L. R. 309.

83. *Add. Annotation :*—**Refd.** Chapman *v.* Ellesmere (1932), 101 L. J. K. B. 376.

88. *Add. Annotation :*—**Refd.** Fenton Textile Assocn. *v.* Thomas (1929), 45 T. L. R. 264.

92. *Add. Annotation :*— **Consd.** Clark *v.* Urquhart, Stracey *v.* Urquhart (1929), 141 L. T. 641.

113. *Add. Annotation :*—**Refd.** Bradstreets British, Ltd. *v.* Mitchell (1932), 48 T. L. R. 670.

115. *Add. Annotations :*—**Refd.** Bradstreets British, Ltd. *v.* Mitchell (1932), 48 T. L. R. 670; The Edison (1932), 147 L. T. 141.

148. *Add. Annotation :*—**Consd.** Horwood *v.* Statesman Publishing Co. (1929), 98 L. J. K. B. 450.

167. *Add. Annotation :*—**Refd.** A.-G. *v.* Walkergate Press, Ltd., Same *v.* Bloomfield, Same *v.* Carlton (1930), 142 L. T. 408.

169. *Add. Annotation :*—**Refd.** Place *v.* Searle (1932), 48 T. L. R. 320.

179. *Add. Annotation :—Generally,* **Refd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

180. *Add. Annotation :—As to* (1) **Refd.** Place *v.* Searle (1932), 48 T. L. R. 320.

Part V.—Waiver and Consent.

228. *Add. Annotations :*—**Refd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375; Copper Export Assocn. Inc. *v.* Mersey Docks & Harbour Board (1932), 48 T. L. R. 542.

PART II. SECT. 8, SUB-SECT. 1.

53 xiii. —— ——.]—In the case of a collision between two vehicles in consequence of independent acts of negligence committed by the respective drivers, both directly contributing to the accident & to the injury suffered by a third person riding in one of the vehicles, he having no control over the driver of the vehicle, both drivers are severally liable to him.—MACDONNELL & JORDAN *v.* PECH & LOVETTE, [1930] 3 W. W. R. 455; 4 D. L. R. 1037; *affg.*, [1930] 4 D. L. R. 396.—**CAN.**

PART II. SECT. 8, SUB-SECT. 5.

84 ii. —— *Acceptance of sum paid into court.*]—DOMINION COAL CO. *v.* LEYLAND & CO., [1930] 2 D. L. R. 558.—**CAN.**

PART II. SECT. 8, SUB-SECT. 6.

89 iii. ——.]—WHYTE *v.* LESLIE, [1930] 2 D. L. R. 409.—**CAN.**

PART II. SECT. 8, SUB-SECT. 7.

95 vi. —— ——.]—ESTEN *v.* ROSEN, [1929] 1 D. L. R. 275; 63 O. L. R. 210. —**CAN.**

95 vii. —— ——.]—REID *v.* ACORN & MCDONALD, [1932] 3 D. L. R. 239.—**CAN.**

so. *Effect of Negligence Act,* 1930 (*Ont.*).]—Above Act is concerned with contribution between joint tort-feasors & does not throw any liability on any party who would be liable apart from the Act.—TOPPING *v.* OSHOWA STREET RY. CO., [1931] 2 D. L. R. 263; 66 O. L. R. 618.—**CAN.**

PART II. SECT. 10, SUB-SECT. 2.

168 ii. —— ——.]—KLEIN *v.* JENOVES & VARLEY, [1932] 3 D. L. R. 571.—**CAN.**

PART VII. SECT. 7, SUB-SECT. 3.—A.

1190 vii. —— —— ——.]—Pltf., who was not a member of deft. union, took a sub-contract under one T. to supply all the labour, but not the material, for the brick-work & masonry work upon a building being erected by T. By a rule of the union, no member was to be allowed to work on any sub-contract taken from a building contractor where the sub-contract was for labour only. Two members of the union saw T. & told him that if he did not get rid of pltf. the bricklayers working for pltf. would be withdrawn, they being members of the union. Pltf., when T. told him this, said he would give up the contract, & did so; subsequently he sued the union for damages. The two members above referred to & a third were added as defts.:—*Held:* what was done was done for the purpose, not of injuring pltf., but of forwarding or defending the trade of the members of the union, & notice that the members of the union would be warned of the situation was not a threat which was unlawful & did not give any right of action to pltf.—HAY *v.* ONTARIO BRICKLAYERS LOCAL UNION NO. 25, [1929] 2 D. L. R. 336; 63 O. L. R. 418.—**CAN.**

TRADE AND TRADE UNIONS.

Part I.—Definitions.

10. *Add. Annotation :—As to* (2) **Apld.** Frost *v.* Caslon, Frost *v.* Wilkins, [1929] 2 K. B. 138.

10a. ——.]—I can find nothing in the Act to prevent me giving to the word " business " one of its ordinary meanings—namely, work or occupation (RUSSELL, L.J.).—FROST *v.* CASLON, FROST *v.* WILKINS, [1929] 2 K. B. 138 ; 98 L. J. K. B. 523 ; 141 L. T. 281 ; 93 J. P. 192 ; 45 T. L. R. 417 ; 73 Sol. Jo. 333 ; 27 L. G. R. 480, C. A.

19. *Add. Annotations :*—**Consd.** Fry *v.* Burma Corpn. (1929), 98 L. J. K. B. 693. **Refd.** Proctor *v.* Ryall, Ryall *v.* Proctor (1928), 14 Tax Cas. 204.

Part III.—Freedom of Trade and Monopoly.

51. *Add. Annotation :—Generally,* **Refd.** L. *v.* L., [1931] P. 63.

Part V.—Restraint of Trade by Agreement.

131. *Add. Annotations :—As to* (6) **Consd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181. *Generally,* **Refd.** Vincents of Reading *v.* Fogden (1932), 48 T. L. R. 613.

143. *Add. Annotation :—As to* (3) **Consd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

154. *Add. Annotation :—As to* (1) **Refd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

164. *Add. Annotation :—As to* (1) **Consd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

PART II. SECT. 10. SUB-SECT. 2.

168 ii. —— ——.]—An action for damages lies against persons who act in concert with the object & result of inducing another to break a valid contract in restraint of trade entered into by him with plff., where as a consequence of their acts plff. has been injured.—RAHAL *v.* RAHAL, [1931] 2 W. W. R. 903 ; *affd.*, [1932] 2 W. W. R. 99 ; 3 D. L. R. 259.—**CAN.**

PART III. SECT. 2, SUB-SECT. 2

m i. ——.]—The proper test in a prosecution under sect. 498 of the Criminal Code, which deals with " restraint of trade," is the injury to the public by the hindering or suppressing of free competition, notwithstanding any advantage which may accrue to the business interests of the members of the combine.—STINSON-REEB BUILDERS SUPPLY CO. *v.* R., [1929] 3 D. L. R. 331 ; S. C. R. 276 ; 52 Can. Crim. Cas. 66.—**CAN.**

m ii. ——.]—In a prosecution for an unlawful combine all that need be proved is that there was a common design to do the things forbidden by statute reduced to a common undertaking to carry that intention into effect.—R. *v.* FAMOUS PLAYERS, [1932] O. R. 307.—**CAN.**

n i. —— ——.] — MACEWAN *v.* TORONTO GENERAL TRUSTS CORPN. (Ont.) (1917), 54 S. C. R. 381 ; 28 Can. Crim. Cas. 387.—**CAN.**

PART III. SECT. 3, SUB-SECT. 2.

sm. *What amounts to " combine "—Within Combines Investigation Act,* 1927.]—An organisation creating a monopoly of the plumbing industry held to be a combine within the Act.—R. *v.* SINGER, [1931] 3 D. L. R. 698 ; *affd.*, 56 Can. C. C. 381.—**CAN.**

sp. —— ——.]—" To the detriment or against the interest of the public " in Combines Investigation Act, R. S. C., 1927, s. 2, includes the words " unreasonably " & " unduly " in Criminal Code, s. 498 (*c*), (*d*).—R. *v.* ALEXANDER, LTD., [1932] 2 D. L. R. 109.—**CAN.**

sr. ——.]—Once it is established that a combine or conspiracy exists, it is unnecessary, to warrant conviction for the formation of a combine, or of the agreement to conspire, to show accused's complicity in subsequent illegal acts done by, or with the connivance of, the body against members of which conspiracy or unlawful combine is charged ; provided there is sufficient proof of their complicity in the original formation of the combine, or in the agreement charged as conspiracy.—BELYEA *v.* R., WEINRAUB *v.* R., [1932] S. C. R. 279 ; 2 D. L. R. 88.—**CAN.**

PART III. SECT. 4, SUB-SECT. 1.

k i. ——.]—A trade association consisting of more than twenty members is not unlawful merely because it has not been registered in conformity with the provisions of the Companies Act.—BHOLANATH SHANKAR DAS *v.* LACHMI NARAIN (1930), I. L. R. 53 All. 316.—**IND.**

PART IV. SECT. 2, SUB-SECT. 1.

sp. *Restraint by proclamation—Contents of proclamation.*]—By Local Government Act, 1919 (N. S. W.), s. 309 (1), " the Government may . . . (*a*) declare by proclamation any defined portion of an area to be a residential district . . . ; (*c*) prohibit the erection in such district of any building for use for the purposes of such trades . . . as may be described in the proclamation ; & (*d*) prohibit the use of any building in the district for any such purposes " :—*Held :* the word " described " requires that every trade intended to be included in the prohibition is to be expressly named in the proclamation, or otherwise specified ; &, therefore, where a proclamation prohibited the use of any building in a residential district for the purposes of " any trade," the prohibition was invalid as the trades intended to be included were not " described."—DYER *v.* LUCKETT (1928), 41 C. L. R. 44.—**AUS.**

sq. *Carrying on business—For purpose of trade licence — Fruit packing.*]—R. *v.* LAKESIDE ORCHARDS, LTD. (B. C.), [1929] 1 W. W. R. 870 ; 51 Can. Crim. Cas. 182.—**CAN.**

sr. *Produce Marketing Act, B. C.—Onus of proof.*]—R. *v.* CHUNG CHUCK (B. C.) (1930), 54 Can. C. C. 174 ; 43 B. C. R. 125 ; *revsg.*, 52 Can. Crim. Cas. 292.—**CAN.**

st. *Who is a manufacturer — " Printer."*]—A printer held not entitled to be licensed as a " manufacturer " under Companies, Trades & Business License Bye-Law of the City of Vancouver.—JONES *v.* SUTHERLAND, [1930] 1 W. W. R. 530 ; 2 D. L. R. 762 ; 53 Can. C. C. 349 ; 42 B. C. R. 321 ; *affd., sub nom.* R. *v.* SUTHERLAND, [1930] 4 D. L. R. 183 ; 2 W. W. R. 244 ; 54 Can. C. C. 313 ; 42 B. C. R. 367.—**CAN.**

sw. *Renewal of licence—Waterside worker.*]—An application for renewal of a licence to a waterside worker, under Transport Workers Acts, 1928-1929, was refused by the licensing officer to whom it was made, on the ground that appct. was not a member of the Waterside Workers' Federation of Australia, & was not a returned soldier or sailor. On the return of an order *nisi* for a writ of *mandamus*, directed to the licensing officer to renew the licence, the order was made absolute.—R. *v.* MAHONY, *Ex p.* JOHNSON, [1931] Argus L. R. 377 ; 5 A. L. J. 286.—**AUS.**

PART V. SECT. 1.

132 i. *Who may enter into agreement —Vendor & purchaser of goodwill.*]—SPENCER *v.* MCKENZIE (1926), 29 W. A. L. R. 95.—**AUS**

234. *Add. Annotation :—Generally,* **Refd.** Vincents of Reading *v.* Fogden (1932), 48 T. L. R. 613.

323. *Add. Annotation :*—**Refd.** *Re* Brownie Wireless Co. of Great Britain (1929), 45 T. L. R. 584.

394. *Add. Annotation :—As to* (1) **Consd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

398. *Add. Annotation :*—**Refd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

399. *Add. Annotation :—As to* (1) **Refd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

406. *Add. Annotation :—As to* (1) **Refd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

435. *Add. Annotation :*—**Refd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

438. *Add. Annotation :—As to* (3) **Dbtd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

457a. **" Within ten miles from X."—Construed as within ten miles from the borough boundary of X.**]—CATTLE *v.* THORPE. [1900] W. N. 83.

470. *Add. Annotation :*—**Refd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

477. *Add. Annotation :*—**Refd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

480. *Add. Annotation :*—**Refd.** Vincents of Reading *v.* Fogden (1932), 48 T. L. R. 613.

488. *Add. Annotation :*—**Refd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

489. *Add. Annotation :*—**Consd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

491. *Add. Annotation :*—**Refd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

497. *Add. Annotation :—As to* (1) & (2) **Consd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

498a. **Clause against soliciting or canvassing customers — Contract with infant.**]—Deft., while still an infant, entered into an agreement of service with C., a dairyman, as a milk roundsman. C. sold his business to pltfs., including the benefits of contracts of service with his employees. After a short time deft. left the service of pltfs. & served another dairyman, in the conduct of whose business he solicited & served the customers of pltfs. When deft. entered the service of C. he entered into an agreement of service with C. This agreement contained a restrictive clause with regard to serving soliciting or canvassing customers of the employer, & it was admitted that if the agreement with C. was binding on deft., it was also binding on him with pltfs. Pltfs. claimed an injunction & damages for acts committed by deft. which were alleged to be in breach of the agreement :—*Held :* the restrictive words were too wide & indefinite to be enforceable, especially in the case of a contract with an infant. The word " customers " alone was used in so expanded a sense that that by itself was sufficient to render the restrictive clause inoperative.—EXPRESS DAIRY CO. *v.* JACKSON (1929), 99 L. J. K. B. 181 ; 142 L. T. 231 ; 46 T. L. R. 147.

511. *Add. Annotation :*—**Refd.** Huntoon Co. *v.* Kolynos (Incorporated), [1930] 1 Ch. 528.

512. *Add. Annotation :*—**Refd.** United Indigo Chemical Co. *v.* Robinson (1931), 49 R. P. C. 178.

PART V. SECT. 3, SUB-SECT. 3.—B.

394 i. *Right to benefit of agreement—General rule.*]—The benefit of a covenant in restraint of trade passes without specific mention to the transferee of the business of the covenantee. —FALLS *v.* BLOCH, [1931] 2 W. W. R. 93.—**CAN.**

PART V. SECT. 7.

n i. —— *Whether extinguished by withdrawal from service.*]—Under a contract covering a certain period between a travelling salesman & his employer, the pltf., the salesman, agreed to give his whole time to his employer's service, & that he would not sell or offer for sale any goods other than those of the employer. The contract placed no restriction on him after the date of the expiry of the contract, nor did it expressly restrict him from selling other goods if before that date he should be discharged for cause under a clause stipulating a cause for his discharge. The salesman, after working under the contract, left the service & entered that of a concern selling competing goods ; & his withdrawal was accepted by the pltf. as a breach of contract :—*Held :* the restriction was not intended to govern the salesman after termination of the contract by breach, & that, if so intended, it was so wide, & general as to be unreasonable & unenforceable.—GERLACH-BARKLOW CO. *v.* MACPHERSON, [1928] 3 W. W. R. 150.—**CAN.**

PART V. SECT. 8, SUB-SECT. 1.—A. (b).

525 iv. ——.]—Pltf. & deft. Z. had been partners in the restaurant business. Z. sold out his interest therein to pltf. & covenanted with him that he, Z., would not during the next three years " carry on or engage in, either directly or indirectly, & whether as a principal, agent, director of a co., servant or otherwise, or take part in the business of a restaurant or cafe or store " within the city of Victoria. Deft. P. opened a combined cafe & candy shop & employed Z. to manage the latter. Pltf. sued Z. for damages for breach of the covenant & for an injunction to restrain further breaches & also claimed damages from Z.'s wife & P. for inducing Z. to commit such breach & from all the three defts. on the ground that they had wrongfully conspired to injure his business :—*Held :* the appeal should be allowed, the injunction prayed for granted & damages awarded against the three defts.—LERIK *v.* ZAFERIS (B. C.), [1929] 3 W. W. R. 422 ; [1930] 1 D. L. R. 634 ; 41 B. C. R. 526.—**CAN.**

539 ii. ——.]—An agreement by the vendor of a restaurant business that she would " neither directly or indirectly have any interest or share or part in any other restaurant or similar place " for five years in the town of B., held not to have been broken by the fact that the vendor became a paid cook for P., a restaurant proprietor who at the time of said sale was employed by the vendor as a cook, & also lent said P. money, without obtaining therefor any right or interest in the restaurant, to be applied by P. in payment of the amount owing on P.'s purchase of the building in which she was carrying on said business.—FONG *v.* BOEHLER (Sask.), [1929] 4 D. L. R. 829 ; 3 W. W. R. 273.—**CAN.**

539 iii. ——.]—An agreement for sale by deft. & another of their business to pltf. co. contained a covenant by deft. that for a period of years, within a specified radius of Wellington, deft. would not " be engaged or beneficially interested in or in any way connected with . . . any trade or business similar to that hereby agreed to be sold." On proceedings against deft. for an injunction to compel observance of the covenant :—*Held :* the wording of the covenant was wide enough to cover deft.'s employment as a servant in a similar business.—SIMMONDS & OSBORNE, LTD. *v.* HIGHAM, [1931] N. Z. L. R. 502.—**N.Z.**

539 iv. ——.]—On the sale of a garage business the vendor covenanted " not to enter into the garage business " within a radius of one mile from the garage sold. The vendor became an employee of a garage within said area ; but there was no evidence that the employment was not a genuine one & concealed an interest in the business :—*Held :* the covenant had not been broken.—MORRISON *v.* MCTURK, [1931] 3 W. W. R. 765.—**CAN.**

t (p. 52). *varied* [1928] 1 D. L. R. 1009 ; 61 O. L. R. 558.—**CAN.**

PART V. SECT. 8, SUB-SECT. 1.—A. (c).

548 i. *Covenant by wife—Trade carried on by husband—Occasional assistance to husband.*]—Where a married woman on selling a business covenants that she will not for a certain period set up a competing business in the same town, either personally or through an agent, the fact that on her husband establishing such a business she renders occasional voluntary unremunerated services in assisting her husband in carrying on the business does not constitute a breach of the covenant, if the business is in reality his own & not hers.—LODGE *v.* ANDERSON, [1930] 3 W. W. R. 359 ; 4 D. L. R. 1040.—**CAN.**

597. After this case add :-

—— —— **Use of initials "A. A. I."**]—*See* AUCTION, No. 15a, *ante*.

634. *Add. Annotation :*—**Refd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

705. *Add. Annotation :*—**Refd.** Papadopoulos *v.* Papadopoulos (1929), 46 T. L. R. 44.

752. *Add. Annotation :—As to* (1) **Refd.** Express Dairy Co. *v.* Jackson (1929), 99 L. J. K. B. 181.

791a. —— —— **Fifteen miles—Three years.**]—Pltfs., who were motor-car dealers, employed deft. as a salesman under an agreement which provided that from its termination deft. should not for three years be engaged in connection with the business of a motor-car dealer within fifteen miles of pltfs.' place of business. Deft. left pltfs.' employment & became a salesman to motor-car dealers within the prohibited area. In an action for an injunction to restrain deft. from an alleged breach of the agreement :—*Held :* as deft.'s employment with pltfs. was not of a confidential nature the restrictive clause was not reasonably necessary for the protection of pltfs.' business, & the action failed. —VINCENTS OF READING *v.* FOGDEN (1932), 48 T. L. R. 613 ; 76 Sol. Jo. 577.

Part VI.—Goodwill.

834. *Add. Annotations :—As to* (1) **Consd.** *Re* John Sinclair, Ltd.'s Trade Mark (1932), 146 L. T. 417. *As to* (2) **Consd.** English, Scottish & Australian Bank, Ltd. *v.* I. R. Comrs. (1931), 48 T. L. R. 170 ; *Re* John Sinclair, Ltd.'s Trade Mark (1932), 146 L. T. 417.

901. *Add. Annotation :*—**Refd.** *Re* Thomson, Thomson *v.* Allen, [1930] 1 Ch. 203.

908. *Add. Annotation :*—**Refd.** Lock *v.* Bell, [1931] 1 Ch. 35.

Part VII.—Trade Unions.

954. *Add. Annotation :—As to* (2) **Refd.** *Re* Home & Colonial Insurance Co., [1930] 1 Ch. 102.

957. *Add. Annotation :—As to* (1) **Apld.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

PART V. SECT. 8, SUB-SECT. 2.—A.

sa. *Correction of judgment—Jurisdiction of court.*]—WARREN TEA CO., LTD. *v.* REINGLASS, [1928] S. R. Q. 29 —**AUS.**

PART V. SECT. 9, SUB-SECT. 3.

sd. *Validity or reasonableness of restraint—Agreement not to "operate" within district—Five years.*]—A covenant by a vendor of a business not to "operate" as a land agent within the municipality of Thebarton for five years is not unreasonable.—LAWRENCE *v.* LLOYD, [1930] S. A. S. R. 194.—**AUS.**

PART V. SECT. 9, SUB-SECT. 5.

Held : the restraint in respect of the period of one year from the termination of W.'s employment was not unreasonable ; but the area within a 5 miles radius was wider than was reasonable, & was void.—MARQUETT *v.* WALSH (1929), 29 S. R. N. S. W. 298 ; 46 N. S. W. W. N. 71.—**AUS.**

PART V. SECT. 9, SUB-SECT. 13.

m i. —— *Five years—Twenty miles.*] —When a contract in restraint of trade is severable as to the areas covered thereby it may be recoverable & valid as to one part of the total area & unreasonable & invalid as to the remainder. Pltf., a physician practising in Nanaimo, who contracted to give professional service to certain miners there, engaged deft. to assist him in that work under an agreement which provided that on its termination deft. would not, for five years, practise in the city of Nanaimo or within a radius of 20 miles thereof. The agreement having been terminated, deft. commenced practice at Ladysmith, 16 miles from Nanaimo :—*Held :* that the restriction was valid as to the city of Nanaimo & invalid as to the area outside of it.—HALL *v.* MORE, [1928] 1 D. L. R. 1028 ; [1928] 1 W. W. R. 400 ; 39 B. C. R. 346.—**CAN.**

PART V. SECT. 9, SUB-SECT. 17.

697 i. *Validity or reasonableness of covenant—Covenant not to solicit employer's customers—For six months.*]—*Held :* the covenant was not unreasonable.—COOTE *v.* SPROULE (1929), 29 S. R. N. S. W. 578 ; 46 N. S. W. W. N. 180.—**AUS.**

699 i. *Construction of covenant "carrying on business."*]—Deft., who had been carrying on the business of selling & delivering milk to retail customers in the town of W., sold his business & the goodwill thereof to pltf. under an agreement which described the business as "dairy business" & in which deft. covenanted that he would not during five years from that date "either by himself or his agent carry on business of selling or delivering milk within the town of W." Deft. thereafter made daily sales of milk to one X., a retail milk vendor in W. The sales were made on the deft.'s premises in W., delivery of the milk to X. was taken there, & X. used it to augment the supplies distributed by him to his customers in the same town :—*Held :* said sales to X. constituted a breach of the covenant & pltf. was given damages & an injunction.—SNELL *v.* MIETTINENEN, [1931] 2 W. W. R. 209.—**CAN.**

PART V. SECT. 9, SUB-SECT. 25.

b (p. 72) i. ——.]—Deft. had carried on in Melbourne for some years a shoe-manufacturing business under a firm-name of which his own name formed part. By a clause in an agreement for the sale of the business & goodwill deft., as one of the vendors, undertook not to carry on or be engaged or concerned or interested in, or permit his name to be used in connection with any similar business within one hundred miles :—*Held :* the clause was not wider than was necessary to protect the goodwill, & was enforceable.—T. W. CRONIN SHOE PTY., LTD. *v.* CRONIN (1929), V. L. R. 244 ; [1929] Argus L. R. 213.—**AUS.**

PART VI. SECT. 3, SUB-SECT. 1.

849 i. *Whether implied—On sale of business.*]—The question whether on the transfer of a business the goodwill itself passes is not to be decided in the negative merely because the word "goodwill" is not specifically mentioned ; but the fact of the passing of the goodwill may be inferred from the circumstances surrounding the transaction.—FALLS *v.* BLOCH, [1931] 2 W. W. R. 93.—**CAN.**

PART VII. SECT. 2, SUB-SECT. 2.—A.

sb. *International labour union.*]—In an action by an unincorporated international labour union against an incorporated society of manufacturers to enforce an agreement in writing in the nature of a collective bargain, made in 1925 by way of settlement of disputes between local manufacturers & local labour unions, it was held the international labour union was an illegal society incapable because of its illegality of maintaining this action or any civil action in an Ontario Ct.—POIAKOFF *v.* WINTERS GARMENT CO., [1928] 2 D. L. R. 277 ; 62 O. L. R. 40.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 1.

sd. *Agreement between union & employer—Who may enforce.*]—In the case of a "collective bargain" between a group or union of employees & an employer a workman who cannot show privity by representation, either authorised or adopted, or by statute cannot claim it, & has no right to call for the enforcement of the bargain. Where in making such an agreement the union assumes to speak on behalf of its members only, a non-member is not in a position to ratify it, although it states that it is made "for employees," & the employer intended that it should apply to all employees & has in fact so applied it. Nor since the subject-matter of such an agreement, *i.e.*, rates of wages, hours & conditions of labour, is not property the non-member cannot claim that it

1038. *Add. Annotation :—As to* (2) **Refd.** Upton *v.* Farmer (1930), 142 L. T. 526.

1044. *Add. Annotations :*—**Consd.** Upton *v.* Farmer (1930), 142 L. T. 526. **Refd.** Woodrow *v.* Trawlers (White Sea) & Grimsby (1929), 141 L. T. 676.

1046. *Add. Citations :*—98 L. J. Ch. 293; 141 L. T. 83; 73 Sol. Jo. 190.

Add. Annotations :—**Apld.** Lamberton *v.* Thorpe (1929), 45 T. L. R. 420. **Refd.** Chapman *v.* Ellesmere (1932), 48 T. L. R. 309.

1047. Add the following paragraph & citations :—

Prior to the passing of the 1927 Act, various committees of a local authority passed resolutions, which were confirmed by the council, to the effect that certain of their employees be required to become members of one of the trade unions in the resolutions referred to. By that Act it was provided that it should not be lawful for any local or other public authority to make it a condition of the employment, or continuance in employment, of any person that he should or should not be a member of a trade union, & that any such condition should be void. Shortly after the passing of the Act instructions were given by a committee that only men belonging to a specified trade union should be employed in respect of certain casual labour; & an employee, who was dismissed accordingly, obtained a declaration in the county court that his dismissal was illegal. A member of the council thereupon brought forward a motion having for its object that instructions should be given that the resolutions of the committees should cease to be operative; but the motion was defeated :—*Held :* in the circumstances the ct. should declare that it was not lawful for the local authority to require any person, as a condition of employment or continuance in employment, to become or to be a member of a trade union.—A.-G. *v.* BIRKENHEAD CORPN. (1928), 93 J. P. 33; 27 L. G. R. 192.

1086. *Add. Citations :*—98 L. J. Ch. 401; 141 L. T. 294.

1087. *Add. Citations :*—[1929] 2 Ch. 58; 98 L. J. Ch. 323; 141 L. T. 178; 73 Sol. Jo. 206.

1092. *Add. Annotation :*—**Refd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

1122. *Add. Annotation :—As to* (1) **Refd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

1122a. —— **Not individual members—Where proceedings intra vires.**]—COTTER *v.* NATIONAL UNION OF SEAMEN, No. 1087, *ante*.

1127. *Add. Annotation :—As to* (1) **Refd.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

1157a. Continuing offence.]—Two officers of a trade union were jointly charged with wilfully withholding moneys of the trade union. It was proved or admitted that the whole of the money had been in the possession of one or other of them, but it was contended that the money was not in their possession at the date of the charge, & that that fact was a necessary ingredient of the offence, & further that the information was out of time :—*Held :* the offence of withholding money referred to in Trade Union Act, 1871 (c. 31), s. 12, was a continuing offence; & it was not necessary to prove that the money was in the possession of the two officers at the date of the charge if there was evidence that money belonging to the

created any benefit for him which he can enforce as a trust.—YOUNG *v.* CANADIAN NORTHERN RY. CO., [1929] 4 D. L. R. 452; 2 W. W. R. 385; 38 Man. L. R. 283; *affd.*, [1931] 1 W. W. R. 49; 1 D. L. R. 645, P. C.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 3.

d i. —— *Reinstatement — Claim by widow to benefit.*]—A member of a trade union having defaulted in payment of his dues & thereby having forfeited his membership was reinstated as a member & died a few months later :—*Held :* under the constitution & bye-laws of the union his default caused a loss of all the benefits of his membership prior to the date of his reinstatement so far as the right of his widow to claim against the death death fund was concerned; &, since the period between his reinstatement & death was not long enough to entitle her, under the constitution, to set up such a claim, she could recover nothing.—HNIDEN *v.* HERR, [1931] 3 W. W. R. 546; [1932] 1 D. L. R. 276; 40 Man. L. R. 108.—**CAN.**

PART VII. SECT. 4, SUB-SECT. 7.

1063 i. *Officers — Election — Construction of rules.*]—Pltf., a member & a trustee of a trade union, was duly nominated for the presidency, his nomination paper being perfectly regular & in order. The committee of management resolved, without any warrant under the rules of the union, to reject his nomination on the ground of personal unfitness for the office, & subsequently the returning officer declared the other candidates, H., one of defts., duly elected unopposed, no ballot having been held, H. himself presided at the meeting in question, which so resolved, without having afforded pltf. an opportunity of being heard. The meeting consisted of seven members, of whom only two had paid their subscriptions, although the rules required a quorum of five financial members. The rules provided for an attendance fee of 2*s.* 6*d.* for each member of the committee, of whom the president was an *ex officio* member, in respect of each committee meeting :—*Held :* the decision of the committee of management was invalid on the following grounds: namely, the committee had no power to reject pltf.'s nomination; H. was present, presiding at the meeting; the committee did not afford pltf. an opportunity of being heard on the question of his eligibility for office; & there was no quorum of qualified members.—CRADDOCK *v.* DAVIDSON, [1929] S. R. (Q.) 328.—**AUS.**

PART VII. SECT. 5, SUB-SECT. 2.—A.

c i. —— *Claim based on arbitration decree.*]—The rules of a master plumbers' assocn. provided that members who tendered successfully for contracts should pay a percentage on these contracts to the funds of the assocn. A claim made by the assocn. against a member in terms of the rules was disputed by him, & a minute of reference was entered into by the parties referring the matter to arbitration & agreeing to abide by & implement the arbiter's decree, & consenting to registration & execution. The arbiter decerned in favour of the assocn. Thereafter the member was sequestrated, & the assocn., founding on the decree-arbitral, lodged a claim in the sequestration, which his trustee in bankruptcy rejected, in respect that, under Trade Union Act, 1871, s. 4, it was unenforceable :—*Held :* while the original claim could not have been entertained in a ct. of law in respect that it was based on an agreement excluded by sect. 4, no such restriction affected the claim here in question, which was a claim based upon a new & independent agreement by the parties to arbitrate & to implement the arbiter's decision—EDINBURGH MASTER PLUMBERS' ASSOCN. *v.* MUNRO, [1928] S. C. (Ct. of Sess.) 565.—**SCOT.**

PART VII. SECT. 5, SUB-SECT. 2.—B.

1116 i. — *Right to benefit—Construction of rule.*]—Pltf. was a member of the Amalgamated Society of Lithographic Printers. Having attained the age of sixty years, he was entitled, under the rules of this Society, to receive superannuation benefit, provided that he had ceased to follow any employment connected with the trade of lithographic printing, or provided that he was "not practically working at the trade or under the rules of the Society." Pltf., having been employed for twenty-five years by a co. of wholesale stationers as foreman of their lithographic department, was promoted to the position of general manager of their entire business. In this capacity he supervised all their departments, including the lithographic department. The Society contended that he was still working at the trade of a lithographic printer :—*Held :* pltf. had ceased to follow any employment connected with the trade, & was not practically working at the trade, within the meaning of the rules of the Society, & he was accordingly entitled to superannuation benefit.—MCCORD *v.* SPROAT, [1931] N. I. 119.—**IR.**

PART VII. SECT. 5, SUB-SECT. 3.

1123 iv. ——.]—BRENTALL *v.* HETRICK, [1928] N. Z. L. R. 788.—**N.Z.**

trade union had been in their possession & was still being withheld.—BEST *v.* BUTLER & FITZGIBBON, [1932] 2 K. B. 108; 101 L. J. K. B. 759; 147 L. T. 99; 96 J. P. 303; 48 T. L. R. 481; 30 L. G. R. 315, D. C.

1164. *Add. Annotation :—Generally,* **Reld.** Hampton *v.* West Cannock Colliery Co., [1932] 2 K. B. 293.

1186. *Add. Annotation :—As to* (1) **Reld.** Place *v.* Searle (1932), 48 T. L. R. 320.

1215. *Add. Annotation :—***Reld.** Musical Performers' Protection Assocn., Ltd. *v.* British International Pictures, Ltd. (1930), 46 T. L. R. 485.

1237. *Add. Annotation :—Generally,* **Reld.** The Croxteth Hall, The Celtic, [1930] P. 197.

1264. *Add. Annotation :—As to* (1) **Consd.** Cookson *v.* Harewood (1931), 101 L. J. K. B. 394, n.

1295. *Add. Annotation :—As to* (1) **Apld.** Cotter *v.* National Union of Seamen, [1929] 2 Ch. 58.

1298. *Add. Annotation :—***Consd.** Horwood *v.* Statesman Publishing Co. (1929), 98 L. J. K. B. 450.

Part VIII.—Trade Protection Societies.

1309. *Add. Annotation :—***Distd.** R. *v.* General Medical Council, [1930] 1 K. B. 562.

PART VII. SECT. 6.

sf. *Hindering provision of public service — Whether indictable.*] — *Held :* the offence created by sect. 30K of Crimes Act, 1914–1926, is not an indictable offence, & the offence can be tried in a ct. of summary jurisdiction.— R. *v.* ARCHDALL & ROSKRUGE, *Ex p.* CARRIGAN, & *Ex p.* BROWN (1928), 41 C. L. R. 128.—**AUS.**

PART VII. SECT. 7, SUB-SECT. 3—A.

1184 vi. ——.]—Pltf., a tally clerk, was employed by Westralian Farmers, Ltd., to assist in the loading of the steamer "B." Pltf. alleged that deft. union & the other defts., W. & M., who were respectively the president & the secretary of the union, combined & conspired to induce Westralian Farmers, Ltd., to dismiss pltf. from his employment & to cease to employ him. There had been a dispute between deft. union & the Australian Workers' Union, & the members of deft. union had resolved that they would not work on the wheat stacks at Geraldton. Pltf., after being elected a member of the deft. union in Nov. 1926, accepted work on the wheat stacks : — *Held :* (1) there was a common understanding among the majority of the members of the union on the jetty that morning to carry out the policy of the union not to work with a man who had worked on the wheat stacks; (2) such common understanding was brought about by defts., W. & M.; (3) the members of the union combined to enforce compliance with their demand that their employer should terminate its contract with pltf.; (4) such combination was unlawful in that the real intention was to deprive pltf. of his contract & thereby injure him; & (5) pltf. was entitled to damages & an injunction.—COFFEY *v.* GERALDTON LUMPERS' UNION (1929), W. A. L. R. 33.—**AUS.**

PART VII. SECT. 8, SUB-SECT. 1.

1237 x. ——.]—Three defts., officials of a union, were charged with doing an act in the nature of a strike, in that they instigated certain employees to do an act in the nature of a strike, namely, to discontinue their employment in pursuance of an agreement made by the said employees to compel their employer, M., to comply with a demand by the employees to dismiss certain non-unionists :—*Held :* as there was no evidence that the agreement between the employees was entered into with intent to compel or induce the employer to comply with a demand made by the employees that non-unionists should be dismissed, the offence was not proved.—*In re* MULLER & WILLIAMS, [1927] S. A. S. R. 353.—**AUS.**

PART VII. SECT. 8, SUB-SECT. 2.

f i. —— *Criminal liability.*]—R. *v.* HOLOWASKAWE (1913), 24 O. W. R. 397; 24 Can. Crim. Cas. 224.—**CAN.**

TRADE MARKS, TRADE NAMES AND DESIGNS.

Part I.—Trade Marks.

5. *Add. Citation :*—[1929] 1 Ch. 113.
Add. Annotation :—**Refd.** *Re* Notox, Ltd., Application by, for a Trade Mark, *Re* Inecto Incorporated (1930), 48 R. P. C. 168.

20. *Add. Annotation :—As to* (2) **Refd.** *Re* Liverpool Electric Cable Co.'s Applications (1928), 46 R. P. C. 99.

25a. ——.]—Applications were made in the joint names of a Canadian Co. & an English Co. for the registration in respect of common soap, class 47, & in respect of perfumed toilet soap, shaving cream, shaving soap & shampoos, class 48, of a trade mark consisting of the word "Palmolive," & for the registration in respect of toilet soap (perfumed) of two marks, the first consisting of the word "Palmolive" shown in gilt lettering on a black band across a representation of a green crêpe paper background, but unlimited as to colours, & the second consisting of the word "Palmolive" shown on a black band & also across a seal at the end of the band. The applications, which had been advertised before acceptance, were opposed by Lever Brothers, Ltd., & others, on behalf of themselves & all other members of the perfumery manufacturers' section of the London Chamber of Commerce :—*Held :* the evidence showed that the words "Palm" & "Olive" had been used in the trade to describe soap containing palm oil & soap containing olive oil respectively ; the word "Palmolive" was descriptive of appcts.' soap containing palm oil & olive oil, & would be deceptive if used upon soaps not containing those oils ; in spite of the evidence showing that to a large number of persons the word "Palmolive" did in fact distinguish appcts.' goods, the word was not adapted to distinguish within sect. 9 (5) ; the mark consisting of the word "Palmolive" in gilt lettering on a black band across a representation of a green crêpe paper background might, if limited as to colours, be regarded as satisfying the provisions of sect. 9, provided that any right to the exclusive use of the word "Palmolive" were disclaimed ; & the objection taken to the applications on the ground of the presence upon the register at the date of the applications of three marks, consisting of or comprising the word "Palmolive," & registered in the name of a different proprietor, would have been removed if the registrations of those prior marks had been subsequently cancelled. Observations were made as to what constitutes a "joint adventure." The applications were refused.—*Re* PALMOLIVE TRADE MARK (1931), 49 R. P. C. 269.

27a. **Addition of diminutive suffix.**]—The word "Consolette," as applicable to a gramophone model intermediate in size between a table & a pedestal or "console" model is not an invented word capable of being registered as a trade mark under Trade Marks Act, 1905 (c. 15), s. 9 (3), as it is merely a diminutive form of the word "console," which is in common use in the gramophone trade. The mark, therefore, was expunged from the register.—S. M. T. GRAMOPHONE CO., LTD. *v.* ITONIA GRAMOPHONES, LTD. (1931), 47 T. L. R. 324 ; 48 R. P. C. 309.

32. *Add. Annotation :*—**Consd.** S. M. T. Gramophone Co. *v.* Itonia Gramophones, Ltd. (1931), 47 T. L. R. 324.

36. *Add. Annotation :*—**Apld.** S. M. T. Gramophone Co. *v.* Itonia Gramophones, Ltd. (1931), 47 T. L. R. 324.

53. *Add. Annotation :*—**Consd.** *Re* Liverpool Electric Cable Co.'s Applications (1928), 46 R. P. C. 99.

54. *Add. Annotation :—As to* (2) **Consd.** *Re* Hans Lauritzen's Application (1931), 48 R. P. C. 392.

64a. ——.]—On Mar. 10, 1930, an application was made to register in Part B of the Register of Trade Marks the word "Brick" as a trade mark in respect of a powder manufactured by appct. for use as a boiler-water

PART I. SECT. 1.

sa. *To what goods applicable.*]—The words "trade mark" have reference to marks applied to goods that are the subject of trade, trade signifying the business of exchanging commodities by barter or by buying & selling for money, & not in the sense of the word as applied to the mechanical arts.—JOURNAL OF COMMERCE PUBLISHING CO., LTD. *v.* RECORD PUBLISHING CO., LTD., [1929] Ex. C. R. 168.—**CAN.**

PART I. SECT. 2, SUB-SECT. 1.

3 v. ——.]—(1) An importer of goods may have a mark of his own for use in the sale of such goods & disregard the exporter's mark, but he cannot register or appropriate to himself the exporter's mark, the mark of the producer of the goods which he imported, though he may use it in connection with such goods imported with such mark.

(2) It is not necessary for the validity of a trade mark that the public should know the name of the proprietor of a trade mark, but in the public mind such mark meant a particular manufacture.—CONTINENTAL OIL CO. *v.* CONSUMERS' OIL CO., LTD., [1932] Ex. C. R. 136.—**CAN.**

r i. ——.]—*Held :* the word "Zipper" having become descriptive of slide fasteners generally & the public having come to associate this word with that type of fasteners, it is not a proper word to be registered as a trade mark.—LIGHTNING FASTENER CO., LTD. *v.* CANADIAN GOODRICH CO., LTD., [1931] Ex. C. R. 90 ; 2 D. L. R. 625 ; *affd.*, [1932] S. C. R. 189 ; 1 D. L. R. 297.—**CAN.**

sb. *Official control or guarantee signs or stamps.*]—The amendment of the Trade Mark & Designs Act passed in 1928, adding paragraph (*g*) to sect. 11 of R. S., 1927, c. 201, was intended as a partial adoption of the terms of Article 6 (*ter*) of the Convention for the protection of Industrial Property, signed at The Hague in 1925, & to which Canada was a signatory. The effect of the addition of paragraph (*g*) was merely to add to the grounds upon which the Minister might refuse to register a mark. The fact that the Minister is now empowered, by said paragraph, to refuse to register trade marks which consist in whole or in part of "official control or guarantee signs or stamps" adopted by another country, is indicative of the fact that prior to 1928 it was not intended by the Trade Mark Act that a trade mark might be refused registration upon the ground that it consisted of "official control & guarantee signs or stamps."—BIRMINGHAM JEWELLERS & SILVERSMITHS' ASSOCN. *v.* STOCK, [1929] Ex. C. R. 175.—**CAN.**

sd. *Name of newspaper.*]—The name of a newspaper is not a proper subject of a trade mark susceptible of being registered under the provisions of the Trade Mark & Designs Act.—JOURNAL OF COMMERCE PUBLISHING CO., LTD. *v.* RECORD PUBLISHING CO., LTD., [1929] Ex. C. R. 168.—**CAN.**

purifier. The powder was supplied sometimes in the form of bricks & sometimes in powder form. The application was refused by the registrar, on the grounds (*a*) that the mark was not " capable of distinguishing " the goods of appct.; (*b*) that it might be calculated to deceive; (*c*) that it too nearly resembled a mark " Brico " already registered for similar goods. Appct. appealed to the ct.:—*Held:* the registrar had correctly decided that the word " Brick " was not " capable of distinguishing " appct.'s goods within Trade Marks Act, 1919 (c. 79), s. 2 (2), & there was too great a similarity between the word " Brick " & the mark " Brico." The appeal was dismissed with costs.—*Re* HANS LAURITZEN'S APPLICATION (1931), 48 R. P. C. 392.

67. *Add. Annotation:—As to* (2) **Consd.** *Re* Liverpool Electric Cable Co.'s Applications (1928), 46 R. P. C. 99.

77a. —— ——.]—The Liverpool Electric Cable Co., Ltd., applied to register the words " Liverpool Cables " in Parts A. & B. of the register in respect of electric cables. The applications were refused on the grounds that, although evidence went to show that those words indicated to the trade the co.'s electric cables, the word " Liverpool " was not *primâ facie* capable of distinguishing those cables or of becoming distinctive of them; that Liverpool was one of a class of geographical names which were of such importance that the names ought not to be registered to any one trader; that the word " Liverpool " describes the common characteristic of vast quantities of goods, namely that they come from Liverpool, & that phrase " Liverpool cables " therefore meant, not the cables of the applicant co., but cables manufactured or dealt in at Liverpool:—*Held:* the Registrar had proceeded upon the right grounds, & that his decisions were correct; the Registrar is not bound to accept an application in Part B. to register upon proof of user or that the mark is in fact distinctive; it is part of his duty to consider as a judicial officer applications put before him; he may refuse registration if not satisfied that the proposed mark is capable of distinguishing; in considering whether a geographical name is registrable, both the locality & the goods must be taken into consideration; & the name of such an important commercial centre as Liverpool, even though it may in fact be distinctive of the goods in respect of which it is sought to register it, is not registrable.—*Re* LIVERPOOL ELECTRIC CABLE CO. LTD.'S APPLICATIONS (1928), 46 R. P. C. 99, C. A.

Annotations:—**Consd.** *Re* Hans Lauritzen's Application (1931), 48 R. P. C. 392. **Refd.** *Re* Hammermill Paper Co.'s Opposition, *Re* Pirie & Sons, Ltd. (1932), 146 L. T. 493.

79. *Add. Annotation:*—**Refd.** *Re* Liverpool Electric Cable Co.'s Applications (1928), 46 R. P. C. 99.

99. *Add. Annotation:*—**Refd.** *Re* Liverpool Electric Cable Co.'s Applications (1928), 46 R. P. C. 99.

114. *Add. Annotation:*—**Consd.** *Re* Liverpool Electric Cable Co.'s Applications (1928), 46 R. P. C. 99.

138. *Add. Annotation:*—**Consd.** *Re* Liverpool Electric Cable Co.'s Applications (1928), 46 R. P. C. 99.

152a. —— **User in foreign country.**]—Notox, Ltd., applied to register the word " Notox " as a trade mark for hair dye, etc. The application was opposed by an American co. who alleged user by them of the mark in America & abroad. The opponents had also, four days before the application, sent out a thousand circulars to hairdressers in London advertising their goods under the mark. Appct. co. had been incorporated about nine months before the application & had made some sales under the mark. The Assistant-Comptroller decided to register the mark. The opponents appealed:—*Held:* the appct.'s right to registration was not affected by the opponents' user abroad, & the thousand circulars sent out by the opponents were not sufficient to cause a liability to confusion such as to destroy the right to registration. The appeal was accordingly dismissed.—*Re* NOTOX, LTD., APPLICATION BY, FOR A TRADE MARK, *Re* INECTO INCORPORATED (1930), 48 R. P. C. 168.

152b. —— **False trade description—" Norwegian sardines."**]—In 1907 Concord Canning Co. registered a trade mark consisting of a label which contained the words " Norwegian Sardines " in respect of " canned sardines preserved in oil." In 1915 it was held that the term " Norwegian Sardines " was a false trade description within Merchandise Marks Act, 1887. In 1932 an application was made to rectify the register by expunging the mark, or, alternatively, by deleting the words

PART I. SECT. 2, SUB-SECT. 6.—A.

sb. *Ordinary word misspelt & hyphenated—" Bar-b-q "—For barbecue—Not registrable.*]—BROOKER *v.* COLLINS, [1932] 2 D. L. R. 139; O. R. 189.—**CAN.**

PART I. SECT. 2, SUB-SECT. 6.—E.

se. *Coloured strand in rope.*]—The trade mark in question was a specific trade mark to be applied to the sale of wire ropes, & consisted of a yellow-coloured strand running through the length of such ropes:—*Held:* a coloured strand woven into a wire fabric is a " mark " which may be used by any person carrying on a manufacture of wire rope for the purpose of distinguishing the article manufactured or produced or offered for sale by him from that of any other manufacture; & the same was a " mark " within sect. 5 of Trade Mark & Designs Act.—WRIGHTS' ROPES, LTD. *v.* BRODERICK & BASCOM ROPE CO., [1931] Ex. C. R. 143; 4 D. L. R. 368.—**CAN.**

sf. *Numerals.*]—*Held:* the registered trade marks " No. 360," " No. 361," " No. 90 " & " No. 99," applied to the upper & lower blades of an animal clipping machine, & not in its original use intended as a trade mark, & being without distinctiveness, are not properly trade marks within Trade Mark & Designs Act & should be expunged. There can be no distinctiveness, as a rule, in a numeral or numerals alone, although conceivably they might be so arranged, selected or used, that they would lose, partially at least, the characteristic of numerals, & acquire a distinctiveness qualifying them for registration as trade marks.—DECATUR *v.* FLEXIBLE SHAFT CO., LTD., [1930] Ex. C. R. 97; 2 D. L. R. 540.—**CAN.**

PART I. SECT. 2, SUB-SECT. 7.

kt. ——.]—By its action, petitioner, owner of the trade marks " Big Ben," " Baby Ben," " Pocket Ben," " Glo-Ben " & " Ben Hur," seeks to have the trade mark " Bentima," owned & registered by deft., expunged on the ground that the same was liable to confuse & deceive the public:—*Held:* as the trade marks in question consisted of distinctive names & were printed in such a conspicuous place & manner, there could not be any confusion as to which was which, & the public, even the unwary & incautious purchaser, could not be made or led to purchase the goods of deft. for that of pltf., deft.'s trade mark was not liable or calculated to confuse or deceive the public, & was properly registered & should not be expunged.—WESTERN CLOCK CO. *v.* ORIS WATCH CO., LTD., [1931] Ex. C. R. 64; [1931] 2 D. L. R. 775; *on appeal,* [1931] D. L. R. 877; S. C. R. 397.—**CAN.**

"*Norwegian Sardines*" therefrom. *An order was made that the register should be rectified by deleting the words* "Norwegian Sardines" *from the mark.—Re* CONCORD CANNING CO.'S TRADE MARK *(1932), 49* R. P. C. 323.

166a. ——.]—*Re* HANS LAURITZEN'S APPLICATION, No. 64a. *ante.*

—— **Discretion of Court of Appeal.**]—Magdalena Securities, Ltd., a Canadian Co., applied to register the word "Ucolite" as a trade mark for partially coked coal. The application was opposed by Low Temperature Carbonisation, Ltd., on the ground that the mark would conflict with the opponents' registered trade mark "Coalite." The registrar decided to register the mark. The opponents appealed. Leave was given to them to take the further objection, which by agreement had been treated as a ground of objection before the registrar, that appcts. had at the date when registration was applied for no *bonâ fide* intention to use the mark as a trade mark. At the hearing of the appeal, some of the declarants were cross-examined & further evidence was adduced:—*Held:* (1) in a case where the ct. has materials before it which were not before the registrar, the ct. has to exercise its discretion under sect. 8 (2) of Trade Marks Act, 1919, although generally speaking it ought to have considerable regard to the decision of the registrar, taking into account the fact of his special experience; the appcts. had failed to show affirmatively that the mark was not calculated to deceive, & therefore the application ought to be disallowed; (2) on the evidence there was within Trade Marks Acts no *bonâ fide* intention on the part of appcts. *at the date of the application to use the mark applied for upon or in connection with the goods in question for the purpose of indicating that they were the goods manufactured by appcts. The appeal was accordingly allowed. —Re* MAGDALENA SECURITIES, LTD., APPLICATION FOR REGISTRATION OF A TRADE MARK, *Re* LOW TEMPERATURE CARBONISATION, LTD., OPPOSITION BY (1931), 48 R. P. C. 477.

167. *Add. Annotation:—As to* (2) **Consd.** *Re* Hammermill Paper Co.'s Opposition, *Re* Pirie & Sons, Ltd. (1932), 146 L. T. 493.

180. *Add. Annotations:—Generally,* **Refd.** Bass, Ratcliff & Gretton, Ltd. *v.* Nicholson & Sons, Ltd., & Registrar of Trade Marks (1931), 48 T. L. R. 161; *Re* Magdalena Securities, Ltd., Application for Registration of a Trade Mark, *Re* Low Temperature Carbonisation, Ltd., Opposition by (1931), 48 R. P. C. 477.

185. *Add. Annotation:—Generally,* **Refd.** E. P. Mohamed Noordin *v.* S. E. S. Abdul Kareem & Co. (1931), 48 R. P. C. 491.

191. *Add. Annotation:*—**Expld.** Bass, Ratcliff & Gretton, Ltd. *v.* Nicholson & Sons, Ltd., & Registrar of Trade Marks (1931), 48 T. L. R. 161.

232. *Add. Annotation:—As to* (1) **Refd.** *Re* Nicholson & Sons, Ltd., Application, *Re* Bass, Ratcliff & Gretton's Trade Mark, [1931] 2 Ch. 1.

248. *Add. Annotations:*—**Refd.** *Re* Liverpool Electric Cable Co.'s Applications (1928), 46 R. P. C. 99; *Re* Magdalena Securities, Ltd., Application for Registration of a Trade Mark, *Re* Low Temperature Carbonisation, Ltd., Opposition by (1931), 48 R. P. C. 477; *Re* Hammermill Paper Co.'s Opposition, *Re* Pirie & Sons, Ltd. (1932), 146 L. T. 493.

PART I. SECT. 2, SUB-SECT. 8.—B. (a).

178 iv. —— ——.]—Pltf.'s trade mark consisted of the words "Peter Pan" with a representation of Peter Pan, used in the sale of "woven piece goods," & deft. registered a trade mark consisting also of a representation of Peter Pan, with the words "Genuine Peter Pan Garments," to be applied to "Ladies', Misses' & Children's Ready-to-Wear Garments":—*Held:* while the Trade Mark & Designs Act permits registration of a specific trade mark, & without there being any provision for the classification of goods, nevertheless trade marks resembling one another should not be registered for different classes of goods, if the result of the junior registration "be calculated to deceive or mislead the public"; &, in consequence, deft.'s trade mark should be expunged, notwithstanding it was applied to garments only whilst pltf.'s was applied to piece goods.—HENRY GLASS & CO. *v.* HAMPTON MANUFACTURING CO., LTD., [1931] 1 D. L. R. 637; [1930] Ex. C. R. 212.—**CAN.**

sg. *Similar mark having expired twenty years previously.*]—In Dec. 1929, B. & L. O. Co. applied to have the letters "B. & L." registered as a trade mark. This application was refused by the Comr. of Patents for the sole reason that one L. had registered the letters "B. L." as a specific trade mark in the year 1885. This latter mark was never renewed. Hence this appeal:—*Held:* the trade mark "B. L." having expired in the year 1910, was not at the time of the application of B. & L. O. Co. a registered trade mark within sect. 11 (b) of Trade Marks & Designs Act; & the Comr. of Patents was not justified in refusing the application aforesaid solely because of the registration aforesaid made in the year 1885.—BAUSCH & LOMB OPTICAL CO. *v.* COMR. OF PATENTS, [1930] Ex. C. R. 123; 2 D. L. R. 981.—**CAN.**

PART I. SECT. 2, SUB-SECT. 8.—B. (c) ii.

sl. "*Sunlight*" — "*Sunbrite.*"]—*Held:* the trade mark of deft. did not so resemble pltf.'s trade mark in appearance, sound, or otherwise, as to be calculated to deceive or mislead the public into purchasing the goods of deft. believing them to be those of pltf. Moreover, pltf.'s product & that of deft. were not of the same class, the one being a cake soap & the other a liquid, & the action of pltf. should be dismissed.—LEVER BROS., LTD. *v.* WILSON, [1932] Ex. C. R. 69.—**CAN.**

sm. "*Sunlight*" — *Sunrise.*]—*Held:* even if deft.'s product could be said to belong to the same class of goods as that of pltf., deft.'s label being so different in appearance, colour, lettering & subject-matter from that of pltf.'s label, & bearing on its face, in large type, the words "Sunrise Co., 711 Langlois Ave., Windsor, Ont.," it could not be said to be "calculated to deceive," within Trade Mark & Design Act.—LEVER BROS., LTD. *v.* UMBERTO PIZZUTI, [1932] Ex. C. R. 79.—**CAN.**

so. "*Sure to rise*"—"*Bound to rise.*"]—Pltf. had a registered trade mark for baking-powder, a prominent part of which consisted of a plate with figures of loaves over which were the words "Sure to rise." Deft. was the registered owner of a trade mark, part of which consisted of the words "Bound to rise" placed round the top of a balloon. There were many dissimilarities in the details of each mark. Deft.'s mark had been registered in 1882, & pltf. had used its mark for about fifty years & had registered it in 1912. Deft. placed part of its trade mark, namely, the words "Bound to rise," above a cake on a prominent part of its labels:—*Held:* deft. had not made an exact or substantial copy of pltf.'s trade mark, nor had deft., by putting part of its registered mark, namely, the words "Bound to rise," above a cake on a prominent part of its label, infringed the trade mark of pltf., as the words "Bound to rise" had not been so used by deft. as to be calculated to cause its goods to be taken by ordinary purchasers for the goods of pltf.—EDMONDS, LTD. *v.* SELF-HELP, LTD., [1932] N. Z. L. R. 87.—**N. Z.**

sq. "*Doris Kinsman*"—"*Dorikin.*"]—Eight girls, while they were still pupils of a certain Doris Kinsman, the proprietress of "Doris Kinsman's Dancing Studio," formed themselves into a troupe known as "The Dorikin Eight." Doris Kinsman sold her dancing studio to the appct., & some time afterwards resp., a member of "the Dorikin Eight" troupe, commenced a dancing school, which, with the permission of the remaining seven members of the "Dorikin Eight," was known to the public & advertised by resp. (who had no intention of interfering in any way with appct.'s business) as the "Dorikin Studio":—*Held:* the words Dancing Studio were merely descriptive of the class of business carried on & could be ignored, & as there had been no confusion in fact the names "Doris Kinsman" & "Dorikin" were not so similar that it was likely they would be so confused. Interdict therefore refused.—PATLANSKY *v.* BROWN (1931), 52 N. L. R. 147.—**S. AF.**

259. *Add. Annotation:—As to* (4) **Refd.** *Re* Nicholson & Sons, Ltd., Application, *Re* Bass, Ratcliff & Gretton's Trade Mark, [1931] 2 Ch. 1.

277a. Triangle & word "Triangle"—Triangle & word "Nicholson."]—From 1865 onwards resps., Nicholson & Sons, brewers of Maidenhead, had stencilled an outline triangle with "N" inside on their "best pale ale" casks & had also branded "Nicholson" thereon. In 1927 they applied to register the combination as a trade mark for bitter beer. Their application was opposed by appts., Messrs. Bass, on account of the similarity of the outline triangle to the well-known Bass solid triangle mark registered in 1876, but the Assistant Comptroller allowed the registration, limiting the outline triangle & "N" to the colours white or black. About the same time resps. applied to remove the word "Triangle" registered by Messrs. Bass in 1926 from the register, & the Assistant Comptroller ordered the removal:—*Held:* (1) resps.' mark had been used both as a mark of quality & of origin before Aug. 13, 1875, & was therefore registrable as an old mark. In the case of a distinctive mark non-recognition by the public is immaterial on the question of "user as a trade mark"; (2) resps.' mark was not prohibited from registration by sect. 11 as being calculated to deceive, inasmuch as the general prohibition in that section must be read subject to the specific exception in sect. 19, which impliedly authorised the Registrar to place upon the register an old mark so nearly resembling a mark of another already on the register as to be calculated to deceive; (3) in view of the extensive user of appts.' mark in connection with bottled beer & the absence of any evidence that resps. had used their mark for bottled beer, bottled beer should be excluded from the specification of goods in respect of which resps.' mark was registered; (4) the registration of resps.' mark involved as a consequence the removal from the register of appts.' mark consisting of the word "Triangle."—BASS, RATCLIFF & GRETTON, LTD. *v.* NICHOLSON & SONS, LTD., [1932] A. C. 130; 101 L. J. Ch. 98; 48 T. L. R. 161; 75 Sol. Jo. 868; 49 R. P. C. 88; *sub nom. Re* NICHOLSON & SON'S APPLICATION FOR REGISTRATION OF A TRADE MARK, *Re* BASS, RATCLIFFE & GRETTON'S TRADE MARK, 146 L. T. 349, H. L.

Annotation:—**Refd.** *Re* Hammermill Paper Co.'s Opposition, *Re* Pirie & Sons, Ltd. (1932), 146 L. T. 493.

277b. "Abermill"—"Hammermill."]—An application by appts., A. P. & Sons, was made for registration of a trade mark in respect of paper goods in class 39, & was opposed by the H. Paper Co., whose business was carried on in the United States of America, but which had business in this country. The H. Paper Co. had a trade mark in the United States "Hammermill Bond," which they made use of in this country after 1920, from that time exporting goods to this country, & each year sold about £2,000 in value of the goods in this country. In May, 1923, appts. adopted the mark "Abermill Bond," which they now sought to register, & their trade under that mark had been over £20,000 a year. Appts. chose the mark "Abermill" in reference to the locality where their paper for stationery was produced near Aberdeen, without any thought of the word "Hammermill" quite honestly, though they were aware of the mark "Hammermill Bond." On June 13, 1931, the Assistant-Comptroller decided that if the application had been under sect. 19 of the combined Trade Marks Act he would have refused the application, on the ground that there was a resemblance calculated to deceive, but though, therefore, he would not have registered it if it had been a new mark & the application had been under sect. 19, he exercised his discretion under sect. 21 of the Acts, & treated the case as within that section, because of there having been an honest concurrent user of the mark by the appts., & made the order for registration of "Abermill Bond":—*Held:* (1) the ct. ought to be very slow to upset the exercise of the discretion of the Comptroller or Registrar, who had to adjust various considerations; (2) accepting the view of the Comptroller & CLAUSON, J., that sect. 19 alone did not avail to secure the admission of the mark to the register, as to sect. 21 there having been an honest choice of the word "Abermill" & an honest user over a period of six years & no confusion having been proved, the ct. ought to permit the registration of the mark under sect. 21, even if it were deemed to be identical or nearly identical with the trade mark of the H. Paper Co., as that section was in no way controlled or limited by sect. 19.—*Re* HAMMERMILL PAPER CO.'S OPPOSITION, *Re* PIRIE (ALEX.) & SONS, LTD. (1932), 146 L. T. 493; *sub nom. Re* ALEXANDER PIRIE & SONS, LTD., TRADE MARK, 49 R. P. C. 195, C. A.

285a. Duty of Registrar—To impose conditions—When possibility of deception or confusion.]—NOTES OF OFFICIAL RULINGS (1929) A (1929), 46 R. P. C. App. i.

285b. Decision of Registrar—Attitude of court towards.]—*Re* HAMMERMILL PAPER CO.'S OPPOSITION; *Re* PIRIE (ALEX.) & SONS, LTD., No. 277b, *ante.*

288. *Add. Annotation:*—**Refd.** *Re* Nicholson & Sons, Ltd., Application, *Re* Bass, Ratcliff & Gretton's Trade Mark, [1931] 2 Ch. 1.

291. *Add. Annotation:*—**Consd.** *Re* Nicholson & Sons, Ltd., Application, *Re* Bass, Ratcliff & Gretton's Trade Mark, [1931] 2 Ch. 1.

300a. Use as quality mark & mark of origin.]—*Re* NICHOLSON & SONS' APPLICATION, *Re* BASS, RATCLIFF & GRETTON'S TRADE MARK, No. 277a, *ante.*

305a. —— Distinctive mark — Triangle.]—*Re* NICHOLSON & SONS' APPLICATION, *Re* BASS, RATCLIFF & GRETTON'S TRADE MARK, No. 277a, *ante.*

309. *Add. Annotation:*—**Refd.** Bass, Ratcliff & Gretton, Ltd. *v.* Nicholson & Sons, Ltd., & Registrar of Trade Marks (1931), 48 T. L. R. 161.

314. *Add. Annotation:*—**Consd.** *Re* Nicholson & Sons, Ltd., Application, *Re* Bass, Ratcliff & Gretton's Trade Mark, [1931] 2 Ch. 1.

318. *Add. Annotation:*—**Consd.** *Re* Nicholson & Sons, Ltd., Application, *Re* Bass, Ratcliff & Gretton's Trade Mark, [1931] 2 Ch. 1.

320. *Add. Annotation:*—*As to* (1) **Consd.** *Re* Nicholson & Sons, Ltd., Application *Re*, Bass, Ratcliff & Gretton's Trade Mark, [1931] 2 Ch. 1.

321. *Add. Annotation :*—**Refd.** Bass, Ratcliff & Gretton, Ltd. *v.* Nicholson & Sons, Ltd., & Registrar of Trade Marks (1931), 48 T. L. R. 161.

323. *Add. Annotation :*—**Refd.** *Re* Nicholson & Sons, Ltd., Application, *Re* Bass, Ratcliff & Gretton's Trade Mark, [1931] 2 Ch. 1.

326a. —— ——.]—J. & J. Colman, Ltd., applied to register in Part A. of the register in class 42 a label in respect of semolina. The registrar refused the application, on the ground that semolina & mustard prepared for use as food were goods of the same description, & appcts. refused to agree to the association of the mark with earlier marks in respect of mustard. Appcts. appealed to the ct. :—*Held :* mustard falls under the description of a condiment & semolina under the description of a cereal & the goods are not of the same description, & the registrar should be directed to reconsider the question as to what association with the cereal group only should be required.—*Re* COLMAN J. J. LTD.'S APPLICATION (1929), 46 R. P. C. 126.

331. *Add. Annotations :—As to* (1) **Refd.** Champagne Heidsieck et Cie Monopole Societe Anonyme *v.* Buxton (1929), 46 T. L. R. 36. *As to* (3) **Refd.** *Re* Proctor & Gamble Co.'s Petition, Proctor & Gamble Co. *v.* Pugsley Dingman & Co. (1929), 46 R. P. C. 421. *Generally*, **Refd.** Lundberg & Sons, Ltd. *v.* Letrik, Ltd., *Re* Lundberg & Sons, Ltd., Trade Marks Nos. 223,405 & 223,408 (1931), 49 R. P. C. 15.

337. *Add. Annotations :—As to* (1) **Consd.** *Re* Liverpool Electric Cable Co.'s Applications (1928), 46 R. P. C. 99. **Refd.** *Re* Alexander Pirie & Sons, Ltd., Trade Mark (1932), 49 R. P. C. 195 ; *Re* Magdalena Securities, Ltd., Application for Registration of a Trade Mark, *Re* Low Temperature Carbonisation, Ltd., Opposition by (1931), 48 R. P. C. 477.

339a. ——.]—*Re* LIVERPOOL ELECTRIC CABLE CO. LTD.'S APPLICATIONS, No. 77a, *ante*.

353a. Withdrawal of application.]—On May 28, 1929, applts. had applied to register a trade mark. Their application was refused, & the registrar in his decision dated Feb. 28, 1930, referred to certain trade marks already registered & owned by resps. Leave was given by the ct. to applts. to serve notice of appeal to resps. Applts. did not inquire as to the objections proposed to be relied upon by resps. At the hearing resps. disclosed for the first time that they had a certain other registered trade mark. The learned judge intimated that, if resps. wished to put that matter in evidence, they would only be allowed to do so subject to terms as to costs. Resps. did not seek to rely on the matter. Thereupon the learned judge directed that the matter ought to be relied on by the registrar, who was also a party to the proceedings. Counsel for the registrar was given leave to rely upon the said registered trade mark as a ground of further objection. Applts. then sought leave to withdraw their application without payment of any costs at all :—*Held :* on applts. by their counsel withdrawing their application there be no order on the motion.—*Re* COLUMBIA PICTURES CORPN.'S APPLICATION (1932), 49 R. P. C. 491.

361. *Add. Annotation :*—**Refd.** *Re* Nicholson & Sons, Ltd., Application, *Re* Bass, Ratcliff & Gretton's Trade Mark, [1931] 2 Ch. 1.

385. *Add. Annotation :*—**Refd.** *Re* Nicholson & Sons, Ltd., Application, *Re* Bass, Ratcliff & Gretton's Trade Mark, [1931] 2 Ch. 1.

386a. —— **Trade mark for beer—User on barrels.**]—The ct. refused an application by resps. that the use of applts.' triangle trade mark, of which the ct. had by a majority allowed the registration as a trade mark for beer should be restricted to its use on barrels.—*Re* NICHOLSON & SONS, LTD., APPLICATION (1931), 47 T. L. R. 276, C. A.

397a. Order of Court of Appeal permitting registration—Whether stay of execution ordered pending appeal to House of Lords.]—*Re* HAMMERMILL PAPER CO.'S OPPOSITION, *Re* PIRIE (ALEX.) & SONS, LTD. (1932), 146 L. T. 493 ; *sub nom. Re* ALEXANDER PIRIE & SONS, LTD., TRADE MARK (1932), 49 R. P. C. 195, C. A.

414. *Add. Citations :*—[1929] 1 Ch. 92 ; 140 L. T. 9.

414a. Prevention of deception—Not right to control conditions of resale.]—The statutory right now conferred on the registered proprietor of a trade mark by Trade Marks Act, 1905 (c. 15), s. 39, is the same as that which was conferred by Trade Marks Registration Act, 1875 (c. 91), s. 3, namely, the right to use the mark as a trade mark to indicate that the goods upon which it is placed are his goods & to exclude others from selling under the mark goods which are not the goods of the registered proprietor. This right does not carry with it any right to control, by the imposition of conditions or restrictions, the selling or dealing with the goods under his mark by other persons.

Pltfs. produced champagne in France. They sold " Champagne Dry Monopole " in England & France, the wine sold in France being the sweeter of the two. The labels on the bottles containing the wine sold in France bore the word " Brut " & sufficiently distinguished in England, as the ct. found as a fact, that wine from the wine prepared for & sold in the English market. Pltfs., who were the registered owners of trade

PART I. SECT. 2, SUB-SECT. 11.

sh. *Meaning of.*]—To be a fancy term & not a descriptive term, a mark applied to goods must be obviously intended to be non-descriptive. Where words are *primâ facie* descriptive, the fact that the article to which they are applied does not answer the description imported by them, will not make them fancy words.—ORANGE CRUSH (AUSTRALIA), LTD. *v.* GARTRELL (1928), 28 S. R. N. S. W. 392 ; 45 N. S. W. W. N. 98.—**AUS.**

PART I. SECT. 3, SUB-SECT. 2.

sk. *Security for costs—Whether ordered.*]—*Held :* a petitioner in a proceeding before this ct. for an order entitling him to register a trade mark is a pltf., & when residing abroad may be compelled to give security for costs.—ENERGINE REFINING & MANUFACTURING CO. *v.* IRVING, [1927] Exch. C. R. 235.—**CAN.**

so. *Joinder of application to expunge.*]—T. presented a petition for leave to register a trade mark, & joined with it in his petition a demand to expunge certain trade marks alleged to stand in his way, objection being made that the two issues could not be so joined in such a petition :—*Held :* inasmuch as the present case is not clearly covered by the rules of the ct., the rules in England were not applicable to this case, & to force petitioner to take a second action to expunge would only be multiplying actions to no purpose, contrary to the spirit of modern law, the ct. availing itself of the power vested in it by rr. 299 & 300, gave leave to petitioner to present his petition as libelled. The rules not being quite definite upon the subject, the application was dismissed without costs.—*Re* TURNBULL (C.) CO., LTD.'S PETITION, [1932] Ex. C. R. 6.—**CAN.**

marks under which the wine prepared for English use was sold, took certain steps to prevent the Brut wine from being sold in England. Deft., without being a party to any breach of contract, imported pltfs.' Brut wine into England, & sold it there in bottles bearing the same labels which pltfs. themselves used on the bottles containing that type of wine. In an action for an injunction to restrain the infringement of pltfs.' trade marks by the sale of the Brut wine in England & from passing off that type of pltfs.' wine as & for pltfs.' wine prepared for the English market:—*Held:* (1) deft. by the sale of the Brut wine in England, although prohibited by pltfs., under the very marks which pltfs. themselves adopted to distinguish that type of their wine, were not guilty of passing off the Brut wine as & for pltfs.' type of wine prepared for the English market; (2) deft. was in no wise affected by the restrictions sought to be imposed by pltfs. against selling or dealing with the Brut wine in England. The action was, accordingly, dismissed.—CHAMPAGNE HEIDSIECK ET CIE MONOPOLE SOCIETE ANONYME *v.* BUXTON, [1930] 1 Ch. 330; 99 L. J. Ch. 149; 142 L. T. 324; 46 T. L. R. 36; 47 R. P. C. 28.

429a. —— **Of invalid assignment.**]—*Re* JOHN SINCLAIR, LTD., TRADE MARK, No. 566a, *post.*

432a. **Leave to adduce further evidence—When granted.**]—*Re* CARL INGENOHL & WERNER DAVIDIS TRADE MARK, *Re* EL ORIENTE FABRIKA DE TABACOS, INCORPORATED, APPLICATION (1931), 48 R. P. C. 399.

458. *Add. Annotation:—Generally,* **Refd.** *Re* Nicholson & Sons, Ltd., Application, *Re* Bass, Ratcliff & Gretton's Trade Mark, [1931] 2 Ch. 1.

465. *Add. Annotation:*—**Apld.** *Re* Inescourt's Trade Mark (1928), 46 R. P. C. 13.

496. *Add. Citation:*—29 R. P. C. 158.

503. *Add. Annotation:*—**Refd.** *Re* Nicholson & Sons, Ltd., Application, *Re* Bass, Ratcliff & Gretton's Trade Mark, [1931] 2 Ch. 1.

511a. —— **Use unknown at time of registration—Mark registered for "cinematograph films"—Whether "talkie films" included.**]—Appcts., Columbia Pictures Corpn., an American Corpn. manufacturing & dealing in cinematograph films, applied to rectify the register by excluding "cinematograph films & goods of a like description to cinematograph films," from the specification of goods for which resps.' three trade marks, all of which contained the word "Columbia" prominently, were registered in class 8. An application by the corpn. for a mark which contained the figure of Liberty & the words "Columbia Pictures" had been refused registration under sect. 19. The following ground of objection was (*inter alia*) relied on by appcts.: (1) there had been no *bonâ fide* user by the resps. of any of their said trade marks in respect of cinematograph films or goods of a like description during the five years immediately preceding the application to rectify. Resps. did not nor had they ever made cinematograph films for commercial purposes. At the end of 1927 cinematograph films with sound accompaniment began to be shown commercially. Later the sound accompaniment was provided by a photographic record of the sound made at the side of the film used to project a picture on the screen. Resps. had no objection if the words "cinematograph films" were held only to describe films for the production of visual pictures, to the exclusion of this class of goods from their specification of goods in class 8. But if the words were held to include films used to record & reproduce a sound accompaniment, then resps. objected to the exclusion of such goods:—*Held:* "cinematograph films" included films which record & reproduce acoustic matter whether alone or jointly with visual matter; films for acoustic reproduction, sought to be excluded, were not known at the date of the resps.' registration; in these circumstances non-user during the five years immediately preceding the application to rectify could not be attributed to a deliberate intention not to use or to a deliberate intention to abandon such trade marks in respect of such goods; the question of exclusion was a matter of discretion & special circumstances must be considered; & the

PART I. SECT. 4, SUB-SECT. 2.

418 i. *Mark registered under specific mark—Use only in respect of one article in class—Whole class not protected.*]—*Re* PROCTOR & GAMBLE CO.'S PETITION, PROCTOR & GAMBLE CO. *v.* PUGSLEY DINGMAN & CO., LTD. (1929), 46 R. P. C. 421.—**CAN.**

PART I. SECT. 5, SUB-SECT. 1.—A.

426 i. *Removal—Grounds for—Prior user by applicant.*]—GOLD MEDAL CAMP FURNITURE MFG. CO. *v.* GOLD MEDAL MFG. CO., [1928] 2 D. L. R. 819.—**CAN.**

PART I. SECT. 5, SUB-SECT. 1.—C. (a).

b i. ——.]—Proceedings were taken to expunge a trade mark consisting of the words "Birdseye Macaroni," registered in respect of macaroni. It appeared that the word "birdseye" had acquired a definite meaning in the trade as denoting small annular particles of macaroni":—*Held:* the trade mark used in respect of small annular particles of macaroni was descriptive of the character of the goods, & if used in respect of other macaroni would be likely to deceive. The trade mark was therefore ordered to be expunged from the register.—*Re* HANCOCK'S GOLDEN CRUST PTY., LTD.'S TRADE MARK, [1929] Argus L. R. 40; [1929] V. L. R. 17.—**AUS.**

b ii. ——.]—Pltf. was the owner of a registered trade-mark "Honey Dew" used in connection with the sale of a certain orange-flavoured drink. The shops where it was sold had a characteristic interior arrangement & equipment & the mark had become well known to distinguish the beverage sold by pltf. from that of others. Deft subsequently registered the words "Flora Dew" as its trade-mark for a similar drink, displaying said trade mark in & about its shops much in the manner employed by pltf., & in a pronounced manner following the interior arrangement & equipment of pltf.'s shops:—*Held:* deft. could not be said to have adopted his mark with a view of giving a distinctive description to his beverage, but rather to take advantage of the business connection & efforts of a rival trader, & such trade mark being liable to mislead, should be expunged from the register. In considering whether one mark is an infringement of another resemblance between the two marks must be considered with reference to the ear as well as to the eye.—HONEY DEW, LTD. *v.* RUDD, [1929] 1 D. L. R. 449; Ex. C. R. 83.—**CAN.**

b iii. ——.]—In 1923 resp. registered, & began using in Canada, a trade mark consisting of a triangle bearing the words "Deer Skin Finish" above the words "Dan Dobbs," & a triangle below bearing the words "Character Hats," for use in the sale of felt & straw hats. Some years before, petitioner, who was in similar business, adopted its president's name "Dobbs" as a trade mark, to be used in the sale of its hats, & has since used the name to the present in Canada, & now by its petition asks that resp.'s trade mark be expunged:—*Held:* that the words "Dan Dobbs" & "Dobbs" are obviously words as applied to a particular kind of goods that can be confused & would tend to deceive the ordinary purchaser, & resp.'s trade mark should be expunged.—DOBBS & CO. *v.* ROBERT CREAN & CO., LTD., [1929] Ex. C. R. 164; *varied,* [1930] S. C. R. 307; 3 D. L. R. 22.—**CAN.**

special circumstances explained the non-user. An order was made to exclude from the specification of goods for which resps.' three trade marks were registered in class 8 "cinematograph films for visual exhibition to the public without the addition, as an integral part of such films, of any means for the reproduction of sound." After a discussion on the question of costs, a special direction was given to the taxing master to consider in taxing the nature of the evidence filed.—*Re* COLUMBIA GRAPHOPHONE CO., LTD., TRADE MARKS (NOS. 288,624, 324,745 & 407,537) (1932), 49 R. P. C. 483.

558. *Add. Citation :*—140 L. T. 19.

566. *Add. Annotation :*—**Consd.** *Re* John Sinclair, Ltd.'s Trade Mark 437,870 (1932), 146 L. T. 417.

566a. —.]—(1) When a mark has been registered in respect of a class of goods, an assignment of the mark is invalid, unless there is assigned with it the goodwill of the business connected with the whole class, even though the mark has only been used in connection with one kind of goods in the class.

(2) When an assignment of a registered trade mark is held to be invalid in a case where the original proprietor of the mark is not before the ct., it is the entry on the register in respect of the assignment only which should be expunged & not the whole entry of the mark.—*Re* JOHN SINCLAIR, LTD.'S TRADE MARK, [1932] 1 Ch. 598 ; 101 L. J. Ch. 239 ; 146 L. T. 417 ; 49 R. P. C. 123, C. A.

629a. —— ——.]—Pltfs., who were proprietors of a trade mark, consisting of the word "Nildé," registered in class 48 in respect of face powders & similar toilet articles, brought an action for infringement of the mark & for passing off against defts., who carried on business as ladies' hair-dressers under the name "Ernaldé, Ltd.," at premises which were nearly opposite to those of pltfs. Pltfs. alleged (*inter alia*) that defts.' shop front was identical with that of pltfs., save in colour & the substitution of the name "Ernaldé" for "Nildé" :—*Held :* the name "Ernaldé" was not adopted with the intention of deceiving, & did not in fact deceive, the public, & there had been no infringement of the trade mark.—SOCIÉTÉ LA PARFUMERIE NILDÉ *v.* ERNALDÉ, LTD. & FRYER (1929), 46 R. P. C. 453.

629b. —— ——.]—E. P. MOHAMED NOORDIN *v.* S. E. S. ABDUL KAREEM & Co. (1931), 48 R. P. C. 491, P. C.

655. *Add. Annotation :*—**Refd.** *Re* Inescourt's Trade Mark (1928), 46 R. P. C. 13.

684. *Add. Citation :—subsequent proceedings* (1929), 46 R. P. C. 406, C. A.

684a. ——.]—STONE J. B. & Co., LTD. *v.* STEELACE MANUFACTURING CO., LTD. (1929), 46 R. P. C. 406, C. A.

696a. Striking out statement of claim—Res judicata.]—JAEGER CO., LTD. *v.* JAEGER (1929), 46 R. P. C. 336, C. A.

763. *Add. Annotation :*—**Distd.** British Blue Spot Co., Ltd. *v.* Keene (1931), 48 R. P. C. 375.

778. *Add. Annotation :—As to* (1) **Refd.** *Re* Nicholson & Sons, Ltd., Application, *Re* Bass, Ratcliff & Gretton's Trade Mark, [1931] 2 Ch. 1.

818a. —— **Possibility of confusion.**]—EDISON ACCUMULATORS, LTD. *v.* EDISON STORAGE BATTERIES, LTD. (1929), 46 R. P. C. 432.

836. *Add. Annotation :*—**Consd.** Johnson & Son (Loughborough), Ltd. *v.* Puffer (W.) & Co. (1930), 47 R. P. C. 95.

PART I. SECT. 6, SUB-SECT. 1.—C.

sm. *Assignment in gross.*]—One H., doing business under the trade name of the Carp Flour Mills, registered the trade mark "Mello-Creme" in 1925, for use in the milling & sale of a breakfast food, & used the same in his business. In 1927, H., by deed, assigned to pltf. the said trade mark with the goodwill of H., relating to the sale of cereal foods under the said mark. Notwithstanding this assignment, H. continued to carry on his business as before, using the trade mark along with his trade name on the cartons of the product milled & sold by him ; & the goodwill aforesaid was never, in fact, transferred. Pltf. did not manufacture but merely sold the product of H., marked as aforesaid, with nothing on the product associating it with them. Pltf. later registered the same trade mark to be used in the sale of all food products, including cattle, hog & hen foods, thereby attempting to extend the scope of the first trade mark. The present action is to restrain defts. from using said mark in the sale of bread :—*Held :* an assignment in gross of the right to a name is invalid, & as the goodwill of H. was never in fact transferred to pltf., & as the trade mark "Mello-Creme" was assigned by itself, notwithstanding what was alleged in the deed of transfer nothing passed to pltf. by the said transfer, & pltf. had no *locus standi* to take the present action.—MELLO-CREME PRODUCTS *v.* EWAN'S BREAD, LTD., [1930] Ex. C. R. 124 ; 4 D. L. R. 877.—**CAN.**

PART I. SECT. 6, SUB-SECT. 3.

sp. *Allocation of areas—Action for infringement.*]—L. carried on, from 1914, in partnership with various persons, the manufacture & distribution in various Australian States of a furniture & stove polish which was put up in tins of a particular size & description, of which the word "Ezywurk" was a distinguishing feature. In 1919 by agreement for dissolution of partnership L. obtained the exclusive right to manufacture & sell the polish in New South Wales, other than the Broken Hill District, & in other areas, while his former partners retained similarly exclusive rights in other States. W. who was carrying on business in Sydney in 1930 obtained consignments of the polish from areas outside pltf.'s control. In a suit by L. to restrain W. from passing off the polish so obtained by him as & for the goods of L., the ct. found as a fact that the word "Ezywurk" & the get up of the polish had become associated in the New South Wales market, other than the Broken Hill District, solely with goods of L.'s manufacture, & granted the injunction asked for.—LEACH *v.* WYATT (1931), 48 N. S. W. W. N. 173.—**AUS.**

PART I. SECT. 7, SUB-SECT. 2.—A.

596 iii. —— *Matters special to one trader.*]—When the goods of one manufacturer are so packed or arranged externally as to resemble those of others engaged in the same trade, as in the case of starch & tea, the similarity common to all does not of itself expose the manufacturer to an action for infringement, but makes it incumbent upon him to take care that his distinguishing mark is really distinguishing. The imitation or similarity must be in respect to matters which are not common to the trade, but special to one trader. In this case the manufacturer's name, printed in large letters at the top being really distinguishing, the public could not be deceived & the action was dismissed.—HENRY K. WAMPOLE & CO., LTD. *v.* HERVAY CHEMICAL CO. OF CANADA, LTD., [1929] Ex. C. R. 78 ; *affd.*, [1930] S. C. R. 336 ; 2 D. L. R. 975.—**CAN.**

PART I. SECT. 7, SUB-SECT. 2.—B.

614 xiii. —— ——.]—MALUMIAR & Co. *v.* FINLAY & Co. (1929), I. L. R. 7 Ran. 169.—**IND.**

PART I. SECT. 7, SUB-SECT. 2.—E.

sg. *Directions on medicine.*]—Where two traders are selling the same medicine, & the one prints on his bottle directions for its use ; assuming such directions to be correct, it is no infringement of such label to copy or repeat such directions ; otherwise his liberty as a manufacturer would be unduly interfered with.—HENRY K. WAMPOLE & CO., LTD. *v.* HERVAY CHEMICAL CO. OF CANADA, LTD., [1929] Ex. C. R. 78.—**CAN.**

Part III.—False Marks and False Trade Descriptions.

859. *Add. Annotation :*—**Refd.** *Re* Concord Canning Co.'s Trade Mark (1932), 49 R. P. C. 323.

877. *Add. Annotation :*—**Refd.** Allen *v.* Whitehead (1929), 45 T. L. R. 655.

Part IV.—Designs.

893a. Wolf-cub head for Boy Scouts' pole.]—As a model of a wolf-cub's head produced from a mould in papier mache & intended to be displayed as their totem on the tops of poles by the Boy Scouts Assocn. consisted of "features of shape, configuration, pattern, or ornament applied to any article" of manufacture or artificial substance by an industrial process, it was therefore a design within the definition of Patents & Designs Act, 1907 (c. 29), s. 93, as amended by Patents & Designs Act, 1919 (c. 80), s. 19, & consequently was capable of being registered under the 1907 Act.—PYTRAM, LTD. *v.* MODELS (LEICESTER), LTD., [1930] 1 Ch. 639; 99 L. J. Ch. 381; 143 L. T. 227; 46 T. L. R. 290.

908a. ——.]—Registration was obtained in class 12 for a design in respect of its application to a slipper-bag. Pltf. commenced an action to restrain defts. from selling or offering for sale an alleged infringement of the design. Defts. denied that they had infringed the design, & alleged that the design was neither new or original. Defts. had not moved to rectify the register, but at the trial, at the request of both parties, validity was treated as put in issue :—*Held :* pltf.'s design possessed novelty & originality & it was valid; the alleged infringement was not identical with the registered design, but that it differed materially therefrom & that it was not an infringement. The action was dismissed with costs.—WELLS *v.* ATTACHE CASE MANUFACTURING CO., LTD. (1931), 49 R. P. C. 113.

910. *Add. Annotation :*—**Follld.** Dean's Rag Book Co. *v.* Pomerantz & Sons (1930), 47 R. P. C. 485.

910a. ——.]—Pltfs. were the owners of a registered design for a toy animal of three dimensions known as Mickey Mouse. Defts. had since put on the market another similar toy animal known as Squeaky which pltfs. alleged was an infringement. A motion by defts. to rectify the register by the removal of pltfs.' design was ordered to come on with the hearing of the action. Defts. pleaded in the action that there was prior publication & filed particulars of objections in which publication of pictures & representations in two dimensions of the same or a similar toy was alleged & they submitted that the design was not in the circumstances a proper subject for registration :—*Held :* (1) the registration was valid, & (2) there had been no infringement.—DEAN'S RAG BOOK CO., LTD. *v.* POMERANTZ & SONS & *Re* DEAN'S RAG BOOK CO., LTD. & THE PATENTS & DESIGNS ACTS, 1907 TO 1928 (1930), 47 R. P. C. 485.

933. *Add. Annotations :*—**Consd.** Dean's Rag Book Co. *v.* Pomerantz & Sons (1930), 47 R. P. C. 485. **Refd.** Wells *v.* Attache Case Manufacturing Co. (1931), 49 R. P. C. 113.

934a. ——.]—S. who was the registered proprietor of a design registered in class 1 in respect of its application to a metal cap for a ball-bearing housing, brought an action for infringement of his copyright in the design against A. S., Ltd. Defts. denied infringement, & alleged that the registration of the design was invalid by reason of want of novelty & subject-matter. Upon the action coming on for trial, an adjournment was ordered to enable defts. to give notice of motion to rectify the register by expunging the design :—*Held :* at the resumed hearing of the action & motion, the design was not new or original, in that it was only distinguishable, if at all, from well-known prior constructions, by modifications of a kind which must be regarded as ordinary trade variants. It was ordered that the register be rectified by expunging the design, & pltf. was ordered to pay the costs.—SAUNDERS *v.* AUTOMOTIVE SPARES, LTD., *Re* REGISTERED DESIGN NO. 747,128 OF ALBERT SAUNDERS (1932), 49 R. P. C. 450.

938. *Add. Annotation :*—**Consd.** Mallards, Ltd. *v.* Gibbons Bros. "Rotary" Co., *Re* Registered Design No. 742,187 of Mallards Ltd. (1931), 48 R. P. C. 315.

PART III. SECT. 2.

c i. —— *Production two short-weight loaves from over forty thousand—No intent.*]—R. *v.* CANADIAN BAKERIES, LTD. (1930), 54 Can. C. C. 369.—**CAN.**

PART III. SECT. 3.

d i. —— *Gasoline stored in tank—Pump bearing trade mark attached to tank.*]—R. *v.* CADIEUX & SEGUIN (1930), 54 Can. C. C. 361.—**CAN.**

PART IV. SECT. 1.

sd. *Industrial design.*]—*Held :* as Trade Mark & Design Act does not define what industrial designs are within the meaning of the Act, the word "design" therein must be taken to be used in its ordinary, & not in an artificial, sense.—CLATWORTHY & SON, LTD. *v.* DALE DISPLAY FIXTURES, LTD., [1928] Exch. C. R. 159; *affd.*, [1929] 3 D. L. R. 11; S. C. R. 429.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.—B.

sg. *Not article of manufacture.*]—An industrial design, under the Act, was intended only to imply some ornamental design applied to an article of manufacture, that is to say, it is the design, drawing, or engraving, applied to the ornamentation of an article of manufacture which is protected, & not the article of manufacture itself.—CANADIAN WM. A. ROGERS, LTD. *v.* INTERNATIONAL SILVER CO. OF CANADA, LTD., [1932] Ex. C. R. 63.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 1.—C. (b).

904 iii. ——.]—Originality involves the exercise of intellectual activity so as to suggest for the first time the application of a particular pattern, shape, or ornament to some special subject-matter to which it had not been applied before. To constitute an original design there must be some substantial difference between it & what had theretofore existed as applied to articles of an analogous character.—CLATWORTHY & SON, LTD. *v.* DALE DISPLAY FIXTURES, LTD., [1929] 3 D. L. R. 11; S. C. R. 429; *affd.*, [1928] Ex. C. R. 159.—**CAN.**

949a. **Director of company—Registration by company.**]—Pltfs., who were the registered proprietors of a design registered in 1928 in class 1 in respect of its application to fruit peelers, brought an action for infringement of their copyright in the design against defts. Defts. denied infringement & alleged that the author of the design was G., a director of the deft. co., & that the application for registration was made in fraud of defts., who first became aware of the existence of copyright on Apr. 12, 1929. Defts. further alleged want of novelty & subject-matter, & that pltfs. had not complied with the provisions as to marking contained in sect. 54 (1) (*b*) of Patents & Designs Act, 1907 to 1928. Defts. moved to rectify the register by expunging the design:—*Held:* the author of the design was H., a director of the pltf. co., & that therefore the application was not made in fraud of defts., & the design had not been published in any of the alleged anticipations, none of the features of the design were solely dictated by the functions which the article was called upon to perform, & the design was valid & subsisting & had been infringed. Pltfs. were granted an injunction & an order for delivery up, but inasmuch as they had failed to comply with the provisions as to marking contained in sect. 54 (1) (*b*) of Patents & Designs Acts, 1907 to 1928, & it was proved that defts. had no notice of the existence of copyright in the design prior to Apr. 12, 1929, an inquiry as to damages was ordered limited to infringements after that date. Defts. were ordered to pay the costs of the action, & the motion to rectify the register was dismissed with costs.—MALLARDS, LTD. *v.* GIBBONS BROS. "ROTARY" CO., LTD., *Re* REGISTERED DESIGN NO. 742,187 OF MALLARDS, LTD. (1931), 48 R. P. C. 315.

958a. **Effect of failure to mark—On inquiry as to damages in action for infringement.**]—MALLARDS, LTD. *v.* GIBBONS BROS. "ROTARY" CO., LTD., *Re* REGISTERED DESIGN NO. 742,187 OF MALLARDS, LTD., No. 949a, *ante*.

970a. ——.]—Registration in class 3 was obtained for a design in respect of its application to a golf ball. The representation of the design on the register consisted of a freehand drawing comprising two views of the design from different aspects. Golf balls made & sold by pltf. co. were not in fact made in strict accordance with the design, although sold in wrappings marked with the registration number thereof. The managing director of deft. co. was in fact the author of pltf.'s registered design, which he had assigned to them while in their employ. The alleged infringing balls were substantially identical with the Maxfli balls made & sold by pltfs. Defts. alleged (*inter alia*) that pltf.'s design was only new or original in certain features having regard to certain prior users & prior publications:—*Held:* obvious or fraudulent imitation of the design had not been established. The action was dismissed with costs. A certificate that the particulars of objections, subject to an exception, were reasonable was granted & a certificate that the validity of the registered design had been put in issue was granted.—DUNLOP RUBBER CO., LTD. *v.* GOLF BALL DEVELOPMENTS, LTD. (1931), 75 Sol. Jo. 173; 48 R. P. C. 268.

976. *Add. Annotation:*—**Consd.** Dean's Rag Book Co. *v.* Pomerantz & Sons (1930), 47 R. P. C. 485.

978. *Add. Annotation:*—**Consd.** Dean's Rag Book Co. *v.* Pomerantz & Sons (1930), 47 R. P. C. 485.

Part V.—Trade Names and Passing Off.

1019. *Add. Annotations:*—*As to* (1) **Apld.** Stone J. B. & Co. *v.* Steelace Manufacturing Co. (1929), 46 R. P. C. 192. *Generally*, **Refd.** Champagne Heidsieck et Cie Monopole Societe Anonyme *v.* Buxton (1929), 46 T. L. R. 36.

1041. *Add. Citation:*—*subsequent proceedings, sub nom.* JAEGER CO., LTD. *v.* JAEGER (1929), 46 R. P. C. 336, C. A.

1054a. —— —— ——.]—*Re* OXLEY, [1932] W. N. 271; 174 L. T. Jo. 489.

1055a. —— **Registration as military officer—No claim to title.**]—*Qu.:* whether registration as a military officer by a person who has no

PART IV. SECT. 2, SUB-SECT. 2.

sv. *Discretion to register.*]—*Held:* appct. for the registration of an industrial design has no absolute right to have the same registered. To allow the registration is within the discretion of the departmental officer charged with duty of administering the Act, but no registration should be lightly made. The exercise of the discretion to register must always contemplate the interests of the public which ought not to be unduly restricted in matters of trade.—JONES *v.* TEICHMAN, [1930] Ex. C. R. 103; 3 D. L. R. 437.—**CAN**

PART V. SECT. 1.

sw. *Territorial extent of right—Effect of prior use locally—Line of motor omnibuses.*]—The action was to restrain defts. from using a certain trade name in connection with motor passenger transportation business in Alberta; pltf. claiming, as first user in the territory, an exclusive right to the name in that business in that territory:—*Held:* the judgment of the Appellate Div., which dismissed the action, should be affirmed, on the ground that, in view of the existing prior extensive use of the name by a certain co. & its affiliated corporations in the tourist transportation business in other territories, the use by pltf. of that name in a like business was not proper, being a use that would mislead the tourist public, & therefore pltf. had not shown a right to the use entitling it to claim the protection of a ct. of equity.—BREWSTER TRANSPORT CO., LTD. *v.* ROCKY MOUNTAIN TOURS & TRANSPORT CO., LTD., [1931] S. C. R. 336; [1931] D. L. R. 713; *affg.*, [1930] 1 W. W. R. 849; 3 D. L. R. 114; 24 Alta. L. R. 486.—**CAN.**

PART V. SECT. 2, SUB-SECT. 3.

1046 i. *What constitutes default—Inaccurate description of business.*]—An Arakanese carried on a money-lending business in his own name until his death. His widow continued the business as sole proprietress, in the name of her husband, adding to that name the words "& Co." She lent moneys to resps. on a mtge., which was taken in her business name. She then registered the business under Burma Registration of Business Names Act, but erroneously entered herself as well as her children as partners. She then sued resps. in the name of the business, for the mtge. debt:—*Held:* sect. 3 (6) of the Act applied without qualification in this case, & that her particulars being inaccurate, there was no proper registration under the Act, & her suit failed under sect. 5 (1) of the Act.—MAUNG THA NYO *v.* MA UN MA PRU (1929), I. L. R. 7 Ran. 296.—**IND.**

1052 ii. —— —— ——.]—M'LACHLAN (J. J. & P.) Petitioners, [1929] S. C. (Ct. of Sess.) 357.—**SCOT.**

1052 iii. ——.]—SMITH *v.* FINCH, (1906), 12 B. C. R. 186; 3 W. L. R. 476.—**CAN.**

claim to that title is an offence under the Registration of Business Names Act, 1916 (c. 58).—R. *v.* WRIGHT (1931), 23 Cr. App. Rep. 128, C. C. A.

1078. *Add. Annotation :*—**Refd.** *Re* Nicholson & Sons, Ltd., Application, *Re* Bass, Ratcliff & Gretton's Trade Mark, [1931] 2 Ch. 1.

1090. *Add. Annotations :*—**Consd.** Edison Storage Battery Co. *v.* Britannia Batteries, Ltd. (1931), 48 R. P. C. 350. **Refd.** Mathieson *v.* Pitman (Sir Isaac) & Sons, Ltd. (1930), 47 R. P. C. 541.

1098. *Add. Annotations :*—**Consd.** Reddaway & Co. *v.* Hartley (1931), 47 T. L. R. 226. **Refd.** Mathieson *v.* Pitmas (Sir Isaac) & Sons, Ltd. (1930), 47 R. P. C. 541 ; Lyons & Co. *v.* Lyons (1931), 49 R. P. C. 188 ; *Re* Hammermill Paper Co.'s Opposition, *Re* Pirie & Sons, Ltd. (1932), 146 L. T. 493.

1099a. —— ——.]—Pltfs. had manufactured & sold since 1926 fencing under the name "Chequerboard," & in 1930 they commenced an action against defts. alleging that they had passed off fencing not of their manufacture as their "Chequerboard" fencing. At the trial of the action two managers of magazines, the manager of an exhibition & an architect's assistant were called as witnesses to prove that the mark was distinctive of pltfs.' goods. Defts. had displayed on their premises, as a background of the display in their shop, panels of fencing which were not of pltfs.' manufacture, & pltfs. alleged that defts. had attempted to sell & in fact sold these panels in response to orders for "Chequerboard" fencing :—*Held :* the mark was *primâ facie* descriptive, & the evidence adduced was not of members of the public but of people in a special position to know of the origin of the goods, & was not sufficient to prove that the mark was distinctive of pltfs.' goods ; & in any event there was not sufficient evidence to establish any passing off by defts. The action was dismissed with costs.—T. & C. ASSOCIATED INDUSTRIES, LTD. *v.* VICTORIA WAGON WORKS, LTD. (1930), 48 R. P. C. 148.

1100a. **"Lechat Camel Hair Belting"—For "Camel Hair Belting."**]— F. R. & Co., Ltd., the proprietors of a trade mark, consisting of the words "Camel Hair" registered in July, 1908, in class 35 in respect of Belting, commenced an action to restrain deft. from passing off goods not pltfs.' manufacture as being pltfs.' goods. Pltfs. alleged that deft. had fraudulently passed off & was threatening & intending to pass off belts & belting not of pltfs.' manufacture or merchandise as & for pltfs.' belts or belting by using upon, or in connection therewith, the words "Camel" or "Camel Hair" ; they claimed a further injunction to restrain deft. from advertising or offering for sale beltings under the description "Lechat's Camel Hair Belting" or under any other name in infringement of their trade name or trade mark in breach of an undertaking given by deft. in 1926. Deft. admitted that the designation "Camel Hair" used alone & without other distinguishing matter denoted both to the trade & to users of belting that such belts or belting were the product of pltfs. Deft. alleged that he had not used upon or in connection with belts or belting not being of pltfs.' manufacture or merchandise the words "Camel" or "Camel Hair" alone, but only with additional matter sufficient clearly to distinguish such belting from the belting of pltfs. Deft. admitted giving the undertaking on which the claim to the second injunction was founded, but denied that he was bound thereby, alleging that he was induced to give the same by certain untrue representations of pltfs. Deft. sold their goods as Lechat's Camel Hair Belting, the goods being manufactured by a Belgian firm of manufacturers of beltings known as "Etablissements J. Laroche Lechat Société Anonyme" : —*Held :* pltfs. had failed to prove their allegation that deft. had passed off or attempted to pass off belts or belting not made by the pltfs. as & for pltfs.' goods ; deft. had so used prefix "Lechat" & "J. Lechat's" as sufficiently to distinguish their belting from that of pltfs. ; & pltfs. had not made out their alleged breach of the undertaking of Dec. 3, 1926. The action was dismissed with costs.—REDDAWAY (F.) & Co., LTD. *v.* HARTLEY (1930), 48 R. P. C. 10, C. A.

1100b. —— ——.]—Pltfs., who were held in *Reddaway* v. *Banham*, No. 1098, to be entitled to an injunction restraining the use of the words "camel hair" in connection with belting, not manufactured by pltfs., without clearly distinguishing such belting from pltfs.' belting, brought a passing-off action against deft. for selling camel hair belting, made by a Belgian co., under the description "Lechat's camel hair belting" : —*Held :* on the evidence, the prefix "Lechat" was insufficient to distinguish the belting sold by the deft. from pltfs.' belting, & pltfs. were entitled to an injunction to prevent passing-off.—REDDAWAY (F.) & Co., LTD. *v.* HARTLEY (1931), 47 T. L. R. 226 ; 48 R. P. C. 283, C. A.

1103. *Add. Annotation :*—**Refd.** Stone J. B. & Co. *v.* Steelace Manufacturing Co. (1929), 46 R. P. C. 406.

1105. *Add. Annotation :*—**Refd.** *Re* Liverpool Electric Cable Co.'s Applications (1928), 46 R. P. C. 99.

1106. *Add. Annotation :*—**Refd.** Stone J. B. & Co. *v.* Steelace Manufacturing Co. (1929), 46 R. P. C. 406.

1120a. —— **Misleading trade circular by successor to business.**]—Pltfs. & defts. carried on business of a similar description. On the expiration of the term in a lease of certain works to pltfs., where they had carried on their business, defts., fifteen months afterwards, had procured a lease of the same works, with the exception of certain mines of clay. Defts. issued a circular & card tending to lead the public to suppose that defts. had succeeded to the business of pltfs., & were working the same material as pltfs. had formerly used :—*Held :* although the words of the circular & card might be literally true, yet, if they tended to mislead the public, the ct. would restrain them from further circulating or issuing such or any similar circular or card.—HARPER *v.* PEARSON (1860), 3 L. T. 547.

1120b. **Representation as to edition prescribed for examination.**]—Pltfs. were the publishers of, & owners of the copyright in, a book

entitled " Hazlitt's Selected Essays," edited by George Sampson, which included thirteen essays & notes on the essays. In 1927 & 1928 the book was prescribed by the London University as one on which candidates for matriculation would be examined. One of defts. published & sold & the other defts. sold a book entitled " Hazlitt's Selected Essays, Edition Hollingworth," containing twenty of such essays, including the thirteen selected by Sampson. Pltfs. commenced an action against defts., alleging that defts. had passed off the Hollingworth edition as & for the Sampson edition of pltfs. by representing that the Hollingworth edition was that prescribed for the London Matriculation Examination, & also alleging infringement of copyright in their selection of essays :—*Held :* if the fact were that a purchaser had been misled into thinking that defts.' book had been prescribed for a certain examination, that was simply a representation as to quality & would give pltfs. no right of action, there had been no passing off of defts.' book as pltfs.' & there was no infringement of copyright.—CAMBRIDGE UNIVERSITY PRESS *v.* UNIVERSITY TUTORIAL PRESS (1928), 45 R. P. C. 335.

1120c. **Goods sent in reply to order by plaintiff.**]—Pltfs., who had for some time used the device of a swan with the word " white " on labels on porcelain enamelled baths of their manufacture, applied on two occasions to register the device, first in class 1 in relation to enamel, secondly in class 13 in relation to baths & the like. Both applications were refused. On Jan. 25, 1926, the B. W. Assocn. registered under sect. 62, in respect of a standardised brass tap approved by the Ministry of Health, the device of a swan with the letter B. W. A. The attention of pltfs. was drawn to the sale by defts. of one of these standardised taps in Feb. ; & later, upon ordering " ½-in. brass globe cocks Ministry of Health pattern swan," pltfs. received a like tap from defts. Pltfs. thereupon brought this action to restrain defts. from passing off, & at the same time moved to rectify the register by removing therefrom the B. W. Assocn.'s standardisation mark :—*Held :* pltf.'s device of a swan was known to the trade as indicating, not taps, but porcelain baths of pltfs.' manufacture or merchandise enamelled with a particular characteristic enamel ; the presence on the register of resps.' standardisation make, & the use of it upon brass taps made to the Ministry of Health specification was not calculated to deceive the trade into believing that such taps were merchandise or manufacture of pltfs. ; the sending of one of such taps by defts. in response to pltfs.' order was a reasonable response to that order : pltfs. had proved neither that the device of a swan indicated their taps to the trade, nor passing off by defts. ; & both the action & the motion failed.—WILSON'S & MATHIESON'S, LTD. *v.* MEYNELL & SONS, LTD., *Re* WILSON'S & MATHIESON'S LTD.'S APPLICATION (1929), 46 R. P. C. 80.

1137a. —— —— ——.]—Pltf. co. was incorporated in Great Britain in 1909, for the purpose of carrying on a business, by means of manifold shops, for the sale of a large variety of articles at a price not over 6*d.* each. Deft. co. was incorporated on June 17, 1929, & was the buying agency of another co. which was incorporated in Australia under the name of Woolworths, Ltd., for the sale of a large variety of articles of a similar class to pltf. co.'s goods, but mainly at a higher price. There was no one with the name of Woolworth connected with deft. co. or its parent co. in Australia. The memorandum of deft. co. was framed so as to include the power to carry on retail business. Pltf. co. brought an action against deft. co. claiming an injunction restraining deft. co. from trading under its present title & from using the term " Woolworth " as part of its title or from using any other title calculated to deceive the public or to lead the public to believe that deft. co. was in any way connected with the pltf. co. :—*Held :* the evidence had not shown that there had been up to the time of the action any real confusion ; but by the name " Woolworths " pltf. co. was understood to be meant, not only among the general public, but also among traders & manufacturers ; the name Woolworths (Australasia), Ltd., must suggest some connection with pltf. co. ; deft. co.'s name so nearly resembled the name of pltf. co. as to be calculated to deceive ; the area of the trading operations of the two cos. was so much the same in many ways that there was serious risk of confusion.—WOOLWORTH (F. W.) & CO., LTD. *v.* WOOLWORTHS (AUSTRALIA), LTD. (1930), 47 R. P. C. 337.

1137b. —— —— ——.]—Pltf. had for nine years had a circus at Olympia in London during the winter, lasting each year for a period of about five weeks, which had each year been largely advertised & attended by a very large number of people. Deft. had a shop in London for animals & birds & in the past winter had had a sideshow of animals during the circus which pltf. was holding at Olympia. In 1928 he started a travelling Zoo, & shortly before the action he added a circus & advertised it as " Chapman's London Olympia Zoo & Circus." Pltf. commenced an action against deft. for an injunction to restrain him from using the words " London Olympia " as descriptive of or in connection with Zoo-Circus or other circus or entertainment & gave notice of motion for an interlocutory injunction :—*Held :* the words " London Olympia Circus " had come to mean pltf.'s circus. An interlocutory injunction was granted restraining deft. from using the words " London Olympia " in conjunction with one another as descriptive of or in connection with a Circus or Zoo-Circus.—MILLS *v.* CHAPMAN (1930), 47 R. P. C. 115.

1155. *Add. Annotation :*—**Consd.** Lyons & Co. *v.* Lyons (1931), 49 R. P. C. 188.

1163a. —— ——.]—Pltfs. brought an action to restrain deft. from passing off goods not of pltfs.' manufacture as & for pltfs.' goods. Deft. was originally registered under the name of Sidney Lyons, but his name was later

changed to Joseph Lyons. Pltf. co. was well known & had two hundred & fifty shops in Great Britain, four of which were situated in the neighbourhood of Brighton. Pltfs. also had two hundred thousand retail agents, & spent one hundred thousand pounds per annum on the advertisement of their tea. Deft. who was the keeper of a boarding establishment at Brighton had notepaper headed "J. Lyons food specialists." He advertised for canvassers & his advertisement read "J. Lyons require. . . ." He provided his canvassers with sets of packets: (i) a cardboard box labelled "J. Lyons, pure domestic cocoa," (ii) a packet of J. Lyons' cake flour, & (iii) a silver foil packet containing tea & bearing a label worded "J. Lyons' superior tea Brighton depot 8*d*. net wt. ¼ lb." Pltfs. sold tea in quarter-pound packets with a label also printed in blue on a white ground, & worded "Lyons tea, J. Lyons & Co., Ltd., Cadby Hall, Kensington." Pltfs. alleged that by reason of the similarity between deft.'s goods sold by the canvassers on behalf of deft., deft. had intended to deceive & had deceived the public into buying his goods as & for those of pltfs. Deft. denied that the acts complained of were calculated to deceive or that they had led to deception. He further claimed to be entitled to trade under his own name provided that his trade was lawful & not calculated to deceive —*Held:* the phrases "Lyons Tea" & "Lyons Cocoa" had come to mean the goods of pltfs., the quarter-pound packets of tea, sold by pltfs. & deft. respectively, were exceedingly alike, the phrase "Brighton depot" was misleading, deft. had intended to deceive & had deceived the public into buying his goods as & for pltfs.' goods. An injunction was granted, together with five pounds damages & costs.—LYONS (J.) & CO., LTD. *v.* LYONS (J.) (1931), 49 R. P. C. 188.

1168a. —— —— **Custom of mining company.**]—*Held:* (1) the valley containing the bed of minerals a part of which was owned by the Spanish Co. had become known as the Tigon Basin, & therefore the word "Tigon" had acquired a geographical significance; (2) having regard to such geographical significance & the custom of mining companies operating in the same area to adopt a name by reference to the geographical name of that area, coupled with the name of a point of the compass, the use by deft. co. of the word "Tigon" was not calculated to deceive or cause confusion in the minds of the public; (3) as pltf. co. themselves had marketed neither sulphur nor any other product under the name "Tigon," there was nothing which, by the use of the word "Tigon," deft. co. could sell or pass off as or for the product or goods of pltf. co. The action was dismissed with costs, & pltf. co. having been granted an interlocutory injunction on motion with the usual undertaking, an inquiry as to damages was ordered on the application of deft. co., the costs of that inquiry being reserved.—TIGON MINING & FINANCE CORPN., LTD. *v.* SOUTH TIGON MINING CO., LTD. (1931), 48 R. P. C. 526.

1199. *Add. Annotation:*—**Refd.** C. & A. Modes, Ltd. *v.* Central Purchasing Assocn., Ltd. (1930), 48 R. P. C. 163.

1207a. —— ——.]—C. & A. MODES, LTD. *v.* CENTRAL PURCHASING ASSOCN., LTD. (1930), 48 R. P. C. 163.

1212a. —— ——.]—Pltf. co. was a public co, with a large capital incorporated in Feb. 1924, for the purpose of carrying on the business of English & foreign chemists & druggists, wholesale & retail, & had a number of retail shops in the West End of London, their most outlying shop being in Knightsbridge. Deft. co. was incorporated in Nov. 1928, with a nominal capital of £1,000 for the purpose of carrying on the business of a high-class dispensing chemist in the neighbourhood of Barons Court, London, & had one shop in that district. Deft., I. J. Eppel, took medical degrees & was a qualified chemist in Dublin in 1912, & carried on there the business of a chemist's shop until 1923. Deft., I. J. Eppel, having formed deft. co., pltf. co. sought an injunction to restrain deft. co. from trading under the name of Eppels, Ltd.:—*Held:* on the evidence there was no ground on which deft. co. could effectively resist the injunction.—HEPPELLS, LTD. *v.* EPPELS, LTD. & EPPEL I. J. (1928), 46 R. P. C. 96.

1212b. -.]—MADEIRA HOUSE CO., LTD. *v.* MADEIRA HOUSE (LONDON), LTD. (1930), 47 R. P. C. 481.

1215a. —— ——.]—SOCIÉTÉ LA PARFUMERIE NILDÉ *v.* ERNALDÉ, LTD. & FRYER, No. 629a, *ante*.

1233a. ——.]—In 1909 pltfs. commenced the sale in England of storage batteries made by them in America in accordance with certain letters patent granted between the years 1900 & 1908. The storage batteries were imported & sold as Edison storage batteries by deft. Monnot & later by defts. Edison Accumulators, Ltd., who did so in accordance with the terms of various agreements made between them & pltfs. In 1929, Edison Accumulators, Ltd., changed its name to Britannia Batteries, Ltd., a new co. was formed by Monnot under the name Edison Accumulators, Ltd., & the two cos. commenced to manufacture & sell in England storage batteries made by them under the name Edison. Pltfs. commenced an action to restrain defts. from passing off their batteries as those of pltfs. & from using the expression "Edison Accumulators" as part of their name. Defts. admitted that they had sold storage batteries not of pltfs.' manufacture as Edison batteries, but alleged that the name Edison was not distinctive of pltfs.' goods, but was descriptive of all types of nickel alkaline batteries, & particularly those made in accordance with certain letters patent, & that they were entitled to continue to describe the goods sold by them as Edison storage batteries:—*Held:* the words "Edison accumulators" & "Edison storage batteries" were at the date of the writ distinctive of pltf.'s goods, & that defts. intended to pass off goods made by them as those of pltfs. Injunctions were granted restraining defts. from passing off & from using the expression "Edison Accumulators" as part of their name, with costs. An inquiry as to damages was refused.—EDISON STORAGE BATTERY CO. *v.* BRITANNIA BATTERIES, LTD. (1931), 48 R. P. C. 350.

1233b. —.]—Pltf. sold greyhound race programmes outside dog racing tracks known as outside cards. His cards were a light green in colour with the names of the dogs running printed & a selection of dogs to win made under the pseudonym "Stirling." These cards became well known to the public as Stirling green cards. Deft. Freeman also sold outside racing cards which were first a buff colour but subsequently were coloured light green. He then registered under Business Names Act, 1916 (c. 58), the business name of Stirling as being the proprietor & publisher of Stirling race cards. Shortly afterwards he incorporated deft. co. which he called Stirling Press, Ltd., & his race cards had printed on them "published by Stirling Press. Ltd." On the evidence the ct. was satisfied that some of the sellers of deft.'s cards sold them as Stirling cards:—*Held:* there had been a deliberate attempt to sell defts.' cards as pltf.'s cards. An injunction was granted to restrain defts. & each of them from printing. publishing, selling or distributing greyhound racing programmes not being the programmes of pltf. as Stirling cards.—SHALLIS *v.* FREEMAN & STIRLING PRESS, LTD. (1931), 48 R. P. C. 370.

1242. *Add. Annotation:*—**Refd.** *Re* Hammermill Paper Co.'s Opposition, *Re* Pirie & Sons, Ltd. (1932), 146 L. T. 493.

1243a. ——.]—In 1899 a trade mark, consisting of the word "Lektrik," was registered in a number of classes, including a registration in class 50 in respect of articles not included in other classes made of vulcanised fibre, & various other goods. In 1931 pltfs., who were the registered proprietors of the mark, brought an action against Letrik, Ltd., for infringement of the mark & passing off by the use upon or in connection with electrical hair combs of the word "Letrik." Pltfs. manufactured & sold electrical goods & accessories, & they alleged that they had manufactured & sold under their trade mark "Lektrik" large quantities of electrical apparatus & accessories for use in connection with electrical hair wavers, hair dryers, & other hairdressing appliances. Defts. denied that the goods in respect of which pltfs.' mark was registered included electrical hair combs, & they further denied that pltfs. had manufactured & sold electrical apparatus for use in connection with hairdressing appliances as alleged, save in so far as pltfs. might have sold the usual switches, plugs, & sockets necessary in any electrical installation, & defts. denied that the mark "Lektrik" was distinctive of pltfs. in connection with hairdressing appliances. Defts. moved to rectify the register by excluding from the specifications of goods, in respect of which the marks in class 50 & another class were registered, electrical hair combs & goods of a like description, on the ground of non-user of the marks in connection with such goods:—*Held:* pltfs. had never manufactured combs, & the user of their mark had been on & in connection with goods of a wholly different character; the trade in electric light & heat accessories was distinct from the trade in combs & toilet articles, & the use of defts.' mark could not legitimately be said to constitute an infringement of pltfs.' registered mark, or to be calculated to induce the belief that defts.' combs were of pltfs.' manufacture or merchandise. The action was dismissed with costs & an order to rectify the register was made, as to the trade mark registered in class 50, in the terms of the notice of motion.—LUNDBERG (A. P.) & SONS, LTD. *v.* LETRIK, LTD., *Re* LUNDBERG (A. P.) & SONS, LTD., TRADE MARKS NOS. 223,405 & 223,408 (1931), 49 R. P. C. 15.

1243b. Name must be attached to goods.]—TIGON MINING & FINANCE CORPN., LTD. *v.* SOUTH TIGON MINING CO., LTD., No. 1168a, *ante.*

1266a. "Navy-Spot"—For "Blue-Spot."]—Pltf. co., who were manufacturers of wireless apparatus, & had sold large quantities of loudspeaker units under the mark "Blue-Spot" & in cartons with a distinctive get-up, claimed an injunction to restrain defts. from passing off loudspeaker units by the use upon or in connection therewith of the word "Navy-Spot" or by using a similar get-up. The form & appearance of the two loudspeaker units were almost identical. Defts. admitted that the word "Blue-Spot" was distinctive of pltfs., but they alleged that their units were always sold in their cartons, which were different from pltfs.' The trial of the action was not defended:—*Held:* defts.' loudspeaker units as sold were calculated to deceive & to be passed off as pltfs.'. An injunction was granted & an inquiry as to damages was ordered, & an order as to delivery up of defts.' cartons & all parts of the units bearing the word "Navy-Spot" was made.—IDEAL WERKE A. G. *v.* WILLESDEN & DISTRICT LIGHT SUPPLY CO., LTD. (1930), 48 R. P. C. 123.

1280. *Add. Annotations:*—**Consd.** Mathieson *v.* Pitman (Sir Isaac) & Sons. Ltd. (1930), 47 R P. C. 541. **Refd.** T. & C. Associated Industries, Ltd. *v.* Victoria Wagon Works, Ltd. (1930), 48 R. P. C. 148.

1289. *Add. Annotation:*—**Refd.** Houghton *v.* Film Booking Offices, Ltd. (1931), 48 R. P. C. 329.

1317. *Add. Annotation:*—*Generally*, **Refd.** Champagne Heidsieck et Cie Monopole Société Anonyme *v.* Buxton, [1930] 1 Ch. 330.

1322. *Add. Annotation:*—**Consd.** Reddaway & Co., Ltd. *v.* Hartley (1931), 47 T. L. R. 226.

PART V. SECT. 5, SUB-SECT. 4.—A. (c) ii.

s1. "*Mulsol*"—"*Monsol.*"]—*Held:* the words were not so similar as to be likely to cause any ordinary purchaser to confuse goods marked or described as "Mulsol" with goods marked or described a "Monsol."—MOND STAFFORDSHIRE REFINING CO., LTD. *v.* ELLIS HARLEM (1929), 41 C. L. R.

PART V. SECT. 5, SUB-SECT. 4.—B. (b).

1271 ii. ——.]—Where goods are ordinarily sold by retail, a more general resemblance with pltf.'s goods at a distance is not enough to entitle him to succeed in a passing-off suit. The test which the ct. will apply is the probability of confusion at that distance which would ordinarily intervene between the purchaser & the seller, or between the purchaser & the goods if they were placed upon the counter.—', MATTHEWS THOMPSON, LTD. (1927), 28 S. R. N. S. W. 15.—**AUS.**

PART V. SECT. 5, SUB-SECT. 5.—C. (b) i.

1313 iv. ——.]—WHITWORTH HERBERT, LTD. *v.* JAMNADAS LEMCHAND MEHTA (1927), I. L. R. 52 Bom. 228.—**IND.**

1313 v. ——.]—HARRY HORNE CO. *v.* SCHWARTZ & SONS, LTD., [1929] 2 D. L. R. 791; 60 N. S. R. 510.—**CAN.**

1350a. ——.]—WILSON'S & MATHIESON'S, LTD. *v.* MEYNELL & SONS, LTD., *Re* WILSON'S & MATHIESON'S LTD.'S APPLICATION, No. 1120c, *ante*.

1350b. ——.]—Pltf. co. claimed an injunction to restrain deft. co. passing off emollient tablets as & for pltf. co.'s goods. In 1916 the trade mark "Snowfire" was registered in class 48 of which pltf. co. was the registered owner. The trade mark had been exclusively advertised & used in connection with an emollient preparation to be used for chapped hands & cracked lips. On one side of the carton containing the preparation was the word "Snowfire" in black on a red sky with snow mountains against a black background representing a dark sky & a brazier with a bright red flame & the words "Chapped Hands." On the other side were snow mountains against a black sky, the words "Snowfire," "Cracked Lips," & "Chapped Hands." Deft. co.'s carton showed on one side snow mountains with "Sunshine Snow" written below in red & a red sun with yellow rays, & on the other side the words "Sunshine Snow" were put into the sky instead of being placed down below & the sun was setting in a lower position. Deft. co. alleged that the features of which pltf. co. claimed a monopoly & the manner of the packing were common to the trade, & that the get-up was not calculated to deceive:—*Held:* the manner in which the product was packed & the shape & colour of the cartons was common to the trade, & pltf. co. had established no monopoly in regard to them; the distinctive feature of pltf. co.'s carton was the combination of snow mountains with the bright flame from the brazier forming a representation of the trade mark "Snowfire," but deft. co.'s get-up showed snow & the sun having reference to the name "Sunshine Snow" & there was nothing in the package or the get-up of deft. co.'s goods which so nearly represented pltf. co.'s goods in any distinctive feature as to be calculated to deceive; & there had been no infringement of pltf.'s trade mark. The action was dismissed with costs.—HAMPSHIRE (F. W.) & Co. (1927), LTD. *v.* GENERAL KAPUTINE SYNDICATE, LTD. (1930), 47 R. P. C. 437.

1354. *Add. Annotation:*—**Reld.** E. P. Mohamed Noardin *v.* S. E. S. Abdul Kareem & Co. (1931), 48 R. P. C. 491.

1415a. Particulars — When ordered.]— Where a paragraph of the defence admitted the selling by defts. of certain articles, an order for further particulars of goods of which pltfs. complained was refused on the ground that defts. must be presumed to have had knowledge of what they were selling. Where pltfs. alleged that the carrying on of a trade over a long period of years by defts. was calculated to deceive, & that defts. had in fact deceived, particulars of the acts of actual passing off which pltfs. intended to rely on at the trial were ordered to be given.—JEYES SANITARY COMPOUNDS CO., LTD. *v.* PHILADELPHUS JEYES & Co., LTD. (1929), 46 R. P. C. 236.

1423. After this case add:—

Commission—Evidence immaterial to issue pleaded.]—*See* EVIDENCE, No. 6269a.

1427a. —— ——.]—Pltfs. were manufacturers of a sweetmeat in the form of a transparent peppermint cube. They were the owners of a trade mark consisting of the word Glacier registered in class 42. Their sweetmeat had the word Fox stamped upon its base. Pltfs. had a substantial trade & their goods were very well known to the public. Deft. owned a number of retail shops in Leicester. He sold various kinds of sweetmeats, including one in the form of a transparent peppermint cube. Pltfs. alleged that sweetmeats of this last kind had been sold by deft.'s shop assistants in response to requests by customers for Glacier mints. Five instances of passing off were alleged. In each case the sale complained of was alleged to have been in response to an oral trap order given by a person on behalf of pltfs. Pltfs. commenced an action to restrain passing off sweetmeats not of pltfs.' manufacture as & for pltfs.' Glacier Mints. Deft. denied the alleged passing off. The action subsequently came on for trial:—*Held:* in each of the alleged cases of passing off it was conceivable that deft.'s shop assistant did not hear, or did not properly hear, the word Glacier; the word might have been mistaken for a request for "glassy" sweets—for in Leicester sweetmeats of this character were often spoken of as "glassy" mints; & pltfs.' evidence was not sufficient to discharge the heavy onus placed upon them in an allegation of passing off. The action was dismissed with costs.—FOX'S GLACIER MINTS, LTD. *v.* JOBLINGS (1932), 49 R. P. C. 352.

1431a. Strict proof required.]—Pltfs. were the registered proprietors of the trade mark "Castrol" in class 47. Deft., who owned a garage, sold there petrol & lubricating oil, but, if asked for Wakefield Castrol XL oil, said he did not stock it. His house was a mile & a half away & he got his wife to sell the very small amount of petrol & oil which might be asked for there. He took to the house two empty tins marked Wakefield Castrol XL oil, from one of which he had blacked out the words "Wakefield Castrol." Pltfs., to protect their trade, sent out employees to discover any dishonesty by the selling as their Wakefield Castrol XL oil of other XL oil. Two of their employees called at deft.'s house, & after asking for & buying some petrol alleged that they asked for two pints of Castrol XL oil. Defts.' daughter, 14 years old, attended to customers

PART V. SECT. 6, SUB-SECT. 2.—A.

1391 1. ***Party having no interest.***]—Applt. co. was the manufacturer of "Orange Crush" concentrate, which is sold to bottlers. The concentrate was used by the bottlers, in accordance with a formula supplied by applt., in the preparation of a beverage called "Orange Crush," the concentrate forming less than 1 per cent. of the finished article. The beverage was sold by the bottlers within their respective areas to their customers. Applt. sued resp. for passing off under the name of "Orange Crush" a beverage not manufactured or sold by the applt. as a beverage manufactured or sold by it:—*Held:* applt. had no legal interest in the business said to be injured by resp.'s representations; there was no connection between the commodity sold to the public as "Orange Crush," & applt.'s business except that applt. supplied one of the ingredients contained in the finished article, & this of itself was not sufficient to identify the beverage sold to the public with the business of applt. so as to justify the assertion that the commodity sold to the public was the goods of applt.—ORANGE CRUSH (AUSTRALIA), LTD. *v.* GARTRELL (1928), 41 C. L. R. 232; 29 S. R. N. S. W. 19; 46 N. S. W. W. N. 1; 2 A. L. J. 326; [1929] Argus L. R. 96.—AUS.

& poured out of the tin on which the words "Wakefield Castrol" were blacked out a pint. The supply then gave out & she asked in the house whether there was any more XL oil & was told there was not. The oil the daughter poured out was not Castrol XL oil, but XL oil of another name. The employees asked her to give a receipt & she made out one for one pint of oil 9*d*. The price 9*d*. was substantially less than the price at which Wakefield Castrol XL oil was sold. She was then told she had not given a receipt for Castrol & was asked to put the word Castrol on the receipt. She added the words "Castrol XL." Pltfs. claimed an injunction against deft., his servants, & agents:—*Held:* it was necessary in trap order cases for a pltf. to prove beyond peradventure his case, but that had not here been done, as there was no suggestion that deft. had ever traded dishonestly at his garage & no proof that the daughter acted dishonestly: further, there was no evidence that a train was laid by deft. so as to enable an innocent agent to commit something which would amount to dishonest trading. Therefore no injunction could be granted against deft., & the action was dismissed with costs.—WAKEFIELD (C. C.) & CO., LTD. *v.* RUSSELL (1930), 47 R. P. C. 473.

1442. *Add. Annotation:*—**Refd.** Stone J. B. & Co. *v.* Steelace Manufacturing Co. (1929), 46 R. P. C. 192.

1442a. —.]—Pltfs., a German co., had for many years manufactured & sold magnetos under the name "Bosch" & certain other marks such as "Z.R.4." Before the war pltfs. formed a co. in America to make & sell magnetos, which co. was sequestrated in 1917 & formed into the American Bosch Corpn. Since 1917 magnetos had been imported into this country, manufactured by the American Corpn. & bearing the word "Bosch" as a part of the identifying marks. Pltfs. commenced an action against defts. to restrain them from passing off magnetos by using in connection with them the name "Bosch" & such marks as "Z.R.4.":—*Held:* there was no sufficient evidence that an American Bosch magneto could not properly be described as a Bosch magneto without other distinguishing words, & accordingly the word "Bosch" when applied to magnetos was not distinctive of pltfs.; & deft. was not intending to pass off magnetos not manufactured by pltfs. as manufactured by them.—ROBERT BOSCH AKTIENGESELLSCHAFT *v.* COOK (R. H.) & CO. (1930), 47 R. P. C. 462.

1448a. .]—HAMPSHIRE (F. W.) & CO. (1927), LTD. *v.* GENERAL KAPUTINE SYNDICATE, LTD., No. 1350b, *ante*.

1458. *Add. Annotation:*—**Folld.** Johnson & Son (Loughborough), Ltd. *v.* Puffer (W.) & Co. (1930), 47 R. P. C. 95.

1462a. ——.]—Pltfs. commenced an action asking for an injunction to restrain the defts. from passing off as & for their goods hosiery not being their hosiery by using upon or in connection therewith the word "Trinity" or any other word only colourably differing therefrom. Pltfs. were the registered proprietors of a Trade Mark No. 321,009 registered in 1910 consisting of the words Trinity Street, Street being in small letters, above a triangle within which was a monogram, & the word "Brand" below the triangle. On their hosiery, however, they had used a mark consisting of the words "Trinity Street Brand," above "All Pure Wool made in England," the word "Trinity" being in large letters & the word "Street" in small letters, & against those words was "Registered 321,009." Defts.' hosiery was dyed by a firm, whose works were in Trinity Lane, Hinckley, & they put on a mark consisting of the words "Trinity Dye & Finish," above a shield containing a representation of the arms of the Borough of Hinckley:—*Held:* pltfs., having made a misrepresentation in the mark which they had used that it was a registered trade mark, had disentitled themselves to relief & that the motion must be refused. The costs were ordered to be defts.' costs in the action.—JOHNSON & SON (LOUGHBOROUGH), LTD. *v.* PUFFER (W.) & CO., LTD. (1930), 47 R. P. C. 95.

1516a. —— —— ——.]—Pltfs. had for some years sold motor car windscreen wipers marked with the words "Vokes-Folberth," "C. G. Vokes & Co." & with pltfs.' address. Such wipers were manufactured for pltfs. by the C. Co. under an agreement which prohibited the C. Co. from manufacturing such wipers otherwise than to pltfs.' order & from selling such wipers to persons other than pltfs. The C. Co. wrongfully sold a number of such wipers marked as above to deft. E., who resold a number of such wipers to defts. The Marble Arch Motor Supplies, Ltd., who resold to the public. Pltfs. instituted an action against defts., claiming an injunction to restrain passing off, an inquiry as to damages, & an order for delivery up:—*Held:* the wipers complained of had been manufactured & sold to deft. E. by the C. Co. wrongfully & in breach of duty to pltfs.: such wipers, not having been selected or marketed by pltfs., were spurious, & the sale thereof by defts. constituted actionable passing off: both defts. had purchased innocently, & there being no evidence of sales by defts. of spurious wipers subsequently to complaint being made by pltfs., an inquiry as to damages must be refused: both defts. had, subsequently to complaint being made by pltfs., maintained their right to sell the spurious wipers, & the action was maintainable. An injunction to restrain passing off was granted against both defts., & an order for delivery up was made against defts. Marble Arch Motor Supplies, Ltd. Defts. appealed, but the appeal was, by consent, dismissed.—C. G. VOKES, LTD. *v.* EVANS (F. J.) & MARBLE ARCH MOTOR SUPPLIES, LTD. (1931), 49 R. P. C. 140, C. A.

1516b. **Inquiry as to damages.**]—C. G. VOKES, LTD. *v.* EVANS (F. J.) & MARBLE ARCH MOTOR SUPPLIES, LTD., No. 1516a, *ante*.

1460 i. *Use of letters REG—Whether bar to relief.*]—ANGELIDES *v.* JAMES STEDMAN HENDERSONS SWEETS, LTD. (1927), 40 C. L. R. 43.—AUS.

1516c. Order for delivery up.]—C. G. VOKES, LTD. *v.* EVANS (F. J.) & MARBLE ARCH MOTOR SUPPLIES, LTD., No. 1516a, *ante*.

1557a. .]—Resps. had used for many years in India a ticket containing a picture of a lotus flower & also a combination of three marks, one of which also contained a picture of a lotus flower. Applts. had adopted a ticket with a different picture, but also including a lotus flower, & a combination of three marks similar in general appearance to resps.' three marks, but with a rose instead of a lotus flower. The ct. at Allahabad found that applts. had adopted these marks fraudulently, & that they were calculated to lead to passing off, & granted an injunction & damages. No case of actual deception was proved. The estimate of damages in particulars to the plaint which was verified by affidavit was Rs.25,000. The ct. awarded damages on the following basis: applts. were proved to have sold cloth bearing the marks complained of to the value of Rs.3,200,000; the ct. assumed that, if offered without these marks, only 40 per cent. of this quantity would have been sold, & gave as damages 9 per cent. as profit on the remaining 60 per cent., *i.e.* Rs.172,800. Applts. appealed:—*Held:* the injunction was rightly granted, but the damages must be calculated by estimating the trade lost to resps. by reason of the use of applts.' marks. & the damages should be reduced to Rs.67,000.—JUGGI LAL-KAMLAPAT & JUGGILAL-KAMLAPAT MILLS OF CAWNPORE *v.* SWADESHI CO., LTD. (1928), 46 R. P. C. 74, P. C.

1570. *Add. Annotations*:—**Apld.** The Young Sid, [1929] P. 190; Co-operative Wholesale Society, Ltd. *v.* Lally (1930), 23 B. W. C. C. 513. **Refd.** Brown *v.* Dagenham U. D. C. (1929), 98 L. J. K. B. 565; Clark *v.* Urquhart, Stracey *v.* Urquhart, [1930] A. C. 28; Lloyd del Pacifico *v.* Board of Trade (1930), 46 T. L. R. 476; London Welsh Estates, Ltd. *v.* Philip (1931), 144 L. T. 643; Midland Employers' Mutual Assurance, Ltd. *v.* Lewis (1930), 23 B. W. C. C. 192.

Part VI.—Royal Arms.

1586a. —— —— —— Application for transfer to King's Bench Division—For trial by jury at Assizes.] — ROYAL WARRANT HOLDERS ASSOCN. *v.* SLOAN, LTD. (1931), 48 R. P. C. 387.

PART V. SECT. 6, SUB-SECT. 7.—F. (b) ii.

1538 i. *Whether granted—Reasonable probability of damage to be shown.*]—BREWSTER TRANSPORT CO. *v.* ROCKY MT. TOURS & TRANSPORT CO. (Alta.), [1929] 4 D. L. R. 413.—**CAN.**

PART V. SECT. 6, SUB-SECT. 7.—F. (c).

1559 iii. ——.]—JUGGI LAL-KAMALAPAT *v.* SWADESHI MILLS CO., LTD. (1928), L. R. 56 Ind. App. 1.—**IND.**

TRAMWAYS AND LIGHT RAILWAYS.

Part I.—Tramways.

25. *Add. Annotation :*—**Consd.** West Midlands Joint Electricity Authority *v.* Pitt, Minister of Transport *v.* Pitt, [1932] 2 K. B. 1.

115. *Add. Annotation :—Generally,* **Refd.** Oxford Corpn. *v.* Oxford Electric Co. (1930), 143 L. T. 577.

PART I. SECT. 3, SUB-SECT. 4.—A.

34 i. *Extent of obligation to repair.*]—The Hobart Tramway Company's Act, 1884, by sect. 15 (2), requires the Hobart Corpn. as the successor of the Tramway Co., "to cause the place where the road is opened or broken up, to be fenced & watched, & to be properly lighted at night where this is necessary for the public safety" :—*Held :* the qualification expressed by the words "where this is necessary," etc., extends to the whole sub-sect.—SEYMOUR *v.* HOBART CORPN., 22 Tas. L. R. 46.—**AUS.**

PART I. SECT. 4, SUB-SECT. 3.

m i. —— *What amounts to breach.*]—GLASGOW CORPN. *v.* STRATHERN, [1929] S. C. (J.) 5.—**SCOT.**

PART IV.

h (p. 365) i. ——.]—A street railway company operating within a province, originally incorporated by a provincial legislature, but whose undertaking was subsequently declared by a Dominion Act to be a work for the general advantage of Canada, is not subject to the jurisdiction of a public service commission created by the province, but the execution of its powers is, by the provisions of the Railway Act, within the jurisdiction of the Board of Railway Comrs. for Canada.—QUEBEC RY. LIGHT & POWER CO. *v.* MONTCALM LAND CO., [1928] 1 D. L. R. 143 ; 34 Can. Ry. Cas. 275 ; [1927] S. C. R. 545.—**CAN.**

ff (p. 365) i. —— *Exemption—Contract of agreement.*]—In an action to recover from deft. co. certain fees alleged to be payable under a bye-law of pltf. corpn. passed under Public Vehicles Act, R. S. O., 1927, s. 4 :—*Held :* an agreement for exemption from taxation applied to the operation of vehicles partly within & partly without the city.—OTTAWA *v.* OTTAWA ELECTRIC CO., [1930] 1 D. L. R. 551 ; 36 C. R. C. 192 ; 64 O. L. R. 537.—**CAN.**

ff (p. 366) i. —— ——.]—SYMONS *v.* WINNIPEG ELEC. CO., [1928] 1 D. L. R. 159 ; 37 Man. L. R. 170 ; [1927] 3 W. W. R. 650 ; *affg.* S. C. *sub nom.* WINNIPEG ELEC. CO. *v.* SYMONS, [1929] 2 D. L. R. 197 ; [1928] S. C. R. 627.—**CAN.**

ff (p. 366) ii. —— ——.]—MORGAN *v.* BRITISH COLUMBIA ELECTRIC RY. CO., [1930] 2 W. W. R. 776 ; 4 D. L. R. 30 ; 42 B. C. R. 382.—**CAN.**

ff (p. 366) iii. —— ——.]—ALLEN *v.* EDMONTON (CITY), [1930] 2 W. W. R. 25 ; 3 D. L. R. 539 ; 37 C. R. C. 23 ; 24 Alta. L. R. 458.—**CAN.**

ff (p. 366) iv. —— ——.]—*Held :* t was the duty of defts.' motorman to take all precautions to avoid a danger which was reasonably to be anticipated ; but he could not have anticipated that the driver of the automobile which he saw in front of him was going to run her vehicle out from the kerb so as to be in his way, & when he saw that an accident was imminent he did everything possible to prevent a collision.—MALONEY *v.* HAMILTON ST. R. CO., [1930] 1 D. L. R. 268 ; 36 C. R. C. 211 ; 64 O. L. R. 444.—**CAN.**

rr (p. 366) i. —— ——.]—MERCER *v.* BRITISH COLUMBIA ELECTRIC RY. CO., [1931] 1 W. W. R. 550.—**CAN.**

rr. (p. 366) ii. —— ——.]—When a street car is travelling on its own right of way, not on a highway, the high speed of the car is not a ground of negligence unless there was some reason for the motorman anticipating an emergency.—NIXON *v.* OTTAWA ELECTRIC RY. CO., [1932] O. R. 389 ; 3 D. L. R. 263.—**CAN.**

aaa (p. 366) i. —— ——.]—PRONEK *v.* WINNIPEG SELKIRK & LAKE WINNIPEG RY. CO., [1928] 2 D. L. R. 725 ; [1928] 1 W. W. R. 857 ; 34 Can. Ry. Cas. 261 ; 37 Man. L. R. 320 ; *revsd. sub nom.* WINNIPEG, SELKIRK & LAKE WINNIPEG RY. CO. *v.* PRONEK, [1929] 2 D. L. R. 81 ; S. C. R. 314 ; 35 Can. Ry. Cas. 124 ; *revsd.*, [1932] 3 W. W. R. 440 P. C.—**CAN.**

aaa (p. 366) ii. —— ——.]—The duty of a railway co. towards its passengers for hire is to take reasonable care, including in that the use of skill & foresight, to see that its carriages are reasonably safe for persons using them in the ordinary & customary manner & with reasonable care ; but this does not mean that the co. should be held to have absolutely warranted their safety. With respect to the constructional type of the steps of street railway cars, the duty of the co. under the above rule is fulfilled when it purchases from the best manufacturers equipment of the type customarily used for that traffic or itself manufactures such equipment in accordance with the design customarily employed by street railway companies ; provided, of course, there is no special defect in the individual car in question.—GEBBIE *v.* SASKATOON, CITY OF, [1930] 2 W. W. R. 625 ; 4 D. L. R. 543.—**CAN.**

hh (p. 367) i. —— *Slippery step.*]—CHIPPENDALE *v.* WINNIPEG ELEC. CO., [1928] 1 D. L. R. 920 ; [1928] 1 W. W. R. 238 ; 37 Man. L. R. 207.—**CAN.**

hh (p. 367) ii. —— *Displacement of platform on street.*]—ZEIDEL *v.* WINNIPEG ELECTRIC CO., [1928] 3 D. L. R. 570 ; [1928] 2 W. W. R. 601 ; 34 Can. Ry. Cas. 267 ; 37 Man. L. R. 412 ; *revsd., sub nom.* WINNIPEG ELECTRIC CO. *v.* ZEIDEL, [1929] 3 D. L. R. 610 ; S. C. R. 538.—**CAN.**

ll (p. 367). *Affd. sub nom.* WINNIPEG ELECTRIC CO. *v.* SCOTT, [1928] 2 D. L. R. 420 ; [1928] S. C. R. 52 ; 34 Can. Ry. Cas. 260.—**CAN.**

oo (p. 367). *Revsd. sub nom.* WINNIPEG ELECTRIC CO *v.* ODEGAARD, [1928] 2 D. L. R. 297 ; [1928] S. C. R. 192.—**CAN.**

co (p. 367) i. —— *Starting car before passenger seated.*] — The evidence showed that a female passenger entered a street car in the winter season, & that there was water, snow & slush on the floor of the car at the time. While pltf. was in the front vestibule of the car, trying carefully to reach a seat, the operator of the car suddenly, & before pltf. had reached a seat or a position of safety, started the car. Pltf. was thrown down & her leg broken :—*Held :* the operator, knowing the condition of the floor of the car, was negligent.—GLICK *v.* NOVA SCOTIA TRAMWAYS & POWER CO. (1928), 60 N. S. R. 198.—**CAN.**

oo (p. 367) ii. —— *Collision with automobile—Injury to plaintiff by automobile.*]—ATHONAS *v.* OTTAWA ELECTRIC RY. CO., [1931] S. C. R. 139 ; 2 D. L. R. 473.—**CAN.**

oo (p. 367) iii. —— *Misleading notice in car.*]—Pltf., a passenger in a street-car operated by deft. Commission, was injured by a fall from the car & sued the Commission & a taxicab co. for damages. Pltf. was standing on the treadle of the car, when the emergency brake was suddenly applied & she was thrown against the exit door which opened & she fell into the road :—*Held :* the notice "Do not stand on the treadle unless you wish to leave the car" was an invitation to stand on it if one wished to leave the car, & implied that it was a proper & safe place to stand whilst the car was in motion. The Commission was therefore liable for negligence.—MORTON *v.* NATIONAL TAXI, LTD., & TORONTO TRANSPORTATION COMMISSION, [1930] 4 D. L. R. 785 ; 66 O. L. R. 3.—**CAN.**

tt (p. 367) i. ——.]—SOUTH AUSTRALIAN RAILWAYS COMRS. *v.* BARNES (1927), 40 C. L. R. 179.—**AUS.**

aa. *Agreement between street railway & municipality—Not enforceable by private individual.*]—*Ex p.* NEW BRUNSWICK POWER CO. (N. B.), [1928] 1 D. L. R. 332.—**CAN.**

ab. *Ontario Railway Act,* 1913, *s.* 246—*Not applicable to railway declared to be for general advantage of Canada.*]—*Held :* the railway being one of Dominion status, s. 246 has no application in so far as it is sought thereby to impose an obligation on the municipality to assume the ownership of the railway or in default submit to the continued exercise of the co.'s privileges, notwithstanding the expiration of the term of the franchise.—MERRITTON *v.* NIAGARA, ST. CATHERINES & TORONTO RY. CO., [1931] 1 D. L. R. 371 ; 65 O. L. R. 563 ; *affd.*, [1931] 2 D. L. R. 161 ; 66 O. L. R. 500.—**CAN.**

ad. *Limitation of action.*]—The benefit of sect. 60 of Consolidated Railway & Light Co. Act, 1896, which provides that actions for any damage or injury sustained by reason of the tramway or railway or the works or operations of the co. shall be commenced within six months after the time when such damage was sustained, extends to employees of the co. as well as to the co. itself.—BENTLEY *v.* ALLEN & YOUNG, [1932] 1 W. W. R. 399.—**CAN.**

TRESPASS.

Part I.—In General.

50. *Add. Citations :—sub nom.* BIGGS *v.* GREENFIELD & BENGER, 8 Mod. Rep. 217 ; *sub nom.* BRIGGS *v.* GREINFEILD & BENGER, 1 Stra. 610.

Part II.—Trespass to Land.

99. *Add. Annotation :*—**Consd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

116. *Add. Annotations :*—**Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63 ; Stillwell *v.* Windsor Corpn. (1932), 76 Sol. Jo. 433.

133. *Add. Annotation :—As to* (1) **Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

236. *Add. Annotation :*—**Refd.** Callard *v.* Beeney, [1930] 1 K. B. 353.

247a. —— **Holding public meeting on private land.**]—Pltf. co. was formed to acquire & did in fact acquire land at H. to be laid out as a garden city under & by virtue of powers conferred by a private Act of Parliament. The roads in the garden city were vested in the pltfs. & were to remain so vested until made up & taken over by the highway authority. Deft. gave notice that he intended to hold an open air meeting in the neighbourhood of a church on pltfs.' property at the junction of two roads. These roads were not barred, but notices had been posted upon them announcing that they were private roads. They were not dedicated to the public, nor had they been taken over by the highway authority. Pltfs. having sought an injunction :—*Held :* it being clear that there was no public right of way along the roads in question, it was unnecessary to discuss the question about any right of holding a meeting at the junction of the roads, & pltfs. were entitled to an injunction.—HAMPSTEAD GARDEN SUBURB TRUST, LTD. *v.* DENROW (1913), 77 J. P. 318.

258. *Add. Annotation :*—**Refd.** Grant *v.* Derwent [1929] 1 Ch. 390.

308a. No right to set up jus tertii.]—In an action of trespass a deft. cannot set up a *jus tertii* against a possessory title.—NICHOLLS *v.* ELY BEET SUGAR FACTORY, [1931] 2 Ch. 84 ; 100 L. J. Ch. 259 ; 145 L. T. 113.

362a. - —— **Repair.**]—To an action on the case for prostrating part, & building on part,

PART I. SECT. 1.

22 i. —— *Interference with superincumbent air—Bodies traversing air without touching ground—Bullets.*]—Deft., who at the time was upon his own property, fired a bullet from a rifle at & killed pltf.'s cat which was then on a shed on the adjoining property occupied by pltf. The judge directed the jury that deft. had committed a trespass for which he was liable in damages to pltf. :—*Held :* the direction was right.—DAVIES *v.* BENNISON, 22 Tas. L. R. 52.—**AUS.**

PART II. SECT. 3, SUB-SECT. 1.—A.

62 xx. ——.—HOLLINGSWORTH & WHITNEY, LTD. *v.* WRIGHT, [1930] 3 D. L. R. 996.—**CAN.**

b i. —— *Lease by committee—Trespass by owner.*]—PEARSON *v.* DUKE, [1931] 2 W. W. R. 442.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.—C. (a).

g (p. 384) i. ——.]—CLARKE *v.* COBURN LUMBER CO. (1929), 1 M. P. R. 579.—**CAN.**

PART II. SECT. 3, SUB-SECT. 4.—A.

aa. *Locatee of Crown lands.*]—HAMM *v.* KROKBACK & CO., BALL *v.* KROKBACK & CO. (1928), 34 O. W. N. 81 ; *affg.*, [1928] 2 D. L. R. 389.—**CAN.**

PART II. SECT. 3, SUB-SECT. 4.—H. (a).

q i. —— ——.]—A painter employed under a contract with a firm of manufacturers, painted on the wall of a shop occupied by a tenant an advertising sign. He did the work with the permission of the tenant, being under the impression that the tenant was the owner, & here presented to his employers that he had the owner's permission. In an actior by the owner of the property claiming damages against the painter & his employers :—*Held :* the owner was entitled to damages against both defts., the matter complained of being of such a permanent nature as to cause injury to the reversion.—BIRTCHNELL *v.* WALKER (FRED.) & CO. PTY., LTD. (1930), Argus L. R. 176.—**AUS.**

PART II. SECT. 5, SUB-SECT. 6.—B.

1 (p. 400) i. ——.]—On an appeal from a judgment whereby pltf. in an action for trespass was awarded vindictive damages in addition to special damages, held that, in view of deft.'s persistence in trespassing in defiance of pltf.'s requests to desist, his violent & abusive conduct towards pltf., & the particularly injurious & malicious manner in which certain of the trespasses were committed, the allowance of vindictive damages was justified & the amount thereof should not be reduced.—SPENCER *v.* GRANT, [1928] 1 D. L. R. 820 ; [1928] 1 W. W. R. 190 ; 22 Sask. L. R. 365.—**CAN.**

b (p. 401) i. —— *Depreciation in value of property—Unlawful removal of remains of building.*]—SIMON *v.* GASTONGUAY, [1931] 2 D. L. R. 75 ; 2 M. P. R. 470.—**CAN.**

PART II. SECT. 6, SUB-SECT. 2.—B.

sc. *Possession of mother.*]—The possession of a mother will not be considered tortious as against the heir, being her own child, but will rather be treated as the possession of a guardian.—DOE d. HOAK *v.* EMPEY (1834), 3 O. S. 488.—**CAN.**

PART II. SECT. 6, SUB-SECT. 3.—B.

sd. *Long possession of easement.*]—BROWN *v.* STREET (1844), 1 U. C. R. 124.—**CAN.**

PART II. SECT. 6, SUB-SECT. 6.

e i. —— ——.]—The moneys payable under an agreement for the sale of land were assigned to deft. bank, & the purchaser, who was in possession & had defaulted in his payments, agreed with the bank to pay over to it the proceeds of the crop on the part of the land which had been broken but had not been summer-fallowed for several years, & also agreed to summer-fallow it without delay. He, however, having neglected to summer-fallow it, although the bank told him that if he did not do so it would ; &, having failed to carry out a promise given by him to the weed inspector to plough under the weeds, one C., acting under instructions from the bank, entered on the land & had ploughed under the weeds on a part of it when he was ordered off by the purchaser :—*Held :* the bank & C. were liable to the purchaser for damages for trespass. The bank was not in the position of a person who has a right to abate a nuisance with or without notice even if a nuisance existed ; nor, in the absence of a contract giving it a right of entry, had it a right to enter on the principle that it was entitled to preserve its security or prevent its impairment ; & the evidence did not support a finding that the entry was by leave & licence.—ROYAL BANK OF CANADA *v.* BENDIKSEN & IRELAND, [1928] 2 W. W. R. 27.—**CAN.**

PART II. SECT. 6, SUB-SECT. 9.

sf. *Mistake as to land entered upon.*]—MUNRO *v.* PINDER LUMBER & MILLING CO. (1925), 52 N. B. R. 487.—**CAN.**

of a wall, & laying materials on a close, in which wall & close pltf. was interested as reversioner, deft. pleaded that his own dwelling-house, which he was repairing, accidentally & without his default fell upon the wall & threw it down, & that afterwards, & before action brought, & within a reasonable time, deft. carefully, & at his own expense, erected & built the said wall upon the said close, &, in & about such erecting & building, necessarily & unavoidably committed the grievances, etc., doing no unnecessary damage, etc., & thereupon & then, to wit at the times when, etc., at his own expense, repaired all damages sustained by pltf. by reason of the grievances, etc. :—*Held :* on demurrer, no answer to the action.—TAYLOR *v.* STENDALL (1845), 3 Dow. & L. 161 ; 7 Q. B. 634 ; 14 L. J. Q. B. 301 ; 5 L. T. O. S. 214 ; 9 Jur. 1096 ; 115 E. R. 629.

Part III.—Trespass to Goods.

448a. Bottles marked with name of plaintiff—Refilled by defendant.]—Applts., who were manufacturers of aerated water, marked their name on the bottles & claimed an exclusive right of property in them. Resp. was a grocer who had no contractual relationship with applts., & he had in his shop a soda fountain by means of which he supplied customers with aerated beverages for consumption off the premises. The customers had to bring a bottle or other receptacle, & in practice resp. filled it without examination & without inquiring into the customer's right to use it. Occasionally applts.' bottles were used in this way. In an action by applts. against resp. to restrain him from receiving from customers bottles marked with applts.' name for the purpose of filling them with beverages :—*Held :* there was no duty on resp. to ascertain which bottles were applts.' property, & the action failed.

As in the particular case the requests to fill the bottles were in the nature of a trap order & were made with the authority of applts., no case of trespass was proved & for this reason the action failed (*per* CUR.).—LEITCH (WILLIAM) & CO., LTD. *v.* LEYDON, BARR (A. G.) & CO., LTD. *v.* MACGEOGHEGAN, [1931] A. C. 90 ; 100 L. J. P. C. 10 ; 144 L. T. 218 ; 47 T. L. R. 81 ; 74 Sol. Jo. 836, H. L.

551. *Add. Citations :—sub nom.* BIGGS *v.* BENGER, 2 Ld. Raym. 1372 ; *sub nom.* BRIGGS *v.* GREINFEILD & BENGER, 1 Stra. 610.

555a. Trap order.]—LEITCH (WILLIAM) & CO., LTD. *v.* LEYDON, BARR (A. G.) & CO., LTD. *v.* MACGEOGHEGAN, No. 448a, *ante*.

Part IV.—Trespass to the Person.

647. *Add. Annotation :*—**Consd.** Horsfield *v.* Brown, [1932] 1 K. B. 355.

733a. —— —— —— ——.]—If A., having no right to apprehend B., direct a police officer to take B., & he do so, B. may maintain an action for false imprisonment against A. ; but if A. merely make a statement to the officer, leaving it to him to act or not as he thinks proper, & the officer then take A., B.'s remedy against A. is, if any, by action on the case.—HOPKINS *v.* CROWE (1836), 7 C. & P. 373 ; 173 E. R. 166, N. P. ; *subsequent proceedings*, 4 Ad. & El. 774.

Annotations :—**Distd.** Hudson *v.* Howard (1837), 1 Jur. 658. **Refd.** Kine *v.* Evershed (1847), 10 Q. B. 143 ; Read *v.* Coker (1853), 13 C. B. 850 ; Derecourt *v.* Corbishley (1855), 1 Jur. N. S. 870.

PART III. SECT. 1, SUB-SECT. 1.—B. (a).

433 i. *Accidental act—Arising from negligence — Ship.*]—WOLVERINE S.S. CO. *v.* CANADIAN DREDGING CO., [1930] 4 D. L. R. 684 ; 65 O. L. R. 641.—**CAN.**

PART III. SECT. 5, SUB-SECT. 3.—B.

q i. ——.]—In an action for negligence causing damage to goods the measure of damages is the depreciation in the value of the goods as the result of the accident.—COPLEY *v.* FINKELSTEIN, [1928] 3 D. L. R. 671 ; [1928] 3 W. W. R. 89.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 5.—D.

644 vii. ——.]—MCNEILL *v.* HILL (Sask.), [1929] 2 D. L. R. 296.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 5.—F.

sp. *Assault by bailiff—Independent contractor.*]—Deft. co. authorised deft. B., who carried on business as a licensed bailiff, to seize a motor car under a conditional sale agreement. In the course of the seizure B. broke open pltf.'s garage, & assaulted pltf. Damages were awarded pltf. against both defts. The co. appealed :—*Held :* the bailiff was an independent contractor & the co. was not liable.—ROMAN *v.* MOTOR CAR LOAN CO., LTD., & BURNS, [1930] 1 W. W. R. 775 ; 3 D. L. R. 296 ; 42 B. C. R. 457.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 7.

k i. —— —— *Provocation to assault.*]—On appeal from a judgment for pltf. in an action for assault the damages were reduced to $10, the assault having been merely a technical one, which apparently had been courted by pltf. with a view to an action for damages.—HODGKINSON *v.* MARTIN, [1928] 3 W. W. R. 763.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 2.

731 i. —— —— *Charge made to police officer—No further action by defendant.*]—MANN *v.* RASMUSSEN, [1928] 3 D. L. R. 319 ; [1928] 2 W. W. R. 278 ; 23 Alta. L. R. 515.—**CAN.**

731 ii. —— —— *Incorrect repetition of statement made by defendant causing arrest.*]—SPARKS *v.* JOSEPH (1858), 7 C. P. 69.—**CAN.**

c i. —— *Detention without formal arrest.*]—A felony having been committed, a civic guard requested the two pltfs., whom he suspected of complicity in the crime, to go to the civic guards' barracks, which pltfs. voluntarily did. When they reached the barracks they were questioned by deft., the chief superintendent of the civic guards for the county, & were then detained in the barracks while the guards were endeavouring to procure evidence. They were not charged with any crime, nor were they formally arrested. They were detained in the barracks from an early hour of the morning of one day until the evening of the following day, when, in consequence of a letter of complaint from their solr., they were formally arrested & charged with the crime & brought before a peace comr., who remanded them on bail to the next district ct. At that ct. the charge was dismissed. It was admitted that pltfs. could have been brought before a peace comr. on either of the two days during which they were detained. Each of pltfs. then brought a civil bill against deft. for damages for false imprisonment :—*Held :* the detention of pltfs. amounted in law to imprisonment, as it was a total restraint of their liberty imposed on them by the action of the Guards. It was the duty of deft., as the officer responsible for such detention, to have brought pltfs. before a peace comr. as

769. *Add. Annotation :—As to* (1) **Refd.** Lazard Bros. & Co. *v.* Banque Industrielle de Moscou, Lazard Bros. & Co. *v.* Midland Bank, Ltd. (1931), 101 L. J. K. B. 65.

852. *Add. Annotation :*—**Refd.** Chapman *v.* Ellesmere (1932), 48 T. L. R. 309.

soon as he reasonably could. Accordingly, as he did not do so, he was liable to pltfs. in damages in respect of the period that elapsed between the time when deft. could reasonably have brought pltfs. before a peace comr. & the time when he in fact did so.—DUNNE *v.* CLINTON, [1930] I. R. 366.—**IR.**

c ii. —— *Submitting to be searched.*]—Pltf. when shopping in deft.'s store was wrongly accused by a house detective of theft, &, in order to prevent the necessity of actual force being used or the creating of a scene, went at the detective's request with her & the latter's assistant to a room where he was searched :—*Held :* deft. was liable in damages for false imprisonment.—CONN *v.* DAVID SPENCER, LTD., [1930] 1 W. W. R. 26 ; 1 D. L. R. 805 ; 42 B. C. R. 128.—**CAN.**

PART IV. SECT. 2, SUB-SECT. 3.

aa. *Warrant issued in course of duty —By clerk of court—No liability.*]—NALTY *v.* HOWELL (1929), S. A. S. R. 23.—**AUS.**

PART IV. SECT. 2, SUB-SECT. 4.—A. (a).

765 i. *Arrest on civil process—Defective affidavit to hold to bail—Failure to allege notice in writing to debtor as required by Judicature Act, R. S. N. B.*, 1927, *s.* 32.]—ELSTON *v.* PURDY (1929), 1 M. P. R. 421.—**CAN.**

TROVER AND DETINUE.

Part I.—Nature and Subject-Matter.

58. *Add. Annotation :*—**Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

Part II.—Liability for Conversion and Detinue.

99. *Add. Annotation :*—**Apprvd.** Oakley *v.* Lyster, [1931] 1 K. B. 148.

100. *Add. Annotation :*—**Apprvd.** Oakley *v.* Lyster, [1931] 1 K. B. 148.

102. *Add. Annotations :*—**Consd.** Fenton Textile Assocn. *v.* Thomas (1929), 45 T. L. R. 264. **Refd.** Leitch (William) & Co. *v.* Leydon, Barr (A. G.) & Co. *v.* Macgeoghegan (1930), 47 T. L. R. 81, H. L.; United Fruit Co. *v.* Frederick Leyland & Co. (1930), 47 T. L. R. 33; Savory & Co. *v.* Lloyds Bank, Ltd., [1932] 2 K. B. 122.

105a. ——]—There may be a conversion of goods even though deft. has never been in physical possession of them, if his act amounts to an absolute denial & repudiation of pltf.'s right.—OAKLEY *v.* LYSTER, [1931] 1 K. B. 148; 100 L. J. K. B. 177; 144 L. T. 363, C. A.

113. *Add. Annotation :*—**Refd.** De Tchihatchef *v.* Salerni Coupling, Ltd., [1932] 1 Ch. 330.

139. *Add. Annotation :*—**Refd.** Spyer *v.* Phillipson, [1931] 2 Ch. 183.

142. *Add. Annotation :*—**Refd.** Leitch (William) & Co. *v.* Leydon, Barr (A. G.) & Co. *v.* Macgeoghegan (1930), 47 T. L. R. 81.

156. *Add. Annotation :*—**Refd.** Buller & Co. *v.* Brooks (T. J.), Ltd. (1930), 142 L. T. 576.

185a. —— **Delivery to bailee.**]—In the end of 1924 the Metropolitan Police found at the house of pltf. & took into their possession a quantity of goods including certain cloth. Pltf. was brought before the police ct. on charges of receiving, & some of the evidence there given tended to show, but did not prove, the identity of the cloth which had been stolen from a firm of carriers. Pltf. was committed for trial at the London sessions on indictments charging him with having received certain of the goods other than the cloth knowing them to have been stolen. & on an indictment charging him with a similar offence in respect of the cloth, & in Feb. 1925, he was convicted on the first-mentioned indictments & sentenced to five years' penal servitude. He was never tried on the indictment relating to the cloth, but it was allowed to remain upon the record. On Apr. 2, 1925, pltf. not having as yet made any credible claim to the cloth, the Receiver for the Metropolitan Police District handed handed it over to the firm of carriers, who claimed it, taking from them a written indemnity. On Jan. 16, 1931, pltf., having less than six months before made an unsuccessful demand for the cloth as his property, brought an action against the Receiver & the firm of carriers claiming damages for detinue & conversion of the cloth. The first-named deft. relied, among other defences, upon the Public Authorities Protection Act, 1893 (c. 61). The jury, having heard the evidence, found that it did not establish the identity of the cloth with that stolen from the carriers, & they returned a verdict for pltf. against both defts. :—*Held :* the first deft. in handing over the cloth to the second defts. in Apr. 1925, had acted in "intended execution" of a "public duty" within Public Authorities Protection Act, 1893 (c. 61), s. 1, & as the action in respect of the act of conversion so effected had not been commenced within six months after that act, it was not maintainable in respect thereof. Pltf. could not elect to rely only on his claim in detinue, so as to make the time run from his demand & to bring the date of the action within six months after the cause of action. Therefore, judgment should be entered for the first deft. against pltf., & for pltf. against the second defts.—BETTS *v.* METROPOLITAN POLICE DISTRICT RECEIVER & CARTER PATERSON & Co., LTD., [1932] 2 K. B. 595;

PART II. SECT. 1, SUB-SECT. 1.

93 i. —— *Mere deprivation of possession not sufficient.*]—In order to support an action for conversion there must be an element of wrong; the mere fact of possession of the goods by the deft. is not sufficient.—BALL *v.* SAWYER-MASSEY CO., LTD. (Sask.), [1929] 4 D. L. R. 323; 2 W. W. R. 582.—**CAN.**

103 iii. ——.]—Pltf. co., importer of the K. motor car, gave P. the right to sell its cars. P. found a purchaser for a K. car, who wished to trade in his old S. car as part payment. P. obtained a car from the pltf. co. & was debited with the price less his commission £346 5*s.* 0*d.* He paid pltf. co. £46 5*s.* 0*d.* & the S. car valued at £300 was accepted by pltf. co. P. who had retained possession of the S. car, sold it on behalf of pltf. co. to C. on hire purchase. C. made default under his hire purchase agreement, & P., without authority from pltf. co., seized the car, & sold it to deft. co. who in turn sold it to W. Deft. co. never had actual possession of the car. Before the sale to W. was completed pltf. co. demanded the car, but the deft. co. refused to deliver it up & completed its purchase from P. & its sale to W. P. delivered the car to W. Pltf. co. then sued for conversion of the car & the jury found a verdict in its favour :—*Held :* there was sufficient evidence of ownership in pltf. co. & of possession of the car by deft. co. to justify the finding of the jury; but even if deft. co. had not been in physical possession of the car, its denial of pltf. co.'s right amounted to a conversion in the circumstances.—MOTOR DEALERS CREDIT CORPN., LTD. *v.* OVERLAND (SYDNEY), LTD. (1931), 31 S. R. N. S. W. 516; 48 N. S. W. W. N. 205.—**AUS.**

PART II. SECT. 1, SUB-SECT. 2.—A. (b).

131 i. *Intermeddling with goods distrained.*]—MORT *v.* BARNES, [1928] V. L. R. 56.—**AUS.**

PART II. SECT. 1, SUB-SECT. 2.—B.

ss. *Unjustifiable detention by police officer.*]—BARRETT *v.* GALLAGHER (1928), 28 S. R. N. S. W. 549; 45 N. S. W. W. N. 154.—**AUS.**

101 L. J. K. B. 588; 147 L. T. 336; 96 J. P. 327; 48 T. L. R. 517; 76 Sol. Jo. 474; 30 L. G. R. 349.

188. *Add. Annotation :*—**Refd.** Simpson *v.* Maurice's Exors. (1929). 14 Tax Cas. 580.

200a. Bill indorsed to agent for account of plaintiff—Deposit by agent to secure advances.]—TREUTTEL *v.* BARANDON (1817), 8 Taunt. 100; 1 Moore, C. P. 543; 129 E. R. 320.

Annotations :—**Apld.** Evans *v.* Kymer (1830), 1 B. & Ad. 528. **Refd.** Wookey *v.* Pole (1820), 4 B. & Ald. 1; Sigourney *v.* Lloyd (1828), 8 B. & C. 622; Bank of Bengal *v.* Macleod (1849), 5 Moo. Ind. App. 1.

202. *Add. Annotation :*—**Consd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

206. *Add. Annotation :*—**Refd.** Savory & Co. *v.* Lloyds Bank, Ltd. (1932), 48 T. L. R. 344.

245. *Add. Annotation :*—**Refd.** *Re* Mason, [1929] 1 Ch. 1.

Part III.—Enforcement of Liability.

488. *Add. Annotation :*—**Refd.** Smart Bros. *v.* Holt, [1929] 2 K. B. 303.

494. *Add. Annotation :*—**Refd.** Slingsby *v.* District Bank, Ltd. (1931), 48 T. L. R. 114.

503. After this case add :—

Contract for whole crop—Sale of part of crop to third party.]—*See* INJUNCTION, No. 853a, *ante*.

579. *Add. Annotation :*—**Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 47 T. L. R. 359.

595. *Add. Annotation :*—**Refd.** Banco de Portugal *v.* Waterlow & Sons, Ltd. (1931), 100 L. J. K. B. 465.

652. *Add. Annotations :*—**Refd.** *Re* City Equitable Fire Insurance Co. (2), [1930] 2 Ch. 293; *Re* Fenton, *Ex p.* Fenton Textile Assocn. (1930), 99 L. J. Ch. 358.

653a. What must be proved.]—MILLS *v.* GRAHAM (1804), 1 Bos. & P. N. R. 140; 127 E. R. 413.

Annotations :—**Refd.** Gledstane *v.* Hewitt (1831), 1 Tyr. 445; Whitehead *v.* Harrison (1844), 6 Q. B. 423.

653b. Proof of taking—What amounts to.]—Trover for bricks. Evidence that men fetched them away, saying they were ordered by deft., & evidence that the cart they took them in had on it the same name as deft.'s, is not evidence to go to the jury that deft. took them away.—EVEREST *v.* WOOD (1824), 1 C. & P. 75; 171 E. R. 1108, N. P.

664. *Add. Annotation :*—**Consd.** Ellis *v.* Stenning & Son, Ltd. (1932), 76 Sol. Jo. 232.

664a. —— ——.]—In 1925, a certain piece of land, known as B. Lodge, was sold to J. & M. In the conveyance a quantity of timber trees, saplings, etc., was excepted out of the sale by the vendors, who reserved to themselves the right to cut & remove them before Oct. 11, 1927. In 1926, pltf. purchased the timber trees, etc., & proceeded to cut & remove them. A large amount of the cut timber was, however, left on the land after Oct. 11, 1927, & in these circumstances J. & M. stated that pltf. had lost his title thereto & forfeited his right to remove it, & they claimed it as their property. As the result of an action in 1930 against J. & M. it was held that the property in the timber remained in pltf. after Oct. 11, 1927, & a certain sum by way of damages for conversion against J. & M. was at the instance of the judge agreed between all parties to the proceedings & awarded pltf. In the meanwhile J. & M. purported to sell the cut timber to the present defts. Pltf., who had taken no steps to enforce the order which he had obtained against J. & M., gave notice on June 10, 1930, to defts. that the sale by J. & M. to them was ineffective, as J. & M. had no title to the timber, & requesting the return of the timber to him. Defts. having refused & repudiated liability, pltf. commenced an action, & by his statement of claim asked for a sum by way of damages for conversion; the conversion relied on being the refusal by deft. co. to return the timber in compliance with the notice of June 10, 1930 :—*Held :* whether a judgment in trover was in the alternative form or was merely one for the value of the goods or for damages for their conversion, it did not by itself & apart from special circumstances divest the owner of the property of his title thereto unless & until the judgment was fully satisfied.—ELLIS *v.* STENNING (JOHN) & SON, [1932] 2 Ch. 81; 101 L. J. Ch. 401; 147 L. T. 449; 76 Sol. Jo. 232.

668. *Add. Annotation :*—**Consd.** Ellis *v.* Stenning & Son, Ltd. (1932), 76 Sol. Jo. 232.

708. *Add. Annotation :*—**Consd.** Ellis *v.* Stenning & Son, Ltd. (1932), 76 Sol. Jo. 232.

PART II. SECT. 2, SUB-SECT. 3.—A. (a).

g i. ——.]—In an action for conversion :—*Held :* deft.'s use of the property after the action was begun, & more especially its denial, in the action, of pltf.'s ownership & right to possession, must be regarded as evidence of conversion before action.—CANADIAN ORCHESTRAPHONE, LTD. *v.* BRITISH CANADIAN TRUST CO., [1932] 2 W. W. R. 618; 4 D. L. R. 86.—**CAN.**

PART III. SECT. 2, SUB-SECT. 1.—B.

371 ii. ——.]—In an action for damages for the conversion of goods it is incumbent on pltf. to prove beyond a doubt title in himself & the right of possession.—MCCUTCHEON *v.* LIGHTFOOT, [1930] S. C. R. 108; 1 D. L. R. 995; *affg.*, [1929] 1 D. L. R. 971; 1 W. W. R. 694; 38 Man. L. R. 160; *revsg.*, [1928] 2 W. W. R. 240.—**CAN.**

PART III. SECT. 2, SUB-SECT. 4.—A.

h i. —— *Election of remedy.*]—Where a bailee or agent wrongfully sells property the owner may claim in tort for conversion or waive the tort & claim the proceeds, but cannot do both.—TRUSTS & GUARANTEE CO. *v.* BRENNER, [1932] O. R. 245; 2 D. L. R. 688.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.—B. (k).

h i. ——.]—BAXTER *v.* ADAMS, [1930] 1 D. L. R. 278.—**CAN.**

PART III. SECT. 3, SUB-SECT. 1.—C. (b) i.

574 iv. —— ——.]—Where pltf. has the immediate right to the possession of goods, the proper measure of damages in an action against the sheriff for wrongfully taking them is the value of the goods at the time of the conversion, though they were taken under an execution against a person who had performed labour upon them, & for which pltf. would be bound to account to such person.—RANKIN *v.* MITCHELL (1869), 12 N. B. R. (1 Han.) 495.—**CAN.**

TRUSTS AND TRUSTEES.

Part I.—Trusts.

3. *Add. Annotation :*—**Refd.** Cotton *v.* Heyl, [1930] 1 Ch. 510.

13. *Add. Annotation :—Generally,* **Refd.** *Re* Blake. *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251.

89. *Add. Annotation :*—**Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

94. *Add. Annotation :*—**Consd.** *Re* Franklin & Swathling's Arbitration, [1929] 1 Ch. 238.

165. *Add. Annotation :*—**Refd.** Perrin *v.* Dickson (1929), 45 T. L. R. 621.

305. *Add. Annotations :—Generally,* **Refd.** *Re* Hood, Public Trustee *v.* Hood (1930), 143 L. T. 691 ; *Re* Schoales, Schoales *v.* Schoales, [1930] 2 Ch. 75 ; Keren Kayemeth Le Jisroel, Ltd. *v.* I. R. Comrs. (1931), 47 T. L. R. 461.

379a. **" It being my wish that the same should be dealt with " as indicated in separate document—No separate document prepared.**]—*Re* BARTON, BARTON *v.* BOURNE (1932), 48 T. L. R. 205.

401a. **" On the understanding."**]—Where a will which named no exor. nor trustee directed that the estate, under £300, should be given to testator's wife in trust for two children " on the understanding " that testator's father provided for the wife so long as she retained her present name, the ct. held on motion that the condition had no testamentary value, & made the grant of letters of administration with the will annexed to the widow as beneficially entitled.—*Re* DULSON (1929), 140 L. T. 470 ; 45 T. L. R. 228.

409a. ——.]—Testator, being entitled to two leasehold houses situate at P. & at R. respectively, directed his trustees to allow his wife to occupy his house at P. or at R. as she should elect, for her life, without the payment of any rent :—*Held :* the widow must elect between the two houses, & could not enjoy both.—HARBY *v.* MOORE (1860), 3 L. T. 209 ; 6 Jur. N. S. 883.

415. *Add. Annotation :*—**Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

421. *Add. Annotation :*—**Refd.** Garland *v.* Archer-Shee (1930), 142 L. T. 443.

427. *Add. Annotation :*—**Refd.** Garland *v.* Archer-Shee (1930), 142 L. T. 443.

428. *Add. Citation :*—140 L. T. 369.

438. *Add. Annotation :*—**Apld.** *Re* Villar, Public Trustee *v.* Villar, [1929] 1 Ch. 243.

451. *Add. Annotation :*—**Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

453. *Add. Annotation :*—**Consd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

460. *Add. Citations :—affd.* [1929] A. C. 318 ; 98 L. J. Ch. 251 ; 140 L. T. 444 ; 45 T. L. R. 208 ; 73 Sol. Jo. 92, H. L.

461. *Add. Annotation :*—**Consd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

PART I. SECT. 3, SUB-SECT. 1.—A. (a).

37 xv. ——.]—Parties taking a deed from a person standing in a fiduciary relation acquire no title if the circumstances should have put them upon inquiry. Neither the Registry of Deeds Act nor Statute of Frauds, requiring certain trusts to be in writing, apply to such a case.—MILLER & Co. *v.* HALIFAX POWER CO. (1915), 48 N. S. R. 370.—**CAN.**

PART I. SECT. 3, SUB-SECT. 1.—A. (c).

61 iv. ——.]—CLARKE *v.* EBY (1867), 13 Gr. 371.—**CAN.**

61 v. ——.]—SMITH *v.* BENOR (1913), 24 O. W. R. 521 ; 4 O. W. N. 985 ; 10 D. L. R. 824.—**CAN.**

PART I. SECT. 3, SUB-SECT. 2.—A. (a).

p i. —— —— *Grantor must have parted with his interest.*]—In order to make a declaration of trust complete there must be an effective, completed & irrevocable disposition of the beneficial interest of the person making the declaration. — *Re* GARDEN ESTATE, [1931] 1 W. W. R. 395 ; 1 D. L. R. 991 ; *affd.*, [1931] 2 W. W. R. 849 ; 4 D. L. R. 791 ; 25 Alta. L. R. 580.—**CAN.**

PART I. SECT. 3, SUB-SECT. 3.—A. (b) ii.

ss. " *Knowing that he will see to the care & maintenance of my wife.*"]—*Held :* not sufficient to create a trust.—*Re* TAARE WAITARA, BEERE *v.* BATES, [1930] N. Z. L. R. 601.—**N.Z.**

PART I. SECT. 3, SUB-SECT. 3.—A. (b) iii.

sc. " *It is my wish.*"]—By his will testator gave to his wife, M. K., " all my property, personal & real, of any kind whatsoever." The will then continued : " It is my wish that after her decease my son, R. K., have the business premises, business effects, & all my land " :—*Held :* M. K. was tenant for life of the property left to R. K., namely, the business premises, the business effects, & all testator's land, & on her death R. K. would be entitled to that property absolutely.—*Re* KEITH TRUSTS, KEITH *v.* KEITH, [1931] I. R. 730.—**IR.**

PART I. SECT. 3, SUB-SECT. 3.—F.

sf. *Precatory words following words of gift.*]—Words construed as absolute gift in view of the tendency against construing merely precatory words as a trust.—*Re* THOMAS, [1932] 2 D. L. R. 334.—**CAN.**

PART I. SECT. 3, SUB-SECT. 3.—H. (h).

t i. ——.]—Testator after devising & bequeathing to his wife " all my personal property, monies, securities, everything that I now possess & may possess at the time of my decease," then added " & this is my wish (her being free to use her own judgment) for her, S. K., to will at her death " in favour of several objects :—*Held :* the will did not create a precatory trust.—*Re* KEYES ESTATE, KEYES *v.* GRANT, [1928] 3 D. L. R. 558 ; [1928] 2 W. W. R. 295.—**CAN.**

PART I. SECT. 3, SUB-SECT. 5.—B. (b).

429 i. *Discretion to select among class.*]—Testator bequeathed property to a certain relative, or among certain relatives, who should within five years after his death settle in Australia. If after five years no one was qualified to receive the property, his trustees were empowered to " extend the time limit for a further three years, & after the lapse of this time were directed to hand over the property to one or more then named beneficiaries, stipulating [they think fit the terms on which " the property was to be handed over. The trustees were directed to consult two persons " about the disposal of the property." The trustees extended the time for the three additional years, but no one of the beneficiaries fulfilled the necessary qualification. During the period from the death of the testator to the disposal of his property the trustees were directed " to hand over the income to any approved object or person " in Adelaide, Australia, or to an Imperial object :—*Held :* the trustees had power to select any one or more of the named beneficiaries, & to apportion the subject-matter between them & to propose to any or all of these beneficiaries a reasonable scheme for the application of the property to some special purpose ancillary to the general objects of the recipient in question, & to be guided in the exercise of their discretionary power by the answer or answers received, & to prefer the beneficiary who was able & willing to devote the property to any approved object.—*Re* JOHNSON, [1928] S. A. S. R. 490.—**AUS.**

g. For " [1918] N. Z. L. R. 364 " read " [1928] N. Z. L. R. 364."

462. *Add. Annotation :*—**Consd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

463. *Add. Annotation :*—**Folld.** Blackwell *v.* Blackwell, [1929] A. C. 318.

464. *Add. Annotation :*—**Distd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

465. *Add. Annotation :*—**Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

478. *Add. Annotation :*—**Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

479. *Add. Annotation :*—**Consd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

480. *Add. Annotation :*—**Consd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

484. *Add. Annotation :*—**Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

487. *Add. Annotation :*—**Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

493a. —— **After variation of original settlement.**]—Testator bequeathed his residuary estate upon trust for his children in equal shares & declared that as to the share of his son E. a moiety thereof should be held upon trust to pay & make over the same to the trustees of a settlement dated Sept. 23, 1916, to be held by them upon the trusts of such settlement, so far as the same should be then applicable & capable of taking effect. By the settlement so referred to, which was made after the marriage of E. with his wife G., a certain fund was vested in the trustees thereof under which E. took the first life interest & upon his death G. took an interest during her widowhood with remainders over upon trusts for E.'s children by his wife G. or any future wife. Testator died in 1917, & in 1928 the marriage was upon G.'s petition dissolved, & an order was made under which the trusts of the settlement were varied ; the effect of this variation being to deprive E. of any interest under the original trusts thereof, to give G. an immediate life interest, & to vest the settlement fund after her death in P., the only child of her marriage with E.:—*Held :* upon the proper construction of testator's will, the share of E. in his father's residuary estate ought to be held upon the trusts of the settlement as originally framed without regard to the order varying those trusts.—*Re* GOOCH, GOOCH *v.* GOOCH, [1929] 1 Ch. 740 ; 98 L. J. Ch. 285 ; 141 L. T. 150.

495. *Add. Annotation :*—**Refd.** *Re* Gooch, Gooch *v.* Gooch, [1929] 1 Ch. 740.

544a. ——.]—Testator directed by his will that his residuary real & personal estate should, after the death of his widow, be "equally divided amongst & settled for their own & sole use upon my dear children, & should they marry the husband to have no control over their property." Testator left him surviving three daughters only :—*Held :* the expression in the will of testator was not sufficiently precise to raise an executory trust.—*Re* BANNISTER, HEYS-JONES *v.* BANNISTER (1921), 90 L. J. Ch. 415 ; 125 L. T. 54.

549. *Add. Annotation :*—**Refd.** *Re* Duncombe's Will Trusts, Wrixon-Becher *v.* Faversham (Earl) (1932), 146 L. T. 412.

666. *Add. Annotation :*—**Refd.** Garland *v.* Archer-Shee (1930), 142 L. T. 443.

761. *Add. Annotation :*—**Consd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743.

769a. Agreement to convey to creditor.]—W. being indebted to C., agreed by deed to convey his estate to C., upon trust to sell the same, & to pay off certain debts of W. due to other persons, & then the debt due from W. to C., & to pay over the surplus, if any, to W. No conveyance was executed. C. being afterwards in possession of the estate under a *fi. fa.* issued on a judgment upon a warrant of attorney given by W., agreed with W.'s agent to purchase the estate. W. ratified the contract, but subsequently impeached it as one made by a trustee for his own benefit & against the interest of the *cestui que trust :*—*Held :* C. was not a trustee for W., but was a creditor holding a security for his debt ; & the contract of sale was valid.—WATERS *v.* GROOM (1844), 11 Cl. & Fin. 684 ; 8 E. R. 1262, H. L. ; *affg.* S. C. *sub nom.* CHAMBERS *v.* WATERS (1833), Coop. *temp.* Brough. 91, L. C.

Annotation :—**Refd.** Helling *v.* Lumley (1858), 28 L. J. Ch. 249.

782. *Add. Annotations :*—**Refd.** I. R. Comrs. *v.* City of Buenos Ayres Tramways Co. (1904), Ltd. (1926), 12 Tax Cas. 1125 ; Madras & Southern Mahratta Ry. Co. *v.* I. R. Comrs. (1926), 12 Tax Cas. 1111.

903. *Add. Annotations :*—**Refd.** Perrin *v.* Dickson (1929), 98 L. J. K. B. 683 ; *Re* Collier, [1930] 2 Ch. 37 ; *Re* Pitts, Cox *v.* Kilsby, [1931] 1 Ch. 546 ; Cousins *v.* Sun Life Assurance Society (1932), 48 T. L. R. 614.

929. *Add. Annotation :*—**Refd.** *Re* Blake, *Re* Minahan's Petition of Right, [1932] 1 Ch. 54.

955. *Add. Annotation :*—**Refd.** Blakey *v.* Pendlebury's Trustees (1931), 47 T. L. R. 503.

977. *Add. Annotation :*—**Refd.** Verner-Jeffreys *v.* Pinto, [1929] 1 Ch. 401.

Part II.—Trustees.

1110. After this case add :—

—.]—*See, now,* Trustee Act, 1925 (c. 19), s. 36 (1).

1178. After this case add :—

——.]—*See, now,* Trustee Act, 1925 (c. 19), 41 (1).

PART I. SECT. 12, SUB-SECT. 1.

aa. *Effect of non-acceptance by beneficiaries.*]—*Re* B., CANADA TRUST CO. *v.* GARDINER, [1928] 1 D. L. R. 501.—**CAN.**

PART I. SECT. 14, SUB-SECT. 2.—A. (c) i.

844 viii. —— ——.]—MARSHALL *v.* HEITT & SIBBALD, LTD., [1932] 1 W. W. R. 520.—**CAN.**

PART I. SECT. 14, SUB-SECT. 3.—B.

so. *Company—Application for shares.*]—*Re* FADA (AUSTRALIA), LTD., *Ex p.* A. L. BROWN, [1927] S. A. S. R. 590.—**AUS.**

PART II. SECT. 2, SUB-SECT. 1.—A.

sd. *Persons resident in Great Britain—Tenant for life resident in England.*]—*Re* BAILLIE, WHITING *v.* CAVENDISH, [1928] V. L. R. 171 ; [1928] Argus L. R. 12.—**AUS.**

PART II. SECT. 2, SUB-SECT. 2.—B. (c).

sf. *Jurisdiction of court to vary power of appointment.*]—Trustee Act, 1925, s. 81, enables the ct. to do any administrative act in the administration of a trust, & empowers the ct. in a proper case to vary a power of

1179. Before this case add "*See, now,* Trustee Act, 1925 (c. 19), s. 41 (1)."

1226a. ——.]—The ct. declined making an order allowing a *feme sole* to propose herself to be trustee, on the ground that on her marriage her husband might interfere with the trust.—BROOK *v.* BROOK (1839), 1 Beav. 531; 48 E. R. 1046.

Annotation :—**N.F.** *Re* Dickenson's Trusts, [1902] W. N. 104.

1226b. ——.]—Upon the hearing of a petition under the Settled Estate Act, 1877 (c. 18), asking that two ladies, respectively a widow & a spinster, the then trustees of a will, might be authorised to sell the whole or any part or parts of the estates devised, the ct. in the first instance refused to confer the authority upon two ladies, & the petition was ordered to stand over generally. Upon further evidence showing that petitioners had been unable to procure any other suitable persons to act as trustees, though they had endeavoured to do so, the ct. made an order conferring the authority asked for on the two ladies during their joint lives, subject to the approval of the ct. in the case of each sale.—*Re* PEAKE'S SETTLED ESTATES, [1894] 3 Ch. 520; 71 L. T. 371; 42 W. R. 687; 38 Sol. Jo. 648; 8 R. 539.

1434a. Equitable estate of beneficiary becoming legal estate.]—On July 5, 1802, B. & another trustee who predeceased him were admitted to certain copyhold plots upon trust out of the rents & profits to raise & pay an annual rent of £7 10s. to H. & his heirs & subject thereto in trust for W. & his heirs. Many years after B.'s death his customary heir C., since deceased, was admitted to two plots, but no one was admitted to the third; so that on Dec. 31, 1925, the best right to admittance was in the customary heirs of C. & B. On the same date the equitable title to the land stood vested in T. & X. as joint tenants in fee, subject to the equitable rentcharge then vested in Y., subject to proof of his title. On Jan. 1, 1926, the Law of Property Acts came into operation & the copyhold plots were enfranchised. The ct. being asked to determine in whom the legal estates in the land & the rentcharge vested :—*Held :* on the rentcharge becoming a legal rentcharge the trustees became bare trustees with no longer any active duties to perform.—*Re* KING'S THEATRE SUNDERLAND, DENMAN PICTURE HOUSES *v.* THOMPSON & COLLINS ENTERPRISES, [1929] 1 Ch. 483; 98 L. J. Ch. 109; 140 L. T. 463.

1492. *Add. Annotation :*—**Refd.** *Re* Blake, *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251.

1495. *Add. Annotation :*—**Refd.** *Re* Blake, *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251.

1497. *Add. Annotation :*—**Refd.** Lynn *v.* Bamber, [1930] 2 K. B. 72.

1499a. Acquisition from married woman trustee—In order to defeat judgment.]—Where the ct. in giving judgment against a married woman, who is a defaulting trustee, orders that the judgment be satisfied out of her separate estate, & execution proves useless, it is not open to pltf., in a new action, to obtain against her judgment in a different form for payment of the moneys into court. As against her the matter is *res judicata.* But if it appear that she has transferred the moneys to a person with knowledge of the proceedings against her, action will lie against the transferee as constructive trustee. Pltf. obtained against the first deft., a married woman, judgment for payment out of her separate estate of the sum in dispute & costs. Evidence disclosed that the first deft. had parted with the whole of the sum, having transferred most of it to her sister, the second deft., who was not a party to the proceedings but knew of them at the time. Execution in respect of the judgment thus proving useless, pltf. now brought this action, alleging that the first deft. had paid the money to the second deft. in order to defeat any judgment for the pltf., & that the second deft. received the money as constructive trustee :—*Held :* judgment could be given against the second deft., who had received the moneys as constructive trustee.—GREEN *v.* WEATHERILL, [1929] 2 Ch. 213; 98 L. J. Ch. 369; 142 L. T. 216; 45 T. L. R. 494.

appointment of new trustees.—*Re* MAYNE (1928), 28 S. R. N. S. W. 157; 45 N. S. W. W. N. 46.—**AUS.**

PART II. SECT. 2, SUB-SECT 2.—C. (d).

sg. " *Desire* " *for not less than three trustees—Whether mandatory or directory.*]—Testator by his will declared that the statutory power of appointing new trustees should be exercisable if any of his trustees should go to reside out of the Australian States, but expressed a " desire " that the number of trustees of the will should always be not less than three. One of the three trustees was dead :—*Held :* it was mandatory on such retirement to appoint no less than three trustees.—*Re* MAYNE (1928), 28 S. R. N. S. W. 157; 45 N. S. W. W. N. 46.—**AUS.**

PART II. SECT. 6, SUB-SECT. 1.

1423 i. *Trustee having no duties to perform.*]—P., by his will, devised his real estate to his trustee in fee simple upon trust for the absolute & exclusive use, enjoyment, benefit, & advancement of certain named beneficiaries, including K., &, having invested his trustee with powers of selling & mortgaging such estate for payment of debts, & of leasing & managing same, declared that " if any one of the beneficiaries under this my will shall die without issue, then all his rights, titles, & interests which he has acquired by virtue of this my last will shall vest in the children of M. P. as tenants in common in equal shares :—*Held :* the trustee named in the will was not a bare trustee.—*Re* PANAPA WARHOPI, [1929] N. Z. L. R. 815.—**N.Z.**

PART II. SECT. 6, SUB-SECT. 2.

1439 i. *Duty to convey legal estate—To beneficiaries.*]—*Re* KEITH, KEITH *v.* EASTERN TRUST CO. (N. S.), [1929] 1 D. L. R. 599.—**CAN.**

PART II. SECT. 7, SUB-SECT. 1.—C. (b) i.

sh. *Property subject to existing contract—Trusts Ordinance,* 1917, *s.* 93, *of Ceylon—When registration necessary.*]—HALL *v.* PELMADULLA VALLEY TEA & RUBBER CO., LTD., [1929] A. C. 662.—**CEYLON.**

PART II. SECT. 8, SUB-SECT. 3.

sj. *Death of trustee.*]—*Re* CATLIN & REID (1923), 54 O. L. R. 1.—**CAN.**

PART II. SECT. 8, SUB-SECT. 5.

sk. *Grant of administration for purpose of conveying—Invalid appointment of trustees.*]—Three new trustees of a will had been appointed in 1875, & the trust estate vested in them. Two of these trustees died prior to 1907, & the third, E., being desirous of retiring from the trust, C. & W. were in that year appointed new trustees. This appointment was subsequently discovered to be invalid. The legal estate was never divested from E., who died intestate in the U.S. in 1915, & no representation had been raised to his estate. The ct. gave liberty to a person, who represented some of the beneficiaries, to apply for a grant limited to conveying the legal estate & without citing the next of kin.—*Re* ECCLES, [1929] N. I. 53.—**IR.**

Part III.—Administration of Trusts.

2033a. —— **Misapplication of trust funds—Payment to wrong person.**]—The indemnity conferred on trustees by Trustee Act, 1925 (c. 19), s. 30 (1), does not apply where a trustee, even though as the result of an honest mistake, has misapplied trust funds by paying them to the wrong person.

The selling agents of a colliery co., which had sold its undertaking & was being voluntarily wound up, claimed £19,088 damages for alleged breach by the co. of the agency agreements. There had in fact, as the ct. held, been no breach of the agreements. The liquidator consulted the solrs. of a large shareholder, who was opposed to the claim, & they said they had advised their client that there was a valid claim but that the amount of damages was uncertain. Without taking further advice or obtaining the opinion of the ct., a course the liquidator had recognised to be open to him, the liquidator settled the claim for £15,000. A summons was taken out by a contributory to obtain repayment of this sum to the co., on the ground that the liquidator had been guilty of misfeasance, & the liquidator, whose *bona fides* was not in question, claimed the benefit of the indemnity given to trustees by Trustee Act, 1925 (c. 19), s. 30:—*Held:* without deciding whether the liquidator was a trustee within the meaning of the Act, even if he were: (1) he was not entitled to indemnity under sect. 30 (1), because that sub-sect. does not extend to a case where a trustee had misapplied trust funds coming to his hands; (2) he was not, on the facts, entitled to relief under sect. 61.

Even if a liquidator is a trustee within Trustee Act, 1925, he is, as a paid trustee, disentitled to relief under sect. 61 (*per* CUR.). —*Re* WINDSOR STEAM COAL CO. (1901), LTD., [1929] 1 Ch. 151; 98 L. J. Ch. 147; 140 L. T. 80, C. A.

Annotation:—Generally, **Refd.** *Re* Home & Colonial Insce. Co., [1930] 1 Ch. 102.

2076. *Add. Annotation:*—**Refd.** *Re* Murphy's Estate, Morton *v.* Marchanton (1930), 74 Sol. Jo. 321.

2250. *Add. Annotation:*—**Refd.** *Re* Lloyds Bank, Bomze & Lederman *v.* Bomze, [1931] 1 Ch. 289.

2269. *Add. Annotation:*—**Consd.** *Re* Raine, Tyerman *v.* Stansfield, [1929] 1 Ch. 716.

2278a. Voluntary settlement in accordance with unexecuted will—Failure to include trust for maintenance — Remedy of beneficiary.] — LANGDON *v.* BLAKE (1865), 12 L. T. 202; 11 Jur. N. S. 762.

2283a. —— **Life interest protected against assignment—Forfeiture.**]—Trustees of a will held land upon trust for sale & the proceeds of sale were not subject to any trust for reconversion under the will:—*Held:* (1) they were entitled to exercise the power of advancement out of capital conferred upon them by Trustee Act, 1925 (c. 19), s. 32, in favour of a remainderman, subject to the consent of the tenant for life, whose life interest was protected against assignment; (2) the tenant for life by consenting to the exercise of the power of advancement forfeited his life interest under the will.—*Re* STIMPSON'S TRUSTS, STIMPSON *v.* STIMPSON, [1931] 2 Ch. 77; 100 L. J. Ch. 312; 145 L. T. 249.

2285a. Property held on trust for sale.]—*Re* STIMPSON'S TRUSTS, STIMPSON *v.* STIMPSON, No. 2283a, *ante.*

2287. *Add. Annotation:*—**Refd.** *Re* Duncombe's Will Trusts, Wrixon-Becher *v.* Faversham (Earl) (1932), 146 L. T. 412.

2289a. Accumulations of income applicable to overdraft—Overdraft secured by equitable mortgage—Legal mortgage of same property to pay off overdraft—Whether accumulations applicable to legal mortgage.]—*Re* BRANDON, SAMUELS *v.* BRANDON (1932), 49 T. L. R. 48.

2357. *Add. Annotation:*—**Consd.** Hyman *v.* Hyman, [1929] A. C. 601.

2500. After this case add:—

Infant domiciled abroad.]—*See* CONFLICT OF LAWS, No. 548a, *ante.*

2503a. —— —— **Fund not carried to account of particular person.**]—*Re* BIRKIN, BIRKIN *v.* BIRKIN, [1901] W. N. 33.

2546a. Administrator ad litem.]—Moneys are never paid out of ct. to an administrator *ad litem.*—WILLIAMS *v.* ALLEN (No. 2) (1863), 32 Beav. 650; 55 E. R. 255.

2609a. ——.]—Testator bequeathed a fund to A. for life, with remainders over. The fund was

PART III. SECT. 3, SUB-SECT. 1.—D. (a).

2055 ii. —— ——.]—BRIGHOUSE MORTON, [1929] 3 D. L. R. 91; S. C. 512; *revsg.*, 40 B. C. R. 278.—**CAN.**

PART III. SECT. 3, SUB-SECT. 4.—A.

2136 xxvi. ——.]—C. had mortgaged certain of his property to a bank. He became mentally defective, & allowed the payments to fall into arrear. The applicants mortgaged their own property, & paid off the bank. At their request, the bank offered C.'s property for sale, &, there being no bid, transferred it to the applicants, who sold the property to advantage. They claimed commission as trustees:—*Held:* commission or remuneration could only be allowed for services rendered in the course of the administration of a trust, & that as the services had all been rendered before appts. became trustees, no allowance could be made.—*Re* COMMANE, [1927] S. A. S. R. 238.—**AUS.**

t i. —— ——.]—Apart from legislation, the general rule is that, in the absence of an expressed prior stipulation with his *cestui que trust*, a trustee will not be allowed remuneration for personal trouble & loss of time.

The right of a trustee to remuneration under Trustee Act, R. S. S., 1920, s. 65, may be disallowed where he has acted fraudulently or dishonestly in managing the trust.—PROCTOR *v.* BENTLEY (Sask.), [1929] 3 W. W. R. 711; [1930] 2 D. L. R. 6; 24 S. L. R. 206.—**CAN.**

si. *Application for—Practice.*]—One co-trustee may petition alone for trustees' commission, & *quære* whether on such an application the ct. has jurisdiction to consider, &, if necessary, to award, a distribution of any commission it may allow. It is not necessary in all circumstances that the personal representatives of a deceased trustee should have notice of such an application.—*Re* BOWMAN'S SETTLEMENT, [1929] S. A. S. R. 1.—**AUS.**

PART III. SECT. 3, SUB-SECT. 5.—A.

2171 i. —— *Question of construction.*]—Upon a summary application under Trustee Act, R. S. O., 1927, s. 59, "for the opinion, advice or direction of the ct.," the ct. will not determine legal rights.—TECUMSEH PUBLIC UTILITIES COMMISSION & MCPHEE, [1931] 1 D. L. R. 538; 66 O. L. R. 231.—**CAN.**

PART III. SECT. 4, SUB-SECT. 3.—B.

2206 iv. ——.]—The rule that a trustee for sale is incapable of purchasing the trust property applies to a person to whom under the terms of the trust agreement the trustee was required to, & did, give the sole charge & general management of the trust property.—MCLENNAN *v.* NEWTON, [1928] 1 D. L. R. 189; 37 Man. L. R. 201; [1927] 3 W. W. R. 684.—**CAN.**

paid into ct. under Trustee Relief Act, 1847 (c. 96). On a petition by A. for payment of the dividends, which was not served on any persons claiming in remainder :—*Held :* the ct. could not allow the costs out of the capital of the fund.—*Ex p.* FLETCHER (1848), 17 L. J. Ch. 169 ; 11 L. T. O. S. 218 ; *sub nom. Re* FLETCHER, *Ex p.* FLETCHER, 12 Jur. 619.

2654a. —— **Proceedings against trustee by action instead of summons.**]—An action was brought against the surviving trustee of a will, claiming a declaration that he was not entitled to charge in account with pltf., who was a *cestui que trust* under the will, the costs of an action brought by the superior landlord in consequence of the failure by the trustee to repair some houses which formed part of the trust property, or to charge commission paid to a collector who had collected the rents of the same property, & also claiming, if necessary, administration of testator's estate. There was no practical dispute as to the facts :—*Held :* the points in dispute between the parties might have been decided upon an originating summons, under R. S. C., Ord. 55, r. 3, & although pltf. succeeded in his claim, no costs of the action would be given.—*Re* JOHNSON, WAGG *v.* SHAND (1885), 53 L. T. 136.

2714. *Add. Annotation :*—*As to* (2) **Refd.** Garland *v.* Archer-Shee (1930), 142 L. T. 443.

2777a. ——.]—SNOW *v.* TEED (1870), L. R. 9 Eq. 622 ; 18 W. R. 623 ; *sub nom.* SUM *v.* TEED, 23 L. T. 303.

2835. *Add. Annotation :*—**Refd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

Part IV.—Duties of Trustees.

2953. *Add. Annotation :*—**Refd.** Clayton *v.* Clayton, [1930] 2 Ch. 12.

3038. *Add. Annotation :*—**Refd.** *Re* Vickery, Vickery *v.* Stephens, [1931] 1 Ch. 572.

3118a. ——.]—REYNOLDS *v.* BROWN (1852), 1 W. R. 50.

3142. *Add. Annotations :*—**Distd.** *Re* Sullivan, Dunkley *v.* Sullivan (1929), 45 T. L. R. 590. **Consd.** *Re* McKee, Public Trustee *v.* McKee, [1931] 2 Ch. 145.

Part V.—Powers and Discretions of Trustees.

3162a. **Exercise of statutory powers—Duty to consult beneficiaries.**]—A summons in an administration action was taken out by the trustees for the purposes of the Settled Land Act, 1925 (c. 18), of a settlement of real estate made by the will of a testator for the determination of the question whether the provisions of Law of Property Act, 1925 (c. 26), s. 26 (3), as amended by the Law of Property (Amendment) Act, 1926 (c. 11) (by which they were directed to consult the wishes of beneficiaries), applied only in respect of sales or applied also to the exercise by them of their other statutory trusts & powers :—*Held :* it was the duty of the trustees to consult the wishes of the beneficiaries not only with regard to the exercise of the trust for sale, but also with regard to the exercise of all other trusts & powers arising under Settled Land Act, 1925 (c. 18), & Law of Property Acts, 1925 (c. 26), & 1926 (c. 11), & the additional or larger powers conferred by the settlement on the trustees thereof or otherwise.—*Re* JONES, JONES *v.* CUSACK-SMITH, [1931] 1 Ch. 375 ; 100 L. J. Ch. 129 ; 144 L. T. 642.

3922. *Add. Annotation :*—**Consd.** *Re* Vickery, Vickery *v.* Stephens, [1931] 1 Ch. 572.

3450. *Add. Annotation :*—**Distd.** *Re* Stevens & Dunsby's Contract, [1928] W. N. 187.

3466a. —— **Consent refused by tenant for life.**]—Where in the case of a trust for sale "any requisite consent cannot be obtained," because the person from whom it must be obtained refuses it, the ct., under Law of Property Act, 1925 (c. 20), s. 30, & Trustee Act, 1925 (c. 19), s. 57, can direct the trustees for sale to sell.—*Re* BEALE'S SETTLEMENT TRUSTS, HUGGINS *v.* BEALE, [1932] 2 Ch. 15 ; 101 L. J. Ch. 320.

3469a. —— **Consent refused—Power of court to order sale under Law of Property Act, 1925 (c. 20), s. 30.**]—*Re* BEALE'S SETTLEMENT TRUSTS, HUGGINS *v.* BEALE, No. 3466a, *ante*.

PART III. SECT. 10, SUB-SECT. 2.—B.

2655 viii. —— ——.]—BRYDEN *v.* BRYDEN (GRIERSON) (1833), 6 Wils. & S. 354 ; *affg.*, 9 S. 457.—**SCOT.**

2655 ix. —— ——.]—The costs of the trustee of a *donatio mortis causâ* in successfully defending an action brought against him by the administrator of the donor's estate, were ordered to be paid out of the whole fund which was the subject-matter of the *donatio mortis causâ*.—WALKER *v* ROMAN CATHOLIC BISHOP OF ST. JOHN, [1929] 4 D. L. R. 15 ; 54. N. B. R. 371.—**CAN.**

PART III. SECT. 11, SUB-SECT. 7.—C.

2866 iii. ——.]—Testator being dead, the ct. is empowered, when the benefit of the estate requires it, to do what it believes a prudent testator would do if alive, & to revoke a direction which had nothing to do with the destination of the estate, but merely with its administration.—*Re* ROGERS, [1929] 1 D. L. R. 116 ; 63 O. L. R. 180.—**CAN.**

PART IV. SECT. 7.

3m. *Trustee following wishes of majority of beneficiaries—Against wishes of minority—No liability for breach of trust.*]—GREEN *v.* FRASER, [1931] S. C. R. 160 ; [1930] 4 D. L. R. 42 ; *affg.*, [1930] 2 D. L. R. 702 ; 65 O. L. R. 90.—**CAN.**

PART IV. SECT. 9.

3067 xi. ——.]—HAMILTON *v.* YORK & BALDRY (1913), 24 W. L. R. 579 ; 4 W. W. R. 859.—**CAN.**

PART V. SECT. 5, SUB-SECT. 2.—A.

g i. ——.]—MACLEOD *v.* ROYAL TRUST CO. (Alta.), [1929] 1 D. L. R. 589.—**CAN.**

PART V. SECT. 7, SUB-SECT. 2.—B.

so. *Whether power of sale given—*WESSELS *v.* CARSCALLEN (1860), 10 C. P. 215.—**CAN.**

PART V. SECT. 7, SUB-SECT. 2.—F. (a).

m i. —— ——.]—A contract between a trustee for sale & the wife of the trustee is in law a valid contract, but the ct. of equity would presume that the contract was for the benefit of the trustee & would require evidence to displace that presumption.—*Re* DOUGLAS (1928), 29 S. R. 48.—**AUS.**

3475a. —.]—In an administration action in which a decree had been made, & which was still pending, a receiver had been appointed, who was receiving the rents & profits & distributing them amongst various persons. On the coming into force of Law of Property Act, 1925 (c. 20), the statutory trusts under Sched. I., Part IV., of the Act came into operation, & the trustee, in whom the legal estate was vested, became invested with the statutory trusts for sale:—*Held:* the trustee could exercise the statutory trusts without the sanction of the ct. in the still pending suit.—BERNHARDT *v.* GALSWORTHY, [1929] 1 Ch. 549; 98 L. J. Ch. 284; 140 L. T. 685.

Annotation:—**Refd.** *Re* Thomas, Thomas *v.* Thompson, [1930] 1 Ch. 194.

3475b. Persons beneficially interested in possession—Annuitants.]—The trustees of a will, which came into operation after the commencement of Law of Property Act, 1925 (c. 20), were directed to stand possessed of the testator's residuary real & personal estate upon trust to pay out of the income thereof four life annuities, & while any annuity remained payable to divide the surplus income amongst such of testator's grandchildren as should be living for the period during which any annuity remained payable; &, on cesser of all the annuities to stand possessed of the residuary estate in trust for his grandchildren & the issue then living of any then dead, as tenants in common according to the stocks. By a codicil power was conferred upon the trustees after the expiration of five years from testator's death to sell his residuary estate or any part thereof by public auction but not by private contract. Upon a summons raising questions, whether the trustees or the persons entitled to the surplus income until cesser of the annuities were the proper persons in whom the land ought to be vested by the exor.; &, if the trustees were the proper persons, whether the annuitants were persons whose wishes ought to be given effect to by the trustees for sale:—*Held:* the annuitants were persons beneficially interested in possession within Law of Property Act, 1925 (c. 20), s. 26 (3), whose wishes should be consulted by the trustees for sale.—*Re* HOUSE, WESTMINSTER BANK *v.* EVERETT, [1929] 2 Ch. 166; 98 L. J. Ch. 381; 141 L. T. 582.

3488a. —.]—Testator, who died in the year 1901, gave the residue of his estate real & personal, consisting of certain stocks & shares, freehold hereditaments, & leasehold houses held on leases expiring in the year 1924, to trustees upon trust neither to allow the same to remain in its state of investment at his decease or, as & when his trustees should, in their absolute discretion, see fit so to do, from time to time to realise & sell & convert the same or any part thereof. Testator directed his trustees to reinvest the money when realised in trustees' securities & to hold the investments, whether original or substituted, upon trust to pay unto or permit his wife, F., who was one of the trustees, to receive the income of his residuary estate during widowhood, to be reduced to a moiety of the income on her re-marriage, & subject to her life interest the testator gave his residuary estate to his son C. to be paid to him as to a moiety at twenty-one & the residue on his attaining thirty, but should his son die under twenty-five the whole residue was given to F.:—*Held:* the words of the will created a trust for sale.—*Re* CRIPS, CRIPS *v.* TODD (1906), 95 L. T. 865.

Annotations:—**Consd.** *Re* Johnson, Cowley *v.* Public Trustee, [1915] 1 Ch. 435; *Re* White's Settlement, Pitman *v.* White, [1930] 1 Ch. 179.

3489. *Add. Annotation:*—**Distd.** *Re* White, Pitman *v.* White (1929), 46 T. L. R. 30.

3489a. —— **With consent of tenant for life.**]—By a marriage settlement made in 1882 an undivided share of real estate passing under a will was settled, together with other property belonging to the wife, upon trust either to retain the same in its present condition, or with the consent of the tenant for life during her life, to sell, & after her death to sell at the discretion of the trustees. The settlement contained various powers to the trustees appropriate to the management of real estate, but no power to postpone conversion. In 1906 a partition of the entirety of the estate was effected, & certain hereditaments appropriated & conveyed to the trustees in satisfaction of the undivided share settled. On a summons to determine the question whether the land remaining unsold was settled land or held upon trust for sale:—*Held:* the settlement having been made before the coming into operation of Law of Property Act, 1925 (c. 20), under sect. 25 (4), of which it would have created a trust for sale, the question was one of construction, & having regard to the trusts & powers in the settlement for the management of the property as real estate, the land remaining subject thereto was not held upon trust for sale but was settled land.—*Re* WHITE'S SETTLEMENT, PITMAN *v.* WHITE, [1930] 1 Ch. 179; 99 L. J. Ch. 49; 142 L. T. 279; 46 T. L. R. 30.

3490. *Add. Annotations:*—**Consd.** *Re* Whitaker, Rooke *v.* Whitaker, [1929] 1 Ch. 662, **Refd.** *Re* Conquest, Royal Exchange Assurance *v.* Conquest, [1929] 2 Ch. 353. **Mentd.** *Re* Smith, Vincent *v.* Smith, [1930] 1 Ch. 88.

3491a. Estate divisible among beneficiaries—Trustee must sell—Notwithstanding power to postpone under Law of Property Act, 1925 (c. 20), s. 25.]—*Re* BALL, JONES *v.* JONES (1930), 74 Sol. Jo. 298.

3590. *Add. Annotation:*—*As to* (1) **Consd.** *Re* Mansel, Smith *v.* Mansel, [1930] 1 Ch. 352.

3617. *Add. Annotation:*—**Refd.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

3639a. Power to partition—Under Law of Property Act, 1925 (c. 20), s. 28 (3)—When exerciseable.]—(1) Law of Property Act, 1925 (c. 20), s. 28 (3), which enables trustees for sale to partition unsold land in cases where the net proceeds of sale have become "absolutely vested" in adult persons in undivided shares, does not apply where those proceeds are only vested in life tenants. A power of partition

e i. —— *Objection by beneficiaries—Duty to sell or apply to court for direction.*]—DUTHIE *v.* GALLAGHER & DUTHIE, [1930] 2 D. L. R. 582.—CAN.

in a will-settlement is *pro tanto* inconsistent with the statutory trusts for sale, & cannot therefore be treated as an "additional or larger" power preserved by sect. 28 (1) as amended by Law of Property (Amendment) Act, 1926 (c. 11), Sched. It is therefore overridden by the statutory trusts.

(2) Where partition, though expedient, cannot be effected under any power vested in the trustees by the trust instrument or by law, the ct. can confer the necessary power for that purpose under Trustee Act, 1925 (c. 19), s. 57.—*Re* THOMAS, THOMAS *v.* THOMPSON, [1930] 1 Ch. 194; 99 L. J. Ch. 140; 142 L. T. 310.

3639b. —— **Whether court may confer.**] — THOMAS, *Re*, THOMAS *v.* THOMPSON, No. 3639a, *ante*.

Part VI.—Investment of Trust Funds.

3922. *Add. Annotation :*—**Refd.** *Re* Vickery, Vickery *v.* Stephens, [1931] 1 Ch. 572.

Part VII.—Breaches of Trust.

3996a. ——.]—*Re* WINDSOR STEAM COAL CO. (1901), LTD., No. 2033a, *ante*.

4002. *Add. Annotation :*—**Refd.** *Re* Blake, *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251.

4050. *Add. Annotation :*—**Refd.** *Re* Houlder, [1929] 1 Ch. 205.

4136. *Add. Annotation :*—**Refd.** *Re* Blake, *Re* Minahan's Petition of Right (1931), 100 L. J. Ch. 251.

4162. *Add. Annotation :*—**Refd.** A.-G. *v.* Goddard (1929), 98 L. J. K. B. 743.

4322. *Add. Annotation :*—**Refd.** *Re* Fenton (No. 2), *Ex p.* Fenton Textile Assocn., Ltd., [1932] 1 Ch. 178.

4356. *Add. Annotations :*—**Consd.** *Re* Windsor Steam Coal Co. (1901), [1929] 1 Ch. 151. **Apld.** *Re* Vickery, Vickery *v.* Stephens, [1931] 1 Ch. 572.

4360. *Add. Annotations :*—*As to* (1) **Apld.** *Re* Windsor Steam Coal Co. (1901), [1929] 1 Ch. 151. *As to* (3) **Refd.** *Re* Vickery, Vickery *v.* Stephens, [1931] 1 Ch. 572.

PART VI. SECT. 1, SUB-SECT. 2.

sg. *Trustee Act, R. S. A.*, 1922, *s.* 54.]—FRASER *v.* FRASER & HUBBARD, [1932] 1 W. W. R. 863; 2 D. L. R. 816.—**CAN.**

PART VI. SECT 7, SUB-SECT. 1.

sn. *Action to set aside trust pending.*] —The trustee under a *donatio mortis causâ* is not guilty of *laches* if he does not invest trust funds in securities but deposits them in a bank, when suit has been brought against him to have the gift set aside, & 3 per cent. interest is all he should pay.—WALKER *v.* ROMAN CATHOLIC BISHOP OF ST. JOHN, [1929] 4 D. L. R. 15; 54 N. B. R. 371.—**CAN.**

PART VI. SECT. 7, SUB-SECT. 2.—E.

sp. *Executor-trustee—Not liable for failure to invest within one year of death.*]—CAMPBELL *v.* HOGG, [1930] 3 D. L. R. 673.—**CAN.**

sq. —— ——.]—Under the decision of the Privy Council in *Campbell v. Hogg*, where a trustee is passing his accounts before a Surrogate Ct. judge under Trustee Act, R. S. O., 1927, s. 23, the ct. or judge cannot charge the trustee who was also exor. with losses arising from failure to sell non-trustee investments of testator within one year of the date of testator's death.—*Re* JOHNSON, [1932] O. R. 385; 3 D. L. R. 164.—**CAN.**

PART VI. SECT. 7, SUB-SECT. 2.—F. (a).

p i. —— *Failure to invest—Reliance on counsel's opinion.*]—Trustees were asked by a beneficiary to invest certain moneys, most of which were admittedly due to the beneficiary pending settlement of the account. At the same time the trustees were told that a claim for interest would be made against them if the moneys continued to lie idle. The trustees, acting on the erroneous opinion of counsel that they were not entitled to invest, omitted to do so :—*Held :* the proper course was for the trustees to invest as requested, but having referred what was a matter of law to competent counsel for his opinion & having acted on it, they were not guilty of wilful neglect & default so as to make them accountable for the loss.—PERPETUAL TRUSTEE CO. *v.* WATSON (No. 2) (1927), 28 S. R. N. S. W. 43; 45 N. S. W. W. N. 3.—**AUS.**

PART VII. SECT. 1, SUB-SECT. 1.

3928 ii. ——.]—JOHNSTON *v.* SMITH & NELSON, [1928] 4 D. L. R. 774; [1928] 3 W. W. R. 495.—**CAN.**

PART VII. SECT. 1, SUB-SECT. 2.

3935 iii. —— *Loss of securities.*]—BROWN *v.* BROWN, [1932] 2 D. L. R. 819; *revsg.*, [1931] 4 D. L. R. 420.—**CAN.**

PART VII. SECT. 3, SUB-SECT. 2.—B. (a).

4100 i. —— *Trustee paying money to wrong person.*]—CHEANG THYE PHIN *v.* LAM KIN SANG, [1929] A. C. 670.—**STRAITS SETTLEMENTS.**

PART VII. SECT. 3, SUB-SECT. 2.—B. (b).

sg. *No fixed rate—Dependent on extent of breach.*]—TORONTO GENERAL TRUSTS CO. *v.* HOGG, [1932] 4 D. L. R. 465.—**CAN.**

PART VII. SECT. 5, SUB-SECT. 3.—C. (a).

4608 ii. ——.]—Where a trustee wrongfully mingles trust property with his own, the beneficiary is entitled to a charge on the whole fund for the amount due to him.—OFFICIAL ASSIGNEE, MADRAS *v.* MINAKSHI VIDYASALAI SANGAM (1929), I. L. R. 52 Mad. 919.—**IND.**

p i. ——.]—DAVIES *v.* CHRISTAKOS, [1931] 1 D. L. R. 1009; [1930] 3 W. W. R. 481; *varg.*, [1930] 2 D. L. R. 870.—**CAN.**

PART VII. SECT. 6, SUB-SECT. 2.—A.

4651 i. *Form of proceeding.*]—The ct. may entertain upon an originating summons a claim for relief framed on a breach of trust.—PERPETUAL TRUSTEE CO. *v.* WATSON (No. 1) (1927), 28 S. R. N. S. W. 39; 45 N. S. W. W. N. 1.—**AUS.**

so. *Whether right to jury exists.*]—Defts., as exors. of a will, were directed by the will to sell lands of testatrix', & distribute the proceeds among her children & a grandchild. In this action, pltfs., two of the children, alleged that defts., exors., had committed a breach of trust by selling the lands at a gross undervalue. Pltfs. gave a notice for trial by jury, & the action was tried with a jury, & judgment entered upon its findings in favour of pltfs. for the recovery of damages :—*Held :* the action being one which, before Administration of Justice Act, could have been brought only in the Ct. of Ch., pltfs. had no right to give a jury notice, & the notice should have been struck out by the trial judge.—DAVIES *v.* NELSON, [1928] 1 D. L. R. 254; 61 O. L. R. 457.—**CAN.**

Part IX.—The Public Trustee.

4757. After this case add :—

Power to sell open space held in undivided shares—Law of Property Act, 1925 (c. 20), Sched. I., Pt. IV., para. 2.]—*See* SETTLEMENTS, Nos. 3151b, 3151c, *ante*.

Appearance as plaintiff & defendant.]—*See* EXECUTORS, Nos. 7812a, 8757a, *ante*.

4763. After this case add :—

—— **Construction of will—Appearance as plaintiff & defendant.**]—*See* EXECUTORS, No. 8757a, *ante*.

VALUERS AND APPRAISERS.

Part II.—Duties, Rights, and Liabilities.

31. *Add. Annotation :*—**Refd.** McAlister (or Donoghue) *v.* Stevenson (1932), 101 L. J. P. C. 119.

PART II. SECT. 1.

sa. *Liability for loss—Valuation bonâ fide.*]—Deft., a paid valuator, estimated the value of a certain property at $4,980, stating in the certificate of value that he held himself "responsible to you," plffs., "for the correctness of this report & valuation," which was enclosed in a letter stating "the houses are unfinished, & my valuation of $4,980 is on the supposition that they will be finished in a manner similar to those adjoining. A final inspection should, I think, be made." The houses never were finished similarly to those adjoining, nor was the deft. ever called upon to make any final or other inspection, & at a subsequent sale the property, which had been taken possession of by the mtgees. & allowed to become greatly out of repair, realised only $1,800 :—*Held :* under these circumstances, there being no *mala fides* imputable to the appraiser, that he was not answerable for the loss sustained by the lender.—SCOTTISH AMERICAN INVESTMENT CO. *v.* HOPE (1879), 26 Gr. 430.—**CAN.**

PART II. SECT. 2.

sb. *Incomplete valuation—Effect of.*]—DANROTH *v.* RAILWAY PASSENGERS ASSURANCE CO., [1930] 2 W. W. R. 555; [1931] 1 D. L. R. 156; 43 B. C. R. 21.—**CAN.**

WATER SUPPLY.

Part I.—Supply by Local Authorities.

41. *Add. Annotation :*—**Apld.** A.-G. *v.* London & Home Counties Joint Electricity Authority, [1929] 1 Ch. 513.

Part III.—Powers, Duties and Liabilities of Undertakers.

99. *Add. Annotations :* — **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons, [1929] 1 Ch. 686 ; Farnworth *v.* Manchester City Corpn., [1929] 1 K. B. 533.

116. *Add. Annotations :*— **Refd.** Manchester Corpn. *v.* Farnworth, [1930] A. C. 171 , Blundy, Clark & Co. *v.* London & North Eastern Ry. Co., [1931] 2 K. B. 334.

150. *Add. Annotation :*—**Apld.** Manchester Corpn. *v.* Buttle, [1929] 2 Ch. 390.

161. *Add. Annotation :*—**Consd.** Manchester Corpn. *v.* Buttle, [1929] 2 Ch. 390.

165. Add the following paragraph & citations :—
Under a local Act no person was entitled to require, nor was the corpn. bound to supply, any dwelling-house in the borough with water, otherwise than by meter or special agreement, where any part of such dwelling-house is used for any trade or business purposes :—*Held :* the residence of a dentist where he practised the profession of dentistry was a dwelling-house used in part for business purposes, & therefore the corpn. was entitled to demand & be paid an annual sum in addition to the ordinary domestic & public water rates charged in respect of dwelling-houses not so used, although the water supplied was used for domestic purposes within the meaning of another local Act.—MANCHESTER CORPN. *v.* BUTTLE, [1929] 2 Ch. 390 ; 98 L. J. Ch. 394 ; 142 L. T. 14 ; 94 J. P. 33 ; 45 T. L. R. 568 ; 27 L. G. R. 748.

176a. **Right to use fire-plugs for purposes other than extinction of fires.**]—Hydrants, fire-plugs, & other apparatus, provided by a metropolitan waterworks co., pursuant to the Metropolitan Fire Brigade Act, 1865 (c. 90), s. 32, & Metropolis Water Act, 1871 (c. 113), s. 34, for supply of water in case of fire, may be used by the waterworks co. for purposes other than the supply of water for extinguishing fires, cleansing sewers & drains, cleansing & watering streets, or supplying public pumps, baths, & washhouses, without the consent of the London County Council, & may, by permission of the co., be used by persons other than the co.—LONDON COUNTY COUNCIL *v.* EAST LONDON WATERWORKS CO., [1900] 1 Q. B. 330 ; 69 L. J. Q. B. 304 ; 82 L. T. 268 ; 48 W. R. 252 ; 16 T. L. R. 141 ; 44 Sol. Jo. 395, D. C.

243. *Add. Annotation :*—**Apld.** Runcorn Guardians *v.* Worrall (1930), 94 J. P. Jo. 205.

269. *Add. Annotation :*—*As to* (1) **Refd.** Copper Export Assocn. Inc. *v.* Mersey Docks & Harbour Board (1932), 48 T. L. R. 542.

270. *Add. Annotation :*—**Refd.** Grant *v.* Derwent, [1929] 1 Ch. 390.

PART I. SECT. 2, SUB-SECT. 3.—A.

sa. *Purity—Failure to maintain—Liability in damages.*]—CAMPBELL *v.* KINGSVILLE (Ont.), [1929] 4 D. L. R. 772.—**CAN.**

PART III. SECT. 2, SUB-SECT. 7.

sc. *Supply for irrigation.*]—A land co., which had bought land to which a water record was appurtenant, sold part of the land to the deft. & agreed to supply him with water for irrigation purposes at a rate not to exceed a certain amount per acre. The land co., & a water co. which it had caused to be formed & which had constructed an irrigation system for the purpose of supplying water to the land co.'s covenantees, sold all their rights in the water to the pltf. municipality which assumed the obligations of the land co. The municipality then obtained from the Water Board an order under the Water Act increasing the rates chargeable for water for irrigation purposes beyond those fixed by said agreement between deft. & the land co. :— the municipality was entitled to recover the increased rates from deft.—PENTICTON CORPN. *v.* SUTHERLAND, [1928] 2 W. W. R. 145.—**CAN.**

PART III. SECT. 2, SUB-SECT. 9.—A. (a).

p. *revsd. sub nom.* HALIFAX CITY *v.* READ, [1928] 4 D. L. R. 461.—**CAN.**

WATERS AND WATERCOURSES.

Part I.—Rights and Obligations in Respect of Water.

12. *Add. Annotation :—As to* (2) **Consd.** Keewatin Power Co. *v.* Lake of the Woods Milling Co., [1930] A. C. 640.

46a. —— —— ——.]—The right of a riparian owner on the banks of a tidal navigable river exists *jure naturæ*, but it is essential to its existence that his land should be in contact with the flow of the stream at least at the times of ordinary high tides.—DAWOOD HASHIM ESOOF *v.* TUCK SEIN (1931), 58 Ind. App. 80, P. C.

71. *Add. Annotation :—Generally,* **Refd.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

99. *Add. Annotation :—***Refd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

122. *Add. Annotation :—As to* (1) **Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

174. *Add. Annotation :—As to* (2) **Refd.** Keewatin Power Co. *v.* Lake of the Woods Milling Co., [1930] A. C. 640.

262a. —— —— ——.]—Unless the existence & course of a defined underground channel is known with reasonable certainty, a lower riparian owner can have no right of action against the owner of the land through which the channel flows for abstraction of the underground water. Where an excavation discloses the existence of a defined channel, that channel becomes a known channel, at least so far as the excavation extends, & any subsequent act of interference with its known flow inflicting an injury on a lower riparian proprietor is capable of prevention by appropriate action. The liability for abstraction of, or interference with, the water depends on the knowledge of the actor when the act complained of is committed & not on the manner in which that knowledge has been obtained.—BLEACHERS ASSOCN., LTD. *v.* CHAPEL-EN-LE-FRITH RURAL DISTRICT COUNCIL (1932), 96 J. P. 515; 49 L. T. R. 51; 76 Sol. Jo. 902.

268. *Add. Annotation :—Generally,* **Refd.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

281. *Add. Annotation :—***Expld.** Vanderpant *v.* Mayfair Hotel Co., [1930] 1 Ch. 138.

302. *Add. Annotation :—***Folld.** Green *v.* Matthews & Co. (1930), 46 T. L. R. 206.

302a. —— ——.]—A person cannot set up a right either by prescription or under the doctrine of lost grant to cause sewage or trade refuse to fall or flow into a stream or watercourse & thereby to pollute it, where the right claimed would be in contravention of a statutory prohibition such as is contained in the Rivers Pollution Prevention Act, 1876 (c. 75).—GREEN *v.* MATTHEWS & CO. (1930), 46 T. L. R. 206.

339. *Add. Annotation :—As to* (1) **Refd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

363a. —— —— —— **Damage common to all King's subjects.**]—Under the Bristol Dock Act, 43 Geo. 3, c. 140, s. 107, which gives compensation where, by means of the dockworks, or in the progress or execution thereof, damage may be done to any hereditaments, houses, lands, & tenements, or the same may be rendered less valuable thereby, no compensation is due to the owners of a brewery for a loss arising to them in their business from the deterioration of the water of the public river Avon, from which the brewery had been before supplied by means of pipes laid under low water mark; the use of the water having been common to all the king's subjects, & not claimed as an easement to the particular tenement. The only remedy for such an injury is by indictment, which was taken away in this case by the act of parliament.—R. *v.* BRISTOL DOCK CO. (1810), 12 East, 429; 104 E. R. 167.

Annotations :—**Consd.** East & West India Docks & Birmingham Junction Ry. Co. *v.* Gattke (1851), 3 Mac. & G. 155. **Apld.** Caledonian Ry. Co. *v.* Ogilvy (1855), 25 L. T. O. S. 106. **Consd.** Chamberlain *v.* West End of London & Crystal Palace Ry. Co. (1862), 2 B. & S. 605; R. *v.* Metropolitan Board of Works (1869), L. R. 4 Q. B. 358. **Apld.** McCarthy *v.* Metropolitan Board of Works (1872), L. R. 8 C. P. 191. **Refd.** R. *v.* Thames & Isis Navigation Comrs. (1836), 5 Ad. & El. 804; R. *v.* London & North Western Ry. Co. (1854), 3 E. & B. 443; Ricket *v.* Metropolitan Ry. Co. (1865), 5 B. & S. 156; Rhodes *v.* Airedale Drainage Comr. (1876), 1 C. P. D. 380.

PART I. SECT. 2, SUB-SECT. 1.

k (p. 7) **i.** —— —— *To change point of diversion.*]—BUONAPARTE RANCH *v.* SCHNEIDER, [1928] 2 D. L. R. 993; [1928] 2 W. W. R. 106.—**CAN.**

PART I. SECT. 4, SUB-SECT. 3.—B. (b).

94 i. *Irrigation—General rule.*]—The property in land bounded by a river, whether tidal & navigable or not, has inherent in it the riparian right to take water from the river for irrigating the land, & on a permanent settlement of the land that right is included, without special mention, in the property in respect of which the Zamindar enters into an engagement with the Government to pay the jama; the right being a natural right, not an easement, is not lost by non-user.—SECRETARY OF STATE FOR INDIA *v.* SUBBARAYUDU, 59 L. R. Ind. App. 56.—**IND.**

d i. ——.]—Plffs. & defts. occupy lands very near each other, the land of a third party intervening between. Defts. had been taking water, flowing through an artificial channel, into their land, for the purpose of irrigation, for nearly 32 or 35 years without interruption, every monsoon, through the land of the third person, by cutting the ridge (ail) of a plot of land, belonging to plffs., in one place. Plffs. sued for permanent injunction to restrain defts. from cutting the ail :—*Held :* defts. had acquired a prescriptive right to take water by cutting the ail.—BIPIN BEHARI GHATAK *v.* RAMNATH GHATAK (1929), I. L. R. 56 Calc. 151.—**IND.**

PART I. SECT. 5, SUB-SECT. 2.

266 v. —— ——.]—Where by digging a ditch a proprietor of land causes surface water to flow therefrom on to lower-lying land he is liable for the damages caused thereby through the flooding of the lower land.—QUALLEY *v.* DAY, [1928] 3 D. L. R. 56; [1928] 1 W. W. R. 961; 22 Sask. L. R. 442; *on appeal,* [1929] 2 D. L. R. 928; 1 W. W. R. 20; 23 S. L. R. 425.—**CAN.**

t. *revsd.* [1928] 3 D. L. R. 725; [1928] S. C. R. 522.—**CAN.**

PART I. SECT. 4, SUB-SECT. 5.—B.

sx. *Erection of piers—To support building.*]—Deft., who was the owner of premises bounded by a natural river, erected on his own half of the bed & soil of the river, concrete piers & steel stanchions for the purpose of supporting a building. The erection of these piers caused an appreciable quantity of water which formerly flowed over deft.'s half of the bed of the river to be discharged & flow over plff.'s half & along plff.'s banks on the opposite side, but no actual damage was thus occasioned :—*Held :* the piers & stanchions constituted an unlawful obstruction & diversion of the waters of the river, & an injunction was accordingly granted compelling deft. to remove them.—MASSEREENE & FERRARD *v.* MURPHY (1931), N. I. 192.—**IR.**

365. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

388. *Add. Annotation :*—**Refd.** Farnworth *v.* Manchester Corpn., [1929] 1 K. B. 533.

430. *Add. Annotations :*—**Refd.** Manchester Corpn. *v.* Farnworth, [1930] A. C. 171; Blundy, Clark & Co. *v.* London & North Eastern Ry. Co., [1931] 2 K. B. 334.

438. *Add. Annotation :*—**Consd.** Bartlett *v.* Tottenham, [1932] 1 Ch. 114.

Part II.—The Sea and the Seashore.

475a. **Part of beach "opposite to" land.**]—A municipal corpn. passed a resolution in Jan. 1860, agreeing to let to pltf. the flat part of the beach opposite to pltf.'s field, for 300 years, at a nominal rent. Pltf. claimed all the beach comprised between lines drawn in prolongation of the sides of his field, & he built a wall & terrace along the part so claimed. In 1864 the corpn. gave pltf. notice to quit, & after much negotiation, in 1869, brought an action of ejectment against pltf., who thereupon filed the bill in this suit for specific performance :—*Held :* the boundaries of the piece of land agreed to be demised were lines drawn from the extremities of pltf.'s field perpendicular to the coast-line.—CROOK *v.* SEAFORD CORPN. (1871), 6 Ch. App. 551; 25 L. T. 1; 35 J. P. 804; 19 W. R. 938, L. C.

479. Add the following paragraph & citation :—

The doctrine of accretion has no appln. to a non-tidal sheet of more or less stagnant water such as one of the Norfolk Broads. It is limited to the seashore & land abutting on rivers of running water & does not extend to canals, lakes or ponds.—TRAFFORD *v.* THROWER (1929), 45 T. L. R. 502.

568. *Add. Annotation :*—*As to* (2) **Overd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

568a. —— ——.]—The construction by the Canvey Island Comrs. of certain works, an embarkment, cartway & ditch, along a strip of land adjoining the Thames on the south of the island, for the purpose of coast preservation, did not operate to vest the soil of that strip in the Comrs. as owners, but the ownership remained in those persons whose lands bordered on the river, & who, provided they do no damage to the works of the Comrs., are entitled to free access thereto from the river. The fact that those owners, or their predecessors in title, were compensated at the time of the erection of the works to the extent of the full value of the lands affected does not imply that the fee simple of the lands was purchased by the Comrs., nor can such an inference be drawn from the terms of the Canvey Island Acts, 1792 & 1883. The ownership acquired by the Comrs. under those Acts is similar to that acquired by a local authority laying sewers in a street, namely, an ownership in the works themselves & just so much of the soil upon which the works are constructed as will enable them to be erected & maintained.—PORT OF LONDON AUTHORITY *v.* CANVEY ISLAND COMRS. & CANVEY ISLAND URBAN COUNCIL, [1932] 1 Ch. 446; 101 L. J. Ch. 63; 146 L. T. 195; 96 J. P. 28; 30 L. G. R. 42, C. A.

580. *Add. Annotation :*—*As to* (1) **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons (No. 2) (1929), 94 J. P. 10.

591. *Add. Annotation :*—**Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons (No. 2) (1929). 94 J. P. 10.

606. *Add. Annotations :* — **Consd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375. **Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

634. *Add. Annotation :*—**Refd.** China Navigation Co. *v.* A.-G. (1932), 48 T. L. R. 375.

640. *Add. Annotation :*—*As to* (1) **Apld.** A.-G. & Public Trustee *v.* Metropolitan Borough of Woolwich Council (1929), 93 J. P. 173.

642. *Add. Annotation :*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

PART I. SECT. 7, SUB-SECT. 1.

g i. —— —— —— —— *Licence to overflow—No right to overflow on subsequent occasions.*]—POTTER *v.* SILVERWOOD, [1930] 1 D. L. R. 989.—**CAN.**

m i. —— *Water from higher land brought into ditch—Ditch unable to take plaintiff's flood water.*]—GEALL *v.* RICHMOND TOWNSHIP [1932] 3 W. W. R. 318.—**CAN.**

PART II. SECT. 3, SUB-SECT. 1.

sd. *"Coastline" — Construction of statute.*]—*Held :* in a grant to applt. co. by the Dominion Govt. of certain lands, together with the minerals thereunder, for the purpose of constructing a railway made under a British Columbia Act of 1883 the expression "coastline" used to describe the eastern boundary of the land in view of the context & circumstances of the case was meant to describe the eastern boundary of the land at high water mark & did not, as the applts. contended, include the foreshore & foreshore rights.—ESQUIMAULT & NANAIMO RY. CO. *v.* TREAT (1919), 121 L. T. 657.—**CAN.**

PART II. SECT. 3, SUB-SECT. 3.—A.

476 ii. —— ——.]—It is an essential condition of the operation of the doctrine which adds to riparian lands the increment which is caused by accretion that the accretion should be natural, *i.e.* occasioned in the ordinary course of the operations of nature, & so gradual as to be in a practical sense imperceptible in its course & progress as it occurs.—CLARKE *v.* EDMONTON CITY, [1928] 2 D. L. R. 154; [1928] 1 W. W. R. 553; 23 Alta. L. R. 233; *on appeal*, [1929] 4 D. L. R. 1010.—**CAN.**

PART II. SECT. 3, SUB-SECT. 4.—B. (b) i.

n i. —— ——.]—Pltf. received a grant from the Provincial Govt. of the shore of a narrow cove or creek at St. Margaret's Bay. The cove or creek was one of a number of small inlets abounding on the shores of the bay not having the name or character of a public harbour, but had been used on several occasions by small vessels for the purpose of loading lumber :—*Held :* no title passed under the grant.—FADER *v.* SMITH (1885), 18 N. S. R. (6 R. & G.) 433; 6 C. L. T. 536.—**CAN.**

sb. *Grant of licence of occupation—Identification of subject-matter of grant.*]—BARTLET *v.* DELANEY (1913), 29 O. L. R. 426; 5 O. W. N. 200.—**CAN.**

PART II. SECT. 3, SUB-SECT. 5.—G.

606 i. *When injunction granted—Destruction of natural barrier.*]—The owner of land abutting on the foreshore is entitled to all the natural advantages belonging to that land, & therefore to all things, such as deposits of shell & sand, which in the course of nature may be swept thereon. But such owner is not entitled to destroy a natural barrier against the sea, *e.g.*, by the removal of shingle, so as to cause an injury to a neighbouring landowner, even though the removal of shingle is a natural & ordinary use of the land; nor is he entitled to interfere with an adjoining landowner's right of support by causing a subsidence of such neighbour's land.—SMALE *v.* TAKAPUNA BOROUGH COUNCIL, [1932] N. Z. L. R. 35.—**N.Z.**

Part III.—Rivers, Lakes and Pools.

747. *For citation substitute* " No. 479, *ante*."

Part IV.—Ports, Harbours, Docks, Piers and Wharves.

793. *Add. Annotation :—As to* (1) **Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons (No. 2) (1929), 94 J. P. 10.

820. *Add. Annotation :—***Consd.** British Trawlers' Federation, Ltd. *v.* London & North-Eastern Ry. Co. (1932), 48 T. L. R. 491.

821a. **—— Removal of goods purchased—Licence.**] —Pltf. railway co. were the owners of two docks & the quays thereof at Kingston-upon-Hull. These docks were used extensively by fishing vessels. The catches were landed on the quays & there sold by " Dutch auction." The purchasers carted away their purchases to various points on the quay where they had offices rented from the railway co. Here the fish was sorted & packed for transport. The railway co. provided facilities for the transport of fish by rail, but the practice had grown up for the merchants to provide mechanical road transport. While the railway co. had no objection to road transport for reasonably short distances, they had serious objection to that form of transport for long distances ; not only on account of the loss of revenue, but also on account of the serious congestion of the vehicles at the docks, which interfered also with the control of the railway-wagons on the quay sidings. They therefore sought to exclude the long-distance road transport by a system of licensing. Some merchants accepted the conditions ; defts., among others, did not. Pltf. railway co. brought the present action against defts. to establish their position, & asked for a declaration that they were entitled to refuse admission of road transport to the docks except under licence & subject to conditions, & also asked for an injunction against the merchants, giving effect to the declaration. Defts. contested this right & claimed that they were entitled to bring their own vehicles & remove their fish irrespective of the destination ; they based their contention mainly on their rights at common law & the provisions of the Hull Docks Act, 1861 :—*Held :* (1) the common law right of access to the docks & quays had gone except so far as preserved by the North-Eastern Railway (Hull Docks) Act, 1883, or subsequent statutes. The rights of the parties were, therefore, governed by the Act of 1883. Under the Act the railway co. were not bound to allow fish sales to take place on the quays in question, & had power to exclude defts. in the first instance. The railway co., however, had given a licence to defts. to attend the fish sales & become owners of goods on the quay, & defts. thus acquired a statutory right to remove them, & by inevitable implication they also had the

PART III. SECT. 2, SUB-SECT. 2.

678 vi. —— —— ——.]—It has been recognised by a series of decisions that in India the beds or channels of navigable waters are the property of the Government in the right of the Crown. The public right of waterway can only be co-extensive with the property of the Government & accordingly does not extend beyond the limits of ordinary high tides, that is to say, the mean between spring & neap tides.—DAWOOD HASHIM ESOOF *v.* TUCK SEIN (1931), 58 L. R. Ind. App. 80.—**IND.**

d i. —— *International waters.*]—The common law doctrine of *ad medium filum* has never been applied to international waters.—*Re* FORT ERIE VILLAGE & BUFFALO & FORT ERIE PUBLIC BRIDGE CO., [1928] 1 D. L. R. 723 ; 61 O. L. R. 502.—**CAN.**

PART III. SECT. 2, SUB-SECT. 4.

702 ii. —— —— —— ——.]—The right of a riparian owner on the banks of a tidal navigable river exists *jure naturæ*, but it is essential to its existence that his land should be in contact with the flow of the stream at least at the times of ordinary high tides.—DAWOOD HASHIM ESOOF *v.* C. TUCK SEIN (1931), I. L. R. 9 Ran. 122.—**IND.**

PART III. SECT. 3, SUB-SECT. 2.—B.

h i. —— *Special administrative area.*]—A portion of a parish was constituted a special drainage district for administrative purposes :—*Held :* the presumption that the description " bounded by " a non-navigable river included the alveus of the river up to the *medium filum* applied in the case of a special administrative area forming part of a larger area ; & the fact that the boundary was described by reference to points on the river bank was insufficient to reargue that presumption. — HAMILTON MAGISTRATES *v.* BENT COLLIERY CO., LTD., [1929] S. C. 686.—**SCOT.**

PART III. SECT. 3, SUB-SECT. 2.—C.

p i. ——.]—The English law of accretion applies in Burma as a matter of justice & equity, provided that it is not excluded by the natural features, or by the nature of the tenure.—FOUCAR & CO. *v.* SECRETARY OF STATE FOR INDIA (1930), I. L. R. 10 Ran. 1.—**IND.**

PART III. SECT. 4.

756 vi. —— —— ——.]—*Held :* a grant from the Crown of land bounded on one side by the waters of an inland non-tidal & non-navigable lake carries with it the ownership of the land covered by water to the centre of the lake.—FARES *v.* R., [1929] Ex. C. R. 144 ; *revsd., on other grounds,* [1932] S. C. R. 78 ; 1 D. L. R. 421.—**CAN.**

g i. —— ——.]—Where a water lot is described by metes & bounds, with measurements & bearings from a fixed point, the boundaries of the lot are so ascertained notwithstanding that one boundary is said to be the water's edge & by a subsequent lowering of the water level part of the lot has become dry land.—*Re* MAILLE & TORONTO, [1932] O. R. 375 ; 3 D. L. R. [illegible]

sc. *Shore as boundary of municipality—Extent.*]—Where the letters patent incorporating a British Columbia municipality describe one of its boundaries as the " shore " of a certain navigable lake, the limits of the municipality extend to low-water mark, although the lake in question is non-tidal water.—R. *v.* LAKESIDE ORCHARDS, LTD. (B. C.), [1929] 1 W. W. R. 870 ; 51 Can. Crim. Cas. 182.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 1.

b i. —— ——.]—The Comrs. appointed under Hamilton Harbour Comrs. Act to manage the business of the harbour are entitled, under Trustee Act, R. S. O., 1927, s. 60, to reasonable compensation for their services.—*Re* HAMILTON HARBOUR TRUST COMRS., [1930] 2 D. L. R. 509 ; 65 O. L. R. 149.—**CAN.**

PART IV. SECT. 1, SUB-SECT. 2.

sd. *Harbour Commissioners—Power to resume possession of land vested in them—Whether of land subject to lease.*] —FLETCHER W. & R., LTD. *v.* GEELONG HARBOUR TRUST COMRS., [1928] V. L. R. 12.—**AUS.**

PART IV. SECT. 2, SUB-SECT. 1.

af. *Expropriation of water lots for improvement of wharf—Basis of valuation.*]—The basis or starting point for the valuation of water lots, expropriated by the Crown for the purpose of wharf improvements, may be had from a municipal assessment of the property, taking into consideration the higher assessable value of the land owing to its location, & the advantage afforded to the owners as a result of the improvements.—R. *v.* ADVENTURERS OF ENGLAND, GOVERNOR & CO. (1916), 17 Exch. C. R. 441 ; 42 D. L. R. 181.—**CAN.**

right to use such vehicle or vehicles as might be reasonably necessary for such removal. Defts. having a statutory right to remove goods of which they were owners, the railway co. had no power of directing the manner in which such goods should be removed; (2) the licence granted by the railway co. gave defts. a right *ex contractu* to carry on their business as fish merchants on the quay, & as long as this contract continued, defts. had the right of access to the quay & to do all acts necessary for the conduct of their business, provided, under the terms of the licence, the business, traffic & convenience of the railway co. were not interfered with.—LONDON & NORTH-EASTERN RY. CO. *v.* CHESTER (J. W.) & SON (1932), 147 L. T. 308; 48 T. L. R. 484.

Annotation:—**Consd.** British Trawlers' Federation, Ltd. *v.* London & North-Eastern Ry. Co. (1932), 48 T. L. R. 491.

821b. —— —— ——.]—Pltfs. in this action asked for a declaration that they were entitled to have access to the harbour at Lowestoft & to bring their own motor-lorries without licence or conditions on to the quays. The railway co. were the owners of the harbour & docks undertakings. Here the trawlers discharged their catches, which were sold by auction, on the quay. The buyers were either local merchants or persons who came from a distance. The practice had grown up for purchasers to bring heavy motor vehicles to transport their goods to great distances, & the railway co. sought to limit this practice by a system of licensing vehicles using the harbour & excluding vehicles not so licensed. Pltfs. based their claim on their common law right of access to the dock & to attend the fish market which they alleged was established there:—*Held:* (1) at common law fish taken by English sea-fishing boats (being non-customable) could be landed anywhere, & deft. railway co. had no monopoly in this respect regarding their own quays; but, being owners of the quays, they had all the common law rights of an owner of property in so far as those rights had not been restricted by statute, & had therefore the right to exclude from the quays persons who had no lawful occasion to be there; (2) there was nothing in the Harbour Docks & Piers Clauses Act, 1847 (c. 27), s. 33, which compelled deft. co. to allow fish to be sold or cleaned or packed on the quays, nor was any duty imposed on the co. by the statutes relating to their undertaking to allow a fish market to be held on its quays. The mere fact that the Legislature contemplated the continuance of fish sales by conferring powers to regulate those sales by by-laws did not create an obligation to hold those sales; (3) as pltfs. were not assisted by common law or statute, they could only rely on their contractual relationship with the railway co., & while their contracts, if any, were in force they were entitled to use vehicles free from the conditions of the licence sought to be imposed. Failing such contractual relationship they were bound by the conditions imposed by the railway co. on which they were allowed access to the quays.—BRITISH TRAWLERS' FEDERATION *v.* LONDON & NORTH-EASTERN RY. CO. (1932), 147 L. T. 313; 48 T. L. R. 491.

821c. —— **To hold fish market.**]—LONDON & NORTH-EASTERN RY. CO. *v.* CHESTER (J. W.) & SON, No. 821a, *ante*.

821d. —— ——.]—BRITISH TRAWLERS' FEDERATION, LTD. *v.* LONDON & NORTH-EASTERN RY. CO., No. 821b, *ante*.

828. *Add. Annotation:*—**Consd.** Great Western Railway *v.* Monmouthshire County Council (1929), 94 J. P. 6.

Part V.—Navigation of Tidal and Natural Inland Watercourses.

833. *Add. Annotation:*—**Refd.** Vanderpant *v.* Mayfair Hotel Co., [1930] 1 Ch. 138.

851. *Add. Annotation:*—*As to* (1) **Refd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

856. *Add. Annotation:*—*As to* (1) **Consd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

867. *Add. Annotation:*—**Refd.** Bournemouth-Swanage Motor Road & Ferry Co. *v.* Harvey & Sons (No. 2) (1929), 94 J. P. 10.

892. *Add. Annotation:*—**Consd.** Port of London Authority *v.* Canvey Island Comrs. (1931), 101 L. J. Ch. 63.

932. After cross-reference following this case add:—

PART IV. SECT. 2, SUB-SECT. 3.

826 iv. ——.]—One who invites another to moor a ship at a certain place undertakes with that other that there are no concealed dangers.—COAST CEMENT CO., LTD. *v.* NAVIGAZIONE LIBERA TRIESTINA S. A., MCKENZIE BARGE & DERRICK CO. *v.* NAVIGAZIONE LIBERA TRIESTINA S. A., [1930] 3 W. W. R. 69; 4 D. L. R. 897. —**CAN.**

PART V. SECT. 1, SUB-SECT. 1.

853 ii. —— *Causing backwash—Nuisance.*]—A steamer co. taking up passengers, in course of plying their steamers, from boats & from places other than recognised jetties & thereby causing backwash involving danger to the public does not by these acts commit a public nuisance.—CALCUTTA STEAM NAVIGATION CO., LTD. *v.* EMPEROR (1930), I. L. R. 58 Calc. 854.—**IND.**

o i. —— ——.]—*Re* WATERS & WATER POWERS REFERENCE, [1929] 2 D. L. R. 481; S. C. R. 200.—**CAN.**

se. *Rights in St. Francis River.*—]R. *v.* SHERBROOKE, [1932] 4 D. L. R. 73.—**CAN.**

PART V. SECT. 1, SUB-SECT. 3.—A.

sg. *Works of navigatum—Liability to maintain.*]—GAUSSEN *v.* LOWER BANN NAVIGATION TRUSTEES, [1929] N. I. 11.—**IR.**

PART V. SECT. 1, SUB-SECT. 3.—D.

sk. *No right to moor—On private ground—Loch Lomond.*]—A boat-hirer on Loch Lomond claimed the right, as a member of the public, to beach & moor boats on private ground on the shore of the loch. He averred that right was incidental to the public right of navigation in the loch, which admittedly existed. He further averred that the public had, by immemorial usage, a right of port & harbour at the place where he claimed the right to beach his boats, & that they had access thereto by a public road. It was admitted, for the purposes of the case, that Loch Lomond was to be assumed to be an extension of the navigable non-tidal River Leven which flowed out of it:—*Held:* a right of navigation on the part of the public did not include a right to beach or moor boats on private ground for the purpose of carrying on the business of a boat-hirer: & a right on the part of the public to embark & disembark on private ground could not be acquired by prescription.—LEITH-BUCHANAN *v.* HOGG, [1931] S. C. 204.—**SCOT.**

932a. Failure to repair swing-bridge—Injury to public—Whether liable.]—Pltf. was injured by tripping over a nail projecting from the footway of a swing-bridge which defts., the Port of London Authority, were under a statutory duty to maintain in repair, & which the public had a right to use only when it was not required to be swung open for dock traffic. The cause of the accident was the failure of the defts. to maintain the footway in good condition. In an action for damages:—*Held:* the swing-bridge was not a highway & defts. were not in the position of a surveyor of highways, & therefore defts. could not avoid liability on the ground of nonfeasance or on the ground that a surveyor of highways is not liable to pay damages to persons injured by his neglect of duty, & pltf. was entitled to recover.—GUILFOYLE *v.* PORT OF LONDON AUTHORITY, [1932] 1 K. B. 336; 101 L. J. K. B. 91; 146 L. T. 91; 48 T. L. R. 55; 75 Sol. Jo. 763; 29 L. G. R. 659.

943. *Add. Annotation:*—**Refd.** R. *v.* Minister of Health, *Ex p.* Yaffe, [1930] 2 K. B. 98.

961a. —— Construction of local Act.]—By Milton Creek Conservancy Act, 1899, s. 7, "No person shall . . . make or form any recess dock . . . or other work or drive any piles . . . in or upon the bed or shores of Milton Creek below high-water mark so as to impede or interfere with the navigation of the creek . . . without in every case the licence of the Conservators." Defts., under a licence from the Conservators, erected in the creek, which was a navigable channel, a pumping plant which was concealed at high tide, & pltfs.' barge, without any negligence on the part of the master, collided with the plant & was damaged. In an action for a nuisance the ct. found that defts. had failed to give adequate warning of the existence of the obstruction:—*Held:* the sect. did not confer upon a licencee a right to create an obstruction causing damage to members of the public & the action succeeded.—BURLEY C., LTD. *v.* LLOYD EDW., LTD. (1929), 45 T. L. R. 626.

965. *Add. Annotation:*—**Refd.** Blundy, Clark & Co. *v.* London & North Eastern Railway (1931), 100 L. J. K. B. 401.

1016. *Add. Annotation:* — **Consd.** The Edison, [1932] P. 52.

PART V. SECT. 3, SUB-SECT. 1.

sm. *Line of navigation—May vary.*]—In a case where the channel dries up in particular seasons of the year, it is quite possible that what is within the line of navigation in one particular season is not so in another season.—GOBINDACHANDRA PODDAR *v.* CHANDPUR SUBDIVISIONAL OFFICER (1931), I. L. R. 58 Calc. 1288.—**IND.**

PART V. SECT. 3, SUB-SECT. 3.—B.

sp. *Erection over non-navigable stream.*]—Where a person is the owner of land in the province of British Columbia through which a non-navigable stream flows, he may legally build a bridge across the stream from one part of his property to the other without the necessity of obtaining the permission or authority of the Provincial Government. Such a bridge, though built with a pier in the centre of the stream, leaving a passage of 50 feet & over on each side thereof, is not an "obstruction" within Water Act of British Columbia. Anyone floating logs or poles down such a stream must take the necessary precautions to avoid causing damage to such a bridge by the flotation operations; & the ct. in this case finding deft. negligent, condemned it to pay damages.—R. *v.* BELL LUMBER CO., [1932] Ex. C. R. 31.—**CAN.**

WEIGHTS AND MEASURES.

Part II.—Standards of Weights and Measures.

26. *Add. Citation:*—28 Cox, C. C. 550.

WILLS.

Part I.—Nature of a Will.

19. *Add. Annotation :*—**Refd.** *Re* Bund, Cruikshank *v.* Willis, [1929] 2 Ch. 455.

80. *Add. Annotation :*—**Refd.** Ariff *v.* Rai Jadunath Majumdar Bahadur (1931), 47 T. L. R. 238.

93. *Add. Annotation :*—**Dbtd. & Distd.** *Re* Duddell, Roundway *v.* Roundway, [1932] 1 Ch. 585.

98. *Add. Annotation :*—**Folld.** *Re* Hack (A.) (1930), 169 L. T. Jo. 284.

98a. —— —— —— ——.]—*Re* HACK (A.) (1930), 169 L. T. Jo. 285.

105. *Add. Annotation :*—**Refd.** *Re* Hagger, Freeman *v.* Arscott, [1930] 2 Ch. 190.

106. *Add. Annotation :*—**Apld.** *Re* Hagger, Freeman *v.* Arscott, [1930] 2 Ch. 190.

108a. —— —— ——.]—A husband & wife made a joint will, whereby they left certain property, which each possessed at the time of the death of the spouse first dying, to the survivor for life with certain absolute remainders over, & they agreed that the will should not be revoked without their mutual consent. The wife died first, & as from her death the husband received the income from the whole estate until his death :—*Held :* from the death of the wife the property of which the husband was then possessed was subject to a trust under which the legatees in absolute remainder took vested interests subject to the life interest of the husband ; & the death of such a legatee after the death of the wife but before the death of the husband did not occasion a lapse.—*Re* HAGGER, FREEMAN *v.* ARSCOTT, [1930] 2 Ch. 190 ; 99 L. J. Ch. 492 ; 143 L. T. 610.

112. After this case add :—

Exercise of power of appointment by joint will.]—*See* POWERS, No. 269a.

Part II.—Power of Disposition by Will.

131. *Add. Annotation :*—**Consd.** *Re* Franklin & Swathling's Arbn., [1929] 1 Ch. 238.

132. *Add. Annotation :*—**Refd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

239. *Add. Annotation :*—**Refd.** *Re* Carrington, Ralphs *v.* Swithenbank, [1932] 1 Ch. 1.

239a. Creation of estate tail—Death after commencement of Law of Property Act, 1925 (c. 20)—Necessity for.]—Under Law of Property Act, 1925 (c. 20), s. 130, the power to create an entailed interest in personal estate can be exercised by will only in the case of a testator who dies after the commencement of the Act. Therefore, where testator, who died in 1912, by his will settled certain chattels including three family portraits to be held upon trusts which should as nearly as the rules of law & equity permitted correspond with the limitations of real estate in tail, & set out such limitations at length, but settled no real estate upon the same limitations :—*Held :* testator had attempted to create an entailed interest in the chattels but had not succeeded, & therefore the trustees of his will had no power to sell them under sect. 130 (5). But the ct., deeming it in the circumstances expedient, would make an order authorising the sale of the portraits by the trustees under Trustee Act, 1925 (c. 19), s. 57.—*Re* HOPE'S WILL TRUST, HOPE *v.* THORP, [1929] 2 Ch. 136 ; 98 L. J. Ch. 249 ; 141 L. T. 509.

265. *Add. Annotations :*—**Distd.** *Re* Sullivan, Dunkley *v.* Sullivan (1929), 45 T. L. R. 590. **Consd.** *Re* McKee, Public Trustee *v.* McKee, [1931] 2 Ch. 145.

299a. Disclaimer by donee—Intestacy—Application of Administration of Estates Act, 1925 (c. 23), ss. 33 (5), 46, 49.]—Testator who owned certain musical copyrights, & who died in 1928, by his will gave the residue of his estate, including the copyright

PART I. SECT. 1, SUB-SECT. 1.

1 i. "*Release.*"] — *Re* DONNELL, [1930] 4 D. L. R. 1037.—**CAN.**

PART I. SECT. 2, SUB-SECT. 1.

d i. *Document in form of will passing no property.*]—A woman procured a printed form of will & partly filled it in, so that it purported to "give devise & bequeath" to her husband, but did not contain any statement of the property to be disposed of or any appointment of an executor. The document was duly executed as required by law in the case of a will :—*Held :* as the document contained no disposition of property, it could not be regarded as a will & should not be admitted to probate.—*Re* FAIRCHILD, [1931] V. L. R. 289.—**AUS**

PART I. SECT. 2, SUB-SECT. 2.—A. (a).

36 i. *Tests for ascertainment.*]—Where a will is made subject to a clearly expressed condition that it is to be subject to the happening of a specified contingency, *e.g.*, the testator's death before a certain time or during a certain surgical operation, the will does not take effect unless the condition is fulfilled ; but, if the will is so expressed as to show that the contingency is only the motive for making the will, the will is not conditional but takes effect whether the event happens or not.—*Re* SWORDS ESTATE (Alta.), [1929] 3 D. L. R. 564 : 2 W. W. R. 245.—**CAN.**

PART I. SECT. 3, SUB-SECT. 1.

79 vi. ——.]—FOLSETTER *v.* YORKSHIRE & CANADIAN TRUST CO., [1932] 2 W. W. R. 382 ; 3 D. L. R. 190.—**CAN.**

PART I. SECT. 4, SUB-SECT. 1.

104 i. For "**S. AF.**" read "**CEYLON.**"

PART I. SECT. 4, SUB-SECT. 2.

106 viii. —— —— ——.]—The fact that a husband & wife have simultaneously made mutual wills, giving each to the other a life interest with similar provisions in remainder, is not in itself evidence of an agreement not to revoke the wills ; in the absence of a definite agreement to that effect there is no implied trust precluding the wife from making a fresh will inconsistent with her former will, even though her husband has died & she has taken the benefits conferred by his will.—GRAY *v.* PERPETUAL TRUSTEE CO., LTD., [1928] A. C. 391 ; 40 C. L. R. 558 ; [1928] Argus L. R. 238.—**AUS.**

PART II. SECT. 3, SUB-SECT. 2.—C. (a).

265 i. *Necessity for conversion into permanent securities.*]—*Re* BINGHAM. [1931] 1 D. L. R. 248 ; 66 O. L. R. 121.—**CAN.**

royalties, on trust for his wife for life & afterwards for his children, & directed that the royalties should be treated as capital. Testator left a widow but no children:—*Held:* as there was a partial intestacy, namely, as to the capital of the residue, the direction would not apply if the widow disclaimed her life interest under the will, & the result of the disclaimer would be that the widow would take a life interest in the residue, including the royalties.—*Re* SULLIVAN, DUNKLEY *v.* SULLIVAN, [1930] 1 Ch. 84; 99 L. J. Ch. 42; 142 L. T. 62;

299b. Death of remaindermen in lifetime of widow.]—By his will testator who died in 1928, after making certain bequests, devised & bequeathed all his real & personal estate not otherwise disposed of to his trustee upon trust for sale & conversion, & after paying his funeral & testamentary expenses, debts & legacies, to invest the net residue, & to stand possessed of the net residue & the investments thereof upon trust to pay the income to his wife for life, & after her death to divide the same between his surviving brothers & sisters. The last of the brothers & sisters died in 1930. The widow was still living. On the construction of the will surviving brothers & sisters was held to mean brothers & sisters surviving the widow, & there was therefore an intestacy as to the reversionary interest in the testator's residuary estate expectant on the widow's death:—*Held:* the reversionary interest ought not to be forthwith sold.—*Re* MCKEE, PUBLIC TRUSTEE *v.* MCKEE, [1931] 2 Ch. 145; 100 L. J. Ch. 325; 145 L. T. 605; 47 T. L. R. 424; 75 Sol. Jo. 442, C. A.

Part IV.—Capacity to Benefit under Will.

454. *Add. Annotation:*—**Consd.** *Re* Belliss, Polson *v.* Parrott (1929), 141 L. T. 245.

479a. —— ——.]—Testator directed that the income of his residuary estate should be paid to his son for life, & after his death be held in trust for the son's "children or reputed children," as the son should by will or codicil appoint. The son had two legitimate children, one predeceasing him & the other being expressly excluded by testator's will from benefiting under the power of appointment, & three illegitimate children, to the second & third of whom, under the power, he appointed the income of testator's residuary estate in equal shares by his will, in which he described them by name & as his "children or reputed children." For many years payments of the income were made for the benefit of the children. On a summons to determine (*inter alia*) whether the trusts in favour of "children or reputed children" were void as contrary to public policy as regards reputed children of the son (*a*) living at or (*b*) born after the date of the will:—*Held:* the power of appointment was valid, & the son's appointment of the income to his "children or reputed children" named in his will was a proper exercise of the power.—*Re* HYDE, SMITH *v.* JACK, [1932] 1 Ch. 95; 101 L. J. Ch. 95; 146 L. T. 255; 75 Sol. Jo. 781.

487. *Add. Annotation:*—**Consd.** *Re* Hyde, Smith *v.* Jack, [1932] 1 Ch. 95.

489. *Add. Annotation:*—**Refd.** *Re* Hyde, Smith *v.* Jack, [1932] 1 Ch. 95.

491. *Add. Annotation:*—**Refd.** *Re* Hyde, Smith *v.* Jack, [1932] 1 Ch. 95.

504. *Add. Annotations:*—**Consd.** *Re* Pitts, Cox *v.* Kilsby, [1931] 1 Ch. 546. **Refd.** *Re* Collier, [1930] 2 Ch. 37; Cousins *v.* Sun Life Assurance Society (1932), 48 T. L. R. 614.

506. *Add. Annotation:*—**Consd.** *Re* Pitts, Cox *v.* Kilsby, [1931] 1 Ch. 546.

Part V.—Formalities of Will or Codicil.

597. *Add. Annotation:*—**Refd.** Smith *v.* Thompson (1931), 146 L. T. 14.

597a. —— —— **Execution prevented by death.**]—Instructions for a will containing the fixed, & final, intentions of the deceased are valid, if the formal execution is prevented by death; &, if there is no evidence of insanity, at the time of giving the instructions, the commission of suicide, three days afterwards will not invalidate the paper by raising an inference of previous derangement.—BURROWS *v.* BURROWS (1827), 1 Hagg. Ecc. 109; 162 E. R. 524.

Annotation:—**Refd.** Godman *v.* Godman, [1920] P. 261.

651. *Add. Annotation:*—**Consd.** Palin *v.* Ponting, [1930] P. 185.

673. *Add. Annotation:*—**Consd.** Palin *v.* Ponting, [1930] P. 185.

717a. —— **Codicil commencing "this is the last will & testament."**]—A testamentary paper headed "Codicil to be attached to my will," & proceeding "This is the last will & testament of A. B." did not expressly or by implication revoke an earlier will, although it effected a substantial difference in the destination of a large portion of the property passing. The same paper bore, in addition to the signature of the testator, the signatures of four persons, two of whom were beneficiaries under it; all four signatures had been placed on the paper at the time of attestation, & there was evidence that the

two beneficiaries signed otherwise than as attesting:—*Held:* (1) the words "last will & testament" did not preclude the admission to probate of both papers; (2) probate of the codicil might go without including the names of the two beneficiaries as attesting witnesses.—KITCAT *v.* KING, [1930] P. 266; 99 L. J. P. 126; 143 L. T. 408; 46 T. L. R. 617; 74 Sol. Jo. 488.

727. *Add. Annotation:*—**Consd.** Jones *v.* Treasury Solicitor (1932), 48 T. L. R. 615.

729. *Add. Annotation:*—**Apld.** Kitcat *v.* King, [1930] P. 266.

802a. Signature at top of sheet.]—A lady got some one to write on a single sheet of paper her wishes for the disposal of her property after her death. There was no room at the end of the writing for her signature, so she signed at the top of the sheet, & her signature there was duly witnessed:—*Held:* the document was not a valid will as it was directly within the prohibition in Wills Amendment Act, 1852 (c. 24), that no signature should be operative to give effect to any disposition or direction which was underneath or which followed it.—*Re* STALMAN, STALMAN *v.* JONES (1931), 145 L. T. 339, C. A.

Annotation:—**Consd.** *In the Goods of* Smith (M. M.), [1931] P. 225.

830. *Add. Annotations:*—**Distd.** *Re* Stalman, Stalman *v.* Jones (1931), 145 L. T. 339. **Apld.** *In the Goods of* Smith (M. M.), [1931] P. 225.

831. *Add. Annotation:*—**Consd.** *In the Goods of* Smith (1931), 47 T. L. R. 618.

831a. —— —— ——.]—Holograph testamentary dispositions so written as to stand after the executive clause, which was in a printed form:—*Held:* to be part of the will & entitled to probate, being written before execution, & the page executed not containing any disposition.—*In the Goods of* SMITH, [1931] P. 225; 100 L. J. P. 115; 146 L. T. 46; 47 T. L. R. 618; 75 Sol. Jo. 725.

836. *Add. Annotations:*—**Consd.** *In the Goods of* Smith (1931), 47 T. L. R. 618; *Re* Stalman, Stalman *v.* Jones (1931), 145 L. T. 339.

838. *Add. Annotation:*—**Consd.** Palin *v.* Ponting, [1930] P. 185.

839. *Add. Annotation:*—**Consd.** Palin *v.* Ponting, [1930] P. 185.

839a. —— **"See other side for completion."**]—On the margin of the first page of a will on a printed form, duly executed & attested at the foot of the page, occurred the words, "See other side for completion." On the second page under the words, "Continuation from the other side," there were dispositions of property & a residuary gift without any further execution or attestation:—*Held:* the words, "See other side for completion," had the effect of joining in or interlining the writing on the second page, & that the executed writing should be included in the probate.—PALIN *v.* PONTING, [1930] P. 185; 99 L. J. P. 121; 46 T. L. R. 310; 74 Sol. Jo. 234; *sub nom.* PALING *v.* PONTING, 143 L. T. 23.

854. *Add. Annotation:*—**Consd.** Neal *v.* Denston (1932), 48 T. L. R. 637.

888. *Add. Annotation:*—**Consd.** Neal *v.* Denston (1932), 48 T. L. R. 637.

913. *Add. Annotation:*—**Expld. & Distd.** Neal *v.* Denston (1932), 48 T. L. R. 637.

PART V. SECT. 3, SUB-SECT. 1.

a i. ——.]—Testator in his trust-disposition & settlement directed his trustees "to pay, implement & fulfil any legacies or bequests which I may leave or bequeath by any writing under my hand, however informally the same may be expressed or executed." Some time prior to his death he delivered to his law agents, who had custody of his trust-disposition & settlement, a sealed envelope bearing the following holograph endorsation: "To be placed with my Last Will & Testament—T. R." After his death the envelope was found to contain three documents of a testamentary character, all holograph of the testator. Only one was signed. One of the unsigned documents began in these terms: "I T. R. desire to make the following alterations & additions to my last Will & Testament namely." Certain directions followed, & the document concluded with these words: "Written by my own hand at L. A. the 17th day of October 1921":—*Held:* the trustees were bound to give effect to the directions contained in the unsigned document, on the ground that the facts connected with the document, taken in conjunction with the directions in the trust-disposition & settlement, showed that testator intended it to be read along with his formal settlement, of which he had effectually made it a part.—RONALDS' TRUSTEES *v.* LYLE, [1929] S. C. (Ct. of Sess.) 104. —**SCOT.**

PART V. SECT. 3, SUB-SECT. 4.

780 i. *Signature in name of person requested to sign—Notary.*]—A testamentary document in Scotland specifically dealt with real estate in Ontario. The document was executed before C., a notary public, & was signed, in the presence of two witnesses, by C. & not in the name of testator, C. signing his own name & the witnesses signing a statement that they had heard authority given to C. & heard the document read over to B., who declared he could not write:—*Held:* a good compliance with Wills Act, R. S. O., 1927, s. 11.—*Re* DEELEY & GREEN, [1930] 1 D. L. R. 603; 64 O. L. R. 535.—**CAN.**

PART V. SECT. 3, SUB-SECT. 5.—B

p i. ——.]—*In the Will of* MORONEY (1928), 28 S. R. N. S. W. 553; 45 N. S. W. W. N. 147.—**AUS.**

PART V. SECT. 3, SUB-SECT. 5.—C.

sl. *Execution invalid.*]—The whole of a will, except testator's signature, was written on one side of a single sheet of paper. The signature appeared in the middle of the back of the sheet:—*Held:* the will was invalid as it was not signed at the foot or end thereof, nor was the signature so placed that it was apparent on the face of the will that testator intended to give effect by such his signature to the writing signed as his will.—*Re* MORGAN, [1931] V. L. R. 191; Argus L. R. 150.—**AUS.**

PART V. SECT. 3, SUB-SECT. 5.—D.

sa. *Signature appearing as endorsement.*]—*Re* DYTRYCH, [1928] V. L. R. 144; [1928] Argus L. R. 88.—**AUS.**

PART V. SECT. 3, SUB-SECT. 6.—C.

871 iii. ——.]—In an action to establish a testamentary document as the last will of H. deceased, the only question for decision was, whether the will had been properly executed. The evidence was conflicting, but the trial judge found that one of the persons attesting the document signed before testator signed, that the other attesting witness signed after testator, & the first witness did not resubscribe the will:—*Held:* the document was not executed in the manner prescribed by Wills Act, s. 12 (1), & could not be admitted to probate. The signature of testator must be written or acknowledged by him in the actual presence of both witnesses together before either of them attests & subscribes the will.—CHESLINE *v.* HERMISTON, [1928] 4 D. L. R. 786; 62 O. L. R. 575.—**CAN.**

PART V. SECT. 4, SUB-SECT. 4.—B. (o).

1006 i. *Testator unable to turn in bed—Attestation visible by turning.*]—Where although the witnesses to a will were in the same room with testator at the time they attested it & so near him that he could have seen them sign if he had been looking at them, yet if he had his face turned away from them & was unable to move without assistance so that it was out of his power to see them even if he so wished, the attestation is invalid.—*Re* WOZCIECHOWIECZ ESTATE, [1931] 3 W. W. R. 283; 4 D. L. R. 585; 26 Alta. L. R. 1.—**CAN.**

PART V. SECT. 4, SUB-SECT. 8.—A.

f i. ——.]—A testator devised & bequeathed all his real & personal estate to his wife for life, & after her death to all his children at her wisdom & discretion. By her will his wife appointed the estate to all the children in equal shares, subject only that the share of a son F. should be retained by her trustees upon trust for him for life with remainder to his issue born before the lapse of twenty-one years from his death as he should

1074. *Add. Annotation :—Generally,* **Refd.** Blackwell *v.* Blackwell, [1929] A. C. 818.

1097. *Add. Annotation :—*Apld. Kitcat *v.* King, [1930] P. 266.

1097a. ——— ———.]—KILCAT *v.* KING, No. 717a, *ante.*

1117. *Add. Annotation :—*Consd. Palin *v.* Ponting, [1930] P. 185.

1126. *Add. Annotation :—*Consd. Neal *v.* Denston (1932), 48 T. L. R. 637.

1141. *Add. Annotation :—*Refd. Neal *v.* Denston (1932), 48 T. L. R. 637.

1155. *Add. Annotation :—* Refd. Neal *v.* Denston (1932), 48 T. L. R. 637.

1158a. ———.]—The ct. applied the presumption of law, *omnia præsumuntur rite esse acta,* in favour of the validity of a will where the evidence of the attesting witnesses as to the circumstances of the execution was found to be wholly unsatisfactory & not to be relied upon & the main fact alleged against undue execution, apart from declarations made by the attesting witnesses, was that it would have been a physical impossibility for testator & the attesting witnesses to have been present together in the confined space in which the execution of the will took place.—NEAL *v.* DENSTON (1932), 147 L. T. 460 ; 48 T. L. R. 637 ; 76 Sol. Jo. 691.

Part IX.—Alterations and Erasures.

1364. *Add. Annotation :—* Consd. Palin *v.* Ponting, [1930] P. 185.

1387. *Add. Annotation :—*Consd. Palin *v.* Ponting [1930] P. 185.

Part X.—Revocation, Revival and Republication.

1518a. ——— ———.]—*In the Estate of* BIRKBY (1929), 73 Sol. Jo. 556.

B. Will Made in Contemplation of Marriage.

(Vol. XLIV., p. 319.)

1522a. Disappearance of wife—Bequest to woman with whom testator cohabiting—Subsequent marriage to legatee.]—Testator, being married to a woman who had left him some years before & had not been heard of, bequeathed the whole of his estate to a woman with whom he was living & whom he described as his wife. Shortly afterwards he married the woman in question, relying on the legal presumption of the death of his wife :—*Held :* the marriage was *primâ facie* valid & the will was expressed to be made in contemplation of it, & was accordingly within the protection of Law of Property Act, 1925 (c. 20), s. 177, & not revoked by the marriage.—PILOT *v.* GAINFORT, [1931] P. 103 ; 100 L. J. P. 60 ; 145 L. T. 22 ; 47 T. L. R. 376 ; 75 Sol. Jo. 490.

1544. *Add. Annotation :—*Consd. Jones *v.* Treasury Solicitor (1932), 48 T. L. R. 615.

1546. *Add. Annotation :—*Consd. Jones *v.* Treasury Solicitor (1932), 48 T. L. R. 615.

1549a. ——— ———.]—Where a testatrix commenced a will made two days before her death with the words, " This is my last will, the former one being *ungültig,*" & then substituted for the German word " *ungültig* " the English word " cancelled," & this will made dispositions quite different from those in an earlier will, without, however, disposing of the residue, & where the residue had been disposed of by the earlier will, & the later will contained no operative appointment of exors., the ct. held that the later will revoked the earlier, &, testatrix being illegitimate & having died without issue, granted letters of administration to the Treasury Solr. with the later will annexed.—JONES *v.* TREASURY SOLICITOR (1932), 147 L. T. 340 ; 48 T. L. R. 615 ; 76 Sol. Jo. 690 ; *affd.,* 49 T. L. R. 75, C. A.

1555. *Add. Annotation :—* Refd. Smith *v.* Thompson (1931), 146 L. T. 14.

appoint, & in default, etc. The husband of M., one of testator's children to whom the appointment was made, attested the execution of the testator's will :—*Held :* M. was not given any share or interest in testator's estate by his will, & therefore Wills Act, 1928, s. 13, did not apply.—*Re* KOCH, KOCH *v.* KOCH, [1931] V. L. R. 263 ; Argus L. R. 274.—**AUS.**

PART V. SECT. 5, SUB-SECT. 3.

sc. *Necessity for compliance with statutory requirements at time of execution.*]—The validity of a testamentary document, in so far as its execution is concerned, depends entirely on the question whether it complied with the statutory requirements in that behalf in force at the time of its execution.—*Re* MCGIBBON, ROYAL TRUST CO. *v.* BAXTER, [1931] 2 W. W. R. 86 ; 2 D. L. R. 586 ; 25 Alta. L. R. 321.—**CAN.**

PART VII.

r i. ——— ———.]—Sect. 14a of Wills Act Amendment Act, 1924, fixes a time as to when the validity of a will of the class referred to therein is determined, viz., when it was made. Therefore, if a British subject, when outside the province, makes a will which meets the requirements of said sect., its validity is not destroyed by the fact that testator afterwards ceases to be a British subject. Where a person while domiciled in British Columbia & owning realty therein makes a will valid as to realty in that province, & he acquires a foreign domicile & makes a holograph will, invalid as to realty in British Columbia, revoking all previous wills & disposing of both realty & personalty, & dies domiciled in said foreign country, the British Columbia will remains effective as to the British Columbia realty.—*Re* COLVILLE ESTATE, [1931] 3 W. W. R. 26 ; [1932] 1 D. L. R. 47 ; 44 B. C. R. 331.—**CAN.**

PART X. SECT. 1, SUB-SECT. 2.

1496 v. ———.]—A will is the aggregate of a man's testamentary intentions, so far as they are manifested in a writing or writings duly executed according to the governing statute. A testamentary paper does not necessarily revoke one prior in date, even though the second instrument contains a general revocatory clause ; the intention of testator is the sole guide & the intention to be discovered is that relating to the disposition of testator's property & not to the form of the will.—*Re* SNOW ESTATE, [1932] 1 W. W. R. 473.—**CAN.**

PART X. SECT. 1, SUB-SECT. 3.

1507 v. ———.]—Where it was proved that a testator made a will which could not be found after his death & there was no evidence touching its whereabouts after it was made :—*Held :* it must be presumed, there being no evidence to rebut the presumption, that the will was destroyed by the testator with the intention of revoking it.—*Re* ROBINSON ESTATE, [1930] 2 W. W. R. 673.—**CAN.**

PART X. SECT. 1, SUB-SECT. 4.—B.

sc. *Necessity for express declaration of contemplation of marriage.*]—*Re* SEDGWICK ESTATE, [1931] 1 W. W. R. 837.—**CAN.**

5. *Add. Annotation :*—**Refd.** Smith *v.* Thompson (1931), 146 L. T. 14.

1610. *Add. Annotation :*—**Refd.** Smith *v.* Thompson (1931), 146 L. T. 14.

1611. *Add. Annotation :*—**Consd.** Jones *v.* Treasury Solicitor (1932), 48 T. L. R. 615.

1613. *Add. Annotation :*—**Apld.** Jones *v.* Treasury Solicitor (1932), 48 T. L. R. 615.

1624. *Add. Annotation :*—**Apld.** Kitcat *v.* King, [1930] P. 266.

1647. *Add. Annotation :*—**Consd.** Jones *v.* Treasury Solicitor (1932), 48 T. L. R. 615.

1650. *Add. Annotation :*—**Refd.** Smith *v.* Thompson (1931), 146 L. T. 14.

1651a. ——.]—A will & codicil made by testatrix in 1893 were revoked by a will made in 1907. In 1911 testatrix made a codicil to the will of 1907 declaring that a share in her estate thereby given to a son should be held upon protective trusts. In 1921 testatrix executed a third codicil, which referred only to the will & codicil of 1893, altered some of the provisions of the will & otherwise confirmed it :—*Held :* the effect of the codicil of 1921 was to revoke both the will of 1907 & the codicil of 1911, & to revive the will & codicil of 1893. —*Re* BAKER, BAKER *v.* BAKER, [1929] 1 Ch. 668 ; 98 L. J. Ch. 174 ; 141 L. T. 29.

1655. *Add. Annotation :*—**N.F.** *Re* Robinson, Lamb *v.* Robinson, [1930] 2 Ch. 332.

1656. *Add. Annotation :*—**Consd.** *Re* Robinson, Lamb *v.* Robinson, [1930] 2 Ch. 332.

1657a. —— ——.]—The question whether a will has been revoked by a subsequent instrument depends entirely upon the intention of the testator as expressed in that instrument. The rule laid down in *Baker* v. *Story*, No. 1655, & earlier cases that a second will will revoke an earlier one though it is ineffective to confer any gift, if such failure is due to the incapacity of the devisee or legatee & not to any infirmity in the will itself, is no longer acceptable since the decision in *Ward* v. *Van der Loeff*, No. 1662.

Testatrix by a will made in 1914 gave her residuary estate upon trust to pay an annuity to her son H., & subject thereto for her grandchildren who should attain twenty-one. In 1921 she executed a document which she described as her last will, by which she gave the whole of her estate to H. absolutely, but it contained no clause revoking former wills. The later will was ineffective, though admitted to probate, owing to the wife of H. having attested it :—*Held :* the earlier will was restored, there being no intention shown by testatrix in the later one to revoke it.—*Re* ROBINSON, LAMB *v.* ROBINSON, [1930] 2 Ch. 332 ; 99 L. J. Ch. 431 ; 143 L. T. 593 ; 46 T. L. R. 542.

1662. *Add. Annotation :*—**Apld.** *Re* Robinson, Lamb *v.* Robinson, [1930] 2 Ch. 332.

1664. *Add. Annotation :*—**Consd.** Jones *v.* Treasury Solicitor (1932), 48 T. L. R. 615.

1671. *Add. Annotation :*—**Consd.** *Re* Bund, Cruikshank *v.* Willis, [1929] 2 Ch. 455.

1707a. ——.]—B., by his will, after appointing his sister W. & one S. exors. & trustees thereof, & after giving certain legacies & exercising certain powers of appointment therein more particularly referred to, appointed & devised his mansion house, lands, cottages & hereditaments known as Wick Episcopi unto & to the use of his trustees upon trust after payment thereout as therein mentioned to pay the residue of the rents & income thereof to his sister the said W. for her life, & after her death upon the trusts therein mentioned. After a further bequest of jewellery, plate & portraits so as to devolve as heirlooms with the said mansion house so far as the rules of law would permit by (*sic*) the person or persons for the time being entitled to the possession or receipt of the rents of the same mansion house, testator thereby further gave, appointed, devised & bequeathed all the rest & residue of his real & personal estate unto & to the use of his trustees to such uses, upon such trusts, & for such ends intents & purposes as the Wick estate might under the trusts of his will for the time being be held so far as the rules of law would permit. By a codicil dated August 4, 1927, after reciting that he was desirous of giving to his stepdaughter C. (pltf.) a residence in England, testator appointed, devised & bequeathed to her for her life his said house Wick Episcopi & all the furniture, books, linen, plate & effects therein or belonging thereto & also the land he occupied therewith. After testator's death in 1928 pltf. C. took out an originating summons to determine (*inter alia*) the question whether pltf. was entitled for her life to the whole or any & if so what part of the rents, profits & income arising out of the residuary real & personal estate of the testator or of the income of the proceeds of sale thereof, or whether deft. W. was entitled during her life to the said rents, profits & income or to some & what part thereof, or to whom the same were payable :—*Held :* testator intended by the codicil only to give certain defined property to pltf. for her life for the definite purpose, namely, the provision of a house in England, mentioned in the codicil & that the codicil could only be read as interpolating into the will an interest in favour of pltf. in respect of the property specifically mentioned in the codicil ; & therefore deft. W. was entitled during her life to the rents profits & income of testator's residuary real & personal estate, & the proceeds of sale thereof. Further, the jewellery, plate, etc., included in the gift of heirlooms contained in testator's mansion house at the date of his death, were in the events that had happened, to be enjoyed by deft. W. during her life ; & the excepted articles of plate were to be enjoyed by pltf. during her life.—*Re* BUND, CRUIKSHANK *v.* WILLIS, [1929] 2 Ch. 455 ; 99 L. J. Ch. 4 ; 142 L. T. 39.

1715. *Add. Annotations :*—**Refd.** Jones *v.* Treasury Solicitor (1932), 48 T. L. R. 615 ; Smith *v.* Thompson (1931), 146 L. T. 14.

PART X. SECT. 1, SUB-SECT. 7.—B. (c) i.

1859 viii. ——.]— LEFEBVRE *v.* MAJOR, [1930] S. C. R. 252 ; 2 D. L. R. 532 ; *revsg.*, [1929] 3 D. L. R. 248 ; 64 O. L. R. 43.—**CAN.**

1859 ix. ——.]—Upon a question whether the presumption of destruction *animo revocandi* had been overcome :—*Held :* the presumption was so attenuated by declarations made by testator, & by evidence of opportunity for removal of the will after testator's death, & by the circumstance that after his death money was stolen from his house, as to be negligible.—BODDY *v.* CARPENTER, [1931] 4 D. L. R. 927 O. R. 694.—**CAN.**

1915. *Add. Annotation :*—**Consd.** *In the Estate of* Birkby (1929), 73 Sol. Jo. 556.

1967. *Add. Annotation :—Generally,* **Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

1978a. **Mistake as to legal rights of widower.**] *-In the Estate of* GREENSTREET (1930), 74 Sol. Jo. 188.

2008a. -.]—*Re* BAKER, BAKER *v.* BAKER, No. 1651a, *ante.*

2068. *Add. Annotation :*—**Refd.** Goonewardene *v.* Goonewardene, [1931] A. C. 647.

2133. *Add. Annotation :*—**Consd.** *Re* Warren, Warren *v.* Warren, [1932] 1 Ch. 42.

2167. *Add. Annotation :*—**Consd.** *Re* Carrington, Ralphs *v.* Swithenbank, [1932] 1 Ch. 1.

Part XI.—Codicils.

2194. *Add. Annotation :*—**Refd.** *Re* Bund, Cruikshank *v.* Willis, [1929] 2 Ch. 455.

2196a. -.]—*Re* BUND, CRUIKSHANK *v.* WILLIS, No. 1707a, *ante.*

2246. *Add. Annotation :*—**Refd.** *Re* Forrest, Carr *v.* Forrest, [1931] 1 Ch. 102.

2248. *Add. Annotation :*—**Apld.** *Re* Forrest, Carr *v.* Forrest, [1931] 1 Ch. 162.

2249. *Add. Annotation :*—**Consd.** *Re* Forrest, Carr *v.* Forrest, [1931] 1 Ch. 162.

2249a. —— ——.]—By her will in 1920 testatrix, who died in the same year, gave the residue of her real & personal estate to her exors. upon trust to permit her husband to receive the rents & income thereof for his life, & directed that after his decease the trustees should sell & convert her residuary estate & should stand possessed of the net residue upon trust to pay & provide for thereout certain legacies. Then there was a direction that the surplus moneys remaining after payment of the legacies should be divided between seven named persons, the children of A., the children of W., & the two children of J., in certain proportions. By a codicil testatrix gave £1,000 upon trust to pay the income to E. for her life, & after her decease directed that the same should fall into her residuary estate & be divisible accordingly; she then revoked the gift by her will of the portion of her residuary estate to the two children of J., & directed that they should take no part of her residuary estate, &, in all other respects, she confirmed her will :—*Held :* in the absence of sufficient indication of intention to give the shares, the gift of which was so revoked, to the other residuary legatees, the effect of the revocation was that those shares were undisposed of.—*Re* FORREST, CARR *v.* FORREST, [1931] 1 Ch. 162; 100 L. J. Ch. 122; 144 L. T. 297.

2251. *Add. Annotation :*—**Refd.** *Re* Forrest, Carr *v.* Forrest, [1931] 1 Ch. 162.

2255. *Add. Annotation :*—**Consd.** *Re* Forrest, Carr *v.* Forrest, [1931] 1 Ch. 162.

Part XII.—Legal Incidents of a Gift by Will.

2339. *Add. Annotation :*—**Refd.** *Re* Buxton, Buxton *v.* Buxton, [1930] 1 Ch. 648.

2378. *Add. Annotation :*—**Refd.** *Re* Warren, Warren *v.* Warren, [1932] 1 Ch. 42.

2395. *Add. Annotation :*—**Refd.** *Re* Newman, Slater *v.* Newman, [1930] 2 Ch. 409.

2438. *Add. Annotation :*— **Consd.** *Re* Warren, Warren *v.* Warren, [1932] 1 Ch. 42.

2511a. —— ——.] — *Re* BACKHOUSE, WESTMINSTER BANK, LTD. *v.* SHAFTESBURY SOCIETY & RAGGED SCHOOL UNION, [1931] W. N. 168; 172 L. T. Jo. 10; 72 L. Jo. 79.

2541. *Add. Annotation :—As to* (2) **Refd.** *Re* Hayden. Pask *v.* Perry, [1931] 2 Ch. 333.

2575. *Add. Annotation :—Generally,* **Refd.** *Re* Newman, Slater *v.* Newman, [1930] 2 Ch. 409; *Re* Warren, Warren *v.* Warren, [1932] 1 Ch. 42.

PART X. SECT. 3, SUB-SECT. 2.—C. (a).

2047 i. *General rule.*]—If a codicil framed to amount to a republication of a will is to have that effect, it is necessary that it should refer in its body to the will to which it is a codicil, & the fact that it appears in the same paper as the will itself to which it is sought to make it a codicil is not sufficient.—*In the Will of* ETESON (1927), 28 S. R. N. S. W. 119; 45 N. S. W. W. N. 6.—**AUS.**

PART X. SECT. 3, SUB-SECT. 3.—A.

2093 ii. ——.]—By sect. 5 of Ordinance No. 21 of 1844, of Ceylon, as by Wills Act, 1837 (c. 26), s. 34, the effect of confirming a will by a codicil of later date is to make a disposition in the will operate in the same way as it would have operated if the words of the will had been contained in the codicil.—GOONEWARDENE (M.) *v.* GOONEWARDENE (E. M.), [1931] A. C. 647; 100 L. J. P. C. 145; 145 L. T. 7, P. C.—**CEYLON.**

PART X. SECT. 3, SUB-SECT. 3.—D.

2146 ii. ——.]—ROYAL TRUST CO. *v.* SHIMMIN, [1932] 3 W. W. R. 447.—**CAN.**

PART XII. SECT. 5, SUB-SECT. 2.—A.

2356 vi. ——.]—A specific legacy of the proceeds of an agreement for sale of land is adeemed by the acceptance by the testator of a quit-claim deed from the purchaser.—*Re* CALVERT, [1928] 3 W. W. R. 42.—**CAN.**

PART XII. SECT. 5, SUB-SECT. 2.—B. (a).

2373 ii. ——.]—By the devise of an estate, which testator has previously mortgaged in fee, nothing passes at law.—DE VEBER *v.* ANDREWS (1845), 4 N. B. R. (2 Kerr) 604.—**CAN.**

PART XII. SECT. 5, SUB-SECT. 2.—B. (d).

2380. *Direction to realise mortgage—Subsequent discharge of mortgage—Ademption.*]—*Re* TODD, [1932] 4 M. P. R. 6.—**CAN.**

PART XII. SECT. 6, SUB-SECT. 3.

3b. *Application to real & personal estate.*]—It is now settled that the doctrine of acceleration applies both to real & personal estate.—HARMAN *v.* ANDERSON, [1930] N. Z. L. R. 67.—**N.Z.**

Part XIII.—Conditions.

2663. *Add. Annotation :*—**Apld.** *Re* Thomas's Will Trusts, Powell *v.* Thomas, [1930] 2 Ch. 67.

2665a. —— ——.]—Where testator makes a gift subject to a condition precedent, the fulfilment of which is rendered impossible by operation of law before the date of the will, the condition is void & the gift remains.—*Re* THOMAS'S WILL TRUSTS, POWELL *v.* THOMAS, [1930] 2 Ch. 67 ; 99 L. J. Ch. 286 ; 144 L. T. 64 ; 74 Sol. Jo. 201.

2686. *Add. Annotation :—As to* (2) **Consd.** *Re* May, Eggar *v.* May (1931), 47 T. L. R. 515.

2689. *Add. Annotation :*—**Refd.** *Re* Knapp, Spreckley *v.* A. G., [1929] 1 Ch. 341.

2698. *Add. Annotation :*—**Refd.** Garland *v.* Archer-Shee (1930), 142 L. T. 443.

2713. *Add. Annotation :*—**Apld.** *Re* Cockerill, Mackaness *v.* Percival, [1929] 2 Ch. 131.

2727. *Add. Annotation :*—**Distd.** *Re* Cockerill, Mackaness *v.* Percival, [1929] 2 Ch. 131.

2730. *Add. Annotation :*—**Distd.** *Re* Cockerill, Mackaness *v.* Percival, [1929] 2 Ch. 131.

2731. *Add. Annotation :*—**Apld.** *Re* Cockerill, Mackaness *v.* Percival, [1929] 2 Ch. 131.

2732a. —— ——.]—Testator, by his will, devised land to P. subject to the payment of certain annuities, of road-making charges for which testator was liable, & of estate & other death duties, & subject also to the proviso that if within twenty years of testator's death P. should desire to sell the land, he was to give the Governors of the N. Grammar School the option of purchasing the land at the price of £300 an acre, such offer to be subject to the payment by the Governors of the said annuities & road charges, & acceptance to be notified within three months. The land, of about 22 acres in area, was in fact worth £670 an acre at the date of testator's death. In accordance with the condition P. offered it to the School Governors at £300 an acre, & the offer was duly accepted & the land sold & conveyed to the Governors for £6,688. The value of the land for the purposes of death duties was assessed at £14,720. On a summons being taken out to determine whether the Governors were liable to pay a rateable proportion of the estate & succession duties levied upon the value of the property :—*Held :* the condition being one in restraint of alienation except to a particular purchaser was void for repugnancy, & not binding upon the devisee. The death duties payable must therefore be borne entirely by P., the devisee.—*Re* COCKERILL, MACKANESS *v.* PERCIVAL, [1929] 2 Ch. 131 ; 98 L. J. Ch. 281 ; 141 L. T. 198.

2825a. Condition against joining religious society requiring surrender of property—Effect of joining society requiring surrender of income only.]—Testator, who died in 1929, left his residue to his uncle's children as tenants in common, with the following proviso : " In case any child of my uncle shall at any time before becoming entitled to receive any share in my residuary estate have joined a religious body to which he or she shall have been or be under a religious obligation to give his or her own property, then I hereby direct & declare that unless such child shall quit & renounce such religious body within six calendar months after my death such child shall be deemed to have died in my lifetime." One of the children in 1927 joined a religious society which had a rule providing that the society should receive the income of the property of members, though every member retained a right to dispose of the capital. The child in question had not quitted or renounced the society within six months from the testator's death :—*Held :* the child's share of the residue was not forfeited.—*Re* BELL, BELL *v.* AGNEW (1931), 47 T. L. R. 401.

2837a. Condition against association or marriage with named person.]—*Re* HANLON, HEADS *v.* HANLON (1932), 76 Sol. Jo. 868.

2898a. —— **Effect of disentailing estates.**]—*Re* WATSON, CULME-SEYMOUR *v.* BRAND, No. 7034a, *post*.

PART XIII. SECT. 3, SUB-SECT. 6.—C. (a).

r i. —— *Condition subsequent—Annexed to gift of personalty.*]—A testamentary condition subsequent in general restraint of marriage, whether it forfeits or only reduces the gift, is, in the case of personalty, only *primâ facie* void ; &, if on the true construction of the will the intention is to benefit the object in whose favour the gift over is made & not to compel the celibacy of the first object of the gift, the condition takes effect.—*Re* HAYTHORNTHWAITE ESTATE, [1930] 1 W. W. R. 58 ; 3 D. L. R. 235.—**CAN.**

r ii. ——.]—Under his will, C. devised all his immoveable property to his son " to be held & enjoyed by him for the term of his natural life . . . & after his death to my son's sons, namely . . . & my son's daughter, F., in equal shares absolutely, provided that, if the said F. should be married before the death of my son . . . , then & in such case she will not take any interest under my will " :—*Held :* the condition attached to the bequest to the son's daughter was not contrary to law or morality & therefore was valid.—COHEN *v.* COHEN (1931), I. L. R. 59 Calc. 102.—**IND.**

PART XIII. SECT. 3, SUB-SECT. 6.—C. (b).

2786 ix. —— ——.]—A settlement made by a Jewish mother contained trusts of real property in favour of her sons, who were of the Jewish faith, & of their widows, & of the children of her sons. It also contained a forfeiture clause in the following terms : " Provided nevertheless & notwithstanding anything herein contained if any person or persons entitled hereunder should marry out of their persuasion then any share or interest of him her or them shall go be applied, & be divided & distributed as if there had never been any such person " :—*Held :* the forfeiture clause was void for uncertainty.—EQUITY, TRUSTEES, EXECUTORS & AGENCY CO., LTD. *v.* MOSS, [1931] Argus L. R. 281.—**AUS.**

PART XIII. SECT. 3, SUB-SECT. 6.—D.

2803 i. *Whether valid—Condition not to live with or be under control of father.*]—A condition in a will having the effect of deterring a father from the performance of his parental duties, or constituting an attempt to interfere with the discretion of the ct. as to the custody & maintenance of its ward, is void as being opposed to public policy.—*Re* ELLIS, PERPETUAL TRUSTEE CO., LTD. *v.* ELLIS (1929), 29 S. R. N. S. W. 470 ; 46 N. S. W. W. N. 146.—**AUS.**

PART XIII. SECT. 3, SUB-SECT. 8.—D.

p i. —— *Or marrying Roman Catholic.*]—*Re* JONES, JONES *v.* BAXTER (1929), 30 S. R. N. S. W. 26.—**AUS.**

80. *Condition as to confirmation.*]—A will provided for the payment of certain legacies on the legatees becoming twenty-five years old, & also provided that the legacies should not be paid until the legatees had been confirmed as members of the Church of England, & that, should any of them attain the age of twenty-five years without having been so confirmed, then his legacy should be divided between the others who had been so confirmed & another legatee :—*Held :* the condition as to being confirmed was a condition precedent ; & that, if it was a condition subsequent, it was one which should not be disregarded as being against public policy, or, under the facts of the case, on the ground that its performance was impossible. Moreover, the fact that the legatee in question was so confirmed when thirty-one years old

2961. *Add. Annotations:*—**Apld.** Patton *v.* Toronto General Trusts Corpn., [1930] A. C. 629. **Consd.** *Re* May, Eggar *v.* May, [1932] 1 Ch. 99.

2961a. —— ——.]—Testator, who died in 1919, bequeathed to his grandson, applt., an annuity, provided that he was & proved himself to be of the Lutheran religion; until he was twenty-five years of age the annuity was to be paid to his mother for his benefit. In 1917, when the will was made, applt. was only twelve years of age, & testator knew that applt.'s mother was a Roman Catholic, & that he was being brought up in that religion. According to the law of Germany, where applt. & his parents were domiciled, applt. could not effectively change his religion without their consent until he was twenty-one years of age. On reaching that age he proved that he had become of the Lutheran religion, & he had since remained so:—*Held:* the intention of testator was that applt. should have an opportunity of choosing his religion, & as he was entitled in law to postpone his choice until he was twenty-one, but not beyond, he was entitled to receive the annuity, also arrears from the date of testator's death, as until he reached twenty-one his enjoyment of the annuity was free from condition.—PATTON (W. R.) *v.* TORONTO GENERAL TRUSTS CORPN., [1930] A. C. 629; 143 L. T. 572; *sub nom. Re* PATTON, PATTON *v.* TORONTO GENERAL TRUSTS CORPN., 99 L. J. P. C. 213, P. C.

Annotation:—**Refd.** *Re* May, Eggar *v.* May, [1932] 1 Ch. 99.

2961b. — —.]—Testatrix, who died in 1915, bequeathed a sum of money to trustees to accumulate the income until her nephew should attain the age of 24 years & afterwards to pay him the income, provided that he should not be a Roman Catholic at her death, or, if he was, that he should cease to be one within 12 months thereafter, the payments to continue until he should become a Roman Catholic, with a gift over if the gift failed. At the death of testatrix the nephew was a child of about nine years of age. He was the son of a Roman Catholic & was being brought up in that faith. In 1917 NEVILLE, J., decided (No. 2961) that within the meaning of the will the child was not a Roman Catholic at the death of testatrix & that he was to have an opportunity of making a choice in the matter when he attained 21 years of age. In 1931, when the legatee was 24 years of age & had never wavered in his adherence to the Roman Catholic Church, the trustees applied for a decision of the question whether the gift over had taken effect:—*Held:* although the proviso as to the child's ceasing to be a Roman Catholic within 12 months was void, yet, as the will provided that even after the age of 24 years the legatee was to benefit only until he became a Roman Catholic, & as this provision included his being a Roman Catholic at that age, the gift over took effect.—*Re* MAY, EGGAR *v.* MAY, [1932] 1 Ch. 99; 101 L. J. Ch. 12; 146 L. T. 56; 48 T. L. R. 3; 75 Sol. Jo. 741, C. A.

Part XIV.—Lapse.

3117. *Add. Annotation:*—**Apld.** *Re* Graham, Graham *v.* Graham, [1929] 2 Ch. 127.

3120. *Add. Annotation:*—**Apld.** *Re* Graham, Graham *v.* Graham, [1929] 2 Ch. 127.

3131a. —— ——.]—By her will, after giving life interests to her parents, a testatrix devised & bequeathed her real & personal estate to her husband, but if he should have predeceased both her parents, then to her husband's children, whether by herself or his first wife. The husband survived both the parents, but predeceased testatrix. Testatrix left no issue of her own, but at her death there were six children of her husband's first marriage living:—*Held:* there was no implication of a gift over to those children on failure of the gift to the husband by lapse in any event, & therefore the residuary estate of testatrix was undisposed of & passed to her next of kin.—*Re* GRAHAM, GRAHAM *v.* GRAHAM, [1929] 2 Ch. 127; 98 L. J. Ch. 291; 141 L. T. 197.

3250. *Add. Annotation:*—**N.F.** *Re* Taylor, Taylor *v.* Taylor (1931), 75 Sol. Jo. 393.

3253a. —— —— ——.]—Testatrix by her will gave, devised & bequeathed all her residuary real & personal estate to a trustee upon trust for conversion, & to divide the net proceeds of such conversion equally between her four step-children named. The will contained a proviso directing that the share to which A., one of her step-daughters, "shall become entitled," should be retained by the trustee upon trust to invest the same, & to apply the income thereof or so much as he should in his discretion think fit towards the maintenance or benefit of A. during her life, & to accumulate the residue of the income (if any), & after the death of A. the said share settled upon her & the investments & income thereof, & any unapplied accumulations were to be equally divided between the other three step-children. A. & another step-child named in the will predeceased testatrix:—*Held:* as A. did not live to become entitled to any share in the residue, the gift lapsed, the settlement failed, & there was an intestacy as to one-half of the residue.—*Re* TAYLOR, TAYLOR *v.* TAYLOR, [1931] 2 Ch. 237; 100 L. J. Ch. 309; 145 L. T. 443; 75 Sol. Jo. 393.

3261. *Add. Annotation:*—**Folld.** *Re* Buxton, Buxton *v.* Buxton, [1930] 1 Ch. 648.

was not a substantial compliance with the condition.—*Re* FORBES, HARRISON *v.* COMMIS, [1928] 3 D. L. R. 22; [1928] 1 W. W. R. 880; 22 Sask. L. R. 473.—**CAN.**

PART XIII. SECT. 4, SUB-SECT. 3.

2924 i. *Where period prescribed—Whether court will extend time.*]—Where testator's object in imposing conditions as to time was to provide for the distribution of his estate within a reasonable time & to relieve his trustee from responsibility in the event of a claim being made after distribution, a failure in strict performance of the condition due to circumstances beyond the control of the claimant will not disentitle such claimant to participate in the distribution of the estate if the parties can be put in substantially the same position as they would have been in had the conditions been performed within the proper time.—ELCOCK *v.* CAMPBELL, [1931] N. Z. L. R. 1060.—**N. Z.**

Add. Annotation :—**Consd.** *Re* Dale, Mayer *v.* Wood, [1931] 1 Ch. 357.

3330. *Add. Annotation :*—**Refd.** *Re* Forrest, Carr *v.* Forrest, [1931] 1 Ch. 162.

3332. *Add. Annotation :*—**Apld.** *Re* Forrest, Carr *v.* Forrest, [1931] 1 Ch. 162.

3334. *Add. Annotation :*—**Consd.** *Re* Forrest, Carr *v.* Forrest, [1931] 1 Ch. 162.

3336a. —— ——.]—Testatrix, who died in 1873, by her will made in 1866 gave her residuary estate in trust for her four daughters A., B., C. & D., or such of them as should be living at her death in equal shares. By a codicil the testatrix revoked her will so far as regarded the bequest to B., & substituted therefor a legacy of £100, & in other respects confirmed her will. Each of the four daughters, including B., survived testatrix : —*Held :* whether or not the bequest in trust for testatrix's four daughters was, in the technical sense of the phrase, a class gift, the share bequeathed in favour of B. did not lapse, but the whole of the residue went to the other three daughters.—*Re* WOODS, WOODS *v.* CREAGH, [1931] 2 Ch. 138 ; 100 L. J. Ch. 385 ; 145 L. T. 206.

3349. *Add. Annotation :*—**Expld.** & **Apld.** *Re* Woods, Woods *v.* Creagh, [1931] 2 Ch. 138.

3352. *Add. Annotations :*—**Folld.** *Re* Maynard, Pearce *v.* Pearce (1930), 69 L. Jo. 440. **Refd.** *Re* Woods, Woods *v.* Creagh, [1931] 2 Ch. 138.

3354a. —.]—*Re* MAYNARD, PEARCE *v.* PEARCE (1930), 69 L. Jo. 440 ; 169 L. T. Jo. 519 ; [1930] W. N. 127.

3357. *Add. Annotation :*—**Apld.** *Re* Taylor, Taylor *v.* Taylor (1931), 75 Sol. Jo. 393.

Part XV.—Powers.

3390. *Add. Annotation :*—*Generally*, **Refd.** *Re* Mills, Mills *v.* Lawrence, [1930] 1 Ch. 440.

3452. *Add. Annotation :*—*As to* (2) **Refd.** Smith *v.* Thompson (1931), 146 L. T. 14.

3453a. —— ——.]—Cheques written in 1833 by deceased upon his bankers, but not intended to have effect until after his death, pronounced for as part of the testamentary disposition of the deceased ; he having in 1834 formally executed a will, disposing of the whole of his property, & containing a full clause of revocation.—GLADSTONE *v.* TEMPEST (1840), 2 Curt. 650.

Annotation :—**Consd.** Smith *v.* Thompson (1931), 146 L. T. 14.

3456. *Add. Annotation :*—**Refd.** Smith *v.* Thompson (1931), 146 L. T. 14.

3457. *Add. Annotation :*—**Refd.** Smith *v.* Thompson (1931), 146 L. T. 14.

3459a. —— ——.]—Where there were two testamentary papers, of which the first, a duly executed will (*inter alia*), exercised a special power of appointment under an ante-nuptial settlement, & the second, also a duly executed will, purported to revoke all former wills without expressly dealing with the power of appointment :—*Held :* the ct. could take into account the surrounding circumstances & treat the exercise of the power of appointment as unrevoked.

The ct. made a grant of letters of administration, with the two papers annexed as the last will of testatrix, & declared that the revocatory clause did not in fact revoke the earlier appointment.—SMITH *v.* THOMPSON (1931), 146 L. T. 14 ; 47 T. L. R. 603 ; 75 Sol. Jo. 555.

3469. *Add. Annotation :*—**Consd.** *Re* Phillips, Lawrence *v.* Huxtable, [1931] 1 Ch. 347.

Part XVI.—Construction.

3483. *Add. Annotation :*—*Generally*, **Refd.** *Re* Walker, Walker *v.* Walker, [1930] 1 Ch. 469.

3502. *Add. Annotations :*—*As to* (4) **Apld.** *Re* Jenkins, Jenkins *v.* Davies (1931), 100 L. J. Ch. 265. **Refd.** Shaw *v.* Public Trustee (1929), 141 L. T. 465.

3554. *Add. Annotation :*—**Refd.** *Re* Grove-Grady, Plowden *v.* Lawrence, [1929] 1 Ch. 557.

3571. *Add. Annotation :*—*Generally*, **Refd.** *Re* Villar, Public Trustee *v.* Villar, [1929] 1 Ch. 243.

3590. *Add. Annotation :*—**Refd.** *Re* Walker, Walker *v.* Walker, [1930] 1 Ch. 469.

3592. *Add. Annotation :*—*As to* (3) **Consd.** Shaw *v.* Public Trustee (1929), 141 L. T. 465.

3609. *Add. Annotations :*—*As to* (2) **Apld.** *Re* Smalley, Smalley *v.* Scotton, [1929] 2 Ch. 112. *As to* (3) **Apld.** *Re* Smalley, Smalley *v.* Scotton, [1929] 2 Ch. 112. *As to* (4) **Apld.** *Re* Smalley, Smalley *v.* Scotton, [1929] 2 Ch. 112.

3624. *Add. Annotation :*—**Refd.** *Re* Cockerill, Mackaness *v.* Percival, [1929] 2 Ch. 131.

3625. *Add. Annotation :*—**Refd.** *Re* Hood, Public Trustee *v.* Hood, [1931] 1 Ch. 240.

3707. *Add. Annotation :*—**Refd.** Jagmohan Singh *v.* Pandit Sri Nath (1930), 46 T. L. R. 586.

3741. *Add. Annotation :*—*As to* (1) **Refd.** *Re* Bund, Cruikshank *v.* Willis, [1929] 2 Ch. 455.

3781. *Add. Annotation :*—**Refd.** Shaw *v.* Public Trustee (1929), 141 L. T. 465.

PART XIV. SECT. 9, SUB-SECT. 2. —B.

3294 v. —— ——.]—*Re* TAIT ESTATE, [1] 4 D. L. R. 1074 ; 1 W. W. R. 23 S. L. R. 454.—**CAN.**

PART XVI. SECT. 3, SUB-SECT. 1.

1 i. —— *Condition relating to religion of donee.*]—*Re* PATTON, [1929] 3 D. L. R. 459 ; 63 O. L. R. 655.—**CAN.**

PART XVI. SECT. 4, SUB-SECT. 4.—A. (a).

3594 xiv. ——.]—*Re* RUMNEY'S ESTATE (1925), 21 Tas. L. R. 3.—**AUS.**

3910. *Add. Annotations :*—**Consd.** *Re* Prosser, Prosser *v.* Griffith (1929), 167 L. T. Jo. 307; *Re* Dale, Mayer *v.* Wood, [1931] 1 Ch. 357. **Refd.** *Re* Cossentine, Philp *v.* Wesleyan Methodist Local Preacher's Mutual Aid Assocn. (1932), 76 Sol. Jo. 512.

3976. *Add. Annotation :*—**Consd.** Shaw *v.* Public Trustee (1929), 141 L. T. 465.

4043. *Add. Annotation :*—**Refd.** Jagmohan Singh *v.* Pandit Sri Nath (1930), 46 T. L. R. 586.

4049. *Add. Annotations :*—**Consd.** *Re* Gates, Gates *v.* Cabell, [1929] 2 Ch. 420. **Refd.** *Re* Emerson, Morrill *v.* Nutty, [1929] 1 Ch. 128; *Re* Mellor, Porter *v.* Hindsley, [1929] 1 Ch. 446.

4054. *Add. Annotation :*—**Consd.** Shaw *v.* Public Trustee (1929), 141 L. T. 465.

4110. *Add. Annotation :*—**Consd.** Price *v.* Gould (1930), 143 L. T. 333.

4184. *Add. Annotation :*—**Refd.** Blackwell *v.* Blackwell, [1929] A. C. 318.

4419. *Add. Annotation :*—**Refd.** *Re* Maynard, Pearce *v.* Pearce (1930), 69 L. Jo. 440.

4432. *Add. Annotation :—As to* (3) **Consd.** *Re* Smalley, Smalley *v.* Scotton, [1929] 2 Ch. 112.

4437. *Add. Annotation :*—**Refd.** *Re* Cruse, Gass *v.* Ingham, [1930] W. N. 206.

4443. *Add. Annotation :*—**Refd.** *Re* Gates, Gates *v.* Cabell, [1929] 2 Ch. 420.

4564. *Add. Annotation :*—**Refd.** Smith *v.* Thompson (1931), 146 L. T. 14.

4619. *Add. Annotation :*—**Refd.** Shaw *v.* Public Trustee (1929), 141 L. T. 465.

4653a. ——.]—*Re* JACKSON, BEATTIE *v.* MURPHY, No. 6708*a*, *post*.

4684a. —— —— **"War Loan."**]—*Re* CRUSE, GASS *v.* INGHAM, [1930] W. N. 206.

4708. *Add. Annotation :*—**Consd.** *Re* Smalley, Smalley *v.* Scotton, [1929] 2 Ch. 112.

4865. *Add. Annotation :*—**Refd.** *Re* Warren, Warren *v.* Warren, [1932] 1 Ch. 42.

4895. *Add. Annotation :—As to* (1) **Refd.** *Re* Carrington, Ralphs *v.* Swithenbank, [1932] 1 Ch. 1.

4911. *Add. Annotation :*—**Consd.** Shaw *v.* Public Trustee (1929), 141 L. T. 465.

4921a. Money invested in Swansea Harbour Trust —Statutory substitution of Great Western Railway Stock.]—The undertaking of the Swansea Harbour Trustees was vested in the Great Western Railway Co. by the Great Western Railway (Swansea Harbour Vesting) Act, 1923, which provided that stock of the Great Western Railway should be issued to holders of stock of the trustees in substitution therefor. Sect. 12 of the Act provides: "Stock of the co. substituted by virtue of this Act for any stock of the Trustees . . . shall be held upon & subject to the same trusts liens charges powers & other legal or equitable rights privileges & restrictions as affected the stock . . . for which by virtue of this Act the stock of the co. is substituted . . . & any reference in any Act of Parliament deed will codicil book document instrument or writing to any such stock . . . shall be deemed to be a reference to the stock of the co. . . . by virtue of this Act substituted therefor":—*Held:* the latter part of the sect. was not restricted in meaning by regard to the first part, & it applied to any reference to stock of the trustees in any "document instrument or writing" in existence when the Act of 1923 came into force, even though the "document instrument or writing" was not then effective to create trusts liens charges powers or other legal or equitable rights privileges or restrictions.

By his will made in 1913 testator bequeathed "the sums of £3,500 & all other moneys that I may at my death possess invested in the Swansea Harbour Trust" upon certain trusts. In 1923 testator received, pursuant to the Act of 1923, £2,800 5 per cent. consolidated preference stock of the Great Western Railway Company in substitution for his holding of £3,500 4 per cent. Swansea Harbour Stock, & continued to hold the Great Western Railway stock till his death:—*Held:* the reference in the will to the property bequeathed was a reference to stock of the Swansea Harbour trustees within the meaning of the Act; by virtue of the latter part of sect. 12 of the Act the bequest operated to pass the substituted

PART XVI. SECT. 9, SUB-SECT. 1.—A.

3823 i. *Will construed to avoid intestacy—Property not acquired at date of will.*]—*Re* GRAZEBROOK, CHASE *v.* LAYTON, [1928] V. L. R. 75.—**AUS.**

PART XVI. SECT. 9, SUB-SECT. 3.—B.

sc. *Gift to Hindu female.*]—In the case of a gift to a Hindu female, there is no presumption either that testator did not mean what he said, or that words are not to be given their ordinary meaning unless further words are added which, by tautology or emphasis, make it certain that they mean what they express.—PRAMATHANATH SARKAR *v.* SUPRAKASH GHOSH (1930), I. L. R. 58 Calc. 77.—**IND.**

PART XVI. SECT. 10, SUB-SECT. 2.—C.

4046 i. —— *Testator inops concilii.*]—*Re* SPLAN (Alta.), [1929] 4 D. L. R. 405.—**CAN.**

PART XVI. SECT. 10, SUB-SECT. 6.

f i. —— *Clerical error.*]—In construing a will the ct. goes far to discover the intention of the testator, & if it can be discovered from the will itself & the surrounding circumstances a clerical error will be treated as such & the apparent intention given effect to.—*Re* ZUROWSKI, [1928] 1 D. L. R. 357; 22 Sask. L. R. 249; [1928] 3 W. W. R. 745.—**CAN.**

PART XVI. SECT. 14, SUB-SECT. 4.

4537 i. —— *To translate words of will.*]—In determining the meaning of expressions in a will written in a language other than English, preponderating weight should be given to the evidence of persons who are not merely skilled in the use of that language, but have presumably a sounder judgment of the verbal nuances of that tongue under the conditions of life of the testator, with which they are familiar, than can be imputed to conclusions from the study of dictionaries.

"*Arrière neveux,*" as used in the will in question herein, held to mean both grand-nephews & grand-nieces, & not posterity or descendants generally.—*Re* BRULE, [1928] 1 W. W. R. 308.—**CAN.**

4537 ii. —— —— *Incorrect translation filed.*]—Where a will is in a foreign language the probate copy of which is an incorrect translation, the Ct. of Equity will not look at the correct translation in order to construe the will, the proper course being to apply to the Probate Ct. to have the translation corrected.—*Re* KLEINSANG (1928), 28 S. R. N. S. W. 455; 45 N. S. W. W. N. 123.—**AUS.**

PART XVI. SECT. 14, SUB-SECT. 8.—C. (a) i.

4629 iv. ——.]—Testator, who was ninety-one years of age & seriously ill, made his last will, & thereby made certain bequests to the children of his late sister Sarah Ann Baker. Testator had a sister Sarah Baker & a niece Sarah Ann Bacon (*née* Baker). In order to clear up the difficulty caused by the misdescription it was proposed to tender evidence of testator's verbal instructions for his will & of the correspondence between testator & his niece & her children, & of a former will in which he had given a legacy "to the children of my late niece Sarah Ann Bacon (daughter of my "sister Sarah Baker)":—*Held:* the evidence was admissible, & that the children of Sarah Ann Bacon were entitled to the share given under the will to the children of Sarah Ann Baker.—*Re* TAYLOR, TAYLOR *v.* BAKER, [1931] N. Z. L. R. 352.—**N.Z.**

Great Western Railway stock.—*Re* JENKINS, JENKINS *v.* DAVIES, [1931] 2 Ch. 218; 100 L. J. Ch. 265; 145 L. T. 184; 47 T. L. R. 379, C. A.

5194. *Add. Annotation:*—**Refd.** English, Scottish & Australian Bank, Ltd. *v.* I. R. Comrs. (1931), 48 T. L. R. 170.

5227. *Add. Annotation:—Generally,* **Refd.** Shaw *v.* Public Trustee (1929), 141 L. T. 465.

5286. *Add. Annotation:*—**Consd.** *Re* Jenkins, Jenkins *v.* Davies (1931), 100 L. J. Ch. 265.

5330. *Add. Annotation:—As to* (2) **Consd.** *Re* Tomline's Will Trusts, Pretyman *v.* Pretyman, [1931] 1 Ch. 521.

5331. *Add. Annotation:*—**Consd.** *Re* Tomline's Will Trusts, Pretyman *v.* Pretyman, [1931] 1 Ch. 521.

5332. *Add. Annotation:*—**Consd.** *Re* Tomline's Will Trusts, Pretyman *v.* Pretyman, [1931] 1 Ch. 521.

5332. After this case add:—

See, also, Nos. 5900, 5901, *post.*

5332a. Manuscript letters.]—(1) Testator by his will made a settlement of his two mansion houses & then bequeathed "all the pictures prints statues sculptures articles of vertu books furniture & plate in my mansion houses . . . unto my trustees upon trust to allow the same, hereinafter called 'the said heirlooms,' to be used & enjoyed" as in the will mentioned. Included in testator's estate were 155 original manuscripts of the series of letters & papers known as the Paston letters. All the originals of the series had belonged to Sir John Fenn, who, towards the end of the eighteenth century, had had these 155 letters inlaid into sheets of paper, which he had then had bound in three volumes. Testator had acquired them so bound, & they were still so bound at the date of his death. On a summons on behalf of the tenant for life under the settlement asking whether the 155 letters were included in the chattels settled by the will to devolve as heirlooms or formed part of testator's residuary estate, &, if the answer to the first part of the question was in the affirmative, that the tenant for life might be authorised to sell them:—*Held:* the three volumes containing the MSS. of the Paston letters passed under the will as heirlooms under the word "books."

(2) There must be many objects of antiquity or curiosity which are not, ordinarily speaking, articles of vertu. I have suggested two, a prehistoric axe-head & an Egyptian mummy. I do not think that anybody in ordinary parlance would describe either of those things as an article of vertu. For my part I think that an article of vertu must be in some sense a product of the fine arts; & the phrase connotes, if not artistic merit, a certain effort on the part of the person who originally produced it, in the direction of what he conceived to be the fine arts (MAUGHAM, J.). —*Re* TOMLINE'S WILL TRUSTS, PRETYMAN *v.* PRETYMAN, [1931] 1 Ch. 521, 526; 100 L. J. Ch. 156; 144 L. T. 592; 47 T. L. R. 274.

5450. *Add. Annotation:*—**Refd.** Shaw *v.* Public Trustee (1929), 141 L. T. 465.

5453. *Add. Annotation:*—**Consd.** *Re* Warren, Warren *v.* Warren, [1932] 1 Ch. 42.

5458. *Add. Annotation:*—**Refd.** *Re* Cruse, Gass *v.* Ingham, [1930] W. N. 206.

5466a. "Bristol Gas Company shares"—Stock passes.]—*Re* CRUSE, GASS *v.* INGHAM, [1930] W. N. 206.

5520. *Add. Citation:—affd. sub nom.* SHAW *v.* PUBLIC TRUSTEE (1929), 141 L. T. 465, H. L.

5532a. "War Loan"—Conversion Stock & Treasury Bonds.]—Testatrix by her will gave a legacy of "my £400 5 per cent. War Loan, 1929/1947." She had never had any War Loan, but some time before the date of her will acquired £400 National War Bonds. These were converted by her, £200 into £284 3½ per cent. Conversion Stock, & £200 into 5 per cent. Treasury Bonds, in each case before the date of the will. Testatrix possessed no other investments at the date of her death:—*Held:* the converted stocks passed under the description of "War Loan."—*Re* PRICE, TRUMPER *v.* PRICE, [1932] 2 Ch. 54; 101 L. J. Ch. 278; 147 L. T. 351; 48 T. L. R. 318; 76 Sol. Jo. 217.

5568. *Add. Annotation:*—**Consd.** *Re* Tomline's Will Trusts, Pretyman *v.* Pretyman, [1931] 1 Ch. 521.

5602. *Add. Annotation:—As to* (2) **Consd.** *Re* Tomline's Will Trusts, Pretyman *v.* Pretyman, [1931] 1 Ch. 521.

PART XVI. SECT. 15, SUB-SECT. 4.—A. (b).

5066 ix. —— ——.]—Subject to his wife's right to carry on his farming business & take the net profits thereof, testator gave, devised, & bequeathed his residuary estate to trustees to sell & convert the same & stand possessed of the proceeds, to pay the income thereof to his wife during her life & after her death to pay such income equally "between such of my children as shall survive me & be alive at the death of my said wife":—*Held:* the gift after the widow's death to the children being of the income of the residuary estate without limit as to time, & there being no other disposition of capital, it amounted to a gift of the capital.—LYNDON *v.* LYNDON, [1930] N. Z. L. R. 76.—**N.Z.**

5066 x. ——.]—*Re* MACDONALD, [1931] 4 D. L. R. 920; O. R. 659.—**CAN.**

PART XVI. SECT. 15, SUB-SECT. 9.

sa. *Dominion War Bonds—Inscribed stock subsequently acquired.*]—Testatrix by her will gave "all Dominion war bonds which may form "part of my estate (other than a sum of £400 available for payment of death duties)" to a certain church. At the date of the will, apart from the sum of £400 which was held in New Zealand inscribed stock, she had £700 in war bonds issued under the War Purposes Loan Act, 1917, & £900 in New Zealand Government "Victory" war bonds issued under the Finance Act, 1918. Subsequent to the date of the will she invested in inscribed stock the sum of £1,500, received from discharged mtges.:—*Held:* the expression "Dominion war bonds" must be taken as meaning New Zealand Government war bonds; &, having regard to the will itself & the surrounding circumstances, testatrix had not beyond all (or beyond reasonable) doubt excluded the ordinary & well-known meaning of "war bonds," which did not include the inscribed stock subsequently purchased.—*Re* BANKS, LOUGHNAN *v.* HAMILTON; HAMILTON *v.* LOUGHNAN, [1931] N. Z. L. R. 798.—**N.Z.**

PART XVI. SECT. 15, SUB-SECT. 14.—G. (g).

sd. "*Promissory notes*"—*Debenture bonds.*]—By a codicil to his will testator gave to his four daughters & his son, in equal shares, "all mtges., promissory notes, money in bank . . . & cash in hand." The will contained a residuary gift to the son. At the time of his death testator had two "debenture bonds" of a loan co. made payable to him "his exors., administrators or registered assigns": —*Held:* these bonds did not pass by the codicil as "promissory notes," they did not come within the strict & primary meaning of those words, & there was nothing in the will or the circumstances to indicate that a secondary meaning should be given to them.—*Re* GEE, [1928] 3 D. L. R. 54; 62 O. L. R. 184.—**CAN.**

PART XVI. SECT. 15, SUB-SECT. 14.—J. (e).

se. "*Household goods & effects*"—*Motor car.*]—*Re* JOHNSON, [1931] 2 D. L. R. 987.—**CAN.**

5625a. "**Furniture**"—**Wireless cabinet.**]—The ct. held that a wireless set contained in an oak cabinet would pass under a bequest of "furniture."—*Re* WILLEY, GOULDING *v.* SHIRTCLIFFE (1929), 45 T. L. R. 327.

5696. *Add. Annotation :*—**Expld.** *Re* Gates, Gates *v.* Cabell, [1929] 2 Ch. 420.

5696a. —— ——.]—In a will the word "money" has its strict legal meaning of cash, unless there is some context to enlarge the meaning so as to include things such as investments or other personal estate.—*Re* PUTNER, PUTNER *v.* BROOKE (1929), 45 T. L. R. 325.

5699. *Add. Annotation :*—**Apld.** *Re* Putner, Putner *v.* Brooke (1929), 45 T. L. R. 325.

5708a. —— **Direction to pay debts.**]—By a home-made will of 1928 testator, after expressly directing payment of his debts & giving (*inter alia*) a limited interest in his (freehold) residence to his housekeeper, gave "the remainder of any monies" to nine legatees including the housekeeper. There was no other residuary gift :—*Held :* having regard to the express direction to pay debts the gift of "the remainder of any monies" could not be construed in the strict sense of the word "monies," but must include all property liable to the payment of debts. Therefore, the residuary property both real & personal passed by the gift either (*a*) on the ground that under Administration of Estates Act, 1925 (c. 23), real & personal estate were now *pari passu* liable to the payment of debts, or (*b*) because when once it was clear that the word "monies," was not used in its strict sense the ct. could give effect to testator's manifest intention to include the whole of his property in the gift.—*Re* MELLOR, PORTER *v.* HINDSLEY, [1929] 1 Ch. 446 ; 98 L. J. Ch. 209 ; 140 L. T. 469.

Annotations :—**Consd.** *Re* Shaw, Mountain *v.* Mountain (1929), 168 L. T. Jo. 371 ; Jones *v.* Treasury Solicitor (1932), 48 T. L. R. 615.

5714. *Add. Annotations :*—**Consd.** Jones *v.* Treasury Solicitor (1932), 48 T. L. R. 615. **Refd.** *Re* Gates, Gates *v.* Cabell, [1929] 2 Ch. 420.

5720a. ——.]—Testator made his will in the following terms : "I leave all my money to A. B." His estate included cash in the house, in his solrs.' hands & on current account at his bankers, furniture, stocks & shares, & an equity of redemption in freehold property :—*Held :* in the absence of any context the word "money" must be construed in its strict sense, & that the will therefore only passed the cash in the house, in his solrs.' hands & on current account at his bank.—*Re* GATES, GATES *v.* CABELL, [1929] 2 Ch. 420 ; 98 L. J. Ch. 360 ; 141 L. T. 392 ; 45 T. L. R. 522 ; 73 Sol. Jo. 429, C. A.

Annotation :—**Consd.** Jones *v.* Treasury Solicitor (1932), 48 T. L. R. 615.

5724a. Real estate — Bequest of "balance of money."]—*Re* SHAW, MOUNTAIN *v.* MOUNTAIN (1929), 168 L. T. Jo. 371 ; 68 L. Jo. 334 ; [1929] W. N. 246.

5734a. ——.]—*Re* GATES, GATES *v.* CABELL, No. 5720a, *ante*.

5737. *Add. Annotations :*—**Consd.** *Re* Emerson, Morrill *v.* Nutty, [1929] 1 Ch. 128. **Apld.** *Re* Gates, Gates *v.* Cabell, [1929] 2 Ch. 420 ; *Re* Mellor, Porter *v.* Hindsley, [1929] 1 Ch. 446. **Consd.** Jones *v.* Treasury Solicitor (1932), 48 T. L. R. 615.

5773. *Add. Annotation :*—**Consd.** *Re* Mellor, Porter *v.* Hindsley, [1929] 1 Ch. 446.

5783. *Add. Annotation :*—**Distd.** *Re* Gates, Gates *v.* Cabell, [1929] 2 Ch. 420.

5793. *Add. Annotation :*—**Consd.** *Re* Gates, Gates *v.* Cabell, [1929] 2 Ch. 420.

5778. *Add. Annotation :*—**Consd.** Jones *v.* Treasury Solcitor (1932), 48 T. L. R. 615.

5806. *Add. Annotation :*—**Consd.** Jones *v.* Treasury Solicitor (1932), 48 T. L. R. 615.

5808. *Add. Annotation :*—**Consd.** *Re* Gates, Gates *v.* Cabell, [1929] 2 Ch. 420.

5811a. ——.]—*Re* MELLOR, PORTER *v.* HINDSLEY, No. 5708a, *ante*.

sf. "*Home*".]—Testator, R., by his will directed payment of his debts, & proceeded to dispose of his estate as follows: "I give devise & bequeath £100 to my brother A., £100 to my daughter M., the remainder of my money to my adopted J. : she can keep the home or sell it as she thinks best after paying all expenses." Testator's estate consisted of 5½ acres of orchard land, on which was erected a cottage, wherein he & his adopted daughter, J., dwelt at the date of his death. He owned, besides some household furniture, a small museum, a certain amount of money invested on mtge., & other small personal belongings :—*Held :* the expression "the home" meant the house of testator, & the whole of the 5½ acres of orchard land occupied therewith, together with the furniture, household goods, implements, & curios, as the same were enjoyed in the home of testator ; & J. took an estate in fee simple in the said orchard.—*In the Will of* RAYNER (1929), 23 Tas. L. R. 41.—**CAN.**

PART XVI. SECT. 15, SUB-SECT. 14.—L. (a).

5697 iv. —— ——.]—Testatrix made the following will : "This being my last will & testament, I bequeath the interest of all my money on trust to my second husband G. until my child becomes twenty-one years of age. When the child reaches the age of twenty-one the whole of my money is to be his. If G. dies before the child is twenty-one years old G.'s children are to have ten pounds each out of the estate & also all his funeral expenses are to be paid out of the estate" :—*Held :* the word "money" as used in the will comprised "the whole of the assets in the estate of testatrix, both real & personal."—PUBLIC TRUSTEE *v.* HORTON, [1929] N. Z. L. R. 83.—**N.Z.**

5697 v. —— ——.]—Testatrix made her will as follows : "I wish my granddaughter, B., to have the use of all my money for her lifetime. I now revoke all former wills." At the date of her death testatrix was possessed of cash on current account in her bank & cash on deposit account, money due to her for pension as the widow of an army officer, a sum of India 5½ per cent. Stock, with dividends accrued thereon, a sum of War Stock, with dividends accrued thereon, an undivided interest in leasehold property, an apportioned part of rents of leasehold property in which she had a life interest, an apportioned part of dividends on stocks in which she also had a life interest, & an undivided interest in freehold property :—*Held :* the word "all" was introduced into the will to insure a wide interpretation being given to the expression "my money," &, accordingly, B. was entitled to a life interest in all the said property except the interest in the freehold.—*Re* JENNINGS, CALDBECK *v.* STAFFORD & LINDEMERE, [1930] I. R. 196.—**IR.**

PART XVI. SECT. 15, SUB-SECT. 14.—L. (b) ii.

5728 v. ——.]—PUBLIC TRUSTEE *v.* LEITCH (1928), 28 S. R. N. S. W. 313 ; 45 N. S. W. W. N. 85.—**AUS.**

PART XVI. SECT. 15, SUB-SECT. 14.—L. (c).

sg. *Money due under mortgage—Receipt of cheque prior to death.*]—Testator gave upon trust for certain nephews "all moneys due & payable to me under" a mtge. executed in his favour over certain property sold by him. That mtge. provided for the payment of a stated sum per annum in reduction of the principal sum, & the first of the annual payments fell due on Aug. 1, 1929. Testator died on Aug. 2, 1929. On the latter day, but prior to testator's death, a cheque in part payment of the first annual sum reached his solrs. On the same day, but after death, the cheque was presented for payment & cashed :—*Held :* until the cheque was presented for payment & met, the debt remained in existence, although the remedy was suspended ; &, accordingly, that the portion of the mtge. debt represented by the amount of the cheque was, at the moment of testator's death, comprised within the words in the will "all

5881a. "Property (not personal)" — Personal estate except personal belongings—Will made without legal advice.]—*Re* BANHAM, WESTMINSTER BANK, LTD. *v.* A.-G. (1931), 47 T. L. R. 376; 75 Sol. Jo. 311.

5897a. Articles of vertu—Rare books & manuscripts.]—*Re* ZOUCHE (BARONESS), DUGDALE *v.* ZOUCHE (BARONESS), No. 5568, *ante*.

5897b. ——.]—*Re* TOMLINE'S WILL TRUSTS, PRETYMAN *v.* PRETYMAN, No. 5332a, *ante*.

5901. After this case add:—
——.]—*See, also*, Nos. 5330–5332, *ante*.

5935a. —— **Autograph letters.**] — *Re* NEILSON, CUMMING *v.* CLYDE (1929), 73 Sol. Jo. 765.

6006. *Add. Annotation:*—**Refd.** *Re* Emerson, Morrill *v.* Nutty, [1929] 1 Ch. 128.

6212. *Add. Annotations:*—**Folld.** *Re* Maynard, Pearce *v.* Pearce (1930), 69 L. Jo. 440. **Consd.** *Re* Woods, Woods *v.* Creagh, [1931] 2 Ch. 138.

6231. *Add. Annotation:* — **Expld. & Apld.** *Re* Woods, Woods *v.* Creagh, [1931] 2 Ch. 138.

6293. *Add. Annotation:*—**Refd.** *Re* Walker, Walker *v.* Walker, [1930] 1 Ch. 469.

6525. *Add. Annotation:*—**Consd.** *Re* Walker, Walker *v.* Walker, [1930] 1 Ch. 469.

6526. *Add. Annotation:*—**Folld.** *Re* Walker, Walker *v.* Walker, [1930] 1 Ch. 469.

6527a. —— ——.] — The primary meaning of "shall die" in a will is "shall hereafter die." In the absence of some context to indicate a contrary intention it cannot be construed as equivalent to "shall have died" or "shall be dead," so as, in an original or substitutional gift to the issue of a child or other person who "shall die," to let in the issue of one who was already dead at the date of the will.

Testator by his will directed that after the death of his wife his trustees were to stand possessed of his residuary estate for all his children in equal shares "provided nevertheless in case any child of mine shall die in my lifetime leaving issue living at my death such issue shall stand in place of such deceased child, & shall take equally between them if more than one the share of my residuary estate which such deceased child of mine would have taken if he or she had survived me." One of testator's sons died three weeks before the date of the will, leaving one child, a daughter, surviving him, & these facts were known to testator when he made his will:—*Held:* there being no context in the will, such as a gift to children who "shall attain the age of twenty-one years," the word "shall" must be strictly construed as referring to the future only, & therefore the daughter of the deceased son was not entitled to any share in the residuary estate. —*Re* WALKER, WALKER *v.* WALKER, [1930] 1 Ch. 469; 99 L. J. Ch. 225; 142 L. T. 472; 74 Sol. Jo. 106, C. A.

6528. *Add. Annotation:*—**Consd.** *Re* Walker, Walker *v.* Walker, [1930] 1 Ch. 469.

6537. *Add. Annotation:*—**Consd.** *Re* Walker, Walker *v.* Walker, [1930] 1 Ch. 469.

6538. *Add. Annotation:*—**Consd.** *Re* Walker, Walker *v.* Walker, [1930] 1 Ch. 469.

6540. *Add. Annotation:*—**Consd.** *Re* Walker, Walker *v.* Walker, [1930] 1 Ch. 469.

6669. *Add. Annotation:*—**Refd.** *Re* Smalley, Smalley *v.* Scotton, [1929] 2 Ch. 112.

6683. *Add. Annotation:*—**Refd.** *Re* Hyde, Smith *v.* Jack, [1932] 1 Ch. 95.

6708a. Bequest to nephew—Legitimate preferred to illegitimate of same name—Unless ex-

moneys due & payable under."—ASHBY *v.* HAYDEN (1931), 31 S. R. N. S. W. 324; 48 N. S. W. W. N. 61.—**AUS.**

PART XVI. SECT. 15, SUB-SECT. 14.—P.

5871 v. ——.]—*Re* SPLAN (Alta.), [1929] 4 D. L. R. 405.—**CAN.**

PART XVI. SECT. 15, SUB-SECT. 14.—R.

sq. *"Desk & contents"—Choses in action evidenced by documents.*]—Bequest of a desk & its contents:—*Held:* not to include choses in action evidenced by documents & bank books usually kept in the desk.—PHILLIPS *v.* JOSEPH, [1932] 1 D. L. R. 568; O. R. 71; *revsd.*, [1932] 4 D. L. R. 261.—**CAN.**

PART XVI. SECT. 15, SUB-SECT. 14.—S.

sl. *"Proceeds" — Income.*] — *Re* PROTER ESTATE (Alta.), [1929] 4 D. L. R. 358; 3 W. W. R. 78.—**CAN.**

PART XVI. SECT. 16, SUB-SECT. 1.

5977 ll. —— ——.]—Testator died survived by his wife, & by a son & daughter. By his trust-disposition & settlement, in which he stated that he had already by *inter vivos* deed made sufficient provision for his daughter, he directed his trustees, after payment of his debts, testamentary & funeral expenses, & certain legacies, to make over the "free residue" of his estate in equal shares to his wife & son. The son & daughter claimed & were paid their *legitim*, the son forfeiting, in terms of the will, its provisions in his favour. A question having arisen as to whether "free residue" fell to be ascertained before or after deduction of the *legitim* fund:—*Held:* "free residue" primarily meant residue after deduction *(inter alia)* of the *legitim* fund, & that there was nothing in the language of the trust-disposition & settlement to indicate that the testator had intended to give these words any other than their ordinary meaning.—SAMSON *v.* RAYNOR, [1928] S. C. (Ct. of Sess,) 899.—**SCOT.**

PART XVI. SECT. 17, SUB-SECT. 3.—A.

sm. *Intention to benefit class—Shares dependent on exercise of power of appointment—Effect of non-exercise of power.*]—UNDERWOOD *v.* DAWSON (N. S.), [1929] 2 D. L. R. 278.—**CAN.**

PART XVI. SECT. 17, SUB-SECT. 3.—C. (c).

6255 v. For "[1918] N. Z. L. R. 364" read "[1928] N. Z. L. R. 364."

PART XVI. SECT. 17, SUB-SECT. 3.—C. (d) ll.

6304 l. *Provision for conversion & distribution when all attain age.*]—Testator devised & bequeathed his residuary estate upon trust to convert & to divide the same equally between such of his grandchildren as should attain the age of twenty-one years, excepting certain named grandchildren, & empowered the trustees to postpone conversion & distribution for such time as they in their absolute discretion might deem expedient & in the meantime to carry on testator's business. He then gave directions for the distribution of the income of the business during the period of its continuance. At the date of testator's death there were a number of grandchildren, of whom one had attained the age of twenty-one years. The trustees had postponed conversion for several years, & during that period other grandchildren were born:—*Held:* the "rule of convenience" laid down in *Andrews* v. *Partington*, No. 6266, had no application until conversion, inasmuch as *(a)* upon the true construction of the will there was no occasion for the operation of the rule until conversion had taken place, & *(b)* the will contained an expression of a contrary intention. Therefore, the class of grandchildren entitled to share in the residuary estate was not closed until the date of conversion.—PERMANENT TRUSTEE CO. OF NEW SOUTH WALES, LTD. *v.* R. (1929), 30 S. R. N. S. W. 318; 47 N. S. W. W. N. 116.—**AUS.**

PART XVI. SECT. 17, SUB-SECT. 6.—A. (d).

6702 l. *Reference in will to illegitimate child—As "niece."*]—By his will testator, out of his residuary estate, gave a sum of money to "my niece J. M., daughter of my late sister Martha," & gave other sums to children of his other brothers & sisters including "my niece J. R., daughter of my late sister Margaret." He finally directed that the ultimate residue of his estate be held in trust for "the children of my brothers & sisters share & share alike." J. M. was the illegitimate & only daughter of the testator's sister Martha. J. R. was legitimate:—*Held:* J. M. was included in the trust for the children of the testator's brothers & sisters.—*Re* MITCHELL, BALLARAT TRUSTEES, EXORS. & AGENCY CO., LTD. *v.* NATIONAL TRUSTEES, EXORS. & AGENCY CO. OF AUSTRALASIA, LTD., [1929] V. L. R. 95; Argus L. R. 108.—**AUS.**

trinsic evidence admissible to prove the contrary.—Testatrix, who died in 1928, by her will gave a bequest to "my nephew, Arthur Murphy." She had two legitimate nephews & one illegitimate nephew, all bearing that name. So far as concerned the legitimate nephews, it was impossible to determine which the testatrix meant:—*Held:* although, if there were only one legitimate Arthur Murphy & one illegitimate, the former would take, yet, as there was an ambiguity, evidence could be received to show who was the person really intended, & on this evidence the words meant the illegitimate nephew.—*Re* JACKSON, BEATTIE *v.* MURPHY (1932), 49 T. L. R. 5; 76 Sol. Jo. 779.

6725. *Add. Annotation:*—*As to* (1) **Folld.** *Re* Hall, Hall *v.* Hall, [1932] 1 Ch. 262.

6726. *Add. Annotation:*—**Distd.** *Re* Hall, Hall *v.* Hall, [1932] 1 Ch. 262.

6728a. "Grandchildren of any degree"—All lawful descendants except children.]—By his will testator disposed of two equal fourth parts of his residue, in the will called "the residuary trust fund," as therein mentioned, & directed his trustees, after the death of one of his daughters, whom he named, & her husband, & subject to or in default of any exercise of a general power of appointment by her, to hold another equal fourth part "in trust as to the capital & income for all my grandchildren who may be living at the time in equal shares." By the second of two codicils he directed that his trustees, at the death of the survivor of his son J. & J.'s wife, should divide the amount of the remaining fourth part "into as many parts as there may be grandchildren of any degree of mine then living, & give to each one a part, part & part alike." Testator had five children. One predeceased him without leaving issue her surviving. All of the remaining four married, three having issue of their marriages. J. predeceased his wife, there having been no issue of the marriage. At the date of the death of J.'s wife, there were living lawful grandchildren, great-grandchildren & great-great-grandchildren of testator. By this summons the trustee of the will & codicils asked (*inter alia*) whether, on the true construction thereof, the words "grandchildren of any degree of mine then living" included lawful grandchildren & remoter descendants of the testator living at the death of J.'s widow. There was evidence that a great-grandchild of testator was shown to him at a date before the execution of the codicils:—*Held:* the words "grandchildren of any degree" included all testator's lawful descendants, save his children, living at the date mentioned in the second codicil.—*Re* HALL, HALL *v.* HALL, [1932] 1 Ch. 262; 101 L. J. Ch. 129; 147 L. T. 33.

6822. *Add. Annotation:*—**Refd.** *Re* Smalley, Smalley *v.* Scotton, [1929] 2 Ch. 112.

6827a. "My uncle G. D. C."—Cousin G. D. C.]—Where in a will legatees were described as the grandchildren of "my uncle George Dennis Curnock" though in fact he was a cousin of testatrix, & the will had been admitted to probate, but no copies of probate had been issued, the ct. granted an application for the exclusion of the words "my uncle" from probate.—*Re* CLARK (1932), 101 L. J. P. 27; 147 L. T. 240; 48 T. L. R. 544; 76 Sol. Jo. 461.

6840. *Add. Annotation:*—**Refd.** *Re* Smalley, Smalley *v.* Scotton, [1929] 2 Ch. 112.

6984. *Add. Annotations:*—**Consd.** *Re* Dale, Mayer *v.* Wood, [1931] 1 Ch. 357. **Refd.** *Re* Prosser, Prosser *v.* Griffith (1929), 167 L. T. Jo. 307; *Re* Cossentine, Philp *v.* Wesleyan Methodist Local Preachers' Mutual Aid Assocn. (1932), 76 Sol. Jo. 512.

6985. *Add. Annotations:*—*As to* (2) **Consd.** *Re* Dale, Mayer *v.* Wood, [1931] 1 Ch. 357. **Apld.** *Re* Cossentine, Philp *v.* Wesleyan Methodist Local Preachers' Mutual Aid Assocn. (1932), 76 Sol. Jo. 512.

6986. *Add. Annotation:*—**Consd.** *Re* Dale, Mayer *v.* Wood, [1931] 1 Ch. 357.

6989. *Add. Annotation:*—**Consd.** *Re* Dale, Mayer *v.* Wood, [1931] 1 Ch. 357.

6994. *Add. Annotation:*—**Refd.** *Re* Dale, Mayer *v.* Wood, [1931] 1 Ch. 357.

7034a. Son born "within due time after my death."]—By a will devising estates in strict settlement the testator declared that if any son of W. or M. should be thereafter born "whether during my lifetime or within due time after my death" the estate in tail male therein devised to such son should not take effect, & in lieu thereof he devised the estates to the use of such son for his life, with remainder to the use of his first & other sons in tail male. The will also contained a name & arms clause requiring every person who became entitled to the possession of the estates as tenant for life or in tail to take & use the name & arms of X. upon pain of forfeiture to the next person entitled in remainder. Testator died in 1899. Pltf., the eldest son of M., was born in 1909, & on the death of W. without issue in 1925 became tenant in tail in possession subject to the effect, if any, of the above proviso cutting down estates tail to estates for life. Immediately after attaining the age of twenty-one years, in 1930, pltf. executed a deed disentailing the estates:—*Held:* the expression "within due time after my death" referred to the period of gestation. Pltf. not having been born in testator's lifetime or within nine months of his death did not come within the clause cutting down his estate tail to a life estate, & having duly disentailed the estates, was not bound to comply with the name & arms clause.—*Re* WATSON, CULME-SEYMOUR *v.* BRAND, [1930] 2 Ch. 344; 99 L. J. Ch. 452; 143 L. T. 764.

PART XVI. SECT. 17, SUB-SECT. 7. A. (a).

6782 iii. ——— ———.]—*Re* TREMBLAY, [1931] O. R. 781.—**CAN.**

PART XVI. SECT. 17, SUB-SECT. 11. —B. (b) i.

b i. ——*Gift to "lawful children."*]—Testator had adopted a child under the laws of a foreign State where he was domiciled. By the laws of that State the child upon adoption became the child & legal heir of the son & entitled to all the rights & privileges & subject to all the obligations of a child begotten in lawful wedlock:—*Held:* the child was not, under the laws of Ontario applicable to the interpretation of the will, the son's "lawful child."—*Re* SKINNER, [1929] 4 D. L. R. 427; 64 O. L. R. 245.—**CAN.**

PART XVI. SECT. 17, SUB-SECT. 11.—F. (c) i.

7089 v. ———.]—While it is possible that a will may be so worded as to indicate that testator meant to include

7179a. Construed as gift to ancestor.]—*Re* COSSENTINE, PHILP *v.* WESLEYAN METHODIST LOCAL PREACHERS' MUTUAL AID ASSOCN. (1932), 76 Sol. Jo. 512.

7249. *Add. Annotations :*—**Consd.** *Re* Hayden, Pask *v.* Perry (1931), 172 L. T. Jo. 97. **Distd.** *Re* Hayden, Pask *v.* Perry, [1931] 2 Ch. 333.

7250. *Add. Annotation :*—**Refd.** *Re* Hayden, Pask *v.* Perry, [1931] 2 Ch. 333.

7252. *Add. Annotation :*—**Refd.** *Re* Hayden, Pask *v.* Perry, [1931] 2 Ch. 333.

7297. *Add. Annotations :*—**Apld.** *Re* Williams' Settlement, Greenwell *v.* Humphries, [1929] 2 Ch. 361. **Refd.** Bosworthick *v.* Clegg (1929), 45 T. L. R. 438.

7304. *Add. Annotation :* — **Apld.** *Re* Smalley, Smalley *v.* Scotton, [1929] 2 Ch. 112.

7307a. ——.]—Testator by his will gave all his property to " my wife E. A. S." Testator left a lawful wife M. A. S. & children by her & contributed to their support, but about five years before his death had contracted a bigamous marriage with a widow E. A. M., who lived with him & was known as E. A. S., & believed she was, & was reputed to be, his wife. The will was produced by E. A. M. :—*Held :* the will, taken in connection with the surrounding circumstances, indicated that the testator intended to benefit E. A. M., she being in a secondary sense & by repute his " wife," & therefore she was entitled, although not his wife nor bearing his surname.—*Re* SMALLEY, SMALLEY *v.* SCOTTON, [1929] 2 Ch. 112 ; 98 L. J. Ch. 300 ; 141 L. T. 158 ; 45 T. L. R. 396 ; 73 Sol. Jo. 234, C. A.

7309. *Add. Annotation :*—**Consd.** *Re* Smalley, Smalley *v.* Scotton, [1929] 2 Ch. 112.

7314. *Add. Annotations :*—**Distd.** *Re* Williams' Settlement, Greenwell *v.* Humphries, [1929] 2 Ch. 361. **Refd.** Bosworthick *v.* Clegg (1929), 45 T. L. R. 438.

7347. Add the following paragraph & citations :—

Testator, by his will, bequeathed a share of his residuary estate upon trust for G. for life, & after his death for his children in equal shares, & in case he died without children upon trust for the person or persons who under the statutes for the distribution of intestate estates would on his decease have been entitled as his next of kin, in case he had then died possessed thereof intestate. Testator died in 1875, & G. died without leaving children in Mar. 1927 :—*Held :* the share was divisible among the persons entitled under the Statutes of Distribution in force at the date of testator's death, there being no contrary intention expressed in the will to exclude the operation of those statutes, so as to introduce the rules of distribution contained in Administration of Estates Act, 1925 (c. 23).—*Re* SUTCLIFFE, SUTCLIFFE *v.* ROBERTSHAW, [1929] 1 Ch. 123 ; 98 L. J. Ch. 33 ; 140 L. T. 135 ; 72 Sol. Jo. 384.

7435. *Add. Annotation :—As to* (1) **Consd.** Price *v.* Gould (1930), 143 L. T. 333.

7455. *Add. Annotation :*—**Consd.** Price *v.* Gould (1930), 143 L. T. 333.

7581. *Add. Annotations :*—**Consd.** *Re* Bain, Public Trustee *v.* Ross, [1930] 1 Ch. 224. **Refd.** *Re* Stratton, Stratton *v.* A.-G., [1930] 2 Ch. 151.

7637a. —— Confined to wages in cash.]—The ct. held that a bequest to a servant of " one year's wages " was confined to wages in cash, & did not include various other benefits to which the servant was entitled.—*Re* PEACOCK, PUBLIC TRUSTEE *v.* BIRCHENOUGH (1929), 45 T. L. R. 301 ; 73 Sol. Jo. 220.

remoter descendants in the word " children," held, however, that there was nothing in the will in question herein to justify a departure from the ordinary meaning of the word. The will in question herein was held to indicate sufficiently that in using the word " issue " in the phrase, " without leaving issue," testator intended to confine its application to issue of the first degree, *i.e.* " children," notwithstanding the fact that the will contained both expressions.—FISHLEIGH *v.* LONDON & WESTERN TRUSTS CO., LTD., FIELD *v.* LONDON & WESTERN TRUSTS CO., LTD., [1930] 3 W. W. R. 150 ; 4 D. L. R. 609 ; *varg.*, S. C. *sub nom. Re* HOBBS, [1929] 4 D. L. R. 433 ; 64 O. L. R. 370.—**CAN.**

PART XVI. SECT. 17, SUB-SECT. 11.—H. (c) i.

c i. ——.]—*Re* BENJAMIN (1931), 3 M. P. R. 5.—**CAN.**

PART XVI. SECT. 17, SUB-SECT. 11.—H. (d).

7247 i. *Whether words substitutional—Bequest of personalty & realty.*]—By her will testatrix gave the whole of her estate to her husband W. for life, & after his decease to be equally divided amongst " my children or their heirs." W., who was still alive, & six of her children survived the testatrix. E., a son, died leaving him surviving a widow & child, & made a will by which he appointed W. his sole exor. & beneficiary. Testatrix's estate comprised both personalty & realty :—*Held :* the words " or their heirs " in testatrix's will were words of substitution & not of limitation.—*Re* ROBERTS' (C. J.) WILL (1929), 29 S. R. N. S. W. 562 ; 46 N. S. W. W. N. 188.—**AUS.**

PART XVI. SECT. 17, SUB-SECT. 11.—J. (a).

p i. ——.]—*Re* YOUNG, [1928] 2 D. L. R. 966 ; 62 O. L. R. 275.—**CAN.**

PART XVI. SECT. 17, SUB-SECT. 11.—J. (d) i.

7365 v. *revsd. sub nom.* MCQUARRIE *v.* EASTERN TRUST CO., [1928] 1 D. L. R. 239 ; [1928] S. C. R. 13.—**CAN.**

7365 ix. ——.]—*Re* CAMPBELL, [1928] 4 D. L. R. 797 ; 63 O. L. R. 36.—**CAN.**

PART XVI. SECT. 17, SUB-SECT. 11.—J. (d) iii.

7389 i. *Ascertainment at death of testator.*]—By his will testator, after a certain bequest to his wife, gave her a life estate in the whole of his residuary real & personal estate, & then provided that, after the death of his wife, all his real & personal estate should be converted into money, & such money should be handed over " to my then living nearest of kin " :—*Held :* the persons who were entitled in remainder on the death of the life tenant were such of testator's nearest blood relations ascertained at his death as were living at the date of the expiration of the life estate.—*Re* MCRAE, MCDONALD *v.* CREER (1928), 28 S. R. N. S. W. 447 ; 45 N. S. W. W. N. 93.—**AUS.**

PART XVI. SECT. 17, SUB-SECT. 11.—K. (b).

c i. ——.]—Testator directed his trustees to pay the income of his estate to his daughter for life, & if she left no issue then to give to his half brother W., one-fourth of his estate " to be expended by him at his discretion & without account for the benefit of more needy members of his branch of my father's family." Testator's daughter died without issue in 1927. Testator's father was married twice & had children by both marriages. W. was a child by the second marriage, & he & three other children of the second marriage who were living at testator's death predeceased the daughter :—*Held :* the words " his branch of my father's family " were not intended by testator to apply to W.'s issue, but to benefit children of the second marriage who were living at his death, the word " family " being used in its primary meaning of children, & as no contrary intention appeared, the members composing it were to be ascertained as at testator's death.—*Re* HATHEWAY, WARDROPER *v.* WOOD (1929), 54 N. B. R. 347.—**CAN.**

c ii. ——.]—*Re* HOBBS, [1929] 4 D. L. R. 433 ; 64 O. L. R. 370.—**CAN.**

PART XVI. SECT. 17, SUB-SECT. 11.—Q.

sm. " *Niece* "—*Grandniece.*] — *Re* LASEURE ESTATE ; RANDOM *v.* LASEURE, [1931] 3 W. W. R. 775.—**CAN.**

PART XVI. SECT. 18, SUB-SECT. 1.

sa. *Bequest to one child—Bequest of residue to " all " children—Enumeration of children omitting first donee—Rejection of " all."*]—*Re* SHORT (Ont.), [1929] 1 D. L. R. 454.—**CAN.**

sb. " *Farm* "—*Lands owned not farm lands in local sense.*]—*Re* MCCAIG ESTATE, LEISEMERE *v.* RESIDUARY LEGATEES & BURNET, [1931] 2 W. W. R. 573.—**CAN.**

sd. " *Legatees* "—*In residuary clause—Whether donees of previous charitable bequest included.*]—*Re* TYHURST, [1932] 1 D. L. R. 595 ; *revsd.*, [1932] 4 D. L. R. 173.—**CAN.**

7673. *Add. Annotation :*—**Refd.** Shaw *v.* Public Trustee (1929), 141 L. T. 465.

7911. *Add. Annotation :*—**Extd.** *Re* Sleeman, Cragoe *v.* Goodman (1929), 167 L. T. Jo. 116.

7911a. ——.]—*Re* SLEEMAN, CRAGOE *v.* GOODMAN, [1929] W. N. 16; 167 L. T. Jo. 116; 67 L. Jo. 163.

8001. *Add. Annotation :*—**Refd.** *Re* Duncombe, Wrixon-Becher *v.* Faversham, [1932] 1 Ch. 622.

8003. *Add. Annotation :*—**Refd.** *Re* Duncombe's Will Trusts, Wrixon-Becher *v.* Faversham (Earl) (1932), 146 L. T. 412.

8009. *Add. Annotation :*—**Refd.** *Re* Duncombe's Will Trusts, Wrixon-Becher *v.* Faversham (Earl) (1932), 146 L. T. 412.

8010. *Add. Annotation :*—**Refd.** *Re* Duncombe's Will Trusts, Wrixon-Becher *v.* Faversham (Earl) (1932), 146 L. T. 412.

8017. *Add. Annotation :*—**Refd.** *Re* Duncombe's Will Trusts, Wrixon-Becher *v.* Faversham (Earl) (1932), 146 L. T. 412.

8022. *Add. Annotation :*—*As to* (1) *&* (2) **Overd.** *Re* Duncombe's Will Trusts, Wrixon-Becher *v.* Faversham (Earl), [1932] 1 Ch. 622.

8028. *Add. Annotation :*—**Consd.** *Re* Duncombe's Will Trusts, Wrixon-Becher *v.* Faversham (Earl) (1932), 146 L. T. 412.

8032a. —— ——.]—By his will dated May 22, 1879, testator bequeathed certain chattels to his exors. upon trust to " permit the same to go along with & be used & enjoyed so far as the rules of law & equity will permit by person or persons who under or by virtue of this my will shall for the time being be in the actual possession or entitled to the receipt of the rents & profits of the mansion & demesne of W. included in & settled by " a resettlement dated Oct. 31, 1874, but so as not to vest absolutely in any tenant in tail by purchase until he attained twenty-one years of age. The will also contained a bequest of residuary personal estate. The W. estate was not settled by testator's will but by the resettlement, & the words " this my will " in the bequest of chattels were therefore construed as " the resettlement." In the events which had happened testator's daughter, E., was on July 6, 1917, tenant for life in possession under the resettlement, & his nephew A. tenant in tail in remainder expectant on the event which happened of testator's three daughters dying without sons. By a disentailing deed of that date A. disentailed the property comprised in the resettlement with the consent of E. as protector of the settlement, & A. & another daughter of testator joined in conveying the property to E. in fee simple. E. survived testator's other daughters & died in 1930. In the events which had then happened testator's great nephew B. would, but for the disentailing deed, have then become tenant in tail in possession. He died soon afterwards. On a summons raising the question who on the death of E. became entitled to the chattels, LUXMOORE, J., who would apart from authority have held that the chattels fell into residue, decided on the authority of *Hogg* v. *Jones*, No. 8022, that B. became entitled to the chattels absolutely on E.'s death. On appeal :—*Held :* reversing the decision of LUXMOORE, J., but without deciding whether the chattels belonged to E. absolutely or fell into residue, as B. had never been in the physical possession of the mansion house & demesne of W., he did not become entitled to the chattels on E.'s death.—*Re* DUNCOMBE, WRIXON-BECHER *v.* FAVERSHAM, [1932] 1 Ch. 622; 101 L. J. Ch. 280; 146 L. T. 412, C. A.

PART XVI. SECT. 19, SUB-SECT. 1.

d i. ——.]—ROCHE *v.* ROCHE, [1930] 4 D. L. R. 310.—**CAN.**

PART XVI. SECT. 19, SUB-SECT. 3. —A.

7704 xxvi. ——.]—Testator by his will directed his trustee to divide the residue of his estate among his children, the share of each child to be vested in & paid to that child at twenty-one years of age. By a codicil testator directed his daughters' shares of residue to be sold & invested, & restricted the gift to his daughters to a life estate, with remainder to their respective children :—*Held :* the gift to the daughter contained in the will was an absolute gift, from which interests were carved out by the codicil in favour of the daughter's children, & as the daughter never had children, the absolute gift remained unaffected.—*Re* BISHOP, PUBLIC TRUSTEE *v.* BISHOP, [1928] S. A. S. R. 302.—**AUS.**

7704 xxvii. ——.]—By the first clause of the will in question herein the testatrix gave her " entire estate," with certain exceptions, to her brother. The will then went on to provide that on the death of her brother " the residue of my estate then remaining " should go to another named person, the testatrix' niece :—*Held :* the brother took an absolute estate, not merely a life interest, & the gift over to the niece was void.—*Re* ROBINSON ESTATE, [1930] 2 W. W. R. 609; [1931] 1 D. L. R. 289; 39 Man. L. R. 93; *revsg.*, [1930] 3 D. L. R. 820; 1 W. W. R. 935.—**CAN.**

PART XVI. SECT. 19, SUB-SECT. 3. —B.

sf. *Absolute gift followed by executory devise.*]—Where testator has made an absolute gift to a beneficiary, & in the succeeding sentence an executorydevise beginning with the words " & at his death if he has no lawful issue " followed by a sentence beginning, " & if he leaves a widow," the clear inference of testator's intention is that the beneficiary takes a fee simple.—*Re* STARK & TRIM, [1932] O. R. 263; 2 D. L. R. 603.—**CAN.**

PART XVI. SECT. 19, SUB-SECT. 6.—A. (a).

a. *affd.* [1928] 3 D. L. R. 773; 1928] S. C. R. 329.—**CAN.**

PART XVI. SECT. 19, SUB-SECT. 6.—A. (1) i.

q i. ——.]—*Re* BECKSTEAD, [1928] 4 D. L. R. 666; 62 O. L. R. 690.—**CAN.**

PART XVI. SECT. 19, SUB-SECT. 6.—B. (a).

a i. —— *Remainder to " representatives."*]—*Re* MORAN, CLAY *v.* EASTERN TRUST CO. (N. S.), [1929] 1 D. L. R. 592.—**CAN.**

PART XVI. SECT. 19, SUB-SECT. 6.—B. (b) iii.

7968 ii. ——.]—Testator made bequests of money to his three daughters, " these respective sums for my daughters & their heirs, the interest during their lives to be absolutely theirs & not subject to the control of their husbands; & after their decease, the principal shall be equally divided among their lawful issue as they shall severally attain the age of twenty-one years, & in case any of my daughters shall not marry or have any lawful issue, then at their decease such daughter's share shall be equally divided between her surviving sisters or their heirs " :—*Held :* each daughter took not a life interest merely but an absolute interest.—*Re* LLOYD, POWELL *v.* RICHARDSON (1929), 54 N. B. R. 336.—**CAN.**

PART XVI. SECT. 19, SUB-SECT. 8. —D.

q i. ——.]—Testator gave to his wife the whole of his estate " for her sole use as long as she may live," &, at her death, to nieces & nephews " what shall then remain over of my estate " : —*Held :* no more than a life estate was given, but the description " what shall then remain over of my estate " adequately implied a power on the part of the widow to encroach on capital; & what remained after her encroachments passed at her death under the will to his nephews & nieces. —STADDER *v.* CAN. BANK COMMERCE, [1929] 3 D. L. R. 651; 64 O. L. R. 69. —**CAN.**

PART XVI. SECT. 19, SUB-SECT. 8.—F. (b).

8164 i. *Whether first donee takes absolutely—" Residue of my estate that may be remaining over at her death."*]—A *mortis causa* settlement, by which testator conveyed his whole estate to his stepdaughter E., whom he also appointed his sole extrix., contained this provision : " In the event of T.

8217. *Add. Citation :*—140 L. T. 369.

8344. *Add. Annotation :*—**Reld.** *Re* Hayden, Pask *v.* Perry, [1931] 2 Ch. 333.

8385. *Add. Annotation :*—**Consd.** *Re* Hayden, Pask *v.* Perry, [1931] 2 Ch. 333.

8495. *Add. Annotations :*—**Consd.** *Re* Dale, Mayer *v.* Wood, [1931] 1 Ch. 357. **Apld.** *Re* Cossentine, Philp *v.* Wesleyan Methodist Local Preachers' Mutual Aid Assocn. (1932), 76 Sol. Jo. 512.

8511. *Add. Annotation :*—**Consd.** *Re* Dale, Mayer *v.* Wood, [1931] 1 Ch. 357.

8534a. ——.]—By his will testator gave all his residuary real & personal estate to his trustees upon trust to pay the rents, profits & income to his wife for life & after her death upon trusts for sale & to divide the proceeds into two equal portions, one to be paid to his son A. & the other on certain trusts for his daughter B. & her children as therein mentioned. By a codicil testator, after reciting that since the date of his will he had purchased a freehold house, devised the same on trust for his wife for life & on her death for E. for life. He then directed his trustees on these events happening to sell the house & "divide the proceeds thereof equally between the children of 'my son A. & my daughter B.'" A. was married, with one child, a son. B. was also married, & had six children. A.'s son having died, his legal personal representative was one of the defts. to the summons. One of B.'s children, a son, also died, & his legal personal representative was also a deft. :—*Held :* although on the authorities a gift to be equally divided between the children of A. & B. ought, in the absence of surrounding circumstances, to be construed as a gift in equal shares to the individual B. & the children of A., the construction must in each case depend on the particular context & all the surrounding circumstances; the gift in the codicil included all testator's grandchildren, both A.'s & his daughter B.'s children, & accordingly the proceeds of sale were divisible in sevenths.—*Re* DALE, MAYER *v.* WOOD, [1931] 1 Ch. 357 ; 100 L. J. Ch. 237 ; 145 L. T. 632.

Annotation :—**Consd.** *Re* Cossentine, Philp *v.* Wesleyan Methodist Local Preachers' Mutual Aid Assocn. (1932), 76 Sol. Jo. 512.

8538a. "**Divided between**"].—*Re* COSSENTINE, PHILP *v.* WESLEYAN METHODIST LOCAL PREACHERS' MUTUAL AID ASSOCN. (1932), 76 Sol. Jo. 512.

8552. *Add. Annotations :*—*As to* (2) **Folld.** *Re* Prosser, Prosser *v.* Griffith (1929), 167 L. T. Jo. 307. **Consd.** *Re* Dale, Mayer *v.* Wood, [1931] 1 Ch. 357 ; *Re* Cossentine, Philp *v.* Wesleyan Methodist Local Preachers' Mutual Aid Assocn. (1932), 76 Sol. Jo. 512.

8553a. ——.]—*Re* PROSSER, PROSSER *v.* GRIFFITH (1929), 167 L. T. Jo. 307 ; 67 L. Jo. 346 ; [1929] W. N. 85.

Annotation :—**Consd.** *Re* Dale, Mayer *v.* Wood, [1931] 1 Ch. 357.

8698a. —.]—Testator executed a codicil to his will whereby he revoked the appointment of an executor & appointed another in his place, revoked a specific devise & bequest & declared certain other trusts of the property comprised therein, gave certain directions to his trustees, bequeathed pecuniary legacies additional to those in his will & declared that the power of appointing new trustees should be exercised by the surviving & continuing trustees, & in other respects confirmed his will. On the same day he executed another codicil in almost identical terms, the only

surviving his sister, the said E., the revenue of the residue of my estate that may be remaining over at her death shall fall to the said T., but in liferent for his liferent use allenarly, & at his death to my own heirs whomsoever in fee." E. survived testator, & died leaving a general settlement by which she bequeathed her whole estate to her brother T., who survived her. At the date of her death she still retained in her possession, in their original forms, certain securities which had belonged to the testator, & a deposit receipt representing heritage belonging to him which she had sold. In a question between T., as his sister's universal legatee, & testator's heirs whomsoever regarding the right of these funds :—*Held :* the effect of the provision above quoted was to restrict the absolute gift originally made by testator to E. to a right of consumption of testator's estate during her lifetime ; &, accordingly, as the funds in question were at her death still capable of identification as part of testator's estate, they passed in terms of his settlement, as residue of his estate, in fee to his heirs whomsoever, subject to a right of liferent in favour of T.—HEAVYSIDE *v.* SMITH, [1929] S. C. (Ct. of Sess.) 68.—**SCOT.**

sb. *Whether first donee takes absolutely—Gift over of "what is left."*]—Testator gave to his wife certain properties, & at her death "what was left was to go over to" a granddaughter, & the will further directed that the wife was to have "the power to do what she likes with" the property, but what remained at the death of the wife was to go to the granddaughter :—*Held :* the wife did not take an absolute interest in the property, but took an interest for life with power to dispose of the whole or part of the corpus of the property, & that on the death of the wife the granddaughter took any part of the property undisposed of.—*Re* MCINTOSH, [1929] S. A. S. R. 21.—**AUS.**

PART XVI. SECT. 19, SUB-SECT. 9.—A. (b).

8200 ii. ——.]—*Re* PEARCE, PEARCE *v.* PEARCE, [1927] S. A. S. R. 397.—**AUS.**

8202 ii. —— —— ——.]—PUBLIC TRUSTEE *v.* WEIR, [1928] N. Z. L. R. 800.—**N.Z.**

sd. *Trustee to have "control" of estate—Whether amounting to beneficial interest.*]—Testator by his will appointed his wife sole executrix, &, after a direction in usual form to pay debts, provided as follows : "I give devise & bequeath all my property to my wife Elizabeth Emma to be held in trust by her for the benefit of our children. The said Elizabeth Emma to have control of the estate during her lifetime." Upon an originating summons for the interpretation of the will : —*Held :* the widow took no beneficial interest under the will & that she held the property only as trustee for the children.—*Re* WALLACE, WALLACE *v.* WALLACE, [1932] N. Z. L. R. 479.—**N.Z.**

PART XVI. SECT. 19, SUB-SECT. 10.—A. (a).

8256 x. ——.]—C. gave his real & personal estate to his wife, J. "for the use & benefit of herself & our dear daughter, E." & upon the death of his wife the whole of his estate was "to revert to my dear daughter, E. aforesaid for her sole use & benefit," & he appointed his wife sole executrix. Testator died in 1904 & E. died in 1911 :—*Held :* the gift created a joint tenancy, & J. took the whole gift by survivorship.—*Re* CHAMBERS (1925), 21 Tas. L. R. 26.—**AUS.**

PART XVI. SECT. 19, SUB-SECT. 10.—C. (a) ii.

8515 iv. ——.]—Testator, by his will, gave one-fourth of a section of land upon trust for his son G. to use, occupy, & enjoy for life, & as to the remaining three-fourths, upon similar trust for three other children. On the death of the children respectively, the will directed the trustees to sell that portion of the section in which each had a life interest, & to stand possessed of the proceeds from any such sale on trust "for all my grandchildren being issue" of the four children "who shall live to attain the age of twenty-one years share & share alike." There was also a direction to use the whole or part of the income for the benefit, etc., of all or any of the children of the four children respectively, whether of full age or not. The residue of the estate was given to the four children or such as should be alive at the testator's death share & share alike. Certain grandchildren died in the lifetime of the life tenants :—*Held :* there was a gift of the proceeds of each of the four parts to the children of each life tenant.—*Re* BAULDERSTONE, [1928] S. A. S. R. 262.—**AUS.**

PART XVI. SECT. 19, SUB-SECT. 10.—C. (b) i.

8545 ii. ——.]—*Re* CROSBY (1925), 21 Tas. L. R. 20.—**AUS.**

material difference being that a blank left in the amount of a legacy in one codicil was filled in in the other. The two codicils were attested by the same witnesses & placed in one envelope, which was sent to a bank for custody. The testator at a later date executed another, which he described as a "third" codicil to his will, & referred therein to his will & codicils:—*Held:* the two codicils of even date were duplicates of one & the same instrument, & that the legacies thereby given were substitutional & not cumulative. — *Re* MICHELL. THOMAS *v.* HOSKINS, [1929] 1 Ch. 552; 98 L. J. Ch. 197; 140 L. T. 686; 45 T. L. R. 243.

8836. *Add. Annotation:*—**Apld.** *Re* Hayden, Pask *v.* Perry, [1931] 2 Ch. 333.

8840. *Add. Annotation:*—**Consd.** *Re* Hayden, Pask *v.* Perry, [1931] 2 Ch. 333.

9015. *Add. Annotation:*—**Refd.** *Re* Alston-Roberts-Wests' Settled Estates, [1928] W. N. 41.

9016. *Add. Citations:*—*affd.* [1929] A. C. 318; 98 L. J. Ch. 251; 140 L. T. 444; 45 T. L. R. 208; 73 Sol. Jo. 92, H. L.

9071a. ——.]—Testator bequeathed a sum of stock to trustees, upon trust, during sixty years from his death, if the law should allow, or, if not, then during the lives of his two sons, & of the survivor, & twenty-one years after his death, to lay out the dividends in repairing & insuring the houses, etc., on his farms, called H. & S., it being his desire, that, upon no account, should the timber of such farms be cut down during the said term of sixty years, on pain that the person so cutting such timber should lose all interest in the said estates, as if he were dead, & upon trust to pay the surplus, if any, of the said dividends, equally among the persons for the time being in possession of the estates under his will, during the continuance of the said trust; & immediately after the expiration thereof, to transfer one moiety of the said stock to the person then in possession of the H. farm, such person being one of his sons, or a descendant of a son; but if not, then to the descendants of testator's brothers & sisters, & to pay the other moiety in like manner to the person in possession of the S. farm. Testator devised the H. farm to the same trustees, in fee, upon trust for his son J., for ninety-nine years, if he should so long live, remainder to the use of his first & other sons in tail, with divers remainders over. Testator devised the S. farm in like manner for the benefit of his son H. & his issue. J. & H., & their eldest sons, barred the entail in remainder in the said farms & resettled the same, &, the stock having been transferred into ct. under Trustee Relief Act, petitioned for the payment out of the fund to them:—*Held:* the fund being intended for the benefit of the sons & their issue, the period for the enjoyment of the capital had been accelerated by barring the entail, which had determined the restriction against cutting down timber.—*Re* COLSON'S TRUSTS (1853), Kay, 133; 2 Eq. Rep. 257; 23 L. J. Ch. 155; 22 L. T. O. S. 183; 2 W. R. 111; 69 E. R. 57.

9340. *Add. Annotation:*—**Distd.** Ganapathy Pillay *v.* Alamaloo, [1929] A. C. 462.

PART XVI. SECT. 20, SUB-SECT. 3.—A.

9060 v. ——.]—In case of a vested legacy payable at a future time, there is a complete severance of the legacy from the residue.—MANEKJI RUSTOMJI *v.* NANABHAI CURSETJI (1928), I. L. R. 53 Bom. 724.—**IND.**

PART XVI. SECT. 20, SUB-SECT. 3.—B. (b).

9101 v. ——.]—Bequests of a certain amount of stock in a co. to each of the nephews & nieces of testator "who shall be alive at the time of my death & who shall attain the age of 21 years":—*Held:* in view of other provisions of the will, to be vested subject only to being divested on death before attaining 21 years of age without leaving issue. Therefore, the nephews & nieces who were at the death of testator & still were under 21 years of age were entitled to the dividends on their shares paid between the date of the death of testator & the date of their attaining respectively the age of 21 years.—*Re* TEGLER ESTATE (Alta.), [1929] 1 D. L. R. 445; 1 W. W. R. 181.—**CAN.**

9101 vi. ——.]—SINGER *v.* SINGER, [1932] S. C. R. 44; 1 D. L. R. 284.—**CAN.**

9103 ix. ——.]—Testator's will, after providing for collection & payment of debts & for certain specific legacies, provided for sale of certain property, comprising the residue of his estate, & investment of the proceeds & payment of the interest for the maintenance of his wife & daughter A. until A., who, however, predeceased testator, attained 21 years of age, &, on A. attaining 21 years of age or dying, for payment of $400 of interest to his wife annually during her life, & then provided that "any money remaining after the payment of said $400 shall be equally divided among my children, the issue of any deceased child to take parent's share. On the death of my wife the whole of my property shall be divided between my children (the issue of any deceased child shall be entitled to parent's share) said division to be in equal shares":—*Held:* the estate of any deceased child of testator who died in the lifetime of testator's widow & left no issue him surviving was not entitled to share in the income from the said residue or in the corpus when divided on the widow's death.—BUSCH *v.* EASTERN TRUST CO., [1928] 3 D. L. R. 834; [1928] S. C. R. 479.—**CAN.**

PART XVI. SECT. 20, SUB-SECT. 3.—E. (a).

9178 i. ——.]—UNITED CHURCH *v.* MURPHY, [1931] 1 D. L. R. 452.—**CAN.**

PART XVI. SECT. 20, SUB-SECT. 3.—E. (c).

9269 xix. ——.]—*Held:* the postponement of the gift until after the life interest was merely for the convenience of the estate, & the estates of the children were therefore vested at testator's death.—*Re* MOORE, [1931] 4 D. L. R. 668; O. R. 454.—**CAN.**

9269 xx. ——.]—Testator's will directed that his trustee should stand possessed of $10,000 in trust, as to one moiety thereof for the sole & separate use of a daughter A. & as to the other moiety for a daughter I., & after the decease of said daughters or either of them the trustee to stand possessed of the share of the daughter so dying in trust to be divided between all the children of said daughter in equal shares on their respectively attaining the age of twenty-one years. The moiety held in trust for I. was fully & finally distributed. A. died in Jan. 1931. She had four children, Isabella, Annie, John, & Flora. Of these Isabella only survived her mother. Flora died in infancy & by will John left all his estate to his sister Isabella, Annie was survived by two children, C. & P.:—*Held:* there were no words of present gift in favour of Annie's children to be found in the will, & no language to interpret which could, consistently with the will, be made effective to vest any portion of the trust fund in them. The granddaughter Isabella therefore was entitled to all the trust fund still awaiting distribution.—*Re* YALE (1931), 44 B. C. R. 196.—**CAN.**

PART XVI. SECT. 20, SUB-SECT. 3.—F. (a).

9335 v. ——.]—Testator, after devising a life estate to his wife in a certain property, directed that upon her death same should be sold, & the proceeds, along with those from the sale of another property, invested, & the principal & interest divided equally between named grandchildren "or the survivors of them in equal shares as soon as the youngest surviving one shall have attained the age of twenty-one years":—*Held:* a grandchild dying before the youngest surviving grandchild attained the age of twenty-one years was not entitled to a share.—PUBLIC TRUSTEE *v.* BOWYEN, [1929] N. Z. L. R. 438.—**N.Z.**

PART XVI. SECT. 20, SUB-SECT. 3.—H. (c).

9473 iv. ——.]—ROACH *v.* ROACH, [1931] S. C. R. 512; 3 D. L. R. 374.—**CAN.**

PART XVI. SECT. 20, SUB-SECT. 3.—J. (b).

9508 vi. ——.]—A will provided for a legacy to each of four children, "to be paid to such of the beneficiaries as

9571a. —— ——.]—A will provided that at the expiration of twenty-one years from the death of testator a trust fund should be divided into five shares, that one of such shares should be paid to each of testator's four sons, & that, in the event of any of the sons dying before the period expired leaving a child or children, such child or children should take the share to which such son would have been entitled if he had survived, & in default of issue of any son, the share of such son should be payable to the surviving sons equally :—*Held :* the child of a son who died before the expiration of the period was entitled only to the one-fifth share which his father would have taken, & was not entitled to participate in the share of a son who died before the expiration of the period without issue.—GANAPATHY PILLAY *v.* ALAMALOO [1929] A. C. 462 ; 98 L. J. P. C. 109 ; 141 L. T. 43, P. C.

9615. *Add. Annotation :*—**Refd.** Parker *v.* Judkin, [1931] 1 Ch. 475.

9687. *Add. Annotation :*—**Refd.** *Re* Hayden, Pask *v.* Perry, [1931] 2 Ch. 333.

9849. *Add. Annotation :*—**Folld.** *Re* Graham, Graham *v.* Graham, [1929] 2 Ch. 127.

9978. *Add. Annotation :*—**Refd.** *Re* Hayden, Pask *v.* Perry, [1931] 2 Ch. 333.

9985. *Add. Annotation :*—*As to* (2) **Refd.** *Re* Hayden, Pask *v.* Perry, [1931] 2 Ch. 333.

10,013. *Add. Annotation :*—*Generally,* **Refd.** *Re* Hayden, Pask *v.* Perry, [1931] 2 Ch. 333.

10,020a. ——.]—In construing a devise of real estate to a class of persons " or their issue," the words " or their issue " must be read as words of limitation & not of substitution, the word " or " being construed to mean " &." Therefore a devise of real estate to be equally divided between the sisters of C. " or their issue " was held to confer upon each of the sisters of C., of whom there were three, an estate tail in one undivided third part.—*Re* HAYDEN, PASK *v.* PERRY, [1931] 2 Ch. 333 ; 100 L. J. Ch. 381 ; 146 L. T. 303.

10,165. *Add. Annotation :*—*As to* (1) **Distd.** *Re* Graham, Graham *v.* Graham, [1929] 2 Ch. 127.

10,175. *Add. Annotation :*—**Folld.** *Re* Graham, Graham *v.* Graham, [1929] 2 Ch. 127.

10,177. *Add. Annotation :*—**Folld.** *Re* Graham, Graham *v.* Graham, [1929] 2 Ch. 127.

10,205. *Add. Annotation :*—**Folld.** *Re* Graham, Graham *v.* Graham, [1929] 2 Ch. 127.

10,427. *Add. Annotation :*—**Folld.** Gilmour *v.* MacPhillamy, [1930] A. C. 712.

10,427a. —— ——.]—The word " survivors " in a will should be given its natural & ordinary meaning unless the context necessitates or justifies a departure therefrom ; it is not enough for that purpose that the natural & ordinary meaning produces what might appear to be a capricious result, or one not in accordance with a logical scheme of disposition. Testator directed that the income of the residue of his estate should be paid to his nine children in equal shares for their respective lives, provided that if any of his children should die without leaving issue, or widow or widower, the share of the child so dying should be equally divided among the survivors upon the same trusts & conditions ; & that after the death of any child his or her share in the residue should be held (subject to a provision for widows & widowers) for his or her children equally :—*Held :* upon the death of a child of testator unmarried the issue of a child who had died earlier were not entitled to participate.—GILMOUR *v.* MACPHILLAMY, [1930] A. C. 712 ; 143 L. T. 606 ; *sub nom. Re* MACPHILLAMY (CHARLES), GILMOUR *v.* MACPHILLAMY, 99 L. J. P. C. 199, P. C.

they shall become of age," with a gift over to the surviving children in the event of one or more of the children dying before becoming of age, & with a direction that the legacies should be paid out of the proceeds of the crop grown on a certain quarter section of land, which was devised to one L., with the direction to the exors. that the conveyance to her should be made upon completion of the payment of said legacies :—*Held :* said legacies must be looked upon as a provision made for the benefit of each child upon such child attaining his or her majority, & there could be no vesting of the legacies until the children, or the survivor of the children, should have reached the age of 21. In the meantime the legacies were merely contingent, & if the four children should die in their minority, the legacies, or such portion of them as should have accumulated, would revert to the devisee of the land.—*Re* BAIRD ESTATE, [1931] 1 W. W. R. 263 ; 2 D. L. R. 1002.—**CAN.**

PART XVI. SECT. 20, SUB-SECT. 3.—L.

1 i. —— *Bequest to such daughters " as shall be spinsters."*]—*Re* GOODGER (1925), 21 Tas. L. R. 17.—**AUS.**

PART XVI. SECT. 23, SUB-SECT. 3.—B.

9752 xxv. ——.]—*Re* MAYBELLE *v.* EQUITY TRUSTEES, EXECUTORS AGENCY CO., LTD., [1928] V. L. R. 6 ; [1928] Argus L. R. 65.—**AUS.**

PART XVI. SECT. 25, SUB-SECT. 2.—A. (c).

10,073 i. *Death in lifetime of tenant for life.*]—Testator dying in 1898 gave to his daughter-in-law the use of a property for life, with the right to the exors. to sell the property & to pay her during her life the interest on the proceeds of sale, & after her decease to divide the principal among the children born to her & his son," & in any event after the death to sell . . . such property . . . & to divide the proceeds among such children, the child or children of any such child or children of theirs deceased to receive in equal parts the portion of such deceased parents' share." The daughter-in-law, D., died in 1926, her husband having predeceased her. Five children were born of the marriage, three of whom survived D. Two sons predeceased her, each leaving a widow but no issue, & each dying intestate :—*Held :* at the death of testator in 1898 a vested estate was created in any child then born to his son & D. subject to be divested in part as other children were born ; & the widows, or personal representatives of the sons who died before D. would take the husband's share unless there was issue, in which case the issue could be substituted for the father ; the gift to the children of D. was determinable only in one event, their death leaving issue, an event which did not happen.—*Re* SMITH, [1928] 1 D. L. R. 179 ; 61 O. L. R. 412.—**CAN.**

10,073 ii. ——.]—*Re* MCDOWELL ESTATE, [1931] 2 W. W. R. 574.—**CAN.**

PART XVI. SECT. 27, SUB-SECT. 2.—A.

10,267 ii. —.]—*Re* GORDON, STOTHART *v.* WESTON (1931), 3 M. P. R. 156.—**CAN.**

PART XVI. SECT. 27, SUB-SECT. 2.—C. (b).

10,355 i. *Contrary intention of testator.*]—*Re* WALKER, CROKER *v.* PENNY, [1928] S. R. Q. 163.—**AUS.**

PART XVI. SECT. 27, SUB-SECT. 2.—E. (b) i.

10,401 x. —— ——.]—Testator by his will directed his trustees to distribute the income of his residuary estate amongst his children in equal shares for the term of their respective lives provided that if any of his children should die without leaving lawful issue or widow or widower living at the date of death of such child the share of the income of the child so dying " shall be equally divided amongst the survivors upon the same trusts & conditions . . ." :—*Held :* the word " survivors " must be interpreted in its ordinary meaning & the share of a child so dying must be distributed only amongst the actual brothers & sisters then surviving such child.—MACPHILLAMY *v.* FOX (1928), 29 S. R. N. S. W. 249 ; 46 N. S. W. W. N. 85.—**AUS.**

PART XVI. SECT. 28, SUB-SECT. 1.

sp. *Trust for " my other child "—Meaning of " other."*]—Testator, by his will, settled certain property upon his

10,752. *Add. Annotation :*—**Consd.** *Re* Mansel, Smith *v.* Mansel, [1930] 1 Ch. 352.

10,764. *Add. Annotation :*—**Consd.** *Re* Mansel, Smith *v.* Mansel, [1930] 1 Ch. 352.

10,766. *Add. Annotation :*—**Consd.** *Re* Mansel, Smith *v.* Mansel, [1930] 1 Ch. 352.

10,767. *Add. Annotation :*—**Folld.** *Re* Mansel, Smith *v.* Mansel, [1930] 1 Ch. 352.

10,767a. ——— ———.]—Testatrix by her will directed that her residuary estate should be held by her trustees upon trust in four equal shares for her four children for life with remainder over. By the third & fourth codicils to her will testatrix declared that two sums, amounting in all to £16,120, which she had advanced to her son, T. M., should be deducted from his share, & that his share should be less in amount than the shares of her other children by that sum. The value of the estate of the testatrix was easily ascertainable as at the date of her death :—*Held :* for the purpose of the division of the actual income of the residuary trust estate of testatrix, pending the appropriation thereof, the £16,120, ought to be added for computation to the capital of the estate, valued as at the death of the testatrix, & deducted from T. M.'s share in the aggregate amount of capital so arrived at, & that the annual income ought to be divided between her four children & their respective issue in the proportions of their respective shares *per stirpes* of capital so arrived at.—*Re* MANSEL, SMITH *v.* MANSEL, [1930] 1 Ch. 352 ; 99 L. J. Ch. 128 ; 142 L. T. 281.

10,768. *Add. Annotation :*—**Expld.** *Re* Mansel, Smith *v.* Mansel, [1930] 1 Ch. 352.

10,769. *Add. Annotation :*—**Consd.** *Re* Mansel, Smith *v.* Mansel, [1930] 1 Ch. 352.

10,770. *Add. Annotation :*—**Consd.** *Re* Mansel, Smith *v.* Mansel, [1930] 1 Ch. 352.

10,771. *Add. Annotation :*—**Expld.** *Re* Mansel, Smith *v.* Mansel, [1930] 1 Ch. 352.

10,772. *Add. Annotation :*—**Consd.** *Re* Mansel, Smith *v.* Mansel, [1930] 1 Ch. 352.

10,943. *Add. Annotation :*—**Refd.** Ganapathy Pillay *v.* Alamaloo, [1929] A. C. 462.

10,983. *Add. Annotation :*—**Refd.** *Re* Graham, Graham *v.* Graham, [1929] 2 Ch. 127.

children, & further directed as follows : " & if any child of mine shall die without leaving a child, who being a son, shall attain the age of twenty-one years, or being a daughter, shall attain that age or marry, then the share in the settled fund, whether original or accruing, of any such child of mine shall be held in trust for my other child in such shares as shall correspond with their respective original shares." One of testator's sons died childless ; afterwards, another died, leaving one child, who attained twenty-one years of age ; after, a third son died childless :—*Held :* the use of the word " other " in the accruer clause did not import that the child, or children, referred to therein should survive the point at which the accruer clause came into operation. Upon the death of the third son, the effect of the accruer clause upon his share was to require its division among all such children, or their representatives, of testator, as has not already died without leaving any child who attained twenty-one years of age, or who being a daughter, married.—MURPHY *v.* PAXTON (1930), Argus L. R. 389 ; 4 A. L. J. 236.—**AUS.**

PART XVI. SECT. 31, SUB-SECT. 4.

10,720 i. *Whether release of personal liability.*]—Testator devised all his real & bequeathed all his residuary personal estate to his trustees in trust to sell the same & divide the proceeds into eleven parts, & pay one of such parts to his widow & each of his ten children. The will proceeded : " I declare that the share of any child of mine in my residuary estate shall be subject to deduction, therefrom of any sum or sums owing by her or him to me at my death or any sum or sums payable by me upon any guarantee made or to be made by me or my exors. on her or his behalf." Testator had guaranteed the overdrawn bank account of R. one of his children, & at the time of testator's death this account was overdrawn to the extent of £1,396 0*s.* 10*d.* The exors. of testator paid off this sum to the bank in accordance with the said guarantee :—*Held :* the declaration operated as a gift to R. of the whole of his indebtedness to the estate.—*In the Will of* ANTHONY HEADLAM (1925), 21 Tas. L. R. 27.—**AUS.**

PART XVI. SECT. 31, SUB-SECT. 5. —A.

n i. — — *Payment by way of income.*] *Held :* the quarterly payments having been made not as permanent provision for the daughter, but in lieu of the income which would have arisen from the settlement upon her of portion of the testator's capital estate, they did not fall within the hotchpot provisions of the will.—*Re* CLARKE ; CLARKE *v.* STURT, [1929] V. L. R. 249 ; [1929] Argus L. R. 219.—**AUS.**

PART XVII.

b (p. 1289) **i.** —— *Real property situated outside State.*]—Testatrix died leaving real estate in New South Wales & also property in Queensland :—*Held :* the authority of the ct. to make an order did not, & could not, directly or indirectly be made to extend to the real property of the testatrix situated in New South Wales.—*Re* OSBORNE, [1928] S. R. Q. 129.—**AUS.**

b (p. 1289) **ii.** — — —— *Real property in New Zealand—Testator domiciled abroad.*]—Testator died domiciled in Scotland, leaving a wife & a daughter resident in New Zealand, & by his will gave all his estate, including land in New Zealand, to a niece. By the law of Scotland the wife became entitled to a sum of over £1,000 out of his estate & the daughter to a sum of £200. On an application by the wife & the daughter under Family Protection Act, 1908, s. 33, for further provision out of the land situated in New Zealand :—*Held :* (1) the validity of a will affecting an immovable, such as land, & the rights of succession thereto, including testator's capacity to deal with his whole estate so far as consisting of such land, is governed by the *lex situs* & not by the law of domicil ; consequently Family Protection Act, 1908, applies to a will so far as it affects land situated in New Zealand, whether testator be domiciled in New Zealand or elsewhere, & an order in respect of such land may be made under that Act in favour of those who are entitled to further provision out of testator's estate ; (2) testator, in failing to make any provision in his will additional to that which the widow (who died after testator but before the hearing of the application) became entitled to by Scottish law, had not failed to make adequate provision for his wife's maintenance & support ; & as to the daughter, who was in delicate health & able to do light work only, & who was possessed of resources received subsequent to the death of testator, such improved means should be taken into account in disposing of the application, & an order should be made providing a sum of £1,000 for her out of the immovable situate in New Zealand, additional to what she took by Scottish law.—*Re* BUTCHART, BUTCHART *v.* BUTCHART, [1932] N. Z. L. R. 125.—**N.Z.**

f i. —— —— *To redraw will.*]—On an application for relief under Testator's Family Maintenance Act, R. S. B. C. 1924, c. 256, the ct. has no power to redraw the will & dispose of the estate as it may think right & just.—*Re* ELWORTHY ESTATE, ELWORTHY & HALE, [1928] 2 D. L. R. 421 ; [1928] 1 W. W. R. 737 ; 39 B. C. R. 474.—**CAN.**

g i. ——.]—Testator's Family Maintenance Act, R. S. B. C., 1924, was not intended to authorise the ct. to make a new will for testator, but only to alter the will in so far as might be necessary for the proper maintenance of testator's wife, husband or children. It is always a question of fact in each case whether or not an order under the Act should be made ; & with respect to children the Act refers only to children for whose maintenance at the time of the testator's death no adequate means of support are available. If the children are at least as well established in life as testator was in his or her lifetime, the Act should not be applied where the surviving parent is the beneficiary under the will. The discretion which is given the ct. to apply the Act where it thinks it just & equitable in the circumstances to do so is not judicially exercised unless the object, intent & spirit of the Act are observed. If a higher ct. is convinced that the judge of first instance did not take a proper view as to the scope of, & the application of the powers conferred by, the Act, it may & should interfere. If, too, a higher ct. is satisfied that the facts of the particular case are such that it was not intended that the powers conferred by the Act should be exercised, it may intervene. In such cases the order made would be based on a wrong principle. If, too, a higher ct. is convinced that on all the facts the judgment under appeal is clearly wrong, it should be set aside.—WALKER *v.* MCDERMOTT, [1930] 1 W. W. R. 332 ; *sub nom.* MCDERMOTT *v.* WALKER, [1930] 1 D. L. R. 945 ; 42 B. C. R. 184.—**CAN.**

h i. —— ——.]—Under Testator's Family Maintenance Act, R. S. B. C., 1924, the provision, which the ct. is authorised to make in the circumstances stated in sect. 3, is " such pro-

vision as the ct. thinks adequate, just & equitable." The conditions upon which this authority rests are that the person whose estate is in question has died leaving a will, & has not made, by that will, in the opinion of the judge, adequate provision for the "proper maintenance & support" of the wife, husband or children, as the case may be, on whose behalf the application is made. What constitutes "proper maintenance & support" is a question to be determined with reference to a variety of circumstances. It cannot be limited to the bare necessities of existence. For the purpose of arriving at a conclusion, the ct., on whom devolves the responsibility of giving effect to the statute, would naturally proceed from the point of view of the judicious father of a family seeking to discharge both his marital & his parental duty; & would of course consider the situation of the child, wife or husband, & the standard of living to which, having regard to this & the other circumstances, reference ought to be had. If the ct. comes to the decision that adequate provision has not been made, then the ct. must consider what provision would be not only adequate, but just & equitable also; & in exercising its judgment upon this, the pecuniary magnitude of the estate & the situation of others having claims upon testator, must be taken into account. Applying these principles to the circumstances of this case, where the only daughter of the deceased brought an application under the Act for an order directed against his second wife, sole beneficiary under the will:—*Held:* the judge was right in deciding that the widow should be called upon to forego part of her annual income in order to make some provision for the appct.—WALKER *v.* MCDERMOTT, [1931] S. C. R. 94; [1931] 1 D. L. R. 662.—**CAN.**

h ii. —— ——.]—*Re* HOFFMAN, [1931] 1 W. W. R. 293; 43 B. C. R. 463.—**CAN.**

k i. —— ——.]—On an application under Family Protection Act:—*Held:* taking into consideration the value of testator's estate, & the facts that of the appcts. three were adult sons capable of maintaining themselves, & the fourth was a daughter who was being maintained by her husband, & that the daughter benefiting under the will had cared for testator through a long illness & was left with her invalid mother to care for, the claims of said daughter were paramount, & what was left to her was none too much, & the application should be refused.—*Re* CAVANAGH, [1930] N. Z. L. R. 376.—**N.Z.**

l i. —— ——.]—Where provision was made in a will for the maintenance of two of testator's children J. & M., &, further, special provision was made for the sharing of the estate by J. & M., & no provision was made for a third child, W., born after the date of the will:—*Held:* the power of the ct. was limited to ordinary "maintenance & support," &, on the facts, that one-third of the net income from the estate from the date of the marriage of the testator's widow was a reasonable allowance.—*In the Estate of* LADE (1925), 21 Tas. L. R. 13.—**AUS.**

l ii. —— —— *Power to rescind or alter order—Whether increase in benefit authorised.*]—The power conferred upon the ct. by Testator's Family Maintenance & Guardianship of Infants Act, 1916, s. 6 (4), to "rescind or alter" any order making provision under that Act, does not extend to authorising an increase to any benefit that has been awarded to an appct. upon an original application.—*Re* MOLLOY (1928), 28 S. R. N. S. W. 546; 45 N. S. W. W. N. 142.—**AUS.**

l iii. —— ——.]—On an application by a widow for relief under Testator's Family Maintenance Act the ct. should not attempt to make a new will or speculate as to how the estate might have been better divided, but should merely determine whether in view of the widow's needs & the property left by the testator he has made adequate provision for her proper maintenance & support. Its duty is to place itself, in all respects, as far as possible, in the position of the testator, & to consider whether or not, having regard to all existing facts & surrounding circumstances, the testator has been guilty of a breach of the moral duty which a just, not a loving, husband owes his wife, &, if it finds that he has been so guilty, to make such an order as appears to be sufficient, but no more than sufficient, to repair it.—*Re* FERGUSON ESTATE, *Re* TESTATOR'S FAMILY MAINTENANCE ACT, [1929] 2 W. W. R. 372; 4 D. L. R. 208.—**CAN.**

l iv. —— —— *Power to give lump sum.*]—Lump sums should only be given when periodical payments will seriously embarrass the exors. & unduly prolong the distribution & winding up of the estate.—*Re* MCCAFFERY, [1931] 4 D. L. R. 930; O. R. 512.—**CAN.**

n i. —— *Extension of time for application under Act—When allowed.*]—Where there has been long & inexcusable delay an application under Family Protection Act, 1908, for extension in time will be refused unless it clearly appears that to refuse it would in the circumstances result in manifest injustice.—SHEEHAN *v.* PUBLIC TRUSTEE, [1930] N. Z. L. R. 1.—**N.Z.**

widow re-married, & thereupon, the exors. applied for the rescission or variation by reduction of the ct.'s order:—*Held:* (1) the order was not unappealable merely because stated to be until the further order of the ct.; (2) not having been appealed against, the effect of the order was to preclude the ct. from considering whether it was beyond the power of the ct. to make provision for the maintenance of a testator's widow by a series of periodical payments extending until after her re-marriage; & (3) considering the matter as one of discretion only, the re-marriage of the widow did not of itself constitute sufficient reason for the rescission, variation, or suspension of the order.—*Re* ROBERT COLLIN (1929), 29 S. R. N. S. W. 548; 46 N. S. W. W. N. 169.—**AUS.**

r ii. —— —— —— *In receipt of maintenance under separation deed.*]—A wife who was compelled in 1912 by her husband's misconduct to leave him agreed to take from him £250 *per annum* for her maintenance. The husband died in 1927, leaving an estate of £30,000 & providing a legacy for his wife of £250 *per annum*:—*Held:* as the wife had agreed to accept & had accepted £250 *per annum* for her maintenance during 15 years she could not be said to have been left "without adequate provision" for her maintenance.—*Re* PHILLIPS (1929), 29 S. R. N. S. W. 191; 46 N. S. W. W. N. 22.—**AUS.**

t i. —— —— *Children domiciled outside jurisdiction.*] — Benefits under Testator's Family Maintenance Act, 1916, are available to children domiciled outside the jurisdiction of the ct.—*Re* DONNELLY (1927), 28 S. R. N. S. W. 34; 45 N. S. W. W. N. 5.—**AUS.**

c (p. 1290) i. —— —— *Adult son—Incapacitated from following his trade by disease contracted in testator's employ.*]—*In the Will of* JOLLIFFE, [1929] S. R. (Q.) 189.—**AUS.**

c (p. 1290) ii. —— —— —— *Promise to bequeath land—Improvements made on faith of promise.*]—*In the Will of* HUGHES (1930), S. R. (Q.) 329.—**AUS.**

e (p. 1290) i. —— ——.]—FRENEY *v.* PERPETUAL TRUSTEES, EXECUTORS & AGENCY CO. OF TASMANIA, LTD. (1925), 21 Tas. L. R. 6.—**AUS.**

e (p. 1290) ii. —— *Upon what property allowance charged.*]—An order was made increasing a weekly sum bequeathed by testator to his widow. Testator's property consisted almost wholly of real estate. Testator, by his will, in addition to the weekly allowance to his widow, had bequeathed a weekly sum to a daughter & also to a stranger in blood. The balance of the income was given to a grandson of testator for life, & the real estate was directed to be held in trust after his death for his child or children then living, with gifts over if there were no such child:—*Held:* in fixing the burden of the provision made by the order the whole of testator's real estate was to be regarded as one property settled successively within sect. 5 (2) of the Act.—*Re* SMITH, [1928] S. A. S. R. 524.—**AUS.**

e (p. 1290) iii. —— *Evidence admissible against applicant.*]—Statements by testator having reference to particular terms of his will & testifying directly, & not merely by inference, to the state of his mind which prompted the making of his will in the form in which it is, are admissible against an applicant for maintenance under Testator's Family Maintenance & Guardianship of Infants Act, 1916.—*Re* HALL (1929), 30 S. R. N. S. W. 165; 47 N. S. W. W. N. 65.—**AUS.**

e (p. 1290) iv. —— *Time for making application—Extension of time—Before distribution—Transfer of part of estate to beneficiary trustee.*]—*Held:* to amount to partial distribution within Family Protection Act, 1908, s. 33, & application for extension therefore refused.—PUBLIC TRUSTEE *v.* KIDD, [1931] N. Z. L. R. 1.—**N.Z.**

e (p. 1290) v. —— —— —— *Effect of delay.*]—An application for an order that the time limited for making an application be extended was made some fifteen years after the death of testator. At the time of the death the estate was insolvent, but at the time of the application was worth some £4,000. By the will the widow took a life estate, & thereafter her two children took also life estates. At the date of the application the widow had assets of her own worth £3,700, her daughter was earning £103 *per annum* as a postmistress, & the son had saved £200:—*Held:* the delay had been great & had not been satisfactorily explained. Furthermore, the case was not one where, if an extension of time were granted, an order for further provision out of the estate could properly be made in favour of any of pltfs.—STEPHENS *v.* BARLTROP, [1931] N. Z. L. R. 7.—**N.Z.**

e (p. 1290) vi. —— *Costs—Whether payable out of estate.*]—WALKER *v.* MCDERMOTT (No. 2), [1930] 1 W. W. R. 845; *sub nom.* MCDERMOTT *v.* WALKER, [1930] 2 D. L. R. 413; 42 B. C. R. 354.—**CAN.**

e vii. —— *Time for making application.*]—An application under sect. 3 of Testator's Family Maintenance Act, 1916, is not out of time if, within the time prescribed by sect. 5 of the Act, an appropriate notice of motion is in fact filed & the exor. of the will is informed by or on behalf of appct. of that fact; & accordingly it is not necessary that the application should be brought on for hearing before the expiration of twelve months from the grant of probate of testator's will, nor that the return date mentioned in the notice of motion should be within that twelve month period.—*Re* BUCKETT (J.) (1931), 48 N. S. W. W. N. 83.—**AUS.**

WORK AND LABOUR.

Part I.—Contracts for Work and Labour.

29. *Add. Annotation :*—**Consd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

30. *Add. Annotation :*—**Consd.** Sagar *v.* Ridehalgh & Son, Ltd., [1931] 1 Ch. 310.

39. *Add. Annotation :*—**Consd.** Sagar *v.* Ridehalgh & Son, Ltd., (1930) 144 L. T. 480.

58. *Add. Annotation :*—**Consd.** Sagar *v.* Ridehalgh, H., & Son, Ltd., [1931] 1 Ch. 310.

Part II.—Statutory Determination of Minimum Rates of Wages.

63. *Add. Annotation :*—**Folld.** Pockney *v.* Atkinson (1929), 45 T. L. R. 639.

63a. ——.]—An employer engaged a worker in agriculture for a period from Dec. 4, 1927, to Nov. 23, 1928, & agreed to pay him on the completion of that term a lump sum which, with his board & lodging, was equivalent to the minimum rate of wages prescribed under the Agricultural Wages (Regulation) Act, 1924 (c. 37). Before the completion of the term, the worker refused to obey a lawful order of the employer & left the employment without notice :—*Held :* the Agricultural Wages (Regulation) Act, 1924 (c. 37), did not prevent the making of an agreement for employment for a fixed term with payment of a lump sum equivalent to the prescribed rate at the end of the term, & the Act did not entitle a worker who had broken his contract to demand any wages for the period during which he was in fact employed.—POCKNEY *v.* ATKINSON, [1930] 1 K. B. 197 ; 99 L. J. K. B. 42 ; 142 L. T. 135 ; 94 J. P. 15 ; 45 T. L. R. 639 ; 27 L. G. R. 645, D. C.

64. Add the following paragraph :—

By an order of the Agricultural Wages Board, embodying orders of a wages committee : " Where a whole-time male worker is employed by the week or any longer period & the hours of work agreed between the worker & the employer in any week (excluding hours of overtime employment) are less than 50 in summer & 48 in winter, the rate of wages applicable to that worker shall be such as to secure to the worker the wages which would have been payable if the agreed hours had been 50 in summer or 48 in winter as the case may be." Applts. employed one T. as an agricultural labourer by the week of 50 hours at 30*s.* per week. On Good Friday, T., according to custom, was not required by the appellants to work, & in consequence they refused at the end of the week to pay him his full weekly wages, deducting the portion appropriate to that day, but gave him, according to their custom, a small bonus instead :—*Held :* the above order was *intra vires*, & that T. was entitled to be paid 30*s.* for the Good Friday week.—SEABROOK & SONS, LTD. *v.* JONES, [1929]

PART I. SECT. 4, SUB-SECT. 1.

n i. —— *Work done at request of defendant.*]—An essential averment in a claim for work & labour is that the work was done at the request of deft.—MCDONALD *v.* WOLVERTON, [1932] 2 W. W. R. 354 ; 3 D. L. R. 317.—**CAN.**

ss. *Lease of land for term of years—Agreement for payment for summer-fallowing on cancellation of lease.*]—MANTEI *v.* HIMOUR, [1928] 3 W. W. R. 390.—**CAN.**

PART I. SECT. 4, SUB-SECT. 2.—A.

171 v. —— *Contract completed imperfectly.*]—Where there was a contract to do certain work, *e.g.* the summer-fallowing of a certain number of acres, & the work has been done, the contract price cannot be reduced or abated on the ground that the work was done improperly unless there is evidence of specific damage.—WAGNER *v.* HEIDT, [1931] 1 W. W. R. 625 ; 2 D. L. R. 680.—**CAN.**

d i. —— *Evidence of value of services.*]—In an action brought on a *quantum meruit* for work done & services rendered evidence was given of an agreement, not in writing, whereby deft. agreed to pay a certain weekly salary & also a sum of £200 at the end of two years. It was also proved that deft. had paid the weekly salary but had refused to pay the sum of £200 :—*Held :* although the parol agreement was one to which the provisions of Stat. Frauds were applicable, it was nevertheless admissible as evidence of the value of pltf.'s services.—WARD *v.* GRIFFITHS BROS., LTD. (1928), 28 S. R. N. S. W. 425 ; 45 N. S. W. W. N. 130.—**AUS.**

d ii. ——.]—Where there is a contract to do specified work for a fixed sum, with a proviso for payment of proportionate amounts, equal to eighty per cent. of the fixed sum, as the work is done, & the balance of twenty per cent. in thirty days after completion & acceptance, completion is a condition precedent to the right to payment, & where the work is not completed there is no right to recover for the portion done as upon a *quantum meruit.*]—SHERLOCK *v.* POWELL (1899), 26 A. R. 407.—**CAN.**

d iii. ——.]—Where there is an entire contract for work & labour containing a provision for monthly payments not exceeding 75 per cent. of the work done, which is abandoned by the party performing the work & labour, he is nevertheless entitled to sue for 75 per cent. of the value of the work performed before abandonment.—MCLACHLAN *v.* NOURSE (1928), S. A. S. R. 230.—**AUS.**

sb. *Contract for logging & cutting timber.*]—MIKKELSEN *v.* DUFF, [1930] 1 D. L. R. 760.—**CAN.**

sc. *Agreement to pay bonus on estimated saving in cost of production—Depreciation of plant.*]—A lumber co. agreed with the superintendent of its logging operations to pay him as a bonus to his salary such amount as he could save the co. in cutting & hauling poles on the net cost of production, taking as a basis the figures set out in the schedule of the agreement :—*Held :* depreciation of the plant & equipment used in the operations was a proper item to include in the cost of production.—AICKIN *v.* BAXTER & Co., [1928] 3 W. W. R. 142.—**CAN.**

sd. *Necessary repairs to automobile in excess of order.*]—An automobile, deft. co.'s property, was sent to pltf. to have certain repairs made. Pltf. at the same time made certain other repairs which he thought necessary & for which he claimed payment. Evidence was given to show that on previous occasions repairs of a similar character were ordered & other work done, & that the accounts rendered were paid without question :—*Held :* pltf. entitled to recover.—CALKIN *v.* WOLFVILLE FRUIT CO. (1927), 59 N. S. R. 499.—**CAN.**

PART I. SECT. 4, SUB-SECT. 3.

56 iii. ——.]—SIMPLEX MACHINE CO. *v.* MCLELLAN, MCFEELY & CO., [1928] 3 W. W. R. 255.—**CAN.**

56 iv. ——.]—COOPER *v.* PENNINGTON, [1928] 2 D. L. R. 878.—**CAN.**

1 K. B. 335; 98 L. J. K. B. 169; 140 L. T. 497; 93 J. P. 47; 45 T. L. R. 139; 72 Sol. Jo. 874; 27 L. G. R. 47; 28 Cox, C. C. 586, D. C.

64a. **Breach of contract by worker—Whether entitled to wages for period employed.**]—POCKNEY *v.* ATKINSON, No. 63a, *ante*.

67. *Add. Annotation :—Generally,* **Refd.** Pockney *v.* Atkinson, [1930] 1 K. B. 197.

68. *Add. Citation :*—28 Cox, C. C. 518.
Add. Annotation :—**Consd.** Hughes *v.* Davies (1929), 94 J. P. 48.

68a. —— **Deduction in respect of washing & mending.**]—Resps. employed a worker in agriculture upon a yearly hiring under which the employers did his washing & mending for two shillings a week, which was reckoned as part of his wages. By the orders made for that county under Agricultural Wages (Regulation) Act, 1924 (c. 37), washing & mending were not benefits or advantages which might be reckoned as part payment of wages in lieu of payment in cash. The justices held that no offence had been committed, & alternatively that it was trivial. They did not convict, & made no order under sect. 7 (3) of the Act for payment of the arrears :—*Held :* (1) there was no material on which the justices could find that no offence was committed, that which was done being the very thing prohibited; (2) they were not entitled to find that the offence was trivial; the question was not the *quantum* of money involved, but the nature of what was done, which was something entirely subversive of the Act; (3) in any event sect. 7 (3) was imperative in its terms, & the justices were bound to make an order for payment of the arrears due.—HUGHES *v.* DAVIES (1929), 94 J. P. 48; 28 L. G. R. 11, D. C.

70a. —— **Duty of justices—To make order for payment of arrears—Although amount trivial.**]—HUGHES *v.* DAVIES, No. 68a, *ante*.

71. *Add. Annotation :*—**Consd.** R. *v.* Minister of Labour, *Ex p.* National Trade Defence Assocn. (1931), 95 J. P. 105.

72. *Add. Annotation :*—**Consd.** R. *v.* Minister of Labour, *Ex p.* National Trade Defence Assocn. (1931), 95 J. P. 105.

73. *Add. Citations :—affd.* [1929] A. C. 496; 98 L. J. K. B. 373; 140 L. T. 673; 45 T. L. R. 306; 27 L. G. R. 249, H. L.

74a. **Power of Minister to define "trade"—Validity of Order.**]—By Trade Boards Act, 1918 (c. 32), s. 1, Parliament has given the power of defining or specifying a definite trade for which he may make a special order to the Minister of Labour, with this qualification, that there must be some subject-matter which can be reasonably described as a trade before its exact limits are defined. The Minister may define a trade by exclusion as well as by description. A special order does not exceed the scope of the very extensive powers given to the Minister & is not bad, on the grounds (1) that it defines a trade by reference to the place where it is carried on; or (2) that it includes a number of occupations or vocations whose collocation is fortuitous except for the fact that all the work is done in or in connection with a trading establishment; or (3) that an employee by its terms might be within or outside the scope of the Acts according to the particular part of the premises on which at a particular moment he might be.—R. *v.* MINISTER OF LABOUR, *Ex p.* NATIONAL TRADE DEFENCE ASSOCIATION, *Ex p.* INCORPORATED ASSOCIATION OF PURVEYORS OF LIGHT REFRESHMENTS, *Ex p.* STRAND HOTEL, LTD., [1932] 1 K. B. 1; 100 L. J. K. B. 540; 145 L. T. 341; 95 J. P. 105; 47 T. L. R. 364; 29 L. G. R. 363, C. A.

Part IV.—Unemployment Insurance.

94. *Add. Annotation :*—**Consd.** *Re* Blackpool Corpn. & Barritt, etc. (1931), 95 J. P. 103.

108. *Add. Annotation :*—**Refd.** *Re* Blackpool Corpn. & Barritt, etc. (1931), 95 J. P. 103.

111. *Add. Annotation :*—**Refd.** *Re* Blackpool Corpn. & Barritt, etc. (1931), 95 J. P. 103.

112. *Add. Annotation :*—**Refd.** *Re* Blackpool Corpn. & Barritt, etc. (1931), 95 J. P. 103.

117. *Add. Annotation :*—**Consd.** *Re* Blackpoo Corpn. & Barritt, etc. (1931). 95 J. P. 103.

118a. —— **Employees of Eton College Stores.**]—*Re* ETON COLLEGE STORES (1931), 47 T. L. R. 306; *sub nom. Re* MINISTER OF LABOUR, *Re* ETON SCHOOL STORES & PARKER, *Re* ETON SCHOOL STORES & BRAMPTON, *Re* ETON SCHOOL STORES & MITCHELL, *Re* ETON SCHOOL STORES & ADDAWAY, *Re* LONDON

PART II. SECT. 3.

b i. —— *To occupations—Exclusion of professions — Pharmacy.*]—DAVENPORT *v.* MCNIVEN, [1930] 2 W. W. R. 289; 4 D. L. R. 386; 42 B. C. R. 468; *sg.*, S. C. *sub nom. Re* MALE MINIMUM WAGE ACT (B. C.), [1929] 4 D. L. R. 1034.—**CAN.**

b ii. —— *Appeal from Board.*]—The Male Minimum Wage Board made an order for a minimum wage to be paid to licentiates of pharmacy. On an appeal for rescission or review the judge dismissed the application to rescind, but ordered that the appeal should be heard as a rehearing *de novo :—Held :* the whole appeal brought by petition to the ct. below must be disposed of before an appeal can be taken to the Ct. of Appeal.—MERRYFIELD & DACK *v.* MALE MINIMUM WAGE BOARD, [1931] 44 B. C. R. 380.—**CAN.**

se. *Industrial Arbitration Act—Meaning of "industry."*]—PARKER & SON *v.* AMALGAMATED SOCIETY OF ENGINEERS (1926), 29 W. A. L. R. 90.—**AUS.**

PART IV. SECT. 1, SUB-SECT. 2.—A.

sf. *Laundresses in army laundry.*]—An army laundry was established for the purpose of washing the clothing of the members of the forces in the Dublin area. The cleansing of army blankets, sheets & the like was also carried on. A number of laundresses, including M., who was a "hand washer," & A., a "drier," were employed for this purpose. The laundry was within the precincts of the army barracks, but was situated in a separate building & quite distinct from the building where the soldiers resided. Although the laundry was not conducted with a view to profit, the facts did not exclude the possibility of a profit being made :—*Held :* M. & A. were not employed in domestic service, as they had all the characteristics of ordinary industrial workers; their service was entirely impersonal; & their work, in the circumstances in which it was carried on, was of a purely industrial character.—MINISTER FOR INDUSTRY & COMMERCE *v.* STEWART & LOWRY, [1930] I. R. 112.—**IR.**

COUNTY COUNCIL & EDWARDS, *Re* LONDON COUNTY COUNCIL & SATCHELL, 75 Sol. Jo. 247.

118b. —— **Employees of Poor Law Institution—Baker.**]—*Re* ETON COLLEGE STORES, No. 118a, *ante*.

118c. —— —— **Ironer.**] — *Re* ETON COLLEGE STORES, No. 118a, *ante*.

119. *Add. Annotation :*—**Consd.** *Re* Blackpool Corpn. & Barritt, etc. (1931), 95 J. P. 103.

123a. —— **Eton College Stores.**] — *Re* ETON COLLEGE STORES, No. 118a, *ante*.

123b. —— **Tramway undertaking—Depot cleaner & lavatory attendant.**]—In the first case B. was employed by the Blackpool Corpn. as a lavatory attendant & a depot cleaner at the corpn.'s tramway depot. In the second case J. was employed by the Liverpool Corpn. as a lavatory attendant. In both these cases the tramway undertakings were owned & worked by the corpn. & were carried on for purposes of gain. In the third case W. was employed as a waitress by the Manchester Corpn. in refreshment rooms at H. Park, Manchester, which was over three miles from the centre of the city. Refreshments were there served to the public at a price which would just cover the cost. In the fourth & fifth cases M. was a waitress & D. a waiter, the former being employed at a pier restaurant & the latter at the "Lucullus" room at the Pavilion, Bournemouth, both being carried on by the Bournemouth Corpn. as part of their pier undertaking. It was admitted in all these cases that the employed persons were in domestic service :—*Held :* the test for making these persons insurable persons within the Act being (1) whether a trade or business was being carried on for the purposes of gain, & (2) whether they were employed in that trade or business. B. & J. were both insurable persons, as the tramway undertakings constituted a trade or business which was being carried on for the purposes of gain. The same reasoning applied to the two Bournemouth cases, but in the case of W. the Manchester Corpn. did not carry on the refreshment catering for the purposes of gain. W. was therefore not an insurable person under the Act.—*Re* MINISTER OF LABOUR, *Re* BLACKPOOL CORPN. & BARRITT, *Re* LIVERPOOL CORPN. & JACKSON, *Re* MANCHESTER CORPN. & WELSBY, *Re* BOURNEMOUTH CORPN., MILLARD & DEREZ (1931), 95 J. P. 103 ; 75 Sol. Jo. 206 ; *sub nom. Re* BLACKPOOL CORPN., 47 T. L. R. 300.

123c. —— **Corporation refreshment room—Waitress.**]—*Re* MINISTER OF LABOUR, *Re* BLACKPOOL CORPN. & BARRITT, No. 123b, *ante*.

123d. —— **Pier undertaking—Waiter & waitress.**] —*Re* MINISTER OF LABOUR, *Re* BLACKPOOL CORPN. & BARRITT, No. 123b *ante*.

135. *Add. Annotation :*—**Consd.** Hearts of Oak Assurance Co. *v.* A.-G. (1931), 47 T. L. R. 579.

Part V.—National Health Insurance.

149. *Add. Citation :*—93 J. P. 35.

PART IV. SECT. 1, SUB-SECT. 2.—C.

124 ii. —— —— ——.]—H. was employed by a dairy farmer, who had a farm of about 200 acres in the County of Dublin, & who tilled about 50 acres & kept 100 cows, & sold the milk in the city & suburbs of Dublin. H. used to come to the farm about 5 o'clock in the morning, milk the cows, get ready a horse & cart, & then go into the city & distribute the milk. On his return he washed the cans, tended his horse, drove in the cows, again milked them & delivered the milk. When he returned the second time, after tending his horse & cleansing the cans, his duties were ended :—*Held :* H. was employed in agriculture & excepted from the provisions of the Act.—WARNER *v.* MINISTER FOR INDUSTRY & COMMERCE, [1929] 1. R. 582.—**IR.**

PART IV. SECT. 2.

sg. *Appeal—From Minister for Industry & Commerce to High Court—Right of appeal to Supreme Court.*]—WARNER *v.* MINISTRY FOR INDUSTRY & COMMERCE, [1929] I. R. 582.—**IR.**

PART V. SECT. 1.

t i. —— —— ——.]—R., a salmon factor, was the owner of several boats used for salmon fishing. At the beginning of a fishing season R. let a boat to one B., who proceeded to select a crew of two others, one of whom was H., & proceeded to fish in the ordinary way. R. was not aware that H. was a member of the crew of the boat. All fish caught had to be handed over to R., who sold them, retaining one-fourth of the proceeds of the sale of the salmon, & handing over the remaining three-fourths & the proceeds of the sale of any other fish caught to B. B. then divided all he received with the crew in proportions arranged between themselves. R. had no part in the arrangement between B. & the crew as to payment, & was not concerned as to how the money was disposed of. In the event of no fish being caught, R. received nothing & made no payment to B. or to the crew, & if B. failed to take the boat out to fish, R. could take it away from him. All repairs to the boat, nets, & tackle were done by R. at his own expense, but B. had full control over its management, the part of the river to be fished, etc., & could dismiss any of the crew, who had to obey his orders :—*Held :* there was no contract of service between R. & H., & consequently R. was not liable for insurance contributions in respect of H.—GALVIN *v.* MINISTER FOR INDUSTRY & COMMERCE & HIGGINBOTHAM, [1932] I. R. 216.—**IR.**

a (p. 1310) **i.** —— *Employment under local authority in pensionable office.*]—By an order made under National Insurance Act, 1913 (c. 37), s. 6, "employment under any local or other public authority in any pensionable office in a permanent capacity" shall be deemed not to be employment within the meaning of Part I. of National Insurance Act, 1911, the Order providing that "the expression 'office' includes any office, situation, or employment, & the expression 'pensionable office' means an office coming within the provisions of any Act authorising the grant of a superannuation allowance." A rural district council employed H. in Sept. 1899, temporarily to take charge of the waterworks system which supplied water to the town of C. shortly after the waterworks had been constructed. In Nov. 1899, H. was permanently appointed as "a person to drive the engine & the pumps, & perform any other duties he might be called upon to perform." The town of C. became on Apr. 1, 1900, an urban sanitary district by virtue of two orders of the Local Govt. Board, & the urban district council, which was created thereby, took over the waterworks. This council was under no obligation to take over the employees or officials of the rural district council who were employed on the waterworks, but H. continued to carry on his duties as before. H.'s wages were increased from time to time, & such increases were passed by the auditor of the Local Govt. Board. He furnished reports from time to time to the urban district council & frequently attended their meetings. At a meeting of the council soon after they had taken over the waterworks the opinion of the Local Govt. Board was sought as to the payment of H.'s wages, & the Board was requested to make an immediate adjustment of the council's property & liabilities. The Board replied that H.'s wages were to be paid by the council pending an adjustment of the accounts. There was no evidence as to the making of any such adjustment. The Board was fully aware of everything done at the meetings of the council, as copies of the minutes had to be transmitted to the Board :—*Held :* having regard to the provisions as to the granting of superannuation allowances contained in Part IV. of Local Govt. Act, 1925, H.

Part VI.—Old Age Pensions.

179a. Widows', Orphans' & Old Age Contributory Pensions Act, 1929 (c. 10)—Employment of husband in Irish Free State before 1922.]—Employment before 1922 in what is now called the Irish Free State under Irish Free State Constitution Act, 1922 (Session 2), is not employment entitling the employee's widow to a pension under Widows', Orphans' & Old Age Contributory Pensions Act, 1929 (c. 10), s. 1 (1).—*Re* ECHLIN (1932), 147 L. T. 530; 48 T. L. R. 675.

was engaged in employment under a local authority in "a pensionable office in a permanent capacity," & therefore not engaged in employment within Part I. of National Insurance Act, 1911.—HANRATTY *v.* MINISTER FOR INDUSTRY & COMMERCE & IRISH INSURANCE COMRS., [1931] I. R. 189.—**IR.**

PART V. SECT. 8.

8h. *Dispute between approved society & member—Refusal of referees to state a case—Application to court.*]—M'NAMARA *v.* SCOTTISH CATHOLIC INSURANCE SOCIETY, [1929] S. C. (Ct. of Sess.) 55.—**SCOT.**

PART VI.

179 i. *Widows', Orphans' & Old Age Contributory Pensions Act, 1925 (c. 70)—Meaning of "entry into insurance."*]—A workman engaged in employment which, after July 5, 1912, rendered him compulsorily insurable under National Insurance Act, 1911, became insured as at that date, & paid his weekly contributions in full until Dec. 1922, when he passed out of insurable employment. For the purposes of the Insurance Acts he ceased, in Dec. 1924, to be an insured person. On Jan. 4, 1926, he again became insured as a voluntary contributor, & thereafter, until his death in July, 1927, he paid his weekly contributions, numbering 81, in full. His widow applied for a pension, but her claim was rejected on the grounds that sect. 5 (*a*) of 1925 Act had not been complied with, since it had not been established that 104 weeks had elapsed & 104 contributions had been paid since the date of her husband's last entry into insurance. The Dept. contended that "entry into insurance" in sect. 5 (*a*) must be construed consistently with National Health Insurance Act, 1924, & particularly sect. 3 (4) thereof, which in effect gave to that expression the meaning "last entry":—*Held:* sect. 5 (*a*) had been complied with, in respect that the "date of his entry into insurance" was the date when appct.'s husband first became an insured person, not the date when he again became insured as a voluntary contributor; & the meaning was not controlled by sect. 3 (4) of 1924 Act, which was not applicable in the case of voluntary contributors.—KERR *v.* DEPARTMENT OF HEALTH FOR SCOTLAND, [1930] S. C. 813.—**SCOT.**

179 ii. ——— ———.]—An appct. for an old age contributory pension had been insured as an employed contributor from Mar. 6, 1922, till Dec. 31, 1925. On Jan. 4, 1926, he became insured as a voluntary contributor, & continued so insured until the expiry of five years, on Jan. 4, 1931. He had attained the age of sixty-five in Mar. 1930. The Dept. rejected his claim, on the ground that the date of his entry into insurance must be taken to be Mar. 6, 1922, & he had not been in continuous insurance since that date:—*Held:* on a construction of Widows', Orphans' & Old Age Contributory Pensions Act, 1925, s. 8 (*a*) & proviso (i), the phrase "entry into insurance" meant entry into the qualifying period; &, accordingly, the date of appct.'s entry must be taken to be Jan. 4, 1926, & he was entitled to a pension on the expiry of five years from that date.—WYLIE *v.* DEPARTMENT OF HEALTH FOR SCOTLAND, [1932] S. C. 51.—**SCOT.**

179 iii. ——— *Husband's employment within three years of death—Husband bedridden.*]—A widow, aged sixty, applied for a pension. Her husband, who died on Nov. 1, 1928, had been employed from boyhood until 1914, & periodically from 1914 until 1921, as a share-fisherman. He became paralysed in 1922, & from that date until his death he was wholly incapacitated for work. For the last three & a half years of his life he was bedridden:—*Held:* appct. was not entitled to the pension claimed, in respect that it could not be held that her husband's normal occupation, at any time within three years before his death, was employment of the specified character.—MACDONALD *v.* DEPARTMENT OF HEALTH FOR SCOTLAND, [1931] S. C. 354.—**SCOT.**

n i. ——— *Residence—Material date—Date of application.*]—A claim for an old age pension under the Acts of 1925 & 1929, made on Mar. 4, 1930, was refused by the Department of Health for Scotland, on the ground that appct. had not satisfied the condition as to residence imposed by sect. 23 (1) (*b*) of the Act of 1925. Appct. had left Scotland in July, 1929, for the Falkland Islands, where he was still residing on Oct. 26, 1929, the date on which he attained the age of sixty-five:—*Held:* appct.'s right to a pension fell to be determined as at the date of his application; at that date the condition as to residence imposed by sect. 23 (1) (*b*) of the 1925 Act had been effectively repealed by sects. 13 (3) & 27 (5) of the 1929 Act; &, accordingly, appct., who otherwise was duly qualified, was entitled to an old age pension.—ROSS *v.* DEPARTMENT OF HEALTH FOR SCOTLAND, [1931] S. C. 316.—**SCOT.**

WORDS AND PHRASES.

A.A.I.] AUCT., No. 15a
about to be wound up.] COYS., No. 7373a
accident.] MAST. & S., Nos. 2310a, 2317a, 2317b, 2331a, 2768a
accidental slip or omission.] ARBN., No. 1668a
accident insurance business.] COYS., No. 7490b
account of payee.] B. OF EXCH., No. 2846a
acknowledgment.] COYS., Nos. 3126a, 4904a; LIMIT. OF A., No. 785a
action.] ACTION, Nos. 18a, 18b
action or other matter.] ACTION, No. 35a
action or suit.] ACTION, No. 48a
Act of Parliament.] STATS., No. 3a
additional capital raised . . . or provided.] COYS., No. 7843a
additional or larger power.] TRUSTS, No. 3639a
adhesive labels.] COPRT., No. 325a
after marriage in right of wife.] BKPCY., No. 7096b
agency of necessity.] AGCY., No. 215a
agistment.] AGRIC., No. 164a; ANIMALS, No. 342a
agreement . . . respecting the amount & manner of payment.] COURTS, No. 895a; SOLRS., No. 1228a
agricultural holding.] AGRIC., No. 30f
aiding & abetting.] CRIM., 613a; STR. TRAF., No. 117a
air gun or air rifle.] REVENUE, No. 302a
all boroughs.] RATES, No. 675f
all loss.] ARBN., No. 238a
all lost.] B. OF EXCH., No. 2414a
all lots uncleared shall be resold.] AUCT., No. 280a
all my interest.] BKPCY., No. 7689a
all my property real & personal of every description.] AGCY., No. 296a
all other goods upon the premises (unless specially exempt) sufficient to satisfy the amount of this distress.] DISTR., No. 737a
all pleasure grounds.] L. & T., No. 4760a
all risks.] BAILMT., No. 218a
alterations & improvements in the buildings.] EDUC., No. 32a
amount or value of the subject-matter of the suit.] DEP., No. 482a
amount . . . remaining in dispute.] CTY. CTS., No. 335a
and co.] ALIENS, No. 558d
annual payment towards the cost of the maintenance & repair.] HGHYS., No. 65
annual salary.] ELECTRIC, No. 103b
annual value.] INC. T., Nos. 25a—25d
annuity.] COYS., No. 7611a
ante-nuptial or post-nuptial settlements.] H. & W., No. 5624a
any act or thing or any event happened whereby he would be deprived of right to receive income.] BKPCY., No. 5902a
any grass land.] AGRIC., No. 56a
any husband who might survive her.] STTLMTS., Nos. 146a, 146b
any other petition.] BKPCY., No. 6965a
any other loss whatever.] INSCE., No. 3259a
apparent.] B. OF EXCH., No. 2513a
appeal in an action.] CTY. CTS., No. 776a
appellant.] CRIM., No. 5607a
appropriated.] BLDG. CONTS., No. 319a
approved commercial bills on London.] SHIP., No. 1723a
approved insurance policy.] BANK., No. 756a
approved subject to adjustment & conditions of insurances.] AGCY., No. 2139b
arising out of the termination of the tenancy.] AGRIC., Nos. 29a—29c
arranged.] INSCE., No. 729a
arrangement.] COYS., No. 7373a
articles of vertu.] WILLS, No. 5332a
artistic work.] COPRT., No. 111a
as agent for.] AGCY., No. 2482a
as principal.] MAGS., No. 1229a
assault on any constable when in the execution of his duty.] CRIM., No. 7685a
assessed.] COYS., No. 6936a
assessed up to the fifth day of April.] COYS., No. 4982b
assignment.] ALIENS, No. 389a
assignment of property.] BKPCY., No. 8782b
association with persons of bad character.] CRIM., No. 5239b
assurance of property or of an interest therein.] EASMT., No. 196b
at all times.] MED., No. 242b
at charterer's risk.] SHIP., No. 2974b
at customer's sole risk.] BAILMT., No. 140a
at present.] H. & W., No. 4836b
attached.] HGHYS., No. 2405a
attempt.] CRIM., Nos. 751a, 751b, 10,779a
at the time of.] COYS., No. 4709a
authorise.] COPRT., Nos. 394b, 489a, 489b
authorised by this or some other Act of Parliament.] GAMING, No. 451a
authorised improvements.] LAND IMP., Nos. 79a—79c
authorised undertakers.] ELECTRIC, No. 103a
autrefois acquit.] CRIM., No. 3647a
autrefois convict.] CRIM., No. 3608a

bag cargo.] SHIP., No. 4461a
baggage of passengers.] REVENUE, No. 70a
balance of money.] WILLS, No. 5724a
before the charge is gone into.] CRIM., No. 1032a MAGS., No. 334a
benefice.] ECCL., No. 3466a
beneficial owners.] EQY., No. 688a
benefit of any persons.] STTLMTS., No. 2600a
bill of lading.] ADM., No. 541a
bill, poster or placard.] ELECT., No. 1038a
body of persons . . . established for charitable purposes only.] *See* Charitable purposes only, *infra*
bookmaker.] REVENUE, Nos. 93a, 93b
books.] WILLS, No. 5332a

bought of ourselves as principals.] AGCY., No. 1529a
brothel.] CRIM., No. 8143b
building.] BURIAL, Nos. 300a, 309a
bungalow.] S. LAND, No. 2701a
bunkering or other purposes.] SHIP., No. 3162a
burial ground.] BURIAL, No. 294a
business.] ALIENS, No. 221a; BKPCY., Nos. 274a, 274b; TRADE, No. 10a
business efficacy.] BLDG. CONTS., No. 58a
butter toffee.] FOOD, No. 243a
buttons.] REVENUE, No. 93d
buy.] AGRIC., No. 979b
by any deed or document anticipate, charge, assign, or otherwise dispose of.] BKPCY., No. 5922a
by order of J. S. & others.] AUCT., No. 301a
by return.] CONTR., No. 418a

candidate.] ELECT., No. 1593a
cannot exceed six years.] INC. T., No. 576a
carrying away.] MINES, No. 327a
carrying on business.] ALIENS, No. 198a
carry-over.] EDUC., No. 288a
castings, iron or steel of light type.] CARR., No. 1245d
casualty.] INSCE., No. 3289a
cease to be in force.] MAST. & S., No. 3288c
change of circumstances.] LUNAT., No. 529a
charge . . . fixed under any subsisting agreement or special statutory provision . . . for valuable consideration.] CARR., Nos. 1237a—1237f
charges.] CARR., No. 1349a
charges of said assured upon said cargo.] INSCE., No. 551a
charitable institution.] STATS., No. 342a
charitable or public institutions.] CHAR., No. 724a
charitable purposes only.] INC. T., Nos. 472a—472f, 476a—476f
charities & institutions as exors. think fit.] CHAR., No. 735a
charities or such religious bodies as trustees think fit.] CHAR., No. 728a
charterer.] AGCY., No. 2609a
chattels.] E. D., No. 128a
Chelsea Hospital.] CHAR., No. 884a
cheque.] BANK., No. 691d; B. OF EXCH., No. 242a
chequelet.] B. OF EXCH., No. 3146a
child.] FR. SOC., No. 175d
children.] H. & W., Nos. 5781a—5781d
children or reputed children.] WILLS, No. 479a
chose in action.] ALIENS, No. 389a
Christian principles.] CHAR., No. 68a
church.] CHAR., No. 981a
church belonging to a monastic order, benefit of.] CHAR., No. 79a
Church of England.] CHAR., No. 981b
cinematograph films.] TRADE MKS., No. 511a
class of creditors.] COYS., No. 7404a
class of persons.] DEP., No. 176a
clear yearly sum after paying or deducting income tax & super-tax.] RNTCHGS., No. 593a
closed stations.] CARR., No. 954a
club.] CLUBS, Nos. 111a, 111b
coal.] CARR., No. 1245c
collision with any object.] INSCE., No. 1708a
commencement of proceedings for compensation.] AGRIC., No. 265c
common fund.] BKPCY., No. 2028a
common gaming house.] CLUBS, Nos. 136a, 140a; GAMING, Nos. 284a, 284b
commonly understood.] ELECT., No. 1025a
competent to dispose of property.] E. D., No. 63a
completion.] AGRIC., No. 266l
comprised in any hire-purchase agreement.] DISTR., No. 424a
compulsory examination or deposition before any court on the hearing of any matter in bankruptcy.] BKPCY., No. 4637a; CRIM., No.
compulsory process of any court of law.] CRIM., No. 2204a
condonation.] H. & W., No. 3179a
conducted by himself.] MED., Nos. 260a, 260b
conduct of the parties.] H. & W., Nos. 5364a, 5365a
confiscation or destruction by the Government of the country.] CONFL., No. 17a
consecutive journeys.] ANIMALS, No. 688a
consent of owner.] AGCY., Nos. 485a, 495a, 495b
consent or permission of the true owner.] BKPCY., No. 6745a
consequences of hostilities or warlike operations.] SHIP., No. 8755a
contemplation of marriage.] WILLS, No. 1522a
contiguous.] RATES, Nos. 226bb, 226cc
contract carriages.] STR. TRAF., No. 76d
contract for sea insurance.] INSCE., No. 252a
contract for the repayment by a borrower of money lent to him.] MONEY, No. 353b
contract for the sale or other disposition of land or any interest in land.] S. LAND, No. 73a
contract in writing.] ARBN., No. 1152a
contract to receive a share of the profits.] BKPCY., No. 4353a
contrary intention.] EASMT., No. 186a
contrary or other intention.] EXORS., No. 5620a
contrary stipulation.] ALIENS, No. 215l
control.] INC. T., No. 674o
conveniences.] CORPNS., No. 997a
conveyance of a private party.] STR. TRAF., No. 76f
conveyance of minerals.] MINES, No. 327c
corroboration in material particular.] BASTY., No. 325a
cost of repairs.] INSCE., No. 3289a
costs, charges or expenses, properly incurred incident to the sale.] MTGE., No. 4326a
costs of the execution.] COYS., No. 6624a
counselling & procuring.] CRIM., No. 9490a
county court or other court for the recovery of small debts.] POOR L., No. 225b
court.] COURTS, Nos. 11a, 17a, 17b
court in which the plaint was entered.] CTY. CTS., No. 750b
covenant or provision . . . having reference to the subject-matter.] L. & T., No. 2792a
cream.] FOOD, No. 476c
creditor entitled to benefit of deed.] BKPCY., No. 8645a
crime.] CRIM., Nos. 5a, 5309a
criminal case.] DEP., 91a
criminal cause or matter.] CRIM., Nos. 6293a, 6298a; CR. PRACT., No. 797a
criminal habits & tendencies.] CRIM., Nos. 5239b—5239e
cruelly ill-treating.] ANIMALS, Nos. 572a, 587a
current prices.] S. GOODS, No. 430a
current rates.] SHIP., No. 1731a
custody of the child.] CRIM., No. 9399a
customarily made up.] INC. T., No. 204d
customer.] BANK., Nos. 289a, 292b, 692d
customers.] TRADE, No. 498a

damage done by a ship.] ADM., No. 484a; SHIP. No. 6811a
dealer in milk.] INC. T., No. 79a
debt.] BKPCY., No. 1657a
debt or other legal thing in action.] BLDG. CONTS., No. 342a; CHOS., No. 77a

debts due or growing due to bankrupt.] BKPCY., Nos. 6858a, 6858b
decree, order, sentence, or decision.] DEP., No. 621a
deduction for or in respect of bad or negligent work.] FACT., Nos. 264a, 264b, 264c
defeasance or condition.] B. OF SALE, No. 228a
del credere agent.] AGCY., No. 127a
delivering cargo.] SHIP., No. 3634a
demand . . . in, to, or on the property.] L. & T., No. 2792a
de minimis non curat lex.] ACTION, No. 303a; COPRT., No. 43b
dental surgeon.] MED., No. 218a
design.] COPRT., Nos. 77a, 111a, 229a; TRADE MKS., No. 893a
determination.] RYS., No. 503a
determined by a legal notice to quit or otherwise.] L. & T., No. 6957a; MTGE., No. 732a
direct & particular interference with business.] BLDG. CONTS., No. 287a
direct loss or damage.] CONST. LAW, No. 499a
direct taxation.] DEP., Nos. 135a—135e, 142a
directors.] B. OF EXCH., No. 763a
disabled from acting by any provisions of this Act.] L. G., No. 27b
discovery.] INC. T., No. 254a
discovery by the party aggrieved of the matter complained of.] CARR., No. 1224a
dishonesty.] INSCE., No. 3260a
disorderly house.] CRIM., No. 4222a
dispute.] BANK., No. 112a
dispute concerning wages.] FISH., No. 497a
distribution of capital assets.] STTLMTS., No. 1998a
disused burial ground.] BURIAL, Nos. 291a, 294a, 309a
divided between.] WILLS, No. 8538a
dividends.] BANK., No. 691d; B. OF EXCH., No. 242a
dock charges.] RYS., No. 756a
documents used in the ordinary course of business.] B. OF SALE, No. 138a
domestic animal.] ANIMALS, No. 602a
domestic service.] WORK, No. 118a
donatio mortis causâ.] GIFTS, Nos. 294a, 337a, 356a; MTGE., No. 3453a
double dipped.] ANIMALS, No. 690a
dramatic piece.] COPRT., No. 99a
driving in a manner dangerous to the public.] STR. TRAF., Nos. 222b, 222c
driving recklessly or in a manner dangerous to the public.] STR. TRAF., No. 222b
driving . . . under the influence of drink.] STR. TRAF., Nos. 222d, 222e
driving without due care & attention or without reasonable consideration.] STR. TRAF., No. 222a
drunk.] INTOX., No. 764a
duly authorised.] MAGS., No. 1229a
during.] TIME, No. 324a
duties of customs & excise.] DEPS., No. 135e
duty due upon an account of real property.] E. D., No. 209e
dwelling-house.] CRIM., No. 10,815a; L. & T., No. 7351b; PUB. HLTH., No. 502a

educational establishment.] INC. T., No. 540a
education of candidates for Holy Orders.] CHAR., No. 75a
ejusdem generis.] CARR., No. 685c; CHAR., No. 755a; CONFL., No. 639a; HGHYS., No. 1435f; INSCE., No. 855a; NUIS., No. 134b; SHIP., No. 3162a
electrically propelled vehicle.] REVENUE, No. 1

emoluments.] METROP., Nos. 29a, 29b
employers of workmen.] FACT., No. 153a
employment.] INC. T., Nos. 312a, 495a, 496a—
enable her to leave the port.] SHIP., No. 3872b
enemy.] ALIENS, Nos. 198a, 392a
enemy debt.] ALIENS, No. 215b
England, unto my country.] CHAR., No. 217c
engravings.] COPRT., No. 229a
entering the employment.] MAST. & S., No. 3837a
entrusting.] CRIM., Nos. 10,315a—10,315c
entry into insurance.] POOR L., No. 1672a
equipment.] CHAR., No. 1382a
equitable assignment.] BKPCY., No. 2902a
error in law on the face of an award.] ARBN., No. 1598b
error of law apparent on the record.] CRIM., Nos. 6298a, 6298c
estimated to be bad.] INC. T., No. 592b
evidence of character & repute.] CRIM., No. 5308a
exceptional.] CARR., No. 1323a
exceptional war measures.] ALIENS, No. 223b
excusable.] BKPCY., No. 8557a
exercise of prerogative right to His Majesty.] CONST. LAW, No. 534a
exert influence.] CONTR., No. 5168a
existing circumstances & conditions.] SHIP., No. 5686a
expenses & maintenance of patients from the parishes of S. & S.] CHAR., No. 42a
expenses necessarily incurred in carrying this Act into effect.] L. G., No. 550a
express carriages.] STR. TRAF., No. 76f
express trust.] EXORS., No. 3818a
external & visible injury.] ANIMALS, No. 145a

factory.] FACT., No. 180b
factory or workshop.] *See* Industrial hereditament, *infra*
fair dealing.] COPRT., No. 43a
false in any material particular.] CRIM., No. 10,352a
false pretences.] CRIM., No. 9340a
false statement . . . in relation to . . . personal character.] ELECT., No. 1038b
family.] L. & T., No. 7107b
faute grave.] MAST. & S., Nos. 470a, 470b
features of shape, configuration, pattern, or ornament applied to any article.] COPRT., No. 111a
final award.] ARBN., Nos. 1058a, 1067a
final judgment.] CONFL., No. 1113a
final judgment or order.] BKPCY., No. 830a
fine.] L. & T., No. 5269a
firearm.] REVENUE, No. 302a
fire insurance business.] COYS., No. 7490a
first arose.] INC. T., No. 449a
first option.] CONTR., No. 5b
first owner.] COPRT., No. 229a
first published.] COPRT., No. 16a
fit for habitation.] L. & T., No. 3106a
fitness or propriety.] INTOX., No. 299a
for.] TIME, No. 324b
for & on account of.] CRIM., No. 5943b
for any term suitable.] L. & T., No. 1978a
for a purpose.] REVENUE, No. 140b
force majeure.] BLDG. CONTS., No. 65a
for default of such issue.] STTLMTS., No. 134a
forged.] CONFL., No. 705a
for her use only & to do as she may wish in her lifetime.] CHAR., No. 657a
for his own benefit.] BKPCY., No. 6401a
formal contract to be signed in due course.] CONTR., No. 546c; THEATRES, No. 64a

for some period less than the life of the child.] INC. T., No. 575b
for the benefit of.] INC. T., No. 545b
for the benefit of his wife.] BKPCY., No. 6012a; H. & W., No. 1223a
for the purposes of this scheme.] ELECTRIC, No. 6b
forthwith.] ESTPL., No. 597a
for use . . . in connection with agriculture & horticulture.] MED., No. 272a
found by night having in his possession without lawful excuse implements of housebreaking.] CRIM., No. 5478a
founded on contract.] MONEY, No. 434a
fraudulent assignment.] BKPCY., Nos. 454a, 596a
fraudulent conveyance.] BKPCY., No. 7339a
fraudulent preference.] AGCY., No. 2273a; BKPCY., Nos. 4665a, 7166a, 7172a, 7176a, 7339a, 7361a, 7393a, 7414a; COYS., Nos. 4699a, 4709a, 6746a
free & clear of all taxes & incumbrances whatsoever.] RNTCHGS., No. 592b
free from incumbrances.] E. D., No. 244a
free house London.] S. GOODS, No. 453a
free of all death duties.] E. D., No. 209c
free of all duties.] E. D., No. 777a
free of income tax.] RNTCHGS., No. 592a
freight-transport hereditament.] RATES, Nos.

fresh evidence.] BASTY., Nos. 366a, 366b; H. & W., Nos. 6251a, 6255b, 6255c
front.] HGHYS., No. 2580a
full benefit of all pending contracts & engagements & of all other property.] CONTR., No. 4957a
full regular pay.] MAST. & S., No. 628c
furniture.] WILLS, No. 5625a

game or pretended game of chance.] GAMING, No. 322c
gardens for the sale of produce.] INC. T., No. 83a
general contingencies.] ARBN., No. 372a
German Government for the benefit of its soldiers disabled in the late war, gift for.] CHAR., No. 23c
German national.] ALIENS, No. 215j
given by the borrower.] MONEY, No. 353r
gone away.] BKPCY., No. 5475a
good cause.] LIBEL, No. 2198a
good character.] CRIM., No. 3820c
goods.] B. OF SALE, No. 138b
goods & chattels.] COHLDS., No. 394a
goods, wares, & merchandizes.] COYS., No. 2211a.
goods works.] CHAR., No. 823a
got by Cheshire Cheese, warranted sound.] ANIMALS, No. 416a
grandchildren of any degree.] WILLS, No. 6728a
grantor.] B. OF SALE, No. 288a
grave & weighty.] H. & W., No. 2479a
gross value.] INC. T., No. 25c

heir-at-law.] COHLDS., No. 1533a
highway.] HGHYS., No. 1894a
His Majesty's ships.] ADM., No. 130a
hoarding or similar structure.] PUB. HLTH., Nos. 204a, 204b
holder in due course.] BANK., No. 687a; B. OF EXCH., No. 896a
holding.] AGRIC., No. 266t
holiday.] SHIP., No. 4046a
home of rest.] CHAR., Nos. 47b—47d
honest.] BKPCY., No. 8557a
honour & interests of the medical profession.] ACTION, No. 249a
Honours Final. Institute of Chartered Accountants.] INJON., No. 906c
hospital.] INC. T., No. 58a
hospital or other charitable or benevolent institution.] CHAR., No. 755a
hostile person.] ALIENS, No. 280a
house with the furniture & fittings as it stands.] CONTR., No. 429a
husband.] H. & W., No. 2039a

if any dispute should arise as to the agreement or any matter or thing therein or intention or construction thereof.] ARBN., No. 237a
if he deems it to be conducive to the public good.] ALIENS, No. 551a
if peace is not declared.] CONST. LAW, No. 487b
if the mare was not all right she was not his.] ANIMALS, No. 476a
illegality.] INSCE., No. 2527a
immediate consequences.] INSCE., No. 720c
impossible in law.] MAGS., No. 500a
improper conduct.] CRIM., No. 10,505a
improvements.] LAND IMP., No. 79b
imputations on the character of . . . the witnesses.] CRIM., No. 4734a
inaccurate description.] ELECT., No. 1145a
in all respects reasonably fit for human habitation.] L. & T., No. 3160a
in any action.] EVID., No. 4428a
in apparent good order & condition.] SHIP., No. 2257a
in arrear.] COYS., No. 3734a
in charge of any vehicle.] INSCE., No. 3157a
income.] INC. T., No. 557a
in connection with.] SHIP., No. 8697a
in connection with the work.] GUAR., No. 1826b
inconsistent with the provisions of this Act.] FACT., No. 211a
incorporated accountant.] INJON., No. 906b
incorporated company.] B. OF SALE, No. 144a
increase of capital.] COYS., No. 1126a
independent contractor.] MAST. & S., Nos. 2213a, 2216a, 2220a
in dispute.] ANIMALS, No. 390a
industrial hereditament.] RATES, Nos. 226a—226aa
initial share issue.] COYS., No. 1814a
in public interest.] L. & T., No. 7298a
in pursuance of any Compensation Scheme.] MAST. & S., No. 3822b
instead of the insured car.] INSCE., No. 3217e
institute, society or nursing home . . . as provide for persons of moderate means.] CHAR., No. 47a
in such position or of such construction as to be equally safe to every person employed or working in the factory as it would be if it were securely fenced.] FACT., No. 76a
insufficiency of packing.] SHIP., Nos. 2257a, 3649a
insurance on his life.] INC. T., No. 549a
intended execution of public duty.] PUB. AUTH., No. 777b
intent.] CRIM., No. 751a
intent to defraud creditors.] COYS., No. 3353a
intent to extinguish.] STTLMTS., No. 2727a
interest.] E. D., No. 63a; INC. T., Nos. 380a, 545e
interested.] COYS., No. 3419a
interest in respect of money charged upon or payable out of land.] ACTION, No. 48a
interest . . . on any securities issued under the War Loan Acts, 1914 to 1917.] INC. T., No. 317b
interfered . . . with the management of the mine.] MINES, No. 1126a

interference with the freedom of inter-State trade.] DEP., No. 188a
in the actual possession or entitled to the receipt.] WILLS, No. 8032a
in the body.] B. OF EXCH., No. 1548a
in the body of it made payable at a particular place.] LIMIT. OF A., No. 154a
in the course of his trade or business.] BKPCY., Nos. 6659a, 6745a
in the course of trade.] REVENUE, No. 140b
in the event of peace not being concluded.] CONST. LAW, No. 487a
in the nature of a fine.] L. & T., No. 5269a
in the ordinary course of business.] B. OF EXCH., No. 2475b
in the ordinary way.] H. & W., No. 4909a
in trust for any creditor.] BKPCY., No. 7414a
investigation of title.] MTGE., No. 4061a
involuntarily alienate or encumber.] ALIENS, No. 215h
issue.] COYS., No. 2589a
issued.] BANK., No. 687a; COYS, No. 439a
is twenty-one years of age.] CRIM., No. 5240b
it being my wish.] TRUSTS, No. 379a

Jew.] ECCL., No. 4047a
Jewish National Fund.] CHAR., No. 215a
judgment.] CTY. CTS., No. 787a
judgment in rem.] JDGMTS., No. 54a
judgment or order.] JDGMTS., No. 30a
judicial officer.] DEP., No. 393a
jurisdiction within . . . foreign countries.] DEP., No. 20a
jus tertii.] NUIS., No. 598a

keeper.] ALIENS, No. 558a; CORPNS., No. 903b; CRIM., No. 8177a
keeping a place . . . for receiving money.] GAMING, No. 401a
keeping open shop.] MED., No. 242b
knock-out.] AUCT., No. 76a
knowingly.] COYS., No. 3916a
known, admitted, & approved of.] MED., No. 253a

landlord.] AGRIC., Nos. 265b, 265c, 266l, 266u; L. & T., Nos. 7351a, 7351b, 7352a—7352d; RATES, No. 226dd
land or any interest in land.] CONTR., Nos. 837a, 837b
last will & testament.] EXORS., No. 1351a; WILLS, No. 717a
law library.] WILLS, No. 5935a
lawfully sublet.] L. & T., No. 7254c
lease of mines & minerals.] L. & T., No. 6399a
legacies.] E. D., No. 209c
legal & other remedies.] BLDG. CONTS., No. 345a
legally incapable.] LUNAT., No. 26a
legal right to compensation.] CONST. LAW, No. 534a
lessee.] CRIM., No. 8143a; L. & T., No. 6361a
liberty to apply.] H. & W., Nos. 5459a, 5469a
lighter.] SHIP., No. 5608a
liquidated damages or penalty.] DAMGS., Nos. 426a, 426b, 487a
lis inter partes.] INC. T., No. 689a
Lister Institute of Preventive Medicine.] CHAR., No. 47a
load.] SHIP., Nos. 2974a, 2974b
local land charge.] S. LAND, No. 1016a
local rate.] BKPCY., No. 4281a
loitering for the purpose of bookmaking.] GAMING, No. 319a
London Agency.] ALIENS, No. 221a
London Library.] CHAR., No. 251a
loss sustained.] GUAR., No. 1745a; STK. EX., No. 217a
lost.] INSCE., No. 3282a

maintain.] HGHYS., No. 2644a; RYS., No. 978a
maintain, keep & leave . . . in good & proper order & condition.] L. & T., No. 4760a
maintenance.] RATES, No. 226c
majority of creditors.] BKPCY., No. 8772a
manner & form.] DEP., No. 192a
mansuetæ naturæ.] ANIMALS, Nos. 163a, 258a
market garden.] AGRIC., Nos. 267b 267c
market overt.] MKTS., No. 472a
material evidence . . . implicating the accused.] CRIM., Nos. 4826a, 4826b
materially altered.] BANK., No. 629a; B. OF EXCH., No. 2475b
matter of practice & procedure.] ARBN., Nos. 523a, 630a; SOLRS., No. 1391a
may.] STATS., No. 1364a
may order.] CTY. CTS., No. 198a
members.] CLUBS, No. 21a; COYS., No. 7669a
memorandum in writing.] AUCT., Nos. 63a, 76a; L. & T., Nos. 370a, 396a
memorandum of agreement.] MONEY, No. 3531; REVENUE, Nos. 548a, 548b
mens rea.] CRIM., No. 40a
mercantile agent.] AGCY., Nos. 485a, 495b
minerals.] MINES, No. 651a
mineral substances.] MINES, No. 651a
mines, minerals & mineral substances.] MINES, No. 651a
misconduct.] CRNRS., Nos. 152a, 308a
misdemeanour.] MED., No. 205b
misfortune without any misconduct.] BKPCY., No. 1657e
missionary purposes.] CHAR., No. 702a
mistake.] RATES, No. 1617a
mixed charity.] CHAR., No. 2137
model form of conveyance specially prepared.] SP. PFCE., No. 282a
modification.] MAST. & S., No. 3801d
money.] WILLS, Nos. 5696a, 5720a
money invested on any security.] MTGE., No.

money secured on mortgage.] EXORS., No. 5594a
monies.] WILLS, No. 5708a
moored vessel.] SHIP., No. 5608a
motor car.] STR. TRAF., Nos. 185b, 232a
M. S. A.] INJON., No. 906a
my own heirs whatsoever.] STTLMTS., No. 140a

name other than that by which he was ordinarily known.] ALIENS, Nos. 558c, 558d
national interest.] MINES, Nos. 180a, 327a, 327c
National League of the Blind.] CHAR., No. 23a
nationals of the former Austrian Empire.] ALIENS, No. 215l
nationals of the former Kingdom of Hungary.] ALIENS, No. 49h
nature or conduct of the defence.] CRIM., No. 4751a
necessary approaches.] RYS., No. 197a
necessary either for disposing fairly of the matter or for saving costs.] ADM., No. 1047a
negligence.] BANK., No. 289a
negligence of master.] INSCE., No. 1660a
negligent in the observance or performance of any of his ordination promises.] ECCL., No. 2717a
nepos.] DESCT., No. 134a
net profits.] PETNRS., No. 1841a

new building.] HGHYS., No. 2591a
new erection.] HGHYS., Nos. 2592a, 2
newly-born.] CRIM., No. 8266a
new street.] HGHYS., No. 951a
next quarter sessions.] RATES, No. 1392a
no application for a new trial before a referee shall be made.] ARBN., No. 2580b
no liability . . . for any accident or damage.] BAILMT., No. 140b
nominee.] FR. SOC., No. 155a
no person shall act as such agent or canvasser.] MONEY, No. 381a
not being earlier than.] FACT., No. 211a
notice of suspensation or intended suspension of payment.] BKPCY., No. 957a
notice to quit.] L. & T., No. 7281a
not negotiable.] AGCY., No. 989a
not required.] COMP. PCHE., No. 116b
not required for the purposes for which it has been acquired.] COMP. PCHE., No. 116b
now or hereafter in force.] DEP., No. 164a
now paid.] B. OF SALE, No. 237a

objects connected with the church as he shall think fit.] CHAR., No. 717a
objects of charity or any other public objects in parish of F.] CHAR., No. 751a
obstruction.] HGHYS., No. 2592a
obtained.] CRIM., No. 10,754b
obtained under circumstances which amount to . . . misdemeanour.] CRIM., No. 10,752a
occasional.] MAST. & S., No. 3801a
occupied for the purpose of business.] ELECT., No. 96a
offence.] CRIM., No. 1676a
offer in writing to withdraw notice to quit.] AGRIC., No. 266e
official guide.] COPRT., No. 135a
oldest respectable inhabitants.] CHAR., No. 23b
omnia præsumuntur rite esse acta.] WILLS, No. 1158a
on account of our principals.] AGCY., No. 2546a
on a sale being effected.] AGCY., No. 1776c
on a special occasion.] STR. TRAF., No. 76f
on a voyage.] INSCE., No. 720b
on or about.] S. LAND, No. 880a
on or before.] INC. T., No. 638a
on sale by private treaty.] AGCY., No. 1776a
on signing this charter.] AGCY., No. 1786a
on the sale of any article.] AGRIC., No. 971a
on the understanding.] TRUSTS, No. 401a
one year's wages.] WILLS, No. 7637a
open space.] STTLMTS., Nos. 3151b, 3151c
opposite to.] WATERS, No. 475a
order.] JDGMTS., No. 368a
order, disposition or reputed ownership.] B. OF SALE, No. 673a
order or judgment.] BKPCY., No. 8496a
orders to be acknowledged by return.] CONTR., No. 418a
order . . . to do an act.] CORPNS., No. 1493a; CNTMPT., No. 528a
order to pay forthwith or within a fixed time after receipt.] BKPCY., No. 8398a
ordinarily resident.] ALIENS, No. 13a; INC. T., Nos. 131b, 131c
ordinary course of business.] AGCY., No. 495b
ordinary necessaries of life.] MAST. & S., No. 2120a
original literary work.] COPRT., Nos. 43a, 43b
original or first vendors.] MED., No. 253a
or in some other responsible insurance office to be approved by the lessor.] L. & T., No. 5069a
or other authority.] STR. TRAF., No. 55a
or their issue.] WILLS, No. 10,020
other funds, charities & institutions as my exors. in their absolute discretion shall think fit.] CHAR., No. 47a
other services.] HGHYS., No. 1435f
other source.] ELECTRIC, No. 6a
otherwise.] RATES, No. 1146a
otherwise absenting himself to the intent to delay creditors.] BKPCY., No. 669a
otherwise than as a private dwelling-house.] S. LAND, No. 2785a
outgoing.] RATES, No. 226dd
outgoings.] L. & T., No. 4482a; RATES, No. 226dd
out of or in the course of the employment.] MAST. & S., Nos. 2340b—2737b
outstanding liabilities.] COYS., No. 2344a
owner.] PUB. HLTH., No. 502a
owner for the time being.] HGHYS., No. 2439a
owner of the goods.] PAWNS, No. 173a

packing or wrapping paper.] REVENUE, No. 93c
paid.] INC. T., No. 557a
paid office.] L. G., No. 14a
parent.] EDUC., No. 99a
parish property.] POOR L., No. 34a
parochial institutions or purposes as he shall select.] CHAR., No. 717b
partial consideration.] E. D., No. 107a
particulars of claim.] AGRIC., Nos. 266v—266x
part with the possession of the demised premises or any part thereof.] L. & T., No. 5186a
patentee as such.] PATS., No. 1687f
patriotic purposes or charitable institutions or objects.] CHAR., No. 740b
peace, order, & good government.] DEP., Nos. 179a, 234b
penalty or liquidated damages.] DAMGS., Nos. 426a, 426b, 487a
pending the settlement of his claim.] MAST. & S., No. 4137a
permanent improvements.] STTLMTS., No. 1873a
permit.] L. & T., No. 2932a
permits such premises . . . to be used as a brothel.] CRIM., No. 8143b
person.] BANK, No. 128a; CORPNS., No. 907a; ELECTRIC, No. 33a
person affected by the decision of the court.] ADM., No. 1597a
person aggrieved.] BKPCY., Nos. 4808a, 4808b; FOOD, No. 476b; HGHYS., No. 1894a; STR. TRAF., No. 5a
person authorised.] MED., No. 242b
person claiming to be entitled to any money deposited in such savings bank.] BANK., No. 112a
person entitled to receive the rents & profits.] AGRIC., No. 266l
person entitled to require a legal estate to be conveyed to or otherwise vested in him.] L. & T., No. 1526a
person having an interest in the inquiry.] ADM., No. 1597a
person interested in the land.] AGRIC., No. 266p
person in the employment of the company.] COYS., No. 3526a
person in trust for any creditor.] BKPCY., No. 7414a
person managing or conducting an entertainment.] CORPNS., No. 903b; CRIM., No. 8177a
person of full age.] CORPNS., No. 903a
personal estate.] CONFL., No. 511
person suffering loss by exercise of powers.] AGRIC., No. 266p
persons beneficially interested in possession.] TRUSTS, No. 3475b

per working hatch.] SHIP., No. 3920a
pipes, rain water, & their connections, cast iron or steel.] CARR., No. 1245b
placards, posters or advertisements other than plates or other similar announcements.] L. & T., No. 3026a
place.] INTOX., No. 366a
place appropriated to public religious worship.] HGHYS., No. 2405b
place of business within the United Kingdom.] CORPNS., No. 1544a
place of dramatic entertainment.] COPRT., No. 99a
plead guilty or admit the truth of the charge.] ALIENS, No. 558h
possession or apparent possession.] B. OF SALE, No. 673a
possession, order or disposition.] BKPCY., Nos. 6507a, 6516a, 6659a, 6708a, 6745a
post-nuptial settlement.] H. & W., Nos. 5623a, 5623b, 5624a, 5624b, 5625a, 5625b
post office offence.] CRIM., No. 5156a
prejudiced by a voluntary winding-up.] COYS., No. 7203a
premises.] ACTION, No. 604a; ALIENS, No. 558a; ELECT., No. 96a; FISH., No. 176a; L. & T., No. 2306e
premises exclusively appropriated to public religious worship.] HGHYS., No. 2405b
premises in such a state as to be a nuisance.] NUIS., No. 364a
premises on which machinery . . . is temporarily used for the purpose of the construction of a building.] FACT., No. 180b
prepared or published by or under the direction or control of His Majesty.] COPRT., No. 85a
preservation of all animals, birds or other creatures not human.] CHAR., No. 208a
pressure.] BKPCY., Nos. 7172a, 7261a
prices to be agreed upon.] S. GOODS, No. 28a
primary purpose & use.] *See* Industrial hereditament, *supra*
prime cost.] INSCE., No. 491a
Primrose League.] CHAR., No. 217b
principles of practice.] AGRIC., No. 266z
printing or knowingly circulating coupons.] GAMING, Nos. 415a—415d
private profit.] COPRT., No. 389a
private wharf.] CARR., No. 1166a
proceeding.] PUB. AUTH., No. 882a
proceeding by action . . . to enforce a restrictive covenant.] S. LAND, No. 2807a
proceeding . . . for recovery of a fine or penalty imposed in relation to an offence against any law of excise.] REVENUE, No. 811a; STR. TRAF., No. 117b
proceeding instituted.] ACTION, No. 90a
proceedings . . . in respect of an alleged deficiency in weight.] FOOD, Nos. 439a, 439c
professing to tell fortunes.] CRIM., Nos. 12,169a, 12,169b
profit.] INC. T., No. 224a
profits available for dividend.] COYS., No. 4016a
profits or gains.] INC. T., Nos. 93a, 96a, 97a, 97b,

profits or gains brought into charge to tax.] INC. T., No. 369c
promotion of sport.] CHAR., No. 199a
properly packed.] CARR., No. 1323e
property.] BKPCY., Nos. 5738a, 7681b, 7782b; CONST. LAW, No. 474a; DEP., Nos. 128c,

property held by bankrupt on trust.] BKPCY., No. 6150a
property in lands, tenements, hereditaments & INC. T., No. 36a
property . . . in respect of which estate duty is leviable.] E. D., No. 129a
property locally situate out of the United Kingdom.] CHOS., No. 26a; COYS., No. 4389a; REVENUE, No. 661a
property (not personal).] WILLS, No. 5881a
property of which deceased was competent to dispose.] E. D., No. 33a
property, rights & interests within His Majesty's dominions.] ALIENS, Nos. 215f, 215g, 215m, 215n
property undisposed of by will.] EXORS., Nos. 5917a, 5917b, 5919a
property with respect to which the personal qualifications of the tenant are of importance.] L. & T., No. 6399a
protective trusts.] POWERS, No. 187a
Protestant.] DEP., No. 176a
public charity.] MAST. & S., Nos. 4230a—4230c
public duty.] PUB. AUTH., No. 777a
public interest.] PATS., No. 1651a
public place.] STR. TRAF., No. 222b
public religious worship.] ECCL., No. 2a
public school.] EDUC., No. 182a; INC. T., Nos. 59a, 62a
public street, road, or place.] STR. TRAF., No. 94a
public trusts.] CHAR., No. 1870b
publish any proposal . . . for the sale of any ticket.] GAMING, Nos. 462a, 464a, 464b
punctually.] B. OF EXCH., No. 441a
purchase for partial consideration.] E. D., No. 107a
purchaser for valuable consideration.] BKPCY., Nos. 7719a, 7121a
purposes of his trade or business.] MAST. & S., No. 2227a
purposes of the employer's trade or business.] MAST. & S., No. 2204a
put through.] BKPCY., No. 7393a

qualified persons.] COYS., No. 2879a
No. 52c
quia timet.] EQY., Nos. 2702a, 2705a

railway.] CARR., No. 1287a
railway charges.] RYS., No. 756a
ratione nocumenti.] HGHYS., No. 1002a
ratione tenuræ.] HGHYS., No. 951a
ready for shipment.] S. GOODS, No. 622a
real & personal estate.] EXORS., No. 5917b
realisation.] INC. T., Nos. 321b, 321c
real securities.] MTGE., No. 383a
real securities in England or Wales, but not in Ireland.] MTGE., No. 389a
reasonable deviation.] SHIP., No. 3162a
reasonable excuse.] AGRIC., No. 978a; EDUC., Nos. 78a, 79a, 96a
reasonable opportunity of making a valuation.] AGRIC., No. 265c
reasonable part of income.] INC. T., No. 674n
reasonable time.] INC. T., No. 674g
reasonable wear & tear excepted.] L. & T., No. 4739a
reasonably required for the purpose of carrying out this Act.] RATES, No. 1158b
receivable.] INC. T., No. 691a
receiver.] B. OF EXCH., No. 763b
receiver, F. Ltd.] COYS., No. 5036a
receives payment.] BANK., No. 292b
receiving.] INC. T., No. 632a
reconstruction.] SEWERS, No. 304a
recovery.] MAST. & S., No. 3541a
rector of St. Thomas' Roman Catholic Church at N.] CHAR., No. 991b

rectory with cure of souls.] ECCL., No. 3466a
refusal or failure to agree to arbitration.] AGRIC., No. 266j
regular jurymen.] CRNRS., No. 152a
regularly employed.] POOR L., No. 100a
reimbursing or repaying any money knowingly lent or advanced for betting.] GAMING, No. 188a
relating to payments on death of children.] FR. SOC., No. 175a
relief.] POOR L., No. 1607a
relief, order or direction concerning or relating to a charity, or the estate, funds, property or income thereof.] CHAR., No. 2177a
renewal debentures.] B. OF EXCH., No. 843a
repair.] SEWERS, No. 304a
repatriation fund . . . for . . . returned soldiers.] CHAR., No. 199b
requisite consent cannot be obtained.] TRUSTS, No. 3466a
res gestæ.] EVID., Nos. 311a, 311b
resident.] ALIENS, No. 13a; INC. T., Nos. 131b, 131c
resorting.] GAMING, No. 278a
restoration or maintenance.] CHAR., No. 1444b
restraint of princes, rulers & people.] CONTR., No. 3183a
retail shop.] RATES, Nos. 226k, 226p, 226r, 226s
return.] CORPNS., No. 1493a; CNTMPT., No. 528a
reversible.] SHIP., No. 3665a
reversion.] L. & T., No. 4841b
revert to & be added to my general residuary estate.] EXORS., No. 5654a
road.] STR. TRAF., No. 232c
rogue & vagabond.] CRIM., No. 1031a
rolling stock.] CARR., No. 1245a
Roman Catholic Church.] CHAR., No. 981c
Royal National Lifeboat Institution.] CHAR., No. 47a
royalties.] DEP., Nos. 98, 98a, 130e
rule.] JDGMTS., No. 368a

salary.] PUB. AUTH., No. 1048a
sale for use as food for cattle.] AGRIC., No. 978b
sale in exercise of a statutory power to enforce a right or to satisfy a claim or lien.] AGRIC., No. 978b
salvage plant.] ROYAL F., No. 56a
same authority in the conduct of any reference or trial as a judge of the High Court.] ARBN., No. 2580b
satisfied.] PUB. HLTH., No. 481a
scheme.] EDUC., No. 24a; ELECTRIC, No. 103c
secured creditors.] BKPCY., No. 3375a
securities for money.] MTGE., No. 1324a
security for an annuity.] REVENUE, No. 619a
see other side for completion.] WILLS, No. 839a
self-governing Dominion.] COPRT., No. 389a
seller of milk.] INC. T., No. 79b
semper præsumitur pro matrimonio.] H. & W., No. 453a
sentence.] CRIM., No. 5554a
servant or agent.] INTOX., No. 733a
set apart for the purposes of interment.] BURIAL, No. 291a
settled land.] STTLMTS., No. 2597
set up a counterclaim.] ADM., No. 969a
set up & commenced.] INC. T., No. 200b
set up new profession.] INC. T., No. 315a
seven days.] CRIM., No. 3165a
Shakespeare Memorial National Theatre.] CHAR., No. 73a
shall be deemed to be a rogue & vagabond.] GAMING, No. 466a
shall die.] WILLS, No. 6527a
shall do some act whereby income would be assigned.] BKPCY., No. 5909a
shall not pass to any trustee or other person.] BKPCY., No. 6296a
shares.] WILLS, No. 5466a
ship.] ADM., No. 87a
ship entitled to be registered as a British ship.] ADM., No. 648a
ship or vessel.] INSCE., No. 505a
shipped in apparent good order & condition.] SHIP., No. 2257a
ship's creditors.] CONFL., No. 1309b
shop assistant.] FACT., No. 206a
sickness.] MAST. & S., No. 640a
signed by him.] BKPCY., No. 8653a
single private drain.] SEWERS, No. 14a
single woman.] BASTY., No. 262a
sinking.] INSCE., No. 1608a
société en nom collectif.] INC. T., No. 206a
society.] ACTION, No. 599a
so far as the circumstances of the case admit.] SHIP., No. 5686a
Soldiers' Crippled Homes.] CHAR., No. 891a
sole agency.] AGCY., Nos. 1813a, 1813b, 2083a—2083c
sole & exclusive right of representing or performing.] CONTR., No. 4922a
sole selling agents.] S. GOODS, No. 1399a
solvent.] BKPCY., No. 4116a
some other or further use.] STR. TRAF., No. 188a
special circumstances.] EXORS., No. 1463a
specially equipped with salvage plant.] ROYAL F., No. 56a
specially valuable articles.] INSCE., No. 3282c
specifically described.] B. OF SALE, No. 420a
specific cause.] INC. T., Nos. 212, 214a
specified.] S. GOODS, No. 1905a
specified age.] INC. T., No. 545c
stage carriages.] STR. TRAF., No. 76d
standard.] CARR., No. 1323a
standing.] STR. TRAF., No. 232a
stateless person.] ALIENS, No. 49a
step in the proceedings.] ARBN., Nos. 316a, 402a
storage.] RATES, Nos. 226g, 226o
street.] HGHYS., Nos. 91a, 2766a; S. LAND, No. 1162a; SP. PFCE., No. 707a
struck with sterility.] OPEN SP., No. 14a
subject of the decree.] H. & W., No. 5624b
subject to any legal objection.] ARBN., No. 816a
subject to a proper contract to be prepared by the vendor's solicitors.] CONTR., No. 546b
subject to contract.] AGCY., No. 1705a; CONTR., Nos. 539a, 540a
subject to such terms being fully set out in a formal contract or agreement.] CONTR., No. 511a
subject to suitable agreements being arranged between your solicitor & mine.] CONTR., No. 546a
subject to surveyor's report.] CONTR., No. 422b; S. LAND, No. 32a
subject to the terms of a lease.] CONTR., No. 419a; L. & T., No. 370a
subject to the title being approved by our solicitors.] CONTR., No. 420a
submission.] ARBN., No. 36a
succession.] INC. T., Nos. 210a—210d
such charges as were in force.] CARR., No. 1377m
suffer.] L. & T., No. 2932a
suffer an injustice.] LUNAT., No. 529a
sufficient cause.] BKPCY., Nos. 1077a, 1483a, 1491a
suitable.] MAST. & S., No. 3392a
Summary Jurisdiction Acts.] H. & W., No. 6238b
sum periodically payable.] REVENUE, No. 619a
Sunday.] CRIM., No. 5570b
Superior of the Jesuit Church.] CHAR., No. 79a

supply of mechanical power.] FACT., No. 98a
surety or guarantor for the debt due to such creditor.] BKPCY., No. 7361a
surplus assets.] COYS., No. 6569a
surrounding circumstances.] B. OF EXCH., No. 763b
survivors.] WILLS, No. 10,427a

tackle & furniture of the barge.] INSCE., No. 519a
tax appropriate thereto.] INC. T., No. 467a
team-work.] AGRIC., No. 166a
temporarily used.] FACT., No. 153a
temporary building.] JDGMTS., No. 219a
tenant.] L. & T., Nos. 7352d, 7359b, 7359c
tenement factory.] FACT., No. 98a
termination of the tenancy.] AGRIC., No. 266h
term of years.] RATES, No. 1057a
testamentary expenses.] EXORS., Nos. 5448a, 8819a
the area.] SHIP., No. 8104a
then current rate.] RATES, No. 1184a
the same.] HGHYS., No. 2244a
thing in action.] H. & W., No. 2294a
third parties.] INSCE., No. 2962a
threatening to accuse . . . of . . . crime.] CRIM., No. 10,505a
tickets in any lottery.] GAMING, No. 466b
till further order.] ECCL., No. 1775a
title deeds.] REAL PROP., No. 537b
to be at his own disposal.] CHAR., No. 1424a
to be drawn by counsel.] CONTR., No. 504a
to be sent to me as published.] CONTR., No. 1213a
to be settled by arbitration in London in the usual way.] ARBN., No. 135a
to get votes.] ELECT., No. 96a
to his knowledge false.] INSCE., No. 3217h
trade.] BKPCY., No. 274a; INC. T., Nos. 112a, 114a, 114b, 116a; WORK, No. 74a
trade expense.] INC. T., Nos. 224a—224c, 226a, 226b
trader.] BKPCY., Nos. 79b, 160a
trader interested.] CARR., No. 1377a
trading.] INC. T., No. 119a
trading receipts.] INC. T., No. 119a
trade or business carried on for purposes of gain.] WORK, Nos. 118a, 123b
transfer of goods in the ordinary course of business of any trade or calling.] B. OF SALE, No. 138b
transfer of property.] BKPCY., No. 2902a
transfer or assignment.] B. OF SALE, No. 830a
treated as a market garden.] AGRIC., No. 267a
true owners.] BANK., No. 687a; B. OF SALE, No. 710a
trustee.] COYS., No. 6857a
trustees for sale.] S. LAND, No. 1104a
twelve feet in height.] PUB. HLTH., No. 204b
twenty-three years of age or under.] CRIM., Nos. 9323b—9323d
two institutions . . . which I hope to be able to name.] CHAR., No. 703a

uberrimæ fidei.] INSCE., No. 2907a
ulterior to the limitations therein.] STTLMTS., No. 2399b
unconditionally.] H. & W., No. 5410a
under any circumstances whatsoever.] CARR., No. 851b
under deck.] S. GOODS, No. 674a
under efficient instruction in some other manner.] EDUC., No. 88a
under influence of drink.] INTOX., No. 764b
underlet or permit any other person to use or occupy.] AGRIC., No. 164a; ANIMALS, No. 342a
under proper conditions.] CORPNS., No. 340a
under such circumstances that he is the reputed owner thereof.] BKPCY., Nos. 6802a, 6882a, 6882b
undertaking.] CONTR., No. 3379a
under the control of not more than five persons.] INC. T., No. 674o
under this Act.] H. & W., No. 6230a
under way.] SHIP., Nos. 5608a, 5648a
unfinished buttons.] REVENUE, No. 93d
unforeseen contingencies excepted.] CONTR., No. 2505a
Universal Negro Redemption Fund.] CHAR., No. 272a
unlawful gaming.] GAMING, Nos. 255a, 267a, 278a
unless he attempts to become bankrupt.] BKPCY., No. 5936a
unreasonably withhold.] L. & T., No. 2995b
until after the completion of the works.] BLDG. CONTS., No. 388a
until further order.] H. & W., No. 5405b
until he shall do some act . . . which shall forfeit the same in the case of bankruptcy.] BKPCY., No. 5936a
unto my country England.] CHAR., No. 217c
untrue.] INSCE., No. 2855a
used as parts of a single . . . factory.] RATES, No. 226cc
used only for commercial travelling.] INSCE., No. 3279a
used or intended to be used as a model or pattern to be multiplied.] COPRT., No. 111a
use of this form constitutes a submission to the rules of the association.] CUSTOM, No. 703a
usual covenants.] L. & T., No. 2498a
usually.] INC. T., No. 204a
usual public-house contract to be entered into.] CONTR., No. 513a
utters . . . any letter . . . demanding . . . with menaces.] CRIM., No. 10,487a

valuable business premises.] AUCT., No. 191a; S. LAND, No. 576a
value.] ANIMALS, No. 694a
value cheque on London.] MONEY, No. 17b
vehicle.] INSCE., No. 3157a
venire de novo.] CRIM., Nos. 2567a. 3287a, 6234a, 6234b, 6237b
violation or culpable neglect of duty.] EXORS., Nos. 3127a, 3127b
volenti non fit injuria.] CARR., No. 598a; LIBEL, No. 167c
voluntary transfer.] BKPCY., No. 7220a
voyage.] INSCE., No. 912a

war.] ALIENS, No. 405a
war bonuses.] L. G., No. 48a
war loan.] WILLS, No. 5532a
weather.] SHIP., No. 2736a
weather working days.] SHIP., No. 2736a
wherein no business of any kind is carried on.] L. & T., No. 2913a
which I promise never to repay.] B. OF EXCH., No. 295a
whist drive.] CLUBS, No. 140a
wholesale distributive business.] RATES, Nos. 226h, 226o, 226t
wholly let out in apartments or lodgings.] RATES, Nos. 675a, 675b
wholly pastoral.] AGRIC., No. 30f
wife.] H. & W., Nos. 1223a, 2039a; WILLS, No. 7307a
wilful act or omission.] COYS., No. 3059a

wilful default.] EXORS., No. 6915a
wilfully assaults . . . child . . . in a manner likely to cause . . . unnecessary suffering.] CRIM., No. 9023a
wilfully refusing & neglecting to maintain.] CRIM., No. 72b
wilfully withhold.] TRADE, No. 1157a
wilful neglect or default.] COYS., Nos. 3059a, 4678a
wilful or wrongful act or default.] COYS., No. 432c
winding-up of any partnership.] PRTNRS., No. 1691a
wine.] INTOX., No. 9a
with all faults.] S. GOODS, Nos. 643a—643c, 645a
within due time after my death.] WILLS, No. 7034a
within six years.] AGRIC., No. 229a
within ten miles from X.] TRADE, No. 457a
without negligence.] B. OF EXCH., No. 2475b
without prejudice.] EVID., Nos. 535a, 3850a
without prejudice to any civil liability.] AGRIC., No. 978a
with respect to the objects of the COYS., No. 4321a
with utmost dispatch.] SHIP., No. 2059a
work.] COPRT., No. 325c
work connected with the Roman Catholic Church.] CHAR., No. 717d
working hatch.] SHIP., No. 3920a
working holiday.] SHIP., No. 4048a
work of the Cathedral.] CHAR., No. 717c
work of the Church in Wales.] CHAR., No. 718b
workman.] MAST. & S., Nos. 2057a, 2057b
writing.] CONTR., No. 467b
written promise to pay.] LIMIT. OF A., No. 356a

year to year.] MAST. & S., No. 769a

Zoological Gardens, upkeep & improvement of.] CHAR., No. 70a
zoology, advancement of.] CHAR., No. 70a

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